

Fill in this information to identify the case:

Debtor 1 Sugarfina, Inc.
Debtor 2 _____
(Spouse, if filing)
United States Bankruptcy Court for the: District of Delaware, Wilmington Division
Case number 1:19-bk-11973

E-Filed on 01/14/2020
Claim # 177

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>NorthPark Partners, LP</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>James Billingsley</u> Name <u>2950 N. Harwood St., Suite 2100</u> Number Street <u>Dallas TX 75201</u> City State ZIP Code Contact phone <u>(214) 397-0030</u> Contact email <u>jbillingsley@polsinelli.com</u> Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	_____ Name _____ Number Street _____ City State ZIP Code _____ Contact phone _____ Contact email
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: 0 8 7 9

7. How much is the claim? \$ 18,163.89. 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.
Lease

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

\$ 18,163.89

* 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 01/14/2020
MM / DD / YYYY

/s/ James Billingsley
Signature

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

Name James Billingsley
First name Middle name Last name

Title Attorney

Company Polsinelli PC
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 - NorthPark Admin Claim Attachment.pdf

Description -

NorthPark Partners, LP: Explanation of Administrative Expense Claim

FACTUAL BACKGROUND

1. NorthPark Partners, LP (“**NorthPark**”) and the Sugarfina, Inc. (the “**Debtor**”) are parties to a Shopping Center Lease dated June 28, 2017 (as subsequently amended and modified, the “**Lease**”) covering certain non-residential real property known as Space M2-1120 (the “**Premises**”) located on the first level of the enclosed pedestrian mall at NorthPark Center, Dallas, Texas.

2. The Lease is an executory contract within the meaning of 11 U.S.C. § 365. The Debtor and its affiliated debtors have a copy of the Lease in their possession.

3. The Lease contains a use clause limiting the permitted use of the Premises,

solely for the operation of a retail store of the highest quality offering in all respects the highest quality in service and merchandise, which merchandise shall consist primarily of candy, chocolates and other confections and related gift items, and/or such other merchandise that may be sold in a majority of the other stores operated nationwide under the [Sugarfina] trade name. . . .

Lease, §1.1(q).

4. The Lease requires the Debtor to pay rent, common area maintenance, taxes, insurance, utilities, other recurring charges, and certain year-end adjustments. The Lease also requires the Debtor to pay certain cooperative advertising charges to NorthPark Merchants Association (“**Merchants**”). NorthPark is the agent for Merchants and is authorized to collect cooperative advertising charges on behalf of Merchants.

5. The Lease also requires the Debtor to pay monthly electricity charges. Electricity at NorthPark Center is provided by a utility company. Each tenant’s space is individually metered. Those meters are read by a meter reading service each month. NorthPark pays the utility provider for overall electricity usage and then bills each tenant based on the meter reading. Because of the delay

in reading the meter and assessing individual tenant charges, electricity charges for any particular month are usually billed to the tenant the month after consumption. For example, August electricity charges are usually billed in September.

6. The Lease also requires the Debtor to reimburse NorthPark for attorneys' fees and expenses incurred in any bankruptcy case filed by the Debtor. Section 17.3 of the Lease provides:

In addition, if Tenant files a voluntary petition under any section or chapter of the Federal Bankruptcy Code (11 U.S.C. §101 et. seq., as amended) (the "Bankruptcy Code") . . . Tenant acknowledges that Landlord may, at its option, retain an attorney(s) to represent Landlord in such bankruptcy case, and, in such event, all attorneys' fees and expenses (including, without limitation, expenses of consulting or testifying expert witnesses) incurred by Landlord shall be paid by Tenant to Landlord as additional rental under this lease and payment thereof to Landlord shall constitute part of the cure required under Section 365(b)(1)(A) of the Federal Bankruptcy Code if Tenant seeks to assume or assume and assign this lease.

Lease, §17.3.

PROCEDURAL BACKGROUND

7. On September 6, 2019 (the "**Petition Date**"), the Debtor filed a voluntary petition for relief under Chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**").

8. On December 9, 2019, the Debtor filed a *Notice of Rejection of Executory Contracts and Unexpired Leases Previously Retained* [Docket No. 318] (the "**Rejection Notice**"), which established December 31, 2019, as the rejection date of the NorthPark Lease (the "**Rejection Date**").

9. Notwithstanding the Debtor's continued possession and enjoyment of the Premises during the month of November 2019, the Debtor failed to remit payment of rent to NorthPark. For the period following and including the Petition Date, NorthPark is owed an administrative expense claim in the amount of \$18,163.89 (the "**Administrative Claim Amount**"). A true and correct copy of the breakdown of the Administrative Claim Amount owed is attached hereto as Exhibit A.

RELIEF REQUESTED

10. Sections 365(d), 503(b), and 507(a)(2) of title 11 of the Bankruptcy Code entitle NorthPark to recover the Administrative Claim Amount. The Administrative Claim Amount relates to post-petition pre-rejection unpaid rent amounts and embodies actual, necessary costs and expenses of preserving the estate.

11. Section 503(b)(1)(A) provides for the allowance of administrative expenses, including, actual, necessary costs and expenses of preserving the bankruptcy estate. *See generally In re Goody's Family Clothing, Inc.*, 392 B.R. 604, 609 (Bankr. D. Del. 2008).

12. Section 365(d)(3) provides, in pertinent part, that a debtor "shall timely perform all of the obligations of the debtor, except those specified in section 365(b)(2), arising from and after the order for relief under any unexpired lease of nonresidential real property... until such lease is assumed or rejected notwithstanding 503(b)(1) of [the Bankruptcy Code]." *See generally In re Montgomery Ward Holding Corp.*, 268 F.3d 204 (3d Cir. 2001).

13. The Debtor's use and occupancy of the Premises during November 2019 comprises an actual and necessary cost and expense of preserving the Debtor's bankruptcy estate.

14. NorthPark is entitled to an allowed administrative expense claim for amounts due, \$18,163.89, under the Lease between the Petition Date and the Rejection Date.

RESERVATION OF RIGHTS

15. NorthPark hereby reserves all rights to amend or supplement the instant administrative expense claim and is not limited by the inclusion or exclusion of any legal bases from asserting its rights in the Debtor's bankruptcy case to the fullest extent available under law.

16. The instant administrative claim does not replace or supplant the general unsecured claim asserted by NorthPark docketed as Proof of Claim 175.

EXHIBIT A

Breakdown of Administrative Expense Claim – November 2019

Date	Code	Description	Amount Due
11/1/2019	HV	HVAC	\$249.09
11/1/2019	EL	08/29 – 09/30 Electricity	\$146.07
11/1/2019	TR	Trash Removal	\$25.42
11/1/2019	TX	Ad Valorem Tax	\$2,669.50
11/1/2019	CA	Common Area Maintenance	\$3,228.81
11/1/2019	MR	Minimum Rent	\$11,845.00
		TOTAL DUE	\$18,163.89