

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

<p>-----X</p> <p>In re</p> <p>SUGARFINA, INC., et al.,</p> <p style="text-align: center;">Debtors.¹</p> <p>-----X</p>	<p>X</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>X</p>	<p>Chapter 11</p> <p>Case No. 19-11973 (MFW)</p> <p>(Jointly Administered)</p> <p>Hrg. Date: May 12, 2020 at 2:00 p.m. (ET)</p> <p>Obj. Due: May 1, 2020 at 4:00 p.m. (ET)</p> <p>Related to D.I. No. 518</p>
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**LIMITED OBJECTION OF FEDERAL REALTY INVESTMENT TRUST, THE
FORBES COMPANY, THE MACERICH COMPANY, AND THE RELATED
COMPANIES TO DEBTORS' PLAN OF REORGANIZATION FOR
SGR WINDDOWN, INC. AND AFFILIATED DEBTORS**

Federal Realty Investment Trust, The Forbes Company, The Macerich Company, and the Related Companies (the “Landlords”) hereby file this limited objection (the “Objection”) to Debtors’ Plan of Reorganization for SGR Winddown, Inc. and Affiliated Debtors [D.I. 518] (the “Plan”),² and respectfully represent as follows:

I. BACKGROUND FACTS

1. Sugarfina, Inc., and affiliated co-debtors (collectively, the “Debtors”), filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code on September 6, 2019 (the “Petition Date”). Debtors continue to operate their business and manage their properties as debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.³

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 Terms not otherwise defined here shall have the meanings ascribed to them in the Disclosure Statement [D.I. 517], Plan, and accompanying documents.

³ Unless otherwise specified, all statutory references to “Section” are to 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”).

2. The Debtors lease retail space (the “Premises”) from the Landlords pursuant to unexpired leases of nonresidential real property (individually, a “Lease,” and collectively, the “Leases”) at the locations (the “Centers”) set forth in detail on the attached Schedule A. The Leases are leases “of real property in a shopping center” as that term is used in Section 365(b)(3). *See In re Joshua Slocum, Ltd.*, 922 F.2d 1081, 1086-87 (3d Cir. 1990).

3. The Debtors filed the Plan [D.I. 518] on February 24, 2020. The Landlords do not object to the Debtors confirming their Plan. However, Landlords do object to any injunction or releases affecting their ability to properly assert claims that have yet been billed under the Leases, affecting their setoff and recoupment rights, as well as their ability to assert appropriate defenses or bring claims against the Debtors, their successors, or any appropriate third parties that may be unknown at this time due to the continuing use and occupancy of the Premises.

II. ARGUMENT

A. The injunction provisions of the Plan are overbroad and ambiguous.

4. The expansive provisions relating to injunction, exculpation and releases potentially compromise Landlords’ rights to assert legitimate claims under the Leases that survive confirmation. *See* Plan at Article VIII (sections 8.01-8.05, at pp. 18 – 21). The Plan should not preclude Landlords from asserting claims for year-end adjustments and reconciliations under the Leases that have accrued or are accruing, but which remained unbilled at this time. These claims accrue throughout the year, both prior to and after the Effective Date. The Debtors cannot use plan confirmation to avoid liability for these Lease charges. The Plan cannot extinguish the Landlords’ rights under the Leases, and the Plan should specifically provide that Landlords can amend their claims to assert claims such as the above, as and when they come due or are discovered in the ordinary course.

6. The injunction provision of the Plan is also overbroad with respect to other enforceable rights of Landlords, and the broad injunction language may seek to prohibit rights of setoff and recoupment. *See* Plan at Article XIII (sections 8.01 & 8.05, at pp. 18 & 20–21). While the Plan is silent on whether third party claimants’ right to assert these rights are preserved,

the Plan specifically reserves these rights for the Reorganized Debtor. See Plan at Article VII (section 7.02(k), at p. 17). Landlords are entitled to exercise their rights to assert setoffs or recoupment irrespective of plan confirmation either defensively, or in connection with the application of security deposit balances. Should Landlords have security deposits they are holding with respect to the Leases, they must be allowed apply such security deposits to any outstanding pre-petition and rejection damages owing by the Debtors, at least up to the amount of the rejection damages cap of Section 502(b)(6). See In re PPI Enterprises, Inc., 324 F.3d 197, 208 (3d Cir. 2003). Courts have held that Section 553 takes precedence over the discharge of Section 1141 and that plan confirmation does not steamroll a party's right to setoff. See Carolco Television Inc. v. Nat'l Broadcasting Co. (In re De Laurentiis Entertainment Group Inc.), 963 F.2d 1269 (9th Cir. 1992), *cert. denied* 506 U.S. 918 (1992) (setoff rights survive plan confirmation); see also In re Luongo, 259 F.3d 323, 333 (5th Cir. 2001). The same analysis applies to recoupment, which is similarly unaffected by a debtor's discharge. See In re Madigan, 270 B.R. 749, 754 (9th Cir. BAP 2001); see also Folger Adam Security, Inc. v. DeMatteis/MacGregor, JV, 209 F.3d 252, 257 - 261 (3rd Cir. 2000) (recoupment defense survives free and clear sale of debtor's assets). The Plan should not limit any ability of Landlords to assert setoff or recoupment rights.

7. To the extent consistent with the objections expressed herein, Landlords join in the objections of other lessors and the Official Committee of Unsecured Creditors.

III. CONCLUSION

In order to preserve the rights of the Landlords, Landlords requests that the Debtors incorporate the changes requested herein prior to confirmation. Landlords also request that the Court provide such other and further relief as the Court deems just and proper.

Dated: May 1, 2020
Wilmington, Delaware

Respectfully submitted,

/s/ Leslie C. Heilman

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