

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

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Organovo Holdings, Inc.,	:	
Plaintiff,	:	INDEX NO.
v.	:	SUMMONS
Spencer Trask Ventures, Inc.,	:	Date Index No. Purchased:
Defendant.	:	
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To: Spencer Trask Ventures, Inc.:

PLEASE TAKE NOTICE, you are hereby summoned to answer the complaint in this action and to serve a copy of your answer on plaintiffs' attorney within twenty (20) days after service of the summons, exclusive of the day of service (or within thirty (30) days after service is complete if the summons is not personally delivered to you within the State of New York) and in case you fail to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is CPLR 503(a) because the company defendants reside in New York, as well as a contractual venue-selection provision.

Dated: New York, NY  
June 28, 2013

Respectfully submitted,

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By:   
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Organovo Holdings, Inc.

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

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Organovo Holdings, Inc.,	:	INDEX NO.
Plaintiff,	:	
v.	:	COMPLAINT
Spencer Trask Ventures, Inc.,	:	
Defendant.	:	
-----	X	

Plaintiff Organovo Holdings, Inc., (“Organovo”), by and through its counsel, brings this action for Declaratory Relief and states and alleges as follows:

OVERVIEW

1. This case involves an attempt by defendant Spencer Trask Ventures, Inc. (“Spencer Trask”) to leverage its client—Organovo’s—desire to “uplist” to a senior stock exchange to make more money off of Organovo than it is entitled to under its existing agreement with Organovo. Over the course of several weeks in February 2013, Organovo and Spencer Trask, through their respective attorneys, negotiated a Warrant Solicitation Agency Agreement (the “WSAA”) pursuant to which Organovo engaged Spencer Trask as its warrant solicitation agent in connection with Organovo’s efforts to solicit the exercise of 2,294,383 outstanding Organovo warrants (the “Solicited Warrants”) as a part of a warrant redemption (the “Warrant Redemption”). Spencer Trask’s President signed the WSAA on behalf of Spencer Trask, and Organovo’s CEO executed the agreement on behalf of Organovo. Spencer Trask provided services to Organovo pursuant to the WSAA, and Organovo has paid Spencer Trask for those services.

2. On February 22, 2013, Organovo requested that Spencer Trask exercise Organovo warrants that Spencer Trask owned, which have different terms than the Solicited Warrants and were not covered by the Warrant Redemption (the “Spencer Trask Warrants”), before the end of March 2013. Organovo made this request of Spencer Trask to help Organovo qualify for a listing on a senior stock exchange, such as Nasdaq or the New York Stock Exchange. Organovo even offered Spencer Trask a 40% discount on the exercise price of the Spencer Trask Warrants, which was worth approximately \$800,000.00 to Spencer Trask. Despite this generous offer, Spencer Trask immediately started to try to negotiate even better terms for the exercise of the Spencer Trask Warrants than the 40% discount Organovo already offered to Spencer Trask.

3. Unable to force Organovo to accede to its demands, on March 1, 2013, Spencer Trask’s counsel sent an email to Organovo purporting to “rescind” the WSAA. Following this supposed “rescission,” Spencer Trask continued to try to negotiate more favorable terms for the exercise of the Spencer Trask Warrants. Despite the purported “rescission,” Spencer Trask continued to provide services to Organovo pursuant to the WSAA and Organovo made the first installment payment to Spencer Trask pursuant to the WSAA, which Spencer Trask accepted.

4. Then, on March 13, 2013, Spencer Trask sent Organovo a letter demanding compensation in excess of the amount agreed to in the WSAA for Spencer Trask’s work pursuant to the WSAA.

5. Spencer Trask’s March 13, 2013 letter also included a threat to sue Organovo unless Organovo acceded to its demand that Organovo pay Spencer Trask more money than set forth in the terms of the WSAA.

6. Upon information and belief, Spencer Trask “rescinded” the WSAA, demanded more money from Organovo for its services, and threatened a lawsuit against Organovo in an

effort to pressure Organovo into providing Spencer Trask with better warrant exercise terms for the Spencer Trask Warrants. This, despite the fact that Spencer Trask already received compensation of approximately \$23 million from Organovo for earlier work in which it helped Organovo raise a relatively small \$15 million for operations.

7. In order to put an end to Spencer Trask's shake down and the disruption to Organovo's business, Organovo respectfully seeks a declaratory judgment that:

- (a) Spencer Trask's purported "rescission" of the WSAA is void and of no force and effect to invalidate the WSAA;
- (b) the WSAA remains a valid and enforceable agreement between Organovo and Spencer Trask; and
- (c) Organovo has fully compensated Spencer Trask for its services under the WSAA and for the solicitation of any and all of the Solicited Warrants.

#### PARTIES

8. Organovo is a Delaware corporation with its principal place of business in San Diego, California. Organovo is a biotech company that designs and creates groundbreaking, functional, three-dimensional human tissues for medical research and therapeutic applications. Organovo's work and technology have been hailed by, among others, the Wall Street Journal, the New York Times, and Inc. Magazine.

9. Defendant Spencer Trask Ventures, Inc. is a Delaware corporation and has its principal place of business in New York, New York. Spencer Trask's business focuses principally on selling private placement investments in its client companies.

#### JURISDICTION AND VENUE

10. Jurisdiction and venue are proper in this Court because it is the jurisdiction and venue stipulated to by the parties in Section 7(h) of the WSAA.

11. Specifically, Section 7(h) of the WSAA provides,

**THE PARTIES HERETO HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY NEW YORK STATE OR UNITED STATES FEDERAL COURT SITTING IN NEW YORK COUNTY OVER ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY AGREEMENT CONTEMPLATED HEREBY, AND THE PARTIES HERETO HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH NEW YORK STATE OR FEDERAL COURT. THE PARTIES HERETO FURTHER WAIVE ANY OBJECTION TO VENUE IN SUCH STATE AND ANY OBJECTION TO AN ACTION OR PROCEEDING IN SUCH STATE ON THE BASIS OF A NON-CONVENIENT FORUM. THE PARTIES HERETO FURTHER AGREE THAT ANY ACTION OR PROCEEDING BROUGHT AGAINST EACH OTHER SHALL BE BROUGHT ONLY IN NEW YORK STATE OR UNITED STATES FEDERAL COURTS SITTING IN NEW YORK COUNTY.**

(Emphasis in original.)

#### STATEMENT OF FACTS

##### **The WSAA and Warrant Redemption**

12. In February 2013, Organovo determined that it would exercise its right to redeem warrants that Organovo issued in a 2012 private placement offering (the “Initial Offering”). The Warrant Redemption covered all of the Solicited Warrants.

13. Over the course of approximately three weeks in February 2013, Organovo and Spencer Trask, through their respective counsel, negotiated the terms of the WSAA, pursuant to which Organovo engaged Spencer Trask as its warrant solicitation agent for the Warrant Redemption.

14. Upon conclusion of negotiations, John Heidenreich, Spencer Trask’s President, executed the WSAA on behalf of Spencer Trask and Keith Murphy, Organovo’s Chief Executive Officer, executed the WSAA on behalf of Organovo.

15. In Section 4 of the WSAA, Spencer Trask represented and warranted that, among other things, the WSAA was “duly and validly authorized, executed and delivered by [Spencer

Trask] and constitutes the legal, valid and binding agreement and obligation of [Spencer Trask], enforceable against [Spencer Trask] in accordance with its terms.”

16. Section 7(d) of the WSAA, entitled “Entire Agreement,” states, “[t]his Agreement contains the entire agreement between [Organovo] and [Spencer Trask] with respect to the solicitation of the exercise of the Warrants and supersedes all prior arrangements or understandings with respect thereto.” The term “Warrants” is defined as all of the warrants issued in the Initial Offering, which includes the Solicited Warrants.

17. Section 7(h) of the WSAA provides that the WSAA is to be governed, construed and enforced in accordance with the laws of the state of New York applicable to contracts made and to be performed wholly within New York.

#### **Organovo’s Request that Spencer Trask Exercise Its Warrants**

18. On February 22, 2013, Organovo made a request that Spencer Trask exercise the Spencer Trask Warrants, which were not subject to the Warrant Redemption. Organovo made the request because Spencer Trask’s exercise of the warrants would help Organovo in its effort to “uplist” to a senior stock exchange. Organovo initially offered a reduced exercise price in return for Spencer Trask’s immediate exercise of the Spencer Trask Warrants, and later offered to modify the exercise price of the Spencer Trask Warrants to \$0.60 instead of \$1.00, without requiring Spencer Trask’s exercise, in return for the amendment of the Spencer Trask Warrants to remove certain anti-dilution protections that were causing a balance sheet impact for Organovo and effecting the ability to uplist. This reduced exercise price was worth \$800,000.00 to Spencer Trask.

### **Spencer Trask's Bad Faith Effort to Negotiate Even Better Warrant Exercise Terms**

19. Apparently recognizing the benefit of the uplisting to Organovo, Spencer Trask seized on the opportunity to try to negotiate even better exercise terms on the Spencer Trask Warrants than the 40% discount Organovo already offered Spencer Trask.

20. Between February 22, 2013 and March 1, 2013, Spencer Trask continued to provide the services to Organovo set forth in the WSAA.

21. On March 1, 2013, counsel for Spencer Trask inexplicably sent an e-mail to Organovo's CEO purporting to "rescind" the WSAA. Organovo informed Spencer Trask that the "rescission" was ineffective and the WSAA remained a valid, enforceable agreement.

22. Despite Spencer Trask's purported "rescission," between March 1, 2013 and March 4, 2013, Spencer Trask continued to provide the services to Organovo set forth in the WSAA.

23. On March 4, 2013, Organovo made the first installment payment of \$50,729.00 to Spencer Trask pursuant to the terms of the WSAA. Spencer Trask accepted and retained this payment.

24. Between March 5, 2013 and March 13, 2013, Spencer Trask continued providing Organovo the services set forth in the WSAA. Email correspondence through March 13, 2013 evidences these services.

25. Between March 1, 2013 and March 13, 2013, Spencer Trask also continued to press for better exercise terms for the Spencer Trask Warrants than the generous 40% discount Organovo already offered Spencer Trask.

26. On March 13, 2013, the reason for Spencer Trask's attempt to "rescind" the WSAA became clear to Organovo when Spencer Trask sent a letter to Organovo claiming that

Organovo owed Spencer Trask more money than the amount set forth in the WSAA for the services Spencer Trask provided Organovo in connection with the Warrant Redemption. This amount included additional cash and the issuance of more Organovo warrants to Spencer Trask.

27. On information and belief, Spencer Trask has threatened this claim in an effort to obtain better warrant exercise terms from Organovo for the Spencer Trask Warrants.

28. Despite its threat, Spencer Trask continued to provide the services to Organovo set forth in the WSAA through March 15, 2013, the end of the Warrant Redemption period.

29. On March 25, 2013, Organovo made the second and final installment payment of \$64,050.00 to Spencer Trask pursuant to the terms of the WSAA. Spencer Trask accepted and retained this payment.

30. To date, Spencer Trask continues to try to negotiate better exercise terms for the Spencer Trask Warrants, while maintaining the threat of a lawsuit against Organovo seeking more money and warrants for Spencer Trask's work in the Warrant Redemption than expressly provided for in the WSAA.

FIRST CAUSE OF ACTION  
Declaratory Relief

31. The allegations set forth in paragraphs 1-30 above are incorporated by reference as though fully set forth herein.

32. On March 1, 2013, Spencer Trask, in bad faith, attempted to rescind the WSAA in an email and now claims that Organovo owes it additional compensation for the services Spencer Trask performed as warrant solicitation agent in the Warrant Redemption. Organovo has informed Spencer Trask that the rescission was ineffective, that the WSAA remains a valid agreement in full force and effect, and that Organovo has fully compensated Spencer Trask for its services as warrant solicitation agent pursuant to the terms of the WSAA. Spencer Trask



continues to use the threat of a lawsuit against Organovo as leverage to obtain better terms for the exercise of the Spencer Trask Warrants than those Organovo offered to Spencer Trask as a part of Organovo's efforts to uplist to a senior exchange.

33. Consequently, an actual controversy has arisen and now exists between Organovo and Spencer Trask concerning their respective rights and duties under the WSAA. A declaration is appropriate and necessary at this time under the circumstances as there is a need for the parties to ascertain their respective rights and duties, including for Spencer Trask to lift the threat of a claim for additional Organovo equity against Organovo and the resulting impact on Organovo's capitalization. Organovo also requires clarity as to the amounts, if any, it will owe Spencer Trask in connection with further solicitations of the Solicited Warrants. In particular, Organovo seeks a judicial declaration as to the following matters:

- a. that Spencer Trask's e-mail communication on March 1, 2013 purporting to "rescind" the WSAA is void and of no force and effect to invalidate the WSAA;
- b. the WSAA remains a valid and enforceable agreement; and
- c. Organovo has paid Spencer Trask in full for its services as the warrant solicitation agent in the Warrant Redemption and for any additional solicitations of the Solicited Warrants.

34. Uncertainty regarding the validity of the WSAA is disrupting Organovo's business and impeding Organovo's ability to pursue its business interests.

35. No more effective alternative remedy to declaratory relief is available to Organovo.

36. In addition, Organovo is entitled to its costs and attorneys' fees pursuant to Section 7(h) of the WSAA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment as follows:

1. For a declaration that Spencer Trask's e-mail communication on March 1, 2013 purporting to "rescind" the WSAA is void and of no force and effect to invalidate the WSAA;
2. For a declaration that the WSAA remains a valid and enforceable agreement;
3. For a declaration that Organovo has paid Spencer Trask in full for its services as the warrant solicitation agent in the Warrant Redemption and for any additional solicitations of the Solicited Warrants;
4. Granting Organovo punitive damages for Spencer Trask's willful and wanton misconduct;
5. Granting Organovo the costs, expenses and disbursements of this action, including attorneys' fees; and
6. Granting Organovo such other relief as the Court may deem just, equitable and proper.


Dated: New York, NY

June 28, 2013

Respectfully submitted,

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By: \_\_\_\_\_

  
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