

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., <i>et al.</i> , ¹ <div style="text-align: right;">Debtors.</div>) Chapter 11)) Case No. 23-90088 (DRJ))) (Jointly Administered))) Re: Docket No. <u>289</u>
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**ORDER AUTHORIZING
THE RETENTION AND EMPLOYMENT OF
KPMG LLP TO PROVIDE TAX COMPLIANCE, TAX PROVISION,
TAX RESTRUCTURING, TAX CONSULTING, AND RELATED
SERVICES TO THE DEBTORS EFFECTIVE AS OF FEBRUARY 14, 2023**

Upon the application (the “Application”)² of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), for the entry of an order pursuant to sections 327(a) and 328(a) of title 11 of the United States Code (the “Bankruptcy Code”), rules 2014 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 Southern District of Texas (the “Local Bankruptcy Rules”), authorizing them to retain and employ KPMG LLP (“KPMG”) to provide tax compliance, tax provision, tax restructuring, tax consulting, and related services to the Debtors, effective as of the February 14, 2023, on the terms and conditions set forth in the Engagement Letters; and upon the *Declaration of Olayinka Kukoyi in Support of the Debtors’ Application for Entry of an Order*

¹ 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.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.

² Capitalized terms not otherwise defined herein shall have the definitions ascribed to them in the Application and Kukoyi Declaration (as defined below).



Authorizing the Retention and Employment of KPMG LLP to Provide Tax Compliance, Tax Provision, Tax Restructuring, Tax Consulting and Related Services to the Debtors Effective as of February 14, 2023 (the “Kukoyi Declaration”) in support thereof; and the Court being satisfied based on the representations made in the Application and in the Kukoyi Declaration that KPMG represents no interest adverse to the Debtors' estates with respect to the matters upon which they are to be engaged, that they are disinterested persons as that term is defined under section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, and that their employment is necessary and in the best interests of the Debtors' estates; the terms of the Engagement Letters are reasonable terms for the purposes of section 328(a) of the Bankruptcy Code; and consideration of the Application and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Application having been provided; and it appearing that no other or further notice need be provided; and after due deliberation and sufficient cause appearing therefore, it is HEREBY ORDERED THAT:

1. The Application is granted as set forth herein.
2. Pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, the Debtors are authorized to retain and employ KPMG to provide tax compliance, tax provision, tax restructuring, tax consulting, and related services to the Debtors, effective as of February 14, 2023, on the terms set forth in the Application and the Engagement Letters, as modified by this Order.
3. The terms and conditions of the Engagement Letters, including without limitation, the compensation provisions, are reasonable terms and conditions of employment and are hereby approved.

4. KPMG shall file fee applications for allowance of compensation and expenses with respect to services rendered in these chapter 11 cases with the Court in accordance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, ~~any applicable US Trustee Guidelines~~, this Order, and such other procedures as may be fixed by order of this Court.

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5. KPMG's fixed fees pursuant to the Engagement Letters (and any supplemental engagement agreements or statements of work subsequently approved in these cases) shall be subject to the standard of review set forth in section 330 of the Bankruptcy Code. KPMG shall keep reasonably detailed time records in half hour increments and will submit, with any fee application, together with the time records, a narrative summary, by project category, of services rendered and will identify each professional rendering services, the category of services rendered, and the total amount of compensation requested by KPMG.

6. KPMG's hourly fees pursuant to the Engagement Letters (and any supplemental engagement agreements or statements of work subsequently approved in these cases) shall be subject to the standard of review set forth in section 330 of the Bankruptcy Code. KPMG shall keep reasonably detailed time records in one tenth (1/10) hour increments ~~in accordance with the US Trustee Guidelines~~ and will submit, with any fee application, together with the time records, a narrative summary, by project category, of services rendered and will identify each professional rendering services, the category of services rendered, and the total amount of compensation requested by KPMG.

7. In the event that, during the pendency of these cases, KPMG seeks reimbursement for any attorneys' fees and/or expenses, the invoices and supporting time records from such attorneys shall be included in KPMG's fee applications and such invoices and time records shall

be in compliance with the Bankruptcy Local Rules, and shall be subject to ~~the U.S. Trustee's~~
~~and the Court's~~ approval of the Court under the standards of Bankruptcy Code sections 330 and
 331, without regard to whether such attorney has been retained under Bankruptcy Code
 section 327; *provided, however*, that KPMG shall not seek reimbursement from the Debtors'
 estates for any fees incurred in defending any of KPMG's fee applications in these chapter 11
 cases.

8. To the extent the Debtors and KPMG enter into any additional engagement letter(s),
 the Debtors will file such engagement letter(s) with the Court and serve such engagement letter(s)
 upon the U.S. Trustee. To the extent any such parties object, within 14 days of such new
 engagement letter(s) being filed and served, to the additional services to be provided by KPMG,
 the Debtors will promptly schedule a hearing before the Court. If no objection are timely served
 with respect to the new engagement letter(s), all additional services reflected therein shall be
 subject to the provisions of this Order.

9. The following terms apply during the pendency of the Debtors' chapter 11 cases:

- (a) KPMG shall not be entitled to indemnification, contribution or reimbursement for services other than those described in the Engagement Letters, unless such services and indemnification therefor are approved by the Court; provided, that to the extent additional engagement letter(s) are filed with the Court and no parties object to such engagement letter(s) in accordance with the procedures described in the immediately preceding Ordered paragraph, such engagement letter(s) shall be deemed approved by the Court;
- (b) The Debtors shall have no obligation to indemnify KPMG, or provide contribution or reimbursement to KPMG, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from KPMG's bad faith, self-dealing, breach of fiduciary duty (if any such duty exists), gross negligence or willful misconduct; or (ii) judicially determined (the determination having become final), based on a breach of KPMG's contractual obligations to the Debtors; or (iii) settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii) immediately above, but determined by the Court, after notice and

a hearing to be a claim or expense for which KPMG should not receive indemnity, contribution or reimbursement under the terms of KPMG's retention by the Debtors pursuant to the terms of the Engagement Letters and Application, as modified by this Order; and

- (c) If, before the earlier of: (i) the entry of an order confirming a chapter 11 plan in this case (that order having become a final order no longer subject to appeal); and (ii) the entry of an order closing these chapter 11 cases, KPMG 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) and Application, including without limitation the advancement of defense costs, KPMG must file an application therefor in this Court, and the Debtors may not pay any such amounts to KPMG 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 KPMG for indemnification, contribution or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify KPMG. All parties in interest shall retain the right to object to any demand by KPMG for indemnification, contribution or reimbursement.

10. Prior to any increases in KPMG's rates for any individual retained by KPMG and providing services in these cases, KPMG shall file a supplemental declaration with this Court and provide 10 business days' notice to the Debtors and the U.S. Trustee. The supplemental declaration shall explain the basis for the requested rate increases in accordance with section 330(a)(3)(F) of the Bankruptcy Code and state whether the Debtors have consented to the rate increase. The U.S. Trustee retains all rights to object to any rate increase on all grounds including the reasonableness standard provided for in section 330 of the Bankruptcy Code and all rates and rate increases are subject to review by this Court.

11. Notwithstanding anything in the Application or the Engagement Letters to the contrary, KPMG shall (i) to the extent that KPMG uses the services of independent contractors, subcontractors, or employees of foreign or domestic affiliates or subsidiaries (collectively, the "Contractors") in these cases, KPMG shall pass-through the cost of such Contractors to the

Debtors at the same rate that KPMG pays the Contractors, (ii) seek reimbursement for actual costs only, (iii) ensure that the Contractors are subject to the same conflict checks as required for KPMG, and (iv) file with the Court such disclosures required by Bankruptcy Rule 2014.

12. The Debtors shall comply with the notice requirement set forth in paragraph 4(c) of KPMG's Standard Terms and Conditions for Advisory and Tax Services (the “Standard Terms and Conditions”), including providing the written notice required prior to disseminating or advancing any of KPMG's advice, recommendations, information, or work product to third parties.

13. During the pendency of the chapter 11 cases, paragraph 6 of the Standard Terms and Conditions is deleted.

14. To the extent there are any discrepancies between this Order, the Application, the Kukoyi Declaration, and the Engagement Letters, this Order shall control.

15. KPMG shall review its files periodically during the pendency of these chapter 11 cases to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new relevant facts or relationships are discovered or arise, KPMG will use reasonable efforts to identify such further developments and will promptly file a supplemental declaration, as required by Bankruptcy Rules 2014(a).

16. The Debtors shall coordinate with KPMG to avoid any duplication of services provided by KPMG and any of the Debtors' other retained professionals in these chapter 11 cases. KPMG shall use reasonable efforts to avoid any such duplication.

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

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

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

20. 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.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE