

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

In re:

Chapter 11 Case

TAYLOR, BEAN & WHITAKER  
MORTGAGE CORP.,  
REO SPECIALISTS, LLC, and  
HOME AMERICA MORTGAGE, INC.,

Case No. 3:09-bk-07047-JAF  
Case No. 3:09-bk-10022-JAF  
Case No. 3:09-bk-10023-JAF

Debtors

Jointly Administered Under  
Case No. 3:09-bk-07047-JAF

\_\_\_\_\_  
In re:

TAYLOR, BEAN & WHITAKER  
MORTGAGE CORP.,

Case No. 3:09-bk-07047-JAF

Applicable Debtor.  
\_\_\_\_\_

**SUPPLEMENT TO THE THIRTY SEVENTH OMNIBUS OBJECTION TO  
CLAIMS OBJECTING TO CLAIM NO. 1426 FILED BY KATINA DURAN**

Neil F. Luria, as Plan Trustee (“Plan Trustee”) for the Taylor, Bean & Whitaker Plan Trust<sup>1</sup> (the “Plan Trust”) and on behalf of the Debtor, Taylor, Bean & Whitaker Mortgage Corp. (“Debtor” or “TBW”), by and through undersigned counsel, and pursuant to Federal Rule of Bankruptcy Procedure 3007 and Local Rules 3007-1 and 2002-4, hereby files this supplement (the “Supplement”) to the *Thirty Seventh Omnibus Objection to Claims* (the “Thirty Seventh Objection”) [D.E. 5211], which objected to Claim No. 1426 (the “Claim”) filed by Katina Duran (the “Claimant”) and states in support thereof:

<sup>1</sup> As of the effective date of the *Third Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors* [D.E. 3240] (the “Plan”), August 10, 2011, the Debtors and the Official Committee of Unsecured Creditors have been replaced, for the most part and according to the terms of the Plan, by the Taylor, Bean &

### **PROCEDURAL HISTORY**

Ms. Duran filed Claim No. 395 on December 14, 2009 for mortgage fraud in the amount \$206,000. Ms. Duran later filed duplicate Claim Nos. 1412 on April 12, 2010 and 1425 on April 15, 2010. Claim Nos. 1412 and 1425 were expunged as a result of the *Order on Debtor's Omnibus Objection #8: Claims for Which Debtors are Not Liable* [D.E. 3626]. In Claim No. 1426, Ms. Duran sought attorney fees and loss of income in the amount of \$65,000. After filing Claim No. 1426, Ms. Duran filed Claim No. 3496 and checked the box indicating that Claim No. 3496 amends a previously filed claim(s).

The Plan Trustee then filed its Thirty Seventh Objection, which objected to Claim No. 1426 on the basis that Claim No. 1426 was amended by Claim No. 3496. After the filing of the Thirty Seventh Objection, Ms. Duran filed a Complaint against TBW asserting \$1,000,000 in punitive damages, among other allegations.<sup>2</sup> The Court dismissed Ms. Duran's lawsuit *sua sponte*. On June 7, 2012, the Court also entered an Order [D.E. 5445] sustaining the Plan Trustee's objection to Claim No. 1426. However, on August 23, 2012, the Court entered an Order [D.E. 6022] vacating its order sustaining the Plan Trustee's objection to Claim No. 1426 on the basis that the Complaint was actually a response to the Thirty Seventh Omnibus Objection. Subsequently, on October 12, 2012, the Court entered an Order [D.E. 6344] sustaining the Plan Trustee's objection to Claim Nos. 395 and 3496.

---

Whitaker Plan Trust (the "Plan Trust").

<sup>2</sup> The Claimant previously commenced a lawsuit on June 21, 2011 against the Debtor by filing, *pro se*, a purported class action complaint with various other creditors (3:11-ap-326-JAF) (the "Adversary"). The Court subsequently dismissed the Adversary and ordered that the Claimants, along with the other plaintiffs in the Adversary, were foreclosed from bringing any more actions for damages against the Debtors.

As a result of the foregoing orders, the Plan Trustee submits that Claim No. 1426 is the only potential remaining claim. To the extent the Court does not find Claim No. 1426 was amended by Claim No. 3496, and therefore is moot, the Plan Trustee submits that there are a number of additional grounds to support the disallowance of Claim No. 1426:

Claimant	Claim #	Amount	Basis for Disposition	Recommended Disposition
Katina Duran 7346 Hill Avenue Holland, OH 43528	1426	\$65,000	<p>The Claimant attempts to assert a claim against the TBW estate for “attorney fees &amp; loss of income.” However, the Claimant fails to attach adequate supporting document supporting her claim for attorneys’ fees, such as invoices from an attorney, nor any documents indicating how TBW has affected her income. Accordingly, the Plan Trustee objects to Claim No. 1426 on the basis that the Claimant fails to assert a basis for a claim. The documents the Claimant does attach to the Claim consist of news articles about TBW and other summaries of issues allegedly relating to the foreclosure of the Claimant’s loan by BAC, a non-debtor entity, but do not relate to or otherwise support a claim for attorneys’ fees and loss of income.</p> <p>To the extent the Claimant, who has designated in her claim that she is <i>pro se</i> is seeking attorney’s fees, she may not unless she can show that she is a licensed attorney admitted before this court. Upon information and belief, the Claimant is not an attorney and Claimant has not retained an attorney to represent her in filing or pursuing claims against the TBW estate.</p> <p>Further, the Claimant fails to define or otherwise describe TBW’s actions that allegedly caused her to lose income. It is the Plan Trustee’s understanding is that the Claimant become unemployed in 2008; therefore, it is unclear how she can seek to recover a claim for lost income against TBW. Claimant informed TBW of her unemployment status in connection with discussions regarding a forbearance with TBW.</p> <p>If the Claimant were seeking a claim against TBW in connection with the foreclosure of her mortgage</p>	Disallow Claim No. 1426.

			<p>loan, TBW transferred the servicing of the Claimant's mortgage loan to Bank of America before any foreclosure of the Claimant's mortgage loan (servicing was released on August 10, 2009). Therefore, any claim in connection with a wrongful foreclosure is improperly asserted against TBW.</p> <p>Accordingly, the Plan Trustee submits that Claim No. 1426 should be expunged both on the basis that it was amended by Claim No. 3496 and on the foregoing substantive grounds.</p>	
--	--	--	--	--

The Plan Trustee reserves the right to amend this objection, to object on additional grounds not set forth herein, and/or to object to any further claims not presently set forth herein. By filing this Objection, the Plan Trustee does not waive the right to file further objections or to pursue avoidance actions or other causes of action.

**WHEREFORE**, the Plan Trustee respectfully requests that the Court (1) dispose of the claim set forth herein, as recommended by the Plan Trustee, on the grounds set forth in this Objection, without prejudice to the rights of the Plan Trustee or other interested parties to file further objections or to pursue avoidance actions or other causes of action, and (2) grant such other and further relief as is just and appropriate.

[INTENTIONALLY LEFT BLANK]

**I HEREBY CERTIFY** that I am admitted to the Bar of the United States District Court for the Middle District of Florida and I am in compliance with the additional qualifications to practice in this court set forth in Local Rule 2090-1(a).

Dated: October 26, 2012

Respectfully submitted,

BERGER SINGERMAN LLP  
*Counsel to Neil F. Luria, Plan Trustee for the  
Taylor, Bean & Whitaker Plan Trust*  
1450 Brickell Avenue  
Suite 1900  
Miami, FL 33131  
Telephone: (305) 755-9500  
Facsimile: (305) 714-4340

By: /s/ Alisa Paige Mason  
James D. Gassenheimer  
Florida Bar No. 959987  
[jgassenheimer@bergersingerman.com](mailto:jgassenheimer@bergersingerman.com)  
Alisa Paige Mason  
Florida Bar No. 084461  
[pmason@bergersingerman.com](mailto:pmason@bergersingerman.com)