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Case No. 2021-0808-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CODY LAIDLAW, on behalf of himself and all similarly situated, PLAINTIFF, v. JONATHAN J. LEDECKY, KEVIN GRIFFIN, JAMES H.R. BRADY, SARAH SCLARSIC, EFRAT EPSTEIN, KATRINA ADAMS, THOMAS J. HYNES III, DIMITRI N. KAZARINOFF, and PIVOTAL INVESTMENT HOLDINGS II LLC, DEFENDANTS.	C.A. No. 2021-

<u>VERIFIED CLASS ACTION COMPLAINT</u>

Plaintiff Cody Laidlaw ("Plaintiff"), on behalf of himself and similarly situated current and former stockholders of Pivotal Investment Corporation II ("Pivotal" or the "Company"), brings this Verified Class Action Complaint asserting: (i) breach of fiduciary duty claims stemming from the Company's merger (the "Merger") with XL Hybrids, Inc. ("Legacy XL") against (a) Jonathan J. Ledecky, Kevin Griffin, James H.R. Brady, Sarah Sclarsic, Efrat Epstein, and Katrina Adams in their capacities as members of the Company's board of directors (the "Board") and/or Company officers; (b) Pivotal Investment Holdings II LLC (the "Sponsor"), in its capacity as the Company's controlling stockholder; and (ii) aiding and abetting breaches of fiduciary duty by Thomas J. Hynes III and Dimitri N. Kazarinoff.

The allegations are based on Plaintiff's knowledge as to himself, and on information and belief, including counsel's investigation and review of publicly available information.

NATURE OF THE ACTION

1. Pivotal Investment Corporation II ("Pivotal"), now renamed XL Fleet Corp. ("XL Fleet"), is a Delaware corporation formed as special purpose acquisition company ("SPAC") by Jonathan Ledecky. Pivotal completed its initial public offering ("IPO") of units on July 16, 2019, raising $230 million from public investors. Those units, priced at $10.00, consisted of one Class A share and one third of a warrant with an exercise price of $11.50 to purchase one Class A share.

2. A SPAC is a financial innovation that traces its origin back to the 1990s, but whose current structure was adopted about a decade ago. The use of SPACs has skyrocketed in the past year and a half, as a means by which a private company can go public through a reverse merger, rather than an IPO.

3. Pivotal's history is part of a disturbing trend of recent SPAC transactions in which financial conflicts of interest of sponsors and insiders disregard good corporate governance and the interests of SPAC stockholders. Like many SPAC transactions, which have triggered scrutiny from the SEC relating to financial projections and the reporting of warrants as equity rather than as liabilities, the Pivotal transaction failed to observe the most basic principle of Delaware corporate governance: namely, that a corporation's governance structure should be designed to

protect and promote the interests of public stockholders, not the financial interests of its insiders and controllers.

4. As in all SPAC transactions, Pivotal was formed and taken public as a shell company by a "sponsor," Pivotal Investment Holdings II LLC (the "Sponsor"), which (1) selected the SPAC's directors, (2) dominated the SPAC's management, (3) made an investment in SPAC shares and warrants to cover the SPAC's underwriting fees and working capital, and (4) for only a nominal investment received a 20% equity stake in the SPAC. As described in Pivotal's Form S-1 registration statement, the Company had an 18-month window within which to consummate a merger. Its only asset was the cash it raised from investors. If Pivotal failed to complete a deal during that window, Pivotal was required to liquidate and return its public stockholders' funds, with interest, which would have rendered the Sponsor's investment and its 20% stake worthless. Hence, the Sponsor was strongly incentivized to get *any* deal done, even a bad deal for Pivotal's public stockholders, rather than liquidate.

5. Although a sponsor can neutralize this inherent conflict of interest by establishing a governance structure that protects the interests of public stockholders—and some sponsors do—many sponsors instead have simply utilized the SPAC structure to protect their own financial interests. The Pivotal transaction followed the latter approach.

6. Ledecky and Griffin owned and controlled the Sponsor. The Sponsor, in turn, was the controlling stockholder of Pivotal. This chain of control was cemented through (a) the appointment of Pivotal officers and directors who were already working for another SPAC with Ledecky and Griffin; (b) the use of a staggered board, which precluded a change of control during Pivotal's 18-month lifespan; and (c) a compensation arrangement for Pivotal's purported independent directors that aligned their interests with those of Ledecky, Griffin, and the Sponsor, rather than with the interests of stockholders.

7. Consistent with the general practice among SPACs, Pivotal issued Class B shares ("Founder Shares") to the Sponsor in an amount that would equal 20% of Pivotal's post-IPO equity for the nominal sum of $25,000. This came to 5,750,000 shares at a price of approximately $.004 per share. In addition, the Sponsor invested $6.35 million in warrants to cover the IPO underwriting fee and working capital.

8. Also consistent with general SPAC practice, Founder Shares differed from the Class A shares that Pivotal would issue to public stockholders in two important respects. First, if Pivotal were to liquidate, the public stockholders of Class A shares would receive, *pro rata*, all proceeds of the IPO plus accrued interest. The IPO proceeds were put in trust for the benefit of the stockholders to ensure they would be available for this purpose. This would amount to approximately $10.09 per share. Second, each public stockholder of Class A shares had a right to redeem his or her

shares on those same terms rather than participate in a proposed merger. Founder Shares, by contrast, would be worthless in a liquidation and had no redemption rights.

9. Through the Sponsor, Ledecky and Griffin selected all Board members and executives, and compensated them in ways that ensured their loyalty not to the public stockholders, but to Ledecky and Griffin. Specifically, instead of compensating the Board members and executives with cash (or even Class A shares), Ledecky and Griffin instead transferred some of the Sponsor's Founder Shares to these officers and Directors, thereby aligning their interests with the Sponsor.[1]

10. Through their holdings of Founder Shares and the promise of shares in a post-merger company, Ledecky, Griffin, the Sponsor, and the Board members were strongly incentivized to get *any* deal done, because any deal (even a knowingly lousy one) was virtually certain to make them a lot of money. By contrast, a failure to merge would mean Pivotal would liquidate and return the public stockholders' investment—in which case the Sponsor, and indirectly Ledecky and Griffin, would receive nothing and lose its $6.375 million investment. The other directors and officers, as holders of Founder Shares, would also receive no compensation in the event of a liquidation.

11. Ledecky, Griffin, and the Board were not about to let this happen. So they orchestrated value-destroying merger with XL Hybrids, Inc. ("Legacy XL")—a company founded by Ledecky's friend Thomas J. Hynes III that modifies commercial

[1] Pivotal Investment Corporation II, form 424B4 filed July 15, 2019 (the "IPO Prospectus"), p. 101.

combustion vehicles into electric hybrids—which closed on December 21, 2020. The search and negotiation processes for the Merger were driven by Ledecky, Griffin, and a representative of the Sponsor without a fairness opinion, no special committee, and the purportedly independent directors largely taking a back seat.[2]

12. As holders of Founder Shares, the members of the Board were incentivized to approve the Merger and breached their duty of loyalty by doing so and recommending the Merger to stockholders. Compounding this breach, the Board breached its duty of candor by failing to disclose material information stockholders would need to vote their shares and to make a decision whether to redeem their shares or remain invested in the Merger.

13. Specifically, while emphasizing potential downside scenarios to liquidation and redemption, the Board failed to consider and failed to disclose the fact that Pivotal held cash amounting to less than $8.00 per share and that, following the Merger and after payment of transaction costs, Pivotal would contribute well under $7.00 per share to the Merger. For public investors who paid $10.00 per share, this meant they stood to receive far less in the Merger than they put into the IPO.

14. With so little cash underlying each share of Pivotal stock, a loyal and diligent board would consider what its stockholders were likely to receive in return from Legacy XL. The Merger consideration was largely cash, so each Pivotal

[2] Pivotal Investment Corporation II, form 424B3 filed December 8, 2020 (the "Proxy Statement"), pp. 80-86.

stockholder was in effect purchasing an interest in XL Fleet for the limited amount of cash underlying his or her shares. The remainder of that consideration consisted of Pivotal shares, which the Merger Agreement impliedly valued at the $10.00 IPO price.[3] That $10.00 per share valuation, however, was clearly overstated because there was far less cash underlying those shares. Consequently, there was an obvious possibility that Legacy XL would similarly overstate its value in order avoid giving up more than its stockholders would receive in the Merger. The Board, however, failed to consider this danger or disclose it to Pivotal stockholders.

15. The value of Legacy XL was, in fact, inflated by substantial undisclosed weaknesses in its business. After the Merger, Muddy Waters Research ("Muddy Waters") issued a report asserting that XL Fleet's products are not nearly as effective as publicly represented, and that the Company's customer base and sales pipeline were much thinner than previously disclosed. The findings in the Muddy Waters report were based, among other things, on interviews with XL Fleet's customers and former employees.

16. Although Pivotal's conflicted Board claimed to have "conducted significant due diligence on [Legacy] XL" prior to the Merger, that representation is demonstrably false. In response to a demand for books and records pursuant to 8 Del.

[3] Proxy Statement p. 1.

C. § 220, the Company was unable to produce any documents *at all* evidencing that the Board conducted *any* due diligence of Legacy XL's business.

17. As a result of the Board's failure to disclose the heavy dilution of Pivotal's public Class A shares and the inflated value of Legacy XL, the vast majority of Pivotal's public stockholders voted in favor of the Merger, and essentially all Pivotal stockholders declined to exercise their right to redeem their shares before the Merger.

18. By approving the Merger and remaining invested in the Company, Pivotal stockholders saw their shares decline in price to a low of $5.41 within months of the Merger—a loss in value exceeding $105 million. Since December 21, 2020, the NASDAQ has risen approximately 15% while Pivotal—now XL Fleet—shares are trading at $6.54 as of September 9, 2021, well below its price both at the time of the IPO and when stockholders decided to redeem or keep their shares.

19. Although an abysmal deal for Pivotal's Class A stockholders, the Merger provided a financial windfall for the holders of the Founder Shares. Even with XL Fleet's loss of share value, the Founder Shares—which were "purchased" for virtually nothing—are worth nearly $40 million.

20. Due to the conflicts of interest on the part of the Board and the Sponsor, which drove the Board's flawed process in considering the Merger, the Merger requires judicial review for entire fairness.

21. In light of the conflicts of interest, the tainted process, the fact that Pivotal had far less cash per public share to invest in the Merger than it purported to have, and its failure to disclose this to stockholders, the Merger cannot meet the entire fairness test.

22. This Court should take this opportunity to affirm that the boards and controlling stockholders of SPACs incorporated in Delaware owe the same fiduciary duties to their stockholders as do the boards and controlling stockholders of any Delaware corporation, and thus bring reasonable limits to the money-grabbing SPAC bonanza that has been burgeoning in recent years at the expense of the investing public.

PARTIES AND RELEVANT NON-PARTIES

I. Plaintiff

23. Plaintiff Cody Laidlaw has consistently held, and has been the beneficial owner of, Pivotal stock at all relevant times, including prior to the December 7, 2020, record date for the Merger (the "Record Date") and through the present date.

II. Defendants

24. Defendant Jonathan J. Ledecky ("Ledecky"), was the Chairman, and Chief Executive Officer of Pivotal. Ledecky remains on XL Fleet's post-merger Board. Ledecky is the Chairman of Ironbound Partners Fund, LLC, which was one of the Sponsor's two managing members. Ledecky is a prolific SPAC founder, having launched numerous such entities and raised more than $1 billion dollars since 2005.

Ledecky was the Chairman and Chief Executive Officer of the first SPAC in his "Pivotal" line, Pivotal Acquisition Corp. ("Pivotal I"), until that Company's de-SPAC merger. Ledecky is also currently the Chairman of Pivotal Investment Corporation III ("Pivotal III").

25. Defendant Kevin Griffin ("Griffin") served as a Director of Pivotal prior to the Merger, and remains on the post-merger XL Fleet Board. Griffin, at all relevant times, was the Chief Executive Officer of MGG Investment Group, LP, an affiliate of Pivotal Spac Funding II LLC (the Sponsor's other managing member, where Griffin was the Chief Executive Officer and a Director). Similarly, Griffin was at all relevant times the Chief Executive Officer and Chief investment Officer of MGG Special Opportunities Fund LP, which purchased Pivotal shares in the PIPE Transaction (defined below) and is also an affiliate of Pivotal Spac Funding II LLC. Griffin was also a Director of Pivotal I and remains in that role following Pivotal I's de-SPAC merger, and is the Chief Executive Officer, President, and a Director of Pivotal III.

26. Defendant James H.R. Brady ("Brady") served as Chief Financial Officer ("CFO") of Pivotal prior to the Merger. He was also a Director of Pivotal I until its de-SPAC merger, and is the CFO of Pivotal III.

27. Defendant Sarah Sclarsic ("Sclarsic") served as a member of the Board prior to the Merger, and remains on the post-merger XL Fleet Board. She is a current Director of Pivotal III.

28. Defendant Efrat Epstein ("Epstein") served as a member of the Board prior to the Merger. Epstein was also a Director of Pivotal I until its de-SPAC merger.

29. Defendant Katrina Adams ("Adams") served as a member of the Board prior to the Merger. Adams was also a Director of Pivotal I until its de-SPAC merger, and is a current Director of Pivotal III.

30. Defendant Pivotal Investment Holdings II LLC is a Delaware limited liability company, which served as the Company's Sponsor and purchased and held Class B founder shares. Sponsor's managing members are Ironbound Partners Fund LLC and Pivotal Spac Funding II LLC.

31. Defendant Thomas J. Hynes III ("Hynes") is the current President of XL Fleet and was, at the time the Merger was being negotiated, the founder and Chief Strategy Officer of Legacy XL. Prior to the merger, Ledecky had a "decades-long relationship" with Hynes's family, and Ledecky and Hynes had been "business acquaintances" for ten years.

32. Defendant Dimitri N. Kazarinoff ("Kazarinoff") is the current Chief Executive Officer of XL Fleet. Prior to the merger, Kazarinoff was Legacy XL's President and Chief Executive Officer.

33. Defendants Ledecky, Griffin, Sclarsic, Epstein, and Adams are referred to herein as the "Director Defendants."

34. Defendants Ledecky and Brady are referred to herein as the "Officer Defendants."

35. Defendants Ledecky, Griffin, and Sponsor are referred to herein as the "Controller Defendants."

III. Relevant Non-Parties

36. XL Fleet Corp., formerly known as Pivotal Investment Corporation II (as defined above, "Pivotal" or the "Company"), was a SPAC formed for the purpose of effecting a merger, share exchange, asset acquisition, share purchase, reorganization or similar business combination with one or more businesses or entities. Pivotal was founded in March 2019, and the Company closed its $230 million IPO in July 2019. On December 21, 2020 (the "Closing Date"), Pivotal merged with Legacy XL, with Pivotal as the surviving entity but taking on the "XL Fleet" trade name. The post-Merger company's shares trade on the Nasdaq under the ticker "XL." XL Fleet provides systems that convert combustion-engine commercial vehicles into electrified hybrids.

37. Cantor Fitzgerald & Co. ("Cantor Fitzgerald") acted as a book-running manager and underwriter of the IPO.

38. BTIG, LLC ("BTIG") acted as a book-running manager and underwriter of the IPO.

39. Northland Capital Markets ("Northland Capital") acted as an underwriter of the IPO.

SUBSTANTIVE ALLEGATIONS

I. Ledecky and Griffin Form Pivotal and Raise $230 Million in the IPO

40. Jonathan Ledecky is a prolific SPAC founder, having launched or helped lead numerous SPACs since at least 2005, raising more than one billion dollars from public investors.[4] This action relates to Ledecky's second SPAC under the "Pivotal" umbrella.

41. The Sponsor's managing members are Ironbound Partners Fund, LLC and Pivotal Spac Funding II LLC, through which Ledecky and Griffin respectively exercised control over the Sponsor and, in turn, Pivotal.[5] Pivotal was incorporated under the laws of Delaware on March 20, 2019.[6] Ledecky joined as Pivotal's Chairman and Chief Executive Officer at the time of its inception, and Griffin joined the Company's Board one month later.[7] In their roles, Ledecky and Griffin were responsible for identifying a private company target with which to merge and for negotiating a merger agreement.

42. Prior to the IPO, the Sponsor purchased 5,750,000 Founder Shares at the nominal price of $25,000 or approximately $0.004 per share. As described in further detail below, certain of those Founder Shares were transferred to Pivotal

[4] IPO Prospectus pp. 93-94.

[5] *Id.* at 102.

[6] *Id.* at 71.

[7] *Id.* at 90-91.

insiders at the same per-share price paid by the Sponsor. This gave the Sponsor and those insiders 20% of outstanding equity following the IPO.

43. On July 16, 2019, Cantor Fitzgerald, BTIG, and Northland Capital took Pivotal public in an IPO that sold 23,000,000 units at $10.00 per unit, including the underwriters' exercise of their overallotment option—bringing proceeds of the IPO to $230,000,000.

44. Consistent with SPAC practice, the proceeds of the IPO were placed in trust for the benefit of the public stockholders. Those funds could be used to pay for redeemed shares, to contribute to a merger (including the payment of certain expenses in that transaction), or to return the public stockholders' investment in a liquidation.

45. Each unit sold in the IPO consisted of one share of Class A stock and one-third of one warrant with an exercise price of $11.50 to purchase one share of Class A common stock. Consistent with common SPAC practice, the price of the units was $10.00 each. Also, consistent with SPAC practice, the shares were redeemable for $10.00 plus interest if a stockholder did not want to remain invested in a proposed merger. Consequently, the warrants were free. An IPO stockholder could buy a unit for $10.00, redeem the share for $10.00 plus interest, and keep the warrant for free.[8]

[8] A recent study found that nearly all investors in IPOs either redeemed or sold their shares and kept their warrants. Klausner, Ohlrogge & Ruan, *A Sober Look at SPACs* (forthcoming Yale Journal on Regulation 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3720919.

46. Concurrently with the IPO, the Pivotal Sponsor acquired 4,233,333 warrants at a price of $1.50 per warrant, for an aggregate purchase price of $6,350,000 ("Private Placement Warrants"). Each Private Placement Warrant is exercisable to purchase one share of Class A common stock at $11.50 per share after the consummation of the Merger. The proceeds of this investment were used to pay the underwriting fee and to cover the expenses of Pivotal until the time of its eventual Merger.

II. Ledecky and Griffin Pack the Board and Management with Loyalists and Ensure Their Fealty with a Windfall of Founder Shares

47. Ledecky and Griffin used their control of the Sponsor to control Pivotal. Indeed, only holders of the Founder Shares—primarily the Sponsor—had the right to vote on the election of directors prior to an initial business combination, meaning Ledecky and Griffin could bring whoever they wished into the Pivotal fold.[9]

48. In addition to appointing themselves to the Board, Ledecky and Griffin appointed their trusted associates to key roles at Pivotal. Specifically, they appointed Brady as Pivotal's Chief Financial Officer, and Sclarsic, Epstein, and Adams as Directors. Ledecky, Griffin, Brady, Epstein, and Adams already had a history of working together, as they were all at the time officers or directors of Pivotal I.[10] Sclarsic subsequently joined Ledecky's next Pivotal venture, Pivotal III, as a Director.

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[9] IPO Prospectus p. 10.

[10] *Id.* at 90-92.

Griffin and Adams are also Pivotal III Directors. These individuals are, in essence, the inner circle of Ledecky's serial SPAC business.

49. As compensation, the Sponsor transferred 100,000 of its Founder Shares to Brady and 50,000 of its Founder Shares to each of Defendants Sclarsic, Epstein, and Adams, at the same $0.004 per-share price paid by the Sponsor.[11] By compensating the Chief Financial Officer and purportedly independent directors with Founder's Shares, Ledecky and Griffin created a perfect alignment of financial interest between themselves, the Sponsor, and the Company's officers and directors—an alignment that would be adverse to the public stockholders' interests. If Pivotal merged, the officers' and Directors' Founder Shares would convert to Class A common shares and trade on the market—just as the Sponsor's shares would. But if Pivotal failed to merge and instead liquidated, the officers' and Directors' shares, like the Sponsor's shares, would be worthless. The financial interests of both the Board and the Sponsor therefore would lead them to pursue a merger, no matter how disadvantageous to public stockholders, rather than a liquidation, even if a liquidation would best serve the interests of public stockholders.

50. The job of Pivotal's officers, like those of any SPAC, was to find a merger target and negotiate a merger agreement that enhanced stockholder value. Pivotal's independent directors, in turn, were obligated to make an independent

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[11] *Id.* at p. 101.

judgment whether any proposed merger would enhance stockholder value, and to approve the merger only if it did. Absent such a merger, the Board's obligation was to liquidate the SPAC and return the stockholders' investment at the end of the SPAC's 18-month lifespan. By appointing Ledecky as CEO and Brady as CFO, Ledecky and Griffin ensured that a merger would be presented to the Board. By appointing Griffin, Sclarsic, Epstein, and Adams as directors and manipulating the independent directors' incentives, Ledecky and Griffin ensured that they, through the Sponsor, would control the Board, and that the Board would approve the Merger and recommend it to the stockholders regardless of whether it was in stockholders' best interests.

51. The strong financial and professional incentives for Brady, Sclarsic, Epstein, and Adams to consummate a merger thus created an unavoidable conflict of interest and prevented them from freely exercising their business judgment to make the one decision they would have to make: to *merge* or to *liquidate*.

III. The Board Approves the Merger Following a Flawed Process

52. On July 24, 2020, a year after the IPO and with the 18-month merger deadline looming, Thomas J. Hynes III, the founder and Chief Strategy Officer of Legacy XL, contacted Ledecky to talk about their most recent business activities and to ask Ledecky for general advice regarding the SPAC market.[12] Ledecky and Hynes

[12] Proxy Statement p. 81.

had been "business acquaintances for 10 years" and Ledecky has a "decades-long relationship" with Hynes's family.[13] During their July 24, 2020 conversation, Ledecky and Hynes discussed the possibility of a potential transaction between Pivotal and Legacy XL.[14]

53. The process of searching for a merger partner, selecting Legacy XL, and negotiating with Legacy XL was driven by Ledecky, Griffin, and Gregory Racz, an officer of the Sponsor.[15] Hynes and Kazarinoff were the chief points of contact with Legacy XL during the negotiations, and made presentations to Pivotal's representatives regarding Legacy XL's business.[16] The Board did not form a special committee of truly independent directors to consider the Merger, despite Ledecky's relationship with Hynes.[17]

54. Nor did the Board obtain a fairness opinion in connection with the Merger. Rather, the Board relied on their purported "substantial experience in evaluating the operating and financial merits of companies from a wide range of industries" and their supposed due diligence in concluding that the Merger was fair to public shareholders.[18]

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[13] *Id*.

[14] *Id.*

[15] *Id.* at 80.

[16] *Id.* at 81-82, 85.

[17] *Id.* at 80-86.

[18] *Id.* at 6-7.

55. During this negotiation process, the clock was ticking on Pivotal's 18-month period to conduct an acquisition and the Company had already spent well over a year searching for targets without finding any Ledecky and Griffin wanted to pursue. If the Merger with Legacy XL was not completed, there likely would not be enough time to find a new target, negotiate terms, and seek the necessary shareholder approvals of a merger. The Board's choice was, in essence, to merge with Legacy XL or take a loss on their Founder Shares.

56. In the end, the Board accepted an excessive valuation of Legacy XL: the combined Company would have an implied enterprise value of $1 billion, which was supported by representations regarding Legacy XL's business that, soon after the Merger, were exposed to have been grossly exaggerated. On September 17, 2020, the Pivotal Board unanimously approved the Merger.[19]

57. Simultaneously with the Merger, Pivotal issued 15,000,000 shares in a private investment in public equity ("PIPE") totaling $150,000,000.[20] Of that total amount, MGG Special Opportunities Fund LP, of which Griffin is the Chief Executive Officer and Chief Investment Officer, purchased 630,000 shares for $6.3 million.[21]

58. Under the terms of the Merger, Pivotal paid out all its cash—including approximately $232 million in its trust and $150,000,000 from the PIPE—to XL

[19] *Id.* at 86.

[20] *Id.* at 121.

[21] *Id.* at 190.

Fleet's ultimate stockholders and to pay its own transaction costs. In addition, Pivotal issued approximately 85,283,991 shares to Legacy XL's stockholders, which were putatively valued at $10.00 apiece.[22] Following a series of transactions, Legacy XL would become a wholly-owned subsidiary of Pivotal, which would change its name to XL Fleet.[23]

59. Pivotal held a stockholders' meeting on December 21, 2020 at which the stockholders approved the proposed Merger. Of the votes present, 17,723,325 shares were voted in favor, 8,364 against, and 12,574 abstained.[24] Only 10,992 shares were redeemed. As explained below, this vote was tainted by a failure of the Board to disclose material information to the stockholders.

60. Following the Merger, the legacy owners of Legacy XL held approximately 66.1% of the post-Merger company; the public stockholders of Pivotal held 17.8%; the PIPE investors held 11.6%; and the Sponsor and its affiliates, along with the directors, held 4.4%.[25]

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[22] XL Fleet Corp., Form S-1 filed January 14, 2021 p. 48.

[23] Proxy Statement p. 121.

[24] XL Fleet Corp. Form 8-K/A filed Dec. 23, 2020, p. 2.

[25] XL Fleet Corp., Form S-1 filed January 14, 2021 p. 48; Proxy Statement pp. 76-78.

IV. The Board Knew or Should Have Known that the Merger Was a Bad Deal for Stockholders

61. The Board knew or should have known that the Merger would be a losing proposition for Pivotal stockholders, but nevertheless approved and recommended the Merger because it was highly lucrative for the Sponsor, Brady, and the Board members themselves.

62. Pivotal stockholders had the option of redeeming their shares for $10.00 per share plus interest in lieu of participating in the Merger. Alternatively, they could invest far less in the Merger. After accounting for the issuance of various shares and warrants, and including various transaction costs, Pivotal had well under $7.00 per share to invest in the Merger.

63. Despite the Board's knowledge of these costs associated with the Merger, there is no indication in the Proxy Statement that, in approving the Merger, the Board took them into account. Furthermore, there is no indication that the Board considered the very real possibility that *Legacy XL* would take these costs into account in negotiating how much value it would exchange for Pivotal's cash and shares. The Merger Agreement impliedly attributed an inflated value of $10.00 to each Pivotal share. That was materially false. As Pivotal consisted only of cash, it contributed to the Merger less than $7.00 per share in cash.

64. Moreover, it should have been apparent to the Board that Legacy XL could well inflate its value to match the depleted cash and inflated value of Pivotal

shares in order to arrive at what it viewed as a fair exchange. If it did that, the Pivotal shareholders would not receive $10.00 per share in value from the Merger, and would therefore see their shares fall below $10.00 following the Merger.

65. It appears that Legacy XL did just that. It claimed a combined value of approximately $1 billion and it supported that value with statements about, among other things, its customer base and the quality of its products.

66. In an attempt to discern, among other things, whether Pivotal's Board conducted due diligence on Legacy XL's business prior to the Merger, Plaintiffs' counsel served on XL Fleet a demand for books and records under 8 Del. C. § 220. Despite searching for such materials, and despite the fact that many of XL Fleet's current Board members were Pivotal Directors, XL Fleet was unable to produce any documents reflecting the due diligence Pivotal supposedly conducted—***not a single one***. Pivotal's claim that it conducted "significant due diligence" before the Merger was false.

67. The result was predictable: following the Merger, when the weaknesses in XL Fleet's business were revealed, its share price fell.

68. The Board and its financial advisors knowingly turned a blind eye to the dilution of Pivotal's shares and the dissipation of its cash. The Board failed to consider how much better off the stockholders would be with a liquidation. The Board thus breached its duty of loyalty, and approved the Merger at the expense of Pivotal stockholders.

V. The Board Failed to Inform the Stockholders' Vote on the Merger and Their Decision to Redeem Their Shares or Remain Invested in the Merger

69. Just as the Board breached its duty of loyalty by deliberately ignoring the effect of dilution and cash dissipation on the value of the Merger for stockholders, it breached its duty of candor by failing to inform stockholders of how little value Pivotal shareholders were getting in the Merger with Legacy XL. The Board thus failed to provide stockholders with the information they needed to vote their shares and to evaluate whether to redeem their shares or remain invested in the Merger.

70. Instead of disclosing the diluted value Pivotal shareholders were receiving in the Merger, the Proxy Statement misled Pivotal's stockholders by attributing an implied value of $10.00 to the shares, which would simply remain as they were following the merger.[26] Due to the dilution and cash dissipation discussed above, this was demonstrably false. The only respect in which Pivotal shares were worth $10.00 is that the publicly traded shares—and only those shares—could be redeemed for that amount (plus interest) by shareholders that chose *not* to participate in the Merger.

71. The Proxy Statement purports to address dilution in two contexts. First, it states that PIPE investors would likely own approximately 11.6% of the combined company common stock immediately following the Merger, and that the issuance of

[26] Proxy Statement p. 1.

the PIPE shares "will result in significant dilution to Pivotal's stockholders[.]"[27] It further indicated that Pivotal shareholders' percentage ownership in the post-Merger company would be less than their percentage ownership of the pre-Merger company—as it is in *any* merger in which shares are part of the consideration or in *any* issuance of shares. In contrast to the dilution in value caused by the issuance of free shares and free warrants, this sort of dilution—where shares are sold at the same price as those sold to public shareholders—has no impact on the value of shares.

72. Second, the Proxy Statement noted the existence of the public warrants and the Sponsor's warrants, and stated that the issuance of additional shares in the future would result in a reduction on existing stockholders' proportionate ownership and a decline in the price of shares.[28]

73. These barely relevant statements are an exercise in misdirection. The relevant dilution was in the prior issuance of essentially free shares and free warrants. Those securities would reduce the per-share value that Pivotal could obtain in a Merger. The Proxy Statement failed to inform the stockholders of this fact. This was a material omission that violated the Board's duty of candor and prevented the stockholders from making informed decisions in voting their shares or exercising their redemption rights.

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[27] *Id.* at 78.

[28] *Id.* at 62.

74. The Board had one decision to make: *to merge or to liquidate*. And each shareholder had a parallel right: to retain its shares through a merger, which would inure to the benefit of the insiders, or to redeem them, which would have been a better outcome for stockholders but a losing proposition for the insiders. The reason behind the Proxy Statement's equivocation is thus clear. Consistent with the personal interests of the Board and the Sponsor, the Board had no interest in liquidating and no desire to see stockholders redeem their shares in volumes that would result in the Merger failing.

75. The Proxy stated:

> Under the terms of Pivotal's amended and restated certificate of incorporation, Pivotal must complete the Business Combination with [Legacy] XL or another business combination by January 16, 2021 (or such later date as may be approved by Pivotal stockholders in an amendment to its amended and restated certificate of incorporation), or Pivotal must cease all operations except for the purpose of winding up, redeeming 100% of the outstanding public shares and, subject to the approval of its remaining stockholders and its board of directors, dissolving and liquidating. In such event, third parties may bring claims against Pivotal. . . . Accordingly, the proceeds held in the trust account could be subject to claims which could take priority over those of Pivotal's public stockholders. . . . Therefore, the per-share distribution from the trust account in such a situation may be less than $10.00 due to such claims.[29]

This is simply a description of the liquidation scenario required by the Pivotal charter, but stated in ominous terms designed to lure stockholders into supporting the Merger for fear that they might get less in liquidation than the $10.00 IPO price of units, even

[29] *Id.* at 66.

though the proceeds of the sale of those units in the IPO had been held in trust for the public stockholders. As the Proxy Statement recognizes, the Sponsor had agreed to indemnify the stockholders against such claims—as SPAC sponsors typically do. Since the proceeds of the IPO were held in trust and the Sponsor provided an indemnification commitment specifically to protect the stockholders' redemption and liquidation rights, the basis of this warning is highly speculative.

76. The Proxy further states that "the Sponsor's only assets are securities of Pivotal and Pivotal has not taken any further steps to ensure that the Sponsor will be able to satisfy any indemnification obligations that arise. Accordingly, the actual per-share redemption price could be less than approximately $10.00, plus interest, due to claims of creditors."

77. Again, this warning was designed to cause public shareholders to worry that in the event of a liquidation, they would receive less than $10.00 per share. The Board was warning investors: approve the Merger, or potentially take a loss on your investment.

78. Separately, the Board hyped Legacy XL's business with misleading statements about its products and customer base. In the Proxy Statement, the Board claimed that "[Legacy] XL's systems enable vehicles to burn less fuel and emit less carbon dioxide (CO_2), resulting in increases of up to a 25-50% miles per gallon (MPG)

improvement and up to a 20-33% reduction in greenhouse gas emissions."[30] The Board also asserted that Legacy XL had a "$220 million 12-month sales pipeline" and "one of the largest end-use customer bases" of any vehicle electrification company for small to medium sized trucks in North America.[31] Based on these and other considerations, the Board asserted that the combined business would have an enterprise value of approximately $1 billion and Legacy XL's business had a "fair market value equal to at least 80% of the balance of the funds in the trust account," in accordance with the requirement in Pivotal's certificate of incorporation that any acquisition target meet that threshold.[32]

79. These statements were not only misleading, they reveal the bias the Board had toward merging rather than liquidating. They further reveal a Board seeking to dissuade shareholders from redeeming their shares. The Proxy is thus manifestly misleading.

80. Moreover, as the Company's failure to produce a single document in response to Plaintiff's Section 220 demand evidencing any due diligence by the Board demonstrates, the Board's representations about Legacy XL's business and prospects lacked any reasonable foundation whatsoever.

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[30] *Id.* at 157.

[31] *Id.* at 90, 157.

[32] *Id.* at 90.

VI. Post-Merger Developments

81. XL Fleet's post-Merger performance confirms the unfairness of the Merger to the legacy Pivotal stockholders. Since the Merger's closing on December 21, 2020, XL Fleet's stock has *lost* approximately two-thirds of its value while the NASDAQ Composite Index has *gained* over 20%. XL Fleet stock currently trades at approximately $6.49 per share, or approximately 35% below the IPO price of $10.00 per share and similarly below the redemption price of $10.09 per share.

82. XL Fleet's tanking stock price reflects the public's realization that XL Fleet's business was not nearly as strong as previously represented, including in the Proxy Statement to justify the Company's lofty valuation.

83. On March 3, 2021, Muddy Waters issued a report revealing that XL Fleet's business had significant, concealed problems that cast doubt on its long-term value proposition.[33] That report was based in part on interviews with XL Fleet customers and former employees, and disclosed, among other things, that:

a. XL Fleet's senior management "systematically inflates" the Company's backlog by pressuring employees to add potential sales to the backlog even when those sales are highly speculative;[34]

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[33] Muddy Waters, *XL Fleet Corp. (NYSE XL): More SPAC Trash*, March 3, 2021, available at: https://d.muddywatersresearch.com/content/uploads/2021/03/MW_XL_20210303.pdf.

[34] *Id.* at 7-8.

b. XL Fleet's revenue projections are unsupported by its pipeline;[35]

c. XL Fleet exaggerates its customer base by touting inactive customers, and the Company struggles to retain customers due to regulatory hurdles and the poor performance of its hybrid systems;[36]

d. The returns on investment for customers using XL Fleet's hybrid systems are far lower than what the Company represents (and are potentially negative), as the miles-per-gallon savings are typically between 5% and 10% instead of the Company's claims of 25% savings or more;[37]

e. XL Fleet's miles-per-gallon savings estimates are based on specific, "optimal circumstances" that fail to account for "real-world situations";[38] and

f. XL Fleet's products use obsolete technology that is ill-suited for certain vehicles the Company is trying to target, and the Company lacks the engineering talent and scalability to compete long-term with other hybrid and electric vehicle companies.[39]

84. One former XL Fleet employee quoted in the Muddy Waters report stated, "I was paid to lie. I was paid to falsify and exaggerate my pipeline."[40] Another

[35] *Id.* at 26-29.
[36] *Id.* at 9-13.
[37] *Id.* at 15-24.
[38] *Id.* at 17, 21.
[39] *Id.* at 31-37.
[40] *Id.* at 1.

said that he was told to add sales into the pipeline "[e]ven if [the potential customers] have no interest."[41] Former XL Fleet employees "literally laughed out loud" at the Company's revenue projections.[42]

85. Regarding XL Fleet's claims of improved mileage in vehicles where its systems are used, one former employee stated that the numbers are "based upon a bare-boned F-150 on a [dynamometer] in optimal, optimal circumstances, but the second you add weight or a passenger or human error to that, it all goes out the window."[43] The simulation used to calculate mileage improvements did not cover climbing hills: "the simulation is all flat. . . . Every time you take a turn, you're expending energy to make that turn. Those are real-world situations it doesn't simulate."[44] Once vehicles were used in ways not specifically measured in the simulation, the real miles-per-gallon improvement was closer to 5% to 10%.[45] As such, XL Fleet's customers did not see the returns they were led to expect on their investments in XL Fleet's products, and the Company struggled to keep customers.[46]

86. The Muddy Waters report caused the Company's stock price to begin a prolonged slide, and it has not closed above $10.00 per share since March 23, 2021.

[41] *Id.*
[42] *Id.* at 25.
[43] *Id.* at 17.
[44] *Id.*
[45] *Id.*
[46] *Id.* at 14.

This is because, even though the Board had supposedly conducted "significant due diligence" on Legacy XL, it failed to warn Pivotal shareholders that they were purchasing such a flawed business.

87. XL Fleet's deteriorating stock performance laid bare the disconnect between the misleading statements in the Proxy Statement, the inflated valuation of Legacy XL, and the actual value of XL Fleet.

88. As bad as the Merger was for the Pivotal public stockholders, it was lucrative for Defendants. When the Merger closed, the Sponsor's Founder Shares—which it had purchased a year earlier for a mere $25,000—were worth over $112 million. Taking into account the 4,233,333 warrants it purchased at the time of the IPO and the PIPE shares its affiliate purchased at the time of the Merger, the total value of Sponsor's and its affiliate's holdings as of the Merger close was approximately $141,000,000.[47] This figure reflects a return of well over 1,000% on the $12,675,000 investment that Sponsor and its affiliates made since the formation of Pivotal.[48] Even at XL Fleet's current stock price, Sponsor's and its affiliate's share holdings (even excluding warrants) are worth nearly $42,000,000.

[47] This is the sum of approximately $112,000,000 for the Founder Shares, $12,000,000 for MGG's PIPE shares, and $17,000,000 for the warrants.

[48] The Pivotal Sponsor's investments and that of its affiliate included $25,000 before the IPO, $6,350,000 concurrently with the IPO and $6,300,000 in the PIPE at the time of the Merger.

89. For the purportedly independent directors Sclarsic, Epstein, and Adams—who put up virtually no capital in Pivotal—their shares were worth more than $2.9 million on the date the Merger closed, not to mention the indirect remuneration they would gain from their close affiliation with Ledecky's other SPACs. Even at XL Fleet's current share price, the purportedly independent directors' aggregate holdings are worth approximately $973,500.

90. Had no merger occurred, the Sponsor and the purportedly independent directors would have received nothing. In fact, the Sponsor would have lost $6,375,000 as a result of forfeited capital contributions to Pivotal. The shareholders, however, would have received approximately $10.09 per share.

91. The dilution of the public shareholders' interests—and enrichment of Ledecky, Griffin, and the Sponsor—is unsurprising given that the Merger was not an arm's length transaction. Ledecky has a "decades-long relationship" with the family of Thomas J. Hynes III, Legacy XL's founder and Chief Strategy Officer.[49] Ledecky and Hynes also had been "business acquaintances for 10 years" before the Merger.[50] In the Proxy Statement, the Company claimed that its representatives "met with and engaged in substantive discussions with a number of potential acquisition targets," though "[n]one of these discussions resulted in an executed letter of intent"[51]—and

[49] Proxy Statement p. 81.

[50] *Id.*

[51] *Id.* at 80.

yet, in a sequence of events that cannot be coincidental, ended up acquiring Ledecky's family friend's company.

92. In sum, the Board breached its fiduciary duties by turning a blind eye to the Merger's dilution of the public shareholders and failing to disclose the dilution in the Proxy Statement—which prevented Pivotal's shareholders from casting informed votes and from considering the Merger's dilution in their redemption decision. The Board's abdication of its duties stems from the desire of the Sponsor and the Board to consummate any deal within the 18-month window, even a value-destroying deal, in addition to the conflict arising from a deal between two companies controlled by family friends. As a result, following a process dominated by Ledecky, Griffin, and others poised to profit from even a bad deal, the Board recommended the dilutive Merger rather than tasking management to find a better deal or liquidating the Company and distributing $10.09 per share to shareholders. In light of the conflicts plaguing Pivotal and the Board's recommendation of the Merger—in addition to the windfall reaped by the Defendants at the public shareholders' expense—the Merger cannot meet the test of entire fairness.

CLASS ACTION ALLEGATIONS

93. Plaintiff, a stockholder in the Company, brings this action individually and as a class action pursuant to Rule 23 of the Rules of the Court of Chancery of the State of Delaware on behalf of himself and all record and beneficial holders of Pivotal common stock (the "Class") who held such stock during the time period from the

Record Date through the Closing Date (except the Defendants herein, and any person, firm, trust, corporation, or other entity related to or affiliated with any of the Defendants) and who were injured by the Defendants' breaches of fiduciary duties and other violations of law.

94. This action is properly maintainable as a class action.

95. A class action is superior to other available methods of fair and efficient adjudication of this controversy.

96. The Class is so numerous that joinder of all members is impracticable. The number of Class members is believed to be in the thousands, and they are likely scattered across the United States. Moreover, damages suffered by individual Class members may be small, making it overly expensive and burdensome for individual Class members to pursue redress on their own.

97. There are questions of law and fact which are common to all Class members and which predominate over any questions affecting only individuals, including, without limitation:

a. whether Defendants owed fiduciary duties to Plaintiff and the Class;

b. whether the Controller Defendants controlled the Company;

c. whether "entire fairness" is the applicable standard of review;

d. which party or parties bear the burden of proof;

e. whether Defendants breached their fiduciary duties to Plaintiff and the Class;

f. whether Hynes aided and abetted any breaches of fiduciary duties by Defendants owed to Plaintiff and the Class;

g. the existence and extent of any injury to the Class or Plaintiff caused by any breach;

h. the availability and propriety of equitable re-opening of the redemption period; and

i. the proper measure of the Class's damages.

98. Plaintiff's claims and defenses are typical of the claims and defenses of other Class members, and Plaintiff has no interests antagonistic or adverse to the interests of other Class members. Plaintiff will fairly and adequately protect the interests of the Class.

99. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature.

100. Defendants have acted in a manner that affects Plaintiff and all members of the Class alike, thereby making appropriate relief with respect to the Class as a whole.

101. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants; or adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interest of other members or substantially impair or impede their ability to protect their interests.

COUNT I

(Direct Claim for Breach of Fiduciary Duty Against the Director Defendants)

102. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

103. As directors of the Company, the Director Defendants owed Plaintiff and the Class the utmost fiduciary duties of care and loyalty, which subsume an obligation to act in good faith, with candor, and to make accurate material disclosures to the Company's stockholders.

104. These duties required them to place the interests of the Company stockholders above their personal interests and the interests of the Controller Defendants.

105. Through the events and actions described herein, the Director Defendants breached their fiduciary duties to Plaintiff and the Class by prioritizing their own personal, financial, and/or reputational interests and approving the Merger, which was unfair to the Company's public Class A stockholders.

106. The Director Defendants also breached their duty of candor by issuing the false and misleading Proxy.

107. As a result, Plaintiff and the Class were harmed by not exercising their redemption rights prior to the Merger.

108. In addition, members of the Class approved the acquisition of Legacy XL based on false and misleading information.

109. Plaintiff and the Class suffered damages in an amount to be determined at trial.

COUNT II

(Direct Claim for Breach of Fiduciary Duty Against the Officer Defendants)

110. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

111. As the most senior officers of the Company, the Officer Defendants owed Plaintiff and the Class the utmost fiduciary duties of care and loyalty, which include an obligation to act in good faith, with candor, and to provide accurate material disclosures to the Company's stockholders.

112. These duties required the Officer Defendants to place the interests of the Company's stockholders above their personal interests and the interests of the Controller Defendants. The Officer Directors are not exculpated for breaches of their duty of care for actions taken in their capacity as officers (which include all actions set forth herein except their formal vote to approve the Merger).

113. Through the events and actions described herein, the Officer Defendants breached their fiduciary duties to Plaintiff and the Class by prioritizing their own personal, financial, and/or reputational interests and approving the Merger, which was unfair to the Company's public Class A stockholders.

114. The Officer Defendants also breached their duty of candor by issuing the false and misleading Proxy, as well as making false and misleading statements.

115. As a result, Plaintiff and the Class were harmed by not exercising their redemption rights prior to the Merger.

116. In addition, members of the Class approved the acquisition of Legacy XL based on false and misleading information.

117. Plaintiff and the Class suffered damages in an amount to be determined at trial.

COUNT III

(Direct Claim for Breach of Fiduciary Duty Against the Controller Defendants)

118. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

119. The Controller Defendants were the Company's controlling stockholders. Specifically, the Controller Defendants controlled all of the Founder Shares, elected (and could remove at any time) the members of the Board, had deep personal and financial ties to the members of the Board they selected (including by granting them material financial interests in the Class B founder shares and by appointing them to other boards of directors of SPACs created under Pivotal banner), and held key roles at the Company.

120. As such, the Controller Defendants owed Plaintiff and the Class fiduciary duties of care and loyalty, which include an obligation to act in good faith, with candor, and to provide accurate material disclosures to Company stockholders.

121. At all relevant times, the Controller Defendants had the power to control, influence, and cause—and actually did control, influence, and cause—the Company to enter into the Merger.

122. The Merger was unfair, reflecting an unfair price and unfair process.

123. Through the events and actions described herein, the Controller Defendants breached their fiduciary duties to Plaintiff and the Class by agreeing to and entering into the Merger without ensuring that it was entirely fair to Plaintiff and the Class.

124. As a result, Plaintiff and the Class were harmed by not exercising their redemption rights prior to the Merger.

125. In addition, members of the Class approved the acquisition of Legacy XL based on false and misleading information.

126. Plaintiff and the Class suffered damages in an amount to be determined at trial.

COUNT IV

(Direct Claim for Aiding and Abetting Breach of Fiduciary Duty Against the Controller Defendants)

127. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

128. At all relevant times, the Controller Defendants had the power to nominate and influence the members of the Board and management of Pivotal.

129. Through the events and actions described herein, the Controller Defendants knowingly influenced and/or participated in the other Defendants' breaches of their duties (and any exculpated care breaches by the Director Defendants), which presented materially misleading statements about Legacy XL's business to support its recommendation that Pivotal stockholders vote in favor of the Merger.

130. The Controller Defendants knew that these statements were materially misleading, and that they stood to profit immensely from the consummation of the Merger——even if the Merger was unfair to public Class A stockholders.

131. As a result, Plaintiff and the Class were harmed by not exercising their redemption rights prior to the Merger.

132. In addition, members of the Class approved the acquisition of Legacy XL based on false and misleading information.

133. Plaintiff and the Class suffered damages in an amount to be determined at trial.

COUNT V

Direct Claim for Aiding and Abetting Breach of Fiduciary Duty Against Thomas J. Hynes III and Dimitri N. Kazarinoff

134. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

135. Hynes and Kazarinoff were aware of the Director Defendants', Officer Defendants', and/or the Controller Defendants' fiduciary duties of care owed to the

Company's Class A stockholders, as set forth above, which required that such Defendants ensure that the Merger was entirely fair to Plaintiff and other public Class A stockholders.

136. Hynes and Kazarinoff knowingly participated in the other Defendants' breaches of their duties (and any exculpated care breaches by the Director Defendants), which presented materially misleading statements about Legacy XL to support its recommendation that Pivotal stockholders vote in favor of the Merger.

137. Hynes and Kazarinoff knew that these statements were materially misleading, and that they, the Director Defendants, and the Controller Defendants stood to profit immensely from the consummation of the Merger——even if the Merger was unfair to public Class A stockholders.

138. As a result, Plaintiff and the Class were harmed by not exercising their redemption rights prior to the Merger.

139. In addition, members of the Class approved the acquisition of Legacy XL based on false and misleading information.

140. Plaintiff and the Class suffered damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment and relief in his favor and in favor of the Class, and against Defendants, as follows:

A. Declaring that this Action is properly maintainable as a class action;

B. Finding the Director Defendants liable for breaching their fiduciary duties owed to Plaintiff and the Class;

C. Finding the Officer Defendants liable for breaching their fiduciary duties, in their capacity as Pivotal officers, owed to Plaintiff and the Class;

D. Finding the Controller Defendants liable for breaching their fiduciary duties, in their capacity as the Company's controlling stockholders, owed to Plaintiff and the Class;

E. Finding Hynes and Kazarinoff liable for aiding and abetting the breaches of fiduciary duties owed to Plaintiff and the Class by the Director Defendants, the Officer Defendants, and the Controller Defendants;

F. Certifying the proposed Class;

G. Awarding Plaintiff and the other members of the Class damages in an amount which may be proven at trial, together with interest thereon;

H. With respect to Class members who had the right to seek redemption and still hold their shares, equitably re-opening the redemption window to allow them to redeem their shares, as per the terms of the Company's foundational documents.

I. Awarding Plaintiff and the members of the Class pre-judgment and post-judgment interest, as well as their reasonable attorneys' and experts' witness fees and other costs; and

J. Awarding Plaintiff and the Class such other relief as this Court deems just and equitable.

Dated: September 20, 2021

GRANT & EISENHOFER P.A.

/s/ Michael J. Barry
Michael J. Barry (# 4368)
Michael Bell (# 6633)
123 Justison St., 7th Floor
Wilmington, DE 19801
Tel: 302-622-7000
mbarry@gelaw.com
mbell@gelaw.com

Attorneys for Plaintiff Cody Laidlaw