IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
SUGARFINA, INC., et al.,	Case No. 19-11973 (MFW)
Debtors.[1]	(Jointly Administered)
	Objection Deadline: Oct. 10, 2019 at 4:00 p.m. **Hearing Date: Nov. 5, 2019 at 10:30 a.m.**

DEBTOR'S APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION OF BMC GROUP, INC. AS ADMINISTRATIVE AGENT EFFECTIVE *NUNC PRO TUNC* TO THE PETITION DATE

Sugarfina, Inc. ("SGRI"), Sugarfina International, LLC, ("SGRLLC"), and Sugarfina (Canada), Ltd. ("SGC" collectively with SGRLLC and SGRI, (the "Debtors")), in the above-captioned chapter 11 cases (these "Chapter 11 Cases"), hereby submit this application (this "Application") for entry of an order (the "Order"), substantially in the form attached hereto as **Exhibit A,** (i) authorizing the Debtors to employ and retain BMC, Group Inc., ("BMC") as administrative agent ("Administrative Agent") for the Debtors in connection with these chapter 11 cases, pursuant to the terms and conditions set forth in the engagement agreement between the Debtors and BMC dated as of August 28, 2019, a copy of which is annexed as **Exhibit 1** to the Order and incorporated herein by reference (the "Engagement Agreement"), and (ii) approving the terms of BMC's employment and the indemnification provisions set forth in the Engagement Agreement, effective *nunc pro tunc* to the Petition Date. In support of this Application, the Debtors rely upon and incorporate by reference (a) the *Declaration of Lance Miller in Support of*

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number or Canadian Revenue Agency, as applicable are (1) Sugarfina, Inc., a Delaware corporation (4356), (2) Sugarfina International, LLC, a Delaware limited liability company (1254) and (3) Sugarfina (Canada), Ltd. (4480). The location of the Debtors' corporate headquarters is 1700 E. Walnut Ave., 5th Floor, El Segundo, California 90245.

First Day Motions, [D.I. 23] and (b) the *Declaration of Tinamarie Feil in support of the Application* (the "Feil Declaration"), a copy of which is attached hereto as **Exhibit B**. In further support of the Application, the Debtors respectfully represent:

Jurisdiction

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

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

3. The bases for the relief requested herein are sections 327(a) and 328 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 2014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules").

Background

4. On September 6, 2019 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. The factual background regarding the Debtors, including description of their business, capital structure, and the circumstances leading to these Chapter 11 Cases is set forth in detail within the First Day Declaration and is fully incorporated herein by reference.

5. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108 of the Bankruptcy Code.

6. No trustee or examiner has been appointed in these Chapter 11 Cases.

7. Concurrently with the filing of this Application, the Debtors have requested

procedural consolidation and joint administration of the Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b).

Relief Requested

8. By this Application, the Debtors request entry of an order, substantially in the form attached hereto as **Exhibit A**, (i) authorizing the Debtors to employ and retain BMC as Administrative Agent for the Debtors in these chapter 11 cases, pursuant to the terms and conditions set forth in the Engagement Agreement; and (ii) approving the terms of BMC's employment and the indemnification provisions set forth in the Engagement Agreement, effective *nunc pro tunc* to the Petition Date.

9. On the Petition Date, the Debtors filed the *Debtors' Application for Entry of an Order Authorizing the Employment and Retention of BMC Group, Inc. as Claims and Noticing Agent, Nunc Pro Tunc to the Petition Date* (D.I. 4) (the "BMC 156 Application"), which this Court approved on August 9, 2019 (D.I. 42). This Application supplements the BMC 156 Application and seeks approval for BMC to perform duties outside of the scope of 28 U.S.C. § 156(c), including soliciting and balloting services with respect to the Debtors' plan of reorganization (when such plan of reorganization is proposed and is subjected to a vote).

BMC's Qualifications

10. BMC is comprised of leading industry professionals with significant experience in both the legal and administrative aspects of large, complex chapter 11 cases. BMC's professionals have experience in noticing, claims administration, solicitation, balloting and facilitating other administrative aspects of chapter 11 cases and experience in matters of this size and complexity. BMC's professionals have acted as official claims and noticing agent and solicitation and balloting agent in many large bankruptcy cases in this District and in other districts nationwide. BMC's active cases include: *See, e.g., In re Restaurants Acquisition I, LLC,*

No.15-12406 (KG, *In re Orchard Supply Hardware Stores Corp.*, No. 13-11565 (CSS); *In re Coach AM Group Holdings Corp.*, No. 12-10010 (KG)*; In re Graceway Pharmaceuticals, LLC,* No. 11-13036 (MFW); *In re Regen Biologics, Inc.*, No. 11-11083 (PJW); *In re Urban Brands, Inc.*, No. 10-13005; *In re Ultimate Escapes Holdings, Inc.*, No 10-12915 (BLS).

Services Performed

11. The Debtors seek to retain BMC to provide, among other things, the following administrative services (the "Administrative Services"), if and to the extent the Debtors request:

a. assisting with, among other things, solicitation, balloting and tabulation and calculation of votes for purposes of plan voting;

b. preparing any appropriate reports, exhibits and schedules of information;

c. prepare an official ballot certification and, if necessary, testify in support of the ballot tabulation results;

d. assist with the preparation of the Debtors' schedules of assets and liabilities and statements of financial affairs and gather data in conjunction therewith;

e. generating, providing and assisting with claims objections, exhibits, claims reconciliation and related matters;

f. facilitating any distributions pursuant to a confirmed plan of reorganization;

g. providing confidential on-line work spaces or virtual data rooms and publishing documents to such workspaces or data rooms; and

h. providing such other claims processing, noticing, solicitation, balloting and Administrative Services described in the Engagement Agreement, but not included in the BMC 156 Retention Application, as may be requested from time to time by the Debtors.

Compensation and Representation of Disinterestedness

12. The fees BMC will charge in connection with its services to the Debtors are set forth in the Engagement Agreement. BMC's rates are competitive and comparable to the rates BMC's competitors charge for similar services, and are reasonable given the quality of BMC's

services and BMC's bankruptcy expertise. Additionally, BMC will seek reimbursement from the Debtors for reasonable expenses in accordance with the terms of the Engagement Agreement.

13. BMC intends to apply to the Court for allowance of compensation and reimbursement of out-of-pocket expenses incurred after the Petition Date in connection with the services it provides pursuant to this Application, subject to Court approval and in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and further orders of this Court.

14. The Feil Declaration represents that, to the best of her knowledge, BMC is not connected with the Debtors, their creditors, the United States Trustee or any person employed by the Office of the United States Trustee, and that, to the best of her knowledge, after due inquiry, BMC does not by reason of any direct or indirect relationship to, connection with or interest in the Debtors, hold or represent any interest adverse to the Debtors, their estates or any class of creditors or equity interest holders with respect to the matters upon which it is to be engaged. Based upon the Feil Declaration, BMC is a "disinterested person," as that term is defined in section 101(14) of the Bankruptcy Code. Should BMC discover any relevant facts or relationships bearing on the matters described herein, BMC will use reasonable efforts to promptly file a supplemental declaration with the Court.

Basis for Relief

15. Section 327 of the Bankruptcy Code provides that a debtor, subject to Court approval:

> [M]ay employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the [debtor] in carrying out the [debtor]'s duties under this title.

11 U.S.C. § 327(a)

16. Section 328(a) of the Bankruptcy Code authorizes the employment of a professional person "on any reasonable terms and conditions of employment, including on a retainer . . ." 11 U.S.C. § 328(a).

17. Bankruptcy Rule 2014(a) requires that an application for retention include:

> [S]pecific facts showing the necessity for the employment, the name of the [firm] to be employed, the reasons for the selection, the professional services to be rendered, and proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the [firm's] connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

Fed. R. Bankr. P. 2014.

18. Additionally, Local Rule 2014-1 requires an entity seeking approval of employment under 11 U.S.C. § 327(a) to file a motion, supporting affidavit and proposed order, all of which have been satisfied by this Application, the Feil Declaration attached hereto as **Exhibit B** and the proposed Order attached hereto as **Exhibit A**. As noted above, should BMC discover any relevant facts or relationships bearing on the matters described herein, BMC will use reasonable efforts to promptly file a supplemental declaration with the Court.

19. To help manage administrative tasks with respect to the large number of creditors, equity security holders and other parties in interest that are expected to be involved in the Debtors' chapter 11 cases and for reasons previously stated, the Debtors submit that BMC's employment is necessary and in the best interests of the Debtors and their estates. In addition, BMC is a disinterested party in these chapter 11 cases. Accordingly, the Debtors submit that Court approval of BMC as the Administrative Agent in these chapter 11 cases pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rule 2014 and Local Rule 2014-1 is warranted.

Nunc Pro Tunc Relief is Appropriate

20. Pursuant to the Debtors' request, BMC has acted as the Administrative Agent since the Petition Date and has performed the Prepetition Services with assurances that the Debtors would seek approval of its employment and retention effective *nunc pro tunc* to the Petition Date so that BMC may be compensated for its pre-application services. The Debtors believe that no party in interest will be prejudiced by the granting of the *nunc pro tunc* employment of BMC, since BMC has provided and continues to provide valuable services to the Debtors' estates in the interim period.

21. Courts in this jurisdiction have routinely approved *nunc pro tunc* employment similar to that requested herein. *See e.g.*, *In re Conexant Sys., Inc.*, No. 13-10367 (MFW) (Bankr. D. Del. Apr. 19, 2013) (approving *nunc pro tunc* employment of an administrative agent to perform administrative services); *In re Satcon Technology Corp.*, No. 12-12869 (KG) (Bankr. D. Del. Oct. 18, 2012) (same); *In re SSI Grp. Holding Corp.*, No. 11-12917 (MFW) (Bankr. D. Del. Sept. 15, 2011) (same); *In re L.A. Dodgers LLC*, No. 11-12010 (KG) (Bankr. D. Del. July 19, 2011) (same).

22. Based on the foregoing, the Debtors submit that they have satisfied the requirements of the Bankruptcy Code, Bankruptcy Rules and Local Rules. Accordingly, the Debtors respectfully request entry of the Order pursuant to section 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rule 2014 and Local Rule 2014-1 authorizing the Debtors to retain and employ BMC to act as Administrative Agent *nunc pro tunc* to the Petition Date.

Notice

23. The Debtors have provided notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the official committee of unsecured creditors; and (c) all parties that have 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 provided.

No Prior Request

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

[*Remainder of Page Intentionally Left Blank*]

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as is just and proper.

DATED: September 26, 2019

MORRIS JAMES LLP

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