JOHN E. LAWLOR, ESQ.
ATTORNEY AT LAW

129 Third Street
Mineola, N.Y. 11501
(516) 248-7700
Fax: (516) 742-7675
E-Mail: JLawlor@johnelawlor.com

September 25, 2023

BY HAND AND OVERNIGHT MAIL

Chief Judge Cecilia M. Altonaga
Wilkie D. Ferguson, Jr. U.S. Courthouse
400 North Miami Avenue
Room 13-3
Miami, FL 33128

Re: Securities and Exchange Commission v. TCA Fund Management Group Corp.
Case No. 20-021964-ALTONAGA

and

Robert D. Press v. Patrick J. Primavera
Index No. 21-cv-10971 (JLR) (Southern District of New York)

Your Honor:

We represent Patrick Primavera, the Defendant in the above-referenced SDNY matter, and a former officer of one or more of the TCA Receivership entities. We write on said Defendant's behalf to object to the proposed settlement which is scheduled for a Final Approval Hearing on October 25, 2023.

PROCEDURAL HISTORY

This action was commenced on May 11, 2020 (ECF Doc. No. 1) and on the same date this court imposed a blanket stay of litigation (ECF Doc. No. 5).

On December 21, 2021, Robert D. Press filed an action against our client Patrick J. Primavera in the Southern District of New York, Case No. 21-cv-10971 (the SDNY Action). A copy of the Complaint in the SDNY Action is annexed as Exhibit A ("Complaint"). Mr. Press is the founder and CEO of one or more of the Receivership entities. The complaint in the SDNY Action alleges that Mr. Primavera was Managing Director of TCA Investment Manager's New York office. Complaint para. 19. The SDNY Action arises directly out of Mr. Primavera's

employment with one or more of the Receivership entities and this Court's blanket stay on its face seems to cover the SDNY action.

On September 11, 2023, my client received and forwarded to me a hard copy notice of a proposed settlement in this action under case no. 20-021964 ("SEC Action"). I do not receive ECF or any other form of notices in the SEC Action. Upon careful review of the proposed settlement in the SEC Action, it came to my attention that this Court had imposed a blanket stay of litigation on May 11, 2020, and that that stay appears to include the SDNY matter. Specifically, paragraph 26 of the ECF Doc. No. 5 provides:

> As set forth in detail below, the following proceedings, . . . are stayed until further Order of the Court:
>
> All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other actions of any nature involving: . . . (d) any of the Receivership Entities' past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise . . .

It also came to my attention that paragraph 8.a. of the proposed settlement in the SEC Action, ECF Doc. No. 369-1 provides: "The Receiver shall, promptly after the Effective Date: a. Consent to the lifting of the Court's stay to permit the prosecution of the pending action by Press against Primavera".

Thus, it would appear that this Court's blanket stay applied to the SDNY Action ab initio. Paragraph 8.a. of the settlement confirms this. I brought this to my adversary's attention and was duty bound to bring it to the Court's attention in the SDNY Action immediately. A copy of my letter to Judge Rochon (later memo endorsed) is attached as Exhibit B. The memo endorsement directed Mr. Press's New York counsel to file a letter in opposition by September 19th. A copy of that letter in opposition is attached as Exhibit C. In that letter Mr. Press's counsel admits the "plaintiff (Mr. Press) had knowledge of the proceedings in the Enforcement Case [the SEC Action] . . ." and that "in or about March 2022, the Receiver . . . demanded that Mr. Press immediately withdraw his Complaint [in the SDNY Action]." Exhibit C, page 2. For the sake of completeness, a copy of our letter in reply is attached as Exhibit D.

As a result of the foregoing, Judge Rochon entered an Order on September 20, 2023, Exhibit E, confirming that "[t]his Court was never informed of any stay or the fact, as Plaintiff now informs the Court, the Receiver 'demanded that Mr. Press immediately withdraw his Complaint . . .' in March, 2022. . . and "[i]t would be very problematic if Plaintiff proceeded with this matter before the Court in contravention of a stay issued by the Southern District of Florida." As a result of Judge Rochon's September 20, 2023 Order, the SDNY Action is now stayed "in order to determine whether this action was stayed by Order of the Southern District of Florida."

ADDITIONAL FACTS

More than one attorney to this proceeding knew that the SDNY Action was proceeding.

On December 19, 2022, I sent an e-mail to Jonathan E. Perlman as Receiver, advising him that Mr. Primavera:

> "is under the belief that there is a D&O policy which may cover all or a portion of his defense costs in the SDNY matter and we write to request a copy of that policy as we would like to make a demand on the carrier to provide a defense. In addition, our client, as a former employee of TCA should have statutory and by-law indemnification rights from TCA."

We also provided Mr. Perlman a copy of the Complaint in the SDNY Action. We received no response to that letter, a copy of which, without attachment, is annexed as Exhibit F.

On September 6, 2023, before having any awareness that this Court had preliminarily approved a settlement, I sent an e-mail to Gregory Garno, who I believed to be counsel to the D&O carrier, a copy of which is annexed as Exhibit G. The e-mail thread confirms that I sent a follow-up reminder on September 14, 2023.

Despite 3 requests, we have never received a copy of the D&O policy nor has the Receiver ever addressed Mr. Primavera's inquiry re his statutory and by-law indemnification rights from TCA.

This procedural history and the additional facts form the basis of Mr. Primavera's objection to the proposed settlement.

OBJECTIONS

1. The first issue is the question posed by Judge Rochon's September 20, 2023 Order: to determine whether the SDNY Action "was stayed by Order of the Southern District of Florida." In light of our objections to the proposed settlement set forth below and for the reasons set forth in our letters to Judge Rochon on September 18 and September 19 (Exhibits B and D), we urge this Court to confirm that the SDNY Action was stayed by the blanket stay imposed by this Court on May 11, 2020 (ECF Docket No. 5 ¶26).

2. Mr. Primavera objects to the proposed settlement to the extent that it seeks to have the Receiver "[c]onsent to the lifting of the Court's stay to permit the prosecution of the pending action by Press against Primavera". ECF Doc. No. 369-1. There is no benefit to the Class Plaintiffs in allowing Mr. Press to continue his action against Mr. Primavera and Mr. Primavera has already been severely prejudiced in having to defend that action in spite of the blanket stay. In addition, Mr. Press should not be in a position to benefit personally from the proposed settlement given that we are all here together based on his misconduct. This is especially true in light of the fact, upon information and belief, that Mr. Press is seriously delinquent in his payment under one or more disgorgement orders. Mr. Press's consent to the proposed settlement does not appear to be required and the Class Plaintiffs will not be

impacted. Under the circumstances, the idea that Mr. Press should profit as a result of this scheme is abhorrent.

3. Should the Court be disinclined to continue the stay of the SDNY matter, we respectfully request that Mr. Garno or Mr. Perlman provide us with a copy of the D&O policy and respond, or have the carrier respond, to Mr. Primavera's prior demands for coverage. I am hereby tendering his defense under any and all applicable policies.

4. Failing coverage under the D&O Policy, we respectfully request that Mr. Garno or Mr. Perlman respond to our inquiries regarding Mr. Primavera's statutory and by-law indemnification rights from TCA and in that regard I reserve my right to tender Mr. Primavera's defense.

ARGUMENT

"Preliminary approval of a proposed class action settlement does not involve a determination of the merits of the proposed settlement or affect the substantive rights of any class member. . . Rather, the purpose of preliminary approval is solely to communicate the proposed settlement to the class, review and approve the proposed form of notice to the class, and to authorize the manner and form of dissemination of the notice . . . " Figueroa v. Sharper Image Corp., 517 F.Supp.2d 1292, 1298-1299 (S.D. Fla. 2007).

Before approving a class-action settlement, a district court must "determine that it [is] fair, adequate, reasonable, and not the product of collusion." Leverso v. SouthTrust Bank of Alabama, 18 F.3d 1527, 1530 (11th Cir. 1994). In so doing, "[a] threshold requirement is that the trial judge undertake an analysis of the facts and the law relevant to the proposed compromise." Cotton v. Hinton, 559 F.2d 1326, 1330 (5th Cir. 1977).

The circumstances surrounding Mr. Press's prosecution of the SDNY Action with admitted full knowledge of the blanket stay is deeply troubling and necessitated that I bring it to Judge Rochon's attention immediately. This was just a matter of common sense dictated by elemental professional responsibility. As Judge Rochon noted, "[i]t would be very problematic if Plaintiff proceeding with this matter before the Court in contravention of a stay issued by the Southern District of Florida." What is also disturbing is that at least 2 attorneys in this action were aware of Mr. Press's conduct: one with the ability to stop Mr. Press who did nothing, and neither of which brought the matter to my attention.

Against this backdrop, which I will decline to characterize except to say this is not rewardable behavior, counsel, we assume for Mr. Press, attempts to insert a carve-out of the SDNY matter, "Press v. Primavera". The gratuitous inclusion of Paragraph 8.a. of the proposed settlement is of no economic or other benefit to the Class Plaintiffs. It is designed (1) to benefit Mr. Press, which should not be the effect or result of this settlement, and (2) to cover up various sins of omission and commission to this point, it was not meant to be uncovered. The deletion of Paragraph 8.a., which does not appear to require Mr. Press's consent, is immaterial to parties with a legitimate interest in the settlement.

In light of the seriousness of this matter, it is my intention to appear at the Final Approval Hearing and request that I be permitted to do so on behalf of Mr. Primavera. Subject to the Court's approval, I would prefer to do so by Zoom as I have a week-long scheduled hearing in Milwaukee.

In anticipation of the Court's possible further inquiry, I was and am prepared to file a motion pro hac vice, see Exhibit H, if that's required under the circumstances but this Court's August 31 2023 Order, ECF Doc. No. 371 does not seem to require same (para. 5). We were unable to accomplish that last week as Mr. Primavera is not recognized as a party on the ECF System.

In accordance with the Court's August 31, 2023 Order, a copy of this letter and the attachments has been served on the attorneys to whom service has been directed by e-mail and by USPS Overnight mail at the address(es) provided for in that Order and as indicated below.

Thank you for your time and attention to this matter.

Very truly yours,

JOHN E. LAWLOR, ESQ.

JEL/eu
Att.

cc: Gregory M. Garno, Esq.
Venable LLP
100 S.E. Second Street
44th Floor Miami, Florida 33131
Email: gmgarno@venable.com
Counsel for the Receiver Class Plaintiffs

Jason Kellogg, Esq.
Levine Kellogg Lehman Schneider & Grossman
201 S. Biscayne Boulevard, Suite 2200
Miami, FL 33131
Email: JK@LKLSG.com
Co-counsel for Class Plaintiffs

Scott L. Silver, Esq.
Silver Law Group
11780 W. Sample Road
Coral Springs, Florida 33065
Email: ssilver@silverlaw.com
Co-Counsel for Class Plaintiffs

Steven Jeffrey Brodie, Esq.
Carlton Fields
2 Miami Central
700 NW 1st Avenue, Ste. 1200
Miami, Florida 33136-4118
Email: sbrodie@carltonfields.com

Carl Schoeppl, Esq.
Schoeppl Law, P.A.
4651 N. Federal Highway
Boca Raton, Florida 33431
carl@schoeppllaw.com
Co-Counsel for Former Officers and Directors

Jonathan E. Perlman, Esq. Receiver
Genovese Joblove & Battista, P.A.
100 SE 2nd Street, Ste. 400
Miami, FL 33131
jperlman@gjblaw.com

Exhibit A

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of New York

Robert D. Press,

Plaintiff(s)

v.

Patrick J. Primavera,

Defendant(s)

Civil Action No. 1:21-cv-10971

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Mr. Patrick J. Primavera
8 Summerfield Drive
Monroe Township, NJ 08831

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Marc E. Kasowitz (mkasowitz@kasowitz.com)
Albert Shemmy Mishaan (amishaan@kasowitz.com)
Sondra D. Grigsby (sgrigsby@kasowitz.com)
Kasowitz Benson Torres LLP
1633 Broadway, New York, NY 10019
(212) 506-1700

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 12/22/2021

/s/ P. Cannios

Signature of Clerk or Deputy Clerk

Marc E. Kasowitz (mkasowitz@kasowitz.com)
Albert Shemmy Mishaan (amishaan@kasowitz.com)
Sondra D. Grigsby (sgrigsby@kasowitz.com)
Jeffrey Ephraim Glatt (jglatt@kasowitz.com)
KASOWITZ BENSON TORRES LLP
1633 Broadway
New York, New York 10019
Tel.: (212) 506-1700
Fax: (212) 506-1800

Attorneys for Plaintiff Robert D. Press

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Robert D. Press, Plaintiff, v. Patrick J. Primavera, Defendant.	Civil Action No. 1:21-cv-10971

COMPLAINT
(Jury Trial Demanded)

Plaintiff Robert D. Press ("Press" or "Plaintiff"), for his complaint against defendant Patrick J. Primavera ("Primavera" or "Defendant"), upon knowledge as to himself and otherwise upon information and belief, alleges as follows:

PRELIMINARY STATEMENT

1. This action arises out of a fraudulent scheme orchestrated by Patrick Primavera, the former managing director of the New York office of TCA Fund Management Group Corp. ("TCA Investment Manager"), an international investment firm, to falsely inflate the size of the New York office's business -- and thereby earn substantial compensation and bonuses to which he was not entitled -- by representing to Robert Press, the firm's founder, and senior management, that the New York office was transacting substantial investment banking business -- and earning substantial investment banking fees -- for numerous clients for which it was in fact doing no such work and earning no such fees. Nevertheless, for the period between 2017 and 2019, Primavera fraudulently concealed that scheme from Press and senior management by using false accounting and bookkeeping entries to reflect nonexistent investment banking fees from multiple clients on multiple transactions. Strikingly, none of those false transactions and fees were discovered by TCA Investment Manager's internal accountants or outside auditor, one of the country's largest and most prestigious accounting firms.

2. Primavera's wrongdoing began to come to light in 2020, after a whistleblower complaint was filed and an internal investigation commenced. To cover his tracks and shift the spotlight away from himself, Primavera concocted a false narrative in which he sought to absolve himself from any responsibility and to improperly place the blame on Press and others. Primavera brazenly brought that scheme to the Securities & Exchange Commission ("SEC"), where he presented a false affidavit which triggered federal investigations and enforcement actions.

3. The fallout from, and attempted cover-up of, Primavera's nefarious and wrongful conduct, coupled with the failure of internal accounting staff and outside auditors of TCA Investment Manager and its offshore and onshore feeder funds[1] to detect the fraud perpetrated by Primavera, has been devastating. Such egregious misconduct and audit failures have resulted in, among other things, the collapse of the TCA Funds, a Cayman Islands liquidation proceeding, an SEC receivership proceeding, and numerous SEC enforcement actions. The damage to Press has been enormous.

4. Primavera was hired, in 2016, following the decision by Press and other upper management to expand TCA Investment Manager's business into investment banking, a business unit that would operate out of TCA Investment Manager's New York office to assist clients with performing agreed upon investment banking services in exchange for a fee set forth in a written investment banking services agreement ("IBSA"). Press hired Primavera to manage the New York office and hire and run a team responsible for, *inter alia*, originating investment banking clients for TCA Investment Manager, and negotiating, drafting, and executing IBSAs with investment banking clients on behalf of the TCA Investment Manager.

5. One of Primavera's key responsibilities was to allocate each portion of the investment banking fee to be paid by a client to a specific performance obligation, record and book the investment banking fees earned by TCA Investment Manager for reporting to Press and upper management, and prepare and issue invoices to investment banking clients for services rendered by TCA Investment Manager. Primavera was responsible for reporting IBSAs

[1] The offshore fund, TCA Global Credit Fund, Ltd. (the "TCA Offshore Feeder Fund"), and the onshore fund, TCA Global Credit Fund, LP (the "TCA Onshore Feeder Fund") were feeder funds to Error! Main Document Only.TCA Global Credit Master Fund, LP (the "TCA Master Fund"). The term "TCA Feeder Funds" refers to TCA Offshore Feeder Fund and TCA Onshore Feeder Fund together. The term "TCA Funds" refers to the TCA Feeder Funds and the TCA Master Fund together.

originated, the amount of investment banking fees booked, and the results of collectability assessments to the internal accounting staff (the "Internal Accountants") of TCA Investment Manager. Such reporting was performed in order to recognize and derecognize revenue in accordance with applicable accounting standards and record the appropriate amount of investment banking fees earned as an input to the computation of the net asset value ("NAV") by the administrator for the TCA Funds each month for ultimate disclosure to investors on monthly statements.

6. By 2017, Press had developed a substantial organizational infrastructure at TCA Investment Manager consisting of more than 40 employees, with a seasoned team of financial and accounting professionals to oversee investment banking and internal accounting functions. In addition, Press had engaged one of the world's largest and most prominent accounting firms (the "Outside Auditor") to audit the financial statements of the TCA Funds to detect fraud or other improprieties in connection with, among other things, the booking of revenue from investment banking fees for which Primavera was principally responsible. It goes without saying that Press relied on managers such as Primavera to deliver honest services and dutifully perform their jobs. This reliance was even more pronounced in Primavera's case, as Press resided and worked from TCA Investment Manager's offices in Florida, was traveling internationally and working from the London office quite frequently, and, therefore, relied on remote reporting from Primavera that he was performing his duties properly in the manner he reported to Press and other members of upper management. Press was not involved in the rendition of the investment banking services, and relied upon Primavera and his team to faithfully discharge those responsibilities and fully and accurately report results of their performance.

7. Through an internal investigation after Primavera left TCA Investment Manager, Press was shocked to learn that, contrary to Primavera's ongoing verbal and written reports and representations to Press and upper management, neither Primavera nor anyone else had been performing the investment banking services for the firm's investment banking clients that Primavera said he had been performing. Further, Press was equally shocked to learn that the Outside Auditor had failed to detect Primavera's gross misconduct in its audit procedures in 2017 and 2018, and that the conclusion in the auditor's written audit finding reports, which had routinely been given to Press and upper management, that it found no evidence of fraud or illegality, were shockingly wrong.

8. In an outrageous effort to escape responsibility for the fraud he had perpetrated on Press, TCA Investment Manager and its clients, Primavera sought to blame Press for his own fraud and deceit. Primavera submitted a false and perjurious declaration to the SEC defaming Press, and he defamed Press to other third parties. Primavera claimed that Press, not he, was responsible for the fraud he had concocted concerning fake investment banking transactions, even though emails and other documentary evidence overwhelmingly demonstrate not only that Primavera was responsible for that fraud, but that he had actively and fraudulently concealed it from Press and upper management.

9. Press brings this action to recover the damages he has suffered, including the enormous damage to his professional reputation, including severed business relationship and future economic opportunities, as a result of Primavera's calculated and fraudulent misconduct, including his egregious defamation of Press's professional reputation and character.

THE PARTIES

10. Plaintiff Robert D. Press is an individual domiciled in the State of Florida.

11. Defendant Patrick J. Primavera is an individual domiciled in the State of New Jersey.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332. This action is between citizens of one or more States and a citizen of a foreign state, and the amount in controversy exceeds $75,000, exclusive of interest and costs.

13. This Court has personal jurisdiction over Primavera, among other things, (i) by virtue of Primavera's business and personal activities within, and contracts with, the State of New York and this Judicial District; and (ii) a substantial portion of Primavera's misconduct described herein occurred in New York.

14. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b), since a substantial part of the events giving rise to the claims occurred in New York and in this Judicial District.

BACKGROUND

A. ROBERT D. PRESS AND THE TCA INVESTMENT MANAGER

15. Press's career spans more than three decades in finance. He began his career in the Capital Markets Group of Chemical Bank and rose to become one of the heads of global derivative products trading. During his extensive career, Press has been a principal in asset management, brokerage and investment banking companies, and has served on industry panels and as an officer and director of public and private companies. Press's diverse background includes years of experience in structured finance, asset-backed lending, securitizations, and mergers and acquisitions, within the United States and Europe.

16. Press is the founder and former Chief Executive Officer and director of TCA Investment Manager, and was the owner of TCA Investment Manager at all relevant times. TCA

Investment Manager was headquartered in Aventura, Florida and had offices in New York, Las Vegas, London, England, and Melbourne, Australia.

17. Under Press's leadership for a decade, TCA Investment Manager served as, among other things, an investment adviser to the TCA Funds. TCA Investment Manager had multiple revenue streams and in 10 years Press had developed a network of contacts and referral sources spanning over 6 continents. Additionally, the TCA Master Fund was a master-feeder fund that supported the trading and investing activities of the TCA Feeder Funds. The TCA Feeder Funds invested substantially of their assets in the TCA Master Fund. As of on or about November 30, 2019, the TCA Master Fund had approximately 470 investor accounts and a published net asset value of over $500 million.

18. As the investment adviser of the TCA Funds, TCA Investment Manager provided portfolio management services to the TCA Funds and also had discretionary authority to invest the assets of the TCA Funds.

B. PRESS HIRES PRIMAVERA TO LEAD THE TCA INVESTMENT MANAGER'S NEW YORK OFFICE AND MANAGE INVESTMENT BANKING FUNCTIONS

19. In or around July 2016, Press hired Patrick Primavera, whom he believed to be duly qualified based upon his stated skills, abilities, knowledge, and experience, to be the Managing Director of the New York office. Primavera began his employment as Managing Director of TCA Investment Manager's New York office in or about September 2016 at a six-figure annual base salary, with additional compensation incentives including an annual discretionary six-figure bonus. As Managing Director, Primavera was in charge of hiring, running, overseeing, and supervising a team of financial professionals responsible for, among other things: (i) originating investment banking clients, (ii) negotiating, drafting, and executing IBSAs with investment banking clients, (iii) preparing written scopes of work ("SOW")

outlining the specific investment banking services to be performed for an investment banking client pursuant to the IBSAs on behalf of the TCA Investment Manager, (iv) performing investment banking services for investment banking clients pursuant to the IBSAs, (v) recording and booking the investment banking fees earned pursuant to IBSAs in a monthly pipeline (the "Investment Banking Pipeline") and other periodic reports given to Press and upper management, (vi) preparing and issuing invoices to investment banking clients for services rendered under IBSAs, (vii) conducting collectability assessments on the ability of an investment banking client to pay investment banking fees, and (viii) reporting IBSAs originated, the amount of investment banking fees booked, and the results of collectability assessments to the Internal Accountants.

20. In connection with the investment banking services, among his other responsibilities, Primavera was responsible for handling the client relationships. The IBSAs required the client companies to pay an investment banking fee to the TCA Master Fund for the investment banking services provided by the TCA Investment Manager through Primavera and his team. The investment banking fees the companies paid would vary from deal-to-deal depending on the investment banking services the companies contracted for and required.

21. The investment banking services TCA generally offered included, among other things: (i) identifying merger-and-acquisition opportunities, (ii) reviewing organization charts and other information regarding the structure of the company, (iii) reviewing employee files, credentials, and background checks, (iv) reviewing incorporation documents, by-laws, minutes of board and committee meetings, (v) reviewing agreements and information regarding stocks and shareholders, (vi) preparing business plans, financial models, and discussing the budgeting and forecasting process, (vii) assisting with finding appropriate legal counsel and reviewing

engagement letters, summaries of litigation or arbitration claims and proceedings, (viii) assisting with SEC reports, (ix) discussing governmental, environmental, and equal opportunity employment compliance issues, (x) assisting with identifying and reviewing trademarks, copyrights, and other issues with intellectual property, (xi) assisting with financial and accounting matters including reviewing audited financial statements, tax returns, and correspondence with the IRS, and (xii) assisting with sales and marketing including identifying potential customers and discussing future product and services trends. Press believed Primavera's stated knowledge and experience running his own business prepared him to handle these types of investment banking services.

22. After a brief transitional period from a prior investment banking manager who became an outside consultant, Primavera assumed ultimate responsibility for all aspects of the investment banking services and fees beginning in or about 2017. Primavera hired a team of staff members who reported to him and whose primary responsibility at the TCA Investment Manager was to perform the investment banking services. Primavera often lamented to Press that he was so busy that he could not keep up with the growing demand for investment banking services and needed to hire additional staff. To meet such purported demands, Primavera hired as many as 10 employees in the New York office and created the outward appearance to Press that Primavera and his team were performing the investment banking services sufficient to support his monthly bookings of millions of dollars in investment banking fees.

23. Primavera was also tasked with working with and reporting to other TCA Investment Manager's employees in the accounting and finance department -- the Internal Accountants. These Internal Accountants were supposed to ensure that TCA Funds's accounting was done accurately and in accordance with all applicable rules and guidelines. They were also

responsible for performing monthly reviews of Primavera's monthly progress reports that contained the IBSAs, investment banking fees, and his proposal of the amount of investment banking fees to book for the calculation of the NAV for the TCA Funds.

24. TCA Investment Manager's internal accounting department was responsible for analyzing the investment banking fees and obligations, performing a review of the same every single month, and performing cash flow analyses. If the TCA Investment Manager had not performed any investment banking services that month and the clients were not invoiced, its policy provided that the accountants would de-recognize that revenue.

25. Though Primavera had made it clear to Press and upper management that he was performing the investment banking services, in reality he had secretly delegated much of his work on the investment banking services to the former investment banking manager who was working as an outside consultant (the "Former IB Manager"). Unbeknownst to Press and upper management, while Primavera ran the New York office and worked with accounting to book the investment banking fees, the Former IB Manager was regularly designated as the main contact for the clients, negotiated many of the IBSA deals, and performed the actual investment banking services work. Together, Primavera and the Former IB Manager would put a value on the services for the investment banking fees and do an evaluation on the collectability of the investment banking fees in order to ensure the client companies could afford the services.

26. Press trusted Primavera and the team Primavera put together with the management and performance of investment banking services, giving Primavera autonomy to manage the New York office and his team as he saw necessary to ensure the investment banking services were performed and booked properly.

27. Primavera voluntarily departed in 2019, following four years of the delivery of purported honest services to the TCA Investment Manager. Subsequently, Press learned in 2020 after an internal investigation was underway following a whistleblower complaint that his reposal of trust in Primavera was sorely misplaced.

C. PRIMAVERA'S FRAUD AND MISCONDUCT ARE REVEALED IN AN INTERNAL INVESTIGATION

28. In or about early January 2020, Press received notice that two people from TCA Investment Manager filed a whistleblower complaint with the SEC. Shocked and unware of any underlying facts that could support such a complaint, Press had the TCA Investment Manager immediately contact the SEC for details regarding the allegations and instructed the TCA Investment Manager's lawyers to launch a side-by-side internal investigation into TCA Investment Manager's accounting and reporting practices (the "Internal Investigation").

29. The Internal Investigation revealed a troubled and fraudulent pattern of activity orchestrated and perpetrated by Primavera and assisted by the Former IB Manager and Internal Accountants. Contrary to what Primavera consistently reported to Press and recorded in the TCA Investment Manager's books and records and Investment Banking Pipeline reports, there were no material investment banking services provided by him or the employees he managed in the New York office in 2017, 2018, or 2019 and Primavera intentionally misrepresented that such services were being performed to the TCA Investment Manager's upper management, including to Press.

30. Throughout the course of his tenure as Managing Director of the TCA Investment Manager's New York office, Primavera made false and misleading misrepresentations to Press regarding, *inter alia*, the Former IB Manager's role, the productivity of the office, the department's workflow, collectability of the investment banking fees, and that he was sending

monthly invoices to each investment banking client. He also knowingly misrepresented investment banking fees collections and investment banking services performance on invoices and scope of work summaries.

31. As a result of Primavera's misrepresentations regarding the provision of investment banking services by the TCA Investment Manager, investment banking fees were booked by the TCA Investment Manager that in reality were never earned. Primavera's fraudulent booking caused improper revenue recognition, and artificially inflated the NAV disseminated to TCA investors on a monthly basis.

32. Contrary to Primavera's consistent representations to Press and upper management, no discernible investment banking services or consulting were being performed by him or his team for the vast majority of deals that the New York office originated. In many cases, clients that Primavera and the Former IB Manager signed up for investment banking services did not need investment banking services at all. In fact, and unbeknownst to Press, it was common for the Former IB Manager and the investment banking services team to tell perspective clients wanting to take out a loan that the TCA Master Fund would not give them a loan unless they executed an IBSA. They would solicit new business for the IBSA by assuring the clients that if the TCA Master Fund did not give them the loan they would never have to pay the investment banking fees -- a term that was not in the standardized IBSAs -- but that the IBSA must be signed in order for the TCA Master Fund to even consider giving them the loan. Or, if the client was planning to acquire or be acquired by another company, the Former IB Manager or Primavera would promise the client that if the acquisition did not go through, it would not have to pay the investment banking fees.

33. Additionally, most of the IBSAs Primavera and his team were responsible for listed investment banking fees that were uncollectable. In many cases, the IBSAs were signed with companies that did not have sufficient credit to get a loan with the TCA Master Fund, much less pay a six- or seven-figure fee for investment banking services, and many were told by Primavera or the Former IB Manager that the listed investment banking fees would not need to be paid. On information and belief, Primavera and his team were aware when getting the companies to enter into the IBSAs and when booking the purported value that the investment banking fees would not be collectable.

34. The Outside Auditor, as TCA Funds's outside and independent auditors, should have uncovered Primavera's scheme through its audit procedures during its review of the files for the audit of the 2017 and 2018 financial statements. However, the Outside Auditor did the exact opposite and ultimately confirmed it found no evidence of fraud or illegal conduct in connection with its audits.

35. Any questions the Outside Auditor had about the IBSAs, investment banking services, and investment banking fees, were routinely answered by Primavera – the primary perpetrator of the hidden fraud. For example, in connection with the audit, the Outside Auditor sent investment banking services clients audit confirmations and the clients would often respond that the investment banking services were not being performed, that they did not actually need any investment banking services, that they did not get a loan and did not need to pay the investment banking fees, or simply value the investment banking services at $0. Primavera explained the responses away by claiming the clients were small businesses and not sophisticated in the ways of investment banking and therefore did not understand the audit confirmations. Primavera said he would work with the clients to clear up the confusion. Instead of speaking to

the clients or properly reviewing the files and the investment banking paperwork, the Outside Auditor neglected its duties as independent auditor and apparently accepted and were satisfied by Primavera's explanations.

36. Press and upper management relied upon Primavera's representations and the audit opinions and findings from the Outside Auditor that the investment banking fees were recognized properly and no fraud or illegal acts were detected. Indeed, the Outside Auditor issued written audit finding reports in 2018 and 2019 to Press and upper management that they found no evidence of fraud or illegality in connection with the 2017 and 2018 audits.

37. The Internal Investigation also revealed that the TCA Investment Manager's accounting department did not perform any cash flow analyses in 2019 for the majority of investment banking deals, nor did they perform any monthly financial analyses for the majority of investment banking deals in the fourth quarter of 2018 -- unbeknownst to Press. Like Primavera, the TCA Investment Manager's accounting department never reported any collectability, booking, or compliance issues to upper management or Press. To the contrary, they routinely reported the opposite to Press -- that the accounting for collections and collectability was fully in compliance with the applicable standards.

38. Further, unbeknownst to Press, the TCA Investment Manager's accounting managers and Internal Accountants ratified Primavera's premature booking of unearned investment banking Fees in the NAV that were disseminated to investors in the TCA Funds.

39. The fact that the TCA Investment Manager's accounting department approved the NAV inputs that included the investment banking fees purportedly earned by Primavera and his team on a monthly basis as compliant with applicable accounting standards, led Press, upper management, and the outside directors into reasonably believing that the revenue had been

properly recognized. On information and belief, Primavera worked with accounting and the Internal Accountants to purposefully conceal the truth from Press.

40. While the Internal Investigation uncovered a multitude of examples where Primavera lied to Press and upper management about the nature and order of magnitude of the investment banking services performed and investment banking fees collected, two examples in particular illustrate the pervasive practice by Primavera and his team and highlight the moral depravity of his fraud.

41. First, in or about November 2018, "Company A," seeking capital to purchase another company, engaged the TCA Master Fund as their banker to provide both debt and equity funding for the purchase. As part of its due diligence, Primavera claimed to have performed a valuation analysis on the acquisition and he and his team prepared a summary banking report stating Company A's financials had been reviewed for affordability of the investment banking services.

42. The TCA Investment Manger entered into an agreement with Company A to, *inter alia*, assist and advise of the creation of a business plan and marketing materials and establish and implement a working model for the company. Primavera signed the IBSA on behalf of the TCA Investment Manager with compensation for the investment banking services set at $500,000.

43. Although Company A's IBSA, executed on November 29, 2018, stated that the full amount of the $500,000 was not due upon execution and instead that the TCA Investment Manager would provide it with monthly invoices payable within 30 days from their receipt, Primavera recorded the entire $500,000 for the investment banking services in the November 2018 Investment Banking Pipeline when no work had been performed. The TCA Investment

Manager's Internal Accountants approved the inclusion of the $500,000 revenue booking in the NAV that was published to investors in the TCA Funds.

44. Additionally, as late as April 2019, the TCA Investment Manager's file for Company A, managed by Primavera and his team, reflected one SOW attached to an invoice indicating that even months later none of the agreed upon work had been completed. The Internal Investigation revealed there is no record of the invoice being sent to Company A. To the contrary, Company A maintained that it did not receive investment banking services and therefore did not owe TCA Investment Manager for those services. In fact, when Company A was contacted by the Outside Auditor to confirm the investment banking fees owed in March 2019, it crossed out $500,000 and stated that $0 in investment banking fees were outstanding and due and payable to TCA Investment Manager. Indeed, Company A never went into underwriting or paid the due diligence fee to TCA Investment Manager.

45. Primavera never made Press aware that the investment banking services for Company A were not performed or that the purported $500,000 in investment banking fees was improperly booked in November 2018.

46. The second example is even more egregious. In 2019, Primavera, his team, the Former IB Manager, and the Internal Accountants corroborated together to book a total of $4,250,000 of investment banking fee income over the span of several months for another company, "Company B," despite knowing they never performed any actual investment banking services for Company B.

47. On March 31, 2019, Primavera and his team executed an IBSA with Company B, which stated that Company B would compensate the TCA Investment Manager for $5,000,000 in investment banking services and the full amount would not be due upon execution of the

agreement but instead the TCA Investment Manager would provide it with monthly invoices payable within 30 days from their receipt.

48. However, Primavera booked $500,000 of Company B's purported investment banking fees in April 2019, booked $2,400,000 a month later in May 2019, $150,000 in June 2019, $200,000 in July 2019, $250,000 in August 2019, and finally $650,000 in September 2019. Primavera and his team booked a total of $4,250,000 in investment banking fees for Company B.

49. Despite the astronomical amount of investment banking fees Primavera booked, the Internal Investigation revealed that there are no invoices in the TCA Investment Manager's file for Company B, and there was only one invoice sent to Company B on May 31, 2019, for $10,000 for investment banking fees. Additionally, there was nothing in the SOW for Company B that was marked as having been completed despite the total projected work valued at $5,000,000 and booking $4,250,000. The Internal Accountants approved the NAV numbers that included these booking of Coinpany B's investment banking fees.

50. Primavera and his staff also prepared an overview of collectability for Company B which provided that based on their initial review of the company's financial, they could afford the $5,000,000 obligation in the IBSA. But the Internal Investigation revealed that there were in fact no company financials or bank statements in Company B's file that could support its ability to pay the investment banking fees.

51. Primavera never made Press aware that the investment banking services for Company B were not performed or invoiced, or that the purported $4,250,000 investment banking fees was improperly booked throughout 2019.

52. The Internal Investigation also revealed that Primavera falsely touted that he and his team had improved the collectability of the investment banking fees to Press and upper management.

53. In total, the Internal Investigation found that of all the companies Primavera and his team were responsible for their investment banking services, they had improperly booked investment banking fees for the overwhelming majority of them. Primavera had consistently represented to Press and upper management in discussions and the Investment Banking Pipelines that work for these companies' investment banking services was being performed and completed according to their SOW documentation. Primavera lied to everyone at the TCA Investment Manager above him and hid the Former IB Manager's continued involvement in the investment banking services for years.

54. Even though Primavera concealed his fraud from Press and upper management, the Outside Auditor, as the outside auditor and last line of defense that the Press relied upon, should have detected that Primavera was not actually performing investment banking services for the vast majority of investment banking fees that he booked when it began its audit procedures, particularly when it began receiving audit confirmation letter responses from investment banking client companies stating that no fees were owed to the TCA Investment Manager because no services had been performed. Had the Outside Auditor conducted the audits in 2017 properly, the improper recognition of investment banking revenue would have been detected and Press would have stopped that practice and ensured that the investment banking managers and the Internal Accountants were fired and that the correct revenue recognition practices and policies were followed in 2018 and going forward.

D. PRIMAVERA'S DEFAMATION TO COVER HIS FRAUD AS TO THE INVESTMENT BANKING FEES

55. As outlined above, Primavera and his team were responsible for signing clients up for investment banking services, determining whether or not the fees would be collectable, managing the investment banking services, performing the investment banking services, and recognizing the proper value of the investment banking services for the TCA Investment Manager's books and records. In that capacity, Primavera and his team would show Press the IBSAs with his monthly Investment Banking Pipeline reports, assuring him that the clients had signed and determining the amount of the investment banking fees that should be booked. Press granted Primavera autonomy to manage the investment banking services in the New York office, and trusted Primavera and his handpicked team to deliver honest work.

56. When Press was notified about the whistleblower complaint in 2020 and he initiated the Internal Investigation, Press had no idea Primavera and his team were fraudulently and inappropriately entering into the IBSAs and booking the investment banking fees' value without completing the work or collecting the fees. During the course of the Internal Investigation, Primavera's fraud was first discovered and later his ill-fated attempt to cover his tracks and shift the spotlight away from himself by concocting and disseminating a fictional narrative to improperly place the blame on Press and others.

57. On information and belief, Primavera submitted a declaration to the SEC dated December 22, 2020 (the "Declaration") regarding his purported experiences while working as the Managing Director for the TCA Investment Manager's New York Office in connection with the SEC's investigation. In the Declaration, Primavera falsely and defamatorily blames Press for Primavera's own fraudulent conduct. In the Declaration, Primavera falsely informed the SEC that the New York office "did not have an investment banking department" and "never had any

investment bankers on staff or anyone else who could provide the investment banking [s]ervices called for under the [IBSAs]." Primavera further told the SEC that Press was aware of the lack of experience in the New York office regarding investment banking services because Press purportedly interviewed and helped hire the personnel in New York and knew that Primavera did not have investment banking experience.

58. Each of these statements was false and Primavera was aware the statements were false. Press specifically hired Primavera to run the New York office and ultimately tasked him with managing investment banking services and hiring the appropriate staff. As discussed above, the investment banking services the TCA Investment Manager offered were limited merger-and-acquisitions work suited to the needs of its client base, and Primavera's experience running his own business should have prepared him to handle the job. Primavera and his team purposefully kept Press and upper management in the dark – lying about the Former IB Manager's continued involvement and misrepresenting the work and collections Primavera claimed he and his team had done in emails to Press as well as asking Press if more staff could be hired to deliver on the purportedly growing demand for the investment banking services.

59. Primavera also purposefully fabricated the claims made to the SEC that Press overruled Primavera, unilaterally determined the value of the investment banking services to be booked as he saw fit and when to close the Investment Banking Pipeline for any given month, and that Press would improperly cause him to include deals from the next month for the previous month. Each of these statements was false. Press entrusted Primavera with valuing the investment banking services based upon the purported work Primavera and his team performed, and left booking the investment banking fees for those services to Primavera and the TCA accounting team.

60. Primavera's fraudulent statements about Press's involvement in Primavera's fraud had no basis in fact. Press relied in good faith that his managers such as Primavera would deliver honest services and dutifully perform their positions. This reliance was more than reasonable as Press resided and worked from TCA Investment Manager's offices in Florida, was traveling internationally and working from the London office quite frequently, and, therefore, Primavera remotely reported to Press that he was performing the duties of his position and purposefully and deceptively hid from Press and other members of upper management any information that would contradict his representations. While Press of course wanted the new investment banking program to succeed and meet its goals of profitability to maximize returns for the investors of the TCA Funds, he was not involved in the rendition of the investment banking services and relied upon Primavera and his team to autonomously perform the same and accurately report results of the performance of such obligations to Press and other members of upper management.

61. Primavera also falsely claimed to the SEC that Press was aware of the financial condition of the companies that signed IBSAs and knew most of the investment banking fees recorded were uncollectable. To the contrary, Press was not involved in the day-to-day workings of the investment banking services and agreements and relied on the information Primavera provided to him about the financial status of the clients, the IBSAs, invoices, and investment banking fees. Primavera purposefully misrepresented and hid information from Press that would have alerted him to the truth. Press believed the IBSAs were executed in good faith and the clients required the investment banking services they were being offered, and throughout 2018, Press added additional resources to improving invoicing and collections of the investment

banking fees to assist Primavera's team, including hiring a bookkeeper in or about November 2018.

62. Primavera knowingly and maliciously defamed Press to the SEC to avoid liability for his own wrongdoing.

63. Ultimately, Press, as the leader of TCA, was compelled to reach a settlement with the SEC, without admitting or denying any of the substantive allegations, in order to put this matter behind him.

COUNT 1
(Defamation Per Se)

64. Press restates each and every allegation of the foregoing paragraphs as if fully set forth herein.

65. As detailed above, through Primavera's December 22, 2020 Declaration to the SEC, Primavera published or caused to be published multiple false statements of fact about and concerning Press that are defamatory.

66. The false and defamatory statements about Press included statements that Press: was aware the TCA Investment Manager's New York office "did not have an investment banking department" and "never had any investment bankers on staff or anyone else who could provide the investment banking [s]ervices called for under the [IBSAs]" and that Press knew Primavera could not do any investment banking services work because Primavera "did not have investment banking experience"; had "constant discussions" with Primavera "about the New York Office not having the staff available to provide [investment banking] services to companies"; "would not close the [Investment Banking] Pipeline for the month until the middle of the following month because he wanted to include more deals"; would assign a monetized value to be logged as investment banking services for the work the New York sales team and

claimed he could value investment banking services as he saw fit and had Primavera calculate the value of the investment banking services on his own; and "was aware of the financial condition of the companies that signed [IBSAs] and knew most of the [investment banking] fees recorded were uncollectable."

67. Additionally, Primavera made false and defamatory statements concerning Press claiming that Press was responsible for determining the monetary value of the investment banking services included in the Investment Banking Pipelines and not Primavera.

68. Primavera caused these false statements to be repeated to third parties including the SEC.

69. The foregoing statements are per se defamatory because they accuse Press of wrongdoing and impugn his reputation in his profession, business, and/or trade.

70. The defamatory statements expose Press to public contempt, hatred, ridicule, aversion, disgrace, and/or deprivation of friendly intercourse in society.

71. Every defamatory statement identified herein is categorically false, and contained or created the impression of, facts that are false and which malign Press's honesty, ethics, trustworthiness, dependability, and/or professional or business abilities.

72. Primavera's publication of these false and defamatory statements was neither privileged nor authorized in any way, and these statements were published or caused to be published maliciously, knowingly, and/or with extreme recklessness, and without justification.

73. Primavera acted with actual malice in publishing these defamatory statements. At the time the statements were published, Primavera knew they were false or acted with reckless disregard for their truth or falsity.

74. Press has suffered and will continue to suffer extensive economic and reputational injury, including *per se* injury, by reason of Primavera's defamation. Primavera's defamatory statements have harmed and/or have a likelihood of harming Press by ruining his business, livelihood, and ability to support himself and his family and causing, among other things, third parties to refuse to engage in any new business dealings with Press, lost revenue and profits, increased expenses, legal fees, and cost expended to mitigate the impact of Primavera's dishonesty. As a direct and proximate result of the publication of these false and defamatory statements, Press has suffered millions of dollars of monetary damages, including damage to his personal dignity, his professional and personal reputation and livelihood, and has also suffered anguish and humiliation among other damages.

75. Press, consequently, seeks both compensatory and punitive damages, in an amount to be determined at trial.

REQUEST FOR RELIEF

WHEREFORE, Press demands judgment against Primavera, awarding Press as follows:

(a) Damages to be determined at trial, including compensatory damages of not less than $75,000 and punitive damages of not less than $75,000;

(b) Cost and disbursements of this action, together with attorneys' fees, where provided for by law;

(c) Pre-judgment interest and post-judgment interest available under law; and

(d) Such other and further relief as the Court may deem just and proper.

TRIAL BY JURY

Trial by jury is demanded on all issues so triable.

Dated: New York, New York
December 21, 2021

KASOWITZ BENSON TORRES LLP

By: *As/ Marc E. Kasowitz*

Marc E. Kasowitz
(mkasowitz@kasowitz.com)
Albert Shemmy Mishaan
(amishaan@kasowitz.com)
Sondra D. Grigsby
(sgrigsby@kasowitz.com)
Jeffrey Ephraim Glatt
(jglatt@kasowitz.com)

1633 Broadway
New York, New York 10019
Tel.: (212) 506-1700
Fax: (212) 506-1800

Attorneys for Plaintiff Robert D. Press

JS 44C/SDNY
REV.
10/01/2020

Case 1:21-cv-10971-VM Document 3 Filed 12/21/21 Page 1 of 2

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS

Robert D. Press

DEFENDANTS

Patrick J. Primavera

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER
Kasowitz Benson Torres LLP
1633 Broadway, New York, NY 10019
(212) 506-1700

ATTORNEYS (IF KNOWN)

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

28 U.S.C. § 1332

Has this action, case, or proceeding, or one essentially the same been previously filed in SDNY at any time? No [X] Yes [ ] Judge Previously Assigned

If yes, was this case Vol. [ ] Invol. [ ] Dismissed. No [ ] Yes [ ] If yes, give date _____ & Case No. _____

IS THIS AN INTERNATIONAL ARBITRATION CASE? No [X] Yes [ ]

(PLACE AN [X] IN ONE BOX ONLY)

NATURE OF SUIT

TORTS

CONTRACT
- [ ] 110 INSURANCE
- [ ] 120 MARINE
- [ ] 130 MILLER ACT
- [ ] 140 NEGOTIABLE INSTRUMENT
- [ ] 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- [ ] 151 MEDICARE ACT
- [ ] 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS)
- [ ] 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS
- [ ] 160 STOCKHOLDERS SUITS
- [ ] 190 OTHER CONTRACT
- [ ] 195 CONTRACT PRODUCT LIABILITY
- [ ] 196 FRANCHISE

REAL PROPERTY
- [ ] 210 LAND CONDEMNATION
- [ ] 220 FORECLOSURE
- [ ] 230 RENT LEASE & EJECTMENT
- [ ] 240 TORTS TO LAND
- [ ] 245 TORT PRODUCT LIABILITY
- [ ] 290 ALL OTHER REAL PROPERTY

PERSONAL INJURY
- [ ] 310 AIRPLANE
- [ ] 315 AIRPLANE PRODUCT LIABILITY
- [X] 320 ASSAULT, LIBEL & SLANDER
- [ ] 330 FEDERAL EMPLOYERS' LIABILITY
- [ ] 340 MARINE
- [ ] 345 MARINE PRODUCT LIABILITY
- [ ] 350 MOTOR VEHICLE
- [ ] 355 MOTOR VEHICLE PRODUCT LIABILITY
- [ ] 360 OTHER PERSONAL INJURY
- [ ] 362 PERSONAL INJURY - MED MALPRACTICE

PERSONAL INJURY
- [ ] 367 HEALTHCARE/ PHARMACEUTICAL PERSONAL INJURY/PRODUCT LIABILITY
- [ ] 368 PERSONAL INJURY PRODUCT LIABILITY
- [ ] 369 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

PERSONAL PROPERTY
- [ ] 370 OTHER FRAUD
- [ ] 371 TRUTH IN LENDING
- [ ] 380 OTHER PERSONAL PROPERTY DAMAGE
- [ ] 385 PROPERTY DAMAGE PRODUCT LIABILITY

PRISONER PETITIONS
- [ ] 463 ALIEN DETAINEE
- [ ] 510 MOTIONS TO VACATE SENTENCE 28 USC 2255
- [ ] 530 HABEAS CORPUS
- [ ] 535 DEATH PENALTY
- [ ] 540 MANDAMUS & OTHER

PRISONER CIVIL RIGHTS
- [ ] 550 CIVIL RIGHTS
- [ ] 555 PRISON CONDITION
- [ ] 560 CIVIL DETAINEE CONDITIONS OF CONFINEMENT

FORFEITURE/PENALTY
- [ ] 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- [ ] 690 OTHER

PROPERTY RIGHTS
- [ ] 820 COPYRIGHTS
- [ ] 830 PATENT
- [ ] 835 PATENT-ABBREVIATED NEW DRUG APPLICATION
- [ ] 840 TRADEMARK

LABOR
- [ ] 710 FAIR LABOR STANDARDS ACT
- [ ] 720 LABOR/MGMT. RELATIONS
- [ ] 740 RAILWAY LABOR ACT
- [ ] 751 FAMILY MEDICAL LEAVE ACT (FMLA)
- [ ] 790 OTHER LABOR LITIGATION
- [ ] 791 EMPL RET INC SECURITY ACT (ERISA)

IMMIGRATION
- [ ] 462 NATURALIZATION APPLICATION
- [ ] 465 OTHER IMMIGRATION ACTIONS

ACTIONS UNDER STATUTES

CIVIL RIGHTS
- [ ] 440 OTHER CIVIL RIGHTS (Non-Prisoner)
- [ ] 441 VOTING
- [ ] 442 EMPLOYMENT
- [ ] 443 HOUSING/ ACCOMMODATIONS
- [ ] 445 AMERICANS WITH DISABILITIES - EMPLOYMENT
- [ ] 446 AMERICANS WITH DISABILITIES - OTHER
- [ ] 448 EDUCATION

BANKRUPTCY
- [ ] 422 APPEAL 28 USC 158
- [ ] 423 WITHDRAWAL 28 USC 157

PROPERTY RIGHTS
- [ ] 880 DEFEND TRADE SECRETS ACT

SOCIAL SECURITY
- [ ] 861 HIA (1395ff)
- [ ] 862 BLACK LUNG (923)
- [ ] 863 DIWC/DIWW (405(g))
- [ ] 864 SSID TITLE XVI
- [ ] 865 RSI (405(g))

FEDERAL TAX SUITS
- [ ] 870 TAXES (U.S. Plaintiff or Defendant)
- [ ] 871 IRS-THIRD PARTY 26 USC 7609

OTHER STATUTES
- [ ] 375 FALSE CLAIMS
- [ ] 376 QUI TAM
- [ ] 400 STATE REAPPORTIONMENT
- [ ] 410 ANTITRUST
- [ ] 430 BANKS & BANKING
- [ ] 450 COMMERCE
- [ ] 460 DEPORTATION
- [ ] 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)
- [ ] 480 CONSUMER CREDIT
- [ ] 485 TELEPHONE CONSUMER PROTECTION ACT
- [ ] 490 CABLE/SATELLITE TV
- [ ] 850 SECURITIES/ COMMODITIES/ EXCHANGE
- [ ] 890 OTHER STATUTORY ACTIONS
- [ ] 891 AGRICULTURAL ACTS
- [ ] 893 ENVIRONMENTAL MATTERS
- [ ] 895 FREEDOM OF INFORMATION ACT
- [ ] 899 ARBITRATION
- [ ] 899 ADMINISTRATIVE PROCEDURE ACT/REVIEW OR APPEAL OF AGENCY DECISION
- [ ] 950 CONSTITUTIONALITY OF STATE STATUTES

Check if demanded in complaint:

[ ] CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $_____ OTHER _____

Check YES only if demanded in complaint
JURY DEMAND: [X] YES [ ] NO

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y. AS DEFINED BY LOCAL RULE FOR DIVISION OF BUSINESS 13?
IF SO, STATE:

JUDGE _____ DOCKET NUMBER _____

NOTE: You must also submit at the time of filing the Statement of Relatedness form (Form IH-32).

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

[x] 1 Original Proceeding | [ ] 2 Removed from State Court | [ ] 3 Remanded from Appellate Court | [ ] 4 Reinstated or Reopened | [ ] 5 Transferred from (Specify District) | [ ] 6 Multidistrict Litigation (Transferred) | [ ] 7 Appeal to District Judge from Magistrate Judge

[ ] a. all parties represented

[ ] b. At least one party is pro se.

[ ] 8 Multidistrict Litigation (Direct File)

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

[ ] 1 U.S. PLAINTIFF [ ] 2 U.S. DEFENDANT [ ] 3 FEDERAL QUESTION (U.S. NOT A PARTY) [x] 4 DIVERSITY

IF DIVERSITY, INDICATE CITIZENSHIP BELOW.

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

	PTF	DEF		PTF	DEF		PTF	DEF
CITIZEN OF THIS STATE	[ ] 1	[ ] 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	[ ] 3	[ ] 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	[ ] 5	[ ] 5
CITIZEN OF ANOTHER STATE	[x] 2	[x] 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[ ] 4	[ ] 4	FOREIGN NATION	[ ] 6	[ ] 6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)
3000 Island Blvd., Apt. 1603
Williams Island, FL 33160
Miami-Dade County

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)
8 Summerfield Drive
Monroe Township, NJ 08831
Middlesex County

DEFENDANT(S) ADDRESS UNKNOWN
REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

COURTHOUSE ASSIGNMENT

I hereby certify that this case should be assigned to the courthouse indicated below pursuant to Local Rule for Division of Business 18, 20 or 21.

Check one: THIS ACTION SHOULD BE ASSIGNED TO: [ ] WHITE PLAINS [x] MANHATTAN

DATE 12/21/2021

/s/ Marc E. Kasowitz
SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT
[ ] NO
[x] YES (DATE ADMITTED Mo. 05 Yr. 1979)
Attorney Bar Code # MK2597

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ Is so Designated.

Ruby J. Krajick, Clerk of Court by _____ Deputy Clerk, DATED _____.

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

DECLARATION OF PATRICK PRIMAVERA

Pursuant to 28 U.S.C. Section 1746, the undersigned states as follows:

1. My name is Patrick Primavera and I am over 21 years of age. I have personal knowledge of the matters set forth herein.

Background

2. I worked at TCA Fund Management Group Corp. ("TCA") from July 2017 until September 2019. By the end of 2017, I became the managing director of TCA's New York office, and my job duties entailed overseeing the sales and originations team.

3. During my entire time at TCA, I reported directly to Robert Press ("Press"), the chief executive officer (CEO) of TCA. Press' management style was hands-on. He was a micromanager who was copied or blind copied on many company emails. Sometimes I received as many as five telephone calls a day from Press while I worked at TCA.

4. TCA had quarterly management meetings for senior staff and in one of those meetings in early 2019, Press announced he was stepping away from managing TCA's day-to-day operations, and that Alyce Schreiber would be the acting chief executive officer and Bill Fickling would be the acting chief operations officer. Although Press no longer had the title of CEO, his involvement in running TCA did not change after the announcement. While it appeared that Press gave Schreiber the authority to make decisions on some things, all final decision-making authority relating to deals remained with Press. Whenever I would ask Schreiber a question, her response was almost always that she had to talk to Press first and would get back to me with an answer.

Investment Banking Transactions

5. The New York office sales and originations team's job duties were to seek out companies that potentially needed financing from the funds TCA managed, including TCA

knew that the office only had a couple of junior-level analysts on staff. Press knew also that I could not do this kind of work because I did not have investment banking experience.

9. I had constant discussions with Press and Schreiber about the New York office not having the staff available to provide IB services to companies. During these conversations, Press and Schreiber often would tell me that the upfront analysis that the New York sales teams had performed on the companies seeking financing was considered IB services. I never agreed with that assessment, however, because I considered the upfront analysis to be more due diligence work and vetting of the companies.

10. Beginning in early 2018, Schreiber had conference calls with the sales team and discussed a list of IB services we were to provide to the companies and accompanying dollar figures to use in order to value the services. However, the IB services Schreiber was telling us to value were just the basic, upfront due diligence work that we did on companies, such as reviewing organizational documents.

11. Press' goal was for TCA to generate between $5 million to $7 million in IB fees every month and he was always pushing to get agreements signed to reach these goals. Press often called me several times a week to inquire about how many deals our sales team was working on and the number of IB agreements we had signed so far. Press' questions were almost always about the amount of IB agreements signed rather than the quality of the deals.

12. TCA would track the signed IB agreements and the IB services performed to date on a spreadsheet called the "IB Pipeline." Each month, I would input into the IB Pipeline the investment banking deals the New York sales team generated for the prior month. Schreiber had created the spreadsheet template for the IB Pipeline. Press decided when there were enough IB agreements signed for any given month before TCA closed or finalized the IB Pipeline. Often,

Press would not close the IB Pipeline for the month until the middle of the following month because he wanted to include more deals.

13. After inputting the deals for the month into the IB Pipeline, beginning after September 2018, I would have a conversation over the telephone with Press, or occasionally with Schreiber if Press was not available, about the amount that TCA would record on the IB Pipeline as "monetized" or "work to date" value for IB services rendered for each company. Press told me that he wanted these conversations to be done over the telephone because of the SEC's investigation into TCA and that emails could be taken out of context. During these telephone calls, which were with Press about 80% of the time, I would tell Press or Schreiber about the work that the New York sales team did with respect to due diligence on the companies, and then either Press or Schreiber would assign a monetized value for the IB services rendered for each company that I was to include in the IB Pipeline for that month. Whenever I would ask Press about the values that he assigned for the IB services, he would say that he could value things as he saw fit and that it was up to him to decide the value of the IB services.

14. Once the monetized amounts for the IB services were established, at Press' instruction, I would then circulate the monthly IB Pipeline along with the signed IB agreements for the month to Press, Schreiber, Nuri Feder, Michael Attar, Tara Antal, and Donna Silverman. A true and correct copy of an email I sent concerning the June 2019 IB Pipeline report along with the June 2019 pipeline spreadsheet are attached hereto as composite **Exhibit A**.

15. I did not come up with any of the monetized IB services values included in the IB Pipelines. Even if there were a basis to do so, Press would have never allowed me to calculate these figures on my own. Beginning in late 2018, Press requested that I sign all of the IB

agreements on behalf of the TCA funds. He told me that this was an administrative function and it would be easier for me to sign since he was constantly travelling.

Collectability of IB Fees

16. Most of the IB fees charged to companies were never collected. Press was aware of the financial condition of the companies that signed IB agreements, and he knew that most of the IB fees recorded were uncollectible. Files for each company seeking financing were kept on a shared computer drive called the "T drive," including the signed IB agreement, the company's financial statements, a company summary written up by the New York sales team, the purpose of the loan, correspondence between TCA and the company, and any documents and evidence relating to the purported IB services TCA provided to companies. Everyone at TCA, including Press, had access to the shared T drive.

17. Prior to 2018, I saw no efforts being made at TCA to collect the unpaid IB fees. At some point in 2018, Grant Thornton, the Master Fund's auditor, began questioning the IB fees the Master Fund carried as receivables. This scrutiny prompted Press and Schreiber to order the sales team to get on the telephone with the companies to try to collect the IB fees or create payment schedules with them. I contacted a number of companies that had signed an IB agreement to remind them of their obligation to pay the IB fees. However, most of the companies refused to pay, stating that they never heard from TCA after their request for financing was not approved by its underwriting department, and that they never received IB services. Other companies stated that they were never told about the obligation to pay the IB fees if their loan was not approved.

18. In addition to having the New York sales team call companies to try to collect the outstanding IB fees, at Press' direction, TCA began sending out demand letters for payment.

When that failed, around November 2018, TCA began sending out invoices to companies for payment. Most of these invoices were never paid. Press knew this because I had those conversations with him. About twice a month, Press would call me asking if any of the invoiced IB fees had been collected or if any of the companies had committed to pay.

19. Whenever I brought up the subject about TCA not having an investment banking department or the collectability of the IB fees, Press would say such things to me as, "you're only seeing a small piece of the business," "you're not an accountant," or "you don't understand the business model."

20. Sometime in late 2018, I suggested to Press that changing the language in the IB agreement to make IB fees due upon invoicing might make collecting on the IB fees easier. Press agreed with my suggestion and he had Schreiber draft language revising the compensation section of the IB agreements to state that IB fees would be due upon TCA providing monthly invoices with a detailed scope of work, rather than being earned upon execution the agreement. There was no change to the collectability of the IB fees after this revision. An illustrative example of the revised compensation language can be found in the true and correct copy of the IB agreement attached hereto as **Exhibit B**.

21. In addition, sometime around the second quarter of 2019, Press thought that, with respect to both private and public companies, it would be a good idea to require payment of the IB fees through redeemable shares. Thus, while he was in the New York office one day, Press sat in the conference room and drafted alternative compensation language in the IB agreements stating that a company would grant the TCA funds a certain amount of redeemable preferred shares as compensation for IB services, with the company obligated to repurchase the shares by the end of the term of the agreement. An illustrative example of the revised compensation

language can be found in the true and correct copy of the IB agreement attached hereto as **Exhibit C.**

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 22 day of December, 2020 in

Monroe, New Jersey

Patrick Primavera

Exhibit B

JOHN E. LAWLOR, ESQ.
ATTORNEY AT LAW

129 Third Street
Mineola, N.Y. 11501
(516) 248-7700
Fax: (516) 742-7675
E-Mail: JLawlor@johnelawlor.com

September 18, 2023

VIA ECF

Hon. Jennifer L. Rochon, U.S.D.J.
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl St.
New York, NY 10007-1312

Re: Robert D. Press v. Patrick J. Primavera
Index No. 21-cv-10971 (JLR)

Your Honor:

I represent the Defendant in the above-referenced matter and write to bring to the Court's attention some rather disturbing facts and to request a stay of this matter.

Approximately one week ago, my client received a hard copy notice of a proposed settlement in the SEC v. TCA Management Corp. matter in the Southern District of Florida, 20-21964 ("SEC Action"). I do not receive ECF or any other form of notices in the SEC Action. Upon careful review of the proposed settlement in the SEC Action, it came to my attention that the Court in Florida had imposed a blanket stay of litigation on May 11, 2020, that that stay includes this action in the SDNY, and that the stay is continuing. See paragraph 26 of the attached May 11, 2020 Order in the SEC Action[1],

> As set forth in detail below, the following proceedings, . . . are stayed until further Order of the Court:
>
> All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other actions of any nature involving: . . . (d) any of the Receivership Entities' past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise . . .

[1] DE 5 in the SEC Action.

and paragraph 8.a. of the proposed settlement in the SEC action, also attached[2]: "The Receiver shall, promptly after the Effective Date: a. Consent to the lifting of the Court's stay to permit the prosecution of the pending action by Press against Primavera".

There does not appear to be any question the instant matter has been, or should have been, stayed since May 11, 2020 (there is only one "Press against Primavera" action) but this is the first notice of a stay my client recalls receiving and I did not become aware of it until he forwarded and I had a chance to review the proposed settlement agreement and the expansive docket sheet in the SEC Action this morning. I brought this matter to my adversary's attention on my discovery this morning but they have not yet gotten back to me. Given the seriousness of the matter and the impact of an apparent stay on all concerned, I am constrained to bring it to this Court's attention immediately.

It is Mr. Primavera's intention to oppose the settlement in the SEC Action to the extent the proposed settlement agreement attempts to have that Court lift the stay as to this action and, for obvious reasons, we would ask this Court to honor the stay in the SEC Action pending further order from that Court.

Thank you for your time and attention to this matter.

Very truly yours,

s/
JOHN E. LAWLOR, ESQ

cc: All counsel, via ECF

Defendant has provided the Court with a Southern District of Florida filing that he recently obtained that indicates that there may have been a stay in place with respect to the present action. Plaintiff, as a senior executive of the defendant companies in the Florida action, presumably had knowledge of those proceedings and any apparent stay, but failed to inform the Court. Accordingly, IT IS HEREBY ORDERED that Plaintiff shall file a letter, no later than **September 19, 2023**, immediately responding to Defendant's letter and informing the Court as to the status of the Florida action and any stay imposed.

Dated: September 18, 2023
New York, New York

SO ORDERED

Jennifer Rochon

JENNIFER L. ROCHON
United States District Judge

[2] DE 369-1 in the SEC Action.

Exhibit C

KASOWITZ BENSON TORRES LLP

1633 BROADWAY
NEW YORK, NEW YORK 10019
(212) 506-1700
FAX: (212) 506-1800

ATLANTA
HOUSTON
LOS ANGELES
MIAMI
NEWARK
SAN FRANCISCO
SILICON VALLEY
WASHINGTON DC

ALBERT SHEMMY MISHAAN
DIRECT DIAL: (212) 506-1936
DIRECT FAX: (212) 500-3436
AMISHAAN@KASOWITZ.COM

September 19, 2023

BY ECF
Hon. Jennifer L. Rochon, U.S.D.J.
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl St.
New York, NY 10007-1312

Re: *Robert D. Press v. Patrick J. Primavera*, No. 21-cv-10971 (JLR)

Dear Judge Rochon:

We represent plaintiff Robert D. Press and write in response to defendant Patrick J. Primavera's letter requesting a stay of this matter in relation to the recently proposed settlement and May 11, 2020 Receivership Order in *Securities and Exchange Commission v. TCA Fund Management Group Corp., et al*, No. 20-21964-CMA (S.D. Fla.) (the "Enforcement Case"), dated September 18, 2023 (the "Letter"). (ECF No. 52). As defendant's counsel noted in his Letter, he reached out to plaintiff's counsel very shortly before filing his Letter. However, had defendant waited more than a couple of hours for plaintiff to respond, or had counsel simply picked up the phone to discuss the matter, we would have informed defendant that he is wrong, that the lawsuit pending before Your Honor in no way violates the stay imposed by the Receivership Order, and there are no "disturbing facts" warranting a stay.

While plaintiff had knowledge of the proceedings in the Enforcement Case, plaintiff had no reason to inform the Court of any impact on this action, because, on its face, the stay provision of the May 11, 2020 Receivership Order does not apply to this action. Per the plain language of the Receivership Order (ECF No. 52-1, ¶ 26), only the following proceedings are automatically stayed:

> "All civil legal proceedings of any nature … involving … any of the Receivership Entities' past or present officers, directors, managers, agents, or general or limited partners **sued for, or in connection with, any action taken by them while acting in such capacity of nature**, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise …." (Emphasis added).

This case does not address actions taken by defendant in his capacity as an employee of TCA or affiliated entities. To the contrary, it involves false statements made by defendant in his individual capacity after the end of his employment. The Receivership Order plainly does *not* purport to stay a proceeding against a former officer, director, or manager of the Receivership Entities (as defined in the Receivership Order) for actions taken by them when *not* acting in such capacity. Specifically, the Complaint alleges that Primavera willfully and intentionally defamed

Mr. Press in a December 22, 2020 declaration that he submitted to the SEC, more than one year *after* Primavera voluntarily left his position with the Receivership Entities in 2019. *See* Complaint ¶¶ 1, 27, 57, 65. This lawsuit does not assert claims for, and certainly does not seek damages for, Mr. Primavera's actions as Managing Director of one of the Receivership Entities, and the progress of this case has no impact on the activities of the Receiver in the Enforcement Action.

Mr. Press alleges that he "has suffered millions of dollars of monetary damages, including damage to his personal dignity, his professional and personal reputation and livelihood, and has also suffered anguish and humiliation among other damages" as a result of Mr. Primavera's post-employment defamatory statements. *See* Complaint ¶ 74. These damages are personal to Mr. Press, and do not belong to any of the Receivership Entities. Simply put, this lawsuit is not a matter involving the Receivership Entities or the Receiver in the Enforcement Action, and solely involves Mr. Primavera's post-employment lies about Mr. Press that Primavera wrongfully published and disseminated, resulting in enormous damage to Mr. Press.

Plaintiff has already addressed with the Receiver in the Enforcement Action the specific issue that Mr. Primavera's counsel has now raised. In or about early March 2022, the Receiver, misunderstanding the allegations in this lawsuit, approached Mr. Press's counsel regarding its purported concern that the Receivership Order stayed this lawsuit, and demanded that Mr. Press immediately withdraw his Complaint. Because it is clear that this lawsuit does not violate the unambiguous terms of the Receivership Order, Mr. Press informed the Receiver that this lawsuit plainly falls outside of the scope of the Order, and rightfully refused to withdraw his Complaint. Apparently accepting this obvious conclusion, the Receiver did not respond to Mr. Press's counsel, and did not pursue any further action in this Court or any other to impose a stay. Nevertheless, in order to ensure that there was no ambiguity, and out of an abundance of caution, the parties in the Enforcement Action agreed to include language in the recently proposed settlement agreement in the Enforcement Action to make clear that this lawsuit is not in fact stayed. Of course, had the Receiver chosen to take any steps to pursue its incorrect position that the Receivership Order actually stayed this lawsuit, Mr. Press would have made an application to the appropriate court for an order confirming that this lawsuit may properly proceed, and would have informed Your Honor of the same. Given that after being informed of the true situation the Receiver did not further pursue its objection, Mr. Press had no reason not to continue with prosecuting this action.

We are sorry that this misunderstanding was hastily brought to the Court's attention before we had an opportunity to explain to opposing counsel the actual course of events. However, based on the facts set forth above, Mr. Press respectfully requests that this Court deny Primavera's request to stay in its entirety. We are of course available to address any of these issues at the Court's convenience.

Respectfully submitted,

/s/ *Albert Shemmy Mishaan*

cc: All Counsel, via ECF

Exhibit D

JOHN E. LAWLOR, ESQ.
ATTORNEY AT LAW

129 Third Street
Mineola, N.Y. 11501
(516) 248-7700
Fax: (516) 742-7675
E-Mail: JLawlor@johnelawlor.com

September 19, 2023

VIA ECF

Hon. Jennifer L. Rochon, U.S.D.J.
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl St.
New York, NY 10007-1312

Re: Robert D. Press v. Patrick J. Primavera
Index No. 21-cv-10971 (JLR)

Your Honor:

I represent the Defendant in the above-referenced matter and this letter is in reply to counsel's letter in opposition to Defendant's letter motion for a stay.

We think a plain reading of the complaint in this action clearly places it within the contemplated scope of the stay in the SEC Action. The complaint in this action goes on at length to address Defendant's actions as an employee of TCA and, in its singular count, alleges that Mr. Primavera essentially lied in a sworn document about what really took place. It is respectfully submitted that it is not the alleged libelous declaration that this Court should focus on, rather Mr. Primavera's employment conduct, which is the entire factual predicate for the complaint, which is clearly **"in connection with, any action taken by them while acting in such capacity or nature"**. That is the genesis of this action.

More concerning now is the fact, as admitted by Plaintiff, that the Receiver in the Enforcement Action raised "the specific issue that Mr. Primavera's counsel has now raised and demanded that Mr. Press immediately withdraw his complaint." Of course, none of this was known to the Defendant at the time and we are forced to accept Plaintiff's rendition which, respectfully, should be considered with a grain of salt. Plaintiff alleges that he "informed the Receiver that this lawsuit plainly falls outside the scope of the Order, and rightfully refused to withdraw his complaint" the Receiver's silence cannot be read as an unambiguous conclusion that the Receiver accepted Plaintiff's position. Neither Plaintiff's argument then or now, nor the Receiver's inaction, changes the plain language of the stay order, especially when read in light of the attempted carve-out in the proposed settlement agreement nor, ultimately, do those things shed any light on the Florida District Court's intent when imposing the stay or its interpretation of the scope of that stay order. Plaintiff's counsel and the Receiver were not empowered to alter

the terms of the stay order; clearly there was, at best, ambiguity given the Receiver's apparent visceral reaction at the time; and clarity or further order from the Florida District Court judge should have been sought. We are still left with what Defendant believes is an unambiguous stay order, the scope of which is reinforced by a proposed settlement agreement which seeks to carve out the instant action. Counsel's spin on this, without any input from the Florida District Court Judge or the Receiver, is not an adequate basis on which to alter the express terms of the stay order.

The seriousness of this matter is obvious and there was nothing hasty about bringing this to this Court's attention. It had to be addressed immediately: the maintenance of this action is a knowing violation of stay imposed by a federal judge and, absent further order from that judge, as opposed to the opinion of parties with a vested interest in circumventing that order, I do not think the matter can be allowed to proceed. Inasmuch as Defendant intends to object to the proposed settlement to the extent that it seeks to lift the stay "to permit the prosecution of the pending action by Press against Primavera" (this action), the Judge in the Southern District of Florida will be made aware of the facts and circumstances as outlined herein and in counsel's letter in opposition to the instant motion and, respectfully, would be in the better position to determine the scope and intent of the stay order and whether or not it should be vacated.

We are available to address any of these issues should the Court so require.

Very truly yours,

s/
JOHN E. LAWLOR, ESQ

cc: All counsel, via ECF

Exhibit E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT D. PRESS,

Plaintiff,

-against-

PATRICK J. PRIMAVERA,

Defendant.

Case No. 1:21-cv-10971 (JLR)

ORDER

JENNIFER L. ROCHON, United States District Judge:

On September 18, 2023, Defendant filed a letter styled as a letter motion to stay, informing the Court that there appears to have been a stay of actions, including this one, instituted by the Southern District of Florida in May 2020. ECF No. 52. The Court ordered Plaintiff to respond to Defendant's letter. ECF No. 53. On September 19, 2023, Plaintiff filed a letter stating that the stay in Florida "on its face . . . does not apply to this action." ECF No. 54. Defendant filed a letter in reply, noting that the stay language could apply to this action, and in any event, the court in Florida must resolve that issue. ECF No. 55.

The May 11, 2020 order of Judge Altonaga of the Southern District of Florida provides that the following proceedings "are stayed until further Order of the Court": "All civil legal proceedings of any nature . . . involving . . . any of the Receivership Entities' past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise . . . ." *See* ECF No. 52-1 at ¶ 26. Plaintiff here is an officer of the Receivership Entities and thus falls within this provision. Without more information, the Court is not persuaded that the stay unambiguously does not apply here. Moreover, and importantly, as Defendant has pointed out, the proposed settlement in the Enforcement Action in the Southern District of Florida filed recently on August 29, 2023

appears to confirm that the present action before this Court is stayed. That proposed settlement expressly refers to the action before this Court, stating that "after the Effective Date" of the settlement, the Receiver shall "[c]onsent to the lifting of the Court's stay to permit the prosecution of the pending action by Press against Primavera." *See* ECF No. 52-2 at ¶ 8a. It does not appear that the settlement has been approved yet, and thus the Receiver's consent to lift the stay is still outstanding.

This Court was never informed of any stay or the fact that, as Plaintiff now informs the Court, the Receiver "demanded that Mr. Press immediately withdraw his Complaint [in the present action]" in March 2022 but did not follow up after Plaintiff contested that this action falls within the stay order. ECF No. 54 at 2. It would clearly be very problematic if Plaintiff proceeded with this matter before the Court in contravention of a stay issued by the Southern District of Florida.

Defendant has stated that he intends to immediately raise these issues with the Southern District of Florida overseeing the Enforcement Action, the appropriate forum to determine whether the present action fell within its May 11, 2020 Order.

Accordingly, for good cause shown, IT IS HEREBY ORDERED that this case is temporarily stayed in order to determine whether this action was stayed by Order of the Southern District of Florida. The parties shall file a joint letter with the Court with an update concerning the proceedings in the Southern District of Florida no later than **October 30, 2023**, or seven days after the Southern District of Florida makes a determination regarding the stay, whichever date is earlier.

The Clerk of Court is respectfully directed to terminate the letter motion pending at ECF No. 52.

Dated: September 20, 2023
New York, New York

SO ORDERED.

Jennifer Rochon

JENNIFER L. ROCHON
United States District Judge

Exhibit F

John Lawlor

From: John Lawlor
Sent: Monday, December 19, 2022 4:04 PM
To: 'JPerlman@gjblaw.com'
Subject: Press v. Primavera, index no. 21-cv-10971 (SDNY)
Attachments: Primaver Perlman 121922.pdf; SDNY Complaint.pdf

Mr. Perlman,

Please see attached.

John E. Lawlor, Esq.
129 Third Street
Mineola, N.Y. 11501
516-248-7700
516-742-7675 (fax)
jlawlor@johnelawlor.com

Selected to Super Lawyers - Metro NYC 2012-2022

JOHN E. LAWLOR, ESQ.
ATTORNEY AT LAW

129 Third Street
Mineola, N.Y. 11501

(516) 248-7700
FAX: (516) 742-7675
E-Mail: JLawlor@johnelawlor.com

December 19, 2022

VIA E-MAIL

Jonathan E. Perlman, Esq. Receiver
Genovese Joblove & Battista, P.A.
100 SE 2nd Street, Ste. 400
Miami, FL 33131

Re: Robert D. Press v. Patrick J. Primavera
Index No. 21-cv-10971 (VM)

Dear Mr. Perlman:

I am the attorney for the Defendant Patrick J. Primavera in the above-captioned matter. Mr. Primavera is a former employee of TCA Fund Management Group Corp. ("TCA") in this action brought by Robert D. Press in the Southern District of New York under index no. 21-cv-10971. Mr. Press as you know is the Defendant/Respondent in SEC v. TCA Fund Management Group Corp. et al., index no. 20-cv-21964 (S.D. Fla.) and In Re: Robert D. Press, SEC Admin. Proc. File No. 3-20610.

My client is under the belief that there is a D&O policy which may cover all or a portion of his defense costs in the SDNY matter and we write to request a copy of that policy as we would like to make a demand on the carrier to provide a defense. In addition, our client, as a former employee of TCA should have statutory and by-law indemnification rights from TCA. Either way, Mr. Primavera would appreciate any assistance you can provide.

I attach a copy of the complaint in the SDNY matter. I have moved to dismiss the complaint in that action on the grounds of privilege under the law of the State of Florida or New York and that motion is sub judice. We had an Initial Pre-trial Conference on November 22, 2022, a Civil Case Management Order was issued (ECF Docket No. 37), but the court has since stayed discovery pending a decision on my motion to dismiss (ECF Docket No. 43).

Thank you for your attention to this matter and should you desire or require further or additional information, please feel free to contact the undersigned.

Very truly yours,

s/
JOHN E. LAWLOR, ESQ.

JEL/eu
Att.

cc: Client

Exhibit G

John Lawlor

From: John Lawlor
Sent: Thursday, September 14, 2023 11:47 AM
To: Garno, Gregory M.
Subject: RE: Press v. Primavera, 21-10971 (SDNY)

Friendly reminder, I haven't received a copy of the D&O Policy yet.

From: Garno, Gregory M. <GMGarno@Venable.com>
Sent: Wednesday, September 6, 2023 10:55 AM
To: John Lawlor <jlawlor@johnelawlor.com>
Subject: RE: Press v. Primavera, 21-10971 (SDNY)

Great. I just sent a zoom invite.

From: John Lawlor <jlawlor@johnelawlor.com>
Sent: Wednesday, September 6, 2023 10:52 AM
To: Garno, Gregory M. <GMGarno@Venable.com>
Subject: RE: Press v. Primavera, 21-10971 (SDNY)

Caution: External Email

That works.

From: Garno, Gregory M. <GMGarno@Venable.com>
Sent: Wednesday, September 6, 2023 10:50 AM
To: John Lawlor <jlawlor@johnelawlor.com>
Subject: RE: Press v. Primavera, 21-10971 (SDNY)

Monday at 100?

From: John Lawlor <jlawlor@johnelawlor.com>
Sent: Wednesday, September 6, 2023 10:42 AM
To: Garno, Gregory M. <GMGarno@Venable.com>
Subject: RE: Press v. Primavera, 21-10971 (SDNY)

Caution: External Email

The only day I can't do is Tuesday. Let me know.

From: Garno, Gregory M. <GMGarno@Venable.com>
Sent: Wednesday, September 6, 2023 10:40 AM
To: John Lawlor <jlawlor@johnelawlor.com>
Subject: RE: Press v. Primavera, 21-10971 (SDNY)

Mr. Lawlor,

I'm going out of town for a conference for the rest of the week. Can we set up a time early next week to discuss your email? Thanks.

From: John Lawlor <jlawlor@johnelawlor.com>
Sent: Wednesday, September 6, 2023 9:19 AM
To: Garno, Gregory M. <GMGarno@Venable.com>
Subject: Press v. Primavera, 21-10971 (SDNY)

Caution: External Email

Mr. Garno,

I was given your contact information by my client Patrick Primavera, defendant in the above-referenced matter. Attached please find a copy of the complaint filed in the action. I'm told you are the Receiver contact for
D&O coverage. I had previously reached out to Mr. Perlman as Receiver and received no response. A copy of that letter is also attached.

My client, as a former employee of TCA Fund Group Management Corp. is under the belief that there is a D&O policy which may cover all or a portion of his defense costs in the SDNY matter and we write to request a copy of that policy as we would like to make a demand on the carrier to provide a defense. In addition, our client, as a former employee of TCA should have statutory and by-law indemnification rights from TCA.

I would appreciate any assistance you can provide.

John E. Lawlor, Esq.
129 Third Street
Mineola, N.Y. 11501
516-248-7700
516-662-3054 (cell)
jlawlor@johnelawlor.com

Selected to Super Lawyers - Metro NYC 2012-2023

Exhibit H

UNITED DISTRICT COURT SOUTHERN
DISTRICT OF FLORIDA

CASE NO.: 1:20-cv-21964-CMA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

TCA FUND MANAGEMENT GROUP CORP., and
TCA GLOBAL CREDIT FUND GP, LTD.,

Defendants, and

TCA GLOBAL CREDIT FUND, LP,
TCA GLOBAL CREDIT FUND, LTD, and
TCA GLOBAL CREDIT MASTER FUND, LP,

Relief Defendants.
----------/

MOTION TO ALLOW JOHN E. LAWLOR, ESQ. TO APPEAR *PRO HAC VICE*, CONSENT TO DESIGNATION, AND REQUEST TO ELECTRONICALLY RECEIVE NOTICES OF ELECTRONIC FILING

In accordance with Local Rules 4(b) of the Rules Governing the Admission, Practice, Peer Review, and Discipline of Attorneys of the United States District Court for the Southern District of Florida, the undersigned respectfully moves for the admission *pro hac vice* of John E. Lawlor, Esq., 129 Third Street, Mineola, N.Y. 11501, 516-248-7700, for the purposes of appearance as co-counsel on behalf of Patrick J. Primavera. in the above-styled case only, and pursuant to Rule 2B of the CM/ECF Administrative Procedures, to permit John E. Lawlor, Esq. to receive electronic filings in this case, and in support thereof states as follows:

1. John E. Lawlor, Esq. is not admitted to practice in the Southern District of Florida and is a member in good standing of the New York State Bar. He is also admitted to practice in the federal courts for the Southern and Eastern Districts of New York.

2. Movant, James D. Sallah, Esquire, of the law firm of Sallah Astarita & Cox, LLC, 3010 N. Military Trail, Suite 201, Boca Raton, FL 33431 561-989-9080, Florida State Bar No. 0092584 is a member in good standing of The Florida Bar and the United States District Court for the Southern District of Florida and is authorized to file through the Court's electronic filing system. Movant consents to be designated as a member of the Bar of this Court with whom the Court and opposing counsel may readily communicate regarding the conduct of the case, upon whom filings shall be served, who shall be required to electronically file and serve all documents and things that may be filed and served electronically, and who shall be responsible for filing and serving documents in compliance with the CM/ECF Administrative Procedures. *See* Section 2B of the CM/ECF Administrative Procedures.

3. In accordance with the local rules of this Court, John E. Lawlor has made payment of this Court's $213 admission fee. A certification in accordance with Rule 4(b) is attached hereto.

4. John E. Lawlor, Esq., by and through designated counsel and pursuant to Section 2B CM/ECF Administrative Procedures, hereby requests the Court to provide Notice of Electronic Filings to John E. Lawlor, Esq. at email address: jlawlor@johnelawlor.com.

WHEREFORE, James D. Sallah, moves this Court to enter an Order permitting John E. Lawlor, Esq. to appear before this Court on behalf of Patrick J. Primavera for all purposes relating to the proceedings in the above-styled matter and directing the Clerk to provide notice of electronic filings to John E. Lawlor, Esq.

Date: September 20, 2023

Respectfully submitted,

/s/James D. Sallah
James D. Sallah
Florida Bar No. 0092584
3010 N. Military Trail, Suite 201,
Boca Raton, FL 33431
561-989-9080
Email Address: jds@sallahlaw.com
SALLAH ASTARITA & COX, LLC

Attorneys for Patrick J. Primavera

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September , 2023, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a Notice of Electronic Filing to all counsel of record that are registered with the Court's CM/ECF system.

/s/James D. Sallah
James D. Sallah

UNITED DISTRICT COURT SOUTHERN
DISTRICT OF FLORIDA

CASE NO.: 1:20-cv-21964-CMA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

TCA FUND MANAGEMENT GROUP CORP., and
TCA GLOBAL CREDIT FUND GP, LTD.,

Defendants, and

TCA GLOBAL CREDIT FUND, LP,
TCA GLOBAL CREDIT FUND, LTD, and
TCA GLOBAL CREDIT MASTER FUND, LP,

Relief Defendants.
---/

CERTIFICATION OF JOHN E. LAWLOR, ESQ.

John E. Lawlor, Esq. pursuant to Rule 4(b)(1) of the Rules Governing the Admission, Practice, Peer Review, and Discipline of Attorneys, hereby certifies that: (1) I have studied the Local Rules of the United States District Court for the Southern District of Florida; (2) I am a member in good standing of the bar of the State of New York; and (3) I have not filed more than three *pro hac vice* motions in different cases in this District within the last 365 days.

Dated: Mineola, N.Y.
September 20, 2023

s/ John E. Lawlor
JOHN E. LAWLOR, ESQ.
Attorney for Defendant Patrick J. Primavera
129 Third Street
Mineola, N.Y. 11501
(516) 248-7700
JLawlor@johnelawlor.com