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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

MEMORANDUM OF POINTS AND AUTHORITIES 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.: Courtroom 3020
280 South First Street
San Jose, CA
Judge: The Hon. Arthur S. Weissbrodt

I. INTRODUCTION

In bringing its motion for relief from the automatic stay, Wells Fargo Equipment Finance, Inc. ("Wells Fargo") is implicitly, if not expressly, admitting that its interest in the property is a security interest and not an ownership interest. At the outset this is an important point, because the agreements on which Wells Fargo bases its claims are denominated "Master Lease" and "Supplemental Lease" in which Wells Fargo is identified as the "Lessor." However, these

agreements are not "true leases," but rather, are loan agreements for which the Debtor, List Biological Laboratories, Inc. ("List Bio Labs" or "Debtor"), gave Wells Fargo a lien on the Debtor's equipment as security for the loans. As a result, Wells Fargo moves "this Court for relief from the automatic stay to enforce its lien against personal property of the Debtors [*sic*]." (Wells Fargo's Notice Of Hearing On Motion For Relief From Automatic Stay Or In The Alternative Adequate Protection, p. 1, lines 24-25.)

With respect to the present motion, Wells Fargo has failed to introduce competent, admissible evidence to satisfy its burden of making an initial showing that the Debtor has no equity in the equipment. Moreover, the equipment is necessary for the Debtor's successful reorganization, because the equipment is used on a daily basis in its ongoing business of producing bacterial toxins and research reagents derived from bacteria, which are marketed and sold to the research and vaccine development communities. Thus, Wells Fargo is not entitled to relief from the automatic stay under 11 U.S.C. §362(d)(2). Because Wells Fargo has failed to satisfy its evidentiary burden under section 362(d)(2), and it has not moved for relief from the stay on any other ground under section 362, its motion should be denied.[1]

II. FACTUAL BACKGROUND

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. Declaration Of Debra Dye In Opposition To Motion For Relief From Stay ("Dye Declaration" or "Dye Decl."), p. 2:10-13. 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'

[1] Wells Fargo has not moved for relief from the stay on the ground that there is a lack of adequate protection of its interest under 11 U.S.C. §362(d)(1). Rather, Wells Fargo has requested that "**if** relief from stay is not granted, WELLS FARGO respectfully request the Court to order adequate protection in the amount of $11,781.00 per month." (Wells Fargo's Motion For Relief From Stay To Enforce Lien On Personal Property Or In The Alternative Adequate Protection [the "Motion"], p. 3, lines 2-4 [emphasis in bold added].)

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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 marketing. *Id.* at 3:2-3.

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. *Id.* at ¶7. 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 of products. 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. *Id.* at ¶8.

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. *Id.* at ¶9.

The majority of products manufactured by List Bio Labs are reagent grade, not Select Agents, and are less toxic than botulinum toxin. 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

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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. *Id.* at ¶10.

Production of these products occurs at the List Bio Labs GMP[2] 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. *Id.* at ¶12.

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). *Id.* at ¶14. During the August 2007 to July 2009 time period, List Bio Labs also purchased three pumps, one Meter Basic PH, two centrifuges, Peek Tubing, Bufferprep Kit, PV-908, PH Electrode, Dummy PH Electrode, one L-2485 Flourescence Detector, two Rotor Assemblies, two JLA 16.250 Rtr with Biosafe Lid (with attachments and accessories), seven Biol Safety Cabinets, one Experion System (with attachments and accessories), one Oven Forced Con Fed (with attachments and accessories), two Avanti JE Biosafe Centrifuges (with attachments and accessories), and One Hepa Filter Kit, Avanti J-25. All of that equipment is essential to both the ongoing business operations and the effective reorganization of List Bio Labs. *Id.* at ¶14.

Subsequently, List Bio Labs obtained two loans from Wells Fargo Equipment Finance,

[2] Good Manufacturing Practices under accepted industry Protocol.

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Inc. ("Wells Fargo"). On or about June 19, 2009, List Bio Labs entered into Master Lease Number 253355 ("Master Lease") with Wells Fargo. *Id.* at ¶15. 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. 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 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. *Id.* at ¶16.

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. 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. *Id.* at ¶17. (The equipment provided as security for the June Loan and August Loan shall collectively be referred to herein as the "Equipment.")

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." *Id.* at ¶18.

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

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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. Such a result could seriously jeopardize the Debtor's reorganization effort, and ultimately, creditor 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. *Id.* at ¶19.

The Debtor commenced its Chapter 11 case on December 11, 2009 (the "Petition Date"). *Id.* at ¶2. At the date of filing the petition, the estimated fair market value of the Equipment was, and still is, $79,500. *Id.* at ¶20.

III. LEGAL DISCUSSION

A. Wells Fargo Has Only A Security Interest In The Equipment, And Not A Lessor's Reversionary Interest

In bringing its motion for relief from the automatic stay, Wells Fargo has effectively conceded that its interest in the equipment is that of a secured creditor, and not that of a "lessor." Wells Fargo's motion refers to its "lien" on the "personal property of Debtor." (Wells Fargo's Motion, p. 1:22-23.) Even if it had not conceded this issue, an examination of the terms of the Master Lease and the June and August Loans, confirms that this was a loan secured by an interest in the Debtor's equipment, and not a lessor-lessee relationship. *See*, Cal. Commer. Code §1203; Minn. Stat., §336.1-203.

The issue of whether a lease is a true lease or a disguised security interest under the Bankruptcy Code depends on whether it is a security interest under applicable state law. *In re Triplex Marine Maintenance, Inc.*, 258 B.R. 659, 664 (Bankr. E.D.Tex. 2000). In this case the equipment and the Debtor are located in California, but the Lease contains a Minnesota choice of law provision and Wells Fargo has a Minnesota address. However, because the relevant Uniform

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Commercial Code provisions that govern this issue are the same under both California and Minnesota law, the analysis and result are the same under either statutory scheme.

The relevant provision of the California Commercial Code is section 1203, which addresses the distinction between a lease and a security interest. Section 1203 provides in relevant part:

(1) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(2) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

(3) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(4) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(5) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or

(6) the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

Section 1203 essentially establishes a two-step procedure for determining whether a transaction is a security interest or a lease. Even though the language of subsection (a) provides a general rule that the character of the transaction will be determined by an examination of the facts of each case, "this instruction is immediately qualified by the delineation of circumstances that create a security interest as a matter of law." *Addison v. Burnett*, 41 Cal.App.4th 1288, 1295 (1996). In other words, there is an exception to that general rule. That exception is a bright line test, which, if satisfied, establishes that the transaction is a security interest as a matter of law, and there is no need to go to step two, which is a contextual analysis of the transaction to determine whether the facts of the case demonstrate that a security interest was created. *See In re Triplex Marine Maintenance, Inc.*, 258 B.R. 659, 669 (Bankr. E.D.Tex. 2000); *see also In re Kim*, 232 B.R. 324, 330 (Bankr. E.D.Pa. 1999).[3] If the bright line test is not satisfied, "a security interest

[3] The Uniform Commercial Code is intended to be a uniform law, so the Court may consider

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will not conclusively be found to exist . . . [and] the court must then resort to an examination of the facts of the case to determine whether the lessor has retained a 'meaningful residual interest' in the goods." *Addison v. Burnett*, 41 Cal.App.4th at 1296.

Under the bright line test, if the lessee does not have the right to cancel the purported lease prior to the expiration of its term, and one of the four conditions identified in Commercial Code section 1203(b) exists, then the purported lease will be deemed to be a security agreement as a matter of law. *Id.* Here, the Debtor, as lessee, does not have the right to cancel the Master Lease. Furthermore, both the June Loan and August Loan give the Debtor the option to become the owner of the equipment for nominal additional consideration ($1.00) at the end of the Lease term after all of the Total Basic Rent has been paid. Consequently, this satisfies the fourth condition found in section 1203(b)(4): "the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement." Thus, the character of the transaction as a security interest is conclusively established, and the inquiry ends there. *See In re Ecco Drilling Co., Ltd.*, 390 B.R. 221, 227 (Bankr. E.D.Tex. 2008) ("For transactions that satisfy the foregoing bright-line test, the inquiry comes to an end--such purported leases constitute security agreements as a matter of law.")

Minnesota's Uniform Commercial Code counterpart to California's section 1203 is found in M.S.A. §336.1-203, and the language is identical to the corresponding portion of California Commercial Code section 1203. Thus the same analysis applies. *See, e.g., James Talcott, Inc. v. Franklin National Bank of Minneapolis*, 292 Minn. 277, 281, 194 N.W.2d 775, 779 (1972) (even before the amendment to the Commercial Code, the court found that an option to purchase the property for a nominal amount ($1 or $2) at the end of the lease term conclusively established that the character of the transaction was a security interest and not a true lease).

In sum, the agreements at issue are secured loan transactions, and not true leases.

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decisions from other state and federal courts interpreting section 1-207(37). *See PSINet, Inc. v. Cisco Systems Capital Corp.*, 271 B.R. 1, 41, 43 (Bankr. S.D.N.Y. 2001); *In re Edison Bros.*, 207 B.R. 801, 809, n. 7 (Bankr. D.Del. 1997) ("Since the UCC has been adopted by all 50 states, and given the uniformity purpose of the UCC, decisions from other states are relevant.")

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B. Wells Fargo Has Failed To Demonstrate A Right To Relief Under Section 362(d)(2), Because It Has Not Established That The Debtor Lacks Equity In The Equipment

As the moving party, Wells Fargo has the burden of introducing evidence to show that the Debtor has no equity in the equipment. 11 U.S.C. §362(g); *In re Bialac*, 712 F.2d 426, 432 (9th Cir. 1983); *In re Anthem Communities/RBG, LLC*, 267 B.R. 867, 870 (Bankr. D.Colo. 2001). Only after Wells Fargo satisfies its burden, does the burden shift to the Debtor to establish that the equipment is necessary for an effective reorganization. *Id.* However, "[a] creditor cannot obtain relief from stay with no evidence whatever, and with only unsupported allegations." *In re Kim*, 71 B.R. 1011, 1015 (Bankr.C.D.Cal. 1987).

Here, Wells Fargo offers only the bare assertion by James A. Bluhm in his declaration that "Debtor has no equity in the Equipment". (Declaration Of James A. Bluhm In Support Of Motion For Relief From Automatic Stay To Enforce Lien On Personal Property Or In The Alternative Adequate Protection ("Bluhm Declaration" or "Bluhm Decl."), p. 3:4-5.) However, neither Mr. Bluhm nor Wells Fargo offer sufficient facts to support that assertion. At most, Mr. Bluhm offers the statement that *Wells Fargo* is informed and believes "that the probable value of the Equipment is the sum of $326,215.00." (Bluhm Decl., p. 2:26-27.) Not only is Mr. Bluhm making an assertion of value based only on "information and belief," he is making that assertion not as to his own information and belief, but as to the monolithic entity Wells Fargo. This statement is inadmissible evidence, because, among other things, it lacks foundation and any indication of personal knowledge. FRE 104, 602. Statements made on "information and belief" are, by the declarant's own admission, made without essential foundational facts and personal knowledge, and suggest that the statement is based, at least in part, on inadmissible hearsay. FRE 802.

Wells Fargo does assert in its Motion that there is no equity in the equipment, based on a calculation of subtracting what it describes as the "Fair Market Value of the Equipment" ($326,215.00) from the "Lien of WELLS FARGO" ($554,080.00) for a "Net Equity [Negative]" ($227,865.00). (Wells Fargo's Motion, p. 2:23-26. However, Wells Fargo offers no facts to support that argument, other than the Bluhm Declaration, and that declaration lacks admissible

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evidence. There is no foundation for the amount claimed to be the "Fair Market Value" of the equipment. In fact, there is no foundation offered for the amount due on Wells Fargo's lien. Argument of counsel is not evidence. *In re Anthem Communities/RBG, LLC*, 267 B.R. at 873.

In short, Wells Fargo has failed to meet its burden of introducing admissible evidence to establish that the Debtor has no equity in the equipment. Therefore, its motion for relief from stay must be denied.

C. Wells Fargo Is Not Entitled To Relief From The Automatic Stay Under Section 362(d)(2), Because The Equipment Is Necessary For An Effective Reorganization

Even if the Court were to find that Wells Fargo had established that the Debtor has no equity in the equipment, that equipment is essential to the Debtor's effective reorganization, and, therefore, Wells Fargo is not entitled to relief from the stay under Section 362(d)(2). *See, e.g., In re Koopmans*, 22 B.R. 395, 407-408 (Bankr.D.Utah 1982).

The evidence submitted by the Debtor establishes that the Equipment at issue is necessary for an effective reorganization. The Equipment is used in the Debtor's daily operations and is key to the production of the bacterial toxins and research reagents derived from bacteria, which are marketed and sold to the research and vaccine development communities. (Dye Decl., ¶¶ 14, 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 reorganization efforts, and ultimately, creditor recoveries. The Debtor requires the equipment to continue its business and maintain and maximize its going concern value for the benefits of

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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. (Dye Decl., ¶19.)

D. Any Adequate Protection Payments Sought By Wells Fargo If Relief From Stay Is Denied Must Be Based On The Value Of The Collateral, As Determined By The Court Under 11 U.S.C. §506 On The Debtor's Cross-Motion

Nowhere in Wells Fargo's motion does it assert that it is seeking relief from the stay on the ground that there is a lack of adequate protection. Rather, all that Wells Fargo's motion asks is that "if relief from stay is not granted," the Court then should "order adequate protection in the amount of $11,781.00 per month." (Wells Fargo's Motion, p. 3:2-4, 12-13.) Although Wells Fargo submits no evidence as to how it determined this amount, it appears to be based upon the monthly payments due under the June and August Loans ($9,847.92 plus $1,934.72 equals $11,782.64).

However, it is well established that the adequate protection provision of 11 U.S.C. §361 protects only secured creditors. *In re Dairy Mart Convenience Stores, Inc.*, 351 F.3d 86, 90 (2d Cir. 2003). Holders of unsecured claims are not entitled to adequate protection under §361. *Id.* Consequently, a valuation of the collateral under 11 U.S.C. § 506(a) establishes the extent of a creditor's secured claim for purposes of adequate protection. *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371-372, 108 S.Ct. 626, 631 (1988); *In re Dairy Mart Convenience Stores, Inc.*, 351 F.3d at 90. Section 506(a) provides, in relevant part:

> An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim.

11 U.S.C. §506(a).[4] "The phrase 'value of such creditor's interest' in §506(a) means 'the value of

[4] With respect to this opposition to Wells Fargo's motion and motion to value property, the Debtor is not conceding, that Wells Fargo's claim is an allowed claim under Section 502.

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the collateral.'" *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. at 372, 108 S.Ct. at 631. Thus, Wells Fargo is only entitled to adequate protection based upon the value of the Equipment.

Under Rule 3012 of the Federal Rules of Bankruptcy Procedure, the Court may determine the value of Wells Fargo's claim that is secured by its lien on the Equipment. Here the evidence shows that the Equipment had a fair market value of $79,500.00[5] as of the Petition Date (Dye Decl., ¶20)--*i.e.*, the estate's interest in the property.[6] Thus, any adequate protection payments must be based on that amount.

IV. CONCLUSION

Wells Fargo has failed to satisfy its burden that it is entitled to relief from the automatic stay. The equipment at issue is necessary to an effective reorganization of the Debtor. Therefore, the motion for relief from stay should be denied. If the Court were to order payment of adequate protection, any such payments are to be based on the estate's interest in the Equipment, which is no more than $79,500.

Dated: March 5, 2010

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

[5] It is not clear how Wells Fargo came up with $326,215.00 as being the value of the Equipment. It did not rely on the Debtor's Amended Schedule B, where the Debtor identified the estimated current market value of all of its equipment, including that on which Wells Fargo claims a lien, as being $204,100. That value represents the estimated used retail value of the equipment as is. The fair market value of the Equipment at issue, is $79,500. This value is calculated by taking the estimated used retail value of $283,000.00, which is the value of clean, ready-to-use equipment, and subtracting 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, and subtracting any fees payable to an auctioneer or consignor. (Dye Decl., ¶20.)

[6] An owner is competent to testify as to the value of his or her property. *South Central Livestock v. Security State Bank*, 614 F.2d 1056, 1061-1062 (5th Cir. 1980) (financial officer was competent to testify as to the business's value).

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