

**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  
(Third 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 “**Third Supplemental Order**”) for, among other things, recognizing and enforcing pursuant to section 49 of the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) certain U.S. Orders (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**”), 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**”) each as attached (without exhibits) to the Affidavit of David Tolley sworn January 15, 2024 (the “**Fourth Tolley Affidavit**”), or the Fourth 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. The Chapter 11 Debtors have recently sought and obtained from the U.S. Bankruptcy Court, among others, final versions of certain of the Recognized First Day Orders, and certain additional orders, which the Foreign Representative now seeks to have recognized in Canada pursuant to the Third Supplemental Order, being: (i) the Final Cash Collateral Order; (ii) the Final Creditor Matrix Order; (iii) the DIP Financing Order; (iv) the Second Lease Rejection Order; and (v) the Cushman Stipulation and Consent Order (each as defined below, and collectively, the “**U.S. Orders**”).

8. These U.S. 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**”), 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 such U.S. Orders in Canada and grant the Third Supplemental Order.

## **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 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>

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 “**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>

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> Fourth Tolley Affidavit at para 2 [CL p [A3648:A15](#)].

<sup>3</sup> Fourth Tolley Affidavit at para 3 [CL p [A3648:A15](#)].

<sup>4</sup> Fourth Tolley Affidavit at para 4 [CL p [A3648:A15](#)].

<sup>5</sup> Fourth Tolley Affidavit at para 5 [CL p [A3649: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 in respect of the Chapter 11 Cases 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 the Information Officer, and (v) granting the Administration Charge and the D&O Charge.<sup>8</sup>

16. In connection with the commencement of the Chapter 11 Cases, the Chapter 11 Debtors, including the WeWork Canadian Entities, worked with various stakeholders across the Chapter 11 Debtors’ capital structure, including SoftBank Group Corp. (“**SoftBank**”), one of WeWork’s most significant investors, and other major holders of the Company’s funded debt to negotiate the terms of a comprehensive restructuring transaction. On November 6, 2023, the Company, SoftBank, an

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<sup>7</sup> Fourth Tolley Affidavit at para 6 [CL p [A3649:A16](#)].

<sup>8</sup> Fourth Tolley Affidavit at para 7 [CL p [A3649:A16](#) – [A3650: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 [*First Supplemental Order*].

ad hoc group of noteholders (the “**Consenting AHG Noteholders**”) and Cupar Grimmond, LLC entered into a restructuring support agreement (the “**RSA**”) that contemplates a path forward for the Chapter 11 Cases with the support of SoftBank and other holders of approximately 92 percent of the Company’s secured notes. The RSA centered on the full equitization of the Company’s 1L Notes, 2L Notes, and the letter of credit (the “**LCs**”) facility to reduce the Company’s funded debt by approximately \$3 billion, and the terms upon which applicable stakeholders would agree to the Chapter 11 Debtors’ use of cash collateral and the incurrence of debtor-in-possession (“**DIP**”) financing (the “**DIP Financing**”) in the Chapter 11 Cases.<sup>9</sup>

17. Following extensive negotiations with the SoftBank Parties, the Consenting AHG Noteholders, certain of the banks that issued the Chapter 11 Debtors’ LCs, and the Official Committee of Unsecured Creditors (the “**UCC**”), the Chapter 11 Debtors, including the WeWork Canadian Entities, resolved all of the formal and informal objections raised by the UCC and various other groups of landlords to the proposed final version of the cash collateral order (the “**Final Cash Collateral Order**”) which was previously entered by the U.S. Bankruptcy Court on an interim basis (the “**Interim Cash Collateral Order**”) and recognized by this Court pursuant to the First Supplemental Order, and the proposed DIP Financing Order (the “**DIP Financing Order**”). At a hearing on December 11, 2023, after the Chapter 11 Debtors resolved all formal and informal objections from various groups of landlords, the U.S. Bankruptcy Court entered the Final Cash Collateral Order and the DIP Financing Order with the support of the UCC.<sup>10</sup>

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<sup>9</sup> Fourth Tolley Affidavit at para 13 [CL p [A3652:A19](#) – [A3653:A20](#)].

<sup>10</sup> Fourth Tolley Affidavit at paras 15, 19, 30, 43 [CL p [A3653:A20](#), [A3655:A22](#), [A3659:A26](#), [A3666:A33](#)]; [First Supplemental Order](#) at para 5.

18. On December 14, 2023, this Court granted a second Supplemental Order (the “**Second Supplemental Order**”), among other things, recognizing and enforcing: (a) the following final versions of Recognized First Day Orders, which were initially granted on an interim basis by the U.S. Bankruptcy Court: (i) the Final Wages Order; (ii) the Final Critical Vendors Order; (iii) the Final Insurance and Surety Bond Order; (iv) the Final Utilities Order; (v) the Final Taxes Order; (vi) the Final NOL Order; and (vii) the Final Customer Programs Order (collectively, the “**December 6 Final First Day Orders**”); and (b) the following additional orders: (i) the Assumption/Rejection Procedures Order; (ii) the Lease Rejection Order; (iii) the Automatic Stay Enforcement Order; (iv) the De Minimis Claims Procedures Order; and (v) the De Minimis Asset Transactions Procedures Order.<sup>11</sup>

19. On December 20, 2023, the U.S. Bankruptcy Court entered the final Creditor Matrix Order (the “**Final Creditor Matrix Order**”), on a consensual basis and without a hearing following the resolution of all formal and informal objections thereto.<sup>12</sup>

20. In addition, a portion of a dispute with Cushman & Wakefield U.S. Inc. (“**Cushman**”) was consensually resolved regarding a certain Master Services Agreement dated May 18, 2022 (the “**MSA**”) and a certain Schedule for Facilities Management Services (the “**Schedule**”, and together with the MSA, both as amended from time to time, the “**Cushman Contract**”), pursuant to which Cushman provides facilities management services (the “**Cushman Services**”) to the Chapter 11 Debtors, including the WeWork Canadian Entities. On December 21, 2023, the Chapter 11 Debtors entered a stipulation and consent order (the “**Cushman Stipulation and Consent**”

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<sup>11</sup> [WeWork Inc., et al. \(14 December 2023\), Toronto, Ont. Sup Ct. J \[Commercial List\] CV-23-00709258-00CL \(Second Supplemental Order\)](#) at para 3 [*WeWork Second Supplemental Order*].

<sup>12</sup> Fourth Tolley Affidavit at para 38 [CL p [A3665:A32](#)].

**Order**”) with the U.S. Bankruptcy Court regarding the Cushman Contract on a consensual basis, without a hearing, as further discussed herein.<sup>13</sup>

21. On January 9, 2024, the U.S. Bankruptcy Court entered a second lease rejection order (the “**Second Lease Rejection Order**”), on a consensual basis and without a hearing following the resolution of all formal and informal objections relating thereto.<sup>14</sup>

**B. THE U.S. ORDERS**

22. The Foreign Representative now seeks the Third Supplemental Order in these proceedings recognizing and enforcing the U.S. Orders in Canada.

(i) **The Final Cash Collateral Order**

23. The Final Cash Collateral Order is the final version of the Interim Cash Collateral 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 in these proceedings pursuant to the First Supplemental Order.<sup>15</sup>

24. The Chapter 11 Debtors’ continued access to sufficient working capital and liquidity through the use of Cash Collateral and other Prepetition Collateral is necessary and vital to the preservation and maintenance of the going-concern value of the business of the Chapter 11 Debtors, including the WeWork Canadian Entities, and their successful reorganization. The Chapter 11 Debtors do not have sufficient sources of working capital and liquidity to operate their business in the ordinary course of business or to maintain their properties without the continued use of Cash Collateral. Absent the ability to continue to use Cash Collateral on a postpetition

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<sup>13</sup> Fourth Tolley Affidavit at para 56-57 [CL p [A3673:A40](#)].

<sup>14</sup> Fourth Tolley Affidavit at para 53 [CL p [A3672:A39](#)].

<sup>15</sup> Fourth Tolley Affidavit at para 31 [CL p [A3659:A26](#)]; [First Supplemental Order](#) at para 5.

basis, and the other Prepetition Collateral provided pursuant to the Final Cash Collateral Order, the continued operations of the business of the Chapter 11 Debtors, including the WeWork Canadian Entities, would not be possible and harm to the estates of the Chapter 11 Debtors would be inevitable.<sup>16</sup>

25. As was the case under the Interim Cash Collateral Order, no adequate protection liens were granted over the assets of the WeWork Canadian Entities under the Final Cash Collateral Order. However, the WeWork Canadian Entities will have the benefit of continued access to the Cash Collateral provided under the Final Cash Collateral Order to finance their working capital and liquidity needs throughout the Chapter 11 Cases, if needed.<sup>17</sup>

26. The Final Cash Collateral Order includes substantially the same material terms as the Interim Cash Collateral Order, except that, among other things, pursuant to the Final Cash Collateral Order: (i) it is noted that the Required Noteholder Secured Parties have consented to the DIP Financing described in the DIP Financing Order solely on the terms set forth in the DIP Financing Order, and have consented to the issuance of liens as provided for pursuant to the DIP Financing Order (as described above, no liens were granted over the assets of WeWork Canadian Entities under the Final Cash Collateral Order or the DIP Financing Order); (ii) reporting on LCs was introduced; (iii) the Default Notice Period in respect of termination of the use of Cash Collateral was lengthened from five (5) days to seven (7) days, and certain termination events were added; (iv) a reserve of estimated unpaid rent obligations for the period from and including the Petition Date through November 30, 2023 and allowable under section 503(b) of the U.S.

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<sup>16</sup> Fourth Tolley Affidavit at para 33 [CL p [A3660:A27](#)].

<sup>17</sup> Fourth Tolley Affidavit at para 34 [CL p [A3660:A27](#)].

Bankruptcy Code (the “**Stub Rent**”) was established which is to be funded by the Chapter 11 Debtors, including the WeWork Canadian Entities, into a segregated account (the “**Stub Rent Reserve**”), and solely used to pay Stub Rent expenses allowed under section 503(b) of the U.S. Bankruptcy Code (the “**Stub Rent Claims**”), as described in further detail in the Final Cash Collateral Order.<sup>18</sup>

27. The Stub Rent Reserve, and the protocol associated therewith as set out in the Final Cash Collateral Order, is for the benefit of the landlord creditors of the Chapter 11 Debtors, including the landlords of the WeWork Canadian Locations (the “**Canadian Landlords**”), and was created to provide comfort and assurance to the landlord creditors regarding the funding for allowed Stub Rent Claims. Such allowed Stub Rent Claims will be paid promptly after the effective date of the Chapter 11 Plan.<sup>19</sup>

28. Accordingly, in light of the impact of the Final Cash Collateral Order on the WeWork Canadian Entities and their creditors, the Foreign Representative is seeking recognition of the Final Cash Collateral Order in these Canadian recognition proceedings.

(ii) **The Final Creditor Matrix Order**

29. The Final Creditor Matrix Order is the final version of the interim creditor matrix order (the “**Interim Creditor Matrix Order**”) that was initially granted on an interim basis by the U.S. Bankruptcy Court on November 8, 2023, and which was previously recognized by this Court pursuant to the First Supplemental Order.<sup>20</sup>

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<sup>18</sup> Fourth Tolley Affidavit at para 36 [CL p [A3661:A28](#) – [A3665:A32](#)].

<sup>19</sup> Fourth Tolley Affidavit at paras 36-37 [CL p [A3661:A28](#) – [A3665:A32](#)].

<sup>20</sup> Fourth Tolley Affidavit at para 39 [CL p [A3665:A32](#)]; [First Supplemental Order](#) at para 5.

30. The Final Creditor Matrix Order, among other things, (a) authorizes the Chapter 11 Debtors to (i) file a consolidated list of the Chapter 11 Debtors' thirty (30) largest unsecured creditors in lieu of filing separate creditor lists for each Chapter 11 Debtor, (ii) file a consolidated list of creditors in lieu of submitting a separate mailing matrix for each Chapter 11 Debtor, (iii) redact or withhold certain confidential information of customers, and (iv) redact certain personally identifiable information, and (b) waives the requirement to file a list of equity holders and provide notices directly to equity security holders of the WeWork Parent.<sup>21</sup>

31. The Final Creditor Matrix Order includes substantially the same material terms as the Interim Creditor Matrix Order, except that, (i) the Final Creditor Matrix Order does not provide for the redaction of the names of natural persons whose personally identifiable information has been provided to an organization with an establishment in the United Kingdom or a European Economic Area member state, and (ii) the United States Trustee for the District of New Jersey (the "U.S. Trustee") reserves the reserves the right to re-raise the issue of redaction of customer names at a future hearing regarding the confirmation of the Chapter 11 Plan, or thereafter.<sup>22</sup>

32. Creditors of the WeWork Canadian Entities are implicated by in the Final Creditor Matrix Order, as they are included in the matrix, and accordingly, the Foreign Representative is seeking recognition of the Final Creditor Matrix Order in these Canadian recognition proceedings.<sup>23</sup>

(iii) **The DIP Financing Order**

33. To continue operating in the ordinary course and preserve optionality with respect to the Chapter 11 Debtors' lease rationalization strategy, the Chapter 11 Debtors critically require access

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<sup>21</sup> Fourth Tolley Affidavit at para 40 [CL p [A3665:A32](#) – [A3666:A33](#)].

<sup>22</sup> Fourth Tolley Affidavit at para 41 [CL p [A3666:A33](#)].

<sup>23</sup> Fourth Tolley Affidavit at para 42 [CL p [A3666:A33](#)].

to DIP Financing in order to be able to maintain access to LCs in support of the Chapter 11 Debtors' lease obligations, as a significant number of the leases to which the Chapter 11 Debtors and their affiliates are party require that they provide, in their capacities as tenants, LCs as security for such leases. If the Chapter 11 Debtors, including the WeWork Canadian Entities, fail to maintain the LCs (including by failing to replace the LCs in advance of their expiration), the Chapter 11 Debtors will likely be in default under those leases and landlords could then invoke their right to draw the applicable LCs in full. This would create additional secured claims, and likely disenfranchise landlords from continuing negotiations with the WeWork Canadian Entities and the other Chapter 11 Debtors, inhibit potential assumption of such leases in the Chapter 11 Cases, and jeopardize the broader restructuring of the Chapter 11 Debtors, including the WeWork Canadian Entities.<sup>24</sup>

34. Pursuant to the terms of the Senior Secured Debtor-In-Possession Credit Agreement, the form of which was approved pursuant to the DIP Financing Order, and was subsequently executed on December 19, 2023 (the "**DIP Credit Agreement**"), the DIP Financing Order authorizes postpetition financing composed of: (i) a senior secured, first priority cash collateralized debtor-in-possession "first out" letter of credit facility (the "**DIP LC Facility**")<sup>25</sup> in an aggregate amount not to exceed \$650,000,000, as further described below; and (ii) senior secured, first priority debtor-in-possession "last out" term loan "C" facility (the "**DIP Term Facility**")<sup>26</sup> and together with the DIP LC Facility, the "**DIP Facilities**") in an aggregate principal amount equal to \$671,237,045.94, the proceeds of which will fully cash collateralize the LCs under the DIP LC Facility.<sup>27</sup>

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<sup>24</sup> Fourth Tolley Affidavit at paras 16-17 [CL p [A3654:A21](#) – [A3655:A22](#)].

<sup>25</sup> The DIP LC Facility is defined as the Senior LC Facility in the DIP Credit Agreement.

<sup>26</sup> The DIP Term Facility is defined as the Junior TLC Facility in the DIP Credit Agreement.

<sup>27</sup> Fourth Tolley Affidavit at paras 34, 44 [CL p [A3660:A27](#); [A3666:A33](#) – [A3667:A34](#)].

35. No collateral of the WeWork Canadian Entities was pledged in respect of the DIP Facilities, nor are any of the WeWork Canadian Entities party to or guarantors of the DIP Facilities, even on an unsecured basis. The DIP Facilities may, however, be used to renew or reissue LCs to certain Canadian Landlords on behalf of the WeWork Canadian Entities and the WeWork Canadian Entities will benefit from the DIP Facilities as an integrated member of the WeWork Group and its access to proper funding.<sup>28</sup>

36. The Foreign Representative is not seeking a Court-ordered charge in respect of the DIP Financing to secure the obligations outstanding from time to time under the DIP Facilities (a “**DIP Charge**”). No adequate protection liens were granted over the WeWork Canadian Entities, or any property belonging thereto, to secure the DIP Facilities under the DIP Financing Order, and accordingly, no DIP Charge is required in Canada.<sup>29</sup>

37. The DIP Facilities do not alter the rights of the Prepetition Secured Parties in collateral as all amounts owing by the Chapter 11 Debtors under the DIP Facilities will be secured by a perfected lien, or as otherwise provided in the DIP Financing Order, on a *pari passu* basis with (i) the current, first-priority liens securing the Prepetition Credit Agreement and Secured Notes; and (ii) any liens securing adequate protection claims granted to the prepetition first lien secured parties under the Interim and Final Cash Collateral Orders.<sup>30</sup>

38. Recognition of the DIP Financing Order in Canada will enable the Chapter 11 Debtors, including the WeWork Canadian Entities, to finance the Chapter 11 Cases and these recognition proceedings, and the Chapter 11 Debtors’ overall efforts to rationalize their lease portfolio and

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<sup>28</sup> Fourth Tolley Affidavit at para 45 [CL p [A3667:A34](#)].

<sup>29</sup> Fourth Tolley Affidavit at para 49 [CL p [A3671:A38](#)].

<sup>30</sup> Fourth Tolley Affidavit at para 50 [CL p [A3671:A38](#)].

execute a value-maximizing global restructuring. Access to the proposed DIP Facilities will (i) ensure that the Chapter 11 Debtors, including the WeWork Canadian Entities, have sufficient funding to consummate the restructuring plan contemplated by the RSA, (ii) provide the requisite LC capacity for the Chapter 11 Debtors and non-filed affiliates to issue and maintain standby LCs to support their third party obligations during the Chapter 11 Cases, and (iii) send a clear message to the Chapter 11 Debtors' stakeholders that the Chapter 11 Debtors' business is on the path to improved, sustainable results for the benefit of all creditors.

39. Accordingly, the Foreign Representative is seeking recognition of the DIP Financing Order in these Canadian recognition proceedings.

(iv) **The Second Lease Rejection Order**

40. The Assumption/Rejection Procedures Order, which was previously recognized by this Court pursuant to the Second Supplemental Order, approved the procedures for rejecting or assuming executory contracts and unexpired leases, and included a form of Rejection Order to be used for the rejection of executory contracts and unexpired leases, as needed. The Second Lease Rejection Order, among other things, authorizes the Chapter 11 Debtors to (i) reject certain unexpired leases or executory contracts, as listed on the Rejection Schedule attached thereto as Exhibit 1 and subject to the Rejection Date; and (ii) abandon certain personal property.<sup>31</sup>

41. The Second Lease Rejection Order rejected two (2) WeWork Canadian Locations in Ontario effective as of December 16, 2023 and December 31, 2023, respectively. The affected landlords and contract counterparties were issued appropriate notice of the rejection of their

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<sup>31</sup> Fourth Tolley Affidavit at para 54 [CL p [A3672:A39](#)].

respective lease and executory contract through the Chapter 11 Cases process and the Company fully exited and turned over the premises at these two (2) rejected WeWork Canadian Locations as of December 16, 2023 and December 31, 2023, respectively.<sup>32</sup>

42. Accordingly, the Foreign Representative is seeking recognition of the Second Lease Rejection Order in these Canadian recognition proceedings.

(i) **The Cushman Stipulation and Consent Order**

43. As described above, the Cushman Stipulation and Consent Order was granted by the U.S. Bankruptcy Court on an consensual basis and without a hearing following the partial resolution of certain disputes in respect of the Cushman Contract.<sup>33</sup>

44. Pursuant to the Cushman Contract, Cushman provides the Cushman Services to the Chapter 11 Debtors. Pursuant to a certain Canada Participation Agreement dated May 18, 2022 (the “**Canadian Participation Agreement**”), Canada LP ULC and Cushman & Wakefield Facility Management Services agreed to participate in the Cushman Contract to facilitate the provision of the Cushman Services to the WeWork Canadian Entities in Canada.<sup>34</sup>

45. Since the Petition Date, the Chapter 11 Debtors and Cushman engaged in negotiations regarding Cushman’s performance under the Cushman Contract on a postpetition basis, the payment of Cushman’s expenses incurred with respect to the Cushman Subcontractors and the Cushman Employees in connection with the Cushman Services prepetition and postpetition,

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<sup>32</sup> Fourth Tolley Affidavit at para 55 [CL p [A3672:A39](#)].

<sup>33</sup> Fourth Tolley Affidavit at para 56 [CL p [A3673:A40](#)].

<sup>34</sup> Fourth Tolley Affidavit at para 57 [CL p [A3673:A40](#)].

Cushman's critical vendor status and the potential assumption of the Cushman Contract, but could not come to terms on a number of issues.<sup>35</sup>

46. On December 6, 2023, Cushman filed, among other papers, a motion seeking to compel the Chapter 11 Debtors, including the WeWork Canadian Entities, to decide whether to assume or reject the Cushman Contract (the "**Cushman Motion**"). The Chapter 11 Debtors and Cushman each subsequently filed various objections and replies to objections.<sup>36</sup>

47. The Cushman Stipulation and Consent Order is the result of good-faith arm's-length negotiations between the Chapter 11 Debtors and Cushman and includes certain agreements and resolutions to certain disputes in respect of the Cushman Contract.<sup>37</sup>

48. The WeWork Canadian Entities benefit from the Cushman Services provided under the Cushman Contract pursuant to the Canadian Participation Agreement (to which Canada LP ULC is a signatory), and accordingly, the Foreign Representative is seeking recognition of the Cushman Stipulation and Consent Order by this Court in the Canadian recognition proceedings.<sup>38</sup>

### **PART III– ISSUES AND THE LAW**

49. The issue on this motion is whether the Court should grant the Third Supplemental Order recognizing the U.S. Orders described above in Canada pursuant to section 49 of the CCAA.

50. 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

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<sup>35</sup> Fourth Tolley Affidavit at para 59 [CL p [A3673:A40](#) – [A3674:A41](#)].

<sup>36</sup> Fourth Tolley Affidavit at para 61 [CL p [A3674:A41](#)].

<sup>37</sup> Fourth Tolley Affidavit at para 63 [CL p [A3675:A42](#)].

<sup>38</sup> Fourth Tolley Affidavit at para 65 [CL p [A3675:A42](#)].

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 THIRD SUPPLEMENTAL ORDER**

51. 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>39</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>40</sup>

52. 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>41</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>42</sup>

53. 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>39</sup> [WeWork Initial Recognition Order](#) at para 3.

<sup>40</sup> [CCAA, s 49\(1\)](#).

<sup>41</sup> [Zochem Inc. \(Re\), 2016 ONSC 958](#) at para 15.

<sup>42</sup> [CCAA, s 44](#).

predictability and fairness”.<sup>43</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>44</sup>

54. 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.

55. 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>45</sup> Canadian courts have held that this exception to recognition should be interpreted restrictively.<sup>46</sup>

56. Accordingly, this Court has the jurisdiction to grant the Third Supplemental Order.

**B. THE U.S. ORDERS OUGHT TO BE RECOGNIZED IN CANADA**

57. 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

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<sup>43</sup> [In the Matter of Voyager Digital Ltd., 2022 ONSC 4553](#) at para 9.

<sup>44</sup> [CCAA, s 52.](#)

<sup>45</sup> [CCAA, s 61\(2\).](#)

<sup>46</sup> [Hartford Computer Hardware, Inc. \(Re\), 2012 ONSC 964](#) at paras 17-18.

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>47</sup> A consideration of these factors supports this Court's recognition of the U.S. Orders pursuant to the Third Supplemental Order.

(i) **Recognition of Final Cash Collateral Order**

58. This Court granted the Interim Cash Collateral Order on the basis that access to cash collateral is essential for the Chapter 11 Debtors, including the WeWork Canadian Entities, as it provides liquidity necessary to effect the value-maximizing lease rationalization and comprehensive, global restructuring, thereby furthering the objectives of the CCAA.<sup>48</sup>

59. The Court's recognition of the Final Cash Collateral Order is required to facilitate the continued access to the liquidity necessary for the Chapter 11 Debtors, including the WeWork Canadian Entities, to continue to operate during the Chapter 11 Cases and effectuate their restructuring. The Chapter 11 Debtors do not have sufficient liquidity to operate their business in the ordinary course without the financing provided pursuant to the Final Cash Collateral Order. Failure to obtain recognition in Canada of the Final Cash Collateral Order would 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>49</sup>

60. As discussed above, the Final Cash Collateral Order includes substantially the same material terms as the Interim Cash Collateral Order, with the exception of the revisions described

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<sup>47</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>48</sup> Supplemental Affidavit at para 52 [CL p [A3850;A217](#)]; Fourth Tolley Affidavit at para 14 [CL p [A3653;A20](#)].

<sup>49</sup> Fourth Tolley Affidavit at paras 33 [CL p [A3660;A27](#)].

above, including the addition of the Stub Rent Reserve to address allowed Stub Rent Claims, as described in detail in the Final Cash Collateral Order. The creation of the Stub Rent Reserve is for the benefit of the landlord creditors of the Chapter 11 Debtors, including the WeWork Canadian Entities, and offers additional protection and comfort in connection with the Chapter 11 Debtors' intention to pay allowed Stub Rent Claims promptly after the effective date of the Chapter 11 Plan.<sup>50</sup>

61. Courts have previously recognized similar orders to the Final Cash Collateral Order in CCAA Part IV recognition proceedings.<sup>51</sup> In respect of the Stub Rent Reserve, Canadian courts have also previously recognized orders which allowed for the payment of “stub rent” or included the creation of a “stub rent reserve” on similar terms to the Stub Rent Reserve approved by the U.S. Bankruptcy Court in the Chapter 11 Cases.<sup>52</sup>

62. The Foreign Representative submits that the recognition of the Final Cash Collateral Order by this Court is consistent with Part IV of the CCAA and the approval of postpetition financing orders commonly granted in Canadian restructuring proceedings and is appropriate in the circumstances.<sup>53</sup>

(ii) **Recognition of Final Creditor Matrix Order**

63. This Court granted the Interim Creditor Matrix Order on the basis that it was in the best interest of the stakeholders of the WeWork Canadian Entities as it authorized the Company to

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<sup>50</sup> Fourth Tolley Affidavit at para 36 [CL p [A3661;A28](#) – [A3665;A32](#)].

<sup>51</sup> [Paladin Labs Canadian Holding Inc., 2022 ONSC 6716](#) at para 5(f) [*Paladin Third Supplemental Order Endorsement*]; [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(a) [*YRC Freight Second Supplemental Order*].

<sup>52</sup> [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(d) [*GNC July 2020 Recognition Order*]; [Cyxtera Technologies, Inc., et al. \(31 July 2023\), Calgary, AB KB 2301-07385 \(Order – Recognition of Foreign Orders\)](#) at para 2(c) [*Cyxtera July 2023 Recognition Order*].

<sup>53</sup> [Paladin Third Supplemental Order Endorsement](#) at para 5(f); [YRC Freight Second Supplemental Order](#) at para 3(a).

provide notice to the creditors of the Chapter 11 Debtors, including the WeWork Canadian Entities, of the meeting of creditors and other noticing and claims information, when applicable, such as lease and executory contract rejection orders.<sup>54</sup>

64. The Court's recognition of the Final Creditor Matrix Order is required to facilitate the Chapter 11 Debtors' restructuring efforts and to ensure that all creditors of the Chapter 11 Debtors, including the WeWork Canadian Entities, remain informed as to the progress of the Chapter 11 Cases and any pertinent issues.<sup>55</sup>

65. This Court has previously recognized similar orders in CCAA Part IV recognition hearings.<sup>56</sup> The Foreign Representative submits that it is appropriate in the circumstances for the Court to recognize and give effect to the Final Creditor Matrix Order.

(iii) **Recognition of DIP Financing Order**

66. The U.S. Bankruptcy Court granted the DIP Financing Order on the basis that the DIP Facilities are critical for the Chapter 11 Debtors, including the WeWork Canadian Entities, to continue operating in the ordinary course of business and preserve optionality with respect to the Chapter 11 Debtors' lease rationalization strategy. The Chapter 11 Debtors, including the WeWork Canadian Entities, require access to the DIP Facilities in order to be able to maintain, renew and issue LCs during the Chapter 11 Cases.<sup>57</sup>

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<sup>54</sup> Fourth Tolley Affidavit at paras 40-41 [CL p [A3665:A32](#) – [A3666:A33](#)].

<sup>55</sup> Fourth Tolley Affidavit at para 40 [CL p [A3665:A32](#) – [A3666:A33](#)].

<sup>56</sup> [YRC Freight Second Supplemental Order](#) at para 3(j); [GNC Holdings, Inc., et al. \(29 June 2020\) Toronto, Ont Sup Ct J \[Commercial List\] CV-20-00642970-00CL \(Supplemental Order \(Foreign Main Proceeding\)\)](#) at para 4(c); [Voyager Digital Ltd. \(12 July 2022\) Toronto, Ont Sup Ct J \[Commercial List\] CV-22-00683820-00CL \(Supplemental Order\)](#) at para 4(i).

<sup>57</sup> Fourth Tolley Affidavit at paras 17-20, 48, 52 [CL p [A3654:A21](#) – [A3655:A22](#), [A3670:A37](#), [A3671:A38](#)].

67. This Court's recognition of the DIP Financing Order is required to provide the requisite LC capacity for the Chapter 11 Debtors, including the WeWork Canadian Entities, and non-filed affiliates to continue their ordinary course operations and preserve value as they undertake efforts to rationalize their lease portfolio, ensure the Chapter 11 Debtors have sufficient access to funding to consummate the restructuring plan contemplated by the RSA, and send a clear message to the Chapter 11 Debtors' stakeholders that the Company's business is on the path to improved, sustainable results for the benefit of all creditors as they pursue a value-maximizing, going concern global restructuring.<sup>58</sup>

68. Absent access to the DIP Facilities, among other things: (i) existing undrawn LCs will mature without a replacement, forcing landlords to choose between losing such credit support or drawing on the expiring prepetition LCs (which would increase prepetition secured claims against the Chapter 11 Debtors) unnecessarily; and (ii) the Chapter 11 Debtors' lease rationalization strategy would be adversely impacted as landlords, including Canadian Landlords, would likely be unwilling to engage with the Chapter 11 Debtors absent some other form of security.<sup>59</sup>

69. Many of the factors established by the Court when considering the approval or recognition of an Order regarding a cross-border DIP Financing are present in these circumstances.<sup>60</sup> Among other things:

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<sup>58</sup> Fourth Tolley Affidavit at paras 17, 47, 52 [CL p [A3654:A21](#) – [A3655:A22](#), [A3669:A36](#) – [A3670:A37](#), [A3671:A38](#)].

<sup>59</sup> Fourth Tolley Affidavit at para 17 [CL p [A3654:A21](#) – [A3655:A22](#)].

<sup>60</sup> [Indalex Limited, Re \(8 April 2009\), Toronto, Ont Sup Ct J \[Commercial List\] CV-09-8122-00CL \(Endorsement of Morawetz J\)](#) at paras 8-9; [Revlon, Inc., Re \(20 June 2023\), Toronto, Ont Sup Ct J \[Commercial List\] CV-00682880-00CL \(Endorsement of Conway J\)](#); [YRC Freight Canada Company \(Re\), 2023 ONSC 4834](#) at para 34 [*YRC Freight Supplemental Order Endorsement*].

- (a) the Chapter 11 Debtors, including the WeWork Canadian Entities, are in need of the DIP Facilities in order to support operations during the period of the going-concern restructuring and preserve optionality with respect to the Chapter 11 Debtors' lease rationalization strategy;
- (b) the LC construct under the DIP Facilities does not unfairly prejudice the Chapter 11 Debtors' stakeholders because the DIP LC Facility;
- (c) the creditors of the Chapter 11 Debtors, including the WeWork Canadian Entities, are not prejudiced given, among other things: (i) no adequate protection liens were granted over the WeWork Canadian Entities, or any property belonging thereto; (ii) the DIP Facilities, do not alter the rights of the Prepetition Secured Parties in collateral because all amounts owing by the Chapter 11 Debtors under the DIP Facilities will be secured by a perfected lien, or as otherwise provided in the DIP Financing Order, on a *pari passu* basis with (A) the current, first-priority liens securing the Prepetition Credit Agreement and Secured Notes; and (B) any liens securing adequate protection claims granted to the prepetition first lien secured parties under the Interim and Final Cash Collateral Orders; and (iii) the unsecured creditors of the WeWork Canadian Entities are represented together with all other unsecured creditors of the Company by the UCC in the Chapter 11 Cases; and
- (d) a stand-alone solution for the WeWork Canadian Entities is impractical given the integrated nature of the business of the Chapter 11 Debtors, and the assets of the

WeWork Canadian Entities remain unencumbered as a result of the DIP Facilities, and therefore no DIP Charge is being sought in these proceedings in Canada.<sup>61</sup>

70. The Foreign Representative submits that recognition of the DIP Financing Order by this Court is appropriate as doing so is consistent with Part IV of the CCAA, the principles of comity, and with prior approvals of DIP Financing commonly granted in Canadian restructuring proceedings, especially given that no DIP Charge is being sought in these proceedings.<sup>62</sup>

(iv) **Recognition of Second Lease Rejection Order**

71. As discussed above, the Assumption/Rejection Procedures Order, which set out the procedures for rejecting executory contracts and unexpired leases, and the Lease Rejection Order, which approved the rejection of certain unexpired leases and abandonment of personal property, were each recognized by this Court pursuant to the Second Supplemental Order.<sup>63</sup>

72. 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 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 not longer needed given its global restructuring efforts. The rejection of these underperforming leases, and possible

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<sup>61</sup> Fourth Tolley Affidavit at paras 17, 49-51 [CL p [A3654:A21](#) – [A3655:A22](#), [A3671:A38](#)].

<sup>62</sup> [YRC Freight Supplemental Order Endorsement](#) at para 34; [Instant Brands Acquisition Holdings Inc., et al. \(23 June 2023\), Toronto, Ont. Sup Ct J \[Commercial List\] CV-23-00701159-00CL \(Recognition of Interim DIP Order\)](#) at para 5; [David's Bridal, LLC, et al. \(18 April 2023\), Toronto, Ont Sup Ct J \[Commercial List\] CV-23-0698107-00CL \(Supplemental Order \(Foreign Main Proceeding\)\)](#) at para 23; [Cytxera July 2023 Recognition Order](#) at para 2(c).

<sup>63</sup> [WeWork Second Supplemental Order](#) at para 3(h) .

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. The Company continues to negotiate with landlords and assess their postpetition administrative costs to facilitate the efficient administration of their estates, and has determined to reject additional contracts and exit additional leased locations, including two WeWork Canadian Locations in Ontario. Accordingly, the Chapter 11 Debtors, including the WeWork Canadian Entities, sought and obtained the Second Lease Rejection Order to reject the Rejected Leases and abandon personal property, where necessary, which included two (2) WeWork Canadian Locations in Ontario.<sup>64</sup>

73. Courts have previously recognized orders similar to the Second Lease Rejection Order in CCAA Part IV recognition proceedings, including in this Canadian recognition proceeding.<sup>65</sup> The Foreign Representative submits that it is appropriate in the circumstances for the Court to recognize and give effect to the Second Lease Rejection Order.

(v) **Recognition of Cushman Stipulation and Consent Order**

74. The Chapter 11 Debtors, including the WeWork Canadian Entities, sought and obtained the Cushman Stipulation and Consent Order to ensure the stability of their operations and the services provided by Cushman and various third-party service providers, and to document the agreement to resolve or otherwise postpone their disputes regarding the Cushman Motion.<sup>66</sup>

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<sup>64</sup> Third Tolley Affidavit at para 41 [CL p [A2887;A254](#) – [A2888;A255](#)]; Fourth Tolley Affidavit at paras 12, 27 [CL p [A3652;A19](#), [A3658; A25](#)].

<sup>65</sup> [WeWork Second Supplemental Order](#) at para 3(h)-(i); [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 July 2020 Recognition Order](#) 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>66</sup> Fourth Tolley Affidavit at paras 64-65 [CL p [A3675;A42](#)].

75. The Cushman Stipulation and Consent Order was entered by the U.S. Bankruptcy Court consensually and without a hearing, following good-faith arm's length negotiations between the Chapter 11 Debtors and Cushman.<sup>67</sup>

76. The WeWork Canadian Entities benefit from the Cushman Services provided under the Cushman Contract pursuant to the Canadian Participation Agreement, and therefore the Foreign Representative submits that it is appropriate in the circumstances for the Court to recognize and give effect to the related Cushman Stipulation and Consent Order.<sup>68</sup>

**PART IV – RELIEF REQUESTED**

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

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

*Goodmans LLP*  
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Goodmans LLP

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<sup>67</sup> Fourth Tolley Affidavit at paras 38, 63 [CL p [A3665:A32](#), [A3675:A42](#)].

<sup>68</sup> Fourth Tolley Affidavit at para 65 [CL p [A3675:A42](#)].

**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>WeWork Inc., et al.</i> (16 November 2023), Toronto, Ont. Sup Ct. J [Commercial List] CV-23-00709258-00CL (Supplemental Order (Foreign Main Proceeding))</u></a>
4.	<a href="#"><u><i>WeWork Inc., et al.</i> (14 December 2023), Toronto, Ont. Sup Ct. J [Commercial List] CV-23-00709258-00CL (Second Supplemental Order)</u></a>
5.	<a href="#"><u><i>Zochem Inc. (Re)</i>, 2016 ONSC 958</u></a>
6.	<a href="#"><u><i>In the Matter of Voyager Digital Ltd.</i>, 2022 ONSC 4553</u></a>
7.	<a href="#"><u><i>Hartford Computer Hardware, Inc. (Re)</i>, 2012 ONSC 964</u></a>
8.	<a href="#"><u><i>Babcock &amp; Wilcox Canada Ltd., Re</i>, [2000] OJ No 786 (QL), 95 ACWS (3d) 608 (ONSC)</u></a>
9.	<a href="#"><u><i>Xerium Technologies Inc., Re</i>, 2010 ONSC 3974</u></a>
10.	<a href="#"><u><i>Paladin Labs Canadian Holding Inc.</i>, 2022 ONSC 6716</u></a>
11.	<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>
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>Cyxtera Technologies, Inc., et al.</i> (31 July 2023), Calgary, AB KB 2301-07385 (Order – Recognition of Foreign Orders)</u></a>
14.	<a href="#"><u><i>GNC Holdings, Inc., et al.</i> (29 June 2020) Toronto, Ont Sup Ct J [Commercial List] CV-20-00642970-00CL (Supplemental Order (Foreign Main Proceeding))</u></a>
15.	<a href="#"><u><i>Voyager Digital Ltd.</i> (12 July 2022) Toronto, Ont Sup Ct J [Commercial List] CV-22-00683820-00CL (Supplemental Order)</u></a>
16.	<a href="#"><u><i>Indalex Limited, Re</i> (8 April 2009), Toronto, Ont Sup Ct J [Commercial List] CV-09-8122-00CL (Endorsement of Morawetz J)</u></a>

No.	Description
17.	<a href="#"><u>Revlon, Inc., Re (20 June 2023), Toronto, Ont Sup Ct J [Commercial List] CV-00682880-00CL (Endorsement of Conway J)</u></a>
18.	<a href="#"><u>YRC Freight Canada Company (Re), 2023 ONSC 4834</u></a>
19.	<a href="#"><u>Instant Brands Acquisition Holdings Inc., et al. (23 June 2023), Toronto, Ont. Sup Ct J [Commercial List] CV-23-00701159-00CL (Recognition of Interim DIP Order)</u></a>
20.	<a href="#"><u>David's Bridal, LLC, et al. (18 April 2023), Toronto, Ont Sup Ct J [Commercial List] CV-23-0698107-00CL (Supplemental Order (Foreign Main Proceeding))</u></a>
21.	<a href="#"><u>WeWork Inc., et al. (14 December 2023), Toronto, Ont. Sup Ct. J [Commercial List] CV-23-00709258-00CL (Second Supplemental Order)</u></a>
22.	<a href="#"><u>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))</u></a>
23.	<a href="#"><u>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))</u></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 January 18, 2024)**

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