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9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 In re INTERMUNE SECURITIES
14 LITIGATION

Case No. C-03-2954-SI

**DEFENDANTS' REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF THEIR MOTION
TO DISMISS FIRST AMENDED AND
CONSOLIDATED CLASS ACTION
COMPLAINT**

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17 This Document Relates to:

CLASS ACTION

18 ALL ACTIONS

Hearing Date: July 30, 2004
Time: 9:00 a.m.
Courtroom: Hon. Susan Illston
Trial Date: Not yet set.

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT pursuant to Federal Rule of Evidence 201, Defendants
3 hereby request that the Court take judicial notice of the following documents in support of their
4 Motion to Dismiss. All exhibit references correspond to the exhibits attached to the supporting
5 Declaration of Shahram Seyedin-Noor, filed concurrently herewith.

6 Exhibit A: InterMune, Inc.'s ("InterMune's") Form 10-Q for the quarter ended
7 September 30, 2002, filed with the Securities and Exchange Commission
8 ("SEC") on November 14, 2002.

9 Exhibit B: InterMune's Form 10-K for the year ended December 31, 2002, filed with
10 the SEC on March 31, 2003.

11 Exhibit C: InterMune's Form 10-Q for the quarter ended March 31, 2003, filed with
12 the SEC on May 14, 2003.

13 Exhibit D: InterMune's Press Release dated August 28, 2002.

14 Exhibit E: InterMune's Press Release dated October 24, 2002.

15 Exhibit F: InterMune's Press Release dated January 6, 2003.

16 Exhibit G: InterMune's Press Release dated February 19, 2003.

17 Exhibit H: InterMune's Press Release dated April 29, 2003.

18 Exhibit I: InterMune's Press Release dated June 11, 2003.

19 Exhibit J: Transcript of InterMune's Conference Call held on October 24, 2002.

20 Exhibit K: Transcript of InterMune's Conference Call held on February 19, 2003.

21 Exhibit L: Transcript of InterMune's Conference Call held on April 29, 2003.

22 Exhibit M: Transcript of InterMune's Conference Call held on June 12, 2003.

23 Judicial notice of these documents is appropriate for the following reasons: (1) Exhibits
24 A, B, and C are documents on file with the SEC, a public agency; (2) Exhibits A through M are
25 directly referenced or relied upon in Plaintiff's First Amended and Consolidated Class Action
26 Complaint for Violations of Federal Securities Laws, and/or their validity is not subject to honest
27 dispute.

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1 On a motion to dismiss, the Court may take judicial notice of “documents whose contents
2 are alleged in a complaint and whose authenticity no party questions, but which are not
3 physically attached to the pleading.” *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994),
4 *overruled on other grounds by Galbraith v. County of Santa Clara*, 307 F.3d 1119 (9th Cir.
5 2002); *see also In re Calpine Corp. Sec. Litig.*, 288 S. Supp. 2d 1054, 1076 (N.D. Cal. 2003)
6 (holding that the court “may properly take judicial notice of SEC filings and documents
7 expressly referenced” in a complaint). “In addition, the Court may take judicial notice of
8 documents on which allegations in the [Complaint] necessarily rely, even if not expressly
9 referenced in the [Complaint], provided the authenticity of those documents [is] not in dispute.”
10 *In re Calpine*, 288 S. Supp. 2d at 1076. As a result, Defendants respectfully request that the
11 Court take judicial notice of the aforementioned documents.

12
13 Dated: April 2, 2004

COOLEY GODWARD LLP

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15 _____
/s/

16 William S. Freeman

17 Attorneys for Defendants
18 W. SCOTT HARKONEN, SHARON SURREY-
19 BARBARI and INTERMUNE, INC.

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