SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

A6 CAPITAL MANAGEMENT LP, A6 MASTER FUND LP, ANGELO, GORDON & CO., L.P., AG CATALOOCHEE, L.P., AG CC FUNDING I, LTD., AG CC FUNDING II, LTD., AG CENTRE STREET PARTNERSHIP, L.P., AG CORPORATE CREDIT OPPORTUNITIES FUND, L.P., AG MM, L.P., AG SUPER FUND MASTER, L.P., CAPITAL FOUR US INC., CANYON BALANCED MASTER FUND, LTD., CANYON DISTRESSED OPPORTUNITY MASTER FUND III, L.P., CANYON DISTRESSED TX (A) LLC, CANYON DISTRESSED TX (B) LLC, CANYON-EDOF (MASTER) L.P., CANYON ESG MASTER FUND, L.P., CANYON-GRF MASTER FUND II, L.P., CANYON IC CREDIT MASTER FUND L.P., CANYON NZ-DOF INVESTING, L.P., CANYON VALUE REALIZATION FUND, L.P., THE CANYON VALUE REALIZATION MASTER FUND, L.P., EP CANYON LTD., MARINER ATLANTIC MULTI-STRATEGY MASTER FUND, LLC, MARINER GLEN OAKS MASTER FUND, LP, and ST. JAMES'S PLACE GLOBAL HIGH YIELD BOND UNIT TRUST,

Plaintiffs,

v.

JAMES M. CHIRICO, JR., ALAN MASAREK, KIERAN J. McGRATH, STEPHAN SCHOLL, KEVIN SPEED, SUSAN L. SPRADLEY, JOHN P. SULLIVAN, STANLEY J. SUTULA III, ROBERT THEIS, SCOTT D. VOGEL, WILLIAM D. WATKINS, and JACQUELINE E. YEANEY,

Defendants.

Index No. _____

SUMMONS WITH NOTICE

JURY TRIAL DEMANDED

Plaintiff designates New York County as the place of trial.

Venue is proper in New York County under C.P.L.R. § 503.

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to serve upon Plaintiffs' attorneys a notice of appearance within twenty (20) days after the service of this Summons, exclusive of the day of service, or within thirty (30) days after service of this Summons is complete if it is not personally delivered to you within the State of New York. If you fail to appear, judgment will be taken against you by default for the relief demanded herein.

Defendants are current and former directors and officers of Avaya Holdings Corp. (the "Company" or "Avaya"). Plaintiffs are current or former investors in debt issued by Avaya. This Court has personal jurisdiction over Defendants under C.P.L.R. §§ 301 and 302 because, *inter alia*, certain Defendants reside in the State of New York and because, as to all Defendants, Plaintiffs' causes of action arise from Defendants' conduct of Avaya's business in this State and from their tortious acts that took place in this State and caused foreseeable injury to Plaintiffs in this State. Venue is proper under C.P.L.R. § 503 because certain Plaintiffs are located in this County and because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this County, including, without limitation, certain Defendants' transaction of business at Avaya's offices in this County, their meetings with Plaintiffs in this County, and the presence of the B3 Term Loan administrative and escrow agent in this County.

NOTICE

Plaintiffs bring this damages action to redress a massive fraud that Avaya's directors and officers perpetrated on investors in the Company's debt. Plaintiffs are current and former investors in the Company's term loan and convertible notes. Through false statements about critical details of Avaya's finances and management, Defendants induced Plaintiffs to purchase or hold hundreds

of millions of dollars in those debt instruments. Plaintiffs relied on Defendants' false statements and have suffered more than $125 million in losses as a result.

All Plaintiffs held certain unsecured convertible notes issued by the Company in 2018 and due 2023 ("the Convertible Notes"). Together, Plaintiffs' holdings in the Convertible Notes totaled over $100 million in face value. And certain Plaintiffs invested in (and later sold at a loss) approximately $80 million in B3 Term Loans issued in July 2022.

In May 2022, Avaya sought to raise additional financing under the pretense of refinancing the Convertible Notes. That same month, Avaya had released what seemed like rosy financial results for the second fiscal quarter of 2022 (ending March 31).[1] In discussing those results, Avaya's then-President and CEO, Defendant James M. Chirico, Jr., publicly touted the success of the Company and its various product lines. Chirico claimed that the Company had enjoyed "record growth" in its "transformational journey to a cloud and SaaS business model." He also told investors in an earnings call that "recurring revenue reached a record." The business was "obviously healthy and growing," according to Chirico. Avaya was "focus[ed] on the long game, investing in growth drivers and doing so profitably." Avaya projected third fiscal quarter revenues of "$685 million to $700 million" and adjusted EBITDA of "$140 million to $150 million."

In late May and early June, Avaya repeated these claims to investors in both public presentations and in private meetings arranged by Avaya's investor relations department. Avaya continued to report favorably on its liquidity, working capital, and financial projections. Members of Avaya's management team, including Defendants Kieran McGrath and John Sullivan, the

[1] Avaya's fiscal year begins on October 1 and ends on September 30 of each year. *See* Avaya Nov. 22, 2021 Form 10-K at 5.

Company's CFO and Treasurer, repeatedly assured investors that the Company's finances and operations were sound, and that financial projections were unchanged.

Defendants then contacted Plaintiffs and other investors in the Company's existing debt about making a new secured term loan to the Company (the "B3 Term Loan"). Avaya's CFO and Treasurer repeatedly represented that the Company's finances, operations, and liquidity were sound and that prospects were great. They repeatedly touted Avaya's continued robust growth. For example, during calls on June 2, 4, and 9, Defendants McGrath and Sullivan claimed to investors, including certain Plaintiffs, that the Company was on track to meet the third-fiscal-quarter guidance in Avaya's recent earnings announcement. Avaya's management also reiterated that guidance to their financial advisors in the B3 Term Loan transaction, knowing that the guidance would be repeated to investors. And to back up their claims, management also provided detailed financial forecasts and guidance in a data room.

During negotiations, several Plaintiffs made clear that they would not invest in the B3 Term Loan on the Company's proposed terms unless the Company made a firm commitment to repurchase their Convertible Notes at or near closing of the new financing. Defendant Sullivan claimed to one Plaintiff that the securities laws prohibited the Company from repurchasing the Convertible Notes before it released its third-fiscal-quarter financial results. Through their advisors, Avaya's management and the board promised multiple Plaintiffs that Avaya would repurchase those notes as soon as practicable. In late June 2022, McGrath and Sullivan even directed holders of the Convertible Notes, including two Plaintiffs, to speak with an agent coordinating the planned repurchase.

All Plaintiffs continued to hold their Convertible Notes in reliance on the Company's statements about its finances and planned repurchases. And certain Plaintiffs – funds associated

with Angelo Gordon, Canyon, and Mariner (the "B3 Plaintiffs") – invested approximately $80 million of new money in the B3 Term Loan in reliance on Defendants' statements. As part of pre-closing due diligence for the B3 Term Loan and other securities transactions, Defendants reaffirmed the financial guidance yet again to the B3 Plaintiffs and claimed that there were no anticipated changes to management.

The B3 Term Loan deal closed on July 12, nearly two weeks after the end of Avaya's third fiscal quarter. Defendants' fraud began to become apparent almost immediately afterwards. In a July 14 SEC filing, Avaya disclosed it had used proceeds from the B3 Term Loan to repurchase $129 million of ***other*** investors' Convertible Notes. The Company provided no explanation for why, contrary to Defendants' representations that it was precluded from doing so, it was repurchasing Convertible Notes before releasing its third quarter financial results, or why the repurchase did not include Convertible Notes held by Plaintiffs. When pressed, McGrath and Sullivan reassured Plaintiffs that the Company still planned to repurchase all the Convertible Notes, and again encouraged one Plaintiff to speak with an agent coordinating the planned repurchases.

Two weeks later, Avaya shocked the market with two disclosures that further revealed the extent of Defendants' fraud. First, in a July 28 press release, management announced that the Company would miss its previous earnings forecasts for the third fiscal quarter ended June 30 by more than ***60%***. While management had earlier predicted adjusted EBITDA for the quarter of $140 to $150 million – and repeatedly reassured Plaintiffs that the Company was on track to meet those predictions – the July 29 results revealed that adjusted EBITDA was, in fact, only between $50 to 55 million. Incredibly, Defendants gave no explanation for this devastating downturn.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.