

**ENTERED**

March 22, 2023

Nathan Ochsner, Clerk

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

In re:

AVAYA INC., *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)  
) Case No. 23-90088 (DRJ)  
)  
) (Jointly Administered)  
)  
(Docket No. 287)

**ORDER (I) AUTHORIZING  
THE DEBTORS TO (A) RETAIN AND EMPLOY  
ALIXPARTNERS, LLP, (B) DESIGNATE ERIC KOZA  
AS CHIEF RESTRUCTURING OFFICER, AND (C) DESIGNATE  
REBECCA ROOF AS INTERIM CHIEF FINANCIAL OFFICER, EACH  
EFFECTIVE AS OF FEBRUARY 14, 2023, AND (II) GRANTING RELATED RELIEF**

Upon the Application (the “Application”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”) authorizing the Debtors to (i) employ and retain AlixPartners, LLP (“AlixPartners”); (ii) designate Eric Koza as Chief Restructuring Officer (“CRO”); and (iii) designate Rebecca Roof as Interim Chief Financial Officer (“CFO”), pursuant to the terms of the Engagement Letters; and (iv) granting related relief, all as more fully set forth in the Application; and upon consideration of the Koza 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 consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Application in this district is proper

<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’ 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 not otherwise defined herein shall have the meanings ascribed to such terms in the Application.



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pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Application 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 Application and opportunity for a hearing on the Application were appropriate and no other notice need be provided; and this Court having reviewed the Application and having heard the statements in support of the relief requested therein at a hearing, if any, before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Application and at the Hearing establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

1. In accordance with sections 327(a) and 328(a) of the Bankruptcy Code, the Debtors are authorized to (i) employ and retain AlixPartners, (ii) designate Eric Koza as the CRO of the Debtors, and (iii) designate Rebecca Roof as the interim CFO, each effective as of the Petition Date, in accordance with the terms and conditions set forth in the Engagement Letters, as modified by this Order.

2. AlixPartners is authorized to apply the Retainer and advanced payments to unpaid amounts to satisfy any unbilled or other remaining prepetition fees and expenses that AlixPartners becomes aware of during its ordinary course billing review and reconciliation. The balance of the Retainer shall be treated as an evergreen retainer and held by AlixPartners as security throughout the Chapter 11 Cases.

3. AlixPartners shall file applications for monthly, interim, and final allowance of compensation and reimbursement of expenses pursuant to the procedures set forth in sections 330 and 331 of the Bankruptcy Code, such Bankruptcy Rules and Bankruptcy Local Rules as may then be applicable, ~~U.S. Trustee Guidelines~~ ~~XXXXXXXXXXXX~~, and any applicable orders and procedures of this Court.

AlixPartners shall keep its time in one tenth (1/10) hour increments ~~in accordance with the U.S. Trustee Guidelines.~~

4. Notwithstanding anything to the contrary contained herein, the U.S. Trustee retains all rights to respond or object to AlixPartners' applications for compensation and reimbursement of out-of-pocket expenses based on the reasonableness standard in section 330 of the Bankruptcy Code.

5. Any success fees, transaction fees, or other back-end fees shall be approved by the Court at the conclusion of this case on a reasonableness standard and are not being pre-approved by entry of this Order.

6. The Debtors are permitted to indemnify those persons serving as executive officers on the same terms as provided by the Debtors' other officers and directors under the corporate bylaws and applicable state law, along with insurance coverage under the Debtors' Directors and Officers insurance policy.

7. As to AlixPartners employees not serving in executive officer positions, the following indemnification procedures are approved during the pendency of this case:

- (a) As set forth and subject to the limitations in subparagraph (c) below, AlixPartners shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Engagement Letters for services, unless such services and the indemnification, contribution, or reimbursement therefore are approved by the Court.
- (b) The Debtors shall have no obligation to indemnify AlixPartners, or provide contribution or reimbursement to AlixPartners, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from AlixPartners' gross negligence, willful misconduct, fraud, breach of fiduciary duty, if any, bad faith or self-dealing; or (ii) settled prior to a judicial determination as to AlixPartners' gross negligence, willful misconduct, breach of fiduciary duty, or bad faith or self-dealing but determined by this Court, after notice and hearing to be a claim or expense for which AlixPartners should not receive indemnity,

contribution, or reimbursement under the terms of the Engagement Letter, as modified by this Order; and

- (c) If, before the earlier of (i) the entry of an order confirming the plan in these Chapter 11 Cases (that order having become a final order no longer subject to appeal) and (ii) the entry of an order closing these Chapter 11 Cases, AlixPartners believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, and/or reimbursement obligations under the Engagement Letters (as modified by this Order), including without limitation, the advancement of defense costs, AlixPartners must file an application therefor in this Court, and the Debtors may not pay any such amounts to AlixPartners before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by AlixPartners for indemnification, contribution, and/or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify AlixPartners. All parties in interest shall retain the right to object to any demand by AlixPartners for indemnification, contribution, and/or reimbursement.

8. To the extent AlixPartners uses the services of independent contractors (the "Contractors") in these Chapter 11 Cases, AlixPartners shall: (a) pass through the cost of Contractors to the Debtors at the same rate that AlixPartners pays the Contractors; (b) with respect to costs incurred by the Contractors, seek reimbursement for actual, reasonable, and documented costs only; (c) ensure that the Contractors are subject to the same conflict checks as were required for AlixPartners in accordance with this retention; and (d) file with the Court such disclosures as are required by Bankruptcy Rule 2014.

9. In the event that, during the pendency of these cases, AlixPartners seeks reimbursement for any attorneys' fees and/or expenses, the invoices and supporting time records from such attorneys shall be included in AlixPartners' fee applications and such invoices and time records shall be in compliance with the Local Rules, and shall be subject to the ~~U.S. Trustee~~ ~~XXXXXX~~ ~~XXXXXX~~ approval of the Court under the standards of sections 330 and 331 of the Bankruptcy Code, without regard to whether such attorney has been retained under

Bankruptcy Code section 327; *provided, however*, that AlixPartners shall not seek reimbursement from the Debtors' estates for any fees incurred in defending any of AlixPartners' fee applications in these Chapter 11 Cases.

10. To the extent there is any inconsistency between the terms of the Engagement Letter, the Application, and this Order, the terms of this Order shall govern.

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

12. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Application.

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

**Signed: March 22, 2023.**

  
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DAVID R. JONES  
UNITED STATES BANKRUPTCY JUDGE