

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

<b>IN RE:</b>	)	<b>Chapter 11</b>
	)	
<b>TAYLOR, BEAN &amp; WHITAKER</b>	)	<b>Case No. 09-07047-JAF</b>
<b>MORTGAGE CORP.,</b>	)	
	)	
<b>Debtor.</b>	)	
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**DELL MARKETING, L.P.'S MOTION  
FOR RETURN OF RECLAMATION PRODUCT**

**TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:**

Dell Marketing, L.P. ("Dell") files this its Motion for Return of Reclamation Product (the "Motion"), which amends Dell's prior Motion filed on September 10, 2009 (Docket No. 182), and pursuant to 11 U.S.C. §§ 503(b)(1) and 546(c)(1) for goods subject to reclamation. In support hereof, Dell respectfully shows the Court as follows:

**I. JURISDICTION**

1. Under 28 U.S.C. §§ 157 and 1334, the Court has jurisdiction over the Motion and relief requested herein. Pursuant to 28 U.S.C. §§ 157(b)(2)(A), (B), and (O), this Motion presents a core proceeding. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is 11 U.S.C. §§ 503(a), 503(b)(9), 507(a)(2), and 546(c)(1).

**II. BACKGROUND**

2. On August 24, 2009, Taylor, Bean & Whitaker Mortgage Corp. ("Debtor") filed its Voluntary Petition for relief under Chapter 11 of the Bankruptcy Code (the "Petition Date").

3. Prior to the Petition Date, Dell entered into purchase agreements regarding certain computer products, equipment and peripherals (the "Goods") ordered by Debtor.

4. The books and records of Dell indicate that Dell provided and shipped certain Goods to the Debtor. Dell shipped the Goods between 45 and 20 days of the Petition Date which are subject to a valid reclamation claim, a copy of the Notice of Reclamation is attached as Exhibit "A." 11 U.S.C. § 546(c)(1). The Debtor has not returned the Goods or otherwise responded to Dell's request for adequate protection for the value of the Goods delivered within 45 days of the filing. Dell seeks either the return of its reclamation Goods and/or would agree to an allowed priority claim under 11 U.S.C. § 503(b)(1) (the actual, necessary costs and expenses of preserving the estate) for its reclaimed Goods. Dell asserts that benefit was and is provided to the estate for the post-petition use of these Goods delivered within the first forty-five (45) days of the Petition, and that it is entitled to an allowed claim for the value of the reclamation Goods of \$57,773.62.

5. Nothing herein shall be construed as a waiver or limitation on the rights of Dell to pursue any and all claims it holds against the Debtor.

### **III. RELIEF REQUESTED AND BASIS THEREFORE**

6. Such Goods were sold to the Debtor under the agreements in the ordinary course of Debtor's business.

7. Accordingly, Dell asserts that since the Debtor has not returned the Goods subject to a valid reclamation claim that it should be allowed either to recover the reclamation Goods or alternatively, Dell would agree to waive its right to reclaim the Goods for an administrative expense claim for the benefit provided to the estate for the use of its computer products. *See,*

*Phar-Mor, Inc. v. McKesson Corp.*, 2008 WL 275688 (6<sup>th</sup> cir. 2008). Such administrative claim should be equal to the invoices for the amount of \$57,773.62.

#### IV. MOTION

8. Notice of this Motion has been given to counsel for the Debtor, the Office of the United States Trustee, counsel for the Committee, and all other parties requesting Motion pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, Dell submits that no other or further Notice need be given.

WHEREFORE, for the reasons described above, Dell respectfully requests this Court to enter an Order (i) granting Dell to recover its reclamation Goods or allow it an administrative claim for the value of the reclamation Goods in the amount of \$57,773.62; and (ii) granting such other and further relief as the Court deems just and proper under the circumstances.

Dated: November 4, 2009

Respectfully submitted,

/s/ Keith Fendrick

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**ATTORNEYS FOR DELL MARKETING, L.P.**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was sent by CM/ECF electronic notification or U.S. Mail this 4<sup>th</sup> day of November, 2009, to:

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/s/ Keith Fendrick  
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