

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re
SUGARFINA, INC., *et al.*,
Debtors.¹

Chapter 11
Case No. 19-11973 (MFW)
(Jointly Administered)
Hearing Date: Nov. 5, 2019 at 10:30 a.m. (ET)
Objection Deadline: Oct. 29, 2019 at 4:00 p.m. (ET)

**APPLICATION OF THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS FOR ENTRY OF AN ORDER
AUTHORIZING RETENTION AND EMPLOYMENT OF BAYARD,
P.A. AS COUNSEL TO THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS, NUNC PRO TUNC TO SEPTEMBER 17, 2019**

The Official Committee of Unsecured Creditors (the “Committee”), appointed on September 17, 2019 [D.I. 97] in the above-captioned chapter 11 cases of the above-captioned debtors (collectively, the “Debtors”), hereby submits this application (the “Application”) pursuant to sections 328, 330, and 1103 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Rules 2014, 2016(a), and 5002 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2014-1 of the Local Rules of Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), for an order authorizing the retention and employment of Bayard, P.A. (“Bayard”) as counsel to the Committee *nunc pro tunc* to September 17, 2019. The Declaration of Erin R. Fay in support of this Application is attached hereto as Exhibit A (the “Fay Declaration”). In further support of this Application, the Committee respectfully represents as follows:

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.

Background

1. On September 6, 2019 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Court”). The Debtors’ chapter 11 cases are jointly administered under Case No. 19-11973 (MFW).

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

3. On September 17, 2019 (the “Formation Date”), the Office of the United States Trustee for Region 3 (the “U.S. Trustee”) selected a seven (7) member Committee pursuant to section 1102(a)(1) of the Bankruptcy Code [D.I. 97], including: (i) Agman Investments LLC; (ii) Fedex Corporate Services, Inc.; (iii) Everplus F&B Fund, LLC; (iv) Marich Confectionery Company; (v) Efrutti; (vi) Right Click, Inc.; and (vii) AMAC.

4. On the Formation Date, the Committee held a meeting and, subject to this Court’s approval, selected Bayard as its proposed counsel and Province, Inc. (“Province”) as its proposed financial advisor in these cases.

Jurisdiction and Venue

5. The Court has jurisdiction over this Application 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 is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. Pursuant to Local Rule 9013-1(f), the Committee consents to the entry of a final judgment or order with respect to this

Application if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties.

6. The statutory predicates for the relief sought herein are sections 328, 330, and 1103 of the Bankruptcy Code, Bankruptcy Rules 2014, 2016(a), and 5002, and Local Rule 2014-1. No trustee or examiner has been appointed in these cases.

Relief Requested

7. By this Application, and pursuant to sections 328, 330, and 1103 of the Bankruptcy Code, the Committee respectfully requests the entry of an order approving the employment and retention of Bayard as its counsel to perform the services described more thoroughly herein in connection with the Debtors' chapter 11 cases *nunc pro tunc* to September 17, 2019.

Basis for Relief

8. Section 328(a) of the Bankruptcy Code empowers a committee appointed under section 1102 of the Bankruptcy Code to employ attorneys under section 1103 of the Bankruptcy Code under any reasonable terms and conditions with the Court's approval. 11 U.S.C. § 328(a). Pursuant to section 1103(b) of the Bankruptcy Code, an attorney employed to represent a committee may not, while employed by such committee, represent any other entity having an adverse interest in connection with the cases. 11 U.S.C. § 1103(b). For the reasons that follow, the Committee respectfully submits that Bayard is appropriately eligible and capable to serve as its counsel in these cases.

A. Bayard's Eligibility to Serve as Counsel Under Section 1103

9. In connection with its proposed retention by the Committee in these cases, Bayard researched its computer client database to determine whether it has any relationships with any of

the entities listed on the “Conflicts Check List” attached to the Fay Declaration as Schedule A. Bayard’s conflict database includes the names of: (i) current and former clients and, where practical, the known affiliates of those clients; (ii) current and former adverse parties; and (iii) certain current and former related parties in matters upon which Bayard has been or is currently engaged.

10. Bayard maintains and systematically updates its conflict check system in the regular course of its business, and it is the regular practice of Bayard to make and maintain these records. It is the policy of Bayard that no new matter be accepted or opened within the firm without completing and submitting to those charged with maintaining the conflict check system the information necessary to check each such matter for conflicts, including the identity of the prospective client, the matter, and the related adverse parties. Accordingly, it is Bayard’s regular practice to update its database for every new matter undertaken by Bayard.

11. Moreover, through a firm-wide email, Bayard solicited information from its attorneys to determine whether any attorneys employed by Bayard are related to any of the Bankruptcy Judges in this District, the U.S. Trustee for Region 3, or any attorney known by Bayard to be employed in the Wilmington Office of the U.S. Trustee. Bayard also solicited information from its attorneys to determine if any attorneys employed by Bayard are investors of any of the Debtors or were, within two years of the Petition Date, a director, officer, or employee of any of the Debtors. No such connections were discovered.

12. To the best of the Committee’s knowledge, based upon the Fay Declaration, and except as otherwise set forth herein and in the Fay Declaration: (i) Bayard does not hold or represent any interest adverse to the Debtors, their chapter 11 estates, their creditors, or any other party in interest in connection with these cases, and (ii) neither Bayard nor any of its directors or

associates have had or presently have any connections with the Debtors or any other party listed on the Conflicts Check List attached to the Fay Declaration. Bayard is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code, and neither represents nor holds an interest adverse to the interests of the Committee, the Debtors, or the Debtors’ estates with respect to the matters on which Bayard is to be employed.² Finally, Bayard will not, while employed by the Committee, represent any other entity having an adverse interest in connection with these cases.

13. Bayard advised the Committee that Bayard and certain of its directors and associates may have in the past represented or opposed, may currently represent or oppose, and may in the future represent or oppose parties in interest in these cases in matters wholly unrelated to the Debtors. Bayard has not (except as disclosed in the Fay Declaration) and will not represent any such parties or any of their affiliates or subsidiaries in relation to the Committee, the Debtors, or these chapter 11 cases.

14. Bayard has further advised the Committee that it appears in many cases, proceedings, and transactions involving many different attorneys, counsel, accountants, financial consultants, and investment bankers, some of which may now or in the future represent parties in interest in these cases. Bayard has not and will not represent any such entities in relation to the Debtors’ cases, and Bayard does not have any relationship with any such entities that would be adverse to the Committee or its interests in the matters upon which Bayard is to be employed. For the avoidance of doubt, Bayard will not represent any entity other than the Committee in

² Section 1103(b) of the Bankruptcy Code provides that proposed counsel to an official committee of unsecured creditors may not represent any other entity having an adverse interest in connection with the cases. Bayard has made this disclosure with respect to its disinterestedness out of an abundance of caution and to the extent required by section 328(c) of the Bankruptcy Code.

connection with the Debtors' chapter 11 cases. Bayard may, however, represent a successor in interest to the Committee if one is formed or appointed.

15. To the extent that Bayard discovers any connections with any interested party or enters into any new relationships with any interested party, the Committee understands that Bayard will promptly supplement its disclosures to the Court.

16. The Committee therefore respectfully submits that Bayard satisfies the applicable standards to represent the Committee as counsel in the Debtors' chapter 11 cases.

B. Bayard's Qualifications

17. The Committee selected Bayard because of its attorneys' experience and knowledge and because of the absence of any conflict of interest. Bayard is particularly well suited for the type of representation that the Committee requires because of Bayard's substantial experience appearing before courts in this District and its substantial experience representing committees and other interested parties in complex bankruptcy cases. Bayard's recent experience representing creditors' committees in other large chapter 11 bankruptcy cases before this Court includes: Mishti Holdings, LLC; Insys Therapeutics, Inc.; Hospital Acquisition LLC; LBI Media, Inc.; Claire's Stores, Inc.; Mac Acquisition LLC; Bertucci's Holdings, Inc.; Marsh Supermarkets Holdings, LLC; American Apparel, LLC; and Pacific Sunwear of California, Inc.

18. The Committee has determined that Bayard has the resources and experience necessary to assist and deal effectively with many of the potential legal issues that may arise in the context of the Debtors' chapter 11 cases. Further, Bayard's appearance before this Court for the applications, motions, and other matters that may arise in these cases will be efficient and cost-effective for the Debtors' estates. The Committee therefore believes that Bayard's

employment as counsel is in the best interest of the Debtors, their estates, and their constituents and desires that Bayard represent it as counsel in connection with these cases.

C. Bayard's Scope of Employment as Counsel to the Committee

19. The Committee anticipates that Bayard will render legal services to the Committee as needed throughout the course of these cases. Accordingly, Bayard has agreed to provide certain legal services as counsel to the Committee in connection with these cases. The services that Bayard has and will render for the Committee include, without limitation:

- (a) providing legal and strategic advice to the Committee with respect to its rights, duties, and powers in these cases;
- (b) assisting and advising the Committee in its consultations and negotiations with the Debtors in connection with the administration of these cases;
- (c) assisting the Committee in its investigation of the acts, conduct, assets, liabilities, and financial condition of the Debtors;
- (d) assisting the Committee in analyzing the claims of the Debtors' creditors and the Debtors' capital structure and in negotiating with holders of claims, including analysis of possible objections to the priority, amount, subordination, or avoidance of claims and/or transfers of property in consideration of such claims;
- (e) advising and representing the Committee in connection with all matters arising in these cases;
- (f) appearing on behalf of the Committee before this Court and any other federal, state, or appellate court as may be necessary in connection with these chapter 11 cases;
- (g) appearing on behalf of the Committee at any meetings of creditors that may be held in connection with these cases;
- (h) preparing, on behalf of the Committee, any pleadings or other documents that may need to be filed in these cases, including, without limitation, motions, memoranda, complaints, objections, and responses or replies to any of the foregoing;
- (i) monitoring the case docket and responding, as needed, regarding matters directly or indirectly impacting the Committee or affecting the Committee's interests in these cases;

- (j) participating in calls and otherwise corresponding with the Committee;
- (k) handling inquiries and calls from creditors and counsel to interested parties regarding pending matters and the general status of these cases; and
- (l) providing such other services as may be required or deemed to be in the interests of the Committee in accordance with the Committee's powers and duties as set forth in the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, order of this Court, or other applicable source of law.

To the extent that Bayard is assigned by the Committee to perform additional services as requested by the Committee that may be necessary and proper in these proceedings and that are materially different from the above-described services, Bayard will file a supplemental declaration in accordance with Bankruptcy Rule 2014, disclosing both the nature of its expanded employment and the reasons supporting the additional duties and responsibilities.

D. Bayard's Professional Compensation

20. Section 328(a) of the Bankruptcy Code authorizes the employment of professional persons on any reasonable terms and conditions of employment, including on an hourly basis. 11 U.S.C. § 328(a). Subject to this Court's approval and in accordance with section 330(a) of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, the Committee requests that Bayard be compensated on an hourly basis for the work it performs, plus reimbursement of the actual and necessary expenses that Bayard incurs.

21. Bayard has advised the Committee that its ordinary hourly rates range from \$500 to \$1,050 per hour for directors, from \$315 to \$450 per hour for associates, and from \$240 to \$295 per hour for paraprofessionals. The primary attorneys and paralegal that will work on this representation and their respective hourly rates are included in the following chart.

<u>Professional</u>	<u>Current Rate</u>
Justin R. Alberto	\$525 per hour
Erin R. Fay	\$500 per hour
Daniel N. Brogan	\$450 per hour
Gregory J. Flasser	\$375 per hour
Sophie E. Macon	\$350 per hour
Erin Hendry (paralegal)	\$265 per hour

Other attorneys and paralegals will render services to the Committee as needed.

22. The hourly rates set forth in the ranges disclosed above are Bayard's standard hourly rates for work of this nature both inside and outside of the bankruptcy context.³ These rates are set at a level designed to fairly compensate Bayard for the work of its attorneys and paralegals, to cover fixed and routine overhead expenses, and are subject to periodic adjustment to reflect economic and other conditions. Bayard has advised the Committee, and the Committee understands, that the hourly rates set forth above are subject to periodic adjustments. Bayard will advise the Committee of any rate increases once they are established and when any other rate change becomes effective during the course of Bayard's engagement.

23. In addition to the hourly billing rates set forth above, Bayard customarily charges its clients for all costs and expenses incurred, including telephone and telecopier charges, mail and express mail charges, hand delivery charges, document processing, photocopying and print

³ Bayard has national practices in commercial bankruptcy, corporate litigation, intellectual property litigation, entity law, and commercial transactions. The hourly rates reflected in the ranges disclosed in this Application are Bayard's standard hourly rates for engagements in those practice areas. In addition, Bayard has a full service regional-based practice in areas including, among others, insurance law and personal services such as familial and estate matters. While Bayard generally charges its standard hourly rates in its regional practice areas, occasionally certain Bayard attorneys will agree to reduced rates for those representations. Bayard also occasionally accepts representations with alternative fee structures, such as contingent, mixed-contingent, flat fee, and blended-hourly.

copy charges, travel expenses, expenses for “working meals,” computerized research, and transcription costs. Bayard has advised the Committee that it will charge such costs and expenses in accordance, and only to the extent consistent, with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any applicable U.S. Trustee guidelines.

24. Bayard did not receive any retainer from the Debtors, the Committee, or any other entity in these cases. Other than as set forth herein, there is no proposed arrangement to compensate Bayard. Bayard has not shared or agreed to share (a) any compensation it has received or may receive with any other party or person, other than with the partners and associates of Bayard, or (b) any compensation another person or party has received or may receive. Bayard has advised the Committee that it intends to apply to the Court for compensation and reimbursement of expenses in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, any order entered in these cases governing the compensation of professionals, and any applicable U.S. Trustee guidelines.

25. The Committee believes the compensation arrangements with Bayard are consistent with and typical of arrangements entered by Bayard and other law firms with respect to rendering similar services for clients such as the Committee. The Committee, therefore, respectfully requests entry of an order, substantially in the form submitted herewith, authorizing the retention and employment of Bayard as counsel to the Committee.

E. *Nunc Pro Tunc* Relief

26. The Committee requests that Bayard’s retention be made effective as of September 17, 2019 to allow Bayard to be compensated for the work it performed for the Committee as of and following the date it was retained and prior to the Court’s consideration and approval of this Application. Due to the size and complex nature of these chapter 11 cases, as

well as the significant relief sought by the Debtors during the early stages of these chapter 11 cases, there was an immediate need for Bayard to perform services for the Committee upon its retention. The Committee submits that under the circumstances, and to avoid the irreparable harm to the Debtors' estates that may occur if Bayard is not immediately retained, retroactive approval to September 17, 2019—the date of Bayard's retention—is warranted. *See, e.g., F/S Airlease II, Inc. v. Simon (In re F/S Airlease II, Inc.)*, 844 F.2d 99, 105 (3d Cir. 1988), *cert. denied*, 488 U.S. 852 (1988); *Indian River Homes, Inc. v. Sussex Tr. Co.*, 108 B.R. 46, 51 (D. Del. 1989).

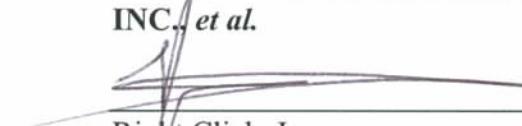
Notice

27. Notice of this Application has been given to the following parties: (i) the Debtors; (ii) the Debtors' counsel; (iii) the U.S. Trustee; (iv) the Debtors' senior secured creditors; and (v) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. The Committee submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Committee respectfully requests that the Court enter an order substantially in the form submitted herewith and grant such other and further relief as is just and proper.

Dated: October 15, 2019

**THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF SUGARFINA,
INC., et al.**


Right Click, Inc.
By/ Baiju Mehta

Solely in his capacity as Chairperson of the Official Committee of Unsecured Creditors of Sugarfina, Inc. and not in any other capacity.