

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

SUGARFINA, INC., et al.,

Debtors.

Chapter 11

Case No. 19-11973 (MFW)

(Jointly Administered)

**DEBTORS' OMNIBUS MOTION FOR ENTRY OF AN ORDER AUTHORIZING  
DEBTORS TO (A) REJECT CERTAIN UNEXPIRED LEASES OF NONRESIDENTIAL  
REAL PROPERTY AS OF THE VACATE DATE AND (B) ABANDON  
CERTAIN PERSONAL PROPERTY IN CONNECTION THEREWITH**

**THIS MOTION SEEKS TO REJECT CERTAIN UNEXPIRED LEASES OF  
NONRESIDENTIAL REAL PROPERTY. PARTIES RECEIVING THIS  
MOTION SHOULD REVIEW THE MOTION TO SEE IF THEIR NAME(S)  
AND/OR LEASE(S) ARE SET FORTH IN THE MOTION AND/OR THE  
EXHIBITS ATTACHED THERETO TO DETERMINE WHETHER  
THE MOTION AFFECTS THEIR LEASE(S).**

Sugarfina, Inc., ("SGRI"), Sugarfina International, LLC, ("SGRLLC"), and Sugarfina (Canada), Ltd. ("SGC" collectively with SGRLLC and SGRI (the "Debtors" or the "Company")), the debtors and debtors in possession in the above-captioned chapter 11 cases (the "Cases"), hereby move the Court (the "Motion") for entry of an order, substantially in the form attached hereto as Exhibit A (the "Proposed Order"), pursuant to sections 105(a), 365 and 554 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), and Rules 6006, 6007 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), authorizing the Debtors to reject certain unexpired leases of nonresidential real property to the Vacate Date (as defined below) and abandon certain commercial property in connection therewith. In support of the Motion, the Debtors respectfully represent as follows:

**JURISDICTION**

1. The United States Bankruptcy Court for the District of Delaware (the "Court")

has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Debtor confirms its consent pursuant to Rule 9013-l(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory and rule predicates for the relief sought herein are sections 105(a), 365(a) and 554(a) of the Bankruptcy Code and Rules 6006, 6007 and 9014 of the Bankruptcy Rules.

### **INTRODUCTION**

4. By this Motion, the Debtors seek authority to Reject the Burdensome Leases (defined below) as of the related Vacate Date. The Burdensome Leases (i) provide no benefit to the Debtors’ Estates and their creditors, (ii) are no longer being used and (iii) are not necessary for the Debtors’ reorganization. Rejection of the Burdensome Leases will result in reduced operating costs, and, as such, rejection is appropriate and will serve the best interest of the Debtors’ Estates and their creditors.

5. For these reasons which will be discussed in greater detail below, the Debtors respectfully request the Court grant the Motion in its entirety.

### **BACKGROUND INFORMATION**

#### **A. The Debtor’s Bankruptcy Cases**

6. The Debtors filed their respective voluntary petitions for relief under Chapter 11

of the United States Code Bankruptcy Code on September 6, 2019 (the “Petition Date”). The Debtors are continuing in possession of their property, and operating and managing their businesses, as debtors in possession pursuant to Bankruptcy Code §§ 1107 and 1108.

7. On September 17, 2019, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed an official committee of unsecured creditors (the “Committee”) in these Chapter 11 Cases (D.I. 97).

**B. Description of the Debtors’ Businesses**

8. The Debtors are an iconic candy and confectionary brand with a uniquely fresh, fashionable, and experiential approach to gourmet confections. With the creation of a “candy store for grown ups,” the Company has gained a strong and loyal customer following, through constant creation and innovation focused on distinctive product presentation and invention of fresh new candy offerings that delight and surprise. Its offerings are sourced from the finest candy makers in the world and include such iconic varieties as Champagne Bears®, Peach Bellini®, Sugar Lips®, Green Juice Bears®, and Cold Brew Bears™. Packaging design is also central to Sugarfina’s edge—listed among “The World’s Most Innovative Companies” list for 2018 by *Fast Company Magazine*, the Companies’ presentation centers around the invention of the distinct Candy Cube™, Candy Bento Box®, and Candy Wall™. The result is an experience that is unique, attracting a significant social media following and a series of successful co-branding opportunities with brands like Casamigos, Disney, The Honest Company, Barbie, Nintendo, and Tito’s Vodka.

9. The Company operates an “omnichannel” business, involving design, assembly, marketing, and sale of confectionary items through a retail fleet of “Candy Boutiques”, including 11 “shop in shops” within Nordstrom’s department stores, a wholesale channel, e-commerce, international franchise, and a corporate/custom channel. In 2018, the Company generated more than \$47 million in net sales.

**C. The Burdensome Leases**

10. Prior to the Petition Date, the Debtors entered into written agreements as the lessee

under the following leases (collectively the “Burdensome Leases”), arranged alphabetically by Landlord Name, and will vacate the premises as set forth below (the “Vacate Date”):

<b>Store (Vacate Date)</b>	<b>Store Address</b>	<b>Landlord Name</b>	<b>Landlord Notice Address</b>
Woodlands Market (Sept. 30, 2019)	9595 Six Pines Dr Space 1150, The Woodlands, TX 77380	ISI MSW Partners LLC	9595 Six Pines Drive, Suite 6290, The Woodlands, TX 77380
Square One (Sept. 27, 2019)	100 City Centre Drive Unit 2-245, Mississauga, ON L5B 2C9	Omers Realty Management Corporation (Oxford Properties Group)	100 City Centre Drive, Mississauga, ON L5B 2C9
Pasadena (Sept. 30, 2019)	20 Hugus Alley, Pasadena, CA 91103	One Colorado Investments LLC	1460 Westwood Blvd #300, Los Angeles, CA 90024
Oakridge (Sept. 30, 2019)	650 W 41st Ave, #266, Vancouver, BC V5Z 2M9 Canada	QuadReal Property Group Limited Partnership	Suite 800 - 666 Burrard Street, Vancouver, BC V6C 2X8
Lenox (Sept. 30, 2019)	3393 Peachtree Road NE Space K106X, Atlanta, GA 30326	Retail Property Trust (Simon)	225 W Washington Street, Indianapolis, IN 46204
Somerset (Sept. 27, 2019)	2801 W Big Beaver Rd, #K- 246 South Building, Troy, MI 48084	Somerset Collection Limited Partnership (Forbes)	100 Galleria Office Centre, Suite 427, Southfield, MI 48034
Bethesda (Sept. 21, 2019)	4808 Bethesda Ave., Bethesda, MD 20814	Street Retail, INC. (Federal Realty)	1626 East Jefferson St, Rockville, MD 20852
Tysons Corner (Sept. 21, 2019)	1961 Chain Bridge Rd Space # KSK03AL, Tysons Corner, VA 22102	Tysons Corner Holdings LLC	1961 Chain Bridge Road Suite 105, Mclean, Virginia 22102- 4501
Rice Village (Sept 30, 2109)	2510 University Blvd, Houston, TX 77005	Village Real Property, Inc.	6100 Main Street, 204 Lovett Hall, MS-91, Houston, TX 77005

### **RELIEF REQUESTED**

11. Pursuant to section 365 of the Bankruptcy Code and Rule 6006 of the Bankruptcy Rules, the Debtors hereby seek the entry of an order in substantially the form attached hereto as Exhibit A (the "Proposed Order"): (a) authorizing them to reject the Burdensome Leases as of the Vacate Date<sup>1</sup>; (b) abandoning certain commercial property in connection therewith<sup>2</sup>; and (c) granting certain related relief.

### **BASIS FOR RELIEF**

#### **A. The Business Judgment Rule is the Standard That Controls the Court's Scrutiny of Debtors' Decision to Reject an Executory Contract or Unexpired Lease**

12. The Debtors are authorized to operate their businesses under section 1107(a), which provides that:

[s]ubject to any limitations on a trustee serving in a case under this chapter, and to such limitation or conditions as the court prescribes, a debtor in possession shall have all the rights, other than the right to compensation under section 330 of this title, and powers, and shall perform all the functions and duties, except the duties specified in sections 1106(a)(2)(3) and (4) of this title, of a trustee serving in a case under this chapter.

13. One of the components of operating a business is the ability to assume or reject an executory contract or unexpired lease. Specifically, Bankruptcy Code section 365(a) provides, in relevant part that "the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). Through section 365, a debtor is able "to use valuable property of the estate and to renounce title to and abandon burdensome property." *In re Republic Airways Holdings Inc.*, 547 B.R. 578, 582 (Bankr. S.D.N.Y. 2016)

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<sup>1</sup> On September 6, 2019, the Debtors filed the *Debtors' Motion for Entry of an Order (I) Authorizing Debtors to (A) Reject Certain Unexpired Leases of Nonresidential Real Property Nunc Pro Tunc to the Petition Date and (B) Abandon Certain Personal Property in Connection Therewith, and (II) Granting Related Relief and (III) for Entry of an Order Establishing Procedures for the Rejection of Executory Contracts and Unexpired Leases* (the "First Rejection Motion") (D.I. 24). Through the First Rejection Motion, the Debtors are seeking to establish Rejection Procedures. The Debtors now seek to reject the Burdensome Leases set forth herein in accordance with the Rejection Procedures, including with regard to abandoning property.

<sup>2</sup> In addition, the Debtors seek to abandon certain property in accordance with the Rejection Procedures.

(quoting *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098 (2d Cir. 1993)); *see also In re Exide Techs.*, 607 F.3d 957, 967 (3d Cir. 2010) (“Courts may use § 365 to free a [debtor] from burdensome duties that hinder its reorganization”); *In re Bildisco*, 465 U.S. 513, 528 (1984) (“[T]he authority to reject an executory contract is vital to the basic purpose to a Chapter 11 reorganization, because rejection can release the debtor’s estate from burdensome obligations that can impede a successful reorganization.”).

14. In order to determine whether the assumption or rejection of an unexpired nonresidential lease should be authorized, Courts apply the “business judgment” test, which requires a debtor to have determined that the requested assumption or rejection would be beneficial to its estate. *See Grp. of Institutional Inv’rs, Inc. v. Chi., Milwaukee, St. Paul & Pac. R.R.*, 318 U.S. 523, 550 (1943) (noting that “the question whether a lease should be rejected . . . is one of business judgment”); *In re Bildisco*, 682 F.2d 72, 79 (3d Cir. 1982), *aff’d*, 465 U.S. 513 (“The usual test for rejection of an executory contract is simply whether rejection would benefit the estate, the ‘business judgment’ test.”); *accord In re HQ Glob. Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003).

15. Courts give deference to a debtor’s decision to assume or reject leases. *See e.g., Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 39–40 (3d Cir. 1989) (affirming the rejection of a service agreement as a sound exercise of the debtor’s business judgment when the bankruptcy court found that such rejection would benefit the debtors’ estate); *In re Trans World Airlines, Inc.*, 261 B.R. 103, 121 (Bankr. D. Del. 2001) (“[A] debtor’s decision to reject an executory contract must be summarily affirmed unless it is the product of bad faith, or whim or caprice.”).

16. The Burdensome Leases provide no benefit to the Debtors’ Estates and their creditors and add no value to the Debtors’ reorganization. The Debtors, in the exercise of their

business judgment, have determined to cease business operations at the locations covered by the subject leases. The underlying leased locations are therefore no longer being used and are not necessary for the Debtors' reorganization. Rejection of the Burdensome Leases will result in a substantial reduction of operating costs. As such, rejection of the Burdensome Leases is a necessary component of the Debtors' bankruptcy and will serve the best interests of the Debtors' Estates and their creditors.

17. In these cases, the interests of creditors would best be served if the Burdensome Leases are rejected. The Burdensome Leases provide no benefit to the Debtors' estates and in fact are detrimental to the Debtors' bankruptcy cases because of the administrative expense associated with the Burdensome Leases. Therefore, rejection of the Burdensome Leases is appropriate.

**B. Abandonment of Any Property is Authorized by Section 554(a) of the Bankruptcy Code**

18. Under section 554(a) of the Bankruptcy Code, a debtor, after notice and a hearing, is authorized to "abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a). The right to abandon property is extensive, unless (a) abandonment of the property will contravene laws designed to protect public health and safety or (b) the property poses an imminent threat to the public's welfare. *See In re Midlantic Nat'l Bank*, 474 U.S. 494, 501 (1986). Neither is relevant in the Cases.

19. Any commercial property left in the locations of the Burdensome Leases is of inconsequential value to the Debtors' estates, and the costs to the Debtors of removing or storing such property will exceed any economic benefit that may come from retaining such property. Accordingly, in the exercise of their business judgment, the Debtors have determined that abandonment of any remaining property will be in the best interest of the Debtors and their estates.

**COMPLIANCE WITH BANKRUPTCY RULE 6006(f)**

20. Bankruptcy Rule 6006(f) establishes requirements for a motion to reject multiple executory contracts and/or unexpired leases that are not between the same parties. Bankruptcy Rule 6006(f) states, in part, that such a motion shall: (1) state in a conspicuous place that parties receiving the omnibus motion should locate their names and their contracts or leases listed in the motion; (2) list parties alphabetically and identify the corresponding contract or lease; (3) specify the terms, including the curing of defaults, for each requested assumption or assignment; (4) specify the terms, including the identity of each assignee and the adequate assurance of future performance by each assignee, for each requested assignment; (5) be numbered consecutively with other omnibus motions to assume, assign, or reject executory contracts or unexpired leases; and (6) be limited to no more than 100 executory contracts or unexpired leases. The Debtors submit that they have satisfied the requirements of Bankruptcy Rule 6006(f).

**RESERVATION OF RIGHTS**

21. Nothing contained herein is intended or shall be construed as (i) an admission as to the validity of any claim against the Debtors; (ii) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors; (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder; or (iv) an approval, assumption, or adoption of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code.

**NOTICE**

22. The Debtors will provide notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel for the official committee of unsecured creditors, Bayard P.A., 600 N. King Street, Suite 400, Wilmington, DE 19801, Attn: Justin Alberto and Erin



Fay, jalberto@bayardlaw.com and efay@bayardlaw.com; (c) counsel to the Debtors' first lien lender, SFCC Loan Investors, LLC, Loeb & Loeb LLP, 345 Park Avenue, New York, NY 10154, Attn: Vadim J. Rubinstein, vrubinstein@loeb.com; (d) counsel to the Debtors' second lien lender, Goldman Sachs Specialty Lending Group L.P., King & Spalding LLP, 1180 Peachtree Street, Northeast, Suite 1600, Atlanta, Georgia 30309, Attn: W. Austin Jowers, ajowers@kslaw.com; (e) each party (lessor) subject to this Motion; (f) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**NO PRIOR REQUEST**

23. No prior motion for the relief requested herein has been made to this or any other court.

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**WHEREFORE**, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as Exhibit A, (i) granting the Motion, (ii) approving the rejection of the Burdensome Leases effective as of the Petition Date, and (iii) granting such other and further relief as the Court may deem just and proper under the circumstances.

DATED: September 20, 2019  
Wilmington, Delaware

**MORRIS JAMES LLP**

/s/ Brya M. Keilson

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