

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

In re:

SUGARFINA INC., *et al.*,  
Debtors.<sup>1</sup>

Chapter 11

Case No. 19-11973 (MFW)  
(Jointly Administered)

**Re: D.I. 155**

**CERTIFICATE OF NO OBJECTION**

I, Brya M. Keilson, hereby certify as follows:

On September 26, 2019, the above-captioned debtors and debtors in possession (the “Debtors”) filed the *Debtors’ 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* (the “Motion”) [Docket No. 155]. The deadline to object to the Motion was October 10, 2019.

The undersigned further certifies that after reviewing the Court’s docket in this case, no formal answer, objection or other responsive pleading to the Motion appears thereon.

The Debtors respectfully request that the Court enter an order, attached hereto as Exhibit A, granting the Motion.

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<sup>1</sup> 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.

DATED: October 14, 2019

**MORRIS JAMES LLP**

/s/ Brya M. Keilson

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**Exhibit A**

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

In re:

SUGARFINA, INC., et al.,

Debtors.<sup>1</sup>

Chapter 11

Case No. 19-11973 (MFW)

(Jointly Administered)

**Re: D.I. 155 &**

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

Upon the application (the "Application") of the above-captioned Debtors (collectively, the "Debtors") for entry of an order (this "Order") pursuant to section 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rule 2014 and Local Rule 2014-1, approving the retention of BMC Group, Inc. ("BMC") as Administrative Agent in these chapter 11 cases, effective *nunc pro tunc* to the Petition Date, on the terms and conditions set forth in the agreement by and between the Debtors and BMC (the "Engagement Agreement"), all as more fully set forth in the Application; and upon the Feil Declaration; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that the venue of this proceeding and the Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Application is in the best interests of the Debtors' estates, their creditors and other parties in interest; and the Court having found that the

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<sup>1</sup> 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.

Debtors' notice of the Application and opportunity for a hearing on the Application was appropriate and no other notice need be provided; and the Court having reviewed the Application and having heard the statements in support of the relief requested therein at a hearing before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Application and at the Hearing establish just cause for the relief granted herein; 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 Application is GRANTED as set forth herein.
2. The Debtors are authorized to retain BMC Group, Inc. as their Administrative Agent in accordance with the terms and conditions set forth in the Application and the Engagement Agreement, effective *nunc pro tunc* to the Petition Date.
3. BMC shall apply to the Court for allowance of compensation and reimbursement of out-of-pocket expenses incurred in these cases under the Application after the Petition Date in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and further orders of this Court.
4. BMC may apply its retainer to all pre-petition invoices, which retainer shall be replenished to the original retainer amount, and thereafter, BMC may hold its retainer under the Engagement Agreement during the chapter 11 cases as security for the payment of fees and expenses incurred under the Engagement Agreement.
5. Any late charges provided for in the Engagement Agreement are inapplicable when payment of said late charges is prohibited by the fee application process.

6. The indemnification provisions of the Engagement Agreement are approved, subject to the following clarifications:

- a. Subject to the provisions of subparagraphs (c) and (d) below, the Debtors are authorized to indemnify, and shall indemnify, BMC in accordance with the Engagement Agreement and to the extent permitted by applicable law, for any claim arising from, related to, or in connection with BMC's performance of the services described in the Engagement Agreement;
- b. BMC shall not be entitled to indemnification, contribution or reimbursement for services other than services provided under the Engagement Agreement, unless such services and the indemnification, contribution or reimbursement therefore are approved by the Court;
- c. Notwithstanding anything to the contrary in the Engagement Agreement, the Debtors shall have no obligation to indemnify any person, or provide contribution or reimbursement to any person, for any claim or expense to the extent that it is either (i) judicially determined (the determination having become final and no longer subject to appeal) to have arisen from that person's gross negligence or willful misconduct; (ii) for a contractual dispute in which the Debtors allege the breach of BMC's contractual obligations unless the Court determines that indemnification, contribution, or reimbursement would be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii), but determined by this Court, after notice and a hearing, to be a claim or expense for which that person should not receive indemnity, contribution or reimbursement under the terms of the Engagement Agreement as modified by the Court's Order;
- d. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal) and (ii) the entry of an order closing these chapter 11 cases, BMC believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution or reimbursement obligations under the Engagement Agreement, including without limitation the advancement of defense costs, BMC must file an application before this Court, and the Debtors may not pay any such amounts to BMC before the entry of an order by this Court approving the payment. This subparagraph (d) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for payment by BMC for indemnification, contribution or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify BMC.

7. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Application.

8. Notwithstanding any term in the Engagement Agreement to the contrary, the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

9. Notwithstanding any provision in the Bankruptcy Rules to the contrary, this Order shall be immediately effective and enforceable upon its entry.

10. In the event of any inconsistency between the Engagement Agreement, the Application and the Order, the Order shall govern.