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7 Attorneys for Plaintiff  
 8 BLX CAPITAL, LLC

9 **UNITED STATES DISTRICT COURT**  
 10 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

12 BLX CAPITAL, LLC.  
 13  
 14 Plaintiffs,  
 15  
 16 vs.  
 17 SAM JIN GENERAL SUPPLY, INC., ET  
 18 AL.,  
 19  
 20 Defendants.

Case No. 2:09-CV-02438 GEB-JFM

**STIPULATION AND ORDER TO  
 AMEND PLEADINGS TO  
 SUBSTITUTE REAL PARTY IN  
 INTEREST AS PLAINTIFF**

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**STIPULATION AND [PROPOSED] ORDER TO AMEND PLEADINGS TO  
 SUBSTITUTE REAL PARTY IN INTEREST AS PLAINTIFF**

1 This Stipulation is entered into by and between BLX Capital, LLC (“BLX”),  
2 the United States of America, on behalf of its agency the Small Business  
3 Administration (“SBA”), Sam Jin General Supply, Inc. (“Sam Jin”), Mason Au and  
4 Najoo Au (collectively the “Individuals”), and Wabash National Trailer Centers,  
5 Inc. (“Wabash” and together with the SBA, Sam Jin and the Individuals,  
6 “Defendants”), as more fully described below:

7 WHEREAS, on or about September 26, 2005, Samjin and the Individuals  
8 executed and delivered to BLX a written Promissory Note in the principal sum of  
9 \$1,780,000.00 (the “Note”);

10 WHEREAS, on or about September 26, 2005, the Individuals executed and  
11 delivered to BLX a certain Deed of Trust with Assignments of Rent (“Deed of  
12 Trust”), which was recorded on September 27, 2005 in Book 2005-0048140 in the  
13 official Records of the County of Yolo, State of California;

14 WHEREAS, on or about September 28, 2005, BLX executed an Allonge to  
15 the Note and an Assignment of the Deed of Trust, transferring the Note and Deed  
16 of Trust to BLC Capital Funding, LLC (“BLC”);

17 WHEREAS, on or about September 28, 2005, BLC executed an Allonge to  
18 the Note and an Assignment of the Deed of Trust, transferring the Note and Deed  
19 of Trust to HSBC Bank USA, its successors and assigns, as indenture trustee under  
20 that certain Indenture dated as of March 19, 2004, relating to BLX Conventional  
21 Funding Trust II Notes (the “First Trustee”);

22 WHEREAS, on or about March 1, 2006, the First Trustee executed an  
23 Allonge to the Note and an Assignment of the Deed of Trust, transferring the Note  
24 and Deed of Trust to The Bank of New York Trust Company, N.A., its successors  
25 and assigns, as Indenture Trustee under that certain Indenture dated as of March 1,  
26 2006, as the same may be amended from time to time, for the benefit of the  
27 Indenture Trustee and the holders of Business Loan Express Business Loan-

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1 Backed Notes, 2006-A and the Hedge Counterparty, as their respective interest  
2 may appear, subject to the Indenture dated as of March 1, 2006, as the same may  
3 be amended from time to time relating to BLX Conventional Funding Trust I Notes  
4 (the “Second Trustee”);

5 WHEREAS, pursuant to a merger in 2007, The Bank of New York Trust  
6 Company, N.A. is now known as the Bank of New York Mellon Trust Company,  
7 N.A., and thus the current holder of the Note and Deed of Trust is the Bank of New  
8 York Mellon Trust Company, N.A. f/k/a The Bank of New York Trust Company,  
9 N.A., its successors and assigns, as Indenture Trustee under that certain Indenture  
10 dated as of March 1, 2006, as the same may be amended from time to time, for the  
11 benefit of the Indenture Trustee and the holders of Business Loan Express  
12 Business Loan-Backed Notes, 2006-A and the Hedge Counterparty, as their  
13 respective interest may appear, subject to the Indenture dated as of March 1, 2006,  
14 as the same may be amended from time to time relating to BLX Conventional  
15 Funding Trust I Notes (“BNY as Trustee”);

16 WHEREAS, previously it was the policy of BLX to repurchase defaulted  
17 notes from the securitization trustee (here, BNY as Trustee) and foreclose under  
18 BLX’s own name, but that policy was changed without being communicated to all  
19 employees of BLX or its counsel herein;

20 WHEREAS, as a result, BLX mistakenly brought this action in its own name  
21 when the Note and Deed of Trust were actually owned by the securitization trustee,  
22 BNY as Trustee, which is the real party in interest with respect to plaintiff’s claims  
23 herein;

24 WHEREAS, Federal Rule of Civil Procedure (“FRCP”) 15(a)(2) provides  
25 that, where a party is not entitled to amend a pleading as a matter of course  
26 pursuant to FRCP 15(a)(1), a party may amend its pleading only with the opposing  
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1 party's written consent or the court's leave, which leave should be given freely  
2 when justice so requires;

3 WHEREAS, FRCP 15(c)(1)(B) provides in part that an amendment relates  
4 back to the date of the original pleading when it asserts a claim that arose out of the  
5 conduct, transaction, or occurrence set out -- or attempted to be set out -- in the  
6 original pleading;

7 WHEREAS, FRCP 17(a)(1) provides that an action must be prosecuted in  
8 the name of the real party in interest, and FRCP 17(a)(3) provides in part that after  
9 substitution of the real party in interest, the action proceeds as if it had been  
10 originally commenced by the real party in interest;

11 **NOW, THEREFORE, IT IS HEREBY STIPULATED** by and between  
12 BLX and Defendants, through their respective counsel of record, that:

13 1. BLX may have leave to amend the pleadings and proceedings herein  
14 to substitute as plaintiff the real party in interest herein, BNY as Trustee.

15 2. All pleadings and proceedings in this action may be amended by  
16 striking out BLX and adding BNY as Trustee as plaintiff herein.

17 3. All pleadings hereby amended are deemed to relate back to the date of  
18 the original pleading pursuant to Fed. Rule Civ. Proc. 15(c)(1)(B) and 17(a)(3).

19  
20 DATED: February 17, 2010

LEO D. PLOTKIN  
JOHN P. MERTENS  
LEVY, SMALL & LALLAS  
A Partnership Including Professional  
Corporations

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26 By: /s/ John P. Mertens

JOHN P. MERTENS  
Attorneys for Plaintiff  
BLX CAPITAL, LLC

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DATED: February 17, 2010

BENJAMIN B. WAGNER  
United States Attorney

By: /s/ Bobbie J. Montoya  
BOBBIE J. MONTOYA  
Attorneys for  
UNITED STATES OF AMERICA

DATED: February 17, 2010

BILL J. SYMES  
FOLEY & LARDNER LLP

By: /s/ Bill J. Symes  
BILL J. SYMES  
Attorneys for Defendant  
WABASH NATIONAL TRAILER  
CENTERS, INC.

DATED: February 17, 2010

JAMES J. KIM  
KIM & ASSOCIATES

By: /s/ James J. Kim  
JAMES J. KIM  
Attorneys for Defendants  
SAM JIN GENERAL SUPPLY, INC.,  
MASON AU AND NANJOO AU


1 **ORDER**

2 Good cause appearing and the parties having so stipulated, IT IS HEREBY  
3 ORDERED that:

4 1. Plaintiff BLX Capital, LLC (“BLX”) is granted leave to amend the  
5 pleadings and proceedings herein to substitute as plaintiff the real party in interest  
6 herein, Bank of New York Mellon Trust Company, N.A., f/k/a The Bank of New  
7 York Trust Company, N.A., as Indenture Trustee for the benefit of the  
8 Noteholders, the Hedge Counterparty and the Certificateholders of Business Loan  
9 Express Business Loan Trust 2006-A (“BNY as Trustee”).

10 2. All pleadings and proceedings in this action hereby are, and shall be  
11 deemed to be, amended by substituting out BLX and adding BNY as Trustee as  
12 plaintiff herein.

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14 Dated: February 22, 2010

  
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GARLAND E. BURRELL, JR.  
United States District Judge