

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

FORM 8-K

**CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(D) OF
THE SECURITIES EXCHANGE ACT OF 1934**

DATE OF REPORT (DATE OF EARLIEST EVENT REPORTED): January 24, 2022

PFSweb, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(STATE OR OTHER JURISDICTION
OF INCORPORATION)

000-28275
(COMMISSION FILE NUMBER)

75-2837058
(IRS EMPLOYER
IDENTIFICATION NO.)

505 MILLENNIUM DRIVE
ALLEN, TX 75013
(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)

(972) 881-2900
(REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE)

N/A
(FORMER NAME OR ADDRESS, IF CHANGED SINCE LAST REPORT)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communication pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, \$0.001 par value	PFSW	NASDAQ Capital Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

INFORMATION TO BE INCLUDED IN THE REPORT

ITEM 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Appointment of Chief Operating Officer

On January 18, 2022, PFSweb, Inc. (the “Company”) appointed Zach Thomann as the Company’s Chief Operating Officer. Mr. Thomann will continue to serve as the President of Priority Fulfillment Services, Inc., a wholly-owned subsidiary of the Company and continues to serve as Executive Vice President of the Company.

Mr. Thomann, age 40, has been employed by the Company since 2003 and served as Executive Vice President and President of the PFS Operations business unit since 2021, Executive Vice President and General Manager of the Company’s PFS Operations business unit from 2018 through 2021, Senior Vice President and General Manager of the Company’s PFS Operations business unit from 2017-2018, Senior Vice President and General Manager of the Company’s Omni-Channel Operations from 2016 to 2017, Vice President and General Manager of the Company’s Omni-Channel Operations from 2015 to 2016, Vice President of Program Management from 2013 to 2015, Director of Program Management from 2012 to 2013 and held various program management and client implementation roles at the Company from 2003 to 2012.

In his roles with the Company, Mr. Thomann will receive an annual base salary of \$475,000. He will be eligible for a cash award under the Company’s annual incentive plan consistent with his existing employment agreement (filed with the SEC with the Company’s quarterly report on Form 10-Q filed on August 7, 2020). In light of Mr. Thomann’s efforts and contributions to advance the sale of our LiveArea business unit last year and the growth of the Company, the Company will pay Mr. Thomann the calendar year 2021 short-term incentive plan awards, including cash and stock, at the 2021 target level performance award level amounts of \$126,750 and 17,928 shares, respectively, upon the earlier of April 15, 2022 or the completion of a strategic transaction involving the Company. Further, in order to incentivize Mr. Thomann to remain with the Company and continue his efforts to maximize the value of the Company, including exploring and acting on strategic alternatives in relation to the Company, the Company has entered into a new transaction retention bonus agreement with Mr. Thomann (a “Retention TRBA”) whereby he will receive a \$250,000 retention cash bonus to be paid on or before January 31, 2022, subject to a claw back in the event Mr. Thomann voluntarily separates or leaves the Company prior to December 31, 2022, unless a strategic transaction is completed prior to such date, in which case such Retention TRBA bonus shall be vested in full. The foregoing description of the Retention TRBA with Mr. Thomann does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Retention TRBA, a copy of which is filed herewith as Exhibit 5.2. The Company has previously entered into a transaction bonus agreement (“TRBA”) with Mr. Thomann (as disclosed in the Company’s Form 8-K filed with the SEC on July 6, 2021 substantially in the form filed as an exhibit with the Company’s Form 8-K filed with the SEC on August 27, 2021 (“August 8-K”)) and the parties have agreed to modify such prior TRBA to extend the date under which the transaction bonus will be paid to Mr. Thomann upon the later date of a strategic transaction closing or December 31, 2022 and in connection with such strategic transaction that the value of the transaction bonus will be modified to .305% of the transaction value as described in the August 8-K.

Mr. Thomann has no family relationships with any director or executive officer of the Company, and there are no arrangements or understandings with any person pursuant to which he was appointed Chief Operating Officer of the Company. In addition, there have been no transactions directly or indirectly involving Mr. Thomann that would be required to be disclosed pursuant to Item 404(a) of Regulation S-K under the Securities Exchange Act of 1934, as amended (the “Exchange Act”).

Resignation of Chief Accounting Officer

Effective as of January 18, 2022, Stephanie Delacruz, Chief Accounting Officer and Controller, resigned her position with the Company. Ms. Delacruz has accepted a job opportunity with another company.

ITEM 7.01 Regulation FD Disclosure

On January 24, 2022, the Company issued a press release regarding the appointment of Mr. Thomann. A copy of the press release is furnished as Exhibit 99.1 to this Current Report on Form 8-K.

The information presented in Item 7.01 of this Current Report on Form 8-K and Exhibits 99.1 shall not be deemed to be “filed” for purposes of Section 18 of the Exchange Act, or otherwise subject to the liabilities of that section, unless the Company specifically states that the information is to be considered “filed” under the Exchange Act or specifically incorporates it by reference into a filing under the Securities Act of 1933, as amended, or the Exchange Act.

ITEM 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
5.2	Transaction Retention Bonus Agreement by and between Zach Thomann and Priority Fulfillment Services, Inc. dated as of January 18, 2022
99.1	Press Release Issued January 24, 2022
104	Cover Page Interactive Data file, formatted in Inline XBRL

Cautionary Note Regarding Forward-Looking Statements. This Current Report on Form 8-K and the press release contain forward-looking statements which involve certain risks and uncertainties that could cause actual results to differ materially from those expressed or implied by these statements.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

PFSweb, Inc.

Dated: January 24, 2022

By: /s/ Thomas J. Madden
Thomas J. Madden
Executive Vice President,
Chief Financial Officer

TRANSACTION RETENTION BONUS AGREEMENT

This Transaction Retention Bonus Agreement (this “Agreement”), dated as of January 18, 2022 (the “Effective Date”), is by and between Zach Thomann (the “Executive”), PFSweb, Inc., (“PFSW”) and Priority Fulfillment Services, Inc. (the “Company”) (each a “Party,” and collectively, the “Parties”).

WHEREAS, PFSW is currently exploring potential strategic alternatives, which may involve a transaction that could result in a Change of Control (as defined below) (a “Transaction”) with respect to the Company pursuant to a definitive transaction agreement (a “Transaction Agreement”);

WHEREAS, the continuing efforts of the Executive are necessary to the successful performance of the ongoing operations of the Company and its subsidiaries and, should the Board of Directors of the Company (the “Board”) authorize the Company to enter into any such Transaction, would be necessary to the successful negotiation and execution of a Transaction Agreement and consummation of the transactions contemplated by any such Transaction Agreement (the “Closing”); and

WHEREAS, as an inducement to the Executive to remain employed by the Company through the earlier to occur of the Closing of a Transaction or December 31, 2022, the Company has determined that the Executive shall be entitled to receive a retention bonus on the terms and conditions described herein.

NOW, THEREFORE, in consideration of the mutual promises made herein, the Parties hereby agree as follows:

1. Transaction Bonus.

(a) In connection with the potential Transaction as an inducement to the Executive to remain employed by the Company through the Closing of one or more Transactions or December 31, 2022, the Company approved the granting of a retention bonus (the “Retention Bonus”) in cash in an amount equal to \$250,000 in single lump-sum payment to be paid by January 31, 2022, subject to (i) the Executive actively supporting and working toward the execution of a Transaction Agreement and the completion of all of the requirements necessary to consummate a Transaction through to a Closing, and (ii) the Executive continuing to be employed in good standing by the Company or PFSW, as the case may be, from the Effective Date through the earlier of (x) a Closing of a Transaction or (y) December 31, 2022. In the event the Executive fails to adhere to the above conditions and/or voluntarily separates from the Company prior to meeting the conditions hereof, Executive shall repay such Retention Bonus to the Company upon fifteen days’ notice. The Company reserves the right to withhold payment of any sums due to Executive until such Retention Bonus is repaid to the Company and/or to be deducted from Executive’s final paycheck, to the extent permitted by applicable federal, state, or local law.

For the purposes of this Agreement, “Change of Control” means the merger or consolidation of the Company with, or the sale of all or substantially all of the assets of the Company to, any other corporation or other entity, in each case, unless, following such merger, consolidation or sale (A) the voting securities of the Company outstanding immediately prior thereto continue to represent (either by remaining outstanding or by being converted into voting securities of the surviving or purchasing entity (the “Surviving Entity”)) more than fifty percent (50%) of the combined voting power of the voting securities of the Company or the Surviving Entity outstanding immediately after such merger, consolidation or sale; and (B) at least a majority of the members of the board of directors of the Surviving Entity were Incumbent Directors at the time of the execution of the initial agreement, or of the action of the Board, providing for such merger, consolidation or sale.

2. 280G Parachute Payments. (a) Notwithstanding any other provision of this Agreement or any other plan, arrangement or Agreement to the contrary, if any of the payments or benefits provided or to be provided by the Company or its affiliates to the Executive or for the Executive's benefit pursuant to the terms of this Agreement ("Covered Payments") constitute parachute payments ("Parachute Payments") within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the "Code") and will be subject to the excise tax imposed under Section 4999 of the Code (or any successor provision thereto) or any interest or penalties with respect to such excise tax (collectively, the "Excise Tax"), then the Company shall pay to the Executive, no later than the time the Excise Tax is required to be paid by the Executive or withheld by the Company, an additional amount (the "Gross-up Payment") equal to the sum of the Excise Tax payable by the Executive, plus the amount necessary to put the Executive in the same after-tax position (taking into account any and all applicable federal, state, local and foreign income, employment and excise taxes (including the Excise Tax and any income and employment taxes imposed on the Gross-up Payment)) that the Executive would have been in if the Executive had not incurred any tax liability under Section 4999 of the Code.

(b) Any determination required under this Section 2, including whether any payments or benefits are Parachute Payments, shall be made by the Company in its sole discretion. The Executive shall provide the Company with such information and documents as the Company may reasonably request in order to make a determination under this Section 2. The Company's determination shall be final and binding on the Company and the Executive.

(c) In light of the uncertainty in applying Section 4999 of the Code, if it is subsequently determined that the Gross-up Payment is not sufficient to put the Executive in the same after-tax position (taking into account any and all applicable federal, state, local and foreign income, employment and excise taxes (including the Excise Tax and such taxes imposed on the Gross-up Payment)) that the Executive would have been in if the Executive had not incurred the Excise Tax, then the Company shall promptly pay to or for the benefit of the Executive such additional amounts necessary to put the Executive in the same after-tax position that the Executive would have been in if the Excise Tax had not been imposed. In the event that a written ruling of the Internal Revenue Service (the "IRS") is obtained by or on behalf of the Company or the Executive, which provides that the Executive is not required to pay, or is entitled to a refund with respect to, all or a portion of the Excise Tax, then the Executive shall reimburse the Company in an amount equal to the Gross-up Payment, less any amounts which remain payable by or are not refunded to the Executive, within fourteen (14) days of the date of the IRS determination or the date the Executive receives the refund, as applicable. The Executive and the Company shall reasonably cooperate with each other in connection with any administrative or judicial proceedings concerning the existence or amount of liability for the Excise Tax.

3. Entire Agreement. This Agreement contains the entire agreement between the Executive and the Company with respect to the subject matter hereof and supersedes all prior agreements, written or oral, with respect thereto.

4. Waiver and Amendments. This Agreement may be amended, modified, superseded, or canceled, and the terms and conditions hereof may be waived, only by a written instrument signed by the Parties or, in the case of a waiver, by the Party waiving compliance. No delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any Party of any right, power, or privilege hereunder, nor any single or partial exercise of any right, power, or privilege hereunder, preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

5. **Governing Law; Venue.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without regard to conflicts of laws principles thereof. All disputes arising out of or related to this Agreement shall be submitted to the state and federal courts of Texas, and the Parties irrevocably consent to such personal jurisdiction and waive all objections thereto, but do so only for the purposes of this Agreement.

6. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

7. **Severability.** The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Party or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Parties or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

10. **Section 409A.** This Agreement is intended to be excepted from Section 409A as installment payments made during the short-term deferral period in compliance with Treasury regulation Section 1.409A-1(b)(4). To the extent this Agreement results in “nonqualified deferred compensation” subject to Section 409A, it is expressly intended that the Agreement shall comply with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended. To the extent that any provision in this Agreement is ambiguous as to its compliance with Section 409A, the provision shall be read in such a manner so that all payments hereunder shall comply with Section 409A. Notwithstanding the foregoing, the Company makes no representation that this Agreement complies with Section 409A and shall have no liability to the Executive for any failure to comply with Section 409A.

11. **Tax Withholding.** The Company shall have the right to deduct from any payment due under this Agreement, any applicable withholding taxes or other deductions required by law to be withheld with respect to such payment and to take such action as may be necessary in the opinion of the Company to satisfy all obligations for the payment of such taxes.

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have executed this Agreement as of the day and year first above mentioned.

PRIORITY FULFILLMENT SERVICES, INC. EXECUTIVE

By: _____

Name: Zach Thomann

Title: Executive

PFSweb Promotes Zach Thomann to Chief Operating Officer

ALLEN, Texas – January 24, 2022 – PFS (NASDAQ:PFSW), a premier eCommerce order fulfillment provider, announced the promotion of Zach Thomann to PFSweb Chief Operating Officer (COO).

Since starting with PFS in 2003, Zach has served in numerous leadership roles, most recently as President of PFS and PFSweb Executive Vice President. In his new role as PFSweb COO, Zach will be responsible for the global management and strategy of all core PFS business activities, including order fulfillment and distribution operations, order management technology, client financial services, PFS omnichannel product development, contact center operations, as well as the consolidation of key corporate support services into the core PFS business.

PFSweb CEO Mike Willoughby commented, “Zach’s service as PFS President has been the primary driving force behind our two consecutive years of record order fulfillment. During that time, we added two new fulfillment centers in the U.S. and moved facilities in Belgium and Canada to expand our global operational footprint. Our clients brought unique challenges and requirements in 2021 as they sought new strategies to improve and expand their eCommerce operations, and that provided the opportunity for us to expand and operate multi-node fulfillment strategies for several clients.”

Willoughby concluded, “I’m thrilled that we are entering 2022 with high client satisfaction, reflecting our continued strong operational performance, including during this recent holiday period. Zach’s leadership through the LiveArea divestiture and transition services agreement with Merkle has also been instrumental in enhancing the strength and stability of the core business. I’m encouraged to have Zach as a critical partner as we work together to lead our company into the next chapter of our corporate journey.”

Zach will continue reporting to CEO Mike Willoughby as PFSweb Executive Vice President and Chief Operating Officer and President of PFS.

About PFS

PFS, the business unit of PFSweb, Inc. (NASDAQ: PFSW) is a premier eCommerce order fulfillment provider. We facilitate each operational step of an eCommerce order in support of DTC and B2B retail brands and specialize in health & beauty, fashion & apparel, jewelry, and consumer packaged goods. Our scalable solutions support customized pick/pack/ship services that deliver on brand ethos with each order. A proven order management platform, as well as high-touch customer care, reinforce our operation. With 20+ years as an industry leader, PFS is the BPO of choice for brand-centric companies and household brand names, such as L’Oréal USA, Champion, Pandora, Shiseido Americas, Kendra Scott, the United States Mint, and many more. The company is headquartered in Allen, TX with additional locations around the globe. For more information, visit www.pfscommerce.com or ir.pfsweb.com for investor information.

Investor Relations:

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