



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

IN RE: PIVOTAL SOFTWARE, INC.  
STOCKHOLDERS' LITIGATION

C.A. No. 2020-0440-KSJM

**ORDER AND FINAL JUDGMENT**

WHEREAS, a stockholder class action is pending in this Court, entitled *In re: Pivotal Software, Inc. Stockholders' Litigation*, C.A. No. 2020-0440-KSJM (the "Action");

WHEREAS, by Stipulation and Order Regarding Class Certification entered by the Court on November 4, 2021, this Court certified the Action as a non-opt out class action pursuant to Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2) on behalf 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. ("VMware") (the "Class Shares"), in their capacities as record holders or beneficial owners of Class Shares, 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 VMware, Dell Technologies Inc., Michael S. Dell, and Robert C. Mee (together, "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. Also excluded from the

Class are (i) Cynthia Gaylor (the “Former Defendant”) and her immediate family members, affiliates, legal representatives, heirs, estates, successors, or assigns, and any entity in which the Former Defendant has had a direct or indirect controlling interest; and (ii) HBK Master Fund L.P. and HBK Merger Strategies Master Fund L.P. (collectively, the “Appraisal Stockholders”);

WHEREAS, (i) plaintiff Kenia Lopez (“Plaintiff”), on behalf of herself and the other members of the Class, with the exception of the Appraisal Stockholders; (ii) Defendants; and (iii) the Former Defendant (Plaintiff, Defendants, and the Former Defendant, together, the “Parties”) have entered into a Stipulation and Agreement of Settlement, Compromise, and Release dated June 2, 2022 (the “Stipulation”) that provides for a complete dismissal with prejudice of the claims asserted against Defendants in the Action on the terms and conditions set forth in the Stipulation, subject to the approval of this Court (the “Settlement”);

WHEREAS, by Order dated June 13, 2022 (the “Scheduling Order”), this Court (i) ordered that notice of the proposed Settlement be provided to potential Class Members; (ii) provided Class Members with the opportunity to object to the proposed Settlement, the proposed Plan of Allocation, and/or Co-Lead Counsel’s application for an award of attorneys’ fees and expenses, including Plaintiff’s application for an incentive award; and (iii) scheduled a hearing regarding final approval of the Settlement;

WHEREAS, the Court conducted a hearing on October 4, 2022 (the “Settlement Hearing”) to consider, among other things: (i) whether the terms and conditions of the Settlement are fair, reasonable, and adequate to the Class, and should therefore be approved; (ii) whether a Judgment should be entered dismissing the Action with prejudice as against Defendants; (iii) whether the proposed Plan of Allocation of the Net Settlement Fund is fair and reasonable, and should therefore be approved; and (iv) whether the application by Co-Lead Counsel for an award of attorneys’ fees and expenses, including Plaintiff’s application for an incentive award, should be approved; and

WHEREAS, due notice of the hearing has been given in accordance with the Scheduling Order; the Parties having appeared by their respective attorneys of record; the Court having heard and considered evidence in support of the proposed Settlement; the attorneys for the respective Parties having been heard; an opportunity to be heard having been given to all other persons or entities requesting to be heard in accordance with the Scheduling Order; the Court having determined that notice to members of the Class was adequate and sufficient; and the entire matter of the proposed Settlement having been heard and considered by the Court;

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED,** this \_\_\_\_\_ day of \_\_\_\_\_, 2022, as follows:

1. **Definitions:** Unless otherwise defined herein, capitalized terms used herein shall have the same meanings given to them in the Stipulation.

2. **Jurisdiction:** The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over the Parties and each of the Class Members for purposes of the Action.

3. **Notice:** The Court finds that the dissemination of the Notice and the publication of the Summary Notice: (i) were implemented in accordance with the Scheduling Order; (ii) constituted the best notice practicable under the circumstances; (iii) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of: the pendency of the Action; the effect of the proposed Settlement (including the Releases to be provided thereunder); the proposed Plan of Allocation; Co-Lead Counsel's application for an award of attorneys' fees and expenses, including Plaintiff's application for an incentive award; their right to object to any aspect of the Settlement, the Plan of Allocation, and/or Co-Lead Counsel's application for an award of attorneys' fees and expenses, including Plaintiff's application for an incentive award; and their right to appear at the Settlement Hearing; (iv) constituted due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (v) satisfied the requirements of Court of Chancery Rule 23, the United States

Constitution (including the Due Process Clause), and all other applicable law and rules.

4. **Final Settlement Approval and Dismissal of Claims:** Pursuant to, and in accordance with, Court of Chancery Rule 23(e), this Court hereby fully and finally approves the Settlement set forth in the Stipulation in all respects (including, without limitation: the Settlement consideration; the Released Claims; and the dismissal with prejudice of the claims asserted against Defendants in the Action), and finds that the Settlement is, in all respects, fair, reasonable, and adequate to the Class. The Parties are directed to implement, perform, and consummate the Settlement in accordance with the terms and provisions contained in the Stipulation, which this Judgment incorporates and makes a part hereof.

5. All claims asserted against Defendants and the Former Defendant in the Action by Plaintiff and the other Class Members are hereby dismissed with prejudice. The Parties shall bear their own fees, costs, and expenses, except as otherwise provided in the Stipulation and this Judgment.

6. **Binding Effect:** The terms of the Stipulation and of this Judgment shall be forever binding on the Parties and all Class Members (regardless of whether or not any individual Class Member was entitled to receive a distribution from the Net Settlement Fund or in fact receives a distribution from the Net Settlement Fund).

7. **Releases:** The Releases set forth in Section II of the Stipulation, together with the definitions contained in Section I of the Stipulation relating thereto, are expressly incorporated herein in all respects. The Releases are effective as of the Effective Date. Accordingly, this Court orders that:

(i) Upon the Effective Date of the Settlement, Plaintiff and each of the other Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of this Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged any and all Released Plaintiff's Claims against Defendants, the Former Defendant, and the other Released Defendants' Persons, and shall forever be barred and enjoined from prosecuting any and all Released Plaintiff's Claims against any of the Released Defendants' Persons. This Release shall not apply to any of the Excluded Parties' Claims.

(ii) Upon the Effective Date of the Settlement, Defendants and the Former Defendant, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of this Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged any and all Released Defendants' Claims against Plaintiff and the

other Released Plaintiff's Persons, and shall forever be barred and enjoined from prosecuting any and all Released Defendants' Claims against any of the Released Plaintiff's Persons.

8. Notwithstanding paragraph 7 above, nothing in the Stipulation or in this Judgment shall in any way impair or restrict the rights of the Parties to enforce the terms of the Settlement pursuant to the Stipulation.

9. **Award of Attorneys' Fees and Expenses:** Plaintiff's Counsel are hereby awarded attorneys' fees in the amount of 25% of the Settlement Fund and payment of Litigation Expenses in the amount of \$ 984,891.13 ("Fee and Expense Award"), which sums the Court finds to be fair and reasonable. The Fee and Expense Award shall be paid solely out of the Settlement Fund.

10. Plaintiff is hereby awarded an incentive award in the amount of \$ 10,000 ("Incentive Award"). The Incentive Award shall be paid to Plaintiff from the Fee and Expense Award awarded under paragraph 9 above

11. No proceedings or court order with respect to the Fee and Expense Award to Co-Lead Counsel or with respect to the Incentive Award to Plaintiff shall in any way affect or delay the finality of this Judgment (or otherwise preclude this Judgment from being entitled to preclusive effect), and shall not affect or delay the Effective Date of the Settlement.

12. **Plan of Allocation of Net Settlement Fund:** The Court hereby finds and concludes that the formula for the calculation of payments to eligible Class Members as set forth in the Plan of Allocation provides a fair and reasonable basis upon which to allocate the proceeds of the Net Settlement Fund with due consideration having been given to administrative convenience and necessity. No proceedings or court order with respect to approval of the Plan of Allocation shall in any way affect or delay the finality of this Judgment (or otherwise preclude this Judgment from being entitled to preclusive effect), and shall not affect or delay the Effective Date of the Settlement.

13. **Modification of the Stipulation:** Without further approval from the Court, the Parties are hereby authorized to agree to and adopt such amendments or modifications of the Stipulation or any Exhibits attached thereto to effectuate the Settlement that: (i) are not materially inconsistent with this Judgment; and (ii) do not materially limit the rights of Class Members in connection with the Settlement. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any provisions of the Settlement.

14. **Termination of Settlement:** If the Settlement is terminated as provided in the Stipulation or the Effective Date of the Settlement otherwise fails to occur, this Judgment shall be vacated, rendered null and void, and be of no further force and effect, except as otherwise provided by the Stipulation; this Judgment shall



be without prejudice to the rights of the Parties or the Class; and Plaintiff and Defendants shall revert to their respective positions in the Action as of immediately prior to the execution of the Term Sheet on May 2, 2022.

15. **Retention of Jurisdiction:** Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over the Parties and all Class Members for purposes of the administration, interpretation, implementation, and enforcement of the Settlement, and all other matters relating to the Action and the Settlement.

16. **Entry of Final Judgment:** There is no just reason to delay the entry of this Judgment as a final judgment in the Action. Accordingly, the Register in Chancery is expressly directed to immediately enter this final Judgment in the Action.

*Kathaleen St. J. McCormick*

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Chancellor Kathaleen St. J. McCormick

*October 4, 2022.*