

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ADAM NEUMANN and WE)	
HOLDINGS LLC, a Delaware limited)	
liability company)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. 2020-
)	
SOFTBANK GROUP CORP. and)	
SOFTBANKVISION FUND (AIV M1),)	
L.P., a Delaware limited partnership)	
)	
)	
Defendants.)	

VERIFIED COMPLAINT

Plaintiffs Adam Neumann and We Holdings LLC (together, “Plaintiffs”), by and through their undersigned counsel, for their verified complaint against defendants SoftBank Group Corp. (“SBG”) and SoftBank Vision Fund (AIV M1) L.P. (“SBVF”), upon knowledge as to themselves and upon information and belief as to all other matters, allege as follows:

NATURE OF THE ACTION

1. After taking control of The We Company (“WeWork”), SBG and SBVF deprived Plaintiffs and other shareholders of billions of dollars that SBG promised to pay.
2. On October 22, 2019, WeWork, Plaintiffs, SBG, and SBVF signed a Master Transaction Agreement (the “MTA”). In exchange for tremendous benefits

and control over WeWork, SBG and SBVF committed that WeWork's shareholders would receive liquidity for their shares in the form of a tender offer (the "Tender Offer"). Plaintiffs upheld their end of the bargain under the MTA. SBG and SBVF did not. This Court should hold SBG and SBVF accountable for breaching their contractual commitments and fiduciary duties.

3. The MTA includes a series of integrated transactions that resulted in Mr. Neumann stepping down as Chairman of the board of directors at WeWork (the "Board") and turning control of WeWork and the Board over to SBG and SBVF. In doing so, Mr. Neumann put his trust in SBG and SBVF to be stewards of WeWork, which he—and thousands of others—had worked so hard to build.

4. In return, a key component of the consideration Mr. Neumann and other shareholders received in the MTA was the Tender Offer, which required SBG to offer to buy up to \$3 billion of WeWork shares for at least \$19.19 per share. Absent SBG's commitment to the Tender Offer, Plaintiffs would not have entered the MTA, and SBG and SBVF would not have gained control of WeWork.

5. After gaining control of WeWork and the Board, SBG and SBVF reneged on their promise to pay for the benefits they had already received. On April 2, 2020, SBG's designee issued a "Notice Regarding Termination and Withdrawal of Offer to Purchase Equity Securities of The We Company" (the

“Notice”), stating that “the tender offer is terminated.” SBG also issued a press release announcing the termination of the Tender Offer (the “Release”).

6. The abuses committed by SBG and SBVF are so brazen that they have prompted legal action by a Special Committee of WeWork’s Board (“Special Committee”), comprised of two directors unaffiliated with SBG and SBVF. On April 7, 2020, the Special Committee sued SBG and SBVF for breaching their fiduciary duties and for violating the MTA by failing to complete the Tender Offer. In response, SBG and SBVF doubled down on their abuse of power, demanding that the Board “act expeditiously to confirm that the Special Committee is not authorized to file a lawsuit on behalf of WeWork” (emphasis added), and insisting that the SBG- and SBVF-controlled Board should make the call. In real time, SBG and SBVF are abusing their control of WeWork in an effort to stop the Special Committee’s meritorious lawsuit from being heard.

7. Plaintiffs respectfully request that this Court find that SBG and SBVF breached their contractual and fiduciary obligations to Plaintiffs; order SBG to specifically perform its obligation to complete the Tender Offer; and further order SBG and SBVF to provide Plaintiffs such equitable and monetary relief as this Court deems appropriate.

THE PARTIES

8. Plaintiff Adam Neumann is an individual. Mr. Neumann was WeWork's Chief Executive Officer and Chairman of the Board until he relinquished these roles, became a Board observer, and gave a voting proxy to the Board (now controlled by SBG and SBVF), all as part of the integrated transactions entered in October 2019.

9. Plaintiff We Holdings LLC is a limited liability company formed under the laws of Delaware, of which Mr. Neumann is a managing member.

10. Defendant SoftBank Group Corp. is a corporation incorporated under the laws of Japan and headquartered in Tokyo, Japan. SBG is publicly traded. As of October 30, 2019, SBG owned 31.0% of WeWork's equity, on a fully diluted basis (including, as described below, preferred stock issued in connection with equity financing for WeWork). Masayoshi Son founded SBG's predecessor in 1981 and has always served as SBG's Chairman and Chief Executive Officer. It has been reported that Mr. Son directly owns approximately 22% of SBG, and owns another 4.8% through asset management vehicles.

11. At the end of 2019 and into 2020, SBG's financial condition was deteriorating, which no doubt influenced its decision to renege on its obligations to WeWork. Its stock price on February 10, 2020 was 5,140 yen, which fell to 2,687 yen by the close on March 19, 2020, a drop of nearly 50% in 29 days. The plunge

in the price of SBG stock threatened to expose Mr. Son to margin calls. Over that same time, the cost of insuring SBG's senior debt over a 5-year period rose from 196 basis points per annum to 532 basis points. On March 25, 2020, SBG received a significant ratings downgrade from Moody's, and in response, asked Moody's to withdraw its coverage of the company. It was reported on April 9, 2020 that as of March 19, 2020, Mr. Son had pledged as collateral an additional 57 million shares he owned in SBG to various banks. On April 13, 2020, twelve days after the Notice, SBG announced that for the fiscal year ending in March 2020, it forecast negative operating income of 1.35 trillion yen (\$12.5 billion), which SBG said was mainly attributable to the expected recording of an investment loss of 1.8 trillion yen (\$16.8 billion) at SBVF for the year.

12. Defendant SoftBank Vision Fund (AIV M1) L.P. was founded by Mr. Son and is a limited partnership organized under the laws of Delaware. SBVF is a venture capital fund that is controlled by SBG. SBG and SBVF frequently invest in tandem, as in the case of WeWork. As of October 30, 2019, SBVF owned 11.0% of WeWork's equity, on a fully diluted basis (including, as described below, preferred stock issued in connection with equity financing for WeWork).

13. SBG and SBVF are under common control. SBVF's website describes SBVF's "Leadership" as comprised of three people: Mr. Son, Ron Fisher, and Rajeev Misra. Mr. Fisher has been a member of SBG's board of directors since

1997 and Vice Chairman of SBG since 2017. Mr. Fisher also joined WeWork's Board in 2017 and resigned on December 31, 2019. Mr. Misra has been a member of SBG's board of directors since 2017 and an Executive Vice President of SBG since 2018, and he was briefly a member of WeWork's Board from January 13-15, 2020.

14. SBVF is managed by its general partner, SB Investment Advisers (UK) Limited (SBIA UK), which is wholly owned by SBG. As general partner, SBIA UK makes investment decisions for SBVF through a three-person Investment Committee, two of whose members are Messrs. Son and Misra. The US arm of SBIA UK is headed by Mr. Fisher.

15. SBVF has received more than \$30 billion in investments from SBG, Mr. Son, and other SBG executives. Consistent with their common ownership and control, SBG and SBVF frequently coordinate to make parallel investments in the same companies. WeWork is one of those investments in which SBG and SBVF are united in control.

16. From October 30, 2019 to the present, SBG and SBVF have controlled WeWork's Board. As a result of the MTA, SBG and SBVF have the right to appoint up to five directors to the Board. Although the Board has a maximum of ten seats, at no point since the MTA was signed has WeWork had more than eight Board members. From October 30, 2019 until December 31, 2019,

at least four of the eight directors were either appointed by or beholden to SBG or SBVF—Marcelo Claure (member of SBG’s board of directors and SBG’s Chief Operating Officer and an Executive Vice President), Ron Fisher (SBG designated director), Jeff Sine (financial advisor to SBG), and Mark Schwartz (recent SBG director, formerly SBG’s Board designee, and Mr. Son’s close friend and long-time confidant who kept Mr. Son informed about Board activities).

17. By April 1, 2020, although some Board members had changed, the Board remained in SBG’s and SBVF’s control because at least five of the eight directors were either appointed by or beholden to SBG or SBVF—Marcelo Claure, Jeff Sine, Sandeep Mathrani (hired by SBG/SBVF-controlled Board and reports to Mr. Claure), Kirthiga Reddy (SBVF partner), and Chad Fentress (SBG’s Chief Compliance Officer). In addition, because SBG and SBVF required Plaintiffs to give the Board a proxy over their significant WeWork stock, SBG and SBVF also had obtained voting control of WeWork.

18. As of October 30, 2019, SBG and SBVF held 42.0% of WeWork equity, on a fully diluted basis. After the MTA was amended on December 27, 2019, SBG and SBVF received penny warrants for another 129,887,919 shares of WeWork. By April 1, 2020, SBG and SBVF held more than 52% of WeWork equity, on a fully diluted basis.

JURISDICTION

19. This Court has subject matter jurisdiction pursuant to 10 *Del. C.* § 341. Plaintiffs seek equitable relief. This includes, without limitation, seeking an order by this Court that SBG must specifically perform its obligations under the MTA to complete the Tender Offer.

20. In Section 11.08(b) of the MTA, the parties irrevocably and unconditionally consented and submitted to the exclusive jurisdiction of Delaware courts in respect of any action arising out of, relating to, or in any manner connected with the MTA or its transactions.

FACTUAL ALLEGATIONS

I. ADAM NEUMANN & WEWORK

21. Mr. Neumann co-founded WeWork and served as its Chief Executive Officer from its inception until September 2019. In that time, WeWork grew significantly. Its membership base grew by over 100% every year starting in 2014. In 2017, WeWork achieved \$1 billion of run-rate revenue, which grew to \$3.3 billion by June 2019. As of June 1, 2019, WeWork's members included 51% of the Fortune 100 and 38% of the Fortune 500. By year-end 2019, WeWork had 740 locations across 140 cities in 37 countries, as well as over 660,000 total memberships.

22. Through the years, WeWork's success attracted investments from institutional investors and financial institutions, including Rhône Group,

Benchmark, Jefferies Financial Group, JPMorgan, Goldman Sachs, Wellington Management, and Fidelity.

II. THE OCTOBER 2019 TRANSACTIONS

23. In October 2019, WeWork needed funding. The Special Committee recommended a funding proposal from SBG and SBVF where they would take control of WeWork in exchange for providing financing to WeWork and liquidity to WeWork shareholders through the Tender Offer.

24. As part of the October 2019 transactions, Mr. Neumann agreed to step down as Chairman of the Board and Plaintiffs agreed to relinquish control to SBG and SBVF. In exchange for giving up significant governance rights, Plaintiffs and other WeWork shareholders were promised liquidity through the Tender Offer and financing for the Company.

25. The financing and tender offer transactions were described in the MTA and had three sequential parts:

a. *First*, the MTA called for an acceleration of funding of a pre-existing agreement under which SBG or their affiliates were to provide \$1.5 billion in equity financing to WeWork. SBG had previously committed to make a \$1.5 billion investment in April 2020 at a price of \$110 per share. After initially threatening not to honor its commitment, SBG agreed to accelerate the funding to

October 2019 in exchange for WeWork preferred stock at an 89% reduced price per share from the prior agreement.

b. *Second*, “[p]romptly following” this funding, the MTA required SBG or its designee to complete the Tender Offer, providing liquidity to Plaintiffs and other WeWork minority shareholders.

c. *Third*, the MTA required that “[c]ontemporaneously with or immediately following” the closing of the Tender Offer, SBG and/or its affiliate(s) committed to provide WeWork with up to \$5.05 billion in debt financing (the “Debt Financing”), which included the purchase of up to \$1.1 billion of WeWork’s senior secured notes.

26. As part of the MTA’s transactions, Plaintiffs relinquished control of WeWork and the Board to SBG and SBVF:

a. The Board was reconstituted to give SBG and SBVF five nominees (at least one of whom would be from SBVF), including WeWork’s Executive Chairman, out of a possible ten directors (although only eight seats are currently filled). Because of these changes, SBG currently controls four of eight directors by itself, and, with SBVF, controls five of eight current directors.

b. The SBG/SBVF-controlled Board also obtained a proxy over Plaintiffs’ WeWork stock, which gave SBG and SBVF voting control. SBG and

SBVF also benefitted from a reduction of the votes accorded to Plaintiffs’ “high vote” stock.

III. THE MTA TRANSACTIONS WERE INTEGRATED & CAREFULLY SEQUENCED

27. The MTA transactions were integrated. Plaintiffs ceded their valuable governance rights described above in consideration for SBG’s agreement that it would complete the Tender Offer. These were all facets of a single deal, which SBG and SBVF reneged on despite the Company’s and Plaintiffs’ performance of their obligations under the MTA.

28. The integrated nature of these transactions is confirmed by the MTA’s plain and unambiguous language. MTA Section 1.01 defines “Transactions” as “[t]he transactions contemplated by” the MTA, including the \$1.5 billion in equity financing, the JV Roll-Ups (described below), the Tender Offer, the debt financing, “and the other transactions contemplated by the other Transaction Agreements.”¹

29. The timing of the transactions called for by the MTA was also an important aspect of the integrated deal. Section 1.02 of the MTA is captioned “Sequencing of Financing Transactions.” It states that the \$1.5 billion in equity

¹ The MTA defines “Transaction Agreements” to include, *inter alia*, the MTA and the Amended and Restated Stockholders’ Agreement dated as of October 30, 2019 (the “Stockholders’ Agreement”), under which Plaintiffs gave the Board a proxy, as well as the agreements entered in connection with the debt financing, and the “AN Agreements” to which WeWork is a party. The MTA defines these “AN Agreements” to include the Omnibus Agreement dated as of October 22, 2019, under which Mr. Neumann relinquished his position as Chairman of the Board.

financing “will be the first financing transaction to occur,” and “[f]ollowing” this, “the Tender Offer will be commenced.” Then, “[f]ollowing the acceptance” of WeWork stock for purchase by SBG or its designee in the Tender Offer, “the Debt Financing will be made available to [WeWork].”

30. On October 23, 2019, the morning after the MTA was executed, WeWork Executive Chairman Marcelo Claure (who is also a member of SBG’s board of directors, and is SBG’s Chief Operating Officer and an Executive Vice President) acknowledged the interdependence of the transactions called for by the MTA at an all-hands meeting of WeWork employees. In response to an employee’s question, he said:

[W]e believe so much in this company that we’re going to put a tender of \$3 billion for any shareholder that wants to go sell their shares.

Why are we doing this? Because when Masa, we decided that we need shareholders that share the same vision and passion with us [*sic*]. The amount of fight between shareholders, the amount of different opinions that there are. We want to make sure that people understand we’re here to grow WeWork and to make it profitable and to create a company that’s going to be one of the most valuable companies in life. But to do that, we want to make sure that any shareholder that wants to leave, we’re going to issue a tender and they’re going to have the ability to sell their shares.

...

Adam had voting rights of 10 to 1, meaning Adam could do whatever he wanted. He had total autonomy for good

or for bad, to do anything that he wanted, and Adam has agreed to relinquish all his votes in favor of the board. He has relinquished being the chairman. And he has relinquished even being in the board of directors. He will now only be an observer with basically no voting rights. **And that has a price and we thought that's going to be a great investment to basically put the company back into our hands.**

(emphasis added). SBG and SBVF received the votes and control that Mr. Claude admitted was Defendants' goal, but they refuse to pay the agreed-upon price.

IV. SBG & SBVF RENEGE ON THEIR MTA OBLIGATIONS

A. The MTA Made the Debt Financing Contingent Upon the Tender Offer Being Completed

31. After signing the MTA, activist investors and market forces pressured SBG to reduce its investments in companies like WeWork. This posed a problem for SBG because the MTA required SBG to pay over \$7 billion in connection with both the Tender Offer and the follow-on Debt Financing. So SBG decided to avoid the \$3 billion cost of the Tender Offer and it instead chose to proceed directly with the Debt Financing. Unlike the Tender Offer, the Debt Financing not only provided SBG with penny warrants for more WeWork stock, but it also provided liquidity to WeWork. This protected SBG and SBVF's multi-billion-dollar WeWork investment, while further solidifying their control of WeWork. It also provided SBG an excuse to avoid an additional \$1.1 billion in additional debt financing.

32. The problem SBG and SBVF faced was that the MTA did not allow SBG to do the Debt Financing before closing the Tender Offer. MTA Section 4.01

required that the “Debt Financing” from SBG to WeWork could only be provided “[c]ontemporaneously with or immediately following” the closing of the Tender Offer. (emphasis added). This timing was intentional, as it prevented SBG, SBVF, and WeWork from obtaining the benefits of the Debt Financing until SBG closed the Tender Offer. To change this sequencing, SBG and SBVF needed the Plaintiffs’ consent, because MTA Section 10.04 required Plaintiffs’ written consent for any amendment to the MTA that adversely changed the terms of the transactions to Plaintiffs.

33. In late December 2019, SBG’s lawyers approached Plaintiffs’ lawyers to seek their permission to amend the MTA to allow the Debt Financing to occur “before or after” the Tender Offer. In seeking Plaintiffs’ consent, SBG provided a draft amendment that included representations by all Parties that everyone—including SBG and SBVF—had used their reasonable best efforts to meet various closing conditions to the Tender Offer.

B. SBG & SBVF Did Not Use Reasonable Best Efforts to Meet The Tender Offer Closing Conditions

34. At the same time that SBG and SBVF were asking Plaintiffs and the Special Committee to amend the MTA and telling them that they were using their best efforts to get the Tender Offer completed, SBG and SBVF were secretly taking actions to undermine it.

35. One of the closing conditions to the Tender Offer was the completion of a “roll up” of two of WeWork’s joint ventures in Asia (the “JV Roll-Up”), one of which was in China (the “China Joint Venture”). The MTA required SBG and SBVF to take steps to ensure that the JV Roll-Ups closed. Section 8.12 of the MTA provides that WeWork, SBG, and SBVF shall cause their affiliates to “use reasonable best efforts” to finalize the JV Roll-Up Documents ten days after the completion of the \$1.5 billion in equity financing. The covenant also provides that WeWork, SBG, and SBVF agree to cause the JV Roll-Ups to close by the time the Tender Offer closes. Similarly, Section 8.03(a) of the MTA required SBG and SBVF to use their “reasonable best efforts” to do “all things necessary” to cause the Tender Offer Commencement Conditions to be satisfied as promptly as reasonably practicable and “to consummate and make effective as reasonably promptly as reasonably practicable . . . the Transactions” (including the Tender Offer).²

36. Yet, as described in the Special Committee’s Complaint, by late December 2019, SBG and SBVF had stopped using their reasonable best efforts to

² Further, Section 8.09 of the MTA required SBG and SBVF to use their “reasonable best efforts” to take all actions to enter the Transaction Agreements (defined to include the JV Roll-Up Documents). According to the MTA, SBG cannot avoid the Tender Offer if the failure to close the JV Roll-Ups “results from any breach of [the MTA] by” SBG or SBVF.

get the China Joint Venture done. Instead, SBG and SBVF repeatedly failed to follow up with China Joint Venture investors who wanted to discuss the transaction. This is not surprising because, on information and belief, SBG, including through Mr. Son, communicated with investors in the China Joint Venture and used their influence to pressure investors not to waive rights of first refusal and co-sale rights—which would prevent the roll-up. Tellingly, SBG focused on a different transaction that would allow SBG and SBVF to avoid investing additional funds in the China Joint Venture and give them an excuse for refusing to close the Tender Offer. According to the Special Committee’s Complaint, as “early as November 2019, SoftBank had begun to pursue an alternative financing transaction with Trustbridge Partners (“Trustbridge”), a significant minority stockholder of [the China Joint Venture]” rather than using its reasonable best efforts to close the China Joint Venture.

37. Unbeknownst to Plaintiffs and as explained in the Special Committee’s Complaint, at the exact same time that SBG and SBVF were asking Plaintiffs to sign an amendment confirming that SBG and SBVF were using their reasonable best efforts to meet the Tender Offer closing conditions, “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” deal that would have interfered with closing the China Joint Venture.

38. SBG and SBVF took these actions in breach and knowing violation of their obligations under Sections 8.03(a), 8.09, and 8.12 of the MTA and their fiduciary obligations with the hope of creating a pretext to terminate the Tender Offer.

39. During the negotiations regarding the MTA amendment and contrary to their obligations to their fiduciaries, neither SBG nor SBVF disclosed to Plaintiffs that they were undermining the China Joint Venture. On the contrary, SBG and SBVF assured Plaintiffs in the very text of the proposed amendment that they had made best efforts to complete it. Plaintiffs would have never even considered amending the MTA if they had known that SBG and SBVF were not committed to closing the China Joint Venture and the Tender Offer.

C. SBG & SBVF Amend the MTA Without Plaintiffs' Signature

40. After several rounds of negotiations, during which Plaintiffs attempted to negotiate their own benefits for changing the MTA's agreed-upon transaction sequencing, SBG, SBVF and Plaintiffs could not come to terms on an MTA amendment. Nevertheless, in blatant disregard for the MTA's contractual provisions and SBG's and SBVF's duties to Plaintiffs, SBG and SBVF went ahead with the amendment anyway. SBG and SBVF signed Amendment No. 1 to the MTA (the "Amendment") on December 27, 2019. Marcelo Claire, who at that time also served as WeWork's Executive Chairman, signed the Amendment for

SBG. Plaintiffs did not sign or agree to the Amendment and reserved all rights if SBG and SBVF proceeded to violate the MTA. In response, SBG and SBVF simply removed Plaintiffs' signature block from the document.

41. Pursuant to the Amendment, Section 4.01 of the MTA was changed to permit the Debt Financing to be made available “**before or after**” the closing of the Tender Offer. (emphasis added). The Amendment also still included representations stating that SBG and SBVF had used their reasonable best efforts to satisfy certain JV Roll-Up conditions. It also included an extension of the Tender Offer closing date to April 1, 2020, an arbitrary date that has no basis in the MTA. (According to MTA Section 3.01(a), the initial expiration of the Tender Offer was 20 business days after the Tender Offer's commencement, which was November 22, 2019.)

42. The result of the Amendment was that SBG and SBVF used their control position at WeWork to conceal their efforts to frustrate a Tender Offer Closing Condition and to leapfrog the Debt Financing ahead of the Tender Offer. With the Amendment in hand, an SBG affiliate committed to purchase WeWork's senior unsecured notes, SBG committed to provide a letter of credit facility for WeWork, and SBG was issued penny warrants for 129,887,919 shares of WeWork's Series H-3 and/or Series H-4 preferred stock.

43. SBG's and SBVF's actions violated the MTA's careful sequencing of the transactions for the benefit of SBG and SBVF, and deprived Plaintiffs and WeWork's other minority shareholders of a material benefit bargained for as part of the MTA. These actions protected SBG's and SBVF's equity in the then-financially starved WeWork and relieved SBG of its \$3 billion commitment to close the Tender Offer before any Debt Financing.

44. SBG's and SBVF's actions also showed a disregard for their fiduciary duty to be candid with the Special Committee and Plaintiffs and to fully disclose that SBG was pursuing a transaction contrary to a Tender Offer Closing Condition **at the same time** that SBG negotiated the MTA amendment, and at the same time that SBG and SBVF were asking the parties to confirm that they had been complying with their promise to use reasonable best efforts to meet the closing conditions.

45. As the Special Committee explained in its Complaint, "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." The Amendment is a clear example of how SBG and SBVF used their control and deceit to create a result that was in SBG's and SBVF's best interests, but that disregarded the best interest of Plaintiffs and other minority shareholders.

D. SBG & SBVF Terminate the Tender Offer on April 2, 2020

46. While Plaintiffs and hundreds of other minority shareholders tendered their shares as part of the Tender Offer, SBG did not uphold its end of the bargain. On April 2, 2020, after SBG already obtained benefits from numerous MTA Transactions—including part of the Debt Financing, the issuance of penny warrants for hundreds of millions of shares of WeWork stock, and the proxy over Plaintiffs' stock—SBG's designee sent the Notice terminating the Tender Offer. SBG's reasons for terminating the Tender Offer were pretextual and disregarded its MTA commitments.

47. The Notice relies on the failure to satisfy closing conditions specified in the MTA. But none of these excuses holds up. In truth, the conditions cited by SBG's designee were satisfied at the time of the Notice, have since been satisfied within the time allotted under the MTA, or have been stymied by SBG's and SBVF's own breaches of contract. The latter includes the closing condition related to completion of the China Joint Venture.

E. SBG Offers Pretextual Excuses to Terminate the Tender Offer

48. As explained below, none of the conditions cited in the Notice provides a legitimate basis to terminate the Tender Offer.

49. The Tender Offer was subject to the “Tender Offer Conditions” contained in MTA Schedule 3.01(a). The Notice cited seven of these conditions (by paragraph number in Schedule 3.01(a)) as purportedly unsatisfied.

50. Paragraphs 1(b), 1(d), & 1(f): Paragraph 1(b) relates to the non-occurrence of an “Event of Default” under the documents governing WeWork’s indebtedness. Paragraph 1(d) states as a condition that there has been no liquidation, reorganization, debt arrangement, dissolution, composition or readjustment of debts, bankruptcy, insolvency, winding up, or similar event as to WeWork. And Paragraph 1(f) states as a condition that there has been no material breach by WeWork under the MTA. Because there was none, the Notice did not identify any Event of Default under Paragraph 1(b) or any event identified in Paragraph 1(d) that would prevent these conditions from being met, nor have SBG or SBVF identified a material breach by WeWork.

51. Paragraph 1(e) relates to proceedings or investigations pending or currently threatened that would reasonably be expected to result in a material liability or material adverse effect to WeWork, SBG, or SBVF or the consummation of the Tender Offer.³ Because there was none, the Notice did not

³ Another condition cited in the Notice is in Paragraph 2(a) of Schedule 3.01(a), which reiterates the conditions described above in paragraphs 1(b) and 1(d)-1(f), and adds the condition in paragraph 1(c)—that there be no government order enjoining or prohibiting consummation of the Tender Offer, or law which

identify any proceedings, investigations, or litigation that fit the narrow criteria of Paragraph 1(e), and certainly none that SBG and SBVF were unaware of in October 2019 when they signed the MTA, or in December 2019 when they signed the Amendment.

52. Paragraph 2(b) is the Regulatory Approval Condition (the “RAC”), which states that antitrust approvals applicable to the Tender Offer in various jurisdictions have been obtained. The JV Roll-Up Documents (described above) for a joint venture of WeWork known as the Pacific Joint Venture were signed on March 31, 2020. On April 17, 2020, WeWork advised that it had obtained approval from the Mexican antitrust regulators, which was the last regulatory step needed for the Pacific Joint Venture. Although antitrust approval was not obtained from Mexican authorities by April 1, 2020, this was not a basis for SBG to terminate the Tender Offer because Section 3.01(b) of the MTA required SBG or its designee to extend the Tender Offer deadline through the Tender Offer Outside Date of August 29, 2020 if the RAC was not satisfied or waived.

53. Paragraph 2(c) states as a condition that each JV Roll-Up Document has been executed, and the transactions contemplated by them have been consummated. The MTA defines the JV Roll-Up Documents as share purchase

(. . . continued)

makes consummation of the Tender Offer illegal or prohibited. There is no such order or law.

agreements for WeWork's China Joint Venture and Pacific Joint Venture, and defines the JV Roll-Ups as the transactions contemplated by these agreements. As to the Pacific Joint Venture, as described above, all conditions for closing have been met. As to the China Joint Venture, as described above, SBG and SBVF materially contributed to the failure to timely complete the roll-up.

54. In addition to the reasons above contained in the Notice, SBG's Release also claimed actions by governments around the world related to COVID-19 created an unfulfilled closing condition. SBG's attempt to exploit the global health pandemic as an excuse is baseless. The MTA's Tender Offer Conditions contain no *force majeure* or general material adverse effect clause that is or could be related to COVID-19 or any other circumstance.

F. The Parties Agreed to Specific Performance in the MTA

55. In Section 11.10 of the MTA, SBG and SBVF agreed that if the Tender Offer was not consummated in accordance with the terms of the MTA and the other transaction agreements, "irreparable damage would occur, no adequate remedy at Law would exist and damages would be difficult to determine." Thus, SBG and SBVF agreed that the parties "shall be entitled to an injunction, specific performance or other equitable relief to prevent breaches" of the MTA or the other transaction agreements, "and to enforce specifically the terms and provisions" of the MTA and the other agreements.

56. Ensuring the ability to enforce the parties' obligations to close the MTA's integrated transactions was of critical importance. Accordingly, in Section 11.10 of the MTA, the parties agreed not to "assert that a remedy of injunctive relief, specific performance or other equitable relief is unenforceable, invalid, contrary to Law or inequitable for any reason, [or] to assert that a remedy of monetary damages would provide an adequate remedy."

COUNT I
(BREACH OF THE MTA AND SPECIFIC
PERFORMANCE AGAINST SBG)

57. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 56 as if fully set forth herein.

58. The MTA is a binding contract between, among others, SBG and Plaintiffs.

59. Plaintiffs have performed their obligations under the MTA.

60. SBG materially breached the MTA, including but not limited to Sections 1.02, 3.01, 4.01, 8.03, 8.09, 8.12, and 10.04, by, among other things, amending the MTA without Plaintiffs' consent, not using its reasonable best efforts to timely finalize the JV Roll-Up Documents, not causing the JV Roll-Ups to timely close, not extending the time to satisfy the RAC, and refusing to close and terminating the Tender Offer.

61. All of the conditions to the commencement and the closing of the Tender Offer in MTA Schedule 3.01(a), including those cited in the Notice, were satisfied; or did not provide a basis for SBG to terminate the Tender Offer, because SBG or its designee was contractually required to allow the other parties to the MTA more time to satisfy them; or SBG's own conduct materially contributed to the supposed "condition failure."

62. At a minimum, SBG's deliberate conduct with certain investors in the China Joint Venture contributed materially to the failure to complete the roll-up of that venture. SBG's actions violated its obligations under the MTA, including its reasonable best efforts obligations under Article VIII. As to the roll-up of the Pacific Joint Venture, WeWork advised on April 17, 2020 that regulatory approval from the Mexican antitrust authorities had been obtained. The MTA required SBG or its designee to extend the closing date of the Tender Offer to allow this approval to be obtained, through August 29, 2020.

63. As SBG contractually agreed in MTA Section 11.10, Plaintiffs have no adequate remedy at law. Damages would be inadequate. The only way to provide Plaintiffs with the intended benefit of their bargain in the MTA would be for this Court to order SBG to specifically perform its MTA obligations and complete the Tender Offer.

64. Therefore, this Court should: (a) declare that all of the conditions to the commencement and the closing of the Tender Offer set forth in the MTA were satisfied, or did not provide SBG with a basis to terminate the Tender Offer because SBG or its designee was contractually required to allow the other MTA parties more time to satisfy them, or that SBG's actions materially contributed to the failure to satisfy them and thus any such failure is excused as a matter of law; (b) declare that SBG materially breached the MTA, and knowingly and intentionally breached its obligations under the MTA; and (c) order SBG or its designee to specifically perform SBG's obligations under the MTA and complete the Tender Offer.

65. In WeWork's lawsuit against SBG and SBVF, the parties agreed that, notwithstanding the Tender Offer Outside Date of August 29, 2020, specific performance will still be an effective remedy on WeWork's claims if ordered by this Court at or after the trial scheduled for January 2021. The Court acknowledged this stipulation at the hearing on April 17, 2020 ("the parties have agreed that expiration of the tender offer outside date will not be asserted as a defense to the Court's ability to order specific performance of the tender offer").

66. In the alternative, if this Court does not order specific performance, then based on the injuries which SBG inflicted on Plaintiffs by its material breaches of the MTA, including its termination of the Tender Offer, Plaintiffs

respectfully request that this Court order that SBG pay money damages to Plaintiffs.

COUNT II
(BREACH OF THE MTA AGAINST SBVF)

67. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 66 as if fully set forth herein.

68. The MTA is a binding contract between, among others, SBVF and Plaintiffs.

69. Plaintiffs have not breached any obligation under the MTA.

70. SBVF materially breached the MTA, including Sections 1.02, 8.03, 8.09, 8.12, and 10.04, by, among other things, amending the MTA without Plaintiffs' consent, not using its reasonable best efforts to timely finalize the JV Roll-Up Documents, and not causing the JV Roll-Ups to timely close.

71. The conditions to the commencement and the closing of the Tender Offer cited in the Notice were satisfied, or SBVF's own conduct materially contributed to the supposed "condition failure."

72. Therefore, this Court should: (a) declare that all of the conditions to the commencement and the closing of the Tender Offer in the MTA were satisfied, or SBVF's actions materially contributed to the failure to satisfy them and thus any such failure is excused as a matter of law; (b) declare that SBVF materially breached the MTA, and knowingly and intentionally breached its obligations under

the MTA; and (c) order such other equitable relief as to the Court may appear just and proper, including a declaration that the roll-up of the China Joint Venture is legally excused as a condition to complete the Tender Offer.

73. In the alternative, based on the injuries which SBVF inflicted on Plaintiffs by its material breaches of the MTA, including its failures to comply with its reasonable best efforts obligations and other obligations under Article VIII in respect of the roll-up of the China Joint Venture, Plaintiffs respectfully request that this Court order that SBVF pay money damages to Plaintiffs.

COUNT III
(BREACH OF FIDUCIARY DUTY AGAINST ALL DEFENDANTS)

74. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 73 as if fully set forth herein.

75. SBG and SBVF constitute a controlling group of shareholders from at least October 22, 2019 to the present and owed fiduciary duties to Plaintiffs.

76. SBG and SBVF have exercised their control to the detriment of Plaintiffs. SBG and SBVF violated their duties to Plaintiffs by, among other things, restructuring the sequence of transactions in the MTA, relieving themselves of the obligation to complete the Tender Offer in order to engage in the Debt Financing with WeWork, and misrepresenting and concealing material information regarding SBG and SBVF's failure to use best efforts to close the China Joint Venture. SBG and SBVF exercised the control that they received over WeWork to preserve the

value of their WeWork investment, while at the same time depriving Plaintiffs of the primary economic benefit Plaintiffs were supposed to receive—the Tender Offer. SBG’s and SBVF’s violation of their fiduciary duties to Plaintiffs is magnified by the fact that Plaintiffs gave up valuable governance rights in the MTA and related transactions, and are burdened by an ongoing requirement to vote shares in favor of the SBG-and-SBVF controlled Board. It is improper for SBG and SBVF to retain the benefits of the MTA and use those benefits to then breach the fiduciary duties that SBG and SBVF owe to Plaintiffs.

77. Plaintiffs are entitled to equitable and monetary relief, including but not limited to the proceeds they are due under the Tender Offer, and any other relief that this Court deems just, equitable, and appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendants as follows:

- a) declaring that SBG and SBVF materially breached the MTA, and knowingly and intentionally breached their obligations under the MTA;
- b) declaring, as to every condition to the commencement and closing of the Tender Offer under the MTA, that (i) it was satisfied, or (ii) SBG’s and/or SBVF’s conduct materially contributed to its failure to

be satisfied, or (iii) if it was not satisfied, this did not provide SBG or its designee a basis to terminate the Tender Offer, because it was required to give the other parties to the MTA more time to satisfy it;

- c) declaring that SBG's and SBVF's conduct—including their failure to honor their reasonable best efforts obligations at law, and their obligations under Article VIII of the MTA—materially contributed to the failure to complete the roll-up of the China Joint Venture, and as such the condition to closing the Tender Offer that the roll-up of the China Joint Venture be completed is excused under the MTA and/or applicable law;
- d) declaring that there was no valid basis for SBG or its designee to refuse to extend the Tender Offer until such time as the RAC was satisfied pursuant to Section 3.01(b) of the MTA;
- e) declaring that with the receipt of regulatory approval from the Mexican antitrust authorities on April 17, 2020, the RAC is satisfied;
- f) ordering such equitable relief as to this Court may appear just and proper against SBG and SBVF, including without limitation an order that SBG perform its obligations under the MTA and promptly complete the Tender Offer;

- g) in the alternative, awarding damages for SBG's and SBVF's breaches of the MTA, in an amount to be determined at trial combined with any equitable relief to undo any transactions premised on the Tender Offer closing;
- h) finding that SBG and SBVF breached their fiduciary duties to Plaintiffs;
- i) awarding equitable relief and compensatory damages for SBG's and SBVF's breaches of fiduciary duty, in a nature and amount to be determined at trial; and
- j) awarding costs, attorneys' fees, and other relief that this Court deems appropriate.

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