

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

PROOF OF CLAIM


YOUR CLAIM IS SCHEDULED AS:
Schedule/Claim ID s6304

In re:
TAYLOR, BEAN & WHITAKER MORTGAGE CORP.

Case Number:
3:09-bk-07047-JAF

Amount/Classification
UNDETERMINED Unsecured Disputed

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503. Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Name of Creditor and Address: the person or other entity to whom the debtor owes money or property
If necessary, please cross out pre-printed address and write in change of address.
 218369290339
ROBIN SAVILLE
C/O NATHAN DRAGE,
35 West Broadway, Suite 104
SALT LAKE CITY, UT 84101

CLAIM FILED
JACKSONVILLE, FLORIDA
JUN 10 2010

The amount(s) reflected above constitute your claim as scheduled by the Debtor. If you agree with the amounts set forth herein, and have no other claim against the Debtor, you do not need to file this proof of claim EXCEPT as stated below.

If the amounts shown above are listed as Contingent, Unliquidated or Disputed "CUD", a proof of claim must be filed.
If you have already filed a proof of claim with the Bankruptcy Court or BMC, you do not need to file again.

Creditor Telephone Number **(801) 519-9300** Check box if address is where Notary to be sent.

Name and address where payment should be sent (if different from above):
same as above

Check this box to indicate that this claim amends a previously filed claim.
Claim Number (if known):
Filed on: _____

Payment Telephone Number **(801) 519-9300**

1. AMOUNT OF CLAIM AS OF DATE CASE FILED \$ **3,476,000**
If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.
If all or part of your claim is entitled to priority, complete item 5.
 Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. BASIS FOR CLAIM: *Breach of contract and Tort* (See instructions #2 and #3a on reverse side.)
3. LAST FOUR DIGITS OF ANY NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR:
3a. Debtor may have scheduled account as: _____


4. SECURED CLAIM (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of set off and provide the requested information
Secured Claim Amount: \$ **876,000** DO NOT include the priority portion of your claim here.
Unsecured Claim Amount: \$ **2.6 million**
Nature of property or right of setoff:
Describe:
 Real Estate Motor Vehicle Other
Amount of arrearage and other charges as of time case filed included in secured claim,
Value of Property: \$ **876,000** Annual Interest Rate: **6.5** % if any: \$ _____ Basis for Perfection: **Mortgage Lien**

5. PRIORITY CLAIM
 Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Include ONLY the priority portion of your unsecured claim here.
Unsecured Priority Claim Amount: \$ _____
You MUST specify the priority of the claim:
 Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).
 Wages, salaries, or commissions (up to \$10,950*), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4).
 Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).
 Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7).
 Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).
 Other - Specify applicable paragraph of 11 U.S.C. § 507(a) (_____).
* Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

6. CREDITS: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. SUPPORTING DOCUMENTS: Attach redacted copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of evidence of perfection of a security interest. (See definition of "redacted" on reverse side.) If the documents are not available, please explain.
DATE-STAMPED COPY To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim. DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

The original of this completed proof of claim form must be sent by mail, hand, courier or overnight delivery (facsimile, telecopy or other electronic means NOT accepted), so that it is actually received on or before 5:00 p.m. prevailing Eastern Time on June 15, 2010, the Bar Date (as defined in the Bar Date Notice).
By Regular Mail to:
BMC Group, Inc.
Attn: Taylor, Bean & Whitaker Mortgage Corp. Claim Processing
PO Box 3020
Chanhausen, MN 55317-3020
By Hand, Courier, Or Overnight Delivery to:
BMC Group, Inc.
Attn: Taylor, Bean & Whitaker Mortgage Corp. Claim Processing
18750 Lake Drive East
Chanhausen, MN 55317

THIS SPACE FOR COURT USE ONLY
T, B & W Mortgage Corp.

01931

DATE **6-9-10** SIGNATURE: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.
[Signature]
Scanned: 6/10/2010-12:14:40 PM

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules.

ITEMS TO BE COMPLETED IN PROOF OF CLAIM FORM (IF NOT ALREADY PROPERLY FILLED IN)

<p>Court, Name of Debtor, and Case Number: Use this proof of claim form only if you are asserting a claim against the Debtor, Taylor, Bean & Whitaker Mortgage Corp. If you received a notice of the case from the Claims Agent, BMC Group, some or all of this information may have been already completed.</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="text-align: left;">DEBTOR</th> <th style="text-align: left;">CASE NO</th> <th style="text-align: left;">PETITION DATE</th> </tr> </thead> <tbody> <tr> <td>Taylor, Bean & Whitaker Mortgage Corp.</td> <td>3:09-bk-07047-JAF</td> <td>8/24/2009</td> </tr> </tbody> </table> <p>Creditor's Name and Address: Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).</p> <p>1. Amount of Claim as of Date Case Filed: State the total amount (in lawful US currency) owed to the creditor on the date of the Bankruptcy filing. Follow the instructions concerning whether to complete item 4. Check the box if interest or other charges are included in the claim.</p> <p>2. Basis for Claim: State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card.</p> <p>3. Last Four Digits of Any Number by Which Creditor Identifies Debtor: State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.</p> <p>3a. Debtor May Have Scheduled Account As: Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.</p> <p>4. Secured Claim: Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.)</p>	DEBTOR	CASE NO	PETITION DATE	Taylor, Bean & Whitaker Mortgage Corp.	3:09-bk-07047-JAF	8/24/2009	<p>State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.</p> <p>5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a). If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.</p> <p>6. Credits: An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.</p> <p>7. Supporting Documents: Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary if documentation is voluminous or an explanation if documentation is not available. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary, FRBP 3001(c) and (d). Do not send original documents, as attachments may be destroyed after scanning.</p> <p>Date and Signature: The person filing this proof of claim <u>must</u> sign and date it. FRBP 9011. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.</p> <p>Date-Stamped Copy: Return claim form and attachments. If you wish to receive an acknowledgement of your claim, please enclose a self-addressed stamped envelope and a second copy of the proof of claim form with any attachments to the Claims Agent, BMC Group, at the address on the front of this form.</p> <p><i>Please read – important information: upon completion of this claim form, you are certifying that the statements herein are true.</i></p> <p>Be sure all items are answered on the claim form. If not applicable, insert "Not Applicable."</p>
DEBTOR	CASE NO	PETITION DATE					
Taylor, Bean & Whitaker Mortgage Corp.	3:09-bk-07047-JAF	8/24/2009					

DEFINITIONS

INFORMATION

<p>DEBTOR A debtor is the person, corporation, or other entity that has filed a bankruptcy case.</p> <p>CREDITOR A creditor is any person, corporation, or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed.</p> <p>CLAIM A claim is the creditor's right to receive payment on a debt that was owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.</p> <p>PROOF OF CLAIM A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the court-appointed Claims Agent, BMC Group, at the address listed on the reverse side of this page</p> <p>SECURED CLAIM Under 11 U.S.C. §506(a) A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors.</p>	<p>The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).</p> <p>UNSECURED NONPRIORITY CLAIM If a claim is not a secured claim it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.</p> <p>UNSECURED PRIORITY CLAIM Under 11 U.S.C. §507(a) Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.</p> <p>Evidence of Perfection Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other</p>	<p>document showing that the lien has been filed or recorded.</p> <p>Redacted A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual's tax-identification, or financial-account number, all but the initials of a minor's name and only the year of any person's date of birth.</p> <p>Offers to Purchase a Claim Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 et seq.), and any applicable orders of the bankruptcy court.</p>
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ONCE YOUR CLAIM IS FILED YOU CAN OBTAIN OR VERIFY YOUR CLAIM NUMBER BY VISITING www.bmcgroup.com/tbwnortgage

NATHAN W. DRAGE (#5194)
Attorney for Plaintiff
4766 Holladay Blvd
Holladay, Utah 84117
Phone: (801)273-9300
Fax: (801)273-9314

issued

IN THE THIRD DISTRICT COURT
COUNTY OF SALT LAKE, STATE OF UTAH

ROBIN L. SAVILLE
Plaintiff,

vs.

TAYLOR BEAN & WHITAKER MORTGAGE
CORP., AND MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, in its
capacity as Substitute Trustee, and and ETITLE
INSURANCE AGENCY, TRUSTEE,

Defendants.

TEMPORARY
RESTRAINING ORDER

Judge: *Kennedy*

Case No: *090912713*

THIS MATTER, having been heard on Plaintiff's Motion For Temporary Restraining Order, and the Court being sufficiently advised, and it appearing to the Court that the Plaintiff will suffer immediate and irreparable harm by virtue of losing title to their home and property through a foreclosure sale by Defendants Taylor Bean & Whitaker Mortgage Corp., eTitle Insurance Agency as Trustee, and Mortgage Electronic Registration Systems, in its capacity as Substitute Trustee, their agents or assigns, that the potential injury to the Plaintiffs is of such a nature that compensation alone will not make Plaintiffs whole, that the relative hardships pertaining to the relief requested are weighted in favor of the Plaintiffs, that the Order would not be adverse to the public interest, and

that the case presents serious issues on the merits which should be the subject of further litigation.

IT IS HEREBY ORDERED, that defendant Taylor Bean & Whitaker Mortgage Corp., and Mortgage Electronic Registration Systems, Substitute Trustee, their agents, servants or employees are hereby enjoined from further foreclosure proceedings toward the sale of Plaintiffs' home and are ordered not to conduct the foreclosure sale scheduled for August 3, 2009.

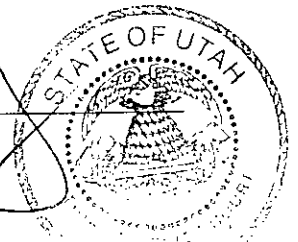
A Bond is not required of Plaintiff because of the unlikelihood of harm to the parties restrained and for the reasons stated above.

The Order was granted without hearing from the parties to be enjoined, but Plaintiff's counsel did fax the moving documents to counsel to Defendant Taylor Bean & Whitaker Mortgage Corp. and the Court did attempt to reach said counsel by telephone. The Motion was accompanied by an affidavit of Plaintiff's counsel Nathan W. Drage.

This Order shall expire on the ~~13th day of August, 2009.~~ *28 Sep 2009* *PK*

Dated the *3* day of August, 2009. *by stip*

JUDGE *[Signature]*



NATHAN W. DRAGE (#5194)
Attorney for Plaintiff
4766 Holladay Blvd
Holladay, Utah 84117
Phone: (801)273-9300
Fax: (801)273-9314

IN THE THIRD DISTRICT COURT
COUNTY OF SALT LAKE, STATE OF UTAH

ROBIN L. SAVILLE)	
Plaintiff,)	
)	COMPLAINT
vs.)	
)	Case No: <i>Kennedy</i>
TAYLOR BEAN & WHITAKER MORTGAGE)	
CORP., AND MORTGAGE ELECTRONIC)	Judge: <i>090912713</i>
REGISTRATION SYSTEMS, in its)	
capacity as Substitute Trustee, and ETITLE)	
INSURANCE AGENCY, TRUSTEE,)	
)	
Defendants.)	

Plaintiff, by and through his attorney, hereby alleges, claims and complains against above defendants as follows:

**I.
JURISDICTION**

1. Plaintiff is an individual who resides in the State of Utah, Salt Lake County.
2. Defendant Taylor Bean & Whitaker Mortgage Corp. is a foreign corporation doing business in the State of Utah, Salt Lake County.
3. Defendant eTitle Insurance Agency is a corporation doing business in the State of

Utah, Salt Lake County.

4. Defendant Mortgage Electronic Registration Systems is a corporation doing business in the State of Utah, Salt Lake County.

5. The matter in controversy exceeds the sum of one hundred thousand (\$100,000), exclusive of interests and costs.

6. This Court has proper jurisdiction to hear the matters complained of herein.

II. GENERAL ALLEGATIONS

7. Plaintiff realleges and incorporates the allegations contained in paragraphs 1 through 6 as though fully set forth at this point.

8. On or about _____, Plaintiff executed loan documents which include a mortgage on property, structures and improvements at 11583 South Sanders Road, Sandy, Utah.

9. Plaintiff believed that the holder and beneficiary of the mortgage and trust deed note was Taylor Bean & Whitaker Mortgage Corp. ("TBW")

10. Up and until October 2008 Plaintiff made timely payments to Defendant TBW as required by the agreements.

11. During the summer and fall of 2008 the American economy experienced an unprecedented economic down-turn which dramatically affected a majority of homeowners.

12. The economic crisis of 2008 was so severe that Congress and the Administration took swift steps to protect homeowners who might be subject to foreclosure actions by struggling financial institutions.

13. As a result of Bush Administration initiatives and action by Congress billions of dollars were infused into American financial institutions.

14. As the America faced the worst financial crises since the depression of 1933, citizens were suffering from substantial changes in income, yet burdened with unsound mortgages encouraged and underwritten by reckless financial institutions.

15. Plaintiff, like the rest of the nation, experienced personal financial changes that dramatically impacted his income and ability to service the mortgage held by Defendant TBW.

16. In the latter part of September, 2008, Plaintiff retained attorney Nathan W. Drage to assist in working a loan modification with Defendant TBW.

17. On or about October 1, 2008 Plaintiff participated in a conference call to Taylor Bean & Whitaker.

18. In conference call with TBW Mr. Drage spoke to a TBW agent and explained that Plaintiff, like other homeowners throughout the country, had experience material changes in his income and desired to work a modification to avoid any delinquency in payments or default under the note.

19. The TBW agent was informed by Mr. Drage that although Plaintiff was completely current in payments to TBW, Plaintiff would need to make a modification due to a change in financial situation.

20. Mr. Drage was told, emphatically, by the agent that TBW does not have any mechanisms set up to modify performing loans; that neither the agent or any other TBW person can work on modifying the loan until Plaintiff's account has become delinquent.

21. The agent further stated that it takes approximately sixty days to go through the delinquency phase and once Plaintiff had gone into delinquency there were plenty of staff and programs to modify the loan.

22. From October 20, 2008 to January 5, 2009 Plaintiff received multiple phone calls and letters from TBW indicating, obviously, that Plaintiff was past due on his account. In each and every phone discussion Plaintiff let TB&W know that Plaintiff was anxious to come to a resolution that would be a "win win" for both parties. Initially TBW representatives stated they would work with Plaintiff.

23. In January 2009 TBW changed their tone from "get behind so we can work with you" to "pay up or else!" Plaintiff was repeatedly threatened by representatives who had no knowledge of the full loan history and prior conversations with Plaintiff and other agents.

24. Because of the subsequent harassment by TBW and the stress it was causing Plaintiff and his family, Plaintiff was forced to hire a loan modification company to help Plaintiff get TBW to actually follow through on their previous promises and put something in writing regarding a loan modification.

25. One or before January 8, 2009 Plaintiff hired a company, Modify My Loan, because Plaintiff was not seeing any progress with TBW and Plaintiff believed a modification company would carry more authority and possess more knowledge on what to do. In each discussion with

TBW that Plaintiff was involved with Plaintiff expressed his desire to get things worked out quickly.

26. In January 2009 Modify My Loan submitted Plaintiff's "hardship letter" and financials to TBW. Modify My Loan was told by TBW it would take 8 to 12 weeks for TBW to respond. This 8 to 12 weeks was, obviously, in addition to the attempts Plaintiff had made to modify the loan for nearly 3 months previously.

27. I have been informed that after the hardship letter and financials were provided to TBW, weekly phone calls were made by Modify My Loan to TBW for status updates.

28. On or about February 19, 2009 TBW told Carrie and Shane at Modify My Loan that Plaintiff's financials and hardship letter were never received. Plaintiff resubmitted this information once again.

29. Thereafter phone calls to TBW continued from Modify My Loan and Plaintiff. The average wait time on hold was 1 to 2 hours.

30. Plaintiff's attorney, Nathan Drage, experienced similar wait times in November of 2008.

31. Each time Plaintiff or Plaintiff's representatives were connected they were forced to talk to someone different at TBW who professed to little or nothing.

32. Plaintiff's representatives at Modify My Loan were told by TBW that TBW cannot modify the loan because they only service Plaintiff's loan and are not the beneficiary.

33. Plaintiff subsequently called TBW and was also told by TBW that TBW cannot modify my loan because they only service my loan and are not the beneficiary. It took over 5 months for TBW to, out of the blue, disclose this information to Plaintiff.

34. Despite the phone calls from Plaintiff's attorney, Plaintiff and Modify My Loan, no one ever disclosed this beneficiary information previously.

35. When either Plaintiff or Modify My Loan asked who the owner of the loan is, they were told by the TBW employee or agent that that information does not show on their computer screen so they did not know.

36. From April to May 2009 Modify My Loan and Plaintiff continued calls to TBW because the "8 to 12 weeks" TBW had represented to Plaintiff had come and gone without TBW giving Plaintiff any definitive information about modifying the loan. Plaintiff or his representatives were eventually told on two separate occasions that TBW had assigned "negotiators" to my loan situation.

37. Carroll Johnson was one of the negotiators assigned by TBW. This was later changed to Sonja. In addition to Modify My Loan, Plaintiff also left several messages for the negotiators but never received a returned phone call.

38. In May 2009 TBW was still saying they only service the loan and can't modify it. Yet they assigned two different people that would work with Plaintiff to try to modify the loan. Communication from TBW was completely and intentionally confusing to Plaintiff and Plaintiff's representatives.

39. On or about May 19, 2009, Plaintiff received a notice on his door that his home was set to go to auction sale on June 19, 2009.

40. Plaintiff was surprised and extremely frustrated by the Notice of Sale because of the numerous representations to Plaintiff in which Plaintiff relied upon and never had the courtesy to contact Plaintiff that, in fact, TBW would not work on a loan modification and proceed with an auction sale.

41. Despite representations of willingness and ability to work out a loan modification, even though not the beneficiary, TBW wrongfully, and in bad faith, failed to communicate TBW's intent to sell the home at auction.

42. Subsequently, again without any communication or fair and reasonable notice to Plaintiff, the auction was changed from June 19, 2009 to July 20, 2009. Plaintiff had to find this information out through sources other than my lender.

43. On June 15, 2009 Plaintiff spoke with Olivia Rodgers with Sparta Servicing.

44. Olivia Rodgers informed Plaintiff that Sparta was hired by TBW because of TBW's huge national backlog for loans in default.

45. From his communication with Sparta, Plaintiff was again encouraged at being able to complete the loan modification process represented and promised by TBW since October 2008.

46. When Plaintiff spoke to TBW's contract Olivia Plaintiff was once again asked to submit a hardship letter and financials and do so on that same day. Through this request Plaintiff learned that, contrary to previous representations by TBW, nothing had been done by TBW on Plaintiff's situation and loan modification. Plaintiff was particularly shocked and troubled by this revelation because Plaintiff had been completely proactive with TBW, had reasonably relied upon statements and representations by TBW, and had done everything TBW had requested since October of 2008.

47. The July 20 auction was rescheduled for August 3, 2009, but Plaintiff was not informed of that by either TBW or Sparta. Plaintiff had to find this out through another source once again.

48. On June 17, 2009, after once again receiving Plaintiff's financials and hardship letter, TBW proposed that Plaintiff pay \$5,193.34 per month, which amount was equal to 47.2% of Plaintiff's gross income.

49. Plaintiff emailed Olivia explained that their plan of Plaintiff paying an amount equal to 47.2% of Plaintiff's gross income would be irresponsible as a lender and irresponsible on Plaintiff's part as the borrower. The loan proposal was completely out of line with federal loan guidelines.

50. On June 18, 2009 Plaintiff again confirmed to Olivia that Plaintiff wanted to work with TBW and was willing to pay what they are asking but that Plaintiff, understandably, needed some time. Plaintiff proposed a one year lower payment of \$3,500. After the one year term the monthly payment would increase to \$5,000 when Plaintiff's financial situation improved.

51. On June 18, 2009 Plaintiff received an email reply from Olivia rejecting Plaintiff's proposal. Olivia said, "Looks like the decision stands as is so just let me know if you want me to convert this to a short sale..."

52. On June 19, 2009 Plaintiff replied to Olivia's email and explained to her that this situation was extremely unfortunate because her client, TBW, instructed Plaintiff to get behind on payments and then TBW proceeded to do nothing for nine months; that Plaintiff was in this "foreclosure sale" situation because Plaintiff relied on TBW to do what TBW said and that Plaintiff's reliance was now, as clearly seen by the sale, to Plaintiff's tremendous detriment.

53. On June 24, 2009 Plaintiff emailed Olivia asking for a 4.45% rate and a forty year term, both of which are terms mentioned on TBW's website or letters they send out. This would make a substantial difference in making the loan modification work. Plaintiff continued to reaffirm Plaintiff's willingness and desire to make a loan modification work.

54. On June 25, 2009 Olivia stated that "the Investor" will do a 4.75% on 30 yrs. This was still is close to 50% of Plaintiff's gross monthly income. She asked again if Plaintiff wanted to do a short sale or the forbearance. Plaintiff was also told a "Partial Claims" could be part of the loan forbearance.

55. On June 26, 2009 Plaintiff emailed Olivia and informed her that the loan amount with an interest rate of 4.75% is \$4,627.90 per month, not \$5,193.34 and asked her why there is a

discrepancy. Plaintiff has never received an answer to this question. In an email she also removed the option of doing a "Partial Claims" because Plaintiff has an FHA loan Plaintiff would not qualify for a "Partial Claims".

56. In fact, Plaintiff does not have an FHA loan. Plaintiff has a Conventional Loan. So once again TBW information was inaccurate and they were being reckless in how they were approaching the promised loan modification.

57. On June 30, 2009 Plaintiff received a letter from TBW indicating their desire to work with me and the letter mentions many different options to resolving my situation.

58. The June 30, 2009 letter includes the Freddie Mac logo.

59. The June 30, 2009 letter once again asks Plaintiff to provide a hardship letter and financials.

60. On July 2, 2009 Plaintiff informed Olivia via email about the letter Plaintiff received on June 30. Plaintiff expressed his extreme unhappiness due to TBW leading Plaintiff and, once again, request that TBW should do exactly what the letter says TBW can and will do - help the Plaintiff.

61. Because the Freddie Mac logo was used by TBW, Plaintiff believes that TBW is utilizing government funds, such as TARP, irresponsibly. Plaintiff informed Olivia on July 2nd that one of Plaintiff's options at this point was, unfortunately, legal action.

62. On July 6, 2009 Plaintiff received an email from Olivia informing him "The Investor" wanted to set up a conference call with Plaintiff, which was set for Thursday July 9 and would include my attorney. In his email Plaintiff asked Olivia for the identity of "The Investor" since TBW previously represented to Plaintiff that TBW did not own the loan. Plaintiff was told in March that TBW could not modify the loan because they, TBW, only serviced the loan. In response to his inquiry, Olivia responded "Ask the investor during the conference call."

63. On July 9, 2009 Nathan Drage (my attorney), Olivia (Sparta), Shayne (TBW) and Plaintiff participated in a conference call.

64. In July 9th call it was confirmed that TBW does, in fact, own the loan, which was contrary to what had been represented to Plaintiff for months.

65. The false information Plaintiff had previously been given regarding ownership of the

loan was the reason given by TBW for not moving towards a definitive loan modification and it was very detrimental to Plaintiff's situation.

66. After a lengthy conversation in the July 9th phone conference, Shayne stated he would have to take Plaintiff's modification proposal to the board of TBW and that he would get back to Plaintiff's attorney or Plaintiff by July 17th at the latest.

67. Neither Plaintiff or Plaintiff's attorney did not receive any emails or phones call from either Shayne (of TBW) or Olivia (of Sparta) by the 17th. Once again, TBW had made false representations and promises upon which Plaintiff relied to his detriment.

68. On July 21, 2009 Plaintiff emailed Olivia asking her why there had not any response from either her or TBW. Olivia responded and said Plaintiff would receive a response that week.

69. The following week came and went without any further contact from either Sparta or TBW.

70. On July 22, 2009 Plaintiff contacted Sheri Fitzpatrick of Perfect Home Living, Inc., a consulting company that investigates lender's practices, and she informed Plaintiff that she is very disturbed with the history of TBW actions and inactions.

71. On July 28, 2009 Michael Blackburn of Perfect Home Living reviewed Plaintiff's loan from TBW and also stated he is concerned about the lender's practices.

73. On July 28, 2009 Sheri Fitzpatrick attempted to talk with anyone at TBW but could not get through on the phone. Ms. Fitzgerald also sent emails to Olivia of Sparta which have not been answered.

74. Plaintiff has continuously made good faith efforts to work through a loan modification that TBW stated was entirely possible if Plaintiff became delinquent on his loan.

75. Plaintiff has been forced to employed an attorney, a mortgage loan modification company and a non-profit company to try to accomplish the loan modification represented by TBW.

76. It has been necessary for Plaintiff to retain the services of an attorney to prosecute this action and therefore Plaintiff is entitled to reasonable attorney's fees and costs incurred herein.

III.
FIRST CLAIM FOR RELIEF
BREACH OF CONTRACT AGAINST DEFENDANT TAYLOR BEAN & WHITAKER

77. Plaintiff incorporates and realleges paragraphs 1 through 76 of the Complaint as though fully set forth at this point.

78. Plaintiff was told on numerous occasions the Defendant TBW would allow Plaintiff to modify his loan and would work with Plaintiff to accomplish the loan modification.

79. Defendant TBW represented that it was working through loan modifications with other homeowners and that TBW had staff, programs, and resources to work through the modification process to successful conclusion.

80. Defendant TBW represented that TBW would be in as much communication with Plaintiff as was necessary to complete the loan modification.

81. Defendant TBW represented that the loan modification process would be conducted without the home being sold at auction prior to conclusion of the modification process.

82. Plaintiff reasonably and detrimentally relied on Defendant TBW's representations regarding modification of the loan.

83. Plaintiff's reliance on Defendant TBW's representations created agreement between the parties act in good faith to modify the loan agreement.

84. Defendant has breached the agreement to modify the loan agreement.

IV.
SECOND CAUSE OF ACTION
NEGLIGENT MISREPRESENTATION AGAINST DEFENDANT TBW

85. Plaintiff incorporates and realleges paragraphs 1 through 84 as though fully set forth at this point.

86. During the period from October 2008 and up and through July 2009, Defendant TBW

negligently made statements of a material fact, or omitted to state facts which were material to Plaintiff's conduct and reliance.

87. Statements were made to Plaintiff with the specific intent to induce Plaintiff to act, or refrain from acting, to his detriment.

88. Defendant TBW should have known that such representations were false and misleading and should have known that such omissions would result in false assumptions and conclusions by Plaintiff.

89. Plaintiff did reasonably believe and rely, to his detriment, upon the aforesaid representations and omissions of Defendant TBW.

90. Plaintiff has been damaged by the tortious actions of TBW.

91. As a direct, natural, and proximate result of the negligently deceitful and false representations of Defendant TBW, Plaintiff has suffered unique and specific damages including threatened foreclosure sale of his home by TBW.

92. As a direct, natural, and proximate result of the negligently deceitful and false representations of Defendant TBW, Plaintiff has suffered general damages in an amount to be determined hereafter.

93. Plaintiff has had to retain the services of an attorney to prosecute this action and therefore Plaintiff is entitled to reasonable attorney's fees and costs incurred herein.

**V.
THIRD CLAIM FOR RELIEF
FRAUD**

94. Plaintiff incorporates and realleges paragraphs 1 through 84 as though fully set forth at this point.

95. During the period from October 2008 and up and through July 2009, Defendant TBW

intentionally made statements of a material fact, or omitted to state facts which were material to Plaintiff's conduct and reliance.

96. False statements were made to Plaintiff with the specific intent to induce Plaintiff to act, or refrain from acting, to his detriment.

97. Defendant TBW knew that such representations were false and misleading and knew that such omissions would result in false assumptions and conclusions by Plaintiff.

98. Plaintiff did reasonably believe and rely, to his detriment, upon the aforesaid intentional representations and omissions of Defendant TBW.

99. Plaintiff has been damaged by the tortious actions of TBW.

99. As a direct, natural, and proximate result of the intentionally deceitful and false representations of Defendant TBW, Plaintiff has suffered unique and specific damages including threatened foreclosure sale of his home by TBW.

100. As a direct, natural, and proximate result of the negligently deceitful and false representations of Defendant TBW, Plaintiff has suffered general damages in an amount to be determined hereafter.

101. That as a direct, natural, and proximate result of the fraudulent and malicious acts of the Defendants named in this count Plaintiff is entitled to an amount of treble damages pursuant to or such other amount as this Court deems applicable.

102. Plaintiff has had to retain the services of an attorney to prosecute this action and therefore Plaintiff is entitled to reasonable attorney's fees and costs incurred herein.

VI.
FOURTH CLAIM FOR RELIEF
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

103. Plaintiff incorporates and realleges paragraphs 1 through 102 as though fully set forth at this point.

104. During the period from October 2008 and up and through July 2009, Defendant TBW made statements of a material fact, or omitted to state facts, which were material to Plaintiff's conduct and reliance.

105. Defendant TBW is fully aware of the sensitive and emotional nature of the financial struggles of homeowners in general, and that of Plaintiff in particular.

106. Defendant TBW was fully aware Plaintiff was working very diligently to stay in contact with TBW to complete the loan modification process.

107. Defendant TBW knew False statements were made to Plaintiff with the specific intent to induce Plaintiff to act, or refrain from acting, to his detriment.

108. Defendant TBW knew that such representations were false and misleading and knew that such omissions would result in false assumptions and conclusions by Plaintiff.

109. Defendant knew that Plaintiff would and did reasonably believe and rely, to his detriment, upon the aforesaid intentional representations and omissions of Defendant TBW.

110. Defendant knew or should have known that conduct of Defendant in 1) making false statements, 2) omitting material facts, 3) not communicating with Plaintiff when represented and promised, and 4) scheduling a foreclosure would cause emotional distress to Plaintiff and Plaintiff's family.

111. As a direct, natural, and proximate result of the emotional distress caused by Defendant

TBW, Plaintiff has experienced additional emotional distress in his family life and work.

112. As a direct, natural, and proximate result of the emotional distress caused by Defendant TBW, Plaintiff has generate less income than he could had TBW not engaged in its tortious conduct.

113. That as a direct, natural, and proximate result of the fraudulent and malicious acts of the Defendants named in this count Plaintiff is entitled to an amount of treble damages pursuant to or such other amount as this Court deems applicable.

114. Plaintiff has had to retain the services of an attorney to prosecute this action and therefore Plaintiff is entitled to reasonable attorney's fees and costs incurred herein.

**VII.
FIFTH CLAIM FOR RELIEF
BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING**

115. Plaintiff incorporates and realleges paragraphs 1 through 115 as though fully set forth at this point.

116. As a federally regulated institution that has received federal financial assistance from the national economic crises, and as a matter of sound public policy, Defendant TBW had a duty of good faith and fair dealing when interacting with Plaintiff.

117. During the period from October 2008 and up and through July 2009, Defendant TBW completely ignored and breach such duty.

118. Defendant TBW's breach of the duties reached its zenith in making promises to "get back to" Plaintiff regarding the loan modification, and yet proceeding with a foreclosure sale.

119. As a result of Defendant TBW's breach of duties Plaintiff is entitled to specific and proximate damages.

120. As a result of Defendant TBW's breach of duties Plaintiff is entitled to an injunction against TBW and its agents from attempting to conduct and sale of Plaintiff's home until Defendant TBW has cured its breach.

VIII.
FIFTH CLAIM FOR RELIEF
ACTIONS OF AGENTS AND REPRESENTATIVES OF TBW
INJUNCTION AGAINST ALL DEFENDANTS

121. Plaintiff incorporates and realleges paragraphs 1 through 120 as though fully set forth at this point.

122. Defendant TBW has scheduled a foreclosure sale of Plaintiff's home and such sale is to be conducted with and through the cooperation of eTitle Insurance Agency as Trustee.

123. Defendant TBW has scheduled a foreclosure sale of Plaintiff's home and such sale is to be conducted with and through the cooperation of Mortgage Electronic Registration Systems as nominee for Defendant TBW.

124. If the other defendants proceed with the planned foreclosure sale by Defendant TBW than those Defendants will be participating in the matters alleged herein and jointly liable.

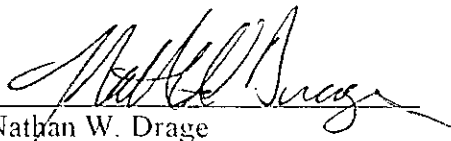
125. Plaintiff is entitled to an injunction preventing all Defendants from proceeding with the planned foreclosure sale.

IX.
PRAYER FOR RELIEF

WHEREFORE, Plaintiff, having set out his complaint and allegations against Defendants herein, hereby prays that the Court provide Plaintiff relief against Defendants as follows:

1. An injunction against all defendants preventing the foreclosure sale of the Plaintiff's property.
2. General Damages in an amount to be determined hereafter.
3. Special Damages in an amount in exceeding \$800,000.
4. Attorneys fees in an amount to be determined hereafter.
5. Punitive damages an the amount exceeding \$2.6 million.
6. Costs of suit.
7. Such other and further injunctive and financial relief as the Court deems just and proper.

Dated the 31st day of July, 2009.


Nathan W. Drage
Attorney for Plaintiff