

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-1(b)

**KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP**
Edward O. Sassower, P.C. (admitted *pro hac vice*)
Christopher Marcus, P.C. (admitted *pro hac vice*)
Derek I. Hunter (admitted *pro hac vice*)
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
edward.sassower@kirkland.com
christopher.marcus@kirkland.com
derek.hunter@kirkland.com

COLE SCHOTZ P.C.
Michael D. Sirota, Esq.
Warren A. Usatine, Esq.
Felice R. Yudkin, Esq.
Court Plaza North, 25 Main Street
Hackensack, New Jersey 07601
Telephone: (201) 489-3000
msirota@coleschotz.com
wusatine@coleschotz.com
fyudkin@coleschotz.com

Proposed Co-Counsel for Debtors and Debtors in Possession

In re:

CYXTERA TECHNOLOGIES, INC., *et al*

Debtors.¹



Order Filed on June 29, 2023
by Clerk
U.S. Bankruptcy Court
District of New Jersey

Chapter 11
Case No. 23-14853 (JKS)
(Jointly Administered)

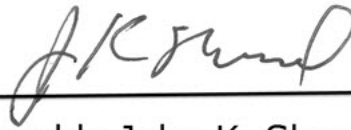
¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at <https://www.kcellc.net/cyxtera>. The location of Debtor Cyxtera Technologies, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is: 2333 Ponce de Leon Boulevard, Ste. 900, Coral Gables, Florida 33134.



FINAL ORDER (I) AUTHORIZING THE DEBTORS TO (A) CONTINUE TO PERFORM UNDER EXISTING HEDGING CONTRACTS, (B) ENTER INTO NEW HEDGING CONTRACTS, (C) GRANT SUPERPRIORITY CLAIMS, PROVIDE OTHER CREDIT SUPPORT, AND HONOR OBLIGATIONS UNDER HEDGING CONTRACTS, AND (II) GRANTING RELATED RELIEF

The relief set forth on the following pages, numbered three (3) through eight (8), is **ORDERED**.

DATED: June 29, 2023



Honorable John K. Sherwood
United States Bankruptcy Court

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Debtors: CYXTERA TECHNOLOGIES, INC., *et al.*

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the Debtors to (A) Continue to Perform Under Existing Hedging Contracts, (B) Enter into New Hedging Contracts, (C) Grant Superpriority Claims, Provide Other Credit Support, and Honor Obligations Under Hedging Contracts, and (II) Granting Related Relief

Upon the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Perform Under Existing Hedging Contracts, (B) Enter into New Hedging Contracts, (C) Grant Superpriority Claims, Provide Other Credit Support, and Honor Obligations Under Hedging Contracts, and (II) Granting Related Relief* (the "Motion")² of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), for entry of a final order (this "Final Order"), (a) authorizing, but not directing, the Debtors to (i) continue to perform under existing prepetition Hedging Contracts, including paying any prepetition amounts owed thereunder, and, as necessary, adjusting, modifying, terminating, and otherwise engaging in transactions thereunder in the ordinary course of business, (ii) enter into and perform under new Hedging Contracts, including paying any amounts owed thereunder, and, as necessary, adjusting, modifying, terminating, and otherwise engaging in transactions thereunder in the ordinary course of business, and (iii) grant superpriority claims and provide other Credit Support as may be necessary; and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11* of the United States District Court for the District of New Jersey, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found sufficient cause exists for the relief

² Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Motion.

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set forth herein; and this Court having found that the Debtors' notice of the Motion was appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED** on a final basis as set forth herein.
2. Pursuant to sections 105 and 363 of the Bankruptcy Code, the Debtors are authorized, but not directed, to (a) continue to perform under existing Hedging Contracts, including paying any prepetition amounts owed thereunder, as necessary in the ordinary course of business, adjusting, modifying, terminating, and otherwise engaging in transactions thereunder, and (b) enter into, guarantee, and perform under new Hedging Contracts, all without further order of the Court; *provided, however*, that the Debtors shall consult with the Ad Hoc First Lien Group and the Official Committee of Unsecured Creditors (the "Committee") prior to entering into new Hedging Contracts; *provided further*, the Debtors shall provide three (3) business days' advance notice to, and opportunity to object by, the Committee prior to paying any prepetition amounts that exceed \$150,000; *provided further*, that if the Committee objects to such payment, the Debtors shall not make such payment without further order of the Court or agreement of the parties.
3. Pursuant to section 364(c) of the Bankruptcy Code, and subject to the consent of the Ad Hoc First Lien Group and the Committee, the Debtors are authorized, but not directed, to

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grant superpriority claims and provide other Credit Support under (a) existing prepetition Hedging Contracts that remain in force and the terms of which are amended to the satisfaction of the Debtor party thereto and (b) postpetition Hedging Contracts, without further order of the Court; *provided, however,* that any such claims shall be subject and junior to any claims, including adequate protection claims, cash collateral and/or claims for postpetition financing, granted in connection with any interim or final order approving the use of such cash collateral and/or the Debtors' entry into any postpetition financing facilities or credit agreements; *provided further,* however, that any superpriority claim granted with respect to postpetition Hedging Contracts shall be subordinate to the Superpriority Claims as defined in *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Certain Debtors to Continue Selling, Contributing, and Servicing Receivables and Related Rights Pursuant to the Receivables Program, (II) Modifying the Automatic Stay, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* [Docket No. 21].

4. Nothing herein or in the Motion shall constitute an assumption, adoption, or rejection by the Debtors of any executory contract or agreement between the Debtors and any third party, or to require the Debtors to make any of the payments authorized herein.

5. Nothing herein or in the Motion shall be construed (a) to limit, or in any way affect, the Debtors' ability to dispute any claim under a Hedging Contract, or (b) as a waiver by any of the Debtors of their rights to contest any invoice or other claim under a Hedging Contract under applicable law.

6. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an implication or

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admission as to the amount of, basis for, or validity of any particular claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in this Final Order or the Motion or any order granting the relief requested by the Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission by the Debtors as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, claims, causes of action or other rights under the Bankruptcy Code or any other applicable law; (h) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code; (i) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens; (j) a waiver of the obligation of any party in interest to file a proof of claim; or (k) otherwise affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease. Any payment made pursuant to this Final Order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

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7. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein and to the extent authorized by this Final Order.

8. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

9. Notwithstanding anything to the contrary contained in the Motion or this Final Order, any payment to be made, obligation incurred, or relief or authorization granted hereunder shall not be inconsistent with, and shall be subject to and in compliance with, the requirements imposed on the Debtors under the terms of each interim and final order entered by the Court in respect of *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protections, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* (the "DIP Orders"), including compliance with any budget or cash flow forecast in connection therewith and any other terms and conditions thereof. Nothing herein is intended to modify, alter, or waive, in any way, any terms, provisions, requirements, or restrictions of the DIP Orders.

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10. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Final Order in accordance with the Motion.

11. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Final Order shall be effective and enforceable immediately upon entry hereof.

12. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

13. The requirement set forth in Local Rule 9013-1(a)(3) that any motion be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Motion or otherwise waived.

14. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

15. Nothing herein or in the Motion shall affect any termination of that certain Master Energy Sales Agreement, including any and all transaction confirmations ancillary thereto, between MP2 Energy LLC d/b/a Shell Energy Solutions (“MP2”) and Cyxtera Technologies, Inc., and the rights of MP2 to assert any claims arising therefrom, and any claims or defenses the Debtors may have with respect thereto, are expressly reserved.