

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

In re:)	
)	
ENUMERAL BIOMEDICAL)	CHAPTER 11
HOLDINGS, INC., <i>et. al.</i>)	CASE NO. 18-10280
)	
Debtors. ¹)	
)	

**INTERIM ORDER AUTHORIZING USE OF
CASH COLLATERAL AND SCHEDULING A FINAL HEARING**

This matter having come before the Court on the *Debtors' Motion For Entry of Interim and Final Orders Authorizing the Use of Cash Collateral* (the "Cash Collateral Motion") filed on January 29, 2018, by Enumeral Biomedical Holdings, Inc. ("EBHI"), Enumeral Biomedical Corp. and Enumeral Securities Corporation (the "Debtors"), debtors-in-possession in the above-captioned cases; the Court having considered the Cash Collateral Motion, along with the evidence submitted and the arguments of counsel made at the interim hearing held on February 5, 2018 (the "Interim Hearing"); notice of the Interim Hearing having been given in accordance with Fed. R. Bankr. P. 2002, 4001(b), (c), and (d), and 9014 and MBLR 4001-2(b); the Interim Hearing having been held and concluded; all objections, if any, to the interim relief requested in the Cash Collateral Motion having been withdrawn, resolved or overruled by the Court; and good and sufficient cause appearing therefor;

¹ The debtors in these jointly administered chapter 11 cases, along with the last four digits of each debtors' federal tax identification number, are: Enumeral Biomedical Holdings, Inc. (6434), Enumeral Biomedical Corp. (9860), and Enumeral Securities Corporation (7157).

THE COURT HEREBY MAKES THE FOLLOWING PRELIMINARY FINDINGS:

A. On January 29, 2018 (the “Petition Date”), the Debtors filed voluntary petitions with this Court for relief under chapter 11 of the Bankruptcy Code. The chapter 11 cases initiated by these petitions are referred to herein as the “Cases.”

B. The Debtors continue to manage their affairs as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Cases.

C. This Court has jurisdiction over these proceedings, and the persons and properties affected hereby, pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409 and the standing order of reference codified in LR D. Mass. 201. The Cash Collateral Motion is a core proceeding pursuant to 28 U.S.C. § 157(b).

D. As of the date hereof, the United States Trustee, District One (the “U.S. Trustee”) has not yet appointed an official committee of unsecured creditors in the Cases pursuant to section 1102 of the Bankruptcy Code (the “Creditors’ Committee”).

E. On the Petition Date, EBHI filed the *Debtor’s Motion to Authorize Sale of Property Free and Clear of All Liens, Claims and Other Interests*, pursuant to which EBHI seeks this Court’s authorization to sell, free and clear of liens, the assets related to its anti-PD-1 antibody program, for \$1,600,000 in cash (subject to higher or better offers) pursuant to an Asset Purchase Agreement (the “Purchase Agreement”) by and between XOMA Corporation (the “Purchaser”) and EBHI dated January 26, 2018. Pursuant to the Purchase Agreement, the Purchaser has paid EBHI a deposit of \$160,000 (the “Deposit”) to be credited against the ultimate purchase price if Purchaser is the successful bidder. If the Purchaser is named the successful bidder but fails to close, the Purchase Agreement provides for the Deposit to be retained by EBHI as liquidated damages.

F. The Debtors requested entry of this Order on an interim basis pursuant to Fed. R. Bankr. P. 4001(b)(2). The Debtors have an immediate need to use cash that may be subject to creditors' liens ("Cash Collateral") to, among other things, preserve and maximize the value of the Debtors' assets, absent which immediate and irreparable harm will result to the Debtors, their estates, and their creditors. The preservation and maintenance of the Debtors' assets is necessary to maximize value available for distribution to creditors. Accordingly, the relief requested in the Cash Collateral Motion is (i) critical to the Debtors' ability to maximize the value of their chapter 11 estates, (ii) in the best interests of the Debtors and their estates, and (iii) necessary, essential, and appropriate to avoid immediate and irreparable harm to the Debtors and their assets. This Order and all of its terms meet the standard for interim relief set forth in MBLR 4001-2(e)(2).

G. Intuitive Venture Partners, LLC, as collateral agent for certain purportedly secured convertible noteholders (the "Collateral Agent") may have an interest in Cash Collateral.

H. Attached to the Cash Collateral Motion is a budget (the "Budget") for the use of Cash Collateral. The expenses shown in the Budget for the period through the further hearing on the Cash Collateral Motion scheduled pursuant to paragraph 8 of this Order are necessary to avoid irreparable harm to the Debtors.

I. The Debtors have caused notice of the Cash Collateral Motion, the relief requested therein, and the Interim Hearing to be served by facsimile, email, overnight courier, or hand delivery on the following parties (collectively, the "Notice Parties"): (i) all creditors of each Debtor, (ii) all entities known to assert a lien on any Debtor's assets, (iii) taxing authorities to which the Debtors are required to pay taxes or file a return, (iv) the Office of the United States Trustee, District One, and (v) all parties who have filed a notice of appearance in the case. Under the circumstances, the

notice given by the Debtors of the Cash Collateral Motion, the relief requested therein, and of the Interim Hearing complies with Fed. R. Bankr. P. 2002, 4001(b), (c), and (d) and MBLR 4001-2(b).

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Cash Collateral Motion is GRANTED on an interim basis as set forth in this order. Any objections to the Cash Collateral Motion to the extent not withdrawn or resolved are hereby overruled.

2. The Debtors are authorized to use Cash Collateral, substantially in accordance with the Budget, through and including February 16, 2018.

3. For the purposes of sections 361, 363(e) and 507(b) of the Bankruptcy Code, and as adequate protection to the Collateral Agent for the Debtors' use of Cash Collateral, the Collateral Agent is granted: (1) replacement liens on the same types of post-petition property of the Debtors' estates against which they held liens as of the Petition Date (the "Replacement Liens"), but only to the extent of any post-petition diminution in the value of the Collateral Agent's pre-petition collateral resulting from the Debtors' use of the Cash Collateral; and (2) a lien on the Debtor's contingent right to the Deposit under the terms of the Purchase Agreement, but only to the extent of any post-petition diminution in value of the Collateral Agent's pre-petition collateral resulting from the Debtors' use of the Cash Collateral, and only after accounting for the value of the Replacement Liens (the "Deposit Lien").

4. The Replacement Liens and the Deposit Lien shall be valid and enforceable to the same extent as the Collateral Agent's pre-petition liens. The Replacement Liens shall maintain the same priority as the Collateral Agent's pre-petition liens.

5. No lien granted pursuant to this Order shall attach to any claims of the Debtors' estate under any avoidance powers conferred by the Bankruptcy Code, including those avoidance powers

set forth in Sections 544, 545, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code, or to the proceeds of any such claims.

6. Nothing in this order shall constitute a waiver by or restrict the right of any Debtor to seek the further use of Cash Collateral.

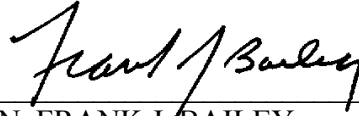
7. This Court has not been asked to find, and it does not find, that any asserted lien is valid, perfected or enforceable, or that any asserted claim is allowable.

8. A continued hearing on the Debtors' request for use of Cash Collateral is scheduled for **February 16, 2018, at 2:00 p.m.** (prevailing Eastern Time) before this Court. Within one business day after entry of this Order, the Debtors shall serve, by first class mail or other appropriate method of service, a copy of this Order on the Notice Parties. Any responses or objections to the Cash Collateral Motion shall be made in writing, conform to the applicable Federal Rules of Bankruptcy Procedure and Massachusetts Local Bankruptcy Rules, and set forth the name of the objecting party, the basis for the objection, and the specific grounds therefor. Any such response or objection shall be filed with the Clerk of this Court not later than **February 14, 2018, at 4:30 p.m.** (prevailing Eastern time) (the "Deadline"), and served on, so as to be actually received not later than the Deadline by, the following parties: (a) counsel for the Debtors, Daniel C. Cohn, Esquire and Jonathan M. Horne, Esquire, Murtha Cullina LLP, 99 High Street, Boston, Massachusetts; (b) U.S. Trustee, and (c) all parties who have filed a notice of appearance and request for service of papers in these cases.

9. Notwithstanding any rule to the contrary, this Order shall be immediately effective and enforceable upon its entry.

10. This Court has and will retain jurisdiction and power to enforce this Order in accordance with its terms, and to adjudicate any and all matters arising from or related to the interpretation or implementation of this Order.

BY THE COURT

A handwritten signature in black ink, appearing to read "Frank J. Bailey", written over a horizontal line.

HON. FRANK J. BAILEY
United States Bankruptcy Judge

Dated: February 6, 2018