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Attorney for Defendant

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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.)
_____)

Civil No. 04-229-S-BLW

AFFIDAVIT IN SUPPORT OF
DEFENDANT'S MOTION FOR
ENLARGEMENT OF TIME WITHIN
WHICH TO FILE ANSWER AND
COUNTERCLAIM

STATE OF IDAHO)
: ss.
County of Ada)

I, R. Wade Curtis, having been first sworn upon an oath, depose and say:

1. On Thursday, June 10, 2004, I was contacted by Manjit Sahota on behalf of the Defendant, American Food Stores, LLC to represent American Food Stores in the above entitled law suit.

2. At that time, I was told that the Summons and Complaint had been served on Sunday, May 23, 2004. An Answer or other responsive pleading was to be filed on or before Monday, June 14, 2004.

3. Because I was leaving the office that day and I would be out of the office on Friday, I contacted the attorneys for the Plaintiff and requested an enlargement of time within which to file an Answer. I initially spoke with Jason Murray and I later spoke with Michael Roe. Both individuals granted an enlargement of time for filing an Answer in this case.

4. Attached hereto as Exhibit "A" is my letter confirming a grant of enlargement until Friday, June 18, 2004, within which to file an Answer.

5. The subject of the Plaintiff's Complaint is a certain document, Mutual Settlement And Release Agreement. At the time Manjit Sahota contacted me he did not have a copy of the subject agreement. He was going to fax it to me.

6. Because of the press of other work in the office on Monday and Tuesday, June 14 and 15, I did not follow up on the status of obtaining a copy of the subject agreement until late on Tuesday when I called Mr. Roe for a copy.

7. After lunch, on Wednesday, June 16, 2004, Mr. Roe kindly faxed me a copy of the subject agreement, attached hereto as Exhibit "B".

8. Without admitting or denying the validity or legal effectiveness of the subject agreement, the agreement in paragraph 4 purports to contain an indemnity agreement whereby Manjit Sahota individually and as managing member of the Defendant LLC will hold the Plaintiff harmless regarding any action brought by Sukhdev Kapur.

9. Sukhdev Kapur and Manjit Sahota are the members of the Defendant LLC.

10. Your undersigned believes that the existence of paragraph 4 raises a likely conflict of interest as between the members and / or the members and the Defendant LLC, and requires a determination of which person or entity this law firm represents.

11. As it presently stands, your undersigned represents the Defendant LLC, but your undersigned does not know from which of the two members to take instructions.

12. Therefore, there is insufficient time within which to conduct necessary communications with all involved parties, obtain independent counsel and execute conflicts letters.

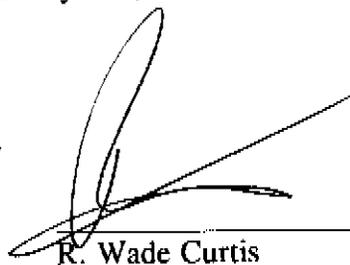
13. Your undersigned attempted to resolve this matter by stipulation, but the Plaintiff's attorney was unwilling to grant our requested relief unless the Lis Pendens were withdrawn.

14. In this case, the Plaintiff has possession of the subject \$306,155.15. The Plaintiff seeks the declaration of this Court that the Plaintiff is the rightful owner of the said sum under the subject agreement. The Plaintiff cannot show that it will be prejudiced or harmed by the enlargement of time requested.

15. Complicating the timing of filing an answer is your undersigned's annual vacation which begins on Thursday, June 24 and runs through Monday, July 5. Therefore, once all issues of representation and conflict are resolved by June 23, this counsel will need from July 6 through July 9 to prepare and file an Answer and Counterclaim.

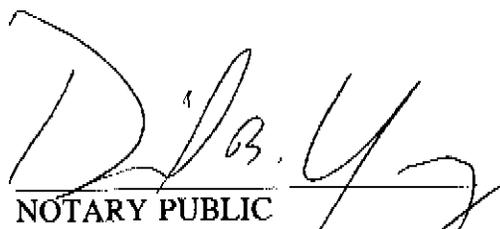
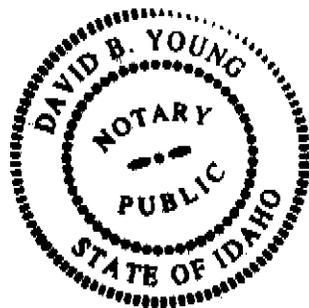
16. WHEREFORE, Defendant requests an enlargement of time until Friday, July 9, 2004, within which to file an Answer and Counterclaim in this case, or for such shorter period of time as the Court may allow, at least until July 2nd, if Defendant must seek new counsel to represent American Food Stores.

DATED this 16th day of June, 2004.



R. Wade Curtis

SUBSCRIBED and SWORN to before me the undersigned Notary, this 16th day of June, 2004.



NOTARY PUBLIC
Residing at Boise, Idaho
My Commission Expires: 1/30/2010

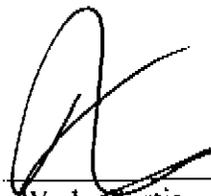
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 16th day of June, 2004, I caused to be served a true and correct copy of the above and foregoing document by the method indicated below, and addressed to the following:

- MAILED
- FAXED -- 385-5384
- HAND DELIVERED
- OVERNIGHT DELIVERY

Attorney(s) and/or Individual(s) Served:

Michael O. Roe
Post Office Box 829
Boise, Idaho 83701


R. Wade Curtis

BELNAP & CURTIS, PLLC

Attorneys at Law

Wm. Lyman Belnap
R. Wade Curtis
Robert A. Huntsman*
Robert J. Williams
David B. Young

1401 Shoreline Drive, Suite 2
Post Office Box 7685
Boise, Idaho 83707

Telephone: (208) 345-3333
Facsimile: (208) 345-4461

wcurtis@belnapcurtis.com

* Registered Patent Attorney

June 10, 2004

FAX TRANSMISSION -- 385-5384

Mr. Michael O. Roe
Mr. Jason G. Murray
Post Office Box 829
Boise, Idaho 83701

Re: Recuperos, LLC v. American Food Stores,
LLC, CIV 04-229-S-BLW

Dear Michael and Jason:

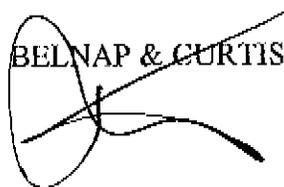
Per our telephone conversation of this day with Jason, it is our understanding and agreement that you have granted an enlargement of time to defendant, American Food Stores, LLC, in the above-entitled cause, until close of business on Friday, June 18, 2004, within which to file an answer or other responsive pleading. You will not take default without giving us a three-day notice of intent to take default.

If the foregoing does not meet with your understanding, please advise since the due date for the filing of an answer in this case is Monday, June 14, 2004.

Thank you for your consideration in this matter.

Sincerely yours,

BELNAP & CURTIS, PLLC



R. Wade Curtis

Copy Furnished:

American Food Stores LLC

COPY

MUTUAL SETTLEMENT AND RELEASE AGREEMENT

This Mutual Settlement and Release Agreement (this "Agreement") is made as of the 28th day of January, 2004, by and between American Food Stores, LLC, a California limited liability company (the "Company"); Manjit Sahota ("Manjit" and collectively with the Company, the "Company Parties"); and ~~Recuperos, LLC, an Idaho limited liability company~~ ("Recuperos").

RECITALS.

The parties hereto acknowledge the following facts and circumstances which give rise to the execution of this Agreement:

1. On or about November 12, 2003 the Company, as buyer, and Recuperos, as seller, entered into an Asset Purchase Agreement (the "Purchase Agreement") whereby Recuperos agreed to sell and the Company agreed to purchase nineteen (19) convenience stores located in the State of Colorado.
2. Pursuant to the Purchase Agreement, the Company provided Recuperos with an earnest money deposit in the total amount of \$306,155.15 (the "Deposit").
3. On or about January 16, 2004, Recuperos terminated the Purchase Agreement as a result of Buyer's failure to meet certain terms of the Purchase Agreement, and retained the Deposit as liquidated damages pursuant to the Purchase Agreement.
4. The Company alleges that the Purchase Agreement may not have been properly terminated and/or that the Deposit should be returned to the Company.
5. Manjit is a principal and managing member of the Company.
6. It is the intention of the parties to this Agreement to settle and dispose of,



fully and completely, any and all claims, demands, and cause or causes of action which exist or may exist between them, known or unknown, from the beginning of time to the date hereof, including, without limitation on the generality of the foregoing, any and all claims, demands, and cause or causes of action which relate in any manner to the Purchase Agreement and the Deposit.

TERMS AND CONDITIONS.

In consideration for the recitals set forth above, which recitals are hereby incorporated herein by this reference, and the mutual releases and covenants contained herein, and for other good and valuable consideration, the receipt of which is acknowledged by each party, the parties to this Agreement agree as follows:

1. **TERMINATION OF THE PURCHASE AGREEMENT:**

The Company Parties and Recuperos acknowledge and agree that the Purchase Agreement is terminated and of no further force and effect.

2. **RETENTION OF DEPOSIT:**

The Company Parties and Recuperos acknowledge and agree that Recuperos is entitled to and shall retain the Deposit, and such Deposit is deemed fully earned by Recuperos.

3. **MUTUAL GENERAL RELEASES:**

In consideration for the mutual general releases contained herein, and for other good and valuable consideration, the receipt of which is acknowledged by each party, the parties to this Agreement hereby promise and agree that, each party hereby generally releases, and forever discharges each other party, and each of its present and former agents, servants, officers, ~~directors, employees, shareholders, principals, managers~~ (including AMRESCO Commercial Finance, LLC) predecessors, alter egos, partners, parents, subsidiaries, attorneys, insurers,

reinsurers, sureties, spouses, heirs, executors, administrators, trustees, successors and assigns, from any and all claims, demands and cause or causes of action heretofore or hereafter arising out of, connected with or incidental to the dealings between the parties prior to the effective date hereof which relate in any manner to the Purchase Agreement and the Deposit.

4. **INDEMNIFICATION:** The Company Parties hereby agree to indemnify and defend Recuperos and hold Recuperos harmless from and against any and all, liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against Recuperos and which arise out of or are related to any claim made by Sukhdev Kapur regarding the Purchase Agreement and/or the Deposit.

5 **NO PRIOR ASSIGNMENT:**

The parties agree and warrant to each other that there has been no assignment, sale, transfer or conveyance of any of the claims or rights being released pursuant to this Agreement. The parties further agree and warrant to each other that no other known person or entity has any interest in the claims, demands, obligations or causes of action being released pursuant to this Agreement.

6. **SUCCESSORS AND ASSIGNS:**

The parties agree that this Agreement, including the mutual releases contained herein, is binding upon and shall inure to the benefit of the parties and each of their present, former or future employees, officers, directors, shareholders, partners, members, managers, predecessors-in-interest, alter egos, parents, subsidiaries, attorneys, insurers, reinsurers, sureties, spouses, heirs, executors, administrators, trustees, and successors and assigns.

7. **NONADMISSION OF LIABILITY:**

The parties agree that this Agreement constitutes a compromise settlement of claims which are denied and contested, and nothing contained herein shall be construed as an admission by any party of any liability of any kind to any other party. This Agreement is for the sole and exclusive purpose of compromising and settling disputed claims and is intended by all parties hereto merely to avoid further legal costs and expenses and to buy their peace.

8. **ADVICE OF COUNSEL:**

The parties warrant that they have read this Agreement in its entirety and understand and voluntarily accept its terms. The parties further warrant that they each have received independent legal advice from their attorneys with respect to the advisability of making the settlement provided for in this Agreement and with respect to the advisability of executing this Agreement.

9. **AUTHORITY:**

The parties warrant that each officer, partner, member or manager executing this Agreement is authorized to do so, and to thereby bind such corporation, partnership or limited liability company to the terms of this Agreement.

10. **COOPERATIVE PREPARATION OF AGREEMENT:**

The parties agree and warrant that each party has cooperated in the drafting and preparation of this Agreement and that in any construction to be made of this Agreement, the same shall not be construed against any party.

11. **COMPLETE AGREEMENT:**

The parties agree and warrant that this Agreement is the entire agreement between

the parties and supersedes all prior and contemporaneous oral and written agreements and discussions and that this Agreement may be amended or modified only by an agreement in writing executed by all parties to this Agreement.

12. **CONTRACTUAL TERMS:**

The parties agree and warrant that each term contained in the Terms and Conditions section of this Agreement is contractual and not merely a recital.

13. **APPLICABLE LAW; JURISDICTION and VENUE:**

The parties agree and warrant that this Agreement shall be deemed to have been executed and delivered within the State of Idaho, and the rights and obligations of the parties hereto shall be construed and enforced with, and governed by, the laws of the State of Idaho. The parties further agree and warrant that jurisdiction and venue for any legal proceeding between the parties to this Agreement arising out of or related to this Agreement, the Purchase Agreement, or the Deposit is exclusively in the Federal District Court of the State of Idaho sitting in County of Ada.

14. **COUNTERPARTS:**

This Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with the other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all parties. Signature by facsimile shall be considered an original signature.

15. **HEADINGS AND TITLES:**

The parties agree and warrant that all headings and titles and subheadings and

subtitles herein are inserted as a matter of convenience and reference only. They in no way define, limit, extend or describe the scope or intent of this Agreement.

16. **SEVERABILITY:**

The parties agree and warrant that the provisions of this Agreement are severable, ~~and if any part of the Agreement is found to be unenforceable, the other provisions shall remain~~
fully valid and enforceable.

17. **COSTS AND ATTORNEYS FEES:**

The parties agree that in the event of any lawsuit, action, appeal or other proceeding arising out of or relating to this Agreement, the Purchase Agreement, or the Deposit, the prevailing party shall be entitled to recover actual attorneys fees and costs incurred in that lawsuit, action, proceeding or appeal, in addition to any other relief to which it may be entitled.

(signatures follow on next page)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

Recuperos, LLC,
an Idaho limited liability company

By: AMRESKO Commercial Finance, LLC,
a Delaware limited liability company,
in its capacity as Manager

By 
Name: _____
Its: D. CRAIG CHRISTENSEN
VICE PRESIDENT

American Food Stores, LLC,
a California limited liability company

By: _____
Manjit Sahota, Managing Member

Manjit Sahota, in his individual capacity



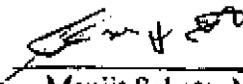
IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

Recuperos, LLC,
an Idaho limited liability company

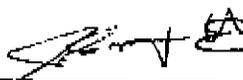
By: AMRESKO Commercial Finance, LLC,
a Delaware limited liability company,
in its capacity as Manager

By _____
Name: _____
Its: _____

American Food Stores, LLC,
a California limited liability company

By: 

Manjit Sahota, Managing Member



Manjit Sahota, in his individual capacity