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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

**RIGEL AND INDIVIDUAL DEFENDANTS'
REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF THEIR MOTION TO DISMISS
CONSOLIDATED COMPLAINT**

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 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** pursuant to Federal Rule of Evidence 201, Defendants
3 Rigel Pharmaceuticals, Inc. (“Rigel”), James M. Gower, Ryan D. Maynard, Donald G. Payan,
4 Raul R. Rodriguez, Elliott B. Grossbard, Jean Deleage, Bradford S. Goodwin, Gary A. Lyons,
5 Walter H. Moos, Hollings C. Renton, Peter S. Ringrose, and Stephen A. Sherwin (collectively,
6 “Defendants”) hereby request that the Court take judicial notice of the documents identified
7 below in support of Defendants’ Motion to Dismiss Consolidated Complaint. All exhibits are
8 attached to the supporting Declaration of Shannon M. Eagan, filed concurrently herewith.

9 Exhibit A: An excerpt from Rigel’s Form DEF 14A for the period ending May 31,
10 2007, filed with the Securities and Exchange Commission (“SEC”) on March 26, 2007. A
11 complete version of this document can be found at [http://www.sec.gov/Archives/edgar/data/
12 1034842/000104746907002139/0001047469-07-002139-index.htm](http://www.sec.gov/Archives/edgar/data/1034842/000104746907002139/0001047469-07-002139-index.htm)

13 Exhibit B: Rigel’s Form 8-K for the period ending December 13, 2007, filed with the
14 SEC on December 13, 2007.

15 Exhibit C: A transcript of Rigel’s December 13, 2007 investor conference call.

16 Exhibit D: An analyst report by Brian Abrahams, M.D., et al, published by CIBC
17 World Markets Corp., dated December 13, 2007.

18 Exhibit E: Excerpts from Rigel’s Form 10-K for the period ending December 31, 2007,
19 filed with the SEC on March 7, 2008. A complete version of this document can be found at
20 [http://www.sec.gov/Archives/edgar/data/1034842/000104746908002350/0001047469-08-
21 002350-index.htm](http://www.sec.gov/Archives/edgar/data/1034842/000104746908002350/0001047469-08-002350-index.htm)

22 Exhibit F: An excerpt from Rigel’s Form DEF 14A for the period ending May 29,
23 2008, filed with the SEC on April 8, 2008. A complete version of this document can be found at
24 [http://www.sec.gov/Archives/edgar/data/1034842/000104746908004304/0001047469-08-
25 004304-index.htm](http://www.sec.gov/Archives/edgar/data/1034842/000104746908004304/0001047469-08-004304-index.htm)

26 Exhibit G: A transcript of Rigel’s October 27, 2008 investor conference call.

27 Exhibit H: An analyst report by Michael Aberman, M.D., et al, published by Credit
28 Suisse Securities (USA) LLC, dated October 27, 2008.

1 Exhibit I: An analyst report by Adam A. Walsh, M.D., et al, published by Jefferies &
2 Co., Inc., dated October 28, 2008.

3 Exhibit J: An analyst report by Brian Abrahams, M.D., et al, published by
4 Oppenheimer & Co., Inc., dated October 28, 2008.

5 Exhibit K: An analyst report by Derek Jellinek, Ph.D., et al, published by Susquehanna
6 Int'l Group, LLP (SIG), dated October 28, 2008.

7 Exhibit L: An analyst report by Jason Kantor, Ph.D, et al., published by RBC Capital
8 Markets, dated October 28, 2008.

9 Exhibit M: Michael E. Weinblatt et al., *Treatment of Rheumatoid Arthritis With a Syk*
10 *Kinase Inhibitor: A Twelve-Week, Randomized, Placebo-Controlled Trial*, ARTHRITIS &
11 RHEUMATISM, November 2008, at 3309.

12 Exhibit N: A transcript of Rigel's November 3, 2008 investor conference call.

13 Exhibit O: An analyst report by Michael Aberman, M.D., et al, published by Credit
14 Suisse Securities (USA) LLC, dated November 3, 2008.

15 Exhibit P: An analyst report by Adam A. Walsh, M.D., et al, published by Jefferies &
16 Co., Inc., dated November 4, 2008.

17 Exhibit Q: An analyst report by Derek Jellinek, Ph.D., et al, published by Susquehanna
18 Int'l Group, LLP (SIG), dated November 4, 2008.

19 Exhibit R Rigel's Form 8-K for the period ending February 2, 2009, filed with the
20 SEC on February 3, 2009.

21 Exhibit S: An excerpt from Rigel's Form DEF 14A for the period ending May 28,
22 2009, filed with the SEC on April 15, 2009. A complete version of this document can be found at
23 [http://www.sec.gov/Archives/edgar/data/1034842/000104746909004180/0001047469-09-](http://www.sec.gov/Archives/edgar/data/1034842/000104746909004180/0001047469-09-004180-index.htm)
24 [004180-index.htm](http://www.sec.gov/Archives/edgar/data/1034842/000104746909004180/0001047469-09-004180-index.htm)

25 Exhibit T: Rigel Form 4s filed with the SEC on behalf of Defendants James M. Gower,
26 Elliott B. Grossbard, Ryan D. Maynard, Donald G. Payan and Raul R. Rodriguez.

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1 Exhibit U: Rigel Form 4s filed with the SEC on behalf of Defendants Jean Deleage,
2 Bradford S. Goodwin, Gary A. Lyons, Walter H. Moos, Hollings C. Renton, Peter S. Ringrose,
3 and Stephen A. Sherwin.

4 **I. ARGUMENT**

5 When ruling on a motion to dismiss, the court may consider any matter that is subject to
6 judicial notice. *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986). Judicial
7 notice is appropriate for facts “not subject to reasonable dispute” that are “capable of accurate and
8 ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Fed.
9 R. Evid. 201(b). Under the incorporation by reference doctrine, courts may take judicial notice of
10 documents “whose contents are alleged in a complaint and whose authenticity no party questions,
11 but which are not physically attached to the [plaintiff’s] pleading.” *In re Silicon Graphics Inc.*
12 *Sec. Litig.*, 183 F.3d 970, 986 (9th Cir. 1999) (citation omitted). Courts may also take judicial
13 notice of filings with the SEC when adjudicating a motion to dismiss. *In re Calpine Corp.*, 288 F.
14 Supp. 2d 1054, 1076 (N.D. Cal. 2003). Defendants’ request for judicial notice should be granted
15 because each exhibit was either referenced in the Consolidated Complaint (“Complaint”) and/or
16 filed with the SEC and therefore “capable of accurate and ready determination resort to sources
17 whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b).

18 **A. The Court Should Take Judicial Notice of Documents Quoted and Referenced**
19 **in the Consolidated Complaint (Exs. B-E and G-R).**

20 Exhibits B-E and G-R are documents that are quoted or referenced in the Complaint. (*See*
21 ¶ 4 (Ex. B), ¶ 49 (Ex. C), ¶ 50 (Ex. D), ¶ 43-45 (Ex. E), ¶ 15 (Ex. G), ¶ 60 (Ex. H), ¶ 129 (Ex. I),
22 ¶ 69 (Ex. J), ¶ 97 (Ex. K), ¶ 59 (Ex. L), ¶ 58 (Ex. M), ¶ 67 (Exs. N, O), ¶ 101 (Exs. P, Q), ¶ 17
23 (Ex. R).) Judicial notice of these documents on a motion to dismiss is appropriate under the
24 incorporation by reference doctrine because their contents were alleged in the Complaint yet the
25 documents were not attached to the pleading. *See Silicon Graphics*, 183 F.3d at 986; *see also*
26 *Wietschner v. Monterey Pasta Co.*, 294 F. Supp. 2d 1102, 1108-09 (N.D. Cal. 2003) (judicially
27 noticing press releases cited in the complaint pursuant to this rationale); *Plevy v. Haggerty*, 38 F.
28 Supp. 2d 816, 821 (C.D. Cal. 1998) (judicially noticing news articles, press releases, stock price

1 and analysts' reports because the documents were referenced in the complaint). Moreover, the
2 doctrine of incorporation by reference allows the Court to consider the full text of a document
3 that the complaint quotes or references only in part. *See In re Stac Elecs. Sec. Litig.*, 89 F.3d
4 1399, 1405 n.4 (9th Cir. 1996) (judicially noticing the full text of the company's prospectus,
5 including portions not mentioned in the complaint). Accordingly, Defendants' request for
6 judicial notice of Exhibits B-E and G-R should be granted.

7 **B. The Court Should Take Judicial Notice of Safe Harbor and Other Cautionary**
8 **Statements (Exs. B, C, E, G and N).**

9 In addition to being quoted or referenced in the Consolidated Complaint, Rigel seeks
10 judicial notice of Exhibits B, C, E, G and N to allow the Court to consider safe harbor and other
11 appropriate cautionary language accompanying the statements of which Plaintiff complains. On a
12 motion to dismiss in which application of the safe harbor rule is at issue, "the court shall consider
13 any statement cited in the complaint and any cautionary statement accompanying the forward-
14 looking statement, which are not subject to material dispute, cited by the defendant." 15 U.S.C.
15 § 78u-5(e); *see also Wenger v. Lumisys, Inc.*, 2 F. Supp. 2d 1231, 1241-43 (N.D. Cal. 1998)
16 (judicially noticing conference call transcript reflecting defendant's safe harbor warning).
17 Moreover, it is appropriate to judicially notice information that was publicly available to investors
18 at the time the defendants made the allegedly false and misleading statements. *In re Copper*
19 *Mountain Sec. Litig.*, 311 F. Supp. 2d 857, 864 (N.D. Cal. 2004). Defendants' request for judicial
20 notice of Exhibits B, C, E, G, and N should be granted for the additional reason that those
21 documents contain cautionary statements that should be considered on Defendants' Motion to
22 Dismiss. *See* 15 U.S.C. § 78u-5(e).

23 **C. The Court Should Take Judicial Notice of Public Filings with the SEC (Exs.**
24 **A, B, E, F and R-U).**

25 Exhibits A, B, E, F, and R-U are publicly available documents that Rigel filed with the
26 SEC. Courts routinely take judicial notice of "relevant public disclosure documents required to
27 be filed with the SEC as facts capable of accurate and ready determination by resort to sources
28 whose accuracy cannot reasonably be questioned." *Yuen v. U.S. Stock Transfer Co.*, 966 F. Supp.

1 944, 945 n.1 (C.D. Cal. 1997); *Copper Mountain*, 311 F. Supp. 2d at 863; *Allison v. Brooktree*
2 *Corp.*, 999 F. Supp. 1342, 1353 n.3 (S.D. Cal. 1998) (taking judicial notice of defendant's Form
3 4). Defendants' request for judicial notice of Exhibits A, B, E, F, and R-U should be granted.

4 **II. CONCLUSION**

5 For the foregoing reasons, Defendants respectfully request that the Court take judicial
6 notice of Exhibits A through U.

7 Dated: September 8, 2009

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11 */s/ William S. Freeman*

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