

1 Kenneth J. Catanzarite (SBN 113570)
CATANZARITE LAW CORPORATION
2 2331 West Lincoln Avenue
Anaheim, California 92801
3 Tel: (714) 520-5544
Fax: (714) 520-0680

4
5 Lionel Z. Glancy, Esq. (SBN 134180)
LAW OFFICES OF LIONEL Z. GLANCY
1801 Avenue of the Stars, Suite 311
6 Los Angeles, California 90067
Tel: (310) 201-9150

7
8 Attorneys for Dale M. Dodd,
and all others similarly situated

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UNITED STATES DISTRICT COURT

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SOUTHERN DISTRICT OF CALIFORNIA

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DALE M. DODD, Trustee of the Dale M.
14 Dodd, D.O., Inc. Money Purchase Pension
Plan, and all others similarly situated,

Case No.

15

Plaintiffs,

CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE FEDERAL
SECURITIES LAWS

16

vs.

JURY TRIAL DEMANDED

17

ELAN CORPORATION, PLC; DONAL J.
18 GEANEY, individually; WILLIAM F.
DANIEL, individually; and THOMAS
19 LYNCH, individually

20

Defendants.

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22 Plaintiff has alleged the following based upon personal knowledge as to him and his own
23 acts, and upon information and belief based upon the investigation of Plaintiff's attorneys as to
24 all other matters. Such investigation included a thorough review and analysis of the documents
25 publicly-filed on behalf of Elan Corporation, PLC ("Elan" or "the Company"), the Liposome
26 Company, Inc. ("Liposome") merger related Registration Statement by Elan (the "Liposome
27 Merger"), the Dura Pharmaceuticals, Inc. ("Dura") merger related Registration Statement by Elan
28 (the "Dura Merger"), public statements, press releases, news articles and analyst reports.

1 Plaintiff believes that substantial additional evidentiary support will exist for the allegations set
2 forth herein after a reasonable opportunity for discovery.

3 **SUMMARY OF THE ACTION**

4 1. This securities class action is brought on behalf of investors in Liposome
5 (“Liposome Investors”) who received American Depository Shares ("ADS's") of Elan as a result
6 of the Liposome Merger on or about May 12, 2000, and investors in Dura (“Dura Investors”)
7 who received ADS’s of Elan as a result of the Dura Merger on or about September 11, 2000,
8 pursuant to Elan’s Form F-4 Registration Statements filed with the Securities and Exchange
9 Commission on April 12, 2000 and October 10, 2000 respectively (sometimes referred to herein
10 as the “Liposome Statement” and the “Dura Statement” and sometimes collectively referred to as
11 the “Registration Statements”) and who sold the ADSs received at a loss or who retained or
12 added to their holdings in Elan through February 4, 2002, inclusive (the "Class Period") and who
13 seek remedies under the Securities Act of 1933 (the "Securities Act Class").

14 2. During the Class Period, the Individual Defendants caused Elan to falsely report
15 in the Registration Statements and other public statements favorable financial results by, among
16 other things, improperly recognizing revenues from joint ventures and/or improperly recognizing
17 income related to deals with companies in which Elan had invested, and/or concealing material
18 related-party transactions and/or overstating its assets and understating its liabilities. As a result,
19 Elan's stock traded as high as \$65 per share during the Class Period.

20 3. Revelations about the Defendants' negligent or intentional misrepresentations
21 began to come to light on January 30, 2002, when The Wall Street Journal published an article
22 on Elan's accounting entitled, "Elan’s Revenue Gets a Quick Lift From Its Complicated
23 Accounting" (the "1/30/02 WSJ Article"). The article quoted Lynn Turner, the former chief
24 accountant for the U.S. Securities and Exchange Commission: “What’s the real substance? ... I’m
25 taking money out of one pocket and putting it into another. That is a charade.” The article went
26 on to raise serious questions about the propriety of Elan's accounting practices, including its
27 practice of recognizing revenues from joint ventures with other entities in which it invested.

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1 4. On the day of the 1/30/02 WSJ Article, the price of Elan's shares fell to as low as
2 \$22.40 per share on volume of 37,139,200 shares. The closing price of \$29.25 on that day was
3 well below the Class Period high of \$65 per share and well below the \$39.9375 per share
4 exchange price received by the Liposome Investors as a consequence of the Liposome merger,
5 and the \$48.9375 per share exchange price received by the Dura Investors as a consequence of
6 the Dura merger, based on closing prices for Elan on the acquisition dates of 5/12/2000 for the
7 Liposome merger and 9/11/2000 for the Dura merger, respectively. The volume on February 4,
8 2002 was well above the 5.08 million average daily volume 3-month moving average as reported
9 for Elan by Market Guide as of 2/7/2002.

10 5. Revelations about the Defendants' negligent or intentional misrepresentation of its
11 financial condition continued to come to light on February 4, 2002, when Elan issued its 2001
12 financial results and held a conference call with investors and analysts to discuss downwardly-
13 revised earnings expectations for the upcoming fiscal year. The Wall Street Journal chronicled
14 the further shock to the market that resulted from disclosures made on Elan's conference call in
15 an article entitled, "Elan Discloses Accounting Details, Issues Profit Warning for 2002" (the
16 "2/4/02 WSJ Article"). The article quoted Marc Goodman, a Morgan Stanley analyst: "...the
17 [conference call] provided a group of numbers that was much worse than anyone would have
18 expected."

19 6. On the day of the February 4, 2002 conference call, the price of Elan's shares fell
20 to as low as \$14.20 per share on volume of 54,045,300 shares. The closing price of \$14.85 on
21 that day was well below the Class Period high of \$65 per share and well below the \$39.9375 per
22 share exchange price received by the Liposome Investors and the \$48.9375 per share exchange
23 price received by the Dura Investors based on closing prices for Elan on the acquisition dates of
24 5/12/2000 and 9/11/2000, respectively. The volume on that day was well above the 5.08 million
25 average daily volume 3-month moving average as reported for Elan by Market Guide as of
26 2/7/2002.

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1 **JURISDICTION AND VENUE**

2 7. This action arises under §§ 11, 12(2) and 15 of the Securities Act. The Court has
3 jurisdiction over the subject matter of this action pursuant to § 22(a) of the Securities Act of 1933
4 (15 U.S.C. §77v(a)) (the "Securities Act").

5 8. Venue is proper in this district pursuant to § 22 of the Securities Act. Elan is
6 headquartered in Dublin, Ireland, but conducts significant business in this District, maintains
7 offices in this District, and the acts charged herein had a substantial effect in this District. The
8 acts alleged herein, including the dissemination of materially false and misleading information,
9 occurred in this District.

10 9. In connection with the wrongs alleged herein, defendants directly or indirectly
11 used the instrumentalities of interstate commerce, including but not limited to the United States
12 mails, interstate wire and telephone facilities, and the facilities of the national securities markets.

13 **PARTIES**

14 10. Plaintiff Dale M. Dodd, Trustee ("Dodd") of the Dale M. Dodd, D.O., Inc. Money
15 Purchase Pension Plan, obtained Elan ADS's during the Class Period as listed on the Sworn
16 Certification, attached hereto as Exhibit "A," and has been damaged thereby.

17 11. Defendants are Elan and the following Officers and Directors of Elan: (a)
18 Chairman and Chief Executive Officer, Donal J. Geaney ("Geaney "); (b) Company Secretary,
19 William F. Daniel ("Daniel"); (c) Executive Vice Chairman and former Chief Financial Officer,
20 Thomas Lynch ("Lynch"). Defendants Geaney, Daniel, and Lynch shall hereinafter collectively
21 be referred to as the "Individual Defendants."

22 12. Defendant Elan is an Irish corporation headquartered in Dublin, Ireland. It also
23 has offices in several cities in the United States and elsewhere, including at 7475 Lusk
24 Boulevard, San Diego California, 92121. A majority of Elan's stock trades in the form of ADSs
25 on the New York Stock Exchange under the symbol "ELN". Elan is a biopharmaceutical
26 company that develops and markets products in neurology, pain management, oncology,
27 infectious disease, and dermatology, and develops and commercializes products using proprietary
28 drug delivery technologies.

1 damages of any member of the Class may be relatively small when measured against the
2 potential costs of bringing this action, and thus make the expense and burden of this litigation
3 unjustifiable for individual actions. In this class action, the Court can determine the rights of all
4 members of the Class with judicial economy. Plaintiff does not anticipate any difficulty in
5 managing this suit as a class action.

6 20. Common questions of law and fact exist as to all members of the Class and
7 predominate over any questions affecting solely individual members of the Class. These
8 questions include, but are not limited to, the following:

- 9 a. whether defendants' conduct as alleged herein violated the federal securities laws;
- 10 b. whether the SEC filings, Registration Statements, press releases and statements
11 disseminated to the investing public and in particular the Liposome Investors and the Dura
12 Investors related to the mergers during the Class Period misrepresented Elan's financial
13 condition and results;
- 14 c. whether the market price of Elan common stock as of the date of the Registration
15 Statements and during the Class Period was artificially inflated; and
- 16 d. Whether members of the Class have been damaged and, if so, the proper measure
17 thereof.

18 **MISLEADING STATEMENTS AND OMISSIONS**

19 21. On April 12, 2000 Elan issued a Form F-4 Registration Statement in conjunction
20 with its acquisition of Liposome which stated at page 9 as follows:

- 21 a. That the summary historical consolidated financial statements of Elan as of
22 September 30, 1999 reflected “. . . all adjustments necessary to present fairly the information set
23 forth therein. . . .”
- 24 b. That as of September 30, 1999 the net income for the nine month period was
25 \$245 million and that as of the same date the total long term obligations were \$1.2 billion
26 resulting in total shareholders equity of \$1.2 billion.

27 22. In fact as outlined in the following disclosures the defendants overstated the above
28 revenue by including licensing revenues that were derived from essentially its own assets

1 transferred to ventures that it controlled and understated its long term liabilities and hence
2 overstated the shareholder equity by approximately \$1 billion as a result of off balance sheet
3 transactions with ventures the debt of which should have been fairly disclosed in the Liposome
4 Statement.

5 23. On October 10, 2000 Elan issued a Form F-4 Registration Statement in
6 conjunction with its acquisition of Dura which stated at page 15 as follows:

7 a. That the summary historical consolidated financial statements of Elan as of
8 September 30, 1999 reflected "...consolidated financial statements of Elan and its subsidiaries,
9 audited by KPMG Chartered...".

10 b. That as of December 31, 1999 the net income for the twelve month period was
11 \$261 million and that as of the same date the total long term obligations were \$1.2 billion
12 resulting in total shareholders equity of \$1.3 billion.

13 24. In fact as outlined in the following disclosures the defendants overstated the above
14 revenue by including licensing revenues that were derived from essentially its own assets
15 transferred to ventures that it controlled and understated its long term liabilities and hence
16 overstated the shareholder equity by approximately \$1 billion as a result of off balance sheet
17 transactions with ventures the debt of which should have been fairly disclosed in the Liposome
18 Statement.

19 25. The Liposome Investors received approximately \$700 million and the Dura
20 Investors approximately \$2.2 billion of ADSs as a consequence of the mergers. The value of the
21 ADSs were artificially inflated as a consequence of the misrepresentations described herein
22 causing loss to the Plaintiff and the Class.

23 26. The above-noted statements and claims were materially false or misleading either
24 specifically or by omission for reasons highlighted in a recent series of Wall Street Journal
25 articles. The specifics of those articles as they relate to the materially false or misleading nature
26 of Elan's Registration Statements were as follows:

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1 The *Journal* characterized Elan’s method of transmuting a cash asset on the balance sheet
2 into a revenue and profit item on the income statement as an “Uncommon Setup.” One example
3 of this uncommon setup was described as follows:

4 In the wake of the scandal over Enron Corp.'s misleading
5 accounting, the ways that fast-growing companies reach their
6 stellar numbers are drawing a closer look. In the case of Elan,
7 whose revenue and earnings have soared in the past decade, such
8 scrutiny reveals some unusually structured deals that contribute to
9 financial results, but that are difficult for investors to evaluate.

10 In one case, a joint venture with a small North Carolina
11 biotech firm designed to find a treatment for ulcerative colitis, Elan
12 booked revenue even though no cash appears to have changed
13 hands when the venture was set up. In another joint venture, with a
14 Canadian biotech firm, the partners hadn't decided what research
15 the venture would pursue before it paid all of its funds to Elan for a
16 license.

17 The *Journal* offered a second example of the cash- to- joint venture- to- income
18 transmutation as follows:

19 Though Elan doesn't announce the joint ventures' financial
20 results, some details can be gleaned from SEC filings by the
21 company or its partners, such as [Incara Pharmaceuticals](#) Corp. of
22 Research Triangle Park, N.C. According to a securities-purchase
23 agreement filed by Incara with the SEC last January, Elan invested
24 \$2.985 million in this joint venture and \$16.015 million in Incara
25 stock and a warrant. Incara, the majority partner, then put \$12.015
26 million into the joint venture, bringing the venture's funding to \$15
27 million.

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1 The SEC filing said Elan would pay Incara the \$16.015
2 million by wire transfer. But in Incara's subsequent quarterly filings
3 with the SEC, its statements of cash flow don't show a receipt of
4 this cash in financing activities, nor do they show any payment
5 from Incara to the joint venture in investing activities. Yet SEC
6 filings say the joint venture bought a \$15 million technology
7 license from Elan.

8 A third example cited by the Journal notes the completely arbitrary nature of the "pricing"
9 decisions made by Elan with regard to these technology licenses "sold" to its captive joint
10 venture subsidiaries:

11 One joint venture brought revenue to Elan 12 months
12 before the partners had even mapped out a research program.
13 Formed a year ago, it involved [Generex Biotechnology](#) Corp. of
14 Toronto. Generex's CEO, Anna Gluskin, says the venture paid Elan
15 a \$15 million license fee for drug-delivery technology. Yet the
16 partners didn't know which chemical compound they would
17 develop or even which disease they would target. In an SEC filing
18 at the time, Generex said the "parties intend to select at least one
19 pharmaceutical product for research and development under the
20 joint venture within one year's time."

21 How could they decide a year in advance that the medical
22 technology was worth \$15 million -- all the money the joint
23 venture had? Elan says the price of its licenses is based on what the
24 technology is worth, not on the use of it. Ms. Gluskin says the joint
25 venture -- which, like Incara's, is based in Bermuda -- could afford
26 to pay that much for a license "based on the potential for coming to
27 market sooner than other" competing drugs. She says the partners
28

1 estimated that the market for whatever drug was eventually
2 developed would be at least \$500 million a year.

3 A similar uncommon setup employed by Elan to inflate its profits was a scheme to
4 transmute notes receivable on its balance sheet into a profit on its income statement. The
5 *Journal* noted:

6 Among Elan ventures' other quirks: After buying a license
7 from Elan, the ventures typically have no money left to pursue
8 research on new drugs. Elan sometimes makes them a loan. Then
9 they contract out the research work, often partly to Elan itself,
10 again producing revenue for Elan.

11 A third uncommon setup employed by Elan to inflate its operating profits was a scheme
12 to transmute items of a non-recurring nature into operating gains. The *Journal* noted:

13 Lately, the drug company has been selling off smaller
14 product lines. It books the proceeds as "product revenue," although
15 some accountants say they should be described as one-time gains,
16 under generally accepted accounting principles.

17 The misleading impact of these financial misrepresentations was magnified beginning
18 with the first quarter of 2000. The *Journal* noted:

19 Elan used to book the full license fee from new joint
20 ventures as revenue right away. But the SEC ruled in 1999 that
21 companies shouldn't immediately book revenue from agreements
22 in which they have continuing involvement, but should book it
23 over the life of the agreement. In response, about a year ago Elan
24 announced a \$344 million retroactive charge against earnings. The
25 seemingly adverse SEC ruling has actually made Elan's later
26 growth look better, because, having reversed the premature
27 booking of revenue, Elan became able to record this revenue in the
28 future.

1 The *Journal* further questions whether Elan is properly accounting for these joint
2 ventures even after the sale of dubious technology licenses:

3 All of the joint ventures run losses, Elan says. Just how
4 these losses affect Elan's earnings isn't very clear.

5 If a company's stake in a joint venture is below 20%, as
6 Elan's are, it may use "cost" accounting and needn't reflect a share
7 of the investment's losses on its own profit-and-loss statement. But,
8 as Elan points out, if a company has significant influence over the
9 investment, it ought to use the "equity" method of accounting and
10 record its share of the losses in a line on its P&L statement,
11 reducing its earnings.

12 In Elan's typical arrangement with joint ventures, it has veto
13 power over research, 50% board representation and a right to raise
14 its 19.9% financial stake to 50%. Yet Elan's P&L statements don't
15 break out any losses from the ventures. The Center for Financial
16 Research & Analysis Inc. in Rockville, Md., a firm that analyzes
17 companies' books for big investors, has said in a report that Elan
18 appears to be using cost accounting.

19 Elan says it uses the equity method "where appropriate." It
20 adds in a written statement that it "expenses its share of the
21 operating losses of all business ventures regardless of whether the
22 equity method or cost method is used. Such amounts are included,
23 in full, in net interest expense."

24 "‘Why in the world would they put this in interest expense?
25 That doesn't make any sense at all," says J. Edward Ketz, an
26 associate professor of accounting at Penn State, when told of Elan's
27 statement. "What they are doing is not consistent with either cost-
28 method or equity-method accounting. I don't see how, under U.S.

1 GAAP, that would be." In addition, the interest-expense table in
2 Elan's SEC filings doesn't seem to show such losses.

3 The Court might as itself why the outside auditors have not acted to rein in Elan's
4 financial sleight-of-hand. The *Journal* notes a disconcerting affiliation between Elan's senior
5 management and its outside auditors that may provide the Court with an important clue:

6 Elan's auditor, KPMG, declines to comment, citing client
7 confidentiality. Elan is managed by a former KPMG partner, Donal
8 Geaney, who has been at Elan for 14 years and chief executive
9 since 1995. Mr. Lynch, the executive vice chairman, came over
10 from KPMG in 1993, and Elan's chief financial officer, Shane
11 Cooke, also is a former KPMG partner.

12 Its auditors and joint venture partners are not the only business associates that Elan has
13 cozied up to in order to boost its operating profits. The *Journal* noted:

14 For instance, Elan is selling a Parkinson's-disease drug
15 called Permax to a small London company called [Amarin Corp.](#)
16 Amarin paid Elan about \$47.5 million in last year's third quarter, is
17 paying a royalty to Elan and has an option to make another payment
18 before mid-May to extend its rights, according to an Amarin SEC
19 filing.

20 Elan says it is booking the cash from Amarin not as a one-
21 time gain but as product revenue. That's wrong, says Mr. Turner, the
22 former SEC chief accountant. "This is not the ongoing sales of
23 pharmaceuticals -- this is a sale of an asset," he says. According to
24 the SEC, gains or losses from asset sales should be reported as
25 "other general expenses" Elan's accounting, says Mr. Turner,
26 "appears to be an attempt to inflate revenue and give a picture to
27 investors that in reality doesn't exist."

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1 Elan says its revenue-accounting policy couldn't possibly
2 mislead investors or analysts because it's known to them and
3 publicly disclosed. It adds that its accounting for sales of product
4 lines is correct because it makes the sales in steps or retains certain
5 rights.

6 With this particular sale, there are other reasons that listing
7 the proceeds as product revenue could give investors an exaggerated
8 impression of Elan's sales. First of all, an Elan affiliate lent \$45
9 million to the buyer, Amarin. Secondly, Elan has extensive ties to
10 Amarin. It owns about 43% of the buyer, on a fully diluted basis.
11 Amarin's CFO, Nigel Bell, maintained an e-mail address featuring
12 an Elancorp.com suffix until several weeks ago. Five Amarin
13 directors or executives are current or former Elan employees.
14 Amarin's chairman is Mr. Lynch, the Elan executive vice chairman,
15 who says he engineered a rescue of Amarin in 1998.

16 The following year, Amarin paid Elan \$25 million for 15
17 product lines. But Elan hasn't listed Amarin as a "related party" in
18 its SEC filings. The Financial Accounting Standards Board, which
19 creates accounting standards, says this label should be applied to
20 transactions with affiliates, owners or management, or wherever one
21 party "might be prevented from fully pursuing its own separate
22 interests" because of the other party's influence. The label can help
23 investors to evaluate a corporate transaction.

24 The Journal offered two additional examples where Elan engaged in transactions that
25 were not arms-length:

26 Occasionally, a company that buys a product line from Elan
27 relies on Elan itself for the money to do so. Last June Elan sold
28 Midrin, a headache drug, to [Women First Healthcare](#) Inc. of San

1 Diego for \$15 million. In the same transaction, Elan invested \$4
2 million in Women First shares and \$11 million in promissory
3 notes.

4 Xcel Pharmaceuticals Inc. of San Diego bought two
5 epilepsy product lines from Elan last year. Xcel's filing for an
6 initial public offering says the net price was \$150 million, \$99
7 million of which it borrowed from Elan, while Elan also put \$15
8 million into equity of the buyer. Xcel had no operations before it
9 bought the Elan product lines. Elan says Xcel, whose board
10 includes one Elan executive and one former one, made the best bid
11 in a competitive auction.

12 **THE FEBRUARY 4, 2002 WALL STREET JOURNAL ARTICLE**

13 28. On February 4, 2002, the Wall Street Journal published an article entitled “Elan
14 Discloses Accounting Details, Issues Profit Warning for 2002” which further questioned the
15 propriety of Elan's accounting practices. The article stated, in part, as follows:

16 Under pressure to open its books further, Elan said that its
17 earnings would have been significantly lower if it included losses
18 from two off-balance-sheet entities, which contain numerous Elan
19 investments in biotechnology companies.

20 Elan's new disclosures suggested that if Elan had recorded
21 these items in its financial statements, last year's profit would have
22 been \$211.4 million, or 59 cents a share, instead of the \$347.7
23 million, or 97 cents a share, which it reported.

24 If these entities' borrowings were included, Elan's total debt
25 would be \$3 billion -- about \$1 billion more than it currently shows
26 on its balance sheet.

27 The materiality of these disclosures is underscored not only in the wide deviation in
28 apparent versus reported financial results but also by the collapse of Elan’s share price

1 subsequent to the disclosure of this news. The *Journal* clarified that it was the undisclosed
2 nature of the accounting discrepancies which led to the stock decline:

3 "The good news is that the company has decided to come
4 clean with respect to disclosure," said Marc Goodman, a New
5 York-based analyst for Morgan Stanley & Co. "The bad news is
6 that the disclosure provided a group of numbers that was much
7 worse than anyone would have expected."

8 Whether Elan provided sufficient transparency of disclosure is still subject to conjecture,
9 and the Wall Street Journal noted in a third article about Elan dated 2/6/2002 and entitled "Elan's
10 Disclosures Further Cloud Already Murky Accounting Picture" which stated, in part:

11 Elan Corp. shares continued to sink as investors puzzled
12 over disclosures made by the Irish drug company in an effort to
13 allay concerns over its accounting practices.

14 On the New York Stock Exchange, Elan's American
15 depository shares fell 8.5% to close at \$13.58 (15.61 euros)
16 Tuesday, after plunging 50% Monday.

17 The company disclosed for the first time Monday details
18 about controversial off-balance-sheet entities it has set up, its joint-
19 venture arrangements and its product line disposals. However,
20 some investors and analysts said it remained unclear what Elan's
21 true profit level was last year.

22 New details released on Elan's conference call continued to raise question marks. The
23 *Journal* noted:

24 But some new details about other activities confused observers.
25 Analysts were trying to gather information about a new Elan entity
26 called Autoimmune Research Development Co., a venture formed
27 to fund the clinical development of certain Elan products,
28 including its highly touted multiple-sclerosis drug Antegren. Some

1 investors and analysts suggested this might be a new off-balance-
2 sheet research and development entity.

3 **VIOLATIONS OF GAAP AND SEC REGULATIONS**

4 29. The deceptive accounting practices described herein were perpetrated in violation
5 of GAAP and SEC Rules and Regulations. GAAP are principals recognized by the accounting
6 profession as the conventions, rules and procedures necessary to define accepted accounting
7 practiced at a particular time.

8 30. SEC Regulation S-X (17 C.F.R. and § 210.4-01(a)(1)) states that financial
9 statements filed with the SEC which are not prepared in compliance with GAAP are presumed to
10 be misleading and inaccurate, despite footnote or other disclosure. Regulation S-X requires that
11 interim financial statements must also comply with GAAP, with the exception that interim
12 financial statements need not include disclosure which would be duplicative of disclosures
13 accompanying annual financial statements (17 C.F.R. § 210.10-01(a)).

14 31. Due to the accounting improprieties set forth herein, Elan presented its financial
15 results and statements which were referred to in the Registration Statements and incorporated
16 therein in a manner that violated GAAP, including the following fundamental principals:

17 a. The principle that financial reporting should provide information that is useful to
18 present and potential investors and creditors and other users in making rational investment, credit
19 and similar decisions. (FASB Statement of Concepts No. 1, ¶ 34);

20 b. The principle that financial reporting should provide information about the
21 economic resources of an enterprise, the claims to those resources and effects of transactions,
22 events and circumstances that change resources and claims to those resources. (FASB Statement
23 of Concepts No. 1, ¶ 40);

24 c. The principle that financial reporting should be reliable in that it represents what it
25 purports to represent. (FASB Statement of Concepts No. 2, ¶¶ 58-59);

26 d. The principle that completeness, which means that nothing is left out of the
27 information that may be necessary to insure that it validly represents underlying events and
28 conditions. (FASB Statement of Concepts No. 2, ¶ 79);

1 e. The principle that conservatism be used as a prudent reaction to uncertainty to try
2 to ensure that uncertainties and risks inherent in business situations are adequately considered.
3 (FASB Statement of Concepts No. 2, ¶¶ 95, 97);

4 f. The principle that revenues and related earnings should not be recognized until
5 earned and that expenses should be recognized in the period incurred. (FASB Statement of
6 Concepts No. 5); and

7 g. The principle that financial statements include disclosures about material related-
8 party transactions. (Statement of Financial Accounting Standards (“SFAS”) No. 57).

9 32. Notwithstanding the above-listed allegations regarding Generally Accepted
10 Accounting Principles, in further support of Plaintiff’s allegations SEC Regulation S-X, Rule
11 4-01 states that mere compliance with GAAP is not sufficient in and of itself when further
12 material information is necessary to make the required statements, in the light of the
13 circumstances under which they are made, not misleading. As alleged herein the negligent or
14 intentional misrepresentations alleged herein were of such a quality and nature as to render the
15 Registration Statements misleading causing damage to the Plaintiff and the Class.

16 **SAFE HARBOR**

17 33. The statutory safe harbor provided for forward-looking statements under certain
18 circumstances does not apply to any of the allegedly false statements pleading in this complaint.
19 Many of the specific statements pleading herein were not identified as “forward-looking
20 statements” when made. The extent there were any forward-looking statements, there were no
21 meaningful cautionary statements identifying important factors that could cause actual results to
22 differ materially from those in the purportedly forward-looking statements. Alternatively, to the
23 extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein,
24 defendants are liable for those false forward-looking statements because at the time each of those
25 forward-looking statements was made, the particular speaker knew that the particular forward-
26 looking statement was false and/or the forward-looking statement was authorized and/or
27 approved by an executive officer of Elan who knew that those statements were false when made.

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1 COUNT I

2 **VIOLATION OF § 11 OF THE SECURITIES ACT**

3 **(AGAINST ALL DEFENDANTS)**

4 34. Plaintiff incorporates by reference and realleges the allegations as set forth above

5 35. This claim is brought by Plaintiff who obtained Elan ADSs pursuant to the
6 Registration Statements on behalf of himself and other members of the Class. Each Class
7 member acquired their shares pursuant to or traceable to, and in reliance on, the Registration
8 Statements.

9 36. Each of the Individual Defendants, as signatories of the Registration Statements,
10 as directors and/or officers of Elan and controlling persons of the issuer, owed to the holders of
11 the ADSs obtained through the Registration Statements the duty to make a reasonable and
12 diligent investigation of the statements contained in the Registration Statements at the time they
13 became effective to ensure that such statements were true and correct and that there was no
14 omission of material facts required to be stated in order to make the statements contained therein
15 not misleading. Defendants knew, or in the exercise of reasonable care should have known, of
16 the material misstatements and omissions contained in or omitted from the Registration
17 Statements as set forth herein. As such, defendants are liable to the Class.

18 37. None of the defendants made a reasonable investigation or possessed reasonable
19 grounds for the belief that the statements contained in the Registration Statements were true or
20 that there was no omission of material facts necessary to make the statements made therein not
21 misleading.

22 38. Defendants issued and disseminated, caused to be issued and disseminated, and
23 participated in the issuance and dissemination of, materially false and misleading written
24 statements to the investing public which were contained in the Registration Statements, which
25 misrepresented or failed to disclose, inter alia, the facts set forth above. By reason of the conduct
26 herein alleged, each defendant violated and/or controlled a person who violated §11 of the
27 Securities Act.

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1 communications made in connection with the Registration Statements contained untrue
2 statements of material facts, omitted other facts necessary to make the statements made not
3 misleading and failed to disclose material facts.

4 47. Each defendant offered for sale and sold the ADSs obtained by Plaintiff and the
5 Class through the Registration Statements. Each defendant solicited and/or was a substantial
6 factor in the acquisition by each Class member of ADSs via the Registration Statements. But for
7 the participation by defendants, or somebody controlled by defendants, including the solicitation
8 pled herein, the transactions could not and would not have been accomplished. Defendants
9 participated in these wrongful acts as follows:

10 a. Defendants actively and jointly drafted, revised and approved the Registration
11 Statements and other written selling materials by which the transaction was offered to the
12 investing public. These written materials were "selling documents," calculated by defendants to
13 create interest in Elan ADSs and were widely distributed by defendants for that purpose;

14 b. Defendants finalized the Registration Statements and caused them to become
15 effective. But for defendants having drafted, filed and/or signed the Registration Statement, the
16 offerings would not have been made; and

17 c. Defendants conceived and planned the offerings and together jointly orchestrated
18 all activities necessary to effect the Secondary Offering by issuing the ADSs, promoting the
19 ADSs and supervising their distribution and ultimate sale to the investing public.

20 41. Defendants were obligated to make a reasonable and diligent investigation of the
21 written and oral statements made in connection with the Registration Statements to insure that
22 such statements were true and that there was no omission to state a material fact required to be
23 stated in order to make the statements contained therein not misleading. Plaintiff and Class
24 members who purchased or otherwise acquired their ADSs pursuant to the Registration
25 Statements did so based on the defective Registration Statements. They did not know, or in the
26 exercise of reasonable diligence could not have known, of the untruths and omissions contained
27 in the Registration Statements and other statements by defendants in connection with the
28 offerings.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. Determining that the instant action is a proper class action maintainable under Rule 23 of the Federal Rules of Civil Procedure;
2. Awarding compensatory damages together with interest thereon, in favor of Plaintiff and all members of the Class for damages sustained as a result of defendants' wrongdoing;
3. Awarding Plaintiff and the Class the costs and disbursements of this suit, including reasonable attorneys', accountants' and experts' fees; and
4. Awarding such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: February 11, 2002

CATANZARITE LAW CORPORATION

By: _____

Kenneth J. Catanzarite
Attorneys for Plaintiffs