

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CHR SOLUTIONS, INC.

Plaintiff,

V.

GILA RIVER TELECOMMUNICATIONS, INC.

Defendant.

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CIVIL ACTION NO. 4:23-cv-1901

CHR SOLUTIONS, INC.’S ORIGINAL COMPLAINT

CHR Solutions, Inc., Plaintiff (“**CHR**”), hereby files its Original Complaint against Gila River Telecommunications, Inc. (“**Complaint**”), Defendant (“**GRTI**”), and in support would respectfully show the Court the following:

I.
INTRODUCTION

1. This lawsuit arises from a software project CHR performed for GRTI under a series of contractual agreements, which GRTI now seeks to unjustifiably terminate to avoid its payment obligations. On March 8, 2021, CHR and GRTI entered into several inter-related agreements, including a Master Services Agreement, Software Agreement, Privacy Agreement, Business Process Agreement, and Compensation Schedule, whereby CHR agreed to license its software platform to GRTI and perform related development, implementation, and maintenance work. The parties also executed a Statement of Work, whereby the parties further defined the development and implementation services CHR was to perform. The software design, development, and implementation to be performed by CHR for GRTI was significant and involved the

implementation and establishment of GRTI's customer relationship management software, billing and back-office functions, web self-care platform, and facilities management system.

2. CHR spent significant time assessing GRTI's needs and learning about GRTI's business. Following the parties' execution of the Master Services Agreement and accompanying contractual agreements, CHR spent significant time gathering GRTI's software requirements, planning, designing, and implementing the software, and preparing the software for user training, testing, and demonstration. Importantly, the software provided to GRTI by CHR involved CHR's Omnia360™ platform.

3. CHR has provided a high-quality operational product, designed to help GRTI's clients manage the day-to-day changes that take place in all the various elements of a "Fiber-to-the Home" network ("*FTTH*").

4. CHR's software has been used by GRTI to manage business and operations functions, and successfully manage its customers.

5. Since November 2022, GRTI has failed to pay the amounts owed to CHR under the Agreements in material breach.

6. Then, in February 2023, GRTI anticipatorily breached the Agreements by a letter purporting to unilaterally terminate the project, in its entirety, to avoid its financial obligations to CHR.

7. As a result of GRTI's actions, CHR has been damaged and respectfully requests an award of monetary relief in this lawsuit.

II.
PARTIES

8. CHR is a Texas corporation with its principal place of business located in Houston, Harris County, Texas.

9. On information and belief, Defendant Gila River Telecommunications, Inc. is a corporation organized and existing under the laws of Gila River Indian Community, with its principal place of business in Chandler, Arizona.

10. The Complaint and Summons may be served on its Chief Executive Officer, Jennifer Burkhalter, located at 7065 West Allison Road, Chandler, Arizona 85226, or wherever she may be found.

III.
JURISDICTION AND VENUE

11. The United States District Court for the Southern District of Texas, Houston Division, has subject matter jurisdiction as the parties are citizens of different states and the amount in controversy exceeds the applicable jurisdictional minimum of \$75,000.00. *See* 28 U.S.C. §1332.

12. In the alternative, this Court has jurisdiction over this civil action against a foreign state for a claim which the foreign state does not have immunity. *See* 28 U.S.C. §1330.

13. This Court has personal jurisdiction over GRTI as the alleged injury arises from GRTI's specific contacts with the forum since GRTI: i) contracted by mail or otherwise with a Texas resident; ii) CHR was to perform the contract in part in Texas; and iii) GRTI directed payments owed under the contract at issue in this lawsuit to Texas.

14. Under Section 10.d of the Master Services Agreement, GRTI further consented to the jurisdiction of the state or federal courts located in Harris County, Texas, and agreed that such courts have exclusive jurisdiction over any dispute between the parties.

15. Venue is proper in this district pursuant to 28 U.S.C. §1391 (b).

IV.
FACTUAL BACKGROUND

16. CHR is a leading provider of business support software solutions, office support software solutions, network engineering, managed information technology, and network operations services.

17. GRTI is a “Fiber-to-the-Home” broadband internet service provider.

GRTI sought CHR’s software and services.

18. In 2021, GRTI desired a new software platform to use for the billing, business, and operational needs of its business. Accordingly, GRTI chose CHR’s Omnia360™ software suite as its software solution.

19. Omnia360™ is a business and operations support software system (“BSS/OSS”). In other words, the software comprises a company’s entire billing, customer relationship, facilities management, and operational platform. Among other things, it:

- serves as the end-to-end mechanism by which a company interfaces with its customers and potential customers, including by managing product catalogs, customer accounts, global sale forces, marketing efforts, web self-care, and customer orders.
- runs the entirety of a company’s billing and back-office functions, including by managing accounts receivable, performing end user billing, processing payments, and handling taxation.
- manages a company’s operational facilities, including by performing IP management, network activation, and equipment and premises management functions.

20. As such, the Omnia360™ software platform is solely designed to support robust and complex broadband service provider needs, and must be designed, developed, and

implemented to account for a company's specific billing, relationship, accounting, and other business and operational practices.

The parties enter into the contracts.

21. After GRTI selected Omnia360™ to be its software platform, the parties proceeded to enter into a series of agreements, attachments, and change orders further described below (collectively, the "**Agreements**").

22. The parties developed and entered into a Statement of Work for Omnia360™ Software Suite Site License (the "**Original Statement of Work**"), dated March 8, 2021.¹ The Original Statement of Work set forth the software functionality to be designed, developed, and implemented by CHR for GRTI. It listed the customized software components, IT support services, and training services included in the project. The Statement of Work also explained the implementation phases and procedures, obligations of the parties, and set forth a schedule for implementation.

23. Overall, the software design, development, and implementation to be performed by CHR for GRTI involved a complete implementation of GRTI's customer relationship management software, billing and back-office functions, web self-care platform, and business, operations, and facilities management systems to the new Omnia360™ system, with some additional customized functionality and integration.

24. The parties also entered into five related agreements, each of which was dated March 8, 2021. First, the Privacy and Data Security Agreement ("**Privacy Agreement**").² Second, the parties executed a Software as a Service Agreement ("**Software Agreement**") providing that

¹ Original Statement of Work dated March 8, 2021, attached hereto as Exhibit A.

² Privacy Agreement dated March 8, 2021, attached hereto as Exhibit B.

CHR would provide maintenance services with respect to the licensed software.³ It also permitted GRTI to license CHR's proprietary Omnia360™ software platform in exchange for pre-determined fees. Third, the parties executed a Business Process Outsourcing and Managed Solutions Agreement ("**Business Outsourcing Agreement**").⁴ Fourth, the parties executed that certain Compensation Schedule outlining the payment terms.⁵

25. Fifth, and most importantly for the purposes of this lawsuit, the parties entered into a Master Services Agreement ("**Master Agreement**") governing the entirety of the parties' relationship and containing detailed termination provisions, among other things.⁶ With respect to termination, the Master Agreement provided that the agreement may only be terminated with cause or "upon mutual consent by both Parties."⁷

26. The parties also entered into a Statement of Work for Managed CABS Service ("**CABS SOW**")⁸ and a Statement of Work and Compensation Schedule for Managed Print Fulfillment ("**Print Fulfillment SOW**"), both dated June 23, 2021.⁹

CHR developed and implemented the Omnia360 platform for GRTI.

27. Work promptly began on the project, at which time CHR dove into the requirements gathering and planning phase of the implementation. CHR worked with GRTI to understand GRTI's requirements, design, develop, implement the software, deploy an environment consisting of several servers, and prepare the software for user training, testing, and demonstration.

28. CHR's software suite is designed to help its clients manage the day-to-day changes that take place in all the various elements of the FTTH network.

³ Software Agreement dated March 8, 2021, attached hereto as Exhibit C.

⁴ Business Outsourcing Agreement dated June 23, 2021, attached hereto as Exhibit D.

⁵ Compensation Schedule dated March 8, 2021, attached hereto as Exhibit E.

⁶ Master Agreement dated March 8, 2021, attached hereto as Exhibit F.

⁷ Id., at p. 4.

⁸ CABS Statement of Work dated June 23, 2021, attached hereto as Exhibit G.

⁹ Print Fulfillment Statement of Work dated June 23, 2021, attached hereto as Exhibit H.

29. CHR implemented and went live with the BSS/OSS software within the Omnia360 system on December 5, 2022.

30. CHR has provided an operational product that has been used by GRTI to manage business and operations functions, and successfully service its customers. CHR continued to provide the product, support services, and training to GRTI in accordance with the Agreements.

31. Initially, GRTI complied with its responsibilities and obligations under the Agreements, providing data and information during the design, development, and implementation phases, as well as payment of invoices sent by CHR.

32. Upon information and belief, GRTI had changes in its Board of Directors and executive leadership.

33. In November 2022, GRTI stopped paying invoices in violation of its covenants, responsibilities, and obligations under the Agreements.

34. On or about February 1, 2023, GRTI unilaterally decided to cease running End User and CABS Billings out of Omnia360, which GRTI claimed was a Board decision.

35. GRTI became increasingly less responsive in its communications with CHR and performance of its obligations.

36. The CHR team made countless attempts to contact General Manager and Chief Executive Officer Ms. Burkhalter for certain required approvals. However, Ms. Burkhalter ignored communications, evaded requests by CHR, and delayed implementations and upgrades, hindering CHR's ability to provide its services.

37. CHR continued to fulfill its obligations under the Agreements until April 13, 2023, when CHR was forced to reject GRTI's anticipatory repudiation.

GRTI anticipatorily breaches the Agreements.

38. On February 1, 2023, Ms. Jennifer Burkhalter, sent a letter to CHR attempting to unilaterally terminate the Agreements. GRTI's letter made unfounded and baseless allegations to allege a material breach by CHR in an attempt to avoid its outstanding financial obligations.

39. Although GRTI's February 1, 2023 letter failed to raise an issue which constituted a material breach by CHR and obligation to cure, CHR addressed all requests raised by GRTI in good-faith and provided multiple plans to address all requests.

40. Despite the fact that CHR was not in breach of the Agreements, on March 14, 2023, GRTI sent a letter to CHR unilaterally declaring itself excused of any further performance of its contractual obligations under the Agreements.

41. GRTI's actions are simply an attempt to manufacture a basis for GRTI to terminate the contractual relationship and avoid its financial obligations.

42. Since the attempted termination and anticipatory breach by GRTI, CHR has been unable to provide all software and support services.

GRTI breaches the Agreements.

43. The Agreements outline a compensation schedule for payments from GRTI to CHR.¹⁰

44. GRTI is required to pay CHR a monthly payment of \$16,821.00 upon commencement and escalating thereafter as detailed in the Compensation Schedule over the sixty (60) month term.

45. GRTI has failed to make a payment since November of 2022 and currently owes CHR for seven (7) months of SaaS monthly fees, plus late fees.

¹⁰ Exhibit E.

46. GRTI has also failed to pay outstanding invoices for implementation charges including (i) \$4,000.00 under the CABS Compensation Schedule for configuration and implementation, (ii) \$87,621.00 for Omnia360 Implementation, (iii) \$24,450.00 in outstanding change order invoices, and (iv) \$15,000.00 for travel and other related expenses.

47. GRTI has failed to make a payment since November of 2022, and currently owes over \$247,000.00, plus late fees. CHR continues to accrue damages under the Agreements.

48. CHR is also entitled to the immediate payment of \$925,155.00 for the remaining balance of the contract term.¹¹

49. CHR has made multiple demands for payment. On April 13, 2023, CHR sent GRTI its final demand for payment of the outstanding balance due at that time. To date, CHR has not received payment of the outstanding balance.

V.
CAUSES OF ACTION

Count 1: Breach of Contract

50. The preceding paragraphs are incorporated by reference as if set forth in full.

51. CHR and GRTI are parties to the Agreements, which comprise binding and enforceable contracts.

52. CHR complied with all covenants and obligations under the Agreements until it was prevented from further performance by GRTI. CHR is not in material breach.

53. GRTI has materially breached the Agreement by failing to fulfill the monetary obligations and by committing various breaches of the express covenants under the Agreements.

¹¹ Exhibit E, ¶ 9.a.

54. Pursuant to the terms and conditions of the Agreements, GRTI was contractually obligated to pay \$16,821.00 a month, initially, and with an escalating amount as detailed in the Compensation Schedule over the duration of the sixty (60) month stated term.

55. GRTI has failed to pay additional invoices for implementation, configuration, and change order costs.

56. GRTI has failed to make a payment since November of 2022. GRTI has incurred a balance of over \$247,000.00 and will continue to accrue a balance each month through the remainder of the contractual term.

57. GRTI has also incurred late fee charges in accordance with the Agreements.

58. CHR contends that it is entitled to payment of past fees duly incurred and owing under the parties' agreements and the balance for the remaining term under the Agreements.

59. As a result of GRTI's material breach of the Agreements, CHR has been damaged in an amount exceeding the minimum jurisdictional limits of this Court.

60. CHR seeks damages that it has and will sustain as a result of GRTI's material breaches, including recovery of its reasonable and necessary attorneys' fees and costs, along with prejudgment and post-judgment interest.

Count 2: Anticipatory Breach/Repudiation of Contract

61. The preceding paragraphs are incorporated by reference as if set forth in full.

62. CHR and GRTI are parties to the Agreements, which comprise a binding and enforceable contract.

63. CHR has complied with all covenants and obligations under the Agreement. CHR is not in default.

64. Pursuant to the terms and conditions of the Master Agreement, the parties could only terminate the contract for cause or by mutual agreement. Neither ground for termination exists.

65. GRTI anticipatorily breached the Agreements by letter dated February 1, 2023, when GRTI attempted to unilaterally declare itself excused of any further performance of its contractual obligations under the Agreements.

66. CHR has complied with all obligations and fully performed under the Agreements. GRTI is not entitled to terminate the Agreements.

67. GRTI's unfounded allegations are simply an attempt to provide a for-cause basis for termination of the Agreements and the parties' contractual relationship.

68. GRTI has no just excuse for repudiating its payment obligations and or for its anticipatory breach of its remaining obligations under the Master Agreement.

69. As a result of GRTI's anticipatory repudiation, CHR has been damaged in an amount exceeding the minimum jurisdictional limits of the Court.

Count 3: Quantum Meruit

70. The preceding paragraphs are incorporated by reference as if set forth in full.

71. Additionally, and in the alternative, CHR provided products and services to GRTI. GRTI accepted the benefit of CHR's products and services, which were reasonably worth the amounts contemplated by and described in the Compensation Schedule.

72. GRTI had reasonable notice of CHR's expected compensation for the products and services provided. CHR was not paid for the products and services it provided to GRTI, and unless and until CHR is compensated for such amounts, GRTI will be unjustly enriched to the detriment of CHR.

VI.
CONDITIONS PRECEDENT

73. All conditions precedent to CHR's claims for relief have been performed or have occurred.

VII.
ATTORNEYS' FEES

74. CHR is entitled to recover reasonable and necessary attorney's fees pursuant to Chapter 38 of the Texas Civil Practice & Remedies Code. CHR is further entitled to recover pre-judgment and post-judgment interest on the amounts that are the subject matter of its claims.

75. In addition, or alternatively, pursuant to Article 10 Section b, of the Master Agreement, CHR requests the recovery of its reasonable and necessary attorneys' fees and costs incurred in connection with this action.

VIII.
CONCLUSION AND PRAYER

76. For these reasons, Plaintiff CHR Solutions, Inc. respectfully requests that:
- a. CHR Solutions, Inc. have a judgment granted in its favor as described above;
 - b. CHR Solutions, Inc. be awarded actual damages in an amount in excess of the minimum jurisdictional limits of this Court;
 - c. CHR Solutions, Inc. be awarded reasonable attorneys' fees, pre and post-judgment interest, and costs of court;
 - d. CHR Solutions, Inc. be awarded such other and further relief to which it may be entitled.

Respectfully submitted,

BOYARMILLER

By: /s/ Lee A. Collins

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