

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

<p>In re:</p> <p>TAYLOR, BEAN &amp; WHITAKER MORTGAGE CORP.,  REO SPECIALISTS, LLC, and  HOME AMERICA MORTGAGE, INC.,</p> <p style="text-align: center;">Debtors.</p>	<p>Chapter 11</p> <p>Case No. 3:09-bk-07047-JAF  Case No. 3:09-bk-10022-JAF  Case No. 3:09-bk-10023-JAF</p> <p>Jointly Administered Under  Case No. 3:09-bk-07047-JAF</p>
<p>TAYLOR, BEAN &amp; WHITAKER MORTGAGE CORP.</p> <p style="text-align: center;">Applicable Debtor.</p>	<p>Case No. 3:09-bk-07047-JAF</p>

**TAYLOR BEAN & WHITAKER MORTGAGE CORP.’S  
RESPONSE IN OPPOSITION TO PLAINTIFFS’ EMERGENCY  
MOTION FOR ENLARGEMENT OF TIME TO FILE WARN ACT  
PROOFS OF CLAIM, REQUEST FOR EMERGENCY HEARING  
ON JUNE 4, 2010 AT 10:00 A.M., AND CERTIFICATE OF  
NECESSITY FOR EMERGENCY RELIEF**

TAYLOR BEAN & WHITAKER MORTGAGE CORP., the Debtor in this Chapter 11 case and the Defendant in Adversary Proceeding No. 09-00439 (“TBW”), submits this response in opposition to the *Emergency Motion for Enlargement of Time to File WARN Act Proofs of Claim, Request for Emergency Hearing on June 4, 2010 at 10:00 a.m., and Certificate of Necessity for Emergency Relief* (the “Emergency Motion”) filed by the Plaintiffs in the Adversary Proceeding (the “Plaintiffs” or the “Movants”) as follows:

1. Plaintiffs originally moved to enlarge the bar date for WARN Act proofs of claim on May 25, 2010 and incorrectly filed their motion in the Adversary Proceeding (A.P. 09-00439). By Order dated June 1, 2010 in the Adversary Proceeding, the Court denied the original motion without prejudice (A.P. Dkt No. 68). Plaintiffs then filed the Emergency Motion.

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

2. 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 the June 15, 2010 Bar Date.

3. 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 are valid even if filed before the issue of class certification is settled. *Id.* at 867-68 (class proof of claim filed on September 14, 1984 in advance of the November 19, 1984 bar date but prior to resolution of the class certification issues); *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.

4. 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* Emergency 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.

5. Furthermore, the extensions Plaintiffs granted TBW in responding to the Complaint have no bearing on the Bar Date or Plaintiffs’ ability to respond within the proscribed time. TBW filed its Motion to Dismiss on January 20, 2010 [A.P. Dkt. No. 28], more than a month before the Bar Date order was entered [Dkt. No. 1067, February 22, 2010]. In its Motion to Dismiss, TBW asserts, *inter alia*, that the WARN Act claims should be presented as part of the claims process and not as an adversary proceeding. As a result, Plaintiffs have been on notice since well before the Bar Date order was entered that TBW believes the proof of claim process should be followed by the WARN Act claimants. The extensions, thus, in no way prejudiced Plaintiffs’ ability to file proofs of claim or a motion for class certification in a timely manner.

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

6. 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.

7. Other unsecured creditors, particularly trade creditors, are 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 (Dkt. No. 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.

8. Furthermore, granting an extension to a particular class of unsecured creditors, such as the Plaintiffs, could encourage other constituencies of creditors to make similar requests of this Court. TBW seeks to proceed with the administration of its bankruptcy case in reliance upon the existing Bar Date for all creditors and not on the basis of the indefinite extension requested by the Plaintiffs.

**III. Adoption of the Official Committee of Unsecured Creditors' Response**

9. In addition, TBW incorporates by reference the arguments set forth in *The Official Committee of Unsecured Creditors' Response to Plaintiffs' Emergency Motion for Enlargement of Time to File WARN Act Proofs of Claim, Request for Emergency Hearing on June 4, 2010 at 10:00 am, and Certificate of Necessity for Emergency Relief* [Dkt. No. 1514], including without limitation the point that Plaintiffs have failed to carry their burden under Bankruptcy Rule 3003(c)(3).

**CONCLUSION**

**WHEREFORE**, Debtor TBW requests that this Court deny Plaintiffs' *Emergency Motion for Enlargement of Time to File WARN Act Proofs of Claim, Request for Emergency Hearing on June 4, 2010 at 10:00 a.m., and Certificate of Necessity for Emergency Relief*.

Respectfully submitted, this 7th day of June 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

Russell M. Blain (FBN 236314)  
Stichter, Riedel, Blain & Prosser, P.A.  
110 East Madison Street, Suite 200  
Tampa, FL 33602  
Telephone: 813.229.0144  
Facsimile: 813-229-1811  
[rblain@srbp.com](mailto:rblain@srbp.com)

Attorneys for Debtor, Taylor, Bean & Whitaker  
Mortgage Corp.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing *Response in Opposition to Plaintiffs' Emergency Motion for Enlargement of Time to File WARN Act Proofs of Claim, Request for Emergency Hearing on June 4, 2010 at 10:00 a.m., and Certificate of Necessity for Emergency Relief* has been furnished by the Court's CM/ECF electronic mail system and/or by electronic mail to:

James D. Gassenheimer, Esq.  
**Berger Singerman, P.A.**  
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 7th day of June 2010.

/s/ Jeffrey W. Kelley  
Jeffrey W. Kelley