



Exhibit C

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

D1 JASPER HOLDINGS LP, D1 SPV JL :
MASTER LP, JAY BLOCKER LTD., :
JAY DOMESTIC LLC, GCCU II LLC, :
TOCU XX LLC, OC II FIE VIII LP, :
SPV HOLDINGS, LLC, EMS J-INV LLC, :
DISRUPTIVE TECHNOLOGY SOLUTIONS :
XIV, LLC, DISRUPTIVE TECHNOLOGY :
SOLUTIONS XVI, LLC-SERIES A, :
DISRUPTIVE TECHNOLOGY SOLUTIONS :
XVI, LLC-SERIES B, and DISRUPTIVE :
TECHNOLOGY SOLUTIONS XVI, :
LLC-SERIES C, :
Plaintiffs, :
v. : Civil Action :
JUUL LABS, INC. and JL TAO LLC, : No. 2023-1060-NAC :
Defendants. :

Chancery Courtroom No. 12A
Leonard L. Williams Justice Center
500 North King Street
Wilmington, Delaware
Wednesday, March 13, 2024
9:15 a.m.

BEFORE: HON. NATHAN A. COOK, Vice Chancellor

TRIAL TRANSCRIPT - VOLUME I

1 APPEARANCES CONT'D:

2
3 RICHARD P. ROLLO, ESQ.
TRAVIS S. HUNTER, ESQ.
ALEXANDER M. KRISCHIK, ESQ.
4 JOHN M. O'TOOLE, ESQ.
Richards, Layton & Finger, PA`
5 -and-
6 ROBERT A. WEIKERT, ESQ.
of the California Bar
Nixon Peabody LLP
7 For Non-Party JL Tao LLC

9 ---

1 APPEARANCES:

2 DANIEL A. MASON, ESQ.
3 SABRINA M. HENDERSHOT, ESQ.
ELIZABETH WANG, ESQ.
Paul, Weiss, Rifkind, Wharton & Garrison LLP
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10 GRANT E. MICHL, ESQ.
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JACOB GORDON, ESQ.
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AMIRA PERRYMAN, ESQ.
18 of the New York Bar
Cleary Gottlieb Steen & Hamilton LLP
19 -and-
DAVID I. GELFAND, ESQ.
20 of the District of Columbia Bar
Cleary Gottlieb Steen & Hamilton LLP
21 for Defendant
22
23
24

Appearances Cont'd ...

1 THE COURT: Good morning, everyone.
2 ATTORNEY MASON: Good morning, Your
3 Honor. Your Honor, Dan Mason of Paul Weiss for
4 plaintiffs. I would like to introduce several of my
5 colleagues from Paul Weiss. Jeff Recher, Nina
6 Kovalenko, and Martin Flumenbaum.
7 THE COURT: Good morning. Welcome.
8 Mr. Lafferty.
9 ATTORNEY LAFFERTY: Good morning, Your
10 Honor. Bill Lafferty on behalf of defendant JUUL
11 Labs. With me at counsel table are my colleagues from
12 Cleary Gottlieb: David Gelfand, Roger Cooper, Lina
13 Bensman. And our client representative is here as
14 well, the CEO of the company, K.C. Crosthwaite, who's
15 in the back. He's going to be present for the trial,
16 and he will also be testifying later in the trial as
17 well, Your Honor.
18 THE COURT: That's fine. Welcome.
19 Thank you.
20 ATTORNEY ROLLO: Good morning, Your
21 Honor. Rich Rollo, Richards, Layton & Finger on
22 behalf of defendant, JL Tao. I am rising to introduce
23 Joe Perkovich from JL Tao, my partner Travis Hunter,
24 Rob Weikert from Nixon Peabody, and my colleague

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1 **that in a board setting with or without me present.**

2 Q. Well, am I correct, sir, that you

3 recused yourself when the board was deciding whether

4 or not to accept the offer that you guys had made?

5 Correct?

6 **A. I don't think I was generally present**

7 **for a lot of discussion around the term loan**

8 **refinancing as it relates to the entity related to me.**

9 Q. Is it your testimony that you never

10 heard Mr. Crosthwaite refer to you at a board meeting

11 as a board insider?

12 **A. I mean, it's super possible that's the**

13 **case. I don't remember any specific conversation.**

14 Q. Super possible that you do remember;

15 correct?

16 **A. No. Super possible that he said that.**

17 **If I remembered, I would tell you I remembered.**

18 Q. You are not denying that he said that,

19 are you?

20 **A. I'm not denying.**

21 Q. And am I correct that during the

22 summer of 2022, there were also discussions about the

23 governance of the board? Correct?

24 **A. Just remind me the date, please.**

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1 Q. Summer of 2022.

2 **A. Yeah, I don't remember specific dates**

3 **on those discussions.**

4 Q. There were a couple of independent

5 directors on that board; correct?

6 **A. There were.**

7 Q. And one was a woman named Teresa

8 Sebastian?

9 **A. Yes.**

10 Q. And one was a woman named Rona

11 Ambrose?

12 **A. Yes.**

13 Q. And am I correct that at board

14 meetings you stated that you did not want to form a

15 special committee and that it was important that the

16 full board's voice be heard?

17 **A. On what specific topic was this?**

18 Q. Related to bankruptcy.

19 **A. I don't remember that. I do think**

20 **that bankruptcy is a full board discussion.**

21 Q. Did you also state that you wanted the

22 full board to be aligned on any decision surrounding

23 Altria or Chapter 11?

24 **A. I don't remember any specific**

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1 **comments. I do think it would have been important for**

2 **the full board to be aligned.**

3 Q. And did you say at the board meetings

4 in August of 2022 that it was important that certain

5 members of the board with specific knowledge about the

6 company and its situation across a number of areas be

7 permitted to weigh in?

8 **A. I think, actually, I do remember that**

9 **from my deposition. And this was, I think,**

10 **specifically with relation to Altria. And I do have a**

11 **rich history of understanding the negotiation with**

12 **Altria, how the contract was set up and the**

13 **relationship there.**

14 THE COURT: One question. When is

15 that from?

16 THE WITNESS: The relationship with

17 Altria? The relationship with Altria, the transaction

18 was consummated in 2017. And there were some

19 revisions to the contract with Altria that I had been

20 helpful with.

21 THE COURT: And it's your testimony

22 that you have a rich memory and understanding of those

23 discussions in 2017?

24 THE WITNESS: Yes. Yes, because it

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1 was a deeply involved process and negotiation that I

2 was specifically involved with.

3 BY ATTORNEY FLUMENBAUM:

4 Q. That's the transaction that closed in

5 December of 2018; correct?

6 **A. Oh, yeah, that's right. Sorry.**

7 **December of 2018. I got my dates mixed up. But yes.**

8 Q. And am I correct that you stated at a

9 board meeting that forming a special committee may

10 create friction?

11 **A. I don't remember the specific use of**

12 **those words.**

13 Q. Was it your position in August of 2022

14 that creating a special committee may create friction?

15 **A. I mean, it was a very fluid time at**

16 **that moment in time and I thought that it was**

17 **important that we would be able to act as a full board**

18 **in real time as relates to the strategic conversations**

19 **that were taking place.**

20 Q. Let me ask you to look at your binder,

21 Exhibit 433.

22 **A. I see this.**

23 Q. And am I correct that Gwendolyn Moy

24 works for you?

| | |
|--|--|
| <p style="text-align: right;">Page 113</p> <p>1 A. She does.</p> <p>2 Q. And am I correct, sir, that on</p> <p>3 September 26th she wrote to Skadden, to lawyers at</p> <p>4 Skadden Arps, that "Riaz and Nick verbally confirmed</p> <p>5 to KC (the CEO) that they will fund"?</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. And was she accurate?</p> <p>9 A. Yes. We did fund.</p> <p>10 Q. And am I correct, sir, that on the</p> <p>11 same day -- let me show you -- take a look at Exhibit</p> <p>12 429. It's a letter from -- excuse me.</p> <p>13 Before I ask you about this, Skadden</p> <p>14 represented you personally?</p> <p>15 A. I think me and my entities.</p> <p>16 Q. So they were your lawyers?</p> <p>17 A. Yes.</p> <p>18 Q. And they also represented Mr. Pritzker</p> <p>19 and his entity?</p> <p>20 A. I think so.</p> <p>21 Q. The two of you had formed a group?</p> <p>22 A. I think it's called joint</p> <p>23 representation.</p> <p>24 Q. But you were working in tandem;</p> | <p style="text-align: right;">Page 115</p> <p>1 Do you see that?</p> <p>2 A. Yes, I do.</p> <p>3 Q. Does that refresh your recollection</p> <p>4 that JUUL was in imminent default of its loan in</p> <p>5 September of 2022?</p> <p>6 A. At that point in time, I think the</p> <p>7 company was worried about being -- as I mentioned,</p> <p>8 there was a minimum cash balance, and I think that</p> <p>9 they were worried about there being a drop in the cash</p> <p>10 balance below the minimum cash balance at the time.</p> <p>11 Q. Well, JUUL had not raised any money</p> <p>12 from any third-party investor; correct?</p> <p>13 A. You mean in terms of the debt</p> <p>14 refinancing?</p> <p>15 Q. Yes, as of September 26th, 2022.</p> <p>16 A. Yes. It exhausted -- it ran an</p> <p>17 exhaustive process to try and get a debt refinancing</p> <p>18 done, and it was, as I mentioned, a difficult time.</p> <p>19 Q. And there was not one third-party</p> <p>20 investor that offered to take over the term loan;</p> <p>21 correct?</p> <p>22 A. To my recollection, there was a number</p> <p>23 of kind of piecemeal offers, but there was no one that</p> <p>24 came through in that span of time.</p> |
| <p style="text-align: right;">Page 114</p> <p>1 correct?</p> <p>2 A. We did work closely.</p> <p>3 Q. And on September 26th, if you look at</p> <p>4 Exhibit 429, there's an email to Kirkland from a</p> <p>5 lawyer named Phil Anker from WilmerHale.</p> <p>6 Do you see that?</p> <p>7 A. I do see this.</p> <p>8 Q. And was WilmerHale also representing</p> <p>9 you and your entities?</p> <p>10 A. Yes.</p> <p>11 Q. And was WilmerHale also representing</p> <p>12 Mr. Pritzker and his entities?</p> <p>13 A. I think so.</p> <p>14 Q. And he writes that he represents "Nick</p> <p>15 Pritzker and Riaz Valani in respect of matters</p> <p>16 relating to your client, Juul"</p> <p>17 Do you see that, sir?</p> <p>18 A. I do.</p> <p>19 Q. And it says that "The Company[] [] has</p> <p>20 advised that the Company's existing term loan, which</p> <p>21 we understand [] in the approximate amount of []400</p> <p>22 million, will likely be in imminent default and []</p> <p>23 could lead to an acceleration of that loan by the</p> <p>24 lenders."</p> | <p style="text-align: right;">Page 116</p> <p>1 Q. And Mr. Anker writes that "The Company</p> <p>2 has requested that Mr. Pritzker and Mr. Valani</p> <p>3 consider providing a new term loan, also in the</p> <p>4 approximate amount of \$400 million, the proceeds of</p> <p>5 which would be used by the Company to pay off the</p> <p>6 existing term loan, so that the Company will be able</p> <p>7 to avoid an imminent default, and have additional time</p> <p>8 both to explore ways to address the litigation it is</p> <p>9 facing and to maximize its value for the benefit of</p> <p>10 all constituencies."</p> <p>11 Do you see that, sir?</p> <p>12 A. I do.</p> <p>13 Q. And was that accurate?</p> <p>14 A. Well, you know, I think it was really</p> <p>15 important to us that the company not trip a minimum</p> <p>16 cash requirement at the time and that, yeah, that that</p> <p>17 not be a reason for it to default. So I think it was</p> <p>18 important to us that actually the term loan get</p> <p>19 refinanced, and it was important for us for the</p> <p>20 company, at that period of time, which was a difficult</p> <p>21 period of time, to try and find ways to see it through</p> <p>22 all of its issues.</p> <p>23 Q. And you and Mr. Pritzker and your</p> <p>24 various entities became the secured lenders to the</p> |

| | |
|--|---|
| <p style="text-align: right;">Page 209</p> <p>1 Q. Right. I think the "to/from" line got 2 cut off on the below email. But I think the top email 3 shows you who is on the email. Kc@juul you know is 4 Mr. Crosthwaite, the CEO. Right? 5 A. Yes. 6 Q. And you know who dbarse is. Right? 7 That's Mr. Barse? 8 A. I do. 9 Q. He is one of the directors on the 10 independent committee at JUUL? 11 A. Correct. 12 Q. Same with Mr. Aronzon? 13 A. Yes. 14 Q. Mr. Kim writes this group. And this 15 is November 26, 2022. So this is, just to orient 16 ourselves, about two weeks before the backstop 17 agreement is signed. Right? 18 A. Yes. 19 Q. The backstop agreement is signed 20 December 7, 2022. Correct? 21 A. I believe those dates are right, yes. 22 Q. All right. And Mr. Kim writes to this 23 group and he says, "The insiders would like to have a 24 principals [and] advisors call in the morning, with</p> | <p style="text-align: right;">Page 211</p> <p>1 Q. And then Mr. Kim writes, "On their 2 side" -- meaning the side of the company insiders -- 3 "[it's] Riaz, Nick" -- that's you. Right? 4 A. Yes. 5 Q. "Zach" -- that's Zach Frankel? 6 A. Yes. 7 Q. "Skadden" -- and Skadden represented 8 you and Mr. Valani, correct, in this transaction? 9 A. Yes. 10 Q. "[A]nd Guggenheim." Guggenheim were 11 financial advisors that were also representing you and 12 Mr. Valani. Right? Correct? 13 A. I think that's who Guggenheim 14 represented. I'm not 100 percent sure. 15 Q. Okay. And did you, in fact, have this 16 principals and advisors call with the company where 17 you served as a principal for JL Tao, this ultimate 18 signatory to the backstop agreement? 19 A. Again, I question your use of 20 "principal." And is the question did this call 21 happen? Was that your question? 22 Q. Did the call happen? 23 A. I remember a call. I couldn't tell 24 you exactly who was on the call, whether it was</p> |
| <p style="text-align: right;">Page 210</p> <p>1 the goal of resolving all open items." 2 Do you see that? 3 A. Yes. 4 Q. And you were still in discussions 5 about the terms of the backstop agreement at this 6 time. Right? 7 A. I think that's right, yes. 8 Q. And there's a reference there to a 9 Sunday evening deadline. 10 Do you see that in the next sentence? 11 A. I do. 12 Q. And that was a deadline imposed by the 13 MDL plaintiffs. Correct? 14 A. I don't know what the deadline was. I 15 don't know. 16 Q. And Mr. Kim at least writes that the 17 insiders suggested Paul, David, KC, and Tyler. Right? 18 Do you see that? As well as advisors? 19 A. Sorry. I would like to read this 20 whole paragraph. 21 Okay. Yeah, I do see this. 22 Q. Okay. And Tyler is Tyler Mace, the 23 general counsel of the company? 24 A. Yes.</p> | <p style="text-align: right;">Page 212</p> <p>1 everyone on this list. 2 Q. Okay. But you were involved with 3 calls with the independent directors about the terms 4 of the backstop agreement that would be signed in 5 December of 2022? 6 A. I do remember this call. 7 Q. You do remember it? 8 A. Yes. 9 Q. Okay. And Mr. Perkovich isn't 10 mentioned in this email, is he? 11 A. Mr. who? 12 Q. Perkovich. 13 A. No. 14 Q. Okay. Mr. Perkovich is an associate 15 of yours? 16 A. Yes. 17 Q. He's worked for you? 18 A. Yes. 19 Q. For more than ten years. Correct? 20 A. Yeah, I think about ten years. 21 Q. Right. He had a significant position 22 at your family office, Tao Capital Management? 23 A. The president of the office. 24 Q. Now --</p> |

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