

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

_____, Individually and on Behalf
of All Others Similarly Situated,

Plaintiff,

v.

AVAYA HOLDINGS CORP., JAMES M.
CHIRICO, JR., ALAN B. MASAREK, and
KIERAN J. MCGRATH,

Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff _____ (“Plaintiff”), individually and on behalf of all others similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants, alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through Plaintiff’s attorneys, which included, among other things, a review of the Defendants’ public documents, conference calls and announcements made by Defendants, United States (“U.S.”) Securities and Exchange Commission (“SEC”) filings, wire and press releases published by and regarding Avaya Holdings Corp. (“Avaya” or the “Company”), analysts’ reports and advisories about the Company, and information readily obtainable on the Internet. Plaintiff believes that substantial, additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a federal securities class action on behalf of a class consisting of all persons and entities other than Defendants that purchased or otherwise acquired Avaya securities between

November 22, 2021 and November 29, 2022, both dates inclusive (the “Class Period”), seeking to recover damages caused by Defendants’ violations of the federal securities laws and to pursue remedies under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder, against the Company and certain of its top officials.

2. Avaya purports to be a “global leader in digital communications products, solutions and services for businesses of all sizes delivering its technology predominantly through software and services.” The Company claims that its “global, experienced team of professionals delivers award-winning services from initial planning and design, to seamless implementation and integration, to ongoing managed operations, optimization, training and support.”

3. Throughout the Class Period, Defendants made materially false and misleading statements regarding the Company’s business, operations, and prospects. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) the Company’s internal control over financial reporting (“ICFR”) was deficient in several areas; (ii) as a result of these deficiencies, the Company had failed to design and maintain effective controls over its whistleblower policies and its ethics and compliance program; (iii) the Company’s deteriorating financial condition was likely to raise substantial doubt as to its ability to continue as a going concern; and (iv) as a result, the Company’s public statements were materially false and misleading at all relevant times.

4. On July 28, 2022, Avaya announced the termination of its Chief Executive Officer James M. Chirico, Jr. (“Chirico”). The Company also announced preliminary Q3 2022 financial results that included expected revenues and adjusted EBITDA well below previously given guidance and an unquantified but “significant” impairment charge. In addition, Avaya withdrew its 2022 guidance.

5. On this news, Avaya's stock price fell \$1.19 per share, or 56.99%, to close at \$0.90 per share on July 29, 2022.

6. Then, on August 9, 2022, Avaya announced that: (1) it determined there was substantial doubt about its ability to continue as a going concern; (2) it would not timely file its financial statements for the quarter ended June 30, 2022; (3) its Audit Committee commenced internal investigations into circumstances surrounding the Company's financial results for the quarter; and (4) the Audit Committee also commenced an investigation into matters raised by a whistleblower.

7. On this news, Avaya's stock price fell \$0.51 per share, or 45.54%, to close at \$0.61 per share on August 9, 2022.

8. Finally, before the market opened on November 30, 2022, Avaya disclosed in a Current Report filed on Form 8-K with the SEC that "control deficiencies [] management had been reviewing represent material weaknesses in the Company's internal control over financial reporting" and that "management's assessment of ICFR included in Item 9A of the Company's Annual Report on Form 10-K for its fiscal year 2021 ended September 30, 2021, filed with the [SEC] on November 22, 2021 [] should no longer be relied upon." Specifically, the Form 8-K stated that the Company "did not design and maintain effective controls related to the information and communication component of the COSO (Committee of Sponsoring Organizations of the Treadway Commission) framework," "did not design and maintain effective controls to ensure appropriate communication between certain functions within the Company," and "did not design and maintain effective controls over the ethics and compliance program."

9. On this news, Avaya's stock price fell \$0.16 per share, or 14.28%, to close at \$0.96 per share on November 30, 2022.

10. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, Plaintiff and other Class members have suffered significant losses and damages.

JURISDICTION AND VENUE

11. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

12. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and Section 27 of the Exchange Act.

13. Venue is proper in this Judicial District pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1391(b). Avaya is headquartered in this Judicial District, Defendants conduct business in this Judicial District, and a significant portion of Defendants' actions took place within this Judicial District.

14. In connection with the acts alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications, and the facilities of the national securities markets.

PARTIES

15. Plaintiff, as set forth in the attached Certification, acquired Avaya securities at artificially inflated prices during the Class Period and was damaged upon the revelation of the alleged corrective disclosures.

16. Defendant Avaya is a Delaware corporation with principal executive offices located at 2605 Meridian Parkway, Suite 200 27713, Durham, North Carolina. The Company's common

stock trades in an efficient market on the New York Stock Exchange (“NYSE”) under the ticker symbol “AVYA”.

17. Defendant Chirico served as Avaya’s President, Chief Executive Officer (“CEO”), and Director from prior to the start of the Class Period until July 2022.

18. Defendant Alan B. Masarek (“Masarek”) has served as Avaya’s President, CEO, and Director since July 2022.

19. Defendant Kieran J. McGrath (“McGrath”) has served as Avaya’s Executive Vice President and Chief Financial Officer at all relevant times.

20. Defendants Chirico, Masarek, and McGrath are sometimes referred to herein as the “Individual Defendants.”

21. The Individual Defendants possessed the power and authority to control the contents of Avaya’s SEC filings, press releases, and other market communications. The Individual Defendants were provided with copies of Avaya’s SEC filings and press releases alleged herein to be misleading prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or to cause them to be corrected. Because of their positions with Avaya, and their access to material information available to them but not to the public, the Individual Defendants knew that the adverse facts specified herein had not been disclosed to and were being concealed from the public, and that the positive representations being made were then materially false and misleading. The Individual Defendants are liable for the false statements and omissions pleaded herein.

22. Avaya and the Individual Defendants are collectively referred to herein as “Defendants.”

SUBSTANTIVE ALLEGATIONS

Background

23. Avaya purports to be a “global leader in digital communications products, solutions and services for businesses of all sizes delivering its technology predominantly through software and services.” The Company claims that its “global, experienced team of professionals delivers award-winning services from initial planning and design, to seamless implementation and integration, to ongoing managed operations, optimization, training and support.”

Materially False and Misleading Statements Issued During the Class Period

24. The Class Period begins on November 22, 2021, when Avaya filed an Annual Report on Form 10-K with the SEC, reporting the Company’s financial and operating results for the year ended September 30, 2021 (the “2021 10-K”). In providing an overview of the Company, the 2021 10-K stated, in relevant part:

Avaya is a global leader in digital communications products, solutions and services for businesses of all sizes, delivering its technology predominantly through software and services. We enable organizations around the globe to succeed by creating intelligent communications experiences for our clients, their employees and their customers. Avaya builds innovative open, converged unified communications and collaboration (“UCC”) and contact center (“CC”) software solutions to enhance and simplify communications and collaboration in the cloud, on-premise or a hybrid of both. Our global, experienced team of professionals delivers award-winning services from initial planning and design, to seamless implementation and integration, to ongoing managed operations, optimization, training and support.

Businesses are built by the experiences they provide, and Avaya delivers millions of those experiences globally through its software and solutions every day. Avaya is shaping the future of businesses and workplaces, with innovation and partnerships that deliver tangible business results. Our cloud communications solutions and multi-cloud software ecosystem power tailored, intelligent, and effortless customer and employee experiences that enable our clients to effectively engage and interact with their customers.

25. Further, with respect to the Company's controls and procedures, the 2021 10-K stated, in relevant part:

Management's Report on Internal Control Over Financial Reporting

The Company's management, including the CEO and CFO, is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act. Management conducted an evaluation of the effectiveness of the Company's internal control over financial reporting based on the criteria set forth in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). ***Based on that evaluation, management has concluded that its internal control over financial reporting was effective as of September 30, 2021 to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with generally accepted accounting principles.*** The Company's independent registered public accounting firm, PricewaterhouseCoopers LLP, has issued an audit report on the Company's internal control over financial reporting, which appears in Part II, Item 8 of this Form 10-K.

Changes in Internal Control Over Financial Reporting

There have been no changes in the Company's internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934) during the quarter ended September 30, 2021 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

(Emphasis added.)

26. Appended to the 2021 10-K as exhibits were signed certifications pursuant to the Sarbanes-Oxley Act of 2002 ("SOX") by Defendants Chirico and McGrath, attesting that "[t]he information contained in the [2021 10-K] fairly presents, in all material respects, the financial condition and results of operations of the Company."

27. That same day, Avaya issued a press release announcing the Company's fiscal Q4 and full year 2021 financial results. The press release stated, in relevant part:

"Fiscal year 2021 for Avaya was a year marked by many firsts, and the outstanding results we delivered exceeded expectations on most every front. Most impressive is the fact that we reversed over a decade of annual revenue declines, delivering

year over year growth closing up approximately \$100 million, while we also grew ARR 177% to \$530 million,” said Jim Chirico, President and CEO of Avaya. “This year marked a real and substantive milestone for the company and I couldn’t be prouder of the performance or more thankful for the commitment of our customers and partners and performance of our global team as we’ve navigated a purposeful and deliberate journey of transformation to be an enterprise cloud leader.”

Financial Outlook - Fiscal Year 2022 - unless otherwise noted, values reflect October 31, 2021 FX rates.

- Revenue of \$2.975 billion to \$3.025 billion
- OneCloud ARR expected to be \$880 million to \$910 million by year end FY22
- CAPS revenue will represent between 45% and 50% of Avaya’s total revenue for FY22
- GAAP operating income of \$193 million to \$213 million; GAAP operating margin of ~7%
- Non-GAAP operating income of \$577 million to \$597 million; non-GAAP operating margin of ~19% to 20%
- Adjusted EBITDA of \$700 million to \$720 million; Adjusted EBITDA margin of ~24%
- Non-GAAP EPS of \$2.85 to \$3.03
- Cash flow from operations expected to be approximately 1% of revenue, as an outcome of the company’s accelerated success in moving to a recurring revenue model which is resulting in higher working capital requirements
- Approximately 88 million to 90 million diluted weighted average shares outstanding

28. Also that same day, Avaya hosted an earnings call with investors and analysts to discuss the Company’s fiscal Q4 2021 results (the “Q4 2021 Earnings Call”). During the scripted portion of the Q4 2021 Earnings Call, Defendant Chirico stated, in relevant part:

If you take a step back and put this past year into context, it is a year marked by many first. And the outstanding results we delivered exceeded expectations on most

every front. These results are not only reflection of how far we've come, but importantly, reinforce the speed at which we are delivering on our value creation strategy. Grow the company of off to a cloud and SaaS business model and remain highly profitable.

Let me start with growth. In Q4, we delivered our sixth consecutive quarter of year over year revenue growth. Revenue was seven sixty million. For the full year, revenue came in at two point nine seven three billion. Most impressive is the fact that we reversed a history of annual revenue declines, delivering year over year growth for the fiscal year closing up approximately one hundred million dollars, a first for Avaya.

We've invested significantly back in the business and it is paying dividends. The investment our enterprise customers are making in Avaya is the single greatest validation that we are accelerating in the right direction. This is why I'm excited for what the future holds and why I'm confident in our ability to drive profitable growth as a leading enterprise cloud company and we look forward to providing you more details about the opportunities we see ahead during our Investor Day in December.

29. On February 9, 2022, Avaya filed a Quarterly Report on Form 10-Q with the SEC, reporting the Company's financial and operating results for the quarter ended December 31, 2021 (the "Q1 2022 10-Q"). With respect to the Company's controls and procedures, the Q1 2022 10-Q stated, in relevant part:

Disclosure Controls and Procedures

As of December 31, 2021, the end of the period covered by this report, the Company carried out an evaluation, under the supervision and with the participation of the Company's management, including the Company's Chief Executive Officer and the Chief Financial Officer, that evaluated the effectiveness of the design and operation of the Company's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended). ***Based on this evaluation, the Chief Executive Officer and the Chief Financial Officer concluded that the Company's disclosure controls and procedures were effective as of December 31, 2021 to provide reasonable assurance that information required to be disclosed by the Company in reports filed or submitted under the Exchange Act is (i) recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms and (ii) accumulated and communicated to the Company's management, including its Chief Executive Officer and Chief***

Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

Changes in Internal Control Over Financial Reporting

During the first quarter of fiscal 2022, the Company was in the process of implementing a new enterprise resource planning accounting module designed to simplify and streamline the accounting process for certain contracts with customers and to provide enhanced operational information to management. The Company will utilize the new module during the second quarter of fiscal 2022. As updated processes were rolled out in connection with the transition to the new accounting module, the Company considered whether these process changes necessitated changes in the design and operation of its internal controls over financial reporting. Certain controls that were previously determined to be effective as of September 30, 2021 were replaced with new or modified controls. Other than those controls impacted by the implementation of the new accounting module, there have been no changes in the Company's internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934) during the quarter ended December 31, 2021 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

(Emphasis added.)

30. Appended to the Q1 2022 10-Q as exhibits were signed certifications pursuant to SOX by Defendants Chirico and McGrath, attesting that “[t]he information contained in the [Q1 2022 10-Q] fairly presents, in all material respects, the financial condition and results of operations of the Company.”

31. That same day, Avaya issued a press release announcing the Company's fiscal Q1 2022 financial results. The press release stated, in relevant part:

“Our transition to the cloud continues to gain strength as our Avaya OneCloud ARR grew by 137% year over year primarily driven by our enterprise segment and contact center solutions,” said Jim Chirico, President and CEO of Avaya. “Market demand remains very strong, especially with large enterprises. This quarter, we yet again closed more than 100 deals with total contract value greater than \$1 million. The breadth of our solutions, scale on which they operate, and global reach are unparalleled and as we closed out the quarter, we landed one of the largest deals in our history, a \$400 million OneCloud Public CCaaS deal with a large global financial services company.”

Financial Outlook - Fiscal Year 2022 - unless otherwise noted, values reflect January 31, 2022 FX rates.

- Revenue of \$2.975 billion to \$3.025 billion
- OneCloud ARR expected to be \$900 million to \$920 million by year end FY22
- CAPS revenue will represent between ~45% and 50% of Avaya's total revenue for FY22
- GAAP operating income of \$179 million to \$199 million; GAAP operating margin of 6% to 7%
- Non-GAAP operating income of \$561 million to \$581 million; non-GAAP operating margin of ~19%
- Adjusted EBITDA of \$680 million to \$700 million; Adjusted EBITDA margin of ~23%
- Non-GAAP EPS of \$2.72 to \$2.88
- Cash flow from operations expected to be approximately 1% of revenue, as an outcome of the company's accelerated success in moving to a recurring revenue model which is resulting in higher working capital requirements
- Approximately 88 million to 90 million diluted weighted average shares outstanding

32. Also that same day, Avaya hosted an earnings call with investors and analysts to discuss the Company's fiscal Q1 2022 results (the "Q1 2022 Earnings Call"). During the scripted portion of the Q1 2022 Earnings Call, Defendant Chirico stated, in relevant part:

This last year was an important one for Avaya. If I take a step back to reflect, I would characterize it as a continuation of a multi-year journey and one of accelerated transformation for the business. And it's clear that we are in a stronger position than when we started. I give our team a lot of credit as they have executed on the company's three value drivers and have remained focused on solidifying our business for our long-term success. Entering this fiscal year, we have successfully navigated a period that is best characterized by high volatility and unpredictability. And despite this extremely dynamic business environment, we've made steady progress on our objectives and strategy. Over the last two years, we've gained new

insights about our customers, their needs and seen their expectations and behaviors evolve. The future is currently moving in our direction and we are fortunate to have so many assets to leverage. Overall, I cannot be more pleased with the momentum of our business.

I'm optimistic about how we're positioned entering 2022, and I have high confidence, not only in the strategy we laid out, but most importantly, in our global team and their ability to continue executing to it. It's important to recognize the magnitude of the changes we have made over the past few years.

As we now move along the inflection point of our business model transformation, we will continue to generate additional successes and there have been many, but there's always more work ahead. We remain focused on solidifying our business for long-term success and the lessons we've learned and implemented will help us do just that. Long-term, the markets we address are robust growing and as we move forward, our performance will accelerate and we believe there is significant opportunity in front of us to drive sustainable growth.

33. On May 10, 2022, Avaya filed a Quarterly Report on Form 10-Q with the SEC, reporting the Company's financial and operating results for the quarter ended March 31, 2022 (the "Q2 2022 10-Q"). With respect to the Company's controls and procedures, the Q2 2022 10-Q stated, in relevant part:

Disclosure Controls and Procedures

As of March 31, 2022, the end of the period covered by this report, the Company carried out an evaluation, under the supervision and with the participation of the Company's management, including the Company's Chief Executive Officer and the Chief Financial Officer, that evaluated the effectiveness of the design and operation of the Company's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended). ***Based on this evaluation, the Chief Executive Officer and the Chief Financial Officer concluded that the Company's disclosure controls and procedures were effective as of March 31, 2022 to provide reasonable assurance that information required to be disclosed by the Company in reports filed or submitted under the Exchange Act is (i) recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms and (ii) accumulated and communicated to the Company's management, including its Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.***

Changes in Internal Control Over Financial Reporting

During the second quarter of fiscal 2022, the Company implemented a new enterprise resource planning accounting module designed to simplify and streamline the accounting process for certain contracts with customers and to provide enhanced operational information to management. The transition to the new accounting module necessitated changes in the design and operation of the Company's internal controls over financial reporting. Certain controls that were previously determined to be effective as of September 30, 2021 were replaced with new or modified controls. Other than those controls impacted by the implementation of the new accounting module, there have been no changes in the Company's internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934) during the quarter ended March 31, 2022 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

(Emphasis added.)

34. Appended to the Q2 2022 10-Q as exhibits were signed certifications pursuant to SOX by Defendants Chirico and McGrath, attesting that “[t]he information contained in the [Q2 2022 10-Q] fairly presents, in all material respects, the financial condition and results of operations of the Company.”

35. That same day, Avaya issued a press release announcing the Company's fiscal Q2 2022 financial results. The press release stated, in relevant part:

“We drove record growth for Avaya OneCloud ARR with a \$130 million quarter over quarter increase and an over \$400 million year over year increase, to \$750 million. The path to hit the \$1 billion ARR mark by the end of calendar year 2022 is well paved,” said Jim Chirico, President and CEO of Avaya. “We are successfully repositioning the company from our historic one-time revenue model to a recurring one, in fact 75% of our new bookings were Avaya OneCloud. Our strategy is clearly taking hold faster than we anticipated leading to a significant and fundamental shift in our business.”

Financial Outlook - Fiscal Year 2022 - unless otherwise noted, values reflect April 30, 2022 FX rates.

- Revenue of \$2.815 billion to \$2.855 billion

- OneCloud ARR expected to be \$940 million to \$960 million by year end FY22
- CAPS revenue will represent between ~47% to 50% of Avaya's total revenue for FY22
- GAAP operating income of \$76 million to \$96 million; GAAP operating margin of ~3%
- Non-GAAP operating income of \$466 million to \$486 million; non-GAAP operating margin of ~17%
- Adjusted EBITDA of \$580 million to \$600 million; Adjusted EBITDA margin of ~21%
- Non-GAAP Diluted EPS of \$2.09 to \$2.25
- Cash flow from operations expected to be approximately (7)% of revenue, as an outcome of the company's accelerated success in moving to a recurring revenue model which is resulting in higher working capital requirements
- Approximately 87 million to 88 million diluted weighted average shares outstanding

36. Also that same day, Avaya hosted an earnings call with investors and analysts to discuss the Company's fiscal Q2 2022 results (the "Q2 2022 Earnings Call"). During the scripted portion of the Q2 2022 Earnings Call, Defendant Chirico stated, in relevant part:

We are delivering Avaya OneCloud solutions to our customers at an accelerated rate and continue to make significant headway on our multi-year transformational journey to a cloud and SaaS business model.

It's important to highlight a number of key indicators of the progress of our transformation. First is Avaya OneCloud ARR. We drove record growth for this key industry KPI with \$130 million quarter-over-quarter increase and over \$400 million year-over-year increase to \$750 million. The path to hit \$1 billion ARR mark by the end of calendar year 2022 is well paid. Second, recurring revenue reached a record for us, growing from 66% a year ago to 69% in Q2. This is a strong indicator that our focus, investment and actions are paying off. Third, software and services as a percent of revenue came in at 89%. Fourth, 75% of new bookings came from Avaya OneCloud, the first time we reached that threshold, and we had record private cloud bookings as well.

And finally, our CAPS metric ended the quarter at 54%, up from 40% a year ago. These metrics serve has proved positive that we are successfully repositioning the company from our historic onetime revenue model to a recurring one. Our strategy is taking hold faster than we had anticipated, leading to a significant shift in our fundamental business model. To summarize, enterprise digital transformation initiatives continue to push forward as companies look to Avaya to help them transform their worker and their customer experiences. The strength of our success with enterprise customers continues to fuel growth in our key cloud and recurring metrics. 95% of ARR comes from enterprise contracts greater than \$100,000. 60% of those greater than \$1 million ARR and 20% comes from those greater than \$5 million, segment.

I'll wrap by saying that the significant progress we saw this quarter signifies our strategy is taking hold, and this shift is reflected in our revised second half guidance. Our transition is forging ahead, and we are showing solid tangible results. We are taking action in this very difficult environment to serve our customers while continuing to invest in innovation. No one could have predicted the rate and pace at which we are moving to the cloud as we're moving quickly to fortify our position. I'm excited about Avaya's future and even more excited about our team's ability to deliver on the opportunity in front of us.

37. On June 27, 2022, issued a press release entitled "Avaya Announces \$600M Financing," which stated, in relevant part:

Avaya [. . .] today announced \$600 million in aggregate financing commitments. The Company priced \$350 million in aggregate principal amount of new Senior Secured Term Loans (the "Term Loan") and entered into agreements for the private placement of \$250 million in aggregate principal amount of Exchangeable Senior Secured Notes (the "Notes"), all due in 2027.

The combined principal amount of the offerings was raised from the previously announced offering size of \$500 million due to increased demand. The closing of each transaction is expected to occur substantially concurrently and is subject to market and customary closing conditions.

"We are pleased with the successful execution of this financing," said Kieran McGrath, Chief Financial Officer, Avaya. "This funding supports and accelerates our business model transformation and addresses our convertible notes maturing in June of next year."

38. Upon information and belief, at all relevant times Avaya maintained a code of conduct available on the Company's website. The most recent Code of Conduct, published in October 2022, contained a message from Defendant Masarek, which stated, in relevant part:

The immense trust that Avaya customers place in our company—this is the foundation of our iconic brand and long-standing success, and it's a primary reason that I am so excited for the opportunity to lead Avaya. This trust is core to our business and to our future, and we do not take it lightly. As we revitalize our culture and our business, we are doubling down in our commitment to being fully open, honest, direct and transparent in all interactions with our customers, our partners, and all of our shareholders.

This is where the Avaya Code of Conduct comes in. This is not simply a required policy that sits on a proverbial shelf. Our Code of Conduct serves as the North Star for maintaining our principles and high standards of business and professional conduct, and our map to guide us in making the right decisions all along our way. It is designed to help all of us do the right things, the right way, and for the right reasons. It's a tool that we should all refer to regularly to ensure we make responsible and ethical business decisions, for the benefit of everyone involved.¹

39. The statements referenced in ¶¶ 24-38 were materially false and misleading because Defendants made false and/or misleading statements, as well as failed to disclose material adverse facts about the Company's business, operations, and prospects. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) the Company's ICFR was deficient in several areas; (ii) as a result of these deficiencies, the Company had failed to design and maintain effective controls over its whistleblower policies and its ethics and compliance program; (iii) the Company's deteriorating financial condition was likely to raise substantial doubt as to its ability to continue as a going concern; and (iv) as a result, the Company's public statements were materially false and misleading at all relevant times.

¹ <https://www.avaya.com/en/documents/avaya-code-of-conduct.pdf?t=0#:~:text=We%20compete%20aggressively%20for%20business,rigging%20or%20dividing%20of%20territories.>

The Truth Emerges

40. On July 28, 2022, Avaya issued a press release announcing “that Alan Masarek has been appointed as its President and CEO and as a member of Avaya’s Board of Directors, effective August 1, 2022. Mr. Masarek will succeed Jim Chirico, who will be removed from his positions as President and CEO of Avaya, effective August 1, 2022, and is resigning as a member of Avaya’s Board.” That same day, the Company issued a press release announcing the Company’s preliminary Q3 2022 financial results. The press release stated, in relevant part:

Based on the information currently available for the third quarter ended June 30, 2022, the company expects revenue to be between \$575 million and \$580 million, compared to guidance of \$685 million to \$700 million, and Adjusted EBITDA to be between \$50 million and \$55 million, compared to guidance of \$140 million to \$150 million.¹ The company is also finalizing testing of its goodwill and intangible assets that is expected to result in significant non-cash impairment charges as of June 30, 2022.

Avaya also announced it has initiated cost-cutting measures that are expected to primarily impact the company’s overall selling, general and administrative expenses, as well as discretionary spending. These actions are expected to generate between \$225 million and \$250 million in annual cost reductions beginning in the first quarter of fiscal 2023. The company expects to minimize any impact to customers with respect to sales and support, and remains committed to Avaya’s long-range innovation and product development roadmaps.

The company’s prior financial guidance should no longer be relied upon. Management will provide additional information in conjunction with the upcoming release of its full third quarter 2022 financial results.

The financial results for the three months ended June 30, 2022 included in this release are preliminary, have not been reviewed or audited, are based upon Avaya’s estimates, and were prepared prior to the completion of the company’s financial statement close process. The preliminary financial results should not be viewed as a substitute for the company’s full third quarter results and do not present all information necessary for an understanding of Avaya’s financial performance as of June 30, 2022. Accordingly, undue reliance should not be placed on this preliminary data.

41. On this news, Avaya’s stock price fell \$1.19 per share, or 56.99%, to close at \$0.90 per share on July 29, 2022.

42. Then, on August 9, 2022, Avaya issued a press release reporting selected additional preliminary Q3 fiscal 2022 financial results and providing business updates. The press release stated, in relevant part:

Going Concern, Audit Committee Internal Investigations and Filing Extension for Quarterly Report on Form 10-Q for the Quarter Ended June 30, 2022

As noted above, the Company completed a series of financing transactions in July 2022, intended in part to provide financing to fund the repurchase or repayment of the convertible notes, which mature in June 2023 and accordingly are classified as a current liability on June 30, 2022. The Company is currently engaging with its advisors to assess its options with respect to addressing the 2023 convertible notes, but there can be no assurance as to the certainty of the outcome of that assessment. As a result of the foregoing, in addition to the Company's decline in revenues during the third quarter, which represented substantially lower revenues than previous Company expectations, and the negative impact of significant operating losses on the Company's cash balance in the year to date, as of the date of this release, the Company has determined that there is substantial doubt about the Company's ability to continue as a going concern.

The Audit Committee of the Company's Board of Directors has commenced an internal investigation to review the circumstances surrounding the Company's financial results for the quarter ended June 30, 2022.

Furthermore, and separately, the Audit Committee has also commenced an internal investigation to review matters related to a whistleblower letter.

The Audit Committee has engaged outside counsel to assist in the investigations and has notified the Securities and Exchange Commission (the "SEC") and the Company's external auditor, PricewaterhouseCoopers LLP, of its investigations. As the investigations are not complete, the Audit Committee requires additional time to complete its initial assessments. As a result, the Company requires additional time to complete its review of its financial statements and finalize its disclosures in the Form 10-Q. Accordingly, the Company will be unable to file its Form 10-Q on or prior to the required filing date and has filed a Form 12b-25 Notification of Late Filing for its Quarterly Report on Form 10-Q for the Quarter Ended June 30, 2022.

43. On this news, Avaya's stock price fell \$0.51 per share, or 45.54%, to close at \$0.61 per share on August 9, 2022.

44. Finally, before the market opened on November 30, 2022, Avaya filed a Current Report on Form 8-K with the SEC which stated, in relevant part:

On November 28, 2022, Avaya Holdings Corp. (the “Company”) determined that control deficiencies that management had been reviewing represent material weaknesses in the Company’s internal control over financial reporting (“ICFR”).

As a result, the Company has concluded that management’s assessment of ICFR included in Item 9A of the Company’s Annual Report on Form 10-K for its fiscal year 2021 ended September 30, 2021, filed with the Securities and Exchange Commission (the “SEC”) on November 22, 2021 (the “2021 Form 10-K”) should no longer be relied upon for the reasons described below. The material weaknesses in ICFR did not result in a material misstatement of any of the Company’s previously issued financial statements.

As previously disclosed in the Company’s Form 12b-25 filed with the SEC on August 9, 2022 (the “Form 12b-25”), the Company has been reviewing matters related to potential material weaknesses in the Company’s ICFR with respect to the appropriate maintenance of its whistleblower log and the proper dissemination of related information and materials. The review related to an email received by a member of the Company’s board of directors (the “Board”) prior to the filing of the Company’s 2021 Form 10-K. Upon receipt of the email, the Board determined to undertake an independent investigation, assisted by outside counsel, into the concerns raised. Upon conclusion of this investigation, it was determined that the claims included in the email were unsubstantiated. However, the existence of the email and the subsequent internal investigation were not included in the whistleblower log or communicated to certain members of management and the Company’s independent registered public accounting firm.

Despite the steps the Board took to ensure the concerns asserted in the email were fully examined, the Company did not appropriately log the email in accordance with the Company’s whistleblower policy, nor did the Company convey to certain members of management or the Company’s independent registered public accounting firm the existence of the email or the fact that the Board had determined to undertake an independent investigation into the matter. As a result of the failure to appropriately communicate and log the email and related independent investigation, the Company determined to re-assess the effectiveness of its ICFR as of September 30, 2021, as reported in the Company’s 2021 Form 10-K.

Based on its re-assessment, management has determined that material weaknesses existed in its ICFR as the Company did not design and maintain effective controls related to the information and communication component of the COSO (Committee of Sponsoring Organizations of the Treadway Commission) framework. Accordingly, the Company’s ICFR as of September 30, 2021, was ineffective. More specifically, the Company did not design and maintain effective controls to

ensure appropriate communication between certain functions within the Company. This material weakness contributed to an additional material weakness, that the Company did not design and maintain effective controls over the ethics and compliance program. As a result of these material weaknesses, the Company also concluded that disclosure controls and procedures were not effective as of September 30, 2021, which continues to be the case. As more fully disclosed in the Form 12b-25, the Audit Committee has undertaken investigations into other matters, some of which may result in the conclusion that other material weaknesses exist in the Company's ICFR. These investigations are not yet complete and may identify additional material weaknesses or other matters.

The Company's Audit Committee has discussed the matters disclosed in this filing with PricewaterhouseCoopers LLP, the Company's independent registered public accounting firm. PricewaterhouseCoopers LLP's opinion dated November 22, 2021 in the 2021 Form 10-K, relating to the effectiveness of the Company's internal control over financial reporting as of September 30, 2021, should no longer be relied upon for the reasons described above.

45. On this news, Avaya's stock price fell \$0.16 per share, or 14.28%, to close at \$0.96 per share on November 30, 2022.

46. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, Plaintiff and other Class members have suffered significant losses and damages.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

47. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired Avaya securities during the Class Period (the "Class"); and were damaged upon the revelation of the alleged corrective disclosures. Excluded from the Class are Defendants herein, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

48. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Avaya securities were actively traded on the NYSE. While the exact number of Class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Avaya or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

49. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

50. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

51. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- whether the federal securities laws were violated by Defendants' acts as alleged herein;
- whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business, operations and management of Avaya;
- whether the Individual Defendants caused Avaya to issue false and misleading financial statements during the Class Period;
- whether Defendants acted knowingly or recklessly in issuing false and misleading financial statements;

- whether the prices of Avaya securities during the Class Period were artificially inflated because of the Defendants' conduct complained of herein; and
- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

52. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

53. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

- Defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- the omissions and misrepresentations were material;
- Avaya securities are traded in an efficient market;
- the Company's shares were liquid and traded with moderate to heavy volume during the Class Period;
- the Company traded on the NYSE and was covered by multiple analysts;
- the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and
- Plaintiff and members of the Class purchased, acquired and/or sold Avaya securities between the time the Defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts.

54. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

55. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants omitted material information in their Class Period statements in violation of a duty to disclose such information, as detailed above.

COUNT I

(Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder Against All Defendants)

56. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

57. This Count is asserted against Defendants and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

58. During the Class Period, Defendants engaged in a plan, scheme, conspiracy and course of conduct, pursuant to which they knowingly or recklessly engaged in acts, transactions, practices and courses of business which operated as a fraud and deceit upon Plaintiff and the other members of the Class; made various untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and employed devices, schemes and artifices to defraud in connection with the purchase and sale of securities. Such scheme was intended to, and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; (ii) artificially inflate and maintain the market price of Avaya securities; and (iii) cause Plaintiff and other members of the Class to purchase or otherwise acquire Avaya securities and options at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each of them, took the actions set forth herein.

59. Pursuant to the above plan, scheme, conspiracy and course of conduct, each of the Defendants participated directly or indirectly in the preparation and/or issuance of the quarterly and annual reports, SEC filings, press releases and other statements and documents described above, including statements made to securities analysts and the media that were designed to influence the market for Avaya securities. Such reports, filings, releases and statements were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about Avaya's finances and business prospects.

60. By virtue of their positions at Avaya, Defendants had actual knowledge of the materially false and misleading statements and material omissions alleged herein and intended thereby to deceive Plaintiff and the other members of the Class, or, in the alternative, Defendants acted with reckless disregard for the truth in that they failed or refused to ascertain and disclose such facts as would reveal the materially false and misleading nature of the statements made, although such facts were readily available to Defendants. Said acts and omissions of Defendants were committed willfully or with reckless disregard for the truth. In addition, each Defendant knew or recklessly disregarded that material facts were being misrepresented or omitted as described above.

61. Information showing that Defendants acted knowingly or with reckless disregard for the truth is peculiarly within Defendants' knowledge and control. As the senior managers and/or directors of Avaya, the Individual Defendants had knowledge of the details of Avaya's internal affairs.

62. The Individual Defendants are liable both directly and indirectly for the wrongs complained of herein. Because of their positions of control and authority, the Individual Defendants were able to and did, directly or indirectly, control the content of the statements of

Avaya. As officers and/or directors of a publicly-held company, the Individual Defendants had a duty to disseminate timely, accurate, and truthful information with respect to Avaya's businesses, operations, future financial condition and future prospects. As a result of the dissemination of the aforementioned false and misleading reports, releases and public statements, the market price of Avaya securities was artificially inflated throughout the Class Period. In ignorance of the adverse facts concerning Avaya's business and financial condition which were concealed by Defendants, Plaintiff and the other members of the Class purchased or otherwise acquired Avaya securities at artificially inflated prices and relied upon the price of the securities, the integrity of the market for the securities and/or upon statements disseminated by Defendants, and were damaged thereby.

63. During the Class Period, Avaya securities were traded on an active and efficient market. Plaintiff and the other members of the Class, relying on the materially false and misleading statements described herein, which the Defendants made, issued or caused to be disseminated, or relying upon the integrity of the market, purchased or otherwise acquired shares of Avaya securities at prices artificially inflated by Defendants' wrongful conduct. Had Plaintiff and the other members of the Class known the truth, they would not have purchased or otherwise acquired said securities, or would not have purchased or otherwise acquired them at the inflated prices that were paid. At the time of the purchases and/or acquisitions by Plaintiff and the Class, the true value of Avaya securities was substantially lower than the prices paid by Plaintiff and the other members of the Class. The market price of Avaya securities declined sharply upon public disclosure of the facts alleged herein to the injury of Plaintiff and Class members.

64. By reason of the conduct alleged herein, Defendants knowingly or recklessly, directly or indirectly, have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

65. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases, acquisitions and sales of the Company's securities during the Class Period, upon the disclosure that the Company had been disseminating misrepresented financial statements to the investing public.

COUNT II

(Violations of Section 20(a) of the Exchange Act Against the Individual Defendants)

66. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

67. During the Class Period, the Individual Defendants participated in the operation and management of Avaya, and conducted and participated, directly and indirectly, in the conduct of Avaya's business affairs. Because of their senior positions, they knew the adverse non-public information about Avaya's misstatement of income and expenses and false financial statements.

68. As officers and/or directors of a publicly owned company, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to Avaya's financial condition and results of operations, and to correct promptly any public statements issued by Avaya which had become materially false or misleading.

69. Because of their positions of control and authority as senior officers, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which Avaya disseminated in the marketplace during the Class Period concerning Avaya's results of operations. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause Avaya to engage in the wrongful acts complained of herein. The Individual Defendants, therefore, were "controlling persons" of Avaya within the meaning of

Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of Avaya securities.

70. Each of the Individual Defendants, therefore, acted as a controlling person of Avaya. By reason of their senior management positions and/or being directors of Avaya, each of the Individual Defendants had the power to direct the actions of, and exercised the same to cause, Avaya to engage in the unlawful acts and conduct complained of herein. Each of the Individual Defendants exercised control over the general operations of Avaya and possessed the power to control the specific activities which comprise the primary violations about which Plaintiff and the other members of the Class complain.

71. By reason of the above conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act for the violations committed by Avaya.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- A. Determining that the instant action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class representative;
- B. Requiring Defendants to pay damages sustained by Plaintiff and the Class by reason of the acts and transactions alleged herein;
- C. Awarding Plaintiff and the other members of the Class prejudgment and post-judgment interest, as well as their reasonable attorneys' fees, expert fees and other costs; and
- D. Awarding such other and further relief as this Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury.

Dated: