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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re INTERMUNE, INC. SECURITIES	)	Master File No. C-03-2954-SI
LITIGATION	)	
_____	)	<u>CLASS ACTION</u>
This Document Relates To:	)	[PROPOSED] ORDER PRELIMINARILY
	)	APPROVING SETTLEMENT AND
ALL ACTIONS.	)	PROVIDING FOR NOTICE
_____	)	

1 WHEREAS, a consolidated class action is pending before the Court entitled *In re InterMune*  
2 *Inc. Securities Litigation*, Master File No. C-03-2954-SI (the "Litigation");

3 WHEREAS, the Court has received the Stipulation of Settlement dated as of May 6, 2005  
4 (the "Stipulation"), that has been entered into by the Lead Plaintiff and Defendants, and the Court  
5 has reviewed the Stipulation and its attached Exhibits; and

6 WHEREAS, the parties having made application, pursuant to Federal Rule of Civil  
7 Procedure 23(e), for an order preliminarily approving the settlement of this Litigation, in accordance  
8 with the Stipulation which, together with the Exhibits annexed thereto sets forth the terms and  
9 conditions for a proposed settlement of the Litigation and for dismissal of the Litigation with  
10 prejudice upon the terms and conditions set forth therein; and the Court having read and considered  
11 the Stipulation and the Exhibits annexed thereto; and

12 WHEREAS, all defined terms contained herein shall have the same meanings as set forth in  
13 the Stipulation;

14 NOW, THEREFORE, IT IS HEREBY ORDERED:

15 1. The Court does hereby preliminarily approve the Stipulation and the settlement set  
16 forth therein, subject to further consideration at the Settlement Hearing described below.

17 2. A hearing (the "Settlement Hearing") shall be held before this Court on August 26,  
18 2005, at 9:00 a.m., at the United States Courthouse, 450 Golden Gate Avenue, San Francisco,  
19 California, to determine whether the proposed settlement of the Litigation on the terms and  
20 conditions provided for in the Stipulation is fair, reasonable and adequate to the Settlement Class and  
21 should be approved by the Court; whether a Judgment as provided in ¶1.10 of the Stipulation should  
22 be entered herein; whether the proposed Plan of Allocation should be approved; and to determine the  
23 amount of fees and expenses that should be awarded to plaintiffs' counsel and the amount of  
24 expenses that should be awarded to the Lead Plaintiff. The Court may adjourn the Settlement  
25 Hearing without further notice to Members of the Settlement Class.

26 3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court preliminarily  
27 certifies, for purposes of effectuating this settlement, a Settlement Class of all Persons who  
28 purchased or acquired InterMune common stock during the period between August 28, 2002 and  
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1 June 11, 2003, inclusive. Excluded from the Settlement Class are Defendants, members of the  
2 immediate families of the Individual Defendants, any entity in which any Defendant has or had a  
3 controlling interest, current or former directors and officers of InterMune, and the legal  
4 representatives, heirs, successors, or assigns of any such excluded person or entity. Also excluded  
5 from the Settlement Class are those Persons who timely and validly request exclusion from the  
6 Settlement Class pursuant to the Notice of Pendency and Proposed Settlement of Class Action. The  
7 certification of the Settlement Class shall be binding only with respect to the settlement of the  
8 Litigation.

9 4. With respect to the Settlement Class, this Court preliminarily finds for purposes of  
10 effectuating this settlement that (a) the Members of the Settlement Class are so numerous that  
11 joinder of all Settlement Class Members in the Litigation is impracticable; (b) there are questions of  
12 law and fact common to the Settlement Class which predominate over any individual questions; (c)  
13 the claims of the Lead Plaintiff are typical of the claims of the Settlement Class; (d) the Lead  
14 Plaintiff and Lead Counsel have fairly and adequately represented and protected the interests of all  
15 of the Settlement Class Members; and (e) a class action is superior to other available methods for the  
16 fair and efficient adjudication of the controversy, considering: (i) the interests of the Members of the  
17 Settlement Class in individually controlling the prosecution of the separate actions; (ii) the extent  
18 and nature of any litigation concerning the controversy already commenced by Members of the  
19 Settlement Class; (iii) the desirability or undesirability of continuing the litigation of these claims in  
20 this particular forum; and (iv) the difficulties likely to be encountered in the management of the  
21 Litigation.

22 5. The Court approves, as to form and content, the Notice of Pendency and Proposed  
23 Settlement of Class Action (the "Notice"), the Proof of Claim and Release form (the "Proof of  
24 Claim"), and Summary Notice for publication annexed as Exhibits A-1, A-2 and A-3 hereto, and  
25 finds that the mailing and distribution of the Notice and publishing of the Summary Notice  
26 substantially in the manner and form set forth in ¶¶6-7 of this Order meet the requirements of  
27 Federal Rule of Civil Procedure 23 and due process, and is the best notice practicable under the  
28 circumstances and shall constitute due and sufficient notice to all Persons entitled thereto.

1           6. Pursuant to Rule 53(c) of the Federal Rules of Civil Procedure, the Court appoints the  
2 firm of Complete Claims Solutions, Inc., principally located at 319 Clematis Street, Suite 300, West  
3 Palm Beach, Florida ("Claims Administrator") to supervise and administer the notice procedure as  
4 well as the processing of claims as more fully set forth below:

5           (a) Not later than July 8, 2005 (the "Notice Date"), Lead Counsel shall cause a  
6 copy of the Notice and the Proof of Claim, substantially in the forms annexed as Exhibits A-1 and A-  
7 2, to be mailed by first class mail to all Settlement Class Members who can be identified with  
8 reasonable effort;

9           (b) Not later than July 8, 2005, Lead Counsel shall cause the Summary Notice to  
10 be published once in *Investor's Business Daily*; and

11           (c) At least seven (7) calendar days prior to the Settlement Hearing, Lead Counsel  
12 shall cause to be served on Defendants' counsel and filed with the Court proof, by affidavit or  
13 declaration, of such mailing and publishing.

14           7. Nominees who purchased InterMune common stock during the period beginning  
15 August 28, 2002 through June 11, 2003, inclusive, shall send the Notice and the Proof of Claim to all  
16 beneficial owners of such InterMune common stock within ten (10) days after receipt thereof, or  
17 send a list of the names and addresses of such beneficial owners to the Claims Administrator within  
18 ten (10) days of receipt thereof, in which event the Claims Administrator shall promptly mail the  
19 Notice and Proof of Claim to such beneficial owners. Lead Counsel shall, if requested, reimburse  
20 banks, brokerage houses or other nominees solely for their reasonable out-of-pocket expenses  
21 incurred in providing notice to beneficial owners who are Settlement Class Members out of the Class  
22 Notice and Administration Fund, which expenses would not have been incurred except for the  
23 sending of such notice, subject to further order of this Court with respect to any dispute concerning  
24 such compensation.

25           8. All Members of the Settlement Class shall be bound by all determinations and  
26 judgments in the Litigation concerning the settlement, whether favorable or unfavorable to the  
27 Settlement Class.

1           9.       Settlement Class Members who wish to participate in the settlement shall complete  
2 and submit Proof of Claim forms in accordance with the instructions contained therein. Unless the  
3 Court orders otherwise, all Proof of Claim forms must be submitted no later than ninety (90) days  
4 from the Notice Date. Any Settlement Class Member who does not timely submit a Proof of Claim  
5 within the time provided for shall be barred from sharing in the distribution of the proceeds of the  
6 Net Settlement Fund, unless otherwise ordered by the Court.

7           10.      Any Person who desires to request exclusion from the Settlement Class shall do so by  
8 mail post-marked on or before August 8, 2005, in the manner described in the Notice. All Persons  
9 who submit valid and timely Requests for Exclusion in the manner set forth in the Notice shall have  
10 no rights under the Stipulation, shall not share in the distribution of the Net Settlement Fund, and  
11 shall not be bound by the Stipulation or the Judgment entered in the Litigation. Lead Counsel shall  
12 cause the Claims Administrator to transmit all Requests for exclusion by fax or electronic delivery to  
13 counsel for Defendants within two business days of receipt by the Claims Administrator.

14           11.      Any Member of the Settlement Class may enter an appearance in the Litigation, at  
15 their own expense, individually or through counsel of their own choice. If they do not enter an  
16 appearance, they will be represented by Lead Counsel.

17           12.      Any Member of the Settlement Class may appear and show cause, if he, she or it has  
18 any reason, why the proposed settlement of the Litigation should or should not be approved as fair,  
19 reasonable and adequate, why a judgment should or should not be entered thereon, why the Plan of  
20 Allocation should or should not be approved, or why attorneys' fees and expenses should or should  
21 not be awarded to plaintiffs' counsel, or expenses awarded to the Lead Plaintiff; provided, however,  
22 that no Settlement Class Member or any other Person shall be heard or entitled to contest the  
23 approval of the terms and conditions of the proposed settlement, or, if approved, the Judgment to be  
24 entered thereon approving the same, or the order approving the Plan of Allocation, or the attorneys'  
25 fees and expenses to be awarded to Lead Counsel, or the expenses awarded to the Lead Plaintiff,  
26 unless that Person has delivered by hand or sent by first class mail written objections and copies of  
27 any papers and briefs such that they are received on or before August 8, 2005, by: Ira A. Schochet,  
28 Goodkind Labaton Rudoff & Sucharow LLP, 100 Park Avenue, New York, NY 10017-5563; and  
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1 William S. Freeman, Cooley Godward LLP, 5 Palo Alto Square, 3000 El Camino Real, Palo Alto,  
2 CA 94306-2155, and filed said objections, papers and briefs with the Clerk of the United States  
3 District Court for the Northern District of California, on or before August 8, 2005. Any Member of  
4 the Settlement Class who does not make his, her or its objection in the manner provided shall be  
5 deemed to have waived such objection and shall forever be foreclosed from making any objection to  
6 the fairness or adequacy of the proposed settlement as set forth in the Stipulation, to the Plan of  
7 Allocation, or to the award of attorneys' fees and expenses to plaintiffs' counsel, unless otherwise  
8 ordered by the Court.

9 13. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia*  
10 *legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such  
11 funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

12 14. Lead Plaintiff and Lead Counsel may conduct discovery for the sole purpose of  
13 confirming the fairness and adequacy of the proposed settlement. Such discovery shall be negotiated  
14 among the parties, and may continue until July 1, 2005. Until that date, Lead Counsel may terminate  
15 the settlement, solely based upon a reasonable and good faith determination that the facts adduced in  
16 the course of such discovery suggest that the settlement is not fair and reasonable. Notice of  
17 termination shall be given to counsel for Defendants (1) by electronic mail or facsimile and (2) first-  
18 class mail, no later than 5:00 p.m. Pacific Time on July 8, 2005, after which date the termination  
19 right shall no longer exist.

20 15. Plaintiffs' motion for award of attorneys' fees and reimbursement of expenses shall  
21 be filed and served on or before July 22, 2005. The motion for final approval of the Settlement and  
22 all papers in response to any objections filed by Class Members shall be filed and served on or  
23 before August 19, 2005.

24 16. Neither Defendants nor their Related Parties shall have any responsibility for or  
25 liability with respect to the Plan of Allocation or any application for attorneys' fees or  
26 reimbursement of expenses submitted by plaintiffs' counsel, or for reimbursement of expenses by  
27 the Lead Plaintiff, and such matters will be considered separately from the fairness, reasonableness  
28 and adequacy of the settlement.

1 17. At or after the Settlement Hearing, the Court shall determine whether the Plan of  
2 Allocation proposed by Lead Counsel, and any applications for attorneys' fees or reimbursement of  
3 expenses shall be approved.

4 18. All reasonable expenses incurred in identifying and notifying Settlement Class  
5 Members, as well as administering the Settlement Fund, shall be paid as set forth in the Stipulation.  
6 In the event the settlement is not approved by the Court, or otherwise fails to become effective,  
7 neither the Lead Plaintiff nor Lead Counsel shall have any obligation to repay any amounts actually  
8 and properly disbursed from the Class Notice and Administration Fund.

9 19. Neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations  
10 or proceedings connected with it, shall be construed as an admission or concession by Defendants or  
11 their Related Parties of the truth of any of the allegations in the Litigation, or of any liability, fault,  
12 or wrongdoing of any kind.

13 20. The Court reserves the right to adjourn the date of the Settlement Hearing without  
14 further notice to the Members of the Settlement Class, and retains jurisdiction to consider all further  
15 applications arising out of or connected with the proposed settlement. The Court may approve the  
16 settlement, with such modifications as may be agreed to by the Settling Parties, if appropriate,  
17 without further notice to the Settlement Class.

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19 DATED: \_\_\_\_\_

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THE HON  
UNITED :

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21 Submitted by:

22 **GLANCY BINKOW & GOLDBERG LLP**

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24 Peter A. Binkow #173848  
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27 *Local Counsel for Lead Plaintiff and the Settlement Class*

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21 *Additional Counsel for Lead Plaintiff and the Settlement Class*

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