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** **EFILED JUNE 11, 2024**

DEFENDANTS' MOTION TO SUPPLEMENT THE RECORD

Defendants JUUL Labs, Inc. ("JLI") and JL Tao LLC, by and through their undersigned counsel, hereby move for an order to supplement the trial record for a limited purpose. Specifically, Defendants seek to introduce two documents for the purpose of disproving Plaintiffs' contentions regarding JLI's "cap tables" and specifically the assertions, raised for the first time in Plaintiffs' Post-Trial Opening Brief, that "no one ever even mentioned the Insiders' entities to the prospective noteholders," and that Plaintiffs had no way to know the identities of JLI's

stockholders in 2019 and 2020.[1] Plaintiffs rely on these erroneous assertions in support of their claims that JLI's treatment of the Transaction[2] as a Qualified Financing violates the implied covenant of good faith and fair dealing, and that Nick Pritzker controls JL Tao and JL Special.[3]

The two documents Defendants seek to introduce refute Plaintiffs' assertions. This evidence shows that D1 knew the identities of JLI's major stockholders—including Ploom Investment, LLC, Ploom Investment II, LLC, and JL Special, LLC—well before D1 negotiated the relevant contractual language in the NPA and NWPA. It therefore undermines Plaintiffs' implied covenant argument as well as their inferences about JL Tao and JL Special.

Defendants' proposed new exhibits consist of (i) a capitalization table, provided by JLI to D1 in May 2018 in connection with D1's equity investment in the Company that preceded its investment in the convertible notes, which listed the

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[1] D.I. 279 at 50, 62-63 ("Had Plaintiffs foreseen that the Insiders would try to hide behind investment vehicles and complex wealth management estates that JUUL had never mentioned . . . then they would have contracted specifically around these tactics.").

[2] Unless otherwise defined herein, capitalized terms have the meanings set forth in Defendants' Post-Trial Answering Brief filed herewith. This motion employs the citation form to the Trial transcript adopted in Defendants' Post-Trial Answering Brief.

[3] D.I. 279 at 62-63, 33, 11.

very entities that Plaintiffs assert JLI "never mentioned"[4]—Ploom Investment, Ploom Investment II, and JL Special (Exhibit A); and (ii) a draft waiver of preemptive rights provided by JLI to D1 in January 2020, which identified Ploom Investment and JL Special as major JLI stockholders, and reminded D1 of the 2018 Investors' Rights Agreement ("IRA") to which D1, Ploom Investment, Ploom Investment II, and JL Special are all parties ("Exhibit B," and with Exhibit A, the "Exhibits").[5] While the IRA itself (JX-00025 in this Action) disproves Plaintiffs' new contentions, Exhibit B—sent to D1 in the midst of the NWPA negotiations—removes all doubt.

BACKGROUND

1. The parties spent months in expedited discovery in this action to resolve a single, narrow issue at trial—whether the Transaction was a Qualified Financing under the NPA and NWPA, such that the Notes were automatically converted on October 27, 2023.[6] Discovery was tailored to that issue.

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4 *Id.* at 63, 50.

5 *See* JX-00025 at -68602-03.

6 D.I. 234 ¶¶ 5, 69 (Pre-Trial Order); D.I. 55 at 2 (Stip. and Order Governing Injunction Through Final Resolution on the Merits).

2. At trial, Plaintiffs introduced evidence outside of the scope of that question, including evidence purporting to show that the "Insiders'" identities were somehow hidden from Plaintiffs.[7] Plaintiffs have doubled down on that limited evidence in post-trial briefing, now asserting that JLI "never mentioned" its stockholders and provided only summary management reports that identified Riaz Valani (rather than Ploom) and Pritzker (rather than JL Special) as major stockholders.[8]

3. Plaintiffs make this assertion in support of their implied covenant argument that, "had Plaintiffs foreseen that the Insiders would try to hide behind investment vehicles and complex wealth management estates that JUUL had never mentioned . . . then they would have contracted specifically around these tactics."[9] Plaintiffs also use their feigned ignorance of the existence of JL Special to insist that "Pritzker remains in control" of JL Tao as well as JL Special.[10]

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7 *See, e.g.*, Sundheim Tr. 23:11-26:14; Goldstein Tr. 260:11-18, 270:11-24.

8 D.I. 279 at 62-63.

9 *Id.* at 63.

10 *Id.* at 31, 33, 11.

4. To demonstrate that Plaintiffs' contentions that they were misled about JLI's major stockholders are baseless, JLI should be permitted to introduce the two Exhibits.

ARGUMENT

5. "A motion to reopen or supplement the record is addressed to the sound discretion of the Court."[11] In determining whether the interests of fairness and justice warrant admission of new evidence, the Court considers:

> [T]he 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.[12]

6. The Exhibits satisfy these criteria. First, the Exhibits are material because they directly rebut Plaintiffs' assertion that "no one ever even mentioned" JLI's stockholders to noteholders, and their arguments premised on that false assertion.[13] Plaintiffs first argue that their alleged ignorance of JLI's stockholders

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[11] *Vianix Del. LLC v. Nuance Commc'ns, Inc.*, 2011 WL 487588, at *3 (Del. Ch. Feb. 9, 2011); *El Paso Natural Gas Co. v. Amoco Prod. Co.*, 1992 WL 43925, at *10 n.15 (Del. Ch. Mar. 4, 1992) ("The decision to reopen the record is within the trial court's discretion.").

[12] *Lola Cars Inter. Ltd v. Krohn Racing, LLC*, 2010 WL 1818907 at *1 (Del. Ch. Apr. 23, 2010).

[13] D.I. 279 at 50; 33, 63.

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