Docket #0007 Date Filed: 10/31/2023

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

| | | |
|---|---|---|
| In re: | ) | Chapter 11 |
| AVAYA HOLDINGS LLC,[1] | ) | Case No. 23-90095 (MI) |
| Reorganized Debtor. | ) | (Formerly Jointly Administered Under Lead Case Avaya Inc., 23-90088) |

**REORGANIZED DEBTOR'S MOTION FOR ENTRY OF A FINAL DECREE CLOSING THE CHAPTER 11 CASE OF AVAYA HOLDINGS LLC**

**If you object to the relief requested, you must respond in writing. Unless otherwise directed by the Court, you must file your response electronically at https://ecf.txsb.uscourts.gov/ within twenty-one days from the date this application was filed. If you do not have electronic filing privileges, you must file a written objection that is actually received by the clerk within twenty-one days from the date this application was filed. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.**

The above-captioned reorganized debtor (the "Reorganized Debtor," and before the Effective Date[2] of the Plan, the "Debtor") states as follows in support of this motion:

## Relief Requested

1. The Reorganized Debtor seeks entry of a final decree, substantially in the attached form (the "Final Decree"), (a) closing the Chapter 11 Case of Avaya Holdings LLC, Case No. 23-90095 (the "Remaining Case") effective as of the date of entry of the Final Decree (the "Closing Date"), and (b) granting related relief.

[1] The Reorganized Debtor's service address in these chapter 11 cases is 350 Mount Kemble Avenue, Morristown, New Jersey 07960.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the *Joint Prepackaged Plan of Reorganization of Avaya Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code (Technical Modifications)* [Docket No. 325] (as amended, supplemented, or otherwise modified from time to time, the "Plan").

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## Jurisdiction and Venue

2. The United States Bankruptcy Court for the Southern District of Texas (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The Reorganized Debtor confirms its consent to the entry of a final order by the Court.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105(a) and 350(a) of title 11 of the United States Code (the "Bankruptcy Code"), rule 3022 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and rules 1075-1 and 9013-1 of the Local Bankruptcy Rules for the Southern District of Texas (the "Bankruptcy Local Rules").

## Background

5. On February 14, 2023, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.[3]

6. On March 22, 2023, the Court confirmed the Plan and entered the *Order Approving the Debtors' Disclosure Statement for, and Confirming, the Joint Prepackaged Plan of Reorganization of Avaya Inc. and Its Debtor Affiliates* [Docket No. 350] (the "Confirmation Order"), pursuant to which, among other things, the Court permanently waived the requirement that the Debtor file schedules and statements of financial affairs and that the Office of the United States Trustee for the Southern District of Texas (the "U.S. Trustee") convene a meeting of creditors or equity holders pursuant to section 341(e) of the Bankruptcy Code. The Confirmation Order is final, non-appealable, and not subject to any pending appeal.

[3] A detailed description of the facts and circumstances of the Chapter 11 Case is set forth in the *Declaration of Eric Koza, Chief Restructuring Officer of Avaya Holdings Corp. and Certain of Its Affiliates and Subsidiaries, in Support of the Debtors' Chapter 11 Petitions and First Day Motions* [Docket No. 4].

7. On May 1, 2023, the Debtors substantially consummated the Plan, and the Effective Date occurred.[4]

8. On August 11, 2023, the Court entered the *Final Decree Closing Certain of the Chapter 11 Cases* [Docket No. 481] (the "Initial Final Decree"), closing twenty chapter 11 cases affiliated with the Remaining Case, leaving open the Remaining Case for purposes of resolving the Remaining Matters (as defined herein).

9. Out of an abundance of caution, the Reorganized Debtor kept open the Remaining Case to resolve any miscellaneous motions, applications, pleadings, or other matters or proceedings that may arise from time to time (collectively, the "Remaining Matters"). Following entry of the Initial Final Decree, the Reorganized Debtor determined that the Remaining Matters, if any, have been fully resolved.

10. As such, as of the filing of this motion, the Reorganized Debtor believes that the Remaining Case and the previously closed cases have been fully administered. Leaving the Remaining Case open beyond the Closing Date would impose continued costs and administrative burden on the Reorganized Debtor's estate.

11. Accordingly, the Reorganized Debtor requests entry of the Final Decree, substantially in the attached form, ruling that the Remaining Case is fully administered within the meaning of section 350(a) of the Bankruptcy Code and closing the Remaining Case.

**Basis for Relief**

12. Section 350(a) of the Bankruptcy Code provides that "[a]fter an estate is fully administered and the court has discharged the trustee, the court shall close the case."

[4] *See Notice of (I) Entry of Order Approving the Debtors' Disclosure Statement for, and Confirming, the Joint Prepackaged Plan of Reorganization of Avaya Inc. and Its Debtor Affiliates and (II) Occurrence of the Effective Date* [Docket No. 385].

11 U.S.C. § 350(a). Bankruptcy Rule 3022, which implements section 350 of the Bankruptcy Code, further provides that "[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case." Fed. R. Bankr. P. 3022.

13. The term "fully administered" is not defined in the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Local Rules. The Advisory Committee Note to Bankruptcy Rule 3022 (the "Advisory Committee Note"), however, sets forth the following non-exclusive factors to be considered in determining whether a case has been fully administered:

i. whether the order confirming the plan has become final;

ii. whether deposits required by the plan have been distributed;

iii. whether the property proposed by the plan to be transferred has been transferred;

iv. whether the debtor or the successor of the debtor under the plan has assumed the business or the management of the property dealt with by the plan;

v. whether payments under the plan have commenced; and

vi. whether all motions, contested matters, and adversary proceedings have been finally resolved.

Fed. R. Bankr. P. 3022, Advisory Comm. Note (1991). Courts look "to the advisory committee's notes on Bankruptcy Rule 3022 in seeking guidance as to the meaning of 'fully administered.'" *In re JCP Props., Ltd.*, 540 B.R. 596, 605 (Bankr. S.D. Tex. 2015).

14. In addition to the factors set forth in the Advisory Committee Note, courts have considered whether the plan of reorganization has been substantially consummated. *See, e.g., In re JCP Props., Ltd.*, 540 B.R. at 605 (commenting that "substantial consummation is

the pivotal question here to determine the propriety of closing the [case]"). Section 1101(2) of the Bankruptcy Code defines substantial consummation as the: (A) transfer of all or substantially all of the property proposed by the plan to be transferred; (B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and (C) commencement of distribution under the plan.

15. Bankruptcy courts have adopted the view that "[the Advisory Committee Note] factors are but a guide in determining whether a case has been fully administered, and not all factors need to be present before the case is closed." *In re SLI, Inc.*, Case No. 02-12608 (WS), 2005 WL 1668396, at *2 (Bankr. D. Del. June 24, 2005).

16. Courts have also noted that entry of a final decree is appropriate to stop the accrual of fees paid to the U.S. Trustee pursuant to section 1930 of the United States Code (the "Section 1930 Fees"). *See In re Jay Bee Enters., Inc.*, 207 B.R. 536, 539 (Bankr. E.D. Ky. 1997) (concluding that "it seems appropriate to close this case to stop the financial drain on the debtor" due to accrual of Section 1930 Fees).

17. Here, the foregoing factors weigh strongly in favor of closing the Remaining Case. The Confirmation Order is a final order, the Effective Date of the Plan has occurred, and the Plan is substantially consummated. The Debtor's estate property has transferred to the Reorganized Debtor in accordance with the Plan, the Reorganized Debtor has assumed the management and control over the Debtor's businesses, and distributions have occurred in accordance with the Plan. Therefore, the Remaining Case has been "fully administered." Closing the Remaining Case is consistent with the confirmed Plan, which provides that the Reorganized Debtors "shall, promptly after the full administration of the Chapter 11 Cases, File

with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Cases." Plan, Art. XII.M.

18. The entry of the Final Decree closing the Remaining Case would be without prejudice to creditors' rights to petition the Court to reopen any of such cases pursuant to section 350(b) of the Bankruptcy Code. Entry of the Final Decree closing the Remaining Case is in the best interests of the Reorganized Debtor and an appropriate use of the Court's equitable powers pursuant to section 105(a) of the Bankruptcy Code.

**Notice**

19. The Reorganized Debtor will provide notice of this motion to the following parties or their respective counsel: (a) the U.S. Trustee; (b) the holders of the thirty largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the Akin Ad Hoc Group; (d) counsel to the PW Ad Hoc Group; (e) the Prepetition ABL Agent and counsel thereto; (f) the First Lien Term Loan Agent and counsel thereto; (g) the 6.125% Senior Secured First Lien Notes Trustee and counsel thereto; (h) the 8.00% Exchangeable Senior Secured Notes Trustee and counsel thereto; (i) the 2.25% Convertible Notes Trustee and counsel thereto; (j) the DIP Term Loan Agent and counsel thereto; (k) the DIP ABL Agent and counsel thereto; (l) the Office of the United States Attorney for the Southern District of Texas; (m) the state attorneys general for states in which the Debtors conduct business; (n) the Internal Revenue Service; (o) the Securities and Exchange Commission; (p) the Environmental Protection Agency; (q) other governmental agencies having a regulatory or statutory interest in these cases; and (r) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, no other or further notice is required.

WHEREFORE, the Reorganized Debtor requests that the Court enter the Final Decree granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Houston, Texas
Dated: October 31, 2023

*/s/ Rebecca Blake Chaikin*

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**Certificate of Service**

I certify that on October 31, 2023, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

*/s/ Rebecca Blake Chaikin*
Rebecca Blake Chaikin

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

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| In re: | ) | Chapter 11 |
| AVAYA HOLDINGS LLC,[1] | ) | Case No. 23-90095 (MI) |
| Reorganized Debtor. | ) | (Formerly Jointly Administered Under Lead Case Avaya Inc., 23-90088) |

**FINAL DECREE CLOSING THE CHAPTER 11 CASE OF AVAYA HOLDINGS LLC**

Upon the motion (the "Motion")[2] of the above-captioned reorganized debtor (the "Reorganized Debtor," and before the Effective Date of the Plan, the "Debtor") for entry of a final decree (this "Final Decree") pursuant to section 350(a) of the Bankruptcy Code and Bankruptcy Rule 3022, closing the Remaining Case, all as more fully set forth in the Motion; 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 permissible 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 Reorganized Debtor's estates, its creditors, and other parties in interest; and this Court having found that the Reorganized Debtor's 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 this Court having determined

[1] The Reorganized Debtor's service address in these chapter 11 cases is 350 Mount Kemble Avenue, Morristown, New Jersey 07960.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion or the *Joint Prepackaged Plan of Reorganization of Avaya Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code (Technical Modifications)* [Docket No. 325] (as amended, supplemented, or otherwise modified from time to time, the "Plan"), as applicable.

that the legal and factual bases set forth in the Motion 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 chapter 11 case of Avaya Holdings LLC, Case No. 23-90095 (MI), is hereby closed effective as of the date of the entry of this Final Decree; *provided,* that this Court shall retain jurisdiction as provided in the Plan and the Confirmation Order.

2. The entry of this Final Decree is without prejudice to the rights of the Reorganized Debtor, the U.S. Trustee, or any other party to seek to reopen the Remaining Case for cause pursuant to section 350(b) of the Bankruptcy Code

3. Within 21 days after entry of this Final Decree, the Reorganized Debtor shall file any outstanding post-confirmation reports and a post-confirmation report for the fourth quarter of 2023 through the date of entry of the Final Decree and shall serve a true and correct copy of said statements on the U.S. Trustee.

4. The Reorganized Debtor shall pay the appropriate sum of quarterly fees for the fourth quarter of 2023 when due and pay subsequent quarters when due and payable under 28 U.S.C. § 1930(a)(6)(A) and (B) for the Remaining Case by either (a) remitting payment to the U.S. States Trustee Payment Center, PO Box 6200-19, Portland, OR 97228-6200, which payment shall reflect the closed Reorganized Debtors' account numbers and shall be transmitted with a "Chapter 11 Quarterly Fee Payment" coupon available from the U.S. Trustee; or (b) by remitting payment via the pay.gov website: http://www.pay.gov/public/form/start/672415208, using the ten digit case number for each payment, no later than the later of (x) fourteen days after the date of entry of the Final Decree and (y) the date on which such quarterly fees are otherwise due. The Reorganized Debtors shall furnish evidence of such payment to the U.S. Trustee via

email. This Court retains jurisdiction to enforce fees assessed under 28 U.S.C. § 1930(a)(6)(A) and (B).

5. The Clerk of the Court shall enter this Final Decree on the docket of the Remaining Case, and thereafter such docket shall be marked as "Closed."

6. Subject to the performance of any obligations of the Debtors' claims, noticing, and solicitation agent, Kurtzman Carson Consultants, LLC ("KCC"), pursuant to this Final Decree, KCC's services as claims, noticing, and solicitation agent for the Remaining Case and the chapter 11 cases of the other Debtors are hereby terminated, and KCC shall be deemed formally discharged as claims and noticing agent for the Remaining Case and the chapter 11 cases of the other Debtors without further order of this Court.

7. Entry of this Final Decree is without prejudice to (a) the rights of the Reorganized Debtors or any party in interest to seek to reopen any of the Affiliate Cases for cause pursuant to section 350(b) of the Bankruptcy Code, and (b) the rights of the Reorganized Debtors, or any entity authorized pursuant to the Plan, as applicable, to dispute any claims filed against the Reorganized Debtors in these Chapter 11 Cases, as provided in the Plan and the Confirmation Order. Notwithstanding anything to the contrary contained in the Plan, any failure of the Reorganized Debtors, or any entity authorized pursuant to the Plan, as applicable, to file an objection to a claim in the Reorganized Debtors' chapter 11 cases shall not constitute allowance of the claim and shall not result in such claim being deemed allowed against any Reorganized Debtor.

8. This Final Decree shall be effective and enforceable upon its entry.

9. The Reorganized Debtors and any entity authorized pursuant to the Plan, and their respective agents, are authorized to take all actions necessary to effectuate the relief granted pursuant to this Final Decree in accordance with the Motion.

10. Nothing in this Final Decree shall change the amount or nature of any distribution, or any other substantive rights, that any claim against or interest in any Debtor would have been entitled to under the Plan, the Confirmation Order, the Bankruptcy Code, the Bankruptcy Rules, or otherwise, had this Final Decree not been entered.

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

Dated: _____, 2023
Houston, Texas

_____
MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE