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 9 BRADFORD S. GOODWIN, GARY A. LYONS,
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 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'
 REQUEST FOR JUDICIAL NOTICE IN
 SUPPORT OF THEIR MOTION TO DISMISS
 CONSOLIDATED AMENDED COMPLAINT**

Date: April 9, 2010
 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 William S. Freeman, filed concurrently herewith.

9 Exhibit A: A summary of “Hypertension Guidelines,” published by the National
10 Guideline Clearinghouse, an initiative of the U.S. Department of Health and Human Services,
11 Agency for Healthcare Research and Quality, and available on the National Guideline
12 Clearinghouse website at [http://www.guideline.gov/summary/summary.aspx?doc_id=9531&nbr](http://www.guideline.gov/summary/summary.aspx?doc_id=9531&nbr=5081&ss=15)
13 [=5081&ss=15](http://www.guideline.gov/summary/summary.aspx?doc_id=9531&nbr=5081&ss=15) (last verified on November 28, 2006), and an explanation of the National
14 Guideline Clearinghouse, available at <http://www.guideline.gov/about/about.aspx>.

15 Exhibit B: An excerpt from Rigel’s Form DEF 14A for the period ending May 31,
16 2007, filed with the Securities and Exchange Commission (“SEC”) on March 26, 2007. A
17 complete version of this document can be found at [http://www.sec.gov/Archives/edgar/data/](http://www.sec.gov/Archives/edgar/data/1034842/000104746907002139/0001047469-07-002139-index.htm)
18 [1034842/000104746907002139/0001047469-07-002139-index.htm](http://www.sec.gov/Archives/edgar/data/1034842/000104746907002139/0001047469-07-002139-index.htm)

19 Exhibit C: A transcript of Rigel’s December 4, 2007 investor conference call.

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

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

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

25 Exhibit G: Excerpts from Rigel’s Form 10-K for the period ending December 31, 2007,
26 filed with the SEC on March 7, 2008. A complete version of this document can be found at
27 [http://www.sec.gov/Archives/edgar/data/1034842/000104746908002350/0001047469-08-](http://www.sec.gov/Archives/edgar/data/1034842/000104746908002350/0001047469-08-002350-index.htm)
28 [002350-index.htm](http://www.sec.gov/Archives/edgar/data/1034842/000104746908002350/0001047469-08-002350-index.htm)

1 Exhibit H: An excerpt from Rigel's Form DEF 14A for the period ending May 29,
2 2008, filed with the SEC on April 8, 2008. A complete version of this document can be found at
3 [http://www.sec.gov/Archives/edgar/data/1034842/000104746908004304/0001047469-08-](http://www.sec.gov/Archives/edgar/data/1034842/000104746908004304/0001047469-08-004304-index.htm)
4 [004304-index.htm](http://www.sec.gov/Archives/edgar/data/1034842/000104746908004304/0001047469-08-004304-index.htm)

5 Exhibit I: A transcript of Rigel's October 27, 2008 investor conference call.

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

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

10 Exhibit L: An analyst report by Brian Abrahams, M.D., et al., published by
11 Oppenheimer & Co., Inc., dated October 28, 2008.

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

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

16 Exhibit O: Rigel's Form 8-K for the period ending February 2, 2009, filed with the
17 SEC on February 3, 2009.

18 Exhibit P: An excerpt from Rigel's Form DEF 14A for the period ending May 28,
19 2009, filed with the SEC on April 15, 2009. A complete version of this document can be found at
20 [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)
21 [004180-index.htm](http://www.sec.gov/Archives/edgar/data/1034842/000104746909004180/0001047469-09-004180-index.htm)

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

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

27 Exhibit S: Rigel's press release dated February 16, 2010 entitled "AstraZeneca and
28 Rigel Pharmaceuticals Sign Worldwide License Agreement for Late-Stage Development Product

1 – Fostamatinib Disodium (R788) – for the Treatment of Rheumatoid Arthritis (RA).”

2 **I. ARGUMENT**

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

17 **A. The Court Should Take Judicial Notice of Documents Quoted and Referenced**
 18 **in the Consolidated Complaint (Exs. C-O).**

19 Exhibits C-O are documents that are quoted or referenced in the Complaint. (*See* ¶ 57
 20 (Ex. C), ¶ 4 (Exs. D and E), ¶ 63 (Ex. F), ¶ 49 (Ex. G), ¶ 142 (Ex. H), ¶ 71 (Ex. I), ¶ 73 (Ex. J), ¶
 21 173 (Ex. K), ¶ 107 (Ex. L), ¶ 7 (Ex. M), ¶ 105 (Ex. N), ¶ 20 (Ex. O).) Judicial notice of these
 22 documents on a motion to dismiss is appropriate under the incorporation by reference doctrine
 23 because their contents were alleged in the Complaint yet the documents were not attached to the
 24 pleading. *See Silicon Graphics*, 183 F.3d at 986; *see also Wietschner v. Monterey Pasta Co.*, 294
 25 F. Supp. 2d 1102, 1108-09 (N.D. Cal. 2003) (judicially noticing press releases cited in the
 26 complaint pursuant to this rationale); *Plevy v. Haggerty*, 38 F. Supp. 2d 816, 820-21 (C.D. Cal.
 27 1998) (judicially noticing news articles, press releases, stock price and analysts’ reports because
 28 the documents were referenced in the complaint). Moreover, the doctrine of incorporation by

1 reference allows the Court to consider the full text of a document that the complaint quotes or
2 references only in part. *See In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399, 1405 n.4 (9th Cir. 1996)
3 (judicially noticing the full text of the company's prospectus, including portions not mentioned in
4 the complaint). Accordingly, Defendants' request for judicial notice of Exhibits C-O should be
5 granted.

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

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

22 **C. The Court Should Take Judicial Notice of Public Filings with the SEC (Exs.**
23 **B, D, G, H and O-R).**

24 Exhibits B, D, G, H and O-R are publicly available documents that Rigel filed with the
25 SEC. Courts routinely take judicial notice of "relevant public disclosure documents required to
26 be filed with the SEC as facts capable of accurate and ready determination by resort to sources
27 whose accuracy cannot reasonably be questioned." *Yuen v. U.S. Stock Transfer Co.*, 966 F. Supp.
28 944, 945 n.1 (C.D. Cal. 1997) (internal quotations omitted); *see also Copper Mountain*, 311 F.

1 Supp. 2d at 863; *Allison v. Brooktree Corp.*, 999 F. Supp. 1342, 1353 n.3 (S.D. Cal. 1998) (taking
2 judicial notice of defendant's Form 4). Defendants' request for judicial notice of Exhibits B, D,
3 G, H and O-R should be granted.

4 **D. The Court Should Take Judicial Notice of Documents Posted on Publicly**
5 **Accessible Websites Which Are Not Reasonably Subject to Dispute (Exs. A**
6 **and S).**

7 Judicial notice of Exhibits A and S is appropriate because the documents are not
8 reasonably subject to dispute and because they are "capable of accurate and ready determination
9 by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b).
10 Exhibit A is a summary of "Hypertension Guidelines" posted on an official website of the federal
11 government. The National Guideline Clearinghouse website (<http://www.guideline.gov>) is an
12 initiative of the Agency of Healthcare Research and Quality, which is part of the U.S. Department
13 of Health and Human Services. Thus, judicial notice of Exhibit A is appropriate because the
14 document is available on a federal government website and thus, is "not reasonably subject to
15 dispute" and its accuracy is easy to determine "by resort to sources whose accuracy cannot
16 reasonably be questioned." Fed. R. Evid. 201(b). *See Brocato v. Dep't of Corr.*, 2009 WL
17 3489367, at *7 (C.D. Cal. Oct. 26, 2009) (judicially noticing U.S. Department of Agriculture
18 Dietary Guidelines for Americans available on federal government website); *Construction*
19 *Laborers Pension Trust v. Neurocrine Biosciences, Inc.*, 2008 WL 2053733, at *6-7 (S.D. Cal.
20 May 13, 2008) (judicially noticing FDA guidance documents).

21 Judicial notice of Exhibit A should also be granted because the information was publicly
22 available to potential investors in the market. *See Copper Mountain*, 311 F. Supp. 2d at 864
23 (judicially noticing information that was publicly available to investors at the time the defendants
24 allegedly made the false and misleading statements); *In re Wet Seal, Inc. Sec. Litig.*, 518 F. Supp.
25 2d 1148, 1159 (C.D. Cal. 2007) (taking judicial notice of documents not referenced in the
26 complaint because they were submitted for the "availability of information to the market . . .
27 rather than for the truth of any matter"). Exhibit A, the summary of the Hypertension Guideline,
28 was last verified on November 28, 2006, prior to the start of the class period alleged in the

1 Complaint, and thus, was information publicly available to the market at the time the alleged
2 misstatements were made. (Ex. A, "Identifying Information and Availability," pp. 17-18.)

3 Judicial notice of Exhibit S should also be granted. Exhibit S is a Rigel press release,
4 which is available on the company's public website. A company's press release is a matter
5 "capable of accurate and ready determination by resort to sources whose accuracy cannot
6 reasonably be questioned." Fed. R. Evid. 201(b); *see also In re Rackable Systems, Inc. Sec.*
7 *Litig.*, 2010 WL 199703, at *3 (N.D. Cal. Jan. 13, 2010) (taking judicial notice of press releases).

8 As a result, the Court should take judicial notice of Exhibits A and S.

9 **II. CONCLUSION**

10 For the foregoing reasons, Defendants respectfully request that the Court take judicial
11 notice of Exhibits A through S.

12
13 Dated: February 16, 2010

COOLEY GODWARD KRONISH LLP

14
15 */s/ William S. Freeman*

16

William S. Freeman (82002)

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24 RINGROSE, and STEPHEN A. SHERWIN