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22 UNITED STATES DISTRICT COURT
23 CENTRAL DISTRICT OF CALIFORNIA

24 Wolfgang Reile and Anthony Beltran,

25 Plaintiffs,

26 v.

27 Afilias, plc,

28 Defendant.

Case No. 2:18-cv-01549

COMPLAINT FOR:

(1) BREACH OF CONTRACT;

(2) ACCOUNTING;

(3) DECLARATORY RELIEF

DEMAND FOR JURY TRIAL

1 Plaintiffs Wolfgang Reile (“Reile”) and Anthony Beltran (“Beltran”) allege
2 as follows:

3 **INTRODUCTION**

4 1. This action arises from defendant Afilias, plc’s (“Afilias”) breach of its
5 obligations under a Stock Purchase Agreement and failure to remit the final
6 installment of the purchase price to Plaintiffs Reile and Beltran.

7 **THE PARTIES, JURISDICTION AND VENUE**

8 2. Plaintiff Reile is an individual currently residing in San Diego County,
9 California.

10 3. Plaintiff Beltran is an individual currently residing in San Diego County,
11 California.

12 4. Reile and Beltran are informed and believe, and thereon allege that,
13 defendant Afilias is an Irish public limited company, with a principal place of
14 business in Horsham, Pennsylvania.

15 5. Afilias owns all of the stock of 101Domain, Inc. (“101Domain”), a
16 Nevada corporation registered to do business in California.

17 6. Afilias acquired the stock of 101Domain on or about September 3, 2015
18 when Afilias entered into a Stock Purchase Agreement with Reile and Beltran (the
19 “Stock Purchase Agreement”).

20 7. Jurisdiction in this Court is proper under 28 U.S.C. § 1332 because there
21 is complete diversity of citizenship between the parties and the amount in controversy
22 exceeds \$75,000, exclusive of interest and costs. This Court also has authority to
23 grant the relief sought in this action pursuant to the provisions of the Declaratory
24 Judgment Act, 28 U.S.C. §§ 2201-2202.

25 8. Venue in this District is proper under 28 U.S.C. § 1391(b) and (c)
26 because a substantial part of the events or omissions giving rise to this claim occurred
27 in this District and Afilias transacts business in this District. Afilias is subject to the
28 personal jurisdiction of this Court and is amenable to service of process pursuant to

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1 the California Long-Arm Statute, Cal. Civ. Proc. Code § 413.10, and Fed. R. Civ. P.
2 4(e).

3 9. Jurisdiction and venue are also proper in this District because pursuant
4 to Section 10.10(b) of the Stock Purchase Agreement, Reile, Beltran, and Afilias
5 consented to jurisdiction in this District with respect to any claims arising under the
6 Stock Purchase Agreement.

7 **GENERAL ALLEGATIONS**

8 **I. The Stock Purchase Agreement**

9 10. Reile is a successful entrepreneur who has founded and grown numerous
10 companies during the last two decades.

11 11. In or around December 12, 2005, Reile and Beltran founded
12 101Domain, which provides international domain name registration and management
13 services. Reile was the majority shareholder of 101Domain, holding 89.74% of its
14 shares, with Beltran holding 10.26% of 101Domain’s shares.

15 12. On or about September 3, 2015, Afilias entered into a Stock Purchase
16 Agreement with Reile and Beltran, pursuant to which Afilias purchased all of the
17 issued and outstanding stock of 101Domain in exchange for \$15,500,000 (the
18 “Purchase Price”). A true and correct copy of the Stock Purchase Agreement is
19 attached hereto as **Exhibit A**.

20 13. Under Section 2.03 of the Stock Purchase Agreement, the Purchase
21 Price was to be paid in installments as follows:

22 (a) Afilias made a closing cash payment of \$12,500,000; and

23 (b) Afilias concurrently executed a non-negotiable Promissory Note
24 in the amount of \$3,000,000, with interest to accrue at 5% per annum, in favor of
25 Reile and Beltran (the “Promissory Note”). A true and correct copy of the
26 Promissory Note executed by Afilias is attached hereto as **Exhibit B**.

27 14. Under the terms of the Promissory Note, Afilias was to repay the
28 principal balance in two installments: (i) a payment of \$2,000,000 on September 3,

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1 2016; and (ii) a payment of \$1,000,000 on September 3, 2017, with accrued interest
2 payable quarterly in arrears.

3 15. The payments under the Promissory Note were to be divided by Reile
4 and Beltran pro rata based on the proportional percentage of their ownership of
5 101Domain’s shares. Thus, Reile was to receive 89.74% and Beltran was to receive
6 10.26%, of each payment, under the Promissory Note.

7 **III. Indemnification Rights Under the Stock Purchase Agreement**

8 16. As part of the Stock Purchase Agreement, Reile and Beltran severally
9 made representations and warranties in favor of Afiliias, including that, subject to the
10 exceptions set forth on Schedule 3.19(a), “all Tax Returns required to be filed on or
11 before [September 3, 2015] by [101Domain] have been, or will be timely filed. Such
12 Tax Returns are, or will be, true, complete and correct in all respects. All Taxes due
13 and owed (whether or not shown on any Tax Return) have been, or will be, timely
14 paid.” (Stock Purchase Agreement, § 3.19(a)).

15 17. Further, Reile and Beltran agreed to severally indemnify Afiliias for “any
16 Loss attributable to any breach of or inaccuracy in any representation or warranty
17 made in Section 3.19” and “all Pre-Closing Taxes” with reimbursement for such to
18 be paid to Afiliias “within ten (10) Business Days after payment of such Taxes by
19 [Afiliias] or [101Domain].” (Stock Purchase Agreement, §6.03).

20 18. In order to seek indemnification under the Stock Purchase Agreement
21 for a indemnifiable loss not resulting from a claim asserted by a third party, Afiliias
22 was required to comply with Section 8.05(c) which provides:

23 Any Action by an Indemnified Party on account of a Loss
24 that does not result from a Third Party Claim (“**Direct**
25 **Claim**”) shall be asserted by the Indemnified Party giving
26 the Indemnifying Party reasonably prompt written notice
27 thereof, by in any event not later than fifteen (15) days after
28 the Indemnified Party becomes aware of such Direct
Claim. . . . Such notice by the Indemnified Party shall
describe the Direct Claim in reasonable detail, shall include
copies of all material written evidence thereof and shall
indicate the estimated amount, if reasonably practicable, of
the Loss that has been or may be sustained by the

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1 Indemnified Party. The Indemnifying Party shall have
 2 thirty (30) days after its receipt of such notice to respond in
 3 writing to such Direct Claim (unless the Direct Claim is
 4 pursuant to a filed Action, in which case the Indemnifying
 5 Party has the period of time allowed at law to file a
 6 responsive pleading) (the “**Dispute Period**”). The
 7 Indemnified Party shall allow the Indemnifying Party and
 8 its professional advisors to investigate the matter or
 9 circumstance alleged to give rise to the Direct Claim, and
 10 whether and to what extent any amount is payable in
 11 respect of the Direct Claim and the Indemnified Party shall
 12 assist the Indemnifying Party’s investigation by giving
 13 such information and assistance (including access to the
 14 Company’s premises and personnel and the right to
 15 examine and copy any accounts, documents or records) as
 16 the Indemnifying Party or any of its professional advisors
 17 may reasonably request. If the Indemnifying Party
 18 disagrees with the validity or amount of all or a portion of
 19 such Direct Claim, the Indemnifying Party will deliver to
 20 the Indemnified Party written notice thereof (the “**Dispute
 21 Notice**”) prior to the expiration of the Dispute Period. If
 22 no Dispute Notice is received by the Indemnified Party
 23 within the Dispute Period or if Indemnifying Party
 24 provides notice that it does not have a dispute with respect
 25 to the Direct Claim, then such claim will be deemed
 26 approved and consented to and payable by the
 27 Indemnifying Party. If a Dispute Notice is received by the
 28 Indemnified Party within the Dispute Period, no payment
 will be made by the Indemnifying Party until such disputed
 Direct Claim is resolved, whether by adjudication of the
 matter, agreement between the Indemnifying Party and the
 Indemnified Party, or otherwise.

19. Further, the Stock Purchase Agreement provides Afiliias with a limited
 right to suspend payment under the Promissory Note “up to the amount in dispute”
 in the event of an indemnification claim. (Stock Purchase Agreement, § 8.06).

II. Afiliias Breaches the Stock Purchase Agreement and Promissory Note

20. On or about September 3, 2016, Afiliias made the first installment
 payment due under the Promissory Note to Reile.

21. However, on or about September 3, 2017, Afiliias failed to make the final
 installment payment due under the Promissory Note.

22. Instead, on or about September 5, 2017, Afiliias delivered a Notice of
 Indemnification Claim (“Indemnification Demand”) to Reile and Beltran asserting
 that it had discovered 101Domain had a purported unpaid pre-closing Value Added

1 Tax (“VAT”) liability for the period of January 1, 2010 to September 3, 2015. While
2 Afilias asserted that the “estimated” liability for the purportedly unpaid VAT totaled
3 \$874,753, no written evidence was enclosed with the Indemnification Demand to
4 support Afilias’ claim.

5 23. Notwithstanding the fact that neither Afilias nor 101Domain have paid
6 the purported pre-closing VAT liability, Afilias asserted that it was entitled to
7 indemnification under the Stock Purchase Agreement and advised that it was
8 withholding the entirety of the final \$1,000,000 installment payment due under the
9 Promissory Note.

10 24. In accordance with the terms of the Stock Purchase Agreement, Reile
11 and Beltran timely delivered a Dispute Notice to Afilias contesting the validity of its
12 claim.

13 **CLAIM FOR RELIEF**

14 **FIRST CLAIM FOR RELIEF**

15 **(Breach of Contract)**

16 25. Reile and Beltran reallege and incorporate by reference, as if fully set
17 forth herein, the previous allegations in paragraphs 1 through 24.

18 26. Reile, Beltran, and Afilias are parties to certain written agreements,
19 including the Stock Purchase Agreement and the Promissory Note (the
20 “Agreements”).

21 27. Reile and Beltran duly performed all conditions on their part with
22 respect to the Agreements.

23 28. Afilias has breached the Agreements and refused to comply with the
24 terms of the Agreements by withholding the final installment of the Purchase Price
25 due to Reile and Beltran based upon a purported pre-closing VAT liability that has
26 not been paid by Afilias or 101Domain.

27 29. As a direct and proximate result of the material breach of the
28 Agreements by Afilias, Reile and Beltran have suffered damages in an amount to be

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1 proven at trial, plus interest, costs and Reile and Beltran’s attorneys’ fees, as provided
2 for in the Stock Purchase Agreement.

3 **SECOND CLAIM FOR RELIEF**

4 **(Accounting)**

5 30. Reile and Beltran reallege and incorporate by reference, as if fully set
6 forth herein, the previous allegations in paragraphs 1 through 29.

7 31. As set forth in Section 8.05(c) of the Stock Purchase Agreement, Afiliias
8 had a duty to provide Reile and Beltran with an indemnification demand setting forth
9 the amount of any alleged unpaid pre-closing tax for which it sought indemnification
10 and all supporting written evidence. Additionally, Afiliias had a duty to provide Reile
11 and Beltran with access to the books and records necessary to assess any
12 indemnification demand made by it.

13 32. Despite Reile and Beltran’s requests, Afiliias has failed to provide an
14 adequate accounting for the purported pre-closing VAT liability.

15 33. Reile and Beltran are informed and believe, and thereon allege, that the
16 alleged amount of unpaid VAT set forth in Afiliias’ Indemnification Demand is
17 inaccurate.

18 34. Reile and Beltran have demanded that Afiliias adequately account for the
19 aforementioned VAT liability, but Afiliias has failed to render an adequate
20 accounting.

21 **THIRD CLAIM FOR RELIEF**

22 **(Declaratory Relief under 28 U.S.C. § 2201 et seq.)**

23 35. Reile and Beltran reallege and incorporate by reference, as if fully set
24 forth herein, the previous allegations in paragraphs 1 through 34.

25 36. An actual controversy has arisen and now exists between the parties
26 relating to the interpretation of the Agreements and the legal rights and duties of Reile
27 and Beltran on the one hand, and Afiliias on the other, for which Reile and Beltran
28 desire a judicial declaration of rights.

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1 37. A declaratory judgment is necessary because Reile and Beltran contend
2 that Afilias is not entitled to withhold the final installment of the Purchase Price based
3 upon a purported pre-closing VAT liability that has not been paid by Afilias or
4 101Domain, while Afilias contends that it is entitled to do so.

5 38. Declaratory relief from this Court will resolve this controversy and limit
6 the uncertainties and clarify the legal rights and duties of the parties.

7 39. Reile and Beltran therefore request declaratory judgment from this
8 Court pursuant to Rule 57 of the Federal Rules of Civil Procedure, that Afilias is
9 obligated to remit the final installment of the Purchase Price and may not withhold it
10 on the basis of an alleged pre-closing VAT liability that has not been paid by Afilias
11 or 101Domain.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs respectfully pray that judgment be entered against
14 Defendant for the following:

- 15 1. For an award of compensatory damages, general damages, prospective
16 damages and restitution, if any, in an amount to be determined at trial;
- 17 2. For an accounting, as set forth in the Second Cause of Action;
- 18 3. For a declaration, pursuant to Rule 57 of the Federal Rules of Civil
19 Procedure that Afilias may not withhold the final installment of the Purchase Price
20 based on an alleged pre-closing VAT liability that has not been paid by Afilias or
21 101Domain, as set forth in the Third Cause of Action;
- 22 4. For an award of attorneys’ fees and costs incurred herein pursuant to the
23 Stock Purchase Agreement and applicable law;
- 24 5. For an award of post judgment interest on the foregoing sums at the
25 maximum rate permitted by law from the date the judgment is entered until paid.
- 26 6. For such other and further relief as the Court deems just and proper.

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Dated: February 26, 2018

Respectfully submitted,
SQUIRE PATTON BOGGS (US) LLP

By: /s/ Daniel H. Wu
Daniel H. Wu
Attorneys for Plaintiff
Wolfgang Reile

Dated: February 26, 2018

Respectfully submitted,
SOLOMON WARD SEIDENWURM
& SMITH LLP

By: /s/ Stephen L. Schreiner
Stephen L. Schreiner
Attorneys for Plaintiff
Anthony Beltran

Pursuant to Local Rule 5-4.3.4(a)(2)(i), the filer attests that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized this filing.

/s/ Daniel H. Wu
Daniel H. Wu

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DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, Reile and Beltran hereby demand a jury trial on all issues so triable.

Dated: February 26, 2018

Respectfully submitted,

SQUIRE PATTON BOGGS (US) LLP

By: /s/ Daniel H. Wu

Daniel H. Wu
Attorneys for Plaintiff
Wolfgang Reile

Dated: February 26, 2018

Respectfully submitted,

SOLOMON WARD SEIDENWURM
& SMITH LLP

By: /s/ Stephen L. Schreiner

Stephen L. Schreiner
Attorneys for Plaintiff
Anthony Beltran

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/s/ Daniel H. Wu

Daniel H. Wu