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List Biological Laboratories, Inc.

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re

LIST BIOLOGICAL LABORATORIES, INC., a California corporation,

Debtor.

Employee ID No. 94-2525317

Case No. 09-60878 ASW

Chapter 11

Motion Control No. RAS.105

DECLARATION OF DEBRA DYE IN OPPOSITION TO MOTION FOR RELIEF FROM STAY AND IN SUPPORT OF CROSS-MOTION TO DETERMINE VALUE OF PROPERTY OF THE ESTATE PURSUANT TO 11 U.S.C. SECTION 506

Date: March 9, 2010
Time: 2:00 p.m.
Dept.: United States Bankruptcy Court
Courtroom 3020
280 South First Street
San Jose, CA
Judge: The Hon. Arthur S. Weissbrodt

I, DEBRA DYE, declare:

1. I am the Vice-President of Operations of List Biological Laboratories ("Debtor" or "List Bio Labs") and am authorized to make this Declaration on its behalf. I have personal knowledge of the facts set forth in this Declaration and if called upon to testify, I could and would competently testify thereto.

2. List Bio Labs commenced its Chapter 11 case on December 11, 2009 (the "Petition Date"). The Debtor is operating its business as a debtor in possession pursuant to the provisions of 11 U.S.C. §§ 1107 and 1108. As of the date of this declaration, there is no Official Committee of Creditors

3. List Bio Labs is a privately held company, owned by five shareholders, established in 1978 to produce and sell research reagents derived from bacteria. Initially, its focus was the production of bacterial toxins marketed to the research and vaccine development communities. The List Bio Labs research reagent portfolio has now grown to include more than 100 products.

4. As Vice President, I am very familiar with the books and records of List Bio Labs, including its assets and liabilities. I am responsible for authorizing payment for equipment purchased by List Bio Labs during the period from 2007 to the present, and I was responsible for the purchase of the equipment that is the subject of this motion for relief from stay.

5. In 1988, botulinum toxin became of great interest to List Bio Labs and the Company developed the technology to produce commercial scale botulinum toxin for the research reagent business. These toxins are the active ingredients in drugs like Botox®, Reloxin® and Myobloc®. As a result of its acknowledged expertise in this area, List Bio Labs was engaged by Allergan, Inc. in the early 1990's to provide assistance in the design and validation of a Good Manufacturing Practices under accepted industry protocols ("GMP") facility and to produce clinical grade botulinum toxin. The relationship ensued that led, ultimately, to the licensure of the manufacturing facility as well as the active ingredient in Botox® produced in the facility.

6. List Bio Labs is known for providing resources to biological and medical scientists and to the biodefense community. The Company success has been based on the List Bio Labs name recognition and our focus on quality products. The List Bio Labs' reagents are used in

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scientific investigations and when the studies are published, List Bio Labs is cited as the source of materials. The Company worldwide customer base has grown on this word-of-mouth style marketing.

7. The List Bio Labs portfolio also consists of a variety of biological products that are, or can be used, in a number of important R & D applications within the biopharmaceutical industry. Several of our products, such as diphtheria, tetanus and pertussis toxins are used in assays for detecting and quantitating serum antibodies to these individual components of DTP, a mandated childhood vaccine.

8. These and other biological products produced by List Bio Labs may also be utilized as vaccine components themselves if produced under GMP conditions. Additionally, List Bio Labs frequently receives inquiries for the custom production of a variety of its products. List Bio Labs has worked to develop this demand into a profitable business by providing a reliable and high quality supply. Many of the List Bio Labs products support the national bio-defense effort and for that purpose the Company has provided reagents to an NIAID funded reagent repository as a subcontractor. Recently a related Request for Proposal, RFP-NAIAD-DMID-NIHAI2009066, has been released that provides funding for assessment of antimicrobial or antitoxin activity of therapeutic substances. In response to this request, List Bio Labs is proposing to develop assays which will test vaccines, drugs or chemicals developed to counter various toxins and bacteria.

9. List Bio Labs is able to serve clientele interested in the use of recombinant proteins. Molecular biologists insert the genetic codes for proteins into bacteria allowing them to synthesize the protein of interest, a "recombinant" protein. This technology is used to produce drugs such as recombinant erythropoietin, growth hormone and components of influenza vaccines. List Bio Labs produces several recombinant proteins as research reagents in this manner. With this technology in hand, List Bio Labs is well suited for the production of recombinant proteins of pharmaceutical interest.

10. The majority of products manufactured by List Bio Labs are not Select Agents (organisms and toxins that could potentially be used as biowarfare agents and require specific

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CDC licensing) and are less toxic than botulinum toxin. Several of List Bio Lab's products (and native organisms) are included in this list of Select Agents, as are the commercially important botulinum toxins. Programs to control the Select Agents were instituted in 1997 and significantly elaborated on in 2003, in response to the intentional delivery of anthrax spores with letters. List Bio Labs has developed an infrastructure that complies with these regulations which has been accepted by the government auditors. Today List Bio Labs is one of the largest entities registered to handle Select Agents. Our facility has been designed to contain and control these Select Agents. Select Agent products or BL3 products are processed completely in the manufacturing suite, taking advantage of the electronic key system for security, the controlled environmental conditions and the enhanced safety features provided by the air handling system.

11. Due to frequent requests for GMP grade toxins, in 2004 List Bio Labs moved to a new location. This move allowed List Bio Labs to design a GMP and Select Agent compliant facility where the manufacture of GMP and reagent grade toxins, as well as other protein products, is now possible. Initially, List Bio Labs constructed a minimal manufacturing area consisting of two manufacturing rooms and associated airlocks. Recently, List Bio Labs completed the project, expanding the manufacturing and laboratory space to 11,440 square feet. With this newly expanded facility, List Bio Labs is prepared to exploit its biological product expertise and expand the contract manufacturing part of the business.

12. Production of these products occurs at the List Bio Labs GMP and Select Agent compliant facility, which has 4,400 square foot of general laboratory space, a 7,040 square foot BSL3 containment suite for manufacturing, and approximately 10,000 square foot of office space. This BSL3 Manufacturing Suite facility allows List Bio Labs sufficient space and appropriate equipment to produce high quality research reagents.

13. The manufacturing suite is used for the cultivation of all biosafety level 2 and 3 organisms. The manufacturing suite has eight separate areas, isolated from each other through air pressure differentials and air locks. These areas are designed to, and comply with, ISO 7 and 8 requirements. Manufacturing spaces are routinely monitored for microbiological status, including surface and airborne sampling, as well as particulate level sampling, to ensure continued

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compliance to the ISO 7 and 8 requirements.

14. From time to time, List Bio Labs acquires new equipment for use in its business operations. During the period from August 2007 through July 2009, List Bio Labs purchased a number of pieces of equipment from various vendors, including VWR International, Cole-Parmer, Beckman Coulter, and Sartorius Stedim Systems, Inc. For example, on or about August 20, 2007, List Bio Labs purchased a BU-FA04104 Biostat D50/D100 Fermentor (with attachments and accessories). List Bio Labs purchased a second Fermentor (BU-FA04104, D-100) on June 3, 2008. List Bio Labs purchased related accessories for the Fermentor on January 8, 2008, and May 30, 2008. List Bio Labs equipment purchases also included the following: one L-2485 Flourescence Detector on August 11, 2008; seven Biol Safety Cabinets on August 29, 2008; Peek Tubing, Bufferprep Kit, PV-908, PH Electrode, Dummy PH Electrode on March 13, 2009; two Avanti JE Biosafe Centrifuges (with attachments and accessories) and one Hepa Filter Kit, Avanti J-25, on March 16 and 20, 2009; three pumps on March 16, 2009 and April 2, 2009; one Meter Basic PH on March 16, 2009; two Rotor Assemblies (JLA-10.500, JLA 16.250) on April 24, 2009; one Experion System (with attachments and accessories) on May 8, 2009; and one Oven Forced Con Fed (with attachments and accessories) on July 10, 2009. All of that equipment is essential to both the ongoing business operations and the effective reorganization of List Bio Labs.

15. Subsequently, List Bio Labs obtained two loans from Wells Fargo Equipment Finance, Inc. ("Wells Fargo"). On or about June 19, 2009, List Bio Labs entered into Master Lease Number 253355 ("Master Lease") with Wells Fargo. A true and correct copy of the Master Lease is attached hereto as **Exhibit A** and is incorporated herein by this reference.

16. List Bio Labs executed a "Supplement to Master Lease" dated June 19, 2009, Supplement Number 0253355-400 ("June Loan"), which incorporates the terms of the Master Lease and provides that Wells Fargo agrees to lease to List Bio Labs the equipment described in Schedule A. A true and correct copy of the June Loan is attached hereto as **Exhibit B** and is incorporated herein by this reference. The June Loan provides that Wells Fargo extended a loan to List Bio Labs in the amount of $494,389.36 and provides for a term of 60 months, as well as a

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monthly basic rental payment of $9,847.92, plus applicable sales and use tax. The "Total Cost" is $494,389.36, and the "Total Basic Rent" is $590,875.20. All of the equipment listed in Attachment A to the June Loan is equipment that List Bio Labs previously purchased.

17. List Bio Labs also executed a Supplement to Master Lease dated August 25, 2009, Supplement Number 0253355-401 ("August Loan"), which incorporates the terms of the Master Lease and provides that Wells Fargo agrees to lease to List Bio Labs the equipment described in Schedule A. A true and correct copy of the June Agreement is attached hereto as **Exhibit C** and is incorporated herein by this reference. The August Loan provides that Wells Fargo extended a loan to List Bio Labs in the amount of $98,730.72 and provides for a term of 60 months, as well as a monthly basic rental payment of $1,934.72, plus applicable sales and use tax. The "Total Cost" is $98,730.72, and the "Total Basic Rent" is $116,083.20. As with the June Loan, all of the equipment listed in Attachment A to the August Loan is equipment that List Bio Labs previously purchased. The equipment identified in Attachment A to the June Loan and in Attachment A to the August Loan is collectively referred to herein as the "Equipment."

18. Both the June Loan and the August Loan provide that List Bio Labs "agrees to pay Lessor $1.00 on the expiration date of the initial term of the Lease (the "Final Purchase Payment")" and that "[u]pon receipt of the Total Basic Rent and the Final Purchase Payment by Lessor, the Equipment shall be deemed transferred to Lessee at its then location."

19. The primary assets of the Debtor are its inventory, equipment, accounts receivable and its intellectual property. The Debtor needs the Equipment that is the subject of this motion to permit the orderly continuation of the operation of its business and to maintain business relationships with its customers. Loss of the Equipment would disrupt the Debtor's ability to operate and maintain its online business, including but not limited to, maintaining its web store for online marketing and sale of product, and would thereby negatively impact the Debtor's customer relationships, revenues, and profits. More importantly, loss of equipment that is utilized to produce the toxins that are central to the Debtor's business operations, would not only disrupt but also destroy the Debtor's business as it would be required to shut down operations if that Equipment was removed by Wells Fargo. Such a result would seriously jeopardize the Debtor's

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reorganization efforts, and ultimately, the Debtor's value and creditors' recoveries. The Debtor requires the Equipment to continue its business and maintain and maximize its going concern value for the benefits of creditors. Failure to meet its commitments to customers will open the door to competitors for new sales and force the customers to shut down the systems in use which will eliminate future revenue and services for spares and upgrades. If the Debtor loses its customers, its business is no longer a going concern and its assets, including IP and customer relations, will be devalued to a nominal amount.

20. I am familiar with the condition of Equipment and I am familiar with the prices of such used equipment when sold in the marketplace. Based on my knowledge and experience, the fair market value of the Equipment on the Petition Date was $79,500.00. This value represents the estimated used retail value $283,000.00,[1] which is the value of clean, ready-to-use equipment, less the cost of decontaminating the Equipment that would be required before any sale to or use by a third party buyer, in order to eliminate any traces of toxins and other contaminants that remain from use of the Equipment in the Debtor's operations, plus any fees payable to an auctioneer or consignor.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on March 5, 2010, at Campbell, California.

/s/ Debra Dye
Debra Dye

[1] To arrive at the estimated retail value of the used Equipment, Hoang Nguyen, an employee of the Debtor who is the Debtor's facilities manager, reviewed websites listing similar used and cleaned equipment for sale on the internet in January 2010.

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