

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

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In re:	:	Chapter 11
	:	
SUGARFINA INC., <i>et al.</i>	:	Case No. 19-11973 (MFW)
	:	
Debtors. <sup>1</sup>	:	Jointly Administered
	:	
	x	Re: Docket Nos. 62, 216, and 256

**RESPONSE OF CANDY CUBE HOLDINGS, LLC REGARDING:**

**ORDER (A) AUTHORIZING AND APPROVING THE SALE OF SUBSTANTIALLY  
ALL THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS,  
INTERESTS, AND ENCUMBRANCES; (B) AUTHORIZING AND APPROVING THE  
ASSUMPTION AND ASSIGNMENT OF CERTAIN CONTRACTS AND LEASES; AND  
(C) GRANTING RELATED RELIEF**

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On September 10, 2019, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed their *Motion for Entry of an Order: (I)(A) Approving Bidding Procedures and Protections in Connection With a Sale of Substantially All of Debtors’ Assets Free and Clear of Liens, Claims, Encumbrances, and Interests; (B) Scheduling an Auction and Sale Hearing; (C) Approving the Form and Manner of Notice Thereof; (D) Approving Procedures for the Assumption and Assignment of Contracts and Leases; and (E) Granting Related Relief and (II)(A) Authorizing and Approving the Sale of Substantially All the Debtors’ Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances; (B) Authorizing and Approving the Assumption and Assignment of Certain Contracts and Leases; and (C) Granting Related Relief* (the “Sale Motion”) [Docket No. 62].

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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.

The Sale Motion sought approval of, among other things, bidding procedures and stalking horse protections related to the asset purchase agreement that the Debtors entered into with Candy Cube Holdings, LLC (“Candy Cube”).

On October 7, 2019, the Bankruptcy Court held a hearing (the “Bidding Procedures Hearing”) on the Debtors’ request for an order approving the bidding procedures components of the Sale Motion (a “Bidding Procedures Order”). At the Bidding Procedures Hearing, Candy Cube explained to the Bankruptcy Court all of the different ways in which Candy Cube’s efforts before and during the Debtors’ bankruptcy benefited the Debtors and provided significant and tangible value for the Debtors’ constituents, and the Bankruptcy Court agreed to “reserve any rights of Candy Cube Holdings to assert a substantial contribution claim or whatever claim that it may assert to recover something.” Bidding Procedures Hearing Transcript, p. 59, lines 23-25; Bidding Procedures Order [Docket No. 268], ¶ 14.

The Bankruptcy Code supports Candy Cube recovering on account of its “substantial contribution.” In particular, section 503(b)(3)(D) of the Bankruptcy Code provides, in relevant part: “(b) After notice and a hearing, there shall be allowed administrative expenses..., including—(3) the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (4) of this subsection, incurred by—(D) a creditor...in making a substantial contribution in a case under chapter 9 or 11 of this title” and section 503(b)(4) of the Bankruptcy Code provides, in relevant part: “(b) After notice and a hearing, there shall be allowed administrative expenses..., including— (4) reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under subparagraph ... (D)... of paragraph (3) of this subsection, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case

under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant”.

Three of the many examples of Candy Cube’s substantial contribution to the Debtors’ chapter 11 cases are the following:

First, Candy Cube’s involvement before the Debtors’ bankruptcy provided a substantial contribution. While the Debtors were running their prepetition marketing process to allow them to file bankruptcy with a committed stalking horse, which would facilitate their restructuring and allow them to send a positive message to their constituents. On August 14, 2019, the Debtors and Candy Cube reached agreement on a term sheet that documented a bid for substantially all of the Debtors’ assets. *See* Declaration of Adam Meislik in Support of Debtor in Possession Financing Motion [Docket No. 179, ¶¶ 27, 29]. But Goldman Sachs Specialty Lending Group, L.P. (“Goldman Sachs”), the Debtors’ prepetition second lien lenders, did not approve. *See id.* at ¶ 30. At the time, the Debtors were running out of cash and, without immediate access to capital to fund operations, Sugarfina, Inc. and its subsidiaries would be forced to liquidate. Under the circumstances, the only source of financing was from the Debtors’ first lien lenders, SFCC Loan Investors, LLC (“SFCC”). But the Debtors needed consent from Goldman Sachs to enable SFCC to provide an additional \$600,000 on a first lien basis (the amount that has since been rolled up into the Debtors’ debtor in possession facility) so the Debtors could fund payroll and pay suppliers. To satisfy concerns from SFCC and Goldman Sachs to preserve the Debtors’ value and maximize recoveries for the Debtors’ constituents, Candy Cube agreed to significant accommodations and changes to the structure of the deal to which Candy Cube had agreed with the Debtors on August 14. *See generally id.* at ¶¶ 30, 31. Ultimately, Candy Cube agreed to purchase substantially all of the Debtors’ assets and provide a portion of the necessary financing

under the debtor in possession facility to allow the Debtors to get the support and consent from SFCC and Goldman Sachs, which avoided an immediate liquidation of the Debtors.<sup>2</sup> *See id.* This enabled the Debtors to have a smooth landing into chapter 11 rather than a crash landing into chapter 7.

Second, Candy Cube's involvement in the Debtors' chapter 11 cases has convinced Bristol Investment Fund, Ltd. (the entity affiliated with the current stalking horse, Sugarfina Acquisition Corp.) (collectively, "Bristol") to change its original position (of purchasing the Debtors' assets in a fire sale at liquidation value) to its current position (with an executed asset purchase agreement that seeks to purchase the Debtors' assets at \$14 million). As set forth in the Debtors' reply in support of their debtor in possession financing and the declaration in support thereof, before Candy Cube was involved and committed to its asset purchase agreement, Bristol would not commit to purchase the Debtors' assets for more than \$7 million. *See* Debtors' Reply in Support of Debtors' Debtor in Possession Financing Motion [Docket No. 177, ¶ 3] and Declaration of Adam Meislik in Support Thereof [Docket No. 179, ¶ 25] (stating that Scott Kaufman, Bristol's financial advisor, asked the Debtors: "why would I pay more than \$7.0 million [for this Company] if I don't have to?"). With Candy Cube's involvement, Bristol had to and did commit to pay much more, **doubling** its "bid" from \$7 million to \$14 million.

Third, Candy Cube has remained involved with the Debtors and submitted a "Qualified Bid" to participate in the Debtors' auction. Candy Cube's bid includes cash consideration of \$14,625,000. This bid ensures an auction for the Debtors, provides leverage to the Debtors to keep Bristol "honest," and provides the Debtors with an opportunity to further enhance their

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<sup>2</sup> As part of all of this, Candy Cube and its advisors spent a significant amount of time documenting the Debtors' agreement to sell their assets. The bidding procedures order and exhibits, the asset purchase agreement signed by Bristol (as defined herein) and many of the other deal documents, and the proposed sale order were mostly drafted by Candy Cube's advisors.

restructuring if the auction results in a “Successful Bid” with better economic and non-economic terms than the asset purchase agreement entered into with Bristol. In fact, Candy Cube submitting a Qualified Bid may have already added substantial value, as it provided the Debtors with leverage to negotiate better terms with Bristol.

In these ways and others, Candy Cube’s efforts more than fostered and enhanced the progress of the Debtors’ reorganization. Candy Cube’s efforts have prevented the Debtors from immediately liquidating and created millions of dollars of tangible value for the Debtors and their constituents. *See Lebron v. Mechem Fin. Inc.*, 27 F.3d 937, 942 (3d Cir. 1994) (*quoting Consol. Bancshares, Inc.*, 785 F.2d 1249, 1253 (*quoting In re Richton Int’l Corp.*, 15 B.R. 854, 855 (Bankr. S.D.N.Y. 1981) (other citations omitted).

Candy Cube’s substantial contribution claim will be in an amount of up to \$700,000 for (a) the actual, necessary expenses incurred by Candy Cube and its affiliates for its professionals and consultants and (b) the reasonable compensation for professional services rendered by attorneys and accountants for Candy Cube and its affiliates. The substantial contribution claim is comprised of the following:

1. Expenses incurred directly by Candy Cube and its affiliates;
2. Expenses incurred by Candy Cube and its affiliates for consultants assisting with due diligence, including, without limitation, Hilco Real Estate, LLC and Vici Capital Partners, LLC;
3. McDonald Hopkins LLC, co-counsel;
4. Young Conaway Stargatt & Taylor LLP, co-counsel and Delaware counsel; and
5. Moss Adams LLP, accountants assisting with accounting and financial due diligence.

## CONCLUSION

Candy Cube has provided a substantial contribution to the Debtors' chapter 11 cases, and the allowance and payment requested herein will ensure that it is appropriately compensated for that contribution. For the foregoing reasons, any sale order entered in the Debtors chapter 11 cases should provide for the allowance and payment to Candy Cube of \$700,000 on account of its substantial contribution claim from the proceeds of the sale.<sup>3</sup>

Dated: October 21, 2019  
Wilmington, Delaware

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<sup>3</sup> Candy Cube reserves all rights with respect to its substantial contribution claim or whatever claim that it may assert to recover something, including, without limitation, to supplement this response.