

1 COOLEY GODWARD KRONISH LLP
WILLIAM S. FREEMAN (82002) (freemanws@cooley.com)
2 JOHN C. DWYER (136533) (dwyerjc@cooley.com)
SHANNON M. EAGAN (212830) (seagan@cooley.com)
3 VALERIE CASTELO (247540) (vcastelo@cooley.com)
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 RIGEL PHARMACEUTICALS, INC.,
JAMES M. GOWER, RYAN D. MAYNARD,
8 DONALD G. PAYAN, RAUL R. RODRIGUEZ,
ELLIOTT B. GROSSBARD, JEAN DELEAGE,
9 BRADFORD S. GOODWIN, GARY A. LYONS,
WALTER H. MOOS, HOLLINGS C. RENTON,
10 PETER S. RINGROSE, and STEPHEN A. SHERWIN

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

**RIGEL AND INDIVIDUAL DEFENDANTS'
REPLY IN SUPPORT OF REQUEST FOR
JUDICIAL NOTICE**

Date: April 9, 2010
Time: 9:00 a.m.
Courtroom: 11, 19th floor
Judge: Hon. Jeffrey S. White

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23 This Document Relates To: All Actions
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1 **I. INTRODUCTION**

2 Plaintiff concedes that Exhibits C through P¹ are properly subject to judicial notice
3 because each of those exhibits was referenced in the CAC. (Plaintiff's Response and Opposition
4 to Defendants' Request for Judicial Notice ("Response") at 3:3-4.) Plaintiff's assertion that the
5 documents may not be considered for their truth (*id.* at 2:12-21), is beside the point because
6 Defendants have made no such request of this Court.

7 Plaintiff opposes Defendants' request for judicial notice as to Exhibits A, B and Q-S on
8 the grounds that the documents "are neither referenced in the Complaint nor crucial to plaintiff's
9 Complaint." (Response at 2:23-3:4.) Neither of those grounds, however, is required for judicial
10 notice and Plaintiff's position is squarely at odds with Ninth Circuit law.

11 **A. Judicial Notice Is Proper for Exhibits C Through P.**

12 Defendants request judicial notice of documents "whose contents are alleged in a
13 complaint and whose authenticity no party questions, but which are not physically attached to the
14 [plaintiff's] pleading." *In re Silicon Graphics Inc. Sec. Litig.*, 183 F.3d 970, 986 (9th Cir. 1999)
15 (citation omitted). Defendants seek judicial notice of the documents not to prove the truth of the
16 statements they contain, but rather to provide the Court with a complete, accurate picture of the
17 public information available to investors during the relevant time period. This use is supported
18 by the case law. *See, e.g., Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954,
19 960 (9th Cir. 2010) (taking judicial notice of documents submitted by defendants "as an
20 indication of what information was in the public realm at the time"); *In re Wet Seal, Inc. Sec.*
21 *Litig.*, 518 F. Supp. 2d 1148, 1159 (C.D. Cal. 2007) (taking judicial notice of press releases and
22 other documents because they were submitted for the "availability of information to the market . .
23 . rather than for the truth of any matter"). Because Plaintiff concedes that Exhibits C through P
24 were cited in the CAC and does not challenge their authenticity, judicial notice is proper as those
25 exhibits. *See Silicon Graphics*, 183 F.3d at 986.

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27 ¹ All exhibits are attached to the Declaration of William S. Freeman in Support of Rigel and
28 Individual Defendants' Motion to Dismiss Consolidated Amended Complaint, filed on February
16, 2010. (Docket no. 65.)

1 Plaintiff's position flatly conflicts with the well-established rule that courts may take
2 judicial notice of the contents of documents filed with the SEC, even where those documents are
3 allegedly untruthful and even where they are not cited in the complaint. *Silicon Graphics*, 183
4 F.3d at 986 (rejecting plaintiff's challenge to the veracity of SEC filings as a basis for denying
5 judicial notice); *Calpine Corp.*, 288 F. Supp. 2d at 1075-76 (judicially noticing individual
6 defendants' Form 3s, 4s and 5s); *Ruble v. Rural/Metro Corp.*, 2001 WL 1772319, at *2 (D. Ariz.
7 Jan. 26, 2001) (judicially noticing defendants' Form 4s and proxy statement); *Wenger v. Lumisys,*
8 *Inc.*, 2 F. Supp. 2d 1231, 1240 n.8 (N.D. Cal. 1998) (denying plaintiffs' motion to strike Form 4s
9 not referenced in complaint); *Allison v. Brooktree Corp.*, 999 F. Supp. 1342, 1352 n.3 (S.D. Cal.
10 1998) (taking judicial notice of defendant's Form 4); *Yuen*, 966 F. Supp. at 945 n.1 (granting
11 request for judicial notice of SEC filings).

12 Similarly, courts routinely take judicial notice of facts contained in SEC filings and
13 consider those facts when ruling on a defendant's motion to dismiss. *See, e.g., Silicon Graphics*,
14 183 F.3d at 987-988 (citing facts concerning number and percentage of shares sold by individual
15 defendants and noting that one defendant was barred from trading company stock prior to the
16 class period); *Allison*, 999 F. Supp. at 1352 & n.3 (noting absence of stock sale allegations in
17 complaint and observing that Form 4 showed "[n]ot only did [defendant] not sell any shares, he
18 actually purchased stock during the Class Period"); *Wietschner v. Monterey Pasta Co.*, 294
19 F. Supp. 2d 1102, 1116 & n.7 (N.D. Cal. 2003) (using contents of judicially-noticed Form 4s to
20 calculate percentage of shares sold by defendants). Thus, the Court may take judicial notice of
21 Rigel's SEC filings and consider their contents when ruling on Defendants' motion to dismiss.

22 Plaintiff also objects to judicial notice of Exhibits B, Q and R because they "are not
23 crucial to plaintiff's claims." (Response at 4:20-26.) In advancing this novel argument, Plaintiff
24 misreads the authority upon which it purports to rely. In *Parrino v. FHP, Inc.*, 146 F.3d 699, 706
25 (9th Cir. 1998), the Ninth Circuit considered whether judicial notice was appropriate for
26 documents upon which the plaintiff's complaint necessarily relied but which were not explicitly
27 referenced in the complaint. The court was troubled by the possibility that a plaintiff could
28 survive a Rule 12(b)(6) motion by deliberately omitting references to documents upon which its

1 claims were based. *Id.* To address this specific concern, the Ninth Circuit held that a “court
2 ruling on a motion to dismiss may consider a document the authenticity of which is not contested,
3 and upon which the plaintiff’s complaint necessarily relies,” even though the document was not
4 explicitly referenced in the complaint. *Id.*

5 Moreover, Defendants’ stock holdings are in fact referenced in Plaintiff’s CAC, further
6 supporting Defendant’s request for judicial notice. For example, Plaintiff relies on Defendants’
7 stock option grants in the CAC to support its allegation that Defendants possessed the requisite
8 scienter to be held liable for securities fraud. (*See* ¶¶ 145-147). Consequently, judicial notice of
9 documents regarding Defendants’ stock is essential to expose Plaintiff’s baseless and generic
10 scienter allegations. *See, e.g., Silicon Graphics*, 183 F.3d at 986-987 (relevant facts in evaluating
11 scienter allegations include amount and percentage of shares sold by insiders, the timing of the
12 sales, prior trading history and the amount of vested options).

13 Plaintiff incorrectly suggests that Defendants seek to introduce the challenged exhibits in
14 order to dispute the CAC’s factual allegations. (Response at 4:5-7.) In fact, the CAC is
15 suspiciously silent as to the specific stock holdings of Rigel’s officers and directors and does not
16 allege any stock sales by the individual defendants during the alleged Class Period. Because
17 Plaintiff has made no such allegations, documents concerning those issues do not “dispute the
18 complaint’s factual allegations,” rather, they are simply necessary facts that Plaintiff has
19 evidently sought to avoid. In a last ditch effort to avoid judicial notice, Plaintiff vaguely asserts
20 that it “does not dispute [these documents] were filed with the SEC, [but] plaintiff does dispute
21 their contents . . .” (*Id.* at 5:18-19.) It is wholly unclear what Plaintiff finds objectionable about
22 the contents of Exhibits B, Q or R. Plaintiff has made no allegations concerning the individual
23 Defendants’ stock holdings or stock sales,³ nor has Plaintiff alleged any false or misleading
24 statements in Exhibits B, Q or R. Tellingly, Plaintiff’s Response is silent as to the bases or
25 reasons for any purported dispute. Plaintiff has therefore failed to show that any reasonable
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27 ³ Indeed, Plaintiff acknowledges “the lack of insider sales” during the alleged “class period.”
28 ([Corrected] Plaintiff’s Opposition to Motion to Dismiss, etc., filed 3/09/10 (Docket No. 79) at 24:1.)

1 dispute exists concerning the facts stated in Exhibits B, Q and R.⁴

2 **C. Judicial Notice Is Proper For Exhibit A.**

3 Exhibit A is a summary of “Hypertension Guidelines” posted on an official website of the
4 federal government and thus, “not subject to reasonable dispute” and stems from a source “whose
5 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Plaintiff cannot legitimately
6 challenge the propriety of judicial request for this document when it has requested judicial notice
7 of a similar government-authored document available on a government website, specifically a
8 notice authored by another agency of the U.S. Department for Health and Human Services. (See
9 Plaintiff’s Request for Judicial Notice in Opposition to Motion to Dismiss Consolidated Amended
10 Complaint (Docket no. 70)). Thus, no *reasonable* dispute exists concerning the facts in Exhibit
11 A, and judicial notice is proper.

12 **D. Judicial Notice Is Proper For Exhibit S.**

13 Finally, Plaintiff opposes Defendants’ request for judicial notice of Exhibit S, a Rigel
14 press release dated February 16, 2010 entitled “AstraZeneca and Rigel Pharmaceuticals Sign
15 Worldwide License Agreement for Late-Stage Development Product – Fostamatinib Disodium
16 (R788) – for the Treatment of Rheumatoid Arthritis (RA).” Plaintiff’s only discernible objection
17 to judicial notice of this press release is that it was neither referenced nor relied upon in the CAC.
18 (Response at 6:9-10). As noted above, the fact that a document is not referenced in or relied
19 upon in a complaint is not a valid objection to a request for judicial notice. Because Exhibit S is
20 capable of accurate and ready determination on Rigel’s website, and because case law clearly
21 supports judicial notice of press releases, judicial notice is proper for Exhibit S. Fed R. Evid.

22 _____
23 ⁴ Plaintiff’s reliance on *LDK Solar* is misplaced. (Response at 5:18-20 (*citing In re LDK Solar*
24 *Sec. Litig.*, 584 F. Supp. 2d 1230 (N.D. Cal. 2008).) In *LDK Solar*, this Court reiterated the basic
25 principle that courts “could take judicial notice of the SEC filings proffered by defendants at the
26 motion to dismiss stage” 584 F. Supp. 2d at 1254. The Court then indicated that disputed
27 factual issues in the case, such as the accounting allegations being contested there, were not
28 proper subjects for judicial notice. *Id.* Here, on the other hand, plaintiff has made no allegations
concerning the individual Defendants’ stock holdings and sales and has failed to show any
reasonable dispute as to the facts contained in Exhibits B, Q and R. The decision in *In re Dura*
Pharms., Inc. Sec. Litig., 548 F. Supp. 2d 1126, 1129 n.1 (S.D. Cal. 2008), is even less instructive
because the court provided no discussion whatsoever of the materials at issue or whether there
were factual disputes in those materials.

1 201(b); *see also In re Rackable Systems, Inc. Sec. Litig.*, 2010 WL 199703, at *3 (N.D. Cal. Jan.
2 13, 2010) (taking judicial notice of press releases).

3 **II. CONCLUSION**

4 For the foregoing reasons and for the reasons set forth in Defendant's Request for Judicial
5 Notice, Defendants respectfully request that the Court take judicial notice of Exhibits A-S.

6 Dated: March 18, 2009

COOLEY GODWARD KRONISH LLP
WILLIAM S. FREEMAN (82002)
JOHN C. DWYER (136533)
SHANNON M. EAGAN (212830)
VALERIE CASTELO (247540)

/s/ William S. Freeman

William S. Freeman (82002)

Attorneys for Defendants
RIGEL PHARMACEUTICALS, INC., JAMES M.
GOWER, RYAN D. MAYNARD, DONALD G.
PAYAN, RAUL R. RODRIGUEZ, ELLIOTT B.
GROSSBARD, JEAN DELEAGE, BRADFORD
S. GOODWIN, GARY A. LYONS, WALTER H.
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