



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

P.F. CHANG’S CHINA BISTRO INC., )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 UKG, Inc. d/b/a ULTIMATE KRONOS )  
 GROUP, )  
 )  
 Defendant. )  
 )  
 )

C.A. No. 2022-\_\_\_\_ - \_\_\_\_

**PUBLIC VERSION**  
**FILED: December 22, 2022**

**VERIFIED COMPLAINT**

Plaintiff P.F. Chang’s China Bistro, Inc. (“PFC” or “Plaintiff”), for its Verified Complaint against Defendant UKG, Inc. d/b/a Ultimate Kronos Group (“UKG” or “Defendant”), alleges as follows:

THE PARTIES, JURISDICTION, AND VENUE

1. PFC is a Delaware Corporation known for its American-based casual dining restaurant chains with a corporate headquarters located in Scottsdale, Arizona.
2. Upon information and belief, UKG was formed from the merger of Ultimate Software Group, Inc. (“Ultimate Software Group”) and Kronos Incorporated.
3. Ultimate Software Group was an American multinational technology company that developed and sold UltiPro Software (“UltiPro”), a cloud-based

human capital management software system for businesses.

4. Upon information and belief, Kronos Incorporated was an American multinational workforce management and human capital management cloud provider.

5. Upon information and belief, the merger of Ultimate Software Group and Kronos Incorporated to UKG was completed on April 1, 2020.

6. Upon information and belief, UKG is an American multinational technology company with dual headquarters in Lowell, Massachusetts, and Weston, Florida which provides workforce management and human resource management services.

7. Upon information and belief, UKG continued to bring together each company's HR solutions—including Workforce Dimensions, Workforce Ready, and UltiPro HCM and HR service delivery solutions.

8. UltiPro is a UKG-exclusively owned hosting service database for data and information which only UKG can modify, alter or enhance.

9. This case arises out of the Intersourcing Service Model Agreement (the "Agreement"), as set forth herein. A true and correct copy of the Agreement is attached hereto as **Exhibit A**.

10. Pursuant to the Agreement: "This Agreement shall be governed by

and construed in accordance with the internal *laws of the state of Arizona* and *jurisdiction and venue* for any action regarding this Agreement or for the breach of it shall be *in Delaware.*” Ex. A at 12 (emphasis added).

11. This Court has jurisdiction over the parties and this matter pursuant to the Agreement and applicable law.

12. Venue is proper in this Court pursuant to the Agreement.

13. Pursuant to the Agreement, the parties also agreed that: “The prevailing party in any such action shall be entitled to recover its attorney’s fees and costs from the non-prevailing Party.” *See* Ex. A at 12.

14. PFC is entitled to recover its attorneys’ fees and costs from UKG pursuant to the parties’ express agreement in the Agreement and under Ariz. Rev. Stat. § 12-341 *et seq.*

#### THE FACTS

15. UKG is an American multinational technology company that developed and sold UltiPro, a cloud-based human capital management software system for businesses. UltiPro is a hosting service database for data and information.

16. UKG has exclusive ownership rights and interest in UltiPro and all modifications and enhancements thereof.

17. On or around February 27, 2009, PFC and UKG entered into the Agreement for PFC to use UltiPro services as a database and to store and protect certain data and information.

18. The agreement contains many clauses and provisions which govern the parties' actions or inactions.

19. UKG had control or dominion over PFC's data and information hosted on UltiPro. As described in the Agreement, [REDACTED]  
[REDACTED]. The Agreement provided:

[REDACTED]

Ex. A at 10(emphasis added).

20. The Agreement contains a "[REDACTED]  
[REDACTED] clause which states, [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED] See Ex. A

at 10.

21. The Agreement provides that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See Ex. A at 10.

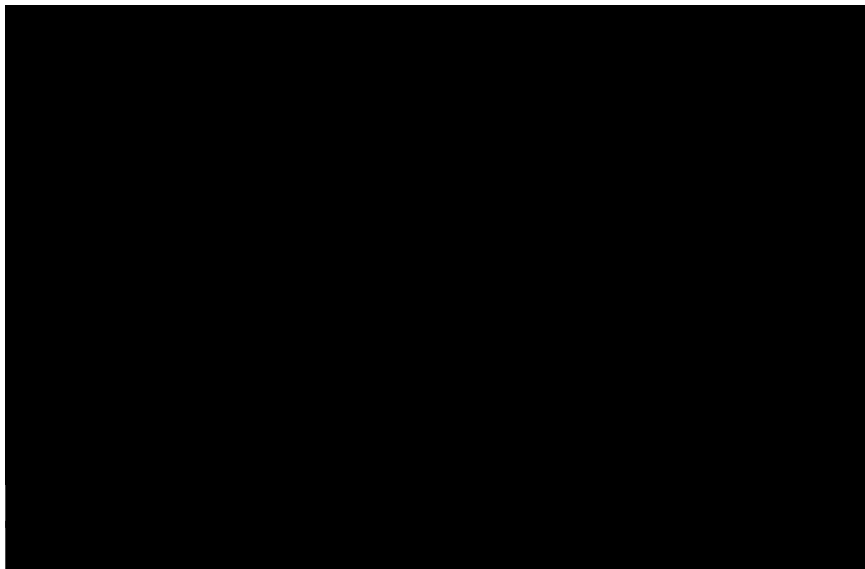
22. The Agreement contains a [REDACTED] which provides:

[REDACTED]



Ex. A at 11-12.

23. The Agreement also contains [REDACTED] clause which states:





Ex. A at 12 (emphasis added).

24. The Agreement also contemplates that



*See* Ex. A at 10.

25. Since February 27, 2009, PFC and UKG have amended and supplemented the Agreement for PFC’s continued use of UltiPro. The Agreement was most recently amended on September 8, 2020 (the “Twelfth Amendment”).

26. In or around March, 2021, PFC chose to move to a different service provider— FUSE. On July 1, 2020, PFC terminated its contract for use of the UltiPro Software.

27. On or around March 25, 2021, PFC requested UKG provide it a full copy and transfer of all the databases that had been stored on UltiPro.

28. On March 26, 2021, PFC again specified what information PFC expected, and thus requested, UKG to provide to PFC.

29. On March 26, 2021, UKG informed PFC that it would pull PFC's data for transfer.

30. Later that same day, UKG responded that PFC had an outstanding balance owed and provided the cost of the data download. PFC responded to UKG that it believed that the invoice was paid, that it would obviously pay UKG what it is owed, PFC would pay for the data dump, and that PFC "wanted to make sure that we have this before everything is turned off".

31. UKG responded by informing PFC that the data dump request can still be addressed after the Agreement's expiration.

32. On March 31, 2021, PFC emailed UKG requesting confirmation that the final data extract requests had been submitted.

33. On April 1, 2021, UKG requested, and PFC provided, the information for the person to whom the data dump should be delivered.

34. On or around May 28, 2021, PFC emailed UKG notifying it of pending litigation against PFC and issued UKG a litigation hold notice requesting that UKG "retain all of P.F. Chang's data until further notice."

35. On June 28, 2021, a UKG representative responded by email,



confirming receipt of the litigation hold demand, and informed PCF that “the database [on UltiPro] was set to decommission three months post-termination on June 27, 2021.” UKG informed PFC that it was successfully able to pause the decommission and would be able to provide PFC with its data to download and retain for its records.

36. On July 21, 2021, PFC responded to UKG by requesting that it continue to ensure the integrity of PFC’s data until all of the migration to Fuse was complete. PFC emphasized its request that UKG not delete any of PFC’s data until the migration process was complete and the data had been validated.

37. On July 27, 2021, UKG responded confirming that it would delay the decommission of PFC’s database until the migration to Fuse was complete.

38. On or around December 3, 2021, PFC discovered that some of its data was not successfully transferred from UltiPro to Fuse. PFC raised the issue with UKG multiple times upon learning of the issue, but UKG made repeated assurances that there was no problem.

39. In or around March 10, 2022, and after subsequent investigation into the matter, PFC discovered that more of its data that was supposed to be stored in and hosted on UltiPro was missing after the transfer.

40. On August 26, 2022, a UKG representative emailed PFC admitting

that UKG had lost some of PFC's data. Specifically, the representative stated, "They've informed me that [] the requested documents are inaccessible and UKG is unable to provide. Therefore, continuing to delay the decommission isn't warranted as we do not have the data. As such, UKG intends to proceed with the decommission currently scheduled for 9/12/22."

41. On November 16, 2022, PFC issued another litigation hold notice to UKG requesting that it refrain from any steps to further delete, destroy, tamper with, or decommission any of PCF's database.

42. Between November and December 2022, UKG provided PFC with the false hope that they might be able to retrieve the missing data and information from UltiPro using some sort of extraction tool. Despite those promises, UKG has been unsuccessful in retrieving PFC's missing data and information.

43. Now, UKG repeatedly threatens to "decommission" PFC's entire data platform hosted on UltiPro beginning on December 31, 2022 despite the multiple litigation holds issued to UKG. Doing so will render it completely impossible for PFC to recover its data.

44. PFC believes that it still might be able to recover some or all of its data but for the threatened decommissioning of its entire data platform resident in UKG's systems.

45. PFC needs its data for any pending or future litigation in which the data and information hosted on UltiPro potentially could have formed a defense or partial defense to any claim or claims. Without this data, PFC's ability to defend these purported seven-figure actions will be significantly impaired.

46. The data and information that UKG lost or destroyed is intangible. It would be impossible for PFC to recreate that data and information.

47. UKG's threatened decommission of PFC's entire database threatens even more intangible, irreparable harm to PFC for which there is no monetary substitute. It is imperative that PFC preserve its data and information for a number of reasons, including but not limited to as evidence in any pending or future litigation.

48. Accordingly, PFC also seeks injunctive relief, enjoining Defendant from deleting PFC's data and information including the PFC data platform stored or hosted on UltiPro before, and until, PFC can search for, obtain, and successfully verify the transfer of its entire database to FUSE.

**COUNT ONE**

**—BREACH OF CONTRACT—**

49. Plaintiff realleges, and hereby incorporates by reference, the allegations set forth in Paragraphs 1 through 48 of this Complaint as though those allegations are fully set forth herein.

50. The Agreement is a valid, binding, and enforceable contract between PFC and UKG.

51. PFC performed all of its obligations and duties (if any) under the Agreement.

52. The Agreement contemplates that UKG will be responsible for [REDACTED] See Ex. A. The Agreement also contemplates that [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] *Id.*

53. UKG materially breached, and continues to breach, the Agreement by (1) losing some of PFC's data and information, (2) being unable to provide PFC some its documents and information which were at one point stored by UKG on its UltiPro Software, and (3) refusing to continue to store PFC's information on their database until PFC can confirm the complete and verified transfer of its data out of the UltiPro Software.

54. UKG has failed to uphold its security obligations and commitments to PCF as contemplated by and contracted for in the Agreement. UKG lost,

destroyed, and permanently deleted some of PFC's database files.

55. UKG refuses to continue to store PFC's database on its UltiPro Software until the verified successful transfer of PFC's data to FUSE.

56. PFC has been damaged, and will continue to be damaged, by UKG's material breach of the Agreement in an amount to be determined at trial.

**COUNT TWO**

***—BREACH OF WARRANTY—***

57. Plaintiff realleges, and hereby incorporates by reference, the allegations set forth in Paragraphs 1 through 48 of this Complaint as though those allegations are fully set forth herein.

58. The Agreement is a valid, binding, and enforceable contract between PFC and UKG.

59. PFC performed all of its obligations and duties (if any) under the Agreement.

60. The Agreement between PFC and UKG contained [REDACTED]

[REDACTED] which provides,



Ex. A at 11.

61. UKG materially breached, and continues to breach, the Agreement by (1) losing some of PFC's data and information, (2) being unable to provide PFC some of its documents and information which were at one point stored by UKG on its UltiPro Software, and (3) refusing to continue to store PFC's information on their database until PFC can confirm the complete and verified transfer of its data out of the UltiPro Software.

62. UKG has failed to uphold its obligations and commitments to PCF as contemplated by and contracted for in the Agreement and as guaranteed by [REDACTED]. UKG lost, destroyed, and permanently deleted some of PFC's database files.

63. PFC has been damaged, and will continue to be damaged, by UKG's material breach of the Agreement in an amount to be determined at trial.

**COUNT THREE**

***—BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING  
(CONTRACT)—***

64. Plaintiff realleges, and hereby incorporates by reference, the

allegations set forth in Paragraphs 1 through 48 of this Complaint as though those allegations are fully set forth herein.

65. The Agreement, just like any other contract, contains an implied covenant of good faith and fair dealing.

66. UKG owed, and continues to owe, PFC an implied duty of good faith and fair dealing that requires UKG do nothing to prevent PFC from receiving all benefits of the Agreement.

67. PFC's benefits under the Agreement include the safekeeping and storing of PFC's database.

68. UKG has breached its duty of good faith and fair dealing, and prevented PFC from receiving the benefits of the Agreement, by failing to store, and ultimately deleting without any back up, some of PFC's database of documents and information.

69. PFC has suffered, and continues to suffer, damage as a result of UKG's breach of its duty of good faith and fair dealing.

70. PFC has been damaged by UKG's breach of its duty of good faith and fair dealing in an amount to be determined at trial.

#### **COUNT FOUR**

#### ***—BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING (TORT)—***

71. Plaintiff realleges, and hereby incorporates by reference, the

allegations set forth in Paragraphs 1 through 48 of this Complaint as though those allegations are fully set forth herein.

72. The Agreement, just like any other contract, contains an implied covenant of good faith and fair dealing.

73. UKG owed, and continues to owe, PFC an implied duty of good faith and fair dealing that requires UKG do nothing to prevent PFC from receiving all benefits of the Agreement.

74. UKG held a position of special trust with respect to PFC. PFC entrusted UKG with the maintenance, protection, and preservation of vital PFC data that is both critical to PFC's corporate mission, and essential to its defense of potential legal claims.

75. PFC's benefits under the Agreement include the safekeeping and storing of PFC's database.

76. UKG has breached its duty of good faith and fair dealing, and prevented PFC from receiving the benefits of the Agreement, by failing to store, and ultimately deleting without any back up, some of PFC's database of documents and information.

77. PFC has suffered, and continues to suffer, damage as a result of UKG's breach of its duty of good faith and fair dealing.



78. UKG failed to protect PFC's data for its only pecuniary advantage, for malicious reasons, and through malicious means.

79. PFC has been damaged by UKG's breach of its duty of good faith and fair dealing in an amount to be determined at trial.

**COUNT FIVE**

**—CONVERSION—**

80. Plaintiff realleges, and hereby incorporates by reference, the allegations set forth in Paragraphs 1 through 48 of this Complaint as though those allegations are fully set forth herein.

81. PFC had and continues to have the sole and absolute right of ownership in its information and data hosted on UltiPro.

82. UKG had control or dominion over PFC's data and information hosted on UltiPro.

83. As described in the Agreement, [REDACTED]

[REDACTED]. The

Agreement provided:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex. A at 10  
(emphasis added).

84. In or around March 25, 2021, PFC requested UKG return of all its information and data hosted on UltiPro. As the rightful owner of the data and information, PFC was entitled to immediate possession of it upon its demand for it to be returned.

85. In or around August 26, 2022, UKG acknowledged that it no longer had some of PFC's information or data, even though, at all times relevant to this Complaint, UKG had exercised control or dominion over PFC's data and information hosted on UltiPro.

86. UKG wrongly continues to exercise control or dominion over some of PFC's data and information in denial of or inconsistent with PFC's rights to have its data and information returned.

87. PFC has been damaged, and will continue to be damaged, by UKG's conversion of its data and information, including by being deprived of its information and data, as well as the consequent damages which will flow from the deprivation of PFC's data and information.

COUNT SIX

*—DECLARATORY JUDGMENT—*

88. Plaintiff realleges, and hereby incorporates by reference, the allegations set forth in Paragraphs 1 through 48 of this Complaint as though those allegations are fully set forth herein.

89. The Agreement is a valid, binding, and enforceable contract between PFC and UKG.

90. Pursuant to [REDACTED] the Agreement, each party agreed:

Ex. A at 12 (emphasis added).

91. PFC's ability to litigate any currently pending or future claims has been, and will continue to be, severely hindered by UKG's negligent deletion and loss of some of PFC's data, as well as its failure to protect some of PFC's data information that is now no longer retrievable. .

92. Due to UKG's negligent deletion, loss, and failure to protect some of PFC's data information, PFC has suffered, and continues to suffer, damage because the data and information could be, and would be, used by PFC to form a defense or partial defense to any claim or claims.

93. If PFC is found to be liable in any pending or future litigation in which the data and information hosted on UltiPro potentially could have formed a defense or partial defense to any claim or claims, any liability would be the direct and proximate result of the acts, omissions, breaches of contract, negligence and other conduct of UKG.

94. PFC is entitled to a declaration that:

A. UKG is legally required to immediately assume the complete defense of PFC in any and all cases in which PFC's records previously hosted on UltiPro potentially could have formed a defense or partial defense, to any claim or claims;

B. UKG is obligated to reimburse PFC its attorneys' fees and legal costs already incurred in any and all cases in which PFC's records previously hosted on

UltiPro potentially could have formed a defense or partial defense to any claim or claims.

C. UKG is obligated to indemnify and hold PFC harmless from and for any and all liability, costs, and fees arising out of or in any way related to any and all cases in which PFC's records previously hosted on UltiPro potentially could have formed a defense or partial defense to any claim or claims.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully request that the Court enter an Order granting Plaintiff judgment as follows:

- a) Granting Plaintiff temporary, preliminary and/or permanent injunctive relief enjoining Defendant from deleting PFC's data and information including the PFC data platform stored or hosted on UltiPro before, and until, PFC can search for, obtain, and successfully verify the transfer of its entire database to FUSE;
- b) Awarding Plaintiff monetary damages in an amount to be determined at trial, plus pre- and post-judgment interest at the maximum rate permitted by law;
- c) Awarding Plaintiff its reasonable costs and expenses, including attorneys' fees and expert witness fees, incurred in connection with this dispute, including pursuant to A.R.S. §§ 12-341, 12-341.01 and Ex. A at 12;
- d) Declaring that UKG is legally required to immediately assume the complete defense of PFC in any and all cases in which PFC's records previously hosted on UltiPro potentially could have formed a defense or partial defense, to any claim or claims; and
- e) Granting such other relief as the Court deems just and proper.

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Dated: December 19, 2022

ASHBY & GEDDES, P.A.

/s/ F. Troupe Mickler IV

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