

ALLEN B. ELLIS  
 ELLIS, BROWN & SHEILS, CHARTERED  
 Attorneys-at-Law  
 707 North 8th Street  
 P.O. Box 388  
 Boise, Idaho 83701-0388  
 208/345-7832 (Tel)  
 208/345-9564 (Fax)  
 ISB No. 1626

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 REC'D \_\_\_\_\_  
 CAMERON S. BURKE  
 CLERK IDAHO

Attorneys for Intervenor

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

RECUPEROS, LLC, an Idaho limited liability company,	)	Civil No. 04-229-S-BLW
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
AMERICAN FOOD STORES, LLC, a California limited liability company,	)	MOTION TO INTERVENE
	)	
Defendant.	)	
AMERICAN FOOD STORES, LLC, a California limited liability company,	)	
	)	
Counterclaimant,	)	
	)	
vs.	)	
	)	
RECUPEROS, LLC, an Idaho limited liability company,	)	
	)	
Counterdefendant.	)	

COMES NOW Tej Pahwa, through his attorney of record, Allen B. Ellis, and moves this court for leave to intervene in the herein matter. This motion is made upon the grounds that with

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respect to the \$296,155.15 deposit referred to in ¶ 10 of the Verified Complaint, intervenor Pahwa provided defendant American Food Stores, LLC ("AFS") with the money to make the aforesaid deposit. In the event it is adjudicated that plaintiff Recuperos, LLC is required to return the aforesaid deposit, that money should be paid to intervenor Pahwa who advanced the deposit money to defendant AFS.

This motion is based upon the memorandum of law lodged herewith, complaint of intervention attached hereto, the pleadings and records in this action and such other oral and documentary evidence as may be presented at the time of hearing, if any there be.

DATED this 13<sup>th</sup> day of August, 2004.

ELLIS, BROWN & SHEILS, CHARTERED

  
\_\_\_\_\_  
Allen B. Ellis

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

RECUPEROS, LLC, an Idaho limited liability company,	)	Civil No. 04-229-S-BLW
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
AMERICAN FOOD STORES, LLC, a California limited liability company,	)	COMPLAINT IN INTERVENTION
	)	
<u>Defendant.</u>	)	
AMERICAN FOOD STORES, LLC, a California limited liability company,	)	
	)	
Counterclaimant,	)	
	)	
vs.	)	
	)	
RECUPEROS, LLC, an Idaho limited liability company,	)	
	)	
<u>Counterdefendant.</u>	)	

COMES NOW the intervenor, Tej Pahwa, through his attorney of record and alleges and complains as follows:

I.

That he is a resident of the state of California and makes this complaint in intervention in accordance with Rule 24(a), Fed.R.Civ.P. Intervenor claims an interest relating to the transaction which is the subject of this action and is so situated that the disposition of this action may, in his absence, impair or impede the intervenor's ability to protect his interests.

II.

That with respect to the "initial payment" of \$306,155.15 referenced in the third affirmative defense of defendant's answer and the \$296,155.15 referenced in ¶ 13 of the verified complaint, intervenor Pahwa advanced this money (\$296,155.15) to defendant American Food Stores, LLC ("AFS") so that it could make the aforesaid deposit to plaintiff Recuperos, LLC ("plaintiff") in connection with the Asset Purchase Agreement referenced in ¶ 9 of the verified complaint and ¶ 3 of defendant's counterclaim.

III.

That in the event there is an adjudication herein that the aforesaid deposit should be disgorged by plaintiff, intervenor Pahwa seeks further adjudication that such money be returned to him on the grounds that remitting the money to AFS would constitute unjust enrichment to and conversion by defendant AFS.

WHEREFORE, intervenor Pahwa prays for relief as follows:

1. For an adjudication of the retention of aforesaid deposit in the amount of \$296,155.15 by plaintiff would constitute unconscionable forfeiture and that payment of aforesaid deposit to defendant AFS would constitute unjust enrichment and conversion should the aforesaid monies be paid to defendant.

2. For reasonable costs and attorneys' fees.

3. For such other and further relief as the court and jury deem appropriate.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2004.

ELLIS, BROWN & SHEILS, CHARTERED

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Allen B. Ellis

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on the 13<sup>th</sup> day of August, 2004, I caused to be served a true and correct copy of MOTION TO INTERVENE by the method(s) indicated below, and addressed to the following:

R. Wade Curtis, Esquire  
BELNAP & CURTIS, PLLC  
1401 Shoreline Drive, Ste. 2  
Post Office Box 7685  
Boise, Idaho 83707

Attorneys for Defendant/Counterclaimant

- U.S. Mail
- Hand Delivery
- Overnight Mail
- Facsimile at  
208/345-4461

Michael O. Roe, Esquire  
MOFFATT, THOMAS, BARRETT, ROCK  
& FIELDS, CHARTERED  
101 S. Capitol Blvd, 10<sup>th</sup> Floor  
Post Office Box 829  
Boise, Idaho 83701-0829

Attorneys for Plaintiff/Counterdefendant

- U.S. Mail
- Hand Delivery
- Overnight Mail
- Facsimile at  
208/385-5384

Allen B. Ellis

