



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

THE WE COMPANY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. _____
	)	
SOFTBANK GROUP CORP. and	)	
SOFTBANK VISION FUND (AIV M1)	)	
L.P., a Delaware limited partnership,	)	
	)	
Defendants.	)	

**VERIFIED COMPLAINT**

Plaintiff The We Company (the “Company”), acting by and under the direction of the Special Committee (the “Committee”) of the Company’s Board of Directors (the “Board”), by and through its undersigned counsel, for its complaint against Defendant SoftBank Group Corp. (“SBG”) and SoftBank Vision Fund (AIV M1) L.P. (“Vision Fund” and, with SBG, “SoftBank”), upon knowledge as to itself and information and belief as to all other matters, alleges as follows:

**NATURE OF THE ACTION**

1. On October 22, 2019, SBG, its affiliate Vision Fund, the Company, We Holdings LLC, and the Company’s co-founder and former CEO Adam Neumann entered into a Master Transaction Agreement, as amended on December 27, 2019

(the “MTA”).<sup>1</sup> The MTA provided for a series of transactions, including a debt financing arrangement and the accelerated funding of an existing \$1.5 billion warrant agreement among SoftBank and the Company.

2. The centerpiece bargained-for benefit to be received by the Company’s minority stockholders in the MTA was a tender offer, through which SoftBank would purchase up to \$3 billion worth of the Company’s stock held by the Company’s stockholders (the “Tender Offer”). The Committee viewed the Tender Offer as a critical component of the MTA because it provided much-needed liquidity to the Company’s minority stockholders—many of whom are longtime Company employees who depended upon receiving value for their shares.

3. SoftBank, in exchange, was granted a variety of rights that secured its control of—and improved the economic terms of its investment in—the Company. For example, under the MTA, as of October 30, 2019, SoftBank became entitled to designate at least half of the Company’s Board and to select the Board’s Executive Chairman. The SoftBank-controlled Board was also given a proxy over all shares of capital stock held by Neumann and his affiliates, including the Company’s high-vote stock, giving SoftBank—by itself and through its domination of the Board—control of the Company’s voting power. In addition, the Company issued, and

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<sup>1</sup> The MTA is attached as Exhibit A. Amendment No. 1 to the MTA is attached as Exhibit B.

authorized for additional issuance, shares of Company Series H preferred stock to SoftBank and reduced by almost 90% the exercise price of warrants previously issued to SoftBank. SoftBank has taken full advantage of these control and economic rights. It has, for example, installed its hand-picked directors and management team, each of whom was recruited by and is beholden to SoftBank, to pursue SoftBank's favored business plan for the Company.

4. Although the MTA was signed in October 2019, SoftBank knew by the time it launched the Tender Offer in November 2019 that it would not close until April 1, 2020, citing its view on the timing of regulatory approval in multiple jurisdictions. As a result, there was a substantial difference in time between when SoftBank would get its primary benefits of the deal and when the Company's minority investors would receive their primary benefits. That is, SoftBank obtained many of the benefits from the deal upon signing. Most significantly, it received increased control of the Company, including the right to change management and the Board, within days of signing the MTA and received a number of financial benefits shortly thereafter.

5. The Committee understood the legitimate regulatory reasons why the Tender Offer could not close for many months when it entered into the MTA. But the Committee did not expect or agree that SoftBank and its executives would back

away from their commitment to the Company and its minority stockholders to close the Tender Offer.

6. Despite the months between the signing of the MTA and the expected closing of the Tender Offer, the MTA does not contain any material adverse effect (“MAE”) provision or similar termination right that is common in such agreements. Instead, the MTA required SoftBank to close the Tender Offer so long as certain conditions were satisfied—and to extend the closing date if the receipt of regulatory approval was the only condition outstanding. Further, SoftBank covenanted that it would use its reasonable best efforts to consummate the transactions contemplated by the MTA as promptly as reasonably practicable and to cause the conditions to the Tender Offer to be satisfied.

7. Shortly after signing the MTA, SoftBank began to demonstrate its intention not to consummate the Tender Offer. On information and belief, many of SoftBank’s executives and directors questioned whether SoftBank should invest the additional \$3 billion required to close the Tender Offer, on top of the over \$13.5 billion (inclusive of joint ventures) it had already invested. For instance, in November 2019, SoftBank’s founder and CEO Masayoshi Son—whose business “philosophy” for SoftBank is “Happiness for Everyone”<sup>2</sup>—admitted that SoftBank’s

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<sup>2</sup> SoftBank Group Homepage, <https://group.softbank/en> (last accessed Mar. 31, 2020).

investment in the Company was “really bad” judgment and that he “regret[s] it in many ways.”<sup>3</sup>

8. SoftBank’s apparent buyer’s remorse (as well as Son’s) was compounded by the fact that SoftBank’s financial condition began to decline shortly after it signed the MTA. In November 2019, SoftBank reported its first quarterly loss in 14 years and announced that it would begin scaling down some of its largest investments. At the same time, SoftBank announced that it expected its portfolio companies to become profitable and it would no longer invest purely for growth.

9. Consistent with its change in strategy, SoftBank began to take action in late 2019 to avoid its obligation to close the Tender Offer. To start, SoftBank decided that it no longer wished to pursue the roll-up of the Company’s Chinese joint venture (“ChinaCo”)—a transaction that was a condition to closing the Tender Offer—on the terms contemplated by the MTA. Instead, SoftBank pursued an alternative transaction with a key ChinaCo minority investor that would allow SoftBank (or the Company) to avoid investing additional funds in ChinaCo. On information and belief, Son and other SoftBank executives had discussions with certain ChinaCo minority investors and used their influence over those investors to

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<sup>3</sup> Phred Dvorak and Megumi Fujikawa, *SoftBank Founder Calls His Judgment ‘Really Bad’ After \$4.7 Billion WeWork Hit*, WALL ST. J., Nov. 6, 2019, <https://www.wsj.com/articles/softbank-books-loss-of-4-7-billion-on-wework-investment-11573024776>.

convince them not to waive certain first refusal and co-sale rights. The practical effect of the investors' non-waiver was that the roll-up of ChinaCo could not be completed in accordance with the MTA, preventing a condition to the Tender Offer from being satisfied. SoftBank took these actions despite its contractual obligation to use reasonable best efforts to effectuate the roll-up.

10. SoftBank's financial condition has continued to weaken. For example, SoftBank's enormous and growing debt burden, which is now over \$109 billion, led Moody's to issue a rare two-notch downgrade in SoftBank's debt rating in March 2020. SoftBank's financial decline can also be seen in its share price, which fell by nearly 50% within the last month, losing about \$50 billion of market value at one point. SoftBank's mismanagement attracted the attention of activist investors, including Elliott Management Corporation, which has pressed SoftBank to avoid further investments in the Company.<sup>4</sup>

11. Faced with an increasingly desperate financial condition and substantial pressure from activists, on March 23, 2020, SoftBank announced a plan to repurchase \$18 billion of its own stock (in addition to a previously existing plan to repurchase more than \$3 billion of its stock). At the same time, SoftBank admitted

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<sup>4</sup> See Clara Denina, *Elliott presses SoftBank to identify \$10 billion of investments it holds: sources*, REUTERS, Feb. 28, 2020, <https://www.reuters.com/article/us-softbank-elliott-vision-fund/elliott-presses-softbank-to-identify-10-billion-of-investments-it-holds-sources-idUSKCN20M22A>.

that it had only \$15 billion in cash on its balance sheet, requiring it to sell \$41 billion in assets and pay down additional debt to finance the buyback.<sup>5</sup>

12. SoftBank therefore began to invent a variety of reasons as to why it did not have to close the Tender Offer. One of those reasons was the failure of the ChinaCo roll-up, which was directly caused by SoftBank's own actions in violation of its obligations under the MTA and of its fiduciary duties to the Company's minority stockholders.

13. SoftBank's efforts to frustrate the Tender Offer continued until the eleventh hour. On March 27, 2020, Company management informed the Committee that the Company was undertaking efforts to renegotiate certain lease agreements, including in light of the COVID-19 crisis—a strategy that SoftBank agreed would be beneficial to the Company. On April 1, 2020, SoftBank took the position that those renegotiations could trigger the failure of a closing condition in the MTA, even absent an actual event of default under the Company's debt agreements. The Company did not believe that the renegotiations could constitute a failure of a closing condition in the MTA but, out of caution, the Committee asked that SoftBank waive the related closing condition to facilitate the very strategy that SoftBank

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<sup>5</sup> Ben Dooley, *SoftBank Says It Will Sell \$41 Billion in Assets to Buy Back Shares*, N.Y. TIMES, Mar. 23, 2020, available at <https://www.nytimes.com/2020/03/23/business/softbank-buyback.html>.

supported. SoftBank refused to do so in order to fabricate another argument for termination of the Tender Offer.

14. SoftBank followed through with its threats on April 1, 2020 when it provided formal notice that it was terminating the Tender Offer because, it claimed, conditions to closing had not been satisfied or had failed.<sup>6</sup> SoftBank's press release announcing the termination of the Tender Offer cited a litany of conditions to closing that it alleged were unsatisfied.<sup>7</sup> Despite the narrative they spun for the media, however, none of the conditions that SoftBank listed gave it a legitimate basis to terminate the Tender Offer. Certain of the conditions SoftBank cited are entirely irrelevant—for example, unspecified “actions by governments related to COVID-19” when there is no MAE or other relevant provision in the MTA. The others either did not give SoftBank a basis to terminate under the clear language of the MTA or were not satisfied as a direct result of SoftBank's own actions.

15. The primary condition SoftBank has touted to avoid closing the Tender Offer is the roll-up of ChinaCo. But that condition was not satisfied solely due to SoftBank's own efforts—including, on information and belief, pressuring the

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<sup>6</sup> SoftBank's April 1, 2020 Notice Regarding Termination and Withdrawal of Offer to Purchase Equity Securities of The We Company is attached as Exhibit C.

<sup>7</sup> Press Release, SoftBank Group, *SoftBank Group Announces End of WeWork Tender Offer Because Closing Conditions Not Met*, Apr. 2, 2020, available at <https://www.bloomberg.com/press-releases/2020-04-02/softbank-group-announces-end-of-wework-tender-offer-because-closing-conditions-not-met>.

ChinaCo minority investors not to waive their first refusal and co-sale rights to prevent the roll-up from closing. SoftBank frustrated the ChinaCo roll-up for two reasons, both of which relate to its core goal of avoiding further investment in the Company. First, SoftBank sought to pursue its preferred alternative financing transaction with a key ChinaCo investor, which would result in that investor putting more money into ChinaCo, reducing the need for SoftBank (or the Company) to provide additional working capital to ChinaCo. Second, by convincing the ChinaCo minority investors to not waive their first refusal and co-sale rights, SoftBank sought to place responsibility for its failure to close the Tender Offer on third parties.

16. SoftBank's actions in this regard violated its covenants in the MTA to use its reasonable best efforts to consummate the transactions contemplated by the MTA—including the Tender Offer—and to complete the roll-up of ChinaCo. Instead, SoftBank sought to benefit itself by taking actions that would allow it to avoid further investment in ChinaCo and create a potential escape hatch from its obligation to complete the Tender Offer.

17. Other conditions that SoftBank claims went unsatisfied—regarding regulatory approvals, the roll-up of another of the Company's joint ventures in Asia ("PacificCo"), and government investigations and litigation—fail under the clear language of the MTA.

18. First, if all conditions other than regulatory approval were satisfied or waived (or capable of being satisfied or waived) by April 1, 2020, then the MTA obligated SoftBank to extend the Tender Offer in 10 business day increments to an outside date of August 29, 2020 to permit the outstanding regulatory approvals to be obtained. Currently, only Mexican regulatory approval remains outstanding and is delayed due to COVID-19 but expected to be obtained in April 2020. Similarly, the consummation of the PacificCo roll-up remains subject only to Mexican regulatory approval. The documents effectuating the roll-up of PacificCo were signed on March 31, 2020. The outstanding regulatory approval by the relevant Mexican authorities required SoftBank to extend, not terminate, the Tender Offer.

19. The government investigations and stockholder lawsuits in California state court are hardly surprising given the substantial public speculation about the Company following its failure to complete an initial public offering (“IPO”) in 2019 and investments by SoftBank in connection with the MTA at a significant discount to the Company’s last financing round. In any event, the investigations and lawsuits cannot be invoked by SoftBank as a barrier to closing the Tender Offer. None of those investigations or lawsuits can be reasonably expected to create any material liability to the Company or SoftBank, create any material adverse effect on the ability of the Company to perform its obligations under the offering documents, or prevent the consummation of the Tender Offer, as required by the MTA.

20. SoftBank's refusal to close the Tender Offer breached both the MTA and its fiduciary duties to the Company's minority stockholders. While SoftBank has already received the broad control and economic benefits it bargained for from the MTA, the Company's minority stockholders have lost the liquidity that they were promised in the Tender Offer. Company employees, who had been counting on the Tender Offer in difficult economic times, were left without an opportunity to receive value for their shares.<sup>8</sup>

21. The Company's own liquidity could also be adversely affected by SoftBank's refusal to consummate the Tender Offer. For example, \$1.1 billion in senior secured debt financing provided for in the MTA is contingent upon the completion of the Tender Offer. In a time of unprecedented uncertainty, the Company may be further imperiled by losing access to this potential source of funding.

22. Accordingly, the Committee seeks a declaration that all conditions to closing the Tender Offer, other than regulatory approval, were satisfied or waived (or capable of being satisfied or waived) by April 1, 2020, and specific performance

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<sup>8</sup> Ellen Huet, *Some WeWork Staff Planned Their Lives Around a Stock Deal That Just Collapsed*, BLOOMBERG, Apr. 3, 2020, <https://www.bloomberg.com/news/articles/2020-04-03/some-wework-staff-planned-their-lives-around-a-stock-deal-that-just-collapsed>.

requiring SoftBank to complete the Tender Offer in accordance with the MTA upon the satisfaction of the regulatory approval condition.

### **THE PARTIES**

23. Plaintiff The We Company is a Delaware corporation headquartered in New York, New York. The We Company is the parent corporation of WeWork Companies LLC (“WeWork”), a space-as-a-service company revolutionizing the way people and companies work. WeWork provides space solutions and related products and services to a membership base ranging from Fortune 500 companies to grassroots nonprofits, in over 100 cities around the world. WeWork became a subsidiary of the Company in or around July 2019 through a series of reorganization transactions.

24. The Committee was established by the Board on October 12, 2019 to evaluate and make a recommendation to the Board regarding the transactions at issue in the MTA, among other strategic alternatives available to the Company. The Committee is composed of outside independent directors Bruce Dunlevie, a venture capitalist and a General Partner of Benchmark, and Lewis Frankfort, the former CEO of Coach Inc. In appointing Dunlevie and Frankfort to the Committee, the Board determined that they were “free of any material conflict of interest” relating to a transaction with SoftBank or Neumann. The resolutions forming the Committee authorize it to, among other things, “exercise all rights and powers of the Board to

the fullest extent permitted by the Delaware General Corporation Law in connection with [the] [p]otential [t]ransaction” with SoftBank.

25. Defendant SoftBank Group Corp. is a publicly-traded, multinational conglomerate holding corporation incorporated under the laws of Japan and headquartered in Tokyo, Japan. SBG is led by Masayoshi Son, its Chairman and CEO. SBG owns 43.4% of the Company’s shares on a fully-diluted basis.

26. Defendant SoftBank Vision Fund (AIV M1) L.P. is a limited partnership organized under the laws of Delaware and an affiliate of SBG. Vision Fund is a \$100 billion venture capital fund formed in 2017 and run by SBG. Vision Fund began with a conversation between Masayoshi Son and Saudi Crown Prince Mohammed bin Salman in 2017.<sup>9</sup> Like SBG, Vision Fund is led by Son, and he and other SBG executives control Vision Fund’s day-to-day operations. Vision Fund is primarily financed through investments from SBG (which has invested more than \$28 billion in Vision Fund), SBG executives (including Son, who made a large personal investment), and Middle Eastern sovereign wealth funds. On information and belief, SBG, Son and the governments of Saudi Arabia and Abu Dhabi have invested approximately \$85 billion of the \$100 billion fund. SBG and Vision Fund frequently coordinate to make parallel investments in the same companies on the

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<sup>9</sup> See Kenichi Yamada et al., *Softbank Vision Fund: All you need to know in simple graphics*, NIKKEI, Feb. 10, 2020, <https://asia.nikkei.com/Business/SoftBank2/SoftBank-Vision-Fund-All-you-need-to-know-in-simple-graphics>.

same (or similar) terms. Vision Fund also holds 8.9% of the Company's shares on a fully-diluted basis. Collectively, SBG and Vision Fund own 52.3% of the Company's shares on a fully-diluted basis and control the Company.

### **JURISDICTION**

27. Jurisdiction is proper under 10 *Del. C.* § 341 and 6 *Del. C.* § 2708(b). The Company and SoftBank expressly negotiated and agreed that the Courts of Delaware would have exclusive jurisdiction over any dispute relating to or arising out of the MTA or the transactions contemplated by it.

28. Specifically, the MTA provides in relevant part that:

Each of the Parties hereby irrevocably and unconditionally (i) consents and submits to the exclusive jurisdiction of the Court of Chancery of the State of Delaware . . . in respect of any action, suit or other proceeding (whether at Law or in equity, whether based on contract, tort or otherwise) that arises out of, relates to or is in any manner connected with this Agreement or the Transactions . . . .<sup>10</sup>

29. Furthermore, jurisdiction is proper because the Company seeks equitable relief in the form of specific performance of the MTA. The Company also asserts an equitable claim that SoftBank breached its fiduciary duties to the Company and its minority stockholders.

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<sup>10</sup> Ex. A, MTA § 11.08(b).

## **FACTUAL ALLEGATIONS**

### **I. SOFTBANK STEADILY GAINS CONTROL OF THE COMPANY.**

30. SoftBank has been pursuing a strategy to take control of the Company for years. In 2017, SoftBank made an initial investment in WeWork of \$3 billion. Since then, SoftBank has been the Company's only source of equity capital and has repeatedly sought to impose its business strategy on WeWork's business. SoftBank has invested more than \$13.5 billion in connection with its investment in the Company, making it one of the largest single investments in SoftBank's portfolio of companies.

31. In mid-2018, SoftBank and WeWork's then-CEO Neumann proposed a buyout of WeWork's outside stockholders that would make them the primary co-owners of WeWork. For months, SoftBank and Son assured WeWork's executive team and Board that it intended to consummate that transaction. In December 2018, SoftBank suddenly abandoned the buyout transaction—which would have delivered \$54 a share to WeWork's minority stockholders—for its own internal reasons. In doing so, SoftBank left WeWork and its minority stockholders in the lurch without an alternative funding source.

32. In January 2019, SoftBank entered into a mandatory warrant agreement with WeWork pursuant to which it agreed to provide another \$1.5 billion in financing in exchange for additional shares in the Company at a price of \$110 per

share (the “Warrant”). The terms of the Warrant provided that it would be funded in April 2020. SoftBank simultaneously acquired additional ownership of WeWork through a \$1 billion tender offer at a price of \$54 a share, which was completed in early 2019. By the time SoftBank entered into the Warrant, it would have undertaken extensive diligence on WeWork in connection with the failed buyout. SoftBank (not to mention its designees on the Board) was therefore fully informed about the Company and its financial condition well before the MTA was signed.

33. On August 14, 2019, the Company publicly filed a Form S-1 with the Securities and Exchange Commission (“SEC”) in connection with its anticipated IPO. Though the prospectus showed revenues for the Company of nearly \$1.6 billion in the first six months of 2019, it also reflected (among other things) significant losses in the years preceding the filing. On September 16, 2019, the Company announced that it would delay the IPO and, on September 30, 2019, the IPO was postponed indefinitely. The Company’s valuation, which had been reported to be \$47 billion in January 2019 based on the \$110 per share valuation implied by the Warrant, declined significantly during this time. By October 2019, the Company was faced with the imminent prospect of running out of money.

34. SoftBank was far from blameless in the Company’s failed IPO and subsequent financial challenges. As SoftBank deepened its investment in the Company, it pressed for the Company to grow at all costs while the controversial

and highly-publicized behavior of Neumann remained unchecked. SoftBank’s critics said that its investments, like the “WeWork debacle,” “poisoned the ecosystem for young companies by encouraging founders to take excessive risks with little regard for building businesses that can last through the ups and downs of the economy.”<sup>11</sup>

35. Nonetheless, SoftBank’s ownership of Company stock and level of influence steadily increased. By October 2019, SoftBank held approximately 27.1% of the Company’s stock on a fully-diluted basis and had designated two members of the Board.

## **II. SOFTBANK SOLIDIFIES CONTROL THROUGH THE MTA.**

### **A. SoftBank’s October 2019 Proposal and the Formation of the Committee**

36. In early October 2019, the Board (and, following its formation, the Committee) began to assess strategic options given that the Company was forecasted to run out of cash imminently. To shore up the Company’s finances, the Company began to actively consider certain debt financing arrangements through a marketing process led by J.P. Morgan Chase & Co. (“J.P. Morgan”).

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<sup>11</sup> Peter Eavis and Michael J. de la Merced, *SoftBank Bet Big on Disruptive Companies. Many Have Not Paid Off.*, N.Y. TIMES, Sept. 26, 2019, <https://www.nytimes.com/2019/09/26/business/softbank-wework-masayoshi-son.html>.

37. On October 11, 2019, SoftBank sent a proposal to the Board with several key components: an alternative debt financing arrangement (in lieu of the arrangements with J.P. Morgan) worth \$5.05 billion; a tender offer by SoftBank for Company equity; an exchange of equity held by Vision Fund in ChinaCo and PacificCo for Company equity; amendments to the Warrant to accelerate funding from April 2020; and changes to the Company's governance to be implemented in addition to (or in lieu of) arrangements previously approved by the Board on September 24, 2019 in connection with Neumann ceasing to be the Company's CEO.

38. At a special meeting on October 12, 2019, the Board discussed both the J.P. Morgan debt financing arrangements and the proposal from SoftBank. The Board considered that Neumann would participate in the tender offer and potentially have a consulting role through which he would receive cash consideration under the terms of SoftBank's proposal. As a result, the Board determined that it was advisable to form an independent committee for the purpose of evaluating SoftBank's proposal, among other strategic alternatives available to the Company. The Board also conditioned any transaction upon the Committee's approval and the approval of a majority of the Company's disinterested stockholders.

39. The Board approved resolutions to form the Committee, consisting of outside disinterested directors Dunlevie (as Chairman) and Frankfort, to evaluate strategic alternatives available to the Company in view of the interests of the

Company and its minority, disinterested stockholders—that is, those not affiliated with SoftBank or Neumann. The Board delegated to the Committee full authority to exercise all of the powers of the Board under Delaware law in connection with a potential transaction with SoftBank, including the power to approve a transaction agreement such as the MTA. The Committee was also empowered to “make any and all determinations and recommendations regarding [the MTA] that the . . . Committee deems appropriate.” Pursuant to its power to engage independent advisors, the Committee retained Perella Weinberg Partners (“PWP”) to act as its financial advisor, after reviewing any potential conflicts of interest on the part of PWP relative to SoftBank or Neumann. The Board also instructed the officers of the Company to continue to pursue the debt financing arrangements underway with J.P. Morgan concurrently with the Committee’s evaluation of SoftBank’s proposal and other alternatives available to the Company.

40. Consistent with its mandate, the Committee thoroughly assessed the options available to the Company and engaged in hard-fought negotiations to secure the best possible transaction for the Company and its disinterested minority stockholders. SoftBank was less sincere. As it has done throughout its time as an investor in the Company, SoftBank sought to advantage itself to the detriment of the Company’s minority stockholders. On or about October 15, 2019, Dunlevie spoke with Marcelo Claire, SoftBank’s Chief Operating Officer, regarding SoftBank’s

proposal. Claire told Dunlevie that SoftBank believed that it had grounds to refuse to honor its obligations under the Warrant and threatened that SoftBank would not fund any of its \$1.5 billion commitment pursuant to the Warrant if the Company chose to pursue an alternative source of financing—such as the transaction with J.P. Morgan. With Claire’s permission, Dunlevie conveyed this message to the Committee and its advisors.

41. The Committee is unaware of any legitimate grounds that could have excused SoftBank’s performance of the Warrant. The Company fully complied with the terms of the Warrant, and SoftBank possessed extensive knowledge of the Company’s financial condition before it agreed to the Warrant. Nevertheless, in consultation with its advisors, the Committee determined that the possibility of SoftBank failing to fund the Warrant significantly impeded the Company’s ability to consummate a debt financing transaction arranged by J.P. Morgan. J.P. Morgan emphasized that any transaction it could arrange would be predicated upon the completion of SoftBank’s investment under the Warrant, as J.P. Morgan was unlikely to be able to fill the \$1.5 billion equity financing gap should SoftBank refuse to comply with the Warrant’s terms. The proposed SoftBank transaction also would provide the Company with approximately \$2.5 billion in greater liquidity than the J.P. Morgan financing—which the Committee viewed as significant in light of the Company’s ongoing capital needs.

42. Following negotiations and discussions with its advisors, the Committee determined—given all of the circumstances, threats, considerations and challenges before it—that the transactions proposed by SoftBank were in the best interest of the Company and its disinterested minority stockholders. Accordingly, the Committee—consistent with its authority—approved the transactions to be effected by the MTA. The Board adopted resolutions on October 26, 2019 to enable the transactions to be effected by the MTA to be submitted for approval by the Company’s stockholders.

**B. The Master Transaction Agreement**

43. The MTA was signed on October 22, 2019. The MTA provided for three separately sequenced transactions intended to “provid[e] equity and debt financing to the Company and its Subsidiaries and offer[] liquidity to the Stockholders” of the Company.<sup>12</sup> First, SoftBank would promptly fund its existing \$1.5 billion financing commitment through the Warrant but at a greatly reduced price per share. Second, SoftBank would offer to purchase up to \$3 billion of the Company’s preferred and common stock through the Tender Offer. Finally, SoftBank would provide \$3.3 billion of debt financing, \$1.1 billion of which was contingent on the closing of the Tender Offer. In connection with the transactions contemplated by the MTA, the Company also issued shares of Series H senior

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<sup>12</sup> Ex. A, MTA at 1.

preferred stock to SoftBank upon the exercise of the Warrant on October 30, 2019. The Company further authorized for issuance to SoftBank additional shares of Series H senior preferred stock upon (i) the exercise of warrants to be issued in relation to the debt financing to be provided under the MTA, and (ii) the roll-ups of ChinaCo and PacificCo.

44. The MTA granted SoftBank substantial governance and control benefits through agreements including an October 30, 2019 Amended and Restated Stockholders' Agreement (the "Stockholders' Agreement") between the Company, Neumann and his affiliates, SoftBank, and certain other stockholders of the Company.<sup>13</sup> Under the Stockholders' Agreement, SoftBank was given the right to designate five of the Company's directors, with the Board capped at ten directors. The remaining stockholder parties are only entitled to designate two directors under the Stockholders' Agreement, but the initial two directors appointed to those seats were beholden to SoftBank: Jeff Sine, a principal at the financial advisor to SoftBank in connection with the MTA; and Mark Schwartz, a recent director of SoftBank and former principal at Goldman Sachs, which has long served as a financial advisor to SoftBank. SoftBank was also given the right to select the Board's Executive Chairman. The Stockholders' Agreement further provided that Neumann would resign from the Board, relinquish all positions with the Company, and execute a

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<sup>13</sup> Ex. A, MTA Ex. I (Stockholders' Agreement).

proxy giving voting control of his super-voting founder shares to the (SoftBank-controlled) Board.

45. The parties did not include any termination right provision, such as a clause allowing SoftBank to terminate the MTA if there is an MAE, with respect to the Company's business or operating conditions. Similarly, the conditions to the Tender Offer do not include an MAE to the Company's business or operating conditions.

### **C. The Tender Offer**

46. The MTA provided SoftBank with immediate control rights and provided the Company with \$1.5 billion of initial financing through the Warrant. But the Committee viewed the Tender Offer as the central transaction of the MTA, from the vantage point of the Company's disinterested minority stockholders. The Tender Offer was intended to deliver liquidity to the Company's minority stockholders, hundreds of whom are current and former employees. The fact that certain large early investors, such as Benchmark (a Series A holder), also stood to receive liquidity in the Tender Offer aligned their interests with smaller, common stockholders.

47. Section 3.01 of the MTA provides that the Tender Offer would commence promptly following the funding of the Warrant and, pursuant to the amendment to the MTA, that the Tender Offer would expire on April 1, 2020. That

timing was subject to several conditions to the commencement and closing of the Tender Offer set forth in Schedule 3.01(a) to the MTA.

48. Schedule 3.01(a) provided that the commencement of the Tender Offer was conditioned upon the satisfaction of six conditions, which SoftBank had the discretion to waive.

49. One condition to commencement pertained to claims and investigations that could, among other things, result in material harm to the Company, SoftBank, or the Tender Offer (the “Investigation and Claims Condition”). Regarding the Investigations and Claims Condition, Schedule 3.01(a) to the MTA provides in relevant part that:

[T]here shall be no claim, action, suit, proceeding, arbitration, complaint, charge, investigation or regulatory inquiry pending or currently threatened against the Company, SBG, [Vision Fund] or any of their respective Affiliates (i) by a Governmental Entity that (A) would reasonably be expected to prevent the consummation of the Tender Offer, (B) has or would ***reasonably be expected to have a material adverse effect*** on the ability of the Company to perform its obligations under Offer Documentation, or (C) has or would ***reasonably be expected to result in any material liability*** to the Company or any of its Subsidiaries or to SBG, [Vision Fund] or any of their respective Affiliates or (ii) by any other Person that would ***reasonably be expected to result in an injunction*** against the Company, SBG, [Vision Fund] or any of their respective Affiliates against consummation of the Tender Offer, or that would ***reasonably be expected to***

*result in a material adverse effect* on the Company, SBG, [Vision Fund] or any of their respective Affiliates.<sup>14</sup>

50. Another condition to the commencement of the Tender Offer set forth in Schedule 3.01(a) provides that no “Event of Default” had occurred under the Company’s debt agreements (the “Default Condition”). Schedule 3.01(a) to the MTA provides in relevant part that:

[T]here shall not have occurred any “Event of Default” or any default which, with the passage of time or the giving of notice (or both), would constitute an “Event of Default” under the debt facilities or agreements and documents governing the Company’s or its Subsidiaries’ indebtedness for borrowed money[.]<sup>15</sup>

51. Schedule 3.01(a) also requires that certain of the conditions to commencement be satisfied as a condition to closing the Tender Offer and sets forth two additional conditions to closing: that the relevant regulatory approvals had been obtained (the “Regulatory Approval Condition”); and that the roll-ups of ChinaCo and PacificCo have been consummated (the “JV Roll-Up Condition”). SoftBank retained the discretion to waive those conditions.

52. Regarding the Regulatory Approval Condition, Schedule 3.01(a) to the MTA provides in relevant part that:

[T]he waiting period (and any extensions thereof) applicable to the Tender Offer under the Hart–Scott–Rodino Antitrust Improvements Act of 1976, as amended

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<sup>14</sup> Ex. A, MTA Schedule 3.01(a)(1)(e) (emphasis added).

<sup>15</sup> *Id.* Schedule 3.01(a)(1)(b).

shall have expired or been terminated and all antitrust approvals applicable to the Tender Offer under the Laws of South Korea, Canada, Mexico, the European Union, the People’s Republic of China, Russia, South Africa, the Philippines, Costa Rica, India, Israel and Japan (the “Foreign Antitrust Approvals”)\* shall have been obtained (the “Regulatory Approval Condition”).<sup>16</sup>

53. The JV Roll-Up Condition concerned the consummation of the roll-ups of WeWork Greater China Holding Company B.V. (referred to as ChinaCo) and WeWork Asia Holding Company B.V. (referred to as PacificCo). The roll-ups of those joint ventures involve an exchange of Vision Fund’s shares in ChinaCo and PacificCo for shares in the Company. They also required the approval of both of the respective boards of ChinaCo and PacificCo and, with respect to ChinaCo, the minority stockholders of ChinaCo waiving their first refusal and co-sale rights.<sup>17</sup> Specifically, Schedule 3.01(a) to the MTA provides that, before closing: “each JV Roll-Up Document shall have been executed and delivered by the parties thereto and the transactions contemplated by each JV Roll-Up Document shall have been consummated.”<sup>18</sup> The Tender Offer could not close unless the ChinaCo roll-up was consummated, which required that the minority investors in ChinaCo waive their first refusal and co-sale rights.

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<sup>16</sup> *Id.* Schedule 3.01(a)(2)(b).

<sup>17</sup> *Id.* Ex. O (ChinaCo Share Purchase Agreement Term Sheet).

<sup>18</sup> *Id.* Schedule 3.01(a)(2)(c).

54. Section 8.12 of the MTA, as amended, provides that the parties would use “reasonable best efforts” to negotiate and finalize the ChinaCo and PacificCo roll-up agreements by February 15, 2020, or at a later date per the parties’ agreement. SoftBank agreed to cause the ChinaCo and PacificCo roll-ups to occur no later than the closing of the Tender Offer. Critically, the parties also agreed that the Company would not be in breach of its obligation to close the roll-ups of ChinaCo and PacificCo if the failure to do so before the closing of the Tender Offer resulted from a breach of the MTA by SoftBank. Section 8.12 of the MTA provides in relevant part that:

The Company, SBG and [Vision Fund] shall cause their respective Affiliates to *use reasonable best efforts to negotiate and finalize the final forms of definitive JV Roll-Up Documents* as promptly as practicable and in any event by February 15, 2020 or such later date as the Company, SBG and [Vision Fund] may agree upon in writing (which final forms may not include complete disclosure schedules and may not reflect negotiation with third parties to the extent required). Each of the Company, SBG and [Vision Fund] agree to cause the closing of the JV Roll-Up to occur no later than the closing of the Tender Offer; provided, that (a) *the Company shall not be in breach of its obligations under this sentence if the failure of the closing of the JV Roll-Up to occur at or prior to the closing of the Tender Offer results from any breach of this Agreement by SB[G] or [Vision Fund]* and (b) neither SB[G] nor [Vision Fund] shall be in breach of their respective obligations under this sentence if the failure of the closing of the JV Roll-Up to occur at or prior to the

closing of the Tender Offer results from any breach of this Agreement by the Company.<sup>19</sup>

55. Section 3.01(b) of the MTA provides that while SBG could choose to extend the Tender Offer if the conditions were not satisfied by April 1, 2020, it was required to extend the Tender Offer if all conditions other than the Regulatory Approval Condition were satisfied or waived, or capable of being satisfied or waived, by that time. SoftBank would be required to extend the Tender Offer in ten business day increments for up to 150 days beyond April 1, 2020—an outside date of August 29, 2020—until the Regulatory Approval Condition was satisfied or waived.<sup>20</sup> In other words, a delay in satisfying the Regulatory Approval Condition was not grounds for SoftBank to avoid closing the Tender Offer unless the delay lasted more than 150 days after April 1, 2020.

56. The parties to the MTA, including SBG and Vision Fund, agreed in Section 8.03(a) of the MTA that they would use their “reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and assist and cooperate with the other Parties [to the MTA] in doing, all things necessary, proper or advisable to cause each of” the conditions to the closing of the Tender Offer “to

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<sup>19</sup> Ex. A, MTA § 8.12 (emphasis added).

<sup>20</sup> *Id.* § 3.01(b)(B).

be satisfied as promptly as reasonably practicable” and “to consummate and make effective as reasonably promptly as reasonably practicable” the Tender Offer.<sup>21</sup>

**D. SoftBank Reconstitutes the Board and Installs Management**

57. After signing the MTA, SoftBank swiftly exercised its power to reconstitute the Board and appoint its chosen management team. On October 30, 2019, SoftBank appointed its executive Claire to the Board. Claire joined two other directors affiliated with SoftBank: Ron Fisher (who SoftBank had formally designated as a director) and Schwartz (a recent SoftBank director, who was technically a designee of the minority stockholders even though the Stockholders’ Agreement had allowed SoftBank to select him initially).

58. A fourth director, investment banker Jeff Sine, has substantial connections to SoftBank, including leading SoftBank’s negotiations of the MTA. He previously acted as SoftBank’s “key” U.S. advisor on its acquisition of a controlling interest in Sprint, and later negotiated Sprint’s acquisition of T-Mobile for SoftBank—the two largest deals that his firm has ever advised on.<sup>22</sup> SoftBank is Sine’s largest client. He is “very liked” by Son and the two of them have a

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<sup>21</sup> *Id.* § 8.03(a).

<sup>22</sup> Nadia Damouni and Peter Lauria, *Raine Group arrives in big way as Softbank’s adviser*, REUTERS, Oct. 15, 2012, <https://www.reuters.com/article/us-raine-sidebar/raine-group-arrives-in-big-way-as-softbanks-adviser-idUSBRE89E1LX20121016>.

professional relationship spanning more than a decade,<sup>23</sup> during which he has become one of Son’s “most trusted” advisors, according to press reports.<sup>24</sup> The other directors as of October 30, 2019 were Dunlevie, Frankfort, Steven Langman, and John Zhao. Each of those directors other than Langman remains on the Board.

59. Also on October 30, 2019, the SoftBank-controlled Board appointed Claire—SoftBank’s Chief Operating Officer—as the Executive Chairman of the Company. Neumann became a Board observer, having surrendered voting control over his shares. SoftBank announced that it would shortly be appointing additional directors to the Board.

60. As of March 18, 2020, SoftBank owned 309,534,964 shares of the Company’s stock on a fully-diluted basis, which is approximately 43.4% of the Company’s fully-diluted equity (including options and warrants). Together with Vision Fund’s ownership of 63,651,953 shares, or 8.9% of the Company’s fully diluted equity, SoftBank controls a majority of the Company’s equity. SoftBank, through the Board, also controls the proxy for Neumann and for We Holdings LLC’s shares, which total 100,788,605 shares, or 14.1% of the Company’s equity on a fully-diluted basis. All told, between its own shares, those of Vision Fund, and the shares

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<sup>23</sup> *Id.*

<sup>24</sup> Liana B. Baker and Greg Roumeliotis, *RPT-Dealmakers aplenty, SoftBank’s Son looks for wonks*, REUTERS, May 19, 2017, <https://www.reuters.com/article/softbank-visionfund-idCNL2N1ILOJI>.

it controls by proxy through its domination of the Board, SoftBank controls 66.4% of the Company's voting power on a fully-diluted basis.

### **III. SOFTBANK RENEGES ON ITS CONTRACTUAL OBLIGATIONS.**

61. SoftBank has continued to reap the benefits it negotiated for itself in the MTA by expanding its control of the Company and making ongoing changes to the Company's leadership to ensure that its own interests come first. In February 2020, following the resignations of three directors (Fisher, Schwartz, and Langman), SoftBank appointed the Company's CEO Sandeep Mathrani (who was hired by the SoftBank-controlled Board) and, underscoring the close relationship between SBG and Vision Fund, Vision Fund executive Kirthiga Reddy to the Board. On March 17, 2020, SoftBank appointed another of its executives, Chad Fentress, to the Board. SoftBank therefore currently controls five of the eight Board seats—with those five seats held by Claire, Fentress, Reddy, Mathrani, and Sine.

62. But in the months following signing of the MTA, SoftBank's financial condition declined, making the Tender Offer less advantageous to it and its affiliates. SoftBank reported in its earnings results for the nine-month period ending December 31, 2019 that its third-quarter operating profits had fallen by 99%—in significant

part because Vision Fund took a \$2 billion loss in the third quarter after writing down investments in the Company and Uber.<sup>25</sup>

63. As a result of its own financial difficulties, SoftBank engaged in a scattershot, ongoing campaign to avoid going forward with the Tender Offer—first by trying to thwart the roll-up of ChinaCo, and then claiming that conditions to closing were not met. Those efforts became more desperate as its financial condition grew increasingly dire.

64. For example, its enormous and growing debt burden, which is now over \$109 billion, led Moody's to issue a rare two-notch downgrade for SoftBank's debt. Moody's cited the "unexpected size and apparent urgency" of SoftBank's debt and recent actions in its decision to lower SoftBank's rating from Ba1 to Ba3.<sup>26</sup> In a fit of anger in response to Moody's action, SoftBank dropped Moody's Investors Service, despite the fact that SoftBank's debt was considered noninvestment grade or junk before that downgrade.<sup>27</sup> On information and belief, Moody's downgrading

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<sup>25</sup> See Ben Dooley, *SoftBank Takes Another Multibillion-Dollar Hit From Bad Bets*, N.Y. TIMES, Feb. 12, 2020, <https://www.nytimes.com/2020/02/12/business/dealbook/softbank-results.html>; see also Dvorak, *SoftBank Founder Calls His Judgment 'Really Bad' After \$4.7 Billion WeWork Hit*, WALL ST. J., Nov. 6, 2019.

<sup>26</sup> Phred Dvorak, *SoftBank Dumps Moody's After a Two-Notch Downgrade*, WALL ST. J., Mar. 25, 2020, <https://www.wsj.com/articles/moodys-downgrades-softbanks-credit-rating-by-two-notches-11585146245>.

<sup>27</sup> *Id.*

of SoftBank's rating by two notches has created further pressure on SoftBank to escape its contractual obligation to close the Tender Offer.

65. SoftBank's financial decline is also reflected in its share price, which fell by nearly 50% in just the last month, at one point losing about \$50 billion of market value. SoftBank's mismanagement has also attracted the attention of activist investors, including Elliott Management Corporation. Elliott Management Corporation has a nearly \$3 billion stake in SoftBank and has been pushing it to stop further investments in a number of SoftBank portfolio companies, including the Company.<sup>28</sup>

**A. SoftBank Thwarts the Roll-Up of ChinaCo to Pursue an Alternative Transaction**

66. As early as November 2019, SoftBank began to pursue an alternative financing transaction with Trustbridge Partners ("Trustbridge"), a significant minority stockholder of ChinaCo. SoftBank preferred the Trustbridge transaction over the roll-up of ChinaCo because Trustbridge would increase its investment in ChinaCo, thereby limiting the additional capital that SoftBank or the Company would have to invest in ChinaCo. The alternative transaction contemplated a restructuring of ChinaCo through which Trustbridge, as lead investor, would

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<sup>28</sup> Clara Denina, *Elliott presses SoftBank to identify \$10 billion of investments it holds: sources*, REUTERS, Feb. 28, 2020, <https://www.reuters.com/article/us-softbank-elliott-vision-fund/elliott-presses-softbank-to-identify-10-billion-of-investments-it-holds-sources-idUSKCN20M22A>.

(together with co-investors) gain ownership of 51% of ChinaCo and assume operational control. The terms and conditions of the restructuring with Trustbridge were inconsistent with the roll-up of ChinaCo required by the MTA. Nonetheless, following discussions between representatives of SoftBank and Trustbridge, on or about December 26, 2019, Son, Claude, Michel Combes (the CEO of SoftBank-owned Sprint), and others held an in-person meeting with representatives of Trustbridge in furtherance of the proposed Trustbridge deal.

67. At this meeting, while assuring the Company that SoftBank intended to close the Tender Offer, Son and other representatives of SoftBank gave Trustbridge reason to believe that it would be against the interests of the ChinaCo minority stockholders to waive their first refusal and co-sale rights. On information and belief, SoftBank also had discussions with other ChinaCo minority investors to pressure them not to waive those rights. SoftBank did so despite its obligations under Sections 8.03 and 8.12 of the MTA to use its reasonable best efforts to secure the achievement of the ChinaCo roll-up—which necessarily depended upon the ChinaCo minority investors waiving their first refusal and co-sale rights.

68. SoftBank took these actions to create a greater likelihood that it would not have to invest further in ChinaCo (through the Company) or in the Company (through the Tender Offer). If the Trustbridge transaction was successful, then SoftBank could avoid its obligation to invest additional capital in the joint venture,

meaning that it would not have to put in additional capital into ChinaCo through the Company. But even if the Trustbridge transaction was not successful, then the minority investors' refusal to waive their first refusal and co-sale rights would prevent the JV Roll-Up Condition to the Tender Offer from being satisfied, giving SoftBank an excuse to avoid its obligation to consummate the Tender Offer. Essentially, SoftBank's decision to pursue the Trustbridge alternative and convince ChinaCo's minority investors to not waive their rights offered SoftBank a "win-win" scenario.

69. SoftBank's tactics had the desired effect. On information and belief, SoftBank's discussions with Trustbridge and the other minority investors in ChinaCo convinced those investors not to waive their first refusal and co-sale rights, and the JV Roll-Up Condition was not satisfied by April 1, 2020. As recently as March 4, 2020, following instruction from SoftBank, Trustbridge wrote to the Company on behalf of various minority stockholders indicating that it would not waive those rights. Although the Trustbridge deal currently has not been accomplished, it might still be available to SoftBank. SoftBank's underhanded conduct gave it a way to avoid spending the \$3 billion required by the Tender Offer while (through the SoftBank-controlled Board) retaining the Trustbridge transaction as an option and avoiding future investment in ChinaCo. SoftBank's actions not only violated the reasonable best efforts covenants of the MTA, but further

demonstrate that SoftBank has put its own interests ahead of the minority stockholders to which it owes fiduciary duties.

**B. SoftBank's Deceitful Assertions that Conditions to the Tender Offer Prevented It from Closing**

70. More recently, SoftBank further complicated the closing of the Tender Offer through a series of unreasonable positions taken by Vision Fund and SBG.

71. At first, SoftBank caused Vision Fund to complicate the Company's ability to consummate the roll-up of ChinaCo. The MTA provided that Vision Fund, a ChinaCo investor, would exchange its interest in ChinaCo for additional shares of Company stock. The other ChinaCo minority investors would remain investors in ChinaCo and had to waive their first refusal and co-sale rights in connection with this share exchange by Vision Fund. SoftBank had encouraged the ChinaCo minority investors to refuse to permit Vision Fund to sell its shares to the Company without being able to participate in a co-sale alongside Vision Fund. Vision Fund informed the Committee in February 2020 that, at the closing of the Tender Offer, it expected to receive the same ownership in the Company it was promised in the MTA, including as a result of the ChinaCo share exchange. Vision Fund also stated that it was not interested in any other transaction. This resulted in a period of negotiations between the Company and Vision Fund.

72. In order to consummate the Tender Offer, the Committee proposed an amendment to the MTA. Among other things, the amendment would have allowed

Vision Fund to retain its equity interests in ChinaCo while also receiving the same number of newly-issued shares of Series H preferred stock that Vision Fund would have received under the MTA upon completion of the ChinaCo share exchange (equivalent to about 8% of the Company's stock). The Committee determined that the benefits to the Company's minority stockholders of consummating the Tender Offer outweighed the costs of such an approach to the Company, in terms of value to the Company foregone by allowing Vision Fund to retain its equity in ChinaCo. Vision Fund found this proposal acceptable, as it would address Vision Fund's purported concerns and result in a windfall to Vision Fund—allowing Vision Fund to both retain its interests in ChinaCo and to receive its promised ownership of the Company.

73. After the Committee's offer to Vision Fund, SoftBank used its other hand—SBG—to attempt to deprive the Company's minority stockholders of the Tender Offer. Now, SBG claimed that it was not satisfied with the amendment previously deemed acceptable to Vision Fund, asserting that, among other reasons, the JV Roll-Up Condition—the same condition SoftBank had spent months obstructing—was not satisfied. SBG first took that position in a March 12, 2020 letter from SoftBank's counsel—even though the deadline to comply with those conditions had not arrived and none of the conditions had failed.

74. On March 17, 2020, in furtherance of its efforts to escape from its obligation to close the Tender Offer, SoftBank amended its Offer to Purchase (the “OTP Amendment”). The OTP Amendment listed four conditions to the Tender Offer that SBG claimed were outstanding and asserted that if “all of th[o]se conditions” were not satisfied by April 1, 2020, SoftBank would “not be obligated to accept for payment the tendered shares.”<sup>29</sup>

75. SBG claimed in the OTP Amendment that the following conditions remained outstanding:

- “The failure to satisfy the regulatory approval condition”;
- “The existence of multiple government investigations that pose a threat of liability for the parties to the master transaction agreement”;
- “The existence of certain litigation that remain[d] outstanding”; and
- “The failure to execute the documents related to the jv roll-up transactions and consummate the transactions contemplated by such documents.”

76. SoftBank’s efforts to frustrate the Tender Offer continued until the date that it was scheduled to close. In late March 2020, the Company sought to renegotiate certain lease agreements to reduce its fixed costs in light of changed business circumstances, including due to COVID-19. This plan was developed with the support of SoftBank’s representatives on the Board. The Committee was informed of these renegotiations on March 27, 2020 and informed that the Company was seeking an amendment to its letter of credit facility (the “LC Facility”) with

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<sup>29</sup> The OTP Amendment is attached as Exhibit D.

Goldman Sachs to enable those renegotiations to proceed without an event of default under the LC Facility. The Committee was concerned that SoftBank would take the position that those renegotiations could trigger the failure of a closing condition in the MTA, even absent an actual event of default under the Company's debt agreements. Although the Company and Committee do not believe that the Default Condition has been triggered, and the amendment to the LC Facility has been obtained, the Committee implored SoftBank to waive the Default Condition so that Company management could move forward with its renegotiation efforts without risk to the Tender Offer. SoftBank refused to provide the waiver, despite its support for the renegotiation efforts. On information and belief, SoftBank did so simply to take advantage of the renegotiations and create an argument that the Default Condition was unsatisfied—again putting its own desire not to close the Tender Offer ahead of the interests of the Company and its minority stockholders.

77. On April 1, 2020, SoftBank provided a Notice Regarding Termination and Withdrawal of Offer to Purchase Equity Securities of The We Company (the "Termination Notice"), stating that its affiliated entity SB WW Holdings (Cayman) Limited was "not obligated to close the [Tender Offer] and accept the tendered shares for payment."<sup>30</sup> SoftBank's Termination Notice claimed that "multiple" unspecified "conditions to closing [had] not been satisfied" by the expiration date,

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<sup>30</sup> Ex. C, Termination Notice.

and cited to a litany of provisions in Schedule 3.01(a) to the MTA. Specifically, the Termination Notice suggested that paragraphs 1(b), 1(d), 1(e), 1(f), 2(a), 2(b), and 2(c) of Schedule 3.01(a) to the MTA remained unsatisfied or had failed. SoftBank stated that it would therefore “not be extending the Tender Offer,” which was “terminated and withdrawn effective as of” April 1, 2020 at 11:59 p.m.

78. The Termination Notice came as a shock to the Company’s minority stockholders—particularly the hundreds of current and former employees who had been counting on the chance to sell after the promised IPO and resulting fallout. It was reported that the Company’s employees especially took issue with SoftBank’s April 2, 2020 press release announcing the termination of the Tender Offer—which pointed out that “current WeWork employees tendered less than 10% of the total.”<sup>31</sup> For those employees, “a tenth of \$3 billion is still a lot of money.”<sup>32</sup>

79. SoftBank’s April 2, 2020 press release announcing the termination of the Tender Offer admitted that SoftBank’s decision was motivated by its own financial reasons, explaining that: “Given [its] fiduciary duty to [its own] shareholders, it would be irresponsible of SoftBank to ignore the fact that . . . conditions were not satisfied and to nevertheless consummate the tender offer.” The

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<sup>31</sup> Press Release, SoftBank Group Corp., *SoftBank Group Announces End of WeWork Tender Offer Because Closing Conditions Not Met*, Apr. 2, 2020.

<sup>32</sup> Huet, *Some WeWork Staff Planned Their Lives Around a Stock Deal That Just Collapsed*, BLOOMBERG, Apr. 3, 2020.

press release then purported to identify what it claimed were “unfulfilled closing conditions”:

- “The failure to obtain the necessary antitrust approvals by April 1, 2020;
- The failure to sign and close the roll up of the China joint venture by April 1, 2020;
- The failure to close the roll up of the Asia (ex-China and ex-Japan) joint venture by April 1, 2020;
- The existence of multiple, new, and significant pending criminal and civil investigations that have begun since the MTA was signed in October 2019, and in which authorities have requested information regarding, among other things, [the Company’s] financing activities, communications with investors, business dealings with Adam Neumann, operations, and financial conditions; and
- The existence of multiple new actions by governments around the world related to COVID-19, imposing restrictions against [the Company] and its operations.”<sup>33</sup>

But none of those excuses serves as a basis for SoftBank to avoid its obligations under the MTA to close the Tender Offer.

80. First, as noted above, the Regulatory Approval Condition (in Schedule 3.01(a)(2)(b) to the MTA) did not give SoftBank a basis to terminate the Tender Offer. Section 3.01(b) of the MTA required that SoftBank extend the Tender Offer until the Regulatory Approval Condition was satisfied if all other conditions were satisfied or waived, or capable of being satisfied or waived. Specifically, the MTA provides that SoftBank must extend in ten business day increments up to a total of

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<sup>33</sup> Press Release, SoftBank Group Corp., *SoftBank Group Announces End of WeWork Tender Offer Because Closing Conditions Not Met*, Apr. 2, 2020.

150 days beyond April 1, 2020. SoftBank nonetheless refused to extend the Tender Offer beyond April 1, 2020, even though a necessary regulatory approval had not been obtained, as the parties are still waiting for clearance in Mexico. That approval has been delayed due to the effects of COVID-19 on the Mexican regulatory authorities and is expected in April 2020.

81. Second, SoftBank was similarly required to extend the closing of the Tender Offer so that regulatory approval of the closing of the PacificCo roll-up could be obtained. The share purchase agreement for the PacificCo roll-up was executed on March 31, 2020. The only reason that the roll-up of PacificCo could not technically close by April 1, 2020 was due to the outstanding regulatory approval needed from Mexican authorities.

82. Third, SoftBank cannot show that the Investigations and Claims Condition (Schedule 3.01(a)(1)(e) to the MTA) was unsatisfied. The pending government investigations at issue—involving the SEC, the U.S. Attorneys’ Office for the Southern District of New York, and the New York State Attorney General’s Office—concern, among other things, the Company’s financing, communications with investors, business dealings with Neumann and financial condition. The investigations were not a surprise, given Neumann’s conduct and the Company’s loss of billions in value. SoftBank had complete knowledge of the facts underlying the investigations when it executed the MTA. Certain of the investigations even

concerned statements that SoftBank made regarding its own threats in October 2019 not to fund the Warrant when it came due in April 2020. Some investigations had been disclosed to SoftBank in the disclosure schedule to the MTA. Others had been publicly reported in the press. All of the investigations were known to SoftBank at the time that it signed the December 27, 2019 amendment to the MTA. But SoftBank did not raise the investigations as a basis not to consummate the Tender Offer until recently, as the approaching April 1, 2020 closing date caused it to become increasingly desperate. In any event, the investigations did not give SoftBank an escape from its obligations. None of the investigations could “reasonably be expected” to prevent the consummation of the Tender Offer or to have a “material adverse effect” or result in any “material liability to the Company,” as required by the plain language of the Investigations and Claims Condition.

83. SoftBank’s claim that the pendency of two purported stockholder derivative and class action lawsuits in the Superior Court of California caused the Investigations and Claims Condition to be unsatisfied is even less credible. Like the governmental investigations, SoftBank was aware of the lawsuits when it signed the December 27, 2019 amendment to the MTA—but took no issue with them until recently. There is no basis whatsoever for SoftBank to assert that the lawsuits could “reasonably be expected” to have prevented the consummation of the Tender Offer or to have a “material adverse effect on the ability of the Company to perform its

obligations under [the] offer documentation” or result in any “material liability to the Company,” as the Investigations and Claims Condition requires. The Company has either moved to dismiss the cases or to require arbitration of the claims.

84. Fourth, the JV Roll-Up Condition with respect to ChinaCo was not satisfied only because of SoftBank’s own actions to prevent the ChinaCo roll-up, which actions violated both its covenant to use reasonable best efforts to ensure the completion of the ChinaCo roll-up and its fiduciary duties to the Company’s minority stockholders. SoftBank encouraged the minority investors in ChinaCo to refuse to waive first refusal and co-sale rights and pursued an alternative financing transaction with Trustbridge that SoftBank believes is more favorable to it than the Tender Offer. SoftBank’s deliberate tactics to prevent the JV Roll-Up Condition from being satisfied did not provide it with a valid basis to avoid closing the Tender Offer. Section 8.12 of the MTA provides that the Company would not be in breach of its obligations to close the JV Roll-Ups “if the failure of the closing of the JV Roll-Up . . . result[ed] from any breach of [the MTA] . . . by [SoftBank].”

85. Lastly, reflecting the fact that SoftBank is keenly aware that its other bases for refusing to close the Tender Offer are not likely to succeed, SoftBank cites “multiple” unspecified “new actions by governments around the world” related to the COVID-19 outbreak and their effects on the business. But that is irrelevant given

the lack of any condition to the Tender Offer concerning such matters, or even an MAE provision with respect to the Company's business in the MTA.

86. It is clear that SoftBank simply does not want to complete the Tender Offer. It is choosing instead to pursue its own business strategy—such as its recent commitment to divest \$41 billion of assets to fund a significant buyback. SoftBank's desire to preserve liquidity for itself and use the \$3 billion it would have spent on the Tender Offer to pursue its self-interested objectives robbed the Company's minority stockholders of the liquidity that they were promised in the MTA.

87. In addition, SoftBank's refusal to close the Tender Offer means that the Company could be denied the \$1.1 billion in senior secured debt financing that SoftBank committed to in the MTA. That debt arrangement is contingent upon the Tender Offer and will only be funded or made available to the Company at the same time as or immediately following the completion of the Tender Offer.

88. The Court therefore should find that: (1) all conditions other than the Regulatory Approval Condition were satisfied or were capable of being satisfied by April 1, 2020, or are excused, such that SoftBank was obligated to extend the Tender Offer beyond April 1, 2020 in 10 business day increments until August 29, 2020 to allow the remaining regulatory approval to be obtained; and (2) upon satisfaction of the Regulatory Approval Condition, SoftBank is obligated to close the Tender Offer.

The Company seeks specific performance of the Tender Offer upon satisfaction of any outstanding closing conditions.

## **COUNT I**

### **(Breach of Contract and Specific Performance Against SoftBank)**

89. The Company repeats and realleges the allegations of paragraphs 1 through 88 as if fully set forth herein.

90. The MTA is a binding contract between, among others, the Company and SoftBank.

91. The Company has not breached any obligation under the MTA.

92. SoftBank has breached Sections 8.03 and 8.12 of the MTA, specifically its obligation to use reasonable best efforts to consummate the transactions contemplated by the MTA, including the Tender Offer and the roll-up of ChinaCo.

93. Each of the conditions to the commencement and closing of the Tender Offer, other than the Regulatory Approval Condition (and, solely as a result of the Regulatory Approval Condition being outstanding, the JV Roll-Up Condition with respect to PacificCo), was satisfied or was capable of being satisfied by April 1, 2020 pursuant to the MTA or, in the case of the JV Roll-Up Condition with respect to ChinaCo, has not been satisfied only as a result of SoftBank's own actions.

94. SoftBank's actions have prevented the satisfaction of the JV Roll-Up Condition and breached its obligations under Section 8.03 of the MTA to use

reasonable best efforts to bring about satisfaction of the JV Roll-Up Condition. But for SoftBank's actions, the JV Roll-Up Condition with respect to ChinaCo would have been satisfied by April 1, 2020.

95. As of April 1, 2020, the only condition to the closing of the Tender Offer that can validly be considered unsatisfied was the Regulatory Approval Condition (and, solely as a result of the Regulatory Approval Condition being unsatisfied, the JV Roll-Up Condition with respect to PacificCo). The Regulatory Approval Condition provides for the mandatory extension of the April 1, 2020 closing date in 10 business day increments until August 29, 2020 to allow any outstanding regulatory approval to be achieved.

96. Upon obtaining Mexican regulatory approval, the Company will have satisfied the Regulatory Approval Condition and will satisfy the JV Roll-Up Condition with respect to PacificCo.

97. The Company has no adequate remedy at law. Damages would not be an adequate remedy. Rather, the only way to provide the intended benefit of the bargain would be to order specific performance of SoftBank's obligation to close the Tender Offer in accordance with the MTA.

98. Therefore, the Court should find that SoftBank breached the MTA and order it to specifically perform its obligations thereunder with respect to the Tender Offer, including (i) extending the closing date in accordance with Section 3.01(b) of

the MTA; and (ii) upon satisfaction of the Regulatory Approval Condition, closing the Tender Offer.

## **COUNT II**

### **(Breach of Fiduciary Duty Against SoftBank)**

99. The Company repeats and realleges the allegations of paragraphs 1 through 88 as if fully set forth herein.

100. SoftBank is the Company's controlling stockholder. As such, SoftBank owes fiduciary duties to the Company and its minority stockholders.

101. A controlling stockholder breaches its duty of loyalty by, among other things, intentionally breaching a contract with the Company in order to advance its own interests and harm the interests of the minority stockholders and by repeatedly using its contract rights, board control and influence to benefit itself, narrow and diminish the Company's options, and harm its minority stockholders.

102. SoftBank has repeatedly used its influence over the Company to limit the Company's options and force it into favorable outcomes for SoftBank, to the detriment of the Company's minority stockholders. For example, SoftBank threatened to withhold additional funding if the Company pursued alternative sources of financing—such as the transaction through J.P. Morgan.

103. After signing the MTA, SoftBank sought to actively frustrate its terms by intentionally causing the failure of the JV Roll-Up Condition with respect to

ChinaCo. SoftBank did so to further its own financial interests at the expense of the Company's minority stockholders. SoftBank also sought to take advantage of the Company's proposed strategy to renegotiate lease agreements—a strategy SoftBank claimed it supported—so that it could create another argument that the conditions to close were not satisfied.

104. SoftBank's actions harmed the Company's minority stockholders by depriving them of liquidity, which was the primary consideration they were to receive under the MTA. At the same time, SoftBank intends to exercise all of the benefits it received under the MTA, including additional voting power, equity, and control rights, at the expense of the Company's minority stockholders.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in its favor and against Defendants as follows:

- a) Finding that SoftBank breached the MTA;
- b) Finding that SoftBank breached its fiduciary duties to the Company and its minority stockholders;
- c) Finding that (i) each of the conditions to the commencement and closing of the Tender Offer under the MTA were satisfied or were capable of being satisfied by April 1, 2010 except the Regulatory Approval Condition (and, solely as a result of the Regulatory Approval

Condition being outstanding, the JV Roll-Up Condition with respect to PacificCo); (ii) the failure of the JV Roll-Up Condition with respect to ChinaCo was the result of SoftBank's breach of the MTA and/or breach of fiduciary duty; (iii) any failure of the JV Roll-Up Condition with respect to ChinaCo is excused; and (iv) neither the failure of the JV Roll-Up Condition, nor any of the other conditions cited by SoftBank in the Termination Notice, constitute a valid basis for SoftBank to refuse to extend the Tender Offer until such time that the Regulatory Approval Condition was satisfied in accordance with Section 3.01(b) of the MTA;

- d) Ordering specific performance requiring SoftBank to close the Tender Offer upon the satisfaction of the Regulatory Approval Condition;
- e) In the alternative, awarding compensatory damages for SoftBank's breaches of contract and breaches of fiduciary duty in an amount to be determined at trial; and
- f) Awarding costs, attorneys' fees and other relief that the Court deems appropriate.

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