

03-0739

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

RICHARD FUCHS, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

CELL THERAPEUTICS INC., MAX LINK,
and JAMES BIANCO,

Defendants.

No.

CLASS ACTION

CLASS ACTION COMPLAINT FOR
VIOLATIONS OF FEDERAL
SECURITIES LAWS

JURY TRIAL DEMANDED

Plaintiff Richard Fuchs ("Plaintiff"), individually and on behalf of all other persons similarly situated, by his undersigned attorneys, for his complaint against Defendants, alleges the following based upon personal knowledge as to himself and his own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through his attorneys, which included, among other things, a review of the Defendants' public documents, conference calls and announcements made by Defendants, United States Securities and Exchange Commission ("SEC") filings, wire and press releases published by and regarding Cell Therapeutics Inc. ("CTI" or the "Company") securities analysts' reports and advisories about the Company, and information readily obtainable on the Internet. Plaintiff believes that

CLASS ACTION COMPLAINT FOR VIOLATIONS OF
FEDERAL SECURITIES LAWS
Case No. _____; Page 1

LAW OFFICES OF
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1 substantial evidentiary support will exist for the allegations set forth herein after a reasonable
2 opportunity for discovery.

3 **NATURE OF THE ACTION**

4 1. This is a federal action on behalf of persons who purchased or otherwise acquired
5 the securities of CTI between June 7, 2004 and March 4, 2005, inclusive (the "Class Period"),
6 seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").
7

8 **JURISDICTION AND VENUE**

9 2. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of
10 the Exchange Act (15 U.S.C. § 78j(b) and 78t(a)), and Rule 10b-5 promulgated thereunder (17
11 C.F.R. § 240.10b-5).

12 3. This Court has jurisdiction over the subject matter of this action pursuant to 27 of
13 the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331.
14

15 4. Venue is proper in this Judicial District pursuant to § 27 of the Exchange Act, 15
16 U.S.C. § 78aa and 28 U.S.C. § 1391(b). Many of the acts and transactions alleged herein,
17 including the preparation and dissemination of materially false and misleading information,
18 occurred in substantial part in this Judicial District. Additionally, the Company maintains a
19 principal executive office in this Judicial District.
20

21 5. In connection with the acts, conduct, and other wrongs alleged in this Complaint,
22 Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce,
23 including but not limited to, the United States mails, interstate telephone communications, and
24 the facilities of the national securities exchange.
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1 **PARTIES**

2 6. Plaintiff, as set forth in the accompanying certification incorporated by reference
3 herein, purchased CTI securities at artificially inflated prices during the Class Period and has
4 been damaged thereby.

5 7. Defendant CTI is a Washington corporation with its principal executive offices
6 located at 501 Elliott Avenue West, Suite 400, Seattle, WA 98119.

7 8. Defendant Max Link (“Link”) was, at all relevant times, the Chairman of the
8 Company’s Board of Directors.

9 9. Defendant James Bianco (“Bianco”) was, at all relevant times, the Company’s
10 President, Chief Executive Officer, and Director.

11 10. Defendants Link and Bianco are collectively referred to hereinafter as the
12 “Individual Defendants.” During the Class Period, each of the Individual Defendants, as senior
13 executive officers and/or directors of CTI, was privy to non-public information concerning its
14 business, finances, products, markets and present and future business prospects via access to
15 internal corporate documents, conversations and connections with other corporate officers and
16 employees, attendance at management and Board of Directors meetings and committees thereof,
17 and via reports and other information provided to them in connection therewith. Because of their
18 possession of such information, the Individual Defendants knew or recklessly disregarded the
19 fact that adverse facts specified herein had not been disclosed to, and were being concealed from,
20 the investing public.
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24 11. Because of the Individual Defendants’ positions with the Company, they had
25 access to the adverse undisclosed information about the Company’s business, operations,
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1 operational trends, financial statements, markets, and present and future business prospects via
2 access to internal corporate documents (including the Company's operating plans, budgets and
3 forecasts, and reports of actual operations compared thereto), conversations and connections with
4 other corporate officers and employees, attendance at management and Board of Directors
5 meetings and committees thereof, and via reports and other information provided to them in
6 connection therewith.

7
8 12. It is appropriate to treat the Individual Defendants as a group for pleading
9 purposes and to presume that the false, misleading, and incomplete information conveyed in the
10 Company's public filings, press releases, and other publications as alleged herein are the
11 collective actions of the narrowly-defined group of Defendants identified above. Each of the
12 above officers of CTI, by virtue of his or her high-level position with the Company, directly
13 participated in the management of the Company, was directly involved in the day-to-day
14 operations of the Company at the highest levels, and was privy to confidential proprietary
15 information concerning the Company and its business, operations, growth, financial statements,
16 and financial condition, as alleged herein. Said Defendants were involved in drafting, producing,
17 reviewing, and/or disseminating the false and misleading statements and information alleged
18 herein, were aware, or recklessly disregarded, that the false and misleading statements were
19 being issued regarding the Company, and approved or ratified these statements, in violation of
20 the federal securities laws.

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22
23 13. As officers and controlling persons of a publicly-held company whose securities
24 were and are registered with the SEC pursuant to the Exchange Act, and were traded on the
25 NASDAQ and governed by the provisions of the federal securities laws, the Individual
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1 Defendants each had a duty to disseminate accurate and truthful information promptly with
2 respect to the Company's financial condition and performance, growth, operations, financial
3 statements, business, markets, management, earnings, and present and future business prospects,
4 and to correct any previously-issued statements that had become materially misleading or untrue,
5 so that the market price of the Company's publicly-traded securities would be based upon
6 truthful and accurate information. The Individual Defendants' misrepresentations and omissions
7 during the Class Period violated these specific requirements and obligations.
8

9 14. The Individual Defendants participated in the drafting, preparation, and/or
10 approval of the various public and shareholder and investor reports and other communications
11 complained of herein and were aware of, or recklessly disregarded, the misstatements contained
12 therein and omissions therefrom, and were aware of their materially false and misleading nature.
13 Because of their Board membership and/or executive and managerial positions with CTI, each of
14 the Individual Defendants had access to the adverse undisclosed information about CTI's
15 financial condition and performance as particularized herein and knew (or recklessly
16 disregarded) that these adverse facts rendered the positive representations made by or about CTI
17 and its business, issued or adopted by the Company, materially false and misleading.
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19 15. The Individual Defendants, because of their positions of control and authority as
20 officers and/or directors of the Company, were able to and did control the content of the various
21 SEC filings, press releases, and other public statements pertaining to the Company during the
22 Class Period. Each Individual Defendant was provided with copies of the documents alleged
23 herein to be misleading prior to or shortly after their issuance and/or had the ability and/or
24 opportunity to prevent their issuance or cause them to be corrected. Accordingly, each of the
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1 Individual Defendants is responsible for the accuracy of the public reports and releases detailed
2 herein and is therefore primarily liable for the representations contained therein.

3 16. Each of the Defendants is liable as a participant in a fraudulent scheme and course
4 of business that operated as a fraud or deceit on purchasers of CTI securities by disseminating
5 materially false and misleading statements and/or concealing material adverse facts. The scheme
6 (i) deceived the investing public regarding CTI's business, operations, management, and the
7 intrinsic value of CTI securities; and (ii) caused Plaintiff and other members of the Class to
8 purchase CTI securities at artificially inflated prices.
9

10 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

11 17. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil
12 Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or
13 otherwise acquired the securities of CTI between June 7, 2004 and March 4, 2005, or the Class
14 Period, and who were damaged thereby. Excluded from the Class are defendants, the officers
15 and directors of the Company at all relevant times, members of their immediate families and
16 their legal representatives, heirs, successors, or assigns, and any entity in which Defendants have
17 or had a controlling interest.
18

19 18. The members of the Class are so numerous that joinder of all members is
20 impracticable. Throughout the Class Period, CTI's securities were actively traded on the
21 NASDAQ. While the exact number of Class members is unknown to Plaintiff at this time and
22 can only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds
23 or thousands of members in the proposed Class. Record owners and other members of the Class
24 may be identified from records maintained by CTI or its transfer agent and may be notified of the
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1 pendency of this action by mail, using the form of notice similar to that customarily used in
2 securities class actions.

3 19. Plaintiff's claims are typical of the claims of the members of the Class, as all
4 members of the Class are similarly affected by Defendants' wrongful conduct in violation of
5 federal law that is complained of herein.

6 20. Plaintiff will fairly and adequately protect the interests of the members of the
7 Class and has retained counsel competent and experienced in class and securities litigation.

8 21. Common questions of law and fact exist as to all members of the Class and
9 predominate over any questions solely affecting individual members of the Class. Among the
10 questions of law and fact common to the Class are:

11 (a) whether the federal securities laws were violated by Defendants' acts as alleged
12 herein;

13 (b) whether statements made by Defendants to the investing public during the Class
14 Period misrepresented material facts about the business, operations, and management of CTI;
15 and
16

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

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

3 **BACKGROUND**

4 23. CTI develops, acquires and commercializes novel treatments for cancer. The
5 Company's research and in-licensing activities are concentrated on identifying new, less toxic
6 and more effective ways to treat cancer. CTI markets TRISENOX for the treatment of relapsed
7 or refractory acute promyelocytic leukemia in the United States and in the European Union. In
8 addition, the Company has more than 70 ongoing or planned clinical development trials or
9 investigator-sponsored research trials related to potential market expansion for TRISENOX. CTI
10 is developing XYOTAX for the treatment of non-small cell lung cancer ("NSCLC") and ovarian
11 cancer.
12

13 24. XYOTAX ("paclitaxel poliglumex") is a pharmaceutical that links paclitaxel, the
14 active ingredient in Taxol (R), to a biodegradable polyglutamate polymer. This polymer
15 technology results in a new chemical entity, designed to selectively deliver higher and potentially
16 more effective levels of active chemotherapeutics to tumors. Blood vessels in tumor tissue,
17 unlike blood vessels in normal tissue, are porous to molecules like polyglutamate. There are
18 several STELLAR trials of XYOTAX including STELLAR 3, a phase III clinical trial of
19 carboplatin in combination with either XYOTAX(TM) or paclitaxel for the potential front-line
20 treatment of poor performance status (PS2) patients with NSCL cancer. In June 2003, XYOTAX
21 received fast track designation from the Food and Drug Administration ("FDA") for the NSCLC
22 pivotal trials for having the potential to address an unmet medical need.
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**MATERIALLY FALSE AND MISLEADING
STATEMENTS ISSUED DURING THE CLASS PERIOD**

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3 25. On June 7, 2004, CTI issued a press release entitled “Cancer Experts Present
4 Updates on XYOTAX, Pixantrone and TRISENOX® at Investor Meeting During ASCO.” In
5 the press release, the Company, in relevant part, stated:

6 At a conference sponsored by Cell Therapeutics, Inc. (CTI) (Nasdaq: CTIC;
7 Nuovo Mercato) during the 40th Annual Meeting of the American Society of
8 Clinical Oncology, five cancer experts provided a clinical perspective on the
9 continuing investigation of XYOTAX, pixantrone and TRISENOX (arsenic
10 trioxide). In an update on the status of the phase III trials in non-small cell lung
11 cancer, Philip Bonomi, M.D. of Rush-Presbyterian-St. Luke's Medical Center
**presented encouraging developments in the STELLAR 3 pivotal trial. As a
12 result of higher than historically predicted survival rates the projected
13 number of events required to perform the primary efficacy analysis and data
14 release of the STELLAR 3 trial will not occur until early 2005.**

15 (Emphasis added.)

16 26. On July 27, 2004, CTI issued a press release announcing financial results for the
17 second quarter ended June 30, 2004. With respect to XYOTAX, the Company, in its July 27,
18 2004, press release stated:

19 “**We’re encouraged by the rebound in TRISENOX® sales, making this the best
20 quarter since launch,” stated James A. Bianco, M.D., President and CEO of CTI.
21 “We are also very excited about the completion of enrollment in our
22 XYOTAX(TM) STELLAR lung cancer trials. Our STELLAR 3 data release
23 has been pushed out to early 2005 due to longer patient survival estimates.
24 As such our efforts are now focused on pre-launch activities and being in
25 position to submit a new drug application as soon as possible following
26 positive trial results.”**

27 (Emphasis added.)

28 27. On July 28, 2004, CTI announced the pricing of the underwritten public offering
29 of 9,000,000 shares of its common stock at a public offering price of \$4.75 per share. These
30 shares were sold under an existing shelf registration statement. The offering was increased by
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1 1,000,000 shares over the proposed offering announced on July 14, 2004. In connection with
2 this offering, CTI had granted the underwriters an option to purchase up to 1,350,000 additional
3 shares to cover over-allotments.

4 28. On August 31, 2004, CTI announced the underwriters of its recent 9,000,000
5 share common stock public offering exercised their over-allotment option and purchased
6 1,350,000 additional shares of common stock from CTI at a price of \$4.75 per share, minus the
7 underwriting discounts. CTI sold a total of 10,350,000 shares of common stock in the offering,
8 including the shares covered by the exercised over-allotment option, for aggregate gross
9 proceeds of approximately \$49.16 million.

10
11 29. On November 9, 2004, CTI issued a press release to report financial results for the
12 third quarter ended September 30, 2004. With respect to XYOTAX, the Company stated:

13
14 **“We continue to be encouraged and enthusiastic about the prolonged**
15 **survival and relatively low adverse event rates being observed in our**
16 **XYOTAX pivotal trials in non-small cell lung cancer (NSCLC) and look**
17 **forward to reporting the preliminary results early next year,”** stated James A.
18 Bianco, M.D., President and CEO of CTI. “In addition, the Gynecologic
19 Oncology Group (GOG) had a very successful meeting with the FDA and is now
20 in the process of readying clinical sites to initiate a XYOTAX phase III clinical
21 trial in ovarian cancer. This milestone, coupled with the completion of the three
22 STELLAR pivotal trials and our progress in opening clinical sites for our phase
23 III trial of pixantrone in aggressive relapsed non-Hodgkin’s lymphoma (NHL) has
24 positioned the Company for a very exciting 2005.”

25 (Emphasis added.)

26 30. On December 16, 2004, CTI issued a press release entitled “Encouraging Survival
Estimates in Non-Small Cell Lung Cancer Push XYOTAX(TM) Pivotal Trial Data Release to
End of First Quarter 2005. XYOTAX Trial Updates Presented at Wachovia’s ‘Ten for ‘05’
Biotechnology Conference.” In the press release, the Company stated, in relevant part:

1 Earlier this year, CTI **extended the timelines for the pivotal trial data release**
2 **due to higher than historically predicted survival rates.** In his update today,
3 James A. Bianco, M.D., President and CEO of CTI, said that at the current rate
4 the trials would not reach the 311 events (deaths) required for data analysis until
5 early January and February next year for STELLAR 3 and 4, respectively. As of
6 December 9, 281 deaths have been reported in the doublet therapy trial,
7 STELLAR 3, and 222 events among 388 patients who received XYOTAX at the
8 175 mg/m2 dose or control in the single agent trial, STELLAR 4. The STELLAR
9 trials are the largest trials ever conducted in the PS2 population and address very
10 important unmet medical needs in the treatment of NSCLC.

11 “With a median follow up of over one year for STELLAR 3 and almost eight
12 months for STELLAR 4, the increase in the number of doses of chemotherapy
13 being administered as well as **the survival estimates are very encouraging,”**
14 **stated Bianco.** “On the STELLAR 3 trial, 36 percent of the patients received six
15 cycles of the doublet therapy, with 50 percent of the patients on STELLAR 4
16 receiving four to six cycles of single agent therapy. Recently published results
17 report that for front-line treatment of NSCLC, PS2 patients tolerate on average
18 only two cycles of therapy, with only 10 percent to 20 percent being alive at one
19 year following single agent or doublet therapy, respectively. **Because the trials**
20 **have not yet reached the number of events required for analysis, the study**
21 **data remains blinded; however, we’re observing ‘blended’ rates of**
22 **tolerability and survival that are substantially outside the range of what is in**
23 **the literature.”**

24 (Emphasis added.)

25 31. On December 20, 2004, CTI issued a press release with the headline: “Cell
26 Therapeutics Announces \$18.4 Million Direct Equity Placement.” Therein, CTI stated that it had
agreed to sell approximately 2,586,000 shares of its common stock to several institutional
investors in a registered direct offering at a negotiated price per share of \$7.10.

32. On January 27, 2005, CTI announced that it was on track to report results in late
March or early April from the XYOTAX pivotal trial in NSCLC, known as STELLAR 3, now
that the required number of events (deaths) for data analysis had been reached. More
specifically, the Company, in its press release, stated:

Due to prolonged survival rates in this blinded trial, CTI had to delay the data
analysis from the date anticipated when the trial was initiated in November 2002.

1 The company also updated its progress on the two other ongoing pivotal trials in
2 NSCLC, STELLAR 4 and STELLAR 2. In STELLAR 4, approximately 250 of
3 the 313 required events have been reached and in STELLAR 2, 578 out of the 635
4 required events have been reached. CTI expects results from STELLAR 4 in the
5 second quarter of this year and results from STELLAR 2 in the third quarter.

6 **“The median and one-year survival estimates in STELLAR 3 are very**
7 **encouraging** and longer than data reported from prior trials of doublet
8 chemotherapy in poor performance status lung cancer patients,” commented Scott
9 Stromatt, M.D., Senior VP for Clinical and Regulatory Development at CTI.
10 “The XYOTAX product team is working diligently to have data available for
11 submission as a late-breaking abstract at the American Society of Clinical
12 Oncology meeting. **Analyzing and reporting the STELLAR trial results is the**
13 **team’s number one priority as it is pivotal for our NDA submission.”**

14 (Emphasis added.)

15 33. The statements contained in ¶¶ 25-26, 29-30, and 32 were materially false and
16 misleading when made because Defendants failed to disclose or indicate the following: (1) that
17 contrary to the Defendant’s express and repeated representations, the results of the STELLAR 3
18 trial were not encouraging; (2) that XYOTAX failed to boost survival for non-small cell lung
19 cancer; (3) that XYOTAX failed to show greater survival benefit than Taxol, the leading drug on
20 the market; and (4) that based on the results of the trial, the Company would not be able to begin
21 pre-launch activities and position itself to submit a new drug application for XYOTAX.

22 **The Truth Begins to Emerge**

23 34. On March 7, 2005, prior to the opening of the market, CTI issued a press release
24 entitled “STELLAR 3 Pivotal Trial Shows XYOTAX(TM) Reduces Side Effects of Paclitaxel
25 With Equivalent Efficacy in the Treatment of Non-Small Cell Lung Cancer (NSCLC) Patients.”

26 In the press release, the Company stated:

Cell Therapeutics, Inc. (CTI) (Nasdaq: CTIC) announced that while a phase III
study of XYOTAX in combination with carboplatin, known as STELLAR 3,
missed its primary endpoint, it met statistical significance for non-inferiority of
survival compared to paclitaxel in combination with carboplatin. Patients who

1 received the XYOTAX/carboplatin regimen had significantly less hair loss and a
2 reduction in other side effects, including muscle and joint pain, cardiac symptoms,
3 and an overall reduction in neurologic toxicities compared to patients who
4 received the standard paclitaxel/carboplatin regimen. The XYOTAX regimen
5 was given in a convenient 10-minute infusion without the requirement for steroids
6 and other premedications. Hypersensitivity reactions were rare on the
7 XYOTAX/carboplatin arm of the study despite the lack of premedications.
8 Complete research findings from this trial are expected to be presented at the
9 American Society of Clinical Oncology (ASCO) meeting in mid-May.

10 “When one controls for validated risk factors, including weight loss, LDH (a
11 marker of tumor aggressiveness), and calcium levels, the single most important
12 and highly statistically significant determinant of survival in the STELLAR 3
13 study was whether the patient received XYOTAX instead of paclitaxel,” noted
14 Jack W. Singer, M.D., Chief Medical Officer at CTI. “This intent-to-treat
15 analysis, using a Cox multivariate model, was pre-specified in the protocol's
16 statistical analysis plan. It provides a strong argument for a survival benefit for
17 XYOTAX over paclitaxel that is not apparent in the primary analysis.”

18 The multi-center, randomized, controlled phase III study compared XYOTAX
19 (210mg/m²) in combination with carboplatin (AUC 6) to paclitaxel (225mg/m²)
20 in combination with carboplatin (AUC 6) every three weeks for up to six cycles of
21 therapy in 400 poor performance status (PS2) NSCLC patients.

22 “We are disappointed that XYOTAX in combination with carboplatin showed
23 equal efficacy after the unprecedented blended median and 1-year survival we
24 saw on the trial. We are encouraged by the preliminary analysis, which
25 demonstrates a significant XYOTAX treatment effect, reduction in toxicities, and
26 increased patient convenience,” stated James A. Bianco, M.D., President and
CEO of CTI. “We look forward to our upcoming discussion with FDA regarding
our STELLAR 2 amendment and the preliminary results of STELLAR 3, as well
as having results from STELLAR 2 in April, with STELLAR 4 results coming in
shortly thereafter.”

35. News of this shocked the market. Shares fell \$4.75 per share or 47.5 percent, on
March 7, 2005, to close at \$5.25 per share, on unusually high volume.

UNDISCLOSED ADVERSE FACTS

36. The market for CTI's securities was open, well-developed, and efficient at all
relevant times. As a result of these materially false and misleading statements and failures to
disclose, CTI's securities traded at artificially inflated prices during the Class Period. Plaintiff

1 and other members of the Class purchased or otherwise acquired CTI securities relying upon the
2 integrity of the market price of CTI's securities and market information relating to CTI, and have
3 been damaged thereby.

4 37. During the Class Period, Defendants materially misled the investing public,
5 thereby inflating the price of CTI's securities, by publicly issuing false and misleading
6 statements and omitting to disclose material facts necessary to make Defendants' statements, as
7 set forth herein, not false and misleading. Said statements and omissions were materially false
8 and misleading in that they failed to disclose material adverse information and misrepresented
9 the truth about the Company, its business and operations, as alleged herein.
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11 38. At all relevant times, the material misrepresentations and omissions particularized
12 in this Complaint directly or proximately caused or were a substantial contributing cause of the
13 damages sustained by Plaintiff and other members of the Class. As described herein, during the
14 Class Period, Defendants made or caused to be made a series of materially false or misleading
15 statements about CTI's business, prospects, and operations. These material misstatements and
16 omissions had the cause and effect of creating in the market an unrealistically positive
17 assessment of CTI and its business, prospects, and operations, thus causing the Company's
18 securities to be overvalued and artificially inflated at all relevant times. Defendants' materially
19 false and misleading statements during the Class Period resulted in Plaintiff and other members
20 of the Class purchasing the Company's securities at artificially inflated prices, thus causing the
21 damages complained of herein.
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1 **ADDITIONAL SCIENTER ALLEGATIONS**

2 39. As alleged herein, Defendants acted with scienter in that Defendants knew that
3 the public documents and statements issued or disseminated in the name of the Company were
4 materially false and misleading; knew that such statements or documents would be issued or
5 disseminated to the investing public; and knowingly and substantially participated or acquiesced
6 in the issuance or dissemination of such statements or documents as primary violations of the
7 federal securities laws. As set forth elsewhere herein in detail, Defendants, by virtue of their
8 receipt of information reflecting the true facts regarding CTI, their control over, and/or receipt
9 and/or modification of CTI's allegedly materially misleading misstatements, and/or their
10 associations with the Company which made them privy to confidential proprietary information
11 concerning CTI, participated in the fraudulent scheme alleged herein.
12

13 40. Defendants knew and/or recklessly disregarded the falsity and misleading nature
14 of the information which they caused to be disseminated to the investing public. The ongoing
15 fraudulent scheme described in this Complaint could not have been perpetrated over a substantial
16 period of time, as has occurred, without the knowledge and complicity of the personnel at the
17 highest level of the Company, including the Individual Defendants.
18

19 41. During the Class Period and with the Company's stock trading at an inflated
20 price, CTI completed an offering of 9,000,000 shares of its common stock at a public offering
21 price of \$4.75 per share. Additionally, CTI completed the sale of approximately 2,586,000
22 shares of its common stock to several institutional investors at a negotiated price per share of
23 \$7.10.
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1 42. Additionally, during the Class Period and with the Company's stock trading at an
2 inflated price, Defendant Bianco sold 39,625 shares for proceeds of \$300,877. Other company
3 insiders sold 34,467 shares for proceeds of \$298,812.85.

4 **Applicability of Presumption of Reliance**
5 **Fraud-On-The-Market Doctrine**

6 43. At all relevant times, the market for CTI securities was an efficient market for the
7 following reasons, among others:

- 8 (a) CTI stock met the requirements for listing, and was listed and actively traded on
9 the NASDAQ, a highly efficient and liquid market;
- 10 (b) As a regulated issuer, CTI filed periodic public reports with the SEC and the
11 NASDAQ;
- 12 (c) CTI regularly communicated with public investors via established market
13 communication mechanisms, including through regular disseminations of press
14 releases on the national circuits of major newswire services and through other
15 wide-ranging public disclosures, such as communications with the financial press
16 and other similar reporting services; and CTI's securities trading volume was
17 substantial during the Class Period; and
- 18 (d) CTI was followed by several securities analysts employed by major brokerage
19 firms who wrote reports which were distributed to the sales force and certain
20 customers of their respective brokerage firms. Each of these reports was publicly
21 available and entered the public marketplace.

22 44. As a result of the foregoing, the market for CTI securities promptly digested
23 current information regarding CTI from all publicly-available sources and reflected such
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1 information in CTI's stock price. Under these circumstances, all purchases of CTI securities
2 during the Class Period suffered similar injury through their purchase of CTI securities at
3 artificially inflated prices and a presumption of reliance applies.

4 **NO SAFE HARBOR**

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

20 **VIOLATION OF SECTION 10(b) OF THE**
21 **EXCHANGE ACT AGAINST AND RULE 10b-5**
22 **PROMULGATED THEREUNDER AGAINST ALL DEFENDANTS**

23 46. Plaintiff repeats and realleges each and every allegation contained above as if
24 fully set forth herein.
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1 47. During the Class Period, Defendants carried out a plan, scheme, and course of
2 conduct which was intended to and, throughout the Class Period, did (i) deceive the investing
3 public, including Plaintiff and other Class members, as alleged herein; and (ii) cause Plaintiff and
4 other members of the Class to purchase CTI securities at artificially inflated prices. In
5 furtherance of this unlawful scheme, plan, and course of conduct, Defendants, and each of them,
6 took the actions set forth herein.
7

8 48. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made
9 untrue statements of material fact and/or omitted to state material facts necessary to make the
10 statements not misleading; and (iii) engaged in acts, practices, and a course of business which
11 operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to
12 maintain artificially high market prices for CTI securities in violation of Section 10(b) of the
13 Exchange Act and Rule 10b-5. All Defendants are sued either as primary participants in the
14 wrongful and illegal conduct charged herein or as controlling persons as alleged below.
15

16 49. Defendants, individually and in concert, directly and indirectly, by the use, means,
17 or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a
18 continuous course of conduct to conceal adverse material information about the business,
19 operations, and future prospects of CTI as specified herein.
20

21 50. These Defendants employed devices, schemes, and artifices to defraud, while in
22 possession of material adverse non-public information, and engaged in acts, practices, and a
23 course of conduct as alleged herein in an effort to assure investors of CTI's value and
24 performance and continued substantial growth, which included the making of, or the
25 participation in the making of, untrue statements of material facts and omitting to state material
26

1 facts necessary in order to make the statements made about CTI and its business operations and
2 future prospects in the light of the circumstances under which they were made, not misleading,
3 as set forth more particularly herein, and engaged in transactions, practices and a course of
4 business which operated as a fraud and deceit upon the purchasers of CTI securities during the
5 Class Period.

6
7 51. Each of the Individual Defendants' primary liability, and controlling person
8 liability, arises from the following facts: (i) the Individual Defendants were high-level
9 executives and/or directors at the Company during the Class Period and members of the
10 Company's management team or had control thereof; (ii) each of these Defendants, by virtue of
11 his or her responsibilities and activities as a senior officer and/or director of the Company, was
12 privy to and participated in the creation, development, and reporting of the Company's internal
13 budgets, plans, projections, and/or reports; (iii) each of these Defendants enjoyed significant
14 personal contact and familiarity with the other Defendants and was advised of and had access to
15 other members of the Company's management team, internal reports, and other data, and
16 information about the Company's finances, operations, and sales at all relevant times; and (iv)
17 each of these Defendants was aware of the Company's dissemination of information to the
18 investing public which they knew or recklessly disregarded was materially false and misleading.
19

20
21 52. The Defendants had actual knowledge of the misrepresentations and omissions of
22 material facts set forth herein, or acted with reckless disregard for the truth in that they failed to
23 ascertain and to disclose such facts, even though such facts were available to them. Such
24 Defendants' material misrepresentations and/or omissions were done knowingly or recklessly
25 and for the purpose and effect of concealing CTI's operating condition and future business
26

1 prospects from the investing public and supporting the artificially inflated price of its securities.
2 As demonstrated by Defendants' overstatements and misstatements of the Company's business,
3 operations, and earnings throughout the Class Period, Defendants, if they did not have actual
4 knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain
5 such knowledge by deliberately refraining from taking those steps necessary to discover whether
6 those statements were false or misleading.
7

8 53. As a result of the dissemination of the materially false and misleading information
9 and failure to disclose material facts, as set forth above, the market price of CTI securities was
10 artificially inflated during the Class Period. In ignorance of the fact that market prices of CTI's
11 publicly-traded securities were artificially inflated, and relying directly or indirectly on the false
12 and misleading statements made by Defendants, or upon the integrity of the market in which the
13 securities trade, and/or on the absence of material adverse information that was known to or
14 recklessly disregarded by Defendants but not disclosed in public statements by Defendants
15 during the Class Period, Plaintiff and the other members of the Class acquired CTI securities
16 during the Class Period at artificially high prices and were damaged thereby.
17

18 54. At the time of said misrepresentations and omissions, Plaintiff and other members
19 of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff and the
20 other members of the Class and the marketplace known the truth regarding the problems that CTI
21 was experiencing, which were not disclosed by Defendants, Plaintiff and other members of the
22 Class would not have purchased or otherwise acquired their CTI securities, or, if they had
23 acquired such securities during the Class Period, they would not have done so at the artificially
24 inflated prices which they paid.
25
26

1 55. By virtue of the foregoing, Defendants have violated Section 10(b) of the
2 Exchange Act, and Rule 10b-5 promulgated thereunder.

3 56. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and
4 the other members of the Class suffered damages in connection with their respective purchases
5 and sales of the Company's securities during the Class Period.
6

7 **SECOND CLAIM**

8 **VIOLATION OF SECTION 20(a) OF THE**
9 **EXCHANGE ACT AGAINST THE INDIVIDUAL DEFENDANTS**

10 57. Plaintiff repeats and realleges each and every allegation contained above as if
11 fully set forth herein.

12 58. The Individual Defendants acted as controlling persons of CTI within the
13 meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level
14 positions, and their ownership and contractual rights, participation in and/or awareness of the
15 Company's operations, and/or intimate knowledge of the false financial statements filed by the
16 Company with the SEC and disseminated to the investing public, the Individual Defendants had
17 the power to influence and control and did influence and control, directly or indirectly, the
18 decision-making of the Company, including the content and dissemination of the various
19 statements which Plaintiff contend are false and misleading. The Individual Defendants were
20 provided with or had unlimited access to copies of the Company's reports, press releases, public
21 filings, and other statements alleged by Plaintiff to be misleading prior to and/or shortly after
22 these statements were issued and had the ability to prevent the issuance of the statements or
23 cause the statements to be corrected.
24
25
26

1 59. In particular, each of these Defendants had direct and supervisory involvement in
2 the day-to-day operations of the Company and, therefore, is presumed to have had the power to
3 control or influence the particular transactions giving rise to the securities violations as alleged
4 herein, and exercised the same.

5 60. As set forth above, CTI and the Individual Defendants each violated Section 10(b)
6 and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their
7 positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of
8 the Exchange Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff
9 and other members of the Class suffered damages in connection with their purchases of the
10 Company's securities during the Class Period.
11

12 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

13 A. Determining that this action is a proper class action, designating Plaintiff as Lead
14 Plaintiff, and certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of
15 Civil Procedure and Plaintiff's counsel as Lead Counsel;
16

17 B. Awarding compensatory damages in favor of Plaintiff and the other Class
18 members against all Defendants, jointly and severally, for all damages sustained as a result of
19 Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
20

21 C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in
22 this action, including counsel fees and expert fees; and

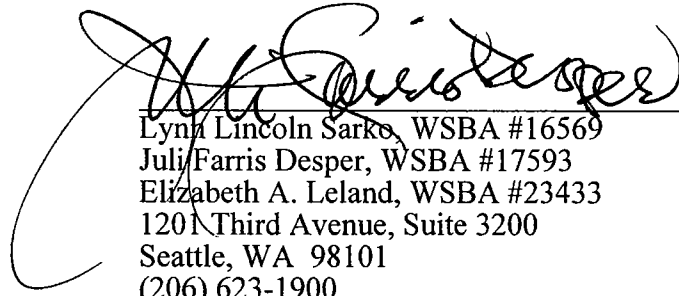
23 D. Such other and further relief as the Court may deem just and proper.

24 **JURY TRIAL DEMANDED**

25 Plaintiff hereby demands a trial by jury.
26

1 DATED this 19th day of April, 2005.

2 **KELLER ROHRBACK L.L.P.**

3 

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CLASS ACTION COMPLAINT FOR VIOLATIONS OF
FEDERAL SECURITIES LAWS

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CERTIFICATION OF CELL THERAPEUTICS, INC.
SECURITIES CLASS ACTION COMPLAINT

I, Richard Fuchs, hereby certify that the following is true and correct to the best of my knowledge, information, and belief:

1. I have reviewed the complaint filed herein (the "Complaint"), and have authorized the filing of a similar complaint or a lead plaintiff motion on my behalf.

2. I am willing to serve as a representative party on behalf of the class (the "Class") as defined in the Complaint, including providing testimony at deposition and trial, if necessary.

3. I did not purchase or sell the securities that are the subject of the Complaint at the direction of my counsel or in order to participate in any private action arising under the Securities Act of 1933 (the "Securities Act") or the Securities Exchange Act of 1934 (the "Exchange Act").

4. During the three year period preceding the date of this Certification, I have not sought to serve, nor have I served, as a representative party on behalf of a class in any private action arising under the Securities Act or the Exchange Act.

5. I will not accept any payment for serving as a representative party on behalf of the Class beyond my pro rata share of any possible recovery, except for an award, as ordered by the court, for reasonable costs and expenses (including lost wages) directly relating to my representation of the Class.

6. I understand that executing this Certification is not a prerequisite to participation in this Class Action as a member of the Class.

7. During the Class Period (as defined in the Complaint), I purchased and/or sold the security that is the subject of the Complaint as follows:

| <u>Date</u> | <u>Buy/Sell</u> | <u>No. Shares</u> | <u>Price Per Share</u> |
|-------------|-----------------|-------------------|------------------------|
| 3/2/05 | BUY | 2000 | \$10.1535 |

Signed under the penalties of perjury, this 12th day of ~~March~~ ^{APRIL} 2005.


Richard Fuchs