

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re:

LYDIA CLADEK, INC.,

Case No. 3:10-bk-02805-PMG

Debtor.

(Consolidated by Prior Court Order with Case
No. 10-bk-02800-PMG)

**APPLICATION FOR AN ORDER PURSUANT TO SECTION 327(a) OF THE
BANKRUPTCY CODE AUTHORIZING THE RETENTION OF MICHAEL
MOECKER AND ASSOCIATES, INC. AS ACCOUNTANTS TO THE
CHAPTER 11 TRUSTEE *NUNC PRO TUNC* TO APRIL 14, 2010**

Michael Phelan, the Chapter 11 Trustee of the consolidated Chapter 11 cases of Lydia Cladek, Inc. (the "Chapter 11 Trustee"), makes this application for an order authorizing the employment of Michael Moecker and Associates, Inc. ("Moecker and Associates"), *nunc pro tunc* to April 14, 2010, as accountants to the Chapter 11 Trustee, and in support thereof says:

STATEMENT OF FACTS

1. On April 2, 2010, several petitioning creditors filed an involuntary Chapter 11 petition against Lydia Cladek, Inc., case styled as In re Lydia Cladek, Inc., Case No. 10-bk-02800-PMG, in the United States Bankruptcy Court, Middle District of Florida, Jacksonville Division (the "Involuntary Case").

2. Subsequently, on April 5, 2010, Lydia Cladek, Inc. ("LCI" or the "Debtor") filed the instant voluntary Chapter 11 petition, case styled as In re Lydia Cladek, Inc., Case No. 10-bk-02805-PMG, in the United States Bankruptcy Court, Middle District of Florida, Jacksonville Division (the "Voluntary Case").

3. On April 7, 2010, several creditors filed an Emergency Motion to Consolidate the Involuntary and Voluntary Chapter 11 cases of Lydia Cladek, Inc. [Docket No. 13]

4. On April 7, 2010, several creditors filed an Emergency Motion to Appoint a Chapter 11 Trustee. [Docket No. 11]

5. On April 12, 2010, the Court entered its Order Granting Motion To Consolidate, consolidating the Voluntary and Involuntary Chapter 11 cases of the Debtor, and providing that the Voluntary Case, Case No. 10-02805, shall be the lead case. [Docket No. 32]

6. On April 12, 2010, the Court entered its Order Granting Motion to Appoint Chapter 11 Trustee. [Docket No. 31]

7. On April 13, 2010, the United States Trustee filed its Appointment of Chapter 11 Trustee and Setting Bond, and its Application for Approval to Appoint Michael Phelan as Chapter 11 Trustee. [Docket Nos. 44 and 46]

8. On April 13, 2010, Michael Phelan filed a Notice of Acceptance as Chapter 11 Trustee (the "Chapter 11 Trustee"). [Docket No. 45]

9. On April 14, 2010, the Court entered its Order Approving Appointment of Chapter 11 Trustee and Setting of Bond. [Docket No. 47]

10. On April 15, 2010, the Chapter 11 Trustee filed an application seeking to employ the law firm of Akerman Senterfitt as counsel for the Chapter 11 Trustee in these cases pursuant to Section 327 of the Bankruptcy Code. [Docket No. 55]

11. On April 27, 2010, the Court entered its Interim Order Approving Appointment of Akerman Senterfitt as Counsel for the Chapter 11 Trustee. [Docket No. 72]

12. The Chapter 11 Trustee is currently operating the Debtor's business pursuant to sections 1106 and 1108 of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

VENUE AND JURISDICTION

13. This Court has jurisdiction over this case and this Application pursuant to 28 U.S.C. § 1334 and 157. Pursuant to 28 U.S.C. § 157(b)(2)(A), this is a core matter. Venue of this case and of this Application is proper pursuant to 28 U.S.C. §1408 and 1409. The statutory predicates for the relief sought in this Application are Section 327(a) of the Bankruptcy Code and Rule 2014, Federal Rules of Bankruptcy Procedure.

RELIEF REQUESTED

14. In order to exercise his rights and perform his duties as Chapter 11 Trustee in a proper, efficient, and economical manner, the Chapter 11 Trustee seeks to retain the services of Moecker and Associates to provide necessary accounting services and financial advice, as more specifically outlined below. The Chapter 11 Trustee requests that the employment of Moecker and Associates be effective as of April 14, 2010, the date on which services were first rendered by Moecker and Associates.

15. The Chapter 11 Trustee desires to employ Moecker and Associates for the following purposes:

- (a) To review the books and records of the Debtor and to analyze and verify accounts with regard to the assets, liabilities, financial affairs, and financial obligations of the Debtor (the "Estate");
- (b) To review, analyze and report to the Chapter 11 Trustee and legal counsel for the Chapter 11 Trustee with regard to any financial reports, information or data concerning the administration of the case, the liquidation of assets, the collection of accounts receivable owed to the

Debtor, and the enforcement and collection of any claims, including, without limitation, claims for preferences, fraudulent conveyances, and other transfers avoidable under the Bankruptcy Code, improper disposal of assets, and other claims of recovery granted to the Estate;

- (c) To advise and assist the Chapter 11 Trustee and attorneys for the Chapter 11 Trustee in connection with an investigation of the affairs of the Debtor, and to assist in the administration;
- (d) To advise and assist the Chapter 11 Trustee with regard to the preparation and filing of any and all tax returns which may be required and to provide assistance, advice and consultation with regard to state and federal income taxes and their impact on the liquidation of assets;
- (e) To provide assistance and advice with regard to the former business operations of the Debtor, the preservation, maintenance, and management of properties of the Debtor, and the advantageous disposition of any assets of the Debtor;
- (f) To advise, assist, and represent the Chapter 11 Trustee and attorneys of the Chapter 11 Trustee in connection with the sale or other disposition of any assets of the Estate, including, without limitation, negotiations with prospective purchasers, evaluation of any offers received, and the compilation and analysis of any financial data and other information required in connection with the marketing and disposition of assets;
- (g) To advise and assist the Chapter 11 Trustee and the Chapter 11 Trustee's legal counsel in connection with the investigation, analysis, and

compilation of data relating to financial and accounting matters or issues in connection with any proceeding in this case, and to prepare such reports, summaries, documents and exhibits as may be required in connection therewith;

- (h) To provide support and assistance with regard to the proper receipt, disbursement, and accounting for funds and other property of the Estate;
- (i) To provide financial consulting services and financial advice during the pendency of the case;
- (j) To provide an appraisal of the fixed assets of the Estate;
- (k) To provide support and assistance to the Chapter 11 Trustee and the Chapter 11 Trustee's legal counsel with regard to the review of claims against the Debtor, the investigation of amounts properly allowable and the appropriate priority or classification of same, and the prosecution of objections to claims as appropriate;
- (l) To provide forensic accounting services to assist the Chapter 11 Trustee in the investigation of recoveries and to provide digital forensic accounting services in the investigation and recovery of electronic data; and
- (m) To assist the Chapter 11 Trustee's attorneys in the performance of the Chapter 11 Trustee's duties and exercise of the Chapter 11 Trustee's rights and powers under the Bankruptcy Code.

16. The Chapter 11 Trustee is a principal of Moecker and Associates. It is in the best interest of the Estate for the Chapter 11 Trustee to employ Moecker and Associates in order to avoid duplication of services and unnecessary expenses. The employees employed by Moecker

and Associates have knowledge and experience with regard to the matters in which Moecker and Associates is to be engaged and are well qualified to represent the Chapter 11 Trustee. Attached hereto and incorporated herein as **Exhibit A** is a verification of Mark C. Healy, Director of Moecker and Associates, pursuant to Rule 2014, Federal Rules of Bankruptcy Procedure. Attached hereto and incorporated herein as **Exhibit B** is Moecker and Associates' engagement letter identifying, among other things, the firm's standard hourly rates.

17. To the best of the Chapter 11 Trustee's knowledge, Moecker and Associates represents no interest adverse to the Chapter 11 Trustee, the Debtor, creditors, or any other party in interest, their respective attorneys and accountants, the United States Trustee, or any person employed in the office of the United States Trustee, or this Estate, in the matter for which Moecker and Associates is to be engaged. Moecker and Associates is disinterested under 11 U.S.C. § 101(14), with regard to the matters upon which it is to be engaged, and Moecker and Associates' employment is in the best interest of the Estate, the Debtor, creditors and other parties in interest.

WHEREFORE, Michael Phelan, the Chapter 11 Trustee of the consolidated Chapter 11 cases of Lydia Cladek, Inc., respectfully requests entry of an order authorizing the retention and employment of Michael Moecker and Associates, Inc., *nunc pro tunc* to April 14, 2010, to serve as accountants for the Chapter 11 Trustee, and to provide services to the Chapter 11 Trustee for the purposes specified herein, and for such other and further relief as is just and proper.

Dated: May 26, 2010.

AKERMAN SENTERFITT

By: /s/ Jacob A. Brown

Jacob A. Brown

Florida Bar Number: 0170038

Email: jacob.brown@akerman.com

Mark S. Mitchell

Florida Bar Number: 018039

Email: mark.mitchell@akerman.com

50 North Laura St., Suite 2500

Jacksonville, FL 32202

Telephone: (904) 798-3700

Facsimile: (904) 798-3730

Attorneys for the Chapter 11 Trustee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished either by electronic notification or U.S. mail, this 26th day of May, 2010 to:

Lydia Cladek, Inc.
108 Seagrove Main Street
St. Augustine, FL 32080

Charles B. Jimerson, Esq.
2124 Park Street
Jacksonville, FL 32204

Lawrence Lilly, Esq.
336 Redwing Lane
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John R. Stiefel, Jr., Esq.
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135 West Central Blvd., Suite 620
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Undine C. Pawlowski, Esq.
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Michael Phelan
Chapter 11 Trustee
6861 S.W. 196th Ave.
Bldg. 200
Ft. Lauderdale, FL 33332

Alan M. Weiss, Esq.
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R. Carter Burgess, Esq.
Arnold & New, LLC
6279 Dupont Station Ct.
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A. Giroud
225 North Forest Dune
St. Augustine, FL 32080

Wm. Patrick Fulford, Esq.
505 Maitland Avenue, Suite 100
Altamonte Springs, FL 32701

and the parties listed on the attached Local Rule 1007-2 Parties in Interest List.

/s/ Jacob A. Brown

Attorney

Label Matrix for local noticing
113A-3
Case 3:10-bk-02805-PMG
Middle District of Florida
Jacksonville
Wed May 26 09:06:33 EDT 2010

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Zemlo, Lorie Ann
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(d)Sharell Holverson
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End of Label Matrix

Mailable recipients	54
Bypassed recipients	3
Total	57

Exhibit A

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

LYDIA CLADEK, INC.,

Case No. 3:10-bk-02805-PMG

Debtor.

(Consolidated by Prior Court Order with Case
No. 10-bk-02800-PMG)

**RULE 2014 VERIFICATION WITH REGARD TO EMPLOYMENT OF
MICHAEL MOECKER AND ASSOCIATES, INC.**

The undersigned hereby declares under penalty of perjury:

1. My name is Mark C. Healy, and I am a Director of Michael Moecker and Associates, Inc. ("Moecker and Associates"). I make this Affidavit from personal knowledge and am competent to do so.

2. Moecker and Associates has been asked to represent Michael Phelan, as the Chapter 11 Trustee of the consolidated Chapter 11 cases of Lydia Cladek, Inc. (the "Chapter 11 Trustee"), in this Chapter 11 case as accountants to the Chapter 11 Trustee. To the best of my knowledge, Moecker and Associates has no professional, business, or other connection with the above mentioned Debtor, its attorneys, creditors, or any party-in-interest in this case. To the best of my knowledge, Moecker and Associates represents no interest which would be adverse to the estate of the Debtor in connection with the matters upon which Moecker and Associates is to be engaged by the Chapter 11 Trustee.

3. Moecker and Associates has not received and will not receive any payments from any source and has not been promised any payment except from the funds of this estate upon proper application to the Court. No understanding or agreement exists between Moecker and

Exhibit B

MICHAEL
MOECKER
& Associates, Inc.

6861 S.W. 196th Avenue
Suite 201-04
Ft. Lauderdale, FL 33332
(954) 252-1560 · (954) 252-2791 Fax

Mr. Michael Phelan
Chapter 11 Trustee
Lydia Cladek, Inc.
6861 SW 196 Ave Bldg 200
Fort Lauderdale, FL 33332

May 14, 2010

Dear Sir:

Thank you for considering our firm Michael Moecker & Associates, Inc. and its services in connection with the bankruptcy case of Lydia Cladek, Inc. (LCI) pending in the Middle District of Florida.

We understand that we will assist you in analyzing the current and past financial data of LCI and in resolving issues posed by the accounting systems employed by LCI. You have also asked us to assist in preparing amended schedules to be filed with the court and in conducting an appraisal of the LCI fixed assets. We understand that some of the work will be performed in St Augustine and that other work may be performed in our Ft. Lauderdale offices.

We will bill you monthly for our services. We understand that payment is conditioned upon court approval and may be subject to an interim holdback.


Our fee structure is as follows;

Hourly Rates -

- Principals \$300 per hour
- Associates \$150 to \$200 per hour
- Clerical \$50 to \$75 per hour

Other costs and expenses including travel, facsimile transmission, long distance telephone calls, document duplication expenses, etc. will be billed at cost. If this letter incorrectly expresses my understanding of the project and job tasks, please contact me. We appreciate the opportunity to work with you on this case.

Sincerely,


Donald Kaplan
President