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8 Counsel for Plaintiff

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 _____, Individually and on Behalf of All
12 Other Similarly Situated,

13 Plaintiff,

14 v.

15 ZOSANO PHARMA CORPORATION,
16 VIKRAM LAMBA, WINNIE W. TSO,
17 ROTH CAPITAL PARTNERS, LADENBURG
18 THALMANN, and DOES 1 through 25,
19 Inclusive,

20 Defendants.

Case No:

**CLASS ACTION COMPLAINT FOR
VIOLATION OF THE FEDERAL
SECURITIES LAWS**

JURY TRIAL DEMANDED

21 Plaintiff _____ (“Plaintiff”), individually and on behalf of all others similarly situated,
22 by Plaintiff’s undersigned attorneys, allege in this Class Action Complaint (the “Complaint”) the
23 following upon personal knowledge with respect to Plaintiff’s own acts, and upon facts obtained
24 through an investigation by Plaintiff’s attorneys and review of documents and materials including
25 but not limited to relevant filings made by Zosano Pharma Corporation, Inc. (“ZSAN” or the
26 “Company”), with the United States Securities and Exchange Commission (the “SEC”), public
27 documents and press releases; and information readily available on the Internet. Plaintiff believes
28 that further substantial evidentiary exists for the allegations set forth herein after a reasonable
opportunity for discovery.

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NATURE OF THE ACTION

1. This is a securities class action on behalf of a class of all persons other than Defendants who purchased the common stock of ZSAN pursuant and/or traceable to the Company’s Registration Statement and Prospectus (collectively the “Offering Documents”), declared effective by the SEC on January 27, 2015, issued in connection with the Company’s Initial Public Offering (the “IPO” or the “Offering”), seeking to recover damages caused by Defendants’ violations of the federal securities laws and to pursue remedies under the Securities Act of 1933 (the “Securities Act”).

JURISDICTION AND VENUE

2. The claims asserted herein arise under and pursuant to Sections 11, 12(a)(2), and 15 of the Securities Act (15 U.S.C. §§ 77k, 77l(a)(2), and 77(o)). This Court has jurisdiction over the subject matter of this action pursuant to Section 22 of the Securities Act, 15 U.S.C. § 77v, which explicitly states that “[e]xcept as provided in section 16(c), no case arising under this title and brought in any State court of competent jurisdiction shall be removed to any court in the United States.” Section 16(c) of the Securities Act refers to “covered class actions,” which are defined as lawsuits brought as class actions or brought on behalf of more than 50 persons asserting claims under state or common law. This is an action asserting federal law claims. Thus, it does not fall within the definition of a “covered class action” under §16(c) and therefore is not removable to federal court under the Securities Litigation Uniform Standards Act of 1998.

3. Each Defendant has sufficient contacts with California, or otherwise purposefully avails itself of benefits from California or has property in California so as to render the exercise of jurisdiction over each by California courts consistent with traditional notions of fair play and substantial justice.

4. The amount in controversy exceeds the jurisdictional minimum of this Court, and the total amount of damages sought exceeds \$25,000.

5. Venue is proper in this District pursuant to Section 22(a) of the Securities Act and 15 U.S.C. § 77v(a) because the Company has offices in Fremont, California where it conducts business

1 in this county and certain of the acts alleged in this Complaint occurred in this County. Defendants
2 either reside in this County and/or engaged in activities in connection with the IPO at ZSAN's
3 Fremont operations. In connection with the acts, conduct and other wrongs alleged in this
4 Complaint, the Defendants, directly or indirectly, used the means and instrumentalities of interstate
5 commerce, including but not limited to, the United States mail, interstate telephone communications
6 and the facilities of the national securities exchange.

7 **PARTIES**

8 6. Plaintiff purchased shares of the Company's common stock that were issued
9 pursuant and traceable to the Registration Statement and the Offering, and was substantially
10 damaged thereby.

11 7. Defendant ZSAN is a biopharmaceutical company that develops products based on
12 novel transdermal delivery technology. ZSAN is incorporated in Delaware and its headquarters are
13 located at 34790 Ardentech Court, Fremont, California. Its shares are listed and trade on the
14 NASDAQ under the ticker symbol "ZSAN."

15 8. Defendant Vikram Lamba ("Lamba") was ZSAN's Chief Executive Officer
16 ("CEO"), President, and a member of ZSAN's Board of Directors from the beginning of the Class
17 Period until January 2016. Lamba is a citizen of California.

18 9. Defendant Winnie W. Tso ("Tso") has been the Chief Financial Officer ("CFO") of
19 ZSAN at all relevant times. Tso is a citizen of California

20 10. Defendants Lamba and Tso are collectively referred to herein as the "Individual
21 Defendants."

22 11. Each of the Individual Defendants:

- 23 (a) Signed the Registration Statement;
24 (b) directly participated in the management of the Company;
25 (c) was directly involved in the day-to-day operations of the Company at the
26 highest levels;

- 1 (d) was directly or indirectly involved in drafting, producing, reviewing and/or
2 disseminating the false and misleading statements and information alleged
3 herein;
- 4 (e) was directly or indirectly involved in the oversight or implementation of the
5 Company's internal controls;
- 6 (f) was aware of or deliberately recklessly disregarded the fact that the false and
7 misleading statements were being issued concerning the Company; and/or
- 8 (g) approved or ratified these statements in violation of the federal securities
9 laws.

10 12. Defendant Roth Capital Partners, LLC ("Roth Capital") was an underwriter and joint
11 book-running manager of the Company's Offering. Defendant Roth Capital assisted in drafting and
12 disseminating the Offering Documents and was apportioned 2,250,000 shares of ZSAN in the IPO.
13 Defendant Roth Capital conducts business in the state of California and has an office located at 185
14 Berry Street, Suite 1050, San Francisco, California 94107.

15 13. Defendant Ladenburg Thalmann & Co. Inc. ("Ladenburg") was an underwriter and
16 joint book-running manager of the Company's Offering. Defendant Allen & Company assisted in
17 drafting and disseminating the Offering Documents and was apportioned 2,250,000 shares of ZSAN
18 in the IPO. Ladenburg conducts business in the state of California and has an office located at
19 24003-A Ventura Boulevard, Calabasas, CA 91302.

20 14. Defendants Roth Capital and Ladenburg are referred to collectively as the
21 "Underwriter Defendants."

22 15. The Underwriter Defendants are liable for the false and misleading statements in the
23 Registration Statement as follows:

24 a. Pursuant to the Securities Act, the Underwriter Defendants are liable for the false
25 and misleading statements in the Offering's Registration Statement and Prospectus. The
26 Underwriter Defendants' failure to conduct adequate due diligence investigations was a substantial
27 factor leading to the harm complained of herein.

28

1 b. In addition, the Underwriter Defendants met with potential investors and presented
2 highly favorable but materially incorrect and/or materially misleading information about the
3 Company, its business, products, plans, and financial prospects, and/or omitted to disclose material
4 information required to be disclosed under the federal securities laws and applicable regulations
5 promulgated thereunder.

6 c. Representatives of the Underwriter Defendants also assisted file Company and the
7 Individual Defendants in planning the Offering. They also purported to conduct an adequate and
8 reasonable investigation into the business, operations, products, and plans of file Company, an
9 undertaking known as a “due diligence” investigation. During the course of their “due diligence,”
10 the Underwriter Defendants had continual access to confidential corporate information concerning
11 file Company’s business, financial condition, products, plans, and prospects.

12 d. In addition to having access to internal corporate documents, the Underwriter
13 Defendants and/or their agents, including their counsel, had access to the Company’s lawyers,
14 management, directors, and top executives to determine: (1) the strategy to best accomplish the
15 Offering; (2) the terms of the Offering, including file price at which the Company’s common stock
16 would be sold; (3) the language to be used in the Registration Statement; (4) what disclosures about
17 the Company would be made in the Registration Statement; and (5) what responses would be made
18 to the SEC in connection with its review of the Registration Statement As a result of those constant
19 contacts and communications between the Underwriter Defendants’ representatives and the
20 Company’s management and top executives, at a minimum, the Underwriter Defendants should
21 have known of the Company’s undisclosed existing problems and plans, and the material
22 misstatements and omissions contained in the Registration Statement as detailed herein.

23 e. The Underwriter Defendants caused the Registration Statement to be filed with the
24 SEC and to be declared effective in connection with offers and sales of the Company’s shares
25 pursuant and/or traceable to the Offering and relevant offering materials, including to Plaintiff and
26 the Class.

27 16. The true names and capacities of defendants sued herein under California Code of
28 Civil Procedure §474 as Does 1 through 25, inclusive, are presently not known to plaintiff, who

1 therefore sues these defendants by such fictitious names. Plaintiff will seek to amend this Complaint
2 and include these Does defendants' true names and capacities when they are ascertained. Each of
3 the fictitiously named defendants is responsible in some manner for the conduct alleged herein and
4 for the injuries suffered by plaintiff and the Class.

5 **SUBSTANTIVE ALLEGATIONS**

6 **Background**

7 17. ZSAN is a clinical stage specialty biopharmaceutical company that developed a
8 proprietary transdermal microneedle patch system to deliver its proprietary formulations of existing
9 drugs through the skin for the treatment of a variety of indications.

10 18. ZSAN's lead drug candidate is the ZP-PTH which is a rapid delivery patch for the
11 treatment of severe osteoporosis and an alternative to daily injections.

12 19. The Registration Statement included that one of ZSAN's lead product candidates is
13 Daily ZP-PTH to treat severe osteoporosis in women. Phase 2 clinical trials of Daily ZP-PTH were
14 completed in the United States, Mexico, and Argentina in 2008. In 2009, ZSAN held End-of-Phase
15 2 meetings with the U.S. Food and Drug Administration (the "FDA") to consider proposed Phase 3
16 clinical trials and identify any additional information needed to support an application for the drug.
17 Similar meetings with European authorities were held in 2009.

18 20. In November 2014, the Company entered into a strategic partnership and license
19 agreement with Eli Lilly and Company ("Lilly") to develop one or more ZP-PTH microneedle patch
20 products. Under the terms of the license agreement, ZSAN granted Lilly an exclusive, worldwide
21 license to commercialize ZP-PTH in all dosing frequencies, with Daily ZP-PTH as the initial
22 product candidate. Under the agreement, Lilly would be responsible for commercialization of Daily
23 ZP-PTH pending successful clinical trial outcomes and regulatory approval. ZSAN was responsible
24 for developing Daily ZP-PTH, including clinical, regulatory and manufacturing scale-up activities.
25 ZSAN would also manufacture and provide commercial supplies of Daily ZP-PTH to Lilly.

26 21. On January 27, 2015, ZSAN conducted an IPO. In the IPO, the Company offered
27 4,500,000 shares at \$11 per share for total proceeds of \$49,500,000.

28 **Materially False and Misleading Statements**

- *Dry formulation.* Our dry formulation provides enhanced convenience, portability and ease of use, potentially facilitating more effective treatment and improved patient compliance.
- *Room temperature stability.* Our internal studies of Daily ZP-PTH demonstrated Daily ZP-PTH's ability to be room temperature stable, obviating the need for refrigeration and allowing for a potentially improved patient experience with administration.

(Emphasis added).

25. The Offering Documents discussed regulatory approval of Daily ZP-PTH outside of the United States, specifically Asia, stating in relevant part:

In foreign jurisdictions, we must receive approval from the appropriate regulatory authorities before we can commercialize any drugs. ***Foreign regulatory approval processes generally include all of the risks associated with the FDA approval procedures described above.*** We cannot assure you that we will receive the approvals necessary to commercialize any of our product candidates for sale outside the United States.

* * *

Other International Markets—Drug Approval Process

In some international markets (e.g., China or Japan), although data generated in United States or EU trials may be submitted in support of a marketing authorization application, additional clinical trials conducted in the host territory, or studying people of the ethnicity of the host territory, may be required prior to the filing or approval of marketing applications within the country.

(Emphasis added).

26. The statements referenced above were materially false and/or misleading because they misrepresented and failed to disclose the following adverse facts pertaining to the Company's business, operations, and prospects, which were known to Defendants or recklessly disregarded by them. Specifically, Defendants made false and/or misleading statements and/or failed to disclose at the time of the IPO Japanese regulatory authorities generally require clinical trial data gathered from Japanese subjects and any delay in commercialization in Japan of Daily ZP-PTH would render its development unfeasible.

The Truth Emerges

1 27. On September 28, 2015, after the market closed, ZSAN issued a press release
2 entitled “Zosano Pharma Resumes Development of Weekly ZP-PTH Treatment for Severe
3 Osteoporosis” discussing the discontinuation of development of Daily ZP-PTH, stating in relevant
4 part:

5 Company Announces Discontinuation of Development of Daily ZP-PTH and
6 Terminates Collaboration With Eli Lilly and Company
7 Zosano to Host Webcast and Conference Call Today at 5:00 p.m. ET

8 FREMONT, Calif., Sept. 28, 2015 (GLOBE NEWSWIRE) -- Zosano Pharma
9 Corporation (NASDAQ:ZSAN) announced today that *the company has decided*
10 *to discontinue development of its Daily ZP-PTH treatment for severe*
11 *osteoporosis and to resume development of its Weekly ZP-PTH product.*

12 *Zosano’s decision to discontinue development of Daily ZP-PTH is driven by*
13 *recent feedback from Japanese regulatory authorities, which would have*
14 *required additional studies that would have likely delayed commercialization in*
15 *Japan by approximately one year, as well as an overall assessment and*
16 *prioritization of company resources towards the most promising commercial*
17 *opportunities.* After discussions with Lilly, the companies agreed to terminate the
18 collaboration agreement that they signed in 2014.

19 Zosano will resume its efforts to develop a Weekly ZP-PTH product, as the
20 company had been doing prior to its collaboration with Lilly. In early 2014,
21 Zosano completed a Phase 1 clinical trial of Weekly ZP-PTH in Australia and in
22 July 2014 held a pre-IND meeting with the U.S. Food and Drug Administration
23 (FDA) to discuss the clinical trial design for a planned Phase 2 and Phase 3 trial
24 of Weekly ZP-PTH. Zosano is now planning to initiate a Phase 2 trial of Weekly
25 ZP-PTH in the first half of 2016.

26 *“While we have received positive feedback from the FDA and were on track to*
27 *initiate a Phase 3 trial of Daily ZP-PTH in the U.S., we believe that committing*
28 *significant capital and other resources to development of Daily ZP-PTH is not a*
prudent investment given the recent feedback received from Japanese
regulatory authorities and the significant milestone payments associated with
approval in Japan. Although we have made the decision to terminate our contract
with Lilly due to business reasons, we are extremely thankful for their support and
collaboration,” said Vikram Lamba, Zosano’s Chief Executive Officer. “Our
Weekly ZP-PTH patch has strong clinical data and is well-differentiated
compared to competitive products. As we finalize our plans for further
development of Weekly ZP-PTH, we look forward to announcing results from a
Phase 2 trial of our ZP-Glucagon product within the next few weeks and results
from a Phase 1 trial of our ZP-Triptan product before the end of 2015.”

1 (Emphasis added).

2 28. On this news, shares of the Company fell \$2.15 per share or over 34% from its
3 previous closing price to close at \$4.17 on September 29, 2015.

4 29. As of the date of the complaint, ZSAN currently trades over 81% below its IPO
5 price.

6 **CLASS ACTION ALLEGATIONS**

7 30. Plaintiff brings this action as a class action pursuant to California Code of Civil
8 Procedure Section 382 on behalf of himself and on behalf of all purchasers of ZSAN securities
9 issued pursuant to and/or traceable to the Company's IPO. Excluded from the Class are Defendants,
10 the officers and directors of the Company, at all relevant times, members of their immediate
11 families and their legal representatives, heirs, successors or assigns and any entity in which
12 Defendants have or had a controlling interest.

13 31. The members of the Class are so numerous that joinder of all members is
14 impracticable. The precise number of Class Members is unknown to Plaintiff at this time but it is
15 believed to be in the thousands. Members of the Class may be identified by records maintained by
16 ZSAN or its transfer agents and may be notified of the pendency of this action by mail, using a form
17 of notice customarily used in securities class actions.

18 32. Plaintiff's claims are typical of the claims of the members of the Class as all
19 members of the Class are similarly affected by the Defendants' respective wrongful conduct in
20 violation of the federal laws complained of herein.

21 33. Plaintiff has and will continue to fairly and adequately protect the interests of the
22 members of the Class and has retained counsel competent and experienced in class and securities
23 litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

24 34. Common questions of law and fact exist as to all members of the Class and
25 predominate over any questions solely affecting individual members of the Class. Among the
26 questions of law and fact common to the Class are:

27 (a) whether the federal securities laws were violated by the Defendants'
28 respective acts as alleged herein;

1 (b) whether the Offering Documents issued by Defendants to the investing public
2 committed and/or misrepresented material facts about the Company and its business; and

3 (c) whether the members of the Class have sustained damages and, if so, what is
4 the proper measure of damages.

5 35. A class action is superior to all other available methods for the fair and efficient
6 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
7 damages suffered by individual Class members may be relatively small, the expense and burden of
8 individual litigation make it impossible for members of the Class to individually redress the wrongs
9 done to them. There will be no difficulty in the management of this action as a class action.

10 **COUNT I**

11 **Violations of §11 of the Securities Act Against All Defendants**

12 36. Plaintiff repeats and realleges the allegations contained above as if fully set forth
13 herein.

14 37. This claim is brought by Plaintiff on his own behalf and on behalf of other members
15 of the Class who acquired ZSAN securities pursuant to or traceable to the Company's IPO. Each
16 Class Member acquired his, her, or its shares pursuant to and/or traceable to, and in reliance on, the
17 Offering Documents. ZSAN is the issuer of the securities through the Offering Documents. The
18 Individual Defendants are signatories of the Offering Documents.

19 38. Defendants issued and disseminated, caused to be issued and disseminated, and
20 participated in the issuance and dissemination of, material misstatements and/or omissions to the
21 investing public that were contained in the Offering Documents, which misrepresented or failed to
22 disclose, among other things, the facts set forth above. By reason of the conduct alleged herein,
23 each Defendant violated and/or controlled a person who violated Section 11 of the Securities Act.

24 39. ZSAN is the issuer of the stock sold via the Offering Documents. As issuer of stock,
25 the Company is strictly liable to Plaintiff and the Class for the material misstatements and omissions
26 therein.

27 40. At the times they obtained their shares of ZSAN, Plaintiff and members of the Class
28 did so without knowledge of the facts concerning the misstatements and omissions alleged herein.

1 damages in connection with their purchases of the stock. Accordingly, Plaintiff and the other
2 members of the Class who hold the common stock issued pursuant to the Prospectus have the right
3 to rescind and recover the consideration paid for their shares, and hereby tender their common stock
4 to defendants sued herein. Class members who have sold their common stock seek damages to the
5 extent permitted by law.

6 **COUNT III**

7 **Violation of §15 of the Securities Act Against the Individual Defendants**

8 48. Plaintiff repeats and realleges the allegations contained above as if fully set forth
9 herein. This claim is not based on and does not sound in fraud.

10 49. This claim is asserted against the Individual Defendants, each of whom was a control
11 person of ZSAN during the relevant time period.

12 50. The Individual Defendants were control persons of ZSAN by virtue of, among other
13 things, their positions as senior officers and/or directors of the Company, and they were in positions
14 to control and did control, the false and misleading statements and omissions contained in the
15 Offering Documents.

16 51. None of the Individual Defendants made reasonable investigation or possessed
17 reasonable grounds for the belief that the statements contained in the Offering Documents were
18 accurate and complete in all material respects. Had they exercised reasonable care, they could have
19 known of the material misstatements and omissions alleged herein.

20 52. This claim was brought within one year after the discovery of the untrue statements
21 and omissions in the Offering Documents and within three years after ZSAN shares was sold to the
22 Class in connection with the IPO.

23 53. By reason of the above conduct, for which ZSAN is primarily liable, as set forth
24 above, the Individual Defendants are jointly and severally liable with and to the same extent as
25 ZSAN pursuant to Section 15 of the Securities Act.

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REQUEST FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows:

- A. Determining that this action is a proper class action, certifying Plaintiff as a Class representative under California Code of Civil Procedure §382 and Rule 3.764 of the California Rules of Court and appointing Plaintiff’s counsel Class Counsel;
- B. Awarding compensatory damages in favor of Plaintiff and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants’ wrongdoing, in an amount to be proven at trial, including interest thereon;
- C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees;
- D. Awarding rescission or a rescissory measure of damages; and
- E. Such equitable/injunctive or other relief as deemed appropriate by the Court.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury.

Dated: April ____, 2016

THE ROSEN LAW FIRM, P.A.

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