

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-21964-CIV-ALTONAGA

SECURITIES & EXCHANGE COMMISSION,

Plaintiff,

v.

TCA FUND MANAGEMENT GROUP CORP.,
et. al.,

Defendants.

**NON-PARTY GRANT THORNTON IRELAND’S OBJECTION TO RECEIVER’S
MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT AMONG RECEIVER,
CLASS PLAINTIFFS, AND FORMER OFFICERS AND DIRECTORS, AND ENTRY OF
BAR ORDER¹**

Non-Party Grant Thornton Ireland (“GT Ireland”), pursuant to this Court’s Order dated August 31, 2023 (ECF No. 371), timely objects to the entry of a bar order that would preclude any claims by GT Ireland against Robert Darryl (Bob) Press², Alyce Schreiber, William (Bill) Fickling, Tara Antal, Bruce Wookey, and Bernard Sumner (“TCA Directors and Officers”) of the Receivership Entities³, where Todd Benjamin International, Ltd. and Todd Benjamin, individually

¹ Grant Thornton Ireland brings forward this Objection as a non-waiver of its appealable rights in the Class Action.

² Mr. Press is added to the definition of TCA Directors and Officers, but GT Ireland notes that the Bar Order excludes any claims against Mr. Press. ECF No. 369-4, ¶ 5.

³ TCA Fund Management Group, Corp., TCA Global Credit Fund GP, Ltd, TCA Global Credit Fund, LP, TCA Global Credit Fund, Ltd., and TCA Global Credit Master Fund, LP (the “Receivership Entities”).

and on behalf of an alleged class (“Class Plaintiffs”) have brought claims against GT Ireland in the Class Action⁴ for acts and omissions committed by the TCA Directors and Officers.

SUMMARY OF THE ARGUMENT

“A bar order is an *extraordinary remedy*—it can bar a third party’s claim, even though the third party may not be part of the relevant lawsuit of settlement.” *Sec. & Exch. Comm’n v. Quiros*, 966 F.3d 1195, 1199 (11th Cir. 2020) (emphasis added).

Here, the Receiver, the Class Plaintiffs and TCA Directors and Officers (collectively, the “Settling Parties”)⁵ have agreed to resolve their claims and negotiated a settlement agreement and the entry of a Bar Order, without any notice or discussion with GT Ireland.⁶ The proposed Bar Order is broad sweeping insofar as it bars “any person or entity” from “commencing, prosecuting, conducting, asserting or continuing in any manner, directly, indirectly, or derivatively, against the Former Officers and Directors.” *See* ECF No. 369-1, ¶ 2(r) (definition of Settling Parties); ECF No. 369-4, ¶ 5. Notably missing from this negotiation is GT Ireland, who has meritorious claims against TCA Directors and Officers that would be barred by the entry of the proposed Bar Order. ECF No. 369-4; *see also* Demand Letter, at **Exhibit 1**. Certainly, federal courts in the United States have found that it is inappropriate to enforce bar orders against non-parties of the litigation such as GT Ireland in the instant action. *See Colbat Multifamily Investors I, LLC v. Shapiro*, 2013 WL 5418588, at *3 (S.D.N.Y. Sept. 27, 2013) (declining to issue the requested bar order)

⁴ *Todd Benjamin Int’l, Ltd. v. TCA Fund Mgmt. Group Corp.*, Case No. 1:20-CV-21808-RNS (S.D. Fla.) (the “Class Action”).

⁵ *See* ECF No. 369-1, ¶ 2(r).

⁶ It is noteworthy that the Settling Parties have been negotiating the instant settlement agreement and Bar Order for over a year. *See* ECF No. 369, at pg. 6 (the Settling Parties “mediated the case before Howard Tescher on March 23 and April 13, 2022.”).

GT Ireland's objection to the entry of the Bar Order should be sustained for the following reasons:

- 1. The Bar Order is Unfair and Inequitable as the factors set forth in *Munford* weigh against the entry of the Bar Order – including because (a) GT Ireland would prevail on its barred claims against the TCA Directors and Officers, (b) GT Ireland has independent claims, (c) because the complexity of the SEC Action and the Class Action is a neutral factor in this analysis, and (d) because excluding GT Ireland as a Barred Party is not a material modification that would unravel the Settlement Agreement.**
- 2. The Bar Order Violates GT Ireland's due process rights as a non-party to the settlement agreement and negotiation of the Bar Order by precluding it from bringing the claims it has against TCA Directors and Officers.**

For these reasons, as discussed in more detail below, this Court should sustain GT Ireland's objection to the entry of the Bar Order and deny or modify the Bar Order to exclude claims GT Ireland has against TCA Directors and Officers.

RELEVANT BACKGROUND

I. TCA Cayman Funds Engagement of GT Ireland for 2017 and 2018 Audits

In 2018 and 2019, GT Ireland was engaged by the TCA Cayman Funds to provide auditing services. *See* Class Action ECF No. 58–4⁷, Glennon Affidavit, ¶ 22. Specifically, GT Ireland audited the statement of financial position of TCA Global Credit Fund, LP, of TCA Global Credit Fund, Ltd., and of TCA Global Credit Master Fund, LP. *Id.* The TCA Cayman Funds were managed by TCA Fund Management Group Corp. (“TCA Management”) which was comprised of the TCA Directors and Officers. The information provided to GT Ireland as to the TCA Cayman Funds' financial statements was provided by TCA Management. *See* Class Action ECF No. 69–1,

⁷ Class Action ECF No. ___, refers to docket entries in the Class Action.

Declaration of Jonathan Perlman. GT Ireland issued qualified opinions for the years of 2017 and 2018 for the TCA Cayman Funds. ECF No. 1, ¶ 8.

II. Class Action

a. Class Action Against TCA Entities and TCA's Directors and Officers

On April 30, 2020, the Class Plaintiffs and *derivatively* on behalf of the TCA Global Credit Master, L.P., TCA Global Credit Fund, LP, TCA Global Credit Fund, Ltd., filed a putative class action lawsuit against TCA Management the TCA Directors and Officers for rescission, breach of fiduciary duty, and negligent misrepresentation stemming from allegations that these defendants knowingly inflated the net asset value (“NAV”) of the Master Fund and engaged in an overvaluation scheme of the funds which eventually caused the fund to collapse. Class Action ECF No. 1.

The alleged class consists of: “All investors who purchased or otherwise held a beneficial interest in one or more of the TCA funds on January 21, 2020.” No class was certified in the Class Action and this Class Action was “effectively dismiss[ed] against all of the original defendants, without prejudice” when this Court granted a relief from a stay to allow the Class Plaintiffs to amend the complaint in the Class Action. ECF No. 369-1, at pg. 2.

b. Pending Class Action Against Auditing Companies that Provided Services to TCA Cayman Funds

The Class Plaintiffs then amended its complaint “to remove all of the original defendants and substitute[d]” the defendants.⁸ ECF No. 369-1, at pg. 2. On September 2, 2022, the Class

⁸ TCA Management and TCA Directors and Officers.

Plaintiffs⁹ filed a putative class action against Grant Thornton International Ltd. (“GTIL”), Grant Thornton Cayman Islands (“GT Cayman”), Grant Thornton Ireland (“GT Ireland”), Bolder Fund Services (USA), LLC and Bolder Fund Services (Cayman), Ltd. (collectively, the “Defendants”), for negligent misrepresentation, aiding and abetting fraud, and aiding and abetting breach of fiduciary duty allegedly for “enabling a massive overvaluation scheme orchestrated through a private investment fund structure managed by TCA Management that resulted in hundreds of millions of dollars in losses to investors.” Class Action ECF No. 21, at 1.

All Defendants in this action filed a joint motion to dismiss for substantive and procedural grounds, including lack of personal jurisdiction. *See* Class Action ECF No. 58. The Court granted the motion to dismiss and dismissed without prejudice GTIL (for lack of personal jurisdiction) and the Bolder defendants (finding that dismissal was required under a *forum non conveniens* analysis). Class Action ECF No. 85, at 11, 19. The Court denied the motion to dismiss as to GT Ireland and GT Cayman. *Id.*, at 23. Currently, the Class Plaintiffs filed a motion for leave to amend their complaint continuing to allege that GT Cayman and GT Ireland “enable[d] a massive overvaluation scheme orchestrated through a private investment fund that was managed by TCA Management.” Class Action ECF No. 98–1, at 1. Further alleging that TCA Management and TCA Directors and Officers made numerous materially false and misleading statements, committed fraud and breached their fiduciary duties. *Id.*

Because this Class Action hinges on the specific acts and omissions allegedly committed by TCA Management and the TCA Directors and Officers, GT Ireland has filed its answer and

⁹ Not derivatively on behalf of the TCA Global Credit Master, L.P., TCA Global Credit Fund, LP, TCA Global Credit Fund, Ltd, as previously brought against TCA Management and TCA Directors and Officers.

affirmative defenses asserting the following affirmative defenses relative to the acts and omissions by TCA Management (Manager of the Funds) and the TCA Directors and Officers –

- TCA Management and the TCA Directors and Officers are individually listed as *Fabre* defendants (Third Affirmative Defense) –

To the extent that the Plaintiffs has suffered any damages, the damages were caused by in whole or in part, by the acts or omissions, carelessness and negligence of persons and/or entities over whom Grant Thornton Ireland had no control, supervisory duties, or dominion including, but not limited to, TCA Management, Matthew Wrigley, MJ Hudson, Bolder Fund Services (USA), LLC; Bolder Fund Services (Cayman), LLC; Circle Partners; TCA Global Credit Master Fund, L.P.; TCA Global Credit Fund, LP; TCA Global Credit Fund, Ltd.; Robert Darryl (Bob) Press; Alyce Schreiber; William (Bill) Fickling; Thomas Day; Donna Marie Silverman; Patrick Primavera; Tara Antel; Michael Attar; Heidi de Vries; Nuri Feder;

- Comparative Fault due to joint negligent tortfeasors, who contributed to the conditions which alleged injured Plaintiffs (Ninth Affirmative Defense);
- Lack of Liability because GT Ireland cannot be held liable for any alleged misstatements, omissions, actions, conduct, or knowledge of any individual or entity other than GT Ireland (Sixteenth Affirmative Defense);
- GT Ireland was the victim of fraud, deceit, misrepresentation, concealment, negligence, and/or breach of contract by others (Twentieth Affirmative Defense);

See Class Action ECF No. 94, attached as **Exhibit 2**. Importantly, GT Ireland has unequivocally denied having any knowledge, actively assisting, or enabling TCA Management in any overvaluation scheme, mismanagement, downplaying of significant control issues, or misleading accounting practices of TCA Management. *See* Class Action ECF No. 94 (see Answer and Affirmative Defenses for specific denials and explanations).

III. SEC Receivership Action

a. SEC Action

On May 11, 2020, the Securities and Exchange Commission (“SEC”) filed its Complaint for Injunctive Relief against TCA Fund Management Group, Corp., TCA Global Credit Fund GP, Ltd. (collectively, the “Receivership Defendants”), and TCA Global Credit Fund, LP, TCA Global Credit Fund, Ltd., and TCA Global Credit Master Fund, LP (the “Relief Defendants,” together with the Receivership Defendants, “Defendants”) in the instant action (the “SEC Action”), alleging that the Receivership Defendants engaged in various conduct that violated federal securities laws by knowingly causing the Master Fund to report inflated revenue numbers to investors, including violation of Section 17(a) of the Securities Act of 1933 (the “Securities Act”), 15 U.S.C. § 77q(a), and Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78j(b), Exchange Act Rules 10b-5, 17 C.F.R. § 240.10b-5, and alleging TCA violated Sections 206(1), (2), and (4) and 207 of the Investment Advisers Act of 1940 (the “Advisers Act”), 15 U.S.C. §§ 80b-6(1), 80(b)-6(4), and 80b-7, and Advisers Act Rules 206(4)-7 and 206(4)-8, 17 C.F.R. §§ 275.206(4)-7, 275.206(4)-8. ECF No. 1, ¶ 9.

On the same date, the SEC filed an Expedited Motion for Appointment of Receiver of Jonathan Perlman, Esq. (“Receiver”). ECF No. 3. The Receiver promptly launched an investigation into the Receivership Entities’ pre-Receivership business practices and confirmed the allegations in the SEC Complaint. ECF No. 284, at 8. As part of its investigation, the Receiver entered into a Litigation Coordination Agreement with the Class Plaintiffs (“Coordination Agreement”) pertaining to their joint understanding with “respect to the common interests, and the representation of their common interests, in connection with the investigation and assertion of

claims against third parties relating to the financial affairs of TCA and related receivership entities.” ECF No. 290–1.

b. Coordination Agreement between Receiver and Class Plaintiffs in Action Against Auditing Companies

As part of the Coordination Agreement, the Receiver and the Class Plaintiffs agreed to join efforts in pursuing their separate common interests against the “Common Targets” by “coordinating their efforts in joint litigation, and distributing the proceeds of any recovery through the receivership proceeding.” ECF No. 290-1, at 3. While the Common Targets are redacted in the filed Coordination Agreement, GT Ireland and GT Cayman are common targets considering the Receiver’s filed declaration in support of the Class Plaintiff’s opposition to defendants’ joint motion to dismiss. *See* Class Action ECF No. 69–1. Specifically, the Receiver stated that

In the interest of helping investors maximize their recovery, and pursuant to the litigation coordination agreement I have entered into with counsel for Plaintiffs in this litigation, I have shared some of the TCA Records with Plaintiffs’ counsel in this case.

Class Action ECF No. 69-1, ¶ 7. Thus, the Receiver and the Class Plaintiffs are acting jointly to prosecute their separate cases, including the Class Action against the auditing companies that provided services to TCA Cayman Funds.

c. Proposed Settlement and Bar Order

As part of their joint efforts, the Receiver and the Class Plaintiffs have negotiated a settlement agreement and the entry of a Bar Order with the Defendants in this Action and with the TCA Directors and Officers. ECF No. 369, at Section C. The Settlement Agreement will pay the Receiver \$3,682,007.78. *Id.* However, as part of this Settlement Agreement, the Settling Parties¹⁰

¹⁰ The Receiver, Class Plaintiffs, and the Former Officers and Directors. ECF No. 369-1, ¶ 2(r).

required the entry of a Bar Order that bars the commencement and continuation of any actions against the Bar Order Parties. *Id.*, at 7. Specifically, the proposed Bar Order states as follows:

For purposes of the Bar Order, “Barred Persons” shall mean ***any person or entity*** other than the Securities and Exchange Commission or any other regulatory authority. Barred Persons includes, without limitation: (i) the Receivership Entities; (ii) owners, officers, directors, members, managers, partners, agents, representatives, employees, and independent contractors of the Receivership Entities; (iii) investors who purchased any Receivership Entities Securities; (iv) persons or entities who found prospective (sic) investors for or referred prospective investors (sic) to the Receivership Entities; (v) persons and entities who offered for sale or sold any Receivership Entities Securities; (vi) the Receiver; (vii) the Class Plaintiffs; (viii) any person or entity claiming by, through, or on behalf of the foregoing persons or entities, whether individually, directly, indirectly, through a third party, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever; and (viii) all persons who have made, have threatened, or may assert claims against any or all of the Bar Order Parties, **excluding Press** provided, however, that the Bar Order shall not relieve the Former Officers and Directors from their obligations under the Settlement Agreement.

ECF No. 369-4, ¶ 5 (emphasis added). Simply put, this proposed bar order seeks to bar any claims that GT Ireland has against the TCA Directors and Officers, notwithstanding the fact that GT Ireland is not part of this proposed settlement agreement and has not been part of the negotiation of the instant Settlement Agreement or the proposed Bar Order.

ARGUMENT AND MEMORANDUM OF LAW

I. Legal Standard Governing the Entry of a Bar Order

As stated above, “[a] bar order is an ***extraordinary remedy***—it can bar a third party’s claim, even though the third party may not be part of the relevant lawsuit of settlement.” *Quiros*, 966 F.3d at 1199 (emphasis added). For this reason, the Eleventh Circuit Court of Appeals has “warned that courts should enter bar orders cautiously and infrequently and only where essential, fair, and

equitable.” *Id.* (citing to *In re Seaside Eng’g & Surveying, Inc.*, 780 F.3d 1070, 1079 (11th Cir. 2015) (cleaned up)).

A district court considering entering a bar order must conduct “a two-part inquiry.” *Quiros*, 966 F.3d at 1199. *First*, “[t]he court must conclude that the bar order is essential.” *Id.* “A bar order issued to facilitate a settlement is essential only if it is essential to resolving the settling parties’ litigation.” *Id.* *Second*, “it must decide that the bar order is fair and equitable, with an eye toward its effect on the barred parties.” *Id.*; *see also Brophy v. Salkin*, 550 B.R. 595, 599 (S.D. Fla. 2015) (“When determining whether to enter a bar order against a non-settling party, the court must reasonably determine that the bar order is fair and equitable.”). “Certain factors should be assessed to reasonably determine whether a bar order is fair and equitable, including: (1) the interrelatedness of the claims that the bar order precludes; (2) the likelihood of the non-settling defendants to prevail on the barred claim; (3) the complexity of the litigation; and (4) the likelihood of depletion of the resources of the settling defendants.” (“*Munford* factors”). *In Re Centro Group, LLC*, 2021 WL 5158001, *2 (11th Cir. Nov. 5, 2021) (citing to *In re Matter of Munford Inv.*, 97 F. 3d 449, 455 (11th Cir. 1996) (cleaned up)).

Lastly, “[c]ourts have routinely determined that bar orders cannot apply to non-parties to an action, as such application violated due process.” *In re European Gov’t Bonds Antitrust Lit.*, 2023 WL 4198730, at *4 (S.D.N.Y. June 27, 2023). For the reasons as further explained in detail below, GT Ireland’s objection to the entry of the Bar Order should be sustained and this Court should not enter the Bar Order against GT Ireland.

II. The Bar Order is Unfair and Inequitable¹¹

The proposed Bar Order is unfair and inequitable because it would preclude GT Ireland from pursuing its claims against the TCA Directors and Officers while having to defend itself in the Class Action. Of importance, GT Ireland is defending itself from allegations of acts and omissions committed by the TCA Directors and Officers. *See* Class Action ECF No. 21. Specifically, alleged claims of aiding and abetting fraud and breach of fiduciary duties by the TCA Directors and Officers. To be clear, GT Ireland is an auditing firm that provided professional auditing services to TCA Cayman Funds for the years of 2017 and 2018. *See* Affidavit of John Glennon, ¶ 3, attached as **Exhibit 3**. GT Ireland—as auditing professionals—is defending itself against allegations that it had knowledge of TCA Management’s fraud and breaches of fiduciary duties. *See* Class Action ECF No. 21. TCA Management’s alleged fraud and breaches of fiduciary duties were committed by the TCA Directors and Officers as “a corporation only acts through its agents.” *See Luxottica Group, S.P.A. v. Airport Mini Mall*, 932 F.3d 1303, 1317 (11th Cir. 2019). GT Ireland has denied any knowledge of any wrongdoing by the TCA Directors and Officers and has further denied that it “assisted TCA Management in any overvaluation scheme, mismanagement, downplaying of significant control issues, or misleading accounting practices.” Class Action ECF No. 94. GT Ireland is not one of the alleged tortfeasors and there are no allegation has been made that GT Ireland, itself, committed any fraud or breach of fiduciary duty. Class Action ECF No. 21.

Now, the Receiver in coordination with the Class Plaintiffs are seeking to bar any claims from GT Ireland (non-settling non-party) against the TCA Directors and Officers in exchange for

¹¹ GT Ireland agrees that the Bar Order is essential to the Settlement Agreement.

\$3,682,007.78, or what is left in the TCA Directors' and Officers' D&O Policy. ECF No. 369, at pg. 7. This, notwithstanding, the Class Plaintiffs are seeking millions in actual damages, punitive damages, and attorney's fees and costs from the auditing professionals – who notably are not the parties that committed the alleged fraud or breach of fiduciary duty at issue in this Receivership matter. *See* Class Plaintiffs' Initial Disclosures in the Class Action, attached as **Exhibit 4**, Section III.

Significantly, the Receiver submitted no evidence in the Receivership Motion that the TCA Directors and Officers¹² are uncollectible outside of the D&O Policy. ECF No. 369. To be clear, the Receivership Motion is noticeably silent on this issue, which is striking given the purported gravity of the claims and damages allegedly caused by the TCA Directors and Officers. *Id.* Moreover, there is no evidence that there are no additional monies available to make the investors whole cannot be collected from the TCA Directors' and Officers' individually. *Id.* To put this issue in the appropriate context, the proposed Bar Order would relieve the purported tortfeasors and fraudsters (*i.e.*, the TCA Directors and Officers) of all financial responsibility without paying any money¹³ and precludes GT Ireland's claims against the TCA Directors and Officers—which stem directly from the TCA Directors' and Officers' actions. In this regard, the proposed Bar Order demonstrates the Receiver and Class Plaintiffs believe that going after third party professionals (and taking away their due process rights) is the easier avenue to pursue without the necessary investigation or evaluation of the collectability of the TCA Directors and Officers.

¹² Excluding Robert Press.

¹³ The entire proposed settlement amount is being paid by the TCA Directors' and Officers' D&O Insurance Policy.

1. GT Ireland maintains meritorious claims against the TCA Directors and Officers and GT Ireland would prevail on its barred claims against the TCA Directors and Officers

This factor weighs against the entry of the Bar Order. GT Ireland will prevail on its claims of fraud, intentional, fraudulent, and negligent misrepresentation, contribution, equitable contribution and common law indemnification against the TCA Directors and Officers.¹⁴ *See* Affidavit of John Glennon, ¶ 5, Exhibit 3; *see* Demand Letter, at Exhibit 1. Each of these claims are not speculative as GT Ireland has asserted these claims against the TCA Directors and Officers and has demanded payment for past attorney’s fees expended in defending itself in the Class Action from the TCA Directors and Officers. *See* Demand Letter, at Exhibit 1. GT Ireland further has demanded full contribution and indemnification from the TCA Directors and Officers. *Id.*

Specifically, GT Ireland would prevail in its contribution claims against the TCA Directors and Officers. Under Florida law, a tortfeasor who pays an amount exceeding his or her pro rata share of the damages for an injury may recover the amount of the excess by asserting a claim for contribution against other tortfeasors who share a common liability for the same injury. *See generally*, Fla. Stat. 768.31 (2023). As stated above, the Class Action alleges claims of aiding and abetting fraud and breach of fiduciary duties by the TCA Directors and Officers. GT Ireland is an auditing firm that provided professional auditing services to TCA Cayman Funds for the years of 2017 and 2018. *See* Affidavit of John Glennon, ¶ 3, at Exhibit 3. GT Ireland—as auditing professionals—is defending itself against allegations that it had knowledge of TCA Management’s fraud and breaches of fiduciary duties. *See* Class Action ECF No. 21. TCA Management’s alleged

¹⁴ The Court in the Class Action denied GT Ireland’s Motion to Dismiss for lack of personal jurisdiction finding that GT Ireland had sufficient contacts with Florida. *See* Class Action ECF No. 85, p. 16. Accordingly, Florida’s common law principles and statutory scheme regarding contribution and indemnity are applicable. *See* Fla. Stat. 768.31 (2023).

fraud and breaches of fiduciary duties were committed by TCA Directors and Officers. *Id.* GT Ireland has denied any knowledge of any wrongdoing by TCA Directors and Officers and has further denied that it “assisted TCA Management in any overvaluation scheme, mismanagement, downplaying of significant control issues, or misleading accounting practices.” Class Action ECF No. 94. GT Ireland is not one of the alleged tortfeasors and there are no allegation has been made that GT Ireland, itself, committed any fraud or breach of fiduciary duty. *See* Class Action ECF No. 21. If the Bar Order were entered, GT Ireland would be barred from seeking contribution from the TCA Directors and Officers.

Equally important, GT Ireland would prevail in its claims of fraud, intentional, fraudulent, and negligent misrepresentation against the TCA Directors and Officers in light of the information that was learned by GT Ireland through the SEC Action relative to the TCA Directors’ and Officers’ scheme to overvalue and report inflated revenue, by reporting fraudulently high revenue. *See* ECF No. 284, at pgs. 2–4. Indeed, this information makes GT Ireland’s claims against the TCA Directors and Officers much stronger as it provides an analysis of how the TCA Directors and Officers were engaged in this massive scheme to defraud to the detriment of GT Ireland. *Id.* Certainly, GT Ireland did not know that TCA Directors and Officers were engaging in these fraudulent practices when it completed the audits for TCA Cayman Funds for the years of 2017 and 2018. Class Action ECF No. 94. GT Ireland is confident additional discovery will further support and lead to additional information to support its fraud, intentional, fraudulent, and negligent misrepresentation claims against the TCA Directors and Officers.

Additionally, each of the TCA Directors and Officers and TCA Entities are identified as *Fabre* defendants in the Class Action, which means they would share an apportionment (if not all of the liability) by the jury of the total fault of all non-parties responsible in whole or in part, for

the damages in question. *See* Class Action ECF No. 94, Affirmative Defense No. 3. Specifically, GT Ireland's Third Affirmative Defense states as follows:

To the extent that the Plaintiffs has suffered any damages, the damages were caused by in whole or in part, by the acts or omissions, carelessness and negligence of persons and/or entities over whom Grant Thornton Ireland had no control, supervisory duties, or dominion including, but not limited to, TCA Management, Matthew Wrigley, MJ Hudson, Bolder Fund Services (USA), LLC; Bolder Fund Services (Cayman), LLC; Circle Partners; TCA Global Credit Master Fund, L.P.; TCA Global Credit Fund, LP; TCA Global Credit Fund, Ltd.; Robert Darryl (Bob) Press; Alyce Schreiber; William (Bill) Fickling; Thomas Day; Donna Marie Silverman; Patrick Primavera; Tara Antel; Michael Attar; Heidi de Vries; Nuri Feder;

See Class Action ECF No. 94, Affirmative Defense No. 3.

Further, GT Ireland will be successful in a claim of common law indemnity under Florida law because GT Ireland was not at fault. Rather, as described above, the TCA Directors and Officers were wholly at fault due to the fraudulent scheme. *See Underwriters at Interest v. All Logistics Group, Inc.*, 483 F.Supp.3d 1199, 1208 (S.D. Fla. 2020) (applying the elements of Florida common law indemnity); Class Action ECF No. 94, Affirmative Defense No. 9 ("Comparative Fault due to joint negligent tortfeasors, who contributed to the conditions which alleged injured Plaintiffs").

Each of the foregoing claims are not speculative as in order to hold GT Ireland liable for either aiding and abetting breach of fiduciary duty or fraud, the Class Plaintiffs are required to prove that the TCA Directors and Officers did in fact commit fraud. *See Gevaerts v. TD Bank, N.A.*, 56 F. Supp. 3d 1335, 1341 (S.D. Fla. 2014) (setting forth elements of aiding and abetting breach of fiduciary duty); *Lamm v. State St. Bank & Tr. Co.*, 889 F. Supp. 2d 1321, 1332 (S.D. Fla. 2012) (setting for elements of aiding and abetting). Thus, the aiding and abetting claims

against GT Ireland hinge on the liability of the TCA Directors and Officers and their purported fraud and breach of their fiduciary duties. *See generally*, Class Action ECF No. 21. Crucially, these claims are not speculative because GT Ireland intends to bring these claims against the TCA Directors and Officers (*See* Affidavit of John Glennon, ¶ 5, at Exhibit 3; *see also* Demand Letter at Exhibit 1).

Accordingly, it would be unfair and inequitable to bar GT Ireland from bringing any claims for the sake of the Class Plaintiffs, Receiver, and TCA Directors' and Officers' settlement because GT Ireland would prevail in its claims against TCA Directors and Officers. The Bar Order would preclude these claims without GT Ireland receiving any compensation for the release of its claims and without GT Ireland being able to bargain for such release. The factors set forth in *Munford* weigh against the entry of the Bar Order.

2. The claims enjoined by the Bar Order against GT Ireland are not interrelated with GT Ireland's claims against TCA Directors and Officers

The Bar Order broadly precludes any claims “arising in connection with . . . the claims released in the Settlement Agreement, . . . claims or allegations in the SEC Action, . . . claims or allegations in the Class Action.” ECF No. 369-4, ¶ 5. Indeed, the Bar Order inappropriately precludes GT Ireland's *independent* claims. “The Eleventh Circuit has not clearly defined what it means for claims to be interrelated, but it has observed that [barring] ‘a truly independent claim . . . might be *per se* inappropriate.’” *Brophy*, 550 B.R. at 600 (quoting *In re HealthSouth Corp. Sec. Litig.*, 572 F.3d 854, 865 (11th Cir. 2009)). “A claim may be ‘truly independent’ if, for example, it is ‘not based on the claimants’ liability to the instant plaintiffs or claims based on damages completely separate from the instant damages.’” *Id.*

Indeed, GT Ireland has claims of fraud, intentional, fraudulent, and negligent misrepresentation against TCA Directors and Officers. *See Demand*, at Exhibit 1. These claims are fully independent of any claims of contribution or indemnification arising due to GT Ireland's defense in the Class Action. *See In re Heritage Bond Litigation*, 546 F.3d 667, 679 (9th Cir. 2008) ("hold[ing] that such bar orders may only bar claims for contribution and indemnity and claims where 'the injury is the non-settling defendant's liability to the plaintiff'"). Moreover, these claims carry independent reputational damages sustained by GT Ireland. *Id.* ("if a non-settling defendant is able to prove that it sustained independent reputational damages or losses relating to the cost of defense arising out of a breached contractual or fiduciary relationship with the settling defendant, it has not been compensated for those losses by the judgment credit, and any such claims should not be extinguished by the bar order.") (citing to *Gerber v. MTC Electronic Technologies Co., Ltd.*, 329 F.3d 297,307 (2nd Cir. 2003) (cleaned up)); *see also Digital Media Solutions, LLC v. S. Univ. of Ohio, LLC*, 59 F. 4th 772, 790 (6th Cir. 2023) (reversing the district court's order entering the Bar Order and holding that the "Bar Order departed from 'the accepted principles of equity.'").

Accordingly, GT Ireland has independent claims against the TCA Directors and Officers. Thus, this factor weighs against the entry of the Bar Order.

3. The Litigations are complex

There is no doubt the SEC Action and the Class Action are complex. The SEC Action asserts violations of federal securities laws based on TCA Management's purported fraudulent revenue recognition practices that inflated the Master Fund's revenue and NAV. ECF No. 1. Further, the Receiver's Motion recognizes that "the claims against the Former Officers and Directors are complex in nature and would likely require a trial on the merits." ECF No. 369, at p. 17. Similarly, the Receiver's Motion admits the Receiver and Class Plaintiffs' case against the

Directors and Officers would be complex and involved “many causes of actions and complicated facts.” ECF No. 369, p. 20.

Further, “there is no question that class action matters are generally complex. . . .” *Fruitstone v. Spartan Race, Inc.*, 2021 WL 2012362, *11 (S.D. Fla. 2021). Here, the Class Action Complaint against the auditing companies is 169 paragraphs. *See* Class Action ECF No. 21. The Class Plaintiffs represent a class of at least 1,485 individuals and corporations located both domestically and abroad who invested in a now-defunct Cayman Islands-based hedge fund managed by a Florida corporation. ECF No. 369-1, p. 2; Class Action ECF No. 21 ¶¶ 1–2. Plaintiffs assert they relied upon fraudulent information provided by TCA Management. *Id.* at ¶¶ 36, 45. As stated above, the claims against GT Ireland concern purported aiding and abetting fraud and breaches of fiduciary duties of the TCA Entities. To be sure, there is no doubt the SEC Action and Class Action are complex. While the complexity of the case generally supports the entry of the Bar Order, in this case it is neutral because the Receiver and the Class Plaintiffs have the discovery necessary for their cases against the TCA Directors and Officers. Indeed, the Receiver and the Class Plaintiffs have entered into a coordination agreement to “coordinating their efforts in joint litigation, and distributing the proceeds of any recovery through the receivership proceeding.” ECF No. 290-1, at 3. Thus, this factor is neutral.

4. The Depletion of Resources of the Settling Defendants

If the Bar Order is modified to exclude GT Ireland as a barred party, there has been no evidence that TCA Directors and Officers do not have any other assets or another policy from which resources could be used to defend claims from GT Ireland. Moreover, the Settlement Agreement allows for modification of the Bar Order—such as excluding GT Ireland as a barred party—without unraveling the entire Settlement Agreement. *See* ECF No. 369-1, ¶ 5(d). Indeed, it

cannot be said that excluding GT Ireland as a barred party—when GT Ireland was not part of the alleged negotiations had between the Settling Parties for the past two years—to be a material modification of the Bar Order. *Id.* Importantly, in *Munford* the Court reasoned that public policy supported bar orders when they “protected against codefendants’ efforts to shift their losses through cross-claims for indemnity, contribution, and other cases related to the underlying litigation.” *Munford*, 97 F. 3d at 455. However, GT Ireland is *not* a co-defendant in the SEC Action *nor* the Class Action against the TCA Directors and Officers. *See* ECF No. 1, *see also* Class Action ECF No. 1. Importantly, it cannot be said that GT Ireland’s claims against are related to the instant underlying litigation as the Class Plaintiffs brought a separate and independent lawsuit against the auditing companies. *See* Class Action ECF No. 21. Action that was notably not filed as a derivative action, unlike the Class Action brought against TCA Management and TCA Directors and Officers. *Id.*, *see also* Class Action ECF No. 1. Thus, excluding GT Ireland from the Bar Order would not be a material modification of the Bar Order and would not unravel the Settlement Agreement. Accordingly, this factor also weighs *against* the entry of the Bar Order.

Simply put, the totality of the circumstances favor denying entry of the Proposed Bar Order. *See Quiros*, 966 F.3d at 1199. The Eleventh Circuit has cautioned courts that they “should enter bar orders ‘cautiously and infrequently and only where essential, fair, and equitable.’” *Id.* (citation omitted). For the reasons set forth above, the Proposed Bar Order is unfair and inequitable under the circumstances. Accordingly, this Court should decline to enter the Proposed Bar Order.

III. Fundamental Due Process Precludes the Entry of the Bar Order Against GT Ireland

Indeed, federal courts in the United States have found that it is inappropriate to enforce bar orders against non-parties of the litigation such as GT Ireland in the instant action. *See Colbat Mutifamily Investors I, LLC v. Shapiro*, 2013 WL 5418588, at *3 (S.D.N.Y. Sept. 27, 2013)

(declining to issue the requested bar order); *see also Alvarado Partners L.P. v. Mehta*, 723 F.Supp. 540, 554 (D.Colo. 1989) (refusing to approve a proffered partial settlement that sought to “bar potential claims of non-parties to this action,” because “[f]undamental due process principles prohibit claim extinguishment against anyone not a party to this action.”); *see also In re European Gov’t Bonds Antitrust Lit.*, 2023 WL 4198730, at *4 (S.D.N.Y. June 27, 2023) (“Courts have routinely determined that bar orders cannot apply to non-parties to an action, as such application violated due process.”).

Here, the Settling Parties are the Receiver, the Class Plaintiffs (only as to the initial Class Action against the TCA Entities), and the TCA Entities and Directors and Officers. GT Ireland is *not a party* of any of the litigation that is settled by the Settlement Agreement. ECF No. 369-1, at pg. 2. This settlement agreement does not extinguish the pending action by Class Plaintiffs against GT Ireland for the same actions and omissions alleged against the TCA Directors and Officers. As a non-settling party, GT Ireland’s fundamental due process rights to bring its own actions against the TCA Directors and Officers are being barred in violation of GT Ireland’s due process rights. *See Demand*, at Exhibit 1. Accordingly, fundamental due process precludes the entry of the bar order against GT Ireland.

IV. Conclusion

In light of the foregoing, Non-Party GT Ireland respectfully requests this Court to deny the entry of the proposed Bar Order or to modify it to permit claims by GT Ireland.

REQUEST TO APPEAR AT FINAL APPROVAL HEARING

Pursuant to the Court’s August 31 Order, GT Ireland requests to appear at Final Approval Hearing set for October 25, 2023.

Dated: September 23, 2023

Respectfully submitted,

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COLE, SCOTT & KISSANE, P.A.

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JONATHAN VINE

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LIZZA C. CONSTANTINE

Florida Bar No.: 1002945

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of September, 2023, a true and correct copy of the foregoing was emailed to all counsel of record listed in the CM/ECF Portal, and a copy was served by email and regular U.S. mail to the parties listed in the Service List below.

By: *s/ Lizza C. Constantine*

LIZZA C. CONSTANTINE

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September 22, 2023

VIA FEDEX & EMAIL

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Re: ***Grant Thornton Ireland v. Robert Press, Alyce Schreiber, William Ficklin III, Tara Antal, Bruce Wookley, and Bernard Sumner***

To whom it may concern:

This firm represents Grant Thornton Ireland (“GT Ireland”) in the in the action styled *Todd Benjamin Int’l, Ltd. v. TCA Fund Mgmt. Group Corp.*, Case No. 1:20-CV-21808-RNS, pending in the Southern District of Florida (the “Class Action”).

Cole, Scott & Kissane
www.csklegal.com

Miami | Fort Lauderdale West | Fort Lauderdale East | West Palm Beach | Orlando | Jacksonville | Tampa
Bonita Springs | Naples | Pensacola | Fort Myers | Tallahassee | Key West

September 22, 2023

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This Class Action brings purported claims against GT Ireland for negligent misrepresentation, aiding and abetting fraud, and aiding and abetting breach of fiduciary duties allegedly for “enabling a massive overvaluation scheme orchestrated through a private investment fund structure managed by TCA Management that resulted in hundreds of millions of dollars in losses to investors.” *See* Class Action ECF No. 21, at 1. The actions of TCA Management were committed by Robert Press, Alyce Schreiber, William Ficklin III, Tara Antal, Bruce Wookley, and Bernard Sumner (collectively, the “TCA Directors and Officers”). GT Ireland denied any knowledge of any wrongdoing by TCA Directors and Officers and has further denied that it assisted TCA Management in any overvaluation scheme, mismanagement, downplaying of significant control issues, or misleading accounting practices.

GT Ireland has had to defend itself on the Class Action due to the alleged actions and omissions committed by the TCA Directors and Officers. It is undisputed that GT Ireland’s defense in the Class Action has given rise to claims against the TCA Directors and Officers under Cayman Islands and Florida law¹, including but not limited to, claims of fraud, intentional, fraudulent, and negligent misrepresentation, contribution, equitable contribution, and common law indemnification. To be clear, the Class Plaintiffs bring three claims against GT Ireland in the Class Action for negligence, aiding and abetting fraud, and aiding and abetting breach of fiduciary duties. *See* Class Action ECF No. 21. All three claims brought against GT Ireland hinge on actions and omissions taken by TCA Management through its directors and officers. *Id.* In part, the Class Action complaint alleges as follows:

- GT Ireland “had actual knowledge of improper conduct in the recognition and reporting of the Master Fund and Feeder Funds’ assets, and that those calculations were based on unverifiable figures and pervasive mismanagement by TCA Management” *Id.*, ¶ 49.
- “TCA Management and Circle Partners included Grant Thornton’s qualified opinion in TCA Management’s 2018 financial statement for publication and dissemination to investors of the Funds.” *Id.*, ¶ 65.
- GT Ireland “knew of the improper practices of certain TCA directors and officers and how TCA Management was misstating financial information to investors.” *Id.*, ¶ 66.
- GT Ireland “had actual knowledge of the conduct of certain members of TCA Management’s officers and directors, TCA Management’s fiduciary duties to Plaintiffs and TCA Management’s breach of those fiduciary duties.” *Id.*, ¶ 90.
- GT Ireland knew that “TCA Management improperly classified its loans,” “lacked evidence to support the collectability of its loans,” “[c]ertain of TCA Management’s directors and officers had overridden controls aimed at preventing fraud or overreaching,” “TCA Management improperly valued SPVs.” *Id.*

See Class Action ECF No. 21.

¹ GT Ireland does not waive any jurisdictional arguments by bringing claims under Florida law and expressly reserves any jurisdictional claims it may have. However, GT Ireland has been forced to defend the Class Action in Florida and has some claims pursuant to Florida law in light of the Class Action’s Court order dismissing its motion to dismiss for lack of jurisdiction. *See* Class Action ECF No. 85.

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To date, GT Ireland has incurred fees and costs in the amount of \$178,694.35 in defending itself in the Class Action. This amount continues to increase as GT Ireland is still a party in the Class Action. GT Ireland demands the TCA Directors and Officers pay GT Ireland this amount within thirty (30) days of the receipt of this demand.

Next, GT Ireland demands that, going forward, the TCA Directors and Officers agree in writing to pay all fees and costs for GT Ireland's defense in the Class Action. GT further demands that the TCA Directors and Officers agree in writing to wholly indemnify GT Ireland for any and all losses associated with the Class Action suit against GT Ireland.

GT Ireland intends to exercise any an all rights available to it under Cayman Islands, Florida law, and in equity against the TCA Directors and Officers.

This letter shall also serve as a legal demand for each of you to retain any and all potentially relevant evidence. Therefore, you should take all necessary steps to retain and avoid the automatic deletion or archiving of any letters, emails, text messages, meeting minutes, voicemails, and other hard copy or electronically stored information relating to TCA Management and the TCA related entities. Therefore, notice is hereby made that we have been authorized to pursue all legal remedies available, all of which are expressly reserved.

This is a legal demand, please govern yourselves accordingly.

Sincerely,

Lizza C. Constantine

Lizza C. Constantine

CC: Jonathan Vine, Esq.

**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,

Plaintiffs,

v.

GRANT THORNTON CAYMAN ISLANDS, and
GRANT THORNTON IRELAND,

Defendants.

**DEFENDANT GRANT THORNTON IRELAND’S ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFFS’ AMENDED CLASS ACTION COMPLAINT AND DEMAND
FOR JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure Rule 8(b)(3), Defendant, Grant Thornton Ireland (“GT Ireland”), denies generally and specifically each and every allegation contained in Plaintiffs’, Todd Benjamin International, Ltd., and Todd Benjamin (“Plaintiffs”), Amended Class Action Complaint and Demand for Jury Trial [ECF No. 21] (“Complaint”), except as stated, qualified, or admitted below. GT Ireland further denies that Plaintiffs were injured or damaged in the manner specified, or otherwise, and GT Ireland denies that Plaintiffs are entitled to the relief claimed, or any relief, on the grounds alleged, or otherwise. Numbered paragraphs below correspond to the like-numbered paragraphs in Plaintiffs’ Complaint.

INTRODUCTION¹

In response to the introduction paragraph of the Complaint, GT Ireland admits that Plaintiffs have asserted claims against GT Ireland and Grant Thornton Cayman Islands (“GT Cayman”) for

¹ For ease of reference, GT Ireland has produced the headings of the Complaint. To the extent the headings contain allegations, GT Ireland denies them.

negligent misrepresentation, aiding and abetting fraud, and aiding and abetting breach of fiduciary duty. GT Ireland denies any allegations that it enabled an overvaluation scheme orchestrated through a private investment fund structured managed by TCA Fund Management Group Corp. (“TCA Management”). GT Ireland further denies that it had knowledge or actively assisted TCA Management in any overvaluation scheme, mismanagement, downplaying of significant control issues, or misleading accounting practices of TCA Management. Lastly, GT Ireland denies any and all allegations for negligent misrepresentation, aiding and abetting fraud, and aiding and abetting breach of fiduciary duty.

THE PARTIES

1. GT Ireland lacks knowledge or information sufficient to form a belief about the truth of the allegations that Todd Benjamin International, Ltd., is a legal entity incorporated in the United Kingdom, and on that basis, denies the same.

2. GT Ireland lacks knowledge or information sufficient to form a belief about the truth of the allegations that Todd Benjamin, acting for the benefit of his IRA account, is a resident of the United Kingdom and a citizen of the United States, and on that basis, denies the same.

3. Grant Thornton International Ltd. (“GTIL”) is no longer a party to this action [ECF No. 85]. Accordingly, no response is required to this allegation. To the extent a response is required, GT Ireland denies the allegations in this paragraph.

4. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

5. GT Ireland admits that is a legal entity organized under the laws of Ireland and that it is a member firm of GTIL but denies that it provides services under the “Grant Thornton” brand on behalf of GTIL.

6. Bolder USA is no longer a party to this action [ECF No. 85]. Accordingly, no response is required to this allegation. To the extent a response is required, GT Ireland lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies them.

7. Bolder Cayman is no longer a party to this action [ECF No. 85]. Accordingly, no response is required to this allegation. To the extent a response is required, GT Ireland lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies them.

RELEVANT NON-PARTIES

8. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

9. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

10. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

11. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

12. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

13. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

14. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

15. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

JURISDICTION AND VENUE

16. This paragraph includes legal conclusions to which no response is required. To the extent a response is required, GT Ireland lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies them.

17. This paragraph includes legal conclusion to which no response is required. To the extent a response is required, GT Ireland denies the allegations in this paragraph.

18. The Bolder Entities are no longer parties to this action [ECF No. 85]. Accordingly, no response is required to this allegation. To the extent a response is required, GT Ireland lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies them.

19. This paragraph includes legal conclusions to which no response is required. To the extent a response is required, GT Ireland lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies them.

SUMMARY

20. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

21. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

22. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

23. The document speaks for itself.

24. The document speaks for itself.

25. The document speaks for itself.

26. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

27. The document speaks for itself.

28. The document speaks for itself.

29. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

FACTUAL ALLEGATIONS

I. Plaintiffs' Investment

30. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

31. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

32. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

33. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

34. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

35. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

36. GT Ireland is without knowledge or information sufficient to form a belief as to the

truth of the allegations contained in this paragraph and, therefore, denies same.

37. To the extent that this allegation is directed at GT Ireland, GT Ireland denies the same.

II. The Whistleblowers

38. The January 2020 NBC story speaks for itself.

39. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

40. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

III. TCA's Questionable Financial Accounting Practices

A. Grant Thornton

41. GT Ireland admits it provided auditing services to TCA Global Credit Master Fund, LP (or the "Master Fund"), TCA Global Credit Fund, LP (or the "Partnership"), and TCA Global Credit Fund, Ltd. (or the "Fund") (together the "Cayman Funds") for the years of 2017 and 2018, pursuant to the Engagement Letters entered between the Cayman Funds, GT Ireland and GT Cayman. *See* Engagement Letters, attached as **Exhibit 1**. GT Ireland denies that it served as an independent auditor to evaluate TCA Management's statements because it was retained to audit the statement of financial position of Cayman Funds. Further, GT Ireland denies that it undertook the duty to evaluate TCA Management's accounting policies and TCA Management's reasonableness of management's accounting estimates.

42. GT Ireland admits that it executed the Engagement Letters. GT Ireland admits that GT Cayman also executed the Engagement Letters. Further, GT Ireland admits that it provided the auditing services pursuant to the Engagement Letters as a member firm of GTIL, which is a separate

legal entity from GTIL. GT Ireland denies that it provided the auditing services as representatives of GTIL using the “Grant Thornton” brand. GT Ireland denies the remaining allegations in this paragraph.

43. GTIL is no longer a party to this action [ECF No. 85]. Accordingly, no response is required to this allegation. To the extent a response is required, GT Ireland denies the allegations in this paragraph.

44. GTIL is no longer a party to this action [ECF No. 85]. Accordingly, no response is required to this allegation. To the extent a response is required, GT Ireland admits that the audit reports generated pursuant to the Engagement Letters were provided using a “Grant Thornton” letterhead. GT Ireland denies the remaining allegations in this paragraph.

45. GT Ireland denies that it provided any auditing services to TCA Management. GT Ireland and GT Cayman, pursuant to the Engagement Letters, provided auditing services to the Cayman Funds. GT Ireland and GT Cayman replaced the Cayman Funds’ prior auditor in late 2017. GT Ireland denies the remaining allegations in this paragraph.

46. GT Ireland denies that it reviewed TCA Management’s financial and business records because GT Ireland and GT Cayman, pursuant to the Engagement Letters, provided auditing services to the Cayman Funds and not TCA Management. GT Ireland denies the remaining allegations in this paragraph.

47. GT Ireland denied the allegations in this paragraph.

48. The draft audit reports speak for themselves.

49. GT Ireland denies the allegations in this paragraph.

50. GT Ireland denies the allegations in this paragraph.

51. GT Ireland admits that it provided a qualified audit report for the year of 2017 for the

Master Fund, however, the qualified audit report noted “[w]e were unable to verify the revenue recognized by the Master Fund in relation to investment banking income has met the revenue recognition criteria of IFRS 15.” GT Ireland denies the remaining allegations in this paragraph.

52. GT Ireland denies the allegations in this paragraph.

53. GT Ireland denies the allegations in this paragraph.

54. GT Ireland denies the allegations in this paragraph.

55. GT Ireland denies the allegations in this paragraph.

56. GT Ireland denies the allegations in this paragraph.

57. GT Ireland admits that it contacted various borrowers of the Master Fund as part of the audits. GT Ireland and GT Cayman provided a qualified audit report for the 2017 audit that noted “[w]e were unable to verify the revenue recognized by the Master Fund in relation to investment banking income has met the revenue recognition criteria of IFRS 15.” GT Ireland denies the remaining allegations in this paragraph.

58. GT Ireland denies the allegations in this paragraph.

59. GT Ireland denies the allegations in this paragraph.

60. GT Ireland denies the allegations in this paragraph.

61. GT Ireland admits that it did not withdraw, amend or restate the 2017 qualified opinion. GT Ireland denies the remaining allegations in this paragraph.

62. GT Ireland admits that an independent valuation of the SPVs was suggested to ensure that various loans were consistent with the IFRS. Further, GT Ireland admits that an independent valuation of the SPVs was provided prior to the completion of the 2018 audit. GT Ireland denies the remaining allegations in this paragraph.

63. GT Ireland denies the allegations in this paragraph.

64. GT Ireland admits that an independent third-party valuation of the SPVs was completed prior to the completion of the 2018 audit opinion. GT Ireland further admits that a qualified audit opinion was issued for 2018. GT Ireland denies the remaining allegations in this paragraph.

65. The audit report was not addressed to prospective investors and specially stated for regulatory filing purposes only. GT Ireland denies the allegations in this paragraph.

66. GT Ireland denies the allegations in this paragraph.

67. The opinions speak for themselves. GT Ireland denies the remaining allegations in this paragraph.

68. GT Ireland denies the remaining allegations in this paragraph.

69. GT Ireland denies the remaining allegations in this paragraph.

B. Circle Partners

70. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

71. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

72. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

73. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

74. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

75. GT Ireland is without knowledge or information sufficient to form a belief as to the

truth of the allegations contained in this paragraph and, therefore, denies same.

76. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

77. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

78. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

79. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

V. Liquidation

80. Exhibit 3 speaks for itself.

81. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

82. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

83. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

84. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

VI. The Securities Exchange Commission's Enforcement Action

85. GT Ireland admits that Plaintiffs initially filed the instant action against the Fund and their managers. GT Ireland further admits that the U.S. Securities and Exchange Commission brought a civil enforcement action against TCA Management and other related defendants ("SEC

Enforcement Action”). The filings made in the SEC Enforcement Action speak for themselves. GT Ireland denies the remaining allegations in this paragraph.

86. The filings made in the SEC Enforcement Action speak for themselves. GT Ireland denies the remaining allegations in this paragraph.

87. The filings made in the SEC Enforcement Action speak for themselves. GT Ireland denies the remaining allegations in this paragraph.

VII. TCA Management Made Numerous Materially False and Misleading Statements and Omissions to Plaintiffs and Other Class Members

88. No response is required from GT Ireland as this allegation is directed solely at TCA Management. To the extent a response is required, GT Ireland denies the allegations in this paragraph.

89. No response is required from Defendants as this allegation is directed solely at TCA Management. To the extent a response is required, GT Ireland denies the allegations in this paragraph.

VIII. Grant Thornton Had Actual Knowledge of TCA Management’s Fraud and Breaches of Fiduciary Duty.

90. GT Ireland denies the allegations in this paragraph and subsections (a)–(k).

IX. Grant Thornton Substantially Assisted the Fraud and Fiduciary Breaches

91. GT Ireland denies the allegations in this paragraph and subsections (a)–(f).

X. At the Very Least, Grant Thornton Made Negligent Misrepresentations and Omissions

92. GT Ireland denies the allegations in this paragraph.

- a. The audit reports speak for themselves.
- b. GT Ireland denies the allegations in this subsection.
- c. GT Ireland denies the allegations in this subsection.
- d. GT Ireland denies the allegations in this subsection.

e. GT Ireland denies the allegations in this subsection.

f. GT Ireland denies the allegations in this subsection.

93. GT Ireland denies the allegations in this paragraph.

94. The audit reports were not addressed to prospective investors and specially stated for regulatory filing purposes only. GT Ireland denies the allegations in this paragraph.

95. The audit reports were not addressed to prospective investors and specially stated for regulatory filing purposes only. GT Ireland denies the allegations in this paragraph.

96. The audit reports were not addressed to prospective investors and specially stated for regulatory filing purposes only. GT Ireland denies the allegations in this paragraph.

97. GT Ireland denies the allegations in this paragraph.

XI. Circle Partners Had Actual Knowledge of TCA's Management's Fraud and Breaches of Fiduciary Duty

98. The Bolder Entities are no longer parties to this action [ECF No. 85]. Accordingly, no response is required to this allegation. To the extent a response is required, GT Ireland lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and subsections (a)–(c), and therefore denies them.

XII. Circle Partners Substantially Assisted the Fraud and Fiduciary Duty Breaches

99. The Bolder Entities are no longer parties to this action [ECF No. 85]. Accordingly, no response is required to this allegation. To the extent a response is required, GT Ireland lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and subsections (a)–(d), and therefore denies them.

XIII. At the Very Least, Circle Partners Made Negligent Misrepresentations and Omissions

100. The Bolder Entities are no longer parties to this action [ECF No. 85]. Accordingly, no

response is required to this allegation. To the extent a response is required, GT Ireland lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and subsections (a)–(c), and therefore denies them.

101. The Bolder Entities are no longer parties to this action [ECF No. 85]. Accordingly, no response is required to this allegation. To the extent a response is required, GT Ireland lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies them.

102. The Bolder Entities are no longer parties to this action [ECF No. 85]. Accordingly, no response is required to this allegation. To the extent a response is required, GT Ireland lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies them.

103. The Bolder Entities are no longer parties to this action [ECF No. 85]. Accordingly, no response is required to this allegation. To the extent a response is required, GT Ireland lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies them.

104. The Bolder Entities are no longer parties to this action [ECF No. 85]. Accordingly, no response is required to this allegation. To the extent a response is required, GT Ireland lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies them.

105. The Bolder Entities are no longer parties to this action [ECF No. 85]. Accordingly, no response is required to this allegation. To the extent a response is required, GT Ireland lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies them.

CLASS ACTION ALLEGATIONS

106. GT Ireland admits that Plaintiffs have asserted this action as a putative class action. GT Ireland denies that any class should be certified and that Plaintiffs and the putative class members are entitled to any relief against GT Ireland in this action. GT Ireland denies the remaining allegations in this paragraph.

107. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

108. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

109. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

110. GT Ireland denies the allegations in this paragraph.

111. GT Ireland denies the allegations in this paragraph.

112. GT Ireland denies the allegations in this paragraph and subsection (a)–(g).

113. GT Ireland denies the allegations in this paragraph.

EQUITABLE TOLLING AND DISCOVERY OF THE WRONGDOING

114. GT Ireland denies the allegations in this paragraph.

115. GT Ireland denies the allegations in this paragraph.

116. GT Ireland denies the allegations in this paragraph.

117. GT Ireland denies the allegations in this paragraph.

118. GT Ireland denies the allegations in this paragraph.

CAUSES OF ACTION

COUNT I – Negligent Misrepresentation (Directly Against Grant Thornton)

119. GT Ireland restates and incorporates its responses to paragraphs 1 through 118 above as though fully stated herein.

120. GT Ireland admits that Plaintiffs allege a claim for negligent misrepresentation. GT Ireland denies that Plaintiffs are entitled to any relief against GT Ireland in this action.

121. GT Ireland denies the allegations in this paragraph.

122. GT Ireland denies the allegations in this paragraph.

123. GT Ireland denies the allegations in this paragraph.

124. GT Ireland denies the allegations in this paragraph.

125. GT Ireland denies the allegations in this paragraph.

COUNT II – Aiding and Abetting Breach of Fiduciary Duty (Directly Against Grant Thornton).

126. GT Ireland restates and incorporates its responses to paragraphs 1 through 118 above as though fully stated herein.

127. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

128. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

129. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

130. GT Ireland denies the allegations in this paragraph.

131. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

132. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies same.

133. GT Ireland denies the allegations in this paragraph.

134. GT Ireland denies the allegations in this paragraph.

135. GT Ireland denies the allegations in this paragraph.

136. GT Ireland denies the allegations in this paragraph.

COUNT III- Aiding and Abetting Fraud (Directly Against Grant Thornton)

137. GT Ireland restates and incorporates its responses to paragraphs 1 through 17, 19 through 69, 80 through 97, and 106 through 118 above as though fully stated herein.

138. GT Ireland denies the allegations in this paragraph.

139. GT Ireland admits that the Engagement Letters set forth the terms and conditions of the auditing services provided to Cayman Funds, and that GT Ireland fully and properly performed its services in accordance with the terms and conditions of the Engagement Letters and applicable accounting principles. GT Ireland denies the remaining allegations in this paragraph.

140. GT Ireland denies the allegations in this paragraph

141. GT Ireland denies the allegations in this paragraph.

142. GT Ireland denies the allegations in this paragraph.

143. GT Ireland denies the allegations in this paragraph.

COUNT IV Negligent Misrepresentation (Directly Against Circle Partners)

This Count was dismissed in the Court's order entered on July 11, 2023. *See* ECF No. 85. No response is necessary for paragraphs 144-150.

COUNT V Aiding and Abetting Breach of Fiduciary Duty (Directly Against Circle Partners)

This Count was dismissed in the Court's order entered on July 11, 2023. *See* ECF No. 85. No response is necessary for paragraphs 151-161.

COUNT VI Aiding and Abetting Breach of Fiduciary Duty (Directly Against Circle Partners)

This Count was dismissed in the Court's order entered on July 11, 2023. *See* ECF No. 85. No response is necessary for paragraphs 162-169.

PRAYER FOR RELIEF

The remainder of Plaintiffs' Complaint consists of Plaintiffs' prayer for relief to which no response is required. To the extent a response is required, GT Ireland denies that Plaintiffs are entitled to the relief sought or to any relief whatsoever.

AFFIRMATIVE DEFENSES

GT Ireland, without waiver, limitation, or prejudice, and while expressly reserving the right to allege additional defenses as they become known through the course of discovery, hereby asserts the following defenses, undertaking the burden of proof only on those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated herein.

First Affirmative Defense

Defendant GT Ireland affirmatively states that the Complaint, in whole or in part, fails to state a claim upon which relief can be granted. Plaintiffs have failed to state a cause of action for negligent misrepresentation, aiding and abetting fraud and aiding and abetting breaches of fiduciary duty. Plaintiffs did not justifiably rely on the 2017 or 2018 audits, nor did GT Ireland render substantial assistance to any wrongdoer.

Second Affirmative Defense

Plaintiffs lack standing to assert the claims alleged in the Complaint, including, without limitation, because such claims must be asserted by the Receiver appointed in the SEC Enforcement Action on behalf of the relevant funds.

Third Affirmative Defense

While GT Ireland denies any liability to Plaintiffs, GT Ireland affirmatively states that, if liability is determined, then Plaintiffs' damages are subject to apportionment by the jury of the total fault of all non-parties responsible in whole or in part, for the damages in question, pursuant to *Fabre v. Marin*, and Florida Statute § 768.81. *623 So. 2d 1182* (Fla. 1993); and see *Reyes v. Barnett Outdoors, LLC*, 2022 WL 1619430, at *4 (M.D. Fla. Mar. 29, 2022) (“[A] court must determine a party's percentage of fault based on “all ... entities who contributed to the accident, regardless of whether they have been or could have been joined as defendants.”). To the extent that the Plaintiffs has suffered any damages, the damages were caused by in whole or in part, by the acts or omissions, carelessness and negligence of persons and/or entities over whom Grant Thornton Ireland had no control, supervisory duties, or dominion including, but not limited to, TCA Management, Matthew Wrigley, MJ Hudson, Bolder Fund Services (USA), LLC; Bolder Fund Services (Cayman), LLC; Circle Partners; TCA Global Credit Master Fund, L.P.; TCA Global Credit Fund, LP; TCA Global Credit Fund, Ltd.; Robert Darryl (Bob) Press; Alyce Schreiber; William (Bill) Fickling; Thomas Day; Donna Marie Silverman; Patrick Primavera; Tara Antel; Michael Attar; Heidi de Vries; Nuri Feder; Jacquelyn (Jacky) Gogin; Carlos Mandino; Jose (Joe) Rodriguez; Steven Rosen; Carl Schoeppl; Matthew Anthony Lucian; Bruce John Wookey; MNP experts; BDO Cayman; Kedi Chang; Chad Fairchild; Dominic Petracca; Keith Schult; Walid Phul; Glen Trenouth; Bernard Sumner; Bousted Securities LLC; The Garner Partnership Pty Ltd.; PricewaterhouseCooper; all other parties to this

action; and all others to be identified in the future.

Fourth Affirmative Defense

GT Ireland affirmatively states that Plaintiffs are barred from recovery to the extent that it was comparatively negligent, pursuant to Florida Statute § 768.81 and *Hoffman v. Jones*, 280 So. 2d 431, 438 (Fla. 1973); and see *Sowers v. R.J. Reynolds Tobacco Co.*, 975 F.3d 1112, 1135 (11th Cir. 2020). Specifically, Plaintiffs knew that they were investing in a Firm that focuses primarily on producing alternative fund options for micro- cap and small-cap publicly traded companies, where such investments pose a substantial amount of risk. In fact, the brochure expressly explains that the loans involve a substantial degree of risk, with major uncertainties. See Brochure of TCA Fund Management Group Corp. (“Brochure”), Section 8(B). This includes the express risk of default as well, a risk that they expressly assumed. *Id.* As such, while GT Ireland, denies any liability to Plaintiffs, if liability is determined, then Plaintiffs’ damages are subject to apportionment by the jury of the total fault of Plaintiffs, in whole or in part, for the damages in question.

Fifth Affirmative Defense

Plaintiffs’ claims are barred in whole or in part because of lack of privity between Plaintiffs and GT Ireland and Plaintiffs have failed to allege any applicable exception to overcome lack of privity. GT Ireland’s services were performed for Cayman Funds pursuant to the Engagement Letters. GT Ireland did not know at the time it performed its services that any limited group of third persons intended to rely upon GT Ireland’s work for any specific transaction.

Sixth Affirmative Defense

GT Ireland affirmatively states that, at the time and place set forth in the Complaint, it was not the proximate cause, and therefore not negligent, for any damages alleged in the Plaintiffs’ Complaint and therefore should not be held liable for any of the damages. Florida Statute § 768.81.

See Dyer v. United States, 2017 WL 88955, at *2 (M.D. Fla. Jan. 10, 2017). *and see Hoffman, supra* at 438 (Fla. 1973); Notably, the Brochure sets forth a variety of reports and information that contribute to the status of the Fund and corresponding Brochure. *See Brochure*, Section 8. GT Ireland prepared audit reports for the years of 2017 and 2018 that were never intended to be addressed to prospective investors but were specifically for regulatory filing purposes only and cannot be said to be the proximate cause of any such investment. Here, GT Ireland is not the cause of the harm done, if any.

Seventh Affirmative Defense

While GT Ireland denies any liability to Plaintiffs, if liability is determined, GT Ireland affirmatively states that it is entitled to a set-off and reduction, for benefits Plaintiffs receive, or are entitled to receive payment under, from a collateral source, potential tortfeasor or any other source, including, but not limited to, other parties to this suit. *See Goble v. Frohman*, 901 So. 2d 830, 832 (Fla. 2005). Specifically, Plaintiffs attempt to rely on audit reports issued by Grant Thornton which expressly provide that its use is solely “for and only for the Partnerships’ General Partner as a body and for regulatory filing purposes only.” *See GTI Audits from 2017 and 2018*, pg 3. Plaintiffs now seek to recover from GTI based on information that was unequivocally disclaimed. Specifically, the qualified, non- public opinion expressly provides that GT Ireland does not “in giving this opinion, accept or assume responsibility for any other purpose or to any other person to whom this report is shown or into whose hands it may come save where expressly agreed by our prior consent in writing.” *Id.* No prior consent was given, and Defendant is therefore entitled to a set-off for benefits that Plaintiffs, or any other party, receive from GT Ireland based on Plaintiffs alleged reliance on these non-public documents.

Eighth Affirmative Defense

GT Ireland affirmatively states that Plaintiffs’ action is barred, in whole or in part, to the extent

that the audit reports are predicated on good faith tactical decision made by GT Ireland, and for which they are immune under the doctrine of judgmental immunity. Defendant acted accordingly based upon a reasonable interpretation of existing law as the facts were presented to them and exercised its professional judgment in doing so. GT Ireland notes in its audit that it conducted the audit in accordance with auditing standards generally accepted in the United States of America. *See Audits from 2017 and 2018*, pg. 3. Such reporting amount to good faith under, *Fehribach v. Ernst & Young LLP*, which explains that the role of an auditor is “to state whether, in his opinion, the financial statements are presented in conformity with generally accepted accounting principles and to identify those circumstances in which such principles have not been consistently observed in the preparation of the financial statements of the current period in relation to those of the preceding period.” 493 F.3d 905, 910 (7th Cir. 2007). GT Ireland’s actions were clearly predicated on good faith. Notably, Plaintiffs even acknowledge in their Complaint that GT Ireland raised issues and noted certain deficiencies with the Cayman Funds. *See Complaint at 2*. Moreover, GT Ireland was not even aware of such deficiencies until early 2018, despite beginning work as TCA Management’s auditor in 2017. *Id.* at ¶45. GT Ireland, as an entity acting independent of GT Cayman, and any other party, acted reasonable in the circumstances and, therefore, the doctrine of judgmental immunity bars GT Ireland from liability as alleged in Plaintiffs’ Complaint.

Ninth Affirmative Defense

Defendant affirmatively states that it is entitled to list all parties or non- parties on the verdict form who may be responsible for causing the alleged damages as permitted by Florida Statute § 768.81(3), and *Hennis v. City Tropics Bistro, Inc.*, 1 So. 3d 1152, 1156 (Fla. 5th DCA 2009) (finding comparative fault statute applied to permit the jury to apportion damages among the joint negligent tortfeasors), including but not limited to, other parties to this suit, separate and independent of GT

Ireland, and persons known to Plaintiffs but not GT Ireland, who knew of, caused, and/or contributed to the conditions which alleged injured Plaintiffs.

Tenth Affirmative Defense

The claims asserted in the Complaint are barred because GT Ireland lacked the level of scienter required to impose liability for the conduct alleged in the Complaint.

Eleventh Affirmative Defense

GT Ireland's conduct was within the accepted standards of practice for auditors. GT Ireland complied with all applicable professional standards and principles. GT Ireland asserts that at all times acted in compliance with the IFRS and SEC regulations.

Twelfth Affirmative Defense

Plaintiffs' claims are time-barred in whole or in part by the applicable statutes of limitations. The applicable limitations periods are not tolled or extended regarding Plaintiffs' alleged claims by any previous rulings in the SEC Enforcement Action, by any discovery rule, by the equitable tolling doctrine, or otherwise.

Thirteenth Affirmative Defense

The claims asserted in the Complaint are barred, in whole or in part, by the bespeaks caution doctrine.

Fourteenth Affirmative Defense

The claims asserted in the Complaint are barred, in whole or in part, by the safe harbor provisions for forward-looking statements in the Private Securities Litigation Reform Act of 1995 (15 U.S.C. Sections 77z-2, 78u-5).

Fifteenth Affirmative Defense

The claims asserted in the Complaint are barred, in whole or in part, because Plaintiffs could

not justifiably rely on any alleged misrepresentation or omissions of GT Ireland. Plaintiffs were qualified investors and the relevant audit opinions were qualified opinions.

Sixteenth Affirmative Defense

GT Ireland cannot be held liable for any alleged misstatements, omissions, actions, conduct, or knowledge of any individual or entity other than GT Ireland.

Seventeenth Affirmative Defense

To the extent that the Complaint purports to allege the “fraud on the market” doctrine, that doctrine is inapplicable including because the market for the alleged investments was not an efficient market.

Eighteenth Affirmative Defense

Plaintiffs’ claims are barred by the “truth on the market” corollary to the “fraud on the market” theory of reliance because the information allegedly misrepresented or omitted was known to the market, already in the public domain, and/or was reasonably available to investors.

Nineteenth Affirmative Defense

Plaintiffs’ action is not properly maintained as a class action because the requirements under federal law for class certification are not met, including, without limitation, because of lack of typicality, commonality, and predominance between Plaintiffs’ claims and those of putative class members. Additionally, class certification is inappropriate for Plaintiffs’ claims because of the individualized nature of the reliance element for each such claim.

Twentieth Affirmative Defense

GT Ireland was the victim of fraud, deceit, misrepresentation, concealment, negligence, and/or breach of contract practiced on it by others, in that information was not provided to GT Ireland, was misrepresented to GT Ireland, and/or was concealed from GT Ireland while GT Ireland was

rendering professional services, and any recovery against GT Ireland shall be barred or diminished as a result.

Twenty-First Affirmative Defense

Plaintiffs' damages, if any, were not proximately caused by any conduct of GT Ireland, but were the result of superseding or intervening conduct for which GT Ireland cannot be held liable.

Twenty-Second Affirmative Defense

GT Ireland is not jointly and severally liable for Plaintiffs' alleged damages because GT Ireland did not engage in any alleged wrongful conduct.

Twenty-Third Affirmative Defense

Plaintiffs have failed to mitigate their alleged damages.

Twenty-Four Affirmative Defense

Plaintiffs claimed are barred in whole or in part by the equitable doctrine of laches.

Twenty-Five Affirmative Defense

The duties and responsibilities of GT Ireland were set forth in the Engagement Letters. GT Ireland fully fulfilled such duties and responsibilities, and all of GT Ireland's services were performed in full compliance with its contractual obligations.

Twenty-Six Affirmative Defense

Plaintiffs have failed to allege a valid claim against GT Ireland for negligent misrepresentation because Plaintiffs have not alleged sufficient, ultimate facts establishing that GT Ireland owed any duty to Plaintiffs.

Twenty-Seven Affirmative Defense

Plaintiffs have failed to allege a cognizable claim for attorneys' fees because they fail to cite to any statute, contract, or other applicable authority that authorizes the recovery of attorneys' fees

for the claims asserted against GT Ireland. GT Ireland hereby moves to strike Plaintiffs' requests for attorneys' fees from their Complaint.

Twenty-Eight Affirmative Defense

Venue is improper in this Court, including, without limitation, because of the venue selection clauses contained in the Engagement Letters and subscription agreements executed by Plaintiffs and the other putative class members.

Twenty-Nine Affirmative Defense

Plaintiffs' aiding and abetting claims fail, including, without limitation, because GT Ireland lacked knowledge of any fraud, fiduciary duty, or breach of such duty on the part of TCA Management and/or its directors and managers, GT Ireland lacked the conscious intent required to establish that GT Ireland substantially assisted in any fraud or breach of fiduciary duty, and no aiding and abetting liability exists as a matter of law regarding any alleged securities law violations.

Thirtieth Affirmative Defense

Plaintiffs have failed to join necessary and indispensable parties in this action so that the Court can afford complete relief, including, without limitation, TCA Management and its directors and managers, the relevant funds, the Receiver in the SEC Enforcement Action, and/or any other alleged wrongdoers.

Thirty-One Affirmative Defense

Any recovery against GT Ireland in this action must be offset against any amounts recovered from any other alleged wrongdoer, whether through settlement or otherwise, and whether in the SEC Enforcement Action or any other action or proceeding.

Thirty-Second Affirmative Defense

Plaintiffs have failed to allege a valid claim against GT Ireland for aiding and abetting any

breach of fiduciary because Plaintiffs have not alleged sufficient, ultimate facts establishing the existence of any fiduciary duty that GT Cayman allegedly aided and abetted the breach of.

Thirty-Third Affirmative Defense

GT Ireland lacked any duty to withdraw, amend, or restate the 2017 qualified audit because it was not misleading or incorrect when issued.

Thirty-Four Affirmative Defense

To the extent not inconsistent with its defenses, GT Ireland incorporates by reference all defenses asserted by any other Defendant in this action.

Thirty-Five Affirmative Defense

GT Ireland reserves the right to assert such other affirmative or other defenses available as discovery and GT Ireland's investigation continues.

DEMAND FOR JURY TRIAL

GT Ireland hereby demands trial by jury on all issues so triable.

Date: August 24, 2023

Respectfully submitted,

COLE, SCOTT & KISSANE, P.A.

Counsel for Defendant GRANT THORNTON IRELAND

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By: s/ Lizza C. Constantine

JONATHAN VINE

Florida Bar No.: 10966

LIZZA C. CONSTANTINE

Florida Bar No.: 1002945

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on August 24, 2023, a copy of the forgoing document was served on counsel via email as set forth below.

By: /s/ Lizza C. Constantine
Lizza C. Constantine

Service List

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SCHNEIDER & GROSSMAN LLP**

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Counsel for Defendant Grant Thornton Cayman Islands

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-21964-CIV-ALTONAGA

SECURITIES & EXCHANGE COMMISSION,

Plaintiff,

v.

TCA FUND MANAGEMENT GROUP CORP.,
et. al.,

Defendants.

**AFFIDAVIT OF JOHN GLENNON IN SUPPORT OF GRANT THORNTON
IRELAND'S NON-PARTY OBJECTION TO RECEIVER'S MOTION FOR APPROVAL
OF SETTLEMENT AGREEMENT AMONG RECEIVER, CLASS PLAINTIFFS, AND
FORMER OFFICERS AND DIRECTORS, AND ENTRY OF BAR ORDER**

1. My name is John Glennon. I am over the age of eighteen. I have personal knowledge of the facts contained herein, which are true and correct. If called as a witness, I could competently testify to these statements.

2. I am an audit partner at Grant Thornton Ireland ("GT Ireland"). As part of my job, I provide audit and assurance services. I have held this position since January 2009.

3. In 2018 and 2019, GT Ireland was engaged to provide auditing services to TCA Cayman Funds.

4. GT Ireland audited the statement of financial position of TCA Global Credit Fund, LP, of TCA Global Credit Fund, Ltd., and of TCA Global Credit Master Fund, LP. Id. The TCA Cayman Funds were managed by TCA Fund Management Group Corp. ("TCA Management")

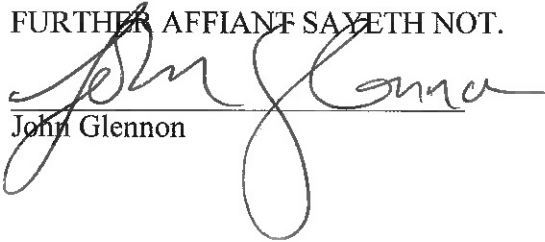
CASE NO.: 1:20-cv-21808-RNS

Board of Directors, including, Robert Darryl (Bob) Press, Alyce Schreiber, William (Bill) Fickling, Thomas Day, Patrick Primavera, Donna Silverman, and Tara Antal (“Directors and Officers”).

5. GT Ireland intends to assert all available claims against the Directors and Officers, including but not limited to equitable contribution, contribution pursuant to Fla. Stat. 768.31 (2023), common law indemnification, fraudulent, intentional and negligent misrepresentation, and fraud and/or any similar claims under the laws of Florida, for all attorneys’ fees and costs expended in defending the above-captioned action, and if liability is found, for any the full amount of any judgment entered against GT Ireland.

Executed this 22 day of September 2023.

FURTHER AFFIANT SAYETH NOT.


John Glennon

[VERIFICATION ON FOLLOWING PAGE]

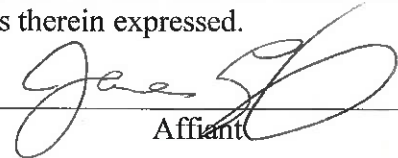
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CASE NO.: 1:20-cv-21808-RNS

VERIFICATION

REPUBLIC OF IRELAND)
) ss
COUNTY OF GALWAY)

BEFORE ME, the undersigned authority, personally appeared JOHN GLENNON who, after being duly cautioned and sworn, deposes and says that he has read the above Affidavit and that he has set his hand and seal thereto for the purposes therein expressed.



Affiant

The foregoing instrument is sworn to and subscribed before me this 22ND day of SEPTEMBER, 2023, by JOHN GLENNON, who is:

- 1. Personally known to me.
- 2. Who has produced following as identification:

Given under my hand and official seal this 22ND day of SEPTEMBER 2023.

Printed Name: JAMES T. SEYMOUR

My Commission Expires: FOR LIFE

Notary Public
State of IRELAND at Large
Notary I.D. Number
(if applicable)



JAMES T. SEYMOUR
NOTARY PUBLIC
7 Monalee Manor, Knocknacarra, Galway
Commissioned for Life
www.galwaynotary.ie

**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,

Plaintiffs,

v.

GRANT THORNTON CAYMAN ISLANDS, and
GRANT THORNTON IRELAND,

Defendants.

_____ /

PLAINTIFFS' INITIAL DISCLOSURES

Plaintiffs, Todd Benjamin International, Ltd. and Todd Benjamin, hereby serve their Initial Disclosures pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure:

Plaintiffs have not completed their investigation of this case and these disclosures are based on information reasonably available to Plaintiffs as of this date. Plaintiffs reserve the right to modify, supplement, or clarify the information herein at any time before trial. Plaintiffs reserve all objections, including objections based on: (a) the attorney-client privilege; (b) the work product doctrine; (c) competency, relevancy, and/or materiality, hearsay and/or any other applicable ground; and (d) any other applicable privilege or protection under federal or state law. Plaintiffs' disclosures represent a good faith effort, in accordance with Federal Rule of Civil Procedure 26(a)(1), to identify individuals likely to have discovery documents, information, or tangible things that Plaintiffs at this time reasonably anticipate they may use to support their claims. These disclosures are not intended, and should not be construed, as a waiver of any privilege, or objection to the production, use, or admission into evidence of any document or information provided in

these disclosures pursuant to Federal Rule of Civil Procedure 26(e).

I. Individuals Likely to Have Discoverable Information:

The following are the names and, if known, the addresses and telephone numbers of each individual or entity that Plaintiffs anticipate is likely to have discoverable information that Plaintiffs may use to support their claims (unless the use would be solely for impeachment), along with the subjects of that information. The list does not include experts and/or consultants who might be retained.

1. Todd Benjamin
c/o Undersigned Counsel
Subjects of discoverable information: Circumstances giving rise to the instant lawsuit, including transfer of invested funds on behalf of Plaintiffs, communications with subject investment issuer/manager before and after the transfer of funds, and the loss of Plaintiffs' invested funds
2. Sonja Shechter
c/o Undersigned Counsel
Subjects of discoverable information: Circumstances giving rise to the instant lawsuit, including transfer of invested funds on behalf of Plaintiffs, communications with subject investment issuer/manager before and after the transfer of funds, and the loss of Plaintiffs' invested funds
3. Robert Press
Address unknown
Subjects of discoverable information: Circumstances giving rise to the instant lawsuit, including investment issuer/manager's dealings with Defendants
4. Alyce Schreiber
Address unknown
Subjects of discoverable information: Circumstances giving rise to the instant lawsuit, including investment issuer/manager's dealings with Defendants
5. William Fickling
Address unknown
Subjects of discoverable information: Circumstances giving rise to the instant lawsuit, including investment issuer/manager's dealings with Defendants
6. Thomas Day
Address unknown
Subjects of discoverable information: Circumstances giving rise to the instant lawsuit, including investment issuer/manager's dealings with Defendants

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

7. Donna Silverman
Address unknown
Subjects of discoverable information: Circumstances giving rise to the instant lawsuit, including investment issuer/manager's dealings with Defendants
8. Patrick Primavera
Address unknown
Subjects of discoverable information: Circumstances giving rise to the instant lawsuit, including investment issuer/manager's dealings with Defendants
9. Tara Antal
Address unknown
Subjects of discoverable information: Circumstances giving rise to the instant lawsuit, including investment issuer/manager's dealings with Defendants
10. Steven Rosen
Address unknown
Subjects of discoverable information: Circumstances giving rise to the instant lawsuit, including investment issuer/manager's dealings with Defendants
11. Michael Attar
Address unknown
Subjects of discoverable information: Circumstances giving rise to the instant lawsuit, including investment issuer/manager's dealings with Defendants
12. Nuri Feder
Address unknown
Subjects of discoverable information: Circumstances giving rise to the instant lawsuit, including investment issuer/manager's dealings with Defendants
13. Patricia Fernandez
Address unknown
Subjects of discoverable information: Circumstances giving rise to the instant lawsuit, including investment issuer/manager's dealings with Defendants
14. Carlos Sandino
Address unknown
Subjects of discoverable information: Circumstances giving rise to the instant lawsuit, including investment issuer/manager's dealings with Defendants
15. Jose Rodriguez
Address unknown
Subjects of discoverable information: Circumstances giving rise to the instant lawsuit, including investment issuer/manager's dealings with Defendants

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

16. Greg O'Driscoll
Address unknown
Subjects of discoverable information: Circumstances giving rise to the instant lawsuit, including investment issuer/manager's dealings with Defendants
17. John Glennon
Address unknown
Subjects of discoverable information: Circumstances giving rise to the instant lawsuit, including investment issuer/manager's dealings with Defendants
18. Ross McLoughlin
Address unknown
Subjects of discoverable information: Circumstances giving rise to the instant lawsuit, including investment issuer/manager's dealings with Defendants
19. Ross Lynskey
Address unknown
Subjects of discoverable information: Circumstances giving rise to the instant lawsuit, including investment issuer/manager's dealings with Defendants
20. Laura Collins
Address unknown
Subjects of discoverable information: Circumstances giving rise to the instant lawsuit, including investment issuer/manager's dealings with Defendants
21. Paul O'Dea
Address unknown
Subjects of discoverable information: Circumstances giving rise to the instant lawsuit, including investment issuer/manager's dealings with Defendants
22. Jonan Krugel
Address unknown
Subjects of discoverable information: Circumstances giving rise to the instant lawsuit, including investment issuer/manager's dealings with Defendants
23. Blain Sheridan
Address unknown
Subjects of discoverable information: Circumstances giving rise to the instant lawsuit, including investment issuer/manager's dealings with Defendants
24. Pierre Jacobs
Address unknown
Subjects of discoverable information: Circumstances giving rise to the instant lawsuit, including investment issuer/manager's dealings with Defendants

25. Dara Keogh
Address unknown
Subjects of discoverable information: Circumstances giving rise to the instant lawsuit, including investment issuer/manager's dealings with Defendants
26. Jonathan E. Perlman, Esq., as Receiver for TCA Management Group Corp., et al.
Venable LLP
100 S.E. Second Street, 44th Floor
Miami, FL 33131
Subjects of discoverable information: Circumstances giving rise to the instant lawsuit and information related to the receivership case, *SEC v. TCA Fund Management Group Corp.*, Case No. 20-cv-21964-CMA (S.D. Fla.)

Plaintiffs anticipate the identity of additional individuals likely to have discovery information may become known as the litigation progresses. These individuals are expected to include employees of the investment issuer/manager, and/or employees of Defendants.

II. Description of Documents, Electronically Stored Information, and Tangible Things in Plaintiffs' Possession

Plaintiffs anticipate they may use the following categories of documents in their possession, custody, or control, or the possession, custody, or control of their counsel, to support their claims. These disclosures are made without waiver of, or prejudice to, any objection Plaintiffs may have, including to the use at trial of any of the documents or information disclosed in the categories below, this document itself, or any other document or thing produced pursuant to Rule 26.

1. Plaintiffs' e-mail communications with TCA Credit Management Ltd.
2. Offering and subscription materials for the subject investments
3. Records received from Jonathan Perlman, as Receiver for TCA Fund Management Group Corp., et al.
4. Documents available in the public record, including court records filed in the receivership case, *SEC v. TCA Fund Management Group Corp.*, Case No. 20-cv-21964-CMA (S.D. Fla.)

III. Computation of Damages Claimed by Plaintiffs

Discovery is ongoing and could affect Plaintiffs' computation of damages, which is preliminary. Plaintiffs reserve the right to supplement and/or amend their initial damages computation as discovery develops, including through potential expert analysis. Subject to these reservations, Plaintiffs, individually and on behalf of the putative class, seek to recover their net investment loss (calculated as the money each class member invested, less the money returned to that class member in connection with that investment), together with pre- and post-judgment interest at the legal rate. Plaintiffs seek damages in their individual capacities and as representatives of a class of similarly situated persons. Plaintiffs' individual net loss as of these Disclosures is \$2,402,361.41. Plaintiffs also seek punitive damages in an amount to be established at trial as well as reasonable attorneys' fees and costs.

IV. Any Insurance Agreement Under Which an Insurance Business May Be Liable to Satisfy a Judgment in This Action

Not applicable.

V. Right to Supplement

Plaintiffs expressly reserve the right to supplement these initial disclosures with additional witnesses, documents, and other information that may become known or available to them through the course of discovery.

Date: August 23, 2023

Respectfully submitted,

/s/ Scott L. Silver, Esq.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing document was served on August 23, 2023 via email to counsel identified below.

By: /s/ Scott L. Silver, Esq.

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