

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

In re:

LYDIA CLADEK, INC.,

Debtor.

CASE NO. 3-10-bk-02805-PMG

Chapter 11

**MOTION OF OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS FOR CRAMDOWN**

The Official Committee of Unsecured Creditors (the "Committee") appointed and serving in the bankruptcy case of Lydia Cladek, Inc. (the "Debtor" or "LCI") hereby moves this Court for confirmation of its Amended Plan of Reorganization (Doc. No. 356)(the "Committee Plan")<sup>1</sup> ("Plan"), notwithstanding non-acceptance by Classes 2, 3, 4, 5, 7 and 8, pursuant to Section 1129(b) of the Bankruptcy Code ("Motion"), and in support thereof states as follows:

**BACKGROUND.**

1. On April 2, 2010, several petitioning creditors filed an involuntary Chapter 11 petition against the Debtor, Case No. 10-bk-02800-PMG, in the United States Bankruptcy Court, Middle District of Florida, Jacksonville Division (the "Involuntary Case"). Subsequently, on April 5, 2010, the Debtor filed the instant voluntary Chapter 11 petition (the "Voluntary Case").

2. On April 7, 2010, several creditors filed an Emergency Motion to Consolidate the Involuntary and Voluntary Chapter 11 cases of Lydia Cladek, Inc. (Doc. No. 13) along with an Emergency Motion to Appoint a Chapter 11 Trustee (Doc. No. 11).

3. On April 12, 2010, the Court entered its Order Granting Motion to Consolidate providing that the Voluntary Case shall be the lead case. On that date, the Court also entered its

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<sup>1</sup> Terms capitalized in this affidavit shall have the same meaning as used in the Plan unless such terms are defined differently herein.

Order Granting Motion to Appoint Chapter 11 Trustee (Doc. No. 32), appointing Michael Phelan as Chapter 11 Trustee (the "Trustee").

4. On June 1, 2010, the Court entered a Notice of Appointment of an Unsecured Creditors' Committee of Lydia Cladek, Inc. (Doc. No. 111).

5. On December 2, 2010, the Committee filed the Committee Plan and the Amended Disclosure Statement (Doc No. 354).

6. On December 3, 2010, the Trustee filed his Amended Plan of Liquidation (Doc. No. 361)("Trustee Plan") and Amended Disclosure Statement in Support of Amended Plan of Liquidation of Michael Phelan as Chapter 11 Trustee of Lydia Cladek, Inc. (Doc. No. 362).

#### **The Plan**

7. The Plan provides for the reorganization of the Debtor's business. The Plan will be funded from cash on hand, distribution of shares of the new reorganized company and proceeds from the causes of action and real estate. Each unsecured creditor in Class 10 will have the opportunity to receive both cash distributions from the Cladek Creditor Trust and shares in the new reorganized corporation which will administer the loan portfolio, with the goal of growing the loan portfolio and may give potential distributions to its shareholders.

8. The Plan contains eleven (11) Classes of Claims and Interests. There is a class of administrative claims and a class of priority claims, both of which are unimpaired. There are six (6) Classes of Secured Claims, two (2) Classes of Unsecured Claims, and one (1) Class of Interests.

9. There is a class of administrative claims and a class of priority claims (Class 1 and Class 2), which are being paid by the Trustee in full on the Effective Date. Allowed Secured Claims will receive there collateral as the indubitable equivalent of their respective claims. The

Unsecured Classes will receive distributions from the Cladek Creditor Trust or distributions from the Cladek Creditor Trust and shares of the new company. Equity Interests shall be canceled and of no further force or effect on the Effective Date. Accordingly, all Classes, except for Class 2, are impaired under the Plan.

10. Some of the creditors either failed to vote or voted against the Plan. The Committee seeks approval of the Plan over the no vote or negative vote of such creditors in accordance with 11 U.S.C. §1129(b).

**CRAMDOWN OF CLASSES THAT DID NOT  
VOTE OR VOTED TO REJECT THE PLAN**

11. Pursuant to Section 1129(b) of the Bankruptcy Code, the Court may confirm a plan of reorganization over the negative vote of a class of creditors, if the plan of reorganization does not discriminate unfairly and is fair and equitable, with respect to each class of creditors that is impaired under and has not accepted the plan.

12. Section 1129(b)(2)(A)(iii) of the Bankruptcy Code provides that a plan of reorganization is deemed to be fair and equitable with respect to a class of secured claims if the plan provides for the realization by such holders of the indubitable equivalent of such claims. The Plan provides for the secured claims to receive the indubitable equivalent of their claims and, therefore, the plan may be confirmed notwithstanding the fact that Classes 3,4,5,7 and 8 either did not vote or voted to reject the Plan.

13. Section 1129(b)(C)(ii) of the Bankruptcy Code provides that a plan of reorganization is deemed to be fair and equitable as to a class of interests if the plan provides that the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property. Class 11 consists of any and all Equity Interests in the Debtor. Upon the Effective Date, all Equity Interests in the Debtor shall

be canceled and have no further force and effect. There are no interests junior to the equity interest that will retain any property. Consequently, the Plan may be confirmed notwithstanding the fact that Equity Interests either did not vote or voted to reject the Plan.

**WHEREFORE**, the Committee respectfully requests this Court grant its motion for confirmation of the Committee Plan, pursuant to Section 1129(b) of the Bankruptcy Code, notwithstanding the non-acceptance by Classes 2, 3, 4, 5, 7 and 8 and for such other and further relief as is just and proper in the circumstances.

**RESPECTFULLY SUBMITTED** this 25th day of January 2011.

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**ATTORNEYS FOR THE OFFICIAL  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the forgoing has been served on January 25, 2011 via the court's electronic CM/ECF system upon all parties and counsel registered to receive such notification and on January 26, 2011 via U.S. Mail upon all parties on the attached Amended Official Service List as of January 20, 2011.

/s/ Jon E. Kane  
Jon E. Kane, Esq.

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Case No.: 3:10-bk-2805-PMG  
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