

Fill in this information to identify the case:

Debtor 1 Gold's Gym Franchising, LLC

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: Northern District of Texas, Dallas Division

Case number 20-31322-hdh11

E-Filed on 09/08/2020
Claim # 328

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?	
<u>David Salvador, as next friend of David Sanchez</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? 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>Martin Powers & Counsel, PLLC</u>	Name
<u>600 E. John Carpenter Fwy., Suite 234</u>	Number Street
<u>Irving TX 75062</u>	City State ZIP Code
Contact phone <u>(214) 612-6471</u>	Contact phone _____
Contact email <u>meagan@martinpowers.com</u>	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? \$ 350,000.00. 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.
Personal Injury/Wrongful Death

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

\$ 0.00

\$ 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

Meagan Martin Powers

Signature

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

Name Meagan Martin Powers
First name Middle name Last name

Title Attorney for David Salvador, as next friend of David Sanchez

Company Martin Powers & Counsel, PLLC
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 - Salvador - POC - Golds Franchising - Final for Filing.pdf

Description - Proof of Claim Form, Statement of Claim and Original Petition

Fill in this information to identify the case:

Debtor 1 Gold's Gym Franchising LLC

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: Northern District of Texas

Case number 20-31322

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?** David Noe Salvador, as next friend of David Alexander Salvador Sanchez, a minor child
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? _____

Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<u>Martin Powers & Counsel, PLLC</u> Name <u>600 E. John Carpenter Fwy., Suite 234</u> Number Street <u>Irving TX 75062</u> City State ZIP Code Contact phone <u>(214)612-6471</u> Contact email <u>meagan@martinpowers.com</u>	 Name Number Street City State ZIP Code 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?** 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? \$ 350,000.00. 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.

Personal injury. See attached.

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. \$ _____

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

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

* 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/ Meagan Martin Powers

Signature

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

Name Meagan Martin Powers
First name Middle name Last name

Title Attorney

Company Martin Powers & Counsel, PLLC
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 600 E. John Carpenter Fwy., Suite 234
Number Street

Irving TX 75062
City State ZIP Code

Contact phone (214)612-6471 Email meagan@martinpowers.com

STATEMENT OF CLAIM

David Noe Salvador, as next friend of David Alexander Salvador Sanchez, a minor child (herein, "Salvador"), sets forth his claims against Debtors Gold's Gym Franchising LLC and Gold's Texas Holdings Group, Inc. (together, the "Debtors") in the attached Original Petition previously filed in the 131st Judicial District, Bexar County, Texas, in the case captioned *David Noe Salvador, as next friend of David Alexander Salvador Sanchez, a minor v. Gold's Gym Franchising LLC, Gold's Texas Holdings Group Inc. and Gold's Texas Holdings Group, LP*, Case No. 2019CI25731. For purposes of this proof of claim, Plaintiff states that the claims set forth in the Original Petition constitute an unsecured claim against the Debtors for \$350,000.00.

Salvador asserts this claim in order to preserve his rights, but he in no way waives his right to trial by jury.

CAUSE NO. 2019CI25731

DAVID NOE SALVADOR,	§	
As Next Friend of,	§	IN THE DISTRICT COURT
DAVID ALEXANDER	§	
SALVADOR SANCHEZ, a minor	§	
	§	
VS.	§	<u>131st</u> JUDICIAL DISTRICT
	§	
GOLD'S GYM FRANCHISING LLC,	§	
GOLD'S TEXAS HOLDINGS	§	
GROUP INC. and GOLD'S TEXAS	§	
HOLDINGS GROUP, LP.	§	BEXAR COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

NOW COMES DAVID NOE SALVADOR, AS NEXT FRIEND OF DAVID ALEXANDER SALVADOR SANCHEZ, A MINOR, hereinafter called Plaintiffs, complaining of and about GOLD'S GYM FRANCHISING LLC, GOLD'S TEXAS HOLDINGS GROUP, INC. and GOLD'S TEXAS HOLDINGS GROUP, LP sometimes referred to as "Defendants" and for cause of action would respectfully show the Court and Jury the following:

I.

DISCOVERY CONTROL PLAN LEVEL

Discovery will be conducted under Level 3, pursuant to the Texas Rules of Civil Procedure.

II.

PARTIES AND SERVICE

Plaintiffs, DAVID NOE SALVADOR, AS NEXT FRIEND OF DAVID ALEXANDER SALVADOR SANCHEZ, a minor, are residents of Bexar County, Texas.

Defendant, GOLD'S GYM FRANCHISING LLC, is a foreign limited liability company duly authorized and licensed to do business in the State of Texas, which may be served with process

herein by serving its registered agent for service of process: Corporation Service Company dba CSC – Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

Defendant, GOLD’S TEXAS HOLDINGS GROUP, INC., is a foreign For-Profit Corporation company duly authorized and licensed to do business in the State of Texas, which may be served with process herein by serving its registered agent for service of process: Corporation Service Company dba CSC – Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

Defendant, GOLD’S TEXAS HOLDINGS GROUP, LP, is a foreign For-Profit Corporation company duly authorized and licensed to do business in the State of Texas, which may be served with process herein by serving its registered agent for service of process: Corporation Service Company dba CSC – Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

III.

JURISDICTION AND VENUE

Venue is proper in Bexar County, Texas in that all or a substantial part of the events or omissions giving rise to this cause of action occurred within Bexar County, Texas.

IV.

MISNOMER, ALTER-EGO, ASSUMED NAME

In the event any parties are misnamed or not included herein, it is Plaintiffs’ contention that such was a “misnomer” and/or such parties are/were “alter egos” of parties named herein.

V.

FACTS

Plaintiffs, on or about April 26, 2018, during normal business hours, came upon the business

premises known as Gold's Gym, located at 4319 Thousand Oaks, San Antonio, Texas 78217, which was occupied, maintained, or otherwise under the control (actual or constructive) of Defendants, GOLD'S GYM FRANCHISING LLC, GOLD'S TEXAS HOLDINGS GROUP, INC. and GOLD'S TEXAS HOLDINGS GROUP, LP. Gold's Gym provides a kids club where the members can leave their children while they workout. According to the Gold's Gym, "Our Kids Club rooms are a safe, fun environment where your kids will engage in fun supervised activities." Sometime after David was left with the Gold's Gym employees at the facilities Kid's Club he crawled up onto a table while not being supervised and fell off. He landed on the ground on his right side causing him to suffer serious injuries. Gold's Gym, at the time, had extended an open invitation to the public, including Plaintiffs who were paying members of Gold's Gym, to enter the premises. Consequently, Plaintiffs were an invitee to whom Defendants owed a duty to use ordinary care and including the duty to protect and safeguard Plaintiffs from unreasonably dangerous conditions on the premises or to warn of their existence. Defendants are liable under premise liability law.

VI.

Plaintiff, David Alexander Salvador Sanchez, a minor, while upon Defendants' premises and care suffered serious and permanent bodily injuries as a direct result of a fall proximately caused by Defendants and their agents, servants, and employees knew or, in the exercise of ordinary care, should have known existed, but failed to adequately make the condition safe.

VII.

Plaintiff alleges Defendants and their agents, servants, and employees negligently allowed the area to become dangerous, negligently permitted such dangerous condition to exist, and negligently failed to warn Plaintiffs of the condition of the area despite the fact Defendants and their agents, servants, and employees knew or, in the exercise of ordinary care, should have known of the

existence of the condition, and the likelihood of someone being injured. Plaintiffs further allege that the condition in the area had continued for such a period of time that it would have been remedied if Defendants and their agents, servants, and employees had exercised ordinary care in the maintenance and inspection of the premises.

VIII.

NEGLIGENCE

Defendants and their agents, servants, and employees, who were at all times acting in the course and scope of their employment, were negligent toward Plaintiff:

1. in failing to maintain reasonably safe premises;
2. in failing to post warnings about the conditions of the childcare facility;
3. Failing to properly train and supervise childcare/Kids Club staff in performing their work and duties in a safe manner;
4. Failure to provide necessary and proper procedures and/or to train its childcare/Kids Club staff with regard to safe childcare supervision;
5. Failing to maintain and/or fix the dangerous conditions in the childcare/Kids Club area;
6. Failing to install, maintain and use safety processes, devices, and safeguards to make the childcare/Kids Club was safe for the minor Plaintiff;
7. Failing to supervise the minor Plaintiff at their childcare/Kids Club area;
8. Failing to correct the dangerous condition by allowing the minor Plaintiff to crawl on the table;
9. Failing to correct the dangerous condition which was created by not removing the minor Plaintiff from the table;
10. Failing to warn invitees, including Plaintiff, of the lack of supervision at the childcare/Kids Club area on Defendants' premises; and
11. Hiring workers without the skill or training to ensure a safe environment for children at the childcare/Kids Club area.

Plaintiffs allege that each and every, all and singular, of the aforementioned acts and/or omissions on the part of Defendants and their agents, servants, and employees constitute negligence which was and is the direct and proximate cause of the injuries and damages sustained by Plaintiffs hereinafter set out.

IX.

**RESPONDEAT SUPERIOR/VICARIOUS LIABILITY,
AND COURSE AND SCOPE OF EMPLOYMENT**

The employee(s) overseeing the childcare/Kids Club area was an employee(s) of Defendants GOLD'S GYM FRANCHISING LLC, GOLD'S TEXAS HOLDINGS GROUP, INC. and GOLD'S TEXAS HOLDINGS GROUP, LP. was negligent while acting within the course and scope of their employment for Defendants GOLD'S GYM FRANCHISING LLC, GOLD'S TEXAS HOLDINGS GROUP, INC. and GOLD'S TEXAS HOLDINGS GROUP, LP. and their actions were the proximate cause of the incident made the basis of this suit. Further, such negligence was the proximate cause of the injuries suffered by Plaintiff and the damages caused to Plaintiff, which are hereinafter described with more particularity. Under the doctrine of *respondeat superior*, apparent agency, actual agency, ratification, and/or vicarious liability, Defendants GOLD'S GYM FRANCHISING LLC, GOLD'S TEXAS HOLDINGS GROUP, INC. and GOLD'S TEXAS HOLDINGS GROUP, LP. are responsible for their own actions and also liable for the actions of their employee.

X.

DAMAGES

Plaintiff would show as a direct result of the negligence of Defendants and their agents, employees, and servants, Plaintiff was caused to suffer serious and permanent personal injuries to

his body generally. Plaintiff has incurred the following damages:

1. Reasonable and necessary medical expenses in the past;
2. Reasonable and necessary medical expenses which, in all reasonable probability, will be incurred in the future;
3. Physical pain suffered in the past;
4. Physical pain which, in all reasonable probability, will be suffered in the future;
5. Mental anguish suffered in the past;
6. Mental anguish which, in all reasonable probability, will be suffered in the future;
7. Physical impairment in the past;
8. Physical impairment which, in all reasonable probability, will be suffered in the future;
9. Lost wages in the past;
10. Lost wages which, in all reasonable probability, will be suffered in the future;
11. Disfigurement suffered in the past; and
12. Disfigurement which, in all reasonable probability, will be suffered in the future.

XI.

REQUESTS FOR DISCLOSURE

Under the authority of RULE 194 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiffs request that Defendant disclose, within fifty (50) days of the service of this petition and request, the information or material described in RULES 194.2(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), and (l) of the TEXAS RULES OF CIVIL PROCEDURE.

XII.

As required by Rule 47(b), Texas Rules of Civil Procedure, Plaintiffs' counsel states that the damages sought are in an amount within the jurisdictional limits of this Court. As required by Rule 47(c), Texas Rules of Civil Procedure, Plaintiffs' counsel states that Plaintiffs seeks monetary relief, the maximum of which is over \$200,000.00 but not more than \$1,000,000.00. The amount of monetary relief actually awarded, however, will ultimately be determined by a jury. Plaintiffs also seek pre-judgment and post-judgment interest at the highest legal rate.

XIII.

Under the authority of Texas Rules of Civil Procedure 193.7, Plaintiffs gives notice of their intent to use documents produced by any and all parties in response to written discovery at the trial of this case.

XIV. **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to appear and answer herein; that upon trial hereof, Plaintiffs recover:

1. Damages, actual, special and otherwise, in an amount within the Court's jurisdictional limits;
2. All Costs of Court;
3. Both pre-judgment and post-judgment interest at the maximum legal rate; and
4. For such other and further relief, both general and special, at law and in equity, to which Plaintiff may show themselves to be justly entitled.

Respectfully submitted,

KETTERMAN ROWLAND & WESTLUND
16500 San Pedro, Suite 302
San Antonio, Texas 78232
Telephone: (210) 490-7402
Telefacsimile: (210) 490-8372

BY: /s/ J. Scott Mechler
J. SCOTT MECHLER
State Bar No.24055952
Email: scott.mechler@krwlawyers.com

ATTORNEYS FOR PLAINTIFFS

PLAINTIFFS RESPECTFULLY REQUESTS A JURY TRIAL