

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:
LYDIA CLADEK, INC.,

Debtor.

CASE NO. : 03:10-bk-02805-PMG

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

**NOTICE OF FILING OF AFFIDAVIT OF NOEL YELL IN SUPPORT OF
CONFIRMATION OF THE AMENDED PLAN OF REORGANIZATION
SUBMITTED BY THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

The Official Committee of Unsecured Creditors (the "Committee"), by and through its undersigned counsel, hereby gives notice of filing of the attached Affidavit of Noel Yell in Support of Confirmation of the Amended Plan of Reorganization Submitted by the Official Committee of Unsecured Creditors.

Dated this 25th day of January 2011.

Respectfully submitted,

/s/ Jon E. Kane

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**ATTORNEYS FOR THE OFFICIAL
COMMITTEE OF UNSECURED CREDITORS**

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.

Lydia Cladek, Inc.
Case No.: 3:10-bk-2805-PMG
AMENDED OFFICIAL SERVICE LIST
(amended as of January 20, 2011)

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UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re: CASE NO. 03:10-bk-02805-PMG
LYDIA CLADEK, INC., CHAPTER 11
Debtor.

_____ /

**AFFIDAVIT OF NOEL YELL IN SUPPORT OF CONFIRMATION OF
THE AMENDED PLAN OF REORGANIZATION SUBMITTED BY
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

STATE OF FLORIDA)
COUNTY OF ST. JOHNS)

Before me personally appeared Noel Yell who, after being duly sworn, deposed and said:¹

1. I am the Chairperson for the Official Committee of Unsecured Creditors (the "Committee") appointed in the bankruptcy case of Lydia Cladek, Inc. ("LCI" or the "Debtor").

2. I have first-hand knowledge and am familiar with the matters described herein including the Amended Plan of Reorganization submitted by Official Committee of Unsecured Creditors (Doc No. 356) (the "Plan") and the Amended Disclosure Statement of Official Committee of Unsecured Creditors (Doc No. 354)(the "Disclosure Statement").

**SIGNIFICANT EVENTS SUBSEQUENT TO THE
FILING OF THE CHAPTER 11 PETITION**

3. The Debtor is a Florida corporation which operated as a specialty finance company which provided financing for pre-owned motor vehicles, known in the industry as a "sub-prime lender". Based on the information provided to the Committee, the Debtor ceased operation of the

¹ Terms capitalized in this affidavit shall have the same meaning as used in the Plan (as defined herein) as may be modified, unless such terms are defined differently herein.

Debtor's business as a legitimate business but became engaged in a Ponzi Scheme where money was diverted from the business to pay Ponzi scheme participates and principals and affiliates of LCI.

4. On April 2, 2010, creditors filed an involuntary Chapter 11 bankruptcy petition against LCI which was pending in the United States Bankruptcy Court for the Middle District of Florida, Jacksonville Division under case number 10-bk-02800-PMG (the "Involuntary Bankruptcy Case").

5. On April 5, 2010 (the "Petition Date"), LCI filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Middle District of Florida, Jacksonville Division under case number 10-bk-02805-PMG (the "Bankruptcy Case").

6. 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).

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

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

9. On July 2, 2010 the Trustee filed a Motion to Approve the Sale of Substantially All of the Debtor's Performing Assets (Doc. No. 152; the "Sale Motion"), pursuant to which the Trustee requested authority to sell all of the car loans less than 180 days past due. On August 9, 2010, the Committee filed an Objection to the Motion to Approve the Sale of Substantially All of the Debtor's Performing Assets (Doc. No. 214; "Sale Objection"). As set forth in the Sale

Objection, the Committee did not believe that it was in the best interest of creditors to liquidate the performing accounts, especially when those accounts were generating cash flow.

10. On July 6, 2010 the Trustee filed a Motion to Approve the Sale of Substantially All of the Debtor's Non-Performing Assets (Doc. No. 158; "Non-Performing Sale Motion"), pursuant to which the Trustee requested authority to sell all of the car loans greater than 180 days past due. On August 9, 2010, the Committee filed an Objection to the Non-Performing Sale Motion (Doc No. 215), which was subsequently withdrawn (Doc. No. 217).

11. On August 12, 2010, an evidentiary hearing was held on the Sale Motion and the Committee's Objection. August 12, 2010, Judge Glenn ruled on the Sale Motion and the Committee's Objection to the Sale Motion and denied the Sale Motion.

12. On October 28, 2010, the Committee filed its Plan of Reorganization (Doc. No. 295) and the Disclosure Statement (Doc No. 294).

13. On October 28, 2010, the Committee filed a Motion by the Official Committee of Unsecured Creditors to Combine Disclosure Statement and Confirmation Hearing (Doc No. 296)(the "Motion to Combine").

14. On November 8, 2010, the Trustee filed the Chapter 11 Trustee's Response in Opposition to Motion of the Official Committee of Unsecured Creditors to Combine Disclosure Statement and Confirmation Hearing (Doc. No. 315)(the "Objection").

15. On November 23, 2010, the Trustee filed his Plan of Liquidation (Doc. No. 347) and the Disclosure Statement (Doc No. 348).

16. On December 2, 2010, the Committee filed its Amended Plan of Reorganization (Doc. No. 356)(the "Committee Plan") and the Amended Disclosure Statement (Doc No. 354).

17. 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).

18. On December 3, 2010, the Trustee and Committee filed a joint motion, pursuant to 11 U.S.C. §§ 105(a), 1125(b), and 1126(b) and Rules 2002, 3003, 3017, 3018, and 3020 of the Federal Rules of Bankruptcy Procedure, for an order: (i) conditionally approving the Disclosure Statements and combining the hearing on the Disclosure Statements with the confirmation hearings on the Plans, (ii) approving the dates, procedures, and forms applicable to solicitation, noticing, and implementation process, (iii) approving vote tabulation procedures, (iv) establishing the deadline for filing objection to the Plans, (v) scheduling the hearing to consider confirmation the Plans, (vi) establishing an extended deadline to file proofs of claim with respect to certain parties in interest (Doc. No. 364)("Solicitation Procedures Motion").

19. On December 7, 2010, the Court entered an order approving the Solicitation Procedure Motion (Doc. No. 367), which was amended on December 16, 2010 (Doc. No. 388)("Solicitation Order").

20. Upon information provided by the Trustee to the Committee, the Trustee has been investigating potential fraudulent transfer causes of action and preference causes of action related to the transfer of funds from the Debtor as part of the ponzi scheme.

PLAN OVERVIEW

21. 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 company and proceeds from the causes of action and real estate. Each unsecured creditor will have the opportunity to receive cash distributions from the Cladek Creditor Trust or both cash distributions from the Cladek Creditor Trust and shares in a new corporation which will administer the loan portfolio, with the goal of growing the loan portfolio and

may give potential distributions to its shareholders, the unsecured creditors. The Debtor's assets consist of its cash on hand, the loan portfolio, some real and personal property, and causes of action for preferences and fraudulent transfers.

22. 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.

23. The Plan provides that Class 1, which consists of holders Allowed Administrative Claims, as defined under 11 U.S.C. § 507(a)(1) and as allowed under 11 U.S.C. § 503(b), will be paid by the Trustee in full on or before the Effective Date, or as otherwise agreed between the Committee, the Trustee and the Administrative Claim Holder. After the Effective Date, quarterly fees payable to the Office of the United States Trustee will be paid by the Cladek Creditors of Trust when due in the ordinary course through the entry of the Final Decree. Administrative Claims may be subject to dispute or objection and shall receive no distribution until such objection or dispute is resolved by Final Order. Class 1 is unimpaired.

24. The Plan provides that Class 2 which consists of the Allowed Priority Claims will be paid by the Trustee in full on or before the Effective Date, or as otherwise agreed between the Committee, the Trustee and the Priority Claim Holder. Priority Creditors whose Claims are subject to dispute or objection shall receive no distribution until such objection or dispute is resolved by Final Order. Class 2 is unimpaired.

25. The plan provides for Class 3 which consists of the Allowed Secured Claim of Anita Spring. The Class 3 Claim is allegedly secured by a lien on all of the Debtor's interest in certain automobile installment sales contracts. To the extent that Anita Spring has a valid and enforceable security interest and an Allowed Claim, Anita Spring shall receive, in full satisfaction of her claim,

an assignment of the automobile installment sales contracts which are allegedly collateral for her Allowed Claim as the indubitable equivalent of her Allowed Secured Claim pursuant to 11 U.S.C. §1129(b)(2)(A)(iii) and/or to the extent that any of the automobile installment sales contracts which are allegedly collateral for her Allowed Secured Claim have been sold in the Bankruptcy Case, the allocated proceeds from that collateral. Any difference between the amount of the Allowed Secured Class 3 Claim and the Allowed Claim of Anita Spring shall be treated as a Class 10 Unsecured Claim and paid accordingly. The Claim of Anita Spring may be subject to dispute or objection and shall receive no distribution until such objection or dispute is resolved by Final Order. Class 3 is impaired.

26. The Plan provides for Class 4 which consists of the Secured Claim of Bernard Reller. The Class 4 Claim is allegedly secured by a lien on all of the Debtor's interest in certain automobile installment sales contracts. To the extent that Bernard Reller has a valid and enforceable security interest and an Allowed Claim, Bernard Reller shall receive, in full satisfaction of his claim, an assignment of the automobile installment sales contracts which are allegedly collateral for his Allowed Claim as the indubitable equivalent of his Allowed Secured Claim pursuant to 11 U.S.C. §1129(b)(2)(A)(iii) and/or to the extent that any of the automobile installment sales contracts which are allegedly collateral for his Allowed Secured Claim have been sold in the Bankruptcy Case, the allocated proceeds from that collateral. Any difference between the amount of the Allowed Secured Class 4 Claim and the Allowed Claim of Bernard Reller shall be treated as a Class 10 Unsecured Claim and paid accordingly. The Claim of Bernard Reller may be subject to dispute or objection and shall receive no distribution until such objection or dispute is resolved by Final Order. Class 4 is impaired.

27. The Plan provides for Class 5 which consists of the Secured Claim of Ralph E. Brown

and the Secured Claim of R&B Investment Trading Company. The Class 5 Claims are allegedly secured by liens on all of the Debtor's interest in certain automobile installment sales contracts. To the extent that Ralph E. Brown and R&B Investment Trading Company have valid and enforceable security interests and Allowed Claims, Ralph E. Brown and R&B Investment Trading Company shall receive, in full satisfaction of their respective claims, an assignment of the automobile installment sales contracts which are allegedly collateral for their respective Allowed Claims as the indubitable equivalent of their Allowed Secured Claims pursuant to 11 U.S.C. § 1129(b)(2)(A)(iii) and/or to the extent that any of the automobile installment sales contracts which are allegedly collateral for their respective Allowed Secured Claims have been sold in the Bankruptcy Case, the allocated proceeds from that collateral. Any difference between the amount of the Allowed Secured Class 5 Claims and the Allowed Claims shall be treated as a Class 10 Unsecured Claim and paid accordingly. The Claims of Ralph E. Brown and R&B Investment Trading Company may be subject to dispute or objection and shall receive no distribution until such objection or dispute is resolved by Final Order. Class 5 is impaired.

28. The Plan provides for Class 6 which consists of the Allowed Secured Claims of Deborah Rey, Mary Katherin Murphy, John Dix Nock, IV, Alexandra Elizabeth Nock, Kathryn Tutton Nock, Axel Justice Nock, Deborah C. Muhs Trust a/k/a Deborah C. Radbill, Radbill Environmental Resources, Inc., a/k/a Donald N. Radbill, The Donald N. Radbill Living Trust, Rad Management Company, Linda R. Nelms, Mary Lou Preston, Linda R. Nelms, Patricia G. Sligh, Equity Trust Company, Robert A. Roth, Diane W. Bennett, and Ruby Inez Weldon which are allegedly secured by liens on certain automobile installment sales contracts. According to the Plan, the State of Florida Uniform Commercial Code Financing Statements for these Secured Creditors were either: (i) filed within ninety (90) days of the Petition Date and are preferences, pursuant to 11

U.S.C. §547; (ii) filed on or after the Petition Date and violate the automatic stay of 11 U.S.C. §362 and are improper post-petition transfers pursuant to 11 U.S.C. §549; and/or (iii) are not properly perfected in accordance with the requirements of the Uniform Commercial Code. The Allowed Secured Class 6 Claims shall be deemed Unsecured Claims and shall be treated as a Class 10 Unsecured Claim and paid accordingly. The Class 6 unsecured Claims may be subject to dispute or objection and shall receive no distribution under Class 10 until such objection or dispute is resolved by Final Order. Class 6 is impaired.

29. The Plan provides for Class 7 which consists of the Allowed Secured Claim of Banc of America Leasing & Capital LLC which is allegedly secured by a lien on certain personal property. To the extent that Banc of America Leasing & Capital LLC has an Allowed Secured Claim it shall receive, in full satisfaction of its claim, the personal property which serves as collateral for its Allowed Claim as the indubitable equivalent of its Allowed Secured Claim pursuant to 11 U.S.C. §1129(b)(2)(A)(iii). Any difference between the amount of the Allowed Secured Class 7 Claim and the Allowed Claim shall be treated as a Class 10 Unsecured Claim and paid accordingly. The Claim of Banc of America Leasing & Capital LLC may be subject to dispute or objection and shall receive no distribution until such objection or dispute is resolved by Final Order. Class 7 is impaired.

30. The Plan provides for Class 8 which consists of the Allowed Secured Claim of CitiCapital Technology Finance, Inc. which is allegedly secured by a lien on certain personal property. To the extent that CitiCapital Technology Finance, Inc. has an Allowed Secured Claim it shall receive, in full satisfaction of its claim, the personal property which serves as collateral for its Allowed Claim as the indubitable equivalent of its Allowed Secured Claim pursuant to 11 U.S.C. §1129(b)(2)(A)(iii). Any difference between the amount of the Allowed Secured Class 8 Claim and the Allowed Claim shall be treated as a Class 10 Unsecured Claim and paid accordingly. The Claim

of CitiCapital Technology Finance, Inc. may be subject to dispute or objection and shall receive no distribution until such objection or dispute is resolved by Final Order. Class 8 is impaired.

31. The Plan provides for Class 9 which consists of all Allowed Unsecured Claims which total \$1,750 or less. Class 9 Allowed Unsecured Claims will receive a pro rata distribution of the Net Trust Proceeds pursuant to the terms set forth in Class 10 Section A. Class 9 Claims may be subject to dispute or objection and shall receive no distribution until such objection or dispute is resolved by Final Order. Class 9 is impaired.

32. The plan provides for Class 10 which consists of all Allowed Unsecured Claims, other than Allowed Unsecured Claim which total \$1,750 or less which are treated in Class 9. Holders of Allowed Class 10 Unsecured Claims will receive, in full satisfaction of their Allowed Unsecured Claims, in accordance with the terms of the Plan: (i) a Pro Rata Share of the Net Trust Proceeds from the Trust Assets, as determined on an annual basis for up to 5 years in accordance with the terms of the Plan and the Creditor Trust Agreement; and (ii) distribution of shares in Newco on the basis of one share for each \$1,000.00 of each such Unsecured Creditor's Allowed Unsecured Class 10 Claim. Class 10 is impaired.

33. The Plan provides for Class 11 which consists of equity interests. There shall be no distribution to holders of pre-petition equity interests in the Debtor and all such equity interests shall be deemed cancelled on the Effective Date, as will all purchase options or prescriptive rights associated with the Debtor's pre-petition equity interests.

34. Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, and except as otherwise provided for in the Plan, the Liquidating Trust shall have the power and authority to perform, among other duties as set forth in the Disclosure Statement and Plan, commence or prosecute, on behalf of the estate, objections to Claims, which are necessary to carry

out the terms and conditions of the Plan and commence or prosecute, on behalf of the estate, any Causes of Action.

35. I have reviewed the Ballot Tabulation and the status of the Impaired Classes under the Plan is summarized in the following table:

<u>Class</u>	<u>Status</u>	<u>Committee Voting Results</u>
Class 3-Anita Spring	Impaired	Rejects
Class 4- Bernard Reller	Impaired	Rejects
Class 5 – Ralph E. Brown and R&B Investment Trading	Impaired	Rejects
Class 6- Secured Claims-Avoidable Claims	Impaired	Accepts
Class 7- Banc of America Leasing & Capital	Impaired	No Vote
Class 8- CitiCapital Technology Capital	Impaired	No Vote
Class 9-Unsecured Claims-Convenience	Impaired	Accepts
Class 10-Unsecured Claims	Impaired	Accepts
Class 11- Equity	Impaired	No Vote

CONFIRMATION REQUIREMENTS

36. I have reviewed the Plan with my attorney who has determined and advised that it complies with the Code.

37. PLAN COMPLIANCE - SECTION 1129(a)(1). The Plan:

- a. designates Classes of Claims and Interests in accordance with Section 1122 of the Bankruptcy Code;
- b. specifies Classes that are not impaired and Classes that are impaired;
- c. specifies the treatment of all Classes that are impaired under the Plan;
- d. provides the same treatment for each Claim or Interest of a particular Class; and

e. provides adequate means for the execution of the Plan.

38. PROPONENT COMPLIANCE - SECTION 1129(a)(2). the Committee has complied with all applicable provisions of the Bankruptcy Code. By way of example, the Committee has:

a. performed and complied with the duties imposed under Bankruptcy Code Section 1107;

b. solicited acceptances to the Plan only in accordance with Bankruptcy Code Section 1125; and

c. obtained court orders for the employment of professionals.

39. GOOD FAITH - SECTION 1129(a)(3). The Plan has been proposed in good faith and, to my knowledge, not by any means forbidden by law. The purpose of the Plan is to pay all Classes of Allowed Claims within a reasonable time to the extent of the Debtor's recovery from its causes of action and cash on hand and to reorganize the business to the benefit of the Debtor's unsecured creditors.

40. PAYMENTS TO PROFESSIONALS - SECTION 1129(a)(4). All payments made, or to be made, by the Trustee and/or Committee in connection with this case or in connection with the Plan either have been approved by or are subject to the approval of the Bankruptcy Court. At the hearing on Confirmation or as scheduled by the Court, the Court will determine and, to the extent appropriate, allow as reasonable certain fees and costs of administration.

41. POST-CONFIRMATION MANAGEMENT - SECTION 1129(a)(5). Terry Soifer will serve as the Creditor Agent for the Cladek Creditor Trust. Terry Soifer will be paid on an hourly basis at a rate of \$250 per hour. The board of the new company will consist of the Committee members who will serve until the shareholders hold their initial meeting of creditors and elect a board. The initial board members will not receive compensation for their services.

42. GOVERNMENT APPROVAL - SECTION 1129(a)(6). There are no governmental regulatory commissions with jurisdiction after Confirmation of the Plan whose approval is needed.

43. BEST INTEREST OF CREDITORS - SECTION 1129(a)(7). With respect to each Impaired Class of Allowed Claims or Interests, each Holder of an Allowed Claim or Interest of such Class has either accepted the Plan or will receive or retain under the Plan on account of such Allowed Claim or Interest property of a value, as of the Effective Date, that is not less than the amount such holder would receive if Debtor was liquidated under Chapter 7 of the Code on such date. In a Chapter 7 liquidation, any return to Creditors will be delayed and reduced by the necessary time and expense of administration by a Chapter 7 trustee. Because liquidation under Chapter 7 would not improve the payout to any creditor, the Best Interests standard is met.

44. ACCEPTANCE OR REJECTION OF PLAN - SECTION 1129(a)(8). The Ballot Tabulation (Doc. No.476) sets forth the vote on the Plan. As evident from the Ballot Tabulation, three Impaired Class of Claims have voted in favor of the Plan.

45. PRIORITY CLAIMS - SECTION 1129(a)(9). The Plan provides for payment in full of all Allowed Administrative Priority Claims.

46. ACCEPTANCE BY IMPAIRED CLASS - SECTION 1129(a)(10). At least one Impaired Class has accepted the Plan.

47. FEASIBILITY - SECTION 1129(a)(11). The Code requires, as a condition to Confirmation, that Confirmation of a plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of Debtor unless the liquidation is proposed in the Plan. Based on the projections and valuations prepared by the Committee and the experts retained by the Committee, this standard is satisfied.

48. TRUSTEE FEES - SECTION 1129(a)(12). The Plan provides for the payment of all fees payable under 28 U.S.C. § 1930 on the Effective Date of the Plan.

49. RETIREE CLAIMS - SECTION 1129(a)(13). There are no unsecured claims for contributions to a retiree benefit plan. The Debtor does not have any retiree benefit plans.

Further affiant sayeth not.

By: Noel Yell
Noel Yell, Chairperson for the Committee of Unsecured Creditors for Lydla Cladek Inc.

STATE OF FLORIDA)
COUNTY OF ST. JOHN)

Sworn to and subscribed before me this 25th day of January 2011, by NOEL YELL, who is personally known to me or has produced drivers license as identification and did take an oath.

Neil L. Bigbie
Signature of Person Taking Acknowledgment
Print Name: Neil L. Bigbie
Title: Notary Public
Serial No. (If any) _____
Commission Expires: July 15, 2012

