

Fill in this information to identify the case:

Debtor 1 Gold's Gym International, Inc.
Debtor 2 _____
(Spouse, if filing)
United States Bankruptcy Court for the: Northern District of Texas, Dallas Division
Case number 20-31319-hdh11

E-Filed on 09/08/2020
Claim # 324

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. **Who is the current creditor?** Elmore, Inc.
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? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
	<u>Arent Fox c/o Kimberly Wachen</u> Name <u>1717 K Street, NW</u> Number Street <u>Washington DC 20006</u> City State ZIP Code Contact phone <u>(202) 857-6000</u> Contact email <u>kimberly.wachen@arentfox.com</u>	<u>Elmore, Inc. c/o Barry Grossman</u> Name <u>11321 Willowbrook Drive</u> Number Street <u>Potomac MD 20854</u> City State ZIP Code Contact phone <u>(301) 983-1533</u> Contact email <u>BBG11321@aol.com</u>

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? \$ 944,000.00. 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 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)() that applies.

Amount entitled to priority

\$ 0.00

\$ 0.00

\$ 0.00

\$ 74,290.34

\$ 0.00

\$ 0.00

* 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 09/08/2020
MM / DD / YYYY

/s/ Barry Grossman
Signature

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

Name Barry Grossman
First name Middle name Last name

Title Vice President

Company Elmore, Inc.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 11321 Willowbrook Drive
Number Street

Potomac MD 20854
City State ZIP Code

Contact phone (301) 983-1533 Email BBG11321@aol.com

Attachment 1 - Elmore - GGI Proof of Claim - POC Rider.pdf

Description -

In re GGI Holdings, LLC
Case No. 20-31318 (HDH) (Jointly Administered)

**Rider to the Proof of Claim of Elmore, Inc. against the
Debtor Gold's Gym International, Inc. (Case No. 20-31319)**

1. Elmore, Inc. ("Elmore"), a Maryland corporation, is the owner of certain nonresidential real property premises within Layhill Shopping Center located at 14370-74, 14382, 14386, 14348 and 14352 Layhill Road, Silver Spring, Maryland 20906 (the "Premises"). This Proof of Claim (the "Proof of Claim") is made and filed against Gold's Gym International, Inc. ("GGI" or the "Guarantor Debtor") (Case No. 20-31319 (HDH)) on account of its obligations as a guarantor under the Lease Documents (as defined herein) or any other operative documents. This Rider is an addendum to, and shall be a part of and incorporated by reference in, the attached Proof of Claim.

2. On May 4, 2020 (the "Petition Date"), GGI and certain of its affiliates (collectively, the "Debtors")¹ filed petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (as amended, the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court"), which were subsequently consolidated and captioned as *In re GGI Holdings, LLC*, Case No. 20-31318 (HDH) (Jointly Administered) (the "Lead Case").

¹ The debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: GGI Holdings, LLC (1222); Gold's Gym International, Inc. (3614); Gold's Holding Corp. (3610); Gold's Alabama, LLC (0520); Gold's Gym Franchising, LLC (5009); Gold's Gym Licensing, LLC (5013); Gold's Gym Merchandising, LLC (4892); Gold's Gym Rockies, LLC (7129); Gold's Louisiana, LLC (9825); Gold's North Carolina, LLC (3221); Gold's Ohio, LLC (4396); Gold's Oklahoma, LLC (7577); Gold's St. Louis, LLC (4827); Gold's Southeast, LLC (9382); and Gold's Texas Holdings Group, Inc. (8156). The Debtors' mailing address is 4001 Maple Avenue, Suite 200, Dallas, Texas 75219. On August 18, 2020, the Court entered its *Order Terminating Joint Administration of Bankruptcy Cases as to Debtor Gold's Gym Licensing, LLC (Case No. 20-31323)*, terminating the joint administration of the bankruptcy case for Gold's Gym Licensing, LLC.

3. Barry Grossman is Vice President at Elmore and is duly authorized and empowered to file a proof of claim on behalf of Elmore. Elmore's business address is located at 11321 Willowbrook Drive, Potomac, MD 20854.

4. Without waiving any rights, claims, arguments, or defenses, the Premises was originally leased to Fitness World, Inc. (the "Original Tenant") pursuant to that certain Lease dated as of May 20, 2002 (as amended and extended, the "Lease"). The Original Tenant's interests in the Lease were subsequently assigned to GBG, LLC (the "Tenant"), a Virginia limited liability company and independent non-debtor franchisee of the Debtors, pursuant to that certain Assignment and Assumption of Lease dated as of June 26, 2013 (the "Lease Assignment").

5. GGI is a guarantor for the Tenant's obligations under the Lease pursuant to a guaranty executed and delivered concurrently with execution of the Lease Assignment (the "Guaranty"). Pursuant to the Guaranty, GGI "absolutely and unconditionally guarantees the full prompt payment and performance when due of the Obligations." The term "Obligations" is defined in the Guaranty as:

all obligations, liabilities, and indebtedness of Tenant to [Elmore], now or hereafter existing under the Lease from and after the date hereof or with respect to the Premises (including, without limitation all Rent payable by Tenant to [Elmore]), together with: (a) interest accruing hereon; and (b) costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by [Elmore] in the enforcement or collection hereof[.]

6. This Proof of Claim asserts a claim in an amount not less than \$944,000.00 on account of GGI's obligations as a guarantor for the Tenant's performance under the Lease, including those amounts owed, arising under or related to the Lease, Lease Assignment, Guaranty and all ancillary and related agreements, documents, instruments and certificates or

other writings executed or delivered in connection with the Lease, Lease Assignment or Guaranty (collectively, the “Lease Documents”),² whether contingent or non-contingent, wherever arising, due or owing, currently or in the future, including, but not limited to, rental arrears, future rent, prepetition interest, postpetition interest, premiums, default interest, defaulted interest, interest on interest, charges, fees, expenses, disbursements, indemnifications, damages, and any other claim or obligation of any kind, whether unsecured, administrative, or otherwise, which claims are obligations under the Guaranty.

7. Pursuant to section 14.1(b) of the Lease, a material Default occurred under the Lease on the Petition Date as a result of the filing of GGI’s bankruptcy case (the “Bankruptcy Default”). Additional material Defaults occurred under the Lease as a result of Tenant’s failure to pay Elmore the base rent called for in the Lease for the months of April, May, June and July 2020 (collectively, the “Delinquent Rent Payments”).

8. Pursuant to that certain Forbearance Agreement effective as of August 21, 2020 (the “Forbearance Agreement”), by and among Elmore, Tenant and CFJ Holdings, LLC, Elmore agreed to refrain from exercising remedies under the Lease in connection with the Bankruptcy Default and the Delinquent Rent Payments provided that Tenant complies with the terms and conditions of the Forbearance Agreement, including, but not limited to, deferred payment of the Delinquent Rent Payments. As a result of the Forbearance Agreement, Tenant is current on its obligations under the Lease as of the filing of this Proof of Claim.

9. From the date of filing of this Proof of Claim through the termination date of the Lease, contingent on Tenant’s future default under the Lease, GGI, as guarantor, will owe Elmore

² The Lease Documents which relate to or support this Proof of Claim are incorporated by reference and are too voluminous to attach, and Elmore believes that the Debtors have, or should have, copies of all such documents. Should any party in interest desire to receive copies of the documents which relate to this Proof of Claim, they are available upon written request to counsel for Elmore.

an amount of no less than \$944,000.00, plus legal fees (which legal fees are of an amount not less than \$10,000.00, which are currently due and owing), as well as any additional amounts which continue to accrue under the terms of the Lease, less any subsequent payments made after the filing of this Proof of Claim. The amounts asserted pursuant to this Proof of Claim are as follows:

- Priority: No less than \$74,290.34 for taxes;
- General Unsecured: No less than \$828,144.78 for the remaining base and additional rents called for under the Lease through expiration of the Lease on December 31, 2022 and no less than \$15,000 for water utility bills; and
- Any other claim for damages, attorneys' fees, indemnification, or any other loss.

10. Elmore reserves the right to: (a) amend, modify or supplement this Proof of Claim for any reason, including to fix or supplement the amount of the claims asserted herein; and (b) to file and assert any additional claims that may be or later become due including, without limitation, any priority and administrative expense or secured or general unsecured claims under the Bankruptcy Code.

11. The filing of this Proof of Claim is not and shall not be deemed or construed as: (a) a waiver or release of Elmore's rights against any person, entity or property; (b) a consent by Elmore to the jurisdiction of this Bankruptcy Court or any other court with respect to proceedings, if any, commenced in any case against or otherwise involving Elmore; (c) a waiver or release of Elmore's right to trial by jury in this Court or any other court in any proceeding as to any and all matters so triable herein, whether or not the same be designated legal or private rights, or in any case, controversy or proceeding related hereto, notwithstanding the designation or not of such matters as "core proceedings" pursuant to 28 U.S.C. § 157(b)(2), and whether such jury trial right is pursuant to statute or the United States Constitution; (d) a consent by Elmore to a jury trial in this Court or any other court in any proceeding as to any and all matters so triable herein or in any case, controversy or proceeding related hereto, pursuant to 28 U.S.C.

§ 157(e) or otherwise; (e) a waiver or release of Elmore's right to have any and all final orders in any and all non-core matters or proceedings entered only after de novo review by a United States District Court Judge; (f) a waiver of Elmore's right to move to withdraw the reference with respect to: (i) the subject matter of this Proof of Claim; (ii) any objection thereto or; (iii) any other proceeding which may be commenced in these cases relating to the Proof of Claim or otherwise involving Elmore; (g) an election of remedies; or (h) an acknowledgment that Elmore received adequate notice of any bar date fixed in this case.

12. All notices concerning this Proof of Claim shall be sent to:

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ARENT FOX LLP
1717 K Street, NW
Washington, DC 20006
Tel: (202) 775-5749
Fax: (202) 857-6395
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With a copy to:

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BBG11321@aol.com