

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re INTERMUNE, INC. SECURITIES  
LITIGATION

Master File No. C-03-2954-SI

This Document Relates To:  
ALL ACTIONS.

CLASS ACTION

**NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION**

***IF YOU PURCHASED INTERMUNE, INC. (“INTERMUNE”) COMMON STOCK BETWEEN AUGUST 28, 2002, AND JUNE 11, 2003, YOU COULD GET A PAYMENT FROM A CLASS ACTION SETTLEMENT.***

A federal court authorized this Notice to be sent to you. This is not a solicitation from a lawyer.

**Security and Time Period:** InterMune, Inc. (“InterMune”) common stock purchased between August 28, 2002, and June 11, 2003.

**Settlement Fund:** \$10,400,000 in cash. Your recovery will depend on the amount of stock you purchased and the timing of your purchases and any sales. It will also depend on the number of eligible shares that participate in the Settlement and when those shares were purchased and sold. Assuming that all of the InterMune investors who purchased shares during the relevant period and suffered damages participate in this Settlement, the estimated average recovery per share will be approximately \$0.27 before deduction of court-approved fees and expenses. See Paragraph 9 in the Settlement Benefits section for additional information concerning, among other things, the allocation of the Settlement Fund based on the relative strength of the claims at two different times during the Class Period.

**Reasons for Settlement:** Provides for a substantial dollar recovery while avoiding the costs and risks associated with continued litigation, including danger of no recovery.

**If the Case Had Not Settled:** Continuing with the case could have resulted in dismissal or loss at trial. The two sides do not agree on the amount of money that could have been won if the Lead Plaintiff prevailed at trial. The parties disagree about: (1) the method for determining whether InterMune stock was artificially inflated during the relevant period, and if so, the extent of that inflation; (2) the amount of any such inflation; (3) whether the various facts alleged by the Lead Plaintiff were materially false or misleading; (4) whether the various facts alleged by the Lead Plaintiff influenced the trading price of InterMune common stock during the relevant period; and (5) whether the facts alleged were material, false, misleading, or otherwise actionable under the securities laws.

**Fees and Expenses:** Plaintiffs’ Counsel have not received any payment for their work investigating the facts, conducting this litigation, and negotiating the Settlement on behalf of the Lead Plaintiff and the Settlement Class. Plaintiffs’ Counsel will ask the court for attorneys’ fees not to exceed 25% of the Settlement Fund and reimbursement of out-of-pocket expenses not to exceed \$225,000 to be paid from the Settlement Fund. In addition, the Lead Plaintiff, Lance A. Johnson, incurred costs and expenses directly related to the representation of the Class in the amount of \$3, 918 for which he will seek reimbursement. If the above amounts are requested and approved by the Court, the average cost per share will be approximately \$0.08.

**Deadlines:**

Submit Claim: October 6, 2005  
Request Exclusion: August 8, 2005  
File Objection: August 8, 2005

**Court Hearing on Fairness of Settlement:** August 26, 2005

**More Information:** [www.CompleteClaimSolutions.com/InterMune/](http://www.CompleteClaimSolutions.com/InterMune/) or

Claims Administrator:  
InterMune Securities Litigation  
c/o Complete Claim Solutions, Inc.  
P.O. Box 24623  
West Palm Beach, FL 33416  
Hotline: 888-299-7522

Lead Counsel:  
Ira A. Schochet, Esq.  
Richard T. Joffe, Esq.  
GOODKIND LABATON RUDOFF  
& SUCHAROW, LLP  
100 Park Avenue, 12th Floor  
New York, NY 10017

- Your legal rights are affected whether you act or don't act. Read this Notice carefully.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>SUBMIT A CLAIM FORM</b>	The only way to get a payment from this Settlement.
<b>EXCLUDE YOURSELF</b>	Get no payment. This is the only option that allows you to commence or participate in another lawsuit against the Defendants relating to the legal claims in this case.
<b>OBJECT</b>	You may write to the Court if you don't like this Settlement.
<b>GO TO A HEARING</b>	You may ask to speak in Court about the fairness of this Settlement.
<b>DO NOTHING</b>	Get no payment; forfeit right to sue in another action.

- These rights and options — ***and the deadlines to exercise them*** — are explained in this Notice.
- The Court in charge of this case must decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and, if there are any appeals, after appeals are resolved. Please be patient.

### **BASIC INFORMATION**

#### **1. Why Did I Get This Notice Package?**

You or someone in your family may have purchased shares of InterMune common stock between August 28, 2002, and June 11, 2003.

The Court sent you this Notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options, before the Court decides whether to approve the Settlement. If the Court approves it and after any objections or appeals are resolved, the Claims Administrator appointed by the Court will make the payments that the Settlement allows.

This package explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court for the Northern District of California, and the case is known as *In re InterMune, Inc. Securities Litigation*, Master File No. C-03-2954-SI. The person who sued is called the Lead Plaintiff, and the company and the individuals he sued, InterMune, W. Scott Harkonen, and Sharon Surrey-Barbari, are called the Defendants.

#### **2. What Is This Lawsuit About?**

This case was brought as a class action alleging that the Defendants made false and misleading statements about sales of Actimmune, InterMune's lead product, resulting in the artificial inflation of the price of InterMune common stock between August 28, 2002, and June 11, 2003. The Lead Plaintiff also alleges that investors who purchased InterMune's common stock during that period were injured when the misleading nature of Defendants' statements was revealed and the price of the stock dropped.

The Lead Plaintiff alleges that Defendants knowingly or recklessly misrepresented: (1) the number of patients taking Actimmune during the first quarter of 2003, (2) the response of the medical community to the data from key clinical trials of Actimmune, (3) the status of InterMune's sales force, and (4) whether InterMune's sales practices violated Food and Drug Administration regulations.

Defendants assert that the allegations of the complaint are without merit. All Defendants deny that they did anything wrong, and contend that if the case were to proceed to trial, they would prevail.

### **3. Why Is This A Class Action?**

In a class action, one or more people called class representatives (in this case the Court-appointed Lead Plaintiff, Lance A. Johnson) sue on behalf of people who have similar claims. Here, all these people, together, are called a Settlement Class or Settlement Class Members. In a class action, one court resolves the issues for all Settlement Class Members at the same time, except for those who voluntarily exclude themselves from the Settlement Class. Judge Susan Illston is in charge of this Class Action.

### **4. Why Is There A Settlement?**

The Court did not decide in favor of Lead Plaintiff or Defendants. Instead, both sides agreed to a Settlement based on a compromise of the claims and defenses. That way, they avoid the cost and risk of a trial, and eligible Settlement Class Members who make a valid claim will get compensation.

The Settlement was arrived at through arms'-length negotiations, assisted by an experienced mediator. The Lead Plaintiff and his attorneys agreed to the Settlement terms after considering the results of their factual and legal investigation of the Settlement Class' claims. In addition, as part of their due diligence, Counsel for the Lead Plaintiff and the Settlement Class will review additional discovery materials obtained from Defendants to further confirm the adequacy and fairness of the Settlement. In connection with that discovery, the Lead Plaintiff obtained the limited right to terminate the Settlement up until July 8, 2005.

Based on their investigation and discovery of the claims, the experience that the Lead Plaintiffs' attorneys have in litigating similar complex actions, the procedural protections provided by the Settlement terms, and the valuable consideration that the Settlement Class can obtain from the Settlement, the Lead Plaintiff and his attorneys think the Settlement is best for all Settlement Class Members.

## **WHO IS IN THE SETTLEMENT**

To see if you will get money from this Settlement, you first have to determine if you are a Settlement Class Member.

### **5. How Do I Know If I Am Part Of The Settlement?**

The Settlement Class includes *all persons who purchased InterMune common stock between August 28, 2002, and June 11, 2003, except those persons and entities that are excluded, as described below.*

### **6. What Are The Exceptions To Being Included?**

You are not a Settlement Class Member if you are a Defendant, a member of the immediate family of one of the individual Defendants listed in question 1, an entity in which any Defendant has or had a controlling interest, a current or former director or officer of InterMune, or a legal representative, heir, successor, or assign of any excluded party.

If you sold InterMune common stock between August 28, 2002, and June 11, 2003, that alone does not make you a Settlement Class Member. You are a Settlement Class Member only if you PURCHASED InterMune common stock between August 28, 2002, and June 11, 2003.

### **7. I'm Still Not Sure If I Am Included.**

If you are still not sure whether you are included, you can ask for free help. You can call the Claims Administrator, Complete Claim Solutions, Inc., at 888-299-7522 for more information, or you can fill out and return the claim form described in question 10, to see if you qualify.

## **THE SETTLEMENT BENEFITS — WHAT YOU GET**

### **8. What Does The Settlement Provide?**

Defendants and their insurance carriers have agreed to pay \$10.4 million in cash in settlement of this case. These funds will be distributed to eligible Settlement Class Members who send in valid claim forms, after payment of Court-approved legal fees and attorney and Lead Plaintiff expenses and the costs of claims administration, including the costs of printing and mailing this Notice and the cost of publishing the newspaper notice.

## 9. How Much Will My Payment Be?

Because the facts of the case have shown that the claims of Settlement Class Members who purchased in the earlier part of the Settlement Class Period are substantially weaker than the claims of those who purchased later, two funds will be established to pay eligible claimants.

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

Your share of the funds will depend on: (a) the number of valid claim forms that Settlement Class Members send in (the fewer the number of Settlement Class Members who choose to participate in the Settlement, the larger will be the recovery for each participating Settlement Class Member), and (b) how many shares of stock you purchased during the relevant period and when you bought and sold them.

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

- A. For shares you purchased between August 28, 2002, and January 6, 2003, and:
  1. sold prior to the 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 the lesser of:
    - a. the purchase price minus \$17.25 per share, multiplied by 10%; or
    - b. \$0.79 per share.
- B. For shares you purchased between January 7, 2003, and June 11, 2003, and:
  1. sold prior to the 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 the lesser of:
    - a. the purchase price minus \$17.25 per share; 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.

The date of purchase or sale is the “contract” or “trade” date as distinguished from the “settlement date.”

The payment you get will reflect your *pro rata* share of the amount in the relevant Settlement Fund (as a fraction, your recognized loss divided by the total of all recognized losses for the relevant fund) after deduction of Court-approved fees and expenses. Depending on the number of eligible shares that participate in the Settlement and when those shares were purchased and sold, the estimated average payment will be approximately \$0.06 per share in Fund I and approximately \$0.38 per share in Fund II before deduction of Court-approved fees and expenses (with an approximate average cost per share of \$0.016 for Fund I and \$0.10 for Fund II). The number of claimants who send in claims varies widely from case to case. You could get more or less money per share than described above.

## HOW YOU GET A PAYMENT — SUBMITTING A CLAIM FORM

### 10. How Will I Get A Payment?

To qualify for payment, you must be an eligible Settlement Class Member and you must send in a claim form. A claim form is enclosed with this Notice. Read the instructions carefully, fill out the form, include all the documents the form asks for, sign it, and mail it, postmarked no later than October 6, 2005.

### 11. When Will I Get My Payment?

The Court will hold a hearing on August 26, 2005, to decide whether to approve the Settlement. If Judge Illston approves the Settlement, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps several years. Everyone who sends in a claim form will be informed of the determination with respect to their claim. Please be patient.

## **12. What Am I Giving Up To Get A Payment Or Stay In The Settlement Class?**

Unless you exclude yourself, you are staying in the Settlement Class, and that means that you cannot sue, continue to sue, or be part of any other lawsuit against the Defendants about the same legal and factual issues in this case. It also means that all of the Court's Orders will apply to you and legally bind you and, in return for your participation in the Settlement, you will release your claims in this case against the Defendants. The terms of the release are included in the claim form that is enclosed.

### **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you don't want a payment from this Settlement, but you want to keep the right to sue or continue to sue the Defendants on your own about the same legal and factual issues in this case, then you must take steps to get out of the Settlement Class. This is called excluding yourself from, or is sometimes referred to as opting-out of, the Settlement Class.

## **13. How Do I Get Out Of The Settlement Class?**

To exclude yourself from the Settlement Class, you must send a letter by mail stating that you want to be excluded from *In re InterMune, Inc. Securities Litigation*, Master File No. C-03-2954-SI. You must include your name, address, telephone number, your signature, and the number of shares of InterMune common stock you purchased between August 28, 2002, and June 11, 2003, the number of shares sold during this time period, if any, and the dates of such purchases and sales. You must mail your exclusion request postmarked no later than August 8, 2005 to:

InterMune Securities Litigation  
c/o Complete Claim Solutions, Inc.  
P.O. Box 24623  
West Palm Beach, FL 33416

You cannot exclude yourself on the phone or by e-mail. If you ask to be excluded, you are not eligible to get any settlement payment, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit.

## **14. If I Do Not Exclude Myself, Can I Sue The Defendants For The Same Thing Later?**

No. Unless you exclude yourself, you give up any right to sue the Defendants for the claims resolved by this Settlement. If you have a pending lawsuit against any of the Defendants, speak to your lawyer in that case immediately. Remember, the exclusion deadline is August 8, 2005.

## **15. If I Exclude Myself, Can I Get Money From This Settlement?**

No. If you exclude yourself, do not send in a claim form; but, you may sue, continue to sue, or be part of a different lawsuit against the Defendants.

### **THE LAWYERS REPRESENTING YOU**

## **16. Do I Have A Lawyer In This Case?**

The Court appointed the law firm of Goodkind Labaton Rudoff & Sucharow, LLP to represent you and other Settlement Class Members.

These lawyers are called Lead Counsel. You will not be charged for these lawyers' work. If you want to be represented by your own lawyer, you may hire one at your own expense.

## **17. How Will The Lawyers Be Paid?**

Lead Plaintiffs' Counsel, including Lead Counsel, will ask the Court for attorneys' fees not to exceed 25% of the Settlement Fund (an average of \$0.07 per share) and for reimbursement of out-of-pocket expenses up to \$225,000 (\$0.01 per share), which were advanced in connection with the Litigation. In addition, the Lead Plaintiff will ask the Court for reimbursement of certain costs and expenses directly incurred in connection with his representation of the Class in the amount of \$3,918. Such sums as may be approved by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses.

The attorneys' fees and expenses requested, to the extent they are awarded by the Court, will be the only payment to Plaintiffs' Counsel for their efforts in achieving this Settlement and for their risk in undertaking this representation on a wholly contingent basis. To date, Plaintiffs' Counsel have not been paid for their services for conducting this Litigation on behalf of the Lead Plaintiff and the Settlement Class or for their substantial out-of-pocket expenses. The fee requested, if awarded, will compensate Plaintiffs' Counsel for their work and risk in achieving the Settlement and is well within the range of fees awarded to Class Counsel under similar circumstances in other cases of this type. The Court may award less than this amount.

### **OBJECTING TO THE SETTLEMENT**

You can tell the Court that you don't agree with the Settlement or some part of it.

#### **18. How Do I Tell The Court That I Don't Like The Settlement?**

If you are a Settlement Class Member, you can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to the Settlement in *In re InterMune, Inc. Securities Litigation*, Master File No. C-03-2954-SI. Be sure to include your name, address, telephone number, your signature, the number of shares of InterMune common stock purchased and sold between August 28, 2002, and June 11, 2003, and the reasons you object to the Settlement. Any objection to the Settlement must be mailed or delivered such that it is received by each of the following no later than August 8, 2005:

*Court:*  
Clerk of the Court  
UNITED STATES OF DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
United States Courthouse  
450 Golden Gate Avenue  
San Francisco, CA 94102

*Lead Counsel for Lead Plaintiff  
and the Settlement Class:*  
GOODKIND LABATON RUDOFF  
& SUCHAROW, LLP  
100 Park Avenue, 12th Floor  
New York, NY 10017-5563  
Attn: Ira A. Schochet, Esq.

*Counsel for all Defendants:*  
Cooley Godward LLP  
5 Palo Alto Square  
3000 El Camino Real  
Palo Alto, CA 94306-2155  
Attn: William S. Freeman, Esq.

#### **19. What's The Difference Between Objecting And Excluding?**

Objecting is simply telling the Court that you don't like something about the Settlement. You can object *only if* you stay in the Settlement Class. Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

### **THE COURT'S FAIRNESS HEARING**

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you don't have to.

#### **20. When And Where Will The Court Decide Whether To Approve The Settlement?**

The Court will hold a fairness hearing at 9:00 a.m., on August 26, 2005, at the United States Courthouse, 450 Golden Gate Avenue, San Francisco, California. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Judge Illston will listen to people who have asked to speak at the hearing. The Court will also consider how much to pay to Plaintiffs' Counsel and the extent to which Counsel and Lead Plaintiff will be reimbursed for their costs and expenses. The Court may decide these issues at the hearing or take them under consideration and decide them at a later time. We do not know how long these decisions will take.

## **21. Do I Have To Come To The Hearing?**

No. Lead Counsel will answer questions Judge Illston may have; but, you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

## **22. May I Speak At The Hearing?**

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your intention to appear in *In re InterMune, Inc. Securities Litigation*, Master File No. C-03-2954-SI. Be sure to include your name, address, telephone number, your signature, and the number of shares of InterMune common stock purchased between August 28, 2002, and June 11, 2003. Your Notice of Intention to Appear must be postmarked no later than August 8, 2005, and be sent to the Clerk of the Court, Lead Counsel, and Defendants' Counsel, at the three addresses listed in question 18. You cannot speak at the hearing if you exclude yourself from the Settlement Class.

### **IF YOU DO NOTHING**

## **23. What Happens If I Do Nothing At All?**

If you do nothing, you'll get no money from this Settlement; but, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Defendants about the same legal or factual issues in this case.

### **GETTING MORE INFORMATION**

## **24. Are There More Details About The Settlement?**

This Notice summarizes the proposed Settlement. More details are in the Stipulation of Settlement dated as of May 6, 2005. You can get a copy of the Stipulation of Settlement by visiting the website of Lead Counsel at [www.glrslaw.com](http://www.glrslaw.com), or from the Clerk's Office at the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California during regular business hours.

## **25. How Do I Get More Information?**

You can call 888-299-7522 or write to InterMune Securities Litigation, c/o Complete Claim Solutions, Inc., P.O. Box 24623, West Palm Beach, FL, 33416, or visit the website at [www.CompleteClaimSolutions.com/InterMune/](http://www.CompleteClaimSolutions.com/InterMune/).

### ***DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE***

### **SPECIAL NOTICE TO NOMINEES**

If you hold shares of any InterMune common stock purchased between August 28, 2002, and June 11, 2003 as nominee for a beneficial owner, then, within ten (10) days after you receive this Notice, you must either: (1) send a copy of this Notice by first class mail to all such Persons; or (2) provide a list of the names and addresses of such Persons to the Claims Administrator:

*InterMune Securities Litigation*  
c/o Complete Claim Solutions, Inc.  
P.O. Box 24623  
West Palm Beach, FL 33416

If you choose to mail the Notice and Proof of Claim yourself, you may obtain from the Claims Administrator (without cost to you) as many additional copies of this Notice and Proof of Claim as you will need to complete the mailing.

Regardless of whether you choose to complete the mailing yourself, or elect to have the mailing performed for you, you may obtain reimbursement for, or advancement of, reasonable administrative costs actually incurred, or expected to be incurred, in connection with forwarding the Notice and which would not have been incurred but for the obligation to forward the Notice, upon submission of appropriate documentation to the Claims Administrator.

DATED: June 24, 2005

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

InterMune Securities Litigation  
c/o Complete Claim Solutions, Inc.  
P.O. Box 24623  
West Palm Beach, FL 33416

## **IMPORTANT COURT DOCUMENTS**

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**ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT AMOUNT OF TIME.**

**THANK YOU FOR YOUR PATIENCE.**

Reminder Checklist:

1. Please sign the above release and declaration.
2. Remember to attach supporting documentation, if available.
3. Do not send original stock certificates.
4. Keep a copy of your claim form for your records.
5. If you desire an acknowledgment of receipt of your claim form, please send it Certified Mail, Return Receipt Requested.
6. If you move, please send us your new address.