

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

In re:

SUGARFINA, INC., *et al.*,

Debtors.

Chapter 11

Case No. 19-11973 (MFW)

Jointly Administered

**Objection Deadline: 10/21/19 by 4:00 p.m. (EST)**

**Hearing Date: 10/24/19 at 10:30 a.m. (EST)**

**Related to Docket Nos. 257 and 268**

**OBJECTION OF AMERICANA AT BRAND, LLC TO DEBTORS' AMENDED  
NOTICE OF ASSUMPTION AND CURE COST WITH RESPECT TO EXECUTORY  
CONTRACTS OR UNEXPIRED LEASES POTENTIALLY TO BE ASSUMED  
AND ASSIGNED IN CONNECTION WITH SALE OF DEBTORS' ASSETS**

COMES NOW Americana at Brand, LLC (the “**Landlord**”) and hereby files this objection (the “**Objection**”) to the Debtors’ *Amended Notice of Assumption and Cure Cost with Respect to Executory Contracts or Unexpired Leases Potentially to be Assumed and Assigned in Connection with Sale of Debtors’ Assets* (the “**Cure Notice**”) [Docket No. 257]. In support of this Objection, the Landlord respectfully states as follows:

**BACKGROUND**

1. On September 6, 2019 (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 title 11 of the United States Code (the “**Bankruptcy Code**”). Since the Petition Date, the Debtors have remained in possession of their assets and have continued to operate and manage their businesses as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code.

2. On October 14, 2019, the Debtors filed the Cure Notice, which proposes cure amounts to be paid upon the assumption and assignment of executory contracts and unexpired leases.

3. On October 15, 2019, upon the Debtors' motion, this Court entered an order authorizing certain bidding procedures to be used in connection with the auction sale(s) of certain assets of the Debtors (the "**Bidding Procedures Order**") [Docket No. 268]. The Bidding Procedures Order also established certain procedures for the assumption and assignment of executory contracts and unexpired leases.

4. Prior to the Petition Date, the Landlord entered into a lease agreement (the "**Lease**") with one of the Debtors for retail space within a shopping center commonly known as the "**Americana at Brand**," which is located in the City of Glendale, County of Los Angeles, California.

5. The Americana at Brand is a "shopping center" as that term is used in 11 U.S.C. § 365(b)(3). Consequently, the Landlord is entitled to the protections that 11 U.S.C. § 365(b)(3) grants to landlords of shopping centers.

6. The Debtors scheduled the Lease in the Cure Notice as an unexpired lease that they may assume and assign and proposed a cure with respect to the Lease in the amount of \$16,666.08.

#### **OBJECTION TO PROPOSED CURE AMOUNT**

7. The Landlord hereby objects to the Debtors' proposed cure amount as scheduled in the Cure Notice. The Landlord further states that the applicable cure amount as of October 17, 2019, totals at least \$24,052.70. A summary of the Landlord's cure claim is attached hereto as **Exhibit A**.

8. Additional amounts may also be due with regard to the pre-petition and post-petition periods, such as year-end adjustments to various items, including, but not limited to, real estate taxes and common area maintenance charges, as well as annual percentage rental

obligations. The final form of Court-approved sale documents must incorporate language to address such obligations due to the Landlord and how they will be managed after the closing of the proposed transaction.

9. Bankruptcy Code § 365(b) requires that a debtor cure all defaults in conjunction with a lease assumption. As a result, the Debtors and any successful bidder(s) must acknowledge, and any order approving cure amounts and assumption and assignment must provide, that the successful bidder of the Lease (a) shall be liable for any and all unbilled charges whether those charges cover pre-petition or pre-assumption periods of time and (b) shall pay any and all year-end adjustments when due pursuant to the terms of the Lease.

#### **RESERVATION OF RIGHTS**

11. The Landlord hereby reserves the right to amend this Objection as appropriate, and to supplement this Objection generally.

12. The Landlord reserves the right to further object to the Debtors' proposed assumption and assignment of the Lease.

13. The Landlord reserves the right to further object to the Debtors' proposed cure amount and to increase or further reconcile the cure claim set forth herein with additional charges, obligations and costs (including attorneys' fees and expenses), which may arise under the Lease prior to the effective date of any assumption and assignment of the Lease.

14. In addition, the Landlord reserves the right to object to any proposed order approving the proposed sale(s) and/or the proposed assumption and assignment of the Lease.

15. The Landlord hereby joins in the objections filed by other landlords to the extent that the other landlords' objections supplement and are not otherwise inconsistent with this Objection.

WHEREFORE, the Landlord respectfully requests that this Court enter an Order sustaining the Objection and granting relief consistent with the Objection, and granting the Landlord such other and further relief as is just and proper.

Date: October 21, 2019

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