

**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: October 15, 2019 @ 2:00pm

Objection Deadline: September 30, 2019 @ 4:00pm

**APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE RETENTION AND
EMPLOYMENT OF SHULMAN HODGES & BASTIAN LLP AS BANKRUPTCY
COUNSEL TO THE DEBTORS *NUNC PRO TUNC* TO THE PETITION DATE**

Sugarfina, Inc., a Delaware corporation (“SGRI”), Sugarfina International, LLC, a Delaware limited liability company (“SGRLLC”), and Sugarfina (Canada), Ltd. (“SGC” collectively with SGRLLC and SGRI, (the “Debtors”), the jointly administered debtors and debtors in possession hereby file this application (the “Application”), seeking entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), authorizing the employment and retention of Shulman Hodges & Bastian LLP (“SH&B” or the “Firm”) as their bankruptcy counsel *nunc pro tunc* to the Petition Date (defined below). In support of this Application, the Debtors submit the Declaration of Alan J. Friedman (the “Friedman Declaration”), a copy of which is attached hereto as **Exhibit B** and incorporated herein. In support of this Application, the Debtors submit the Declaration of Lance Miller (the “Miller Declaration”), a copy of which is attached hereto as **Exhibit C** and incorporated herein.

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 Sugarfina (Canada), Ltd. (4480). The location of the Debtors’ corporate headquarters is 1700 E. Walnut Ave, 5th Floor, El Segundo, California 90245.

Additionally, in support of this Application, the Debtors rely on the *Declaration of Lance Miller in Support of First Day Motions* [Docket No. 23] (the “First Day Declaration”). In further support of this Application, the Debtors submit as follows:

Jurisdiction, Venue, and Predicates for Relief

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this proceeding is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. The statutory predicates for the relief requested herein are sections 105, 327, 328, and 330 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2014-1 and 2016-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

Background

3. On September 6, 2019 (the “Petition Date”), each of the Debtors filed with the Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code commencing the above-captioned chapter 11 cases. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. No trustee or examiner has been appointed in these cases.

Relief Requested

5. The Debtors seek to employ and retain the Firm *nunc pro tunc* to the Petition Date to represent them as their counsel in connection with these chapter 11 cases.

Accordingly, the Debtors respectfully request that the Court enter the Proposed Order attached hereto.

6. The Debtors seek to retain the Firm as their counsel because of the Firm's experience and knowledge in the field of business reorganizations under Chapter 11 of the Bankruptcy Code, and because of the Firm's familiarity with the Debtors' financial matters and the matters related to the Debtors' business operations.

A. Services to be Provided

7. Subject to Court approval, and in consultation with its local Delaware counsel, Morris James LLP, so as to avoid duplication of effort, the professional services that the Firm will render to the Debtors include, but shall not be limited to, the following:

- (a) To advise the Debtors with respect to their rights, powers, duties and obligations as debtors in possession in the administration of the Cases, the management of their business affairs and the management of their property;
- (b) To advise the Debtors regarding their legal rights and responsibilities under the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure;
- (c) To prepare on behalf of the Debtors all necessary motions, applications, answers, orders, reports, and other papers in connection with the administration of the Debtors' estates;
- (d) To advise and assist the Debtors with respect to compliance with the requirements of the Office of the United States Trustee;
- (e) To assist the Debtors with any sale of all or substantially all of their assets pursuant to section 363 of the Bankruptcy Code;
- (f) To advise the Debtors regarding matters of bankruptcy law, including the rights and remedies of the Debtors with respect to their assets and with respect to the claims of creditors;
- (g) To take all necessary or appropriate actions in connection with a chapter 11 plan(s) and related disclosure statement(s) and all related documents,

and such further actions as may be required in connection with the administration of the Debtors' estates;

- (h) appear at hearings before the Court on behalf of the Debtors; and
- (i) perform all other necessary legal services that are desirable and necessary for the efficient and economic administration of these chapter 11 cases.

Basis for Relief

8. Under section 327(a) of the Bankruptcy Code, a debtor in possession "with the court's approval, may employ one or more attorneys . . . that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the [debtor in possession] in carrying out [its] duties under this title." 11 U.S.C. § 327(a). Such employment may be based "on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed percentage fee basis, or on a contingent fee basis." 11 U.S.C. § 328(a).

A. The Firm's Qualifications

The Debtors believe that the Firm is well qualified to represent them in their bankruptcy cases in an efficient and timely manner. The Firm is comprised of attorneys who are experienced in, among other areas of law, insolvency, bankruptcy and corporate reorganization and is well-qualified to represent the Debtors in proceedings of this nature. In addition, the Firm is already familiar with the Debtors' financial matters and the matters related to the Debtors' business operations.

9. By separate applications, the Debtors are also seeking to employ (i) Morris James LLP as Delaware bankruptcy counsel, (ii) Force Ten Partners LLC, financial advisors, and (iii) FisherBroyles, LLP, special counsel. This Court has already approved the retention of BMC Group Inc., as claims and noticing agent to the Debtors [Docket No. 42]. The Debtors intend

to monitor carefully these and any other retained legal professionals to ensure a clear delineation of their respective duties and roles so as to prevent duplication of effort. The Debtors recognize that efficient coordination of efforts among the Debtors' legal professionals, and between such legal professionals and their other professionals, will greatly add to the effective administration of these chapter 11 cases.

B. Payment of Fees and Expenses

10. The Firm intends to apply to the Court for allowance of compensation and reimbursement of expenses in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any applicable orders of this Court. Subject to those provisions, the Debtors propose to pay the Firm its customary hourly rates in effect from time to time as set forth in the Friedman Declaration. The Debtors submit that these rates are reasonable.

11. While additional attorneys, professionals and paraprofessionals may provide services to the Debtors in these cases, the principal professionals and paraprofessionals designated to represent the Debtors and their current standard hourly rates are as follows:

<u>Professional</u>	<u>Position</u>	<u>Hourly Rate</u>
Alan J. Friedman	Partner	\$645
Leonard M. Shulman	Partner	\$645
James C. Bastian	Partner	\$645
Ryan D. O'Dea	Partner	\$425
Lorre Clapp	Paralegal	\$250
Lori Gauthier	Paralegal	\$250

12. The Firm's hourly rates are set at a level designed to fairly compensate the Firm for the work of its attorneys, paralegals and legal secretaries and to cover routine expenses. These hourly rates may be subject to periodic adjustments (which adjustments will be reflected in the first fee application following such adjustments) and are consistent with the

rates charged elsewhere.

13. Other than the periodic adjustments described above, the Firm's hourly rates and financial terms for the services performed prior to the Petition Date are identical to the hourly rates and financial terms² of the post-petition engagement proposed herein. The Debtors understand that these hourly rates are consistent with the rates that the Firm charges other comparable chapter 11 clients, regardless of the location of the chapter 11 case, and are the same rates that the Firm charges in non-bankruptcy representations.

14. The Debtors understand that it is the Firm's policy to charge its clients in all areas of practice for all other expenses incurred in connection with the client's case. The expenses charged to clients include, among other things, regular mail and express mail charges, special or hand delivery charges, document processing charges, printing and photocopying charges, travel expenses, expenses for "working meals," computerized research charges and transcription costs. The Firm will charge the Debtors for these expenses in a manner and at rates consistent with charges made generally to the Firm's other clients or as previously fixed by this Court. In accordance with Local Rule 2016-2(d)(ix), travel time during which no work is performed shall be separately described and billed at no more than 50% of regular hourly rates.

15. Prior to the Petition Date, the Firm rendered legal services to the Debtors in connection with and in contemplation of the Debtors' chapter 11 filings. Prior to the Petition Date, the Debtors paid the Firm retainers in the total amount of \$335,000.00.

16. Prior to the commencement of the Cases, the Firm incurred total fees and costs of \$334,759.99, leaving a pre-petition balance of \$240.01 remaining in the Firm's trust

² Pre-petition, the Firm had agreed to a blended hourly cap of \$500/hour. That term is not part of the current engagement.

account. In addition, the Firm is holding funds representing a separate retainer provided by SGC in the amount of \$9,640.44 (the “SGC Retainer”). The Firm does not intend to apply the SGC retainer against any postpetition fees incurred specifically on behalf of SGC, until the end of the Cases. Given the fact that the overwhelming majority of the work in the Cases will be in connection with SGRI, the Firm intends to bill all time incurred in the Cases to a single billing number. SGRLLC is a holding company with no operations or employees, and SGC has a limited scope of operations. Virtually all aspects of the Cases are being handled on a consolidated basis, including all of the relief sought in connection with the various motions filed at the outset of the Cases. Consequently, the Firm believes that billing its time in this manner is appropriate under the circumstances.

17. Other than as set forth in the Friedman Declaration, no arrangement is proposed between the Debtors and the Firm for compensation to be paid in these chapter 11 cases. The Firm has informed the Debtors that, except for sharing arrangements among the members of the Firm, it has no agreement with any other entity to share any compensation received, nor will any be made, except as permitted under section 504(b)(1) of the Bankruptcy Code.

C. Disinterestedness

18. Prior to the Petition Date, the Debtors employed the Firm to assist the Debtors in connection with, among other things, general insolvency counseling, preparing their respective bankruptcy petitions and in the preparation of several first day motions.

19. To the best of the Debtors’ knowledge and except as disclosed herein and in the Friedman Declaration: (a) the Firm is a “disinterested person” under section 101(14) of the Bankruptcy Code; (b) the Firm does not hold or represent an interest adverse to the Debtors’ estates; and (c) the Firm’s directors, counsel, and associates have no connection to the

Debtors, their creditors, or their related parties except as may be disclosed in the Friedman Declaration.

20. As set forth in the Friedman Declaration, neither the Firm nor any of the attorneys comprising or employed by the Firm is a relative of, or has been so connected with, any United States Bankruptcy Judge for the District of Delaware, any of the District Court Judges for the District of Delaware who handle bankruptcy cases, the United States Trustee for Region 3, the Assistant United States Trustee for the District of Delaware, the attorney for the United States Trustee assigned to these chapter 11 cases or any other employee of the Office of the United States Trustee. Accordingly, the employment of the Firm is not prohibited by Bankruptcy Rule 5002.

Notice

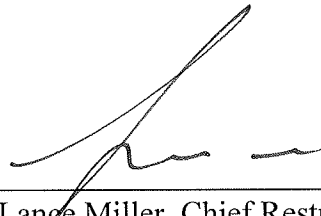
21. The Debtors have provided notice of this Application to: (a) the Office of the United States Trustee for the District of Delaware; (b) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (c) counsel to the Debtors' 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) the Internal Revenue Service; (f) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (g) all parties entitled to notice pursuant to Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

22 The Debtors have not previously sought the relief requested herein from this or any other Court.

WHEREFORE, the Debtors respectfully request entry of an order, substantially in the form attached hereto as **Exhibit A**, authorizing the Debtors to employ and retain the Firm as counsel for the Debtors, *nunc pro tunc* to the Petition Date, and granting such other and further relief as is just and proper.

Dated: September 17, 2019
Wilmington, Delaware

A handwritten signature in black ink, appearing to read "Lance Miller", is written above a horizontal line.

Lance Miller, Chief Restructuring Officer