

ORIGINAL

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ISB No. 1626

U.S. COURTS
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Attorneys for Intervenor

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

RECUPEROS, LLC, an Idaho limited liability company,)

Plaintiff,)

vs.)

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

Defendant.)

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

Counterclaimant,)

vs.)

RECUPEROS, LLC, an Idaho limited liability company,)

Counterdefendant.)

Civil No. 04-229-S-BLW

AMENDED MOTION
TO INTERVENE

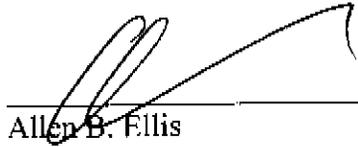
COMES NOW Tej Pahwa, through his attorney of record, Allen B. Ellis, and moves this court for leave to intervene in the herein matter. This motion is made upon the grounds that with

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 previously lodged, complaint in 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 16th day of September, 2004.

ELLIS, BROWN & SHEILS, CHARTERED



Allen B. Ellis
Attorneys for Intervenor Pahwa

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of September, 2004, I caused to be served a true and correct copy of AMENDED MOTION TO INTERVENE by the method(s) indicated below, and addressed to the following:

Manjit Sahota
Managing Member
American Food Stores, LLC
106 South 1st Street
Johnstowne, Colorado 80534

- U.S. Mail
 Hand Delivery
 Overnight Mail
 Facsimile at
303/362-6590

Sukhdev Kapur
Member
American Food Stores, LLC
13249 Paramount Drive
Sarasota, California 95070

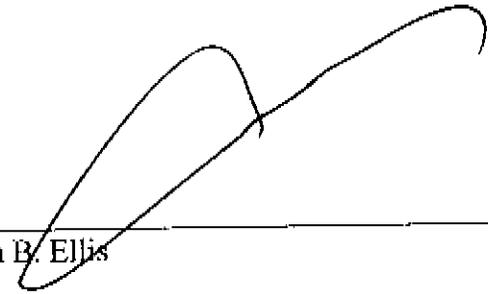
- U.S. Mail
 Hand Delivery
 Overnight Mail
 Facsimile at
408/527-2477

Pro se for Defendant/Counterclaimant

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

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 Hand Delivery
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Attorneys for Plaintiff/Counterdefendant


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,)

Plaintiff,)

vs.)

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

Defendant.)

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

Counterclaimant,)

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RECUPEROS, LLC, an Idaho limited liability company,)

Counterdefendant.)

Civil No. 04-229-S-BLW

COMPLAINT IN INTERVENTION

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.

The intervenor incorporates the allegations contained in the answer and counterclaim of defendant/counterclaimant as though set forth in full herein.

III.

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.

IV.

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 & SHEPHERD, CHARTERED

Allen B. Ellis
Attorney for Intervenor, Tej Pahwa