

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-2(c)

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In re:

WEWORK INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 23-19865 (JKS)

(Jointly Administered)

**Hearing Date: March 27, 2024 at 10:00 a.m.
Eastern time**

**REPLY OF CUSHMAN & WAKEFIELD U.S., INC. TO DEBTORS' OBJECTION
TO MOTION FOR ORDER COMPELLING ASSUMPTION OR REJECTION
OF EXECUTORY CONTRACT OR IN THE ALTERNATIVE, FOR RELIEF
FROM THE AUTOMATIC STAY**

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at <https://dm.epiq11.com/WeWork>. The location of Debtor WeWork Inc.'s principal place of business is 12 East 49th Street, 3rd Floor, New York, NY 10017; the Debtors' service address in these chapter 11 cases is WeWork Inc. c/o Epiq Corporate Restructuring, LLC 10300 SW Allen Blvd. Beaverton, OR 97005.

TO THE HONORABLE JOHN K. SHERWOOD, UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEW JERSEY:

Cushman & Wakefield U.S., Inc. (the “Movant”), respectfully submits this Reply (the “Reply”) to the Objection of the Debtors [D.I. No. 1536] (the “Objection”) to Movant’s Motion for Order Compelling Assumption or Rejection of Executory Contract or in the Alternative, Relief From the Automatic Stay [D.I. No. 348] (the “Motion”).²

SUMMARY OF ARGUMENT IN SUPPORT OF REPLY

1. Debtors fail to provide any reason, let alone present any evidence, to support a denial of the Motion. In fact, the only basis cited by the Debtors in support of denying the Motion is that the Debtors need more time to re-negotiate the MSA (which, by the way, was only entered into about a year before the Petition Date). Instead, the focus of the Objection, and the Declaration of Matthew Frank filed in support [D.I. No. 1539] (the “Frank Declaration”), appears to be an attempt to paint Movant as unreasonable and overly aggressive. As detailed below, this could not be further from the truth. Quite the contrary, and as admitted by the Debtors, the parties have engaged in various discussions regarding the MSA and payments thereunder since the day after the Petition Date, if not before. See, Frank Declaration at ¶8-10. Movant has been acting in good faith to try to reach an agreed upon modified MSA for over four (4) months but unfortunately, the parties were unable to reach a resolution. Negotiations on a modified MSA have been very slow and it appears the parties are unlikely to reach an agreement. Debtors cannot be allowed to hold Movant hostage in an attempt to force Movant to negotiate further. In sum, Debtors admit they have no intention to assume the MSA “as is” and thus, granting the Motion to compel Debtors to reject the MSA is proper.

² Capitalized terms not otherwise defined herein shall have the meaning set forth in the Motion.

2. Debtors complain that it is too early to require them to decide whether to assume or reject the MSA but again, Debtors admit they have been considering this issue for at least four (4) months, if not longer. There is no end in sight for Movant to have clarity on whether the MSA will be assumed or rejected as the Debtors have not yet filed a plan and recently filed a motion seeking to extend their exclusivity deadlines for another (4) months. See, D.I. No. 1452. Requiring Movant to wait longer, and allowing Debtors to prolong this further with no real deadline on when to provide an answer to Movant on assumption or rejection of the MSA, is unfair and prejudicial. This is particularly true in light of Debtors' admission that they have no intention to assume the MSA "as is."

3. The continued uncertainty with respect to whether the Debtors will assume or reject the MSA causes harm to Movant, such as the loss of employees, and thus, understaffing of the Debtors' account, difficulties with vendors, and the negative impact on Movant's reputation with vendors, as well as with its current clients and potential future clients. Since December 2023, Movant has lost approximately twenty (20) employees on Debtors' account (over 10% of its staff). The understaffing of Debtors' account can lead to safety issues, a high-stress workplace, higher employee turnover, increased costs, and an increased risk of accidents. Further uncertainty as to whether the MSA will be assumed or rejected also affects Movant's relationship with the vendors which negatively impacts Movant's performance under the MSA. Under these very uncertain conditions, vendors are hard to replace; it is difficult for Movant to enter into long term contracts with vendors, meaning Movant (and thus, the Debtors) are not made a priority; and costs are increased.

4. A denial of the Motion not only prejudices Movant, however, it also prejudices the Debtors. Specifically, if there continues to be uncertainty as to whether the Debtors will assume

or reject the MSA such that employees continue to leave Movant's employ, Movant's ability to perform under the MSA is jeopardized. This would have negative ramifications for the Debtors, including but not limited to code compliance, lease compliance, and fire and life safety issues (because if staffing levels are below the industry norm and there is high turnover, the risk of these types of issues is heightened).

5. The points raised in the Objection are not persuasive because: (1) the only basis cited by the Debtors for denial of the Motion is to give the Debtors more time to try to negotiate better terms on the MSA but the parties have already exhausted such efforts so any such additional time would be futile; (2) Movant demonstrates the harm to both Movant and the Debtors if the Motion is denied, including but not limited to, the loss of employees and vendors due to the uncertainty of whether the MSA will be assumed which jeopardizes Movant's ability to perform under the MSA, puts employees and vendors at risk, and increases the cost to Movant and the Debtors; (3) Debtors recently filed a motion to extend their exclusivity deadlines, forecasting that the filing of a plan is not imminent, and meaning that Movant will be required to continue to wait an indefinite amount of time for a decision on assumption or rejection of the MSA; (4) Movant has negotiated in good faith to reach the terms of an amended MSA but such efforts have failed; and (5) the Debtors cannot force Movant to accept a modified MSA but Debtors admit they have no intention to assume the MSA "as is" and thus, granting the Motion is proper.

REPLY TO DEBTORS' OBJECTION

Debtors Fail To Demonstrate Any Basis to Deny the Motion

6. Debtors object to the Motion, but their only argument in support of the Objection is that granting the Motion will prevent the Debtors from engaging in further negotiations to try to obtain more favorable terms on the MSA. This is simply not a basis to deny the Motion. Debtors

being unhappy with a contract they negotiated and executed provides no basis to deny the Motion, especially as to a contract they negotiated just one (1) year before the Petition Date. Debtors cannot be allowed to continue to hold Movant hostage because Debtors want a better deal on the MSA.

7. Moreover, Debtors cannot assume a modified form of the MSA without Movant's consent. See, e.g., Cinicola v. Scharffenberger, 248 F.3d 110 (3rd Cir. 2001); In re Fleming Cos., 2004 Bankr. LEXIS 198 (Bankr. D. Del. February 27, 2004). Debtors must decide whether to assume the MSA "as is", or to reject the MSA.

8. Nevertheless, the parties have engaged in robust negotiations on a modified form of MSA for months, a fact acknowledged by the Debtors. See, Frank Declaration at ¶19. Movant exhausted its efforts to settle but was unable to reach a resolution with Debtors. There appears to be no possibility of a resolution at this time and thus, denying the Motion only to allow Debtors to further negotiate the terms of the MSA would be futile and would provide no benefit to the Debtors or their Estates. Accordingly, the Motion must be granted without any further delay.

The Motion Must Be Granted to Avoid Harm to Both the Movant and the Debtors

9. Movant has demonstrated harm to both the Debtors and Movant that will result from Debtors being given more time to assume or reject the MSA and thus, met its burden to grant the Motion. Further, the Motion is certainly not moot, as the Debtors would have the Court believe. The payment of vendors was not the only cause cited in the Motion. The Motion also cited the loss of employees and the damage to Movant's reputation, which also affects whether vendors will continue to work with Movant and whether employees will see Movant as an attractive place to work. See, e.g., Motion at ¶47, 50. Moreover, while vendors are being paid, the continued uncertainty with respect to whether the MSA will be assumed or rejected still causes concern for

employees and vendors, thus leading to turnover and understaffing, which in turn can lead to safety issues, operational issues and delay, and higher costs, to name a few.

10. Specifically, if the Motion is denied, Movant will be harmed by the loss of employees and understaffing of Movant's account with the Debtors. Since December 2023, Movant has lost approximately twenty (20) employees on Debtors' account (over 10% of its staff) and is likely to lose more. The understaffing of Debtors' account leads to safety issues (most especially with respect to personal protective equipment issues), a high-stress workplace, higher employee turnover, increased costs, and an increased risk of accidents.

11. Further uncertainty as to whether the MSA will be assumed or rejected also affects the vendors. Under these very uncertain conditions, vendors are hard to replace; Movant is unable to enter into long term contracts with vendors, meaning Movant (and thus, the Debtors) are not made a priority; and costs are increased. As a concrete example, Movant recently provided a request for proposal (a "RFP") for HVAC but due to the uncertainty of whether the MSA will be assumed or rejected, and whether Movant's relationship with the Debtors will continue, Movant received very little response to the RFP from vendors. Vendors simply do not want to work on the Debtors' account because it is too risky and uncertain.

12. The Debtors will also be harmed because further delay could result in the loss of employees and vendors due to the uncertainty with respect to whether the MSA will be assumed or rejected, meaning that Movant's ability to perform under the MSA and provide services to the Debtors may be jeopardized. This could result in very negative ramifications for the Debtors, including but not limited to code compliance, lease compliance, and fire and life safety issues (with staffing levels below the industry norm and high turnover, the risk of these type of issues is heightened).

13. For all these reasons, the Motion must be granted so that Debtors are compelled to either assume or reject the MSA without delay, and to avoid any further harm to both parties.

Movant Has Negotiated in Good Faith But Has Always Been Clear It Will Not Continue the Hearing on the Motion Any Further

14. Despite Debtors' complaints to the contrary, Movant has negotiated in good faith in an attempt to reach the terms of a modified MSA. Any other characterization of Movant's actions is simply disingenuous and misleading. In fact, Debtors acknowledge that Movant began negotiations immediately after the Petition Date, if not even before the Petition Date. Movant has also agreed to at least three (3) continuances of the hearing on the Motion in order to continue negotiations (the hearing on the Motion was originally set for December 11, 2023, but Movant signed a stipulation on December 20, 2023 to move the hearing to the first omnibus hearing in February; then Movant agreed to continue the hearing to March 20, 2024; and again agreed to continue the hearing to March 27, 2024).

15. It is now over three (3) months after the filing of the Motion and over four (4) months after the Petition Date, but the parties have yet to reach an agreement due to Debtors' delay and obfuscations. Movant at all times negotiated in good faith in an expedited fashion.

16. To wit, on January 5, 2024, Debtors' counsel informed Movant that A&M had presented recommendations on modifications to the MSA to Debtors. On January 18, 2024, Debtors' counsel informed Movant that a proposed modified MSA or at least the major issues for discussion would be sent to Movant no later than January 23, 2024.

17. However, Debtors did not send a modified MSA or major issues for discussion by January 23, 2024. Instead, Debtors sent to Movant a "Contract Discussion Agenda" deck which did not address any specific issues for negotiation. On January 25, 2024, Debtors and Movant had

a call to discuss the deck and Movant once again requested that Debtors send a modified MSA with a specific proposal. Yet Debtors did not present any proposal on such call. During that call, Movant offered to host an in person meeting with all interested parties to negotiate the MSA and FM Schedule, but the Debtors declined such a meeting.

18. On January 30, 2024, Debtors sent a Term Sheet (again, not a modified MSA) to Movant which covered mostly bankruptcy items to be resolved but did not cover specific modifications to business terms. On February 13, 2024, the parties had agreed on the major points on the Term Sheet. Of note, Debtors agreed that an amended MSA would be executed by the first March omnibus hearing date. Based on the agreed upon Term Sheet, Movant agreed to adjourn the hearing on the Motion to March 20, 2024 (and later to March 27, 2024).

19. Movant did not receive a redline of the proposed modified MSA from Debtors until February 27, 2024. Notwithstanding Debtors' delay Movant returned to Debtors its comments and redlines to the proposed modified MSA expeditiously, on March 5, 2024.

20. Debtors sent to Movant an unmarked FM Schedule on March 7, 2024 that could not easily be compared with the existing FM Schedule. Movant's counsel asked for a redline, which Debtors then sent on March 8, 2024; however, the proposed changes in the redline did not reflect the business discussions to date. When questioned about this, Debtors confirmed that A&M prepared the redline of the FM Schedule. In fact, the new FM schedule was wholly inconsistent with the spirit and substance of the partnership the parties had negotiated; it essentially shifted all risk and liabilities to Movant while eliminating or diminishing the Debtors' responsibilities and significantly reducing or in some cases removing Movants' fees.

21. On March 12, 2024, Debtors sent a redline of the MSA to Movant. Due to the severe dis-alignment of the parties on the redlined FM Schedule prepared by the Debtors, Movant

paused negotiations. Movant thus requested that Debtors re-submit a redline of the FM Schedule that accurately reflected the business discussions. On March 21, 2024, Debtors sent to Movant a new redline of the FM Schedule. There remains areas of major dis-alignment in that draft. That same day, Movant sent to Debtors an additional redline of the MSA. Given the pending hearing on the Motion, on March 22, 2024, Movant and Debtors had a call to discuss the non-negotiable points of each party.

22. The parties have negotiated in earnest to resolve the Motion and reach the terms of a modified MSA for assumption, but those negotiations have stalled and it appears the parties will be unable to reach a resolution.

23. Movant did not cause any delay over the course of negotiations; if anything, Debtors' decision to not meet in person in January and to belatedly send a redline of the FM Schedule with language and terms that were extremely different from what was discussed on the business side have delayed the process. Movant has always been clear that it would not continue the hearing on the Motion unless a modified MSA was finalized and executed. That has not been accomplished and as such, Movant has no choice but to move forward and request the Court grant the Motion so that Movant has certainty with whether the MSA will be assumed or rejected.

24. Based on all of the above, Movant respectfully requests the Court grant the Motion and compel the Debtors to assume or reject the MSA.

CONCLUSION

25. In summary, the Motion must be granted because Movant is harmed if the Motion is denied because it risks losing employees and damage to its reputation in the community and the Debtors are harmed because they risk code and lease compliance and fire and life safety issues if staffing levels are not maintained and because, despite Movant's best efforts to negotiate the terms of a modified MSA, the parties have been unable to reach a resolution. Movant is unwilling to

negotiate any further and Debtors admit they have no intention to assume the MSA “as is”; it is time to compel rejection.

26. For all the reasons discussed above, and in the Motion, Movant requests the Court grant the Motion and compel the Debtors to assume or reject the MSA immediately so as to avoid any further harm to Movant and to the Debtors.

Dated: March 25, 2024

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