DISTRICT COURT, ARAPAHOE COUNTY STATE OF COLORADO 7325 South Potomac Street Centennial, CO 80112 Tel.: (303) 645-6600	DATE FILED: December 14, 2022 10:18 AM CASE NUMBER: 2021CV31173 ▲ COURT USE ONLY ▲
Plaintiff: THE PUREBRED ARABIAN TRUST, a Colorado non-profit corporation. v. **Defendant:** ARABIAN HORSE ASSOCIATION, a Colorado non-profit corporation.	Case Number: 2021CV31173 Division: 21

ORDER GRANTING DIRECTED VERDICT AND DISMISSING CASE WITH PREJUDICE, PURSUANT TO C.R.C.P. 50

This matter having come before the Court on Defendant's Motion for Directed Verdict Under C.R.C.P. 50, made on the third day of trial (December 7, 2022), and the Court having considered the Defendant's Motion, hereby grants Defendant's Motion as explained on the record and as identified below.

1. Trial occurred on this matter from December 5, 2022 through December 7, 2022.

2. During trial, Plaintiff presented testimony from Robert Fauls, Bruce Johnson, James Lawless, Randy Buckner, Andy Becker, Deborah Fuentes, and Nancy Harvey.

3. The Court received into evidence Exhibits 1, 3, 7, 10-13, 15, 18-19, 24-28, 30-32, 36-38, 41, 45-47, 53, 55-56, 58, 60, 62, 65-70, 74-75, 78, 82, 85-88, 95-96, 98-102, 104, 110, 112, 114, 116-121, 133 and 144.

4. Plaintiff rested its case on December 7, 2022.

5. After Plaintiff rested its case, Defendant's counsel orally moved for a directed verdict pursuant to C.R.C.P. 50.

6. C.R.C.P. 50 authorizes a party to move for a directed verdict at the close of the evidence offered by the opposing party. A motion for directed verdict may be granted only if the evidence, considered in the light most favorable to the nonmoving party, "compels the conclusion that reasonable persons could not disagree and that no evidence, or legitimate inference therefrom, has been presented upon which a jury's verdict against the moving party could be sustained." *Burgess v. Mid-Century Ins. Co.*, 841 P.2d 325, 328 (Colo. App. 1992).

7. "When considering a motion for directed verdict pursuant to C.R.C.P. 50, [the Court] must examine the evidence in the light most favorable to the non-moving party, indulging all reasonable inferences which may be drawn from the evidence in favor of the non-moving party." *Vikman v. Int'l Bhd. of Elec. Workers, Loc. Union No. 1269*, 889 P.2d 646, 654 (Colo. 1995) (citing *Smith v. City & County of Denver*, 726 P.2d 1125, 1128 (Colo.1986)). "If, after such review, the trial court determines that the evidence and all reasonable inferences drawn therefrom compels the conclusion that reasonable jurors would agree that a verdict against the moving party could not be sustained, the motion should be granted." *Id.* (citating *Safeway Stores, Inc. v. Langdon*, 187 Colo. 425, 430, 532 P.2d 337, 340 (1975)).

8. The Court applied these standards to the evidence as presented by Plaintiff, comparing the evidence Plaintiff presented to the Plaintiff's allegations in Plaintiff's Complaint. After doing so, the Court has concluded that reasonable persons could not disagree and that no evidence, or legitimate inference therefrom, has been presented upon which verdict against the Defendant could be sustained.

9. Plaintiff alleged in its Complaint that "Parties negotiated for several months and on June 26, 2020, mutually agreed to amend the terms and condition of the [April 1, 2003 License and Security Agreement] while leaving all other aspects of the Agreement unchanged." *Complaint*, ¶ 17. Plaintiff attached to its Complaint as Exhibit 5 a version of Amendment # 1 signed by Robert Fauls, on behalf of the Plaintiff, on June 23, 2020. That version is not signed by any authorized representative or officer of the Defendant.

10. All drafts of the proposed Amendment # 1 contained a signature block that expressly conditioned the effectiveness of the proposed Amendment # 1 to the License and Security Agreement on the signatures of Plaintiff's and Defendant's "duly authorized officers." *Ex. 27,* p. 11; *Ex. 46,* p. 11, *Ex. 95*, p. 10.

11. Mr. Fauls, Mr. Johnson and Ms. Harvey testified that the only version of Amendment # 1 to the License and Security Agreement that bears the signatures of both Plaintiff's and Defendant's "duly authorized officers" is the version marked as Exhibit 95.

11. Ms. Harvey testified that, as the then-President of the Defendant Arabian Horse Association (sometimes referred to herein as the "Association"), she expected that the only effective version of Amendment # 1 to the License and Security Agreement would be the one that contained the signatures of both Plaintiff's and Defendant's "duly authorized officers."

12. The evidence was undisputed that when Mr. Fauls sent to Ms. Harvey a proposed version of Amendment # 1 to the License and Security Agreement that on June 23, 2020 that was scanned, Ms. Harvey requested a version that she could sign because she knew that the version of Amendment # 1 to the License and Security Agreement needed to be signed for it to be effective. Ms. Harvey did not consent to or reasonably expect that the proposed Amendment # 1 to the License and Security Agreement would become effective through an email responding to Mr. Fauls' email.

13. Plaintiff nevertheless contends that Ms. Harvey's June 26, 2020 email to Mr. Fauls advising that the Defendant's Executive Committee (EC) approved Amendment # 1 to the License and Security Agreement (*Ex. 53*) is sufficient to constitute a signature under the Uniform Electronic Transactions Act ("UETA"), C.R.S. § 24-71.3-101 et seq.

14. Plaintiff specifically cited to the Court C.R.S. § 24-71.3-102(8), which defines an electronic signature as "an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record."

15. Defendant argued that the UETA did not apply to Amendment # 1 to the License and Security Agreement because the Plaintiff and Defendant did not agree in advance to use electronic signatures through an email response or otherwise.

16. The Court finds and rules, as a matter of law, that the UETA does not apply to Amendment # 1 to the License and Security Agreement.

17. The Court also finds, based on the evidence presented, that Ms. Harvey needed a Word document she could apply her actual signature to, which demonstrated that the Defendant did not intend for the UETA to apply.

18. Mr. Fauls responded to Ms. Harvey's email attaching a version of Amendment # 1 to the License and Security Agreement by putting his actual signature on the document, confirming the parties' understanding (as expressed in the agreement itself) that Amendment # 1 to the License and Security Agreement needed to be actually, physically signed by "duly authorized officers" of both the Defendant and Plaintiff organizations.

19. The evidence presented in Plaintiff's case demonstrated that in May 2021, Mr. Fauls asked representatives of the Defendant Association for a copy of the fully signed Amendment # 1 to the License and Security Agreement, suggesting that Plaintiff did not retain a copy.

20. Based on the evidence presented, the Court finds that the fully signed version of Amendment # 1 to the License and Security Agreement, Exhibit 95, is the only effective and enforceable version of Amendment # 1.

21. Amendment # 1 to the License and Security Agreement (*Ex. 95*) amends, in part, the License and Security Agreement of 2003 (LSA). *Ex. 3*.

22. The LSA defines the term Licensed Technology as "the Database and the Software and all information technology, and other related items thereto." *Ex. 3*, p. 2.

23. The LSA defines the term "Database" to mean the "Original Database together with all Updates thereto." *Id.*

24. The LSA defines the term "Original Database" to mean "an electronic database of information pertaining to purebred Arabian horses registered by AHRA or recorded by AHRA from other sources and maintained by AHRA prior to the Merger Date." *Id.*, p. 1.

25. In Case No. 2016CV31911, Division 202 of the Arapahoe County District Court ("the previous court") found the language in the LSA provides that the Defendant has the obligation "to maintain a system capable of registering purebred Arabian horses. Whether that is the previously transferred IBM system or an 'updated,' 'modified' or 'derivative' system, it seems that the choice is the Association's, so long as there is ***a*** System, capable of performing the registration functions. The terms of the LSA also provide that this system must relate 'solely' to the registration of purebred Arabian horses." *Ex. 135,* p. 9.

26. The Horse Registry System (HRS) that the Defendant created "does much more than register only purebred Arabian horses." *Id.*

27. The previous court found that "that while the HRS provides the functions of the prior Licensed Technology it is not an update to that Licensed Technology," such that the Defendant owns HRS. *Id.*, p. 15.

28. However, the previous court found that "the LSA obligates the Association to maintain the Licensed Technology such that the Licensed Technology is 'sufficient to relate solely to purebred Arabian Horses and to carry out the Purebred registry Services.'" *Id.*, p. 15. The previous court recognized that the previous IBM system that Plaintiff licensed to Defendant may need to be updated or replaced. *Id.* It held that the Association owed the responsibility "to provide this upgrade or replacement" and "to continue to maintain or replace a system such that the Trust always has the capability of providing registration of purebred Arabian horses, in the event that the Association can no longer perform those functions." *Id.*

29. Finally, the previous court ordered the Defendant to certify that the Defendant has maintained or replaced a system capable of providing for the registration of purebred Arabian horses. *Ex. 136,* p. 5. The previous court later extended the deadline to provide such a certification to September 1, 2019.

30. On August 28, 2019, the Defendant provided to the Trust a certification that it has maintained or replaced a system capable of providing for the registration of purebred Arabian horses, which it called the Purebred Arabian Registration Software (PARS). *Ex. 7.*

31. Along with its August 28, 2019 certification, the Defendant provided a copy of the PARS software, including the source code for all components of PARS, compiled executables for the PARS software, a current backup of the database containing the purebred Arabian registration data, a copy of the Defendant's PARS test web server environment, scanned images of all customer documents for the purebred Arabian registry contained in the database, and documents depicting the PARS architecture and certification distribution. *Id.*

32. The Plaintiff received the Defendant's August 28, 2019 certification, but claimed that it was insufficient because it was just the database and software "on a stick" and because the Plaintiff never purchased a license from a third party software company, Oracle, to be able to use the software and database provided.

33. The Plaintiff moved for an order of contempt in the previous lawsuit, Case No. 2016CV31911, but its motion for contempt was denied.

34. Rather than continue to litigate in court or file another lawsuit, the Plaintiff engaged with representatives of the Defendant to negotiate an amendment to the LSA, which ultimately became Amendment # 1 (*Ex. 95*).

35. Regarding Plaintiff's claim that Defendant breached Amendment # 1 to the License and Security Agreement, the Court examined the Plaintiff's allegations of alleged breach contained in paragraph 58 of Plaintiff's Complaint and compared those allegations of breach to the evidence Plaintiff presented at trial.

36. Plaintiff's first allegation of breach was that the Defendant breached Amendment # 1 to the License and Security Agreement by "failing to keep the registration system continuously available and operational during Business Hours." *Complaint*, ¶ 58(a).

37. The registration system applicable to Amendment # 1 is the PARS system. This is reflected in Amendment # 1 itself. There, the Defendant represented, warranted and covenanted "that (i) Exhibit B (attached to this Amendment #1) shall at all times represent a complete, accurate and exhaustive list of all Components necessary for the Licensed Technology to operate consistent with the Specifications." *Ex. 95,* p. 5, ¶ 5(a).

38. Exhibit B to Amendment # 1, which all parties agreed was reflected in Exhibit 62, relates only to the PARS system and not the Association's HRS or other information technology systems.

39. The PARS system was a backup copy of the Association's HRS system, placed on a server purchased by Plaintiff and placed in a location different from Defendant's other servers, with scripts that remove the registration information for horses other than purebred Arabian horses.

39. The only reasonable interpretation of Amendment # 1 is that the Defendant owed the obligation to keep the PARS system (the backup of the HRS system placed on Plaintiff's server) operational and supported during Business Hours of the Defendant.

40. As stated more fully on the record, the Court finds that Plaintiff did not present any evidence that the PARS system was not continuously available and operational during Business Hours.

41. Rather, the evidence presented demonstrated that Mr. Fauls and Mr. Johnson, as Plaintiff's Trustees, knew that the PARS system was unaffected by the ransomware attacks Defendant suffered. On April 20, 2021 and again on May 14, 2021, Mr. Johnson himself acknowledged in writing that the PARS system (and the Defendant's HRS system) was unaffected by the ransomware attacks and that the PARS system remained operational.

42. The Court therefore finds that there was no evidence which would support a verdict in the Plaintiff's favor on its first allegation of breach, as alleged in Plaintiff's Complaint, ¶ 58(a).

43. As its second theory of breach, Plaintiff alleged that Defendant breached Amendment # 1 by "failing to cure the Critical Impact Errors within two Business Days when notified by the" Plaintiff. *Complaint*, ¶ 58(b).

44. Amendment # 1 defined the term "Critical Impact Error" to mean "an Error to the Licensed Technology which is reasonably likely to impact the ability to timely obtain or provide current and accurate data from the Database, including any Racing Data." *Ex. 95,* p. 1.

45. Thus, to be a critical impact error, any error must impact the ability to obtain or provide current and accurate data from the database of purebred Arabian horse registration data.

46. The Court finds that Plaintiff did not present any evidence of an inability to obtain or provide current and accurate data from the database of purebred Arabian horse registration data in PARS during either of the ransomware attacks Defendant suffered in 2021. On behalf of the Plaintiff, Mr. Johnson and Mr. Fauls acknowledged that the PARS system was unaffected by the ransomware attacks Defendant suffered. Plaintiff's expert also testified that the PARS system was operational when he accessed it.

47. Even if the Defendant's pausing of its own systems during the March ransomware attack affected the Defendant's ability to obtain or provide current and accurate data from the database of purebred Arabian horse registration data, there was no evidence that Plaintiff was unable to obtain or provide current and accurate data from the database of purebred Arabian horse registration data from PARS, to which it had been provided access through its own Managed Services Provider (TrinWare) on a different server in a different location.

48. Plaintiff claimed that Amendment # 1's definition of the terms "Production Environment" and "Transition Environment" meant the Defendant's HRS system and PARS system, respectively. The Court finds that Plaintiff's interpretation is not supported by the language contained in Amendment # 1.

Amendment # 1 defines the term "Production Environment" to mean "the Licensed Technology together with all Components which are necessary for Licensor to access and use the Licensed Technology, including the Database and Software, in accordance with the Specifications." *Ex. 95*, p. 3. It defines the term "Transition Environment" to mean "the Licensed Technology together with all Components which are necessary for Licensor to access, operate and use the Licensed Technology, including the Database and Software, to transfer the responsibility and operation of Purebred Registration activities in a smooth and seamless manner and without any loss of functionality to any aspect of the foregoing, immediately following an Insourcing Event." *Id.*

49. The only reasonable interpretation of these terms, in the context of the entire Amendment # 1 interpreted in harmony, is that the "Production Environment" meant the PARS software, documents and other data placed on the server purchased by the Plaintiff and placed in a different location than Defendant's other servers (the PARS server).

50. The "Transition Environment" is the same environment as the "Production Environment," except that the Transition Environment only becomes relevant if an Insourcing Event occurs which required the Defendant to transition the PARS system to the Plaintiff.

51. The Court therefore rejects Plaintiff's interpretation of Amendment # 1 to the extent that Plaintiff claims that Amendment # 1 applied to the Defendant's operation of the Defendant's HRS system rather than PARS.

52. Plaintiff presented no evidence that a critical impact error occurred to the PARS system.

53. Plaintiff also presented no evidence that, even if a critical impact error had occurred to the HRS system Defendant owned and operated, that Defendant did not resolve any such errors by May 14, 2021, when Mr. Fauls notified the Defendant of what the Plaintiff claimed were critical impact errors.

54. Rather, the evidence was undisputed that Defendant's HRS system was fully operational and being used to input registration data by April 29, 2021, fifteen days before the Plaintiff sent its May 14, 2021 notice (*Ex. 98*).

55. The Court therefore finds that there was no evidence which would support a verdict in the Plaintiff's favor on its second allegation of breach, as alleged in Plaintiff's Complaint, ¶ 58(b).

56. Plaintiff's third allegation of breach asserted that Defendant failed "to develop or implement any commercially reasonable efforts, processes, or plans for guarding against performance failures resulting from criminal activity, including the two ransomware attacks that occurred in February and March 2021." *Complaint*, ¶ 58(c).

57. Plaintiff claimed that Defendant breached the "commercially reasonable" provision of Amendment # 1 – found in Paragraph 8(a) of Exhibit 95 – by not having multifactor authentication or intrusion detection software operating on its systems.

58. The term "commercially reasonable efforts" was not defined in Amendment # 1. Plaintiff's witness, Bruce Johnson, acknowledged that the term was undefined. The Court finds that Defendant used commercially reasonable efforts by hiring NexusTek to provide security. Further, although the Court noted that these two protection methods were advised prior to the second attack, the proverbial horse was already out of the barn by then because of the first ransomware attack.

59. The evidence presented demonstrated, without dispute, that Defendant had contracted with third-party managed services providers to provide monitoring of their servers and information technology systems.

60. The evidence also demonstrated, without dispute, that Defendant's managed service provider made recommendations to Defendant regarding cybersecurity and that Defendant's managed service provider did not recommend to Defendant prior to the first ransomware attack that Defendant have multifactor authentication or intrusion detection software operating on its systems.

61. Plaintiff's witnesses, including its expert witnesses, testified that it was commercially reasonable for the Defendant to have a managed service provider. It was reasonable for Defendant to listen to its managed service provider and follow its

recommendations, which the evidence showed Defendant did. There was no evidence presented that would support an inference that the Defendant should have deployed multifactor authentication or intrusion detection software to operate on its systems before it was recommended by the expert managed service provider Defendant contracted with to provide security recommendations.

62. Plaintiff's experts testified that the term good industry practices does not mean perfect practices, meaning practices that would always avoid any cybersecurity incidents.

63. Regardless, Plaintiff did not present any evidence that the Defendant did not develop or implement commercially reasonable efforts, processes, or plans for guarding against performance failures to the PARS system.

64. The Court therefore finds that there was no evidence which would support a verdict in the Plaintiff's favor on its third allegation of breach, as alleged in Plaintiff's Complaint, ¶ 58(c).

65. Plaintiff's fourth allegation of breach was that Defendant failed to "continually have the Transition Environment current with the Production Environment or Specifications as required by the Amended Agreement."

66. Plaintiff presented no evidence that the PARS system on the server it purchased, which was located in a different place than Defendant's other systems, was not current. There was no evidence presented on this issue.

67. Plaintiff's expert testified that the PARS system was current in August 2022 when he accessed it.

68. The Court therefore finds that there was no evidence which would support a verdict in the Plaintiff's favor on its fourth allegation of breach, as alleged in Plaintiff's Complaint, ¶ 58(d).

69. Plaintiff's fifth allegation of breach asserted that Defendant failed "to maintain and update the Components in the Transition Environment so that, upon an Insourcing Event, the Licensed Technology continuously performs in accordance with the Specifications." *Complaint*, ¶ 58(e).

70. Plaintiff presented no evidence that the PARS system on the server it purchased, with the updated components, was not maintained and updated. There was no evidence presented on this issue.

71. Further, Plaintiff presented no evidence that an Insourcing Event occurred. Amendment # 1 defined an Insourcing Event to mean Plaintiff's "election to take over the operation, hosting, support and maintenance of the Licensed Technology following one of the events identified in Section 9.a.i. through Section 9.a.ix. of this Amendment #1." *Ex. 95*, p. 2.

72. Section 9(a), captioned "Option to Insource," identified nine insourcing events. *Id.,* p. 9. Sections 9(a)(i), (ii), (iii), (iv), (v) and (viii) were irrelevant in this matter. Plaintiff never claimed that the issues addressed in any of those Sections applied here.

73. Plaintiff's witness, Bruce Johnson, testified that he believed Section 9(a)(vi) applied. Mr. Johnson differed from Mr. Fauls on this issue, given that Mr. Fauls did not claim an Insourcing Event occurred under Section 9(a)(vi).

74. Section 9(a)(vi) allowed an Insourcing Event only if Defendant ceased "to carry on all or any significant part of its business." *Ex. 95*, p. 9.

75. Plaintiff presented no evidence that Defendant ceased to carry on all or any significant part of its business between February and May 2021. Rather, Defendant's witnesses testified that they were still able to conduct its business regarding registration of horses, even if they had to do it in paper form as the Defendant and its predecessor had been doing since at least 1984 when Ms. Fuentes started working in registration for the organization that later became the Defendant.

76. The only evidence presented demonstrated that Defendant's staff provided work-arounds and took reasonable measures to ensure that owners who wanted to register their horses could still do so through applying the work-arounds until access to the Defendant's HRS system was restored, following the ransomware attacks Defendant suffered.

77. Relying on Section 9(a)(vii) of Amendment # 1, Plaintiff claimed that an insourcing event occurred because it alleged Defendant was "in breach of its obligations as to the operation, maintenance, support or modification of the Licensed Technology under the Agreement or any maintenance agreement entered into in

connection with the Licensed Technology (or there is anticipatory repudiation by Licensee of any material obligation)." *Ex. 95*, p. 9.

78. Plaintiff did not present any evidence that Defendant breached its obligations "as to the operation, maintenance, support or modification of the Licensed Technology," as the term Licensed Technology is defined in the original LSA.

79. Instead, Plaintiff claimed Amendment # 1 required the Defendant to "update" the HRS and PARS to make them accessible online so that customers could input the data and register their horses independently. Mr. Fauls and Mr. Johnson both testified about the Plaintiff's desire that the horse registration system – at least for purebred Arabian horses – should be online.

80. Plaintiff claimed at trial that the Defendant's obligation to update the Licensed Technology, as described in Section 8 of Amendment # 1, meant that Defendant had an obligation to make HRS accessible online for customers to input registration data directly.

81. Plaintiff did not allege any such claim of breach in its Complaint. Even if it did, however, the Court finds that Plaintiff's interpretation is not supported by the language of Amendment # 1, which never imposes an obligation to substantially revise and rewrite the PARS system so that it would be accessible online for customers to input registration data directly.

82. Further, the evidence Plaintiff presented demonstrated that when Plaintiff's representatives and Defendant's representatives were discussing the

PARS system – which later became the subject of Amendment # 1 – they agreed that "creating an external website is outside the scope of the PARS system and is not addressed" in the discussions that Mr. Johnson documented. *Ex. 15,* p. 4.

83. Given that the parties expressly discussed not making PARS accessible online by creating an external website before entering into Amendment # 1, the Court could not reasonably interpret Amendment # 1 to require Defendant to substantially revise and rewrite the PARS system so that it would be accessible online for customers to input registration data directly.

84. Plaintiff presented no other evidence Defendant breached its obligations "as to the operation, maintenance, support or modification of the Licensed Technology," as the term Licensed Technology is defined in the original LSA.

85. Plaintiff also alleged that an insourcing event occurred under Section 9(a)(ix) of Amendment # 1.

86. Section 9(a)(ix) provided that one insourcing event that could occur is the "occurrence of a force majeure event (as such term is generally understood) that reasonably appears probable to prevent Licensor from being able to perform its maintenance and support obligations with respect to all or any portion of the Licensed Technology for a period more than five (5) Business Days." *Ex. 95*, p. 9.

87. Amendment # 1 defines Licensor as the Plaintiff. There was no evidence that any force majeure event happened that prevented Plaintiff "from being able to

perform its maintenance and support obligations with respect to all or any portion of the Licensed Technology for a period more than five (5) Business Days."

88. Plaintiff claimed that the term "Licensor" was a typo and Section 9(a)(ix) should have said "Licensee" (e.g., Defendant) instead.

89. Even accepting Plaintiff's view that there was a typo, Plaintiff presented no evidence demonstrating that a force majeure occurred that prevented Defendant from being able to perform its maintenance and support obligations with respect to PARS.

90. A force majeure is an event outside the control of the parties. The Court finds that a ransomware attack is such an event.

91. Regardless, Plaintiff presented no evidence that PARS system as placed on the server Plaintiff purchased and hired TrinWare to host at a different location, could not have been accessed.

92. Instead, the evidence showed that as of April 20, 2021, the PARS system was "up and running and untouched," which was verified the day before. *Ex. 82,* p. 3. There was no evidence that Plaintiff ever accessed the PARS system before April 20, 2021 to independently verify that the PARS system was up and running and untouched by the ransomware attack. Mr. Johnson testified that he attempted to access PARS, but could not do so because his internet was too slow. Mr. Fauls never even attempted to access PARS.

93. The Court therefore finds that there was no evidence which would support a verdict in the Plaintiff's favor on its fifth allegation of breach, as alleged in Plaintiff's Complaint, ¶ 58(e).

94. Plaintiff's sixth allegation of breach claimed Defendant failed "to continuously maintain and keep current Documentation and SOPs for the Licensed Technology." *Complaint*, ¶ 58(f).

95. The evidence Plaintiff presented demonstrated that the Defendant provided a PARS User Guide to describe how to operate PARS. *Ex. 104.* Defendant later revised the PARS User Guide to incorporate new updates to the PARS system and uploaded the updated PARS User Guide to the PARS server Plaintiff owned and to which Plaintiff had access.

96. Plaintiff's representative, Mr. Johnson, complained that he did not know that the updated PARS User Guide was uploaded to the PARS server and he was not notified of any update regardless. Even accepting Mr. Johnson's testimony and giving Plaintiff the benefit of all inferences, the alleged failure to notify Mr. Johnson of an updated PARS User Guide is a far cry from what would be required to demonstrate that Defendant breached an obligation to provide documentation and SOPs, particularly given that Amendment # 1 does not impose a deadline for the Defendant to do so and did not provide any requirement to notify a particular representative of the Plaintiff of any updates.

97. Finally, Plaintiff alleged as its last theory of breach that Defendant refused to cooperate "with Transition Assistance upon notice of the Insourcing Event." *Complaint*, ¶ 58(g).

98. Plaintiff presented no evidence that the events it complains of in this case constituted an insourcing event, as explained above and on the record during the Court's ruling. Because no insourcing event occurred, Defendant was not obligated to provide to the Plaintiff transition assistance.

99. The Court therefore finds that there was no evidence which would support a verdict in the Plaintiff's favor on its final allegation of breach, as alleged in Plaintiff's Complaint, ¶ 58(f).

100. For these reasons and those the Court stated on the record on December 7, 2022, the Court finds a directed verdict in Defendant's favor is appropriate. The Court hereby enters judgment in Defendant's favor.

101. The Court finds Defendant is the prevailing party in this action.

102. If Defendant wishes to file any motion for costs or attorney fees, it must do so within the deadlines and consistent with the requirements of C.R.C.P. 121 § 1-22.

Dated this 14 day of December, 2022., nunc pro tunc December 7, 2022.

District Court Judge

APPROVED AS TO FORM:

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