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13 **UNITED STATES DISTRICT COURT**

14 **NORTHERN DISTRICT OF CALIFORNIA**

15 JOSEPH J. MAHONEY, JR., On Behalf of) Case No.
16 Himself and All Others Similarly Situated,)
17 Plaintiff(s),) CLASS ACTION
18 vs.)
19) COMPLAINT FOR VIOLATION OF THE
20) FEDERAL SECURITIES LAWS
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1 Plaintiff, individually and on behalf of all other persons similarly situated, has alleged the
2 following based upon the investigation of his counsel, which included a review of regulatory
3 filings and reports, securities analyst reports and advisories about InterMune, Inc. ("InterMune" or
4 the "Company"), press releases and other public statements issued by the Company, and media
5 reports about the Company. Plaintiff believes that substantial additional evidentiary support will
6 exist for the allegations set forth herein after a reasonable opportunity for discovery.

7 **NATURE OF THE ACTION**

8 1. This is a federal class action on behalf of purchasers of the securities of InterMune
9 between October 24, 2002 and June 11, 2003, inclusive (the "Class Period"), seeking remedies
10 under the Securities Exchange Act of 1934 (the "Exchange Act").

11 **JURISDICTION AND VENUE**

12 2. The claims asserted herein arise under and pursuant to §§10(b) and 20(a) of the
13 Exchange Act [15 U.S.C. §§78j(b) and 78t(a)] and Rule 10b-5 promulgated thereunder by the SEC
14 [17 C.F.R. §240.10b-5].

15 3. This Court has jurisdiction over the subject matter of this action pursuant to 28
16 U.S.C. §§1331 and 1337, and §27 of the Exchange Act.

17 4. Venue is proper in this District pursuant to §27 of the Exchange Act and 28 U.S.C.
18 §1391(b) and InterMune conducts business in this District many of the acts charged herein,
19 including the preparation and dissemination of materially false and misleading information,
20 occurred in substantial part in this District.

21 5. In connection with the acts alleged in this complaint, defendants, directly or
22 indirectly, used the means and instrumentalities of interstate commerce, including, but not limited
23 to, the mails, interstate telephone communications and the facilities of the national securities
24 markets.

25 **PARTIES**

26 6. Plaintiff Joseph J. Mahoney, Jr., as set forth in the accompanying certification,
27 incorporated by reference herein, purchased the common stock of InterMune at artificially inflated
28 prices during the Class Period and has been damaged as a result of defendants' conduct as alleged

1 herein.

2 7. Defendant InterMune is a Delaware corporation and maintains its principal
3 executive offices in Brisbane, California. According to its recent press releases, InterMune is a
4 "commercially driven biopharmaceutical company focused on the marketing, development and
5 applied research of life-saving therapies for pulmonary, hepatic and infectious diseases."

6 8. Defendant Scott Harkonen ("Harkonen") was at all relevant times InterMune's
7 Chief Executive Officer, President and a director.

8 9. Defendant Sharon Surrey-Barbari ("Surrey-Barbari") was at all relevant times
9 InterMune's Chief Financial Officer and Senior Vice President of Finance and Administration.

10 10. Defendants Harkonen and Surrey-Barbari are referred to herein as the "Individual
11 Defendants."

12 11. During the Class Period, the Individual Defendants, as senior executive officers
13 and/or directors of InterMune were privy to confidential and proprietary information concerning
14 InterMune, its operations, finances, financial condition, and present and future business prospects.
15 The Individual Defendants also had access to material adverse non-public information concerning
16 InterMune, as discussed in detail below. Because of their positions with InterMune, the Individual
17 Defendants had access to non-public information about its business, finances, products, markets
18 and present and future business prospects via access to internal corporate documents,
19 conversations and connections with other corporate officers and employees, attendance at
20 management and board of directors meetings and committees thereof and via reports and other
21 information provided to them in connection therewith. Because of their possession of such
22 information, the Individual Defendants knew or recklessly disregarded the fact that adverse facts
23 specified herein had not been disclosed to, and were being concealed from, the investing public.

24 12. The Individual Defendants are liable as direct participants in, and as co-
25 conspirators with respect to, the wrongs complained of herein. In addition, the Individual
26 Defendants, by reason of their status as senior executive officers and/or directors were "controlling
27 persons" within the meaning of §20 of the Exchange Act and had the power and influence to cause
28 the Company to engage in the unlawful conduct complained of herein. Because of their positions

1 of control, the Individual Defendants were able to and did, directly or indirectly, control the
2 conduct of InterMune's business.

3 13. The Individual Defendants, because of their positions with the Company,
4 controlled and/or possessed the authority to control the contents of its reports, press releases and
5 presentations to securities analysts and through them to the investing public. The Individual
6 Defendants were provided with copies of the Company's reports and press releases, alleged herein
7 to be misleading, prior to or shortly after their issuance and had the ability and opportunity to
8 prevent their issuance or cause them to be corrected. Thus, the Individual Defendants had the
9 opportunity to commit the fraudulent acts alleged herein.

10 14. As senior executive officers and/or directors and as controlling persons of a
11 publicly traded company whose common stock was, and is, registered with the Securities and
12 Exchange Commission (the "SEC") pursuant to the Exchange Act, and was traded on the Nasdaq
13 National Market ("Nasdaq") and governed by the federal securities laws, the Individual
14 Defendants had a duty to disseminate promptly accurate and truthful information with respect to
15 InterMune's financial condition and performance, growth, operations, financial statements,
16 business, products, markets, management, earnings and present and future business prospects, to
17 correct any previously issued statements that had become materially misleading or untrue, so that
18 the market prices of InterMune's securities would be based upon truthful and accurate information.
19 The Individual Defendants' misrepresentations and omissions during the Class Period violated
20 these specific requirements and obligations.

21 15. The Individual Defendants are liable as participants in a fraudulent scheme and
22 course of conduct that operated as a fraud or deceit on purchasers of InterMune securities by
23 disseminating materially false and misleading statements and/or concealing material adverse facts.
24 The scheme deceived the investing public regarding InterMune's business, operations and
25 management and the intrinsic value of InterMune securities, and caused plaintiff and members of
26 the Class to purchase InterMune securities at artificially inflated prices.

1 **CLASS ACTION ALLEGATIONS**

2 16. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil
3 Procedure 23(a) and (b)(3) on behalf of a class consisting of all those who purchased the securities
4 of InterMune during the Class Period and who were damaged thereby (the "Class"). Excluded
5 from the Class are defendants, the officers and/or directors of the Company, at all relevant times,
6 members of their immediate families and their legal representatives, heirs, successors or assigns
7 and any entity in which defendants have or had a controlling interest.

8 17. The members of the Class are so numerous that joinder of all members is
9 impracticable. Throughout the Class Period, InterMune common shares were actively traded on
10 the NASDAQ. While the exact number of Class members is unknown to plaintiff at this time and
11 can only be ascertained through appropriate discovery, plaintiff believes that there are hundreds or
12 thousands of members in the proposed Class. Record owners and other members of the Class may
13 be identified from records maintained by InterMune or its transfer agent and may be notified of the
14 pendency of this action by mail, using the form of notice similar to that customarily used in
15 securities class actions.

16 18. Plaintiff's claims are typical of the claims of the members of the Class as all
17 members of the Class are similarly affected by defendants' wrongful conduct in violation of
18 federal law that is complained of herein.

19 19. Plaintiff will fairly and adequately protect the interests of the members of the Class
20 and has retained counsel competent and experienced in class and securities litigation.

21 20. Common questions of law and fact exist as to all members of the Class and
22 predominate over any questions solely affecting individual members of the Class. Among the
23 questions of law and fact common to the Class are:

24 (a) whether the federal securities laws were violated by defendants' acts as
25 alleged herein;

26 (b) whether statements made by defendants to the investing public during the
27 Class Period misrepresented material facts about the business and operations of InterMune; and

28 (c) to what extent the members of the Class have sustained damages and the

1 proper measure of damages.

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

8 **SUBSTANTIVE ALLEGATIONS**

9 22. The Class Period begins on October 24, 2002. On that date, InterMune released its
10 financial and operational results for the third quarter ended September 30, 2002. The press release
11 stated, in pertinent part, as follows:

12 "Actimmune continues to be the primary driver of our revenue growth, and
13 we anticipate total 2002 sales for this product to reach \$95 to \$100 million," said
14 Scott Harkonen, President and CEO of InterMune. "Infergen® and Amphotec®
15 sales also continue to grow, keeping us on track to achieve \$105 to \$110 million in
16 total revenues in 2002."

17 23. At the analysts' conference call on October 24, 2002, InterMune disclosed it had an
18 estimated 2,500 patients on Actimmune.

19 24. On January 30, 2003, InterMune issued a press release entitled "InterMune
20 Announces Senior Management Change" announcing that David A. Cory, InterMune's Vice
21 President of Sales, had left the Company and that Scott Harkoner, President and CEO of
22 InterMune, would oversee David's area of responsibility until a replacement was named. The
23 press release continued, in pertinent part:

24 "We wish David well in his new endeavors and thank him for his many
25 contributions to the company," said Dr. Harkonen. "InterMune now has an
26 extraordinary sales force and a team of seasoned marketing professionals who are
27 spearheading efforts to educate physicians about InterMune's products. We look
28 forward to another year that extends our track record of growth and establishes
InterMune's commitment to providing patients with promising therapies for unmet
medical needs."

1 25. On February 19, 2003, InterMune released its financial and operational results for
2 the fourth quarter and year ended December 31, 2002. The press release stated, in pertinent part:

3 For the fourth quarter of 2002, InterMune recorded total product sales of
4 \$39.3 million, compared to \$15.1 million for the same quarter in 2001, an increase
5 of 161%. Sales of Actimmune® (interferon gamma-1b) for the fourth quarter of
6 2002 were \$37.0 million, compared to \$13.8 million in the same period in 2001, an
increase of 168%.

7 * * *

8 "We are very pleased with InterMune's financial performance in 2002,
9 which continues our track record of revenue growth based on strong sales of our
lead product, Actimmune, along with steadily increasing sales of Infergen®," said
Scott Harkonen, President and CEO of InterMune.

10 * * *

11 Financial Outlook for 2003

12 InterMune also announced its financial guidance for 2003. The Company
13 projects total net product sales for 2003 to be in the range of \$170 to \$195 million,
14 with Actimmune net product sales projected to be in the range of \$160 to \$180
million for the full year.

15 26. At the analysts' conference call on February 19, 2003, InterMune disclosed it had
16 an estimated 3,000 patients on Actimmune.

17 27. On April 29, 2003, InterMune released its financial and operational results for first
18 quarter ended March 31, 2003. The press release stated, in pertinent part:

19 For the first quarter of 2003, InterMune recorded total product sales of
20 \$40.4 million, compared to \$18.8 million for the same quarter in 2002, an increase
21 of 115%. Sales of Actimmune® (interferon gamma-1b) for the first quarter of 2003
were \$37.9 million, compared to \$17.7 million in the same period in 2002, an
22 increase of 114%.

23 "InterMune continued its track record of year-over-year revenue growth,"
24 said Scott Harkonen, President and CEO of InterMune. "We are on track to achieve
our revenue projections for the year as we continue to build our commercial
25 portfolio and pipeline of products for pulmonary, infectious and hepatic diseases."

26 * * *

27 Financial Outlook For 2003

28 InterMune reiterates its previous revenue and expense guidance for 2003.
The Company projects total net product sales for 2003 to be in the range of \$170 to
\$195 million, with Actimmune® net product sales projected to be in the range of
\$160 to \$180 million for the full year.

1 28. At the analysts' conference call on April 29, 2003, InterMune disclosed it had an
2 estimated 3,300 patients on Actimmune.

3 29. Contrary to the representations and statements made by InterMune throughout the
4 Class Period, such representations and statements were materially false and misleading when
5 made as they misrepresented and/or omitted one or more of the following adverse facts which then
6 existed and disclosure of which was necessary to make the statements made not false and/or
7 misleading, including, but not limited to:

8 (a) InterMune's estimated number of patients on Actimmune, disclosed
9 throughout the Class Period as an accurate and valid means by which to register the level of
10 strength of the demand for Actimmune, was "inherently" unreliable, inconsistent, and lacking in
11 any accountable basis for presentation;

12 (b) there had been disruptions and problems with InterMune's sales and
13 marketing efforts, including extraordinary turnover and lack of proper training;

14 (c) since at least the fourth quarter of fiscal 2002, InterMune was materially
15 understating the level of inventory being held by its distributors, of which millions of dollars
16 worth was being held in excess, and materially overstating its revenues;

17 (d) InterMune lacked adequate and sufficient internal controls and systems; and

18 (e) based on the foregoing, InterMune had no reasonable basis to issue its
19 financial and operational projections.

20 30. On June 11, 2003, after the close of market, InterMune shocked the investing
21 public when it provided "Updated 2003 Financial Guidance" and disclosed, in pertinent part, as
22 follows:

23 InterMune, Inc. announced today that the Company estimates second quarter 2003
24 Actimmune® (interferon gamma-1b) product sales will be in the range of \$30 to
25 \$33 million. As a result, the Company has revised its full-year 2003 revenue
26 guidance, which was stated in its April 29, 2003 press release. For Actimmune
27 product sales, full-year guidance was revised from \$160-\$180 million to \$135-\$150
28 million and, for total product revenue, full-year guidance was revised from \$170-
\$195 million to \$145-\$165 million. Although the Company is reevaluating
ongoing operating expenses, operating expense guidance for the full-year 2003
remains as projected on April 29, 2003.

1 * * *

2 The Company's updated guidance is based on current assessments of
3 underlying demand in the first half of 2003, changes in customer inventory levels
4 and a correction of the Company's April 29th projection of approximately 3,300
5 patients on Actimmune therapy as of the end of the first quarter down to
6 approximately 2,900 patients on Actimmune therapy during the first quarter.

7 31. Investor reaction was decisive, swift and negative. InterMune stock fell from a
8 close of \$25.10 on June 11, 2003 to a close of \$16.74 on June 12, 2003, or a single-day decline of
9 more than 33% on more than twenty-five times normal trading volume.

10 32. At the conference call on June 12, 2003, InterMune essentially admitted, among
11 other things, that (i) its estimated number of patients on Actimmune, disclosed throughout the
12 Class Period as an accurate and valid means by which to register the level of strength of the
13 demand for Actimmune, was "inherently" unreliable, inconsistent, and lacking in any accountable
14 basis for presentation, (ii) there had been disruptions and problems with InterMune's sales and
15 marketing efforts, including extraordinary turnover and lack of proper training, and (iii) since at
16 least the fourth quarter of fiscal 2002, InterMune was materially understating the level of
17 inventory being held by its distributors and materially overstating its revenues.

18 33. A June 12, 2003 Dow Jones article entitled "Investors Flee InterMune Following
19 Warning on Drug Sales" provided the following additional details:

20 Shares of InterMune Inc. tumbled after the biotech company late Wednesday cut its
21 sales views for Actimmune, a treatment for a disease that can end in respiratory
22 failure.

23 "Last night's announcement calls into question management credibility and
24 makes an already controversial stock too risky to continue to recommend," Banc of
25 America Securities analyst Michael King told investors in a research note.

26 * * *

27 InterMune, based in Brisbane, Calif., lowered its 2003 sales expectations
28 for Actimmune to between \$135 million and \$150 million from its prior target of
\$160 million to \$180 million. The company blamed the shortfall on inventory
buildup and a correction of the number of patients on Actimmune at the end of the
first quarter.

1 The restatement of how many patients are using InterMune's Actimmune,
2 down to 2,900 from 3,300, did more than lower the drug's sales. It also called into
3 question the validity of the data provided by the company's management, said Mr.
4 King. He added that because of the product's distribution, investors have to rely on
5 InterMune's data as opposed to figures provided by a third party.

6 34. As alleged herein, defendants acted with scienter in that defendants knew that the
7 public documents and statements issued or disseminated in the name of the Company were
8 materially false and misleading and knew that such statements or documents would be issued, or
9 acquiesced in the issuance or dissemination of such statements or documents, as primary
10 violations of the federal securities laws. As set forth elsewhere herein in detail, defendants, by
11 virtue of their receipt of information reflecting the true facts regarding InterMune, their control
12 over, and/or receipt of information of InterMune's allegedly materially misleading misstatements
13 and/or their associations with the Company which made them privy to confidential proprietary
14 information concerning InterMune, participated in the fraudulent scheme alleged herein.

15 **UNDISCLOSED ADVERSE INFORMATION**

16 35. The market for InterMune's securities was open, well-developed and efficient at all
17 relevant times. As a result of these materially false and misleading statements and failures to
18 disclose, InterMune's securities traded at artificially inflated prices during the Class Period.
19 Plaintiff and other members of the Class purchased or otherwise acquired InterMune securities
20 relying upon the integrity of the market price of InterMune's securities and market information
21 relating to InterMune, and have been damaged thereby.

22 36. During the Class Period, defendants materially misled the investing public, thereby
23 inflating the prices of InterMune securities, by publicly issuing false and misleading statements
24 and omitting to disclose material facts necessary to make defendants' statements, as set forth
25 herein, not false and misleading. Said statements and omissions were materially false and
26 misleading in that they failed to disclose material adverse information and misrepresented the truth
27 about the Company, its business and operations, as alleged herein.

28 37. At all relevant times, the material misrepresentations and omissions particularized
in this Complaint directly or proximately caused or were a substantial contributing cause of the
damages sustained by plaintiff and other members of the Class. As described herein, during the

1 Class Period, defendants made or caused to be made a series of materially false or misleading
2 statements about InterMune's business, prospects and operations. These material misstatements
3 and omissions had the cause and effect of creating in the market an unrealistically positive
4 assessment of InterMune and its business, prospects and operations, thus causing the Company's
5 securities to be overvalued and artificially inflated at all relevant times.

6 38. Defendants' materially false and misleading statements during the Class Period
7 resulted in plaintiff and other members of the Class purchasing the Company's securities at
8 artificially inflated prices, thus causing the damages complained of herein.

9 **FRAUD-ON-THE-MARKET DOCTRINE**

10 39. At all relevant times, the market for InterMune's securities was an efficient market
11 for the following reasons, among others:

12 (a) InterMune's stock met the requirements for listing, and was listed and
13 actively traded on the NASDAQ, a highly efficient and automated market;

14 (b) As a regulated issuer, InterMune filed periodic public reports with the SEC
15 and the NASDAQ;

16 (c) InterMune regularly communicated with public investors via established
17 market communication mechanisms, including through regular dissemination of press releases on
18 the national circuits of major newswire services and through other wide-ranging public
19 disclosures, such as communications with the financial press and other similar reporting services;
20 and

21 (d) InterMune was followed by several securities analysts employed by major
22 brokerage firms who wrote reports, which were distributed to the sales force and certain customers
23 of their respective brokerage firms. Each of these reports was publicly available and entered the
24 public marketplace.

25 40. As a result of the foregoing, the market for InterMune's securities promptly
26 digested current information regarding InterMune from all publicly available sources and reflected
27 such information in InterMune's stock price. Under these circumstances, all purchasers of
28 InterMune securities during the Class Period suffered similar injury through their purchase of

1 InterMune's securities at artificially inflated prices and a presumption of reliance applies.

2 **FIRST CLAIM FOR RELIEF**
3 **Violation Of Section 10(b) Of The Exchange Act**
4 **And Rule 10b-5 Promulgated Thereunder**
5 **Against All Defendants**

6 41. Plaintiff repeats and realleges each and every allegation contained above as if fully
7 set forth herein.

8 42. During the Class Period, InterMune and the Individual Defendants, and each of
9 them, carried out a plan, scheme and course of conduct which was intended to and, throughout the
10 Class Period, did: (a) deceive the investing public, including plaintiff and other Class members, as
11 alleged herein; (b) artificially inflate and maintain the market price of InterMune securities; and
12 (c) cause plaintiff and other members of the Class to purchase InterMune's securities at artificially
13 inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants,
14 and each of them, took the actions set forth herein.

15 43. Defendants: (a) employed devices, schemes, and artifices to defraud; (b) made
16 untrue statements of material fact and/or omitted to state material facts necessary to make the
17 statements made not misleading; and (c) engaged in acts, practices, and a course of business which
18 operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to
19 maintain artificially high market prices for InterMune's securities in violation of §10(b) of the
20 Exchange Act and Rule 10b-5. All defendants are sued either as primary participants in the
21 wrongful and illegal conduct charged herein or as controlling persons as alleged below.

22 44. In addition to the duties of full disclosure imposed on defendants as a result of their
23 making of affirmative statements and reports, or participation in the making of affirmative
24 statements and reports, to the investing public, defendants had a duty to promptly disseminate
25 truthful information that would be material to investors in compliance with the integrated
26 disclosure provisions of the SEC as embodied in SEC Regulation S-X (17 C.F.R. §210.01, et seq.)
27 and Regulation S-K (17 C.F.R. §229.10, et seq.) and other SEC regulations, including accurate
28 and truthful information with respect to the Company's operations, financial condition and
earnings so that the market price of the Company's securities would be based on truthful, complete

1 and accurate information.

2 45. InterMune and the Individual Defendants, individually and in concert, directly and
3 indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails,
4 engaged and participated in a continuous course of conduct to conceal adverse material
5 information about the business, operations and future prospects of InterMune as specified herein.

6 46. These defendants employed devices, schemes and artifices to defraud, while in
7 possession of material adverse non-public information and engaged in acts, practices, and a course
8 of conduct as alleged herein in an effort to assure investors of InterMune's value and performance
9 and continued substantial growth, which included the making of, or the participation in the making
10 of, untrue statements of material facts and omitting to state material facts necessary in order to
11 make the statements made about InterMune and its business operations and future prospects in the
12 light of the circumstances under which they were made, not misleading, as set forth more
13 particularly herein, and engaged in transactions, practices and a course of business which operated
14 as a fraud and deceit upon the purchasers of InterMune securities during the Class Period.

15 47. The Individual Defendants' primary liability, and controlling person liability, arises
16 from the following facts: (a) the Individual Defendants were high-level executives and directors at
17 the Company during the Class Period; (b) the Individual Defendants were privy to and participated
18 in the creation, development and reporting of the Company's internal budgets, plans, projections
19 and/or reports; and (c) the Individual Defendants were aware of the Company's dissemination of
20 information to the investing public which they knew or recklessly disregarded was materially false
21 and misleading.

22 48. The defendants had actual knowledge of the misrepresentations and omissions of
23 material facts set forth herein, or acted with reckless disregard for the truth in that they failed to
24 ascertain and to disclose such facts, even though such facts were available to them. Such
25 defendants' material misrepresentations and/or omissions were done knowingly or recklessly and
26 for the purpose and effect of concealing InterMune's operating condition and future business
27 prospects from the investing public and supporting the artificially inflated price of its securities.
28 As demonstrated by defendants' overstatements and misstatements of the Company's business,

1 operations and earnings throughout the Class Period, defendants, if they did not have actual
2 knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such
3 knowledge by deliberately refraining from taking those steps necessary to discover whether those
4 statements were false or misleading.

5 49. As a result of the dissemination of the materially false and misleading information
6 and failure to disclose material facts, as set forth above, the market prices of InterMune securities
7 were artificially inflated during the Class Period. In ignorance of the fact that market prices of
8 InterMune's publicly traded securities were artificially inflated, and relying directly or indirectly
9 on the false and misleading statements made by defendants, or upon the integrity of the market in
10 which the securities trade, and/or on the absence of material adverse information that was known
11 to or recklessly disregarded by defendants but not disclosed in public statements by defendants
12 during the Class Period, plaintiff and the other members of the Class acquired InterMune
13 securities during the Class Period at artificially high prices and were damaged thereby.

14 50. At the time of said misrepresentations and omissions, plaintiff and other members
15 of the Class were ignorant of their falsity, and believed them to be true. Had plaintiff and the other
16 members of the Class and the marketplace known of the true financial condition and business
17 prospects of InterMune, which were not disclosed by defendants, plaintiff and other members of
18 the Class would not have purchased or otherwise acquired their InterMune securities, or, if they
19 had acquired such securities during the Class Period, they would not have done so at the
20 artificially inflated prices which they paid.

21 51. By virtue of the foregoing, defendants have violated §10(b) of the Exchange Act,
22 and Rule 10b-5 promulgated thereunder.

23 52. As a direct and proximate result of defendants' wrongful conduct, plaintiff and the
24 other members of the Class suffered damages in connection with their respective purchases and
25 sales of the Company's securities during the Class Period.

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1 **SECOND CLAIM FOR RELIEF**
2 **Violation Of Section 20(a) Of The Exchange Act**
3 **Against All Defendants**

4 53. Plaintiff repeats and realleges each and every allegation contained above as if fully
5 set forth herein.

6 54. The Individual Defendants acted as a controlling person of InterMune within the
7 meaning of §20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions,
8 and their ownership and contractual rights, participation in and/or awareness of the Company's
9 operations and/or intimate knowledge of the statements filed by the Company with the SEC and
10 disseminated to the investing public, the Individual Defendants had the power to influence and
11 control and did influence and control, directly or indirectly, the decision-making of the Company,
12 including the content and dissemination of the various statements which plaintiff contends are
13 false and misleading. The Individual Defendants were provided with or had unlimited access to
14 copies of the Company's reports, press releases, public filings and other statements alleged by
15 plaintiff to be misleading prior to and/or shortly after these statements were issued and had the
16 ability to prevent the issuance of the statements or cause the statements to be corrected. InterMune
17 controlled the Individual Defendants and all of its employees.

18 55. In particular, the Individual Defendants had direct and supervisory involvement in
19 the day-to-day operations of the Company and, therefore, are presumed to have had the power to
20 control or influence the particular transactions giving rise to the securities violations as alleged
21 herein, and exercised the same.

22 56. As set forth above, InterMune and the Individual Defendants each violated §10(b)
23 and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their
24 positions as controlling persons, defendants are liable pursuant to §20(a) of the Exchange Act. As
25 a direct and proximate result of InterMune's and the Individual Defendants' wrongful conduct,
26 plaintiff and other members of the Class suffered damages in connection with their purchases of
27 the Company's securities during the Class Period.

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PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for relief and judgment, as follows:

A. Determining that this action is a proper class action, designating plaintiff as lead plaintiff and certifying plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and plaintiff's counsel as lead 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; and

D. Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: July 14, 2003

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