Docket #326 Date Filed: 3/21/2023

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

In re:	)	Chapter 11
AVAYA INC., *et al.*,[1]	)	Case No. 23-90088 (DRJ)
Debtors.	)	(Jointly Administered)

DECLARATION OF DAVID M. BARSE
IN SUPPORT OF CONFIRMATION OF THE JOINT
PREPACKAGED PLAN OF REORGANIZATION OF AVAYA INC. AND ITS
DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

I, David M. Barse, hereby declare as follows:

1. I am a director of Avaya Inc. ("Avaya," and together with its affiliated debtors and debtors in possession, the "Debtors" or the "Company"). I make this declaration in support of confirmation of the *Joint Prepackaged Plan of Reorganization of Avaya Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 50] (as amended or modified from time to time, the "Plan").[2] My declaration is based upon my personal knowledge unless stated otherwise. If called upon to testify, I could and would testify competently to the matters stated herein.

2. I have extensive business experience, as well as a strong background as a corporate director. Prior to my appointment as a director of Avaya, I spent over 25 years as a Chief Executive Officer, including at XOUT Capital LLC (since 2019) and Third Avenue Management (from 1991 to 2015), and as founder and Chief Investment Officer of DMB

[1] A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at http://www.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 not otherwise defined herein shall have the meaning given to them in the Plan.

Holdings. I currently serve as a board member and one of two Special Committee Members for Celsius Network Ltd., which filed for chapter 11 on July 13, 2022, as an independent board member of Juul Labs, Inc., and as a board member of Keter Group Holding S.ar.l. I previously served as a board member of numerous other companies, including Covanta Holding Corporation, Millstein & Co., Third Avenue Capital p.l.c., Manifold Capital, Commercial Guaranty Assurance, Ltd., National American Insurance Company of California, and Danielson Trust Company. Additionally, I serve as the chairman of the board of the New York City Parks Foundation (since 2020) and as an emeritus member of the board of trustees of Brooklyn Law School.

Background

3. As set forth more fully in the *Declaration of Eric Koza in Support of Confirmation of the Joint Prepacked Plan of Reorganization of Avaya Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* filed contemporaneously herewith (the "Koza Declaration"), I understand that in the summer of 2022, Avaya announced and closed on a new capital raise, after which Avaya self-reported to the U.S. Securities and Exchange Commission ("SEC") and notified its external auditor, PricewaterhouseCoopers LLP ("PwC"), that its preliminary third quarter results were significantly below prior guidance (the "Preliminary Q3 2022 Results"). I am also aware that the Company and certain current and former directors and officers are or were previously named as defendants in litigation or threatened with litigation relating to the circumstances giving rise to the Preliminary Q3 2022 Results.

4. I also understand that, in July 2022, the Company launched an investigation into the circumstances giving rise to the Preliminary Q3 2022 Results and other matters related to these Chapter 11 Cases (the "Investigation"). That Investigation was

conducted by a team at Kirkland & Ellis LLP ("Kirkland") at the direction of, and under the supervision of, the Audit Committee. After my appointment on February 1, 2023, I started to receive and have now received multiple briefings on the Investigation in February and March 2023.

5. As part of that Investigation, I understand Kirkland interviewed 31 current and former employees regarding the Preliminary Q3 2022 Results. Kirkland also reviewed over 290,000 documents, including financial documents, minutes from meetings of HoldCo's board of directors (the "Board") and related presentations and materials, communications between senior executives, and publicly available materials. Specifically with respect to communications, I am informed that Kirkland reviewed communications between the Debtors' employees, officers, and the Board between May 18, 2022, and August 8, 2022. I also understand that Kirkland reviewed facts relating to the Company's historical performance and revenue booking timeline with various employees and members of management.

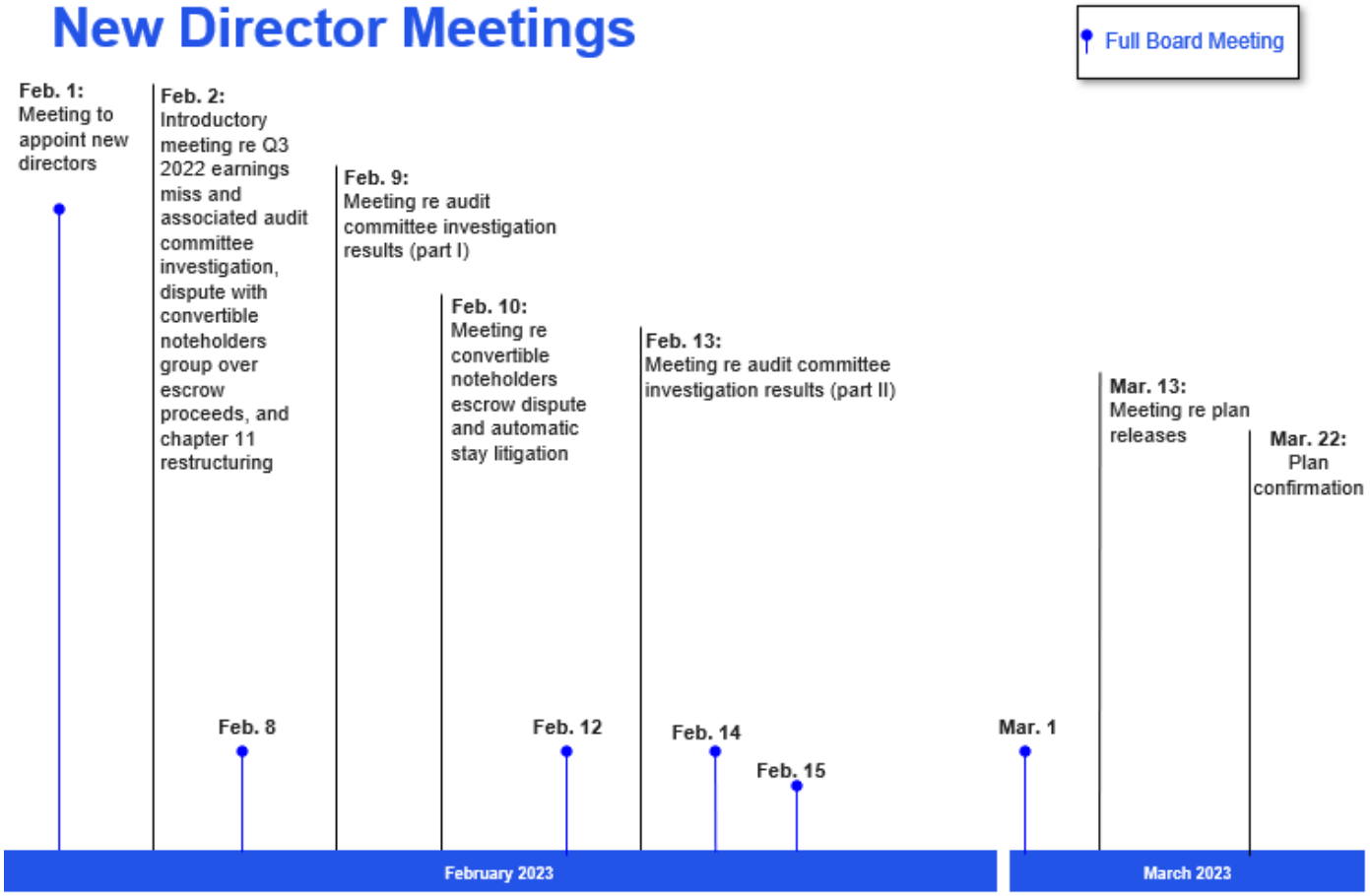
6. I understand that the Investigation as to the Preliminary Q3 2022 Results is largely complete, although Avaya and Kirkland are continuing to answer questions and information requests from PwC and have an ongoing dialogue with the SEC, all of which is likely to continue to be an iterative and ongoing process. I am aware that the Board received regular updates from management in the months leading up to the Preliminary Q3 2022 Results, including updates regarding Avaya's financial performance. Nothing out of the ordinary was raised to the Board during those updates with respect to Avaya's financial performance. Additionally, Avaya's quarterly financials did not suggest that a large earnings miss was imminent—in fact, recognized revenue generally tracked the prior four quarters.

Review Process

7. On February 1, 2023, I was appointed as a director to the board of Avaya. Since my appointment, I have actively participated as a director and have actively engaged with the Company's external advisors on the Investigation and the larger restructuring of Avaya and the other Debtors.

8. More specifically, on February 2, 2023, Carrie W. Teffner (another director appointed to the Board at the same time as my appointment) and I met with Kirkland to discuss the Preliminary Q3 2022 Results, anticipated disputes with the S&C Ad Hoc Group in any in-court restructuring, and the Debtors' general restructuring path. The following week, on February 9, 2023, we met to discuss the Investigation, a discussion we continued at a meeting on February 13, 2023. We also met on February 10, 2023, to further discuss disputes that may arise in a contested chapter 11 process and pending litigation against certain of the Debtors' current and former directors and officers. Each of these meetings was in addition to numerous telephone calls that Ms. Teffner and I had with individuals from Kirkland on these topics, as well as our attendance at the Debtors' full board meetings, and various communications after the filing of the Chapter 11 Cases.

9. The following timeline reflects the dates of the meetings that I attended with Ms. Teffner in February and March 2023:



Evaluation of the Plan's Releases

10. As part of the heavily negotiated restructuring support agreement ("RSA"), the Debtors and their creditors (who will own the equity of Reorganized Avaya following the Effective Date) proposed the Debtor Release (as defined herein) and the consensual Third-Party Release (as defined herein) of Claims and Causes of Action—subject to the Investigation, and excluding any Claims and Causes of Action found to have arisen from fraud, willful misconduct, or gross negligence—against the Debtors, their current directors, officers, and employees by the Debtors, the RSA parties, and any participating third-parties. The Plan's releases consist of (i) certain releases of claims by the Debtors (as described in Article VIII.C of the Plan, the "Debtor Release"); (ii) certain consensual third-party releases (as

described in Article VIII.D of the Plan, the "Third-Party Release"); and (iii) certain limited exculpation provisions solely for the benefit of the Debtors for claims arising prior to the Effective Date (as described in Article VIII.F of the Plan, the "Exculpation Provision," together with the Debtor Release and the Third-Party Release, the "Releases"). I further understand the Exculpation Provision comports with applicable law in this jurisdiction.

11. The Releases are intended to avoid potentially costly and time-consuming litigation and ensure the Debtors' "fresh start" upon emergence from chapter 11. Given that the Company operates in a particularly competitive industry, and this is its second bankruptcy, a true "fresh start" is crucial to the Debtors' post-emergence success.

12. I understand that certain shareholders have submitted comments to the Court that were filed on the docket. At least one shareholder suggested that the Board's overriding motivation was for a global release. In my experience, nothing could be further from the truth. Rather, the Company's directors have remained with the Company amidst a great deal of uncertainty, motivated solely by their desire to steer the Company through this chapter 11 process, maximize value for creditors, and save thousands of jobs worldwide.

13. The RSA and Plan will deleverage the Debtors' balance sheet by approximately 75 percent, from approximately $3.4 billion to approximately $810 million. The Plan also provides for an $810 million Exit Term Loan Facility and access to an approximately $128 million Exit ABL Facility, which will collectively ensure the Reorganized Debtors are well-capitalized upon emergence from chapter 11. Each Holder of First Lien Claims will receive (i) its applicable Takeback Term Loan Recovery, (ii) its *Pro Rata* share of 100% of the New Equity Interests, subject to dilution on account of the Management Incentive Plan Pool, the RO

Common Shares, the RO Backstop Shares, the RO Premium Shares, and the DIP Commitment Shares, and (iii) its *Pro Rata* share of the Rights.

14. Notably, the Plan leaves all Allowed General Unsecured Claims, including employee and vendor Claims, at the Company Unimpaired and will allow the Debtors to minimize disruptions to their go-forward operations while effectuating a value-maximizing transaction through the chapter 11 process.

15. I also understand that the Plan enjoys the support of all of the Debtors' major creditor constituencies, including the PW Ad Hoc Group, Akin Ad Hoc Group and the S&C Ad Hoc Group, all of whom support the proposed Debtor Release and have agreed to not opt-out of the Third-Party Release pursuant to the RSA.

16. I also understand that some shareholders have voiced concerns regarding Mr. Alan Masarek's $6 million retention payment, made in December 2022. In evaluating this retention payment, I considered that it was made in lieu of long-term equity incentive awards that historically would have been granted in the beginning of FY 2023, and that it is subject to a recapture provision that generally requires repayment in the event of a voluntary departure or termination by the Company "for cause" prior to December 31, 2023, which recapture provision will partially lapse upon certain specified events. I also considered that Mr. Masarek's retention payment was reviewed and approved by the Board's compensation committee of (the "Compensation Committee"), and, ultimately, the full Board. Additionally, I am aware that cash compensation packages for management of a distressed debtor are common to incentivize management teams to remain in place during a restructuring particularly where, as is the case here, Mr. Masarek did not have the benefit of a management team. Having considered all of the foregoing, I believe Mr. Masarek's compensation package was provided in good faith and in an

effort to retain him as a senior executive committed to steering the Debtors through their Chapter 11 Cases and post-emergence.

17. Based on my experience, my understanding of the Investigation, and in consultation with the Company's advisors, I formed a view on the propriety of the Releases.

18. Given the narrow scope of the Releases in light of the heavily negotiated RSA, the fact that there are no non-consensual Releases in the Plan, the inclusion of Release carveouts for certain types of Claims, and the value derived from the continued employment of current directors and officers, I believe that granting the Releases constitutes a sound exercise of business judgment.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 21, 2023

/s/ David Barse
David M. Barse
Member of Board of Directors
Avaya Inc.