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Transaction ID 67071138
Case No. 2020-0440-KSJM



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: PIVOTAL SOFTWARE, INC.
STOCKHOLDERS' LITIGATION

C.A. No. 2020-0440-KSJM

**STIPULATION AND [PROPOSED] ORDER REGARDING
CLASS CERTIFICATION**

WHEREAS, on June 4, 2020, Kenia Lopez ("Plaintiff") filed a Verified Class Action Complaint in C.A. No. 2020-0440-KSJM (Trans. ID 65667520);

WHEREAS, Plaintiff seeks certification of a class consisting of: All former record holders and beneficial owners of Class A common stock of Pivotal Software, Inc. ("Pivotal") who received \$15 per share in cash in exchange for their shares of Pivotal Class A common stock in connection with the acquisition of Pivotal by VMware, Inc. (the "Class Shares"), in their capacities as record holders or beneficial owners of Class Shares (the "Class"), together with their heirs, assigns, transferees, and successors-in-interest, in each case in their capacity as holders of Class Shares. Excluded from the Class are (i) Defendants and their immediate family members, affiliates, legal representatives, heirs, estates, successors, or assigns; and (ii) any entity in which any Defendant has had a direct or indirect controlling interest;

WHEREAS, Plaintiff alleges the following:

- a. As of the closing of the acquisition of Pivotal by VMware, Inc., there

were approximately 105.5 million shares of Pivotal's Class A common stock outstanding, approximately 75.5 million of which were not owned by Defendants, such that Class members are so numerous that joinder of all members is impractical;

- b. Questions of law or fact are common to members of the Class, such as whether Defendants breached any fiduciary duties owed to the Class;
- c. Plaintiff's claims are typical of the claims of the Class, including because her interest arises from the same alleged course of conduct that gives rise to claims of other Class members, the claims of Plaintiff and the Class employ the same legal theories, and Plaintiff's claims seek relief for purported harm allegedly caused by the same course of conduct that purportedly damaged all Class members;
- d. Plaintiff will fairly and adequately represent the interests of the Class because her interests are not antagonistic to those of other Class members and her attorneys are qualified, have experience litigating complex class action cases, and have more than ample resources available to be able to conduct the litigation;
- e. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications for individual members of the Class and of establishing incompatible

standards of conduct for Defendants;

- f. Conflicting adjudications for individual members of the Class might, as a practical matter, be dispositive of the interests of other members of the Class who are not parties to the adjudications, and might substantially impair or impede their ability to protect their interests; and
- g. Defendants have acted on grounds generally applicable to the Class, so that final injunctive relief or corresponding declaratory relief, if any, would be appropriate with respect to the Class as a whole; and

WHEREAS, the parties have agreed on treatment of this action as a class action, subject to the terms below.

IT IS HEREBY STIPULATED AND AGREED, subject to the approval of the Court, that:

1. The action is a proper class action pursuant to Rules 23(a), 23(b)(1) and 23(b)(2) of the Rules of the Court of Chancery and a class is hereby certified without opt-out rights consisting of the following:

All former record holders and beneficial owners of Class A common stock of Pivotal Software, Inc. (“Pivotal”) who received \$15 per share in cash in exchange for their shares of Pivotal Class A common stock in connection with the acquisition of Pivotal by VMware, Inc. (the “Class Shares”), in their capacities as record holders or beneficial owners of Class Shares (the “Class”), together with their heirs, assigns, transferees, and successors-in-interest, in

each case in their capacity as holders of Class Shares. Excluded from the Class are (i) Defendants and their immediate family members, affiliates, legal representatives, heirs, estates, successors, or assigns; and (ii) any entity in which any Defendant has had a direct or indirect controlling interest.

2. The Class satisfies the numerosity requirement of Rule 23(a)(1); there are common issues of fact and law sufficient to satisfy Rule 23(a)(2); Plaintiff's claims are typical of the claims of absent members of the Class, satisfying Rule 23(a)(3); Plaintiff and Co-Lead Counsel (as defined below) are adequate representatives of the Class, satisfying Rule 23(a)(4); the prosecution of separate actions by individual members of the Class would create a risk of inconsistent adjudications which would establish incompatible standards of conduct for Defendants, and, as a practical matter, the disposition of this action will influence the disposition of any future identical cases brought by other members of the Class, satisfying Rule 23(b)(1); and there are allegations that Defendants acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole, satisfying Rule 23(b)(2).

3. Plaintiff is hereby appointed as the representative for the Class.

4. The law firms of Bernstein Litowitz Berger & Grossmann LLP ("BLBG") and Block & Leviton LLP are hereby appointed Co-Lead Counsel for

the Class.¹

5. This Stipulation and Order is without prejudice to Defendants' rights, which they expressly preserve, to (a) raise any substantive arguments or defenses concerning the claims of Plaintiff and/or any members of the Class, including without limitation the right to argue that the doctrines of acquiescence, ratification, estoppel, waiver, or similar doctrines and/or lack of standing may operate to preclude recovery by all or a subset of the Class; and (b) bring an appropriate motion to limit, extend, or otherwise modify or redefine the Class, or to divide it into subclasses, or to challenge, substitute, or modify its representative.

6. Notwithstanding the certification of the Class at this time, this Stipulation and Order is not intended to affect Defendants' ability to obtain discovery from or concerning entities who may also be members of the Class.

¹ **BLBG hereby states the following:** On April 20, 2021, the United States District Court for the Northern District of California issued an order in an action captioned *SEB Investment Management AB v. Symantec Corp.*, which involved a disputed motion for class certification based on allegations of a BLBG competitor. 2021 WL 1540996 (N.D. Cal. Apr. 20, 2021). Following discovery, the Court reaffirmed BLBG's appointment as lead counsel, having found no evidence of any wrongdoing. The Court nonetheless ordered that BLBG bring this order to the attention of other courts in future cases and also to the decisionmaker for the proposed lead plaintiff who is selecting class counsel. *Id.* at *2. BLBG has discussed the order with Ms. Lopez. Ms. Lopez considered the order and reaffirmed her selection of BLBG to represent her and serve as Class counsel.

Dated: November 3, 2021

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IT IS SO ORDERED this ____ day of _____, 2021

Chancellor Kathaleen S. McCormick

This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: Kathaleen St Jude McCormick

File & Serve

Transaction ID: 67067643

Current Date: Nov 04, 2021

Case Number: 2020-0440-KSJM

Case Name: CONF ORD/CONS W/2020-0583-KSJM, IN RE: PIVOTAL SOFTWARE INC
STOCKHOLDERS' LITIGATION

Court Authorizer: Kathaleen St Jude McCormick

/s/ Judge Kathaleen St Jude McCormick