

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

HOWARD CHARATZ, Individually and On Behalf of All Others)	No. 3:05-cv-02319-MLC-TJB
Similarly Situated,)	(Consolidated)
Plaintiff,)	<u>CLASS ACTION</u>
vs.)	
AVAYA, INC., et al.,)	
Defendants.)	

PROOF OF CLAIM AND RELEASE

I. GENERAL INSTRUCTIONS

1. To recover as a member of the Class based on your claims in the action entitled *Charatz v. Avaya, Inc., et al.*, No. 3:05-cv-02319-MLC-TJB (the "Litigation"), you must complete and, on page 7 hereof, sign this Proof of Claim and Release. If you fail to file a properly addressed (as set forth in paragraph 3 below) Proof of Claim and Release, your claim may be rejected and you may be precluded from any recovery from the Net Settlement Fund created in connection with the proposed settlement.

2. Submission of this Proof of Claim and Release, however, does not assure that you will share in the proceeds of the settlement of the Litigation.

3. YOU MUST MAIL YOUR COMPLETED AND SIGNED PROOF OF CLAIM AND RELEASE POSTMARKED ON OR BEFORE SEPTEMBER 9, 2010, ADDRESSED AS FOLLOWS:

Avaya Securities Litigation
Claims Administrator
c/o Gilardi & Co. LLC
P.O. Box 8040
San Rafael, CA 94912-8040

If you are NOT a member of the Class (as defined in the Notice of Proposed Settlement of Class Action ("Notice")) DO NOT submit a Proof of Claim and Release form.

4. If you are a member of the Class and you did not timely request exclusion in connection with the proposed settlement, you are bound by the terms of any judgment entered in the Litigation, including the releases provided therein, WHETHER OR NOT YOU SUBMIT A PROOF OF CLAIM AND RELEASE FORM.

II. CLAIMANT IDENTIFICATION

If you purchased or acquired Avaya common stock or put and call options and held the certificate(s) in your name, you are the beneficial purchaser as well as the record purchaser. If, however, you purchased or acquired Avaya common stock or put and call options and the certificate(s) were registered in the name of a third party, such as a nominee or brokerage firm, you are the beneficial purchaser and the third party is the record purchaser.

Use Part I of this form entitled "Claimant Identification" to identify each purchaser of record ("nominee"), if different from the beneficial purchaser of the Avaya common stock or put and call options which forms the basis of this claim. THIS CLAIM MUST BE FILED BY THE ACTUAL BENEFICIAL PURCHASER(S) OR ACQUIRER(S) OR THE LEGAL REPRESENTATIVE OF SUCH PURCHASER(S) OR ACQUIRER(S) OF THE AVAYA COMMON STOCK OR PUT AND CALL OPTIONS UPON WHICH THIS CLAIM IS BASED.

All joint purchasers must sign this claim. Executors, administrators, guardians, conservators, and trustees must complete and sign this claim on behalf of persons represented by them and their authority must accompany this claim and their titles or capacities must be stated. The Social Security (or taxpayer identification) number and telephone number of the beneficial owner may be used in verifying the claim. Failure to provide the foregoing information could delay verification of your claim or result in rejection of the claim.



III. CLAIM FORM

Use Part II of this form entitled "Schedule of Transactions in Avaya Common Stock" to supply all required details of your transaction(s) in Avaya common stock and Part III of this form entitled "Schedule of Transactions in Avaya Options" to supply all required details of your transaction(s) in Avaya put and call options. If you need more space or additional schedules, attach separate sheets giving all of the required information in substantially the same form. Sign and print or type your name on each additional sheet.

On the schedules, provide all of the requested information with respect to **all** of your purchases or acquisitions of Avaya common stock and/or put and call options which took place at any time between March 2, 2005 and April 19, 2005, inclusive (the "Class Period"), and **all** of your sales of Avaya common stock which took place at any time between March 2, 2005 and July 18, 2005, inclusive, and **all** of your sales of Avaya put and call options which took place at any time between March 2, 2005 and April 19, 2005, inclusive, whether such transactions resulted in a profit or a loss. You must also provide all of the requested information with respect to **all** of the Avaya common stock you held at the close of trading on March 1, 2005, at the close of trading on April 19, 2005, and at the close of trading on July 18, 2005. Failure to report all such transactions may result in the rejection of your claim.

List each transaction in the Class Period separately and in chronological order, by trade date, beginning with the earliest. You must accurately provide the month, day, and year of each transaction you list.

The date of covering a "short sale" is deemed to be the date of purchase or acquisition of Avaya common stock. The date of a "short sale" is deemed to be the date of sale of Avaya common stock.

Copies of broker confirmations or other documentation of your transactions in Avaya common stock should be attached to your claim. Failure to provide this documentation could delay verification of your claim or result in rejection of your claim.

NOTICE REGARDING ELECTRONIC FILES: Certain claimants with large numbers of transactions may request, or may be requested, to submit information regarding their transactions in electronic files. All claimants **MUST** submit a manually signed paper Proof of Claim and Release form whether or not they also submit electronic copies. If you wish to file your claim electronically, you must contact the Claims Administrator at 1-877-567-4775 or visit their website at www.gilardi.com to obtain the required file layout. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues to the claimant a written acknowledgment of receipt and acceptance of electronically submitted data.



**Must Be Postmarked
No Later Than
September 9, 2010**

Charatz v. Avaya, Inc., et al.
No. 3:05-cv-02319-MLC-TJB

PROOF OF CLAIM AND RELEASE

Please Type or Print in the Boxes Below
Do NOT use Red Ink, Pencil, or Staples

AVAYA

PART I: CLAIMANT IDENTIFICATION

Last Name

M.I.

First Name

Last Name (Co-Beneficial Owner)

First Name (Co-Beneficial Owner)

☐ IRA ☐ Joint Tenancy ☐ Employee ☐ Individual ☐ Other_____

Company Name (Beneficial Owner - If Claimant is not an Individual) or Custodian Name if an IRA

(specify)

Trustee/Asset Manager/Nominee/Record Owner's Name (if Different from Beneficial Owner Listed Above)

Account#/Fund# (Not Necessary for Individual Filers)

Social Security Number

Taxpayer Identification Number

Telephone Number (Work)

Telephone Number (Home)

Email Address

MAILING INFORMATION

Address

Address

City

State

Zip Code

Foreign Province

Foreign Zip Code

Foreign Country Name/Abbreviation

**FOR CLAIMS
PROCESSING
ONLY**

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OTHER

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	D	D
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Y	Y	Y	Y
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FOR CLAIMS
PROCESSING
ONLY

PART II. SCHEDULE OF TRANSACTIONS IN AVAYA COMMON STOCK

Proof
Enclosed?

A. Number of shares of Avaya common stock held at the close of trading on March 1, 2005:

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☐	Y
☐	N

B. Purchases or acquisitions of Avaya common stock (March 2, 2005 – April 19, 2005, inclusive):

PURCHASES

	Trade Date(s) of Shares (List Chronologically)	Number of Shares Purchased or Acquired	Total Purchase or Acquisition Price (Excluding Commissions, Taxes and Fees) <i>Please round off to the nearest whole dollar</i>	Proof of Purchase Enclosed?
	M M / D D / Y Y Y Y			
1.	/ /		\$. 00	☐ Y ☐ N
2.	/ /		\$. 00	☐ Y ☐ N
3.	/ /		\$. 00	☐ Y ☐ N

IMPORTANT: (i) Identify by number listed above all purchases in which you covered a "short sale":

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(ii) If you received shares through an acquisition or merger, please identify the date, the share amount and the company acquired:

M M / D D / Y Y
/ /

Merger Shares:

Company:

C. Sales of Avaya common stock (March 2, 2005 – July 18, 2005, inclusive):

SALES

	Trade Date(s) of Shares (List Chronologically)	Number of Shares Sold	Total Sales Price (Exclusive of Commissions, Taxes and Fees) <i>Please round off to the nearest whole dollar</i>	Proof of Sales Enclosed?
	M M / D D / Y Y Y Y			
1.	/ /		\$. 00	☐ Y ☐ N
2.	/ /		\$. 00	☐ Y ☐ N
3.	/ /		\$. 00	☐ Y ☐ N

Proof
Enclosed?

D. Number of shares of Avaya common stock held at the close of trading on April 19, 2005:

--	--	--	--	--	--	--	--	--	--

☐	Y
☐	N

Proof
Enclosed?

E. Number of shares of Avaya common stock held at the close of trading on July 18, 2005:

--	--	--	--	--	--	--	--	--	--

☐	Y
☐	N

If you require additional space, attach extra schedules in the same format as above. Sign and print your name on each additional page.

YOU MUST READ AND SIGN THE RELEASE ON PAGE 7. FAILURE TO SIGN THE RELEASE
MAY RESULT IN A DELAY IN PROCESSING OR THE REJECTION OF YOUR CLAIM.



PART III. SCHEDULE OF TRANSACTIONS IN AVAYA OPTIONS

PURCHASES/REPURCHASES

A. I made the following purchase/repurchase of options on Avaya common stock during the period from March 2, 2005 through April 19, 2005, inclusive:

Option Type	Date(s) of transaction (List Chronologically)						Number of option contracts acquired	Expiry Date (Month/Year)	Strike Price	Transaction price per option contract	[X]expired [A]ssigned [E]xercised	Proof of transaction Enclosed?
	M	M	D	D	Y	Y						
☐ Put												☐ Y
☐ Call												☐ N
☐ Put												☐ Y
☐ Call												☐ N
☐ Put												☐ Y
☐ Call												☐ N
☐ Put												☐ Y
☐ Call												☐ N
☐ Put												☐ Y
☐ Call												☐ N
☐ Put												☐ Y
☐ Call												☐ N
☐ Put												☐ Y
☐ Call												☐ N
☐ Put												☐ Y
☐ Call												☐ N

SALES/WRITTEN

B. I made the following sales/written options on Avaya common stock during the period from March 2, 2005 through April 19, 2005, inclusive:

Option Type	Date(s) of transaction (List Chronologically)						Number of option contracts acquired	Expiry Date (Month/Year)	Strike Price	Transaction price per option contract	[X]expired [A]ssigned [E]xercised	Proof of transaction Enclosed?
	M	M	D	D	Y	Y						
☐ Put												☐ Y
☐ Call												☐ N
☐ Put												☐ Y
☐ Call												☐ N
☐ Put												☐ Y
☐ Call												☐ N
☐ Put												☐ Y
☐ Call												☐ N
☐ Put												☐ Y
☐ Call												☐ N
☐ Put												☐ Y
☐ Call												☐ N
☐ Put												☐ Y
☐ Call												☐ N

If you require additional space, attach extra schedules in the same format as above. Sign and print your name on each additional page.

**YOU MUST READ AND SIGN THE RELEASE ON PAGE 7. FAILURE TO SIGN THE RELEASE
MAY RESULT IN A DELAY IN PROCESSING OR THE REJECTION OF YOUR CLAIM.**



IV. SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENTS

I (We) submit this Proof of Claim and Release under the terms of the Stipulation of Settlement described in the Notice. I (We) also submit to the jurisdiction of the United States District Court for the District of New Jersey with respect to my (our) claim as a Class Member and for purposes of enforcing the release set forth herein. I (We) further acknowledge that I am (we are) bound by and subject to the terms of any judgment that may be entered in the Litigation. I (We) agree to furnish additional information to the Claims Administrator to support this claim if requested to do so. I (We) have not submitted any other claim covering the same purchases, acquisitions, or sales of Avaya common stock or put and call options during the Class Period and know of no other person having done so on my (our) behalf.

V. RELEASE

1. I (We) hereby acknowledge full and complete satisfaction of, and do hereby fully, finally, and forever settle, release, and discharge from the Released Claims each and all of the "Released Persons," defined as each and all of the Defendants and each and all of their past or present family members, heirs, executors, administrators, subsidiaries, parents, successors and predecessors, officers, directors, shareholders (excepting Class Members), partners, agents, employees, attorneys, insurers, and any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any of the Defendants, and the legal representatives, heirs, successors-in-interest or assigns of the Defendants.

2. "Released Claims" means all rights, demands, claims (including "Unknown Claims" as defined below), and causes of action of every nature and description, in law or equity, whether arising under federal, state, local, statutory or common law, foreign law, or other law, rule or regulation, whether fixed or contingent, liquidated or un-liquidated, matured or un-matured, accrued or unaccrued, and whether known or unknown that Lead Plaintiffs or any member of the Class asserted, or could have asserted in this Litigation, or any other action or forum against the Released Persons arising out of, relating to, directly or indirectly, or in connection with the purchase or acquisition of Avaya Publicly Traded Securities during the Class Period, and the facts, matters, allegations, transactions, events, disclosures, statements, acts or omissions which were alleged or that could have been alleged in the Litigation.

3. "Unknown Claims" means all claims, demands, rights, liabilities, and causes of action of every nature and description which any Lead Plaintiff or any Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Persons which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Persons, or might have affected his, her or its decision not to object to this settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Lead Plaintiffs shall expressly waive, and each of the Class Members shall be deemed to have waived, and by operation of the Judgment shall have waived, the provisions, rights, and benefits of California Civil Code §1542 (or of any other applicable law of any state or territory of the United States or principle of common law). Section 1542 provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Lead Plaintiffs shall expressly waive, and each of the Class Members shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code §1542. Lead Plaintiffs and Class Members may hereafter discover facts in addition to or different from those which he, she, they or it now knows or believes to be true with respect to the subject matter of the Released Claims, but Lead Plaintiffs shall expressly fully, finally and forever settle and release, and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released, any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Lead Plaintiffs acknowledge, and the Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part.

This release shall be of no force or effect unless and until the Court approves the Stipulation of Settlement and the Stipulation becomes effective on the Effective Date (as defined in the Stipulation).

4. I (We) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any matter released pursuant to this release or any other part or portion thereof.

5. I (We) hereby warrant and represent that I (we) have included information about all of my (our) transactions in Avaya common stock and/or put and call options which occurred during the Class Period, as well as the number of shares of Avaya common stock held by me (us) at the close of trading on March 1, 2005, at the close of trading on April 19, 2005, and at the close of trading on July 18, 2005.





I (WE) DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT ALL OF THE FOREGOING INFORMATION SUPPLIED ON THIS PROOF OF CLAIM AND RELEASE FORM BY THE UNDERSIGNED IS TRUE AND CORRECT.

Executed this _____ day of _____ in _____
(Month/Year) (City/State/Country)

(Sign your name here)

(Sign your name here)

(Type or print your name here)

(Type or print your name here)

(Capacity of person(s) signing, e.g.,
Beneficial Purchaser or Acquirer, Executor or Administrator)

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Beneficial Purchaser or Acquirer, Executor or Administrator)

**ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT AMOUNT OF TIME.
THANK YOU FOR YOUR PATIENCE.**

Reminder Checklist:

- | | |
|--|---|
| 1. Please sign the above release and declaration. | 5. If you desire an acknowledgment of receipt of your claim form please send it Certified Mail, Return Receipt Requested. |
| 2. Remember to attach supporting documentation, if available. | 6. If you move, please send the Claims Administrator your new address. |
| 3. Do not send original stock certificates. | |
| 4. Keep a copy of your claim form and all supporting documentation for your records. | |



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