

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>
--------------------------------------------------------------------------------------------------------------	---------------------------------	-----------------------------------------------------------------------------------------------------------------

**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 U.S. Trustee Guidelines~~ this Order, and such other procedures as may be fixed by order of this Court.

DRJ

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 XXXXXXXXXXXXXXXX U.S. 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 XXXXX~~
~~XXXXXX~~ 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

United States Bankruptcy Court
Southern District of Texas

In re:
Avaya Inc.
Debtor

Case No. 23-90088-drj
Chapter 11

CERTIFICATE OF NOTICE

District/off: 0541-4
Date Rcvd: Mar 22, 2023

User: ADIuser
Form ID: pdf002

Page 1 of 3
Total Noticed: 39

The following symbols are used throughout this certificate:

Symbol	Definition
+	Addresses marked '+' were corrected by inserting the ZIP, adding the last four digits to complete the zip +4, or replacing an incorrect ZIP. USPS regulations require that automation-compatible mail display the correct ZIP.
^	Addresses marked '^' were sent via mandatory electronic bankruptcy noticing pursuant to Fed. R. Bank. P. 9036.

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Mar 24, 2023:

Recip ID	Recipient Name and Address
db	+ Avaya Inc., 350 Mount Kemble Avenue, Morristown, NJ 07960-6635
cr	+ BRI 1875 Meridian, LLC, c/o Michael P. Menton, 3333 Lee Parkway, 8th Floor, Dallas, TX 75219-5111
cr	+ Bank of New York Mellon Trust Company, N.A., c/o Morgan, Lewis & Bockius LLP, 101 Park Avenue, New York, NY 10178-0060
cr	+ Communications Workers of America, AFL-CIO, 501 3rd Street NW, Washington, DC 20001-2797
cr	+ CyrusOne LLC, c/o Sprouse Law Firm, 901 Mopac Expressway South, Building 1, Suite 300, Austin, TX 78746-5776
intp	+ Debevoise Holders, Debevoise & Plimpton LLP, 66 Hudson Boulevard, New York, NY 10001-2189
cr	+ Lubbock Central Appraisal District, et al, c/o Laura J. Monroe, Perdue, Brandon, Fielder, Collins & Mott, PO Box 817, Lubbock, TX 79408-0817
cr	+ Maricopa County Treasurer, c/o Maricopa County Attorney's Office, 225 West Madison Street, Phoenix, AZ 85003, UNITED STATES 85003-2141
cr	+ Oklahoma County Treasurer, Tammy Jones, Oklahoma County Treasurer, 320 Robert S. Kerr, Room 307, Oklahoma City, OK 73102-3441
cr	+ Tax Appraisal District of Bell County, McCreary Veselka Bragg & Allen PC, Attn: Julie Anne Parsons, PO Box 1269, Round Rock, TX 78680-1269
cr	+ Verint Systems, Inc. Verint Systems, Inc., c/o Taylor English Duma LLP, 1600 Parkwood Circle, Suite 200, Atlanta, GA 30339-2119
cr	+ Weslaco ISD and City of Weslaco, c/o Hiram Gutierrez, 2805 Fountain Plaza Blvd., Suite B, Edinburg, Tx 78539-8031
cr	+ Winstron Corporation, K&L Gates LLP, 609 Main Street, Suite 4150, Houston, TX 77002-3283

TOTAL: 13

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.

Electronic transmission includes sending notices via email (Email/text and Email/PDF), and electronic data interchange (EDI). Electronic transmission is in Eastern Standard Time.

Recip ID	Notice Type: Email Address	Date/Time	Recipient Name and Address
cr	+ Email/Text: dallas.bankruptcy@LGBS.com	Mar 22 2023 20:05:00	Allen ISD, C/O John Kendrick Turner, 2777 North Stemmons Frwy, Suite 1000, Dallas, TX 75207, UNITED STATES 75207-2328
cr	+ Email/Text: bankruptcy@abernathy-law.com	Mar 22 2023 20:05:00	COLLIN COUNTY TAX ASSESSOR/COLLECTOR, Abernathy, Roeder, Boyd & Hullett, P.C., 1700 Redbud Blvd., Suite 300, McKinney, TX 75069-3276
cr	+ Email/Text: USCBNotices@cdtfa.ca.gov	Mar 22 2023 20:05:00	California Dept. of Tax and Fee Admin., 450 N Street, MIC: 82, Sacramento, CA 95814-4311
cr	+ Email/Text: dallas.bankruptcy@LGBS.com	Mar 22 2023 20:05:00	City Of Allen, C/O John Kendrick Turner, 2777 North Stemmons Frwy, Suite 1000, Dallas, TX 75207, UNITED STATES 75207-2328
cr	+ Email/Text: dallas.bankruptcy@LGBS.com	Mar 22 2023 20:05:00	City Of Frisco, C/O John Kendrick Turner, 2777 North Stemmons Frwy, Suite 1000, Dallas, TX 75207, UNITED STATES 75207-2328
cr	Email/Text: houston_bankruptcy@LGBS.com	Mar 22 2023 20:05:00	Cypress-Fairbanks ISD, Linebarger Goggan Blair & Sampson LLP, C/O Tara L. Grundemeier, P.O. Box 3064, Houston, TX 77253-3064
cr	+ Email/Text: dallas.bankruptcy@LGBS.com	Mar 22 2023 20:05:00	Dallas County, Linebarger Goggan Blair & Sampson, LLP, c/o John K Turner, 2777 N. Stemmons Frwy Ste 1000, Dallas, TX 75207-2328
cr	+ Email/Text: lemaster@slollp.com	Mar 22 2023 20:04:00	Dell Financial Services L.L.C., c/o Streusand Landon Ozburn & Lemmon, 1801 S. MoPac

District/off: 0541-4

User: ADIuser

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Date Rcvd: Mar 22, 2023

Form ID: pdf002

Total Noticed: 39

			Expressway, Suite 320, Austin, TX 78746-9817
cr	+ Email/Text: dallas.bankruptcy@LGBS.com	Mar 22 2023 20:05:00	Ellis County, C/O John Kendrick Turner, 2777 North Stemmons Frwy, Suite 1000, Dallas, TX 75207, UNITED STATES 75207-2328
cr	+ Email/Text: dallas.bankruptcy@LGBS.com	Mar 22 2023 20:05:00	Grayson County, C/O John Kendrick Turner, 2777 North Stemmons Frwy, Suite 1000, Dallas, TX 75207, UNITED STATES 75207-2328
cr	Email/Text: houston_bankruptcy@LGBS.com	Mar 22 2023 20:05:00	Harris County, Linebarger Goggan Blair & Sampson LLP, C/O Tara L. Grundemeier, P.O. Box 3064, Houston, TX 77253-3064
cr	Email/Text: houston_bankruptcy@LGBS.com	Mar 22 2023 20:05:00	Jefferson County, Linebarger Goggan Blair & Sampson LLP, c/o Tara L. Grundemeier, P.O. Box 3064, Houston, TX 77253-3064
cr	Email/Text: sanantonio.bankruptcy@publicans.com	Mar 22 2023 20:04:00	Bexar County, 112 E. Pecan Street, Suite 2200, c/o Don Stecker, San Antonio, TX 78205
cr	Email/Text: tleday@mvbalaw.com	Mar 22 2023 20:04:00	Midland Central Appraisal District, McCreary Veselka Bragg & Allen, PC, Attn: Julie Anne Parsons, PO Box 1269, Round Rock, TX 78680-1269
cr	Email/Text: houston_bankruptcy@LGBS.com	Mar 22 2023 20:05:00	Montgomery County, Linebarger Goggan Blair & Sampson LLP, c/o Tara L. Grundemeier, P.O. Box 3064, Houston, TX 77253-3064
cr	+ Email/Text: bncctnotifications@pbgc.gov	Mar 22 2023 20:04:00	Pension Benefit Guaranty Corporation, Office of the General Counsel, 445 12th Street, SW, Washington, DC 20024-2101
cr	+ Email/Text: bankruptcy@fult.com	Mar 22 2023 20:05:00	SAP America, Inc., c/o Brown & Connery LLP, Donald K. Ludman, Esquire, Julie F. Montgomery, Esquire, 6 North Broad Street - Suite 100, Woodbury, NJ 08096-4635
cr	+ Email/Text: dallas.bankruptcy@LGBS.com	Mar 22 2023 20:05:00	Smith County, Linebarger Goggan Blair & Sampson, LLP, c/o John K. Turner, 2777 N. Stemmons Frwy Ste 1000, Dallas, TX 75207-2328
cr	+ Email/Text: dallas.bankruptcy@LGBS.com	Mar 22 2023 20:05:00	Tarrant County, Linebarger Goggan Blair & Sampson, LLP, c/o John K. Turner, 2777 N. Stemmons Frwy Ste 1000, Dallas, TX 75207-2328
cr	Email/Text: tleday@mvbalaw.com	Mar 22 2023 20:04:00	Taylor County CAD, McCreary Veselka Bragg & Allen, PC, Attn: Julie Anne Parsons, PO Box 1269, Round Rock, TX 78680-1269
cr	^ MEBN	Mar 22 2023 19:58:51	Texas Comptroller of Public Accounts, Revenue Acco, Courtney J. Hull, P.O. Box 12548, Austin, TX 78711-2548
cr	Email/Text: tleday@mvbalaw.com	Mar 22 2023 20:04:00	The County of Brazos, Texas, McCreary Veselka Bragg & Allen, PC, Attn: Julie Anne Parsons, PO Box 1269, Round Rock, TX 78680-1269
cr	Email/Text: tleday@mvbalaw.com	Mar 22 2023 20:04:00	The County of Comal, Texas, McCreary Veselka Bragg & Allen, PC, Attn: Julie Anne Parsons, PO Box 1269, Round Rock, TX 78680-1269
cr	Email/Text: tleday@mvbalaw.com	Mar 22 2023 20:04:00	The County of Denton, Texas, McCreary Veselka Bragg & Allen, PC, Attn: Julie Anne Parsons, PO Box 1269, Round Rock, TX 78680-1269
cr	Email/Text: tleday@mvbalaw.com	Mar 22 2023 20:04:00	The County of Guadalupe, Texas, McCreary Veselka Bragg & Allen, PC, Attn: Julie Anne Parsons, PO Box 1269, Round Rock, TX 78680-1269
cr	Email/Text: tleday@mvbalaw.com	Mar 22 2023 20:04:00	The County of Williamson, Texas, McCreary Veselka Bragg & Allen, PC, Attn: Julie Anne Parsons, PO Box 1269, Round Rock, TX 78680-1269

District/off: 0541-4

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Date Rcvd: Mar 22, 2023

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TOTAL: 26

BYPASSED RECIPIENTS

The following addresses were not sent this bankruptcy notice due to an undeliverable address, *duplicate of an address listed above, *P duplicate of a preferred address, or ## out of date forwarding orders with USPS.

Recip ID	Bypass Reason	Name and Address
intp		Ad Hoc Noteholder Group
intp		Akin Ad Hoc Group
cr		Ascension Health
cr		Citibank, N.A.
intp		City of Pittsburgh Comprehensive Municipal Pension
cr		Element Fleet Corporation
intp		Goldman Sachs Bank USA, as Prepetition Term Loan A
cr		Hidalgo County
cr		JPMorgan Chase Bank, N.A.
op		Kurtzman Carson Consultants LLC
intp		Oliver Jiang, Securities Class Action Plaintiff
intp		Paul, Weiss Ad Hoc Group
intp		RingCentral, Inc.
intp		S&C Ad Hoc Group
cr		THE WOODLANDS METRO CENTER MUD AND THE WOODLANDS R
cr		Texas Taxing Entities
cr		The Bank of New York Mellon Trust Company, N.A.
op		Theodore Walker Cheng-De King
intp		United States Of America
cr		Wichita Falls Independent School District
intp		Wilmington Trust, National Association, as Trustee

TOTAL: 21 Undeliverable, 0 Duplicate, 0 Out of date forwarding address

NOTICE CERTIFICATION

I, Gustava Winters, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed .R. Bank. P.2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Mar 24, 2023

Signature: /s/Gustava Winters