PAUL HASTINGS LLP
Kristopher M. Hansen, Esq. (admitted *pro hac vice*)
Frank A. Merola, Esq. (admitted *pro hac vice*)
Gabriel E. Sasson, Esq.
Emily L. Kuznick, Esq. (admitted *pro hac vice*)
Matthew D. Friedrick, Esq. (admitted *pro hac vice*)
200 Park Avenue
New York, New York 10166
Telephone: (212) 318-6000
Facsimile: (212) 319-4090
krishansen@paulhastings.com
frankmerola@paulhastings.com
gabesasson@paulhastings.com
emilykuznick@paulhastings.com
matthewfriedrick@paulhastings.com

Co-Counsel to the Official Committee of Unsecured Creditors

RIKER DANZIG LLP
Joseph L. Schwartz, Esq.
Tara J. Schellhorn, Esq.
Daniel A. Bloom, Esq.
Gregory S. Toma, Esq.
Headquarters Plaza, One Speedwell Avenue
Morristown, New Jersey 07962-1981
Telephone: (973) 538-0800
Facsimile: (973) 538-1984
jschwartz@riker.com
tschellhorn@riker.com
dbloom@riker.com
gtoma@riker.com

Co-Counsel to the Official Committee of Unsecured Creditors

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:	Chapter 11
WEWORK INC., *et al*.,	Case No. 23-19865 (JKS)
Debtors.[1]	(Jointly Administered)

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) EXTENDING THE DEBTORS' EXCLUSIVE PERIODS TO FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF PURSUANT TO SECTION 1121 OF THE BANKRUPTCY CODE AND (II) GRANTING RELATED RELIEF

The Official Committee of Unsecured Creditors (the "Committee") appointed in the chapter 11 cases (the "Chapter 11 Cases") of WeWork, Inc. and its affiliated debtors and

[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.

debtors-in-possession (collectively, the "Debtors"), by and through its undersigned counsel, hereby submits this objection (the "Objection") to the *Debtors' Motion for Entry of an Order (I) Extending the Debtors' Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances Thereof Pursuant to Section 1121 of the Bankruptcy Code and (II) Granting Related Relief* [Docket No. 1452] (the "Motion"). In support of this Objection, the Committee respectfully states as follows:

PRELIMINARY STATEMENT[2]

1. The Debtors seek conditional approval of a disclosure statement on an emergency basis in an attempt to demonstrate progress towards confirmation of an amended chapter 11 plan, but in truth, the Debtors are no closer to finalizing their placeholder plan and obtaining critical post-petition financing than they were when these cases commenced. The Debtors entered these cases hand-in-hand with their purported secured creditors and equityholders to consummate a chapter 11 plan premised upon a restructuring support agreement (the "RSA") through the negotiation of their lease portfolio and development of a revised business plan. Importantly, however, the RSA was missing the key economic terms needed for a feasible, confirmable plan of reorganization, including a commitment for post-petition and exit financing to consummate a chapter 11 plan and adequately capitalize the Debtors' business.

2. The Debtors filed an initial chapter 11 plan, consistent with the RSA, on February 4, 2024, and, in the days leading up to the hearing on this Motion (which was adjourned several times), filed the Proposed Plan and Revised Disclosure Statement, each of which raises more

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the *Declaration of David Tolley, Chief Executive Officer of WeWork Inc., in Support of Chapter 11 Petitions and First Day Motions* [Docket No. 21], the *First Amended Joint Chapter 11 Plan of Reorganization of WeWork Inc. and its Debtor Subsidiaries* [Docket No. 1690] (the "Proposed Plan"), or the accompanying *First Amended Disclosure Statement Relating to the First Amended Joint Chapter 11 Plan of Reorganization of WeWork Inc. and its Debtor Subsidiaries* [Docket No. 1691] (the "Revised Disclosure Statement"), as applicable.

questions than answers. Specifically, the Proposed Plan fails to provide the full treatment for any class, contains a potential rights offering with no material terms and envisions a necessary, but nonexistent post-petition financing facility. Now, more than two months after filing the initial plan, the Proposed Plan remains a dead letter because the Debtors, the Ad Hoc Group, SoftBank, and Cupar (all parties to the RSA) have been unable to agree on the terms of the post-petition and exit financing that are necessary to get the Debtors through the remainder of their cases and successfully transition out of bankruptcy. As a result, the Debtors have missed nearly all of the RSA milestones, the cases have stagnated while their liquidity continues to shrink, and the Debtors are now seeking conditional approval of the Revised Disclosure Statement on an emergency basis in an effort to show "progress" in connection with the Motion, effectively trampling on stakeholders' due process rights.

3. Worse and at the same time, the Debtors continue to ignore potential alternative solutions, including those that could provide more meaningful recoveries to the Debtors' constituents and preserve the business as a going concern. As widely reported, Flow and certain third-party financial firms (the "Flow Parties") have provided a proposal to the Debtors and have repeatedly attempted to perform the basic diligence necessary to firm up their bid. Inexplicably, the Debtors have not provided the Flow Parties with diligence access at this point in time nor engaged in a more broad marketing process. The Committee, as a fiduciary, welcomes options and competition which benefits all stakeholders, and, in the event that those parties making proposals for post-petition financing (i.e., the RSA Parties) are intent on receiving the vast majority

of the equity of the Reorganized Debtors, the Debtors must explore all options to satisfy their fiduciary duties – something that the Committee has repeatedly asked the Debtors to do.[3]

4. While the Committee recognizes that the Bankruptcy Code initially grants the Debtors the exclusive right to propose and solicit a plan, such continued right must be balanced against the greater interests of the estate and the urgency of the situation. The Debtors' lack of progress in these cases, their shrinking liquidity, and their unwillingness to conduct a proper marketing process or even engage with interested parties making unsolicited offers to the Debtors prove that here, the appropriate balance requires the Court to (i) extend the Exclusive Periods (as defined below) for a maximum of thirty days and (ii) condition that extension on the Debtors' immediate engagement with third-party financing sources and potential purchasers and the establishment of an appropriate marketing process that the Debtors should have started months ago. Absent the foregoing limitations and conditions, the Committee believes the Motion should be denied.

RELEVANT BACKGROUND

5. On November 6, 2023, in connection with the commencement of these cases, the Debtors, SoftBank Group Corp. (together with its affiliates that are party to the RSA, "SoftBank"), in its capacity as a holder of 1L Notes, 2L Exchangeable Notes, 3L Exchangeable Notes, and/or equity in the Debtors, an ad hoc group representing approximately 87 percent of the Debtors' Series I 1L Notes and 2L Notes (the "Ad Hoc Group"), and Cupar Grimmond, LLC ("Cupar"), a large holder of 1L Notes (collectively, the "RSA Parties") entered into the RSA. Among other things, the RSA contemplates the equitization of the Debtors' prepetition secured debt, the

[3] On April 12, 2024, the Committee sent the Debtors a letter detailing the Committee's concern with the case progress and, once again (following months of verbally requesting the same), requested that the Debtors engage potential third-party financing parties and/or sale alternatives. The Debtors have not responded to the Committee's letter as of the filing of this Objection.

cancellation of all other indebtedness and effectively no distribution to general unsecured creditors, but the RSA lacked critical financial details. The Debtors currently have the exclusive right to propose and solicit a plan through March 6, 2024 and May 6, 2024, respectively. On February 4, 2024, the Debtors filed a chapter 11 plan and disclosure statement, consistent with the RSA, but missing key details as discussed herein (and similar to the RSA). Thereafter, on April 18, the Debtors filed the Proposed Plan and Revised Disclosure Statement. As noted, to date, the Debtors have been unable to prosecute the initial plan and disclosure statement, and they will not be able to prosecute the Proposed Plan and Revised Disclosure Statement without substantial amendments that will essentially require them to start over.

6. On March 3, 2024, the Debtors filed the Motion, seeking to extend the Debtors' exclusive right (i) to file a plan by 120 days through and including July 3, 2024 and (ii) to solicit votes thereon for 120 days through and including September 3, 2024 (together, the "Exclusive Periods"). In support of the Motion, the Debtors cite many accomplishments, but the reality is quite different. The Debtors simply have not made material progress towards confirmation of any plan, let alone the Proposed Plan. Contrary to their assertions, the Debtors have not obtained post-petition financing, they have renegotiated less than a third of their lease portfolio (and even those are "pending")[4] and they have had to amend their business plan (and are now about to do so again) and they have not engaged in material plan negotiations with the Committee because they haven't figured out what the plan will look like among their purportedly secured creditors.

[4] More specifically, the Debtors' lease negotiations have resulted in only 30 assumptions and 115 pending deals that have not been consummated. The Debtors have rejected and exited over 115 leases in the U.S. and Canada and terminated approximately 46 leases outside of those jurisdictions.

OBJECTION

I. The Debtors Have Not Shown Causes to Extend the Exclusive Periods

7. The Bankruptcy Code grants a debtor an exclusive period of 120-days to achieve confirmation of a plan. The right to extend that period and to maintain exclusivity is not automatic and is conditioned on the ability of a debtor to show cause. 11 U.S.C. § 1121(d).

8. While the Bankruptcy Code does not define "cause," bankruptcy courts, including those in this district, employ a multi-factor balancing test to aid in their analysis. Such factors (collectively, the "Exclusivity Factors") include: (i) the size and complexity of the case; (ii) the necessity of sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information to allow a creditor to determine whether to accept such plan; (iii) the existence of good faith progress towards reorganization; (iv) the fact that the debtor is paying its bills as they become due; (v) whether the debtor has demonstrated reasonable prospects for filing a viable plan; (vi) whether the debtor has made progress in negotiations with its creditors; (vii) the amount of time which has elapsed in the case; (viii) whether the debtor is seeking an extension of exclusivity in order to pressure creditors to submit to the debtor's reorganization demands; and (ix) whether an unresolved contingency exists. *See In re Cent. Jersey Airport Servs., LLC*, 282 B.R. 176, 184 (Bankr. D.N.J. 2002); *In re GMG Capital Partners III, L.P.*, 503 B.R. 596, 600-601 (Bankr. S.D.N.Y. 2014); *In re Borders Grp., Inc.*, 460 B.R. 818, 822 (Bankr. S.D.N.Y. 2011); *In re Adelphia Commc'ns Corp.*, 352 B.R. 578, 587 (Bankr. S.D.N.Y. 2006) (citing *Dow Corning*, 208 B.R. at 664).

9. Courts evaluate the Exclusivity Factors based on the particular facts and circumstances of the case. *See In re Mid-State Raceway, Inc.*, 323 B.R. 63, 68 (Bankr. N.D.N.Y. 2005) (holding that a determination as to extending or terminating exclusivity should be made based on the facts and circumstances of the case); *In re Borders Grp., Inc.*, 460 B.R. 818, 821

(Bankr. S.D.N.Y. 2011) (stating that the determination of "cause" is a fact-specific inquiry); *In re Nicolet, Inc.*, 80 B.R. 733, 742 (Bankr. E.D. Pa. 1987) (same). Moreover, courts have the discretion "to decide which factors are relevant and give the appropriate weight to each." *In re Acceptance Ins. Companies, Inc.*, No. BK05-80059-TJM, 2008 WL 3992799, at *2 (Bankr. D. Neb. Aug. 20, 2008) (internal quotations omitted).

10. Additionally, courts agree that the primary consideration in assessing a request to extend or terminate exclusivity is whether doing so would facilitate moving the case forward. *See In re Dow Corning Corp.*, 208 B.R. 661, 670 (Bankr. E.D. Mich. 1997) ("When the Court is determining whether to terminate a debtor's exclusivity, the primary consideration should be whether or not doing so would facilitate moving the case forward."); *In re Henry Mayo Newhall Mem'l Hosp.*, 282 B.R. 444, 453 (B.A.P. 9th Cir. 2002) (holding that "a transcendent consideration is whether adjustment of exclusivity will facilitate moving the case forward toward a fair and equitable resolution.").

11. Here, the Debtors argue that their requested extension is warranted because (i) the Chapter 11 Cases are complex, (ii) the Debtors purport to have made good-faith progress towards exiting chapter 11, (iii) the Debtors believe that an extension of the Exclusive Periods will not prejudice creditors, (iv) the Chapter 11 Cases were, at the time of the Motion, four months old, and (v) according to the Motion, the Debtors have filed a viable chapter 11 plan.

12. The facts and circumstances of the Chapter 11 Cases, however, do not support granting the Debtors' requested relief. Given the lack of meaningful progress towards a feasible, confirmable plan, and the Debtors' inexplicable failure to give serious consideration to alternative funding sources or plan sponsors, among other reasons, the Debtors have not shown cause to extend their Exclusive Periods *carte blanche*, as they have requested.

A. The Debtors' Plan Negotiations Have Not Progressed

13. The Debtors' cases have been caught in a stasis for the past three months and simply are not progressing towards confirmation. The filing of the Proposed Plan and scheduling conditional approval of the Revised Disclosure Statement on shortened notice in an effort to jam the Committee and other stakeholders further demonstrates the Debtors' inability to guide these cases to conclusion. Typically, when a debtor isn't advancing its case, courts will allow exclusivity to expire to permit other parties to attempt to make the progress towards confirmation that the debtor isn't making. *See In re R.G. Pharmacy, Inc.*, 374 B.R. 484, 488 (Bankr. D. Conn. 2007) (denying motion to extend exclusivity where negotiations had broken down and the requested extension was not likely to improve the progress of the case). "[L]everage accorded to the debtor by the period of exclusivity must give way to the legitimate interests of other parties in interest so that progress toward an effective reorganization of the debtor may be enhanced before it is too late. The proceeding must be opened up to substantial and significant input by the creditors in the event they can propose a means (possibly by proposal of a plan of reorganization) which will rescue the debtor from its precarious posture." *In re Sharon Steel Corp.*, 78 B.R. 762, 766 (Bankr. W.D. Pa. 1987).

14. Here, the Debtors point to the filing of the initial plan and disclosure statement, and will likely point to the filing of the Proposed Plan and Revised Disclosure Statement, as evidence that resolution of these Chapter 11 Cases is in sight. Unfortunately, this is not reality. The Proposed Plan and Revised Disclosure Statement, on their face, do not contain the vast majority of the material terms required for a confirmable plan.[5] They include no recoveries, no valuation analysis, no liquidation analysis, and no funding mechanism (among many other glaring

[5] To the extent that the Debtors continue to pursue their flawed Proposed Plan and Revised Disclosure Statement, the Committee intends to file an objection to the Revised Disclosure Statement and, if necessary, the Proposed Plan.

deficiencies). The filing of a skeleton plan without any of the necessary details or information regarding the underlying economic terms can help to create a negotiating framework, but it has not done so in these cases. In fact, these cases have undergone a paradigmatic shift where the post-petition new money needs have become so large that they will take the lion's share of the Debtors' distributable value and it is this reality that is causing the existing RSA Parties to have retreated to their corners, unable to reach an agreement, and is what is causing the seizure of these cases. As a result, there can be no progress on the existing Proposed Plan because it needs to be rewritten when the parties find consensus or when the Debtors find an alternative plan sponsor to galvanize the parties – and time is running short.

15. The inability to reach a plan agreement means that there is no post-petition financing and the Debtors' liquidity is shrinking. As the Debtors themselves said at the last status conference over six weeks ago, they need post-petition financing. Indeed, the Debtors' lack of liquidity has reached a critical level (despite not paying administrative claims, as described below). To put it bluntly, Rome is burning and the Debtor and its RSA Parties are fiddling.

16. As noted at the outset, the Debtors know that if they are to exit chapter 11, it is going to be with the capital provided on a post-petition basis that will sweep the Debtors' distributable value. In those circumstances, the Debtors are effectively being sold and the appropriate exercise of fiduciary duties requires the Debtors to run a thorough marketing process. However, the Debtors have not done so, much to the Committee's dismay. To be clear, the Committee does not know if the Flow Parties or any other party will present a binding proposal and, if so, whether it will be any better than whatever comes from the negotiations between the

RSA Parties (if anything actually does come out of those discussions), but for the Debtors to ignore potentially viable alternatives and not look for others is value destructive and inexcusable.[6]

17. While the Committee entered these cases optimistic that a resolution existed among the Debtors' key stakeholders and engaged in some global settlement negotiations with the Ad Hoc Group and the Debtors regarding a viable plan of reorganization, the Committee has lost confidence in the Debtors' process. Now, with the Debtors' liquidity position worsening – a concern the Committee has expressed to the Debtors and this Court since its appointment – a *carte blanche* four month extension of the Exclusive Periods would prejudice all creditors and risk a successful reorganization.

18. Accordingly, the Committee believes that the Exclusive Periods should only be extended for a maximum of thirty days and should be conditioned upon the Debtors being required to engage with Flow and other interested parties to grant them the necessary diligence to firm up their proposals and to run a proper marketing process for DIP financing and plan sponsorship. Doing so may yield options the Debtors do not have today and may force the RSA Parties to come to a quicker solution or to support an alternative solution. *See, e.g. In re Pub. Serv. Co. of New Hampshire*, 99 B.R. 155, 176 (Bankr. D.N.H. 1989) ("… a further extension of exclusivity would

[6] As the Supreme Court held in *North LaSalle*, a "new value" chapter 11 plan - such as the Proposed Plan - that vests equity in a debtor's reorganized business in the former equityholders "without extending an opportunity to anyone else either to compete for that equity or to propose a competing reorganization plan" is not confirmable under section 1129(b)(2)(B)(ii) of the Bankruptcy Code. *Bank of America National Trust and Savings Assoc. v. 203 North LaSalle Street Partnership*, 526 U.S. 434, 454 (1999). The Supreme Court further explained that:

> Even when old equity would pay its top dollar and that figure was as high as anyone else would pay, the price might still be too low unless the old equity holders paid more than anyone else would pay, on the theory that the "necessity" required to justify old equity's participation in a new value plan is a necessity for the participation of old equity as such. On this interpretation, disproof of a bargain would not satisfy old equity's burden; it would need to show that no one else would pay as much.

Id. at fn. 26 (internal citations omitted).

only result in the parties continuing to argue in circles endlessly… but opening up the process to alternative plans in my judgment will … ***force the parties to use all of their considerable skills to negotiate resolutions on a fact basis under the gun of having the 'reorganization train leave the station' before they are aboard***.") (emphasis added); *Matter of Mother Hubbard, Inc.*, 152 B.R. 189, 195 (Bankr. W.D. Mich. 1993) ("Although the chapter 11 debtor should be allowed a first attempt to confirm a plan, parties in interest should not be held hostage by a chapter 11 debtor.").

B. The Debtors Are Not Paying Their Bills As They Come Due

19. Another significant factor Courts consider when determining whether to grant an extension of exclusivity is whether a debtor has continued to pay its bills as they come due. *In re GMG Cap. Partners III, L.P.*, 503 B.R. 596, 601 (Bankr. S.D.N.Y. 2014) (denying an extension of exclusivity, in part, because of increasing insolvency, including unpaid administrative expenses that must be paid to confirm a plan of reorganization). Here, the Debtors have failed to pay substantial post-petition rent since January 2024. To date, the Debtors have failed to pay over $40 million in post-petition rent, including several million in April rent.[7]

CONCLUSION

20. These cases appear on the brink of a meltdown. Further extending the Debtors' Exclusive Periods without the aforementioned limitations and conditions would continue the status quo, which is unacceptable and not in keeping with the Debtors' duties as a fiduciary to all creditors. In the event that the Debtors will not agree to undertake the effort to engage with third-party capital providers and plan sponsors and run a competent marketing process, the Court should

[7] In response, approximately 46 of the Debtors' landlords have filed motions to compel the payment of rent during these cases, and the Committee filed a statement in support of such motions in January 2024 [Docket No. 1194]. The Court has yet to hear substantive arguments with respect to the motions to compel as the Debtors and individual landlords continue to find discrete resolutions to each motion, although motions concerning at least 4 landlords remain pending.

terminate the Debtors' Exclusive Periods so that such parties can come forth themselves with the assistance of the Committee and other creditors.

RESERVATION OF RIGHTS

21. The Committee reserves its rights to supplement this Objection and to respond to any filing of the Debtors, or any other party-in-interest in these Chapter 11 Cases, either by further submission to this Bankruptcy Court, at oral argument or by testimony presented at the hearing to consider the Motion. The Committee further reserves the right to review and comment on any order with respect to the Motion.

[*Remainder of Page Intentionally Left Blank*]

Dated: April 19, 2024

PAUL HASTINGS LLP

By: */s/ Kristopher M. Hansen*

Kristopher M. Hansen, Esq. (admitted *pro hac vice*)
Frank A. Merola, Esq. (admitted *pro hac vice*)
Gabriel E. Sasson, Esq.
Emily L. Kuznick, Esq. (admitted *pro hac vice*)
Matthew D. Friedrick, Esq. (admitted *pro hac vice*)
200 Park Avenue
New York, New York 10166
Telephone: (212) 318-6000
Facsimile: (212) 319-4090
krishansen@paulhastings.com
frankmerola@paulhastings.com
gabesasson@paulhastings.com
emilykuznick@paulhastings.com
matthewfriedrick@paulhastings.com

- and -

RIKER DANZIG LLP

Joseph L. Schwartz, Esq.
Tara J. Schellhorn, Esq.
Daniel A. Bloom, Esq.
Gregory S. Toma, Esq.
Headquarters Plaza, One Speedwell Avenue
Morristown, New Jersey 07962-1981
Telephone: (973) 538-0800
Facsimile: (973) 538-1984
jschwartz@riker.com
tschellhorn@riker.com
dbloom@riker.com
gtoma@riker.com

Co-Counsel to the Official Committee of Unsecured Creditors