

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

In re:

SUGARFINA INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 19-11973 (MFW)

(Jointly Administered)

Hearing Date: Nov. 15, 2019 @ 10:30 a.m. (ET)

Obj. Deadline: Nov. 8, 2019 @ 4:00 p.m. (ET)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER FIXING CURE COSTS
AND AUTHORIZING THE ASSUMPTION AND ASSIGNMENT, REJECTION OR
RETENTION OF EXECUTORY CONTRACTS NOT PREVIOUSLY INCLUDED**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), by and through their undersigned counsel, hereby move (“Motion”) for entry of an order (“Omitted Contract Order”), under sections 105, 501, and 502 of title 11 of the United States Code (“Bankruptcy Code”) and Rules 2002, 3003(c)(3), and 9007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (i) fixing cure costs and (ii) authorizing the assumption and assignment, rejection or retention of executory contracts not previously included. In support of the Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider the Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of the Chapter 11 Cases (as defined below) and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

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.

2. The statutory predicates for the relief requested herein are (a) sections 105, 363, and 365 of the Bankruptcy Code, (b) Rules 2002(a)(2), 6006, and 9014 of the Bankruptcy Rules, and (c) Rules 2002-1 of the Local Rules.

3. Pursuant to Rule 9013-1(f) of the Local Rules for the United States Bankruptcy Court for the District of Delaware (“Local Rules”), the Debtors consent to the entry of a final judgment or order with respect to the Motion if it is determined that this Court would lack Article III jurisdiction to enter such final order or judgment absent the consent of the parties.

BACKGROUND

4. On September 6, 2019 (the “Petition Date”), the Debtors each filed their voluntary petition (the “Chapter 11 Cases”) under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Court”). The Debtors continue to operate their business and manage their properties as debtors in possession as authorized by sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner in this chapter 11 case.

5. Further information regarding the Debtors’ business operations and capital structure is set forth in the *Declaration of Lance Miller in Support of First Day Motions* (the “First Day Declaration”).

6. On September 10, 2019, the Debtors filed their *Debtors’ 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 (“Bid Procedures Motion”) (D.I. 62). On October 15, 2019, the Court entered an order approving the Bid Procedures Motion (the “Bid Procedures Order”) (D.I. 268). Pursuant to the Bid Procedures Order, the Debtors filed 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* (the “Cure Notice”) (D.I. 239) and the *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 “Amended Cure Notice”) (D.I. 257). On October 28, 2019, the Court entered the *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 Executory Contracts and Unexpired Leases, and (C) Granting Related Relief* (the “Sale Order”) (D.I. 318), which approved the sale of substantially all of the Debtors' assets to Sugarfina Acquisition Corp (the “Proposed Assignee”). Pursuant to the Sale Order, the Debtors now seek authority to fix the cure costs (“Cure Cost”) and authorize the assumption and assignment, rejection or retention of executory contracts not previously included on any cure notice or assumption and assignment, rejection or retention schedule, which are reflected in Exhibit B attached hereto (the “Supplemental Cure Notice”).

RELIEF REQUESTED

7. By the Motion, the Debtors seek entry of an order (a) fixing the Cure Costs and (b) authorizing the assumption and assignment, rejection or retention of contracts not previously included on any cure notice or assumption and assignment, rejection or retention schedule.

RELIEF REQUESTED

Procedures for the Assumption and Assignment, Rejection and Retention of Executory Contracts and Unexpired Leases Included on the Supplemental Cure Notice.

8. Pursuant to the Sale Order, and specifically paragraph 51 of the Sale Order, the Debtors are seeking to fix the cure amounts and authorize assumption and assignment, rejection or retention of certain contracts not previously included in any cure notice or assumption and assignment, rejection or retention schedule.

9. The Supplemental Cure Notice is a schedule setting forth certain executory contracts and the relevant contract counterparty ("Contract Counterparty"), along with the proposed treatment with regard to assumption and assignment, rejection or retention, and, any proposed cure amount, where applicable.

10. The Debtors request the following procedures be adopted:

a. Any objection to any Cure Cost set forth on the Supplemental Cure Notice or to the assumption and assignment to the Proposed Assignee by any Contract Counterparty, including with respect to adequate assurance of future performance of the Proposed Assignee (collectively, a "Contract Objection"), must: (a) be in writing; (b) state the basis for such objection with specificity; (c) if it contests any Cure Cost set forth in the Supplemental Cure Notice, state with specificity what amounts, costs, or expenses the Contract Counterparty believes must be paid or actions or obligations must be performed or satisfied pursuant to the Bankruptcy Code to effectuate the assumption by the applicable Debtor and the assignment to the Proposed Assignee (in all cases with appropriate documentation in support thereof); (d) comply with the Bankruptcy Rules and the Local Rules; (e) be filed with the Clerk of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, by 4:00 p.m.

(ET) on November 8, 2019 (the “Contract Objection Deadline”); and, (f) be served upon: (i) the Debtors, 1700 East Walnut Avenue, 5th Floor, El Segundo, California 90245, Attn: Lance Miller, lance.miller@sugarfina.com; (ii) counsel to the Debtors, Shulman & Bastian LLP, 100 Spectrum Center Drive, Suite 600, Irvine, California 92618, Attn: Alan J. Friedman, afriedman@shbllp.com and Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington Delaware 19806, Attn: Brya M. Keilson, Esquire, bkeilson@morrisjames.com; (iii) counsel to the Proposed Assignee, Olshan Frome Wolosky LLP, 1325 Avenue of the Americas, New York, NY 10019 Attn: Adam Friedman, AFriedman@olshanlaw.com; and Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington DE 19801 Attn: Kerri Mumford, mumford@lrclaw.com; (iv) the Office of the United States Trustee, United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: U.S. Trustee; (v) counsel to the Committee, Bayard, P.A., 600 North King Street, Suite 400, Wilmington, DE 19801, Attn: Erin R. Fay, efay@bayardlaw.com; (vi) counsel to the Debtors’ first lien lender, SFCC Loan Investors, LLC, Loeb & Loeb LLP, 345 Park Avenue, New York, NY 10154, Attn: Vadim J. Rubinstein, vrubinstein@loeb.com; and (vii) counsel to the Debtors’ second lien lender, Goldman Sachs Specialty Lending Group L.P., King & Spalding LLP, 1180 Peachtree Street, N.E., Atlanta, Georgia 30309, Attn: W. Austin Jowers, ajowers@kslaw.com.

b. If no Contract Objection for a contract listed on the Supplemental Cure Notice is timely asserted by the Contract Counterparty and received in accordance with the procedures set forth herein, then: (a) the Contract Counterparty will be deemed to have consented to the assumption and assignment, rejection or retention of the relevant contract; (b) the Contract Counterparty will be forever barred and estopped from asserting any objection to the propriety or effectiveness of the assumption and assignment of the relevant contract against the Debtors, the

Proposed Assignee, or the property of any of them; (c) the Cure Cost set forth on the Supplemental Cure Notice for such contract shall be controlling and the Contract Counterparty will be deemed to have consented thereto, notwithstanding anything to the contrary in the applicable contract or otherwise; and (d) the Contract Counterparty will be forever barred and estopped from objecting to the Cure Cost or asserting any claims, other than the Cure Costs, against the Debtors, the Proposed Assignee, or the property of any of them.

11. The Debtors shall serve the Contract Counterparties with the adequate assurance information provided by the Proposed Assignee at the same time the Debtors serve this Motion on the Contract Counterparties.

NOTICE

12. The Debtors will provide notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the official committee of unsecured creditors, Bayard P.A., 600 N. King Street, Suite 400, Wilmington, DE 19801, Attn: Erin Fay and Justin Alberto, efay@bayardlaw.com and jalberto@bayardlaw.com; (c) counsel to the Debtors' first lien lender, SFCC Loan Investors, LLC, Loeb & Loeb LLP, 345 Park Avenue, New York, NY 10154, Attn: Vadim J. Rubinstein, vrubinstein@loeb.com; (d) counsel to the Debtors' second lien lender, Goldman Sachs Specialty Lending Group L.P., King & Spalding LLP, 1180 Peachtree Street, Northeast, Suite 1600, Atlanta, Georgia 30309, Attn: W. Austin Jowers, ajowers@kslaw.com; (e) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (f) all Contract Counterparties. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

NO PRIOR REQUEST

13. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that this Court enter an order, substantially in the form attached hereto as Exhibit A, (a) fixing the Cure Costs and (b) authorizing the assumption and assignment, rejection or retention of contracts not previously included on any cure notice or assumption and assignment, rejection or retention schedule, and (c) granting such other and further relief as this Court deems appropriate.

DATED: October 31, 2019

MORRIS JAMES LLP

/s/ Brya M. Keilson

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