SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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HM RX 2024 LLC,

Plaintiff,

- v -

MCCP INVESTMENT PARTNERS LP, LOAN ADMIN CO LLC, NEW PHARMACY MANAGEMENT LLC,HYGIEIA ONE CREDIT FUND (DELAWARE) LP, MC CREDIT FUND I LP, MC CREDIT FUND III (CAYMAN MASTER) LP, MC CREDIT FUND III (DELAWARE) LP, MC CREDIT FUND III (LOAN FUNDING) LP, MC CREDIT FUND III-U (DELAWARE) LP, MC CREDIT FUND N (CAYMAN MASTER) LP, MC CREDIT FUND N (DELAWARE) LP, MC CREDIT FUND N (LOAN FUNDING) LP, MC CREDIT SM (LOAN FUNDING) LP, MC CREDIT SM (MASTER) LP, ASHOK NAYYER, BARRY BEST, and JONATHAN TUNIS,

Defendants.

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INDEX NO. 654018/2026

MOTION DATE ________

MOTION SEQ. NO. 002 005

DECISION + ORDER ON MOTION

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 22, 32, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 112, 113, 114, 135, 125
were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 73, 74, 75, 103
were read on this motion to/for MODIFY.

In motion sequence 002, plaintiff HM RX 2024 LLC moves to stay the implementation of the June 22, 2026 written consent of nonparty Optio Rx, LLC (Optio), which removed HM Rx's governance rights by replacing Online Pharmacy Holdings, LLC's (Holdings) as manager with defendant New Pharmacy management LLC (NewCo), an affiliate of the MCCP defendants[1]. (NYSCEF 32, July 14, 2026 Order to

[1] The MCCP defendants include: Hygieia One Credit Fund (Delaware) LP, MC Credit Fund I LP (Classes IA and IB), MC Credit Fund III (Cayman Master) LP, MC Credit Fund III (Delaware) LP, MC Credit Fund III (Loan Funding) LP, MC Credit Fund III-U (Delaware) LP, MC Credit Fund N (Cayman Master) LP, MC Credit Fund N

Show Cause [OSC].) Plaintiff seeks more specific relief in its Memorandum of Law (MOL):

(1) staying the implementation of the June 22, 2026 written consent of Optio Rx, LLC, which removed HM Rx's governance rights by replacing Holdings with NewCo;

(2) restrain defendants MCCP and NewCo from causing Optio to engage in non-ordinary course actions that bypass the Holdings governance bargain, including, but not limited to:

(a) amendments to any Credit Document or the incurrence of new debt;

(b) acquisition financing or consummation of any acquisition;

(c) affiliate transactions or management-fee arrangements;

(d) asset sales, dispositions, or distributions outside the ordinary course of business; and

(e) changes to the organizational documents of Optio Rx or any subsidiary; and

(3) stay the implementation of the purported Second Amendment to the Credit Agreement;

(4) restore HM Rx's right to access Optio's online financial portal and to management. (NYSCEF 12, Plaintiff's MOL at 22.)

The court issued a TRO directing the parties to maintain the status quo pending argument on the motion. (NYSCEF 32, OSC.)

In motion sequence 005, Optio moves (1) pursuant to CPLR 1012 or 1013, to intervene in this action and (2) pursuant to CPLR 6314 to modify and vacate, in part, the July 14, 2026 TRO. The request to intervene was granted on consent on the record,

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(Delaware) LP, MC Credit Fund N (Loan Funding) LP, MC Credit SM (Loan Funding) LP, and MC Credit SM (Master) LP are funds affiliated with MCCP that, along with MC Credit Partners LP (collectively MCCP). Ashok Nayyar is MCCP's CEO. (NYSCEF 1, Complaint 23.) MCCP appointed Jonathan Tunis, a managing director of MCCP, to the Holdings board. (*Id*. ¶25.)

but the request to vacate the TRO was denied. (NYSCEF ___, July 30, 2026 tr ___ [TRO conference].)

Optio is 100% owned by Holdings and was controlled by Holdings until June 22, 2026. (NYSCEF 1, Complaint 48.) In late 2024, plaintiff and MCCP joined together for an emergence-from-bankruptcy transaction to pull Optio out of bankruptcy. (*Id*. ¶42.) Plaintiff purchased Optio's senior debt "in exchange for governance rights, information rights, equity, and of course, the right to be repaid." (*Id*. ¶43.) The relationship among plaintiff, MCCP, and Optio is governed by (i) the Amended and Restated Limited Liability Company Agreement of Holdings (LLC Agreement), which sets up the governance structure of Holdings (NYSCEF 5), (ii) March 21, 2025 Credit Agreement (Credit Agreement) which governs the lending relationship among Holdings, Optio, Loan Admin Co LLC (as Administrative Agent), and the lenders (including the MCCredit Funds as First Out Lenders and plaintiff as Last Out Lender) (NYSCEF 6), (iii) March 21, 2025 Pledge Agreement (Pledge Agreement) (NYSCEF 7), and (iv) March 21, 2025 Agreement Among Lenders (AAL), which governs the intercreditor relationship between the First Out Lenders (i.e., MCCP) and the Last Out Lender (i.e., plaintiff), including the priority of payments and exercise of remedies (NYSCEF 8). (NYSCEF 1, Complaint ¶¶46, 47, 48, 59, 63, 64.)

According to plaintiff, "since emerging from bankruptcy in 2025, [Optio]'s finances have been strong and rapidly improving," and thus plaintiff's equity in Optio suddenly become valuable. (*Id*. ¶¶44, 75.) Plaintiff alleges that "in an effort to capture Optio's dramatic growth in equity value for itself, MCCP offered to purchase [plaintiff]'s equity in Holdings in August 2025," but plaintiff declined. (*Id*. ¶¶77, 78.) In December 2025, Tunis called plaintiff's Jon Finch and "demanded that [plaintiff] transfer 50% of the common equity it holds in [Optio]." (*Id*. ¶88.) Tunis "threatened to use enforcement rights as a lender to 'wipe out' [plaintiff]'s equity entirely if plaintiff did not hand over half of it." (*Id*. ¶90.) "Tunis implored [plaintiff] to accept his 'offer,' saying that 'a smaller equity stake is better than no equity,' which he implied would be the result if [plaintiff] refused his offer." (*Id*. ¶91.)

When Optio identified an acquisition opportunity, the parties bickered over how to finance it. (*Id*. 97.) Each party proposed financing plans. (*Id.* ¶¶98, 99-113, 120-124, 125-135.) The parties disagreed whether one or both parties were conflicted and thus could not vote on the competing plans at a board meeting. (*Id*. ¶¶115-117.) The parties clearly agree that the transaction is beneficial for Optio.

MCCP called for a board meeting on June 9, 2026. (*Id*. ¶104; NYSCEF 62, Barry Best aff ¶35.) According to plaintiff, "MCCP designed this entire proposal to further its own goal of dangling [Optio] over a financial cliff and extorting [plaintiff] into giving up its equity." (*Id*. ¶105.) Plaintiff's two directors failed to attend the June 9, 2026 board meeting which precluded a quorum. (NYSCEF 62, Barry Best[2] aff ¶36.) The board meeting was adjourned to June 10, 2026, but again plaintiff's board members did not attend. (*Id*. ¶¶38, 39.) The independent board member executed the consent proposed by MCCP. (*Id*. ¶41.) On June 16, 2026, plaintiff initiated litigation against the independent board member captioned *HM RX 2024 LLC v Jarlath Johnston*, Index No. 653558/2026. (*Id*. ¶43.)

[2] Barry Best is MCCP's managing director. (NYSCEF 62, aff 1.)

According to MCCP, since February 12, 2026, no board meetings have occurred creating a governance vacuum which triggered it to exercise its remedies for Optio's alleged breach. (*Id.* ¶44.)

According to plaintiff, in response to Optio's alleged "minor," "immaterial", or "technical" breach of a projection covenant that occurred months earlier, MCCP declared a default on June 22, 2026 to achieve its goal of taking plaintiff's equity. (*Id.* ¶¶ 94, 137, 154; NYSCEF 62, Barry Best aff 45.) It exercised its remedy

> (f) "to vote (and exercise all rights and powers in respect of voting) all or any part of the Collateral (whether or not transferred into the name of the Pledgee) and give all consents, waivers and ratifications in respect of the Collateral and otherwise act with respect thereto as though it were the outright owner thereof (each Pledgor hereby irrevocably constituting and appointing the Pledgee the proxy and attorney-in-fact of such Pledgor, with full power of substitution to do so)." (NYSCEF 7, Pledge Agreement 7(f); NYSCEF 1, Complaint ¶138.)

Defendants removed Holdings as manager and substituted Newco. (*Id.* ¶148.)

> "A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual." (CPLR 6301.)

To obtain a preliminary injunction, a movant must establish: "(1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the provisional relief is withheld;[3] and (3) a balance of equities tipping in the moving party's favor." (*Doe v Axelrod*, 73 NY2d 748, 750 [1988] [citation omitted].)

Plaintiff asserts ten causes of action. To obtain the injunctive relief it seeks here, plaintiff must establish likelihood of success on Counts II to VI for breach of the implied covenant of good faith and fair dealing (Covenant). (NYSCEF 21, Complaint.) Here, it

[3] As discussed on the record on August 6, 2026, plaintiff established irreparable harm.

cannot be disputed that the Covenant is both explicitly stated in certain transaction documents (see e.g. NYSCEF 5, LLC Agreement §10.09(a) [“No Member, in its capacity as a Member, shall have any fiduciary or other duty to the Company, any other Member, any Director or any other Person that is a party to or is otherwise bound by this Agreement other than the implied contractual covenant of good faith and fair dealing and other than such Member’s express obligations under this Agreement;” NYSCEF 7, Pledge Agreement §7, “Pledgor hereby agrees to be commercially reasonable”]) and implicit, as a matter of law. (*111 W. 57th Inv. LLC v 111 W57 Mezz Inv. LLC*, 2026 NY Slip Op 03376 [Ct App May 28, 2026].) Specifically, plaintiff alleges “MCCP violated the implied covenant of good faith and fair dealing by, among other things: (a) manufacturing and exploiting pretextual defaults to strip HM Rx of its bargained-for rights; (b) rejecting a manifestly superior funding proposal for the sole purpose of perpetuating the alleged defaults; (c) exercising remedies not to protect legitimate creditor interests but to seize HM Rx’s equity and exclude it from governance; and (d) wrongfully and improperly increasing the cost of HM Rx exercising its buyout right, therein effectively nullifying the right.” (NYSCEF 1, Complaint ¶217.)

For the reasons stated on the record on August 6, 2026, the court finds that plaintiff did not establish likelihood of success on its claims for breach of the implied covenant of good faith and fair dealing.

> “The implied covenant exists to preserve the benefit of the bargain against bad faith acts taken by one party that do not violate an express term included in the contract.” (*111 W. 57th Inv. LLC v 111 W57 Mezz Inv. LLC*, 2026 NY Slip Op 03376 [Ct App, May 28, 2026] [finding plaintiff stated a claim for breach of the covenant of good faith and fair dealing because defendants negotiated a secret “backroom deal” including a promise to the Sponsor “that could remain on the

deals as construction manager and carry over its equity on the condition that it did not object to the strict foreclosure.")

"It does not matter if the parties already negotiated certain restrictions with respect to a party's sole discretion because the implied covenant's very purpose is to cover that which is not anticipated and yet incompatible with the object of the contract when viewed as a whole, regardless of that sole discretion." (*111 W. 57th Inv. LLC v 111 W57 Mezz Inv. LLC,* 2026 NY Slip Op 03376 [Ct App May 28, 2026].)

Plaintiff challenges defendant's exercise of its discretion in (1) declaring a "pretextual" default months after the default occurred (NYSCEF 1, Complaint 12, 150, 165); (2) selecting Remedy F as a remedy instead of Remedy C[4] which is the remedy plaintiff would have selected for such a "technical" default (*id*. at 20/45, 62, 155); (3) rejecting plaintiff's "superior funding proposal (*id*. 13, 123, 160, 163); and (4) defendants' unexpected appointment on June 22, 2026 of Newco as Optio's manager substituting Holdings as Optio's manager.

That plaintiff would have selected a different remedy because it is more proportional, in plaintiff's opinion, does not escalate defendants' selected remedy to bad faith. Likewise, that plaintiff was surprised by MCCP's selection of Remedy F instead of Remedy C does not make it unanticipated by the parties who drafted the transaction documents. Indeed, these options were clearly set forth in the transaction documents to which plaintiff agreed. The difference between Remedy C and F is that plaintiff negotiated a plan to protect itself if MCCP ever selected Remedy C, but no such consideration was given to Remedy F. As discussed on the record, plaintiff's focus on

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[4] It provides: "to accelerate any Pledged Note which may be accelerated in accordance with its terms, and take any other lawful action to collect upon any Pledged Note (including, without limitation, to make any demand for payment thereon.)"

MCCP's decision as to which remedy to select is misplaced as the options were in plain sight and not unanticipated.

This is the opposite of *111 W. 57th Inv. LLC v 111 W57 Mezz Inv. LLC*, 2026 NY Slip Op 03376 [Ct App May 28, 2026] where there was a "'backdoor deal' that stripped plaintiff of its position as an equity participant in the Project—the very equity the forbearance agreement was intended to protect." The backdoor deal was with a nonparty who could do what the parties to the agreements could not do: a strict foreclosure instead of a public auction foreclosure. (*Id*. at 2.) Further, the nonparty allegedly negotiated a deal with the project's sponsor who would remain on the project as developer and get "carry over" equity and not object to the nonparty's foreclosure. (*Id*.) Here, plaintiff continues to hold its equity position but has lost its governance rights and is locked out of the financial portal, which are significant losses, to be sure.

The court also rejects plaintiff's breach of Covenant argument because it requires the court to conclude that plaintiff's offer to address Optio's breach of the projection covenant was the best solution or that plaintiff's financing proposal was superior to MCCP's proposal. However, these are business decisions, not the sort of decision a court can make in assessing likelihood of success which is necessary to issue an injunction.

For the reasons stated on the record on August 6, 2026, the court grants plaintiff's motion for a preliminary injunction based on the likelihood of success of Count X for a declaratory judgment that the Second Amendment is void. (NYSCEF __, August 6, 2026 tr ___.) The Second Amendment "includes a 100% prepayment premium that eviscerates its key protection as the subordinated lender. The amendment also strips

HM Rx's right to receive the Company's monthly and quarterly financials as well as budget and key-performance indicators, and its right to receive material notices regarding the Company – in essence, freezing out HM Rx's ability to monitor the performance of the Company. MCCP also caused HM Rx's board members to be locked out of the Company's online financial portal, the system through which they previously monitored daily sales, prescriptions, and gross margins." (NYSCEF 1, Complaint ¶¶179 -181.) However, plaintiff did not agree to these changes as required by §14.12(a) of the Credit Agreement. (*Id.* ¶176; NYSCEF 6, Credit Agreement.)

Accordingly, it is

ORDERED that plaintiff's motion 002 is granted to the extent that defendants are stayed from the implementation of the purported Second Amendment to the Credit Agreement and otherwise denied; and it is further

ORDERED that Optio's motion 005 to intervene is granted on consent and that Optio Rx, LLC be permitted to intervene in this action as a party defendant; and it is further

ORDERED that the summons and complaint in this action be amended by adding Optio Rx, LLC thereto as a party defendant and listing Optio as the last defendant in the caption; and it is further

ORDERED that Optio shall timely answer or move; and it is further

ORDERED that the attorney for the intervenor shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk's Office, who are directed to amend their records to reflect such change in the caption; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website)]; and it is further

ORDERED that motion 005 is granted and the TRO is vacated; and it is further

ORDERED that plaintiff is directed to file the August 6, 2026 transcript to be so ordered; and it is further

ORDERED that Optio is directed to file the transcript of the July 30, 2026 conference to be so ordered; and it is further

ORDERED that MCCP shall contact the Commercial Division support office to correct its filing of NYSCEF 124 and 125 which should be connected to motion sequence 002.

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8/10/2026
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:	☐ **CASE DISPOSED**		X **NON-FINAL DISPOSITION**			
	☐ **GRANTED**	☐ **DENIED**	X **GRANTED IN PART**		☐ **OTHER**	
APPLICATION:	☐ **SETTLE ORDER**		☐ **SUBMIT ORDER**			
CHECK IF APPROPRIATE:	☐ **INCLUDES TRANSFER/REASSIGN**		☐ **FIDUCIARY APPOINTMENT**		☐ **REFERENCE**	