

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re : Chapter 11
:
SUGARFINA INC., et al., : Case No. 19-11973 (MFW)
:
Debtors.¹ : (Jointly Administered)
:
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**OBJECTION OF RCPI LANDMARK PROPERTIES, L.L.C.
TO DEBTORS’ PROPOSED CURE AMOUNT**

RCPI Landmark Properties, L.L.C. (“**Landlord**”), by its attorneys, Greenberg Traurig, LLP, submits this objection to the cure amount (the “**Cure Amount**”) set forth in 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” filed October 14, 2019 (D.I. 257; the “**Cure Schedule**”). In support of its objection, Landlord states as follows:

Background

1. Pursuant to a lease dated May 16, 2017 (as thereafter may have been modified and/or amended, the “**Lease**”), by and between Landlord, as landlord, and Sugarfina, Inc. (“**Tenant**”), as tenant, Tenant leases certain non-residential real property located on a portion of the concourse level of 30 Rockefeller Plaza, New York, New York.

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).

2. On September 6, 2019, Tenant and various affiliates (collectively, the “**Debtors**”) filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware.

3. On October 14, 2019, the Debtors filed the Cure Schedule which sets forth the purported amounts that the Debtors assert are owed to cure any defaults existing under the contracts to which the Debtors are parties.

Objection

4. Pursuant to the Cure Schedule, the Debtors assert that the Cure Amount with respect to the Lease is \$16,728.72. However, through and including October 15, 2019, Tenant owes rent under the Lease in the amount of \$21,477.96 as shown on the schedule annexed hereto as Exhibit A.

5. Moreover, additional amounts, not yet known, may also be due, such as year-end adjustments to various items including, but not limited to, real estate taxes and operating expenses. The year-end adjustments, or true-ups, of various categories of charges do not take place until after the close of Landlord’s fiscal year. Accordingly, adjustments that may currently be accruing, and may still be unknown, should be part of the Cure Amount and a part of the obligation of the Debtors to provide adequate assurance of future performance.

6. In addition to the payment of Fixed Rent, the Lease requires the payment of Percentage Rent which, as more particularly set forth in the Lease, obligates Tenant to pay a percentage of gross sales in excess of certain breakpoints. Since the calculation of gross sales is cumulative for each Lease year, in connection with any assumption or assignment and assumption of the Lease, (i) gross sales for the entire Lease year must be utilized to calculate Percentage Rent even though certain of the gross sales will have occurred pre-closing, (ii) the reorganized Debtors, purchaser, new owner, or ultimate assignee of the Lease must be liable for

all percentage rent (including amounts based upon pre-closing sales); and (iii) all unpaid Percentage Rent payments should be part of the Cure Amount.

7. The Cure Amount should also include the reimbursement of the Landlord's actual pecuniary losses including, but not limited to, attorneys' fees expended with regard to the Debtors' bankruptcy proceedings.

8. Landlord reserves its rights to supplement or amend the Cure Amount asserted in this objection at any time and to assert administrative claims for amounts due. Landlord also reserves the right to oppose consideration of any potential purchaser on the ground of lack of adequate assurance of future performance. Landlord makes no representations with respect to the condition of the space and/or whether or not Tenant has fulfilled its obligations under the Lease, such as maintaining the space or the fixtures and equipment that may be located therein.

9. Landlord hereby joins the objections filed by the Debtors' other landlords to the extent that such objections are not inconsistent with the provisions hereof.

Dated: October 21, 2019

GREENBERG TRAURIG, LLP

/s/ Dennis A. Meloro

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