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On behalf of the Lead Plaintiff Peter Frouws

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

PETER FROUWS, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. ROBERT LYONS; DANIEL BONCEL; and STEPHEN CUMMING, Defendants.	)))))))))))))	No. 2:23-cv-00691-PHX-DJH <u>CLASS ACTION</u> **MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

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PRELIMINARY STATEMENT

Plaintiff Peter Frouws ("Lead Plaintiff") submits this brief in support of his Motion for Final Approval of the proposed $15,000,000 settlement of this class action (the "Action") pursuant to the Stipulation and Agreement of Settlement (the "Stipulation" or "Stip.," ECF No. 80-4).[1] The proposed Settlement will benefit a class (the "Class") of purchasers of the common stock of Edgio, Inc. (formerly Limelight Networks, Inc., and referred to herein as "Edgio" or the "Company"), and if approved will settle all claims at issue in this Action. For the reasons set forth herein and in the accompanying Joint Declaration of William C. Fredericks and Brian J. Schall ("Joint Decl."), the Court should approve the Settlement and enter the [Proposed] Judgment and Order Granting Final Approval of Class Action Settlement (the "Judgment"), which is being separately filed herewith.

As detailed below, the $15 million all-cash Settlement represents an excellent result for the Class that readily meets the "fair, reasonable, and adequate" standard for final approval, particularly when weighed against the significant risks of continued litigation and collectability issues arising out of Edgio's 2024 bankruptcy. Indeed, the proposed Settlement was only reached after arm's-length negotiations conducted under the auspices of a highly respected mediator, David Murphy, Esq. of Phillips Alternative Dispute Resolution (the "Mediator"), and reflects both sides' acceptance of the material terms of Mr. Murphy's independent "mediator's proposal."

Lead Plaintiff also seeks approval of the proposed Plan of Allocation, which governs how the Net Settlement Fund will be distributed among eligible Class Members who timely file a valid Proof of Claim ("Claimants"). Developed primarily by Lead Plaintiff's damages expert, the Plan of Allocation calculates each eligible Claimant's "recognized claim amount" based on the relative economic losses attributable to the alleged fraud, using

[1] All capitalized terms not otherwise defined herein have the meanings given to them in the Stipulation.

a common formula applied uniformly to all Claimants. Because the Plan of Allocation allocates the Net Settlement Fund on a *pro rata* basis based on the respective loss-based recognized claim amounts of each Class Member/Claimant, it is fair and reasonable and should also be approved.

Finally, the Motion requests, pursuant to Rules 23(a) & (b)(3), that the Court grant final certification of the proposed Class for settlement purposes only and appoint Peter Frouws as class representative and Scott+Scott Attorneys at Law LLP ("Scott+Scott") and Schall, Brown, & Schwartz LLP ("SBS") (together, "Co-Lead Counsel") as Class Counsel for the Settlement Class.

I. LITIGATION HISTORY, SETTLEMENT NEGOTIATIONS, AND THE IMPLEMENTATION OF THE COURT'S PLAN FOR ISSUING THE NOTICE

Litigation history. This action was commenced on April 25, 2023 by the filing of a complaint alleging claims under §§10(b) and 20(a) of the Exchange Act of 1934 ("1934 Act") and Rule 10b-5 thereunder against the now bankrupt Edgio, its former CEO Robert Lyons, and two of its former CFOs, Daniel Boncel and Stephen Cumming. ECF No. 1. On June 26, 2023, Mr. Frouws moved to be appointed Lead Plaintiff. ECF 15. On November 3, 2023, the Court appointed Mr. Frouws as Lead Plaintiff, consolidated all related cases into this Action, and appointed Scott+Scott and SBS as Co-Lead Counsel. ECF No. 23.

On January 29, 2024, Lead Plaintiff filed his amended complaint ("Amended Complaint"). ECF No. 32. In sum, Lead Plaintiff alleges that during the period from February 11, 2021 to March 12, 2023,[2] Edgio and Defendants made materially false and misleading statements and omissions concerning Edgio's: (1) performance, growth, sales pipeline, and the success of its business strategy; (2) internal financial controls; and (3)

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[2] The Class Period for settlement purposes (February 12, 2021 to March 10, 2023) is slightly different, reflecting that the first alleged misstatement was made after (rather than before) the close of the market on February 11, 2021, and that the last alleged corrective disclosure was made before the market opened on March 13, 2023.

revenue. Lead Plaintiff contends that as a result of the alleged misrepresentations and omissions, Edgio's stock traded at artificially inflated prices during the Class Period, and that Settlement Class Members suffered damages when the truth was revealed and Edgio's stock price declined. *Id*. For their part, Defendants have consistently denied all allegations of liability or damages. *See* Stip., ¶¶18-20.

Defendants moved to dismiss the Amended Complaint in March 2024 (ECF No. 37), and Lead Plaintiff filed comprehensive papers in opposition (ECF No. 38). However, before that motion was decided, Edgio filed for bankruptcy under Chapter 11 in the District of Delaware (ECF No. 41), thereby automatically staying these proceedings. The Court subsequently dismissed Edgio from this Action. ECF No. 49.

On April 2, 2025, the remaining Defendants re-filed their motion to dismiss. ECF No. 55. In response, Lead Plaintiff again opposed (ECF No. 56), and Defendants filed reply papers (ECF No. 57). Following this comprehensive briefing, on August 25, 2025 the Court issued its Order denying Defendants' motion to dismiss in full. ECF No. 58.

History of the Mediation. Given the limited prospects for recovery against the now-bankrupt Edgio, and given that competing breach of fiduciary duty and related derivative claims would be brought on behalf of Edgio's creditors' committee that—either with or without the separate investors claims asserted in this Action—threatened to rapidly exhaust the limited insurance coverage potentially available to Defendants, the Settling Parties began to discuss the possibility of trying to mediate the claims asserted in this Action during the pendency of Defendants' second motion to dismiss (i.e., in the summer of 2025). Accordingly, while the Settling Parties awaited the Court's decision on the motion to dismiss, they agreed to retain David Murphy, Esq. as Mediator—a highly regarded mediator and former litigator with over 30 years of experience in securities class actions —to explore mediation options. Joint Decl. at ¶25-26.

After retaining the Mediator, both sides engaged in extensive preparation for their initial mediation session in early September 2025, exchanging comprehensive mediation statements and related submissions. Moreover, the timing of the Court's August 25, 2025 Order (which denied Defendants' motion to dismiss) allowed the parties to hold their first mediation session with the benefit of the Court's MTD Order, and to submit supplemental submissions addressing the import of that Order on the claims asserted in this action. The initial face-to-face mediation session, which was held on September 8, 2025, lasting a full day, was conducted with the active involvement of the Mediator. Nonetheless, despite these efforts, the parties were unable to reach an agreement at the September 2025 Mediation. Joint Decl. at ¶¶27-28.

Given the significant gap that remained between the parties' respective settlement positions, following the unsuccessful September 2025 mediation—and given that the automatic PSLRA discovery stay was now dissolved by virtue of the Court's August 2025 MTD Order—Lead Plaintiff and Co-Lead Counsel pursued a two-track approach of keeping a settlement channel open through the Mediator while simultaneously pursuing active litigation and discovery. Joint Decl. at ¶¶21-23, 27-28. Accordingly, Lead Plaintiff negotiated the terms of a Joint Case Management Report with Defendants that proposed relevant litigation deadlines, and which the Court substantially adopted in its Rule 16 Scheduling Order of October 22, 2025. ECF No. 65. Both sides thereafter commenced fact discovery, including the preparation and service of Rule 26 initial disclosures, interrogatories, document requests, and third-party subpoenas. Joint Decl. at ¶¶23, 27-29.

Meanwhile, the Mediator continued to explore and challenge both sides' positions on liability, damages, and collectability. Ultimately, in early December 2025, the Mediator made a double-blind "mediator's proposal" to each side, proposing that all claims asserted in this Action be settled for $15 million in cash. On December 9, 2025, the Mediator advised that both sides had agreed in principle to accept his proposal, subject to the negotiation and preparation of the required "long form" settlement documents. The Parties informed the Court that they reached an agreement in principle on December 11, 2025. ECF No. 78; Joint Decl. at ¶30-31.

Over the next two months, both sides engaged in further extensive good-faith negotiations and drafting efforts to prepare the required final settlement documents, consisting primarily of the customary Stipulation of Settlement and its accompanying exhibits. The Parties finalized and signed the Stipulation on February 11, 2026, which Lead Plaintiff then promptly filed together with his motion for preliminary approval. On June 8, 2026, the Court granted preliminary approval of the Settlement. ECF No. 81, *as amended by* ECF 83; Joint Decl. at ¶32.

II. NOTICE HAS BEEN GIVEN TO THE SETTLEMENT CLASS IN ACCORDANCE WITH RULE 23, DUE PROCESS, AND THE PSLRA

As the Court has already held in its Preliminary Approval Order (ECF No. 81), the form and content of the Notice and Summary Notice (*see* Stip., Exs. A-1, A-3), satisfied all applicable requirements under Rule 23(e) and the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. §78u-4(a)(7). *See also* Lead Plaintiff's MOL in support of his Motion for Preliminary Approval, ECF No. 80-1, §III. For example, the Notice was written in plain language, and apprised Class Members of (i) the essential terms of the Settlement and the pendency of the Action; (ii) information regarding Co-Lead Counsel's Fee and Expense Application; (iii) specifics on the date, time, and place of the Settlement Hearing; and (iv) how, if they so wished, they could exercise their rights to (a) object to the Settlement, Plan of Allocation, and/or any Fee and Expense Application, or (b) request exclusion from the Class; and (v) contact information for Co-Lead Counsel and the Claims Administrator who could answer questions from Class Members relating to the Settlement. *Id.*

Moreover, the Court-approved forms of notice have now been disseminated in accord with the Preliminary Approval Order. *See* Declaration of Ann Cavanaugh (of the Court-appointed Claims Administration firm, A.B. Data) Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date ("Cavanaugh Decl."), at ¶¶4-12. For example, as set forth in the Cavanaugh Decl., A.B. Data has posted the Notice and

Proof of Claim on the dedicated settlement website established for the Settlement, and caused the Summary Notice (which directs potential Class Members to the settlement website) to be published on PR Newswire on July 9, 2026. *Id.* ¶¶14,15. In addition, the Claims Administrator assembled a comprehensive list of all potential record holders of Edgio common stock during the Class Period, using both records obtained from Edgio's former transfer agent and its own proprietary list of the banks, brokerage firms, and other nominee purchasers ("Nominees"). *Id.* ¶¶5-8. The Claims Administrator then used this list to contact all of these Nominees, and instructed them (pursuant to the Court's Preliminary Approval Order) to either (a) forward copies of the Claims Packages to their clients or (b) provide the names and addresses of the beneficial owners to A.B. Data (so that A.B. Data could mail Claim Packets to these potential Class Members). *Id.* ¶7. On June 29, 2026, A.B. Data also emailed the Claim Packages to Depository Trust Company for publication on its Legal Notice System ("LENS"), where all potential Nominees could also review it and request copies for their beneficial holders. *Id.* ¶8. In total, the Claims Administrator has sent 28,550 Notice Packets to potential Nominees or directly to potential Class Members identified by those Nominees (either by first-class mail or by email, if available). *Id.* ¶11. In addition, one institution advised A.B. Data that they sent electronic copies of Claim Packages via email to 28,550 potential Settlement Class Members. ***Id.*** ¶12.

The manner in which notice was provided here as directed by and already approved by the Court's Preliminary Approval Order—namely, individual notice by mail or email to all Class Members who could be reasonably identified, plus notice by publication and over the internet (*see* Cavanaugh Decl. at ¶4-11)—constituted the best notice practicable under the circumstances and satisfied the requirements of due process, Rule 23 and the PSLRA. *See, e.g.*, *Howard v. Web.com Grp. Inc.*, 2020 WL 10223299 (D. Ariz. Sept. 18, 2020) (Humetewa, J.); *Koch v. Desert States Emps. & UFCW Unions Pension Plan*, 2021 WL 4318477, at *9 (D. Ariz. Sept. 23, 2021); *Rodriguez v. QS Next Chapter LLC*, 2020 WL

6882844, at *8 (D. Ariz. Nov. 18, 2020); *In re RH, Inc. Sec. Litig.*, 2019 WL 5538215, at *2 (N.D. Cal. Oct. 25, 2019). In sum, the form and manner of notice provided to the Class here fully satisfy all applicable legal requirements.

III. THE COURT SHOULD APPROVE THE PROPOSED SETTLEMENT

The Settlement plainly merits final approval. It provides an immediate and certain $15 million recovery for the Settlement Class, which is fair and reasonable in light of the significant risks, costs, and uncertainties of continued litigation (particularly as exacerbated by collectability issues arising out of former defendant Edgio's bankruptcy). Moreover, the reasonableness of the proposed Settlement is also confirmed by reference to published data, which indicates that, based on several metrics, Lead Plaintiff and Co-Lead Counsel have obtained a superior, above-average recovery.

Rule 23(e) requires judicial approval for any Settlement of Class Action claims, and whether to grant such approval lies within the district court's sound discretion. *See In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prod. Liab. Litig.*, 895 F.3d 597, 611 (9th Cir. 2018) (citation omitted). In exercising this discretion, courts are guided by the Ninth Circuit's "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned." *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 556 (9th Cir. 2019)(citation omitted); *see also Taafua v. Quantum Glob. Techs., LLC*, 2021 WL 579862, at *3 (N.D. Cal. Feb. 16, 2021) ("The Ninth Circuit has declared that a strong judicial policy favors settlement of Rule 23 class actions.").

Rule 23(e)(2) requires a district court to find that a proposed Class Action Settlement is "fair, reasonable, and adequate" before it can be approved, based on consideration of whether:

a. the class representatives and class counsel have adequately represented the class;

b. the proposal was negotiated at arm's length;

c. the relief provided for the class is adequate, taking into account:

1. the costs, risks, and delay of trial and appeal;

2. the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

3. the terms of any proposed award of attorney's fees, including timing of payment; and

4. any agreement required to be identified under Rule 23(e)(3); and

d. the proposal treats class members equitably relative to each other.

FED. R. CIV. P. 23(e)(2)(A)-(D); *see also Campbell v. Facebook, Inc*., 951 F.3d 1106, 1120-21 (9th Cir. 2020). Consistent with this guidance, the Ninth Circuit has identified the following similar and/or overlapping "*Churchill* factors" for courts to consider in evaluating proposed Class Action Settlements, namely: "(1) the strength of Plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement."[3] *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (citation omitted); *In re Cal. Pizza Kitchen Data Breach Litig.*, 129 F.4th 667, 674 (9th Cir. 2025).

Where, as here, a settlement is negotiated prior to formal Class certification, consideration of the *Churchill* factors alone is not sufficient. Before formal certification, there is a "greater potential for a breach of the fiduciary duty owed the class," and such agreements accordingly must withstand a higher level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e). *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011). In applying that standard,

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[3] Lead Plaintiff does not believe that the risk of maintaining class action status here is significant and accordingly does not separately discuss this litigation risk below. Nor is there any governmental participant in the Action, rendering that *Churchill* factor inapplicable. Any objections and requests for exclusion will be addressed in Lead Plaintiff's reply, submitted after the August 28, 2026 deadline for objecting and opting out has passed.

courts consider whether the settlement reflects any of the recognized indicia that Class counsel's interests may have diverged from those of the Class, including: (1) counsel receiving a disproportionate share of the Settlement, or the Class receiving no monetary distribution while counsel is amply rewarded; (2) a "clear sailing" arrangement providing for the payment of attorneys' fees separate and apart from Class funds; and (3) an arrangement under which fees not awarded revert to defendants rather than to the Class fund. *Id.* at 947. As set forth below, none of these indicia are present here.

These factors are not necessarily exclusive. Of particular relevance here, courts in this circuit also often give significant weight to whether a proposed settlement was reached through a supervised mediation process that would lend further confidence to a finding that a proposed settlement is fair and reasonable. *See* §II.B., below.

A. Lead Plaintiff and Co-Lead Counsel Have Adequately Represented the Class in This Action

In deciding whether to approve a settlement, the Court first considers whether Lead Plaintiff and Co-Lead Counsel "have adequately represented the class." Rule 23(e)(2)(A). This inquiry focuses on the actual performance of the Class representative and counsel in prosecuting the action on the Class's behalf, and it substantially overlaps with the adequacy assessment under Rule 23(a)(4). Here, the record shows that Lead Plaintiff and Co-Lead Counsel diligently and effectively advanced the interests of the Settlement Class at every stage of the litigation.

From the outset, Co-Lead Counsel devoted substantial resources to developing the strongest possible case for the Class. In connection with the detailed Amended Complaint, Co-Lead Counsel conducted an extensive investigation, including by collecting and analyzing large numbers of Edgio's SEC filings, press releases, and conference call transcripts; reviewing numerous analyst reports and news stories about the Company; and identifying, locating, and interviewing various former Edgio employees. When Defendants moved to dismiss, Co-Lead Counsel vigorously defended the Class's claims, preparing and filing a comprehensive opposition brief and ultimately prevailing in full on all disputed issues, as reflected in this Court's August 2025 Order denying dismissal. And even as the parties entered into mediation discussions, Co-Lead Counsel – having successfully defeated Defendants' motion to dismiss as reflected in the Court's August MTD Order – simultaneously commenced formal discovery by preparing and serving interrogatories, document requests, and deposition notices. *See generally*, Joint Decl. at ¶¶6-24, 29.

Lead Plaintiff and Co-Lead Counsel also diligently protected and advocated for the Class's interests throughout the settlement process. Co-Lead Counsel thoroughly briefed the relevant facts and law in preparing Lead Plaintiff's opening mediation submission. They also carefully reviewed Defendants' submission and responded to the Mediator's analysis of (and comments on) liability, damages, and collectability issues. As a result, Lead Plaintiff and Co-Lead Counsel were fully informed of the strengths and weaknesses of the parties' respective positions and were well-positioned to evaluate—and to negotiate on the Class's behalf—the fairness and adequacy of a possible settlement. *Id.* ¶¶25-32. Moreover, Lead Plaintiff and Co-Lead Counsel respectfully submit that the substantial recovery they secured for the Class further confirms that Lead Plaintiff and Co-Lead Counsel have more than adequately represented the Class. Joint Decl. at ¶35.

Co-Lead Counsel also respectfully submit that they have extensive experience in litigating securities class actions in this Circuit and across the country (*id.* ¶36), and that accordingly their belief that the Settlement is in the best interests of the Settlement Class also weighs in support of granting final approval. *See, e.g.*, *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995) ("Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation.").

B. The Settlement Was Reached Through Arm's-Length Negotiations Under the Auspices of a Highly Experienced Mediator

Courts must also consider whether the "proposal was negotiated at arm's length." Rule 23(e)(2)(B). As described above at §I, the Settlement here was achieved only after all counsel participated in a thorough, arm's-length mediation process conducted by a highly experienced mediator. The Settlement, therefore, resulted from a procedurally fair process, including "serious, informed, non-collusive negotiations" by informed counsel under the supervision of the Mediator. *Horton v. USAA Cas. Ins. Co.*, 266 F.R.D. 360, 363 (D. Ariz. 2009) (citation omitted); *see also Koch*, 2021 WL 4318477, at *7 (granting preliminary approval where settlement was "arrived at after lengthy discussions with an experienced private mediator"). Moreover, the Settlement itself is based on a mediator's proposal, *see* Joint Decl., ¶30, which further confirms that it was not the product of collusion. *See, e.g.*, *Farrar v. Workhorse Grp., Inc.*, 2023 WL 5505981, at *5 (C.D. Cal. July 24, 2023) (that settlement was based on the mediator's proposal supported a finding of arm's-length negotiations and the absence of collusion). Joint Decl., ¶30-31, 37.

C. The Relief Provided to the Settlement Class Is Adequate

Courts next consider if the settlement consideration is fair, reasonable, and adequate in light of the "costs, risks, and delay of trial and appeal." Rule 23(e)(2)(C). In short, courts balance the continuing risks of litigation against the amount, immediacy, and certainty of the proposed recovery under the settlement. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000); FED. R. CIV. P. 23(e)(2)(C).

The proposed Settlement provides for the creation of an immediate, all-cash $15 million settlement fund. This result represents a meaningful recovery in a case involving substantial litigation risk and collectability concerns arising from Edgio's bankruptcy, including the threat of competing creditor claims against a limited amount of available insurance coverage. The alternative of continuing to pursue litigation here, therefore, raised a significant risk of recovering far less than $15 million, and possibly nothing at all. Joint Decl. at ¶38.

1. Litigation Risk

Under §10(b) of the 1934 Act, Lead Plaintiff faced significant risks on the merits in proving that Defendants made materially false or misleading statements. The alleged misstatements here fell into three main categories: (1) statements about Edgio's allegedly inflated performance, growth, and sales pipeline, and the allegedly inflated success of its business strategy; (2) statements about Edgio's allegedly inadequate internal financial controls; and (3) statements about Edgio's allegedly inflated revenue. However, Defendants argued that most statements at issue were immunized from liability because they were mere puffery or constituted inactionable forward-looking statements, and that the remaining statements at issue were neither false nor misleading. While Lead Plaintiff prevailed on falsity issues at the motion to dismiss stage, such matters would have likely been subject to review at summary judgment and trial in light of a more fully developed factual record, and proof of falsity is rarely certain in securities litigation. Further, a number of the alleged misrepresentations were based on data reviewed by an outside auditor, which invariably makes it harder to challenge the accuracy of related statements before a jury. Joint Decl. at ¶40.

Further, although Lead Plaintiff believes he could have proven that Defendants acted with scienter (*i.e.*, that they acted with the requisite intent to defraud), such proof is never assured in §10(b) cases. For example, while Co-Lead Counsel had identified certain witnesses who provided information indicating that Edgio's top officers (i.e., the Individual Defendants here) *knew* that Edgio was facing sales pipeline issues, none of those witnesses had direct conversations with the Individual Defendants on that subject, and there could be no assurance that a jury would find Lead Plaintiff's witnesses more credible than Defendants' witnesses on such matters. Defendants also argued that although they monitored Edgio's revenue closely, that did not mean that they knew that Edgio's revenue data was being recorded incorrectly, or that their reliance on accounting personnel to apply the correct sales-lease accounting principles was not made in good faith. Further, the fact that Defendants did not engage in suspicious insider stock sales during the Class Period would have made it difficult to prove motive to commit fraud to a jury. Joint Decl. at ¶41.

In sum, although Lead Plaintiff survived the motion to dismiss, the evidentiary burden at trial would have posed a significant risk, as Lead Plaintiff would ultimately need to prove his claims—and particularly scienter—based on the preponderance of the admissible evidence. And cases involving disputed accounting and internal control allegations frequently come down to inherently unpredictable "battles of the experts." In sum, this case was no exception to the rule that §10(b) fraud cases involve very high risk. Joint Decl. at ¶42-43.

2. Ability to Pay

Issues with ability to pay and collectability also highlight the reasonableness of the Settlement. Here, assuming Lead Plaintiff's complete success in establishing Defendants' liability, Plaintiff's expert estimated that the *maximum* damages that could have theoretically been recovered at trial were in the range of roughly $150 million. However, not only was Edgio's and the Settling Defendants' combined available insurance only a fraction of that amount, but this limited coverage was subject to certain related (but separate and competing) claims that are almost certain to be brought for the benefit of Edgio's creditors in the aftermath of Edgio's bankruptcy. Accordingly, the risk that prolonged litigation of this Action would significantly reduce available insurance coverage was especially real here, as that coverage was subject to being wasted by costs of litigation that Defendants would likely have had to incur in fighting on two fronts (in the absence of a settlement) against both Plaintiff in this action and in separate proceedings brought for the benefit of Edgio's creditors. Joint Decl. at ¶44.

3. The Amount Recovered

The $15 million Settlement also plainly compares favorably to other Securities Class Action Settlements. As noted above, Lead Plaintiff's damages expert determined that the best-case scenario damages were roughly $150 million, assuming the Class would run the table on all reasonably disputable liability, loss causation, and damages issues. Accordingly, the proposed $15 million recovery here represents roughly 10% of the maximum reasonably recoverable damages. By contrast, the National Economic Research Associates firm ("NERA") reports that the median Settlement value as a percentage of estimated investor losses for the period 2015 to 2025, for comparably sized cases involving estimated losses of $100 to $200 million, was only about 3.2% of losses.[4] In addition, the $15 million recovery exceeds the reported median for all §10b-5 Securities Class Action Settlements in the Ninth Circuit over the last decade ($11 million) and also exceeds the median for all §10b-5 such Settlements nationwide over the same period ($12.3 million), based on data collected between 2016 and 2025.[5] The amount recovered here, therefore, falls at the upper end of any "range of reasonableness," based on comparison to published data. Joint Decl. at ¶45.

4. Likely Duration and Complexity of The Litigation

The likely duration and complexity of this litigation also favor settlement. As discussed above, although discovery had commenced here, absent settlement, there is little doubt that completion of discovery, the conduct of expert discovery, the briefing of summary judgment, trial, and the inevitable post-trial motions and appeals would take several more years. Joint Decl. at ¶46. These factors also weigh strongly in favor of the proposed Settlement. *See Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 966 (9th Cir. 2009) ("risk, expense, complexity, and likely duration of litigation" support settlement); *see also*, *Sanchez v. Mohawk Indus., Inc.*, 2025 WL 2694749, at *20 (E.D. Cal. Sept. 20, 2025) (that

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4 *See* E. Flores, S. Starykh & I. Velikova, *Recent Trends in Securities Class Actions Litigation: 2025 Full Year Review*, NERA at 27 (2026), https://www.nera.com/insights/publications/2026/recent-trends-in-securities-class-action-litigation--2025-full-y.html?lang=en (last visited Aug. 13, 2026).

5 *See* L. Bulan & E. Tam, *Securities Class Action Settlements, 2025 Review & Analysis*, CORNERSTONE RESEARCH at 19, 21 (2026), https://www.cornerstone.com/insights/reports/interactive-securities-class-action-settlements-2025-review-and-analysis/ (last visited Aug. 13, 2026).

"costs of future litigation [] may reduce the recovery to class members" weighed in favor of final approval of settlement).

D. The Experience and Views of Counsel

As noted above, the experienced Co-Lead Counsel for the proposed Class believe that the Settlement is in the best interests of the Settlement Class. Joint Decl. at ¶36. Accordingly, this factor also weighs in favor of final approval. *In re Pac. Enters.*, 47 F.3d at 378.

E. The Settlement Treats All Class Members Fairly

The Settlement also "treats class members equitably relative to each other." Rule 23(e)(2)(D). Specifically, the proposed Plan of Allocation (the "POA") set forth in the Notice is fair and reasonable. Co-Lead Counsel developed the POA in consultation with Lead Plaintiff's damages expert. Under the POA, each Class Member's recovery will be based upon the relative economic losses they sustained as a result of Defendants' alleged misconduct. Each eligible Class Member who submits a valid Proof of Claim ("Claimant") will receive their *pro rata* distribution from the Net Settlement Fund, based on a common formula applicable to all Claimants that takes into account the estimated amount of inflation per share in Edgio stock at the times that they purchased and sold (if they sold) their shares. Each Claimant will then receive a *pro rata* distribution of the Net Settlement Fund based on the amount of his, her, or its Recognized Claim as a percentage of the total Recognized Claims of all Claimants. Joint Decl. at ¶47.

Such POAs, based on *pro rata* allocations to each Class Member under a common formula, are customary and ensure that each Claimant's recovery is based upon the relative losses they sustained, and that eligible Class Members will receive distributions calculated in the same manner, and are routinely held to be fair and reasonable. *See, e.g.*, *In re Biolase, Inc. Sec. Litig.*, 2015 WL 12720318, at *5 (C.D. Cal. Oct. 13, 2015); *In re RH, Inc.*, 2019 WL 5538215, at *5, 20; *In re Zynga Inc. Sec. Litig.*, 2015 WL 6471171, at *12 (N.D. Cal.

Oct. 27, 2015).[6] The proposed POA here is thus a fair and reasonable method for allocating the Net Settlement Fund.

F. The Settlement Reflects None of the Indicia of Collusion Identified in *Bluetooth*

Finally, because the Settlement was negotiated prior to formal class certification, the Court also considers the three indicia identified in *Bluetooth*. None is present here. First, the Settlement does not provide a disproportionate distribution to counsel. The Class will receive the entire Net Settlement Fund, and Co-Lead Counsel seek a fee of 27.5% of the Settlement Fund, which falls within the range of fees routinely awarded in comparable Securities Class Actions in this Circuit. *See Bluetooth*, 654 F.3d at 947. Second, the Stipulation contains no "clear sailing" provision. Defendants have not agreed to pay attorneys' fees separate and apart from the Settlement Fund, and any fees and expenses awarded will be paid solely out of the Settlement Fund. Defendants likewise retain the right to be heard on any fee application. Stip. ¶¶8.1-8.3. Third, the Settlement contains no reverter. Any portion of the requested fees and expenses that the Court declines to award will remain in the Settlement Fund for distribution to the Class, and no portion of the Settlement Fund reverts to Defendants under any circumstances. *See* Stip. ¶¶5.4, 6.2, 6.3. Accordingly, the Settlement satisfies not only the Rule 23(e)(2) and *Churchill* factors, but also the heightened scrutiny that applies to Settlements reached before formal Class certification.

IV. CLASS CERTIFICATION IS APPROPRIATE FOR SETTLEMENT PURPOSES

The Court has already preliminarily certified the Class (for Settlement purposes only), finding that it met all four Rule 23(a) prerequisites for certification (i.e., numerosity,

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[6] If funds remaining after the initial distribution of the Net Settlement Fund to eligible Class Members are so small that a further re-distribution to Class Members would not be economically feasible, they will be donated to a non-profit §501(c)(3) entity approved by the Court. Stip. at ¶9.12.

commonality, typicality, and adequacy), as well as the requisite prongs for certification under Rule 23(b)(3) (namely predominance and superiority). *See* ECF No. 81, §IV.A.

None of the facts and circumstances that make this Action a prototypical example of a case that merits Class certification have changed since the Court preliminarily certified the Class in June 2026. Accordingly, for precisely the same reasons previously set forth in Plaintiff's Preliminary Approval Brief, Doc. 80-1, §IV, the Court should grant final certification of the Class and confirm its prior decisions appointing Lead Plaintiff as Class representative and the undersigned counsel as Class Co-Lead Counsel.

CONCLUSION

The proposed Settlement provides an immediate, all-cash $15 million recovery to a Class that faced a substantial risk of recovering far less, or nothing at all, given Edgio's bankruptcy, limited insurance coverage, and competing creditor claims against that coverage. It was the product of hard-fought litigation and an arm's-length, mediator-proposed resolution, and it satisfies each of the Rule 23(e)(2) and *Churchill* factors as well as the heightened scrutiny applicable to pre-certification settlements.

Accordingly, the Court should: (1) finally approve the proposed Settlement as fair, reasonable, and adequate under FED. R. CIV. P. 23(e); (2) approve the proposed Plan of Allocation as fair and reasonable; (3) confirm its prior Order certifying the Class (for Settlement purposes only) and appointing Peter Frouws as Class representative and the Scott+Scott and SBS firms as class counsel; and (4) enter the accompanying [Proposed] Judgment and Order Granting Final Approval of Class Action Settlement.

Dated: August 14, 2026

Respectfully submitted,
SCOTT+SCOTT ATTORNEYS AT LAW LLP

<u>/s/ William C. Fredericks</u>
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CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2026, and pursuant to FED. R. CIV. P. 5(b), I served via the CM/ECF electronic filing system a true and correct copy of the foregoing motion to all parties registered to receive CM/ECF notification.

/*s*/ William C. Fredericks
William C. Fredericks (*pro hac vice*)