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7

8 **UNITED STATES DISTRICT COURT**  
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN FRANCISCO DIVISION**

11 In re INTERMUNE SECURITIES  
LITIGATION

Master File No. C 03-2954 SI

CLASS ACTION

Hon. Susan Illston

12  
13  
14 This Document Relates to:  
All Actions.

**DECLARATION OF IRA A. SCHOCHET  
IN SUPPORT OF MOTION FOR AN  
ORDER AUTHORIZING THE  
DISBURSEMENT OF THE NET  
SETTLEMENT FUND**

17 I, IRA A. SCHOCHET, hereby declare:

18 1. I am a member of Labaton Sucharow & Rudoff LLP (“LSR”), the lead counsel in  
19 this consolidated securities class action (the “Consolidated Action”). I am an attorney licensed  
20 to practice law in the State of New York, and admitted Pro Hac Vice in the Northern District of  
21 California. I submit this declaration in further support of: (a) the motion for approval to  
22 distribute the Net Settlement Fund to eligible Class Members, and (b) the motion for approval to  
23 pay the Claims Administrator’s fees and expenses. I would be competent to testify that the  
24 following facts are true to the best of my knowledge, information and belief.

25 2. This action involves claims brought on behalf of a class of shareholders against  
26 Intermune Inc. (referred to herein as “Intermune”), W. Scott Harkonen and Sharon Surrey  
27 Barbari (hereinafter “Individual Defendants”) (hereinafter Intermune and Individual Defendants  
28 are collectively referred to herein as “Defendants”) for violations of §§10(b) and 20(a) of the

1 Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder,  
2 arising from false and misleading statements about the sale of Actimmune, Intermune’s lead  
3 product resulting in the artificial inflation of the price of Intermune’s common stock during the  
4 Class Period, and that shareholders who purchased Intermune’s common stock while it was  
5 inflated were injured when the misleading nature of Defendants’ statements was revealed and the  
6 price of the stock dropped.

7 **General**

8 3. This is a securities class action on behalf of public investors who purchased the  
9 common stock of Intermune during the period from August 28, 2002 through June 11, 2003 (the  
10 “Class Period”).

11 4. Excluded from the Settlement Class are Defendants, members of the immediate  
12 families of the Individual Defendants, any entity in which any Defendant has a controlling  
13 interest, current or former directors and officers of Intermune and the legal representatives, heirs,  
14 successors, or assigns of any such excluded person or entity.

15 5. Also excluded from the Settlement Class are those persons who timely and validly  
16 requested exclusion from the Settlement Class pursuant to the notice of pendency and Proposed  
17 Settlement of Class Action.

18 6. The Action was settled as to all Settling Defendants by the payment of the  
19 principal amount of \$10,400,000 by the Settling Defendants for the benefit of the Settlement  
20 Class.

21 7. The Settlement was approved by the Court by a Final Judgment and Order of  
22 Dismissal with Prejudice, dated August 26, 2005. (Docket Index (“DI”) #150).

23 **Claims Administrator**

24 8. Pursuant to the Stipulation of Settlement in this case and the Court’s prior orders,  
25 the Claims Administrator, Complete Claims Solutions, LLC (“CCS”), under the supervision of  
26 Plaintiff’s Lead Counsel, has determined which claims submitted by claimants are authorized  
27 claims. *See* the Affidavit of Thomas R. Glenn (“Glenn Aff.”) submitted herewith.

28

1           9.       As stated in the Glenn Aff., claimants who submitted claims that are “ineligible”  
2 to participate in the fund on which the claimant purported to make a claim were advised of their  
3 ineligibility. (Glenn Aff. ¶ 5).

4           10.       Regarding the Net Settlement Fund (the first fund and the second fund will be  
5 collectively referred to as the “Net Settlement Fund”), as shown by the Glenn Aff., 201 untimely  
6 but otherwise authorized claims have been submitted. These claims represent a net weighted  
7 loss of \$1,965,326.95, out of a total net weighted loss for all authorized claims, whether timely  
8 or untimely, of \$47,787,533.74. (Glenn Aff. ¶ 11).

9           11.       Because the untimely filing of these claims has not caused significant delay to the  
10 distribution of the Net Fund or otherwise prejudiced any claimant, Plaintiff requests that the  
11 Court approve payment of these untimely but otherwise authorized claims.

12           12.       This motion does not request any award of attorneys fees. All attorneys fees for  
13 counsel for Lead Plaintiff and the Class have previously been awarded by the Court.

14           13.       In addition, this motion does not request award of any expenses, *except* for the  
15 final fees and expenses (including the remaining costs incurred in giving notice to the settlement  
16 class members) of the Claims Administrator, CCS, relating to the processing of claims and  
17 distribution of the settlement fund.<sup>1</sup>

18           14.       Although the Court has previously awarded reimbursement of certain expenses,  
19 no award has yet been made of any fees or expenses of the Claims Administrator, CCS. *See*  
20 *Supplemental Declaration of Ira Schochet in Support of The Proposed Settlement And The*  
21 *Petition For An Award of Attorneys Fees And Reimbursement Of Litigation Expenses*, dated  
22 August 18, 2005, Exhibit B to the August 18th Schochet Declaration (DI #145).

23           15.       Moreover, the Court retained jurisdiction of this case so that, among other things,  
24 Plaintiff’s counsel would be able to request payment, from the settlement funds, of “fees and  
25 expenses in the Litigation and for reimbursement of the Lead Plaintiff’s costs and expenses  
26

27 <sup>1</sup> Pursuant to the Settlement Stipulation ¶2.6 (DI #123-1) and ¶18 of this Court’s Order  
28 Preliminarily Approving Settlement and Providing for Notice (DI #134), \$12,035.47 of the costs  
incurred in notifying the settlement class members was paid to CCS by Plaintiff’s Lead Counsel  
and \$7,500 of this cost remains due and owing to CCS, as reflected in Exhibit F.

1 incurred in the Litigation.” *See* Final Judgment and Order of Dismissal with Prejudice (DI  
2 #150).

3 16. The deadline for submitting claims has passed (the deadline was October 6,  
4 2005).

5 17. The Claims Administrator has now processed all claims and has determined its  
6 final fees and expenses for such processing and for distribution of the Fund—which will occur  
7 following the issuing of the order requested herein.

8 18. As stated in the Glenn Aff., the total amount of the Claims Administrator’s final  
9 fees and expenses relating to the Fund, which includes, without limitation, the amounts for  
10 giving notice of the settlement to the Class, processing the claims made on the Fund, paying  
11 taxes on the Fund, and distributing the fund to the claimants, is \$178,454.81.

12 19. Because the work done, and remaining to be done, by the Claims Administrator  
13 was, and is, necessary for the benefit of the Class Members, and because the Claims  
14 Administrator’s fees and expenses are reasonable, Plaintiff requests that the Court approve  
15 payment of these fees and expenses.

16 20. Pursuant to the Settlement Stipulation and Court-approved Notice of Settlement,  
17 after payment from the settlement fund of taxes on income from the settlement fund; and court  
18 approved attorneys’ fees, attorneys’ expenses, Lead Plaintiff’s costs, and Claims Administrator’s  
19 fees and expenses; each settlement fund is to be distributed by the Claims Administrator, under  
20 the supervision of Plaintiff’s Lead Counsel, in accordance with the Stipulation and the Plan of  
21 Allocation, or such further approval and further orders of the Court as may be necessary or as  
22 circumstances may require.

23 21. Pursuant to the Settlement Stipulation and the Court-approved Notice of  
24 Settlement, the settlement funds, net of previously awarded attorneys’ fees and expenses, Lead  
25 Plaintiff’s costs (previously awarded by the Court) have been held in escrow by Plaintiff’s Lead  
26 Counsel, as Escrow Agent, pending completion of the claims administration process, approval by  
27 the Court of payment of the Claims Administrator’s final fees and expenses, and approval by the  
28 Court of the Claims Administrator’s determinations regarding any disputed or late filed claims.

1           22.     Along with the Claims Administrator's final fees and expenses, funds to pay the  
2 taxes on the income earned by the settlement fund will be removed from the fund just prior to  
3 distribution of the fund.

4           23.     The Court has already ordered the parties to perform their respective obligations  
5 the Stipulation of Settlement which sets forth that the "Net Settlement Fund shall be distributed  
6 to the Authorized Claimants substantially in accordance with a Plan of Allocation to be described  
7 in the Notice . . ." (*See Settlement Stipulation*, p. 12 (DI #123)).

8           24.     The Plan of Allocation as set forth in the Court Approved Notice is as follows:

9                   "The first fund ("Fund I") will be in the gross amount of \$800,000 and will be  
10 used to pay eligible claimants who purchased shares of InterMune during the period  
11 August 28, 2002, through January 6, 2003. The second fund ("Fund II") will be in the  
12 amount of \$9.6 million and will be used to pay eligible claimants who purchased shares  
13 of InterMune stock during the period January 7, 2003, through June 11, 2003. . . .

14                   In order to recover damages, you must have suffered an actual monetary loss on  
15 the shares of InterMune stock that you purchased during the Settlement Class Period.  
16 That is, (a) for shares that you purchased and sold during the Settlement Class Period, the  
17 purchase price must have been greater than the sales price; or (b) for shares that you  
18 purchased during the Settlement Class Period and held at the end of that period, the  
19 purchased price must have been greater than \$17.25 a share. A claim will be calculated  
20 as follows:

- 21                   A. For shares you purchased between August 28, 2002, and January 6, 2003, and:
- 22                   1. sold prior to close of business on June 11, 2003, your recognized loss shall be  
23 the purchase price minus the sales price, multiplied by 10%; or
  - 24                   2. held as of the close of business on June 11, 2003, your recognized loss shall  
25 be lesser of:
    - 26                   a. the purchase price minus \$17.25 per share, multiplied by 10%; or
    - 27                   b. \$0.79 per share
- 28                   B. For shares you purchased between January 7, 2003, and June 11, 2003, and:
1. sold prior to close of business on June 11, 2003, your recognized loss shall be  
the purchase price minus the sales price, multiplied by 10%; or
  2. held as of the close of business on June 11, 2003, your recognized loss shall  
be lesser of:
    - a. the purchase price minus \$17.25 per share, multiplied by 10%; or
    - b. \$7.85 per share

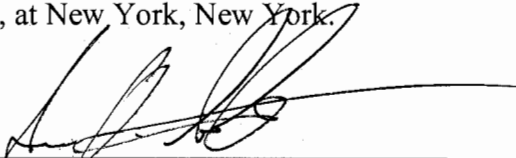
For purposes of determining which shares of InterMune stock purchased during  
the Class Period were: (a) sold at a profit at any time during the Class Period, (b)  
sold at a loss at any time during the Class Period, or (c) were retained at the close  
of business on June 11, 2003, all sales of InterMune stock shall be matched on a  
"first-in, first-out" ("FIFO") basis against prior purchases during the Class  
Period."

1           25.     Because the Claims Administrator has now finished processing all claims,  
2 Plaintiff requests the Court to authorize distribution of the Net Settlement Fund to eligible Class  
3 Members as provided in the Notice sent to the Class in connection with the Settlement.

4           26.     Based upon the foregoing and the matters set forth in the Glenn Aff., Plaintiff  
5 respectfully requests that the Court enter the Proposed Order submitted herewith.

6           I declare under penalty of perjury under the laws of the United States of America that the  
7 foregoing is true and correct.

8           Executed this 7th day of November, 2006, at New York, New York.

9  
10   
11 \_\_\_\_\_  
Ira A. Schochet

12  
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21 [Case 3:03-cv-02954](#) [Document 157](#) [Filed 11/07/2006](#) [Page 6 of 7](#)

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□