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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

LANCE ARMBRUSTER,

Plaintiff,

v.

CELLCYTE GENETICS CORPORATION,  
*et al.*,

Defendants.

No. 08-0047RSL

ORDER CONSOLIDATING  
RELATED ACTIONS, APPOINTING  
THE NEWBILLS AS LEAD  
PLAINTIFFS AND APPOINTING  
HAGENS BERMAN AS LEAD  
COUNSEL

DOMINIC J. TOLERICO,

Plaintiff,

v.

CELLCYTE GENETICS CORPORATION,  
*et al.*,

Defendants.

No. 08-00163RSL

1 JOE M. PRUITT,

2 Plaintiff,

No. C08-0178RSL

3 v.

4 CELLCYTE GENETICS CORPORATION,  
*et al.*,

5 Defendants.  
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8 This matter comes before the Court on motions to consolidate three related actions  
9 and on three motions for appointment of lead plaintiff.<sup>1</sup> On January 14, 2008, the first  
10 case was filed by plaintiff Lance Armbruster on behalf of himself and all others who  
11 purchased CellCyte securities between April 6, 2007 and January 9, 2008. Two actions  
12 were subsequently filed by plaintiffs Dominic Tolerico and Joe Pruitt. All three cases  
13 involve claims of securities violations pursuant to the Securities Exchange Act of 1934 as  
14 amended by the Private Securities Litigation Reform Act of 1995 (“PSLRA”). Plaintiffs  
15 allege that defendant CellCyte Genetics Corporation (“CellCyte”)<sup>2</sup> misled investors by  
16 making false and misleading statements to investors and the SEC about the history and  
17 experience of the company’s CEO Gary Reys. Reys’ background was called into  
18 question after published news reports noted alleged discrepancies regarding his  
19 experience and background. CellCyte subsequently removed some of Reys’ biographical  
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21 <sup>1</sup> Because the Court finds that this matter can be decided on the parties’  
22 memoranda, declarations, and exhibits, the Wyatts’ and the Newbills’ request for oral  
23 argument is denied.

24 <sup>2</sup> CellCyte is “a company focused on the discovery and development of stem cell  
25 enabling therapeutic products. Wyatt Family’s Motion for Appointment of Lead  
26 Plaintiff at p. 3.

1 information from its website. Plaintiffs allege that within days, the value of company  
2 stock fell by 55%.

3 **A. Consolidation.**

4 Pursuant to the PSLRA, the Court first considers whether to consolidate the related  
5 actions. 15 U.S.C. § 77z-4(a)(3)(B)(ii); 15 U.S.C. § 78u-4(a)(3)(B)(ii). Consolidation is  
6 appropriate if the actions “involve a common question of law or fact. Fed. R. Civ. P.  
7 42(a). The Court has broad discretion to consolidate cases pending within the district.  
8 See, e.g., Investors Research Co. v. United States Dist. Court, 877 F.2d 777 (9th Cir.  
9 1989). In this case, defendants do not oppose consolidation. In addition, all three cases  
10 involve common factual and legal questions under the PSLRA including whether  
11 defendants made false statements and omissions and whether those actions caused the  
12 stock price to increase then precipitously drop as alleged. Consolidation of these actions  
13 will promote efficiency, conserve judicial resources, and foster uniform decision-making  
14 while avoiding inconsistent results. Accordingly, the Court orders that these actions will  
15 be consolidated for all purposes.

16 Defendants argue that the named defendants should be limited to the defendants  
17 named in all three actions. Specifically, they note that the Tolerico action names Glen  
18 MacDonald, Michael Eyre, and John Fluke, but none of them is a named defendant in the  
19 Armbruster and Pruitt actions. They therefore argue that none of the three should be a  
20 named defendant in the consolidated action. None of the plaintiffs responded to this  
21 argument. However, Tolerico did not file a motion to be appointed lead plaintiff, so he  
22 did not necessarily have an opportunity to respond to that argument. In addition, the  
23 argument is premature. None of the three defendants has been dismissed. The newly  
24 appointed lead plaintiff will file a consolidated complaint which may or may not include  
25 the three defendants. Accordingly, the Court will not delete any of the named  
26 defendants.

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2 **B. Lead Plaintiff and Lead Counsel.**

3 Pursuant to 15 U.S.C. § 78u-4(a)(3)(A)(I), plaintiff Armbruster published a notice  
4 of pendency of the action in *PR Newswire* on January 14, 2008. Pursuant to 15 U.S.C. §  
5 78u-4(a)(3)(A)(i)(II), three timely applications to be appointed lead plaintiff were filed by  
6 the Wyatt family, Jim Thompson, and Anthony and James Newbill (the “Newbills”).

7 At this stage of the proceeding, the Court accepts the allegations of the multiple  
8 complaints as true. The Court evaluates the typicality of plaintiffs’ claims and the  
9 adequacy of their representation in light of those allegations.

10 The alleged losses suffered by the Newbills are approximately \$88,000 and are  
11 significantly greater than the losses suffered by any of the other proposed lead plaintiffs.  
12 The Newbills also satisfy the requirements of Rule 23 at this stage in the proceedings.<sup>3</sup>  
13 The PSLRA inquiry on that issue focuses principally on the elements of typicality and  
14 adequacy. See, e.g., Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust v.  
15 Labranche & Co., 229 F.R.D. 395, 411 (S.D.N.Y. 2004). The Newbills certifications  
16 show that they have reviewed the complaint, authorized its filing and are willing to serve  
17 as representatives of the class. The Newbills’ claims are typical of the claims of other  
18 plaintiffs in the proposed class. They allege that their losses occurred as a result of the  
19 same wrongful conduct alleged by other plaintiffs. The Newbills’ claims are based on the  
20 same legal theories as other plaintiffs’ claims. The Newbills have retained adequate  
21 counsel. The Court finds that the Newbills satisfy the requirements of 15 U.S.C. § 78u-  
22 4(a)(3)(B)(iii)(I). Jim Thompson and the Wyatts do not oppose the Newbills’ motion to  
be appointed lead plaintiffs. For these reasons, the Court affords the Newbills a

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24 <sup>3</sup> Defendants stress, and the Court agrees, that the determinations of adequacy and  
25 typicality are solely for purposes of this motion. The Court will reevaluate whether  
plaintiffs meet those requirements if and when a motion for class certification is filed.

1 rebuttable presumption that they are the most adequate plaintiffs to prosecute the  
2 consolidated actions. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(bb).

3 The presumption may be rebutted upon proof by a member of the purported  
4 plaintiff class that the movant: (aa) will not fairly and adequately protect the interests of  
5 the class, or (bb) is subject to unique defenses that render such plaintiff incapable of  
6 adequately representing the class. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II). The claims of the  
7 Newbills do not appear to be subject to unique defenses. The record does not describe  
8 the relationship between Anthony and James Newbill, although they appear to be related  
9 to each other. Because of their familial relationship and two-person composition, the  
10 Newbills are likely to be a cohesive plaintiff unit. None of the other parties has offered  
11 any arguments to rebut the presumption. Accordingly, the Newbills are hereby appointed  
12 lead plaintiffs pursuant to 15 U.S.C. § 78u-4(a)(3)(B).

13 Pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v), the Newbills have selected the law  
14 firms of Hagens Berman Sobol Shapiro LLP as lead counsel. The PSLRA provides that  
15 once the lead plaintiff is selected, it “shall, subject to the approval of the court, select and  
16 retain counsel to represent the class. 15 U.S.C. § 78u- 4(a)(3)(B)(v). The decision to  
17 approve counsel selected by the lead plaintiff is a matter within the discretion of the  
18 district court. See In re Milestone Scientific Sec. Litig., 187 F.R.D. 165, 176 (D.N.J.  
19 1999). In this case, the record does not show any reasons to reject the Newbills’ choice  
20 of counsel. Counsel has been appointed lead counsel in a number of other securities  
21 fraud cases, including another one currently pending before this Court, In re Jones Soda  
22 Co. Litig., Cause No. 7-1366RSL (W.D. Wash.). The Newbills’ selection of lead counsel  
23 is hereby approved.

24 Accordingly, the Court DENIES the motions to be appointed lead plaintiff filed by  
25 Jim Thompson and the Wyatt family. The Court GRANTS the Newbills’ motion.

1 Pursuant to Fed. R. Civ. P. 42(a), the above-captioned matters are hereby consolidated for  
2 all purposes.

3 Counsel shall make efforts to identify all cases, other than those identified above,  
4 which might properly be consolidated as part of this action, whether the cases are  
5 currently pending before the Court or are later filed in or transferred to this district. The  
6 Clerk of Court is directed to file this Order in Cause No. C08-0163RSL and 8-178RSL  
7 and then close those cases. No additional documents shall be filed in Cause No. C08-  
8 0163RSL or 8-178RSL. The consolidated action shall be re-captioned as *In re CellCyte*  
9 *Genetics Corporation Securities Litigation*, Cause No. C08-47RSL. All documents filed  
10 in the future regarding these matters are to be filed under that caption.

11 All counsel shall be responsible for notifying the Court if they become aware of  
12 any case that is filed regarding the same subject matter that might be appropriate for  
13 consolidation with this case.


14 Lead counsel shall have authority to speak for plaintiffs in matters regarding  
15 pretrial and trial procedure and settlement negotiations, and shall make all work  
16 assignments in such manner as to facilitate the orderly and efficient prosecution of this  
17 litigation and to avoid duplicative or unproductive effort. Lead counsel shall organize,  
18 coordinate, and conduct this litigation in the most cost-effective manner possible.

19 Lead counsel shall also be available and solely responsible for communications to  
20 and from the Court and shall coordinate the activities of plaintiffs and plaintiffs' counsel  
21 in the conduct of the consolidated action. Defendants' counsel may rely upon all  
22 agreements made with lead counsel, or their duly authorized representatives, and such  
23 agreements shall be binding on plaintiffs.

24 Lead counsel shall be responsible for coordination of all activities and appearances  
25 on behalf of plaintiffs and for the dissemination of notices and orders of this Court. No  
26 motion, request for discovery or other pretrial proceedings shall be initiated or filed by

1 plaintiffs except through lead counsel. This order shall apply to this consolidated action  
2 and to each case that relates to the same subject matter that is subsequently filed in this  
3 Court or is transferred to this Court and is consolidated with this consolidated action.

4  
5 DATED this 28th day of April, 2008.

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9 Robert S. Lasnik  
10 United States District Judge