



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: PIVOTAL SOFTWARE, INC.
STOCKHOLDERS' LITIGATION

C.A. No. 2020-0440-KSJM

**PLAINTIFF'S UNOPPOSED MOTION
FOR CLASS DISTRIBUTION ORDER**

PLEASE TAKE NOTICE THAT Plaintiff, Kenia Lopez, respectfully moves this Court to enter the accompanying Class Distribution Order pursuant to the terms of the Stipulation and Agreement of Settlement, Compromise, and Release (the "Stipulation") (Trans. ID 67683113) and the Court's Order and Final Judgment (Trans. ID 68210425) and submits in support of this motion the accompanying Affidavit of Luiggy Segura in Support of Plaintiff's Unopposed Motion for Class Distribution Order (the "Segura Affidavit") submitted by the Court-approved Settlement Administrator, JND Legal Administration ("JND").^{1,2} If approved by the Court, the Class Distribution Order will, *inter alia*:

1. Direct JND to distribute 100% of the Net Settlement Fund to Eligible Class Members, after deducting all payments previously allowed and the payment

¹ Pursuant to the Court's Scheduling Order (Trans. ID 67719722), the Court authorized JND to act as the Settlement Administrator in connection with the Settlement of this Action.

² Plaintiff incorporates by reference the definitions in the Stipulation and the Segura Affidavit, and all terms used herein shall have the same meanings as set forth in the Stipulation and/or the Segura Affidavit.

of JND's fees and expenses requested in this Motion, and after deducting payment of any estimated taxes, the costs of preparing appropriate tax returns, administrative contingencies, and any escrow fees, as set forth in paragraph 10 of the Segura Affidavit (the "Distribution").

2. Consistent with ¶ 45 of the Court-approved Plan of Allocation stated in the Notice disseminated to Class Members, direct that each Eligible Class Member will be allocated a *pro rata* payment from the Net Settlement Fund in connection with the Distribution equal to the product of (i) the number of shares of Pivotal Class A common stock held by the Eligible Class Member at the time such shares were exchanged for the Acquisition Consideration and (ii) the "Per-Share Recovery" for the Settlement, which will be determined by dividing the total amount of the Net Settlement Fund by the total number of shares of Pivotal Class A common stock held by all of the Eligible Class Members at the time such shares were exchanged for the Acquisition Consideration. (Segura Affidavit ¶ 10(a)).

3. Consistent with ¶ 46 of the Court-approved Plan of Allocation, payments from the Net Settlement Fund to Eligible Class Members will be made in the same manner in which Eligible Class Members received the Acquisition Consideration. Accordingly, if an Eligible Class Member's shares of Pivotal Class A common stock were held in "street name" and the Acquisition Consideration was deposited into that Eligible Class Member's brokerage account, their broker will be

responsible for depositing their Settlement payment into that same brokerage account. (Segura Affidavit ¶ 10(b)).

4. Consistent with ¶ 47(i) of the Plan of Allocation, with respect to shares of Pivotal Class A common stock held of record at the Closing by the Depository Trust & Clearing Corporation, including its subsidiary the Depository Trust Company (collectively, “DTCC”), through its nominee Cede & Co., Inc. (“Cede”), direct JND to cause that portion of the Net Settlement Fund allocated to Eligible Class Members who held their shares through DTCC Participants to be paid to the DTCC Participants by paying each the Per-Share Recovery times its respective Closing Security Position,³ using the same mechanism that DTCC used to distribute the Acquisition Consideration and subject to payment suppression instructions with respect to Excluded Shares and any other shares ineligible for recovery from the Settlement. (Segura Affidavit ¶ 10(c)). The DTCC Participants and their respective customers, including any intermediaries, shall then ensure *pro rata* payment to each Eligible Class Member based on the number of shares beneficially owned by such Eligible Class Member at the time such shares were converted into the right to receive the Acquisition Consideration in connection with the Closing of the Acquisition. (*Id.*)

³ For each DTCC Participant, the “Closing Security Position” is the number of shares of Pivotal Class A common stock reflected on the DTCC Allocation Report used by DTCC to distribute the Acquisition Consideration.

5. Consistent with ¶ 47(ii) of the Plan of Allocation, with respect to shares of Pivotal Class A common stock held of record as of the Closing other than by Cede, as nominee for DTCC (a “Closing Non-Cede Record Position”), direct JND to make payment with respect to each such Closing Non-Cede Record Position from the Net Settlement Fund directly to the Eligible Closing Date Record Holders in an amount equal to the Per-Share Recovery times the number of shares comprising such Closing Non-Cede Record Position. (Segura Affidavit ¶ 10(d)).

6. Consistent with ¶ 47(iii) of the Plan of Allocation, direct that any person who purchased shares of Pivotal Class A common stock on the Closing of the Acquisition on December 30, 2019, but had not settled those shares at the Closing (“Non-Settled Shares”), shall be treated as an Eligible Class Member (and their shares treated as Class Shares) with respect to those Non-Settled Shares (except for the Excluded Shares), and any person who sold those Non-Settled Shares on or before the Closing on December 30, 2019, shall not be treated as an Eligible Class Member with respect to those Non-Settled Shares. (Segura Affidavit ¶ 10(e)).

7. Consistent with ¶ 47(iv) of the Plan of Allocation, in the event that any payment from the Net Settlement Fund is undeliverable or in the event a check is not cashed by the stale date (i.e., more than six months from the check’s issue date), the DTCC Participants or the holder of a Closing Non-Cede Record Position shall

follow their respective policies with respect to further attempted distribution or escheatment. (Segura Affidavit ¶ 10(f)).

8. All undeliverable or uncashed payments returned to JND by DTCC Participants or the holder of a Closing Non-Cede Record Position will be available for further distribution provided that such distribution is economically feasible. At such time as Plaintiff's Counsel, in consultation with JND, determines that further distribution of the funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance of the Net Settlement Fund, after payment of any unpaid fees or expenses incurred in connection with administering the Net Settlement Fund and after the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, will be contributed to the Combined Campaign for Justice (the "CCJ"). (Segura Affidavit ¶ 10(g)).

9. Following the distribution of the Net Settlement Fund to DTCC Participants, direct that inquiries by Eligible Class Members regarding payment of the Net Settlement Fund should be made directly to DTCC Participants, such as banks or brokerage firms, through which they beneficially owned Class Shares. (Segura Affidavit ¶ 10(h)).

10. In order to encourage Eligible Class Members to promptly cash their checks, and to avoid or reduce future expenses relating to unpaid checks, direct that all Distribution checks bear the following notation: "CASH PROMPTLY, VOID

AND SUBJECT TO REDISTRIBUTION IF NOT CASHED BY [6 MONTHS AFTER ISSUE DATE].” (Segura Affidavit ¶ 10(g)).

11. All undeliverable or uncashed payments returned to JND by DTCC Participants or the holder of a Closing Non-Cede Record Position shall be available for further distribution provided that such distribution is economically feasible. At such time as Plaintiff’s Counsel, in consultation with JND, determines that further distribution of the funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance of the Net Settlement Fund, after payment of any unpaid fees or expenses incurred in connection with administering the Net Settlement Fund and after the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, will be contributed to the CCJ. (Segura Affidavit ¶ 10(i)).

12. Authorize the destruction of paper copies of all supporting documentation one year after the distribution of the Net Settlement Fund, and the destruction of electronic copies of the same one year after all funds in the Net Settlement Fund have been distributed. (Segura Affidavit ¶ 10(j)).

13. Direct that payment pursuant to the Class Distribution Order shall be final and conclusive against all Class Members, and release and discharge all persons involved in the investment, administration, distribution, or taxation of the Settlement Fund or the Net Settlement Fund, from any and all claims arising out of such

involvement, and bar all Class Members, whether or not they receive payment from the Net Settlement Fund, from making any further claims against the Net Settlement Fund, Plaintiff, Plaintiff’s Counsel, the Settlement Administrator (JND), or any other agent retained by Plaintiff or Plaintiff’s Counsel in connection with the investment, administration, distribution, or taxation of the Settlement Fund or the Net Settlement Fund beyond the amounts allocated to Class Members.

14. Approve all of JND’s fees and expenses incurred in connection with the administration of the Settlement and estimated to be incurred in connection with the distribution of the Net Settlement Fund as set forth in Exhibit 1 to the Segura Affidavit and authorize Plaintiff’s Counsel to direct payment out of the Settlement Fund to JND in payment of any such outstanding fees and expenses.

15. Retain jurisdiction to consider any further applications concerning the administration of the Settlement, and such other and further relief as the Court deems appropriate.

Dated: April 5, 2024

**BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP**

OF COUNSEL:

Jeroen van Kwawegen
Edward G. Timlin
Thomas G. James
**BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP**
1251 Avenue of the Americas
New York, NY 10020
(212) 554-1400

/s/ Gregory V. Varallo
Gregory V. Varallo (Bar No. 2242)
500 Delaware Avenue, Suite 901
Wilmington, DE 19801
(302) 364-3601

*Co-Lead Counsel for Lead Plaintiff and
the Class*

WORDS: 1,532 (of 3,000 Word Limit)

*Co-Lead Counsel for Lead Plaintiff and
the Class*

Jason Leviton
BLOCK & LEVITON LLP
260 Franklin St, Suite 1860
Boston, MA 02110
(617) 398-5600

*Co-Lead Counsel for Lead Plaintiff and
the Class*

Robert Weiser
James Ficaro
THE WEISER LAW FIRM, P.C.
22 Cassatt Avenue,
Berwyn, PA 19312
(610) 225-2677

Additional Counsel for Lead Plaintiff

CERTIFICATE OF SERVICE

I, Gregory V. Varallo, hereby certify that on April 5, 2024, the foregoing *Plaintiff's Unopposed Motion for Class Distribution Order* was filed and served via File & ServeXpress upon the following counsel of record:

Elena. C. Norman, Esq.
Daniel Kirshenbaum, Esq.
YOUNG CONAWAY
STARGATT & TAYLOR LLP
100 North King Street
Wilmington, DE 19801

John D. Hendershot, Esq.
Andrew L. Milam, Esq.
RICHARDS, LAYTON
& FINGER, P.A.
920 North King Street
Wilmington, DE 19801

Henry E. Gallagher, Jr., Esq.
Jarrett W. Horowitz, Esq.
CONNOLLY GALLAGHER LLP
1201 N. Market Street, 20th Floor
Wilmington, DE 19801

Samuel T. Hirzel II, Esq.
Elizabeth A. DeFelice, Esq.
HEYMAN ENERIO GATTUSO
& HIRZEL LLP
300 Delaware Ave., Suite 200
Wilmington, DE 19801

Kimberly A. Evans, Esq.
BLOCK & LEVITON LLP
3801 Kennett Pike, Suite C-305
Wilmington, DE 19807

/s/ Gregory V. Varallo
Gregory V. Varallo (Bar No. 2242)

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: PIVOTAL SOFTWARE, INC.
STOCKHOLDERS' LITIGATION

C.A. No. 2020-0440-KSJM

[PROPOSED] CLASS DISTRIBUTION ORDER

The Court, having considered Plaintiff's Unopposed Motion for Class Distribution Order (the "Motion"), and for good cause shown, IT IS HEREBY ORDERED that:

1. The Motion is GRANTED.
2. The Settlement Administrator shall implement the proposed Plan of Distribution as described in the Motion.

IT IS SO ORDERED this ____ day of _____, 2024.

Chancellor Kathaleen St. J. McCormick