

**ENTERED**

February 15, 2023

Nathan Ochsner, Clerk

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

	) Chapter 11
In re:	)
AVAYA INC., <i>et al.</i> , <sup>1</sup>	) Case No. 23-90088 (DRJ)
	)
Debtors.	) (Jointly Administered)
	)
	) <b>Re: Docket No. <u>18</u></b>

**ORDER (I) AUTHORIZING THE DEBTORS  
TO (A) PAY PREPETITION WAGES, SALARIES, OTHER  
COMPENSATION, AND REIMBURSABLE EXPENSES, AND (B) CONTINUE  
EMPLOYEE BENEFITS PROGRAMS AND (II) GRANTING RELATED RELIEF**

Upon the emergency motion (the "Motion")<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Order") (a) authorizing the Debtors to (i) pay certain prepetition wages, salaries, other compensation, and reimbursable expenses, and (ii) continue employee benefits programs in the ordinary course, including payment of certain prepetition obligations related thereto; and (b) 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); and this Court having found that it may enter a final order 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

<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.kccllc.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.



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 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 continue and, subject to paragraph 7 hereof, modify the Compensation and Benefits on a postpetition basis, in the ordinary course of business, in accordance with the Debtors' prepetition policies and practices, and, in the Debtors' discretion, to pay and honor prepetition amounts related thereto and other obligations incurred in providing the Compensation and Benefits in the ordinary course and in accordance with the Debtors' prepetition practices and the terms of this Order.

2. Subject to paragraph 5 hereof, the Debtors are authorized, but not directed, to continue the Additional Non-Insider Compensation Opportunities and Non-Insider Severance Programs described in the Motion, in each case, in the ordinary course of business and consistent with historical practices, including making any payments or satisfying any obligations to non-insiders with respect to the prepetition period.

3. Pursuant to section 362(d) of the Bankruptcy Code: (a) Employees are authorized to proceed with their workers' compensation claims in the appropriate judicial or administrative forum under the Workers' Compensation Programs, and the Debtors are authorized to pay all prepetition amounts relating thereto in the ordinary course of business; and (b) the notice

requirements pursuant to Bankruptcy Rule 4001(d) with respect to clause (a) are waived. This modification of the automatic stay pertains solely to claims under the Workers' Compensation Programs and any such claims must be pursued in accordance with the applicable Workers' Compensation Programs. Payment on account of any recoveries obtained in connection with a claim brought pursuant to this paragraph is limited to the terms and conditions of the applicable Workers' Compensation Programs, including with regard to any policy limits or caps.

4. With the exception of the three former Salaried Employees with Former Salaried Employee Severance Agreement amounts above the statutory cap (collectively, the "Exception Employees"), the Debtors shall not honor any prepetition claims or obligations on account of Compensation and Benefits to any individual that exceed the priority amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. If unpaid prepetition claims or obligations to any Employee exceed the \$15,150 priority wages cap imposed by section 507(a)(4) of the Bankruptcy Code, the Debtors shall seek such relief pursuant to a separate motion. Prior to paying any amounts to the Exception Employees over \$15,150, the Debtors shall file and serve a notice (the "Exception Notice") of the amounts the Debtors intend to pay the Exception Employees (the "Noticed Amounts"). Provided no objections are received by the Debtors to the proposed payment of the Noticed Amounts within fourteen days of filing the Exception Notice, the Debtors shall be authorized, but not directed, to pay the Noticed Amounts without further order of the Court.

5. The Debtors shall not make any prepetition or postpetition bonus, incentive, retention, severance payments, or any payments that would violate or implicate section 503(c) of the Bankruptcy Code to any Insiders (as such term is defined in section 101(31) of the Bankruptcy Code) without further order of this Court.

6. 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.

7. The Debtors shall provide five days written notice to the U.S. Trustee for the Southern District of Texas, any statutory committee appointed in these chapter 11 cases, counsel to the Akin Ad Hoc Group, and counsel to the PW Ad Hoc Group of any material changes or modifications to the programs and policies for the Debtors' Employees described in the Motion and any new Employee Compensation or Benefits.

8. The Debtors shall maintain a matrix or schedule of payments made on account of Additional Non-Insider Compensation Opportunities, made pursuant to this Order, including the

following information: (a) the title of the claimant paid; (b) the amount and date of the payment to such claimant; (c) the total amount paid to the claimant to date; and (d) category or type of payment, as further described and classified in the Motion. The Debtors shall provide a copy of such matrix or schedule to the U.S. Trustee, the Akin Ad Hoc Group, the PW Ad Hoc Group, and any statutory committee appointed in these chapter 11 cases within ten days of the end of each calendar month beginning upon entry of this Order.

9. Before making any payments related to the Debtors' Additional Non-Insider Compensation Opportunities in excess of (y) \$100,000 in the aggregate in any calendar month or (z) \$50,000 to any individual, the Debtors shall provide five days' advance notice to the U.S. Trustee, the Akin Ad Hoc Group, the PW Ad Hoc Group, and any statutory committee of: (a) the title of the claimant; (b) the amount of the payment to such claimant; and (c) the proposed payment date.

10. The Debtors shall not (i) offer or pay an Employee-candidate a New Hire Award that exceeds \$50,000 or (ii) offer or pay an Employee-candidate a New Hire Award, which, when taken together with any prior New Hire Awards offered or paid during these chapter 11 cases, would cause the amount of all New Hire Awards to exceed \$100,000 in the aggregate, in each case, without the prior written consent (which consent shall not be unreasonably withheld) of the Akin Ad Hoc Group and the PW Ad Hoc Group.

11. 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).

12. 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 funds transfer 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 funds transfer request as approved by this Order.

13. 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.

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

15. 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.

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

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

18. 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.**



DAVID R. JONES  
UNITED STATES BANKRUPTCY JUDGE



District/off: 0541-4  
Date Rcvd: Feb 15, 2023

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