

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re CELLCYTE GENETICS SECURITIES
LITIGATION

No. 08-cv-0047-RSL

This Document Relates to:
ALL ACTIONS

FIRST AMENDED CONSOLIDATED
CLASS ACTION COMPLAINT

Jury Trial Demanded



TABLE OF CONTENTS

	<u>PAGE</u>
I. NATURE OF THE ACTION	1
II. JURISDICTION AND VENUE	3
III. PARTIES	4
IV. LEAD PLAINTIFFS’ CLASS ACTION ALLEGATIONS	8
V. SUBSTANTIVE ALLEGATIONS	10
A. The Origins of CellCyte and the Reverse Merger	10
B. The First Misrepresentations About Reys’ Qualifications.....	12
C. The Prospectus and Repeated Misrepresentations Regarding Reys	14
D. The Affiliation With Pierce – a Scam Artist Banned by Canadian Authorities.....	17
E. With Reys and Berningers’ Knowledge Pierce Falsely Promotes CellCyte’s Stock	21
F. The Truth Begins to Unfold.....	28
VI. APPLICABILITY OF PRESUMPTION OF RELIANCE UNDER THE FRAUD ON THE MARKET DOCTRINE	36
VII. NO SAFE HARBOR	37
VIII. LOSS CAUSATION/ECONOMIC LOSS	38
COUNT I Violations of Section 11 of the 1933 Act Against CellCyte, Reys and Berninger.....	39
COUNT II Violations of Section 12(a)(2) of the 1933 Act Against CellCyte, Reys and Berninger.....	40
COUNT III Violations of Section 15 of the 1933 Act Against Reys and Berninger.....	42
COUNT IV Violation of Section 10(b) of the Exchange Act of 1934 and Rule 10b-5, Against All Defendants	42
COUNT V Violation of Section 20(a) of the Exchange Act of 1934 Against the Individual Defendants	46
PRAYER FOR RELIEF	47
JURY DEMAND	47

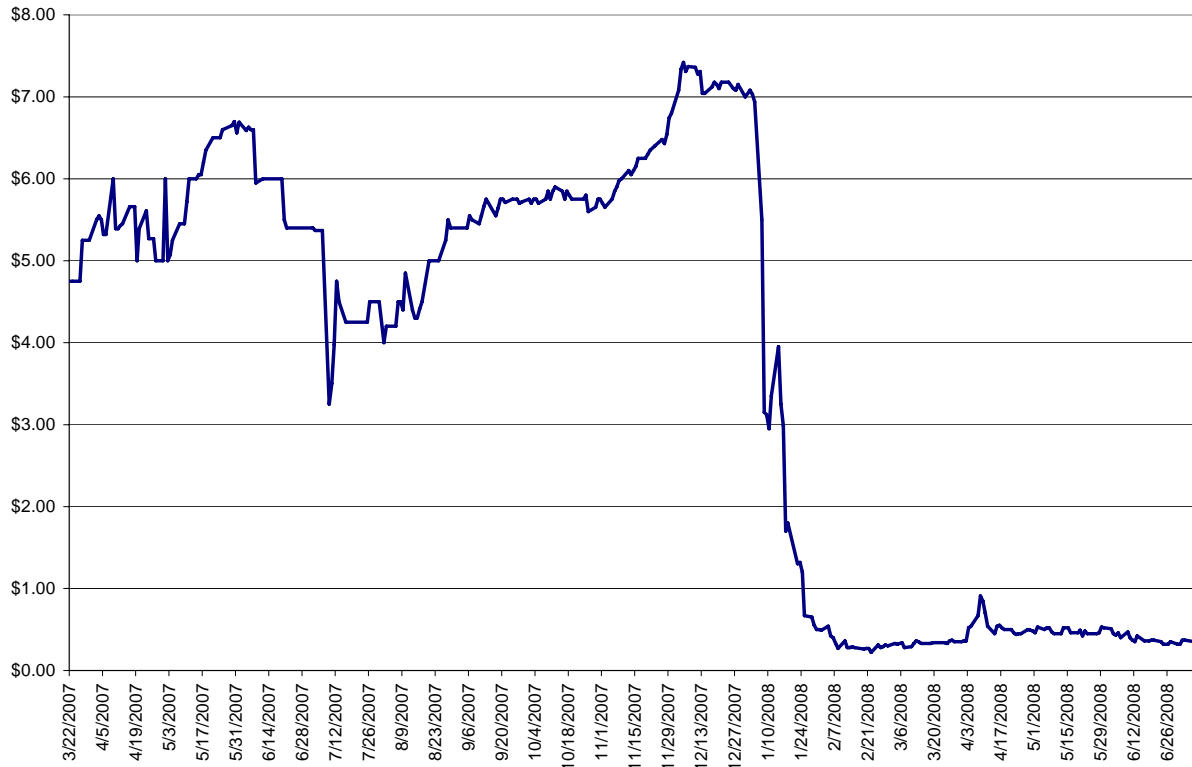
1 public statements portrayed Reys as qualified by experience and educational background to
2 navigate the difficult path of an emerging biotechnological company. In truth, Reys had not
3 been a successful executive. The companies where he did actually hold an executive position
4 were complete failures. Reys was not an accountant, did not major in finance at the University
5 of Washington and did not complete even a semester at the University of Washington.

6 5. Not content with misrepresentations in the CellCyte prospectus as well as other
7 documents filed with the SEC, CellCyte and its top officers hired G. Brent Pierce, a stock
8 promoter who had been banned by Canadian authorities from the stock market, to promote
9 CellCyte stock. Pierce had a long history of “pumping and dumping” stocks through a variety of
10 bogus companies that he controlled. A cursory examination of his record by CellCyte executives
11 would have revealed this history and the actions of Canadian regulatory authorities in response.
12 This did not stop Reys and Berninger from hiring Pierce. Following his typical pattern, Pierce
13 proceeded to promote CellCyte stock, and he did so by falsely promoting Reys’s qualifications
14 and the status of CellCyte’s products. Reys and Berninger were aware of and approved of
15 Pierce’s promotional efforts.

16 6. By late 2007, CellCyte’s stock had risen such that the Company’s market value
17 was over \$400 million, with Reys and defendant Berninger having a stake worth \$137 million
18 each.

19 7. When media reports eventually questioned the integrity of CellCyte’s
20 representations concerning the Company, including its representations concerning its products
21 and Reys’s background, and the truth was partially revealed to the public, the market reacted and
22 the price of CellCyte shares plummeted.² The following graph demonstrates the stock’s reaction
23 to these statements:

24
25
26 ² SEATTLE TIMES, “CellCyte shares plummet; questions raised about CEO’s bio” (Jan. 9,
2008).



8. In sum, the Defendants knew that the qualifications of senior management and the status of product development are critical facts to investors and the value of a bio-tech stock like CellCyte. The Defendants blatantly lied about both, and when the truth was revealed the stock tanked. It now trades at \$0.29.

II. JURISDICTION AND VENUE

9. The claims asserted herein arise under and pursuant to §§ 11, 12(a)(2) and 15 of the Securities Act of 1933 (“1933 Act”) (15 U.S.C. §§ 77k, 77i and 77o).

10. The claims asserted herein also arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78t(a)] and Rule 10b-5 promulgated there under by the SEC [17 C.F.R. §240.10b-5].

11. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 133l and 22 of the 1933 Act.

1 12. This Court also has jurisdiction over the subject matter of this action pursuant to
2 28 U.S.C. § 1331 and Section 27 of the Exchange Act [15 US.C. § 78aa].

3 13. Venue is proper in this District pursuant to Section 27 of the Exchange Act and 28
4 U.S.C. § 1391(b), as CellCyte Genetics is a Nevada corporation that maintains its corporate
5 headquarters in this judicial district at 1725 220th Street SE, Bothell, Washington 98021 and
6 many of the acts and practices complained of herein occurred in substantial part in this judicial
7 district.

8 14. In connection with the acts alleged in this complaint, Defendants directly or
9 indirectly used the means and instrumentalities of interstate commerce, including, but not limited
10 to, the mails, interstate telephone communications and the facilities of the national securities
11 markets.

12 III. PARTIES

13 15. Lead Plaintiffs, Anthony and James Newbill, as set forth in the accompanying
14 certification, incorporated by reference herein, purchased CellCyte common stock at artificially
15 inflated prices during the Class Period and have been damaged thereby.

16 16. Defendant CellCyte Genetics Corporation is a Nevada corporation³ originally
17 incorporated as a mining company under the name Shepard Inc. on March 9, 2004.

18 17. Defendant Gary A. Reys (“Reys”) co-founded CellCyte and served as the
19 Company’s Chairman, President, Chief Executive Officer, Principal Executive Officer and a
20 director during the Class Period. Mr. Reys owned 18,625,000 shares or 31.2% of the Company
21 based on 59,649,225 shares of the Company outstanding as of March 30, 2007. According to the
22 Company’s prospectus, effective July 11, 2007, Reys may be considered a “promoter” of the
23 Company. Reys signed the false registration statement referred to herein.

24
25
26 ³ Cellcyte Form 8-K, March 30, 2007.

1 18. Defendant Ronald W. Berninger, Ph.D. (“Berninger”) co-founded CellCyte and
2 served as the Company’s Secretary, Treasurer, Executive Vice-President and a director during
3 the Class Period. Dr. Berninger owns 18,625,000 shares or 31.2% of the Company based on
4 59,649,225 shares of the Company outstanding as of March 30, 2007. According to the
5 Company’s prospectus, effective July 11, 2007, Berninger may be considered a “promoter” of
6 the Company. Berninger signed the false registration statement referred to herein.

7 19. Defendant G. Brent Pierce (“Pierce”) is a Canadian citizen and a stock promoter
8 who the British Columbia Securities Commission (“BCSC”) barred from trading securities in
9 Canadian exchanges, acting as a director or officer of any publicly traded Canadian company or
10 acting as a director or officer of any issuer that provides management, promotional, consulting
11 or certain other services for 15 years – from 1993 to 2008.⁴ In the settlement that led to the ban,
12 Pierce acknowledged presenting false documents to the commission and diverting funds from a
13 small public stock offering to his own use.⁵

14 20. After the ban, Pierce continued to operate as a stock promoter just over the British
15 Columbia border in Washington State through the formation of a number of companies. He is
16 currently president of Stockgroup AG, a stock-promotion firm based in Zurich, with an office in
17 Bellingham. As described below, Pierce was a significant early investor in CellCyte, controlled
18 a percentage of the Company’s stock either directly or through others and was a primary
19 participant in the promotion and sale of the Company’s stock.

20 21. At the time CellCyte filed the July 11, 2007, prospectus with the SEC, Pierce is
21 identified as holding or controlling 1,666,666 shares of CellCyte stock, including common stock
22 and shares issuable upon exercise of any warrants, through Newport Capital Corp.⁶ This
23

24 ⁴ June 18, 1993 Settlement In the Matter of the Securities Act. S.C.C. 1985, chapter 83 and in
the Matter of Gordon Brent Pierce.

25 ⁵ *Id.*

26 ⁶ July 11, 2007, Prospectus at 16-17.

1 represented 2.7% of the shares of CellCyte common stock outstanding as of June 28, 2007.⁷ The
 2 prospectus described the relationship between Pierce and Newport Capital: “Brent Pierce is an
 3 officer of Newport Capital Corp. and has discretionary authority to purchase, vote and dispose of
 4 the securities on behalf of Newport Capital Corp.” Newport Capital and Stockgroup AG share
 5 an address in Zurich. In addition to Pierce’s control of stock through Newport Capital Corp., the
 6 July 11, 2007, CellCyte prospectus identified as significant shareholders at least three other
 7 individuals or entities in which Pierce was involved and/or over whom he exercised control:

Individual/ Entity	Number of Shares	Percentage
Dana Pierce	333,332	Nil
Golden West Investments	2,000,000	3.3%
Phoenix Asset Corp.	2,000,000	3.3%

8 Dana Pierce is Pierce’s wife. Golden West Investments is a Belize corporation with its principle
 9 offices in the Turks & Caicos Islands. Golden West’s sole director is Barry Dempsey for
 10 Cockburn Directors Ltd. and its sole shareholder, Rising Sun Capital Corp.⁸ The sole
 11 shareholder of Rising Sun Capital Corporation is Hornback Trust, located in Belize.⁹ Pierce
 12 controls Hornback Trust.¹⁰ Cockburn Directors is the other officer and director of Newport
 13 Capital, in addition to Mr. Pierce. Phoenix Asset Group’s sole director is Fitzroy Holdings.
 14 Barry Dempsey is a director of Fitzroy Holdings. Phoenix Asset Group shares the same Turks &
 15 Caicos Islands address as Golden West Investments. In total, then, Pierce directly or indirectly
 16 controlled 6,000,000 CellCyte shares or 10.0% of the Company based on the 59,854,224 shares
 17 of common stock the Company reported outstanding as of June 28, 2007. According to the
 18 prospectus, other than Defendants Reys and Berninger, no other individual or entity controlled
 19 more stock than Pierce.
 20
 21
 22

23 _____
 24 ⁷ *Id.*

25 ⁸ Uranium Energy Corp., Form SB-2/A, Oct. 25, 2005.

26 ⁹ Genemax Corp., Form SC 13D, May 14, 2002, filed by Rising Sun.

¹⁰ IRS Examiners Report in connection with Investor Communications International, Inc.

1 22. In addition to Pierce's control of CellCyte stock, Pierce actively promoted the
2 stock. According to the SEATTLE POST-INTELLIGENCER, CellCyte paid a monthly fee to Pierce
3 through an unnamed company "to maintain a conduit for investor inquiries."¹¹ The paper also
4 reported that the Pierce company's website stated that it helped clients "increase shareholder
5 value."¹² Pierce and his company Stockgroup AG were behind a colorful 12-page mailer
6 distributed on or about October 2007 to potential U.S. and foreign buyers of CellCyte stock
7 entitled "James Rapholz's Economic Advice." Stockgroup AG paid Rapholz \$445,000 to
8 produce the brochure. Pierce and Stockgroup AG were also behind a promotional piece
9 disseminated in Germany where CellCyte traded on the Frankfurt exchange. By virtue of his
10 promotional conduct, Pierce was a primary participant in the sale of Company stock.

11 23. Defendants Reys, Berninger, and Pierce are, collectively, the "Individual
12 Defendants." Reys and Berninger were directors and officers of the Company during the Class
13 Period.

14 24. The Individual Defendants are pled as a group based on the presumption that the
15 false, misleading and incomplete information conveyed in the Company's public filings, press
16 releases, stock promotional materials and other publications as alleged herein are the collective
17 actions of the narrowly defined group of Defendants identified above. Reys and Berninger,
18 officers and/or directors of CellCyte Genetics Corporation, by virtue of their positions with the
19 Company, directly participated in the management of the Company, can be presumed to have
20 been directly involved in the day-to-day operations of the Company at the highest levels and
21 were privy to confidential proprietary information concerning the Company and its business,
22 operations, growth, financial statements, and financial condition, as alleged herein. As explained
23 herein, Pierce had access to the truth by virtue of his close position to the officer/director
24 Defendants and the authority he commanded as a large shareholder.

25 ¹¹ SEATTLE POST-INTELLIGENCER, "Former exec at CellCyte reports threat" (Feb. 13, 2008).

26 ¹² *Id.*



1 25. Each of the Defendants is liable as a participant in a fraudulent scheme and course
2 of business that operated as a fraud or deceit on purchasers of CellCyte common stock by
3 disseminating materially false and misleading statements and/or concealing material adverse
4 facts. The scheme: (i) deceived the investing public regarding CellCyte's business, operations,
5 management and the intrinsic value of CellCyte common stock; and (ii) caused Lead Plaintiffs
6 and other members of the Class to purchase CellCyte common stock at artificially inflated prices.

7 **IV. LEAD PLAINTIFFS' CLASS ACTION ALLEGATIONS**

8 26. This is a class action on behalf of all persons or entities who acquired the shares
9 of CellCyte during the period July 16, 2007, through the date of this lawsuit, pursuant to
10 CellCyte's untrue or misleading Registration Statements and Prospectus (collectively, the
11 "Prospectus") issued in connection with the offering of its shares, seeking to pursue remedies
12 under the 1933 Act. (The Section 11 and 12 class.)

13 27. Lead Plaintiffs also seek class certification under Federal Rules of Civil
14 Procedure 23(a) and (b)(3) on behalf of a Class consisting of all those who purchased the
15 securities of CellCyte during the period April 6, 2007, and January 9, 2008, inclusive (the
16 "Class") and who were damaged thereby for claims asserted under the Exchange Act. (The
17 Section 10(b) class.)

18 28. Excluded from the Class are Defendants, the officers and directors of CellCyte,
19 members of their immediate families and their legal representatives, heirs, successors or assigns
20 and any entity in which Defendants have or had a controlling interest.

21 29. The members of the Class are so numerous that joinder of all members is
22 impracticable. Throughout the Class Period, CellCyte common shares were actively and
23 publicly traded on the Over the Counter Bulletin Board ("OTCBB") and on the Frankfurt Stock
24 Exchange. According to CellCyte's financial statement filed with the SEC on Form 10-Q on
25 May 15, 2008, CellCyte had 60,873,848 shares of common stock outstanding as of March 31,
26 2008. While the exact number of Class members is unknown to Lead Plaintiffs at this time and



1 can only be ascertained through appropriate discovery, Lead Plaintiffs believe that there are
2 hundreds or thousands of members in the proposed Class. Class members may be identified
3 from records maintained by CellCyte or its transfer agent and may be notified of the pendency of
4 this action by mail, using the form of notice similar to that customarily used in securities class
5 actions.

6 30. Lead Plaintiffs' claims are typical of the claims of the members of the Class as all
7 members of the Class are similarly affected by Defendants' wrongful conduct in violation of
8 federal law that is complained of herein.

9 31. Lead Plaintiffs will fairly and adequately protect the interests of the members of
10 the Class and have retained counsel competent and experienced in class and securities litigation.

11 32. Common questions of law and fact exist as to all members of the Class and
12 predominate over any questions solely affecting individual members of the Class. Among the
13 questions of law and fact common to the Class are:

14 (a) whether Defendants violated the federal securities laws by the acts alleged
15 herein;

16 (b) whether statements made by Defendants to the investing public (or
17 material omissions) during the Class Period misrepresented material facts about the business,
18 operations and management of CellCyte; and

19 (c) to what extent the members of the Class have sustained damages and the
20 proper measure of damages.

21 33. A class action is superior to all other available methods for the fair and efficient
22 adjudication of this controversy since joining all members is impracticable. Furthermore, as the
23 damages suffered by individual Class members may be relatively small, the expense and burden
24 of individual litigation make it impossible for members of the Class to individually redress the
25 wrongs done to them. There will be no difficulty in the management of this action as a class
26 action.



V. SUBSTANTIVE ALLEGATIONS

A. The Origins of CellCyte and the Reverse Merger

34. CellCyte Genetics Corporation, the Nevada corporation, was originally incorporated under the name Shepard Inc. on March 9, 2004.¹³ Shepard Inc. was a mining company with an unexplored mineral prospect in Canada’s Northwest Territories, no assets and a history of negligible revenue. Since its formation, Shepard Inc. had realized no revenues from its planned operations which were limited to mining, according to documents it filed with the SEC.

35. CellCyte Genetics Corporation, a Washington corporation (“CellCyte Washington”), was incorporated on January 14, 2005, as a private Washington State company.

36. On February 2, 2007, Shepard Inc. filed with the SEC a Form 8-K announcing that it had entered into an agreement in principle with CellCyte Washington to merge the Companies.

37. On February 16, 2007, the Company filed with the SEC a Form 8-K stating that Shepard had merged with CellCyte Washington to create CellCyte Genetics Corporation and began trading on the OTC board under the new trading symbol CCYG:

On February 13, 2007, Shepard Inc. (the “Company”) filed Articles of Merger with the Secretary of State of Nevada in order to effectuate a merger whereby Shepard Inc. would merge with its wholly-owned subsidiary, CellCyte Genetics Corporation, as a parent/subsidiary merger with the Company as the surviving corporation. This merger, which became effective as of February 16, 2007, was completed pursuant to Section 92A.180 of the Nevada Revised Statutes (“NRS”). Shareholder approval to this merger was not required under Section 92A.180 of the NRS. Upon completion of this merger the Company’s name has been changed to “CellCyte Genetics Corporation” and the Company’s Articles of Incorporation have been amended to reflect this name change.

In connection with this name change to CellCyte Genetics Corporation, as of the open of business on February 16, 2007, the

¹³ CellCyte Genetics Corporation, the Nevada corporation, will be referred to as “CellCyte Genetics,” “CellCyte,” or the “Company,” unless otherwise indicated. The second CellCyte Genetics Corporation will be referred to as “CellCyte Washington.”

1 Company has the following new CUSIP number and trading
2 symbol:

3 New CUSIP Number: 15116P 10 3.

4 New Trading Symbol: CCYG.

5 The Company decided to change its name to “CellCyte Genetics
6 Corporation” because, as disclosed in the Company’s Current
7 Report on Form 8-K dated January 26, 2007 (the “January 26,
8 2007 Current Report”), the Company entered into an agreement in
9 principle (the “Agreement in Principle”) on January 26, 2007 with
10 CellCyte Genetics, Inc. (“CellCyte”) and a shareholder of CellCyte
11 (together with the other shareholders of CellCyte that are to be
12 parties to a formal agreement to replace the Agreement in
13 Principle, the “Vendors”) in connection with the proposed
14 acquisition by the Company from the Vendors of all of the issued
15 and outstanding shares of CellCyte. A summary of such
16 Agreement in Principle is provided in the Company’s January 26,
17 2007 Current Report, and a copy such Agreement in Principal has
18 been filed as an exhibit to the Company’s January 26, 2007
19 Current Report.

20 The Company is informed that CellCyte, a Washington State
21 company, is an emerging biotechnology company that is in the
22 principle business of the discovery and development of
23 breakthrough stem cell enabling therapeutics products.

24 38. This type of transaction is known as a “reverse merger.” By merging with an
25 public shell corporation – generally defined an inactive corporation without assets that is used as
26 a legal and financial entity through which another corporation can conduct certain matters¹⁴ – a
company may “go public” without satisfying the regulatory hurdles that would otherwise
accompany public stock offerings.¹⁵

39. The “reverse merger” here represented a change in control of the Company. As a
consequence, the Company was no longer in the mining business and became “a company
focused on the discovery and development of stem cell enabling therapeutic products.”¹⁶

¹⁴ Webster’s New Millenium Dictionary, www.dictionary.com.

¹⁵ *U.S. v Gilak*, 2006 U.S. Dist. LEXIS 95655 (N.D. Cal. 2006) (Walker, J.).

¹⁶ Cellcyte Form 8-K, March 30, 2007.

1 40. According to the Company's SEC filings, the first trade in the Company's
2 common stock occurred on or about March 23, 2007.

3 **B. The First Misrepresentations About Reys' Qualifications**

4 41. On April 6, 2007, the start of the Class Period, the Company filed an SEC Form
5 8-K announcing the completion of "the acquisition of all of the issued and outstanding shares
6 (the 'Purchased Shares') of CellCyte (the 'Closing') pursuant to a Share Exchange Agreement
7 among CellCyte, the shareholders of CellCyte (the 'Vendors') and the Company dated as fully
8 executed on March 14, 2007 (the 'Share Exchange Agreement')."

9 42. In the same Form 8-K, CellCyte stated the academic and professional credentials
10 of Company president, CEO, Principal Executive Officer and director Reys as follows:

11 Mr. Reys brings over 30 years of experience with both
12 international Fortune 100 and 500 publicly traded companies and
13 emerging-growth companies in the pharmaceutical, biotechnology
14 and medical device sectors. **[False Statement 1.]** He held
15 executive positions with Pfizer and with Rhone Poulenc Rorer
16 (now Aventis), North America. Mr. Reys was one of the pioneers
17 in the generic pharmaceutical industry as part of a five member
18 founding executive team forming Schein Pharmaceutical, taking
19 the company through an IPO and the acquisition by Bayer AG.
20 **[False Statement 2.]** Mr. Reys served in various capacities for
21 Goldline Laboratories, positioning the company for the acquisition
22 by IVAX, an international pharmaceutical holding company (now
23 Teva Pharmaceutical), retiring from IVAX as Vice President of
24 Business Development in 1993. **[False Statement 3.]** Mr. Reys
25 served as Executive Vice President and Chief Financial Officer of
26 IBV Technologies, a division of the McKesson Corporation from
May 1994 to December 1997. **[False Statement 4.]** Mr. Reys
served as Chief Executive Officer and President of Genespan, a
cell expansion and DNA biotechnology company from January
1998 to February 2000. **[False Statement 5.]** Mr. Reys served as
Chief Executive Officer, President and Chief Financial Officer for
Clear Medical from February 2000 to March 2001, where he
positioned the company as the first FDA approved high-level
disinfectant re-processor of medical devices. Mr. Reys co-founded
and served as the President and Chief Executive Officer of
Cennapharm, a biopharmaceutical company from April 2001 to
May 2003. **[False Statement 6.]** Mr. Reys co-founded CellCyte
Genetics in June 2003. Mr. Reys attended the University of
Washington where he majored in finance, later receiving a CPA
designate. **[False Statement 7.]** Mr. Reys is a past member of the
Washington Society of Certified Public Accountants. **[False**



1 **Statement 8.]** He also serves as a member of the University of
2 Washington's Graduate School, M.B.A. Mentor Advisory Board.
3 **[False Statement 9.]**

4 43. With respect to these statements, they are false and/or misleading as follows and
5 as explained in detail below and elsewhere in the complaint:

6 False Statement 1. Mr. Reys did not have "over 30 years experience with both
7 Fortune 100 and 500 publicly traded companies in the pharmaceutical, biotechnology and
8 medical device sectors." Until 1988 or 1989, Reys worked at a lumber company with his
9 ex-wife. It was not an "international Fortune 100" or "500" company, was not public traded and
10 was not in the "pharmaceutical, biotechnology and medical device sectors." The lumber
11 company was family owned. Assuming then that Reys did become employed for a Fortune 100
12 or 500 publicly traded company, his experience would at best be 17 years in this capacity not
13 over 30 as represented.

14 False Statement 2. Mr. Reys's highest position at Schein was as a district sales
15 manager and he held no position that included his being part of an "executive team" or one that
16 "took Schein through an IPO."

17 False Statement 3. Mr. Reys was not in a capacity where he helped Goldline
18 position itself for a takeover by IVAX. Reys left the lumber business in 1989. According to the
19 above biography he thus would have, with no experience, in the span of just three years, served
20 as an "executive" at Pfizer, a member of the "executive team at Schien" and in an executive
21 capacity at Goldline such that he positioned it for acquisition. None of this is plausible.

22 False Statement 4. Reys claims that in the period of 1994 to 1997 he served as an
23 Executive Vice President and Chief Financial Officer of IBV Technologies, a division of
24 McKesson. McKesson is one of the country's top 20 corporations in terms of revenue. In fact,
25 IBV was not a division of McKesson. In 1998 after Reys left IBV, McKesson agreed to stock
26 IBV's products in its distribution centers.



1 False Statement 5. Omitted from this statement is the material fact that as
2 President and CEO he led Genespan into failure and bankruptcy. On or about June 13, 2002
3 Genespan filed for Chapter 7 bankruptcy and was forced to auction off its laboratory and test
4 equipment. Genespan left a long list of creditors. Having called attention to his Genespan
5 experience, Defendants omitted to complete the Genespan experience so as to make the
6 statement not misleading.

7 False Statement 6. Reys was fired from Cennapharm. Thereafter Reys organized
8 creditors to file an involuntary Chapter 7 against the company. As a result the company was
9 forced to layoff all of its staff while the petition was at issue. Berninger was employed by the
10 company at the time. The United States Bankruptcy Court dismissed the petition with Judge
11 Steiner finding that “a couple of minor unpaid debts simply do not justify an involuntary
12 petition.” Again, having called attention to his executive position at Cennapharm to boost his
13 experience and credentials, Defendants omitted to complete the full story so as to make the
14 statement not misleading.

15 False Statement 7. Mr. Reys never graduated from the University of Washington
16 and did not major in finance, in fact he did not complete a single semester and did not complete a
17 single course.

18 False Statement 8. Mr. Reys is not a member of the Washington Society of
19 Public Accountants and is not an accountant.

20 False Statement 9. At the time of this statement, Mr. Reys was not a member of
21 the University of Washington’s Graduate School, M.B.A. Mentor Advisory Board.

22 **C. The Prospectus and Repeated Misrepresentations Regarding Reys**

23 44. On July 16, 2007, the Company filed a Prospectus and Registration Statement on
24 Form 424B1 with the SEC offering to the public 9,523,448 shares of the common stock of the
25 Company.
26

1 45. The prospectus repeated the qualifications of Reys from the April 6, 2007, Form
2 8-K *verbatim* and emphasized how dependent the Company was on its key officers. The
3 prospectus stated:

4 We are dependant on the services of key personnel. We are *highly*
5 *dependent* on the principal members of our management and
6 scientific staff and some of our outside consultants, including our
7 CEO.... [Emphasis added.]¹⁷

8 46. As of July 11, 2007, the date of the prospectus, the CellCyte stock was trading at
9 \$3.98 per share.

10 47. CellCyte also included Reys's biography along with those of other executives on
11 the Company's website, www.cellcyte.com. The contents were virtually identical to the
12 biography in the filed SEC forms in most respects, with some additional details including the
13 claims that Reys had, as the President and CEO of Cennapharm, a defunct biotechnology
14 company, taken that company from conception to early human clinical trials in 18 months and
15 that Reys had served as the CEO and president of a company CellCyte had "acquired":

16 Mr. Reys brings over 30 years of experience with both
17 international Fortune 100 and 500 publicly traded companies and
18 emerging-growth companies in the pharmaceutical, biotechnology
19 and medical device sectors. He held executive positions with
20 Pfizer and with Rhone Poulenc Rorer (now Aventis), North
21 America. Mr. Reys was one of the pioneers in the generic
22 pharmaceutical industry as part of a five member founding
23 executive team forming Schein Pharmaceutical, taking the
24 company through an IPO and the acquisition by Bayer AG.
25 Mr. Reys served as Vice President of Business Development for
26 Goldline Laboratories and then as Vice President of SuperPharm
Laboratories, a subsidiary division, positioning the company for
the acquisition by IVAX, an international pharmaceutical holding
company (now Teva Pharmaceutical), Mr. Reys served as
Executive Vice President and Chief Financial Officer of IBV
Technologies, a division of the McKesson Corporation. *Mr. Reys*
also served as Chief Executive Officer and President of Genespan,
a cell expansion and DNA biotechnology company, which was
acquired by CellCyte. He served as Chief Executive Officer,
President and Chief Financial Officer for Clear Medical from
February 2000 to March 2001, where he positioned the company
as the first FDA approved high-level disinfectant re-processor of

¹⁷ Cellcyte July 11, 2007, Prospectus at 12.

1 medical devices. *Most recently, he served as the President and*
 2 *Chief Executive Officer of Cennapharm, a biopharmaceutical*
 3 *company which he co-founded, taking the Company from*
 4 *conception to early human clinical trials in 18 months.* Mr. Reys
 5 attended the University of Washington where he majored in
 6 finance, later receiving a CPA designate. Mr. Reys is a past
 7 member of the Washington Society of Certified Public
 8 Accountants. He also serves as a member of the University of
 9 Washington's Graduate School, M.B.A. Mentor Advisory Board.
 10 [Emphasis added.]¹⁸

11 48. CellCyte's repeated these representations regarding Mr. Reys's biography
 12 *verbatim* elsewhere. For example, on June 18, 2007, Reys and then CellCyte Vice President of
 13 Research and Development, participated in an interview published by The Wall Street
 14 Transcript. The interview was published along with the Reys biography provided by CellCyte.¹⁹

15 49. Each of these statements regarding Reys' background were false and misleading
 16 as set forth above.

17 50. The background of executives plays a critical and material role in a biotechnology
 18 firm's bid to attract investors. This is particularly true where the executives have previous
 19 experience in biotechnology. As one Seattle-based analyst stated in the *Seattle Times* in
 20 connection with CellCyte, "If you can bring management to the table who has a track record of
 21 getting drugs through the process, it automatically brings credibility."²⁰ Studies have shown that
 22 the prestigious credentials of a new biotechnology firm's top management team can signal
 23 organizational legitimacy that in turns affects investor decisions.²¹ This is especially critical in

24 ¹⁸ www.cellcyte.com/company-management.htm (viewed 12/17/07).

25 ¹⁹ THE WALL STREET TRANSCRIPT, Company Interview with Gary A. Reys and Theresa A. Deisher (June 18, 2007).

26 ²⁰ Gonzalez, A., "CellCyte shares plummet; questions raised about CEO's bio," SEATTLE TIMES (Jan. 9, 2008) (quoting Phil Latt, Regan McKenzie).

²¹ Higgins & Gulatti, *Stacking the Deck the Effects of Top Management Backgrounds on Investor Decisions*, STRATEGIC MANAGEMENT JOURNAL 27:1-25 (2006).

1 young firms where there is no product or history for the investor to measure.²² The CEO and the
2 prestige of his credentials are recognized factors in the success of early stock offerings and can
3 offset the lack of demonstrated success, leading to greater market confidence and investment.²³
4 In the competitive biotechnology field, the race to get products or therapies to market drives
5 success and it is often the leadership of the companies that distinguishes one competitor from the
6 pack. This was true for CellCyte.

7 51. In their positions as founders, directors and officers of the company, from its
8 earliest days, Defendants Reys and Berninger played a large role in raising capital for CellCyte.
9 CellCyte was a fledgling company with no revenue and was in need of capital in a highly
10 competitive industry. The stem cell products that were CellCyte's sole business would require
11 expensive research and development efforts and clinical trials before they could reach market.

12 **D. The Affiliation With Pierce – a Scam Artist Banned by Canadian Authorities**

13 52. The reverse merger with Shepard Inc. had brought Reys and Berninger together
14 with Canadian stock promoter Pierce who, by the time Reys and Berninger met him, had already
15 been banned from the Canadian stock market for more than a decade.

16 53. CellCyte, Reys and Berninger had knowledge of Pierce's background. At the
17 time the Company's March 30, 2007, 8-K was filed, no stock had been sold publicly and the
18 Company had just 48 stockholders, all participants in private placements, one of the largest was
19 G. Brent Pierce.²⁴ The Company was hungry for cash and investors. It was reasonable to infer
20 that the Company and its key officers researched the background and qualifications of each of
21 the initial investors and in particular the individual other than the officers and director who
22

23 ²² *Id.* See also Richard L. Lester, *et al.*, "Initial Public Offering Investor Evaluations: An
24 Examination of Top Management Team Prestige and Environmental Uncertainty," JOURNAL OF
SMALL BUSINESS MANAGEMENT, 44(1), pp. 1-26 (2006).

25 ²³ S. Trevis Certo, *et al.*, "The influence of people on the performance of IPO firms,"
BUSINESS HORIZONS, 50, pp. 271-276 (2007).

26 ²⁴ Cellcyte July 11, 2007, Prospectus.

1 controlled the most significant share of stock. As a result of the original private placement, as
 2 described above, Pierce controlled 1,666,666 shares or 2.7% of Cellcyte via Newport Capital. In
 3 addition, Pierce exercised control over at least 4,333,334 shares through his wife Dana Pierce
 4 and entities related to him: Golden West Investments and Phoenix Asset Corp. In total, Pierce
 5 controlled 6,000,000 shares or 10% of the Company.

6 54. Reys publicly represented that he had had the Company's lawyers investigate
 7 Pierce and "they found nothing wrong."²⁵ Yet, even the most cursory vetting of Pierce would
 8 have revealed Pierce's 15-year ban from the Canadian stock market as well as his involvement in
 9 the U.S. penny stock market and his continued work as a stock promoter, all of which were
 10 covered by the Vancouver press. And the lawyer listed on the face page of CellCyte's
 11 Registration Statement is Thomas J. Deutsch. Mr. Deutsch had been the solicitor on other Pierce
 12 generated scams or "pump and dump" stock schemes and would have been fully aware of if not
 13 complicit in Pierce's schemes:

14 Lexington Resources, Inc. (high \$7.46, down to one cent)

15 Uranium Energy Corp. (high \$9.25, down to \$3.30)

16 55. It is reasonable to infer that it was no accident that Reys and Berninger enlisted
 17 Deutsch as the lawyer handling the CellCyte offering due to his association with Pierce who had
 18 a history of promoting stocks and due to Deutsch's willingness to look the other way as to
 19 Pierce's stock manipulation.

20 56. After Pierce's ban from the Canadian securities markets in 1993, he moved his
 21 operations just south of the Canadian border to Blaine and Bellingham, Washington. Pierce
 22 actively promoted a number of low-priced bulletin board companies whose shares, according to
 23 newspaper reports, "levitated to high heights, but have since faded."²⁶ Among those companies,

24 _____
 25 ²⁵ SEATTLE TIMES, "CellCyte shares ride a wave of hype," (Dec. 9, 2007 [updated Dec. 25,
 2007]).

26 ²⁶ VANCOUVER SUN, "Investor vainly seeks financial reports," (Nov. 24, 2007); *see also id.*



1 along with their highs and December 2007 trading prices as reported by the VANCOUVER SUN,
2 were Lexington Resources (\$7.46/\$ 0.01), Morgan Creek Energy (\$5.40/0.30), Genemax (\$7.00/
3 \$0.21) and Geneva Gold (\$3.50/\$1.50).²⁷

4 57. Also after the Canadian ban, Pierce operated at least two stock promotion
5 companies out of different locations in Bellingham, Washington: Investor Communications
6 International, Inc. (“ICI”) and International Market Trend, Inc. (“IMT”). ICI was incorporated in
7 Washington State in March 1997; ICI’s corporate license expired in March 2005. ICI was in the
8 business of providing investor relations services for companies trading on the OTCBB, including
9 Lexington Resources, Inc., Morgan Creek Energy and Genemax. On paper at least, the
10 ownership of ICI was complex and international. From March 1997 until March 2000, ICI was
11 100% owned by Nessa Financial Corp., a Belize company controlled by Pierce. In March 2000,
12 Pierce transferred the ICI stock from Nessa to himself. In June 2000, Pierce transferred the
13 shares of ICI for no consideration to two individuals, Marcus Johnson and Stephen Jewett, and
14 two foreign trusts directly controlled by Pierce, Hornback Trust and Ocean and Sea Empire
15 Trust. Marcus Johnson, an architect, became the president of ICI. Even before ICI had been
16 incorporated, ICI had entered into a Consulting Services Agreement with Newport Capital Corp.,
17 also owned by Pierce. In 2001, ICI paid Newport \$1,257,200.00 pursuant to the agreement.
18 Pierce, ICI and several other Pierce entities and associates were the subjects of an Internal
19 Revenue Service investigation in 2005. ICI closed its doors shortly thereafter.

20 58. IMT is a Nevada corporation with its offices in Bellingham. IMT registered to do
21 business in Washington shortly before ICI ceased operation. IMT has an affiliate company,
22 International Market Trend AG located at the same address as Newport Capital in Zurich,
23 Switzerland. According to Swiss government records, International Market Trend AG also does
24 business as Stockgroup AG. Pierce is the director, president and treasurer of IMT. IMT is

25 _____
26 ²⁷ VANCOUVER SUN, “The rise and impending fall of yet another OTC stock,” (Dec. 12,
2007).



1 engaged in the same business as ICI and had consulting agreements with many of the same
2 companies, including Lexington Resources, Inc., Morgan Creek Energy Corp., Genemax Corp.
3 and Transax International, Ltd. Stock that was issued to ICI in connection with their consulting
4 agreements in some instances has been assigned to IMT.²⁸

5 59. In 2005, the Internal Revenue Service (IRS) investigated Pierce's activities under
6 the banner of Investor Communications International, Inc. and concluded that some were a
7 "sham." In connection with the investigation, the IRS issued a subpoena to the Bank of America
8 Bankcard Services for 81 entities purportedly related to Pierce's ICI. Among the entities were
9 individuals or entities involved in this case: G. Brent Pierce, Gordon Brent Pierce, Gordon B.
10 Pierce, Marcus Johnson, Gino Cicci, Newport Capital Corporation, Phoenix Asset Group,
11 Golden West Investments, Ltd., Hornback Trust and Mrs. Dana Pierce.²⁹ Pierce's company,
12 Newport Capital, the same company that owned 2.7% of the outstanding CellCyte stock, was
13 being paid substantial fees by ICI. The IRS investigation led to an adjustment to the income
14 taxes owed by ICI for the years 2001 and 2002. According to the IRS, Pierce "made it clear that
15 Newport was a 'private non-reporting company incorporated under the laws of Belize that has a
16 worldwide services network and infrastructure that specializes in providing various corporate
17 finance and marketing services."³⁰ Also according to the IRS, Pierce tried to keep his name out
18 of the ICI ownership by a complicated series of stock ownership companies or the use of
19 nominees. The IRS concluded that the transactions between ICI and Newport Capital were not at
20 arm's length and were a "sham."
21
22

23 ²⁸ See various Lexington Resources SEC filings.

24 ²⁹ *Investor Communications Int'l v. USA, et al.*, Petition to Quash Summons (Feb. 8, 2005)
25 (petition later denied).

26 ³⁰ IRS Examiners Report, Explanation of Items, Investor Communications International, Inc.
(year ended 12/21/2001).

1 60. Typically when Pierce becomes involved in a fledgling penny stock company, as
2 part of the share exchange agreement the company enters into a consulting agreement with one
3 of Pierce's stock promotion entities. Money may never change hands. The company incurs a
4 debt to Pierce, a Pierce controlled entity or Pierce associates. The debt is often paid off with
5 stock. The Pierce-associated entities associated with some of his previous deals are among many
6 of those found here: Dana Pierce (Morgan Creek Energy Corp., Lexington Resources, Inc.);
7 Newport Capital (Morgan Creek Energy Corp, Uranium Energy Corp., Petrogen, Inc.,); Golden
8 West Investments (Uranium Energy Corp., Petrogen, Inc.); Phoenix Asset Corp. (Morgan Creek
9 Energy Corp., Petrogen, Inc., Lexington Resources, Inc.); Marcus Johnson (Morgan Creek
10 Energy Corp (through Geneva Energy Corp. of which he is the sole director and whose sole
11 shareholder is Phoenix Asset Group), Uranium Energy Corp); Gino Cicci (Geneva Resources,
12 Lexington Resources, Inc.); Stephen Jewett (Morgan Creek Energy Corp., Geneva Resources,
13 Lexington Resources, Inc., Uranium Energy Corp., Genemax Corp., Petrogen, Inc.). All of these
14 entities, and others, were included in the 2005 subpoena issued by the IRS to Bank of America.
15 It is unclear whether Pierce or Pierce entities received stock in exchange for their work in
16 connection with CellCyte. Various CellCyte SEC filings referenced stock options or stock
17 shares issued to be available for consultants and a consultant's agreement is referenced but not
18 attached to the July 11, 2007 prospectus.³¹

19 **E. With Reys and Berningers' Knowledge Pierce Falsely Promotes CellCyte's Stock**

20 61. Pierce met with CellCyte founders via telephone or in person, and introduced
21 them to others before the stock was offered to the public. For example, according to the
22 VANCOUVER SUN, Pierce provided a connection between CellCyte and another Vancouver stock
23 promoter and Pierce associate, Gino Cicci. Like Pierce, Cicci had been stripped of his trading
24 rights by the B.C. Securities Commission. In 1995, the B.C. Securities Commission banned him

25 _____
26 ³¹ See, e.g., Cellcyte Form 8-K, March 30, 2007; Form 10QSB, June 30, 2007; July 11, 2007
Prospectus.



1 and prohibited him from acting as an officer or director of any B.C. public company for three
2 years for disseminating misleading promotional material about a Vancouver Stock Exchange-
3 listed company.³² CellCyte hired Cicci to “work the phones.”³³

4 62. Upon information and belief, Pierce also introduced CellCyte to Jack Wynn &
5 Co., a public relations company CellCyte hired.

6 63. Based on Pierce’s background and control, Reys and Berninger knew that Pierce
7 was a stock promoter and that he would promote the CellCyte stock. CellCyte hired Pierce for a
8 monthly fee “to maintain a conduit for investor inquiries.”³⁴

9 64. As Reys and Berninger intended, Pierce directly promoted the stock. He retained
10 James A. Rapholz to write, produce and distribute to the investing public a colorful 12-page
11 brochure promoting the Company, its executives’ credentials and the anticipated meteoric rise in
12 the stock.

13 65. Rapholz is a “pen for hire” whose medium is what he calls a “stock advisory
14 newsletter.” In fact, Rapholz’s “stock advisory newsletters” are paid promotional advertising for
15 select stocks. Rapholz drafts the newsletter or brochure to suggest that the subject stock is a
16 “recommendation” discovered by a successful stock investor, but in fact he is always being paid
17 by the subject company to promote the stock and it is only the fine print that discloses this
18 information.

19 66. Here, Pierce – through Stockgroup AG Company - paid Rapholz to promote
20 CellCyte stock.³⁵ Rapholz created a glossy, 12-page brochure entitled James L. Rapholz’s
21 *Economic Advice*, Fall 2007.³⁶ The brochure was strictly an advertising piece touting the
22

23 ³² VANCOUVER SUN, “No shortage of brass in Vancouver,” (Jan. 23, 2008).

24 ³³ *Id.*

25 ³⁴ SEATTLE POST-INTELLIGENCER, “Former exec at CellCyte reports threat,” (Feb. 13, 2008).

26 ³⁵ James L. Rapholz, *Economic Advice*.

³⁶ *Id.*

1 CellCyte stock. On the bright red front page Raphael wrote: “Forget what you may think you
 2 know about stem cells! ... Finally, there’s a practical solution to the safety and ethical dilemma!
 3 ... [A] practical “pill-in-a-bottle” application puts the miracle of regenerative medicine within
 4 immediate reach!” “Invest just \$5,000 now in the \$5.70 stock* of CellCyte Genetics
 5 (OTCBB:CCYG) and you could have \$7 million ... FIND OUT INSIDE.”

6 67. Inside, the promotional brochure touted the scientific breakthroughs underlying
 7 the company’s business and misrepresented the availability of the therapies. “Now, a practical
 8 ‘pill-in-a-bottle’ application puts the miracle of regenerative medicine within *immediate reach*,”
 9 the brochure promised (emphasis added). “The technology is real. It’s here *now*. *It is heading*
 10 *into FDA testing*. Because it’s based on safe, naturally occurring proteins, FDA fast tracking, if
 11 granted, could allow more rapid approval of this revolutionary treatment.” The undisclosed
 12 truths, which appeared no where in the promotional brochure, included the fact that CellCyte was
 13 at least years away from any commercially available product and a successful outcome was
 14 completely speculative.³⁷ CellCyte had no product available in the marketplace and was not
 15 even close. The Company had not even filed an Investigational New Drug Application or
 16 scheduled the necessary clinical trials. Nor did they have the financing to do so.³⁸

17 68. And even if the FDA granted fast tracking, there was no guarantee that the status
 18 would expedite the drug’s ultimate approval. According to industry analysis and media reports,
 19 fast tacking has become routine, relatively easy to apply for and the FDA has approved more
 20 than 70% of requests over the past decade.³⁹ The designation does not increase the likelihood
 21 the drug will be approved or speed its availability to the marketplace.⁴⁰ On the other hand, a
 22

23 ³⁷ July 11, 2007, Prospectus at 6 (“our technology is at an early stage of development, and we
 may fail to develop any commercially acceptable or profitable products”).

24 ³⁸ Cellcyte Form 8-K, March 30, 2007.

25 ³⁹ CLEVELAND PLAIN DEALER, “FDA’s Fast Track designation more help to investors than
 patients” (12/02/2007).

26 ⁴⁰ *Id.*



1 company's announcement of fast track approval has been associated with an immediate increase
2 in the value of the company's stock.

3 69. The brochure also claimed: "Repair your own heart ... regenerative medicine is
4 on the verge of an enormous and historic leap forward." "Grow-your-own repair tissues! ... In
5 the not-too-distant-future" doctors should be able to inject stem cells from the patient's own
6 body into a vein where the stem cells will target the heart to allow growth and repair of damaged
7 heart tissue." "CellCyte can use the patient's own adult stem cells rather than controversial
8 embryonic form." This was also a misrepresentation. The technology that would allow patients
9 to use their own stem cells to repair their damaged organs was apparently not in use at Cellcyte.
10 According to documents filed with the SEC, CellCyte's current research and development was
11 based on the use of human stem cells obtained from stem cells taken from aborted fetal tissue⁴¹
12 and not adult stem cells. The Company had no more than undeveloped "plans to explore an
13 application to allow the use of the patients' own stem cells to repair their damaged organs
14 without the need to harvest and re-inject the cells."⁴²

15 70. The *Economic Advice* brochure also claimed that CellCyte had a patented way to
16 use naturally occurring proteins to enhance delivery to specific organs, one that "in pre-clinical
17 studies over 77% of the stem cells remained in place in the organ, compared to a mere 1 to 5%
18 by current invasive methods." The statement falsely implied that CellCyte had conducted
19 clinical trials and that the trials had led to these results, but in fact CellCyte had not conducted
20 any clinical trials and had limited experience in doing so.⁴³ The reference was to clinical trials
21 conducted by government scientists in mice which resulted in the patents CellCyte had bought.⁴⁴
22 Before they could do so, CellCyte would have to submit an IND with the FDA and obtain FDA

23
24 ⁴¹ July 11, 2007, Prospectus at 8.

25 ⁴² Cellcyte Form 10-KSB, Dec. 31, 2007.

26 ⁴³ July 11, 2007, Prospectus at 6.

⁴⁴ Cellcyte Form 10-KSB, Dec. 31, 2007.



1 approval for the IND. Moreover, human clinical trials required money that CellCyte did not
2 have. As of July 11, 2007, according to SEC filings, the company's bank accounts were nearly
3 empty and the Company's holdings were highly illiquid.⁴⁵ As of December 2007, the Company
4 did not have enough cash to cover more than five months' operations.⁴⁶ Lack of funding would
5 necessarily cause the Company to delay, scale back or eliminate research and product
6 development.⁴⁷

7 71. Reys is quoted in the Rapholz brochure as promoting the company's strong
8 financials and debt-free position so all their money is for product development and moving the
9 company forward to revenues. Again, this statement is misleading for it did not disclose that in
10 fact the Company had no money.

11 72. The brochure continued by touting the stock's potential: "This could be the most
12 astonishing investment opportunity since the microchip!" "This is a stock with the long-term
13 potential of a Microsoft or an Intel."

14 73. The promotional brochure also repeated the Defendants' representations
15 concerning the importance of the Company's leadership and credentials to its success, including
16 the success of the stock. The brochure promoted the "Absolutely World-Class Team" with a
17 picture of Gary A. Reys and the widely-accepted principle that "[b]reakthrough technology isn't
18 worth much without the management and entrepreneurial experience to guide it successfully and
19 profitably to the market."⁴⁸ Defendants Reys and Berninger were extensively quoted throughout
20 the brochure.

21
22
23
24 ⁴⁵ July 11, 2007 Prospectus.

25 ⁴⁶ Cellcyte Form 10-KSB, Dec. 31, 2007.

26 ⁴⁷ July 11, 2007 Prospectus.

⁴⁸ James A. Rapholz, *Economic Advice*.



1 74. The promotional brochure also repeated some of the representations CellCyte had
2 made in its SEC filings and on its website concerning Reys' professional experience, adding
3 additional details:

4 CellCyte Genetics has both a renowned, pioneering stem cell
5 scientist and biotech researcher, and a seasoned successful CEO
6 with more than 30 years experience leading divisions of
7 international Fortune 100 and 500 publicly traded companies,
8 notably emerging growth firms in the pharmaceutical,
9 biotechnology and medical device sectors. Gary A. Reys held
10 executive positions with Pfizer and with Rhone Poulence (sic)
11 Roer Inow Aventis), North America. As a member of the founding
12 management team of Schein Pharmaceutical, Mr. Reys was a
13 pioneer in the *genetic* pharmaceutical industry, *helping take the*
14 *company public and its acquisition by Bayer AG*. He was also
15 CEO and President of Genespan, a cell expansion and DNA
16 biotechnology company, which *CellCyte acquired*. [Emphasis
17 added.]

18 The brochure continued discussing Reys' credentials by discussing the work CellCyte had
19 focused on "under the leadership of Mr. Reys ... since it was formed in 2003." In fact, Reys
20 had not been involved in the genetic pharmaceutical industry, had not taken Schein public or
21 participate in its acquisition by Bayer, and Cellcyte had not acquired another biotechnology
22 company.

23 75. The "Important Disclaimer" at the end of the brochure under James L. Rapholz's
24 signature confirmed Pierce's role in the brochure funding for the promotional brochure:

25 Disclosure of financial interests involving the creating of this
26 publication includes: (1) The Editor [defined as James Rapholz]
and editorial staff were paid a total of US\$12,500 in editorial fees
to undertake an independent investigation and due diligence in
regard to the editorial review of all aspects of this report; (2) the
Publisher [defined as Economic Advice] also was remunerated part
of the editorial fees to ensure the final copy was in a form
consistent with general industry standards for a publication of this
nature; (3) the total budget for the production and distribution of
this publication is \$445,000 which has been paid for by
Stockgroup AG; (4) James Rapholtz (sic) and James Rapholtz
(sic), Economic Advice are also expected to gain additional
subscription revenues from anticipated growth in their subscriber
base as a result of participating in this publication.



1 76. CellCyte was aware of the promotional piece paid for by Pierce, said Reys in a
2 SEATTLE TIMES article.⁴⁹ Defendants had also endorsed the stock promotion and specifically the
3 representations contained therein, according to the brochure, by confirming the business and
4 financial factual contents:

5 The factual information contained in this Report specifically
6 pertaining to CellCyte business, operations or financial records
7 (the "CellCyte Facts") has been reviewed and verified for accuracy
8 by CellCyte.⁵⁰

9 77. The glossy red promotional brochure was widely disseminated to the public
10 nationwide in the United States at least two ways. Class members report receiving copies of the
11 brochure by unsolicited direct U.S. mail and as inserts in daily newspapers, including U.S.A.
12 TODAY. Class members were influenced by the representations of the excellence of the
13 Company's leadership and the executives' histories in the industries, as described in Rapholz's
14 *Economic Advice*. Class members were also influenced by the brochure's representations
15 concerning Celcyte products.

16 78. Simultaneously, CellCyte stock which was trading on the Frankfurt Stock
17 Exchange, was being promoted in Germany and Pierce and Stockgroup AG were directly
18 involved. According to the SEATTLE TIMES, unsolicited spam faxes of a positive article
19 reportedly from German FOCUS MONEY magazine began appearing in Germany. The faxes were
20 sent by StockGroup AG.⁵¹

21 79. By October 1, 2007, national media in the United States were reporting that
22 shares of CellCyte stock had risen 34,500% since the company was formed creating a
23 \$362 million market capitalization. The same media repeated the Company's representations its

24 ⁴⁹ SEATTLE TIMES, "CellCyte shares ride a wave of hype," (Dec. 9, 2007 [updated Dec. 25,
25 2007]).

26 ⁵⁰ *Economic Advice*

⁵¹ SEATTLE TIMES, "CellCyte shares ride a wave of hype," (Dec. 9, 2007 [updated Dec. 25,
2007]).

1 CEO was an “ex-CPA.” Defendant Reys attributed the stock’s meteoric rise to German investors
2 boosting the stock.⁵²

3 80. Within weeks, later in October, CellCyte Vice President of Research &
4 Development, Theresa A. Deisher, suddenly resigned for undisclosed reasons. She later started
5 her own stem cell research company.

6 **F. The Truth Begins to Unfold**

7 81. On December 9, 2007 (corrected on December 25, 2007), the Seattle Times wrote
8 a story questioning the run-up on CellCyte’s stock and the integrity of the Company and its
9 claims, citing the *Economic Advice* brochure, the German spam faxes and Pierce’s role:

10 For years, the founders of CellCyte Genetics relied on infusions
11 from angel investors to keep their tiny startup afloat. But after
12 Kirkland-based CellCyte combined with a moribund public
13 company, its shares caught fire this fall in the loosely regulated
14 over-the-counter (OTC) market and on Germany’s Frankfurt Stock
15 Exchange.

16 A wave of glossy brochures and spam faxes, touting CellCyte with
17 lofty claims, has helped propel the company’s total market value to
18 more than \$440 million. That’s greater than many local biotechs
19 that are far more advanced in developing therapies. Suddenly, the
20 two founders each have a stake worth about \$137 million.

21 The barrage of hype has been bankrolled, to the tune of hundreds
22 of thousands of dollars, by an outside stockholder – a man whom
23 British Columbia securities regulators have barred from their
24 industry for 15 years.

25 CellCyte Genetics Chief Executive Gary Reys says he is not
26 concerned about that history, and insists he has no role in the
27 promotional push.

28 He says the skyrocketing trading volume is simply an “amazing”
29 show of investor confidence in his company’s technology for
30 manipulating stem cells, which is still a year away from its first
31 early-stage clinical trials.

32 A former mining stock.

33 CellCyte bought an inactive B.C. mining company whose stock
34 trades in the OTC market in the U.S., and completed a private

35 ⁵² FORBES, “Striking It Rich on Wall Street,” (Oct. 1, 2007).

1 placement that let a well-known Canadian promoter of penny
2 stocks acquire millions of shares. A few months later, the
spamming began.

3 That's a pattern familiar to the B.C. Securities Commission, which
4 is trying to crack down on stock-promotion schemes. It "is not
untypical of the problem we're facing," said Martin Eady, head of
5 corporate finance at the B.C. Securities Commission.

6 The commission is writing new rules to restrict what Eady calls a
"subculture" of pump-and-dump stock promoters that have thrived
7 in B.C. by taking a large position in an inexpensive stock, hyping
it, and unloading it onto unsuspecting investors.

8 Reys maintains that the acquisition of a shell company is a
legitimate way of tapping investors while the firm prepares to enter
9 a major regulated market such as Nasdaq. He said CellCyte isn't a
fly-by-night company, it's a "brick-and-mortar organization" with
10 experienced researchers and patented technology.

11 As for the spam activity, he said, "We have no control over it."

12 Spammed.

13 Last month, investors participating in German stock message
boards began asking questions about an unsolicited fax they'd
14 received promoting CellCyte. The fax reproduced a positive story
about the company from the weekly newsmagazine Focus Money,
15 based in Offenburg.

16 There was also a handwritten note in German: "This is the stock
that's about to take off! Greetings, Paul."

17 In a copy of the fax obtained by The Seattle Times, dated Nov. 19,
18 the fax sender is identified as Stockgroup AG. That's a stock-
promotion firm based in Zurich, with offices in Bellingham,
19 according to Swiss government records.

20 The firm's president, G. Brent Pierce, is a Canadian citizen barred
by the B.C. Securities Commission from trading shares or acting as
21 an officer of any B.C. public company until 2008. In the 1993
settlement that led to the ban, he acknowledged presenting false
22 documents to the commission and diverting funds from a small
public stock offering to his own use.

23 Pierce controls about 1.66 million shares of CellCyte through a
24 company called Newport Capital Group, according to a regulatory
filing with the Securities and Exchange Commission. Those shares
25 were worth about \$12.2 million as of Friday, and his wife, Dana
Pierce, owns shares worth an additional \$2.5 million.
26

1 Pierce's firm is also behind a colorful 12-page mailer distributed
2 since early October to potential U.S. buyers of the stock.

3 Titled "James Rapholz's Economic Advice," the brochure says
4 CellCyte shares "could be the chance of your lifetime to turn
5 \$10,000 into \$4 million, maybe even \$15 million!"

6 "This could be the most astonishing investment opportunity since
7 the microchip," it says elsewhere. "This truly could be the most
8 astonishing and important medical breakthrough in your lifetime!"

9 The fine print at the back of the brochure discloses that Stockgroup
10 AG, Pierce's company, paid Rapholz \$445,000 to produce and
11 distribute the mailer. Rapholz, who is based in Florida, didn't
12 return several calls seeking comment.

13 The article reproduced in the German spam faxes, meanwhile,
14 cited a research report by an analyst named Matthias Redenbach of
15 Midas Research.

16 The report itself discloses that Midas was paid to write it by
17 Michael Drepper Communications, of Mannheim, Germany.
18 Drepper's name appears alongside that of Brent Pierce as an
19 investor-relations contact in many Frankfurt-traded companies.

20 Reys said he was aware of Rapholz's newsletter, but had never
21 seen the fax in German, though it is easily found on the German
22 chat boards discussing CellCyte stock.

23 His lawyers investigated Pierce and found nothing wrong, Reys
24 added.

25 A review of regulatory filings shows Pierce's Stockgroup AG has
26 also promoted other U.S. companies with low-priced shares where
he controlled a large block of stock.

One was oil exploration firm Lexington Resources, whose worth
plummeted from about \$40 million in the summer of 2006 to less
than \$1 million as of Friday. Another, Morgan Creek Energy, saw
its share price drop to 32 cents after trading as high as \$5.30 in
October 2006. Both companies traded on the OTC and in German
stock exchanges.

Pierce did not respond to messages left at his company's
Bellingham office.

On a separate front, CellCyte's auditor also has regulatory issues.
Just months after the firm, Williams & Webster of Spokane, signed
off on CellCyte's 2006 financial statements, the national Public
Company Accounting Oversight Board in June took the unusual
step of barring one of its two name partners from associating with

1 any accounting firm, and suspended the other for a year, over
2 inadequate scrutiny of a different public company.

3 82. After the *Seattle Times* story appeared, individuals began to inquire about Reys's
4 credentials as set forth in the SEC filings, Rapholz's *Economic Advice* and the Company's
5 website. The Reys façade, which CellCyte had crafted and worked to maintain, began to crack.

6 83. Among those who questioned Reys's published credentials were individuals who
7 had known him for decades. One source has confirmed that Reys's resume falsification had
8 started forty years before in the late 1960's when he began to lie about attending the University
9 of Washington. Reys attended classes at the university, over a period of a few weeks in 1965,
10 but withdrew almost immediately before earning any credits toward a degree. He could not have
11 "majored in finance," as Defendants represented to the SEC and the investing public because he
12 had not finished a class, let alone earned a degree.

13 84. In addition, questions arose about Reys's claim to hold any sort of CPA
14 designation. The Washington State Board of Accountancy, which regulates CPA's in the state,
15 confirmed that "CPA designate" is an obsolete term reserved for *graduates* who received a
16 degree in accounting but were not yet licensed. There is no evidence Reys ever received a
17 degree in accounting. Moreover, the Washington State Board of Accountancy discontinued use
18 of the term in 2001 – six years before CellCyte used it in SEC filings. The American Institute of
19 Certified Public Accountants never used the term. The Washington State Board of Accountancy
20 is currently investigating Reys.

21 85. There was not even any evidence that Reys had any on-the-job practical
22 experience with accounting. For fifteen years, Reys and his former wife had owned and
23 operating a lumber yard together. The former wife, not Reys, kept the books – which would at
24 least be unusual for a business owner with a CPA designation. Reys habitually leaves his fifteen
25 years at the family's lumber company off of his resume.
26



1 86. The same source, a witness who has known Reys for years, confirmed that
2 CellCyte would not be the first time Reys had falsified his resume. After the lumber yard closed,
3 Reys wanted to enter the pharmaceutical industry. He accepted an out-of-state interview for a
4 job that required a college degree, specifically stating that he did have a degree. When the
5 company discovered he did not have a degree, the interview was terminated and Reys was sent
6 home.

7 87. During the first week in January, pressured by inquiries related to Reys's
8 credentials including an inquiry by the Seattle Times, CellCyte removed from its website claims
9 made about Reys's experience after an inquiry by the Seattle Times. Coincident with this
10 removal, the Company's shares began to plummet as investors lost confidence in the credibility
11 of the Company.

12 88. On January 9, 2008, the Seattle Times wrote in an article entitled, "CellCyte
13 shares plummet; questions raised about CEO's bio" the following:

14 Shares in fledgling biotechnology company CellCyte Genetics,
15 whose market value soared to more than \$400 million last fall after
16 being hyped by offshore shareholders, plunged 55 percent Monday
17 and Tuesday in heavy selling.

18 The sharp drop coincided with changes made on the company's
19 Web site after The Seattle Times inquired late last week about the
20 accuracy of statements in the biography of CellCyte chief
21 executive and co-founder Gary Reys.

22 Claims removed from the Web site include statements that Reys
23 had led his previous company "from conception to early human
24 clinical trials in 18 months," and that he had helped an early
25 generic pharmaceuticals company through an initial stock offering
26 and a sale to a drug-industry giant.

Reys said any inaccuracies in his profile were unintentional.

"We at CellCyte strive to be ... truthful and endeavor to display
integrity to the public and insist (on) that with our personnel," he
wrote in an e-mail. "If an error is brought to our attention we
correct it immediately ... "



1 But other misleading statements remain on the company's site and
2 in the filing it made with the Securities and Exchange Commission
to begin trading its shares.

3 Both documents state that he "attended the University of
4 Washington and majored in finance." According to university
5 records, however, he enrolled in autumn 1965 and withdrew within
6 weeks; he did not receive any credits toward a degree.

7 Asked about the discrepancy, Reys said in an e-mail that he
8 attended some night-school business classes at the university and
9 was forced to withdraw from the full-time program due to financial
10 hardship. He said he later enrolled at Auerswald's Business
11 University, a one-time Seattle business college.

12 Both documents say Reys received a "CPA designate," and until
13 late last week the Web site said he was a past member of the
14 Washington Society of Certified Public Accountants. But the
15 Washington state Board of Accountancy says he is not registered
16 as a certified public accountant, nor does it have any record that
17 Reys took the CPA test in the state.

18 Reys said that in 1967 he passed the test on his second try after
19 enrolling in a CPA coaching course at Auerswald's, and became a
20 member of the Washington Society of CPAs until 1969. He added
21 that he never claimed to be "a practicing CPA."

22 Reys' membership in the association couldn't be verified because
23 the association's records, unlike the Board of Accountancy's, do
24 not extend back to the 1960s.

25 The SEC filing says that in addition to being chairman, president
26 and CEO at CellCyte, Reys is its chief financial officer and
principal accounting officer.

The background of executives plays an outsized role in biotech
companies' bid to attract investors, said Paul Latta, a Seattle-based
analyst with McAdams Wright Ragen.

"If you can bring management to the table who has a track record
of getting drugs through the process, it automatically brings
credibility," he said.

Conversely, inaccurate biographical information in SEC filings
could open the door to legal action from shareholders, said
University of Washington law professor Sean O'Connor.

"Whatever you disclose to the SEC has to be correct, and can't be
misleading," said O'Connor, a specialist on securities law. "Often
the company was sold to investors based on the strength of the
founders."

1 Major stockholder

2 Reys owns about a third of CellCyte's shares after a transaction
3 last February when the then-private company combined with a
4 shell company with shares trading in the loosely regulated OTC
5 Bulletin Board and in Frankfurt.

6 Some 2 million shares of CellCyte are controlled by G. Brent
7 Pierce, a stock promoter banned by the British Columbia Securities
8 Commission, who paid hundreds of thousands of dollars for a
9 campaign of spam faxes and glossy mailers touting the company's
10 stem-cell technology in the U.S. and Germany.

11 A regulator in B.C. said last month that such tactics are commonly
12 used in "pump-and-dump" schemes to inflate a small company's
13 shares before selling out.

14 Reys said CellCyte is not responsible for the promotional activity,
15 and that its foray into alternative markets is a legitimate step on its
16 way to a major trading floor like Nasdaq.

17 The company employs 16 people and recently moved from its
18 startup offices in Kirkland to a larger facility in Bothell.

19 In a November interview, Reys said investors' faith in the
20 company's patented technology was the reason for its large market
21 capitalization, which at the time made it the area's fourth-most-
22 valuable biotech.

23 But as of Tuesday, stockholders seemed to have had a change of
24 mind. The company's value was more than halved in two days, to
25 \$188 million. Selling volume Tuesday was the highest in the
26 company's eight-month history of trading.

Pharmaceutical background

Reys' CellCyte profile refers to executive stints with Pfizer and
Rhone Poulenc Rorer. But it also describes him as part of a "five
member founding executive team forming Schein Pharmaceutical,
taking the company through an IPO and the acquisition by Bayer
AG."

Reys said he was the Western sales manager when Schein
Pharmaceutical was formed in 1985. But he acknowledged that
***he'd left before Bayer bought a 28 percent stake in 1994 and the
1998 IPO.***

"In my profile the wording was meant to state events about Schein
and has been reworded since," he said by e-mail. "This was not
meant to deceive anyone, just a mistake in sequences and, indeed, I
was not with Schein at the time of those events."

1 That claim was absent from the company's Web site Monday, but
2 was back on there as of Tuesday.

3 CellCyte also eliminated some references to Reys' role in bringing
4 his previous company, Cennapharm, to early clinical trials in
5 humans. Reys' tenure at the company ended in 2003, and was
6 followed by a bitter legal dispute with the company's founders;
7 court documents in that dispute say the company never tested its
8 product on people. [Emphasis added.]

9 89. The article did not highlight all discrepancies in publications of Reys's biography,
10 including the claim that CellCyte had acquired Genespan, a previous Reys employer.⁵³ In fact,
11 Genespan had gone into bankruptcy in June 2002, years before CellCyte was founded, and
12 auctioned off most of its assets that same month.⁵⁴ At most, CellCyte or one of the founders
13 could have acquired some of the defunct company's assets, as they claimed elsewhere.

14 90. CellCyte's stock plummeted as the disclosures hit the market – from a high of
15 \$7.02 on January 4, 2008 to as low as \$2.20 on January 9, 2008, as investors lost faith in the
16 company's prior representatives.

17 91. Later in January 2008, the SEC commenced an informal non-public inquiry
18 relating to certain matters related to the Company's filings. According to a then-company-
19 insider, the SEC was investigating CellCyte for fraud. The SEC requested that the Company
20 voluntarily produce documents relating to its investigation.⁵⁵ The Company indicated it would
21 cooperate fully.⁵⁶

22 92. On May 12, 2008, CellCyte learned that the SEC's informal inquiry had become a
23 formal investigation. The SEC investigation is ongoing.

24 ⁵³ THE WALL STREET TRANSCRIPT, Company Interview with Gary A. Reys and Theresa A.
25 Deisher (June 18, 2007).

26 ⁵⁴ SEATTLE PI, "Genespan Corp. files for Chapter 7 bankruptcy," (June 13, 2002);
www.murhpyauctions.net.

⁵⁵ Cellcyte Form 10-Q, March 31, 2008.

⁵⁶ *Id.*

1 93. On May 29, 2008, CellCyte announced that RedChip Visibility had “initiated
2 coverage” on CellCyte, implying that an analyst had initiated coverage on the floundering
3 stock.⁵⁷ In fact, CellCyte paid \$36,000 for the coverage and the related “Initial Report.”⁵⁸
4 RedChip Companies, Inc., the parent of RedChip Visibility, is an “a small cap research and
5 financial public relations firm” that disclosed:

6 None of the profiles issued by RedChip Companies, Inc.
7 constitutes a recommendation for any investor to purchase or sell
8 any particular security or that any security is suitable for any
9 investor. CellCyte Genetics Corp. paid REdCHip Visibility, a
10 division of RedChip Companies, Inc., \$36,000 for RedChip
11 Visibility Program services which included the preparation of this
12 equity research report.⁵⁹

13 Notably, the paid-for equity report, created and published after the SEC investigation began and
14 after this lawsuit was filed, does not include the misrepresentations concerning Defendant Reys’s
15 background.

16 **VI. APPLICABILITY OF PRESUMPTION OF RELIANCE**
17 **UNDER THE FRAUD ON THE MARKET DOCTRINE**

18 94. The market for CellCyte Genetics Corporation’s common stock was open, well-
19 developed and efficient at all relevant times for the following reasons, among others:

20 95. CellCyte Genetics stock met the requirements for listing, and was listed and
21 actively traded on the OTC, a highly efficient and automated market;

22 96. As a regulated issuer, CellCyte Genetics filed periodic public reports with the
23 SEC;

24 97. CellCyte regularly communicated with public investors via established market
25 communication mechanisms, including through regular distribution of press releases on the
26

27 ⁵⁷ PRIME NEWSWIRE, Red Chip Visibility Initiates Research Coverage on CellCyte
28 Genetics Corp., www.cellcyte.com.

29 ⁵⁸ *Id.*; see also RedChip Visibility Initial Report, www.RedChip.com.

30 ⁵⁹ *Id.*

1 national circuits of major newswire services and through other wide-ranging public disclosures,
2 such as communications with the financial press and other similar reporting services;

3 98. As a result of the foregoing, the market for CellCyte's common stock promptly
4 digested current information regarding CellCyte from all publicly available sources and reflected
5 such information in CellCyte's stock price. Under these circumstances, all purchasers of
6 CellCyte's common stock during the Class Period suffered similar injury through their purchase
7 of CellCyte's common stock at artificially inflated prices and a presumption of reliance applies.

8 **VII. NO SAFE HARBOR**

9 99. The statutory safe harbor provided for forward-looking statements under certain
10 circumstances does not apply to any of the allegedly false statements pleaded in this complaint.
11 Many of the specific statements pleaded herein were not identified as "forward-looking
12 statements" when made. To the extent there were any forward-looking statements, there were no
13 meaningful cautionary statements identifying important factors that could cause actual results to
14 differ materially from those in the purportedly forward-looking statements. Alternatively, to the
15 extent that the statutory safe harbor does apply to any forward-looking statements pleaded
16 herein, Defendants are liable for those false forward-looking statements because at the time each
17 of those forward-looking statements was made, the particular speaker knew that the particular
18 forward-looking statement was false, and/or the forward-looking statement was authorized
19 and/or approved by an executive officer of CellCyte who knew that those statements were false
20 when made.

21 100. The market for CellCyte's common stock was open, well-developed and efficient
22 at all relevant times. As a result of these materially false and misleading statements and failures
23 to disclose, CellCyte's common stock traded at artificially inflated prices during the Class
24 Period. Lead Plaintiffs and other members of the Class purchased or otherwise acquired
25 CellCyte Genetics Corporation common stock relying upon the integrity of the market price of
26



1 CellCyte's common stock and market information relating to CellCyte, and have been damaged
2 thereby.

3 101. During the Class Period, Defendants materially misled the investing public,
4 thereby inflating the price of CellCyte's common stock, by publicly issuing false and misleading
5 statements and omitting to disclose material facts necessary to make Defendants' statements, as
6 set forth herein, not false and misleading. Said statements and omissions were materially false
7 and misleading in that they failed to disclose material adverse information and misrepresented
8 the truth about the Company, its business and operations, as alleged herein.

9 102. At all relevant times, the material misrepresentations and omissions particularized
10 in this Complaint directly or proximately caused or were a substantial contributing cause of the
11 damages sustained by Lead Plaintiffs and other members of the Class. As described herein,
12 during the Class Period, Defendants made or caused to be made a series of materially false or
13 misleading statements about CellCyte Genetics Corporation's business, prospects and operations.
14 These material misstatements and omissions had the cause and effect of creating in the market an
15 unrealistically positive assessment of CellCyte Genetics Corporation and its business, prospects
16 and operations, thus causing the Company's common stock to be overvalued and artificially
17 inflated at all relevant times. Defendants' materially false and misleading statements during the
18 Class Period resulted in Lead Plaintiffs and other members of the Class purchasing the
19 Company's common stock at artificially inflated prices, thus causing the damages complained of
20 herein.

21 **VIII. LOSS CAUSATION/ECONOMIC LOSS**

22 103. During the Class Period, as detailed herein, Defendants engaged in a scheme to
23 deceive the market and a course of conduct that artificially inflated CellCyte stock price and
24 operated as a fraud or deceit on Class Period purchasers of CellCyte stock by misrepresenting the
25 Company's operating success and future business prospects and the qualifications and
26 experience of management. Defendants achieved this façade of success, growth and strong



1 future business prospects by blatantly misrepresenting the credentials of its founder, CEO and
2 President Gary Reys and by overstating the schedule and certainty of getting any of its products
3 to the marketplace. Later, however, when Defendants' prior misrepresentations and fraudulent
4 conduct were disclosed and became apparent to the market, CellCyte stock fell precipitously as
5 the prior artificial inflation came out of CellCyte's stock price. As a result of their purchases of
6 CellCyte stock during the Class Period, Lead Plaintiffs and other members of the Class suffered
7 economic loss, *i.e.*, damages under the U.S. federal securities laws.

8 **COUNT I**

9 **Violations of Section 11 of the 1933 Act**
10 **Against CellCyte, Reys and Berninger**

11 104. Lead Plaintiffs repeat and incorporate each allegation contained above, except to
12 the extent any allegations above contain facts that are unnecessary or irrelevant for purposes of
13 stating a claim under Section 11, including allegations that might be interpreted to sound in fraud
14 or relating to any state of mind on the part of the Section 11 Defendants.

15 105. This Count is brought pursuant to § 11 of the 1933 Act, 15 U.S.C. § 77k, on
16 behalf of the Class, against CellCyte, Reys and Berninger (the "§ 11 Defendants").

17 106. The Registration Statements for CellCyte's shares contained untrue statements of
18 material facts, omitted to state other facts necessary to make the statements made not misleading,
19 and/or omitted to state material facts required to be stated therein.

20 107. The § 11 Defendants were responsible for the contents and dissemination of the
21 Registration Statement.

22 108. None of the § 11 Defendants made a reasonable investigation or possessed
23 reasonable grounds for believing that the statements contained in the Registration Statement
24 were true and without omissions of any material facts and were not misleading.

25 109. By reasons of the conduct herein alleged, each Defendant violated § 11 of the
26 1933 Act.



1 110. Lead Plaintiffs purchased or otherwise acquired CellCyte shares pursuant to or
2 traceable to the Registration Statement.

3 111. Lead Plaintiffs and the Class have sustained damages. The value of CellCyte's
4 shares have declined substantially subsequent to and due to Defendants' violations.

5 112. At the time of their purchases of shares, Lead Plaintiffs and other members of the
6 Class were without knowledge of the facts concerning the untrue statements or omissions herein
7 and could not have reasonably discovered those facts before January 2008. Less than one year
8 has elapsed from the time that Lead Plaintiffs discovered or reasonably could have discovered
9 the facts upon which this complaint is based to the time that Lead Plaintiffs filed this complaint.
10 Less than three years have elapsed between the time that the securities upon which this Count is
11 brought were offered to the public and the time Lead Plaintiffs filed this Complaint.

12 **COUNT II**

13 **Violations of Section 12(a)(2) of the 1933 Act**
14 **Against CellCyte, Reys and Berninger**

15 113. This count is brought by Lead Plaintiffs under § 12(a)(2) of the Securities Act (15
16 U.S.C. § 77l(a)(2)) on behalf of all purchasers of CellCyte shares in connection with and
17 traceable to the CellCyte public offering. This cause of action is brought against defendants
18 CellCyte, Reys and Berninger (hereinafter the "§ 12 Defendants").

19 114. Defendants were sellers, offerors and/or solicitors of sales of the CellCyte shares
20 offered pursuant to the July 11, 2007 Registration Statement and Prospectus.

21 115. Lead Plaintiffs repeat and incorporate each and every allegation contained above
22 as if fully set forth herein, except to the extent any allegations above contain facts that are
23 unnecessary or irrelevant for purposes of stating a claim under § 12, including allegations that
24 might be interpreted to sound in fraud or relating to any state of mind on the part of the § 12
25 Defendants, other than strict liability or negligence.
26

1 116. The § 12 Defendants offered and sold a security, namely CellCyte common stock,
2 by means of a prospectus and/or sales brochures of CellCyte or of those who offered and sold
3 CellCyte's shares. This prospectus contained untrue statements of material facts and omitted to
4 state material facts necessary in order to make the statements, in light of the circumstances under
5 which they were made, not misleading. Defendants owed to the purchasers of CellCyte shares
6 sold in the offering the duty to make a reasonable and diligent investigation of the statements
7 contained in the Prospectus and Registration Statement, to ensure that such statements were true
8 and that there was no omission to state a material fact required to be stated in order to make the
9 statements contained therein not misleading. Had the § 12 Defendants satisfied this duty, they
10 would have known of the false or misleading statements and omissions in the Prospectus and
11 Registration Statement.

12 117. The § 12 Defendants actively solicited the sale of shares to serve their own
13 financial interests. CellCyte, as the issuer, solicited and actually transferred title of the
14 securities; and each of the Individual Defendants is a solicitor seller because he signed those
15 documents that solicit the sale of securities, *i.e.*, the Prospectus and/or Registration Statement.

16 118. Lead Plaintiffs did not know that the representations made in connection with the
17 distribution to them by the § 12 Defendants regarding the matters described above were untrue
18 and did not know the above described material facts that were not disclosed.

19 119. As a result of the matters set forth herein, pursuant to § 12(a)(2) of the Securities
20 Act, Lead Plaintiffs and Class members are entitled to recover the consideration paid for such
21 security with interest thereon, less the amount of any income received thereon, upon the tender
22 of such security, or for rescissory damages if they no longer own such shares.

23 120. Lead Plaintiffs and putative Class members who do not opt out, hereby tender
24 their shares in CellCyte.

25 121. The § 12 Defendants are liable to Lead Plaintiffs and Class members pursuant to
26 § 12(a)(2) of the Securities Act as sellers of CellCyte's shares.

1 122. Less than three years elapsed from the time that the securities upon which this
2 Count is brought were sold to the public to the time of the filing of this action. Less than one
3 year elapsed from the time when Lead Plaintiffs discovered or reasonably could have discovered
4 the facts upon which this Count is based to the time of the filing of this action.

5 **COUNT III**

6 **Violations of Section 15 of the 1933 Act Against Reys and Berninger**

7 123. Lead Plaintiffs repeat and incorporates each allegation contained above expect as
8 to those allegations of fraud and/or scienter.

9 124. This Count is brought pursuant to § 15 of the 1933 Act.

10 125. Each of the Defendants in this Count was a control person of CellCyte by virtue
11 of his or her position as a trustee and/or senior officer of CellCyte. These Defendants each had a
12 series of direct and/or indirect business and/or personal relationships with other trustees and/or
13 officers and/or major shareholders of CellCyte.

14 126. Each of the Defendants in this Count was a culpable participant in the violations
15 of §§ 11 and 12 of the 1933 Act alleged in the Counts above, based on their having signed or
16 authorized the signing of the Registration Statement and having otherwise participated in the
17 process which allowed the offer or sale of the shares of the company to be successful.

18 **COUNT IV**

19 **Violation of Section 10(b) of the Exchange Act of 1934**
20 **and Rule 10b-5, Against All Defendants**

21 127. Lead Plaintiffs incorporate each allegation contained above as if fully set forth
22 herein.

23 128. During the Class Period, Defendants disseminated or approved the materially
24 false and misleading statements specified above, which they knew or deliberately disregarded
25 were misleading in that they contained misrepresentations and failed to disclose material facts
26



1 necessary in order to make the statements made, in light of the circumstances under which they
2 were made, not misleading.

3 129. Defendants: (a) employed devices, schemes, and artifices to defraud; (b) made
4 untrue statements of material fact and/or omitted to state material facts necessary to make the
5 statements not misleading; and (c) engaged in acts, practices, and a course of business which
6 operated as a fraud and deceit upon the purchasers of the Company's common stock during the
7 Class Period. The scheme included: (a) making false statements about the background and
8 experience of Reys; and (b) the promulgation of promotional material by Pierce that falsely
9 touted the company's success.

10 130. CellCyte regularly communicated with public investors via established market
11 communication mechanisms, including through regular disseminations of press releases on the
12 national circuits of major newswire services and through other wide-ranging public disclosures,
13 such as communications with the financial press and other similar reporting services; and

14 131. Defendants, directly and indirectly, by the use, means or instrumentalities of
15 interstate commerce and/or of the mails, engaged and participated in a continuous course of
16 conduct to conceal adverse material information about the business, operations and future
17 prospects of CellCyte as specified herein.

18 132. Defendants had actual knowledge of the misrepresentations and omissions of
19 material facts set forth herein, or acted with reckless disregard for the truth in that they failed to
20 ascertain and to disclose such facts, even though such facts were available to them. Defendants'
21 material misrepresentations and/or omissions were done knowingly or recklessly and for the
22 purpose and effect of concealing the truth about the background of CellCyte's CEO and future
23 business prospects from the investing public and supporting the artificially inflated price of its
24 securities. As demonstrated by Defendants' misstatements of its CEO's background throughout
25 the Class Period, if Defendants did not have actual knowledge of the misrepresentations and
26 omissions alleged, they were reckless in failing to obtain such knowledge by deliberately



1 refraining from taking those steps necessary to discover whether those statements were false or
2 misleading.

3 133. As a result of the dissemination of the materially false and misleading information
4 and failure to disclose material facts, as set forth above, the market price of CellCyte stock was
5 artificially inflated during the Class Period. In ignorance of the fact that the market prices of
6 CellCyte were artificially inflated, and relying directly or indirectly on the false and misleading
7 statements made by Defendants, or upon the integrity of the market in which the securities trade,
8 and/or on the absence of material adverse information that was known to or recklessly
9 disregarded by Defendants but not disclosed in public statements by Defendants during the Class
10 Period, Lead Plaintiffs and other members of the Class acquired CellCyte stock during the Class
11 Period at artificially high prices and were damaged thereby.

12 134. As alleged herein, Defendants acted with scienter in that they knew that public
13 documents and statements issued or disseminated in the name of the Company were materially
14 false and misleading; they knew that such statements or documents would be issued or
15 disseminated to the investing public; and they knowingly (or recklessly) and substantially
16 participated or acquiesced in the issuance or dissemination of such statements or documents as
17 primary violators of the federal securities laws. As set forth elsewhere herein in detail,
18 Defendants also understood the critical role that the academic and professional credentials of the
19 CEO and the management team played in attracting investors to a fledgling biotechnology
20 company, and it was for this very reason that Defendants lied about Reys's qualifications. Prior
21 to submitting its SEC filings, the Company should have confirmed the credentials of its
22 executives. Therefore, the Company either knowingly submitted a false biography for Reys or
23 was reckless in doing so.

24 135. In particular, defendants Reys and Berninger engaged in such a scheme to inflate
25 the price of CellCyte in order to increase investment in the Company and to allow for the
26



1 capitalization of the Company thereby. Pierce did it in order to increase the value of his shares
2 so that he could engage in his standard “pump and dump”.

3 136. The scienter of Reys is evident as he plainly knew of the misrepresentations of his
4 qualifications. Further, Reys had a long history of lying about his qualifications. Prior to his
5 second marriage, Reys told his ex-wife that he had attended the University of Washington.
6 Ms. Gehl checked on this during the course of her marriage and confirmed that this was false.
7 She confronted Reys who admitted that he attended the University of Washington for just one
8 week and did not complete a course. After the couple sold their lumber company in 1989, Reys
9 tried to re-enter the workforce. He was given a job tip by a person who told Reys he needed a
10 degree to interview. Reys said he had one. He was flown to California to interview. During the
11 course of the interview the Company became suspicious, called the University of Washington
12 and discovered Reys did not have a degree and he was sent home.

13 137. Berninger acted with scienter and/or was reckless in not knowing the truth about
14 Reys. Berninger who was employed at Cennapharm certainly knew the prospectus falsely
15 portrayed Rey’s experience there. Thus, he was reckless in not knowing the truth about the other
16 misrepresentation regarding Reys and/or its reasonable to infer that he either knew of the
17 misrepresentation or was reckless in that regard as others discovered his phony resume just in the
18 course of an interview.

19 138. Without the funds raised through the prospectus, the Company would have failed.
20 And, these Defendants knew that no one would have bought CellCyte stock if Reys had told the
21 truth about his qualifications.

22 139. By virtue of its receipt of information reflecting the true facts regarding CellCyte,
23 its control over and/or receipt and/or modification of CellCyte’s allegedly materially misleading
24 misstatements and/or its associations with the Company which made them privy to confidential
25 proprietary information concerning CellCyte, participated in the fraudulent scheme alleged
26 herein.



1 140. Defendants knew or recklessly disregarded the falsity and misleading nature of
2 the information which they caused to be disseminated to the investing public.

3 141. The ongoing fraudulent scheme described in this complaint could not have been
4 perpetrated over the period of time it has occurred without the knowledge and complicity of the
5 personnel at the highest level of CellCyte, including defendants Reys and Berninger.

6 142. By virtue of the foregoing, Defendants have violated Section 10(b) of the
7 Exchange Act and Rule 10b-5.

8 143. Lead Plaintiffs and the Class have suffered damages in that, in reliance on the
9 integrity of the market, they paid artificially inflated prices for CellCyte common stock. Lead
10 Plaintiffs and the Class would not have purchased CellCyte common stock at the prices they
11 paid, or at all, if they had been aware that the market prices had been artificially and falsely
12 inflated by Defendants' misleading statements.

13 144. As a direct and proximate result of these Defendants' wrongful conduct, Lead
14 Plaintiffs and the other members of the Class suffered damages in connection with their
15 purchases of CellCyte common stock during the Class Period.

16 **COUNT V**

17 **Violation of Section 20(a) of the Exchange Act**
18 **of 1934 Against the Individual Defendants**

19 145. Lead Plaintiffs incorporate each allegation contained above as if fully set forth
20 herein.

21 146. The Individual Defendants acted as controlling persons of CellCyte Genetics
22 Corporation within the meaning of Section 20(a) of the Exchange Act as alleged herein. Because
23 of their positions as officers and/or directors of CellCyte, and their ownership of CellCyte stock,
24 the Individual Defendants had the power and authority to cause CellCyte to engage in the
25 wrongful conduct complained of herein. Because of such conduct, the Individual Defendants are
26 liable pursuant to Section 20(a) of the Exchange Act.

1 147. As a direct and proximate result of the Individual Defendants' wrongful conduct,
2 Lead Plaintiffs and other members of the Class suffered damages in connection with their
3 purchase of CellCyte stock during the Class Period.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Lead Plaintiffs prays for relief and judgment, as follows:

6 A. Determining that this action is a proper class action, designating Lead Plaintiffs as
7 representatives of the Class and under Rule 23 of the Federal Rules of Civil Procedure and Lead
8 Plaintiffs' counsel as Lead Counsel;

9 B. Awarding compensatory damages in favor of Lead Plaintiffs and other Class
10 members against all Defendants, jointly and severally, for all damages sustained as a result of
11 Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

12 C. Awarding Lead Plaintiffs and the Class their reasonable costs and expenses
13 incurred in this action, including counsel fees and expert fees; and

14 D. Such other and further relief as the Court may deem just and proper.

15 **JURY DEMAND**

16 Pursuant to Federal Rule of Civil Procedure 38(a), Lead Plaintiffs hereby demand a trial
17 by jury of all issues so triable.

18 DATED: July 10, 2008.

19 HAGENS BERMAN SOBOL SHAPIRO LLP

20
21 By /s/ Steve W. Berman
22 Steve W. Berman, WSBA #12536
23 Jeniphr A.E. Breckenridge, WSBA #21410
24 1301 Fifth Avenue, Suite 2900
25 Seattle, Washington 98101
26 Telephone: (206) 623-7292
Facsimile: (206) 623-0594

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Reed R. Kathrein
HAGENS BERMAN SOBOL SHAPIRO LLP
715 Hearst Avenue, Suite 202
Berkeley, CA 94710
Telephone: (510) 725-3000
Facsimile: (510) 725-3001

Attorneys for Lead Plaintiffs

CERTIFICATE OF SERVICE

On July 10, 2008, I caused to be electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following attorneys of record:

- Aneelah Afzali - aneelah.afzali@stokeslaw.com
- Chris Farias - chris.farias@stokeslaw.com
- Steve W. Berman - steve@hbsslaw.com
- Peter E. Borkon - peterb@hbsslaw.com
- Reed R. Kathrein - reed@hbsslaw.com
- Rebecca M. Lamberth - RMLamberth@Duanemorris.com
- Robert M. Palumbos - RMPalumbos@Duanemorris.com
- Rodney L. Umberger , Jr. - rumberger@williamskastner.com
- Elizabeth Ann Leland - bleland@kellerrohrback.com
- Lynn Lincoln Sarko - lsarko@kellerrohrback.com
- Daniel S. Sommers - dsommers@cmht.com
- S. Douglas Bunch - dbunch@cmht.com
- Steven J. Toll - stoll@cmht.com
- Matthew James Ide - mjide@yahoo.com
- Donald J. Enright - denright@finkelsteinthompson.com
- Mark Punzalan - mpunzalan@finkelsteinthompson.com
- Elizabeth K. Tripodi - etripodi@finkelsteinthompson.com
- Jake Downs - jdowns@williamskastner.com
- Rod Umberger - rumberger@williamskastner.com
- Gwendolyn C. Payton - paytong@lanepowell.com
- Christopher Brian Wells - wellsc@lanepowell.com
- David L Young - youngd@lanepowell.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Larry Steven Gangnes - gangnesl@lanepowell.com

Brian J Meenaghan - meenaghanb@lanepowell.com

Executed this 10th day of July 2008, at Seattle, Washington.

/s/ Steve W. Berman
STEVE W. BERMAN

CERTIFICATION OF NAMED PLAINTIFF
PURSUANT TO FEDERAL SECURITIES LAWS

Anthony J. Newbill and James W. Newbill (“Plaintiffs”) declare as to the claims asserted under the federal securities laws, that:

1. Plaintiffs have reviewed a complaint alleging securities fraud against Celcyte Genetics Corp. and authorized its filing.

2. Plaintiffs did not acquire the security that is the subject of this action at the direction of Plaintiffs’ counsel in order to participate in this private action or any other litigation under the federal securities laws.

3. Plaintiffs are willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary.

4. Plaintiffs have made no transaction(s) during the Class Period in the debt or equity securities that are the subject of this action except those set forth below:

Acquisitions	Date Acquired	No. Shares Acquired	Acquisition Price Per Share
CCYG			

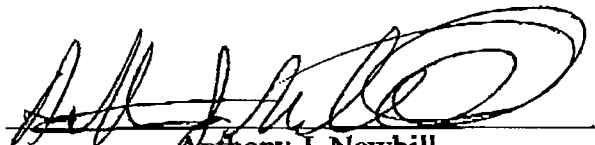
FRONT

FAX NO. 5288840287

Feb. 05 2008 12:18PM PT

except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered or approved by the court.

I declare under penalty of perjury that the foregoing is true and correct.
Executed this 5th day of February, 2008.


Anthony J. Newbill


James W. Newbill

FROM :

FAX NO. 3286840287

Feb. 05 2008 12:16PM P3
Page 1 of 3**Tony Newbill** 2/5/2008

From: "Tony Newbill" <ajironworks@w3az.net>
Sent: Tuesday, February 05, 2008 9:52 AM
Subject: CellCyte Genetics Corporation (CCYG) Securities Litigation ; list of Newbill Shares Bought

Date	Symbol	Description	Commission/Fees	Interest	Amount
12/12/2007	CCYG	BOUGHT 500 SHARES OF CCYG AT \$7.38	(\$7.00)	\$0.00	(\$3,697.00)
12/12/2007	CCYG	BOUGHT 500 SHARES OF CCYG AT \$7.38	(\$7.00)	\$0.00	(\$3,697.00)
12/12/2007	CCYG	BOUGHT 500 SHARES OF CCYG AT \$7.38	(\$7.00)	\$0.00	(\$3,697.00)
12/12/2007	CCYG	BOUGHT 500 SHARES OF CCYG AT \$7.35	(\$7.00)	\$0.00	(\$3,682.00)
12/12/2007	CCYG	BOUGHT 500 SHARES OF CCYG AT \$7.38	(\$7.00)	\$0.00	(\$3,697.00)
12/12/2007	CCYG	BOUGHT 500 SHARES OF CCYG AT \$7.38	(\$7.00)	\$0.00	(\$3,697.00)
12/12/2007	CCYG	BOUGHT 500 SHARES OF CCYG AT \$7.38	(\$7.00)	\$0.00	(\$3,697.00)
12/12/2007	CCYG	BOUGHT 500 SHARES OF CCYG AT \$7.38	(\$7.00)	\$0.00	(\$3,697.00)
12/5/2007	CCYG	BOUGHT 100 SHARES OF CCYG AT \$7.34	(\$7.00)	\$0.00	(\$741.00)
12/4/2007	CCYG	BOUGHT 500 SHARES OF CCYG AT \$7.23	(\$7.00)	\$0.00	(\$3,622.00)
12/4/2007	CCYG	BOUGHT 500 SHARES OF CCYG AT \$7.23	(\$7.00)	\$0.00	(\$3,622.00)
12/4/2007	CCYG	BOUGHT 100 SHARES OF CCYG AT \$7.20	(\$7.00)	\$0.00	(\$727.00)
12/4/2007	CCYG	BOUGHT 500 SHARES OF CCYG AT \$7.23	(\$7.00)	\$0.00	(\$3,622.00)
12/4/2007	CCYG	BOUGHT 400 SHARES OF CCYG AT \$7.23	(\$7.00)	\$0.00	(\$2,899.00)
12/4/2007	CCYG	BOUGHT 500 SHARES OF CCYG AT \$7.23	(\$7.00)	\$0.00	(\$3,622.00)

2/5/2008

FROM :

FHX NO. 9288840287

Feb. 05 2008 12:17PM P4

[Handwritten Signature] 2/5/2008

12/4/2007	CCYG	BOUGHT 500 SHARES OF CCYG AT \$7.23	(\$7.00)	\$0.00	(\$3,622.00)
11/20/2007	CCYG	BOUGHT 500 SHARES OF CCYG AT \$6.31	(\$7.00)	\$0.00	(\$3,162.00)
11/20/2007	CCYG	BOUGHT 500 SHARES OF CCYG AT \$6.31	(\$7.00)	\$0.00	(\$3,162.00)
11/20/2007	CCYG	BOUGHT 500 SHARES OF CCYG AT \$6.31	(\$7.00)	\$0.00	(\$3,162.00)
11/20/2007	CCYG	BOUGHT 500 SHARES OF CCYG AT \$6.30	(\$7.00)	\$0.00	(\$3,157.00)
11/20/2007	CCYG	BOUGHT 230 SHARES OF CCYG AT \$6.30	(\$7.00)	\$0.00	(\$1,456.00)
11/20/2007	CCYG	BOUGHT 500 SHARES OF CCYG AT \$6.28	(\$7.00)	\$0.00	(\$3,147.00)
11/20/2007	CCYG	BOUGHT 500 SHARES OF CCYG AT \$6.29	(\$7.00)	\$0.00	(\$3,152.00)
11/19/2007	CCYG	BOUGHT 500 SHARES OF CCYG AT \$6.25	(\$7.00)	\$0.00	(\$3,132.00)
11/19/2007	CCYG	BOUGHT 345 SHARES OF CCYG AT \$6.24	(\$7.00)	\$0.00	(\$2,159.80)
11/19/2007	CCYG	BOUGHT 500 SHARES OF CCYG AT \$6.20	(\$7.00)	\$0.00	(\$3,107.00)
11/16/2007	CCYG	BOUGHT 500 SHARES OF CCYG AT \$6.25	(\$7.00)	\$0.00	(\$3,132.00)
11/16/2007	CCYG	BOUGHT 500 SHARES OF CCYG AT \$6.25	(\$7.00)	\$0.00	(\$3,132.00)
11/16/2007	CCYG	BOUGHT 500 SHARES OF CCYG AT \$6.25	(\$7.00)	\$0.00	(\$3,132.00)
11/16/2007	CCYG	BOUGHT 500 SHARES OF CCYG AT \$6.25	(\$7.00)	\$0.00	(\$3,132.00)
11/16/2007	CCYG	BOUGHT 500 SHARES OF CCYG AT \$6.25	(\$7.00)	\$0.00	(\$3,132.00)
11/16/2007	CCYG	BOUGHT 500 SHARES OF CCYG AT \$6.25	(\$7.00)	\$0.00	(\$3,132.00)
11/16/2007	CCYG	BOUGHT 500 SHARES OF CCYG AT \$6.25	(\$7.00)	\$0.00	(\$3,132.00)

As your agreement for the receipt and use of market data provides, the securities markets (1) reserve all rights to the market data that they make available; (2) do not guarantee that data; and (3) shall not be liable for any loss due to their negligence or to any cause beyond their reasonable control.


2/5/2008

FRONT

FILE NO. 0200040201

FEB. 05 2008 12:17PM PD

© Copyright 2005 Scottrade. All Rights Reserved.

Anthony J. Newbill - 
2/5/2008