

1 SUSAN MUCK (CSB No. 126930)  
2 DEAN S. KRISTY (CSB No. 157646)  
3 FENWICK & WEST LLP  
4 555 California Street, 12<sup>th</sup> Floor  
5 San Francisco, CA 94104  
6 Telephone: (415) 875-2300  
7 Facsimile: (415) 281-1350

8 MICHAEL A. SANDS (CSB No. 178788)  
9 FELIX S. LEE (CSB No. 197084)  
10 FENWICK & WEST LLP  
11 Silicon Valley Center  
12 801 California Street  
13 Mountain View, CA 94041  
14 Telephone: (650) 988-8500  
15 Facsimile: (650) 938-5200

16 Attorneys for Defendants Uzia Galil, Levy  
17 Gerzberg, Karl Schneider, Raymond A.  
18 Burgess, James D. Meindl, James B. Owens,  
19 Jr., Arthur B. Stabenow, Camillo Martino and  
20 Nominal Defendant Zoran Corporation

21 UNITED STATES DISTRICT COURT  
22 NORTHERN DISTRICT OF CALIFORNIA  
23 SAN FRANCISCO DIVISION

24 IN RE ZORAN CORPORATION  
25 DERIVATIVE LITIGATION

CASE NO. C 06-04843 WHA

**OPPOSITION TO LEAD PLAINTIFF'S  
MOTION TO STRIKE EXHIBITS  
ATTACHED TO DECLARATION OF  
FELIX LEE**

Date: May 17, 2007  
Time: 8:00 a.m.  
Dept: Courtroom 9, 19<sup>th</sup> Floor  
Judge: Honorable William Alsup

1 **I. INTRODUCTION**

2 Plaintiff's motion to strike Exhibits A and C<sup>1</sup> attached to the Declaration of Felix Lee In  
3 Support Of Defendants' Reply ("Motion") ignores both controlling law and – most  
4 disingenuously – the contents of plaintiff's own filings in this case. Both the Zoran 2006 10-K  
5 and the CNET 1994 Option Plan were filed with the SEC. The law is clear that documents filed  
6 with the SEC are properly subjects of judicial notice. Moreover, plaintiff's own opposition to  
7 defendants' pending motion to dismiss cites and relies upon the very Zoran 2006 10-K he seeks to  
8 strike. Having used it himself, plaintiff cannot now argue in good faith that the Court is barred  
9 from considering the substance of this document. Plaintiff's Motion should be summarily denied.

10 **II. JUDICIAL NOTICE OF EXHIBITS A AND C TO THE LEE REPLY  
11 DECLARATION IS PROPER**

12 **A. The Zoran 2006 10-K, Filed With The SEC And Relied Upon By Plaintiff In  
13 His Opposition To Defendants' Motion To Dismiss, May Be Judicially  
14 Noticed**

15 There is a long line of authority in this circuit – including cases relied upon by plaintiff in  
16 his Motion – holding that courts may judicially notice documents filed with the SEC. *Siemers v.*  
17 *Wells Fargo & Co.*, 2006 U.S. Dist. LEXIS 81097, at \*42 (N.D. Cal. Oct. 24, 2006) (taking  
18 judicial notice of the contents of SEC filings); *see also In re Copper Mountain Sec. Litig.*, 311 F.  
19 Supp. 2d 857, 865 (N.D. Cal. 2004); *In re Nuko Info. Sys. Sec. Litig.*, 199 F.R.D. 338, 341 (N.D.  
20 Cal. 2000); *In re Silicon Graphics Inc. Sec. Litig.*, 183 F.3d 970, 986 (9th Cir. 1999); *In re Gupta*  
21 *Corp. Sec. Litig.*, 900 F. Supp. 1217, 1228 (N.D. Cal. 1994); *Kramer v. Time Warner, Inc.*, 937  
22 F.2d 767, 773-74 (2d. Cir. 1991). Zoran's Form 10-K for the fiscal year 2006 ("2006 10-K") is

23 <sup>1</sup> On its face, plaintiff's motion does *not* seek to strike the Form 4s submitted as Exhibit B to the  
24 Lee Reply Declaration, but nonetheless inexplicably argues that they are not susceptible to  
25 judicial notice. Motion at p. 2 n.2. That argument is incorrect. First, contrary to plaintiff's  
26 assertion, these Form 4s are unambiguously identified and relied upon in the consolidated verified  
27 derivative complaint ("Complaint" or "CC") at paragraph 254. Even if plaintiff had not relied on  
28 them, however, Form 4s are unquestionably a proper subject of judicial notice. *In re CNET*  
*Networks Inc. S'holder Deriv. Litig.*, 2007 U.S. Dist. LEXIS 29780, \*39-41 (N.D. Cal. Apr. 11,  
2007) (taking judicial notice of Form 4 establishing that stock options were not backdated); *In re*  
*Turnstone Systems, Inc. Sec. Litig.*, 2003 U.S. Dist. LEXIS 26709, \*107 (N.D. Cal. Feb. 4, 2003).  
In any event, plaintiff does not dispute that the Form 4s were timely filed. As such, the Form 4s  
in Exhibit B of the Lee Reply Declaration are properly before the Court on judicial notice.

1 just such an SEC filing and is therefore subject to judicial notice on that basis alone. Indeed,  
2 plaintiff makes no attempt to distinguish the myriad decisions to the contrary.<sup>2</sup>

3 Plaintiff's only real argument against judicial notice of the 2006 10-K is that it was not  
4 referenced in the Complaint. Motion at 3. This assertion fails to acknowledge that the Complaint  
5 explicitly notes that the 2006 10-K was forthcoming. CC ¶ 12 n.1. In any event, incorporation by  
6 reference is just one basis for judicial notice – it is not a requirement. Filing with the SEC is a  
7 separate and independent basis upon which judicial notice can be granted. *See, e.g., CNET*, 2007  
8 U.S. Dist. LEXIS 29780, at \*16-17; *Calpine*, 288 F. Supp. 2d at 1076; *Turnstone*, 2003 U.S. Dist.  
9 LEXIS 26709, at \*106-07.

10 Given that the 2006 10-K is clearly a proper subject of judicial notice, plaintiff is  
11 ultimately left to quibble over the purposes for which the Court may consider it. Plaintiff's  
12 position that the Court should not consider the substance of the 2006 10-K is incredible given that  
13 *his own opposition to defendants' pending motion to dismiss cites and relies upon it*. In  
14 footnote 1 on page 2 of his opposition brief – nowhere identified or acknowledged in his present  
15 Motion – plaintiff argues:

16 The Company issued its 2006 10-K...on April 20, 2007, restating results  
17 for 1997-2005 to account for increased compensation expenses related to  
18 stock option grants over that period, and acknowledged multiple instances  
19 of backdating.

20 While defendants of course dispute this interpretation of the 2006 10-K, there can be no  
21 dispute that plaintiff's own opposition purports to rely upon the very substance he now seeks to  
22 preclude the Court from considering. This Court has already rejected such self-serving  
23 arguments. *CNET*, 2007 U.S. Dist. LEXIS 29780, at \*54-55 (“Plaintiffs are not entitled to pick  
24 and choose which of defendants' statements in public documents favor them and have all others  
25 ignored”).

26 <sup>2</sup> Plaintiff's citation to *In re Calpine Corp. Sec. Litig.*, 288 F. Supp. 2d 1054, 1076 (N.D. Cal.  
27 2003) is inapposite. In *Calpine*, the documents which the court refused to judicially notice were  
28 *not* SEC filings, and moreover were offered by *plaintiffs* to “plead” additional facts not contained  
in their complaint. *Id.* No such circumstances exist here. Indeed, *Calpine* itself unambiguously  
states that “the Court may properly take judicial notice of SEC filings.” *Id.*

1 Plaintiff's claim that the 2006 10-K should be excluded because it contains contested facts  
 2 (Motion at 3) is likewise without basis. Putting aside the fact that plaintiff himself has no qualms  
 3 about citing and relying upon such "contested facts" when it suits his purpose, defendants seek  
 4 judicial notice of the 2006 10-K to set forth the content of Zoran's disclosures regarding its  
 5 restatement – a proper purpose under the law. *See Shurkin v. Golden State Vintners, Inc.*, 471 F.  
 6 Supp. 2d 998, 1011 (N.D. Cal. 2006) ("the Court takes judicial notice of these [SEC filings] for  
 7 the fact that these documents [] were publicly-filed and for the fact that the statements made  
 8 therein were made to the public on the dates specified"). The Company's 2006 10-K is just the  
 9 sort of document routinely afforded judicial notice and relied upon by courts addressing the sort  
 10 of claims at issue here. *Id.*; *see also In re Ditech Communs. Corp. Secs. Litig.*, 2007 U.S. Dist.  
 11 LEXIS 26547, at \*16-17 (N.D. Cal. Mar. 22, 2007).

12 **B. The CNET 1994 Option Plan Is Properly Subject To Judicial Notice**

13 Plaintiff opposes judicial notice of the CNET 1994 Option Plan (the "CNET Plan"), which  
 14 the Court previously relied upon in dismissing the CNET options backdating case. *CNET*, 2007  
 15 U.S. Dist. LEXIS 29780, at \*51. The CNET Plan was filed with the SEC and is therefore  
 16 judicially noticeable to show the content of that Plan. *CNET*, 2007 U.S. Dist. LEXIS 29780, at  
 17 \*51-52 (citing to "CNET's 1994 stock options plan filed with the SEC"); *see also* authorities  
 18 cited *supra* at 1. Furthermore, courts may take judicial notice of documents filed in other cases  
 19 for purposes of comparing their allegations. *In re Silicon Graphics*, 183 F.3d 970, 984 n.14 (9th  
 20 Cir. 1999) (taking judicial notice of complaints filed in other securities class action suits for the  
 21 purpose of comparing allegations). That plaintiff apparently disputes this Court's reading of the  
 22 plain language of the CNET Plan (and, presumably, the parallel language in Zoran's option plan)  
 23 is not a basis for refusing to judicially notice the CNET Plan.

1 **III. CONCLUSION**

2 For all the foregoing reasons, plaintiff’s motion to strike Exhibits A and C to the reply  
3 declaration of Felix Lee should be denied. These exhibits are proper subjects of judicial notice  
4 that the Court can and should consider in deciding defendants’ pending motion to dismiss.

5  
6 Dated: May 14, 2007

FENWICK & WEST LLP

7 By: \_\_\_\_\_ /s/  
8 Michael A. Sands

9 Attorneys for Defendants Uzia Galil, Levy  
10 Gerzberg, Karl Schneider, Raymond A.  
11 Burgess, James D. Meindl, James B. Owens,  
12 Jr., Arthur B. Stabenow, Camillo Martino and  
13 Nominal Defendant Zoran Corporation

FENWICK & WEST LLP  
ATTORNEYS AT LAW  
SAN FRANCISCO

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