

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

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|--------------------------------------|---|-------------------------------|
| In re: | : | Chapter 11 |
| | : | |
| MALLINCKRODT PLC, <i>et al.</i> , | : | Case No. 20-12522 (JTD) |
| | : | |
| Reorganized Debtors. | : | (Jointly Administered) |
| | : | |
| OPIOID MASTER DISBURSEMENT TRUST II, | : | Adversary Proceeding |
| | : | |
| Plaintiff, | : | No. 22-50435 (JTD) |
| | : | |
| v. | : | |
| | : | Re: D.I. 491 & 515 |
| ARGOS CAPITAL APPRECIATION MASTER | : | |
| FUND LP, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
| | : | |

**REPLY IN SUPPORT OF 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**

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QTPUS¹ submits this reply in support of the Protocol Motion and in response to *Plaintiff's Opposition to Motion of Defendant Quantlab Trading Partners US, LP for Summary Judgment* [D.I. 515] (the "Opposition" or "Opp.").

PRELIMINARY STATEMENT

1. This is a motion that QTPUS never should have needed to file and that this Court never should have needed to waste its time considering and deciding.

2. QTPUS, the only defendant actually sued in the Amended Complaint, moves for dismissal on the grounds that it is a non-transferee. The Trust *agrees* that QTPUS is a non-transferee. Indeed, in its Opposition (at 8 n.6), the Trust says that it has always agreed that QTPUS is a non-transferee.

3. Nevertheless, the parties are here because the Trust, for almost a year, has refused simply to dismiss QTPUS. Deciding this Motion, accordingly, should be straightforward. The Motion requests dismissal of QTPUS because it is a non-transferee, the Trust agrees it is a non-transferee, and the Trust offers no argument or reason why QTPUS should not be dismissed. The Motion should be granted.

4. The Motion went further, addressing the defenses of two Quantlab entities who were not sued as defendants—QLS and QTP—to preempt the only response the Trust has ever offered for refusing to dismiss QTPUS. As explained in the Motion (¶¶ 24-25), the Trust demanded, as a condition to QTPUS's dismissal, that QTPUS agree to permit the Trust to file a further Amended Complaint to add a separate entity, QTP, as a defendant.

¹ Unless otherwise defined herein, capitalized terms shall have their meanings as defined in 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* [D.I. 491] (the "Protocol Motion" or "Mot.").

5. The Trust’s strategic position was not a valid basis to refuse dismissal under the Protocol Order. *See* Mot. ¶¶ 8, 29. And, more importantly, for present purposes, the Trust’s strategic (not legal) position provides no basis for refusing the relief QTPUS seeks in the Motion—dismissal as a matter of law based on its undisputed status as a non-transferee. Unsurprisingly, the Trust does not interpose its previous strategic position here, or any other position regarding QTPUS, conceding that QTPUS is entitled to dismissal. *See* Opp. at 1, ¶ 16 & n.6.

6. The Court could stop here and enter an order dismissing QTPUS. The Trust insists, however, that two additional, legally distinct Quantlab entities—QLS and QTP—are also defendants here. This is not because the Amended Complaint actually sued either party. Rather, the Trust asserts they are parties because the Amended Complaint describes QTPUS—the entity named as the defendant—as being “also known as” QLS and QTP.

7. That assertion—that one can properly sue one corporate entity merely by listing it as “also known as” the name of a distinct corporate entity—is not supported by any case law.

8. The Trust’s position throughout the Protocol process effectively confirms the lack of support for its position. At every turn, the Trust has refused to dismiss QTPUS without an agreement permitting the Trust to *amend* its complaint to *add* QTP as a defendant. That is because, as the Trust offers in its Opposition, “[w]ithout such language,” the Trust believes it “would risk also dismissing Quantlab Trading [*i.e.*, QTP] as a defendant.” Opp. ¶ 20.

9. For practical purposes, though, this is all irrelevant. The Trust concedes that QLS is a dissolved entity. So even if it were a defendant, it should be dismissed. And as to QTP, the Trust concedes both (a) that QTP is a financial participant, satisfying the “qualifying participant” prong of 11 U.S.C. § 546(e) (“Section 546(e)”), and (b) that this Court has already held that the

Share Repurchases were “settlement payments,” satisfying the qualifying transaction prong of Section 546(e).

10. Those concessions leave nothing actually to be considered and decided by the Court, even if the Trust were correct that it sued all three Quantlab entities. Rather, based on the Trust’s concessions, this Court can and should enter an order dismissing all three entities—QTPUS because there is no dispute that it is a non-transferee, QLS because there is no dispute that it is a dissolved entity, and QTP pursuant to Section 546(e).

ARGUMENT

I. QTPUS Is A Non-Transferee And Should Be Dismissed

11. The present Motion seeks the dismissal of QTPUS on the ground that it is a non-transferee.

12. The Trust does not dispute that a non-transferee must be dismissed, and the Trust concedes that QTPUS is a non-transferee. *See* Opp. at 1, ¶¶ 16, 20. Indeed, the Trust says it has “never disputed” that QTPUS is a non-transferee. *Id.* ¶ 16 n.6.

13. Those concessions are dispositive. QTPUS should be dismissed.

14. While the Trust refused to stipulate to the dismissal of QTPUS based on strategic considerations—because, in its words, “that would risk also dismissing [QTP] as a defendant,” Opp. ¶ 20—that strategic consideration has no place here. The question on this Motion is whether QTPUS is a non-transferee. Because there is no dispute on that issue, this Court should enter an order dismissing QTPUS from the case.

II. Even If QLS And QTP Are Defendants, They Should Be Dismissed

15. The Trust insists that the Amended Complaint also sued two distinct legal entities—QLS and QTP—by virtue of listing each as an alternative name by which QTPUS allegedly is or was known. QTPUS strongly disagrees that the Amended Complaint sued any Quantlab entity

other than QTPUS (*see infra* Part III), but even if that were so, both entities are entitled to dismissal based on the Trust's concessions and this Court's earlier Dismissal Order holding that the Share Repurchases were settlement payments.

16. As to QLS, the Trust concedes it is a dissolved entity under Delaware law that cannot be sued. *See* Opp. at 1, ¶¶ 16, 20. Indeed, the Trust says that it has "never disputed" that QLS is a dissolved entity. *Id.* ¶ 16 n.6. So QLS should be dismissed.

17. As to QTP, the Trust's claims are barred by the Section 546(e) safe harbor. The Trust agrees (Opp at 1, ¶ 19) that QTP is a financial participant. *See* Levine Decl., Ex. 2, 5, 8, 11, 16. The qualifying participant prong accordingly is not in dispute. The Trust also concedes (Opp. at 3, ¶ 22) that this Court already "determined that the Share Repurchases were qualifying transactions and rejected the Trust's argument to the contrary," saying that the arguments offered in the Opposition on that issue are merely for the Trust "to make its record, preserve the qualifying transaction issue for appeal, and avoid waiver." That concession is sensible, as this Court's holding that the Share Repurchases were settlement payments and thus qualifying transactions is the law of the case. *See McDuffy v. Marsico*, 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)).

18. For these reasons, even if the Trust were correct that the Amended Complaint named QLS and QTP as defendants, both Quantlab entities also should be dismissed—QLS because it is a dissolved entity, and QTP pursuant to the Section 546(e) safe harbor.

III. The Trust Did Not Sue QTP In The Amended Complaint

19. Finally, the Trust expends much of its Opposition (at 1-2, 10-17) asserting that it sued QTP in the Amended Complaint. To the extent the Court reaches this issue, it is obvious that the Amended Complaint does not name QTP as a defendant.

20. History is important here. As the Court knows, the Trust engaged in extensive Rule 2004 discovery before it filed the Complaint and, later, the Amended Complaint. *See* D.I. 199 at 5-6; *see also* D.I. 204 at 2-3. As the Quantlab entities' Protocol submissions showed, on September 1, 2022, counsel for QTPUS made clear to counsel to the Trust as part of the Rule 2004 discovery process that (a) QLS was a dissolved entity, and (b) QTP was the Quantlab entity that sold Mallinckrodt stock on the dates identified by the Trust in the subpoena. *See* Levine Decl., Ex. 1 at Ex. A. Nonetheless, when the Trust filed the Complaint on October 12, 2022 about a month later, it brought claims against QTPUS and QLS, but not QTP. *See* D.I. 1, 4-1 at 2.

21. On October 11, 2023, undersigned counsel reminded the Trust in a submission pursuant to the Protocol Order that QTP is the entity that would have received proceeds of any sales of Mallinckrodt stock on the dates identified by the Trust, meaning that QTP (and not QTPUS) was the only potential defendant in this case. *See* Levine Decl., Exs. 1 & 2. Nonetheless, just 13 days later, the Trust filed the Amended Complaint, choosing to sue only QTPUS—describing it as “Quantlab Trading Partners U.S., L.P. a/k/a Quantlab Securities, LP a/k/a Quantlab Trading Partners, L.P.” D.I. 205, 209 at ii, ¶ 74.

22. After filing the Amended Complaint, on January 5, 2024 and April 8, 2024, the Trust filed motions seeking a fifth and sixth extension of time to file and serve a further amended complaint, respectively. *See* D.I. 237, 400. On May 21, 2024, this Court denied both those motions. *See* D.I. 420, 421. The Trust did not use that time to amend its complaint further to add QTP as a defendant.

23. Against this background, the question presented by the Trust's argument in its Opposition is: Which Quantlab entity did the Trust actually sue in the Amended Complaint? There

can be no dispute that the party named as the defendant is QTPUS. There is also no dispute that, to the extent QTP is mentioned at all, it is as an “a/k/a” of QTPUS.

24. So, to the extent the Court reaches this issue, the question is whether describing one legal entity as linked to another distinct legal entity through an “a/k/a” is sufficient to actually sue that other entity as a defendant. The answer is no.

25. The law is clear: A plaintiff fails to name an entity as a defendant by listing it as an “a/k/a” of a separate and distinct legal entity, where the plaintiff knew the two entities were not the same, was “warned . . . of the likelihood that he initially sued the wrong party,” and yet failed to “exert[] the minimal effort required to name a separate Defendant and issue proper summons” by instead “merely merg[ing] the correct party’s name into the name of the party he already sued” using an “a/k/a.” *Innocent v. Palm Beach Cnty. Workforce Dev. Consortium*, 2021 WL 7082830, at *3-4 (S.D. Fla. Oct. 22, 2021); *see also 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”); *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 “a/k/a” of named defendant).

26. None of the cases cited by the Trust addressed this principle. Rather, the cases generally address (a) whether a slight error in the defendant’s name is permissible, *see, e.g., McCary v. Cunningham*, 2022 WL 2802385, at *1-2 (D. Del. July 18, 2022) (due to “typographical error,” the complaint’s caption named “New Castle County Police Department,” but body of complaint identified defendant as “New Castle County”); *Morrel v. Nationwide Mut. Fire Ins. Co.*, 188 F.3d 218, 224 (4th Cir. 1999) (naming “The Miller Group Construction Company,” rather

than “The Miller Group Construction Company, *Inc.*”) (emphasis added); *Spero v. Helge*, 2004 WL 5709578, at *16 n.22 (D.N.J. July 21, 2004) (plaintiff mistakenly named “Monroe Township First Aid Squad” instead of the “Monroe Township Municipal Ambulance Service”), *aff’d*, 139 F. App’x 431 (3d Cir. 2005); or (b) whether the use of the *actual* trade name instead of the corporate name for the same entity was permissible to name that defendant, *see, e.g., Kroetz v. AFT-Davidson Co.*, 102 F.R.D. 934, 937 (E.D.N.Y. 1984) (plaintiff’s “unintentional use” of the defendant’s trade name sufficed to properly name defendant); *Anthony v. Choudary*, 2020 WL 7054271, at *3 (D.N.J. Dec. 2, 2020) (*pro se* plaintiff used the “most commonly used [name] for the [defendant]”).

27. Neither of those scenarios is at issue here. Since September 1, 2022, the Trust has known that QTP, QLS, and QTPUS were separate and distinct legal entities, and that QTP was the party that received the proceeds from sales of Mallinckrodt stock. *See supra* ¶¶ 20-22. But instead of naming QTP as a defendant, the Trust chose to sue QTPUS as the only defendant, then falsely described QLS and QTP as “a/k/a” names of QTPUS.²

28. As a result, the Trust’s entire argument comes down to its contention that linking a party by using “a/k/a” naming is sufficient to name that entity in its own right under the Federal Rules. But the Trust’s Opposition cites no authority supporting that proposition and, as noted, the

² The other cases cited in the Opposition are equally irrelevant. *Nally v. New Jersey Manufacturers Insurance Company*, 674 F. Supp. 3d 171 (E.D. Pa. 2023), addressed a situation where the case caption, summons caption, and civil case sheet all named the correct defendant, but the summons named the wrong entity, as the result of an oversight by plaintiff. *Id.* at 174. But the Trust’s failure to list QTP in the summons (or, in the Complaint, for that matter) is no mere oversight; the Trust made the conscious decision to name QLS and QTP as “a/k/a” names of QTPUS, despite knowing all along that QTP was likely the correct defendant. *CNX Gas Co. v. Lloyd’s of London*, 410 F. Supp 3d 746 (W.D. Pa. 2019), also does not help the Trust. There, the question was whether the plaintiff properly named several underwriters as defendants when the complaint alleged “[o]n information and belief” that “Defendants herein are *all of the underwriters of a Certificate of Insurance.*” *Id.* at 753 (emphasis in original). But here the Amended Complaint did not name QTPUS “on information and belief”; the Trust was well aware of the fact that QTP and QLS were separate and distinct entities from QTPUS, and that QTP was the only possible right defendant.

only on-point authority explicitly addressing attempts by parties to name and sue separate legal entities by listing them as an “a/k/a” rejects that argument. *See Innocent*, 2021 WL 7082830, at *3-4; *Ochoa*, 989 F. Supp. at 832-33; *IAA Servs.*, 2022 WL 22328957, at *2.

29. The Opposition (¶¶ 27-30) attempts to evade this issue—*i.e.*, whether it *did* sue QTP—by seeking to shift the debate to whether QTP had notice of the Amended Complaint and would suffer prejudice if it were treated as a defendant. But notice and prejudice, which apply to relation back under Rule 15(c) when a party seeks to *amend* a complaint to *add* a party, *see Moore v. Walton*, 96 F.4th 616, 623 (3d Cir. 2024), are irrelevant here. The issue is simply which entity the Trust actually did sue in the Amended Complaint.

30. As the adage goes, actions speak louder than words. And the Trust’s actions make clear that it recognizes the error of its ways. The Trust has never been content to dismiss QTPUS and move forward under its purported position that the Amended Complaint sued three legally distinct Quantlab entities. To the contrary, the Trust has refused to dismiss QTPUS—a party it concedes (and, apparently, has always conceded) is a non-transferee—unless QTPUS will cover the Trust’s mistake by consenting to the filing of a further amended complaint *adding* QTP as a party. *See Levine Decl.*, Ex. 12. That position should tell the Court all it needs to know: The Trust did not sue QTP as a Defendant in the Amended Complaint.

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CONCLUSION

31. For the foregoing 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 agrees with the Trust that the Amended Complaint sues QLS and QTP as defendants, then the Court should enter an order dismissing those two entities as well.

Dated: February 7, 2025
Wilmington, Delaware

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