REDACTED VERSION OF ADV. DOCKET NO. 515

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.	:	**Re: Adv. D.I. 491**

PLAINTIFF'S OPPOSITION TO MOTION OF DEFENDANT QUANTLAB TRADING PARTNERS US, LP FOR SUMMARY JUDGMENT

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Dated: January 17, 2025

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

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Plaintiff, the Opioid Master Disbursement Trust II ("**Trust**"), by and through its undersigned counsel, hereby objects to and opposes (by this "**Opposition**") the 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 [Adv. D.I. 491][2] ("**Motion**"). For the reasons that follow, the Motion should be denied.

PRELIMINARY STATEMENT

The Motion is filled with pages of information and attaches volumes of exhibits explaining why Quantlab Securities, LP ("**Quantlab Securities**") is a dissolved entity and non-transferee, why Quantlab Trading Partners US, LP ("**Quantlab US**") is also a non-transferee, and why Quantlab Trading Partners, LP ("**Quantlab Trading**" and, together with Quantlab Securities and Quantlab US, "**Quantlab**") is a "financial participant," as defined in the Bankruptcy Code. But the Trust does not contest any of these points. The only issues relevant to the Motion are (1) whether the Trust properly named Quantlab Trading as a defendant, and (2) whether there existed a qualifying transaction under 11 U.S.C. § 546(e)—precisely the same issue that the Trust intends to present on appeal.

As to the first issue, the caption in the Trust's Amended Complaint [Adv. D.I. 205] named as defendants "Quantlab Trading Partners U.S., L.P. a/k/a Quantlab Securities, L.P. a/k/a Quantlab Trading Partners, L.P." The summons issued from this Court followed form and identified the Quantlab defendants the same way. *See* Adv. D.I. 233 (incorporating the Amended Complaint by reference); Adv. D.I. 236 (same). Rule 10(a) of the Federal Rules of Civil Procedure ("**Civil**

[2] As used herein, citations to "**D.I. __**" refer to documents filed in *In re Mallinckrodt plc*, No. 20-12522 (JTD) (Bankr. D. Del.). Citations to "**Adv. D.I. __**" refer to documents filed in the above-captioned adversary proceeding.

Rules") requires that a complaint "name all the parties," and Civil Rule 4(a) requires that a summons, *inter alia*, "name the court and the parties[.]" Fed. R. Civ. P. 4(a)(1)(A), 10(a). Sufficiency under Civil Rules 4 and 10—and whether imprecision in naming merits dismissal—turns on whether the naming and pleadings together are sufficient to place the intended defendant on notice and whether the naming imprecision prejudiced the defendant. Technical inaccuracies do not warrant dismissal against a well-notified party who suffered no prejudice.

Here, there can be no dispute that Quantlab Trading was among the entities the Trust intended to sue, and that Quantlab Trading had timely notice of the pleadings. It knew from the content of the pleadings that it was an intended defendant and indeed has responded in this proceeding no differently than if it were the only named Quantlab defendant, including through the submission of a dismissal request under the Court's Protocol Order Relating to Conduits, Non-Transferees, "Stockbrokers," "Financial Institutions," "Financial Participants," and Dissolved Entities [Adv. D. I. 185-1] ("**Protocol**"). Its active participation in this proceeding also evidences that it has suffered no prejudice. Accordingly, Quantlab Trading is a properly named defendant and is not entitled to dismissal simply because it was identified as an "also known as."

As to the second issue, Quantlab Trading's § 546(e) defense requires proof of a "qualifying transaction," which must either be a "settlement payment" or a "transfer made . . . in connection with a securities contract." 11 U.S.C. § 546(e).[3] As the Trust previously argued in response to other defendants' motions to dismiss based on § 546(e) (*see, e.g.*, Plaintiff's Opposition to Motion to Dismiss Citadel Securities and Susquehanna Securities from Amended Complaint, Adv. D.I.

[3] The § 546(e) safe harbor requires proof of both (a) a qualifying transaction and (b) a qualifying participant. *See Opioid Master Disbursement Tr. II v. Covidien Unlimited Co. (In re Mallinckrodt PLC)*, No. 22-50433, 2024 WL 206682, at *14 (Bankr. D. Del. Jan. 18, 2024); *Bankr. Est. of Norske Skogindustrier ASA v. Cyrus Cap. Partners, L.P.* (*In re Bankr. Est. of Norske Skogindustrier ASA*), 629 B.R. 717, 757 (Bankr. S.D.N.Y. 2021). After reviewing the information that Quantlab Trading provided under the Protocol and based on the Court's Memorandum Opinion and Order [Adv. D.I. 460] ("**Opinion**"), the Trust is not challenging Quantlab Trading's status as a qualifying participant.

263, pt. I), the Companies Act 2014 of Ireland ("**Companies Act**" or "**Irish Law**"), which applies to Mallinckrodt under the internal affairs doctrine, provides that share repurchases or redemptions are void *ab initio* when a company does not have profits available for distribution. Here, when Mallinckrodt repurchased its ordinary shares prepetition ("**Share Repurchases**"), it was insolvent because of its substantial opioid liabilities and therefore did not have the required profits available for distribution to repurchase shares. As such, the Share Repurchases were void and therefore cannot serve as qualifying transactions, thus making Quantlab's § 546(e) defense unavailing.

The Trust recognizes that this Court's Opinion determined that the Share Repurchases were qualifying transactions and rejected the Trust's argument to the contrary. The Trust is pursuing an appeal on this issue, and submits this Opposition to make its record, preserve the qualifying transaction issue for appeal, and avoid waiver of its arguments as to Quantlab Trading's status as an adequately named defendant.

FACTUAL BACKGROUND

I. MALLINCKRODT'S OPIOID-RELATED MISCONDUCT AND SHARE REPURCHASE PROGRAM

1. Mallinckrodt and its direct and indirect subsidiaries are a global pharmaceutical enterprise, which, among other things, was the largest producer and seller of opioid medications in the United States, and one of the largest in the world. Amended Complaint [Adv. D.I. 205] ("**Am. Compl.**") ¶ 2.

2. Before entering chapter 11, Mallinckrodt engaged in aggressive and deceptive marketing of opioids. *Id.* ¶¶ 103, 124-34. Mallinckrodt's army of sales representatives were trained to use false and misleading statements to sell opioids. *Id.* ¶¶ 135-38, 142-49. Mallinckrodt also intentionally targeted doctors who were known to be high prescribers of opioids to sell its products and many of those doctors later faced criminal or disciplinary action for overprescribing

opioids. *Id*. ¶¶ 193-226. Mallinckrodt also sought to shift the perception that opioids were dangerous and highly addictive by sponsoring front groups that encouraged prescribers to give patients opioids long-term to treat chronic pain. *Id*. ¶¶ 186-92. And it worked in concert with industry peers to persuade prescribers, patients, and regulators that opioids were safe and effective treatments for chronic pain, despite knowing that opioids were highly addictive and ineffective at treating such pain. *Id*. ¶ 178. Mallinckrodt also failed to implement necessary and required systems to detect and report suspicious orders of opioids. *Id.* ¶¶ 193-236. Mallinckrodt's failure to properly monitor and report suspicious orders resulted in the massive diversion of its opioids to the black market for recreational use and abuse and exposed it to significant legal liability. *Id.* ¶ 215. Mallinckrodt's wrongful conduct led the Drug Enforcement Administration to call it "the kingpin within the drug cartel" of companies driving the opioid epidemic. *Id*. ¶ 2.

3. Mallinckrodt's wrongful acts and omissions ultimately resulted in an "all-consuming tidal wave of litigation," with more than 3,000 lawsuits filed against it and its debtor-affiliates around the country. *Id*. ¶¶ 6, 257. After filing for bankruptcy on October 12, 2020, Mallinckrodt itself estimated that it had "[opioid-related] liability in excess of $30 billion" based on the settlements it had entered into before it filed chapter 11. *Id*. ¶ 264.[4]

4. While Mallinckrodt was manufacturing and selling opioids, promoting a false and dangerous narrative to change the medical consensus regarding the proper uses and risks of opioid drugs, and incurring crushing opioid-related liability, it also implemented its Share Repurchases, thereby favoring its shareholders over its creditors. Am. Compl. ¶ 7. Mallinckrodt's board of directors authorized the Share Repurchases on four separate occasions: (a) on January 22, 2015, it authorized $300 million of share repurchases; (b) on November 19, 2015, it authorized $500

[4] *See also* Hr'g Tr. at 63:3-5, *In re Mallinckrodt plc*, No. 20-12522 (Bankr. D. Del. Dec. 6, 2021) (Welch Direct).

million; (c) on March 16, 2016, it authorized $350 million; and (d) on March 1, 2017, it authorized $1 billion. *Id.* ¶ 270. The Share Repurchases occurred between August 4, 2015 and April 23, 2018. In total, Mallinckrodt repurchased approximately 35.57 million shares for approximately $1.6 billion. *Id.* ¶ 271.

5. Among the beneficiaries of the Share Repurchases was defendant Quantlab Trading, which received at least [redacted] from Mallinckrodt in connection with the Share Repurchases. *Id.* ¶ 74.

6. Mallinckrodt authorized the Share Repurchases in part to artificially inflate the market price of its shares during a period of consistent, dramatic decline in Mallinckrodt's value due to its opioid business. *Id.* ¶ 273. Even aside from the substantial opioid liabilities it had at the time of the Share Repurchases, Mallinckrodt did not have enough cash on hand to fund the Share Repurchases and had to engage in a series of intercompany loans and complex intercompany transactions to obtain sufficient funds. *Id.* ¶ 327. As a result of Mallinckrodt's staggering opioid liabilities and its general liquidity issues, Mallinckrodt did not have sufficient distributable reserves when it engaged in the Share Repurchases, rendering them void under Irish Law. *Id.* ¶¶ 317, 335.[5]

II. QUANTLAB'S DISMISSAL REQUESTS

7. The Trust is a statutory trust formed under the Modified Fourth Amended Joint Plan of Reorganization (With Technical Modifications) of Mallinckrodt plc and Its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code [D.I. 7670] ("**Plan**"). The Trust is charged with, among other things, investigating and prosecuting claims for the benefit of the Debtors' unsecured

[5] For further explanation regarding applicable Irish Law, and why Mallinckrodt's Share Repurchases were void pursuant to the same, the Trust incorporates by reference paragraphs 20 through 52 of the Plaintiff's Opposition to Motion to Dismiss Citadel Securities and Susquehanna Securities from Amended Complaint [Adv. D.I. 263], as if they were fully set forth herein.

creditors, which include the many victims of the nationwide opioid epidemic that the Debtors were instrumental in causing. These victims include individuals who suffered bodily injuries through addiction, overdose, other sickness and disease, and death, as well as babies born with neonatal abstinence syndrome (which means they suffer from withdrawal symptoms from opioids when they are born). The Trust is also pursuing these claims for the benefit of all States and territories, their political subdivisions, Native American tribes, hospitals, emergency room physicians, insurance ratepayers, and third-party payors, that hold claims against the Debtors based on their role in causing, perpetuating, and exacerbating the opioid crisis. Many States, thousands of counties and other municipalities, Native American tribes, and other opioid victims are relying on the Trust to provide the much-needed funding for the purpose of abating the opioid scourge in communities across the country and to compensate victims.

8. Under the Plan, the Trust received, among other assets, certain claims and causes of action of the Debtors, *see* Plan art. IV.W.6 at 97, including certain claims and causes of action against defendants in this proceeding that arise from Mallinckrodt's Share Repurchases. *See* Plan art. I.A.56 at 7.

9. On October 12, 2022, the Trust filed its original complaint. Adv. D.I. 1. Among the named defendants were "Quantlab Securities, LP" and "Quantlab Trading Partners US, LP."

10. On May 15, 2023, the Court entered the Protocol, which permits defendants to submit to the Trust a request for voluntary dismissal based on, among other things, the defendant's purported status as a non-transferee or a dissolved entity, or the securities safe harbor under § 546(e) of the Bankruptcy Code.

11. On October 11, 2023, Quantlab Trading (*not* Quantlab US) submitted a request under the Protocol that the Trust dismiss it on the grounds that it is a "financial participant" and

that the Share Repurchases were qualifying transactions under 11 U.S.C. § 546(e). *See* Adv. D.I. 492, Ex. 1. As to the qualifying-transaction requirement, Quantlab merely asserted that "the share repurchase transactions at issue here—which involved the payment of cash for Mallinckrodt stock—are qualifying transactions," citing case law that defined a "settlement payment" as a "transfer of cash or securities made to complete a securities transaction." *Id.* (citations omitted). Quantlab Trading also asked that the Trust dismiss Quantlab Securities because it was a non-transferee under § 550(a) of the Bankruptcy Code and because it was a dissolved entity not subject to suit under Delaware law. *Id.*

12. Quantlab US did not seek dismissal under the Protocol. Quantlab Trading merely mentioned in a footnote that "[Quantlab Trading], not Quantlab US, was the entity that received the proceeds of the alleged sales of Mallinckrodt common stock listed in Exhibit B to the version of the Complaint served on Quantlab Trading Partners U.S., L.P." *Id.*

13. Approximately two weeks following Quantlab Trading's Protocol submission, on October 24, 2023, the Trust filed the Amended Complaint. Still unclear from Quantlab Trading's submission which Quantlab entity or entities received proceeds from the Share Repurchases or were otherwise the proper defendants, and out of an abundance of caution, the Trust named in the caption of the Amended Complaint "Quantlab Trading Partners U.S., L.P. a/k/a Quantlab Securities, LP a/k/a Quantlab Trading Partners, L.P." The Amended Complaint also incorporated and attached an exhibit setting forth the amount of proceeds from the Share Repurchases that each defendant received, and specifically set forth the amount of proceeds that "Quantlab Trading Partners, LP" (*i.e.*, Quantlab Trading) received from the Share Repurchases, which totaled [redacted]. *See* Am. Compl., Ex. B. Furthermore, the Trust served Quantlab with the trading data it possessed that showed that Quantlab Trading is the proper defendant. *See* Adv. D.I.

233-1. The summons that the clerk of the Court issued incorporated the caption of the Amended Complaint by reference. *See* Adv. D.I. 233 & 236.

14. On November 21, 2023, in accordance with the Protocol, the Trust sent a request to Quantlab Trading for additional information relating to Quantlab Trading's asserted § 546(e) defense, as well as requests for additional information about the relationship among the various Quantlab affiliates so that the Trust could understand who the proper defendants are. *See* Adv. D.I. 492, Ex. 3.

15. On January 4, 2024, Quantlab responded to the Trust's information requests, which included for the first time a demand that the Trust also voluntarily dismiss Quantlab US. *See* Adv. D.I. 492, Ex. 4.

16. On February 16, 2024, the Trust notified Quantlab that it was declining to dismiss it on the grounds that no qualifying transaction existed because the Share Repurchases were void *ab initio* under Irish Law and that Quantlab did not provide the Trust with sufficient information to show that Quantlab Trading is a "financial participant." *See* Adv. D.I. 492, Ex. 6. The Trust, however, did not dispute that Quantlab Securities was a non-transferee or a dissolved entity or that Quantlab US was a non-transferee. *See id.*[6]

17. On February 29, 2024, Quantlab Trading and Quantlab Securities sent another letter in support of their dismissal request, primarily providing additional evidence that Quantlab Trading was a "financial participant" under § 101(22A)(A) of the Bankruptcy Code. *See* Adv. D.I. 492, Ex. 7.

[6] As such, Quantlab is incorrect that the Trust only "eventually" and through "a series of meet and confers" agreed that Quantlab Securities was a dissolved entity and non-transferee and that Quantlab US was a non-transferee (*see* Motion ¶¶ 6, 23), as the Trust never disputed their status as such following Quantlab's Protocol submission.

18. Counsel for the Trust and Quantlab then engaged in multiple meet-and-confers and exchanged additional letters regarding the issue of Quantlab Trading's status as a financial participant. *See* Adv. D.I. 492, Exs. 10, 13, 14, 15.

19. On August 5, 2024, the Trust notified Quantlab that, based on the information Quantlab provided, it agreed that Quantlab Trading established that it was a "financial participant" during the relevant period. However, the Trust declined to dismiss Quantlab Trading, because in the Trust's view there is no qualifying transaction as the Share Repurchases were void *ab initio* under Irish Law. Adv. D.I. 492, Ex. 17.

20. In addition, although the Trust did not dispute that Quantlab Securities is a dissolved entity and non-transferee, and that Quantlab US is also a non-transferee, the parties could not agree to an appropriate stipulation that would dismiss Quantlab Securities and Quantlab US, while keeping Quantlab Trading as a defendant. Adv. D.I. 492, Ex. 19. The disagreement arose because Quantlab alleged that the Trust did not properly name Quantlab Trading as a defendant, and therefore Quantlab rejected language in the stipulation permitting the Trust to file a further amended complaint naming only Quantlab Trading as a defendant. *See id.* Without such language, the Trust could not agree to a dismissal of Quantlab Securities and Quantlab US that would risk also dismissing Quantlab Trading as a defendant.

21. On November 25, 2024, Quantlab US filed its Motion. Adv. D.I. 491.

ARGUMENT

22. Despite the wide-ranging grievances that the Motion raises, the only disputed issues before the Court are (1) whether Quantlab Trading has adequately been named as a party defendant in this proceeding, and (2) whether Quantlab has failed to show that the Share Repurchases were qualifying transactions under § 546(e) because they were void *ab initio* under Irish Law. As to the second issue, the Trust acknowledges that the Court in its Opinion determined that the Share

Repurchases were qualifying transactions;[7] the Trust submits its arguments again in this Opposition to make its record and preserve the qualifying transaction issue for appeal.

I. THE TRUST PROPERLY NAMED AND IDENTIFIED QUANTLAB TRADING AS A DEFENDANT

23. Although the Amended Complaint describes Quantlab Trading as an "also known as" of Quantlab US, the allegations in and attachments to the Amended Complaint undisputably name and identify Quantlab Trading as a defendant; the Trust did not accidentally sue a different party. Civil Rule 10(a) provides that a pleading "must name all the parties," and Civil Rule 4(a) requires, *inter alia*, that a summons "name the court and the parties[.]" Fed. R. Civ. P. 4(a)(1)(A) & 10(a). Together, these rules govern the naming of parties in a federal action. *See Kroetz v. AFT-Davidson Co.*, 102 F.R.D. 934, 936-37 (E.D.N.Y. 1984) (concluding that Civil Rules 4 and 10 mandated federal standards governing whether a defendant had been adequately named in federal court).

24. While the Motion frames the issue purely as one of defective service, the adequacy of naming in the pleadings under Civil Rule 10 and in the summons under Civil Rule 4 go hand-in-hand. *See Anthony v. Choudary*, No. 19-cv-17074, 2020 WL 7054271, at *4-5 (D.N.J. Dec. 2, 2020) (concluding that the complaint adequately identified the defendant and therefore the summons that used the same name as the complaint was not defective); *Kroetz*, 102 F.R.D. at 936-37 (considering together the consequences of a defendant being improperly named in both the complaint and summons). Accordingly, the Court must look not just to the summons but also to the Amended Complaint to determine whether the Trust adequately named Quantlab Trading. *See*

[7] Quantlab's assertion that it does not even have to address whether the Share Repurchases are qualifying transactions (*see* Motion ¶ 18) is incorrect. The Court already rejected this argument in its Opinion, making no suggestion that the Trust may have waived this issue, and addressing only the substantive arguments relating to the qualifying transaction prong. *See* Opinion at 8.

Anthony, 2020 WL 7054271, at *5 (holding that defendants' defective summons argument was controlled by the sufficiency of their naming in the complaint). In other words, the Motion only focuses on Civil Rule 4, not Civil Rule 10. And, in any event, the summons incorporated the Amended Complaint by reference. *See* Adv. D.I. 233, 236.

25. Turning to the Amended Complaint, Civil Rule 10(a) does not require a complaint's caption to use the precise name of every defendant for the rule to be satisfied, since "the caption is not determinative of the identity of the parties to the action." *CNX Gas Co. v. Lloyd's of London*, 410 F. Supp. 3d 746, 752 (W.D. Pa. 2019) (citing 5A Wright & Miller, *Federal Practice & Procedure* § 1321 (4th ed. Aug. 2019)). Even if not precisely named, a party can be sufficiently identified "if the allegations in the body of the complaint make . . . plain [it] is intended as a defendant." *McCary v. Cunningham*, No. 1: 21-cv-00667-TLA, 2022 WL 2802385, at *2 (D. Del. July 18, 2022) (quotations and citations omitted); *see Anthony*, 2020 WL 7054271, at *4 (holding that the pleading's factual allegations regarding the persons, places, and events put defendant on notice that it had been sued despite using the completely wrong name).

26. Indeed, courts in this Circuit have interpreted Civil Rule 10(a) to be satisfied even when a defendant is imprecisely named so long as (1) the defendant had sufficient notice that it is the intended subject of the suit and (2) the misnaming does no unfair prejudice. *See, e.g.*, *Anthony*, 2020 WL 7054271, at *4 (holding that plaintiff's misnaming of defendant still satisfied Civil Rule 10(a) where the factual allegations in the complaint sufficed to notify it of the claim and it had timely filed an answer); *Spero v. Helge*, No. CIV.A.02-5226, 2004 WL 5709578, at *16 n.22 (D.N.J. July 21, 2004) (same); *Kroetz*, 102 F.R.D. at 937 (same). On various occasions, the Third Circuit has held that using a different name for a defendant did not necessarily mean the defendant was not adequately identified. *See, e.g.*, *Dandrea v. Malsbary Mfg. Co.*, 839 F.2d 163, 166-67 (3d

Cir. 1988) (holding that the defendant corporation had been adequately identified as a party when sued under its former legal name, rejecting the argument that the plaintiffs had sued a non-existent party and then sought an untimely "change of parties" under Civil Rule 15). Evidence of notice and lack of prejudice to a defendant is established where a defendant's attorneys acted as though the defendant had been sued and responded in the litigation in a timely fashion. *See Anthony*, 2020 WL 7054271, at *4 (observing that defendant's notice was demonstrated by its timely filing of an answer); *Spero*, 2004 WL 5709578, at *16 n.22 (same); *Kroetz*, 102 F.R.D. at 937 (same). As such, the Trust's naming of Quantlab Trading in the Amended Complaint as an "also known as" of Quantlab US suffices.

A. Quantlab Trading Had Timely Notice of This Proceeding

27. Furthermore, Quantlab Trading knew from the start of the Proceeding that it was an intended defendant. On October 11, 2023, Quantlab Trading (not Quantlab US) took advantage of the Protocol that this Court entered and filed a request for dismissal on the ground that it is allegedly protected under the § 546(e) securities safe harbor. Indeed, in its initial Protocol-based correspondence, Quantlab Trading acknowledged that the Amended Complaint "implicitly recognized" Quantlab Trading as an intended defendant "when it listed Quantlab Trading Partners as the counterparty to [Mallinckrodt stock] sales in Exhibit B." Adv. D.I. 492, Ex. 1. Quantlab Trading argued in that letter that it was the intended defendant, not Quantlab US or Quantlab Securities, and therefore plainly had timely notice that it was a defendant. *Id.*

28. After the Trust filed its Amended Complaint, Quantlab Trading, over a span of many months, continued to engage in substantive correspondence under the Protocol over whether it met the definition of "financial participant" under § 101(22A)(A). *See* Adv. D.I. 492, Exs. 4, 7. Importantly, Quantlab Trading never argued that it was an "unnamed person." *See* Protocol ¶ 13 (providing procedure for "a person or entity that reasonably believes that it may have received

proceeds of one or more Mallinckrodt Share Repurchase Transactions . . . but is not a named defendant in the Complaint" to make use of the Protocol and request that the Trust not name it as a future defendant). Quantlab Trading's timely usage of the Protocol—as though it were a named defendant—shows that it timely understood that the Trust had sued it. Indeed, the Motion does not argue that Quantlab Trading lacked notice. As such, Quantlab Trading cannot demonstrate that the Trust inadequately named it, and therefore also cannot show that the summons, which referred to parties as named in the Amended Complaint, was deficient. *See Anthony*, 2020 WL 7054271, at *5 (sufficient naming in the pleadings foreclosed defendants' argument that the same naming in the summons had caused a service of process deficiency meriting dismissal); *Kroetz*, 102 F.R.D. at 936-37 (same).

B. Quantlab Trading Was Not Prejudiced by How the Trust Named It in the Amended Complaint

29. Quantlab Trading's participation in this proceeding through the Protocol also evidences that it was not prejudiced by how it was named. Indeed, Quantlab does not argue otherwise. The Motion does not claim and provides no support by way of affidavits or otherwise that Quantlab was confused as to who the intended defendant was. Tellingly, the Motion does not claim that Quantlab Trading did not timely receive a copy of the summons or complaint or that the Trust failed to serve it through an appropriate corporate representative. It contends only that the service of process should not count because the summons allegedly did not use the right name.

30. Civil Rule 4 is not a tool for intended defendants who received timely notice of a suit and suffered no prejudice to obtain dismissal based on technical defects. *See Morrel v. Nationwide Mut. Fire Ins. Co.*, 188 F.3d 218, 224 (4th Cir. 1999) ("[S]ervice of process is not legally defective simply because the complaint misnames the defendant in some insignificant way."); *United Food & Com. Workers Union v. Alpha Beta Co.*, 736 F.2d 1371, 1382 (9th Cir.

1984) ("Even if the summons fails to name all of the defendants . . . dismissal is generally not justified absent a showing of prejudice[.]"); *Nally v. New Jersey Mfrs. Ins. Co.*, 674 F. Supp. 3d 171, 174 (E.D. Pa. 2023) (holding that misnaming in the summons did not render service defective when the summons and related documents, including the complaint, made clear the defendant had been sued).

C. Quantlab's Cited Cases Are Distinguishable and Not Authoritative

31. The Motion devotes much space to citing distinguishable out-of-circuit cases and misrepresents the law as to purported naming mistakes under Civil Rule 4. The lone Third Circuit case that Quantlab cites involved a plaintiff's failure to obtain a summons issued by the clerk and bearing the seal of the district court; it does not hold that technical naming inexactness merits the drastic remedy of dismissal. *See Ayres v. Jacobs & Crumplar, P.A.*, 99 F.3d 565, 569 (3d Cir. 1996) (holding that the plaintiff's use of its own drafted summons rather than one issued by the clerk was a substantial deficiency in service). Of the cited cases involving how parties were named in the summons, none supports the asserted proposition that a naming inaccuracy merits dismissal even in the absence of prejudice.[8]

32. Quantlab misrepresents *Trytko v. US Bank Home Mortgage* as providing a rule that "errors in naming the proper defendant" are always subject to dismissal, but that case did not even involve a naming error.[9] *See* No. 3:17-CV-175-JD-MGG, 2018 WL 4088941, at *4 (N.D. Ind.

[8] *Phillips v. Capital Internal Medicine Associates, P.C.* involved a defendant not properly named in the summons who did not appear in the case and suffered a default judgment. No. 1:23-cv-429, 2023 WL 8467789, at *2 (W.D. Mich. Dec. 7, 2023). In *Bowman v. Sanofi-Aventis U.S.*, the district court declined to dismiss the case and instead gave the plaintiff an opportunity to effect proper service. No. A-09-CA-192-SS, 2009 WL 5083431, at *2 (W.D. Tex. Apr. 16, 2009).

[9] Other cases the Motion relies on for this supposed rule are inapposite because they hinge on more than an alleged naming error; the deficiency in every case is that the movant had not timely received any attempted service of process. *See Strahan v. Phibbs*, No. 1:21-CV-28-SNLJ, 2024 WL 4039806, at *1 (E.D. Mo. Sept. 4, 2024) (vacating default judgment where the plaintiff had not provided the right address for the defendant, resulting in failure to serve the summons on him); *Aalampour v. Wal-Mart Stores East, LP*, No. 3:22-CV-976-CCB-SJF, 2024 WL 3860950, at *1-3 (N.D. Ind. Aug. 19, 2024) (finding service deficient because it was sent to the wrong entity's registered agent at the

Aug. 10, 2018) (finding dismissal warranted because the plaintiff did not serve the defendant through the correct corporate representative). The court merely included "errors in naming the proper defendant" in a list of examples of what could be a deficiency cognizable under Civil Rule 12(b)(4). *Id.* at *3. Indeed, *Flippo v. Daffin*, another case Quantlab cites, explains that "[a] 'minor defect' in the summons will . . . not necessarily defeat personal jurisdiction" and that "[i]mperfect process" suffices "'so long as a party receives sufficient notice of the complaint.'" No. 16-cv-80989-MIDDLEBROOKS, 2016 WL 10933002, at *2 (S.D. Fla. Nov. 17, 2016) (quoting *Sanderford v. Prudential Ins. Co. of Am.*, 902 F.2d 897, 899-900 (11th Cir. 1990)). In *Flippo*, the plaintiff not only failed to correctly name the defendant in the summons but also did not refer to him or his actions in the complaint. *Id.* The court described this deficiency in the complaint as the "fatal ambiguity" that meant the defendant "would not reasonably be on notice that Plaintiff meant to sue him[.]" *Id.* Unlike the defendant in *Flippo*, Quantlab Trading knew it was the intended defendant after examining the complaint and attached exhibits; there is no "fatal ambiguity" to process or personal jurisdiction. *Cf. id.* (demonstrating how the rules apply in the counterfactual where the summons and complaint *together* failed to provide an intended defendant notice of suit).

33. Even in the face of contrary case law, Quantlab implies that naming the intended defendant as an "a/k/a" alongside related entities is especially suspect by citing three inapposite cases, *Ochoa v. Texas Metal Trades Council*, *Innocent v. Palm Beach County Workforce Development Consortium*, and *TCB Auto Detailing & Cleaning Services, Inc. v. IAA Services, Inc.* Two involved circumstances where the plaintiff attempted to maintain its suit against the wrong

wrong address); *Wasson v. Riverside Cnty.*, 237 F.R.D. 423, 424 (C.D. Cal. 2006) (finding service deficient because plaintiffs had only mailed a copy of the complaint to the movant and the clerk of court did not even issue a summons). They provide no guidance here, where Quantlab Trading was served with the Amended Complaint and knew it was the intended defendant.

entity by treating it, incorrectly, as an alias of the intended defendant.[10] Here, by contrast, the Amended Complaint named and identified Quantlab Trading, and the Trust does not seek to proceed against the other Quantlab entities. The third case involved a motion to amend that would have incorrectly named a nonparty as an alias of another defendant for reasons unclear to the court, and the court denied the motion to amend on different grounds.[11] Quantlab's cases do not involve claims against a proper but allegedly imprecisely named defendant who received a copy of the summons and complaint—as well as an exhibit that explicitly tied the correct defendant to the claims—which provided notice that it had been sued. They do not even discuss the relevant standard for sufficiency of naming under Civil Rules 4 and 10, and do not support Quantlab's suggestion that a mistaken "a/k/a" is more egregious than other naming inaccuracies. Indeed, precedent supports that this type of imprecision in naming is *not* egregious if it does not impair notice. *See Schiavone v. Fortune*, 477 U.S. 21, 29 (1986) (holding that an amended complaint's naming the defendant with an inaccurate "also known as" could sufficiently describe the targeted

[10] In *Ochoa v. Texas Metal Trades Council*, the plaintiff intended to sue a specific trade union but named and served a legally distinct association of trade unions. 989 F. Supp. 828, 832 (S.D. Tex. 1997). The plaintiff amended his pleadings, attempting to continue his suit against the association by alleging it was an "aka" of the nonparty trade union. *Id.* The court dismissed the claims against the association for failure to state a claim against that entity. *Id.* Similarly, in *Innocent v. Palm Beach County Workforce Development Consortium*, the plaintiff sued the wrong entity and then tried to convince the court that it was an alias of the nonparty proper defendant; unconvinced, the court dismissed the claims against the wrong entity. No. 21-CV-80623, 2021 WL 7082830, at *3 (S.D. Fla. Oct. 22, 2021). The Trust is not attempting to continue this proceeding against Quantlab US or Quantlab Securities on the theory that they are the same entity as Quantlab Trading. As such, neither *Ochoa* nor *Innocent* is relevant.

[11] *TCB Auto Detailing & Cleaning Services, Inc. v. IAA Services, Inc.* did not involve an intended defendant seeking dismissal over a naming inaccuracy. No. 2:21-cv-03185-FLA, 2022 WL 22328957, at *1-3 (C.D. Cal. Nov. 2, 2022). There, the plaintiff initially sued the intended defendant using another entity's name, but the right defendant nonetheless appeared to defend itself. *Id.* at *1. The plaintiff moved to amend its complaint to add the defendant's correct name but keep the wrong name as its "aka." *Id.* at *2. The court denied the motion because the plaintiff failed to attach a proposed amended complaint, rendering the motion procedurally defective. *Id.* Unsure why the plaintiff even sought that amendment, the court additionally explained that plaintiff could not draw in a nonparty entity by alleging it was an alias of the defendant, to the extent that was the intent. *Id.* at *3. The opinion does not give enough detail as to who the intended defendant was or why the plaintiff sought the amendment; moreover, the events occurred in a different procedural context. *See id.* at *1-3. Accordingly, the case provides no guidance here.

defendant to provide notice of suit, though ultimately affirming dismissal because notice had arrived after limitations had expired).

34. Should the Court nevertheless conclude that service of process on Quantlab Trading was deficient, it should at most order amendment of the summons under Civil Rule 4(a)(2) and permit the Trust to re-serve process. The Court could also permit the Trust to amend its pleading to correct any naming deficiencies therein. *See* Fed. R. Civ. P. 15(a)(2) ("[A] party may amend its pleading" at any time before trial with "the court's leave. The court should freely give leave when justice so requires."). But, for the reasons described above, the Court need not do so because under the Civil Rules and relevant case law, the Trust adequately named and properly identified Quantlab Trading as a defendant. The Motion's request to have Quantlab Trading dismissed on an "also known as" technicality lacks merit in every respect.

II. MALLINCKRODT'S SHARE REPURCHASES ARE NOT QUALIFYING TRANSACTIONS

A. The Share Repurchases Do Not Constitute a "Settlement Payment" Because They Were Void *Ab Initio* Under Irish Law

35. In addition to being properly named, Quantlab Trading fails to meet its burden that the Share Repurchases constituted a "settlement payment" under § 546(e) as the Share Repurchases were void *ab initio* under Irish Law. Transfers to repurchase or redeem a company's shares do not qualify as a "settlement payment" when applicable law renders those transfers void. *See Enron Corp. v. Bear, Stearns Int'l Ltd.* (*In re Enron Corp.*), 323 B.R. 857, 877 (Bankr. S.D.N.Y. 2005); *cf. also Cooper v. Centar Invs. (Asia) Ltd* (*In re TriGem Am. Corp.*), 431 B.R. 855, 865 (Bankr. C.D. Cal. 2010) (relying on *Enron* in refusing to apply § 546(g) swap agreement safe harbor where transaction was structured to try to evade Korean law); Barbara Black, *Corporate Dividends & Stock Repurchases* § 6:19 (Feb. 2022 Update) ("An agreement by a

corporation to purchase its own shares is void and unenforceable if the statute prohibits the corporation from purchasing its shares.").

36. Under *Enron*, the relevant question is whether "there is a valid underlying securities transaction from which a settlement payment can flow." *Enron*, 323 B.R. at 877. If not, "there is no settlement payment to which to apply the protection of section 546 of the Bankruptcy Code." *Id.* The *Enron* court found that, when distributions from an insolvent corporation are "prohibited" and considered void under the applicable law, the distributions are "a complete nullity, [and] there would be no resulting settlement payment." *Id.* at 876.

1. Irish Law Governed Mallinckrodt's Share Repurchases

37. Under the internal affairs doctrine, the law of the state of incorporation governs a corporation's relationship with its shareholders, including share repurchases or redemptions. *See In re PHP Healthcare Corp.*, 128 F. App'x 839, 843-44 (3d Cir. 2005) (noting that law of state of incorporation governs questions relating to a corporation's share redemptions); *Castel S.A. v. Wilson*, No. CV 19-09336-DFM, 2023 WL 6295774, at *32 (C.D. Cal. Sept. 27, 2023) (holding that the law of the state of incorporation governed a dispute regarding repurchase or redemption of stock); *100079 Canada, Inc. v. Stiefel Laboratories, Inc.*, No. 11-22389-Civ-SCOLA, 2011 WL 13116079, at *9 (S.D. Fla. Nov. 30, 2011) (same); Restatement (Second) of Conflict of Laws § 302 cmt. a (1971) (providing that law of the state of incorporation governs a corporation's purchase or redemption of outstanding shares of its stock).

38. Mallinckrodt was formed and registered as a public limited company ("**PLC**") under the laws of the Republic of Ireland on January 9, 2013. Harkin Decl. ¶ 4.[12] Accordingly, under the internal affairs doctrine, Irish Law applied to Mallinckrodt's Share Repurchases.

[12] Citations to "**Harkin Decl**." refer to the Declaration of Anne Harkin, which is annexed hereto as **Exhibit 1**.

2. Under Irish Law, Mallinckrodt Was Required to Fund Its Share Repurchases from Profits Available for Distribution, or Else the Share Repurchases Were Void

39. When the Share Repurchases occurred, the Companies Act applied to Mallinckrodt. Harkin Decl. ¶ 8. Section 105 of the Companies Act provides that an Irish PLC may purchase or redeem its shares only if, *inter alia*, the purchases or redemptions are funded out of profits available for distribution. Companies Act § 105(2); Harkin Decl. ¶¶ 9-10. "Profits available for distribution" are a company's "accumulated, realised profits, so far as not previously utilised by distribution or capitalisation, less its accumulated, realised losses, so far as not previously written off in a reduction or reorganisation of capital duly made." Companies Act § 117(2); Harkin Decl. ¶ 11. If the share repurchase or redemption does not comply with section 105 of the Companies Act, the repurchase or redemption is "**void**" under Irish Law. Companies Act § 102(3) (emphasis added); Harkin Decl. ¶ 13 (emphasis added).

40. Irish case law clarifies that the profits available for distribution "must mean profits calculated in accordance with the relevant applicable accountancy standards." *In re Irish Life & Permanent Plc* [2009] IEHC 567 [H. Ct.] § 7.10 (Ir.);[13] *see also Wilson (Inspector of Taxes) v Dunnes Stores (Cork) Ltd* [1976] WJSC-HC 1470 [H. Ct.] (Ir.) (concluding the proper interpretation of the term "profits" must be determined by the context in which it is used).[14] For Mallinckrodt, those standards were the United States Generally Accepted Accounting Principles ("**U.S. GAAP**"), because, at the time of the Share Repurchases, Mallinckrodt filed consolidated group financial statements that it prepared in accordance with U.S. GAAP. *See* Companies Act § 279 (permitting an Irish company to avail itself of U.S. GAAP where the company's

[13] A copy of the *Irish Life* decision is annexed hereto as **Exhibit 2**.

[14] A copy of the *Wilson* decision is annexed hereto as **Exhibit 3**.

securities are listed on U.S. stock exchanges for a transitional period ending December 31, 2020); Shaked Decl. ¶ 33 & n.35.[15] Mallinckrodt's individual financial statements were prepared in accordance with the Irish Generally Accepted Accounting Principles ("**Irish GAAP**"), which is the Financial Reporting Standard applicable in the United Kingdom and the Republic of Ireland ("**FRS 102**").[16]

3. Mallinckrodt's Share Repurchases Were Void Because It Did Not Have Profits Available for Distribution When It Made Those Repurchases

41. Under Irish Law, Mallinckrodt's Share Repurchases were void *ab initio* because, when it engaged in those repurchases, it did not have the necessary profits available for distribution. Am. Compl. ¶¶ 327-42; Shaked Decl. ¶¶ 99-103.

42. Under U.S. GAAP, Mallinckrodt's opioid liabilities constituted "probable" and "reasonably estimable" contingent liabilities that it was required to, but did not, account for in its financial statements. Shaked Decl. ¶¶ 4, 41, 47, 104. (FRS 102 has or applies a substantially similar standard looking to whether the liabilities are probable and reasonably estimable.[17]). When the opioid liabilities are correctly accounted for, Mallinckrodt did not have profits available for distribution when it engaged in the Share Repurchases. *Id.*

43. In his declaration, Professor Israel Shaked explains that "according to U.S. GAAP, a company is required to accrue a loss for a contingent liability if, based on information available

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[15] Citations to "**Shaked Decl.**" refer to the Declaration of Israel Shaked, which is annexed hereto as **Exhibit 4**.

[16] *See* Harkin Decl. ¶ 20. Mallinckrodt's individual financial statements were prepared in accordance with an older version of Irish GAAP for the financial years ending September 26, 2014 and September 25, 2015, and in accordance with FRS 102 for the financial years ending September 30, 2016 and December 29, 2017. *Id.* In addition, on June 29, 2017, Mallinckrodt filed interim accounts for the period up to March 31, 2017, which were prepared in accordance with FRS 102. *Id.* The section relating to recognition of liabilities of uncertain timing or amount (Section 21 of FRS 102) did not change the existing rules of Irish GAAP. *See* Declaration of Damien Malone ("**Malone Decl.**") ¶ 11, which is annexed hereto as **Exhibit 5**.

[17] *See* Malone Decl. ¶ 5; Shaked Decl. ¶¶ 32-33. Indeed, FRS 102 has a lower threshold for determining "probable," because it is defined under those statutes as "more likely than not." Malone Decl. ¶ 7; Shaked Decl. ¶ 32.

at the time, it is probable that a liability will be incurred and the amount of that liability is reasonably estimable." Shaked Decl. ¶ 31. He concludes that Mallinckrodt's liabilities were probable when Mallinckrodt engaged in its Share Repurchases. *Id.* ¶¶ 36-46.

44. Professor Shaked finds that, based on information available to it at the time, Mallinckrodt's opioid liabilities were reasonably estimable when it engaged in the share repurchases. Shaked Decl. ¶¶ 47-84. He estimates that Mallinckrodt's opioid liabilities as of December 31, 2015, were between $49.0 billion and $77.1 billion. *Id.* ¶ 72. Additionally, he estimates that Mallinckrodt's opioid liabilities as of December 31, 2016, were between $54.7 billion and $84.7 billion. *Id.* ¶ 76. Further, he estimates that Mallinckrodt's opioid liabilities as of December 31, 2017 were between $58.6 billion and $89.6 billion. *Id.* ¶ 81.

45. Professor Shaked concludes that Mallinckrodt's retained earnings each year is the best measure of its profits available for distribution. Before accounting for opioid liabilities, Mallinckrodt's retained earnings were –$193 million in 2014, $250 million in 2015, $529 million in 2016, $2.589 billion[18] in 2017, and –$1.018 billion in 2018. *Id.* ¶ 102. Each year, Mallinckrodt's profits available for distribution were significantly below its probable and reasonably estimable opioid liabilities, as the following table shows:

($ Millions)	As of December,				
	2014	2015	2016	2017	2018
Retained Earnings	$ (193)	$ 250	$ 529	$ 2,589	$ (1,018)
- Adjustment for one-time, non-cash Item	-	-	-	(1,055)	(1,055)
- Opioid Liability	(44,633)	(48,956)	(54,678)	(58,611)	(58,611)
Profits Available for Distribution	**(44,827)**	**(48,706)**	**(54,149)**	**(57,077)**	**(60,683)**

46. Professor Shaked thus summarizes his conclusions as follows:[19]

[18] Moreover, in fiscal year 2017, at least $1.5 billion of the retained earnings were due to a one-time recognized income tax benefit and were not profits available for distribution. *See* Mallinckrodt plc, Annual Report (Form 10-K), at 49-50, 101 (Dec. 29, 2017).

[19] Shaked Decl. ¶ 4.

(a) At the time Mallinckrodt repurchased its shares, Mallinckrodt's opioid liabilities were probable.

(b) At the time Mallinckrodt repurchased its shares, Mallinckrodt's opioid liabilities were reasonably estimable.

(c) As Mallinckrodt's opioid liabilities were probable and reasonably estimable, Mallinckrodt should have accrued a contingent liability.

(d) If Mallinckrodt had correctly accrued a contingent liability at the time of the Share Repurchases, Mallinckrodt would not have had sufficient profits available for distribution to conduct the Share Repurchases.[20]

(e) Mallinckrodt repurchased over $1.5 billion of its own shares without sufficient profits available for distribution to do so.

47. Because Mallinckrodt did not have profits available for distribution from which to fund its share repurchases, its entire Share Repurchase Program was void *ab initio* under Irish Law. Thus, under *Enron*, Mallinckrodt's share repurchases did not constitute a "settlement payment" under § 546(e). Quantlab therefore lacks a qualifying transaction and does not have the benefit of the § 546(e) safe harbor.

B. Mallinckrodt's Share Repurchases Were Not Transfers Made "in Connection with a Securities Contract"

48. For the same reasons noted above, Quantlab cannot establish that Mallinckrodt's share repurchases were "transfer[s] made . . . in connection with a securities contract[.]" 11 U.S.C. § 546(e). In *Enron*, the court examined whether the safe harbor in § 546(g) protected a transfer allegedly made "in connection with a swap agreement." 323 B.R. at 878 (quoting 11 U.S.C.

[20] Indeed, in 2014 and 2018, Mallinckrodt did not have profits available for distribution *even before* accounting for opioid liabilities.

§ 546(g)). Because the entire transaction was void under applicable law, the "in connection with" language in § 546(g) did not apply. *Id*. ("If it is determined that the transaction violated Oregon law, the agreement would be a nullity and have no legal effect. As a consequence, the transfer would not have been made under or in connection with a swap agreement and it would not be protected from avoidance under section 546(g) of the Bankruptcy Code."). This reasoning applies with equal force to the "in connection with" language in § 546(e). *See id.* at 877 ("An agreement that is void under controlling state law has no legal force or effect and carries no enforceable obligations."). Because Mallinckrodt's Share Repurchases were nullities, there were no transfers made in connection with any valid securities contract. Accordingly, this Court should determine that Quantlab has not established the requisite elements for its § 546(e) defense, and accordingly it should deny the Motion.

C. Section 546(e) Does Not Preempt Irish Law

1. Section 546(e) Contains No Express Preemptory Language

49. The Court should not apply § 546(e) to negate the effect of governing Irish Law. The text of § 546(e) contains no express preemptory language stating that it must be applied "[n]othwithstanding any otherwise applicable nonbankruptcy law," as exists in other provisions of the Bankruptcy Code.[21] By contrast, for example, the Third Circuit in *In re Federal-Mogul Global Inc.* stated that the "notwithstanding" clause in § 1123(a) of the Code demonstrated a "clear congressional intent" to expressly preempt conflicting state law and thus held that § 1123 preempts

[21] *See, e.g.*, 11 U.S.C. § 1123 (providing that "[n]otwithstanding any otherwise applicable nonbankruptcy law," a plan must specify and provide certain information); *id*. § 1142 (providing that "[n]otwithstanding any otherwise applicable nonbankruptcy law, rule, or regulation relating to financial condition, the debtor and any entity organized or to be organized for the purpose of carrying out the plan shall carry out the plan and shall comply with any orders of the court"); *id*. § 541(c) (providing that an interest of the debtor in property becomes property of the estate "notwithstanding any provision in an agreement, transfer instrument, or applicable nonbankruptcy law").

anti-assignment clauses in insurance policies, allowing such policies to be transferred to a § 524(g) trust. *See* 684 F.3d 355, 375, 382 (3d Cir. 2012).

50. Section 546(e), on the other hand, contains no such express preemptory language. *See United States v. Lavin*, 942 F.2d 177, 184 (3d Cir. 1991) ("As always, the most authoritative indicators of what Congress intended are the words that it chose in drafting the statute."). Judge Gross recognized that, while "certain other Code provisions expressly preempt state law by incorporating phrases such as 'notwithstanding any applicable law' . . . [n]o such language is included in section 546(e)." *PAH Litig. Tr. v. Water Street Healthcare Partners L.P. (In re Physiotherapy Holdings, Inc.)*, No. 13-12965 (KG), 2016 WL 3611831, at *9 (Bankr. D. Del. June 20, 2016). He concluded that "[t]he absence of this ['notwithstanding'] phrase in section 546(e) constitutes strong evidence that Congress did not intend that section to preempt state-law avoidance claims."[22] *Id*. at *9 (quotation and citations omitted). Judge Gross thus concluded that there was no basis for finding express preemption under the facts of that case. *Id*. at *10.

51. Similarly, in *Integrated Solutions Inc. v. Service Support Specialties, Inc.*, the Third Circuit held that the trustee could not assign the debtor's tort claims in contravention of applicable state law, stating that the applicable Code provisions lacked the clear congressional intent to preempt state-law restrictions on transferring estate property. 124 F.3d 487, 493 (3d Cir. 1997). The Third Circuit observed that "once a property interest has passed to the estate, it is subject to the same limitations imposed upon the debtor by applicable nonbankruptcy law." *Id*. at 492 (citing cases); *see also Kent's Run P'ship, Ltd. v. Glosser*, 323 B.R. 408, 422 (W.D. Pa. 2005) ("Federal

[22] Although in *Golden v. Community Health Systems, Inc. (In re Quorum Health Corp.)*, Judge Shannon declined to follow the reasoning of *Physiotherapy Holdings* with respect to § 546(e)'s preemption of state law fraudulent transfer claims, *see* No. 20-10766 (BLS), 2023 WL 2552399, at *11 (Bankr. D. Del. Mar. 16, 2023), the narrow preemption of specific causes of action at issue in *Quorum* is not comparable to the preemption of an otherwise neutral law of corporate governance that renders a particular transaction void. *See Enron*, 323 B.R. at 877 ("As a matter of public policy, a bankruptcy court could not give legal significance to an agreement that is a nullity under state law.").

bankruptcy law is designed to work in conjunction with state property law; thus, absent specific federal preemption, state law determines the nature and extent of the debtor's property rights."); *In re Fresh–G Rest. Intermediate Holding, LLC*, 580 B.R. 103, 113 (Bankr. D. Del. 2017) ("Without express language within the Bankruptcy Code evincing a Congressional intent to supersede state law, the Third Circuit has been previously unwilling to infer federal preemption within the bankruptcy context."). The same principles apply here. Because § 546(e) contains no express preemption language, the statute should not be applied in a manner that overrides the effect of Irish Law. If Quantlab believes that § 546(e) should override Irish Law or any other applicable nonbankruptcy law, it should seek a remedy from Congress, not the courts.[23]

2. Additionally, the Presumption in Favor of State—or Foreign—Law Defeats § 546(e) Preemption Here

52. There exists a strong presumption against Bankruptcy Code preemption of state—or foreign—law that Quantlab cannot rebut. "Even in instances of express preemption, the presumption in favor of state law applies, requiring [the court] to accept 'a plausible alternative reading . . . that disfavors preemption.'" *Federal-Mogul*, 684 F.3d at 368-69 (quoting *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 449 (2005)); *LaSala v. Bordier et Cie*, 519 F.3d 121, 138-39 (3d Cir. 2008) (noting that courts do not presume Congress intended to preempt foreign law through a federal statue absent clear congressional intent). Indeed, courts have recognized that "the presumption against displacing state law by federal bankruptcy law is just as strong in bankruptcy as in other areas of federal legislative power." *Pac. Gas & Elec. Co. v. California ex rel.*, 350 F.3d 932, 943 (9th Cir. 2003).

[23] The fact that share repurchases by an entity with insufficient profits available for distribution renders the transaction void, not voidable, applies to Irish law as well as only a few states' laws, such as Oregon.

53. Although federal law typically determines the standards for applying the Bankruptcy Code, federal courts look to state law to determine the parties' underlying rights and obligations in bankruptcy. *See Butner v. United States*, 440 U.S. 48, 54 (1979) ("Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law."). "Corporations are generally creatures of state law, . . . and state law is well equipped to handle disputes involving corporate property rights . . . . Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law." *Rodriguez v. FDIC*, 589 U.S. 132, 137 (2020) (quotations and citations omitted). Indeed, the Supreme Court has stated:

> Notwithstanding this requirement as to uniformity the bankruptcy acts of Congress may recognize the laws of the state in certain particulars, although such recognition may lead to different results in different States. For example, the Bankruptcy Act recognizes and enforces the laws of the states affecting dower, exemptions, the validity of mortgages, priorities of payment and the like. Such recognition in the application of state laws does not affect the constitutionality of the Bankruptcy Act, although in these particulars the operation of the act is not alike in all the states.

Butner, 440 U.S. at 54 n.9 (quoting *Stellwagen v. Clum*, 245 U.S. 605, 613 (1918)).

54. This deference to applicable nonbankruptcy law applies with even more force when it comes to corporate law. *CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 89 (1987) ("No principle of corporation law and practice is more firmly established than a State's authority to regulate domestic corporations[.]"); *Freedman v. Redstone*, 753 F.3d 416, 430 (3d Cir. 2014), *overruled in part on other grounds by In re Cognizant Tech. Sols. Corp. Derivative Litig.*, 101 F.4th 250 (3d Cir. 2024) ("This presumption against preemption is heightened in areas traditionally occupied by the states, such as corporate law[.]").

55. Here, Quantlab cannot overcome the strong presumption against preemption because Irish Law governs the Share Repurchases and renders them void *ab initio* since Mallinckrodt did not have profits available for distribution when it made the Share Repurchases.

There is no preemptive language to suggest that Congress intended § 546(e) to displace generally applicable corporate laws, such as those governing the Share Repurchases.

3. A Finding of Implied Preemption Is Similarly Inappropriate

56. There is no basis to find implied preemption here. The court in *Enron* concluded that there was no implied preemption of a law rendering a share repurchase void under § 546(e). *See Enron*, 323 B.R. at 876 ("As a complete nullity, there would be no resulting settlement payment. This consequence is not a result of the bankruptcy filing, it is simply a function of state law that was not preempted by 546(e).").

57. Moreover, the same presumption against preemption would defeat any assertion of implied preemption. *Fellner v. Tri-Union Seafoods, L.L.C.*, 539 F.3d 237, 249 (3d Cir. 2008) (applying the "traditional presumption" against preemption to claims of implied preemption); *see also Torres v. Precision Indus., Inc.*, 995 F.3d 485, 491 (6th Cir. 2021) ("Because preemption can trammel upon state sovereignty, courts apply a 'strong presumption' against implied preemption in fields that States traditionally regulate."). As explained above, Quantlab cannot rebut the strong presumption against preemption of an otherwise neutral law of corporate governance that renders a particular transaction void.

D. Third Circuit Jurisprudence Embraces the Key Distinction Between Void and Voidable Transactions That Lies at the Core of the *Enron* Decision

58. Furthermore, recognizing that a void contract cannot form the basis of a qualifying transaction under § 546(e) is consistent with a long line of controlling authority that distinguishes void contracts from voidable contracts. *See, e.g.*, *MZM Constr. Co. v. New Jersey Bldg. Laborers Statewide Benefit Funds*, 974 F.3d 386, 405-06 (3d Cir. 2020) (noting difference between an "agreement [that is] 'void *ab initio*'" that renders the contract "as if it never existed" and an

agreement that is voidable, where the party has the option of enforcing the contract).[24] For example, courts in the Third Circuit have adhered to the distinction between *void* and *voidable* contracts in finding that a party was not entitled to arbitration where the contract containing the arbitration clause was void. *See Sandvik AB v. Advent Int'l Corp.*, 220 F.3d 99, 107-09 (3d Cir. 2000) ("This Court's jurisprudence supports distinguishing between void and voidable contracts."). Indeed, the Third Circuit reached this conclusion despite the strong public policy favoring arbitration in which the Federal Arbitration Act is grounded. *See Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983) ("The Arbitration Act establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability.").

59. Here, too, the Court should recognize the distinction between void and voidable contracts and not apply § 546(e) to preempt Irish Law, which renders certain repurchases or redemptions void and not merely voidable. *See, e.g.*, *Wilmington Sav. Fund Soc'y, FSB v. PHL Variable Ins. Co.*, No. CV 13-499-RGA, 2014 WL 1389974, at *12 (D. Del. Apr. 9, 2014) ("A court may never enforce agreements void *ab initio*, no matter what the intentions of the parties");

[24] *See also Friedman v. Yula*, 679 F. Supp. 2d 617, 625 (E.D. Pa. 2010) ("A voidable contract is capable of being affirmed or rejected at the option of one of the parties . . . . However, a contract that is void *ab initio* is null from the beginning.") (quotations omitted); *Bertram v. Beneficial Consumer Disc. Co.*, 286 F. Supp. 2d 453, 459 (M.D. Pa. 2003) ("[T]he traditional distinguishing factor between voidable and void contracts is that the former vests a party with the power to elect either to ratify or to disaffirm the contract."); *Mack v. Progressive Corp.*, No. 23-2430, 2024 WL 1120377, at *5 (E.D. Pa. Mar. 14, 2024) ("[T]here is a distinction between a contract being void, where the contract itself is non-existent, or voidable, where the contract is in some way legally operative, but one or more of the parties may avoid the contract's legal effect."); *State College Area School Dist. v. Royal Bank of Canada*, No. 4:10-CV-1823, 2013 WL 12142576, at *2 (M.D. Pa. Jan. 7, 2013) ("[A] contract is void *ab initio* where one contracting party lacked authority or capacity to enter into the agreement in the first instance; a contract is voidable if there is some procedural defect or other conduct tainting the contracting circumstances, but the parties otherwise maintain authority to enter into the agreement."); *see also* Restatement (Second) of Contracts § 7 cmt. a (1981) (A "voidable contract is one where one or more parties have the power, by a manifestation of election to do so, to avoid the legal relations created by the contract, or by ratification of the contract to extinguish the power of avoidance." In contrast, a void contract "is not a contract at all; it is the 'promise' or 'agreement' that is void of legal effect.").

cf. Contemp. Indus. Corp. v. Frost, 564 F.3d 981, 988 (8th Cir. 2009) (finding that *Enron* does not support argument that § 546(e) does not preempt Nevada law because appellant failed to cite authority indicating that Nevada would consider the transaction void, rather than voidable).

CONCLUSION

For the reasons set forth above, the Court should deny the Motion.

[*Signature of counsel appears on following page*.]

Dated: January 17, 2025
Wilmington, Delaware

Respectfully submitted,

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