

PROPOSED REDACTED VERSION

IN THE UNITED STATES BANKRUPTCY COURT DISTRICT OF DELAWARE

In re:

MALLINCKRODT PLC, *et al.*,

Debtors.¹

OPIOID MASTER DISBURSEMENT
TRUST II,

Plaintiff,

v.

COVIDIEN UNLIMITED COMPANY
(formerly known as Covidien Ltd. and
Covidien plc), COVIDIEN GROUP
HOLDINGS LTD. (formerly known as
Covidien Ltd.), COVIDIEN
INTERNATIONAL FINANCE S.A.,
COVIDIEN GROUP S.À R.L., and DOE
DEFENDANTS 1-500,

Defendants.

Chapter 11

Case No. 20-12522 (JTD)

(Jointly Administered)

Adv. Proc. No. 22-50433 (JTD)

DECLARATION OF TIM HUSNIK

I, Tim Husnik, hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief:

1. I submit this declaration in support of *Covidien's Motion for Summary Judgment Based on The Section 546(e) Safe Harbor* submitted on behalf of Covidien Limited (f/k/a Covidien Unlimited Company and f/k/a Covidien plc) ("Covidien plc"), Covidien Group Holdings Ltd. (f/k/a Covidien Ltd.) ("Covidien Ltd."), Covidien International Finance S.A. ("CIFSA"), and Covidien Group S.à.r.l. ("Covidien Sarl") (collectively, the "Covidien

¹ A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at <http://restructuring.primeclerk.com/Mallinckrodt>. The Debtors' mailing address is 675 McDonnell Blvd., Hazelwood, Missouri 63042.

Defendants”) in the litigation brought by the Opioid Master Disbursement Trust II (the “Trust”) identified in the caption set out above.

2. I am a Senior Treasury Director at Medtronic, Inc., a role I have held since July 2021. In this capacity, I am responsible for overseeing all corporate foreign currency risk management hedging programs at Medtronic and its subsidiaries, including Covidien Group S.à.r.l. My duties include leading a six-person treasury team focused on foreign currency risk, derivative hedging programs, debt capital markets, global foreign currency conversion, global investments, technology integration, treasury operations, compliance, and risk management.

3. I began my tenure at Medtronic in May 2012. Prior to my current role, I served as the Treasury Director from July 2018 to July 2021, Senior Treasury Manager from May 2015 to July 2018, and Principal Treasury Analyst from May 2012 to May 2015. In each of those positions, I assumed escalating levels of responsibility in the domain of foreign currency risk management. Over my tenure, I have developed and implemented hedging strategies that have substantially reduced, delayed, and/or mitigated foreign currency risk at Medtronic and its subsidiaries, for which I have won several, highly competitive, industry awards. I am the leader of the team that runs the Covidien Group S.à.r.l hedging program. During the execution of the currency forward and swap transactions that I discuss in this declaration, all personnel involved in these trades reported up through me. Prior to joining Medtronic, I was at Wells Fargo for eleven years, where I held various finance roles within technology and operations. I hold an MBA in Finance from the Carlson School of Management at the University of Minnesota and a Bachelor of Fine Arts degree from the Minneapolis College of Art and Design.

4. This declaration is based on my personal knowledge, my review of relevant documents, and my experience and knowledge of the management of foreign currency risk by

Medtronic and its subsidiaries, including Covidien Group S.à.r.l., and their participation in the currency forward-contract and swap markets. If called upon to testify, I would testify to the facts set forth herein.

Covidien Group S.à.r.l.'s Currency Forwards and Swaps

5. Covidien Group S.à.r.l. ("Covidien Sarl") is a Luxembourg partnership limited by shares, which has a branch in Neuhausen, Switzerland, referred to as Covidien Group S.à.r.l. – Neuhausen Branch (the "Neuhausen Branch"). The Neuhausen Branch is not a separate legal entity, but the same legal entity as Covidien Group S.à.r.l. Through the Neuhausen Branch, Covidien Sarl has historically entered into currency exchange rate derivative contracts to manage currency risk.

6. To minimize earnings and cash flow volatility resulting from currency exchange rate changes, Covidien Sarl enters into derivative contracts, including currency exchange rate forward contracts and swap agreements. Through these contracts, Covidien Sarl contracts to buy or sell a foreign currency, such as Euros, Japanese Yen, Chinese Yuan, and others, in exchange for U.S. dollars at a future date pursuant to an agreed exchange rate, which is the "forward" rate. These contracts allow Covidien Sarl to hedge its currency exchange-rate risk on anticipated foreign-currency-denominated transactions and changes in the value of foreign-currency-denominated assets and liabilities by locking in an exchange rate.

7. As described in more detail below, on April 23, 2020 (which is a date within 15 months of when I understand that Mallinckrodt filed for bankruptcy on October 12, 2020), Covidien Sarl had currency forward and swap contracts outstanding of a total gross dollar value in excess of \$2.5 billion in notional amount. I have also reviewed Covidien Sarl's outstanding currency forward and swap contracts for the period from February 4, 2020, through October 12,

2020, and on every day during that period, Covidien Sarl had currency forward and swap contracts outstanding with a total gross dollar value in excess of \$1.0 billion in notional amount. Because the highest total notional amount outstanding on any single day during the fifteen-month period preceding Mallinckrodt's October 12, 2020, bankruptcy filing date was the amount outstanding on April 23, 2020, I have focused on that date for purposes of this declaration.

8. Covidien Sarl's counterparties on these forward and swap contracts were not Covidien affiliates, but rather large global banks, namely, Barclays, BNP Paribas, Citibank, Deutsche Bank, Bank of America, JPMorgan Chase, Goldman Sachs, and Mizuho. The terms of each contract were set forth in two parts. The first part was a master agreement with the counterparty bank, typically documented on one or more of the ISDA Master Agreement, Schedule, and Credit Support Annex templates developed by the International Swaps and Derivatives Association, Inc. The master agreement for each transaction sets forth the general terms governing that transaction. True and correct copies of the ISDA master agreements are attached as Exhibits 1 – 8.² The second part was an electronic trading confirmation provided at

² A true and correct copy of the ISDA 2002 Master Agreement among Barclays Bank plc, Covidien Group S.à.r.l. – Neuhausen Branch, and the other parties thereto, dated as of January 31, 2019, together with the Schedule and Credit Support Annex, is attached hereto as Exhibit 1. A true and correct copy of the ISDA 2002 Master Agreement between BNP Paribas and Covidien Group S.à.r.l., dated as of June 26, 2018, together with the Schedule and Credit Support Annex, is attached hereto as Exhibit 2. A true and correct copy of the ISDA 2002 Master Agreement Schedule between Bank of America, N.A., and Tyco Group S.à.r.l., Luxembourg (LU), Schaffhausen branch, dated as of May 15, 2007, is attached hereto as Exhibit 3. A true and correct copy of the Shareholder resolution dated July 20, 2007, changing the name of Tyco Group S.à.r.l. to Covidien Group S.à. r.l. is attached hereto as Exhibit 3a. A true and correct copy of the ISDA 2002 Master Agreement between Citibank, N.A., and Covidien Group S.à.r.l., dated as of February 26, 2008, together with the Schedule, is attached hereto as Exhibit 4. A true and correct copy of the ISDA 2002 Master Agreement between Deutsche Bank AG and Covidien Group S.à.r.l. Luxembourg (LU) Neuhausen am Rheinflall, dated as of June 29, 2007, together with the Schedule, is attached hereto as Exhibit 5. A true and correct copy of the ISDA 2002 Master Agreement between Goldman Sachs Capital Markets, L.P., and Tyco Group S.à.r.l., Luxembourg (L), (Schaffhausen branch), dated as of May 17, 2007, together with the Amended and Restated Schedule dated as of May 17, 2007, among Goldman Sachs Bank USA, Covidien Group S.à.r.l., and the other parties thereto, is attached hereto as Exhibit 6. A true and correct copy of the ISDA 2002 Master Agreement among JPMorgan Chase Bank, National Association, Covidien Group S.à.r.l., and the other parties thereto, dated as of March 31, 2011, together with the Schedule, is attached hereto as Exhibit 7. A true and correct copy of the ISDA 2002 Master Agreement between Mizuho Capital Markets LLC, Covidien Group

the time of each forward or swap transaction setting forth the specific economic terms of the trade.

9. Covidien Sarl executed the trades through a third-party trading platform, Refinitiv FXall (“Refinitiv”), now known as LSEG FX, which is a part of the London Stock Exchange Group. Trade execution followed a process where Covidien Sarl would electronically submit a request for pricing to multiple banks at once through FXall. The banks would then submit their best price (or bids), and Covidien Sarl would typically select the bank with the best price, with that bank becoming the winning bidder, completing the execution of the trade. Once a bank was selected as the winning bidder, that bank and Covidien Sarl would each submit its understanding of the terms of the trade to Refinitiv’s Settlement Center, where the trades would be matched and confirmed. Refinitiv’s Settlement Center platform acts as a repository of trade execution details of each party. If the details are the same, the trade is considered confirmed and matched, specifying the terms of the currency forward or swap transaction. Refinitiv maintains an electronic archive of this information, which Covidien Sarl and its counterparties can access through the platform. In addition, at the time each trade was executed and confirmed, the trade confirmation was uploaded into the Medtronic Ion Reval Treasury Management System (“Reval TMS”), which is Covidien Sarl’s internal system of record for derivative trades. Among other things, Covidien Sarl uses the trade execution details and trade confirmation data in the Reval TMS as its book of record in connection with performing various accounting, auditing, and compliance functions. Attached as Exhibit 9 is a true and correct copy of a report (the “Trade Confirmations Report”) that a member of my foreign currency team working under my direction

S.à.r.l. (Neuhausen Branch), dated as of July 30, 2019, together with the Schedule and Credit Support Annex, is attached hereto as Exhibit 8.

retrieved from the Reval TMS system of record, which compiles the trade confirmations for the 61 currency forward and swap contracts that Covidien Sarl had outstanding on April 23, 2020.

10. As the Trade Confirmations Report (Ex. 9) shows, the trade confirmations for those 61 currency forward and swap contracts each had a “Trade Date”, which is the date when the contract was executed. In each case, that date preceded April 23, 2020. Furthermore, each of the 61 trade confirmations had a “Value Date”, which is the date when the trade would settle. In each case, that date was after April 23, 2020. Thus, each of the 61 currency forward and swap contracts shown in the Trade Confirmations Report was outstanding on April 23, 2020.

11. The notional amount of each forward or swap contract was the amount of foreign currency that Covidien Sarl contracted to buy or sell on the settlement date at the agreed forward exchange rate, expressed in the U.S. dollar equivalent of such amount at the forward exchange rate. This amount is shown in the trade confirmations set forth in the Trade Confirmations Report (Ex. 9). The amount of currency bought or sold in the trade is shown in the trading confirmation for each contract under the “Parameters” and “Terms” tables. The agreed forward exchange rate is the rate shown in the trading confirmation for each contract in the “Parameters” table under the column labeled “All-in Rate”, which is the sum of the spot exchange rate at the commencement of the contract (shown in the trading confirmation in the “Parameters” table under the “Spot Rate” line item) and the forward points (shown in the trading confirmation in the “Parameters” table under the “Fwd Points” column, expressed as a positive or negative number in basis points, i.e., one one-hundredth).

12. For example, the tenth and eleventh pages of the Trade Confirmations Report contain the trading confirmation for a currency forward contract with Trade ID of 19715 (as shown in the “Main” table) in which Covidien Sarl contracted with Barclays on January 22, 2020

(as shown in the “Main” table under the “Entity,” “Counterparty” and “Trade Date” columns) to buy €381.5 million Euros (as shown in the “Parameters” and “Terms” tables) on a forward date of April 24, 2020 (as shown in the “Parameters” table under the “Value Date” column) at a forward exchange rate of [REDACTED] U.S. dollars per Euro (as shown in the “Parameters” table under the “All in Rate” column). *See* Ex. 9 at pp. 10-11. The notional amount of this swap was thus US\$ [REDACTED] (as shown in the “Parameters” and “Terms” tables), which is the product of €381.5 million Euros at the forward exchange rate of [REDACTED] U.S. dollars per Euro.³

13. Attached as **Exhibit 10** is a true and correct copy of a second report (the “Reval Trade Summary”) that a member of my foreign currency team working under my direction retrieved from the Reval TMS system of record, which contains a summary of all of the trading confirmations for the 61 currency forwards and swap contracts that Covidien Sarl had outstanding on April 23, 2020. Attached as **Exhibit 11** is a true and correct copy of another report (the “Refinitive Trade Summary”) that I retrieved from the Refinitiv FXall archive, which likewise contains a summary of all of the trading confirmations for the 61 currency forwards and

³ In a currency forward contract, Covidien Sarl would enter into a trade to buy or sell an amount of foreign currency in exchange for U.S. dollars at a future date at the forward exchange rate. In some cases, Covidien Sarl would enter into a currency swap, in which Covidien Sarl would essentially enter into two trades; in the first leg, it would sell (or buy) an amount of currency at the outset of the contract at the then-prevailing spot rate or an agreed forward rate, and in the second leg, it would buy (or sell) the same amount of currency at a future date at another agreed forward exchange rate. Furthermore, in some cases, Covidien Sarl entered into “non-deliverable” currency forwards or swaps, in which the parties did not actually deliver the notional amounts of the bought or sold currency, but rather settled the contract by paying the difference between the notional amount at the agreed forward exchange rate and the prevailing spot rate at the time of settlement. Non-deliverable forwards and swaps were designated as “Non-Deliverable” in the trading confirmations in the Trading Confirmations Report in the “Parameters” table under the “Delivery Type” line item.

swap contracts that Covidien Sarl had outstanding on April 23, 2020.⁴ As Exhibits 10 and 11 each shows, each of the contracts had a “Trade Date” preceding April 23, 2020, and a settlement “Value Date” or “Maturity Date” after April 23, 2020, and hence was outstanding on April 23, 2020. The notional amount of each contract is shown in the column labeled “Trade Description” in the Reval Trade Summary (Ex. 10) and in the column labeled “Contra Amount” in the Refinitiv Trade Summary (Ex. 11). For instance, the currency forward discussed in the prior paragraph 12 appears in the fifth row of the Reval Trade Summary (Ex. 10), which shows that Covidien Sarl contracted with Barclays to buy €381.5 million Euros for a notional amount of US\$ [REDACTED] million U.S. dollars on April 24, 2020 (as shown in the “Trade Description” column), based on a forward exchange rate of [REDACTED] U.S. dollars per Euro. The same trade terms and notional amount are shown in the fifth row in the Refinitiv Trade Summary (Ex. 11) under the “Dealt CCY”, “Dealt Amount”, “All in” rate, “Contra CCY” and “Contra Amount” columns. The aggregate notional amount for all 61 currency forward and swap contracts that Covidien Sarl had outstanding on April 23, 2020 (the amounts shown in the “Trade Description” column of the Reval Trade Summary and the “Contra Amount” column of the Refinitiv Trade Summary) totaled US\$2,528,812,039.68.

⁴ The Refinitiv Trade Summary sets forth the same information and terms for the trade confirmations for the 61 trades as are shown in the Trade Confirmations Report (Ex. 9) and Reval Trade Summary (Ex. 10). The trade confirmations shown in each of the reports can be matched up by using the deal and trade ID numbers that Refinitiv and Reval assigned to each trade, which appear under the “Trade ID” and “Import ID” line items in the “Main” and “Interface” tables of the Trading Confirmation Report (Ex. 9), under the “Trade ID” column in the Reval Trade Summary (Ex. 10), and under the “FXall Deal ID” column in the Refinitiv Trade Summary (Ex. 11).

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.


Dated: July 9, 2024 
Minneapolis, Minnesota Tim Husnik

EXHIBIT 1

FILED UNDER SEAL

EXHIBIT 2

FILED UNDER SEAL

EXHIBIT 3

FILED UNDER SEAL

EXHIBIT 3a

FILED UNDER SEAL

EXHIBIT 4

FILED UNDER SEAL

EXHIBIT 5

FILED UNDER SEAL

EXHIBIT 6

FILED UNDER SEAL

EXHIBIT 7

FILED UNDER SEAL

EXHIBIT 8

FILED UNDER SEAL

EXHIBIT 9

FILED UNDER SEAL

EXHIBIT 10

FILED UNDER SEAL

EXHIBIT 11

FILED UNDER SEAL