CHARLES S. CROMPTON, JR.
ROBERT K. PAYSON
LEONARD S. TOGMAN
RICHARD E. POOLE
MICHAEL D. GOLDMAN
JAMES F. BURNETT
DANIEL F. WOLCOTT, JR.
DAVID J. GARRETT
CHARLES S. MCDOWELL
DAVID S. BROWN
SOMERS S. PRICE, JR.
DONALD J. WOLFE, JR.
GREGORY A. INSKIP
DAVID J. BALDWIN
JOHN E. JAMES
W. HARDING DRANE, JR.
MARY E. COPPER
W. LAIRO STABLER, III
RICHARD L. HORWITZ
WILLIAM J. MARSDEN, JR.
MICHAEL B. TUMAS
KATHLEEN FUREY MCDONOUGH
LAURIE SELBER SILVERSTEIN
PETER J. WALSH, JR.
STEPHEN C. NORMAN
ARTHUR L. DENT
HAROLD I. SALMONS, III
WILLIAM R. DENNY
PHILIP A. ROVNER

WRITER'S DIRECT
DIAL (302) 984-6043

POTTER ANDERSON & CORROON
DELAWARE TRUST BUILDING
P.O. BOX 951
WILMINGTON, DELAWARE 19899
(302) 984-6000
TELECOPIER (302) 658-1192
INTERNET: ATTYS.PACDELAWARE.COM

JOHN P. SINCLAIR
BLAINE T. PHILLIPS
HUGH CORROON
JOSEPH H. GEOGHEGAN
RICHARD L. MCMAHON
OF COUNSEL
ROBERT F. BARNETT
W. LAIRO STABLER, JR.
COUNSEL

FREDERICK H. ALTERBOTT
PETER L. TRACEY
JENNIFER GIMLER BRADY
SCOTT E. WAXMAN
JOANNE CEBALLOS
WENDY K. VOSS
KEVIN R. SHANNON
TODD L. GOODMAN
MICHAEL A. PITTENGER
COLLEEN E. HICKS
MICHAEL S. MCGINNISS
ANDREW MCK. JEFFERSON
WILLIAM A. HAZELTINE
EILEEN M. FILLIGER*
JUDY ROTER MAY
EMILIE RAJARATNAM
ANDREW T. O'NEILL
GREGORY M. JOHNSON
ROGER D. ANDERSON

*ADMITTED ONLY IN NEW YORK

June 13, 1997

BY HAND DELIVERY

The Honorable Roderick R. McKelvie
United States District Court
for the District of Delaware
844 King Street
Wilmington, Delaware 19801

Re: The Johns Hopkins University, et al. v. CellPro
Civil Action No. 94-105-RRM

Dear Judge McKelvie:

I am enclosing for the Court's consideration a letter from my co-counsel, Donald R. Ware and a Supplemental Declaration of Dr. Jerry A. Hausman addressing CellPro's June 5, 1997 letter to the Court and accompanying declarations.

Respectfully,

William J. Marsden, Jr.

WJMjr/kgm
PA&C/263136

cc: Clerk of the United States District Court (w/enclosure) (Via Hand Delivery)
Coe A. Bloomberg, Esquire (w/enclosure) (Via Facsimile and Federal Express)
Gerard M. O'Rourke, Esquire (w/enclosure) (Via Hand Delivery)
Donald R. Ware, Esquire (w/enclosure) (Via Facsimile and U.S. Regular Mail)
Steven J. Lee, Esquire (w/enclosure) (Via Facsimile and U.S. Regular Mail)
Michael Sennett, Esquire (w/enclosure) (Via Facsimile and U.S. Regular Mail)

FOLEY, HOAG & ELIOT LLP
ONE POST OFFICE SQUARE
BOSTON, MASSACHUSETTS 02109-2170

TELEPHONE 617-832-1000
FACSIMILE 617-832-7000
http://www.fhe.com

1615 L STREET, N.W., SUITE 850
WASHINGTON, D.C. 20036
TEL: 202-775-0600
FAX: 202-857-0140

Donald R. Ware
(617) 832-1167
dware@fhe.com

June 13, 1997

The Honorable Roderick R. McKelvie
United States District Court for the District of Delaware
844 King Street
Wilmington, Delaware 19801

Re: The Johns Hopkins University, et al. v. CellPro
C.A. No. 94-105 RRM

Dear Judge McKelvie:

We are in receipt of CellPro's letter to the Court dated June 5, 1997, enclosing declarations of Edward Kenney, Larry Culver, James Mack Folsom, and Dr. Monica Krieger.

The Court will recall that CellPro's request to file this letter was discussed with the Court during the telephone conference held two days earlier, on June 3, 1997. At that time, Mr. Bloomberg represented to the Court that CellPro wanted only to file a "very brief" letter, "a matter of a few pages." Tr. 6/3/97 at 14. On behalf of plaintiffs, I expressed concern as to whether CellPro was intending to file another brief, accompanied by "five more affidavits" or the like. Id. at 15. Mr. Bloomberg assured plaintiffs and the Court that this is not what was intended, and that there would only be "a short letter." In reliance on Mr. Bloomberg's representation, the Court allowed CellPro to proceed, stating, "If it's only going to be a short letter, I think it's probably fine to go ahead and do, and I expect Mr. Ware may have an additional comment on it." Id.

As it turns out, Mr. Bloomberg's representation to the Court was untrue. Accompanying CellPro's letter were four declarations, one of which includes 23 pages of charts, tables and graphs, based upon detailed financial analyses that have never before been presented to the Court and have never been subjected to cross examination. Each of the declarations was executed on or before the date of the telephone conference, and CellPro's counsel cannot have been unaware of CellPro's plan to submit them two days later.

In the face of CellPro's outright dishonesty, and in view of the fact that plaintiffs will have had no opportunity to cross examine Mr. Culver (who did not even attend the trial) or to examine

CellPro's business records to evaluate Mr. Culver's assertions, we urge the Court to give no weight to any of CellPro's latest submissions.

We also offer the following brief comment on the declarations:

Declarations of Larry Culver and James Mack Folsom

These declarations threaten that if the Court enters an order requiring CellPro to disgorge its incremental profit on post-trial infringing sales, CellPro will have no choice but to go into a "shut down mode." For the Court's information, Mr. Culver's declaration was submitted to the NIH in support of CellPro's Bayh-Dole petition. The declaration represents another tactic in CellPro's campaign to bully the NIH into granting CellPro a compulsory license by threatening to deprive cancer patients of treatment if CellPro does not get what it wants. CellPro's willingness to instill unnecessary fears in cancer patients and their families in support of its business strategy is callous, irresponsible, and deplorable.

When CellPro submitted its papers in opposition to plaintiffs' motion for entry of a permanent injunction, including the declaration of its accounting expert, William Simpson, it did not contend that the terms of the proposed order would force it to shut down operations. Mr. Simpson opined only that the proposed minimum payment on infringing commercial sales would cause CellPro to lose money. The focus of CellPro's opposition papers was not on alleged financial ruin, but rather on its argument that certain restrictions in the proposed order would prevent patients from obtaining access to stem cell technology in clinical trials.

In response to CellPro's arguments, plaintiffs removed any restrictions on CellPro's commercial sales or its clinical trials pending FDA approval of an equivalent alternative system. Only then, after it recognized that the proposed order raised no genuine patient access issues, did CellPro conceive its argument that the order would force it to shut down operations and on that basis would "deny patients access to treatment."

As the enclosed Supplemental Declaration of Dr. Jerry A. Hausman shows, CellPro's latest argument has no basis in economic reality. By CellPro's own admission, it will need additional financing in 1998 whether or not the Court enters the proposed order. Dr. Hausman explains that the capital markets have been willing to finance CellPro throughout its existence in the face of potentially blocking patents and despite the known risk that a court would ultimately enjoin further sales. CellPro has represented to the financial community that it intends to appeal the Court's judgment and expects to win. Financial analysts continue to recommend the purchase of CellPro's stock, and investors continue to buy it. In view of CellPro's assessment of its prospects on appeal, the potential size of the market for its Ceprate® SC products, and the significant upside opportunity for CellPro should it succeed in its long-term litigation strategy of invalidating the Hopkins patents, CellPro has ample ability to finance its operations pending the

outcome of its appeal. Moreover, it would be irrational and imprudent for CellPro to abandon its principal product line during its appeal and thereby run the risk of forfeiting the substantial profits that will accrue should it succeed. Notably, CellPro's May 14, 1997 press release announcing its results for fiscal 1997 (Hausman Decl., Exh. B) discusses the pending litigation but contains no suggestion that entry of the proposed order would force it to shut down operations.

Dr. Hausman's declaration also shows that the sales, expense, and cash flow projections which are essential to Mr. Culver's analysis are unsupported and highly questionable. Plaintiffs requested back-up documentation from CellPro to allow them to evaluate Mr. Culver's declaration (Hausman Decl., Exh. C), but CellPro refused. This is further reason to disregard the declarations of Mr. Culver and Mr. Folsom.

Declaration of Edward Kenney.

The purpose of Mr. Kenney's declaration is unclear. According to CellPro's letter, it is offered to rebut a statement made by plaintiffs in a letter dated May 15, 1997 concerning the availability of stem cell selection devices in a "large number" of U.S. transplant centers. In the same letter, however, plaintiffs agreed to remove any restriction on CellPro's sales of Ceprate® SC devices to new customers or on its initiation of new clinical trials pending FDA approval of an equivalent alternative. The Kenney declaration is irrelevant.

Declaration of Monica Krieger.

The purpose of Dr. Krieger's declaration is also unclear, apart from its gratuitous attempt to disparage Baxter's record with the FDA. Plaintiffs did not assert that the use of the Ceprate® SC device touted in CellPro's Christmas card was outside the scope of an FDA-approved clinical trial. Rather, plaintiffs pointed out that CellPro's extensive promotion of its device for "off-label" use by commercial customers is a violation of federal law, as the FDA emphasized in its letter to CellPro. Plaintiffs also pointed out, as did the FDA in its letter, that there has been no determination that CellPro's device is safe and effective for any indication other than processing autologous bone marrow. As Dr. Rowley's declaration shows, this procedure is no longer used in U.S. transplant centers.

CellPro's entire public health argument thus is based upon uses of its device that are still experimental and unproven. Indeed, CellPro has not even applied to the FDA for approval of its device for indications other than the limited one covered by its December 1996 approval. Baxter, by contrast, submitted its PMA in February, has been scheduled for Advisory Committee review in July, and expects approval by the end of the year.

Respectfully submitted,

Donald R. Ware

DRW/kaw
Enclosure

cc: Coe A. Bloomberg, Esq.
Gerard M. O'Rourke, Esq.
William J. Marsden, Jr., Esq.
Steven J. Lee, Esq.
Michael Sennett, Esq.