

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

**Caption in Compliance with D.N.J. LBR 9004-1(b)**

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In re:

WEWORK INC., *et al.*,<sup>1</sup>

Debtors.

Case No.: 23-19865 (JKS)

Chapter 11

Judge John K. Sherwood

(Jointly Administered)

**COSTAR CENTRAL PLACE HQ, LLC'S MOTION FOR ENTRY OF AN ORDER  
COMPELLING THE DEBTORS' PAYMENT OF POST-PETITION LEASE  
OBLIGATIONS, REQUEST FOR ADEQUATE PROTECTION AND IN THE  
ALTERNATIVE, FOR RELIEF FROM THE AUTOMATIC STAY  
AND OTHER APPROPRIATE RELIEF**

CoStar Central Place HQ, LLC (the "Landlord"), by and through its undersigned counsel, hereby files this motion (the "Motion") for entry of an order compelling Debtor-Tenant (as defined below) to pay post-petition rent obligations due and payable under the Lease (as defined below) in accordance with 11 U.S.C. § 365(d)(3), payment of Stub Rent (as defined below)

<sup>1</sup> A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed 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.

pursuant to 11 U.S.C. § 503(b)(1), and to provide adequate protection of Landlord's interests. In the alternative, Landlord moves for an order deeming the Lease rejected, as well as for an order modifying the automatic stay, pursuant to 11 U.S.C. § 362(d), to allow Landlord to pursue its state court remedies. In support of the Motion, Landlord states as follows:

**I. JURISDICTION AND VENUE**

1. The United States Bankruptcy Court for the District of New Jersey has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1134.
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. This matter constitutes a core proceeding pursuant to 28 U.S.C. § 157(b).
4. The statutory predicates for the relief requested herein are 11 U.S.C. §§ 362(d), 365(d)(3), and 503(b)(1).

**II. PRELIMINARY STATEMENT**

5. The Bankruptcy Code contemplates a specific process and pathway for treatment of executory contracts and unexpired leases, one meant to balance the interests of both the debtor, who wishes to reorganize, and the landlord, who has no choice but to permit the debtor to continue to occupy its owned premises while it does so. Even under the Bankruptcy Code, a debtor cannot unilaterally modify the terms of its leases, so if it wishes to do so, it must be consensual, with the agreement of its landlords.

6. Here, the Debtors seek to exceed the authority granted by the Bankruptcy Code by withholding payment of postpetition rent in direct contravention of Section 365(d)(3) in an attempt to gain leverage in lease negotiations. Notwithstanding the Debtors' pronouncements that withholding rent from approximately 100 of its landlords for January (and beyond) "worked" for them, it does not work for Landlord and the ends do not justify the means.

7. The Debtors will likely argue that, even if successful, moving landlords demanding payment of postpetition rent due under Section 365(d)(3) are only entitled to allowance of an administrative claim to be paid (maybe) at the end of these cases. Not only is that legally incorrect, it is illogical. This result would render Section 365(d)(3) meaningless, as a Debtor would face no recourse or penalty for simply choosing, without authorization, to withhold payment of all postpetition rent until it exists bankruptcy, placing unbearable burden and risk on its landlords. This is especially true where, as here, the Debtors have admitted to so-called “temporary cash constraints” and the Debtors have no access to post-petition financing to pay its business obligations, like rent. Landlord alone has current, outstanding postpetition rent amounts *in excess of \$3 million*, which will only continue to accrue if the Debtors are permitted to flout the requirements of Section 365(d)(3) for the remainder of these cases. Debtors should not be permitted to involuntarily finance these chapter 11 cases on the backs of landlords in direct contravention of the plain language and purpose of Section 365(d)(3)..

8. Debtors should be required to immediately pay all postpetition rent obligations, in accordance with the Bankruptcy Code, as they should have been “timely perform[ed]” under Section 365(d)(3). If not, Landlord is entitled to adequate protection of its property interest, which according to the Bankruptcy Code cannot take the form of an administrative claim, and in light of the financial uncertainty of these cases and track record of the Debtors, should be provided through immediate payment.

9. Finally, in the alternative, if immediate payment is not provided, the Lease should be deemed rejected and Landlord should be granted relief from the automatic stay to pursue all of its rights and remedies under state law. If the Debtors will not be bound by Section 365(d)(3) then the Landlord should have relief from the automatic stay in Section 362.

### III. BACKGROUND

10. Debtors filed their voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) on November 6, 2023 (the “Petition Date”) in the United States Bankruptcy Court for the District of New Jersey (the “Court”). Since the Petition Date, Debtors have been operating and managing their businesses as debtors-in-possession. The Official Committee of Unsecured Creditors (the “Committee”) was appointed on November 16, 2023. [Docket No. 150].

11. On the Petition Date, Debtors filed their *Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Use Cash Collateral, (II) Granting Adequate Protection to the Prepetition Secured Parties, (III) Scheduling a Final Hearing, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* [Docket No. 43] (the “Cash Collateral Motion”). On November 9, 2023, this Court entered the order approving the Cash Collateral Motion on an interim basis [Docket No. 103] (the “Interim Cash Collateral Order”). The Interim Cash Collateral Order approved, on an interim basis, the Debtors’ post-petition 13-week budget (the “Initial Budget”), providing for approximately \$78 Million per month for rent for the months of December 2023 and January 2024 and approximately \$43 Million in rent for the month of February 2024.

12. On November 7, 2023, Debtors filed their *Notice of Debtors’ Motion for Entry of an Order (I) Authorizing and Approving Procedures to Reject or Assume Executory Contracts and Unexpired Leases, and (II) Granting Related Relief* [Docket No. 12] seeking approval of certain procedures for the Debtors to assume or reject executory contracts and unexpired leases.

13. On November 29, 2023, this Court entered the *Order (I) Authorizing and Approving Procedures to Reject or Assume Executory Contracts and Unexpired Leases and (II) Granting Related Relief* [Docket No. 289].

14. On December 11, 2023, this Court entered its *Final Order (I) Authorizing the Debtors to Use Cash Collateral, (II) Granting Adequate Protection to the Prepetition Secured Parties, (III) Modifying the Automatic Stay and (IV) Granting Related Relief* [Docket No. 428] (the “Final Cash Collateral Order”).

15. Landlord acquired the premises located at 1201 Wilson Boulevard Arlington, Virginia (the “Premises”) from its predecessor in interest (“Former Owner”) in a sale that closed on or about February 12, 2024. In connection with that acquisition, Landlord acquired all right, title and interest to the Premises, including with respect to that certain Deed of Lease dated December 6, 2018 (as subsequently modified and amended, the “Lease”). Pursuant to the Lease, Debtor 1201 Wilson Blvd Tenant LLC leases four floors at the Premises. Although the Debtors’ obligations under the lease are guaranteed by one or more guarantors (who may also be Debtors in these chapter 11 cases), Landlord does not hold a security deposit, nor is the Landlord the beneficiary of a standby letter of credit in connection with the Lease.

16. Prior to the Petition Date, on November 3, 2023, the Former Owner exercised its right to terminate the Lease with respect to the portion of the Premises located on the 28th floor, with such termination effective as of January 3, 2024. (the “28th Floor Termination Date”). Following the 28th Floor Termination Date, Debtor has failed to remove its property from the 28th Floor, as required by the terms of the Lease, which triggers an obligation by the Debtor to pay holdover rent beginning on January 4, 2024.

17. Debtors failed to pay rent for January and February of 2024. While Landlord was not a party to any lease negotiations prior to its acquisition of the Premises, once the sale closed, Landlord promptly notified the Debtors and their advisors that Landlord will not be entertaining any proposed amendment or modification of the Lease. Debtors further failed to pay any rent for March 2024, despite remaining in possession of the Premises. Landlord has attempted to engage the Debtors in a consensual resolution, but those efforts have been unsuccessful, leaving Landlord with no choice but to file this Motion.

#### **IV. MOTION**

18. In violation of Bankruptcy Code section 365(d)(3), the Debtor has failed to pay monthly post-petition rent and charges accruing under the Lease. In addition to the rent and charges accruing under the Lease during this period, Pursuant to the Third Amendment to the Lease, the Debtor's post-petition defaults under the Lease of the non-payment of January, February and March rent, result in (1) the resumption of payment of Base Rent under the Lease instead of at agreed Reduced Rent rates, and (2) all previously deferred Base Rent becoming immediately due and payable to Landlord. This results in a further post-petition balance owed by the Debtors of \$1,525,026.37 comprised of all previously deferred rent from March 2023 through March 2024, which is now immediately due and payable. These sums are as follows:

<b>LOCATION</b>	<b>UNPAID STUB RENT (11/06/23 – 11/30/23)</b>	<b>UNPAID POST- PETITION 365(d)(3) RENT (12/01/23-03/01/24)</b>	<b>DEFERRED RENT IMMEDIATELY DUE BASED ON POST-PETITION DEFAULT (03/01/23-03/01/24)</b>	<b>TOTAL</b>
1201 Wilson Boulevard	\$320,187.81	\$1,198,881.91	\$1,525,026.37	\$3,044,096.09

19. While the Debtors have rejected certain unexpired leases, the Debtors have not sought to assume or reject the Lease, and remain in possession of the Premises, which are open and operating and the Debtors continue to utilize to generate membership revenue.

20. As summarized in the chart above, despite the Debtors' ongoing use and occupancy of the Premises to conduct their business, including remaining open to their members at the Landlord's Premises, the Debtors have failed to pay post-petition rent for the period of November 6, 2023 through November 30, 2023 (the "Stub Rent") to the Landlord for the use and occupancy of the Premises. The Stub Rent obligations due and payable to Landlord total at least \$320,187.81 and entitled to payment under 11 U.S.C. § 503(b)(1).

21. In addition to the Stub Rent, as of the date of this Motion, the post-petition rent obligations due and payable to Landlord under the Lease total at least \$2,723,908.28. Section 365(d)(3) of the Bankruptcy Code requires the Debtors, as tenant, to timely perform all obligations under the Lease, including payment of all postpetition rent, until the Lease is assumed or rejected. The Lease has not been rejected, no notice or motion has been filed seeking to reject the Lease, and the Debtors have not surrendered possession. The Debtors have intentionally ignored the obligation that rent be paid to Landlord. This willful disregard for the Debtors' statutory obligations imposes undue hardship on Landlord and is a direct violation of the Bankruptcy Code and its intent.

22. Absent an affirmative showing by Debtors of administrative insolvency, Debtors should be compelled to immediately pay Landlord the unpaid post-petition rent due under the Lease outlined above.

## **V. RELIEF REQUESTED**

23. By this Motion, Landlord seeks entry of an Order by this Court allowing and directing immediate payment of unpaid postpetition rent and charges due under the Lease

pursuant to Section 365(d)(3), as well as the immediate allowance and payment of Stub Rent pursuant to Section 503(b)(1), in the aggregate sum of \$3,044,096.09 as more particularly detailed in paragraph 17, above. Landlord should also be awarded attorneys' fees, which are estimated to be at least \$15,000.00 in connection with this Motion and compelling the payment of post-petition lease obligations, as authorized by the terms of the Lease.

24. In the alternative, if the Debtors fail to pay the unpaid post-petition rent amounts, Landlord respectfully request an Order under Section 365(d)(1) deeming the Lease rejected and terminating the stay to permit the Landlord to exercise its state law rights and remedies.

## **VI. BASIS FOR RELIEF REQUESTED**

### **A. DEBTORS ARE REQUIRED TO TIMELY PERFORM POST-PETITION, PRE-REJECTION LEASE OBLIGATIONS**

25. The Bankruptcy Code affords lessors of nonresidential real property specific protections with regard to post-petition, pre-rejection rental obligations. Bankruptcy Code section 365(d)(3) provides, in pertinent part, as follows:

The trustee shall timely perform all of the obligations of the debtor, except those specified in section 365(b)(2), arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) if this title.

11 U.S.C. § 365(d)(3). The plain language of Section 365(d)(3) and applicable case law require Debtors' immediate payment of the post-petition, pre-rejection obligations under the Lease. "The clear and express intent of § 365(d)(3) is to require the trustee to perform the lease in accordance with its terms." *CenterPoint Properties v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 268 F.3d 205, 209 (3rd Cir. 2001); *see also Augusta Mall Partnership v. Twigland Fashions (In re Twigland Fashions, Inc.)*, 198 B.R. 199, 200 (W.D. Tex. 1996), citing *In re PacificAtlantic Trading Co.*, 27 F.3d 401, 404 (9th Cir. 1994) ("The plain and



unconditional language of the statute demands that a trustee promptly pay the full amount of rent due under a nonresidential real property lease during the 60-day [now 120-day] period pending assumption or rejection [of the lease].”); *In re Appletree Markets, Inc.*, 139 B.R. 417, 421 (Bankr. S.D. Tex. 1992) (“The plain language of the statute is clear. Section 365(d)(3) provides for timely performance of all obligations of the debtor from and after the order for relief.”). “Both the text and the intent of § 365(d)(3) are clear: commercial real property lessees must continue to perform after filing for bankruptcy.” *In re CEC Entertainment, Inc.*, 625 B.R. 344, 352 (Bankr. S.D. Tex. 2020).<sup>2</sup>

26. Indeed, the Third Circuit has characterized Section 365(d)(3) of the Bankruptcy Code as “impos[ing] a special duty with respect to unexpired leases of nonresidential real property” on the debtor in possession. *See In re Goody’s Family Clothing Inc.*, 610 F.2d 812, 816 (3rd Cir. 2010).

27. The legislative history of Bankruptcy Code section 365 suggests that the purpose of the 1984 Amendments to Section 365 was “to relieve the burden placed on nonresidential real property lessors (or ‘landlords’) during the period between a tenant’s bankruptcy petition and assumption or rejection of a lease.” *Omni Partners, L.P. v. Pudgie’s Development of NY, Inc. (In re Pudgie’s Development of NY, Inc.)*, 239 B.R. 688, 692 (S.D.N.Y. 1999) (citing 130 Cong. Rec. S8894-95 (daily ed. June 29, 1994) (statement of Sen. Hatch); *accord, In re Appletree Markets, Inc.*, 139 B.R. at 419-420 (discussing legislative history of 1984 amendments to Section 365). Prior to these amendments, the Bankruptcy Code did not require a

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<sup>2</sup> “No notice or hearing is required, the [lease] obligations are simply required to be met in a timely fashion.” *In re C.Q., LLC*, 343 B.R. 915, 917 (Bankr. W.D. Wisc. 2005). *Accord, In re Valley Media, Inc.*, 290 B.R. 73, 77 (Bankr. D. Del. 2003) (In rejecting argument that a landlord must file a request for payment of an administrative expense claim for unpaid post-petition rent, the bankruptcy court concluded: “There is no suggestion of any such filing requirement in § 365(d)(3). Indeed, just the opposite is suggested. The timely payment of the obligation is dictated by statute.”).

trustee to perform its obligations under a nonresidential lease, but the landlord was forced to provide services to the debtor-tenant. Congress specifically chose to protect real property lessors because “the Landlord is forced to provide current services – the use of its property, utilities, security, and other services – without current payment. No other creditor is put in this position.” *In re Goody’s Family Clothing*, 610 F.3d at 818; *see also In re DeCicco of Montvale, Inc.*, 239 B.R. 475, 479 (Bankr. D.N.J. 1999) (“§365(d)(3) [was enacted] to protect landlords from becoming involuntary post-petition creditors, and ensure that landlords receive ‘current payment’ for ‘current services.’”). In describing the purpose and intent of Section 365(d)(3), the bankruptcy court in *In re Pac-West Telecomm, Inc.*, 377 B.R. 119, 125 (Bankr. D. Del. 2007), stated that “a landlord can remain confident that obligations arising post-petition will be timely paid while the debtor is deciding whether to assume or reject the lease.”

28. Contrary to Bankruptcy Code section 365(d)(3) and applicable case law, Landlord is plainly not receiving “current payment” for the “current services” which they are being compelled to provide pending Debtors’ decisions to assume or reject a particular real property lease. Debtors should accordingly be compelled to immediately pay all post-petition rent and charges due to Landlord under the Lease. This is the involuntary creditor situation that Section 365(d)(3) was intended to prevent.

29. Under Third Circuit law, a debtor must timely perform its postpetition obligations under section 365(d)(3) of the Code when “the legally enforceable duty to perform arises under [the] lease.” *In re Montgomery Ward Holding Corp.*, 268 F.3d at 211. January, February, and March 2024 rent and charges are past due with respect to Debtors’ Lease with Landlord.

**B. THE UNPAID POSTPETITION RENT IS UNQUESTIONABLY PAST DUE AND OWED IN FULL**

30. There can be no legitimate dispute that the outstanding post-petition rent is past due and outstanding. This includes Stub Rent in the amount of \$320,187.81, and post-petition rent and recurring monthly charges in the amount of \$1,198,881.91. Further, the Debtors' decision to default under the Third Amendment to the Lease after the Petition Date through the non-payment of January, February and March rent triggers the obligation to immediately pay \$1,525,026.37 in previously deferred rent under the terms of the Lease.

31. Simply put, Debtors' rent obligations to Landlord have not changed merely "by happenstance of bankruptcy." The only valid basis for failing to pay the postpetition rent amounts is administrative insolvency. If Debtors are truly administratively insolvent, this Court should consider conversion of this case to Chapter 7 or appointment of a Chapter 11 Trustee or examiner. Indeed, it has been observed that "[a] failure to pay rent may conceal operational losses or an ongoing dissipation of estate assets." *In re J.T. Rapps, Inc.*, 225 B.R. 257, 264 (Bankr. D. Mass. 1998). But it is more likely that Debtors' nonpayment of rent to Landlord and others is simply gamesmanship. Under these circumstances, Landlord's right to immediate payment of post-petition rent and charges is required by the plain language of Sections 365(d)(3) and the Lease.

**C. DEBTORS CANNOT UNILATERALLY WITHHOLD POST-PETITION RENT TO LEVERAGE LEASE RENEGOTIATION EFFORTS**

32. At least one bankruptcy court has concluded that a landlord has no duty to grant a debtor rent or other lease concessions or financing assistance unless the lease agreement expressly requires such assistance. *In re Ernst Home Center, Inc.*, 209 B.R. 967, 974 (Bankr. W.D. Wash. 1997). State law is generally in accord. *See, e.g., Racine & Laramie, Ltd. v. Dept. of Parks & Recreation*, 11 Cal. App. 4th 1026, 1034 (1992) ("The fact that parties commence

negotiations looking to a contract, or to the amendment of an existing contract, does not by itself impose any duty on either party not to be unreasonable or not to break off negotiations, for any reason or for no reason.”). Indeed, to hold otherwise, would dilute, if not eliminate, the principle of *cum onere* lease assumption and the protections afforded real property landlords under Bankruptcy Code section 365.

33. Another court has described a debtor’s options under the “assume-or-reject procedure” prescribed in Bankruptcy Code section 365 as follows: “moving for the court’s approval of rejection; stating an intent to reject; using the possibility of rejection as leverage in negotiations with the nondebtor party.” *Rubloff Development Group, Inc. v. Kmart Corp.*, 389 B.R. 555, 561-562 (N.D. Ill. 2008). While the threat of rejection can potentially help a debtor gain leverage to negotiate more favorable terms with its landlords, based on the plain language of Section 365(d)(3), the one thing a debtor cannot do is intentionally withhold payment of accruing post-petition rent pending assumption or rejection of the lease.

34. While there is limited case law applying Bankruptcy Code section 365(d)(3) that might authorize an extension of the time for performance under nonresidential real property leases during the first sixty (60) days of a bankruptcy case based on the existence of pending negotiations (*In re DWE Screw Products, Inc.*, 157 B.R. 326, 329 (Bankr. N.D. Ohio 1993),<sup>9</sup> “§365(d)(3) expressly prohibits the Court from allowing extensions of more than sixty days after the order for relief.” *In re CEC Entertainment, Inc.*, 625 B.R. at 352. “The Court cannot override that statutory mandate.” *Id.* at 353. Here, the availability of deferred rent relief under Section 365(d)(3) has expired (and the Debtors never bothered to seek Court approval as required by the statute anyway). Now, lacking the authority to obtain an extension of time to perform from this Court, Debtors are simply exercising “self help,” withholding post-petition

rent payments in contravention of Section 365(d)(3) and relying on the automatic stay and the time to file and prosecute a motion to compel to give them an unauthorized, extra-judicial deferral of postpetition rent payments.

35. This is precisely the situation the 1984 amendments to Bankruptcy Code section 365(d)(3) were intended to prevent. A commercial landlord should not be forced to effectively extend unsecured credit to the bankruptcy estate during the period in which the debtor-in-possession may decide to assume or reject a lease. *See In re J.T. Rapps, Inc.*, 257 B.R. at 260-61; *In re Warehouse Club, Inc.*, 184 B.R. 316, 317 (Bankr. N.D. Ill. 1995) (“The purpose of § 365(d)(3) is to prevent landlords from becoming involuntary post-petition creditors of the bankruptcy estate.”).

36. Accordingly, the Court should order immediate payment of unpaid post-petition, pre-rejection rent and charges due to Landlord.

#### **D. DEBTORS CANNOT DISCRIMINATE AMONG LANDLORDS**

37. It is well established that, absent express statutory language, the bankruptcy court may not establish priorities among various administrative claimants. *See, e.g., In re Lazar*, 83 F.3d 306, 308-09 (9th Cir. 1996) (“Under the Bankruptcy Code, administrative expense creditors must be treated equally and the court should not set up its own order of priorities.”); *In re Digital Impact, Inc.*, 223 B.R. 1, 7 n.2 (Bankr. N.D. Okla. 1998) (“The Court has a duty to insure an equitable distribution among like claims and sees no legitimate legal or business reason for classifying administrative claims at all, much less in a manner that sets two standards for payment . . . .”); *In re MS Freight Distribution, Inc.*, 172 B.R. 976, 980 (Bankr. W.D. Wash. 1994).

38. But Debtors and their estate professionals are doing just that, under the guise of claimed “temporary cash constraints,” literally picking “winner and losers” by deciding

which landlords will receive current post-petition payments under Section 365(d)(3) and those that will not. Regardless of the reasons for choosing “winners and losers” here, there is no such discretion provided by Bankruptcy Code under section 365(d)(3). “The language of § 365(d)(3) requires an estate representative to make immediate payment of nonresidential lease obligations where the estate representative can meet those obligations consistent with its obligations to others.” *In re Valley Media, Inc.*, 290 B.R. 73, 77 (Bankr. D. Del. 2003). It is simply inequitable to treat certain landlords and other parties being paid in the ordinary course in these chapter 11 cases differently than a subset of portion of Debtors’ landlords and other administrative creditors (including estate professionals), while Debtors continue to use and occupy their properties. At a minimum, Landlord should be paid current on an equal basis with other accruing, post-petition obligations of the bankruptcy estate. *See In re Pacific-Atlantic Trading Co.*, 27 F.3d at 405 (rejecting an interpretation of Section 365(d)(3) that would reward trustees [or debtors-in-possession] for failing to timely perform lease obligations).

39. While the Bankruptcy Code leaves many decisions within the purview of the Debtors’ business judgment, the payment of post-petition rent is not one of them, and Section 365(d)(3) unequivocally directs payment of all lease obligations.

**E. LANDLORD IS ENTITLED TO ADEQUATE PROTECTION IN THE FORM OF IMMEDIATE PAYMENT**

40. Real property lessors are entitled to seek adequate protection. *See, e.g., Memphis-Shelby County Airport Authority v. Braniff Airways, Inc. (In re Braniff Airways, Inc.)*, 783 F.2d 1283, 1286-87 (5th Cir. 1986) (recognizing landlord’s right to adequate protection); *In re P.J. Clarke’s Restaurant Corp.*, 265 B.R. 392, 404 (Bankr. S.D.N.Y. 2001) (noting that a “landlord’s right to adequate protection seems to follow clearly from the language of §363(e) . . . .”); *In re Ernst Home Center, Inc.*, 209 B.R. at 966 (real property lessors have the

right to request adequate protection); *In re MS Freight Distribution, Inc.*, 172 B.R. at 980 (A landlord has the right to seek “adequate protection of its right to have obligations under its lease kept current.”); *In re Attorneys Office Management, Inc.*, 29 B.R. 96, 98 (Bankr. C.D. Cal. 1983). Moreover, Section 363(p)(1) places the burden of proving adequate protection on the Debtors.<sup>3</sup>

41. Bankruptcy Code section 363(e) provides, in pertinent part, that:

[A]t any time, on request of an entity that has an interest in property used, sold or leased, or proposed to be used, sold or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale or lease as is necessary to provide adequate protection of such interest.

11 U.S.C. § 363(e).

42. Critically, the mere allowance of an administrative priority claim for unpaid post-petition rent and charges (the remedy we expect the Debtors may argue is appropriate here) **cannot constitute adequate protection** under the plain language of Section 361(3). 11 U.S.C. § 361(3) (“When adequate protection is required under section 362, 363, or 364 of this title of an interest of an entity in property, such adequate protection may be provided by granting such other relief, **other than entitling such entity to compensation allowable under section 503(b)(1) of this title as an administrative expense . . .**” (emphasis added)). This is especially prescient where Debtors’ professionals are informing landlords that Debtors are faced with “temporary cash constraints.” *In re Attorneys Office Management, Inc.*, 29 B.R. at 99 (“In § 361(3) it is made clear that an administrative claim under § 503(b)(1) in itself will not constitute adequate protection.”). Merely budgeting for accruing post-petition rent is not

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<sup>3</sup> “In any hearing under this section – (1) the trustee [or debtor-in-possession] has the burden of proof on the issue of adequate protection . . .” 11 U.S.C. § 363(p)(1).

enough, as demonstrated here where the Budget approved by the Final Cash Collateral Order provides for payment of post-petition rent but Debtors have just unilaterally elected not to pay it.

43. Under the circumstances, the only form of adequate protection that would even approach acceptability would be timely cash payments equal to the amount of rent and charges accruing under the Lease for the use of the Premises between the Petition Date and prior to the effective date of any assumption or rejection. This Court should order Debtors to make timely cash payments of accruing post-petition, pre-rejection rent and charges, providing for expedited relief in the event timely payments are not made as required by Bankruptcy Code section 365(d)(3).

**F. IN THE ALTERNATIVE, PURSUANT TO 11 U.S.C. § 362(d)(1), CAUSE EXISTS TO TERMINATE THE AUTOMATIC STAY TO PERMIT LANDLORD TO EXERCISE ITS REMEDIES UNDER THE LEASE**

44. Section 362(d) provides, in relevant part, as follows:

On request of a party in interest and after notice and a hearing, the Court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay:

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

11 U.S.C. § 362(d).

45. The Bankruptcy Code does not define “cause,” however, courts have found “cause” existed to grant lessors relief from the automatic stay to pursue their rights under rejected leases and/or applicable state law. *See In re Seven Stars Restaurant, Inc.*, 122 B.R. 213, 218 (Bankr. S.D.N.Y. 1990) (granting landlord stay relief to pursue state court action for eviction); *see also In re The Inn at Longshore, Inc.*, 32 B.R. 942, 946 (Bankr. D. Conn. 1983) (granting relief from the automatic stay for “cause” under section 362(d) to permit lessor to commence and prosecute its rights under the subject lease).



46. As a result of the Debtors' payment default under the Lease, "cause" exists to terminate the automatic stay imposed by Section 362(a) to permit Landlord to exercise its rights pursuant to the terms of the Lease to regain possession of the Premises in accordance with the terms of the Lease and applicable state law.

47. Accordingly, Landlord respectfully requests an Order under Section 365(d)(1) to deem the lease rejected and terminate the stay in the event that the Debtors fail to make the unpaid post petition rent payments described *supra*, or are unwilling to voluntarily agree to surrender and relinquish control of the Premises in accordance with the rejection provisions of the Bankruptcy Code. Any such surrender and rejection of the Lease by the Debtors must be an unequivocal relinquishment of control, in writing, and requires that the Debtors return the Premises to the Landlord in accordance with the terms and conditions of the Lease, including but not limited to, in "broom clean" condition.

48. If the Lease is deemed rejected in accordance with the relief sought by this Motion, or voluntarily surrendered and rejected by the Debtors, any rejection order should also provide that any remaining assets not removed from the Premises within fourteen (14) days of the date of such order will be deemed abandoned by the Debtors, free and clear of any and all liens, claims, encumbrances and interests, and that the Landlord shall have the express authority to dispose of such assets, in its sole discretion, without further notice or any liability whatsoever to the Debtors or any third party, and without waiver of any claim that the Landlord may have against the Debtors' estates, or any other third party, for the disposal of such property.

**G. LANDLORD IS ENTITLED TO ITS ATTORNEYS' FEES INCURRED WITH RESPECT TO THIS MOTION**

49. Additionally, Landlord has been compelled to incur attorneys' fees to enforce its rights under the Lease and the Bankruptcy Code with respect to Debtors' defaults in

their failure to timely pay rent charges, and such fees, as authorized by the terms of the Lease, are recoverable as an administrative claim as well. *See, e.g., In re MS Freight Distribution, Inc.*, 172 B.R. at 978-79; *In re Pac-West Telecomm, Inc.*, 377 B.R. 119, 126 (Bankr. D. Del. 2007) (attorneys' fees for motion to compel payment of post-petition lease obligations); *In re Beltway Medical, Inc.*, 358 B.R. 448, 453-455 (Bankr. S.D. Fla. 2006); *see also Travelers Casualty & Surety Co. of America v. Pacific Gas & Elec. Co.*, 549 U.S. 443, 449, 127 S. Ct. 1199, 1203-04 (2007) (holding that "an otherwise enforceable contract allocating attorney's fees... is allowable in bankruptcy except where the Bankruptcy Code provides otherwise."). These attorneys' fees are estimated to be in excess of \$15,000.00 and will only increase through the hearing on this Motion.

#### **VII. NO PREVIOUS REQUEST FOR RELIEF**

50. No previous request for the relief sought herein has been made by Landlord to this or any other Court.

#### **VIII. WAIVER OF MEMORANDUM OF LAW**

51. Landlord requests that this Court waive the requirement of District of New Jersey Local Bankruptcy Rule 9013-1(a)(3) to file a separate memorandum of law because the legal basis on which Landlord seeks relief is incorporated into this Motion and the Motion does not raise any novel issues of law.

#### **IX. CONCLUSION**

52. Landlord respectfully requests the entry of an order, (A) directing the Debtors to (i) pay all outstanding post-petition rent and obligations owing under the Lease, including Stub Rent, as an administrative expense within three business days of entry of such order, (ii) perform all post-petition obligations under the Lease going forward unless and until the Lease is rejected and the Premises surrendered, and (iii) award to Landlord its reasonable

attorneys' fees and costs incurred to enforce their rights under the Lease and the Bankruptcy Code; or (B) in the alternative, deeming the Lease rejected and granting the Landlord relief from the automatic stay to pursue its state law rights and remedies; and (C) granting the Landlord such further relief as is just and proper.

Dated: March 15, 2024  
Wilmington, Delaware

Respectfully submitted,

/s/ Leslie C. Heilman

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*Counsel to CoStar Central Place HQ, LLC*

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

**Caption in Compliance with D.N.J. LBR 9004-1(b)**

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*Counsel to CoStar Central Place HQ, LLC*

In re:

WEWORK INC., *et al.*,<sup>1</sup>

Debtors.

Case No.: 23-19865 (JKS)

Chapter 11

Judge John K. Sherwood

(Jointly Administered)

**ORDER COMPELLING THE DEBTORS' PAYMENT OF POST-PETITION LEASE  
OBLIGATIONS, REQUEST FOR ADEQUATE PROTECTION AND OTHER  
APPROPRIATE RELIEF**

The relief set forth on the following pages, numbered two (2) through three (3), is hereby

**ORDERED.**

<sup>1</sup> A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed 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: WeWork Inc., et al.

Case No. 23-19865 (JKS)

Caption of Order: COMPELLING THE DEBTORS' PAYMENT OF POST-PETITION LEASE  
OBLIGATIONS, REQUEST FOR ADEQUATE PROTECTION AND  
OTHER APPROPRIATE RELIEF

Upon consideration of the *CoStar Central Place HQ, LLC's Motion for Entry of an Order Compelling the Debtors' Payment of Post-Petition Lease Obligations, Request for Adequate Protection and in the Alternative, for Relief from the Automatic Stay and Other Appropriate Relief* (the "Motion")<sup>2</sup> filed by the Landlord; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue is proper under 28 U.S.C. §§ 1408 and 1409; and this Court having determined that notice of the Motion provided by the Landlord was adequate and sufficient under the circumstances and that no further notice of the Motion need be provided; and this Court having reviewed the Motion; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor;

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED to the extent set forth herein.
2. The Debtors shall pay Landlord the following sums, on account of Stub Rent and remaining postpetition rent and charges, within three (3) business days of entry of this Order:

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

Debtors: WeWork Inc., et al.

Case No. 23-19865 (JKS)

Caption of Order: COMPELLING THE DEBTORS' PAYMENT OF POST-PETITION LEASE  
OBLIGATIONS, REQUEST FOR ADEQUATE PROTECTION AND  
OTHER APPROPRIATE RELIEF

LOCATION	UNPAID STUB RENT (11/06/23 – 11/30/23)	UNPAID POST- PETITION 365(d)(3) RENT (12/01/23-03/01/24)	DEFERRED RENT IMMEDIATELY DUE BASED ON POST-PETITION DEFAULT (03/01/23-03/01/24)	TOTAL
1201 Wilson Boulevard	\$320,187.81	\$1,198,881.91	\$1,525,026.37	\$3,044,096.09

3. Debtors shall perform all postpetition obligations under the Lease with Landlord in a timely manner unless and until the Lease is rejected and possession of the Premises is surrendered.

4. In the event Debtors fail to timely perform postpetition obligations owed to the Landlord, the Landlord may move this Court for an order compelling payment or other appropriate relief on five (5) business days' notice.

5. Debtors shall pay Landlord reasonable attorneys' fees in the amount of \$15,000.00 and related costs accrued in connection with the preparation, filing and prosecution of the Motion within three (3) business days of entry of this Order.

6. The requirement set forth in Local Rule 9013-1(a)(3) that any motion be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Motion or otherwise waived.

7. The Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.