

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 1:20-CV-21808-RNS

TODD BENJAMIN INTERNATIONAL, LTD. and
TODD BENJAMIN, individually and on behalf of
all others similarly situated, and derivatively on
behalf of the TCA Global Credit Master Fund, L.P.,
TCA Global Credit Fund, LP, and TCA Global
Credit Fund, Ltd.,

Plaintiffs,

v.

GRANT THORNTON INTERNATIONAL LTD.,
GRANT THORTON CAYMAN ISLANDS,
GRANT THORNTON IRELAND, BOLDER
FUND SERVICES (USA), LLC, and BOLDER
FUND SERVICES (CAYMAN), LTD.,

Defendants.

**JOINT SCHEDULING REPORT, WRITTEN DISCOVERY
PLAN, AND PROPOSED SCHEDULING ORDER**

Plaintiffs Todd Benjamin International, Ltd., and Todd Benjamin, (“Plaintiffs”), and Defendants Grant Thornton Cayman Islands, Grant Thornton Ireland, Grant Thornton International Ltd., Bolder Fund Services (USA), LLC, and Bolder Fund Services (Cayman), Ltd. (“Defendants”) submit the following Joint Scheduling Report pursuant to Fed. R. Civ. P. 16(b) and 26(f), S.D. Fla. L.R. 16.1(b), the Court’s May 1, 2020, Order Requiring Discovery and Scheduling Conference and Order Referring Discovery Matters to the Magistrate Judge [ECF No.

4], and the Court's April 11, 2023, Paperless Order directing the Parties to file a joint discovery plan and conference report [ECF No. 65].¹

SCHEDULING REPORT

A. Likelihood of Settlement

The Parties have not discussed settlement and at this time agree that the likelihood of settlement is remote.

B. Likelihood of Appearance of Additional Parties

Plaintiffs may add additional class representatives.

Defendants believe that the appearance of additional parties is unlikely.

¹ In submitting this joint report, Defendants expressly preserve, and do not waive, all defenses including, but not limited to, lack of personal jurisdiction and *forum non conveniens*.

C. Proposed Limits on Time (based on Complex Track):

- i. **to join other parties and to amend pleadings:** as directed by the Court following resolution of Defendants' pending motion to dismiss or as otherwise permitted by the Federal Rules of Civil Procedure
- ii. **to file motion for class certification and to meet and confer on a briefing schedule for the motion:** March 29, 2024 (approximately 327 days after the entry of the Scheduling Order)
- iii. **to complete fact discovery:** April 10, 2024 (approximately 339 days after the entry of the Scheduling Order)
- iv. **to serve initial expert reports by the party with the burden of proof:** April 10, 2024 (approximately 339 days after entry of the Scheduling Order)
- v. **to serve rebuttal expert reports:** May 10, 2024 (approximately 369 days after entry of the Scheduling Order)
- vi. **to complete expert discovery:** June 10, 2024 (approximately 400 days after entry of the Scheduling Order)
- vii. **to file dispositive motions:** August 19, 2024 (approximately 469 days after entry of the Scheduling Order)

Per the Court's Order Requiring Discovery and Scheduling Conference, the Plaintiffs submit that the Complex Track is appropriate for this class action lawsuit because it presents complicated and time-consuming legal and factual matters. Plaintiffs allege the Defendants' involvement in a years-long overvaluation scheme that caused investors hundreds of millions of dollars in losses. In addition to the class-related issues, Plaintiffs thus anticipate extensive discovery on the substance of Plaintiffs' claims, including from various nonparties, and the need for financial data and analyses to prove losses resulting from each of the five Defendants.

Defendants agree that the Complex Track is appropriate for this action because it is uniquely complex and potentially requires significantly more time than the default periods set forth in Attachment B to the Court's May 1, 2020, Order. In particular, should the case proceed past the motion to dismiss stage, Defendants submit the following factors justify a complex designation

and a more protracted schedule: 1) trial will take more than 10 days; 2) Plaintiffs seek class certification for numerous individuals in various countries of origin. Five Defendants have been sued, which are located in different countries; 3) relevant documentation for Defendants may be located abroad, including in the Netherlands, Singapore, Ireland and the Cayman Islands. Court filings also suggest that the receivership case involving the fund(s) has “millions” of documents that may be relevant to this case; 4) foreign law may apply to issues in this case; and 5) while the number of expert witnesses is unknown, they may include experts in foreign law, and Defendants anticipate that the total number of experts for the parties will be more than in a standard track case.²

Defendants further submit that modifications to the Scheduling Order may be appropriate after the Court’s resolution of Defendants’ pending motion to dismiss to the extent any claims or defendants remain in the action.³

D. Proposals for the formulation and simplification of issues, including the elimination of frivolous claims or defenses, and the number and timing of motions for summary judgment or partial summary judgment

The Parties will attempt to stipulate to as many facts as possible and confer with each other as the case progresses to simplify discovery on those issues to which they cannot stipulate. The Parties propose a class certification motions deadline of March 29, 2024. The Parties should have

² While the parties propose slightly more time than the default Complex Track to complete *expert* disclosure (around 400 days from entry of the Scheduling Order, the parties only request approximately 339 days from entry of the Scheduling Order to complete fact discovery, for an average time to complete both fact and expert discovery of around 365 days from entry of the Scheduling Order. For the reasons more fully set forth above, the Parties respectfully submit that this brief amount of additional time for expert discovery in this case is appropriate.

³ As explained in more detail below, if the Plaintiffs initiate discovery, the Defendants anticipate filing a motion to stay discovery pending the Court’s determination of Defendants’ pending motion to dismiss. Defendants respectfully submit that such a stay would be warranted for reasons that Defendants will explain in their stay motion. Accordingly, Defendants jointly propose with Plaintiffs the scheduling dates above without waiving their right to seek a stay of any discovery sought by Plaintiffs.

thirty days to oppose any summary judgment motion and thirty days to provide a reply to any summary judgment motion.

E. Necessity or desirability of amendments to the pleadings

Plaintiffs may seek to add class representatives and revise the class definition.

Defendants do not believe that it is necessary or warranted to amend the pleadings.

F. The possibility of obtaining admissions of fact and of documents, electronically stored information or things which will avoid unnecessary proof, stipulations regarding authenticity of documents, electronically stored information or things, and the need for advance rulings from the Court on admissibility of evidence

The Parties agree to confer after the applicable discovery cut-off date and prior to the final pretrial conference to discuss potential admissions of fact and of documents, electronically stored information or things which will avoid unnecessary proof, stipulations regarding the authenticity of documents, electronically stored information or things, and the need for advance rulings from the Court on the admissibility of evidence. However, at this point, the Parties have not stipulated to any facts or admissibility and believe it is premature to address these issues at this time.

G. Suggestions for the avoidance of unnecessary proof and cumulative evidence

The Parties believe it is premature to address these issues at this time, but will meet and confer on these topics after the close of any discovery.

H. Suggestions on the advisability of referring matters to a Magistrate Judge or Master

The Court has referred all discovery matters to Magistrate Judge Torres. [ECF No. 4]. The Parties have elected not to have the Judge Torres conduct proceedings beyond those matters already referred to him.

I. Preliminary estimate of the time required for trial

The Parties estimate the trial will require 10-14 days.

J. Requested date or dates for conferences before trial, a final pre-trial conference, and trial

The Parties propose a final pretrial conference on December 3, 2024, and a trial beginning on December 9, 2024 (or approximately 581 days after entry of the Scheduling Order). This schedule follows the Complex Track, as described in Local Rule 16.1(a)(2)(C).

K. Any issues about:

- i. disclosure, discovery, or preservation of ESI, including the form or forms in which it should be produced:** The parties agree to negotiate an ESI protocol to govern the exchange of electronically stored information in this case.
- ii. claims of privilege or of protection as trial-preparation materials, including— if the parties agree on a procedure to assert those claims after production— whether to ask the court to include their agreement in an order under Federal Rule of Evidence 502:** The parties intend to work with each other and with any third parties to judiciously and efficiently resolve any privilege issues or objections that may arise.
- iii. when the parties have agreed to use the ESI Checklist available on the Court’s website (www.flsd.uscourts.gov), matters enumerated on the ESI Checklist:**
None at this time.

DISCOVERY PLAN PURSUANT TO FED. R. CIV. P. 26(f)

A. What changes should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement of when initial disclosures were made or will be made

Plaintiffs do not seek any departure from Rule 26(a) regarding initial disclosures.

Pursuant to Rule 26(a)(1)(C), Defendants believe that any Rule 26(a)(1)(A) initial disclosures should not be exchanged until after resolution of Defendants’ pending motion to

dismiss. Defendants also believe that initial disclosures, if any, should be made fourteen days after the resolution of Defendants' motion to dismiss. Plaintiffs disagree with Defendants' position and will seek to enforce Defendants' discovery obligations absent an order staying discovery. Furthermore, prior to any finding of personal jurisdiction over the Grant Thornton Defendants and Bolder Fund Services (Cayman), Ltd (the "Foreign Defendants"), Foreign Defendants submit that any discovery from the Foreign Defendants must be governed by the Hague Convention procedures and not the Federal Rules of Civil Procedure. Plaintiffs also disagree with Defendants' position here and will take discovery consistent with the applicable law and the Federal Rules of Civil Procedure.

B. The subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues

Plaintiffs do not believe discovery should be phased or limited based on particular issues.

Defendants believe that all discovery should be stayed until the resolution of Defendants' motion to dismiss, which raises threshold jurisdictional, venue, and merits defenses that Defendants submit will dispose of the case in its entirety.

C. Any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced

The parties will work to resolve any issues they have related to the disclosure, discovery, or preservation of electronically stored information.

D. Any issues about claims of privilege or of protection as trial-preparation materials, including—if the parties agree on a procedure to assert these claims after production—whether to ask the court to include their agreement in an order under Federal Rule of Evidence 502

The Parties anticipate a significant amount of confidential material and evidence to be at issue. Thus, the Parties agree to discuss the preparation of a stipulated confidentiality and

protective order, including provisions under Fed. R. Evid. 502(d), (e). Otherwise, the Parties intend to rely on the applicable Rules and Local Rules for matters of privilege and trial-preparation materials.

E. What changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed

Plaintiffs do not believe any changes should be made in the limitations on discovery imposed under the applicable rules.

As noted above, the Defendants believe that all discovery should be stayed until the resolution of Defendants' case-dispositive motion to dismiss and that, in any event, prior to any finding of personal jurisdiction over the Foreign Defendants, any discovery from the Foreign Defendants must be governed by the Hague Convention procedures and not the Federal Rules of Civil Procedure. As noted above, Plaintiffs will oppose Defendants' efforts to stay or otherwise limit the taking of discovery in this action.

F. Any other orders that the court should issue under Rule 26(c) or under Rule 16(b) and (c)

The Parties have no suggestions for other such orders at this time.

PROPOSED SCHEDULING ORDER

A Proposed Scheduling Order is attached hereto as **Exhibit A**. The Parties believe that the Court should adopt the Complex Track schedule for this matter for the reasons indicated above.

Dated: May 8, 2023

Respectfully submitted,

/s/ Jeffrey C. Schneider

**LEVINE KELLOGG LEHMAN
SCHNEIDER + GROSSMAN LLP**

Jeffrey C. Schneider, P.A.
Florida Bar No.: 933244
Jason K. Kellogg, P.A.
Florida Bar No.: 0578401
Marcelo Diaz-Cortes
Florida Bar No.: 118166
Miami Tower
100 SE 2nd Street, 36th Floor
Miami, Florida 33131
T: (305) 403-8788
F: (305) 403-8789
Email: jcs@klsg.com
ph@klsg.com
jk@klsg.com
ame@klsg.com
md@klsg.com
cf@klsg.com

**WEINBERG WHEELER
HUDGINS GUNN & DIAL, LLC**

Aaron M. Cohn, Esq.
Florida Bar No.: 95552
Weinberg Wheeler Hudgins
Gunn & Dial, LLC
2601 South Bayshore Drive
Suite 1500
Miami, FL 33133
T: (305) 455-9500
F: (305) 455-9501
E-Mail: acohn@wwhgd.com
dmallqui@wwhgd.com
mferrer@wwhgd.com

SILVER LAW GROUP

Scott L. Silver, Esq.
Florida Bar No.: 095631
11780 W. Sample Road
Coral Springs, FL 33065
T: (954) 755-4799
F: (954) 755-4684

/s/ David M. Cheifetz

STROOCK & STROOCK & LAVAN LLP

James L. Bernard (Admitted *Pro Hac Vice*)
David M. Cheifetz (Admitted *Pro Hac Vice*)
Patrick N. Petrocelli (Admitted *Pro Hac Vice*)
180 Maiden Lane
New York, NY 10038
Tel.: (212) 806-5400
Fax: (212) 806-6006
jbernard@stroock.com
dcheifetz@stroock.com
ppetrocelli@stroock.com

*Counsel for Defendant Grant Thornton
International Ltd.*

/s/ John D. Mullen

PHELPS DUNBAR LLP

John D. Mullen
Florida Bar No. 0032883
John.mullen@phelps.com
Michael S. Hooker
Florida Bar No. 330655
Michael.hooker@phelps.com
PHELPS DUNBAR LLP
100 South Ashley Drive, Suite 2000
Tampa, FL 33602
Tel.: (813) 472-7550
Fax: (813) 472-7570

*Counsel for Defendant Grant Thornton Cayman
Islands*

/s/ Lizza C. Constantine

COLE, SCOTT & KISSANE, P.A

JONATHAN VINE
Florida Bar No.: 10966
CODY GERMAN
Florida Bar No.: 58654
LIZZA C. CONSTANTINE
Florida Bar No.: 1002945

<p>E-Mail: ssilver@silverlaw.com rfeinberg@silverlaw.com</p> <p>GIBBS LAW GROUP LLP David Stein <i>(Pro Hac Vice to be submitted)</i> Kyla J. Gibboney <i>(Pro Hac Vice to be submitted)</i> 1111 Broadway, Suite 2100 Oakland, CA 94607 T: (510) 350-9700 F: (510) 350-9701 E-Mail: ds@classlawgroup.com kjg@classlawgroup.com</p> <p><i>Counsel for Plaintiffs</i></p>	<p>NICHOLAS NASH II Florida Bar No.: 1017063 Cole, Scott & Kissane Building 9150 South Dadeland Boulevard, Suite 1400 P.O. Box 569015 Miami, Florida 33256 Telephone (561) 383-9203 Facsimile (305) 373-2294 Primary e-mail: jonathan.vine@csklegal.com Primary e-mail: cody.german@csklegal.com Primary e-mail: lizza.constantine@csklegal.com Primary e-mail: nicholas.nashII@csklegal.com Alternate e-mail: donna.scott@csklegal.com Alternate e-mail: nicolle.quant@csklegal.com</p> <p><i>Counsel for Defendant Grant Thornton Ireland</i></p> <p><u>/s/ Matthew C. Henning</u></p> <p>CLYDE & CO US LLP Frederick J. Fein Florida Bar No. 813699 Matthew C. Henning Florida Bar No. 014360 1221 Brickell Avenue, Suite 1600 Miami, FL 33131 Tel.: (305) 446-2646 Fax: (305) 441-2374 fred.fein@clydeco.us matthew.henning@clydeco.us</p> <p><i>Counsel for Defendants Bolder Fund Services (USA), LLC and Bolder Fund Services (Cayman), Ltd.</i></p>
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the forgoing document was served on May 8, 2023 via the Court's CM/ECF filing system to all recipients registered to receive notices of electronic filings generated by CM/ECF for this case.

By: /s/ Jeffrey C. Schneider

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Defendants.

PROPOSED JOINT SCHEDULING ORDER

THIS MATTER is set for trial during the two-week trial period beginning on December 9, 2024. Calendar call will be held at 9:00 a.m. on Tuesday, December 3, 2024, at the Wilkie D. Ferguson, Jr. United States Courthouse, 400 N. Miami Avenue, Courtroom 12-3, Miami, Florida. A pretrial conference will be held immediately following calendar call only if requested by the parties in advance.

1. The parties must comply with the following schedule:

DATE	ACTION
<i>As directed by the Court following resolution of Defendants' pending motion to dismiss or</i>	Deadline to join additional parties or to amend pleadings.

<i>as otherwise permitted by the Federal Rules of Civil Procedure</i>	
August 18, 2023 (or 14 weeks after entry of Scheduling Order)	Deadline to file joint interim status report.
<i>May 3, 2024 (or 361 days after entry of the Scheduling Order)</i>	Deadline to file Proposed Order Scheduling Mediation, setting forth the name of the mediator, and the date, time, and location of the mediation, consistent with the Order of Referral to Mediation.
<i>March 29, 2024 (or 327 days after entry of the Scheduling Order)</i>	<i>Deadline for Plaintiffs to move for class certification</i>
<i>April 10, 2024 (or 339 days after entry of the Scheduling Order)</i>	<p>Deadline to complete all fact discovery.</p> <p>Deadline to submit joint notice indicating whether the parties consent to jurisdiction before the designated magistrate judge for purposes of final disposition.</p> <p>Deadline to exchange expert witness summaries/reports pursuant to Federal Rule of Civil Procedure 26(a)(2). Rebuttal disclosures are permitted and must conform to the deadline set forth in Federal Rule of Civil Procedure 26(a)(2)(D)(ii).</p>
<i>August 19, 2024 (or 469 days after entry of the Scheduling Order)</i>	Deadline for the filing of all dispositive motions
<i>October 4, 2024 (or 515 days after entry of the Scheduling Order)</i>	Deadline to complete mediation, consistent with the Order of Referral to Mediation.
<i>June 10, 2024 (or 400 days after entry of the Scheduling Order)</i>	Deadline to complete all expert discovery.
October 8, 2024 (or 8 weeks before calendar call)	Deadline for the filing of pretrial motions, including motions in limine and <i>Daubert</i> motions.

November 12, 2024 (or 4 weeks before the trial date)	Deadline to file joint pretrial stipulation pursuant to Local Rule 16.1(e) and pretrial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(3).
November 25, 2024 (or two weeks before the trial date)	Deadline to file proposed jury instructions (if the matter is set for a jury trial) or proposed findings of fact and conclusions of law (if the matter is set for a bench trial) pursuant to Local Rule 16.1(k).
<i>December 9, 2024 (or 581 days after entry of the Scheduling Order)</i>	Two-week trial period commences (calendar call will be scheduled on the Tuesday before the trial period)

2. Interim Joint Status Report. The parties are required to submit an interim joint status report addressing the following issues:

- a) Have all defendants been served? If not, state the reasons.
- b) Have all defendants responded to the complaint? If not, state the reasons.
- c) If this is a class action, has a motion for class certification been filed? If so, what is its status?
- d) Have the parties agreed on and selected a mediator? Have the parties agreed upon a place, date, and time for mediation?
- e) Have the parties engaged in informal settlement negotiations? If not, explain the reasons for the failure to do so. If yes, state the status of such negotiations (e.g., ongoing, impasse, etc.) and the relative prospects for resolution through informal means.
- f) Describe the status of discovery conducted to date, and identify whether the parties reasonably believe that they will be able to complete discovery by the Court's deadline. If not, explain the reasons.

g) Identify any other issues that the Court should be aware of that may affect the resolution of this matter or the schedule as currently set.

3. Limit on motions in limine & Daubert motions. Each party is limited to filing one motion in limine and one Daubert motion. If a party cannot address his or her evidentiary issues or expert challenges in a 20-page motion, leave to exceed the page limitation will be granted upon a showing of good cause. The parties are reminded that motions in limine and Daubert motions must contain the Local Rule 7.1(a)(3) pre-filing conference and certification.
4. Jury Instructions. The parties must submit their proposed jury instructions jointly, though they need not agree on each proposed instruction. Where both parties agree on a proposed instruction, that instruction must be set out in regular typeface. Instructions proposed only by a plaintiff must be underlined. Instructions proposed only by a defendant must be bold-faced. Every instruction must be supported by a citation of authority. The parties should use as a guide the Eleventh Circuit Pattern Jury Instructions for Civil Cases, including the directions to counsel, or the applicable state pattern jury instructions. The parties must jointly file their proposed jury instructions via CM/ECF, and must also submit their proposed jury instructions to the Court via e-mail at scola@flsd.uscourts.gov in Word format (.doc).
5. Trial Exhibits. All trial exhibits must be pre-marked. Plaintiff's exhibits must be marked numerically with the letter "P" as a prefix. Defendant's exhibits must be marked alphabetically with the letter "D" as a prefix. A list setting out all exhibits must be submitted at the time of trial. This list must indicate the pre-marked identification label (e.g., P-1, or D-A) and must also include a brief description of the exhibit.

6. Deposition Designations. Any party intending to use deposition testimony as substantive evidence must designate by line and page reference those portions in writing. The designations must be served on opposing counsel and filed with the Court 14 days before the deadline to file the joint pretrial stipulation. The adverse party must serve and file any objections and any cross-designations within seven days. The initial party then has seven days to serve and file objections to the cross-designations.
7. Voir Dire Questions. The Court will require each prospective juror to complete a brief written questionnaire prior to the commencement of questioning in the courtroom. Any party may up to five proposed, case-specific questions to be included in the questionnaire. The proposed questions must be filed with the Court at the time of the filing of the joint pretrial stipulation, and must also be submitted to the Court via e-mail at scola@flsd.uscourts.gov in Word format (.doc).
8. Settlement Conference Before Magistrate Judge. The parties may, at any time, file a motion requesting a settlement conference before Magistrate Judge Edwin Torres. The Court encourages the parties to consider a confidential settlement conference with Judge Torres, especially if the parties believe there is a meaningful chance of reaching an early, amicable resolution of their dispute.
9. Settlement Notification. If this matter is settled, counsel are directed to inform the Court promptly via telephone (305-523-5140) and/or e-mail (scola@flsd.uscourts.gov).

DONE and **ORDERED**, in Miami, Florida, this ____ day of May, 2023.

ROBERT N. SCOLA
UNITED STATES DISTRICT JUDGE

cc: All counsel of record.