**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

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| In re: | ) | Chapter 11 |
| | ) | |
| YOGAWORKS, *et al.*, | ) | Case No. 20-12599 – KBO |
| | ) | |
| Debtors.[1] | ) | (Jointly Administered) |
| | ) | |
| | ) | **Hearing Date: November 30, 2020 at 10:00 a.m. (ET)** |
| | ) | **Response Deadline: November 10, 2020 at 4:00 p.m. (ET)** |

**DEBTORS' APPLICATION FOR AN ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF FORCE 10 PARTNERS LLC AS FINANCIAL ADVISOR EFFECTIVE *NUNC PRO TUNC* TO THE PETITION DATE**

YogaWorks, Inc., a Delaware corporation ("YogaWorks") and Yoga Works, Inc., a California corporation ("Yoga Works"), the jointly administered debtors and debtors in possession (the "Debtors") hereby file this application (the "Application"), pursuant to section 327(a) of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 2014-1 and 2016-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") seeking entry of an order (the "Proposed Order"), substantially in the form attached hereto as **Exhibit A**, (a) authorizing them to retain and employ Force 10 Partners LLC ("Force 10") as their financial advisor effective *nunc pro tunc* as of October 14, 2020 (the "Petition Date"), in accordance with the terms and conditions set forth in that certain engagement letter dated as of October 14, 2020 (the "Engagement Letter"), a copy of which is attached hereto as **Exhibit B**; (b) approving the terms of Force 10s' employment and retention; and granting further relief as is just and proper. In support of this Application, the Debtors submit

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number is (1) YogaWorks, Inc., a Delaware corporation (9105); and (2) Yoga Works, Inc., a California corporation (0457).

the Declaration of Adam Meislik, a Partner of Force 10 (the "Meislik Declaration"), which is attached hereto as **Exhibit C** and incorporated herein; and further respectfully state as follow:

## Jurisdiction and Venue

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 147(b)(2).

2. The bases for the relief requested herein are sections 327(a) and 330 of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016, and Local Rules 2014-1 and 2016-1.

## Background

3. On October 14, 2020 (the "Petition Date"), each of the Debtors commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, no trustee or examiner has been appointed.

4. Additional information regarding the Debtors, including their business operations, corporate and capital structure, and the events leading to the Petition Date is more fully set forth in the *Declaration of Brian Cooper in Support of First Day Pleadings* [Docket No. 11] (the "First Day Declaration").

## Relief Requested

5. By this Application, the Debtors seek entry of the Proposed Order authorizing them to retain and employ Force 10 as their financial advisor *nunc pro tunc* to the Petition Date for the purpose of providing necessary financial advisory services in connection with the Debtors' chapter 11 cases and in accordance with the terms of the Engagement Letter.

**Force 10's Qualifications**

6. Force 10 is well qualified to represent the Debtors in connection with the types of services requested herein. Force 10 is an advisory firm that specializes in financial and operational corporate restructuring, valuation, forensic accounting, complex litigation support, and computations involved in court proceedings and dispute resolution. Force 10 serves individual chapter 11 debtors, middle-market companies as well as their creditors, stakeholders and professionals in roles including financial advisor, interim manager, fiduciary services, expert witness, financier and M&A advisor. Force 10 has a wealth of experience in providing financial advisory services and enjoys an excellent reputation for services it has rendered in complex chapter 11 cases on behalf of debtors and creditors.

7. Force 10 has assisted, advised, and provided strategic advice to debtors, creditors, and other entities in numerous chapter 11 cases of similar size and complexity to the Debtors' chapter 11 cases. Its professionals have provided restructuring or crisis management services in numerous cases.

8. Force 10 performed prepetition advisory work for the Debtors and as a result has acquired significant knowledge of the Debtors and their businesses and familiarity with the Debtors' financial affairs, debt structure, operations, and related matters. Likewise, in providing prepetition services to the Debtors, Force 10 has worked closely with the Debtors' management and their other advisors and counsel. Accordingly, Force 10 has experience, expertise, and specifically relevant knowledge regarding the Debtors that will assist it in providing effective and efficient services in these chapter 11 cases.

**Services to Be Provided**

9. Subject to further order of the Court, Force 10 may provide the services described in the Engagement Letter, including the following (collectively, the "**Financial Advisory Services**") to the extent applicable:

- Assist in the preparation of first day motions and developing procedures and processes necessary to implement such motions;
- Assist with monthly operating reports, schedules, statements of financial affairs, UST packages and other financial information and disclosures required during the pendency of these cases;
- Assist the Debtors and their legal counsel with preparation of all case motions requiring financial information or analysis;
- Assist with the development and maintenance of a creditor matrix, claims and other parties in interest information;
- Assist with developing accounting and operating procedures to segregate post-petition business transactions;
- Assist with monitoring of all cash disbursements according to the DIP budget;
- Assist with the preparation of DIP/cash collateral budgets and weekly monitoring and compliance thereof;
- Assist with business operating activities as necessary;
- Assist the Debtors in identifying and evaluating parties interested in facilitating Transactions[2] either through purchasing the Debtors' securities, providing post-petition financing or purchasing the Debtors' assets;
- Advise the Debtors on tactics and strategies for negotiating with potential parties to a transaction, creditors, and other stakeholders, and participate in such negotiations;
- Assist the Debtors in preparing materials describing the Debtors for distribution and presentation to parties that might be interested in a Transaction;
- Advise the Debtors on the timing, nature, and terms of new securities, other consideration, or other inducements to be offered pursuant to any Transaction;
- Assist in the Debtors' over-bid process related to the proposed Section 363 sale of the Debtors' assets by seeking parties interested in over-bidding the stalking

[2] As is defined in the Engagement Letter attached as Exhibit "B".

horse bid and facilitating due diligence and their incorporation into the process per the Debtors' bid procedures;

- Render financial advice to the Debtors related to a Transaction and participate in meetings or negotiations with creditors, stakeholders, or other appropriate parties'
- Render general financial advice, financial analytics, and modeling;
- Assist in preparing the plan and disclosure statement;
- Assist with the review, classification, and quantification of claims against the estates under the plan;
- Assist in the identification of executory contracts and unexpired leases and performing the cost/benefit evaluations with respect to the assumption or rejection of each, as needed;
- Assist in effectuating the plan; and
- Render such other general business consulting or such additional assistance as Debtors' management or counsel may deem necessary that are consistent with the role of a financial advisor and not duplicative of services provided by other professionals.

10. The Financial Advisory Services are necessary to the Debtors' restructuring efforts and in the ongoing operation and management of the Debtors' businesses while subject to chapter 11 of the Bankruptcy Code.

**No Duplication of Services**

11. The Financial Advisory Services provided by Force 10 will complement and not duplicate the services to be rendered by any other professional retained in these chapter 11 cases.

**Force 10's Disinterestedness**

12. To the best of the Debtors' knowledge, information, and belief and except to the extent disclosed herein and in the Meislik Declaration, Force 10: (a) is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code; (b) has no connection with the Debtors, their creditors, or other parties in interest, or the attorneys or accountants of the

foregoing, or the U.S. Trustee for the District of Delaware (the "U.S. Trustee") or any person employed in the Office of the U.S. Trustee; and (c) does not hold any interest adverse to the Debtors' estates.

13. Force 10 has engaged in other business transactions with Serene Investment Management, LLC ("Serene"), who is the DIP lender and stalking horse bidder in this case. Specifically, Serene has retained Force 10 from time to time and Serene is the debtor in possession lender in other cases in which Force 10 is involved. Force 10 does not represent Serene in this case and has had no involvement representing Serene in this case. Force 10 does not have any ownership or other interest in Serene.

14. To the extent that any new relevant facts or relationships bearing on the matters described herein during the period of Force 10's retention are discovered or arise, Debtors are advised that Force 10 will use reasonable efforts to promptly file a supplemental declaration.

**Terms of Proposed Employment**

15. Force 10 intends to charge the Debtors for its services on an hourly basis, and will seek the reimbursement of the actual and necessary out-of-pocket expenses and other charges that it incurs in the course of representing the Debtors.

16. Force 10 did not receive a pre-petition retainer for post-petition work. Force 10 will undertake representation of the Debtors at its customary hourly rates ranging from $100.00 to $750.00, depending on the experience and expertise of the professional performing the work. The majority of the work will be performed by Adam Meislik ($750.00 per hour), Chad Kurtz ($550.00 per hour), and Darryl Myers ($425.00 per hour). However, Force 10 reserves the right to have other professionals perform work in these cases, as it deems appropriate. Other partners that may work on these cases bill at the rate of between $550.00 and

$750.00 per hour, other associates and directors that may work on these cases bill at the hourly rate of $350.00 to $595.00, analysts at the hourly rate of $225.00 to $350.00 and staff at the hourly rate of $100.00 to $225.00. The Debtors submit that such rates are reasonable.

17. For the investment banking services described in "Investment Banking Services - Debtor-in-Possession Financing/363 Sale" section above, the Debtors shall pay Force 10's hourly rates as set forth immediately above, plus a transaction fee equal to the greater of $182,500, or 5.0% of the gross proceeds, (the "Transaction Success Fee") of any consideration including cash, securities, or other property or assets paid to the Debtors or their creditors for some or all of their assets, debt or equity securities or any other form of indebtedness, equity or equity-related securities, partnership interests, joint venture proceeds, sale proceeds, including but not limited to a sale under section 363 of the Bankruptcy Code; and debt or equity financings issued, incurred, amended, refinanced, recapitalized, restructured, restated, or otherwise received (individually, or collectively, a "Transaction") directly or indirectly by the Debtors or the economic value created in conjunction with a Transaction, including purchase price reductions, economic improvements to deal terms or other economic enhancements raised, borrowed, received or incurred.

18. If a sale under section 363 results in a winning cash overbid, then Force 10's Transaction Success Fee will increase by the difference between 5.0% of the cash sales price and $182,500 and will be due and payable upon sale.

19. Concurrent with the substantial consummation of a Transaction, Force 10 shall earn, and the Debtors shall immediately pay directly from the proceeds of such Transaction (or other such other sources if there are insufficient direct proceeds), as a cost of such Transaction, a cash fee equal to the Transaction Success Fee.

20. In addition to compensation for professional services rendered by Force 10's personnel, Force 10 will seek reimbursement for reasonable and necessary expenses incurred in connection with these chapter 11 cases, including travel/transportation costs, lodging, and third-party research, as applicable. In accordance with Local Rule 2016-2(d)(ix), travel time during which no work is performed shall be separately described and billed at no more than 50% of regular hourly rates.

21. The fees and reimbursement of expenses are consistent with and typical of compensation arrangements entered into by Force 10 and other comparable firms that render similar services under similar circumstances. The Debtors believe that the fees are reasonable, market-based, and designed to compensate Force 10 fairly for its work and to cover fixed and routine overhead expenses.

**Allowance of Fees and Expenses**

22. The Debtors understand that Force 10 intends to apply for compensation for professional services rendered and reimbursement of expenses incurred in connection with these chapter 11 cases consistent with the terms set forth herein, subject to this Court's approval and in compliance with applicable provisions of the Bankruptcy Code, including sections 330 and 331, the Bankruptcy Rules, the Local Rules of the United States Bankruptcy Court for the District of Delaware, and any other applicable procedures and orders of this Court.

23. Force 10 will maintain records in support of any fees (in 1/10th of an hour increments), as well as costs, and expenses incurred in connection with services rendered in these chapter 11 cases. Records will be arranged by category and nature of the services rendered and will include reasonably detailed descriptions of those services provided on behalf of the Debtors.

24. Such fee structure is consistent with and typical of compensation arrangements

entered into by Force 10 and other comparable firms that render similar services under similar circumstances.

**Payments Prior to the Petition Date**

25. Force 10 was paid $135,000 in the 90 days prior to the Petition Date. for professional services performed and expenses incurred. As of the Petition Date, Force 10 had a pre-petition balance of $36,680.00, which Force 10 has written off.

**Basis for Relief**

26. Section 327(a) of the Bankruptcy Code provides that a debtor, subject to court approval:

> [M]ay employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the [debtor] in carrying out the [debtor's] duties under this title.

11 U.S.C. § 327(a).

27. Bankruptcy Rule 2014 requires that an application for retention include:

> [S]pecific facts showing the necessity for the employment, the name of the [firm] to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the [firm's] connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

Fed. R. Bankr. P. 2014.

28. The Debtors respectfully submit that section 327(a) of the Bankruptcy Code permits them to hire a professional firm like Force 10 to undertake an advisory role in these chapter 11 cases. Furthermore, the requirements set forth by Bankruptcy Rule 2014 are satisfied by this Application. The retention of Force 10 as financial advisor in these chapter 11 cases is in the best interests of the Debtors' estates, creditors, and the parties in interest.

**Notice**

29. The Debtors have provided notice of this Application to: (a) the Office of the United States Trustee for the District of Delaware; (b) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (c) counsel to the Debtors' DIP lender Serene Investment Management, LLC, Randy Michelson, Esq., Michelson Law Group, 220 Montgomery Street, Suite 2100, San Francisco, CA 94104; and (d) counsel to Great Hill Equity Partners V, LP, Matthew A. Clemente, Esq. and William Curtin, Esq., Sidley Austin, One South Dearborn Street, Chicago, IL 60603; (e) the Internal Revenue Service; (f) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (g) all parties entitled to notice pursuant to Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

30. The Debtors have not previously sought the relief requested herein from this or any other Court.

**WHEREFORE,** the Debtors respectfully request that the Court enter the Order, substantially in the form attached hereto as **Exhibit A,** granting the relief sought herein and granting to the Debtors such other and further relief as the Court may deem proper.

Dated: October 21, 2020

By: _____
Brian Cooper, Chief Executive Officer