

1 COOLEY GODWARD LLP
WILLIAM S. FREEMAN (82002)
2 NEAL J. STEPHENS (152071)
LINDA J. BREWER (217730)
3 MARY BETH O'CONNOR (228591)
Five Palo Alto Square
4 3000 El Camino Real
Palo Alto, CA 94306-2155
5 Telephone: (650) 843-5000
Facsimile: (650) 857-0663
6

Attorneys for Defendants
7 W. SCOTT HARKONEN, SHARON SURREY-
BARBARI and INTERMUNE, INC.
8

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

**[PROPOSED] ORDER GRANTING
DEFENDANTS' MOTION TO DISMISS
SECOND AMENDED AND CONSOLIDATED
CLASS ACTION COMPLAINT**

15
16
17 This Document Relates to:
18 ALL ACTIONS
19

CLASS ACTION

Hearing Date: January 21, 2005
Time: 9:00 a.m.
Courtroom: Hon. Susan Illston
Trial Date: Not yet set.

1 The motion of defendants W. Scott Harkonen, Sharon Surrey-Barbari, and InterMune,
2 Inc. (the "Defendants") to dismiss Plaintiffs' Second Amended and Consolidated Class Action
3 Complaint for Violations of Federal Securities Laws (the "Amended Complaint") was heard on
4 January 21, 2005, at 9:00 a.m. in this Court. Counsel for Defendants and for Plaintiffs were in
5 attendance and presented oral arguments. Having considered the parties' papers filed in support
6 of and in opposition to the motion, oral argument, and other pleadings and papers on file herein,
7 the Court finds as follows:

8 1. With respect to the first claim for relief for violation of § 10(b) of the Securities
9 Exchange Act of 1934, Plaintiffs fail to plead with the required particularity which statements
10 were false or that statements attributed to the Defendants were false at the time they were made.
11 Plaintiffs also fail to allege facts giving rise to a strong inference that any of the Defendants
12 possessed the requisite state of mind.

13 2. With respect to the second claim for relief for violation of § 20(a) of the
14 Securities Exchange Act of 1934, Plaintiffs fail to plead adequately that individual Defendants
15 Harkonen and Surrey-Barbari are liable as control persons.

16 3. In view of the arguments presented by the parties, any further amendment to the
17 Amended Complaint would be futile.

18 **IT IS THEREFORE ORDERED** that Defendants' Motion to Dismiss is **GRANTED**,
19 and the Amended Complaint is dismissed without leave to amend.

20 **IT IS SO ORDERED.**

21
22 Dated: _____, 2005

23
24 _____
25 HON. SUSAN ILLSTON
26 UNITED STATES DISTRICT JUDGE

27 688123 v1/PA
28 #QYJ01!.DOC