

**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)

(Joint Administration Requested)

**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**

**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., a Delaware corporation (“SGRI”), Sugarfina International, LLC, a Delaware limited liability company (“SGRLLC”), and Sugarfina (Canada), Ltd. (“SGC”) collectively with SGRLLC and SGRI (the “Debtors”), 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”), (I) authorizing the Debtors to reject certain unexpired leases of nonresidential real property *nunc pro tunc* to September 6, 2019 and abandon certain commercial property in connection therewith, and (II) approving procedures for the rejection of

executory contracts and unexpired leases throughout these Cases, and granting authority to take all actions necessary to implement such procedures, including abandonment of the Remaining Property (as defined below). In support of the Motion, the Debtors rely on the *Declaration of Lance Miller in Support of First Day Motions* (the “First Day Declaration”), which is fully incorporated herein by reference. In further 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 title of the United States Code (the “Bankruptcy Code”) and Rules 6006, 6007 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

INTRODUCTION

4. By this Motion, the Debtors seek authority to Reject the Burdensome Leases (defined below) as of September 6, 2019, the petition date (“Petition Date”). The

underlying 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 (over \$189,000 per month) so rejection is appropriate and will serve the best interest of the Debtors' Estates and their creditors.

5. In addition, by this Motion, the Debtors seek approval of procedures for the rejection of executory contracts and unexpired leases throughout these Cases, and granting authority to take all actions necessary to implement such procedures, including abandonment of the Remaining Property.

6. 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

7. 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. No trustee, examiner, or committee has been appointed in these chapter 11 cases.

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 45 “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.

10. A more detailed description of the Debtors’ background, structure, operations and recent financial history is detailed in the First Day Declaration.

C. The Burdensome Leases

11. Prior to the Petition Date, the Debtors entered into written agreements as the lessee under the following leases (collectively the “Burdensome Leases”):

Store	Store Address	Landlord Name	Landlord Notice Address
Legacy West	7700 Windrose Ave G152 Plano, TX 75024	Legacy West Investors, LP	c/o The Karahan Companies 7200 Bishop Road, Suite 250 Plano, TX 75024 Attn: Fehmi Karahan
Woodbury Commons	Unit KI11 498 Red Apple Ct. Central Valley, NY 10917-6619	Premium Outlet Partners, L.P.	c/o Simon Property Group 225 West Washington Street Indianapolis, IN 46204-3438
Houston Galleria	5085 Westheimer Road Suite B3630 Houston, TX 77056	HG Galleria, LLC	c/o M.S. Management Associates, Inc. 225 West Washington Street Indianapolis, IN 46204-3438
Oakbrook	715 Oakbrook Center Oakbrook, IL 60523	Oakbrook Shopping Center, LLC	c/o Oakbrook Center 110 N. Wacker Dr. Chicago, IL 60606 Attn: Law/Lease Administration Dept.
Aventura	19575 Biscayne Blvd. Space #707 Aventura, FL 33180	Aventura Mall Venture	c/o Turnberry Aventura Mall Company, Ltd. 19501 Biscayne Blvd., Suite 400 Aventura, FL 33180 Attn: Legal Dept/Leasing Attorney w/copy to: c/o M.S. Management Associates, Inc. 225 West Washington Street Indianapolis, IN 46204 Attn: Sr. EVP-Leasing
Ala Moana	1450 Ala Moana Blvd Space #2256 Honolulu, HI 96814	GGP Ala Moana L.L.C.	c/o Ala Moana Center 110 N. Wacker Dr. Chicago, IL 60606 Attn: Law/Lease Admin Dept. w/copy to: Ala Moana Center 1450 Ala Moana Blvd; Suite 1290 Honolulu, HI 96814

The Burdensome Leases are subject to Bankruptcy Code section 365. The Debtors request that the Burdensome Leases be rejected effective as of September 6, 2019. After evaluating each of the Burdensome Leases, the Debtors concluded that the Burdensome Leases are unlikely to generate value for the Debtors' estates, and that, in the exercise of the Debtors' business judgment,

it is in the best interest of the estates to reject the Burdensome Leases. Rejection of the Burdensome Leases will allow the Debtors to avoid unnecessary administrative expenses.

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) (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. As set forth in the First Day Declaration, sound business judgment requires the rejection of the Burdensome Leases. 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 (over \$189,000 per month). 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. Rejection of the Burdensome Leases as of the Petition Date is Appropriate

18. Courts in this and other circuits have authorized the rejection of the leases *nunc pro tunc* and held that a bankruptcy court may authorize the retroactive rejection of a nonresidential lease if the balance of the equities favors such retroactive rejection. *See In re Chi-Chi's, Inc.*, 305 B.R. 396, 399 (Bankr. D. Del. 2004) (acknowledging that a bankruptcy court may approve a rejection retroactive to the date the motion is filed after balancing the equities in the particular case); *In re Fleming Cos.*, 304 B.R. 85, 96 (Bankr. D. Del. 2003) (stating that rejection has been allowed *nunc pro tunc* to the date of the motion or the date the premises were surrendered); *see also Thinking Machs. Corp. v. Mellon Fin. Servs. Corp. (In re Thinking Machs. Corp.)*, 67 F.3d 1021, 1028 (1st Cir. 1995) (finding that, in the context of rejections of executory contracts, "bankruptcy courts may enter retroactive orders of approval, and should do so when the balance of equities preponderates in favor of such remediation"). Courts in this jurisdiction recently have authorized debtors to reject unexpired nonresidential leases *nunc pro tunc* to the date that the debtors filed their petitions for bankruptcy protection. *See, e.g., In re Mac Acquisition LLC*, Ch. 11 Case No. 17-12224 (MFW) (Bankr. D. Del. Nov. 13, 2017); *In re Marsh Supermarkets Holding, LLC*, Ch. 11 Case 17-11066 (BLS) (Bankr. D. Del. May 7, 2017); *In re Ltd. Stores Co.*, Ch. 11 Case No. 17-10124 (KJC) (Bankr. D. Del. Jan. 30, 2017).

19. In these Cases, the balance of the equities favors approval of the rejection of the Burdensome Leases as of the Petition Date. Such rejection *nunc pro tunc* will allow the Debtors to avoid incurring unnecessary administrative expenses.

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

20. 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.

21. 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.

D. Establishing Rejection Procedures With Respect to All Executory Contracts and Unexpired Leases Is Supported By The Debtors’ Business Judgment

22. In an effort to minimize the postpetition expenses associated with the leases of burdensome stores, and the costs attendant to rejecting those leases, as well as expenses associated with the contracts that the Debtors deem, in their business judgment, to be unnecessary for, or burdensome to, the Debtors’ ongoing operations, the Debtors seek approval of procedures with respect to all executory contracts (the “Contracts”) and unexpired leases (the “Leases”) (the “Rejection Procedures”). Such procedures are as follows:

a. Rejection Notice. The Debtors will file a notice (the “Rejection Notice”) setting forth the proposed rejection of one or more Contracts and/or Leases and will serve the Rejection Notice via U.S. mail on: (i) the counterparty to the Contract or Lease (the “Counterparty”) (and counsel, if known) under the respective Contract of Lease at the last known address available to the Debtors; (ii) with respect to Real Property Leases (“Real Property Leases”), any known third

party having an interest in personal property located at the leased premises (“Leased Premises”); (iii) any party known to assert a lien in any property subject to the rejected Contract or Lease; (iv) counsel to the Debtors’ first lien lender, SFCC Loan Investors, LLC, Loeb & Loeb LLP, 10100 Santa Monica Boulevard, Suite 2200, Los Angeles, California 90067, Attn: Lance Jurich, ljurich@loeb.com; (iv) 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; and (vi) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Timothy J. Fox, Esq.), timothy.fox@usdoj.gov, and (v) counsel to any committee appointed in these Cases (collectively, the “Rejection Notice Parties”).

b. Content of Rejection Notice. The Rejection Notice shall be substantially in the form attached as Exhibit B. With respect to Real Property Leases, the Rejection Notice shall set forth the following information, to the best of the Debtors’ knowledge: (i) the street address of the related real property; (ii) the name and address of the landlord (the “Landlord”); (iii) the date on which the Debtors will vacate (or have vacated) the Leased Premises; and (iv) a brief description of any personal property or furniture, fixtures and equipment to be abandoned. With respect to all other Contracts or Leases to be rejected, the Rejection Notice shall set forth the following information, to the best of the Debtors’ knowledge: (i) the name and address of the Counterparty; and (ii) a brief description of the Contract or Lease to be rejected. All Rejection Notices will be accompanied by a copy of the proposed order approving the rejection of the Contracts and/or Leases set forth on the Rejection Notice (each such order a “Rejection Order”).

c. Objections. Should a party in interest object to the Debtors’ proposed rejection of a Contract or Lease, such party must file and serve a written objection (an “Objection”) so that it is filed with this Court and actually received by the following parties (the “Objection Notice Parties”) no later than fourteen (14) days after the date the Rejection Notice is filed: (i) proposed counsel to the Debtors: Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, Delaware 19801 Attn: Brya Keilson, bkeilson@morrisjames.com and Shulman Hodges & Bastian, 100 Spectrum Center Drive; Suite 600 Irvine, CA 92618 Attn: Alan Friedman, afriedman@shbllp.com; (ii) counsel to the Debtors’ first lien lender, SFCC Loan Investors, LLC, Loeb & Loeb LLP, 10100 Santa Monica Boulevard, Suite 2200, Los Angeles, California 90067, Attn: Lance Jurich, ljurich@loeb.com; (iii) 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; (iv) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Timothy J. Fox, Esq.),

timothy.fox@usdoj.gov, and (v) counsel to any committee appointed in these Cases.

d. Effects of Failing to File an Objection to a Rejection Notice. If no Objection to a Rejection Notice is timely filed and served, the applicable Contract or Lease shall be deemed rejected on the effective date set forth in the Rejection Notice (the “Rejection Date”); provided, however, that the Rejection Date for a Real Property Lease shall not be earlier than the later of (i) the date the Debtors file and serve a Rejection Notice for the Real Property Lease or (ii) the date the Debtors relinquish control of the applicable Leased Premises by notifying the affected Landlord in writing of the Debtors’ irrevocable surrender of the premises.

e. Remaining Property. Upon the Rejection Date, any personal property or furniture, fixtures and equipment (the “Remaining Property”) remaining on the Leased Premises shall be deemed abandoned by the Debtors and the Landlords may dispose of any Remaining Property, in their sole discretion, free and clear of all liens, claims, encumbrances and interests, and without any liability to the Debtors and any third party and without waiver of any claim the Landlords may have against the Debtors.

f. Effects of Filing an Objection to a Rejection Notice. If a timely Objection to a Rejection Notice is filed and received in accordance with the Rejection Procedures, the Debtors shall schedule a hearing on such Objection and shall provide at least seven (7) days’ notice of such hearing to the objecting party and the Objection Notice Parties. If this Court upholds the Debtors’ determination to reject the applicable Contract or Lease, then the applicable Contract or Lease shall be deemed rejected (i) as of the Rejection Date or (ii) as otherwise determined by this Court as set forth in any order overruling such Objection.

g. Consent Orders. Any Objection may be resolved without a hearing by an order of this Court submitted on a consensual basis by the Debtors and the objecting party. If no Objection is filed, the Debtors may submit a form of order with the Court under certification of counsel substantially in the form attached to the Rejection Notice.

h. Deadlines for Filing Claims. Any Rejection Order will be served on the appropriate Counterparties no later than five (5) days after entry of such order. Claims arising out of the rejection of Contracts or Leases must be filed on or before the later of (i) the deadline for filing proofs of claims established by this Court in these Cases or (ii) thirty-five (35) days after the date of entry of the applicable Rejection Order. If no proof of claim is timely filed, such claimant shall not be treated as a creditor with respect to such claims for voting on any chapter 11 plan in these Cases and shall be forever barred from asserting a claim for rejection damages and from participating in any distributions that may be made in connection with these Cases.

i. Treatment of Security Deposits. If the Debtors have deposited funds with a Counterparty or Landlord as a security deposit or other arrangement, such Counterparty may not setoff or otherwise use such deposit without the prior authority of this Court or agreement of the Debtors.

23. In connection with the foregoing Rejection Procedures, the Debtors also request that they be authorized to execute and deliver all instruments and documents, and take such other actions as may be necessary or appropriate to implement and effectuate the Rejection Procedures as approved by the Court and that entry of the requested order be without prejudice to the Debtors' right to seek further, other, or different relief regarding the Contracts or Leases.

24. The Debtors will comply with the requirements of Bankruptcy Rule 6006(f) when serving the Rejection Notices. In addition, the Rejection Procedures satisfy the requirements of Rule 6006(f).

RESERVATION OF RIGHTS

25. 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

26. The Debtors will provide notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors; (c) counsel to the Debtors' first lien lender, SFCC Loan Investors, LLC, Loeb & Loeb LLP, 10100 Santa Monica Boulevard, Suite 2200, Los Angeles, California 90067, Attn: Lance

Jurich, ljurich@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

27. 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) authorizing the Debtors to reject certain unexpired leases of nonresidential real property *nunc pro tunc* to September 6, 2019 and abandon certain commercial property in connection therewith, (II) approving procedures for the rejection of executory contracts and unexpired leases throughout these Cases, and granting authority to take all actions necessary to implement such procedures, and (III) granting further relief as the Court may deem just and proper under the circumstances.

DATED: September 6, 2019
Wilmington, Delaware

MORRIS JAMES LLP

/s/ Brya M. Keilson

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*Proposed Counsel to the Debtors and
Debtors in Possession*

EXHIBIT A

**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)

(Joint Administration Requested)

**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**

Upon the motion (the “Motion”)¹ of Sugarfina, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”), for entry of an order (i) authorizing the Debtors to (a) reject the Burdensome Leases, each effective nunc pro tunc to the Petition Date, and (b) abandon any Remaining Property, and (ii) granting related relief, and (III) establishing procedures for the rejection of executory contracts and unexpired leases, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157(a)–(b) and 1334(b), and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties, and it appearing that no other or further notice need be provided; and this Court having held a hearing to consider the relief requested in the Motion (the “Hearing”); and upon the First Day Declaration; and the Court having determined that the legal

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT

1. The Motion is GRANTED to the extent set forth herein.
2. Pursuant to section 365 of the Bankruptcy Code, the Burdensome Leases identified on Schedule 1 attached hereto are hereby rejected nunc pro tunc to the Petition Date.
3. The Debtors do not waive any claims that they may have against any counterparty to the Burdensome Leases, whether or not such claims arise under, are related to the rejection of, or are independent of the Burdensome Leases.
4. The Debtors are authorized to abandon any property located at the stores subject to the Burdensome Leases free and clear of all liens, claims, encumbrances, interests, and rights of third parties.
5. Nothing herein shall prejudice the rights of the Debtors to argue that any of the Burdensome Leases were terminated prior to the Petition Date; that any claim for damages arising from the rejection of the Burdensome Leases is limited to the remedies available under any applicable termination provision of such Burdensome Lease; or that any such claim is an obligation of a third party and not that of the Debtors or their estates.
6. The following Rejection Procedures are hereby APPROVED:
 - a. Rejection Notice. The Debtors will file a notice (the “Rejection Notice”) setting forth the proposed rejection of one or more Contracts and/or Leases and will serve the Rejection Notice via U.S. mail on: (i) the counterparty to the Contract or Lease (the “Counterparty”) (and counsel, if known) under the respective Contract of Lease at the last known address available to the Debtors; (ii) with respect to Real Property Leases (“Real Property Leases”), any known third

party having an interest in personal property located at the leased premises (“Leased Premises”); (iii) any party known to assert a lien in any property subject to the rejected Contract or Lease; (iv) counsel to the Debtors’ first lien lender, SFCC Loan Investors, LLC, Loeb & Loeb LLP, 10100 Santa Monica Boulevard, Suite 2200, Los Angeles, California 90067, Attn: Lance Jurich, ljurich@loeb.com; (iv) 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; and (vi) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Timothy J. Fox, Esq.), timothy.fox@usdoj.gov, and (v) counsel to any committee appointed in these Cases (collectively, the “Rejection Notice Parties”).

b. Content of Rejection Notice. The Rejection Notice shall be substantially in the form attached as Exhibit B. With respect to Real Property Leases, the Rejection Notice shall set forth the following information, to the best of the Debtors’ knowledge: (i) the street address of the related real property; (ii) the name and address of the landlord (the “Landlord”); (iii) the date on which the Debtors will vacate (or have vacated) the Leased Premises; and (iv) a brief description of any personal property or furniture, fixtures and equipment to be abandoned. With respect to all other Contracts or Leases to be rejected, the Rejection Notice shall set forth the following information, to the best of the Debtors’ knowledge: (i) the name and address of the Counterparty; and (ii) a brief description of the Contract or Lease to be rejected. All Rejection Notices will be accompanied by a copy of the proposed order approving the rejection of the Contracts and/or Leases set forth on the Rejection Notice (each such order a “Rejection Order”).

c. Objections. Should a party in interest object to the Debtors’ proposed rejection of a Contract or Lease, such party must file and serve a written objection (an “Objection”) so that it is filed with this Court and actually received by the following parties (the “Objection Notice Parties”) no later than fourteen (14) days after the date the Rejection Notice is filed: (i) proposed counsel to the Debtors: Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, Delaware 19801 Attn: Brya Keilson, bkeilson@morrisjames.com and Shulman Hodges & Bastian, 100 Spectrum Center Drive; Suite 600 Irvine, CA 92618 Attn: Alan Friedman, afriedman@shbllp.com; (ii) counsel to the Debtors’ first lien lender, SFCC Loan Investors, LLC, Loeb & Loeb LLP, 10100 Santa Monica Boulevard, Suite 2200, Los Angeles, California 90067, Attn: Lance Jurich, ljurich@loeb.com; (iii) 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; (iv) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Timothy J. Fox, Esq.),

timothy.fox@usdoj.gov, and (v) counsel to any committee appointed in these Cases.

d. Effects of Failing to File an Objection to a Rejection Notice. If no Objection to a Rejection Notice is timely filed and served, the applicable Contract or Lease shall be deemed rejected on the effective date set forth in the Rejection Notice (the “Rejection Date”); provided, however, that the Rejection Date for a Real Property Lease shall not be earlier than the later of (i) the date the Debtors file and serve a Rejection Notice for the Real Property Lease or (ii) the date the Debtors relinquish control of the applicable Leased Premises by notifying the affected Landlord in writing of the Debtors’ irrevocable surrender of the premises.

e. Remaining Property. Upon the Rejection Date, any personal property or furniture, fixtures and equipment (the “Remaining Property”) remaining on the Leased Premises shall be deemed abandoned by the Debtors and the Landlords may dispose of any Remaining Property, in their sole discretion, free and clear of all liens, claims, encumbrances and interests, and without any liability to the Debtors and any third party and without waiver of any claim the Landlords may have against the Debtors.

f. Effects of Filing an Objection to a Rejection Notice. If a timely Objection to a Rejection Notice is filed and received in accordance with the Rejection Procedures, the Debtors shall schedule a hearing on such Objection and shall provide at least seven (7) days’ notice of such hearing to the objecting party and the Objection Notice Parties. If this Court upholds the Debtors’ determination to reject the applicable Contract or Lease, then the applicable Contract or Lease shall be deemed rejected (i) as of the Rejection Date or (ii) as otherwise determined by this Court as set forth in any order overruling such Objection.

g. Consent Orders. Any Objection may be resolved without a hearing by an order of this Court submitted on a consensual basis by the Debtors and the objecting party. If no Objection is filed, the Debtors may submit a form of order with the Court under certification of counsel substantially in the form attached to the Rejection Notice.

h. Deadlines for Filing Claims. Any Rejection Order will be served on the appropriate Counterparties no later than five (5) days after entry of such order. Claims arising out of the rejection of Contracts or Leases must be filed on or before the later of (i) the deadline for filing proofs of claims established by this Court in these Cases or (ii) thirty-five (35) days after the date of entry of the applicable Rejection Order. If no proof of claim is timely filed, such claimant shall not be treated as a creditor with respect to such claims for voting on any chapter 11 plan in these Cases and shall be forever barred from asserting a claim for rejection damages and from participating in any distributions that may be made in connection with these Cases.

i. Treatment of Security Deposits. If the Debtors have deposited funds with a Counterparty or Landlord as a security deposit or other arrangement, such Counterparty may not setoff or otherwise use such deposit without the prior authority of this Court or agreement of the Debtors.

7. The form of Rejection Notice attached hereto as Exhibit 1 is hereby APPROVED.

8. The Debtors are authorized to send the Rejection Notices to the Counterparties of the Contracts and Leases.

9. Nothing in the Motion or this Order shall prohibit the Debtors from filing one or more motions to reject executory contracts or unexpired leases.

10. The Debtors reserve all rights to contest any rejection claims and/or the characterization of any lease as an unexpired lease.

11. The Debtors do not waive any claims they may have against Landlords and Counterparties, regardless of whether such claims relate to the Contracts and Leases.

12. Nothing herein shall be construed as a concession or evidence that a Contract or Lease has expired, been terminated or is otherwise not currently in full force and effect. The Debtors' rights with respect thereto are reserved, including their right to seek a later determination of such matters and to dispute the validity, status, characterization or enforceability of such Contract or Lease or any claims related thereto.

13. Nothing in the Motion or this Order shall be deemed or construed as an approval of an assumption of any lease, sublease, or contract pursuant to section 365 of the Bankruptcy Code.

14. Notwithstanding entry of this Order, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any party.

15. Under the circumstances of these chapter 11 cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a).

16. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry.

17. Any proofs of claim for damages in connection with the rejection of the Burdensome Leases, if any, shall be filed on or before the later of (a) the claims bar date established by the Court in these chapter 11 cases, if any, and (b) thirty (30) days after entry of this Order.

18. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Order.

19. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

SCHEDULE 1

<u>Store</u>	<u>Store Address</u>	<u>Landlord Name</u>	<u>Landlord Notice Address</u>
Legacy West	7700 Windrose Ave G152 Plano, TX 75024	Legacy West Investors, LP	c/o The Karahan Companies 7200 Bishop Road, Suite 250 Plano, TX 75024 Attn: Fehmi Karahan
Woodbury Commons	Unit KI11 498 Red Apple Ct. Central Valley, NY 10917-6619	Premium Outlet Partners, L.P.	c/o Simon Property Group 225 West Washington Street Indianapolis, IN 46204-3438
Houston Galleria	5085 Westheimer Road Suite B3630 Houston, TX 77056	HG Galleria, LLC	c/o M.S. Management Associates, Inc. 225 West Washington Street Indianapolis, IN 46204-3438
Oakbrook	715 Oakbrook Center Oakbrook, IL 60523	Oakbrook Shopping Center, LLC	c/o Oakbrook Center 110 N. Wacker Dr. Chicago, IL 60606 Attn: Law/Lease Administration Dept.
Aventura	19575 Biscayne Blvd. Space #707 Aventura, FL 33180	Aventura Mall Venture	c/o Turnberry Aventura Mall Company, Ltd. 19501 Biscayne Blvd., Suite 400 Aventura, FL 33180 Attn: Legal Dept/Leasing Attorney w/copy to: c/o M.S. Management Associates, Inc. 225 West Washington Street Indianapolis, IN 46204 Attn: Sr. EVP-Leasing
Ala Moana	1450 Ala Moana Blvd Space #2256 Honolulu, HI 96814	GGP Ala Moana L.L.C.	c/o Ala Moana Center 110 N. Wacker Dr. Chicago, IL 60606 Attn: Law/Lease Admin Dept. w/copy to: Ala Moana Center 1450 Ala Moana Blvd; Suite 1290 Honolulu, HI 96814

EXHIBIT B

**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)

(Joint Administration Requested)

**NOTICE OF REJECTION OF
EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

PLEASE TAKE NOTICE that on [], 2019, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered an order [Docket No. __] (the “Procedures Order”) in the above-referenced chapter 11 cases of Sugarfina, Inc. and its chapter 11 affiliates, the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”), establishing, among other things, procedures (the “Rejection Procedures”) for the rejection of executory contracts (each a “Contract” and collectively the “Contracts”) and unexpired leases (each a “Lease” and collectively the “Leases”).

PLEASE TAKE FURTHER NOTICE that pursuant to the terms of the Procedures Order, the Debtors hereby provide notice of their intent to reject the below referenced Contracts and Leases. Pursuant to the terms of the Procedures Order, unless a written objection is filed and served in accordance with the terms of the Procedures Order, the following Contracts and Leases will be rejected pursuant to section 365(a) of the Bankruptcy Code, effective as of the date set forth below in this Notice (the “Rejection Date”):

**EXECUTORY CONTRACTS AND UNEXPIRED LEASES OTHER THAN
NONRESIDENTIAL PROPERTY LEASES**

Title/ Description of Executory Contract or Unexpired Lease	Name and Address of Counterparty	Rejection Date

UNEXPIRED NONRESIDENTIAL REAL PROPERTY LEASES

Title/ Description of Executory Contract or Unexpired Lease	Name and Address of Counterparty	Rejection Date

PLEASE TAKE FURTHER NOTICE that objections, if any, to this Notice must be filed and served so that such objection is filed with the Court and actually received by the following parties no later than ten (10) business days after the date of this Notice:

PLEASE TAKE FURTHER NOTICE that pursuant to the terms of the Procedures Order, if no objection is filed and served in accordance with the above procedures, the Debtors may submit a proposed order approving the rejection of the Contracts and/or Leases set forth on this Notice (the “Rejection Order”), substantially in the form attached hereto as Exhibit A, for entry by the Court under certification of counsel, and such rejection shall be deemed effective as of the Rejection Date.

PLEASE TAKE FURTHER NOTICE that if an objection to this Notice is timely filed and served, the Debtors shall seek a hearing on such objection and shall provide at least seven (7) days’ notice of such hearing to the objecting party and the Objection Notice Parties. If the Court upholds the Debtors’ determination to reject the applicable Contract or Lease, then the applicable Contract or Lease shall be deemed rejected (a) as of the Rejection Date or (b) as otherwise determined by the Court as set forth in any order overruling such objection.

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Procedures Order, if the Debtors have deposited monies with the Contract or Lease counterparty as a security deposit or otherwise, the Contract or Lease counterparty may not setoff or otherwise use such deposit without the prior authorization of the Court.

PLEASE TAKE FURTHER NOTICE that pursuant to the terms of the Procedures Order, you will receive notice of any order entered rejecting any Contract or Lease set forth in this Notice to which you are a counterparty no later than five (5) days after entry of such order.

PLEASE TAKE FURTHER NOTICE that pursuant to the terms of the Procedures Order, for any claim that you may assert against the Debtors as a result of the rejection of any Contract or Lease, you must submit a proof of claim for damages arising from such rejection, on or before the later of (a) the deadline for filing proofs of claim established by the Court in the Debtors' cases, or (b) thirty-five (35) days after the date of entry of the Rejection Order. If you do not timely file such proof of claim, you shall not be treated as a creditor with respect to such claims for voting on any chapter 11 plan in these cases and shall be forever barred from asserting a claim for rejection damages arising from the rejection of the above-referenced Contract or Lease and from participating in any distributions that may be made in connection with these chapter 11 cases unless otherwise ordered by the Court.

DATED: _____, 2019
Wilmington, Delaware

MORRIS JAMES LLP

/s/ Brya M. Keilson

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*Proposed Counsel to the Debtors and
Debtors in Possession*

**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)

(Joint Administration Requested)

**ORDER APPROVING THE REJECTION
OF UNEXPIRED LEASES AND EXECUTORY CONTRACTS**

Pursuant to and in accordance with the Order Establishing Procedures for the Rejection of Executory Contracts and Unexpired Leases [Docket No. ____] (the “Rejection Procedures Order”); and the Court having 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; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and it appearing that venue of these Cases and this matter is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Debtors having properly filed and served a “Notice of Rejection of Executory Contracts and Unexpired Leases” (the “Rejection Notice”) in accordance with the terms of the Rejection Procedures Order in respect of the rejection of the executory contracts (the “Contracts”) and unexpired leases (the “Leases”) set forth on Exhibit 1 hereto; and no timely objections having been filed to the rejection of the Contracts and Leases; and it appearing that due and adequate notice of the Rejection Procedures Order and the Rejection Notice has been given, and that no other or further notice need be given; and the Court having determined that the rejections provided for herein are an appropriate exercise of the Debtors’ business judgment; and after due deliberation, and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Leases and Contracts listed on Exhibit 1 hereto are hereby rejected effective as of the dates set forth for each such Lease or Contract listed on Exhibit 1 hereto (the “Rejection Date”).
2. With respect to the Leases listed on Exhibit 1 hereto, any personal property remaining at the leased premises as of the Rejection Date shall be deemed abandoned and the landlord shall be free to dispose of such abandoned property in its sole and absolute discretion without notice or liability to the Debtors or any third parties.
3. If any affected landlord or counterparty subject to this Order (the “Rejection Claimant”) asserts a claim or claims against the Debtors arising from the rejection of a Lease or Contract, such Rejection Claimant shall submit a proof of claim on or before the later of (i) the date that is thirty (30) days after entry of this Order and (ii) the general bar date established by this Court for filing proofs of claim against the Debtors. If a Rejection Claimant does not timely file such proof of claim, such claimant will be forever barred from asserting a claim for such rejection damages.
4. The Debtors are authorized to take any action necessary or appropriate to Implement the terms of this Order and the rejection without further order from this Court.
5. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Final Order.