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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

_____, Individually and On Behalf of All
Others Similarly Situated,

Plaintiff,

v.

PIVOTAL SOFTWARE, INC., ROBERT
MEE, and CYNTHIA GAYLOR,

Defendants.

)
) **Case No.**
)
) **CLASS ACTION COMPLAINT**
)
) **JURY TRIAL DEMANDED**
)
)

Plaintiff ____ (“Plaintiff”), individually and on behalf of all other persons similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants, alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through Plaintiff’s attorneys, which included, among other things, a review of the Defendants’ public documents, conference calls and announcements made by Defendants, United States Securities and Exchange Commission (“SEC”) filings, wire and press releases published by and regarding Pivotal Software, Inc. (“Pivotal” or the “Company”), analysts’ reports and advisories about the Company, and information readily obtainable on the

1 Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set
2 forth herein after a reasonable opportunity for discovery.

3 **NATURE OF THE ACTION**

4 1. This is a federal securities class action on behalf of a class consisting of all persons
5 other than Defendants who purchased or otherwise acquired (1) Pivotal common stock pursuant
6 or traceable to the registration statement and prospectus (collectively, the “Registration
7 Statement”) issued in connection with Pivotal’s April 2018 initial public offering (the “Offering”
8 or “IPO”); and/or (2) Pivotal securities between April 24, 2018 and June 4, 2019, both dates
9 inclusive (the “Class Period”), seeking to recover damages caused by Defendants’ violations of
10 the federal securities laws and to pursue remedies under Sections 11 and 15 of the Securities Act
11 of 1933 (the “Securities Act”) and Sections 10(b) and 20(a) of the Securities Exchange Act of 1934
12 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder, against the Company and certain
13 of its top officials.
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16 2. Pivotal was founded in 2013 and is headquartered in San Francisco, California.
17 Pivotal, together with its subsidiaries, provides a cloud-native application platform and services
18 in the United States.

19 3. Pivotal’s cloud-native platform, Pivotal Cloud Foundry (“PCF”), purportedly
20 accelerates and streamlines software development by reducing the complexity of building,
21 deploying, and operating cloud-native and modern applications. The Company also purportedly
22 enables its customers to accelerate their adoption of a modern software development process and
23 their business success using its platform through its strategic services, Pivotal Labs (“Labs”).
24 Pivotal markets and sells PCF and Labs through its sales force and ecosystem partners.
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1 4. In April 2018, Pivotal commenced the IPO, issuing over 42 million shares of
2 Pivotal common stock to the investing public at \$15.00 per share, all pursuant to the Registration
3 Statement, raising more than \$638 million in gross proceeds.

4 5. On March 14, 2019, Pivotal issued a press release in which disclosed its financial
5 outlook for fiscal year 2020 and told investors that the Company was in the “early stages of [a]
6 high-growth market.” In particular, Pivotal touted a financial outlook for the full fiscal year 2020,
7 of subscription revenue of \$542 to \$547 million and total revenue of \$798 to \$806 million
8

9 6. In the Registration Statement and throughout the Class Period, Defendants made
10 materially false and misleading statements regarding the Company’s business, operational and
11 compliance policies. Specifically, Defendants made false and/or misleading statements and/or
12 failed to disclose that: (i) Pivotal was facing major problems with its sales execution and a
13 complex technology landscape; (ii) the foregoing headwinds resulted in deferred sales,
14 lengthening sales cycles, and diminished growth as its customers and the industry’s sentiment
15 shifted away from Pivotal’s principal products because the Company’s products were outdated,
16 inadequate, and incompatible with the industry-standard platform; and (iii) as a result, the
17 Company’s public statements were materially false and misleading at all relevant times.
18

19 7. On June 4, 2019, post-market, Pivotal reported its financial and operating results
20 for the first quarter of fiscal year 2020, advising investors that “sales execution and a complex
21 technology landscape impacted the quarter.” Wedbush Securities (“Wedbush”) analyst Daniel
22 Ives (“Ives”) called the quarter a “train wreck” and characterized the Company’s operating results
23 as “disastrous,” asserting that Pivotal’s “management team does not have a handle on the
24 underlying issues negatively impacting its sales cycles and the activity in the field which gives us
25 concern that this quarter will be the start of some ‘dark days ahead’ for Pivotal (and its investors).”
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1 8. On this news, Pivotal’s stock price fell \$7.65 per share, or over 40%, to close at
2 \$10.89 per share on June 5, 2019, far below the IPO price of \$15 per share.

3 9. As a result of Defendants’ wrongful acts and omissions, and the precipitous
4 decline in the market value of the Company’s securities, Plaintiff and other Class members have
5 suffered significant losses and damages.

6
7 **JURISDICTION AND VENUE**

8 10. The claims asserted herein arise under and pursuant to Sections 11 and 15 of the
9 Securities Act (15 U.S.C. §§ 77k and 77o) and Sections 10(b) and 20(a) of the Exchange Act (15
10 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. §
11 240.10b-5).

12 11. This Court has jurisdiction over the subject matter of this action pursuant to 28
13 U.S.C. § 1331 and Section 27 of the Exchange Act.

14 12. Venue is proper in this Judicial District pursuant to Section 27 of the Exchange
15 Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1391(b). Pivotal is headquartered in this Judicial District,
16 Defendants conduct business in this Judicial District, and a significant portion of Defendants’
17 actions took place within this Judicial District.

18 13. In connection with the acts alleged in this complaint, Defendants, directly or
19 indirectly, used the means and instrumentalities of interstate commerce, including, but not limited
20 to, the mails, interstate telephone communications, and the facilities of the national securities
21 markets.

PARTIES

1
2 14. Plaintiff, as set forth in the attached Certification, acquired Pivotal securities at
3 artificially inflated prices pursuant or traceable to the Registration Statement and during the Class
4 Period, and was damaged upon the revelation of the alleged corrective disclosures.

5 15. Defendant Pivotal is a Delaware corporation with its principal executive offices
6 located at 875 Howard Street, Fifth Floor, San Francisco, California. Pivotal securities trade in
7 an efficient market on the New York Stock Exchange (“NYSE”) under the symbol “PVTL”.

8
9 16. Defendant Robert Mee (“Mee”) has served as Pivotal’s Chief Executive Officer at
10 all relevant times.

11 17. Defendant Cynthia Gaylor (“Gaylor”) has served as Pivotal’s Chief Financial
12 Officer at all relevant times.

13
14 18. The Defendants Mee and Gaylor are sometimes referred to herein as the
15 “Individual Defendants.”

16 19. The Individual Defendants possessed the power and authority to control the
17 contents of Pivotal’s SEC filings, press releases, and other market communications. The
18 Individual Defendants were provided with copies of Pivotal’s SEC filings and press releases
19 alleged herein to be misleading prior to or shortly after their issuance and had the ability and
20 opportunity to prevent their issuance or to cause them to be corrected. Because of their positions
21 with Pivotal, and their access to material information available to them but not to the public, the
22 Individual Defendants knew that the adverse facts specified herein had not been disclosed to and
23 were being concealed from the public, and that the positive representations being made were then
24 materially false and misleading. The Individual Defendants are liable for the false statements and
25 omissions pleaded herein.
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SUBSTANTIVE ALLEGATIONS

Background

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3 20. Pivotal was founded in 2013 and is headquartered in San Francisco, California.
4 Pivotal, together with its subsidiaries, provides a cloud-native application platform and services
5 in the United States.

6
7 21. Pivotal's cloud-native platform, PCF, purportedly accelerates and streamlines
8 software development by reducing the complexity of building, deploying, and operating cloud-
9 native and modern applications. The Company also purportedly enables its customers to
10 accelerate their adoption of a modern software development process and their business success
11 using its platform through its strategic services, Labs. Pivotal markets and sells PCF and Labs
12 through its sales force and ecosystem partners.

13
14 22. In April 2018, Pivotal commenced the IPO, issuing over 42 million shares of
15 Pivotal common stock to the investing public at \$15.00 per share, all pursuant to the Registration
16 Statement, raising more than \$638 million in gross proceeds.

17
18 23. On March 14, 2019, Pivotal issued a press release in which it disclosed its financial
19 outlook for fiscal year 2020 and told investors that the Company was in the "early stages of [a]
20 high-growth market." In particular, Pivotal touted a financial outlook for the full fiscal year 2020,
21 of subscription revenue of \$542 to \$547 million and total revenue of \$798 to \$806 million

Defendants' Materially False and Misleading Statements

22
23 24. On December 15, 2017, Defendants filed with the SEC a confidential draft
24 Registration Statement on Form S-1, which would be used for the IPO following a series of
25 amendments in response to SEC comments, including comments from the SEC emphasizing the
26

1 importance of adequately disclosing material trends and risk factors, as required by Items 303 and
2 503 (defined below).

3 25. On or about April 18, 2018, Defendants filed a final amendment to the Registration
4 Statement, which registered over 37 million shares of Pivotal common stock for public sale. The
5 SEC declared the Registration Statement effective on April 19, 2018. On or about April 20, 2018,
6 Defendants filed the final prospectus for the IPO, which forms part of the Registration Statement.
7 On April 24, 2018, the Company completed the IPO, which, upon the underwriters exercising
8 their full overallotment option to purchase additional shares, issued a total of 42,550,000 shares
9 priced to the public at \$15.00 per share, generating over \$638 million for Defendants.
10

11 26. Defendants claimed in the Registration Statement that “[l]egacy IT [c]hallenges”
12 at “many enterprises” was its “[o]ppportunity”:
13

14 ***Legacy IT Challenges: Our Opportunity***

15 Despite the availability of these cloud technology and agile process
16 advancements, many enterprises remain deeply invested in legacy technology and
17 process that differ significantly from cloud-native approaches to software
18 development and operations. These enterprises are seeking to leverage private and
19 public cloud technologies and to use cloud-native software to transform their
20 businesses. They continue to deploy monolithic software built on custom silos of
21 supporting infrastructure. When changes to software become necessary, many
22 manual steps and serial reviews and approvals by different functional teams are
23 required, which can often lead to instability and downtime. For a large enterprise
24 with hundreds or thousands of applications and large numbers of disparate
25 hardware components in multiple data centers, the operational challenges can be
26 daunting as hundreds or thousands of people in operations may be required just to
27 support a small number of developers and to keep existing applications running.
28 This complexity can create ingrained processes and cultures that are resistant to
change, given the level of investment in legacy infrastructure and inefficient IT
operations, which constrain innovation and new software development initiatives.

In addition to these technology challenges, many enterprises implement legacy
software development approaches such as the ‘waterfall’ process, in which
software development proceeds in a strict sequence from conception to analysis,
design, construction, testing, implementation and maintenance. By the time such
software is ready to be released, requirements and business priorities often have
changed. The waterfall process is ill-suited for software development and IT
operations, where the code and user requirements are constantly changing.

1 27. The Registration Statement highlighted the Company’s purported “leading cloud-
2 native platform” as “[its] solution” to these legacy IT challenges, stating in relevant part:

3 We provide a leading cloud-native platform that makes software development and
4 IT operations a strategic advantage for our customers. PCF customers can
5 accelerate their adoption of modern software development practices through Labs,
6 our complementary strategic services. Our customers realize measurable
7 improvement in developer productivity, software quality, security, time-to-market
8 and IT operational efficiency. Our offering helps make developing and operating
9 software a strategic advantage for our customers, empowering them to
10 revolutionize their customer experiences, helping create new revenue streams and
11 improving the speed and cost of business operations through software.

12 28. Defendants also touted the “[m]arket opportunities” purportedly available for
13 Pivotal, stating that its “cloud-native software addresses IT spending across *the rapidly growing*
14 *market* for public cloud workloads, sometimes referred to as Platform-as-a-service (‘PaaS’), and
15 the market for application infrastructure, middleware and development software.” Indeed, the
16 Registration Statement touted an estimated market of “over \$50 billion” for its cloud-native
17 platform.

18 29. On March 14, 2019, Pivotal issued a press release announcing its financial and
19 operating results for the fourth quarter and full fiscal year 2019.

20 30. After touting its financial results, including subscription revenue growth of over
21 50% in 4Q19 and FY19, and total revenue growth of 27% year over year in 4Q19 and 29% year
22 over year for FY19, Defendant Mee stated that the Company was in the “early stages of [a] high-
23 growth market.”

24 31. The March 14, 2019 press release also contained the Company’s financial outlook
25 for the first quarter of fiscal 2020 and the full fiscal year of 2020, stating:

26 For the first quarter of fiscal 2020, Pivotal currently expects:

- 27 • Subscription revenue of \$124.5 to \$125.5 million

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- Total revenue of \$183 to \$185 million
- Non-GAAP loss from operations of \$13.5 to \$12.5 million
- Non-GAAP net loss per share of 6¢ to 5¢, assuming weighted average shares outstanding of approximately 267 million

For the full fiscal year 2020, Pivotal currently expects:

- Subscription revenue of \$542 to \$547 million
- Total revenue of \$798 to \$806 million
- Non-GAAP loss from operations of \$38 to \$36 million
- Non-GAAP net loss per share of 15¢ to 13¢, assuming weighted average shares outstanding of approximately 272 million.

32. Later on March 14, 2019, the Company held a conference call with analysts to discuss its financial results for fiscal year 2019 and its guidance for fiscal year 2020. On that call Defendant Gaylor told analysts and investors that Pivotal “continue[s] to attract new customers and as many of [its] existing customers grow their investments with [Pivotal].”

33. Discussing the Company’s net expansion rate for Fiscal 2019, Defendant Gaylor stated that the Company “continued to see healthy expansion from existing customers.” Notably, after touting the Company’s “industry-leading” net expansion rate, Defendant Gaylor stated that Pivotal “expect[s] the percentage to come down *gradually over time.*” (Emphasis added.)

34. Moreover, Defendant Gaylor concluded her prepared remarks for the call by providing greater detail on the Company’s 2020 guidance, stating in relevant part:

I would also like to share some assumptions that we have built into our guidance. I’m pleased to confirm that we will continue to be on track to reach breakeven profitability 8 to 10 quarters from the time we went public, which would be during the first half of our fiscal ‘21.

With regards to revenue, we expect mix to continue shifting towards subscription. We expect services revenue for the year to be relatively flat to last year as we enable existing customers to be self-sufficient, leverage our SI partners and as maintenance revenue associated with legacy products continues to decline and as we expect -- and we expect services gross margin to be in the low 20% range for the year.

1 *In closing, we will continue to drive top line growth and operating leverage across*
2 *the company. We are still in the early stages of executing against our long-term*
3 *vision in this high-growth market, and I look forward to updating you on our*
4 *progress throughout the year.*

(Emphasis added.)

5 35. Following Defendant Gaylor’s description of the Company’s guidance, an analyst
6 at Credit Suisse pressed her on the Company’s projected growth and potential risks to achieving
7 the projected figures, to which Defendant Gaylor responded that Pivotal’s guidance was
8 “reasonable”:

9 Kevin Ma, Credit Suisse:

10 ... [Y]ou mentioned guidance implies flat growth next year and deceleration from
11 this year. How should we think about the upside/ downside risks from what you
12 baked into your 2020 outlook? And what are the major variables that might cause
13 it to be higher or lower?

14 Defendant Gaylor:

15 It’s a great question. Thanks for the question. I would say, in general, our guidance
16 is pretty consistent and each quarter reflects our expectations for this point in time
17 in the year. *So we think it’s reasonable.* Clearly, there is some upside and downside
18 in the guidance, *but what we’re putting out is what we think is reasonable for the*
19 *year.*

(Emphases added.)

20 36. Finally, Defendant Mee reiterated his statement in the March 14 press release, also
21 parroted by Defendant Gaylor on the conference call, that Pivotal was “still in the early stages of
22 this high-growth market.” Defendant Mee further touted Pivotal’s “*industry-leading net*
23 *expansion rate* of 149%” and added that “we expect to see continued growth in these very large
24 accounts as they seek to modernize the applications that run their businesses.” (Emphasis added.)

25 37. Market analysts received the Company’s Fiscal 2020 guidance and the Individual
26 Defendants’ statements favorably. For example, on March 15, 2019, Morgan Stanley raised its
27 price target for Pivotal shares from \$24 to \$26, citing the Company’s much touted expansion
28

1 rates, billings, and revenue outlook pointing to “a large opportunity ahead.” Likewise, RBC
2 Capital raised its price target from \$25 to \$27 and remained constructive on Pivotal’s opportunity
3 and valuation, noting billings and revenue growth plus the subscription outlook. Also, on March
4 22, 2019, Wedbush analyst Ives was quoted as stating that Pivotal has “massive tailwinds” as
5 businesses continue the shift towards cloud-based software systems, and concluded that Pivotal
6 is on “a clear path to profitability over the next few years, which many investors are overlooking.”
7 Wedbush then placed a price target of \$26 per share on Pivotal stock and rated it as an
8 outperformer.
9

10 38. On March 29, 2019, after the market closed, Pivotal issued its annual report on
11 Form 10-K with the SEC for the fiscal year ended February 1, 2019 (the “2019 10-K”). The 2019
12 10-K touted the Company’s strategic services, Labs, stating in relevant part:
13

14 Labs software development experts deliver strategic services that transfer the
15 expertise for enterprises to accelerate their cloud-native transformation by
16 implementing modern agile development practices. With Labs, we help customers
17 co-develop new applications and transform existing ones while accelerating
18 software development, streamlining IT operations and ultimately driving
19 self-sustaining business transformation.

20 39. Defendants further touted its services business in the 2019 10-K, stating: “We
21 expect that over time subscription revenue will continue to become a larger percentage of our
22 total revenue as customers continue to adopt PCF and as our SI partner ecosystem ramps to deliver
23 strategic services directly to our customers.” In fact, one of the six “competitive strengths” the
24 Company claims to have is its “**Leading cloud-native platform with strategic services**. Our cloud-
25 native platform combines technology and agile development through our renowned Labs
26 processes, enabling cloud-native transformation within enterprises.” (Emphasis in original.)

27 40. The 2019 10-K was signed by Defendant Mee and contained signed certifications
28 pursuant to the Sarbanes-Oxley Act of 2002 by the Individual Defendants attesting to the accuracy

1 of financial reporting, the disclosure of any material changes to the Company’s internal controls
2 over financial reporting, and the disclosure of all fraud.

3 41. The statements referenced in ¶¶ __-__ were materially false and misleading
4 because Defendants made false and/or misleading statements, as well as failed to disclose material
5 adverse facts about the Company’s business, operational and compliance policies. Specifically,
6 Defendants made false and/or misleading statements and/or failed to disclose that: (i) Pivotal was
7 facing major problems with its sales execution and a complex technology landscape; (ii) the
8 foregoing headwinds resulted in deferred sales, lengthening sales cycles, and diminished growth
9 as its customers and the industry’s sentiment shifted away from Pivotal’s principal products
10 because the Company’s products were outdated, inadequate, and incompatible with the industry-
11 standard platform; and (iii) as a result, the Company’s public statements were materially false and
12 misleading at all relevant times.
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15 42. In addition, the Registration Statement contained untrue statements of material
16 facts and omitted to state material facts both required by governing regulations and necessary to
17 make the statements made therein not misleading. Foremost, the Registration Statement
18 contained merely a boilerplate warning to the effect that its sales cycles “*can* be long, [and]
19 unpredictable” (emphasis added), but failed to disclose that the Company was *already*
20 experiencing deferred sales, lengthening sales cycles, and consequently diminished growth as
21 customers and industry sentiment shifted away from Pivotal’s principal, yet outdated, PAS
22 offering because it was incompatible with the industry-standard Kubernetes platform.
23

24 43. At the same time, Pivotal’s alternate Kubernetes-compatible PKS offering was
25 severely limited and could not be applied to the full scope of large enterprise customers’ needs.
26 This disjointed product mix—on the one hand, an outdated primary PAS offering, incompatible
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1 with the industry standard; on the other, a limited secondary PKS add-on that, although
2 compatible with the industry standard, could only handle a narrow subset of enterprise customer's
3 needs—hamstrung the Pivotal sales force's ability to respond to customers who were demanding
4 a versatile, Kubemetes-compatible platform. It also rendered Pivotal's primary PAS offering
5 increasingly obsolete, for Pivotal would be forced to reengineer its flagship PAS product from
6 the ground up to be compatible with Kubemetes and thus competitive against large public cloud
7 providers like Amazon, Microsoft, and Google. These undisclosed negative events, trends, and
8 uncertainties rendered false and misleading Pivotal's reported financial and operational
9 statements incorporated in the Registration Statement.
10

11 44. Defendants were required to disclose this material information in the Registration
12 Statement for at least three independent reasons. First, Item 303 of SEC Regulation S-K, 17
13 C.F.R. §229.303 ("Item 303"), requires disclosure of any known events or uncertainties that at
14 the time of the IPO had caused or were reasonably likely to materially impact Pivotal's future
15 operating results and prospects. The undisclosed increasing competition, increasingly apparent
16 obsolescence of its primary offerings, competitive disadvantages hampering its sales force, and
17 consequently deferred sales, lengthening sales cycles, diminished growth, and other financial
18 metrics, were likely to (and in fact did) materially and adversely affect Pivotal 's future results
19 and prospects.
20

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

5 46. Third, Defendants' failure to disclose the then-increasing competition,
6 increasingly apparent obsolescence of its primary offerings, competitive disadvantages
7 hampering its sales force, and consequently deferred sales, lengthening sales cycles, diminished
8 growth, and other financial metrics, much less the likely material effects these omissions would
9 have on Pivotal's share price, rendered false and misleading the Registration Statement's many
10 references to known "risks" which "*if*" occurring "*may*" or "*could*" materially affect the
11 Company. (Emphasis added.) These "risks" had already materialized at the time of the IPO.
12

13 **The Truth Begins to Emerge**

14
15 47. On June 4, 2019, post-market, Pivotal issued a press release, reporting its financial
16 and operating results for the first quarter of 2020. Therein, Defendant Mee disclosed that "sales
17 execution and a complex technology landscape impacted the quarter," which resulted in the
18 Company revising its 2020 guidance, less than three months after it was first touted to the market.
19 Specifically, the Company provided the following revised guidance:
20

21 For the second quarter of fiscal 2020, Pivotal currently expects:

- 22 • Subscription revenue of \$131 to \$133 million
- 23 • Total revenue of \$185 to \$189 million
- 24 • Non-GAAP loss from operations of \$11 to \$9 million
- 25 • Non-GAAP net loss per share of 4¢ to 3¢, assuming weighted average
26 shares outstanding of approximately 274 million

27 For the full fiscal year 2020, Pivotal currently expects:

- 28 • Subscription revenue of \$530 to \$538 million
- Total revenue of \$756 to \$767 million
- Non-GAAP loss from operations of \$49 to \$44 million

- Non-GAAP net loss per share of 15¢ to 13¢, assuming weighted average shares outstanding of approximately 275 million

48. The Company held a conference call with analyst the following day on June 5, 2019. On that call, multiple analysts questioned Defendant Gaylor regarding the Company's lowered guidance:

Credit Suisse:

And just a follow-up for Cynthia. Hi, *Cynthia, just trying to reconcile the comments that you've made about slipped deals landing in 2Q. With your guidance for significant deceleration in deferred revenue and RPO, it would seem you're expecting the business gets worse.* How much of that is demand environment? How much is execution? And what's embedded in terms of close rates and duration in that guidance that you've given us on deferred's and RPO?

Defendant Gaylor:

I guess, in terms of the quarter itself we did have some deals that slipped in Q1 and as Rob said, the good news there is that we don't lose the deal. So they're very much still in play and a few of them have already closed in Q1 and we're expecting others to close in the coming quarters. Our sales cycle in places is elongating, I think partly due to a lot of the things that Rob talked about in terms of the complex tech landscape. And then from a sales execution perspective, I think you hit the nail on the head, these things tend to take time and we think we have kind of the right team and the right process in place to make it happen, but it takes time. And I think that's what you're seeing reflected in the balance sheet metrics, if you will.

* * *

Citi:

I want to observe that you took down your full year guidance for services by order of magnitude of \$30 million to \$35 million or so and that's been the primary portion of the drag on the guidance. And so a mark-up question from that perspective, you sell expensive pieces of software that take a while to implement. What are you seeing as far as propensity of your customers to go on and procuring, obviously expensive pieces of software that may take a little bit -- a bit of time to implement? Are you seeing a positive spend or maybe people taking a bit of a pause in doing these kinds of expensive and long term duration implementations?

Defendant Gaylor:

Yes. So I think it's a good question, and I think you're spot on. You probably as you noted, we guide to subscription revenue and we guide to total revenue and the strategy around services is to sell the amount of services that customers need to

1 really enable them on the platform and it's really about enabling them. I think in
2 Q1, specifically, *the slipped deals that we saw did play into kind of the services*
3 *revenue line and we would expect that to kind of continue as you look through*
4 *the year. We just had a lower level of attach to software.* I think the other thing is,
5 we are partnering with ATICE to kind of scale services outside of our four walls. I
6 would say that probably less played into the quarter, but it is a careful balance as
7 we operationalize it and scale. So I think that's a piece of the puzzle there as well.

8 Citi:

9 And just one follow-up; it seems like you've had a little bit of challenges as far as
10 adding new customers in the previous quarters. And just from the perspective of
11 timing, by you lowering this guidance, are you implying that you observed some
12 lightness on expansion deals and not only on new customer acquisitions? What
13 should we be reading with regards to your expectations for those two separate
14 drivers of top line growth for 2020?

15 Defendant Gaylor:

16 So I think from a customer perspective, I mean, we're focused on continuing to
17 grow our customer base. Rob talked a little bit about PKS and we have over 140
18 PKS customers. We're expecting that over time, there'll be more volume there both
19 in dollars, but also in counts, as the go-to-market strategy -- as the go-to-market
20 strategy there ramps. I think in terms of -- it's important for us to acquire new
21 customers, and we're very focused on that motion. I think part of that plays into
22 kind of some of the sales execution pieces and making sure we're building pipeline
23 through both top of the funnel activity and enablement. And those are two key
24 priorities for us in terms of continuing to build on the number of customers that we
25 have.

26 (Emphases added.)

27 49. Following the call, Wedbush analyst Ives called the quarter a "train wreck" and
28 characterized the Company's operating results as "disastrous," asserting that Pivotal's
"management team does not have a handle on the underlying issues negatively impacting its sales
cycles and the activity in the field which gives us concern that this quarter will be the start of
some 'dark days ahead' for Pivotal (and its investors)."

50. On this news, Pivotal's stock price fell \$7.65 per share, or over 40%, to close at
\$10.89 per share on June 5, 2019.

1 51. As a result of Defendants' wrongful acts and omissions, and the precipitous
2 decline in the market value of the Company's securities, Plaintiff and other Class members have
3 suffered significant losses and damages.

4 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

5 52. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil
6 Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or
7 otherwise acquired Pivotal securities (1) pursuant or traceable to the Registration Statement
8 issued in connection with the IPO; and/or (2) during the Class Period (the "Class"); and were
9 damaged upon the revelation of the alleged corrective disclosures. Excluded from the Class are
10 Defendants herein, the officers and directors of the Company, at all relevant times, members of
11 their immediate families and their legal representatives, heirs, successors or assigns and any entity
12 in which Defendants have or had a controlling interest.

13 53. The members of the Class are so numerous that joinder of all members is
14 impracticable. Throughout the Class Period, Pivotal securities were actively traded on the NYSE.
15 While the exact number of Class members is unknown to Plaintiff at this time and can be
16 ascertained only through appropriate discovery, Plaintiff believes that there are hundreds or
17 thousands of members in the proposed Class. Record owners and other members of the Class
18 may be identified from records maintained by Pivotal or its transfer agent and may be notified of
19 the pendency of this action by mail, using the form of notice similar to that customarily used in
20 securities class actions.
21

22 54. Plaintiff's claims are typical of the claims of the members of the Class as all
23 members of the Class are similarly affected by Defendants' wrongful conduct in violation of
24 federal law that is complained of herein.
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1 55. Plaintiff will fairly and adequately protect the interests of the members of the Class
2 and has retained counsel competent and experienced in class and securities litigation. Plaintiff
3 has no interests antagonistic to or in conflict with those of the Class.

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

- 7 • whether the federal securities laws were violated by Defendants' acts as alleged
8 herein;
- 9 • whether statements made by Defendants to the investing public during the Class
10 Period misrepresented material facts about the business, operations and
11 management of Pivotal;
- 12 • whether the Individual Defendants caused Pivotal to issue false and misleading
13 financial statements during the Class Period;
- 14 • whether Defendants acted knowingly or recklessly in issuing false and misleading
15 financial statements;
- 16 • whether the prices of Pivotal securities during the Class Period were artificially
17 inflated because of the Defendants' conduct complained of herein; and
- 18 • whether the members of the Class have sustained damages and, if so, what is the
19 proper measure of damages.

20 57. A class action is superior to all other available methods for the fair and efficient
21 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as
22 the damages suffered by individual Class members may be relatively small, the expense and
23 burden of individual litigation make it impossible for members of the Class to individually redress
24 the wrongs done to them. There will be no difficulty in the management of this action as a class
25 action.
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1 58. Plaintiff will rely, in part, upon the presumption of reliance established by the
2 fraud-on-the-market doctrine in that:

- 3 • Defendants made public misrepresentations or failed to disclose material facts during the
4 Class Period;
- 5 • the omissions and misrepresentations were material;
- 6 • Pivotal securities are traded in an efficient market;
- 7 • the Company's shares were liquid and traded with moderate to heavy volume during the
8 Class Period;
- 9 • the Company traded on the NYSE and was covered by multiple analysts;
- 10 • the misrepresentations and omissions alleged would tend to induce a reasonable investor
11 to misjudge the value of the Company's securities; and
- 12 • Plaintiff and members of the Class purchased, acquired and/or sold Pivotal securities
13 between the time the Defendants failed to disclose or misrepresented material facts and
14 the time the true facts were disclosed, without knowledge of the omitted or misrepresented
15 facts.

16 59. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a
17 presumption of reliance upon the integrity of the market.

18 60. Alternatively, Plaintiff and the members of the Class are entitled to the
19 presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State*
20 *of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants omitted material
21 information in their Class Period statements in violation of a duty to disclose such information,
22 as detailed above.

23 **COUNT I**

24 **(VIOLATIONS OF SECTION 10(B) OF THE EXCHANGE ACT AND RULE 10B-5**
25 **PROMULGATED THEREUNDER AGAINST ALL DEFENDANTS)**

26 61. Plaintiff repeats and re-alleges each and every allegation contained above as if
27 fully set forth herein.
28

1 62. This Count is asserted against Defendants and is based upon Section 10(b) of the
2 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

3 63. During the Class Period, Defendants engaged in a plan, scheme, conspiracy and
4 course of conduct, pursuant to which they knowingly or recklessly engaged in acts, transactions,
5 practices and courses of business which operated as a fraud and deceit upon Plaintiff and the other
6 members of the Class; made various untrue statements of material facts and omitted to state
7 material facts necessary in order to make the statements made, in light of the circumstances under
8 which they were made, not misleading; and employed devices, schemes and artifices to defraud
9 in connection with the purchase and sale of securities. Such scheme was intended to, and,
10 throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other
11 Class members, as alleged herein; (ii) artificially inflate and maintain the market price of Pivotal
12 securities; and (iii) cause Plaintiff and other members of the Class to purchase or otherwise
13 acquire Pivotal securities and options at artificially inflated prices. In furtherance of this unlawful
14 scheme, plan and course of conduct, Defendants, and each of them, took the actions set forth
15 herein.
16

17
18 64. Pursuant to the above plan, scheme, conspiracy and course of conduct, each of the
19 Defendants participated directly or indirectly in the preparation and/or issuance of the quarterly
20 and annual reports, SEC filings, press releases and other statements and documents described
21 above, including statements made to securities analysts and the media that were designed to
22 influence the market for Pivotal securities. Such reports, filings, releases and statements were
23 materially false and misleading in that they failed to disclose material adverse information and
24 misrepresented the truth about Pivotal's finances and business prospects.
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1 65. By virtue of their positions at Pivotal, Defendants had actual knowledge of the
2 materially false and misleading statements and material omissions alleged herein and intended
3 thereby to deceive Plaintiff and the other members of the Class, or, in the alternative, Defendants
4 acted with reckless disregard for the truth in that they failed or refused to ascertain and disclose
5 such facts as would reveal the materially false and misleading nature of the statements made,
6 although such facts were readily available to Defendants. Said acts and omissions of Defendants
7 were committed willfully or with reckless disregard for the truth. In addition, each Defendant
8 knew or recklessly disregarded that material facts were being misrepresented or omitted as
9 described above.
10

11 66. Information showing that Defendants acted knowingly or with reckless disregard
12 for the truth is peculiarly within Defendants' knowledge and control. As the senior managers
13 and/or directors of Pivotal, the Individual Defendants had knowledge of the details of Pivotal's
14 internal affairs.
15

16 67. The Individual Defendants are liable both directly and indirectly for the wrongs
17 complained of herein. Because of their positions of control and authority, the Individual
18 Defendants were able to and did, directly or indirectly, control the content of the statements of
19 Pivotal. As officers and/or directors of a publicly-held company, the Individual Defendants had
20 a duty to disseminate timely, accurate, and truthful information with respect to Pivotal's
21 businesses, operations, future financial condition and future prospects. As a result of the
22 dissemination of the aforementioned false and misleading reports, releases and public statements,
23 the market price of Pivotal securities was artificially inflated throughout the Class Period. In
24 ignorance of the adverse facts concerning Pivotal's business and financial condition which were
25 concealed by Defendants, Plaintiff and the other members of the Class purchased or otherwise
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1 acquired Pivotal securities at artificially inflated prices and relied upon the price of the securities,
2 the integrity of the market for the securities and/or upon statements disseminated by Defendants,
3 and were damaged thereby.

4 68. During the Class Period, Pivotal securities were traded on an active and efficient
5 market. Plaintiff and the other members of the Class, relying on the materially false and
6 misleading statements described herein, which the Defendants made, issued or caused to be
7 disseminated, or relying upon the integrity of the market, purchased or otherwise acquired shares
8 of Pivotal securities at prices artificially inflated by Defendants' wrongful conduct. Had Plaintiff
9 and the other members of the Class known the truth, they would not have purchased or otherwise
10 acquired said securities, or would not have purchased or otherwise acquired them at the inflated
11 prices that were paid. At the time of the purchases and/or acquisitions by Plaintiff and the Class,
12 the true value of Pivotal securities was substantially lower than the prices paid by Plaintiff and
13 the other members of the Class. The market price of Pivotal securities declined sharply upon
14 public disclosure of the facts alleged herein to the injury of Plaintiff and Class members.
15

16
17 69. By reason of the conduct alleged herein, Defendants knowingly or recklessly,
18 directly or indirectly, have violated Section 10(b) of the Exchange Act and Rule 10b-5
19 promulgated thereunder.
20

21 70. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and
22 the other members of the Class suffered damages in connection with their respective purchases,
23 acquisitions and sales of the Company's securities during the Class Period, upon the disclosure
24 that the Company had been disseminating misrepresented financial statements to the investing
25 public.
26

27 **COUNT II**

**(VIOLATIONS OF SECTION 20(A) OF THE EXCHANGE ACT AGAINST THE
INDIVIDUAL DEFENDANTS)**

1
2
3 71. Plaintiff repeats and re-alleges each and every allegation contained in the
4 foregoing paragraphs as if fully set forth herein.

5 72. During the Class Period, the Individual Defendants participated in the operation
6 and management of Pivotal, and conducted and participated, directly and indirectly, in the conduct
7 of Pivotal’s business affairs. Because of their senior positions, they knew the adverse non-public
8 information about Pivotal’s misstatement of income and expenses and false financial statements.

9
10 73. As officers and/or directors of a publicly owned company, the Individual
11 Defendants had a duty to disseminate accurate and truthful information with respect to Pivotal’s
12 financial condition and results of operations, and to correct promptly any public statements issued
13 by Pivotal which had become materially false or misleading.

14
15 74. Because of their positions of control and authority as senior officers, the Individual
16 Defendants were able to, and did, control the contents of the various reports, press releases and
17 public filings which Pivotal disseminated in the marketplace during the Class Period concerning
18 Pivotal’s results of operations. Throughout the Class Period, the Individual Defendants exercised
19 their power and authority to cause Pivotal to engage in the wrongful acts complained of herein.
20 The Individual Defendants therefore, were “controlling persons” of Pivotal within the meaning
21 of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct
22 alleged which artificially inflated the market price of Pivotal securities.
23

24 75. Each of the Individual Defendants, therefore, acted as a controlling person of
25 Pivotal. By reason of their senior management positions and/or being directors of Pivotal, each
26 of the Individual Defendants had the power to direct the actions of, and exercised the same to
27 cause, Pivotal to engage in the unlawful acts and conduct complained of herein. Each of the
28

1 Individual Defendants exercised control over the general operations of Pivotal and possessed the
2 power to control the specific activities which comprise the primary violations about which
3 Plaintiff and the other members of the Class complain.

4 76. By reason of the above conduct, the Individual Defendants are liable pursuant to
5 Section 20(a) of the Exchange Act for the violations committed by Pivotal.
6

7 **COUNT III**

8 **(Violations of Section 11 of the Securities Act Against All Defendants)**

9 77. Plaintiff incorporates by reference and re-alleges each and every allegation
10 contained above, as though fully set forth herein.
11

12 78. This Count is brought pursuant to Section 11 of the Securities Act, 15 U.S.C. §
13 77k, on behalf of the Class, against all Defendants.

14 79. This Cause of Action does not sound in fraud. Plaintiff does not allege that
15 Defendants had scienter or fraudulent intent, which are not elements of the Section 11 claim.
16

17 80. The Registration Statement was inaccurate and misleading, contained untrue
18 statements of material facts, omitted to state other facts necessary in order to make the statements
19 made not misleading, and omitted to state material facts required to be stated therein.
20

21 81. Defendant Pivotal Energy is the registrant and issuer of the stock sold in the
22 Offering. As issuer of the stock, the Company is strictly liable to plaintiff and the Class for the
23 misstatements and omissions in the Registration Statement.

24 82. The Defendants named herein were responsible for the contents and dissemination
25 of the Registration Statement.
26
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1 83. None of the Defendants named herein made a reasonable investigation or
2 possessed reasonable grounds for the belief that the statements contained in the Registration
3 Statement were true and without omissions of any material facts and were not misleading.

4 84. By reason of the conduct alleged herein, each Defendant violated, and/or
5 controlled a person who violated, Section 11 of the Securities Act.
6

7 85. Plaintiff acquired Pivotal shares pursuant to the Registration Statement.

8 86. Plaintiff and the Class have sustained damages. The value of Pivotal common
9 stock has declined substantially subsequent and due to Defendants' violations.
10

11 87. At the time of their purchases of Pivotal stock, plaintiff and the other members of
12 the Class were without knowledge of the facts concerning the wrongful conduct alleged herein.
13 Less than one year has elapsed from the time that plaintiff discovered or reasonably could have
14 discovered the facts upon which this Complaint is based to the time that plaintiff filed this
15 Complaint. Less than three years have elapsed between the time that the securities upon which
16 this Cause of Action is brought were offered to the public and the time Plaintiff filed this
17 Complaint.
18 Complaint.

19 88. By virtue of the foregoing, plaintiff and the other members of the Class are entitled
20 to damages under Section 11 of the Securities Act from all of the Defendants, and each of them,
21 jointly and severally.
22

23
24 **COUNT IV**

25 **(Violations of Section 15 of the Securities Act Against The Individual Defendants)**

26 89. Plaintiff incorporates by reference and re-alleges each and every allegation
27 contained above, as though fully set forth herein.
28

1 90. This Count is brought pursuant to Section 15 of the Securities Act against
2 Defendant Pivotal and the Individual Defendants.

3 91. The Individual Defendants were controlling persons of Pivotal by virtue of their
4 positions as directors or senior officers of Pivotal. The Individual Defendants each had a series
5 of direct or indirect business or personal relationships with other directors or officers or major
6 stockholders of Pivotal. The Individual Defendants controlled the Company and all of Pivotal's
7 employees.
8

9 92. Defendant Pivotal and the Individual Defendants were each a culpable participant
10 in the violations of Section 11 of the Securities Act alleged in Count I above, based on their having
11 signed, or authorized the signing of, the Registration Statement and having otherwise participated
12 in the process which allowed the Offering to be successfully completed.
13

14 93. By reason of such wrongful conduct, Defendant Pivotal and the Individual
15 Defendants are liable pursuant to Section 15 of the Securities Act. As a direct and proximate
16 result of said wrongful conduct, plaintiff and the other members of the Class suffered damages in
17 connection with their purchase or acquisition of Pivotal stock.
18

19
20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiff demands judgment against Defendants as follows:
22

23 A. Determining that the instant action may be maintained as a class action under Rule
24 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class representative;

25 B. Requiring Defendants to pay damages sustained by Plaintiff and the Class by
26 reason of the acts and transactions alleged herein;
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C. Awarding Plaintiff and the other members of the Class prejudgment and post-judgment interest, as well as their reasonable attorneys' fees, expert fees and other costs; and

D. Awarding such other and further relief as this Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury.