

B 10 (Official Form 10) (12/08)

UNITED STATES BANKRUPTCY COURT Central District of California		PROOF OF CLAIM
Name of Debtor: David Schwartzman		Case Number: 1:09-bk-16565-MT
<i>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503</i>		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Comerica Bank		<input checked="" type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Court Claim Number: <u>9</u> (If known) Filed on: <u>11-30-09</u>
Name and address where notices should be sent: Maria K. Pum, Esq. Henderson, Caverly, Pum & Charney LLP P.O. Box 9144 (all US Mail), 16236 San Dieguito Rd., Ste. 4-13, Rancho Santa Fe, CA 92067 Telephone number: (858) 756-6342		
Name and address where payment should be sent (if different from above): Comerica Bank c/o Katherine J. Schipper 2000 Avenue of the Stars, Suite 210, Los Angeles, CA 90067 Telephone number: (310) 557-4051		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case
1. Amount of Claim as of Date Case Filed: \$ <u>2,147,503.84</u> (See Exhibit A) If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507 (a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5). <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (a)(): _____ Amount entitled to priority: \$ _____ <small>*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
2. Basis for Claim: <u>Guaranty of Money Loaned</u> (See instruction #2 on reverse side.) 3. Last four digits of any number by which creditor identifies debtor: <u>3737</u> 3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ _____ Annual Interest Rate _____ % Amount of arrearage and other charges as of time case filed included in secured claim, If any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim. 7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain: <u>See Exhibit A</u>		
Date: <u>11/30/09</u> Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. Stephen R. Leskovsky, Vice-President - Western Market		FOR COURT USE ONLY

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both 18 U.S.C. §§ 152 and 3571.

Exhibit A
To Proof of Claim filed by
Comerica Bank

The instant claim of Comerica Bank (“Bank”) against David Schwartzman (“Debtor”) is based on that certain “Guaranty” dated as of March 25, 2008 (the “Guaranty”) and executed by Debtor as “Guarantor,” guarantying and promising to pay to Bank the current and future obligations of LB/L-DS VENTURES LOMPOC LLC, a Delaware limited liability company, as “Borrower” to Bank under therein defined “Loan Documents.” The term “Loan Documents” includes (i) a “Building Loan Agreement (Commercial)” dated as of March 25, 2008 by and between Borrower and Bank (the “Loan Agreement”), and (ii) a “Note Secured by Deed of Trust (Floating Rate Note)” dated as of March 25, 2008 in the original principal amount of \$5,748,000 executed by Borrower to the order of Bank (the “Note”).

Calculation of Claim Amount as of June 1, 2009, Petition Date:

<u>Components of Claim</u>	<u>Amount</u>
Principal	\$2,129,903.56
Interest	\$16,343.13
Late Fees	\$817.15
Attorney’s Fees	\$440.00
Appraisal Fees	\$0.00
Total:	\$2,147,503.84¹

Documentation Attached:

1. “Guaranty” dated as of March 25, 2008².

¹ Claim amount increased after June 1, 2009, and continues to increase due to continued accrual of interest, attorney’s fees and other costs and expenses incurred by Bank for which Debtor is liable.

² Additional documentation available upon request.

GUARANTY

COMERICA BANK
75 EAST TRIMBLE ROAD, M.C. 4770
SAN JOSE, CA 95131

TO: COMERICA BANK

In order to induce COMERICA BANK ("Bank"), to extend financial accommodations to LB/L-DS VENTURES LOMPOC LLC, a Delaware limited liability company (hereinafter referred to as "Borrower") pursuant to the terms and conditions of that certain Building Loan Agreement dated March 25, 2008, by and between Borrower and Bank ("Loan Agreement"), and evidenced by that certain promissory note executed by Borrower in favor of Bank in the principal amount of Five Million Seven Hundred Forty-Eight Thousand Dollars (\$5,748,000) dated March 25, 2008, which note is secured by a deed of trust encumbering the real property more particularly described therein (hereinafter collectively referred to as the "Loan Documents"), and in consideration thereof, David Schwartzman (hereinafter collectively and individually referred to as "Guarantor") hereby, jointly and severally, guarantee(s), promise(s) and undertake(s) as follows:

1. Guarantor unconditionally, absolutely and irrevocably guarantees and promises to pay to Bank, or order, on demand, in lawful money of the United States, any and all indebtedness and/or obligations of Borrower to Bank and the payment to Bank of all sums which may be presently due and owing and of all sums which shall in the future become due and owing to Bank from Borrower under the Loan Documents or under that certain Environmental Indemnity executed by Borrower in favor of Bank of even date with the Loan Documents (the "Indemnity"). The terms "indebtedness" and "obligations" (hereinafter collectively referred to as the "Obligations") are used herein in their most comprehensive sense and include any and all advances, debts, obligations, and liabilities of Borrower under the Loan Documents and the Indemnity (including, without limitation, any and all attorneys' fees, expenses, costs, premiums, charges and/or interest owed by Borrower to Bank under the Loan Documents or the Indemnity) whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, whether recovery upon such indebtedness may be or hereafter becomes barred by any statute of limitations or whether such indebtedness may be or hereafter become otherwise unenforceable, and includes Borrower's prompt, full and faithful performance, observance and discharge of each and every term, condition, agreement, representation, warranty undertaking and provision to be performed by Borrower under the Loan Documents and the Indemnity.

2. This Guaranty ("Guaranty") is an absolute guaranty of payment and performance and not of collection and shall remain effective during the term of the Loan Documents and the Indemnity and relates to any Obligations, including those which arise under successive transactions which continue the Obligations from time to time. Guarantor expressly agrees that until the Obligations are paid and performed in full and each and every term, covenant and condition of this Guaranty is fully performed, Guarantor shall not be released by or because of: (a) any act or event which might otherwise discharge, reduce, limit or modify Guarantor's obligations under this Guaranty; (b) any waiver, extension, modification, forbearance, delay or other act or omission of Bank, or its failure to proceed promptly or otherwise as against

Borrower, Guarantor or any security; (c) any action, omission or circumstance which might increase the likelihood that Guarantor may be called upon to perform under this Guaranty or which might affect the rights or remedies of Guarantor as against Borrower; or (d) any dealings occurring at any time between Borrower and Bank, whether relating to the loan evidenced by the Loan Documents or otherwise. Guarantor hereby expressly waives and surrenders any defense to its liability under this Guaranty based upon any of the foregoing acts, omissions, agreements, waivers or matters. It is the purpose and intent of this Guaranty that the obligations of Guarantor under it shall be absolute and unconditional under any and all circumstances. Guarantor agrees that nothing shall discharge or satisfy its obligations created hereunder except for the full payment and performance of the Obligations.

3. Guarantor agrees that it is directly and primarily liable to Bank, that the obligations hereunder are independent of the obligations of Borrower and that a separate action or actions may be brought and prosecuted against Guarantor whether Borrower is joined in any such action or actions. Guarantor agrees that the liability of Guarantor under this Guaranty shall in no way be affected by (a) the release or discharge of Borrower in any creditor proceeding, receivership, bankruptcy or other similar proceeding, (b) the impairment, limitation or modification of the liability of Borrower or of any remedy for the enforcement of Borrower's liability, resulting from the operation of any present or future provision of Title 11 of the United States Code, as amended, or any other statute or proceeding affecting creditors' rights generally, (c) the rejection or disaffirmance of the Obligations or any portion thereof in any such proceeding, or (d) the cessation, from any cause whatsoever, whether consensual or by operation of law, of the liability of Borrower to Bank. In the event that bankruptcy, insolvency, receivership or similar creditors rights proceedings are instituted against Borrower, Guarantor hereby waives any rights of indemnification and/or subrogation it may have against Borrower.

In the event that any bankruptcy, insolvency, receivership or similar proceeding is instituted by or against Guarantor and/or Borrower or in the event that either Guarantor or Borrower become insolvent, make an assignment for the benefit of creditors, or attempt to effect a composition with creditors, or if there be any default under the Loan Documents or the Indemnity (whether declared or not), then, at Bank's election, without notice or demand, the obligations of Guarantor created hereunder shall become due, payable and enforceable against Guarantor whether or not the Obligations are then due and payable.

4. As a condition to payment or performance by Guarantor under this Guaranty, Bank shall not be required to, and Guarantor hereby waives any and all rights to require Bank to, prosecute or seek to enforce any remedies against Borrower or any other party liable to Bank on account of the Obligations and/or to require Bank to seek to enforce or resort to any remedies with respect to any security interests, liens or encumbrances granted to Bank by Borrower or any other party on account of the Obligations.

5. Guarantor agrees to indemnify Bank and hold Bank harmless against all obligations, demands, and liabilities, by whomsoever asserted and against all losses in any way suffered, incurred, or paid by Bank as a result of or in any way arising out of, following, or consequential to transactions with Borrower under the Loan Documents or the Indemnity, and also agrees that this Guaranty shall not be impaired by any modification, supplement, extension, or amendment of the Loan Documents or the Indemnity to which Bank and Borrower may

hereafter agree, nor by any modification, release or other alteration of any of the Obligations hereby guaranteed or of any security therefor, nor by any agreements or arrangement whatsoever with Borrower or anyone else.

6. Guarantor hereby authorizes Bank, without notice or demand and without affecting its liability hereunder, from time to time to: (a) renew, compromise, extend, accelerate, or otherwise change the time for payment or the terms of any of the Obligations, or any part thereof, including, without limitation, increasing or decreasing the rate of interest thereof; (b) waive any terms of the Loan Documents or security; (c) take and hold security for the payment of the Obligations guaranteed hereby, and exchange, enforce, waive, and release any such security; (d) apply such security and direct the order or manner of sale thereof as Bank in its discretion may determine; (e) release or substitute any one or more endorser(s) or guarantor(s); and (f) assign, without notice, this Guaranty in whole or in part and/or Bank's rights hereunder to anyone at any time. Guarantor agrees that Bank may do any or all of the foregoing in such manner upon such terms, and at such times as Bank, in its discretion, deems advisable, without, in any way or respect, impairing, affecting, reducing or releasing Guarantor from its undertakings hereunder and Guarantor hereby consents to each and all of the foregoing acts, events and/or occurrences.

Guarantor hereby waives any right to assert against Bank as a defense, counterclaim, set-off on cross-claim, any defense (legal or equitable), set-off, counterclaim, and/or claim which Guarantor may now or at any time hereafter have against Borrower and/or any other party liable to Bank in any way or manner.

Guarantor hereby waives all defenses, counterclaims and off-sets of any kind or nature, arising directly or indirectly from the present or future lack of perfection, sufficiency, validity and/or enforceability of the Loan Documents or the Indemnity.

Without limiting the generality of the foregoing or any other provisions hereof, Guarantor waives all rights and defenses that Guarantor may have because the Obligations are secured by real property. This means, among other things, that:

(a) Bank may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Borrower.

(b) If Bank forecloses on any real property collateral pledged by Borrower:

(i) The amount of the Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

(ii) Bank may collect from Guarantor even if Bank, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Borrower.

The foregoing is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the Obligations are secured by real property. These rights and

defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

Guarantor hereby waives all presentments, demands for performance, notices of non-performance, protests, notices of protest, notices of dishonor, notices of default, notice of acceptance of this Guaranty, and all other notices or formalities to which Guarantor may be entitled. THE UNDERSIGNED ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED UNDER CERTAIN CIRCUMSTANCES. TO THE EXTENT PERMITTED BY LAW, EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS, HIS OR HER CHOICE KNOWINGLY AND VOLUNTARILY, AND FOR THE MUTUAL BENEFIT OF ALL PARTIES, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY OTHER DOCUMENT, INSTRUMENT OR AGREEMENT BETWEEN THE PARTIES. Guarantor also hereby waives any right of subrogation it may have or assert, or any other right of reimbursement from Borrower or any other party, unless Bank expressly consents to Guarantor's assertion of such rights.

Any indebtedness of Borrower now or hereafter held by Guarantor is hereby subordinated to the Obligations; and such indebtedness of Borrower to Guarantor if Bank so requests shall be collected, enforced and received by Guarantor as trustees for lender and shall be paid over to Bank on account of the Obligations, but without reducing or affecting in any manner the liability of Guarantor under the other provisions hereof. Any lien or charge on the property securing the obligations, and on the revenue and income to be realized therefrom, which Guarantor may have or obtain shall be, and such lien or charge hereby is, subordinated to the lien or charge of the Obligations on such property.

Without limiting the generality of any of the foregoing waivers or any other provision of this Guaranty, Guarantor further waives any rights, defenses and benefits which might otherwise be available to Guarantor under California Civil Code Sections 2787 to 2855, inclusive, (including, without limitation, California Civil Code Sections 2809, 2810, 2819, 2839, 2845, 2848, 2849 and 2850) 2899 and 3433, and any successor sections. Guarantor acknowledges and agrees that all waivers of defenses arising from any impairment of Guarantor's rights of subrogation, reimbursement, contribution and indemnification and waivers of any other rights, privileges, defenses or protections available to Guarantor by reason of Sections 2787 to 2855, inclusive, of the California Civil Code are intended by Guarantor to be effective to the maximum extent permitted by Section 2856 of the California Civil Code and other applicable law.

7. Guarantor agrees that it shall file all claims against Borrower in any bankruptcy or other similar proceeding in which the filing of claims is required by law on any indebtedness of Borrower to Guarantor, and will assign to Bank all rights of Guarantor. If Guarantor does not file such claim, Bank, as attorney-in-fact for Guarantor, is authorized to do so in the name of Guarantor or, in Bank's discretion, to assign the claim and to file a proof of claim in the name of Bank or Bank's nominee. In all such cases, whether in bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to Bank the full amount of any such claim, and, to the full extent necessary for that purpose, Guarantor assigns to Bank all of Guarantor's rights to any such payments or distributions to which Guarantor would otherwise be entitled. All monies

or other property of Guarantor at any time in Bank's possession may be held by Bank as security for any and all obligations of Guarantor to Bank no matter how or when arising, whether absolute or contingent, whether due or to become due, and whether under this Guaranty or otherwise. Guarantor also agrees that Bank's books and records showing the account between Bank and Borrower shall be admissible in any action or proceeding and shall be binding upon Guarantor for the purpose of establishing the terms set forth therein and shall constitute prima facie proof thereof.

8. Guarantor is presently informed of the financial condition of Borrower and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment or nonperformance of the Obligations. Guarantor hereby covenants that it will continue to keep itself informed of Borrower's financial condition and of all other circumstances which bear upon the risk of nonpayment or nonperformance. Absent a written request for such information by Guarantor to Bank, Guarantor hereby waives its rights, if any, to require, and Bank is relieved of any obligation or duty to disclose to Guarantor any information which Bank may now or hereafter acquire concerning such condition or circumstances.

9. This Guaranty shall continue in full force and effect until Borrower's Obligations are fully paid, performed and discharged and Bank gives Guarantor written notice of that fact. Borrower's Obligations shall not be considered fully paid, performed and discharged unless and until all payments by Borrower to Bank are no longer subject to any right on the part of any person whomsoever, including, but not limited to, Borrower, Borrower as a debtor-in-possession, and/or any trustee or receiver in bankruptcy, to set aside such payments or seek to recoup the amount of such payments, or any part thereof. The foregoing shall include, by way of example and not by way of limitation, all rights to recover preferences voidable under Title 11 of the United States Code, as amended. In the event that any such payments by Borrower to Bank are set aside after the making thereof, in whole or in part, or settled without litigation, to the extent of such settlement, all of which is within Bank's discretion, Guarantor shall be liable for the full amount Bank is required to repay plus costs, interest, attorneys' fees and any and all expenses which Bank paid or incurred in connection therewith.

10. The amount of Guarantor's liability and any and all rights, powers and remedies of Bank hereunder or under any of the Loan Documents or the Indemnity shall be cumulative and not alternative, and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to Bank at law or in equity. This Guaranty is in addition to and exclusive of the guarantee of any other indebtedness or obligations of Borrower to Bank.

11. This Guaranty shall be binding upon the successors and assigns of Guarantor and shall inure to the benefit of Bank's successors and assigns. The death of Guarantor shall not terminate this Guaranty.

12. No modification of this Guaranty shall be effective for any purpose unless it is in writing and executed by an officer of Bank authorized to do so.

13. Guarantor agrees to pay all attorneys' fees and all other costs and out-of-pocket expenses which may be incurred by Bank in the enforcement of this Guaranty or in any way arising out of, following, or consequential to the enforcement of Borrower's Obligations,

whether under this Guaranty, the Loan Documents or the Indemnity, including, without limitation, the prosecution of motions or actions for relief from any stay or restraint under the Bankruptcy Code from pursuing any remedy against Borrower or Guarantor.

14. In all cases where the word "Guarantor" is used in this Guaranty, it shall mean and apply equally to each of and all of the individuals and/or entities which have executed this Guaranty.


15. Guarantor agrees that Bank may provide any financial or other information, data or material in Bank's possession relating to Guarantor, Borrower, the Loan, this Guaranty, the real property or the improvements, to Bank's parent, affiliate, subsidiary, participants or service providers, without further notice to Guarantor.

16. All acts and transactions hereunder and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California. Guarantor consents to the jurisdiction of the State of California and consents to service of process by any means authorized by California law, including, without limitation, service of process by mail.

17. Guarantor shall maintain Liquid Assets (as defined in the Loan Agreement) of at least One Million Dollars (\$1,000,000) at all times.

[Remainder of page intentionally left blank]

This Guaranty is dated as of March 25, 2008.



David Schwartzman

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
COUNTY OF Los Angeles) SS

On March 27, 2008, before me, Nancy Josephson, Notary Public, personally appeared David Schwartzman who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Nancy Josephson
(Signature)

[Seal]

