



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:

May 7, 2024

PLAINTIFFS' MOTION TO SUPPLEMENT THE RECORD

1. Plaintiffs, by and through their undersigned counsel, hereby respectfully move for an order to supplement the record with the following discrete set of documents, comprising two documents provided to Plaintiffs following trial and related correspondence:

- a document produced on March 20, 2024 by Jefferies Group LLC, an advisor to JUUL Labs, Inc. in connection with its fundraising efforts (Exhibit A, JX-1231);
- JUUL's audited Consolidated Financial Statements for the years ending December 31, 2022 and December 31, 2023 (Exhibit B, JX-1228, the "Financial Statements"), in which JUUL makes representations that are

either false and misleading, or demonstrate a violation of this Court's orders enjoining JUUL from effecting a conversion of Plaintiffs' Notes; and

- the parties' correspondence in connection with the Financial Statements (Exhibits C (JX-1229) and D (JX-1230)).¹

2. Plaintiffs subpoenaed several third parties in connection with their discovery efforts, including Jefferies. Jefferies produced over 3,000 documents in advance of trial. On March 20, six days following trial, and without any advance notice to Plaintiffs that its document productions in response to Plaintiffs' subpoena were not completed before trial, Jefferies produced over 400 documents.

3. Plaintiffs respectfully request to supplement the record with one document from Jefferies's post-trial production, which further underscores the disingenuous positions that Defendants have taken in this litigation. Exhibit A is a set of Jefferies notes from a September 25, 2023 call with JUUL's CFO Vittal Kadapakkam and the private equity investor ArmaVir Partners LLC. The notes record several questions posed during the call, as well as Kadapakkam's responses. Of particular relevance, in response to questions about JUUL's term loan, the notes reflect that Kadapakkam responded that the term loan is "owned by Nick and Riaz and they have good ability to negotiate." Ex. A at 1. Further, in response to the

¹ Unless otherwise defined herein, capitalized terms have the meanings set forth in Plaintiffs' Opening Post-Trial Brief.

question “Is \$1.227bn” [referring to the Insider Financing] “**all Nick and Riaz?**” Kadapakkam responded: “Mostly along with a few others with minimal contribution.” *Id.*

4. Exhibit A makes clear, yet again, that JUUL’s attempts to distance Pritzker from the Insider Financing are a fiction created specifically for the purposes of this litigation, and divorced from the reality of his extensive substantive involvement, as recognized by all parties involved, including the other Insiders; Pritzker and Valani’s lawyers; JUUL’s advisors; and JUUL itself.

5. Additionally, on April 2, 2024, JUUL uploaded the Financial Statements to its virtual data room for review by actual and potential investors. As discussed in Plaintiffs’ Opening Post-Trial Brief, the Financial Statements falsely state—in contravention of this Court’s injunction orders—that (i) the Notes *have already been converted* into millions of shares of JUUL Class A common stock and (ii) an “adverse court decision could potentially require the Company to *reinstate* the Notes”:

Pursuant to the 2019 Note Agreement and 2020 Note Agreement, *the Notes were automatically converted into equity on October 27, 2023, upon the closing of a Qualified Private Financing. The Notes were converted into 107.8 million shares of Class A common stock.* On October 19, 2023, certain noteholders commenced legal proceedings in Delaware Chancery Court disputing that the transaction that closed on October 27, 2023 is a Qualified Financing capable of resulting in automatic conversion of the Notes. At the time of the issuance of the financial statements, the dispute is still pending. An adverse court

decision *could potentially require the Company to reinstate the Notes at an estimated carrying amount of approximately \$610.0 million inclusive of accreted interest as of December 31, 2023*. Based on the status of the dispute at the time of the issuance of the financial statements, the Company’s legal counsel believes a decision in the Company’s favor is more likely than not.

Ex. B at 30 (emphases added). JUUL likewise assigned a carrying value of \$0 to the Notes in its Financial Statements. *See id.* at 28, 30.

6. On April 8, Plaintiffs sent a letter to JUUL outlining their concerns that JUUL had violated the Court’s orders, or else was misleading potential investors (which JUUL continues to solicit) by implying, falsely, that Plaintiffs’ Notes have been converted. (Exhibit C.)

7. On April 11, JUUL responded that it had not converted any Notes, but failed to explain why it would need to “reinstate” Notes that had never been converted in the first place. (Exhibit D.)

8. The Financial Statements lead to the deeply concerning conclusion that JUUL has either willfully violated the Court’s orders prohibiting any such purported conversion, on the one hand, or has—once again—intentionally disseminated false and misleading statements to actual or potential investors, on the other hand. Assuming the latter, JUUL has falsely described the Court’s unambiguous orders by marketing itself as a Company with **\$2 billion** less debt on its books. JUUL is thus actively fundraising based on the terms set as part of the improper Insider Financing

and by promulgating false and misleading statements about this Court’s rulings, JUUL’s capital structure, and the status of the Notes.

9. Under Delaware law, whether to allow supplementation of the trial record “is a matter for the Court’s discretion.” *Lola Cars Int’l Ltd. v. Krohn Racing, LLC*, 2010 WL 1818907, at *1 (Del. Ch. Apr. 23, 2010). “The Court will allow the introduction of additional evidence when doing so will serve the interests of fairness and substantial justice.” *Id.* The factors to be considered include “the materiality of the evidence to be admitted; the moving party’s ability to have introduced the evidence at trial; the length of time that has passed between the conclusion of trial and the request to reopen the record; the need for judicial efficiency; and prejudice to the opposing party.” *Id.*

10. Supplementing the record here to permit the addition of the Jefferies call notes and the Financial Statements (and related correspondence) would be both fair and just. The Jefferies call notes are further material evidence that—contrary to the position that JUUL continues to advance—it was, in fact, Pritzker who brought about the Insider Financing, regardless of the financial vehicle through which his estate did so. The Financial Statements are material evidence that directly relates to this Court’s injunction orders and JUUL’s purported conversion of the Notes. They likewise are consistent with, as established at trial, JUUL’s history of making false statements to actual and potential investors. The Financial Statements, and the

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