

accordance with section 105(a) of the Bankruptcy Code, Rules 4(m) and 15(c) of the Federal Rules of Civil Procedure (“**Civil Rules**”), and Rules 7004, 7015, and 9006 of the Federal Rules of Bankruptcy Procedure (“**Bankruptcy Rules**”), further enlarging the time to effectuate service of process (“**Service Deadline**”) of the complaint (as amended, “**Complaint**”) initiating the above-captioned adversary proceeding (“**Proceeding**”). The grounds supporting this Motion are as follows:

PRELIMINARY STATEMENT

The Trust seeks a further extension of the Service Deadline to allow additional time for Defendants to utilize the approved dismissal protocol [Adv. D.I. 185-1] (“**Protocol**”) to assert conduit, non-transferee, and stockbroker defenses (collectively, “**Conduit Defenses**”), the assertion of which would require Defendants to provide the Trust with the identities of additional recipients or ultimate transferees of proceeds from the share repurchase transactions described in the Complaint (such transactions, “**Share Repurchases**” and such information “**Shareholder Identifying Information**”). In an effort to facilitate the Trust’s prompt receipt of Shareholder Identifying Information, and to avoid the need for boundless requests to further extend the Service Deadline, the Trust filed the *Motion for Leave to Serve Limited Interrogatories on Defendants* [Adv. D.I. 245] (“**Discovery Motion**”) shortly after filing the *Fifth Motion of the Opioid Master Disbursement Trust II for Entry of an Order Further Enlarging the Time to Effectuate Service of Process* [Adv. D.I. 237] (together with the exhibits thereto, “**Fifth Service Deadline Extension**”).

Request”).³ As of the date hereof, both the Discovery Motion and the Fifth Service Deadline Extension Request remain pending, thus necessitating the filing of this Motion.

By the Discovery Motion, the Trust seeks this Court’s leave to conduct targeted discovery on Defendants to require those Defendants to provide the Trust with the identities of the recipients of the repurchased Mallinckrodt shares. Once Defendants provide the Trust with this information, the Trust can determine whether it should name those newly identified transferees as defendants and file a second amended complaint. The Trust thus needs an extension of the Service Deadline so that if the Discovery Motion is ultimately granted, the Trust has time to conduct the targeted discovery, identify and name any new defendants, and obtain relation back under Civil Rule 15 as to those new defendants. Accordingly, the Trust seeks to further extend the Service Deadline to October 8, 2024⁴ so that any additional Defendants identified as part of any asserted Conduit Defenses can be named and served without having claims against them be potentially barred by the statute of limitations.

JURISDICTION

1. This Court has subject-matter jurisdiction to hear and decide this Motion under 28 U.S.C. §§ 157 and 1334, and Article X.F. of the Plan. This Motion constitutes a core proceeding under 28 U.S.C. § 157(b). Under Local Rule 9013-1(f), the Trust consents to the entry of a final order by this Court in connection with this Motion if it is later determined that the Court, absent the

³ The factual background, arguments, and authority set forth in the Fifth Service Deadline Extension Request are incorporated by reference into this Motion as if fully set forth herein. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Fifth Service Deadline Extension Request.

⁴ Because the Trust’s Fifth Service Deadline Extension Request, which it filed four months ago, is still pending, the Trust requests an extension of the service deadline for six months—as opposed to the 90 days it previously sought—to conserve the Trust’s and Court’s resources in connection with filing and adjudicating a potential additional motion between now and October 8, 2024.

parties' consent, cannot enter final orders or judgments on the Motion consistent with Article III of the United States Constitution.

2. Venue in this District is proper under 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are section 105(a) of the Bankruptcy Code, Civil Rules 4(m) and 15(c), and Bankruptcy Rules 7004, 7015, and 9006.

BACKGROUND

4. The factual background set forth in the Fifth Service Deadline Extension Request is incorporated by reference into this Motion as if fully set forth herein.

5. On January 5, 2024, the Trust filed the Fifth Service Deadline Extension Request seeking to extend the Service Deadline to April 8, 2024. *See* Adv. D.I. 237. Although the Trust previously completed its initial investigation under Bankruptcy Rule 2004 into the identities of the shareholders that engaged in Share Repurchases, the Trust sought a further extension of the Service Deadline to allow additional time for existing Defendants to assert Conduit Defenses and provide the Shareholder Identifying Information required under the Protocol.

6. To facilitate the Trust's prompt receipt of Shareholder Identifying Information, the Trust filed the Discovery Motion on January 11, 2024. *See* Adv. D.I. 245. By the Discovery Motion, the Trust sought leave to serve a limited set of interrogatories on Defendants to determine whether any of them hold as-yet unasserted Conduit Defenses and to require those Defendants to provide the Trust with the Shareholder Identifying Information required under the Protocol.

7. On January 26, 2024, certain Defendants filed objections and joinders to the Fifth Service Deadline Extension Request and Discovery Motion (collectively, "**Objections**"). *See* Adv. D.I. 276, 277, 278, 280, 282, 283.

8. On February 8, 2024, the Trust filed a reply in support of the Fifth Service Deadline Extension Request and Discovery Motion and in response to the Objections. *See* Adv. D.I. 329.

9. On February 22, 2024, the Trust filed the *Notice of Completion of Briefing Regarding (I) Fifth Motion of the Opioid Master Disbursement Trust II for Entry of an Order Further Enlarging the Time to Effectuate Service of Process and (II) Motion for Leave to Serve Limited Interrogatories on Defendants* [Adv. D.I. 352]. Both the Fifth Service Deadline Extension Request and Discovery Motion remain pending as of the date hereof.

RELIEF REQUESTED

10. By this Motion, the Trust seeks entry of an Order, substantially in the form attached hereto as **Exhibit A**, further extending the Service Deadline for six months to October 8, 2024, without prejudice to the Trust's ability to seek further extensions of the Service Deadline.⁵

BASIS FOR RELIEF

11. The Trust incorporates the arguments and authority in support of the Fifth Service Deadline Extension Request as if fully set forth herein.

12. The Trust has shown good cause under Civil Rule 4(m) to receive an extension of the Service Deadline. The Trust's efforts to identify proper share repurchase defendants remains ongoing only to the extent that defendants have not come forward and asserted Conduit Defenses. To date, the Trust has been unable to identify all those who might assert Conduit Defenses because the Protocol is voluntary as to Defendants, does not fix a deadline for asserting those defenses, and

⁵ In accordance with Rule 9006-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, the filing of this Motion before the expiration of the Service Deadline automatically extends that deadline until the Court acts on this Motion without the necessity of entering a bridge order. *See* Del Bankr. L. R. 9006-2.

discovery outside of the Protocol is currently stayed. Protocol ¶ 12. To address this issue, and to avoid the need for boundless requests to extend the Service Deadline, the Trust filed the Discovery Motion, which has been fully briefed and is awaiting decision.

13. The Trust has undertaken extraordinary efforts to identify shareholders that participated in the Share Repurchase Program. Despite these good-faith efforts, and through no fault of its own, the Trust still has not been able to identify all the shareholders that were transferees of share repurchase proceeds. This constitutes good cause, and as such, this Court must extend the Service Deadline. *See Teets v. Doe One*, No. 2:20-cv-1334-WSH, 2021 WL 808572, at *2 (W.D. Pa. Mar. 3, 2021) (finding good cause to extend service deadline where plaintiff could not identify or serve the John Doe defendants and sought leave for discovery to uncover their identities); *Friendly Grocery & Gas Station, LLC v. Pan Caribbean Broad. de P.R., Inc.*, No. ST-10-CV-677, 2013 WL 12460440, at *3 (V.I. Sup. Ct. May 24, 2013) (finding good cause to extend service deadline where plaintiffs continued to be unable to serve defendants through no fault of their own because the defendants' identities were still not known).

14. Finally, even if the Court were to find that the Trust's inability to identify all remaining shareholder-defendants to date does not constitute good cause, it should still, in its discretion, extend the Service Deadline. First, the Trust has demonstrated diligence and good faith in attempting to identify the remaining shareholders. *See Shomide v. ILC Dover Inc.*, No. 03-1019-SLR, 2005 WL 8170606, at *2 (D. Del. Aug. 3, 2005) (extending service deadline where even though plaintiff did not show good cause, he demonstrated "reasonable diligence and good faith"). Second, given the 11 U.S.C. § 546(a) limitations issue, a dismissal without prejudice, as Civil Rule 4(m) provides, would effectively constitute a dismissal with prejudice, thereby depriving the Trust

of the right to have its claims adjudicated on the merits, which, as a general principle, courts have been reluctant to do. *See In re Hechinger*, 308 B.R. at 688 (extending service deadline even though plaintiff did not show good cause because the statute of limitations had run). Accordingly, the Court should extend the Service Deadline to allow the Trust additional time to serve the targeted discovery sought in the Discovery Motion (assuming it is granted) and to identify and timely serve additional defendants that benefited from the Share Repurchases.

RESERVATION OF RIGHTS

15. The Trust expressly reserves all rights to object to or oppose any Conduit Defenses asserted by a party or any defenses raised by alleged transferees. When reviewing the information submitted by any party asserting Conduit Defenses, the Trust reserves the right to determine whether that party should be dismissed and whether to add any alleged transferees as additional defendants. By naming alleged transferees as defendants, the Trust does not imply or concede that any party has a valid Conduit Defense or that any party should be dismissed.

NOTICE

16. The Trust has provided notice of this Motion to (a) the United States Trustee for Region 3 and (b) all Defendants in this Proceeding as of the date hereof. The Trust respectfully submits that such notice is adequate and that no other or further notice need be provided.

CONCLUSION

For the reasons explained above, the Court should grant the Motion, enter the Proposed Order, and grant such other and further relief as this Court deems just and proper.

Dated: April 8, 2024
Wilmington, Delaware

Respectfully submitted,

COLE SCHOTZ P.C.

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EXHIBIT A

[Proposed Order]

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

In re:

Chapter 11

MALLINCKRODT PLC,

Case No. 20-12522 (JTD)

Reorganized Debtor.¹

OPIOID MASTER DISBURSEMENT TRUST II,

Plaintiff,

vs.

Adversary Proceeding
No. 22-50435 (JTD)

ARGOS CAPITAL APPRECIATION MASTER
FUND LP, *et al.*,

Defendants.

**ORDER FURTHER ENLARGING THE TIME FOR
PLAINTIFF TO EFFECT SERVICE OF PROCESS**

Upon consideration of the motion (“**Motion**”)² of the Opioid Master Disbursement Trust II (“**Trust**”) for entry of an Order further extending the Trust’s deadline to serve the Complaint; and the Court having found that (1) the Court has jurisdiction for purposes of entering this Order under 28 U.S.C. §§ 157(a) and 1334(b), (2) venue for purposes of entering this Order in this district is proper under 28 U.S.C. § 1409, (3) notice of the Motion was sufficient under the circumstances, and no other or further notice is necessary or required, and (4) granting the extension sought in the

¹ The Reorganized Debtor in this chapter 11 case is Mallinckrodt plc. On May 3, 2023, the Court closed the chapter 11 cases of the Reorganized Debtor’s debtor-affiliates (collectively, “**Debtors**”). A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Reorganized Debtor’s claims and noticing agent at <http://restructuring.ra.kroll.com/Mallinckrodt>. The Reorganized Debtor’s mailing address is 675 McDonnell Blvd., Hazelwood, Missouri 63042.

² Capitalized terms used but not defined herein shall have the meanings ascribed to those terms in the Motion.

Motion (a) is fair and reasonable, (b) is consistent with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the local rules of this Court, (c) will not be prejudicial to the Defendants in this Proceeding, and (d) is appropriate under the circumstances; and the Court having determined that good cause exists for the relief granted herein;

IT IS HEREBY ORDERED as follows:

1. The Motion is **GRANTED**.
2. The time for effectuating service of the summons and complaint in this Adversary Proceeding in accordance with Federal Rules of Bankruptcy Procedure 7004 and 7015 and Federal Rules of Civil Procedure 4(m) and 15(c) is extended and enlarged up to and through October 8, 2024, without prejudice to the Trust's ability to seek further extensions.
3. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
4. The Trust is authorized and empowered to take all actions necessary to implement the relief granted in this Order.
5. The Court shall retain jurisdiction over all matters arising from or related to the interpretation, implementation, or enforcement of this Order.