IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re **EDGIO, INC.**, *et al.*,[1] Debtors.	Case No. 24-11985 (KBO) Chapter 11 (Jointly Administered) **Objection Deadline (proposed): February 4, 2025, 12:00 p.m. (ET)** **Hearing Date (proposed): February 6, 2025, 11:00 a.m. (ET)**

MOTION OF DEBTORS FOR ENTRY OF AN ORDER (I) AUTHORIZING THE PRIVATE SALES AND LICENSE OF CERTAIN RESIDUAL ASSETS, (II) AUTHORIZING THE DEBTORS TO PROVIDE CERTAIN TRANSITIONAL SERVICES, AND (III) GRANTING RELATED RELIEF

[1] The Debtors operate under the trade name Edgio and have previously used the trade names Limelight, Edgecast and Layer0. The Debtors in these chapter 11 cases (the "***Chapter 11 Cases***"), along with the last four digits of each Debtor's federal tax identification number, are: Edgio, Inc. (7033); Edgecast Inc. (6704); Edgio International, Inc. (3022); Limelight AcquisitionCo, Inc. (6138); Limelight Midco, Inc. (1120); Limelight Networks VPS, Inc. (3438); and Mojo Merger Sub, LLC (7033). The Debtors' service address for purposes of these Chapter 11 Cases is: 11811 N. Tatum Blvd., Ste. 3031, Phoenix, AZ 85028. Additional information about the Chapter 11 Cases is available at https://OmniAgentSolutions.com/Edgio/.

Edgio, Inc. and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, "***Edgio***" or the "***Debtors***"),[2] respectfully state as follows.

PRELIMINARY STATEMENT

1. On November 26, 2024, this Court entered three orders that collectively authorized the Debtors to sell substantially all of their assets, including assets related to Edgio's content delivery business, assets related to Edgio's "Apps" business, assets related to Edgio's "Uplynk" business, and certain intellectual property. The sale of assets related to the content delivery and Apps businesses closed on December 13, 2024, the sale of intellectual property closed subsequently, and the sale of the Uplynk business is currently expected to be consummated pursuant to a chapter 11 plan.

2. Although the three transactions disposed of the vast majority of the Debtors' assets, the Debtors retained certain residual assets that the three purchasers did not acquire. The Debtors actively explored liquidating these residual assets in the weeks following the Auction.[3] Pursuant to this Motion, the Debtors seek authorization to sell certain of these residual assets to two separate acquirers, Parler and Encore (each as defined below), for total consideration of no less than $7,500,000.[4] Of note, the Debtors' decision to sell these assets follows a comprehensive public marketing process for all of the Debtors assets (including the residual assets to be sold pursuant to

[2] A detailed description of the Debtors and their businesses is set forth in the *Declaration of Todd Hinders in Support of Chapter 11 Petitions and First Day Motions* (the "***First Day Declaration***") [Dkt. No. 3], filed with the Debtors' voluntary petitions for relief filed under title 11 of the United States Code (the "***Bankruptcy Code***"), on September 9, 2024 (the "***Petition Date***"). The Debtors are operating their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. An official committee of unsecured creditors (the "***Committee***") was appointed on September 20, 2024; no trustee, examiner or official committee has been appointed.

[3] Capitalized terms used but not defined in this Motion have the meanings ascribed to them in the *Motion of Debtors for Entry of an Order (I) Approving (A) Bidding Procedures for the Sale of All or Substantially All of the Debtors' Assets, (B) the Expense Reimbursement, (C) Assumption and Assignment Procedures, (D) Form and Manner of Notice of Sale Hearing, Assumption Procedures and Auction Results, (E) the Debtors' Entry into One or More Asset Purchase Agreements, (F) Sale(s) of Assets Free and Clear of All Encumbrances, and (G) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (II) Scheduling Certain Dates and Deadlines, and (III) Granting Related Relief* [Dkt. No. 34].

[4] The estates (or their successor) may receive an additional $2,500,000 if Parler exercises an option to purchase certain blocks of IP addresses, as described below.

this Motion). The Debtors have kept both Lynrock Lake and the Committee apprised of the discussions with the proposed purchasers and expect both parties to be supportive of the relief requested by this Motion.

3. While the proposed Transactions with Parler and Encore are value accretive and will maximize value for the benefit of the Debtors' estates, the purchasers have indicated that time is of the essence with respect to consummation of the Transactions. As a result, contemporaneously with this Motion, the Debtors have filed a motion to shorten the 21-day notice period otherwise applicable to applications to sell property of the estate. For the reasons set forth therein, the Debtors submit that expedited consideration (and a waiver of the 14-day stay) is appropriate and essential to realizing the anticipated value of these proposed Transactions. Without an expedited process, there is a significant risk that the proposed purchasers will be unwilling to proceed with the sales. As a result, the Debtors are requesting that the Court consider this Motion at the scheduled February 6, 2025 omnibus hearing.

RELIEF REQUESTED

4. By this motion (the "***Motion***"), the Debtors seek expedited entry of an order, authorizing them (i) to sell (the "***Parler Sales***") to Parler Cloud Technologies, LLC ("***Parler***") (a) certain residual equipment and physical assets (the "***Parler Equipment***"), (b) related software (the "***Parler Software***") and (c) if Parler elects, certain blocks of IP Addresses[5] (the "***IP Address Assets***," and, together with the Parler Equipment and the Parler Software, the "***Parler Assets***"), (ii) to grant Parler a one-year license (the "***Parler License***") to use the IP Address Assets, (iii) to provide certain transitional services to Parler, including the use of certain IP addresses other than the IP Address Assets, and (iv) to sell (the "***Encore Sale***" and, together with the Parler Sales, the "***Sales***", and the Sales together with the Parler License and other transactions and agreements related to the Sales and the Parler License, the "***Transactions***") to SJN Data Center LLC d/b/a

[5] An IP (Internet Protocol) address is a unique number that identifies a device connected to the internet, which allows devices to communicate with one another over the internet. The IP Address Assets consist of valuable rights that the Debtors own to use certain consecutive blocks of IP addresses.

Encore Technologies ("***Encore***") (a) certain other residual equipment and physical assets (the "***Encore Equipment***") and (b) related software (the "***Encore Software***", and together with the Encore Equipment, the "***Encore Assets***", and the Parler Assets and Encore Assets together, the "***Residual Assets***"). The Residual Assets that are sold pursuant to this Motion (including the IP Address Assets, if and when Parler exercises its option to purchase them) are referred to as the "***Sale Assets***." A proposed form of order (the "***Proposed Order***") is attached to this Motion as **Exhibit A**.

5. The principal statutory bases for this Motion are sections 105(a) and 363 of the Bankruptcy Code, Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedures (the "***Bankruptcy Rules***"), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "***Local Rules***"). This Motion is supported by the *Declaration of Ann Miller in Support of the Motion of Debtors for Entry of an Order (I) Authorizing the Private Sales and License of Certain Residual Assets, (II) Authorizing the Debtors to Provide Certain Transitional Services, and (III) Granting Related Relief* (the "***Miller Declaration***") and the *Declaration of Todd Hinders in Support of the Motion of Debtors for Entry of an Order (I) Authorizing the Private Sales and License of Certain Residual Assets, (II) Authorizing the Debtors to Provide Certain Transitional Services, and (III) Granting Related Relief* (the "***Hinders Declaration***"), each to be filed along with this Motion.

JURISDICTION AND VENUE

6. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This case has been referred to the Court pursuant to 28 U.S.C. § 157(a) by the Amended Standing Order of Reference, *In re Standing Order of Reference re: Title 11* (D. Del. Feb. 29, 2012) (Sleet, C.J.). This Motion is a core proceeding under 28 U.S.C. § 157(b). The Debtors consent to the Court's entry of a final order on this Motion if it is determined that the Court cannot otherwise enter a final order or judgment consistent with article III of the U.S. Constitution.

7. Venue in the Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

8. As the Court is aware, the Debtors commenced these Chapter 11 Cases to implement an expeditious process to market and sell their assets pursuant to section 363 of the Bankruptcy Code. Over the first three months of these Chapter 11 Cases, the Debtors and their advisors broadly marketed the Debtors' assets. Specifically, the Debtors' advisors contacted hundreds of potential purchasers, received six Qualified Bids for various assets, and conducted a competitive Auction for those assets. The Debtors' marketing efforts ultimately led to three agreements to sell the vast majority of the Debtors' assets in exchange for over $180 million in value to the Debtors' estates.

9. Notably, the winning bidder for the Debtors' content delivery business (Akamai Technologies, Inc., or "***Akamai***") *purchased only the customer contracts* and certain ancillary assets associated with that business—*but not the physical equipment* for the Debtors' content delivery networks. Since the closing of the Akamai transaction, Akamai has transitioned nearly all the Debtors' content delivery customers to Akamai's network, and (with one exception that has been negotiated with Akamai) the Debtors have substantially ceased operating their own delivery networks in accordance with the terms of their agreement with Akamai. *Cf.* Asset Purchase Agreement § 8.11 ("No later than the expiration of the Transition Services Agreement, Seller shall terminate and cease operation of the [content delivery] network used in the Business, including terminating . . . all Contracts for services to the Business related to the [content delivery] network.") (the "***Network Termination Requirement***") [Dkt. No. 382, Ex. 1].

10. Because Akamai elected not to purchase the physical equipment associated with the Debtors' content delivery network, the Debtors have actively sought to liquidate these residual assets since the Auction. *See generally* Miller Decl. As a result of such efforts, the Debtors identified Parler and Encore, which are both willing to provide substantial value for these residual assets. These residual assets would otherwise offer no value to the Debtors' estates, given the Network Termination Requirement and the liquidation of the Debtors' content delivery and applications businesses.

11. Following substantial hard fought and good faith negotiations, Parler agreed to pay $5,000,000 for certain assets that relate to the Debtors' "Edgecast" network and a one-year license for the IP Address Assets. At the end of the one-year license, Parler will have an option to purchase those IP Address Assets outright for an additional $2,500,000 (the "***Purchase Option***"). Moreover, Encore agreed to pay $2,500,000 for certain assets that relate to the Debtors' "Limelight" network. The Debtors do not believe that any plausible alternative, such as an orderly liquidation, would generate greater value for the estates.

THE PROPOSED SALES

12. The Debtors and the respective purchasers expect to enter into three separate agreements, each of which is subject to Court approval: (a) that certain Asset Purchase Agreement by and among Edgio, Inc., and Parler (the "***Parler Sale Agreement***"); (b) that certain IP Address Block Agreement by and between Edgio, Inc., and Parler (the "***Parler IP Address Agreement***" and, together with the Parler Sale Agreement, the "***Parler Agreements***"); and (c) that certain Asset Purchase Agreement by and among Edgio, Inc. and Encore (the "***Encore Sale Agreement***" and, collectively with the Parler Agreements, the "***Transaction Agreements***"). These Transaction Agreements are attached to this Motion as **Exhibits B, C** and **D**, respectively, in final or substantially final forms.

I. THE PARLER TRANSACTIONS

13. By way of background, Parler launched a social media platform in 2018, presenting itself as a "free speech" alternative to established platforms such as Twitter and Facebook. Although Parler did not submit a Qualified Bid during the Debtors' auction process, it expressed considerable interest in segments of the Debtors' assets at several times, both before and after the Petition Date. The Debtors understand that Parler hopes to use the Parler Assets to develop and expand its social media platform. Parler, thus, contrasts with other participants in the Auction process, who were primarily interested in acquiring assets that included the Debtors' customer contracts, which have now been transferred to Akamai. In this regard, the Debtors consider Parler

to be the only plausible purchaser of the residual Edgecast equipment and software that the Debtors now propose to sell.

14. Along with the residual Parler Equipment and Parler Software, the Debtors and Parler have agreed to certain arrangements regarding blocks of IP addresses that are currently used by the Debtors. Certain IP addresses (the IP Address Assets) are owned by the Debtors outright. Pursuant to the Parler IP Address Agreement, the IP Address Assets will be licensed to Parler for one year, after which Parler will have the option to purchase them for an incremental $2,500,000.

15. Separately, the Debtors currently use certain other IP addresses (the "***Additional IP Addresses***") that are owned by an affiliate of Verizon Communications, Inc. The Additional IP Addresses will not be sold to Parler. Rather, the Debtors will provide Parler with transitional services in the form of access to these Additional IP Addresses for a period of nine months.

16. The material economic terms of the Parler Sales are thus as follows:[6]

Summary of Material Terms and Terms Specified by Local Rule 6004-1(b)	
Parler Agreements Parties *See* Preamble	**Seller**: Edgio, Inc. **Purchaser**: Parler
Acquired Assets *See* § 2.1; Parler IP Address Agreement §§ 1.1, 2.1.	The Acquired Assets under the Parler Sale Agreement fall into two principal categories: (a) the Acquired Equipment is listed on a schedule, and mainly consists of equipment related to Edgio's Edgecast content delivery network; and (b) the Acquired Software is listed on another schedule, and mainly consists of software related to Edgio's Apps product line. Additionally, the Parler IP Address Agreement grants a one-year license and a purchase option on certain IP address blocks that constitute the IP Address Assets.
Purchase Price and Purchase Option *See* § 3.1	The purchase price is $5,000,000 (the "***Parler Purchase Price***"), plus $2,500,000 if Parler exercises the Purchase Option.
Transition Services *See* Parler IP Address Agreement § 3.1	Apart from the IP Address Assets, the Debtors possess the right to use the Additional IP Addresses. The Debtors will provide Parler with transitional services in the form of access to these IP addresses for a period of nine months after the closing date.

[6] Capitalized terms in this section bear the meanings ascribed to them in the Parler Sale Agreement, and citations are to the Parler Sale Agreement unless otherwise specified. To the extent that this summary is inconsistent with the terms of the Parler Sale Agreement, the Parler Sale Agreement shall govern.

Summary of Material Terms and Terms Specified by Local Rule 6004-1(b)	
No Sale to an Insider *See* Del. Bankr. L.R. 6004-1(b)(iv)(A).	Parler is not an insider of any Debtor.
Agreements with Management *See* § 8.6; *see also* Del. Bankr. L.R. 6004-1(b)(iv)(B).	Parler has not entered into any agreements with the Debtors' management or key employees regarding compensation or future employment. Parler expects to offer employment to certain non-insider employees of the Debtors.
Releases *See* Del. Bankr. L.R. 6004-1(b)(iv)(C).	None.
Private Sale/No Competitive Bidding *See* Del. Bankr. L.R. 6004-1(b)(iv)(D)	The proposed sales and related transactions are private transactions, and the Debtors do not intend to conduct an auction for the sale of the Parler Assets, which, as described herein and in the Miller Declaration have already been subject to an extensive marketing effort by TD Cowen.
Closing and Other Deadlines (Closing and Closing Date) *See* § 9.1; *see also* Del. Bankr. L.R. 6004-1(b)(iv)(E).	The Closing is subject to customary conditions precedent. Expedited relief has been requested so that the Debtors can retain and transition certain employees to Parler and immediately reject their contracts with various data centers where their equipment is stored (the "***Data Centers***"). The closing of the sale of IP Address Assets will occur, approximately one year after Closing of the Parler Sale Agreement, if and when Parler exercises its option to purchase the IP Address Assets.
Good Faith Deposit *See* § 3.2; *see also* Del. Bankr. L.R. 6004-1(b)(iv)(F).	Parler has funded a deposit of $500,000.
Interim Arrangements with the Buyer *See* § 8.1; *see also* Del. Bankr. L.R. 6004-1(b)(iv)(G).	The Parler Sale Agreement includes customary pre-closing obligations, which include the obligation to maintain the condition of the Acquired Assets.
Use of Proceeds *See* Proposed Order ¶ 12; Del. Bankr. L.R. 6004-1(b)(iv)(H).	The proceeds of the proposed sale are "Remaining Sale Proceeds" under that certain chapter 11 plan term sheet among the Debtors, the Committee, and Lynrock Lake Master Fund LP and its affiliates ("***Lynrock***") executed on January 9, 2025 (the "***Settlement Term Sheet***"). Accordingly, Lynrock will receive 90% of the net proceeds, and general unsecured creditors will receive 10% through a chapter 11 plan.
Tax Exemption *See* Del. Bankr. L.R. 6004-1(b)(iv)(I).	None.
Record Retention *See* § 8.2; *see also* Del. Bankr. L.R. 6004-1(b)(iv)(J).	During the Chapter 11 Cases, Parler shall use commercially reasonable efforts to make available to the Debtors such documents, books, records, or other information in connection with tax, contractual obligations, or to prepare for the prosecution of claims against third parties.

Summary of Material Terms and Terms Specified by Local Rule 6004-1(b)	
Sale of Avoidance Actions *See* § 2.2(n); *see also* Del. Bankr. L.R. 6004-1(b)(iv)(K).	None. Avoidance actions are Retained Assets under the Parler Sale Agreement.
Requested Findings as to Successor Liability *See* § 7.3(f); Proposed Order ¶ 18; s*ee* Del. Bankr. L.R. 6004-1(b)(iv)(L).	Parler will not be subject to successor liability or similar liability for any claims, defenses, rights of recoupment, or causes of action of any kind or character against Seller, Seller's estate, or otherwise, whether known or unknown, unless expressly assumed as an Assumed Liability pursuant to the Parler Sale Agreement or the Parler IP Address Agreement.
Sale Free and Clear of Unexpired Leases *See* Del. Bankr. L.R. 6004-1(b)(iv)(M).	None.
Credit Bid *See* Del. Bankr. L.R. 6004-1(b)(iv)(N).	None.
Relief from Bankruptcy Rules 6004(h) and 6006(d) *See* Proposed Order ¶ 31; Del. Bankr. L.R. 6004-1(b)(iv)(O).	The Debtors are requesting relief from the 14-day stay imposed by Bankruptcy Rule 6004(h).

II. THE ENCORE SALE

17. By way of background, Encore offers a variety of internet technology services, including data center facilities, server management, and on-site networking. The Debtors understand that Encore intends to use the hardware and software associated with the Debtors' "Limelight" network principally for its internal operations. Because Encore foresees a use for these assets independent of the customers whose contracts have been sold to Akamai, Encore is uniquely situated and a natural fit to purchase these assets pursuant to the Encore Sale Agreement. In this regard, the Debtors consider Encore to be the only plausible purchase of the residual Limelight hardware and software that the Debtors propose to sell.

18. The material economic terms of the Encore Sale are as follows:[7]

Summary of Material Terms and Terms Specified by Local Rule 6004-1(b)	
Encore Sale Agreement Parties *See* Preamble	**Seller**: Edgio, Inc. **Purchaser**: Encore
Acquired Assets *See* § 2.5	The Acquired Assets under the Encore Sale Agreement fall into two principal categories: (a) the Acquired Equipment, which is listed on a separate Disclosure Letter and mainly consists of equipment; and (b) the Acquired Software, which is also listed on the Disclosure Letter and mainly consists of software related to Edgio's Limelight network.
Purchase Price and Purchase Option *See* § 3.1	The aggregate purchase price for the Encore Assets is $2,500,000 (the "***Encore Purchase Price***"), to be paid as follows: (i) at Closing, $500,000, (ii) on or before January 31, 2026, $500,000; and (iii) on or before January 31, 2027, $1,500,000.
No Sale to An Insider *See* Del. Bankr. L.R. 6004-1(b)(iv)(A).	Encore is not an insider.
Agreements with Management *See* § 8.6; *see also* Del. Bankr. L.R. 6004-1(b)(iv)(B).	Encore has not entered into any agreements with the Debtors' management or key employees regarding compensation or future employment. Encore expects to offer employment to certain non-insider employees of the Debtors in connection with the Encore Sale.
Releases *See* Del. Bankr. L.R. 6004-1(b)(iv)(C).	None.
Private Sale/No Competitive Bidding *See* Del. Bankr. L.R. 6004-1(b)(iv)(D)	The proposed sale is a private sale, and the Debtors do not intend to conduct an auction for the sale of the Encore Assets, which, as described herein and in the Miller Declaration have already been subject to an extensive marketing effort by TD Cowen.
Closing and Other Deadlines (Closing and Closing Date) *See* § 9.1; *see also* Del. Bankr. L.R. 6004-1(b)(iv)(E).	The Closing is subject to customary conditions precedent. Expedited relief is necessary so the Debtors can retain and transition certain employees to Encore and immediately reject their contracts with various Data Centers where their equipment is stored.
Good Faith Deposit *See* Del. Bankr. L.R. 6004-1(b)(iv)(F).	None.

[7] Capitalized terms in this section bear the meanings ascribed to them in the Encore Sale Agreement, and citations are to the Encore Sale Agreement unless otherwise specified. To the extent that this summary is inconsistent with the terms of the Encore Sale Agreement, the Encore Sale Agreement shall govern.

Summary of Material Terms and Terms Specified by Local Rule 6004-1(b)	
Interim Arrangements with the Buyer *See* § 8.1; *see also* Del. Bankr. L.R. 6004-1(b)(iv)(G).	The Encore Sale Agreement includes customary pre-closing obligations, which include the obligation to maintain the condition of the Acquired Assets.
Use of Proceeds *See* Proposed Order ¶ 12; Del. Bankr. L.R. 6004-1(b)(iv)(H).	The proceeds of the proposed sale are "Remaining Sale Proceeds" under the Settlement Term Sheet. Accordingly, Lynrock will receive 90% of the net proceeds, and general unsecured creditors will receive 10% through a chapter 11 plan.
Tax Exemption *See* Del. Bankr. L.R. 6004-1(b)(iv)(I).	None.
Record Retention *See* § 8.2; *see also* Del. Bankr. L.R. 6004-1(b)(iv)(J).	During the Chapter 11 Cases, Encore shall use commercially reasonable efforts to make available to the Debtors such documents, books, records, or other information in connection with tax, contractual obligations, or to prepare for the prosecution of claims against third parties.
Sale of Avoidance Actions *See* § 2.1(b)(ii); *see also* Del. Bankr. L.R. 6004-1(b)(iv)(K).	None.
Requested Findings as to Successor Liability *See* § 7.3(f); Proposed Order ¶ 18; s*ee* Del. Bankr. L.R. 6004-1(b)(iv)(L).	Encore will not be subject to successor liability or similar liability for any claims, defenses, rights of recoupment, or causes of action of any kind or character against Seller, Seller's estate, or otherwise, whether known or unknown, unless expressly assumed as an Assumed Liability pursuant to the Encore Sale Agreement.
Sale Free and Clear of Unexpired Leases *See* Del. Bankr. L.R. 6004-1(b)(iv)(M).	None.
Credit Bid *See* Del. Bankr. L.R. 6004-1(b)(iv)(N).	None.
Relief from Bankruptcy Rules 6004(h) and 6006(d) *See* Proposed Order ¶ 31; Del. Bankr. L.R. 6004-1(b)(iv)(O).	The Debtors are requesting relief from the 14-day stay imposed by Bankruptcy Rule 6004(h).

BASIS FOR RELIEF

I. THE DEBTORS HAVE SATISFIED SECTION 363(B) OF THE BANKRUPTCY CODE.

19. Section 363(b)(1) of the Bankruptcy Code provides that a debtor, "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1).

20. The sale of a debtor's assets should be authorized pursuant to section 363 of the Bankruptcy Code where the transaction represents an exercise of the debtor's sound business judgment. *See*, *e.g.*, *In re Martin* (*Myers v. Martin*), 91 F.3d 389, 395 (3d Cir. 1996); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991).

21. Courts typically consider the following factors in determining whether a proposed sale satisfies this standard: (a) whether a sound business justification exists for the sale; (b) whether adequate and reasonable notice of the sale was given to interested parties; (c) whether the sale will produce a fair and reasonable price for the property; and (d) whether the parties have acted in good faith. *See*, *e.g.*, *Del. & Hudson Ry.*, 124 B.R. at 176. As set forth in the Miller Declaration, the Debtors have established that: (i) a sound business justification exists for the approval of the Transaction Agreements because the Sales provide meaningful value for the Residual Assets; (ii) potential purchasers received adequate and reasonable notice of the original marketing process and only one other party expressed interest in purchasing the Parler Equipment and the Encore Equipment;[8] (iii) the purchase prices are fair and reasonable; and (iv) the Transaction Agreements were negotiated at arm's-length and in good faith.

22. The Debtors submit that adequate business justification exists for the proposed Transactions because the two proposed purchasers are uniquely situated to pay substantial value

[8] One bidder had previously submitted a bid for certain of the Debtors' networking assets, which would have included the Parler Equipment and the Encore Equipment. That bidder, however, did not express interest in acquiring such assets without the Debtors' customer contracts, which have been sold to Akamai. *Cf.* Hinders Decl. ¶ 7 (describing Akamai transaction).

for the Sale Assets, and no better alternative exists following the extensive marketing and competitive sale process that the Debtors' conducted throughout 2024. As the Court is aware, both before the Petition Date and leading up to the Debtors' November 2024 Auction, the Debtors and their advisors undertook a rigorous process to: (a) identify potential purchasers for the Debtors' assets (including the Residual Assets); (b) provide diligence to potential purchasers; and (c) negotiate with any party that demonstrated interest in the Debtors' assets leading up to the Auction.

23. At the Auction, the Debtors determined that the best or otherwise highest bids included a $125,000,000 bid by Akamai for their Apps & Security Business Assets and their Network Assets. Because Akamai already administered its own content delivery network, Akamai was not interested in acquiring assets other than the Debtors' customer contracts. Accordingly, following the Auction, the Debtors and their advisors attempted to identify purchasers for the residual networking assets that Akamai would not purchase, including the physical equipment, software, and supplier contracts that constituted the Debtors' content delivery networks, in each case within the confines of the Network Termination Requirement.

24. Specifically, the Debtors' investment banker contacted all parties that had expressed interest in the networking assets during the Auction process, including the one party whose Qualified Bid had included the Residual Assets. Unfortunately, there was little interest in acquiring the Residual Assets without also acquiring the customer contracts that had been sold to Akamai. While a few potential counterparties expressed interest in acquiring piecemeal equipment, those proposals would not have yielded any meaningful value for the Debtors' estates. Parler and Encore were thus the only parties interested in acquiring Residual Assets in a manner other than on a piecemeal basis.

25. The Parler Assets largely consist of the hardware and software that underlie the Debtors' "Edgecast" network, which has little utility to most networking companies now that Akamai has purchased the associated customer contracts. The Debtors understand that Parler intends to incorporate these assets into its own social media platform, and that the license and use

of related IP address blocks will be essential to Parler's immediate use of the hardware and software assets. Likewise, the Encore assets consist of the hardware and software for the "Limelight" network, which Encore can also use for internal purposes.

26. The Debtors submit that no alternatives for disposing of the Residual Assets would be superior to the proposed Sales. A new auction process would be time consuming, costly, and unlikely to yield any potential purchasers that the Debtors' pre-petition, pre-auction, or post-auction marketing efforts have not already revealed. Further, piecemeal equipment sales would yield little value and would require much longer to consummate. The Debtors themselves no longer have content delivery customers, and are forbidden from operating their content delivery networks under the terms of the Akamai sale documents and, specifically, the Network Termination Requirement. Moreover, if the Debtors cannot sell the Residual Assets in short order, the estates will incur substantial labor and storage costs associated with maintaining the Residual Assets. Accordingly, the Debtors believe that pursuing the proposed sale of the Residual Assets immediately is in the best interests of their estates.

II. THE SALES SHOULD BE FREE AND CLEAR OF ALL CLAIMS AND INTERESTS

27. The Debtors also request that the Sales be approved free and clear of any and all liens, claims, encumbrances and interests (collectively, "***Encumbrances***"), with all such Encumbrances to attach to the proceeds of the Sales with the same extent, priority, validity, force and effect applicable to such Encumbrances immediately prior to the closing of the Sales. Section 363(f) of the Bankruptcy Code permits a debtor in possession to sell property of the estate "free and clear of any interest in such property of an entity other than the estate" if any one of the following conditions is satisfied:

(1) Applicable non-bankruptcy law permits the sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interests is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(5) such interest is in bona fide dispute; or

(6) Such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

28. Satisfaction of any single requirement listed above is sufficient to warrant the sale of the Residual Assets free and clear of all interests. *See Citicorp Homeowners Servs., Inc. v. Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988). The court also may authorize the sale of a debtor's assets free and clear of any liens, claims or encumbrances under section 105 of the Bankruptcy Code. *See In re Trans World Airlines, Inc.*, No. 01-0056 (PJW), 2001 WL 1820325, at *3, 6 (Bankr. D. Del. Mar. 27, 2001) (stating that "bankruptcy courts have long had the authority to authorize the sale of estate assets free and clear even in the absence of § 363(f)"); *see also Volvo White Truck Corp. v. Chambersburg Beverage, Inc*. *(In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) ("Authority to conduct such sales [free and clear of liens] is within the court's equitable powers when necessary to carry out the provisions of Title 11.").

29. Here, the Debtors believe that any holder of an Encumbrance on, or against, the Sale Assets could be compelled to accept a monetary satisfaction of its existing Encumbrance. The Debtors further submit that all Encumbrances will attach to the sale proceeds with the same extent, priority, validity, force and effect as such Encumbrances previously applied to the Residual Assets immediately prior to the closing of the Sales, provided that all of the Debtors' claims, defenses and objections with respect to the amount, validity or priority of each such Encumbrances and the underlying liabilities are expressly preserved. Accordingly, the Debtors believe that the sale of the Sale Assets free and clear of Encumbrances is appropriate, with all such Encumbrances to attach to the proceeds of the Sales with the same extent, priority, validity, force and effect applicable to such Encumbrances immediately prior to the closing of the Sales.

III. A Private Sale of the Residual Assets Is Appropriate

30. Bankruptcy Rule 6004(f)(1) permits private sales or sales conducted without an auction. Fed. R. Bankr. P. 6004(f)(1) ("All sales not in the ordinary course of business may be by private sale or by public auction."). Further, courts have generally held that a debtor has broad

discretion in determining the manner in which assets are sold. *Berg v. Scanlon (In re Alisa P'ship)*, 15 B.R. 802, 802 (Bankr. D. Del. 1981) ("[T]he manner of sale is within the discretion of the trustee . . . ."); *In re Bakalis*, 220 B.R. 525, 531 (Bankr. E.D.N.Y. 1998) (noting that a trustee has "'ample discretion to administer the estate, including authority to conduct public or private sales of estate property.'") (citing *In re WPRV-TV, Inc.*, 143 B.R. 315, 319 (D.P.R. 1991)). As long as a debtor maximizes the return to its estate, a court should defer to a debtor's business judgment regarding how to structure an asset sale. *Bakalis*, 220 B.R. at 532 (recognizing that although a trustee's business judgment enjoys great judicial deference, a duty is imposed on the trustee to maximize the value obtained from a sale); *In re NEPSCO, Inc.*, 36 B.R. 25, 26 (Bankr. D. Me. 1983) ("Clearly, the thrust of th[e] statutory scheme [governing 363 sales] is to provide maximum flexibility to the trustee, subject to the oversight of those for whose benefit he acts, *i.e.*, the creditors of the estate."). Accordingly, a sale should be permitted without a public auction if a private sale is in the best interests of their estates. *See Penn Mut. Life Ins. Co. v. Woodscape L.P. (In re Woodscape L.P.)*, 134 B.R. 165, 174 (Bankr. D. Md. 1991) (noting that, with respect to sales of estate property, "[t]here is no prohibition against a private sale . . . and there is no requirement that the sale be by public auction.").

31. Here, the proposed Sales follow an extensive public marketing process for substantially all of the Debtors' assets that revealed no higher or better offers for the Residual Assets. The Debtors submit that further public marketing of the Residual Assets would deplete valuable estate resources and would be unlikely to yield a superior price than that offered by Parler or Encore. Furthermore, the Debtors expect that their lender (Lynrock Lake) will be supportive of the proposed Transactions. The Committee is already supportive of the Sales. Both parties have no objection to the request for expedited relief, and have reserved their rights to review the final form of proposed order. The Debtors therefore submit that their decision to sell and license the Residual Assets through private transactions is reasonable under the circumstances, is supported by the Debtors' business judgment, and should be approved.

IV. PARLER AND ENCORE ARE GOOD FAITH PURCHASERS PURSUANT TO SECTION 363(m) OF THE BANKRUPTCY CODE

32. Parler and Encore are purchasing the Parler Assets and the Encore Assets, respectively, in good faith and are thus entitled to the full protections of section 363(m) of the Bankruptcy Code. Section 363(m) of the Bankruptcy Code protects a good-faith purchaser's interest in property purchased from the debtor, notwithstanding that the sale conducted under section 363(b) is later reversed or modified on appeal. Specifically, section 363(m) of the Bankruptcy Code states that:

> The reversal or modification on appeal of an authorization under [section 363(b) of the Bankruptcy Code] of a sale . . . of property does not affect the validity of a sale . . . to an entity that purchased . . . such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale . . . were stayed pending appeal.

11 U.S.C. § 363(m).

33. Section 363(m) fosters the "'policy of not only affording finality to the judgment of the bankruptcy court, but . . . give[s] finality to those orders and judgments upon which third parties rely.'" *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 147 (3d Cir. 1986) (quoting *Hoese Corp. v. Vetter Corp. (In re Vetter Corp.)*, 724 F.2d 52, 55 (7th Cir. 1983)); *see Allstate Ins. Co. v. Hughes*, 174 B.R. 884, 888 (S.D.N.Y. 1994) ("Section 363(m) . . . provides that good faith transfers of property will not be affected by the reversal or modification on appeal of an unstayed order, whether or not the transferee knew of the pendency of the appeal."); *In re Stein & Day, Inc.*, 113 B.R. 157, 162 (Bankr. S.D.N.Y. 1990) ("pursuant to 11 U.S.C. §363(m), good faith purchasers are protected from the reversal of a sale on appeal unless there is a stay pending appeal").

34. The Debtors request a finding that Parler and Encore are good faith purchasers entitled to the protections of section 363(m) of the Bankruptcy Code. The terms and conditions of the Transaction Agreements have been negotiated by the Debtors, Parler, and Encore at arm's-length and in good faith. Neither the Debtors nor any of their current or former officers or directors have any connection with Parler or Encore to the best of the Debtors' information and belief, and the Debtors believe that neither Parler nor Encore has engaged in any conduct that would indicate

or constitute a lack of good faith. *See In re Gucci*, 126 F.3d 380, 390 (2d Cir. 1997) ("Good faith of a purchaser is shown by the integrity of his conduct during the course of sale proceedings . . . ."); *In re Tempo Tech. Corp.*, 202 B.R. 363, 367 (D. Del. 1996) (stating that a purchaser's good faith status would be destroyed only by conduct involving "'fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.'") (quoting *Abbotts Dairies of Pa.*, 788 F.2d at 147). Accordingly, the Debtors believe that Parler and Encore are entitled to the protections that section 363(m) of the Bankruptcy Code provides to a good faith purchaser.

REQUEST FOR WAIVER OF BANKRUPTCY RULE 6004(H)

35. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h).

36. The Debtors request that any order approving the Transactions be effective immediately upon its entry. If the Proposed Order is not immediately effective, the Debtors may face unnecessary costs during the pre-closing period, including costs to maintain server space at data centers whose contracts could otherwise be rejected and costs to pay employees who would otherwise be hired by Parler or Encore. Moreover, the proposed purchasers have indicated that time is of the essence and the proposed Transactions are at risk the event the Transactions are not consummated promptly. Accordingly, the Debtors believe that it is appropriate that any order approving the Transaction Agreements and authorizing the proposed Transactions be effective without any delay by providing that any fourteen-day stay, including under Bankruptcy Rule 6004(h) (to the extent such stays are applicable), be waived.

RESERVATION OF RIGHTS

37. Nothing in this Motion is intended or should be construed as: (i) an implication, admission, or concession as to the validity, amount, or priority of, or basis for, any claim against any Debtor; (ii) a waiver of any Debtor's right to dispute any claim on any ground; (iii) a promise

or requirement to pay any claim; (iv) a waiver of any claim or cause of action that any Debtor may have against any entity; (v) a ratification, adoption, rejection, or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code; (vi) a waiver or limitation of any Debtor's rights under any agreement, the Bankruptcy Code, or other applicable law; (vii) an implication or admission that any particular claim is of a type specified or defined in the Motion or any order granting the relief requested in the Motion; or (viii) an implication, admission, concession, or finding that (a) any particular claim is of a type specified or defined in this Motion or (b) any lien, security interest, other encumbrance on property of any Debtor or right of setoff is valid, enforceable, or perfected (and the Debtors expressly reserve and preserve their rights to contest or to seek avoidance of the same).

NOTICE

38. Notice of this Motion will be provided to: (a) the Office of the U.S. Trustee for the District of Delaware; (b) counsel to the Official Committee of Unsecured Creditors; (c) counsel to Lynrock Lake Master Fund LP; (d) counsel to U.S. Bank Trust Co., N.A., as trustee and collateral agent for the Debtors' outstanding senior secured convertible notes due 2027; (e) all persons known or reasonably believed to have asserted an interest in the Residual Assets; (f) all parties who have asserted or could assert liens against the Residual Assets; (g) the Internal Revenue Service; (h) the Securities and Exchange Commission; (i) the United States Attorney's Office for the District of Delaware and all other states in which the Debtors operate; (j) counsel to Parler; (k) counsel to Encore; (l) the Data Centers; (m) counsel to Akamai; (n) counsel to InterDigital; (o) MCI Communications Services, Inc. d/b/a Verizon, (p) any other person that has filed a request for service of notices pursuant to Bankruptcy Rule 2002, and (q) to the extent not already included above, all parties in interest listed on the Debtors' creditor matrix. The Debtors submit that the applicable notice requirements have been satisfied, and that no further notice is required under the circumstances.

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Upon the foregoing Motion, the Debtors respectfully request that the Court (a) enter the Proposed Order granting this Motion and (b) grant such other relief as is just and proper.

Dated: January 27, 2025
Wilmington, Delaware

Respectfully submitted,

/s/ Emily R. Mathews

Mark D. Collins (No. 2981)
Russell C. Silberglied (No. 3462)
Brendan J. Schlauch (No. 6115)
Huiqi Liu (No. 6850)
Emily R. Mathews (No. 6866)
RICHARDS, LAYTON & FINGER, P.A.
One Rodney Square
920 North King St.
Wilmington, DE 19801
Telephone: 1 (302) 651-7700
Fax: 1 (302) 651-7701
Email: Collins@RLF.com
Silberglied@RLF.com
Schlauch@RLF.com
Liu@RLF.com
Mathews@RLF.com

- and -

Dennis F. Dunne (*pro hac vice*)
Tyson Lomazow (*pro hac vice*)
Lauren C. Doyle (*pro hac vice*)
Benjamin M. Schak (*pro hac vice*)
MILBANK LLP
55 Hudson Yards
New York, NY 10001
Telephone: 1 (212) 530-5000
Email: DDunne@Milbank.com
TLomazow@Milbank.com
LDoyle@Milbank.com
BSchak@Milbank.com

Co-Counsel to the Debtors and Debtors in Possession