

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

_____	)	
GARY ZAGAMI, Individually and on Behalf	)	
of all Others Similarly Situated,	)	
	)	
	)	<b>Case No. 1:15-cv-7194 (KPF)</b>
Plaintiff,	)	
	)	
	)	
v.	)	<b>ORAL ARGUMENT REQUESTED</b>
	)	
	)	
CELLCEUTIX CORPORATION, LEO	)	
EHRlich, AND KRISHNA MENON,	)	
	)	
Defendants.	)	
_____	)	

**DEFENDANTS’ REQUEST FOR JUDICIAL NOTICE  
IN SUPPORT OF THEIR MOTION TO DISMISS SECOND AMENDED COMPLAINT**

In connection with their Motion to Dismiss the Second Amended Complaint, Defendants CELLCEUTIX CORPORATION, LEO EHRlich, and KRISHNA MENON respectfully request that the Court take judicial notice, pursuant to Rule 201 of the Federal Rules of Evidence, of the exhibits attached to the accompanying Declaration of Michael J. Sullivan in Support of Defendants’ Motion to Dismiss (“Sullivan Declaration”).

These documents are either referenced in the Second Amended Complaint (“SAC”), publicly-available documents filed with the United States Securities and Exchange Commission (“SEC”), or from sources whose accuracy cannot reasonably be questioned. This request is necessary in part because Plaintiff elected not to attach documents containing Defendants’ alleged misrepresentations, or other documents relied upon or referenced in the SAC. In addition, Defendants’ public filings with the SEC refute certain allegations in the SAC, clarify

mischaracterizations in other allegations, or otherwise show that the Company violated no alleged duty to disclose.

On a motion to dismiss, the Court may take judicial notice of and properly consider the full content of documents that are either referenced or relied upon in the complaint without converting the motion to dismiss to a motion for summary judgment. *See In re Pfizer, Inc. Sec. Litig.*, 538 F. Supp. 2d 621, 627 (S.D.N.Y. 2008) (considering on a motion to dismiss the full text of documents incorporated into the complaint by reference, press releases, and analyst call transcripts). The Court also may consider documents within the public record, such as SEC filings. *See ATSI Commc'ns, Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87, 98 (2d Cir. 2007) (court may take judicial notice of SEC filings); *see also Rothman v. Gregor*, 220 F.3d 81, 88 (2d Cir. 2000). Courts likewise may take judicial notice of proceedings in other courts and facts outside of the complaint where it “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2). Judicial notice of such matters is particularly appropriate in connection with motions to dismiss in securities cases because it allows the Court to consider the facts and allegations in their entirety, rather than in isolation. *See Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007).

Based on the foregoing, Defendants respectfully request that the Court take judicial notice of the contents of the following documents, all of which are authenticated by the Sullivan Declaration and attached as exhibits thereto:

Ex.	Document Description	Basis for Judicial Notice
1	Article, “ <i>Cellceutix: Empty Office, Unviable ‘Science’, Misleading Disclosures, 96% Downside</i> ,” by Mako Research (anonymous author), posted on <a href="http://seekingalpha.com">http://seekingalpha.com</a> Aug. 6, 2015	Referenced in SAC at ¶¶39-41

Ex.	Document Description	Basis for Judicial Notice
2	Cellceutix Press Release, "Cellceutix Provides Insights to its Four Clinical Trials for the treatment of ABSSSI (Completed Phase 2), Anti-Cancer (Phase 1), Psoriasis (Phase 2), and Oral Mucositis in Head and Neck Cancer Patients (Phase 2), Aug. 7, 2015	Referenced and relied upon repeatedly in SAC at ¶¶ 5, 26, 28, 36, 45-47
3	Cellceutix Corporation, Form 10-K, United States Securities and Exchange Commission, For the Period Ending June 30, 2009, dated October 8, 2009 (Excerpt)  Full text available at: <a href="http://www.sec.gov/Archives/edgar/data/1355250/000135525009000018/form10k.htm">http://www.sec.gov/Archives/edgar/data/1355250/000135525009000018/form10k.htm</a>	Public disclosure document filed with the SEC
4	Cellceutix Corporation, Form 10-K, United States Securities and Exchange Commission, For the Period Ending June 30, 2010, dated Oct. 12, 2010 (Excerpt)  Full text available at: <a href="http://www.sec.gov/Archives/edgar/data/1355250/000135525010000023/form10k.htm">http://www.sec.gov/Archives/edgar/data/1355250/000135525010000023/form10k.htm</a>	Public disclosure document filed with the SEC
5	Cellceutix Corporation, Form 10-K, United States Securities and Exchange Commission, For the Period Ending June 30, 2011, dated Oct. 13, 2011 (Excerpt)  Full text available at: <a href="http://www.sec.gov/Archives/edgar/data/1355250/000114420411057659/v237150_10k.htm">http://www.sec.gov/Archives/edgar/data/1355250/000114420411057659/v237150_10k.htm</a>	Public disclosure document filed with the SEC
6	Cellceutix Corporation, Form 10-K, United States Securities and Exchange Commission, For the Period Ending June 30, 2012, dated Oct. 12, 2012 (Excerpt)  Full text available at: <a href="http://www.sec.gov/Archives/edgar/data/1355250/000154823312000017/annual2012_10k.htm">http://www.sec.gov/Archives/edgar/data/1355250/000154823312000017/annual2012_10k.htm</a>	Public disclosure document filed with the SEC
7	Cellceutix Corporation, Form 10-K, United States Securities and Exchange Commission, For the Period Ending June 30, 2013, dated Sept. 30, 2013 (Excerpt)  Full text available at: <a href="http://www.sec.gov/Archives/edgar/data/1355250/0001171520130000616/annual2013_10k.htm">http://www.sec.gov/Archives/edgar/data/1355250/0001171520130000616/annual2013_10k.htm</a>	Public disclosure document filed with the SEC

Ex.	Document Description	Basis for Judicial Notice
8	Cellceutix Corporation, Form 10-K, United States Securities and Exchange Commission, For the Period Ending June 30, 2014, dated Sept. 15, 2014 (Excerpt)  Full text available at: <a href="http://www.sec.gov/Archives/edgar/data/1355250/000147793214005027/ctix_10k.htm">http://www.sec.gov/Archives/edgar/data/1355250/000147793214005027/ctix_10k.htm</a>	Public disclosure document filed with the SEC
9	Cellceutix Corporation, Form 10-K, United States Securities and Exchange Commission, For the Period Ending June 30, 2015, dated Sept. 11, 2015 (Excerpt)  Full text available at: <a href="http://www.sec.gov/Archives/edgar/data/1355250/000147793215005843/ctix_10k.htm">http://www.sec.gov/Archives/edgar/data/1355250/000147793215005843/ctix_10k.htm</a>	Public disclosure document filed with the SEC
10	Article, “ <i>The man who dares to take on cancer,</i> ” by Prashob K P, in <u>Future Woman</u> , dated March 10, 2013	Relied upon in SAC at ¶22 as a false or misleading statement
11	Article, “ <i>An Interview with Leo Ehrlich, Cellceutix CEO,</i> ” by KarinCA, posted on website <a href="http://seekingalpha.com">http://seekingalpha.com</a> , May 14, 2013	Referenced in SAC at ¶29
12	Cellceutix Corporation, Form 8-K, United States Securities and Exchange Commission, Date of Report: Sept. 24, 2014, and Exhibit, Press Release dated Sept. 24, 2014, titled “CELLCEUTIX PROVIDES UPDATE TO SHAREHOLDERS”  Text available at: <a href="http://www.sec.gov/Archives/edgar/data/1355250/000147793214005136/ctix_8k.htm">http://www.sec.gov/Archives/edgar/data/1355250/000147793214005136/ctix_8k.htm</a> (Form 8-K) <a href="http://www.sec.gov/Archives/edgar/data/1355250/000147793214005136/ctix_ex991.htm">http://www.sec.gov/Archives/edgar/data/1355250/000147793214005136/ctix_ex991.htm</a> (Exhibit)	Relied upon in SAC at ¶33 as a false or misleading statement
13	Cellceutix Press Release, “Reports Spleen Lesion ‘Disappears’ in Patient with Metastatic Stage 4 Ovarian Cancer in Clinical Trial of AntiCancer Drug Kevetrin,” Jan. 20, 2015	Relied upon in SAC at ¶35 as a false or misleading statement
14	Cellceutix Press Release, “Cellceutix Acquires PolyMedix Assets From Bankruptcy Court, Gains Ownership of Two Clinical Stage Drugs, Multiple Compounds, and Equipment Assets,” Sept. 9, 2013	Relied upon in SAC at ¶37 for claim of failure to disclose
15	Chart Presentation, “ <i>Brilacidin, Host Defence Peptide mimetic, one of a new class of immunomodulatory agents that can target multiple disease indications,</i> ” 2015 European Congress of Clinical Microbiology and Infectious Diseases (“ECCMID”), Copenhagen, Denmark	Incomplete chart presentation relied upon in SAC at ¶25 as false or misleading statement

Ex.	Document Description	Basis for Judicial Notice
16	Cellceutix Press Release, "FDA Grants Fast Track Designation to Cellceutix's Brilacidin-OM for Oral Mucositis," dated Nov. 25, 2015	Fed. R. Evid. 201; FDA determination
17	Chart of Celleceutix Stock Price, Jan. 1, 2010 to Feb. 9, 2016  Full information available: <a href="http://finance.yahoo.com/q/hp?s=CTIX+Historical+Prices">http://finance.yahoo.com/q/hp?s=CTIX+Historical+Prices</a>	Fed. R. Evid. 201
18	Notice, " <i>EQUITY ALERT: The Rosen Law Firm Announces Investigation of Securities Claims Against Cellceutix Corporation – CTIX</i> ", dated Aug. 6, 2015	Fed. R. Evid. 201
19	Notice, " <i>EQUITY ALERT: Rosen Law Firm Files Securities Class Action Against Cellceutix Corporation – CTIX</i> ", dated Sep.11, 2015	Dkt. 11-1, 15-1 (included for Court's convenience)
20	Cellceutix Transfer Agent Report (listing original shareholders of Cellceutix)  Transfer Agent Website found at: <a href="http://www.pacificstocktransfer.com/">http://www.pacificstocktransfer.com/</a>  SEC Fast Answers found at: <a href="https://www.sec.gov/answers/transferagent.htm">https://www.sec.gov/answers/transferagent.htm</a>	Fed. R. Evid. 201

Dated: February 10, 2016

Respectfully Submitted,

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