

**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**

NOTICE OF TAKING DEPOSITION DUCES TECUM

**TO: MICHAEL P. PHELAN
in his capacity as Chapter 11 Trustee of
the Bankruptcy Estate of Lydia Cladek, Inc.
c/o Jacob A. Brown, Esq.
Akerman Senterfitt
50 North Laura Street, Suite 2500
Jacksonville, FL 32202**

PLEASE TAKE NOTICE that on **December 2, 2010 at 10:00 a.m.**, at the law offices of Akerman Senterfitt, located at 50 North Laura Street, Suite 2500, Jacksonville, Florida 32202, pursuant to Sections 7030 and 9014 of the Federal Rules of Bankruptcy Procedure and Rule 7030-1 of the Local Rules of the U.S. Bankruptcy Court for the Middle District of Florida, counsel for the Official Committee of Unsecured Creditors shall take the deposition of Michael P. Phelan in his capacity as Chapter 11 Trustee of the Bankruptcy Estate of Lydia Cladek, Inc.

The deposition will be taken upon oral examination before an Official Court Reporter, a Notary Public in and for the State of Florida at large, or some other officer duly authorized by law to take depositions. The deposition is being taken for the purpose of discovery, for use at trial, or both of the foregoing, or for such other purposes as are permitted under the applicable and governing rules. The deposition will continue from day to day until completed.

Michael P. Phelan in his capacity as Chapter 11 Trustee of the Bankruptcy Estate of Lydia Cladek, Inc. is also required, subject to Court approval, to produce at the time and place stated above, the items listed on the attached **SCHEDULE A**.

DATED this 17 day of November 2010.

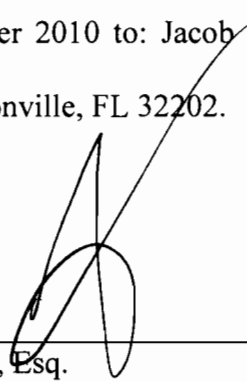


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**ATTORNEYS FOR OFFICIAL
COMMITTEE OF UNSECURED
CREDITORS OF LYDIA CLADEK,
INC.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **NOTICE OF TAKING DEPOSITION DUCES TECUM** was furnished via electronic mail, facsimile and/or First Class U.S. Mail on the 17 day of November 2010 to: Jacob A. Brown, Esq. Akerman Senterfitt, 50 North Laura Street, Suite 2500, Jacksonville, FL 32202.



Jon Kane, Esq.
Florida Bar No.: 814202

SCHEDULE A

DEFINITIONS AND INSTRUCTIONS

Unless specifically indicated, or otherwise required by the context in which the terms, names, and instructions are used, the following definitions shall be applicable herein for the purposes of this discovery request only.

1. The words "**any**" and "**all**" shall be considered to include "each" and "each and every."

2. "**Accountant**" shall mean Michael Moecker & Associates, Inc., its past and present employees, its agents, officers, directors, shareholders and employees, its assignors; merged, consolidated or acquired predecessors or successors; divisions, affiliates, units and subsidiaries, whether or not wholly owned; including, but not limited to, all other persons acting or purporting to act on its behalf; experts, persons consulted concerning any factual matter or matters of opinion relating to any of the facts or issues involved in this action, including, but not limited to, its attorneys.

3. "**Accountant Fee Application**" shall mean the Amended Application for Interim Compensation for Michael Moecker & Associates, Inc. (Doc. No. 244).

4. "**Committee**" shall mean the Official Committee of Unsecured Creditors of Lydia Cladek, Inc.

5. The term "**communication**" and "**communications**" shall mean any and all writings, electronic mail, oral communications, conversations by telephone, meeting and any contact, oral or written, formal or informal, at any time or place, under any circumstances whatsoever in which information of any nature was transmitted or exchanged in any form, and

any record or notes of other communications (including interoffice, intra-office communications, electronic memoranda, voicemail messages and all other oral communications) and specifically including Electronically Stored Information ("ESI").

6. **"Confidentiality Agreement"** means the Confidentiality Agreement entered into between the Trustee and Committee, dated September 30, 2010.

7. **"Debtor"** shall mean Lydia Cladek Inc., its past and present employees, agents, representatives, counsel and all other persons or entities acting or purporting to act under its control.

8. **"Disclosure Statement"** shall mean the Disclosure Statement of Official Committee of Unsecured Creditors filed by the Committee (Doc. No. 294).

9. The term **"document"** or **"documents"** shall mean each and every document in the possession, custody, or control of Michael P. Phelan, in his capacity as Chapter 11 Trustee of the bankruptcy estate of Lydia Cladek, Inc., the original and any non-identical copies (whether different from the original because of notations made on or attached to a copy or otherwise), of any written, graphic, or otherwise recorded matter however produced, and drafts and both sides thereof, whether inscribed by hand, printed, created and stored on computer software or hardware, or recorded by mechanical, electronic, microfilm, photographic, phonic, or any other means including material printed or recorded electronically or magnetically or stored in any type of data bank, computer, or storage device including, but not limited to, the following: abstracts, address books, advertisements, advertising materials, agendas, agreements, analyses of any kind, appointment books, audio cassettes, bids, billings, bulletins, books, books of account, brochures, calendars, catalogs, charts, checks and canceled checks, agreements, checklists, circulars, communications, compilations, computer files and programs, consultant's reports, contracts,

correspondence and drafts of correspondence, desk calendars, diagrams, diaries, dictionaries, directories, diskettes, drafts, drawings, electronic mail, electronic mail message, estimates, evaluations, expense records, experts' reports or studies, facsimiles, films, financial statements or calculations, floppy disks, flyers, graphs, instructions, intra-corporate communications, inspection records, sheets and reports, inter- and intra-office memoranda, invoices, layouts, leaflets, ledgers, letters, licenses, lists, logs, mailings, manuals, maps, memoranda, minutes, movies, notes, notebooks, opinions, outlines, organizational charts, tables, pamphlets, permits, photographs, pictures, prints, projections, promotional materials, press releases or clippings, publications, procedures, quotations, records, records or transcripts of statements, depositions, conversations, meetings, discussions, conferences or interviews, whether in person or by telephone or by other means, recordings, renderings, reports, schedules, scripts, sketches, slides, specifications, statistical analyses, studies, summaries, tabulations, tallies, tapes, tape recordings, telegrams, teletype messages, telefax messages, telephone logs, time sheets, transcripts, undertakings, work assignments, worksheets, video cassettes, videotapes, papers and files, summaries of personal conversations or interviews, notes or summaries of conversation, minutes, notes or records of meetings or conferences, opinions or reports of consultants, projections, statistical statements, computer stored matter, magnetic tapes, microfilm, microfiche, all other records kept by electronic, photographic, or mechanical means, records and paper and things similar to any of the foregoing, however denominated, specifically including any information stored at any time in any electronically stored data on magnetic or optical storage media as an "active" file or files (readily readable by one or more computer applications or forensics software); any "deleted" but recoverable electronic files on said media; any electronic file fragments (files that have been deleted and partially overwritten with new data); and slack (data

fragments stored randomly from random access memory on a hard drive during the normal operation of a computer [RAM slack] or residual data left on the hard drive after new data has overwritten some but not all of previously stored data). Document shall also mean the transcript of any deposition taken in any other action, which contains information called for in this request.

10. The terms "**Electronically Stored Information**" or "**ESI**" shall include all electronic information permitted under Rule 34 of Federal Rules of Civil Procedure, including, without limitation: word-processing documents; spreadsheets; presentation documents; graphics; animations; images; email (including attachments which shall be kept with the email); instant messages; text messages; log files; source code; compressed files; voice mail; audio, video, and audiovisual recordings; databases and database subsets; and other user, or machine created, computer files or other digital information which is stored on computer networks, servers, computer systems, desktop computers, laptop computers, home computers, the Internet, an intranet, archives, discs, CDs, DVDs, other optical media, diskettes, drives, zip drives, tapes, cartridges, other magnetic media, flash drives, and other external storage media, personal digital assistants, handheld wireless devices, cellular telephones, Blackberries, iPods, pagers, and voicemail systems.

11. "**Objection**" shall mean the Chapter 11 Trustee's Response in Opposition to Motion of the Official Committee of Unsecured Creditors to Combine Disclosure Statement and Confirmation Hearing filed by the Trustee (Doc. No. 315).

12. "**Persons**" shall mean natural persons, corporations, firms, companies, partnerships, unincorporated associations, governmental or public agencies, joint ventures, and all other entities.

13. **"Plan"** shall mean the Plan of Reorganization submitted by Official Committee of Unsecured Creditors filed by the Committee (Doc. No. 295).

14. **"Referring to"** or **"relating to"** shall mean constituting or evidencing and directly or indirectly mentioning, describing, referring to, pertaining to, being connected with or reflecting upon the stated subject matter.

15. **"Trustee"** shall mean Michael P. Phelan, in his capacity as Chapter 11 Trustee of the bankruptcy estate of Lydia Cladek, Inc. and all other persons or entities acting or purporting to act under his control or on his behalf, including but not limited to employees, agents and attorneys.

16. **"Trustee Fee Application"** shall mean the Amended Application for Interim Compensation for Michael P. Phelan, Trustee Chapter 11 (Doc. No. 243).

17. The singular of any word shall include the plural, and the plural of any word shall include the singular.

18. To the extent that you consider any of the following Requests objectionable, respond to so much of each Request and part thereof, as is not objectionable in your view and separately state that part of each Request as to which you raise objection and each ground for such objection.

19. Each and every request for a document or documents to be produced requires production of the document, in its entirety, without abbreviation or expurgation.

20. More than one paragraph of this request may ask for the same document. The presence of such duplication is not to be interpreted to narrow or limit the normal interpretation placed upon each individual request. Where a writing is requested in more than one numbered paragraph, only one copy of it need be produced.

21. If any document is withheld under claim of privilege or work product, furnish a list identifying each document for which the privilege or work product is claimed, together with the following information for each such document: date, sender, recipient, persons to whom copies were furnished, job titles of each of these persons, subject matter of the document, number of pages in the document, the basis on which the privilege or work product is claimed, the paragraph or paragraphs of this request to which the document responds, the subject matter of the document and the person in whose custody the document is presently located, and whether any matter that is not privileged or not work product is discussed or mentioned in that document.

22. If any document requested was, but is no longer in the possession or subject to the control of the Trustee, or is no longer in existence, state whether it: (i) is missing or lost; (ii) has been destroyed; (iii) has been transferred, voluntarily or involuntarily, to others and state the identity of those persons to whom it has been transferred; (iv) has been otherwise disposed of, and in each instance, explain the circumstances surrounding such disposition, state the date or approximate date thereof, and the identity of the persons with knowledge of such circumstances; and (v) identify the documents that are missing, lost, destroyed, transferred, or otherwise disposed of, by author, date, subject matter, addressee and the number of pages.

23. If you do not clearly understand, or have any questions about, the definitions, instructions, or any request for documents, please contact counsel for Committee promptly for clarification.

24. As to any request that is claimed to be overbroad or to seek irrelevant documents, please indicate whether any responsive documents or subcategory of responsive documents are conceded to be discoverable and identify the documents or subcategory of documents that will be produced.

25. As to any request that is claimed to be unduly burdensome, expensive or oppressive or to which a similar objection is asserted, please provide the following information: (i) the approximate number and/or volume of responsive documents; (ii) the location and manner in which the documents are maintained; (iii) any particular or unusual burden or effort required to produce the responsive documents; (iv) the estimated cost of producing responsive documents; and (v) any other facts on which you rely in support of your claim that production of responsive documents is unduly burdensome, costly or difficult.

26. Pursuant to Federal Rules of Civil Procedure 34, made applicable through Federal Rules of Bankruptcy Procedure 7034, all documents must be produced as they are kept in the usual course of business, including ESI, or must be organized and labeled to correspond to the categories of documents requested below. Each and every request for a document or documents to be produced requires production of the document, in its entirety, without abbreviation or expurgation.

27. Production of Documents in Electronic Format. As to all electronically stored information and Documents or communications existing in electronic format, including, but not limited to, electronic mail, please provide diskettes containing such data, CDR discs, or other portable storage media. *All Documents existing in electronic format shall be provided in their native format with accompanying metadata* (for example, but not by way of limitation, emails sent or received using Microsoft Outlook should be produced on CDR disc in ".PST" format).

28. Each request herein shall be deemed continuing so as to require prompt supplemental responses, to the extent required by the Federal Rules of Civil Procedure, if information called for herein is obtained, discovered or created subsequent to the time of responding to these requests.

29. This request covers all documents from April 5, 2010 to date, unless the specific request calls for a different time period.

DOCUMENTS TO BE PRODUCED

1. All documents which the Trustee intends to admit into evidence or rely upon at any hearing on approval (conditional or final) of the Disclosure Statement.

2. All documents which Trustee intends to admit into evidence or rely upon at any hearing on the Accountant Fee Application and/or the Trustee Fee Application.

3. All documents which support the Trustee's allegations in the Objection relating to feasibility of the Plan.

4. All documents which support the Trustee's allegation in the Objection that the Plan is not in the best interest of creditors.

5. All communications between the Trustee and Accountant relating to feasibility of the Plan, including but not limited to any feasibility analysis, liquidation analysis, and analysis of the loan portfolio.

6. All documents relating to any analysis of the Debtor's loan portfolio.

7. All communications between the Trustee and Accountant relating to the Objection, Plan and Disclosure Statement.

8. Any communications between the Trustee and the Accountants which relates to the projections attached to the Disclosure Statement and/or feasibility.

9. All communications and documents which support the allegation that the Committee committed improper solicitation of the Plan.

10. All communications and documents which support the allegation that the Committee breached the Confidentiality Agreement.

11. All documents, including time sheets, correspondence, notes, records, invoices, worksheets, correspondence and billing statements, which evidence, support or relate to the work performed by the Trustee as set forth in the Trustee Fee Application and/or the Accountant Fee Application and attachments thereto.

12. All documents, including time sheets, correspondence, notes, records, invoices, worksheets, correspondence and billing statements which evidence, support or relate to the work performed by the Accountant as set forth in the Accountant Fee Application and/or the Trustee Fee Application and the attachments thereto.

13. All communications relating to the Accountant Fee Application and any objections thereto, including e-mail communications.

14. All communications relating to the Trustee Fee Application and any objections thereto, including e-mail communications.

15. If the Trustee intends to have expert testimony at the hearing on approval (conditional or final) of the Disclosure Statement, all documents which were relied on by that expert(s) in forming his or her opinion.

16. If the Trustee intends to have expert testimony at the hearing on approval (conditional or final) of the Disclosure Statement, all documents provided to the expert(s) who will testify on behalf of the Trustee and all correspondence with such expert and reports drafted by the expert.

17. If the Trustee intends to have expert testimony at the hearing on approval (conditional or final) of the Disclosure Statement, all documents which were referred to in any reports drafted by the expert(s) who will testify on behalf of the Trustee.

18. If the Trustee intends to have expert testimony at the hearing on approval (conditional or final) of the Disclosure Statement, all communications between the Accountant and the expert(s).