



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, JL 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.

JUUL LABS, INC. and JL TAO LLC,

Defendants.

C.A. No. 2023-1060-NAC

**PUBLIC VERSION FILED:
April 1, 2024**

**PLAINTIFFS' MOTION TO COMPEL,
OR IN THE ALTERNATIVE, TO STRIKE**

1. The trial testimony of David Barse, a JUUL director and member of the Independent Committee of JUUL's Board that approved the Insider Financing, strikes at the heart of the fundamental principle that privilege cannot be used as both a sword and a shield.

2. During discovery, Defendants aggressively shielded from Plaintiffs any and all information that the Independent Committee considered in authorizing the Insider Financing. In addition to withholding as privileged dozens of documents

involving advice that the Committee received, counsel for JUUL and for the Independent Committee instructed Barse, along with the other member of the Independent Committee, Paul Aronzon, not to answer any questions on myriad topics that they had discussed with their counsel, including questions directed at discovering the facts of which the Committee was aware, and on which the Committee based its decision. For example, Barse and Aronzon were instructed not to answer questions regarding their knowledge about the relationship between Pritzker and JL Tao; the circumstances of Bowen's resignation from the Board; and which Insider entities' contributions counted towards a Qualified Financing. And in cases where Barse and Aronzon were permitted to answer questions, they testified that they were unaware of relevant facts.

3. Yet Barse told a completely different story at trial. He affirmatively introduced the very advice and facts that JUUL and the Independent Committee had refused to provide in discovery: Barse testified about the substance of the advice he supposedly received from the Independent Committee's counsel; he testified that the Independent Committee had been advised by counsel about the requirements for a Qualified Financing; he testified about what he believed those requirements to be and which entities he believed met those requirements; and he claimed that his recollection had been refreshed by counsel as to facts about which he denied any knowledge at his deposition only five weeks prior.

4. Defendants made a tactical choice during discovery to shield basic information from Plaintiffs. Their choice has consequences. Based on Barse’s waiver of attorney-client privilege in his trial testimony, Defendants should be ordered to produce all documents reflecting the advice the Independent Committee received as to whether the Insider Financing constitutes a Qualified Financing, and as to the requirements of a Qualified Financing. Alternatively, Barse’s trial testimony should be stricken from the record, and the Court should infer that the Independent Committee failed to conduct any meaningful analysis as to whether or not the Insider Financing was a Qualified Financing.

BACKGROUND¹

I. The Independent Committee Rubber Stamps the Insider Financing.

5. As shown in Plaintiffs’ Pre-Trial Briefs (D.I. 224, 238), JUUL used the Independent Committee to rubber stamp the Insider Financing. (D.I. 224 at 49-51.) Neither the Independent Committee nor its counsel did any meaningful independent investigation into the facts underlying the Insider Financing, including the relationship between Pritzker and JL Tao. And, to the extent the Independent Committee considered those facts or any other relevant facts regarding the Insider

¹ The trial transcript is cited as “[Last Name] Tr. ___.” Deposition transcripts are cited as “[Last Name] Dep. ___.” Capitalized terms not defined herein have the same meaning as in Plaintiffs’ Pre-Trial Briefs. (D.I. 224, 238.)

Financing, Defendants blocked any discovery into those topics through extremely broad privilege assertions—before Defendants reversed course and abandoned those positions at trial, choosing to elicit testimony from Barse about the advice and information he received from counsel.

6. Barse and Aronzon’s review of written materials (other than, potentially, undisclosed materials provided by counsel) started and stopped with a self-serving advocacy presentation by the Skadden law firm and financial adviser Guggenheim Partners,² both of which represented Pritzker and Valani³—two of the Insiders whose conflicted interests warranted the appointment of independent directors in the first place. The Independent Committee received the Skadden/Guggenheim deck arguing in favor of a Qualified Financing just days before the Independent Committee approved resolutions providing that “the Committee believes the Financing constitutes a ‘Qualified Financing’ as defined in the Note Purchase Agreements.”⁴ The Committee otherwise relied on its counsel to diligence the facts of the Insider Financing.⁵ Indeed, at his deposition on February

² Barse Dep. 144:20-145:10; Aronzon Dep. 137:6-138:8.

³ Pritzker Tr. 211:10-14; Valani Tr. 113:13-23; Barse Dep. 140:24-141:8.

⁴ JX-1111 at 9 (Independent Committee resolutions dated October 14, 2023); *see also* JX-1086 (Guggenheim/Skadden materials shared with the Independent Committee on October 9 and 10).

⁵ Aronzon Dep. 259:8-260:1; Barse Dep. 152:3-10.

8, Barse testified that he did not know: whether Pritzker had ever been a beneficiary of JL Tao;⁶ as of October 2023, how long the then-operative ownership or management structure of JL Tao had been in place;⁷ or what Tao Capital Management LP is or how it is related to Pritzker.⁸

7. Based on the information provided in discovery, the Independent Committee's counsel at Milbank also lacked access to the facts necessary to advise the Independent Committee. In response to Plaintiffs' document requests, Defendants' counsel disclosed that the *only* materials provided to the Independent Committee's counsel to diligence the representations in the Skadden/Guggenheim deck were limited to: (1) JL Tao's Third Amended and Restated Operating Agreement, dated September 14, 2023 (after the various management and ownership changes made to JL Tao leading up to the Insider Financing), and (2) the trust instrument approving JL Tao's participation in the Insider Financing, signed by its recently installed trustees.⁹

⁶ Barse Dep. 134:18-135:2; *see also id.* 137:2-6.

⁷ *Id.* 135:3-8, 135:21-136:2; *see also id.* 137:7-11; Aronzon Dep. 308:14-19.

⁸ Barse Dep. 137:12-18.

⁹ JX-1196 (citing JX-1002 and JX-1028).

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