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**FILED**  
San Francisco County Superior Court

MAR -4 2021

CLERK OF THE COURT  
*[Signature]*  
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
DEPARTMENT 613

IN RE PIVOTAL SOFTWARE, INC.  
SECURITIES LITIGATION

Case No. CGC-19-576750

This Document Relates to:

ORDER DENYING DEFENDANTS' JOINT  
MOTION TO STAY DISCOVERY

ALL ACTIONS

**INTRODUCTION**

This matter came on regularly for hearing on February 18, 2021 in Department 613, the Honorable Andrew Y.S. Cheng, presiding. David W. Hall appeared for plaintiff Zhung Tran. Wesley A. Wong and Reed Kathrein appeared for plaintiff Alandra Mothorpe. John Jasnoch appeared for plaintiff Jason Hill. Jordan Eth, Mark RS Foster, Karen Leung and Randall D Zack appeared for defendants Pivotal Software Inc., Robert Mee, Cynthia Gaylor, Paul Maritz, Michael Dell, Zane Rowe, Egon Durban, William D. Green, Marcy S. Klevorn and Khozema Z. Shipchandler (collectively the "Pivotal Defendants"). Gavin M. Masuda and Elizabeth L. Deeley appeared for the Underwriter Defendants.<sup>1</sup> Andrew T Sumner and Gidon Caine appeared for Dell Technologies, Inc. ("Dell").<sup>2</sup>

<sup>1</sup> 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; Keybank Capital Markets Inc.; William Blair & Co., LLC; Mischler Financial Group, Inc.; Samuel A. Ramirez & Co., Inc.; Siebert Cisneros Shank & Co., LLC; and Williams Capital Group, L.P. (the latter two, which have since merged, renamed "Siebert Williams Shank & Co., LLC").

<sup>2</sup> The Pivotal Defendants, Dell and the Underwriter Defendants are collectively referred to as

1 Having reviewed and considered the arguments, pleadings, and written submissions of all parties,  
2 the Court **DENIES** Defendants’ joint motion to stay discovery.

3 **BACKGROUND**

4 This is a securities class action on behalf of all those who purchased or otherwise acquired Pivotal  
5 common stock, pursuant or traceable to the registration statement and prospectus (collectively, the  
6 “Offering Materials”), issued in connection with Pivotal’s April 20, 2018 initial public offering (the  
7 “IPO” or “Offering”). (Compl. ¶ 1.) The Complaint asserts strict liability claims under Sections 11,  
8 12(a)(2), and 15 of the Securities Act of 1933 (the “Securities Act”) against Pivotal, Dell, certain Pivotal  
9 and Dell officers and directors, and the underwriters of the IPO. (See *id.*)

10 On October 20, 2020, the parties filed a Joint Case Management Conference Statement. In the  
11 statement, Defendants requested that the Court stay discovery pursuant to the Private Securities Litigation  
12 Reform Act (“PSLRA”). Plaintiffs opposed this request.

13 At the October 27, 2020 Case Management Conference (“CMC”), this Court heard both sides’  
14 positions on the discovery stay issue. After the CMC, the Court issued its Order After October 27, 2020  
15 Case Management Conference. In its Order, the Court denied Defendants’ request for a discovery stay  
16 and ordered the parties to proceed with bilateral written discovery on all issues including both merits and  
17 class certification discovery. The Court also ordered Plaintiffs to file their consolidated amended  
18 complaint by January 15, 2021 and set a hearing on Defendants’ demurrer(s) for June 16, 2021.

19 On December 14, 2020, Defendants filed a petition for writ of mandate requesting that the Court  
20 of Appeal (1) vacate this Court’s Order denying Defendants’ request for a discovery stay, and (2) grant  
21 Defendants’ request for an immediate stay of discovery. The Court of Appeal denied the petition. The  
22 court noted that “[i]n sharp contrast to the briefing before [it], petitioners did not thoroughly present the  
23 positions urged in the present petition by way of a stay motion” and “[s]uch a motion represents another,  
24 unexhausted, adequate remedy at law available to petitioners.” (Writ Order, 1.) On January 5, 2021,  
25 Defendants filed their joint motion pursuant to the discovery stay provision of the PSLRA. (Defendants’  
26 Notice of Joint Motion and Joint Motion to Stay Discovery [“Motion”], 6.)

27 ///

28 \_\_\_\_\_  
“Defendants”.

1 **STATUTORY PROVISION AT ISSUE**

2 The PSLRA’s discovery stay provides “[i]n any private action arising under this subchapter [15  
3 U.S.C. § 77a *et seq.*], all discovery and other proceedings shall be stayed during the pendency of any  
4 motion to dismiss, unless the court finds, upon the motion for any party, that particularized discovery is  
5 necessary to preserve evidence or to prevent undue prejudice to that party.” (15 U.S.C. §77z-1, subd.  
6 (b)(1).)

7 **DISCUSSION AND ANALYSIS**

8 Defendants assert that the PSLRA’s automatic discovery stay applies here as evidenced by (1) its  
9 plain language and (2) its legislative history. The Court disagrees.

10 **I. The Plain Language of the Statute**

11 **a. Background Law**

12 In interpreting a statute, the Court’s fundamental task is to “ascertain the intent of the lawmakers  
13 so as to effectuate the purpose of the statute.” (*Mays v. City of Los Angeles* (2008) 43 Cal.4th 313, 321.)  
14 The Court “start[s] with the language of the statute, giving the words their usual and ordinary meaning,  
15 while construing them in light of the statute as a whole and the statute’s purpose.” (*Apple, Inc. v. Sup. Ct.*  
16 (2013) 56 Cal.4th 128, 135 [internal quotations and citation omitted].) “[T]o seek the meaning of a  
17 statute is not simply to look up dictionary definitions and then stitch together the results. Rather, it is to  
18 discern the sense of the statute, and therefore its words, *in the legal and broader culture.*” (*Hodges v. Sup.*  
19 *Ct.* (1999) 21 Cal. 4th 109, 114, 980 P.2d 433, 437 [emphasis in original] [internal quotations and citation  
20 omitted].) “The statute’s structure and its surrounding provisions can reveal the semantic relationships  
21 that give more precise meaning to the specific text being interpreted, even if the text may have initially  
22 appeared to be unambiguous[.]” (*Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241, 1247 [citing  
23 *Poole v. Orange County Fire Authority* (2015) 61 Cal.4th 1378, 1391 [conc. opn. of Cuéllar, JJ].)

24 **b. Application**

25 **i. The PSLRA**

26 Defendants argue that by its plain terms, the PSLRA governs “any private action arising under”  
27 the Securities Act. Defendants argue that because a Securities Act suit in state court is just as much a  
28 “private action arising under” the Securities Act as a Securities Act suit in federal court, the provision

1 applies to state actions like this one that bring claims under the Securities Act. The Court is unpersuaded.  
2 Defendants fail to cite a single reported decision in California holding the PSLRA’s discovery stay  
3 applies to securities class actions filed in state court. Indeed, there is no legal authority for the  
4 proposition. However, in *Diamond Multimedia Systems, Inc. v. Superior Court*, the dissenting opinion  
5 explained the PSLRA “adopts a number of measures intended by Congress to remove incentives to  
6 shareholder participation in what the [PSLRA]’s managers called class action litigation ‘abuses’ . . .  
7 [including] a mandatory stay of discovery in *federal court litigation* while a motion to dismiss is  
8 pending[.]” (*Diamond Multimedia Systems, Inc. v. Sup. Ct.* (1999) 19 Cal.4th 1036, 1069 [Brown, J.,  
9 dissenting] [emphasis supplied].)

10 The Court finds the plain language of the discovery stay’s surrounding provisions evidences that  
11 the provision only applies to federal court. The complete absence of any reference to state courts stands  
12 in contrast to other provisions in the PSLRA that do make explicit reference to state courts. (See, e.g., 15  
13 U.S.C. §77z-1, subd. (a)(7)(b)(iii) [“A statement made in accordance with clause (i) or (ii) concerning the  
14 amount of damages shall not be admissible in any Federal or State judicial action or administrative  
15 proceeding”]; 15 U.S.C. §21D(a)(7)(B)(iii) [same]; 15 U.S.C. §78u-4(a)(7)(B)(iii) [same].) This suggests  
16 that in drafting the PSLRA, Congress was explicit where it intended the statute’s provisions to reach state  
17 courts. The sheer lack of any such express direction in the text of the PSLRA discovery stay strongly  
18 indicates that it was never intended to apply in state court. (See, e.g., *Keene Corp. v. United States* (1993)  
19 508 U.S. 200, 208 [courts must “refrain from reading into the statute a phrase that Congress has left it  
20 out”].)

21 Defendants’ contrary interpretation isolates the phrase “any private action” without any regard to  
22 the provision as a whole, much less the overall statutory structure. Statutory language must be construed  
23 in light of the “statute as a whole” and the statute’s purpose. (*Apple, supra*, 56 Cal.4th at 135.) Not only  
24 is the full provision itself silent on application to state court, but the statute as a whole consistently limits  
25 its procedural provisions to action under the Federal Rules of Civil Procedure and is replete with  
26 procedural devices and associated federal nomenclature. (See, e.g., 15 U.S.C. §77z-1(a)(1); 15 U.S.C.  
27 §77z-1(a)(3)(A)(iii); 15 U.S.C. §77z-1(a)(3)(B)(iii)(cc); 15 U.S.C. §77z-1(a)(3)(B)(vi); 15 U.S.C.  
28 §77z-1(a)(7)(B)(iii); 15 U.S.C. §77z-1(c)(1); 15 U.S.C. §77z-1(c)(2); 15 U.S.C. §77z-1(c)(3)(A); 15

1 U.S.C. §77z-1(c)(3)(B); 15 U.S.C. §77z-1(c)(3)(C).) Nothing in the discovery stay provisions indicates  
2 any deviation from the statute’s overarching focus on federal procedure in federal court.

3 **ii. The Securities Litigation Uniform Standards Act of 1998**

4 Interpreting the discovery stay provision to apply to state courts would also render the Securities  
5 Litigation Uniform Standards Act of 1998 (“SLUSA”) and its discovery stay redundant. SLUSA  
6 amended the Securities Act to provide “[u]pon a proper showing, a court may stay discovery proceedings  
7 in any private action in a State court as necessary in aid of its jurisdiction, or to protect or effectuate its  
8 judgments, in an action subject to a stay of discovery pursuant to this subsection.” (15 U.S.C. §77z-1,  
9 subd. (b)(4); see also *In re Dot Hill Systems Corp. Securities Litigation* (S.D. Cal. 2008) 594 F.Supp.2d  
10 1150, 1165 [“The PSLRA imposes a discovery stay in *private federal securities litigation* during motion  
11 dismiss proceedings. When Congress enacted the [SLUSA] in 1988, “[t]he legislative history explains  
12 that the purpose of this provision is to prevent plaintiffs from circumventing the stay of discovery under  
13 the [PSLRA] by using State court discovery, which may not be subject to those limitations, in an action  
14 filed in State Court[.]”] [emphasis supplied] [citations omitted]; see also *In re Transcript Intern.  
15 Securities Litigation* (D.Neb. 1999) 57 F.Supp.2d 836, 841-842 [“In an effort to save beleaguered  
16 corporations from ‘frivolous lawsuits,’ Congress in 1995 passed the [PSLRA] by which it required,  
17 among other protections, a stay of discovery in securities fraud class actions brought in federal court . . .  
18 While the new provisions apparently had the desired effect of reducing the number of federal class actions  
19 brought against corporate defendants, the restrictions were later seen as responsible for a corresponding  
20 increase in the number of securities fraud cases brought in state court . . . Thus was born [Section 27(b)(1)  
21 of SLUSA]”].) If the PSLRA’s discovery stay already provided for an automatic stay of discovery in  
22 state court securities cases, there would have been no need to enact Section 27(b)(1) of SLUSA to give  
23 federal courts the power to stay discovery in related state securities cases.

24 **II. The Court’s Interpretation Is Consistent with *Cyan, Inc. v. Beaver County Employees***  
25 ***Retirement Fund***

26 The discovery stay provision does not explicitly reference the Federal Rules of Civil Procedure.  
27 Nonetheless, the Court finds that the discovery stay is of procedural nature as it (1) does not alter the  
28 range of conduct or the class of persons that the Securities Act punishes or (2) modify the elements of a

1 Securities Act claim, and therefore only applies to actions filed in federal court. (See *In re Martinez*  
2 (2017) 3 Cal.5th 1216, 122; *Cyan, Inc. v. Beaver County Employees Retirement Fund* (2018) 138 S.Ct.  
3 1061. [“The Reform Act included both substantive reforms, applicable in state and federal court alike, and  
4 procedural reforms, applicable only in federal court.”]; *Chavez v. Keat* (1995) 34 Cal.App.4th 1406, 1413  
5 [“The general rule is that where an action founded on a federal statute is brought in a state court, the law  
6 of the state controls in matters of practice and procedure unless the federal statute provides otherwise.”];  
7 *Deaile v. General Telephone Co. of California* (1974) 40 Cal.App.3d 841, 851 [identifying discovery as a  
8 matter of procedure]; *Caranchini v. Peck* (D. Kansas 2018) 355 F.Supp.3d 1052 1061 [finding an act’s  
9 mandatory discovery stay provisions are “strictly procedural in nature and do not affect the outcome of a  
10 case”].)

11 The Court’s interpretation is consistent with *Cyan*. In *Cyan*, the U.S. Supreme Court identified the  
12 PSLRA “safe harbor” provisions as “substantive” and thus applicable even when a Securities Act claim is  
13 brought in state court. (See *Cyan, supra*, 138 S.Ct. at 1072-1073.) The PSLRA safe harbor functions to  
14 exempt certain conduct from liability while imposing additional substantive elements on claims premised  
15 on certain forward-looking statements. The Court then identified that other PSLRA provisions, citing the  
16 statute’s lead plaintiff provision as an example, “modified the procedures used in litigating securities  
17 actions, and applied only when such a suit was brought in federal court.” (*Id.* at 1067.) The PSLRA lead  
18 plaintiff provisions do not impact liability under the Securities Act, but instead merely prescribe a process  
19 by which a plaintiff is appointed to lead the case.

20 Here, the timing of discovery does not alter the range of conduct or the class of person liable under  
21 the Securities Act. It does not modify the elements of the claims alleged in this case. Rather, it merely  
22 prescribes a process for gathering evidence to prove up those unaltered elements and thus determine  
23 whether a defendants’ alleged conduct falls within the Securities Act’s unaltered scope of liability.  
24 Consistent with *Cyan*, the PSLRA discovery stay is procedural, not substantive, and thus does not apply  
25 in state court. (See *Chavez, supra*, 34 Cal.App.4th at 1413; *Deaile, supra*, 40 Cal.App.3d at 851.)

### 26 **III. Legislative History**

27 The legislative history of the PSLRA supports the Court’s conclusion. Federal Comments from  
28 the Minutes of the Civil Rules Advisory Committee from February 1995 and April 1994 show that the



1 PSLRA’s discovery stay was viewed and intended as a procedural reform inapplicable to state courts.  
2 Third Circuit Judge Anthony Joseph Scirica and Duke Law Professor Thomas D. Rowe, Jr. – both  
3 members of the Advisory Committee on Civil Rules – informed the Advisory Committee that: “[o]ne  
4 directly procedural approach is to adopt heightened pleading requirements. . . and staying discovery  
5 during the pleading stage [subject to exceptions].” (Declaration of David W. Hall in Support of Plaintiffs’  
6 Opposition to Defendants’ Joint Motion to Stay Discovery [“Hall Decl.”], Ex. K [Advisory Committee on  
7 Civil Rules, Minutes, dated February 16-17, 1995].) The minutes also state the “central question posed  
8 by [the pending securities litigation legislation] is whether securities litigation is so unique that it needs  
9 *special procedural rules*[.]” (*Id.* [emphasis supplied].) Similarly, attorney Herbert M. Wachtell’s  
10 testimony before the Advisory Committee characterized the PSLRA discovery stay as a procedural  
11 device. (See Hall Decl., Ex. L at 11-12 [Advisory Committee on Civil Rules, Minutes, dated April 28-29,  
12 1994] [noting three procedural devices have been particularly effective in securities class actions, the third  
13 a “developing trend to stay discovery if a substantial motion is made under Rule 9(b) or 12(b)(6)”].) As  
14 discussed, *supra*, in *Cyan*, the Supreme Court explained the PSLRA’s procedural reforms are only  
15 applicable in federal court.

16 Finally, no significant class action litigation was brought in state court prior to the PSLRA.  
17 (Committee on Commerce Report on H.R. 1689, Securities Litigation Uniform Standards Act of 1998,  
18 H.R. Rep. No. 105-640, at 9-10 (July 21, 1998).) Thus, in enacting the PSLRA’s discovery stay,  
19 Congress focused on remedying the problem of discovery abuses in federal courts, not state courts.

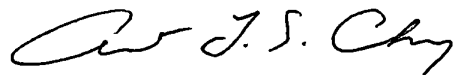
20 The Court finds that the PSLRA’s discovery stay does not apply to this case.

21 **CONCLUSION**

22 Defendants’ motion to stay discovery pursuant to 15 U.S.C. §77z-1, subdivision (b)(1) is  
23 **DENIED.**

24 IT IS SO ORDERED.

25 Dated: March 4, 2021

26 


27 ANDREW Y.S. CHENG  
28 Judge of the Superior Court

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FIVE

PIVOTAL SOFTWARE, INC. et al.,  
Petitioners,  
v.  
SUPERIOR COURT FOR THE CITY AND  
COUNTY OF SAN FRANCISCO,  
Respondent;  
JASON HILL et al.,  
Real Parties in Interest.  
A162228  
San Francisco No. CGC19576750

**FILED**  
San Francisco County Superior Court

MAR 23 2021

CLERK OF THE COURT  
BY:  Deputy Clerk

**BY THE COURT:\***

The petition for writ of mandate and accompanying stay request are denied.

Date 03/22/2021

**Simons, J.**

Acting P.J.

ACTING P.J.

\* Before Simons, Acting P.J., Burns, J. and Seligman, J. (Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution)

SUPREME COURT  
**FILED**

APR 14 2021

Jorge Navarrete Clerk

Deputy

Court of Appeal, First Appellate District, Division Five - No. A162228

S267949

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

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PIVOTAL SOFTWARE, INC. et al., Petitioners,

v.

SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO, Respondent;

JASON HILL et al., Real Parties in Interest.

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The requests to appear as counsel pro hac vice are granted.  
The petition for review and application for stay are denied.

CANTIL-SAKAUYE

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*Chief Justice*



**FILED**  
San Francisco County Superior Cou.

OCT 27 2020

CLERK OF THE COURT  
BY: [Signature]  
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
DEPARTMENT 613

IN RE PIVOTAL SOFTWARE, INC.  
SECURITIES LITIGATION

Case No. CGC-19-576750

This Document Relates to:

ORDER AFTER OCTOBER 27, 2020 CASE  
MANAGEMENT CONFERENCE

ALL ACTIONS

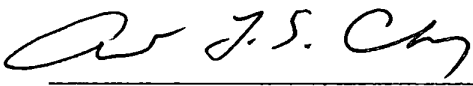
This matter came on regularly for a case management conference in the above matter on October 27, 2020. David W. Hall appeared for plaintiff Zhung Tran. Danielle Smith appeared for plaintiff Alandra Mothorpe. John Jasnoch appeared for plaintiff Jason Hill. Jordan Eth and Mark Foster appeared for defendant Pivotal Software Inc. Gavin M. Masuda and Elizabeth L. Deeley appeared for defendant Morgan Stanley L & W Global. Having considered the joint case management conference statement, the arguments of the parties, and all relevant pleadings, the Court orders as follows:

1. Plaintiffs shall file their consolidated amended complaint no later than **January 15, 2021**. Defendants shall file their response to the consolidated amended complaint no later than **March 17, 2021**.
2. A hearing on Defendants' demurrer(s) is set for **June 16, 2021, at 9:00 a.m.**
3. The next case management conference is set for **February 18, 2021, at 10:30 a.m.** The parties' joint CMC statement is due no later than **February 11, 2021**.
4. Defendants' request for a discovery stay is denied. The parties shall proceed with bilateral

1 written discovery on all issues including both merits and class certification discovery. Any other form of  
2 discovery (depositions) will require the Court's authorization.

3 IT IS SO ORDERED.

4  
5 Dated: October 27, 2020

  
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6 ANDREW Y.S. CHENG  
7 Judge of the Superior Court  
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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FIVE

PIVOTAL SOFTWARE, INC., et al,

Petitioners,

v.

SUPERIOR COURT FOR THE  
COUNTY OF SAN FRANCISCO,

Respondent;

ZHUNG TRAN, et al.,

Real Parties in Interest.

A161571

(San Francisco Super. Ct.  
No. CGC-19-576750)

**BY THE COURT:\***

The petition for writ of mandate and accompanying stay request are denied. Having considered the petition's arguments and other circumstances made apparent by the record in this case, the court declines to review the issue raised in the petition by extraordinary writ. While not an exhaustive statement of the court's reasons for denying the petition, the court observes that the petition challenges a ruling that was made based on the parties' summary arguments in a case management conference statement. In sharp contrast to the briefing before this court, petitioners did not thoroughly present the positions urged in the present petition by way of a stay motion filed in the superior court. Such a motion represents another, unexhausted, adequate remedy at law available to petitioners. Additionally, and irrespective of the foregoing, the petition does not persuasively demonstrate that petitioners will suffer cognizable irreparable harm absent writ review. (*Omaha Indemnity Co. v. Superior Court* (1989) 209 Cal.App.3d 1266, 1269, 1271-1274; *Ordway v. Superior Court* (1988) 198 Cal.App.3d 98, 101, fn. 1, disapproved on other grounds, *Knight v. Jewett* (1992) 3 Cal.4th 296.)

Date \_\_\_\_\_ Acting P.J.

\* Before Simons, Acting P.J., Burns, J. and Reardon, J. (Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution)

Document received by the CA 1st District Court of Appeal.

## **15 U.S.C. § 77z-1. Private securities litigation**

### **(a) Private class actions**

#### **(1) In general**

The provisions of this subsection shall apply to each private action arising under this subchapter that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure.

#### **(2) Certification filed with complaint**

##### **(A) In general**

Each plaintiff seeking to serve as a representative party on behalf of a class shall provide a sworn certification, which shall be personally signed by such plaintiff and filed with the complaint, that—

(i) states that the plaintiff has reviewed the complaint and authorized its filing;

(ii) states that the plaintiff did not purchase the security that is the subject of the complaint at the direction of plaintiff's counsel or in order to participate in any private action arising under this subchapter;

(iii) states that the plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary;

(iv) sets forth all of the transactions of the plaintiff in the security that is the subject of the complaint during the class period specified in the complaint;

(v) identifies any other action under this subchapter, filed during the 3-year period preceding the date on which the certification is signed by the plaintiff, in which the plaintiff has sought to serve, or served, as a representative party on behalf of a class; and

(vi) states that the plaintiff will not accept any payment for serving as a representative party on behalf of a class beyond the plaintiff's pro rata share of any recovery, except as ordered or approved by the court in accordance with paragraph (4).

##### **(B) Nonwaiver of attorney-client privilege**

The certification filed pursuant to subparagraph (A) shall not be construed to be a waiver of the attorney-client privilege.

#### **(3) Appointment of lead plaintiff**

##### **(A) Early notice to class members**

**(i) In general**

Not later than 20 days after the date on which the complaint is filed, the plaintiff or plaintiffs shall cause to be published, in a widely circulated national business-oriented publication or wire service, a notice advising members of the purported plaintiff class—

(I) of the pendency of the action, the claims asserted therein, and the purported class period; and

(II) that, not later than 60 days after the date on which the notice is published, any member of the purported class may move the court to serve as lead plaintiff of the purported class.

**(ii) Multiple actions**

If more than one action on behalf of a class asserting substantially the same claim or claims arising under this subchapter is filed, only the plaintiff or plaintiffs in the first filed action shall be required to cause notice to be published in accordance with clause (i).

**(iii) Additional notices may be required under Federal rules**

Notice required under clause (i) shall be in addition to any notice required pursuant to the Federal Rules of Civil Procedure.

**(B) Appointment of lead plaintiff**

**(i) In general**

Not later than 90 days after the date on which a notice is published under subparagraph (A)(i), the court shall consider any motion made by a purported class member in response to the notice, including any motion by a class member who is not individually named as a plaintiff in the complaint or complaints, and shall appoint as lead plaintiff the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members (hereafter in this paragraph referred to as the “most adequate plaintiff”) in accordance with this subparagraph.

**(ii) Consolidated actions**

If more than one action on behalf of a class asserting substantially the same claim or claims arising under this subchapter has been filed, and any party has sought to consolidate those actions for pretrial purposes or for trial, the court shall not make the determination required by clause (i) until after the decision on the motion to consolidate is rendered. As soon as practicable after such decision is rendered, the court shall appoint the most adequate plaintiff as lead plaintiff for the consolidated actions in accordance with this subparagraph.



### **(iii) Rebuttable presumption**

#### **(I) In general**

Subject to subclause (II), for purposes of clause (i), the court shall adopt a presumption that the most adequate plaintiff in any private action arising under this subchapter is the person or group of persons that-

(aa) has either filed the complaint or made a motion in response to a notice under subparagraph (A)(i);

(bb) in the determination of the court, has the largest financial interest in the relief sought by the class; and (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

#### **(II) Rebuttal evidence**

The presumption described in subclause (I) may be rebutted only upon proof by a member of the purported plaintiff class that the presumptively most adequate plaintiff—

(aa) will not fairly and adequately protect the interests of the class; or

(bb) is subject to unique defenses that render such plaintiff incapable of adequately representing the class.

### **(iv) Discovery**

For purposes of this subparagraph, discovery relating to whether a member or members of the purported plaintiff class is the most adequate plaintiff may be conducted by a plaintiff only if the plaintiff first demonstrates a reasonable basis for a finding that the presumptively most adequate plaintiff is incapable of adequately representing the class.

### **(v) Selection of lead counsel**

The most adequate plaintiff shall, subject to the approval of the court, select and retain counsel to represent the class.

### **(vi) Restrictions on professional plaintiffs**

Except as the court may otherwise permit, consistent with the purposes of this section, a person may be a lead plaintiff, or an officer, director, or fiduciary of a lead plaintiff, in no more than 5 securities class actions brought as plaintiff class actions pursuant to the Federal Rules of Civil Procedure during any 3-year period.

## **(4) Recovery by plaintiffs**

The share of any final judgment or of any settlement that is awarded to a representative party serving on behalf of a class shall be equal, on a per share basis, to the portion of the final judgment or settlement awarded to all other

members of the class. Nothing in this paragraph shall be construed to limit the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of the class.

**(5) Restrictions on settlements under seal**

The terms and provisions of any settlement agreement of a class action shall not be filed under seal, except that on motion of any party to the settlement, the court may order filing under seal for those portions of a settlement agreement as to which good cause is shown for such filing under seal. For purposes of this paragraph, good cause shall exist only if publication of a term or provision of a settlement agreement would cause direct and substantial harm to any party.

**(6) Restrictions on payment of attorneys' fees and expenses**

Total attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class.

**(7) Disclosure of settlement terms to class members**

Any proposed or final settlement agreement that is published or otherwise disseminated to the class shall include each of the following statements, along with a cover page summarizing the information contained in such statements:

**(A) Statement of plaintiff recovery**

The amount of the settlement proposed to be distributed to the parties to the action, determined in the aggregate and on an average per share basis.

**(B) Statement of potential outcome of case**

**(i) Agreement on amount of damages**

If the settling parties agree on the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this subchapter, a statement concerning the average amount of such potential damages per share.

**(ii) Disagreement on amount of damages**

If the parties do not agree on the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this subchapter, a statement from each settling party concerning the issue or issues on which the parties disagree.

**(iii) Inadmissibility for certain purposes**

A statement made in accordance with clause (i) or (ii) concerning the amount of damages shall not be admissible in any Federal or State judicial

action or administrative proceeding, other than an action or proceeding arising out of such statement.

**(C) Statement of attorneys' fees or costs sought**

If any of the settling parties or their counsel intend to apply to the court for an award of attorneys' fees or costs from any fund established as part of the settlement, a statement indicating, which parties or counsel intend to make such an application, the amount of fees and costs that will be sought (including the amount of such fees and costs determined on an average per share basis), and a brief explanation supporting the fees and costs sought.

**(D) Identification of lawyers' representatives**

The name, telephone number, and address of one or more representatives of counsel for the plaintiff class who will be reasonably available to answer questions from class members concerning any matter contained in any notice of settlement published or otherwise disseminated to the class.

**(E) Reasons for settlement**

A brief statement explaining the reasons why the parties are proposing the settlement.

**(F) Other information**

Such other information as may be required by the court.

**(8) Attorney conflict of interest**

If a plaintiff class is represented by an attorney who directly owns or otherwise has a beneficial interest in the securities that are the subject of the litigation, the court shall make a determination of whether such ownership or other interest constitutes a conflict of interest sufficient to disqualify the attorney from representing the plaintiff class.

**(b) Stay of discovery; preservation of evidence**

**(1) In general**

In any private action arising under this subchapter, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss, unless the court finds, upon the motion of any party, that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

**(2) Preservation of evidence**

During the pendency of any stay of discovery pursuant to this subsection, unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data

compilations (including electronically recorded or stored data), and tangible objects that are in the custody or control of such person and that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from an opposing party under the Federal Rules of Civil Procedure.

### **(3) Sanction for willful violation**

A party aggrieved by the willful failure of an opposing party to comply with paragraph (2) may apply to the court for an order awarding appropriate sanctions.

### **(4) Circumvention of stay of discovery**

Upon a proper showing, a court may stay discovery proceedings in any private action in a State court as necessary in aid of its jurisdiction, or to protect or effectuate its judgments, in an action subject to a stay of discovery pursuant to this subsection.

## **(c) Sanctions for abusive litigation**

### **(1) Mandatory review by court**

In any private action arising under this subchapter, upon final adjudication of the action, the court shall include in the record specific findings regarding compliance by each party and each attorney representing any party with each requirement of Rule 11(b) of the Federal Rules of Civil Procedure as to any complaint, responsive pleading, or dispositive motion.

### **(2) Mandatory sanctions**

If the court makes a finding under paragraph (1) that a party or attorney violated any requirement of Rule 11(b) of the Federal Rules of Civil Procedure as to any complaint, responsive pleading, or dispositive motion, the court shall impose sanctions on such party or attorney in accordance with Rule 11 of the Federal Rules of Civil Procedure. Prior to making a finding that any party or attorney has violated Rule 11 of the Federal Rules of Civil Procedure, the court shall give such party or attorney notice and an opportunity to respond.

### **(3) Presumption in favor of attorneys' fees and costs**

#### **(A) In general**

Subject to subparagraphs (B) and (C), for purposes of paragraph (2), the court shall adopt a presumption that the appropriate sanction—

- (i) for failure of any responsive pleading or dispositive motion to comply with any requirement of Rule 11(b) of the Federal Rules of Civil Procedure is an award to the opposing party of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation; and

(ii) for substantial failure of any complaint to comply with any requirement of Rule 11(b) of the Federal Rules of Civil Procedure is an award to the opposing party of the reasonable attorneys' fees and other expenses incurred in the action.

**(B) Rebuttal evidence**

The presumption described in subparagraph (A) may be rebutted only upon proof by the party or attorney against whom sanctions are to be imposed that- (i) the award of attorneys' fees and other expenses will impose an unreasonable burden on that party or attorney and would be unjust, and the failure to make such an award would not impose a greater burden on the party in whose favor sanctions are to be imposed; or (ii) the violation of Rule 11(b) of the Federal Rules of Civil Procedure was de minimis.

**(C) Sanctions**

If the party or attorney against whom sanctions are to be imposed meets its burden under subparagraph (B), the court shall award the sanctions that the court deems appropriate pursuant to Rule 11 of the Federal Rules of Civil Procedure.

**(d) Defendant's right to written interrogatories**

In any private action arising under this subchapter in which the plaintiff may recover money damages only on proof that a defendant acted with a particular state of mind, the court shall, when requested by a defendant, submit to the jury a written interrogatory on the issue of each such defendant's state of mind at the time the alleged violation occurred.

## **15 U.S.C. § 77z-2 Application of safe harbor for forward-looking statements**

### **(a) Applicability**

This section shall apply only to a forward-looking statement made by—

- (1) an issuer that, at the time that the statement is made, is subject to the reporting requirements of section 78m(a) or section 78o(d) of this title;
- (2) a person acting on behalf of such issuer;
- (3) an outside reviewer retained by such issuer making a statement on behalf of such issuer; or
- (4) an underwriter, with respect to information provided by such issuer or information derived from information provided by the issuer.

### **(b) Exclusions**

Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, this section shall not apply to a forward-looking statement—

- (1) that is made with respect to the business or operations of the issuer, if the issuer-
  - (A) during the 3-year period preceding the date on which the statement was first made-
    - (i) was convicted of any felony or misdemeanor described in clauses (i) through (iv) of section 78o(b)(4)(B) of this title; or
    - (ii) has been made the subject of a judicial or administrative decree or order arising out of a governmental action that-
      - (I) prohibits future violations of the antifraud provisions of the securities laws;
      - (II) requires that the issuer cease and desist from violating the antifraud provisions of the securities laws; or
      - (III) determines that the issuer violated the antifraud provisions of the securities laws;
  - (B) makes the forward-looking statement in connection with an offering of securities by a blank check company;
  - (C) issues penny stock;
  - (D) makes the forward-looking statement in connection with a rollup transaction; or
  - (E) makes the forward-looking statement in connection with a going private transaction; or

(2) that is—

(A) included in a financial statement prepared in accordance with generally accepted accounting principles;

(B) contained in a registration statement of, or otherwise issued by, an investment company;

(C) made in connection with a tender offer;

(D) made in connection with an initial public offering;

(E) made in connection with an offering by, or relating to the operations of, a partnership, limited liability company, or a direct participation investment program; or

(F) made in a disclosure of beneficial ownership in a report required to be filed with the Commission pursuant to section 78m(d) of this title.

**(c) Safe harbor**

**(1) In general**

Except as provided in subsection (b), in any private action arising under this subchapter that is based on an untrue statement of a material fact or omission of a material fact necessary to make the statement not misleading, a person referred to in subsection (a) shall not be liable with respect to any forward-looking statement, whether written or oral, if and to the extent that—

(A) the forward-looking statement is—

(i) identified as a forward-looking statement, and is accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement; or

(ii) immaterial; or

(B) the plaintiff fails to prove that the forward-looking statement—

(i) if made by a natural person, was made with actual knowledge by that person that the statement was false or misleading; or

(ii) if made by a business entity, was-

(I) made by or with the approval of an executive officer of that entity, and

(II) made or approved by such officer with actual knowledge by that officer that the statement was false or misleading.

**(2) Oral forward-looking statements**

In the case of an oral forward-looking statement made by an issuer that is subject to the reporting requirements of section 78m(a) or section 78o(d) of this title, or by a person acting on behalf of such issuer, the requirement set forth in paragraph (1)(A) shall be deemed to be satisfied—

(A) if the oral forward-looking statement is accompanied by a cautionary statement- (I) that the particular oral statement is a forward-looking statement; and (ii) that the actual results could differ materially from those projected in the forward-looking statement; and

(B) if—

(i) the oral forward-looking statement is accompanied by an oral statement that additional information concerning factors that could cause actual results to differ materially from those in the forward-looking statement is contained in a readily available written document, or portion thereof;

(ii) the accompanying oral statement referred to in clause (i) identifies the document, or portion thereof, that contains the additional information about those factors relating to the forward-looking statement; and

(iii) the information contained in that written document is a cautionary statement that satisfies the standard established in paragraph (1)(A).

### **(3) Availability**

Any document filed with the Commission or generally disseminated shall be deemed to be readily available for purposes of paragraph (2).

### **(4) Effect on other safe harbors**

The exemption provided for in paragraph (1) shall be in addition to any exemption that the Commission may establish by rule or regulation under subsection (g).

### **(d) Duty to update**

Nothing in this section shall impose upon any person a duty to update a forward-looking statement.

### **(e) Dispositive motion**

On any motion to dismiss based upon subsection (c)(1), the court shall consider any statement cited in the complaint and cautionary statement accompanying the forward-looking statement, which are not subject to material dispute, cited by the defendant.

### **(f) Stay pending decision on motion**

In any private action arising under this subchapter, the court shall stay discovery (other than discovery that is specifically directed to the applicability of the



exemption provided for in this section) during the pendency of any motion by a defendant for summary judgment that is based on the grounds that—

(1) the statement or omission upon which the complaint is based is a forward-looking statement within the meaning of this section; and

(2) the exemption provided for in this section precludes a claim for relief.

**(g) Exemption authority**

In addition to the exemptions provided for in this section, the Commission may, by rule or regulation, provide exemptions from or under any provision of this subchapter, including with respect to liability that is based on a statement or that is based on projections or other forward-looking information, if and to the extent that any such exemption is consistent with the public interest and the protection of investors, as determined by the Commission.

**(h) Effect on other authority of Commission**

Nothing in this section limits, either expressly or by implication, the authority of the Commission to exercise similar authority or to adopt similar rules and regulations with respect to forward-looking statements under any other statute under which the Commission exercises rulemaking authority.

**(i) Definitions**

For purposes of this section, the following definitions shall apply:

**(1) Forward-looking statement**

The term “forward-looking statement” means—

(A) a statement containing a projection of revenues, income (including income loss), earnings (including earnings loss) per share, capital expenditures, dividends, capital structure, or other financial items;

(B) a statement of the plans and objectives of management for future operations, including plans or objectives relating to the products or services of the issuer;

(C) a statement of future economic performance, including any such statement contained in a discussion and analysis of financial condition by the management or in the results of operations included pursuant to the rules and regulations of the Commission;

(D) any statement of the assumptions underlying or relating to any statement described in subparagraph (A), (B), or (C);

(E) any report issued by an outside reviewer retained by an issuer, to the extent that the report assesses a forward-looking statement made by the issuer; or

(F) a statement containing a projection or estimate of such other items as may be specified by rule or regulation of the Commission.

**(2) Investment company**

The term “investment company” has the same meaning as in section 80a-3(a) of this title.

**(3) Penny stock**

The term “penny stock” has the same meaning as in section 78c(a)(51) of this title, and the rules and regulations, or orders issued pursuant to that section.

**(4) Going private transaction**

The term “going private transaction” has the meaning given that term under the rules or regulations of the Commission issued pursuant to section 78m(e) of this title.

**(5) Securities laws**

The term “securities laws” has the same meaning as in section 78c of this title.

**(6) Person acting on behalf of an issuer**

The term “person acting on behalf of an issuer” means an officer, director, or employee of the issuer.

**(7) Other terms**

The terms “blank check company”, “rollup transaction”, “partnership”, “limited liability company”, “executive officer of an entity” and “direct participation investment program”, have the meanings given those terms by rule or regulation of the Commission.

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Cynthia Gaylor, Paul Maritz, Michael Dell, Zane Rowe, Egon  
10 Durban, William D. Green, Marcy S. Klevorn, and Khozema Z.  
Shipchandler

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF SAN FRANCISCO

15 IN RE PIVOTAL SOFTWARE, INC.  
16 SECURITIES LITIGATION

Lead Case No. CGC-19-576750

Class Action

17 \_\_\_\_\_  
18  
19 This Document Relates To:  
20 ALL ACTIONS.

**DECLARATION OF MARK R.S. FOSTER,  
INDEX OF EXHIBITS, AND EXHIBITS IN  
SUPPORT OF DEFENDANTS' JOINT MOTION  
TO STAY DISCOVERY**

Date: February 18, 2021  
Time: 10:30 a.m.  
Dept: 613  
Judge: Hon. Andrew Y.S. Cheng

ELECTRONICALLY  
**FILED**  
*Superior Court of California,  
County of San Francisco*  
**01/05/2021**  
**Clerk of the Court**  
BY: JUDITH NUNEZ  
Deputy Clerk

Document received by the CA 1st District Court of Appeal.

1 I, Mark R.S. Foster, declare as follows:

2 1. I am a partner with the law firm of Morrison & Foerster LLP, counsel for defendants  
3 Pivotal Software, Inc. (“Pivotal”); Individual Defendants Robert Mee, Cynthia Gaylor, Paul Maritz,  
4 Michael Dell, Zane Rowe, Egon Durban, William D. Green, Marcy S. Klevorn, and Khozema Z.  
5 Shipchandler (collectively, “Individual Defendants”); in the above-captioned action. I have  
6 personal knowledge of the facts set forth herein, except where noted, and if called to testify, could  
7 and would competently testify thereto.

8 2. Attached as **Exhibit A** is a true and correct copy of the Complaint in *Tran v. Pivotal*  
9 *Software, Inc.*, No. CGC-19-576806, filed 6/18/2019.

10 3. Attached as **Exhibit B** is a true and correct copy of the Complaint in *Mothorpe v.*  
11 *Pivotal Software, Inc.*, No. CGC-19-577110, filed 6/27/2019.

12 4. Attached as **Exhibit C** is a true and correct copy of the First Amended Complaint  
13 in *Hill v. Pivotal Software, Inc.*, No. CGC-19-576750, filed 9/24/2019.

14 5. Attached as **Exhibit D** is a true and correct copy of the Court’s Order to Stay  
15 pursuant to the parties’ stipulation, filed 10/1/2019.

16 6. Attached as **Exhibit E** is a true and correct copy of the Joint Stipulation and Order  
17 Relating and Consolidating Cases and Appointing Co-Lead Plaintiffs and Counsel, filed 1/6/2020.

18 7. Attached as **Exhibit F** is a true and correct copy of the Stipulation and Order to Stay  
19 and Continue Case Management Conference 120 Days, filed 2/10/2020.

20 8. Attached as **Exhibit G** is a true and correct copy of the Order Continuing July 27,  
21 2020 Case Management Conference, filed 7/23/2020.

22 9. Attached as **Exhibit H** is a true and correct copy of the parties’ Joint Case  
23 Management Conference Statement, filed 10/20/2020.

24 10. Attached as **Exhibit I** is a true and correct copy of the Order After October 27, 2020  
25 Case Management Conference, filed 10/27/2020.

26 11. Attached as **Exhibit J** is a true and correct copy of Plaintiffs’ Requests for  
27 Production of Documents to the Pivotal Defendants, dated 11/17/2020.  
28

Document received by the CA 1st District Court of Appeal.

1           12. Attached as **Exhibit K** is a true and correct copy of Plaintiffs' Requests for  
2 Production of Documents to the Underwriter Defendants, dated 11/17/2020.

3           13. Attached as **Exhibit L** is a true and correct copy of Plaintiffs' Requests to Defendant  
4 Dell Technologies, Inc. for the Production of Documents, Set One, dated 12/21/2020.

5           14. Attached as **Exhibit M** is a true and correct copy of the Court of Appeal's denial of  
6 Defendants' petition for writ of mandate, filed 12/16/2020.

7           15. At the October 27 CMC, this Court heard both Plaintiffs' and Defendants' positions  
8 on the question of whether the Private Securities Litigation Reform Act's automatic discovery-stay  
9 provision, 15 U.S.C. § 77z-1(b)(1), applied to the present suit brought under the Securities Act of  
10 1933.

11           16. At the October 27 CMC, Defendants requested an opportunity to fully brief this  
12 issue for the Court.

13           17. At the October 27 CMC, the Court discussed the parties' proposed case schedules.  
14 Defendants objected to the schedule proposed by Plaintiffs and requested that Plaintiffs be required  
15 to file their amended consolidated complaint more quickly.

16  
17           I declare under the penalty of perjury under the laws of the State of California that the  
18 foregoing is true and correct. Executed on January 5, 2021, in Piedmont, California.

19  
20 

21  
22 \_\_\_\_\_  
23 Mark R.S. Foster

**EXHIBITS TO DECLARATION OF MARK R.S. FOSTER**

<b>Ex.</b>	<b>Description</b>	<b>Page No.</b>
A	Complaint in <i>Tran v. Pivotal Software, Inc.</i> , No. CGC-19-576806, filed 6/18/2019	7
B	Complaint in <i>Mothorpe v. Pivotal Software, Inc.</i> , No. CGC-19-577110, filed 6/27/2019	26
C	First Amended Complaint in <i>Hill v. Pivotal Software, Inc.</i> , No. CGC-19-576750, filed 9/24/19	54
D	Court's Order to Stay pursuant to the parties' stipulation, filed 10/1/2019	81
E	Joint Stipulation and Order Relating and Consolidating Cases and Appointing Co-Lead Plaintiffs and Counsel, filed 1/6/20	88
F	Stipulation and Order to Stay and Continue Case Management Conference 120 Days, filed 2/10/2020	98
G	Order Continuing July 27, 2020 Case Management Conference, filed 7/23/2020	106
H	Parties' Joint Case Management Conference Statement, filed 10/20/2020	109
I	Order After October 27, 2020 Case Management Conference, filed 10/27/2020	123
J	Plaintiffs' Requests for Production of Documents to the Pivotal Defendants, dated 11/17/2020	127
K	Plaintiffs' Requests for Production of Documents to the Underwriter Defendants, dated 11/17/2020	144
L	Plaintiffs' Requests to Defendant Dell Technologies, Inc. for the Production of Documents, Set One, dated 12/21/20	160

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**EXHIBITS TO DECLARATION OF MARK R.S. FOSTER**

<b>Ex.</b>	<b>Description</b>	<b>Page No.</b>
M	Court of Appeal's denial of Defendants' writ of mandate, filed 12/16/2020	179

# EXHIBIT J

126

Document received by the CA 1st District Court of Appeal.

**284**



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6 *Co-Lead Counsel for Plaintiffs*

7 [Additional counsel on signature page.]

8  
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF SAN FRANCISCO**

12 IN RE PIVOTAL SOFTWARE, INC.  
13 SECURITIES LITIGATION

Lead Case No. CGC-19-576750

CLASS ACTION

14 This Document Relates to:  
15 ALL ACTIONS.

16 PLAINTIFFS' REQUESTS TO  
17 DEFENDANTS PIVOTAL SOFTWARE,  
18 INC., ROBERT MEE, CYNTHIA GAYLOR,  
19 PAUL MARITZ, MICHAEL S. DELL, ZANE  
20 ROWE, EGON DURBAN, WILLIAM D.  
21 GREEN, MARCY S. KLEVORN, AND  
22 KHOZEMA Z. SHIPCHANDLER FOR THE  
23 PRODUCTION OF DOCUMENTS, SET ONE

Judge: Hon. Andrew Y.S. Cheng  
24 Dept.: 613

25  
26  
27  
28  
PLAINTIFFS' REQUESTS TO DEFENDANT PIVOTAL SOFTWARE, INC., ROBERT MEE, CYNTHIA GAYLOR, PAUL  
MARITZ, MICHAEL S. DELL, ZANE ROWE, EGON DURBAN, WILLIAM D. GREEN, MARCY S. KLEVORN, AND  
KHOZEMA Z. SHIPCHANDLER FOR THE PRODUCTION OF DOCUMENTS, SET ONE

Document received by the CA 1st District Court of Appeal.

1 Pursuant to California Code of Civil Procedure §2031.010, *et seq.*, Plaintiffs Jason Hill,  
2 Nhung Tran, and Alandra Mothorpe (collectively, “Plaintiffs”) request that Defendants Pivotal  
3 Software, Inc., Robert Mee, Cynthia Gaylor, Paul Maritz, Michael S. Dell, Zane Rowe, Egon Durban,  
4 William D. Green, Marcy S. Klevorn, and Khozema Z. Shipchandler (together, the “Company  
5 Defendants”) identify and produce the following documents at the offices of Scott+Scott Attorneys  
6 at Law LLP, 600 West Broadway, Suite 3300, San Diego, California, within 30 days of the date of  
7 these Requests.

8 **I. DEFINITIONS**

9 The following definitions shall apply to each of the document requests set forth and are  
10 deemed to be incorporated in each request:

11 1. “Action” refers to the above-captioned lawsuit pending in the Superior Court of  
12 California, San Francisco County.

13 2. “Pivotal” or the “Company” means defendant Pivotal Software, Inc. and its  
14 predecessors, successors, parents, subsidiaries, divisions, or affiliates and their respective officers,  
15 directors, agents, attorneys, accountants, employees, partners, or other persons occupying similar  
16 positions or performing similar functions.

17 3. “All” shall include the term “each,” and vice versa, as necessary to bring within the  
18 scope of the Request all responses that might otherwise be construed to be outside the scope of the  
19 Request.

20 4. “Communication” or “communications” means the transmittal of information (in the  
21 form of facts, ideas, inquiries or otherwise), or attempt to transmit information, whether written, oral,  
22 electronic or by any other means.

23 5. “Complaint” refers to the Amended Complaint, filed on September 24, 2019.

24 6. “Concerning” means relating to, referring to, describing, evidencing or constituting.

25 7. “Defendants” refers to Pivotal Software, Inc., Dell Technologies, Inc. (“Dell”), Robert  
26 Mee, Cynthia Gaylor, Paul Maritz, Michael S. Dell, Zane Rowe, Egon Durban, William D. Green,  
27 Marcy S. Klevorn, Khozema Z. Shipchandler, Morgan Stanley & Co. LLC, Goldman Sachs & Co.

1 LLC, Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Barclays  
2 Capital Inc., Credit Suisse Securities (USA) LLC, RBC Capital Markets, LLC, UBS Securities LLC,  
3 Wells Fargo Securities, LLC, KeyBanc Capital Markets Inc., William Blair & Company, LLC,  
4 Mischler Financial Group, Inc., Samuel A. Ramirez & Company, Siebert Cisneros Shank & Co.,  
5 LLC, and Williams Capital Group, L.P., as well as all of their corporate parents, subsidiaries,  
6 attorneys, accountants, officers, directors, employees, partners, agents, representatives, or other  
7 persons occupying similar positions or performing similar functions.

8 8. “Document” and “documents” shall have the broadest meaning possible under  
9 California law, including, but not limited to, the definition of “writings” in California Evidence Code  
10 §250, and includes all originals and drafts, in any and all languages, of any nature whatsoever, in your  
11 possession, custody, or control, regardless of where located, and includes, but is not limited to, letters,  
12 correspondence, logs, drafts, contracts, prospective contracts, agreements, records, studies, surveys,  
13 resolutions, tabulations, notes, summaries, memoranda, Electronically Stored Information (“ESI”),  
14 electronic mail (“email”), instant messages, calendar or diary entries, handwritten notes, working  
15 papers, worksheets, spreadsheets, diagrams, minutes, agendas, bulletins, periodicals, circulars,  
16 advertisements, notices, announcements, invoices, statements, checks (front and back), bank  
17 statements, ledgers, orders, vouchers, instructions, drawings, charts, graphs, manuals, brochures,  
18 pamphlets, schedules, telegrams, teletypes, photographs, audio tapes, voicemail messages,  
19 videotapes, electronic recordings, facsimile transmissions and information of whatever kind, either  
20 stored on computers, including computer disks, hard drives and other media for storage of ESI or  
21 information recorded on any medium, and every other written, typed, recorded, transcribed, filed or  
22 graphic matter, whether sent, received or neither, and both sides thereof, including non-identical  
23 copies and drafts, in the custody, possession, or control of the parties responding to these Requests,  
24 their agents, accountants, employees, representatives or attorneys, and things similar to any of the  
25 foregoing, however denominated by the parties required to produce hereunder.

26 9. “Including” means including, without limitation.  
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1 10. "IPO" or "Offering" refers to Pivotal's April 20, 2018 initial public offering of  
2 common stock.

3 11. "Meeting" means the contemporaneous presence, whether in person or through any  
4 means of communication, of any natural persons, whether or not such presence was by chance or  
5 prearranged and whether or not the meeting was formal, informal, or occurred in connection with  
6 some other activity.

7 12. "Offering Documents" refers to the Registration Statement and Prospectus issued in  
8 connection with the IPO, along with any previously filed or amended versions of those documents  
9 and related documents.

10 13. "Person" or "persons" means any natural person, public or private corporation,  
11 whether or not organized for profit; governmental entity, partnership, association, cooperative, joint  
12 venture, sole proprietorship or other legal entity. With respect to a business entity, the term "person"  
13 includes any natural person acting formally or informally as a director, trustee, officer, agent, attorney,  
14 or other representative of the business entity.

15 14. "Plaintiffs" refers to Jason Hill, Zhung Tran, and Alandra Mothorpe.

16 15. "Prospectus" means any prospectus distributed by Defendants or used to conduct the  
17 IPO, including, without limitation, all previously filed or amended versions and all drafts thereof.

18 16. "Referring" or "relating to" means all documents that comprise, explicitly or implicitly  
19 refer to, were reviewed in conjunction with or were created, generated or maintained as a result of the  
20 subject matter of the request, including, without limitation, all documents that reflect, record,  
21 memorialize, embody, discuss, evaluate, consider, review, or report on the subject matter of the  
22 Request.

23 17. "Registration Statement" means the Registration Statement and Prospectus filed with  
24 the SEC in connection with the IPO, including all amendments thereto, whether filed with the SEC  
25 or not, and all drafts thereof.

26 18. "Road Show" means any physical or virtual meeting in which any Defendant  
27 communicated with any current or potential investor concerning the IPO.

1 19. "SEC" means the United States Securities and Exchange Commission.

2 20. "You," "your," and "yourself" refers to the parties to whom the following requests are  
3 addressed and their agents, representatives, officers, directors, accountants, insurance companies,  
4 attorneys, investigators, affiliates, predecessors and successors in interest, parents, divisions,  
5 subsidiaries, area and regional offices and employees, including persons or entities outside the United  
6 States or anyone acting on their behalf, if applicable.

7 21. The connectives "and" and "or" shall be construed either disjunctively or  
8 conjunctively as necessary to bring within the scope of the discovery Request all responses that might  
9 otherwise be construed to be outside of its scope.

10 22. The use of the singular form of any word includes the plural and vice versa, and the  
11 masculine, feminine, or neuter form of any words includes each of the other genders.

12 23. The use of any tense of any verb shall also include within its meaning all other tenses.

13 **II. INSTRUCTIONS**

14 1. All documents shall be produced in the order they are kept in the ordinary course of  
15 business, and shall be produced in their original folders, binders, covers, or containers or facsimile  
16 thereof.

17 2. If a document was prepared in several copies, or if additional copies were subsequently  
18 made and any such copies were not identical or are no longer identical by reason of subsequent  
19 notation or modification of any kind whatsoever, including, without limitation, handwritten notations  
20 on the front or back of the document, all such non-identical copies shall be produced.

21 3. Documents shall be produced in such fashion as to identify the department, branch, or  
22 office in which they were located and, where applicable, the natural person in whose possession they  
23 were found and the business address of each document's custodian(s).

24 4. Documents attached to each other should not be separated.

25 5. These Requests relate to all documents which are in your possession, custody, or  
26 control, or in the possession, custody, or control of your predecessors, successors, parents,  
27 subsidiaries, divisions or affiliates, or their respective officers, directors, agents, attorneys,  
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1 accountants, employees, partners, or other persons occupying similar positions or performing similar  
2 functions.

3 6. The documents to be produced pursuant to these Requests specifically embrace, in  
4 addition to documents within your possession, custody, or control, all documents within the  
5 possession, custody, or control of any of your agents, accountants, representatives or attorneys. Such  
6 documents also embrace originals and identical copies (whether different from the original because  
7 of notes made thereon or otherwise) of the documents described in these Requests.

8 7. The fact that a document has been, or will be, produced by another party does not  
9 relieve you of the obligation to produce your copy of the same document, even if the two documents  
10 are identical in all respects.

11 8. You shall produce the original of each document described below or, if the original is  
12 not in your custody, then a copy thereof, and in any event, all non-identical copies which differ from  
13 the original or from the other copies produced for any reason, including, but not limited to, the making  
14 of notes thereon.

15 9. If any document(s) fall within the scope of any Request but are not being produced, or  
16 are being produced with portions redacted, pursuant to any claim of privilege or confidentiality, you  
17 shall provide a log containing the following information:

- 18 (a) the nature of the privilege claimed (*i.e.*, attorney-client, work-product, etc.);
- 19 (b) the name of the person or entity claiming privilege and the name of the  
20 attorney, if any, with respect to whom the privilege is claimed;
- 21 (c) the facts upon which you rely as the basis for claiming any privilege as to the  
22 specific information or document;
- 23 (d) the name of such document; identify the type of document (*i.e.*, letter, memo,  
24 etc.); set forth the subject matter thereof; identify the person who prepared it  
25 and each person (if any) who signed it; identify each person to whom it was  
26 directed, circulated or shown; and identify each person now in possession of  
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1 the document. If any document is produced in redacted form, the word  
2 “redacted” is to be placed in the redacted section of the document; and

- 3 (e) whenever a document is not produced in full or is produced in redacted form,  
4 so indicate on the document and state with particularity the reason or reasons  
5 it is not being produced in full and describe to the best of your knowledge,  
6 information and belief, and with as much particularity as possible, those  
7 portions of the document which are not being produced.

8 10. In the event that any document called for by these Requests has been destroyed or  
9 discarded, that document is to be identified by stating:

- 10 (a) the nature of the document;  
11 (b) the names of any addresser or addressee;  
12 (c) if there are any indicated or blind copies;  
13 (d) the document’s date, subject matter, number of pages, and attachments or  
14 appendices;  
15 (e) all persons to whom the document was distributed, shown or explained;  
16 (f) the document’s date of destruction or discard, manner of destruction or discard;  
17 (g) the persons authorizing or carrying out such destruction or discard.

18 11. With respect to any documents which you contend would be in some way or  
19 “oppressive” to produce, state the specific reasons for that objection. If you object to part of any  
20 Request, furnish documents responsive to the remainder of Each Request refers to all documents that  
21 are either known by the Defendants to exist located or discovered by reasonably diligent efforts of  
22 the Defendants.

23 12. The document(s) produced in response to these Requests shall include all attachments  
24 enclosures.

25 **III. PRODUCTION OF HARD COPY DOCUMENTS – FORMAT**

26 Hard copy documents should be scanned as single-page, Group IV, 300 DPI TIFF images  
27 with an opt image cross-reference file and a delimited database load file (*i.e.*, .dat). The database load  
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1 file should contain the following fields: “BEGNO,” “ENDNO,” “PAGES,” “VOLUME,” and  
2 “CUSTODIAN.” The documents should be logically unitized (*i.e.*, distinct documents shall not be  
3 merged into a single record, and single documents shall not be split into multiple records) and be  
4 produced in the order in which they are kept in the usual course of business. If an original document  
5 contains color, and the color is necessary to understand the meaning or content of the document, the  
6 document shall be produced as single-page, **300 DPI JPG images with JPG compression and a high**  
7 **quality setting as to not degrade the original image**. Multi-page OCR text for each document should  
8 also be provided. The OCR software shall maximize text quality. Settings such as “auto-skewing”  
9 and “auto-rotation” should be turned on during the OCR process.

#### 10 **IV. PRODUCTION OF ESI**

11 1. Format: Electronically stored information (“ESI”) should be produced in single-page,  
12 black and white, TIFF Group IV, 300 DPI TIFF images with the exception of spreadsheet and  
13 presentation type files, audio and video files, photo or graphic images, and documents with tracked  
14 changes reflected in the metadata, which should be produced in native format. If an original document  
15 contains color, the document should be produced as **single-page, 300 DPI JPG images with JPG**  
16 **compression and a high quality setting as to not degrade the original image**. Parties are under no  
17 obligation to enhance an image beyond how it was kept in the usual course of business. TIFFs/JPGs  
18 should show any and all text and images that would be visible to the reader using the native software  
19 that created the document. For example, TIFFs/JPGs of email messages should include the BCC line.

20 2. Format – Native Files: If a document is produced in native format, a single-page,  
21 Bates-stamped image slip sheet stating the document has been produced in native format should also  
22 be provided, with the exception of PowerPoint presentations. PowerPoint documents should be  
23 produced in native format along with single-page, 300 DPI TIFF/JPG images which display both the  
24 slide and speaker’s notes. Each native file should be named according to the Bates number it has  
25 been assigned, and should be linked directly to its corresponding record in the load file using the  
26 NATIVELINK field. To the extent that either party believes that specific documents or classes of  
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1 documents, not already identified within this protocol, should be produced in native format, the parties  
2 should meet and confer in good faith.

3 3. De-Duplication: Each party shall remove exact duplicate documents based on MD5 or  
4 SHA-1 hash values, at the family level. Attachments should not be eliminated as duplicates for  
5 purposes of production, unless the parent email and all attachments are also duplicates. An email that  
6 includes content in the BCC or other blind copy field shall not be treated as a duplicate of an email  
7 that does not include content in those fields, even if all remaining content in the email is identical.  
8 Removal of near-duplicate documents and email thread suppression is not acceptable. De-duplication  
9 should be done across the entire collection (global de-duplication) and the CUSTODIAN-ALL field  
10 should list each custodian, separated by a semicolon, who was a source of that document and the  
11 FILEPATH-DUP field will list each file path, separated by a semicolon, that was a source of that  
12 document. Should the CUSTODIAN-ALL or FILEPATH-DUP metadata fields produced become  
13 outdated due to rolling productions, an overlay file providing all the custodians and file paths for the  
14 affected documents should be produced prior to substantial completion of the document production.

15 4. Technology Assisted Review: Predictive coding/technology-assisted-review shall not  
16 be used for the purpose of culling the documents to be reviewed or produced without notifying the  
17 requesting party prior to use and with ample time to meet and confer in good faith regarding a  
18 mutually agreeable protocol for the use of such technologies.

19 5. Metadata: All ESI shall be produced with a delimited, database load file that contains  
20 the metadata fields listed in Table 1, attached hereto. The metadata produced should have the correct  
21 encoding to enable preservation of the documents' original language.

22 For ESI other than email and e-docs that do not conform to the metadata listed in Table 1,  
23 such as text messages, Instant Bloomberg, iMessage, Google Chat, Yammer, Slack, etc., the parties  
24 will meet and confer as to the appropriate metadata fields to be produced.

25 6. Embedded Objects: Embedded files shall be produced as attachments to the document  
26 that contained the embedded file, with the parent/child relationship preserved. The embedded files  
27 should be marked with a "YES" in the load file under the "Is Embedded" metadata field. The parties  
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1 agree logos need not be extracted as separate documents as long as they are displayed in the parent  
2 document.

3 7. Attachments: If any part of an email or its attachments is responsive, the entire email  
4 and attachments should be produced, except any attachments that must be withheld or redacted on the  
5 basis of privilege. The parties should meet and confer about whether there is an appropriate basis for  
6 withholding a family document for any reason other than attorney-client or work product privilege.  
7 The attachments should be produced sequentially after the parent email. The parties shall use their  
8 best efforts to collect and produce documents that are links in emails, including, but not limited to,  
9 Google G Suite, Microsoft O365, etc. Documents extracted from links shall be populated with the  
10 BegAttach and EndAttach metadata fields to show the family relationship.

11 8. Compressed File Types: Compressed file types (*e.g.*, .ZIP, .RAR, .CAB, .Z) should be  
12 decompressed so that the lowest level document or file is extracted.

13 9. Structured Data: To the extent a response to discovery requires production of  
14 electronic information stored in a database, the parties should meet and confer regarding methods of  
15 production. Parties should consider whether all relevant information may be provided by querying  
16 the database for discoverable information and generating a report in a reasonably usable and  
17 exportable electronic file.

18 10. Exception Report: The producing party shall compile an exception report enumerating  
19 any unprocessed or unprocessable documents, their file type, and the file location.

20 11. Encryption: To maximize the security of information in transit, any media on which  
21 documents are produced may be encrypted. In such cases, the producing party shall transmit the  
22 encryption key or password to the receiving party, under separate cover, contemporaneously with  
23 sending the encrypted media.

24 12. Redactions: If documents that the parties have agreed to produce in native format need  
25 to be redacted, the parties should meet and confer regarding how to implement redactions while  
26 ensuring that proper formatting and usability are maintained.

1 **V. RELEVANT PERIOD**

2 All Requests herein refer to the period of October 1, 2017 through the date of document  
3 production (the “Relevant Period”), unless otherwise specifically indicated, and shall include all  
4 documents that relate, in whole or in part, to such period even though dated, prepared, or received  
5 before or after that period. If a document from before or after this period is necessary for a correct or  
6 complete understanding of any document covered by a Request, you must produce the earlier or  
7 subsequent document as well. If any document is undated and the date of its preparation cannot be  
8 determined, the document shall be produced if otherwise responsive to the production Request.

9 **VI. DOCUMENTS REQUESTED FOR PRODUCTION**

10 REQUEST NO. 1:

11 All documents and communications related to the Offering, including all due diligence  
12 checklists, procedure manuals, or other due diligence materials, deal files, drafts of the Registration  
13 Statement and Prospectus and documents incorporated therein, internal or other presentations, Road  
14 Show slides, lists of invitees and attendees, and any other solicitation materials, meeting minutes, and  
15 any reports, memoranda, analyses, or notes.

16 REQUEST NO. 2:

17 Documents sufficient to identify all persons, excluding purely clerical staff, affiliated with  
18 any Defendant who provided any services in connection with the Offering.

19 REQUEST NO. 3:

20 All documents and communications related to Pivotal’s quarterly and annual financial and  
21 operational results and forecasts for fiscal years 2018, 2019, and 2020, including: (a) budgets;  
22 (b) operating plans; (c) internal forecasts; (d) dashboards; (e) projections; (f) reports;  
23 (g) presentations; (h) accounting policies and procedures; and (i) documents and communications  
24 related to any outside auditor review of Pivotal’s quarterly and annual financial results and forecasts  
25 for fiscal years 2018, 2019, and 2020, including any quarterly reviews or year-end audits.

1 REQUEST NO. 4:

2 All documents and communications distributed at, used during, created in connection with, or  
3 concerning any meeting of Pivotal’s Board of Directors or of any committee or subcommittee of  
4 either, including, but not limited to, any board packages, presentation materials, communications,  
5 minutes, agendas, or notes.

6 REQUEST NO. 5:

7 All documents and communications distributed at, used during, created in connection with, or  
8 concerning any meeting involving any Pivotal management or executives and any Defendant or  
9 VMWare, Inc. (“VMWare”) management or executives, including presentation materials, minutes,  
10 agendas, and notes.

11 REQUEST NO. 6:

12 All documents and communications regarding any statements by any Defendant regarding  
13 Pivotal’s quarterly or annual financial or operational results and forecasts for fiscal years 2018, 2019,  
14 and 2020, including any presentations to or meetings with any Pivotal, Dell, or VMWare  
15 shareholders, securities analysts, financial analysts, institutional investors, financial publications,  
16 news reporters, journalists or investment bankers concerning Pivotal, Dell, or VMWare, including  
17 any drafts, scripts, transcripts, tapes or videos prepared in connection with, or as a result of, such  
18 presentations or meetings.

19 REQUEST NO. 7:

20 All documents and communications concerning Pivotal, Dell, or VMWare that were publicly  
21 disseminated (and drafts thereof), including:

- 22 (a) all press releases, annual reports, quarterly reports, proxy materials and other  
23 materials sent to Pivotal, Dell, or VMWare security holders or to any financial  
24 institutions, analysts, broker-dealers, or investment banks;
- 25 (b) all recordings, transcripts, or summaries of electronic media broadcasts,  
26 including conference calls, and interviews with, or statements by, any  
27 Defendant or any representative of the Pivotal, Dell, or VMWare; and  
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1 (a) all print media clippings and reproductions.

2 REQUEST NO. 8:

3 All documents and communications related to any loss of market share, price pressure,  
4 reduced margins, decreased demand, diminished growth in new customers, deferred sales,  
5 lengthening or seasonality of sales cycles, sales execution challenges, changes, or trends, increasing  
6 competition from Amazon Web Services, Microsoft Azure, and Google Cloud or other ecosystem  
7 partners, cloud partners, or other competitors for enterprise clients, or other competition that Pivotal  
8 had experienced, was experiencing, or could experience in connection with its product offerings.

9  
10 REQUEST NO. 9:

11 All documents and communications related to Pivotal’s product offerings, including: (a) any  
12 spec sheets, pricing comparisons and performance comparisons with then-existing or future solutions  
13 from both competitors or partners’ offerings; (b) documents and communications regarding sales,  
14 demand, results, or forecasts for Pivotal’s product offerings and Defendants’ visibility therein,  
15 including any documents or communications related to any delays, increased competition, customer  
16 complaints, or lengthening sales cycles, or other actual or contemplated changes or trends; and  
17 (c) documents and communications regarding the actual, contemplated, or potential functionality of  
18 Pivotal’s product offerings, including any purported compatibility with Kubernetes, ability to install  
19 or function with customer environments, automation features, and support for and functionality with  
20 any Infrastructure as a Service (“IaaS”) service.

21 REQUEST NO. 10:

22 All documents and communications relating to the efforts made by Defendants or any other  
23 person to sell, market, distribute, publicize, or promote the Offering or otherwise concerning the  
24 purchase or sale of securities issued in connection with the Offering, including: (a) any documents or  
25 communications concerning any sale to, or solicitation of, any named Plaintiff; (b) documents  
26 sufficient to identify all persons or entities that purchased or otherwise obtained securities in, or  
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1 traceable to, the Offering; and (c) documents and communications regarding any Defendant's  
2 decision to invest in Pivotal, Dell, or VMWare securities.

3 REQUEST NO. 11:

4 All documents and communications regarding any Defendant's employment by, ownership  
5 interest in, shared officers, partners, directors, or other affiliated persons, or other relationship with  
6 Pivotal, Dell, or VMWare, or any other Defendant.

7 REQUEST NO. 12:

8 All documents and communications related to any valuation of Pivotal, Dell, or VMWare  
9 securities, including all documents and communications concerning Pivotal, Dell, or VMWare's share  
10 price, market capitalization, or the market, perceived, inherent, actual, or other value of any Pivotal,  
11 Dell, or VMWare security or any of the assets or businesses of Pivotal, Dell, or VMWare, including  
12 any market studies, market research reports, valuations, comparisons and analysts' reports concerning  
13 Pivotal, Dell, or VMWare, and all documents and communications related to the current, anticipated,  
14 or perceived value of Pivotal common stock, including any movement or change in the public market  
15 price thereof.

16 REQUEST NO. 13:

17 All documents and communications regarding any compensation, fees, bonuses, expenses,  
18 reimbursements, stock, options, costs, or other remuneration or benefit paid to, or received by, any  
19 Defendant in connection with, or as a result of, the Offering, including any Defendant's 10b5-1 or  
20 other trading plan, documents concerning stock option awards or vesting schedules, and any  
21 documents or communications regarding any Defendant's trading or other transactions in Pivotal,  
22 Dell, or VMWare securities since the Offering.

23 REQUEST NO. 14:

24 Documents sufficient to show, on a year-by-year basis, Pivotal's organizational structure,  
25 including its ownership, parent companies, subsidiaries, and affiliates, and sufficient to identify each  
26 of Pivotal's present and former officers and directors, including organizational charts, and any  
27 relationship between any officer or director and Dell, VMWare, or any other Defendant.

1 REQUEST NO. 15:

2 A copy of any insurance policies possibly covering the claims asserted in this Action, as well  
3 as all documents and communications concerning any proposed or actual agreement by Pivotal, Dell,  
4 VMWare, or any other entity to indemnify any Defendant in relation to the Offering.

5  
6 Dated: November 17, 2020

**SCOTT+SCOTT ATTORNEYS AT LAW LLP**

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27 *Co-Lead Counsel for Plaintiffs*

28 Peretz Bronstein

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*Additional Counsel for Co-Lead Plaintiffs*

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# EXHIBIT K

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**301**

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6 *Co-Lead Counsel for Plaintiffs*

7 [Additional counsel on signature page.]

8  
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF SAN FRANCISCO**  
11

12 IN RE PIVOTAL SOFTWARE, INC.  
13 SECURITIES LITIGATION

Lead Case No. CGC-19-576750

CLASS ACTION

14 This Document Relates to:  
15 ALL ACTIONS.

16 PLAINTIFFS' REQUESTS TO  
17 UNDERWRITER DEFENDANTS MORGAN  
18 STANLEY & CO. LLC, GOLDMAN SACHS  
19 & CO. LLC, CITIGROUP GLOBAL  
20 MARKETS INC., MERRILL LYNCH,  
21 PIERCE, FENNER & SMITH  
22 INCORPORATED, BARCLAYS CAPITAL  
23 INC., CREDIT SUISSE SECURITIES (USA)  
24 LLC, RBC CAPITAL MARKETS, LLC, UBS  
25 SECURITIES LLC, WELLS FARGO  
26 SECURITIES, LLC, KEYBANC CAPITAL  
27 MARKETS INC., WILLIAM BLAIR &  
28 COMPANY, LLC, MISCHLER FINANCIAL  
GROUP, INC., SAMUEL A. RAMIREZ &  
COMPANY, SIEBERT CISNEROS SHANK  
& CO., LLC, AND WILLIAMS CAPITAL  
GROUP, L.P. FOR THE PRODUCTION OF  
DOCUMENTS, SET ONE

Judge: Hon. Andrew Y.S. Cheng  
Dept.: 613

PLAINTIFFS' REQUESTS TO UNDERWRITER DEFENDANTS FOR THE PRODUCTION OF DOCUMENTS,  
SET ONE

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1 Pursuant to California Code of Civil Procedure §2031.010, *et seq.*, Plaintiffs Jason Hill,  
2 Nhung Tran, and Alandra Mothorpe (collectively, “Plaintiffs”) request that Defendants Morgan  
3 Stanley & Co. LLC, Goldman Sachs & Co. LLC, Citigroup Global Markets Inc., Merrill Lynch,  
4 Pierce, Fenner & Smith Incorporated, Barclays Capital Inc., Credit Suisse Securities (USA) LLC,  
5 RBC Capital Markets, LLC, UBS Securities LLC, Wells Fargo Securities, LLC, KeyBanc Capital  
6 Markets Inc., William Blair & Company, LLC, Mischler Financial Group, Inc., Samuel A. Ramirez  
7 & Company, Siebert Cisneros Shank & Co., LLC, and Williams Capital Group, L.P. identify and  
8 produce the following documents at the offices of Scott+Scott Attorneys at Law LLP, 600 West  
9 Broadway, Suite 3300, San Diego, CA, within 30 days of the date of these Requests.

10 **I. DEFINITIONS**

11 The following definitions shall apply to each of the document requests set forth and are  
12 deemed to be incorporated in each request:

13 1. “Action” refers to the above-captioned lawsuit pending in the Superior Court of  
14 California, San Francisco County.

15 2. “Pivotal” or the “Company” means defendant Pivotal Software, Inc. and its  
16 predecessors, successors, parents, subsidiaries, divisions, or affiliates and their respective officers,  
17 directors, agents, attorneys, accountants, employees, partners, or other persons occupying similar  
18 positions or performing similar functions.

19 3. “All” shall include the term “each,” and vice versa, as necessary to bring within the  
20 scope of the Request all responses that might otherwise be construed to be outside the scope of the  
21 Request.

22 4. “Communication” or “communications” means the transmittal of information (in the  
23 form of facts, ideas, inquiries or otherwise), or attempt to transmit information, whether written, oral,  
24 electronic or by any other means.

25 5. “Complaint” refers to the Amended Complaint, filed on September 24, 2019.

26 6. “Concerning” means relating to, referring to, describing, evidencing or constituting.

27 7. “Defendants” refers to Pivotal Software, Inc., Dell Technologies, Inc. (“Dell”), Robert  
28 Mee, Cynthia Gaylor, Paul Maritz, Michael S. Dell, Zane Rowe, Egon Durban, William D. Green,

1 Marcy S. Klevorn, Khozema Z. Shipchandler, and the Underwriter Defendants, as well as all of their  
2 corporate parents, subsidiaries, attorneys, accountants, officers, directors, employees, partners,  
3 agents, representatives, or other persons occupying similar positions or performing similar functions.

4 8. “Document” and “documents” shall have the broadest meaning possible under  
5 California law, including, but not limited to, the definition of “writings” in California Evidence Code  
6 §250, and includes all originals and drafts, in any and all languages, of any nature whatsoever, in your  
7 possession, custody, or control, regardless of where located, and includes, but is not limited to, letters,  
8 correspondence, logs, drafts, contracts, prospective contracts, agreements, records, studies, surveys,  
9 resolutions, tabulations, notes, summaries, memoranda, Electronically Stored Information (“ESI”),  
10 electronic mail (“email”), instant messages, calendar or diary entries, handwritten notes, working  
11 papers, worksheets, spreadsheets, diagrams, minutes, agendas, bulletins, periodicals, circulars,  
12 advertisements, notices, announcements, invoices, statements, checks (front and back), bank  
13 statements, ledgers, orders, vouchers, instructions, drawings, charts, graphs, manuals, brochures,  
14 pamphlets, schedules, telegrams, teletypes, photographs, audio tapes, voicemail messages,  
15 videotapes, electronic recordings, facsimile transmissions and information of whatever kind, either  
16 stored on computers, including computer disks, hard drives and other media for storage of ESI or  
17 information recorded on any medium, and every other written, typed, recorded, transcribed, filed or  
18 graphic matter, whether sent, received or neither, and both sides thereof, including non-identical  
19 copies and drafts, in the custody, possession, or control of the parties responding to these Requests,  
20 their agents, accountants, employees, representatives or attorneys, and things similar to any of the  
21 foregoing, however denominated by the parties required to produce hereunder.

22 9. “Including” means including, without limitation.

23 10. “IPO” or “Offering” refers to Pivotal’s April 20, 2018 initial public offering of  
24 common stock.

25 11. “Meeting” means the contemporaneous presence, whether in person or through any  
26 means of communication, of any natural persons, whether or not such presence was by chance or  
27 prearranged and whether or not the meeting was formal, informal, or occurred in connection with  
28 some other activity.

1           12.    “Offering Documents” refers to the Registration Statement and Prospectus issued in  
2 connection with the IPO, along with any previously filed or amended versions of those documents  
3 and related documents.

4           13.    “Person” or “persons” means any natural person, public or private corporation,  
5 whether or not organized for profit; governmental entity, partnership, association, cooperative, joint  
6 venture, sole proprietorship or other legal entity. With respect to a business entity, the term “person”  
7 includes any natural person acting formally or informally as a director, trustee, officer, agent, attorney,  
8 or other representative of the business entity.

9           14.    “Plaintiffs” refers to Jason Hill, Zhung Tran, and Alandra Mothorpe.

10          15.    “Prospectus” means any prospectus distributed by Defendants or used to conduct the  
11 IPO, including, without limitation, all previously filed or amended versions and all drafts thereof.

12          16.    “Referring” or “relating to” means all documents that comprise, explicitly or implicitly  
13 refer to, were reviewed in conjunction with or were created, generated or maintained as a result of the  
14 subject matter of the request, including, without limitation, all documents that reflect, record,  
15 memorialize, embody, discuss, evaluate, consider, review, or report on the subject matter of the  
16 Request.

17          17.    “Registration Statement” means the Registration Statement and Prospectus filed with  
18 the SEC in connection with the IPO, including all amendments thereto, whether filed with the SEC  
19 or not, and all drafts thereof.

20          18.    “Road Show” means any physical or virtual meeting in which any Defendant  
21 communicated with any current or potential investor concerning the IPO.

22          19.    “SEC” means the Unites States Securities and Exchange Commission.

23          20.    “Underwriter Defendants” refers to Morgan Stanley & Co. LLC, Goldman Sachs &  
24 Co. LLC, Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated,  
25 Barclays Capital Inc., Credit Suisse Securities (USA) LLC, RBC Capital Markets, LLC, UBS  
26 Securities LLC, Wells Fargo Securities, LLC, KeyBanc Capital Markets Inc., William Blair &  
27 Company, LLC, Mischler Financial Group, Inc., Samuel A. Ramirez & Company, Siebert Cisneros  
28 Shank & Co., LLC, and Williams Capital Group, L.P., as well as all of their corporate parents,

1 subsidiaries, attorneys, accountants, officers, directors, employees, partners, agents, representatives,  
2 or other persons occupying similar positions or performing similar functions.

3 21. "You," "your," and "yourself" refers to the parties to whom the following requests are  
4 addressed and their agents, representatives, officers, directors, accountants, insurance companies,  
5 attorneys, investigators, affiliates, predecessors and successors in interest, parents, divisions,  
6 subsidiaries, area and regional offices and employees, including persons or entities outside the United  
7 States or anyone acting on their behalf, if applicable.

8 22. The connectives "and" and "or" shall be construed either disjunctively or  
9 conjunctively as necessary to bring within the scope of the discovery Request all responses that might  
10 otherwise be construed to be outside of its scope.

11 23. The use of the singular form of any word includes the plural and vice versa, and the  
12 masculine, feminine, or neuter form of any words includes each of the other genders.

13 24. The use of any tense of any verb shall also include within its meaning all other tenses.

14 **II. INSTRUCTIONS**

15 1. All documents shall be produced in the order they are kept in the ordinary course of  
16 business, and shall be produced in their original folders, binders, covers, or containers or facsimile  
17 thereof.

18 2. If a document was prepared in several copies, or if additional copies were subsequently  
19 made and any such copies were not identical or are no longer identical by reason of subsequent  
20 notation or modification of any kind whatsoever, including, without limitation, handwritten notations  
21 on the front or back of the document, all such non-identical copies shall be produced.

22 3. Documents shall be produced in such fashion as to identify the department, branch, or  
23 office in which they were located and, where applicable, the natural person in whose possession they  
24 were found and the business address of each document's custodian(s).

25 4. Documents attached to each other should not be separated.

26 5. These Requests relate to all documents which are in your possession, custody, or  
27 control, or in the possession, custody, or control of your predecessors, successors, parents,  
28 subsidiaries, divisions or affiliates, or their respective officers, directors, agents, attorneys,

1 accountants, employees, partners, or other persons occupying similar positions or performing similar  
2 functions.

3 6. The documents to be produced pursuant to these Requests specifically embrace, in  
4 addition to documents within your possession, custody, or control, all documents within the  
5 possession, custody, or control of any of your agents, accountants, representatives or attorneys. Such  
6 documents also embrace originals and identical copies (whether different from the original because  
7 of notes made thereon or otherwise) of the documents described in these Requests.

8 7. The fact that a document has been, or will be, produced by another party does not  
9 relieve you of the obligation to produce your copy of the same document, even if the two documents  
10 are identical in all respects.

11 8. You shall produce the original of each document described below or, if the original is  
12 not in your custody, then a copy thereof, and in any event, all non-identical copies which differ from  
13 the original or from the other copies produced for any reason, including, but not limited to, the making  
14 of notes thereon.

15 9. If any document(s) fall within the scope of any Request but are not being produced, or  
16 are being produced with portions redacted, pursuant to any claim of privilege or confidentiality, you  
17 shall provide a log containing the following information:

- 18 (a) the nature of the privilege claimed (*i.e.*, attorney-client, work-product, etc.);
- 19 (b) the name of the person or entity claiming privilege and the name of the  
20 attorney, if any, with respect to whom the privilege is claimed;
- 21 (c) the facts upon which you rely as the basis for claiming any privilege as to the  
22 specific information or document;
- 23 (d) the name of such document; identify the type of document (*i.e.*, letter, memo,  
24 etc.); set forth the subject matter thereof; identify the person who prepared it  
25 and each person (if any) who signed it; identify each person to whom it was  
26 directed, circulated or shown; and identify each person now in possession of  
27 the document. If any document is produced in redacted form, the word  
28 “redacted” is to be placed in the redacted section of the document; and

1 (e) whenever a document is not produced in full or is produced in redacted form,  
2 so indicate on the document and state with particularity the reason or reasons  
3 it is not being produced in full and describe to the best of your knowledge,  
4 information and belief, and with as much particularity as possible, those  
5 portions of the document which are not being produced.

6 10. In the event that any document called for by these Requests has been destroyed or  
7 discarded, that document is to be identified by stating:

- 8 (a) the nature of the document;
- 9 (b) the names of any addresser or addressee;
- 10 (c) if there are any indicated or blind copies;
- 11 (d) the document's date, subject matter, number of pages, and attachments or  
12 appendices;
- 13 (e) all persons to whom the document was distributed, shown or explained;
- 14 (f) the document's date of destruction or discard, manner of destruction or discard;
- 15 (g) the persons authorizing or carrying out such destruction or discard.

16 11. With respect to any documents which you contend would be in some way or  
17 "oppressive" to produce, state the specific reasons for that objection. If you object to part of any  
18 Request, furnish documents responsive to the remainder of Each Request refers to all documents that  
19 are either known by the Defendants to exist located or discovered by reasonably diligent efforts of  
20 the Defendants.

21 12. The document(s) produced in response to these Requests shall include all attachments  
22 enclosures.

23 **III. PRODUCTION OF HARD COPY DOCUMENTS – FORMAT**

24 Hard copy documents should be scanned as single-page, Group IV, 300 DPI TIFF images  
25 with an opt image cross-reference file and a delimited database load file (*i.e.*, .dat). The database load  
26 file should contain the following fields: "BEGNO," "ENDNO," "PAGES," "VOLUME," and  
27 "CUSTODIAN." The documents should be logically unitized (*i.e.*, distinct documents shall not be  
28 merged into a single record, and single documents shall not be split into multiple records) and be



1 produced in the order in which they are kept in the usual course of business. If an original document  
2 contains color, and the color is necessary to understand the meaning or content of the document, the  
3 document shall be produced as single-page, **300 DPI JPG images with JPG compression and a high**  
4 **quality setting as to not degrade the original image**. Multi-page OCR text for each document should  
5 also be provided. The OCR software shall maximize text quality. Settings such as “auto-skewing”  
6 and “auto-rotation” should be turned on during the OCR process.

7 **IV. PRODUCTION OF ESI**

8 1. Format: Electronically stored information (“ESI”) should be produced in single-page,  
9 black and white, TIFF Group IV, 300 DPI TIFF images with the exception of spreadsheet and  
10 presentation type files, audio and video files, photo or graphic images, and documents with tracked  
11 changes reflected in the metadata, which should be produced in native format. If an original document  
12 contains color, the document should be produced as **single-page, 300 DPI JPG images with JPG**  
13 **compression and a high quality setting as to not degrade the original image**. Parties are under no  
14 obligation to enhance an image beyond how it was kept in the usual course of business. TIFFs/JPGs  
15 should show any and all text and images that would be visible to the reader using the native software  
16 that created the document. For example, TIFFs/JPGs of email messages should include the BCC line.

17 2. Format – Native Files: If a document is produced in native format, a single-page,  
18 Bates-stamped image slip sheet stating the document has been produced in native format should also  
19 be provided, with the exception of PowerPoint presentations. PowerPoint documents should be  
20 produced in native format along with single-page, 300 DPI TIFF/JPG images which display both the  
21 slide and speaker’s notes. Each native file should be named according to the Bates number it has  
22 been assigned, and should be linked directly to its corresponding record in the load file using the  
23 NATIVELINK field. To the extent that either party believes that specific documents or classes of  
24 documents, not already identified within this protocol, should be produced in native format, the parties  
25 should meet and confer in good faith.

26 3. De-Duplication: Each party shall remove exact duplicate documents based on MD5 or  
27 SHA-1 hash values, at the family level. Attachments should not be eliminated as duplicates for  
28 purposes of production, unless the parent email and all attachments are also duplicates. An email that

1 includes content in the BCC or other blind copy field shall not be treated as a duplicate of an email  
2 that does not include content in those fields, even if all remaining content in the email is identical.  
3 Removal of near-duplicate documents and email thread suppression is not acceptable. De-duplication  
4 should be done across the entire collection (global de-duplication) and the CUSTODIAN-ALL field  
5 should list each custodian, separated by a semicolon, who was a source of that document and the  
6 FILEPATH-DUP field will list each file path, separated by a semicolon, that was a source of that  
7 document. Should the CUSTODIAN-ALL or FILEPATH-DUP metadata fields produced become  
8 outdated due to rolling productions, an overlay file providing all the custodians and file paths for the  
9 affected documents should be produced prior to substantial completion of the document production.

10 4. Technology Assisted Review: Predictive coding/technology-assisted-review shall not  
11 be used for the purpose of culling the documents to be reviewed or produced without notifying the  
12 requesting party prior to use and with ample time to meet and confer in good faith regarding a  
13 mutually agreeable protocol for the use of such technologies.

14 5. Metadata: All ESI shall be produced with a delimited, database load file that contains  
15 the metadata fields listed in Table 1, attached hereto. The metadata produced should have the correct  
16 encoding to enable preservation of the documents' original language.

17 For ESI other than email and e-docs that do not conform to the metadata listed in Table 1,  
18 such as text messages, Instant Bloomberg, iMessage, Google Chat, Yammer, Slack, etc., the parties  
19 will meet and confer as to the appropriate metadata fields to be produced.

20 6. Embedded Objects: Embedded files shall be produced as attachments to the document  
21 that contained the embedded file, with the parent/child relationship preserved. The embedded files  
22 should be marked with a "YES" in the load file under the "Is Embedded" metadata field. The parties  
23 agree logos need not be extracted as separate documents as long as they are displayed in the parent  
24 document.

25 7. Attachments: If any part of an email or its attachments is responsive, the entire email  
26 and attachments should be produced, except any attachments that must be withheld or redacted on the  
27 basis of privilege. The parties should meet and confer about whether there is an appropriate basis for  
28 withholding a family document for any reason other than attorney-client or work product privilege.

1 The attachments should be produced sequentially after the parent email. The parties shall use their  
2 best efforts to collect and produce documents that are links in emails, including, but not limited to,  
3 Google G Suite, Microsoft O365, etc. Documents extracted from links shall be populated with the  
4 BegAttach and EndAttach metadata fields to show the family relationship.

5 8. Compressed File Types: Compressed file types (*e.g.*, .ZIP, .RAR, .CAB, .Z) should be  
6 decompressed so that the lowest level document or file is extracted.

7 9. Structured Data: To the extent a response to discovery requires production of  
8 electronic information stored in a database, the parties should meet and confer regarding methods of  
9 production. Parties should consider whether all relevant information may be provided by querying  
10 the database for discoverable information and generating a report in a reasonably usable and  
11 exportable electronic file.

12 10. Exception Report: The producing party shall compile an exception report enumerating  
13 any unprocessed or unprocessable documents, their file type, and the file location.

14 11. Encryption: To maximize the security of information in transit, any media on which  
15 documents are produced may be encrypted. In such cases, the producing party shall transmit the  
16 encryption key or password to the receiving party, under separate cover, contemporaneously with  
17 sending the encrypted media.

18 12. Redactions: If documents that the parties have agreed to produce in native format need  
19 to be redacted, the parties should meet and confer regarding how to implement redactions while  
20 ensuring that proper formatting and usability are maintained.

21 **V. RELEVANT PERIOD**

22 All Requests herein refer to the period of October 1, 2017 through the date of document  
23 production (the “Relevant Period”), unless otherwise specifically indicated, and shall include all  
24 documents that relate, in whole or in part, to such period even though dated, prepared, or received  
25 before or after that period. If a document from before or after this period is necessary for a correct or  
26 complete understanding of any document covered by a request, you must produce the earlier or  
27 subsequent document as well. If any document is undated and the date of its preparation cannot be  
28 determined, the document shall be produced if otherwise responsive to the production Request.

1 **VI. DOCUMENTS REQUESTED FOR PRODUCTION**

2 REQUEST NO. 1:

3 All documents and communications related to the IPO and any services the Underwriter  
4 Defendants performed related to the Offering

5 REQUEST NO. 2:

6 All documents and communications concerning each Underwriter Defendant's participation  
7 in the preparation, review, and submission of the Offering Documents.

8 REQUEST NO. 3:

9 All documents, including any deal files, communications, presentations, meeting minutes,  
10 reports, memoranda, analyses, drafts, or notes concerning any due diligence investigation, effort, or  
11 inquiry related to the Offering.

12 REQUEST NO. 4:

13 All documents and communications concerning the Offering, Offering Documents, and due  
14 diligence investigations related to the Offering between or among you and Pivotal or any Defendant,  
15 including the Underwriter Defendants, and any auditor or accountant, any vendor involved in the  
16 Offering, any regulatory agency, any bank or stock exchange.

17 REQUEST NO. 5:

18 All documents and communications concerning how you conduct due diligence, including all  
19 due diligence checklists and procedure manuals.

20 REQUEST NO. 6:

21 Documents sufficient to identify all persons, excluding purely clerical staff, affiliated with  
22 any Underwriter Defendant or Pivotal who provided any services in connection with the Offering.

23 REQUEST NO. 7:

24 All documents and communications relating to the pricing of the Offering.

25 REQUEST NO. 8:

26 All comfort letters prepared or received by the Underwriter Defendants concerning Pivotal or  
27 the Offering.

28

1 REQUEST NO. 9:

2 All documents or communications relating to the efforts made by the Underwriter Defendants,  
3 Pivotal, any other Defendant, or any other person to sell, market, distribute, publicize, or promote the  
4 Offering or otherwise concerning the purchase or sale of securities issued in connection with the  
5 Offering, including: (a) any documents or communications concerning any sale to, or solicitation of,  
6 any named Plaintiff; (b) documents sufficient to identify all persons or entities that purchased or  
7 otherwise obtained securities in, or traceable to, the Offering; and (c) documents and communications  
8 regarding any Defendant's decision to invest in Pivotal, Dell, or VMWare securities.

9 REQUEST NO. 10:

10 All documents and communications provided to or received from the SEC concerning the  
11 Offering, including documents relating to the Offering Documents, or any action considered or taken  
12 to correct, amend, or supplement any Offering Document.

13 REQUEST NO. 11:

14 All documents and communications concerning purchasers of Pivotal's securities in  
15 connection with the Offering, including any lists and trading records in the possession, custody, or  
16 control of the Underwriter Defendants, and documents identifying any person or entity that purchased  
17 Pivotal securities in the Offering.

18 REQUEST NO. 12:

19 All documents and communications concerning any Road Show, including any Road Show  
20 materials, created, reviewed, or otherwise used in connection with the Offering.

21 REQUEST NO. 13:

22 All documents and communications related to any loss of market share, price pressure,  
23 reduced margins, decreased demand, diminished growth in new customers, deferred sales,  
24 lengthening or seasonality of sales cycles, sales execution challenges, changes, or trends, increasing  
25 competition from Amazon Web Services, Microsoft Azure, and Google Cloud or other ecosystem  
26 partners, cloud partners, or other competitors for enterprise clients, or other competition that Pivotal  
27 had experienced, was experiencing, or could experience in connection with its product offerings.

1 REQUEST NO. 14:

2 All documents and communications related to Pivotal’s product offerings, including: (a) any  
3 spec sheets, pricing comparisons and performance comparisons with then-existing or future solutions  
4 from both competitors or partners’ offerings; (b) documents and communications regarding sales,  
5 demand, results, or forecasts for Pivotal’s product offerings and Defendants’ visibility therein,  
6 including any documents or communications related to any delays, increased competition, customer  
7 complaints, or lengthening sales cycles, or other actual or contemplated changes or trends; and  
8 (c) documents and communications regarding the actual, contemplated, or potential functionality of  
9 Pivotal’s product offerings, including any purported compatibility with Kubernetes, ability to install  
10 or function with customer environments, automation features, and support for and functionality with  
11 any Infrastructure as a Service (“IaaS”) service.

12 REQUEST NO. 15:

13 All documents and communications related to any valuation of Pivotal, Dell, or VMWare  
14 securities, including all documents and communications concerning Pivotal, Dell, or VMWare’s share  
15 price, market capitalization, or the market, perceived, inherent, actual, or other value of any Pivotal,  
16 Dell, or VMWare security or any of the assets or businesses of Pivotal, Dell, or VMWare, including  
17 any market studies, market research reports, valuations, comparisons and analysts’ reports concerning  
18 Pivotal, Dell, or VMWare, and all documents and communications related to the current, anticipated,  
19 or perceived value of Pivotal common stock, including any movement or change in the public market  
20 price thereof.

21 REQUEST NO. 16:

22 All documents and communications related to any agreements concerning the Offering  
23 between Pivotal and any Underwriter Defendant.

24 REQUEST NO. 17:

25 All working group lists for the Offering.  
26  
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28

1 REQUEST NO. 18:

2 All documents and communications concerning daybooks, calendars, phone logs, phone bills,  
3 timesheets, expense reports, and visitor logs maintained by of for each member of the working group  
4 for the Offering.

5 REQUEST NO. 19:

6 All documents concerning Your policies or practices, if any, regarding the retention or  
7 destruction of documents and files, including emails, email backup, hard drives, and corporate  
8 storage, including, without limitation, any changes or modifications in such policies or practices  
9 during the Relevant Period.

10 REQUEST NO. 20:

11 A copy of any insurance policies possibly covering the claims asserted in this Action, as well  
12 as all documents and communications concerning any proposed or actual agreement by Pivotal, Dell,  
13 VMWare, or any other entity to indemnify any Underwriter Defendant in relation to the Offering.

14  
15 Dated: November 17, 2020

**SCOTT+SCOTT ATTORNEYS AT LAW LLP**

16 s/ John T. Jasnoch \_\_\_\_\_  
17 John T. Jasnoch (CA 281605)  
18 Hal Cunningham (CA 243048)  
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20 San Diego, CA 92101  
21 Telephone: 619-233-4565  
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Document received by the CA 1st District Court of Appeal.

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*Additional Counsel for Co-Lead Plaintiffs*



# EXHIBIT L

159

Document received by the CA 1st District Court of Appeal.

**317**

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Hal Cunningham (CA 243048)  
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6 *Co-Lead Counsel for Plaintiffs*

7 [Additional counsel on signature page.]

8  
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF SAN FRANCISCO**

12 IN RE PIVOTAL SOFTWARE, INC.  
SECURITIES LITIGATION

Lead Case No. CGC-19-576750

13 CLASS ACTION

14 This Document Relates to:  
ALL ACTIONS.

15 PLAINTIFFS' REQUESTS TO DEFENDANT  
DELL TECHNOLOGIES, INC. FOR THE  
16 PRODUCTION OF DOCUMENTS, SET ONE

17 Judge: Hon. Andrew Y.S. Cheng  
18 Dept.: 613

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PLAINTIFFS' REQUESTS TO DEFENDANT DELL TECHNOLOGIES, INC. FOR THE PRODUCTION OF DOCUMENTS,  
SET ONE

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Document received by the CA 1st District Court of Appeal.

1 Pursuant to California Code of Civil Procedure §2031.010, *et seq.*, Plaintiffs Jason Hill,  
2 Nhung Tran, and Alandra Mothorpe (collectively, “Plaintiffs”) request that Defendant Dell  
3 Technologies, Inc. (“Dell”) identify and produce the following documents at the offices of  
4 Scott+Scott Attorneys at Law LLP, 600 West Broadway, Suite 3300, San Diego, California, within  
5 30 days of the date of these Requests.

6 **I. DEFINITIONS**

7 The following definitions shall apply to each of the document requests set forth and are  
8 deemed to be incorporated in each request:

9 1. “Action” refers to the above-captioned lawsuit pending in the Superior Court of  
10 California, San Francisco County.

11 2. “Pivotal” or the “Company” means defendant Pivotal Software, Inc. and its  
12 predecessors, successors, parents, subsidiaries, divisions, or affiliates and their respective officers,  
13 directors, agents, attorneys, accountants, employees, partners, or other persons occupying similar  
14 positions or performing similar functions.

15 3. “All” shall include the term “each,” and vice versa, as necessary to bring within the  
16 scope of the Request all responses that might otherwise be construed to be outside the scope of the  
17 Request.

18 4. “Communication” or “communications” means the transmittal of information (in the  
19 form of facts, ideas, inquiries or otherwise), or attempt to transmit information, whether written, oral,  
20 electronic or by any other means.

21 5. “Complaint” refers to the Amended Complaint, filed on September 24, 2019.

22 6. “Concerning” means relating to, referring to, describing, evidencing or constituting.

23 7. “Defendants” refers to Pivotal Software, Inc., Dell, Robert Mee, Cynthia Gaylor, Paul  
24 Maritz, Michael S. Dell, Zane Rowe, Egon Durban, William D. Green, Marcy S. Klevorn, Khozema  
25 Z. Shipchandler, Morgan Stanley & Co. LLC, Goldman Sachs & Co. LLC, Citigroup Global Markets  
26 Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Barclays Capital Inc., Credit Suisse  
27 Securities (USA) LLC, RBC Capital Markets, LLC, UBS Securities LLC, Wells Fargo Securities,  
28 LLC, KeyBanc Capital Markets Inc., William Blair & Company, LLC, Mischler Financial Group,

1 Inc., Samuel A. Ramirez & Company, Siebert Cisneros Shank & Co., LLC, and Williams Capital  
2 Group, L.P., as well as all of their corporate parents, subsidiaries, attorneys, accountants, officers,  
3 directors, employees, partners, agents, representatives, or other persons occupying similar positions  
4 or performing similar functions.

5 8. "Document" and "documents" shall have the broadest meaning possible under  
6 California law, including, but not limited to, the definition of "writings" in California Evidence Code  
7 §250, and includes all originals and drafts, in any and all languages, of any nature whatsoever, in your  
8 possession, custody, or control, regardless of where located, and includes, but is not limited to, letters,  
9 correspondence, logs, drafts, contracts, prospective contracts, agreements, records, studies, surveys,  
10 resolutions, tabulations, notes, summaries, memoranda, Electronically Stored Information ("ESI"),  
11 electronic mail ("email"), instant messages, calendar or diary entries, handwritten notes, working  
12 papers, worksheets, spreadsheets, diagrams, minutes, agendas, bulletins, periodicals, circulars,  
13 advertisements, notices, announcements, invoices, statements, checks (front and back), bank  
14 statements, ledgers, orders, vouchers, instructions, drawings, charts, graphs, manuals, brochures,  
15 pamphlets, schedules, telegrams, teletypes, photographs, audio tapes, voicemail messages,  
16 videotapes, electronic recordings, facsimile transmissions and information of whatever kind, either  
17 stored on computers, including computer disks, hard drives and other media for storage of ESI or  
18 information recorded on any medium, and every other written, typed, recorded, transcribed, filed or  
19 graphic matter, whether sent, received or neither, and both sides thereof, including non-identical  
20 copies and drafts, in the custody, possession, or control of the parties responding to these Requests,  
21 their agents, accountants, employees, representatives or attorneys, and things similar to any of the  
22 foregoing, however denominated by the parties required to produce hereunder.

23 9. "Including" means including, without limitation.

24 10. "IPO" or "Offering" refers to Pivotal's April 20, 2018 initial public offering of  
25 common stock.

26 11. "Meeting" means the contemporaneous presence, whether in person or through any  
27 means of communication, of any natural persons, whether or not such presence was by chance or  
28

1 prearranged and whether or not the meeting was formal, informal, or occurred in connection with  
2 some other activity.

3 12. "Offering Documents" refers to the Registration Statement and Prospectus issued in  
4 connection with the IPO, along with any previously filed or amended versions of those documents  
5 and related documents.

6 13. "Person" or "persons" means any natural person, public or private corporation,  
7 whether or not organized for profit; governmental entity, partnership, association, cooperative, joint  
8 venture, sole proprietorship or other legal entity. With respect to a business entity, the term "person"  
9 includes any natural person acting formally or informally as a director, trustee, officer, agent, attorney,  
10 or other representative of the business entity.

11 14. "Plaintiffs" refers to Jason Hill, Zhung Tran, and Alandra Mothorpe.

12 15. "Prospectus" means any prospectus distributed by Defendants or used to conduct the  
13 IPO, including, without limitation, all previously filed or amended versions and all drafts thereof.

14 16. "Referring" or "relating to" means all documents that comprise, explicitly or implicitly  
15 refer to, were reviewed in conjunction with or were created, generated or maintained as a result of the  
16 subject matter of the request, including, without limitation, all documents that reflect, record,  
17 memorialize, embody, discuss, evaluate, consider, review, or report on the subject matter of the  
18 Request.

19 17. "Registration Statement" means the Registration Statement and Prospectus filed with  
20 the SEC in connection with the IPO, including all amendments thereto, whether filed with the SEC  
21 or not, and all drafts thereof.

22 18. "Road Show" means any physical or virtual meeting in which any Defendant  
23 communicated with any current or potential investor concerning the IPO.

24 19. "SEC" means the United States Securities and Exchange Commission.

25 20. "You," "your," and "yourself" refers to the parties to whom the following requests are  
26 addressed and their agents, representatives, officers, directors, accountants, insurance companies,  
27 attorneys, investigators, affiliates, predecessors and successors in interest, parents, divisions,  
28

1 subsidiaries, area and regional offices and employees, including persons or entities outside the United  
2 States or anyone acting on their behalf, if applicable.

3 21. The connectives “and” and “or” shall be construed either disjunctively or  
4 conjunctively as necessary to bring within the scope of the discovery Request all responses that might  
5 otherwise be construed to be outside of its scope.

6 22. The use of the singular form of any word includes the plural and vice versa, and the  
7 masculine, feminine, or neuter form of any words includes each of the other genders.

8 23. The use of any tense of any verb shall also include within its meaning all other tenses.

9 **II. INSTRUCTIONS**

10 1. All documents shall be produced in the order they are kept in the ordinary course of  
11 business, and shall be produced in their original folders, binders, covers, or containers or facsimile  
12 thereof.

13 2. If a document was prepared in several copies, or if additional copies were subsequently  
14 made and any such copies were not identical or are no longer identical by reason of subsequent  
15 notation or modification of any kind whatsoever, including, without limitation, handwritten notations  
16 on the front or back of the document, all such non-identical copies shall be produced.

17 3. Documents shall be produced in such fashion as to identify the department, branch, or  
18 office in which they were located and, where applicable, the natural person in whose possession they  
19 were found and the business address of each document’s custodian(s).

20 4. Documents attached to each other should not be separated.

21 5. These Requests relate to all documents which are in your possession, custody, or  
22 control, or in the possession, custody, or control of your predecessors, successors, parents,  
23 subsidiaries, divisions or affiliates, or their respective officers, directors, agents, attorneys,  
24 accountants, employees, partners, or other persons occupying similar positions or performing similar  
25 functions.

26 6. The documents to be produced pursuant to these Requests specifically embrace, in  
27 addition to documents within your possession, custody, or control, all documents within the  
28 possession, custody, or control of any of your agents, accountants, representatives or attorneys. Such

1 documents also embrace originals and identical copies (whether different from the original because  
2 of notes made thereon or otherwise) of the documents described in these Requests.

3 7. The fact that a document has been, or will be, produced by another party does not  
4 relieve you of the obligation to produce your copy of the same document, even if the two documents  
5 are identical in all respects.

6 8. You shall produce the original of each document described below or, if the original is  
7 not in your custody, then a copy thereof, and in any event, all non-identical copies which differ from  
8 the original or from the other copies produced for any reason, including, but not limited to, the making  
9 of notes thereon.

10 9. If any document(s) fall within the scope of any Request but are not being produced, or  
11 are being produced with portions redacted, pursuant to any claim of privilege or confidentiality, you  
12 shall provide a log containing the following information:

- 13 (a) the nature of the privilege claimed (*i.e.*, attorney-client, work-product, etc.);
- 14 (b) the name of the person or entity claiming privilege and the name of the  
15 attorney, if any, with respect to whom the privilege is claimed;
- 16 (c) the facts upon which you rely as the basis for claiming any privilege as to the  
17 specific information or document;
- 18 (d) the name of such document; identify the type of document (*i.e.*, letter, memo,  
19 etc.); set forth the subject matter thereof; identify the person who prepared it  
20 and each person (if any) who signed it; identify each person to whom it was  
21 directed, circulated or shown; and identify each person now in possession of  
22 the document. If any document is produced in redacted form, the word  
23 “redacted” is to be placed in the redacted section of the document; and
- 24 (e) whenever a document is not produced in full or is produced in redacted form,  
25 so indicate on the document and state with particularity the reason or reasons  
26 it is not being produced in full and describe to the best of your knowledge,  
27 information and belief, and with as much particularity as possible, those  
28 portions of the document which are not being produced.

1 10. In the event that any document called for by these Requests has been destroyed or  
2 discarded, that document is to be identified by stating:

- 3 (a) the nature of the document;
- 4 (b) the names of any addresser or addressee;
- 5 (c) if there are any indicated or blind copies;
- 6 (d) the document's date, subject matter, number of pages, and attachments or  
7 appendices;
- 8 (e) all persons to whom the document was distributed, shown or explained;
- 9 (f) the document's date of destruction or discard, manner of destruction or discard;
- 10 (g) the persons authorizing or carrying out such destruction or discard.

11 11. With respect to any documents which you contend would be in some way or  
12 "oppressive" to produce, state the specific reasons for that objection. If you object to part of any  
13 Request, furnish documents responsive to the remainder of Each Request refers to all documents that  
14 are either known by the Defendants to exist located or discovered by reasonably diligent efforts of  
15 the Defendants.

16 12. The document(s) produced in response to these Requests shall include all attachments  
17 enclosures.

18 **III. PRODUCTION OF HARD COPY DOCUMENTS – FORMAT**

19 Hard copy documents should be scanned as single-page, Group IV, 300 DPI TIFF images  
20 with an opt image cross-reference file and a delimited database load file (*i.e.*, .dat). The database load  
21 file should contain the following fields: "BEGNO," "ENDNO," "PAGES," "VOLUME," and  
22 "CUSTODIAN." The documents should be logically unitized (*i.e.*, distinct documents shall not be  
23 merged into a single record, and single documents shall not be split into multiple records) and be  
24 produced in the order in which they are kept in the usual course of business. If an original document  
25 contains color, and the color is necessary to understand the meaning or content of the document, the  
26 document shall be produced as single-page, ***300 DPI JPG images with JPG compression and a high***  
27 ***quality setting as to not degrade the original image.*** Multi-page OCR text for each document should  
28



1 also be provided. The OCR software shall maximize text quality. Settings such as “auto-skewing”  
2 and “auto-rotation” should be turned on during the OCR process.

3 **IV. PRODUCTION OF ESI**

4 1. Format: Electronically stored information (“ESI”) should be produced in single-page,  
5 black and white, TIFF Group IV, 300 DPI TIFF images with the exception of spreadsheet and  
6 presentation type files, audio and video files, photo or graphic images, and documents with tracked  
7 changes reflected in the metadata, which should be produced in native format. If an original document  
8 contains color, the document should be produced as *single-page, 300 DPI JPG images with JPG*  
9 *compression and a high quality setting as to not degrade the original image*. Parties are under no  
10 obligation to enhance an image beyond how it was kept in the usual course of business. TIFFs/JPGs  
11 should show any and all text and images that would be visible to the reader using the native software  
12 that created the document. For example, TIFFs/JPGs of email messages should include the BCC line.

13 2. Format – Native Files: If a document is produced in native format, a single-page,  
14 Bates-stamped image slip sheet stating the document has been produced in native format should also  
15 be provided, with the exception of PowerPoint presentations. PowerPoint documents should be  
16 produced in native format along with single-page, 300 DPI TIFF/JPG images which display both the  
17 slide and speaker’s notes. Each native file should be named according to the Bates number it has  
18 been assigned, and should be linked directly to its corresponding record in the load file using the  
19 NATIVELINK field. To the extent that either party believes that specific documents or classes of  
20 documents, not already identified within this protocol, should be produced in native format, the parties  
21 should meet and confer in good faith.

22 3. De-Duplication: Each party shall remove exact duplicate documents based on MD5 or  
23 SHA-1 hash values, at the family level. Attachments should not be eliminated as duplicates for  
24 purposes of production, unless the parent email and all attachments are also duplicates. An email that  
25 includes content in the BCC or other blind copy field shall not be treated as a duplicate of an email  
26 that does not include content in those fields, even if all remaining content in the email is identical.  
27 Removal of near-duplicate documents and email thread suppression is not acceptable. De-duplication  
28 should be done across the entire collection (global de-duplication) and the CUSTODIAN-ALL field

1 should list each custodian, separated by a semicolon, who was a source of that document and the  
2 FILEPATH-DUP field will list each file path, separated by a semicolon, that was a source of that  
3 document. Should the CUSTODIAN-ALL or FILEPATH-DUP metadata fields produced become  
4 outdated due to rolling productions, an overlay file providing all the custodians and file paths for the  
5 affected documents should be produced prior to substantial completion of the document production.

6 4. Technology Assisted Review: Predictive coding/technology-assisted-review shall not  
7 be used for the purpose of culling the documents to be reviewed or produced without notifying the  
8 requesting party prior to use and with ample time to meet and confer in good faith regarding a  
9 mutually agreeable protocol for the use of such technologies.

10 5. Metadata: All ESI shall be produced with a delimited, database load file that contains  
11 the metadata fields listed in Table 1, attached hereto. The metadata produced should have the correct  
12 encoding to enable preservation of the documents' original language.

13 For ESI other than email and e-docs that do not conform to the metadata listed in Table 1,  
14 such as text messages, Instant Bloomberg, iMessage, Google Chat, Yammer, Slack, etc., the parties  
15 will meet and confer as to the appropriate metadata fields to be produced.

16 6. Embedded Objects: Embedded files shall be produced as attachments to the document  
17 that contained the embedded file, with the parent/child relationship preserved. The embedded files  
18 should be marked with a "YES" in the load file under the "Is Embedded" metadata field. The parties  
19 agree logos need not be extracted as separate documents as long as they are displayed in the parent  
20 document.

21 7. Attachments: If any part of an email or its attachments is responsive, the entire email  
22 and attachments should be produced, except any attachments that must be withheld or redacted on the  
23 basis of privilege. The parties should meet and confer about whether there is an appropriate basis for  
24 withholding a family document for any reason other than attorney-client or work product privilege.  
25 The attachments should be produced sequentially after the parent email. The parties shall use their  
26 best efforts to collect and produce documents that are links in emails, including, but not limited to,  
27 Google G Suite, Microsoft O365, etc. Documents extracted from links shall be populated with the  
28 BegAttach and EndAttach metadata fields to show the family relationship.

1 8. Compressed File Types: Compressed file types (*e.g.*, .ZIP, .RAR, .CAB, .Z) should be  
2 decompressed so that the lowest level document or file is extracted.

3 9. Structured Data: To the extent a response to discovery requires production of  
4 electronic information stored in a database, the parties should meet and confer regarding methods of  
5 production. Parties should consider whether all relevant information may be provided by querying  
6 the database for discoverable information and generating a report in a reasonably usable and  
7 exportable electronic file.

8 10. Exception Report: The producing party shall compile an exception report enumerating  
9 any unprocessed or unprocessable documents, their file type, and the file location.

10 11. Encryption: To maximize the security of information in transit, any media on which  
11 documents are produced may be encrypted. In such cases, the producing party shall transmit the  
12 encryption key or password to the receiving party, under separate cover, contemporaneously with  
13 sending the encrypted media.

14 12. Redactions: If documents that the parties have agreed to produce in native format need  
15 to be redacted, the parties should meet and confer regarding how to implement redactions while  
16 ensuring that proper formatting and usability are maintained.

17 **V. RELEVANT PERIOD**

18 All Requests herein refer to the period of January 1, 2017 through the date of document  
19 production, unless otherwise specifically indicated, and shall include all documents that relate, in  
20 whole or in part, to such period even though dated, prepared, or received before or after that period.  
21 If a document from before or after this period is necessary for a correct or complete understanding of  
22 any document covered by a Request, you must produce the earlier or subsequent document as well.  
23 If any document is undated and the date of its preparation cannot be determined, the document shall  
24 be produced if otherwise responsive to the production Request.

25 **VI. DOCUMENTS REQUESTED FOR PRODUCTION**

26 REQUEST NO. 1:

27 All documents and communications related to the Offering, including all due diligence  
28 checklists, procedure manuals, or other due diligence materials, deal files, drafts of the Registration

1 Statement and Prospectus and documents incorporated therein, internal or other presentations, Road  
2 Show slides, lists of invitees and attendees, and any other solicitation materials, meeting minutes, and  
3 any reports, memoranda, analyses, or notes.

4 REQUEST NO. 2:

5 Documents sufficient to identify all persons, excluding purely clerical staff, affiliated with  
6 any Defendant who provided any services in connection with the Offering.

7 REQUEST NO. 3:

8 All documents and communications related to Pivotal’s quarterly and annual financial and  
9 operational results and forecasts for fiscal years 2018, 2019, and 2020, including: (a) budgets;  
10 (b) operating plans; (c) internal forecasts; (d) dashboards; (e) projections; (f) reports;  
11 (g) presentations; (h) accounting policies and procedures; and (i) documents and communications  
12 related to any outside auditor review of Pivotal’s quarterly and annual financial results and forecasts  
13 for fiscal years 2018, 2019, and 2020, including any quarterly reviews or year-end audits.

14 REQUEST NO. 4:

15 All documents and communications distributed at, used during, created in connection with, or  
16 concerning any meeting of Pivotal’s Board of Directors or of any committee or subcommittee of  
17 either, including, but not limited to, any board packages, presentation materials, communications,  
18 minutes, agendas, or notes.

19 REQUEST NO. 5:

20 All documents and communications distributed at, used during, created in connection with, or  
21 concerning any meeting involving any Pivotal management or executives and any Defendant or  
22 VMWare, Inc. (“VMWare”) management or executives, including presentation materials, minutes,  
23 agendas, and notes.

24 REQUEST NO. 6:

25 All documents and communications regarding any statements by any Defendant regarding  
26 Pivotal’s quarterly or annual financial or operational results and forecasts for fiscal years 2018, 2019,  
27 and 2020, including any presentations to or meetings with any Pivotal, Dell, or VMWare  
28 shareholders, securities analysts, financial analysts, institutional investors, financial publications,

1 news reporters, journalists or investment bankers concerning Pivotal, Dell, or VMWare, including  
2 any drafts, scripts, transcripts, tapes or videos prepared in connection with, or as a result of, such  
3 presentations or meetings.

4 REQUEST NO. 7:

5 All documents and communications concerning Pivotal, Dell, or VMWare that were publicly  
6 disseminated (and drafts thereof), including:

- 7 (a) all press releases, annual reports, quarterly reports, proxy materials and other  
8 materials sent to Pivotal, Dell, or VMWare security holders or to any financial  
9 institutions, analysts, broker-dealers, or investment banks;
- 10 (b) all recordings, transcripts, or summaries of electronic media broadcasts,  
11 including conference calls, and interviews with, or statements by, any  
12 Defendant or any representative of the Pivotal, Dell, or VMWare; and
- 13 (a) all print media clippings and reproductions.

14 REQUEST NO. 8:

15 All documents and communications related to any loss of market share, price pressure,  
16 reduced margins, decreased demand, diminished growth in new customers, deferred sales,  
17 lengthening or seasonality of sales cycles, sales execution challenges, changes, or trends, increasing  
18 competition from Amazon Web Services, Microsoft Azure, and Google Cloud or other ecosystem  
19 partners, cloud partners, or other competitors for enterprise clients, or other competition that Pivotal  
20 had experienced, was experiencing, or could experience in connection with its product offerings.

22 REQUEST NO. 9:

23 All documents and communications related to Pivotal's product offerings, including: (a) any  
24 spec sheets, pricing comparisons and performance comparisons with then-existing or future solutions  
25 from both competitors or partners' offerings; (b) documents and communications regarding sales,  
26 demand, results, or forecasts for Pivotal's product offerings and Defendants' visibility therein,  
27 including any documents or communications related to any delays, increased competition, customer  
28 complaints, or lengthening sales cycles, or other actual or contemplated changes or trends; and

1 (c) documents and communications regarding the actual, contemplated, or potential functionality of  
2 Pivotal's product offerings, including any purported compatibility with Kubernetes, ability to install  
3 or function with customer environments, automation features, and support for and functionality with  
4 any Infrastructure as a Service ("IaaS") service.

5 REQUEST NO. 10:

6 All documents and communications relating to the efforts made by Defendants or any other  
7 person to sell, market, distribute, publicize, or promote the Offering or otherwise concerning the  
8 purchase or sale of securities issued in connection with the Offering, including: (a) any documents or  
9 communications concerning any sale to, or solicitation of, any named Plaintiff; (b) documents  
10 sufficient to identify all persons or entities that purchased or otherwise obtained securities in, or  
11 traceable to, the Offering; and (c) documents and communications regarding any Defendant's  
12 decision to invest in Pivotal, Dell, or VMWare securities.

13 REQUEST NO. 11:

14 All documents and communications regarding any Defendant's employment by, ownership  
15 interest in, shared officers, partners, directors, or other affiliated persons, or other relationship with  
16 Pivotal, Dell, or VMWare, or any other Defendant.

17 REQUEST NO. 12:

18 All documents and communications related to any valuation of Pivotal, Dell, or VMWare  
19 securities, including all documents and communications concerning Pivotal, Dell, or VMWare's share  
20 price, market capitalization, or the market, perceived, inherent, actual, or other value of any Pivotal,  
21 Dell, or VMWare security or any of the assets or businesses of Pivotal, Dell, or VMWare, including  
22 any market studies, market research reports, valuations, comparisons and analysts' reports concerning  
23 Pivotal, Dell, or VMWare, and all documents and communications related to the current, anticipated,  
24 or perceived value of Pivotal common stock, including any movement or change in the public market  
25 price thereof.

26 REQUEST NO. 13:

27 All documents and communications regarding any compensation, fees, bonuses, expenses,  
28 reimbursements, stock, options, costs, or other remuneration or benefit paid to, or received by, any

1 Defendant in connection with, or as a result of, the Offering, including any Defendant's 10b5-1 or  
2 other trading plan, documents concerning stock option awards or vesting schedules, and any  
3 documents or communications regarding any Defendant's trading or other transactions in Pivotal,  
4 Dell, or VMWare securities since the Offering.

5 REQUEST NO. 14:

6 Documents sufficient to show, on a year-by-year basis, Pivotal's organizational structure,  
7 including its ownership, parent companies, subsidiaries, and affiliates, and sufficient to identify each  
8 of Pivotal's present and former officers and directors, including organizational charts, and any  
9 relationship between any officer or director and Dell, VMWare, or any other Defendant.

10 REQUEST NO. 15:

11 A copy of any insurance policies possibly covering the claims asserted in this Action, as well  
12 as all documents and communications concerning any proposed or actual agreement by Pivotal, Dell,  
13 VMWare, or any other entity to indemnify any Defendant in relation to the Offering.

14 REQUEST NO. 16:

15 All documents and communications related to the 2017 discussions of a potential acquisition  
16 or other transaction between Pivotal and VMWare, including but not limited to any non-disclosure  
17 agreements executed by or among Pivotal, VMWare, or Dell, or any Pivotal, VMWare, or Dell  
18 officers or directors, all documents and communications related to the 2017 discussions by or among  
19 Pivotal, VMWare, or Dell transaction committees or other involved committees, all documents and  
20 communications in the electronic data room for the contemplated transactions, and any due diligence  
21 information exchanged in connection therewith.

22 REQUEST NO. 17:

23 All documents and communications regarding Dell's equity stake in Pivotal.

24 REQUEST NO. 18:

25 All documents and communications between Michael Dell, Dell, or any Dell representative  
26 and Egon Durban or any other Silver Lake Partners' representative regarding Pivotal, VMWare, or  
27 any actual or potential transactions between Pivotal and VMWare.

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1 REQUEST NO. 19:

2 All documents and communications between Michael Dell, Dell, or any Dell representative  
3 and Egon Durban regarding Pivotal, VMWare, or any actual or potential transactions between Pivotal  
4 and VMWare.

5 REQUEST NO. 20:

6 All documents and communications between Michael Dell, Dell, or any Dell representative  
7 and Patrick Gelsinger regarding Pivotal, VMWare, or any actual or potential transactions between  
8 Pivotal and VMWare.

9 REQUEST NO. 21:

10 All documents and communications between Michael Dell, Dell, or any Dell representative  
11 and Robert Mee regarding Pivotal, VMWare, or any actual or potential transactions between Pivotal  
12 and VMWare.

13 REQUEST NO. 22:

14 All documents and communications between Michael Dell, Dell, or any Dell representative  
15 and Cynthia Gaylor regarding Pivotal, VMWare, or any actual or potential transactions between  
16 Pivotal and VMWare.

17 REQUEST NO. 23:

18 Unredacted versions of all documents and communications quoted, cited, or otherwise  
19 referenced in the June 9, 2020 verified class action complaint filed in the case *Kenia Lopez v. Dell*  
20 *Technologies Inc., et al.*, C.A. No. 2020-0440-KSJM (Del. Ch.).

21  
22 Dated: December 21, 2020

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Document received by the CA 1st District Court of Appeal.



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*Additional Counsel for Co-Lead Plaintiffs*

Document received by the CA 1st District Court of Appeal.

1 **PROOF OF SERVICE**

2 I am employed in the County of San Diego, State of California. I am over the age of 18 years  
3 and not a party to the within action. My business address is Scott+Scott Attorneys at Law LLP, 600  
4 W. Broadway, Suite 3300, San Diego, CA 92101.

5 On December 21, 2020, I served the foregoing document, via electronic mail, on the following  
6 parties:

7 **ALSTON & BIRD LLP**

8 Gidon M. Caine  
9 1950 University Avenue, Suite 430  
10 East Palo Alto, CA 94303  
11 Telephone: (650) 838-2060  
12 gidon.caine@alston.com

13 *Counsel for Defendant Dell Technologies, Inc.*

14 **MORRISON & FOERSTER, LLP**

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25 rwebb@mofo.com  
26 kleung@mofo.com

27 *Counsel for Defendants Pivotal Software, Inc., Robert Mee, Cynthia Gaylor, Pau Maritz, Michael  
28 S. Dell, Zane Rowe, Egon Durban, William D. Green, Marcy S. Klevorn, and Khozema Z.  
Shipchandler*

29 **LATHAM & WATKINS LLP**

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4 *Securities LLC, Wells Fargo Securities LLC, Keybank Capital Markets Inc., William Blair & Co.,*  
5 *LLC, Mischler Financial Group, Inc., Samuel A. Ramirez & Co., Inc. Siebert Cisneros Shank &*  
6 *Co., LLC, and Williams Capital Group, L.P. (the latter two, SWS)*

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24 *Counsel for Plaintiff Nhung Tran and Co-Lead Counsel*

25 I declare under penalty of perjury pursuant to the laws of California that the foregoing is true  
26 and correct. Executed on December 21, 2020, at San Jose, California.

27 \_\_\_\_\_  
28 s/ Devin Colonna  
DEVIN COLONNA

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11  
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **COUNTY OF SAN FRANCISCO**

14  
15 **IN RE PIVOTAL SOFTWARE, INC.**  
**SECURITIES LITIGATION**

16  
17 This Document Relates to:  
18 ALL ACTIONS.

Lead Case No. CGC-19-576750

CLASS ACTION

**DECLARATION OF DAVID W. HALL  
IN SUPPORT OF PLAINTIFFS'  
OPPOSITION TO DEFENDANTS' JOINT  
MOTION TO STAY DISCOVERY**

Date: February 18, 2021  
Time: 10:30 a.m.  
Judge: Hon. Andrew Y.S. Cheng  
Dept.: 613

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DECL. OF DAVID W. HALL IN SUPPORT OF PLAINTIFFS' OPP TO DEFS' JOINT MOTION TO STAY DISCOVERY

Document received by the CA 1st District Court of Appeal.

1 I, David W. Hall, declare as follows:

2 1. I am an attorney admitted to practice before this Court. I am a partner with the law  
3 firm of Hedin Hall LLP, court-ordered Co-Lead Counsel in the above-captioned action. I have  
4 personal knowledge of the facts set forth herein and if called upon to testify I could and would do so  
5 truthfully and accurately. I submit this declaration, together with the attached exhibits, in support of  
6 Plaintiff's Opposition to Defendants' Joint Motion to Stay Discovery.

7 2. Attached are true and correct copies of the following documents:

8 Exhibit A: *Plymouth Cty. Contributory v. Adamas* [sic] *Pharm.*, No. RG19018715, Order  
9 re: Case Management (Cal. Super. Ct., Alameda Cty. July 16, 2019);

10 Exhibit B: *Buelow v. Alibaba Grp. Holdings Ltd.*, No. CIV535692, Order Denying  
11 Motion to Stay Proceedings (Cal. Super. Ct., San Mateo Cty. Apr. 1, 2016);

12 Exhibit C: *Luther v. Countrywide Home Loans Servicing, LP*, No. BC380698, Notice of  
13 Ruling (Cal. Super. Ct., Los Angeles Cty. Feb. 28, 2012);

14 Exhibit D: *Head v. NetManage, Inc.*, No. CV763295, Order Denying Defendants' Motion  
15 to Stay Discovery (Cal. Super. Ct., Santa Clara Cty. Aug. 1, 1997);

16 Exhibit E: *Adler v. Prism Solutions, Inc.*, No. CV764547, Order Denying Defendants'  
17 Motion to Quash Plaintiffs' Subpoenas Seeking Third Party Discovery and  
18 Stay All Discovery (Cal. Super. Ct., Santa Clara Cty. May 27, 1997);

19 Exhibit F: *In re PPDAl Grp. Sec. Litig.*, No. 654482/2018, 2019 WL 2751278, at \*14-  
20 \*15 (N.Y. Sup. Ct. July 1, 2019);

21 Exhibit G: *In re Dentsply Sirona, Inc. S'holders Litig.*, No. 155393/2018, 2019 WL  
22 3526142, \*5-\*6 (N.Y. Sup. Ct. Aug. 2, 2019);

23 Exhibit H: *In re Qudian Sec. Litig.*, No. 651804/2018, Transcript of Proceedings (Sup.  
24 Ct., N.Y. Co. Nov. 8, 2018);

25 Exhibit I: *In re Ally Fin. Inc., Sec. Litig.*, No. 2016-013616-CB, Order Denying Stay  
26 (Mich. Cir. Ct., Wayne Cty. Aug. 1, 2018);

27 Exhibit J: *In re Pac. Biosciences of Cal., Inc. Sec. Litig.*, Master File No. CIV 509210,  
28 Order Denying Defendants' Motion to Stay Proceedings (Cal. Super. Ct., San  
Mateo Cty. May 25, 2012);

Exhibit K: *Advisory Committee on Civil Rules*, Minutes, dated February 16-17, 1995; and

Exhibit L: *Advisory Committee on Civil Rules*, Minutes, dated April 28-29, 1994.

1 I declare under penalty of perjury under the laws of the United States of America that the  
2 foregoing is true and correct. Executed this 3rd day of February 2021, at San Francisco, California.

3  
4 **HEDIN HALL LLP**

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Document received by the CA 1st District Court of Appeal.

# EXHIBIT A

Document received by the CA 1st District Court of Appeal.

**461**

**Superior Court of California, County of Alameda  
Rene C. Davidson Alameda County Courthouse**

Plymouth County Contributory <p style="text-align: right;">Plaintiff/Petitioner(s)</p> <p style="text-align: center;">VS.</p> Adams Pharmaceuticals, Inc. <p style="text-align: right;">Defendant/Respondent(s) (Abbreviated Title)</p>	No. <u>RG19018715</u>  Case Management Order  Date: 07/16/2019 Time: 03:00 PM Dept: 23 Judge: Brad Seligman
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**ORDER re: CASE MANAGEMENT**

The Court has ordered the following at the conclusion of a judicially supervised Case Management Conference.

**FURTHER CONFERENCE**

A further Case Management Conference is scheduled for 12/17/2019 at 03:00 PM in Dept. 23.

Plaintiff and Defense Counsel shall file Updated Case Management Statements (preferably joint) in compliance with CRC § 3.725, preferably on pleading paper rather than on Judicial Council Form CM-110, no later than five (5) court days prior to the CMC. **PARTIES ARE STRONGLY ENCOURAGED TO SERVE COURTESY COPIES ON THE COURT BECAUSE OF DELAYS IN SCANNING AS A RESULT OF BUDGET SHORTFALLS IN ALAMEDA COUNTY.**

**OTHER ORDERS**

1. Per the parties' agreement, opposition to any pleadings motion shall be filed and served by 11/12/2019 and any reply by 12/10/2017. Courtesy copies of all briefs shall be delivered to chambers by the time of filing. Hearing on the pleading motion(s) shall be on December 17, 2019 at 3 pm. Defendant may request a reservation number for this time.

2. Defendants' request for a discovery stay is denied. As the parties agree, there is no dispositive appellate case on the applicability of the stay provision at 15 U.S.C. 77z-1(b) to state courts, and state and federal trial courts have reached differing conclusions as to this. The California Supreme Court suggests that the PSLRA and the Uniform Standards Act do not apply in state court (*Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167,178), a position that overstates the federal law. The United States Supreme Court explained in *Cyan v. Beaver County Employees Retirement Fund* (2018) \_\_\_ U.S. \_\_\_, 138 S.Ct. 1061, 1072 that certain provisions, which it described as "substantive" in fact apply to state courts while other "procedural measures....apply only in federal court." Neither court, however, addressed the stay provision facing this court. The court finds that the stay provision is ambiguous. While it doesn't explicitly refer to federal court, language in other provisions at least arguably support the claim that the stay provisions only apply to federal court. The court accordingly declines to impose a total stay.

Defendants also appeal to the court's discretion for a stay. At this stage of the case, the court lacks a basis to exercise its discretion. That being said, the court authorizes prior to the pleadings hearing only focused discovery that does not impose an undue burden on defendants. If the parties are unable to

Document received by the CA 1st District Court of Appeal.



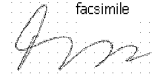
reach agreement on the scope of such discovery, they may invoke the discovery conference process laid out in Local Rule 3.31.

NOTICES

Counsel for Plaintiff(s) must forthwith serve a copy of this order on all counsel of record and self-represented parties, and file proof of service.

Any delay in the trial, caused by non-compliance with any order contained herein, shall be the subject of sanctions pursuant to CCP 177.5.

Dated: 07/16/2019

facsimile  


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Judge Brad Seligman

Document received by the CA 1st District Court of Appeal.

# **EXHIBIT B**

Document received by the CA 1st District Court of Appeal.

**464**

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**FILED**  
SAN MATEO COUNTY

APR 01 2016

Clerk of the Superior Court  
By   
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN MATEO

GARY BUELOW, RUSTEM NURLYBAYEV, )  
and MICHAEL HERCULES, Individually and on )  
Behalf of All Others Similarly Situated, )

Plaintiff,

vs.

ALIBABA GROUP HOLDING LIMITED, et al., )

Defendants. )

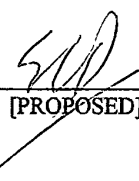
Case No. CIV535692  
(Consolidated)

CLASS ACTION

~~PROPOSED~~ ORDER DENYING  
MOTION TO STAY PROCEEDINGS

ASSIGNED FOR ALL PURPOSES TO:  
JUDGE STEVEN L. DYLYNA  
DEPT. 7, COURTROOM 8B

Date Action Filed: 10/05/15



[PROPOSED] ORDER DENYING MOTION TO STAY PROCEEDINGS

Document received by the CA 1st District Court of Appeal.  
FILE VIA FAX

1 On March 24, 2016, this Court heard argument on the Motion to Stay Proceedings brought  
2 by Defendant Alibaba Group Holding Limited. After considering the papers submitted by the  
3 parties, as well as all argument and other evidence properly submitted to the Court, the Court  
4 adopted its tentative ruling and IT IS HEREBY ORDERED:

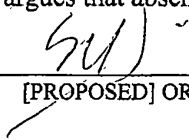
5 Defendant Alibaba Group Holding Limited's Motion to Stay Proceedings is DENIED.

6 Defendant moves for an order (1) staying discovery pending resolution of the motion to  
7 dismiss filed in *In re Alibaba Group Holding Limited Securities Litigation*, U.S. District Court for  
8 the Southern District of New York, Case No. 1:15-md-02631-CM and (2) staying discovery  
9 pending this Court's resolution of the as-yet unfiled demurrer:

10 With respect to Defendant's request to stay discovery pending the ruling on the motion to  
11 dismiss, the Court exercises its discretion to deny the request. When a federal action has been filed  
12 involving substantially identical parties and covering the same subject matter as is involved in a  
13 California action, the state court "has the discretion but not the obligation" to stay the state  
14 proceedings in favor of the federal action. (*Caiafa Prof. Law Corp. v. State Farm Fire & Cas. Co.*  
15 (1993) 15 Cal.App.4th 800, 804; *see also Farmland Irr. Co. v. Dopplmaier* (1957) 48 Cal.2d 208,  
16 215.)

17 Here, Defendant has not shown that this action and the federal action involve substantially  
18 identical parties and the same subject matter. It is true that the present action and the federal action  
19 arise out of the same core factual allegations. However, the two actions involve different  
20 defendants, different putative classes, and different causes of action. Since the present action  
21 asserts claims not currently asserted in the federal action, it does not appear that Plaintiffs filed this  
22 action to harass Alibaba. Rather, it appears that Plaintiffs filed this action to assert interests that  
23 would not be adequately represented in the federal lawsuit.

24 Further, Defendant has not shown that unseemly conflicts will result absent a stay. Since  
25 this action and the federal action involve different defendants, different putative classes, different  
26 causes of action and, arguably, different pleading standards, resolution of the motion to dismiss  
27 would not resolve any arguments that may be raised in the demurrer to be filed in this state court  
28 case. Defendant argues that absent a stay of discovery, this Court may issue discovery rulings that

  
[PROPOSED] ORDER DENYING MOTION TO STAY PROCEEDINGS

Document received by the CA 1st District Court of Appeal.

1 may conflict with the ruling on the motion to dismiss, and that staying discovery will allow the  
2 parties in the state and federal proceedings to coordinate discovery and keep the scope of discovery  
3 consistent across the state and federal proceedings. Defendant fails to explain how a ruling on a  
4 discovery motion in this case will conflict with the district court's ruling on the motion to dismiss.  
5 Additionally, while the Court sees a benefit to coordinating discovery across the state and federal  
6 proceedings, Defendant failed to explain why it is appropriate for this Court to ensure that the *scope*  
7 of discovery in this action exactly matches the scope of discovery in the federal action. This action  
8 involves different claims and is governed by the Code of Civil Procedure, not the Federal Rules of  
9 Civil Procedure.

10       Lastly, Defendant has not shown that the rights of the parties in the present action are best  
11 determined by the U.S. District Court for the Southern District of New York. While the present  
12 action only involves federal claims under the Securities Act of 1933, this Court is well-equipped to  
13 handle such claims and Judge Freeman of the U.S. District Court for the Northern District of  
14 California, in her remand order, has already ruled that the claims are appropriately adjudicated by  
15 this Court. While the federal action was earlier-filed, that action is not so far advanced in  
16 comparison to the present action.

17       Turning to Defendant's request to stay discovery pending this Court's resolution of the as-  
18 yet unfiled demurrer, the Court finds that a stay of discovery is not warranted.

19       Defendant argues a stay of discovery is automatic under the Private Securities Litigation  
20 Reform Act ("PSLRA"). However, Defendant fails to cite a single reported decision in California  
21 that the PSLRA's discovery stay applies to securities class actions filed in state court. The only  
22 reported decision in California discussed by the parties supports that the PSLRA is inapplicable to  
23 this state court proceeding. (*See Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 178.)

24       Defendant argues that even if the PSLRA's automatic stay is inapplicable, the Court should  
25 exercise its discretion to stay discovery because of the jurisdictional and pleading deficiency  
26 arguments that may be raised in the demurrer. Defendant's arguments are unavailing. Judge  
27 Freeman of the U.S. District Court for the Northern District of California, in her remand order, has  
28 already ruled that Plaintiffs' claims are appropriately adjudicated by this California state court.

  
[PROPOSED] ORDER DENYING MOTION TO STAY PROCEEDINGS

Document received by the CA 1st District Court of Appeal.

1 Further, “[p]leading deficiencies generally do not affect either party’s right to conduct discovery.”  
2 (*Mattco Forge, Inc. v. Arthur Young & Co.* (1990) 223 Cal.App.3d 1429, 1443 fn. 3.)

3 Following oral argument on the motion with respect to the stay of discovery, and after  
4 submission by both sides as to the motion with respect to the stay of all proceedings, the Court  
5 denies both aspects of Alibaba’s motion.

6 IT IS SO ORDERED.

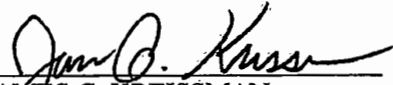
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8 Dated: 4/1, 2016

  
\_\_\_\_\_  
JUDGE STEVEN L. DYLIINA


11 I approve the form of this order.

12 SIMPSON THACHER & BARTLETT LLP

13  
14  
15 Dated: March 30, 2016

  
\_\_\_\_\_  
JAMES G. KREISSMAN  
*Attorneys for Defendant*  
*Alibaba Group Holding Limited*

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[PROPOSED] ORDER DENYING MOTION TO STAY PROCEEDINGS

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# EXHIBIT C

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**469**



Feb 28 2012  
11:23AM

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& DOWD LLP  
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12 Co-Lead Counsel for Plaintiffs  
13 [Additional counsel appear on signature page.]

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF LOS ANGELES

16	DAVID H. LUTHER, Individually and On	)	Lead Case No. BC 380698
	Behalf of All Others Similarly Situated,	)	
17		)	<u>CLASS ACTION</u>
	Plaintiff,	)	
18		)	Assigned to: The Hon. John Shepard Wiley, Jr.
	vs.	)	
19		)	NOTICE OF RULING
	COUNTRYWIDE HOME LOANS	)	
20	SERVICING, LP, et al.,	)	DEPT: 311
		)	DATE ACTION FILED: 11/14/07
21	Defendants.	)	

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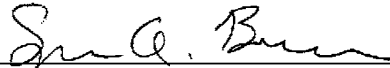
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1 On February 15, 2012, the Court granted Plaintiffs' Motion to Lift Discovery Stay in its entirety.  
2 The Court also ordered that defendants should produce the approximately 25 million pages that  
3 defendants produced in the "NY Funds" case to plaintiffs within one week. The Court deferred its  
4 ruling at this time on the issue of defendants' production of due diligence reports for the MBS offerings.

5 DATED: February 28, 2012

ROBBINS GELLER RUDMAN  
& DOWD LLP  
SPENCER A. BURKHOLZ  
THOMAS E. EGLER  
SCOTT H. SAHAM  
NATHAN R. LINDELL  
ASHLEY M. ROBINSON

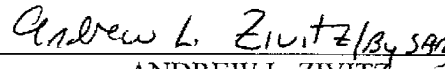


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14 DATED: February 28, 2012

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ANDREW L. ZIVITZ  
KIMBERLY A. JUSTICE  
JENNIFER L. JOOST



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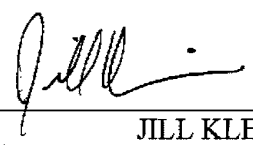
DECLARATION OF SERVICE BY ELECTRONIC MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 655 West Broadway, Suite 1900, San Diego, California 92101.

2. That on February 28, 2012, declarant served NOTICE OF RULING by LexisNexis File and Serve electronic mail on the parties listed on the attached service list.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 28th day of February, 2012, at San Diego, California.



JILL KLEINMAN

**LEXISNEXIS FILE-AND-SERVE SERVICE LIST**  
*Luther v. Countrywide Home Loans Servicing, LP, et al.*  
 Superior Court of California, County of Los Angeles Case No. BC 380698

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Document received by the CA 1st District Court of Appeal.

# EXHIBIT D

Document received by the CA 1st District Court of Appeal.

**474**

(ENDORSED)  
FILED

97 AUG -1 PH 12:35

STEPHEN V. LOVE  
COUNTY CLERK  
SANTA CLARA COUNTY

BY \_\_\_\_\_ DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA

11	WALTER W. HEAD, III, et al., On Behalf of )	Case No. CV763295
12	Themselves and All Others Similarly Situated, )	
	Plaintiffs, )	<u>CLASS ACTION</u>
13		
14	vs. )	
15	NETMANAGE, INC., et al., )	DATE: July 11, 1997
16	Defendants. )	TIME: 9:00 a.m.
	_____ )	DEPT. 15

~~[PROPOSED]~~ ORDER DENYING DEFENDANTS' MOTION  
TO STAY DISCOVERY

Exhibit 4

1 -

Document received by the CA 1st District Court of Appeal.

1 Defendants' motion to stay discovery came on for hearing on July 11, 1997 at 8:30 a.m.,  
2 before the Honorable Mary Joe Levinger (the "Motion"). Having considered the papers in  
3 support of and in opposition to the motion, the arguments of counsel, and for good cause, the  
4 court ORDERS as follows:

- 5 1. The Motion is DENIED; and
- 6 2. The parties are directed to meet and confer regarding the selection and  
7 appointment of a Discovery Master in the above-referenced action.

8  
9 DATED: 7/31, 1997

  
JUDGE OF THE SUPERIOR COURT

10 Submitted by:

11 MILBERG WEISS BERSHAD  
12 HYNES & LERACH LLP  
13 ALAN SCHULMAN  
14 JAMES A. CAPUTO  
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Attorneys for Plaintiffs and the Class

# **EXHIBIT E**

Document received by the CA 1st District Court of Appeal.

**478**



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(ENDORSED)  
**FILED**  
MAY 27 1997  
STEPHEN V. LOVE  
County Clerk  
Santa Clara County  
BY \_\_\_\_\_ DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA

DOUGLAS ADLER, et al., On Behalf of Themselves and All Others Similarly Situating,	)	Case No. CV764547
	)	<u>CLASS ACTION</u>
Plaintiffs,	)	
vs.	)	
PRISM SOLUTIONS, INC., et al.,	)	DATE: May 9, 1997
	)	TIME: 9:00 a.m.
Defendants.	)	CTRM: 17(b)
	)	DEPT: Hon. Frank Cliff

~~PROPOSED~~ ORDER DENYING DEFENDANTS' MOTION TO  
QUASH PLAINTIFFS' SUBPOENAS SEEKING THIRD  
PARTY DISCOVERY AND STAY ALL DISCOVERY

Exhibit 6

Document received by the CA 1st District Court of Appeal.

1 On May 9, 1997, the Prism and Underwriter Defendants' joint  
 2 motion for an order quashing plaintiffs' subpoenas seeking third  
 3 party discovery and for a protective order staying all discovery in  
 4 this action was heard before the Honorable Frank Cliff of Santa  
 5 Clara County Superior Court. This Order is based upon the papers  
 6 submitted in support of, and in opposition to, this motion and the  
 7 arguments heard regarding this motion.

8 IT IS HEREBY ORDERED that:

- 9 (1) Defendants' motion to quash plaintiffs' subpoenas to  
 10 First Albany Corporation, PaineWebber, Inc. and UBS  
 11 Securities, Inc. is DENIED; and  
 12 (2) Defendants' motion for a protective order staying all  
 13 discovery is DENIED.

13 DATED: May 27, 1997

FRANK CLIFF

14 THE HONORABLE FRANK CLIFF  
 15 SANTA CLARA COUNTY SUPERIOR COURT

14 Submitted by:

15 DATED: May 9, 1997

16 MILBERG WEISS BERSHAD  
 17 HYNES & LERACH LLP  
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10 Approved as to form:

11 DATED: May 12, 1997

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Document received by the CA 1st District Court of Appeal.

**EXHIBIT I**

Document received by the CA 1st District Court of Appeal.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

In re ALLY FINANCIAL INC.,  
SECURITIES LITIGATION

Case No: 16-013616-CB  
Hon. Brian R. Sullivan

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CLASS ACTION

This Document Relates To:

**ORDER DENYING STAY**

ALL ACTIONS.

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**ORDER DENYING STAY**

At a session of said Court, held in the City  
County Building, City of Detroit, County of  
Wayne, State of Michigan, on  
8/1/2018

PRESENT: HONORABLE BRIAN R. SULLIVAN

Plaintiffs filed suit against defendants and generally alleged Ally Financials 2014 Initial Public Offering of stock contained material misinformation as to value, or failed to disclose information such that it compromised their decision to purchase the stock and/or affected the stock value. Defendant answered that suit. Discovery has been undertaken. Defendant now seeks a protective order or stay of any discovery until the defendant's motion to dismiss is heard in August, 2018. The court, without oral argument, denies defendant's motion for stay.

This case is a consolidation of three cases (for discovery), two of which were

filed in Wayne County and a third in Oakland County.<sup>1</sup> All three cases asserted 1933 claims and were transferred into the business court of Wayne County Circuit Court.

In 2017 defendant requested a stay pending a jurisdictional ruling in *Cyan, Inc. v Beaver Cty Empl Ret Fund*, \_\_\_ US \_\_\_; 138 S. Ct. 10061 (2018). The Supreme Court decided *Cyan* on March 20, 2018 and held state courts have jurisdiction to hear 1933 actions. The cases proceeded. Plaintiffs sent defendants Request for Production of Documents and Interrogatories to Ally (May 7, 2018); to the Underwriter defendants (May 7, 2018) and Second Request for Production of Documents (May 30, 2018).

Defendants responded by objecting to the discovery and asserted there was a stay of discovery under *Cyan* until the motion to dismiss has been decided. See defendant's general objections, June 4, 2018.

Defendants now seek a protective order and automatic stay of discovery under the Private Securities Litigation Reform Act (PSLRA) of 1995 or MCR 2.302(C). Defendants contend the PSLRA has a stay provision which applies to state courts "private [securities] actions." 15 USC 7721(b)(1). Defendants claim 15 USC §77 z-1(b)(d) and z-2 apply to "any private action arising under this subchapter," and "controls a 1933 state court action."

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<sup>1</sup>The consolidation occurred on September 7, 2017.

Plaintiffs state the PSLRA applies only to federal cases. The language of 77 z-1 refers to “any motions to dismiss” unless “discovery is necessary to preserve evidence or present undue prejudice to that party.” §77 z-2. Plaintiffs have also repeatedly raised the issue of fading memories due to delay in the case and problems with the availability of evidence from any delay. The case is almost two years old and involves transactions about four years old.

The construction of *Cyan* by defendants is rational but involves inferences and conclusions apparently not uniformly accepted by several courts, i.e. *In Re Regions Morgan Kiegen Sec.*, No. 07-02F30 W.D. Tenn Feb 16, 2010; *In Re Transcript Int’l Sec Litig*, 57 Supp 2d 836 (D Neb 1999), (looking for clear indication of intent and explicit statement of that power for state court stay); *In Re Pacific Biosciences*, etc. and other cases cited in plaintiff’s brief.

The long and the short of it is that a stay in cases of this magnitude makes practical sense. But likewise the complaint alleges action taken in 2014, plaintiffs’ suits filed in 2016 and 2017, and the ‘stay’ awaiting the decision in *Cyan* all weigh against plaintiff’s ability to process their case. The delay exposes plaintiffs to faded memories and prejudice. The court concludes under state law, and the circumstances of this case, do not warrant a further stay.

After considering all the arguments and the processing of the case thus far, the

court concludes a stay is not mandatory, necessary or warranted under MCR 2.302(C).

Defendant's motion is denied; and

IT IS SO ORDERED.

/s/ Brian R. Sullivan 8/1/2018  
BRIAN R. SULLIVAN  
Circuit Court Judge

ISSUED:



No.

**REQUESTING STAY OF MARCH 4, 2021  
ORDER PERMITTING ONGOING DISCOVERY**

**IN THE COURT OF APPEAL OF THE STATE OF  
CALIFORNIA FIRST APPELLATE DISTRICT**

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**PIVOTAL SOFTWARE, INC., ET AL.,**

*Petitioners,*

v.

**SUPERIOR COURT OF THE COUNTY OF  
SAN FRANCISCO,**

*Respondent.*

---

**ZHUNG TRAN, ET AL.,**

*Real Parties in Interest.*

---

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From an Order of the San Francisco Superior Court,  
Case No. CGC-19-576750, Hon. Andrew V.S. Cheng, Dept. No. 613  
Telephone: 415.551.3840

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**PETITION FOR WRIT OF MANDATE; REQUEST FOR IMMEDIATE STAY;  
MEMORANDUM OF POINTS AND AUTHORITIES  
[EXHIBITS FILED SEPARATELY]**

---

---

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**DELL TECHNOLOGIES INC.**

## CERTIFICATES OF INTERESTED PARTIES

In accordance with Rule 8.208 of the California Rules of Court, the undersigned certifies with respect to Pivotal Software, Inc. that there are no interested entities other than VMware, Inc. and Dell Technologies Inc. with either (1) an ownership interest of 10 percent or more in Pivotal Software, Inc. or (2) a financial or other interest in the outcome of this proceeding that the justices should consider in determining whether to disqualify themselves.

Dated: March 18, 2021

By: /s/ James R. Sigel  
James R. Sigel

In accordance with Rule 8.208 of the California Rules of Court, the undersigned, as counsel of record for the Underwriter Petitioners, certifies as to each of the Underwriter Petitioners that:

1. Morgan Stanley & Co. LLC is a limited liability company whose sole member is Morgan Stanley Domestic Holdings, Inc., a corporation wholly owned by Morgan Stanley Capital Management, LLC, a limited liability company whose sole member is Morgan Stanley. Morgan Stanley is a publicly held corporation that has no parent corporation. Based on Securities and Exchange Commission Rules regarding beneficial ownership, Mitsubishi UFJ Financial Group, Inc. 7-1 Marunouchi 2-chome, Chiyoda-ku, Tokyo 100-8330, beneficially owns greater than 10% of Morgan Stanley's outstanding common stock. The following listed persons or entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that

subject matter or in a party that could be substantially affected by the outcome of this proceeding: Morgan Stanley Domestic Holdings, Inc., Morgan Stanley Capital Corporation and Mitsubishi UFJ Financial Group, Inc.

2. Goldman Sachs & Co. LLC is a wholly-owned subsidiary of The Goldman Sachs Group, Inc. (“Group Inc.”), except for de minimis non-voting, non-participating interests held by unaffiliated broker-dealers. Group Inc. is a corporation organized under the laws of Delaware and whose shares are publicly traded on the New York Stock Exchange. No other publicly held company owns a 10% or more interest in Goldman Sachs & Co. LLC. The following listed persons or entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding: Goldman Sachs Group, Inc.

3. Citigroup Global Markets Inc. is a wholly-owned subsidiary of Citigroup Financial Products Inc., which in turn, is a wholly-owned subsidiary of Citigroup Global Markets Holdings Inc., which in turn, is a wholly-owned subsidiary of Citigroup Inc., a publicly traded company. Citigroup Inc. has no parent corporation, and no publicly traded corporation owns 10% or more of its stock to the best of Citigroup Global Markets Inc.’s knowledge. The following listed persons or entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding: Citigroup Financial Products, Inc., Citigroup Global Markets Holdings, Inc. and Citigroup, Inc.

4. Merrill Lynch, Pierce, Fenner & Smith Inc. (n/k/a BofA Securities, Inc.) is a direct, wholly-owned subsidiary of NB Holdings

Corporation. NB Holdings Corporation is a direct, wholly-owned subsidiary of Bank of America Corporation. Bank of America Corporation is a publicly held company whose shares are traded on the New York Stock Exchange and has no parent corporation. Based on the U.S. Securities and Exchange Commission Rules regarding beneficial ownership, Berkshire Hathaway Inc., 3555 Farnam Street, Omaha, Nebraska 68131, beneficially owns greater than 10% of Bank of America Corporation's outstanding common stock. The following listed persons or entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding: NB Holdings Corporation, Bank of America Corporation and Berkshire Hathaway, Inc.

5. Barclays Capital Inc. is an indirect wholly-owned subsidiary of Barclays PLC, a publicly traded corporation, and no other publicly traded entity owns 10% or more of Barclays Capital Inc.'s stock. The following listed persons or entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding: Barclays PLC.

6. Credit Suisse Securities (USA) LLC is a wholly-owned subsidiary of Credit Suisse (USA), Inc., a private company, which is a wholly-owned subsidiary of Credit Suisse Holdings (USA), Inc., a private company, which is a jointly-owned subsidiary of (1) Credit Suisse AG, Cayman Islands Branch, which is a branch of Credit Suisse AG, and (2) Credit Suisse AG, a private company, which in turn is a wholly-owned subsidiary of Credit Suisse Group AG, a publicly held company. Credit Suisse Group AG has no parent company and no publicly held corporation owns 10% or more of its stock. The following listed persons or entities (i)

have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding: Credit Suisse (USA), Inc., Credit Suisse Holdings (USA), Inc., Credit Suisse AG, Cayman Islands Branch, Credit Suisse AG, and Credit Suisse Group AG.

7. RBC Capital Markets, LLC is an indirect wholly-owned subsidiary of Royal Bank of Canada, which is a publicly traded company. Royal Bank of Canada has no parent company, and there are no publicly held companies that own 10% or more of Royal Bank of Canada's common stock. The following listed persons or entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding: Royal Bank of Canada.

8. UBS Securities LLC's corporate parents are UBS Americas Holding LLC and UBS Americas Inc., the latter of which is wholly-owned by UBS Americas Holding LLC. UBS Americas Holding LLC is wholly-owned by UBS AG, which is wholly-owned by UBS Group AG, a publicly traded corporation. No publicly held corporation holds 10% or more of UBS Group AG stock. The following listed persons or entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding: UBS Americas Holding LLC, UBS Americas, Inc., UBS AG and UBS Group AG.

9. Wells Fargo Securities, LLC is a wholly-owned subsidiary of EVEREN Capital Corporation. EVEREN Capital Corporation is a wholly-owned subsidiary of WFC Holdings, LLC, which, in turn, is a wholly-

owned subsidiary of Wells Fargo & Company, a publicly traded corporation. Wells Fargo & Company has no parent corporation and no publically held corporation owns 10% or more of its stock. The following listed persons or entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding: EVEREN Capital Corporation, WFC Holdings, LLC and Wells Fargo & Company.

10. Keybanc Capital Markets Inc. is a wholly-owned subsidiary of KeyCorp. KeyCorp is a publicly held company whose shares are traded on the New York Stock Exchange. The Vanguard Group, Inc., a publicly held company, owns 10% or more of KeyCorp's shares. No other publicly held company owns 10% or more of KeyCorp's shares. The following listed persons or entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding: KeyCorp and The Vanguard Group, Inc.

11. Mischler Financial Group, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock. The following listed persons or entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding: SAR Holdings, Inc. and employees: Dean A. Chamberlain, Doyle L. Homes and GTS Holding Company.

12. Samuel A. Ramirez & Co., Inc. is wholly-owned by SAR Holdings, Inc., which is owned by its employees, and no publicly held corporation owns 10% or more of its stock. The following listed persons or

entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding: SAR Holdings, Inc. and employees.

13. Siebert Williams Shank & Co., LLC (“SWS”) hereby discloses that Shank Williams Cisneros, LLC is the non-publicly traded parent company of SWS. The following listed persons or entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding: Shank Williams Cisneros, LLC.

Dated: March 18, 2021

By: /s/ Elizabeth L. Deeley  
Elizabeth L. Deeley

In accordance with Rule 8.208 of the California Rules of Court, the undersigned certifies with respect to Dell Technologies Inc. that there are no interested entities or persons other than Michael S. Dell and Silver Lake Partners with either (1) an ownership interest of 10 percent or more in Dell Technologies Inc. or (2) a financial or other interest in the outcome of this proceeding that the justices should consider in determining whether to disqualify themselves.

Dated: March 18, 2021

By: /s/ Gidon M. Caine  
Gidon M. Caine



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## PETITION

### A. Introduction.

1. No appellate court has yet addressed the recurring and unresolved question presented by this Petition: whether discovery can proceed in federal securities law class actions pending in state court before adjudication of the sufficiency of the complaint, when the governing federal statute automatically stays discovery “in *any* private action.” California trial courts (and trial courts across the country) are divided on this issue. The question is of critical importance not only to a rising tide of cases that are filed in the wake of initial public offerings of company stock to investors, but also to the more than twenty Co-Petitioners, who are now responding to expansive written discovery on meritless claims a federal court has already dismissed.

2. The answer to this question turns on the plain meaning of the statute. In the Private Securities Litigation Reform Act, Pub. L. No. 104–67, 109 Stat. 737 (the “Reform Act”), the United States Congress sought to curb certain abuses of the federal securities laws, including the Securities Act of 1933, 15 U.S.C. § 77a, et seq. (the “Securities Act”). Among other things, securities plaintiffs had long propounded vexatious discovery requests against defendants in efforts to encourage early settlement on meritless claims. In response, Congress enacted the Reform Act’s discovery-stay provision, which automatically stays all discovery until the presiding court has sustained the legal sufficiency of the complaint. (15 U.S.C. § 77z-1(b)(1).) This provision expressly applies “in *any* private action arising under [the Securities Act].” (*Ibid.*, italics added.) Notwithstanding the breadth of that language, Courts are split on whether it governs private Securities Act actions filed in *state* court.

3. Here, the trial court joined those courts that have rejected the

discovery stay's applicability in state court. Plaintiffs, the real-parties-in-interest, have invoked the Securities Act to challenge allegedly false statements contained in the Registration Statement that Petitioner Pivotal Software, Inc. ("Pivotal") issued in connection with its April 2018 initial public offering ("IPO"). These claims are meritless—a federal district court has already dismissed a parallel lawsuit advancing the same contentions. (*In re Pivotal Sec. Litig.* (N.D.Cal. July 21, 2020, No. 3:19-CV-03589-CRB) 2020 WL 4193384.) And the trial court here has not overruled any demurrer or otherwise suggested that Plaintiffs have stated a viable claim. To the contrary, demurrers to that complaint are not scheduled to be heard until June. But notwithstanding the Reform Act's automatic discovery stay, the trial court has allowed plaintiffs to seek expansive discovery.

4. This Court should issue a writ of mandate directing the trial court to vacate its order denying Petitioners' request for a stay of discovery. The trial court's decision cannot be reconciled with the text or purpose of the Reform Act. Congress made clear its intent that "all discovery and other proceedings shall be stayed" in *all* "private action[s] arising under" the Securities Act. (15 U.S.C. § 77z-1(b)(1).) Plaintiffs cannot invoke the Securities Act to bring suit, but then ignore the limitations Congress imposed on such suits.

5. Petitioners previously sought a writ of mandate from this Court, challenging the trial court's initial two-sentence order allowing discovery to go forward. The Court denied the petition, noting that the issue had not been fully briefed before the trial court and that Petitioners had not persuasively demonstrated they would suffer irreparable harm absent writ review. Petitioners have addressed both of these concerns.

6. First, following this Court's guidance, Petitioners fully exhausted their available remedies in the trial court. Petitioners sought



application of the Reform Act’s automatic discovery stay by filing a motion to stay with the trial court. After full briefing and a hearing, the trial court denied the motion. It issued a seven page opinion explaining its rationales for departing from those courts that have previously concluded that the Reform Act’s discovery stay governs in state as well as federal court. The question is therefore now ripe for this Court’s review.

7. Second, this petition demonstrates the irreparable harm Petitioners will suffer absent writ review. As Petitioners previously explained, in permitting Plaintiffs to proceed with discovery, the trial court has subjected Petitioners—Pivotal, its Directors, its majority stockholder, and fifteen financial institutions that underwrote Pivotal’s IPO—to precisely the sort of discovery that Congress intended to preclude. This discovery and its costs are not just theoretical. Within 24 hours of the trial court’s denial of the motion to stay, Plaintiffs insisted that counsel for all parties meet and confer, and they then sought to begin negotiating a protocol for producing electronically-stored information—information that is notoriously costly and burdensome to produce. There is no reprieve in sight. Petitioners’ joint demurrer and motion to strike will not even be heard until June 2021. And Petitioners will be obligated to respond to additional, costly discovery while they await the trial court’s eventual ruling on their demurrer—or, perhaps, even additional demurrers, if the trial court grants Plaintiffs another opportunity to attempt to amend their complaint. This time and substantial expense can never be recovered.

8. What is more, these escalating costs threaten to compel Petitioners to succumb to the very irreparable harm Congress intended the Reform Act’s discovery stay to prevent, pressuring them to settle baseless claims simply to avoid costly discovery. Congress and the United States Supreme Court have long sought to curb the coercive effect that burdensome discovery has in securities litigation. (See H.R. Conf. Rep.

No. 104-369 (1st session), p. 31 (1995); *Blue Chip Stamps v. Manor Drug Stores* (1975) 421 U.S. 723, 741.) The settlement pressure created by the trial court's erroneous order alone warrants this Court's immediate intervention. (See *Starbucks Corp. v. Superior Court* (2008) 168 Cal.App.4th 1436, 1453 [granting writ relief where petitioner faced "irreparable harm" of "pressure to settle" on a "basis other than the merits"], quotation marks omitted.)

9. In addition, writ review is independently warranted given the importance of the question presented, the need to resolve the confusion created by trial courts' conflicting interpretations of the Reform Act, and the fact that this issue will otherwise continue to evade review. Under the *Oceanside* doctrine, California appellate courts have long exercised their discretion to grant relief "in discovery matters to review questions of first impression that are of general importance to the trial courts and to the profession, and where general guidelines can be laid down for future cases." (*Oceanside Union School Dist. v. Superior Court of San Diego County* (1962) 58 Cal.2d 180, 185, fn. 4.) Because such discovery issues could never otherwise be addressed by a Court of Appeal, review is warranted even where the petitioner confronts solely monetary or other harms that might not ordinarily be considered irreparable. (E.g., *O'Grady v. Superior Court* (2006) 139 Cal.App.4th 1423, 1440-1451 [addressing unresolved question regarding whether federal Stored Communication Act required quashing certain subpoenas]; *Toshiba America Electronic Components v. Superior Court* (2004) 124 Cal.App.4th 762, 767 [addressing "which party should pay when it is necessary to translate electronic data compilations in order to obtain usable information responsive to a discovery request"]; *Save Open Space Santa Monica Mountains v. Superior Court* (2000) 84 Cal.App.4th 235, 245 [addressing attorneys' fee issue related to discovery orders, a question "of first

impression and of general importance to the trial courts and to the profession”], disapproved in part on other grounds by *Williams v. Superior Court* (2017) 3 Cal.5th 531, 557, fn. 8.)

10. This case readily satisfies these requirements. No California Court of Appeal (or, for that matter, other appellate court) has yet addressed whether the Reform Act’s discovery stay applies in state court—a question implicated in each of the many Securities Act cases filed in California courts every year. Indeed, the trial court faulted Petitioners for not citing any precedential opinion on this issue. (Ex. N. at p. 640.) Absent this Court’s review, this important issue will continue to evade any precedential guidance, and the trial courts will continue to remain divided. To provide much needed clarity, prevent Petitioners from incurring the precise harms that Congress sought to eliminate, and correct the trial court’s erroneous reading of the Reform Act, this Court should grant the petition.

**B. The Parties.**

11. Pivotal is a San Francisco-based information technology and software company that is now wholly owned by VMware, Inc. (“VMware”). The individual Petitioners were, at all relevant times, Pivotal officers or members of Pivotal’s Board of Directors: Robert Mee (Chief Executive Officer), Cynthia Gaylor (Chief Financial Officer), Paul Maritz (Chairman of the Board), Michael S. Dell (Board member), Zane Rowe (Board member), Egon Durban (Board member), William D. Green (Board member), Marcy S. Klevorn (Board member), and Khozema Z. Shipchandler (Board member). Petitioners also include Dell Technologies Inc. (“Dell”), a Texas-based enterprise technology company that beneficially owned a majority of Pivotal’s stock, and 15 financial institutions that underwrote Pivotal’s IPO: 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; Keybank Capital Markets Inc.; William Blair & Co., LLC; Mischler Financial Group, Inc.; Samuel A. Ramirez & Co., Inc.; Siebert Cisneros Shank & Co., LLC; and Williams Capital Group, L.P. (the latter two, which have since merged, renamed “Siebert Williams Shank & Co., LLC”). Petitioners are defendants in the underlying lawsuit.

12. Respondent is the Superior Court of the State of California, County of San Francisco.

13. Real parties in interest are Plaintiffs Jason Hill, Nhung Tran, and Alandra Mothorpe.

**C. Authenticity Of Exhibits.**

14. All exhibits accompanying this petition are true copies of original documents filed in the trial court, except for Exhibit B, which is a true and correct copy of the Petition for Writ of Mandate Petitioners filed on December 14, 2020, Exhibit C, which is a true and correct copy of this Court’s December 16, 2020, order denying the writ petition, Exhibits D, E, and I, which are true and correct copies of Defendants’ Responses to Plaintiffs’ Requests for Production served on December 21, 2020 and January 22, 2021, and Exhibit M, which is a true and correct copy of the reporter’s transcript of the February 18, 2021, hearing on Petitioners’ motion to stay discovery.

**Factual Background.**

15. Plaintiffs’ complaints allege that Pivotal provides a “cloud-native” software platform called Pivotal Cloud Foundry (“PCF”). (Ex. H at p. 341, ¶ 2.) PCF allows customers to build, deploy, and operate cloud-based software and applications. (*Id.* at ¶ 16) Pivotal generates most of its

revenue from the sale of time-based subscriptions. (Ex. H at p. 354, ¶ 51.) Pivotal’s flagship product is Pivotal Application Service (“PAS”), which enables customers to operate custom software securely and at scale. (*Ibid.*)

16. Pivotal released its new product Pivotal Container Service (“PKS”) in February 2018. (Ex. H at p. 341, ¶ 2.) PKS is a container management platform that allows customers to more easily deploy and operate Kubernetes, an open-source system similar to PAS, but designed for managing containerized workloads and services. (*Id.* at ¶¶ 3, 4, 51.)

17. In April 2018, Pivotal launched its IPO, offering 42,550,000 of its shares at \$15 per share. (Ex. H at p. 362, ¶¶ 77-79.) Pivotal’s Registration Statement included a detailed overview of its products, business operations, and financial results, along with almost 40 pages of risk disclosures. (*In re Pivotal Securities Litig., supra*, 2020 WL 4193384, at p. \*2.)

18. In August 2019, Pivotal announced a proposed merger with VMware at \$15 per share, the same price as the IPO. (Ex. G at p. 239.) The merger closed at the end of 2019. (*Ibid.*) Stockholders who purchased in the IPO and held their shares through the merger thus broke even.

#### **D. Procedural Background.**

##### **1. Plaintiffs assert claims arising from Pivotal’s April 2018 IPO.**

19. This litigation commenced in June 2019 (shortly before Pivotal announced the merger with VMware) when three plaintiffs filed three substantially identical lawsuits in the superior court, all purportedly on behalf of a class of persons who purchased Pivotal stock in its IPO. The trial court subsequently consolidated the three actions. (Ex. G at p. 246.)

20. The complaints all asserted claims solely under the Securities Act. (Ex. G at pp. 231-235, ¶¶ 88-109.) Like those initial complaints, the

Consolidated Amended Class Action Complaint, filed on January 15, 2021, claims that Pivotal’s Registration Statement describing Pivotal’s “rapidly growing market” and Pivotal’s products as “cutting-edge” and “leading” was false and misleading. (See, e.g., Ex. H at p. 358, ¶ 64, Ex. G at p. 224, ¶ 54, *id.* at p. 225, ¶ 56.) And Plaintiffs allege that Pivotal failed to adequately disclose “deferred sales and lengthening sales cycles were already kneecapping growth.” (See, e.g., Ex. H at p. 358, ¶ 65.)

## **2. The federal court dismisses parallel class actions.**

21. At the same time these plaintiffs filed their initial actions in state court, other plaintiffs commenced parallel federal lawsuits. Those federal suits were also on behalf of those who purchased Pivotal stock in the IPO (along with additional class members who subsequently purchased Pivotal stock). Because of these pending federal actions, the state court proceedings were stayed for more than a year. (Ex. G at pp. 239, 256, 267.)

22. The federal actions—which were also consolidated—asserted the same claims, against the same defendants, based on the same allegedly false or misleading statements. (*In re Pivotal Sec. Litig.*, *supra*, 2020 WL 4193384 at p. \*2.)<sup>1</sup> As in the state-court action, the federal plaintiffs alleged that Pivotal failed to disclose “increasing competition,” “lengthening sales cycles,” and a “disjointed product mix,” consisting of an allegedly “obsolete” PAS offering and a PKS offering that “had a number of undisclosed drawbacks.” (*Id.* at pp. \*7, \*10, \*12.)

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<sup>1</sup> The consolidated federal action was also broader in scope. As in this action, the federal plaintiffs asserted claims under the Securities Act. In addition, the federal plaintiffs asserted claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78a, et seq. (the “Exchange Act”), based on allegedly false statements made following the IPO.

23. In a 34-page opinion, the district court (Judge Charles R. Breyer) dismissed the consolidated federal complaint for failure to state a claim under the Securities Act. As the court explained, the federal plaintiffs had failed to plausibly allege that any of the challenged statements regarding Pivotal’s product offerings, Pivotal’s competition, or risks to Pivotal’s business were actually false. (*In re Pivotal Securities Litig., supra*, 2020 WL 4193384, at pp. \*6-7.) Additionally, the court concluded that all claims based on statements of corporate optimism or that were forward-looking in nature were inactionable as a matter of law and barred the plaintiffs from including such claims in their amended complaint. (*Id.* at pp. \*6, \*19.) Finally, the court also concluded that Pivotal had violated no applicable duty to disclose, and that the plaintiffs’ “narrative of fraud is simply not as plausible as a nonfraudulent alternative.” (*Id.* at pp. \*7-8; \*18, citation and internal quotation marks omitted.)

24. The district court granted the federal plaintiffs leave to amend their complaint. Presumably recognizing that the district court’s opinion had thoroughly dismantled the premise of their lawsuit, the federal plaintiffs instead voluntarily dismissed with prejudice.

**3. The trial court allows discovery to proceed even before Plaintiffs file their operative complaint.**

25. Following the federal court’s dismissal, the parties in the consolidated state-court action filed a Joint Case Management Conference Statement, on October 20, 2020. (Ex. G at p. 267.) The parties diverged on a key issue: whether the Reform Act’s discovery stay provision, Section 77z-1(b)(1), precluded Plaintiffs from commencing discovery until the trial court had sustained the legal sufficiency of their claims. Plaintiffs maintained that this discovery-stay provision was wholly inapplicable in

state court. (*Id.* at pp. 274-275.) In support, Plaintiffs relied on two unpublished California trial court decisions reaching that conclusion. (*Ibid.*)

26. Petitioners responded that, by its plain terms, the Reform Act’s discovery stay applies in both state and federal court. As Petitioners explained, this statutory provision applies “[i]n any private action arising under [the Securities Act],” and Plaintiffs’ suit plainly qualifies as a private Securities Act action, whether filed in state or federal court. (Ex. G at p. 275, quoting 15 U.S.C. § 77z-1(b).) The need to give Petitioners an opportunity to challenge the complaint before commencing discovery was all the more apparent here given that the district court had recently dismissed with prejudice the parallel consolidated federal action—which relied on the very same allegations advanced in the consolidated state-court action—for failure to state a claim. (*Id.* at pp. 275-276.) Petitioners countered Plaintiffs’ cited trial court decisions with unpublished authorities of their own: other California trial courts had applied the Reform Act’s discovery stay according to its plain language and deemed it applicable in state as well as federal court. (*Id.* at p. 276.)

27. At the ensuing October 27, 2020 case management conference, the trial court heard both sides’ positions on the discovery stay’s application. The trial court issued its order later that day, writing: “Defendants’ request for a discovery stay is denied. The parties shall proceed with bilateral written discovery on all issues including both merits and class certification discovery.” (Ex. G at pp. 281-282.)

28. The same order set a schedule requested by Plaintiffs. As relevant here, a “hearing on defendants’ demurrer(s) is set for June 16, 2021.” (*Ibid.*)

29. Consistent with the trial court’s order, Plaintiffs served discovery requests a few weeks later. These requests are as broad and



burdensome as document requests can be. Plaintiffs requested “[a]ll documents and communications related to Pivotal’s product offerings,” “[a]ll documents and communications distributed at, used during, created in connection with, or concerning any meeting involving any Pivotal management or executives,” and “[a]ll documents and communications related to Pivotal’s quarterly and annual financial and operational results and forecasts for fiscal years 2018, 2019, and 2020”—and many other similarly overbroad requests. (Ex. G at pp. 295-296.) Plaintiffs served the Underwriter Defendants with equally broad discovery, including requests for “[a]ll documents and communications related to the IPO and any services the Underwriter Defendants performed related to the Offering” and “[a]ll documents, including any deal files, communications, presentations, meeting minutes, reports, memoranda, analyses, drafts, or notes concerning any due diligence investigation, effort, or inquiry related to the Offering.” (Ex. G at p. 312.)

30. On November 19, 2020, Plaintiffs served the operative complaint on Dell Technologies, and thereafter served similarly overbroad document demands on Dell Technologies. For example, the requests served on Dell requested “[a]ll documents and communications” having anything to do with the Pivotal-VMware Merger and “[a]ll documents and communications regarding Dell’s equity stake in Pivotal” for a time period extending nine months beyond that reflected in the discovery to the Pivotal Defendants. (Ex. G at pp. 327-332.).

31. Petitioners provided written responses and objections to those onerous requests on December 21, 2020 and January 22, 2021. (Exs. D, E, and I.) The parties have since engaged in multiple meet and confers. Petitioners are responding to these discovery requests, with production of documents expected to start soon.

**4. Defendants petition this Court for a writ of mandate.**

32. Before Petitioners' initial deadline to respond to Plaintiffs' overly broad discovery requests, Defendants filed a petition for writ of mandate on December 14, 2020. (Ex. B.) The petition requested that this Court direct the trial court to vacate its order denying Petitioners' request for a discovery stay and stay discovery until it ruled on Petitioners' demurrers or motions to strike. (*Ibid.*)

33. This Court denied Petitioners' request for relief, "declin[ing] to review the issue raised in the petition[.]" (Ex. C.) This Court explained that the challenged order "was made based on the parties' summary arguments in a case management conference statement," and "[P]etitioners did not thoroughly present the positions urged in the present petition by way of a stay motion filed in the superior court." (*Ibid.*) This Court's denial also stated that Petitioners had not "persuasively demonstrate[d] that [they] will suffer cognizable irreparable harm absent writ review." (*Ibid.*)

**5. The trial court denies Petitioners' motion to stay.**

34. In accordance with this Court's order, Petitioners filed a motion to stay discovery in the trial court. The parties thoroughly briefed whether the Reform Act's discovery stay applies to "any private action arising under" the Securities Act, whether filed in state or federal court. (See Ex. F.)

35. The trial court heard Petitioners' motion on February 18, 2021. (Ex. M.) On March 4, 2021, the trial court issued an order denying the motion. (Ex. N.)

36. The trial court explained its reasoning in some detail. After criticizing Petitioners for "fail[ing] to cite a single reported decision in

California holding the PSLRA’s discovery stay applies to securities class actions filed in state court,” the court concluded that while Section 77z-1(b)(1) expressly states it applies to “any private action[s] arising under” the Securities Act, its failure to *also* expressly reference state courts precluded its application in such courts. (Ex. N at pp. 639-640.) The trial court buttressed that reading by citing surrounding (but distinct) subsections of the Reform Act, declaring that the statute “is replete with procedural devices and associated federal nomenclature.” (*Ibid.*) The court further asserted that reading the Reform Act’s discovery stay provision to apply in state court would render redundant a separate provision of the subsequently enacted Securities Litigation Uniform Standards Act of 1998—notwithstanding that the cited provision, unlike Section 77z-1(b)(1), applies also to state-court litigation that *does not* arise under the Securities Act. (*Id.* at p. 641.)

37. In addition, the trial court concluded that limiting Section 77z-1(b)(1)’s discovery stay to federal court was consistent with the provision’s “procedural nature.” (Ex. N at pp. 641-642.) The court appeared to read the United States Supreme Court’s recent decision in *Cyan, Inc. v. Beaver County Employees Retirement Fund* (2018) 138 S. Ct. 1061 to require an assessment of whether a given Reform Act provision is “procedural” or “substantive” in determining if the provision applies in state court. (*Id.* at pp. 641-642). Pointing to the minutes of the Civil Rules Advisory Committee (and not any congressional materials), the trial court declared that the “legislative history” of the Reform Act supported the conclusion that Section 77z-1(b)(1) is “procedural” and therefore inapplicable in state court. (*Id.* at pp. 642-643.)

**6. Plaintiffs press their discovery demands.**

38. Less than 24 hours after the trial court denied the stay,

Plaintiffs requested to meet and confer with Petitioners. During the subsequent meet and confer, Plaintiffs insisted that Petitioners comply with Plaintiffs' document requests and begin negotiating a protocol for the production of electronically-stored information. That negotiation is ongoing.

39. On March 17, 2021, Petitioners jointly demurred and moved to strike Plaintiffs' consolidated Amended Class Action Complaint. Consistent with the trial court's prior scheduling order, that motion is set to be heard on June 16, 2021.

#### **E. The Need For Writ Relief.**

40. Immediate appellate intervention is necessary for three reasons.

41. First, as the trial court recognized, there is no precedential opinion on this important question. (Ex. N at p. 640.) California trial courts (like other trial courts nationwide) are divided on whether the Reform Act's automatic discovery stay applies in state court.<sup>2</sup> This divide

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<sup>2</sup> (Compare *Shores v. Cinergi Pictures Entertainment, Inc.* (Cal.Super. Ct. Sept. 11, 1996, No. BC149861) Notice of Ruling 2 [“[T]he automatic stay provision in Section 27(b) of the [1933] Act applies to all cases filed under the [1933] Act, whether in state or federal court.”]; *Milano v. Auhll* (Cal.Super. Ct., October 2, 1996,) 1996 WL 33398997 at p. \*2 [same]; with *Switzer v. W.R. Hambrecht & Co.* (Cal.Super. Ct. Sept. 19, 2018, Nos. CGC-18-564904, CGC-18-565324) 2018 WL 4704776, at p. \*1 [concluding the PSLRA's discovery stay “only applies to actions filed in federal court, not state court”]; *In re Pacific Biosciences of California Inc.* (Cal.Super. Ct. May 25, 2012, No. CIV509210) 2012 WL 1932469 [same].) Petitioners cite these unpublished decisions not as authority, but to highlight the fact that there is confusion regarding this legal question. (See California Criminal Appellate Practice Manual (Jan. 2013 ed.), at § 7.11 [notwithstanding California Rule of Court, rule 8.1115(a), a “petition for review . . . may point to unpublished cases to show conflicts among the

implicates every state-court action brought under the Securities Act—of which there are an increasing number.<sup>3</sup> This Court should act now to address this question, which has never been addressed by an appellate court. (See *Oceanside, supra*, 58 Cal.2d at p. 185, fn. 4 [the writ should be “used in discovery matters to review questions of first impression that are of general importance to the trial courts and to the profession, and where general guidelines can be laid down for future cases”].)

42. Second, the trial court’s orders cannot be reconciled with the statutory text Congress enacted or its underlying purpose. The Reform Act’s discovery stay provision applies to “any private action arising under” the Securities Act. (15 U.S.C. § 77z-1(b)(1).) The language is clear: it applies in “any private” action, which necessarily means that it applies in state court just as it applies in federal court. Surrounding subsections of the Reform Act confirm as much, showing that when Congress instead wanted to limit a provision’s application to federal court, it knew how to do so. (See *id.*, § 77z-1(a)(1) [specifying provision’s application to actions “brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure”].) And that plain-text reading is consistent with Congress’s purpose, which was to limit plaintiffs’ ability to file costly discovery requests in the hopes of forcing Securities Act defendants to settle meritless claims. (*Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit* (2006) 547 U.S. 71, 81.) This concern is no less present in state court than it is in federal court.

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courts on a particular issue”]; *People v. Hill* (1998) 17 Cal.4th 800, 847-848, fn. 9 [taking judicial notice of unpublished opinion]; *In re Luke L.* (1996) 44 Cal.App.4th 670, 674, fn. 3 [same].)

<sup>3</sup> (Stanford Clearinghouse, *Securities Class Action Filings: 2019 Year In Review* (2020), at p. 4; see *infra*, pp. 49-50.)

43. Third, absent writ relief, Petitioners will be subjected to just the sort of costs and pressures that Congress intended to preclude. As discussed, the day after the trial court's order, Plaintiffs insisted that the parties confer about written discovery. Such discovery—which requires (among other things) investigation to identify responsive electronically stored information, forensic collection, processing, and hosting of electronically stored information, as well as manual review of potentially hundreds of thousands of documents for responsiveness and privilege—is the very definition of burdensome. Because of the trial court's order, certain Petitioners must now incur the cost of Plaintiffs' broad and invasive discovery requests, all of which are premised on claims identical to those a federal court already adjudicated as meritless. The substantial time and expense Petitioners incur in responding to discovery requests are harms that cannot be redressed in any subsequent appeal. The expense for Pivotal will be compounded by its obligation to indemnify its Co-Petitioning Underwriter Defendants—no fewer than 15 major financial institutions—for the equally broad discovery that was simultaneously propounded on each of them. Those costs may soon compel Petitioners to suffer the ultimate harm that Section 77z-1(b)(1) was designed to address, pressuring them to settle meritless claims simply to avoid those costs. This Court should not permit the trial court's legal error to strip Petitioners of their statutory rights and expose them to such costly discovery before the sufficiency of Plaintiffs' allegations is adjudicated.

44. Finally, a temporary stay of the trial court's order while this Court considers whether to grant the petition is also needed. Absent a stay, Petitioners will be required to incur substantial expense responding to Plaintiffs' discovery requests. That burden, and its associated coercive pressure, will only increase in the months ahead.

## **PRAYER FOR RELIEF**

**WHEREFORE, Petitioners pray that this Court:**

1. Stay the trial court's order permitting discovery while this Court considers this petition.
2. Issue an order directing the Superior Court and respondents to show cause before this Court, at a time and place specified by this Court, why a peremptory writ should not issue directing the Superior Court to vacate its order denying Petitioners' motion for a discovery stay in accordance with the Reform Act and enter a new order staying discovery until the Superior Court rules on Petitioners' demurrers or motions to strike.
3. Thereafter issue a writ of mandate directing the Superior Court to vacate its order denying Petitioners' motion for a discovery stay and enter a new order staying discovery until the Superior Court rules on the Petitioners' demurrers or motions to strike.
4. Award Petitioners their costs for this proceeding; and
5. Grant such other relief as may be just and proper.

Dated: March 18, 2021

Respectfully submitted,

**MORRISON & FOERSTER LLP**

By:                   /s/ James R. Sigel                    
                  James R. Sigel

Attorneys for Petitioners Pivotal Software, Inc., Robert Mee, Cynthia Gaylor, Paul Maritz, Michael Dell, Zane Rowe, Egon Durban, William D. Green, Marcy S. Klevorn, and Khozema Z. Shipchandler

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By:                   /s/ Elizabeth Deeley                    
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**ALSTON & BIRD LLP**

By:                   /s/ Gidon M. Caine                    
Gidon M. Caine

Attorneys for Petitioner Dell Technologies Inc.



## VERIFICATION

I, Mark R.S. Foster, declare:

I am an attorney duly licensed to practice law in the State of California. I am a partner at Morrison & Foerster LLP, counsel for Petitioners Pivotal Software, Inc., Robert Mee, Cynthia Gaylor, Paul Maritz, Michael Dell, Zane Rowe, Egon Durban, William D. Green, Marcy S. Klevorn, and Khozema Z. Shipchandler.

I have read the foregoing petition for writ of mandate and know its contents. I am informed and believe the facts stated in the petition are true, and that the exhibits referred to and filed herewith are true and correct copies of the documents filed in the trial court. Because of my familiarity with the relevant facts pertaining to the proceedings in the trial court, I, rather than Petitioners, verify this petition.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on March 18, 2021, in San Francisco, California.

/s/ Mark R.S. Foster

Mark R.S. Foster

# MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

The trial court’s error is apparent from the Reform Act’s plain text. The discovery-stay provision applies in *any* private actions under the Securities Act—full stop. (See 15 U.S.C. § 77z-1(b).) Nowhere in the statute is there a carve-out for cases proceeding in state court, or any indication that Congress intended this provision to apply only to Securities Act actions in *federal* court. Nor would such a reading be consistent with Congress’s purpose to eliminate the abusive discovery practices it targeted, which are by no means limited to federal courts. This Court should grant this petition, read the Reform Act according to its plain text, resolve this issue that has divided the trial courts, and restore to Petitioners the statutory protection from premature discovery and coercive settlement pressure that Congress intended.

## II. STANDARD OF REVIEW

Although “[d]iscovery orders are generally reviewed for abuse of discretion,” where, as here, the trial court’s order turns on the construction of the “relevant discovery statute[],” this Court’s review is “de novo and without regard to the trial court’s reasoning.” (*St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 772-773; accord, e.g., *City of Tulare v. Superior Court* (2008) 169 Cal.App.4th 373, 380 [“The construction of a statute and its application to a particular case is a question of law.”].)

### III. ARGUMENT

#### A. The Reform Act’s Discovery Stay Applies In Both State And Federal Court.

In interpreting a statute, courts start with the plain language, “giving the words their usual and ordinary meaning, while construing them in light of the statute as a whole and the statute’s purpose.” (*Apple Inc. v. Superior Court* (2013) 56 Cal.4th 128, 135, internal quotation marks and alteration omitted.) If the language is plain, it is “decisive.” (*Id.* at p. 139; see *Stephens v. County of Tulare* (2006) 38 Cal.4th 793, 802 [“If the plain language of the statute is clear and unambiguous, our inquiry ends, and we need not embark on judicial construction.”].) If the text is ambiguous, courts “may consider various extrinsic aids,” such as “the legislative history” and “public policy.” (*Holland v. Assessment Appeals Bd. No. 1* (2014) 58 Cal.4th 482, 490.)

Here, these indicators of legislative intent all point to one conclusion. The Reform Act’s plain text is unambiguous, clearly providing that the discovery-stay applies in both state and federal court. Even if there were any ambiguity that could warrant consideration of the legislative history, that history confirms this plain-text reading—which is the only interpretation consistent with Congress’s purpose of eliminating certain discovery practices. The trial court erred in concluding otherwise.

##### 1. The Reform Act’s discovery stay applies in state court.

Congress enacted the Reform Act to combat certain “perceived abuses” of the federal securities laws—both the Securities Act and the Exchange Act. (See *Merrill Lynch, Pierce, Fenner & Smith, supra*, 547 U.S. at p. 81.) Among other things, Congress mandated sanctions for frivolous litigation, imposed a heightened pleading standard for certain claims, created a “safe harbor” for certain types of statements, and

prohibited discovery until after the plaintiff’s complaint had survived a motion to dismiss. (*Id.*; see 15 U.S.C. § 77z-1.)

Some federal securities claims—such as those under Sections 77k, 77l, and 77o of the Securities Act, which Plaintiffs invoke here—may be brought in either federal or state court, as the U.S. Supreme Court recently reaffirmed. (*Cyan, Inc., supra*, 138 S. Ct. at p. 1066 [rejecting argument that statute subsequent to Reform Act stripped state courts of jurisdiction they previously exercised].) As a result, many Reform Act provisions apply to Securities Act claims regardless of where they are filed. (*Ibid.*)

The Reform Act’s discovery-stay requirement is one such provision. It provides, in relevant part, that:

*In any private action arising under this subchapter, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss, unless the court finds, upon the motion of any party, that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party.*

(15 U.S.C. § 77z-1(b), italics added.) “[T]his subchapter,” in turn, refers to subchapter 2A of Title 15 of the U.S. Code—that is, the Securities Act. (See 15 U.S.C. § 77a.)<sup>4</sup>

By its plain terms, the Reform Act’s discovery-stay provision thus governs “any private action arising under” the Securities Act. And because a Securities Act suit in state court is just as much a “private action arising under” the Securities Act as a Securities Act suit in federal court, the

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<sup>4</sup> In the statute enacted by Congress (which was subsequently codified), the provision read “any private action arising under this *title*,” which likewise referred to “the Securities Act of 1933.” (Private Securities Litigation Reform Act of 1995, Pub.L. No. 104-67, § 101, 109 Stat. 737, italics added.)

provision applies in *both* state and federal court. If the trial court has not yet ruled on the sufficiency of the complaint or determined that discovery is urgently needed—and there is no dispute that neither occurred here—the Reform Act’s mandate is clear: “all discovery and other proceedings shall be stayed.” (15 U.S.C. § 77z-1(b).)<sup>5</sup>

Surrounding provisions of the Reform Act further confirm the discovery stay’s application to state court. In particular, the immediately preceding statutory subsection, Section 77z-1(a), carefully limits its requirements (such for the appointment of lead plaintiffs and class notice) to “each private action arising under this subchapter that is brought as a plaintiff *class action pursuant to the Federal Rules of Civil Procedure.*” (15 U.S.C. § 77z-1(a), italics added.) Thus, unlike subsection (b), subsection (a) does not apply to all claims “arising under this subchapter [i.e., the Securities Act],” but rather to the *subset* of those Securities Act

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<sup>5</sup> While Section 77z-1(b) refers to the “pendency” of a motion to dismiss, it is well-established that this stay applies even if the defendants have not yet filed a motion challenging the pleadings. (See, e.g., *SG Cowen Securities Corp. v. U.S. Dist. Court for Northern Dist. of CA* (9th Cir. 1999) 189 F.3d 909, 912-913 [“discovery should be permitted in securities class actions *only after the court has sustained the legal sufficiency of the complaint,*” quoting S. Rep. No. 104–98 (1995) at p. 14]; *In re American Funds Securities Litigation* (C.D.Cal. 2007) 493 F.Supp.2d 1103, 1105 [holding discovery stay applies despite defendants not yet filing their motion to dismiss]; *In re JDS Uniphase Corporation Securities Litigation* (N.D.Cal. 2002) 238 F.Supp.2d 1127, 1133 [same]; *In re Carnegie Internat. Corp. Secs. Lit.* (D.Md. Apr. 11, 2000, Civil No. L–99–1688) 2000 U.S. Dist. LEXIS 6137, at p. \*23 [same]; *In re Tyco Internat., Ltd., Sec. Litig.* (D.N.H. July 27, 2000, No. 00MD1335) 2000 WL 33654141, at p. \*1 [same]; *In re Trump Hotel Shareholder Derivative Lit.* (S.D.N.Y. Aug. 5, 1997, No. 96CIV.7820 (DAB) (HBP)) 1997 WL 442135, at p. \*2 [same].) Neither Plaintiffs nor the trial court have suggested otherwise. In any event, Petitioners filed their demurrer and motion to strike on March 17, 2021.

claims that are brought as class actions in federal court. “[W]hen different words are used in contemporaneously enacted, adjoining subdivisions of a statute, the inference is compelling that a difference in meaning was intended.” (*Kleffman v. Vonage Holdings Corp.* (2010) 49 Cal.4th 334, 343.) That is the case here. Had Congress intended to limit Section 77z-1(b) to federal-court actions, it would have said so, just as it did in Section 77z-1(a). (See *Russello v. United States* (1983) 464 U.S. 16, 23 [“Had Congress intended to restrict § 1963(a)(1) to an interest in an enterprise, it presumably would have done so expressly as it did in the immediately following subsection (a)(2).”].)

The U.S. Supreme Court’s recent decision in *Cyan* fortifies this plain-text reading. There, the Court noted that some provisions of the Reform Act “appl[y] only when such a suit was brought in federal court.” (*Cyan, supra*, 138 S. Ct. at p. 1067.) As an example, the Court cited a subprovision contained in Section 77z-1(a)—which, as the Court observed, applies “in any class action brought under the Federal Rules of Civil Procedure.” (*Ibid.*) By contrast, the Court explained, some of the Reform Act’s provisions “appl[y] even when a [Securities] Act suit was brought in state court.” (*Id.* at p. 1066.) As an example, the Court cited Section 77z-2, the Reform Act’s “safe harbor” for forward-looking statements. (*Ibid.*) Just like Section 77z-1(b)’s discovery stay, Section 77z-2 governs “any private action arising under this subchapter.” (15 U.S.C. § 77z-2(c)(1).) If, as the Supreme Court recognized, this language means that Section 77z-2 “applie[s] even when a [Securities] Act suit was brought in state court” (*Cyan, supra*, 138 S. Ct. at p. 1066), the same must hold true for the identical language in Section 77z-1(b): it is a “normal rule of statutory construction that identical words used in different parts of the same act are

intended to have the same meaning.” (*Gustafson v. Alloyd Co.* (1995) 513 U.S. 561, 570.)<sup>6</sup>

Finally, if any further confirmation of this straightforward understanding were necessary, the Reform Act’s legislative history provides it. In the years preceding the Reform Act, plaintiffs had used the Securities Act to extract settlements from deep-pocketed defendants. (*Merrill Lynch, Pierce, Fenner & Smith, supra*, 547 U.S. at p. 81.) Congress was concerned, in particular, with “the abuse of the discovery process to impose costs so burdensome that it is often economical for the victimized party to settle.” (H.R. Conf. Rep. No. 104-369, at p. 31.) Indeed, the cost of discovery in these cases is often millions of dollars. Accordingly, the “stay of discovery provisions [were] intended to prevent unnecessary imposition of discovery costs on defendants.” (*Id.* at p. 32.)

This concern with such discovery requests is no less applicable to state-court actions than it is to federal-court actions. There is thus no reason to think that Congress would have limited the Reform Act’s discovery stay to state courts.<sup>7</sup> Congress intended Section 77z-1(b) to do

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<sup>6</sup> A recent, post-*Cyan*, state court decision applied the same reasoning to conclude the Reform Act’s discovery stay applies in state court. (See *City of Livonia Retiree Health and Disability Benefits Plan v. Pitney Bowes Inc.* (Conn.Super. May 15, 2019, No. X08 FST CV 18 6038160 S) 2019 WL 2293924, at p. \*4.) As explained in detail below (*infra* pp. 45-46), the trial court’s contrary reading of *Cyan* here was erroneous.

<sup>7</sup> Indeed, Congress soon thereafter recognized that many provisions of the PSLRA, including the discovery stay, were unduly narrow in that they encompassed only federal-law claims and not also state-law claims—an issue Congress took steps to rectify in a follow-on statute, the Securities Litigation Uniform Standards Act of 1998 (“SLUSA”), Pub.L. No. 103-353

just what the provision says it does: “prevent unnecessary imposition of discovery costs on defendants” in whatever court those defendants might find themselves. (*Id.* at p. 32.)

**2. No viable rationale supports concluding that the Discovery Stay applies only in federal court.**

For these reasons, several courts have found that the Reform Act’s discovery stay applies in state court. But notwithstanding Section 77z-1(b)’s unambiguous language, other trial courts, like the superior court below, have reached the contrary conclusion. In fact, both in California<sup>8</sup> and in other states across the country,<sup>9</sup> trial courts are sharply split on this question.

Many of the courts that have held the provision inapplicable in state

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(Nov. 3, 1998) 112 Stat. 3227. (*Cyan, supra*, 138 S.Ct. at p. 1067.) As explained *infra*, pp. 44-45, SLUSA expanded upon the Reform Act to further protect securities defendants by granting courts the authority to enjoin state-court discovery where the claims asserted in state court arise under state law, or where the Reform Act’s discovery stay has expired or not been enforced.

<sup>8</sup> See cases cited, *supra*, fn. 2.

<sup>9</sup> (Compare *City of Livonia Retiree Health and Disability Benefits Plan, supra*, 2019 WL 2293924, at p. \*4 [concluding that the plain meaning of the phrase “any private action arising under this subchapter” means that the discovery stay applies to securities claims brought in state courts]; *Greensky, Inc. Securities Litigation* (N.Y.Sup. Ct. Nov. 25, 2019, No. 655626/2018) 2019 WL 6310525, at p. \*2 [same]; *In re Everquote, Inc. Securities Litigation* (N.Y.Sup. Ct. 2019) 106 N.Y.S.3d 828, 828 [same]; with *In Re Dentsply Sirona, Inc. v. XXX* (N.Y.Sup. Ct. Aug. 02, 2019, No. 155393/2018) 2019 WL 3526142, at p. \*6 [holding discovery stay inapplicable in state court]; *Matter of PPD AI Group Sec. Litig.* (N.Y.Sup. Ct. 2019) 64 Misc.3d 1208(A), 116 N.Y.S.3d 865, at pp. \*6-7 [same].)



court have done so summarily, with little or no explanation. While the trial court's order here was somewhat more detailed, none of the rationales it offered withstand scrutiny.

*First*, the trial court criticized Petitioners for failing to “cite a single reported decision in California holding that the PSLRA’s stay applies to securities class actions filed in state court.” (Ex. N at p. 640.) But of course, no reported decision holds the Reform Act’s discovery stay is inapplicable in state court, either; no published decision has addressed the question at all. Indeed, in trying to locate support for its reading of the Reform Act, the trial court was reduced to citing an out of context, offhand remark from a dissent in a case addressing whether California’s blue sky statutes have extraterritorial effect. (Ex. N at p. 640, quoting *Diamond Multimedia Systems, Inc. v. Superior Court* (1999) 19 Cal.4th 1036 [Brown, J., dissenting].) The absence of any appellate guidance on this question is precisely why this Court’s review is needed.

*Second*, the trial court emphasized that Section 77z-1(b) contains no “reference to state courts.” (Ex. N at p. 640.) But such a “reference” would be superfluous given the provision’s express application to “*any private action.*” (15 U.S.C. § 77z-1(b)(1), italics added.) “From the earliest days of statehood the courts have interpreted ‘any’ to be broad, general, and all embracing” and “the use of the word ‘any’ . . . connotes *all.*” (*Legal Aid Society of San Mateo County v. Department of Finance* (2020) 59 Cal.App.5th 166, 187, italics in original, quotation marks omitted.) And the lack of reference to “state court” in the discovery stay is unsurprising, as the provision’s focus is the type of “action,” not the forum in which that action is litigated. That is in contrast to other provisions the trial court cited, which reference the fora to which they apply because they are not limited to any particular type of action. For instance, the trial court relied

on Section 77z-1(a)(7)(B), which requires lead plaintiffs to disclose certain settlement terms to class members, including any agreements or disagreements concerning recoverable damages per share. (See Ex. N at p. 640.) That subsection limits the use of such statements by forum—the statements “shall not be admissible in any Federal or State judicial action or administrative proceeding.” (15 U.S.C. § 77z-1(a)(7)(B)(iii).) By contrast, the Reform Act’s discovery stay had no need to specify any particular forum because it expressly applies to all “private action[s] arising under” the Securities Act. (15 U.S.C. § 77z-1(b)(1), italics added.) It follows that the stay applies wherever such an action is litigated, whether in state or federal court.

*Third*, the trial court, citing provisions other than Section 77z-1(b), declared that the Reform Act “consistently limits its procedural provisions to action under the Federal Rules of Civil Procedure and is replete with procedural devices and associated federal nomenclature.” (Ex. N at pp. 640-641.) But that *some* Reform Act provisions are limited to federal court does not mean that the discovery-stay provision is as well. (See *Cyan, supra*, 138 S. Ct. at pp. 1066-1067 [explaining that some Reform Act provision apply in state court while others do not].) If anything, the fact that other Reform Act provisions are expressly limited to federal court makes clear that the discovery stay—which contains no such language—is not: Congress knew how to limit the Reform Act’s provision to federal court when it wanted to. (*Supra*, pp. 37-38; see *Russello, supra*, 464 U.S. at p. 23.)

Thus, for example, the trial court cited a number of provisions of Section 77z-1(a). As discussed above (*supra*, pp. 37-38), while Section 77z-1(a) does indeed limit its reach to “plaintiff class action[s] pursuant to the Federal Rules of Civil Procedure,” this language by its terms speaks

only to when courts should apply “the provisions of this subsection”—that is, subsection (a), which addresses procedures unique to Securities Act class actions brought in federal court (e.g., “appointment of lead plaintiff,” “notice to class members,” and “selection of lead counsel”). (15 U.S.C. § 77z-1(a).) The Reform Act’s discovery stay, by contrast, is contained in subsection (b), and it expressly applies to “any private action arising under this subchapter.” (15 U.S.C. § 77z-1(b).) As the Fifth Circuit Court of Appeals observed of a parallel Reform Act provision applicable to the Exchange Act, subsection (b) is “equal in rank to subsection (a),” it “is separate and distinct from subsection (a),” and it “governs a broader category [of cases] than subsection (a).” (*Newby v. Enron Corp.* (5th Cir. 2003) 338 F.3d 467, 473.)

Similarly, the trial court pointed to provisions within Section 77z-1(c). That subsection, governing sanctions for abusive litigation, is again entirely distinct from the Reform Act’s discovery-stay provision. (15 U.S.C. § 77z-1(c).) Moreover, while Section 77z-1(c) references Federal Rule of Civil Procedure 11, its application is not limited to federal court—the provision simply requires courts to apply the *standard* set forth in that federal rule when determining whether plaintiffs should be sanctioned for certain specified types of abuses. (E.g., *id.* § 77z-1(c)(2).) This provision thus provides no reason to think that the Reform Act’s discovery stay is not, as its plain language provides, applicable to all Securities Act actions. (See *In re Everquote, Inc. Securities Litigation*, *supra*, 106 N.Y.S.3d at p. 828 [rejecting similar argument].)

*Fourth*, the trial court asserted that reading the Reform Act’s discovery stay to apply in state court would render Section 77z-1(b)(4) “redundant.” (Ex. N at p. 641.) The referenced provision was added as part of SLUSA three years after the Reform Act. It provides that “a court

may stay discovery proceedings in any private action in a State court as necessary in aid of its jurisdiction, or to protect or effectuate its judgments, in an action subject to a stay of discovery pursuant to this subsection.” (15 U.S.C. § 77z-1(b)(4).)

The trial court erred in suggesting that this provision would have been superfluous had the Reform Act’s discovery stay already applied in state courts. Whereas the Reform Act’s discovery stay applies only in actions arising under the Securities Act, Section 77z-1(b)(4) applies to “any private action in a State court,” including those raising purely state-law claims. (See, e.g., *In re DPL Inc., Sec. Litig.* (S.D. Ohio 2003) 247 F.Supp.2d 946, 948, fn. 6, 949-950 [noting that this SLUSA provision applies to “discovery in ‘any private action’ pending in state court” and staying discovery in parallel state-law derivative action]; *In re Crompton Corp.* (No. 3:03-CV-1293(EBB), July 28, 2003) 2005 WL 3797695, at p. \*3 [similar].) Consistent with SLUSA’s goal of preventing the use of state-law securities suits to evade the Reform Act’s restrictions (*Cyan, supra*, 138 S. Ct. at pp. 1067, 1072), Section 77z-1(b)(4) expands the Reform Act’s anti-discovery provisions by enabling courts to stay state-court actions that were *not* otherwise subject to the Reform Act’s discovery stay—cases, for instance, that do not arise under the Securities Act because they involve only state-law claims, or in which the Reform Act’s discovery stay has either expired or not been enforced.<sup>10</sup>

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<sup>10</sup> As this case illustrates, this last concern remains very real notwithstanding the Reform Act’s plain language. Had the federal plaintiffs not abandoned their claims, Petitioners could have made application to the federal court to stay this action under SLUSA. For that reason, even if there were any redundancy between the Reform Act’s discovery stay and this additional SLUSA protection against abusive

*Fifth* and finally, the trial court concluded that the Reform Act’s discovery stay applies only in federal court because it is “of [a] procedural nature” and is not “substantive.” (Ex. N at pp. 641-642.) But even assuming the discovery stay provision should be characterized as “procedural,” nothing precludes Congress from applying “procedural” requirements in state courts. Rather, the “general rule is that where an action founded on a federal statute is brought in a state court, the law of the state controls in matters of practice and procedure *unless the federal statute provides otherwise.*” (*Chavez v. Keat* (1995) 34 Cal.App.4th 1406, 1413-1414, italics added.) Here, the federal statute “provides otherwise”—the Reform Act expressly applies its discovery stay to “*any private action.*” (15 U.S.C. § 77z-1(b)(1), italics added.) That is the end of the matter.<sup>11</sup>

Contrary to the trial court’s presumption, *Cyan* does not hold that whether a Reform Act provision applies in state courts turns on whether it is classified as “substantive” or “procedural.” (See Ex. N at pp. 641-642.) Instead, the *Cyan* Court simply used the word “substantive” as a general descriptor for the types of provisions that Congress had applied to both state

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discovery, that would not justify reading the Reform Act contrary to its plain language. (See *Atlantic Richfield Co. v. Christian* (2020) 140 S. Ct. 1335, 1350, fn. 5 [“sometimes the better overall reading of the statute contains some redundancy,” as Congress may have “employed a belt and suspenders approach”].)

<sup>11</sup> Indeed, even when a federal statute does not (as here) expressly supersede state-court procedures, it may impliedly do so when application of those procedures “would stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 409, internal quotation marks and alteration omitted). Allowing state-court Securities Act plaintiffs to pursue discovery prior to any judicial assessment of their claims would subvert Congress’s intent of eliminating meritless claims. (*Supra*, pp. 39-40.)

and federal court, while similarly referring to the provisions that apply only in federal court as having “modified the procedures” used in such securities litigation. (*Cyan, supra*, 138 S. Ct. at p. 1066.) The Court nowhere suggested that deciding whether a given Reform Act provision applies in state court requires determining whether that provision is “substantive” or “procedural” under some unspecified standard. Thankfully not— “[c]lassification of a law as ‘substantive’ or ‘procedural’” is often “a challenging endeavor.” (*Gasperini v. Center for Humanities* (1996) 518 U.S. 415, 427.) Section 77z-1(b)(1) itself, for example, could (as the trial court believed) perhaps be deemed “procedural” because it does not affect the merits of any Securities Act claim. (Ex. H at pp. 641-642.) But it is also “substantive” because it is designed to avoid a particular “outcome”: defendants forced to settle frivolous litigation due to onerous discovery. (*Gasperini, supra*, 518 U.S. at p. 427; see H.R. Rep. No. 104-369 at pp. 31-32.)

Whether a given Reform Act provision applies in state court does not, however, ultimately turn on such amorphous distinctions. Rather, as always, it turns on Congress’s intent, which is best illustrated by the statutory text Congress enacted. (*CSX Transp. v. Easterwood* (1993) 507 U.S. 658, 664; *Chavez, supra*, 34 Cal.App.4th at pp. 1413-1414.) And as *Cyan* itself made clear, when Congress in the Reform Act stated that a provision governed “any private action arising under” the Securities Act, it intended that provision to apply in state court. (See *Cyan, supra*, 138 S. Ct. at p. 1066; *supra*, pp. 38-39.) *Cyan*’s passing reference to such provisions generally being “substantive” provides no reason to depart from that plain meaning in interpreting the Reform Act’s discovery stay provision.

For the same reasons, the purported “legislative history” on which the trial court relied provides no support for its atextual reading. (Ex. H at

pp. 642-643.) To start, the materials the trial court cited are not “legislative history” at all, but rather the minutes and materials of the Advisory Committee on Civil Rules, a body entirely distinct from Congress. (See *ibid.*) They provide no indication of Congress’s intent. But even if the cited materials were relevant, they simply describe discovery stays as generally “procedural” in nature. Because, as just discussed, nothing in the Reform Act or *Cyan* limits the statute’s provisions applicable in state court to provisions that cannot be characterized as “procedural,” these third parties’ views on that question have no bearing here.

In sum, while the trial court has added itself on one side of the ever-growing split on the scope of the Reform Act’s discovery-stay provision, the court identified no reason to reject the statute’s plain meaning. Congress directed that discovery be stayed in “any private action arising under” the Securities Act, and that mandate applies in both state and federal court. (15 U.S.C. § 77z-1(b).)

**B. Writ Review Is Needed.**

This Court should grant this petition to resolve this confusion and ensure that California courts adhere to Congress’s requirements. “A writ of mandate is the proper remedy to review discovery orders and procedures.” (*Palay v. Superior Court* (1993) 18 Cal.App.4th 919, 925, disapproved in part on other grounds by *Williams, supra*, 3 Cal.5th at p. 557, fn. 8.) Such a writ is the only way for this Court to address this question, as Petitioners cannot meaningfully raise this issue in a subsequent appeal. Indeed, Petitioners are unlikely to have any adverse judgment from which they may appeal if Plaintiffs’ claims are resolved (as they should be) in the same way they were in the identical federal-court litigation. And regardless, at that point Petitioners will not be able to recover the costs of discovery that they

will have already incurred. Moreover, these increasing costs may effectively prove to be dispositive of the case, as Petitioners now face substantial pressure to settle Plaintiffs' claims notwithstanding their lack of merit.

This Court's intervention is warranted given the significance of the question presented and the absence of any precedent resolving it. As our Supreme Court has long recognized, the writ should be "used in discovery matters to review questions of first impression that are of general importance to the trial courts and to the profession, and where general guidelines can be laid down for future cases." (*Oceanside Union School Dist.*, *supra*, 58 Cal.2d at p. 185, fn. 4.) Thus, even where the harm a petitioner faces is purely monetary, appellate courts in California regularly grant review where the case "presents an opportunity to resolve unsettled issues of law and furnish guidance applicable to other pending or anticipated cases." (*O'Grady*, *supra*, 139 Cal.App.4th at p. 1439; *Toshiba America Electronic Components*, *supra*, 124 Cal.App.4th at p. 767; *Save Open Space Santa Monica Mountains*, *supra*, 84 Cal.App.4th at p. 245.)

This case presents the opportunity to provide such guidance. As described above, trial courts are in conflict as to whether the Reform Act's discovery stay applies in state courts, having reached divergent conclusions on the issue both nationwide and in California specifically. (*Supra*, p. 40.) What is more, there is no published appellate authority—let alone California appellate authority, published or unpublished—that might provide guidance on this issue. This Court should therefore take this opportunity to address this "question[] of first impression" and establish much-needed "general guidelines" for state trial courts going forward. (*Oceanside Union School Dist.*, *supra*, 58 Cal.2d at p. 185, fn. 4.)



Only in such a writ proceeding is clarification of this question possible: *no* defendant is likely to ever be able to raise this issue in an appeal. The vast majority of Securities Act cases that survive a motion to dismiss settle (Stanford Clearinghouse, *Securities Class Action Filings: 2019 Year In Review* (2020), at p. 26), and demonstrating that the violation of the discovery stay affected any ultimate judgment would be difficult if not impossible in any event.

Clarification of this critical issue is especially necessary given the rising number of federal securities cases being filed in state courts. In 2018, the U.S. Supreme Court reaffirmed that Congress had, in fact, intended to permit state courts to retain jurisdiction over Securities Act claims. (*Cyan, supra*, 138 S. Ct. at p. 1070.) Since that time, plaintiffs have filed a deluge of Securities Act cases in state courts—with more than five times the total number of state court actions in 2019 than were filed on average in the previous nine years. (Stanford Clearinghouse, *supra*, at p. 4.) The vast majority of these suits are filed in either California or New York. (*Ibid.*) The consequences of the continued uncertainty regarding the application of the Reform Act in California courts and those of other states are thus increasingly significant.

That is all the more true because the costs of each individual suit, and not just their total numbers, are also increasing. Cases filed in recent years “threaten much higher litigation and settlement costs than cases filed in prior years—nearly three times larger than the average for 1997 to 2017.” (U.S. Chamber Institute for Legal Reform, *Containing the Contagion: Proposals to Reform the Broken Securities Class Action System* (Feb. 2019) p. 2.) And while companies that issue securities are subjected to individual suits, the banks that underwrite securities offerings are

subjected to suit after suit, meaning their threatened costs of litigation have increased exponentially over the same time period.<sup>12</sup>

This case is no exception: the costs that Petitioners face as a result of the trial court’s order independently warrant this Court’s review. While the federal court has already expressly rejected identical claims, Plaintiffs here have nevertheless been able to proceed with onerous discovery demands, seeking everything from “[a]ll documents and communications related to Pivotal’s product offerings,” to “[a]ll documents and communications related to Pivotal’s quarterly and annual financial and operational results and forecasts for fiscal years 2018, 2019, and 2020,” to “[a]ll documents and communications related to the IPO and any services the Underwriter Defendants performed related to the Offering,” to “[a]ll documents and communications regarding Dell’s equity stake in Pivotal.” (Ex. G at pp. 297-298, 312, 328.)

Absent an immediate stay from this Court and its subsequent grant of the requested writ, Petitioners will all be forced to incur the substantial time and expense of responding to these invasive requests (and Petitioner Pivotal will then be obligated to cover some or all of those costs). Indeed, immediately after the trial court denied the stay, Plaintiffs began insisting that the parties negotiate a protocol for the production of electronically stored information—the first step in what will be a lengthy, complex, and costly production process. Yet all of this discovery will ultimately be irrelevant if and when the trial court determines that Plaintiffs’ claims are

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<sup>12</sup> Four of the fifteen Underwriter Defendants have been sued under the Securities Act in California state court *more than twenty* times since *Cyan* was decided on March 20, 2018. Six of the Underwriter Defendants have been sued between fifteen and twenty times, and five have been sued between ten and fifteen times.

meritless (as they in fact are).

Such costs may also force Petitioners to settle Plaintiffs' claims rather than submit to this discovery—exactly the sort of abuse that Congress intended the Reform Act to eliminate. As noted above (*supra*, pp. 39-40), in enacting the Reform Act, Congress was concerned that securities plaintiffs might “abuse . . . the discovery process to impose costs so burdensome that it is often economical for the victimized party to settle.” (H.R. Conf. Rep. No. 104-369 at p. 31.) The Conference Report expressly noted that by some estimates “discovery costs account for roughly 80% of total litigation costs in securities fraud cases,” and that “the threat that the time of key employees will be spent responding to discovery requests, including providing deposition testimony, often forces coercive settlements.” (*Id.* at p. 37; see *Blue Chip Stamps*, *supra*, 421 U.S. at p. 741 [recognizing similar concerns associated with the high costs of discovery in securities cases].) Section 77z-1(b)(1) was thus designed “to prevent unnecessary imposition of discovery costs on defendants.” (H.R. Conf. Rep. No. 104-369 at p. 32.)

By refusing to apply Section 77z-1(b)(1) here, the trial court has subjected Petitioners to that “coercive” pressure. (H.R. Conf. Rep. No. 104-369 at p. 37.) Petitioners should not be compelled to settle Plaintiffs' meritless claims—which were already rejected by a federal court—simply because the trial court declined to adhere to Congress's mandate. (See *Starbucks Corp.*, *supra*, 168 Cal.App.4th at p. 1453 [granting writ where trial court's error created “pressure to settle” on a “basis other than the merits”], quotation marks omitted.) This Court should act to ensure that the Reform Act's discovery stay provision may serve its intended purpose both here and in other California cases, preventing Petitioners and future

Securities Act defendants from suffering the very harm from which Congress sought to shield them.

## CONCLUSION

For the reasons discussed above and in the accompanying petition, Petitioners respectfully request that the Court grant the relief prayed for in the petition.

Dated: March 18, 2021

Respectfully submitted,

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Attorneys for Petitioner Dell Technologies Inc.

## **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 8.204(c) of the California Rules of Court and in reliance on the word count of the computer program used to prepare this brief, counsel certifies that this Petition was produced using at least 13 point font and contains 10,611 words.

Dated: March 18, 2021

By: /s/ James R. Sigel  
James R. Sigel

**PROOF OF SERVICE**

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 2000 Pennsylvania Avenue, NW, Suite 6000, Washington, DC 20006-1888. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on March 18, 2021, I served a copy of the following document:

**PETITION FOR WRIT OF MANDATE; REQUEST FOR IMMEDIATE STAY**

- BY TRUEFILING ELECTRONIC SERVICE:** by electronically submitting a true and correct copy through the **TrueFiling** electronic system to the email addresses set forth below. The file transmission was reported as completed and a copy of the **TrueFiling** receipt page will be maintained with the documents in our office.
- BY U.S. MAIL:** by having a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as follows, for collection and mailing at Morrison & Foerster LLP, 2000 Pennsylvania Avenue, NW, Suite 6000, Washington, DC 20006-1888 in accordance with Morrison & Foerster LLP’s ordinary business practices.

- BY MESSENGER:**  
**Clerk of the San Francisco Superior Court**

See service list.

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

Dated: March 18, 2021.

\_\_\_\_\_  
Chad T. Borgman  
(typed)

\_\_\_\_\_  
/s/ Chad T. Borgman  
(signature)

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**DECLARATION OF MESSENGER**

- BY PERSONAL SERVICE.** I personally delivered the envelope or package to the person(s) at the address(es) listed below on the date shown below. For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or individual in charge of the office; for a self-represented party, delivery was made to the party or by leaving the documents at the party's residence between the hours of eight in the morning and six in the evening with some person not less than 18 years of age.

At the time of service, I was at least 18 years of age. I am not a party to the within legal proceeding.

On March 18, 2021, I served a copy of:

On the following:

Clerk of the Superior Court  
San Francisco Superior Court  
400 McAllister Street  
San Francisco, California 94102  
Attn: The Honorable Andrew Y.S. Cheng

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

Date: March 18, 2021

\_\_\_\_\_  
Andres Arias  
(Print Name)

\_\_\_\_\_  
/s/ Andres Arias  
(Signature)

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**FILED**  
SAN MATEO COUNTY

MAR 14 2018

Clerk of the Superior Court  
By   
DEPUTY CLERK

**RECEIVED**  
MAR 13 2018  
CLERK OF THE SUPERIOR COURT  
SAN MATEO COUNTY

8 *Lead Counsel and Attorneys for Plaintiff Timothy Gallas*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF SAN MATEO**

12 IN RE PRONAI THERAPEUTICS, INC.  
13 SHAREHOLDER LITIGATION

) Case No. 16-CIV-02473

) Class Action


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15 This Document Relates To:  
16 ALL ACTIONS

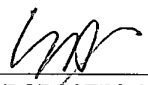
) **[PROPOSED] ORDER RE MOTION TO  
DISMISS OR STAY**

) Judge: Hon. Steven L. Dylina  
Dep't: 7  
17 Courtroom: 8B

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[PROPOSED] ORDER RE MOTION TO DISMISS OR STAY

1 Defendants' Motion to Dismiss or Stay came on for hearing on December 15, 2017 at 9:00  
2 a.m. before this Court. The Court reviewed and considered the written submission of all parties and  
3 issued a tentative ruling. All Parties appeared at the hearing, and the Court has considered the  
4 arguments asserted. The Court hereby adopts its tentative ruling and orders as follows:

5 The Court DENIES, IN PART, and GRANTS, IN PART, Defendants' Motion to Dismiss or  
6 Stay.

7 As a threshold matter, this Court notes the excessive use of footnotes by Defendants on every  
8 single page of their reply memorandum in an attempt to skirt the maximum page length limit. The  
9 parties are admonished that future filings that do not comply with the maximum page length limits,  
10 without first seeking leave, may be stricken, *sua sponte*, or disregarded by this Court.

11 This Court DENIES Defendants' motion to stay pending the United States Supreme Court's  
12 decision in Cyan, Inc. v. Beaver County Employees Retirement Fund. (Notice of Motion, p. 2:11-  
13 24.) First, "[t]he appeal of a remand order does not deprive the state court of jurisdiction unless a stay  
14 is obtained from the federal court." (People v. Bhakta (2006) 135 Cal.App.4th 631, 636.) This is  
15 because "the pendency of the federal appeal [does] not, in and of itself, serve to oust the state court  
16 of jurisdiction to proceed with the trial." (People v. Mason (1968) 259 Cal.App.2d 30, 42.) "In the  
17 absence of a stay or injunction pending appeal, the prevailing party may act upon a district court's  
18 order or judgment." (Goelz, Watts and Batalden, Cal. Prac. Guide: Fed. 9th Cir. Civ. App. Prac.  
19 (Rutter, Mar. 2017 Update) ¶ 6:316.) Defendants do not point to any stay or injunction pending appeal  
20 being issued.

21 Second, this Court presently has jurisdiction over the 1933 Act claims. (Luther v.  
22 Countrywide Financial Corp. (2011) 195 Cal.App.4th 789, 797; Electrical Workers Local #357  
23 Pension v. Clovis Oncology, Inc. (N.D. Cal. 2016) 185 F.Supp.3d 1172, 1177-78; City of Warren  
24 Policy & Fire Retirement System v. Revance Therapeutics Inc., (N.D.Cal. 2015) 124 F.Supp.3d 917,  
25 920-21.)

26 This Court DENIES Defendants' motion to dismiss or stay in deference to the action pending  
27 in the United States District Court for the Southern District of New York ("New York action").

1 (Notice of Motion, p. 2:25 – 3:10.) "When both federal and state court actions are pending, the  
2 California court has the discretion but not the obligation' to stay the state proceedings in favor of the  
3 federal action." (Weil & Brown, Cal. Prac. Guide: Civ. Proc. Before Trial (Rutter, Jun. 2017 Update)  
4 ¶ 3:626.5.)

5 Although encompassing some of the same facts, the instant action and the New York action  
6 are not the same as Defendants purport. (See Reply, p. 2:1-17.) "While some conduct actionable under  
7 Section 11 may also be actionable under Section 10(b), it is hardly a novel proposition that the  
8 Securities Exchange Act and the Securities Act 'prohibit some of the same conduct.' " (Herman &  
9 MacLean v. Huddleston (1983) 459 U.S. 375, 383 ("Huddleston".) However, Section 11 and Section  
10 10(b) require different burdens to establish the respective claims.

11 "Section 11 lacks a scienter requirement." (Hildes v. Arthur Andersen LLP (9th Cir. 2013)  
12 734 F.3d 854, 860 ("Hildes".) Whereas Section 10(b) requires scienter. "[A] Section 10(b) plaintiff  
13 carries a heavier burden than a Section 11 plaintiff. Most significantly, he must prove that the  
14 defendant acted with scienter, i.e., with intent to deceive, manipulate, or defraud." ((Huddleston,  
15 supra, 459 U.S. at 382.) "A private cause of action for damages will not lie under s 10(b) and Rule  
16 10b-5 in the absence of any allegation of "scienter," i.e., intent to deceive, manipulate, or defraud on  
17 the defendant's part." (Ernst & Ernst v. Hochfelder (1976) 425 U.S. 185, 185 ("Ernst".)

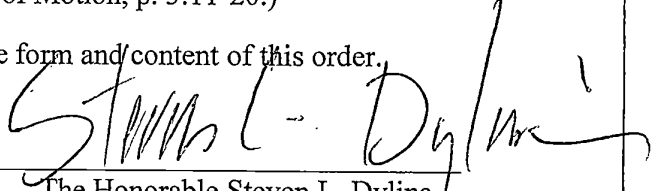
18 Furthermore, in a Section 11 claim, "[l]iability against the issuer of a security is virtually  
19 absolute, even for innocent misstatements." (Hildes, supra, 734 F.3d at 859.) And in a Section 10(b)  
20 claim, there is no recovery for negligent conduct. (Ernst, supra, 425 U.S. at 186.) Accordingly, the  
21 jury will not be deciding the exact same issues in both actions. (Reply, p. 2:14.)

22 This Court GRANTS Defendants' motion to stay all discovery pending an order ruling on any  
23 demurrer to the consolidated complaint. (Notice of Motion, p. 3:11-20.)

24 All Parties have reviewed and approve the form and content of this order.

25 **IT IS SO ORDERED.**

26 Dated: 3/14/18

  
The Honorable Steven L. Dylina  
Judge of the Superior Court



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IN THE SUPERIOR COURT OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

MICHAEL SHORES, and ARON GOLDS on behalf )  
of themselves and )  
all others similarly situated, )

Plaintiffs, )

vs. )

CINERGI PICTURES ENTERTAINMENT INC., )  
ANDREW G. VAJNA, WARREN BRAVERMAN, )  
DIANNE CAPLAN LEBOVITS, FRED R. )  
FEITSHANS, and RANDOLPH PAUL, )

Defendants. )

**FILED**  
LOS ANGELES SUPERIOR COURT

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JOHN A. CLARKE, CLERK  
*R. Bellamy*  
BY R. BELLAMY, DEPUTY

CASE NO. BC149861

NOTICE OF RULING

1 TO ALL PARTIES, NO-PARTIES AND THEIR ATTORNEYS OF RECORD:  
 2 PLEASE TAKE NOTICE that on September 5, 1996, at 10:00 a.m.  
 3 in Dept. 59 of this court, Defendants Motion To Quash NonParty  
 4 Subpoenas and/or Stay All Discovery came on for hearing. Brian  
 5 Barry of Law Offices of Brian Barry and Lionel Glancy of Law  
 6 Offices of Lionel Glancy appeared on behalf of plaintiffs.  
 7 Laurie Smilan and Cynthia Dy of Wilson Sonsini Goodrich & Rosati  
 8 appeared on behalf of defendants

9 The court granted the motion n part and denied the motion in  
 10 part. The court ruled that the automatic stay provision in  
 11 Section 27(b) of the Securities Act applies to all cases filed  
 12 under the Securities Act, whether in state or federal court.  
 13 However, the court ruled that the stay provision has no effect on  
 14 state law claims and denied the motion to stay discovery on the  
 15 negligent misrepresentation claim, even though the discovery  
 16 sought for that claim "overlaps" the discovery sought for the  
 17 Securities Act claims. The court ordered that defendants and all  
 18 non-parties to produce documents responsive to the negligent  
 19 misrepresentation claim. The court further ordered that if  
 20 defendants were to provide to plaintiffs and the non-parties a  
 21 list of documents it will be producing, then plaintiffs and the  
 22 non-parties should discuss a narrowing of the subpoenas to avoid  
 23 duplicative discovery.

24 Dated: September 5, 1996

BRIAN BARRY  
 LAW OFFICES OF BRIAN BARRY

LIONEL GLANCY  
 LAW OFFICES OF LIONEL GLANCY

27 BY:   
 Brian Barry  
 Attorneys for Plaintiff

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**PROOF OF SERVICE**

STATE OF CALIFORNIA )  
 )ss.  
COUNTY OF LOS ANGELES )

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 8424A Santa Monica Blvd., Suite 184, Los Angeles, California 90069.

On September 5, 1996, I served the foregoing documents described as NOTICE OF RULING on the interested parties in this action by fax and thereafter regular mail to those listed below:

Laurie Smilan  
Noah Mesel  
Wilson Sonsini Goodrich & Rosati  
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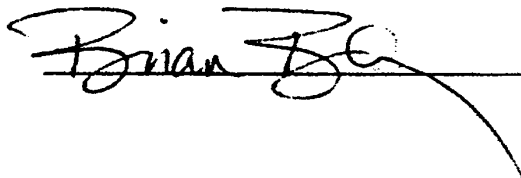
Jay Handlin  
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Executed on Sept. 5, 1996, at Los Angeles, California.

XXX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

BRIAN BARRY





**Appendix A – Representative List of Securities Act Cases Filed in State Court Post-Cyan**

<b>Barclays Capital Inc.</b>			
<b>Case Name</b>	<b>Case Number</b>	<b>Court</b>	<b>Date Filed</b>
Schwartz v. Genfit SA	657123/2020	New York County Supreme Court	12/18/2020
Saffron Capital Corporation v. Elanco Animal Health Incorporated	49DO1-2010-CT-036760	Marion County Commercial Court, Indiana	10/16/2020
Roche v. Tufin Software Technologies Ltd.	652833/2020	New York County Supreme Court	7/1/2020
City of Miami Fire Fighters’ and Officers’ Retirement Trust v. Occidental Petroleum Corporation	652161/2020	New York County Supreme Court	6/1/2020
<u>In re Uber Technologies, Inc. Securities Litigation</u>			
Cianci v. Uber Technologies Inc.	CGC-19-580480	San Francisco County Superior Court, California	11/4/2019
Esa v. Uber Technologies, Inc.	CGC-19-580262	San Francisco County Superior Court, California	10/24/2019
Braun v. Uber Technologies Inc.	CGC-19-580137	San Francisco County Superior Court, California	10/18/2019
Pallathu v. Uber Technologies Inc.	CGC-19-580047	San Francisco County Superior Court, California	10/16/2019
Ashford v. Uber Technologies Inc.	CGC-19-579684	San Francisco County Superior Court, California	10/1/2019
Messinger v. Uber Technologies Inc.	CGC-19-579544	San Francisco County Superior Court, California	9/25/2019
<u>In re Sundial Growers Inc. Securities Litigation</u>			
Clarke v. Sundial Growers Inc.	655272/2019	New York County Supreme Court	9/27/2019
Hoeller v. Sundial Growers Inc.	655523/2019	New York County Supreme Court	9/23/2019
Peters v. Sundial Growers Inc.	655650/2019	New York County Supreme Court	9/9/2019
Chester County Employees Retirement Fund v. Alnylam Pharmaceuticals Inc.	655178/2019	New York County Supreme Court	9/12/2019
<u>In re Casa Systems, Inc. Securities Litigation</u>			
Panther Partners Inc. v. Casa System Inc.	654585/2019	New York County Supreme Court	8/13/2019
Hook v. Casa System Inc.	654548/2019	New York County Supreme Court	8/9/2019

<u>In re Pivotal Software, Inc. Securities Litigation</u>			
Morthorpe v. Pivotal Software Inc.	CGC-19-577110	San Francisco County Superior Court, California	6/27/2019
Tran v. Pivotal Software Inc.	CGC-19-576806	San Francisco County Superior Court, California	6/18/2019
Hill v. Pivotal Software Inc.	CGC-19-576750	San Francisco County Superior Court, California	6/14/2019
<u>In re Osmotica Pharmaceuticals PLC Securities Litigation</u>			
Tello v. Osmotica Pharmaceuticals PLC	SOM-L-00617-19	Somerset County Superior Court, New Jersey	5/10/2019
Schumacher v. Osmotica Pharmaceuticals PLC	SOM-L-00540-19	Somerset County Superior Court, New Jersey	4/26/2019
<u>In re Venator Materials PLC Securities Litigation</u>			
Gonzalez v. Venator Materials PLC	DC-19-03709- M	Dallas County District Court, Texas	3/13/2019
Firemen's Retirement System Of St. Louis v. Venator Materials PLC	DC-19-03170- B	Dallas County District Court, Texas	3/4/2019
Inter-Local Pension Fund GCC/IBT v. Tesla Inc.	18-CV-337109	Santa Clara County Superior Court, California	11/2/2018
<u>In re Altice USA, Inc. Securities Litigation</u>			
Newman v. Altice USA Inc.	716650/2018	Staten Island Queens County Supreme Court, New York	10/31/2018
Garcia v. Altice USA Inc.	712803/2018	Staten Island Queens County Supreme Court, New York	8/17/2018
Richardson v. Altice USA Inc.	610258/2018	Long Island Nassau County Supreme Court, New York	8/1/2018
Doris Shenwick Trust v. Altice USA Inc.	610261/2018	Long Island Nassau County Supreme Court, New York	8/1/2018
O'Neill v. Altice USA Inc.	711788/2018	Staten Island Queens County Supreme Court, New York	7/31/2018
LaPoint v. Altice USA Inc.	710845/2018	Staten Island Queens County Supreme Court, New York	7/16/2018
Warner v. Altice USA Inc.	709097/2018	Staten Island Queens County Supreme Court, New York	6/12/2018
<u>In re ADT Inc., Securities Litigation</u>			
Lowinger v. ADT Inc.	2018ca005326	Palm Beach County Circuit Court, Florida	5/7/2018
Sweet v. ADT Inc.	2018ca005057	Palm Beach County Circuit Court, Florida	4/25/2018

Krebsbach v. ADT Inc.	2018ca004474	Palm Beach County Circuit Court, Florida	4/12/2018
Katz v. ADT Inc.	2018ca004357	Palm Beach County Circuit Court, Florida	4/10/2018
Goldstrand Investments Inc. v. ADT Inc.	2018ca003494	Palm Beach County Circuit Court, Florida	3/21/2018

<b>Citigroup Global Markets Inc.</b>			
<b>Case Name</b>	<b>Case Number</b>	<b>Court</b>	<b>Date Filed</b>
St. John v. Cloopen Group Holding Limited	652617/2021	New York County Supreme Court	4/19/2021
Yutan v. Lizhi Inc.	650171/2021	New York County Supreme Court	1/8/2021
<u>In re Uber Technologies, Inc. Securities Litigation</u>			
Cianci v. Uber Technologies Inc.	CGC-19-580480	San Francisco County Superior Court, California	11/4/2019
Esa v. Uber Technologies, Inc.	CGC-19-580262	San Francisco County Superior Court, California	10/24/2019
Braun v. Uber Technologies Inc.	CGC-19-580137	San Francisco County Superior Court, California	10/18/2019
Pallathu v. Uber Technologies Inc.	CGC-19-580047	San Francisco County Superior Court, California	10/16/2019
Ashford v. Uber Technologies Inc.	CGC-19-579684	San Francisco County Superior Court, California	10/1/2019
Messinger v. Uber Technologies Inc.	CGC-19-579544	San Francisco County Superior Court, California	9/25/2019
Saffron Capital Corporation v. Elanco Animal Health Incorporated	49D01-2010-CT-036760	Marion County Commercial Court, Indiana	10/16/2020
Owens v. CannTrust Holdings Inc.	19-CV-352374	Santa Clara County Superior Court, California	8/5/2019
<u>In re Casper Sleep Inc. Securities Litigation</u>			
Gorenberg v. Casper Sleep Inc	0653118/2020	New York County Supreme Court	7/15/2020
Mattern v. Casper Sleep Inc.	0653112/2020	New York County Supreme Court	7/15/2020
Jankowiak v. Casper Sleep Inc.	0652507/2020	New York County Supreme Court	6/16/2020
Patel v. Casper Sleep Inc.	0652284/2020	New York County Supreme Court	6/5/2020
<u>In re Pivotal Software, Inc. Securities Litigation</u>			
Morthorpe v. Pivotal Software Inc.	CGC-19-577110	San Francisco County Superior Court, California	6/27/2019
Tran v. Pivotal Software Inc.	CGC-19-576806	San Francisco County Superior Court, California	6/18/2019
Hill v. Pivotal Software Inc.	CGC-19-576750	San Francisco County Superior Court, California	6/14/2019
Nurlybayev v. SmileDirectClub Inc.	652603/2020	New York County Supreme Court	6/19/2020

<u>In re Occidental Petroleum Corp. Securities Litigation</u>			
City of Miami Fire Fighters' and Officers' Retirement Trust v. Occidental Petroleum Corporation	652161/2020	New York County Supreme Court	6/1/2020
City of Sterling Heights Police & Fire Retirement System v. Occidental Petroleum Corporation	651830/2020	New York County Supreme Court	5/28/2020
City of Sterling Heights General Employees' Retirement System v. Occidental Petroleum Corporation	651994/2020	New York County Supreme Court	5/26/2020
Kazi v. XP Inc.	651774/2020	New York County Supreme Court	3/19/2020
Macomb County Employees' Retirement Systems v. Venator Materials PLC	651771/2020	New York County Supreme Court	3/19/2020
Cobb v. Liberty Oilfield Services Inc.	20cv30983	Denver County District Court, Colorado	3/11/2020
Sasso v. SmileDirectClub Inc.	657557/2019	New York County Supreme Court	12/18/2019
<u>In re: SmileDirectClub, Inc. Securities Litigation</u>			
Fernandez v. SmileDirectClub Inc.	19-1392-III	Davidson County, Chancery Court, Tennessee	11/19/2019
Vang v. SmileDirectClub Inc.	19-2316	Davidson County, Chancery Court, Tennessee	9/30/2019
Mancour v. SmileDirectClub Inc.	19-1169-IV	Davidson County, Chancery Court, Tennessee	9/27/2019
Nurlybayev v. Smiledirectclub Inc.	2019-177527-CB	Greater Detroit Oakland County Circuit Court, Michigan	10/25/2019
Convery v. Jumia Technologies AG	656021/2019	New York County Supreme Court	10/15/2019
<u>In re UP Fintech Securities Litigation</u>			
Ou v. UP Financial Holdings Limited	655952/2019	New York County Supreme Court	10/11/2019
Lopez v. UP Fintech Holding Limited	655882/2019	New York County Supreme Court	10/8/2019
Lyu v. Ruhnn Holdings Limited	655420/2019	New York County Supreme Court	9/18/2019
<u>In re Jumia Technologies Securities Litigation</u>			

Weinberger v. v. Jumia Technologies AG	518182/2019	Kings County Supreme Court, New York	8/16/2019
Krupp v. Jumia Technologies AG	518121/2019	Kings County Supreme Court, New York	8/15/2019
<u>In re NIO Inc. Securities Litigation</u>			
Isman v. NIO Inc.	654236/2019	New York County Supreme Court	7/24/2019
Reddy v. NIO Inc.	654202/2019	New York County Supreme Court	7/23/2019
Gorjizadeh v. NIO Inc.	653610/2019	New York County Supreme Court	6/20/2019
Donlon v. NIO Inc.	653422/2019	New York County Supreme Court	6/11/2019
<u>In re Livent Corporation Securities Litigation</u>			
Bizarria v. Livent Corporation	190702133	Philadelphia County Court of Common Pleas	7/18/2019
Plymouth County Retirement Association v. Livent Corporation	190501229	Philadelphia County Court of Common Pleas	5/13/2019
Song v. Qudian Inc.	18-CIV-01425	San Mateo County Superior Court, California	3/21/2018
Agarwal v. NIO Inc.	505647/2019	Kings County Supreme Court, New York	3/14/2019
Gonzalez v. Venator Materials Plc	DC-19-03709	Dallas County District Court, Texas	3/13/2019
<u>In re Venator Materials PLC Securities Litigation</u>			
Firemen's Retirement System Of St. Louis v. Venator Materials Plc	DC-19-03170	Dallas County District Court, Texas	3/4/2019
Macomb County Employees' Retirement System v. Venator Materials PLC	DC-19-02030	Dallas County District Court, Texas	2/8/2019
Lowinger v. GreenSky Inc.	650303/2019	New York County Supreme Court	1/16/2019
<u>In re Greensky, Inc. Securities Litigation</u>			
Zhang v. Greensky Inc.	656164/2018	New York County Supreme Court	12/11/2018
Coombs v. Greensky Inc.	656134/2018	New York County Supreme Court	12/10/2018

Zou v. GreenSky Inc.	655744/2018	New York County Supreme Court	11/16/2018
Dobek v. GreenSky Inc.	655707/2018	New York County Supreme Court	11/15/2018
Inter-Local Pension Fund GCC/IBT v. Tesla Inc.	18-CV-337109	Santa Clara County Superior Court, California	11/2/2018
Plutte v. Sea Limited	655436/2018	New York County Supreme Court	11/1/2018
<u>In re Altice USA, Inc. Securities Litigation</u>			
Newman v. Altice USA Inc.	716650/2018	Staten Island Queens County Supreme Court, New York	10/31/2018
Garcia v. Altice USA Inc.	712803/2018	Staten Island Queens County Supreme Court, New York	8/17/2018
Richardson v. Altice USA Inc.	610258/2018	Long Island Nassau County Supreme Court, New York	8/1/2018
Doris Shenwick Trust v. Altice USA Inc.	610261/2018	Long Island Nassau County Supreme Court, New York	8/1/2018
O'Neill v. Altice USA Inc.	711788/2018	Staten Island Queens County Supreme Court, New York	7/31/2018
LaPoint v. Altice USA Inc.	710845/2018	Staten Island Queens County Supreme Court, New York	7/16/2018
Warner v. Altice USA Inc.	709097/2018	Staten Island Queens County Supreme Court, New York	6/12/2018
<u>In re PPD AI Group Securities Litigation</u>			
Vora v. PPD AI Group Inc.	654777/2018	New York County Supreme Court	9/27/2018
Huang v. PPD AI Group Inc.	654482/2018	New York County Supreme Court	9/10/2018
City of Livonia Retiree Health and Disability Benefits Plan v. Pitney Bowes Inc.	FST-CV18-6038160	New Haven Stamford Superior Court, Connecticut	9/18/2018
Kohl v. Loma Negra Compania Industrial Argentina Sociedad Anonima	653114/2018	New York County Supreme Court	6/21/2018
<u>In re Qudian Securities Litigation</u>			
The Morrow Property Trust v. Qudian Inc.	653047/2018	New York County Supreme Court	6/18/2018
Panther Partners v. Qudian Inc.	651804/2018	New York County Supreme Court	4/13/2018

Chun v. Switch Inc.	A-18-774407-C	Clark County District Court, Nevada	5/11/2018
<u>In re ADT Inc., Securities Litigation</u>			
Lowinger v. ADT Inc.	2018ca005326	Palm Beach County Circuit Court, Florida	5/7/2018
Sweet v. ADT Inc.	2018ca005057	Palm Beach County Circuit Court, Florida	4/25/2018
Krebsbach v. ADT Inc.	2018ca004474	Palm Beach County Circuit Court, Florida	4/12/2018
Howard Katz v. ADT Inc.	2018ca004357	Palm Beach County Circuit Court, Florida	4/10/2018
Goldstrand Investments Inc. v. ADT Inc.	2018ca003494	Palm Beach County Circuit Court, Florida	3/21/2018



<b>Credit Suisse Securities (USA) LLC</b>			
<b>Case Name</b>	<b>Case Number</b>	<b>Court</b>	<b>Date Filed</b>
<u>In re 9F Inc. Securities Litigation</u>			
Moua v. 9F Inc.	655073/2020	New York County Supreme Court	10/7/2020
Ho v. 9F Inc.	654654/2020	New York County Supreme Court	9/23/2020
Nurlybayev v. SmileDirectClub Inc.	652603/2020	New York County Supreme Court	6/19/2020
Ng v. Yunji Inc.	24906/2020E	Bronx County Supreme Court, New York	5/29/2020
Kazi v. XP Inc.	651774/2020	New York County Supreme Court	3/19/2020
Campos v. Tencent Music Entertainment Group	655863/2019	New York County Supreme Court	3/11/2020
Lindholm v. Yunji Inc.	21635/2020E	Bronx County Supreme Court, New York	1/31/2020
Sasso v. Katzman	657557/2019	New York County Supreme Court	12/18/2019
Volonte v. Domo Inc.	190401778	Utah County District Court	11/8/2019
Nurlybayev v. SmileDirectClub Inc.	19-177527-CB	Oakland County Circuit Court, Greater Detroit, Michigan	10/25/2019
<u>In re SmileDirectClub, Inc. Securities Litigation</u>			
Fernandez v. SmileDirectClub Inc.	19-1392-III	Davidson County Chancery Court, Tennessee	10/4/2019
Vang v. SmileDirectClub Inc.	19-2316	Davidson County Chancery Court, Tennessee	9/30/2019
Mancour v. SmileDirectClub Inc.	19-1169-IV	Davidson County Chancery Court, Tennessee	9/30/2019
Chester County Employees Retirement Fund v. Alnylam Pharmaceuticals Inc.	655272/2019	New York County Supreme Court	9/12/2019
Doumit v. The RealReal Inc.	19-CIV-05302	San Mateo County Superior Court, California	9/10/2019
<u>In re Lyft, Inc., Securities Litigation</u>			
Toscano v. Lyft Inc.	CGC-19-579089	San Francisco County Superior Court, California	9/9/2019
Greater Pennsylvania Carpenters Pension Fund v. Lyft Inc.	CGC-19-576502	San Francisco County Superior Court, California	6/6/2019

Pyron v. Lyft Inc.	CGC-19-575728	San Francisco County Superior Court, California	5/6/2019
Gupta v. Lyft Inc.	CGC-19-575644	San Francisco County Superior Court, California	4/30/2019
McCloskey v. Lyft Inc.	CGC-19-575475	San Francisco County Superior Court, California	4/24/2019
Clapper v. Lyft Inc.	CGC-19-575453	San Francisco County Superior Court, California	4/23/2019
Hinson v. Lyft Inc.	CGC-19-575293	San Francisco County Superior Court, California	4/16/2019
Lande v. Lyft Inc.	CGC-19-575294	San Francisco County Superior Court, California	4/15/2019
Owens v. CannTrust Holdings Inc.	19-CV-352374	Santa Clara County Superior Court, California	8/5/2019
<u>In re Nio Inc. Securities Litigation</u>			
Isman v. NIO Inc.	654236/2019	New York County Supreme Court	7/24/2019
Gorjizadeh v. NIO Inc.	653610/2019	New York County Supreme Court	6/20/2019
Donlon v. NIO Inc.	653422/2019	New York County Supreme Court	6/11/2019
<u>In re Livent Corporation Securities Litigation</u>			
Bizarria v. Livent Corporation	190702133	Philadelphia County Court of Common Pleas	7/18/2019
Plymouth County Retirement Association v. Livent Corporation	190501229	Philadelphia County Court of Common Pleas	5/13/2019
<u>In re Pivotal Software, Inc. Securities Litigation</u>			
Morthorpe v. Pivotal Software Inc.	CGC-19-577110	San Francisco County Superior Court, California	6/27/2019
Tran v. Pivotal Software Inc.	CGC-19-576806	San Francisco County Superior Court, California	6/18/2019
Hill v. Pivotal Software Inc.	CGC-19-576750	San Francisco County Superior Court, California	6/14/2019
<u>In re Brightview Holdings, Inc. Securities Litigation</u>			
Speiger v. Brightview Holdings Inc.	2019-14989	Montgomery County Court of Common Pleas, Pennsylvania	6/5/2019
Mccomas Sr. v. Brightview Holdings Inc.	2019-07222	Montgomery County Court of Common Pleas, Pennsylvania	4/16/2019
<u>In re Bloom Energy Securities Litigation</u>			

Evans v. Bloom Energy Corporation	19-CV-347262	Santa Clara County Superior Court, California	5/7/2019
Rodriguez v. Bloom Energy Corporation	19-CV-346299	Santa Clara County Superior Court, California	4/22/2019
Lincolnshire Police Pension Fund v. Bloom Energy Corporation	19-CV-344894	Santa Clara County Superior Court, California	3/20/2019
Agarwal v. NIO Inc.	505647/2019	Kings County Supreme Court, New York	3/14/2019
Glock v. FTS International Inc.	DC-19-02668- H	Dallas County District Court, Texas	2/22/2019
Geis v. Camping World Holdings Inc.	2019-CH-2404	Cook County Circuit Court, Illinois	2/22/2019
<u>In re Sogou Inc. Securities Litigation</u>			
Dore v. Sogou Inc.	19-CIV-00951	San Mateo County Superior Court, California	2/19/2019
Bishop v. Sogou Inc.	19-CIV-00780	San Mateo County Superior Court, California	2/6/2019
Khayan v. Sogou Inc.	18-CIV-06699	San Mateo County Superior Court, California	12/14/2018
Lowinger v. GreenSky Inc.	650303/2019	New York County Supreme Court	1/16/2019
International Union of Operating Engineers Benefit Funds of Eastern Pennsylvania and Delaware v. Camping World Holdings Inc.	656308/2018	New York County Supreme Court	12/18/2018
<u>In re Greensky, Inc. Securities Litigation</u>			
Zhang v. Greensky Inc.	656164/2018	New York County Supreme Court	12/11/2018
Coombs v. Greensky Inc.	656134/2018	New York County Supreme Court	12/10/2018
Zou v. GreenSky Inc.	655744/2018	New York County Supreme Court	11/16/2018
Dobek v. GreenSky Inc.	655707/2018	New York County Supreme Court	11/15/2018
Zhang v. RYB Education Inc.	717923/2018	Queens County Supreme Court, New York	11/21/2018
Plutte v. Sea Limited	655436/2018	New York County Supreme Court	11/1/2018
<u>In re Pinduoduo Securities Litigation</u>			

Webb v. Pinduoduo Inc.	18-CIV-05509	San Mateo County Superior Court, California	10/11/2018
Schlessinger v. Pinduoduo Inc.	18-CIV-04326	San Mateo County Superior Court, California	8/20/2018
Zhang v. Pinduoduo Inc.	18-CIV-04256	San Mateo County Superior Court, California	8/15/2018
<u>In re PPD AI Group Securities Litigation</u>			
Vora v. PPD AI Group Inc.	654777/2018	New York County Supreme Court	9/27/2018
Huang v. PPD AI Group Inc.	654482/2018	New York County Supreme Court	9/10/2018
Bucks County Employees Retirement System v. REV Group Inc.	2018CV001501	Waukesha County Circuit Court, Wisconsin	8/21/2018
Corona v. WideOpenWest Inc.	18CV31930	Arapahoe County District Court, Colorado	8/15/2018
<u>In re WideOpenWest Securities Litigation</u>			
Employees' Retirement System of the Puerto Rico Electric Power Authority v. WideOpenWest Inc.	653801/2018	New York County Supreme Court	7/31/2018
Fiore v. WideOpenWest Inc.	18CV31793	Arapahoe County District Court, Colorado	7/26/2018
Kirkland v. WideOpenWest Inc.	653248/2018	New York County Supreme Court	6/27/2018
<u>In re Qudian Securities Litigation</u>			
The Morrow Property Trust v. Qudian Inc.	653047/2018	New York County Supreme Court	6/18/2018
Panther Partners v. Qudian Inc.	651804/2018	New York County Supreme Court	4/13/2018
<u>In re Switch, Inc. Securities Litigation</u>			
Silverberg v. Switch Inc.	A-18-775670-B	Clark County District Court, Nevada	6/6/2018
Chun v. Switch Inc.	A-18-774407-C	Clark County District Court, Nevada	5/11/2018
Palkon v. Switch Inc.	A-18-773730-B	Clark County District Court, Nevada	4/30/2018
Martz v. Switch Inc.	A-18-773212-B	Clark County District Court, Nevada	4/20/2018
<u>In re ADT Inc., Securities Litigation</u>			

Lowinger v. ADT Inc.	2018ca005326	Palm Beach County Circuit Court, Florida	5/7/2018
Sweet v. ADT Inc.	2018ca005057	Palm Beach County Circuit Court, Florida	4/25/2018
Krebsbach v. ADT Inc.	2018ca004474	Palm Beach County Circuit Court, Florida	4/12/2018
Goldstrand Investments Inc. v. ADT Inc.	2018ca003494	Palm Beach County Circuit Court, Florida	3/21/2018
Song v. Qudian Inc.	18-CIV-01425	San Mateo County Superior Court, California	3/21/2018

<b>Goldman Sachs &amp; Co. LLC</b>			
<b>Case Name</b>	<b>Case Number</b>	<b>Court</b>	<b>Date Filed</b>
City of Pittsburgh Comprehensive Municipal Pension Trust Fund v. BenefitFocus Inc.	65145/2021	New York County Supreme Court	3/2/2021
Safron Capital Corporation v. Elanco Animal Health Incorporated	49-DO1-2010-CT-036760	Marion County Commercial Court, Indiana	12/23/2020
<u>In re Casper Sleep Inc. Securities Litigation</u>			
Gorenberg v. Casper Sleep Inc	0653118/2020	New York County Supreme Court	7/15/2020
Mattern v. Casper Sleep Inc.	0653112/2020	New York County Supreme Court	7/15/2020
Jankowiak v. Casper Sleep Inc.	0652507/2020	New York County Supreme Court	6/16/2020
Patel v. Casper Sleep Inc.	652284/2020	New York County Supreme Court	6/5/2020
<u>Olsen v. Zuora Inc.</u>			
James Alpha Multi Strategy Alternative Income Portfolio v. Zuora Inc.	20-CIV-02276	San Mateo County Superior Court, California	5/29/2020
Olsen v. Zuora Inc.	20-CIV-01918	San Mateo County Superior Court, California	4/17/2020
Kazi v. XP Inc.	651774/2020	New York County Supreme Court	3/19/2020
Macomb County Employees' Retirement Systems v. Venator Materials PLC	651771/2020	New York County Supreme Court	3/19/2020
Campos v. Tencent Music Entertainment Group	655863/2019	New York County Supreme Court	3/11/2020
Cobb v. Liberty Oilfield Services Inc.	20cv30983	Denver County District Court, Colorado	3/11/2020
<u>In re Sciplay Corporation Securities Litigation</u>			
Li v. SciPlay Corporation	657309/2019	New York County Supreme Court	12/9/2019
Police Retirement System of St. Louis v. SciPlay Corporation	655984/2019	New York County Supreme Court	10/14/2019
Good v. Sciplay Corporation	A-19-804789-B	Clark County District Court, Nevada	11/4/2019

<u>In re Uber Technologies, Inc. Securities Litigation</u>			
Cianci v. Uber Technologies Inc.	CGC-19-580480	San Francisco County Superior Court, California	11/4/2019
Esa v. Uber Technologies Inc.	CGC-19-580262	San Francisco County Superior Court, California	10/24/2019
Braun v. Uber Technologies Inc.	CGC-19-580137	San Francisco County Superior Court, California	10/18/2019
Pallathu v. Uber Technologies Inc.	CGC-19-580047	San Francisco County Superior Court, California	10/16/2019
Ashford v. Uber Technologies Inc.	CGC-19-579684	San Francisco County Superior Court, California	10/1/2019
Messinger v. Uber Technologies Inc.	CGC-19-579544	San Francisco County Superior Court, California	9/25/2019
<u>In re Dropbox, Inc. Securities Litigation</u>			
Rivera v. Dropbox, Inc.	19-CIV-05865	San Mateo County Superior Court, California	10/3/2019
Simonton v. Dropbox Inc.	19-CIV-05417	San Mateo County Superior Court, California	9/13/2019
Rieman v. Dropbox Inc.	19-CIV-05217	San Mateo County Superior Court, California	9/5/2019
Steinhaus v. Dropbox Inc.	19-CIV-05089	San Mateo County Superior Court, California	8/30/2019
Ang v. Surface Oncology Inc.	655304/2019	New York County Supreme Court	9/13/2019
Chester County Employees Retirement Fund v. Alnylam Pharmaceuticals Inc.	655272/2019	New York County Supreme Court	9/12/2019
<u>In re Eventbrite Inc. Securities Litigation</u>			
Vallem v. Eventbrite Inc.	19-CIV-04924	San Mateo County Superior Court, California	8/23/2019
Clemons v. Eventbrite Inc.	19-CIV-2911	San Mateo County Superior Court, California	6/3/2019
Long v. Eventbrite Inc.	19-CIV-02798	San Mateo County Superior Court, California	5/24/2019
<u>In re Livent Corporation Securities Litigation</u>			
Bizarria v. Livent Corporation	190702133	Philadelphia County Court of Common Pleas	7/18/2019
Plymouth County Retirement Association v. Livent Corporation	190501229	Philadelphia County Court of Common Pleas	5/13/2019

<u>In re Pivotal Software, Inc. Securities Litigation</u>			
Morthorpe v. Pivotal Software Inc.	CGC-19-577110	San Francisco County Superior Court, California	6/27/2019
Tran v. Pivotal Software Inc.	CGC-19-576806	San Francisco County Superior Court, California	6/18/2019
Hill v. Pivotal Software Inc.	CGC-19-576750	San Francisco County Superior Court, California	6/14/2019
<u>In re Brightview Holdings, Inc. Securities Litigation</u>			
Speiger v. Brightview Holdings Inc.	2019-14989	Montgomery County Court of Common Pleas, Pennsylvania	6/5/2019
Mccomas v. Brightview Holdings Inc.	2019-07222	Montgomery County Court of Common Pleas, Pennsylvania	4/16/2019
<u>In re Venator Materials PLC Securities Litigation</u>			
Gonzalez v. Venator Materials Plc	DC-19-03709	Dallas County District Court, Texas	3/13/2019
Firemen's Retirement System Of St. Louis v. Venator Materials Plc	DC-19-03170	Dallas County District Court, Texas	3/4/2019
Macomb County Employees' Retirement System v. Venator Materials PLC	DC-19-02030	Dallas County District Court, Texas	2/8/2019
Geis v. Camping World Holdings Inc.	2019-CH-2404	Cook County Circuit Court, Illinois	2/22/2019
<u>In re Sogou Inc. Securities Litigation</u>			
Dore v. Sogou Inc.	19-CIV-951	San Mateo County Superior Court, California	2/19/2019
Bishop v. Sogou Inc.	19-CIV-780	San Mateo County Superior Court, California	2/6/2019
Khayan v. Sogou Inc.	18-CIV-6699	San Mateo County Superior Court, California	12/14/2018
Lowinger v. GreenSky Inc.	650303/2019	New York County Supreme Court	1/16/2019
International Union of Operating Engineers Benefit Funds of Eastern Pennsylvania and Delaware v. Camping World Holdings Inc.	656308/2018	New York County Supreme Court	12/18/2018
<u>In re Greensky, Inc. Securities Litigation</u>			



Zhang v. Greensky Inc.	656164/2018	New York County Supreme Court	12/11/2018
Coombs v. Greensky Inc.	656134/2018	New York County Supreme Court	12/10/2018
Zou v. GreenSky Inc.	655744/2018	New York County Supreme Court	11/16/2018
Dobek v. GreenSky Inc.	655707/2018	New York County Supreme Court	11/15/2018
Langere v. GreenSky Inc.	655626/2018	New York County Supreme Court	11/12/2018
Inter-Local Pension Fund GCC/IBT v. Tesla Inc.	18-CV-337109	Santa Clara County Superior Court, California	11/2/2018
<u>In re Altice USA, Inc. Securities Litigation</u>			
Newman v. Altice USA Inc.	716650/2018	Staten Island Queens County Supreme Court, New York	10/31/2018
Garcia v. Altice USA Inc.	712803/2018	Staten Island Queens County Supreme Court, New York	8/17/2018
Richardson v. Altice USA Inc.	610258/2018	Long Island Nassau County Supreme Court, New York	8/1/2018
Doris Shenwick Trust v. Altice USA Inc.	610261/2018	Long Island Nassau County Supreme Court, New York	8/1/2018
O'Neill v. Altice USA Inc.	711788/2018	Staten Island Queens County Supreme Court, New York	7/31/2018
LaPoint v. Altice USA Inc.	710845/2018	Staten Island Queens County Supreme Court, New York	7/16/2018
Warner v. Altice USA Inc.	709097/2018	Staten Island Queens County Supreme Court, New York	6/12/2018
<u>In re Pinduoduo Securities Litigation</u>			
Webb v. Pinduoduo Inc.	18-CIV-05509	San Mateo County Superior Court, California	10/11/2018
Schlessinger v. Pinduoduo Inc.	18-CIV-04326	San Mateo County Superior Court, California	8/20/2018
Zhang v. Pinduoduo Inc.	18-CIV-04256	San Mateo County Superior Court, California	8/15/2018
City of Livonia Retiree Health and Disability Benefits Plan v. Pitney Bowes Inc.	FST-CV18-6038160	New Haven Stamford Superior Court, Connecticut	9/18/2018
Bucks County Employees Retirement System v. REV Group Inc.	2018CV001501	Waukesha County Circuit Court, Wisconsin	8/21/2018

<u>In re Netshoes Securities Litigation</u>			
Williams v. Netshoes (Cayman Limited)	653951/2018	New York County Supreme Court	8/9/2018
1199SEIU Health Care Employees Pension Fund v. Netshoes	157435/2018	New York County Supreme Court	8/9/2018
Yandoli v. REV Group. Inc.	2018CV001163	Waukesha County Circuit Court, Wisconsin	6/26/2018
Jacobs v. Funko Inc.	18-2-14811-1	King County Superior Court, Seattle	6/12/2018
<u>In re Switch, Inc. Securities Litigation</u>			
Silverberg v. Switch Inc.	A-18-775670-B	Clark County District Court, Nevada	6/6/2018
Chun v. Switch Inc.	A-18-774407-C	Clark County District Court, Nevada	5/11/2018
Palkon v. Switch Inc.	A-18-773730-B	Clark County District Court, Nevada	4/30/2018
Martz v. Switch Inc.	A-18-773212-B	Clark County District Court, Nevada	4/20/2018
Berkelhammer v. Funko, Inc.	18-2-12229-5	King County Superior Court, Seattle	5/15/2018
<u>In re ADT Inc., Securities Litigation</u>			
Lowinger v. ADT Inc.	2018ca005326	Palm Beach County Circuit Court, Florida	5/7/2018
Sweet v. ADT Inc.	2018ca005057	Palm Beach County Circuit Court, Florida	4/25/2018
Krebsbach v. ADT Inc.	2018ca004474	Palm Beach County Circuit Court, Florida	4/12/2018
Katz v. ADT Inc.	2018ca004357	Palm Beach County Circuit Court, Florida	4/10/2018
Goldstrand Investments Inc. v. ADT Inc.	2018ca003494	Palm Beach County Circuit Court, Florida	3/21/2018
Lovewell v. Funko, Inc.	18-2-08153-0	King County Superior Court, Seattle	3/27/2018

<b>KeyBanc Capital Markets Inc.</b>			
<b>Case Name</b>	<b>Case Number</b>	<b>Court</b>	<b>Date Filed</b>
Campos v. Tencent Music Entertainment Group	655863/2019	New York County Supreme Court	3/11/2020
Thorning v. Tintri Inc.	20-CIV-00980	San Mateo County Superior Court, California	2/18/2020
Erie County Employees Retirement System v. NN, Inc.	656462/2019	New York County Supreme Court	11/1/2019
<u>In re Dropbox, Inc. Securities Litigation</u>			
Rivera v. Dropbox, Inc.	19-CIV-05865	San Mateo County Superior Court, California	10/3/2019
Simonton v. Dropbox Inc.	19-CIV-05417	San Mateo County Superior Court, California	9/13/2019
Rieman v. Dropbox Inc.	19-CIV-05217	San Mateo County Superior Court, California	9/5/2019
Steinhaus v. Dropbox Inc.	19-CIV-05089	San Mateo County Superior Court, California	8/30/2019
Doumit v. The RealReal Inc.	19-CIV-05302	San Mateo County Superior Court	9/10/2019
<u>In re Lyft, Inc., Securities Litigation</u>			
Toscano v. Lyft Inc.	CGC-19-579089	San Francisco County Superior Court, California	9/9/2019
Greater Pennsylvania Carpenters Pension Fund v. Lyft Inc.	CGC-19-576502	San Francisco County Superior Court, California	6/6/2019
Pyron v. Lyft Inc.	CGC-19-575728	San Francisco County Superior Court, California	5/6/2019
Gupta v. Lyft Inc.	CGC-19-575644	San Francisco County Superior Court, California	4/30/2019
McCloskey v. Lyft Inc.	CGC-19-575475	San Francisco County Superior Court, California	4/24/2019
Clapper v. Lyft Inc.	CGC-19-575453	San Francisco County Superior Court, California	4/23/2019
Hinson v. Lyft Inc.	CGC-19-575293	San Francisco County Superior Court, California	4/16/2019
Lande v. Lyft Inc.	CGC-19-575294	San Francisco County Superior Court, California	4/15/2019
<u>In re Pivotal Software, Inc. Securities Litigation</u>			

Morthorpe v. Pivotal Software Inc.	CGC-19-577110	San Francisco County Superior Court, California	6/27/2019
Tran v. Pivotal Software Inc.	CGC-19-576806	San Francisco County Superior Court, California	6/18/2019
Hill v. Pivotal Software Inc.	CGC-19-576750	San Francisco County Superior Court, California	6/14/2019
<u>In re Bloom Energy Securities Litigation</u>			
Evans v. Bloom Energy Corporation	19-CV-347262	Santa Clara County Superior Court, California	5/7/2019
Rodriguez v. Bloom Energy Corporation	19-CV-346299	Santa Clara County Superior Court, California	4/22/2019
Lincolnshire Police Pension Fund v. Bloom Energy Corporation	19-CV-344894	Santa Clara County Superior Court, California	3/20/2019
Geis v. Camping World Holdings Inc.	2019-CH- 2404	Cook County Circuit Court, Illinois	2/22/2019
Plymouth County Retirement System v. Impinj Inc.	650629/2019	New York County Supreme Court	1/31/2019
International Union of Operating Engineers Benefit Funds of Eastern Pennsylvania and Delaware v. Camping World Holdings Inc.	656308/2018	New York County Supreme Court	12/18/2018

<b>Merrill Lynch, Pierce, Fenner &amp; Smith Inc.</b>			
<b>Case Name</b>	<b>Case Number</b>	<b>Court</b>	<b>Date Filed</b>
City of Pittsburgh Comprehensive Municipal Pension Trust Fund v. Mesa Air Group Inc.	CV2020-003927	Maricopa County Superior Court, Phoenix	3/24/2020
Macomb County Employees' Retirement Systems And Firemen's Retirement System Of St. Louis v. Venator Materials PLC	651771/2020	New York County Supreme Court	3/19/2020
Campos v. Tencent Music Entertainment Group	655863/2019	New York County Supreme Court	3/11/2020
Thorrying v. Tintri Inc.	20-CIV-00980	San Mateo County Superior Court, California	2/18/2020
<u>In re Uber Technologies, Inc. Securities Litigation</u>			
Cianci v. Uber Technologies Inc.	CGC-19-580480	San Francisco County Superior Court, California	11/4/2019
Esa v. Uber Technologies Inc.	CGC-19-580262	San Francisco County Superior Court, California	10/24/2019
Braun v. Uber Technologies Inc.	CGC-19-580137	San Francisco County Superior Court, California	10/18/2019
Pallathu v. Uber Technologies Inc.	CGC-19-580047	San Francisco County Superior Court, California	10/16/2019
Ashford v. Uber Technologies Inc.	CGC-19-579684	San Francisco County Superior Court, California	10/1/2019
Messinger v. Uber Technologies Inc.	CGC-19-579544	San Francisco County Superior Court, California	9/25/2019
<u>In re Dropbox, Inc. Securities Litigation</u>			
Rivera v. Dropbox, Inc.	19-CIV-05865	San Mateo County Superior Court, California	10/3/2019
Simonton v. Dropbox Inc.	19-CIV-05417	San Mateo County Superior Court, California	9/13/2019
Rieman v. Dropbox Inc.	19-CIV-05217	San Mateo County Superior Court, California	9/5/2019
Steinhaus v. Dropbox Inc.	19-CIV-05089	San Mateo County Superior Court, California	8/30/2019
Owens v. CannTrust Holdings Inc.	19-CV-352374	Santa Clara County Superior Court, California	8/5/2019
<u>In re NIO Inc. Securities Litigation</u>			

Isman v. NIO Inc.	654236/2019	New York County Supreme Court	7/24/2019
Reddy v. NIO Inc.	654202/2019	New York County Supreme Court	7/23/2019
Gorjizadeh v. NIO Inc.	653610/2019	New York County Supreme Court	6/20/2019
Donlon v. NIO Inc.	653422/2019	New York County Supreme Court	6/11/2019
<u>In re Livent Corporation Securities Litigation</u>			
Bizarria v. Livent Corporation	190702133	Philadelphia County Court of Common Pleas	7/18/2019
Plymouth County Retirement Association v. Livent Corporation	190501229	Philadelphia County Court of Common Pleas	5/13/2019
<u>In re Pivotal Software, Inc. Securities Litigation</u>			
Morthorpe v. Pivotal Software Inc.	CGC-19-577110	San Francisco County Superior Court, California	6/27/2019
Tran v. Pivotal Software Inc.	CGC-19-576806	San Francisco County Superior Court, California	6/18/2019
Hill v. Pivotal Software Inc.	CGC-19-576750	San Francisco County Superior Court, California	6/14/2019
Plymouth County Contributory Retirement System v. Adamas Pharmaceuticals Inc.	RG-19-018715	Alameda County Superior Court, California	5/13/2019
<u>In re Bloom Energy Securities Litigation</u>			
Evans v. Bloom Energy Corporation	19-CV-347262	Santa Clara County Superior Court, California	5/7/2019
Rodriguez v. Bloom Energy Corporation	19-CV-346299	Santa Clara County Superior Court, California	4/22/2019
Lincolnshire Police Pension Fund v. Bloom Energy Corporation	19-CV-344894	Santa Clara County Superior Court, California	3/20/2019
Solak v. US Xpress Enterprises Inc.	651535/2019	New York County Supreme Court	3/14/2019
<u>In re Venator Materials PLC Securities Litigation</u>			
Firemen's Retirement System Of St. Louis v. Venator Materials Plc	DC-19-03170- B	Dallas County District Court, Texas	3/4/2019
Macomb County Employees' Retirement System v. Venator Materials PLC	DC-19-02030-G	Dallas County District Court, Texas	2/8/2019

<u>In re EverQuote, Inc. Securities Litigation</u>			
Townsend v. EverQuote Inc.	651177/2019	New York County Supreme Court	2/26/2019
Townsend v. EverQuote Inc.	650997/2019	New York County Supreme Court	2/15/2019
<u>In re Arlo Technologies, Inc. Shareholder Litigation</u>			
Hill v. Arlo Technologies Inc.	19-CV-343033	Santa Clara County Superior Court, California	2/22/2019
Learn v. Arlo Technologies Inc.	19-CV-342318	Santa Clara County Superior Court, California	2/8/2019
Patel v. Arlo Technologies Inc.	19-CV-340758	Santa Clara County Superior Court, California	1/10/2019
Pham v. Arlo Technologies Inc.	19-CV-340741	Santa Clara County Superior Court, California	1/9/2019
Aversa v. Arlo Technologies Inc.	18-CV-339231	Santa Clara County Superior Court, California	12/11/2018
Lowinger v. GreenSky Inc.	650303/2019	New York County Supreme Court	1/16/2019
<u>In re Greensky, Inc. Securities Litigation</u>			
Zhang v. Greensky Inc.	656164/2018	New York County Supreme Court	12/11/2018
Coombs v. Greensky Inc.	656134/2018	New York County Supreme Court	12/10/2018
Zou v. GreenSky Inc.	655744/2018	New York County Supreme Court	11/16/2018
Dobek v. GreenSky Inc.	655707/2018	New York County Supreme Court	11/15/2018
Inter-Local Pension Fund GCC/IBT v. Tesla Inc.	18-CV-337109	Santa Clara County Superior Court, California	11/2/2018
City of Livonia Retiree Health and Disability Benefits Plan v. Pitney Bowes Inc.	FST-CV18-6038160	New Haven Stamford Superior Court, Connecticut	9/18/2018
Kohl v. Loma Negra Compania Industrial Argentina Sociedad Anonima	653114/2018	New York County Supreme Court	6/21/2018
Jacobs v. Funko Inc.	18-2-14811-1	King County Superior Court, Seattle	6/12/2018
Berkelhammer v. Funko, Inc.	18-2-12229-5	King County Superior Court, Seattle	5/15/2018
<u>In re ADT Inc., Securities Litigation</u>			

Lowinger v. ADT Inc.	2018ca005326	Palm Beach County Circuit Court, Florida	5/7/2018
Sweet v. ADT Inc.	2018ca005057	Palm Beach County Circuit Court, Florida	4/25/2018
Krebsbach v. ADT Inc.	2018ca004474	Palm Beach County Circuit Court, Florida	4/12/2018
Katz v. ADT Inc.	2018ca004357	Palm Beach County Circuit Court, Florida	4/10/2018
Goldstrand Investments Inc. v. ADT Inc.	2018ca003494	Palm Beach County Circuit Court, Florida	3/21/2018
Lovewell, v. Funko, Inc.	18-2-08153-0	King County Superior Court, Seattle	3/27/2018



**Mischler Financial Group, Inc.**

<b>Case Name</b>	<b>Case Number</b>	<b>Court</b>	<b>Date Filed</b>
<u>In re Uber Technologies, Inc. Securities Litigation</u>			
Cianci v. Uber Technologies Inc.	CGC-19-580480	San Francisco County Superior Court, California	11/4/2019
Esa v. Uber Technologies Inc.	CGC-19-580262	San Francisco County Superior Court, California	10/24/2019
Braun v. Uber Technologies Inc.	CGC-19-580137	San Francisco County Superior Court, California	10/18/2019
Pallathu v. Uber Technologies Inc.	CGC-19-580047	San Francisco County Superior Court, California	10/16/2019
Ashford v. Uber Technologies Inc.	CGC-19-579684	San Francisco County Superior Court, California	10/1/2019
Messinger v. Uber Technologies Inc.	CGC-19-579544	San Francisco County Superior Court, California	9/25/2019
<u>In re Lyft, Inc., Securities Litigation</u>			
Toscano v. Lyft Inc.	CGC-19-579089	San Francisco County Superior Court, California	9/9/2019
Greater Pennsylvania Carpenters Pension Fund v. Lyft Inc.	CGC-19-576502	San Francisco County Superior Court, California	6/6/2019
Pyron v. Lyft Inc.	CGC-19-575728	San Francisco County Superior Court, California	5/6/2019
Gupta v. Lyft Inc.	CGC-19-575644	San Francisco County Superior Court, California	4/30/2019
Clapper v. Lyft Inc.	CGC-19-575453	San Francisco County Superior Court, California	4/23/2019
Hinson v. Lyft Inc.	CGC-19-575293	San Francisco County Superior Court, California	4/16/2019
Lande v. Lyft Inc.	CGC-19-575294	San Francisco County Superior Court, California	4/15/2019
<u>In re Pivotal Software, Inc. Securities Litigation</u>			
Morthorpe v. Pivotal Software Inc.	CGC-19-577110	San Francisco County Superior Court, California	6/27/2019
Tran v. Pivotal Software Inc.	CGC-19-576806	San Francisco County Superior Court, California	6/18/2019
Hill v. Pivotal Software Inc.	CGC-19-576750	San Francisco County Superior Court, California	6/14/2019

<b>Morgan Stanley &amp; Co. LLC</b>			
<b>Case Name</b>	<b>Case Number</b>	<b>Court</b>	<b>Date Filed</b>
City of Warwick Municipal Employees Pension Fund v. Restaurant Brands International Inc.	655686/2020	New York County Supreme Court	10/26/2020
<u>In re Casper Sleep Inc. Securities Litigation</u>			
Gorenberg v. Casper Sleep Inc	0653118/2020	New York County Supreme Court	7/15/2020
Mattern v. Casper Sleep Inc.	0653112/2020	New York County Supreme Court	7/15/2020
Jankowiak v. Casper Sleep Inc.	0652507/2020	New York County Supreme Court	6/16/2020
Patel v. Casper Sleep Inc.	0652284/2020	New York County Supreme Court	6/5/2020
<u>Olsen v. Zuora Inc.</u>			
James Alpha Multi Strategy Alternative Income Portfolio v. Zuora Inc.	20-CIV-02276	San Mateo County Superior Court, California	5/29/2020
Olsen v. Zuora Inc.	20-CIV-01918	San Mateo County Superior Court, California	4/17/2020
Ng v. Yunji Inc.	24906/2020E	Bronx County Supreme Court, New York	5/29/2020
<u>In re Douyu International Holdings Limited Securities Litigation</u>			
Polokoff v. DouYu International Holdings Limited	651790/2020	New York County Supreme Court	3/20/2020
Kovalenko v. DouYu International Holdings Ltd.	651703/2020	New York County Supreme Court	3/13/2020
Kazi v. XP Inc.	651774/2020	New York County Supreme Court	3/19/2020
Cobb v. Liberty Oilfield Services Inc.	20cv30983	Denver County District Court, Colorado	3/11/2020
Campos v. Tencent Music Entertainment Group	655863/2019	New York County Supreme Court	3/11/2020
Kaplan v. Douyu International Holdings Limited	20-CV-364988	Santa Clara County Superior Court, California	3/11/2020
Yang v. Douyu International Holdings Limited	20-CV-364755	Santa Clara County Superior Court, California	3/5/2020
Guilford v. Yunji Inc.	23095/2020E	Bronx County Supreme Court, New York	3/3/2020

Thorring v. Tintri Inc.	20-CIV-00980	San Mateo County Superior Court, California	2/18/2020
Lindholm v. Yunji Inc.	21635/2020E	Bronx County Supreme Court, New York	1/31/2020
<u>In re X Financial Securities Litigation</u>			
Xiong v. X Financial	657383/2019	New York County Supreme Court	12/11/2019
Chen v. X Financial	657095/2019	New York County Supreme Court	11/27/2019
Ningappa v. X Financial	657033/2019	New York County Supreme Court	11/26/2019
<u>In re Sciplay Corporation Securities Litigation</u>			
Li v. SciPlay Corp.	657309/2019	New York County Supreme Court	12/9/2019
Police Retirement System of St. Louis v. SciPlay Corp.	655984/2019	New York County Supreme Court	10/14/2019
Volonte v. Domo Inc.	190401778	Utah County District Court	11/8/2019
<u>In re Uber Technologies, Inc. Securities Litigation</u>			
Cianci v. Uber Technologies Inc.	CGC-19-580480	San Francisco County Superior Court, California	11/4/2019
Esa v. Uber Technologies Inc.	CGC-19-580262	San Francisco County Superior Court, California	10/24/2019
Braun v. Uber Technologies Inc.	CGC-19-580137	San Francisco County Superior Court, California	10/18/2019
Pallathu v. Uber Technologies Inc.	CGC-19-580047	San Francisco County Superior Court, California	10/16/2019
Ashford v. Uber Technologies Inc.	CGC-19-579684	San Francisco County Superior Court, California	10/1/2019
Messinger v. Uber Technologies Inc.	CGC-19-579544	San Francisco County Superior Court, California	9/25/2019
Convery v. Jumia Technologies AG	656021/2019	New York County Supreme Court	10/15/2019
<u>In re Jumia Technologies Securities Litigation</u>			
Weinberger v. Jumia Technologies AG	518182/2019	Kings County Supreme Court, New York	8/16/2019
Krupp v. Jumia Technologies AG	518121/2019	Kings County Supreme Court, New York	8/15/2019
Panther Partners Inc. v. Guo	654585/2019	New York County Supreme Court	8/13/2019
Hook v. Casa System Inc.	654548/2019	New York County Supreme Court	8/9/2019
<u>In re Nio Inc. Securities Litigation</u>			

Isman v. NIO Inc.	654236/2019	New York County Supreme Court	7/24/2019
Gorjizadeh v. NIO Inc.	653610/2019	New York County Supreme Court	6/20/2019
Donlon v. NIO Inc.	653422/2019	New York County Supreme Court	6/11/2019
<u>In re Pivotal Software, Inc. Securities Litigation</u>			
Morthorpe v. Pivotal Software Inc.	CGC-19-577110	San Francisco County Superior Court, California	6/27/2019
Tran v. Pivotal Software Inc.	CGC-19-576806	San Francisco County Superior Court, California	6/18/2019
Hill v. Pivotal Software Inc.	CGC-19-576750	San Francisco County Superior Court, California	6/14/2019
Shen v. Casa Systems Inc.	1977CV00787	Massachusetts Superior Court of Essex County	6/7/2019
<u>In re Brightview Holdings, Inc.</u>			
Speiger v. Brightview Holdings Inc.	2019-14989	Montgomery County Court of Common Pleas, Pennsylvania	6/5/2019
Mccomas Sr. v. Brightview Holdings Inc.	2019-07222	Montgomery County Court of Common Pleas, Pennsylvania	4/16/2019
<u>In re Bloom Energy Securities Litigation</u>			
Evans v. Bloom Energy Corporation	19-CV-347262	Santa Clara County Superior Court, California	5/7/2019
Rodriguez v. Bloom Energy Corporation	19-CV-346299	Santa Clara County Superior Court, California	4/22/2019
Lincolnshire Police Pension Fund v. Bloom Energy Corporation	19-CV-344894	Santa Clara County Superior Court, California	3/20/2019
<u>In re Uxin Limited Securities Litigation</u>			
Buckley v. Uxin Limited	652517/2019	New York County Supreme Court	4/30/2019
Araujo v. Uxin Limited	650613/2019	New York County Supreme Court	1/31/2019
Franchie v. Uxin Limited	650604/2019	New York County Supreme Court	1/30/2019
Liang v. Uxin Limited	650509/2019	New York County Supreme Court	1/25/2019
Lee v. Uxin Limited	650427/2019	New York County Supreme Court	1/22/2019
Chiu v. Uxin Limited	650633/2019	New York County Supreme Court	1/31/2019

Solak v. US Xpress Enterprises Inc.	651535/2019	New York County Supreme Court	3/14/2019
Robbins v. U.S. Xpress Enterprises Inc.	19C214	Hamilton County Circuit Court, Tennessee	2/6/2019
Southeastern Pennsylvania Transportation Authority v. U.S. Xpress Enterprises Inc.	19C209	Hamilton County Circuit Court, Tennessee	2/5/2019
Lyons v. U.S. Xpress Enterprises Inc.	19C191	Hamilton County Circuit Court, Tennessee	1/30/2019
Terry v. U.S. Xpress Enterprises Inc.	19C177	Hamilton County Circuit Court, Tennessee	1/23/2019
Glock v. FTS International Inc.	DC-19-02668-H	Dallas County District Court, Texas	2/22/2019
Plymouth County Retirement System v. Impinj Inc.	650629/2019	New York County Supreme Court	1/31/2019
Lowinger v. GreenSky Inc.	650303/2019	New York County Supreme Court	1/16/2019
<u>In re Greensky, Inc. Securities Litigation</u>			
Zhang v. Greensky Inc.	656164/2018	New York County Supreme Court	12/11/2018
Coombs v. Greensky Inc.	656134/2018	New York County Supreme Court	12/10/2018
Zou v. GreenSky Inc.	655744/2018	New York County Supreme Court	11/16/2018
Dobek v. GreenSky Inc.	655707/2018	New York County Supreme Court	11/15/2018
Langere v. GreenSky Inc.	655626/2018	New York County Supreme Court	11/12/2018
Babbidge v. U.S. Xpress Enterprises Inc.	18C1303	Hamilton County Circuit Court, Tennessee	11/21/2018
Zhang v. RYB Education Inc.	717923/2018	Queens County Supreme Court, New York	11/21/2018
Inter-Local Pension Fund GCC/IBT v. Tesla Inc.	18-CV-337109	Santa Clara County Superior Court, California	11/2/2018
Plutte v. Sea Limited	655436/2018	New York County Supreme Court	11/1/2018
<u>In re Altice USA, Inc. Securities Litigation</u>			
Newman v. Altice USA Inc.	716650/2018	Queens County Supreme Court, New York	10/31/2018
Garcia v. Altice USA Inc.	712803/2018	Queens County Supreme Court, New York	8/17/2018
Richardson v. Altice USA Inc.	610258/2018	Nassau County Supreme Court, New York	8/1/2018

Doris Shenwick Trust v. Altice USA Inc.	610261/2018	Nassau County Supreme Court, New York	8/1/2018
O'Neill v. Altice USA Inc.	711788/2018	Queens County Supreme Court, New York	7/31/2018
LaPoint v. Altice USA Inc.	710845/2018	Queens County Supreme Court, New York	7/16/2018
Warner v. Altice USA Inc.	709097/2018	Queens County Supreme Court, New York	6/12/2018
City of Livonia Retiree Health and Disability Benefits Plan v. Pitney Bowes Inc.	FST-CV18-6038160	New Haven Stamford Superior Court, Connecticut	9/18/2018
Yandoli v. REV Group. Inc.	2018CV001163	Waukesha County Circuit Court, Wisconsin	6/26/2018
Kohl v. Loma Negra Compania Industrial Argentina Sociedad Anonima	653114/2018	New York County Supreme Court	6/21/2018
<u>In re Qudian Securities Litigation</u>			
The Morrow Property Trust v. Qudian Inc.	653047/2018	New York County Supreme Court	6/18/2018
Panther Partners v. Qudian Inc.	651804/2018	New York County Supreme Court	4/13/2018
<u>In re ADT Inc., Securities Litigation</u>			
Krebsbach v. ADT Inc.	2018ca004474	Palm Beach County Circuit Court, Florida	4/12/2018
Katz v. ADT Inc.	2018ca004357	Palm Beach County Circuit Court, Florida	4/10/2018
Goldstrand Investments Inc. v. ADT Inc.	2018ca003494	Palm Beach County Circuit Court, Florida	3/21/2018
Song v. Qudian Inc.	18-CIV-01425	San Mateo County Superior Court, California	3/21/2018

<b>RBC Capital Markets, LLC</b>			
<b>Case Name</b>	<b>Case Number</b>	<b>Court</b>	<b>Date Filed</b>
City of Miami Fire Fighters' and Officers' Retirement Trust v. Occidental Petroleum Corporation	652161/2020	New York County Supreme Court	6/1/2020
<u>In re Sciplay Corporation Securities Litigation</u>			
Li v. SciPlay Corporation	657309/2019	New York County Supreme Court	12/9/2019
Police Retirement System of St. Louis v. SciPlay Corporation	655984/2019	New York County Supreme Court	10/14/2019
Good v. Sciplay Corp.	A-19-804789	Clark County District Court, Nevada	11/4/2019
<u>In re Uber Technologies, Inc. Securities Litigation</u>			
Cianci v. Uber Technologies Inc.	CGC-19-580480	San Francisco County Superior Court, California	11/4/2019
Esa v. Uber Technologies Inc.	CGC-19-580262	San Francisco County Superior Court, California	10/24/2019
Braun v. Uber Technologies Inc.	CGC-19-580137	San Francisco County Superior Court, California	10/18/2019
Pallathu v. Uber Technologies Inc.	CGC-19-580047	San Francisco County Superior Court, California	10/16/2019
Ashford v. Uber Technologies Inc.	CGC-19-579684	San Francisco County Superior Court, California	10/1/2019
Messinger v. Uber Technologies Inc.	CGC-19-579544	San Francisco County Superior Court, California	9/25/2019
Convery v. Jumia Technologies AG	656021/2019	New York County Supreme Court	10/15/2019
<u>In re Dropbox, Inc. Securities Litigation</u>			
Rivera v. Dropbox, Inc.	19-CIV-05865	San Mateo County Superior Court, California	10/3/2019
Simonton v. Dropbox Inc.	19-CIV-05417	San Mateo County Superior Court, California	9/13/2019
Rieman v. Dropbox Inc.	19-CIV-05217	San Mateo County Superior Court, California	9/5/2019
Steinhaus v. Dropbox Inc.	19-CIV-05089	San Mateo County Superior Court, California	8/30/2019
<u>In re Lyft, Inc., Securities Litigation</u>			
Toscano v. Lyft Inc.	CGC-19-579089	San Francisco County Superior Court, California	9/9/2019

Greater Pennsylvania Carpenters Pension Fund v. Lyft Inc.	CGC-19-576502	San Francisco County Superior Court, California	6/6/2019
Pyron v. Lyft Inc.	CGC-19-575728	San Francisco County Superior Court, California	5/6/2019
Gupta v. Lyft Inc.	CGC-19-575644	San Francisco County Superior Court, California	4/30/2019
McCloskey v. Lyft Inc.	CGC-19-575475	San Francisco County Superior Court, California	4/24/2019
Clapper v. Lyft Inc.	CGC-19-575453	San Francisco County Superior Court, California	4/23/2019
Hinson v. Lyft Inc.	CGC-19-575293	San Francisco County Superior Court, California	4/16/2019
Lande v. Lyft Inc.	CGC-19-575294	San Francisco County Superior Court, California	4/15/2019
<u>In re Eventbrite Inc. Securities Litigation</u>			
Vallem v. Eventbrite Inc.	19-CIV-04924	San Mateo County Superior Court, California	8/23/2019
Clemons v. Eventbrite Inc.	19-CIV-02911	San Mateo County Superior Court, California	6/3/2019
Long v. Eventbrite Inc.	19-CIV-02798	San Mateo County Superior Court, California	5/24/2019
<u>In re Jumia Technologies Securities Litigation</u>			
Weinberger v. v. Jumia Technologies AG	518182/2019	Kings County Supreme Court, New York	8/16/2019
Krupp v. Jumia Technologies AG	518182/2019	Kings County Supreme Court, New York	8/15/2019
<u>In re Pivotal Software, Inc. Securities Litigation</u>			
Morthorpe v. Pivotal Software Inc.	CGC-19-577110	San Francisco County Superior Court, California	6/27/2019
Tran v. Pivotal Software Inc.	CGC-19-576806	San Francisco County Superior Court, California	6/18/2019
Hill v. Pivotal Software Inc.	CGC-19-576750	San Francisco County Superior Court, California	6/14/2019
Goodman v. RBC Capital Markets LLC	653631/2019	New York County Supreme Court	6/21/2019
<u>In re Brightview Holdings, Inc. Securities Litigation</u>			
Speiger v. Brightview Holdings Inc.	2019-14989	Montgomery County Court of Common Pleas, Delaware Valley	6/5/2019



Mccomas v. Brightview Holdings Inc.	2019-07222	Montgomery County Court of Common Pleas, Delaware Valley	4/16/2019
<u>In re Venator Materials PLC Securities Litigation</u>			
Gonzalez v. Venator Materials Plc	DC-19-03709	Dallas County District Court, Texas	3/13/2019
Firemen's Retirement System Of St. Louis v. Venator Materials Plc	DC-19-03170	Dallas County District Court, Texas	3/4/2019
Plymouth County Retirement System v. Impinj Inc.	650629/2019	New York County Supreme Court	1/31/2019
Inter-Local Pension Fund GCC/IBT v. Tesla Inc.	18-CV-337109	Santa Clara County Superior Court, California	11/2/2018
<u>In re Altice USA, Inc. Securities Litigation</u>			
Newman v. Altice USA Inc.	716650/2018	Staten Island Queens County Supreme Court, New York	10/31/2018
Garcia v. Altice USA Inc.	712803/2018	Staten Island Queens County Supreme Court, New York	8/17/2018
Richardson v. Altice USA Inc.	610258/2018	Long Island Nassau County Supreme Court, New York	8/1/2018
Doris Shenwick Trust v. Altice USA Inc.	610261/2018	Long Island Nassau County Supreme Court, New York	8/1/2018
O'Neill v. Altice USA Inc.	711788/2018	Staten Island Queens County Supreme Court, New York	7/31/2018
LaPoint v. Altice USA Inc.	710845/2018	Staten Island Queens County Supreme Court, New York	7/16/2018
Warner v. Altice USA Inc.	709097/2018	Staten Island Queens County Supreme Court, New York	6/12/2018
City of Livonia Retiree Health and Disability Benefits Plan v. Pitney Bowes Inc.	FST-CV18-6038160	New Haven Stamford Superior Court, Connecticut	9/18/2018
Raul Corona v. Wideopenwest Inc.	18cv31930	Arapahoe County District Court, Colorado	8/15/2018
<u>In re WideOpenWest Securities Litigation</u>			
Employees' Retirement System of the Puerto Rico Electric Power Authority v. WideOpenWest Inc.	653801/2018	New York County Supreme Court	7/31/2018
Fiore v. WideOpenWest Inc.	156404/2018	Arapahoe County District Court, Colorado	7/26/2018
Kirkland v. WideOpenWest Inc.	653248/2018	New York County Supreme Court	6/27/2018
<u>In re ADT Inc., Securities Litigation</u>			

Lowinger v. ADT Inc.	2018ca005326	Palm Beach County Circuit Court, Florida	5/7/2018
Sweet v. ADT Inc.	2018ca005057	Palm Beach County Circuit Court, Florida	4/25/2018
Krebsbach v. ADT Inc.	2018ca004474	Palm Beach County Circuit Court, Florida	4/12/2018
Howard Katz v. ADT Inc.	2018ca004357	Palm Beach County Circuit Court, Florida	4/10/2018
Goldstrand Investments Inc. v. ADT Inc.	2018ca003494	Palm Beach County Circuit Court, Florida	3/21/2018

**Samuel A. Ramirez & Co., Inc.**

<b>Case Name</b>	<b>Case Number</b>	<b>Court</b>	<b>Date Filed</b>
<u>In re Lyft, Inc., Securities Litigation</u>			
Toscano v. Lyft Inc.	CGC-19-579089	San Francisco County Superior Court, California	9/9/2019
Greater Pennsylvania Carpenters Pension Fund v. Lyft Inc.	CGC-19-576502	San Francisco County Superior Court, California	6/6/2019
Pyron v. Lyft Inc.	CGC-19-575728	San Francisco County Superior Court, California	5/6/2019
Gupta v. Lyft Inc.	CGC-19-575644	San Francisco County Superior Court, California	4/30/2019
McCloskey v. Lyft Inc.	CGC 19-575475	San Francisco County Superior Court, California	4/24/2019
Clapper v. Lyft Inc.	CGC-19-575453	San Francisco County Superior Court, California	4/23/2019
Hinson v. Lyft Inc.	CGC-19-575293	San Francisco County Superior Court, California	4/16/2019
Lande v. Lyft Inc.	CGC-19-575294	San Francisco County Superior Court, California	4/15/2019
<u>In re Pivotal Software, Inc. Securities Litigation</u>			
Morthorpe v. Pivotal Software Inc.	CGC-19-577110	San Francisco County Superior Court, California	6/27/2019
Tran v. Pivotal Software Inc.	CGC-19-576806	San Francisco County Superior Court, California	6/18/2019
Hill v. Pivotal Software Inc.	CGC-19-576750	San Francisco County Superior Court, California	6/14/2019

**Siebert Cisneros Shank & Co., LLC**

<b>Case Name</b>	<b>Case Number</b>	<b>Court</b>	<b>Date Filed</b>
<u>In re Uber Technologies, Inc. Securities Litigation</u>			
Cianci v. Uber Technologies Inc.	CGC-19-580480	San Francisco County Superior Court, California	11/4/2019
Esa v. Uber Technologies Inc.	CGC-19-580262	San Francisco County Superior Court, California	10/24/2019
Braun v. Uber Technologies Inc.	CGC-19-580137	San Francisco County Superior Court, California	10/18/2019
Pallathu v. Uber Technologies Inc.	CGC-19-580047	San Francisco County Superior Court, California	10/16/2019
Ashford v. Uber Technologies Inc.	CGC-19-579684	San Francisco County Superior Court, California	10/1/2019
Messinger v. Uber Technologies Inc.	CGC-19-579544	San Francisco County Superior Court, California	9/25/2019
<u>In re Lyft, Inc., Securities Litigation</u>			
Toscano v. Lyft Inc.	CGC-19-579089	San Francisco County Superior Court, California	9/9/2019
Greater Pennsylvania Carpenters Pension Fund v. Lyft Inc.	CGC-19-576502	San Francisco County Superior Court, California	6/6/2019
Pyron v. Lyft Inc.	CGC-19-575728	San Francisco County Superior Court, California	5/6/2019
Gupta v. Lyft Inc.	CGC-19-575644	San Francisco County Superior Court, California	4/30/2019
Clapper v. Lyft Inc.	CGC-19-575453	San Francisco County Superior Court, California	4/23/2019
Hinson v. Lyft Inc.	CGC-19-575293	San Francisco County Superior Court, California	4/16/2019
Lande v. Lyft Inc.	CGC-19-575294	San Francisco County Superior Court, California	4/15/2019
<u>In re Pivotal Software, Inc. Securities Litigation</u>			
Morthorpe v. Pivotal Software Inc.	CGC-19-577110	San Francisco County Superior Court, California	6/27/2019
Tran v. Pivotal Software Inc.	CGC-19-576806	San Francisco County Superior Court, California	6/18/2019
Hill v. Pivotal Software Inc.	CGC-19-576750	San Francisco County Superior Court, California	6/14/2019

UBS Securities LLC			
Case Name	Case Number	Court	Date Filed
<u>In re Casper Sleep Inc. Securities Litigation</u>			
Gorenberg v. Casper Sleep Inc	0653118/2020	New York County Supreme Court	7/15/2020
Mattern v. Casper Sleep Inc.	0653112/2020	New York County Supreme Court	7/15/2020
Jankowiak v. Casper Sleep Inc.	0652507/2020	New York County Supreme Court	6/16/2020
Patel v. Casper Sleep Inc.	652284/2020	New York County Supreme Court	6/5/2020
Nurlybayev v. SmileDirectClub Inc.	652603/2020	New York County Supreme Court	6/19/2020
Kazi v. XP Inc.	651774/2020	New York County Supreme Court	3/19/2020
Sasso v. SmileDirectClub Inc.	657557/2019	New York County Supreme Court	12/18/2019
<u>In re: SmileDirectClub, Inc. Securities Litigation</u>			
Fernandez v. SmileDirectClub Inc.	19-1392-III	Davidson County, Chancery Court, Tennessee	11/19/2019
Vang v. SmileDirectClub Inc.	19-2316	Davidson County, Circuit Court, Tennessee	9/30/2019
Mancour v. SmileDirectClub Inc.	19-1169-IV	Davidson County, Chancery Court, Tennessee	9/27/2019
Volonte v. Domo Inc.	190401778	Utah County District Court	11/8/2019
Nurlybayev v. Smiledirectclub Inc.	19-177527- CB	Greater Detroit Oakland County Circuit Court, Michigan	10/25/2019
Lyu v. Ruhnn Holdings Limited	655420/2019	New York County Supreme Court	9/18/2019
Doumit v. The RealReal Inc.	19-CIV-05302	San Mateo County Superior Court, California	9/10/2019
<u>In re Lyft, Inc., Securities Litigation</u>			
Toscano v. Lyft Inc.	CGC-19-579089	San Francisco County Superior Court, California	9/9/2019
Greater Pennsylvania Carpenters Pension Fund v. Lyft Inc.	CGC-19-576502	San Francisco County Superior Court, California	6/6/2019
Pyron v. Lyft Inc.	CGC-19-575728	San Francisco County Superior Court, California	5/6/2019
Gupta v. Lyft Inc.	CGC-19-575644	San Francisco County Superior Court, California	4/30/2019

McCloskey v. Lyft Inc.	CGC-19-575475	San Francisco County Superior Court, California	4/24/2019
Clapper v. Lyft Inc.	CGC-19-575453	San Francisco County Superior Court, California	4/23/2019
Hinson v. Lyft Inc.	CGC-19-575293	San Francisco County Superior Court, California	4/16/2019
Lande v. Lyft Inc.	CGC-19-575294	San Francisco County Superior Court, California	4/15/2019
<u>In re NIO Inc. Securities Litigation</u>			
Isman v. NIO Inc.	654236/2019	New York County Supreme Court	7/24/2019
Reddy v. NIO Inc.	654202/2019	New York County Supreme Court	7/23/2019
Gorjizadeh v. NIO Inc.	653610/2019	New York County Supreme Court	6/20/2019
Donlon v. NIO Inc.	653422/2019	New York County Supreme Court	6/11/2019
<u>In re Pivotal Software, Inc. Securities Litigation</u>			
Morthorpe v. Pivotal Software Inc.	CGC-19-577110	San Francisco County Superior Court, California	6/27/2019
Tran v. Pivotal Software Inc.	CGC-19-576806	San Francisco County Superior Court, California	6/18/2019
Hill v. Pivotal Software Inc.	CGC-19-576750	San Francisco County Superior Court, California	6/14/2019
Firemen's Retirement System Of St. Louis v. Venator Materials Plc	DC-19-03170-B	Dallas County District Court, Texas	3/4/2019
<u>In re Brightview Holdings, Inc.</u>			
Speiger v. Brightview Holdings Inc.	2019-14989	Montgomery County Court of Common Pleas, Pennsylvania	6/5/2019
Mccomas v. Brightview Holdings Inc.	2019-07222	Montgomery County Court of Common Pleas, Pennsylvania	4/16/2019
Corona v. Wideopenwest Inc.	18cv31930	Arapahoe County District Court, Colorado	8/15/2018
<u>In re WideOpenWest Securities Litigation</u>			
Employees' Retirement System of the Puerto Rico Electric Power Authority v. WideOpenWest Inc.	653801/2018	New York County Supreme Court	7/31/2018
Fiore v. WideOpenWest Inc.	31793/2018	Arapahoe County District Court, Colorado	7/26/2018

Kirkland v. WideOpenWest Inc.	53248/2018	New York County Supreme Court	6/27/2018
<u>In re Qudian Securities Litigation</u>			
The Morrow Property Trust v. Qudian Inc.	653047/2018	New York County Supreme Court	6/18/2018
Panther Partners v. Qudian Inc.	651804/2018	New York County Supreme Court	4/13/2018
Song v. Qudian Inc.	18-CIV-01425	San Mateo County Superior Court, California	3/21/2018

<b>Wells Fargo Securities, LLC</b>			
<b>Case Name</b>	<b>Case Number</b>	<b>Court</b>	<b>Date Filed</b>
<u>In re Occidental Petroleum Corp. Securities Litigation</u>			
City of Miami Fire Fighters' and Police Officers' Retirement Trust v. Occidental Petroleum Corp.	652161/2020	New York County Supreme Court	6/1/2020
City of Sterling Heights Police & Fire Retirement System v. Occidental Petroleum Corp.	651830/2020	New York County Supreme Court	5/28/2020
City of Sterling Heights General Employees' Retirement System v. Occidental Petroleum Corp.	651994/2020	New York County Supreme Court	5/26/2020
Cobb v. Liberty Oilfield Services Inc.	20cv30983	Denver County District Court, Colorado	3/11/2020
<u>In re Lyft, Inc., Securities Litigation</u>			
Toscano v. Lyft Inc.	CGC-19-579089	San Francisco County Superior Court, California	9/9/2019
Greater Pennsylvania Carpenters Pension Fund v. Lyft Inc.	CGC-19-576502	San Francisco County Superior Court, California	6/6/2019
Pyron v. Lyft Inc.	CGC-19-575728	San Francisco County Superior Court, California	5/6/2019
Gupta v. Lyft Inc.	CGC-19-575644	San Francisco County Superior Court, California	4/30/2019
McCloskey v. Lyft Inc.	CGC-19-575475	San Francisco County Superior Court, California	4/24/2019
Clapper v. Lyft Inc.	CGC-19-575453	San Francisco County Superior Court, California	4/23/2019
Hinson v. Lyft Inc.	CGC-19-575293	San Francisco County Superior Court, California	4/16/2019
Lande v. Lyft Inc.	CGC-19-575294	San Francisco County Superior Court, California	4/15/2019
<u>In re Pivotal Software, Inc. Securities Litigation</u>			
Morthorpe v. Pivotal Software Inc.	CGC-19-577110	San Francisco County Superior Court, California	6/27/2019
Tran v. Pivotal Software Inc.	CGC-19-576806	San Francisco County Superior Court, California	6/18/2019
Hill v. Pivotal Software Inc.	CGC-19-576750	San Francisco County Superior Court, California	6/14/2019
<u>In re Osmotica Pharmaceuticals PLC Securities Litigation</u>			



Tello v. Osmotica Pharmaceuticals PLC	SOM-L-00617-19	Somerset County Superior Court, New Jersey	5/10/2019
Schumacher v. Osmotica Pharmaceuticals PLC	SOM-L-000540-19	Somerset County Superior Court, New Jersey	4/26/2019
Solak v. US Xpress Enterprises Inc.	651535/2019	New York County Supreme Court	3/14/2019
Geis v. Camping World Holdings Inc.	2019-CH-2404	Cook County Circuit Court, Illinois	2/22/2019
Robbins v. U.S. Xpress Enterprises Inc.	19C214	Hamilton County Circuit Court, Tennessee	2/6/2019
Southeastern Pennsylvania Transportation Authority v. U.S. Xpress Enterprises Inc.	19C209	Hamilton County Circuit Court, Tennessee	2/5/2019
Lyons v. U.S. Xpress Enterprises Inc.	19C191	Hamilton County Circuit Court, Tennessee	1/30/2019
Terry v. U.S. Xpress Enterprises Inc.	19C177	Hamilton County Circuit Court, Tennessee	1/23/2019
International Union of Operating Engineers Benefit Funds of Eastern Pennsylvania and Delaware v. Camping World Holdings Inc.	656308/2018	New York County Supreme Court	12/18/2018
Babbidge v. U.S. Xpress Enterprises Inc.	18C1303	Hamilton County Circuit Court, Southeast Tennessee	11/21/2018
<u>In re Switch, Inc. Securities Litigation</u>			
Silverberg v. Switch Inc.	A-18-775670-B	Clark County District Court, Nevada	6/6/2018
Chun v. Switch Inc.	A-18-774407-C	Clark County District Court, Nevada	5/11/2018
Palkon v. Switch Inc.	A-18-773730-B	Clark County District Court, Nevada	4/30/2018
Martz v. Switch Inc.	A-18-773212-B	Clark County District Court, Nevada	4/20/2018

<b>William Blair &amp; Company, L.L.C.</b>			
<b>Case Name</b>	<b>Case Number</b>	<b>Court</b>	<b>Date Filed</b>
Roche v. Tufin Software Technologies Ltd.	652833/2020	New York County Supreme Court	7/1/2020
Sasso v. Katzman	657557/2019	New York County Supreme Court	12/18/2019
Volonte v. Domo Inc.	190401778	Utah County District Court	11/8/2019
<u>In re Uber Technologies, Inc. Securities Litigation</u>			
Cianci v. Uber Technologies Inc.	CGC-19-580480	San Francisco County Superior Court, California	11/4/2019
Esa v. Uber Technologies Inc.	CGC-19-580262	San Francisco County Superior Court, California	10/24/2019
Braun v. Uber Technologies Inc.	CGC-19-580137	San Francisco County Superior Court, California	10/18/2019
Pallathu v. Uber Technologies Inc.	CGC-19-580047	San Francisco County Superior Court, California	10/16/2019
Ashford v. Uber Technologies Inc.	CGC-19-579684	San Francisco County Superior Court, California	10/1/2019
Messinger v. Uber Technologies Inc.	CGC-19-579544	San Francisco County Superior Court, California	9/25/2019
Erie County Employees Retirement System v. NN Inc.	656462/2019	New York County Supreme Court	11/1/2019
Convery v. Jumia Technologies AG	656021/2019	New York County Supreme Court	10/15/2019
Fernandez v. SmileDirectClub Inc.	19C2371	Davidson County Circuit Court, Tennessee	10/4/2019
Vang v. SmileDirectClub Inc.	19C2316	Davidson County Circuit Court, Tennessee	9/30/2019
Mancour v. SmileDirectClub Inc.	19-1169-IV	Davidson County Chancery Court, Tennessee	9/30/2019
<u>In re Jumia Technologies Securities Litigation</u>			
Weinberger v. Jumia Technologies AG	518182/2019	Kings County Supreme Court, New York	8/16/2019
Krupp v. Jumia Technologies AG	518121/2019	Kings County Supreme Court, New York	8/15/2019
Panther Partners Inc. v. Guo	654585/2019	New York County Supreme Court	8/13/2019
<u>In re Pivotal Software, Inc. Securities Litigation</u>			
Morthorpe v. Pivotal Software Inc.	CGC-19-577110	San Francisco County Superior Court, California	6/27/2019

Tran v. Pivotal Software Inc.	CGC-19-576806	San Francisco County Superior Court, California	6/18/2019
Hill v. Pivotal Software Inc.	CGC-19-576750	San Francisco County Superior Court, California	6/14/2019
<u>In re Brightview Holdings, Inc.</u>			
Speiger v. Brightview Holdings Inc.	2019-14989	Montgomery County Court of Common Pleas, Pennsylvania	6/5/2019
Mccomas Sr. v. Brightview Holdings Inc.	2019-07222	Montgomery County Court of Common Pleas, Pennsylvania	4/16/2019
<u>In re Everquote, Inc. Securities Litigation</u>			
Townsend v. EverQuote Inc.	651177/2019	New York County Supreme Court	2/26/2019
Townsend v. EverQuote Inc.	650997/2019	New York County Supreme Court	2/15/2019
<u>In re Switch, Inc. Securities Litigation</u>			
Silverberg v. Switch Inc.	A-18-775670-B	Clark County District Court, Nevada	6/6/2018
Chun v. Switch Inc.	A-18-774407-C	Clark County District Court, Nevada	5/11/2018
Palkon v. Switch Inc.	A-18-773730-B	Clark County District Court, Nevada	4/30/2018
Martz v. Switch Inc.	A-18-773212-B	Clark County District Court, Nevada	4/20/2018

<b>Williams Capital Group, L.P.</b>			
<b>Case Name</b>	<b>Case Number</b>	<b>Court</b>	<b>Date Filed</b>
City of Miami Fire Fighters' and Officers' Retirement Trust v. Occidental Petroleum Corporation	652161/2020	New York County Supreme Court	6/1/2020
<u>In re Uber Technologies, Inc. Securities Litigation</u>			
Cianci v. Uber Technologies Inc.	CGC-19-580480	San Francisco County Superior Court, California	11/4/2019
Esa v. Uber Technologies Inc.	CGC-19-580262	San Francisco County Superior Court, California	10/24/2019
Braun v. Uber Technologies Inc.	CGC-19-580137	San Francisco County Superior Court, California	10/18/2019
Pallathu v. Uber Technologies Inc.	CGC-19-580047	San Francisco County Superior Court, California	10/16/2019
Ashford v. Uber Technologies Inc.	CGC-19-579684	San Francisco County Superior Court, California	10/1/2019
Messinger v. Uber Technologies Inc.	CGC-19-579544	San Francisco County Superior Court, California	9/25/2019
<u>In re Lyft, Inc., Securities Litigation</u>			
Toscano v. Lyft Inc.	CGC-19-579089	San Francisco County Superior Court, California	9/9/2019
Greater Pennsylvania Carpenters Pension Fund v. Lyft Inc.	CGC-19-576502	San Francisco County Superior Court, California	6/6/2019
Pyron v. Lyft Inc.	CGC-19-575728	San Francisco County Superior Court, California	5/6/2019
Gupta v. Lyft Inc.	CGC-19-575644	San Francisco County Superior Court, California	4/30/2019
Clapper v. Lyft Inc.	CGC-19-575453	San Francisco County Superior Court, California	4/23/2019
Hinson v. Lyft Inc.	CGC-19-575293	San Francisco County Superior Court, California	4/16/2019
Lande v. Lyft Inc.	CGC-19-575294	San Francisco County Superior Court, California	4/15/2019
<u>In re Pivotal Software, Inc. Securities Litigation</u>			
Morthorpe v. Pivotal Software Inc.	CGC-19-577110	San Francisco County Superior Court, California	6/27/2019
Tran v. Pivotal Software Inc.	CGC-19-576806	San Francisco County Superior Court, California	6/18/2019
Hill v. Pivotal Software Inc.	CGC-19-576750	San Francisco County Superior Court, California	6/14/2019

City of Livonia Retiree Health and Disability Benefits Plan v. Pitney Bowes Inc.	FST-CV18-6038160	New Haven Stamford Superior Court, Connecticut	9/18/2018
<u>In re ADT Inc., Securities Litigation</u>			
Lowinger v. ADT Inc.	2018ca005326	Palm Beach County Circuit Court, Florida	5/7/2018
Sweet v. ADT Inc.	2018ca005057	Palm Beach County Circuit Court, Florida	4/25/2018
Krebsbach v. ADT Inc.	2018ca004474	Palm Beach County Circuit Court, Florida	4/12/2018
Katz v. ADT Inc.	2018ca004357	Palm Beach County Circuit Court, Florida	4/10/2018
Goldstrand Investments Inc. v. ADT Inc.	2018ca003494	Palm Beach County Circuit Court, Florida	3/21/2018