

Fill in this information to identify the case:

Debtor John C. Heath, Attorney At Law PC

United States Bankruptcy Court for the: _____ District of Delaware
(State)

Case number 23-10725

Official Form 410
Proof of Claim

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. **Who is the current creditor?** Andrew Rhodes
Name of the current creditor (the person or entity to be paid for this claim)
Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?** No
 Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
Andrew Rhodes 223 Rosa L. Parks Avenue, Suite 200 Nashville, TN 37203	

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Contact phone _____ Contact phone _____
Contact email gstranch@stranchlaw.com Contact email _____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?** No
 Yes. Claim number on court claims registry (if known) _____ Filed on _____
MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?** No
 Yes. Who made the earlier filing? _____



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ _

7. How much is the claim? \$ 15,150 unliquidated. Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
WARN Act claim

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature or property:
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____
Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

<input type="checkbox"/> No		
<input checked="" type="checkbox"/> Yes. Check all that apply:		Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).		\$ _____
<input type="checkbox"/> Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).		\$ _____
<input checked="" type="checkbox"/> Wages, salaries, or commissions (up to \$15,150* ¹) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).		\$ <u>15150</u>
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).		\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).		\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(<u> </u>) that applies.		\$ _____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 09/07/2023
MM / DD / YYYY

/s/Michael C. Iadevaia
Signature

Print the name of the person who is completing and signing this claim:

Name Michael C. Iadevaia
First name Middle name Last name

Title Attorney

Company Stranch, Jennings, and Garvey PLLC
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____

Contact phone _____ Email _____

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (888) 249-2721 | International (310) 751-2604

Debtor: 23-10725 - John C. Heath, Attorney At Law PC		
District: District of Delaware		
Creditor: Andrew Rhodes 223 Rosa L. Parks Avenue, Suite 200 Nashville, TN, 37203 Phone: Phone 2: Fax: Email: gstranch@stranchlaw.com	Has Supporting Documentation: Yes, supporting documentation successfully uploaded Related Document Statement:	
	Has Related Claim: No Related Claim Filed By:	
	Filing Party: Authorized agent	
Other Names Used with Debtor:	Amends Claim: No Acquired Claim: No	
Basis of Claim: WARN Act claim	Last 4 Digits: No	Uniform Claim Identifier:
Total Amount of Claim: 15,150 unliquidated	Includes Interest or Charges: No	
Has Priority Claim: Yes	Priority Under: 11 U.S.C. §507(a)(4): 15150	
Has Secured Claim: No Amount of 503(b)(9): No Based on Lease: No Subject to Right of Setoff: No	Nature of Secured Amount: Value of Property: Annual Interest Rate: Arrearage Amount: Basis for Perfection: Amount Unsecured:	
Submitted By: Michael C. Iadevaia on 07-Sep-2023 9:32:17 a.m. Eastern Time Title: Attorney Company: Stranch, Jennings, and Garvey PLLC		

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*PRO HAC VICE FORTHCOMING

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

ANDREW RHODES, CASSANDRA
MASON, and JOHN BRAY, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

PGX HOLDINGS, INC.; PROGEXION;
TELESERVICES, INC.; PROGEXION
MARKETING, INC.; PROGEXION,
ASG, INC.; EFOLKS, LLC;
CREDITREPAIR.COM, INC.;
CREDIT.COM, INC.; JOHN C. HEATH,
ATTORNEY AT LAW, P.C., d/b/a
LEXINGTON LAW FIRM,

Defendants.

COMPLAINT

[PROPOSED CLASS ACTION]

JURY TRIAL DEMANDED

Case No.: 2:23-cv-354

Andrew Rhodes, Cassandra Mason, and John Bray (the “Plaintiffs”), on behalf of themselves and a putative class of similarly situated former employees as defined herein, brings this suit against Defendant PGX Holdings, Inc., and its subsidiaries, Defendants Progexion Teleservices, Inc. (“PTI”), Progexion Marketing, Inc. (“PMI”), Progexion ASG, Inc. (“PASG”), eFolks, LLC (“eFolks”), CreditRepair.com, Inc. (“CreditRepair.com”), Credit.Com, Inc. (“Credit.com”), and John C. Heath, Attorney at Law P.C., d/b/a (“Lexington Law”), by way of this Class Action Complaint against Defendants—a common business enterprise—alleging as follows:

NATURE OF THE ACTION

1. This is a Class Action Complaint brought under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101–2109 (the “WARN Act”), by the Plaintiffs on their own behalf and on behalf of the other similarly situated persons against Defendant PGX Holdings, Inc., and its subsidiaries, Defendants Progexion Teleservices, Inc. (“PTI”), Progexion Marketing, Inc. (“PMI”), Progexion ASG, Inc. (“PASG”), eFolks, LLC (“eFolks”), CreditRepair.com, Inc. (“CreditRepair.com”), Credit.Com (Credit Inc.) and John C. Heath, Attorney at Law P.C., d/b/a (“Lexington Law”) their employers (a common business enterprise) for WARN Act purposes.

2. On or within 30 days of April 5, 2023, Defendants made a mass layoff by, unilaterally and without proper notice to employees or staff, terminating approximately 800 total employees nationwide, including employees at their:

- a. Salt Lake City, Utah facility, located at 257 East 200 South, Suite 1200, Salt Lake City, UT 84111;
- b. West Valley City, UT facility, located at 2850 S. Decker Lake Dr., Suite 300, West Valley City, Utah 84119;

- c. Rexburg, Idaho facility, located at 7 East Main St., Rexburg, Idaho 83440;
- d. Phoenix, Arizona facility, located at 20620 N. 19th Ave, Phoenix, Arizona, 85027; and
- e. Oklahoma City, Oklahoma facility located at 7725 W Reno Ave #393, Oklahoma City, Oklahoma.

3. Defendants failed to provide 60 days advance written notice to employees or staff as required by the WARN Act, 29 U.S.C. § 2101 *et seq.*, to the affected employees.

4. On or about April 5, 2023, Defendants informed the affected employees in the Utah, Idaho, Arizona, and Oklahoma facilities that, as of that same day, their services would no longer be required and that they were not required nor allowed to report for work.

5. Defendants' reduction in forces constituted a mass layoff or plant closing, which became terminations, commencing on April 5, 2023 and occurring within 30 days. As such, Plaintiffs and other similarly situated employees, should have received the full protection afforded by the WARN Act.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this matter pursuant to 28 U.S.C § 1331 and 29 U.S.C. § 2104(a)(5).

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and 29 U.S.C. § 2104(a)(5).

PARTIES

8. At all times herein relevant, each of the Representative Plaintiffs was and are members of the Nationwide class.

9. Plaintiff Andrew Rhodes is a citizen of the United States and resident of Salt Lake County, Utah. Plaintiff Rhodes was employed by PTI at all relevant times at the West Valley City, UT, facility. He is an “aggrieved employee” within the meaning of 29 U.S.C. § 2104(a)(7).

10. Plaintiff Cassandra Mason is a citizen of the United States and resident of Salt Lake County, Utah. Plaintiff Mason was employed by PTI at all relevant times at the Salt Lake City, UT facility. She is an “aggrieved employee” within the meaning of 29 U.S.C. § 2104(a)(7).

11. Plaintiff John Bray is a citizen of the United States and resident of Salt Lake County, Utah. Plaintiff Bray was employed by PTI at all relevant times at the West Valley City, UT facility. He is an “aggrieved employee” within the meaning of 29 U.S.C. § 2104(a)(7).

12. Defendant PGX Holdings, Inc., is a Delaware corporation with its principal place of business 257 East 200 South, Suite 1200, Salt Lake City, UT 84111. Defendant PGX Holdings, Inc. may be served via its registered agent, CT Corporation System, 1108 E South Union Ave, Midvale, UT 84047.

13. Defendant PTI is a Delaware limited liability corporation with its principal place of business at 257 East 200 South, Suite 1200, Salt Lake City, UT 84111. Defendant PTI may be served via its registered agent, CT Corporation System, 1108 E South Union Ave, Midvale, UT 84047.

14. Defendant PASG is a Delaware corporation with its principal place of business at 257 East 200 South, Suite 1200, Salt Lake City, UT 84111. Defendant PASG may be served via its registered agent, CT Corporation System, 1108 E South Union Ave, Midvale, UT 84047.

15. Defendant PMI is a Delaware corporation with it its principal place of business at 257 East 200 South, Suite 1200, Salt Lake City, UT 84111. Defendant PMI may be served via its registered agent, CT Corporation System, 1108 E South Union Ave, Midvale, UT 84047.

16. Defendant eFolks LLC is a Delaware corporation with its principal place of business at 257 East 200 South, Suite 1200, Salt Lake City, UT 84111. Defendant eFolks may be served via its registered agent, CT Corporation System, 1108 E South Union Ave, Midvale, UT 84047.

17. Defendant CreditRepair.com, Inc. is a Florida corporation with its principal place of business at 257 East 200 South, Suite 1200, Salt Lake City, UT 84111. Defendant CreditRepair.com may be served via its registered agent, CT Corporation System, 1108 E South Union Ave, Midvale, UT 84047.

18. Defendant Credit.Com is an entity belonging to PGX Holdings, with its principal place of business at 257 East 200 South, Suite 1200, Salt Lake City, UT 84111. Defendant Credit.Com may be served via its registered agent, CT Corporation System, 1108 E South Union Ave, Midvale, UT 84047.

19. Defendant Lexington Law is a professional corporation with its principal place of business 2875 South Decker Lake Drive, Suite 200, West Valley City, UT 84119. Defendant Lexington Law may be served via its registered agent, John C. Heath, 2875 S. Decker Lake Dr., Suite 200, West Valley City, UT 84119.

20. Collectively, these entities operate as a common enterprise under Defendant PGX Holdings, Inc. Defendant PGX Holdings, Inc., as a result, is the responsible entity for the operation of the common enterprise with facilities located at: 257 East 200 South, Suite 1200, Salt Lake City, UT 84111; 2850 S. Decker Lake Dr., Suite 300, West Valley, City, Utah 84119; 7 East Main St., Rexburg, Idaho 83440, and 7725 W Reno Ave #393, Oklahoma City, Oklahoma; and one or all of such entities who employed the affected employees of Defendant PGX Holdings, Inc., and the entities liable for the actions alleged in this complaint.

FACTS

21. As a common enterprise, Defendants are Utah-based businesses that provide credit repair services through various consumer brands.

22. On or about April 5, 2023, Defendants informed all employees at its Salt Lake City, UT, West Valley, UT, Oklahoma City, OK, and Rexburg, ID locations, including Plaintiffs, that they were abolishing positions and terminating employees' employment effective immediately, April 5, 2023, and that terminated employees would perform no additional compensated services.

23. That same day, Defendants filed a notice with the Utah Department of Workforce Services, advising that 355 employees of Defendants located in the State of Utah would be separated.

24. As of this filing, no similar notice has been reported to be filed with the Idaho Department of Labor or the Oklahoma Department of Labor.

25. On April 28, Defendants filed a notice with the Arizona Department of Labor, indicating that 203 employees were terminated.

26. Defendants did not provide any WARN Act Notice as required by 29 U.S.C. §§ 2101 *et seq.* even though it planned to abolish, terminate, and/or layoff over one-hundred full-time employees employed there.

27. Upon information and belief, no circumstances existed that would have permitted NBC from reducing the notification period as provided in 29 U.S.C. § 2102(b).

28. By failing to provide their affected employees who were temporarily or permanently terminated on or around April 5, 2023, with WARN Act Notices and other benefits, Defendants acted willfully and cannot establish that they had any reasonable grounds or basis for believing their actions were not in violation of the statute.

RULE 23 CLASS ACTION ALLEGATIONS

29. Plaintiffs brings their WARN Act claim as a Class Action pursuant to Federal Rule of Civil Procedure 23 on behalf of the following Nationwide class:

All employees of Defendants who were terminated pursuant to a mass layoff or plant closing (as those terms are defined in the WARN Act) within 30 days of April 5, 2023.

30. Class Action treatment of WARN Act claims is appropriate because all of Federal Rule of Civil Procedure 23's Class Action requisites can be satisfied. For example:

- a. The class includes, upon information and belief, over 50 class members, and, as such, is so numerous that joinder of all the class members is impracticable under these circumstances, thereby satisfying Federal Rule of Civil Procedure 23(a)(1).
- b. Questions of law and fact are common to the class, including, *inter alia*, whether Defendants provided adequate notice of their mass layoff under the WARN Act, 29 U.S.C. § 2102. Thus, Plaintiffs satisfy Federal Rule of Civil Procedure 23(a)(2).

- c. Plaintiffs are members of the class, and their claims are typical of the claims of other class members. Plaintiffs have no interests that are antagonistic to or in conflict with the interests of other class members. Thus, Plaintiffs satisfy Federal Rule of Civil Procedure 23(a)(3).
- d. Plaintiffs will fairly and adequately represent the class and its interests. Moreover, Plaintiffs have retained competent and experienced counsel who will effectively represent the interests of the class. Thus, Plaintiffs satisfy Federal Rule of Civil Procedure 23(a)(4).

31. Class certification is appropriate pursuant to Federal Rule of Civil Procedure 23(b)(1) because the prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for Defendants and/or because adjudications with respect to individual class members would as a practical matter be dispositive of the interests of non-party class members.

32. Class certification is appropriate pursuant to Federal Rule of Civil Procedure 23(b)(2) because Defendants acted or refused to act on grounds generally applicable to the Class, making appropriate declaratory and injunctive relief with respect to Plaintiffs and the class as a whole.

33. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact predominate over any question affecting only individual class members, and because a Class Action is superior to other available methods for the fair and efficient adjudication for this litigation.

FIRST CAUSE OF ACTION
(VIOLATIONS OF THE WARN ACT, 29 U.S.C. §§ 2101, *et seq.*)

34. Plaintiffs re-allege and incorporate all preceding paragraphs as if set forth in full here.

35. Defendants individually are “employers” within the meaning of the WARN Act, 29 U.S.C § 2101(a)(1) and, collectively, operated as a common “business enterprise” as defined by 29 U.S.C § 2101(a)(1).

36. Plaintiffs and those they seek to represent were at all relevant times “affected employees” within the meaning of the WARN Act, 29 U.S.C § 2101(a)(5).

37. The April 5, 2023, permanent layoffs of at least 505 employees at the Salt Lake City, UT; West Valley City, UT; Rexburg, ID; Oklahoma City, OK; and Phoenix, AZ facilities resulted in “employment losses” as defined in 29 U.S.C. § 2101(a)(3)(B)(i)(I) and (II) for at least 33 percent of the employees and at least 50 employees.

38. For purposes of 29 U.S.C. § 2101(a)(3)(B)(i)(I) and (II), the Salt Lake City, UT; West Valley City, UT; Rexburg, ID facilities; Oklahoma City, OK; and Phoenix, AZ individually, and in aggregate, constitute a single site of employment in that each employee’s facility was the location to which relevant employees were assigned as their home base, the place from which their work was assigned, and the place to which they reported for work.

39. The WARN Act requires employers to provide 60-days’ notice of any plant closing or mass layoff “to each representative of the affected employees . . . or, if there is no such representative at that time, to each affected employee,” 29 U.S.C. § 2102(a)(1), and “to the State or entity designated by the State to carry out rapid response activities under [29 U.S.C. §]

3174(a)(2)(A),” as well as to “the chief elected official of the local government within which such closing or layoff is to occur,” 29 U.S.C. § 2102(a)(2).

40. On information and belief, prior to April 5, 2023, Defendants did not give any prior written notice of the plant closing and/or mass layoff to any “affected employee,” including Plaintiffs and those they seek to represent, as that term is defined in 29 U.S.C § 2101(a)(5). Nor upon information and belief did Defendants give any *prior* written notice to the Utah Department of Workforce Services, Oklahoma Department of Labor, Arizona Department of Labor, Idaho Department of Labor, or to the chief elected official of the local government within which the mass layoff was ordered. Rather, Defendants waited until the day of the mass layoffs to do so (or they never did).

41. Defendants violated the WARN Act by failing to give timely written notice of the mass layoff as required by 29 U.S.C. § 2102(a), which began on or about April 5, 2023.

42. As such, Plaintiffs and those they seek to represent are “aggrieved employees” within the meaning of the WARN Act, 29 U.S.C. § 2104(a)(7).

43. The WARN Act expressly permits an “aggrieved employee” to bring a civil action individually and on behalf of all those similarly situated to seek relief for violations of the provisions of 29 U.S.C. § 2102. *See* 29 U.S.C. § 2104(5).

44. Moreover, Defendants’ violations of the WARN Act were not in good faith, and Defendants had no reasonable grounds for believing that the plant closing or mass layoff it ordered was not in violation of the notice requirements at 29 U.S.C. § 2102.

JURY DEMAND

Plaintiffs request a jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

1. Certification of the Class as a Class Action pursuant to Federal Rule of Civil Procedure 23(b), and designation of Plaintiffs as a representative of the Class and her counsel of record as Class Counsel.

2. A declaration that Defendants have violated the WARN Act;

3. A judgment against Defendants and in favor of Plaintiffs and those they seek to represent for back pay to the fullest extent permitted by the WARN Act, 29 U.S.C. § 2104(a)(1)(A);

4. A judgment against Defendants and in favor of Plaintiffs and those they seek to represent for the loss of benefits, including, but not limited to, medical expenses incurred by Plaintiffs and those they seek to represent during the employment loss, to the fullest extent allowable under the WARN Act, 29 U.S.C. § 2104(a)(1)(B);

5. A finding that Defendants' violations of the WARN Act were and are willful, not in good faith, and that Defendants had no reasonable grounds for believing that its mass layoff was not in violation of the notice requirements of the WARN Act, 29 U.S.C. § 2102;

6. A judgment against Defendants and in favor of Plaintiffs and those they seek to represent for litigation costs, expenses, attorney's fees to the fullest extent permitted under the WARN Act, 29 U.S.C. § 2104(a)(6), and for discretionary costs pursuant to Federal Rule of Civil Procedure 54(d);

7. A judgment against Defendants for civil penalties to the fullest extent allowable under the WARN Act, 29 U.S.C. § 2104(a)(3); and,

8. Such other and further relief as this Court deems just and proper and allowed under the WARN Act.

DATED this 30th day of May, 2023.

MARSHALL OLSON & HULL, PC

BY: /s/ JASON R. HULL
JASON R. HULL

STRANCH, JENNINGS, & GARVEY, PLLC

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