

The below described is **SIGNED**.

Dated: September 11, 2013



JOEL T. MARKER
U.S. Bankruptcy Judge



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IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

In re:

DEE ALLEN RANDALL, et al.,

Debtors.

Bankruptcy Case No. 10-37546

(Substantively Consolidated with Case Nos. 11-34826, 11-34830, 11-34831, 11-34833 and 11-34834)

Chapter 11

Honorable Joel T. Marker

(Filed via ECF)

ORDER (I) APPROVING DISCLOSURE STATEMENT WITH RESPECT TO THE CHAPTER 11 TRUSTEE'S LIQUIDATING PLAN OF REORGANIZATION DATED SEPTEMBER 9, 2013, (II) ESTABLISHING VOTING RECORD HOLDER DATE, (III) APPROVING SOLICITATION PROCEDURES, FORM OF BALLOTS, AND MANNER OF NOTICE, AND (IV) FIXING THE DEADLINE FOR FILING OBJECTIONS TO THE CONFIRMATION OF THE PLAN

This matter came before the Court on Monday, September 9, 2013, upon *The Trustee's Motion for an Order (I) Approving Disclosure Statement with Respect to the Chapter 11 Trustee's Plan of Reorganization dated April 3, 2013, (II) Establishing Voting Record Holder Date, (III) Approving Solicitation Procedures, Form of Ballots, and Manner of Notice, and (IV) Fixing the Deadline for Filing Objections to the Confirmation of the Plan* (the "**Motion**") filed by Gil A. Miller (the "**Trustee**"), Chapter 11 Trustee of the substantively consolidated Chapter 11 estates (the "**Consolidated Estate**") of Dee Allen Randall, Horizon Auto Funding, LLC, Independent Commercial Lending, LLC, Horizon Financial Center I, LLC, Horizon Mortgage and Investment Inc. and Horizon Financial & Insurance Group Inc. (collectively, the "**Debtors**"). At the hearing, Michael R. Johnson and Douglas M. Monson represented the Trustee, and counsel for other parties in interested noted their appearances upon the record.

Notice of the Motion, of the deadline to object to the Motion and to the adequacy of the Trustee's proposed *Disclosure Statement for Chapter 11 Trustee's Liquidating Plan of Reorganization Dated April 3, 2013* [Doc. 1174], as modified by the Trustee's proposed *Disclosure Statement for Chapter 11 Trustee's Liquidating Plan of Reorganization dated September 9, 2013* [Doc. 1269] (the "**Disclosure Statement**"), filed September 11, 2013, was given to all creditors and parties-in-interest. The Disclosure Statement relates to the Trustee's *[Proposed] Chapter 11 Trustee's Liquidating Plan of Reorganization Dated April 3, 2013* [Doc. 1070], as modified by the Trustee's *[Proposed] Chapter 11 Trustee's Liquidating Plan of Reorganization dated September 9, 2013* [Doc. 1268] (the "**Plan**"), filed September 11, 2013, which is also on file with the Court.

The Court, having considered the Motion, the facts stated in the Motion, and other pleadings and papers of record, including the Disclosure Statement and the Plan and all exhibits thereto, having considered the arguments and representations of counsel and the modifications to

the Disclosure Statement and Plan agreed to by the Trustee at the hearing, which modifications are contained in the versions of the Disclosure Statement and Plan filed with the Court on September 11, 2013 as Docs. 1268 and 1269, and it appearing from the declarations of service on file with this Court that adequate and sufficient notice of the Motion and of the hearing on the Motion has been given, and upon all of the proceedings heretofore had before the Court and after due deliberation and sufficient cause appearing, therefore it is **ORDERED, FOUND AND DETERMINED THAT:**

1. The Motion shall be, and hereby is, GRANTED.
2. The Trustee's proposed Disclosure Statement filed with the Court on September 11, 2013 as Doc. 1269 contains adequate information within the meaning of 11 U.S.C. § 1125, and it shall be, and hereby is, APPROVED, and the Trustee may solicit acceptances of the Trustee's proposed Plan filed with the Court on September 11, 2013, as Doc. 1268, in accordance with the terms of this Order.
3. For voting purposes and mailing of notices pursuant to this Order, Thursday, September 19, 2013, shall be the "**Record Holder Date**" for the holders of Claims and Equity Interests.
4. Only the following holders of Claims in the Voting Classes¹ shall be entitled to vote with regard to such Claims (a) the holders of filed proofs of claim as reflected, as of the close of business on the Record Holder Date, on the official Claims Register maintained by the Clerk of this Court, that have not been objected to as of the Record Holder Date, (b) the holders of scheduled claims that are listed in the Debtors' Schedules as not contingent, unliquidated or disputed Claim (excluding scheduled Claims that have been superseded by a filed proof of claim), and (c) the holders, if any, of claims that have been allowed by a Final Order of the

¹ As used herein, the "**Voting Classes**" shall be each class of claims or interests as specified and defined in the Amended Plan that is designated as impaired and, thus, eligible to vote either to accept or reject the proposed plan or reorganization.

Court; provided, however, that the assignee of a transferred and assigned claim (whether a filed or scheduled claim) shall be permitted to vote such claim only if evidence of the transfer and assignment has been filed with the Court by the assignee in accordance with Federal Rule of Bankruptcy Procedure 3001 as of the close of business on the Record Holder Date.

5. Except as otherwise ordered by the Court, Holders of Claims shall not be permitted to vote on the Plan if their Claims are subject to a pending objection on the Voting Deadline (as defined below).

6. The Trustee shall mail ballots (with instructions), substantially in the form of the ballots (with instructions) attached as Exhibit “B” to the Motion (the “**Ballots**”), to each holder of a claim in the Voting Classes under the Plan. The forms of the Ballots attached as Exhibit “B” to the Motion are approved. The form of the *Notice of Non-Voting Status to Holders of Unimpaired Claims (Classes 1 through 15) Under Chapter 11 Trustee’s Liquidating Plan of Reorganization dated April 3, 2013* (the “**Notice of Non-Voting Status**”) attached as Exhibit “C” to the Motion (with an update for the date of the Plan) also is approved.

7. The Trustee shall deposit or cause to be deposited in the United States mail, postage prepaid, addressed to each of the holders of Voting Claims (as defined in the Motion) a solicitation package (the “**Solicitation Package**”), which shall include the following:

a. A paper copy of the Notice of the Confirmation Hearing and related matters, setting forth the time fixed for filing acceptances and rejections to the Plan, the time fixed for filing objections to confirmation of the Plan, and the date and time of the Confirmation Hearing;

b. An electronic copy of the Disclosure Statement (with all exhibits, including the Plan, included therein);

c. A paper copy of the letter attached as Exhibit “D” to the Motion describing the information being provided in the Solicitation Package, briefly summarizing the Plan (including information on the Victim Causes of Action and the mechanism to assign the Victim Causes of

Action to the Private Actions Trust), and providing instructions to the holders of Claims in the Voting Classes about how to vote; and

d. Either (i) a paper copy of the appropriate Ballot (with instructions) to the holders of Claims in the Voting Classes, or (ii) a paper copy of the Notice of Non-Voting Status to the holders of Claims who are not members of the Voting Classes.

8. All persons and entities entitled to vote on the Plan shall deliver their Ballots by mail, hand delivery or overnight courier to the Trustee, at:

RANDALL CHAPTER 11 BANKRUPTCY PLAN
c/o Sherry Glendening, Ballot Tabulator
Ray Quinney & Nebeker PC
36 South State Street, Suite 1400
Salt Lake City, Utah 84111

Ballots submitted by email or facsimile shall not be counted.

9. The deadline for persons and entities to return their Ballots accepting or rejecting the Plan shall be 4:00 p.m. Mountain Time on Wednesday, October 23, 2013 (the “**Voting Deadline**”).

10. In order to be counted as a vote to accept or reject the Plan, all Ballots must be properly executed, completed and delivered to the Trustee by mail (in the return envelope provided with each Ballot), by overnight mail, or by personal delivery so that the Ballots are received by counsel for the Trustee, c/o Sherry Glendening, Ballot Tabulator, by no later than the Voting Deadline.

11. For purposes of voting, the amount of a claim used to tabulate acceptance or rejection of the Plan shall be the amount set forth on the Ballot for that particular creditor, which shall be one of the following:

a. The amount set forth as a claim in the Debtors’ Schedules that is not listed as contingent, unliquidated or disputed (excluding scheduled Claims that have been superseded by

filed Claims);

b. The amount set forth on a filed proof of claim that has not been disallowed, disqualified, suspended, reduced or estimated and temporarily allowed for voting purposes prior to computation of the vote on the Plan;

c. The Class of Claim and the amount agreed upon between the Trustee and the holder of a Claim in a settlement agreement that has been approved by this Court; or

d. The amount estimated and temporarily allowed with respect to a Claim pursuant to an order of this Court.

12. With respect to Ballots submitted by a holder of a Claim:

a. Any Ballot that is properly completed, executed and timely returned to the Trustee that does not indicate an acceptance or rejection of the Plan shall be deemed to be a vote to accept the Plan;

b. Any Ballot which is returned to the Trustee indicating acceptance or rejection of the Plan but which is unsigned shall not be counted;

c. Whenever a holder of a Claim casts more than one Ballot voting the same Claim prior to the Voting Deadline, only the last timely Ballot received by the Trustee shall be counted;

d. If a holder of a Claim casts simultaneous duplicative Ballots voted inconsistently such Ballots shall count as one vote accepting the Plan;

e. Each holder of a Claim shall be deemed to have voted the full amount of its Claim;

f. Each holder of any Claim shall be entitled to vote all of the Claims it holds, and shall be entitled to cast several Ballots, to be counted separately, in determining numerical voting count, as to each Claim within a particular class;

g. Any Ballots that partially reject and partially accept the Plan shall be deemed a vote to accept the Plan; and

h. Any Ballot received by the Trustee by telecopier, facsimile or other electronic communication shall not be counted.

13. The hearing to consider confirmation of the Plan is scheduled for Monday, October 28, 2013, at 9:00 a.m., at the United States Bankruptcy Court at 350 South Main Street, Room 341, Salt Lake City, Utah 84101, before the Honorable Joel T. Marker, United States Bankruptcy Court Judge. This hearing may be adjourned from time to time without further notice other than an announcement of the adjourned date(s) at said hearing and at any adjourned hearing(s).

14. The Trustee shall cause the Notice of Confirmation Hearing and Solicitation Packages to be mailed by no later than Monday, September 23, 2013, i.e., at least twenty-eight days prior to the Voting Deadline.

15. Any objection to confirmation of the Plan must be filed with the Clerk of the Bankruptcy Court, together with proof of service, no later than 4:00 p.m. Mountain Time on the Voting Deadline, and must be served upon the following so as to be received no later than 4:00 p.m. the same day: (i) counsel to the Trustee, Michael R. Johnson and Douglas M. Monson, Ray Quinney & Nebeker P.C., 36 South State Street, Suite 1400, Salt Lake City, UT 84111; and (ii) the Office of the United States Trustee, Attn. Laurie Cayton, Ken Garff Bldg., 405 South Main Street, Suite 300, Salt Lake City, Utah 84111.

16. Any objection to confirmation of the Plan must be in writing and (a) must state the name and address of the objecting party and the amount(s) of the objecting party's Claim(s) or the nature of the objecting party's interest, and (b) must state, with particularity, the nature of the objecting party's objection.

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