

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)

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**MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION  
OF CHAPTER 11 TRUSTEE'S AMENDED PLAN OF LIQUIDATION**

Michael Phelan, the chapter 11 trustee (the "Trustee") of Lydia Cladek, Inc. (the "Debtor"), respectfully submits this memorandum of law in support of the issuance and entry of an order of this Court, pursuant to section 1129 of Title 11 of the United States Code (the "Bankruptcy Code"), *inter alia*, confirming the proposed *Amended Plan of Liquidation of Michael Phelan, as Chapter 11 Trustee of Lydia Cladek, Inc.* dated December 3, 2010 (the "Plan"). As will be demonstrated below and at the Confirmation Hearing,<sup>1</sup> all of the confirmation requirements set forth in section 1129 of the Bankruptcy Code are satisfied in this chapter 11 case, and confirmation of the Plan is therefore appropriate.

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<sup>1</sup> All capitalized terms used but not defined herein shall have the same meaning ascribed to them under the Plan, which is incorporated herein by reference.

**THE PLAN SATISFIES EACH OF THE CONFIRMATION  
REQUIREMENTS SET FORTH IN SECTION 1129 OF THE BANKRUPTCY CODE**

**I. The Plan Complies With the Applicable Provisions of Title 11**

Section 1129(a)(1) of the Bankruptcy Code requires that a plan must comply with the applicable provisions of Title 11. In interpreting this provision, courts have held that although the section is broad in scope, it is aimed primarily at sections 1122 and 1123, which respectively govern classification of claims and contents of a plan of reorganization. *See In re Holywell Corp.*, 913 F.2d 873, 879 (11th Cir. 1990); *Kane v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 843 F.2d 636, 648 (2d Cir. 1988); *In re AOV Indus., Inc.*, 792 F.2d 1140, 1150 (D.C. Cir. 1986), *vacated in part, on other grounds*, 797 F.2d 1004 (D.C. Cir. 1986); *In re Holley Garden Apartments, Ltd.*, 238 B.R. 488, 493 (Bankr. M.D. Fla. 1999). The legislative history of Section 1129(a) states that "[p]aragraph (1) [of Section 1129(a)] requires that the plan comply with the applicable provisions of chapter 11, such as Sections 1122 and 1123, governing classification and contents of the plan." H.R. Rep. No. 595, 95th Cong., 1st Sess. 412 (1977).

**A. The Classification of Claims and Equity Interests Embodied in the Plan is Proper**

Section 1122(a) provides for the placing of claims or interests in a particular class only if such claims or interests are "substantially similar" to other claims or interests of that class. *See* 11 U.S.C. § 1122(a).

Although the Bankruptcy Code does not define "substantially similar," it is generally accepted that the phrase means "similar in legal character or effect as a claim against the debtor's assets or as an interest in the debtor." 5 *Collier on Bankruptcy* ¶ 1122.03[1][b], at 1122-7 (15th ed. 1992). Section 1122(a) does *not* require that all "substantially similar" claims be placed in the same class, but rather that all claims in each class be substantially similar to one another. *See Hanson v. First Bank of South Dakota, N.A.*, 828 F.2d 1310, 1313 (8th Cir. 1987);

*In re Jersey City Medical Ctr.*, 817 F.2d 1055, 1060-61 (3d Cir. 1987); *In re SM 104 Ltd.*, 160 B.R. 202, 206 (Bankr. S.D. Fla. 1993).

It has been held that "[t]he reasonableness of a classification should be presumed if any arguable rationale exists upon which a debtor may want to separate general creditors, particularly if distinctions may be readily drawn." *In re Rochem, Ltd.*, 58 B.R. 641, 642 (Bankr. D.N.J. 1985) (citation omitted).

Each of the Classes of Claims and Equity Interests specified in the Plan consist of Claims and Equity Interests which are "substantially similar" in nature to the other Claims or Equity Interests in that same Class. The Secured Claim of Anita Spring is in Class 1. The Secured Claim of Bernard Reller is in Class 2. The Secured Claims of Ralph E. Brown and R&B Investment Trading Company are in Class 3. Secured Claims which are Avoidable Claims are in Class 4. The Secured Claim of CitiCapital Technology Finance, Inc. is in Class 6. General Unsecured Claims (Convenience Class) equal to or less than \$1,750 are in Class 7. General Unsecured Claims (other than Convenience Class Claims) are in Class 8. Equity Interests are in Class 9. The Trustee therefore submits that the classification scheme embodied in the Plan complies with section 1122(a) of the Bankruptcy Code in all respects.

B. The Plan Complies With Section 1123 of the Bankruptcy Code

1. Proper Classification (11 U.S.C. § 1123(a)(1))

Section 1123(a)(1) of the Bankruptcy Code requires that the Plan "designate . . . classes of claims other than claims of a kind specified in section 507(a)(2), 507(a)(3) or 507(a)(8) of this title, and classes of interests." Article IV of the Plan adequately designates the Classes of Claims and Equity Interests in accordance with this requirement.

2. Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2))

Section 1123(a)(2) requires that a plan "specify any class of claims or interests that is not impaired under the plan."<sup>2</sup> Article IV of the Plan specifies that no Classes of Claims or Equity Interests are unimpaired by the Plan and, accordingly, section 1123(a)(2) is inapplicable.

3. Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3))

Section 1123(a)(3) requires that a plan "specify the treatment of any class of claims or interests that is impaired under the Plan." Claims in Classes 1, 2, 3, 4, 5, 6, 7 and 8, and Equity Interests in Class 9 are "impaired" under the Plan. Article IV of the Plan adequately sets forth the treatment accorded each such impaired Class of Claims and Equity Interests. The Plan, therefore, complies with section 1123(a)(3).

4. No Discrimination (11 U.S.C. § 1123(a)(4))

Section 1123(a)(4) requires that a plan "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment . . ." The Plan clearly satisfies this requirement, because no holder of a Claim or Equity Interest in any Class will receive treatment more favorable than the other Claims or Equity Interests in that Class.

5. Implementation of Plan (11 U.S.C. § 1123(a)(5))

Section 1123(a)(5) requires that a plan "provide adequate means for the plan's implementation. . . ." This subsection also includes several examples of appropriate means for implementation of a plan, some of which are incorporated in the Plan. Article VII of the Plan provides detailed means for the Plan's implementation, including the establishment and

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<sup>2</sup> The concept of "impairment" is governed by section 1124 of the Bankruptcy Code and refers to the alteration of legal, equitable or contractual rights of holders of claims or interests.

contribution of assets to the Liquidating Trust, and therefore comports with the requirements of section 1123(a)(5).

6. Prohibition Against Issuance of Non-Voting Equity Securities and Provisions for Voting Power of Classes of Securities (11 U.S.C. § 1123(a)(6))

Section 1123(a)(6) requires, in pertinent part, that a plan "provide for the inclusion in the charter of the debtor . . . of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities holding voting power, an appropriate distribution of such power among such classes . . . ." 11 U.S.C. § 1123(a)(6). As set forth in Section 7.3 of the Plan, as soon as practicable after the Effective Date, the Debtor will be dissolved and shall cease to exist for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Debtor. In addition, because the Plan provides for the liquidation of the Debtor and the vesting of its Assets in the Liquidating Trust on the Effective Date, section 1123(a)(6) of the Bankruptcy Code is inapplicable.

7. Selection of Officers and Directors (11 U.S.C. § 1123(a)(7))

Section 1123(a)(7) requires that a plan "contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director, or trustee." The Plan contemplates the liquidation of the Debtor and the vesting of its assets in the Liquidating Trust on the Effective Date. In addition, Article VII of the Plan properly and adequately discloses the identity and affiliations of the individual proposed to serve on or after the Effective Date as the Liquidating Trustee of the Liquidating Trust. The appointment of the Liquidating Trustee is consistent with the interests of the holders of Claims

against and Interests in the Debtor, and with public policy. Accordingly, the Plan complies with section 1123(a)(7).

8. Additional Plan Provisions (11 U.S.C. § 1123(b))

The Plan's provisions are appropriate and consistent with the applicable provisions of the Bankruptcy Code, including without limitation, provisions for: (a) distributions to holders of Allowed Claims; (b) the disposition of executory contracts; (c) the retention and/or transfer of, and right to enforce, sue on, settle, or compromise (or refuse to do any of the foregoing) certain claims or causes of action against third parties, to the extent not waived or released under the Plan; (d) resolution of Disputed Claims; and (e) certain releases by the Debtor and holders of certain Claims. Accordingly, the Plan satisfies section 1123(b) of the Bankruptcy Code.

9. Bankruptcy Rule 3016(a)

The Plan is dated and identifies the person submitting it, thereby satisfying Bankruptcy Rule 3016(a).

**II. The Proponents of the Plan Have Complied With the Applicable Provisions of Chapter 11**

Section 1129(a)(2) of the Bankruptcy Code requires that the proponents of a plan comply with the applicable provisions of the Bankruptcy Code. The principal purpose of this provision is to assure that the proponent of the plan has complied with the disclosure and solicitation requirements of sections 1125 and 1126 of the Bankruptcy Code in the solicitation of acceptances to the plan of reorganization. *See In re Lykes Bros. SS Co., Inc.*, 233 B.R. 497, 516 (Bankr. M.D. Fla. 1997); *In re Drexel Burnham Lambert Group, Inc.*, 138 B.R. 723, 759 (Bankr. S.D.N.Y. 1992); *see also In re Toy & Sports Warehouse, Inc.*, 37 B.R. 141, 149 (Bankr. S.D.N.Y. 1984).

On December 16, 2010, this Court issued an order entitled *Amended Order Granting Joint Motion of Chapter 11 Trustee and Official Committee of Unsecured Creditors of Lydia Cladek, Inc. for Order (I) Conditionally Approving and Combining Hearing of Amended Disclosure Statements, (II) Determining Dates, Procedures and Forms Applicable to Solicitation Process, (III) Establishing Vote Tabulation Procedures, (IV) Establishing Objection Deadline and Scheduling Hearing to Consider Confirmation of Plans, and (V) Extending Deadline to File Proofs of Claim With Respect to Certain Parties in Interest* (the "Amended Solicitation Procedures Order") [Doc. No. 388].

The Amended Solicitation Procedures Order conditionally approved the Trustee's Amended Disclosure Statement and combined the hearing on the Amended Disclosure Statement with the hearing on confirmation of Trustee's Amended Plan. Pursuant to the Amended Solicitation Procedures Order, Epiq Bankruptcy Solutions, LLC mailed a solicitation package containing a copy of the Trustee's Amended Disclosure Statement, the Amended Plan, and certain other materials approved by the Court to each Holder of a Claim or Equity Interest. In addition, each Holder of a Claim entitled to vote on the Plan also received a ballot for voting purposes. Thus, the disclosure and solicitation requirements of sections 1125 and 1126 of the Bankruptcy Code have been satisfied. The Trustee has therefore fully complied with the applicable provisions of section 1129(a)(2) of the Bankruptcy Code.

**III. The Plan Has Been Proposed in Good Faith and Not by Any Means Forbidden by Law**

Section 1129(a)(3) of the Bankruptcy Code requires as a prerequisite to the confirmation of a plan of reorganization, that the plan be "proposed in good faith and not by any means forbidden by law."

The term "good faith" is not defined by the Bankruptcy Code. Courts have consistently held that good faith requires that "the plan was proposed with 'honesty and good intentions' and with 'a basis for expecting that a reorganization can be effected.'" *In re Johns-Manville Corp.*, 843 F.2d 636, 649 (2d Cir. 1988) (quoting *In re Koelbl*, 751 F.2d 137, 139 (2d Cir. 1984) (quoting *Manati Sugar Co. v. Mock*, 75 F.2d 284, 285 (2d Cir. 1935))); *see also In re Piper Aircraft Corp.*, 244 F.3d 1289, 1300 (11th Cir. 2001) (quoting *McCormick v. One Banc Leasing Corp.*, 49 F.3d 1524, 1526 (11th Cir. 1995)) ("where the plan is proposed with a legitimate and honest purpose to reorganize and has a reasonable hope of success, the good faith requirements of 1129(a)(3) are satisfied").

In *In re Madison Hotel Assocs.*, 749 F.2d 410 (7th Cir. 1984), the court stated that good faith should be found where:

there exists a 'reasonable likelihood that the plan will achieve a result consistent with the objectives and purposes of the Bankruptcy Code.'

*Id.* at 425 (citations omitted). *Accord In re United Marine, Inc.*, 197 B.R. 942, 947 (Bankr. S.D. Fla. 1996); *In re Drexel Burnham Lambert Group, Inc.*, 138 B.R. 723, 759 (Bankr. S.D.N.Y. 1992).

Under the standards outlined above, the Plan was proposed in good faith. The Trustee proposed the Plan for the legitimate purpose of liquidating the Debtor's estate in the most efficient and effective manner. Moreover, the Plan is fundamentally fair to all creditors as it provides the best means for providing an earlier and higher return on Allowed Claims.

**IV. Payments Made or Promised for Services or for Costs and Expenses in or in Connection With the Plan or the Case Have Been Disclosed or Are Subject to Court Approval**

Section 1129(a)(4) of the Bankruptcy Code requires that "[a]ny payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable." *See, e.g., In re Winn-Dixie Stores, Inc.*, 356 B.R. 813, 828 (Bankr. M.D. Fla. 2006).

Applications for allowance of interim compensation and for reimbursement of expenses have been filed herein by the various professionals retained pursuant to orders of this Court on a periodic basis since the Debtor's chapter 11 filing date. Further, final applications for fees and disbursements incurred by professionals in the chapter 11 cases will be filed with the Court within 30 days of confirmation. Accordingly, the requirements of section 1129(a)(4) are satisfied herein.

**V. The Identity, Affiliations and Compensation of the Person Proposed to Serve as the Liquidating Trustee of the Liquidating Trust Has Been Disclosed and Such Appointment Is Consistent With the Interests of Creditors and Equity Interest Holders and With Public Policy**

Subsections 1129(a)(5)(A)(i) and (ii) of the Bankruptcy Code require the proponent of any plan to disclose the "identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor," and require a finding that "the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy."

Section 1129(a)(5)(B) requires the proponent of a plan to disclose the "identity of any insider

that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider."

In evaluating whether subsection (a)(5)(A)(ii) is satisfied, a court should give the debtor "first choice of its management, unless *compelling* cause to the contrary exists." *In re Sherwood Square Assocs.*, 107 B.R. 872, 878 (Bankr. D. Md. 1989). Thus, unless there is demonstrable evidence that the individual chosen by the debtor as an officer will be unfit to manage the new entity, an objection based on section 1129(a)(5)(A)(ii) should be rejected. *See In re Mortgage Inv. Co. of El Paso*, 111 B.R. 604, 612 (Bankr. W.D. Tex. 1990); *see also In re the Landing Assoc., Ltd.*, 157 B.R. 791, 817 (Bankr. W.D. Tex. 1993).

Michael Phelan, the duly appointed chapter 11 trustee in this case, will be the Liquidating Trustee of the Liquidating Trust, and shall be compensated in accordance with section 326 of the Bankruptcy Code.

The selection of Mr. Phelan is (i) in the best interests of the Debtor's creditors and equity interest holders, and (ii) consistent with public policy. The Trustee has, therefore, fully satisfied the requirements of section 1129(a)(5).

#### **VI. No Regulatory Approval Is Necessary**

Section 1129(a)(6) of the Bankruptcy Code requires that "[a]ny governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval." Section 1129(a)(6) is inapplicable to the Debtor's chapter 11 case, because (i) there is no governmental regulatory commission with jurisdiction over the rates charged by the Debtor and (ii) the Trustee is not seeking to effect a rate change of the Debtor.

**VII. The Plan is in the "Best Interests" of All Creditors and Equity Security Holders**

Generally referred to as the "best interests of creditors" test, section 1129(a)(7) of the Bankruptcy Code requires that "[w]ith respect to each impaired class of claims or interests - (A) each holder of a claim or interest of such class - (i) has accepted the plan; or (ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date." *Kane v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 843 F.2d 636, 649 (2d Cir. 1988); *In re Morande Enterprises, Inc.*, 371 B.R. 546, 547 (Bankr. M.D. Fla. 2007); *In re Celotex Corp.*, 204 B.R. 586, 611 (Bankr. M.D. Fla. 1996).

The Plan satisfies the "best interests" test because each holder of a Claim or Equity Interest will receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain if the Debtor was liquidated under chapter 7 of the Bankruptcy Code. *See Supplement to Amended Plan of Reorganization of Michael Phelan, as Chapter 11 Trustee of Lydia Cladek, Inc.* [Doc. 477] (setting forth chapter 7 and chapter 11 liquidation analyses and complementing liquidation analysis contained in Article VI of the Trustee's Amended Disclosure Statement).

**VIII. Acceptance of the Plan**

Section 1129(a)(8) of the Bankruptcy Code requires as a condition to confirmation that each Class of Claims and Equity Interests has either accepted the plan or is not impaired thereunder. *See Holley*, 238 B.R. at 494.

Classes 1, 2, 3, 4, 5, 6, 7, 8 and 9 are each impaired under the Plan. As the certification of the balloting agent indicates [Doc. No. 476], holders of Claims in Class 3 have

voted to accept the Plan. In addition, holders of Priority Tax Claims which were unclassified under the Trustee's Plan have voted to accept the Trustee's Plan (such claims were separately classified in Class 2 in the Committee's amended plan of reorganization). The votes of holders of Equity Interests in Class 9 was not solicited because they will not receive or retain any property under the Plan and are therefore deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Notwithstanding, consistent with section 1129(b)(1) of the Bankruptcy Code, the Plan does not discriminate unfairly and is fair and equitable with respect to the holders of Claims in Classes 1, 2, 4, 5, 6, 7 and 8, and of Equity Interests in Class 9.

**IX. Priority Claims Are Treated Appropriately Under the Plan**

Section 1129(a)(9) of the Bankruptcy Code requires that, unless the holder of a particular claim agrees to a different treatment of such claim: (i) claims entitled to priority under section 507(a)(2) or (3) must receive cash in the allowed amounts of such claims on the effective date of the plan; (ii) claims entitled to priority under section 507(a)(1), (4), (5), (6) or (7) must receive (a) if such class has accepted the plan, cash in the allowed amounts of such claims on the effective date of the plan or deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claims, or (b) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim; and (iii) tax claims entitled to priority under section 507(a)(8) must receive on account of such claims regular installment payments in cash (a) of a total value, as of the effective date of the plan equal to the allowed amount of such claim, (b) over a period not exceeding five (5) years from the date after the date of the order for relief under section 301, 302, or 303, and (c) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b)).

Under the Plan, Allowed Claims entitled to priority as specified above are to be paid in Cash in full on or as soon as practicable after the Effective Date. Moreover, Priority Tax Claims voted in favor of the Trustee's Plan, even though such claims had not been separately classified under such plan. Thus, under the Trustee's Plan, Claims entitled to priority are treated in accordance with the requirements of section 1129(a)(9).

**X. At Least One Impaired Class of Claims Has Accepted the Plan**

Section 1129(a)(10) requires that at least one impaired class of claims has accepted the plan, determined without including the acceptance of the plan by any insider holding a claim in such class. *See Holley*, 238 B.R. at 494. As indicated above, Class 3 Claims and Priority Tax Claims, each of which are impaired, have all voted to accept the Plan.

Accordingly, the requirements of section 1129(a)(10), have been satisfied.

**XI. The Plan Is Feasible**

Section 1129(a)(11), the so-called "feasibility" test, requires that the court find that confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization of the debtor, unless such liquidation or reorganization is proposed in the plan. Inasmuch as the Plan calls for the complete liquidation of the property of the Debtor's estate, this requirement is satisfied.

**XII. Section 1930 Fees Have Been or Will Be Paid**

Section 1129(a)(12) of the Bankruptcy Code requires that all fees payable under 28 U.S.C. § 1930 -- fees payable to the Clerk of the Court or the United States Trustee -- be paid. The Trustee represents that all such fees which have been billed to the Debtor have been paid in full, and further that any additional fees that may subsequently be billed will be paid promptly. Accordingly, the requirements of section 1129(a)(12) are satisfied herein.

**XIII. Retiree Benefits**

Section 1129(a)(13) requires that all retiree benefits, as defined in section 1114 of the Bankruptcy Code, be continued after the effective date of the plan. Section 1114 provides that "the term 'retiree benefits' means payments to any entity or person for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents, for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death under any plan, fund, or program (through the purchase of insurance or otherwise) maintained or established in whole or in part by the debtor prior to filing a petition commencing a case under this title." Inasmuch as the Debtor has no such liabilities, section 1129(a)(13) is inapplicable.

**XIV. Domestic Support Obligation**

The Debtor is not subject to any judicial or administrative order, or by statute, to pay any domestic support obligation. Inasmuch as the Debtor has no such obligations, section 1129(a)(14) is inapplicable.

**XV. Individual Debtor**

The Debtor is not an individual, making Bankruptcy Code section 1129(a)(15) inapplicable herein.

**XVI. Transfers Under Nonbankruptcy Law**

There are no provisions in nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust that apply to the Debtor since the Debtor was a commercial business. The Plan thus satisfies section 1129(a)(16) of the Bankruptcy Code.

**XVII. Principal Purpose of Plan**

The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of Section 5 of the Securities Act of 1933, and there has been no objection filed by any governmental unit asserting such avoidance. Accordingly, the Plan complies with section 1129(d) of the Bankruptcy Code.

**XVIII. Good Faith Solicitation**

The Trustee and his attorneys and advisors have solicited votes to accept or reject the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Amended Solicitation Procedures Order, and have complied with, and are entitled to, the protections afforded by section 1125(e) of the Bankruptcy Code.

**CONCLUSION**

All of the requirements for Confirmation set forth in, *inter alia*, section 1129 of the Bankruptcy Code have been satisfied herein. Accordingly, the Trustee respectfully requests that this Court issue an order confirming the Plan and granting the Trustee such other relief as the Court may deem to be just and appropriate.

Dated: January 25, 2011, in Jacksonville, Florida.

AKERMAN SENTERFITT

By: /s/ Steven R. Wirth

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished either by electronic notification on all parties who have consented to receive electronic notifications in this case or U.S. mail, this 25th day of January, 2011 to all parties on the attached Amended Official Service list.

/s/ Steven R. Wirth  
Attorney

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