

**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  
(Fourth Supplemental Order)  
(Motion Returnable February 22, 2024)**

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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 (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**”, and collectively, the business of the Canadian Limited Partnerships together with the business of the Canadian Debtors, the “**Canadian Business**”).

2. The WeWork Parent, as Foreign Representative, files this factum in support of its motion for an Order (the “**Fourth Supplemental Order**”) for, among other things, recognizing and enforcing pursuant to section 49 of the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) the following orders granted by the United States Bankruptcy Court for the District of New Jersey (the “**U.S. Bankruptcy Court**”) in the Chapter 11 Cases:

- (a) *Second Interim Order (I) Authorizing the Chapter 11 Debtors to (A) Continue Using the Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, and (C) Maintain Existing Chapter 11 Debtor Bank Accounts, Business Forms, and Books and Records; (II) Authorizing the Chapter 11 Debtors to Continue to Perform Intercompany Transactions, (III) Waiving Certain U.S. Trustee Requirements; and (IV) Granting Related Relief* (the “**Second Interim Cash Management Order**”);
- (b) *Final Order (I) Authorizing the Chapter 11 Debtors to (A) Continue Using the Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, and (C) Maintain Existing Chapter 11 Debtor Bank Accounts, Business Forms, and Books and Records; (II) Authorizing the Chapter 11 Debtors to Continue to*

*Perform Intercompany Transactions, (III) Waiving Certain U.S. Trustee Requirements; and (IV) Granting Related Relief* (the “**Final Cash Management Order**”); and

- (c) *Order (I) Setting Bar Dates for Submitting Proofs of Claim, Including Requests for Payment Under Section 503(b)(9) of the Bankruptcy Code; (II) Establishing an Amended Schedules Bar Date, a Rejection Damages Bar Date, and a Stub Rent Bar Date; (III) Approving the Form, Manner, and Procedures for Filing Proofs of Claim; (IV) Approving Notices Thereof; and (V) Granting Related Relief* (the “**Bar Date Order**”).<sup>1</sup>

3. The Second Interim Cash Management Order and Final Cash Management Order, among other things, authorize the Chapter 11 Debtors, including the WeWork Canadian Entities, to continue using their complex global cash management system (the “**Cash Management System**”), pursuant to the terms set out in the Second Interim Cash Management Order and Final Cash Management Order.

4. The Bar Date Order establishes a process and procedures for the filing of claims against the Chapter 11 Debtors, including the WeWork Canadian Entities, approves the procedures for providing notice to known and unknown creditors, sets various deadlines by which particular types of creditors must file their claims, and enables the Chapter 11 Debtors to ascertain the universe of potential claims against them.

5. The Foreign Representative submits that the recognition of the Second Interim Cash Management Order, the Final Cash Management Order and the Bar Date Order by this Court is appropriate in the circumstances. This Court commonly approves cash management orders and

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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**”), the Affidavit of David Tolley sworn November 14, 2023 (the “**Supplemental Affidavit**”), the Affidavit of David Tolley sworn December 11, 2023 (the “**Third Tolley Affidavit**”), the Affidavit of David Tolley sworn January 15, 2024 (the “**Fourth Tolley Affidavit**”), each as attached (without exhibits) to the Affidavit of David Tolley sworn February 14, 2024 (the “**Fifth Tolley Affidavit**”), or the Fifth Tolley Affidavit. Unless otherwise indicated, dollar amounts referenced in this affidavit are references to United States Dollars.

claims procedures that are similar in substance to the relief granted by the U.S. Bankruptcy Court in the Second Interim Cash Management Order, the Final Cash Management Order and the Bar Date Order. The Foreign Representative submits that recognition of these orders pursuant to section 49 of the CCAA is consistent with the principles of comity and is in the best interests of the WeWork Canadian Entities and their stakeholders.

## **PART II – SUMMARY OF THE FACTS**

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

6. The Chapter 11 Debtors, including the WeWork Canadian Entities and WeWork Companies U.S. LLC (the “**Real Property Obligor**”), and non-Chapter 11 Debtor affiliates (collectively with the Chapter 11 Debtors, “**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>

7. The Company operates over 700 locations in 37 countries and is among the top providers of commercial office space in business hubs including New York City, London, Dublin, Boston, and Miami. In Canada, WeWork currently has 17 leased locations in Toronto, Vancouver, Burnaby, Calgary, and Montreal (the “**WeWork Canadian Locations**”).<sup>3</sup>

8. 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>

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<sup>2</sup> Fifth Tolley Affidavit at para 2 [CL p [A5204:A15](#)].

<sup>3</sup> Fifth Tolley Affidavit at para 3 [CL p [A5204:A15](#)].

<sup>4</sup> Fifth Tolley Affidavit at para 4 [CL p [A5205:A16](#)].

9. On November 6, 2023 (the “**Petition Date**”), 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>

10. On November 8, 2023, the Chapter 11 Debtors filed first day motions (the “**First Day Motions**”) and were heard in respect thereof before the U.S. Bankruptcy Court (the “**First Day Hearing**”). Following 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**”), including the Foreign Representative Order appointing the WeWork Parent to act as the Foreign Representative in respect of the Chapter 11 Cases for the purposes of these recognition proceedings, and the First Interim Cash Management Order (as defined below).<sup>6</sup>

11. 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 (the “**First Supplemental Order**”), among other things, recognizing certain of the First Day Orders (the “**Recognized First Day Orders**”), and appointing Alvarez & Marsal Canada Inc. as the Information Officer (in such capacity, the “**Information Officer**”).<sup>7</sup>

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<sup>5</sup> Fifth Tolley Affidavit at para 5 [CL p [A5205:A16](#)].

<sup>6</sup> Fifth Tolley Affidavit at para 6 [CL p [A5205:A16](#)].

<sup>7</sup> Fifth Tolley Affidavit at para 7 [CL p [A5205:A16](#) – [A5206:A17](#)]; *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*]; *WeWork Inc., et al.* (16 November 2023), Toronto, Ont. Sup Ct. J [Commercial List] CV-23-00709258-00CL (Supplemental Order (Foreign Main Proceeding)) at paras 2, 5-7, 20, 22.

12. This Court has granted recognition to certain other orders granted by the U.S. Bankruptcy Court in the Chapter 11 Cases pursuant to a Second Supplemental Order dated December 14, 2023 (the “**Second Supplemental Order**”), and a Third Supplemental Order dated January 18, 2024.<sup>8</sup>

**B. DEVELOPMENTS IN THE CHAPTER 11 CASES**

13. The Chapter 11 Debtors have recently sought and obtained from the U.S. Bankruptcy Court, among others, the Second Interim Cash Management Order, the Final Cash Management Order, and the Bar Date Order, which the Foreign Representative now seeks to have recognized in Canada pursuant to the Fourth Supplemental Order.<sup>9</sup>

14. The Chapter 11 Debtors’, including the WeWork Canadian Entities’, use of their complex global Cash Management System was initially authorized by the U.S. Bankruptcy Court on an interim basis pursuant to the interim cash management order (the “**First Interim Cash Management Order**”), entered on November 9, 2023, which was previously recognized by this Court pursuant to the First Supplemental Order.<sup>10</sup>

15. On January 22, 2024, the United States Trustee for the District of New Jersey (the “**U.S. Trustee**”) filed a limited objection to the *Chapter 11 Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Chapter 11 Debtors to (A) Continue Using the Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, and (C) Maintain Existing Debtor Bank Accounts, Business Forms, and Books and Records; (II) Authorizing the Chapter 11 Debtors to Continue to Perform Intercompany Transactions, (III) Waiving Certain U.S. Trustee*

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<sup>8</sup> Fifth Tolley Affidavit at para 8 [CL p [A5206:A17](#)]; *WeWork Inc., et al.* (14 December 2023), Toronto, Ont. Sup Ct. J [Commercial List] CV-23-00709258-00CL (Second Supplemental Order); *WeWork Inc., et al.* (18 January 2024), Toronto, Ont. Sup Ct. J [Commercial List] CV-23-00709258-00CL (Third Supplemental Order).

<sup>9</sup> Fifth Tolley Affidavit at para 9 [CL p [A5206:A17](#) – [A5207:A18](#)].

<sup>10</sup> Fifth Tolley Affidavit at para 13 [CL p [A5208:A19](#)].

*Requirements; and (IV) Granting Related Relief* (the “**Cash Management Motion**”). In light of the U.S. Trustee’s limited objection, as an interim measure, on January 30, 2024, the Chapter 11 Debtors sought, and the U.S. Bankruptcy Court entered, the Second Interim Cash Management Order, which supersedes the First Interim Cash Management Order, on an interim basis, consensually and without a hearing.<sup>11</sup>

16. Following negotiations with a certain group of landlords (the “**Objecting Landlords**”) who filed a limited objection to the motion in respect of the Bar Date Order (the “**Bar Date Motion**”), the Chapter 11 Debtors resolved all the formal and informal objections to the Bar Date Motion and on February 2, 2024, the U.S. Bankruptcy Court entered the Bar Date Order on a consensual basis and without a hearing.<sup>12</sup>

17. At a hearing on February 5, 2024, the U.S. Bankruptcy Court heard the unresolved limited objection of the U.S. Trustee, overruled the limited objection, and agreed to enter the Final Cash Management Order. The Final Cash Management Order was entered by the U.S. Bankruptcy Court on February 6, 2024 and supersedes the Second Interim Cash Management Order.<sup>13</sup>

18. The Second Interim Cash Management Order, the Final Cash Management Order and the Bar Date Order are essential for the administration of the estates of the Chapter 11 Debtors, including the WeWork Canadian Entities and the Real Property Obligor, benefit the WeWork Canadian Entities, and affect the creditors of the WeWork Canadian Entities. Accordingly, the Foreign Representative respectfully requests that this Court recognize and give effect to the Second

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<sup>11</sup> Fifth Tolley Affidavit at paras 15-16 [CL p [A5208:A19](#)].

<sup>12</sup> Fifth Tolley Affidavit at paras 18-19 [CL p [A5209:A20](#)].

<sup>13</sup> Fifth Tolley Affidavit at paras 16, 36 [CL p [A5208:A19](#), [A5215:A26](#) – [A5216:A27](#)].

Interim Cash Management Order, the Final Cash Management Order and the Bar Date Order in Canada and grant the Fourth Supplemental Order.

C. **THE SECOND INTERIM CASH MANAGEMENT ORDER, THE FINAL CASH MANAGEMENT ORDER AND THE BAR DATE ORDER**

19. The Foreign Representative now seeks the Fourth Supplemental Order in these proceedings recognizing and enforcing the Second Interim Cash Management Order, the Final Cash Management Order and the Bar Date Order in Canada.

(i) **The Second Interim Cash Management Order and the Final Cash Management Order**

20. The Second Interim Cash Management Order supersedes the First Interim Cash Management Order that was initially granted on an interim basis by the U.S. Bankruptcy Court on November 9, 2023, and which was previously recognized by this Court pursuant to the First Supplemental Order. The Final Cash Management Order is the final version of the First Interim Cash Management Order and the Second Interim Cash Management Order, and supersedes both.<sup>14</sup>

21. As with the First Interim Cash Management Order and the Second Interim Cash Management Order, the Final Cash Management Order, among other things: (a) authorizes, but does not direct, the Chapter 11 Debtors, including the WeWork Canadian Entities, to (i) continue using the Cash Management System, (ii) honour certain prepetition obligations related thereto, and (iii) maintain existing Chapter 11 Debtor Bank Accounts, Business Forms, and Books and Records; (b) authorizes, but does not direct, the Chapter 11 Debtors, including the WeWork Canadian Entities, to continue Intercompany Transactions and funding consistent with the Chapter 11 Debtors' historical practices; (c) grants administrative expense status to postpetition

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<sup>14</sup> Fifth Tolley Affidavit at paras 33, 36 [CL p [A5213:A24](#) – [A5214:A25](#), [A5215:A26](#) – [A5216:A27](#)].

Intercompany Claims; (d) grants final waivers of the Chapter 11 Debtors' compliance with the deposit and investment guidelines set forth in section 345(b) of the U.S. Bankruptcy Code; and (e) grants related relief.<sup>15</sup>

22. The Second Interim Cash Management Order includes substantially the same material terms as the First Interim Cash Management Order, except that pursuant to the Second Interim Cash Management Order:

- (a) the Chapter 11 Debtors are now required to notify each of the advisors to the Official Committee of Unsecured Creditors (the "UCC"), the Ad Hoc Group, Softbank and Cupar Grimmond, LLC of any material changes to the Cash Management System (including the Adjusted JPM Cash Management Structure) and procedures related thereto as soon as reasonably practicable following such material changes;
- (b) the Chapter 11 Debtors continue to be authorized to continue Intercompany Transactions arising from or related to the operation of their business, including Intercompany Transactions with non-Chapter 11 Debtor affiliates to the extent they are in the ordinary course of business and consistent with past practice (including with respect to amount), with the newly introduced proviso that the Chapter 11 Debtors shall not transfer cash in excess of \$7.5 million to a non-Chapter 11 Debtor without either (i) providing notice thereof to the UCC, the Ad Hoc Group, SoftBank and Cupar Grimmond, LLC not less than one (1) business day prior to effectuating such a transfer, or (ii) obtaining the prior consent of the UCC and the Required

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<sup>15</sup> Fifth Tolley Affidavit at para 34 [CL p [A5214:A25](#)].

Consenting Stakeholders (as defined in the RSA). The Chapter 11 Debtors will provide the UCC's advisors, on a professionals'-eyes only basis, a schedule of cash balances at non-Chapter 11 Debtor affiliates within three (3) business days of request therefor, a copy of which shall be provided simultaneously to advisors to the Ad Hoc Group, SoftBank and Cupar Grimmond, LLC;

- (c) the Chapter 11 Debtors continue to be required to maintain accurate and detailed records of all Intercompany Transactions and the payment of Intercompany Claims, and are now also required to, upon the request of the U.S. Trustee, the Ad Hoc, SoftBank, Cupar Grimmond, LLC or the UCC, make records related to the forgoing available, on a professionals-eyes-only basis, to the U.S. Trustee, the Ad Hoc Group, SoftBank, Cupar Grimmond, LLC or the UCC, as applicable, to the extent such records are kept by the Chapter 11 Debtors in the ordinary course of business.<sup>16</sup>

23. The Final Cash Management Order includes substantially the same material terms as the Second Interim Cash Management Order, except that section 345 of the U.S. Bankruptcy Code and any provision of the U.S. Trustee Guidelines requiring that the Bank Accounts of the Chapter 11 Debtors, including the WeWork Canadian Entities, be U.S. Trustee authorized depositories was waived on a final basis with respect to the Subject Accounts, with the U.S. Trustee reserving rights regarding the final waiver in respect of the Investment Accounts held at Goldman Sachs & Co. LLC, pending finalization of the closure thereof.<sup>17</sup>

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<sup>16</sup> Fifth Tolley Affidavit at para 35 [CL p [A5214:A25](#) – [A5215:A26](#)].

<sup>17</sup> Fifth Tolley Affidavit at para 37 [CL p [A5216:A27](#)].

24. The WeWork Canadian Entities are dependent on the continued operation of the Cash Management System to collect, transfer, and disburse funds generated from WeWork's operations and to facilitate cash monitoring, forecasting and reporting. The WeWork Canadian Entities' continued access to the Cash Management System is important to facilitate the ordinary course operation of, minimize disruption to, and preserve the value of the Canadian Business. Any disruption to the Cash Management System could have an immediate and significant effect on the WeWork Canadian Entities, to the detriment of all stakeholders. Accordingly, the Foreign Representative is seeking recognition of the Second Interim Cash Management Order and the Final Cash Management Order by this Court in these recognition proceedings.<sup>18</sup>

(ii) **The Bar Date Order**

25. The Bar Date Order entered by the U.S. Bankruptcy Court, among other things, (i) sets the Bar Dates (as defined below) for creditors to submit proofs of claim based on prepetition claims, including requests for payment under section 503(b)(9) of the U.S. Bankruptcy Code in respect of claims arising from the value of any goods received by the Chapter 11 Debtors, including the WeWork Canadian Entities, within twenty (20) days before the Petition Date in the ordinary course of business ("**503(b)(9) Claims**"), and unsecured priority claims as specified in the Bar Date Motion (collectively, "**Proofs of Claim**", and each a "**Proof of Claim**") against any Chapter 11 Debtor, including any WeWork Canadian Entity; (ii) approves the procedures for submitting Proofs of Claim, the form of Proof of Claim, and the form of stub rent proof of claim (the "**Stub Rent Proof of Claim**"); (iii) approves the form and manner of service of the notice of the Bar

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<sup>18</sup> Fifth Tolley Affidavit at para 38 [CL p [A5216:A27](#)].

Dates (the “**Bar Date Notice**”), including the publication version of the Bar Date Notice, and the Member Notice; and (iv) grants related relief.

26. The Bar Date Order establishes various bar dates, including the General Claims Bar Date, the Member Claims Bar Date, the Governmental Bar Date, the Amended Schedules Bar Date, the Rejection Damages Bar Date, and the Stub Rent Bar Date (each as defined below and collectively, the “**Bar Dates**”) by which particular types of creditors must file their claims, and which are described in more detail in the Fifth Tolley Affidavit:

- (a) *General Claims Bar Date:* The Bar Date Order established March 12, 2024 as the last date by which all persons and entities,<sup>19</sup> governmental units holding prepetition claims, must file Proofs of Claim based on prepetition claims, including 503(b)(9) Claims, and unsecured priority claims as specified in the Bar Date Motion against any Chapter 11 Debtor, including any WeWork Canadian Entity (the “**General Claims Bar Date**”). Such Proofs of Claim must be received by Epiq Corporate Restructuring, LLC (the “**Notice and Claims Agent**”) by the General Claims Bar Date, unless such entity’s claim falls within one of the exceptions set forth in the Bar Date Motion. Subject to these exceptions, the General Claims Bar Date applies to all claims against the Chapter 11 Debtors, including the WeWork Canadian Entities, that arose or are deemed to have arisen prior to the Petition Date, including

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<sup>19</sup> Except as otherwise defined herein, all terms specifically defined in the U.S. Bankruptcy Code shall have those meanings ascribed to them by the U.S. Bankruptcy Code. In particular, as used herein: (i) the term “claim” has the meaning given to it in section 101(5) of the U.S. Bankruptcy Code; (ii) the term “entity” (including individuals, partnerships, corporations, joint ventures, estates, and trusts) has the meaning given to it in section 101(15) of the U.S. Bankruptcy Code; (iii) the term “governmental unit” has the meaning given to it in section 101(27) of the U.S. Bankruptcy Code; and (iv) the term “person” has the meaning given to it in section 101(41) of the U.S. Bankruptcy Code.

secured claims, unsecured priority claims, unsecured non-priority claims and rejection damages claims for executory contracts and unexpired leases that have already been rejected by order of the U.S. Bankruptcy Court in the Chapter 11 Cases.

- (b) *Member Claims Bar Date:* Member Claims are claims held by the Chapter 11 Debtors', including the WeWork Canadian Entities', customers and members arising out of service retainers paid in connection with such customer's or member's membership agreement with the Chapter 11 Debtors (such claims, "**Member Claims**", and each a "**Member Claim**", and such customers and members, solely in their capacity as holders of such claims, "**Member Claimants**"). Member Claimants of the Chapter 11 Debtors, including the WeWork Canadian Entities, have been sent an individualized notice by email setting forth, among other things, the amount that each such Member Claimant is owed on account of such Member Claimant's service retainer (calculated based on the amounts set forth in the Chapter 11 Debtors' books and records) (the "**Member Notice**"). To the extent known, counsel representing a Member Claimant will also be sent the Member Notice by email. The Bar Date Order further provides that if a Member Claimant disagrees with the amount listed on such Member Claimant's Member Notice, such Member Claimant may file a Proof of Claim at any point on or before March 12, 2024 (the "**Member Claims Bar Date**").<sup>20</sup>

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<sup>20</sup> For the avoidance of doubt, the amount of the Member Claim shall be subject to all deductions and setoffs provided for in the membership agreement that gives rise to such Member Claim, if any.

- (c) *Governmental Bar Date:* Solely in respect of governmental units, the Bar Date Order established May 6, 2024 as the last date for any such governmental unit to file Proofs of Claim asserting claims against any Chapter 11 Debtor, including any WeWork Canadian Entity, that arose or are deemed to have arisen on or before the Petition Date (the “**Governmental Bar Date**”). The Governmental Bar Date applies to all governmental units any holding claims against the Chapter 11 Debtors (whether secured, unsecured priority, or unsecured non-priority) that arose or are deemed to have arisen prior to the Petition Date, including governmental units with any claims against the Chapter 11 Debtors, including the WeWork Canadian Entities, for unpaid taxes, whether such claims arise from prepetition tax years or periods or prepetition transactions to which the Chapter 11 Debtors were a party.
- (d) *Amended Schedules Bar Date:* In the event that the Chapter 11 Debtors, including the WeWork Canadian Entities, amend their Schedules, the Bar Date Order established the later of (i) the applicable Bar Date (ii) and the date that is thirty (30) calendar days from the date on which the Chapter 11 Debtors provide notice of the amendment to the Schedules, as the last date by which claimants holding claims affected by the amendment must file Proofs of Claim with respect to such claims against any Chapter 11 Debtor, including any WeWork Canadian Entity (such later date, the “**Amended Schedules Bar Date**”) so that such Proofs of Claim are actually received by the Notice and Claims Agent by the Amended Schedules Bar Date.
- (e) *Rejection Damages Bar Date:* Solely in respect of claims arising from the rejection of executory contracts and unexpired leases by the Chapter 11 Debtors, including

the WeWork Canadian Entities, the Bar Date Order established the later of (a) (i) the General Claims Bar Date or (ii) the Governmental Bar Date, as applicable, and (b) the date that is thirty (30) calendar days after the later of (i) entry of the order approving the Chapter 11 Debtors' rejection of the applicable executory contract or unexpired lease and (ii) the effective date of such rejection as the last date by which claimants holding claims based upon such rejection must file Proofs of Claim with respect thereto against any Chapter 11 Debtor, including any WeWork Canadian Entity, unless otherwise ordered by the U.S. Bankruptcy Court (such later date, the **"Rejection Damages Bar Date"**). The Chapter 11 Debtors, including the WeWork Canadian Entities, will provide notice of the Rejection Damages Bar Date to the contract or lease counterparty whose contract or lease is being rejected at the time the Chapter 11 Debtors reject any executory contract or unexpired lease. For the avoidance of doubt and notwithstanding anything to the contrary contained in the Bar Date Order, counterparties to unexpired leases of non-residential property are not required to file prepetition claims (including, without limitation, any claims in respect of a guarantee claim against a Chapter 11 Debtor) against any of the Chapter 11 Debtors, including the WeWork Canadian Entities, unless and until the applicable lease is rejected by the Chapter 11 Debtors; *provided, however*, that nothing in the Bar Date Order will be construed to alter any requirement for such party to file a Proof of Claim (x) on account of a Stub Rent Claim or (y) pursuant to another order of the U.S. Bankruptcy Court.

- (f) *Stub Rent Bar Date*: Solely in respect of claims that arise in connection with the Chapter 11 Debtors' occupation of a nonresidential real property (a **"Leased**

**Premise**”) in the period from and including November 6, 2023, through and including November 30, 2023 (each a “**Stub Rent Claim**,” and each claimant, a “**Stub Rent Claimant**,” and collectively, the “**Stub Rent Claimants**”), on February 7, 2024, the Chapter 11 Debtors, including the WeWork Canadian Entities, filed with the U.S. Bankruptcy Court a schedule detailing the amount of each Stub Rent Claim calculated based on the Chapter 11 Debtors’ books and records and internal analysis (the “**Stub Rent Claim Schedule**”). On February 8, 2023, the Chapter 11 Debtors, including the WeWork Canadian Entities, served the Stub Rent Claim Schedule via email and direct mail to the mailing address of the applicable landlord (to the extent known) and counsel (to the extent known), including any counsel that has filed a notice of appearance in the Chapter 11 Cases, as well as any other party in interest entitled to receive service of the same in the Chapter 11 Cases pursuant to the Case Management Order. Any Stub Rent Claimant that disagrees with the amount of such holder’s Stub Rent Claim identified on the Stub Rent Claim Schedule must work in good faith with the Chapter 11 Debtors, including the WeWork Canadian Entities, and/or their counsel to resolve such disagreement prior to filing a Stub Rent Proof of Claim on account of such Stub Rent Claim. In the event that such disagreement remains unresolved, the applicable Stub Rent Claimant must file a Stub Rent Proof of Claim with the U.S. Bankruptcy Court on or before March 24, 2024 (the “**Stub Rent Bar Date**”),<sup>21</sup>

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<sup>21</sup> On February 9, 2024, the Chapter 11 Debtors filed a supplemental schedule (the “**Supplemental Stub Rent Claim Schedule**”) detailing the amount of a Stub Rent Claim for five additional Stub Rent Claimants (collectively, the “**Supplemental Stub Rent Claimants**”), and subsequently established March 25, 2024 as the supplemental Stub Rent Bar Date (the “**Supplemental Stub Rent Bar Date**”). None of the five additional Stub Rent Claimants subject to the Supplemental Stub Rent Bar Date are Canadian creditors.

which is forty-five (45) calendar days after service of the Stub Rent Claim Schedule; *provided* that, for the avoidance of doubt and notwithstanding anything to the contrary contained in the Assumption/Rejection Procedures Order, the Stub Rent Bar Date with respect to Stub Rent Claims associated with unexpired leases that were rejected prior to the entry of the Bar Date Order will be March 24, 2024, which is forty-five (45) days following service of the Stub Rent Claims Schedule. Any disagreement with respect to a Stub Rent Claim, including the allowance thereof, may only be resolved in connection with and upon the earlier of (i) mutual agreement by the Chapter 11 Debtors and the applicable Stub Rent Claimant; (ii) the assumption, assumption and assignment, or rejection of a lease under section 365 of the U.S. Bankruptcy Code; or (iii) the confirmation of a chapter 11 plan of reorganization in the Chapter 11 Cases. For the avoidance of doubt, notwithstanding the Stub Rent Bar Date, counterparties to unexpired leases of non-residential property will not be required to file Proofs of Claim with respect to prepetition obligations of the Chapter 11 Debtors, including the WeWork Canadian Entities (including, without limitation, any claims in respect of a guarantee claim against a Chapter 11 Debtor) against any of the Chapter 11 Debtors unless and until the applicable lease is rejected by the Chapter 11 Debtors. Effective as of the Stub Rent Bar Date, the Stub Rent Claims will be allowed in the amounts identified on the Stub Rent Claim Schedule unless a Stub Rent Claimant files a Proof of Claim

in an amount contrary to the amount of such holder's Stub Rent Claim set forth on the Stub Rent Claim Schedule on or before the Stub Rent Bar Date.<sup>22</sup>

27. The following table summarizes the various Bar Dates for the filing of claims pursuant to the Bar Date Order:<sup>23</sup>

<b>BAR DATES</b>	
General Claims Bar Date	March 12, 2024
Member Claims Bar Date	March 12, 2024
Governmental Bar Date	May 6, 2024
Amended Schedules Bar Date	In the event the Chapter 11 Debtors amend or supplement their Schedules, the Chapter 11 Debtors shall give notice of any such amendment to the holders of any claim affected thereby, and such holders shall submit their claims by the later of (i) the applicable Bar Date and (ii) on the date that is thirty (30) calendar days after such person or entity is served with notice that the Chapter 11 Debtors have amended their Schedules in a manner that affects such person or entity.
Rejection Damages Bar Date	On or before the later of (a) (i) the General Claims Bar Date or (ii) the Governmental Bar Date, as applicable, and (b) on the date that is thirty (30) calendar days after the later of (i) entry of the order approving the Chapter 11 Debtors' rejection of the applicable executory contract or unexpired lease and (ii) the effective date of such rejection, unless otherwise ordered by the U.S. Bankruptcy Court.
Stub Rent Bar Date	March 24, 2024, which is the date that is forty-five (45) calendar days after the Chapter 11 Debtors served to each Stub Rent Claimant (as defined below) as well as any other party entitled to receive notice of the same pursuant to the Case Management Order (as defined below), the Stub Rent Claim Schedule (as defined below) setting forth the Chapter 11 Debtors' calculation of the Stub Rent Claim (as defined below) owed to all Stub Rent Claimants.
Supplemental Stub Rent Bar Date	March 25, 2024, which is the date that is forty-five (45) calendar days after the Chapter 11 Debtors served to each Supplemental Stub Rent Claimant (as defined below) as well as any other party entitled to receive notice of the same pursuant to the Case Management Order, the Supplemental Stub Rent Claim Schedule setting forth the Chapter 11 Debtors' calculation of the Stub Rent Claim owed to all Supplemental Stub Rent Claimants (as defined below). None of the Supplemental Stub Rent Claimants subject to the Supplemental Stub Rent Bar Date are Canadian creditors.

<sup>22</sup> Fifth Tolley Affidavit at paras 42, 44, 48-56 [CL p [A5218:A29](#), [A5219:A30](#) – [A5220:A31](#), [A5221:A32](#) – [A5225:A36](#)].

<sup>23</sup> Fifth Tolley Affidavit at paras 42-43 [CL p [A5218:A29](#) – [A5219:A30](#)].

28. In accordance with the Bar Date Order, with the assistance of the Notice and Claims Agent, the Chapter 11 Debtors, including the WeWork Canadian Entities (i) served each Stub Rent Claimant with the Stub Rent Claim Schedule, (ii) served each Supplemental Stub Rent Claimant with the Supplemental Stub Rent Claim Schedule, (iii) served each Member Claimant with their personalized Member Notice, and (iv) served the Bar Date Notice and a Proof of Claim Form, as applicable, by email from the Notice and Claims Agent as applicable and/or first class mail in accordance with the Case Management Order on, among others, (i) the Master Service List (as defined in the Case Management Order), (ii) all known creditors and other known holders of potential claims against the Chapter 11 Debtors, including the WeWork Canadian Entities, as of the date of entry of the Bar Date Order, including all persons or entities listed in the Schedules for which the Chapter 11 Debtors have mailing addresses or email addresses, and (iii) various other entities, employees, regulatory and taxing authorities, as described in detail in the Bar Date Order.<sup>24</sup>

29. The Bar Date Order also directs the Chapter 11 Debtors to cause the Bar Date Notice to be published on one occasion in the *New York Times* (National Edition) in the United States of America, which was published on February 15, 2024, and on one occasion in the *Globe and Mail* (National Edition) in Canada on or before twenty-one (21) days before the General Claims Bar Date.<sup>25</sup>

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<sup>24</sup> Fifth Tolley Affidavit at para 60 [CL p [A5226:A37](#) – [A5227:A38](#)].

<sup>25</sup> Fifth Tolley Affidavit at para 61 [CL p [A5227:A38](#)].

30. Information regarding the Bar Date Order and links to the Bar Date Order, the Bar Date Notice and the Proof of Claim form have been posted to the Information Officer's case website at: <https://www.alvarezandmarsal.com/WeWorkCanada>.<sup>26</sup>

31. Creditors of the WeWork Canadian Entities hold various claims that are the subject of the Bar Date Order, and accordingly, the Foreign Representative is seeking recognition of the Bar Date Order in these Canadian recognition proceedings.

### **PART III – ISSUES AND THE LAW**

32. The issue on this motion is whether the Court should grant the Fourth Supplemental Order recognizing the Second Interim Cash Management Order, the Final Cash Management Order and the Bar Date Order described above in Canada pursuant to section 49 of the CCAA.

33. For the reasons set out below, the Foreign Representative submits that it is necessary and appropriate for this Court to grant the relief sought on this motion to preserve the value of the 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 FOURTH 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>27</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

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<sup>26</sup> Fifth Tolley Affidavit at para 62 [CL p [A5228:A39](#)].

<sup>27</sup> [WeWork Initial Recognition Order](#) at para 3.

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>28</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>29</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>30</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, predictability and fairness”.<sup>31</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>32</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. As noted by C.J.

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<sup>28</sup> [CCAA, s 49\(1\)](#).

<sup>29</sup> [Zochem Inc. \(Re\)](#), 2016 ONSC 958 at para 15.

<sup>30</sup> [CCAA, s 44](#).

<sup>31</sup> [In the Matter of Voyager Digital Ltd.](#), 2022 ONSC 4553 at para 9.

<sup>32</sup> [CCAA, s 52](#).

Morawetz in *Paladin*, in Part IV recognition proceedings “it is not the role of [the Canadian] court to second guess or conduct an initial assessment of the merits, [r]ather, the appropriate inquiry is to consider whether the orders made in the Chapter 11 Cases should be recognized.”<sup>33</sup>

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>34</sup> Canadian courts have held that this exception to recognition should be interpreted restrictively.<sup>35</sup>

39. Accordingly, this Court has the jurisdiction to grant the Fourth Supplemental Order.

**B. THE SECOND INTERIM CASH MANAGEMENT ORDER, THE FINAL CASH MANAGEMENT ORDER AND THE BAR DATE ORDER OUGHT TO BE RECOGNIZED IN CANADA**

40. 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 to a significant degree upon the court’s nexus to the enterprise.<sup>36</sup> A consideration of these factors

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<sup>33</sup> [Paladin Labs Canadian Holding Inc., 2024 ONSC 219](#) at para 49.

<sup>34</sup> [CCAA, s 61\(2\)](#).

<sup>35</sup> [Hartford Computer Hardware, Inc. \(Re\), 2012 ONSC 964](#) at paras 17-18.

<sup>36</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.

supports this Court's recognition of the Second Interim Cash Management Order, the Final Cash Management Order and the Bar Date Order pursuant to the Fourth Supplemental Order.

(i) **Recognition of the Second Interim Cash Management Order and the Final Cash Management Order is Appropriate**

41. This Court granted the First Interim Cash Management Order on the basis that continued access to the Cash Management System is essential for the Chapter 11 Debtors, including the WeWork Canadian Entities, to collect, transfer, and disburse funds generated from WeWork's operations, to facilitate cash monitoring, forecasting and reporting, and to facilitate the ordinary course operation of, and minimize disruption to, the Canadian Business during the Chapter 11 Cases.<sup>37</sup>

42. The Court's recognition of the Second Interim Cash Management Order and the Final Cash Management Order is required to facilitate the continued access to the Cash Management System necessary for the Chapter 11 Debtors, including the WeWork Canadian Entities, to continue to operate during the Chapter 11 Cases and effectuate their restructuring. Failure to obtain recognition in Canada of the Second Interim Cash Management Order and the Final Cash Management Order would disrupt the Cash Management System and negatively impact the ability of the Chapter 11 Debtors, including the WeWork Canadian Entities, to operate as a going-concern while they pursue a comprehensive and coordinated restructuring, including the restructuring of lease terms, thereby harming the value of the estates of the Chapter 11 Debtors to the detriment of all stakeholders.<sup>38</sup>

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<sup>37</sup> Fifth Tolley Affidavit at para 38 [CL p [A5216:A27](#)].

<sup>38</sup> Fifth Tolley Affidavit at para 38 [CL p [A5216:A27](#)].

43. This Court has previously recognized similar orders to the Second Interim Cash Management Order and the Final Cash Management Order in CCAA Part IV recognition proceedings.<sup>39</sup> The Foreign Representative submits that it is appropriate and necessary in the circumstances for the Court to recognize and give effect to the Second Interim Cash Management Order and the Final Cash Management Order.

(ii) **Recognition of the Bar Date Order is Appropriate**

44. The U.S. Bankruptcy Court granted the Bar Date Order to establish a process and procedures for the filing of claims against the Chapter 11 Debtors, including the WeWork Canadian Entities. As discussed above, the Bar Date Order, among other things, sets out the procedures for a claims process, including establishing the Bar Dates, noticing procedures, and identifies entities who are required to file or exempted from filing Proofs of Claim prior to the applicable Bar Date. The Bar Date Order also enables the Chapter 11 Debtors, including the WeWork Canadian Entities, to ascertain the nature, validity and amount of claims asserted against them.<sup>40</sup>

45. This Court's recognition of the Bar Date Order will help further facilitate the notice process for potential Canadian claimants to receive notice of the Bar Dates in order to file Proofs of Claim in the Chapter 11 Cases, and is therefore in the best interest of stakeholders. Recognition of the Bar Date Order will also assist the Chapter 11 Debtors, including the WeWork Canadian Entities,

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<sup>39</sup> [\*YRC Freight Canada Company \(Re\)\*, 2023 ONSC 5513 at para 5\(c\) \[YRC Freight Second Supplemental Order Endorsement\]](#); [\*Instant Brands Inc., et al\* \(20 July 2023\), Ont Sup Ct J \[Commercial List\] CV-23-00701159-00CL \(Order \(Recognition of Supplemental Interim DIP Order, Final DIP Order, Cash Management Order and Bidding Procedures Order\)\) at para 3\(c\)](#); [\*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\(d\) \[David's Bridal\]](#); [\*Paladin Labs Canadian Holding Inc.\*, 2022 ONSC 5810 at para 5\(g\)](#); [\*Voyager Digital Ltd.\* \(11 August 2022\), Toronto, Ont Sup Ct J \[Commercial List\] CV-22-00683820-00CL \(Recognition Order\) at para 3\(e\) \[Voyager\]](#); [\*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\(a\) \[GNC Holdings\]](#).

<sup>40</sup> Fifth Tolley Affidavit at paras 40, 42-65 [CL p [A5217:A28](#), [A5218:A29](#) – [A5231:A42](#)].

in their claims identification process, which forms part of their comprehensive, global restructuring, and is therefore an important step in the Chapter 11 Debtor's restructuring efforts.

46. This Court has previously recognized similar orders to the Bar Date Order in CCAA Part IV recognition proceedings.<sup>41</sup> The Foreign Representative submits that it is appropriate and necessary in the circumstances for the Court to recognize and give effect to the Bar Date Order.

#### **PART IV– RELIEF REQUESTED**

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

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 16<sup>th</sup> day of February, 2024.

*Goodmans LLP*

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Goodmans LLP

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<sup>41</sup> [\*YRC Freight Second Supplemental Order Endorsement\*](#) at para [6\(a\)](#); [\*David's Bridal\*](#) at para 3(k); [\*Paladin Labs Canadian Holding Inc. et al.\*](#), 2023 ONSC 2516 at paras [2\(b\)](#) and [13](#); [\*Voyager\*](#) at para 3(h); [\*GNC Holdings\*](#) at para 3(l).

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

No.	Description
1.	<a href="#"><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))</a>
2.	<a href="#"><i>WeWork Inc., et al.</i> (16 November 2023), Toronto, Ont. Sup Ct. J [Commercial List] CV-23-00709258-00CL (Supplemental Order (Foreign Main Proceeding))</a>
3.	<a href="#"><i>WeWork Inc., et al.</i> (14 December 2023), Toronto, Ont. Sup Ct. J [Commercial List] CV-23-00709258-00CL (Second Supplemental Order)</a>
4.	<a href="#"><i>WeWork Inc., et al.</i> (18 January 2024), Toronto, Ont. Sup Ct. J [Commercial List] CV-23-00709258-00CL (Third Supplemental Order)</a>
5.	<a href="#"><i>Zochem Inc. (Re)</i>, 2016 ONSC 958</a>
6.	<a href="#"><i>In the Matter of Voyager Digital Ltd.</i>, 2022 ONSC 4553</a>
7.	<a href="#"><i>Paladin Labs Canadian Holding Inc.</i>, 2024 ONSC 219</a>
8.	<a href="#"><i>Hartford Computer Hardware, Inc. (Re)</i>, 2012 ONSC 964</a>
9.	<a href="#"><i>Babcock &amp; Wilcox Canada Ltd., Re</i>, [2000] OJ No 786 (QL), 95 ACWS (3d) 608 (ONSC)</a>
10.	<a href="#"><i>Xerium Technologies Inc., Re</i>, 2010 ONSC 3974</a>
11.	<a href="#"><i>YRC Freight Canada Company (Re)</i>, 2023 ONSC 5513</a>
12.	<a href="#"><i>Instant Brands Inc., et al</i> (20 July 2023), Ont Sup Ct J [Commercial List] CV-23-00701159-00CL (Order (Recognition of Supplemental Interim DIP Order, Final DIP Order, Cash Management Order and Bidding Procedures Order))</a>
13.	<a href="#"><i>David's Bridal, LLC et al.</i> (29 May 2023), Toronto, Ont Sup Ct J [Commercial List] CV-23-0698107-00CL (Recognition Order)</a>
14.	<a href="#"><i>Paladin Labs Canadian Holding Inc.</i>, 2022 ONSC 5810</a>
15.	<a href="#"><i>Voyager Digital Ltd.</i> (11 August 2022), Toronto, Ont Sup Ct J [Commercial List] CV-22-00683820-00CL (Recognition Order)</a>
16.	<a href="#"><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))</a>

No.	Description
17.	<a href="#"><i>Paladin Labs Canadian Holding Inc. et al., 2023 ONSC 2516</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 February 22, 2024)**

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