IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
MALLINCKRODT PLC, *et al.*,	:	Case No. 20-12522 (JTD)
Reorganized Debtors.	:	(Jointly Administered)
OPIOID MASTER DISBURSEMENT TRUST II,	:	Adversary Proceeding
Plaintiff,	:	No. 22-50435 (JTD)
v.	:	
ARGOS CAPITAL APPRECIATION MASTER FUND LP, *et al.*,	:	
Defendants.	:	

MOTION OF DEFENDANT QUANTLAB TRADING PARTNERS US, LP FOR SUMMARY JUDGMENT PURSUANT TO THE PROTOCOL ORDER RELATING TO CONDUITS, NON-TRANSFEREES, "STOCKBROKERS," "FINANCIAL INSTITUTIONS," "FINANCIAL PARTICIPANTS," AND DISSOLVED ENTITIES

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

RULES

Pursuant to the Protocol Order Relating to Conduits, Non-Transferees, "Stockbrokers," "Financial Institutions," "Financial Participants," and Dissolved Entities entered on May 15, 2023 [D.I. 185-1] (the "Protocol Order"), Defendant Quantlab Trading Partners US, LP ("QTPUS") moves for summary judgment on the claims brought against QTPUS by Plaintiff, the Opioid Master Disbursement Trust II (the "Trust")[1] in the above-captioned Adversary Proceeding.

PRELIMINARY STATEMENT

1. This is a straightforward motion for summary judgment under the Protocol Order. As the Court is aware, the Trust seeks to avoid more than $1.6 billion that Mallinckrodt allegedly paid its public shareholders to repurchase shares of its common stock on the open market. The Amended Complaint alleges that QTPUS is one such shareholder but, as the parties now agree, QTPUS never received the proceeds of any such alleged sales of Mallinckrodt stock.

2. This agreement has come about as a result of the Protocol Order and the parties' exchange of information and positions pursuant to that order. QTPUS made a Protocol submission to the Trust explaining that it was not a "transferee" within the meaning of Section 550(a) of the Bankruptcy Code and thus should be dismissed from the Adversary Proceeding. That submission included evidence in the form of a declaration substantiating the fact that QTPUS never received any proceeds. After consideration of QTPUS's evidence and a meet-and-confer process, the Trust has agreed.

3. That agreement should have made this Court's intervention unnecessary. The Protocol Order, negotiated by the parties and entered by this Court, provides a stipulation for the parties to submit in the event of such an agreement. However, the Trust refuses to enter into that

[1] Unless otherwise defined, terms have the meanings provided in the Protocol Order. "Share Repurchases" mean "Share Repurchase Transactions" as defined in the Protocol Order.

stipulation, based on a separate dispute concerning the status of two *other* Quantlab Entities—Quantlab Securities, LP ("QLS") and Quantlab Trading Partners, LP ("QTP").

4. Although counsel for QTPUS made clear to counsel for the Trust during the Rule 2004 discovery process, long before any complaint was filed in this adversary proceeding, that QLS and QTP were wholly different entities, the Trust has sued only QTPUS. The Amended Complaint purports, additionally, to describe QTPUS as having the alternative names of QLS and QTP—describing QTPUS as "Quantlab Trading Partners U.S., L.P. a/k/a Quantlab Securities, L.P a/k/a Quantlab Trading Partners, L.P."

5. While neither QLS nor QTP were named as defendants, the Quantlab Protocol submission showed that even if they were, they should be dismissed. QLS is a "dissolved entity" under Delaware law and therefore cannot be sued, and QTP is a "financial participant" under Section 101(22A)(A) and thus protected from the Trust's avoidance claims by the Section 546(e) "safe harbor."

6. Following a series of meet and confers, the Trust has now finally agreed not only that QTPUS is a non-transferee, but also that QLS is a dissolved entity that would be entitled to dismissal and that QTP is a financial participant. Nevertheless, the Trust still maintains its position that QTP is a defendant and would not be entitled to dismissal. That is because, notwithstanding this Court's holding in its September 5, 2024 *Memorandum Opinion and Order*, D.I. 460 (the "Dismissal Opinion"), the Trust insists the Share Repurchases were neither "settlement payments" nor "transfers made in connection with a securities contract" and thus not "qualifying transactions."

7. It is this final position that has led the Trust to refuse to enter into the stipulation provided in the Protocol Order for dismissal of non-transferee QTPUS—again, the only Quantlab

entity named as a defendant in this case. The Trust demands that any stipulation dismissing QTPUS from this action *must* include language authorizing the Trust to file a further amended complaint (beyond the deadline entered by this Court for serving the complaint) naming the separate entity QTP as a defendant.

8. The Trust's position is untenable. To begin, the parties' dispute over whether the Trust properly named QTP as a defendant by listing it as an "a/k/a" name of QTPUS is completely irrelevant to QTPUS's entitlement to dismissal as a non-transferee under the Protocol Order. Under that order, if the Trust agrees that a Defendant should be dismissed from the Adversary Proceeding, it *must* file the stipulation attached thereto as Appendix B. Although not necessary, QTPUS offered a compromise position, whereby it would agree to include language in the stipulation making clear that the parties have a dispute regarding the status of QTP and that the stipulation is not intended to address that dispute. But the Trust rejected that proposal, unfortunately necessitating this Motion.

9. The Trust's concern is also flatly wrong on the law. Listing a distinct legal entity as a mere "a/k/a" or as a trade name of an actually named defendant is ineffective under the Federal Rules of Civil Procedure to name the separate entity as a defendant. So, there is no legal basis for the Trust's assertion that QTP (or QLS for that matter) is a party, and thus no basis for asserting that position as an obstacle to dismissal of QTPUS.

10. Moreover, even if QTP (or QLS) were properly named as defendants in this action (they are not), each would be entitled to dismissal in its own right, making the Trust's refusal to stipulate to the dismissal of QTPUS entirely unwarranted.

11. *First*, QTP would be entitled to dismissal because both requirements of the Section 546(e) safe harbor are satisfied here. As this Court held in the Dismissal Order, the Share

Repurchases are "settlement payments" and thus "qualifying transactions." And, as the Trust agrees, QTP is a financial participant and thus a "qualifying participant." QTP provided the Trust with evidence in the form of sworn declarations, internal trading data, broker statements, and copies of swap agreements confirming that on a statutorily relevant date, QTP had outstanding equity swap positions with notional amounts exceeding $1 billion.

12. *Second*, to the extent QLS is even relevant, the Trust agrees it is a "dissolved entity" under applicable Delaware law.

13. For all these reasons, the Court should grant the Motion and enter an order dismissing QTPUS from this Adversary Proceeding. And, if the Court were to agree with the Trust that the Trust named QLS and QTP as defendants, then the Court should enter an order dismissing those two entities as well.

BACKGROUND

I. The Quantlab Entities

14. The Trust named "Quantlab Trading Partners U.S., L.P. a/k/a Quantlab Securities, LP a/k/a Quantlab Trading Partners, L.P." as a single defendant in this action, but QTP is (and, in the case of QLS, it was) a separate and distinct legal entity from QTPUS. *See* Am. Compl., D.I. 209 ¶ 74.

15. QTPUS is a Delaware limited partnership managed by QCM Cayman, Ltd. ("QCMC"). *See* Levine Decl., Ex. 5 ¶ 4 & Ex. B at 1.

16. QLS was a Delaware limited partnership and broker-dealer registered with the U.S. Securities and Exchange Commission ("SEC"). *Id.*, Ex. 2 ¶ 4. QLS provided order routing and executing brokerage services strictly on an agency basis to its sole customer, QCMC. *Id.* On October 21, 2021, the Secretary of State of Delaware issued the *State of Delaware Certificate of*

Cancellation of Certificate of Limited Partnership of QLS, meaning that as of that date, QLS was a dissolved limited partnership under Delaware law. *Id.*, Ex. 2 ¶ 7 & Ex. A.

17. QTP is a Cayman Islands exempted limited partnership. *Id.*, Ex. 2 ¶ 5. QCMC is QTP's general partner and investment adviser. *Id.*

II. The Mallinckrodt Share Repurchases and the Protocol Order

18. QTP incorporates by reference paragraphs 10 through 17 of the *Motion to Dismiss the Amended Complaint as to Defendants Citadel Securities LLC and Susquehanna Securities, LLC Pursuant to the Protocol Order Relating to Conduits, Non-Transferees, "Stockbrokers," "Financial Institutions," "Financial Participants," and Dissolved Entities*, filed on December 8, 2023 at Docket No. 215 in the Adversary Proceeding.

III. The Quantlab Entities' Protocol Submission

19. On October 11, 2023, the Quantlab Entities made an initial submission to the Trust pursuant to the Protocol Order. *See* Levine Decl., Exs. 1 & 2. The Quantlab Entities showed in that submission that (1) QTPUS was not a transferee with respect to the alleged sales of Mallinckrodt stock identified in Exhibit B to the Complaint; (2) QLS was a dissolved entity under Delaware law and was also not a transferee; and (3) QTP, the entity that would have received any alleged proceeds, was a financial participant and thus protected from the Trust's avoidance action by the Section 546(e) safe harbor. *See generally id.*, Exs. 1 & 2. The initial submission included the following supporting documentation:

- A sworn declaration from the Director of Trading and Operations at Quantlab Financial, LLC attesting that "[n]either [QLS] [n]or [QTPUS] owned or held an interest as beneficial owner in the Mallinckrodt stock allegedly sold by each entity," that neither QLS nor QTPUS "receive[d] the proceeds of such alleged sales," and that identified QTP as the accountholder that would have received any of the alleged proceeds of sales of Mallinckrodt stock; *id.*, Ex. 2 ¶ 6; and
- Internal trading data identifying non-affiliate equity swap positions exceeding $1 billion; *id.* Ex. 2 ¶ 9 & Ex. C.

The initial protocol submission also reminded the Trust that on September 1, 2022, in response to a Rule 2004 subpoena served by the Trust, counsel for the Quantlab Entities had explained to counsel for the Trust that QLS was a dissolved entity and that QTP was the "shareholder" associated with the trades listed in the subpoena. *See* Levine Decl., Ex. 1 at Ex. A, MDTII_Quantlab Trading Partners LP_00000002.

20. The Trust responded to the Protocol submission on November 21, 2023, requesting additional information and documentation from the Quantlab Entities. Levine Decl., Ex. 3. On January 4, 2024, the Quantlab Entities responded with a supplemental submission. *See id.*, Exs. 4 & 5. The Quantlab Entities provided a second sworn declaration and additional supporting documentation that included, among other information:

- QCMC's Form ADV and brochure filed with the SEC that explained the relationship between all of the relevant Quantlab Entities, *id.*, Ex. 5 ¶ 4 & Exs. A, B;
- Statements from each of QTP's primary swap dealers disclosing the notional amounts of QTP's swap positions as of March 30, 2020, *id.*, Ex. 5 ¶ 6 & Ex. C;
- Information concerning the form ISDA master agreements entered into between QTP and its primary swap dealers associated with its equity swap positions, *id.*, Ex. 5 ¶ 7; and
- QTP's audited financial statements for the year ending December 31, 2019, and December 31, 2020, *id.*, Ex. 5 ¶ 13 & Exs. D, E.

21. On February 16, 2024, the Trust sent a letter to the Quantlab Entities refusing to dismiss any of them from the Adversary Proceeding. *See* Levine Decl., Ex. 6. The Trust did not explain why it was refusing to dismiss QTPUS, noting only in a footnote that it lacked sufficient information from which to conclude that QTPUS was not a transferee. *See id.*, Ex. 6 at 1 n.1. The Trust also did not explain why it believed QLS, as a dissolved entity, could be a defendant consistent with the Protocol Order. *Cf. id.* As to QTP, the Trust claimed that the evidence failed to establish a Section 546(e) safe harbor defense because (a) the Share Repurchase Transactions

were not settlement payments or transfers made in connection with a securities contract, and thus not qualifying transactions, as they were "void" under Irish law, and (b) the Trust lacked information necessary to "verify" that QTP had non-affiliate swap positions with notional amounts exceeding $1 billion. *Id.*, Ex. 6 at 2-8.

22. The Quantlab Entities continued to engage with the Trust in the hopes of narrowing the issues requiring resolution by the Court. Over the next eight months, while this Court considered the bellwether Protocol Motions brought by other Defendants, the Quantlab Entities made additional supplemental submissions, providing the Trust with copies of ISDA master agreements and trade confirmations associated with QTP's outstanding swap positions and three more sworn declarations attesting that, among other things, QTPUS "did not own or hold an interest as beneficial owner in the Mallinckrodt stock identified in Exhibit B to the Amended Complaint" and that it did not "receive the proceeds of such alleged sales." Levine Decl., Ex. 11 ¶ 7; *see also id.*, Exs. 7, 8, 9, 10, 11, 13, 15 & 16.

23. Based on these submissions, the Trust eventually agreed that (a) QTPUS was not a transferee and was entitled to dismissal under the Protocol Order, *see* Levine Decl., Ex. 12; (b) QLS was a dissolved entity and therefore could not be sued, *see id.*; and (c) QTP was a financial participant, *see id.*, Ex. 17. The Trust, however, maintained that the Share Repurchases were not qualifying transactions, and thus QTP was not protected from the Trust's avoidance action by the Section 546(e) safe harbor. *See id.*, Ex. 14 at 3 n.7; *see also id.*, Ex. 17 at 1.

24. While the parties agreed that QTPUS should be dismissed, they could not agree on the form of the stipulation dismissing QTPUS from the Adversary Proceeding. The dispute centered on whether the Trust had properly named QTP as a defendant by listing it as an "a/k/a" name of QTPUS. On June 6, 2024, counsel for the Trust sent undersigned counsel a draft

stipulation of dismissal that departed from the stipulation attached as Appendix B to the Protocol Order in significant ways. *See* Levine Decl., Ex. 12. The draft conditioned QTPUS's dismissal on an agreement that QTP would be named as a defendant in a further amended complaint. *See id.* Undersigned counsel and counsel for the Trust met and conferred on July 16, 2024 to discuss the stipulation. *See id.*, Ex. 18. During and after that meet and confer, undersigned counsel proposed that the Trust file a stipulation substantially in the form of Appendix B to the Protocol Order that included the following language: "Counsel for Plaintiff and Defendants disagree whether Quantlab Trading Partners, LP was properly named as a defendant in the operative Amended Complaint []. Counsel for Plaintiff and Defendants . . . agree that this stipulation of dismissal does not address that issue. Counsel for Plaintiff and Defendants further agree that by this Stipulation, Plaintiff does not intend to dismiss and does not dismiss any party other than [QTPUS] and Q[L]S." *See id.*

25. On August 16, 2024, the Trust sent undersigned counsel a revised stipulation, which reverted to the Trust's prior draft from June 6, 2024 and conditioned QTPUS's dismissal on the filing of a further amended complaint naming QTP as a defendant. Levine Decl., Ex. 18. After a final meet and confer of counsel on October 9, 2024, the parties agreed they were at an impasse, necessitating the filing of this Motion. *Id.*, Ex. 19.

ARGUMENT

I. The Court Should Dismiss QTPUS Because It Is A Non-Transferee

26. This Court should dismiss QTPUS because, *as the Trust agrees*, QTPUS was not a transferee with respect to the alleged Share Repurchases.

27. Section 550 of the Bankruptcy Court provides that a trustee may only recover an avoided fraudulent transfer from either a "transferee" or the entity for whose benefit the debtor made the transfer. *See* 11 U.S.C. § 550(a). To satisfy Section 550, the trustee must show that the

defendant "had, at some point, been in physical possession of the proceeds," or that the defendant received an "actual, quantifiable, and accessible benefit" from the transfer. Dismissal Order at 6-7 (citing *In re Samson Res. Corp.,* 2022 WL 3135288, at *7 (Bankr. D. Del. Aug. 4, 2022), and *Leonard v. First Com. Mortg. Co. (In re Circuit All., Inc.)*, 228 B.R. 225, 234 (Bankr. D. Minn. 1998)).

28. Neither is the case here. QTPUS provided the Trust with sworn declarations attesting that it "did not own or hold an interest as beneficial owner in the Mallinckrodt stock identified in Exhibit B to the Amended Complaint," and that it did not "receive the proceeds of such alleged sales." Levine Decl., Ex. 11 ¶ 7; *see also id.*, Ex. 2 ¶ 6. The Trust has finally agreed, so the Court should enter an order dismissing QTPUS from this action.

29. The Trust only refuses to dismiss QTPUS because QTPUS will not agree, as a condition of dismissal, to allow the Trust to file an amended complaint naming a different entity, QTP, as a defendant. That is not a basis for refusing to dismiss QTPUS from the Adversary Proceeding. The Protocol Order required the Trust to file the stipulation attached to the order as Appendix B dismissing a non-transferee like QTPUS from the Adversary Proceeding. The Order is clear: "Plaintiff *shall* . . file a notice of dismissal (without prejudice) pursuant to Fed. R. Civ. P. 41 in the form of Appendix B to this Protocol." D.I. 185-1 ¶ 9 (emphasis added). That the Trust purported to describe QTPUS as being alternatively known as QTP is irrelevant. Nothing in the Protocol Order allows the Trust to condition a non-transferee's dismissal on anything having to do with a different legal entity. Indeed, nothing in the Protocol Order allows the Trust to condition a non-transferee's dismissal on anything other than what is expressly contained in the Appendix B stipulation.

30. Moreover, the Trust's position is completely unreasonable given QTPUS's offer during the July 16, 2024 meet and confer. While it was under no obligation to do so, QTPUS proposed a compromise position to the Trust, offering to include language in the stipulation making clear that QTPUS's dismissal would not impact the parties' dispute regarding the status of QTP as a defendant. *See* Levine Decl., Ex. 18. The Trust rejected that language and continued to demand that QTPUS stipulate to the filing of a further amended complaint naming QTP as a defendant. *See id.* To this day, counsel for the Trust has never provided any explanation why that compromise was insufficient. Thus, QTPUS unfortunately was left with no choice but to file this Motion.

A. The Trust Has Not Named QTP As A Defendant

31. While the Trust's agreement that QTPUS is a non-transferee is wholly sufficient, standing alone, to require QTPUS's dismissal from this case, and while the argument in Paragraphs 26-30, *supra*, shows why the Trust's refusal to enter into the Appendix B stipulation was unwarranted and unreasonable, the Trust's underlying position regarding QTP is also flatly wrong. Merely listing QTP as an "a/k/a" name of QTPUS did not make that separate entity a defendant in this case.

32. To begin, the Trust's naming of QTPUS as "Quantlab Trading Partners U.S., L.P. a/k/a Quantlab Securities, LP a/k/a Quantlab Trading Partners, L.P." is insufficient under Rule 4(a) of the Federal Rules of Civil Procedure. Rule 4(a) requires that "[a] summons must . . . name . . . the parties . . . [and] be directed to the defendant." Fed. R. Civ. P. 4(a)(1)(A), (B). If the summons contains "errors in naming the proper defendant," the complaint is subject to dismissal under Rule 12(b)(4). *Trytko v. US Bank Home Mortg.*, 2018 WL 4088941, at *3 (N.D. Ind. Aug. 10, 2018); *see also Aalampour v. Wal-Mart Stores E., LP*, 2024 WL 3860950, at *2-3 (N.D. Ind. Aug. 19,

2024) (dismissing complaint where defendant served wrong legal entity at wrong address).[2] Here, the Trust sued a single defendant while asserting (wrongly) that the defendant used alternative names. The Trust did not sue three defendants. As a result, the summons did not "name . . . the parties" in interest and could not be "directed to" QTP. The certificate and supplemental certificate of service filed by the Trust confirm this. The only entities named in the summons are Quantlab Trading Partners US LP a/k/a Quantlab Securities LP," D.I. 233-1, and "Quantlab Trading Partners U.S., L.P.", D.I. 236, and nowhere does the summons mention QTP, *see* D.I. 233-1, 236.

33. Likewise, the Trust's naming of "Quantlab Trading Partners U.S., L.P. a/k/a Quantlab Securities, LP a/k/a Quantlab Trading Partners, L.P." is insufficient under Rule 4(b), which provides that a "copy of a summons that is addressed to multiple defendants . . . must be issued for each defendant to be served." Fed. R. Civ. P. 4(b). The Trust's naming of only a single defendant, while purporting to assert (wrongly) that it also went by different names, and the Trust's failure to sue QTP as a defendant in its own right, meant that a summons also could not be "issued" and "served" on QTP. Again, the Trust's certificate and supplemental certificate of service confirm this. The executed summons named QTPUS as the sole entity sued, and nowhere do the certificates mention that QTP was served with separate summons. *See* D.I. 233-1, 236.

34. The Trust's failure to comply with Rule 4 ends any assertion that the complaint somehow named QTP as a defendant. "Fed. R. Civ. P. 4 sets forth the procedure by which a court obtains personal jurisdiction over the defendant . . . As the Commentaries to the Rule point out, the Rule is comprehensive and 'a mistake in its use can be fatal.'" *Ayres v. Jacobs & Crumplar, P.A.*, 99 F.3d 565, 569 (3d Cir. 1996) (quoting Fed. R. Civ. P. 4, 28 U.S.C. Practice Commentary

[2] *See also Wasson v. Riverside Cnty.*, 237 F.R.D. 423, 424 (C.D. Cal. 2006) (similar); *cf. Strahan v. Phibbs*, 2024 WL 4039806, at *2 (E.D. Mo. Sept. 4, 2024) (vacating default judgment where plaintiff named wrong defendant in violation of Rule 4(a)(1)(B)).

C4-1 (1992 & Supp. 1996)). A plaintiff's "fail[ure] to substantially comply with Rule 4(a)" means that "personal jurisdiction is lacking," *Flippo v. Daffin*, 2016 WL 10933002, at *2 (S.D. Fla. Nov. 17, 2016), so courts routinely dismiss actions or vacate judgments where the plaintiff fails to comply with Rule 4's requirements, *see, e.g.*, *Phillips v. Cap. Internal Med. Assocs., P.C.*, 2023 WL 8467789, at *2-3 (W.D. Mich. Dec. 7, 2023) (vacating judgment where plaintiff failed to name party sought to be added as a separate defendant); *Bowman v. Sanofi-Aventis U.S.*, 2009 WL 5083431, at *2 (W.D. Tex. Apr. 16, 2009) (dismissing case where defendant incorrectly named corporate entity in summons). Whatever the Trust hoped to accomplish then, its naming of "Quantlab Trading Partners U.S., L.P. a/k/a Quantlab Securities, LP a/k/a Quantlab Trading Partners, L.P." as the sole Quantlab defendant could not establish personal jurisdiction over QTP.

35. While the plain text of the Rules is enough, case law confirms that the Trust's naming of QTP as a purported "a/k/a" name of QTPUS fails to render QTP an actual defendant. Courts routinely dismiss claims when they rely on having named separate and distinct entities merely as "a/k/a" or trade names of a defendant. *See, e.g.*, *Ochoa v. Tex. Metal Trades Council*, 989 F. Supp. 828, 832-33 (S.D. Tex. 1997) (dismissing complaint where plaintiff "attempt[ed] to bootstrap [the correct entities] into this action by using 'AKA' in his First Amended Complaint"); *Innocent v. Palm Beach Cnty. Workforce Dev. Consortium*, 2021 WL 7082830, at *3 (S.D. Fla. Oct. 22, 2021) (similar, where plaintiff was aware before naming new entity as "aka" of defendant that they were distinct legal entities); *TCB Auto Detailing & Cleaning Servs., Inc. v. IAA Servs., Inc.*, 2022 WL 22328957, at *2 (C.D. Cal. Nov. 2, 2022) (denying motion to amend complaint to add new entity listed as "aka" of named defendant).

36. These cases are particularly instructive here. In *Ochoa v. Texas Metal Trades Council*, the court dismissed the plaintiff's amended complaint, which attempted to name a local

union and its parent organization as a single string of "aka" names. *See* 989 F. Supp. 832-33. The court was "genuinely irritated" that the plaintiff had "attempt[ed] to bootstrap" the proper defendants in the action by merely "using 'AKA' in his First Amended Complaint," noting that "[m]anifest procedural defects such as suing an improper party cannot be cured by unilaterally mixing and matching monikers without regard to factual reality." *Id.* at 832.

37. Likewise, in *TCB Auto Detailing and Cleaning Services, Inc. v. IAA Services, Inc.*, the court rejected the plaintiff's attempt to add a separate and distinct legal entity as a new defendant merely by listing it as an "aka" name of the original defendant. *See* 2022 WL 22328957, at *1-2. The court noted that plaintiff "does not cite any legal authority to establish that a non-party that is a separate and distinct legal entity may be added as a defendant to an action simply by naming it as an 'aka' of a current defendant," and held, "[t]o the contrary, the Federal Rules of Civil Procedure make clear that each defendant must be named in the operative complaint and served in its own right, for the court to have jurisdiction over that entity." *Id.* at *2 (citing Fed. R. Civ. P. 4, 5, 8). In *Innocent v. Palm Beach County Workforce Development Consortium*, the court similarly dismissed the plaintiff's complaint because it listed separate and distinct legal entities as "a/k/a" names of a single defendant. 2021 WL 7082830, at *3. The court held that an incorporated entity listed as an "aka" name of a separate corporation could not plausibly be the defendant's trade name and chastised the plaintiff for failing to "exert[] the minimal effort required to name a separate Defendant and issue proper summons," despite knowing that each of the parties was a separate and distinct legal entity. *Id.*

38. Here, there can be no dispute that QTPUS, QLS and QTP are separate and distinct legal entities. QTPUS is a limited partnership organized under the laws of Delaware, *see* Levine Decl., Ex. 5 ¶ 4 & Ex. B at 1, QLS is a dissolved limited partnership, *id.*, Ex. 2 ¶ 7 & Ex. A, and

QTP is an exempted limited partnership under the laws of the Cayman Islands, *id.*, Ex. 2 ¶ 5. Thus, the Trust cannot merely "bootstrap" all three entities as defendants merely by listing them as "a/k/a" names of one another. *Ochoa*, 989 F. Supp. 832-33.

39. Indeed, the Trust knew all of this before filing the Complaint and Amended Complaint. On September 1, 2022, in response to the Trust's Rule 2004 subpoena, counsel for the Quantlab Entities explained to the Trust that QLS was a dissolved broker-dealer entity that offered trade execution services to its sole client, QCMC; and that QTP, not QTPUS, would have been the selling shareholder with respect to all of the trades in Mallinckrodt stock identified in the Trust's subpoena. *See* Levine Decl., Ex. 1 at Ex. A, MDTII_Quantlab Trading Partners LP_00000002. Yet, the Trust went ahead and named QTPUS and QLS as defendants in its October 12, 2022 complaint. *See* Compl., D.I. 4-1.

40. The Quantlab Entities explained all of this to the Trust again in the October 11, 2023 protocol submission. *See* Levine Decl., Exs. 1 & 2. The submission attested that QTPUS did not receive the proceeds of any of the sales of Mallinckrodt stock identified in the Complaint, that QLS was a dissolved broker-dealer entity, and that QTP was the sole shareholder. *See generally id.* The Trust again ignored this information, naming "Quantlab Trading Partners U.S., L.P. a/k/a Quantlab Securities, LP a/k/a Quantlab Trading Partners, L.P." as the sole Quantlab defendant in its October 24, 2023 Amended Complaint. *See* Am. Compl., D.I. 209 ¶ 74. Much like plaintiffs in the other cases described above, the Trust's failure to "exert[] the minimal effort required to name [QTP] and issue proper summons" means the Trust failed to actually join QTP as a defendant. *Innocent*, 2021 WL 7082830, at *3.

II. Even If QLS's And QTP's Statuses Were Relevant, They Are Entitled To Dismissal Too

41. Even if QLS's and QTP's statuses were relevant, they would be entitled to dismissal under the Protocol Order too.

42. QLS is a dissolved Delaware limited partnership that cannot be sued. *See* Levine Decl., Ex. 2 ¶ 7 & Ex. A. Under Delaware law, an entity that has received a certificate of cancellation from the Secretary of State cannot be sued. *See* Del. Code Ann. 6, § 17-803(b); *see also id.* § 18-803(b); *Metro. Commc'n Corp. BVI v. Advance Mobilecomm Techs. Inc.*, 854 A.2d 121, 138, 139 n.24 (Del. Ch. 2004) ("absent statutory authority, no claim may be brought against a dissolved entity," including limited partnerships); *Holliday v. K. Road Power Mgmt., LLC (In re Bos. Generating LLC)*, 617 B.R. 442, 495 (Bankr. S.D.N.Y. 2020) (same), *aff'd sub nom. Holliday v. Credit Suisse Sec. (USA) LLC,* 2021 WL 4150523 (S.D.N.Y. Sept. 13, 2021). The Secretary of State issued QLS a certificate of cancellation on October 21, 2021, almost a year prior to the filing of the initial Complaint. *See* Levine Decl., Ex. 2 ¶ 7 & Ex. A. The Trust does not dispute this, nor does the Trust dispute that QLS would be entitled to dismissal under the Protocol Order.

43. Likewise, QTP would be entitled to dismissal because it is protected by the Section 546(e) safe harbor. Under Section 546(e), a trustee cannot avoid "a transfer that is a . . . settlement payment . . . or . . . transfer . . . in connection with a securities contract" "made by or to (or for the benefit of) a . . . financial participant." 11 U.S.C. § 546(e). The safe harbor applies if two requirements are met: (1) there is a "qualifying transaction" (e.g., a settlement payment or a transfer made in connection with a securities contract); and (2) there is a "qualifying participant" (e.g., financial participants). *See* Dismissal Order at 8 (citing *In re Nine W. LBO Sec. Litig.*, 482 F. Supp. 3d 187, 197 (S.D.N.Y. 2020), *aff'd in relevant part by Kirschner v. Robeco Cap. Growth*

Funds - Robeco BP U.S. Premium Equities (In re Nine W. LBO Sec. Litig.), 87 F.4th 130 (2d Cir. 2023)).

44. As this Court held, the Share Repurchases were "settlement payments" and thus qualifying transactions for purposes of the Section 546(e) safe harbor, *see* Dismissal Order at 9-13, so the first requirement of the safe harbor defense is satisfied here.

45. And, as the Trust agrees, QTP is a financial participant and thus a qualifying participant. QTP provided the Trust with several sworn declarations, internal trading data, broker statements, and copies of ISDA Master Agreements and trade confirmations showing that as of December 31, 2019, QTP had outstanding non-affiliate equity swap positions with gross notional amounts exceeding $1 billion. *See* Levine Decl. Exs. 2, 5, 8, 11, 16. Based on those submissions, the Trust has stated that it does not dispute that QTP is a financial participant. *Id.*, Ex. 17 at 1. The second requirement of the safe harbor defense is therefore met.

46. To be sure, the Trust refuses to agree that QTP would be entitled to dismissal because it continues to maintain its position that the Share Repurchases were "void" under Irish law and, hence, are not qualifying transactions. *See* Levine Decl., Ex. 17 at 1-2. But that argument was correctly rejected by the Court in the Dismissal Order. This Court recognized that under binding Third Circuit precedent, the term settlement payment is "extremely broad" and includes any "transfer of cash or securities made to complete a securities transaction." Dismissal Order at 9, 13 (quoting *Lowenschuss v. Resorts Int'l, Inc. (In re Resorts Int'l, Inc.)*, 181 F.3d 505, 515 (3d Cir. 1999), *abrogated in part on other grounds by Merit Mgmt. Grp., LP v. FTI Consulting, Inc.*, 138 S. Ct. 883 (2018)). Applying that precedent, the Court held that the Share Repurchases, which involved the payment of cash for stock, are settlement payments and thus qualifying transactions for purposes of the Section 546(e) safe harbor. *See id.* at 13. The Court also correctly declined to

follow *Enron Corp. v. Bear, Stearns Int'l Ltd. (In re Enron Corp.)*, 323 B.R. 857 (Bankr. S.D.N.Y. 2005) ("*Enron I*"), because *Enron I* is not good law even in its own Circuit in light of the Second Circuit's subsequent decision in *Enron Creditors Recovery Corp. v. Alfa, S.A.B. de C.V.*, 651 F.3d 329 (2d Cir. 2011) ("*Enron II*"), and because the transfers at issue in *Enron I* were factually distinguishable from the Share Repurchases. *See* Dismissal Order at 10-12.

47. The Trust offers no basis to reconsider that decision—because there is none. While the Trust may disagree with the Court's ruling in the Dismissal Order and want a "second bite at the apple," *Pagan v. Dent*, 2024 WL 643264, at *2 (M.D. Pa. Feb. 15, 2024) (quoting *Qazizadeh v. Pinnacle Health Sys.*, 214 F. Supp. 3d 292, 295-96 (M.D. Pa. 2016)), that is not a valid basis for reconsideration, *see Chesapeake Appalachia, L.L.C. v. Scout Petroleum, LLC*, 73 F. Supp. 3d 488, 491 (M.D. Pa. 2014), *aff'd,* 809 F.3d 746 (3d Cir. 2016); *see also Pagan*, 2024 WL 643264, at *2. Likewise, the Trust's letter refusing to recognize QTP's Section 546(e) defense identifies no new controlling authority the Court may have overlooked in the Dismissal Order, it points to no new evidence that was unavailable to the Court at the time of the Dismissal Order, and identifies no "clear error of law" or "manifest injustice" caused by the Dismissal Order. *See Lazaridis v. Wehmer*, 591 F.3d 666, 669 (3d Cir. 2010). Regardless, the Dismissal Order is the law of the case, so it should apply here. *McDuffy v. Marisco*, 572 F. Supp. 2d 520, 524 (D. Del. 2008) ("[W]hen a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." (internal quotations omitted)).

CONCLUSION

48. For all these reasons, the Court should grant QTPUS's motion for summary judgment and enter an order dismissing QTPUS from this Adversary Proceeding with prejudice. Additionally, if the Court were to agree with the Trust that the Trust named QLS and QTP as defendants, then the Court should enter an order dismissing those two entities as well.

Dated: November 25, 2024
Wilmington, Delaware

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