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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

CIV 04-229-S-BLW

RECUPEROS, LLC, an Idaho limited liability
company,

Plaintiff,

vs.

AMERICAN FOOD STORES, LLC, a
California limited liability company,

Defendant.

Civil No. _____

VERIFIED COMPLAINT

COMES NOW the plaintiff, Recuperos, LLC, and complains and alleges as follows:

PARTIES/JURISDICTION

1. Recuperos, LLC ("Recuperos" or "plaintiff") is an Idaho limited liability company with its principal place of business in Boise, Idaho.
2. American Food Stores, LLC ("AFS" or "defendant") is a California limited liability company with its principal place of business in Loomis, California.

3. This is an action for a declaratory judgment pursuant to 28 U.S.C. Section 2201, Idaho Code Sections 10-1201, *et seq.*, and Rule 57 of the Federal Rules of Civil Procedure.

4. This Court has subject matter jurisdiction over this controversy pursuant to 28 U.S.C. Section 1332 because the matter in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.00 and exists between citizens of different states.

5. This Court has personal jurisdiction over the defendant pursuant to Idaho Code Section 5-514 because, *inter alia*, the defendant transacted business within the state of Idaho. Furthermore, the defendant has consented to the jurisdiction of this Court.

6. Venue is proper pursuant to 28 U.S.C. Section 1391 because, *inter alia*, a substantial part of the events giving rise to this action occurred in this District. Furthermore, the defendant has consented to venue in this District.

CLAIM FOR RELIEF

7. Plaintiff hereby reiterates and incorporates paragraphs 1 through 6 as though set forth in full herein.

8. Recuperos is the owner of certain convenience stores and related assets located in the state of Colorado (the "Assets").

9. On or about November 12, 2003, Recuperos and AFS entered into an Asset Purchase Agreement, pursuant to the terms of which AFS agreed to purchase the Assets from Recuperos (the "Purchase Agreement").

10. The Purchase Agreement required that AFS provide Recuperos with an earnest money deposit in the aggregate amount of \$1,000,000.00. AFS provided \$306,155.15 of

such amount (the "Deposit"), of which \$10,000.00 was remitted directly to Recuperos and \$296,155.15 was held in escrow, pursuant to the terms of the Purchase Agreement.

11. AFS breached the terms of the Purchase Agreement and Recuperos terminated the Purchase Agreement on or about January 16, 2004.

12. Pursuant to the terms of the Purchase Agreement, upon AFS' breach thereof, Recuperos was entitled to retain the Deposit as liquidated damages.

13. In accordance with the terms of the Purchase Agreement, and with AFS' express consent, \$296,155.15 of the Deposit was released from escrow to Recuperos on or about January 19, 2004. Recuperos also retained the \$10,000.00 portion of the Deposit held by Recuperos.

14. Thereafter, AFS claimed that the Deposit had been improperly retained and released and demanded return of the Deposit, which demand Recuperos rightfully refused.

15. On or about January 28, 2004, Recuperos and AFS entered into a Mutual Settlement and Release Agreement (the "Settlement Agreement") which provided, *inter alia*, that Recuperos was entitled to retain the Deposit and that AFS thereby relinquished all claim thereto. By its terms, the Settlement Agreement is governed by Idaho law.

16. The Settlement Agreement further provided that AFS released all claims against Recuperos which related in any manner to the Purchase Agreement or the Deposit.

17. Notwithstanding the express terms of the Settlement Agreement, on or about May 5, 2004, AFS made written demand upon Recuperos for return of the Deposit. Such demand sets forth no cognizable factual or legal basis for the demand.

18. Recuperos is entitled to a declaration from this Court that the Settlement Agreement is a valid, binding, effective and enforceable contract between the parties.

ATTORNEY FEES

19. The defendant's actions have required the plaintiff to retain counsel to represent its interests. The plaintiff is entitled to the recovery of its costs and attorney fees pursuant to the terms of the Settlement Agreement and Idaho Code Sections 12-120 and 12-121.

WHEREFORE, the plaintiff requests that the Court declare and adjudge:

1. That, under Idaho law, the Settlement Agreement is a valid, binding, effective and enforceable contract between the parties, which constitutes a complete bar to AFS' demand for return of the Deposit; and that Recuperos is entitled to retain the Deposit free and clear of any claim of AFS or any person or entity claiming by or through AFS;

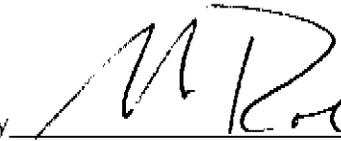
2. That the plaintiff is entitled to recover its costs and attorney fees; and

3. Such other and further relief as the Court may deem just and proper.

DATED this 12 day of May, 2004.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By



Michael O. Roe – Of the Firm
Attorneys for Plaintiff

