EFiled: Oct 24 2023 04:04PM EDT
Transaction ID 71179818
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, and OC II FIE VIII LP, Plaintiffs, v. JUUL LABS, INC., Defendants.	C.A. No. 2023-1060-NAC **REDACTED VERSION FILED: October 24, 2023**

VERIFIED COMPLAINT

D1 Jasper Holdings LP, D1 SPV JL Master LP, Jay Blocker Ltd., Jay Domestic LLC, GCCU II LLC, TOCU XX LLC, and OC II FIE VIII LP (together, "Plaintiffs"), for their complaint against Defendant JUUL Labs, Inc. ("JUUL" or the "Company"),[1] allege as follows:

NATURE OF THE ACTION

1. Plaintiffs bring this action to enjoin an attempt by JUUL to wrongfully convert JUUL's debt held by Plaintiffs into equity worth a fraction of its value, which JUUL has indicated it intends to do in 8 days, as early as October 27,

[1] By bringing this Complaint against the sole Defendant JUUL, Plaintiffs seek the expeditious resolution by this Court of their application for injunctive relief. Plaintiffs expressly preserve and do not waive or intend to waive any of their rights to assert any and all claims against and to seek all available remedies, whether legal or equitable, against JUUL and the Insiders (as defined herein), including any entities controlled by them, and Plaintiffs expect to pursue all appropriate claims against such parties.

2023. The attempted conversion of Plaintiffs' debt instruments is prohibited by the applicable agreement and represents only the latest step in a lengthy scheme by certain JUUL insiders to plunder the Company for their own benefit.

2. Plaintiffs are investment funds that bought notes (the "Notes") that Defendant JUUL, the e-cigarette company, issued in 2019 and 2020. The Notes are governed by a Note and Warrant Purchase Agreement, dated as of February 3, 2020, by and among JUUL and the investors thereto (the "Note Purchase Agreement").

3. This is an action to stop JUUL's improper attempts to cause the conversion of the Notes to equity at a significantly inflated valuation—in violation of the terms of the Note Purchase Agreement—for the benefit of certain insiders: Adam Bowen, James Monsees, Nicholas J. Pritzker, and Riaz Valani (together, the "Insiders"), who will inject capital at a fraction of the valuation at which JUUL intends to convert the Notes.

4. The purported conversion of the Notes is the latest in a series of conflicted transactions in which the Insiders have leveraged a distressed situation for their own personal gain to the detriment of JUUL's other stakeholders.

5. [redacted] JUUL and its Insiders have been subject to ongoing and extensive

litigation with respect to JUUL's marketing practices, including a multi-district litigation involving thousands of plaintiffs, as well as investigations by almost every state attorney general in the United States.

6. Initially, in mid-2021, four state attorneys general entered into settlement agreements with JUUL; however, the settlement agreement executed by the attorney general for North Carolina notably did not release claims against the Insiders in their individual capacities, and shortly thereafter the North Carolina attorney general brought such claims against the Insiders.

7. Since that time, the Insiders have leveraged their positions to shield themselves from personal liability in every subsequent settlement negotiation undertaken by JUUL, including with respect to claims brought against them that likely would not be indemnifiable by JUUL.

8. From September 2022 through April 2023, JUUL settled billions of dollars of these contingent litigation claims. Each settlement agreement is explicitly predicated on obtaining releases for the benefit not only of JUUL, but also of the Insiders. [redacted]

9. Second, the Insiders obtained control of both JUUL's board process and its capital structure. Certain of the Insiders—through entities that they control—personally refinanced JUUL's first-lien term loan and used their positions on the board to negotiate a financing package favorable to them as lenders. [redacted]

10. Third, the Insiders have also leveraged their positions to fund an equity investment in JUUL [redacted]—in a plain attempt to capture any upside for themselves to the detriment of JUUL's other stakeholders. [redacted]

11. The Insiders agreed to fund this equity investment under the guise of providing JUUL with the liquidity necessary to fund various settlement agreements. The Insiders, including the Insiders on JUUL's board, participated in bringing about those settlements in the first place, which settlements personally

benefited them. But the economic circumstances reveal the Insiders' true motive: to capture for themselves the potentially significant upside in JUUL's business by investing at a trough valuation at the expense of the holders of more than $1.9 billion of JUUL's outstanding Notes.

12. On October 16, 2023, JUUL informed noteholders that it intends to forcibly convert their Notes to equity [redacted]

13. This final step in the scheme violates the terms of the Note Purchase Agreement. Under that agreement, JUUL is prohibited from automatically converting the Notes unless there is a "Qualified Financing." Such a Qualified Financing must be a "Capital Raising Transaction," bringing in at least $500 million in new money from outsiders. The Note Purchase Agreement unambiguously defines a Capital Raising Transaction as "a transaction or series of related transactions in which the Company sells capital stock of the Company to investors for cash . . . ***excluding . . . shares issued to employees or directors of, or consultants or advisors to, the Company or any of its subsidiaries***," such as the Insiders.

14. The Note Purchase Agreement's strict limitations on the types of investments that may result in an automatic conversion of the Notes reflect a fundamental agreement that such a conversion may be effected only upon a true,

third-party investment that supplies a reliable, arms-length valuation of the Company. Here, as discussed below, JUUL's demonstrated intent is to effect an automatic conversion based on a transaction led by the Insiders and designed for their benefit.

15. At 11:04 p.m. on October 16, JUUL notified noteholders that it intends to close a financing [redacted] on or about October 27, 2023, which JUUL's notice conclusorily asserts will be a Qualified Financing resulting in JUUL's automatic conversion of the Notes.

16. But any attempt by JUUL to consummate a Qualified Financing predicated on a notice period triggered by delivery of this deficient notice would be improper. JUUL's deficient notice has in and of itself breached the Notes, which require that any notice of conversion include "a summary of the principal terms" of the proposed financing. The notice failed to comply with this requirement. Among other reasons, it fails to include information necessary to determine whether the proposed financing meets the requirements for a Qualified Financing, such as the identities of the investors or the amount of their contributions. A basic purpose of the Notes' requirement that any notice supply "a summary of the principal terms" of the proposed financing is to permit noteholders to determine whether such a financing results in an automatic conversion that would fundamentally affect their rights.

17. And the reason the notice excludes critical information is clear: the proposed financing does *not* meet the requirements for a Qualified Financing because less than $500 million of the financing is coming from outside sources. Based on information previously relayed by the Company, and the notice's silence on the Company's financing counterparties, it is clear that the bulk of the proposed financing will be supplied by the Insiders or entities they control. Those investments do not count toward a Qualified Financing because the Insiders are or were Company directors at all material times and/or serve as advisers or consultants to the Company.

18. Plaintiffs seek relief from this Court to preserve the status quo by enjoining the Company from converting the Notes while Plaintiffs pursue the dispute resolution process provided for in the Note Purchase Agreement. Plaintiffs are compelled to seek the Court's assistance because the time-consuming dispute resolution provision in the underlying agreement does not permit meaningful relief for Plaintiffs in these circumstances. The dispute resolution provisions, as discussed below, impose a mandatory 60-day period before a party can pursue arbitration, during which time the parties are required to engage in discussions and mediation. On October 19, 2023, Plaintiffs served a notice of dispute upon the Company, initiating the dispute resolution process pursuant to the Note Purchase Agreement.

19. Here, JUUL has announced that it intends to effect a conversion of the Notes as early as October 27, 2023. Plaintiffs will suffer imminent and

irreparable harm if the Notes are converted before this dispute can be adjudicated by being deprived of their contractual rights and benefits under the Notes, which may not be readily restored. The Company, by contrast, will suffer no meaningful harm if the status quo is preserved. It is free to raise capital and, on information and belief, it has ready and available funds supplied by the Insiders to satisfy any litigation settlements when required to do so. The Company should be enjoined from effecting any automatic conversion of the Notes, which would fundamentally alter the capital structure to Plaintiffs' detriment in a way that will be difficult—if not impossible—to undo.

JURISDICTION

20. This Court has equitable jurisdiction under 10 *Del. C.* § 341 because Plaintiffs seek equitable relief barring JUUL from effecting a conversion of the Notes.

21. This Court has subject matter jurisdiction under 8 *Del. C.* § 111(a)(2), because this is an action to interpret, apply, and enforce provisions of the Note Purchase Agreement, an agreement by which JUUL, a Delaware corporation, created and sold rights respecting its stock. The Note Purchase Agreement, a true and correct copy of which is attached hereto as **Exhibit A**, is governed by Delaware law. Section 9.3 of the Note Purchase Agreement provides

that it "shall be governed in all respects by the internal laws of the State of Delaware, without regard to conflicts of law."

22. This Court has personal jurisdiction over JUUL because it is a Delaware corporation.

THE PARTIES AND RELEVANT NON-PARTIES

23. Plaintiffs D1 Jasper Holdings LP, D1 SPV JL Master LP, Jay Blocker Ltd, Jay Domestic LLC, GCCU II LLC, TOCU XX LLC, and OC II FIE VIII LP are investment funds that hold Notes issued by JUUL in 2019 and 2020, which are governed by the Note Purchase Agreement. In aggregate, Plaintiffs hold approximately 50.2% of the more than $1.9 billion in outstanding Notes.

24. Defendant JUUL is a Delaware corporation headquartered in Washington, D.C. that manufactures, markets, and sells e-cigarettes.

25. Non-party Insider Nicholas J. Pritzker is a JUUL director. Pritzker is a member of the wealthy Pritzker family that owned chewing-tobacco giant Conwood before selling it to Reynolds American. Pritzker has been a director of the Company since 2017.

26. Non-party Insider Riaz Valani is a JUUL director. Valani was JUUL's very first investor.

27. Non-party Insider James Monsees is a co-founder of JUUL, and was a JUUL director until March 2020.

28. Non-party Insider Adam Bowen is a co-founder of JUUL, and was a JUUL director until at least May 2023.

29. Bowen, Monsees, Pritzker, and Valani each have substantial equity holdings in the Company. Bowen, Pritzker, and Valani are or at all materials times were directors of the Company. Bowen, Pritzker and Valani are, or at all material times were, advisors and consultants to the Company.

SUBSTANTIVE ALLEGATIONS

JUUL's Regulatory and Litigation Problems

30. JUUL was founded in May 2015 by Bowen and Monsees, who had invented an e-cigarette while in graduate school. By the end of 2017, after a major social media marketing campaign, JUUL's e-cigarettes became the most popular e-cigarette brand in the United States.

31. The company grew from 200 employees in September 2017 to 1,500 by the end of 2018.

32. The widespread use of JUUL and other e-cigarettes triggered concern from the public health community and multiple investigations by the U.S. Food and Drug Administration (the "FDA"), the U.S. Federal Trade Commission, the U.S. House of Representatives, and various state attorneys general. Various plaintiffs also began filing consumer lawsuits against JUUL in 2018.

33. In 2018, JUUL agreed to pull certain flavored cartridges (which were alleged to entice underage use) from the market.

The Note Purchase Agreement and JUUL's Representations That It Was Taking Steps to Curb Marketing Aimed at Underage Users

34. From August 2019 through February 2020, JUUL raised a significant amount of capital, including approximately $720 million through the issuance of the Notes pursuant to the Note Purchase Agreement.[2]

35. In the Note Purchase Agreement, the Company represented that it "manufactures legal products intended for individuals of legal age to purchase tobacco products, including vapor products," and that it "expends significant resources and energy to prevent underage access to Company products." (Section 4.11(1).)

36. Shortly after issuance of the Notes, in October 2019, JUUL entered into a settlement with the Center for Environmental Health, under which it agreed to scale back and restrict its marketing efforts to those who are of appropriate age.

[2] In addition to the new money raised through the issuance of Notes under the Note Purchase Agreement, JUUL raised approximately $785 million through the sale of convertible debt securities in August 2019, some of which were exchanged into Notes pursuant to the Note Purchase Agreement.

JUUL's Regulatory and Litigation Problems Worsen

37. Despite JUUL's representations that it was making efforts to curb underage use of its products, its regulatory and litigation problems worsened.

38. Since 2019, thousands of personal injury, governmental entity, tribal, and class action cases have been filed against JUUL in courts around the country in connection with its e-cigarette sales and marketing.

39. On June 23, 2022, the FDA denied authorization for JUUL to continue selling its products in the United States and issued Marketing Denial Orders ("MDOs") banning any further marketing or sale of the products. The United States Court of Appeals for the District of Columbia Circuit later stayed these orders.

JUUL's Exorbitant Settlements and Insider Financing Deals

40. The avalanche of litigation filed against JUUL pushed it to the verge of insolvency. The real threat of a bankruptcy filing gave JUUL substantial leverage against the plaintiffs in the various lawsuits filed against it, given that the plaintiffs would have held only contingent unsecured claims in any bankruptcy proceeding.

41. Nonetheless, JUUL did not file for bankruptcy. Instead, it entered into a series of massive settlements with different plaintiff groups.

42. Those settlements are being funded, in part, by financings provided by, or proposed to be provided by, the Insiders, through entities that they

control. Those Insiders include Pritzker and Valani, who are both major stockholders and directors of JUUL, as well as current or former directors and Company founders Monsees and Bowen, each of whom were named personally as defendants in many of the lawsuits, including as to claims—such as racketeering—that likely would not be indemnifiable if proven.

43. For example, one lawsuit alleged that the Insiders violated federal racketeering laws ("RICO") by (a) transmitting advertisements that fraudulently and deceptively omitted any reference to JUUL's nicotine content or potency; (b) causing false and misleading statements regarding the nicotine content of JUUL pods to be posted on JUUL's website; (c) causing thousands, if not millions, of JUUL pod packages containing false and misleading statements regarding the nicotine content of JUUL pods to be transmitted via U.S. mail; (d) representing to users and the public at-large that JUUL was created and designed as a smoking cessation device; (e) misrepresenting the nicotine content and addictive potential of its products; (f) making fraudulent statements to the FDA to persuade the FDA to allow mint flavored JUUL pods to remain on the market; and (g) making fraudulent statements to the public (including through advertising), the FDA, and Congress to prevent prohibition of JUUL cigarettes, as the authorities contemplated in light of JUUL's role in the youth vaping epidemic.

44. The court denied a motion to dismiss those claims, ruling that the allegations regarding the "RICO conduct [were] plausible" and that they "sufficiently allege[d] personal participation to maintain the RICO . . . claims."

45. On September 6, 2022, JUUL and the attorneys general for 34 states and territories announced a settlement in principle of certain investigations and lawsuits regarding JUUL's marketing of its e-cigarette products for $438.5 million (the "First AG Settlement"), including the release of claims that were asserted against the Insiders. On September 24, 2022, however, the State of Maine dropped out of this settlement, resulting in the final settlement covering 33 states and territories and reducing the amount to be paid by approximately $11 million.

46. [redacted]

47. On information and belief, JUUL refinanced its then existing term loan to obtain relief from a liquidity covenant in the credit agreement governing that facility. The Company then increased the size of its new Insider-provided term loan by hundreds of millions of dollars.

48. On December 6, 2022, JUUL announced that it had reached an agreement to settle more than 5,000 lawsuits in the multi-district litigation (the

"MDL Settlement"), which includes the release of claims that were asserted against the Insiders.

49. On April 12, 2023, the Company agreed to settle lawsuits filed by six states and the District of Columbia regarding JUUL's marketing of its e-cigarette products for $462 million (the "Second AG Settlement"), including the release of claims that were asserted against the Insiders.

50. The settlements have permitted the Insiders to achieve unique benefits for themselves. [redacted]

51. The Insiders or entities they control also have entered into a financing arrangement in which they have made available to the Company the funds necessary to satisfy these settlement payments on terms highly advantageous to the Insiders. Thus, not only [redacted], but also as a means to enter into the Proposed Financing (as defined below) with the Company to position themselves to achieve additional vast economic benefits at the expense of JUUL's other stakeholders, including Plaintiffs.

The New Purported "Qualified Financing"

52. Late in the evening on October 16, 2023, JUUL provided Plaintiffs and other noteholders notice of a purported Qualified Financing (the "Proposed Financing"). Under Section 3.1.1 of the Notes, JUUL is required to provide notice, including "a summary of the principal terms," at least 10 days prior to the initial closing of any Qualified Financing. The notice supplied by JUUL (the "Notice") fails to supply meaningful information as to the principal terms of the Proposed Financing, including basic facts as to the identity of the investors or amounts being funded by those investors. Accordingly, JUUL appears intent on breaching the Note Purchase Agreement by purporting to close a Qualified Financing, and effecting a conversion of the Notes, without the required notice under the Notes.

53. According to the Notice, the Proposed Financing contemplates an offering [redacted] to occur on or about October 27, 2023. The price per share will be calculated based on a pre-money valuation of the Company [redacted]

[redacted] A true and correct copy of the Notice is attached hereto as **Exhibit B**.

54. The Notice further states that, pursuant to Section 3.1.1 of the Notes, "at such First Closing, the Notes held by you shall be automatically converted into fully paid and non-assessable shares of Conversion Stock at the Conversion Price, [redacted]."

55. The Notice, however, fails to comply with the requirements of Section 3.1.1 of the Notes. It contains no meaningful detail, apart from generic descriptions, of the terms extended to investors. It also fails to include any agreement. Nor does it even provide the identities of the investors who supposedly have agreed to provide the Proposed Financing, critical information for investors to determine whether or not the Proposed Financing constitutes a Qualified Financing given the specific requirements on which investors' investment would result in a Qualified Financing.

56. Here, the reasons for the deficient notice are clear. Prior statements by the Company's representatives indicate that the Proposed Financing does *not* constitute a Qualified Financing that would permit the conversion of Plaintiff's Notes to equity. In particular, the Proposed Financing does not qualify as a Qualified Financing under the Note Purchase Agreement, because (a) it does not qualify as a Capital Raising Transaction in which the Company raises $500 million

from outside investors and (b) it does not raise $400 million of cash attributable to investors that own less than 5% of JUUL's outstanding shares.

"Capital Raising Transaction," "Qualified Financing," and the Automatic Conversion Provision

57. The Note Purchase Agreement contains provisions relating to additional financing, including a "Capital Raising Transaction" that qualifies as a "Qualified Financing."

58. A "Capital Raising Transaction" is defined as

> a transaction or series of related transactions in which the Company sells capital stock of the Company to investors for cash . . . excluding the following issuances of capital stock by the Company: (a) shares issued to employees or directors of, or consultants or advisors to, the Company or any of its subsidiaries, (b) shares issued to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction, (c) shares issued to suppliers or third party service providers in connection with the provision of goods or services, (d) shares issued as acquisition consideration pursuant to the acquisition of another entity or business or assets by the Company, whether by merger, conversion, purchase of assets or other reorganization, (e) shares issued in connection with a joint venture agreement, (f) shares issued in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships, and (g) shares issued upon the exercise, conversion or settlement of options, restricted stock units, warrants or other rights to acquire capital stock of the Company (other than preemptive rights triggered by such transaction or series of related transactions).

59. A "Qualified Financing" is defined as:

(a) a Capital Raising Transaction with total net proceeds in cash to the Company in an amount equal to at least $500 million (excluding the conversion of the Notes, but including amounts invested by the Company's existing stockholders, including pursuant to the exercise of preemptive rights under Section 4 of the Rights Agreement), at least $400 million of which is attributable to purchases by investors that do not own more than five percent of the outstanding shares of capital stock of the Company on a fully-diluted basis as of immediately prior to the initial closing of such Capital Raising Transaction (a "Qualified Private Financing"), (b) an IPO with total net proceeds in cash to the Company in an amount equal to at least $500 million (a "Qualified IPO"), or (c) a Direct Listing in which (i) the Company's market capitalization as of the last day of the Pricing Period is [redacted] (calculated using the trailing 30-day volume weighted average price of the Class A Common as of the end of the Pricing Period) and (ii) the average daily dollar volume of the Class A Common during such 30-day period is [redacted] (a "Qualified Direct Listing").

60. Section 3.1 of the Note Purchase Agreement provides for automatic conversion of the Notes into equity in the event of a proper Qualified Financing:

The Company shall provide the Holder at least ten (10) days' advance notice of the initial closing of the first Qualified Financing to occur after the date hereof (the "First Closing"), which notice will include a summary of the principal terms thereof. If the Holder delivers to the Company a Minimum Interest Notice at least five (5) days prior to the consummation of the First Closing, then upon the consummation of the First Closing, an amount equal to 107% of the Original Principal Amount shall automatically be converted into fully paid and non-assessable shares of Conversion Stock at the Conversion Price.

61. "Conversion Stock" is defined as

(a) with respect to a Qualified Financing or Non-Qualified Financing, as applicable (and except as set forth in (b) or (c) below), the shares of the capital stock of the Company issued by the Company in such

financing to "new money" investors (other than shares of Class C-1 Common or Class C Common issued to Altria); provided, however, if the Company issues a mix of shares (e.g., common stock and preferred stock) or security types (e.g. Company capital stock and warrants, options or other securities convertible, exercisable or exchangeable for Company capital stock) in a Qualified Financing or Non-Qualified Financing, then "Conversion Stock" shall mean the same mix of shares, warrants, options or other securities convertible, exercisable or exchangeable for Company capital stock (and in the same proportions) of the Company as are issued and sold by the Company to the "new money" investors in such financing (other than shares of Class C-1 Common or Class C Common issued to Altria); provided, further, if the shares of capital stock of the Company issued in a Qualified Financing or Non-Qualified Financing are (or include) preferred stock of the Company with a liquidation preference, price-based anti-dilution protection and/or dividend rights, then "Conversion Stock" shall mean shares of preferred stock of the Company having the identical rights, privileges, preferences and restrictions as the shares of preferred stock of the Company issued and sold to the "new money" investors in such financing, other than with respect to: (i) the per share liquidation preference and the initial conversion price for purposes of price-based anti-dilution protection, which will equal the Conversion Price (unless the Conversion Price is the Valuation Floor, in which case the per share liquidation preference of such shares of preferred stock shall be an amount such that the aggregate liquidation preference of all such shares of preferred stock equals the entire portion of the Accreted Principal Amount and all accrued by unpaid interest thereon converted into such shares of preferred stock); and (ii) the basis for any dividend rights, which will be based on the Conversion Price, (b) with respect to a Non-Qualified Financing involving only the issuance of Class C-1 Common or Class C Common to Altria, Class A Common, (c) with respect to a Direct Listing, Class A Common, and (d) in all other circumstance in which the Notes are converted, the capital stock of the Company into which the Notes are so converted pursuant to the terms of the Notes.

62. "Conversion Price" is defined as

the higher of: (a) the Valuation Floor; and (b) the lower of (i) the price per share paid by the "new money" investors purchasing capital stock

> of the Company in a Qualified Financing or Non-Qualified Financing (provided, that in the event of a Direct Listing, the foregoing price per share shall be calculated using the trailing 30-day volume weighted average price of Class A Common as of the end of the Pricing Period), as applicable, multiplied by the Applicable Discount, and (ii) the Valuation Cap.

63. "Valuation Floor" is defined as

> the number obtained by dividing [redacted] (as it may be adjusted pursuant to Section 3.9 of the Notes) by the total number of shares of Common Stock outstanding immediately prior to such financing or event, calculated on a fully diluted basis, including shares issuable upon exercise or conversion of any outstanding options, warrants and convertible preferred stock, and any shares authorized but unallocated under the Company's equity incentive plans, but excluding the Notes.

64. "Valuation Cap" is defined as

> the number obtained by dividing [redacted] (as it may be adjusted pursuant to Section 3.9 of the Notes) by the total number of shares of Common Stock outstanding immediately prior to such financing, event or conversion, as applicable, calculated on a fully diluted basis, including shares issuable upon exercise or conversion of any outstanding options, warrants and convertible preferred stock, and any shares authorized but unallocated under the Company's equity incentive plans, but excluding the Notes.

65. The Note Purchase Agreement thus provides, as relevant here, two basic requirements for money raised by the Company to constitute a Qualified Financing that would automatically convert the Notes. A financing must constitute a Capital Raising Transaction—*i.e.*, a sale of Company stock for cash excluding stock issued to, among others, Company directors, employees, consultants, or advisers—in the amount of at least $500 million. At least $400 million of such a

Capital Raising Transaction must come from individuals who own less than five percent of the outstanding shares of capital stock of the Company on a fully-diluted basis immediately prior to the initial closing.

66. By its terms, the unambiguous Qualified Financing provision reflects the parties' agreement and understanding that the only transactions that could lead to an automatic conversion are those that reflect a significant contribution from unaffiliated third parties whose investments would reflect a meaningful, arms-length valuation of the Company.

67. While JUUL's Notice does not disclose the identities of the investors in the Proposed Financing, information previously relayed to Plaintiffs by the Company demonstrates that the Proposed Financing does not constitute such a transaction and cannot satisfy the requirements of the Note Purchase Agreement. Instead, the Proposed Financing appears to be funded almost entirely—if not exclusively—by the Insiders.

68. [redacted]

69. The Notice reveals that the anticipated initial closing of the Proposed Financing will involve an offering [redacted], meaning that the Company appears to have raised an incremental investment [redacted] beyond what the Insiders already agreed to fund.

70. Such a transaction would fail the threshold requirements under the Note Purchase Agreement for a Qualified Financing.

71. It is apparent from the Notice that the Proposed Financing does not include $500 million in cash from third parties after excluding directors, employees, consultants, or advisers. The only Insiders who do not currently serve as Company directors are Bowen and Monsees.

72. With respect to Bowen, he served as a director at all relevant times, including when the Company entered into the litigation settlements that gave rise to its financing needs and when the backstop financing was put in place. He appears to have resigned in the lead up to the disclosure of the Proposed Financing after he participated as a director in setting in motion the events that gave rise to that financing. His resignation therefore appears to have been a tactical choice designed to create the appearance of a Qualified Financing. He should be deemed a Company insider whose contributions do not count toward the $500 million from outside investors required for a Qualified Financing. In any event, Bowen continues to act as a Company adviser and consultant. Plaintiffs expect that discovery will show that

Monsees, Bowen's co-founder, also provides advice to the Company and its management such that his investments are likewise excluded from any calculation of the $500 million threshold.

73. The information revealed by the Company together with the limited information in the Notice further indicates that the Proposed Financing does not raise $400 million from investors who own less than 5% of the Company's outstanding capital stock.

74. Accordingly, the Proposed Financing does not constitute a Qualified Financing under the terms of the Note Purchase Agreement, and the Company may not utilize the automatic conversion provisions of the Note Purchase Agreement to convert the Notes to equity.

75. To the contrary, the Proposed Financing is another effort by well-entrenched Insiders to profit at the expense of noteholders and the Company's other stakeholders.

76. The Insiders' scheme caused the Company to seek to breach the Note Purchase Agreement by approving the Proposed Financing and using it as the basis to assert that a Qualified Financing will occur in an attempt to automatically convert Plaintiffs' Notes into equity, for the Insiders' benefit.

77. JUUL should be enjoined from effecting a conversion of the Notes, or taking any steps in connection with effecting such a conversion, to preserve

the status quo while Plaintiffs protect their rights under the dispute resolution provision of the Note Purchase Agreement.

78. Section 9.9 of the Note Purchase Agreement contains a dispute resolution provision that provides, in the first instance, for good faith negotiations between party representatives for a period of 30 days, followed by mediation, and then, 30 days later, binding arbitration pursuant to the AAA's Commercial Arbitration Rules. On October 19, 2023, Plaintiffs served a notice of dispute upon the Company, initiating the dispute resolution process pursuant to the Note Purchase Agreement, a true and correct copy of which is attached hereto as **Exhibit C**. Absent relief from this Court, the dispute resolution provision would not afford Plaintiffs any avenue to obtain effective relief in connection with an improper corporate transaction that, according to the Company, will be effected in 8 days, and trigger the automatic conversion of the Notes to equity.

79. The equities in these circumstances entirely favor Plaintiffs. The limited injunctive relief sought by Plaintiffs would not disadvantage JUUL. It remains free to raise capital and, on information and belief, it already has committed and available financing to satisfy its upcoming litigation settlements. What it should not be permitted to do is undertake an automatic conversion of Plaintiffs' Notes on the basis of a Proposed Financing that violates the Note Purchase Agreement and benefits Company Insiders while irreparably harming Plaintiffs. The Notes contain

a variety of contractual rights—for example, conversion rights, maturity dates, and other features—that, if lost through automatic conversion into equity, may not be readily restored.

CAUSES OF ACTION

Count One
(Breach/Anticipatory Breach of Note Purchase Agreement)

80. Plaintiffs repeat and reallege each of the allegations above as if fully set forth herein.

81. The Note Purchase Agreement is a valid and enforceable agreement between, among others, Plaintiffs and JUUL.

82. Plaintiffs have fulfilled in all material respects their obligations under the Note Purchase Agreement.

83. JUUL has anticipatorily breached the Note Purchase Agreement by unequivocally stating its intent to convert the Notes to equity pursuant to the automatic conversion provisions of Section 3.1 even though the Proposed Financing fails to meet the requirements of a Qualified Financing.

84. JUUL has thus manifested its intent not to perform its contractual duties when the time comes for it to do so, even though Plaintiffs have rendered full and complete performance.

85. The Proposed Financing and the purported automatic conversion of the Notes are scheduled to be consummated on or about October 27, 2023.

86. Under the dispute resolution provisions of the Note Purchase Agreement, Plaintiffs are unable to file a demand for arbitration for at least sixty days, much less have the dispute addressed in arbitration prior to the purported automatic conversion.

87. Thus, given the timing of the purported automatic conversion, absent a status quo injunction issued by this Court, Plaintiffs will be deprived of their rights before they can avail themselves of the remedies set forth in the dispute resolution provisions of the Note Purchase Agreement.

Count Two
(Breach of Notes)

88. Plaintiffs repeat and reallege each of the allegations above as if fully set forth herein.

89. JUUL has unequivocally stated in the Notice its intent to conduct the initial closing of the Proposed Financing on or about October 27, 2023.

90. Section 3.1.1 of the Notes requires that JUUL deliver a notice, 10 days prior to the initial closing of any Qualified Financing, which includes a summary of the principal terms of such Qualified Financing.

91. The Notice was defective in its failure to provide the principal terms of the Proposed Financing, including basic information about the terms of the investments contemplated by the Proposed Financing as well as information necessary to determine whether the Proposed Financing is a Qualified Financing.

92. As such, the Notice does not meet the requirements of Section 3.1.1 of the Notes, and JUUL's delivery of such deficient notice breached the Notes. The Company's intended closing of a Qualified Financing on or about October 27, 2023 would violate the 10-day notice requirement under Section 3.1.1 of the Notes.

93. Thus, given the timing of the purported automatic conversion, absent a status quo injunction issued by this Court, Plaintiffs will be deprived of their rights before they can avail themselves of the remedies set forth in the dispute resolution provisions of the Note Purchase Agreement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seek an order:

A. Preliminarily enjoining JUUL from causing the automatic conversion of the Notes under Section 3.1 of the Note Purchase Agreement pending Plaintiffs' pursuit of their remedies under the dispute resolution provisions of the Note Purchase Agreement; and

B. Awarding Plaintiffs such other and further relief as the Court may deem just, equitable, and proper.

C. Plaintiffs also intend to seek other and further relief as may be appropriate, including damages, in or subsequent to the dispute resolution procedures provided for in the Note Purchase Agreement.

PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP

By: */s/ Daniel A. Mason*
Daniel A. Mason (#5206)
Sabrina M. Hendershot (#6286)
Elizabeth Wang (#6620)
500 Delaware Avenue, Suite 200
Post Office Box 32
Wilmington, DE 19899-0032
(302) 655-4410

Attorneys for Plaintiffs D1 Jasper Holdings LP, D1 SPV JL Master LP, Jay Blocker Ltd., Jay Domestic LLC, GCCU II LLC, TOCU XX LLC, and OC II FIE VIII LP

OF COUNSEL:

Martin Flumenbaum
Jeffrey J. Recher
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3000

Dated: October 19, 2023

CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2023, the foregoing *[REDACTED] Verified Complaint* was caused to be served upon the following counsel of record via File & Serve*Xpress*:

David J. Teklits, Esq.
Grant E. Michl, Esq.
MORRIS, NICHOLS,
ARSHT & TUNNELL LLP
1201 N. Market Street
Wilmington, DE 19801

/s/ Daniel A. Mason
Daniel A. Mason (#5206)