

Fill in this information to identify the case:

Debtor P-D Valmiera Glass USA Corp.
United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division
 Case number 19-59440

**Modified Form 410
 Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Other than a claim under 11 U.S.C. § 503(b)(9), this form should not be used to make a claim for an administrative expense arising after the commencement of the case.

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.

Part 1: Identify the Claim

<p>1. Who is the current creditor?</p>	<p>ALLIE SANDERS</p> <p>Name of the current creditor (the person or entity to be paid for this claim)</p> <p>Other names the creditor used with the debtor _____</p> <p>Corporate Tax ID _____</p>	
<p>2. Has this claim been acquired from someone else?</p>	<p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. From whom? _____</p>	
<p>3. Where should notices and payments to the creditor be sent?</p> <p>Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)</p>	<p>Where should notices to the creditor be sent?</p> <p>Mary E. Olsen, The Gardner Firm, P.C.</p> <p>Name _____</p> <p>PO Box 3103 Number Street</p> <p>Mobile AL 36652 City State ZIP Code</p> <p>USA Country</p> <p>Contact phone (251)433-8100 Contact email molson@thegardnerfirm.com</p>	<p>Where should payments to the creditor be sent? (if different)</p> <p>Name _____</p> <p>Number Street</p> <p>City State ZIP Code</p> <p>Country</p> <p>Contact phone _____</p> <p>Contact email _____</p>
<p>RECEIVED</p> <p>MAR 10 2020</p>		
<p>KURTZWAN CARSON CONSULTANTS Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____</p>		
<p>4. Does this claim amend one already filed?</p>	<p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY</p>	
<p>5. Do you know if anyone else has filed a proof of claim for this claim?</p>	<p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. Who made the earlier filing? _____</p>	



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? \$ 13,650 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.
 Violation of the WARN Act 29 U.S.C. § 2101 et seq. See Attached complaint.
 Unpaid wages, vacation pay and 2 weeks severance as per the company handbook.

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature of property:
 Real estate: If the claim is secured by the debtor's principal 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.)

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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.

- No
- Yes. Check all that apply:
- Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). \$ _____
 - Up to \$3,025* 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 \$13,650*) 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). \$ 13,650
 - 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 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of this claim entitled to allowance as an administrative expense 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, including but not limited to relevant invoices and confirmation of delivery including delivery date.

For each delivery of goods received by the Debtor between May 28, 2019 and June 17, 2019, please state the following:

(Attach additional pages as needed)

	Date each shipment left claimant's loading dock, factory, warehouse, pier, etc.	Date each shipment delivered to Debtor's facility	Amount of Claim for each shipment	All available documents relating to each shipment are attached to this Request Form (Yes/No)
1				
2				
3				
4				
5				
6				
7				
			Total Claim:	

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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 03/05/2020
MM / DD / YYYY

/s/ Mary E. Olsen
Signature

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

Name Mary E. Olsen
First name Middle name Last name

Title Attorney for claimant

Company The Gardner Firm, P.C.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address PO Box 3103
Number Street

City Mobile State AL ZIP Code 36652 Country USA

Contact phone (251) 433-8100 Email molsen@thegardnerfirm.com

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COMPLETED PROOF(S) OF CLAIM SHOULD BE SENT TO THE FOLLOWING ADDRESS BY MAIL, OVERNIGHT OR HAND DELIVERY:

Valmiera Glass Claims Processing Center
c/o KCC
222 N. Pacific Coast Hwy., Ste. 300
El Segundo, CA 90245

Alternatively, proof(s) of claim can be filed electronically on KCC's website at <https://epoc.kccllc.net/valmieraglassusa>.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re:

P-D VALMIERA GLASS USA CORP.

Chapter 11
Case No. 19-59440-pwb

Debtor.

DWAYNE WHITEHEAD
on behalf of himself and all others similarly
situated,

Adversary Proceeding
No. _____

Plaintiff,

v.

P-D VALMIERA GLASS USA CORP.

**CLASS ACTION ADVERSARY
PROCEEDING COMPLAINT**

Defendant.

--
CLASS ACTION ADVERSARY PROCEEDING COMPLAINT

Plaintiff Dwayne Whitehead ("Plaintiff") by and through undersigned counsel, on behalf of himself and all other similarly situated persons, as and for his complaint against Defendant, alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157, 1331, 1334 and 1367.
2. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (B) and (O).

NATURE OF THE ACTION

3. This is a class action for the recovery by Plaintiff and other similarly situated employees of the Defendant of damages in the amount of 60 days' pay and ERISA benefits by reason of Defendant's violation of the Plaintiff's rights under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq. ("WARN Act"). The Plaintiff was an employee of the Defendant and was terminated as part of, or as a result of a mass layoff and/or plant closing ordered by the Defendant. As such, the Defendant violated the WARN Act by failing to give the Plaintiff and other similarly situated employees of the Defendant at least 60 days' advance written notice of termination, as required by the WARN Act. As a consequence, the Plaintiff and other similarly situated employees of the Defendant are entitled under the WARN Act to recover from the Defendant their wages and ERISA benefits for 60 days, none of which has been paid.

PARTIES

4. Upon information and belief, at all relevant times, Defendant P-D Valmiera Glass USA Corp. ("Valmiera" or "Defendant") maintained a facility in Dublin, GA (the "Facility").

5. At all relevant times, Plaintiff was an employee who was employed by Defendant and worked at or reported to the Facility until his termination without cause on or about June 17, 2019 and thereafter.

6. Until their termination by Defendant, the Plaintiff and other similarly situated persons were employees of Defendants who worked at or reported to the Defendant's Facility.

7. On or about June 17, 2019 Defendant filed with this Court a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code.

CLASS ACTION ALLEGATIONS 29 U.S.C. § 2104

8. The Plaintiff and each person he seeks to represent herein, were discharged on or about June 17, 2019 and thereafter without cause on his or her part and are "affected employees" within the meaning of 29 U.S.C. § 2101(a)(5).

9. The Plaintiff brings this action on his own behalf and, pursuant to the WARN Act, and Rules 7023(a) and (b)(3) of the Federal Rules of Bankruptcy and Rules 23(a) and (b) of the Federal Rules of Civil Procedure, on behalf of all other similarly situated former employees of Defendant who were terminated on or about June 17, 2019 and thereafter, who worked at the Facility until their terminations.

10. On or about June 17, 2019 and thereafter, Defendant terminated the Plaintiff's employment as part of a mass layoff and/or plant closure which qualifies as an event for which he was entitled to receive to sixty (60) days' advance written notice under the WARN Act.

11. Defendant never gave Plaintiff the statutorily required sixty (60) days advance written notice of the mass layoff and/or plant closure in violation of the WARN Act.

12. At or about the time that the Plaintiff was discharged on or about June 17, 2019 and thereafter, Defendant discharged approximately 350 other employees at the Facility (the "Other Similarly Situated Former Employees").

13. Pursuant to WARN Act 29 U.S.C. § 2104(a)(5), the Plaintiff maintains this claim on behalf of each of the Class and for his or her benefit.

14. Each of the Other Similarly Situated Former Employees is similarly situated to the Plaintiff in respect to his or her rights under the WARN Act.

15. The Plaintiff and the Other Similarly Situated Former Employees were discharged by Defendant, without cause on their part.

16. The Plaintiff and each of the Other Similarly Situated Former Employees is an "affected employee" within the meaning of WARN Act 29 U.S.C. § 2101(a)(5).

17. Defendant was required by the WARN Act to give the Plaintiff and Other Similarly Situated Former Employees at least sixty (60) days prior written notice of their respective terminations.

18. Prior to their termination, neither the Plaintiff nor Other Similarly Situated Former Employees received written notice that complied with the requirements of the WARN Act.

19. Defendant failed to pay the Plaintiff and the Other Similarly Situated Former Employees their respective wages, salary, commissions, bonuses, accrued holiday pay and accrued vacation for sixty (60) calendar days following their respective terminations and failed to make the 401(k) contributions and provide health insurance coverage and other employee benefits under ERISA in respect to them for sixty (60) calendar days from and after the dates of their respective terminations.

CLASS ACTION ALLEGATIONS RULE 7023 (a) and (b)

20. The Plaintiff asserts his claims on behalf of himself and the Other Similarly Situated Former Employees pursuant to Rules 7023(a) and (b)(3) of the Federal Rules of Bankruptcy and Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure.

21. The Plaintiff and the Other Similarly Situated Former Employees constitute a

class within the meaning of Rules 7023(a) and (b)(3) of the Federal Rules of Bankruptcy and Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure (the "Class").

22. Common questions of law and fact are applicable to all members of the Class.

23. The common questions of law and fact arise from and concern the following facts and actions, among others, that Defendant committed or failed to commit as to all members of the Class: all Class Members enjoyed the protection of the WARN Act; all Class members were employees of Defendant who, prior to the terminations, worked at the Facility; Defendant terminated the employment of all the members of the Class without cause on their part without giving them at least sixty (60) days' prior written notice as required by the WARN Act; and Defendant failed to pay the Class Members wages and to provide other employee benefits for the sixty (60) day period following their respective terminations.

24. The questions of law and fact common to the members of the Class, as above noted, predominate over any questions affecting only individual members, and thus, this Class claim is superior to other available methods for the fair and efficient adjudication of this controversy.

25. The Plaintiff's claims are typical of the claims of other members of the Class in that for each of the several acts described above.

26. The Plaintiff will fairly and adequately protect and represent the interests of the Class.

27. The Plaintiff has the time and resources to prosecute this action and has retained counsel who have had extensive experience in matters involving employee rights, the WARN Act, class action litigation and bankruptcy court litigation.

28. The Class is so numerous as to render joinder of all members impracticable as

there are approximately 350 persons who are included in the Class.

29. The Class meets the requirements of Fed. R. Civ. P. 23(a) for class certification.

30. The Class meets the requirements of Fed. R. Civ. P. 23(b)(3) because the questions of law or fact common to the members of the Class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

31. No Class member has an interest in individually controlling the prosecution of a separate action under the WARN Act.

32. No litigation concerning the WARN Act rights of any Class member has been commenced in this Court.

33. Concentrating all the potential litigation concerning the WARN Act rights of the Class members in this Court will avoid a multiplicity of suits, will conserve judicial resources and the resources of the parties and is the most efficient means of resolving the WARN Act rights of all the Class members.

34. On information and belief, the identities of the Class members are contained in the books and records of Defendant.

35. On information and belief, a recent residence address of each of the Class members is contained in the books and records of Defendant.

36. On information and belief, the rate of pay and benefits that were being paid by Defendant to each Class member at the time of his/her termination are contained in the books and records of Defendant.

37. As a result of Defendant's violation of the WARN Act, the Plaintiff and the other members of the Class have been damaged in amounts equal to the sum of: (a) their respective lost wages, salaries, commissions, bonuses, accrued holiday pay, accrued vacation pay, 401(k) contributions for sixty (60) days; (b) the health and medical insurance and other fringe benefits that they would have received or had the benefit of receiving, for a period of sixty (60) days after the dates of their respective terminations; and (c) medical expenses incurred during such period by such persons that would have been covered and paid under the then applicable employee benefit plans had that coverage continued for that period.

THE CLAIM FOR RELIEF

38. At all relevant times, the Defendant employed 100 or more employees (exclusive of part-time employees, *i.e.*, those employees who had worked fewer than 6 of the 12 months prior to the date notice was required to be given or who had worked fewer than an average of 20 hours per week during the 60 day period prior to the date notice was required to be given (the "Part-Time Employees")), or employed 100 or more employees who in the aggregate worked at least 4,000 hours per week exclusive of hours of overtime within the United States.

39. At all relevant times, Defendant was an "employer," as that term is defined in the WARN Act and continued to operate as a business until it determined to order a mass layoff and/or plant closure at the Facility.

40. On or about June 17, 2019 and thereafter the Defendant ordered a "mass layoff" and/or "plant closure" at the Facility, as those terms are defined by the WARN Act.

41. The mass layoff and/or plant closure at the Facility resulted in "employment losses," as that term is defined by the WARN Act for at least fifty (50) of Defendant's employees as

well as 33% of Defendant's workforce at the Facility, excluding "part-time employees," as that term is defined by the WARN Act.

42. The Plaintiff and each of the other members of the Class were discharged by the Defendant without cause on his or her part as part of or as the reasonably foreseeable result of the mass layoff and/or plant closure ordered by the Defendant at the Facility.

43. The Plaintiff and each of the other members of the Class are "affected employees" of the Defendant within the meaning of the WARN Act.

44. The Defendant was required by the WARN Act to give the Plaintiff and each of the other members of the Class at least 60 days advance written notice of his or her termination.

45. The Defendant failed to give the Plaintiff and other members of the Class written notice that complied with the requirements of the WARN Act.

46. The Plaintiff and each of the other members of the Class are "aggrieved employees" of the Defendant as that term is defined in the WARN Act.

47. The Defendant failed to pay the Plaintiff and each of the other members of the Class their respective wages, salary, commissions, bonuses, accrued holiday pay and accrued vacation for 60 days following their respective terminations and failed to make the pension and 401(k) contributions and provide employee benefits under ERISA, other than health insurance, for 60 days from and after the dates of their respective terminations.

48. The relief sought in this proceeding is equitable in nature.

WHEREFORE, Plaintiff on their own behalf and on behalf of the other Class members demand judgment, jointly and severally, against Defendant as follows:

- A. An allowed claim against the Defendant in favor of the Plaintiff and Class members equal to the sum of: (a) unpaid wages, salary, commissions, bonuses, accrued holiday pay, accrued vacation pay, pension and 401(k) contributions and other ERISA benefits, for 60 days, that would have been covered and paid under the then applicable employee benefit plans had that coverage continued for that period, all determined in accordance with the WARN Act, The first \$13,650.00 of each Class member's allowed WARN Act claim against the Defendant is entitled to wage priority claim status under 11 U.S.C. § 507(a)(4) and (5), and any remainder as a general unsecured claim;
- B. Certification that the Plaintiff and the other Class members constitute a single class;
- C. Appointment of the undersigned attorneys as Class Counsel;
- D. Appointment of Plaintiff as the Class Representative and payment of reasonable compensation to him for their services as such;
- E. An allowed administrative priority claim against the Defendant under 11 U.S.C. § 503 for the reasonable attorneys' fees and the costs and disbursements that the Plaintiff incurs in prosecuting this action, as authorized by the WARN Act, 29 U.S.C. § 2104(a)(6); and
- F. Such other and further relief as this Court may deem just and proper.

Respectfully submitted,

June 26, 2019

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