EFiled: Apr 16 2024 03:20PM EDT
Transaction ID 72757216
Case No. 2023-1060-NAC

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 JINV 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 16, 2024**

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL

PRELIMINARY STATEMENT

1. Plaintiffs' Motion to Compel (the "Motion")[1] rests on a fundamental mischaracterization of the record. Plaintiffs assert that at trial, Barse "reverse[d] course" from his deposition and put at issue privileged advice to JLI's Independent

[1] D.I. 261.

Find authenticated court documents without watermarks at docketalarm.com.

Committee. In reality, Barse's trial testimony was consistent with his deposition testimony, he did not try to make affirmative use of counsel's advice, and Plaintiffs' strategic decision to wait until trial to object to his description of the Committee's diligence should not be rewarded.

2. Plaintiffs' claim that Barse "affirmatively introduced [at trial] the very advice and facts that JUUL and the Independent Committee had refused to provide in discovery"[2] is false. Consistent with his deposition testimony, Barse simply testified at trial that the Committee was advised by counsel on the Transaction, including that it was Qualified, without introducing the substance of counsel's advice. Defendants do not rely on counsel's advice: the question of whether the Transaction was Qualified is governed entirely by the Agreements, irrespective of the Committee's process.

3. Plaintiffs also have no authority for the extreme relief they seek. They do not cite a single case in which a court reopened discovery following trial, struck the entirety of a witness's trial testimony, or drew an adverse inference. The law is clear: if any remedy were warranted (none is), at most it would be to strike the challenged portion of Barse's trial testimony. Plaintiffs' Motion should be denied.

[2] Motion at 2.

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

BACKGROUND

4. The sole issue in this contract case is whether the Transaction was Qualified.[3] The Agreements do not condition this on any determination by JLI's Independent Committee at all, much less on the process it used in approving the Transaction. Despite this, Plaintiffs have tried to put at issue the conduct of the JLI Board and Independent Committee, alleging that the Transaction "is the latest in a series of conflicted transactions in which the Insiders have" benefited themselves[4] and arguing that the Committee "rubber stamp[ed]" it.[5] At trial, Plaintiffs called Barse in their own case to question him, not about the actual facts relevant to the contractual analysis, but about what the Committee knew when, and what diligence it did. In response, Defendants' trial examination of Barse presented the Committee's process in negotiating and approving the Transaction.

A. JLI provided the requested discovery.

5. Plaintiffs sought broad discovery of the Committee and its members, which JLI and counsel for the Committee provided.[6] In total, nearly 1,000

---

[3] D.I. 55 at 2-3. Capitalized terms not defined herein have the same meaning as in Defendants' Pre-Trial Briefs. D.I. 223, 239.

[4] D.I. 1 at 2.

[5] D.I. 224 at 49.

[6] *E.g.*, JX-502; JX-560; JX-610; JX-644.

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

documents relating to the Committee were produced,[7] and its communications with counsel reflecting substantive legal advice were withheld as privileged.[8] During discovery, Plaintiffs raised no timely issues with this production nor with the privilege assertions.[9]

6. At their January depositions, Committee members Barse and Aronzon provided substantive responses (to the best of their recollection) on a host of topics related to the Transaction, while asserting privilege over communications with counsel reflecting substantive legal advice. Barse in particular testified at his deposition that:

- he knew "Pritzker had no financial interest nor control in JL Tao," and that he "became more aware of how they were related" around October 2023, including that "the beneficiaries [are] the children of Nick";[10]

---

[7] *E.g.* JX-459; JX-466; JX-480; JX-502; JX-521; JX-560; JX-607; JX-610; JX-618; JX-638; JX-644; JX-707; JX-757; JX-777; JX-916; JX-01069; JX-01067; JX-01074; JX-01082; JX-01101; JX-01106; JX-01107; JX-01111.

[8] *See* Motion, Appendix 1.

[9] Plaintiffs sent two letters requesting supplemental productions, which JLI promptly made.

[10] Barse Dep. 46:10-25, 149:7-9.

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

- he did not discuss Bowen's Board resignation with other Board members, but it was "not relevant" because "at the time of the qualified financing proposal that we were reviewing, he was not a member of the board";[11]
- "the provisions of the [NWPA] were pretty clear . . . about what made one qualified," and he was prepared to discuss further "if you showed me" the provisions (Plaintiffs did not);[12]
- the Guggenheim presentation provided the Committee with "information that went to supporting that this was, in fact, a qualified financing"; he did not recall the details, but he volunteered to "talk through" the presentation "if we can go back to [it]," asking multiple times that "you show[] me something" (Plaintiffs declined).[13]

7. Barse and Aronzon both testified to the *fact* that the Committee "was advised by counsel that [the Transaction] met the standards of the qualified financing,"[14] and counsel instructed them not to disclose the substance of the advice,

---

[11] *Id.* 102:14-106:8.

[12] *Id.* 142:18-143:6; 132:12-16; 131:4-14.

[13] *Id.* 170:5-13; 45:19-21; 54:7-16.

[14] *Id.* 151:5-8; 154:8-15; 143:7-17; Aronzon Dep. 303:11-16; 136:9-17.

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

WHAT WILL YOU BUILD? | sales@docketalarm.com | 1-866-77-FASTCASE

fastcase® Smarter legal research.