

**ENTERED**

February 15, 2023

Nathan Ochsner, Clerk

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

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In re:	) Chapter 11
	)
AVAYA INC., <i>et al.</i> , <sup>1</sup>	) Case No. 23-90088 (DRJ)
	)
Debtors.	) (Jointly Administered)
	)
	) <b>Re: Docket No. 6</b>

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**ORDER (I) AUTHORIZING  
THE DEBTORS TO CONTINUE  
THEIR PREPETITION BUSINESS OPERATIONS,  
POLICIES, AND PRACTICES AND PAY RELATED  
CLAIMS IN THE ORDINARY COURSE OF BUSINESS ON A  
POSTPETITION BASIS, (II) GRANTING ADMINISTRATIVE  
EXPENSE PRIORITY TO ALL OUTSTANDING ORDERS AND  
AUTHORIZING THE DEBTORS TO SATISFY SUCH OBLIGATIONS  
IN THE ORDINARY COURSE, AND (III) GRANTING RELATED RELIEF**

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Upon the emergency motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for the entry of an order (this “Order”), (a) authorizing the Debtors to continue their prepetition business operations, policies, and practices and to pay Ordinary Course Claims on a postpetition basis in the ordinary course of business; (b) granting administrative expense priority to all Outstanding Orders and authorizing the Debtors to satisfy such obligations in the ordinary course of business; and (c) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order

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<sup>1</sup> A complete list of each of the Debtors in these Chapter 11 Cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://www.kcellc.net/avaya>. The location of Debtor Avaya Inc.’s principal place of business and the Debtors’ service address in these Chapter 11 Cases is 350 Mount Kemble Avenue, Morristown, New Jersey 07960.

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



consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Debtors are authorized, but not directed, to pay the prepetition Ordinary Course Claims described in the Motion in the ordinary course of business and consistent with their prepetition practices on a final basis as set forth in the Motion and as the Debtors deem necessary in their reasonable business discretion. The Debtors are authorized, but not directed, to pay all undisputed amounts related to the Outstanding Orders in the ordinary course of business consistent with the parties' customary practices in effect prior to the Petition Date.

2. The Debtors shall maintain a matrix/schedule of payments made pursuant to this Order, including the following information: (a) the names of the payee; (b) the nature of the payment; (c) the amount of the payment; (d) the category or type of payment; (e) the Debtor or Debtors that made the payment; (f) the payment date; (g) the purpose of such payment (the "Vendor Matrix"). Beginning upon entry of this Order, the Debtors shall provide a copy of the Vendor Matrix on a monthly basis to (i) the United States Trustee for the Southern District of

Texas; (ii) counsel to each of the Akin Ad Hoc Group and the PW Ad Hoc Group; and (iii) counsel to any statutory committee appointed in the chapter 11 cases within ten (10) calendar days following the conclusion of each calendar month.

3. Nothing herein shall impair or prejudice the Debtors' ability to contest, in their sole discretion, the extent, perfection, priority, validity, or amounts of the Ordinary Course Claims. The Debtors do not concede that any claims satisfied pursuant to this Order are valid, and the Debtors expressly reserve all rights to contest the extent, validity, or perfection or to seek the avoidance of all such liens or the priority of such claims.

4. For the avoidance of doubt, this Order does not authorize payments to insiders (as such term is defined in section 101(31) of the Bankruptcy Code) of the Debtors.

5. As a condition to receiving any payment under this Order (a) any Ordinary Course Claimant that accepts any payment pursuant to the authority granted in this Order shall agree to continue—or recommence—supplying goods and services to the Debtors in accordance with trade terms at least as favorable to the Debtors as the most favorable terms in place during the twelve months prior to the Petition Date, or such other trade terms that are acceptable to the Debtors (the "Customary Trade Terms") and (b) any Lien Claimant who has obtained a Lien on the Debtors' or their customers' assets that accepts any payment pursuant to the authority granted in this Order shall further agree to take whatever action is necessary to remove the Lien at the Lien Claimant's sole cost and expense. The Debtors have the right to adjust Customary Trade Terms with any Ordinary Course Claimant according to the facts and circumstances to the extent such adjustment is in the ordinary course of business and consistent with prepetition practices and the Debtors determine such adjustment is in the best interest of their estates. The Debtors reserve the

right to require additional favorable trade terms with any Ordinary Course Claimant as a condition to payment of any Ordinary Course Claim.

6. If any Ordinary Course Claimant that accepts payment from the Debtors pursuant to the authority granted in this Order does not continue to provide goods or services on Customary Trade Terms, then: (a) the Debtors may then take any and all appropriate steps to cause such Ordinary Course Claimant to repay payments made to it on account of its prepetition claim to the extent that such payments exceed the postpetition amounts then owing to such Ordinary Course Claimant; (b) upon recovery by the Debtors, any prepetition claim of such Ordinary Course Claimant shall be reinstated as if the payment had not been made; and (c) if there exists an outstanding postpetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the authority granted in this Order to such outstanding postpetition balance and such Ordinary Course Claimant will be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or otherwise.

7. Notwithstanding anything to the contrary herein, prior to making any payment pursuant to this Order to an Ordinary Course Claimant or on account of an Outstanding Order, the Debtors shall provide such Ordinary Course Claimant with a copy of this Order (unless previously provided to such Ordinary Course Claimant).

8. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or

admission that any particular claim is of a type specified or defined in the Motion or any order granting the relief requested by the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

9. Notwithstanding anything to the contrary in this Order, any payment made or to be made hereunder, and any authorization herein, shall be subject to the requirements (if any) imposed on the Debtors under any order(s) of this Court approving the postpetition secured debtor in possession financing facility and the use of cash collateral (any such order, a "Financing Order"), including any documentation with respect to such financing and any budget in connection with such Financing Order. In the event of any conflict between the terms of this Order and a Financing Order, the terms of the applicable Financing Order shall control (solely to the extent of such conflict).

10. The banks and financial institutions on which checks were drawn or electronic funds transfer requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on

the Debtors' designation of any particular check or electronic payment request as approved by this Order.

11. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these Chapter 11 Cases with respect to prepetition amounts owed in connection with the relief granted herein.

12. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

13. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

14. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

15. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order.

16. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

**Signed: February 15, 2023.**

  
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DAVID R. JONES  
UNITED STATES BANKRUPTCY JUDGE