SIGNED.

Dated: September 21, 2011

Michael S. McManus, Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

SOUTHWESTERN BUSINESS FINANCING CORPORATION, Plaintiff, vs. MARK KALA BRIGGS and WENDY GERLACH BRIGGS, Defendant.	(Chapter 7 Case) No. No. 2:09-bk-31388-SSC Adv. No. 2-10-ap-00364-SSC **JUDGMENT**

This matter having come before the Court pursuant to the trial between the parties held on July 20, 21 and 22, 2011, and the Court having received the evidence, heard the arguments, and reviewed the pleadings of record of the parties;

THIS COURT FINDS that the debts of Mark Kala Briggs and Wendy Gerlach Briggs (the "Briggs") are dischargeable under the law and find for the Briggs on both counts of Plaintiff Southwestern Business Finance Corporation's ("SWBF") Amended Complaint as set forth more particularly in this Court's Findings of Fact and Conclusions of Law (Dkt #80) which is incorporated fully herein by this reference (a copy of which is attached hereto as Exhibit A).

Based upon the foregoing, and good cause appearing therefrom,

IT IS ORDERD, ADJUDICATED, AND DECREED as follows:

1. A judgment is granted in favor of the Briggs against Plaintiff SWBF on both counts of SWBF's Amended Complaint.

2. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that it is expressly determined by the Court that there is no just reason for delay and, pursuant to Rule 54(b), Federal Rules of Civil Procedure, the Court hereby directs immediate entry of this Judgment.

DATED and signed as above.

EXHIBIT A

SIGNED.

Dated: September 7, 2011

Michael S. McManus, Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

DISTRICT OF ARIZONA

In re MARK KALA BRIGGS and WENDY GERLACH BRIGGS, Debtors.	Case No. 2:09-bk-31388-SSC Chapter 7 Case
SOUTHWESTERN BUSINESS FINANCING CORPORATION, as agent for UNITED STATES SMALL BUSINESS ADMINISTRATION, the real party in interest, Plaintiffs, vs. MARK KALA BRIGGS and WENDY GERLACH BRIGGS, Defendants.	Adv. No. 2:10-ap-00364-SSC Date: July 20, 21, 22, 2011

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court conducted a bench trial of this adversary proceeding on July 20, 21, and 22, 2011. Having received and reviewed the evidence and arguments of the parties, as well as their proposed findings and conclusions, the Court now makes its findings of fact and conclusions of law pursuant to Rule 7052 of the Rules of the Bankruptcy Procedure.

Findings of Fact

1. This proceeding involves a Small Business Administration ("SBA") loan personally guaranteed by the debtors Mark and Wendy Briggs (the "Briggs" or the "Debtors"). Plaintiff Southwestern Business Finance Corporation ("SWBF") is a lender that makes SBA loans.

2. In the Spring and early Summer of 2007, Mark Briggs negotiated to purchase a Scottsdale bar and restaurant known as Sugar Daddy's, as well as the real estate on which Sugar Daddy's was located.

3. In early 2007, Mr. Briggs began working with Choice Bank as one of the potential lenders for the purchase.

4. On July 12, 2007, Mr. Briggs caused Sugar Real Estate, LLC ("Sugar Real Estate"), Sugar Management, LLC ("Sugar Management"), and Sugar Operations, LLC ("Sugar Operations") to be formed.

   a. Sugar Real Estate was formed to borrow the money to purchase the real property. It would repay that loan. The members of Sugar Real Estate were: Sugar Investment Group, LLC ("Sugar Investment"), 5%; Shari Davis, 65%; Jacqui Allen, 15%; and Mark Briggs, 15%.

   b. Sugar Operations would operate Sugar Daddy's and rent the real property from Sugar Real Estate. The members of

Sugar Operations, and the percentage of their equity interests, were identical to their equity interests in Sugar Real Estate.

c. Sugar Management would manage Sugar Real Estate and Sugar Operations.

d. The membership of Sugar Investment would consist of investors. At the time the loan transaction described below was negotiated and consummated, there were no investors. Once subscriptions were sold, the investors were to receive a preferred return of their investment from profits of Sugar Real Estate, and then profits would be divided among all members in accordance with their equity interests.

These entities are collectively referred to as the "Sugar Entities."

5. In early August 2007, Mr. Briggs was introduced to Ross Kohl of SWBF by Choice Bank's loan officer, Marcus Di Fiore, for the purpose of exploring a loan to finance Sugar Real Estate's acquisition of the restaurant real property. Mr. Di Fiore introduced Mr. Briggs to Mr. Kohl because he understood that the project might be eligible for Section 504 financing from the SBA. SWBF provided such financing. Neither Mr. Briggs nor Mr. Di Fiore had prior experience in Section 504 financing.

6. Mr. Briggs, in his capacity as a manager of Sugar Management on behalf of Sugar Real Estate, prepared the original loan application to SWBF with the assistance of Mr. Kohl, who was the business development officer and underwriter for SWBF. Mr. Kohl was Mark Briggs' point of contact with SWBF during the application, structuring, and approval process of the loan

transaction. Mr. Kohl provided Mr. Briggs with information about the Section 504 loan eligibility, application, and approval process. Mr. Briggs conferred with Mr. Kohl when organizing the Sugar Entities.

7. Typically, SBA Section 504 loans require the borrower to make a contribution (the "borrower contribution") in connection with the loan. The loan application signed by Mr. Briggs as Manager of Sugar Management on behalf of Sugar Real Estate, identifies the source of Sugar Real Estate's borrower contribution as a "capital contribution from owners."

8. In connection with the loan application process, the Briggs and the other individual (i.e., non-entity) owners of Sugar Real Estate provided SWBF with personal financial statements and tax returns. The Briggs' personal financial statement disclosed over $10.2 million in contingent liabilities.

9. On or about August 30, 2007, SWBF prepared an internal memorandum for its loan committee summarizing the Sugar Real Estate loan transaction (the "Loan Committee Memorandum"). According to the Loan Committee Memorandum, the funding for the Sugar Real Estate transaction would consist of three components: (a) a loan by Choice Bank in the amount of $2,519,000 secured by a first position deed of trust on Sugar Real Estate's real property; (b) a $1,670,000 loan by SWBF (the SBA) secured by a second deed of trust on Sugar Real Estate's real property; and (c) a borrower contribution by Sugar Real Estate of $569,904.[1]

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[1] As discussed in more detail below, the actual amounts loaned were slightly different than the amounts discussed in the Loan Committee Memorandum. The actual amounts were: (1) $2,265,800

10. The Loan Committee Memorandum further indicated that Sugar Operations would receive a Section 7A loan, another type of SBA loan, from Choice Bank to fund the purchase of Sugar Daddy's operating business assets, and that the Briggs, Todd Allen, Jacqui Allen, and Shari Davis (collectively, the "Guarantors") would personally guarantee the loan.

11. The Loan Committee Memorandum also discussed the capitalization of Sugar Real Estate indicating that: "[t]he borrowers [Sugar Real Estate] will also payback [sic] money to the investors which own Sugar Investment Group, LLC the 5% owner of the business as warranted by net profits. Once the owners [Sugar Investment Group] are paid their initial investment, they will be paid profits based on their ownership interest. It is set up as a pure investment; therefore there is no set payback schedule or note payable to the investors."

12. The respective operating agreements for the Sugar Entities were provided to SWBF. Consistent with the Loan Committee Memorandum, Sugar Real Estate's operating agreement provides that it would receive a $600,000 capital contribution from Sugar Investment, and that Sugar Investment would receive a preferred return on its capital in addition to an ongoing 5% percentage interest in Sugar Real Estate.

13. In September 2007, Mr. Di Fiore informed Mr. Briggs that Choice Bank would not be able to provide the proposed Section 7A financing for Sugar Operations. As a result, Sugar

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from Choice Bank; (2) $1,717,000 from SWBF; and (3) a borrower contribution of $511,388.

Operations asked the seller of the restaurant/real property to finance a portion of the sale by carrying back a note in the amount of $550,000. Mr. Briggs disclosed this development to Mr. Kohl prior to the transaction closing date. His disclosure is referred to in SWBF's internal credit memorandum prepared by Mr. Kohl and reviewed by SWBF's CEO and President, Robert McGee.

14. At approximately the same time, Mr. Briggs informed Mr. Kohl that Sugar Investments had not yet raised capital from investors to fully fund the borrower contribution and the other capital needs of Sugar Real Estate and Sugar Operations. Therefore, to close the transactions Sugar Investment was planning to borrow a large portion of the funds that it would be investing in Sugar Real Estate.

15. Mr. Kohl testified that he did not recall Mr. Briggs informing him of Sugar Investment's plans to obtain outside investors or to borrow capital to fund its initial investment in Sugar Real Estate. The Court, however, finds that he was so informed. Other than Mr. Kohl's testimony at trial, there was no persuasive evidence contradicting Mr. Briggs' testimony about the structure and source of Sugar Real Estate's borrower contribution.

16. In September 2007, Sugar Investment provided an offering memorandum to certain qualified investors about an opportunity to invest in Sugar Investment. That offering memorandum made plain that Sugar Daddy's was intended to operate as a bar and restaurant. But, it also made plain that the Sugar Daddy's real estate held a long-term potential for later redevelopment. Mr. Briggs discussed this potential with Mr. Kohl

as well as the possible early payoff of the loan. Mr. Kohl admitted that he discussed the prepayment penalties associated with a prepayment with Mr. Briggs.

17. On September 26, 2007, Mr. Briggs, in his capacity as manager of Sugar Management, signed an 'acceptance' of the "Authorization for Debenture Guarantee" that SWBF prepared for the SBA. The Authorization amounts to a loan agreement between SWBF/SBA and Sugar Real Estate. The Authorization provides that the funding for the Sugar Real Estate transaction would have three components: (1) the loan from Choice Bank, which amounted to $2,265,800; (2) the SWBF/SBA loan of $1,717,000; and (3) the Sugar Real Estate borrower contribution of $511,388. The Authorization provided that the borrower contribution "may come from Borrower's own resources, CDC [SWBF], or another source." The Guarantors and Sugar Operations guaranteed the Sugar Real Estate loans from Choice Bank and SWBF/SBA. Sugar Investment did not guarantee those loans.

18. Also on September 26, 2007, Mr. Briggs, as manager of Sugar Management, on behalf of Sugar Real Estate and Sugar Operations, and individually as guarantor, signed a Loan and Assistance Agreement which included certain representations and warranties. These included a representation that there had been no material adverse changes in the financial status of Sugar Real Estate, Sugar Operations, or the Guarantors since the August 9, 2007 loan application. Wendy Briggs and the other Guarantors also signed this document.

19. In September 2007, Sugar Investment capitalized Sugar Real Estate. To do this, Sugar Investment borrowed $560,000 from

Valley Films, LLC which it had borrowed from Castle Valley Films, LLC. Valley Films is a member and Manager of Castle Valley Films. Mr. Briggs was the co-manager of Valley Films, along with Christopher LaMont.

a. On September 28, 2007, Valley Films caused Castle Valley Films to transfer $560,000 to Sugar Operations' account for the benefit of Sugar Investment. Sugar Operations, once again for the benefit of Sugar Investment,[2] wired a portion of these funds, $483,000, to the title company.[3]

b. Although the money referred to in subparagraph (a) flowed from Castle Valley Films directly to Sugar Operations rather than to Sugar Investment, the documentation for the loans indicated that Sugar Investment borrowed the funds from Valley Films which had borrowed the funds from Castle Valley Films.

c. The documentation for these loans (notes and personal guarantees) was not prepared contemporaneously with the funding of the loans. The documents were drawn up in February 2008 but provided they were effective in September 2007. Mr. Briggs testified that the loans were approved by the other manager of Valley Films, Mr. LaMont, and that

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[2] A possible explanation for the flow of money to and through Sugar Operations rather than Sugar Investment, may be the fact that Sugar Operations, as the operating entity, was the one with a bank account in September 2007.

[3] The total amount of the borrower contribution under the Sugar Real Estate loan was $511,388. The difference between $511,388 and $483,000 was made up by funds contributed by the Briggs and the other owners on behalf of Sugar Real Estate.

Valley Films had the authority under the Castle Valley Films operating agreements to make the loans. Mr. Briggs also testified that the Briggs personally guaranteed the Valley Films loan to Sugar Investment. There was no persuasive contrary evidence.

20. Consistent with their not being the borrower of the $560,000, neither Sugar Operations nor Sugar Real Estate repaid the $560,000 to Valley Films. Rather Sugar Investment, as the borrower and without financial assistance from Sugar Real Estate or Sugar Operations, repaid the $560,000 to Valley Films. Valley Films in turn repaid Castle Valley Films.

21. Contemporaneously with the purchase of the real estate, Sugar Operations closed on its purchase of the Sugar Daddy's operating assets, financing the purchase in part with the seller carry-back financing in the amount of $550,000. The Guarantors all personally guaranteed the seller carry-back financing.

22. At about the time of the closing, Mr. Briggs and Jacqui Allen executed an option to purchase part of Shari Davis' interest in Sugar Operations and Sugar Real Estate (32% of the total project). This option was never exercised.

23. Around December 3, 2007, Mark Briggs, in his capacity as Manager of Sugar Management, signed a certification indicating that there had been no material adverse changes in the financial condition of Sugar Real Estate or Sugar Operations. In connection with that certification, Mr. Briggs signed a balance sheet for Sugar Real Estate, which had been prepared by Mr. Kohl, indicating that Sugar Real Estate had $511,388 in equity. On that same date, Robert McGee signed a certification on behalf of

SWBF indicating that Sugar Real Estate had made the borrower contribution.

24. On December 4, 2007, SWBF's legal counsel issued a closing compliance opinion letter. SWBF's legal counsel had reviewed a number of documents, including the Sugar Entities' and Sugar Investment's respective operating agreements. SWBF's legal counsel stated, ". . . we have been engaged by the CDC [SWBF] as counsel, no information has come to our attention that has given us actual knowledge or actual notice or reasonably would lead us to conclude that anything in this letter or in any of the documents referred to in this letter on which we have relied (including SBA Form 2101 the CDC certification) is misleading or inaccurate or that further inquiry is appropriate." SWBF's compliance counsel concluded that it had found "no fraud" in connection with the loan.

25. To the extent one of the above findings of fact is a conclusion of law, the Court adopts it as one of its conclusions. Similarly, to the extent one of the below conclusions of law is a finding of fact, the Court adopts it as one of its findings.

Conclusions of Law

1. This proceeding is pursuant to 11 U.S.C. § 523(a)(2)(B) and (a)(6). It is a core proceeding over which the Court has subject matter jurisdiction. 28 U.S.C. §§ 1334(b) and 157(b)(2)(J).

2. In order to prevail on its claim under section 523(a)(2)(B), SWBF must prove by a preponderance of the evidence that:

a. The debtors obtained the loan from SWBF;

b. through the use of a statement in writing;

c. respecting the debtors' financial condition;

d. that was materially false;

e. made with the intent to deceive SWBF; and

f. upon which SWBF reasonably relied to its detriment and loss.

In re Everett, 364 B.R. 711 (Bankr. D. Ariz. 2007) (citing In re Candland, 90 F.3d 1466, 1469 (9^{th} Cir. 1996)).

3. SWBF's pleadings failed to specifically allege the misrepresentations made by the Briggs. During its closing argument at trial, SWBF identified two alleged misrepresentations:

a. the Briggs misrepresented the source and nature of Sugar Real Estate's borrower contribution; and

b. the Briggs concealed their intention to develop the restaurant real estate for a use unrelated to the operation of a restaurant.

4. Even though not mentioned during closing argument, SWBF alluded to three other misrepresentations during its presentation of evidence.

a. the Briggs had misrepresented their financial condition on September 26, 2007 by not disclosing their personal guarantees of Sugar Operations' seller carry-back loan or the Sugar Investment loan from Valley Films;

b. the Briggs had failed to disclose the existence of Sugar Operations' seller carry-back financing; and

c. the Briggs misrepresented the ownership structure of

Sugar Real Estate and Sugar Operations.

5. The Briggs truthfully disclosed how Sugar Real Estate would be obtaining its borrower contribution for the SWBF loan.

a. Sugar Real Estate was capitalized by an equity investment from Sugar Investment. This is disclosed in Sugar Real Estate's operating agreement and in SWBF's Loan Committee Memorandum.

b. SWBF, however, argued that it did not know that Sugar Investment would be borrowing the funds to make its equity investment in Sugar Real Estate. Mr. Briggs, however, disclosed to Mr. Kohl that Sugar Investment would be borrowing the funds for its equity investment in Sugar Real Estate. While Mr. Kohl testified that he believed the funds for Sugar Real Estate's borrower contribution would be coming solely from the personal assets of the Guarantors, the Court does not believe his testimony.

i. The personal financial statements of the Guarantors given to SWBF and Mr. Kohl did not include sufficient liquid assets to fund a $511,388 borrower contribution. The liquid assets of the Guarantors were: Ms. Davis, $4,500; the Allens, $21,400; and the Briggs, $58,000.

ii. Further, the Court notes that Mr. Kohl's recollection of the transaction was contradicted in another particular. Mr. Kohl testified that he had no knowledge of seller carry-back financing, but SWBF's own underwriting memorandum, prepared by him, proves otherwise.

c. Because the money for the borrower contribution was transferred directly from Castle Valley Films to Sugar Operations, SWBF asserted that Sugar Operations or Sugar Real Estate, not Sugar Investment, borrowed the money for capital contribution. If true, this would be problematic for the Briggs. Sugar Real Estate was the SWBF borrower and Sugar Operations was a guarantor for the loan. If either had borrowed the funds for the borrower contribution, this would have been a material change in their financial condition that was not disclosed to SWBF prior to the close of the loan transaction.

d. However, Sugar Investment, which was not a SWBF borrower or guarantor, borrowed and repaid the funds to Valley Films. Neither Sugar Operations nor Sugar Real Estate made any payments to Valley Films or Castle Valley Films.

e. The underwriting documentation, operating agreements, bank account records, tax returns, and the testimony of Mr. Briggs all support the conclusion that Sugar Real Estate and Sugar Operations did not borrow the borrower contribution.

f. While it is true that the loans from Castle Valley Films to Valley Films and then to Sugar Investment were not contemporaneously documented, the Court discerns nothing improper or fraudulent in the later documentation of the loans.

g. The 2007 and 2008 tax returns for Sugar Investment and Sugar Real Estate, as well as their respective operating agreements, treated the money for the borrower contribution as an equity contribution from Sugar Investment into Sugar Real Estate.

h. The Court concludes that the Briggs did not misrepresent the source or nature of Sugar Real Estate's borrower contribution.

6. SWBF also failed to establish the materiality of the fact that Sugar Investments borrowed a portion of the funds used to invest in Sugar Real Estate.

a. The loan documentation provided by SWBF to Sugar Real Estate provides that the borrower contribution could be borrowed by Sugar Real Estate (under certain terms and conditions) or could come from another source, such as Sugar Investment.

b. Sugar Investment was not the "borrower" on the SWBF loan, nor was it a guarantor of that loan or in any other contractual relationship with SWBF.

c. Moreover, none of SWBF's witnesses testified that had SWBF known that Sugar Investment was borrowing any of the money that it was investing in Sugar Real Estate, SWBF would not have made the loan.

d. Neither Sugar Real Estate nor Sugar Operations repaid any money to Castle Valley Films or Valley Films - the money was treated as a true equity investment.

7. For these reasons, the Court concludes that the fact that Sugar Investment borrowed a portion of the funds it invested in Sugar Real Estate was not material to SWBF's decision to make the loan.

8. The Briggs did not misrepresent the purpose of the

loan. That is, they did not secretly intend to use the SWBF loan to redevelop the restaurant real property rather than to operate the restaurant.

a. While Mr. Briggs testified that he recognized that the real property had a potential for later redevelopment, the entire transaction was used to acquire the real and personal property that comprised the restaurant and to operate it.

b. There was no evidence that the Sugar Entities engaged in any redevelopment activities for the property.

c. The Sugar Investment private placement memorandum sent to prospective investors prominently indicates that it is a bar/restaurant operation investment opportunity and makes no specific mention of redeveloping the property.

d. Sugar Operations operated Sugar Daddy's as a bar and restaurant for approximately 18 months before the business failed.

9. Therefore, the Court concludes that the Briggs did not misrepresent the intended purpose of the SWBF loan.

10. The Briggs did not misrepresent their financial condition by not disclosing their personal guarantees of the seller carry-back loan or the Sugar Investment loan from Valley Films.

a. Mr. Briggs told Mr. Kohl about both the seller carry-back loan and the Sugar Investment loan, as well as the attendant personal guarantees.

i. With respect to the seller carry-back loan, SWBF's underwriting documents show SWBF anticipated that the funds to purchase the Sugar Daddy's operating assets would come from the 7A loan from Choice Bank, which would have been personally guaranteed by the Briggs and the other Guarantors. SWBF's underwriting documents also show that SWBF knew about the Sugar Operations' seller carry-back financing. When the 7A loan could not be obtained, there was no plausible reason for SWBF to expect that the Briggs would not be guaranteeing a replacement loan.

ii. With respect to the guarantee of the Sugar Investment loan from Valley Films, the Court again finds no reason to not believe Mr. Briggs's testimony that he disclosed the guarantee to Mr. Kohl.

b. There was no reason to not disclose the guarantees because they were simply not material.

i. The Briggs' financial statement included approximately $10.2 million of contingent liabilities as of August 9, 2007 (before the close of the Sugar Daddy's transaction). SWBF's Loan Committee Memorandum listed the Briggs' net worth as approximately $1.1 million.

ii. Once the transaction closed, the Briggs would have approximately $15 million of contingent liabilities. Assuming the Briggs had not signed guarantees of the Sugar Operations' seller carry-back loan and the Sugar Investment loan from Valley Film, their net worth would have been approximately 7.7% of their contingent liabilities. Adding the Briggs' guarantees of Sugar Operations' seller carry-back and Sugar Investment loans results in their net worth being approximately 7.1% of their contingent liabilities.

iii. Per SBA regulations, the Briggs' liquid assets constituted 0.41% (with no additional guarantees) or 0.37% (with the two additional guarantees) of their contingent liabilities.

iv. The foregoing demonstrates what the Loan Committee Memorandum made explicit - the primary basis for approving the loan was not the amount of the Guarantors' assets, but rather the historical and projected cash flows of the business and the value of the collateral.

v. SWBF provided no persuasive evidence that the Briggs' net worth was a material reason for approving the Sugar Real Estate loan. None of SWBF's witnesses testified that if the Briggs' two additional guarantees had been disclosed that SWBF would have not approved the loan.

vi. The Court concludes that the Briggs' guaranty of the Sugar Investment loan from Valley Films ended up having no impact whatever on Sugar Real Estate's ability to pay back the loan to SWBF or the Briggs' ability to meet their guaranty obligations to SWBF. Once Sugar Investment repaid the Valley Films loan in April 2008, a full year before the Sugar Daddy's business ceased operating, the Briggs' guarantee of that loan became irrelevant for purposes of their obligations to SWBF. The Briggs' guarantee of the

Sugar Investment loan did not put SWBF into a worse economic position vis a vis the Briggs.

11. As discussed above, SWBF's internal written underwriting documentation related to the Sugar Real Estate loan transaction reveals that SWBF was aware of the seller carry-back loan taken by Sugar Operations to complete the transaction. SWBF knew that the 7A financing sought from Choice Bank had fallen through. Mr. Kohl, who first testified that he did not know about the seller carry-back financing, ultimately acknowledged that he knew the seller carry-back financing had replaced the proposed 7A loan. Therefore, the Court concludes that the Briggs did not make any misrepresentations regarding the seller carry-back financing.

12. The Court finally concludes that there was no misrepresentation regarding the ownership of equity in Sugar Real Estate and Sugar Operations.

a. In fact, the equity interests in both of these entities were as stated in Findings of Fact 4(a) and 4(b). SWBF was not told the contrary. There was no misrepresentation regarding the ownership of either entity.

b. Around September 26, 2007, Shari Davis gave Mr. Briggs and Jacqui Allen an option to each purchase up to 32% of Sugar Real Estate and Sugar Operations from her 65% ownership interest in those two entities.

i. However, this option was never exercised.

ii. Mr. Briggs testified that he discussed with Mr. Kohl the possibility of changing the ownership percentages of the Sugar Entities in the future.

iii. Mr. Kohl admitted during his testimony that SBA regulations allow for future ownership changes of greater than 10% after at least six months following the funding of the loan.

13. SWBF's complaint also seeks relief under 11 U.S.C. § 523(a)(6). That is, it asserts that the Briggs willfully and maliciously injured SWBF in connection with the loan. The factual underpinning of this claim is based on the alleged misrepresentations supporting the claim for relief under section 523(a)(2). Because the Court has concluded that no material misrepresentations were made, there is no factual basis to support a conclusion that the Briggs willfully and maliciously intended to injure Plaintiffs in connection with the loan.

Conclusion

Based upon the foregoing, the Court finds and concludes that the Briggs' obligations to Plaintiffs are dischargeable in bankruptcy. Judgment will be for Defendants on both counts of the Plaintiffs' complaint. Defendants shall lodge a proposed judgment that is consistent with this decision within 14 days. Defendants may apply for attorneys' fees and costs within 14 days of the date of entry of judgment in accordance with Local Rule 7054-1.