

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

K. Heeps HoldCo, LLC, *et al.*,¹

Debtors.

Chapter 11 (Subchapter V)

Case No. 26-11505 (KBO)

(Jointly Administered)

Re. Dkt. No. 61

**OBJECTION OF MEDTRITION, INC. TO DEBTORS' MOTION FOR A
DETERMINATION THAT THE CO-PACKER AGREEMENTS EXPIRED, OR IN THE
ALTERNATIVE, TO REJECT THE CO-PACKER AGREEMENTS *NUNC PRO TUNC***

Medtrition, Inc. ("Medtrition") hereby files this objection (the "Objection") to the *Debtors'* *Motion for a Determination That the Co-Packer Agreements Expired, or in the Alternative, to Reject the Co-Packer Agreements Nunc Pro Tunc* [Dkt. No. 61] (the "Motion") filed by K. Heeps HoldCo, LLC and its affiliated debtors and debtors in possession (collectively, the "Debtors"). In support of this Objection, Medtrition respectfully states as follows:

PRELIMINARY STATEMENT

1. This Motion is not a good-faith request to administer a bankruptcy estate. It is the latest move in a scheme that the Debtors and their private equity owner, Alta Equity Partners, LLC ("Alta"), have pursued since April 2026: to walk away from an exclusive co-packing relationship that Medtrition built over a decade; to take Medtrition's product line, shapes, numbering system, and customer relationships, and relaunch them under a new brand called "Eatsential"; and to leave Medtrition, and the more than 200,000 dysphagia patients who eat Medtrition's Café Puree products every day, to fend for themselves. All in the name of "reorganization".

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification numbers are: K. Heeps HoldCo, LLC (6064); and K. Heeps, LLC (5618). The Debtors' service address is 5239 Tilghman Street, Allentown, PA 18104.

2. The Debtors already litigated the precise question this Motion presents – whether the 2016 Co-Packer Agreement expired – and lost at every turn in the Pennsylvania state courts earlier this year after Medtrition sued to enforce its terms. Following a May 13, 2026 evidentiary hearing, on May 14, 2026 the Lancaster County Court of Common Pleas entered a preliminary injunction in favor of Medtrition, finding that Medtrition is likely to succeed and that the injunction “will prevent harm to the public, specifically those served by the Plaintiff’s products.” On July 10, 2026, the Superior Court of Pennsylvania denied the Debtors’ emergency application to stay the injunction. On July 29, 2026 – after a July 27 evidentiary hearing at which the Debtors pressed the same “bank default” argument repeated here – the Lancaster Court denied the Debtors’ reconsideration petition. Two days later, the Superior Court denied their application to expedite an appeal.

3. Having exhausted their options in state court without success, the Debtors then pivoted to bankruptcy. Their forum shopping is abundantly clear: they entered into a forbearance agreement with their lender one day prior to filing chapter 11 to “restructure” their debt to fit under the Subchapter V cap – a questionable tactic that demands judicial review for eligibility – then promptly removed the state court action to federal court the following day, with this Motion filed one week later seeking to have a new court opine on state law issues already presented to, and ruled upon by, the state courts in Pennsylvania.

4. The Motion should be denied because the “determination” request is an improper attempt to have this Court second-guess the rulings of the Pennsylvania Court of Common Pleas and the Pennsylvania Superior Court regarding the existence and enforceability of the underlying contract – rulings that remain on appeal in the Pennsylvania courts and must be respected here based on comity and the Rooker-Feldman doctrine. Even if the Court were to reach the question,

the parties' decade-long course of dealing leaves no doubt that the Agreement did not expire prepetition.

5. The alternative request for contract rejection fares no better. Rejection is reserved for contracts that burden the estate, and this one does not. To the contrary, the Debtors are turning a profit under the Agreement, which is their only meaningful source of income. The Debtors do not seek to reject the Agreement as unprofitable but rather because they want to make more money by competing with Medtrition in violation of the Non-Compete and the Preliminary Injunction. Because rejection is a breach, not a termination, it does not rescind the contract, extinguish Medtrition's rights under the non-compete or dissolve the state-court injunction. Considering the serious public-health consequences of an abrupt cutoff to hundreds of thousands of patients, any rejection must be conditioned on, and deferred until, a reasonable transition to a new co-manufacturer that ensures the patients who depend on this product will not experience disruption – a transition Medtrition is committed to pursuing in good faith but which likely cannot be completed until the end of Q1 2027, depending on unforeseen manufacturing issues that may arise during the transition process. There is no estate emergency justifying anything faster: the Debtors are profitable, they are being paid by Medtrition, and their own cash projections depend on Medtrition's revenue.

BACKGROUND

A. Medtrition Built the Café Puree Business and Made Heaps Its Exclusive Manufacturer

6. Medtrition is a Lancaster, Pennsylvania company that has been an innovator in the healthcare nutrition industry since 1986. Its clinically proven medical foods are trusted by more than 5,500 healthcare facilities in the United States and sold in over 50 countries. Medtrition revolutionized three-dimensional, pre-formed puréed foods that transformed the dysphagia

(swallowing-disorder) market, converting “mystery bowls” of purée into dense, cohesive, shaped purées that are easier and safer to swallow and more appetizing to eat. Over 200,000 dysphagia patients rely on Medtrition’s Café Puree products daily for sustenance.

7. Medtrition is the country’s leading provider of puréed foods to healthcare facilities, with approximately 60% of the market share, supplying the largest foodservice management companies (e.g., Aramark, Sodexo, and Morrison) and national distributors (e.g., Dot Foods, Sysco, Gordon Food Services, and US Foods). For many of these customers, Medtrition is their sole-source supplier of these products.

8. Debtor K. Heeps, LLC (“Heeps”), by contrast, operates a food manufacturing facility in Allentown, Pennsylvania. The division of labor between the parties was straightforward: Medtrition owns the formulations, specifications, innovations, customer base, and market access; Heeps supplies a factory. On June 29, 2016, Medtrition (through its predecessor, Café Puree, Inc.) and Heeps entered into the Co-Packer Agreement (the “Agreement”), under which Heeps became “the exclusive supplier of the Products during the term of this Agreement.” Agreement § 5.

9. Among other things, the Agreement (i) vests ownership of “all recipes, formulations, specifications, artwork, graphics, and label copy furnished by, or developed for,” Medtrition, and all other confidential and proprietary information relating to the Products, in Medtrition (§ 7); (ii) incorporates a Mutual Non-Disclosure Agreement (§ 13(a)); (iii) contains a nationwide covenant (the “Non-Compete”) under which Heeps “shall not, directly or indirectly, engage in the business of producing, distributing, purchasing, or selling, or otherwise dealing in, any products . . . that cannot be differentiated from the Product by taste or formula evaluation,” in which Heeps “acknowledges” that Medtrition “would suffer irreparable injury” from a breach, and which requires Heeps to cease such production “upon termination of this agreement and for a

period of one year following termination” (§ 13(b)); and (iv) gives renewal rights exclusively to Medtrition (§ 2).

10. Over the next decade, Medtrition invested heavily in Heeps’s factory and operation, through loans for equipment purchases, the provision of employees, and the marketing of products, growing production from approximately 50,000 cases per year to approximately 150,000 cases per month. Heeps’s president has testified that Medtrition accounts for approximately 99 percent of Heeps’s business, and Alta’s own principal (and First-Day Declarant), Chris Dias, conceded that Heeps had built its plant “on the backs of” Medtrition’s business: “yeah we did.”

B. Alta Acquires Control and Heeps Secretly Builds a Counterfeit Product Line

11. For nearly a decade the parties performed under the Agreement exactly as written. However, it all changed after Heeps was acquired by Alta, a private equity firm. In late 2025, Heeps, at Alta’s direction, began secretly developing a competing line of puréed foods under the brand name “Eatsential.” Eatsential is a sku-by-sku replica of Café Puree, replicating the very products listed in the Agreement – and in direct violation of the Non-Compete. Eatsential products are made with the same molds Medtrition conceptualized and directed Heeps to develop, the same trays, the same film, and the same laser printer. The Eatsential website even claimed that Eatsential “ships 1,898,000 cases annually,” the exact number of Medtrition cases Heeps manufactured the prior year.

12. Heeps then began contacting Medtrition’s customers holding itself out as “Eatsential,” and telling them that Medtrition was running into a supply problem and was going out of business, that Eatsential had 90 days of inventory to “backstop” them, and that Eatsential would be “backfilling demand.” None of that was true.

13. During an unannounced on-site inspection on April 28, 2026, Medtrition

discovered Heeps casing purée in Eatsential-labeled boxes using Medtrition’s shapes, trays, and film.

14. The next day, Heeps’ leadership refused to engage with Medtrition directly and instead put Alta on the call. The message from Alta’s Chris Dias was unambiguous: the relationship was over, and Medtrition could have “60 days, or you can have zero days.” When Medtrition’s founder explained that an abrupt cutoff would leave hundreds of thousands of patients without their meals and asked for a one-year exit, Mr. Dias responded: “We’ll worry about ourselves, and you guys can worry about yourselves.” When Medtrition offered a price increase on the spot, pleaded for 180 days of supply, and proposed alternatives, Alta rejected every one.

15. Instead, Heeps notified Medtrition it was discontinuing their relationship – despite no contractual basis to do so.

C. The State Court Litigation.²

16. In response, on May 8, 2026, Medtrition sued Debtors and Alta in the Court of Common Pleas of Lancaster County (the “Lancaster Court”) for breach of contract, misappropriation under the Pennsylvania Uniform Trade Secrets Act, unfair competition, tortious interference and other claims. That same day, the Lancaster Court entered a TRO in favor of Medtrition that, among other things, (i) enjoined Heeps and Alta from manufacturing, selling, or marketing Eatsential or any other products that “compete with, imitate, or are substantially similar to Medtrition’s Café Puree products”; (ii) barred use of Medtrition’s confidential information and solicitation of its customers; (iii) enjoined Heeps “from wrongfully terminating the Agreement and discontinuing manufacturing and packaging of Medtrition’s Café Puree products until a reasonable transition can take place”; and (iv) ordered that “[t]he status quo as set forth in the contracts

² Relevant portions of the transcript from the May 13, 2026 hearing in the State Court Litigation are attached hereto as Exhibit A.

between Medtrition and Heeps shall be maintained until the parties' rights are finally determined in the underlying lawsuit." A copy of the TRO is attached hereto as **Exhibit B**.

17. After an evidentiary hearing, on May 14, 2026, the Lancaster Court entered a preliminary injunction finding that (1) Medtrition "is likely to succeed in the underlying case"; (2) Medtrition's harm "is irreparable and imminent, no adequate remedy"; (3) the harm if the injunction is denied outweighs the harm if granted; (4) "[t]he injunction will prevent harm to the public, specifically those served by the Plaintiff's products"; and (5) the relief "will restore the parties to the position they were in before Defendant's wrongful conduct." The Lancaster Court required Medtrition to post a \$1,000,000 bond, which it did, and ordered that the TRO remain in effect. A copy of the Preliminary Injunction is attached hereto as **Exhibit C**.

18. On May 27, 2026, Heeps and Alta filed a Petition for Reconsideration or, in the Alternative, to Dissolve or Modify the Preliminary Injunction, arguing the very points this Motion now recycles: that the Agreement "expired years ago"; that Medtrition "did not produce any written renewals"; that Medtrition supposedly invited Heeps to sell its own products on the April 29 call; that other manufacturers could fill any supply gap "overnight"; and that the injunction had caused Heeps's lender to refuse to extend its term loan and would render Heeps insolvent "in a matter of weeks."

19. On June 4, 2026, Heeps and Alta sought a stay pending appeal from the Superior Court of Pennsylvania, which was denied on July 10, 2026. *See Medtrition, Inc. v. K. Heeps Inc.*, No. 41 MDM 2026 (Pa. Super. Ct. July 10, 2026) (per curiam).

20. On July 27, 2026, the Lancaster Court held an evidentiary hearing on Heeps's emergency motion to supplement the record with a July 22, 2026 notice of default from its lender. On July 29, 2026, the Lancaster Court denied the reconsideration petition and ordered that the

Preliminary Injunction “remain *in full force and effect*.” It also denied Heeps’ request to increase Medtrition’s bond from \$1,000,000 to \$11,000,000.

21. On July 31, 2026, the Superior Court denied Heeps and Alta’s application to expedite their appeal. *Medtrition, Inc. v. K. Heeps Inc.*, No. 921 MDA 2026 (Pa. Super. Ct. July 31, 2026) (per curiam).

22. The Debtors conveniently fail to disclose to this Court that they asked the Pennsylvania courts four times to free Heeps from the Agreement and the Preliminary Injunction, and they lost each time. Instead, they downplay the Preliminary Injunction as a “one-page order continuing the TRO,” and describe the TRO as having been entered “ex parte” without noting the three-hour evidentiary hearing that followed – at which the Debtors cross-examined Medtrition’s witnesses, called their own witness, and introduced six exhibits – and without disclosing the findings made by the Lancaster Court regarding Medtrition’s likelihood of success, irreparable harm, and harm to the patients nationwide who rely on these products for daily health and well-being. (Mot. ¶¶ 4, 28).

D. The Bankruptcy Filing.

23. On September 23, 2026, the Debtors filed these chapter 11 cases. The Debtors attribute their financial difficulties to the Preliminary Injunction, asserting that their lender, Salem Five Cents Savings Bank (“Salem”), identified the injunction as a “Material Adverse Effect,” declared a default, accelerated the debt, and terminated the revolver. (Mot. ¶ 4.) Yet, the day prior to filing chapter 11, the Debtors and Salem entered into a Reinstatement, Modification and Forbearance Agreement under which Salem, among other things, rescinded and withdrew its prior acceleration of the Real Estate Loans, released Debtor K. Heeps HoldCo, LLC from all liabilities under the Business Term Loan, terminated the revolving line of credit, and agreed to forbear for

six months from collecting the Business Term Loan, in exchange for a pledged cash account of not less than \$1.5 million. (Dias Decl. ¶¶ 54–55). By doing so, the Debtors and Salem undermined the primary reason asserted for bankruptcy relief.

24. Even worse, this “forbearance” agreement appears to have been manufactured for the purpose of manufacturing eligibility under Subchapter V, considering the Debtors’ liabilities otherwise would approximate \$10 million. To do so, the Debtors and Salem treat as “contingent” the very same Salem debt whose acceleration allegedly caused the filing and thereby reduce their noncontingent debts by \$6.6 million to stay under the Subchapter V debt limit.³ Simply, a lender that genuinely believes its borrower is in default and its collateral at risk does not, the day before a bankruptcy filing, agree to forbear for six months and to have its non-contingent unconditional guaranty claim re-characterized as contingent. The forbearance was not a response to distress; it was the staging for this Motion.

E. The Debtors’ Postpetition Projections and Performance.

25. The Debtors’ own financial projections reveal where these cases are headed. The 13-week cash-flow budget filed with the Debtors’ cash collateral motion [Dkt. No. 17] projects weekly sales of approximately \$630,000 in weeks 1 through 5, consistent with co-packing revenue from Medtrition at approximately \$16 per case, followed by a dip and then a jump to \$926,700 in week 9 and \$1,158,375 per week in weeks 10 through 13. *See*, Dkt. No. 17 at 76 (the “Budget”). The implied per-case price in weeks 9 through 13 is approximately \$29.33, nearly double the co-

³ Medtrition intends to take discovery of Salem Bank regarding its prepetition conduct with the Debtors, as well as of the Debtors, to determine whether these cases should be dismissed as bad faith filings and/or should not proceed under Subchapter V in connection with the improper reclassification of certain debts as contingent and improper removal of certain debts from Debtors’ balance sheet to circumvent the sub-chapter V debt threshold. *See Interim Order (I) Authorizing Postpetition Use of Cash Collateral, (II) Granting Adequate Protection to Salem Five Cents Savings Bank, and (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(B)*, Exhibit A (Initial Budget) (noting a \$796,986 “claim reclass” payable, which amount, conveniently, brings Debtors’ debt to under the statutory cap of \$3,424,000.)

packing rate and just below Medtrition's year-to-date average selling price of \$29.51 per case. The most natural reading is that the Debtors intend to be selling Medtrition-equivalent product directly to Medtrition's distributors within nine weeks of the Petition Date, in direct violation of the Non-Compete and the Preliminary Injunction.

OBJECTION

I. The Court Should Decline to Decide the Expiration Question, Which Is Pending Before the Pennsylvania Superior Court.

A. The Motion is Forum Shopping for Another Bite at the Apple.

26. The Debtors frame their request as a “threshold” section 365 question. It is not. Whether the Agreement was renewed, whether Heeps waived strict compliance with the renewal formalities, whether the parties' decade of performance impliedly renewed the Agreement under Pennsylvania law, and whether the Non-Compete binds Heeps are all questions of Pennsylvania contract law – questions that remain pending before the Pennsylvania state courts. These are purely state law issues, not bankruptcy issues.

27. The Debtors concede as much: their entire argument rests on Pennsylvania authorities, *Tindall*, *Clairton Slag*, *Byrne*, and *Brozzetti*, and on the Agreement's Pennsylvania choice-of-law clause. (Mot. ¶¶ 32-34.) Those are the same authorities and the same arguments the Debtors presented to the Lancaster Court on multiple occasions – and the Lancaster Court nonetheless found Medtrition likely to succeed and declined to dissolve the injunction.

28. Courts look skeptically at efforts to use bankruptcy to obtain a new forum for pending state litigation that a debtor is losing. *See, e.g., In re Myers*, 491 F.3d 120, 125 (3d Cir. 2007) (“we have no doubt that Bankruptcy Courts may reasonably find that bad faith exists “where the purpose of the bankruptcy filing is to defeat state court litigation without a reorganization purpose.”); *In re Integrated Telecom Express, Inc.*, 384 F.3d 108, 119–20, 128 (3d Cir. 2004)

(chapter 11 petition must serve a valid bankruptcy purpose and not merely be filed to obtain a tactical litigation advantage); *In re SGL Carbon Corp.*, 200 F.3d 154, 165–69 (3d Cir. 1999) (dismissing chapter 11 case filed as a litigation tactic to gain leverage over litigation adversaries); *In re 15375 Memorial Corp.*, 589 F.3d 605, 618–19 (3d Cir. 2009) (affirming dismissal of petitions filed to gain a litigation advantage rather than to preserve going-concern value or maximize the estate); *In re Laurel Highlands Foundation, Inc.*, 473 B.R. 641 (Bankr. W.D.Pa. 2012) (dismissing case without prejudice where the court found forum shopping to be a bad faith litigation tactic); *In re Heritage Wood 'N Lakes Estates, Inc.*, 73 B.R. 511, 514 (Bankr.M.D.Fla.1987) (dismissing Chapter 11 case because court found “a certain amount of forum shopping has occurred,” and that debtor “determined that it was not going to get the best side of the coin in the state court and looked to go elsewhere to have a new bite at the apple.”); *In re Argus Grp. 1700, Inc.*, 206 B.R. 737 (Bankr. E.D. Pa. 1996), *aff’d*, 206 B.R. 757 (E.D. Pa. 1997) (granting remand where, by filing for bankruptcy, debtors were merely shopping for another forum in which to have their litigation decided). Here, there can be no doubt that, after having lost repeatedly in the Pennsylvania state courts, the Debtors are forum shopping.

B. The Rooker-Feldman Doctrine and Principles of Comity Bar This Court from Reviewing and Rejecting the Pennsylvania Courts’ Rulings

29. This Court must respect the rulings of the Lancaster Court and the Superior Court. It is well established that federal courts, including bankruptcy courts, have no jurisdiction to sit in appellate review of a judgment from a state court. *See*, 28 U.S.C. § 1257; *T.M. v. Univ. of Maryland Medical System Corp.*, 608 U.S. 668 (2026); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983). The doctrine reaches “cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those

judgments.” *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). Relevantly, *Rooker-Feldman*’s reasoning does not depend on the finality of a judgment in state court. *T.M.*, 608 U.S. at 681. “[A]llowing federal district courts to review state-court judgments while they are on appeal in the state-court system would undermine the ‘[c]ooperation and comity’ on which our federal system is built.” *Id.* at 672.

30. In determining whether *Rooker-Feldman* applies, the Third Circuit requires the presence of four factors: (1) the federal movant lost in state court; (2) the movant complains of injuries caused by the state-court judgment; (3) the judgment was rendered before the federal proceeding was filed; and (4) the movant invites the federal court to review and reject that judgment. *Great W. Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 166 (3d Cir. 2010). The doctrine applies fully in bankruptcy, and a debtor cannot use a bankruptcy filing to relitigate what it lost in state court. *See In re Adams*, 151 F.4th 144 (3d Cir. 2025) (*Rooker-Feldman* applies when (i) the claim is alleged as part of an adversary proceeding, and (ii) the federal bankruptcy plaintiff’s claim is “not otherwise independent of [the] state-court claims).

31. Each element is met here. First, the Debtors lost in state court. The Lancaster Court found Medtrition likely to succeed, found irreparable harm and harm to the public, and on July 29, 2026 denied the Debtors’ petition to reconsider, dissolve, or modify the Preliminary Injunction, and ruled on Heeps’s preliminary objections asserting that the Agreement had expired. The Superior Court had already denied the Debtors’ request for a stay.

32. Second, the injuries the Debtors complain of are the state court’s orders themselves. The Motion blames the injunction for Salem’s “Material Adverse Effect” declaration and the loss of the Debtors’ financing. It further complains that Heeps has been “required to continue manufacturing products for Medtrition without the ability to manufacture and sell their own

product line.” (Mot. ¶¶ 5, 28). Those are not injuries Medtrition caused independently. They are the direct and intended effect of the Preliminary Injunction and the July 29 orders.

33. Third, those orders were entered months prior to the Debtors’ bankruptcy.

34. Fourth, the Motion asks this Court to review and reject those orders and rulings. The “determination” that the Agreement expired prepetition is the precise proposition the Lancaster Court rejected when it found Medtrition likely to succeed and overruled the Debtors’ demurrer. The Debtors’ proposed order goes further and would declare that “the Debtors are not required to continue producing any product for Medtrition pursuant to any of the Co-Packer Agreements or any other contract entered into before the Petition Date,” which would nullify the core principles of the TRO that the Preliminary Injunction continued. (Mot. Ex. A ¶ 4.) A federal order granting such relief would not be estate administration, but rather would reverse a state-court injunction that the Superior Court itself declined to stay.

35. Even if the Court were to conclude that *Rooper-Feldman* does not strictly apply to interlocutory orders, the same result follows as a matter of comity. The expiration question has been fully briefed, argued, and ruled upon in the Lancaster Court, is pending before the Pennsylvania Superior Court, and turns entirely on Pennsylvania contract law. This Court should decline the Debtors’ invitation to issue a competing ruling on an issue that the Pennsylvania courts are actively adjudicating out of respect for principles of comity. *See, e.g., Stoe v. Flaherty*, 436 F.3d 209, 214 (3d. Cir. 2006) (“Section 1334(c)(2) is based on comity and, on its face, reflects a congressional judgment that a party who wishes to litigate a state claim in a state court, but finds himself in a federal court solely because the controversy is related to a bankruptcy, should be able to insist upon a state adjudication if that will not adversely affect the bankruptcy proceedings.”)

C. The Parties’ Decade-Long Course of Dealing Leaves No Doubt That the Agreement Did Not Expire Prepetition

36. Even if the Court were to reach the expiration question, the answer is not a close one. Under Pennsylvania law, “[w]hen a contract lapses but the parties to the contract continue to act as if they are performing under a contract, the material terms of the prior contract will survive.” *Atofina Chemicals, Inc. v. Sierra Chem. Co.*, 2004 WL 739953, at *3 (E.D. Pa. Apr. 5, 2004) (holding that the venue selection clause of an express written contract survived the one-year contract term because the defendant “continuously and consistently acted as a distributor of the Plaintiff’s products” during the relevant period) (quoting *Luden’s Inc. v. Local Union No. 6*, 28 F.3d 347, 355-56 (3d Cir. 1994)). *Id.* And in *Brozzetti* – one of the very authorities on which the Debtors rely – the Pennsylvania Commonwealth Court held that a contract to supply vending machines was impliedly renewed where the supplier continued to perform after the contract term. *Com., Dep’t of Transp. v. Brozzetti*, 684 A.2d 658, 664 (Pa. Commw. Ct. 1996).

37. The Agreement’s structure confirms that the parties never intended it to lapse automatically. The Agreement provides for an initial one-year term and gives Medtrition alone the option to renew annually by written notice to Heeps. (Agreement § 2.) Critically, the Agreement contains no termination-upon-expiration clause and nowhere states that it automatically terminates at the end of the initial term or any renewal term. *See generally, Id.* To the contrary, the Agreement attaches specific consequences to its end: Heeps must cease production of Medtrition’s products and indistinguishable products “upon termination of this agreement and for a period of one year following termination” *Id.* at § 13(b)), and “[i]n the event of termination or expiration of this Agreement,” Heeps “immediately shall account for and return” all packaging materials and ingredients Medtrition supplied. *Id.* at § 24.

38. Heeps did none of the things the Agreement required upon expiration or termination, because the Agreement never expired or terminated. For ten years following

execution, the parties fully performed. Medtrition provided forecast demands for its products, and Heeps manufactured them. Heeps never stopped producing Medtrition's products – last year alone it manufactured and shipped approximately 1.9 million cases – and it continues to do so today. Heeps never returned Medtrition's materials and still stores them at its facility. And Heeps continued to accept monthly quality inspections by Medtrition. This is precisely the “continuous[] and consistent[]” performance that preserved the contracts in *Atofina* and *Brozzetti*.

39. The parties' course of dealing also forecloses any argument premised on the timing or form of Medtrition's renewals. In 2020, Medtrition did not email Heeps to renew the Agreement until October 26, 2020 – almost four months after the term had expired – and Heeps neither objected nor claimed that the Agreement had expired. To the contrary, Heeps's then-president, James Heeps, replied in writing: “Yes, I am in agreement with this.” (Mot. Ex. B.) Having accepted renewal outside the strict formal requirements, Heeps waived strict compliance with those formalities. *See Weyerhaeuser Co. v. Domtar Corp.*, 721 Fed. Appx. 186, 190 (3d Cir. 2018) (affirming holding that party “waived the signed writing requirement” where its conduct left “no alternative but to conclude that it had specifically and directly intended to waive its rights”).

40. Heeps's own conduct when it sought to end the relationship tells the same story. Its April 30, 2026 letter did not claim that the Agreement had expired; Heeps instead made a business decision to “discontinue all co-packing activities for Medtrition.” The expiration theory surfaced only afterward, on May 1, 2026, three days after Heeps submitted to a contractual inspection under the very Agreement it now says did not exist. Importantly, Heeps has no contractual right to terminate absent one of the grounds enumerated in Section 22 of the Agreement – (i) a material breach by Medtrition and a 15-day notice and cure period, (ii) Medtrition's insolvency, (iii) a precipitous decline in sales, or (iv) a failure to agree on pricing, which even then requires 180

days' notice – none of which is present or even alleged.

41. Taken together, the parties' ten years of uninterrupted performance, Heeps's acceptance of Medtrition's renewals without objection, and the Agreement's provisions precluding unilateral termination confirm that the Agreement was renewed and remains in full force and effect, which is why the Lancaster Court found Medtrition likely to succeed. Accordingly, the Debtors' request for a determination that the Agreement expired prepetition should be denied.

II. The Alternative Request to Reject Should Be Denied or, at a Minimum, Conditioned on an Orderly Transition.

A. The Agreement Cannot Be Rejected Because the Preliminary Injunction Rendered It Non-Executory.

42. As a threshold matter, section 365 of the Bankruptcy Code is inapplicable because there is no executory contract to reject. Section 365(a) permits a debtor, subject to the court's approval, to assume or reject "any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). The Third Circuit defines an executory contract as one "under which the obligation of both the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete performance would constitute a material breach excusing performance of the other." *In re Columbia Gas Sys. Inc.*, 50 F.3d 233, 239 (3d Cir. 1995) (citing *Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 39 (3d Cir. 1989)). Whether a contract is executory is tested as of the petition date and the Debtors, as the movants, bear the burden of proving that the Agreement is executory. *Id.* at 240; *In re Bennett Enters., Inc.*, 628 B.R. 481, 487 (Bankr. D.N.J. 2021) (citing *In re Philadelphia Newspapers, LLC*, 424 B.R. 178, 181 (Bankr. E.D. Pa. 2010).

43. Obligations imposed under a court order, such as those in the TRO and Preliminary Injunction issued by the Lancaster Court, may not be rejected. "Courts agree that the phrase 'executory contract' cannot be applied to a judicial order." *Bennett*, 628 B.R. at 487 (quoting *Roxse Homes, Inc. v. Roxse Homes Ltd. P'ship*, 83 B.R. 185, 187 (D. Mass.), *aff'd sub nom. In re Roxse*

Homes, Inc., 860 F.2d 1072 (1st Cir. 1988)). In *Bennett*, the court denied a debtor's motion to reject a contract after a state court had entered a prepetition order requiring specific performance. Because "application of the Bankruptcy Code does not change the attributes of a given legal relationship... when, under relevant non-bankruptcy law, parties are subject to a judicial order, rather than a contract, it will be a judicial order and not a contract in bankruptcy." *Id.* at 489–90 (quoting *Columbia Gas*, 50 F.3d at 238). Because the state-court order was immediately enforceable and the state court had the power to enforce it, the parties' remaining obligations became "ministerial," and the contract "ceased to be an executory contract that Debtor could reject under section 365 of the Bankruptcy Code." *Id.* at 491.

44. The same is true here where the parties' relationship is governed not only by the Agreement but also by the Lancaster Court's injunctive orders. Those orders enjoined Heeps "from wrongfully terminating the Agreement and discontinuing manufacturing and packaging of Medtrition's Café Puree products until a reasonable transition can take place" and ordered that "[t]he status quo as set forth in the contracts between Medtrition and Heeps shall be maintained until the parties' rights are finally determined in the underlying lawsuit." *See* Exs. A, B. Contrary to the Debtors' characterization of an "open-ended" obligation, the injunction is expressly bounded by a "reasonable transition" one that has been made difficult by Heeps' questionable cooperation with such transition. The Preliminary Injunction was entered after an evidentiary hearing, was immediately enforceable, and remained in effect after the Superior Court declined to stay it. It may not be disregarded by the Debtors under the guise of rejection. *See Bennett*, 628 B.R. at 491.

B. Rejection Is a Breach, Not a Termination, and Does Not Extinguish the Non-Compete or the Preliminary Injunction.

45. The Motion presupposes rejection would terminate the Agreement and free Heeps to sell Eatsential. It would not. Rejection "constitutes a breach" of the contract, not a rescission,

immediately before the date of the filing of the petition. 11 U.S.C. § 365(g)(1). The Supreme Court has made clear that rejection “has the same effect as a breach outside bankruptcy” – it does not “rescind rights that the contract previously granted.” *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 587 U.S. 370, 381–82, 387 (2019). Rather, rejection relieves a debtor of the obligation to perform going forward and converts the counterparty’s claim for damages into a prepetition claim; it does not unwind the bargain, eliminate the counterparty’s non-monetary rights that survive breach under state law, or vacate injunctions entered by a court of competent jurisdiction. *Id.* (licensee’s right to use trademark survives the breach caused by rejection); *In re Chisholm Oil and Gas Nominee, Inc.*, 660 B.R. 593, 600-01 (Bankr. D. Del. 2024) (“[R]ejection does not terminate the contract. When it occurs, the debtor and counterparty do not go back to their pre-contract positions” and the rejected contract “is not cancelled, repudiated, rescinded, or in any other fashion terminated”); *In re Rappaport*, 517 B.R. 518, 535 (“Rejection establishes that the estate will not become obligated on the contract; it does not affect the continued existence of the debtor’s obligations, which form the basis of the non-debtor’s claim”).

46. That principle is dispositive as to the Non-Compete. The Agreement itself provides that the Non-Compete survives “for a period of one year following termination.” (Agreement § 13(b).) Section 23 of the Agreement confirms that termination is “without prejudice to any rights that may have accrued.”

47. While rejection may relieve the Debtors’ affirmative performance obligations, the Non-Compete rides through rejection. *See Tempnology*, 587 U.S. at 387; *Chisholm*, 660 B.R. at 600; *Rappaport*, 517 B.R. at 535. Importantly, the scope and enforcement of the Non-Compete is squarely before the Lancaster Court.

48. Likewise, the Preliminary Injunction remains in full force, and nothing in section

365 of the Bankruptcy Code authorizes this Court to circumvent the established procedures for dissolving an injunction. *See* Federal Rule of Civil Procedure 65 (made applicable herein by Federal Rule of Bankruptcy Procedure 7065) (requiring a motion and hearing for dissolution of an order). Section 365(a) does not give a debtor a license to reject a prepetition state-court injunction. *See Bennett Enterprises*, 628 B.R. at 494 (holding that debtor cannot reject a prepetition state court order). The Debtors can no more “reject” the Preliminary Injunction than they could “reject” any other order or judgment entered against them.

49. The Bankruptcy Code is not an appellate mechanism through which a disgruntled debtor may relitigate a prepetition state-court injunction under the guise of contract rejection. Here, *Bennett* is again instructive, explaining that even if the underlying contract remained executory, rejection would be inequitable because the state court had already awarded the counterparty an equitable remedy, and rejection would have produced “a harsh and inequitable result.” *Bennett*, 628 B.R. at 494. Here, the same is true: the Lancaster Court has already granted Medtrition equitable relief through issuance of the Preliminary Injunction, which is based on factual findings of Medtrition’s likelihood of success on the merits, irreparable harm to Medtrition, and harm to the public.

C. Rejection Should Be Denied Because the Agreement is Not Economically Burdensome and Rejection Would Harm the Estate and Its Creditors.

50. The purpose of contract rejection is to relieve the estate of contracts that are burdensome and would impede a successful reorganization. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984); *Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 39–40 (3d Cir. 1989) (applying business judgment test and asking whether rejection would benefit the estate). A decision to reject will not be approved where it is “so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice.”

Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc., 756 F.2d 1043, 1047 (4th Cir. 1985).

51. This Agreement is anything but economically burdensome. The Debtors' own Budget shows that the Agreement remains profitable: it projects weekly sales of approximately \$630,000 per week to Medtrition in weeks 1 through 5 and corresponding positive cash flow. *See* Budget. Medtrition is paying for every case the Debtors produce, and the Debtors are collecting that revenue postpetition. The Debtors do not (and cannot) contend that performance under the Agreement is causing the estate to lose money. There is, accordingly, no economic urgency to rejection.

52. What the Debtors actually seek is not relief from a burden, but the freedom to make more money by competing with Medtrition. The Budget's jump to an implied price of approximately \$29.33 per case beginning in week 9 – nearly double the co-packing rate and just below Medtrition's own average selling price – reveals the Debtors' plan to sell Medtrition-equivalent Eatsential product directly to Medtrition's customers. That plan would violate the Non-Compete, which survives rejection, and the Preliminary Injunction, which remains in force. A debtor's desire to free itself from a contract so that it can engage in conduct a state court has enjoined is not a legitimate exercise of business judgment; rather, it is the type of bad faith that warrants denial of rejection. *See Trans World*, 261 B.R. at 121.

53. Nor would rejection serve the best interests of creditors. Heeps acknowledged in the state court proceedings that its entire business is related to Medtrition, and the Debtors have no other meaningful source of revenue. Because the Non-Compete bars Heeps from producing indistinguishable products for one year following termination, and the Preliminary Injunction prohibits the Eatsential line, rejection would leave the Debtors with no customer and no lawful product to sell for at least twelve months. The Debtors could not survive that period, and rejection

would also generate a substantial rejection-damages claim in favor of Medtrition that would dilute recoveries to all other unsecured creditors. Rejection would therefore harm, not benefit, the estate and its creditors, and should be denied. *See Sharon Steel*, 872 F.2d at 39–40.

54. At a minimum, and alternatively, only if the Court is inclined to permit rejection, the absence of any economic burden is yet another reason why the effective date of rejection should be deferred. Because the Debtors are profitable under the Agreement, the estate suffers no prejudice from continued performance through an orderly transition period, as set forth in more detail below.

D. Any Rejection of the Agreement Must Be Conditioned on, and Effective Only After, a Reasonable Transition, Not *Nunc Pro Tunc*.

55. Even if the Court were inclined to authorize rejection, it should do so only on terms that protect the countless patients who rely on Medtrition products to survive. While Medtrition recognizes that the Debtors do not wish to continue the parties’ business relationship, and has been working in good faith on a transition to an alternative co-manufacturer, this likely will take until at least January 31, 2027, in order to avoid interrupting the food supply of the patients who depend on it daily for their health and well-being.

56. The Court may fix the effective date of rejection and condition its approval on terms that protect the counterparty and the public, and the equities overwhelmingly favor doing so here. See 11 U.S.C. §§ 105(a), 365(a); *In re Jamesway Corp.*, 179 B.R. 33, 37 (S.D.N.Y. 1995) (stating that section 365 does not dictate “the manner in which the court can approve rejection”); *see also In re CCI Wireless, LLC*, 297 B.R. 133, 138 (D. Colo. 2003) (holding that a “court has authority under section 365(d)(3) to set the effective date of rejection...”).

57. Nor should any rejection be retroactive. While courts have recognized the power to authorize retroactive rejection in appropriate cases, such relief is the exception, not the norm, and

is only warranted where the balance of equities favors such treatment and no party will be prejudiced. *See In re Fleming Companies, Inc.*, 304 B.R. 85, 96 (Bankr. D. Del. 2003); *In re Chi-Chi's, Inc.*, 305 B.R. 396, 399 (Bankr. D. Del. 2004) (retroactive rejection appropriate only “after balancing the equities in a particular case”).

58. Here, the balancing of the equities does not support retroactive rejection. Postpetition, the Debtors have continued to accept Medtrition’s purchase orders, to manufacture and ship product, and to invoice and collect payment for it, as they are required to do by the Preliminary Injunction. A debtor cannot accept the benefits of a contract postpetition and simultaneously declare it rejected as of the petition date, especially where, as here, the estate suffers no prejudice from a prospective effective date because the Agreement remains profitable for the Debtors.

59. The equities also weigh heavily in favor of the patients who would bear the consequences of an abrupt cutoff. Failing to provide Medtrition time to find a replacement manufacturer could cause immense harm to more than 200,000 patients who rely on Medtrition for their food supply on a daily basis. Likewise, Medtrition needs sufficient time in order to comply with the regulatory and clinical complexity of the pureed product. Medtrition estimates this could take until the end of Q1 2027 to substitute a new, qualified co-packer on a commensurate manufacturing scale.

60. An abrupt cutoff of Medtrition’s sole manufacturing source would cause a catastrophic supply chain disruption. Healthcare facilities, group purchasing organizations, and foodservice providers cannot absorb such a disruption in that timeframe, given that corporate menu order guide approval processes require months of ingredient review, test kitchen analysis, and multi-step clinical vetting before a new supplier can be added.

61. Moreover, the introduction of physically indistinguishable Eatsential products carrying different allergen profiles, including the substitution of pea protein for soy protein isolate, into the same distribution chain and identical packaging creates a direct patient safety risk.

62. Simply, the result of untimely rejection will be hundreds of thousands of vulnerable patients may lose the food supply they depend on. Accordingly, to the extent the Court authorizes rejection at all, Medtrition requests that the order provide that (a) rejection shall not be effective until the later of (i) March 31, 2027, and (ii) the date on which Medtrition has qualified an alternative manufacturer capable of supplying the Café Puree product line, or such other date as Medtrition and the Debtors may agree; and (b) the Debtors shall continue to perform under the Agreement, consistent with the Preliminary Injunction.

CONCLUSION

For the foregoing reasons, Medtrition respectfully requests that the Court deny the Motion.

Dated: October 15, 2026
Wilmington, Delaware

BLANK ROME LLP

/s/ Jordan L. Williams

Jordan L. Williams (DE No. 7128)

1201 Market Street, Suite 800

Wilmington, Delaware 19801

Telephone: (302) 425-6400

Facsimile: (302) 425-6464

E-mail: Jordan.Williams@blankrome.com

-and-

BLANK ROME LLP

John E. Lucian (admitted *pro hac vice*)

One Logan Square

130 N. 18th Street

Philadelphia, PA 19103

Telephone: (215) 569-5500

E-mail: john.lucian@blankrome.com

Counsel to Medtrition, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2026 I served or caused to be served the foregoing *Objection of Medtrition, Inc. to Debtors' Motion for a Determination That the Co-Packer Agreements Expired, or in the Alternative, to Reject the Co-Packer Agreements Nunc Pro Tunc* by CM/ECF upon those parties registered to receive such electronic notifications in these cases, as well as the following parties by electronic mail:

ICE MILLER LLP

R. Stephen McNeill
Sarah R. Gladieux
500 Delaware Avenue, Suite 220
Wilmington, Delaware 19801
stephen.mcneill@icemiller.com
sarah.gladieux@icemiller.com

-and-

ICE MILLER LLP

Louis T. DeLucia
Alyson M. Fiedler
Ryan C. Hibbard
1500 Broadway, 29th Floor
New York, New York 10036
louis.delucia@icemiller.com
alyson.fiedler@icemiller.com
ryan.hibbard@icemiller.com

*Proposed Counsel to the Debtors
and Debtors in Possession*

ARCHER & GREINER, PC

Natasha Songonuga,
300 Delaware Ave., Suite 1100
Wilmington, DE 19801
nsongonuga@archerlaw.com

Sub-Chapter V Trustee

**CHIPMAN BROWN CICERO
& COLE, LLP**

William E. Chipman, Jr.,
Hercules Plaza
1313 North Market Street, Suite 5400
Wilmington, Delaware 19801
chipman@chipmanbrown.com

-and-

SEYFARTH SHAW LLP

James B. Sowka, Esquire
233 S. Wacker Drive, Suite 800
Chicago, Illinois 60606
jsowka@seyfarth.com

Counsel to Salem Five Cents Savings Bank

**OFFICE OF THE UNITED STATES
TRUSTEE**

Hannah J. McCollum
Hannah.mccollum@usdoj.gov

/s/ Jordan L. Williams

Jordan L. Williams, Esq. (DE No. 7128)

1 IN THE COURT OF COMMON PLEAS
2 LANCASTER COUNTY, PENNSYLVANIA
3 CIVIL
4
5

6 MEDTRITION, INC. :

7 vs. :

No. CI-26-03265

8 K. HEEPS, INC., and :
9 ALTA EQUITY PARTNERS, LLC :
10
11
12

13 PRELIMINARY INJUNCTION HEARING
14
15
16

17 Before: HONORABLE THOMAS B. SPONAUGLE

18 Date : Wednesday, May 13, 2026

19 Place : Courtroom No. 6
20 50 North Duke Street
21 Lancaster, Pennsylvania
22
23
24

25 ORDERED: 5/18/26

LODGED: _____

FILED: _____

1 APPEARANCES:

2 LAWRENCE F. STENGEL, ESQUIRE
3 SAXTON & STUMP
4 280 Granite Run Drive
5 Lancaster, PA 17601
6 DANIEL RHYNHART, ESQUIRE
7 CHRISTOPHER CODY WILCOXSON, ESQUIRE
8 BLANK ROME LLP
9 One Logan Square
10 130 North 18th Street
11 Philadelphia, PA 19103
12 Representing the Plaintiff

13 MATTHEW M. HENNESY, ESQUIRE , Esquire
14 BARLEY SNYDER
15 126 East King Street
16 Lancaster, PA 17602
17 Representing the Defendants
18
19
20
21
22
23
24
25

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P R O C E E D I N G S

(8:39 a.m.)

(Plaintiff's Exhibit Nos. 1 - 14 marked.)

THE COURT: Good morning. You can have a seat.
Have you had enough time to see if you can get
this worked out?

ATTORNEY STENGEL: Your Honor, we have not had
a chance to talk outside. Mr. Hennesy was retained, I
believe --

ATTORNEY HENNESY: Yesterday afternoon.

ATTORNEY STENGEL: -- yesterday.

THE COURT: Well, that's plenty of time.
Okay. Do you want to talk to him? Do you
think it's beneficial, or we're ready to start? We have
all morning for this.

ATTORNEY HENNESY: I mean, we can talk. I'll
-- I have to talk to my folks.

ATTORNEY STENGEL: There's no client
representative here on the defense side.

THE COURT: Where is your client?

ATTORNEY HENNESY: Your Honor, I wasn't able to
arrange somebody at this hour. I might be able to get
somebody here later in the morning

THE COURT: Well, this is the time and date for
the hearing. We're starting now.

1 Do you want to talk to other counsel, opposing
2 counsel, to see if you can get this resolved?

3 ATTORNEY HENNESY: Sure.

4 ATTORNEY RHYNHART: We can step out.

5 ATTORNEY STENGEL: Should we take five minutes?

6 THE COURT: Sure. Sure. Thank you.

7 Do you want to stay in here or --

8 ATTORNEY RHYNHART: We can step outside, Your
9 Honor.

10 THE COURT: Whatever you wish to do.

11 (Recess taken from 8:41 a.m. to 10:05 a.m.)

12 THE COURT: We can go back on the record.

13 We're now an hour and a half into this and we
14 haven't even started the hearing. We tried to get the
15 attorneys to work this out. Apparently, they've been
16 very reasonable in trying to get this worked out.

17 The problem for us right now is that neither
18 one of the defendants bothered to show up. They sent an
19 attorney who I assume represents both of them; is
20 that --

21 ATTORNEY HENNESY: Correct, Your Honor.

22 THE COURT: Okay. Where are we on a temporary
23 order extension? There was talk about getting an
24 extension of the emergency injunction order and coming
25 back again for another hearing June 24 in the morning,

1 or if my civil trial that starts on Monday settles,
2 possibly May 20, Wednesday.

3 ATTORNEY HENNESY: Your Honor also mentioned
4 the date of May 15th, and we would request that date if
5 that's possible. And I know that one of the three
6 counsel on the other side is not available, but we would
7 request that indulgence because we didn't have an
8 opportunity to know when this was gonna be scheduled
9 or -- and we're on very short notice ourselves. And
10 they do have additional counsel.

11 So we would request the opportunity to schedule
12 on May 15th if that's available, Your Honor.

13 THE COURT: This order was signed and filed
14 with the Prothonotary on May 8th in the afternoon.

15 ATTORNEY HENNESY: Correct, Your Honor.

16 THE COURT: And then when was -- when were the
17 defendants served?

18 ATTORNEY STENGEL: Monday.

19 THE COURT: Monday.

20 ATTORNEY HENNESY: Monday afternoon.

21 THE COURT: Well, are you -- but you're not
22 available on May 15th in the morning.

23 ATTORNEY STENGEL: Right. I have a seminar
24 that I'm actually speaking at from 8:30 until about
25 1:30.

1 THE COURT: Okay. So we can't do it then.

2 So now we're down to June 24 in the morning or
3 possibly May 20. I'm having my staff contact the
4 attorneys in the May 18 civil trial to see what the
5 settlement status is; of course, not asking what the
6 numbers are, to see if they're close to getting that
7 case settled. I should find out today about that. But
8 that's -- that's what we have.

9 Otherwise, we're ready to start right now with
10 this hearing. What do you want to do?

11 ATTORNEY HENNESY: I was trying to get a final
12 answer right before I walked in, and I was talking to my
13 client. And I don't want to take any more time than is
14 necessary, Your Honor, so --

15 THE COURT: That's good.

16 ATTORNEY HENNESY: -- if I could just have,
17 like, five minutes tops just to get a confirmation.

18 I -- if we have to have the hearing, then we'll
19 do the hearing. I -- I don't -- I think the June 24th
20 date might be -- might be a problem. So I can't agree
21 to that unless I have their authorization.

22 THE COURT: Well, sometimes counsel doesn't
23 agree with what the Court does and they still have to
24 comply.

25 ATTORNEY HENNESY: Agreed.

1 THE COURT: So we'll give you another five
2 minutes.

3 ATTORNEY HENNESY: Thank you.

4 THE COURT: This is what we're going to do.
5 We're gonna start at 10:15 whether -- if you have an
6 agreement, you'll let us know.

7 But otherwise, at 10:15 I'll know whether I
8 have an extension or we're gonna start this hearing.
9 We're not gonna waste another minute.

10 10:15 we're gonna start. Okay. All right.
11 Thank you.

12 (Recess taken from 10:08 a.m. to 10:12 a.m.)

13 THE COURT: All right. I've been told we're
14 gonna have a hearing.

15 You can call your first witness.

16 ATTORNEY RHYNHART: Your Honor, Dan Rhynhart
17 for plaintiff. The first witness is David Marks, the
18 CEO and founder of Medtrition.

19 ATTORNEY HENNESY: Your Honor, I would request
20 that we sequester the other witnesses.

21 THE COURT: All right.

22 ATTORNEY RHYNHART: No objection.

23 So Ms. Hess is the only other witness. Stacy,
24 do you mind waiting outside?

25 THE COURT: You can step forward.

1 DAVID MICHAEL MARKS,
2 called as a witness, being duly sworn or affirmed, was
3 examined and testified as follows:

4 DIRECT EXAMINATION

5 BY ATTORNEY RHYNHART:

6 Q. Mr. Marks, can you hear us all right?

7 A. I can. Thank you.

8 Q. Would you introduce yourself to the Court and
9 tell us where you work.

10 A. Yes. My name is David Michael Marks. I live
11 in Lititz, Pennsylvania and work as the founder and CEO
12 of Medtrition.

13 Q. What kind of a company is Medtrition?

14 A. We make medical foods and foods for food
15 service, specifically purees for the healthcare
16 industry.

17 Q. And where is Medtrition located?

18 A. In Lancaster.

19 Q. We're here about a case against a company
20 called K. Heeps?

21 A. Correct.

22 Q. What is K. Heeps?

23 A. K. Heeps is a manufacturer. They make all of
24 our pureed foods that we sell in the United States. And
25 we are their only customer, and we -- they are our only
26 supplier of that product line.

1 Q. When did you start working with K. Heeps?

2 A. We started working with them in the 19 -- in
3 1990. And they were making a type of puree that they
4 private labeled for us and that we sold for about four
5 years.

6 We sold it until 1994 when I sold the -- my
7 company to Hormel Foods, and then they manufactured that
8 product for Hormel.

9 Q. Let's flash forward to 2013. Did you start
10 working with Heeps again?

11 A. I did, yes.

12 Q. And what -- what was that new relationship?

13 A. That relationship was that we had brokered for
14 Hormel that same product line until 2013. And Heeps was
15 packaging some powdered products for my company, and so
16 I had an ongoing relationship with Jim Heeps, the
17 president of Heeps.

18 And he had asked me to get back into the puree
19 business since I was no longer connected with Hormel
20 Foods. So we had a conversation about bringing a
21 different type of puree product to the market.

22 Q. Whose ideas -- well, strike that.

23 Did you have some ideas about new products that
24 could be pureed foods?

25 A. So we wanted to reinvent the pureed food

1 market. Under Hormel, the products that they originally
2 had introduced were pretty much bastardized in terms of
3 quality.

4 For example, they had 14 grams of meat in their
5 pureed meat product, but it was -- they had fillers and
6 they had -- with egg white and skim milk and cream
7 cheese and things like that.

8 We wanted to come in with a pureed meat product
9 that had 21 grams of protein. We wanted no MSG. We
10 didn't want any fillers. We wanted new shapes and
11 sizes, new varieties. And we wanted microwavable and
12 ovenable dishes, as opposed to Hormel.

13 Q. All those innovations you just described, --

14 A. All those innovations came from us.

15 Q. -- whose --

16 Wait for me to finish.

17 All of those innovations you just described,
18 whose ideas were they?

19 A. They were ours.

20 Q. And ours is what company?

21 A. Is Medtrition.

22 Q. What is the -- what was Heeps' role if those
23 were the Medtrition ideas?

24 A. Heeps' role was to figure out how to get
25 equipment made that would fill individual microwavable

1 trays.

2 Q. Were they your manufacturer?

3 A. As the manufacturer, yeah. Yes. Their role
4 was strictly manufacturer.

5 Q. And where was Heeps located?

6 A. In Allentown, Pennsylvania.

7 Q. They had a factory there?

8 A. They have a factory there.

9 Q. Okay. Did you enter into a contract with
10 Heeps?

11 A. We did, in 2016.

12 ATTORNEY RHYNHART: Your Honor, we have a few
13 binders with a handful of exhibits in them. With
14 permission, could I hand one to the Court and one to the
15 witness?

16 THE COURT: Yes.

17 ATTORNEY HENNESY: Do I get one?

18 ATTORNEY RHYNHART: Oh, excuse me. The first
19 one will go to opposing counsel.

20 Thank you, Your Honor.

21 THE COURT: Do you want this marked as Exhibit
22 1?

23 ATTORNEY RHYNHART: So we're turning to --

24 THE COURT: Do you want the binder marked as an
25 exhibit?

1 ATTORNEY STENGEL: Sure.

2 ATTORNEY RHYNHART: Sure. Let's mark the
3 entire binder as -- could we call it Exhibit A, because
4 then it has tabs within it?

5 THE COURT: Plaintiff 1, is that what you wish?
6 Whatever you wish to do. I just want to mark
7 something here.

8 ATTORNEY RHYNHART: Could we call it
9 Plaintiff's Exhibit A, because then it has Tabs 1
10 through 14 inside it.

11 THE COURT: Okay.

12 ATTORNEY RHYNHART: Thank you, Your Honor.

13 So we're looking at Tab 1. And with the
14 Court's permission we'll call that Exhibit A1.

15 BY ATTORNEY RHYNHART:

16 Q. Mr. Marks, do you recognize Exhibit A1?

17 A. Yes. This is the Co-Packing agreement that we
18 signed with Heeps.

19 Q. Now, in the first paragraph there it doesn't
20 say Medtrition, it says Cafe Puree, Inc.

21 Do you recognize that name?

22 A. I do. We -- we set up a separate company
23 called Cafe Puree, Inc. to market the purees.

24 Q. Is Cafe Puree, Inc. a predecessor of
25 Medtrition?

1 A. It is. And we brought it into Medtrition in
2 2022, I believe.

3 Q. And this contract, is it all right with you if
4 we just refer to Cafe Puree, Inc. --

5 A. Sure.

6 Q. -- as Medtrition?

7 A. Yes.

8 Q. And the co-party under this agreement is K.
9 Heeps, right?

10 A. Correct.

11 Q. If we look at the second whereas paragraph of
12 this Co-Packer agreement it says, Cafe Puree, Inc., or
13 Medtrition, desires to obtain a supply of pureed food
14 products as more fully described in Exhibit A.

15 Do you see that?

16 A. Yes, I do.

17 Q. If we turn to Exhibit A on Page 13 --

18 A. Okay.

19 Q. -- there is a list of products.

20 Do you see that?

21 A. I do.

22 Q. And it ranges from roasted turkey and other
23 sorts of meats to breakfasts, like French toast and
24 waffles.

25 Do you see that?

1 A. Yeah, I do.

2 Q. Whose idea was it to come up with these pureed
3 food products?

4 A. Those -- that variety was all our idea.

5 Q. And were -- were these new ideas for pureed
6 food products?

7 A. There were products like this on the market
8 from Hormel but not in the form and the function and the
9 nutritional quality and the clean ingredients that we
10 came out with.

11 Q. If we look at Section 1 on the first page of
12 the agreement, in the first sentence it says, Cafe
13 Puree, or Medtrition, shall place purchase orders with
14 Co-Packer, or K. Heeps.

15 Over the years since this was signed, has
16 Medtrition been placing purchase orders with K. Heeps?

17 A. Literally every week.

18 Q. And in the next sentence it says, Co-Packer, or
19 K. Heeps, shall manufacture and package the Products in
20 strict compliance with the standards and specifications.

21 Do you see that?

22 A. Yes. That is correct.

23 Q. And --

24 A. We did.

25 Q. -- who comes up with the standards and

1 specifications for these products?

2 A. We do.

3 Q. Medtrition?

4 A. All of the standards and all of the
5 specifications of the product.

6 Q. And the Products, with a capital P, is defined
7 above in that whereas paragraph we were just looking at
8 as the products in Exhibit A; is that right?

9 A. Yes.

10 Q. Let's go to Section 3 on the next page,
11 production schedule.

12 In the second sentence there it says, Cafe
13 Puree, Inc., or Medtrition, will provide Co-Packer, or
14 K. Heeps, daily reports showing inventory levels and
15 customer orders placed for future delivery.

16 Do you see that?

17 A. I do.

18 Q. And has that happened?

19 A. We do that weekly, not daily.

20 Q. Okay. And by the way, over the last few months
21 has Medtrition been providing K. Heeps with weekly
22 reports showing its inventory levels and customer orders
23 for future delivery?

24 A. As recently as Monday.

25 Q. All right. And in the last few months has K.

1 Heeps told you that they are using that information to
2 go to your customers and sell competing products?

3 A. Yes.

4 Q. They did? When did they tell you that?

5 A. Yes.

6 Oh, they didn't tell us about it, we --

7 ATTORNEY HENNESY: Objection.

8 THE WITNESS: -- did discover that.

9 BY ATTORNEY RHYNHART:

10 Q. You discovered that?

11 A. We discovered that, yes.

12 Q. All right. And you discovered that on what
13 date?

14 A. We discovered that two weeks -- two Tuesdays
15 ago.

16 Q. April 28th?

17 A. April 28th.

18 Q. Before April 28th, when you were giving weekly
19 reports with customer orders and forecasts, did K. Heeps
20 tell you they were gonna use that to approach your
21 customers --

22 A. No.

23 Q. -- with other products?

24 A. No.

25 Q. Okay. Let's go to Section 5 at the bottom of

1 Page 2, manufacturing facilities. The last sentence
2 says, Co-Packer shall be the exclusive supplier of the
3 Products, capital P, which are those Products on Exhibit
4 A?

5 A. Yes.

6 Q. Has K. Heeps been your exclusive supplier?

7 A. Yes, they have been.

8 Q. And then let's go to ownership rights on
9 Section 7 on the next page.

10 A. Okay.

11 Q. Ownership rights of Cafe Puree, or Medtrition.

12 In the first sentence there it says, Co-Packer, or K.
13 Heeps, acknowledges that Medtrition is and shall remain
14 the owner of all recipes, formulations, specifications,
15 artwork, graphics and label copy. It goes on and then
16 says, and other confidential and proprietary information
17 related to the Products, capital P.

18 Was that sentence important to you when you
19 signed this agreement?

20 A. It was very important. It gave us the ability
21 to share any information and have full visibility on our
22 business with -- with Heeps. It solidified our
23 partnership with them.

24 Q. And then let's go to Section 13 on Page 6 --
25 excuse me, Page 5. There is a confidential --

1 confidentiality and non-competition section.

2 Do you see that?

3 A. Yes.

4 Q. And it's -- in the first part, (a), it says,
5 you've executed a NDA?

6 A. Correct.

7 Q. If we flip for a moment to Tab 2 of this book,
8 and then we're gonna come back to that page.

9 A. Yep.

10 Q. Is this the NDA that you executed on the same
11 day?

12 A. Yes, it is.

13 Q. And is your signature on the last page?

14 A. Yes, it is.

15 ATTORNEY RHYNHART: We'll call that Exhibit A2,
16 Your Honor.

17 BY ATTORNEY RHYNHART:

18 Q. Let's go back to A1, Page 5, that Paragraph 13,
19 and let's go to Paragraph 13(b).

20 Do you see the first sentence there?

21 A. Yes.

22 Q. Co-Packer acknowledges that it is reasonable
23 and necessary for the protection of the business and
24 goodwill of Medtrition for K. Heeps to enter into the
25 following agreement respecting competition with

1 Medtrition and that Medtrition would suffer irreparable
2 injury if K. Heeps breaches any such agreement?

3 A. And that's true.

4 Q. Okay. And if we go down to the next sentence
5 it says, as a further safeguard and necessary protection
6 for trade secret and proprietary information that
7 Medtrition discloses to Co-Packer or K. Heeps, K. Heeps
8 shall not directly or indirectly engage in the business
9 of producing, distributing, purchasing or selling or
10 otherwise dealing in any products, goods or merchandise
11 that cannot be differentiated from the Product, capital
12 P, by taste or formula evaluation in any part of the
13 United States.

14 Do you see that language?

15 A. Yeah, I do.

16 Q. Was that important to you when you signed this
17 agreement?

18 A. It was very important to us.

19 Q. Why?

20 A. It was -- it just -- because it created a bond
21 and a partnership between us. We couldn't go to another
22 Co-Packer, and they couldn't sell our product line or
23 similar products to a competitor or -- to a competitor.

24 Q. And if we go to the last sentence of that
25 Paragraph 13(b) which is at the top of Page 6 it says,

1 Co-Packer, or K. Heeps, agrees to cease production of
2 all products whose formulations are owned by Cafe Puree,
3 or Medtrition, covered by Paragraph 7 of the agreement,
4 which is what we were just looking at, the ownership
5 clause, or of products that cannot be differentiated
6 from products owned by Medtrition by taste or formula
7 evaluation upon termination of this agreement and for a
8 period of one year following termination of this
9 agreement.

10 Was that important to you?

11 A. Exactly right.

12 Q. Why?

13 A. Because we didn't want to have to compete
14 against ourselves with our formulations, our product,
15 our ideas, our IP.

16 Q. And why do you need one year following
17 termination? Does it take a while to get a new
18 supplier?

19 A. It takes at least a year.

20 Q. Why?

21 A. To find another Co-Packer who has the equipment
22 that can pack those types of trays; to get the supplies.
23 For example, fruits and vegetables are generally
24 contracted for the entire year and generally aren't
25 available through other suppliers in the interim.

1 Q. All right. Let's go back to Page 2 of this
2 agreement and look at Paragraph 2. It says, the term of
3 this agreement commences as of the date of this
4 agreement, which is June 29th, 2016, and I'm
5 paraphrasing, will continue for one year.

6 And then it says, and successive -- and can be
7 renewed for -- by an additional -- for an additional one
8 year period and successive one year periods thereafter
9 by providing written notice to K. Heeps of such election
10 to renew at least 90 days prior to expiration.

11 Has Medtrition submitted those written
12 renewals?

13 A. We did. We lost some governance over it, but
14 we did for quite a few years. Our CFO -- we lost our
15 CFO in 2022, and we haven't been able to locate those
16 signed renewals. Now, we've --

17 Q. Are you still looking for them?

18 A. We still -- we've gone into archives from
19 Google, whatever that is. We found some more storage
20 disks recently that date back to 2010. So we're still
21 searching for them.

22 Q. Setting aside written renewals, had -- is it --
23 do you believe your company has renewed orally or in
24 other ways?

25 A. I believe through our operations and our

1 collaboration. Nothing has changed. We operate it
2 today exactly as we've operated for the last 10 years.
3 If there was any change on their behalf, they simply
4 didn't indicate it to us. So we acted as if we were
5 still tied together and partners.

6 Q. Has your company been following the terms of
7 this agreement continually since it was signed?

8 A. Absolutely we have.

9 Q. And to your understanding has K. Heeps, aside
10 from the recent discoveries that we're here in court
11 about?

12 A. Absolutely.

13 Q. Has K. Heeps ever told you that they believe
14 this agreement expired or was not renewed?

15 A. No.

16 Q. Has K. Heeps ever told you they believed that
17 this was terminated in any way?

18 A. No.

19 Q. And if we look at their termination rights,
20 let's go to Paragraph 22 on Page 10, this says,
21 termination by Co-Packer, or K. Heeps, they may
22 terminate this agreement, (a), if Medtrition breaches or
23 violates any of the agreements, and then there is a
24 15-day notice provision.

25 To your understanding, has K. Heeps ever told

1 Medtrition that you were in breach of this agreement?

2 A. They have not.

3 Q. Or served you a written notice or anything like
4 that?

5 A. They have not.

6 Q. Has Medtrition been paying Cafe Puree (sic)
7 under the terms of this agreement?

8 A. We absolutely have.

9 Q. Has Medtrition made recent payments to Cafe --
10 to K. Heeps despite the recent developments?

11 A. Yes. We paid them \$1,000,000 last week.

12 Q. And then we look at 22(b). It says, they may
13 terminate if Medtrition makes an assignment for the
14 benefit of its creditors or commits an act of
15 bankruptcy.

16 Has any of those things happened?

17 A. No.

18 Q. And then the last one, (c), if the sales drop
19 below 360,000 cases in any calendar year.

20 Has that happened?

21 A. No. Those sales increased to 2,000,000 cases
22 last year.

23 ATTORNEY RHYNHART: Your Honor, with
24 permission, could we put up the website of Medtrition?
25 It's --

1 THE COURT: Yes.

2 ATTORNEY RHYNHART: -- on the internet?

3 Thank you. It's Medtrition.com.

4 BY ATTORNEY RHYNHART:

5 Q. Mr. Marks, are you able to see on your screen?

6 A. Yes.

7 Q. Okay. Do you recognize the website that we're
8 showing you?

9 A. Yes. This is our website.

10 Q. And it is www.medtrition.com for the --

11 A. Correct.

12 Q. -- record?

13 All right. And what are we looking at here on
14 the home page? There's a picture of three foods on a
15 plate. What is this?

16 A. All right. These are shapes and forms of
17 purees using molds of our design. You have waffle, you
18 have sausage and you have omelette.

19 Q. These were Medtrition designs --

20 A. These are Medtrition designs.

21 Q. -- that -- and who manufactured these for
22 Medtrition?

23 A. The designs or the --

24 Q. No. Sorry. Who actually makes these products
25 for Medtrition?

1 A. K. Heeps.

2 Q. K. Heeps.

3 ATTORNEY RHYNHART: And if we could go up to --
4 it's a little hard for me to see. Oh, it's not on your
5 screen either.

6 Can we just look through -- like, if you go to
7 products there, upper left, upper left. Do you see
8 that? Products. Yeah.

9 And if we go to Cafe Puree -- whoops. Stick
10 with products. We need the dropdown box. Can you get
11 back to that dropdown box?

12 This might be more trouble than it's worth. Go
13 to products. There we go. And go into Cafe Puree to
14 the right, meats.

15 TECHNICAL ASSISTANT: Right there?

16 ATTORNEY RHYNHART: Yep.

17 BY ATTORNEY RHYNHART:

18 Q. What are we looking at here?

19 A. Yeah. Again, pureed meats from -- from the
20 molds that we designed. You have pork chop and fish and
21 roast beef and chicken.

22 Q. All right. How did contract performance go?
23 Has -- has the collaboration between Medtrition and K.
24 Heeps been successful?

25 A. We've always considered it a partnership. You

1 know, we did our job. They produced products for us,
2 and we went out and we developed the marketing and the
3 sales for the product.

4 And it was successful. To grow from 350,000
5 cases a year to 2,000,000 cases a year, it's been an
6 incredible success. And we dominate the market.

7 Q. And who does Medtrition sell to, categories of
8 customers?

9 A. We sell to contract managers like Aramark,
10 A-r-a-m-a-r-k, Morrison, and Sodexo. We sell through
11 food service distributors, and we are aligned with group
12 purchasing organizations.

13 Q. And when you say we, is that Medtrition --

14 A. Medtrition.

15 Q. -- has its own sales team?

16 A. Medtrition has a sales and marketing group of
17 27 people.

18 Q. Does K. Heeps sell to any of those customers?

19 A. Not to my knowledge.

20 Q. Okay.

21 A. Certainly not -- not these products. No. No,
22 they don't sell anything outside of our products. So
23 the answer is no.

24 Q. Okay. And who has the customer relationships,
25 Medtrition or K. Heeps?

1 A. Medtrition.

2 Q. Do -- does Medtrition share information with K.
3 Heeps about its customers and their needs and their
4 forecasts?

5 A. In the course of business, absolutely.

6 Q. And do you share that information with K. Heeps
7 believing that they can do anything they want with it or
8 believing there are protections?

9 A. We know that they're restricted in using that
10 information. They can't use it.

11 Q. What is IDDSI?

12 A. It's the International Dysphagia Diet
13 Standardisation Initiative. And there was a group that
14 was formed a number of years ago that clearly specifies
15 the consistency of a puree.

16 There are eight different levels to it. The
17 products that we sell are in Category 4 and --

18 Q. Hold -- hold on one second.

19 Let's flip to Tab 3 in your book.

20 ATTORNEY RHYNHART: We'll call that Exhibit A3,
21 Your Honor.

22 BY ATTORNEY RHYNHART:

23 Q. And are we looking here at the -- something
24 referred to as IDDSI standards?

25 A. IDDSI standards.

1 Q. And before you go any further, dysphagia is
2 what?

3 A. Dysphagia is basically a swallowing impairment,
4 typically caused by stroke, cancer or surgery. It's
5 when the epiglottis loses some sensitivity, and thin
6 liquids and purees can run down the back of the throat
7 and you can aspirate it.

8 Q. Okay. So you were saying under the IDDSI
9 standards -- go ahead, and let's move through this
10 quickly.

11 A. So under the IDDSI standards we manufacture
12 purees, Level 4 and a Level 5, which is called moist and
13 minced, which is more like ground food.

14 Q. Was this part of your enhancements to the
15 product or your innovations?

16 A. Absolutely. The development of the product to
17 meet these standards absolutely was done under our
18 guidance, our review --

19 Q. All right.

20 A. -- our testing.

21 Q. And has Medtrition invested in K. Heeps in
22 other ways, aside from just paying them for
23 manufacturing over the years?

24 A. We have in multiple ways.

25 When they bought the first filling equipment we

1 | lent them just under \$500,000 to buy the equipment.

2 | When they had a product recall, I think in
3 | 2016, 20 -- I forget when they had it. They had a
4 | recall in 2017, we had to lend them \$100,000 to get
5 | through that.

6 | Q. And has Medtrition helped K. Heeps with its
7 | factory and efficiency and things like that?

8 | A. Okay. Absolutely. Okay. There's two other
9 | investments that we've made. Both times when Heeps got
10 | into trouble in not being able to produce -- either
11 | produce the product or produce it at the quality that we
12 | wanted, we've hired our own operations managers, at our
13 | expense, to go in and work in the facility.

14 | The first time, I think it was 2016, we sent
15 | someone in for about six months, and he stayed there
16 | until he had a stroke.

17 | A year later I hired a neighbor from Vermont
18 | who was a production expert. I had him come down and
19 | work in Allentown for a year and a half at our expense.
20 | We put up -- paid his hotel and his salary and all those
21 | things. Yes. And he made an enormous amount of
22 | efficiencies in production, in staffing, in quality
23 | control. It was Eatsential for keeping our business --

24 | Q. Thank you.

25 | A. -- going.

1 Q. And as K. Heeps grew with Medtrition, were they
2 eventually an acquisition target themselves?

3 A. Yes. They were acquired by Alta private
4 equity.

5 Q. And did your company, Medtrition, or you
6 personally assist K. Heeps in allowing them to be
7 acquired?

8 A. Jim Heeps asked me personally to help him with
9 that. We created a narrative and a -- and a story that
10 would, you know, encourage the -- the investment.

11 Q. Did you think it would be good for your company
12 that Alta was acquiring K. Heeps?

13 A. K. Heeps needed to expand physically, and I
14 thought if they were giving them the capital to do that,
15 I thought that was great.

16 Q. On April 28th did you hear some shocking news
17 about K. Heeps?

18 A. Our quality control manager went there for an
19 unannounced audit, which she's entitled to do under the
20 agreement, and she saw that they were making Eatsential,
21 a product line she had never heard of. We didn't know
22 what it was.

23 The gentleman that was with her from our
24 company took a picture of the QR code and sent that to
25 me, and I could see that this was Eatsential product

1 line. Heeps, Beau Heeps, Jim Heeps are all on it.
2 Products that look the same as ours.

3 And so, yeah, I was -- I -- I immediately
4 jumped in my car and drove to Allentown to meet with
5 Beau.

6 Q. When you mentioned a quality control manager
7 who did that unannounced audit, was that Stacy Hess who
8 we just asked to walk out of the courtroom?

9 A. Yes.

10 Q. Okay. And you drove to see Beau Heeps in
11 Allentown that day?

12 A. Immediately.

13 Q. He's the president of K. Heeps?

14 A. He's the president of K. Heeps.

15 Q. Tell us about that conversation.

16 A. I said, Beau, what's going on here? We're
17 partners.

18 He said, we're not partners. You haven't been
19 here in 10 years.

20 And I said, well, I don't know if it's been 10
21 years, but we have our own team of people that meet with
22 you regularly, weekly on zoom calls, in-person monthly,
23 our quality control manager, our production manager and
24 other people, so -- and I said, Beau, you don't load
25 trucks anymore, do you?

1 He said, no.

2 Well, I don't do all the things that I used to
3 do. I have other responsibilities. I said, how are you
4 planning to -- how are you planning to -- to reach this
5 market?

6 He goes, already taken care of.

7 I said, do you realize the supply chain issue
8 that's gonna happen if we get cut off without any
9 ability to build -- to find either another Co-Packer or
10 build inventory?

11 It's all taken care of.

12 He was dismissive. And basically, it was a
13 five-minute conversation. And I said, set up a meeting
14 with Alta as soon as we can, and we had that meeting at
15 9:00 the next day.

16 Q. Okay. So the next day you had a Zoom meeting
17 with Alta?

18 A. I did, yes.

19 Q. And who was it at Alta that you spoke with?

20 A. Chris, is it Dias?

21 Q. Dias, D-i-a-s.

22 And did you -- tell us about that conversation.

23 A. We jumped on the call. I said, help me
24 understand what's going on here, and, like, how do we
25 create a win/win out of this?

1 He goes, there's only one thing to talk about,
2 whether I give you 0 days' notice or 60 days' notice.
3 And he said that three times in the course of the
4 conversation. He said, I'm not gonna get involved in
5 he-said-she-said. He said, have you ever been up here
6 to see us?

7 And I said, no. I mean, why would I come up to
8 see you? But the president of our company had made --
9 reached out to him in November and wanted to have a
10 meeting with him and our vice president of operations,
11 and that meeting kept getting delayed and delayed.
12 Finally, it was set for May 14th, tomorrow. And that's
13 when Beau said they were going to tell us that they were
14 cutting us off.

15 Q. Okay. In that conversation with Mr. Dias, did
16 you say anything about, like, the number of patients
17 that could be at risk if they cut you off?

18 A. I said, first of all, this is gonna create an
19 enormous supply chain issue. There's, you know, I said
20 a half a million patients who are going to not have the
21 puree. That's gonna put people's lives at risk. Look
22 at it this way, we sell an average of 166,000 cases a
23 month, 24 trays per case. That's 4,000,000 trays a
24 month that go out. Where -- where do those trays go?
25 Do they go into warehouses? Do they go into kitchens

1 and get thrown away? No. They're used to feed
2 patients. There's no way you're going to be able to get
3 your product in distribution and approved by the GPOs
4 and the contract managers in 60 days. It won't be done.

5 Q. And how did he respond?

6 A. I'll take care of that. You don't worry about
7 it.

8 Q. All right. The next day -- if we turn to Tab 7
9 and we'll mark this Exhibit A7 -- did you send an e-mail
10 to Mr. Dias after that conversation?

11 A. I did, the very next day. The next morning, I
12 think I probably sent it probably early in the morning
13 as a matter of fact.

14 Q. And it's a --

15 A. Yes, and I said --

16 Q. Yeah. Go ahead.

17 A. -- maybe you'd consider selling the company to
18 us.

19 Q. Why did you ask if they would sell the company
20 to you?

21 A. I'm looking for an alternative to be able to
22 keep in business.

23 Q. And how did he respond?

24 A. Very curtly. He said, no.

25 Q. Did you want to own Heeps?

1 A. Not necessarily, but if it's an option I would
2 have looked at it.

3 Q. Did you -- let's go back to Tab 4. And we'll
4 mark this Exhibit A4.

5 Did you receive an e-mail later that day, April
6 30th, --

7 A. We did.

8 Q. -- from Eatsential Foods, someone named
9 Christal Adler?

10 Do you know who that is?

11 A. I did not know her, but I see that she is the
12 chief transformation officer.

13 Q. And the e-mail to you says, attached please
14 find a formal notice outlining our transition plan.

15 Did you receive this?

16 A. I did.

17 Q. And if we turn to Tab 5, and mark this Exhibit
18 A5, is this the attachment?

19 A. This is the attachment.

20 Q. Did you review this when you received it?

21 A. I did.

22 Q. And what was your reaction to it?

23 A. It's just absolutely sickening. I mean, they
24 really tried to handcuff us, not -- handcuff us, not
25 just on production but on receivables. It was

1 dismissive. It was just appalling.

2 Q. And either in this letter or in your
3 conversation with Chris Dias at Alta or in your
4 conversation with Beau Heeps, the president of K. Heeps,
5 did any of those people ever say to you that they were
6 terminating the agreement?

7 A. Never.

8 Q. Did any of them tell you that the agreement had
9 expired or didn't exist anymore?

10 A. No. No. When I talked to Beau, I said, we
11 have a Co-Packing agreement. And he goes, that's 2016
12 and completely dismissed me.

13 Q. Well, that's the day it was signed, right?

14 A. Right. That's all he said.

15 Q. Okay. But he didn't say that it had been
16 terminated or expired?

17 A. No one -- no one said it was terminated or
18 expired.

19 Q. Did you take a look at the Eatsential website
20 when you received this news that there was a --

21 A. Yes.

22 Q. -- new product line?

23 A. Yes.

24 Q. So we're gonna go to a website called
25 www.eatsentialfoods.com.

1 Do you recognize what's displayed on the screen
2 here, the home page of that website?

3 A. Yes.

4 Q. And did you look at this?

5 A. I did.

6 Q. Okay. And if we go to -- let's go to first the
7 our story at the top. And if we could scroll down a
8 little bit.

9 Do you see how it says Eatsential ships
10 1,898,000 cases annually?

11 A. Yes.

12 Q. Did that number look familiar to you?

13 A. That's the number of cases that we shipped
14 annually.

15 Q. Medtrition?

16 A. Medtrition shipped annually.

17 Q. That's the exact number?

18 A. And they're -- yes.

19 And they're implying that Eatsential shipped
20 that many cases.

21 Q. Let's go to the our products heading at the
22 top. And let's just start with breakfast.

23 Did you see these products?

24 A. On the website, yes.

25 Q. Did they look familiar to you?

1 A. Absolutely. They're our molds.

2 Q. Do they look --

3 A. The molds that we designed.

4 Q. Do they look -- do they look similar to your
5 products?

6 A. Identical.

7 Q. Do you believe a customer would be able to tell
8 the difference between these products?

9 A. I do not.

10 THE COURT: I can't.

11 Go ahead.

12 BY ATTORNEY RHYNHART:

13 Q. And were these the Products, capital P, that
14 were listed on Exhibit A?

15 A. Correct.

16 Q. That Medtrition had ownership rights in?

17 A. Correct.

18 Q. We can take this down.

19 Was there -- did you -- did -- were there any
20 customer communications that led you to believe
21 customers were somehow hearing about this?

22 A. We started getting calls from key customers
23 saying that, are you having a supply problem? And it's
24 like, no, why are you saying that? This started about
25 three weeks before the date in -- it was -- this was

1 discovered. No.

2 And we thought maybe it was a competitor just
3 talking trash about us. In fact, we had just gotten an
4 award from the largest national redistributor for a
5 second year in a row of being the top 20 suppliers out
6 of 1,500 because our service record is 98 percent.

7 So, no, we're not having any supply problems at
8 all.

9 Q. Okay. You were getting calls like that?

10 A. We were getting calls like that.

11 Q. Did --

12 A. And then we discovered this and realized, okay,
13 that's what's happening.

14 And then we find out from our customers that,
15 yes, they've had contact with Eatsential reps or
16 management in some fashion who have been telling them
17 that we're going out of business but they're there to
18 backstop us, they've got 90 days worth of inventory.

19 Q. So these -- the customers were saying that
20 Medtrition was going out of business or asking if that
21 was happening?

22 A. They were saying that Medtrition was going to
23 be out of supply.

24 Q. Who was?

25 A. Yes, Medtrition was going out of business.

1 (Matthew Miller entered the courtroom.)

2 ATTORNEY HENNESY: Could we just have a brief
3 pause, Your Honor?

4 THE COURT: No.

5 Go ahead.

6 BY ATTORNEY RHYNHART:

7 Q. Did any customers express confusion about what
8 Eatsential was?

9 A. They had never heard of it before.

10 Q. Yeah.

11 Okay. And if -- I want to -- I now want to
12 talk about what harm this could cause if it continues.

13 A. Okay.

14 Q. If -- if Medtrition only has 60 days of supply
15 from K. Heeps, which was two weeks ago, right, so if
16 they have 46 more days of supply, is that a problem for
17 Medtrition?

18 A. It's a problem for Medtrition. It's a problem
19 for the market.

20 And what they're saying, what they assumed,
21 that our customers were telling us, that they could
22 simply slip in their product for ours.

23 So, for example, on our item number, like 2002,
24 they simply changed the first digit to 3002. So if
25 you're ordering our product, just make a quick change in

1 the database and -- and they will be able to slip their
2 product -- the industry does not work that way at all.

3 Q. Why can't Medtrition just go find another
4 supplier to make your products?

5 A. We -- to find a manufacturer with the type of
6 equipment that we would need and to get the raw
7 materials, it's at least a yearlong process.

8 Q. Is there some lengthy process involved in
9 getting customers to approve your products?

10 A. It's an enormous process.

11 Q. Why is that?

12 A. So first off, it's a lengthy process to get
13 products registered with distributors. Okay? Just the
14 IT piece of it is a two-or-three-month process. We just
15 went through that with Sysco, for example.

16 So you're not just gonna slip your product into
17 a distributor as a replacement to ours without going
18 through all the regulatory, nutritional, insurance
19 indemnifications and -- and those things.

20 With the contract management companies, like
21 Aramark and Sodexo and Morrison, they're not going to
22 inspect your product unless you have distribution, and
23 distribution's not going to bring your product in if you
24 don't have orders for it, the contract management
25 companies.

1 And the contract management companies, it's --
2 we just finished a program with Aramark. It took us
3 nine months of analysis -- they took nine months
4 analyzing our products, our nutritionals, testing them,
5 using them out in the field before they would approve
6 it.

7 Q. And would they require you to go through all
8 that again if you had a new factory?

9 A. If we had the exact same product and the same
10 ingredients, no, --

11 Q. But --

12 A. -- I don't believe they would.

13 Q. But would the delay then be getting the
14 supplier and the new factory?

15 A. It's getting -- yeah, getting -- finding a
16 Co-Man who has the equipment to fill individual trays,
17 to have the capability to make purees and to get the --
18 the things like fruit and vegetable supplies contracted.

19 Q. To your knowledge, are factories like that out
20 there waiting for you to contract with them?

21 A. I don't know any.

22 Q. What about the people that eat the pureed
23 foods? Is there any risk if -- if -- if K. Heeps cuts
24 you off that -- the --

25 A. And their product's not --

1 Q. -- safety or anything like that?

2 A. And their product is not available.

3 It's a huge risk.

4 Q. Why?

5 A. It's a huge risk because we're actually two
6 generations away, food-service-wise, of people who know
7 how to puree and thicken and serve purees at the right
8 consistency.

9 And today you have the IDDSI standards that
10 they would have to adhere to. That's all the training
11 that we do in facilities that we call on. We're
12 constantly training that.

13 So the -- the facilities are gonna -- there's
14 gonna be a void of how to process purees if they have to
15 make it themselves. And Heeps is not gonna be in the
16 marketplace for months and months.

17 Q. You have competitors, right?

18 A. There's -- we have one competitor.

19 Q. What's the name of that one competitor?

20 A. It's called Lyons Magnus. It's out on the west
21 coast.

22 Q. Is Lyons Magnus actually the old Hormel?

23 A. It is the old Hormel.

24 Q. And is Lyons Magnus capable of just stepping in
25 and filling the void?

1 A. You know, let me put it this way, if we have 60
2 percent of the market and they have 40 percent of the
3 market, you know, could they fill an extra -- on
4 average, 166,000 cases, 2,000,000 trays, quickly? I
5 don't think they would be able to.

6 Q. So these patients would not get the pureed food
7 product from anyone?

8 A. And risk lives.

9 Q. And by the way, if Lyons Magnus was capable of
10 taking all that business, what happens to K. Heeps -- or
11 excuse me, what happens to Medtrition?

12 A. We'd be out of business on that product line.

13 Q. Would people lose jobs?

14 A. People would lose jobs.

15 Q. How much transition time does Medtrition really
16 need to get a new factory up and running so that it can
17 fill orders of its customers?

18 A. I mean, realistically I would a say a year and
19 a half. We would do everything we can to get it done in
20 a year. I don't see it happening in under a year.

21 ATTORNEY RHYNHART: One last exhibit, Your
22 Honor.

23 BY ATTORNEY RHYNHART:

24 Q. Could we turn to Tab 6 and call this Exhibit
25 A6?

1 Did you receive an e-mail from Jim Heeps?

2 A. I did.

3 Q. And who is Jim Heeps?

4 A. Jim Heeps was the owner of Heeps, the president
5 of Heeps. I know he sits on the Board now of Heeps with
6 Alta.

7 He and I worked very, very closely together for
8 10, 12 years. He's an outstanding man.

9 Q. The current president is Beau Heeps, his son?

10 A. His son, yeah.

11 And we had a phenomenal relationship. And we
12 had the same vision for the industry from the beginning,
13 which is why we were able to develop the product lines
14 that we did.

15 Q. If you look at the bottom of Page A6, you wrote
16 to Jim Heeps and asked him if he was available to talk.
17 And you said, are you fully aware of what is going on at
18 Heeps?

19 A. Correct.

20 Q. Why did you ask that?

21 A. Because I couldn't believe the betrayal, that
22 they would do what they're doing secretly, deceitfully,
23 behind our backs; getting ready to prepare a competing
24 product line while taking us out of business, that --

25 Q. And how did he respond?

1 A. He said he was on the Board of Directors, he
2 was aware of the decisions.

3 And incidentally, when I asked Beau about that,
4 is your dad aware of this, he said, yes, but not fully.

5 So he said he was on the Board of Directors,
6 and that the strategy of Alta was to finish construction
7 on their new plant; to build production, product
8 handling and computer systems; and then third was to
9 work on profitability. And I assume by profitability it
10 meant taking over the business themselves.

11 Q. At the bottom of the e-mail that he wrote to
12 you on May 5th he writes, bottom line, I was just a
13 production guy that could get things done. You taught
14 me a lot, but I am naive to the equity world. I
15 apologize for letting you down. Thank you for all
16 you've done for me.

17 What did you think of that?

18 A. The last time I saw him in person after they
19 sold to Alta he said to me -- and I remember it because
20 it was, you know, a badge of honor for me. He said,
21 David, you always delivered on what you said you would
22 do.

23 I mean, that company would have been out of
24 business without us.

25 ATTORNEY RHYNHART: Thank you, Your Honor.

**CONFORMED
COPY**

MEDTRITION, INC.,

Plaintiff,

v.

K. HEEPS, INC., and

ALTA EQUITY PARTNERS, LLC,

Defendants.

COURT OF COMMON PLEAS
LANCASTER COUNTY

Civil Action – Equity

No. **26-03265**

PROthonotary's OFFICE
LANCASTER, PA

2026 MAY -8 PM 3:20

ENTERED AND FILED

TEMPORARY RESTRAINING ORDER

AND NOW, this 8th day of May, 2026, upon consideration of the Verified Complaint, Petition for Temporary Restraining Order and Preliminary Injunction, Memorandum of Law in support thereof, and the supporting declaration of Stacy Hess and attached exhibits, filed by Plaintiff Medtrition, Inc. ("Medtrition"), and having determined that:

1. Medtrition will suffer irreparable harm if Defendants K. Heeps, Inc. ("Heeps") and Alta Equity Partners, LLC ("Alta") are permitted to:
 - A. Breach their contractual obligations to manufacture pureed food for the benefit of Medtrition; and/or
 - B. Misappropriate Medtrition's trade secret and confidential information; and/or
 - C. Tortiously interfere with Medtrition's contracts with its customers and distributors; and/or
 - D. Unfairly compete with Medtrition;
2. Medtrition does not have an adequate remedy at law; and

3. Greater injury will be inflicted upon Medtrition by the denial of temporary injunctive relief than would be inflicted upon Defendants by granting of such relief.

And for good cause shown, it is therefore ORDERED, ADJUDGED, and DECREED as follows:

1. Defendants are enjoined from manufacturing, producing, packaging, distributing, selling, marketing, advertising, or promoting any products under the Eatsential brand name or any other brand that compete with, imitate, or are substantially similar to Medtrition's Café Puree products;
2. Defendants are enjoined from using any of Medtrition's proprietary or confidential information in the development, manufacture, marketing, or sale of any products (other than for Medtrition);
3. Defendants are enjoined from contacting, soliciting, or communicating with any of Medtrition's current or prospective customers, distributors, or business partners for the purpose of marketing, selling, or promoting Eatsential products or any other competing products, or for the purpose of diverting business away from Medtrition, including by disseminating false information about Medtrition;
4. Heeps is enjoined from wrongfully terminating the Agreement and discontinuing manufacturing and packaging of Medtrition's Café Puree products until a reasonable transition can take place;
5. The *status quo* as set forth in the contracts between Medtrition and Heeps shall be maintained until the parties' rights are finally determined in the underlying lawsuit;
6. This Temporary Restraining Order shall continue in effect until further Order of this Court;

7. A Rule to Show Cause why a Preliminary Injunction should not be ordered will issue;

8. True but uncertified copies of this Order may be served by attorneys and/or representatives or employees of Medtrition upon Heeps and Alta and upon any persons acting for or in concert with Heeps and/or Alta, and any and all persons in

violation of the Order.

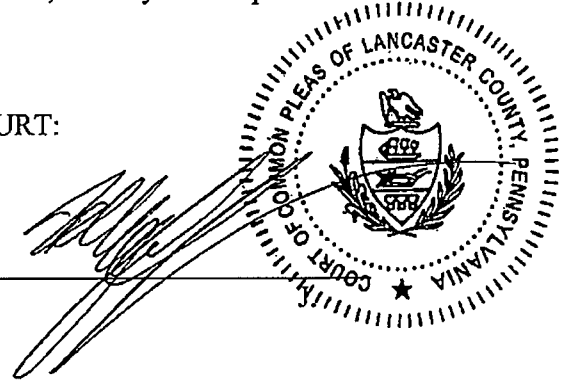
Attest C Leon BY THE COURT:

NOTICE OF ENTRY OF ORDER OR DECREE
PURSUANT TO PA. R.C.P. NO. 236
NOTIFICATION - THE ATTACHED DOCUMENT
HAS BEEN FILED IN THIS CASE
PROTHONOTARY OF LANCASTER CO., PA
DATE:

5/8/26

236 Notice 8/5/26

CC: Rory O. Connaughton ESQ handed over counter 8/5/26
K. Heeps, Inc. 8/5/26
ALTA EQUITY PARTNERS, LLC 8/5/25



CONFORMED
COPY

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

MEDTRITION, INC.,

Plaintiff

v.

K. HEEPS, INC. and ALTA EQUITY
PARTNERS, LLC

Defendants

No. CI-26-03265

ENTERED AND FILED
2026 MAY 14 PM 2:34
PROTHONOTARY'S OFFICE
LANCASTER, PA

ORDER

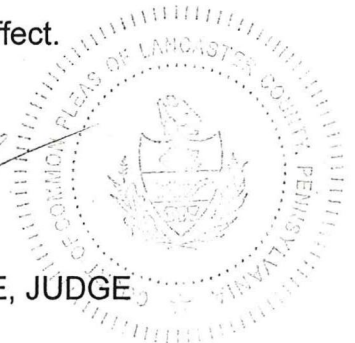
AND NOW, this 14th day of May, 2026, upon a preliminary injunction hearing being held yesterday, the court finds the following:

- 1) Plaintiff is likely to succeed in the underlying case.
- 2) The harm to Plaintiff in not granting the injunction is irreparable and imminent, no adequate remedy.
- 3) The harm if the injunction is denied outweighs the harm if it is granted.
- 4) The injunction will prevent harm to the public, specifically those served by the Plaintiff's products.
- 5) The relief requested will restore the parties to the position they were in before Defendant's wrongful conduct.
- 6) Plaintiff has complied with it's procedural requirements and shall post a bond in the amount of \$1,000,000.00 to cover potential damages if the injunction is improperly granted.

Accordingly, the May 8, 2026 temporary restraining order remains in effect.

BY THE COURT:

THOMAS B. SPONAUGLE, JUDGE



NOTICE OF ENTRY OF ORDER OR DECREE
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NOTIFICATION - THE ATTACHED DOCUMENT
HAS BEEN FILED IN THIS CASE
PROTHONOTARY OF LANCASTER CO., PA
DATE: 5/15/2026

Attest:

Copies to:

Lawrence F. Stengel, Esquire

Daniel E. Rhynhart, Esquire

Matthew Hennessy, Esquire

Mailed - 5/15/2026