

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

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|--|---|-------------------------------|
| In re: |) | |
| |) | Chapter 11 |
| |) | |
| AVAYA INC., <i>et al.</i> , ¹ |) | Case No. 23-90088 (DRJ) |
| |) | |
| Debtors. |) | (Jointly Administered) |
| |) | (Emergency Hearing Requested) |

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

Emergency relief has been requested. Relief is requested not later than 9:00 a.m. (prevailing Central Time) on February 15, 2023.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on February 15, 2023, at 9:00 a.m. (prevailing Central Time) in Courtroom 400, 4th floor, 515 Rusk Street, Houston, Texas 77002. Participation at the hearing will only be permitted by an audio and video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at (832) 917-1510. Once connected, you will be asked to enter the conference room number. Judge Jones's conference room number is 205691. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Jones's homepage. The meeting code is "Judge Jones". Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the "Electronic Appearance" link on Judge Jones's homepage. Select the case name, complete the required fields and click "Submit" to complete your appearance.

¹ 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.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.



The above-captioned debtors and debtors in possession (collectively, the “Debtors”) state the following in support of this motion (this “Motion”):²

Relief Requested

1. The Debtors seek entry of an order, substantially in the attached form (the “Order”), (a) authorizing, but not directing, the Debtors to (i) pay prepetition wages, salaries, other compensation, and reimbursable expenses, and (ii) continue employee benefits programs in the ordinary course, including payment of certain related prepetition obligations; and (b) granting related relief.

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 Debtors confirm their consent to 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), 362(d), 363(b), 507(a), and 541(b)(1) of title 11 of the United States Code (the “Bankruptcy Code”), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rule 9013-1(a) of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”).

² The Debtors, together with their non-Debtor affiliates (collectively, “Avaya” or the “Company”), are a leading provider of mission-critical, real-time communication applications. The facts and circumstances supporting this Motion are 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* (the “First Day Declaration”), filed contemporaneously with the filing of this Motion and incorporated by reference herein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

Background

5. On the date hereof (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

6. The Debtors have filed a motion requesting joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases and no official committees have been appointed or designated.

The Debtors' Workforce

7. As of the Petition Date, Avaya Inc. and its affiliated Debtor and non-Debtor entities have more than 6,500 employees in fifty-seven countries around the globe. The Debtors currently employ approximately 2,000 individuals (collectively, the "Employees") in the United States, as well as approximately seventy individuals in a number of Foreign Branches (as defined herein) around the world.

8. While the substantial majority of their Employees are not represented by a labor union (such non-represented Employees, collectively, the "Salaried Employees"), the Debtors are party to two collective bargaining agreements (the "CBAs") with respect to approximately 275 union Employees (collectively, the "Represented Employees"). Of the Debtors' Represented Employees, approximately 250 are employed under a CBA with the Communication Workers of America (the "CWA"), and the remaining twenty-five Represented Employees are covered by a CBA with various bargaining units of the International Brotherhood of Electrical Workers (the "IBEW"). As discussed in greater detail below, by this Motion the Debtors seek authority, but not direction, to continue to provide compensation and benefits to their Represented

Employees in compliance with the CBAs to which they are party.³ In addition to their domestic and foreign Employees, the Debtors also rely on approximately 3,400 independent contractors (collectively, the “Contractors”), who fulfill duties similar to Employees in furtherance of the Debtors’ business.

9. The Employees and Contractors perform a wide variety of functions crucial to the Debtors’ operations. Their skills, knowledge, and understanding of the Debtors’ operations and infrastructure are essential to preserving operational stability and efficiency. The Employees and Contractors include highly trained personnel who cannot easily be replaced. Accordingly, without the continued, uninterrupted services of the Employees and Contractors, the Debtors’ reorganization will be materially impaired.

10. At the same time, the vast majority of Employees and Contractors rely exclusively on their compensation and benefits to pay their daily living expenses and to support their families. Thus, Employees and Contractors will be exposed to significant financial constraints if the Debtors are not permitted to continue paying wages and salaries, providing employee benefits, and maintaining certain programs benefiting Employees and Contractors in the ordinary course of business. Consequently, the Debtors respectfully submit that the relief requested herein is necessary and appropriate under the facts and circumstances of these chapter 11 cases.

Compensation and Benefits

11. To minimize the personal hardship Employees and Contractors would suffer if prepetition Employee- or Contractor-related obligations are not paid or remitted when due or as expected, the Debtors seek authority to pay and honor certain prepetition claims and continue to

³ By requesting authorization to honor obligations relating to any CBA in this Motion, the Debtors are not assuming or affirming any contracts, agreements, programs, or applicability of any law related to the CBAs, and the Debtors reserve all of their rights with respect thereto.

honor obligations on a postpetition basis, as applicable, relating to, among other things: (a) Compensation and Withholding Obligations; (b) Active Employee Health and Welfare Benefits; (c) Other Employee Benefits; (d) Former Employee Health and Welfare Benefits; and (e) Administrator Fees (each as defined below and collectively, the “Compensation and Benefits”), as summarized in the following chart:

| Relief Sought | Amount |
|--|---------------------|
| <i>Compensation and Withholding Obligations</i> | <i>\$59,843,000</i> |
| Employee Wages | \$8,600,000 |
| Employee Sales Compensation | \$1,300,000 |
| Contractor Fees | \$46,000,000 |
| Foreign Branch Obligations | \$450,000 |
| Avaya Argentina Payroll Election | \$100,000 |
| Time-Off Benefits | \$1,375,000 |
| Withholding Obligations | \$0 |
| Reimbursable Expenses | \$650,000 |
| Corporate Card Expenses | \$1,350,000 |
| Additional Non-Insider Compensation Opportunities | \$18,000 |
| <i>Active Employee Health and Welfare Benefits</i> | <i>\$11,700,500</i> |
| Health Benefits | \$6,200,000 |
| Health Savings Accounts | \$850,000 |
| Flexible Spending Accounts | \$500 |
| Life and AD&D Insurance Benefits | \$70,000 |
| Disability Benefits | \$575,000 |
| Business Travel Insurance | \$30,000 |
| Worker's Compensation Programs | \$3,975,000 |
| 401(k) Plans | \$0 |
| <i>Other Employee Benefits</i> | <i>\$3,375,000</i> |
| Optional Employee-Paid Benefits | \$365,000 |
| Wellness Programs | \$10,000 |
| Tuition Assistance Program | \$0 |
| Academic Awards Program | \$0 |
| Non-Insider Severance Programs | \$3,000,000 |
| <i>Former Employee Health and Welfare Benefits</i> | <i>\$230,000</i> |
| Retiree Benefits Program | \$230,000 |
| COBRA Benefits | \$0 |
| <i>Administrator Fees</i> | <i>\$600,000</i> |
| Payroll and Benefits Processing Services | \$45,000 |
| Benefits Administration Services | \$395,000 |
| Relocation Programs | \$0 |
| Pension Administration Expenses | \$95,000 |
| Other Administration Services | \$65,000 |
| TOTAL | \$75,748,500 |

12. In addition, out of an abundance of caution, the Debtors seek authority to continue to honor the Compensation and Benefits provided to Employees on a postpetition basis in the ordinary course of business and pay all necessary costs related thereto.

I. Compensation and Withholding Obligations.

13. In the ordinary course of business, the Debtors incur obligations to their Employees and Contractors for Employee Wages, Employee Sales Compensation, Contractor Fees, Foreign Branch Obligations, Avaya Argentina Payroll Election, Time-Off Benefits, Withholding Obligations, Reimbursable Expenses, Corporate Card Expenses, and Additional Non-Insider Compensation Opportunities (each as defined below and collectively, the “Compensation and Withholding Obligations”). As of the Petition Date, the Debtors estimate that they owe approximately \$59,843,000 in the aggregate on account of accrued but unpaid Compensation and Withholding Obligations. Accordingly, the Debtors request authorization to continue to honor the Compensation and Withholding Obligations and to pay any related prepetition claims in the ordinary course of business.

A. Employee Wages.

14. In the ordinary course of business, the Debtors incur payroll obligations for base wages owed to Employees (the “Employee Wages”). The Employees are paid weekly, semi-monthly, or monthly. Although most Employees paid either on a semi-monthly or monthly basis are made current at the end of their respective pay period, approximately 275 of the Employees are paid on a weekly basis one-week in arrears. The Debtors pay approximately \$22 million per month in the aggregate on account of Employee Wages.

15. Because a substantial number of Employees have some form of their compensation paid in arrears, certain Employees may be owed accrued but unpaid Employee Wages as of the Petition Date. Employee Wages also may be due and owing as of the Petition Date because of, among other things, potential discrepancies between the amounts paid and the amounts that

Employees believe they should have been paid, which, upon resolution, may reveal that additional amounts are owed to such Employees.

16. As of the Petition Date, the Debtors estimate that they owe approximately \$8,600,000 on account of accrued but unpaid Employee Wages. The Debtors request authorization to pay all outstanding prepetition amounts on account of the Employee Wages, and to continue paying the Employee Wages on a postpetition basis in the ordinary course of business consistent with prepetition practices.

B. Employee Sales Compensation.

17. In addition to those Employees receiving Employee Wages, certain non-insider Employees are eligible to receive sales-based compensation, including, among other things, monthly commissions for sales or renewals of products and services purchased by customers (the “Employee Sales Compensation”). Approximately 425 Employees are eligible to receive Employee Sales Compensation. On average, the Debtors pay approximately \$4,500,000 per month in Employee Sales Compensation.

18. As of the Petition Date, the Debtors estimate that they owe approximately \$1,300,000 on account of accrued but unpaid Employee Sales Compensation. The Debtors request authorization to pay any outstanding prepetition amounts incurred on account of the Employee Sales Compensation, and to continue paying the Employee Sales Compensation on a postpetition basis in the ordinary course of business consistent with prepetition practices.

C. Contractor Fees.

19. The Debtors directly engage Contractors and incur payment obligations to their Contractors for services rendered to the Debtors (collectively, the “Contractor Fees”). The Debtors pay the applicable Contractor, or the entity that has supplied the applicable Contractor to the

Debtors, based upon periodic invoices submitted to the Debtors. The Contractor Fees are then processed through the Debtors' accounts payable system. On average, the Debtors pay approximately \$27 million in Contractor Fees per month.⁴ The Contractors are not eligible to receive the Employee Health and Welfare Benefits (as defined below) or any other benefits provided by the Debtors and further described in this Motion.

20. As of the Petition Date, the Debtors estimate that they owe approximately \$46 million on account of accrued but unpaid Contractor Fees. The Debtors request authorization to pay all outstanding prepetition amounts incurred on account of the Contractor Fees, and to continue paying the Contractor Fees on a postpetition basis in the ordinary course of business consistent with prepetition practices.

D. Foreign Branch Obligations.

21. The Debtors maintain branch operations in six foreign countries (the "Foreign Branches"), with approximately seventy Employees in the aggregate detailed to such Foreign Branches. Debtor Avaya EMEA, Ltd. ("Avaya EMEA") maintains Foreign Branches in Saudi Arabia, South Africa, Portugal, and Greece, while Debtor Sierra Asia Pacific Inc. ("Sierra Asia Pacific") operates Foreign Branches in Thailand and Taiwan. Avaya EMEA and Sierra Asia Pacific pay various of the Compensation and Benefits and contract with third-party providers to procure various administrative services (*e.g.*, payroll processing) and health and welfare benefits to Employees of the Foreign Branches that are generally comparable to those provided to U.S. Employees (collectively, the "Foreign Branch Obligations"), all of which may vary slightly by Foreign Branch.

⁴ The foregoing includes amounts payable to service providers such as TapFin Process Solutions, which provides workforce management solutions for supplemental staffing.

22. As of the Petition Date, the Debtors estimate that they owe approximately \$450,000 on account of accrued but unpaid Foreign Branch Obligations. The Debtors request authorization to pay all outstanding prepetition amounts incurred on account of the Foreign Branch Obligations, and to continue paying the Foreign Branch Obligations on a postpetition basis in the ordinary course of business consistent with prepetition practices.

E. Avaya Argentina Payroll Election.

23. Avaya provides the opportunity for certain active employees (the “Avaya Argentina Employees”) of non-Debtor Avaya Argentina S.R.L. (“Avaya Argentina”) to elect to have up to twenty percent of their salary paid in USD to a United States bank account (the “Avaya Argentina Payroll Election”). As of the Petition Date, less than 100 Avaya Argentina Employees participate in the Avaya Argentina Payroll Election Program, and approximately \$75,000 to \$80,000 is transferred under the program each month. The Debtors hold the salaries transferred through the Avaya Argentina Payroll Election in trust for the benefit of the participating Avaya Argentina Employees, and these funds may not constitute property of the Debtors’ estates. Out of an abundance of caution, because the USD portion of participating Avaya Argentina Employees’ salaries is paid through a Debtor bank account,⁵ the Debtors request authorization to remit approximately \$100,000 in prepetition elections made but not yet deposited to the Avaya Argentina Employees’ United States bank accounts, and to continue the Avaya Argentina Payroll Election on a postpetition basis in the ordinary course of business consistent with prepetition practices.

⁵ Funds are transferred from non-Debtor Avaya Argentina’s bank account to a Debtor bank account for the benefit of participating Avaya Argentina Employees.

F. Time-Off Benefits.

24. The Debtors offer several paid and unpaid time-off benefits for Employees, including Vacation Time, Other Paid Leave, and Parental Leave (each as defined below, and collectively, the “Time-Off Benefits”).

25. **Vacation Time.** In the ordinary course of business, the Debtors provide Represented Employees with paid vacation time (“Vacation Time”). Represented Employees accrue between one and five weeks of Vacation Time per year depending on their length of service with the Debtors. Vacation Time begins to accrue upon the completion of six months of service. Represented Employees may carry over unused Vacation Time accrued in a given calendar year into the following calendar year. Any carryover Vacation Time is forfeited if unused by April of the following calendar year. Represented Employees who are terminated or resign are entitled to a cash payment in lieu of the accrued but unused Vacation Time. Any amounts due on account of accrued but unused Vacation Time are paid to a Represented Employee in one lump sum, in addition to any unpaid Employee Wages, in the first bi-weekly pay period following the Represented Employee’s termination or resignation. As of the Petition Date, the Debtors estimate that their current cash obligation for Vacation Time for Represented Employees is approximately \$1,300,000 (the “Represented Employee Accrued Vacation Time”).

26. Certain Salaried Employees (collectively, the “Exempt Employees”) follow a discretionary time-off (“DTO”) model, and therefore the Debtors do not presently have any obligations to Exempt Employees on account of Vacation Time or related obligations. However, the Debtors’ other Salaried Employees (collectively, the “Non-Exempt Employees”) continue to accrue Vacation Time. As of the Petition Date, the Debtors estimate that they owe approximately \$75,000 in accrued but unpaid Vacation Time to approximately forty Non-Exempt Employees

(the “Non-Exempt Employee Accrued Vacation Time,” and, together with the Represented Employee Accrued Vacation Time, the “Accrued Vacation Time”).

27. **Other Paid Leave and Parental Leave.** The Debtors also permit all Employees to take certain other paid leaves of absence for personal reasons, many of which are required by law. The Debtors pay Employees for certain missed work time in the ordinary course of business for bereavement leave and jury duty or court attendance (the “Other Paid Leave”). Employees are not entitled to any separate cash payments in addition to their normal compensation for the Other Paid Leave. Additionally, the Debtors provide eligible Employees with up to twelve weeks of unpaid parental leave following the birth or adoption of a child (the “Parental Leave”) in accordance with the Family and Medical Leave Act (“FMLA”).

28. As of the Petition Date, the Debtors estimate that they owe approximately \$1,375,000 on account of the Time-Off Benefits, all of which is Accrued Vacation Time. The Debtors request authorization to pay all outstanding prepetition amounts incurred on account of the Time-Off Benefits, and to continue paying the Time-Off Benefits on a postpetition basis in the ordinary course of business consistent with prepetition practices.

G. Withholding Obligations.

29. The Debtors are required by federal and state laws to withhold from Employees’ Wages amounts related to federal, state, and local income taxes, Medicare taxes, Social Security, and state-issued employment insurance (collectively, the “Employee Payroll Taxes”) for remittance to the appropriate federal, state, or local taxing authority. Moreover, the Debtors are required by applicable statutory authority to match from their own funds Social Security, Medicare taxes, and certain additional amounts for federal and state unemployment insurance and short-term disability insurance (the “Employer Payroll Taxes” and, together with the Employee Payroll

Taxes, the “Payroll Taxes”). On average, the Debtors pay and remit approximately \$6 million per month on account of the Payroll Taxes.

30. The Debtors also routinely deduct certain amounts from Employees’ Wages, including, without limitation, (a) garnishments, child support and service charges, and other similar deductions and (b) other pre- and post-tax deductions payable pursuant to certain of the Employee Health and Welfare Benefits, including health insurance premiums and 401(k) plan contributions (collectively, the “Deductions,” and together with the Payroll Taxes, the “Withholding Obligations”). On average, the Debtors withhold and remit approximately \$2,800,000 per month on account of all Deductions.

31. As of the Petition Date, the Debtors do not believe there are any Withholding Obligations that have been deducted but not yet remitted to the appropriate third-party payees. Moreover, the Debtors believe that any amounts held by the Debtors on account of the Withholding Obligations generally are held in trust by the Debtors and are not property of their estates. As such, the Debtors do not believe they need authority to remit such payments to the appropriate third parties. However, out of an abundance of caution, the Debtors request authorization to pay all outstanding prepetition amounts incurred on account of the Withholding Obligations, and to continue paying the Withholding Obligations on a postpetition basis in the ordinary course of business consistent with prepetition practices.

H. Reimbursable Expenses.

32. The Debtors reimburse Employees for business expenses and other qualifying expenses incurred in carrying out their employment responsibilities, including, but not limited to, expenses for meals, hotels, flights, car rentals, parking, fuel costs, and other qualifying expenses (collectively, the “Reimbursable Expenses”). Except for those Employees who are issued a

Corporate Card (as defined below), Employees pay for incurred Reimbursable Expenses by using either a personal credit card or cash.⁶ Employees then submit paper receipts to request reimbursement, and if approved in accordance with internal policies and procedures, the Reimbursable Expenses are processed through the Debtors' accounts payable system. Without continued reimbursement of the Reimbursable Expenses, Employees relying on these benefits would be saddled with additional costs, causing personal financial hardship. On average, the Debtors pay approximately \$430,000 per month in Reimbursable Expenses.

33. As of the Petition Date, the Debtors estimate that they owe approximately \$650,000 on account of accrued but unpaid Reimbursable Expenses. Additionally, although the Debtors ask that reimbursement requests be submitted promptly, submission delays occur from time to time. Employees may therefore submit reimbursement requests for prepetition expenses after the Petition Date. The Debtors request authorization to pay all outstanding prepetition amounts incurred on account of the Reimbursable Expenses, and to continue paying the Reimbursable Expenses on a postpetition basis in the ordinary course of business consistent with prepetition practices.

I. Corporate Card Expenses.

34. Employees pay for the majority of the Reimbursable Expenses they incur through a combination of commercial card accounts and related contractual arrangements with American Express Travel Related Services Company, Inc. and its subsidiaries and affiliates (collectively, "American Express").

⁶ Some Employees with Corporate Cards may still incur Reimbursable Expenses for items such as mileage or charges incurred for vendors who do not accept American Express.

35. The Debtors provide American Express corporate credit cards (collectively, the “Corporate Credit Cards”) to approximately seventy-five Employees pursuant to a corporate card account agreement (the “CCA Agreement”) between the Debtors and American Express for ordinary course expenses that they incur in performing their job functions. Corporate Credit Cards are used by Employees to charge business-related travel and marketing expenses. It is essential to the continued operation of the Debtors’ business that the Debtors be permitted to continue reimbursing, or making direct payments on behalf of, Employees for such expenses.

36. In addition, as an essential part of their business operations, the Debtors: (a) require Employees to use American Express-issued meeting cards to pay for the Debtors’ procurement of items, such as office supplies (collectively, the “Corporate Meeting Cards” and together with the Corporate Credit Cards, the “Corporate Cards”), which are used in the ordinary course of the operation of the Debtors’ businesses pursuant to a corporate meeting card agreement (the “CMC Agreement”); and (b) require certain Employees to charge expenses for business travel undertaken in the ordinary course of performing their job functions to the Debtors’ centrally billed accounts provided by American Express (collectively, the “Central Billed Accounts”).

37. Each individual holder of a Corporate Card is individually and personally liable to American Express for the payment of the amounts charged to their respective Corporate Card. Employees may submit expense reimbursement reports for expenses charged on their Corporate Cards through the Debtors’ expense system and the Debtors process and directly pay all reimbursable amounts due to American Express on the Employee’s behalf. Because American Express directly bills each cardholder for all charges incurred on their individual Corporate Card at the end of each billing cycle, failure to timely process expense reimbursements to American Express on an Employee’s behalf may result in serious financial hardship to the extent

the Employees are faced with the choice to either pay all un-reimbursed expenses due on their Corporate Card from their personal funds up front or to incur late charges and interest expenses, as well as other potential negative credit implications.

38. Use of the Corporate Cards is an integral part of the Debtors' account functions, and continuation of the Employees' ability to use the Corporate Cards and Central Billed Accounts for procurement and travel purposes is essential to the continued operation of the Debtors' businesses. On average, the Debtors pay approximately \$900,000 per month to American Express for amounts incurred on the Corporate Cards that are submitted for reimbursement through the Debtors.

39. As of the Petition Date, the Debtors estimate that they owe approximately \$1,350,000 on account of Corporate Cards. The Debtors request authorization to pay all outstanding prepetition amounts incurred on account of the Corporate Cards, and to continue paying the Corporate Cards on a postpetition basis in the ordinary course of business consistent with prepetition practices.

J. Additional Non-Insider Compensation Opportunities.

40. In addition to regular Employee Wages, the Debtors may provide Employees with additional compensation through various payments if certain eligibility criteria are met. More specifically, the Debtors offer their Employees New Hire Awards, Incentive Programs, Non-Insider Retention Awards, and Referral Awards (each as defined below and collectively, the "Additional Non-Insider Compensation Opportunities").

41. By this Motion, the Debtors are not seeking to make any payments to any "insider" (as the term is defined in section 101(31) of the Bankruptcy Code) under any of the Additional

Non-Insider Compensation Opportunities. Should the Debtors in the future seek authority to make any such payments to insiders, the Debtors will do so by separate motion filed with the Court.

1. New Hire Awards.

42. From time to time, the Debtors may offer certain Employee-candidates a sign-on cash payment, subject to their commencement of employment, in addition to their base salary (the “New Hire Awards”). For candidates who the Debtors believe will bring additional value to their workforce and have unique experience and knowledge with respect to the Debtors’ industry, the Debtors offer New Hire Awards as an incentive for such Employee-candidates to leave their current places of employment to work for the Debtors. New Hire Awards are granted on a case-by-case basis, and may include clawback provisions requiring the Employee-candidate to remain employed with the Debtors for at least six months or one year. In 2022, the average New Hire Award was approximately \$10,000 per Employee-candidate. New Hire Awards allow the Debtors to provide competitive compensation packages to Employee-candidates and play an important role in the Debtors’ recruiting efforts, and thus, their operations.

43. As of the Petition Date, the Debtors do not believe they owe any prepetition amounts on account of New Hire Awards. The Debtors request authorization to continue to offer and pay prospective Employee-candidates the New Hire Awards on a postpetition basis in the ordinary course of business consistent with prepetition practices.

2. Incentive Programs.

44. Recognizing the achievements of their Employees (whether performance-based or for their continued service to the Debtors) is essential to the continued morale and performance of the Employees. In their continuing efforts to drive high performance, the Debtors offer various

incentive and recognition programs for Employees to acknowledge achievements of those individuals and encourage similar performance.

a. Represented Employee Awards.

45. **Service Awards.** Pursuant to the terms of their respective CBAs, the Represented Employees are eligible to receive cash awards, gift certificates or other means of compensation for achieving certain significant milestones of service (the “Service Awards”). Specifically, the Debtors recognize each five-year service anniversary or retirement of a Represented Employee (whether by service or disability) with their choice of an award from the Debtors’ collection of Service Awards for which they are eligible. In 2022, the Debtors provided Service Awards of approximately \$27,000 to their Represented Employees.

46. **Certification Bonuses.** The Debtors additionally provide Represented Employees at certain levels with certification bonuses (the “Certification Bonuses”) designed to grow their skills and knowledge in intellectual property and converged products and technologies. In 2022, the Debtors paid approximately \$350,000 in Certification Bonuses to their Represented Employees.

47. **Local Advantage Program.** Represented Employees may also participate in the Local Advantage Program (the “Local Advantage Program”), through which customers pay for services provided by a United States citizen who has passed certain background checks. Salaried Represented Employees who participate in the Local Advantage Program receive a yearly bonus of \$400. In 2022, the Debtors paid approximately \$20,000 in bonuses under the Local Advantage Program to their Represented Employees.

48. **Yearly Avaya Award.** The Debtors also provide Represented Employees with an opportunity to receive meaningful rewards based on their overall performance and contributions

to the Debtors' business results (the "Yearly Avaya Award" and together with the Service Awards, the Certification Bonuses, and the Local Advantage Program bonus, the "Represented Employee Awards"). The Yearly Avaya Award emphasizes overall individual performance, including individual impact on business results and performance against pre-defined objectives. In 2022, the Debtors paid approximately \$170,000 in Yearly Avaya Awards to their Represented Employees.

49. As of the Petition Date, the Debtors do not believe they owe any prepetition amounts on account of Represented Employee Awards. The Debtors request authorization to continue paying for the Represented Employee Awards on a postpetition basis in the ordinary course of business consistent with prepetition practices.

b. *De Minimis Incentive Programs.*

50. In addition to the specific programs detailed above, from time to time, the Debtors also offer Employees a variety of *de minimis* incentive programs designed to provide small spot bonuses designed to promote specific business or strategic objectives, or to recognize employee contributions to short-term business needs. These programs include, but are not limited to: (a) the "Ovation" program (awarding one-time payments of no more than \$200 each to Employees for particular achievements and special efforts); (b) the "TEE" program (awarding payments of no more than \$65,000 per year in the aggregate to Employees who demonstrate Avaya's six cultural principles); and (c) the "Microsoft Certification Incentive Program" (awarding payments of up to \$1,000 for participating Employees who complete a required level of Microsoft software training) (collectively, the "De Minimis Incentive Programs," and, together with the Represented Employee Awards, collectively, the "Incentive Programs").

51. As of the Petition Date, the Debtors estimate that they owe approximately \$15,000 in the aggregate on account of the *De Minimis* Incentive Programs. The Debtors request authorization to pay all outstanding prepetition amounts incurred on account of the *De Minimis* Incentive Programs, and to continue paying for the *De Minimis* Incentive Programs on a postpetition basis in the ordinary course of business consistent with prepetition practices.

3. Non-Insider Retention Awards.

52. The Debtors provide payments (the “Non-Insider Retention Awards”) to non-insider Employees who possess certain skills or knowledge to incentivize them to remain in the employ of the Debtors for a set time period. As of the Petition Date, approximately twenty Employees are eligible for Non-Insider Retention Awards pursuant to a standard retention agreement with the Debtors, each of which contains a promise of future payment if the Employee remains with the Debtors through a predetermined date, subject to the applicable Employee’s continued employment through the date of payment and satisfaction of minimum performance standards. Prior to the Petition Date, the Debtors paid approximately \$300,000 in aggregate Non-Insider Retention Awards pursuant to such agreements. The Debtors estimate approximately \$300,000 will come due under such agreements postpetition, between March 2023 and May 2024.

53. As of the Petition Date, the Debtors do not believe they owe any prepetition amounts on account of the Non-Insider Retention Awards. The Debtors request authorization to continue paying the Non-Insider Retention Awards on a postpetition basis in the ordinary course of business consistent with prepetition practices.

4. Referral Awards.

54. The Debtors also provide cash awards to Employees who refer candidates with specific skills or knowledge to the Debtors and are ultimately hired by the Debtors to fill certain

roles (the “Referral Awards”). In 2022, the Debtors paid approximately \$21,000 in Referral Awards.

55. As of the Petition Date, the Debtors estimate that they owe approximately \$3,000 on account of the Referral Awards. The Debtors request authorization to pay all outstanding prepetition amounts incurred on account of the Referral Awards, and to continue paying the Referral Awards on a postpetition basis in the ordinary course of business consistent with prepetition practices.

II. Active Employee Health and Welfare Benefits.

56. In the ordinary course of business, the Debtors offer health and welfare benefits to eligible Employees for medical, dental, and vision care coverage and certain other welfare benefits, including Health Benefits, Health Savings Accounts, Flexible Spending Accounts, Life and AD&D Insurance Benefits, Disability Benefits, Business Travel Insurance, Workers’ Compensation Benefits, and the 401(k) Plans (each as defined below and collectively, the “Active Employee Health and Welfare Benefits”). As of the Petition Date, the Debtors estimate that they owe approximately \$11,700,500 in the aggregate on account of accrued but unpaid Active Employee Health and Welfare Benefits. Accordingly, the Debtors request authorization to continue to honor the Active Employee Health and Welfare Benefits and to pay any prepetition claims with respect thereto in the ordinary course of business.

A. Health Benefits.

57. The Debtors offer Employees the opportunity to participate in a variety of health benefit plans, including the Health Plans and the Vision Plan (each as defined below and collectively, the “Health Benefits”). The Health Benefits are customary for similarly-sized companies, and Employees and their dependents have come to rely on the Health Benefits.

Without the Health Benefits, Employees would be forced to either forego health benefit coverage completely or obtain potentially expensive out-of-pocket insurance coverage, which would likely adversely affect Employee morale. The Debtors request authorization to pay or remit all outstanding prepetition amounts incurred on account of the Health Benefits, and to continue paying the Health Benefits on a postpetition basis in the ordinary course of business consistent with prepetition practices.

1. Health Plans.

58. The Debtors offer a variety of medical and prescription drug coverages to current Salaried Employees (the “Salaried Employee Health Plan”) and Represented Employees (the “Represented Employee Health Plan,” and, together with the Salaried Employee Health Plan, collectively, the “Health Plans”).

59. Under the Salaried Employee Health Plan, participants have five medical benefit options: (a) a point-of-service option (the “Salaried Employee POS Plan”); (b) a consumer-directed health plan with a corresponding savings account (the “CDHP/HSA Plan”); (c) a standalone consumer-directed health plan (the “CDHP Alternative Plan”); (d) a health maintenance organization plan (the “Salaried Employee HMO Plan”); or (e) a Hawaii Medical Service Association plan (the “HMSA Plan”). The Salaried Employee Health Plan provides coverage for, among other medical costs, outpatient and inpatient services, preventative care, and prescription drugs. Participants pay monthly premiums between approximately \$125 and \$975 depending on the level of coverage selected under their chosen plan option. The Debtors pay approximately \$1,700 per month per eligible employee, including Employee contributions, to provide the medical benefits under the Salaried Employee Health Plan.

60. Pursuant to the terms of their CBAs, the Debtors' Represented Employees are eligible to select one of three medical benefit options under the Represented Employee Health Plan: (a) a point-of-service option (the "Represented Employee POS Plan"); (b) a traditional indemnity option (the "Indemnity Plan"); or (c) a health maintenance organization plan (the "Represented Employee HMO Plan"). The Debtors pay on average \$1,550 per month per eligible employee to provide the medical benefits under the Represented Employee Health Plan. In addition, the Debtors offer prescription drug coverage (the "Prescription Drug Plan") to both Represented Employees enrolled in the Represented Employee POS Plan and the Indemnity Plan and Salaried Employees. The Debtors pay approximately \$960,000 in the aggregate per month to provide the Prescription Drug Plan.

61. The Debtors also offer dental benefit options to Employees under their respective health plans. Under the Salaried Employee Health Plan, Salaried Employees may choose from a dental preferred provider option (the "Dental PPO Plan") or a dental maintenance organization (the "DMO Plan"). Participants pay monthly premiums of approximately \$10 and \$90 depending on the level of chosen coverage. The Debtors pay, on average, \$125 per month per eligible employee, including Employee contributions, to provide the dental benefits under the Salaried Employee Health Plan.

62. Similarly, consistent with their respective CBAs, the Represented Employee Health Plan offers Represented Employees a Dental PPO Plan or a DMO Plan. The Debtors pay on average \$80 per month per eligible employee to provide the dental benefits under the Represented Employee Health Plan.

63. Except for the Salaried Employee HMO Plan, the HMSA Plan, and the Represented Employee HMO Plan, which are fully-insured, the Debtors self-insure the Health Plans, but have

contracted with Aetna Inc. (“Aetna”) to administer the coverage thereunder and provide related services. With respect to the Salaried Employee HMO Plan and the Represented Employee HMO Plan, the Debtors contract with Kaiser Permanente (“Kaiser”) to administer the coverage thereunder. The HMSA Plan is administered by the Hawaii Medical Service Association. The Prescription Drug Plan is administered by Express Scripts.

64. As of the Petition Date, the Debtors estimate that they owe approximately \$6,200,000 on account of the Health Plans to cover outstanding, unpaid claims submitted by Employees. The Debtors request authorization to pay all outstanding prepetition amounts incurred on account of the Health Plans, and to continue paying the Health Plans on a postpetition basis in the ordinary course of business consistent with prepetition practices.

2. Vision Plan.

65. The Debtors offer all Employees the option to participate in a vision plan (the “Vision Plan”) administered by EyeMed Vision Care, LLC (“EyeMed”). Approximately 1,600 Employees are enrolled in the Vision Plan, consisting of approximately 1,330 Salaried Employees and 270 Represented Employees. Salaried Employees pay monthly premiums of up to approximately \$25 depending on the level of coverage selected under the Vision Plan. The Debtors pay approximately \$30,000 per month, including Employee contributions, to offer the benefits under the Vision Plan.

66. As of the Petition Date, the Debtors do not believe they owe any prepetition amounts to EyeMed on account of the Vision Plan. However, out of an abundance of caution, the Debtors request authorization to pay all outstanding prepetition amounts incurred on account of the Vision Plan, and to continue paying the Vision Plan on a postpetition basis in the ordinary course of business consistent with prepetition practices.

B. Health Savings Accounts.

67. Employees who participate in the CDHP/HSA Plan also may contribute a portion of their Wages into a health savings account (the “Health Savings Account” or “HSA”), administered by Fidelity Investments (“Fidelity”) in conjunction with the Debtors’ agreements with Aetna related to the Medical Plans. The Debtors contribute between \$125 and \$1,000 annually to participants’ Health Savings Accounts depending on plan enrollment and timing (the “HSA Contributions”). Employees may make pre-tax contributions (collectively, the “HSA Deductions”) to their HSA through payroll deductions to cover reimbursements of amounts paid for qualified medical expenses under the Health Plans and the Vision Plan up to the maximum amount permitted by the Internal Revenue Service. As of the Petition Date, approximately 1,000 Employees have a Debtor-sponsored HSA and continue to make regular contributions.

68. As of the Petition Date, the Debtors estimate that they owe approximately \$850,000 on account of HSA Contributions, and do not believe they owe any amounts on account of HSA Deductions made by Employees. The Debtors request authorization to pay all prepetition HSA Contributions, to remit any prepetition Employee HSA Deductions to the extent necessary, and to continue honoring their obligations under the HSA on a postpetition basis in the ordinary course of business consistent with prepetition practices.

C. Flexible Spending Accounts.

69. To allow Employees to set aside pre-tax income to be used for qualified expenses, the Debtors provide Employees with a number of flexible spending (reimbursement) account options to make pre-tax contributions through payroll deductions to pay for certain health and welfare needs (collectively, the “Flexible Spending Accounts”), which include: (a) a flexible

spending account for health care (“Health Care FSA”) for participants in the POS Plans and CDHP Alternative Plan to pay qualified health care expenses; (b) a limited flexible spending account for health care (the “Limited Health Care FSA”) for participants in the CDHP/HSA Plan to pay for qualified dental and vision expenses; (c) a flexible spending account to pay for qualified expenses related to care for dependents while Employees or their spouses/partners work or attend school (the “Dependent Care FSA”);⁷ and (d) a flexible spending account for certain transportation expenses (the “Transportation FSA,” and together with the Health Care FSA, the Limited Health Care FSA, and the Dependent Care FSA, the “FSAs”).

70. Currently, approximately 300 Employees contribute to a Health Care FSA, approximately 475 Employees contribute to a Limited Health Care FSA, approximately 100 Employees participate in the Dependent Care FSA program, and approximately five Employees contribute to the Transportation FSA, all of which are administered by HealthEquity, Inc. (“HealthEquity”). On average, the Debtors deduct approximately \$100,000 from Employees’ Wages on account of Employee contributions to their respective Flexible Spending Accounts on a monthly basis (the “Employee FSA Deductions”).

71. Because the Debtors remit all Employee FSA Deductions to HealthEquity on the same day they are deducted from each Employee’s Wages, the Debtors do not believe they are presently holding any amounts as of the Petition Date that have not yet been remitted on account of any Employee FSA Deductions. As of the Petition Date, the Debtors estimate that they owe approximately \$500 on account of matching contributions for Represented Employees under the Dependent Care FSA. The Debtors request authorization to remit all outstanding prepetition

⁷ For Represented Employees, the Debtors will match Dependent Care FSA contributions at a rate of \$0.25 for every \$1 contributed, up to \$1,000.

amounts owed on account of the Flexible Spending Accounts, and to continue paying for the Flexible Spending Accounts on a postpetition basis in the ordinary course of business consistent with prepetition practices.

D. Life and AD&D Insurance Benefits.

72. The Debtors offer Employees several life and accidental death and dismemberment insurance policies (collectively, the “Life and AD&D Insurance Benefits”), which are administered by The Metropolitan Life Insurance Company (“MetLife”). In the event of a death or serious injury, many Employees’ long-term planning consists solely of the Life and AD&D Insurance Benefits.

73. More specifically, the Debtors provide all Employees with basic term life and accidental death and dismemberment insurance (the “Basic Life and AD&D Insurance”). The Basic Life and AD&D Insurance is fully insured by the Debtors and provides benefits under a combined amount equal to one times (for non-executives) and two times (for executives) an Employee’s total annual earnings, with a maximum benefit amount of up to \$1 million for non-executives and \$2 million for executives. The Debtors pay approximately \$50,000 per month in premiums with respect to the Basic Life and AD&D Insurance.

74. As of the Petition Date, the Debtors estimate that they owe approximately \$70,000 on account of premiums for the Basic Life and AD&D Insurance. The Debtors request authorization to pay all outstanding prepetition amounts incurred on account of the Life and AD&D Insurance, and to continue honoring their obligations under the Basic Life and AD&D Insurance on a postpetition basis in the ordinary course of business consistent with prepetition practices.

E. Disability Benefits.

75. The Debtors provide Employees with both short-term disability benefits (the “Short-Term Disability Benefits”) and long-term disability benefits (the “Long-Term Disability Benefits,” and together with the Short-Term Disability Benefits, collectively, the “Disability Benefits”). In the event of a short-term disability due to an illness, injury, or pregnancy-related condition, eligible Salaried Employees may receive between seventy and ninety percent of their weekly pay depending on years-of-service under the Short-Term Disability Benefits and may continue to receive the Short-Term Disability Benefits up to a maximum of twenty-six weeks. Eligible Represented Employees may receive between 50 and 100 percent (depending on years of net credited service) of their annual net pay depending on years-of-service under the Short-Term Disability Benefits and may continue to receive the Short-Term Disability Benefits up to a maximum of fifty-two weeks.

76. Following the period of the Short-Term Disability Benefits, Employees are eligible to receive Long-Term Disability Benefits. With regards to the Long-Term Disability Benefits, eligible Salaried Employees are entitled to receive sixty percent of their monthly pay. Eligible Represented Employees are entitled to receive up to fifty percent of eligible pay (calculated as basic pay plus an annual performance award payment), with an additional buy-up option available for up to sixty percent of the represented Employee’s eligible pay. The Long-Term Disability Benefits begin after an Employee is absent from work for twenty-six consecutive weeks following a covered disability and continue until either the Employee is able to return to work or the Employee reaches the established Social Security retirement age.

77. Currently, approximately thirty Employees are receiving Short-Term Disability Benefits, which are self-insured through Sedgwick Claims Management Services, Inc.

(“Sedgwick”). On a monthly basis, the average total salary paid for those Employees receiving Short-Term Disability Benefits is approximately \$150,000. Approximately seventy-five Employees are receiving Long-Term Disability Benefits, which are self-insured through Sedgwick for claims prior to 2017 and fully-insured by MetLife for claims arising in and after 2017.

78. As of the Petition Date, the Debtors estimate that they owe approximately \$75,000 on account of the Short-Term Disability Benefits and approximately \$500,000 on account of the Long-Term Disability Benefits. The Debtors request authorization to pay all outstanding prepetition amounts incurred on account of the Disability Benefits, and to continue honoring their obligations on account of the Disability Benefits on a postpetition basis in the ordinary course of business consistent with prepetition practices.

F. Business Travel Insurance.

79. The Debtors provide various benefits to Employees who are injured or experience a medical emergency while traveling on a company-paid and approved business or relocation trip. Specifically, the Debtors contract with Chubb Corp. (“Chubb”) to provide all Employees with business travel accident insurance (the “Business Travel Accident Insurance”), which is provided by the Debtors to Employees at no cost and provides coverage of up to four times the Employee’s annual salary, up to a maximum amount of \$3 million (and provides coverage of up to \$100,000 for a spouse or \$50,000 for any child traveling with the Employee on an approved business trip). The Debtors also provide related travel medical insurance through The Life Insurance Corporation of North America (“CIGNA”) (the “Business Travel Medical Insurance”), and travel assistance concierge service through International SOS (the “Business Assistance Concierge Service” and

together with the Business Travel Accident Insurance and the Business Travel Medical Insurance, the “Business Travel Insurance”).

80. The Debtors pay approximately \$100,000 per year for expenses related to the Business Travel Insurance. As of the Petition Date, the Debtors estimate that they owe approximately \$30,000 on account of premiums under the Business Travel Insurance. The Debtors request authorization to pay all outstanding amounts incurred on account of the Business Travel Insurance, and to continue paying the Business Traveler Insurance on a postposition basis in the ordinary course of business consistent with prepetition practices.

G. Workers’ Compensation Programs.⁸

81. In the ordinary course of business, the Debtors maintain multiple workers’ compensation policies in accordance with applicable state law requirements (the “Workers’ Compensation Programs”).

82. **Domestic Workers’ Compensation Policy.** The Debtors maintain workers’ compensation insurance at the level required by statute for each state in which the Debtors conduct business to satisfy any claims made by an Employee for workers’ compensation (each, a “Workers’ Compensation Claim”). The Debtors maintain a domestic workers’ compensation policy (the “Domestic Workers’ Compensation Policy”), administered by American Zurich Insurance Company (“Zurich Insurance”), which also provides coverage for the Debtor’s potential liability (the “Employer’s Liability Insurance,” and such claim, an “Employer’s Liability Claim”). The Domestic Workers’ Compensation Policy is subject to a \$500,000 deductible applicable to

⁸ Contemporaneously herewith, the Debtors have filed the *Debtors’ Emergency Motion for Entry of an Order (I) Authorizing the Debtors to (A) Continue Insurance Coverage Entered into Prepetition and Satisfy Prepetition Obligations Related Thereto, (B) Renew, Amend, Supplement, Extend, or Purchase Insurance Policies, (C) Continue to Pay Brokerage Fees, and (D) Maintain the Surety Bond Program, and (II) Granting Related Relief* (the “Insurance Motion”) in which the Debtors are not seeking relief related to workers’ compensation.

each and every claim, with the Debtors required to fund losses incurred up to that \$500,000 threshold. The Domestic Workers' Compensation Policy provides unlimited statutory coverage per incident for each Workers' Compensation Claim and up to \$1 million for each Employer's Liability Claim.

83. The Debtors pay a premium to Zurich Insurance for the Domestic Workers' Compensation Policy (the "Domestic Workers' Compensation Premium"). The Debtors pay the Domestic Workers' Compensation Premium in advance on an annual basis, the amount of which is based on the Debtors' estimated gross payroll for the applicable policy year. The Domestic Workers' Compensation Premium is then subject to adjustment following an audit of the Debtors' actual payroll for the applicable policy year. The Domestic Workers' Compensation Premium for the 2023 policy year was approximately \$275,000.

84. As of the Petition Date, the Debtors believe there were twenty-two open claims against the Debtors under the Domestic Workers' Compensation Policy with total future reserves of approximately \$2,650,000. The Debtors estimate that they owe obligations of approximately \$2,650,000 on account of claims against the Domestic Workers' Compensation Policy.

85. **Monopolistic State Coverage Policies.** To supplement their coverage under the Domestic Workers' Compensation Policy, the Debtors maintain multiple umbrella and excess liability policies for any excess amounts.⁹ In addition, the Debtors separately maintain workers' compensation policies for North Dakota, Ohio, and Washington, which require coverage through state-specific funds (collectively, the "Monopolistic State Coverage Policies").

⁹ The Debtors' general liability umbrella policy is described more fully in the Insurance Motion.

86. The Debtors pay premiums on account of the Monopolistic State Coverage Policies (the “Monopolistic State Coverage Premiums”). The total amount due in premiums for the Monopolistic State Coverage Policies was approximately \$50,000 in 2023.

87. As of the Petition Date, the Debtors do not believe there were any open claims against the Monopolistic State Coverage Policies. Accordingly, the Debtors do not believe they owe any amounts on account of claims against the Monopolistic State Coverage Policies.

88. **Other State Coverage Policies.** In addition to the Monopolistic State Coverage Policies, the Debtors also separately maintain workers’ compensation policies for Massachusetts and Wisconsin (together, the “Other State Coverage Policies”).

89. The Debtors pay premiums on account of the Other State Coverage Policies (the “Other State Coverage Premiums,” and together with the Domestic Workers’ Compensation Premium and the Monopolistic State Coverage Premiums, the “Workers’ Compensation Premiums”). The total amount due in premiums for the Other State Coverage Policies was approximately \$70,000 in 2023.

90. As of the Petition Date, the Debtors do not believe there were any open claims against the Other State Coverage Policies. Accordingly, the Debtors do not believe they owe any amounts on account of claims against the Other State Coverage Policies.

91. **Oklahoma Guarantee Association Obligations.** The Debtors also incur workers’ compensation obligations to the Oklahoma Property and Casualty Insurance Guaranty Association (the “Oklahoma Guarantee Association Obligations”) in relation to claims by a certain Employee. These claims were previously administered by Lumbermans’ Underwriting Association, the Debtors’ previous workers’ compensation insurer. As of the Petition Date, the Debtors estimate

that they owe approximately \$875,000 on account of the Oklahoma Guarantee Association Obligations.

92. **AIG Workers' Compensation Obligations.** In addition, the Debtors are obligated to pay workers' compensation claims to certain Employees covered under a workers' compensation policy issued by American International Group, Inc. (the "AIG Workers' Compensation Obligations"). The AIG Workers' Compensation Obligations arose in connection with the Debtors' spin-off from AT&T. As of the Petition Date, the Debtors estimate that they owe approximately \$325,000 on account of the AIG Workers' Compensation Obligations.

93. **Lucent Workers' Compensation Obligations.** The Debtors are also obligated to pay workers' compensation claims to certain Employees covered under a workers' compensation policy issued by Travelers (the "Lucent Workers' Compensation Obligations"). The Lucent Workers' Compensation Obligations arose in connection with the Debtors' spin-off from Lucent Technologies, Inc. As of the Petition Date, the Debtors estimate that they owe approximately \$125,000 on account of the Lucent Workers' Compensation Obligations.

94. The Debtors request authorization to pay all outstanding prepetition amounts incurred on account of the Workers' Compensation Premiums, and to maintain the Workers' Compensation Policies and continue to honor their obligations thereunder on a postpetition basis in the ordinary course of business consistent with prepetition practices.

H. 401(k) Plans.

95. The Debtors provide all Employees with the ability to participate in one of two 401(k) plans (together, the "401(k) Plans") administered by Fidelity Brokerage Services LLC ("Fidelity Brokerage")—a 401(k) Plan for Salaried Employees (the "Salaried Employee 401(k) Plan"), and a 401(k) Plan for Represented Employees (the "Represented Employee 401(k)"),

Plan)—and generally provide for pre-tax salary deductions up to limits set by the Internal Revenue Code. Approximately \$3,100,000 is deducted from Employees’ pay in the aggregate each monthly period on account of Employees’ 401(k) contributions to the 401(k) Plans (the “401(k) Deductions”).

96. The Debtors also provide certain matching contributions for the Represented Employee 401(k) Plan (the “401(k) Matching Contributions”). Under the Represented Employee 401(k) Plan, the Debtors match two-thirds of the first six percent contributed by the individual only upon the completion of six months of creditable service to the Debtors. The Debtors pay approximately \$16,000 in 401(k) Matching Contributions per weekly pay period on account of their Represented Employees. All 401(k) Matching Contributions are immediately 100 percent fully vested.

97. As of the Petition Date, the Debtors do not believe they owe any amounts on account of the 401(k) Matching Contributions. However, out of an abundance of caution, the Debtors request authorization to pay all outstanding prepetition amounts incurred on account of the 401(k) Plan, including 401(k) Matching Contributions, to remit any unpaid prepetition 401(k) Deductions, and to continue honoring their obligations on account of the 401(k) Plan and 401(k) Matching Contributions on a postpetition basis in the ordinary course of business consistent with prepetition practices.

III. Other Employee Benefits.

98. In the ordinary course of business, the Debtors offer other employee benefits and programs, including Optional Employee-Paid Benefits, Wellness Programs, Tuition Assistance Program, Academic Awards Program, and Non-Insider Severance Programs (each as defined below and collectively, the “Other Employee Benefits”). As of the Petition Date, the Debtors

estimate that they owe approximately \$3,375,000 in the aggregate on account of accrued but unpaid Other Employee Benefits. Accordingly, the Debtors request authorization, but not direction, to continue to honor the Other Employee Benefits and to pay any related prepetition claims in the ordinary course of business.

A. Optional Employee-Paid Benefits.

99. The Debtors provide their Employees access to supplemental Employee-paid benefits (collectively, the “Optional Employee-Paid Benefits”). With respect to their Salaried Employees, the Debtors provide the Optional Employee-Paid Benefits as an elective benefit with any payments due funded in full through deductions from the individual Employees’ Wages.

100. **Supplemental Insurance Plans.** The Debtors provide their Employees with supplemental life, supplemental accidental death and dismemberment, critical illness, accident, and hospital indemnity insurance through MetLife (collectively, the “Supplemental Insurance Plans”).¹⁰ The Debtors pay approximately \$175,000 per month on account of the Supplemental Insurance Plans and are fully reimbursed through applicable pay period deductions from participating Employees’ pay.

101. **Legal Services Plan.** The Debtors also provide their Employees with a legal services plan to assist Employees with procuring affordable legal advice involving a variety of family law issues, the drafting or amendment of simple will and codicils, or real estate transactions or refinancing of an Employees’ primary residence, which is administered by MetLife (the “Legal Services Plan”). The Debtors deduct approximately \$11,000 on a monthly basis from

¹⁰ The Debtors also offer their Employees the opportunity to purchase life and accidental death and dismemberment insurance for their spouse/partner and qualifying dependent children in varying amounts that are also fully funded by the Employees themselves.

the roughly 500 Employees participating in the Legal Services Plan and pay approximately \$2,000 per month with respect to the premiums for its Represented Employees.

102. As of the Petition Date, the Debtors estimate that they owe approximately \$340,000 on account of the Supplemental Insurance Plans and approximately \$25,000 on account of the Legal Services Plan. The Debtors believe that the Optional Employee-Paid Benefits generally are held in trust by the Debtors and are not property of their estates. As such, the Debtors do not believe they need authority to remit such payments to the appropriate third parties. However, out of an abundance of caution, the Debtors request authorization to remit all outstanding prepetition amounts incurred on account of the Optional Employee-Paid Benefits, and to continue paying the Optional Employee-Paid Benefits on a postpetition basis in the ordinary course of business consistent with prepetition practices.

B. Wellness Programs.

103. The Debtors contract with Aetna to administer a variety of wellness programs (the “Wellness Programs”) which reward their Employees for maintaining healthy lifestyles. Upon completion of certain Wellness Programs, the Debtors pay amounts up to \$100 per individual per year (the “Wellness Payments”).

104. As of the Petition Date, the Debtors estimate that they owe approximately \$10,000 on account of the Wellness Payments. The Debtors request authorization to pay all outstanding Wellness Payments, and to continue honoring their obligations under the Wellness Programs on a postposition basis in the ordinary course of business consistent with prepetition practices.

C. Tuition Assistance Program.

105. Represented Employees who are in good standing and continue to meet the performance requirements of their current job assignment are eligible for the Debtors’ tuition

assistance program (the “Tuition Assistance Program”). Under the Tuition Assistance Program, Represented Employees are eligible to be reimbursed for tuition expenses (the “Tuition Reimbursements”) up to \$7,000 for undergraduate courses and up to \$9,000 for graduate courses in subjects and fields of study that directly pertain to the Debtors’ operations and objectives and the Employee’s current or future job duties. Courses must be approved by the Debtors prior to the time of enrollment and must be taught at an accredited college or university. Currently, no Employees are enrolled in the Tuition Assistance Program.

106. As of the Petition Date, the Debtors do not believe they owe any Tuition Reimbursements on account of the Tuition Assistance Program. The Debtors request authorization to continue honoring the Tuition Assistance Program on a postposition basis in the ordinary course of business consistent with prepetition practices.

D. Academic Awards Program.

107. Represented Employees who are in good standing and continue to meet the performance requirements of their current job assignment are eligible for the Debtors’ academic awards program (the “Academic Awards Program”) through Scholarship America. Under the Academic Awards Program, Represented Employees are eligible to receive up to \$6,500 per award (each, an “Academic Award”) to be used for tuition and other education expenses. Currently, approximately twenty Employees participate in the Academic Awards Program.

108. As of the Petition Date, the Debtors do not believe they owe any Academic Awards on account of the Academic Awards Program. The Debtors request authorization to continue honoring the Academic Awards Program on a postposition basis in the ordinary course of business consistent with prepetition practices.

E. Non-Insider Severance Programs.

109. The Debtors maintain a variety of non-insider severance programs in the ordinary course of business for their former employees, whereby payments are made based on the terminated employee's salary, job level, and for those employees below the vice president level, their time of service with the Debtors prior to termination (the "Non-Insider Severance Programs").¹¹ Under the Non-Insider Severance Programs, the amount of any severance payment is based upon a multiple of the former employee's final annual base salary (as well as other limited health or welfare benefits).¹² The Debtors request authorization to continue honoring the Non-Insider Severance Programs on a postpetition basis in the ordinary course of business consistent with prepetition practices.

110. **Former Salaried Employee Severance Agreements.** As of the Petition Date, the Debtors have executed and are awaiting countersignatures to severance agreements with twelve former salaried employees, each of whose employment terminated on or after September 1, 2022, for an aggregate amount of approximately \$150,000 (the "Former Salaried Employee Severance Agreements"). Agreements for three of these former salaried employees are for an aggregate amount of approximately \$55,000, and which individually would exceed the priority claim cap set forth in section 507(a)(4) and 507(a)(5) of the Bankruptcy Code. The Debtors do not believe they owe any prepetition amounts on account of the Former Salaried Employee Severance Agreements. However, out of an abundance of caution, the Debtors request

¹¹ The Debtors' Severance Program for non-insiders includes the following individual plans: (a) Avaya Inc. Involuntary Separation Plan for U.S. Based Salaried Employees dated January 11, 2023; (b) Avaya Inc. Involuntary Separation Plan for Senior Vice Presidents, Group/Global Vice Presidents and Vice Presidents dated January 11, 2023; and (c) the Involuntary Separation Plan for Senior Officers dated December 11, 2020.

¹² As a condition to receiving a severance payment, the terminated Employee will be required to waive all prepetition claims relating to prior employment and compensation arrangements.

authorization to pay any prepetition amounts owed under the Former Salaried Employee Severance Agreements, including amounts above the priority cap for three former salaried employees, and to continue honoring the Former Salaried Employee Severance Agreements on a postpetition basis in the ordinary course of business consistent with prepetition practices.

111. **Represented Employee Severance Program.** In addition, the Debtors request authorization to continue the Non-Insider Severance Programs with regards to approximately forty retired Represented Employees (the “Represented Employees Severance Program”). Pursuant to the Represented Employees Severance Program, these retired Represented Employees receive, among other things, certain pension payments and medical benefits from the Debtors. The Debtors believe that failure to honor the Represented Employees Severance Obligations could result in a severe strain on the Debtors’ relationship with their Represented Employees and may jeopardize the Debtors’ ability to conduct business as usual during these chapter 11 cases.

112. As of the Petition Date, the Debtors believe they owe approximately \$3 million in the aggregate to approximately thirty-five members of the CWA and five members of the IBEW on account of the Represented Employees Severance Program, continuance of which the Debtors believe is vital to their continued relationship with their Represented Employees. By this Motion, the Debtors request authorization to pay all outstanding prepetition amounts incurred on account of the Represented Employees Severance Program, and to continue paying for the Represented Employees Severance Program on a postpetition basis in the ordinary course of business consistent with prepetition practices.

113. Importantly, the Debtors do not request authorization to make any bonus or severance payments to any “insider” as the term is defined in section 101(31) of the Bankruptcy

Code. Consequently, the Debtors submit that section 503(c) of the Bankruptcy Code with respect to bonus or severance payments to insiders does not apply to the relief requested herein.

IV. Former Employee Health and Welfare Benefits.

114. In the ordinary course of business, the Debtors provide retired employees (the “Retirees”) with certain health and welfare benefits, including the Retiree Benefits Program and COBRA Benefits (each as defined below and collectively, the “Former Employee Health and Welfare Benefits”). As of the Petition Date, the Debtors estimate that they owe approximately \$230,000 in the aggregate on account of accrued but unpaid Former Employee Health and Welfare Benefits. Accordingly, the Debtors request authorization to continue to honor the Former Employee Health and Welfare Benefits and to pay any prepetition claims with respect thereto in the ordinary course of business.

A. Retiree Benefits Program.¹³

115. The Debtors provide various health benefits, maintain certain qualified pension plans, and have historically offered various other benefit programs for the health and welfare of their Retirees (collectively, the “Retiree Benefits Program”).

1. Qualified Pension Plan.

116. The Debtors maintain one qualified defined benefit pension plan under the Internal Revenue Code (the “IRC”) and the Employee Retirement Income Security Act of 1974 (“ERISA”) for their Employees and Retirees. The Avaya Inc. Pension Plan (the “Qualified Pension Plan”) provides pension benefits to approximately 325 active Employees and approximately 4,100 Retirees and other separated participants and beneficiaries (collectively,

¹³ By requesting authority to continue the Retiree Benefits Program, the Debtors are not assuming or affirming any contracts, agreements, programs, or applicability of any law related to the Retiree Benefits Program, and the Debtors reserve all of their rights with regard to the Retiree Benefits Program.

the “Pension Recipients”). Under the IRC and ERISA, the Debtors make minimum funding contributions to the Qualified Pension Plan based on annual actuarial calculations. In addition, the Qualified Pension Plan makes annual premium payments to the Pension Benefit Guaranty Corporation. The Pension Recipients receive approximately \$20 million per quarter under the Qualified Pension Plan (collectively, the “Pension Benefit Payments”), consisting of payments per-participant of approximately \$4,800. The Pension Benefit Payments are paid out of the corpus of trusts established for the plan (collectively, the “Pension Plan Trusts”).

117. **PBGC Premiums.** In connection with the Qualified Pension Plan, the Debtors are obligated to make certain statutory insurance premium payments to the Pension Benefit Guaranty Corporation (“PBGC”) on an annual basis (the “PBGC Premiums”). The Debtors’ PBGC Premiums are payable every October. The Debtors paid the PBGC Premium due in October 2022, which was approximately \$4,200,000. The Debtors have historically paid all PBGC Premiums from assets of the Qualified Pension Plan as and when due and, accordingly, do not believe that they owe any prepetition amounts on account of PBGC Premiums. However, out of an abundance of caution, the Debtors request authorization, but not direction, to pay any prepetition PBGC Premiums outstanding as of the Petition Date and to continue honoring their obligations on account of the PBGC Premiums on a postpetition basis in the ordinary course of business and consistent with their prepetition practices.

2. Retiree Health Benefits.

118. The Debtors pay two distinct sets of health benefits to Retirees, depending on whether such Retirees were Salaried Employees (the “Salaried Retirees”) or Represented Employees (the “Represented Retirees”).

119. **Salaried Retiree Health Plan.** Presently, as part of the Debtors' plan for Employee Health and Welfare Benefits for Salaried Retirees (the "Salaried Retiree Health Plan"), the Debtors provide eligible Salaried Retirees with a health reimbursement arrangement ("HRA") contribution of between \$600 and \$4,500 annually depending on their marital status, Medicare age-in status, and date of retirement. The Debtors expect to contribute approximately \$100,000 in 2023 on account of the Salaried Retiree Health Plan, which will ultimately provide approximately \$225,000 in expected benefit payments during the same period. As of the Petition Date, the Debtors estimate that they owe approximately \$40,000 in contributions on account of the Salaried Retiree Health Plan.

120. **Represented Retiree Health Plan.** With respect to their Represented Employees, as part of the Debtors' plan for Health and Welfare Benefits for Represented Retirees (the "Represented Retiree Health Plan" and, together with the Salaried Retiree Health Plan, the "Retiree Health Plans"), the Debtors provide approximately \$130,000 in health and dental benefits to nearly 3,400 Represented Retirees on a monthly basis.¹⁴ The Debtors expect to pay approximately \$1,500,000 per year to provide their Represented Retirees these health and dental benefits, which the Debtors are contractually obligated to provide to these individuals under their respective CBAs. As of the Petition Date, the Debtors estimate that they owe approximately \$190,000 on account of the Represented Retiree Health Plan.

121. By this Motion, the Debtors request authorization, but not direction, to (a) pay any prepetition amounts outstanding on account of the Retiree Health Benefits; (b) continue to offer

¹⁴ Effective as of January 1, 2017, the Represented Retiree Health Plan was amended to provide that Represented Retirees who retired on or before October 15, 2015, will receive a HRA contribution in an amount to be negotiated with the respective collective bargaining units. Represented Retirees who retire after that date will receive the benefits provided under the Represented Retiree Health Plan in effect on December 31, 2016.

the Retiree Health Benefits, including to those Employees who may retire after the Petition Date, and honor all obligations related thereto on a postpetition basis in the ordinary course of business consistent with prepetition practices; and (c) continue honoring obligations arising under the Retiree Health Benefits (including the Retiree Health Plan Fees (as defined below)) on a postpetition basis in the ordinary course of business consistent with prepetition practices.¹⁵

3. Retiree Life Insurance Benefits.

122. The Debtors also provide the Basic Life and AD&D Insurance for their Retirees (the “Retiree Life Insurance Benefits”). Premiums for the Retiree Life Insurance Benefits are paid from the Pension Plan Trusts. As of the Petition Date, the Debtors do not believe they owe any premiums on account of the Retiree Life Insurance Benefits. The Debtors request authorization to continue honoring their obligations under the Retiree Life Insurance Benefits on a postpetition basis in the ordinary course of business consistent with prepetition practices.

B. COBRA Benefits.

123. Pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”), former employees of the Debtors (the “COBRA Participants”) may continue insurance coverage under the Medical Plan, Dental Plan, and Vision Plan (the “COBRA Benefits”). More specifically, COBRA Participants are entitled by law to continue to receive COBRA Benefits for up to eighteen months, and in some instances up to thirty-six months, following termination of employment. With respect to their approximately 250 COBRA Participants, approximately forty COBRA Participants participate in a point-of-service

¹⁵ To the extent that Debtors have inadvertently omitted any other similar postretirement employee benefits payable to Retirees that may be deemed to constitute an “employee benefit” for purposes of ERISA, the Debtors request authority to pay any prepetition amounts related thereto and to continue to honor their obligations under any such program in the ordinary course of business as if set forth fully herein.

plan and approximately 170 COBRA Participants participate in either the CDHP/HSA Plan, the CDHP Alternative Plan, or the HMO Plan. Additionally, approximately 190 COBRA Participants receive benefits under the Dental Plan and approximately 130 COBRA Participants are enrolled under the Vision Plan.

124. COBRA Participants are responsible for paying all premium costs associated with the COBRA Benefits except with respect to those COBRA Participants who are eligible for three months of company-paid COBRA health benefits on account of their participation in a voluntary transition plan or per an individualized separation agreement. To assist in the administration of the COBRA Benefits, the Debtors utilize the services of HealthEquity.

125. Because the costs of any COBRA fees are paid directly by HealthEquity to Aetna or EyeMed and do not pass through the Debtors, the Debtors do not believe they owe any prepetition amounts to HealthEquity, Aetna, or EyeMed on account of any COBRA Benefits. However, out of an abundance of caution, the Debtors request authorization to (a) pay all outstanding prepetition amounts incurred on account of the COBRA Benefits; (b) continue to offer the COBRA Benefits, including to those Employees who may be terminated after the Petition Date, and honor all obligations related thereto on a postpetition basis in the ordinary course of business consistent with prepetition practices; and (c) continue to pay fees related to the COBRA Benefits on a postpetition basis in the ordinary course of business consistent with prepetition practices.

V. Administrator Fees.

126. As part of the effective and efficient administration of the Compensation and Benefits, the Debtors use certain administrators to disburse Employee payments (collectively, the “Administrators”). As of the Petition Date, the Debtors estimate that they owe approximately \$600,000 in the aggregate on account of accrued but unpaid fees to the Administrators

(the “Administrator Fees”). Accordingly, the Debtors request that the Court authorize the Debtors to continue to pay the Administrator Fees, including any related prepetition claims, in the ordinary course of business.

A. Payroll and Benefits Processing Services.

127. The Debtors utilize the services of Automatic Data Processing, Inc. (“ADP”) to provide payroll processing, payroll tax calculations and filings, 401(k) contribution and match calculations, garnishment support and filings, check preparation, report writing support, and 1095-C form processing (collectively, the “ADP Payroll Services”). In addition, the Debtors utilize the services of Equifax for W-2 form processing and vacation time processing (the “Equifax Payroll Services”). ADP calculates the amounts owed for certain Withholding Obligations each applicable payroll period. Prior to the respective payday, the Debtors transfer to ADP the amounts necessary to satisfy their Employee Wages, Payroll Taxes, and garnishment obligations. ADP then processes direct deposit transfers for the Employee Wages to each Employee into the respective Employee’s bank account or issues a check (a “Paycheck”) if an Employee has not elected for direct deposit.¹⁶ ADP also remits the Payroll Taxes and garnishments to the applicable taxing authorities and third-party payees, respectively. The Debtors calculate and remit those amounts owed on account of certain Employee Health and Welfare Benefits directly to the applicable third-party payees.

¹⁶ ADP will also process payments and issue Paychecks: (a) to newly hired Employees who have opted for direct deposit but whose accounts have not yet been verified through a pre-note transaction; (b) when state law requires the Debtors to pay outstanding owed amounts, including the Employee’s wages or salary, immediately upon termination; and (c) if there was an error calculating or entering the Employee’s time and the Employee cannot wait for that error to be remedied during the next pay cycle. Accordingly, the Debtors seek authority to continue to issue Paychecks, as necessary, on a postpetition basis in the ordinary course of business and consistent with past practices.

128. As of the Petition Date, the Debtors estimate that they owe approximately \$35,000 to ADP on account of the ADP Payroll Services, and approximately \$10,000 to Equifax on account of the Equifax Payroll Services. The Debtors request authorization to pay all outstanding prepetition amounts incurred on account of the ADP Payroll Services and Equifax Payroll Services, and to continue to pay the ADP Payroll Services and Equifax Payroll Services on a postpetition basis in the ordinary course of business consistent with prepetition practices.

B. Benefits Administration Services.

129. **Sedgwick Administration Fees.** The Debtors utilize Sedgwick to administer claims for Short-Term Disability Benefits (and Long-Term Disability Benefits prior to 2017), FMLA claims, and claims against the Domestic Workers' Compensation Policy. The Debtors pay Sedgwick certain administration fees in the amount of approximately \$18,000 per month (the "Sedgwick Administration Fees") to administer claims for Disability Benefits, FMLA claims, and claims against the Domestic Workers' Compensation Policy. As of the Petition Date, the Debtors estimate that they owe approximately \$35,000 on account of the Sedgwick Administration Fees.

130. **Health Plan Fees.** In addition, the Debtors have contracted with Aetna to administer coverage under the Debtors' Health Plans, except with regards to the Salaried Employee HMO Plan and the Represented Employee HMO Plan, for which the Debtors have contracted with Kaiser to administer coverage, and the HMSA Plan, which is administered by the Hawaii Medical Service Association. The Debtors pay a monthly fee to Aetna to administer the Health Plans (collectively, the "Health Plan Fees"). As of the Petition Date, the Debtors estimate that they owe approximately \$250,000 in Health Plan Fees.

131. **Prescription Drug Plan Fees.** The Debtors pay approximately \$45,000 per month to Express Scripts to administer the Prescription Drug Plan (the "Prescription Drug Plan Fees"). As of the Petition Date, the Debtors estimate that they owe approximately \$65,000 to Express Scripts on account of Prescription Drug Plan Fees.

132. **Work and Family Program Fee.** The Debtors also offer a variety of programs designed to help their Employees integrate personal commitments and job responsibilities at no cost to Employees (the "Work and Family Programs"). Among other programs, the Debtors' provide Employees with a family resource program that offers confidential, free, practical advice and educational materials, as well as referrals to local and national resources to help Employees better manage their work and personal commitments, including information and referrals related to aging/elder care, child care, parenting, convenience services, mental health support, and adoption assistance. The Debtors contract with Magellan Health Services, Inc. ("Magellan") to provide the Work and Family Programs and pay approximately \$13,000 per month to provide the Work and Family Programs to their Employees (the "Work and Family Programs Fee"). As of the Petition Date, the Debtors estimate that they owe approximately \$20,000 to Magellan on account of the Work and Family Programs Fee.

133. **Retiree Health Plan Fees.** The Debtors also contract with Via Benefits ("Via") to administer the various payments due to their Retirees under the Retiree Health Plans. Via provides the Debtors with individualized employee benefit administration, as well as eligibility verification and related administrative services. In exchange for these services, the Debtors pay Via approximately \$14,000 monthly and a one-time transaction fee per eligible household of \$100 (the "Retiree Health Plan Fees," and together with the Sedgwick Administration Fees, the Health Plan Fees, the Prescription Drug Plan Fees, and the Work and Family Programs Fees, the "Benefits

Administration Fees”). As of the Petition Date, the Debtors estimate that they owe approximately \$25,000 on account of the Retiree Health Plan Fees.

134. By this Motion, the Debtors request authorization to pay all outstanding prepetition amounts incurred on account of the Benefit Administration Fees, and to continue paying the Benefit Administration Fees on a postpetition basis in the ordinary course of business consistent with prepetition practice.¹⁷

C. Relocation Program.

135. The Debtors pay for certain expenses to relocate or provide temporary housing for Employees who are transferred in connection with their job (the “Relocation Program”). The Relocation Program provides eligible Employees with a full-household goods move as well as other services, including home purchase and sale assistance, home finding, temporary living, and rental search assistance, and visa assistance. The Debtors’ Relocation Program is administered by Cartus Global Relocation Services (“Cartus”). Certain expenses related to the Relocation Program (the “Employee Relocation Expenses”) are incurred by Cartus and directly billed to the Debtors while other expenses incurred on account of the Debtors’ Relocation Program are paid directly by Employees, including, but not limited to, costs associated with home finding, temporary living assistance, and other miscellaneous expenses.

136. As of the Petition Date, the Debtors do not believe that they owe any prepetition amounts on account of the Relocation Program. However, out of an abundance of caution, the Debtors request authorization to pay all outstanding prepetition amounts incurred on account of

¹⁷ To the extent that Debtors have inadvertently omitted any other similar postretirement employee benefits payable to Retirees that may be deemed to constitute an “employee benefit” for purposes of ERISA, the Debtors request authority to pay any prepetition amounts related thereto and to continue to honor their obligations under any such program in the ordinary course of business as if set forth fully herein.

the Relocation Program, and to continue paying the Relocation Program on a postpetition basis in the ordinary course of business consistent with prepetition practices.

D. Pension Administration Expenses.

137. To administer the Debtors' Qualified Pension Plan, the Debtors contract with Alight Solutions LLC ("Alight") to provide actuarial and administrative services, including the facilitation of the remittance of all Pension Benefit Payments to Pension Recipients. The Debtors pay Alight certain fees in the aggregate amount of approximately \$65,000 per month (the "Pension Administration Fees").

138. As of the Petition Date, the Debtors estimate that they owe Alight approximately \$95,000 in prepetition unpaid Pension Administration Fees. The Debtors request authorization to pay all outstanding prepetition amounts incurred on account of the Pension Administration Fees, and to continue paying the Pension Administration Fees on a postpetition basis in the ordinary course of business consistent with prepetition practices.

E. Other Administration Services.

139. The Debtors also use the services of Willis Towers Watson and Aon Consulting Inc. as brokers, and Crowe LLP as benefits auditor (collectively, the "Other Administration Services").

140. As of the Petition Date, the Debtors estimate that they owe approximately \$65,000 on account of the Other Administration Services. The Debtors request authorization to pay all outstanding prepetition amounts incurred on account of the Other Administration Services, and to continue honoring their obligations under the Other Administration Services on a postpetition basis in the ordinary course of business consistent with prepetition practices.¹⁸

¹⁸ To the extent that Debtors have inadvertently omitted any other similar postretirement employee benefits payable to Retirees that may be deemed to constitute an "employee benefit" for purposes of ERISA, the Debtors request

Basis for Relief

I. Sufficient Cause Exists to Authorize the Debtors to Honor the Compensation and Benefits Obligations.

A. Certain Compensation and Benefits Are Entitled to Priority Treatment.

141. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code entitle certain of the Compensation and Benefits owed to the Employees to priority treatment. As priority claims, the Debtors are required to pay these claims in full to confirm a chapter 11 plan. 11 U.S.C. § 1129(a)(9)(b). Granting the relief sought herein should only affect the timing of certain payments to the Employees and should not negatively affect recoveries for general unsecured creditors. Payment of the Compensation and Benefits at this time enhances value for the benefit of all interested parties. *See In re Equalnet Commc'ns Corp.*, 258 B.R. 368, 370 (Bankr. S.D. Tex. 2000) (“The need to pay [employee wage] claims in an ordinary course of business time frame is simple common sense. Employees are more likely to stay in place and to refrain from actions which could be detrimental to the case and/or the estate if their pay and benefits remain intact and uninterrupted.”).

B. Payment of Certain Compensation and Benefits Is Required by Law.

142. The Debtors seek authority to pay the applicable Withholding Obligations to the appropriate third-party entities. These amounts principally represent Employee earnings that governments, Employees, and judicial authorities have designated for deduction from the Employees’ paychecks. Certain Withholding Obligations are not property of the Debtors’ estates because the Debtors have withheld such amounts from the Employees’ paychecks on another party’s behalf. *See* 11 U.S.C. §§ 541(b)(1), (d); *see also In re Equalnet Commc'ns*, 258 B.R. at 370

authority to pay any prepetition amounts related thereto and to continue to honor their obligations under any such program in the ordinary course of business as if set forth fully herein.

(noting that, for tax obligations where funds are held by the debtor in trust, “the legal right to payment of such claims at any time appears irrefutable.”) (citing *In re Al Copeland Enter., Inc.*, 991 F.2d 233 (5th Cir. 1993)).

143. Federal and state laws require the Debtors to withhold certain tax payments from the Employees’ paychecks and to pay such amounts to the appropriate taxing authority. 26 U.S.C. §§ 6672, 7501(a); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95–97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees’ wages created a trust relationship between debtor and the city for payment of withheld income taxes). Because the Withholding Obligations may not be property of the Debtors’ estates, the Debtors request that the Court authorize them to transmit the Withholding Obligations on account of the Employees to the proper parties in the ordinary course of business.

144. State laws also require the Debtors to maintain the Workers’ Compensation Program. If the Debtors fail to maintain the Workers’ Compensation Program, state laws may prohibit the Debtors from operating in those states. Payment of all Workers’ Compensation Program amounts is therefore crucial to the Debtors’ continued operations and the success of the Debtors’ ongoing chapter 11 process.

II. Payment of the Compensation and Benefits Is Proper Pursuant to Section 363(b) of the Bankruptcy Code.

145. Payment of prepetition obligations is appropriate where necessary to protect and preserve the estate, including an operating business’s going-concern value. *See, e.g., In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (authorizing payment of certain prepetition claims pursuant to “doctrine of necessity”); *In re Equalnet Commc’ns Corp.*, 258 B.R. at 369–70 (business transactions critical to the survival of the business of the debtor are exceptions to the general rule of nonpayment of prepetition claims prior to plan confirmation);

see also In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (“The ability of a Bankruptcy Court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.”); *Armstrong World Indus., Inc. v. James A. Phillips, Inc.*, (*In re James A. Phillips, Inc.*), 29 B.R. 391, 398 (S.D.N.Y. 1983). Several legal theories rooted in sections 105(a), 363(b), and 1107(a) of the Bankruptcy Code support the payment of prepetition claims as provided herein.

146. Section 363(b) of the Bankruptcy Code permits a debtor, subject to court approval, to pay prepetition obligations where a sound business purpose exists for doing so. *See Ionosphere Clubs*, 98 B.R. at 175 (noting that section 363(b) provides “broad flexibility” to authorize a debtor to honor prepetition claims where supported by an appropriate business justification). Under section 1107(a) of the Bankruptcy Code, a debtor in possession has, among other things, the “implied duty of the debtor-in-possession to ‘protect and preserve the estate, including an operating business’ going-concern value.” *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. at 497). Under section 105(a) of the Bankruptcy Code, “the Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code.” 11 U.S.C. § 105(a); *In re CoServ, L.L.C.*, 273 B.R. at 497 (finding that sections 105 and 1107 of the Bankruptcy Code provide the authority for a debtor-in-possession to pay prepetition claims); *In re CEI Roofing, Inc.*, 315 B.R. at 60 (finding that “[b]ecause Congress has specifically provided that prepetition wage claims up to a certain amount per claim be elevated to priority status under § 503(1)(3)” the court’s job is easier when it considers approval of such prepetition claims); *In re Mirant Corp.*, 296 B.R. 427, 429 (Bankr. N.D. Tex. 2003) (noting that non-payment of prepetition claims may seriously damage a debtor’s business). The above-referenced sections of the Bankruptcy Code

therefore authorize the postpetition payment of prepetition claims when the payments are critical to preserving the going-concern value of the debtor's estate, as is the case here.

147. Payment of the Compensation and Benefits is warranted under this authority and the facts of these chapter 11 cases. The majority of the Employees and Contractors exclusively rely on the Compensation and Benefits to satisfy their daily living expenses. Employees and Contractors will be exposed to significant financial difficulties if the Debtors are not permitted to honor obligations for unpaid Compensation and Benefits. Continuing ordinary course benefits will help maintain Employee morale and minimize the adverse effect of the commencement of these chapter 11 cases on the Debtors' ongoing business operations.

148. Employees and Contractors are critical to the ordinary course operations of the Debtors. The Debtors believe that absent the payment of the Compensation and Benefits owed to the Employees and Contractors the Debtors may experience workforce turnover and instability at this critical time in these chapter 11 cases. Without these payments, the workforce may become demoralized and unproductive because of the potential significant financial strain and other hardships these Employees and Contractors may face. Such individuals may then elect to seek alternative employment opportunities. A significant portion of the value of the Debtors' business is tied to their workforce, which cannot be replaced without significant efforts—which efforts may not be successful given the overhang of these chapter 11 cases. Enterprise value may be materially impaired to the detriment of all stakeholders in such a scenario. The Debtors therefore believe that payment of the prepetition obligations with respect to the Compensation and Benefits is a necessary and critical element of the Debtors' efforts to preserve value and will give the Debtors the greatest likelihood of retention of their Employees and Contractors as the Debtors seek to operate their business in these chapter 11 cases.

149. The Debtors request that the Court authorize the Debtors to pay and continue the Compensation and Benefits in the ordinary course of business and consistent with past practices on a final basis from the outset of these cases.

III. A Limited Waiver of the Automatic Stay for the Debtors' Workers' Compensation Program Is Appropriate in this Case.

150. Section 362(a)(1) of the Bankruptcy Code operates to stay:

[T]he commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title

Section 362(d) of the Bankruptcy Code, however, permits a debtor or other parties in interest to request a modification or termination of the automatic stay for "cause." 11 U.S.C. § 362(d)(1).

151. The Debtors seek authorization, under section 362(d) of the Bankruptcy Code, to permit their Employees to proceed with their claims against the Workers' Compensation Program in the appropriate judicial or administrative forum. The Debtors believe that cause exists to modify the automatic stay because staying the Employees' workers' compensation claims could have a detrimental effect on the financial well-being and morale of the Employees and lead to the departure of certain Employees who are critical at this juncture. Such departures could cause a severe disruption in the Debtors' business to the detriment of all stakeholders. In addition, if the Debtors fail to maintain the Workers' Compensation Program, state laws may prohibit the Debtors from operating in those states. The Debtors request a limited waiver of the automatic stay for purposes of allowing the Debtors' Workers' Compensation Program to proceed.

Emergency Consideration

152. The Debtors request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first twenty-one days

after the commencement of a chapter 11 case “to the extent that relief is necessary to avoid immediate and irreparable harm.” An immediate and orderly transition into chapter 11 is critical to the viability of the Debtors’ operations. Failure to receive the requested relief during the first twenty-one days of these chapter 11 cases would imperil the Debtors’ restructuring and cause irreparable harm. The Debtors have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and request that the Court approve the relief requested in this Motion on an emergency basis.

Processing of Checks and Electronic Fund Transfers Should Be Authorized

153. The Debtors have sufficient funds to pay the amounts described herein in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to cash collateral and debtor in possession financing. Under the Debtors’ existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the relief requested herein. Checks or wire transfer requests that are not related to authorized payments will not be honored inadvertently. The Debtors request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested herein.

Waiver of Bankruptcy Rules 6004(a) and 6004(h)

154. The Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the fourteen-day stay period under Bankruptcy Rule 6004(h).

Reservation of Rights

155. Nothing contained herein or any actions taken pursuant to such relief requested is intended or shall be construed as: (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 this Motion or any order granting the relief requested by this 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 this 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. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended, and should not be construed as, an admission as to the validity of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

Notice

156. The Debtors have provided notice of this Motion to the following parties or their respective counsel: (a) the U.S. Trustee for the Southern District of Texas; (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 Prepetition 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 proposed 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.

The Debtors request that the Court enter the Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Houston, Texas
Dated: February 14, 2023

/s/ Matthew D. Cavanaugh

JACKSON WALKER LLP

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*Proposed Co-Counsel to the Debtors
and Debtors in Possession*

*Proposed Co-Counsel to the Debtors
and Debtors in Possession*

Certificate of Accuracy

I certify that the foregoing statements are true and accurate to the best of my knowledge. This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ Matthew D. Cavanaugh

Matthew D. Cavanaugh

Certificate of Service

I certify that on February 14, 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/ Matthew D. Cavanaugh.

Matthew D. Cavanaugh

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

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

**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”)² 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

¹ 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.

² 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.

Dated: _____, 2023

UNITED STATES BANKRUPTCY JUDGE