



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

Cody Laidlaw,	)	
	)	
Plaintiff,	)	C.A. No.
	)	
v.	)	
	)	
XL Fleet Corp.,	)	
	)	
Defendant.	)	

**VERIFIED COMPLAINT PURSUANT TO 8 *DEL. C.* § 220  
TO COMPEL INSPECTION OF BOOKS AND RECORDS**

Plaintiff Cody Laidlaw (“Plaintiff”), by and through his undersigned counsel, alleges upon knowledge as to himself and his own actions and upon information and belief as to all other matters, as follows:

**NATURE OF THE ACTION**

1. Plaintiff brings this action to enforce his right to inspect certain corporate books and records of defendant XL Fleet Corp. (“XL Fleet” or the “Company”), a Delaware corporation, pursuant to 8 *Del. C.* § 220 (“Section 220”). Plaintiff seeks to inspect these documents to investigate possible wrongdoing and/or breaches of fiduciary duty by the Board of Directors of the Company (the “Board”) in connection with the merger that created XL Fleet. Plaintiff further seeks access to certain books and records to investigate the independence and disinterestedness of the Board.

2. Plaintiff served a demand to inspect XL Fleet's books and records on April 27, 2021, in full compliance with Section 220 (the "220 Demand"). By statute, XL Fleet was required to respond to the 220 Demand on or before May 4, 2021. XL Fleet did not respond to the 220 Demand by that date and has yet to respond to the 220 Demand as of May 13, 2021, the date of filing of this complaint.

3. XL Fleet has therefore violated its obligations under Section 220, forcing Plaintiff to bring this action to enforce his statutory inspection rights.

### **JURISDICTION**

4. This Court has exclusive jurisdiction to hear and determine this action pursuant to Section 220. XL Fleet is incorporated in Delaware and maintains a registered agent and principal place of business within the State of Delaware. Venue is also appropriate pursuant to Section 220.

### **THE PARTIES**

5. Plaintiff is a current stockholder of record of XL Fleet and has continuously been a stockholder of the Company at all times relevant herein.

6. Defendant XL Fleet is a Delaware corporation headquartered in Boston, Massachusetts. XL Fleet's common stock is traded on the New York Stock Exchange under the symbol "XL."

## **FACTUAL BACKGROUND**

7. According to its public filings, XL Fleet provides systems that convert combustion-engine commercial vehicles into electrified hybrids. As stated in its most recent annual report, its “electrified drive systems are comprised of an electric motor that is mounted onto the vehicle’s drive shaft, an inverter motor controller, and a lithium-ion battery pack to store energy to be used for propulsion.” XL Fleet offers two types of hybrid products: a regenerative braking hybrid with a small battery and a plug-in hybrid with a larger battery.

### ***SPAC Origins and Merger***

8. XL Fleet was originally known as Pivotal Investment Corporation II (“Pivotal”), a special purpose acquisition company (“SPAC”) founded by Jonathan J. Ledecy.

9. In March 2019 when Pivotal was still a private company, Pivotal issued 5,750,000 Class B founder shares to its sponsor—Pivotal Investment Holdings II LLC<sup>1</sup> (the “Sponsor”)—in exchange for a nominal payment of \$25,000, or approximately \$0.004 per share.<sup>2</sup> The Sponsor’s two members at the time were Ledecy (who was also Pivotal’s Chief Executive Officer and Chairman at the time)

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<sup>1</sup> Pivotal Investment Corporation II, Form 424(b)(4) filed July 15, 2019, p. 1.

<sup>2</sup> Pivotal Investment Corporation II, Form 424(b)(4) filed July 15, 2019, pp. 1, 10.

and Pivotal Spac Funding II LLC, which was affiliated with Kevin Griffin, also a Pivotal Director.<sup>3</sup>

10. In the following month, the Sponsor transferred 50,000 founder shares to each of Pivotal’s Independent Directors—Sarah Sclarsic, Efrat Epstein, and Katrina Adams—and transferred 100,000 founder shares to its Chief Financial Officer, James H.R. Brady, in each case at the same per-share price paid by the Sponsor.<sup>4</sup>

11. Pivotal conducted its initial public offering (“IPO”) in July 2019, selling 23 million units to the public at \$10 per unit.<sup>5</sup> Each unit sold in the IPO consisted of one share of Pivotal’s Class A common stock and one third of one redeemable warrant, with each whole warrant entitling the holder to purchase one share of Class A common stock for \$11.50 per share.<sup>6</sup>

12. The shares of Class A common stock were identical to Class B founder shares except that only the holders of founder shares had the right to elect directors prior to an initial business combination, in addition to there being certain limitations

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 10, 95, 101.

<sup>5</sup> Pivotal Investment Corporation II, Form 8-K filed July 22, 2019.

<sup>6</sup> *Id.*; Pivotal Investment Corporation II, Form 424(b)(4) filed July 15, 2019, pp. 6-8.

on the founder shares' transfer and conversion.<sup>7</sup> Upon an initial business combination, the Class B founder shares would automatically convert into Class A common stock on a one-to-one basis (or, if more Class A shares were subsequently issued, at a ratio that would cause the converted shares to equal 20% of the total outstanding Pivotal shares immediately prior to the business combination).<sup>8</sup>

13. Simultaneously with the IPO, the Sponsor purchased 4,233,333 warrants in a private placement at a price of \$1.50 per warrant, with each warrant exercisable to purchase one share of Class A common stock at \$11.50 per share.<sup>9</sup>

14. XL Fleet was created when, on December 21, 2020, Pivotal acquired Legacy XL, a Delaware corporation.<sup>10</sup>

15. At the same time as the Merger, Pivotal issued 15 million Class A shares to a group of investors at a price of \$10.00 per share (the "PIPE Transaction").<sup>11</sup> Among those investors was MGG Special Opportunities Fund LP—an affiliate of one of the Sponsor's managing members and of which Kevin Griffin was (and still is) the Chief Executive Officer and Chief Investment Officer—

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<sup>7</sup> Pivotal Investment Corporation II, Form 424(b)(4) filed July 15, 2019, pp. 10-12.

<sup>8</sup> *Id.* at 12.

<sup>9</sup> *Id.* at 102; Pivotal Investment Corporation II, Form 10-Q filed August 26, 2019, p. 5.

<sup>10</sup> XL Fleet Corp., Form 8-K filed December 23, 2020.

<sup>11</sup> *Id.*; Pivotal Investment Corporation II, Form 424(b)(3) filed December 8, 2020, p. 1.

which purchased 630,000 Class A shares for \$6.3 million.<sup>12</sup> Those shares were issued at a discount to Pivotal's public stock price at the time, which closed at \$15.32 per share on December 18, 2020, the trading day immediately prior to the Merger.

16. Upon the Merger, Pivotal changed its name to XL Fleet Corp., all Class B shares were converted into shares of Class A common stock, and provisions for Class B stock were removed from the Company's Certificate of Incorporation so that the Company was left with only a single class of common stock.<sup>13</sup> Legacy XL shareholders received 0.75718950 XL Fleet shares for each Legacy XL share (resulting in a total of approximately 100 million new XL Fleet shares being issued to Legacy XL shareholders).<sup>14</sup>

17. Also upon the Merger, Legacy XL's President and Chief Executive Officer, Dimitri N. Kazarinoff, became XL Fleet's Chief Executive Officer, and Legacy XL's Founder and Chief Strategy Officer, Thomas J. Hynes III, became XL Fleet's President.<sup>15</sup> Three Pivotal Directors (Griffin, Ledecy, and Sclarsic) and four

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<sup>12</sup> XL Fleet Corp., Form 8-K filed December 23, 2020; Pivotal Investment Corporation II, Form 424(b)(3) filed December 8, 2020, pp. 1, 10; [S-1] p. 100.

<sup>13</sup> XL Fleet Corp., Form 8-K filed December 23, 2020.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

Legacy XL officers or Directors (Kazarinoff, Hynes, Debora M. Frodl, and Christopher Hayes) joined XL Fleet’s new nine-member Board.<sup>16</sup>

18. In its Merger proxy, Pivotal told investors that it had conducted due diligence on Legacy XL, including: (1) “the financial and other information provided by [Legacy] XL to Pivotal;” (2) “document review and numerous telephone conference calls with representatives of [Legacy] XL” and Legacy XL’s legal counsel; (3) a review of Legacy XL’s “commercial operations and contracts, financial results, litigation, legal compliance, intellectual property, tax and general corporate matters” in addition to its “products, market share, and future prospects, as well as the outlook for the sector more generally”; and (4) “calls with [Legacy] XL suppliers, customers, and investors, as well as competitors and industry experts.”<sup>17</sup>

19. Based on that due diligence, Pivotal claimed that Legacy XL had a “very appealing market opportunity and growth profile, strong position in its industry and a compelling valuation.”<sup>18</sup> Pivotal’s Board further claimed to have satisfied itself that Legacy XL had a “scalable business model,” a base of “over 200

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<sup>16</sup> *Id.*; Pivotal Investment Corporation II, Form 424(b)(3) filed December 8, 2020, pp. 126-29.

<sup>17</sup> Pivotal Investment Corporation II, Form 424(b)(3) filed December 8, 2020, pp. 6, 81.

<sup>18</sup> *Id.* at 6.

existing customers and a significant network of upfitter partners,” a “unique market position” to benefit from the “dramatic shift toward fleet electrification,” and an “[e]xperienced [l]eadership [t]eam with a [p]roven [t]rack [r]ecord.”<sup>19</sup>

20. Pivotal did not obtain a third-party valuation or fairness opinion as part of its decision to acquire Legacy XL, instead relying upon its “significant due diligence” and “substantial experience with mergers and acquisitions.”<sup>20</sup>

21. On the day the Merger closed, XL Fleet’s stock price closed at \$19.54 per share, yielding a market capitalization of \$2.1 billion on the public float.

22. On January 14, 2021, XL Fleet filed a registration statement for a secondary offering of up to 48,083,495 shares of common stock from time to time by a group of shareholders including the Sponsor, certain Legacy XL shareholders who received XL Fleet shares in the Merger, and participants in the PIPE Transaction.<sup>21</sup> Nearly 33 million of the 48 million shares offered in the secondary offering were subject to lock-up agreements that prevented their sale until December 2021, but the high price of XL Fleet stock above \$15.00 per share, if sustained, could have caused the lock-up agreements to terminate in June 2021.<sup>22</sup> At the same time the Company announced the secondary offering, it announced that it would be

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<sup>19</sup> *Id.* at 87.

<sup>20</sup> *Id.* at 67.

<sup>21</sup> XL Fleet Corp., Form S-1 filed January 14, 2021, p. 3.

<sup>22</sup> *Id.* at 4, 95.



issuing up to 11.9 million shares of common stock upon the exercise of certain warrants.<sup>23</sup>

23. XL Fleet has since filed prospectus supplements for the offerings first announced on January 14, 2021.<sup>24</sup>

***Muddy Waters Reveals Significant Problems with XL Fleet's Business***

24. On March 3, 2021, *Muddy Waters* issued a report revealing that XL Fleet's business was not nearly as robust as publicly represented.<sup>25</sup> 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;<sup>26</sup>

(b) XL Fleet's revenue projections are unsupported by its pipeline;<sup>27</sup>

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<sup>23</sup> *Id.*

<sup>24</sup> *E.g.*, XL Fleet Corp., Form 424(b)(3) filed May 11, 2021.

<sup>25</sup> 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](https://d.muddywatersresearch.com/content/uploads/2021/03/MW_XL_20210303.pdf).

<sup>26</sup> *Id.* at 7-8.

<sup>27</sup> *Id.* at 26-29.

(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;<sup>28</sup>

(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;<sup>29</sup>

(e) XL Fleet’s miles-per-gallon savings estimates are based on specific, “optimal circumstances” that fail to account for “real-world situations”;<sup>30</sup> 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.<sup>31</sup>

25. 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. Presently, the stock price is trading at around \$6.00 per share, and as a result IPO

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<sup>28</sup> *Id.* at 9-13.

<sup>29</sup> *Id.* at 15-24.

<sup>30</sup> *Id.* at 17, 21.

<sup>31</sup> *Id.* at 31-37.

purchasers have lost a substantial portion of their investment while Pivotal's founders still stand to reap millions of dollars in profit.

26. Given the allegations in the *Muddy Waters* report, Plaintiff has reason to believe that XL Fleet's Board and senior officers have breached their fiduciary duties by either causing or allowing Pivotal and Legacy XL to merge at a valuation that harmed IPO investors but benefitted Pivotal insiders who acquired Class B founder shares. Given that those Class B founder shares were initially purchased at a price of only \$0.004 per share (while Class A shares were sold in the IPO at a price of \$10.00 per share), Ledesky and others were incentivized to cause Pivotal to merge with *virtually any company* – regardless of the merits of such a transaction – because they stood to personally benefit even if post-merger shares traded at prices under \$10.00 per share. Pivotal claimed to have conducted “significant due diligence” prior to the Merger, which raises an inference that the issues identified in the *Muddy Waters* report may have been uncovered before the Merger but were ignored due to these conflicts of interest.

***A Majority of the XL Fleet Board Appears to Lack Independence***

27. The undisclosed problems with Legacy XL's business call the Board's involvement and oversight into serious question. Of the Board's nine members, seven served on either Pivotal's or Legacy XL's respective boards prior to the Merger. Each such director was presumably either aware of the undisclosed

shortcomings of Legacy XL's business, knew that Pivotal did not conduct the due diligence into Legacy XL that it claimed, or knew that Pivotal was acquiring Legacy XL at a valuation that harmed purchasers of Pivotal stock in its IPO.

28. Jonathan J. Ledecy is a current XL Fleet Board member.<sup>32</sup> Ledecy was a Board member of Pivotal since its inception, and has been an XL Fleet Board member since the Merger.<sup>33</sup> From Pivotal's founding until the Merger, Ledecy was also Pivotal's Chairman and Chief Executive Officer.<sup>34</sup> Ledecy is one of the Sponsor's managing members, and as such has at all relevant times been a beneficial owner of the shares held by the Sponsor.<sup>35</sup>

29. Kevin Griffin is a current XL Fleet Board member.<sup>36</sup> Griffin joined Pivotal's Board in April 2019 and stayed in that position through the Merger.<sup>37</sup> Griffin is an affiliate of Pivotal Spac Funding II LLC, which is one of the Sponsor's managing members, and as such has at all relevant times been a beneficial owner of

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<sup>32</sup>[S-1] p. 82.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Pivotal Investment Corporation II, Form 424(b)(4) filed July 15, 2019, pp. 1, 10; [S-1] p. 99.

<sup>36</sup> [S-1] p. 80.

<sup>37</sup> *Id.*

the shares held by the Sponsor.<sup>38</sup> Griffin is also the Chief Executive Officer of MGG Special Opportunities Fund LP, which purchased 630,000 of Pivotal's Class A shares in the PIPE Transaction at the below-market rate of \$10.00 per share.<sup>39</sup>

30. Sarah Sclarsic is a current XL Fleet Board member.<sup>40</sup> Sclarsic joined Pivotal's Board in June 2019, and remained in that role through the Merger.<sup>41</sup> Sclarsic received 50,000 founder shares from the Sponsor in April 2019 at the same per-share price paid by the Sponsor.<sup>42</sup>

31. Dimitri N. Kazarinoff is XL Fleet's Chief Executive Officer and is a current Board member.<sup>43</sup> Kazarinoff served as Legacy XL's President and Chief Executive Officer and as a member of its Board of Directors from October 2019 until the Merger.<sup>44</sup>

32. Thomas J. Hynes III is XL Fleet's President as is a current Board member.<sup>45</sup> Hynes founded Legacy XL in 2009 and served as its Chief Executive

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<sup>38</sup> Pivotal Investment Corporation II, Form 424(b)(4) filed July 15, 2019, pp. 1, 10; [S-1] p. 99.

<sup>39</sup> XL Fleet Corp., Form 8-K filed December 23, 2020; Pivotal Investment Corporation II, Form 424(b)(3) filed December 8, 2020, pp. 1, 10; [S-1] p. 100.

<sup>40</sup> [S-1] p. 82.

<sup>41</sup> *Id.*

<sup>42</sup> Pivotal Investment Corporation II, Form 424(b)(4) filed July 15, 2019, p. 101.

<sup>43</sup> [S-1] p. 80.

<sup>44</sup> *Id.*

<sup>45</sup> [S-1] p. 80.

Officer between July 2009 and October 2019, and thereafter served as its Chief Strategy Officer and Treasurer and as a member of its Board of Directors from October 2019 to the time of the Merger.<sup>46</sup>

33. Debora M. Frodl is the current Chair of XL Fleet's Board of Directors.<sup>47</sup> Frodl was a Legacy XL Board member from May 2018 until the Merger and was also the Legacy XL Board Chair beginning in July 2019.<sup>48</sup>

34. Christopher Hayes is a current XL Fleet Board member.<sup>49</sup> From August 2019 until the closing of the Merger, Hayes was a Legacy XL Board member.<sup>50</sup>

### **PLAINTIFF'S SECTION 220 DEMAND**

35. Plaintiff served his 220 Demand on the Company on April 27, 2021. Plaintiff's 220 Demand is attached to this complaint as Exhibit A, and the proof of service of the 220 Demand on the Company's registered agent is attached hereto as Exhibit B.

36. XL Fleet failed to respond to Plaintiff's 220 Demand by the May 4, 2021 statutory deadline, which itself constitutes a refusal of the demand.

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<sup>46</sup> *Id.*

<sup>47</sup> [S-1] p. 80.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 81.

<sup>50</sup> *Id.*

37. Plaintiff has asserted a proper purpose in the Demand. It is well-established that the investigation of potential breaches of fiduciary duty and/or corporate wrongdoing are proper purposes under Section 220. *See Mudrick Capital Mgmt., L.P. v. Globalstar, Inc.*, 2018 WL 3625680, at \*6 (Del. Ch. July 30, 2018) (quoting *Seinfeld v. Verizon Commc'ns, Inc.*, 909 A.2d 117, 121 (Del. 2006) (“It is well established that a stockholder’s desire to investigate wrongdoing or mismanagement is a ‘proper purpose.’”); *Lavin v. West Corp.*, 2017 WL 6728702, at \*13 (Del. Ch. Dec. 29, 2017) (finding a “proper purpose” where a stockholder was seeking the inspection of a corporation’s books and records to investigate potential breaches of fiduciary duty in connection with a sale of West Corporation to Apollo).

38. The conduct discussed in the Demand provides more than a credible basis to infer possible wrongdoing and/or breaches of fiduciary on the part of the XL Fleet Board and/or Ledecy and Griffin.

39. The documents sought by Plaintiff are identified with rifled precision and include the typical board documents that are needed to fulfill the proper purposes set forth in the Demand, including:

(a) All minutes (including draft minutes), agendas, materials, and/or Board books for any meetings of the Board or any Board committees during which any of the following topics were discussed or raised: (1) Any of the matters discussed in the grounds supporting the demand; (2) Legacy XL; (3) the Merger; (4) the pre-

Merger due diligence conducted on Legacy XL; (5) the decision not to obtain a third-party valuation or fairness opinion in connection with the Merger; (6) conflicts of interest between holders of Pivotal's Class B shares and Class A common stock; (7) the PIPE Transaction; (8) the offerings described in the January 14, 2021 Form S-1; (9) the federal securities class actions *Suh v. XL Fleet Corp.*, No. 1:21-cv-2002 (S.D.N.Y. filed March 8, 2021) and *Kumar v. XL Fleet Corp.*, 1:21-cv-2171 (S.D.N.Y. filed March 12, 2021), which allege that XL Fleet fraudulently concealed the matters raised in the *Muddy Waters* report; (10) any communications from other XL Fleet stockholders concerning the above topics; (11) any XL Fleet policies, certification system and/or procedures relating to the matters addressed in items (a)(1), (3)-(8), or (10) above;

(b) All resolutions of the Board or any committee thereof concerning any of the matters enumerated in items (a)(1)-(11);

(c) All documents reviewed, considered, or produced by the Board or any committee thereof in connection with any meeting during which any of the items enumerated in items (a)(1)-(11) were discussed;

(d) All documents and communications between any Pivotal Board members, management, or advisors on the one hand, and any representatives of Legacy XL (including board members, management, or advisors) on the other hand;



(e) All communications between or among the directors or officers of XL Fleet in connection with any of the items enumerated in items (a)(1)-(11);

(f) Documents sufficient to demonstrate how each of the directors serving on the Board was nominated for appointment and/or election to the Board (including any committee of the Board) and all documents considered by the Board in connection with such appointment or nomination;

(g) All documents relied upon by the Board or any committee thereof in determining whether to identify any Director as independent;

(h) All questionnaires completed by members of the Board concerning their independence;

(i) Documents sufficient to show the personal net worth and annual compensation from any source of each member of the Board;

(j) All documents that have already been produced or that XL Fleet is planning or intending to produce to any other stockholder making similar demands for inspection of books and records under Section 220 or any analogous statute concerning any of the conduct described herein.

40. As described above, Plaintiff's 220 Demand sets forth a proper purpose and a credible basis to inspect the requested documents, and requests only those appropriate books and records in furtherance of Plaintiff's proper purposes. XL Fleet failed to respond to Plaintiff's 220 Demand within the statutory deadline, and

has yet to respond as of the date of this filing. As such, XL Fleet has violated its obligations under Section 220, and Plaintiff respectfully requests that the Court enter an order compelling XL Fleet's immediate compliance with its statutory obligations to Plaintiff.

## **COUNT I**

### **Demand for Inspection Pursuant to 8 *Del. C.* §220**

41. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

42. Plaintiff's 220 Demand satisfies the form and manner requirements of Section 220.

43. Plaintiff's stated purposes in making the Demand are proper under Delaware law and are directly related to Plaintiff's interest as a stockholder in the Company. The requests for information and books and records are narrowly tailored to serve these stated purposes, and are necessary and essential to fulfill these purposes.

44. XL Fleet has wrongly refused Plaintiff's Demand.

45. For the foregoing reasons, Plaintiff is entitled to a judgment directing XL Fleet to produce to Plaintiff, or otherwise permit Plaintiff to inspect and receive copies of, the books and records requested in the Demand.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment as follows:

- A. Entering judgment in favor of Plaintiff and against XL Fleet;
- B. An order requiring XL Fleet to produce to Plaintiff, or to otherwise permit the inspection and copying of each and every book and record requested by Plaintiff's Section 220 Demand;
- C. Awarding to Plaintiff the costs and disbursements of the action, including without limitation reasonable attorneys' fees, costs, and expenses; and
- D. Granting such other and further relief as the Court deems just and proper.

Dated: May 13, 2021

**GRANT & EISENHOFER P.A.**

/s/ Christine M. Mackintosh  
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