

Fill in this information to identify the case:

Debtor Thrasio, LLC

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

Case number 24-11902

**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?	<u>ARI HOROWITZ</u> 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?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent? See summary page	Where should payments to the creditor be sent? (if different)
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Contact phone <u>212-972-3000</u> Contact email <u>jjureller@klestadt.com</u>	Contact phone _____ Contact email _____
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> 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?	<input checked="" type="checkbox"/> No <input type="checkbox"/> 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? \$ 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.
See attached Rider

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: Swiftline Corp. Shares
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: \$ To be Determined
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
<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 type="checkbox"/> 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).	\$ _____
<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)(____) 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 entitled to administrative priority 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 05/06/2024
MM / DD / YYYY

/s/Ari Horowitz
Signature

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

Name Ari Horowitz
First name Middle name Last name

Title _____

Company _____
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 (866) 967-0496 | International +1 (310) 751-2696

Debtor: 24-11902 - Thrasio, LLC		
District: District of New Jersey, Trenton Division		
Creditor: ARI HOROWITZ c/o KLESTADT WINTERS JURELLER SOUTHARD STEVENS, LLP 200 West 41st Street, 17th Floor New York, New York, 10036 United States Phone: 212-972-3000 Phone 2: Fax: 212-972-2245 Email: jjureller@klestadt.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: See attached Rider	Last 4 Digits: No	Uniform Claim Identifier:
Total Amount of Claim: Unliquidated	Includes Interest or Charges: No	
Has Priority Claim: No	Priority Under:	
Has Secured Claim: Yes: To be Determined Amount of 503(b)(9): No Based on Lease: No Subject to Right of Setoff: No	Nature of Secured Amount: Other Describe: Swiftline Corp. Shares Value of Property: Annual Interest Rate: Arrearage Amount: Basis for Perfection: Amount Unsecured:	
Submitted By: Ari Horowitz on 06-May-2024 12:58:55 p.m. Eastern Time Title: Company:		

**RIDER TO PROOF OF CLAIM
OF
ARI HOROWITZ**

1. The Claims:

The proof of claim (“Proof of Claim”) is based upon damages incurred by, and amounts due and owing to, Ari Horowitz (“Claimant”) as a result of fraudulent, false and improper actions taken by debtor Thrasio LLC (the “Debtor”) and its directors and officers with respect to the Yardline Transaction (defined below) between the Debtor and Swiftline Corp. (“Swiftline”). The facts and circumstances of the Claims are set forth in detail below:

A. Claims for Damages for Fraud, Fraudulent Misrepresentation, Breach of Contract, Violation of Securities Laws and Constructive Trust – Prepetition:

a. Secured Claim: Swiftline Corp. Shares.

The Claim is secured as against 1,439,709 shares of Swiftline Corp. Series A-2 Preferred Stock, par value \$0.0001 (“Swiftline Shares”). The Swiftline Shares are restricted and non-transferrable to third parties pursuant to the terms of the Preferred Stock Agreements (as defined therein). As such, the Swiftline Shares currently have no economic value to the Debtor or its estate. Based upon the Claims, Claimant seeks the immediate return of the Swiftline Shares, which were transferred as a result of the fraudulent and false financial statements and representations prepared by, and improper actions taken by, the Debtor and its officers and directors. It is submitted that the Swiftline Shares are held, and should continue to be held, in a constructive trust for the Claimant. Demand is made for the return of the Swiftline Shares.

b. Unsecured Claim for Damages: *Unliquidated.*

The Claim also asserts damages, in an amount to be determined after hearing and/or trial.

c. Basis for Claim:

The Claim is based upon causes of action for fraud, fraudulent misrepresentations, breach of contract, violation of securities laws, and constructive trust against the Debtor, by and through

its officers, directors and employees, arising from producing fraudulent or false financial statements and other related documents relied upon by Swiftline and its founders and majority shareholders at the time, Claimant and Tomo Matsuo, to evaluate, among other things, certain consideration contemplated in that certain Yardline SPA (defined herein), including the value of accelerated stock options of Thrasio Holdings LLC (“Thrasio Holdings”, and together with the Debtor as the “Debtors”) which were a material component of consideration for the Transaction (defined herein).

Pursuant to a Stock Purchase Agreement (“Yardline SPA”) dated as of January 13, 2022, the Debtor sold, and Swiftline purchased, 100% of the outstanding capital (“Yardline Outstanding Capital”) of Yardline Capital Corp. (“Yardline”), a wholly owned subsidiary of the Debtor (the “Transaction”). In exchange for the Yardline Outstanding Capital, Swiftline paid cash consideration in the amount of \$7,041,954 and transferred 1,435,709 shares of its Series A-2 stock (i.e. the Swiftline Shares) to the Debtor. In further consideration for agreeing to enter into the Transaction, the Debtors sought restrictive covenant agreements and general releases (the “Restrictive Covenants”) from Claimant and Tomo Matsuo (“Matsuo”), the then-principles of Claimant and sought approval of the Board of Thrasio Holdings, the parent company of the Debtor, for the acceleration of certain unvested stock options (the “Thrasio Stock Options”) granted to each of Claimant and Matsuo (the “Option Acceleration”) during the course of their prior employment by the Debtors and subject to the terms and conditions of the Thrasio 2019 Equity Incentive Plan and Stock Option Agreement between the respective parties. The Restrictive Covenants and the Thrasio Holding’s Board’s approval of the Option Acceleration were conditions precedent to the closing of the Transaction.

The purported value of the Option Acceleration was material factor in determining the consideration to be paid by Swiftline as part of the Transaction, and specifically the agreement by Swiftline to include the transfer of the Swiftline Shares thereunder. Further, the purported value of the Option Acceleration was material to Claimant's decision to enter into the Restrictive Covenants. Claimant reasonably relied upon certain financial information prepared by the Debtors and multiple associated communications about the financial condition of the Debtors in agreeing to the Transaction under the proposed terms. As set forth more fully below, Claimant was fraudulently and purposefully misled by the Debtors, by and through their directors, officers and employees, as to the financial condition of the Debtors at the time of the Transaction. As a result, Claimant received significantly less consideration than represented by the Debtors under the Option Acceleration.

Specifically, and while reserving all rights related to its claims (including any right to amend or modify same), Claimant was damaged as a result of, *inter alia*, the fraudulent and false misrepresentations about the financial condition of the Debtors, including, without limitation, Claimant's reliance upon the following documents and representations (or misrepresentations):

- On December 23, 2020, Joshua Silberstein, the Debtors' then-Co-Chief Executive Officer, provided financial statements purportedly representing the Debtors' income for 2019 and 2020 and indicating that the Debtors were profitable.
- In June 2021, the Debtors provided GAAP financial statement in the Debtors' data room that represented the Debtors' 2020 EBIT at \$32.5mm; yet, when disclosed publicly a year later in June 2022, the Debtors' 2020 audited financial statements shows an EBIT loss of (\$88.0 million).
- At all relevant times in furtherance of the Swiftline Transaction, the Debtors' CEO Silberstein made representations and warranties reasonably relied upon by Swiftline and its principals Ari Horowitz and Tomo Matsuo, that the Debtors were profitable and operating cash flow positive since inception.
- Following the disclosure of the 2020 audited financial statements in June 2022, the share price fell materially from where insiders were selling their stock.

Claimant relied on such information and the valuation calculated therefrom, with the knowledge, intent and consent of the Debtors and their officers. In addition, Claimant relied upon representations and warranties made by the Debtors' officers, including as set forth in email correspondence, regarding the financial condition of the Debtors at all relevant times. The representations, both verbal and in writing, were false and fraudulent.

In addition to the fraudulent and false statements set forth above, the Debtors and their directors and officers took affirmative actions to thwart the sale of stock purchased under the Investment, all to their own benefit. Claimant was denied access to the data room and information that the Debtors' directors and officers were utilizing to sell their own stock during the same time period. During the period beginning in 2021 and through June 2022 (the "Insider Stock Sales Period"), certain of the Debtors' directors and officers (and potentially other co-conspirator insider investors) are believed to have sold over hundreds of millions of dollars of their personal stock or stock held by an entity where they were a fiduciary. However, once the 2020 audited financial statements were disclosed to the Major Investors, the share price dropped materially.

Through their unwillingness to provide information to outside stockholders, the Debtors and their directors and officers (and preferred investors) were denying the availability and use of the same data that they were using to sell their own holdings and front ran demand for the Debtors' stock during the Insider Stock Sales Period.

But for the fraud and fraudulent misrepresentation, breach of contract and wrongful and improper actions of the Debtors, and their directors and officers, Sweifline would not have proceeded with the Transaction under the same terms and would have otherwise refused to include the Swiftline Shares in the Transaction. The Swiftline Shares were a material part of the

consideration and were included based upon the Debtors' representation of value of the Option Acceleration and Yardline business. Further, Claimant would not have entered into the Restrictive Covenants.

Pursuant to Section 8(j) of the Yardline SPA, Claimant is entitled to reimbursement of its costs and expenses including reasonable attorneys' fees.

For avoidance of doubt, nothing contained herein waives, or shall be deemed to waive, any claims or rights that Claimant has against any other parties, including, without limitation, certain former and/or current officers, directors, shareholders or other investors of the Debtor, all in their individual capacities. All such rights and claims are hereby specifically reserved.

2. Reservation of Rights:

Claimant reserves the right to amend or supplement this Proof of Claim to reflect any additional claims against the Debtor, to specify interest, costs, expenses or other charges or claims incurred by Claimant and to file additional claims which may be based upon the same or additional documents.

3. No Waiver:

This Proof of Claim is filed to protect Claimant from forfeiture of the claim and preserve all rights and claims against the Debtor. The filing of the Proof of Claim is not (a) a waiver or release of Claimant's rights against any person, entity or property who may be liable for all or any part of the claims set forth herein, whether an affiliate of the Debtor, an assignee, a guarantor or otherwise; (b) a consent by Claimant to the jurisdiction of the Bankruptcy Court with respect to the subject matter of the claim or any objection or other proceeding commenced in this case against or otherwise involving Claimant; (c) a waiver of the right to move to withdraw the reference or otherwise challenge the jurisdiction of this reference or otherwise challenge the jurisdiction of the Bankruptcy Court; (d) a consent to a jury trial, or a waiver of Claimant's rights

to a jury trial, in each case, in the Bankruptcy Court or any other court in any proceeding as to any and all matters so triable herein or therein or in any case, controversy or proceeding related hereto, whether or not the same be designated legal, public or private rights, notwithstanding the designation or not of such matters as “core proceedings” pursuant to 28 U.S.C. § 157(b)(2), and whether such right to a jury trial is pursuant to statute or the Constitution of the United States or any State; (e) a waiver of any right to seek relief under 11 U.S.C. § 362(d); (f) an election of remedy; and (g) a waiver of any rights or claims that Claimant has against the Debtor or any person or entity with respect to any pending or future litigation or to any matters related to such litigation.

4. Notice:

All notices to Claimant should be sent to Claimant as set forth on the Proof of Claim, with a copy to:

Klestadt Winters Jureller Southard & Stevens, LLP
200 West 41st Street, 17th Floor
New York, New York 10026
Attn: Tracy L. Klestadt
John E. Jureller, Jr.
Tel: (212) 972-3000
Email: tklestadt@klestadt.com
jjureller@klestadt.com