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IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

<p>In re:</p> <p>DEE ALLEN RANDALL, et al.,</p> <p>Debtors.</p>	<p>Bankruptcy Case No. 10-37546</p> <p>(Substantively Consolidated with Case Nos. 11-34826, 11-34830, 11-34831, 11-34833 and 11-34834)</p> <p>Chapter 11</p> <p>Honorable Joel T. Marker</p> <p>(Filed via ECF)</p>
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**THE TRUSTEE'S FINAL REPORT DATED JANUARY 18, 2019,
AND MOTION FOR ENTRY OF FINAL DECREE AND FOR ORDER CLOSING THE
CONSOLIDATED CASE**

Gil A. Miller (the "**Trustee**"), in his capacity both as the post-confirmation Trustee of the substantively consolidated and reorganized Chapter 11 estate of Dee Allen Randall ("**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. (the “**Reorganized Debtors**”) and also as the Trustee of the Randall Victims Private Actions Trust (the “**PAT**”) that was created pursuant to the confirmed plan of reorganization for the Reorganized Debtors (defined below as the “**Plan**”) and the order confirming the Plan (defined below as the “**Confirmation Order**”), through counsel, hereby files this *Final Report Dated January 18, 2019 and Motion for Entry of Final Decree and for Order Closing the Consolidated Case* (the “**Final Report and Motion**”), which is supported by the *Declaration of Trustee Gil A. Miller in Support of Final Report Dated January 18, 2019 and Motion for Entry of Final Decree and for Order Closing the Consolidated Case* (the “**Miller Decl.**”) that is being filed contemporaneously herewith.

Capitalized terms in this Final Report and Motion and in the Miller Decl. that are not otherwise defined shall have the meanings stated in the Plan and the Confirmation Order. This Final Report and Motion and the Miller Decl. are intended to apprise the Court and parties in interest that the Consolidated Estate has been fully administered and the Plan has been fully consummated, and that the Consolidated Case should now be closed. This Final Report and Motion and the Miller Decl. will also provide a summary of the actions taken by the Trustee, the results obtained, and the final status of this consolidated Chapter 11 bankruptcy case (the “**Consolidated Case**”).

A. BACKGROUND OF THE CONSOLIDATED CASE

Pursuant to 11 U.S.C. § 350, Bankruptcy Rule 3022, Local Rule 3022-1, and this Final Report and Motion, the Trustee respectfully moves the Court for entry of a Final Decree and Order closing this Consolidated Case and for the discharge of the Trustee, and in support thereof

represents as follows:

1. This Court has jurisdiction over this Consolidated Case and this Final Report and Motion pursuant to 11 U.S.C. § 350(a), 28 U.S.C. §§ 157(b)(2)(A) and 1334.

2. Pursuant to 11 U.S.C. § 350(a), a bankruptcy case may be closed when the bankruptcy estate is fully administered. Federal Rule of Bankruptcy Procedure 3022, which implements Section 350(a) and specifically applies to chapter 11 cases, provides: “After an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case.” Fed. R. Bankr. P. 3022.

3. The Advisory Committee Notes to Bankruptcy Rule 3022 list a number of factors (the “**Advisory Committee Factors**”) to be considered in determining if the bankruptcy estate is fully administered for purpose of closing a bankruptcy case. Those factors are:

- a. Whether the order confirming the plan has become final;
- b. Whether deposits required by the plan have been distributed;
- c. Whether the property proposed by the plan to be transferred has been transferred;
- d. Whether the debtor or the successor of the debtor under the plan has assumed the business of the management of the property dealt with by the plan;
- e. Whether payments under the plan have commenced; and
- f. Whether all motions, contested matters and adversary proceedings have been finally resolved.

4. On December 20, 2010 (the “**Randall Petition Date**”), after experiencing extreme financial pressures and litigation from disgruntled investors, Randall filed a personal

Chapter 11 bankruptcy petition with the United States Bankruptcy Court for the District of Utah under Bankruptcy Case No. 10-37546 (the “**Randall Case**”). See, Miller Decl. at ¶ 7.

5. On September 28, 2011 hearing, the Bankruptcy Court ordered the immediate appointment of a Chapter 11 trustee. On September 29, 2011, an Order was entered by the Bankruptcy Court approving the appointment of the Trustee as the Chapter 11 Trustee in the Randall Case [Dkt. 247]. See, Miller Decl. at ¶ 8.

6. On October 12, 2011 (the “**Corporate Debtors Petition Date**”), the Trustee, in his capacity as the Chapter 11 Trustee in the Randall Case, and as the authorized representative of each of the Corporate Debtors, caused a voluntary Chapter 11 petition for relief to be filed for each of the Corporate Debtors (the “**Corporate Debtor Cases**”). See, Miller Decl. at ¶ 9.

7. On January 27, 2012, the Bankruptcy Court entered its Order (the “**Consolidation Order**”) [Docket 449] substantively consolidating the bankruptcy estates of each of the Debtors (the “**Consolidated Estate**”), with the Corporate Debtor Cases being consolidated with and into the Randall Case (also referred to as the “**Consolidated Case**”). See, Miller Decl. at ¶ 10.

8. Nine of the real properties of the Debtors had equity, and after these properties were sold with Bankruptcy Court approval, there was approximately \$2 million of net sale proceeds remaining after payment of the first lienholders (if any) on these properties. The nine properties and the amount of net sale proceeds for each of the nine properties are listed on **Exhibit A** to the Miller Decl. See, Miller Decl. at ¶ 11.

9. The Trustee filed his *Chapter 11 Trustee’s Liquidating Plan of Reorganization Dated September 9, 2013* (“**Plan**”) on September 11, 2013 [Dkt. 1268]. See, Miller Decl. at ¶ 12.

10. The overwhelming majority of the Class 17 Victims voted in favor of the Plan. On October 28, 2013, the Bankruptcy Court entered its *Order Confirming the Chapter 11 Trustee's Liquidating Plan of Reorganization Dated September 9, 2013* [Docket No. 1367] (the "**Confirmation Order**"). See, Miller Decl. at ¶ 13.

11. There were no appeals of the Confirmation Order. Pursuant to the terms of the Plan, the Confirmation Order became a final order when no appeals were filed, and the Plan became effective on November 27, 2013 (the "**Plan Effective Date**"). See, Miller Decl. at ¶ 14.

12. Under Section 6.9(a) of the Plan, on the Effective Date, the PAT was created to pursue the Victim Causes of Action assigned by Class 17 Victims to the PAT, with the Trustee also acting as the Trustee of the PAT. See, Miller Decl. at ¶ 15.

13. One of the major tasks facing the Trustee was negotiating with the Internal Revenue Service ("**IRS**") the payment terms for the IRS's approximately \$1.2 million claim against the Consolidated Estate, which included unsecured priority claim of \$933,850.56 (the "**IRS Priority Tax Claim**"). See, Miller Decl. at ¶ 16.

**C. THE CONSOLIDATED ESTATE HAS NOW BEEN FULLY ADMINISTERED,
AND THE PLAN HAS BEEN FULLY CONSUMMATED**

14. Local Rule 3022-1(b), which applies to Chapter 11 cases filed by an individual, states: "A final decree must be sought by an individual *within 28 days after completion of all payments under the plan*. The final decree shall serve as a notice of the order of discharge of the individual debtor once all payments under the plan are complete." (Emphasis added). See, Miller Decl. at ¶ 17.

15. All payments under the Plan have now been completed, and all adversary proceedings and contested matters (including claims objections) in this Consolidated Case have now been resolved and closed, as outlined below, so the time is now right for the filing of this Final Report and Motion. See, Miller Decl. at ¶ 18.

16. On July 17, 2015, the Bankruptcy Court entered its Order [Dkt. 1602] whereby the Bankruptcy Court approved the settlement of the Trustee's claims against Bryan Cave, LLP, asserted in Adversary Proceeding No. 13-02341. Under the settlement, Bryan Cave, LLP paid \$50,000.00 to the Consolidated Estate and \$1,950,000 to the PAT, Bryan Cave, LLP withdrew all of its claims, and Adversary No. 13-02341 was dismissed. See, Miller Decl. at ¶ 19.

17. On July 15, 2015, the Bankruptcy Court entered its Order (the "**First Estate Class 17 Distribution Order**") [Dkt. 1600] approving the Trustee's distribution of \$1,251,695.87 (the "**First Estate Class 17 Distribution**") to the designated Class 17 Victims, and the Trustee's distribution of \$900,000.00 to the PAT Beneficiaries (the "**First PAT Distribution**"). See, Miller Decl. at ¶ 20.

18. On February 2, 2017, the Bankruptcy Court entered its Order [Dkt. 1642], approving a stipulation between the Trustee and the IRS whereby the IRS Priority Tax Claim was reduced to \$312,750.00, and all other IRS claims were disallowed. The reduced priority claim of the IRS was subsequently paid. See, Miller Decl. at ¶ 21.

19. In February of 2018, the Trustee made a restitution distribution in the amount of \$31,000.00 (the "**Restitution Distribution**") to Class 17 Victims who had invested with the Debtors after June 1, 2009. See, Miller Decl. at ¶ 22.

20. On May 8, 2018, the Bankruptcy Court entered its Order [Dkt. 1686] approving the settlement of the Trustee's claims against Union Central Life Insurance Company and Ameritas Life Insurance Corp. (collectively "**Union Central**") in Adversary No. 12-02385 and Adversary No. 13-02023 (the "**Union Central Adversary Proceedings**"). Under the settlement, Union Central paid \$3,450,000.00 to the Consolidated Estate, and the Union Central Adversary Proceedings were dismissed. See, Miller Decl. at ¶ 23.

21. On May 8, 2018, the Bankruptcy Court entered its Order (the "**Second Estate Class 17 Distribution Order**") [Dkt. 1687] approving the Trustee's distribution of \$2,250,000.00 (the "**Second Estate Class 17 Distribution**") to designated Class 17 Victims. See, Miller Decl. at ¶ 24.

22. On November 26, 2018, the Bankruptcy Court entered its Order (the "**PAT Union Central Settlement Order**") [Dkt. 1710] approving the Trustee's settlement of PAT claims asserted against Union Central in the United States District Court for the District of Utah entitled *Gil A. Miller, Trustee v. Union Central Life Insurance Company et al.*, Civil No. 2:14-cv-00575-JNP-PMW (the "**PAT Union Central Litigation**"), whereby Union Central paid the PAT \$11,250,000.00, and the PAT Union Central Litigation was dismissed. See, Miller Decl. at ¶ 25.

23. On December 13, 2018, the Bankruptcy Court entered its Order (the "**Final Distributions Order**") [Dkt. 1719] approving the Trustee's distribution of \$1,815,101.00 (the "**Final Estate Class 17 Distribution**") to designated Class 17 Victims, and also approving the Trustee's final distribution of \$5,186,817.35 to the PAT Beneficiaries (the "**Final PAT Distribution**"). See, Miller Decl. at ¶ 27.

24. All distributions authorized by the Bankruptcy Court pursuant to the foregoing orders have been made. See, Miller Decl. at ¶ 27.

25. The total amount of all Estate Class 17 Distributions for the Class 16(B) Claim and the Class 17 Victim Claims was **\$11,434,614.22** (i.e., the total Estate Class 17 Distributions of \$5,347,796.87 plus the total PAT Distributions of \$6,086,817.35). See, Miller Decl. at ¶ 28.

25. The Estate Class 17 Distribution percentage under the Rising Tide Distribution Method was not less than **36.56%**. For those Class 17 Victims who are also PAT Beneficiaries, their final percentage recovery of the principal amount of their investments was not less than **47.9%**. See, Miller Decl. at ¶ 29.

26. The total distributions made by the Trustee in this Consolidated Case have been \$24,888,261.24 (the “**Total Distributions**”). See, Miller Decl. at ¶ 30.

D. STATUS OF THE ADVISORY COMMITTEE FACTORS

27. On December 12, 2018, the Bankruptcy Court entered its Order [Dkt. 1720] approving the Trustee’s Final Fee Application, and the Trustee’s final fees and expenses have now been paid in full. See, Miller Decl. at ¶ 31.

28. Under the Final Distributions Order, the Bankruptcy Court also approved the Trustee’s reserve of \$70,600.00 for paying the estimated fees and costs necessary to close this Consolidated Case, and approved the Trustee’s proposal for the disposition of unclaimed funds at the time of the closing of this Consolidated Case. See, Miller Decl. at ¶ 32.

29. The Plan did not require the distribution of any deposits within the meaning of Bankruptcy Rule 3020. See, Miller Decl. at ¶ 33.

30. The Advisory Committee Factor of “[w]hether the property proposed by the plan to be transferred has been transferred” is not applicable because the Plan did not propose the transfer of any Consolidated Estate property to any other entity. See, Miller Decl. at ¶ 34.

31. The Advisory Committee Factor of “[w]hether the debtor or the successor of the debtor under the plan has assumed the business of the management of the property dealt with by the plan” is not applicable because there was no ongoing business of the Reorganized Debtors. See, Miller Decl. at ¶ 35.

32. All assets of the Consolidated Estate have now been liquidated and reduced to cash, and all payments under the Plan have been completed. A complete summary of the disposition of all Classes classified under the Plan and an account of all receipts and disbursements in this Consolidated Case are attached as **Exhibits B and C** to the Miller Decl. See, Miller Decl. at ¶ 36.

33. All of the post-Confirmation Order lawsuits that were being pursued by the Trustee on behalf of the Consolidated Estate and on behalf of the PAT have now been resolved and dismissed, and all motions, contested matters, objections to claims, and adversary proceedings in this Consolidated Case have been finally resolved. See, Miller Decl. at ¶ 37.

34. As outlined above, pursuant to the Final Distributions Order, sufficient funds have been set aside by the Trustee to prepare and file final tax returns and any other matters necessary to complete the closure of the Reorganized Debtors, and to pay any remaining fees under 28 U.S.C. § 1930. See, Miller Decl. at ¶ 38.

35. To the extent that the closure of this Consolidated Case is dependent upon a determination of whether or not Randall has received a discharge under his Chapter 11 case,

Section 6.11 of the Plan provides that pursuant to Section 1141(d)(3) of the Bankruptcy Code, Randall was not discharged under the Plan. See, Miller Decl. at ¶ 39.

36. All of the Advisory Committee Factors have now been satisfied, and this Consolidated Case has been fully administered for purposes of closing this Consolidated Case. For purposes of satisfying Local Rule 3022-1(a), which requires that a motion to close for a final decree “must set forth evidence of full administration for the purpose of entering the final decree”, the Miller Decl. supplies the necessary evidence of full administration of this Consolidated Case. See, Miller Decl. at ¶ 40.

**E. REQUEST FOR AUTHORIZATION TO
DESTROY CONSOLIDATED CASE RECORDS**

37. The Trustee is holding voluminous records relating to the Consolidated Case that will no longer be needed after this Consolidated Case is closed. See, Miller Decl. at ¶ 41.

38. The Trustee requests that the Bankruptcy Court authorize the Trustee to destroy the records relating to the Consolidated Case after the Consolidated Case is closed and such records are no longer needed by the Trustee. See, Miller Decl. at ¶ 42.

**F. TRUSTEE’S MOTION TO MODIFY AND CLARIFY
THE FINAL DISTRIBUTIONS ORDER**

39. The Final Distributions Order states in part the following:

5. The Trustee is authorized and ordered to reserve from the Consolidated Estate’s funds the Trustee’s Final Closing Reserve of \$70,600.00.

6. The Trustee is authorized and ordered to pay the fees and costs and other items outlined in the Final Distributions Motion to be funded from the Trustee’s Final Closing Reserve.

...

9. The Trustee is authorized and ordered to mark all checks for the Third and Final Estate Distribution and the Final PAT Distribution “VOID AFTER 60 DAYS.”

10. The Trustee is authorized and ordered to cancel any checks for the Third and Final Estate Distribution and the Final PAT Distribution that are not negotiated by the payees of such checks within the “VOID AFTER 60 DAYS” time frame.

11. The Trustee is authorized and ordered to donate the amount of any unclaimed funds or cancelled checks from the PAT Distributions, as well as any unused funds from the Trustee’s Final Closing Reserve (if any), to the nonprofit legal services organization “And Justice For All.”

See, Miller Decl. at ¶ 43.

40. The Final Distributions Order is unclear about the final disposition of uncashed checks from the Final Estate Distribution. The Trustee intended that the proceeds of any uncashed checks from the Final Estate Distribution would first be deposited into the Trustee’s Final Closing Reserve and used to pay any final expenses of the Consolidated Estate before they would be donated to “And Justice For All.” See, Miller Decl. at ¶ 44.

41. The Trustee moves that Paragraph 11 of the Final Distributions Order be amended to state the following (added language is in bold), in order to clarify what was intended by the Final Distributions Order:

11. The Trustee is authorized and ordered to donate the amount of any unclaimed funds or cancelled checks from the PAT Distributions, as well as any unused funds from the Trustee’s Final Closing Reserve (if any) **(after the proceeds from any cancelled checks from the Third and Final Estate Distribution are first deposited into the Trustee’s Final Closing Reserve to be applied towards the U.S. Trustee’s quarterly fees under 28 U.S.C. § 1930 and any other final expenses of the Consolidated Estate)**, to the nonprofit legal services organization “And Justice For All.”

See, Miller Decl. at ¶ 45.

F. TRUSTEE'S REQUEST FOR A DISCHARGE

42. The Trustee requests that he be discharged by the Bankruptcy Court as the Trustee of the Consolidated Estate and as the PAT Trustee as part of the Bankruptcy Court's Order approving this Final Report and Motion and closing the Consolidated Case. See, Miller Decl. at ¶ 46.

H. CONCLUSION

A little more than eight years after Randall's fraud was first made known to the Court this Consolidated Case has finally reached its conclusion. It is now time for the Consolidated Case to be closed and for the Trustee to be discharged. The Trustee respectfully moves that the Court: (1) enter a final decree and order closing this Consolidated Case, (2) authorize the Trustee to destroy the records of the Consolidated Case after the Consolidated Case is closed and the Trustee no longer needs such records, (3) modify the Final Distributions Order to clarify Paragraph 11 of the Final Distributions Order as outlined above, and (4) approve the Trustee's Final Report, as set forth herein and in the Miller Decl., and discharge the Trustee as the Trustee of the Consolidated Estate and as the PAT Trustee. The Trustee also moves that the Court grant any other relief that is appropriate in connection with the final decree and the closing of this Consolidated Case.

DATED this 18th day of January, 2019.

RAY QUINNEY & NEBEKER P.C.

/s/ Michael R. Johnson

Michael R. Johnson

Douglas M. Monson

Attorneys for Gil A. Miller, Post-Confirmation

Trustee of the Reorganized Consolidated Estate and

Trustee of the Private Actions Trust

CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2019, the foregoing **TRUSTEE'S FINAL REPORT DATED JANUARY 18, 2019, AND MOTION FOR ENTRY OF FINAL DECREE AND FOR ORDER CLOSING THE CONSOLIDATED CASE** was electronically filed and therefore served via the Court's electronic noticing system on all electronic filing users in this case.

I further hereby certify that on January 18, 2019, copies of the foregoing **TRUSTEE'S FINAL REPORT DATED JANUARY 18, 2019, AND MOTION FOR ENTRY OF FINAL DECREE AND FOR ORDER CLOSING THE CONSOLIDATED CASE** were served via first class mail, postage prepaid, on the following:

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