

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X

PALMA CAPITAL LIMITED,
as assignee,

Index No.14/ _____

Plaintiff,

Date Purchased: _____

- against -

Plaintiff Designates New York
County as the Place of Trial
based on contractual agreement

WESTERGAARD.COM, INC.,

Defendant.

SUMMONS

----- X

To the above named Defendant:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the Plaintiff's attorneys within twenty (20) days after service of this summons, exclusive of the day of service (or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York). If you fail to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates New York County as the place of trial.

Plaintiff maintains its principal place of business at Currency House, Office 206, Dubai International Financial Centre, 312th Road, Dubai, United Arab Emirates.

Dated: New York, New York
July 31, 2014

LAW OFFICES OF DONALD WATNICK

By: DWF/WWA

Donald E. Watnick

Attorneys for Plaintiff
51 East 42nd Street, 11th Floor
New York, New York 10017
(212) 213-6886

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
PALMA CAPITAL LIMITED
as assignee,

VERIFIED COMPLAINT

Plaintiff,

- against -

Index No. 14/ _____

WESTERGAARD.COM, INC.,

Defendant.
----- X

Plaintiff Palma Capital Limited, by its undersigned attorneys, hereby avers and alleges for its Complaint against Defendant Westergaard.com, Inc. as follows:

INTRODUCTION

1. Plaintiff Palma Capital Limited (“Palma”), as assignee, brings this action to enforce the contractual obligations of defendant Westergaard.com, Inc. (“Westergaard”) to redeem shares of stock under a written agreement providing that defendant would re-purchase the shares of stock from plaintiff’s assignors if Westergaard did not complete an Initial Public Offering (“IPO”) at an offering price of at least \$3.00 per share within a specified time period. Westergaard did not complete an IPO within the specified time period, but failed to abide by its resulting contractual obligation to re-purchase the shares of stock from plaintiff’s assignors.

THE PARTIES

2. At all relevant times, plaintiff Palma Capital Limited (“Palma”) was and is a corporation that is duly organized under the laws of the United Arab Emirates with its principal offices located at Currency House, Office 206, Dubai International Financial Centre, 312th Road,

Dubai, United Arab Emirates. Palma brings this action as the duly authorized assignee of certain Westergaard investors (collectively, the “Investors”), each of who has assigned his/her/its claim against defendant to Palma pursuant to signed written assignment agreements. (A list of the Investors that have duly assigned their claims to Palma is annexed hereto as Exh. A.)

3. At all relevant times, defendant Westergaard.com, Inc. (“Westergaard”) was and is a corporation that is duly organized under the laws of the State of Delaware with its principal place of business located at Chendai Andou Industry Park, Jinjiang Quanzhou, Fujian, China 362211, and was and is qualified to do business in the State of New York.

JURISDICTION

4. This Court has jurisdiction over this case pursuant to CPLR 301, by virtue of (i) Westergaard, being qualified to and, upon information and belief, regularly doing business in the State of New York, and (ii) Westergaard and the Investors contractually submitting to the jurisdiction of this Court in Section 7.2(b) of the September 2011 Securities Purchase Agreement (the “Agreement”) under which this action arises, which states in part:

“Each of the Company [Westergaard] and the Purchasers [the Investors] (i) hereby irrevocably submits to the jurisdiction of the United States District Court sitting in the Southern District of New York and the courts of the State of New York located in New York county for the purposes of any suit, action or proceeding arising out of or relating to this Agreement . . .”

Additionally, this Court has jurisdiction over this case, pursuant to CPLR 301, by virtue of Westergaard designating an agent for service in New York County with the New York Secretary of State.

5. Venue properly lies in this Court pursuant to CPLR 501 by virtue of Westergaard contractually submitting to the venue of this Court in Section 7.2(b) of the Agreement, as reproduced in Paragraph 4 of this Complaint.

COMMON FACTS

6. In this action, Palma, as assignee of the Investors, seeks to enforce Westergaard's written agreement to redeem shares of Westergaard purchased by the Investors, at a price of \$3.00 per share payable to the Investors, as well as recover contractual attorneys' fees.

7. In September 2011, Westergaard initiated a private securities offering, in which Westergaard offered preferred shares and warrants in Westergaard to potential purchasers, pursuant to the terms of the Agreement.

8. The Agreement offered the opportunity to purchase "Units" in Westergaard at the price of \$1.50 per Unit. Each Unit consisted of one (1) share of Westergaard's Series B Convertible Preferred Stock (the "Preferred Shares"), one (1) Series A Warrant to purchase 0.5 share of Westergaard's Common Stock at a price of \$1.875 per share (the "Series A Warrant"), and one (1) Series B Warrant to purchase 0.5 share of Westergaard's Common Stock at a price of \$2.25 per share (the "Series B Warrant"). The Agreement expressly provided for Westergaard to automatically redeem the Preferred Shares if Westergaard did not complete an IPO within two years of the "Closing Date," as defined in the Agreement.

9. Specifically, Section 1.5 of the Agreement states as to Westgaard's repurchase obligations as follows:

Automatic Redemption. The Company [Westergaard] shall automatically redeem the Preferred Shares held by the Purchasers [the Investors] at a price of \$3.00 per share if the Company fails to complete an Initial Public Offering at an offering price of \$3.00 or higher per share within two (2) years from the Closing Date (the "Automatic Redemption"). In the event of an Automatic Redemption, the Purchasers shall retain ownership of the Warrants.

10. Similarly, Section 3.20 of the Agreement states:

Automatic Redemption. The Company [Westergaard] shall automatically redeem the Preferred Shares held by the Purchasers [the Investors] at a price of \$3.00 per share if the Company fails to complete an Initial Public Offering at an offering

price of \$3.00 or higher per share within (2) years from the Closing Date. In the event of an Automatic Redemption, the Purchasers shall retain ownership of the Warrants.

11. As to the Closing Date, Section 1.4 of the Agreement states, in part:

Purchase Price and Closing. [. . .] Subject to all conditions to closing being satisfied or waived, the closing of the purchase and sale of the Units shall take place at the offices of Anslow & Jaclin, LLP (the “Closing”) no later than September 23, 2011, which date may be extended by the Company (the “Closing Date”).

12. Each of the Investors purchased a number of Units by signing the Agreement.

Upon information and belief, the Chief Executive Officer of Westergaard, Jinbiao Ding, also signed the Agreement, on behalf of Westergaard, with each Investor.

13. Upon information and belief, based upon the Form 8-K Westergaard filed with the United States Securities and Exchange Commission on November 23, 2011, the Closing Date referred to in the Agreement was no later than October 24, 2011.

14. Therefore, pursuant to Sections 1.5 and 3.20 of the Agreement, if Westergaard did not complete an IPO by October 24, 2013, it was obligated to redeem the Investors’ Preferred Shares at a price of \$3.00 per share, payable to the Investors, within two years of the Closing Date or by October 24, 2013.

15. Upon information and belief, Westergaard failed to complete an IPO by October 24, 2013, and has not completed an IPO of any kind and at any offering price as of the filing date of this Complaint.

16. Westergaard did not redeem the Investors’ Preferred Shares pursuant to Sections 1.5 and 3.20 of the Agreement.

17. In February 2014, the Investors executed assignments to Palma, with each assignment providing that “for the purposes of collection, all rights, title and interest in any

claims, demands, or causes of action pertaining to the Redemption Clause” be assigned to Palma and appointing Palma “as the true and lawful attorney in fact for the purposes of collecting all monies owed to the Investor resulting from any claims arising under the Redemption Clause” of the Agreement.

18. The Investors who assigned their claims to Palma owned a total of 799,999 of Preferred Shares. (See Exh. A for a list of each of the Investors that assigned claims to Palma and the number of Preferred Shares owned by such Investor.)

19. Palma notified Westergaard, on behalf of the Investors, of Westergaard’s breach of the Agreement by failing to either complete an IPO or redeem the Investors’ Preferred Shares by the Closing Date, through a demand letter, dated February 17, 2014, requesting that Westergaard fulfill its Automatic Redemption obligation under the Agreement. Westergaard has neither responded to the letter nor cured its breach.

20. By virtue of the foregoing, Palma, as assignee, has been damaged in an amount to be determined at trial, but equal to a minimum of \$3.00 for each Preferred Share purchased by the Investors through the Agreement.

21. Palma, as assignee, also is entitled to contractual attorneys’ fees incurred in pursuing this action because Section 6.1 of the Agreement states in part:

General Indemnity. The Company [Westergaard] agrees to indemnify and hold harmless the Purchasers [the Investors] . . . from and against any and all losses, liabilities, deficiencies, costs, damages and expenses (including, without limitation, reasonable attorneys’ fees, charges and disbursements) incurred by the Purchasers [the Investors] as a result of any breach of the representations, warranties, or covenants made by the Company [Westergaard] herein.

FIRST CAUSE OF ACTION – BREACH OF CONTRACT

22. Plaintiff repeats and re-alleges the allegations contained in Paragraphs 1 to 21 as if fully set forth and incorporated herein.

23. The Investors purchased the Units, including the Preferred Shares, from Westergaard pursuant to the terms of the Agreement, signed by the Investors and defendant, and the Investors paid the amounts due for such Preferred Shares.

24. Sections 1.5 and 3.20 of the Agreement provided that if Westergaard did not complete an IPO within two years of the Closing Date, Westergaard was required to repurchase the Investors' Preferred Shares by paying them a price of \$3.00 per share or higher by the end of the foregoing two year period.

25. Upon Information and belief, the Closing Date is no later than October 24, 2011.

26. As of October 24, 2013 Westergaard had not completed an IPO or redeemed the Investors' Preferred Shares, and, in fact, Westergaard has not completed an IPO or redeemed the Investor's Preferred Shares as of the date of this Complaint.

27. By virtue of the foregoing, Westergaard breached the Agreement and the contractual obligations therein to the Investors, causing damage to the Investors.

28. In February 2014, the Investors assigned their claims against Westergaard to plaintiff, and, based upon such assignments, Palma holds claims based upon 799,999 Preferred Shares in Westergaard.

29. By reason of the foregoing, Westergaard is liable to plaintiff for damages in an amount to be determined at trial, but equal to at least \$3.00 for each Preferred Share purchased by the Investors.

SECOND CAUSE OF ACTION – COSTS OF COLLECTION

30. Plaintiff repeats and re-alleges the allegations contained in Paragraphs 1 to 29 as if fully set forth and incorporated herein.

31. Pursuant to Section 6.1 of the Agreement, Westergaard and the Investors agreed that Westergaard would “indemnify and hold harmless” the Investors “from and against any and all losses, liabilities, deficiencies, costs, damages and expenses (including, without limitation, reasonable attorneys’ fees, charges and disbursements)” resulting from “any breach of the representations, warranties or covenants” made by Westergaard in the Agreement.

32. Westergaard breached the representations, warranties and covenants made in Sections 1.5 and 3.20 of the Agreement, by not repurchasing the Preferred Shares from the Investors.

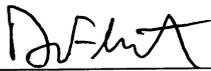
33. By virtue of the foregoing, plaintiff, as assignee, is entitled to recover as damages its costs of collection, including reasonable attorneys’ fees, in this action against Westergaard, in an amount to be determined at trial.

WHEREFORE, plaintiff Palma Capital Limited, as assignee of the Investors, hereby demands judgment against defendant Westergaard.com, Inc. for damages in an amount to be determined at trial but equal to no less than the following:

- a. \$3.00 for each Preferred Share owned by the Palma, as assignee of the Investors, for a total of \$2,399,997.00;
- b. Palma's costs of collection, including attorneys' fees; and
- c. for such other and further relief as this Court deems just and proper.

Dated: New York, New York
July 31, 2014

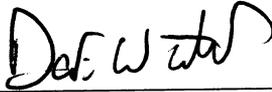
LAW OFFICES OF DONALD WATNICK

By: 
Donald E. Watnick
Attorneys for Plaintiff
51 East 42nd Street, 11th Floor
New York, NY 10017
(212) 213-6886

VERIFICATION

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

Donald E. Watnick, being duly sworn, states that he is the attorney for plaintiff Palma Capital Limited in this action and that the foregoing complaint is true to his own knowledge, except as to matters therein stated on information and belief and as to those matters he believes it to be true; that the grounds of his belief as to all matters not stated upon his knowledge are correspondence and other writings furnished to him by plaintiff and interviews with officers and employees of plaintiff; and that the reason why this verification is not made by plaintiff is that plaintiff is a foreign corporation organized under the laws of the United Arab Emirates with its principal place of business located in Dubai.



Donald E. Watnick

Sworn to this 31st day of
July, 2014



Notary Public

MATTHEW A. BEYER
Notary Public, State of New York
New York County
No. 02BE6298133 
Commission Expires March 10, 2018