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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13
14 IN RE RIGEL PHARMACEUTICALS, INC.
15 SECURITIES LITIGATION

Master File No. CV 09-0546 JSW

CLASS ACTION

**[PROPOSED] ORDER GRANTING (1)
DEFENDANTS' MOTION TO DISMISS
CONSOLIDATED COMPLAINT AND (2)
REQUEST FOR JUDICIAL NOTICE**

Date: December 4, 2009
Time: 9:00 a.m.
Courtroom: 11, 19th floor
Judge: Hon. Jeffrey S. White

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22 This Document Relates To: All Actions
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1 The Motion by Rigel Pharmaceuticals, Inc. ("Rigel") and the Individual Defendants to
2 Dismiss Plaintiff's Consolidated Complaint ("Complaint"), and the Underwriter Defendants'
3 Joinder to the Motion, was heard on December 4, 2009 at 9:00 a.m. Having considered the
4 parties' papers, oral argument, and other pleadings and papers on file herein, the Court orders as
5 follows.

6 **1. Counts I and II**

7 Plaintiff's claims are premised on the theory that the Defendants' disclosures to the
8 market in December 2007 concerning the results of the R788 Phase IIa clinical trial were revealed
9 to be fraudulent by later presentations to scientific audiences and investors in October 2008.
10 While the later presentation included additional detailed information regarding patient data, this is
11 not in itself surprising given the differences in the intended audiences. The Complaint fails to
12 establish that the later disclosures were materially inconsistent from the earlier disclosures, and,
13 therefore, Plaintiff fails to plead with the required particularity that Defendants made material
14 misrepresentations or omissions in connection with the earlier disclosures. *Padnes v. Scios Nova,*
15 *Inc.*, 1996 WL 539711, at *5 (N.D. Cal. Sept. 18, 1996).

16 Plaintiff also alleges that Defendants' statements concerning the company's partnership
17 plans were false when made. However, these forward-looking statements were accompanied by
18 appropriate cautionary language within the meaning of the Private Securities Litigation Reform
19 Act and, therefore, are not actionable. *In re Vantive Corp. Sec. Litig.*, 110 F. Supp. 2d 1209, 1215
20 (N.D. Cal. 2000), *aff'd* 283 F.3d 1079 (9th Cir. 2002).

21 Plaintiff also fails to allege facts giving rise to a strong inference that any of the
22 Defendants possessed *scienter*, particularly in light of the fact that none of the Individual
23 Defendants sold stock during the relevant time period. *In re Silicon Graphics Inc. Sec. Litig.*, 183
24 F.3d 970, 988 (9th Cir. 1999); *In re Pixar, Inc. Sec. Litig.*, 450 F. Supp. 2d 1096, 1107 (N.D. Cal.
25 2006).

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1 Because Plaintiff fails to plead a violation of Section 10(b), Plaintiff cannot state a claim
2 under Section 20(a) of the 1934 Act. *Lipton v. Pathogenesis Corp.*, 284 F.3d 1027, 1035 n.14
3 (9th Cir. 2002). Plaintiff also fails to plead with specificity facts showing each Defendant's ability
4 to exercise control over the activity on which the primary violation is premised. *Lilley v.*
5 *Charren*, 936 F. Supp. 708, 716 (N.D. Cal. 1996).

6 **2. Counts III, IV and V**

7 According to the Complaint, Plaintiff bought its shares *before* the Offering and therefore
8 lacks standing to pursue its claims under Sections 11 or 12(a)(2) of the 1933 Act. *In re Levi*
9 *Strauss & Co. Sec. Litig.*, 527 F. Supp. 2d 965, 974-75 (N.D. Cal. 2007); *Abbey v. Computer*
10 *Memories, Inc.*, 634 F. Supp. 870, 872 (N.D. Cal. 1994).

11 Because Plaintiff fails to plead a violation of Sections 11 or 12(a)(2), Plaintiff cannot state
12 a claim under Section 15 of the 1933 Act. *In re Charles Schwab Sec. Litig.*, 257 F.R.D. 534, 550
13 (N.D. Cal. 2009). Plaintiff also fails to plead with specificity facts showing each Defendant's
14 ability to exercise control over the activity on which the primary violation is premised. *Lilley*,
15 936 F. Supp. at 716.

16 **3. Request for Judicial Notice**

17 Judicial notice is appropriate for Exhibits A through T to the Declaration of Shannon M.
18 Eagan because each exhibit was referenced in the Complaint and/or filed with the SEC and
19 therefore "capable of accurate and ready determination by resort to sources whose accuracy
20 cannot reasonably be questioned." Fed. R. Evid. 201(b).

21 **4. Dismissal with Prejudice**

22 A consolidated complaint may be dismissed without leave to amend where it is clear that
23 amendment would be futile. *In re FVC.com, Inc. Sec. Litig.*, 136 F. Supp. 2d 1031, 1040-41
24 (N.D. Cal.), *aff'd*, 2002 WL 465461 (9th Cir. 2002). In view of the arguments presented by the
25 parties, any amendment to the Complaint would be futile.

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IT IS THEREFORE ORDERED that Defendants’ Motion to Dismiss is **GRANTED**,
and the Complaint is dismissed without leave to amend. The Court also **GRANTS** Defendants’
Request for Judicial Notice as to Exhibits A through T to the Declaration of Shannon M. Eagan.

IT IS SO ORDERED.

Dated: _____ 2009

HON. JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE