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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

LEAD PLAINTIFF'S OPENING BRIEF IN SUPPORT OF APPLICATION FOR FINAL APPROVAL OF SETTLEMENT, AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AN INCENTIVE AWARD

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Dated: September 6, 2022

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I. PRELIMINARY STATEMENT

Lead Plaintiff Kenia Lopez seeks approval of a $42.5 million cash settlement of this certified class action.[1] Lead Plaintiff represents a class of former stockholders of Pivotal Software, Inc.'s Class A common stock whose Pivotal Class A shares were exchanged for $15 per share in the "Merger"—a sale to Pivotal's controller, VMware, Inc. ("VMware").

Lead Plaintiff and the Class challenged the fairness of the Merger and asserted claims for breach of fiduciary duty against Pivotal's former controllers (VMware, which, along with Dell Technologies Inc. ("Dell"), controlled Pivotal),[2] Dell (which controlled VMware), and Michael Dell (the ultimate human controller of Dell)),[3] as well as Pivotal's former CEO (Robert Mee) and former CFO (Cynthia Gaylor).[4]

If the Settlement is approved, Defendants and their insurers will pay $42.5 million for the benefit of approximately 95 million Class shares. That's approximately $0.45 per share before fees and expenses—a 3% premium to deal

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[1] There is a parallel appraisal action pending before the Court. *HBK Master Fund L.P., et al. v. Pivotal Software, Inc.*, C.A. No. 2020-0165-KSJM. The appraisal petitioners do not fall within the scope of the Class definition and the Settlement does not release or otherwise affect the appraisal petitioners' claims.

[2] Plaintiff and the Class also asserted an alternative aiding-and-abetting claim against VMware.

[3] Plaintiff and the Class also asserted claims against Michael Dell in his capacity as a Pivotal director.

[4] The claims against Gaylor were dismissed at the pleadings stage.

price. The Settlement is the result of two-and-a-half years of hard-fought litigation—which included nineteen fact depositions, extensive expert reports, and two all-day expert depositions—and was reached fewer than three months before trial. The Settlement is an excellent result for the Class that compares favorably to the results achieved in similar litigation. It is particularly favorable given that Lead Plaintiff and the Class would have had to convince the Court to award damages on the basis of a valuation approach that has rarely found favor in Delaware.

Lead Plaintiff asks that the Court approve the settlement, award Class Counsel 25% of the common fund plus expenses and approve an incentive award for Lead Plaintiff of $10,000.

II. FACTS AND PROCEDURAL BACKGROUND

A. Pivotal's History and Business

Pivotal is an enterprise software company, that was co-founded by Mee and acquired by EMC Corporation ("EMC") in 2012.[5] In 2013, EMC, which also owned VMware, combined Pivotal with other assets and spun out the Company as a privately owned and controlled subsidiary.[6] Dell acquired EMC in 2016.[7] In April 2018, a minority of Pivotal's equity was sold into the market via an IPO at $15 per

[5] Ex. 9 at 23:8-15.

[6] *Id*. at 31:14-33:7; Ex. 4 at 21.

[7] Ex. 9 at 41:5-42:2.

share.[8] Dell held 94.4% of Pivotal's voting power and a 62.6% economic interest.[9] Dell similarly controlled 97.5% of VMware's voting power and an 80.8% economic interest.[10] As a result, Dell was economically aligned with VMware over Pivotal.[11] Michael Dell, who owed 66.9% of Dell's voting power, was the ultimate human controller of Pivotal, VMware, and Dell.[12]

B. The Deal Process Begins

Pivotal and VMware began discussing a sale of Pivotal in January 2019 ("Project Raven").[13] But no one told Pivotal's independent directors, Madelyn Lankton and Marcy Klevorn, about Project Raven until mid-March 2019 (almost two months after discussion began) when they were belatedly tasked with serving on the special committee (the "Pivotal Committee").[14] By this time, VMware had formed its own committee (the "VMware Committee") and retained advisors; the parties had begun discussing diligence, and executed an NDA.[15]

Lankton had been appointed to Pivotal's Board in October 2018, just a few

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[8] Ex. 4 at 21.

[9] *Id*.

[10] *Id*.

[11] Ex. 12 at 35:23-37:5.

[12] Ex. 4 at 21; Ex. 6 at 60:15-61:2.

[13] Ex. 4 at 22; Ex. 9 at 197:4-198:16; Ex. 17.

[14] Ex. 7 at 74:11-19; Ex. 8 at 68:5-69:8.

[15] Ex. 4 at 22-33.

months before VMware initiated discussions about a sale.[16] She had never served as a director and had no relevant M&A or valuation experience.[17] Klevorn joined the Board in 2016 as a designee of one of Pivotal's pre-IPO investors, the Ford Motor Company ("Ford"), where she had worked for nearly four decades.[18] Klevorn repeatedly missed or was late to key Board and Pivotal Committee meetings, prioritizing both her Ford responsibilities as well as personal errands over the important work of the Pivotal Committee.[19]

Lead Plaintiff would have argued at trial that Klevorn put her loyalties to Ford ahead of her duties to Pivotal and its stockholders. By 2019, Ford was prepared to exit its Pivotal investment (for which Klevorn felt responsibility).[20] Behind the scenes, Klevorn discussed: (i) Ford's investment with Pivotal management; and (ii) material nonpublic information with Ford executives.[21] Lankton knew none of this.[22]

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[16] Ex. 8 at 38:19-23.

[17] *Id*. at 37:12-16, 47:18-48:8.

[18] Ex. 7 at 46:16-47:7.

[19] *Id*. at 180:21-239:18. Klevorn was even late to the March 15, 2019 meeting establishing the Pivotal Committee. *Id*. at 185:3-187:7; Ex. 18 at PVTL_00000739.

[20] Ex. 7 at 53:20-54:9, 246:9-247:10.

[21] *Id*. at 279:25-280:8, 285:2-296:17.

[22] Ex. 8 at 242:2-243:18.

The Pivotal Committee did not select its own advisors.[23] Rather, Pivotal management (including Pivotal's CFO, Gaylor, who was a Morgan Stanley alumna) contacted Morgan Stanley & Co LLC ("Morgan Stanley") without Board authority and put its bankers in the room just minutes after the Pivotal Committee itself was formed.[24] The Pivotal Committee considered no other advisors and hired Morgan Stanley on the spot.[25]

During this same period, Morgan Stanley was soliciting VMware for buy-side business, "maintain[ed] a regular contact with the corporate strategy and treasury teams" at VMware and was "looking to take a more active role with VMware" including "potential financing(s)."[26] One of the Morgan Stanley bankers representing the Pivotal Committee—Sterling Wilson—worked on the VMware primary coverage team.[27] The Pivotal Committee knew none of this.[28]

Worse, over the course of negotiations, Morgan Stanley was simultaneously engaged by the special committee of Carbon Black, Inc. ("Carbon Black"), another

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[23] Ex. 7 at 138:6-10, 139:6-9.

[24] Ex. 8 at 55:25-56:16; Ex. 10 at 140:23-141:12.

[25] Ex. 8 at 58:15-21, 65:22-66:15.

[26] Ex. 16; *see also* Ex. 20 (Morgan Stanley Relationship Meeting Briefing Memo on VMware's CFO).

[27] Ex. 20 at MS-0048154.

[28] Ex. 8 at 91:20-92:14.

software company that VMware sought to (and ultimately did) purchase simultaneously with Pivotal. VMware viewed the transactions as complementary/synergistic and announced them together.[29] This created a serious conflict as Morgan Stanley stood to secure a $33.8 million success fee if the Carbon Black deal closed.[30] Again, the Pivotal Committee knew none of this. Lankton testified that had she known about Morgan Stanley's conflicts, she would have considered firing Morgan Stanley and retaining a new advisor.[31]

On March 16, 2019, the day after the Pivotal Committee was formed, Mee spoke with Sterling Wilson, Morgan Stanley's senior coverage banker for Pivotal. Mee informed Wilson that:

- He was "getting pressure from [VMware CEO P]at [Gelsinger] and Michael [Dell]to move fast."
- Pivotal "[c]an't be slow. Can't be dug in. Gotta be fast. Gotta give stuff."
- The negotiations were "Not standard process. This is a supervised process. One where [P]ivotal has great risk if parent [*i.e.*, Dell] decides to go with V [*i.e.*, VMware], then [d]oesn't happen…[P]ivotal will lose all disputes in the future."
- This "can't be typical m[&]a playbook with third party."[32]

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[29] Ex. 12 at 316:10-317:10, 318:15-320:9; Ex. 31.

[30] Ex. 32; Ex. 42.

[31] Ex. 8 at 108:16-110:4, 113:12-23, 114:13-22.

[32] Ex. 19.

Wilson relayed these messages to Anthony Armstrong, who ran the Morgan Stanley team advising the Pivotal Committee. Armstrong responded: "Yep got it. Advice I am giving is with that in mind."[33] Morgan Stanley's Rule 30(b)(6) designee confirmed at his deposition that Pivotal fiduciaries regularly discussed the expectation that VMware would retaliate against Pivotal if the deal fell through and that this dynamic colored Morgan Stanley's advice.[34]

On April 7, 2019, Gelsinger invited Mee to dinner.[35] Mee responded that the Pivotal Committee did not want management meetings before an initial offer.[36] Gelsinger replied: "I consider this most unfortunate as I wanted to discuss with you thoughts on integration strategy, go forward strategy and your potential role at VMware as part thereof."[37] Mee asked the Pivotal Committee to reconsider its opposition with a description of Gelsinger's conversation topics that omitted the reference to a discussion of his post-closing employment.[38] The dinner took place on April 10, 2019.[39] Mee's employment was discussed (but ultimately, he did not

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[33] *Id*.

[34] Ex. 10 at 171:11-15, 173:17-25, 177:6-11, 178:24-179:14, 191:18-25; 301:24-302:23, 309:8-310:8.

[35] Ex. 21.

[36] *Id*.

[37] *Id*.

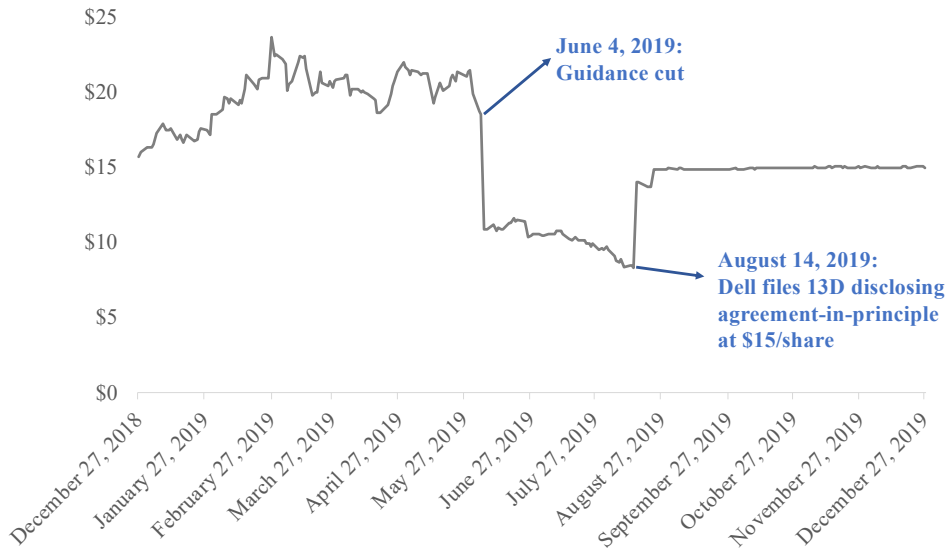
[38] Ex. 22.

[39] Ex. 4 at 25.

stay with the company after closing).[40] After the dinner, talks cooled for several weeks.

C. Pivotal Slashes Its Q2 2020 Guidance and VMware Quickly Reengages

Pivotal released its Q1 2020 results[41] after the close of trading on June 4, 2019, slashing its guidance for the full fiscal year.[42] The market's reaction was sharply negative, with the price for the Company's Class A common stock dropping 41% from $18.54 per share at the close of trading on June 4 to $10.89 per share at the close of trading the next day. The chart below shows Pivotal's trading history over the last year of its life as a public company:



[40] Ex. 9 at 274:8-277:25.

[41] Pivotal's fiscal year was 11 months ahead of the calendar year. Pivotal's first quarter of fiscal year 2020 closed on April 30, 2019.

[42] Ex. 1; Ex. 2.

The guidance cut—and the market's reaction—would have been a key issue at trial. Plaintiff and the Class would have presented evidence that Mee thought the market had "overreact[ed]."[43] They would have showed that Morgan Stanley believed the reaction was "overblown" and that "some time and execution [would] [p]ut all this behind [Pivotal] shortly."[44] But Defendants would likely have relied on contemporaneous emails suggesting that senior Pivotal executives were genuinely concerned about the Company's deteriorating prospects and declining growth trajectory.[45]

Having paused the process in April, VMware reemerged to take advantage of the depressed stock price. On June 13, 2019—nine days after the guide-down—VMware management told the VMware Committee that acquiring Pivotal was again the first "priority."[46]

Pivotal's second quarter of fiscal year 2020 ended on July 31, 2019. On August 4, the VMware Committee met and reviewed Pivotal's "flash" results for the

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[43] Ex. 9 at 330:2-332:6; Ex. 29.

[44] Ex. 30.

[45] Ex. 23; Ex. 24; Ex. 25; Ex. 26; Ex. 27; Ex. 28; *see also* Trans. ID 67784460 at 17 (public version of Pivotal's pretrial brief in the appraisal action: "Internally, Pivotal management recognized that Pivotal's disappointing Q1 was not merely one aberrant quarter, but the continuation of several concerning trends.").

[46] Ex. 33 at VMW_00171655.

just-completed quarter.[47] The VMware Committee's advisors at Lazard told the VMware Committee that Pivotal was poised to beat its revised guidance and that Pivotal's stock price "may rebound but it is not expected to recover entirely."[48] The VMware Committee immediately authorized an offer of $13.75 per share, tied to a two-week negotiating window (ensuring that Pivotal's unaffected stock price would never reflect the Q2 results).[49]

Later that day, the VMware Committee delivered the $13.75 offer and its demand for a two-week timeline.[50] Surprisingly, the Pivotal Committee immediately acquiesced to VMware's two-week timeline, rather than wait for the Q2 results to be announced in September.[51] The Pivotal Committee accepted this condition even though, just days later, Lankton had written that the Q2 "flash" results reflected "[f]antastic news" and agreed with management that, given the

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[47] Ex. 34.

[48] Ex. 34; Ex. 35; Ex. 11 at 116:4-121:11. On August 11, Lazard informed the VMware Committee that Pivotal had further updated its Q2 flash numbers, "which show results are now ahead of prior forecasts[.]" Ex. 40 at VMW_00000370; Ex. 41 at LAZARD_00060970.

[49] Ex. 34; Ex. 38; Ex. 11 at 129:15-22; Ex. 12 at 320:10-16.

[50] Ex. 8 at 193:19-23.

[51] Ex. 36.

Company's Q2 performance, Pivotal's stock price would be expected to "return to 'normal' trading levels…."[52]

On August 5, 2019, the Pivotal Committee met to discuss how to respond to VMware's offer. Lankton's contemporaneous handwritten notes suggest that the members of the Pivotal Committee went along with VMware's proposed timeline because they feared that VMware would retaliate against Pivotal if they resisted. Lankton wrote:[53]

- "Pat [Gelsinger] – won[']t do Pivotal any favors if the deal doesn't happen."
- "Michael [Dell] – if Pivotal is on its own – can't get Pat [Gelsinger] to play."
- "Moral obligation – Michael [Dell]/Egon [Durban]"; "Pat [Gelsinger] doesn't feel that pressure"; "if we go our separate way – not a good shareholder outcome."
- "Michael [Dell] wants this deal done!"

Morgan Stanley advised the Pivotal Committee that VMware's offer was too low to warrant a counter-offer.[54] But Mee pushed the Pivotal Committee to engage with a counter that would end up at or around the IPO price.[55] The Pivotal

[52] Ex. 39; Ex. 36; Ex. 8 at 200:12-202:10.

[53] Ex. 37.

[54] Ex. 8 at 215:6-21.

[55] Ex. 9 at 374:6-376:18.

Committee acceded and agreed to present a $16.50 per share counter-offer,[56] strongly signaling a zone of agreement at the IPO price of $15 per share.[57]

Deposition testimony suggested that the Pivotal Committee did not understand Morgan Stanley's valuation analysis. Lankton believed that the valuation analyses had been updated to reflect the "fantastic news" about the Company's better-than-expected Q2 results.[58] They had not. Lankton also testified that it would have been important for the Pivotal Committee to understand whether Morgan Stanley's forecasts made radical downward revisions to Pivotal's growth rates for the entirety of the ten-year projection period as a result of the Company's short-term guidance cut.[59] They did. But this was not explained to the Pivotal Committee.

After some additional, minimal negotiations, the Pivotal Committee had, by August 14, agreed to sell the Company's Class A shares at the IPO price of $15 per share. Dell promptly filed an amended Schedule 13D disclosing the agreement-in-

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[56] Ex. 8 at 210:20-212:6, 219:11-220:13.

[57] *See* Guhan Subramanian, DEALMAKING: THE NEW STRATEGY OF NEGOTIAUCTIONS (2020) ("by far the best predictor of the final deal price is the midpoint of the first semireasonable offer and counteroffer."). The midpoint of $13.75 and $16.50 is $15.13.

[58] Ex. 8 at 193:8-18, 236:7-18.

[59] *Id*. at 186:4-187:2.

principle, which capped the Company's market price.[60] The parties negotiated an agreement for Dell to roll over its Class B shares in Pivotal into Class B shares of VMware and the Merger agreement was signed on August 22, 2019. Stockholders voted to approve the Merger on December 27, 2019, which closed promptly thereafter.

D. Procedural Background

After the Merger was announced, Lead Plaintiff served a demand on the Company seeking books and records pursuant to 8 *Del. C.* § 220. The Company produced certain formal Board materials before the stockholder vote but Lead Plaintiff pressed for additional documents—filing a 220 complaint shortly before the Merger closed.[61] The parties actively litigated the 220 action for several weeks until reaching an agreement to resolve the action in exchange for the Company's agreement to search for and produce certain electronic communications.

Lead Plaintiff filed a plenary complaint on June 4, 2020. A second Pivotal stockholder, Stephanie Howarth, filed another complaint six weeks later on July 16. The two actions were consolidated and, pursuant to a stipulation, the Court appointed Ms. Lopez as Lead Plaintiff and Bernstein Litowitz Berger & Grossmann LLP and

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[60] Ex. 3.

[61] *Lopez v. Pivotal Software, Inc.*, C.A. No. 2019-1032-KSJM (Del. Ch.).

Block & Leviton LLP as co-lead counsel.[62] During this same period, Class Counsel were negotiating with Defendants to obtain their agreement that discovery could proceed in the consolidated fiduciary duty action during the pendency of motions to dismiss, so that the action could remain coordinated with the parallel appraisal action. On August 14, the Court entered a stipulation and proposed order coordinating the two actions.[63]

As discovery proceeded, Defendants all moved to dismiss Lead Plaintiff's complaint. Those motions were fully briefed and argued and on June 29, 2021, the Court issued a bench ruling, granting Gaylor's motion but otherwise denying the motions.[64]

Over the course of fact discovery, Lead Plaintiff sought and obtained significant document productions from Defendants and a variety of third parties (including the Pivotal Committee's financial and legal advisors (Morgan Stanley and Latham & Watkins), the VMware Committee's financial advisors (Lazard), and Dell's financial advisors (Goldman Sachs and Moelis)). In total, Lead Plaintiff obtained and analyzed over 500,000 pages of documents. During fact discovery,

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[62] Trans. ID 65849190.

[63] *Id*.

[64] Transcript of June 29, 2021 Telephonic Rulings of the Court at 30-37 (Trans. ID 66768286).

Class Counsel took eighteen depositions and defended Ms. Lopez's deposition. Lead Plaintiff was also forced to file two motions to compel, which were later mooted. On November 4, 2021, the Court entered a stipulated order certifying the Class, appointing Lopez as Class Representative and appointing Bernstein Litowitz Berger & Grossmann and Block & Leviton as Class Counsel.[65]

The Parties agreed to mediate shortly after the close of fact discovery. Before that mediation, the Parties exchanged detailed mediation statements and participated in an all-day mediation with Robert Meyer, a respected and experienced mediator. The mediation was unsuccessful and the Parties continued on the litigation track—exchanging two rounds of expert reports and conducting full-day depositions of each side's valuation expert. During this same period, Defendants allowed their deadline to seek leave to file a motion for summary judgment to lapse. Simultaneously, the parties continued to engage in extensive settlement communications, facilitated by Mr. Meyer.

As a result of those discussions, on May 2, 2022, the parties executed a term sheet reflecting an agreement to settle the Action for $42.5 million. The parties then negotiated and executed a formal Stipulation of Settlement, which the parties filed with the Court on June 2, 2022.

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[65] Trans. ID 67071138.

Notice of the Settlement was issued to the Class consistent with the Court's June 13, 2022 scheduling order. To date, Lead Plaintiff and Class Counsel have not received any objections to the Settlement or Fee and Expense Award.

III. THE COURT SHOULD APPROVE THE SETTLEMENT

A. Standard of Review

"The settlement of a class … action requires court approval."[66] To approve a class settlement, the Court "must make an independent determination, through the exercise of its own business judgment, that the settlement is intrinsically fair and reasonable."[67] To determine the fairness of the settlement, the Court considers several factors, including:

> (1) the probable validity of the claims, (2) the apparent difficulties in enforcing the claims through the courts, (3) the collectability of any judgment recovered, (4) the delay, expense and trouble of litigation, (5) the amount of the compromise as compared with the amount and collectability of a judgment, and (6) the views of the parties involved, pro and con.[68]

In other words, the Court must balance the value of the benefit achieved with the strength of the claims being released.[69] This requires "assessing the reasonableness

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[66] *In re Activision Blizzard, Inc. S'holder Litig.*, 124 A.3d 1025, 1042 (Del. Ch. 2015).

[67] *Goodrich v. E.F. Hutton Grp., Inc.*, 681 A.2d 1039, 1045 (Del. 1996).

[68] *Polk v. Good*, 507 A.2d 531, 536 (Del. 1986).

[69] *See Barkan v. Amsted Indus. Inc.*, 567 A.2d 1279, 1284 (Del. 1989) ("[T]he [C]ourt's function is to consider the nature of the claim, the possible defenses

of the 'give' and the 'get[.]'"[70] Here, a comparison of the give (the claims released) and the get (a $42.5 million cash payment) weighs heavily in favor of approving the Settlement.

B. The Settlement Represents A Significant Recovery For The Class

The amount recovered is substantial and represents an excellent result for the Class when compared to the risks of trial. Stockholder settlements often fall in the range of 1% to 2% of deal price.[71] Here, the $42.5 million cash recovery is approximately $0.45 per Class share, which represents a 3% premium to the $15 per share deal price. That compares favorably with other recent, large settlements of entire fairness actions, including:

- *Pilgrim's Pride* ($42.5 million; 3.2% premium to deal price);[72]

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thereto, the legal and factual circumstances of the case, and then to apply its own business judgment in deciding whether the settlement is reasonable in light of these factors."); *Polk*, 507 A.2d at 535 (same).

[70] *Activision*, 124 A.3d at 1043.

[71] *In re Calamos Asset Mgmt., Inc. S'holder Litig.*, Consol. C.A. No. 2017-0058-JTL (Del. Ch. Apr. 25, 2019) (TRANSCRIPT) (Ex. B) at 4-5 (Plaintiff's counsel: "I recalled the *ExamWorks* argument where Mr. Hanrahan was presenting to Vice Chancellor Laster. … And what Mr. Hanrahan said was, 'Look, I've been practicing a long time. My sense is most stockholder settlements are under 5 percent [of the deal price] and often in the 1 to 2 percent range.'").

[72] *In re Pilgrim's Pride Corp. Deriv. Litig.*, Consol. C.A. No. 2018-0058-JTL (Del. Ch.) (Trans. ID 64576742) (plaintiffs' final approval brief; $42.5 million derivative settlement of action challenging $1.3 billion transaction).

- *Starz* ($92.5 million; 2.3% premium to deal price);[73] and
- *GCI Liberty* ($110 million; 1.5% premium to deal price).[74]

The fairness of the Settlement is strengthened further when compared to the likely recoverable damages. As detailed below, Plaintiff's absolute ceiling for any damages award was $5 per share and there was a high risk that the Class would get nothing. The $0.45 per share recovery represents 9% of the maximum possible damages award, which falls comfortably within the range of settlements approved by this Court.[75]

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[73] *In re Starz S'holder Litig.*, Consol. C.A. No. 12584-VCG (Del. Ch.) (Trans. ID 62702942) (plaintiffs' final approval brief; recovery of $0.75 per class share; implied merger price of $32.17 per share).

[74] *Hollywood Firefighters' Pension Fund v. Malone*, C.A. No. 2020-0880-SG (Del. Ch.) (Trans. ID 66951808) ("*GCI Liberty*") (plaintiffs' final approval brief; $110 million recovery for 99 million class shares (*i.e.*, $1.11 per share); implied per-share deal price of $72.49 per share).

[75] *See, e.g.*, *In re Jefferies Grp., Inc. S'holders Litig.*, 2015 WL 3540662, at *3 (Del. Ch. June 5, 2015) (approving settlement that "equates to less than 11% of the damages sought"); *Aldridge v. Blackmore*, C.A. No. 12196-CB (Del. Ch.) (Trans. ID 61152613) (plaintiff's final approval brief; settlement equated to approximately 8.7% of maximum damages), (Trans. ID 61226426) (Order and Final Judgment; approving settlement); *Vero Beach Police Officers' Ret. Fund v. Bettino*, C.A. No. 2017-0264-JRS (Del. Ch.) (Trans. ID 62682791) (plaintiff's final approval brief; settlement valued at between 6% and 12% of potential damages), (Trans. ID 62717976) (Order and Final Judgment; approving settlement); *In re VENOCO, INC. S'holder Litig.*, 2016 WL 5243078 (Del. Ch. Sept. 19, 2016) (Brief) ("This represents a recovery of approximately 5.3% of the total potential recovery[.]").

C. Class Counsel Were Confident In The Liability Case, But Damages Were A Significant Question Mark

Not all the *Polk* factors are relevant in every case. Here, Class Counsel had no concerns about collecting on a judgment against VMware, Dell, or Michael Dell and with trial just a few months away, the "delay" factor carried minimal weight. In evaluating the Settlement, Class Counsel focused exclusively on comparing the $42.5 million available through settlement to the expected value of pursuing the Class's claim through trial.

While litigation is inherently uncertain, Class Counsel believed there was a strong likelihood that the Class would establish Defendants' liability (*i.e.*, that entire fairness applied and the sale process was unfair). But the Class faced a steep uphill climb to prove damages in a method that would accord with Delaware precedents. Against that backdrop, Class Counsel believe the Settlement reflects an excellent result compared to the risk-adjusted value of proceeding to trial.

1. Lead Plaintiff Had Strong Liability Claims

As a threshold matter, Class Counsel believed that the Court would likely apply the entire fairness standard. Although the Merger was approved by a Special Committee and conditioned on approval by a majority of minority stockholders, the *MFW* conditions were not imposed until VMware's first formal offer in early August 2019—199 days after the sale process began and just 18 days before the Merger

agreement was signed.[76] In denying the motion to dismiss, the Court concluded that "the merger was not conditioned on *MFW* early enough in the process."[77] Class Counsel believed the Court would reach the same conclusion at trial.

Class Counsel also believed that the Court would find that the process was unfair. In particular, the record showed significant evidence of: (i) controller coercion;[78] (ii) a "controlled mindset" from the Pivotal Committee, management, and Morgan Stanley;[79] (iii) remarkably unfair timing (*i.e.*, the Pivotal Committee's inexplicable decision to agree to the Merger before Pivotal's Q2 2020 earnings release in early September);[80] and (iv) serious advisor conflicts (*i.e.*, Morgan

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[76] Ex. 4 at 28-29.

[77] Transcript of June 29, 2021 Telephonic Rulings of the Court at 27 (Trans. ID 66768286).

[78] *Compare* Ex. 37 ("Pat [Gelsinger] – won[']t do Pivotal any favors if the deal doesn't happen," "Michael [Dell] wants this deal done!," etc.) *with In re Dell Techs. Inc. Class V S'holders Litig.*, 2020 WL 3096748, at *29 & n.13 (Del. Ch. June 11, 2020) ("a controller's explicit or implicit threats can prevent a committee from fulfilling its function") (collecting cases).

[79] *Compare* Ex. 19 ("'Not standard process. This is a supervised process. One where [P]ivotal has great risk if parent [*i.e.*, Dell] decides to go with V [*i.e.*, VMware], then [d]oesn't happen…[P]ivotal will lose all disputes in the future.") *with In re S. Peru Copper Corp. S'holder Deriv. Litig.*, 52 A.3d 761, 798 (Del. Ch. 2011) ("from inception, the Special Committee fell victim to a controlled mindset and allowed Grupo Mexico to dictate the terms and structure of the Merger.") *aff'd sub nom. Ams. Mining Corp. v. Theriault*, 51 A.3d 1213 (Del. 2012).

[80] *In re Dole Food Co., Inc. S'holder Litig.*, 2015 WL 5052214, at *27 (Del. Ch. Aug. 27, 2015) ("It is an example of the prototype instance in which the timing of a merger would itself likely constitute a breach of a controlling shareholder's duty

Stanley's concurrent representation of Carbon Black) that were concealed from the Special Committee.[81] Given that record, Class Counsel believed that the Court would likely find the process to be unfair.[82]

2. Lead Plaintiff Faced Substantial Risks Regarding Damages

Proving an unfair process is, however, only half the battle. "[A]ll roads in the realm of entire fairness ultimately lead to fair price."[83] And the fair price/damages inquiry was a much more challenging proposition for the Class. From Class Counsel's perspective, the Class faced a substantial risk of an outcome like *Tesla* or *PLX*—a finding of a "far from perfect" process (as in *Tesla*)[84] or even an outright

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under the entire fairness standard, namely, when it could be shown both (1) that the minority was financially injured by the timing (*i.e.*, from their point of view it was an especially poor time to be required to liquidate their investment) and (2) that the controlling shareholder gained from the timing of the transaction what the minority lost.") (internal quotations marks omitted).

[81] *Compare* Ex. 8 at 108:16-110:4, 113:12-23, 114:13-22; Ex. 12 at 316:10-317:10, 318:15-320:9; Ex. 31; Ex. 32; and Ex. 42 *with Morrison v. Berry*, 2020 WL 2843514, at *8 (Del. Ch. June 1, 2020) (noting that "an unfair merger process" results where a "conflicted financial advisor … conceals the conflict from the board of directors of [its] … client."); *Gesoff v. IIC Indus., Inc.*, 902 A.2d 1130, 1147 (Del. Ch. 2006) (describing fair-process issues where conflicted "financial advisor … was motivated by an incentive fee structure to close the deal").

[82] Remarkably, both Pivotal Committee members refused to testify voluntarily at trial in the appraisal action. *See* Trans. ID 67767671. This suggests that they felt similarly.

[83] *In re Tesla Motors, Inc. S'holder Litig.*, 2022 WL 1237185, at *31 (Del. Ch. Apr. 27, 2022).

[84] *Id.* at *2.

fiduciary breach (as in *PLX*)[85]—but no damages award. This risk drove both the decision to settle and the amount of the Settlement.

In Class Counsel's experience, cases usually get much better for plaintiffs over the course of fact discovery. In well-lawyered transactions, the "surface of events, … in most instances, will itself be well-crafted and unobjectionable."[86] But major strategic transactions are inevitably rife with conflicts.[87] And human beings are imperfect. So, when plaintiff's counsel are able to use the tools of fact discovery to "disturb[] the patina of normalcy surrounding the transaction,"[88] it is far from unusual for significant warts and defects to emerge. In many respects, this case followed that pattern. As detailed above, Class Counsel were able to uncover significant process defects that were not apparent from Pivotal's public filings or limited books-and-records production. With respect to damages, however, fact discovery did not meaningfully improve the Class's position.[89]

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[85] *In re PLX Tech. Inc. S'holders Litig.*, 2018 WL 5018535, at *2 (Del. Ch. Oct. 16, 2018).

[86] *In re Fort Howard Corp. S'holders Litig.*, 1988 WL 83147, at *12 (Del. Ch. Aug. 8, 1988).

[87] J. Travis Laster, *Revlon Is A Standard of Review: Why It's True and What It Means*, 19 FORDHAM J. CORP. & FIN. L. 5, 11-18 (2013) (explaining why sale transactions present particularly acute risks of conflicts, even outside the controller context).

[88] *In re Del Monte Foods Co. S'holders Litig.*, 25 A.3d 813, 817 (Del. Ch. 2011).

[89] Indeed, in some respects, it got worse. As noted above, the Merger was announced

At trial, Defendants would have relied on the expert opinion of Dr. Kenneth Lehn. Professor Lehn would have opined that the fair value of Pivotal was substantially less than $15 per share based on market evidence and a discounted cash flow analysis.[90] Lead Plaintiff and the Class would have relied on the expert analysis of Murray Beach (who also served as the expert for the appraisal petitioners). Beach would have opined that (i) revenue multiples from comparable companies and comparable transactions were the most reliable measure of fair value and (ii) a discounted cash flow analysis and Pivotal's market price were unreliable measures of value.[91] Based on these analyses, Beach would have testified that Pivotal's fair value was $20 per share ($5 per share more than the deal price).[92]

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soon after Pivotal had slashed its full-year guidance for FY2020, leading to a dramatic drop in the Company's stock price. When this case began, Class Counsel believed that they were likely to uncover evidence that Pivotal's management had deliberately given overly pessimistic guidance to make the Merger price seem more reasonable. *Accord In re Mindbody, Inc.*, 2020 WL 5870084, at *6 (Del. Ch. Oct. 2, 2020); *Dole*, 2015 WL 5052214, at *2.

The full record strongly suggests that was not the case. Contemporaneous emails show that the Company was facing genuine challenges and senior executives feared that Pivotal's growth was going to decelerate. *See, e.g.*, Ex. 23; Ex. 24; Ex. 25; Ex. 26; Ex. 27; Ex. 28.

While it is, of course, impossible to translate these subjective expressions of concern into a quantitative impact on damages, this was a significant hole in the narrative that Lead Plaintiff had initially hoped to be able to tell.

[90] Ex. 15 ¶¶ 11-14, 16.

[91] Ex. 13 ¶¶ 7, 54-116.

[92] *Id.* ¶ 209.

Beach's opinion was not irrational. To the contrary, his preference for valuing a high-growth software company by using comparable companies instead of a DCF was, objectively more aligned with the approach taken by sophisticated, real-world practitioners than Lehn's approach.[93] And Beach gave compelling reasons for disregarding the market evidence, including that as a controlled company, Pivotal was subject to a controller overhang that depressed its price by some hard-to-quantify amount.[94]

But the Court would not have been writing on a blank slate. The Supreme Court has, in recent years, had occasion to weigh on matters of valuation.

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[93] As Beach explained, Morgan Stanley relied upon this approach to value high-growth software companies like Pivotal because it had found that it possessed the largest "R squared" when conducting statistical regressions, meaning that it was the valuation approach "that most explains the valuation of a company."[93] Other financial advisors agreed that this was a common approach for companies like Pivotal. *See* Ex. 13 ¶¶ 111-13 (collecting banker testimony). By contrast, as Morgan Stanley's lead banker testified: (i) "a DCF ... with a software company is ... less reliable than a DCF for a traditional manufacturing concern"; (ii) the "limitations" of the DCF method are "more visible in the case of a software company"; and (iii) "DCFs are more, I would say, complicated and volatile and variable in the case of software companies versus other sectors." Ex. 10 at 54:15-17, 55:3-12.

[94] Ex. 14 ¶¶ 27-28; *see also In re Appraisal of Regal Entm't Grp.*, 2021 WL 1916364, at *26 (Del. Ch. May 13, 2021) ("[I]n an efficient market, participants will perceive the possibility that the controller will act in its own interests and discount the minority shares accordingly."); *see also Bandera Master Fund LP v. Boardwalk Pipeline P'rs, LP*, 2021 WL 5267734, at *83 (Del. Ch. Nov. 12, 2021) ("The presence of a controlling stockholder matters because participants will perceive the possibility that the controller will act in its own interests and discount the minority shares accordingly.") (cleaned up).

Specifically, the Supreme Court has reversed this Court when it has strayed too far from deal price and emphasized that trial courts should give significant weight to "real-world" evidence of fair value, including the unaffected market price and the deal price.[95] To be sure, neither *Aruba* nor *Dell* nor *DFC* involved a buyout by a controlling stockholder.[96] But even in cases with a controller or significant process problems, in the wake of *Dell* and *DFC*, this Court has given significant weight to unaffected market price and deal price as a "reality check."[97]

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[95] *Verition P'rs Master Fund Ltd. v. Aruba Networks, Inc.*, 210 A.3d 128, 138 (Del. 2019) ("the price a stock trades at in an efficient market is an important indicator of its economic value…."); *see also Dell, Inc. v. Magnetar Glob. Event Driven Master Fund Ltd*, 177 A.3d 1, 24 (Del. 2017) ("[T]he price produced by an efficient market is generally a more reliable assessment of fair value than the view of a single analyst, especially an expert witness who caters her valuation to the litigation imperatives of a well-heeled client."); *DFC Glob. Corp. v. Muirfield Value P'rs, L.P.*, 172 A.3d 346, 369–70 (Del. 2017) ("Market prices are typically viewed superior to other valuation techniques because, unlike, *e.g.*, a single person's discounted cash flow model, the market price should distill the collective judgment of the many based on all the publicly available information about a given company and the value of its shares.").

[96] *Aruba*, *Dell*, and *DFC* were appraisal cases, not breach of fiduciary duty cases, but "the fair price inquiry in a fiduciary duty claim is [often] largely equivalent to the fair value determination in an appraisal proceeding[.]" *Owen v. Cannon*, 2015 WL 3819204, at *31 (Del. Ch. June 17, 2015). *But see In re Columbia Pipeline Grp., Inc.*, 2021 WL 772562, at *44-46 (Del. Ch. Mar. 1, 2021) (explaining why a finding, in the appraisal context, that "fair value" was less than or equal to deal price is not necessarily dispositive of a fiduciary-duty action challenging the same transaction).

[97] *See, e.g.*, *Tesla*, 2022 WL 1237185, at *42 ("After a careful review of the market-based evidence presented at trial, I am satisfied that the market was sufficiently informed to reach a reliable assessment of SolarCity's value. And that evidence also

Moreover, where this Court has declined to look to market price, it has overwhelmingly fallen back on a DCF analysis.[98] The comparable companies approach taken by Beach is a distant third choice that the Court has described as "inferior to other methodologies" and "best viewed as a 'shortcut' to the discounted

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supports Elon's argument that Tesla paid a fair price for SolarCity."); *Dieckman v. Regency GP LP*, 2021 WL 537325, at *33 (Del. Ch. Feb. 15, 2021) ("The positive market reaction to the Merger's announcement corroborates its fairness to Regency."), *aff'd*, 264 A.3d 641 (Del. 2021); *Blueblade Capital Opportunities LLC v. Norcraft Cos., Inc.*, 2018 WL 3602940, at *39 (Del. Ch. July 27, 2018) ("the Merger Price is not a reliable indicator of … fair value…, however, … it is appropriate to consider the Merger Price as a 'reality check' on the Court's DCF valuation[.]"); *PLX*, 2018 WL 5018535, at *56 ("The real-world market evidence from the sale process provides another reason to reject the plaintiffs' damages case.") *aff'd*, 2018, 2019 WL 2144476 (Del.); *In re AOL Inc.*, 2018 WL 1037450, at *21 (Del. Ch. Feb. 23, 2018) ("While the deal process was not *Dell* Compliant and thus not entitled to deference as a reliable indicator of fair value, it was sufficiently robust that I use the deal price as a 'check' on my analysis, while granting it zero explicit weight."); *ACP Master, Ltd. v. Sprint Corp.*, 2017 WL 3421142, at *28 (Del. Ch. July 21, 2017), *aff'd*, 184 A.3d 1291 (Del. 2018).

[98] *AOL*, 2018 WL 1037450, at *2 ("Having rejected transaction price as the sole determinant of value, I find myself further unable, in a principled way, to assign it any weight as a portion of my fair value determination. … Therefore, I take the parties' suggestion to ascribe full weight to a discounted cash flow analysis."); *Norcraft*, 2018 WL 3602940, at *2 ("Having concluded that flaws in the sales process leading to the Merger undermine the reliability of the Merger Price as an indicator of fair value, and that the evidence *sub judice* does not allow for principled reliance upon the efficient capital markets hypothesis, I have turned to a traditional valuation methodology, a discounted cash flow ('DCF') analysis, to calculate the fair value of Norcraft as of the Merger date.") (cleaned up); *Gesoff*, 902 A.2d at 1155 n.138 ("The DCF method is frequently used in this court, and the court ... prefers to give it great, and sometimes even exclusive, weight when it may be used responsibly.") (cleaned up).

cash flow methods[.]"[99] The Court is particularly critical of comparable companies analyses that, like Beach's, return a wide range of results.[100]

To be sure, Beach did perform his own discounted cash flow analysis as a "cross-check,"[101] which yielded a value of $18.05 per share.[102] But in preparing his DCF analysis, Beach made several methodological choices that—although they were well-grounded in the facts of this case—were vulnerable to challenge under existing Delaware precedent. For example, Beach used a perpetuity growth rate of 5% because he found "no indication that the GDP rate is an appropriate ceiling for growth in the terminal period" within "the rapidly evolving technology sector in which Pivotal competes[.]"[103] As Beach noted, this was consistent with the terminal

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[99] *In re Appraisal of Jarden Corp.*, 2019 WL 3244085, at *33 (Del. Ch. July 19, 2019), *aff'd sub nom. Fir Tree Value Master Fund, LP v. Jarden Corp.*, 236 A.3d 313 (Del. 2020) (internal quotation omitted).

[100] *Compare* Ex. 13 at Exhibit 7 (median EV/LTM revenue multiple was 6.5X but the range was 3.6X to 21.8X) *with In re Trados Inc. S'holder Litig.*, 73 A.3d 17, 75 (Del. Ch. 2013) ("Becklean's data sets generated wide ranges of multiples … indicating that the companies in each data set were not in fact comparable."); *Gholl v. Emachines, Inc.*, 2004 WL 2847865, at *6 (Del. Ch. Nov. 24, 2004) ("This wide range of values implicitly violates the law of one price which holds that similar assets should sell for a similar price."), *aff'd*, 875 A.2d 632 (Del. 2005); *Paramount Commc'ns Inc. v. Time Inc.*, 1989 WL 79880, at *13 (Del. Ch. July 14, 1989) (criticizing valuation analysis that generated values falling within "a range that a Texan might feel at home on.").

[101] Ex. 13 ¶ 151, Exhibit 14.

[102] *Id.* ¶ 194.

[103] *Id.* ¶¶ 176, 181.

growth rates projected by Pivotal management.[104] But Class Counsel believed that the Court would have found this conclusion difficult to square with substantial Delaware precedent concluding that the rate of GDP growth is a ceiling for a perpetuity growth rate.[105]

Similarly, Beach declined to use Pivotal management's base case projections and developed his own.[106] Again, he had good reasons for doing so. As Beach explained, "the [base case management] projections relied upon by Morgan Stanley were (i) not prepared in the ordinary course of business, (ii) were intended to be 'super conservative,' and (iii) the out years of the projections were merely arithmetic extrapolations of earlier years. Moreover, … there is no indication that [management or] Morgan Stanley made any effort to update the projections to reflect

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[104] *Id.* ¶ 180.

[105] *See, e.g.*, *In re Cellular Tel. P'ship Litig.*, 2022 WL 698112, at *40 (Del. Ch. March 9, 2022) ("Conventional valuation wisdom holds that the perpetuity growth rate generally should fall somewhere between the rate of inflation and the projected growth rate of the nominal gross domestic product ('GDP')."); *Merion Capital, L.P. v. 3M Cogent, Inc.*, 2013 WL 3793896, at *21 (Del. Ch. July 8, 2013) ("A terminal growth rate should not be greater than the nominal growth rate for the United States economy, because if a company is assumed to grow at a higher rate indefinitely, its cash flow would eventually exceed America's gross national product.") (cleaned up). *But see Glob. GT LP v. Golden Telecom, Inc.*, 993 A.2d 497, 511 (Del. Ch. 2010) ("Generally, once an industry has matured, a company will grow at a steady rate that is roughly equal to the rate of nominal GDP growth.") (emphasis added).

[106] Ex. 13 ¶¶ 153-59.

the positive 'flash results' for Q2FY20."[107] Nonetheless, this methodological choice would also have been vulnerable to challenge under a significant line of Delaware precedents. "This Court prefers valuations based on management projections available as of the date of the merger and holds a healthy skepticism for post-merger adjustments to management projections or the creation of new projections entirely. Expert valuations that disregard contemporaneous management projections are sometimes completely discounted."[108]

Finally, Class Counsel considered whether the Court would analyze the but-for world where the Pivotal Committee refused to go along with VMware's timeline and Pivotal released its Q2 2020 earnings results in early September. Would the stock have "return[ed] to 'normal' trading levels" [109] (*i.e.*, above $15 per share) as Lankton expected? Or would it have "rebound[ed] but … not … recover[ed]

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[107] Ex. 14 ¶ 79; *see also* Ex. 13 ¶¶ 77-79.

[108] *Cede & Co. v. JRC Acq. Corp.*, 2004 WL 286963, at *2 (Del. Ch. Feb. 10, 2004); *see also In re SWS Grp., Inc.*, 2017 WL 2334852, at *11 (Del. Ch. May 30, 2017) ("This Court has long expressed its strong preference for management projections. Naturally, prior appraisal decisions have recognized that it is proper to be skeptical of '*post hoc*, litigation-driven forecasts' by experts.") (cleaned up); *Owen*, 2015 WL 3819204, at *18 ("When performing a DCF analysis to determine the fair value of stock, Delaware courts tend to place great weight on contemporaneous management projections because management ordinarily has the best first-hand knowledge of a company's operations.") (cleaned up).

[109] Ex. 36; *see also* Ex. 39; Ex. 8 at 200:12-202:10.

entirely"[110] (*i.e.*, perhaps still below $15 per share) as Lazard predicted? Ultimately, Class Counsel determined it is not possible to say and that the Court would be reluctant to guess. The "wrongdoer rule" does suggest that "when the defendant's wrongful act causes uncertainty in estimating damages, justice and sound public policy alike require that he should bear the risk of the uncertainty thus produced."[111] But in the absence of any reliable or rigorous way to quantify where the stock would trade, it was hard for Class Counsel to justify rolling the dice on behalf of Class members.

D. The Negotiation Process Further Supports the Settlement

Although the "give" and the "get" are the primary factors that the Court should consider in deciding whether to approve the Settlement, the Court should also consider the negotiation process that led to the Settlement.

Here, the Parties reached the Settlement through the assistance of Robert Meyer, a respected and experienced mediator who has helped resolve many significant stockholder actions in this Court. The Settlement was reached only after a full-day mediation session and several more months of negotiations regarding the

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[110] Ex. 34; *see also* Ex. 35; Ex. 11 at 116:4-121:11. Subsequently, on August 11, Lazard informed the VMware Committee that Pivotal had updated its Q2 flash numbers, "which show results are now ahead of prior forecasts[.]" Ex. 40 at VMW_00000370; Ex. 41 at LAZARD_00060970.

[111] *Boardwalk*, 2021 WL 5267734, at *88 (cleaned up).

settlement consideration.[112] Further, Class Counsel are experienced and competent lawyers with a track record of success in stockholder litigation. They performed a careful investigation of the facts and a thoughtful assessment of the Action's value. The Court can appropriately give weight to their considered judgment that this Settlement is an excellent result for the Class.[113]

E. The Plan of Allocation is Fair

The Court should also approve the plan of allocation, which follows the direct-distribution/no-claims-form roadmap set out in *Dole*,[114] as modified by *PLX*,[115] and directs consideration to stockholders whose Class A shares of Pivotal were exchanged for the Merger Consideration of $15 per share. As in *PLX* and *Garfield*, settlement funds intended for Class members who held their shares through Depository Trust Company ("DTC") participants will be distributed to DTC

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[112] *Activision*, 124 A.3d at 1067 ("The manner in which the Settlement was reached provides further evidence of its reasonableness. It resulted from a protracted mediation conducted by a highly respected" mediator).

[113] *Doe v. Bradley*, 64 A.3d 379, 396 (Del. Sup. Ct. 2012) ("It is appropriate for the Court to consider the opinions of experienced counsel when determining the fairness of a proposed class action.").

[114] *In re Dole Food Co., Inc.*, 2017 WL 624843 (Del. Ch. Feb. 15, 2017).

[115] *In re PLX Tech., Inc. S'holders Litig.*, 2022 WL 1133118, at *1 (Del. Ch. Apr. 18, 2022) (approving modifications to a *Dole*-style distribution); *see also Garfield v. BlackRock Mortg. Ventures, LLC, et al.*, 2018-0917-KSJM (Del. Ch. June 8, 2022) (Trans. ID 67704702) (order granting motion to modify *Dole*-style plan of distribution consistent with *PLX*).

participants along with payment instructions to ensure that the appraisal petitioners, Defendants and other persons who received the $15 per share Merger consideration for their Class A shares do not receive any portion of the settlement fund. For non-DTC record holders, funds will be distributed directly to record holders.

IV. THE COURT SHOULD APPROVE THE REQUESTED FEE AND EXPENSE AWARD

Plaintiff's Counsel seek a fee of $10,625,000 which is 25% of the common fund, plus expenses of $984,891.13 for a total Fee and Expense Award of $11,609,891.13 . In considering that request, the Court will apply the familiar *Sugarland* factors: "1) the results achieved; 2) the time and effort of counsel; 3) the relative complexities of the litigation; 4) any contingency factor; and 5) the standing and ability of counsel involved."[116]

These factors support the requested award.

A. Counsel Achieved a Significant Benefit

The benefits achieved through litigation are accorded the greatest weight in determining an appropriate fee award.[117] The $42.5 million cash recovery weighs strongly in favor of approving the Fee and Expense Award.

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[116] *Ams. Mining*, 51 A.3d at 1254 (citing *Sugarland Indus., Inc. v. Thomas*, 420 A.2d 142, 149 (Del. 1980)).

[117] *Seinfeld v. Coker*, 847 A.2d 330, 336 (Del. Ch. 2000); *Ams. Mining*, 51 A.3d at 1254; *In re Cox Radio, Inc. S'holders Litig.*, 2010 WL 1806616, at *20 (Del. Ch.

Plaintiff's Counsel are requesting 25% of the common fund, plus expenses. As the table below shows, this Court has made similar awards in cases resolved at a similar or earlier stage of the litigation in multiple recent decisions:

Case	Settlement Amount	Fee As Percentage Of Recovery	Stage of Litigation
In re Starz S'holder Litig., C.A. No. 12584-VCG	$92.5M	30% all-in award (28% after the deduction of approximately $1.7 million in expenses)	Settlement reached after fact discovery, expert discovery, and summary judgment briefing complete but before summary judgment hearing
Cummings v. Edens ("New Senior"), C.A. No. 13007-VCS	$53M	27% all-in award (25.3% after the deduction of approximately $1.1 million in expenses)	Settlement reached after fact discovery, expert discovery, and summary judgment briefing complete but two days before summary judgment hearing
In re Handy & Harman, Ltd. S'holder Litig., Consol. C.A. No. 2017-0882-VCMR	$30M	25% fee award, plus approximately $280,000 in expenses	Settlement achieved near the close of fact discovery with most fact-witness depositions complete; no expert reports or expert discovery and no summary judgment briefs filed

May 6, 2010) ("the size of the benefit being of paramount importance"); *Franklin Balance Sheet Inv. Fund v. Crowley*, 2007 WL 2495018, at *8 (Del. Ch. Aug. 30, 2017) ("courts assign the greatest weight to the benefit achieved by the litigation").

Case	Settlement Amount	Fee As Percentage Of Recovery	Stage of Litigation
Arkansas Teacher Retirement Sys. v. Alon USA Energy, Inc., et al., C.A. No. 2017-0453-KSJM	$44.75M	25% fee award, plus approximately $1 million in expenses	Settlement reached after submission of pre-trial briefs (Court did not grant leave for summary judgment briefing)
Witmer v. H.I.G. Capital, L.L.C., et al. ("Surgery Partners"), C.A. No. 2017-0862-LWW	$45M	25% fee award, plus approximately $900,000 in expenses	Settlement reached after expert discovery on the day before summary judgment hearing
In re Columbia Pipeline Grp., Inc. Merger Litig., Consolidated C.A. No. 2018-0484-JTL	$79 million	23% all-in award (22.4% after the deduction of $446,776.39 in expenses)	Partial settlement reached before conclusion of fact discovery, after multiple depositions had been taken

B. Counsel Faced Contingent Risk

Counsel are "entitled to a much larger fee" where, as here, "the compensation is contingent[.]"[118] For all the reasons set forth above, this case presented "true contingency risk"[119] to counsel. "Counsel did not enter the case with a ready-made exit or obvious settlement opportunity."[120] From inception, this was a post-closing

[118] *Ryan v. Gifford*, 2009 WL 18143, at *13 (Del. Ch. Jan. 2, 2009).

[119] *Activision*, 124 A.3d at 1074.

[120] *Sciabacucchi v. Salzberg*, 2019 WL 2913272, at *8 (Del. Ch. July 8, 2019), *vacated on unrelated grounds sub nom. Salzberg v. Sciabacucchi*, 227 A.3d 102 (Del. 2020).

damages case where "[c]ounsel faced … the realistic possibility that [they] would receive nothing for their time and effort."[121]

C. Counsel Invested Significant Time and Effort And Expended Significant Expenses

"The time and effort expended by counsel is considered as a cross-check to guard against windfalls[.]"[122] But the more important aspect is "effort, as in what [plaintiff's] counsel actually did."[123]

Here, the Settlement is the result of Class Counsel's multi-year effort litigating this Action. The parties did not reach agreement until after they had completed expert discovery and begun preparing for trial. Class Counsel's litigation efforts included obtaining, reviewing and analyzing over 500,000 pages of documents, taking and defending 19 fact depositions, participating in extensive expert discovery, and beginning preparations for trial.

Class Counsel spent 14,856.95 hours on this Action through the date that the term sheet was signed on May 2, 2022. The requested Fee and Expense Award reflects an implied hourly rate of $715.15, which is well within the range of implied

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[121] *In re Orchard Enters., Inc. S'holder Litig.*, 2014 WL 4181912, at *9 (Del. Ch. Aug. 22, 2014).

[122] *In re Emerson Radio S'holder Deriv. Litig.*, 2011 WL 1135006, at *2 (Del. Ch. Mar. 28, 2011).

[123] *In re Del Monte Foods Co. S'holders Litig.*, 2011 WL 2535256, at *13 (Del. Ch. June 27, 2011) (citations omitted).

hourly rates reflected by fee and expense awards approved by the Court.[124]

When cases settle early, this Court frequently awards a single all-in figure for fees and expenses. But in actions where counsel litigate for years and obtain a large common-fund recovery, the Court will often calculate the fee as a percentage of the gross common fund and award expenses separately.[125] As Vice Chancellor Laster recently explained in *Haverhill Retirement System v. Kerley*, a "separate expense award" is appropriate where, as here, "people go deep in a case and incur substantial amounts … where people have put out high six figures to an expert, or a lot of time, a lot of expenses, doing discovery and depositions and things like that, where it would really affect the compensatory function of the fee number."[126]

Here, Class Counsel incurred a total of $984,891.13 in out-of-pocket expenses. Those expenses were reasonably and necessarily incurred in pursuit of

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[124] *Ams. Mining*, 51 A.3d at 1257 (affirming fee award of "approximately $35,000 an hour, if you look at it that way"); *Salzberg*, 2019 WL 2913272, at *6 (approving fee of $11,262.26 per hour); *Activision*, 124 A.3d at 1073 (approving fee of $9,685 per hour); *City of Monroe Emps. Ret. Sys. v. Murdoch*, 2018 WL 822498, at *3 (Del. Ch. Feb. 9, 2018) (ORDER), 2018 WL 565520 (BRIEF) (approved fee of $4,015.96 per hour).

[125] *See, e.g.*, *In re: Handy & Harman Ltd. S'holder Litig.*, Consol. C.A. No. 2017-0882-VCMR (Del. Ch. Nov. 14, 2019) (TRANSCRIPT) (Ex. C) at 55 ("I'm awarding $7.5 million in attorneys' fees, which equates to 25 percent, plus I'm awarding the out-of-pocket expenses of $280,239.08."); *Gifford*, 2009 WL 18143, at *13–14 (awarding one-third of the monetary portion of the settlement in fees plus $398,100.79 in expenses).

[126] C.A. No. 11149-VCL (Del. Ch. Sept. 28, 2017) (TRANSCRIPT) (Ex. A) at 33.

this litigation on behalf of Lead Plaintiff and the Class. Approximately 83% of the total expenses reflected charges by Lead Plaintiff's expert. The remaining costs include mediation expenses, research costs, filing fees, travel expenses, and court reporting services and were all necessary to the successful prosecution of the Action.

D. Counsel Are Well Respected in This Court

Class Counsel are known to and have a significant track record of success representing stockholder plaintiffs in this Court. Their standing and ability fully justify the requested Fee and Expense award.

V. THE COURT SHOULD APPROVE AN INCENTIVE AWARD OF $10,000 TO LEAD PLAINTIFF

Finally, the Court should approve the payment of a $10,000 incentive award to the Lead Plaintiff, to be paid out of the fees awarded to Class Counsel as compensation for the time and effort that she devoted to this matter, which required her to produce documents and sit for a deposition.

The Supreme Court has recently re-affirmed that lead plaintiffs may be paid modest incentive awards, where justified by the factors identified in *Raider v. Sunderland*: (i) the time, effort, and expertise expended by the class representative, and (ii) the benefit to the class.[127] Public policy also favors such an award. "Compensating the lead plaintiff for efforts expended is not only a rescissory

[127] 2006 WL 75310, at *1 (Del. Ch. Jan. 4, 2006), *cited in Isaacson v. Niedermayer*, 200 A.3d 1205, 1205 n.1 (Del. 2018).

measure returning certain lead plaintiffs to their position before the case was initiated, but an incentive to proceed with costly litigation (especially costly for an actively participating plaintiff) with uncertain outcomes."[128] And in "the current environment" a stockholder who files plenary litigation faces "the very real possibility of having their computer and other electronic devices imaged and searched, sitting for a deposition—perhaps more than one if they also institute 220 litigation—and then perhaps testify at trial."[129] Here, Ms. Lopez produced documents twice: once in connection with the Section 220 action and again in this Action. Her email, computer, and mobile device were imaged over a period of several days.[130] Ms. Lopez also responded to two sets of interrogatories in each action and sat for a four-hour deposition in this Action.

The requested award is "reasonable and will be paid out of [Class] Counsel's fee, so [it will] not harm the class. [The requested award has] been fully disclosed

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[128] *Raider*, 2006 WL 75310, at *1.

[129] *Verma v. Costolo*, C.A. No. 2018-0509-PAF (Del. Ch. July 27, 2021) (TRANSCRIPT) (Ex. D) at 52-53.

[130] *Voight v. Metcalf*, C.A. No. 2018-0828-JTL (Del. Ch. Feb. 2, 2022) (TRANSCRIPT) (Ex. E) at 44-45 ("I will tell you, if you told me that I was going to have to image all my devices, produce a bunch of documents, spend a day with you-all, and then have a full-day deposition where any one of the excellent defense lawyers on this team was going to go into all my potentially tangentially related decisions that might touch on something about my ability to act in a fiduciary capacity or be in this litigation, I wouldn't do it for $5,000.").

[in the notice] and [is] not so large as to raise specters of conflicts of interest or improper lawyer-client entanglements."[131] The Court has recently approved awards ranging from $5,000 to $100,000.[132] A $10,000 award is appropriate here.

VI. CONCLUSION

For all the foregoing reasons, the Court should approve the Settlement, award the requested Fee and Expense Award to Class Counsel, and award the requested incentive award to Lead Plaintiff.

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[131] *Orchard*, 2014 WL 4181912, at *13.

[132] *Mesirov v. Enbridge Energy Co., Inc.*, 2019 WL 690410, at *1 (Del. Ch. Feb. 18, 2019) (ORDER) (award of $7,500 to plaintiff); *Hignett v. Adams*, 2018 WL 4922098, at *3 (Del. Ch. Oct. 9, 20118) (ORDER) ($5,000 incentive awards to each of two lead plaintiffs); *In re Saba Software, Inc. S'holder Litig.*, 2018 WL 4620107, at *4 (Del. Ch. Sept. 26, 2018) (ORDER) ($100,000 award to lead plaintiff); *Doppelt v. Windstream Hldgs., Inc.*, 2018 WL 3069771, at *3 (Del. Ch. June 20, 2018) (ORDER) (awards of $15,000 and $7,500 to lead plaintiffs); *In re Physicians Formula Hldgs., Inc.*, 2017 WL 319058, at *4 (Del. Ch. Jan. 20, 2017) (ORDER) ($25,000 award to one lead plaintiff; $5,000 to the other).

Dated: September 6, 2022

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

OF COUNSEL:

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Thomas G. James
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/s/ Gregory V. Varallo

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Co-Lead Counsel for Plaintiff Kenia Lopez and the Class

WORDS: 9,495

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: PIVOTAL SOFTWARE, INC. STOCKHOLDERS' LITIGATION	C.A. No. 2020-0440-KSJM

AFFIDAVIT OF KENIA LOPEZ IN SUPPORT OF PROPOSED SETTLEMENT, APPLICATION FOR ATTORNEYS' FEES AND EXPENSES, AND INCENTIVE AWARD TO PLAINTIFF

I, Kenia Lopez, do hereby state as follows:

1. I am the Lead Plaintiff in the above-captioned stockholder class action (the "Action"). I respectfully submit this affidavit in support of the proposed settlement of the Action (the "Settlement"), the requested Fee and Expense Award, and my request for an Incentive Award of $10,000 for my work as a representative plaintiff in this Action, which would be paid solely from any award of attorneys' fees and expenses ordered by the Court.

2. The Court appointed me as Lead Plaintiff to represent a class of former stockholders of Pivotal Software, Inc. ("Pivotal" or the "Company") 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.

3. In connection with my role as Lead Plaintiff in the Action, I have monitored the work of counsel and been kept apprised of the status of the litigation. I have regularly communicated with my counsel regarding the strategic direction, significant developments, status updates, and major decisions in the litigation.

Further, I discussed with my counsel and/or reviewed the pleadings and relevant documents in the Action, including, among other things: (i) the inspection demand pursuant to 8 *Del. C.* §220 ("Section 220"); (ii) the complaint in the subsequent Section 220 action; (iii) the plenary complaint in this Action; and (iv) the document requests and interrogatories served upon me and my answers thereto in the Section 220 action and this Action. I also prepared for and sat for a deposition in this Action.

4. I have accepted and authorized the Settlement because I believe that it is a fair, reasonable, and adequate compromise that is in the best interest of the Class. I believe that, balanced against the risks, duration, and uncertainty of continued litigation, the Settlement's guarantee of significant benefits to the Class justified settling this Action on the agreed terms.

5. My counsel never offered any assurances that I would receive any compensation for bringing the Action, and the prospect of such an award was not a factor in my decision to initiate, pursue, or settle the Action. I did not commence the Action to obtain any special benefit. I have not received, been promised, or been offered—and would not and will not accept—any form of compensation, directly or indirectly, for prosecuting or serving as a representative party in this Action, except (i) such fees, costs, or other payments as the Court expressly approves to be paid to me or on my behalf, or (ii) reimbursement, paid by my attorneys, of actual and

reasonable out-of-pocket expenditures in connection with the prosecution of the Action.

6. My counsel has requested on my behalf a $10,000 Incentive Award in consideration of the time and effort I have expended on behalf of the Class. In addition to my efforts described in paragraph 3, above, on behalf of the Class, I have: (i) twice produced my personal documents; (ii) had my email, computer, and mobile device imaged over a period of several days; and (iii) responded to two sets of interrogatories in each both the Section 220 action and the Action.

7. I state under penalty of perjury under the laws of the State of Delaware that the foregoing is true and correct.

Executed this 24 day of August, 2022

Kenia S. Lopez

KENIA LOPEZ

SWORN and SUBSCRIBED before me on this
24th day of August, 2022.

Notary Public
My Commission Expires: 03/2027

DANIEL BELTRAN
Notary Public - State of Florida
Commission # HH 236943
My Comm. Expires Mar 7, 2026
Bonded through National Notary Assn.

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: PIVOTAL SOFTWARE, INC. STOCKHOLDERS' LITIGATION	C.A. No. 2020-0440-KSJM

AFFIDAVIT OF EDWARD G. TIMLIN IN SUPPORT OF PLAINTIFF'S APPLICATION FOR SETTLEMENT APPROVAL AND AN AWARD OF ATTORNEYS' FEES AND EXPENSES

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTHESTER)

I, Edward G. Timlin , being duly sworn, deposes and say:

1. I am a member in good standing of the Bar of the State of New York and a partner with the law firm of Bernstein Litowitz Berger & Grossmann LLP ("BLB&G"). BLB&G has served as Co-Lead Counsel for Plaintiff Kenia Lopez ("Plaintiff") in the above-captioned action (the "Action"). I submit this Affidavit in support of the contemporaneously-filed Brief in Support of Application for Final Approval of Settlement, an Award of Attorneys' Fees and Expenses and an Incentive Award.

2. BLB&G undertook this litigation on an entirely contingent basis. From the commencement of this Action through May 2, 2022, BLB&G attorneys and paraprofessionals dedicated 7,655.75 hours with respect to the prosecution of this Action for a lodestar value of $4,264,943.75, based on BLB&G's current hourly rates that are the usual and customary rates for each individual in BLB&G's cases. A breakdown of the hours, rates and lodestar is as follows:

Name	Number of Hours	Rate	Lodestar
Partner			
Mark Lebovitch	102.75	$1,100	$113,025.00
Jeroen van Kwawegen	106.25	$1,100	$116,875.00
Edward Timlin	1,103.50	$900	$993,150.00
Greg Varallo	99.50	$1,100	$109,450.00
Associate			
Thomas James	1,165.25	$575	$670,018.75
Jacqueline Ma	771.75	$500	$385,875.00
Litigation Support			
Paul Charlotin	169.00	$375	$63,375.00
Johanna Pitcairn	12.00	$400	$4,800.00
Roberto Santamarina	82.25	$425	$34,956.25
Managing Clerk			
Mahiri Buffong	47.75	$400	$19,100.00
Case Managers			
Kenneth Cardwell	91.50	$375	$34,312.50
Janielle Lattimore	7.00	$375	$2,625.00
Jay Layfield	44.75	$375	$16,781.25
Ronald Wittman	108.25	$375	$40,593.75
Senior Staff Attorneys			
David C. Carlet	1,720.00	$450	$774,000.00
Stavros Katsetos	1,028.00	$450	$462,600.00
Staff Attorney			
Scott Horlacher	862.00	$425	$366,350.00
Lewis Smith	134.25	$425	$57,056.25
Total	**7,655.75**		**$4,264,943.75**

3. During the course of the Action, BLB&G incurred and disbursed $472,271.68 in expenses necessary to the prosecution of the Action. The following table summarizes these expenses:

Category	**Amount**
Court Fees	$15,477.75
Service of Process	$3,991.87
On-Line Factual Research	$20,819.33
Document Management/Litigation Support	$3,180.06
On-Line Legal Research	$12,471.91
Telephone	$269.12
Postage & Express Mail	$1,843.50
Hand Delivery Charges	$50.25
Local Transportation	$2,935.87
Internal Copying/Printing	$6.90
Outside Copying	$7,673.19
Out of Town travel	$2,172.97
Working Meals	$1,514.04
Court Reporting & Transcripts	$40,178.40
Experts	$353,921.12
Mediation Fees	$5,765.40
Total	**$472,271.68**

4. The expenses incurred in this Action are reflected in the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

I declare under penalty of perjury under the laws of Delaware that the foregoing is true and correct.

Executed this 6th day of September, 2022.

Edward G. Timlin

Sworn to and subscribed before me
this 6th day of September, 2022

NOTARY PUBLIC

JOHN DICANIO
NOTARY PUBLIC STATE OF NEW YORK
WESTCHESTER COUNTY
LIC #01DI4977768
COMMISSION EXPIRES 2/11/2023

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: PIVOTAL SOFTWARE, INC. STOCKHOLDERS' LITIGATION	C.A. No. 2020-0440-KSJM

AFFIDAVIT OF JASON M. LEVITON

COMMONWEALTH OF MASSACHUSETTS :
: S.S.
COUNTY OF SUFFOLK :

I, Jason M. Leviton, hereby declare as follows:

1. I am a member in good standing of the Bar of the Supreme Court of the Commonwealth of Massachusetts and a partner of Block & Leviton LLP ("B&L"), which acts as co-counsel for Lead Plaintiff.[1] I am admitted pro hac vice in this Action. I submit this affidavit in support of Lead Plaintiff's Application for Final Approval of Settlement, an Award of Attorneys' Fees and Expenses and an Incentive Award.

2. Lead Plaintiff's Counsel, including B&L, represented Lead Plaintiff in this Action on a fully contingent basis. B&L timekeepers dedicated 6,727.7 hours to the prosecution of the Action from its commencement through May 2, 2022 (the date of the executed term sheet). The total lodestar amount is based on my firm's current rates, which are our standard rates for corporate litigation matters. A breakdown of

[1] Defined terms have the same meaning as those used in the accompanying motion.

B&L's lodestar through May 2, 2022 is as follows:

Timekeeper	Hourly Rate	Hours	Total
Nathan Cook (P)*	$950	296.2	$281,390.00
Jason Leviton (P)	$950	327.3	$310,935.00
Joel Fleming (P)	$800	495.9	$396,720.00
David Dorfman (A)	$625	579.4	$362,125.00
Lauren Godles Milgroom (A)	$540	9.9	$5,346.00
Mae Oberste (A)*	$540	149.6	$80,784.00
Amanda Crawford (A)	$525	718.0	$376,950.00
Bryan Jennings (A)	$525	11.5	$6,037.50
Jeffrey Gray (A)	$450	1,597.3	$718,785.00
Liliana Birziche-Miller (A)	$400	860.5	$344,200.00
Connie Jordan (CA)*	$395	1,640.0	$647,800.00
Rachel Murphy (PL)	$280	26.0	$7,280.00
Olivia Cohen (LC)*	$275	2.5	$687.50
Robert Erikson (LC)*	$275	6.1	$1,677.50
Shilpa Sahasivam (LC)*	$275	7.50	$2,062.50
TOTAL:		**6727.7**	**$3,542,780.00**

(P)Partner *(A)Associate* *(CA) Contract Attorney*

(LC) Law Clerk *(PL) Paralegal*

** No longer associated with Block & Leviton; billing rate listed is last rate while still at the firm*

3. My firm's expenses total $510,898.65. Those expenses are broken down by category below:

Expense Type	Amount
Expert Fees	$466,392.01
Deposition Fees	$16,233.98
Online Research (Westlaw, PACER, AlphaSense)	$15,497.11
Mediation Fees	$7,725.60
Printing / Copying / Delivery Fees / Courier Fees / Postage	$1,947.47

Expense Type	Amount
Court Fees / Filing Fees	$1,787.24
Travel / Lodging / Meals	$1,315.24
TOTAL:	**$510,898.65**

4. The expenses and charges pertaining to this case are reflected in the books and records of my firm. These books and records are prepared from receipts, expense vouchers, check records and other documents and are an accurate record of the expenses.

5. For the reasons stated in Lead Plaintiff's Brief In Support of Application for Final Approval of Settlement, an Award of Attorneys' Fees and Expenses and an Incentive Award, I believe that the settlement is fair and should be approved.

Executed on the 6th day of September 2022.

Jason M. Leviton

Sworn to and subscribed
before me this 6 day of September 2022

Notary Public

My commission expires: Nov. 22, 2024

LUCIA ALEXANDRIA STROUT
Notary Public
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires
November 22, 2024

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: PIVOTAL SOFTWARE, INC. STOCKHOLDERS' LITIGATION	C.A. No. 2020-0440-KSJM

AFFIDAVIT OF JAMES M. FICARO IN SUPPORT OF PLAINTIFF'S APPLICATION FOR SETTLEMENT APPROVAL AND AN AWARD OF ATTORNEYS' FEES AND EXPENSES

COMMONWEALTH OF PENNSYLVANIA)
) ss.:
COUNTY OF MONTGOMERY)

I, James M. Ficaro, being duly sworn, deposes and say:

1. I am a member in good standing of the Bar of the Commonwealth of Pennsylvania and a partner with The Weiser Law Firm, P.C. ("Weiser Firm"). The Weiser Firm has served as additional counsel for Plaintiff Kenia Lopez ("Plaintiff") in the above-captioned action (the "Action"). I submit this Affidavit in support of the contemporaneously-filed Brief in Support of the Proposed Settlement, Class Certification, an Award of Attorneys' Fees and Expenses, and a Plaintiff Incentive Award.

2. The Weiser Law Firm undertook this litigation on an entirely contingent basis. From the commencement of this Action through May 2, 2022, Weiser Firm attorneys dedicated 473.50 hours with respect to the prosecution of this Action for a lodestar value of $401,637.50, based on the Weiser Firm's current hourly rates that are the usual and customary rates for each individual in the Weiser Firm's cases. A breakdown of the hours, rates and lodestar is as follows:

Name	Number of Hours	Rate	Lodestar
Partner			
Robert B. Weiser	65.25	$1,150	$75,037.50
James M. Ficaro	408.25	$800	$326,600.00
Total	**473.50**		**$401,637.50**

3. During the course of the Action, the Weiser Firm incurred and disbursed $1,720.80 in expenses necessary to the prosecution of the Action. The following table summarizes these expenses:

Category	Amount
Notary Services	$239.16
Postage & Express Mail	$17.00
On-Line Legal Research	$1,464.64
Total	**$1,720.80**

4. The expenses incurred in this Action are reflected in the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

I declare under penalty of perjury under the laws of Delaware that the foregoing is true and correct.

Executed this 6th day of September, 2022.

James M. Ficaro 09/06/2022

James M. Ficaro

Sworn to and subscribed before me
this 6th day of September, 2022

NOTARY PUBLIC
Ravi Seville Lewis

State of Texas
County of Harris

Ravi Seville Lewis
ID NUMBER
133740308
COMMISSION EXPIRES
May 3, 2026

Sworn to and subscribed before me
on 09/06/2022 by James M. Ficaro.
Notarized online using audio-video communication