

**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: Docket Nos. 61 & 83

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

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), by and through their undersigned counsel, file this reply (the “Reply”) (i) in support of 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* [Docket No. 61] (the “Motion”) and (ii) in opposition to the *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* [Docket No. 83] (the “Objection”). In support of the Reply, the Debtors respectfully state as follows:

PRELIMINARY STATEMENT

1. Medtrition, Inc. (“Medtrition”) attempts to muddy the waters, painting the Debtors as a bad-faith actor² (they are not) and manufacturing factual disputes. At its core, however, this

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 unequivocally deny any allegations stating or insinuating that the Debtors have acted in bad faith and deny any bad faith claims against the Debtors and the Debtors’ estates.

is a straightforward matter: the parties entered into the 2016 Co-Packer Agreement³ which has a defined term renewable only by written notice from Medtrition; Medtrition failed to provide written notice of renewal after July 2021 (no party disputes this point); the 2016 Co-Packer Agreement expired; and the parties' business relationship continued on a purchase order-by-purchase order basis. No contract existed between the parties as of the Petition Date, and the Debtors' Eatsential product line is not constrained by a non-compete.

2. In fact, prepetition, Medtrition agreed. On April 29, 2026, representatives from Medtrition and the Debtors held a meeting to discuss a potential transition period, whereby the Debtors would continue packing for Medtrition while Medtrition looked for a replacement co-packer. Medtrition cites to this meeting throughout their Objection, but did not disclose the most relevant part: David Marks, Medtrition's Chief Executive Officer, conceded that the Debtors may sell their own product line, stating "go sell your product in the meantime, you'll get your feet wet." The Debtors planned to do just that, yet a mere nine days later, Medtrition sued in state court using the long expired and never discussed 2016 Co-Packer Agreement as its basis.

3. Not once during the April 29th meeting did Medtrition mention the 2016 Co-Packer Agreement, its non-compete provision or otherwise inform the Debtors that they allegedly believed the Debtors had a contractual obligation that would prevent them from manufacturing their own product line. Instead, Medtrition ran to court without warning, seeking an *ex parte* TRO based on a ten-year-old expired contract (never informing the state court that the contract had, in fact, expired years earlier).

³ All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion. The Motion requests that all Co-Packer Agreements be found to have expired, or in the alternative, rejected. The Debtors reserve all rights with respect to the relief requested in the Motion. However, for purposes of the Reply, the Debtors only refer to the 2016 Co-Packer Agreement as it is the only agreement addressed in the Objection.

4. Not content with the objective facts, Medtrition now attempts to manufacture an alternative narrative. Medtrition alleges that once Alta Equity Partners, LLC (“Alta”) acquired the OpCo Debtor, they began “secretly developing a competing line of puréed foods under the brand name ‘Eatsential’ . . . a sku-by-sku replica of Café Puree.” Objection ¶ 11. Medtrition further alleges that (i) “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,” and (ii) the Debtors contacted Medtrition’s customers prior the Petition Date to undermine Medtrition’s business.⁴ *Id.* ¶¶ 11–12.

5. The allegations are irrelevant and demonstrably false. The Debtors developed their manufacturing process years before their relationship with Medtrition began, and do not use any Medtrition “trade secrets” to make Eatsential products. To the extent the same film and laser printer are used, this is a moot point. The plastic film that covers pre-packaged food and the laser printer used to create labels are not proprietary technology, but standard equipment used in large-scale food manufacturing plants. The molds, on the other hand, are owned by the OpCo Debtor. Indeed, Medtrition has admitted this point. In a letter dated June 17, 2026, counsel for Medtrition stated:

At the same time, the Agreement [the 2016 Co-Packer Agreement] recognizes that K. Heeps “shall be the owner of the specific manufacturing processing techniques and individual mold designs which it develops in the production of the Products.” **And to that extent, your letter does also mention “technical manufacturing procedures” and “molds,” which to the extent you are referencing “specific manufacturing processing techniques and individual mold designs,” as defined in Section 7, we agree would be owned by K. Heeps.** However, we do not know how the

⁴ The Debtors reserve their rights to commence an adversary proceeding, including a declaratory judgment action against Medtrition to resolve the intellectual property related issues.

mold designs would be confidential or a trade secret when they are widely disseminated and advertised.

A true and correct copy of the June 17, 2026 letter is attached hereto as **Exhibit A**.

6. Moreover, the allegation that the Debtors met with Medtrition's customers behind its back is disingenuous. The Debtors did reach out to several national food distributors (e.g., Dot Foods, Sysco, Gordon Food Services, etc.) when developing the Eatsential product line. However, the Debtors did not reach out to any end users of Medtrition's products, such as hospitals. To suggest any of these national food distributors is an exclusive client of Medtrition ignores economic reality. Medtrition is hardly the victim here.

7. To put things into perspective, Medtrition is a massive company whose products are distributed across the entire United States and in over fifty countries around the world. The Debtors, on the other hand, are a third-generation family-operated business with close to eighty employees, many of whom are refugees hired through work placement programs. Put simply, these chapter 11 cases are not a ploy by a private equity backed⁵ bad actor—they reflect a final effort to resolve dispositive business issues and preserve the livelihoods of the employees who allow the Debtors to operate each and every day.

8. Medtrition fares no better with respect to its legal arguments.⁶ First, neither the *Rooper-Feldman* doctrine nor principles of comity deprive this Court of authority to decide the

⁵ AEP K. Heeps Investors, LLC invested in the Debtors in 2021. Any suggestion that the relationship between the parties changed or deteriorated after the "Alta" investment ignores the fact that the parties worked together for five years after the investment. Moreover, Christopher Dias is the President of K. Heeps HoldCo, LLC, not just a representative of Alta as Medtrition insinuates.

⁶ Throughout the Objection, Medtrition suggests that these chapter 11 cases are a bad faith filing and that the Debtors impermissibly "manipulated" their debt to qualify for a Subchapter V filing. The Debtors unequivocally deny these allegations. Regardless, this is not the appropriate forum to address these allegations. If Medtrition believes this is a bad faith filing, Medtrition can timely file the appropriate pleadings, but until then, its comments regarding the propriety of these chapter 11 cases and allegations of forum shopping are irrelevant.

Motion. The State Court Action was properly removed in its entirety to federal court and, with Medtrition's consent, was transferred to this Court. Under these circumstances, neither the *Rooker-Feldman* doctrine nor comity are applicable. This Court is not being asked to sit in appellate review of a state court decision. Rather, it is being asked to adjudicate issues properly before it.

9. Second, Pennsylvania law requires the Court to enforce the 2016 Co-Packer Agreement's unambiguous renewal provision as written. Medtrition does not dispute that it has not provided written notice of renewal after July 1, 2021—the latest date the 2016 Co-Packer Agreement could have expired—and the parties' course of conduct cannot revive an expired contract that has a specific procedure for renewal.

10. Third, if the Court determines that the 2016 Co-Packer Agreement was in effect as the Petition Date, the TRO and Preliminary Injunction do not prevent the Debtors from exercising its business judgment and rejecting the 2016 Co-Packer Agreement *nunc pro tunc* to the Petition Date. As detailed in the Motion, in the Debtors' business judgment, the long-term success of the Debtors is dependent upon shifting resources away from manufacturing for Medtrition and towards developing alternative revenue streams. This is the Debtors' decision to make and cannot be second guessed by a self-interested third-party.

ARGUMENT

I. The Rooker-Feldman Doctrine and Principles of Comity Are Not Applicable.

11. Medtrition's argument that *Rooker-Feldman* applies and prevents the Bankruptcy Court from adjudicating the Motion takes the doctrine a step too far. "The *Rooker-Feldman* doctrine is narrow, and it applies only when a federal plaintiff improperly invokes the jurisdiction of a district court to appeal—in fact or in effect—a state-court judgment." *In re Adams*, 151 F.4th 144, 156 (3d Cir. 2025). The doctrine is intended to prevent state court losers from having federal

courts sit in appellate review of a state court judgment. *See Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). That is not what is happening here.

12. On September 23, 2026, the OpCo Debtor properly removed the State Court Action to the United States District Court for the Eastern District of Pennsylvania, Civil Action No. 5:26-cv 07361 (the “Federal Action”), by filing a Notice of Removal pursuant to 28 U.S.C. § 1452(a) and Bankruptcy Rule 9027. On September 24, 2026, the OpCo Debtor filed a Motion to Transfer Venue [Federal Action, Docket No. 6] seeking to transfer the Federal Action to the United States District Court for the District of Delaware pursuant to 28 U.S.C. § 1412 and Bankruptcy Rule 9027. On October 13, 2026, the United States District Court for the Eastern District of Pennsylvania entered a *Stipulated Order Transferring Venue to the United States Bankruptcy Court for the District of Delaware* [Federal Action, Docket No. 9], whereby Medtrition, the OpCo Debtor, and Alta Equity Partners, LLC consented to transferring venue of the Federal Action to this Court.

13. There is no longer any pending State Court Action. The dispute between the parties has been removed, in its entirety, to federal court and a valid removal action has the effect of staying all further state court proceedings, including pending appeals. *See Wenrick v. Schloemann-Siemag Aktiengesellschaft*, 361 Pa. Super. 137, 142, 522 A.2d 52, 54 (Pa. Super. Ct. 1987), *aff’d*, 523 Pa. 1, 564 A.2d 1244 (Pa. 1989); *see also Crown Const. Co. v. Newfoundland Am. Ins. Co.*, 429 Pa. 119, 124–25, 239 A.2d 452, 455 (Pa. 1968) (“When a removal has been effected in strict compliance with the statutory requirements, then the state court’s jurisdiction ceases and any further proceeding in the state court is a nullity so long as the action is pending in the federal court.”).

14. The Debtors are not requesting that this Court impermissibly exercise appellate jurisdiction and opine on the validity of the State Court’s decision. Rather, they are requesting the Court exercise its original jurisdiction and continue adjudicating the underlying lawsuit in the federal forum.

15. When a case is removed to federal court, the federal court takes it as though everything done in the state court had in fact been done in the federal court. *Leavitt v. Sky Warrior Bahamas Ltd.*, No. CV 24-886 (RMB) (SAK), 2024 WL 4275052, at *3 (D.N.J. Sept. 24, 2024). This includes revisiting judgment entered by the state court, and if appropriate, setting them aside. *Id.* As courts in this district have held, *Rooker-Feldman* does not apply when the underlying state court action is properly removed to federal court. *Id.* (“[W]hen an action is properly removed from state court, the *Rooker-Feldman* doctrine doesn’t apply. . . This is so because when a party removes an action to federal court based on the court’s original jurisdiction, the removing party is merely continuing that lawsuit in the federal forum—not starting a new one.”); *Danziger & De Llano, LLP v. Morgan Verkamp LLC*, 948 F.3d 124, 132 (3d Cir. 2020) (“The [federal court’s] jurisdiction exercised on removal is original not appellate”) (internal citations removed). “Said differently, removal is not an appeal of state court proceedings” but a continuation of the state court lawsuit in the federal forum. *Leavitt*, 2024 WL 4275052, at *4; *see also Jenkins v. MTGLQ Investors*, 218 Fed. Appx. 719, 723 (10th Cir. 2007) (“Proper removal does not constitute an appeal, de facto or otherwise, of the state court proceedings but a continuation of them.”).

16. If Medtrition’s argument that *Rooker-Feldman* applies were taken at face value, it would mean that actions properly removed to federal court could not be adjudicated if an interlocutory order was entered. But that would add limitations to a federal court’s jurisdiction which do not exist. The TRO and Preliminary Injunction are interlocutory orders which this Court

has the power to dissolve without overstepping its jurisdictional authority. *See Leavitt*, 2024 WL 4275052, at *3. Accordingly, *Rooker-Feldman* is inapplicable here.

17. Moreover, Medtrition’s position that “[t]his 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” is just wrong. Objection ¶ 35.

18. Medtrition’s comity argument relies on the mistaken assumption that the interlocutory orders are being actively adjudicated by the Pennsylvania courts. As discussed above, this is untrue. The State Court Action has been removed, no issues are currently pending in state court, and the state court has rendered no final adjudication on any issue. Thus, there is no risk of a competing ruling. This Court has authority to adjudicate this matter going forward and “will take it as though everything done in the state court had in fact been done in the federal court.” *Leavitt*, 2024 WL 4275052, at *3 (quoting *Munsey v. Testworth Labs*, 227 F. 2d 902, 903 (6th Cir. 1955)). Accordingly, Medtrition’s comity argument falls flat.

II. The Incontrovertible Facts and Pennsylvania Law Indicate that the Co-Packer Agreement Expired Prepetition.

A. Medtrition Conceded the Debtors Can Sell Their Own Product Line.

19. Medtrition attempts to create an alternative narrative, alleging “if the Court were to reach the expiration question, the answer is not a close one.” Objection ¶ 36. The facts, however, tell a much different story.

20. In support of the Objection, Medtrition includes quotes from a meeting that took place on April 29, 2026 (the “April 29th Meeting”), between representatives from the Debtors and Medtrition. *Id.* ¶ 14. Despite including quotes from this meeting, which Medtrition themselves

recorded,⁷ Medtrition neither includes citations to the transcript (the “April Transcript”) of the April 29th Meeting nor do they include the April Transcript as an exhibit.⁸ Medtrition’s reluctance to introduce the April Transcript is not without reason—it undermines Medtrition’s position that the 2016 Co-Packer Agreement was in effect prior to the Petition Date. A true and correct copy of the April Transcript is attached hereto as **Exhibit B**.

21. When discussing a potential transition period between the parties, David Marks (Chief Executive Officer of Medtrition) stated:

[G]o sell your product in the 180 day term. That’s fine.

And go sell your product in the meantime, you'll get your feet wet, and you'll get to see, because it's not just manufacturing, Chris. I'll give you time to go out and get the approvals and get a product into distribution. That's a fair and reasonable solution to this. That's a win-win for both of us.

April Transcript, Ex. B, 14:6-7; 15:14-20.

22. Not only does Medtrition concede the Debtors can indeed sell their own product line, but the April Transcript also indicates that Medtrition did not believe the 2016 Co-Packer Agreement was in effect as of April 29, 2026. No contract between the parties is mentioned during the April 29th Meeting. The April 29th Meeting took place on the eve of litigation and focused on the parties’ ongoing business relationship, the Debtors’ ability to manufacture their own product line, and a transition period during which Medtrition would find a replacement co-packer. If a

⁷ Medtrition recorded the virtual meeting using software that then sent a video recording and an automated transcript of the meeting via email to representatives of the Debtors. The Debtors subsequently had Magna Legal Services, a court reporter, transcribe the meeting. The Debtors did not record the meeting themselves.

⁸ This is no surprise as Medtrition fought introducing this transcript as evidence at the hearing on the Preliminary Injunction. Because of Medtrition’s opposition, the full transcript was not considered by the State Court when determining whether to issue the Preliminary Injunction.

viable contract governing these very issues existed on April 29, 2026, why did Medtrition not say so?

23. The April Transcript also paints a much different narrative than the one Medtrition attempts to convey. Medtrition sees themselves as the victim here, a company that was allegedly blindsided by the Debtors' self-dealing. However, it is Medtrition that has engaged in gamesmanship and taken contrary positions throughout this litigation. David Marks told the Debtors they could sell their own product, yet Medtrition ran to court without notice to the OpCo Debtor a mere nine days later, suing the OpCo Debtor and seeking *ex parte* injunctive relief.

B. The Parties' Course of Conduct Indicates the 2016 Co-Packer Agreement Expired Prepetition.

24. Ignoring the fact that Medtrition expressly agreed that the Debtors could sell their own product line, Medtrition argues that the parties' course of conduct establishes that the 2016 Co-Packer Agreement was in place prepetition. It was not, and Medtrition's strained reasoning does not alter this conclusion.

25. First, the parties' course of dealing does not, and cannot, revive an expired contract. Unambiguous contract terms require strict compliance. If a contract's renewal provision expressly dictates the method or timing of renewal, any renewal must fully comply with those terms. *Clairton Slag, Inc. v. Department of General Services*, 2 A.3d 765, 770–71, 785 (Pa. Commw. Ct. 2010); *TMT Sales Co. v. Canadian Shield Spring Water Co.*, 1990 WL 107945, *4–5 (E.D. Pa. July 26, 1990) (holding that an unambiguous term and renewal provision must be construed to give effect to all of its terms, including the specified initial term and subsequent renewal terms). Unambiguous renewal clauses must be given full effect. *Byrne v. Bushkoff*, 177 Pa. Super. 101, 104 (Pa. Super. Ct. 1955). While Medtrition points to *Brozzetti* to refute this point, *Brozzetti* stands for the proposition that if a contract's renewal provision is *silent* as to the means or method

of renewal, continued performance by either party may be adequate to effect renewal. *Commonwealth v. Brozzetti*, 684 A.2d 658, 664 (Pa. Commw. Ct. 1996). The 2016 Co-Packer Agreement is not silent with respect to its renewal requirements.

26. Here, Section 2 of the 2016 Co-Packer Agreement expressly required that all renewal notices be in writing and provided ninety (90) days prior to the expiration of the term. The last written notice requesting renewal of the 2016 Co-Packer Agreement was sent on October 26, 2020, when Medtrition's Chief Financial Officer, Trey Little, sent James Heeps an email (the "2020 Renewal Email") stating "[a]ccording to our agreement, we need to renew every year by giving written notice" and acknowledging the renewal would only take the parties through "July 2021."

27. By Medtrition's own admission, the term was to end on July 2021. James Heeps, who was *not* the president of the OpCo Debtor in 2020 as erroneously alleged by Medtrition, responded "Yes, I am in agreement with this." James Heeps was not agreeing to waive the signed writing requirement of the 2016 Co-Packer Agreement nor was he green lighting an indefinite extension. As the 2016 Co-Packer Agreement unambiguously, provides a one-time waiver of a breach, default or violation of any term does not constitute a waiver of any subsequent breach, default or violation. 2016 Co-Packer Agreement, Motion, Ex. C § 31. Rather, James Heeps was agreeing to a one-year extension of the 2016 Co-Packer Agreement, expiring July 2021.

28. Medtrition's attempt to reframe objective facts is just as revealing as what Medtrition chooses not to dispute. Nowhere in the Objection does Medtrition assert written renewal was provided after the 2020 Renewal Email. Nor does Medtrition allege that the parties discussed the existence of the 2016 Co-Packer Agreement after 2021.

29. Both before and after July 1, 2021, Medtrition and the Debtors met on multiple occasions to discuss their ongoing business relationship, including on February 3, 2021, when Medtrition's management team met with the Debtors' management team and representatives of potential investors in the Debtors, including Christopher Dias. At no time during that meeting, or otherwise, did anyone mention the 2016 Co-Packer Agreement or any other Co-Packer Agreement.

30. The fact that the OpCo Debtor allegedly sent a letter to Medtrition on April 30, 2026, which fails to mention that the 2016 Co-Packer Agreement expired, only bolsters the Debtors' position. Objection ¶ 40. The parties did not discuss the 2016 Co-Packer Agreement, and the OpCo Debtor did not reference it in the April 30th letter, because it expired approximately five years earlier.

31. Additionally, the structure of the 2016 Co-Packer Agreement undermines Medtrition's claim that "the parties never intended it to lapse automatically." *Id.* ¶ 37. The 2016 Co-Packer Agreement provides that "[t]he term of this Agreement shall commence as of the date of this Agreement and shall continue in full force and effect until July 1, 2017," unless extended at Medtrition's option by written notice delivered at least ninety days before expiration of the term. 2016 Co-Packer Agreement, Motion, Ex. C § 2. The 2016 Co-Packer Agreement had a clearly defined term, required yearly written renewals, and would expire absent such renewals, showing that the parties intended the 2016 Co-Packer Agreement to lapse automatically.

32. Moreover, Medtrition's strained interpretation is at odds with the express terms of the contract. Medtrition argues the "Agreement contains no termination-upon-expiration clauses" and does not state that it "automatically terminates at the end of the initial term or any renewal term." Objection ¶ 37. But a fixed-term contract need not separately provide for "termination" upon expiration. Where the contract establishes a definite term and a specific mechanism for

renewal, the contract expires if that mechanism is not properly exercised, and the parties are no longer contractually bound. *See Brozzetti*, 684 A.2d at 664 (holding that, upon expiration of each one-year fixed term, the parties were no longer contractually bound *unless* the option to renew included in the contract for another one-year term was exercised). In either scenario the contract is no longer in effect—not continued indefinitely. Medtrition’s position would effectively convert the 2016 Co-Packer Agreement’s fixed term and express renewal requirements into an indefinite contract, contrary to the 2016 Co-Packer Agreement’s plain language.

33. Further, the fact that the Debtors did not immediately account for and return all packaging materials and ingredients at the end of the 2016 Co-Packer Agreement’s term is a moot point. There was nothing to return. Medtrition did not supply any packing materials or ingredients in 2021. Even today, the materials provided by Medtrition are *de minimis* and are limited to boxes and labels. Accordingly, the parties’ course of conduct shows the 2016 Co-Packer Agreement was not in effect prepetition, and therefore, it expired prior to the Petition Date.

III. If the 2016 Co-Packer Agreement Is Found Not to Have Expired, the Court Should Authorize the Debtors to Reject the 2016 Co-Packer Agreement *Nunc Pro Tunc* to the Petition Date.

A. A Preliminary Injunction Does Not Render an Executory Contract Non-Executory

34. Medtrition alleges that section 365 of the Bankruptcy Code is inapplicable because there is no executory contract to reject, reasoning that the TRO and Preliminary Injunction rendered the 2016 Co-Packer Agreement non-executory. Objection ¶ 42. Medtrition is mistaken.

35. As Medtrition recognizes in the Objection, the TRO and Preliminary Injunction 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.” *Id.* ¶ 44. If the Court determines that any of the Co-Packer Agreements did not expire before the Petition Date,

such agreements would be executory as the “status quo” means the Debtors would remain obligated to manufacture and package products for Medtrition, and Medtrition would, in turn, remain obligated to place orders with the Debtors.

36. Neither a TRO nor a preliminary injunction can transform a contract with material, unperformed obligations on each side into a non-executory contract. *See In re Times Square JV LLC*, 648 B.R. 277, 285–87 (Bankr. S.D.N.Y. 2023) (finding a preliminary injunction preventing a debtor from terminating a contract did not render the contract non-executory). Unlike with a final order, a preliminary injunction does not alter the parties’ contractual rights, nor does it render section 365 inapplicable. *See In re Wills Motors*, 133 B.R. 297, 301–03 (Bankr. S.D.N.Y. 1991) (where a state court preliminary injunction prohibited franchisor from terminating franchise agreement, the debtor had “existing contractual rights under the [franchise agreement] . . . when it filed its Chapter 11 petition . . . with the result that the debtor could employ 11 U.S.C. § 365 to assume . . . such contractual interest . . .”).

37. Medtrition relies on *In re Bennett Enters., Inc.* (“*Bennett*”) to support the argument that the 2016 Co-Packer Agreement cannot be rejected, however, *Bennett* is readily distinguishable from this case. *Bennett* involved a sale contract where no substantial obligations remained and a court entered an order for specific performance, akin to a final order altering the parties’ rights, prepetition. *See Bennett*, 628 B.R. 481, 485–90 (Bankr. D.N.J. 2021). Here, no final order has been entered and unlike a sale contract, if it is determined the 2016 Co-Packer Agreement did not expire, there are material, ongoing obligations on both sides and would, therefore, be executory.

B. Rejection of the 2016 Co-Packer Agreement Is an Appropriate Exercise of the Debtors’ Business Judgment.

38. Section 365(a) of the Bankruptcy Code expressly provides that a debtor may, with court approval, assume or reject an executory contract or unexpired lease. 11 U.S.C. § 365(a).

“The purpose behind allowing the . . . rejection of executory contracts is to permit the trustee or debtor-in-possession to use valuable property of the estate and to renounce title to and abandon burdensome property.” *In re Orion Pictures Corp.*, 4 F.3d 1095, 1098 (2d Cir. 1993) (internal quotation marks and citation omitted). Medtrition, however, ignores the proper standard as it attempts to substitute its own judgment for that of the Debtors.

39. In order for the Debtors to reject an executory contract, they need only allege facts demonstrating that rejection will provide an economic benefit to the estate and will be “summarily affirmed unless it is the product of ‘bad faith, or whim or caprice.’” *See In re Trans World Airlines*, 261 B.R. 103, 121 (Bankr. D. Del. 2001) (quoting *Wheeling-Pittsburgh Steel Corp. v. W. Penn Power Co. (In re Wheeling-Pittsburgh Steel Corp.)*, 72 B.R. 845, 849–50 (Bankr. W.D. Pa. 1987)). Courts generally will not second-guess a debtor’s business judgment concerning the rejection of an executory contract. *See id.*

40. Medtrition argues that the contract at issue is anything but economically burdensome and that rejection is a mere attempt to make more money. Objection ¶¶ 51–52. These allegations are patently false. The Debtors determined in their reasonable business judgment that rejection is in the best interests of the Debtors and their estates because the 2016 Co-Packer Agreement no longer aligns with the Debtors’ business objectives and leaves the Debtors overly dependent on a single customer. Medtrition is actively searching for a replacement co-packer, leaving the Debtors completely exposed to the risk they will be replaced at a moment’s notice with no backup plan. While Medtrition describes the 2016 Co-Packer Agreement as “anything but economically burdensome,” in reality, it restrains the Debtors from exploring other ventures that will yield long-term growth and stability for the benefit of the Debtors’ estates. The very long-term growth and stability that the Medtrition relationship can no longer provide.

41. To protect their viability as a going concern, the Debtors must direct their resources toward developing alternative revenue streams, including the Eatsential product line central to their go-forward business plan.⁹ The 2016 Co-Packer Agreement, if in effect, would directly impede that goal by requiring the Debtors to devote almost all of their resources to producing products for Medtrition, to the detriment of every other business venture. Rejection of the 2016 Co-Packer Agreement would allow the Debtors to redirect their resources to business initiatives critical to their survival. This is far from the “manifestly unreasonable” behavior evidencing bad faith Medtrition cites to in the Objection.

42. Medtrition’s bad faith argument alleging that the Debtors are attempting to free themselves from a contract so they can engage in conduct enjoined by a state court similarly falls short. As an initial matter, the State Court Action has been properly removed and this Court has the power to lift the Preliminary Injunction, if it so determines (Medtrition has posted a bond in connection with the Preliminary Injunction).¹⁰

43. The Debtors recognize lifting the Preliminary Injunction and rejection are two separate and distinct requests for relief. Through the Motion, the Debtors are merely seeking to reject the 2016 Co-Packer Agreement as a form of alternative relief. Such rejection is permissible notwithstanding the continued effectiveness of the Preliminary Injunction. *See In re Times Square JV LLC*, 648 B.R. at 285–87.

44. Moreover, to be clear, the non-compete does not simply ride through rejection as suggested by Medtrition. Objection ¶ 47. Executory contracts are assumed or rejected as a whole,

⁹ The Eatsential product line was only developed after Medtrition threatened to find another co-packer, presenting an existential threat to the Debtors.

¹⁰ Medtrition has only posted a \$1,00,000 bond despite the gravity of this dispute. The Debtors reserve all rights to seek an increase of the bond.

and a noncompetition clause is unenforceable against the debtor after the contract is rejected. *See e.g., In re Register*, 95 B.R. 73 (Bankr. M.D. Tenn. 1989), *aff'd by, In re Silk Plants, Etc. Franchise Systems, Inc.*, 100 B.R. 360 (M.D. Tenn. 1989) (“The court holds that the covenant-not-to-compete terminated when the contract was rejected”); *In re Rovine Corp.*, 6 B.R. 661, 666 (Bankr. W.D. Tenn. 1980) (“May a party to an executory contract, rejected by a debtor-in-possession pursuant to § 365 of the Bankruptcy Code, compel enforcement of a provision of that contract which restrains said debtor from competing with that party? The Court must answer this question in the negative.”); *In re Norquist*, 43 B.R. 224 (Bankr. E.D. Wash. 1984) (debtor-in-possession was allowed to reject partnership agreement and covenant not to compete).

45. Medtrition cannot defeat the Debtors’ business judgment by second-guessing the Debtors’ decision simply because Medtrition, as a self-interested party, disagrees. *See In re Patterson*, 119 B.R. 59, 61 (E.D. Pa.1990) (finding fairness to the nondebtor party is irrelevant in determining whether debtor may reject contract); *see also In re Sabine Oil & Gas Corp.*, 547 B.R. 66, 71 (Bankr. S.D.N.Y. 2016) (“the interests of the debtor and its estate are paramount; adverse effects on the non-debtor contract party arising from the decision to assume or reject are irrelevant”). Accordingly, in the event it is found the 2016 Co-Packer Agreement did not expire prepetition, it should be rejected.

C. Rejection *Nunc Pro Tunc* to the Petition Date is Appropriate

46. “[C]ourts have held that bankruptcy courts may exercise their equitable powers in granting such a retroactive order when doing so promotes the purposes of Section 365(a). Courts have further held that the retroactive *rejection* of executory contracts and unexpired leases may be approved ‘after balancing the equities’ of a case and concluding that such equities weigh in favor of the debtor.” *In re Extraction Oil & Gas*, 622 B.R. 608, 630 (Bankr. D. Del. 2020). Rejection *nunc pro tunc* is ordinary course relief and is regularly granted in this district. *See, e.g., In re*

Searles Valley Minerals Inc., Case No. 26-10966 (BLS) (Bankr. D. Del. July 7, 2026) [Docket No. 145]; *In re Avenger Flight Group, LLC*, Case No. 26-10183 (MFW) (Bankr. D. Del. Mar. 6, 2026) [Docket No. 125]; *In re Flexshopper, Inc.*, Case No. 25-12254 (LSS) (Bankr. D. Del. Apr. 1, 2026) [Docket Nos. 330, 331]; *In re US Magnesium LLC*, Case No. 25-11696 (BLS) (Bankr. D. Del. Mar. 23, 2026) [Docket No. 738].

47. Medtrition argues that the Court should not grant relief *nunc pro tunc* to the Petition Date because the equities would disfavor such a ruling because (1) the Debtors have continued to manufacture and ship product on Medtrition’s behalf and (2) there is a risk of an abrupt cutoff in the marketplace. Objection ¶¶ 58–60.

48. First, Medtrition has not been prejudiced by the Debtors continuing to manufacture and ship their products. To the contrary, Medtrition has benefited from Debtors’ performance while the Debtors are stuck in the same untenable position that caused their financial distress: they are restrained from producing their own products yet must fulfill Medtrition’s purchase orders while Medtrition actively seeks a replacement co-packer. Accordingly, this fact does not weigh in favor of Medtrition, but weighs in favor of the Debtors who need to shift their focus away from manufacturing for Medtrition as soon as possible.

49. Second, Medtrition’s concern for the patients who rely on Medtrition products is not only irrelevant, but also disingenuous. Medtrition is not the only company in this space and any disruption would be self-imposed as Medtrition has fought the Debtors’ ability to enter the market with its own product line at every turn. Further, Medtrition’s allegation that “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” only exemplifies the ever-shifting

position of Medtrition. Objection ¶ 61. Medtrition claims the Eatsential line is a counterfeit product line exploiting protected trade secrets, yet by its own admission, it has a unique recipe.¹¹

50. The Debtors have reviewed and analyzed the 2016 Co-Packer Agreement and determined that it is not necessary, does not provide a meaningful benefit to the Debtors' estates, and is antithetical to the Debtors' go-forward business plan. Without a retroactive rejection date, the Debtors would be forced to incur unnecessary administrative expenses and contractual obligations that do not provide an equivalent benefit to the detriment of their estates and creditors. Accordingly, for all the reasons cited above, the balance of the equities favors the requested relief and rejection *nunc pro tunc* to the Petition Date is appropriate.

CONCLUSION

WHEREFORE, the Debtors respectfully request that this Court grant (i) the relief requested in this Motion, and (ii) such other and further relief as this Court deems just and proper.

[Signature Page Follows]

¹¹ As stated above, the Debtors reserve their rights to commence an adversary proceeding, including a declaratory judgment action against Medtrition to resolve the intellectual property related issues.

Dated: October 22, 2026
Wilmington, Delaware

Respectfully submitted,

/s/ R. Stephen McNeill

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EXHIBIT A

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June 17, 2026

Via Email

Joseph W. Catuzzi, Esquire
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RE: Respond to K. Heeps, LLC's June 11, 2026 Letter

Dear Mr. Catuzzi:

I write on behalf of my client, Medtrition, Inc. ("Medtrition"), in response to your letter dated June 11, 2026, addressed to counsel for Medtrition on behalf of K. Heeps, LLC ("K. Heeps"). We have reviewed the letter and its demands carefully.

Frankly, we are confused by the letter. Your letter states that K. Heeps "disclosed and developed highly sensitive trade secret information," and then goes on to list "detailed ingredient formulations" and "batch compositions" among other things. However, those sound like the categories of information that *Medtrition*, not K. Heeps, owns.

The parties' Co-Packer Agreement, executed June 29, 2016 (the "Agreement"), delineates the ownership of intellectual property and confidential information between the parties. Under Section 7 of the Agreement, Medtrition "is and shall remain the owner of all recipes, formulations, specifications, artwork, graphics, and label copy furnished by, or developed for" Medtrition, as well as "other confidential and proprietary information relating to the Products." This language is unambiguous and it encompasses information both furnished by Medtrition and developed for Medtrition's products, regardless of which party physically created the documentation.

At the same time, the Agreement recognizes that K. Heeps "shall be the owner of the specific manufacturing processing techniques and individual mold designs which it develops in the production of the Products." And to that extent, your letter does also mention "technical manufacturing procedures" and "molds," which to the extent you are referencing "specific manufacturing processing techniques and individual mold designs," as defined in Section 7, we agree would be owned by K. Heeps. However, we do not know how the mold designs would be confidential or a trade secret when they are widely disseminated and advertised. We would be open to considering which specific manufacturing processing

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Joseph W. Catuzzi, Esq.
June 17, 2026
Page 2

techniques (if any) are confidential or a trade secret, if you want to provide us more details on what techniques you are referencing.

You also mention “scaling data” and “sequencing instructions” and “processing steps” but these are all too vague to understand what you are referencing or determine who owns it, let alone whether it is confidential.

To the extent you are asking Medtrition to confirm the ownership rights set forth in Section 7 of the Agreement, we agree and hereby confirm. If, however, your letter seeks to alter or expand upon the ownership allocation set forth in Section 7, or to claim ownership of categories of information that Section 7 assigns to Medtrition, we cannot agree to that, as it would be inconsistent with the parties’ contractual undertakings.

Before you raise any dispute to Judge Sponaugle in the Lancaster County Court, where the parties’ respective ownership and IP rights under the Agreement are the subject of the pending litigation, we request more information and a meet and confer to conserve the parties’ and the Court’s resources. To the extent K. Heeps has specific concerns about the handling of particular materials or information that fall within its ownership rights under the Agreement—namely, its specific manufacturing processing techniques and individual mold designs—we are happy to discuss those concerns further. We would welcome an opportunity to meet and confer to address these issues cooperatively.

With respect to the preservation obligations referenced in your letter, Medtrition has implemented standard litigation hold protocols since the inception of the Lancaster County proceedings, as we hope has been the case with K. Heeps as well.

Nothing in this letter shall be construed as a waiver of any of Medtrition’s rights, claims, or defenses, all of which are expressly reserved.

Very truly yours,



DANIEL E. RHYNHART

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EXHIBIT B

IN RE: MEDTRITION, INC. V. K. HEEPS, INC. AND ALTA

EQUITY PARTNERS, LLC

AUDIO TRANSCRIPTION OF RECORDED CONVERSATION

BETWEEN

CHRIS G. DIAS, BEAU HEEPS

AND

DAVID MARKS

SPEAKERS

DAVID MARKS

CHRIS G. DIAS

BEAU HEEPS

BILL HAUBER

1 (RECORDED AND TRANSCRIBED)

2

3 DAVID MARKS: Good morning.

4 BILL HAUBER: Good morning.

5 DAVID MARKS: Chris, how are you?

6 CHRIS G. DIAS: I'm good. How are you
7 guys?

8 DAVID MARKS: Good, thanks. Is it just
9 Chris and Beau at this point?

10 CHRIS G. DIAS: I think (indiscernible)
11 it.

12 BEAU HEEPS: Yes, that's it

13 DAVID MARKS: Okay. Anybody else going
14 on? So great.

15 (Indiscernible) taking time to talk to us
16 this morning, Chris.

17 So we thought maybe you could help us
18 understand kind of what the situation is. What's going
19 on? What can we do to help facilitate getting back
20 together?

21 Why don't you give us your perspective on
22 that?

23 CHRIS G. DIAS: Yeah. I mean, that's
24 probably a quick one. I don't think there is a
25 scenario where we're going to sort of stick together.

1 I think the scenario is we're going to go
2 our way, and you guys are going to go your way. And
3 the question is, you know, is there a transition period
4 or no transition period?

5 DAVID MARKS: So what do you mean by that?

6 CHRIS G. DIAS: Meaning we can go our
7 separate ways starting today, or we can give you some
8 period of time where we'll sort of either continue to
9 pack the product or ship the product, but it's not
10 going to be a very long period of time.

11 DAVID MARKS: And so tell me, what are you
12 -- what are you trying to achieve with this? And what
13 motivated -- what prevented you from picking up the
14 phone and call (indiscernible)?

15 CHRIS G. DIAS: Yeah, I don't think that's
16 a great use of time. I mean, I have my feelings on how
17 this relationship is. I'm sure you have your feelings
18 on what this relationship was.

19 And at the end of the day, it doesn't really
20 matter if I was right or you were right. This is where
21 we are. And so all we can do now is go our separate
22 ways. And like I said, there can be a transition
23 period or there cannot be a transition period.

24 And then you come back and tell us all the
25 things you think we did wrong isn't a great use of

1 either our time. And you're going to think you're
2 right.

3 DAVID MARKS: I (indiscernible) to say
4 that you know, from our perspective, and you have your
5 perspective, but we don't know what your perspective
6 is. So if we were doing things wrong, that was never
7 communicated with us.

8 We're an action-oriented company with long-
9 term relationships with a (indiscernible). It would
10 have been great to know what they were and let us
11 address that.

12 CHRIS G. DIAS: Again, I think we did
13 communicate where our issues were. I'm not part of --
14 I'm not part of the discussion, Dave. This is the
15 first time you and I have talked in, what, five plus
16 years? I've never met Bill.

17 It is what it is, but we are where we are,
18 and I think we -- I think we're very clear where our
19 issues were. I don't think it makes a lot of sense to
20 like litigate how we thought we were treated and what
21 we feel like we were -- how we felt this relationship
22 went. Is -- it is where we are now. You know.

23 DAVID MARKS: Well, maybe both could at
24 least articulate what some of those issues are. I
25 mean, from our own perspective, it's like, okay.

1 You're saying goodbye, we at least, you know,
2 understand why.

3 CHRIS G. DIAS: I think we do -- I think
4 I've told you why. I mean, I think it -- I don't think
5 it really matters because I'm going to say nasty things
6 about you guys. How is that going to really help --
7 how is that going to help you guys?

8 You guys know how you acted. If you feel
9 like you acted completely fine, then that's how you
10 should act, and that's how you should act with your
11 (indiscernible) going forward, and you guys will be
12 fine.

13 I did -- I don't feel like that's the way
14 this relationship was. We felt like we had to make a
15 change. We're making that change. Really the only
16 thing now is, in my opinion, I would have given you
17 guys no transition period.

18 So the only person here who wants to do
19 anything for you is Beau. And so we can either do that
20 or we cannot do that. But I really don't see how
21 talking about, you know, I've been partners with Beau
22 now for five years. Like me saying all the things that
23 I feel that you guys did wrong over five years. It's
24 not going to change anything at this point.

25 DAVID MARKS: Well, at least give us some

1 insight. Look, we -- here's what we thought we did,
2 right? We built a business from 50,000 cases a year to
3 150,000 cases a month. You know, we did our job as the
4 marketers, you guys did your job as the supplier.

5 If there were things that were upsetting and
6 you didn't think were right, you know, that could have
7 been -- all have been addressed.

8 I mean, here's what you risk, Chris. You
9 risk an enormous supply chain disruption. Okay? You
10 risk a 0.5 million to 750,000 dysphagic patients not
11 getting pureed food.

12 You risk, I mean, so much. And it's not
13 just easy to substitute one product for another. You
14 have to go through all the testing, the nutritional
15 analysis, the IDDIS testing, needs to be slotted and
16 needs to be stocked.

17 I mean, there's an enormous amount of work
18 that needs to be done. I mean, I don't see how you
19 could do that in six months. And if you don't do it,
20 then you're risking a major supply chain disruption.
21 You're risking the lives of as much as three-quarters
22 of a million dysphasic patients.

23 And it's not enough to say, oh, well, you
24 know, we got the same product, a little different
25 formulation, but it's the same product. I mean, it

1 doesn't work that way.

2 It doesn't work that way on GPO contracts.
3 It doesn't work that way on contract managers. It
4 doesn't work that way with distributors. I mean,
5 you've got to go -- you got to get slots. You have to
6 go through that whole process. And that can't be done
7 in six months. It can't be.

8 I mean, that's a major disruption. And
9 look, the one thing that we work really hard on and
10 we've gotten kudos from is the fact that we keep the
11 supply chain full when everybody else basically -- and
12 we're asked about that all the time.

13 And I know you've reached out to some of our
14 customers and have kind of hinted that there might be
15 some changes. And the first thing they did is you
16 don't have any supply problems, right? No, not that we
17 know of. Certainly don't know that.

18 But you're not going to make a swap just
19 like that. You can't go into any of those accounts and
20 say, oh, we got the same product. It's a little
21 different ingredients, a little bit of nutritional
22 value difference. You got to provide the 44
23 nutritional values for all the minerals, all the
24 vitamins.

25 I mean, Chris. I mean, if nothing else, I'm

1 trying to protect you as well as us.

2 CHRIS G. DIAS: All I'd say to that is
3 we'll worry about ourselves, and you guys can worry
4 about yourselves. I appreciate it. I --

5 DAVID MARKS: We want a year's notice.
6 We've been partners. We've been win-win on this thing.

7 Look, have your own line. You want to start
8 selling your own line? Go ahead and sell your own
9 line.

10 CHRIS G. DIAS: It's not happening.

11 DAVID MARKS: I don't mind that, but you
12 can't just cut us off without destroying your own
13 reputation. You can't just switch this.

14 Beau, what do you -- what are you thinking
15 about? This?

16 BEAU HEEPS: We considered this all, and
17 we're ready to go.

18 DAVID MARKS: You haven't contacted our
19 customers to go through that process. And the moment
20 you pick up the phone and call them and say, okay, hey,
21 Attrition doesn't have product, we do. You're still
22 stuck. Do you understand that, Beau?

23 Do you understand the difficulty of getting
24 the slots, getting on the GPO contracts? Don't tell me
25 --

1 BEAU HEEPS: It's all taken care of.

2 DAVID MARKS: What does that mean, it's
3 all taken care of? You got two people who've got
4 experience in that business, and they can figure out
5 how to do that.

6 CHRIS G. DIAS: Maybe we'll be wrong,
7 Dave.

8 DAVID MARKS: Well, Chris, where's the
9 win-win on this?

10 CHRIS G. DIAS: Where's the win-win?

11 DAVID MARKS: Yeah.

12 CHRIS G. DIAS: I don't see -- the
13 problem, Dave, for you, is this is a zero sum. So I
14 don't think there is one. I think the time for a win-
15 win was a long time ago. And I think that ship is kind
16 of (indiscernible).

17 DAVID MARKS: Why didn't you -- why didn't
18 you say that? You're owner of the company. Why didn't
19 you say, hey, this is not working out for us. Why
20 don't you -- let's get ahold of these guys. And we're
21 the easiest company to work with? Chris, no, seriously
22 --

23 CHRIS G. DIAS: I disagree. I disagree,
24 Dave.

25 DAVID MARKS: But you never reached out.

1 You never talked to us about it. You're doing a slow
2 burn and never said a word about it.

3 CHRIS G. DIAS: I'll say this. Is there
4 one time that Beau asked you guys for anything that we
5 actually got it?

6 DAVID MARKS: Give me a specific.

7 BILL HAUBER: Price increases.

8 DAVID MARKS: We made a lot of compromises
9 on price increases. We just had a 12% price increase
10 in September. And you know what? If you needed more,
11 say it. I'll give you a 10% price increase today.

12 CHRIS G. DIAS: It's just not -- I mean,
13 this is just not --

14 DAVID MARKS: Chris, you see what I'm
15 saying. You never even talked about it. I mean,
16 Chris, do you think this is fair that, you know, we
17 built that plant, we built -- bought the equipment, we
18 (indiscernible)?

19 CHRIS G. DIAS: You built the plant? You
20 built it?

21 DAVID MARKS: Yeah.

22 CHRIS G. DIAS: Did you write -- you wrote
23 the check you built equipment?

24 DAVID MARKS: On the backs -- on the backs
25 of our business. Yeah. We did. You know.

1 CHRIS G. DIAS: I could say the same --
2 Dave, this is where it's just going to -- I can say
3 this. You're saying you went from 50,000 cases to
4 150,000 cases a month because your other competitor
5 didn't have a supplier. That's the only reason --
6 that's the only reason that Hormel dropped out of this.

7 So like now we're just going to go round and
8 round. I'm going to say, well, we were the ones who
9 made the product, and you're going to say we're the
10 ones who sold it. It doesn't change anything.

11 DAVID MARKS: Yeah. But you're actually
12 wrong about the Hormel situation. But that's okay. I
13 don't need to get --

14 CHRIS G. DIAS: Okay.

15 DAVID MARKS: -- into discussion with you
16 about that. But do you think this is fair?

17 I mean, you must give us some credit for the
18 amount of business that we've -- and the work that
19 we've done. All the in-service of the IDDSI in-
20 service, the education, the work with all the GPOS, the
21 work with the contract managers.

22 I mean, let me be realistic, Chris. I mean,
23 you got to give us some credit for that. This business
24 -- hey, you know what? If the business just showed up,
25 it would be -- it would be Lyons Magnus that would be

1 doing all this volume, not us.

2 I mean, we collaborated from our perspective
3 as much as we should collaborate. And we worked well
4 with the company. We provide production schedules and,
5 you know, had visibility on pricing and the activity
6 that we were doing.

7 I don't understand why you've got a hard-on
8 for us. I really don't, and you know what you do
9 because you didn't say anything. So you're doing a
10 slow burn and you never really said anything to us
11 about it.

12 So look, we want a one-year exit strategy.
13 The risk to supply chain disruption is going to be
14 consequential, and it's going to filter right down to
15 you.

16 CHRIS G. DIAS: You're not going to get
17 (indiscernible).

18 DAVID MARKS: Beau can say it's all --
19 Beau can say it's all taken care of, but -- and you
20 want to sell your own line in that time, that will give
21 you a perfect way to transition to your own line
22 without the disruption and give you a -- give you time
23 to get knowledge about the industry and how all this
24 stuff works. That's a win-win, Chris. That is a win-
25 win.

1 CHRIS G. DIAS: It's not happening.

2 DAVID MARKS: Why not?

3 CHRIS G. DIAS: Because it's not.

4 DAVID MARKS: But why can't it happen?

5 CHRIS G. DIAS: Because we're not packing
6 your product anymore, Dave.

7 DAVID MARKS: So how much time are you
8 giving us?

9 CHRIS G. DIAS: Give you 60 days.

10 DAVID MARKS: We need at least a half a
11 year. We need 100, 180 days, Chris.

12 CHRIS G. DIAS: Dave, it's not a
13 negotiation.

14 DAVID MARKS: You can't give me a reason
15 why?

16 Beau, do you think this is a good idea?

17 BEAU HEEPS: Yes.

18 DAVID MARKS: Why?

19 BEAU HEEPS: It's what the business needs
20 to do.

21 DAVID MARKS: We need 180 days. We can't
22 just leave -- we can't leave -- Chris --

23 CHRIS G. DIAS: It's not going to happen.

24 DAVID MARKS: Chris, we can't leave our
25 customers high and dry. And you're not going to be

1 able to get your product approved and in stock before
2 then.

3 CHRIS G. DIAS: Dave, you can have 60
4 days, you can have zero days.

5 DAVID MARKS: Makes no sense. I mean,
6 really it's no -- (indiscernible) go sell your product
7 in that 180 day term. That's fine. Come on Chris,
8 that's the reasonable thing. Chris, that's the
9 reasonable thing.

10 There's nothing unreasonable about that.
11 You need the time to be able to make that transition.
12 Chris, you have -- you need it. And we need the time
13 to make the transition. You just can't cut people off
14 like that. I know that's not how you guys do business.

15 CHRIS G. DIAS: That's how it's happening.

16 DAVID MARKS: Chris, will you at least
17 sleep on it for -- over the night, talk to Beau offline
18 and sleep on it, and give us 180 days? May, June,
19 July, August, September, November. Come on, Chris, you
20 would want to be treated the same way. You know darn
21 well --

22 CHRIS G. DIAS: Dave, the one thing, I've
23 been treated every sort of way by every sort of
24 company. So the idea that this is some like
25 unprecedented thing that doesn't resonate with me.

1 This is how it's happening.

2 DAVID MARKS: That doesn't mean it's
3 right, Chris. It really doesn't mean that it's right.

4 CHRIS G. DIAS: You know, I think -- I
5 feel like you guys have held over our head that you
6 could go to somebody else at any point. And so this is
7 how I would have --

8 DAVID MARKS: There's no way we can do
9 that, Chris. There's simply no way to line up another
10 co-packer. Even within a year, even within a year. It
11 can't be done. It literally can't be done, from
12 equipment to supplies. It can't be done.

13 So that's not even a concern. It's not a
14 concern. And go sell your product in the meantime,
15 you'll get your feet wet, and you'll get to see,
16 because it's not just manufacturing, Chris.

17 I'll give you time to go out and get the
18 approvals and get a product into distribution. That's
19 a fair and reasonable solution to this. That's a win-
20 win for both of us.

21 CHRIS G. DIAS: Oh, that's a great
22 solution for you, and it's not a great solution for us.
23 And it's not going to happen.

24 DAVID MARKS: Okay. Well, at least I'd
25 like you to sleep on it for the night and talk to Beau

1 offline and see if he can come to a better resolution.

2 Would you do that?

3 CHRIS G. DIAS: I'll sleep on it for a
4 night.

5 DAVID MARKS: Okay. Thanks for your time.

6 CHRIS G. DIAS: Yep.

7 BEAU HEEPS: Thank you.

8 (Recording stopped.)

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CERTIFICATE

I Steven Thomas certify that I was authorized to and did transcribe the above audio and that the transcript is a true and correct record of the audio provided.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

Steven Thomas

/s/ Steven Thomas

Steven Thomas

Transcriber

May 19, 2026



Magna

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