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Counsel for Plaintiff Jason Hill

[Additional counsel listed on signature page.]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

JASON HILL, Individually and on Behalf of All
Others Similarly Situated,

Plaintiff,

vs.

PIVOTAL SOFTWARE, INC.; ROBERT MEE;
CYNTHIA GAYLOR; PAUL MARITZ;
MICHAEL S. DELL; ZANE ROWE; EGON
DURBAN; WILLIAM D. GREEN; MARCY S.
KLEVORN; KHOZEMA Z.
SHIPCHANDLER; MORGAN STANLEY &
CO. LLC; GOLDMAN SACHS & CO. LLC;
CITIGROUP GLOBAL MARKETS INC.;
MERRILL LYNCH, PIERCE, FENNER &
SMITH INC.; BARCLAYS CAPITAL INC.;
CREDIT SUISSE SECURITIES (USA) LLC;
RBC CAPITAL MARKETS, LLC; UBS
SECURITIES LLC; WELLS FARGO
SECURITIES LLC; KEYBANC CAPITAL
MARKETS INC.; WILLIAM BLAIR & CO.,
LLC; MISCHLER FINANCIAL GROUP,
INC.; SAMUEL A. RAMIREZ & CO., INC.;
SIEBERT CISNEROS SHANK & CO., LLC;
WILLIAMS CAPITAL GROUP, L.P.;

Defendants.

FILED

San Francisco County Superior Court

JUN 14 2019

CLERK OF THE COURT

BY:  Deputy Clerk

Case No. **CGC - 19 - 576750**

CLASS ACTION

**COMPLAINT FOR VIOLATIONS OF
THE SECURITIES ACT OF 1933**

DEMAND FOR JURY TRIAL

1 customers and the industry's sentiment shifted away from Pivotal's principal, yet outdated and
2 inadequate, offering because it was incompatible with the industry-standard platform.

3 7. With the benefit of these misrepresentations and omissions, the IPO was extremely
4 lucrative for Defendants, who raised more than \$638 million in gross proceeds.

5 8. But when the truth of Defendants' misrepresentations and omissions became known,
6 the price of Pivotal shares declined sharply. By the commencement of this action, Pivotal shares had
7 traded below \$11.00 per share, an *over 27% decline* from the Offering price. As a result, investors
8 suffered tens of millions of dollars in losses.

9 JURISDICTION AND VENUE

10 9. This Court has original subject matter jurisdiction under the California Constitution,
11 Article VI, §10. Removal is barred by §22 of the 1933 Act.

12 10. This Court has personal jurisdiction under California Code of Civil Procedure §410.10
13 because Defendants and their agents are headquartered in or otherwise reside in this County or
14 California or affirmatively solicited the subject securities and Registration Statement to investors in
15 California, including, *e.g.*, during roadshows conducted in California, and those contacts with
16 California have a substantial connection to the claims alleged herein.

17 11. This Court is a proper venue under C.C.P. §395.

18 PARTIES

19 12. Plaintiff Hill purchased Pivotal shares issued pursuant to the Registration Statement
20 and was damaged thereby.

21 13. Defendant Pivotal is a cloud platform technology company headquartered in San
22 Francisco, California. Pivotal is incorporated under the laws of Delaware, and its common stock
23 trades on the NYSE exchange under the ticker "PVTL."

24 14. Defendant Robert Mee was, at the time of the IPO, the Chief Executive Officer
25 ("CEO") and a director of Pivotal. He reviewed, contributed to, and signed the Registration
26 Statement.

27 15. Defendant Cynthia Gaylor was, at the time of the IPO, the Chief Financial Officer
28 ("CFO") of Pivotal. She reviewed, contributed to, and signed the Registration Statement.

1 16. Defendant Paul Maritz was, at the time of the IPO, Chairman of the Board of Directors
2 (the "Board"). He reviewed, contributed to, and signed the Registration Statement.

3 17. Defendant Michael S. Dell was, at the time of the IPO, a director of Pivotal. He
4 reviewed, contributed to, and signed the Registration Statement.

5 18. Defendant Zane Rowe was, at the time of the IPO, a director of Pivotal. He reviewed,
6 contributed to, and signed the Registration Statement.

7 19. Defendant Egon Durban was, at the time of the IPO, a director of Pivotal. He
8 reviewed, contributed to, and signed the Registration Statement.

9 20. Defendant William D. Green was, at the time of the IPO, a director of Pivotal. He
10 reviewed, contributed to, and signed the Registration Statement.

11 21. Defendant Marcy S. Klevorn was, at the time of the IPO, a director of Pivotal. He
12 reviewed, contributed to, and signed the Registration Statement.

13 22. Defendant Khozema Z. Shipchandler was, at the time of the IPO, a director of Pivotal.
14 He reviewed, contributed to, and signed the Registration Statement.

15 23. The Defendants named in ¶¶14-22 above are collectively referred to herein as the
16 "Individual Defendants." The Individual Defendants each signed the Registration Statement,
17 solicited the investing public to purchase securities issued pursuant thereto, hired and assisted the
18 underwriters, planned and contributed to the IPO and Registration Statement, and attended road
19 shows and other promotions to meet with and present favorable information to potential Pivotal
20 investors, all motivated by their own and the Company's financial interests.

21 24. Defendant Morgan Stanley & Co. LLC is a financial services company that acted as
22 an underwriter for the IPO, helping to draft and disseminate the Registration Statement and solicit
23 investors to purchase Pivotal securities issued pursuant thereto.

24 25. Defendant Goldman Sachs & Co. LLC is a financial services company that acted as
25 an underwriter for the IPO, helping to draft and disseminate the Registration Statement and solicit
26 investors to purchase Pivotal securities issued pursuant thereto.

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1 26. Defendant Citigroup Global Markets Inc. is a financial services company that acted as
2 an underwriter for the IPO, helping to draft and disseminate the Registration Statement and solicit
3 investors to purchase Pivotal securities issued pursuant thereto.

4 27. Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated is a financial services
5 company that acted as an underwriter for the IPO, helping to draft and disseminate the Registration
6 Statement and solicit investors to purchase Pivotal securities issued pursuant thereto.

7 28. Defendant Barclays Capital Inc. is a financial services company that acted as an
8 underwriter for the IPO, helping to draft and disseminate the Registration Statement and solicit
9 investors to purchase Pivotal securities issued pursuant thereto.

10 29. Defendant Credit Suisse Securities (USA) LLC is a financial services company that
11 acted as an underwriter for the IPO, helping to draft and disseminate the Registration Statement and
12 solicit investors to purchase Pivotal securities issued pursuant thereto.

13 30. Defendant RBC Capital Markets, LLC is a financial services company that acted as an
14 underwriter for the IPO, helping to draft and disseminate the Registration Statement and solicit
15 investors to purchase Pivotal securities issued pursuant thereto.

16 31. Defendant UBS Securities LLC is a financial services company that acted as an
17 underwriter for the IPO, helping to draft and disseminate the Registration Statement and solicit
18 investors to purchase Pivotal securities issued pursuant thereto.

19 32. Defendant Wells Fargo Securities, LLC is a financial services company that acted as
20 an underwriter for the IPO, helping to draft and disseminate the Registration Statement and solicit
21 investors to purchase Pivotal securities issued pursuant thereto.

22 33. Defendant KeyBanc Capital Markets Inc. is a financial services company that acted as
23 an underwriter for the IPO, helping to draft and disseminate the Registration Statement and solicit
24 investors to purchase Pivotal securities issued pursuant thereto.

25 34. Defendant William Blair & Company, LLC is a financial services company that acted
26 as an underwriter for the IPO, helping to draft and disseminate the Registration Statement and solicit
27 investors to purchase Pivotal securities issued pursuant thereto.

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1 35. Defendant Mischler Financial Group, Inc. is a financial services company that acted
2 as an underwriter for the IPO, helping to draft and disseminate the Registration Statement and solicit
3 investors to purchase Pivotal securities issued pursuant thereto.

4 36. Defendant Samuel A. Ramirez & Company, Inc. is a financial services company that
5 acted as an underwriter for the IPO, helping to draft and disseminate the Registration Statement and
6 solicit investors to purchase Pivotal securities issued pursuant thereto.

7 37. Defendant Siebert Cisneros Shank & Co., LLC is a financial services company that
8 acted as an underwriter for the IPO, helping to draft and disseminate the Registration Statement and
9 solicit investors to purchase Pivotal securities issued pursuant thereto.

10 38. Defendant Williams Capital Group, L.P. is a financial services company that acted as
11 an underwriter for the IPO, helping to draft and disseminate the Registration Statement and solicit
12 investors to purchase Pivotal securities issued pursuant thereto.

13 39. The Defendants named in ¶¶24-38 above are collectively referred to herein as the
14 “Underwriter Defendants.” Pursuant to the Securities Act, the Underwriter Defendants are liable for
15 the false and misleading statements in the Registration Statement as follows:

16 (a) The Underwriter Defendants are investment banking houses that specialize,
17 *inter alia*, in underwriting public offerings of securities. They served as the underwriters of
18 the IPO and collectively shared tens of millions of dollars in fees. The Underwriter
19 Defendants arranged a multi-city roadshow prior to the IPO during which they, and
20 representatives from Pivotal, met with potential investors and presented highly favorable
21 information about the Company, its operations, and its financial prospects.

22 (b) The Underwriter Defendants also demanded and obtained an agreement from
23 Pivotal and the Individual Defendants that Pivotal would indemnify and hold the Underwriter
24 Defendants harmless from any liability under the federal securities laws. They also made
25 certain that Pivotal had purchased millions of dollars in directors’ and officers’ liability
26 insurance.

27 (c) Representatives of the Underwriter Defendants also assisted Pivotal and the
28 Individual Defendants in planning the IPO, and purportedly conducted an adequate and

1 reasonable investigation into the business and operations of Pivotal, an undertaking known as
2 a “due diligence” investigation. The due diligence investigation was required of the
3 Underwriter Defendants in order to engage in the IPO. During the course of their “due
4 diligence,” the Underwriter Defendants had continual access to confidential corporate
5 information concerning Pivotal’s operations, clinical trial data, and financial prospects.

6 (d) In addition to availing themselves of virtually unlimited access to internal
7 corporate documents, agents of the Underwriter Defendants met with Pivotal’s lawyers,
8 management, and top executives and engaged in “drafting sessions” between at least
9 December 2017 and April 2018. During these sessions, understandings were reached as to:
10 (i) the strategy to best accomplish the IPO; (ii) the terms of the IPO, including the price at
11 which Pivotal stock would be sold; (iii) the language to be used in the Registration Statement;
12 (iv) what disclosures about Pivotal would be made in the Registration Statement; and (v) what
13 responses would be made to the SEC in connection with its review of the Registration
14 Statement. As a result of those constant contacts and communications between the
15 Underwriter Defendants’ representatives and Pivotal’s management and top executives, the
16 Underwriter Defendants knew of, or, in the exercise of reasonable care, should have known
17 of, Pivotal’s existing problems as detailed herein.

18 (e) The Underwriter Defendants caused the Registration Statement to be filed with
19 the SEC and declared effective in connection with the offers and sales of securities registered
20 thereby, including those to Plaintiff and the other members of the Class.

21 40. The true names and capacities of Defendants sued herein under C.C.P. §474 as Does
22 1 through 25, inclusive, are presently not known to Plaintiff, who therefore sues these Defendants by
23 such fictitious names. Plaintiff will seek to amend this Complaint and include these Doe Defendants’
24 true names and capacities when they are ascertained. Each of the fictitiously named Defendants is
25 responsible in some manner for the conduct alleged herein and for the injuries suffered by the Class.

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**DEFENDANTS' FALSE AND MISLEADING
REGISTRATION STATEMENT AND PROSPECTUS**

41. On December 15, 2017, Defendants filed with the SEC a confidential draft Registration Statement on Form S-1, which would be used for the IPO following a series of amendments in response to SEC comments, including comments from the SEC emphasizing the importance of adequately disclosing material trends and risk factors, as required by Items 303 and 503 (defined below).

42. On or about April 18, 2018, Defendants filed a final amendment to the Registration Statement, which registered over 37 million Pivotal common stock shares for public sale. The SEC declared the Registration Statement effective on April 19, 2018. On or about April 20, 2018, Defendants filed the final prospectus for the IPO, which forms part of the Registration Statement. On April 24, 2018, the Company completed the IPO, which, upon the underwriters exercising their full overallotment option to purchase additional shares, issued a total of 42,550,000 shares priced to the public at \$15.00 per share, generating over \$638 million for Defendants.

43. The Registration Statement contained untrue statements of material facts and omitted to state material facts both required by governing regulations and necessary to make the statements made therein not misleading. Foremost, the Registration Statement failed to disclose that the Company was already experiencing deferred sales, lengthening sales cycles, and consequently diminished growth as customers and industry sentiment shifted away from Pivotal's principal, yet outdated, PAS offering because it was incompatible with the industry-standard Kubernetes platform. At the same time, Pivotal's alternate Kubernetes-compatible PKS offering was severely limited and could not be applied to the full scope of large enterprise customers' needs. This disjointed product mix – on the one hand, an outdated primary PAS offering, incompatible with the industry standard, on the other, a limited secondary PKS add on that, although compatible with the industry standard, could only handle a narrow subset of enterprise customer's needs – hamstrung Pivotal sales force responding to customers who were demanding a versatile, Kubernetes-compatible platform. It also rendered Pivotal's primary PAS offering increasingly obsolete, for Pivotal would be forced to reengineer its flagship PAS product from the ground up to be compatible with Kubernetes and thus

1 competitive against large public cloud providers like Amazon, Microsoft, and Google. These
2 undisclosed negative events, trends, and uncertainties rendered false and misleading Pivotal's
3 reported financial and operational statements incorporated in the Registration Statement.

4 44. Defendants were required to disclose this material information in the Registration
5 Statement for at least three independent reasons. First, Item 303 of SEC Regulation S-K, 17 C.F.R.
6 §229.303 ("Item 303"), requires disclosure of any known events or uncertainties that at the time of
7 the IPO had caused or were reasonably likely to materially impact Pivotal's future operating results
8 and prospects. The undisclosed increasing competition, increasingly apparent obsolescence of its
9 primary offerings, competitive disadvantages hampering its sales force, and consequently deferred
10 sales, lengthening sales cycles, diminished growth, and other financial metrics, were likely to (and in
11 fact did) materially and adversely affect Pivotal's future results and prospects.

12 45. Second, Item 503 of SEC Regulation S-K, 17 C.F.R. §229.503 ("Item 503"), required,
13 in the "Risk Factors" section of the Registration Statement, a discussion of the most significant factors
14 that make the offering risky or speculative and that each risk factor adequately describe the risk. The
15 Registration Statement's discussion of risk factors did not even mention, much less adequately
16 describe, the risk posed by the increasing competition, increasingly apparent obsolescence of its
17 primary offerings, competitive disadvantages hampering its sales force, and consequently deferred
18 sales, lengthening sales cycles, diminished growth, and other financial metrics, nor the likely and
19 consequent materially adverse effects on the Company's future results, share price, and prospects.

20 46. Third, Defendants' failure to disclose the then-increasing competition, increasingly
21 apparent obsolescence of its primary offerings, competitive disadvantages hampering its sales force,
22 and consequently deferred sales, lengthening sales cycles, diminished growth, and other financial
23 metrics, much less the likely material effects these omissions would have on Pivotal's share price,
24 rendered false and misleading the Registration Statement's many references to known "*risks*" which
25 "*if*" occurring "*may*" or "*could*" materially affect the Company. [Emphasis added.] These "risks"
26 had already materialized at the time of the IPO.

27 47. Nevertheless, Defendants went forward with the IPO with the foregoing
28 misrepresentations and omissions in the Registration Statement. With these misrepresentations and

1 omissions, the IPO was extremely lucrative for Defendants, who raised more than \$638 million in
2 gross proceeds.

3 48. But as the truth gradually emerged, the price for Pivotal shares plummeted. For
4 example, on June 4, 2019, after the market closed, Pivotal reported disappointing financial and
5 operating results for the first quarter of 2019 and severely reduced full year guidance, which it vaguely
6 attributed to “sales execution and a complex technology landscape.” Later, during a conference call
7 with analysts, Defendant Robert Mee attributed the sale execution challenges to Pivotal’s disjointed
8 PAS/PKS offering and emphasized that Pivotal would thus be forced to reengineer its primary PAS
9 on Kubernetes.

10 49. Analysts were quick to respond, calling Pivotal’s quarter a “train wreck,”
11 characterizing the Company’s operating results as “disastrous,” and asserting that Pivotal’s
12 “management team does not have a handle on the underlying issues negatively impacting its sales
13 cycles and the activity in the field.”

14 50. On this news, Pivotal’s stock price fell sharply from its June 4, 2019, closing price of
15 \$18.54 per share to its June 5, 2019, closing price of \$10.89 per share, representing a single trading
16 day loss of over 41%, and an over 27% drop compared to its \$15.00 IPO price.

17 51. As a result of Defendants’ misconduct, investors suffered tens of millions of dollars in
18 losses.

19 **CLASS ACTION ALLEGATIONS**

20 52. Plaintiff brings this action as a class action on behalf of all those who purchased Pivotal
21 common stock shares pursuant or traceable to the Registration Statement issued in connection with
22 the IPO (the “Class”). Excluded from the Class are Defendants and their families; the officers,
23 directors, and affiliates of Defendants, at all relevant times; members of their immediate families and
24 their legal representatives, heirs, successors, or assigns; and any entity in which Defendants have, or
25 had, a controlling interest.

26 53. The members of the Class are so numerous that joinder of all members is
27 impracticable. While the exact number of Class members is unknown to Plaintiff at this time, and
28 can only be ascertained through appropriate discovery, Plaintiff believes that there are at least

1 thousands of members in the proposed Class. Record owners and other members of the Class may
2 be identified from records maintained by Pivotal or its transfer agent and may be notified of the
3 pendency of this action by mail, using the form of notice similar to that customarily used in securities
4 class actions.

5 54. Plaintiff's claims are typical of the claims of the members of the Class, as all members
6 of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is
7 complained of herein.

8 55. Plaintiff will fairly and adequately protect the interests of the members of the Class
9 and has retained counsel competent and experienced in class and securities litigation.

10 56. Common questions of law and fact exist as to all members of the Class and
11 predominate over any questions solely affecting individual members of the Class. Among the
12 questions of law and fact common to the Class are:

13 (a) whether Defendants violated the Securities Act;

14 (b) whether the Registration Statement was negligently prepared and contained
15 inaccurate statements of material facts and omitted material information required to be stated
16 therein; and

17 (c) to what extent the members of the Class have sustained damages and the proper
18 measure of damages.

19 57. A class action is superior to all other available methods for the fair and efficient
20 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
21 damages suffered by individual Class members may be relatively small, the expense and burden of
22 individual litigation make it impossible for members of the Class to individually redress the wrongs
23 done to them. There will be no difficulty in the management of this action as a class action.

24 **FIRST CAUSE OF ACTION**
25 **For Violation of §11 of the Securities Act**
26 **Against All Defendants**

27 58. Plaintiff incorporates all the foregoing by reference as if fully set forth herein.

28 59. This Cause of Action is brought pursuant to §11 of the Securities Act, 15 U.S.C. §77k,
on behalf of the Class, against all Defendants.

1 60. The Registration Statement contained untrue statements of material facts, omitted to
2 state other facts necessary to make the statements made therein not misleading, and omitted to state
3 material facts required to be stated therein.

4 61. Defendants are strictly liable to Plaintiff and the Class for the misstatements and
5 omissions.

6 62. None of the defendants named herein made a reasonable investigation or possessed
7 reasonable grounds for the belief that the statements contained in the Registration Statement were
8 true and without omissions of any material facts and were not misleading.

9 63. By reason of the conduct herein alleged, each Defendant violated, or controlled a
10 person who violated, §11 of the Securities Act.

11 64. Plaintiff acquired Pivotal shares issued pursuant to the Registration Statement.

12 65. Plaintiff and the Class have sustained damages. The value of Pivotal common stock
13 has declined substantially subsequent to and due to Defendants' violations.

14 66. At the time of their purchases of Pivotal shares, Plaintiff and the other members of the
15 Class were without knowledge of the facts concerning the wrongful conduct alleged herein and could
16 not have reasonably discovered those facts prior to the disclosures herein. Less than one year has
17 elapsed from the time that Plaintiff discovered, or reasonably could have discovered, the facts upon
18 which this Complaint is based to the time that Plaintiff commenced this action. Less than three years
19 have elapsed between the time that the securities upon which this Cause of Action is brought were
20 offered to the public and the time Plaintiff commenced this action.

21 **SECOND CAUSE OF ACTION**
22 **For Violation of §12(a)(2) of the Securities Act**
 Against All Defendants

23 67. Plaintiff incorporates all the foregoing by reference as if fully set forth herein.

24 68. By means of the defective prospectus, Defendants promoted, solicited, and sold
25 Pivotal shares to Plaintiff and the other members of the Class.

26 69. The Prospectus for the IPO contained untrue statements of material fact and concealed
27 and failed to disclose material facts, as detailed above. Defendants owed Plaintiff and the other
28 members of the Class, who purchased Pivotal shares pursuant to the Prospectus, the duty to make a

1 reasonable and diligent investigation of the statements contained in the Prospectus to ensure that such
2 statements were true and that there was no omission to state a material fact required to be stated in
3 order to make the statements contained therein not misleading. Defendants, in the exercise of
4 reasonable care, should have known of the misstatements and omissions contained in the Prospectus,
5 as set forth above.

6 70. Plaintiff did not know, nor in the exercise of reasonable diligence could Plaintiff have
7 known, of the untruths and omissions contained in the Prospectus at the time Plaintiff acquired Pivotal
8 shares.

9 71. By reason of the conduct alleged herein, Defendants violated §12(a)(2) of the
10 Securities Act. As a direct and proximate result of such violations, Plaintiff and the other members
11 of the Class, who purchased Pivotal shares pursuant to the Prospectus, sustained substantial damages
12 in connection with their purchases of the stock. Accordingly, Plaintiff and the other members of the
13 Class, who hold the common stock issued pursuant to the Prospectus, have the right to rescind and
14 recover the consideration paid for their shares and hereby tender their common stock to Defendants
15 sued herein. Class members who have sold their common stock seek damages to the extent permitted
16 by law.

17 **THIRD CAUSE OF ACTION**
18 **For Violation of §15 of the Securities Act**
19 **Against All Defendants, Except the Underwriter Defendants**

20 72. Plaintiff incorporates all the foregoing by reference as if fully set forth herein.

21 73. This Cause of Action is brought pursuant to §15 of the Securities Act, on behalf of the
22 Class, against all Defendants, except the Underwriter Defendants.

23 74. The Individual Defendants were controlling persons of Pivotal by virtue of their
24 positions as directors or senior officers of Pivotal. The Individual Defendants each had a series of
25 direct and indirect business and personal relationships with other directors and officers and major
26 shareholders of Pivotal.

27 75. Pivotal and the Individual Defendants were culpable participants in the violations of
28 §§11 and 12(a)(2) of the Securities Act alleged in the First and Second Causes of Action above, based
on their having signed, or authorized the signing of, the Registration Statement and having directed,

1 controlled, and otherwise participated in the process which allowed the IPO to be successfully
2 completed.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

5 A. Under C.C.P. §382, certifying this action as a class action, appointing Plaintiff as a
6 Class Representative, and appointing Plaintiff's counsel as Class Counsel;

7 B. Awarding damages in favor of Plaintiff and the Class against all Defendants, jointly
8 and severally, in an amount to be proven at trial, including interest thereon;


9 C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this
10 action, including counsel and expert fees; and

11 D. Awarding rescission, disgorgement, or such other equitable or injunctive relief as
12 deemed appropriate by the Court.

13 **JURY DEMAND**

14 Plaintiff demands a trial by jury.

15 DATED: June 14, 2019

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