

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

In re:

TAYLOR BEAN & WHITAKER  
MORTGAGE CORP., *et al.*,

Debtors.

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NICHOLAS A. CALLAHAN, JULIE  
WHITEAKER, ERIC E. ANDERSON,  
CHRIS ESCANDON, CHARLES VAN  
HARTSELL III, DEBRA ORLANDO,  
DEZI TEIANN JESSOP, WILLIAM P.  
HICKEY III and TANJANIKA CARTER,  
on behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

TAYLOR BEAN & WHITAKER  
MORTGAGE CORP.,

Defendant.

Chapter 11

Case No. 09-07047 JAF

Adv. Case. No. 09-00439 JAF

**TAYLOR BEAN & WHITAKER MORTGAGE CORP.'S  
RESPONSE TO PLAINTIFFS' MOTION FOR ENLARGEMENT  
OF TIME TO FILE WARN ACT PROOFS OF CLAIM**

Defendant TAYLOR BEAN & WHITAKER MORTGAGE CORP. ("TBW") submits  
this response to Plaintiffs' *Motion for Enlargement of Time to File WARN Act Proofs of Claim* as  
follows:

**I. Plaintiffs Do Not Need To File Individual Proofs of Claim for Each Member of the Putative Class**

1. Contrary to Plaintiffs' assertion, the constituency that they seek to represent as a class of former employees with potential WARN Act claims do not need to file individual claims. Rather, Plaintiffs, who are well-represented by putative class counsel, need only file one putative class proof of claim on or before June 15, 2010.

2. The Eleventh Circuit expressly recognizes class proofs of claim. *See In re Charter*, 876 F.2d 866 (11<sup>th</sup> Cir. 1989), *cert dismissed*, 496 U.S. 944 (1990). Moreover, putative class proofs of claim can be filed before the issue of class certification is settled. *See In re Bill Heard Enterprises, Inc.*, 400 B.R. 795 (Bankr. N.D. Ala. 2009)(recognizing the validity of the putative class proof of claim filed on November 26, 2008 prior to resolution of the class certification issue). Plaintiffs, therefore, are in a position now to file a putative class proof of claim and do not need an extension of time beyond June 15, 2010 to do so. If Plaintiffs are correct in their assertion that a class should be certified, the burden of filing and processing "perhaps more than two thousand" individual proofs of claim need never arise. *See* Plaintiffs' Motion ¶ 8. If Plaintiffs are incorrect in their class certification assertion, then any burden associated with "more than two thousand" individual proofs of claim is not theirs.

**II. An Extension of Time for Plaintiffs Will Prejudice TBW and Other Creditors**

3. Again contrary to Plaintiffs' assertions, an extension of the Bar Date for employees with potential WARN Act claims will prejudice both TBW and other unsecured creditors. No reasonable basis exists for the Plaintiffs to be treated differently than any other unsecured creditor.

4. Other unsecured creditors, particularly trade creditors, find themselves in the same or similar position as Plaintiffs. All unsecured creditors, including former employees,

have been aware of the Bar Date since March 2, 2010 (*In re Taylor, Bean & Whitaker Mortgage Corp.*, 3:09-bk-07047-JAF, Dkt. 1109). If anything, Plaintiffs have an advantage over other unsecured creditors in their ability to meet the Bar Date, as they are represented by counsel. It would be unjust to extend the Bar Date for Plaintiffs, while holding other unsecured creditors to the June 15, 2010 deadline.

5. Furthermore, granting an extension to a particular class of unsecured creditors, such as the Plaintiffs, would open the doors for other constituencies of creditors to make similar requests of this Court. TBW wishes to proceed with the administration of its bankruptcy case in reliance upon the existing Bar Date for all creditors.

#### **CONCLUSION**

**WHEREFORE**, Defendant TBW requests that this Court deny Plaintiffs' *Motion for Enlargement of Time to File WARN Act Proofs of Claim*.

Respectfully submitted, this 26th day of May 2010.

/s/ Jeffrey W. Kelley  
Jeffrey W. Kelley (GA. Bar No. 412296)  
Michael D. Kaufman (GA Bar No. 409195)  
TROUTMAN SANDERS LLP  
Bank of America Plaza, Suite 5200  
600 Peachtree Street, NE  
Atlanta, GA 30308-2216  
Telephone: 404.885.3000  
Facsimile: 404.885.3900  
Jeffrey.kelley@troutmansanders.com

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Russell M. Blain (FBN 236314)  
Stichter, Riedel, Blain & Prosser  
110 East Madison Street, Suite 200  
Tampa, FL 323602  
Telephone: 813.229.0144  
Facsimile: 813-229-1811  
Rblain.ecf@srbp.com

Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing *Response to Plaintiffs' Motion for Enlargement of Time to File WARN Act Proofs of Claim* has been furnished by the Court's CM/ECF electronic mail system and/or by electronic mail to:

James Gassenheimer, Esq.  
**Berger Singerman**  
200 South Biscayne Boulevard, Suite 1000  
Miami, Florida 33131-5308

Jason B. Burnett, Esq.  
Kenneth B. Jacobs, Esq.  
**Gray Robinson, P.A.**  
1100 Bank of America Tower  
50 North Laura Street  
Jacksonville, Florida 32202  
[jburnett@gray-robinson.com](mailto:jburnett@gray-robinson.com)

Jack A. Raisner, Esq.  
Rene S. Roupinian, Esq.  
**Outten & Golden LLP**  
3 Park Avenue, 29<sup>th</sup> Floor  
New York, New York 10016  
[rroupinian@outtengolden.com](mailto:rroupinian@outtengolden.com)

This 26th day of May 2010.

/s/ Jeffrey W. Kelley  
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Jeffrey W. Kelley