

NEUFELD LAW GROUP  
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9  
10 Attorneys for Plaintiff TomatoBank, N.A.

*Abert 7/18/01*  
*SS*  
*Maleala*  
*Masterson*

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES  
MAR 18 2010  
John A. Clarke, Executive Officer/Clerk  
By [Signature] Deputy  
RUGENA LOPEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

11 TOMATOBANK, N.A., a national banking  
12 association,

12 Plaintiff,

13 vs.

14 DANIEL MASTERSON, an individual, and  
15 DOES 1-50, inclusive,

16 Defendants.

CASE NO. **BC488849**

**VERIFIED COMPLAINT FOR  
DAMAGES FOR BREACH OF WRITTEN  
GUARANTY**

17 Plaintiff TomatoBank, N.A., based upon personal knowledge as to all acts or events that it  
18 has undertaken and witnessed, and upon information and belief as to all others, alleges as follows:

**PARTIES**

20 1. Plaintiff TomatoBank, N.A. ("TomatoBank") is, and at all relevant times herein  
21 was, a federally-chartered bank, with its principal place of business in Alhambra, California.

22 2. TomatoBank is informed and believes, and based thereon alleges, that defendant  
23 Daniel Masterson ("Masterson") is, and at all relevant times was, an individual residing  
24 with a place of residence in Los Angeles County, California.

25 3. The agreements sued upon herein provide for jurisdiction and venue in Los  
26 Angeles County, California and were entered into and to be performed within the jurisdictional  
27 boundaries of this Court. This Court is the proper Court for trial of this action.  
28

FILED  
RECEIPT #:  
DATE PAID: 03/18/10 11:25:16 AM  
PAYMENT: \$355.00  
RECEIVED  
CASH:  
CHECK:  
CHANGE:  
CASH:  
CHECK:  
0310

1 4. TomatoBank is ignorant of the true names and capacities of defendants sued herein  
2 as Does 1 through 50, inclusive, and therefore sues these defendants by such fictitious names.  
3 TomatoBank will amend this complaint to allege their true names and capacities when ascertained,  
4 together with such other allegations as may be appropriate.

5 5. TomatoBank is informed and believes, and on that basis alleges, that each  
6 defendant listed herein is the agent of every other defendant, and in performing the actions  
7 described in this complaint, each defendant was acting within the scope of that agency. Further,  
8 each defendant is the alter ego of every other defendant herein, such that each defendant in equity  
9 should be held responsible under law for the damages caused by every other defendant herein.

10 6. The within action is not subject to the provisions of Section 2981, et seq. or Section  
11 1801, et seq. of the Civil Code of the State of California.

12 7. This is a collection action against Masterson based on his unconditional written  
13 guaranty of a promissory note dated June 6, 2007, in the original principal sum of \$3,200,000,  
14 executed by the borrower, Bellalily, LLC ("Bellalily" or "Borrower"). Bellalily is not a defendant  
15 in this case.

16 GENERAL ALLEGATIONS

17 8. Under the terms of the Construction Loan Agreement, TomatoBank agreed to loan  
18 to Bellalily the maximum principal amount of \$3,200,000 for the construction of a condominium  
19 unit located at 4440 Talofa Avenue, Los Angeles, California. Under the terms of the Promissory  
20 Note ("Note"), Bellalily agreed to repay TomatoBank the sum of \$3,200,000 or as much of the  
21 principal as may be outstanding, plus interest and other charges. The maturity date of the Note  
22 was extended from June 6, 2008 to September 6, 2009 through a Change in Terms Agreement  
23 dated September 6, 2008. Thus, the Note matured on September 6, 2009, and Borrower has failed  
24 to pay its obligations under the Note. Bellalily executed the Note in consideration of  
25 TomatoBank's loan and extension of credit. A true and correct copy of the Note is attached hereto  
26 as exhibit A and incorporated herein by reference.

27 9. To induce the Bank to provide the loan, and in consideration of TomatoBank's  
28 extension of credit to Borrower, on or about June 6, 2007, Masterson signed a Commercial

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1 Guaranty (the "Guaranty") by which he absolutely and unconditionally guaranteed full and  
2 punctual payment and satisfaction of Borrower's debt to TomatoBank, and the performance and  
3 discharge of all of Borrower's obligations under the Note, Construction Loan Agreement, and  
4 other related loan documents (collectively, the "Loan Documents"). A true and correct copy of  
5 the Guaranty is attached hereto as Exhibit B and incorporated herein by reference.

6 10. Among other things, the Guaranty expressly provided as follows:

7 This is a guaranty of payment and performance and not of collection, so Lender can  
8 enforce this Guaranty against Guarantor even when Lender has not exhausted  
9 Lender's remedies against anyone else obligated to pay the Indebtedness or against  
10 any collateral securing the Indebtedness. Guarantor will make any payments to  
11 Lender or its order, on demand. . . .

12 The word "Indebtedness" as used in this Guaranty means all of the principal  
13 amount outstanding from time to time and at any one or more times, accrued  
14 unpaid interest thereon and all collection costs and legal expenses related thereto  
15 permitted by law, attorneys' fees, arising from any and all debts, liabilities and  
16 obligations of every nature or form, now existing or hereafter arising or acquired,  
17 that Borrower . . . owes or will owe Lender.

18 Guarantor waives any right to require Lender to (A) make any presentment, protest,  
19 demand, or notice of any kind, including notice of change of any terms of  
20 repayment of the Indebtedness, default by Borrower or any guarantor or surety, any  
21 action or nonaction taken by Borrower, [or] Lender . . . .

22 Guarantor waives all rights and defenses that Guarantor may have because  
23 Borrower's obligation is secured by real property. This means among other things:  
24 (1) Lender may collect from Guarantor without first foreclosing on any real or  
25 personal property collateral pledged by Borrower. (2) If Lender forecloses on any  
26 real property collateral pledged by Borrower: (a) the amount of Borrower's  
27 obligation may be reduced only by the price for which the collateral is sold at the  
28 foreclosure sale, . . . This is an unconditional and irrevocable waiver of any rights  
and defenses Guarantor may have because Borrower's obligation is secured by real  
property. These rights and defenses include, but are not limited to, any rights and  
defenses based upon Section 580a, 580b, 580d, or 726 of the Code of Civil  
Procedure.

29 Guarantor acknowledges that Guarantor has provided these waivers of rights and  
30 defenses with the intention that they be fully relied upon by Lender. Guarantor  
31 further understands and agrees that this Guaranty is a separate and independent  
32 contract between Guarantor and Lender, given for full and ample consideration,  
33 and is enforceable on its own terms. Until all of the Indebtedness is paid in full,  
34 Guarantor waives any right to enforce any remedy Guarantor may have against the  
35 Borrower or any other guarantor, surety or other person, and further, Guarantor  
36 waives any right to participate in any collateral for the Indebtedness now or  
37 hereafter held by Lender.

38 11. TomatoBank accepted the Guaranty and, in reliance thereon, extended credit to  
Borrower as alleged herein.

1 12. TomatoBank disbursed the total sum of \$2,807,531.20 to or on behalf of Borrower,  
2 in accordance with the Loan Documents.

3 13. Following the loan maturity on September 6, 2009, Borrower failed to pay its debt  
4 to TomatoBank and has failed to make any interest payments since at least that date. On January  
5 29, 2010, TomatoBank made written demand to Borrower and Masterson for payment in full of all  
6 principal, accrued unpaid interest and late charges due under the Loan Documents; however,  
7 Borrower and Masterson failed and refused to pay the sum due and owing to TomatoBank.

8 14. Masterson's failure to fulfill his obligations under the Guaranty constitutes a breach  
9 of contract.

10 **FIRST CAUSE OF ACTION**

11 **(Breach of Written Guaranty)**

12 15. TomatoBank realleges and incorporates by this reference Paragraphs 1 through 14  
13 as if set forth in full herein.

14 16. Masterson executed a valid written Guaranty.

15 17. TomatoBank has performed all of the obligations required on its part to be  
16 performed under the terms of the Guaranty.

17 18. Masterson has failed and refused to perform his obligations under the Guaranty.

18 19. As an actual and proximate result of Masterson's breach of the Guaranty, as of  
19 March 5, 2010, there was and still is due, owing and payable by Masterson to TomatoBank the  
20 sum of not less than \$2,807,531.20, plus costs and expenses chargeable to Borrower and  
21 Guarantor pursuant to the Loan Documents, Change in Terms Agreement and Guaranty, as well as  
22 unpaid accrued interest of \$58,313.73, late charges pursuant to the Loan Documents and the  
23 Guaranties, and delinquent property taxes in the amount of \$45,723.18, all according to proof at  
24 time of trial or entry of judgment.

25 20. As an actual and proximate result of Masterson's breach of the Guaranty,  
26 TomatoBank has incurred additional consequential damages in an amount to be proved at trial.

27 21. The Loan Documents and Guaranty provide that Masterson agrees to pay attorneys'  
28 fees incurred by TomatoBank in enforcing its rights under the terms of said documents.

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1 TomatoBank has retained the law firm of Neufeld Law Group for the purpose of instituting and  
2 prosecuting this action.

3 WHEREFORE, Plaintiff TomatoBank prays for judgment against defendant as follows:

- 4 1. For compensatory damages in an amount to be determined at trial, but not less than
- 5 \$2,911,568.11, plus interest and consequential damages;
- 6 2. For prejudgment interest as allowed by law;
- 7 3. For costs of suit and attorneys' fees as allowed by law; and
- 8 4. For such other relief as the court deems just and appropriate.

11 DATED: March 9, 2010

NEUFELD LAW GROUP  
A Professional Corporation  
Timothy L. Neufeld  
Kelly N. Stone  
Eva Wong

By:   
Timothy L. Neufeld  
Attorneys for Plaintiff TomatoBank, N.A.



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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

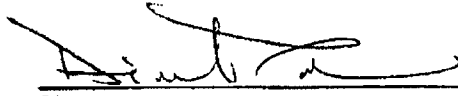
I have read the foregoing VERIFIED COMPLAINT FOR DAMAGES FOR BREACH OF WRITTEN GUARANTY and know its contents.

I am First Senior Vice President/Assistant Chief Credit Officer of TomatoBank, N.A., a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason.  I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.  The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

Executed on March 1<sup>st</sup>, 2010, at Alhambra, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Diana Pun  
Print Name of Signator

  
Signature

