

DISTRICT COURT, ARAPAHOE COUNTY, COLORADO Court Address: 7325 South Potomac Street Centennial, Colorado 80112	DATE FILED: July 7, 2021 12:22 PM FILING ID: 233577A8E5D8E CASE NUMBER: 2021CV31173 <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Plaintiff: THE PUREBRED ARABIAN TRUST, a Colorado non-profit corporation v. Defendants: ARABIAN HORSE ASSOCIATION, a Colorado non-profit corporation	
Attorneys for Plaintiff the Purebred Arabian Trust Name: J. Lee Gray, Reg No. 27306 Hannah E. Armentrout, Reg No. 53990 Address: HOLLAND & HART LLP 555 17th Street, Suite 3200 Denver, CO 80202-3921 Phone: 303.295.8000 Fax: 303.295.8261 E-Mail: lgray@hollandhart.com hearmentrout@hollandhart.com	Case No. Div: Ctrm:
VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF	

Plaintiff, The Purebred Arabian Trust (the “Trust”), by and through its counsel, states the following Verified Complaint for Injunctive Relief against Defendant Arabian Horse Association (“AHA”), and alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. The Trust is, at all times pertinent to this action, a non-profit corporation organized under the laws of Colorado with its registered agent in Denver, Colorado.
2. As more fully described herein and in the attachments hereto, the Trust is the owner of certain software, database and documentation used for the registration of purebred Arabian horses and related functions, as well as the historical pedigree database.
3. Defendant AHA is a non-profit corporation organized under the laws of Colorado with its principal place of business at 10805 E. Bethany Dr., Aurora, CO 80014 in Arapahoe County.

4. This court has jurisdiction over the subject matter at issue pursuant to Colo. Const. Art. VI, § 9(1) because this is a civil action for damages.

5. AHA is subject to personal jurisdiction in Colorado because its principal place of business is in Colorado and it committed breaches of the subject contract in this state and because it has irrevocably submitted itself to the jurisdiction of this Court for purposes of this matter.

6. Venue in this court is proper pursuant to C.R.C.P. 98(c) because Defendant is deemed to reside in Arapahoe County as the location of its principal place of business and as expressly agreed to by the Parties.

GENERAL ALLEGATIONS

7. On or about April 1, 2003, the Arabian Horse Registry of America, Inc., a Colorado non-profit corporation (“AHRA”) and International Arabian Horse Association, Inc., a Colorado nonprofit corporation (“IAHA”) merged into a single entity: AHA.

8. For nearly 100 years prior to the merger, AHRA was the recognized registry of purebred Arabian horses in the United States.

9. Although methods of registrations have changed over time, in 2003 AHRA operated and maintained a computerized registration system, including a database of information pertaining to purebred Arabian horses registered by AHRA (the “Original Database”), computer hardware, and related computer software developed and owned by AHRA.

10. Immediately prior to the April 1, 2003 merger, AHRA conveyed the Original Database and all related hardware, software and documentation to the Trust.

11. On or about April 1, 2003, the Trust and AHA entered into a License and Security Agreement (the “Agreement”), which is attached to this Complaint as **Exhibit 1** and incorporated by reference.

12. The purpose of the Agreement was, among other things, for AHA as licensee, to take over performing purebred Arabian horse registration services previously performed by AHRA, including its continuous operation, use, maintenance, and updating the database, software, and related documentation for its registry operations, and for the Trust to retain ownership of the database, software, related documentation and all of AHA’s updates thereto.

13. After a dispute arose between the Trust and AHA concerning the Agreement, the Trust brought a declaratory judgment action in this Court (Case No. 2016cv031911) to determine the Parties’ respective obligations and rights under the Agreement (the “2016 Lawsuit”).

14. Following an eight-day bench trial, the Court entered its Findings of Facts, Conclusions of Law and Judgment on September 19, 2018 (“Judgment”), which is attached to this Complaint as **Exhibit 2** and incorporated by reference.

15. The Court subsequently entered an order clarifying the Judgment on November 27, 2018. *See* Order Re: Parties Rule 54 Motions (“Clarification”), which is attached to this Complaint as **Exhibit 3** and incorporated by reference.

16. Thereafter, the Court entered a third order on January 30, 2019 related to a motion for reconsideration filed by AHA. *See* Order Re: Defendant’s Motion for Reconsideration (“Reconsideration Order”), which is attached to this Complaint as **Exhibit 4** and incorporated by reference. **Exhibits 2-4** are collectively referred to as the “Court Rulings.”

17. In order to comply with the Court Rulings and further clarify the Agreement, the Parties negotiated for several months and on June 26, 2020, mutually agreed to amend the terms and conditions of the Agreement while leaving all other aspects of the Agreement unchanged. *See* Amendment #1 to License and Security Agreement (“Amendment”), which is attached to this Complaint as **Exhibit 5** and incorporated by reference.¹ **Exhibits 1 and 5** are collectively referred to as the “Amended Agreement.”

AHA’s Obligations Under the Amended Agreement

18. The Amended Agreement contains the following relevant defined terms, which are incorporated herein as used in this Verified Complaint:

“‘Components’ means any and all hardware, firmware, communication and printing devices, software, operating systems, equipment and other technology and data, along with operating manuals, documentation and instructions to the foregoing, in any form or media, together with any intellectual property rights in any of the foregoing” (**Ex. 5**, § 1);

“‘Database’ means the Original Database together with all Updates thereto” (**Ex. 1**, § 1);

“‘Documentation’ means all written materials relating to the Licensed Technology including user and operating manuals, instructions, maintenance and support materials, and specifications and other technical data together with all Updates thereto” (*id.*, § 1);

¹ Although the parties inadvertently signed an earlier version of the Amendment after AHA’s President had difficulty attaching her electronic signature to the scanned copy, **Exhibit 5** is a true and correct copy of the final version agreed to by the parties.

“‘Insourcing Event’ means [the Trust’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]” (Ex. 5, § 1);

“‘Licensed Technology’ means the Database and the Software and all information technology, and other items related thereto” (Ex. 1, § 1);

“‘Production Environment’ means 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. 5, § 1);

“‘Purebred Registry Services’ means services performed by [AHA] with respect to the registration of purebred Arabian horses and activities relating thereto that result in the generation of Purebred Revenues” (Ex. 1, § 1);

“‘Software’ means all technology and software (in object and source code form) used with, supporting, or otherwise related to, the Database from time to time together with all Updates thereto” (*id.*, § 1);

“‘Specifications’ means, collectively, (i) the Court Rulings, (ii) the terms and conditions of the Agreement, (iii) all applicable laws, and (iv) causing the Licensed Technology to function as set forth in the then-current Documentation and in such a manner reasonably designed to result in the least disruption to the availability of the Licensed Technology to [the Trust] and its customers” (Ex. 5, § 1);

“‘Transition Environment’ means the Licensed Technology together with all Components which are necessary for [the Trust] 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.*, § 1);

“‘Updates’ means all replacements, additions, deletions, enhancements, and modifications to, or derivative works of, the Database (including the Racing Data), the Documentation, and the Software developed by or for either party” (Ex. 1, § 1).

19. The Agreement provided AHA with “an exclusive, perpetual license to reproduce, perform, display, modify, create derivative works of, distribute, provide access to (including the ability to search, query, tabulate and generate reports from), transmit, publish and, except as prohibited by this Agreement, otherwise exploit the Licensed Technology and Documentation (in whole or in part) in connection with the legitimate business purposes of [AHA].” **Ex. 1** at § 2.A.

20. The Agreement also provided that the Trust “is and shall remain the exclusive owner of the Licensed Technology and the Documentation and all Updates thereto, regardless of which party generated the Updates.” *Id.* at § 3.A.

21. In addition, AHA had continuing obligations to, at its own expense, both “maintain the Licensed Technology and Documentation” and “make all Updates necessary or desirable to make the Licensed Technology and the Documentation sufficient to relate solely to purebred Arabian horses and to carry out the Purebred Registry Services” *Id.* at § 4.A.

22. As interpreted by the Court, “the Association has the responsibility to provide **a software system capable of registering purebred Arabian horses** and to maintain the database for purebred Arabian horses ... The Association has the right to make the choice about how it will comply with the requirements of the [Agreement], **so long as the Trust has the ability to perform registration services in the event that it must do so.**” **Ex. 2**, p. 16 (emphasis added).

23. Moreover, AHA “is required to provide a functioning version of software capable of registering purebred Arabian horses, and the Association is required to maintain the database for such registrations.” *Id.* at 21, ¶ A.

24. Thus, AHA had an obligation to provide a *replacement registration system* that the Trust would own. **Ex. 3**, pp. 5-6 (“At some point in time, it appears certain that the IBM system will no longer be capable of working and then a ‘replacement’ system will be needed. The Association will be responsible for providing that replacement system. At such time the Trust will ‘own’ the replacement system.”).

25. With respect to this replacement system, AHA must annually—beginning in 2019—certify that it has provided the Trust “a copy of fully-functioning software capable of registering purebred Arabian horses” and certifying that the database used for such registrations has been maintained. *Id.* at 6, ¶¶ 3-4.

26. This fully functioning replacement system owned by the Trust must include not just the raw data, but an updated and maintained database. *Id.* at 6, ¶ 1.

27. Beginning in August 2019, AHA’s IT Director, James Lawless, began providing details, including a demonstration, to a representative of the Trust, Bruce Johnson, regarding the software (referred to as “PARS”) that was to be a part of AHA’s replacement purebred horse registration system.

28. Thereafter, the Trust and AHA, worked to negotiate and agree upon the terms and provisions of the Amendment to govern various details of this replacement registration system, including the hardware, software, and database, the Transition Environment, the procedure for transitioning registration services to the Trust, and the circumstances that would trigger such transition or Insourcing Event.

29. Specifically, pursuant to the Amended Agreement, AHA had numerous obligations related to the Licensed Technology environments, and support, including:

a. to “continuously maintain, update and operate the Production Environment in accordance with the Specifications” (Amendment, **Ex. 5**, § 2(a));

b. to “prepare, maintain and continually have ready the Transition Environment for the benefit of [the Trust] until [the Trust] takes over the operation of the Transition Environment following an Insourcing Event.” (*id.*, § 2(b));

c. to “adhere to good industry practices in the safeguarding and protection of the accuracy and integrity of the Database and the other Licensed Technology in both [AHA’s] Production Environment and the Transition Environment, including ... performing nightly back-ups of [AHA’s] production server and the Development Server on separate servers” and also “promptly access and use the information contained on a back-up server as necessary for Licensee to comply with the Specifications.” (*id.*, § 8(a) and (a)(iii));

d. to “upload a full, complete and accurate copy of the Database updates into the Transition Environment and Production Environment” on “[e]ach Business Day (or on the evening or night thereof) throughout the Term” (*id.*, § 8(b));

e. to “maintain and update the Scripts in the Transition Environment so that, upon an Insourcing Event, the Licensor may use a Database Administrator to update the production database *so the Licensed Technology continuously performs in accordance with the Specifications.*” (*id.*) (emphasis added);

f. to “use commercially reasonable efforts to keep the Production Environment of the Licensed Technology continuously available and operational during Business Hours” (*id.*, § 8(c)(i));

g. to “continuously maintain and keep current Documentation and standard operating procedures sufficient to allow a professional having ordinary skills and experience to properly access, use, maintain, and keep current the Licensed Technology (collectively, including the Documentation, ‘SOPs’),” which AHA acknowledged are part of the Licensed Technology and would be maintained “consistent with good industry practices” (*id.*, § 8(c)(iii));

h. to “provide the first SOP Certification not later than August 31, 2020, and each calendar year thereafter, shall provide an SOP Certification [on or within one week of May 15th of each year] as provided in Section 7.c of this [Amendment]” (*id.*);

i. to “monitor the performance of the Initial Trust Hardware and any Updated Trust Hardware to detect any Component or database failures and will have such failures repaired or corrected within two (2) Business Days.” (*id.*, § 8(f)); and

j. to “establish and maintain the organization, staff, contractors and processes to comply with the Specifications.” (*id.*, § 8(g)).

30. Significantly, AHA expressly agreed to perform these obligations “in a manner to guard against performance failures resulting from force majeure events (as such term is generally understood) and other reasonably anticipated natural disasters,” including “criminal activity ... and other deleterious activity, and shall not be excused for nonperformance as a result of events outside of its reasonable control, except for such nonperformance proximately caused by the breach or negligence of [the Trust].” **Ex. 5**, § 10(c).

31. In addition to these obligations, AHA represented and warranted that the “logically-separated Database is capable of, and will, transition to the Updated Hardware, including the Trust Hardware, so that the Licensed Technology shall continuously perform in accordance with the Specifications both before and after an Insourcing Event” *Id.*, § 7(a)(ii).

32. In the event that AHA breached any one or more of its obligations, including those described above, the Trust “may elect by providing notice to Licensee thereof to take on, or permit a third party to undertake, the operation, maintenance and support of the Licensed Technology and any Components relating thereto within the Transition Environment.” *Id.*, § 9(a) and (a)(vii).

33. In addition, the Trust could also provide such notice of an Insourcing Event upon “occurrence of a force majeure event (as such term is generally understood) that reasonably appears probable to prevent Licensee 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.” *Id.*, § 9(a)(ix).

34. Following such an Insourcing Event, pursuant to the Amended Agreement:

a. AHA’s license rights to the Licensed Technology under Section 2.A of the Agreement become non-exclusive (**Ex. 5**, § 9(b)(i));

b. AHA is no longer entitled to any registration revenue or fee split (*id.*, § 9(b)(ii)); and

c. AHA must “reasonably cooperate with [the Trust] and its designee(s) to facilitate a smooth transition of the operation, maintenance and support of the Licensed

Technology consistent with the Specifications ('Transition Assistance') for the period of time requested by Licensor, not to exceed twelve (12) months from such Insourcing Event ('Transition Assistance Period')." (*id.*, § 9(b)(iii)).

Ransomware Attacks and AHA's Failure to Provide Registration Services

35. On or about February 20, 2021, AHA experienced a ransomware attack on its Microsoft Windows-based servers that also affected approximately one-third of AHA's computers, leaving its windows-based software encrypted and inoperable.

36. This, in turn, impacted the operation and backup of other software and databases, including AHA's horse registration system ("HRS"), leaving AHA unable to register horses for a period of nine days, until March 1, 2021.

37. Subsequently, computer hackers again attacked and infiltrated AHA's computer systems on or about March 30, 2021, once again causing failures and interruptions to AHA's computer network and leaving it unable to perform horse registration services.

38. On April 1, 2021, AHA notified the Trust of the second attack and reported that it had engaged a "Cyber Security Legal Team as well as Forensic Analysts" to investigate the two cyber-attacks and to perform a "forensic analysis of these network interruptions."

39. AHA notified its membership of its network interruptions on April 2, 2021 and indicated that certain resources would be unavailable until further notice.

40. Upon information and belief, this second cyber-attack was more serious and caused more damage to AHA's computer network, software, and some hardware, including scanners used to perform horse registration services.

41. During a briefing by AHA president Deborah Johnson at an April 6, 2021 AHA Board of Directors meeting, Mr. Johnson offered the use of the Trust's PARS to AHA for it to resume registering horses. AHA did not respond to this offer.

42. In an April 20, 2021 conference call among AHA's and the Trust's leadership and technical representatives, the Trust notified AHA that it had breached the Amended Agreement because registration services had been interrupted twice, with the second interruption being twenty-one days at that point.

43. Although not all of the necessary hardware was working, AHA was able to begin performing some registration service functions using its HRS system on April 29, 2021, thirty days after the second cyber-attack.

44. Due to these two cyber-attacks, AHA was unable to complete any registration services for a combined 39 days, nine days between February 20, 2021 and March 1, 2021, and thirty days, from March 31, 2021 through April 28, 2021, causing a significant backlog of

registration service requests made by Arabian horse owners, including multiple rush requests related to horse racing registrations.

45. Although some registration functions had returned, other functions that require email, including error letter generation, customer password reset, emailing member cards to customers, remained non-functional until at least May 10, 2021.

46. Upon information and belief, AHA still cannot perform certain registration functions related to registration payment or customer balance confirmation.

AHA Breaches Its Obligations Under the Amended Agreement

47. Although AHA decided to use PARS as the Transition Environment, it has failed to continually have the Transition Environment current with the Production Environment or Specifications as required by the Amended Agreement.

48. Upon information and belief, AHA has 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.

49. AHA has failed to use commercially reasonable efforts to keep the Production Environment of the Licensed Technology continuously available and operational during Business Hours.

50. AHA has failed to continuously maintain and keep current Documentation and SOPs for the Licensed Technology and has failed to provide SOP Certification as required under the Amended Agreement.

51. AHA failed to cure the Critical Impact Errors when notified by the Trust within two Business Days so that the Licensed Technology operates in accordance with the Specifications.

52. Even though AHA acknowledged the need for a plan to address “catastrophic hacking” in communications to the Trust in 2013, it 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.

53. Based on these facts, AHA has breached several of its obligations in the Amended Agreement and an Insourcing Event has occurred.

54. The Trust notified AHA of the Insourcing Event in writing, based on AHA’s breaches of AHA’s obligations under the Amended Agreement (per Amendment, § 9(a)(vii)) and/or the force majeure events (per Amendment, § 9(a)(ix)), on May 14, 2021 and its election to

take over the operation, maintenance and support of the Licensed Technology and related Components within the Transition Environment as provided by Section 9(a) of the Amendment.

55. AHA has subsequently denied that an Insourcing Event has occurred and has refused to cooperate with Transition Assistance as required by Section 9(b)(iii) of the Amendment.

FIRST CLAIM FOR RELIEF (BREACH OF CONTRACT)

56. The Trust incorporates by reference each of the allegations contained in the paragraphs above.

57. The Amended Agreement is a legally binding and enforceable contract between the Trust and AHA.

58. AHA materially breached its contractual obligations under the Amended Agreement in numerous ways, set forth above, including by:

- a. failing to keep the registration system continuously available and operational during Business Hours;
- b. failing to cure the Critical Impact Errors within two Business Days when notified by the Trust;
- c. failing 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;
- d. failing to continually have the Transition Environment current with the Production Environment or Specifications as required by the Amended Agreement.
- e. failing 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; and
- f. failing to continuously maintain and keep current Documentation and SOPs for the Licensed Technology; and
- g. Refusing to cooperate with Transition Assistance upon notice of the Insourcing Event.

59. The Amended Agreement's provisions are reasonably necessary to protect and advance the Trust's legitimate business interests in protecting and assuring continuous purebred Arabian horse registrations.

60. The Trust has fully performed its obligations under the Amended Agreement.

61. AHA's material breach of its contractual obligations has resulted in damages and irreparable harm to the Trust, in an amount to be proven at trial.

62. AHA's conduct has caused, and, unless restrained, will continue to cause damages and irreparable harm to the Trust.

63. The Trust has no adequate remedy at law and will suffer irreparable harm unless an injunction is entered.

64. Therefore, the Trust requests that the Court grant it temporary injunctive relief against AHA, and enter a judgment against AHA for its breaches of the Amended Agreement, consequential and compensatory damages, prejudgment interest, costs, and all other relief that is just and proper.

WHEREFORE, Plaintiff the Trust requests that this court enter judgment in its favor and against Defendant AHA, as follows:

A. Enjoining AHA from refusing to reasonably cooperate with the Trust, as required under the Amended Agreement to facilitate a smooth transition to the Trust of the operation, maintenance and support of the Licensed Technology consistent with the Specifications;

B. Awarding the Trust damages in an amount to be proven at trial;

C. Awarding the Trust costs of this action, including an award of the Trust's reasonable attorney fees, pursuant to Section 7.D of the Agreement.

D. Awarding the Trust Pre-judgment and post-judgment interest on any award of damages to the extent permitted by law; and

E. Awarding the Trust such other and further relief as this court may deem just and appropriate under the circumstances.

Dated July 7, 2021.

Respectfully submitted,

s/ J. Lee Gray

J. Lee Gray

Hannah E. Armentrout

HOLLAND & HART LLP

Attorneys for Plaintiff the Purebred
Arabian Trust

Plaintiff's Address:

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VERIFICATION

I, Robert Fauls, Chariman of the Purebred Arabian Trust, certify under penalty of perjury that I have read the foregoing VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF, and the facts it contains are true and correct to the best of my knowledge and belief.

DATED this ___ day of July, 2021.

R J Fauls Jr.

Robert Fauls

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