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Attorneys for Plaintiff

DEVENDRA PRASAD

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

DEVENDRA PRASAD, on behalf of himself
and all "aggrieved employees" pursuant to
Labor Code § 2698 *et seq.*,

Plaintiffs,

v.

CYXTERA TECHNOLOGIES, INC., a
Delaware corporation, and DOES 1 through
10, inclusive,

Defendants.

Case No.: 20CV373926

[Assigned To The Honorable Sunil R.
Kulkarni, Dept. 1]

**CLASS ACTION SETTLEMENT
AGREEMENT**

Complaint Filed: November 23, 2020
Trial Date: Not Set

THE SETTLEMENT

2. A summary of the terms of the Agreement is as follows:

1

1 Members. In no event shall Defendant be required to pay more than
2 the Gross Settlement Amount under this Agreement, except for the
3 employer's share of any payroll taxes due on the settlement payments
4 made pursuant to this Agreement, and in no event shall any amount of
5 the Gross Settlement Amount revert to Defendant's possession. The
6 employer portion of any required payroll taxes will be paid separately
7 by Defendant and not from the Gross Settlement Amount.

8 (b) The Agreement shall be administered on an opt-out basis. This
9 means that unless a Class Member submits a valid and timely Request
10 for Exclusion from the Settlement, as described herein, the Class
11 Member will be bound by the terms of this Settlement Agreement,
12 including the release of claims, as set forth herein.

13 (c) The Class shall include all non-exempt California employees who
14 worked for Cyxtera from July 1, 2017 through June 1, 2021.
15 Members of the Class who do not submit valid and timely Requests
16 for Exclusion from the Settlement shall receive Settlement Payments
17 in accordance with paragraphs 53-56 of the Agreement.

18 (d) The Settlement Administrator shall be ILYM Group, Inc. ("ILYM"),
19 subject to approval of the Court. From the Gross Settlement Amount,
20 settlement administration fees in a reasonable amount shall be paid to
21 the Settlement Administrator. Settlement administration fees are
22 estimated not to exceed Five Thousand Dollars and No Cents
23 (\$5,000.00). If the actual cost of settlement administration is less or
24 more than the amount approved by the Court, those funds shall be
25 added to or subtracted from the Net Settlement Amount.

26 (e) From the Gross Settlement Amount, Plaintiff may seek from the
27 Court an Enhancement Award not to exceed Ten Thousand Dollars
28

1 and No Cents (\$10,000.00), which Award Defendant shall not
2 oppose.

3 (f) From the Gross Settlement Amount, Twenty Thousand Dollars and
4 No Cents (\$20,000.00) shall be allocated to penalties under the
5 PAGA, Seventy-Five Percent (75%) of which shall be paid by the
6 Settlement Administrator directly to the California Labor and
7 Workforce Development Agency ("LWDA"). The remaining
8 Twenty-Five Percent (25%) shall be part of the Net Settlement
9 Amount and shall be distributed to the PAGA Group and shall receive
10 their share of the PAGA penalty allocation based on their pro rata
11 number of pay periods worked during the PAGA Period..

12 (g) Class Counsel may seek attorneys' fees up to Ninety-Eight Thousand
13 Three Hundred Thirty-Three Dollars and Thirty-Three Cents
14 (\$98,333.33), which is One-Third of the Gross Settlement Amount, as
15 well as a reasonable recovery of litigation costs in an amount not to
16 exceed Fifteen Thousand Dollars and No Cents (\$15,000.00), both of
17 which shall be deducted from the Gross Settlement Amount, and
18 neither of which shall be opposed by Defendant.

19 **DEFINITIONS**

20 Unless otherwise defined herein, capitalized terms used in this Agreement shall have the
21 meanings set forth below:

22 3. "Class Counsel" means

23 Daniel F. Gaines
24 Alex P. Katofsky
25 Evan S. Gaines
26 GAINES & GAINES, APLC
27 27200 Agoura Road, Suite 101
28 Calabasas, CA 91301
Telephone: (818) 703-8985
Facsimile: (818) 703-8984

1 4. “Class,” “Class Member” or “Class Members” means all non-exempt California
2 employees who worked for Cyxtera from July 1, 2017 through June 1, 2021.

3 5. “Class Period” means July 1, 2017 through June 1, 2021.

4 6. “Class Representative” means Plaintiff Devendra Prasad.

5 7. “Complaints” means the Representative Complaint originally filed on November 23,
6 2020 in Santa Clara County Superior Court and the soon-to-be filed First Amended Complaint,
7 which will be filed in the Civil Action as explained herein.

8 8. “Court” means the Santa Clara County Superior Court.

9 9. “Defendant” or “Cyxtera” means Cyxtera Technologies, Inc. and past and present
10 corporate affiliates, parents, subsidiaries, related entities, predecessors, successors-in-interest,
11 divested business units, including but not limited to Cyxtera Communications, LLC.

12 10. “Defense Counsel” means
13 Christina T. Tellado
14 Deisy Castro
15 HOLLAND & KNIGHT LLP
16 400 S. Hope Street, 8th Floor
17 Los Angeles, CA 90071
18 Telephone: (213) 896-2400
19 Facsimile: (213) 896-2450

20 11. “Effective Date” means the first date upon which all of the following events have
21 occurred:

- 22 (i) this Agreement has been executed by all Parties and by Class Counsel and
23 Defense Counsel;
24 (ii) the Court has preliminarily approved the Settlement;
25 (iii) notice has been properly given to the Class Members, providing them an
26 opportunity to opt out of the Settlement;
27 (iv) if no objections to the Settlement have been filed, or any objections to the
28 Settlement which have been filed have been withdrawn, the Court has held a
Final Fairness and Approval Hearing and entered the Final Order and
Judgment approving the Settlement; and

(v) in the event that there are objections to the Settlement, which are not withdrawn, and if an appeal, review, or writ is not sought from the Judgment, (a) the date sixty (60) days after service of notice of entry of Judgment has passed; or (b) the dismissal or denial of an appeal is no longer subject to judicial review.

(vi) In this regard, it is the intention of the Parties that the Settlement shall not become effective until the Court's order approving the Settlement has become completely final, and there is no timely recourse by an appellant or objector who seeks to contest the Settlement.

12. "Enhancement Award" means any payment to the Class Representative for his service to the Class, the risks he undertook and his general release in favor of Defendant, which is in addition to whatever payment he may otherwise be entitled to as a Class Member.

13. "Final Fairness and Approval Hearing" means the hearing to be requested by Plaintiff and conducted by the Court after the filing by Plaintiff of an appropriate motion and following appropriate notice to Class Members giving Class Members an opportunity to opt out from the Class and Settlement and/or to object to the Settlement, at which time Plaintiff shall request that the Court finally approve the fairness, reasonableness and adequacy of the terms and conditions of the Settlement, enter the Final Order and Judgment, and take other appropriate action.

14. "Final Order and Judgment" means the order and judgment to be entered by the Court upon granting final approval of the Settlement and this Agreement as binding upon the Parties and the Class Members who do not properly and timely Opt Out. Notice of the Final Order and Judgment shall be posted on the Settlement Administrator's website for no fewer than 180 days after its entry.

15. "Gross Settlement Amount" means the maximum amount of Two Hundred Ninety-Five Thousand U.S. Dollars and No Cents (\$295,000.00) that Defendant shall be required to pay under this Agreement.

16. "Net Settlement Amount" means the amount of money remaining after Class Counsel's attorneys' fees and costs, any Enhancement Award to the Class Representative,

1 settlement administration costs and expenses to the Settlement Administrator, and the PAGA
2 payment to the LWDA are all deducted from the Gross Settlement Amount. The entire Net
3 Settlement Amount will be distributed to Participating Class Members without the need for
4 Participating Class Members to submit claim forms.

5 17. "Notice of Class Settlement" means the form attached hereto as Exhibit 1 or
6 whichever form is approved by the Court that shall be mailed to Class Members to inform them of
7 the terms of this Agreement and their rights and options related thereto.

8 18. "Opt Out Request" or "Request for Exclusion" means a written request for exclusion
9 that a Class Member may submit to be excluded from the Class and the Settlement. Requests for
10 Exclusion shall be in the form described in paragraph 45.

11 19. "Opt Out Period" refers to the forty-five (45) day period following the date the
12 Settlement Administrator mails the Notice of Class Settlement to Class Members, and within which
13 any Class Member who wishes to be excluded from the Class and this Settlement may submit a
14 Request for Exclusion.

15 20. "PAGA" means the Private Attorneys General Act of 2004, California Labor Code
16 section 2698, *et seq.*

17 21. "PAGA Group" means all non-exempt California employees who worked for
18 Cyxtera from September 15, 2019 through June 1, 2021.

19 22. "PAGA Letter" means the notice of alleged Labor Code violations that Plaintiff
20 caused to be sent to the LWDA pursuant to Labor Code Section 2699.3(1) on or about September
21 15, 2020.

22 23. "PAGA Period" means September 15, 2019 through June 1, 2021.

23 24. "Participating Class Members" means all Class Members who do not submit a
24 timely and valid Request for Exclusion to the Settlement Administrator.

25 25. "Qualifying Workweeks" means the total number of calendar weeks that each
26 member of the Class was employed by Cyxtera in California as a non-exempt employee during the
27 Class Period.

28 26. "Released Claims" are defined in paragraph 73 of this Agreement.

27. “Released Parties” means Defendant Cyxtera Technologies, Inc., and past and present corporate affiliates, parents, subsidiaries, related entities, predecessors, successors-in-interest, divested business and business units, including, but not limited to, Cyxtera Communications, LLC, and the board members, officers, employees, agents, representatives, insurers and attorneys of any of the same.

28. "Settlement Administrator" means ILYM Group, Inc.

29. "Settlement" means the settlement as provided for in this Agreement.

30. "Settlement Payment" or "Settlement Payments" means the amount payable from the Net Settlement Amount to each Participating Class Member, as well as each PAGA Group member.

31. "Settlement Payment Rate" or "SPR" means the gross amount that shall be paid for each Qualifying Workweek. The Settlement Payment Rate or SPR shall be determined as described in paragraph 55 below.

BACKGROUND

32. On November 23, 2020, Plaintiff, on behalf of himself and all others “aggrieved employees,” filed the above-referenced Representative Action Complaint (“Complaint”) in the Santa County Superior Court against Defendant. As subsequently amended by the First Amended Complaint, Plaintiff, on behalf of himself, allegedly aggrieved employees, and the Class, seeks unpaid wages, damages, restitution, civil and statutory penalties, including penalties pursuant to PAGA, interest, attorneys’ fees, costs and other relief on the basis of allegations, *inter alia*, that the Defendant failed to properly calculate the regular rate of pay, such that Defendant allegedly improperly used the base hourly wage for calculating overtime, sick time, and meal premium payments, such that Plaintiff and the allegedly aggrieved employees and Class Members he seeks to represent were underpaid, in addition to Defendant’s alleged failure to timely pay all wages due at termination and failure to provide complete and accurate wage statements. Defendant denies each of the allegations of the Complaints and the PAGA Letter, and deny that it has any liability to Plaintiff or the Class or any allegedly aggrieved current or former employee, and denies that Plaintiff, the Class or any allegedly aggrieved employee is entitled to any relief.

1 33. Class Counsel and Defense Counsel have extensive experience in litigating wage and
2 hour class actions in California, and they have vigorously litigated the Civil Action since their
3 inception.

4 34. On April 27, 2021, Plaintiff and Defendant engaged in mediation before the
5 Honorable Michael A. Latin (L.A. Sup. Ct., Ret.), an experienced mediator in this area of law. The
6 Parties reached an agreement on the key terms of a class action settlement, which was memorialized
7 in a Memorandum of Understanding Re Settlement and fully executed by the Parties on April 29,
8 2021.

9 35. This Agreement further memorializes the Parties' settlement and is made in
10 compromise of and embraces all claims against the Released Parties as enumerated in paragraph 73
11 of this Agreement.

12 36. Because the settled case is a class action, this Agreement must receive preliminary
13 and final approval by the Court. Accordingly, Plaintiff and Defendant enter into this Agreement on
14 a conditional basis. Should the Court, or any other court taking jurisdiction of this matter, decline
15 to approve all material aspects of the Settlement or make any ruling substantially altering the
16 material terms of the Settlement, the Settlement shall be voidable and unenforceable as to Plaintiff
17 and Defendant, at the option of any party. Any party may exercise his or its option to void this
18 Settlement by giving notice, in writing, to the other parties and to the Court at any time before final
19 approval by the Court of this Settlement. In the event that the Effective Date does not occur, this
20 Agreement shall be deemed null and void *ab initio* and shall be of no force or effect whatsoever,
21 and shall not be referred to or utilized for any purpose. Defendant denies all of Plaintiff's
22 individual, class and representative claims as to liability and damages. Defendant expressly
23 reserves all rights to challenge any and all such claims and allegations upon all procedural and
24 factual grounds, including the assertion of all defenses, if the Effective Date of the Settlement does
25 not occur. Likewise, Plaintiff expressly reserves all rights to pursue, amend, dismiss or otherwise
26 dispose of the claims covered under this Settlement in the event the Effective Date of the Settlement
27 does not occur.
28

1 37. Plaintiff and Class Counsel have concluded, after taking into account the sharply
2 disputed factual and legal issues involved in the Actions, the risks attending further prosecution,
3 and the substantial benefits to be received pursuant to settlement as set forth in this Agreement, that
4 settlement on the terms set forth herein is in the best interest of Plaintiff and the Class, and is fair
5 and reasonable.

6 38. Similarly, Defendant has concluded, after taking into account the sharply disputed
7 factual and legal issues involved in the Civil Action, the risks and expense attending further
8 litigation, and their desire to put the controversy to rest, that settlement on the terms set forth herein
9 is in their best interests and is fair and reasonable.

10 39. This Settlement contemplates: (i) amendment of the Civil Action to add the class
11 claims contemplated to be released herein; (ii) entry of an order preliminarily approving the
12 Settlement; (iii) distribution of the Notice of Class Settlement to the Class Members; and (iv) entry
13 of a Final Order and Judgment in accordance with the Settlement. The Court shall retain
14 jurisdiction over the Civil Action and Parties for purposes of enforcing the Settlement and resolving
15 any disputes relating to the Settlement.

16 **SETTLEMENT APPROVAL AND IMPLEMENTATION PROCEDURE**

17 **Amendment of the Civil Action to Add Class Claims**

18 40. As soon as practicable, or concurrently when Plaintiff moves the Court to enter a
19 preliminary approval order, Plaintiff shall file a First Amended Complaint in the Civil Action to add
20 the corresponding class claims.

21 **Preliminary Approval of Settlement**

22 41. As soon as practicable, Class Counsel shall submit this Agreement to the Court for
23 its preliminary approval. Plaintiff shall also move the Court to enter a preliminary approval order
24 and to conditionally certify the Class for purposes of this Settlement only. The submission shall be
25 supported by evidence as may be required for the Court to determine that this Settlement is fair,
26 adequate and reasonable, as required by Section 382 of the California Code of Civil Procedure and
27 Rule 3.7639 of the California Rules of Court. The submission shall also include a proposed Notice
28 of Class Settlement in the form attached hereto as Exhibit 1 and a proposed order granting

1 preliminary approval of Settlement, which shall, among other things, set a Final Fairness and
2 Approval Hearing date. Plaintiff and Defendant agree that the conditional certification of the Class
3 for settlement purposes only is in no way an admission by any of the Released Parties that class
4 certification would otherwise be proper.

5 **Cooperation**

6 42. The Parties agree to cooperate with each other to accomplish the terms of this
7 Settlement, including, but not limited to, the timely execution of such documents and such other
8 acts as may be reasonably necessary to implement the terms of this Settlement. Neither the Parties
9 nor any of their attorneys or agents shall solicit or encourage any Class Members to exclude
10 themselves from the Settlement or to object to the Settlement, but this shall not impair Class
11 Counsel's obligations to advise Class Members of their rights and options under the Settlement.
12 The Parties to the Settlement shall use their best efforts, including all efforts contemplated by this
13 Agreement and any other efforts that may become necessary by Court order, or otherwise, to
14 effectuate this Settlement and the terms set forth herein.

15 **Notice of Class Settlement by Mail**

16 43. The Settlement Administrator shall, within thirty-five (35) calendar days of the date
17 of preliminary approval of this Settlement, send by First-Class United States mail the Notice of
18 Class Settlement to each Class Member using the most recent address available to the Settlement
19 Administrator for mail delivery. Any returned mail with a forwarding address from the U.S. postal
20 service shall be promptly re-mailed to the new addresses. The Settlement Administrator shall
21 perform a reasonable search for a new address for any returned mail without a forwarding address.

22 **Opt Out Request**

23 44. Any Class Member seeking to be excluded from the Class and this Settlement shall
24 submit a written Request for Exclusion in the manner described herein.

25 45. The Notice of Class Settlement will provide that Class Members who wish to
26 exclude themselves from the Settlement must mail to the Settlement Administrator a written
27 Request for Exclusion. The written Request for Exclusion must (a) state the Class Member's name,
28 address, telephone number, and social security number; (b) state the Class Member's request to

1 exclude himself or herself from the Settlement and to opt out of the Settlement; (c) be signed by the
2 Class Member or his or her lawful representative; and (d) be addressed and sent to the Settlement
3 Administrator and postmarked no later than forty-five (45) calendar days after the date of mailing of
4 the Notice of Class Settlement. Any Class Member who submits a complete, signed and timely
5 Request for Exclusion shall no longer be a member of the Class, shall be barred from participating
6 in this Settlement, shall be barred from objecting to this Settlement, and shall receive no benefit
7 from this Settlement; however, they will receive their PAGA portion of the settlement and will be
8 releasing their PAGA claims because they cannot opt out of the PAGA settlement. Any untimely or
9 incomplete Request for Exclusion shall be considered null and void. The Settlement Administrator
10 shall notify Class Counsel and Defense Counsel of the number of timely opt outs within seven (7)
11 calendar days after the close of the Opt Out period.

12 46. If more than Ten Percent (10%) of the members of either the Class timely opt out of
13 the Settlement in the manner described herein, then Defendant shall have the right in its sole
14 discretion to rescind and void this Settlement by giving written notice to Class Counsel within
15 seven (7) business days after the end of the Opt Out period.

16 **Declaration of Compliance**

17 47. As soon as practicable, but no later than ten (10) calendar days following the close of
18 the Opt Out Period, the Settlement Administrator shall provide Class Counsel and Defense Counsel
19 with a declaration attesting to completion of the notice process set forth in this Agreement, the
20 number and names of any opt outs, and a summary of any disputes raised by any Class Members.
21 This declaration shall be filed with the Court by Class Counsel along with a motion requesting final
22 approval of the Settlement.

23 **Sufficient Notice**

24 48. The Parties agree that compliance with the procedures described in this Agreement
25 constitutes due and sufficient notice to Class Members of this Settlement and the Final Fairness and
26 Approval Hearing, and satisfies the requirements of due process, and that nothing else shall be
27 required of Plaintiff, Class Counsel, Defendant, Defense Counsel, or the Settlement Administrator
28 to provide notice to Class Members of the Settlement and the Final Fairness and Approval Hearing.

Objections to Settlement

49. Any Class Member wishing to object to this Settlement shall file a written objection with the Court by following the procedure set forth in the Notice of Class Settlement no later than forty-five (45) calendar days after the mailing of the Notice of Class Settlement.

50. Any Class Member may appear at the Final Fairness and Approval Hearing to present and argue objections to the Settlement.

51. Class Counsel and Defense Counsel shall file any responses to any written objections submitted to the Court in accordance with this Agreement at least seven (7) calendar days before the Final Fairness and Approval Hearing.

Final Fairness and Approval Hearing

52. On the date set forth by the Court for the Final Fairness and Approval Hearing in the Order granting preliminary approval of the Settlement, a Final Fairness and Approval Hearing shall be held before the Court in order to consider and determine: (i) whether the Court should give this Settlement final approval; (ii) whether the Court should approve Class Counsel's application for attorneys' fees and costs and any Enhancement Award to Plaintiff; and (iii) to hear any proper objections to the Settlement. At the Final Fairness and Approval Hearing, Plaintiff, Class Counsel, Defendant, and Defense Counsel shall ask the Court to give final approval to this Settlement.

Settlement Payment Procedures

Payments under this Agreement shall be made by the Settlement Administrator as follows:

53. Participating Class Members shall be paid exclusively from the Net Settlement Amount.

54. Plaintiff and Defendant recognize and agree that the asserted claims in the Civil Action are extremely difficult to quantify with any certainty for any given year, or at all, and are subject to a myriad of differing calculations and formulas. Plaintiff and Defendant agree that the formula for allocating Settlement Payments to Participating Class Members provided herein is reasonable and that the Settlement Payments are designed to provide a fair settlement, despite the uncertainties of the amounts alleged to be owed to Participating Class Members and the calculation

1 of them. Plaintiff and Defendant have agreed that the distribution to each Participating Class
2 Member shall be determined as set forth in paragraph 55 below.

3 55. The Settlement Payment to each Participating Class Member shall be determined
4 based on the number of Qualifying Workweeks during which that Participating Class Member was
5 employed in California in a non-exempt position during the Class Period. The Net Settlement
6 Amount shall be divided by the total number of Qualifying Workweeks for all Participating Class
7 Members while employed in California in a non-exempt position during the Class Period. The
8 result of this division shall yield a SPR. The gross amount of each Participating Class Member's
9 Settlement Payment shall be calculated by multiplying the number of Qualifying Workweeks the
10 Participating Class Member was employed in California in a non-exempt position during the Class
11 Period by SPR. Governmentally-required employee tax withholdings shall be deducted from that
12 portion of each Settlement Payment allocated as wages.

13 56. In calculating Settlement Payments for each Class Member, Defendant's records and
14 reasonable calculation regarding Qualifying Workweeks of Class Members shall be deemed
15 presumptively valid, subject to challenge by the Class Member with supporting documentation or
16 otherwise. Defendant shall research any challenged discrepancy and proffer evidence to rebut it, if
17 appropriate. The Parties shall attempt to resolve amongst themselves any challenges to Qualifying
18 Workweek calculations, and the Court shall make a final determination if the Parties cannot agree
19 to a resolution.

20 57. Within ten (10) business days after the Effective Date, Defendant shall transmit the
21 Gross Settlement Amount to the Settlement Administrator. Within fifteen (15) business days after
22 the Effective Date, the Settlement Administrator shall transmit to Class Counsel the attorneys' fees,
23 costs, and expenses approved by the Court, shall transmit to the Class Representative his
24 Enhancement Award approved by the Court, shall transmit to the LWDA the payment pursuant to
25 PAGA, and shall mail a Settlement Payment to each Participating Class Member and each member
26 of the PAGA Group.

27 58. The Settlement Payments are payments for all Released Claims for the Class
28 Members. The Settlement Administrator shall be authorized to establish a Qualified Settlement

Fund ("QSF") pursuant to Internal Revenue Service ("IRS") rules and regulations in which the Gross Settlement Amount shall be placed and from which payments required by the Settlement shall be made. The Settlement Administrator will calculate the Settlement Payments and allocation of those payments as to unpaid wages, penalties, and/or interest as set forth above in paragraph 55. The amount of each Settlement Payment to each Participating Class Member that is allocated to alleged unpaid wage claims shall be paid net of all applicable employee portions of employment taxes, including any federal, state, and/or local laws in issue tax withholding requirements and the employee share of FICA taxes. The amount of each Settlement Payment to each Participating Class Member shall be allocated 25% to alleged unpaid wages, subject to withholding and reported in an IRS Form W-2, and 75% to alleged penalties and interest, which shall not be subject to withholding and will be reported on an IRS Form 1099 if required by law. Settlement Payments issued to PAGA Group members, pursuant to paragraph 2(f), shall be allocated 100% to penalties, which shall not be subject to withholding and will be reported on an IRS Form 1099 if required by law.

59. With the exception of employer side payroll taxes, the Released Parties shall not be required to provide any additional form of compensation to any Participating Class Member as a result of his or her receipt of a Settlement Payment. Each Participating Class Member and the Class Representative shall be responsible for remitting to state and/or federal taxing authorities any applicable taxes which may be owed on the portion of any payment received pursuant to this Agreement, except as provided by this Agreement.

60. It is expressly understood and agreed that the receipt of a Settlement Payment shall not entitle any Class Member to additional compensation or benefits under any company bonus, contest or other compensation or benefit plan or agreement, nor shall it entitle any Class Member to any increased retirement, 401(k) or matching benefits, or deferred compensation benefits. The Parties agree that any Settlement Payments made to Participating Class Members under the terms of this Agreement shall not represent any modification of previously credited length of service or other eligibility criteria under any bonus plan, employee pension benefit plan or employee welfare plan sponsored by any of the Released Parties, or to which any of the Released Parties are required to make contributions. Further, any Settlement Payments made under this Agreement shall not be

1 considered compensation in any year for purposes of determining eligibility for, or benefit accrual
2 within, any employee pension benefit plan or employee welfare benefit plan sponsored by any of
3 the Released Parties or to which any of the Released Parties are required to make contributions. It
4 is the Parties' intent that the Settlement Payments provided for in this Agreement are the sole
5 payments to be made by Defendant to the Class Members, and that the Class Members are not
6 entitled to any new or additional compensation or benefits as a result of having received the
7 Settlement Payments, notwithstanding any contrary terms in any agreement, contract, benefit or
8 compensation plan document that might have been in effect during the Class Period.

9 61. Any Settlement Payment that remains uncashed after one hundred eighty (180) days
10 of disbursement shall be void and the Settlement Administrator shall pay the funds represented by
11 such un-redeemed checks to the California State Controller – Unclaimed Property Division, with an
12 identification of the Class Member to whom the funds belong. In that event, the Class Member
13 nonetheless shall be bound by the terms of this Agreement and shall look only to the State of
14 California for recovery of such property. The Parties stipulate and agree that this provision of
15 uncashed checks is in the best interests of the Class, within the meaning of Code of Civil Procedure
16 section 384, as it avoid forfeiture by any Participating Class Member or members of the PAGA
17 Group.

18 **The Settlement Administrator**

19 62. The Settlement Administrator shall administer the Settlement, including, but not
20 limited to: (i) printing, mailing and re-mailing (if necessary) the Notice of Class Settlement, and
21 receiving Requests for Exclusion from Class Members; (ii) preparing and submitting to
22 Participating Class Members and government entities all appropriate tax filings and forms; (iii)
23 computing the amount of and distributing Settlement Payments, the Enhancement Award, and Class
24 Counsel attorneys' fees and costs; (iv) processing and validating Requests for Exclusion; (v)
25 establishing a QSF, as defined by the Internal Revenue Code; and (vi) calculating and remitting to
26 the appropriate government agencies all employee payroll tax obligations arising from the
27 Settlement and preparing and submitting filings required by law in connection with the payments
28 required by the Settlement.

63. Settlement administration fees in a reasonable amount shall be paid to the Settlement Administrator from the Gross Settlement Amount. Settlement administration fees are not to exceed Five Thousand Dollars and No Cents (\$5,000.00). If the actual cost of settlement administration is less than the not to exceed amount as approved by the Court, those funds shall be added to the Net Settlement Amount for allocation to Class Members. All costs associated with settlement administration shall come out of the Gross Settlement Amount.

64. Defendant shall provide the names, last known addresses, social security numbers and Qualifying Workweeks for Class Members ("Class Data") to the Settlement Administrator only no later than twenty (20) calendar days after the Court grants preliminary approval of the Settlement. Class Data shall only be used by the Settlement Administrator for the purpose of calculating Settlement Payments and notifying Class Members of the Settlement. Class Data shall not be disclosed to Class Counsel, the Class Representative, or any other Class Members without the written consent of Defendant or by order of the Court. The Settlement Administrator shall not disclose the Class Data to third parties, shall keep the Class Data confidential to the fullest extent possible, and shall be responsible for following all privacy laws and taking appropriate steps to ensure that Class Members' personal information is safeguarded and protected from improper disclosure or use. The Settlement Administrator shall run the Class Data list through the National Change of Address database, and shall use the most recent address for each Class Member – either from Defendant's records or the National Change of Address database – before mailing the Notice of Class Settlement. The Settlement Administrator shall also take reasonable steps to locate any Class Member whose Notice of Class Settlement is thereafter returned as undeliverable. Class Data shall be provided in a secure format to be determined by the Settlement Administrator and Defendant.

65. Based on data available at the time of mediation, there are approximately sixty-eight (68) Class Members (who worked 7,698 Qualifying Workweeks) who are eligible to participate in this Settlement. If the final number of Class Members exceeds seventy-two (72) individuals or the final number of Qualifying Workweeks exceeds 7,850, Plaintiff shall have the right in his sole

discretion to rescind and void this Settlement by giving written notice to Defendant within seven (7) business days after Defendant's production of the Class Data to the Settlement Administrator.

Resolution of Disputes Over Qualifying Workweeks or

Settlement Payment Calculations

66. In calculating Settlement Payments for each Class Member and PAGA Group member, Defendant's records regarding Qualifying Workweeks of Class Members shall be presumed to be correct. Any Class Member who disagrees with Defendant's determination of his or her Qualifying Workweeks as indicated on his or her Notice of Class Settlement may dispute that calculation to the Settlement Administrator as explained on the Notice of Class Settlement. Defendant's determination shall be presumed accurate unless clear and compelling documentary evidence is provided by the Class Member to the Settlement Administrator that establishes that a mistake was made by Defendant. The Settlement Administrator shall investigate the dispute, requesting information from Defendant as necessary and make the final determination of whether any additional amount is owed. All such challenges must be received within the 45-day Opt Out Period. In no case shall a dispute result in a payment by Defendant in excess of the Gross Settlement Amount.

Enhancement Award

67. From the Gross Settlement Amount, the Class Representative may seek approval from the Court of an Enhancement Award not to exceed Ten Thousand Dollars and No Cents (\$10,000.00), which Defendant shall not oppose.

Payment of Class Counsel Attorneys' Fees and Costs

68. Class Counsel shall apply to the Court at the Final Fairness and Approval Hearing for an award of attorneys' fees not to exceed the amount of Ninety-Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$98,333.33), which is One-Third (1/3) of the Gross Settlement Amount, and a reasonable award of litigation costs in an amount not to exceed Fifteen Thousand Dollars and No Cents (\$15,000.00), both of which shall be paid out of the Gross Settlement Amount and neither of which Defendant will oppose. Class Counsel and Defendant agree that such awards of attorneys' fees and costs are reasonable under the circumstances. Any

order relating to the award of attorneys' fees, costs or a Class Representative Enhancement Award, or any appeal from any order relating thereto or reversal or modification thereof, will not operate to terminate or cancel this Agreement. If the amount of Enhancement Award, attorneys' fees and/or costs awarded by the Court is less than the requested amounts, the difference shall serve to increase the Net Settlement Amount to be distributed to Participating Class Members as part of their Settlement Payments. Nothing in this Agreement will require Defendant to pay more than the Gross Settlement Amount under any circumstances, except that Defendant is responsible for paying the employer's share of any payroll taxes owed on the Settlement Payments.

Taxes and Withholding and Indemnification

69. The Settlement Administrator shall be responsible for ensuring that all tax obligations associated with the Settlement are timely paid to the appropriate governmental taxing authorities. The Settlement Administrator's responsibilities include the following:

- (i) filing all federal, state and local employment tax returns, income tax returns, and any other tax returns associated with the taxes,
- (ii) timely and proper filing of all required federal, state and local information returns (e.g., 1099s, W-2s, etc.), and
- (iii) completion of any other steps necessary for compliance with any tax obligations applicable to Settlement Payments under federal, state and/or local law.

68. The Settlement Administrator shall determine the amount of any tax withholding to be deducted from each Participating Class Member's Settlement Payments. All such tax withholdings shall be remitted by the Settlement Administrator to the proper governmental taxing authorities.

69. The Parties and Participating Class Members and PAGA Group members acknowledge and agree that:

- (i) No provision of this Agreement and no written communication or disclosure between or among the Parties or their attorneys and other advisers is or was intended to be, nor shall any such communication or disclosure constitute or be construed or

be relied upon as, tax advice within the meaning of United State Treasury Department Circular 230 (31 CFR Part 10, as amended);

(ii) Each Party and Participating Class Member (a) has relied exclusively upon their own, independent legal and tax advisers for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on him or her; and

(iii) No attorney or adviser to any other party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by him or her of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

70. The Settlement Payments received by Participating Class Members and PAGA Group members shall be reported by the Settlement Administrator, as required, to the state and federal taxing authorities on IRS forms 1099 and W-2 or similar forms, as detailed above. Each Participating Class Member shall be responsible for paying all applicable state, local, and federal income taxes on all amounts the Participating Class Member receives pursuant to this Agreement. Each Participating Class Member is advised to obtain independent tax advice in connection with this Agreement.

RELEASED CLAIMS

71. Upon final approval by the Court of the Settlement and as of the Effective Date, the Class Members who do not timely opt-out shall individually and on behalf of all their respective successors, assigns, agents, attorneys, executors, heirs and personal representatives, fully and finally release and discharge the Released Parties, and each of them, from the Released Claims (as defined in paragraph 73) that arose during employment in a non-exempt position in California during the Class Period.

1 72. Upon final approval by the Court of the Settlement and as of the Effective Date, all
2 PAGA Group members shall individually and on behalf of all their respective successors, assigns,
3 agents, attorneys, executors, heirs and personal representatives, fully and finally release and
4 discharge the Released Parties, and each of them, from all PAGA claims encompassed within the
5 Released Claims (as defined in paragraph 73) that arose during employment in a non-exempt
6 position in California during the PAGA Period. PAGA Group member who opted out of the
7 Settlement as Class Members, shall nonetheless be issued Settlement Payments, pursuant to
8 paragraph 2(f), and be bound by the release of the PAGA claims.

9 73. The "Released Claims" include all claims, rights, demands, liabilities, causes of
10 action, and theories of liability of every nature and description, whether known or unknown, that
11 were alleged against Defendant and/or any of the Released Parties, or which could have been
12 alleged based on the facts pled against them, arising out of, in connection with, or based on the
13 PAGA Letter or the Complaint and/or Amended Complaint in the Civil Action. These claims
14 include, but are not limited to, claims for failure to pay wages, failure to pay wages guaranteed or
15 wages at the agreed upon rate and/or failure to calculate wages due at the applicable statutory
16 and/or regular rate of pay or compensation, failure to pay sick pay or paid time off, failure to pay all
17 wages due upon termination, failure to pay waiting time penalties, failure to provide and/or
18 maintain copies of accurate itemized wage statements, failure to maintain records of hours worked
19 and/or accurate payroll records, damages, interest, costs or attorneys' fees, and violations of any
20 local, state or federal law, whether for economic damages, non-economic damages, liquidated, or
21 punitive damages, restitution, tort, contract, equitable relief, injunctive or declaratory relief, that
22 relate to all such claims accrued during the applicable Class Period and arising from the facts that
23 were alleged or could have been alleged based on the facts set forth in the written notices sent to the
24 Labor & Workforce Development Agency pursuant to California Labor Code § 2699.3(a)(1) or the
25 Complaint and/or Amended Complaint in the Civil Action, including, but not limited to, claims
26 under any common laws, contract, or any other federal, state, or local law including the Fair Labor
27 Standards Act ("FLSA"), the California Business & Professions Code Sections 17200, *et seq.*
28 ("UCL"), including, but not limited to, claims asserted under the UCL predicated on violations of

any state and/or federal law, including the FLSA, Cal. Code of Regulations, Title 8, Sections 11000, *et seq.*, any other applicable Wage Order, the California Labor Code, and the California Private Attorneys General Act of 2004, Labor Code Sections 2698, *et seq.*, based on the claims alleged or that could have been alleged based on the facts set forth in the written notices sent to the Labor & Workforce Development Agency pursuant to California Labor Code § 2699.3(a)(1) or the Complaint and/or Amended Complaint in the Civil Action. Notwithstanding the foregoing, the Released Claims does not include any individual claim under the Section 16(b) of the FLSA, 29 U.S.C. § 216(b), as to a Class Member who does not opt-in to the Settlement by cashing, depositing or endorsing his or her Settlement Payment check, to the extent that opting-in is required to release such FLSA claims.

Releases by Plaintiff Prasad

74. Upon final approval of the Settlement and as of the Effective Date, Prasad, for himself, his successors, assigns, agents, executors, heirs and personal representatives, spouse and attorneys, and any and all of them, voluntarily and with the advice of counsel, waives and releases any and all claims, obligations, demands, actions, rights, causes of action, and liabilities against Defendant and any of the Released Parties, including, without limitation, all claims that were or could have been alleged in the written notice sent to the Labor & Workforce Development Agency pursuant to California Labor Code § 2699.3(a)(1) and the Complaint and/or Amended Complaint in the Civil Action under any state law, federal law, common law, equity or other theory arising in any way out of Prasad's former employment with Cyxtera or any of the Released Parties. As part of these releases, Prasad further releases all unknown claims against Defendant and any of the Released Parties, covered by California Civil Code Section 1542, which states: "**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**" Prasad understands that he is a "creditor" or "releasing party" within the meaning of California Civil Code Section 1542, and thereby that he expressly waives and relinquishes any and all rights and benefits

1 under Section 1542 of the Civil Code of the State of California and under any statute, rule, or
2 principle of common law or equity, of any jurisdiction, that is similar to Section 1542.

3 75. Without limiting the scope of this Agreement in any way, Prasad certifies and
4 acknowledges that:

- 5 (i) The release set forth in paragraph 74 above acts and constitute a knowing and
6 voluntary waiver by Prasad of any Claims Prasad has or may have against any of the
7 Released Parties under the Age Discrimination in Employment Act ("ADEA"), as
8 amended by the Older Worker's Benefit Protection Act of 1990 (29 U.S.C. § 621, *et*
9 *seq.*);
- 10 (ii) The release set forth in paragraph 74 above do not apply to or govern any rights of
11 claims that might arise under the ADEA after the date this Settlement Agreement is
12 signed by Prasad;
- 13 (iii) The consideration provided to Prasad by Cyxtera pursuant to this Settlement is in
14 addition to any consideration that Prasad would otherwise be entitled to receive;
- 15 (iv) Prasad has been and hereby is advised in writing to consult with an attorney prior to
16 signing this Agreement;
- 17 (v) Prasad has been provided a full and ample opportunity consisting of a period of at
18 least twenty-one (21) days to study and consider this Agreement, and any changes to
19 this Agreement, whether material or immaterial, will not and do not restart or extend
20 this 21-day period;
- 21 (vi) To the extent that Prasad takes less than twenty-one (21) days to study, consider, and
22 execute this Agreement:
- 23 a. Prasad has had sufficient time and a sufficient opportunity to study and
24 consider this Agreement with independent legal counsel of Prasad's own
25 choosing before the expiration of the twenty-one (21) day time period;
- 26 b. Prasad expressly, knowingly, and voluntarily has executed this Agreement
27 before the expiration of the twenty-one (21) day time period and waives any
28 additional time to study, consider, and execute this Agreement.

(vii) Prasad is aware of his right to revoke this Agreement at any time within the seven (7) day period following the date Prasad signs this Agreement, and that this Agreement will not become effective or enforceable until after the seven (7) day revocation period expires without Prasad exercising his right to revoke this Agreement;

(viii) In order to be effective, timely notice of revocation of the waiver of ADEA must be made in writing and must be delivered in-person, by email, or by fax transmission to Cyxtera through its counsel, Christina T. Tellado at Holland & Knight LLP, 400 South Hope Street, 8th Floor, Los Angeles, California 90071, FAX number (213) 896-2450, no later than the seventh day after Prasad executes this Agreement; and

(ix) Prasad will relinquish any right to receive or have any of the consideration or money specified in this Agreement if Prasad exercises his right to revoke this Agreement as set forth herein.

LIMITATIONS ON USE OF THIS SETTLEMENT AND AGREEMENT

No Admission

75. Neither the acceptance nor the performance by Defendant of the terms of this Agreement nor any of the related negotiations or proceedings are or shall be claimed to be, construed as, or deemed a precedent or an admission by Defendant of the truth of any allegations in the Complaints or the PAGA Letter. Defendant expressly denies any wrongdoing or liability to Plaintiff, any Class Members, or any of their other current and former employees.

Non-Evidentiary Use

76. Defendant denies that it has failed to comply with any law in any respect, or have any liability to anyone based on the claims asserted in the Civil Action. Defendant expressly denies any wrongdoing or liability to Plaintiff, any of the Class Members, or any of its other current or former employers, and further denies that the Civil Action is appropriate for class certification. Plaintiff expressly acknowledges that this Agreement is entered into for the purpose of compromising highly disputed claims and that nothing herein is an admission of liability, wrongdoing, or the propriety of class or representative treatment by Defendant. Neither the

1 Agreement nor any document prepared in connection with the Settlement may be admitted in any
2 proceeding as an admission by Defendant. Notwithstanding this paragraph, any and all provisions
3 of this Agreement may be admitted in evidence and used in any proceeding to enforce the terms of
4 this Agreement, or in defense of any claims released or barred by this Agreement.

5 **Nullification**

6 77. If the Court for any reason does not approve this Settlement, this Agreement shall be
7 considered null and void and the Parties to this Agreement shall stand in the same position, without
8 prejudice, as if the Agreement had been neither entered into nor filed with the Court.

9 78. Invalidation of any material portion of this Agreement shall invalidate this
10 Agreement in its entirety unless the Parties agree in writing that the remaining provisions shall
11 remain in full force and effect.

12 **MISCELLANEOUS PROVISIONS**

13 **No Inducements**

14 79. Plaintiff and Defendant acknowledge that they are entering into this Settlement as a
15 free and voluntary act without duress or undue pressure or influence of any kind or nature
16 whatsoever, and that neither Plaintiff nor Defendant have relied on any promises, representations or
17 warranties regarding the subject matter hereof other than as set forth in this Agreement.

18 **No Prior Assignment**

19 80. The Parties represent, covenant, and warrant that they have not directly or indirectly,
20 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or
21 entity any portion of any liability, claim, demand, action, cause of action or rights herein released
22 and discharged except as set forth herein.

23 **Construction**

24 81. The Parties agree that the terms and conditions of this Agreement are the result of
25 lengthy, intensive arm's-length negotiations between the Parties and their counsel, and this
26 Agreement shall not be construed in favor of or against any Party by reason of the extent to which
27 any Party or his or its counsel participated in the drafting of this Agreement.
28

California Law

82. All terms of this Agreement and its exhibits shall be governed and interpreted by and according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

Captions and Interpretations

83. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof.

Incorporation of Exhibits

84. All exhibits to this Agreement are incorporated by reference and are a material part of this Agreement. Any notice, order, judgment, or other exhibit that requires approval of the Court must be approved without material alteration from its current form in order for this Agreement to be enforceable.

Modification

85. This Agreement may not be changed, altered, or modified, except in a writing signed by the Parties or their representatives, and approved by the Court. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

Reasonableness of Settlement

86. Plaintiff has represented that this is a fair, reasonable, and adequate settlement and has arrived at this settlement through arm's-length negotiations, taking into account all relevant factors, present and potential.

Integration Clause

87. This Agreement contains the entire agreement between the Parties relating to the Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

Binding On Assigns

88. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors and assigns.

No Prevailing Party

89. No Party shall be considered a prevailing party for any purpose. Except as otherwise provided for in this Agreement, each Party shall bear its or his own attorneys' fees and costs.

Non-Signatories to Agreement

90. It is agreed that because the members of the Class are numerous, it is impossible or impractical to have each member of the Class execute this Agreement. The Notice of Class Settlement shall advise all Class Members of the binding nature of the Agreement, and the Agreement shall have the same force and effect as if this Agreement were executed by each member of the Class.

Counterparts

91. This Agreement, and any amendments hereto, may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument. Fax, electronic, and PDF signatures, including through DocuSign, shall be as valid as original signatures.

Plaintiff's Agreement To Be Bound and Attorney Authorization

92. By signing this Agreement, Plaintiff, on behalf of the Class, aggrieved employees and himself, agrees to be bound by its terms and further agrees not to request to be excluded from the Class or Settlement, and agrees not to object to any of the terms of the Agreement. Any request for exclusion from the Settlement by Plaintiff or any objection by Plaintiff shall be void and of no force and effect. The Parties and their counsel agree to fully cooperate with each other and use their best efforts to effectuate the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Hon. Michael A. Latin (Ret.) for resolution.

Administration Costs if Settlement Fails

93. If the Settlement is not finally approved by the Court, voided or rescinded, any costs incurred by the Settlement Administrator shall be paid equally by both Parties.

Final Order and Judgment

94. Upon final approval of the Settlement, a Final Order and Judgment shall be entered by the Court which shall, among other things:

- (i) Grant final approval to the Settlement as fair, reasonable, adequate, in good faith and in the best interests of the Class as a whole, and order the Parties to carry out the provisions of this Agreement.
- (ii) Adjudge that the Participating Class Members and those Class Members who have failed to Opt Out of the settlement are conclusively deemed to have released Defendant and the Released Parties from the Released Claims, as more specifically set forth above.
- (iii) Adjudge that the PAGA Group members are conclusively deemed to have released Defendant and the Released Parties from all PAGA claims encompassed within the Released Claims for the PAGA Period which arose during employment in a non-exempt position in California.
- (iv) Prohibit and permanently enjoin each Class Member from pursuing in any fashion or forum against Defendant or the other Released Parties any and all of the Released Claims.
- (v) Enter judgment in the Civil Action.
- (vi) Reserve continuing jurisdiction as provided herein.

Limitations on Disclosure

95. Other than the necessary disclosure made to the Court, the LWDA, and in response to inquiries by Class Members, Plaintiff, Participating Class Members, and Class Counsel and their agents (including but not limited to the Settlement Administrator) agree to keep the facts of this settlement, the terms of this Agreement and any attached documents, and their settlement

1 negotiations confidential to the fullest extent possible, and that they will not disclose such
2 information to any third party, including the press or inclusion on any websites.

3 96. The Parties and their counsel agree that they will not issue any press releases, initiate
4 any contact with the press, respond to any press inquiry, or have any communication with the press
5 about this case and/or the fact, amount or terms of the Settlement. As an absolute condition of this
6 Agreement, Plaintiff, Participating Class Members, and Class Counsel will not post (or cause to be
7 posted) anything on the internet, firm websites, biographies, marketing materials or any other
8 electronic forum or print publication disclosing the facts, the amount and terms of settlement, the
9 fact of settlement, this Agreement other than what is otherwise necessary and consistent with the
10 need for Court approval of the Settlement and notice to the Class. Plaintiff, Participating Class
11 Members, and Class Counsel will also not publicize or post anything regarding the facts, the
12 amount and terms of the settlement, the fact of settlement, this Agreement, except in relevant
13 submissions to a court or other judicial panel, but under no circumstances shall any such posting
14 reference any of the foregoing items. Nothing in this Agreement is intended to prohibit Cyxtera or
15 its affiliates, subsidiaries, or related entities from reporting the terms of this Agreement to their
16 shareholders, disclosing the terms of this Agreement in any SEC or other public filing, or otherwise
17 prohibiting it in any way from disclosing the fact of settlement or the terms of this Agreement as
18 they might deem proper as part of the operation of their businesses.

19 97. Class Counsel shall submit this Agreement and the motion for preliminary approval
20 to the LWDA at the same time as they are submitted to the Court, as required by PAGA, and shall
21 transmit the Final Order and Judgement to the LWDA, as required by PAGA.

22 98. This Agreement, the Settlement, and any proceedings or actions or negotiations in
23 connection therewith shall be deemed settlement communications covered by California Evidence
24 Code Sections 1152 and 1154, Federal Rule of Evidence 408, and any other similar provisions of
25 law, and shall not be construed as an admission of truth of any allegation or the validity of any
26 cause of action or claim asserted or of any liability therein.

1 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly
2 authorized attorneys, as of the day and year herein set forth.

3 June 29, 2021
4 Dated: June __, 2021

DocuSigned by:
DEVENDRA PRASAD
CD8F18086588460...
DEVENDRA PRASAD

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7 7/2/2021
8 Dated: June __, 2021

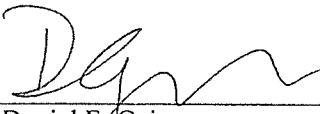
DEFENDANT CYXTERA TECHNOLOGIES,
INC.

9 DocuSigned by:
10 Victor Semah
87346D6064CF470
By Victor Semah
11 Its Chief Legal Officer

1 **APPROVED AS TO FORM AND CONTENT**

2 Dated: June 30, 2021

GAINES & GAINES, APLC

3
4 By 
5 Daniel F. Gaines
6 Attorneys for Plaintiff
7 DEVENDRA PRASAD

8 July 2, 2021

9 Dated: ~~June~~ July, 2021

HOLLAND & KNIGHT LLP

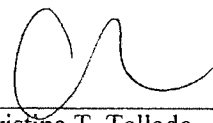
10 By 
11 Christina T. Tellado
12 Attorneys for Defendant
13 CYXTERA TECHNOLOGIES, INC.
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EXHIBIT 1

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

DEVENDRA PRASAD, on behalf of himself
and all “aggrieved employees” pursuant to Labor
Code § 2698 *et seq.*,

Plaintiffs,

v.

CYXTERA TECHNOLOGIES, INC., a
Delaware corporation, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: 20CV373926

**NOTICE OF PROPOSED CLASS ACTION
SETTLEMENT AND FINAL APPROVAL
HEARING**

YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT

A California court authorized this notice. You are not being sued.

This is not a solicitation from a lawyer. This notice affects your rights. Please read it carefully.

- You have received this Notice of Proposed Class Action Settlement because Cyxtera Technologies, Inc. (“Cyxtera” or “Defendant”) records show you are what is called a “Class Member” and therefore entitled to a payment from this class action settlement (“Settlement”). Class Members are all individuals who are or were employed by Cyxtera as a non-exempt employees in the State of California at any time from July 1, 2017 through June 1, 2021, This Notice explains the proposed Settlement and informs you of your legal rights under that proposed Settlement.
- On [date of preliminary approval], Honorable Sunil R. Kulkarni, California Superior Court Judge for the County of Santa Clara, granted preliminary approval of the class action Settlement and ordered that all Class Members be notified of the Settlement.
- The Settlement resolves a lawsuit over whether Cyxtera allegedly failed to pay all wages due, including failed to properly pay and/or calculate overtime, sick time, and meal premium payments,, as well as failed to timely issue wages upon separation of employment; and issue accurate and complete wage statements. It avoids costs and risks to you from continuing the lawsuit; pays money to Class Members; and releases Defendant from liability from the claims asserted in this lawsuit.
- Cyxtera strongly denies it engaged in any alleged unlawful conduct. Cyxtera asserts that it did compensate its employees properly. Cyxtera further asserts it has and had during the Class Period lawful wage and hour policies, practices and procedures. The Court has made no ruling on the merits of Plaintiff’s claims.
- Plaintiff and Cyxtera have agreed to settle this case on behalf of himself and the Class Members in exchange for the Maximum Settlement Amount of \$295,000. The Maximum Settlement Amount includes: (1) Settlement Payments to Participating Class Members, (2) a \$10,000 enhancement award to Plaintiff Devendra Prasad for his time and effort in pursuing this case and in exchange for a general release of claims against Cyxtera; (3) Claims Administration Costs

estimated to be no more than \$5,000; (4) a \$15,000 payment to the California Labor and Workforce Development Agency for settlement of claims under the California Private Attorneys General Act (“PAGA”); (5) subject to Court approval of an application for fees and costs, an award of up to \$98,333.33 in attorneys’ fees and up to \$15,000 in litigation costs and expenses to Class Counsel for investigating the facts, litigating the case, and negotiating the Settlement; and (6) Cyxtera’s share of payroll taxes for the portion of the Settlement Payments allocated to wages. After deducting the enhancement award to Plaintiff, the Claims Administration Costs, the payment to the California Labor and Workforce Development Agency, attorneys’ fees and costs/expenses, and payroll taxes, a total of approximately \$146,666.67 will be available to Class Members who do not opt out of the Settlement, while \$5,000.00 shall be distributed to the “PAGA Group,” defined as all non-exempt California employees who worked for Cyxtera from September 15, 2019 through June 1, 2021 (“PAGA Period”), based on their pro rata number of pay periods worked during the PAGA Period.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	You do not need to take any action if you wish to receive your Settlement Payment. If the Settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator. If you move, you must notify the Settlement Administrator of your new address.
Exclude Yourself	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Defendant about the legal claims that were brought in this case.
Object	Write to the Court about why you don’t like the settlement.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement. The Final Fairness and Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at _____.m. on _____, in Department 1 of the Santa Clara Superior Court, located at 191 North First Street, San Jose, California 95113. You are not required to attend the Hearing, but you are welcome to do so.

WHAT IS THIS LAWSUIT ABOUT?

On November 23, 2020, Plaintiff Devendra Prasad filed this lawsuit in the Santa Clara County Superior Court (the “Lawsuit” or “Civil Action”). The Lawsuit, as amended, alleges violations of the California Labor Code. The Lawsuit seeks to certify a class of all non-exempt California employees who worked for Cyxtera from July 1, 2017 through June 1, 2021 (“Class Period”). The Lawsuit alleges that Cyxtera failed to properly calculate the regular rate of pay, such that Cyxtera allegedly improperly used that Class Members were not properly paid for overtime, sick time, and meal premium payments such that Plaintiff and the Class Members were allegedly underpaid, in addition not being timely issued wages during employment and upon separation of employment; and were not issued accurate and complete wage statements. It seeks recovery of alleged unpaid wages, interest, statutory and civil penalties, attorneys’ fees and costs.

Cyxtera strongly denies it engaged in any alleged unlawful conduct. Cyxtera asserts that it did compensate its employees properly. Cyxtera further asserts it has and had during the Class Period lawful wage and hour policies, practices and procedures. The Court has made no ruling on the merits of Plaintiff's claims.

Plaintiff entered into settlement discussions with Cyxtera in an attempt to resolve the disputed claims in this case. On April 27, 2021, the parties negotiated a settlement on behalf of himself and the Class Members with the assistance of a mediator. The parties' agreement has been documented in a Class Action Settlement Agreement ("Settlement Agreement"). The Court has only preliminarily approved the Settlement Agreement. The Court will decide whether to give final approval to the Settlement at the Final Fairness and Approval Hearing.

The lawyers for the Plaintiff ("Plaintiff's Attorneys") are:

Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Gaines & Gaines, APLC
27200 Agoura Road, Suite 101
Calabasas, CA 91301
Phone: (866) 550-0855

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Defendant. Plaintiff believes he would have prevailed on his claims at a trial. Defendant does not believe that Plaintiff would have won anything from a trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they all avoid the costs, risks, and uncertainty of a trial. Plaintiff and Plaintiff's Attorneys think the settlement is fair, reasonable, and adequate and in the best interests of all Class Members.

B. Who is in the Settlement Class?

The Settlement encompasses a class composed all non-exempt employees who work or formerly worked for Defendant within the State of California at any time from July 1, 2017 through June 1, 2021.

C. What does the Settlement provide?

1. Maximum Settlement Amount.

Defendant will pay \$295,000 (the "Maximum Settlement Amount") to settle the Lawsuit. The following sums will be paid from the Maximum Settlement Amount: (1) \$15,000 to the California Labor and Workforce Development Agency; (2) Class Counsel's attorneys' fees in an amount set by the Court not to exceed \$98,333.33 and Class Counsel's documented litigation costs in an amount set by the Court not to exceed \$15,000; (3) an enhancement award to the Class Representative set by the Court, not to exceed \$10,000, for his service in the Action; (4) a reasonable amount set by the Court to the settlement administrator for administering the settlement, not to exceed \$5,000; and (5) the employer's share of payroll taxes. The amount of the Maximum Settlement Amount remaining after these payments is the "Net Settlement Amount." A total of approximately \$146,666.67 will be available to Class Members who

do not opt out of the Settlement, which does not include the \$5,000.00 that shall be distributed to the PAGA Group.

2. Settlement Payment.

Your share of the Net Settlement Amount will be determined by the formula detailed in section E below.

D. What Claims Are You Releasing To Get A Payment?

Upon the Effective Date, Plaintiff and all Class Members who have not submitted a valid Request for Exclusion (“Participating Class Members”) will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged with respect to Defendant Cyxtera Technologies, Inc., and past and present corporate affiliates, parents, subsidiaries, related entities, predecessors, successors-in-interest, divested business and business units, including, but not limited to, Cyxtera Communications, LLC, and the board members, officers, employees, agents, representatives, insurers and attorneys of any of the same (the “Released Parties”), subject to Defendant’s full payment of the Maximum Settlement Amount and the Court’s final approval of the Settlement, for all claims, rights, demands, liabilities, causes of action, and theories of liability of every nature and description, whether known or unknown, that were alleged against Defendant and/or any of the Released Parties, or which could have been alleged based on the facts pled against them, arising out of, in connection with, or based on the PAGA Letter or the Complaint and/or Amended Complaint in the Civil Action. These claims include, but are not limited to, claims for failure to pay wages, failure to pay wages guaranteed or wages at the agreed upon rate and/or failure to calculate wages due at the applicable statutory and/or regular rate of pay or compensation, failure to pay sick pay or paid time off, failure to pay all wages due upon termination, failure to pay waiting time penalties, failure to provide and/or maintain copies of accurate itemized wage statements, failure to maintain records of hours worked and/or accurate payroll records, damages, interest, costs or attorneys’ fees, and violations of any local, state or federal law, whether for economic damages, non-economic damages, liquidated, or punitive damages, restitution, tort, contract, equitable relief, injunctive or declaratory relief, that relate to all such claims accrued during the applicable Class Period and arising from the facts that were alleged or could have been alleged based on the facts set forth in the written notices sent to the Labor & Workforce Development Agency pursuant to California Labor Code § 2699.3(a)(1) or the Complaint and/or Amended Complaint in the Civil Action, including, but not limited to, claims under any common laws, contract, or any other federal, state, or local law including the Fair Labor Standards Act (“FLSA”), the California Business & Professions Code Sections 17200, *et seq.* (“UCL”), including, but not limited to, claims asserted under the UCL predicated on violations of any state and/or federal law, including the FLSA, Cal. Code of Regulations, Title 8, Sections 11000, *et seq.*, any other applicable Wage Order, the California Labor Code, and the California Private Attorneys General Act of 2004, Labor Code Sections 2698, *et seq.*, based on the claims alleged or that could have been alleged based on the facts set forth in the written notices sent to the Labor & Workforce Development Agency pursuant to California Labor Code § 2699.3(a)(1) or the Complaint and/or Amended Complaint in the Civil Action. Notwithstanding the foregoing, the Released Claims does not include any individual claim under the Section 16(b) of the FLSA, 29 U.S.C. § 216(b), as to a Class Member who does not opt-in to the Settlement by cashing, depositing or endorsing his or her Settlement Payment check, to the extent that opting-in is required to release such FLSA claims. (the “Released Claims”).

Each Participating Class Member fully releases and discharges the Released Parties for the Released Claims for any period between July 1, 2017 through June 1, 2021.

E. How Is My Share Of The Settlement Calculated?

Each Participating Class Member shall receive an “Settlement Payment,” which is a portion of the Net Settlement Amount.

Settlement Payments will be calculated and apportioned from the Net Settlement Amount based on the Qualifying Workweeks a Participating Class Member worked during the Class Period. Specific calculations of Settlement Payments will be made as follows:

(1) The Settlement Administrator will calculate the number of Qualifying Workweeks per Participating Class Member during the Class Period based on records in Defendant’s possession, custody or control. Defendant’s Workweek data will be presumed to be correct, unless a particular Class Member proves otherwise to the Settlement Administrator by clear and compelling documentary evidence. The Settlement Administrator shall investigate any dispute, requesting information from Defendant as necessary, and make the final determination. The Settlement Administrator’s decision on all Workweek disputes will be final and non-appealable. The Settlement Administrator will also calculate the total number of Qualifying Workweeks for all Class Members (“Class Workweeks”).

(2) To determine each Class Member’s “Settlement Payment” the Settlement Administrator will use the following formula: Settlement Payment = (Net Settlement Amount ÷ Total Participating Qualifying Workweeks) x Qualifying Workweeks for each individual Participating Class Member.

For tax purposes, each Settlement Payment will be apportioned as follows: (a) 25% as alleged unpaid wages (reported on an IRS Form W-2 and subject to applicable withholdings); and (b) 75% as alleged penalties and interest (reported on an IRS Form 1099). All Settlement Payments paid to Class Members will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

Class Members should consult a tax advisor regarding the significance of how each Settlement Payment is allocated between wages, penalties, and interest. This notice is not intended to provide legal or tax advice. To the extent this notice or any of its attachments is interpreted to contain or constitute advice regarding any United States or Federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code.

According to the records of Defendant, you worked [_____] Qualifying Workweeks while employed in California from July 1, 2017 through June 1, 2021. Based on these Qualifying Workweeks worked, you are entitled to a Settlement Payment of approximately \$[_____]. This amount is subject to change based on the final ruling of the Court.

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator at [Settlement Administrator address] postmarked no later than 45 days after the date this Notice of Class Action Settlement was mailed to you. In the event of a dispute, the Settlement Administrator will evaluate the evidence submitted by the Class Member in consultation with Plaintiff's Attorneys and counsel for Defendant and will make the final decision as to the Settlement Payment to which the Class Member may be entitled, subject to judicial review.

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the "Final Settlement Hearing") on _____, at _____ a.m./p.m., in Courtroom 1, Judge Sunil R. Kulkarni of the Santa Clara County Superior Court presiding, located at 191 North First Street, San Jose, California 95113. The Court will determine: (i) whether the Lawsuit should be certified as a class action for settlement purposes; (ii) whether the Settlement should be given the Court's final approval as fair, reasonable, adequate and in the best interests of the Class Members; (iii) whether the Participating Class Members should be bound by the terms of the settlement; (iv) the amount of the attorneys' fees and costs to be awarded to Plaintiff's Attorneys; (v) the amount that should be awarded to Plaintiff as an enhancement award; and (vi) the amount that should be awarded as settlement administration costs. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed Settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

WHAT ARE YOUR OPTIONS?

- **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NOT REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE. If you move, you must update your address with the Settlement Administrator.

- **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Participating Class Member, but you object to the proposed Settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed Settlement by submitting a Notice of Objection. The Notice of Objection must include: (a) your full name, signature, address, telephone number, and the last four digits of your social security number; (b) the dates you were employed by Defendant in California; (c) a written statement of all grounds for the objection accompanied by any legal support for such objection; and (d) copies of any papers, briefs, or other documents upon which the objection is based. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. Any Notice of Objection must be postmarked no later than [45 days after mailing].

If you choose this option, you may still be entitled to the money from the Settlement. You will remain a Participating Class Member, and if the Court overrules your objections and approves the Settlement, you will receive your Settlement Payment and will be bound by the terms of the Settlement in

the same way as Class Members who do not object, including being deemed to have released the Released Claims. **You cannot both object to the Settlement and exclude yourself. You must choose one option only.**

- **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself (“opt out”) from the Settlement, but if you choose to do so, you will not receive any benefits from the proposed settlement. You will not be deemed to have released any claims due to this Settlement or bound by a judgment in this case. You can opt out of the Class by mailing a letter (“Request for Exclusion”) to the Settlement Administrator which must (a) state the Class Member’s name, address, telephone number, and social security number; (b) state the Class Member’s request to exclude himself or herself from the Settlement and to opt out of the Settlement; (c) be signed by the Class Member or his or her lawful representative; and (d) be addressed and sent to the Settlement Administrator and postmarked no later than [45 days after mailing].

Any Class Member who opts out and excludes themselves from the Settlement will still receive a PAGA Settlement Payment as Class Members cannot opt-out of the PAGA Settlement.

ADDITIONAL INFORMATION

The above is a summary of the case and the Settlement. For more details, you may review the pleadings, the Class Action Settlement Agreement, and the other papers filed in this case, which may be examined at any time during regular business hours at the Office of the Clerk of the Santa Clara County Superior Court, located at 191 North First Street, San Jose, California 95113.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact Gaines & Gaines, APLC at (866) 550-0855 or the Settlement Administrator at [address], [telephone number].

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.