

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

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**In re:**

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

**Debtors.**

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**Chapter 11**

**Case No. 19-11973 (MFW)**

**(Jointly Administered)**

**MATTEL, INC.’S OBJECTION TO PROPOSED CURE AMOUNT AND  
ADEQUATE ASSURANCE OF FUTURE PERFORMANCE**

Mattel, Inc. (“Mattel”), by its undersigned counsel, hereby objects (the “Objection”) to (1) the proposed cure amount as set forth in the *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* dated October 10, 2019 [Dkt. No. 239] (the “Cure Notice”)<sup>2</sup> and (2) adequate assurance of future performance from the Stalking Horse Bidder. In support of its Objection, Mattel states as follows:

**BACKGROUND**

1. On September 6, 2019 (the “Petition Date”), the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) filed voluntary chapter 11 petitions.

2. Mattel is a party to an unexpired sublease of non-residential real property with Sugarfina, Inc. (“Sugarfina”) dated January 19, 2018 (the “Sublease”) for space located at 1700 E. Walnut Ave., Suite 500, El Segundo, California 90345. Sugarfina currently occupies the Premises which are utilized as Sugarfina’s principal corporate office space.

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<sup>1</sup> The Debtors in these case are: Sugarfina, Inc.; Sugarfina International, LLC; and Sugarfina (Canada), Ltd.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Cure Notice.

3. The monthly rental rate under the Sublease is \$71,279.00, which includes base rent and parking. Sugarfina is additionally obligated under the Sublease to pay its proportionate share of certain operating costs, including, but not limited to, real estate taxes, operating expenses, insurance and utilities.

4. As indicated on the Cure Notice, the Sublease is subject to possible assumption and assignment to the Successful Bidder. The Debtors list the proposed cure amount as \$142,558.00. (*See* Cure Notice, at 10.) This amount equals exactly two months of base rent and parking.

### **OBJECTION**

#### **Cure Objection**

5. The proposed cure amount is incorrect. As of the date of this Objection, Matte is owed three months of rent, plus additional amounts. The correct cure amount is \$219,070.85 (including the additional amounts noted in the subsequent paragraphs below, the “Correct Cure Amount”) which breaks down as follows:<sup>3</sup>

<b>Unpaid Expense</b>	<b>Amount</b>
August rent	\$71,279.00
September rent	\$71,279.00
October rent	\$71,279.00
Operating pass-throughs Nov ‘18 – Aug ‘19	\$5,233.85
<b>TOTAL</b>	<b>\$219,070.85</b>

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<sup>3</sup> The Debtors have indicated to Mattel that September stub rent and the full October rent have been paid or shortly will be paid. As of the date of this Objection, Mattel has not been able to confirm receipt of those amounts. Upon confirmation that those amounts have been paid and received by Mattel, the Correct Cure Amount will be reduced accordingly.

6. In addition, the Proposed Cure Amount does not take into consideration the passage of time between the filing of the Cure Notice and the effective date of assumption of the Sublease by the Debtors. Accordingly, any order that is entered establishing cure amounts with respect to the Sublease must require that the Debtors (i) comply with all obligations under the Sublease pursuant to 11 U.S.C. § 365(d)(3) pending the actual assumption of the Sublease, and (ii) cure any additional defaults that may occur under the Sublease between the date of this Objection and the effective date of assumption by the Debtors. *See* 11 U.S.C. § 365(b)(1).

7. Next, the Proposed Cure Amount does not include amounts that may become due under the Sublease after the Sublease is assumed but which may relate to the pre-assumption period (i.e., real estate taxes and common area maintenance reconciliations not otherwise listed in the breakdown above because those amounts might not have come due yet). Any order establishing a cure amount in connection with the assumption of the Sublease must provide for the payment of all charges due and/or accrued in the ordinary course under the terms of the Sublease.

*Adequate Assurance Objection*

8. The Cure Notice provides that the Debtors will provide to Contract Counterparties and their counsel adequate assurance information (i) by no later than October 11 as to the Stalking Horse Bidder and (ii) by no later than October 18 as to other Qualified Bidders. (*See* Cure Notice, ¶ 4.) Mattel understands that in addition to the Stalking Horse Bidder, other Qualified Bidders exist. Neither Mattel nor its counsel has been provided with any information to assess adequate assurance of future performance as to either the Stalking Horse Bidder or other Qualified Bidders. Accordingly, this Court cannot approve assumption and assignment of the Sublease until Mattel is afforded a meaningful opportunity to evaluate adequate assurance of future performance and to object, if necessary.

WHEREFORE, Mattel respectfully requests that this Court (i) condition any assumption of the Sublease upon prompt payment of the Correct Cure Amount upon assumption, (ii) deny assumption of the Sublease until adequate assurance information regarding the bidders is provided to Mattel and Mattel is afforded a meaningful opportunity to evaluate adequate assurance and to object, if Mattel deems it necessary, and (iii) grant such other and further relief to Mattel as this Court deems fair and equitable.

Dated: October 21, 2019

Respectfully submitted,

MATTEL, INC.

By: /s/ Jason M. Torf

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