

Fill in this information to identify the case:

Debtor QLess, Inc.

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

Case number 24-11395

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?** Tom Mitchell
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)
See summary page	

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

Contact phone 3022524462 Contact phone _____
Contact email roglen1@ballardspahr.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? \$ 216665.17. 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.
Shareholder litigation

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)?

- No
 Yes. Check all that apply:

Amount entitled to priority

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

- Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). \$ _____
- 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). \$ _____
- Wages, salaries, or commissions (up to \$15,150*) 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). \$ _____
- Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). \$ _____
- Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). \$ _____
- Other. Specify subsection of 11 U.S.C. § 507(a)() 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.

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 08/19/2024
MM / DD / YYYY

/s/Laurel Loglen
 Signature

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

Name Laurel Loglen
First name Middle name Last name

Title Attorney-in-fact

Company Ballard Spahr LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____

Contact phone _____ Email _____



Verita (KCC) ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (866) 967-0493 | International (310) 751-2693

Debtor: 24-11395 - QLess, Inc. District: District of Delaware		
Creditor: Tom Mitchell c/o Laurel D. Roglen, Esq. Ballard Spahr LLP 919 N. Market St., 11th Floor Wilmington, DE, 19801 United States Phone: 3022524462 Phone 2: Fax: Email: roglenl@ballardspahr.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: Shareholder litigation	Last 4 Digits: No	Uniform Claim Identifier:
Total Amount of Claim: 216665.17	Includes Interest or Charges: No	
Has Priority Claim: No	Priority Under:	
Has Secured Claim: 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: Laurel Loglen on 19-Aug-2024 8:15:38 p.m. Eastern Time Title: Attorney-in-fact Company: Ballard Spahr LLP		

Schedule to Proof of Claim

In re: QLess, Inc., Case No. 24-11395 (BLS)
United States Bankruptcy Court for the District of Delaware

Creditor: Tom Mitchell (“Creditor”)

This Schedule supplements the information stated in the accompanying Proof of Claim and shall constitute part of the Proof of Claim.

I. Basis for the Claim

A. Background

Alex Backer founded QLess, Inc. (“Debtor” or the “Company”) in 2007. Mr. Backer served as President of the Company until 2019 and as a member of the board of directors of the Company until the 2021 merger transaction described herein orchestrated by Palisades Growth Capital II, L.P. (“Palisades”).

At the beginning of 2021, the Company had two groups of shareholders: (i) the common shareholders, and (ii) the Series A and A-1 preferred shareholders, of which preferred shares Palisades, which is a private equity firm, owned over 80%. As the Company’s controlling and majority preferred shareholder, Palisades controlled the Company through its voting power and veto rights for a range of the Company’s decisions, including, any merger, asset sale, or other corporate reorganization and the incurrence of any debt through borrowed funds. At the beginning of 2021, Creditor was also a preferred shareholder of the Company.

Palisades also had appointed four members (the “Palisades Directors”) of the Company’s five-seat Board of Directors (the “Board”) and officers and therefore controlled the Board. The Board, at the direction of Palisades, guided the Company into a freeze-out merger transaction at less than fair market value and for the purpose of removing Company’s shareholders from the rapidly-growing Company for Palisades’ benefit.

In January 2021, Palisades expressed its intention to acquire the Company and proposed a two-step merger transaction. First, Palisades would secure additional voting power and leverage over the Company through a \$1 million financing, and second, sell the Company to Palisades at an undervalued price. Palisades justified this proposal based on purported liquidity needs of the Company, which were overstated and of Palisades’ own making.

In March 2021, the Company entered a convertible note transaction with Palisades, that was conditioned on the company initiating a process to sell the Company. This transaction was approved by the Board without consideration of whether a financing transaction with the Company’s controlling shareholder, that was conditioned on initiating a merger process that Palisades would control through its veto power, was in the best interest of the Company’s shareholders.

Palisades, through its appointed directors on the Board, controlled the sale process. Although three bids from bidders outside of Palisades were generated that were favorable to the Company's shareholders, Palisades utilized its veto power over these merger transactions and coerced the Company into an acquisition transaction with itself.

As a result of Palisades' control over the Board, the Board accepted Palisades' offer reflecting an enterprise value of \$24.7 million, which was significantly less than the prior valuations and the alternate bids that projected the Company to be worth in excess of \$100 million (the "Merger Transaction"). Furthermore, Palisades dictated that the Merger Transaction be structured as a "Deemed Liquidation Event," as defined by the Company's Amended and Restated Articles of Incorporation, dated November 19, 2018 (the "Articles of Incorporation"), which caused nearly the entirety of the merger consideration that it paid for the Company to be paid to itself.

Upon the occurrence of the Merger Transaction, preferred shareholders of the company were entitled to be paid by the Company as provided in Section 2 of the Articles of Incorporation. Creditor requested payment of merger consideration from the Company, but the Company has not made any payment to Creditor, in breach of Section 2 of the Articles of Incorporation.

On December 27, 2023, Creditor, Mr. Backer, and certain other shareholders of the Company filed a verified complaint in the Court of Chancery of the State of Delaware bringing various claims for breach of fiduciary duty relating to the Merger Transaction against the Company, Palisades, and the Palisades Directors, among others (the "Shareholder Litigation"). A true and correct copy of the public version of the Verified Complaint is attached hereto as Exhibit A.

On June 19, 2024 (the "Petition Date"), the Debtor filed a voluntary petition for relief under subchapter V of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), commencing the instant bankruptcy case (the "Chapter 11 Case"). The Shareholder Litigation is now stayed as to the Debtor by operation of the automatic stay, and is temporarily stayed as to the other defendants by consent of the parties through August 30, 2024.

II. Amount & Priority of the Claim

Creditor asserts a general unsecured claim against the Debtor in the amount of \$216,665.17 based upon the claims and causes of action asserted by Creditor in the Shareholder Litigation.

III. Notices

All notices and pleadings concerning this proof of claim should be sent to the following:

Matthew G. Summers
Laurel D. Roglen
Ballard Spahr LLP
919 N. Market Street, 11th Floor

Wilmington, Delaware 19801

IV. Reservation of Rights

Creditor reserves the right to amend this proof of claim to include amounts not stated above, including, without limitation, costs, expenses, attorneys' fees, and any other charges or amounts due, as appropriate, under applicable bankruptcy and non-bankruptcy law. Creditor reserves all of his rights and remedies, including, without limitation, the right to amend this claim from time to time to reflect damages, additional charges, adjustments and the like, due and payable to Creditor, as the same become quantified, known or available.

Creditor further reserves the right to amend this Proof of Claim (and any Proof of Claim that he files, has filed or may file in the Debtors' bankruptcy cases) to make such claim a secured claim by virtue of Creditor's right to setoff, offset, or recoup the amount thereof under 11 U.S.C. § 553 or otherwise, or to otherwise assert a defense of setoff, offset and/or recoupment against any claims, defenses or offsets that the Debtor or any other party may assert against Creditor.