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AT SEATTLE
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WESTERN DISTRICT OF WASHINGTON
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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

C09-1263 BAT

12 SECURITIES AND EXCHANGE COMMISSION,

Civil Action No. _____

13 Plaintiff,

COMPLAINT

14 vs.

15 CELLCYTE GENETICS CORPORATION and
16 RONALD W. BERNINGER,

17 Defendants.

19 Plaintiff Securities and Exchange Commission ("Commission" or "SEC") alleges:

20 SUMMARY OF ACTION

21 1. During 2007, CellCyte Genetics Corporation ("CellCyte"), a fledgling
22 biotechnology company based in Bothell, Washington, repeatedly misled the investing public
23 about its key product, a purported stem cell therapy to treat and repair damaged organs. CellCyte
24 claimed it had received approval from the U.S. Food and Drug Administration ("FDA") and was
25 on the verge of beginning human clinical trials with a special stem cell compound to repair the
26 heart. Contrary to these claims, CellCyte did not even know how to produce the stem cell
27 compound and had not satisfied any of the FDA requirements to begin human clinical trials.

1 2. In late 2005, CellCyte paid \$90,000 to license very early-stage stem cell
2 technology. No research had been done using the technology since 2002. CellCyte failed in its
3 efforts to raise money to begin conducting research, so it completed a reverse merger with a shell
4 company controlled by a Canadian stock promoter to become a public company in March 2007.
5 CellCyte agreed that the stock promoter would receive 15 million supposedly “freely tradeable”
6 CellCyte shares as part of an illegal unregistered stock distribution, in exchange for about \$6
7 million in funding.

8 3. CellCyte then made false and misleading statements in several SEC filings and
9 other materials distributed to potential investors about the Company’s purportedly late-stage
10 stem cell research and imminent clinical trials. Ronald Berninger, CellCyte’s Chief Scientific
11 Officer and a member of the Board of Directors, originally approved or participated in the
12 drafting of many of the false and misleading statements and knew or was reckless in not
13 knowing that the statements were false and misleading. During fall 2007, the stock promoter
14 conducted a promotional campaign on behalf of CellCyte that included millions of spam emails,
15 blast faxes, and newsletters containing false and misleading statements, some of which
16 originated from CellCyte’s own investor materials.

17 4. The misleading stock promotion campaign caused CellCyte’s stock price to soar
18 to a high of \$7.50 per share, with a 50-fold increase in trading volume. At its peak, CellCyte had
19 a market capitalization of nearly \$450 million. The stock now trades at less than \$0.08 per share,
20 leaving investors who were deceived by the fraudulent materials with massive losses.

21 5. The Commission seeks an order enjoining Defendants from future violations of
22 the federal securities laws, requiring Berninger to pay a civil monetary penalty, and barring
23 Berninger from serving as an officer or director of a public company.

24 **JURISDICTION AND VENUE**

25 6. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d)
26 and 22(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77t(b), 77t(d) and
27 77v(a)] and Sections 21(d), 21(e) and 27 of the Securities Exchange Act of 1934 (“Exchange

1 Act”) [15 U.S.C. §§ 78u(b), 78u(e) and 78aa]. Defendants, directly or indirectly, have made
2 use of the means and instrumentalities of interstate commerce, or of the mails, in connection
3 with the acts, practices and courses of business alleged in this Complaint.

4 7. Venue in this District is proper pursuant to Section 22(a) of the Securities Act
5 [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Certain of the
6 transactions, acts, practices and courses of conduct alleged in this Complaint occurred within
7 the Western District of Washington.

8 8. Assignment to the Seattle Division is appropriate pursuant to Local Rule 5(1)
9 because a substantial part of the events that give rise to the claims occurred in Snohomish
10 County. In addition, defendant Ronald Berninger resides in Snohomish County and
11 CellCyte’s principal place of business is located in Snohomish County.

12 **DEFENDANTS**

13 9. Defendant CellCyte Genetics Corporation, formerly Shepard Inc., is a Nevada
14 corporation that maintains its principal place of business in Bothell, Washington. CellCyte
15 purported to be engaged in stem cell research until July 1, 2008, when it suspended operations
16 and placed all employees on unpaid leave. CellCyte’s stock is quoted on the OTC Bulletin
17 Board under the symbol CCYG.

18 10. Defendant Ronald Berninger, age 63, of Mukilteo, Washington, co-founded
19 CellCyte in 2005 and served as Chief Scientific Officer and a Board member of CellCyte
20 through 2008.

21 **FACTUAL ALLEGATIONS**

22 **A. CellCyte Is Formed and Licenses Very Early-Stage Stem Cell Technology.**

23 11. In 2004, Berninger learned from a friend that a scientist who worked for a
24 government agency had made a stem cell-related discovery that might be available for
25 licensing.

26 12. In 2001 and 2002, the scientist had observed in fewer than ten mice that a
27 specially formulated compound, when injected into the bloodstream before a dose of stem

1 cells, appeared to cause the stem cells to migrate to specific organs and remain there in
2 significant concentrations. Normally, stem cells that are injected into the bloodstream do not
3 remain in any particular organ and are quickly flushed out of the body. The special
4 compound was supplied by a European biotechnology company, which also funded the
5 scientist's research. The biotechnology company and the scientist filed patent applications
6 related to the discovery in 2002.

7 13. In 2002, before the scientist could perform additional research using the
8 compound, the biotechnology company stopped funding the research and supplying the
9 special compound. The scientist performed no further research using the compound after
10 2002.

11 14. Berninger and CellCyte's CEO formed CellCyte as a private company in early
12 2005 for the purpose of acquiring the rights to the scientist's discovery.

13 15. In January 2005, Berninger and CellCyte's CEO met with the scientist for
14 several days to review the details of her research findings. At the meetings and in discussions
15 thereafter, the scientist told Berninger and CellCyte's CEO that she had only conducted
16 preliminary research.

17 16. The scientist also told Berninger and CellCyte's CEO that she had never
18 conducted research on the compound using mice with injured organs, and therefore had no
19 data showing that the stem cells could repair or improve function in injured organs. The
20 scientist also disclosed that she had not yet done any toxicology studies, and that the mixture
21 of the compound and stem cells had killed some mice during her research. Further, the
22 scientist told Berninger and CellCyte's CEO that CellCyte would need to obtain or develop a
23 supply of the special compound before any further research could begin.

24 17. In October 2005, CellCyte paid \$90,000 to license the scientist's discovery.
25 The license agreement required CellCyte to raise an additional \$5.5 million within one year to
26 demonstrate that it was capable of conducting active research and development of the
27 technology. At least by the time CellCyte entered into the license agreement, Berninger and
28

1 CellCyte's CEO were aware that the scientist had only achieved positive results in a small
2 number of mice, and that CellCyte would need to conduct extensive further research and
3 testing on much larger numbers of mice before preparing an investigational new drug ("IND")
4 application for FDA approval to begin any human clinical trials.

5 **B. CellCyte Merges With a Public Shell Company and Attempts To Conduct**
6 **Research.**

7 18. In late 2006, while unsuccessfully trying to raise \$5.5 million to retain the
8 license to the scientist's discovery and begin research, CellCyte's CEO met a Canadian stock
9 promoter who controlled a public shell company. CellCyte and the stock promoter conducted
10 a reverse merger between CellCyte and the shell company, thereby making CellCyte a public
11 company.

12 19. In connection with the reverse merger, CellCyte received about \$6 million
13 from the stock promoter and other investors, and the stock promoter received about 15 million
14 purportedly "freely tradeable" CellCyte shares. As a result, the stock promoter controlled
15 about 90% of CellCyte's public float (the shares outstanding and available for trading by the
16 public). No registration statement was in effect covering the stock promoter's receipt of the
17 15 million shares and no exemption from the registration requirements applied.

18 20. CellCyte's stock was first quoted on the Over The Counter (OTC) Bulletin
19 Board on February 16, 2007, and the reverse merger officially closed on March 30, 2007.

20 21. In March 2007, CellCyte began searching for lab space and hiring personnel,
21 including a Vice President of Research & Development who reported to Berninger.

22 22. In May 2007, CellCyte began attempting to formulate the special compound
23 itself for the first time. Within a few months, the Vice President of Research & Development
24 raised concerns to Berninger and CellCyte's CEO that the compound was not properly
25 formulated and could not be used to successfully develop the stem cell technology.

26 23. In October 2007, CellCyte began conducting experiments using the compound
27 in mice. Those experiments failed to produce any of the results necessary to support an IND
28

1 application. CellCyte conducted additional experiments using mice in November 2007 and
2 March 2008, which also failed.

3 **C. CellCyte Makes False and Misleading Statements About Its Research.**

4 24. After CellCyte became a public company in March 2007, it made false and
5 misleading statements in SEC filings about its research and development efforts and business
6 prospects. Berninger originally approved or participated in the drafting of many of these
7 statements for use in materials that were distributed to potential investors before and after
8 CellCyte became a public company.

9 25. CellCyte made false and misleading statements in four different SEC filings,
10 including a Form 8-K current report filed April 5, 2007, a Form 10-Q quarterly report filed
11 May 18, 2007, a Form SB-2 registration statement filed June 29, 2007, and a Form 10-Q
12 quarterly report filed August 14, 2007. CellCyte's Board, including Berninger, approved the
13 Form SB-2 filing, and CellCyte's CEO emailed Berninger a draft of the SB-2 filing that
14 contained the false and misleading statements and asked Berninger to review it. Berninger
15 also was present at Board meetings during which the May and August 2007 Form 10-Q
16 reports were approved or discussed.

17 i. CellCyte Falsely Claimed That Its Stem Cell Drugs Were Already in FDA-
18 Approved Clinical Trials.

19 26. In the SEC filings listed in paragraph 25 above and other materials distributed
20 to potential investors, CellCyte stated that its stem cell discoveries "are the first stem cell
21 enabling drugs to enter Investigational New Drug ('IND') supported by the United States
22 Food and Drug Administration ('FDA') clinical trials."

23 27. In reality, Berninger knew that CellCyte never filed an IND application for the
24 stem cell technology and therefore never received FDA approval to begin clinical trials.
25 Berninger knew or was reckless in not knowing that the statement was materially false and
26 misleading.

1 ii. CellCyte Misled Investors About the Advanced Stage of Its Research and
2 Development.

3 28. In the SEC filings listed in paragraph 25 above and other materials distributed
4 to potential investors, CellCyte portrayed its stem cell research as having been “proven in
5 extensive late-stage animal studies.”

6 29. In reality, Berninger knew that the research had not been proven in extensive
7 late-stage animal studies. Berninger knew or was reckless in not knowing that the statement
8 was materially false and misleading.

9 iii. CellCyte Falsely Stated That It Was Within Months of Starting Clinical
10 Trials To Repair the Heart.

11 30. In the SEC filings listed in paragraph 25 above and other materials distributed
12 to potential investors, CellCyte claimed that “the company is advancing [the heart compound]
13 into human trials for repair of the heart with an IND submission scheduled for the second half
14 of 2007.”

15 31. In reality, Berninger knew that CellCyte never attempted any research nor
16 achieved any results to prove that its stem cell technology could repair the heart in mice, a
17 prerequisite to beginning any clinical trial to repair the heart in humans. Indeed, in June 2006,
18 Berninger told CellCyte’s CEO that the Company’s target was to complete research and
19 testing for an IND submission involving the heart in two years, i.e. by June 2008. Berninger
20 knew or was reckless in not knowing that the statement was materially false and misleading.

21 iv. CellCyte Falsely Stated That It Was Working Closely With Swedish
22 Medical Center.

23 32. In the SEC filings listed in paragraph 25 above and other materials distributed
24 to potential investors, CellCyte claimed to be “working closely with Swedish Medical Center
25 in Seattle and their internationally recognized organ transplant group” on the stem cell
26 technology.

1 33. In reality, CellCyte’s CEO had merely spoken to an acquaintance at Swedish
2 Medical Center, a leading health care provider in the Pacific Northwest, about the possibility
3 of conducting joint research in the future. Berninger knew that CellCyte was not actually
4 working with Swedish Medical Center. Berninger knew or was reckless in not knowing that
5 the statement was materially false and misleading.

6 v. CellCyte Falsely Stated That Its Drugs Had Been Shown To Improve Bone
7 Marrow Engraftment.

8 34. In the SEC filings listed in paragraph 25 above and other materials distributed
9 to potential investors, CellCyte claimed that during its research using the special compound,
10 “the stem cells migrated directly to the bone marrow, therefore increasing the effective dose
11 of stem cells available for engraftment.”

12 35. In reality, Berninger knew that the preliminary research on the compound had
13 not shown stem cells migrating to the bone marrow. CellCyte never conducted any research
14 involving bone marrow, and it had no data showing that the compound caused stem cells to
15 localize in bone marrow or improved bone marrow engraftment. Berninger knew or was
16 reckless in not knowing that the statement was materially false and misleading.

17 **D. CellCyte Makes Material Omissions About Its Research and Operations.**

18 36. CellCyte also omitted critical information from its public statements about its
19 research. Most significantly, CellCyte failed to disclose that it was unable to obtain the
20 specially formulated compound from the European biotechnology company that had
21 originally funded the stem cell research, and that CellCyte had not determined how to
22 properly formulate the special compound from material that CellCyte obtained from other
23 sources. CellCyte needed to have a sufficient supply of the special compound before it could
24 begin conducting the extensive additional research that was required to determine whether an
25 IND application could be filed to begin human clinical trials.

26 37. CellCyte touted a lack of safety and toxicity concerns about the special
27 compound, but failed to state that no safety or toxicology studies had been done or that some

1 mice had died during the scientist's preliminary research, suggesting that some doses of the
2 compound and stem cells were in fact toxic and even fatal.

3 38. CellCyte also failed to disclose that its experiments in mice between October
4 2007 and March 2008 were unsuccessful.

5 39. The information omitted by CellCyte, and the false and misleading statements
6 described in paragraphs 26 to 34 above, were material to investors because they concerned the
7 Company's ultimate likelihood of success in developing stem cell technology to repair
8 damaged organs.

9 **E. The Stock Promoter Conducts a Widespread Promotional Campaign.**

10 40. In April 2007, Berninger and CellCyte's CEO met with the Canadian stock
11 promoter to discuss investor relations, a marketing budget, and the stock promoter's efforts to
12 raise additional capital for CellCyte. CellCyte gave the stock promoter investor materials that
13 contained the false and misleading statements described in paragraphs 26 to 34 above, to use
14 in preparing promotional materials.

15 41. In August 2007, CellCyte's CEO told Berninger that the stock promoter was
16 ready to launch a promotional campaign for CellCyte and would spend \$2 million on the
17 campaign in exchange for additional stock in a future offering. Between August and
18 December 2007, the stock promoter distributed millions of spam emails, blast faxes, and
19 newsletters that contained false and misleading statements about CellCyte, some of which
20 originated from CellCyte's own investor materials.

21 42. During the promotional campaign, CellCyte's stock price rose from around
22 \$4.00 to \$7.50, and its daily trading volume increased from 2,000 to more than 100,000
23 shares. At one point during the campaign, CellCyte's market capitalization reached nearly
24 \$450 million.

25 43. By the end of January 2008, after the stock promotion campaign had concluded
26 (and after much of the Canadian promoter's stock had been dumped into the market), CellCyte's
27 stock price declined below a dollar. The stock currently trades at around \$0.07 per share.

1 **FIRST CLAIM FOR RELIEF**

2 *Violations of Securities Act Sections 5(a) and 5(c) by CellCyte*

3 44. The Commission realleges and incorporates by reference paragraphs 1 through
4 43.

5 45. By engaging in the conduct described above, CellCyte, directly or indirectly,
6 made use of means or instruments of transportation or communication in interstate commerce
7 or of the mails to offer or to sell securities through the use or medium of a prospectus or
8 otherwise when no registration statement had been filed or was in effect as to such securities
9 and no exemption from registration was available.

10 46. By reason of the foregoing, CellCyte has violated and, unless restrained and
11 enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C.
12 §§ 77e(a) and 77e(c)].

13 **SECOND CLAIM FOR RELIEF**

14 *Violations of Exchange Act Section 10(b) and Rule 10b-5 Thereunder by All Defendants*

15 47. The Commission realleges and incorporates by reference paragraphs 1 through
16 46.

17 48. By engaging in the conduct described above, CellCyte and Berninger, directly
18 or indirectly, in connection with the purchase or sale of securities, by the use of means or
19 instrumentalities of interstate commerce or of the mails, with scienter:

20 (a) employed devices, schemes, or artifices to defraud;

21 (b) made untrue statements of material facts or omitted to state material
22 facts necessary in order to make the statements made, in the light of the
23 circumstances under which they were made, not misleading; and

24 (c) engaged in acts, practices, or courses of business which operated or
25 would operate as a fraud or deceit upon other persons, including purchasers
26 and sellers of securities.

1 49. By reason of the foregoing, CellCyte and Berninger have violated and, unless
2 restrained and enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C.
3 § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5].

4 **THIRD CLAIM FOR RELIEF**

5 *Violations of and Aiding and Abetting Violations of Exchange Act Section 13(a)* 6 *and Rules 12b-20, 13a-11 and 13a-13 Thereunder by Defendants*

7 50. The Commission realleges and incorporates by reference paragraphs 1 through
8 49.

9 51. By engaging in the conduct described above, CellCyte violated Section 13(a)
10 of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-11 and 13a-13 [17 C.F.R.
11 §§ 240.12b-20, 240.13a-11 and 240.13a-13], which obligate issuers of securities registered
12 pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] to file with the Commission
13 accurate quarterly and current reports.

14 52. By reason of the foregoing, CellCyte has violated and, unless restrained and
15 enjoined, will continue to violate Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and
16 Rules 12b-20, 13a-11 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-11 and 240.13a-13].

17 53. By engaging in the conduct described above, Berninger knowingly provided
18 substantial assistance to CellCyte's filing of materially false and misleading reports with the
19 Commission.

20 54. By reason of the foregoing, Berninger aided and abetted CellCyte's violations
21 of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-11 and
22 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-11 and 240.13a-13]. Unless restrained and
23 enjoined, Berninger will continue to aid and abet such violations.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

Issue an order permanently restraining and enjoining CellCyte and its agents, servants, employees, attorneys, and assigns, and those persons in active concert or participation with them, from violating, directly or indirectly, Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77q(a) and 77q(c)]; Sections 10(b) and 13(a) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78m(a)]; and Rules 10b-5, 12b-20, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-11 and 240.13a-13]; and permanently restraining and enjoining Berninger and his agents, servants, employees, attorneys, and assigns, and those persons in active concert or participation with them, from violating, directly or indirectly, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] and from aiding and abetting violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-11 and 240.13a-13].

II.

Issue an order directing Berninger to pay a civil monetary penalty under Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

III.

Issue an order barring Berninger from serving as an officer or director of any public company, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)].

IV.

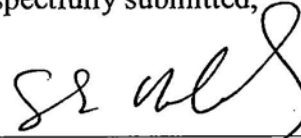
Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

V.

1
2 Grant such other and further relief as this Court may determine to be just and
3 necessary.

4
5 Dated: Sept. 8, 2009

6 Respectfully submitted,

7 

8 Steven D. Buchholz

9 Attorney for Plaintiff
10 SECURITIES AND EXCHANGE
11 COMMISSION