

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 584 OF 2012

B E T W E E N:

(1) SETH PINEGAR

AND

(1) ISOFTSTONE HOLDINGS LIMITED



Defendant

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**AMENDED WRIT OF SUMMONS**

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TO: (1) iSoftstone Holdings Limited

The Defendant's address is:  
c/o Maples Corporate Services Limited  
PO Box 309  
Ugland House  
South Church Street  
George Town Grand Cayman  
Cayman Islands KY1-1104

THIS AMENDED WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court office, PO Box 495, George Town, Grand Cayman KY1-1106, the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 21<sup>st</sup> day of December 2012

Amended this 12<sup>th</sup> day of March 2013 pursuant to GCR O.20, r.1.

**NOTE** - This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by order of the Court.

**IMPORTANT**

Directions for Acknowledgement of Service are given with the accompanying form.

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**AMENDED STATEMENT OF CLAIM**

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**Parties and background**

1. The Plaintiff is and was at all material times a citizen of the United States of America and resident of the People's Republic of China.
2. The Defendant is and was at all material times a Cayman Islands exempt company which is the holding company for a China-headquartered information technology service provider to clients both in China and globally. The American Depository Shares ("ADS's") of the Defendant are listed on the New York Stock Exchange (NYSE: ISS).
3. From 1 July 2008 to 30 June 2011, the Plaintiff was employed by a subsidiary of the Defendant, iSoftStone Information Technology (Group) Co., Ltd. (formerly iSoftStone Information Service Corporation) ("IITG") as a Senior Vice President and Head of Corporate Development.
4. IITG is a company incorporated in the People's Republic of China.
5. Mr Tianwen Liu ("Mr Liu") is and was at all material times the founder, Chairman and CEO of the Defendant and of IITG.

**The Initial Agreements**

6. In and around May and June of 2008 the Plaintiff had discussions with Mr Liu regarding possible employment, and specifically to assist the Defendant with mergers and acquisitions, pre-initial public offering fundraising, attending meetings of the Board of Directors and other investor-related events, and to lead its initial public offering (intended for a United States stock exchange listing).

7. On 1 July 2008 the Plaintiff entered into an Employment Letter of Intent with IITG.
8. On or about 1 July 2008 the Plaintiff entered into a Labour Contract, in the Chinese language, with IITG.
9. On or about 1 July 2008 the Plaintiff commenced employment with IITG.

### **The 2008 Options**

10. On 20 December 2008, pursuant to a Share Option Agreement (the “2008 Agreement”) the Plaintiff was granted 2,176,462 options with respect to shares of the Defendant governed by the 2008 Share Incentive Plan (the “2008 Plan”). The exercise price of the options was US\$0.30.
11. The 2008 Agreement provided under the heading “Withholding Taxes”:

“You will not be allowed to exercise this option unless you make acceptable arrangements to pay any withholding or other taxes that may be due as a result of the option exercise or sale of shares acquired under this option. In the event that the Company determines that any federal, state, local or foreign tax or withholding payment is required relating to the exercise or sale of shares arising from this grant, the Company shall have the right to require such payments from you, or withhold such amounts from other payments due to you from the Company or any Affiliate.”

### **The 2009 Options**

12. On 23 December 2009, pursuant to a Share Option Agreement (the “First 2009 Agreement”) the Plaintiff was granted 170,000 options with respect to shares in the Defendant governed by the ISS 2009 Share Incentive Plan (the “2009 Plan”).

13. On 1 August 2010, pursuant to a Share Option Agreement (the “Second 2009 Agreement” and together with the First 2009 Agreement “the 2009 Agreements”) the Plaintiff was granted an additional 435,292 options with respect to shares in the Defendant governed by the 2009 Plan.
14. The terms of the First 2009 Agreement, Second 2009 Agreement and 2009 Plan were substantially in a form similar to the 2008 Agreement and 2008 Plan, save that:
  - (1) the exercise price was US\$0.50 per option and US\$0.65 per option respectively;
  - (2) the options were “deemed exercised” upon completing the exercise procedures, payment of the exercise price and any applicable withholding tax;
  - (3) the grantee was given the right to elect to pay relevant taxes by the withholding of shares, the surrender of other shares or cash payment.
15. In about early November 2010 Mr Liu agreed verbally with the Plaintiff on behalf of the Defendant to accelerate vesting of the Plaintiff’s 2008 options. This was agreed to compensate the Plaintiff in respect of a short-fall in compensation earlier agreed.
16. It was the understanding and intention of both the Plaintiff and the Defendant that following the IPO the shares issued to the Plaintiff pursuant to his options would become tradable on a stock exchange. This represents normal practice in an IPO and was necessary to give value to the options granted to the Plaintiff as remuneration and incentive for his employment.

### **The Initial Public Offering**

17. On or about 14 December 2010 the Defendant completed its initial public offering (“IPO”) of ADS’s which were listed on the New York Stock Exchange (“NYSE”).
18. The ISS ADS’s traded on the NYSE are governed by a Deposit Agreement dated on or about 14 December 2010 between the Defendant, JP Morgan Chase N.A.

("JPM") as Depository and Holders of ADS's from time to time (the "Deposit Agreement"). The Deposit Agreement is governed by New York law.

19. Pursuant to the preamble of the Deposit Agreement, the Defendant appointed JPM to act as Depository (as defined) for ISS shares deposited with it pursuant to the Deposit Agreement. This includes those shares deposited by the Defendant in conjunction with the IPO.
20. Pursuant to clause 3 of the Deposit Agreement, upon a deposit of ISS shares JPM would then issue ADS's in the form attached to the Deposit Agreement (at a rate of one ADS for each ten shares).
21. Shares issued or to be issued to management of the Defendant and its affiliates were subject to a 180 day Lock Up period following the IPO during which such shares could not be traded. This Lock Up period expired on 10 June 2011.
22. On 4 May 2011 the Plaintiff received an e-mail sent to option-holder employees by Lin Tang (Linda), then head of the Defendant's Legal Department introducing them to Computershare, a web-based application ISS had procured to allow employees to be able to exercise options and automatically sell shares, following the conversion of shares to ADS's and following expiration of the IPO Lock Up. The e-mail included an individualized log-in and password.
23. On 10 June 2011 the Plaintiff received a group email from Ms Tang informing him that he would be able to sell his shares commencing 13 June 2011 (in the form of ADSs') and he would be required to conform to the Insider Trading Policy attached to the email.

### **Exercise of 2008 Options**

24. On 11 November 2010, the Plaintiff sent an e-mail to Shianniang Lv (Deborah), the Defendant's in-house Legal Director at the time, requesting her to initiate the appropriate documentation for the Plaintiff to exercise the 2008 options, in accordance with the agreement referred to in paragraph 15 above. Notwithstanding

that there was no clause requiring written amendment or waiver of the 2008 option agreement or plan, Ms Lv denied this request, citing a required Board resolution approving such a request.

25. By email dated 12 January 2011, the Plaintiff advised Ms Lv that he wanted to exercise all vested 2008 Options, being a total of 1,632,346 options with an exercise price of US\$0.30, totalling US\$489,703.80.
26. By email in reply dated 12 January 2011, Ms Lv queried whether the Plaintiff wanted to receive ordinary shares of the Defendant or ADS's, to which the Plaintiff responded that ADS's were preferred, but that ordinary shares would be acceptable in the interim, to be exchanged for ADS's in the future. Ms Lv advised the Plaintiff that he would be allowed to exercise the vested options, but that no ADS's would be issued during the Lock-Up period as the underwriters would not allow this during the Lock Up period.
27. On 17 January 2011, Ms Lv sent the documents necessary for the Plaintiff to exercise the 2008 options, including a "Notice of Exercise" and wire instructions.
28. On or about 24 January 2011 the Plaintiff wired the sum of US\$489,703.92, of which US\$489,698.92 was received on or about 9 February 2011. The Notice of Exercise was hand-delivered by the Plaintiff to Ms Lv, and the Defendant had a copy of his passport on file. A reference letter was provided for the Defendant by Kurt Berney Esq., a U.S. lawyer with O'Melveny & Myers and the Defendant's counsel.
29. On 15 February 2011 the Plaintiff was sent a share register for the Defendant showing that he had been issued 1,632,346.00 ordinary shares in the Defendant (the "2008 Shares").
30. In issuing shares to the Plaintiff, the Defendant did not raise any concern about withholding taxes (as it might have done as referred to in paragraph 11 above).

## **Exercise of 2009 Options**

31. On 11 March 2011, the Plaintiff sent an email to Ms Tang, head of the Defendant's Legal Department following the resignation of Ms Lv, informing her that he intended to exercise his 85,000 vested options from the First 2009 Agreement, and again sent the necessary "Notice of Exercise."
32. Also on 11 March 2011, Ms Boai Liu, an assistant in the Defendant's Legal Department advised the Plaintiff that there were no other forms which needed to be completed, and requested that the Plaintiff send the original Notice of Exercise and wire the exercise amounts directly to the Defendant.
33. On 16 May 2011 the Plaintiff wired US\$42,500 to the Defendant, to the same account as that to which the 2008 funds had been sent, and informed the Defendant that he would send the original Notice of Exercise form as soon as possible. The completed form was sent under cover of email dated 18 May 2011, and on the same day the original was delivered to Ms Tang in Beijing.
34. By email dated 18 May 2011, the Plaintiff was informed that a wire of US\$42,480 had been received (the "2009 Payment"), which was US\$20 short of the US\$42,500 required, and by subsequent emails that day the Plaintiff informed the Defendant that he would bring the additional US\$20.
35. On 8 June 2011, the Plaintiff sent a further email enquiring as to the status of the 2009 option exercise.
36. By email dated 8 June 2011, the Plaintiff was informed that he was required to wire US\$25 to the Defendant with respect to a shortfall of US\$5 for the 2008 options and US\$20 for the First 2009 Agreement.
37. On 29 June 2011 the Plaintiff queried how the shortfall of US\$25 for the 2009 exercise should be paid, and requested that this be deducted from his salary for June.

38. In the premises, by at latest 29 June 2011, the Plaintiff paid and/or tendered the full amount payable on exercise of the 2009 Options.
39. In breach of the First 2009 Agreement, the Defendant has failed to issue to the Plaintiff 85,000 shares.
40. Alternatively, the Defendant ought to have issued the number of shares for which the price was tendered and, in breach of the First 2009 Agreement, the Defendant has failed by at latest 29 June 2011 to issue 84,060 shares (being 85,000 shares less 40 shares at \$0.50 per share, totalling US\$20).

#### **Further Agreement**

41. On 7 May 2011 the Plaintiff tendered his resignation from IITG.
42. The Plaintiff's last day of employment at IITG was 9 June 2011.
43. On or about 5 June 2011, the Plaintiff and Mr Liu (on behalf of the Defendant) had a further conversation which occurred in Mr Liu's office. During this conversation the Defendant, by Mr Liu, and the Plaintiff agreed:
  - (1) the Plaintiff would provide consulting services on certain projects for IITG;
  - (2) neither IITG nor the Defendant would pay the Plaintiff for such services (save for reimbursement of expenses);
  - (3) the Defendant would arrange for the share certificates for the exercised 2009 options to be sent to the Plaintiff;
  - (4) vesting of the ~~outstanding~~ options in respect of 108,823 shares under the Second ~~First~~ 2009 Agreement would be accelerated; and

- (5) the 2008 Shares and 2009 shares (once issued) would be converted to ADS's for trading on the NYSE.
44. The Consulting Agreement was entered into on or after 6 July 2012 and provided for the Plaintiff to provide services to IITG for the period 1 August 2011 to 31 August 2011.
45. On 24 June 2011 the Plaintiff sent the shares certificates for 1,632,346 common shares to his broker UBS and requested that these be converted to ADS's.
46. In breach of the agreement referred to in paragraph 43 above (1) the Defendant failed to deliver to the Plaintiff share certificates for the exercised 2009 options and (2) the Defendant failed to procure or to allow the 2008 (or 2009) shares to become tradable on the NYSE.
47. By reason of the Defendant's breaches, the Plaintiff did not seek to exercise the accelerated balance of the options under the Second First 2009 Agreement, the vesting of which had been accelerated under the terms of the agreement referred to in paragraph 43 and pursuant to an amendment letter dated 9 June 2011.
48. During numerous conversations between 18 July 2011 and 23 December 2011, the Plaintiff verbally requested of Kurt Berney Esq and Larry Sussman, attorneys with O'Melveny & Myers (the Defendant's counsel) and Mr Liu directly, that (a) his shares be made tradable; and (b) his 2009 option exercise to be given effect. During these conversations:
- (1) The Plaintiff was told that there were issues in relation to taxation, but despite repeated requests the Plaintiff was not told how much tax had actually been assessed as due, when it was payable, to whom, or how it should be paid;
  - (2) Despite being given no proper details of the tax to be paid or any liability for tax, the Plaintiff was told that his 2009 shares would not be issued and all shares made tradable until he agreed that the proceeds would be used to pay

whatever tax might be due; and

- (3) The Plaintiff asked for the 2009 Payment to be returned to him, but the 2009 Payment was never refunded.

49. The reasons given on behalf of the Defendant for its failure to issue and convert shares under the 2008 Agreement and 2009 Agreements and the agreement referred to at paragraph 43 above were unjustified and not given in good faith. In particular:

- (1) The reliance on non-payment of withholding taxes could not be justified by the term referred to at paragraph 11 above and was not provided for in the agreement referred to at paragraph 43 above;
- (2) The Defendant had failed to deal with the issue of withholding taxes at the time that the share options were exercised and had failed to ensure that IITG met its tax liabilities, demonstrating a clear failure of internal controls;
- (3) The Defendant intended to make its shares tradable following the IPO, as set out at paragraph 16 above and as reflected in the Prospectus for the IPO, and had allowed the shares of other senior executives to be converted to ADS's who were able to sell at the expiration of the IPO Lock Up;
- (4) The Defendant failed to provide to the Plaintiff the same rights as were provided to the Defendant's shareholders generally;
- (5) The Defendant knew that the shares were worthless to the Defendant until converted to ADS's and that the price of ADS's was falling.

50. By reason of the said breaches of contract (at paragraphs 39, 40 and 46 above), the Plaintiff was and remains unable to sell his shares, as he would have done on or about 5 July 2011, and has suffered loss and damage.

## Particulars of Loss

51. Had the 2008 Shares been made tradable, the Plaintiff would have sold the ADS's on or about 5 July 2011 at a price of US\$16.00 per ADS.
52. Had the 2009 Shares been issued and made tradable the Plaintiff would have sold the ADS's on or about 5 July 2011 at a price of US\$16.00 per ADS.
53. As the 2008 shares held by the Plaintiff have still not been made tradable (by reason of the Defendant's breach) he is unable to sell them at the current price of the ADS's (US\$4.72 as at 7 November 2012) and gives no credit for their value.
54. In the premises the Plaintiff has suffered loss of US\$2,921,870.40 ~~US\$2,883,753.00~~, (calculated as 1,632,346 (paragraph 29) + 85,000 (paragraph 39)) + 108,823 ~~85,000~~ (paragraph 47) / 10 (paragraph 20) x 16 (paragraphs 51 and 52), together with interest thereon.

## AND THE PLAINTIFF claims:

1. Damages as set out at paragraph 54 above;
2. Alternatively specific performance;
3. Interest;
4. Costs; and
5. Such further and other orders as this Court thinks fit.

Dated the 21<sup>st</sup> day of December 2012

Re-dated the 12<sup>th</sup> day of March 2013 pursuant to GCR O. 20, r.3

Appleby (Cayman) Ltd  
Appleby (Cayman) Ltd.

THIS AMENDED WRIT AND STATEMENT OF CLAIM was issued by Appleby (Cayman) Ltd. of Clifton House, 75 Fort Street, PO Box 190, Grand Cayman KY1-1104, Cayman Islands (Ref. ES/JC/AG/417280.0001), Attorneys-at Law for the Plaintiff, whose address is 1038 Huashan Lu #5-3507, Changning District, Shanghai, PRC

**DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE  
OF WRIT OF SUMMONS**

1. The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person. After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495 GT, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings must also serve a Defence on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his Defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A Stay of Execution against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, issue a Summons for a Stay of Execution, supported by an Affidavit of his means. The Affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

*See over for notes for guidance*

*Please complete overleaf*

### Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (*the name stated on the Writ of Summons*)".
4. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
6. Where the Defendant is a Limited Company the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian *ad litem*.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2012

B E T W E E N:

(1) SETH PINEGAR

Plaintiff

AND

(1) ISOFTSTONE HOLDINGS LIMITED

Defendant

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ACKNOWLEDGMENT OF SERVICE  
OF WRIT OF SUMMONS

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If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged:

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2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

YES

NO

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3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (tick box)

YES

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Service of the Writ is acknowledged accordingly

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Attorneys for Defendant

Address for service:

**Notes on address for service**

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

*Indorsement by Plaintiff's Attorney (or by Plaintiff if suing in person) of his name, address and reference, if any, in the box below.*

Appleby (Cayman) Ltd.  
Attorneys-at-Law  
Clifton House  
75 Fort Street  
PO Box 190  
George Town  
Grand Cayman KY1-1104  
Ref: ES/JC/AG/417280.0001

*Indorsement by Defendant's Attorney (or by Defendant if suing in person) of his name, address and reference, if any, in the box below.*

