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**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:	RESPONSE TO ORDER TO SHOW CAUSE AND MOTION FOR ORDER TO STAY PROCEEDINGS
DEE ALLEN RANDALL, CRD# 1651035 dba INDEPENDENT FINANCIAL & INVESTMENT, HORIZON AUTO FUNDING, LLC, HORIZON FINANCIAL & INSURANCE GROUP, INC., HORIZON FINANCIAL CENTER I, LLC, INDEPENDENT COMMERCIAL LENDING, LLC, INDEPENDENT PROPERTY MANAGEMENT Respondents.	Docket No. SD-12-0079 Docket No. SD-12-0081 Docket No. SD-12-0082 Docket No. SD-12-0083 Docket No. SD-12-0084 Docket No. SD-12-0085

RESPONSE TO ORDER TO SHOW CAUSE

Pursuant to Utah Code Ann. § 63G-4-204, respondent Dee Allen Randall[1] ("Randall"), through counsel, responds to the *Order to Show Cause*, dated December 18, 2012, but not mailed until December 19, 2012 (the "Order to Show Cause"), issued by the Director of the Utah Division of Securities (the "Division"), as follows:

Randall hereby moves the Division for entry of an Order staying these administrative proceedings pending threatened and imminent criminal prosecution based upon the same matters. Responding to the factual allegations in the Order to Show Cause would cause Randall to suffer substantial prejudice because of the pending criminal prosecution. These administrative proceedings substantially implicate Randall's right against self-incrimination. Moreover, the civil discovery devices available through these administrative proceedings should not be used to aid in Randall's criminal prosecution. The government similarly should not be able to benefit from a "dress rehearsal" of Randall's criminal defense strategy through these administrative proceedings. Finally, with the respondent entities out of business, the public interest in

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[1] The Order to Show Cause also names as respondents Horizon Auto Funding, LLC ("Horizon Auto"), Horizon Financial & Insurance Group, Inc. ("HFI"), Horizon Financial Center I, LLC ("HFC"), Independent Commercial Lending, LLC ("ICL"), and Independent Property Management, LLC ("IPM") (collectively, the "Respondent Entities"). Randall formerly was sole owner and manager or president of the Respondent Entities. However, in Randall's bankruptcy case (Bankruptcy No. 10-37546 in the United States Bankruptcy Court for the District of Utah), after the appointment of Gil A. Miller (the "Trustee") as Chapter 11 trustee in that case, the Trustee removed Randall as manager or president of the entities Randall owned and controlled and substituted himself as manager or president. The Trustee by operation of law and in his capacity as Chapter 11 trustee became the sole owner, and either the manager or president of, the Respondent Entities. Thus, Randall has no authority to file a Response to the Order to Show Cause on behalf of the Respondent Entities. In addition, the Order to Show Cause does not appear to have been properly served upon the Trustee or his counsel.

Copies of the Order Granting United States Trustee's Motion to Appoint a Chapter 11 Trustee, the Appointment of Trustee, the Trustee's Motion Requesting Joint Administration and Procedural (But Not Substantive) Consolidation of Related Chapter 11 Cases, and the Order Authorizing Joint Administration and Procedural (But Not Substantive) Consolidation of Related Chapter 11 Cases are attached as Exhibits A-D, respectively.

expedited administrative proceedings is minimal. For all these reasons, a stay of these proceedings is appropriate pending criminal prosecution.

RANDALL WOULD SUFFER SUBSTANTIAL PREJUDICE ABSENT A STAY OF THIS PROCEEDING PENDING CRIMINAL PROSECUTION

The Constitution and the interests of justice require a stay of administrative proceedings pending resolution of criminal proceedings when, under the particular circumstances of the case, a party would suffer substantial prejudice absent the stay. Creative Consumer Concepts, Inc. v. Kreisler, 563 F.3d 1070, 1080 (10th Cir. 2009). Central to this determination is "the extent to which a party's Fifth Amendment rights are implicated" and are appropriate to prevent the government "from taking advantage of broader civil discovery rights [and] to prevent the exposure of the criminal defense strategy to the prosecution." Id. (citing Sec. & Exch. Comm'n v. Dresser Indus., Inc., 628 F.2d 1368, 1375-76 (D.C. Cir. 1980)).

A. Criminal Prosecution on Overlapping Facts is Threatened and Imminent.

Absent a stay, Randall will be required to defend an administrative action when criminal proceedings involving the same matter are threatened and imminent. See Dresser, 628 F.2d at 1375-76 (observing that "the strongest case for deferring civil proceedings until after completion of criminal proceedings is where a party under indictment for a serious offense is required to defend a civil or administrative action involving the same matter"). In a recent meeting with Randall's counsel on or about December 20, 2012—the same meeting where the Division delivered the Order to Show Cause to Randall's counsel—the government clearly indicated it intends to prosecute criminally and wants a prison sentence. The same factual allegations the

government makes in connection with its criminal prosecution are alleged in the Order to Show Cause.

The factual overlap between the imminent criminal prosecution and these administrative proceedings is substantial. This is not a case where "any crossover of evidence [would be] minimal." Kreisler, 628 F.2d at 1081. This is not a case where there would be "limited overlap between the issues and evidence in the civil and criminal cases." Id. Rather, the Division's Order to Show Cause and the government's purported bases for criminal prosecution are *identical*. These factors support a stay of these proceedings pending resolution of the criminal prosecution.

B. Randall's Fifth Amendment Rights are Substantially Implicated.

Even invoking Respondents' Fifth Amendment rights to respond to allegations in the Order to Show Cause would result in prejudice. See First Fed. Sav. & Loan Ass'n of Salt Lake City v. Schamanek, 684 P.2d 1257, 1267 (Utah 1984) (observing that "[t]he proposition is well established that in civil cases a party's failure to respond to valid inquiries on the basis of the privilege against self-incrimination can give rise to an adverse inference against that party at trial"). Moreover, given the strong factual overlap between the Order to Show Cause and the imminent criminal proceedings, Randall's right against self-incrimination is substantially implicated.

The circumstances of this case are distinguishable from cases that have denied stay requests. Unlike those cases, absent a stay Randall will suffer prejudice because he has not previously waived his rights against self-incrimination through discovery in these proceedings. Compare with Kreisler, 628 F.2d at 1081 (concluding party provided no concrete examples of

how denial of motion to stay where party previously had "waived her Fifth Amendment privilege with respect to the questions she answered during her deposition"); Wirth v. Taylor, 2:09-CV-127 TS, 2011 WL 222323 (unpublished) (D. Utah Jan. 21, 2011) (denying request for stay because moving party "shows little if any prejudice to his interests as he has already testified in two depositions"). In contrast, continuing these administrative proceedings will permit the government to use broad civil discovery devices to aid its criminal prosecution when Randall has not previously waived his Fifth Amendment rights.

C. Broad Civil Discovery Devices Should Not Aid the Criminal Prosecution.

Utah Code Ann. § 63G-4-205(2) enables the Division to conduct discovery according to the Utah Rules of Civil Procedure, permitting the use of civil discovery devices that are substantially broader than discovery under the Utah Rules of Criminal Procedure. See Utah R. Crim. P. 16; State v. Nielsen, 522 P.2d 1366, 1367 (Utah 1974) (holding that Rule 30 of the Utah Rules of Civil Procedure, permitting discovery depositions, does not apply to criminal cases). The potential for use of civil discovery to aid criminal investigations is an especially important ground to "freeze" the civil proceeding pending criminal prosecution, as one court has explained:

> The broad scope of civil discovery may present to … the prosecution … an irresistible temptation to use that discovery to one's advantage in the criminal case. Such unconstitutional uses may begin with the surreptitious planting of criminal investigators in civil depositions, as in the case at bar, and end with passive abuses, such as when the civil party, who asserts fifth amendment rights, is compelled to refuse to answer questions individually, revealing his weak points to the criminal prosecutor. This point-by-point review of the civil case may lead to a "link in the chain of evidence" that unconstitutionally contributes to the defendant's conviction.

Afro-Lecon, Inc. v. United States, 820 F.2d 1198, 1203 (Fed. Cir. 1987). In this case, the broad civil discovery devices available through the administrative proceeding should not be permitted to aid the government's criminal prosecution.

D. The Proceedings Would Expose Randall's Criminal Defense Strategy.

This proceeding involves the same matters as the imminent criminal prosecution. Counsel for Randall is the same in both matters. Absent a stay, the proceedings unfairly would expose Randall's defense strategy—allowing the government to observe a "dress rehearsal"—in advance of the criminal prosecution. A stay therefore is appropriate under the circumstances.

E. Public Interest in Expedited Administrative Proceedings is Minimal.

The Respondent Entities are out of business. As such—and in contrast to cases that have denied requests to stay—the public interest in expedited administrative proceedings is minimal. Compare with Fed. Sav. & Loan Ins. Corp. v. Molinaro, 889 F.2d 899, 903 (9th Cir. 1989) (denying stay where agency "would be prejudiced by delay since [the party] continued to attempt to dispose of his assets"); Keating v. Office of Thrift Supervision, 45 F.3d 322, 326 (9th Cir. 1995)(emphasizing strong public interest weighing against stay in high visibility cases where "[g]overnmental entities are frequently aware of the need to reassure the public that they are taking prompt action in response to a crisis"). These circumstances are not present in this case and weigh in favor of granting the stay.

WHEREFORE, Randall respectfully requests that the Division enter an Order staying these administrative proceedings pending criminal prosecution. Randall also requests such other and further relief as is just and equitable.

DATED this 17th day of January, 2013.

PARSONS KINGHORN HARRIS
A Professional Corporation

Paul T. Moxley
Victor P. Copeland
Attorneys for Dee Allen Randall

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of January, 2013, I caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing **RESPONSE TO ORDER TO SHOW CAUSE AND MOTION FOR ORDER TO STAY PROCEEDINGS** to:

Administrative Court Clerk
c/o Julie Price
Utah Division of Securities
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Box 146760
Salt Lake City, Utah 84114-6760

D. Scott Davis
Assistant Attorney General
Utah Division of Securities
160 East 300 South, 5th Floor
Salt Lake City, Utah 84114-0872

Keith Woodwell
Director, Utah Division of Securities
Utah Division of Securities
160 East 300 South, 5th Floor
Salt Lake City, Utah 84114-0872

Dated this 17th day of January, 2013.

Kim Waters

Exhibit A

Laurie A. Cayton (USB #4557)
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Attorney for Richard A. Wieland, United States Trustee

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

In re: **DEE ALLEN RANDALL,** Debtor.	**Bankruptcy Case No. 10-37546 JTM** (Chapter 11) (Electronically Filed)

APPOINTMENT OF CHAPTER 11 TRUSTEE

Pursuant to the Order to Appoint Chapter 11 Trustee entered herein, the United States Trustee hereby appoints Gil A. Miller as Chapter 11 Trustee. Prior to obtaining control over any liquid assets of the estate Mr. Miller shall promptly obtain a bond in favor of the United States in an amount no less than $1,000,000.00 which amount is equal to or greater than 125% of the total amount of liquid assets under his control. The establishment of said bond shall be a condition of the faithful performance of Mr. Miller's official duties as Trustee in the above-entitled case. Mr. Miller, as Trustee in the above entitled case, shall cause the original bond together with all

subsequent riders and renewals to be filed with the United States Bankruptcy Court and shall deliver copies of said bond together with all subsequent riders and renewals to the United States Trustee and shall adjust the bonds so that at all times the bonds shall equal or exceed the total amount of liquid assets of the bankruptcy estate. Mr. Miller, as Trustee in the above entitled case, shall deposit estate funds only in federally insured depositories and shall cause depositories to deliver a summary of each bankruptcy estate account to the United States Trustee on a monthly basis. Should Mr. Miller have reasonable grounds for believing that any violation of the bankruptcy laws or other laws have been committed, he shall promptly submit a report in compliance with 18 U.S.C. §3057 with a copy of said report submitted to the Office of the United States Trustee. Mr. Miller, as Trustee in the above entitled case, shall satisfy quarterly fee obligations owed to the United Sate Trustee, if any, and all fees owed to the Clerk of Court, when due, and shall file monthly financial reports, when due, in compliance with Local Rule Bankr. D. Ut. LBR 2081-1.

DATED this 28th day of September 2011.

Respectfully submitted,

/s/

Laurie A. Cayton
Attorney for Richard A. Wieland,
United States Trustee

Exhibit B

The below described is SIGNED.

Dated: September 29, 2011

JOEL T. MARKER
U.S. Bankruptcy Judge

LAURIE A. CAYTON, Trial Attorney (#4557)
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Attorney for Richard A. Wieland
United States Trustee

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

In re: DEE ALLEN RANDALL, Debtor.	Bankruptcy Case No. 10-37546 JTM (Chapter 11)

ORDER DENYING MOTION TO APPROVE SETTLEMENT AGREEMENT AND ORDER GRANTING UNITED STATES TRUSTEE'S MOTION TO APPOINT A CHAPTER 11 TRUSTEE

The United States Trustee's Motion to Approve Settlement Agreement between Dee Allen Randall and the United States Trustee having come before the Court on September 28, 2011 at 9:30 a.m., Laurie A. Cayton appearing for the United States Trustee, Andres Diaz

ORDER SIGNED

appearing for the Debtor, Dee Allen Randall, other parties' appearances having been noted on the record, the Court having considered the evidence presented, the objections and responses filed to the Motion and having heard representations of parties in interest and having determined that proper notice of the hearing was given, and having made its findings of fact and conclusions of law on the record, the Court HEREBY ORDERS that:

1) the Motion to Approve the Settlement Agreement entered into between the United States Trustee and the Debtor is hereby denied; and

2) the United States Trustee's Motion to Appoint a Chapter 11 Trustee is hereby granted forthwith.

END OF DOCUMENT

ORDER SIGNED

Exhibit C

Michael R. Johnson, Esq. (A7070)
David H. Leigh (A9433)
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Proposed Counsel for Gil A. Miller, Chapter 11 Trustee

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

In re: DEE ALLEN RANDALL, Debtor.	**Bankruptcy Case No. 10-37546** Chapter 11 Honorable Joel T. Marker [Filed via ECF]
In re: HORIZON AUTO FUNDING, LLC, Debtor-in-Possession.	**Bankruptcy Case No. 11-34826** Chapter 11 Honorable Joel T. Marker [Filed via ECF]
In re: INDEPENDENT COMMERCIAL LENDING, LLC, Debtor-in-Possession.	**Bankruptcy Case No. 11-34830** Chapter 11 Honorable Joel T. Marker [Filed via ECF]

In re: HORIZON FINANCIAL CENTER I, LLC, Debtor-in-Possession.	**Bankruptcy Case No. 11-34831** Chapter 11 Honorable William T. Thurman [Filed via ECF]
In re: HORIZON MORTGAGE AND INVESTMENT INC., Debtor-in-Possession.	**Bankruptcy Case No. 11-34833** Chapter 11 Honorable William T. Thurman [Filed via ECF]
In re: HORIZON FINANCIAL & INSURANCE GROUP INC., Debtor-in-Possession.	**Bankruptcy Case No. 11-34834** Chapter 11 Honorable Joel T. Marker [Filed via ECF]

THE TRUSTEE'S MOTION REQUESTING JOINT ADMINISTRATION AND PROCEDURAL (BUT NOT SUBSTANTIVE) CONSOLIDATION OF RELATED CHAPTER 11 CASES

Gil A. Miller (the "**Trustee**"), who is the duly appointed trustee in the case of In re Dee Allen Randall, Case No. 10-37546, now pending in the above-entitled case (the "**Randall Case**"), and who also is by virtue of his appointment as Trustee in the Randall Case is the sole owner of the following entities (collectively, the "**Randall Entities**") owned by Dee Randall and the Randall Estate, which Randall Entities filed Chapter 11 bankruptcy petitions (collectively, the "**Randall Entity Cases**") with this Court on October 12, 2011: (a) Horizon Auto Funding, LLC ("**Horizon Auto**"), Case No. 11-34826, (b) Independent Commercial Lending, LLC

("**Independent Commercial**"), Case No. 11-34830, (c) Horizon Financial Center I, LLC ("**Horizon Financial Center**"), Case No. 11-34831, (d) Horizon Mortgage and Investment Inc. ("**Horizon Mortgage**"), Case No. 11-34833, and (e) Horizon Financial & Insurance Group Inc. ("**Horizon Insurance**"), Case No. 11-34834, by and through his proposed counsel, respectfully moves this Court for an order authorizing and directing the joint administration and procedural (but not substantive at this time) consolidation of the Randall Case and the Randall Entity Cases, and for other related relief (the "**Motion**"). In support of the Motion, the Trustee states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested in this Motion are section 105 of Title 11 of the United States Code, Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, and Local Rule 1015-1.

3. No prior motion has been filed for the relief requested herein.

GENERAL BACKGROUND

4. On December 20, 2010 (the "**Petition Date**"), Dee Randall ("**Randall**") filed the Randall Case under Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**").

5. Randall continued to operate the Randall Case as a debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code from the Petition Date until September 29, 2011.

6. On September 29, 2011, this Court entered its Order approving the appointment of the Trustee as the trustee of Randall's bankruptcy estate in the Randall Case. [Randall Case, Doc. 247]

7. As of September 29, 2011, Randall was the sole owner of all of the Randall Entities. Further, Randall was either the manager or president of all of the Randall Entities.

8. Upon his appointment by the Court, the Trustee stepped into Randall's shoes and became the owner, in his capacity as Chapter 11 trustee, of the Randall Entities.

9. After his appointment by the Court, the Trustee removed Randall as manager or president of the Randall Entities (depending upon whether the Randall Entities were limited liability companies or corporations), and substituted himself in as either manager or president.

10. Thus, as of the date of filing of this Motion, the Trustee, by operation of law and in his capacity as Chapter 11 trustee, is both the sole owner of, and either the manager or president of, the Randall Entities.

11. On October 12, 2011, the Trustee, in his capacity as Chapter 11 trustee in the Randall Case, caused the following petitions to be filed by the Randall Entities under Chapter 11 of Title 11 of the United States Code:

A. In re Horizon Auto Funding, LLC, Case No. 11-34826;

B. In re Independent Commercial Lending, LLC, Case No. 11-34830;

C. In re Horizon Financial Center I, LLC, Case No. 11-34831;

D. In re Horizon Mortgage and Investment Inc., Case No. 11-34833; and

E. In re Horizon Financial & Insurance Group Inc., Case No. 11-34834.

12. The Randall Entities are currently operating the Randall Entity Cases as debtors-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. The Trustee, in his capacity as trustee of the Randall Case and as the president or manager of each of the Randall Entities, is the representative of each of the Randall Entities.

13. The Randall Case and the Randall Entity Cases have been assigned to different judges of this Court. Specifically, Judge Marker has been assigned Case Nos. 11-34826, 11-34830 and 11-34834 filed by Horizon Auto, Independent Commercial and Horizon Insurance,

and Judge Thurman has been assigned Case Nos. 11-34831 and 11-34833 filed by Horizon Financial Center and Horizon Mortgage.

RELIEF REQUESTED AND BASIS FOR RELIEF

14. By this Motion, and pursuant to Section 105 of the Bankruptcy Code, Federal Rule of Bankruptcy Procedure 1015 and Local Rule 1015-1, the Trustee seeks entry of an order directing the joint administration and procedural (but not substantive) consolidation of the Randall Case and the Randall Entity Cases before the Honorable Joel T. Marker, and with all filings to take place in the Randall Case.

15. The Trustee further proposes that the Clerk of the Court file and maintain all pleadings, papers, and other filings in either the Randall Case or the Randall Entity Cases (other than proofs of claim) under a single pleading docket—that pleading docket being the docket for the Randall Case—and that all pleadings, papers, or other filings relating to either the Randall Case or the Randall Entity Cases bear a single joint caption, in the form substantially similar to the following (with parties in interest noting on the joint caption of their filing to which cases their filing relates):

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

In re: 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., Debtors.	Bankruptcy Case No. 10-37546 Bankruptcy Case No. 11-34826 Bankruptcy Case No. 11-34830 Bankruptcy Case No. 11-34831 Bankruptcy Case No. 11-34833 Bankruptcy Case No. 11-34834 Chapter 11 Honorable Joel T. Marker

	Jointly Administered Under Case No. 10-37546 Filing Relates to Case No. _____ [Filed via ECF]

16. The Trustee does not, at this time, propose substantive consolidation of the Randall Case and the Randall Entity Cases. However, the Trustee believes that Randall and the Randall Entities were and are the mere instrumentalities and alter egos of one another, that substantial commingling of assets and liabilities exists between Randall and the Randall Entities, that corporate formalities generally were not followed between Randall and the Randall Entities, that there were significant intercompany transfers between and among Randall and the Randall Entities, and that creditors and interested parties generally viewed Randall and the Randall Entities as a single economic enterprise. Thus, the Trustee anticipates filing a motion to substantively consolidate the Randall Case with the Randall Entity Cases within the next thirty to sixty days.

17. Federal Rule of Bankruptcy Procedure 1015(b) provides, in relevant part, that "[i]f . . . two or more petitions are pending in the same court by or against . . . a debtor and an affiliate, the court may order joint administration of the estates."

18. Joint administration typically involves the use of a single docket for administrative matters, "and the joint handling of other purely administrative matters that may aid in expediting the cases and rendering the process less costly." Fed. Rule Bank. P. 1015 Adv. Comm. Note (1983).

19. "Joint administration is designed in large part to promote procedural convenience and cost efficiencies which do not affect the substantive rights of claims or the respective debtor

estates." *In re McKenzie Energy Corp.*, 228 B.R. 854, 857 (Bankr. S.D. Tex. 1998). Thus, "joint administration or administrative consolidation is merely a procedural device which enables a court to efficiently oversee multiple estates." *In re Babcock & Wilcox Co.*, 250 F.3d 955, 958 n.6 (5th Cir. 2001).

20. The Randall Entities all are affiliates of Randall, as that term is defined by Section 101(2) of the Bankruptcy Code, as Randall (and now the Trustee, his capacity as Chapter 11 trustee of the Randall Estate), owns 100% of each of the Randall Entities.

21. As noted in Collier's, "[j]oint administration is common when a consolidated group of corporations files for bankruptcy relief. Particularly in Chapter 11, the success of one affiliate's reorganization effort may depend on the success of the other affiliates' efforts." 9 Collier on Bankruptcy, ¶1015.03, at 1015-5 (16th ed. 2010).

22. The Court should order joint administration of the Randall Case and the Randall Entity Cases here. Joint administration will avoid duplicate notices, applications, motions and orders, thereby saving the Trustee considerable time and expense. For example, joint administration will permit the Clerk of the Court to utilize a single general docket for these cases and combine notices to creditors of the respective estates of the various debtors and other parties in interest.

23. Indeed, the official mailing matrix in the Randall Case and in <u>each</u> of the Randall Entity Cases lists 793 creditors and parties in interest. The official mailing matrixes for all cases are substantively identical, and many of the Trustee's filings will relate to all six Debtors (i.e., Randall and the five Randall Entities). Requiring the Trustee to serve six separate copies of pleadings seeking the same relief as to all debtors would be a substantial waste of estate resource resources, and would penalize the very persons—the various creditors of Randall and the various Randall Entities, and in particular the investors—that the Trustee is hoping to benefit.

24. Moreover, the rights of creditors and other parties in interest will not be adversely affected by joint administration of the Randall Case and the Randall Entity Cases, because the relief sought in this Motion is purely procedural and is in no way intended to affect substantive rights. Indeed, the rights of creditors and parties in interest will be enhanced by the reduced costs that will result from joint administration. The Court will also be relieved of the burden of hearing duplicative motions, entering duplicative orders and maintaining duplicative files. Supervision of the administrative aspects of these cases by the United States Trustee also will be simplified and streamlined.

WHEREFORE, based upon the foregoing, the Trustee respectfully asks this Court to enter an Order, in the form filed contemporaneously herewith, (a) directing the joint administration and procedural (but not substantive) consolidation of the Randall Case and the Randall Entity Cases, under the caption set forth above, (b) authorizing a combined service list for the jointly administered cases, and combined notices to creditors and parties in interest for all of the cases, (c) authorizing and directing the use of the proposed caption set forth in paragraph 15 above, and (d) granting the Trustee such other and further relief as the Court deems just and proper under the circumstances.

DATED this 12th day of October, 2011.

RAY QUINNEY & NEBEKER P.C.

/s/ Michael R. Johnson
Michael R. Johnson
David H. Leigh
Proposed Attorneys for Gil A. Miller, Chapter 11 Trustee, In re Randall, Case No. 10-37546

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of October, 2011, a true and correct copy of the foregoing was electronically filed and therefore served via ECF on the following:

- Steven R. Bailey karen@baileylaw.org
- Brandon L. Baker bbakerlaw@hotmail.com
- Jesse A.P. Baker ecfutb@piteduncan.com, jbaker@piteduncan.com
- John Christian Barlow Bankruptcy@JohnChristianBarlow.com, calendar@johnchristianbarlow.com
- Laurie A. Cayton tr laurie.cayton@usdoj.gov, James.Gee@usdoj.gov;Lindsey.Huston@usdoj.gov;Rinehart.Peshell@usdoj.gov;Suzanne .Verhaal@usdoj.gov
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- Gerald H. Suniville gsuniville@vancott.com, bhammond@vancott.com
- United States Trustee USTPRegion19.SK.ECF@usdoj.gov
- James H. Woodall jwoodall@utahtrustee.com

I further certify that on the 12th day of October, 2011, a true and correct copy of the foregoing was served upon the following parties by first class U.S. mail, postage prepaid.

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Ogden, UT 84401

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Brad Jacobsen
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Michael A Burnett
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Clay W. Stucki
Bennett Tueller Johnson & Deere
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Salt Lake City, UT 84109

/s/Sherry D. Glendening

1155446

Exhibit D

The below described is SIGNED.

Dated: October 31, 2011

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, Debtor.	**Bankruptcy Case No. 10-37546** Chapter 11 Honorable Joel T. Marker [Filed via ECF]
In re: HORIZON AUTO FUNDING, LLC, Debtor-in-Possession.	**Bankruptcy Case No. 11-34826** Chapter 11 Honorable Joel T. Marker [Filed via ECF]

ORDER SIGNED

In re: INDEPENDENT COMMERCIAL LENDING, LLC, Debtor-in-Possession.	**Bankruptcy Case No. 11-34830** Chapter 11 Honorable Joel T. Marker [Filed via ECF]
In re: HORIZON FINANCIAL CENTER I, LLC, Debtor-in-Possession.	**Bankruptcy Case No. 11-34831** Chapter 11 Honorable William T. Thurman [Filed via ECF]
In re: HORIZON MORTGAGE AND INVESTMENT INC., Debtor-in-Possession.	**Bankruptcy Case No. 11-34833** Chapter 11 Honorable William T. Thurman [Filed via ECF]
In re: HORIZON FINANCIAL & INSURANCE GROUP INC., Debtor-in-Possession.	**Bankruptcy Case No. 11-34834** Chapter 11 Honorable Joel T. Marker [Filed via ECF]

ORDER SIGNED

ORDER AUTHORIZING THE JOINT ADMINISTRATION AND PROCEDURAL (BUT NOT SUBSTANTIVE) CONSOLIDATION OF RELATED CHAPTER 11 CASES

This matter came before the Court on October 31, 2011, in Case No. 10-37546 (the "**Randall Case**"), for hearing, on shortened notice, of the *Motion Requesting Joint Administration and Procedural (but not Substantive) Consolidation of Related Chapter 11 Cases*

(the "**Motion**") filed by Gil A. Miller (the "**Trustee**"), Chapter 11 trustee of Dee Allan Randall in the Randall Case. At the hearing, Michael R. Johnson represented the Trustee, and other parties in interest noted their appearances upon the record.

In the Motion, the Trustee has requested that the Court order joint administration and procedural (but not substantive consolidation) of the Randall Case with the following related Chapter 11 cases (collectively, the "**Randall Entity Cases**") which were filed with this Court on October 12, 2011: (a) In re Horizon Auto Funding, LLC, Case No. 11-34826; (b) In re Independent Commercial Lending, LLC, Case No. 11-34830; (c) In re Horizon Financial Center I, LLC, Case No. 11-34831; In re Horizon Mortgage and Investment Inc., Case No. 11-34833; and (e) In re Horizon Financial & Insurance Group Inc., Case No. 11-34834.

Prior to the hearing, the Court carefully considered the Motion and all papers that were filed in support of and in opposition thereto. At the hearing, the Court carefully considered the arguments and representations of counsel and all other parties in interest. At the conclusion of the hearing, the Court made its findings and conclusions upon the record, and those findings and conclusions are incorporated herein by this reference.

Based upon the foregoing, and good cause appearing therefore, **IT IS HEREBY ORDERED** as follows:

1. This Court has jurisdiction over the Randall Case, the Randall Entity Cases and the Motion, pursuant to 28 U.S.C. §§ 1334 and 157(b)(2)(G), and the Motion is a core proceeding. Venue of this case is appropriate under 28 U.S.C. § 1408(a).

2. Notice of the Motion, of the deadline to object thereto and of the scheduled hearing thereon was adequate and appropriate under the particular circumstances, and no other notice need be given. To the extent not resolved prior to the hearing, all objections to the Motion, if any were filed, shall be, and they hereby are, overruled.

3. The Motion shall be, and it hereby is, granted.

ORDER SIGNED

4. The Randall Case and the Randall Entity Cases shall be procedurally consolidated and jointly administered under the docket for the Randall Case, In re Dee Allan Randall, Case No. 10-37546, before the Honorable Joel T. Marker, and with all filings (other than the filing of proofs of claim) to take place in the Randall Case.

5. All pleadings and other papers filed in either the Randall Case or any of the Randall Entity Cases (other than proofs of claim) shall bear a joint caption, in substantially the form set forth in paragraph 6 below. Proofs of claim shall be filed against the applicable debtor(s) having liability for the claim.

6. The Clerk of the Court shall file and maintain all pleadings, papers, and other filings in either the Randall Case or the Randall Entity Cases (other than proofs of claim) under a single pleading docket—that pleading docket being the docket for the Randall Case—and all pleadings, papers, proofs of claim or other filings relating to either the Randall Case or the Randall Entity Cases bear a single joint caption, in the form substantially similar to the following (with parties in interest noting on the joint caption of their filing to which case(s) their filing relates):

ORDER SIGNED

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[RECOMMENDED CAPTION]

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

In re: 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., Debtors.	Bankruptcy Case No. 10-37546 Bankruptcy Case No. 11-34826 Bankruptcy Case No. 11-34830 Bankruptcy Case No. 11-34831 Bankruptcy Case No. 11-34833 Bankruptcy Case No. 11-34834 Chapter 11 Honorable Joel T. Marker **Jointly Administered Under Case No. 10-37546** Filing Relates to Case No. _____ [Filed via ECF]

7. The separate bankruptcy estates of Randall and the Randall Entities shall not be substantively consolidated at this time. This Order is without prejudice, however, to the ability of the Trustee or any other party in interest to request substantive consolidation of the separate estates of Randall and the Randall Entities, after appropriate notice and a hearing.

8. The Trustee shall serve a copy of this Order on each of the parties listed on the official mailing matrix for the Randall Case as of October 31, 2011, as well as on all parties, if any, listed on the official mailing matrix for any of the Randall Entity Cases as of October 31, 2011 who do not already appear on the official mailing matrix for the Randall Case.

----------END OF DOCUMENT----------

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ORDER SIGNED