

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

PIVOTAL SOFTWARE, INC.; ROBERT MEE; CYNTHIA GAYLOR;
PAUL MARITZ; continued on next page

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

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

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): San Francisco Superior Court
400 McAllister Street, San Francisco, CA 94102

CASE NUMBER:
(Número del Caso)

CGC-19-576750

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

DATE: JUN 14 2019
(Fecha)

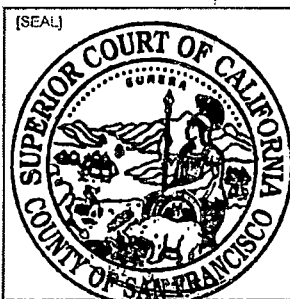
Clerk of the Court

Clerk, by
(Secretario)

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NEYL WEBB



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

SHORT TITLE:

Hill v. Pivotal Software Inc.

CASE NUMBER:

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
→ If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff ☒ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

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

1 JOHN T. JASNOCH (CA 281605)
2 SCOTT+SCOTT ATTORNEYS AT LAW LLP
3 600 W. Broadway, Suite 3300
4 San Diego, CA 92101
5 Telephone: 619-233-4565
6 Facsimile: 619-233-0508
7 jjasnoch@scott-scott.com

8
9 *Counsel for Plaintiff Jason Hill*

10 [Additional counsel listed on signature page.]

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

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

Plaintiff,

vs.

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

Defendants.

FILED

San Francisco County Superior Court

JUN 14 2019

CLERK OF THE COURT

BY: 

Deputy Clerk

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

CLASS ACTION

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

DEMAND FOR JURY TRIAL

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

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

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

9 JURISDICTION AND VENUE

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

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

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

18 PARTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

49. Analysts were quick to respond, calling Pivotal’s quarter a “train wreck,” characterizing the Company’s operating results as “disastrous,” and 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.”

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

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

CLASS ACTION ALLEGATIONS

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

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

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

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

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

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

- 13 (a) whether Defendants violated the Securities Act;
- 14 (b) whether the Registration Statement was negligently prepared and contained
15 inaccurate statements of material facts and omitted material information required to be stated
16 therein; and
- 17 (c) to what extent the members of the Class have sustained damages and the proper
18 measure of damages.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **PRAYER FOR RELIEF**

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

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

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

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

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

13 **JURY DEMAND**

14 Plaintiff demands a trial by jury.

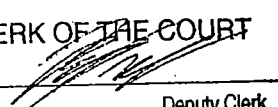
15 DATED: June 14, 2019

16
17 
18 John P. Jasnoch (CA 281605)
19 **SCOTT+SCOTT ATTORNEYS AT LAW LLP**
20 600 W. Broadway, Suite 3300
21 San Diego, CA 92101
22 Telephone: 619/233-4565
23 619/233-0508 (fax)
24 jjasnoch@scott-scott.com

25 *Counsel for Plaintiff Jason Hill*

26 Peretz Bronstein
27 **BRONSTEIN, GEWIRTZ & GROSSMAN, LLC**
28 60 East 42nd Street, Suite 4600
New York, NY 10165
Telephone: 212/697-6484
212/697-7296 (fax)
peretz@bgandg.com

Additional Counsel for Plaintiff Jason Hill

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): John T. Jasnoch (CA 281605) Scott + Scott Attorneys at Law LLP 600 W. Broadway, Suite 3300 San Diego, CA 92101 TELEPHONE NO.: 619/233-4565 FAX NO.: 619/233-0508 ATTORNEY FOR (Name): Jason Hill		FOR COURT USE ONLY <h1 style="margin: 0;">FILED</h1> San Francisco County Superior Court JUN 14 2019 CLERK OF THE COURT BY:  Deputy Clerk	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: MAILING ADDRESS: 400 McAllister Street, Room 103 CITY AND ZIP CODE: San Francisco BRANCH NAME: Civic Center Courthouse		CASE NAME: Jason Hill et al. vs. Pivotal Software, Inc., et al.	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
		CASE NUMBER: CGC-19-576750 JUDGE: DEPT:	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WVD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WVD (23) Non-PI/PD/WVD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WVD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input checked="" type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a. <input checked="" type="checkbox"/> Large number of separately represented parties
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | d. <input checked="" type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): §11 of the Securities Act, 15 U.S.C. §77k
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: June 14, 2019

John T. Jasnoch

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto).

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-PI/PD/WD Tort (35)
Employment
Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (not unlawful detainer or wrongful eviction)
Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)
Unlawful Detainer
Commercial (31)
Residential (32)
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)
Judicial Review

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Sister State Judgment
Administrative Agency Award (not unpaid taxes)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (not specified above) (42)
Declaratory Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (non-tort/non-complex)
Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition