

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

QLESS, INC.,

Reorganized Debtor.

Chapter 11, Subchapter V

Case No. 24-11395 (BLS)

OMNIBUS REPLY RE OBJECTIONS TO CLAIMS

QLess, Inc., the reorganized debtor in this case (“**QLess**”), submits this reply regarding (1) *Debtor’s Substantive Objection to Proofs of Claim 11 and 13 Filed by Alex Backer* [Doc. 110] (the “**Backer Objection**”) and (2) *Debtor’s First Omnibus Objection to Proofs of Claim 17, 18, 20, 20, and 21 Filed by Certain Preferred Shareholders* [Doc. 111] (the “**Shareholder Objection**”) and, together with the Backer Objection, the “**Claim Objections**”). The “Preferred Shareholders” filed their *Response* [Doc. 162] (the “**Shareholder Response**”) to the Shareholder Objection, and Alex Backer filed his *Response* [Doc. 172] (the “**Backer Response**”) to the Backer Objection. This filing replies to the Shareholder Response and the Backer Response.

Given that the Preferred Shareholders now appear to have provided Letters of Transmittal with the Shareholder Response, QLess does not believe it prudent to continue with the Shareholder Objection. QLess withdraws the Shareholder Objection with prejudice.

In the Backer Response, Mr. Backer indicated his intention to withdraw Claim No. 13 “upon the occurrence of the effective date under the plan.” The Effective Date has occurred—it was September 18, 2024—so QLess simply requests that the Court confirm with Mr. Backer that Claim No. 13 is, in fact, withdrawn with prejudice.

The Backer Response continues to urge the allowance of Mr. Backer’s Claim No. 11, based entirely on claims Mr. Backer made in a prepetition arbitration proceeding (as further identified in the Backer Objection, the “**Arbitration**”). In doing so, Mr. Backer persists in a delusional view of both the merits of his arbitral claims and the evidence and testimony in the Arbitration.



The fanciful narrative and characterizations in the Backer Response bear no resemblance to the reality of the evidence adduced in the Arbitration or summarized in the Backer Objection. The stunningly indulgent Backer Response only confirms that Mr. Backer remains as untruthful as the Delaware Chancery Court and Delaware Supreme Court found him to be in earlier litigation.

Rather than exhaustively address every detail of deception in the Backer Response, QLess notes the following:¹

- The Delaware Supreme Court’s earlier decision *was* in fact admitted into evidence in the Arbitration as a reflection on the lack of veracity of Mr. Backer’s testimony. [Arbitration Exh. 271.]
- The evidence in the Arbitration established that Mr. Backer was allowed to resign as QLess’s CEO instead of being terminated because the investigation by independent outside counsel concluded Mr. Backer was “toxic” to QLess by his pattern of harassment of co-workers. [Arb. Exh. 213, describing Backer’s creating a “toxic work environment” in which he regularly intimidated and threatened employees.]
- Mr. Backer claims to have a written consulting agreement with QLess after he resigned as CEO, but the arbitration testimony of every witness, *including Mr. Backer*, established that Mr. Backer had fabricated the purported consulting agreement. The Arbitrator prohibited further testimony on this claim because Mr. Backer agreed that no such consulting agreement ever existed. Further, at the Arbitration, Mr. Backer acknowledged that QLess’s directors repeatedly and emphatically told Mr. Backer that any consulting agreement entered into with QLess “requires a release” by Mr. Backer. [Arb. Exh. 232, p.3, Director Ho Nam email to Backer.]

¹ These are only some of QLess’s factual and legal rebuttal to the many claims raised in both the Arbitration and Claim No. 11. By reciting only these examples, QLess does not waive any procedural or substantive arguments regarding any of Mr. Backer’s claims in the Arbitration or in Claim No. 11. QLess refers below to Arbitration exhibits by number as admitted in the Arbitration substantiating the following facts. QLess will provide these exhibits, and more, if the Court so requests.

- Mr. Backer admitted that QLess’s board never approved an increase to the interest rate on his note from 7.5% compounded annually to 12% compounded monthly but that he nevertheless unilaterally decided the interest should be increased to 12% compounded monthly, despite Mr. Backer’s written contracts to the contrary. [Arb. Exhs. 201 and 203, signed by Backer, reflecting 7.5% interest.]
- Mr. Backer claims that Palisades’s investment into QLess was a “milestone event” triggering an obligation by QLess to pay his deferred compensation before October 2021 and, incredibly, denying that he was paid deferred compensation that was actually paid to him. But evidence at the Arbitration established that Palisades, as a condition of investing in QLess, had QLess amend the employment contract with Mr. Backer to eliminate “milestone events” as a trigger for paying deferred compensation. [Arb. Exh. 201, § 2.3, with “milestone” language; Exh. 203, amended § 2.3, with “milestone” language removed.] The amended language gave the QLess board the discretion of when to pay the deferred compensation, *which QLess actually did pay before Mr. Backer’s arbitration demand*. The arbitrator also ruled before the Arbitration that Mr. Backer’s argument that he should have been paid the “deferred compensation” earlier was “irrelevant.” [Arbitrator’s Scheduling Order No. 5.] Arbitration Exhibit 297 demonstrates that Mr. Backer acknowledged in an email that he had in fact received payment of his deferred compensation in October 2021, something he was forced to admit in testimony.
- Mr. Backer claims he is owed a bonus for 2019 before he was allowed to resign as CEO. But unrefuted evidence at the Arbitration established that QLess did not pay anyone any bonus for 2019 because QLess performed poorly in 2019.
- Mr. Backer claims to have persuaded several entities to invest in QLess, including Boathouse Capital. But the evidence at Arbitration established that these entities would never have invested in QLess as long as Mr. Backer was associated with QLess in any way. [Arb. Exh. 264, “[Boathouse] request[s] that the founder [i.e., Alex Backer] leave the Board” as part of any investment deal.]

Sadly, Mr. Backer continues to fabricate claims against QLess and the Backer Response completely misrepresents the conclusive evidence adduced in the Arbitration.

But substantial documentary evidence was submitted to the arbitrator, along with approximately six days of witness testimony and argument. The Arbitration has proceeded to the point of the arbitrator's readiness to rule on all of Mr. Backer's substantive claims. Because those arbitral claims and only those claims constitute Claim No. 11 in this case, QLess respectfully requests that the Court hold both the Backer Objection and the Backer Response in abeyance and allow the Arbitration to resume with the arbitrator's ruling.

All evidentiary proceedings in the Arbitration concluded shortly before the Petition Date. All that remains in the Arbitration is for the arbitrator to rule. To facilitate and enable that ruling, QLess is responsible for paying the remaining arbitrator's fee of \$10,000 and any post-hearing briefs and transcripts required by the Arbitrator would have to be provided by the parties.

The alternative—that this Court should conduct lengthy evidentiary proceedings on Claim No. 11, duplicating the proceedings already completed in the Arbitration—would obviously waste judicial resources and squander both parties' investment in the Arbitration. It is better for this Court to defer to the substantive rulings in the Arbitration and then consider the merits of Claim No. 11 for Plan distribution purposes only once those rulings have been rendered. QLess has requested that Mr. Backer stipulate to this approach but, if he does not, QLess respectfully urges that this approach is far more prudent than beginning time-consuming, expensive, and utterly duplicative litigation in this Court.

CONCLUSION

For the foregoing reasons, QLess respectfully requests an order: (a) recognizing the withdrawal of Claim No. 13 and the mooted of the Backer Objection to the extent it pertains to Claim No. 13; (b) recognizing QLess's withdrawal of the Shareholder Objection; and (c) holding the Backer Objection (and the Backer Response) in abeyance and directing the parties to complete the Arbitration such that the arbitral ruling can be used to resolve Claim No. 11 for purposes of distributions under the Plan.

September 23, 2024

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