



Department of Justice

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SMALL BUSINESS LENDER PAYS \$26.3 MILLION TO THE UNITED STATES TO RESOLVE FRAUD CLAIMS

ATLANTA, GA – Subject to bankruptcy court approval of the settlement, “Ciena Capital LLC,” located in New York City has reached an agreement with the government to settle fraud claims related to its small business lending for \$26.3 million, the United States Attorney’s Office and the Department of Justice announced today.

Sally Quillian Yates, United States Attorney for the Northern District of Georgia, said, “Defrauding the SBA’s loan programs takes necessary resources away from small businesses and leaves the taxpayers holding the bag. We will continue to investigate and prosecute this type of fraudulent activity, diligently using all tools at our disposal.”

In Washington, D.C., Tony West, Assistant Attorney General for the Department of Justice's Civil Division, said, “The United States will not tolerate fraud in lending programs designed to assist small businesses, which are so vital to our nation's economy. We will pursue those who seek to take unfair advantage of programs designed to help people start a business and earn a living.”

Small Business Administration (SBA) General Counsel Sara Lipscomb said, “As a result of strong collaboration between SBA's attorneys, the SBA Office of Inspector General, the Department of Justice and the U.S. Attorney's Offices in Atlanta and New York, we have recovered a significant amount of the loan loss stemming from Ciena's operations. This cooperation has had a positive result for taxpayers and will be a model for collaboration in future cases.”

SBA Inspector General Peggy E. Gustafson said, “The size of these payments sends a strong message that the Government will not tolerate fraud, waste, or abuse of SBA programs.”

Ciena is a private-non-depository lender, and Ciena's subsidiary, Business Loan Center (“BLC”), is a Small Business Lending Company licensed to originate and service loans under Section 7(a) of the Small Business Act. On September 30, 2008, Ciena and several of its subsidiaries filed petitions for bankruptcy under Chapter 11 of the Bankruptcy

Code in the United States Bankruptcy Court for the Southern District of New York. Allied Capital Corporation (Allied) was a business development company that invested in private middle-market companies in a variety of industries. Allied owned 94.9 percent of the voting interest of Ciena. On April 1, 2010, Allied merged with and into business development company Ares Capital Corporation.

The SBA, through various lending programs, provides financial assistance to small businesses by guaranteeing up to 85 percent of the value of loans made by private lenders. This settlement resolves allegations that Ciena/BLC falsely certified that it complied with SBA regulations when it submitted claims for payment on loans it originated, underwrote and serviced. Some of these loans defaulted shortly after they were made as a result of Ciena's /BLC's disregard of SBA rules, regulations and underwriting requirements. Other loans were originated by former BLC Executive Vice President Patrick Harrington, or his office during his tenure. Harrington pleaded guilty in the Eastern District of Michigan in October 2007, to a charge of conspiracy to defraud the United States and was sentenced to ten years imprisonment for his prominent role in the fraudulent loan scheme, which included falsifying loan documents, inflating property appraisals, and using straw purchasers to engage in sham transactions. The settlement also resolves allegations that Allied is liable for the acts of its subsidiary.

The settlement for \$26.3 million (including a credit for \$18.1 million previously negotiated by and paid to the SBA) resolves a lawsuit filed by James R. Brickman and Greenlight Capital, Inc., under the *qui tam*, or whistleblower provisions, of the False Claims Act. Under the False Claims Act, private citizens can bring suit on behalf of the United States and share in any recovery obtained by the government. Mr. Brickman and Greenlight Capital will receive \$4.3 million as their share of the recovery.

The litigation and settlement of this case were conducted by the United States Attorney's Office for the Northern District of Georgia, the Commercial Litigation Branch of the Civil Division for the Department of Justice in Washington, D.C., the U.S. Small Business Administration, Office of Inspector General and Office of General Counsel, and the United States Attorney's Office for the Southern District of New York.

This law enforcement action is in part sponsored by the interagency Financial Fraud Enforcement Task Force. The task force was established to wage an aggressive, coordinated, and proactive effort to investigate and prosecute financial crimes. It includes representatives from a broad range of federal agencies, including the Small Business Administration, regulatory authorities, inspectors general, and state and local law enforcement who, working together, bring to bear a powerful array of criminal and civil enforcement resources. The task force is working to improve efforts across the federal executive branch and, with state and local partners, investigate and prosecute significant financial crimes, ensure just and effective punishment for those who perpetrate financial crimes, combat discrimination in the lending and financial markets, and recover proceeds for victims of financial crimes.

This matter was handled by Assistant United States Attorneys Gerald S. Sachs and Amy Berne.

For further information please contact Sally Q. Yates, United States Attorney, or Charlyse L. Alexander, Executive Assistant United States Attorney, through Patrick Crosby, Public Affairs Officer, U.S. Attorney's Office, at (404) 581-6016. The Internet address for the HomePage for the U.S. Attorney's Office for the Northern District of Georgia is www.justice.gov/usao/gan.