

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C 36, AS AMENDED**

**AND IN THE MATTER OF 9670416 CANADA INC., WEWORK CANADA GP ULC,  
AND WEWORK CANADA LP ULC**

**APPLICATION OF WEWORK INC. UNDER SECTION 46 OF THE *COMPANIES'*  
*CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

Applicant

**FACTUM OF THE APPLICANT  
(Second Supplemental Order)**

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## **PART I – INTRODUCTION**

1. WeWork Inc. (the “**WeWork Parent**”) files this factum in its capacity as the foreign representative (the “**Foreign Representative**”) appointed under chapter 11 of the United States Bankruptcy Code (the “**U.S. Bankruptcy Code**”) in respect of the proceedings (the “**Chapter 11 Cases**”) commenced by the WeWork Parent and certain of its affiliates (collectively, the “**Chapter 11 Debtors**”), including 9670416 Canada Inc., WeWork Canada GP ULC and WeWork Canada LP ULC (“**Canada LP ULC**”, and collectively, the “**Canadian Debtors**” and each a “**Canadian Debtor**”), 700 2 Street Southwest Tenant LP, 4635 Lougheed Highway Tenant LP and 1090 West Pender Street Tenant LP (collectively, the “**Canadian Limited Partnerships**” and each a “**Canadian Limited Partnership**”, and together with the Canadian Debtors, the “**WeWork Canadian Entities**”).

2. The WeWork Parent, as Foreign Representative, files this factum in support of its motion for an Order (the “**Second Supplemental Order**”) for, among other things, recognizing and enforcing pursuant to section 49 of the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) certain December 6 Final First Day Orders and Additional Orders (each as defined below) granted by the United States Bankruptcy Court for the District of New Jersey (the “**U.S. Bankruptcy Court**”) in the Chapter 11 Cases.<sup>1</sup>

3. The business of the Canadian Limited Partnerships, together with the business of the Canadian Debtors is collectively referred to herein as the “**Canadian Business**”.

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<sup>1</sup> Capitalized terms not otherwise defined in this Factum have the meanings set out in the Affidavit of David Tolley sworn November 7, 2023 (the “**Initial Affidavit**”), the First Day Declaration sworn by David Tolley on November 7, 2023 in the Chapter 11 Cases (the “**First Day Declaration**”), or the Affidavit of David Tolley sworn November 14, 2023 (the “**Supplemental Affidavit**”), each as attached (without exhibits) to the Affidavit of David Tolley sworn December 11, 2023 (the “**Third Tolley Affidavit**”). Unless otherwise indicated, dollar amounts referenced in this affidavit are references to United States Dollars.

4. As described below, the Chapter 11 Debtors filed first day motions (the “**First Day Motions**”) and were heard in respect thereof before the U.S. Bankruptcy Court on November 8, 2023 (the “**First Day Hearing**”).

5. In connection with the First Day Hearing, on November 8, 2023 and November 9, 2023, the U.S. Bankruptcy Court entered Orders in respect of the First Day Motions (collectively, the “**First Day Orders**”).

6. On November 16, 2023, among other things, this Court recognized certain of the First Day Orders (the “**Recognized First Day Orders**”), pursuant to the supplemental order (the “**First Supplemental Order**”).

7. As described below, the Orders that the Foreign Representative seeks to have recognized in Canada pursuant to the Second Supplemental Order fall into two categories: (a) final Orders of certain of the Recognized First Day Orders which were initially granted on an interim basis by the U.S. Bankruptcy Court (the “**December 6 Final First Day Orders**”), and (b) certain additional Orders granted by the U.S. Bankruptcy Court (the “**Additional Orders**”).

8. The December 6 Final First Day Orders and Additional Orders are essential for the administration of the estates of the Chapter 11 Debtors, including the WeWork Canadian Entities and WeWork Companies U.S. LLC (the “**Real Property Obligor**”), and the WeWork Parent respectfully requests that this Court recognize and give effect to such December 6 Final First Day Orders and Additional Orders in Canada.

## **PART II – SUMMARY OF THE FACTS**

### **A. BACKGROUND OF THE PROCEEDINGS TO DATE**

9. The Chapter 11 Debtors, including the WeWork Canadian Entities and the Real Property Obligor (collectively, “**WeWork**” or the “**Company**” or the “**WeWork Group**”), are the global leader in flexible workspace that integrates community, member services, and technology.<sup>2</sup>

10. The Company operates approximately 770 locations in over 30 countries and is among the top commercial real estate lessors in business hubs including New York City, London, Dublin, Boston, and Miami. In the United States, WeWork operates approximately 220 locations across the country. In Canada, WeWork has 24 leased locations in Toronto, Vancouver, Burnaby, Calgary, and Montreal.<sup>3</sup>

11. The WeWork Canadian Entities and the Real Property Obligor are integrated members of the broader WeWork Group, with the Canadian Business representing approximately 3 percent of the Company’s overall business, and less than 5 percent of the WeWork Group’s leased locations.<sup>4</sup>

12. Commencing on November 6, 2023, the Chapter 11 Debtors, including the WeWork Canadian Entities, commenced the Chapter 11 Cases in the U.S. Bankruptcy Court by electronically filing voluntary petitions for relief under the U.S. Bankruptcy Code.<sup>5</sup>

13. On November 7, 2023, this Court granted an Interim Stay Order which, among other things, granted a stay of proceedings in respect of the WeWork Canadian Entities, and their respective directors and officers, and in respect of the Real Property Obligor, in Canada.<sup>6</sup>

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<sup>2</sup> Third Tolley Affidavit at para 2 [CL p [A2633:A15](#)].

<sup>3</sup> Third Tolley Affidavit at para 3 [CL p [A2633:A15](#)].

<sup>4</sup> Third Tolley Affidavit at para 4 [CL p [A2634:A16](#)].

<sup>5</sup> Third Tolley Affidavit at para 5 [CL p [A2634:A16](#)].

<sup>6</sup> [WeWork Inc. et al. \(7 November 2023\), Toronto, Ont. Sup Ct. J \[Commercial List\] CV-23-00709258-00CL \(Interim Stay Order\)](#).

14. On November 8, 2023, and November 9, 2023, following the First Day Hearing, the U.S. Bankruptcy Court granted the First Day Orders, including the Foreign Representative Order appointing the WeWork Parent to act as the Foreign Representative for the purposes of these recognition proceedings.<sup>7</sup>

15. On November 16, 2023, this Court granted: (a) the initial recognition order (the “**Initial Recognition Order**”), among other things, recognizing the WeWork Parent as the “foreign representative” in respect of the Chapter 11 Cases, and the Chapter 11 Cases as a “foreign main proceeding” pursuant to section 47 of the CCAA; and (b) the First Supplemental Order, among other things, (i) recognizing the Recognized First Day Orders, (ii) ordering a stay of proceedings in respect of the WeWork Canadian Entities, and their respective directors and officers, and in respect of the Real Property Obligor, (iii) extending the protections and authorizations of the First Supplemental Order to the Canadian Limited Partnerships, (iv) appointing Alvarez & Marsal Canada Inc. as information officer in respect of these proceedings (in such capacity, the “**Information Officer**”), and (v) granting the Administration Charge and the D&O Charge.<sup>8</sup>

16. On November 29, 2023, the Chapter 11 Debtors obtained from the U.S. Bankruptcy Court an Order authorizing the rejection of certain unexpired leases and the abandonment of certain personal property (the “**Lease Rejection Order**”) and an Order authorizing and approving the contract procedures for rejecting or assuming executory contracts and unexpired leases (the “**Assumption/Rejection Procedures Order**”), as further discussed herein.<sup>9</sup>

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<sup>7</sup> Third Tolley Affidavit at para 7 [CL p [A2634:A16](#) – [A2635:A17](#)].

<sup>8</sup> Third Tolley Affidavit at para 8 [CL p [A2635:A17](#)].

<sup>9</sup> Third Tolley Affidavit at paras 14-15 [CL p [A2637:A19](#)].

17. In addition, a dispute with Hudson’s Bay Company (“**HBC**”) regarding personal property of the Chapter 11 Debtors, including that of the WeWork Canadian Entities, as well as property of the Company’s members located at 176 Yonge Street in Toronto, Ontario (“**176 Yonge**”) was consensually resolved. On December 4, 2023, the Chapter 11 Debtors entered a consent Order with the U.S. Bankruptcy Court ordering HBC to restore the access of the Chapter 11 Debtors, including the WeWork Canadian Entities, to their respective personal property and that of their members, as well as to restore access to the freight elevators at 176 Yonge (the “**Automatic Stay Enforcement Order**”), as further discussed herein.<sup>10</sup>

18. On December 6, 2023, the Chapter 11 Debtors, including the WeWork Canadian Entities, also obtained from the U.S. Bankruptcy Court (i) the December 6 Final First Day Orders, and (ii) the Additional Orders, as discussed further herein and in the Third Tolley Affidavit.<sup>11</sup> The Chapter 11 Debtors received and resolved all formal and informal objections in connection with the motions in respect of the December 6 Final First Day Orders with various revisions thereto such that the U.S. Bankruptcy Court entered the December 6 Final First Day Orders on an unopposed basis and without a hearing. The Foreign Representative now seeks the Second Supplemental Order recognizing and enforcing such December 6 Final First Day Orders and Additional Orders in Canada.

**B. THE DECEMBER 6 FINAL FIRST DAY ORDERS AND THE ADDITIONAL ORDERS**

19. The Foreign Representative seeks recognition of the following December 6 Final First Day Orders: (a) the Final Wages Order; (b) the Final Critical Vendors Order; (c) the Final Insurance

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<sup>10</sup> Third Tolley Affidavit at para 16 [CL p [A2637;A19](#) – [A2638;A20](#)].

<sup>11</sup> Third Tolley Affidavit at para 10 [CL p [A2636;A18](#)].

and Surety Bond Order; (d) the Final Utilities Order; (e) the Final Taxes Order; (f) the Final NOL Order; and (g) the Final Customer Programs Order. Each of the foregoing orders are final versions of the Recognized First Day Orders which were granted on an interim basis by the U.S. Bankruptcy Court, and thereafter recognized by this Court pursuant to the First Supplemental Order.

20. The Foreign Representative also seeks recognition of the following Additional Orders: (a) the Assumption/Rejection Procedures Order; (b) the Lease Rejection Order; (c) the Automatic Stay Enforcement Order; (d) the De Minimis Claims Procedures Order; and (e) the De Minimis Asset Transactions Procedures Order.

(i) **Recognition of December 6 Final First Day Orders**

(a) *Final Wages Order*

21. The Final Wages Order includes the same material terms as the Interim Wages Order, except that the limit not to exceed the statutory cap priority claim amount of \$15,150 per individual imposed by the Interim Wages Order no longer applies to the authorization for the Chapter 11 Debtors to pay and honour prepetition amounts outstanding under, or related to, the Compensation and Benefits Programs, where applicable and where amounts owed are in excess of the statutory cap priority claim.<sup>12</sup>

(b) *Final Critical Vendors Order*

22. The Final Critical Vendors Order includes substantially the same material terms as the Interim Critical Vendors Order, except for the introduction of an aggregate cap of \$25 million in respect of the payments of the claims that are the subject of the Final Critical Vendors Order, and certain revised noticing provisions, as described in the Third Tolley Affidavit. The WeWork

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<sup>12</sup> Third Tolley Affidavit at para 26 [CL p [A2641;A23](#)].

Canadian Entities will also provide the Information Officer with copies of any such notices that relate to the Canadian Business.<sup>13</sup>

*(c) Final Insurance and Surety Bond Order*

23. The Final Insurance and Surety Bond Order includes substantially the same material terms as the Interim Insurance and Surety Bond Order, except that, among other things: (i) to the extent any company or entity that financed the premiums for Insurance Policies pursuant to one of the two premium financing agreements (each, a “**Premium Financier**”) obtains relief from the automatic stay pursuant to the U.S. Bankruptcy Code to request or effectuate cancellation of any Insurance Policy or any portion thereof, the automatic stay will be lifted without further order of the U.S. Bankruptcy Court solely to permit certain insurance carriers to cancel (pursuant to and in accordance with applicable non-bankruptcy law, the terms and conditions of the applicable financing agreement(s), and the terms and conditions of the applicable Insurance Policies) any such Insurance Policies or any portion thereof if and to the extent requested by such Premium Financier; and (ii) certain noticing provisions as described in the Third Tolley Affidavit. The WeWork Canadian Entities will also provide the Information Officer with copies of any such notices that relate to the Canadian Business.<sup>14</sup>

*(d) Other December 6 Final First Day Orders*

24. Each of the Final Critical Vendors Order, Final Utilities Order, Final Taxes Order, Final NOL Order, and Final Customer Programs Order were also entered by the U.S. Bankruptcy Court on December 6, 2023. Each of these December 6 Final First Day Orders is substantially similar to the corresponding Recognized First Day Orders granted on an interim basis by the U.S.

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<sup>13</sup> Third Tolley Affidavit at para 28 [CL p [A2641;A23](#) – [A2642;A24](#)].

<sup>14</sup> Third Tolley Affidavit at para 30 [CL p [A2642;A24](#) – [A2643;A25](#)].

Bankruptcy Court and which were previously recognized by this Court pursuant to the First Supplemental Order.<sup>15</sup>

(ii) **Recognition of Additional Orders**

(a) *The Assumption/Rejection Procedures Order*

25. The Chapter 11 Debtors, including the WeWork Canadian Entities, are party to thousands of contracts, which include, among other agreements, real property leases, contracts with vendors for the supply of goods and services, and other contracts related to the operation of the Chapter 11 Debtors' business, including the Canadian Business. Although the Chapter 11 Debtors are in the process of evaluating all of their contracts to determine whether such contracts should be (a) rejected, as they are unfavourable to the Chapter 11 Debtors or no longer beneficial for the Chapter 11 Debtors' business operations, or (b) assumed (including as amended) or assumed (including as amended) and assigned, as they are favourable or otherwise valuable to the estate of the Chapter 11 Debtors, the Chapter 11 Debtors anticipate that they will reject a number of unexpired leases and executory contracts given their ongoing initiative to rationalize their expansive lease portfolio. Accordingly, to avoid the need to file additional separate motions to reject contracts, the Chapter 11 Debtors sought and obtained the Assumption/Rejection Procedures Order, among other things, authorizing and approving procedures of rejecting unexpired leases and executory contracts, and the removal or abandonment of related personal property. The Assumption/Rejection Procedures Order, and the procedures approved therein, avoids additional costs and administrative burdens for the Chapter 11 Debtors, including the WeWork Canadian Entities, that would otherwise arise. The procedures approved by the Assumption/Rejection Procedures Order are described in further detail

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<sup>15</sup> Third Tolley Affidavit at paras 31-32 [CL p [A2643:A25](#)].

in the Third Tolley Affidavit. The WeWork Canadian Entities will provide the Information Officer with copies of any Rejection Notices that relate to the Canadian Business.<sup>16</sup>

*(b) The Lease Rejection Order*

26. The Chapter 11 Debtors, including the WeWork Canadian Entities, have worked tirelessly to build stakeholder consensus around a value-maximizing restructuring of the Company, and their ongoing effort to rationalize their lease portfolio. The Chapter 11 Debtors have determined in their business judgment, following a comprehensive cost-benefit analysis, that the closure of certain underperforming locations is appropriate given that (a) the lease portfolio of the Chapter 11 Debtors, including the WeWork Canadian Entities, has been, and continues to be, a significant contributing factor to their current financial challenges, and (b) the cost of some of the leases exceeds any marginal benefit that could potentially be achieved through assignments or subleases. The rejection of the underperforming leases (each, a “**Rejected Lease**,” and collectively, the “**Rejected Leases**”) is critical for the Chapter 11 Debtors, including the WeWork Canadian Entities, to administer their estates efficiently during the pendency of the Chapter 11 Cases. Accordingly, the Chapter 11 Debtors sought and obtained authorization pursuant to the Lease Rejection Order to reject the Rejected Leases and abandon certain equipment, fixtures, furniture, or other personal property that may be located at the Rejected Premises, each effective as of the later of (x) the rejection date listed on Schedule 1 to the Lease Rejection Order and (y) the date the Chapter 11 Debtors have surrendered the premises.<sup>17</sup>

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<sup>16</sup> Third Tolley Affidavit at paras 35-38 [CL p [A2644:A26](#) – [A2648:A30](#)].

<sup>17</sup> Third Tolley Affidavit at paras 40-41 [CL p [A2648:A30](#) – [A2649:A31](#)].

(c) *The Automatic Stay Enforcement Order*

27. As part of the management of their leased premises in Canada, from time to time the Chapter 11 Debtors move furniture, fixtures and equipment owned by the Chapter 11 Debtors, including the WeWork Canadian Entities, and their members from one WeWork Canadian Location to another, depending upon the needs of their members. On November 30, 2023, Canada LP ULC was scheduled to move furniture owned by the Company from 176 Yonge to another WeWork Canadian Location in Toronto, Ontario (the “**Move**”). HBC initially did not cooperate in facilitating the Move, but ultimately on December 3, 2023, HBC and the Chapter 11 Debtors, including the WeWork Canadian Entities, were able to reach a consensual agreement resulting in the Automatic Stay Enforcement Order being entered by the U.S. Bankruptcy Court on December 4, 2023 on an unopposed basis and without a hearing. The Automatic Stay Enforcement Order orders HBC to restore the access of the Chapter 11 Debtors, including the WeWork Canadian Entities, to their respective personal property and that of their members, as well as to restore access to the freight elevators at 176 Yonge. Recognition of the Automatic Stay Enforcement Order will provide stability to the global restructuring process and minimize potential further disruptions that could arise from other actions which could be found to be in violation of the stay of proceedings.<sup>18</sup>

(d) *The De Minimis Claims Procedures Order*

28. The De Minimis Claims Procedures Order authorizes the Chapter 11 Debtors, including the WeWork Canadian Entities, to, among other things: (a) approve the Settlement Procedures to allow the Chapter 11 Debtors, including the WeWork Canadian Entities, to compromise and settle both prepetition and postpetition claims, cross-claims, litigation, and causes of action, including but not limited to, prepetition claims threatened or actions brought by various parties (each a

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<sup>18</sup> Third Tolley Affidavit at paras 16, 45-47 [CL p [A2637:A19](#) – [A2638:A20](#), [A2650:A32](#) – [A2651:A33](#)].

“**Claimant**,” and collectively, the “**Claimants**”) against one or more of the Chapter 11 Debtors or their estates, or brought by the Chapter 11 Debtors or their estates against one or more Claimant(s), in judicial, administrative, or other actions or proceedings with a Settlement Amount less than or equal to \$1 million (collectively, the “**De Minimis Claims**,” and each settlement reached with respect thereto pursuant to the Settlement Procedures, a “**Settlement**”); and (b) approves the proposed form and manner of notice that will be provided to affected creditors.<sup>19</sup>

29. Recognition of the De Minimis Claims Procedures Order, and the Settlement Procedures stipulated therein, will minimize expenses and maximize value for creditors of the estates of the Chapter 11 Debtors, including the WeWork Canadian Entities, serve the interests of juridical economy, and are in the best interests of all stakeholders. The Settlement Procedures will allow the Chapter 11 Debtors, including the WeWork Canadian Entities, to enter into Settlements on a more cost-effective and expeditious basis, and reduce the burden on the Chapter 11 Debtors from returning to the U.S. Bankruptcy Court to have each Settlement recognized on a stand-alone basis. The WeWork Canadian Entities will provide the Information Officer with notice of any Settlements relating to the Canadian Business.<sup>20</sup>

*(e) The De Minimis Asset Transactions Procedures Order*

30. The De Minimis Asset Transactions Procedures Order, authorizes the Chapter 11 Debtors, including the WeWork Canadian Entities, to, among other things: (i) establish procedures providing for the expedited use, sale, or transfer of certain assets, including any rights or interests therein (collectively, the “**De Minimis Assets**”) in any individual transaction or series of related transactions (each, a “**De Minimis Asset Transaction**”) to a single buyer or group of related buyers with an

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<sup>19</sup> Third Tolley Affidavit at para 50 [CL p [A2652;A34](#)].

<sup>20</sup> Third Tolley Affidavit at para 52 [CL p [A2653;A35](#)].

aggregate sale price equal to or less than \$4 million, provided that the total value of sales of De Minimis Assets does not exceed \$15 million during the course of the Chapter 11 Cases absent further order of the U.S. Bankruptcy Court, as calculated within the Chapter 11 Debtors' reasonable discretion, free and clear of all Liens, without the need for further U.S. Bankruptcy Court approval and with Liens attaching to the proceeds of such use, sale, or transfer with the same validity, extent, and priority as had attached to the De Minimis Assets immediately prior to the use, sale, or transfer; (ii) authorizes and establishes procedures to provide for the expedited abandonment of a De Minimis Asset to the extent that a sale thereof cannot be consummated at a value greater than the cost of liquidating such De Minimis Asset; and (iii) approves the form and manner of the notice of De Minimis Asset Transactions and abandonment.<sup>21</sup>

31. The proposed Second Supplemental Order recognizes the De Minimis Asset Transactions Procedures Order notwithstanding paragraph 5 of the Initial Recognition Order (discussed below), provided that a WeWork Canadian Entity shall provide written notice to the Information Officer and to any affected landlord at least five days prior to taking any action with respect to its property pursuant to the De Minimis Asset Transactions Procedures Order.<sup>22</sup>

### **PART III – ISSUES AND THE LAW**

32. The issue on this motion is whether the Court should grant the Second Supplemental Order recognizing the December 6 Final First Day Orders and the Additional Orders described above in Canada pursuant to section 49 of the CCAA.

33. For the reasons set out below, the WeWork Parent submits that it is necessary and appropriate for this Court to grant the relief sought on this motion to preserve the value of the

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<sup>21</sup> Third Tolley Affidavit at paras 54-55 [CL p [A2654:A36](#) – [A2655:A37](#)].

<sup>22</sup> Third Tolley Affidavit at para 57 [CL p [A2656:A38](#)].

WeWork Canadian Entities and the Canadian Business while the Company pursues its comprehensive global restructuring efforts pursuant to the Chapter 11 Cases.

**A. THE COURT HAS JURISDICTION TO GRANT THE SECOND SUPPLEMENTAL ORDER**

34. This Court recognized the Chapter 11 Cases as a “foreign main proceeding” under section 47 of the CCAA pursuant to the Initial Recognition Order.<sup>23</sup> When a foreign main proceeding has been recognized under Part IV of the CCAA, subsection 49(1) provides the Court with broad jurisdiction to grant “any order that it considers appropriate” with respect to such foreign proceedings if the Court is satisfied that it is necessary for the protection of the debtor company’s property or the interests of a creditor or creditors.<sup>24</sup>

35. This Court has noted that “[t]he purpose of Part IV of the CCAA is to effect cross-border insolvencies and create a system under which foreign insolvency proceedings can be recognized in Canada.”<sup>25</sup> This statement corresponds with the stated purposes of Part IV of the CCAA set out in section 44 of the CCAA, which include the promotion of: (a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions; and (b) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtor companies.<sup>26</sup>

36. The principle of comity is central to achieving these objectives. Comity requires that Canadian courts recognize and enforce the judicial acts of other jurisdictions, “provided that those other jurisdictions have assumed jurisdiction on a basis consistent with principles of order,

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<sup>23</sup> [WeWork Inc. et al. \(16 November 2023\), Toronto, Ont. Sup Ct. J \[Commercial List\] CV-23-00709258-00CL \(Initial Recognition Order \(Foreign Main Proceeding\)\)](#) at para 3 [*WeWork Initial Recognition Order*].

<sup>24</sup> [CCAA, s 49\(1\)](#).

<sup>25</sup> [Zochem Inc. \(Re\), 2016 ONSC 958](#) at para 15.

<sup>26</sup> [CCAA, s 44](#).

predictability and fairness”.<sup>27</sup> Section 52 of the CCAA provides that if a proceeding is recognized by a Canadian court under the CCAA as a foreign proceeding, “the court shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.”<sup>28</sup>

37. Where a cross-border insolvency proceeding is most closely connected to another jurisdiction, it is appropriate for the court in that jurisdiction to exercise principal control over the process given the principles of comity and to avoid a multiplicity of proceedings.

38. Typically, a Canadian court will only refuse to recognize an order of another court in situations where subsection 61(2) of the CCAA is engaged. Subsection 61(2) of the CCAA provides that “Nothing in this Part [IV] prevents the court from refusing to do something that would be contrary to public policy.”<sup>29</sup> Canadian courts have held that this exception to recognition should be interpreted restrictively.<sup>30</sup>

**B. THE DECEMBER 6 FINAL FIRST DAY ORDERS AND THE ADDITIONAL ORDERS OUGHT TO BE RECOGNIZED IN CANADA**

39. In considering whether to recognize a foreign order, including an order made in a Chapter 11 proceeding, a Canadian court should consider, among other things: (a) the principles of comity and the need to encourage cooperation between courts of various jurisdictions; (b) the need to respect foreign bankruptcy and insolvency legislation; (c) the equitable treatment of stakeholders, and, to the extent reasonably possible, the equal treatment of stakeholders regardless of the jurisdiction in which they reside; and (d) that the appropriate level of court involvement depends

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<sup>27</sup> [In the Matter of Voyager Digital Ltd, 2022 ONSC 4553](#) at para 9.

<sup>28</sup> [CCAA, s 52.](#)

<sup>29</sup> [CCAA, s 61\(2\).](#)

<sup>30</sup> [Hartford Computer Hardware, Inc. \(Re\), 2012 ONSC 964](#) at paras 17-18.

to a significant degree upon the court's nexus to the enterprise.<sup>31</sup> A consideration of these factors supports this Court's recognition of the December 6 Final First Day Orders and the Additional Orders pursuant to the Second Supplemental Order.

(i) **Recognition of the December 6 Final First Day Orders**

40. The December 6 Final First Day Orders that the WeWork Parent is seeking to have recognized pursuant to the Second Supplemental Order are final versions of certain of the Recognized First Day Orders initially granted on an interim basis by the U.S. Bankruptcy Court and which were previously recognized by this Court pursuant to the First Supplemental Order. The Recognized First Day Orders are summarized in the Supplemental Affidavit and each of the December 6 Final First Day Orders are substantially similar to the respective Recognized First Day Orders, except to the extent otherwise noted in the Third Tolley Affidavit.

41. The December 6 Final First Day Orders were obtained by the Chapter 11 Debtors, including the WeWork Canadian Entities, to facilitate their comprehensive global restructuring efforts in the Chapter 11 Cases with a view to preserving and maximizing the value of the estates of the Chapter 11 Debtors, including the WeWork Canadian Entities, for the benefit of the Company's stakeholders.<sup>32</sup>

42. The WeWork Parent submits that it is appropriate for the Court to recognize and give effect to the December 6 Final First Day Orders, and that recognition of the December 6 Final First Day Orders is necessary for the protection of the property of the Chapter 11 Debtors, including that of the WeWork Canadian Entities, and the interests of creditors and other stakeholders.

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<sup>31</sup> [Babcock & Wilcox Canada Ltd., Re, \[2000\] OJ No 786 \(QL\), 95 ACWS \(3d\) 608 \(ONSC\)](#) at para 21; [Xerium Technologies Inc., Re, 2010 ONSC 3974](#) at paras 26-27.

<sup>32</sup> Third Tolley Affidavit at paras 12, 23-24, 59 [CL p [A2636:A18](#), [A2639:A21](#) – [A2640:A22](#), [A2656:A38](#)].

(ii) **Recognition of the Assumption/Rejection Procedures Order**

43. As discussed above, the Chapter 11 Debtors, including the WeWork Canadian Entities, are party to a substantial number of contracts, and in light of the Chapter 11 Debtors' objective of a value-maximizing restructuring of the Company, the Chapter 11 Debtors, including the WeWork Canadian Entities, anticipate that they will reject burdensome contracts that no longer provide a benefit to the estate of the Chapter 11 Debtors, including the WeWork Canadian Entities, and assume (including as amended) fruitful contracts that the Chapter 11 Debtors believe will benefit the estates during the Chapter 11 Cases. Accordingly, the Chapter 11 Debtors sought and obtained the Assumption/Rejection Procedures Order to avoid the need to file separate motions to reject contracts, which would result in additional costs and administrative burdens on the estates of the Chapter 11 Debtors.<sup>33</sup>

44. Courts have previously recognized similar orders in Part IV recognition proceedings.<sup>34</sup> The WeWork Parent submits that it is appropriate in the circumstances for the Court to recognize and give effect to the Assumption/Rejection Procedures Order.

(iii) **Recognition of the Lease Rejection Order**

45. As discussed above, the lease portfolio of the Chapter 11 Debtors, including the WeWork Canadian Entities, has been, and continues to be, a significant contributing factor to their current financial challenges, and the cost of some of the leases exceeds any marginal benefit that could potentially be achieved through various assignments or subleases. A key component of the

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<sup>33</sup> Third Tolley Affidavit at paras 35-38 [CL p [A2644:A26](#) – [A2648:A30](#)].

<sup>34</sup> [David's Bridal, LLC et al. \(29 May 2023\), Toronto, Ont Sup Ct J \[Commercial List\] CV-23-0698107-00CL \(Recognition Order\)](#) at para 3(j); [YRC Freight Canada Company et al. \(29 September 2023\), Toronto, Ont Sup Ct J \[Commercial List\] CV-23-00704038-00CL \(Second Supplemental Order\)](#) at para 3(m) [[YRC Freight Second Supplemental Order](#)]; [Cyxtera Technologies, Inc. et al. \(21 November 2023\), Calgary, AB KB 2301-07385 \(Miscellaneous Recognition Order\)](#) at para 2(i).

Company's ongoing efforts to rationalize their lease portfolio is the closure of certain underperforming locations, and abandonment of certain property that the Company has identified as no longer needed given its global restructuring efforts. The rejection of these underperforming leases, and possible abandonment of personal property at the Rejected Premises, is critical for the Chapter 11 Debtors, including the WeWork Canadian Entities, to administer their estates efficiently during the Chapter 11 Cases. Accordingly, to reduce postpetition administrative costs and facilitate the efficient administration of their estates, the Chapter 11 Debtors, including the WeWork Canadian Entities, sought and obtained the Lease Rejection Order to reject the Rejected Leases and abandon personal property, where necessary.<sup>35</sup>

46. Courts have previously recognized similar orders in Part IV recognition proceedings.<sup>36</sup> The WeWork Parent submits that it is appropriate in the circumstances for the Court to recognize and give effect to the Lease Rejection Order.

(iv) **Recognition of the Automatic Stay Enforcement Order**

47. The Chapter 11 Debtors, including the WeWork Canadian Entities, sought and obtained the Automatic Stay Enforcement Order to ensure stability of their operations, and to secure their ability to move furniture, fixtures and equipment of the Company and its members as needed based upon their respective needs, while providing certainty to their members and other stakeholders that violations of the stay of proceedings will not be tolerated.<sup>37</sup>

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<sup>35</sup> Third Tolley Affidavit at paras 40-42 [CL p [A2648:A30](#) – [A2650:A32](#)].

<sup>36</sup> [Pier 1 Imports, Inc. et al. \(18 February 2020\) Toronto, Ont Sup Ct J \[Commercial List\] CV-20-00636511-00CL \(Amended and Restated Supplemental Order \(Foreign Main Proceeding\)\)](#) at para 4(m); [GNC Holdings, Inc., et al. \(27 July 2020\) Toronto, Ont Sup Ct J \[Commercial List\] CV-20-00642970-00CL \(Recognition Order \(Recognition of Second Day Orders in Foreign Main Proceeding\)\)](#) at para 3(n); [Brooks Brothers Group, Inc., et al. \(16 October 2020\) Toronto, Ont Sup Ct J \[Commercial List\] CV-20-00647463-00CL \(Recognition Order \(Lease Recognition Order\)\)](#) at para 3(a).

<sup>37</sup> Third Tolley Affidavit at paras 44-47 [CL p [A2650:A32](#) – [A2651:A33](#)].

48. This Court has granted orders similar to the Automatic Stay Enforcement Order in the context of CCAA proceedings including where a creditor was denied its attempted enforcement of rights in the face of a CCAA Order of this Court that included a stay of proceedings.<sup>38</sup> Accordingly, the Foreign Representative submits that it is appropriate in the circumstances for this Court to recognize and give effect to the Automatic Stay Enforcement Order.

(v) **Recognition of the De Minimis Claims Procedures Order**

49. The U.S. Bankruptcy Court granted the proposed Second Supplemental Order on the basis that the Settlement Procedures provide the Chapter 11 Debtors, including the WeWork Canadian Entities, and their estates a significant cost savings benefit by obviating the need to file a separate motion to approve each Settlement with service on all creditors. Additionally, excepting relatively low-cost Settlements from notice requirements ensures that the Chapter 11 Debtors will be able to reach the greatest number of low-cost Settlements – which have a comparatively minor impact on the bankruptcy estates of the Chapter 11 Debtors – in an expeditious and cost-effective manner.<sup>39</sup>

50. This Court has granted orders which include terms that are similar to the De Minimis Claims Procedures Order in the context of CCAA proceedings in order to allow Canadian debtors to efficiently deal with disputes concerning a variety of matters and compromise and settle claims having de minimis value.<sup>40</sup>

(vi) **Recognition of the De Minimis Asset Transactions Procedures Order**

51. Paragraph 5 of the Initial Recognition Order provides that, except with leave of this Court, each of the WeWork Canadian Entities is prohibited from selling or otherwise disposing of (a)

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<sup>38</sup> [Nortel Networks Corporation \(Re\)](#), 2010 ONSC 1304 at paras 42, 44.

<sup>39</sup> Third Tolley Affidavit at paras 49-52 [CL p [A2652:A34](#) – [A2653:A35](#)].

<sup>40</sup> [Nortel Networks Corporation et al. \(16 September 2010\) Toronto, Ont Sup Ct J \[Commercial List\] 09-CL-7950 \(Order Approving Cross-Border Claims Protocol\)](#) at para 2, Schedule “A” at paras 17-18.

outside the ordinary course of its business, any of its property in Canada that relates to the business; and (b) any of its other property in Canada.<sup>41</sup>

52. The proposed Second Supplemental Order recognizes the De Minimis Asset Transactions Procedures Order and authorizes the WeWork Canadian Entities to deal with their property in accordance with the De Minimis Asset Transactions Procedures Order notwithstanding paragraph 5 of the Initial Recognition Order, provided that a WeWork Canadian Entity shall provide written notice to the Information Officer and to any affected landlord at least five days prior to taking any action with respect to its property pursuant to the De Minimis Asset Transactions Procedures Order. As referenced above, the De Minimis Asset Transactions Procedures Order authorizes the Chapter 11 Debtors, including the WeWork Canadian Entities, to, among other things: (i) establish procedures providing for the expedited use, sale or transfer of De Minimis Assets outside the ordinary course of business for an aggregate sale price equal to or less than \$4 million without the need for U.S. Bankruptcy Court approval, with the total value of sales of De Minimis Assets capped at \$15 million absent further order of the U.S. Bankruptcy Court; and (ii) abandon a De Minimis Asset in the event the De Minimis Asset cannot be sold at a price greater than the cost of liquidating such asset.<sup>42</sup>

53. This Court has recognized orders similar to the De Minimis Asset Transactions Procedures Order, which allow Canadian debtors to efficiently deal with assets having de minimis value.<sup>43</sup>

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<sup>41</sup> [WeWork Initial Recognition Order](#) at para 5.

<sup>42</sup> Third Tolley Affidavit at paras 54-57 [CL p [A2654:A36](#) – [A2656:A38](#)].

<sup>43</sup> [Paladin Labs Canadian Holding Inc. \(29 November 2022\), Toronto, Ont Sup Ct J \[Commercial List\] CV-22-00685631-00CL \(Third Supplemental Order\)](#) at para 4; [Paladin Labs Canadian Holding Inc., 2022 ONSC 6716](#) at para [5\(d\)](#); [YRC Freight Second Supplemental Order](#) at para 4.

**PART IV – RELIEF REQUESTED**

54. The WeWork Parent, in its capacity as Foreign Representative, respectfully requests that the Court grant the Second Supplemental Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 12<sup>th</sup> day of December, 2023.

*Goodmans LLP*

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Goodmans LLP

**SCHEDULE A**  
**LIST OF AUTHORITIES**

No.	Description
1.	<a href="#"><u><i>WeWork Inc. et al.</i> (7 November 2023), Toronto, Ont. Sup Ct. J [Commercial List] CV-23-00709258-00CL (Interim Stay Order)</u></a>
2.	<a href="#"><u><i>WeWork Inc. et al.</i> (16 November 2023), Toronto, Ont. Sup Ct. J [Commercial List] CV-23-00709258-00CL (Initial Recognition Order (Foreign Main Proceeding))</u></a>
3.	<a href="#"><u><i>Zochem Inc. (Re)</i>, 2016 ONSC 958</u></a>
4.	<a href="#"><u><i>In the Matter of Voyager Digital Ltd</i>, 2022 ONSC 4553</u></a>
5.	<a href="#"><u><i>Hartford Computer Hardware, Inc. (Re)</i>, 2012 ONSC 964</u></a>
6.	<a href="#"><u><i>Babcock &amp; Wilcox Canada Ltd., Re</i>, [2000] OJ No 786 (QL), 95 ACWS (3d) 608 (ONSC)</u></a>
7.	<a href="#"><u><i>Xerium Technologies Inc., Re</i>, 2010 ONSC 3974</u></a>
8.	<a href="#"><u><i>David's Bridal, LLC et al.</i> (29 May 2023), Toronto, Ont Sup Ct J [Commercial List] CV-23-0698107-00CL (Recognition Order)</u></a>
9.	<a href="#"><u><i>YRC Freight Canada Company et al.</i> (29 September 2023), Toronto, Ont Sup Ct J [Commercial List] CV-23-00704038-00CL (Second Supplemental Order)</u></a>
10.	<a href="#"><u><i>Cyxtera Technologies, Inc. et al.</i> (21 November 2023), Calgary, AB KB 2301-07385 (Miscellaneous Recognition Order)</u></a>
11.	<a href="#"><u><i>Pier 1 Imports, Inc. et al.</i> (18 February 2020) Toronto, Ont Sup Ct J [Commercial List] CV-20-00636511-00CL (Amended and Restated Supplemental Order (Foreign Main Proceeding))</u></a>
12.	<a href="#"><u><i>GNC Holdings, Inc., et al</i> (27 July 2020) Toronto, Ont Sup Ct J [Commercial List] CV-20-00642970-00CL (Recognition Order (Recognition of Second Day Orders in Foreign Main Proceeding))</u></a>
13.	<a href="#"><u><i>Brooks Brothers Group, Inc., et al.</i> (16 October 2020) Toronto, Ont Sup Ct J [Commercial List] CV-20-00647463-00CL (Recognition Order (Lease Recognition Order))</u></a>
14.	<a href="#"><u><i>Nortel Networks Corporation (Re)</i>, 2010 ONSC 1304</u></a>
15.	<a href="#"><u><i>Nortel Networks Corporation et al.</i> (16 September 2010) Toronto, Ont Sup Ct J [Commercial List] 09-CL-7950 (Order Approving Cross-Border Claims Protocol)</u></a>

No.	Description
16.	<a href="#"><i>Paladin Labs Canadian Holding Inc. (29 November 2022), Toronto, Ont Sup Ct J [Commercial List] CV-22-00685631-00CL (Third Supplemental Order)</i></a>
17.	<a href="#"><i>Paladin Labs Canadian Holding Inc., 2022 ONSC 6716</i></a>

**SCHEDULE B**  
**STATUTORY REFERENCES**

**COMPANIES' CREDITORS ARRANGEMENT ACT**

**R.S.C. 1985, c. C-36, as amended**

[s. 11](#)

Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

[s. 11.02\(1\)](#)

A court may on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

[s. 44](#)

The purpose of this Part is to provide mechanisms for dealing with cases of cross-border insolvencies and to promote

- (a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions in cases of cross-border insolvencies;
- (b) greater legal certainty for trade and investment;
- (c) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtor companies;
- (d) the protection and the maximization of the value of debtor company's property; and
- (e) the rescue of financially troubled businesses to protect investment and preserve employment.

[s. 46\(1\)](#)

A foreign representative may apply to the court for recognition of the foreign proceeding in respect of which he or she is a foreign representative.

[s. 46\(2\)](#)

Subject to subsection (3), the application must be accompanied by

- (a) a certified copy of the instrument, however designated, that commenced the foreign proceeding or a certificate from the foreign court affirming the existence of the foreign proceeding;
- (b) a certified copy of the instrument, however designated, authorizing the foreign representative to act in that capacity or a certificate from the foreign court affirming the foreign representative's authority to act in that capacity; and
- (c) a statement identifying all foreign proceedings in respect of the debtor company that are known to the foreign representative.

[s. 46\(3\)](#)

The court may, without further proof, accept the documents referred to in paragraphs (2)(a) and (b) as evidence that the proceeding to which they relate is a foreign proceeding and that the applicant is a foreign representative in respect of the foreign proceeding.

[s. 46\(4\)](#)

In the absence of the documents referred to in paragraphs (2)(a) and (b), the court may accept any other evidence of the existence of the foreign proceeding and of the foreign representative's authority that it considers appropriate.

[s. 47\(1\)](#)

If the court is satisfied that the application for the recognition of a foreign proceeding relates to a foreign proceeding and that the applicant is a foreign representative in respect of that foreign proceeding, the court shall make an order recognizing the foreign proceeding.

[s. 47\(2\)](#)

The court shall specify in the order whether the foreign proceeding is a foreign main proceeding or a foreign non-main proceeding.

[s. 48\(1\)](#)

Subject to subsections (2) to (4), on the making of an order recognizing a foreign proceeding that is specified to be a foreign main proceeding, the court shall make an order, subject to any terms and conditions it considers appropriate,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken against the debtor company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the debtor company;
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the debtor company; and
- (d) prohibiting the debtor company from selling or otherwise disposing of, outside the ordinary course of its business, any of the debtor company's property in Canada that relates to the business and prohibiting the debtor company from selling or otherwise disposing of any of its other property in Canada.

[s. 49\(1\)](#)

If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order

- (a) if the foreign proceeding is a foreign non-main proceeding, referred to in subsection 48(1);
- (b) respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor company's property, business and financial affairs, debts, liabilities and obligations; and
- (c) authorizing the foreign representative to monitor the debtor company's business and financial affairs in Canada for the purpose of reorganization.

[s. 49\(2\)](#)

If any proceedings under this Act have been commenced in respect of the debtor company at the time an order recognizing the foreign proceeding is made, an order made under subsection (1) must be consistent with any order that may be made in any proceedings under this Act.

[s. 50](#)

An order under this Part may be made on any terms and conditions that the court considers appropriate in the circumstances.

[s. 52\(1\)](#)

If an order recognizing a foreign proceeding is made, the court shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

[s. 52\(2\)](#)

If any proceedings under this Act have been commenced in respect of a debtor company and an order recognizing a foreign proceeding is made in respect of the debtor company, every person who exercises powers or performs duties and functions under the proceedings under this Act shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

[s. 52\(3\)](#)

For the purpose of this section, cooperation may be provided by any appropriate means, including

- (a) the appointment of a person to act at the direction of the court;
- (b) the communication of information by any means considered appropriate by the court;
- (c) the coordination of the administration and supervision of the debtor company's assets and affairs;
- (d) the approval or implementation by courts of agreements concerning the coordination of proceedings; and
- (e) the coordination of concurrent proceedings regarding the same debtor company.

[s. 61\(1\)](#)

Nothing in this Part prevents the court, on the application of a foreign representative or any other interested person, from applying any legal or equitable rules governing the recognition of foreign insolvency orders and assistance to foreign representatives that are not inconsistent with the provisions of this Act.

[s. 61\(2\)](#)

Nothing in this Part prevents the court from refusing to do something that would be contrary to public policy.

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF 9670416 CANADA INC., WEWORK CANADA GP ULC AND WEWORK CANADA LP ULC**

**APPLICATION OF WEWORK INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**Applicant**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**FACTUM OF THE APPLICANT  
(Motion returnable December 14, 2023)**

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