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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 TO USE COLLATERAL (INTERIM AND FINAL ORDERS)** Date: TBS Time: TBS Dept.: United States Bankruptcy Court Courtroom #3035 280 South First Street San Jose, CA

TO: THE HONORABLE ARTHUR S. WEISBRODT, UNITED STATES BANKRUPTCY JUDGE, SAN JOSE DIVISION, SECURED CREDITORS, TWENTY LARGEST CREDITORS, THE U.S. TRUSTEE AND THOSE PARTIES REQUESTING SPECIAL NOTICE**:**

List Biological Laboratories, Inc., a California corporation ("Debtor" or "List Bio Labs"), hereby moves for the entry of an order, pursuant to 11 U.S.C. §§ 361, 362 and 363 (the "Motion") for interim and final orders authorizing use of cash collateral and to provide additional adequate protection for such use, to the extent such use results in a diminution of pre-petition collateral securing certain secured obligations. All statutory references are to Title 11 of the United States Code ("Code" or "Bankruptcy Code") unless otherwise specified. The Motion will be made on the grounds that such use is necessary for the operations of List Bio Labs and that the entities

with an interest in such cash collateral are or will be adequately protected under the terms of the proposed order granting the Motion. The Motion is supported by the Declaration of Debra Dye in Support of Initial Case Motions, Expedited Relief and Applications (the "Initial Dye Declaration"), the pleadings and papers on file in this case, and on such other oral or documentary evidence as may be submitted before the Court.

In support of the Motion, the Debtor respectfully represents the following:

I. JURISDICTION

1. The Court has jurisdiction over the matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2) and venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory basis for the relief requested herein is §§ 363(c) and 503(b)(1) of the Bankruptcy Code.

II. BANKRUPTCY RULE 4001 INTRODUCTORY STATEMENT

Name of Entity With Claimed Interest In Cash Collateral:	Wells Fargo Bank, N.A ("Wells Fargo Bank") See Exhibits B and C to Initial Dye Declaration.
Purpose of Use of Cash Collateral:	Accounts receivable and sale proceeds are to be used to pay operating expenses consistent with the Budget attached as Exhibit D to the Initial Dye Declaration.
Terms:	There are no terms as there is no stipulation.
Liens, Cash Payments or Other Adequate Protection Payments:	Replacement lien on post-petition property not otherwise encumbered by subsequently approved financing.
Carve-outs for professional fees:	Replacement lien does not encumber Chapter 11 professional fees or U.S. Trustee fees, or Chapter 7 Trustee compensation and expenses.
Certification:	The undersigned Certifying Professional has read the accompanying motion and the foregoing Introductory Statement; the best of my knowledge, information and belief, formed after reasonable inquiry, the terms of the relief sought in the motion are in conformity with the Court's Guidelines for Use of Cash Collateral and Financing Motions and Stipulations except as set forth above. The undersigned understands and has advised the debtor in possession that the court may grant relief under Fed. R. Bank P. 9024 if the court determines that a material element of the motion or stipulation was not adequately disclosed in the Introductory Statement

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A. Relief Requested.

In the ordinary course of its business, List Bio Labs utilized (i) revenues from operations and (ii) proceeds of its pre-petition borrowings as the source of working capital for its pre-petition operations. Pursuant to this Motion, the Debtor seeks authority to use cash collateral of its pre-petition secured lender Wells Fargo Bank, N.A. (the "Bank") listed in the schedule attached to the Initial Dye Declaration which, together with anticipated debtor in possession financing, will fund continuing operations pursuant to the initial budget (the "Initial Budget") attached as Exhibit C to the Initial Dye Declaration. The Bank asserts a perfected security interest in substantially all assets of the Debtor, including accounts receivable, inventory, and equipment. As set forth in the Budget, List Bio Labs anticipates that it will receive cash during the Chapter 11 case from accounts receivable, the sales of assets and other collateral ("Cash Collateral") and by this Motion seeks authority to use Cash Collateral to fund operations, and thereby maintain the going concern value of its business, pending consummation of a Chapter 11 Plan.

A proposed form of Order is attached hereto as **Exhibit A** consistent with Rule 4001(b)(1)(A).

B. The Secured Debt.

The Bank is owed approximately $2,717,205.13. Attached as Exhibit B to the Initial Dye Declaration is a copy of a summary of the UCC Financing Statements filed with the Secretary of State of California. The Debtor has provided notice of this motion to the Bank directly. The recorded UCC Financing Statements are set fort below are in the priority by agreement as indicated:

(i) (First Priority.) Wells Fargo Bank recorded on May 30, 2008 as document No. 08-71597489.[1]

(ii) (Second Priority.) Wells Fargo Equipment Finance, Inc., recorded on June 24, 2009, and August 27, 2009 as document Nos. 09-7200474376 and 09-7206766942.

The secured debt can be described in further detail as follows in the priority set forth:

[1] Wells Fargo Bank is the successor in interest to the UCC-1 Financing Statement recorded on October 10, 2003, as document no. 10328960657 by San Jose National Bank by virtue of the amendment and continuation statement recorded on April 15, 2008, as document no. 166554470002.

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3. Wells Fargo Bank loaned List Bio Labs the sum of $2,000,000 by way of a secured promissory note ("Term Loan") dated May 27, 2008, with interest accruing at the rate of 4.631%. The outstanding balance as of this date is the sum of $1,644.095.00. See Exhibit D to Initial Dye Declaration.

4. Wells Fargo Bank loan List Bio Labs the sum of $750,000 by way of a secured promissory note ("Credit Line") dated February 9, 2009 with variable interest. The outstanding balance as of this date is the sum of $535,610.13.

5. The obligations owing to Wells Fargo Bank are subject to an Interest Rate SwapTransaction dated June 2, 2008, providing that the fixed interest rates are 6.65%, and the floating rates are based USD-Libor with a spread of plus 2.25%.

6. Wells Fargo Equipment Finance, Inc. loaned List Bio Labs the sum of $494,389.36 and $98,730.72. The outstanding balance as of this date is $535,610.13.

Debtor will try to reach a stipulation with Wells Fargo Bank prior to the hearing. The Debtor requests entry of an order or orders (a) approving the use of up to $450,000 of Cash Collateral through January 15, 2010 pending the conclusion of a final hearing on this Motion (assuming a final hearing on or before January 8, 2010) to the extent necessary to avoid immediate and irreparable injury, (b) scheduling a final hearing on the Motion for a date on or before January 8, 2010, and (c) at the final hearing, approving use of Cash Collateral through the confirmation of a Chapter 11 Plan or such date as is agreed between the Debtor and Bank.

C. Proposed Use of Cash Collateral.

The Debtor requests interim approval for use of Cash Collateral in the amounts described under the line items and time periods set forth in the Budget to the extent necessary to prevent immediate and irreparable harm to the Estate, pending a final hearing on this Motion. Debtor needs to pay the expenses of operation so that the Debtor can continue its efforts to reorganize as a going concern. Thereafter, the Debtor proposes to continue to use Cash Collateral as described in the Budget. In both situations, the Debtor requests authority to (a) exceed and pay any expense line item by 20% provided that it does not exceed the aggregate budgeted expenditures for any

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period by more than 10%, and (b) carry over unused funds budgeted in any period for use in future periods.

D. Adequate Protection.

The Debtor anticipates that it will negotiate with the Bank for interim use of Cash Collateral prior to the preliminary hearing. In the event a formal preliminary stipulation is reached before the hearing on this Motion, the Debtor will file a supplement to this Motion attaching the stipulation and detailing its material provisions. Assuming that a stipulation is reached, Debtor anticipates that it will submit to the Court prior to the Final Hearing a proposed final stipulation, together with a Certificate of Compliance with guidelines of this Court for cash collateral motions and stipulations.

However, in the event a stipulation is not reached, and as demonstrated in the Initial Dye Declaration, the Debtor believes that its assets are worth at least the amount of the combined claim owed to Wells Fargo Bank and Wells Fargo Equipment Finance, Inc., which is currently owed the sum of $2,717,205.13. The proposed use of cash collateral will allow the Debtor to fund its operating expenses, enabling it to maintain the business enterprise value of its business and thereby maintain the value of the collateral and thus the secured claim of the Bank.

In addition, the Debtor further requests that as security for any decrease in the value of the property securing the prepetition claims resulting of the Bank from the use of Cash Collateral by the Debtor, the Debtor be allowed to grant to the Bank a replacement lien ("**Replacement Lien**") on all property of the Debtor acquired after the commencement of this case of the same types and description as the collateral securing the prepetition liens, if any, but excluding claims for relief arising under the Bankruptcy Code (including claims arising under §§ 506(c), 544, 545, 547, 548, and 549 thereof) and excluding property acquired by the Debtor post-petition through the use of Debtor-in-possession financing. Such Replacement Lien shall have the same priority, validity and extent as each of the prepetition liens, but shall be subordinate to the (i) compensation and expense reimbursement (other than for professional fees and expenses) allowed to a Trustee in any successor Chapter 7 case; (ii) fees payable to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6); and (iii) the fees of the Debtor's professionals and any counsel that is appointed to

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represent any committee of unsecured creditors in this case.

The Replacement Lien shall be perfected by operation of law upon entry of the orders by the Bankruptcy Court. The Bank may but shall not be required to file or record any financing statements, mortgages, or other documents in any jurisdiction or to take any other action in order to validate or perfect the Replacement Lien. The order of the Court shall be deemed sufficient and conclusive evidence of the security interest and liens granted by the Order. If the Bank shall, in their sole discretion, choose to file financing statements or record mortgages or other documents, or otherwise confirm perfection of such security interests and liens, the Bank is hereby authorized to effect such filings and recordations, and all such financing statements, mortgages, or similar documents shall be deemed to have been filed, recorded, or made on the date of entry of the orders granting such Replacement Lien.

In addition to the foregoing Replacement Lien, to adequately protect Wells Fargo Bank, the Debtor proposes to grant Wells Fargo Bank a lien in two of prepetition patents owned by Nancy R. Shine, Karen R. Crawford, and Linda J. Eaton.

As additional adequate protection, the Debtor also will consent to reasonable reporting requirements to the Bank.

III. NOTICE OF THIS MOTION AND THE HEARINGS.

Copies of this Motion and the related papers were served upon the following parties: (1) the Bank; (2) counsel to the Bank where known; (3) the twenty largest creditors; (4) the United States Trustee; (5) and all parties who have requested special notice. After the preliminary hearing, the Debtor will give notice of any subsequent hearing in the manner ordered by the Court.

IV. MOTION

A. Bankruptcy Case Status

7. On December 11, 2009 (the "Petition Date"), the Debtor filed its voluntary petition under Chapter 11 of the United States Bankruptcy Code ("Code"). The Debtor is presently operating its business as debtor in possession pursuant to the provisions of 11 U.S.C. §§ 1107 and 1108.

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8. An official committee of unsecured creditors ("Creditors' Committee") has not yet been formed in this case.

B. History and Events Leading to the Debtor's Bankruptcy Case.

1. 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.

2. 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 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.

3. 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.

4. 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 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

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marketing.

5. The List Bio Labs portfolio 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. A major requirement for licensure of any new vaccine targeting children requires the demonstration that the new vaccine will not interfere with the immunogenicity of DTP or any other childhood mandated vaccine. Consequently, with increasing attention to the importance of vaccines as the most cost effective way to prevent or minimize a variety of viral and bacterial diseases among children worldwide, there is a continuing and growing need for quality reagents, such as diphtheria, tetanus and pertussis toxins, all staples of the company's inventory.

6. These and other biological products produced by List Bio Labs may also be utilized as vaccine components themselves if produced under GMP conditions. Anthrax toxin proteins, Clostridium difficile toxins, and staphylococcal antigens, are examples of proteins with potential usage as reagents in testing for antibodies as well as components of novel vaccines. Lipopolysaccharides and other toxins are under consideration for cancer treatment. Other biological products may be of interest as therapeutic agents based on their individual and unique biological activities. The botulinum toxin line produced by List Bio Labs is a prime example of a group of proteins with not only cosmetic applications, but therapeutic potential as well. Cholera toxin, another example, generates a great deal of interest based on its demonstrated adjuvant activity for transdermal vaccine delivery as do a variety of bacterial polysaccharides produced by List Bio Labs.

7. Additionally, List Bio Labs frequently receives inquires for the custom production of a variety of its products. For example, hospital acquired C. difficile infections are increasing in frequency and severity. The support of these sick patients is quite expensive. In response, the large pharmaceutical companies are working on vaccines to mitigate this situation. List Bio Labs has been contacted by two of these companies, Merck & Co. and Wyeth Pharmaceuticals for

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supplies of the purified toxins in order to produce the vaccines. List Bio Labs has worked to develop this demand into a profitable business by providing a reliable and high quality supply.

8. 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. Finally, to put the List Bio Labs capabilities in perspective, one needs to consider that bacteria are used as protein factories. 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.

C. Intellectual Property

10. List Bio Labs is the assignee of a patent for peptide substrates capable of producing light signals when the toxin is present. SNAPtide®, which contains a cleavage site for botulinum neurotoxin type A, is a quenched fluorescent substrate peptide based on fluorescence resonance energy transfer (FRET). This peptide has been helpful in the development of detection systems and in the quest for toxin inhibitors. Similar FRET peptides, VAMPtide® and SNAPEtide® have been developed for types B and E. These peptides have been used by other research groups with several prototype instruments designed to detect the toxins. Additionally, the SNAPtide® peptides have been used extensively in the quest for inhibitors of the toxin. As the pressure mounts for therapeutic toxin manufacturers such as Allergan producer of Botox® to replace animal based potency assays with assays that can be carried out in test tubes, interest in these peptides is intensifying.

11. List Bio Labs also has a patent application covering the use of the mammalian

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receptor protein for botulinum toxin. This protein will become an important component of assays developed as models of the intoxication process.

D. Facility

12. The List Bio Labs GMP and Select Agent compliant facility provides 4,400 ft2 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. Equipment available includes two 150-liter fermenters, four filter skids sized from one to several hundred liters, five biological safety cabinets, a walk-in warm room and two walk-in production cold rooms. All production areas are supplied with purified water produced by reverse osmosis/deionization purification system. This water meets USP requirements for purified water as well as the endotoxin and microbial limits for water for injection.

13. The manufacturing suite is used for the cultivation of all biosafety level 2 and 3 organisms. Management and a Select Agent Program Responsible Official approve and schedule all work with select agents. 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 compliance to the ISO 7 and 8 requirements.

14. The majority of products manufactured by List Bio Labs is reagent grade, not select agents and are less toxic than botulinum toxin. Once cultivation and harvest of any one of these proteins is complete, further purification such as chromatography, diafiltration and preparation of derivatives, takes place in the laboratories outside of the BL3 manufacturing suite. Products that are intended for clinical trial use are produced on cGMP compliant records. 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.

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E. Select Agents and CDC Registration

15. Select Agents are organisms and toxins that could potentially be used as biowarfare agents. 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. Our systems, training and immunization programs make us uniquely suited to undertake projects utilizing Select Agents.

16. List Bio Labs is registered with the CDC to work with certain Category A and B select agents. Registration with the CDC has been maintained since 1997. Procedures for working safely with select agents are well documented and part of our ongoing safety training program. The facility is designed and operated according to specific federal laws, the Select Agent Regulations. Our administrative staff is thoroughly trained and experienced in shipping and transferring dangerous goods. They maintain current IATA Dangerous Goods Certification and receive training from the U.S. Department of Commerce, Bureau of Industry and Security, regarding compliance with export controls.

F. Safety Program

17. List Bio Labs maintains an active safety program that complies with local, state and federal laws and regulations. The staff is trained in control of aerosols through facility design, equipment features, respirators and appropriate laboratory techniques. An immunization program is provided for personnel working with Clostridium botulinum, Clostridium tetani and Corynebacterium diphtheriae. All of List Bio Labs' permanent staff members are either approved or in the approval process by the CDC Select Agent Program. Staff members are extensively trained in the biosafety and security aspects of handling select agents. New employees, student employees and those waiting for approval are physically restricted from entry by an electronic

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key system when select agents are present. Standard operating procedures for security and safety are well established.

18. In addition to the safety training given to all personnel, employees are also trained routinely on cGMP documentation and compliance. The training includes documentation of deviations and change control, control and release of raw materials, equipment calibration, suitability and maintenance as well as detailed documentation or procedural training.

G. State Drug License

19. List Bio Labs received a Drug Manufacturing License from the Department of Public Health, Food and Drug Branch, State of California in order to support projects requiring toxins for use in human phase I and II clinical trials.

H. Bacteria Used

20. The production staff is experienced in handling biosafety level 2 and 3 microorganisms. Bacteria routinely handled in pure culture include Bordetella pertussis, Vibrio cholerae, Escherichia coli, Bacillus anthracis, Clostridium botulinum, Clostridium tetani, Clostridium difficile, Corynebacterium diphtheriae, Staphylococcus sp., Pseudomonas sp. and Salmonella sp.

I. Assets and Debt Structure.

The condensed balance sheet for List Bio Labs for the month ending November 30, 2009, lists assets of $9,013,491, liabilities of $4,712,096, and stockholder's equity (deficit) of ($4,298,211). The Company lost $174,688 from operations on revenue of $399,273 in the month ending November 30, 2009.

In addition to this Motion, the Debtor is filing other "Initial Case" motions, including motions for an order authorizing the Debtor to pay pre-petition wages to employees and preventing the utilities from discontinuing services. The Debtor intends to file a Chapter 11 Plan to restructure its capital to satisfy its obligations, provide for the adjustment or cancellation of equity interest and to obtain funds necessary to complete reorganization.

The primary assets of the Debtor are its equipment, accounts receivable, and its intellectual property. No formal appraisal of the value of List Bio Labs has been obtained;

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however, the Debtor believes that at a minimum, the value of the List Bio Labs operations as a going concern, does not the value of the obligations owing to Wells Fargo Bank, the holder of the first lien. The schedules have not been filed; however, the secured creditors are owed a total of approximately $2,717,205, and the Debtor believes that its unsecured debt will exceed $150,000. Debtor has no unencumbered funds.

J. Necessity For Use Of Cash Collateral.

The Debtor met its pre-petition working capital requirements through operations and borrowing from the Bank. The Debtor will need to use cash collateral and debtor in possession financing to permit the orderly continuation of the operation of its business and to maintain business relationships with and pay employees, vendors and suppliers, to maintain its intellectual property, and to satisfy other working capital needs. However, the Debtor does not believe that it can continue to operate if it is not also using its cash collateral, and thus reducing its need to borrow additional funds. Aside from loans from the Bank, the Debtor has been unable to obtain financing from any other source. Debtor anticipates that its future debtor in possession financing will be from its Debtor's equity holders, if authorized by this Court. .

The Debtor has prepared the Initial Budget as cash operating budget reflecting the anticipated receipt of revenues and operating expenses of the Debtor during the Chapter 11 period to January 15, 2010. The Budget assumes that the Debtor will be able to use Cash Collateral consisting of proceeds of accounts receivable. The ability of the Debtor to obtain sufficient working capital and liquidity through the use of cash collateral is vital to the preservation and maintenance of the going concern value of the Debtor. This use of Cash Collateral is required to supplement the debtor-in-possession financing.

The emergency interim relief requested is critical to the success of this case. As set forth in the Initial Budget, the Debtor anticipates that it will require up to $93,000 to fund wages and other employee expenses and necessary expenses during the first three (3) weeks following the Petition Date, and $37,000, and payments to vendors for inventory and suppliers. These expenses are set forth on page 1 of the Budget. They include payroll and utility deposits. The Debtor has reduced its employees down to 30 employees, and it requires these employees who have a history

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with the Debtor to conduct the Chapter 11 case and to continue its business and maintain and maximize its going concern value for the benefits of creditors. Failure to retain its remaining employees will destroy any prospect of a Chapter 11 Plan and reduce the value of its assets.

During this Chapter 11 Case, the Debtor intends to maintain the going concern value of its business by continuing operations through use of Cash Collateral pending confirmation of a Chapter 11 Plan.

K. Use Of Cash Collateral And Adequate Protection

Debra Dye is the vice President of Operations of the Debtor and has prepared and submitted the Initial Dye Declaration. The Debtor has developed a budget which provides for that period commencing on the Petition Date and continuing through January 15, 2010 (the "**Initial Cash Collateral Period**"), by which time the Debtor anticipates that it will have received additional financing. The Budget is divided into bi-weekly periods. The Debtor has itemized the immediate cash needs as set forth hereinabove (the "**Interim Period**"), pending the final hearing on this motion and identifies those expenditures that the Debtor anticipates will be necessary to make during the Interim Period prior to the final hearing and without which the Debtor will be irreparably harmed. The Debtor requests authorization to use Cash Collateral during the Interim Period to the extent necessary to prevent immediate and irreparable harm to the Estate. The balance of the Initial Budget reflects anticipated revenues and the Debtor's operating needs through the balance of the Cash Collateral Budget. The Budget reflects the efforts of List Bio Labs to continue operations and maintain the going concern value of its assets and operations.

The Initial Dye Declaration demonstrates that the Debtor is unable to obtain financing from any source other than the loans obtained from the Bank, that the use of Cash Collateral to continue the ongoing operations will preserve the going concern value of the Debtor and thus provide adequate protection to the Bank and that the Debtor is prepared to provide additional adequate protection in the form of the Replacement Lien and reasonable reporting requirements.

C. Interim Approval Should Be Granted

Pursuant to Bankruptcy Code Section 363(c), this Court, authorizes the debtor-in-possession to use cash collateral if a secured creditor consents or this Court authorizes use of cash

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collateral after Notice and a hearing.

Bankruptcy Rule 4001(b) provides that a final hearing on a motion to use cash collateral may not be commenced earlier than 15 days after the service of such motion. Upon request, the Court is empowered to conduct a preliminary hearing on the motion and authorize the use of cash collateral to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

The Debtor anticipates negotiating with the Bank to develop a stipulation allowing use of cash collateral. The Debtor requests that the Court approve use of Cash Collateral during the Interim Period in accordance with the Initial Budget pending final approval of the Motion. The Budget and the Initial Dye Declaration have identified those expenses which are required to be paid during the Interim Period in order to avoid immediate and irreparable harm to the Debtor. The Debtor believes that failure to pay these expenses before the final hearing will cause immediate and irreparable harm to the estate, making it impossible for the Debtor to continue to operate its business, and undermining the chances of a successful reorganization. Specifically, the employees have indicated that they must be paid and assured that they will be paid if they are to continue to work for the Debtor. The Debtor requests approval for use of cash collateral to pay those expenses before the final hearing on this Motion if cash is available and that this Court authorizes the Debtor to grant the Replacement Lien as additional adequate protection.

WHEREFORE, the Debtor requests that this Court:

1. Conduct a preliminary hearing on this motion at the earliest possible date;

2. Following said preliminary hearing, make and enter its orders:

a. Finding that notice of the preliminary hearing was adequate under the circumstances of this case;

b. Authorizing the Debtor to use cash collateral pursuant to the budget pending the final hearing on this Motion;

c. Authorizing the Debtor to take such acts and executes such documents as are necessary to carry out said order; and

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3. Fix the date and time for the final hearing to approve the use of cash collateral by the Debtor.

Dated: December 17, 2009

WENDEL, ROSEN, BLACK & DEAN LLP

By: */s/ Elizabeth Berke-Dreyfuss*
Elizabeth Berke-Dreyfuss
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List Biological Laboratories, Inc.

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