

**Fill in this information to identify the case:**

Debtor 1 OCB Restaurant Company, LLC  
Debtor 2 \_\_\_\_\_  
(Spouse, if filing)  
United States Bankruptcy Court for the: Northern District of Texas, Dallas Division  
Case number 21-30726-11

E-Filed on 05/25/2021  
Claim # 134

# Official 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. 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 of 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

<b>1. Who is the current creditor?</b>		<u>G&amp;I IX Empire Big Flats LLC</u> Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor _____
<b>2. Has this claim been acquired from someone else?</b>		<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____
<b>3. Where should notices and payments to the creditor be sent?</b>  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b>	<b>Where should payments to the creditor be sent? (if different)</b>
	<u>c/o Barclay Damon LLP</u> Name <u>Attn: Scott L. Fleischer 1270 Avenue of the Ame</u> Number Street <u>New York NY 10020</u> City State ZIP Code Contact phone <u>(212) 784-5810</u> Contact email <u>sfleischer@barclaydamon.com</u>	<u>c/o Barclay Damon LLP</u> Name <u>Attn: Kevin M. Newman Barclay Damon Tower, 1</u> Number Street <u>Syracuse NY 13202</u> City State ZIP Code Contact phone <u>(315) 413-7115</u> Contact email <u>knewman@barclaydamon.com</u>
Uniform claim identifier for electronic payments in chapter 13 (if you use one): -----		
<b>4. Does this claim amend one already filed?</b>		<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY
<b>5. Do you know if anyone else has filed a proof of claim for this claim?</b>		<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: 4 3 5 1

7. How much is the claim? \$ \_\_\_\_\_ 0.01. 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.  
  
Post-petition rent due and owing -- see attached claim.

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 amounts 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. \$ \_\_\_\_\_ 0.00

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 one:

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).

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)(2) that applies.

**Amount entitled to priority**

\$ 0.00

\$ 0.00

\$ 0.00

\$ 0.00

\$ 0.00

\$ 0.01

\* 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.

**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 acknowledgment 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 a 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 05/25/2021  
MM / DD / YYYY

Scott L. Fleischer

Signature

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

Name Scott L. Fleischer  
First name Middle name Last name

Title Counsel

Company Barclay Damon LLP, as attorneys  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_  
Number Street

City State ZIP Code

Contact phone \_\_\_\_\_ Email \_\_\_\_\_

Attachment 1 - POC - Big Flats Tenant Post-petition Unliquidated+.PDF

Description -

**Fill in this information to identify the case:**

Debtor 1 OCB Restaurant Company, LLC

United States Bankruptcy Court for the Northern District of Texas

Case Number 21-30726

Official 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. 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 of 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. <b>Who is the current creditor</b>	Name of the current creditor (the person or entity to be paid for this claim):  <b>G&amp;I IX Empire Big Flats LLC</b>  Other names the creditor used with the debtor: _____	
2. <b>Has this claim been acquired from someone else?</b>	<input type="checkbox"/> No <input type="checkbox"/> Yes. From Whom? _____	
3. <b>Where should notices and payments to the creditor be sent?</b>  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b>  <b>c/o Barclay Damon LLP Attn: Scott L. Fleischer 1270 Avenue of the Americas, Suite 501 New York, New York 10020 Telephone: (212) 784-5810 Email: sfleischer@barclaydamon.com</b>	<b>Where should payments to the creditor be sent? (if different):</b>  <b>c/o Barclay Damon LLP Attn: Kevin M. Newman Barclay Damon Tower 125 East Jefferson Street Syracuse, New York 13202 Telephone: (315) 413-7115 Email: knewman@barclaydamon.com</b>  Uniform claim identified for electronic payments in Chapter 13 (if you use one): -----
4. <b>Does this claim amend one already filed?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. <b>Do you know if anyone else has filed a proof of claim for this claim?</b>	<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

<p>6. Do you have any number you use to identify the debtor?</p>	<p><input type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: <u>3114351</u></p>
<p>7. How much is the claim?</p>	<p><b>Unliquidated plus any and all rent and charges that accrue or come due on or after 4/20/2021, plus indemnity obligations and amounts subject to rights of setoff and/or recoupment, plus attorneys' fees</b></p> <p><b>Does this amount include interest or other charges:</b></p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).</p>
<p>8. What is the basis of the claim?</p>	<p>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.</p> <p><b>Post-petition rent due and owing under lease of non-residential real property located at Big Flats Consumer Square, Elmira, New York, plus any and all rent and charges that accrue or come due on or after 4/20/2021, plus indemnity obligations and amounts subject to rights of setoff and/or recoupment, plus attorneys' fees. See attached Summary of Lease, and portions of lease.</b></p>
<p>9. Is all or part of the claim secured?</p>	<p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. The claim is secured by a lien on property.</p> <p><b>Nature of property:</b></p> <p><input type="checkbox"/> Real Estate. If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410A) with this Proof of claim.</p> <p><input type="checkbox"/> Motor Vehicle.</p> <p><input type="checkbox"/> Other. Describe: _____</p> <p><b>Basis for perfection:</b> _____</p> <p>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.)</p> <p><b>Value of property:</b> \$ _____</p> <p><b>Amount of the claim that is secured:</b> \$ _____</p> <p><b>Amount of the claim that is unsecured:</b> \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)</p> <p><b>Amount necessary to cure any default as of the date of the petition:</b> \$ _____</p> <p><b>Annual Interest Rate</b> (when case was filed) _____%</p> <p><input type="checkbox"/> Fixed</p> <p><input type="checkbox"/> Variable</p>
<p>10. Is this claim based on a lease?</p>	<p><input type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____</p>
<p>11. Is this claim subject to a right of setoff?</p>	<p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. Identify the property: _____</p>

12. **Is all of 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 \$3,025\* 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 was 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 applicable paragraph of 11 U.S.C. §§ 507(a)(2) and 365(d)(3). **Unliquidated plus any and all rent and charges that accrue or come due on or after 4/20/2021, plus indemnity obligations and amounts subject to rights of setoff and/or recoupment, plus attorneys' fees.**

\* 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.

**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 the guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

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

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

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

Executed on date: May 25, 2021  
**Barclay Damon LLP, as attorneys for DLC Management Corporation, as managing agent for G&I IX Empire Big Flats LLC**

  
 \_\_\_\_\_  
 Signature

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

Name	<u>Scott</u>	<u>L.</u>	<u>Fleischer</u>
	First name	Middle name	Last name
Title	<u>Counsel</u>		
Company	<u>Barclay Damon LLP</u>		
	Identify the corporate servicer as the company if the authorized agent is a servicer.		
Address	<u>1270 Avenue of the Americas, Suite 501</u>		
	Number	Street	
	<u>New York</u>	<u>NY</u>	<u>10020</u>
	City	State	Zip Code
Contact phone	<u>(212) 784-5810</u>	Email	<u>sfleischer@barclaydamon.com</u>

## SUMMARY OF LEASE

Name of Shopping Center:	Big Flats Consumer Square
Location of Shopping Center:	Elmira, New York
Landlord:	G&I IX Empire Big Flats LLC

Tenant:	OCB Restaurant Company, LLC, as assignee of OCB Realty Co.
D/B/A:	Old Country Buffet
Store No.	237

### Documents:

Lease dated April 7, 1995

Guaranty of Buffets, Inc. dated April 4, 1995

Memorandum of Lease dated July 1, 1996

Assignment of Leases dated January 1, 2000

Lease Renewal Letter dated July 15, 2011

Extension and Modification of Lease dated December 22, 2014

Due to their voluminous nature, complete copies of the lease documents referenced above are not attached. Complete copies are available upon request to claimant's attorneys, Barclay Damon LLP, Attn: Scott L. Fleischer, 1270 Avenue of the Americas, Suite 501, New York, New York 10020, email: [sfleischer@barclaydamon.com](mailto:sfleischer@barclaydamon.com).



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LEASE

BY AND BETWEEN OCB REALTY CO., AS TENANT,

AND

RONALD BENDERSON, RANDALL BENDERSON AND DAVID H. BALDAUF  
AS TRUSTEES UNDER AGREEMENT DATED OCTOBER 14, 1985  
KNOWN AS THE BENDERSON 85-1 TRUST; DAVID FEUERSTEIN AND  
~~DAVID~~ GOODMAN, DBA FG-85 ASSOCIATES, AS LANDLORD  
STEPHEN B.

FOR SPACE IN

NORTHWEST CONSUMER SQUARE  
BIG FLATS, NEW YORK

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LEASE

THIS AGREEMENT, made this 7<sup>th</sup> day of April, 1995, between RONALD BENDERSON, RANDALL BENDERSON AND DAVID H. BALDAUF AS TRUSTEES UNDER AGREEMENT DATED OCTOBER 14, 1985 KNOWN AS THE BENDERSON 85-1 TRUST; DAVID FEUERSTEIN AND ~~DAVID~~ GOODMAN, DBA FG-85 ASSOCIATES, having offices at 570 Delaware Avenue, Buffalo, New York 14202, party of the first part (collectively "Landlord") and OCB REALTY CO., a Minnesota corporation, having offices at 10260 Viking Drive, Suite 100, Eden Prairie, Minnesota 55344, party of the second part ("Tenant").

X STEPHEN B.

WITNESSETH:

That the Landlord hereby lets to the Tenant and the Tenant hereby hires from the Landlord the following premises:

consisting of approximately 10,000 square feet of leasable area located at Big Flats Consumer Square, Big Flats, New York, ("Premises") as cross-hatched on the site plan attached hereto as Exhibit A. The Premises is part of the shopping center development known as Northwest Consumer Square located at Route 64 at Route 17 in Big Flats, New York consisting of approximately eighty-three thousand eight hundred (83,800) square feet ("Shopping Center"), as outlined in red on the site plan attached hereto as Exhibit A and as legally described in Exhibit B attached hereto. Tenant acknowledges that this number is an approximation and subject to adjustment. In the event Tenant uses or is required by law to use an enclosed garbage area, such area shall be made available and enclosed by Landlord (unless the requirement by law is imposed after the Commencement Date, in which case Tenant shall enclose) but such area shall not be considered a portion of the Premises for rent purposes and rent shall not be payable thereon.

This Lease shall be for a term of fifteen (15) full Lease Years and any Partial Lease Year commencing either (i) one hundred twenty (120) days after the Landlord completes Landlord's Work (as defined in Section 46), approves Tenant's Plans (as defined in Section 58), tenders possession of the Premises to Tenant, provides Tenant with a nondisturbance agreement from any and all ground lessors or mortgagees of the Shopping Center (as provided in Section 5) and Tenant obtains all necessary governmental permits and approvals concerning the construction and operation of the Premises, or (ii) the day Tenant opens the Premises for business, whichever comes first ("Commencement Date"), and ending fifteen (15) Lease Years after the last day of the first Partial Lease Year of the Term ("Expiration Date"). Tenant shall use best efforts to obtain the aforesaid governmental permits and approvals and shall apply for said permits and approvals within ninety (90) days of the date of this Lease. If Tenant is unable to obtain said permits and approvals within 120 days following the date of this Lease, then Landlord may elect to terminate this Lease upon thirty (30) days advance written notice to Tenant, provided that such election shall not be effective if Tenant actually receives all of such permits and approvals within the aforesaid thirty (30) day period. Tenant shall deliver to Landlord copies of said permits and approvals promptly after receipt from governmental authorities. In no event shall the Commencement Date occur until the parking area adjacent to the Premises and access to the Premises is paved. Promptly following the Commencement Date, Landlord and Tenant shall enter into an amendment of this Lease prepared by Landlord setting forth the Commencement Date,



STATE OF New York )  
 ) ss.  
COUNTY OF ERIE )

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of April, 1995, by David Feuerstein, \_\_\_\_\_, on behalf of \_\_\_\_\_, a \_\_\_\_\_

Julie Wilde-Roberts  
Notary Public

JULIE WILDE-ROBERTS  
NOTARY PUBLIC, State of New York  
Registration No. 01W15022817  
Qualified in Erie County  
My Commission Expires January 18, 1996

STATE OF New York )  
 ) ss.  
COUNTY OF ERIE )

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of April, 1995, by Stephen B. Goodman, \_\_\_\_\_, on behalf of \_\_\_\_\_, a \_\_\_\_\_

Julie Wilde-Roberts  
Notary Public

JULIE WILDE-ROBERTS  
NOTARY PUBLIC, State of New York  
Registration No. 01W15022817  
Qualified in Erie County  
My Commission Expires January 18, 1996

STATE OF New York )  
 ) ss.  
COUNTY OF ERIE )

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of April, 1995, by David H. Baldauf, Trustee, on behalf of RB-3 Associates, a partnership \*

Julie Wilde-Roberts  
Notary Public

\* Benderson 85-1 Trust,  
Q Trust Agreement

JULIE WILDE-ROBERTS  
NOTARY PUBLIC, State of New York  
Registration No. 01W15022817  
Qualified in Erie County  
My Commission Expires January 18, 1996

STATE OF New York )  
 ) ss.  
COUNTY OF ERIE )

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of April 1995, by Randall Benderson, ~~vice president and partner, on behalf of RB-3 Associates, a partnership.~~ Trustee

Julie Wilde Roberts  
Notary Public

\* Benderson ES-1 Trust,  
a Trust Agreement

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF Dakota )

JULIE WILDE-ROBERTS  
NOTARY PUBLIC, State of New York  
Registration No. 01W15022817  
Qualified in Erie County  
My Commission Expires January 18, 1996

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of March, 1995, by Roe H. Hatten, the CEO of OCB Realty Co., a Minnesota corporation, on behalf of the corporation.

Julie Sauser  
Notary Public

