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Case No. 2021-0808-KSJM

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE XL FLEET (PIVOTAL) STOCKHOLDER LITIGATION PUBLIC REDACTED VERSION	CONSOLIDATED C.A. NO. 2021-0808-KSJM DUE JULY 18, 2022

VERIFIED SECOND AMENDED CONSOLIDATED CLASS ACTION COMPLAINT

Plaintiffs Cody Laidlaw and Irfan Janmohamed ("Plaintiffs"), on behalf of themselves and similarly situated current and former stockholders of Pivotal Investment Corporation II ("Pivotal II" or the "Company"), bring this Verified Second Amended Consolidated Class Action Complaint asserting: (i) breach of fiduciary duty claims stemming from the Company's merger (the "Merger") with XL Hybrids, Inc. ("Legacy XL") against (a) Jonathan J. Ledecky ("Ledecky"), Kevin Griffin ("Griffin"), James H.R. Brady ("Brady"), Sarah Sclarsic ("Sclarsic"), Efrat Epstein ("Epstein"), and Katrina Adams ("Adams") in their capacities as members of the Company's board of directors (the "Board") and/or Company officers; (b) Pivotal Investment Holdings II LLC (the "Sponsor"), Ledecky, Griffin, Brady, Sclarsic, Epstein and Adams in their capacities as the Company's controlling stockholders; (ii) aiding and abetting breaches of fiduciary duty by Thomas J. Hynes III ("Hynes") and Dimitri N. Kazarinoff ("Kazarinoff"); (iii) an unjust enrichment claim against the aforementioned defendants; and (iv) a breach of contract claim against XL Fleet Corp. ("XL Fleet"). The allegations are based on Plaintiffs' knowledge as to themselves, and on information and belief, including counsel's investigation and review of publicly available information, and a review of documents produced by the Company in response to a books and records inspection conducted pursuant to 8 Del. C. § 220.

NATURE OF THE ACTION

1. This class action arises from the Merger between Legacy XL and Pivotal II, now renamed XL Fleet, a Delaware corporation formed as a special purpose acquisition company ("SPAC"). Here, Defendants used Pivotal II to enrich themselves by using funds held in trust for the benefit of the public stockholders to consummate a value-destroying Merger with Legacy XL without disclosing information that was material to the stockholders' decision to allow their funds to be invested in the Merger. As a result of Defendants' actions in pursuing the Merger without disclosing material facts to stockholders, the stockholders sustained substantial financial losses.

2. The Merger closed on December 21, 2020. Just ten weeks later, Muddy Waters Research ("Muddy Waters") issued a report, revealing that the Proxy contained false and misleading information, while also omitting material information about XL Fleet's value. That news caused the Company's stock's price to begin a steep downward decline from trading at nearly $17 per share to less than

$2 per share a year later, when XL Fleet disclosed that it was under investigation by the Securities and Exchange Commission ("SEC"). As a result of the stock price decline, Pivotal II's public stockholders have lost nearly all the value of their investment. The stockholders' losses were the result of Defendants causing Pivotal II to enter into a value-decreasing merger without giving its stockholders information they needed to avoid that fate by exercising a redemption right provided for in Pivotal II's certificate to protect them from just such a situation.

3. Defendants' actions in connection with the Merger are subject to entire fairness review. *See In re MultiPlan Corp. Stockholders Litigation*, C.A. No. 2021-0300-LWW ("*Multiplan*"). In *Multiplan*, the Court held that the "entire fairness standard of review applies due to inherent conflicts between the SPAC's fiduciaries and public stockholders in the context of a value-decreasing transaction," where "stockholders were allegedly robbed of their right to make a fully informed decision about whether to redeem their shares." The same conflicts exist here, and, like the defendants in *Multiplan*, the Defendants here did not provide full and complete information to Pivotal II's public stockholders to allow them to exercise their right to redemption on a fully informed basis.

4. Like the sponsor in *Multiplan* and consistent with the general practice among SPACs, Pivotal II issued Class B shares ("Founder Shares") to the Sponsor

in an amount that would equal 20% of Pivotal II's post-initial public offering ("IPO") equity for the nominal sum of $25,000. This came to 5,750,000 shares at a price of approximately $.004 per share. In addition, the Sponsor invested $6.35 million in warrants to cover the IPO underwriting fee and working capital.

5. Also consistent with general SPAC practice, Founder Shares differed from the Class A shares that Pivotal II would issue to public stockholders in two important respects. First, Pivotal II's certificate provided that, if it did not consummate a merger within 18 months of its IPO, it would have to liquidate. If Pivotal II were to liquidate, the public stockholders of Class A shares would receive, *pro rata*, all proceeds of the IPO plus accrued interest. The IPO proceeds were put in trust for the benefit of the stockholders to ensure they would be available for this purpose. This would amount to approximately $10.09 per share. Second, each public stockholder of Class A shares had a right to redeem his or her shares from the trust for the same $10.09 per share rather than participate in a proposed merger. Founder Shares and the warrants that the Sponsor purchased, by contrast, would have value only if a merger occurred – any merger. Those shares would be worthless in a liquidation, and they did not provide for redemption rights.

6. Ledecky and Griffin owned and controlled the Sponsor. Both were affiliates of managing members of the Sponsor, and Griffin served as the Sponsor's

CEO and Chief Investment Officer. The Sponsor transferred some of its Founder Shares to Brady, Sclarsic, Epstein and Adams, making them part of an "initial stockholder" block that Pivotal II acknowledged in its IPO Prospectus exercised control over Pivotal II. Specifically, the IPO Prospectus states that "because of their ownership position," as well as the existence of a staggered board and the failure to hold an annual meeting at which the public stockholders could elect even a minority of Pivotal II's directors, the "initial stockholders will continue to exert control at least until the completion of our business combination."

7. In addition, the Sponsor, along with Ledecky and Griffin as affiliates of its two managing members, were by themselves controlling stockholders of Pivotal II through their ability to actually control and dominate the business affairs of the SPAC. They cemented their control through: (a) the appointment of Pivotal II officers and directors who were already working for other SPACs with Ledecky and Griffin; (b) the use of a staggered board, which precluded a change of control during Pivotal II's 18-month lifespan; (c) stating in the IPO Prospectus that in any event Pivotal II might not hold an annual meeting of stockholders to elect new directors prior to the Merger and then actually failing to hold such a meeting, (d) a compensation arrangement (including the granting of Founder Shares) for Pivotal II's purportedly independent directors that aligned their interests with those of

Ledecky, Griffin, and the Sponsor as controllers, rather than with the interests of public stockholders; (e) the provision of a free warrant to public stockholders that assured that stockholders—who could "elect to redeem their Public Shares irrespective of whether they vote for or against the proposed transaction"—would vote in favor of the Merger, rendering the vote illusory and assuring that the Sponsor, Ledecky and Griffin's favored transaction was *a fait accompli*; and (f) as acknowledged in the IPO Prospectus, granting the Company's initial stockholders a block of stock sufficient to allow them to "effectively influence the outcome of all other matters requiring approval by our stockholders, including amendments to our amended and restated certificate of incorporation and approval of significant corporate transactions including our initial business combination."

8. On July 16, 2019, Pivotal II completed its IPO of units, raising $230 million from public investors. Those units, priced at $10.00, consisted of one Class A share and one third of one warrant to purchase one Class A share at an exercise price of $11.50. After the IPO occurred, the 18-month clock began ticking for the Sponsor to make an acquisition or lose its investment.

9. Legacy XL was founded in 2009 by Thomas J. Hynes, an old family friend of Ledecky's. Legacy XL was, and through the Merger XL Fleet is, a provider of electrification solutions for commercial vehicles in North America, including the

provision of charging stations to enable customers to plug in their electrified vehicles. In 2020, Legacy XL relied on a small business loan to fund its operations and was in need of cash to continue its operations in the near term. As such, Legacy XL was attempting to obtain funds either through a SPAC or a Series E round of fund raising.

10. On July 24, 2020, Hynes reached out to his friend Ledecky to propose a business combination. Seeing an opportunity for the SPAC and Legacy XL management to help each other out, Ledecky and his team purportedly began discussing a deal for Pivotal II to acquire Legacy XL that same day. Just three days later, Pivotal II sent over a letter of intent to acquire Legacy XL. The following day, per the request of Legacy XL's Hynes and Kazarinoff, Pivotal II sent over a revised letter of intent that valued Legacy XL at $1 billion. In its prior round of financing, in which Hynes and his father invested as preferred stockholders, Legacy XL had been valued at $73 million.

11. Although Pivotal II's conflicted Board claimed to have "conducted significant due diligence on [Legacy] XL" prior to the Merger, that representation is either false because it did not occur, or the Board and Pivotal II's management consciously failed to document such efforts in order to avoid undermining the Proxy's false representation that XL Fleet was purportedly worth $1 billion.

Specifically, in response to a demand for books and records pursuant to 8 Del. C. § 220, the Company was unable to produce any documents *at all* evidencing the Board conducting *any* due diligence or independent valuation of Legacy XL's business.

12. The Board did not form a special committee of independent directors, nor could it in light of the conflicts that each director faced. Even the nominally independent directors largely took a back seat, allowing Ledecky and Griffin to lead the negotiations with Hynes and Legacy XL's CEO, Kazarinoff. The Board also did not obtain a fairness opinion or an independent valuation conducted by a financial advisor. Although the Proxy repeatedly refers to Pivotal II's "financial advisors," the Proxy does not identify any such advisor, and the 220 production does not indicate that the Board, in fact, retained any outside financial advisor at all.

13. As holders of Founder Shares, the members of the Board were incentivized to approve a proxy statement that misinformed stockholders as to material aspects of the Merger. They did not want stockholders to redeem their shares. To the extent Pivotal II stockholders did so, the shares that the Board and the Sponsor held would decline in value. This is true for two reasons. First, the post-merger company would have less liquidity; and second, redemptions would increase the dilution of unredeemed shares, including those held by Defendants. Consistent with their incentives, members of the Board breached their duties of

loyalty and candor by misleading Pivotal II stockholders with respect to the value of Pivotal II shares and the value of Legacy XL. Through this breach, the Board deprived Pivotal II stockholders of material information that they would need to decide whether to redeem their shares or to invest in the Merger, along with whether to vote in favor of the Merger.

14. As explained below, Pivotal II misled its stockholders with respect to the value of the merged company. *First*, the Proxy omitted that as of September 15, 2020—a mere two days before the Merger Agreement was signed—Legacy XL's board passed a resolution stating that "the fair market value of the Company's common stock…is not greater than $4.75 per share" based on "(i) a draft independent third party valuation as of August 5, 2020, prepared by Timan LLC…and (ii) the [Legacy XL] Board's assessment as of [September 15, 2020]" that there had not been any material events as of that date that "would cause an increase in such valuation." Notably, a valuation of Legacy XL's common stock at $4.75 per share implies an equity value of approximately $55 million – or nearly $945,000,000 less than its purported $1 billion valuation in the Proxy.

15. *Second*, the Proxy failed to disclose that the Merger violated a provision of Pivotal II's charter providing that the company was not allowed to merge with a

company worth less than 80% of the trust assets, or $178.4 million, which Legacy XL certainly was based on the Legacy XL board's $4.75 per share valuation.

16. *Third*, the Proxy failed to inform stockholders of the value of the shares they would contribute to the Merger. Pivotal II's only asset was cash, so the value of its shares was the net cash underlying each share. The Proxy failed to disclose this figure. Net cash per share was crucial to the public stockholders' decision to redeem their shares for $10.09 or to invest in the Merger because it would have informed stockholders regarding the value they could expect to hold in the combined company if they determined to participate in the Merger.

17. *Fourth*, the Proxy omitted key facts regarding the nature and success of Legacy XL's business, and falsely represented that the target company was worth $1 billion. On March 3, 2021, Muddy Waters issued a report revealing facts that exposed the Proxy as false and misleading, as well as lacking material information necessary for the Pivotal II stockholders to consider when deciding whether to exercise their redemption rights and/or vote in favor of the Merger. Specifically, the Proxy omitted at least four categories of material information:

- First, the Proxy omitted all information concerning Legacy XL's valuation during prior rounds of fund raising, including that Legacy XL "reportedly raised its most recent equity funding round [in 2017 and 2018] at a ~$73 million valuation, a fraction of its SPAC valuation;"

- Second, the Proxy misleadingly stated that the company claimed returns of 25% savings or more on investments for customers using Legacy XL's hybrid systems, when in reality, those returns are far lower than what the Company represented (and are potentially negative), as the miles-per-gallon savings are typically between 5% and 10%;[1]

- Third, the Proxy did not disclose that Legacy XL lost its California Air Resources Board approval in 2019 and failed to regain approval in 2020, and was unlikely to be approved in 2021, and thus could not sell in California; and

- Fourth and finally, the Proxy was misleading with respect to Legacy XL's supposed $1 billion valuation that was based in part on a $220 million 12-month sales pipeline. Of this supposed $220 million sales in the pipeline, the Proxy failed to disclose that Legacy XL had just over $80 million of that amount committed. In addition, Legacy XL's revenue projections were unsupported because the company exaggerated its customer base by touting inactive customers, while struggling to retain customers due to regulatory hurdles and the poor performance of its hybrid systems.[2]

18. The materiality of the Proxy's faulty disclosures concerning Legacy XL's business has been affirmed by the United States District Court for the Southern District of New York in *In re XL Fleet Corp. Securities Litigation*. There, Plaintiffs alleged, based on the same Muddy Waters report referenced herein, that certain statements that XL Fleet had made concerning its sales pipeline and revenue projections were materially false and made with scienter. In an opinion dated February 17, 2022 denying defendants' motions to dismiss, the Southern District of

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[1] *Id.* at 15-24.
[2] *Id.* at 9-13.

New York explicitly held that the Muddy Waters report bore certain "indicia of reliability," explaining as follows:

> [T]he allegations based on the confidential sources are corroborated by the Muddy Waters report, which is proper for consideration at this stage of the litigation because it is appended to the Complaint and has indicia of reliability. Those indicia include claims in the report that XL Fleet admitted were true or did not deny. For example, XL Fleet admitted the report's disclosure that XL Fleet had lost a certain regulatory approval in California and consequently could not sell in that market; yet according to the Complaint, XL Fleet continued to record California sales opportunities. Another example is that in its response to the report, XL Fleet did not deny that its pipeline numbers were falsely exaggerated. The Muddy Waters report apparently was deemed credible by the market as reflected in the significant drop in XL Fleet's share price on the day the report was published as well as the next trading day.[[3]]

19. The Southern District of New York further found that "the Complaint's allegations that Pivotal directors, including Ledecky, Griffin and Brady, were substantially involved in conducting due diligence into XL Fleet, including its financial projections, supports a finding of conscious misbehavior or recklessness as to those three individuals."[4]

20. Further demonstrating that the Proxy was false and misleading, on March 1, 2022 –one year after Muddy Waters revealed the truth – XL Fleet

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[3] *In re XL Fleet Corp. Sec. Litig.*, 2022 WL 493629, at *5 (S.D.N.Y. Feb. 17, 2022).
[4] *Id*. at *6.

announced that it had received a subpoena from the SEC concerning "the Company's business combination with Legacy XL, Inc., and the related PIPE financing, the Company's sales pipeline and revenue projections, purchase orders, suppliers, CARB approvals, fuel economy from our Power Drive products, customer complaints, and disclosures and other matters in connection with the foregoing." The areas of investigation disclosed in the SEC's subpoena appear to track the misstatements and omissions identified by Muddy Waters. After the disclosure of the SEC subpoena, XL Fleet's stock has not traded above $1.99 per share.

21. In sum, the Board failed to disclose to Pivotal II stockholders: (a) Legacy XL's recent $4.75 per share valuation (adding up to $55 million in equity) conducted by an independent third party, (b) the fact that this valuation caused the Merger to violate Pivotal II's charter, (c) how little net cash there was underlying Pivotal II's shares, (d) how the gap between that amount of net cash and the $10 valuation of its shares in the Merger would affect the post-merger value of their shares, and (e) material information concerning the inflated value and business prospects of Legacy XL. As a result, essentially no shares were redeemed, or voted against the Merger.

22. By choosing to invest in the Merger, rather than redeem their shares, Pivotal II stockholders saw their shares decline in price to a low of $5.41 after

Muddy Waters revealed Defendants' deception—a loss in value exceeding $105 million. Moreover, after XL Fleet disclosed receipt of a subpoena from the SEC focusing on many of the same issues identified by Muddy Waters, XL Fleet stock's price has not closed above $1.99 per share. In fact, XL Fleet shares closed at $1.15 as of June 30, 2022, well below the redemption price of $10.09.

23. Although an abysmal deal for Pivotal II's Class A stockholders, the Merger provided a financial windfall for the holders of the Founder Shares. Even with XL Fleet's loss of share value, the Founder Shares—which were "purchased" for virtually nothing—were worth more than $6,612,500 as of June 30, 2022. Likewise, Hynes and his father were similarly unjustly enriched by converting their Legacy XL Series D preferred stock into XL Fleet Class A common stock as a result of the Merger. In this regard, Hynes more than doubled his original investment even with XL Fleet's stock trading at $1.15 per share as of June 30, 2022, while his father, whose stock was not subject to any lock-up restrictions, potentially made an even larger return on his shares by cashing out by no later than when Muddy Waters exposed the truth, when XL Fleet stock was still trading above $10.00 per share.

24. Due to the conflicts of interest on the part of the Board and the Sponsor, which drove the Board's flawed process in considering the Merger and led to the issuance of a false and misleading Proxy, the Merger requires judicial review for

entire fairness as outlined by the court in *Multiplan*, and Defendants cannot meet that test.

PARTIES AND RELEVANT NON-PARTIES

I. PLAINTIFFS

25. Plaintiff Cody Laidlaw has consistently held, and has been the beneficial owner of, Pivotal II stock at all relevant times through the present date.

26. Plaintiff Irfan Janmohamed has consistently held, and has been the beneficial owner of, Pivotal II stock at all relevant times through the present date.

II. DEFENDANTS

27. Defendant XL Fleet Corp., formerly known as Pivotal Investment Corporation II (as defined above, "Pivotal II" or the "Company"), was a SPAC formed for the purpose of effecting a merger, share exchange, asset acquisition, share purchase, reorganization or similar business combination with one or more businesses or entities. Pivotal II was founded in March 2019, and the Company closed its $230 million IPO in July 2019. On December 21, 2020 (the "Closing Date"), Pivotal II merged with Legacy XL, with Pivotal II as the surviving entity but taking on the "XL Fleet" trade name. The post-Merger company's shares trade on the Nasdaq under the ticker "XL." XL Fleet provides systems that convert combustion-engine commercial vehicles into electrified hybrids.

28. Defendant Ledecky was the Chairman and Chief Executive Officer ("CEO") of Pivotal II. Ledecky remains on XL Fleet's post-Merger Board. Ledecky is the Chairman of Ironbound Partners Fund, LLC, which was one of the Sponsor's two managing members. Ledecky is a prolific SPAC founder, having launched numerous such entities and raised more than $1 billion dollars since 2005. Ledecky was the Chairman and CEO of the first SPAC in his "Pivotal" line, Pivotal Acquisition Corp. ("Pivotal I"), until that Company's de-SPAC merger. Ledecky is also currently the Chairman of Pivotal Investment Corporation III ("Pivotal III"). Ledecky is also President and Chief Operating Officer of Northern Star Investment Corp. II, another SPAC. Ledecky is further listed as part of Northern Star Investment Corp. II and IV's websites as part of those funds' "management" teams. Ledecky had a decades-long close relationship with Hynes' family. Ledecky currently holds 9,862,635 shares of Class A stock.

29. Defendant Griffin served as a director of Pivotal II prior to the Merger, and remains on the post-Merger XL Fleet Board. Griffin, at all relevant times, was the CEO of MGG Investment Group, LP, an affiliate of Pivotal Spac Funding II LLC (the Sponsor's other managing member, where Griffin was the CEO and a director). Similarly, Griffin was at all relevant times the CEO and Chief Investment Officer of MGG Special Opportunities Fund LP, which purchased Pivotal II shares in the PIPE

Transaction (defined below) and is also an affiliate of Pivotal Spac Funding II LLC. Griffin was also a director of Pivotal I and remains in that role following Pivotal I's de-SPAC merger, and is the CEO, President, and a director of Pivotal III. Griffin currently holds 10,492,635 shares of Class A stock.

30. Defendant Brady served as Chief Financial Officer ("CFO") of Pivotal II prior to the Merger. He was also a director of Pivotal I until its de-SPAC merger, and is the CFO of Pivotal III. Brady received 100,000 Founder Shares from the Sponsor prior to the IPO. In addition, he received 100,000 founder shares from both Pivotal I and Pivotal III. Brady further serves as CFO of Northern Star Investment Corp. II. Brady currently holds 320,000 shares of Class A stock.

31. Defendant Sclarsic served as a member of the Board prior to the Merger, and remains on the post-Merger XL Fleet Board. She is a current director of Pivotal III. Sclarsic received 50,000 Founder Shares from the Sponsor prior to the IPO, which converted to 50,000 shares of XL Fleet Class A common stock upon the Merger's consummation. Currently, Sclarsic owns 159,992 shares of XL Fleet stock. Sclarsic also serves as a director for Pivotal III. In addition, on the websites of Northern Star Investment Corp. II, Northern Star Investment Corp. III, and Northern Star Investment Corp. IV, Sclarsic is listed as part of those funds' management teams.

32. Defendant Epstein served as a member of the Board prior to the Merger. Epstein was also a director of Pivotal I until its de-SPAC merger, and received 50,000 founder shares from that SPAC. Epstein received 50,000 Founder Shares from the Sponsor prior to the IPO which converted to 50,000 shares of XL Fleet Class A common stock upon the Merger's consummation. In December 2016, Epstein began working as a managing partner at Sound Ventures, a venture capitalist fund.

33. Defendant Adams served as a member of the Board prior to the Merger. Adams was also a director of Pivotal I until its de-SPAC merger, where she received 50,000 founder shares, and is a current director of Pivotal III, where she received another 50,000 founder shares. Adams received 50,000 Founder Shares from the Sponsor prior Pivotal II's IPO, which converted to 50,000 shares of XL Fleet Class A common stock upon the Merger's consummation. From 2015-2018, Adams, a former professional tennis player, served as the president, chairman and CEO of the United States Tennis Association.

34. Defendant Pivotal Investment Holdings II LLC is a Delaware limited liability company, which served as the Company's Sponsor and purchased and held Class B founder shares. The Sponsor's managing members are Ironbound Partners Fund LLC and Pivotal Spac Funding II LLC.

35. Defendant Hynes was the President of XL Fleet and was, at the time the Merger was being negotiated, the founder and Chief Strategy Officer of Legacy XL. Prior to the Merger, Ledecky had a "decades-long relationship" with Hynes' family, and Ledecky and Hynes had been "business acquaintances" for ten years. Hynes and his father were investors in Legacy XL's Series D round of fund raising that occurred in 2017 and 2018, purchasing 150,877 of Series D preferred stock for $63,999, while his father Hynes, Jr. purchased 109,357 Series D preferred stock for $51,711. In total, Hynes owed 7,305,277 shares of XL Fleet common stock (i.e., 5.6% of the Company) after the consummation of the Merger. Shortly after the disclosure of the SEC's investigation of the Company, on March 21, 2022, Hynes resigned from the Board and as the Company's President with a lucrative separation package approved by the Board.

36. Defendant Kazarinoff was the CEO of XL Fleet. Prior to the Merger, Kazarinoff had served as Legacy XL's President and CEO since October 2019. As a result of the Merger, Kazarinoff's Legacy XL stock options converted into 1,206,851 shares of XL Fleet Class A common stock, worth $23,581,868 on the day of the Company's Merger. On November 20, 2021, Kazarinoff resigned from his officer and director roles at XL Fleet, exiting with a lucrative separation package approved by the Board.

37. Defendants Ledecky, Griffin, Sclarsic, Epstein, and Adams are referred to herein as the "Director Defendants."

38. Defendants Ledecky and Brady are referred to herein as the "Officer Defendants."

39. Defendants Ledecky, Griffin, Brady, Sclarsic, Epstein, Adams and the Sponsor are referred to herein as the "Controller Defendants."

SUBSTANTIVE ALLEGATIONS

I. LEDECKY HAS A HISTORY OF ENHANCING HIS FINANCIAL INTERESTS WHILE HARMING PUBLIC INVESTORS' INTERESTS

40. Since the 1990s, Ledecky has developed a reputation on Wall Street as an investor who has enriched himself through conflicted and risky investments that often harmed public investors. In this regard, Ledecky made his initial fortune in risky "roll-up" transactions in which he acquired and combined several companies for cash and stock that he then brought public through an IPO of the combined entity.

41. Similar to SPACs' recent popularity, roll-ups were red hot on Wall Street, and, at their height, eventually more than 100 roll-ups were created in the mid-1990s. Many of those roll-ups, however, ended up declaring bankruptcy or were struggling to survive by the early 2000s.

42. Like his current use of SPACs, Ledecky used roll-ups to earn himself

hundreds of millions of dollars through self-dealing transactions. For example, when Ledecky facilitated the U.S. Office Products ("USOP") roll-up, he merged Sharp Pencil, a company in which he was the majority owner, and then used $17.6 million of its February 1995 IPO proceeds to, in effect, buy himself out. When questioned about this payment, Ledecky stated that it was not necessary to get an independent appraisal of Sharp Pencil's value for his self-dealing transaction because he did not believe any conflict of interest existed. By early 1998, trouble began mounting in the form of rising debt for USOP– a common problem for roll-ups that often led to their demise. Not wanting to be part of USOP's downfall, Ledecky quickly cashed out, while also resigning from his positions as the company's CEO and President, leaving with an estimated fortune of $200 million. Nearly three years later, USOP filed for bankruptcy.

43. With roll-ups drying up, Ledecky moved on to SPACs, becoming a prolific SPAC founder, having launched or helped lead numerous SPACs since at least 2005, raising more than one billion dollars from public investors.[5] This action relates to Ledecky's second SPAC under the "Pivotal" umbrella.

II. LEDECKY AND GRIFFIN FORM PIVOTAL II AND RAISE $230 MILLION IN THE IPO

44. Pivotal II was incorporated under the laws of Delaware on March 20,

[5] IPO Prospectus at 93-94.

2019.[6] Ledecky joined as Pivotal II's Chairman and CEO at the time of its inception, and Griffin joined the Company's Board one month later.[7] Ledecky and Griffin were responsible for identifying a private company target with which to merge and for negotiating a merger agreement.

45. The Sponsor's managing members are Ironbound Partners Fund, LLC and Pivotal Spac Funding II LLC, through which Ledecky and Griffin respectively exercised control over the Sponsor and, in turn, Pivotal II.[8] Prior to the IPO, the Sponsor purchased 5,750,000 Founder Shares at the nominal price of $25,000 or approximately $0.004 per share. As described in further detail below, 50,000 of those Founder Shares were transferred to each of Sclarsic, Epstein and Adams, and 100,000 were transferred to Brady, at the same per-share price paid by the Sponsor. This gave the Sponsor (whose shares were also deemed beneficially owned by Ledecky and Griffin) and those directors (along with Brady as an officer) 20% of Pivotal II's outstanding equity following the IPO.

46. On July 16, 2019, Pivotal II went public in an IPO that sold 23,000,000 units at $10.00 per unit, including the underwriters' exercise of their overallotment

[6] *Id.* at 71.
[7] *Id.* at 90-91.
[8] *Id.* at 102.

option—bringing proceeds of the IPO to $230,000,000.

47. Consistent with SPAC practice, the proceeds of the IPO were placed in trust for the benefit of the public stockholders. Those funds could be used in the first instance to pay for redeemed shares, with remaining funds contributed to a merger (including the payment of certain expenses in that transaction), or if no merger occurred, to return to the public stockholders in a liquidation.

48. Each unit sold in the IPO consisted of one share of Class A stock and one-third of one warrant with an exercise price of $11.50 to purchase one share of Class A common stock. Consistent with common SPAC practice, the price of the units was $10.00 each. Also, consistent with SPAC practice, the shares were redeemable for $10.00 plus interest if a stockholder did not want to invest in a proposed merger. Consequently, the warrants were free. An IPO stockholder could buy a unit for $10.00, redeem the share for $10.00 plus interest, and keep the warrant for free.

49. Concurrently with the IPO, the Sponsor acquired 4,233,333 warrants at a price of $1.50 per warrant, for an aggregate purchase price of $6,350,000 ("Private Placement Warrants"). Each Private Placement Warrant is exercisable to purchase one share of Class A common stock at $11.50 per share after the consummation of the Merger. The proceeds of this investment were used to pay the initial

underwriting fee and to cover the expenses of Pivotal II until the time of its eventual Merger.

III. LEDECKY AND GRIFFIN PACK THE BOARD AND MANAGEMENT WITH LOYALISTS AND TAKE STEPS TO ENSURE THEIR CONTROL OVER PIVOTAL II

50. The use of SPACs has skyrocketed during the last few years, as a means by which a private company can go public through a reverse merger, rather than an IPO. Notably, in May 2022, Senator Elizabeth Warren issued a report, "The SPAC Hack: How SPACs Tilt the Playing Field and Enrich Wall Street Insiders," which highlighted how the SPAC structure "misalign[s] incentives for SPAC sponsors, who are given a 'promote,' or 20% stake, in the public company following the merger with private company, which gives them an all-but-guaranteed profit, putting retail investors at increased risk and allowing companies with significant weaknesses to bypass the disclosures required of a traditional IPO."[9]

51. Pivotal II's history is part of this disturbing trend of SPAC transactions in which financial conflicts of interest of sponsors and insiders disregard good corporate governance and the interests of SPAC stockholders. Like many SPAC transactions, which have triggered scrutiny from the SEC relating to financial

[9] The sponsor's promote actually gives it 20% of the post-IPO equity, not 20% of the post-merger company.

projections and the reporting of warrants as equity rather than as liabilities,[10] the Pivotal II Merger failed to observe the most basic principle of Delaware corporate governance: namely, that a corporation's governance structure should be designed to protect and promote the interests of public stockholders, not the financial interests of its insiders and controllers.

A. The Sponsor, Along With the Officer and Director Defendants, Were Controllers of Pivotal II

52. Ledecky and Griffin used their control of the Sponsor to control Pivotal II and enlisted loyalists Brady, Sclarsic, Epstein and Adams as part of their controlling block. Indeed, as acknowledged in Pivotal II's IPO Prospectus "because of their ownership position," as well as the existence of a staggered board and the failure to hold an annual meeting at which the public stockholders could elect even a minority of Pivotal II's directors, the "initial stockholders [i.e. the Controller Defendants] will continue to exert control at least until the completion of our business combination." The Controller Defendants thus had the ability to actually

[10] In fact, on May 11, 2021, XL Fleet announced that, "following a statement published by the Staff of the U.S. Securities and Exchange Commission on April 12, 2021 regarding the accounting and reporting of warrants issued by special purpose acquisition companies, the consolidated financial statements as of and for the year ended December 31, 2020 included in the Company's Annual Report on Form 10-K filed on March 31, 2021 should be restated."

control the Company.[11]

53. To ensure their loyalty and the alignment of their interests, the Sponsor transferred 100,000 of its Founder Shares to Brady and 50,000 of its Founder Shares to each of Defendants Sclarsic, Epstein, and Adams, at the same \$0.004 per-share price paid by the Sponsor.[12] By compensating the CFO and purportedly independent directors with Founder Shares, Ledecky and Griffin created a perfect alignment of financial interest between themselves, the Sponsor, and the Company's officers and directors, ensuring their control.

54. Ledecky and Griffin could bring whoever they wished into the Pivotal II fold, and only appointed directors that they knew would be loyal to them.[13] As such, Ledecky, Griffin and the Sponsor independently wielded control over Pivotal II

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[11] Additionally, the existence of the free warrants provided to IPO investors and the ability of public stockholders to both redeem *and* vote their shares had the consequence of further cementing the Sponsor, Ledecky and Griffin's control. Any transaction favored by these defendants was a *fait accompli*; stockholders would vote to approve. The warrants would be worthless if a merger were not consummated. Therefore, any stockholder with a warrant would vote to approve a proposed merger if only to support the warrant. Any stockholder that believed a proposed merger was a bad deal could simply redeem his or her shares. No stockholder has a rational reason to vote against a proposed merger. This is a structural feature of all SPACs.

[12] *Id.* at 101.

[13] IPO Prospectus at 10.

due to their own ability to exercise actual control and domination over the Company, including a majority of the Board members, who they appointed as not only Pivotal II directors, but also as directors for Pivotal I and III, and in management positions at other SPACs, including the Northern Star Investment Corp. funds. In fact, Epstein and Adams had a history of working together, as they were all at the time officers or directors of Pivotal I.[14] Likewise, Sclarsic and Adams worked together at Pivotal II and Pivotal III, as directors. In addition, Sclarsic worked as management with Ledecky and Brady at Ledecky's Northern Star Investment Corp. line of SPACs. These individuals are, in essence, the inner circle of Ledecky's serial SPAC business, and owe their allegiance to Ledecky for continued lucrative employment opportunities.

55. Moreover, the potential compensation that Epstein, Sclarsic, and Adams earned from the founder shares bestowed on them from the Pivotal SPAC line and other Ledecky SPACs represented material compensation for them. For example, when Ledecky first appointed Sclarsic as Pivotal director in 2019, her primary job was working as a "Researcher" at MIT Media Lab, where she likely earned less than $150,000 annually.

[14] *Id.* at 90-92.

56. Likewise, when Epstein began her director duties for the Pivotal SPAC line, she had recently begun working as a managing director of Sound Venture – a venture capitalist fund, where she earned approximately $250,000-$300,000 per year from base salary and annual bonus. As such, potential compensation earned by receiving Founder Shares for serving as a director of Pivotal II was also material income for Epstein.

57. Finally, the potential compensation from serving as a director for the Pivotal SPAC line was also material to Adams, whose term serving as the president, chairman and CEO of the United States Tennis Association had come to an end in December 2018. Moreover, Adams, a retired professional tennis player, has publicly expressed her desire to serve as a professional director as the next phase of her career, ensuring her loyalty to Ledecky, from whom she could secure more lucrative director positions to further her career goals.

B. THE CONTROLLER DEFENDANTS' FINANCIAL INTERESTS ARE MISALIGNED WITH THOSE OF PUBLIC STOCKHOLDERS

58. Concurrently with Pivotal II's IPO, the Sponsor purchased 5,750,000 Founder shares (amounting to 20% of Pivotal II's post-IPO equity) for $25,000, or $.004 per share, giving the Sponsor an incentive to favor *any deal* over a liquidation in which it would have to refund the public stockholders' investment. Not only

would those Founder Shares be worthless in a liquidation, but the warrants the Sponsor purchased would be worthless as well. The Sponsor's interests thus conflicted directly with those of the public stockholders. The Sponsor then issued Founder Shares to the Director Defendants, assuring that the Director Defendants' interests were aligned with those of the Sponsor, and thus adverse to the public stockholders' interests. If Pivotal II merged, the officers' and directors' Founder Shares would convert to Class A common shares and trade on the market—just as the Sponsor's shares would—providing the officers and directors with a windfall on their nominally priced shares and warrants. But if Pivotal II failed to merge and instead liquidated, the officers' and directors' shares, like the Sponsor's shares, would be worthless. Consequently, the officers and directors had the same interest as the Sponsor in ensuring that Pivotal II merged, rather than liquidated, even if the merger was not a good deal for their stockholders. In other words, a bad merger for stockholders would be a good deal for the Sponsor, the officers and the directors. Accordingly, the strong financial and professional incentives for Brady, Sclarsic, Epstein, and Adams to consummate a merger created an unavoidable conflict of interest, created an atmosphere for self-dealing, and prevented them from freely exercising their business judgment to make the one decision they would have to make: to *merge* or to *liquidate*.

IV. RELYING ON SMALL BUSINESS LOANS TO FUND ITS OPERATIONS, LEGACY XL TURNED TO A SPAC ACQUISITION AS A MEANS TO SURVIVE

59. Founded in 2009 by Thomas J. Hynes, an old family friend of Ledecky, Legacy XL provided electrification solutions for vehicles in North America. The services provided by Legacy XL included the provision of charging stations to enable customers to plug in their electrified vehicles.

60. On September 29, 2017 and January 15, 2018, Legacy XL engaged in its final round of financing before the Merger. It issued: (i) an aggregate of 42,897,246 shares of Series D-1 preferred stock at a purchase price of $0.5775 per share for an aggregate purchase price of $24,773,159.57, (ii) 1,465,110 shares of Series D-2 preferred stock at a purchase price of $0.5053 per share for an aggregate purchase price of $740,320.08, (iii) 223,254 shares of Series D-3 preferred stock at a purchase price of $0.4620 per share for an aggregate purchase price of $103,143.35 and (iv) 5,522,960 shares of Series D-4 preferred stock at a purchase price of $0.4043 per share for an aggregate purchase price of $2,232,932.73. In connection with this round of financing, Legacy XL was valued at $73 million—a fraction of the $1 billion valuation placed on the company in connection with the Merger.

61. In 2019, Legacy XL lost its certification from the California Air Resources Board ("CARB"), which prevented it from selling its products in the State of California. Compounding this problem, in 2016, California enacted a regulation providing that hybrids with under 35 miles of all-electric range, such as XL's conventional hybrid line, would be ineligible for CARB certification after 2021. Accordingly, the company's entire conventional hybrid line was out of compliance with California law.

62. On April 13, 2020, Legacy XL secured a $1.1 million PPP loan from the federal government to fund its payroll of fifty-six employees, including Hynes and Kazarinoff. By the summer of 2020, Legacy XL needed a cash infusion in the near future to be able to continue running its business. Legacy XL, therefore, was attempting to raise cash through either a Series E fund-raising round or by going public via a SPAC.

63. At a July 23, 2020 Legacy XL Board meeting, [redacted] The Legacy XL Board then [redacted]

64. The following day, on July 24, 2020, Hynes immediately put his family connections to work, and reached out to Ledecky, who had "decades-long relationship" with Hynes' family, and had been "business acquaintances [with Hynes] for 10 years."

V. THE BOARD APPROVES A VALUE-DESTROYING MERGER TO ENRICH THE DEAL'S INSIDERS

65. During their July 24, 2020 conversation, Ledecky and Hynes discussed the possibility of a potential transaction between Pivotal II and Legacy XL. Just hours later, Pivotal II's team purportedly began due diligence efforts that "covered various areas, including, among others, commercial operations and contracts, financial results, litigation, legal compliance, intellectual property, tax and general corporate matters."[15] In the Proxy, Pivotal II represented that it "conducted further diligence, including calls with XL suppliers, customers, and investors, as well as competitors and industry experts, which diligence focused on, among other things, XL's products, market share, and future prospects, as well as the outlook for the sector more generally."

66. Three days later, on July 27, 2020, Ledecky, Griffin, Sclarsic,

[15] Proxy at 81. Pivotal II's legal advisor, Morrison & Foerster only purportedly conducted "legal" due diligence related to the Merger.

Kazarinoff, Hynes, and Gregory Racz (an officer of the Sponsor), among others, had an introductory video conference meeting to discuss the respective businesses of Pivotal II and Legacy XL, and the possibility of a transaction between the two companies. Later that day, Pivotal II sent an initial draft of a letter of intent ("LOI") setting forth the proposed terms of a transaction between Pivotal II and Legacy XL, which contemplated Pivotal II issuing an aggregate of 100,000,000 shares of Pivotal II common stock with a valuation of $10 per share.

67. The next day, at a July 28, 2022 videoconference meeting attended by Ledecky, Griffin, Sclarsic, Racz, Hynes and Kazarinoff, the parties discussed the proposed Merger, including the LOI. In this regard, Hynes and Kazarinoff requested a change to the LOI to include a "specific reference to the $1,000,000,000 implied valuation of XL." Pivotal II's team agreed to this request, among other things, and the companies signed a revised LOI on August 5, 2020.[16]

68. Ledecky, Griffin, and Racz drove the process of searching for a merger partner, selecting Legacy XL, and negotiating with Legacy XL.[17] Hynes and Kazarinoff were the chief points of contact for Legacy XL during the negotiations,

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[17] *Id.* at 80.

and made presentations to Pivotal II's representatives regarding Legacy XL's business, and insisted on Pivotal II's LOI referencing a $1 billion valuation for Legacy XL.[18] Accordingly, the Board did not take any actions to protect Pivotal II's public stockholders during the negotiation. The Board did not form a special committee of truly independent directors – because there were none – to consider the Merger, despite the Sponsor's interest in getting any deal consummated to prevent the loss of its entire investment in Pivotal II and Ledecky's relationship with Hynes and his family.[19]

69. Nor did the Board obtain a fairness opinion or an independent valuation in connection with the Merger. Nor are any valuations, independent or otherwise, reflected in the 220 documents. Instead, the Defendant Directors relied on their purported "substantial experience in evaluating the operating and financial merits of companies from a wide range of industries" and their supposed due diligence in concluding that the $1 billion valuation of Legacy XL was a fair valuation and that the Merger was fair to the public stockholders.[20]

70. But the Merger was not fair, and the $1 billion valuation was inflated.

[18] *Id.* at 81-82, 85.
[19] *Id.* at 80-86.
[20] *Id.* at 67.

On September 15, 2021—a mere two days before the Merger Agreement was signed—the Legacy XL board determined that its common stock was worth "not greater than $4.75 per share," reaching this conclusion based on "(i) a draft independent third party valuation as of August 5, 2020, prepared by Timan LLC…and (ii) the [Legacy XL] Board's assessment as of [September 15, 2020]" that there had not been any material events as of that date that "would cause an increase in such valuation."

71. The Proxy represents that the very next day at the Pivotal II Board's September 16, 2020 meeting, "Ledecky gave an extensive presentation about the proposed transaction, including potential risks relevant to XL's business, the implied valuation of XL, the pro forma ownership of the post-closing combined company, the fairness to Pivotal and its stockholders of the consideration to be paid by Pivotal in the transaction and the value of XL as a whole being at least equal to 80% of the amount held in Pivotal's trust account (excluding deferred underwriting commissions)."

72. None of the documents in the 220 Production reflect such an "extensive presentation," or support the Proxy's representation that Legacy XL was worth purportedly $1 billion. In fact, the *only* reference to the basis for Legacy XL's supposed $1 billion valuation was a meeting between Pivotal and Legacy XL on July

28, 2020. The Proxy represents: "At the meeting, the parties discussed the operations of Pivotal and [Legacy XL] and the terms of the draft letter of intent, including certain changes thereto that were requested by [Legacy XL]. Those changes included, among other things, a specific reference to the $1,000,000,000 implied valuation of [Legacy XL] based on the number of shares of Pivotal common stock to be issued to the stockholders of XL and XL's and its financial advisor's view of the valuations of similarly situated companies, …"

73. Legacy XL's supposed $1 billion valuation, therefore, appears to have been picked out of thin air and is contradicted by the *only* third-party valuation of Legacy XL that was obtained by either Pivotal II or Legacy XL. That valuation, which the Legacy XL board adopted just two days before signing the merger agreement, confirmed that Legacy XL's common stock was worth "no greater than $4.75 per share."

74. When the Board approved the Merger, there likely was not enough time for Pivotal II's Board to find a new target, negotiate terms, and seek the necessary stockholder approvals of a transaction before its January 16, 2021 deadline. The Board's choice was, in essence, to merge with Legacy XL or liquidate, which would mean taking a loss on their Founder Shares, causing them to miss the opportunity of receiving a substantial windfall through the Merger, and causing the Sponsor to lose

its investment in its warrants, while also failing to facilitate a transaction that would also unjustly enrich Ledecky's family friends.

75. On September 17, 2020, the Pivotal II Board unanimously approved the Merger.[21]

VI. DEFENDANTS' BREACHES OF FIDUCIARY DUTY RESULT IN A WINDFALL AS SOON AS THE MERGER AND PIPE TRANSACTION CLOSE

76. While the January 16, 2021 deadline was fast approaching on Pivotal II's tight 18-month period to make an acquisition, the pressure to close the Merger as quickly as possible came from Legacy XL's need for a cash infusion to continue its operations. [redacted]

77. On December 8, 2020, Defendants filed a definitive Proxy seeking stockholder support for the deal. Under the terms of Pivotal II's certificate of incorporation, all of Pivotal II's public stockholders had a right to redeem their

[21] *Id.* at 86.

[22] [redacted]

shares instead of investing in the Merger. The deadline for redeeming was December 17, 2020.

78. Pivotal II held a stockholders' meeting on December 21, 2020 at which the stockholders approved the proposed Merger. Of the votes present, 17,723,325 shares were voted in favor, 8,364 against, and 12,574 abstained.[23] Only 10,992 shares (.04%) were redeemed.

79. Simultaneously with the Merger, Pivotal II issued 15,000,000 shares in a private investment in public equity ("PIPE") totaling $150,000,000.[24] Of that total amount, MGG Special Opportunities Fund LP, of which Griffin is the CEO and Chief Investment Officer, purchased 630,000 shares for $6.3 million.[25] Notably, shares purchased as part of the PIPE were freely tradeable without restriction upon effectiveness of the S-1 registration statement and no lock-up applied to them. Griffin's 630,000 were worth $12,310,200 – or nearly double his investment – based on XL Fleet's stock closing price of $19.54 per share on the day the Merger closed.

80. On December 21, 2020 (the "Closing Date"), as contemplated by the Merger Agreement, Merger Sub merged with and into Legacy XL, with Legacy

[23] XL Fleet Corp., Current Report (Form 8-K/A) (Dec. 23, 2020), at 2.
[24] *Id.* at 121.
[25] *Id.* at 190.

XL surviving as a wholly owned subsidiary of Pivotal. On the Closing Date, each outstanding share of common stock of Legacy XL (including each share of Legacy XL's common stock issued as a result of the conversion of Legacy XL's preferred stock and any conversion or exchange of Legacy XL's convertible promissory notes) was converted into the right to receive 0.75718950 shares of Pivotal's common stock, par value $0.0001 per share. Pursuant to this share exchange, Pivotal II issued or committed to issue a total of 100,000,000 shares to Legacy XL stockholders, which included shares to be issued upon the exercise of Legacy XL's options and warrants that were outstanding immediately following the Merger. With the agreed upon valuation of Legacy XL at $1 billion, those the parties attributed a value of $10 to each of those shares.[26]

81. Following these transactions, Legacy XL became a wholly-owned subsidiary of Pivotal II, which changed its name to XL Fleet.[27] Following the Merger, the legacy owners of Legacy XL held approximately 66.1% of the post-Merger company; the public stockholders of Pivotal II held 17.8%; the PIPE investors held 11.6%; and the Sponsor and its affiliates, along with the directors,

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[26] Proxy Statement at 77.
[27] Proxy Statement at 121.

held 4.4%.[28]

82. All Legacy XL's preferred stock was converted into Class A shares of XL Fleet common stock. Significantly, Hynes held 150,877 of Series D preferred stock that he purchased for $63,999, while his father Hynes, Jr. held 109,357 Series D preferred stock that he purchased for $51,711. Those shares alone were worth $2,948,136.58 and $2,136,835.78, respectively, on the day the Merger closed based on a closing price of $19.54 per share. Even based on XL Fleet's trading price on June 30, 2022, the Hynes family more than doubled their Series D investment due to the Merger. In contrast, Pivotal II's public investors lost nearly all their investment. Moreover, since Hynes' father was not subject to any lock-up restrictions, he may well have made a significantly larger return on his investment, by cashing out before XL Fleet headed into its tailspin. In addition, Kazarinoff's Legacy XL stock options converted into 1,206,851 of XL Fleet common stock worth $23,581,868.54, and Hynes' Legacy XL total stock options converted into 9,733,333 shares of XL Fleet common stock worth $190,189,326.82 as of the closing share price on the day of the Merger.

83. As bad as the Merger was for the Pivotal II public stockholders, it was

[28] XL Fleet Corp., Registration Statement (Form S-1) (Jan. 14, 2021) at 48; Proxy Statement at 76-78.

lucrative for Defendants as long as it occurred. When the Merger closed, the Sponsor's Founder Shares—which it had purchased a year earlier for a mere $25,000—were worth over $112 million. Taking into account the 4,233,333 warrants it purchased at the time of the IPO and the PIPE shares its affiliate purchased at the time of the Merger, the total value of Sponsor's and its affiliate's holdings as of the Merger close was approximately $141 million.[29] The lock-up period for insiders, including all Defendants, expired on December 21, 2021, when XL Fleet's stock opened at $3.64 per share. Notably, XL Fleet's stock experienced a significant increase in trading volume on the day the lock-up period expired, with 16,972,900 shares traded that day, while only 1,571,300 shares had traded the prior day. Meanwhile, MGG's PIPE shares were not subject to any lock-up, and MGG had nearly doubled its $6.3 million investment on the day the Merger closed, and when most PIPE investors sell their shares for a profit.

84. For the purportedly independent directors Sclarsic, Epstein, and Adams—who purchased Founder Shares for the same pittance paid by the Sponsor—their shares were collectively worth more than $2.9 million on the date the Merger closed. Brady's shares were worth approximately $2 million as of the

[29] This is the sum of approximately $112,000,000 for the Founder Shares, $12,000,000 for MGG's PIPE shares, and $17,000,000 for the warrants.

same date. Again, this represented over a 1000% return on these initial stockholders' investments. Even at today's trading price, these Founder Shares represent material compensation for Sclarsic, Epstein, and Adams. Indeed, Epstein and Adams, who were excepted from the lock-up restrictions because they were not continuing as directors once the Merger closed, likely sold their shares at a substantial profit when XL Fleet's stock was trading above $10.00 per share.

85. Had no merger occurred, the Sponsor, the purportedly independent directors and Brady would have received nothing. In fact, the Sponsor would have lost $6,375,000 as a result of forfeited capital contributions to Pivotal II.

86. The Pivotal II stockholders, however, would have received approximately $232,070,000 – $10.09 per share. Had the Defendants disclosed accurate information to the stockholders in the Proxy, the stockholders could have redeemed their shares for the same amount.

87. Likewise, the Merger was lucrative for Legacy XL insiders, like Hynes and Kazarinoff. In the first instance, as a result of the Merger, Hynes and Kazarinoff got to keep their lucrative management positions; rather than lose their jobs because Legacy XL did not have the funds to operate its business. In addition, Kazarinoff and Hynes were incentivized to ensure the consummation of the Merger, because

they would own 1,206,851 and 7,305,277 shares of XL Fleet Class A common stock, respectively, after it closed.

88. The Merger also provided Hynes and his father with the opportunity to convert their Series D preferred stock into XL Fleet's Class A common stock. Hynes held 150,877 of Series D preferred stock that he purchased for $63,999, while his father Hynes, Jr. held 109,357 Series D preferred stock that he purchased for $51,711. Those shares alone were worth $2,948,136.58 and $2,136,835.78 on the day the Merger closed. Even based on XL Fleet's trading price of $1.15 on June 30, 2022, Hynes has more than doubled his Series D investment, while his father, who was not subject to any lock-up restrictions, likely made even larger returns simply because the Merger occurred, even if it caused Pivotal II's public investors to lose the vast majority of their investment because it was a value-destroying deal.

VII. DEFENDANTS PROVIDE PIVOTAL II STOCKHOLDERS WITH FALSE AND MISLEADING INFORMATION TO DISSUADE THEM FROM REDEEMING THEIR SHARES AND TO CONVINCE THEM TO INVEST IN THE MERGER

89. As is true of all SPACs, Pivotal II's certificate provided that its public stockholders (and only its public stockholders) would have the right to redeem their shares at the time the Board proposed a merger. The proceeds of the IPO were held in trust for this purpose. If a stockholder chose to redeem, the trustee would pay out

the $10 per share that was paid for units in the IPO, plus accrued interest. A decision not to redeem would be a decision to invest in the Merger and to become a stockholder of the combined company.

90. In order the make the decision whether to invest in the Merger or to redeem their shares, Pivotal II stockholders needed information that would allow them to make a judgment regarding the potential value of the combined company. Defendants had a fiduciary duty to provide the stockholders with this material information. As explained below, they failed to fulfill that duty in several respects. They failed to provide stockholders with material information concerning the valuation of Legacy XL, they failed to inform stockholders that the Merger violated Pivotal II's charter, they failed to inform them of the of value of Pivotal II shares that would be exchanged for Legacy XL shares, and they failed to inform the stockholders of crucial information regarding the business prospects and viability of Legacy XL.

A. THE PROXY STATEMENT FAILED ADEQUATELY TO DISCLOSE THAT LEGACY XL'S COMMON STOCK WAS WORTH ONLY $4.75 PER SHARE

91. On September 15, 2020, a mere two days before execution of the Merger Agreement, Legacy XL's Board adopted the following resolution:

> RESOLVED, that the fair market value of the Company's common stock, $0.001 par value per share (the "*Common Stock*") is not greater

> than $4.75 per share, which fair market value is based upon (i) a draft independent third party valuation as of August 5, 2020, prepared by Timan LLC, a professional valuation firm retained by the Company, in the form presented to the Board (the "*Valuation Report*") and (ii) the Board's assessment as of the date hereof that there have not been any material events at the Company from August 5, 2020, through the date hereof that would cause an increase in such valuation.

92. With 11,555,159 weighted average shares outstanding,,[30] the $4.75 per share valuation meant that the Company's common stock was worth less than $55 million.

93. The Proxy did not fairly or completely disclose this $4.75 per share valuation to Pivotal II's stockholders. The only reference to this $4.75 per share value is buried in the notes to Legacy XL's financial statements, in the calculation of Net Loss Per Share. That passing reference, however, did not disclose: (1) the existence of the August 5, 2020 Valuation Report presented to the Legacy XL Board by Timan LLC, (2) that the Legacy XL board had specifically resolved, on September 15, 2020, that "the fair market value of the Company's common stock, $0.001 par value per share (the "*Common Stock*") is not greater than $4.75 per share," or (3) that the Timan Valuation Report was the *only* third-party valuation of Legacy XL in the possession of either Legacy XL or Pivotal II at the time of the

[30] Proxy at 36.

Merger.

B. THE PROXY STATEMENT FAILED TO DISCLOSE THAT THE MERGER WAS PROHIBITED UNDER PIVOTAL II'S CHARTER

94. The Proxy also failed to disclose that the Merger was prohibited under Pivotal II's certificate of incorporation.

95. At the time the parties executed the Merger Agreement, Article SIXTH of Pivotal II's amended and restated certificate of incorporation provided, in relevant part, as follows:

> A "Business Combination" shall mean any merger, share exchange, asset acquisition, stock purchase, recapitalization, reorganization or other similar business combination involving the Corporation and one or more businesses or entities ("Target Business" or "Target Businesses"). ***The Target Business or Target Businesses acquired in the Business Combination must together have a fair market value of at least 80% of the assets held in the Trust Account (defined below), net of amounts previously disbursed to the Corporation's management for tax and working capital purposes (if any) and excluding the amount of Deferred Underwriting Compensation (defined below), at the time of the signing of the definitive agreement governing the terms of the initial Business Combination.*** If the Corporation acquires less than 100% of the equity interests or assets of a Target Business, the portion of such Target Business that the Corporation acquires is what will be valued for purposes of the 80% fair market value test.
>
> The "fair market value" for purposes of this Article Sixth will be determined by the Board of Directors of the Corporation based upon one or more standards generally accepted by the financial community (such as actual and potential sales, earnings, cash flow and/or book value). If the Board of Directors is unable to independently determine

the fair market value of the Target Business, the Corporation will obtain an opinion from an independent investment banking firm, or another independent entity that commonly renders valuation opinions, with respect to the satisfaction of such criteria.

(emphasis added)

96. At the time the parties executed the Merger Agreement, the balance of the funds in Pivotal II's trust account was approximately $223 million. 80% of that balance is $178.4 million. Because Legacy XL's common stock was worth less than $55 million, it is readily apparent that the Merger failed the 80% requirement and was thus a violation of Pivotal II's charter.

97. The Proxy concealed this fact. Instead, the Proxy represented that the Merger complied with this requirement:

Satisfaction of 80% Test

… In determining whether the 80% requirement was met, rather than relying on any one factor, Pivotal's board of directors concluded that it was appropriate to base such valuation on a number of qualitative factors, such as management strength and depth, competitive positioning, customer relationships and technical skills, as well as quantitative factors, such as the anticipated enterprise value of the combined company being approximately $1 billion with No material debt expected to be outstanding. Pivotal's assessment that XL's valuation was attractive compared to its competitive peers, the historical performance of XL and the potential for future growth in revenues and profits of XL and a $220 million 12-month sales pipeline. Based on the qualitative and quantitative information used to approve the Business Combination described herein, Pivotal's board of directors determined that the foregoing 80% fair market value requirement was

> met. Pivotal's board of directors believes that the financial skills and background of its members qualify it to conclude that the acquisition met the 80% requirement.

98. The foregoing statement was materially false and misleading. The Pivotal II Board had no basis to believe that Legacy XL was worth $1 billion, or anything close to it. The representation that the Merger "satisfie[d]" the 80% test ignored the Timan Valuation Report, as well as the fact that Legacy XL used a "stock price fair value of $4.75" in calculating its "Net Loss Per Share."

99. The documents produced in response to Plaintiffs' Section 220 demand do not reflect that the Pivotal II Board adopted any specific determinations regarding the value of Legacy XL *at all*, or even bothered to consult with its financial advisor regarding such valuation. There is *nothing* in the documents produced in response to the Section 220 demands to support the assertion that "the anticipated enterprise value of the combined company [would] be[] approximately $1 billion," and as discussed below (*infra* Sec. VII.D.d), the supposed "$220 million 12-month sales pipeline" was a gross exaggeration that concealed Legacy XL's substantially lower projected sales.

C. THE PROXY STATEMENT FAILED TO DISCLOSE THE VALUE OF PIVOTAL II SHARES THAT WOULD BE EXCHANGED FOR SHARES IN XL FLEET

100. The only asset that Pivotal II held was cash, and the Proxy failed to

disclose to Pivotal II stockholders how much net cash on a per-share basis it was actually contributing to the Merger.

101. The net cash underlying each Pivotal II share was diluted by the essentially free shares issued to the Sponsor and the free warrants issued to IPO investors. That cash was further dissipated by fees paid in connection with the Merger. The amount of net cash underlying Pivotal II shares was not disclosed in the Proxy.

102. The failure to disclose Pivotal II's net cash per share was material in three respects. First, this was cash that would be carried over to the surviving post-Merger company. It therefore was part of the value Pivotal II stockholders would hold if they chose to invest in the Merger rather than redeem their shares. Less cash meant less value. Second, because cash was Pivotal II's only asset, the amount of net cash underlying each Pivotal II share was the payment Pivotal II stockholders would, in effect, make in the share exchange with Legacy XL stockholders. Third, and relatedly, because Pivotal II shares were treated as being worth $10 in the share exchange when in fact they were worth less, a reasonable expectation would be that Legacy XL would inflate its value commensurately.

103. The net cash underlying each share was roughly $7, not the $10 investors paid for units in the IPO nor the $10 (plus interest) redemption price.

Between the IPO and the Merger, Pivotal II shares were diluted, and cash was dissipated. As a result, Legacy XL stockholders would in effect receive about $7 per share in value for each of their cancelled Legacy XL shares. They had no reason, and the Board gave them no reason, to expect more than $7 in value from the Merger.

104. The Proxy Statement failed to disclose the extent to which Pivotal II's shares would be diminished in value as a result of dilution and dissipation of cash. It purports to address dilution in two very different, and immaterial, contexts. First, it states that PIPE investors would likely own approximately 11.6% of the combined company common stock immediately following the Merger, and that the issuance of the PIPE shares "will result in significant dilution to Pivotal's stockholders[.]"[31] In contrast to the dilution in value caused by the issuance of free shares and free warrants, this sort of dilution has no impact on the value of shares. Its impact is solely on the percentage ownership, which is of no consequence to Pivotal III stockholders. The Proxy further stated that Pivotal II's stockholders' percentage ownership in the post-Merger company would be less than their percentage ownership of the pre-Merger company—as it is in *any* merger in which shares are

[31] *Id.* at 78.

part of the consideration or in *any* issuance of shares. Again, this is of no consequence.

105. Next, the Proxy Statement noted the existence of the public warrants and the Sponsor's warrants, and stated that the possible issuance of additional shares in the future would result in a reduction of existing stockholders' proportionate ownership and a decline in the price of shares.[32] This statement failed to disclose that, as of the time of the Merger, those warrants diluted the value of the stockholders' shares.

106. These barely relevant statements are an exercise in misdirection. The relevant dilution was in the prior issuance of essentially free shares and free warrants. Those securities would reduce the per-share value of Pivotal II shares in the Merger. Cash expended in connection with the Merger further reduced the value of Pivotal II shares. The Proxy Statement failed to inform the stockholders of this fact. This was a material omission that violated the Board's duty of candor and prevented the stockholders from making informed decisions in voting their shares or exercising their redemption rights.

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[32] *Id.* at 62.

D. THE BOARD PROVIDED MATERIALLY FALSE AND MISLEADING INFORMATION REGARDING XL HYBRID'S BUSINESS AND VALUATION, WHICH THE BOARD KNEW OR SHOULD HAVE KNOWN THROUGH THEIR SUPPOSED "DUE DILIGENCE"

107. The Board knew or should have known that the Merger would be a losing proposition for Pivotal II stockholders, but nevertheless approved and recommended the Merger because they expected it to be lucrative for the Sponsor, Brady, and the Board members themselves.

108. If the Board had done the supposed due diligence that it claimed to have conducted in the Proxy, it should have been apparent to the Board that Legacy XL was not worth $1 billion.

109. The Board also should have been aware that Legacy XL would inflate its value at least to match the depleted net cash and inflated value of Pivotal II shares in order to arrive at what it viewed as a fair exchange.

110. It appears that Legacy XL did just that. It claimed an inflated value of approximately $1 billion, and it supported that value with vague statements about its customer base, the quality of its products, and its pipeline.

111. In an attempt to discern, among other things, whether Pivotal II's Board conducted adequate or any due diligence on Legacy XL's business prior to the Merger as represented in the Proxy, Plaintiffs' counsel served on XL Fleet a demand

for books and records under 8 Del. C. § 220. Despite searching for such materials, and despite the fact that many of XL Fleet's current Board members were Pivotal II directors, XL Fleet was unable to produce any documents reflecting the due diligence Pivotal II supposedly conducted—***not a single one***. Pivotal II's claim in the Proxy that it conducted "significant due diligence" before the Merger, therefore, was either false, or the Board made the bad faith decision not to document any of its due diligence because that due diligence did not support a $1 billion valuation of XL Fleet. Indeed, the Board was motivated to approve a bad deal for Pivotal II investors because it would still deliver a windfall to themselves, the Sponsor, and Ledecky's family friends.

i. The Proxy Failed To Disclose That Prior Funding Rounds As Recent As 2018 Valued Legacy XL At Just $73 Million.

112. The Proxy omitted material information about the valuation placed on Legacy XL during prior rounds of fund raising, including its last valuation during its Series D round, where it was reportedly valued at only $73 million. In fact, the Muddy Waters Report further disclosed that "XL appears to have tried to keep this number under wraps. Our interviews with other former XL employees consistently described secrecy regarding XL's valuation. When we recently asked the company what its most recent valuation was, it refused to answer."

113. Here, the Proxy is false and misleading by omitting Legacy XL's valuation during its Series D round, and only disclosing partial information about the Series D round as follows:

> ***Series D Financing***
>
> On September 29, 2017 and January 15, 2018, XL issued an aggregate of 42,897,246 shares of Series D-1 preferred stock at a purchase price of $0.5775 per share for an aggregate purchase price of $24,773,159.57, 1,465,110 shares of Series D-2 preferred stock at a purchase price of $0.5053 per share for an aggregate purchase price of $740,320.08, 223,254 shares of Series D-3 preferred stock at a purchase price of $0.4620 per share for an aggregate purchase price of $103,143.35 and 5,522,960 shares of Series D-4 preferred stock at a purchase price of $0.4043 per share for an aggregate purchase price of $2,232,932.73, (collectively, the "Series D Financing"). The following table summarizes purchases of XL Series D preferred stock by related persons and their affiliates, including purchases by James Davis, Constellation New Energy, Inc. and Ingka Investments Ventures, B.V., each of whom are holders of more than 5% of XL's common stock, and by Thomas J. Hynes, III, and his affiliate Thomas J. Hynes, Jr.

Stockholder	**Shares of Series D Preferred Stock**	**Total Purchase Price**
James Davis	10,939,170	$6,087,226
Constellation New Energy, Inc.	8,658,008	$5,000,000
Ingka Investments Ventures B.V.	8,658,008	$5,000,000
Thomas J. Hynes, III	150,877	$63,999
Thomas J. Hynes, Jr.	109,357	$51,711

114. Moreover, it is inferable that Ledecky and Hynes discussed the exact number that Legacy XL was valued at when it raised money for its Series D round

during their initial call on July 24, 2020. Legacy XL's valuation in its most recent fund raising efforts is material to its current valuation. Defendants consciously omitted from the Proxy Legacy XL's most recent valuation of $73 million during its Series D round of fund raising, because they knew it would cast serious doubt on the Board's representation that the Merger was worth $1 billion.

ii. The Proxy Overstated The Purported Financial Benefits To Customers Created By The Use of Legacy XL's Products

115. The Muddy Waters Report revealed the Proxy falsely stated that "XL's systems enable vehicles to burn less fuel and emit less carbon dioxide (CO2), resulting in increases of up to a 25-50% miles per gallon (MPG) improvement and up to a 20-33% reduction in greenhouse gas emissions."[33] The Proxy further misleadingly stated that, "XL's hybrid systems (branded as "XLH™") have been proven to improve MPG by up to 25% over standard gas-powered vehicles, while reducing CO2 emissions by up to 20%. Its plug-in hybrid system, branded as "XL Plug-In™" or "XLP™," "offers an even more significant improvement in these metrics, demonstrating up to a 50% MPG improvement and up to a 33% reduction in emissions."[34]

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[33] Proxy at 157.
[34] *Id.* at 159.

116. In reality, as revealed in the Muddy Waters Report, based on information obtained from a former employee, the MPG numbers are "based upon a bare-boned F-150 on a [dynamometer] in optimal, optimal circumstances, but the second you add weight or a passenger or human error to that, it all goes out the window," and the tests fail to simulate real-world situations.[35] Muddy Waters further explained that when real-world vehicles were used in ways not specifically measured in the simulation, the real miles-per-gallon improvement was closer to 5% to 10%.[36] As such, XL Fleet's customers did not see the benefits they were led to expect on their investments in XL Fleet's products, and the Company struggled to keep customers.[37]

iii. The Proxy Omitted That XL Hybrid's Products Lost Required Certification for Sales in California

117. The Proxy made misleading statements about Legacy XL's products' compliance with regulations issued by the California Air Resource Board. Specifically, the Proxy misled stockholders by stating:

> CARB Emissions Compliance and Certification
>
> The XL hybrid and plug-in hybrid systems are fitted to vehicles that have been certified to meet the requirements of U.S. Environmental Protection Agency

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[35] *Id.* at 17.
[36] *Id.*
[37] *Id.* at 14.

(the “EPA”) and California Air Resource Board (“CARB”). The OEMs are responsible for ensuring compliance with the appropriate regulations for the base vehicle for emissions, fuel economy and on board diagnostics.

CARB classifies the XL system as an aftermarket fit system / device. As such, CARB requires that an Executive Order (“EO”) is obtained for the sale of the system intended for use on a vehicle to be operated in the state of California. In order to obtain the EO, XL is required to submit an application to CARB for each vehicle group or family, which is required for each model year. The vehicle models included in a group or family are determined by the level of commonality of vehicle systems on both the base vehicle and the hybrid or plug in hybrid systems that are fitted.

CARB will then issue a test order that details the required testing and the specification of the vehicle to be used to demonstrate compliance. The essence of the testing is not to confirm the performance of the hybrid or plug-in hybrid system fitted to the vehicle, but to demonstrate that addition of the system does not negatively impact the emissions or diagnostic monitoring performance of the vehicle.

XL has obtained a number of EOs for prior model years and is in the process of conducting testing against CARB issued test orders for future products to be introduced into the Californian market. EOs issued by CARB to XL are public record and are available to view on the CARB database for aftermarket, performance, and add-on parts. EOs also include requirements to collect data from vehicles in the field (in use data).

Future XL products may include battery electric vehicles, which would require a different certification process and would be subject to both CARB and EPA testing in order to demonstrate electric range and qualify for credits if appropriate. For light duty vehicles, a zero emission vehicle certification would be required. Heavy duty electric vehicles are subject to the CARB Zero-Emission Powertrain Certification Program.[38]

[38] Proxy at 168.

118. These representations are false and misleading because, as revealed in the Muddy Waters Report, Legacy XL lost CARB approval in 2019, and the Company cannot sell its products in California without such approval. The Muddy Waters Report also revealed that XL Fleet's "entire conventional hybrid line will be structurally non-compliant by January 1, 2022, meaning XL will not be able to sell new model year upfits in California." Muddy Waters explained that per a "2016 regulation, hybrids with under 35 miles of all-electric range (AER), such as XL's conventional hybrid line, cannot get CARB certification after 2021." In contrast, the Proxy improperly directs Pivotal II stockholder to do further investigation if they want to find out the truth about Legacy's XL's ability to sell its products in California by stating that "EOs issued by CARB to XL are public record and are available to view on the CARB database for aftermarket, performance, and add-on parts."

iv. The Proxy Misrepresented Legacy XL's Value Through Exaggerated Customer Numbers And Inflated Pipeline Projections

119. The Proxy's repeated representations that the Company had a "$220 million 12-month sales pipeline" to support its $1 billion valuation was also materially false. In this regard, one former XL Fleet employee quoted in the Muddy Waters Report stated, "I was paid to lie. I was paid to falsify and exaggerate my

pipeline."[39] Another said that he was told to add sales into the pipeline "[e]ven if [the potential customers] have no interest."[40] Former XL Fleet employees "literally laughed out loud" at the Company's revenue projections.[41]

120. Moreover, in its Opinion and Order dated February 17, 2022, the United States District Court for the Southern District of New York relied on similar corroborating allegations made by former Legacy XL employees when denying a motion to dismiss in a securities class action for making false and misleading statements under Rule 10b-5 of the Securities Exchange Act of 1934. For example, that court relied on allegations that one former employee stated that "she disclosed the overstated sales pipeline to Pivotal's attorneys during the due diligence process for the merger."

121. In contrast, the Board hyped Legacy XL's business with misleading statements about its customer base in the Proxy Statement, by claiming that Legacy XL had "one of the largest end-use customer bases" of any vehicle electrification company for small to medium sized trucks in North America.[42]

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[39] *Id.* at 1.
[40] *Id.*
[41] *Id.* at 25.
[42] *Id.* at 90, 157.

122. The Muddy Waters Report caused the Company's stock price to begin a prolonged slide from an open on March 1, 2021 at $16.72 per share, losing nearly $3 a share, to close at $13.86 per share on that same day. By March 24, 2021, XL Fleet's stock was trading under $10 per share, and never closed above $10 per share again. This is because, even though the Board had supposedly conducted "significant due diligence" on Legacy XL, and thus knew or should have known the facts uncovered by Muddy Waters, it failed to disclose these material adverse facts or to warn Pivotal II stockholders that they were purchasing such a flawed business to ensure the consummation of the Merger to further enrich themselves.

E. TO FURTHER INDUCE THE STOCKHOLDERS TO SUPPORT AND INVEST IN THE MERGER, THE BOARD EXAGGERATED THE RISK TO SHAREHOLDERS THAT LIQUIDATION POSED TO THEM

123. As explained above, the Board had one decision to make: *to merge or to liquidate*. And each stockholder had a parallel right: to retain its shares through a merger or to redeem them. Neither the Board nor the Sponsor had any interest in liquidating and no desire to see stockholders redeem their shares. Therefore, the Board misled the stockholders in recommending the Merger over liquidation.

124. The Proxy stated:

> Under the terms of Pivotal's amended and restated certificate of incorporation, Pivotal must complete the Business Combination with

> [Legacy] XL or another business combination by January 16, 2021 (or such later date as may be approved by Pivotal stockholders in an amendment to its amended and restated certificate of incorporation), or Pivotal must cease all operations except for the purpose of winding up, redeeming 100% of the outstanding public shares and, subject to the approval of its remaining stockholders and its board of directors, dissolving and liquidating. In such event, third parties may bring claims against Pivotal. . . . Accordingly, the proceeds held in the trust account could be subject to claims which could take priority over those of Pivotal's public stockholders. . . . Therefore, the per-share distribution from the trust account in such a situation may be less than $10.00 due to such claims.[43]

This is simply a description of the liquidation scenario required by the Pivotal II charter, but stated in ominous terms designed to lure stockholders into supporting the Merger for fear that they might get less in liquidation than the $10.00 IPO price of units, even though the proceeds of the sale of those was held in trust for the public stockholders. As the Proxy Statement recognizes, the Sponsor had agreed to indemnify the stockholders against such claims—as SPAC sponsors typically do. Since the proceeds of the IPO were held in trust and the Sponsor provided an indemnification commitment specifically to protect the stockholders' redemption and liquidation rights, the basis of this warning is highly speculative. Further, as Pivotal II was a non-operating company that simply held assets in trust until a merger

[43] *Id.* at 66.

or liquidation event, warnings of potential claims against the assets upon liquidation and/or bankruptcy were illusory and misleading.

125. The Proxy further states that "the Sponsor's only assets are securities of Pivotal and Pivotal has not taken any further steps to ensure that the Sponsor will be able to satisfy any indemnification obligations that arise. Accordingly, the actual per-share redemption price could be less than approximately $10.00, plus interest, due to claims of creditors." "Additionally," the Proxy ominously warned that, "if Pivotal is forced to file a bankruptcy case or an involuntary bankruptcy case is filed against it which is not dismissed, the proceeds held in the trust account could be subject to applicable bankruptcy law, and may be included in Pivotal's bankruptcy estate and subject to the claims of third parties with priority over the claims of Pivotal's stockholders."

126. Again, this warning was designed to cause public stockholders to worry that in the event of a liquidation, they would receive less than $10.00 per share. Of course, in the event of a bankruptcy in which Pivotal II was subject to the claims of creditors, property held in trust would not be deemed property of the estate and would be unreachable by creditors, rendering this statement patently false and demonstrating that the Board was falsely threatening that if investors did not approve

the Merger or chose to redeem in amounts that made the Merger impracticable, they could take a loss on their investments.

VIII. XL FLEET'S STOCK PRICE TRADES IN THE $1-$2 PER SHARE RANGE AFTER THE COMPANY DISCLOSES IT IS SUBJECT TO AN SEC INVESTIGATION

127. On March 1, 2022, XL Fleet filed its Form 10-K with the SEC, disclosing that, "[o]n January 6, 2022, the Company received a subpoena from the Securities and Exchange Commission (the "SEC") requesting the production of certain documents related to, among other things, the Company's business combination with Legacy XL, Inc. and the related PIPE financing, the Company's sales pipeline and revenue projections, purchase orders, suppliers, CARB approvals, fuel economy from our Power Drive products, customer complaints, and disclosures and other matters in connection with the foregoing."

128. The Company made the same disclosure on May 5, 2022, when it filed its Form 10-Q with the SEC.

129. After revealing that the Company was subject to an SEC investigation for the same issues that the Muddy Waters Report had revealed a year earlier, XL Fleet's stock traded in the range of $2 to $1 range per share. Notably, XL Fleet's stock has not closed above $1.99 since April 5, 2022.

CLASS ACTION ALLEGATIONS

130. Plaintiffs, stockholders in the Company, bring this action individually and as a class action pursuant to Rule 23 of the Rules of the Court of Chancery of the State of Delaware on behalf of themselves and (a) all record and beneficial holders of Pivotal II common stock who held such stock during the time period from the Record Date through the Closing Date (except the Defendants herein, and any person, firm, trust, corporation, or other entity related to or affiliated with any of the Defendants) and who were injured by the Defendants' breaches of fiduciary duties and other violations of law (the "Fiduciary Class"); and (b) all record and beneficial holders of Pivotal II common stock who held such stock as of the Closing Date (except the Defendants herein, and any person, firm, trust, corporation, or other entity related to or affiliated with any of the Defendants) and who were injured by the Defendants' breaches of fiduciary duties and other violations of law (the "Charter Violation Class") (together with the Fiduciary Class, the "Classes").

131. This action is properly maintainable as a class action.

132. A class action is superior to other available methods of fair and efficient adjudication of this controversy.

133. The Classes are so numerous that joinder of all members is impracticable. The number of members of the Classes is believed to be in the

thousands, and they are likely scattered across the United States. Moreover, damages suffered by individual members of the Classes may be small, making it overly expensive and burdensome for individual members of the Classes to pursue redress on their own.

134. There are questions of law and fact which are common to all members of the Fiduciary Class and which predominate over any questions affecting only individuals, including, without limitation:

a. whether Defendants owed fiduciary duties to Plaintiffs and the Fiduciary Class;

b. whether the Controller Defendants controlled the Company;

c. whether "entire fairness" is the applicable standard of review;

d. which party or parties bear the burden of proof;

e. whether Defendants breached their fiduciary duties to Plaintiffs and the Fiduciary Class;

f. Whether Defendants issued a materially false and misleading Proxy Statement;

g. whether the Company breached its certificate of incorporation;

h. whether Hynes and Kazarinoff aided and abetted any breaches of fiduciary duties by Defendants owed to Plaintiffs and the Fiduciary Class;

i. the existence and extent of any injury to the Fiduciary Class or Plaintiffs caused by any breach; and

j. the proper measure of the Fiduciary Class's damages.

135. There are questions of law and fact which are common to all members of the Charter Violation Class and which predominate over any questions affecting only individuals, including, without limitation:

a. Whether the Company breached its certificate of incorporation;

b. The existence and extent of any injury to the Charter Violation Class or Plaintiffs caused by any breach; and

c. The proper measure of the Charter Violation Class's damages.

136. Plaintiffs' claims and defenses are typical of the claims and defenses of other members of the Classes, and Plaintiffs have no interests antagonistic or adverse to the interests of other members of the Classes. Plaintiffs will fairly and adequately protect the interests of the Classes.

137. Plaintiffs are committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature.

138. Defendants have acted in a manner that affects Plaintiffs and all members of the Classes alike, thereby making appropriate relief with respect to the Classes as a whole.

139. The prosecution of separate actions by individual members of the Classes would create a risk of inconsistent or varying adjudications with respect to individual members of the Classes, which would establish incompatible standards of conduct for Defendants; or adjudications with respect to individual members of the

Classes would, as a practical matter, be dispositive of the interest of other members or substantially impair or impede their ability to protect their interests.

COUNT I

(Direct Claim for Breach of Fiduciary Duty Against the Director Defendants)

140. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

141. As directors of the Company, the Director Defendants owed Plaintiffs and the Fiduciary Class the utmost fiduciary duties of care and loyalty, which subsume an obligation to act in good faith, with candor, and to make accurate material disclosures to the Company's stockholders.

142. These duties required them to place the interests of the Company stockholders above their personal interests and the interests of the Controller Defendants.

143. Through the events and actions described herein, the Director Defendants breached their fiduciary duties to Plaintiffs and the Fiduciary Class by prioritizing their own personal, financial, and/or reputational interests and approving the Merger, which was unfair to the Company's public Class A stockholders.

144. The Director Defendants breached their duty of candor by issuing the false and misleading Proxy.

145. As a result, Plaintiffs and the Fiduciary Class were harmed because they were deceived in connection with their decision on whether to exercise their right to redeem their shares instead of participating in the Merger.

146. Plaintiffs and the Fiduciary Class were also harmed because they approved the acquisition of Legacy XL based on false and misleading information contained in the Proxy.

147. Plaintiffs and the Fiduciary Class suffered damages in an amount to be determined at trial.

COUNT II

(Direct Claim for Breach of Fiduciary Duty Against the Officer Defendants)

148. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

149. As the most senior officers of the Company, the Officer Defendants owed Plaintiffs and the Fiduciary Class the utmost fiduciary duties of care and loyalty, which include an obligation to act in good faith, with candor, and to provide accurate material disclosures to the Company's stockholders.

150. These duties required the Officer Defendants to place the interests of the Company's stockholders above their personal interests and the interests of the other Defendants. The Officer Defendants are not exculpated for breaches of their

duty of care for actions taken in their capacity as officers (which include all actions set forth herein except their formal vote to approve the Merger).

151. Through the events and actions described herein, the Officer Defendants breached their fiduciary duties to Plaintiffs and the Fiduciary Class by prioritizing their own personal, financial, and/or reputational interests and approving the Merger, which was unfair to the Company's public Class A stockholders.

152. The Officer Defendants breached their duty of candor by issuing the false and misleading Proxy, as well as making false and misleading statements.

153. As a result, Plaintiffs and the Fiduciary Class approved the acquisition of Legacy XL based on false and misleading information and did not have a full, fair and informed opportunity to exercise their redemption rights on an informed basis prior to the Merger.

154. In addition, members of the Fiduciary Class approved the acquisition of Legacy XL based on false and misleading information.

155. Plaintiffs and the Fiduciary Class suffered damages in an amount to be determined at trial.

COUNT III

(Direct Claim for Breach of Fiduciary Duty Against the Controller Defendants or, Alternatively, Ledecky, Griffin and the Sponsor)

156. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

157. The Controller Defendants were the Company's controlling stockholders. Specifically, the Controller Defendants controlled all of the Founder Shares, were acknowledged as controllers in Pivotal II's IPO Prospectus and, as described herein, had the ability to exercise actual control over the business affairs of Pivotal II.

158. In the alternative, Ledecky, Griffin and the Sponsor, independently of the other officers and directors, exercised control over Pivotal II as described in Paragraphs 7 and 54 herein and breached their fiduciary duties to Plaintiffs and the Fiduciary Class by agreeing to and entering into the Merger without ensuring that the Company made full and fair disclosures to Plaintiffs and the Fiduciary Class.

159. As such, the Controller Defendants, including Ledecky, Griffin and the Sponsor, owed Plaintiffs and the Fiduciary Class fiduciary duties of care and loyalty, which include an obligation to act in good faith, with candor, and to provide accurate material disclosures to Company stockholders.

160. At all relevant times, the Controller Defendants had the power to control, influence, and cause—and actually did control, influence, and cause—the Company to enter into the Merger.

161. Through the events and actions described herein, the Controller Defendants breached their fiduciary duties to Plaintiffs and the Fiduciary Class by agreeing to and entering into the Merger without ensuring that the Company made full and fair disclosures to Plaintiffs and the Classes concerning the Merger.

162. As a result, Plaintiffs and the Fiduciary Class were harmed by not exercising their redemption rights prior to the Merger.

163. In addition, members of the Fiduciary Class approved the acquisition of Legacy XL based on false and misleading information.

164. Plaintiffs and the Fiduciary Class suffered damages in an amount to be determined at trial.

COUNT IV

(Direct Claim for Aiding and Abetting Breach of Fiduciary Duty Against Thomas J. Hynes III and Dimitri N. Kazarinoff)

165. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

166. Hynes and Kazarinoff were aware of the Director Defendants', Officer

Defendants', and/or the Controller Defendants' fiduciary duties of care, loyalty and candor owed to the Company's Class A stockholders.

167. Hynes and Kazarinoff knowingly participated in the other Defendants' breaches of their duties (and any exculpated care breaches by the Director Defendants), which presented materially misleading statements about Legacy XL to support its recommendation that Pivotal II stockholders vote in favor of the Merger.

168. Hynes and Kazarinoff knew that these statements were materially misleading, and that they, the Director Defendants, and the Controller Defendants stood to profit immensely from the consummation of the Merger——even if the Merger was unfair to public Class A stockholders.

169. As a result, Plaintiffs and the Fiduciary Class were harmed by not exercising their redemption rights prior to the Merger.

170. In addition, members of the Fiduciary Class approved the acquisition of Legacy XL based on false and misleading information.

171. Plaintiffs and the Fiduciary Class suffered damages in an amount to be determined at trial.

COUNT V

(Direct Claim for Unjust Enrichment Against the Director Defendants, Officer Defendants, Controller Defendants, Thomas J. Hynes III and Dimitri N. Kazarinoff)

172. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

173. As a result of the conduct described above, the Director Defendants, Officer Defendants, and Controller Defendants breached their fiduciary duties to Pivotal II public stockholders and were disloyal by putting their own financial interests above those of Pivotal II public stockholders.

174. Defendants were unjustly enriched, to the detriment of Plaintiffs and the Fiduciary Class, by their disloyalty.

175. By aiding and abetting the aforementioned breaches, as described herein, Defendants Hynes and Kazarinoff were also unjustly enriched to the detriment of Plaintiffs and the Fiduciary Class.

176. All unjust profits realized by these defendants should be disgorged and recouped by the affected stockholders.

COUNT VI

(Direct Claim For Breach of Contract Against Defendant XL Fleet (f/k/a Pivotal II)

177. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

178. Pivotal II's Amended and Restated Certificate of Incorporation was a valid and enforceable contract between Pivotal II and its public stockholders.

179. The Director Defendants and the Officer Defendants caused Pivotal II to enter into a merger that violated the Sixth Article of Pivotal II's Amended and Restated Certificate of Incorporation.

180. Specifically, whereas the certificate required Pivotal II to enter into a merger with a company having "a fair market value of at least 80% of the assets held in the Trust Account." Accordingly, based on the amount of trust assets at the time of the Merger, Pivotal II was required to merger with a company worth at least $178.4 million.

181. At the time of the Merger, Legacy XL's common stock had an equity value of only $55 million, and Legacy XL did not have a value greater than 80% of the Trust's assets.

182. Accordingly, the Merger breached of Pivotal II's Amended and Restated Certificate of Incorporation.

183. As a result of this breach, Plaintiffs and the Charter Violation Class suffered damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment and relief in their favor and in favor of the Class, and against Defendants, as follows:

A. Declaring that this Action is properly maintainable as a class action;

B. Finding the Director Defendants liable for breaching their fiduciary duties owed to Plaintiffs and the Fiduciary Class;

C. Finding the Officer Defendants liable for breaching their fiduciary duties, in their capacity as Pivotal II officers, owed to Plaintiffs and the Fiduciary Class;

D. Finding the Controller Defendants liable for breaching their fiduciary duties, in their capacity as the Company's controlling stockholders, owed to Plaintiffs and the Fiduciary Class;

E. Finding Hynes and Kazarinoff liable for aiding and abetting the breaches of fiduciary duties owed to Plaintiffs and the Fiduciary Class by the Director Defendants, the Officer Defendants, and the Controller Defendants;

F. Finding XL Fleet liable for breach of contract;

G. Awarding rescission or rescissory damages to Plaintiffs and the Classes;

H. Finding that the Director Defendants, Officer Defendants, Controller Defendants, and Defendants Hynes and Kazarinoff have been unjustly enriched;

I. Certifying the proposed Classes;

J. Awarding Plaintiffs and the other members of the Classes damages in an amount which may be proven at trial, together with interest thereon;

K. Awarding Plaintiffs and the members of the Classes pre-judgment and post-judgment interest, as well as their reasonable attorneys' and experts' witness fees and other costs; and

L. Awarding Plaintiffs and the Classes such other relief as this Court deems just and equitable.

Dated: July 11, 2022

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Co-Counsel for Plaintiff Irfan Janmohamed and Counsel for Plaintiff Cody Laidlaw

CERTIFICATE OF SERVICE

I, Michael J. Barry, hereby certify that on July 18, 2022, I caused a true and correct copy of *[Public Redacted version] of the Verified Second Amended Consolidated Class Action Complaint* to be served upon the following counsel of record via File & Serve*Xpress*:

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