UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

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

Plaintiffs,

v.

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

Defendants.
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PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' JOINT MOTION TO DISMISS

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Introduction

This case centers around three private equity funds[1] managed by TCA Fund Management Group Corp. ("TCA Management"), an investment advisor located in Aventura, Florida, and owned and controlled by Robert Press, a Florida resident. TCA Management massively overvalued the Funds, bilking Plaintiffs and other investors out of hundreds of millions of dollars. The SEC has taken TCA Management to task for its fraudulent revenue-recognition practices and misrepresentations. Those misrepresentations included misstating the nature and value of the Funds' assets as well as TCA Management's true business model (which was to make high interest loans not to be repaid but to be used in litigation to seize borrowers' assets).

Plaintiffs seek to hold accountable key participants in the overvaluation scheme—Grant Thornton,[2] the Funds' supposedly "independent" auditor, and Bolder Fund Services,[3] the Funds' administrator. Plaintiffs adequately plead claims for negligent misrepresentation, aiding and abetting fraud, and aiding and abetting breach of fiduciary duty against both Grant Thornton and the Bolder Defendants based on misrepresentations and omissions in the Funds' 2017 and 2018 audit opinions (Grant Thornton) and valuation reports (Bolder Fund Services).

Defendants challenge this Court's exercise of jurisdiction over Grant Thornton. But under Florida's long-arm statute and principles of due process, jurisdiction is proper. TCA Management conducted the Funds' business in Florida and Grant Thornton audited the Funds by communicating with and visiting TCA Management in Florida. All of Grant Thornton's alleged misconduct arises from its Florida-directed auditing activities.

This Court is also the proper forum for this action. For sometimes overlapping and other times distinct reasons, neither Bolder Fund Services nor Grant Thornton can invoke any forum selection clause requiring Plaintiffs to litigate their claims elsewhere, including the Cayman

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[1] The three funds consist of two feeder funds (together, the "Feeder Funds"), TCA Global Credit Fund, LP (the "U.S. Feeder"), the investment vehicle for U.S. citizens, and TCA Global Credit Fund, Ltd. (the "Foreign Feeder"), the investment vehicle for non-U.S. citizens, as well as TCA Global Credit Master Fund, LP (the "Master Fund"), which was used to pool all assets invested from the Feeder Funds. (Dkt. 21, Amended Class Action Complaint, ¶ 21.) Plaintiffs collectively refer to the Feeder Funds and Master Fund as the "Funds" or "TCA".

[2] Plaintiffs collectively refer to Grant Thornton Cayman Islands ("GT Cayman"), Grant Thornton Ireland ("GT Ireland"), and Grant Thornton International Ltd. ("GTIL") as "Grant Thornton."

[3] Plaintiffs collectively refer to Bolder Fund Services (USA), LLC ("Bolder USA") and Bolder Fund Services (Cayman), Ltd. ("Bolder Cayman"), the successors to Circle Partners' respective companies, as "Bolder Fund Services" or the "Bolder Defendants".

Islands. Defendants also fail to meet their burden on *forum non conveniens* grounds because the relevant public and private factors point to Florida—where the Funds were managed by a Florida-based investment advisor, where key executives reside, where Grant Thornton directed its auditing activities, where Circle partners conducted its financial administration services, where most documents and witnesses are located, and where related SEC proceedings are based. Florida is the center of gravity of this case and this District is the proper forum.

Finally, Plaintiffs adequately allege the bases for each Defendant's liability under claims of negligent misrepresentation, aiding and abetting, and, in the case of GTIL, agency. Defendants' arguments for dismissal under Rule 12(b)(6) ask the Court to adopt elements and modify the rules of pleading. The Court should reject these arguments as inconsistent with well-established law, the Rules of Civil Procedure, and Plaintiffs' allegations recounting the Defendants' participation in the years-long overvaluation scheme.

Defendants' motion should be denied in full.

Background and Related Cases

Roughly three years ago, in this District, the SEC initiated its case against the Funds and TCA Management. *See SEC v. TCA Fund Management Group Corp. et al.*, No. 20-cv-21964 (S.D. Fla. May 11, 2020) ("SEC Receivership Case"). That action instituted a receivership to protect and recover investors' remaining equity after it was discovered that TCA Management had created fake investment banking fees and used other accounting tricks to vastly inflate the net asset value of the Master Fund. Jonathan Perlman, who submits a supporting declaration, was appointed Receiver.[4]

Around the same time the SEC Receivership Case was filed, a creditor to the Foreign Feeder, TCA's investment vehicle for non-U.S. citizens, instituted a liquidation and wind-up proceeding in the Cayman Islands. The liquidators appointed in that matter have appeared in the SEC Receivership Case[5] and agreed, in a separate action also filed in this District, that the Cayman liquidation should be deemed a "nonmain proceeding" under Chapter 15 of the Bankruptcy Code. That agreement was entered as an order by Chief Judge Altonaga, who found that the

[4] *See* Declaration of Jonathan E. Perlman in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss ("Perlman Dec."). Citations to "Perlman Dec. Ex. _" refer to an exhibit attached to the Perlman Dec.

[5] *See* SEC Receivership Case, Dkt. 146.

liquidators for the Foreign Feeder have the right to sue and be sued in the United States and are subject to jurisdiction in the United States.[6]

The following year, in August 2022, Judge Altonaga entered another order authorizing the Receiver to distribute a portion of recovered funds to all investors under equitable principles. Judge Altonaga entered that order over objections from the liquidators in the Caymans action, who sought to handle distribution to non-U.S. investors through the Foreign Feeder liquidation proceeding in the Cayman Islands. *See SEC v. TCA Fund Mgmt. Grp. Corp*., No. 20-21964-CIV, 2022 WL 3334488, at *12-13 (S.D. Fla. Aug. 4, 2022), *appeal pending* No. 22-13412-B (11th Cir. Oct. 12, 2022).

Discussion

I. Personal Jurisdiction

A. Rule 12(b)(2) Framework

On a Rule 12(b)(2) motion, the determination of personal jurisdiction over a nonresident defendant involves three steps. First, the plaintiff bears the initial burden of making out a *prima facie* case of jurisdiction. *Landmark Bank, N.A. v. Cmty. Choice Fin., Inc.,* No. 17-60974-CIV, 2017 WL 4310754, at *8 (S.D. Fla. Sept. 28, 2017). Second, if the plaintiff pleads sufficient jurisdictional facts, the burden shifts to the defendant to raise a "meritorious challenge" to the applicability of the state's long-arm statute through affidavits, documents, or testimony. *Keim v. ADF MidAtlantic, LLC*, 199 F. Supp. 3d 1362, 1366 (S.D. Fla. 2016) (citations omitted); *see Landmark*, 2017 WL 4310754, at *8. If the defendant does so, in the third step, the burden shifts back to the plaintiff to prove jurisdiction using the same types of evidence. *Keim*, 199 F. Supp. 3d at 1366. The Court must accept as true all uncontroverted allegations in the complaint and where the evidence conflicts, the Court must construe all reasonable inferences in favor of the plaintiff. *Cableview Commc'ns of Jacksonville, Inc. v. Time Warner Cable Se. LLC*, No. 3:13-CV-306-J-34JRK, 2014 WL 1268584, at *12-*19 (M.D. Fla. Mar. 27, 2014) (citing *Delong Equip. Co. v. Washington Mills Abrasive Co.,* 840 F.2d 843, 845 (11th Cir. 1988)).

Each step entails a two-part analysis of personal jurisdiction. *See Louis Vuitton Malletier, S.A. v. Mosseri,* 736 F.3d 1339, 1350 (11th Cir. 2013) (discussing the two-step analysis). The first question is whether the defendant is within reach of Florida's long-arm statute. *Id.* If the

[6] *See In the matter of: TCA Global Credit Fund, Ltd.*, 21-cv-21905-CMA (Judge Altonaga order dated June 4, 2021), at ¶¶ 4, 10, attached as Ex. 1.

answer is yes, the second question is whether exercise of jurisdiction would violate the Due Process Clause. *Id.*

B. Plaintiffs satisfy step one through their *prima facie* showing of jurisdiction over GT Ireland and GT Cayman under Florida's tortious act provision.

Under Florida's long-arm statute, an out-of-state defendant who commits a tortious act in Florida submits itself to the jurisdiction of Florida courts. *See* Fla. Stat. Ann. § 48.193(1)(a)(2). The defendant's physical presence in Florida is not required under this provision. *Keim*, 199 F. Supp. 3d at 1367; *see Wendt v. Horowitz*, 822 So. 2d 1252, 1260 (Fla. 2002); *Horizon Aggressive Growth, L.P. v. Rothstein-Kass, P.A.*, 421 F.3d 1162, 1168 (11th Cir. 2005); *see also Acquadro v. Bergeron,* 851 So. 2d 665, 670 (Fla. 2003).[7]

1. Florida courts have found the requisite connexity between claims against out-of-state auditing firms and their suit-related communications into Florida.

Allegations of a nonresident defendant's ***telephonic, electronic, or written communications into Florida*** trigger jurisdiction under this subsection, so long as some "connexity" exists between the communications and the cause of action. *See Horizon Aggressive Growth*, 421 F.3d at 1168 (emphasis added); *see also Wendt,* 822 So. 2d at 1260. The connexity requirement stems from the long-arm statute's requirement that the cause of action "arise from" the statute's covered acts. *See Kapila v. RJPT, Ltd.,* No. 2D22-837, 2023 WL 2051156, at *5 (Fla. Dist. Ct. App. Feb. 17, 2023); Fla Stat. Ann. § 48.193(1)(a). A plaintiff satisfies this requirement if their cause of action against the out-of-state defendant depends on proof of either the existence or content of the defendant's communication into Florida. *See Horizon Aggressive Growth,* 421 F.3d at 1168; *Carlyle v. Palm Beach Polo Holdings*, 842 So. 2d 1013, 1017 (Fla. Dist. Ct. App. 2003).[8] That is the case here.

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[7] Florida's long-arm statue was amended in 2016. Subsection (1)(a)(2) of the current statute covers the "commi[ssion of] a tortious act within [Florida]". *See* Fla. Stat. Ann. § 48.193(1)(a)(2). Prior to July 1, 2016, subsection (1)(b) of Florida's long-arm statute contained the same provision. *See, e.g., Horizon Aggressive Growth*, 421 F.3d at 1168. Pre-2016 cases referencing § 48.193(1)(b), therefore, are instructive.

[8] Defendants misstate the holding of *Carlyle*. (Motion at 13.) In that case, the court held that the plaintiffs were required, but failed, to allege or show that the communications were themselves tortious ***or*** that "the several alleged causes of action…arose out of such communications." *Carlyle*, 842 So. 2d at 1017. Plaintiffs here allege and show the latter. In *Sky Enterprises*, the court specifically rejected what Defendants assert here, that only the former suffices. *Sky Enterprises, LLC v. Offshore Design & Drilling Servs., LLC*, No. 3:16-CV-916-J-32PDB, 2017

A tortious act occurs ***in Florida***, for purposes of the long-arm statute, when a defendant commits the tort by way of Florida-directed communications. *See Cableview*, 2014 WL 1268584, at *7 ("[A] nonresident defendant can commit a tortious act ***in Florida*** under section 48.193(1)(b) by way of telephonic, electronic, or written communications into Florida, so long as the tort alleged arises from such communications.") (emphasis added) (citations omitted); *Silvers v. Verbata, Inc.,* No. 5:17-CV-169, 2017 WL 8812752, at *4 (M.D. Fla. Dec. 1, 2017), *adopted*, No. 5:17-CV-169, 2018 WL 564549 (M.D. Fla. Jan. 26, 2018) (tortious acts via communications into Florida occur ***in Florida***). A plaintiff, therefore, need not be harmed in Florida when it is the defendant's Florida-directed communications that trigger subsection (1)(a)(2) jurisdiction. Defendants' assertion otherwise is wrong. (Motion at 12.) Injury in Florida is required only where the plaintiff asserts subsection (1)(a)(2) jurisdiction based on the defendant's commission of a tort ***outside Florida*** resulting in an in-state injury. *See Cableview*, 2014 WL 1268584, at *7 (discussing cases and distinguishing between subsection (1)(a)(2) jurisdiction based on ***either*** tortious acts in Florida ***or*** out-of-state tortious acts causing injury in Florida).

What matters for purposes of subsection (1)(a)(2) connexity is that the defendant's communications into Florida tie into the defendant's alleged liability. And multiple courts have held that to be the case where out-of-state auditing firms communicated with in-state audited parties about the audits in question. For example, in *Horizon Aggressive Growth*, a nonresident auditor contacted a Florida-based investment fund by phone and electronically accessed its computer files. *See Horizon Aggressive Growth*, 421 F.3d at 1164-65. Those limited communications, which were related to the defendant's alleged intent to deceive and defraud, satisfied the connexity requirement. *Id.* at 1168-69.

More attenuated contacts with Florida than in *Horizon Aggressive Growth* sufficed in *Deloitte & Touche v. Gencor Indus., Inc.,* 929 So. 2d 678 (Fla. Dist. Ct. App. 2006). In that case, the court held that a United-Kingdom-based accounting firm was within reach of the tortious act provision because it sent false audit reports to Florida for use by a Florida company. *Id.* at 683.

WL 7309871, at *12 (M.D. Fla. Dec. 21, 2017). The cases cited by the defendant in *Sky Enterprises*, including *Deloitte & Touche*, "[did] not undermine that connexity may be established where…the cause of ation depends on proof of the existence or content of communication into Florida." *Id.* (citation omitted).

2. Grant Thornton's alleged communications into Florida and in-person meetings in Florida satisfy the connexity requirement.

Plaintiffs' allegations satisfy the connexity requirement because the content of Grant Thornton's communications into Florida are tied to Plaintiffs' theories of liability. Plaintiffs' claims focus on GT Ireland and GT Cayman auditors' improper coordination with TCA Management, the Funds' investment advisor in Aventura, Florida, which was owned and controlled by Mr. Press, a Florida resident. (¶¶ 8-9, 42, 69.)[9] Plaintiffs allege that Grant Thornton's audit opinions included misrepresentations and omissions about the nature and value of the Master Fund and Feeder Funds' assets, as well as the control deficiencies of TCA Management. (¶¶ 48-69, 121, 134, 135, 138, 140, 141.)

Per the complaint, by early 2018, Grant Thornton knew of TCA Management's improper valuation of "special purpose vehicles" (or "SPVs"), certain assets owned by the Master Fund. (¶¶ 48-49.) Instead of alerting investors to that misconduct, Grant Thornton worked closely with TCA Management's directors and officers, in Florida, to minimize investor concerns: Grant Thornton advised TCA Management to obtain a third-party valuation of the special purpose vehicles, giving TCA Management a way to conceal its wrongdoing, and TCA Management followed that advice. (¶¶ 63-66.) By way of this back-and-forth between Grant Thornton auditors and TCA Management executives in Florida, TCA Management avoided an adverse opinion or disclaimer—an opinion that would have been justified under the circumstances had Grant Thornton acted as an independent auditor. (¶ 64.)

This improper coordination occurred via email and telephone communications between Grant Thornton auditors and TCA Management representatives in Florida, as well as the auditors' in-person meetings at TCA Management's offices in Florida. (¶ 17.) Grant Thornton also sent its final audit reports to TCA Management in Florida, for publication by TCA Management in this state. (*Id.*) Because Grant Thornton's Florida contacts form the basis of Plaintiffs' tort claims, the requisite connexity is present here and personal jurisdiction is appropriate under subsection (1)(a)(2).[10] *See Deloitte & Touche*, 929 So.2d at 683 (sending allegedly false audit reports to

[9] Unless otherwise specified, citations to "¶" are to the operative complaint (Dkt. 21).

[10] The connexity requirement that Plaintiffs identify and analyze above is what matters. Courts often skip the "essential to the success of the tort" test (Motion at 12) when determining whether a plaintiff has met the connexity requirement based on the defendant's communications into Florida. *See, e.g., SkyHop Techs., Inc. v. Narra*, 58 F.4th 1211, 1227-28 (11th Cir. 2023).

Florida for use by a Florida company suffices under the tortious act provision); *SkyHop Techs.*, 58 F.4th at 1227-28 (connexity requirement met where the defendant's communications into Florida served as the basis for the inference of intent necessary for the plaintiff's claim); *Acquadro*, 851 So. 2d at 670–71 (defendant's telephone communications with individuals in Florida formed the basis of the plaintiff's tort claims and, therefore, sufficed under the long-arm statute's tortious act provision).

C. Defendants fail to meet their burden under step two because their evidence does not raise a meritorious challenge to the applicability of Florida's long-arm statute.

Most of Defendants' jurisdictional evidence is irrelevant and doesn't controvert Plaintiffs' assertion of jurisdiction under subsection (1)(a)(2).[11] Grant Thornton need not be operating a business in Florida to have committed torts here; subsections (1)(a)(1) and (1)(a)(2) of the long-arm statute offer independent bases for jurisdiction. *See* Fla. Stat. Ann. § 48.193(1)(a) (jurisdiction attaches "for any cause of action arising from any of the following acts"). Defendants' evidence purporting to prove the same might be relevant if Plaintiffs were arguing that this Court has general jurisdiction over Grant Thornton, or that Grant Thornton is operating a business in Florida for purposes of subsection (1)(a)(1). *See also Landmark*, 2017 WL 4310754, at *11 (whether a defendant has offices, property, licenses, or employees in Florida is relevant to a general jurisdiction analysis). But Plaintiffs make no such arguments.

Defendants can't—and don't—dispute GT Ireland and GT Cayman auditors' email and telephone communications with TCA Management executives in Florida related to the 2017 and 2018 audits.[12] In fact, some of Defendants' jurisdictional evidence confirms Grant Thornton's Florida contacts and communications.[13] Defendants' attempt to downplay Grant Thornton's connection to Florida with facts that aren't germane to a specific jurisdiction analysis under

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Nevertheless, Grant Thornton's communications into Florida and meetings here were essential to the success of Grant Thornton's torts for the same reasons those Florida contacts form the basis of Plaintiffs' causes of action.

[11] *See, e.g.,* Motion, Ex. D, at ¶¶ 7-19; Motion, Ex. C, at ¶¶ 9-21.

[12] *See* Motion, Exs. C, D. In fact, Mr. Glennon (GT Ireland) acknowledges "email or telephone communications" between Grant Thornton and "service providers" (which would include TCA Management, as the Funds' investment manager) during the audits. Motion, Ex. D, at ¶ 36.

[13] *See, e.g.,* Motion, Ex. D, at ¶¶ 30-32 (in-person meetings in Florida attended by GT Ireland representatives), ¶ 36 (acknowledging "email or telephone communications" between "service providers" to the Cayman Funds during the course of the audit); Motion. Ex. C, at ¶¶ 24-25 (in-person meeting in Florida attended by GT Cayman and GT Ireland representatives).

subsection (1)(a)(2) doesn't amount to a meritorious challenge.

On reply, Defendants may argue that the Grant Thornton auditors' coordination with Florida-based TCA Management representatives doesn't count for purposes of the long-arm statute because of a technicality. According to the engagement letters, Grant Thornton prepared the audits for the Board of Directors of the General Partner, TCA Global Credit GP, Ltd. (the "General Partner") (a Caymans-based entity) as opposed to TCA Management—a point that Defendants repeat often. (Motion at 9, 10, 11, 13, 16.) So, the argument would go, the Florida-based TCA Management personnel[14] were acting on behalf of the General Partner instead of TCA Management.[15]

This argument ignores key facts— first, Grant Thornton's engagement letters specify the need for close coordination between Grant Thornton and ***TCA Management*** in Florida.[16] Florida-based TCA Management, not the General Partner, was the investment manager and the auditors' source of information about how the Funds were managed and valued.[17]

Though Defendants harp on the fact that the audits were prepared for the General Partner, what matters under cases like *SkyHop Technologies* and *Sky Enterprises*,[18] is that the defendant's communications—those tied to the plaintiff's causes of action—were ***received in Florida***. *See Sky Enterprises*, 2017 WL 7309871, at *11; *SkyHop Techs.*, 58 F.4th at 1228. Defendants do not, and cannot, dispute that TCA Management's executives, Alyce Schreiber, Robert Press, and Tara

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[14] Plaintiffs allege Grant Thornton auditors' communications with TCA Management's representatives. (¶ 17.) As explained below, Alyce Schreiber, Robert Press, and Tara Antal (¶¶ 9-10, 15) were the auditors' primary contacts at TCA Management.

[15] *See* Motion, Ex. C, at ¶¶ 8, 23, 26 (stating that the audits were prepared for and provided to the General Partner (a Cayman Islands entity) and the General Partner was responsible for the appointment, compensation, and oversight of GT Cayman's work); Motion, Ex. D, at ¶¶ 22-26, 29, 40 (same and attaching engagement letters showing that GT Ireland and GT Cayman were retained by the General Partner and audit work reported to the General Partner); *see also* Motion, Ex. D, at Ex. 1 (engagement letters).

[16] *See id.* (listing, in detail, "Management's" responsibilities with respect to Grant Thornton's audits, including: providing Grant Thornton with all information relevant to the preparation and "fair presentation" of the financial statements; providing "unrestricted access" to persons within the funds; and informing Grant Thornton of their "views about the risk of fraud," as well as any facts or events post-dating the balance sheet that might affect the financial statements or related disclosures).

[17] *See* Motion, Ex. D, Ex. 1.

[18] The district court in *Sky Enterprises* cited both *Horizon Aggressive Growth* and *Deloitte & Touche*. *See Sky Enterprises*, 2017 WL 7309871, at *12.

Antal, are Florida residents, (¶¶ 9-10, 15) and, therefore, Grant Thornton's alleged communications were received in Florida.[19] Defendants also confirm that John Glennon (GT Ireland) and Greg O'Driscoll (GT Cayman) traveled to Aventura, Florida for in-person meetings.[20] Defendants cite no case in which a nonresident defendant's communications into Florida were insufficient for purposes of the long-arm statute because the Florida-based individuals had ties to both a Florida entity and a foreign one.

Because none of the evidence offered by Defendants controverts Plaintiffs' factual allegations of specific jurisdiction,[21] Defendants fail to effectively challenge Plaintiffs' *prima facie* case. *See B & D Nutritional Ingredients, Inc. v. Unique Bio Ingredients, LLC,* No. 16-62364-CIV, 2016 WL 11071664, at *5 (S.D. Fla. Dec. 27, 2016). Plaintiffs, therefore, have no burden to introduce evidence proving jurisdiction. *See Keim*, 199 F. Supp. 3d at 1366.

D. Even if Defendants' jurisdictional challenge were meritorious, Plaintiffs prevail on step three through their documentary evidence.

Even if Defendants had succeeded in shifting the burden via step two of the jurisdictional inquiry, Plaintiffs offer substantial evidence of Grant Thornton's communications into—and conduct directed at—Florida. Those proven communications satisfy the connexity requirement since Plaintiffs' claims against Grant Thornton depend on them.

As described in more detail below, beginning in late 2017 and continuing through 2019, Grant Thornton auditors, including Mr. O'Driscoll (GT Cayman) and Mr. Glennon (GT Ireland), coordinated closely, and communicated frequently with individuals in Florida. The auditors' primary contacts, including Mr. Press, Ms. Schreiber, and Ms. Antal, were executives of TCA Management and Florida residents. Grant Thornton engaged in this Florida-directed coordination with TCA Management via email and telephone. In those communications, Mr. O'Driscoll, Mr. Glennon, and other members of the Grant Thornton audit team shared and discussed information related to the audits, worked closely with Florida-based TCA Management personnel on the audit opinions, and twice traveled to Florida for substantive, in-person meetings.

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[19] Mr. Glennon (GT Ireland) references "email or telephone communications…between service providers to the Cayman Funds and GT Ireland". Motion, Ex. D, at ¶ 36.
[20] Motion, Ex. D, at ¶¶ 30-32; Motion, Ex. C, at ¶¶ 24-25.
[21] The Court's jurisdictional determination doesn't entail an inquiry on the merits. Defendants should be foreclosed from introducing evidence to dispute the merits of Plaintiffs' claims. *See Future Tech. Today, Inc. v. OSF Healthcare Sys.*, 218 F.3d 1247, 1250 (11th Cir. 2000).

The misleading audit reports that resulted from the collaboration between Grant Thornton and TCA Management in Florida are the foundation of Plaintiffs' claims against Grant Thornton.

1. Grant Thornton's communications into Florida concerning the 2017 audit

Even before being formally retained, Grant Thornton's conduct was aimed at Florida. Grant Thornton's first order of business was looking into TCA Management's accounting practices and control policies and procedures,[22] all of which bore directly on the Master Fund's and Feeder Funds' assets. (¶¶ 46-48, 53.) In a December 11, 2017, email to Ms. Antal and Ms. Schreiber, and copying Mr. Press, all in Florida, Mr. O'Driscoll (GT Cayman) thanked them for "providing the information" then asked a series of detailed questions about loans, investment banking services, special purpose vehicles, and other topics. Mr. O'Driscoll directed his questions to Ms. Schreiber and Ms. Antal[23] because the answers needed to come from the Funds' investment manager—TCA Management,[24] based in Aventura, Florida. Only TCA Management could speak to, for example, how Grant Thornton could confirm the special purpose vehicles' loans and assets.

In the "executive summary" of Grant Thornton's December 2017 audit proposal, just days after his December 11 email, Mr. O'Driscoll (GT Cayman) referenced previous "discussions" with Florida-based TCA Management executives Mr. Press and Ms. Schreiber.[25] Once formally engaged to audit the Master Fund and Feeder Funds, Grant Thornton corresponded with TCA Management personnel and received payment from Florida. Mr. O'Driscoll (GT Cayman) sent the December 18, 2017 engagements letters (for the 2017 audit) via email to Ms. Schreiber in Florida, and upon returning the executed letters to Mr. O'Driscoll, Ms. Schreiber asked Mr. O'Driscoll to forward wire instructions so that "we" could get $175,000 to Grant Thornton that week.[26] Each Grant Thornton engagement letter was signed by Mr. Press, a Florida resident.[27]

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[22] *See* Perlman Dec. Ex. 2.

[23] *See id.* This email alone calls into question Mr. O'Driscoll's sworn statement that GT Cayman never "inspected" or audited TCA Management. *See* Motion, Ex. C, ¶ 23.

[24] There is no dispute that Florida-based TCA Management was the Funds' investment manager. *See* Motion, Ex. D, at ¶ 29.

[25] Perlman Dec. Ex. 3.

[26] Perlman Dec. Ex. 4. Mr. O'Driscoll (GT Cayman) and Mr. Glennon (GT Ireland) don't deny that payment for Grant Thornton's auditing services came ***from Florida***. They simply assert that they ***received*** payment in the Cayman Islands and Ireland, respectively. *See* Motion Ex. C, ¶ 27 (O'Driscoll); Motion, Ex. D, ¶ 42 (Glennon).

[27] *See* Motion, Ex. D, Ex. 1.

The letters spell out the need for close coordination with TCA Management in Florida.[28]

Grant Thornton included the results of its internal investigation into the Funds' Florida-based investment manager, TCA Management, in its 2017 draft audit report.[29] As alleged in the complaint, (¶ 49), that draft report, which was shared with TCA Management but not investors, demonstrates Grant Thornton's early-2018 knowledge of TCA Management's control deficiencies and improper accounting practices.[30] With respect to the Master Fund's accounts, Grant Thornton found that over half had a "significant" risk of material misstatement and warranted "significant" audit findings, and half had "significant" control deficiencies.[31] Throughout the internal, unreleased draft, Grant Thornton specifically, repeatedly references ***information Grant Thornton received from TCA Management in Florida*** related to TCA Management's institutional controls, policies, and practices.[32]

Between December 6, 2017, and May 3, 2018, Grant Thornton exchanged over forty emails about the draft report and the 2017 audit with TCA Management executives based in Florida.[33] The upshot of these communications was Grant Thornton agreeing to put aside its concerns and tailor its audit to TCA Management's wishes. In one email, Michael Attar, Senior Analyst at

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[28] *See id.* (listing, in detail, "Management's" responsibilities with respect to Grant Thornton's audits, including: providing Grant Thornton with all information relevant to the preparation and "fair presentation" of the financial statements; providing "unrestricted access" to persons within the funds; and informing Grant Thornton of their "views about the risk of fraud," as well as any facts or events post-dating the balance sheet that might affect the financial statements or related disclosures).

[29] *See* Perlman Dec. Ex. 5. That draft report—watermarked as "DRAFT"—includes an April 2018 cover letter signed by Mr. O'Driscoll (GT Cayman), in which Mr. O'Driscoll extended his "appreciation for the assistance provided by the team at TCA Capital during [the] audit." In the days prior to Grant Thornton's issuance of the draft report, TCA Management emailed red-line revisions to Mr. Glennon (GT Ireland). *See* Perlman Dec. Ex. 6**;** Perlman Dec. Ex. 7.

[30] *See* Perlman Dec. Ex. 5.

[31] *See id.* at pp. 4-5.

[32] *See id.* at p. 6 (referencing revenue schedules "provided to the audit team"); *id.* at p. 7 (discussing Grant Thornton's "review of accounting estimates, judgements and decisions made by management"); *id.* at p. 8 (referencing "accounting records provided by…TCA Management); *id.* at p. 10 ("we obtained confirmation of the receivable provided by the Investment Manager[, TCA Management]").

[33] *See* Perlman Dec. Ex. 6; Perlman Dec. Ex. 2; Perlman Dec. Ex. 8; Perlman Dec. Ex. 9; Perlman Dec. Ex. 10; Perlman Dec. Ex. 11; Perlman Dec. Ex. 7; Perlman Dec. Ex 4; Perlman Dec. Ex. 12; Perlman Dec. Ex. 13; Perlman Dec. Ex. 14; Perlman Dec. Ex. 15; Perlman Dec. Ex. 16; Perlman Dec. Ex. 17.

TCA Management in Aventura, Florida, asked Grant Thornton what numbers would make Grant Thornton "comfortable."[34] In more than one of her communications with Grant Thornton about the 2017 audit and the draft report, Ms. Schreiber, a TCA Management executive and Florida resident, proposed phone calls with Mr. Glennon (GT Ireland) to discuss Grant Thornton's findings.[35] Other emails during this time period also reference phone calls between Grant Thornton and TCA Management in Florida.[36] In some of these same emails, TCA Management employees discuss uploading electronic files—from Florida—for Grant Thornton.[37] The final report, which hid from the public the serious control deficiencies that Grant Thornton had uncovered, was thus contoured by TCA Management's Florida personnel. (¶¶ 51, 53.)

Findings in Grant Thornton's April 2018 draft internal controls report that reflected negatively on TCA Management never saw the light of day or made it to the final 2017 audit reports.[38] Despite Grant Thornton's serious concerns about TCA Management's practices, Grant Thornton's' final 2017 reports included nothing more than a brief "basis for qualified opinion" referencing "qualifications" to the Master Fund's "revenue recognition of investment banking income, valuation of special purpose vehicles, recoverability of loans, derivative assets and redeemed warrants receivable."[39] The Funds' financial statements otherwise "presented fairly, in all material respects" according to Grant Thornton.[40] This neutered opinion, in the face of TCA

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[34] Perlman Dec. Ex. 10. (copying Mr. O'Driscoll and Mr. Glennon).
[35] *See* Perlman Dec. Ex. 8; Perlman Dec. Ex. 7.
[36] *See* Perlman Dec. Ex. 12 (including April 16, 2018 email from Mr. Attar, TCA Management Senior Analyst based in Aventura, Florida according to his email signature, to Ross Lynskey and Ross McLoughlin, both with GT Ireland "ie.gt.com" email addresses, referencing items uploaded "prior to tomorrow's call"); Perlman Dec. Ex. 2 (including December 11, 2017 emails between Mr. O'Driscoll (GT Cayman) and Ms. Schreiber, whose email signature identifies her as the COO of TCA Management in Aventura, Florida, referencing a phone call that day); Perlman Dec. Ex. 15 (including April 23, 2018 email from Mr. Glennon (GT Ireland) thanking Ms. Schreiber (COO of TCA Management in Florida) for the call that day); Perlman Dec. Ex. 16 (April 27, 2018 email from Ms. Schreiber to Mr. Glennon (GT Ireland) referencing "Bob's" (Mr. Press') conversation with "Greg" (O'Driscoll, GT Cayman)).
[37] *See, e.g.,* Perlman Dec. Ex. 12 (including April 16, 2018 email from Mr. Attar informing Mr. Lynskey and Mr. McLoughlin that various files had been uploaded, including "Memo regarding SPV accounting").
[38] Compare Perlman Dec. Ex. 5 with Motion, Ex. D, Ex. 2 ("Independent Auditor's Report" for Master Fund and Feeder Funds dated April 30, 2018).
[39] *See* Motion, Ex. D, Ex. 2 (final 2017 audit opinions dated April 30, 2018).
[40] *See id.*

Management's glaring accounting and control problems, was the direct result of Grant Thornton's close coordination with TCA Management in Florida.

Through the summer of 2018 and as they began planning the 2018 audit, Grant Thornton continued communicating with TCA Management in Florida about the 2017 audit.[41] Ms. Schreiber (a Florida resident) told Grant Thornton that TCA Management would be providing "notes" and "comments" on the 2017 audit as late as August 2018, and provided TCA Management's "response" on September 6, 2018, via a letter to Mr. O'Driscoll (GT Cayman).[42]

2. Grant Thornton's communications in Florida concerning the 2018 audit

Beginning in August 2018, Grant Thornton began exchanging emails with TCA Management representatives in Florida to plan the 2018 audit.[43] TCA Management continued to be highly involved with the 2018 audit—by way of emails and phone calls with GT Ireland — throughout early 2019.[44] Despite these joint efforts, in late April 2019, Grant Thornton threatened to issue an adverse opinion or disclaimer[45] for its 2018 audit opinion given the ongoing and serious concerns about TCA Management's control deficiencies and accounting practices.[46] (¶ 59.) In

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[41] Perlman Dec. Ex. 18.

[42] *See* Perlman Dec. Ex. 19; Perlman Dec. Ex. 20. (April 30, 2019 email from Ms. Schreiber to Mr. Press forwarding Ms. Schreiber's September 6, 2018 email to Grant Thornton, in which Mr. Glennon and Mr. O'Driscoll were copied, containing "TCA's response to the post audit report" and attached September 6, 2018 letter from Ms. Schreiber to Mr. O'Driscoll).

[43] *See* Perlman Dec. Ex. 19.

[44] *See* Perlman Dec. Ex. 21 (January-February 2019 email chain, including January 25, 2019 email from Ms. Schreiber to Ross Lynskey of GT Ireland asking to be copied "on all audit correspondence" and all "confirms going out"); Perlman Dec. Ex. 22 (April 2019 email chain including numerous communications between Grant Thornton Ireland and TCA Management in Florida, including references to phone calls and uploaded documents shared by TCA Management with Grant Thornton); Perlman Dec. Ex. 23 (also referencing a phone call between representatives of GT Ireland and representatives of TCA Management in Florida); Perlman Dec. Ex. 24.

[45] *See* Perlman Dec. Ex. 25.

[46] *See* Perlman Dec. Ex. 26 (April 28, 2019 email chain including email from Mr. O'Driscoll to Matthew Wrigley, copying Ms. Schreiber and Mr. Press, and asking them to confirm that "it's okay for [Grant Thornton Ireland] to speak with Matt on the TCA audit findings" and previous email from Mr. Wrigley to Mr. O'Driscoll asking if there is "anything that we can do (as TCA) to have GT resile from the position of an adverse opinion" given the potentially "massive implications for TCA's business"); Perlman Dec. Ex. 27 **(** April 29, 2019 email chain between representatives of Grant Thornton and TCA Management regarding the potential adverse opinion and referencing telephone communications between Grant Thornton and TCA Management, as well as TCA Management's suggestion that Grant Thornton had concluded that TCA Management had done something "untoward" with respect to valuations); Perlman Dec. Ex. 37.

the end, however, Grant Thornton gave TCA Management a way out of the tentative adverse opinion.

Matthew Wrigley (an Australia-based attorney[47] who TCA Management authorized to communicate with Grant Thornton) advised Mr. O'Driscoll of the "potentially massive" implications for TCA Management's business if Grant Thornton issued an adverse audit opinion.[48] Mr. O'Driscoll (GT Cayman) responded by, first, copying Ms. Schreiber and Mr. Press, in Florida, and offering to set up a call with Mr. Wrigley, and then, two days later, providing Ms. Schreiber and Mr. Press with a roadmap of how to avoid an adverse opinion or disclaimer.[49] (¶ 62.) Ms. Schreiber responded to Mr. O'Driscoll that same day, from Florida, according to her TCA Management email signature, thanking him for "providing a path for TCA to obtain a Qualified Opinion" and choosing to go that route.[50] (¶ 64.)

In July 2019, following further communications,[51] Grant Thornton finalized its 2018 audit findings.[52] In the cover letter to the final audit report, Mr. O'Driscoll extended his appreciation "for the assistance provided by the team at TCA Capital during [the] audit."[53] Plaintiffs allege those final audit findings to be materially false and misleading because, among other things, they contained inflated asset values—for special purpose vehicles and other assets—and omitted and minimized material accounting irregularities and control deficiencies. (¶¶ 17, 64, 68, 88.)

As in the previous year's audit, Grant Thornton's well-founded concerns about TCA Management's control deficiencies and accounting practices never saw the light of day due to its coordination with Florida-based TCA Management.[54]

3. Grant Thornton's in-person meetings in Florida

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[47] *See* Perlman Dec. Ex. 2 (email signature with an Australian address identifying Mr. Wrigley as a law partner "qualified" in Queensland, Australia).
[48] *See* Perlman Dec. Ex. 26.
[49] *See* Perlman Dec. Ex. 28 (April 30, 2019 email exchange between Grant Thornton and TCA Management, including e-amil from Mr. O'Driscoll providing three options to TCA Management given "the number of qualifications and material size of each qualification").
[50] *See id.*
[51] *See* Perlman Dec. Ex. 29.
[52] *See* Perlman Dec. Ex. 30.
[53] *Id.*
[54] *See* Motion, Ex. D, Ex. 2 ("Independent Auditor's Report" for Master Fund and Feeder Funds dated Aprile 30, 2018).

As Defendants confirm,[55] GT Ireland and GT Cayman auditors attended two meetings in person, in Florida.[56] Defendants try to undercut the significance of the January and November 2018 Florida meetings by calling them "introductory"[57] and "immaterial to the completion of the audit work."[58] Yet, through their own evidence—namely Mr. O'Driscoll's (GT Cayman) and Mr. Glennon's (GT Ireland) sworn statements—Defendants acknowledge that the Florida meetings were in service of the audits.[59] According to Mr. Glennon, Grant Thornton auditors used the Florida meetings to gather audit-related information,[60] understand TCA Management's role as investment manager,[61] discuss the audit timetable,[62] and obtain "updates" about both the Master Fund and Feeder Funds.[63]

Emails between Grant Thornton and TCA Management referencing the Florida meetings, and the meeting agendas themselves, confirm that both meetings were substantive and audit-related.[64] Under the header of "Agenda for onsite visit to TCA Fund Management Group," the

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[55] *See* Motion, Ex. D, at ¶¶ 30-32 (confirming January 29-30, 2018, meeting at TCA Management offices in Aventura, Florida attended by representatives of GT Ireland, GT Cayman, and TCA Management, and a second meeting on November 13, 2018, attended by representatives of GT Ireland); Motion. Ex. C, at ¶¶ 24-25 (confirming January 29-30, 2018, meeting in Aventura, Florida attended by representatives of GT Ireland and GT Cayman).

[56] The meetings are additional Grant Thornton contacts with Florida and relevant to the jurisdictional inquiry. Travel to Florida, however, is not a requirement for jurisdiction to be proper under subsection (1)(a)(2). *See Deloitte & Touche*, 929 So. 2d, at 680 (no allegations of any employee of the U.K.-based firm attending an in-person meeting in Florida).

[57] Motion at 10 (citing Motion, Ex. C, at ¶¶ 24-25; Motion, Ex. D, at ¶¶ 31-34).

[58] Motion at 10. Mr. O'Driscoll also states that purpose of the January 2018 Florida meeting was "not to perform auditing services or to gather documents relating to the auditing services"). Motion, Ex. C, at ¶ 25.

[59] Motion at 10 ("[T]here were only two in-person meetings in Florida having any connection with the auditing services performed."); Motion, Ex. C, at ¶ 24 ("In connection with performing auditing services for the TCA Cayman Funds…").

[60] Motion, Ex. D, at ¶ 30.

[61] *Id.* at ¶ 31.

[62] *Id.* at ¶ 32.

[63] *Id.*

[64] *See* Perlman Dec. Ex. 31 (including January 2018 meeting agenda circulated by Ross McLoughlin on January 24, 2018); Perlman Dec. Ex. 32 (including November 2018 meeting agenda circulated by Ms. Schreiber on November 7, 2018); Perlman Dec. Ex. 33 (January 2018 meeting); Perlman Dec. Ex. 19 (November 2018 meeting); Perlman Dec. Ex. 34; Perlman Dec. Ex. 35 (March 4, 2019 email chain between Grant Thornton auditors, including Mr. Glennon, and TCA Management personnel, including Ms. Schreiber).

two-day January 2018 meeting agenda[65] lists various, in-depth, audit-related topics, including "Investment/Loan valuation/review process," "Review of other non-Investment/Loan balances," "NAV[66] calculation process," and "Financial Statement preparation process". The agenda identifies Mr. O'Driscoll and Mr. Glennon as contributing participants in those discussions.[67]

The improper coordination between Grant Thornton auditors and TCA Management was on full display at their joint November 2018 meeting in Florida. The meeting agenda has audit-related discussion topics similar to the January meeting agenda but also includes, "changes to [audit] approach".[68] That particular agenda item demonstrates that, like Grant Thornton's email communications into Florida, the meetings, too, involved audit-related coordination that resulted in Grant Thornton tailoring its "independent" audit to TCA Management's practices and preferences. (¶ 56.) This result is confirmed by a March 2019 email from Ms. Schreiber to GT Ireland auditors, in which she states that TCA Management's method of valuing a particular type of loan was discussed and "blessed" by Mr. Glennon (who was copied on the email) and another GT Ireland auditor (Ross McLoughlin) at the November 2018 meeting in Florida.[69]

These Florida meetings, as well as Grant Thornton's extensive, audit-related communications into Florida, meet the connexity requirement, since Plaintiffs' claims against Grant Thornton depend on them. Whether based on Plaintiffs' allegations alone or on the jurisdictional evidence Plaintiffs now offer, this Court's exercise of personal jurisdiction over GT Ireland and GT Cayman is warranted under the tortious act provision of Florida's long-arm statute.

E. This Court's exercise of jurisdiction will not violate due process rights.

Having established that GT Ireland and GT Cayman are within reach of Florida's long-arm statute,[70] Plaintiffs now turn to the Court's due process inquiry. The due process test has three prongs: "(1) whether the plaintiff's claims 'arise out of or relate to' at least one of the defendant's contacts with the forum; (2) whether the nonresident defendant 'purposefully availed' himself of

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[65] The January meeting agenda appears to have been labeled with the correct dates but wrong year (2017 instead of 2018). *See* Ex. 31.

[66] "NAV" is net asset value. (Introduction to Amended Class Action Complaint, Dkt. 21.)

[67] *See id.*

[68] *See* Perlman Dec. Ex. 36 (including November 2018 meeting agenda).

[69] Perlman Dec. Ex. 35 (March 4, 2019 email chain between Grant Thornton representatives, including Mr. Glennon, and TCA Management personnel also referencing "high level" TCA Management accounting policy discussions between Grant Thornton and TCA Management at the November 2018 audit planning meeting).

[70] Plaintiffs address how the long-arm statute applies to GTIL, under agency principles, below.

the privilege of conducting activities within the forum state, thus invoking the benefit of the forum state's laws; and (3) whether the exercise of personal jurisdiction comports with 'traditional notions of fair play and substantial justice.'" *Louis Vuitton Malletier*, 736 F.3d at 1355 (citations omitted). Plaintiffs bear the burden of establishing the first two prongs. Defendants, then, must make a "compelling case" on the third prong. *See id.* Plaintiffs meet their burden under the first two prongs, and Defendants fail to make a compelling case under the third.

1. Plaintiffs' claims arise out of Grant Thornton's contacts with Florida.

The first prong, the "arising out of or related to" inquiry, focuses on the causal relationship between the defendant, the forum, and the litigation. *See Louis Vuitton Malletier*, 736 F.3d at 1355-56. Where, as here, a defendant's alleged minimum contacts are directed to the causes of action, they relate to specific jurisdiction. *See New Lenox Indus., Inc. v. Fenton,* 510 F. Supp. 2d 893, 904 (M.D. Fla. 2007). GT Ireland and GT Cayman auditors improperly coordinated with TCA Management personnel in Florida and that coordination resulted in Grant Thornton's misleading audits and thus Plaintiffs' causes of action against Grant Thornton.

Because there's a causal relationship between Grant Thornton, Florida, and Plaintiffs' causes of action, Plaintiffs satisfy the first due process requirement. *See Louis Vuitton Malletier,* 736 F.3d at 1356; *see also SkyHop Techs*., 58 F.4th at 1229.

2. Grant Thornton purposefully availed itself of the privilege of conducting activities in Florida under the traditional minimum-contacts test.

Under the second prong, in intentional tort cases, there are two possible tests for determining purposeful availment—the traditional minimum-contacts test and the "effects test" articulated by the Supreme Court in *Calder v. Jones*, 465 U.S. 783 (1984). *See Louis Vuitton Malletier*, 736 F.3d at 1356. The "effects test"—the one Defendants invoke (Motion at 15-16)—doesn't supplant the traditional test. *Id.* at 1357. Rather, it provides an additional or alternative means of determining personal jurisdiction based on the "plaintiff's ties to the forum state and harm suffered by the plaintiff." *Id.*; *see also SkyHop Techs*., 58 F.4th at 1230 (either test suffices). Where the plaintiff is not a resident of the forum state and can show purposeful availment under the traditional test, there's no need for an analysis under the "effects test." *Louis Vuitton Malletier,* 736 F.3d. at 1356-57. That's the case here. Plaintiffs, who bear the burden of establishing purposeful availment, *SkyHop Techs*., 58 F.4th at 1230, choose to proceed under—and satisfy—the traditional minimum-contacts test.

The traditional minimum-contacts test for purposeful availment takes into consideration all

contacts between a nonresident defendant and the forum state and asks whether those contacts, individually or collectively: "(1) are related to the plaintiff's cause of action; (2) involve some act by which the defendant purposefully availed himself of the privileges of doing business within the forum; and (3) are such that the defendant should reasonably anticipate being haled into court in the forum." *Louis Vuitton Malletier,* 736 F.3d. at 1357 (citation omitted). Under this test, a plaintiff can meet their burden under the second due-process prong by showing that the defendant had multiple contacts with the forum state and the plaintiff's cause of action "derives directly from those contacts." *See id.* at 1358. Plaintiffs do exactly that here. Plaintiffs allege and now show Grant Thornton's extensive suit-related alleged conducted directed at Florida.

i. Grant Thornton's Florida contacts relate to Plaintiffs' causes of action.

Grant Thornton auditors' frequent email and telephone communications with TCA Management in Florida, their access of files shared by the same Florida individuals, as well as two in-person meetings in Florida all relate to Grant Thornton's alleged improper coordination with TCA Management in Florida. That coordination, which resulted in misleading 2017 and 2018 audit opinions, is at the heart of Plaintiffs' claims against Grant Thornton. Because Grant Thornton's Florida contacts collectively relate to Plaintiffs' causes of action, Plaintiffs satisfy this part of the minimum-contacts test. *See Sky Enterprises*, 2017 WL 7309871, at *13.

ii. Grant Thornton's Florida contacts involved acts in which it purposefully availed itself of the privilege of doing business in Florida.

Relevant to the second part of the traditional minimum-contacts test, in asserting that they didn't "aim or target Florida" (Motion at 16), Defendants ignore the extensive back-and-forth between Grant Thornton auditors and Florida-based TCA Management personnel. Neither Mr. O'Driscoll (GT Cayman) nor Mr. Glennon (GT Ireland) denies Grant Thornton's frequent, audit-related communications into Florida or meetings here.[71] These collective Florida contacts constitute acts by which Grant Thornton purposefully availed itself of the privilege of doing business in Florida. *See Louis Vuitton Malletier*, 736 F.3d 1357-58.

iii. Given Grant Thornton's contacts with Florida, Grant Thornton should reasonably anticipate being haled into court in this forum.

As for the third part of the purposeful availment analysis, Defendants' reasonable

[71] *See generally* Motion, Exs. C, D. To the contrary, Mr. Glennon (GT Ireland) references "email or telephone communications…between service providers to the Cayman Funds and GT Ireland". Motion, Ex. D, at ¶ 36.

anticipation of being haled into a Florida court, given their frequent communications with TCA Management personnel in Florida and in-person meetings here, this Court's jurisdiction would not be based on "random, fortuitous, or attenuated contacts." *See Jordan v. Travis Wolff, LLP,* No. 615CV570ORL31KRS, 2015 WL 7076963, at *5 (M.D. Fla. Nov. 13, 2015). Grant Thornton auditors reached out to and worked closely with TCA Management executives in Florida from the start of their auditing work. Their first order of business, in fact, was taking a deep dive into TCA Management's institutional controls and accounting practices. Because Grant Thornton's contacts with Florida result from its own actions, Grant Thornton, by its own accord, created a substantial connection with Florida and should reasonably anticipate being haled into court here. *See Landmark*, 2017 WL 4310754, at *13.

3. This Court's exercise of personal jurisdiction over Grant Thornton comports with traditional notions of fair play and substantial justice.

Defendants fail to carry their burden of making a "compelling case" on the third due process prong, that exercising jurisdiction over Grant Thornton would violate traditional notions of fair play and substantial justice. This is so because Grant Thornton has had far more than "slight" contact with Florida. *See Spigot, Inc. v. Hoggatt,* No. 218CV764FTM29NPM, 2020 WL 1955360, at *13 (M.D. Fla. Apr. 23, 2020). The fair play and substantial justice analysis hinges on: "(1) 'the burden on the defendant'; (2) 'the forum's interest in adjudicating the dispute'; (3) 'the plaintiff's interest in obtaining convenient and effective relief'; and (4) 'the judicial system's interest in resolving the dispute.'" *Louis Vuitton Malletier*, 736 F.3d at 1358 (citation omitted); *see also Landmark*, 2017 WL 4310754, at *13.

With respect to the first factor, it's undisputed that GT Ireland and GT Cayman auditors traveled to Florida for in-person meetings with TCA Management. Those substantive, in-depth meetings related to the audits and, in the case of the November 2018 meeting, entailed Grant Thornton's "blessing" of TCA Management's asset valuation methods and tailoring of the 2018 audit process to TCA Management's business practices and liking. Subjecting Grant Thornton to litigation in Florida that relates to those contacts is not unduly burdensome. *See Elandia Int'l, Inc. v. Ah Koy*, 690 F. Supp. 2d 1317, 1341 (S.D. Fla. 2010) ("Defendants have traveled to and from Florida on numerous occasions; subjecting Defendants to litigation in Florida that relate to those contacts is not unduly burdensome."). This is particularly true given modern means of communication and transportation. *See Landmark*, 2017 WL 4310754, at *14 (this factor weighs in favor of exercising personal jurisdiction even assuming some travel to Florida). Defendants

offer no evidence of any financial or other limitations indicating that Grant Thornton would be overly burdened by having to litigate this case here. *See Louis Vuitton Malletier*, 736 F.3d at 1358.

As for the remaining factors, Florida has an obvious interest in stamping out the type of wrongful conduct perpetrated here—a massive overvaluation scheme orchestrated through by a Florida-based firm resulting in hundreds of millions of dollars in investor losses. Plaintiffs have a natural interest in obtaining relief for these injustices. Both the second and third factors, then, outweigh any burden on Grant Thornton. *See Sculptchair, Inc. v. Century Arts, Ltd.,* 94 F.3d 623, 632 (11th Cir. 1996). And under the fourth factor, "there is no evidence that litigating in Florida would negatively affect the interests of the states in furthering shared substantive policies, or that another forum would better promote the efficient use of judicial resources." *Sutherland v. SATO Glob. Sols., Inc.,* No. 17-CV-61596-WPD, 2018 WL 3109627, at *6 (S.D. Fla. Apr. 10, 2018).

F. This Court's jurisdiction extends to GTIL under agency principles.

While GT Ireland and GT Cayman auditors had the extensive jurisdictional contacts with Florida discussed above, this Court's exercise of personal jurisdiction also extends to GTIL under agency principles. Subsection (1)(a) of Florida's long-arm statute provides that tortious acts in Florida giving rise to personal jurisdiction may be done through an agent. *See* Fla. Stat. § 48.193(1)(a); *Keim*, 199 F. Supp. 3d at 1369. "[I]t is well-established that general agency principles apply when determining personal jurisdiction." *Keim*, 199 F. Supp. 3d at 1368–69.

Defendants rely on GT Ireland's and GT Cayman's status as independent member firms in arguing that this Court lacks jurisdiction over GTIL on agency principles. [72] However, agency is not limited to a parent-subsidiary relationship; it extends to other affiliated parties. *Meier ex rel. Meier v. Sun Int'l Hotels, Ltd.,* 288 F.3d 1264, 1273 (11th Cir. 2002). GT Ireland and GT Cayman, therefore, need not be subsidiaries of, or partially or wholly owned by, GTIL for agency to attach. GT Ireland and GT Cayman are member firms and GTIL is the global umbrella organization.[73] (¶¶ 3-5.) That affiliation suffices to establish agency in this case for either of two reasons: first, because Plaintiffs allege the requisite control by GTIL over its member firms; and second, because GT Cayman and GT Ireland are mere instrumentalities of GTIL.

[72] *See* Motion at 19-20; Motion, Ex. C, at ¶5 ("GT Cayman is wholly owned by its partners…."); Motion Ex. D, at ¶¶ 4-5 (GT Ireland is an independently owned and managed member firm).
[73] *See* Motion, Ex. E, at ¶¶ 7, 13.

1. GTIL's control over GT Ireland and GT Cayman gives rise to agency.

Defendants argue that GTIL lacks the requisite operational control over GT Ireland and GT Cayman. (Motion at 20-22.) On this issue, Defendants submitted an affidavit from Sumanjeet Parmer, GTIL's Finance Director, but Mr. Parmar but offered no corporate documents relating to GTIL's corporate structure or the level of operational control that GTIL exercises over its member firms.[74] Plaintiffs, for their part, make certain, undisputed allegations of control by GTIL over GT Cayman and GT Ireland.[75] GTIL authorizes use of the "Grant Thornton" brand,[76] monitors and enforces the professional standards applicable to GT Ireland, GT Cayman, and other member firms, and coordinates strategy and policy for the firms thereby exercising control over them.[77] (¶¶ 3, 43.)

Another district court has acknowledged an agency relationship between GTIL and its member firms based on similar allegations. In *In re Parmalat Securities Litigation*, the court concluded that the plaintiffs' allegations of an agency relationship between GTIL and one if its member firms (GT-Italy) were sufficient at the pleading stage. *In re Parmalat Sec. Litig.,* 377 F. Supp. 2d 390, 408 (S.D.N.Y. 2005); *see also Scrimgeour v. Pulte Home Corp.*, No. 613CV280ORL22GJK, 2013 WL 12157875, at *4 n.6 (M.D. Fla. Sept. 5, 2013). As Plaintiffs do here, the plaintiffs in *In re Parmalat Securities Litigation* alleged that GTIL set standards and procedures for its member firms and authorized their use of the Grant Thornton logo and name.

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[74] For example, Defendants provide no evidence of the corporate policies, procedures, tools, and measures referenced by Mr. Parmar in his declaration. *See* Motion, Ex. E, at ¶ 35.

[75] If the Court deems that level of control relevant to the question of agency and, therefore, jurisdiction as to GTIL, and Plaintiffs' evidence to be insufficient, Plaintiffs respectfully request jurisdictional discovery on that issue.

[76] *See* Motion, Ex. E, at ¶ 12.

[77] Mr. Parmar states that GTIL doesn't have operational or day-to-day control over GT Ireland and GT Cayman, while also referencing certain undisclosed "policies and procedures," an "audit planning tool," and periodic reviews "to aid member firms in providing consistent quality of services". Motion, Ex. E, at ¶ 35. Mr. Parmar also acknowledges that GTIL takes "measures" to "promote consistent services across the Grant Thornton network". Mr. Parmar's statements call into question Mr. Glennon's assertion that, "GT Ireland does not receive any …marketing, training, or any other type of services from GTIL." Motion, Ex. D, at ¶ 6. The same is true of Mr. O'Driscoll's (GT Cayman) 2018 assertion that, GTIL "performs internal audits of all Grant Thornton member firms…" and that GTIL had audited GT Cayman the previous year. *See* Perlman Dec. Ex. 38 (September 24, 2018 email from Laura Collins of GT Cayman and attached, completed questionnaire).

See In re Parmalat Sec. Litig., 377 F. Supp. 2d at 397.

2. Plaintiffs allege that GT Ireland and GT Cayman are mere instrumentalities of GTIL, thereby also establishing agency.

GTIL's operational control over GT Ireland and GT Cayman is not the only basis for agency-based jurisdiction, however. *See Hard Candy, LLC v. Hard Candy Fitness, LLC*, 106 F. Supp. 3d 1231, 1240 (S.D. Fla. 2015) (recognizing that agency-based jurisdiction may be based on operational control ***or*** a firm's status as a "mere instrumentality" of the larger organization). Setting aside questions of operational control, agency-based jurisdiction is appropriate because GT Ireland and GT Cayman exist to conduct business for GTIL. *See id.* GT Cayman and GT Ireland ***represent*** GTIL per the explicit terms of the engagement letters.[78] In those letters, on Grant Thornton letterhead, GT Cayman and GT Ireland are together referred to as "Grant Thornton".[79] (¶¶ 42, 44.) Because GTIL licensed GT Cayman and GT Ireland to use the Grant Thornton name, those firms do not—and could not—undertake any business activity for anyone other than Grant Thornton. *See Meier*, 288 F.3d at 1273 (finding agency-based jurisdiction where the agent-subsidiaries didn't undertake business activity for anyone other than the principal). They are mere instrumentalities of GTIL. *See id.* The fact that GTIL doesn't—and can't—directly provide auditing services to clients[80] only proves that GTIL relies ***exclusively*** on its member firms, including GT Ireland and GT Cayman, to conduct its business.

Without the benefit of jurisdictional discovery, Plaintiffs offer further evidence of GT Ireland and GT Cayman being synonymous with GTIL and existing for the sole purposes of conducting Grant Thornton business. In Grant Thornton's initial December 2017 proposal to do the at-issue auditing work, Mr. O'Driscoll (GT Cayman) boasted Grant Thornton's status as a "Top-5 audit firm".[81] The same proposal states that Grant Thornton has a presence "[i]n more than 130 countries" and with "more than 47,000 personnel".[82] Similarly, in response to TCA Management's September 2018 "due diligence" questionnaire, Mr. O'Driscoll stated that the name of the audit services provider was "Grant Thornton" and had "over 50,000 people

[78] *See* Motion, Ex. D, Ex. 1 ("Other matters: Relationship to Grant Thornton International Ltd.").
[79] *See id.*
[80] Motion at 20 (citing Motion, Ex. E, ¶¶ 8-10).
[81] Perlman Dec. Ex. **3**, at p. 3.
[82] *Id.* at p. 5.

globally".[83] Given that GTIL doesn't service clients, the only way GTIL can conduct business is through its member firms. Because GT Ireland and GT Cayman are mere instrumentalities of GTIL, this Court can exercise agency-based jurisdiction.

G. If this Court determines that any jurisdictional issues are in dispute, Plaintiffs respectfully request an evidentiary hearing and limited discovery.

The Court has discretion to conduct a limited evidentiary hearing on the question of jurisdiction. *See Cableview*, 2014 WL 1268584, at *4; *Sky Enterprises*, 2017 WL 7309871, at *6 ("To decide a motion to dismiss for lack of personal jurisdiction, a court may (1) rely on complaint allegations; (2) rely on complaint allegations and affidavit statements; or (3) conduct an evidentiary hearing and find facts."); *Jordan,* 2015 WL 7076963, at *4. A hearing is not necessary where, as here, a plaintiff makes an uncontroverted, prima facie showing of personal jurisdiction. *See Cableview*, 2014 WL 1268584, at *4.

Should the Court go beyond the jurisdictional allegations in the complaint, Plaintiffs offer enough evidence to prove jurisdiction and to rebut the limited—and largely irrelevant—evidence offered by Defendants. If this Court, nonetheless, deems an evidentiary hearing to be appropriate, Plaintiffs respectfully request the same, as well as limited jurisdictional discovery.

II. Forum Selection and Venue

"The enforceability of a forum-selection clause in a diversity case is governed by federal law." *Pappas v. Kerzner Intern. Bahamas, Ltd.*, 585 F. App'x 962, 966 n.4 (11th Cir. 2014). Where a defendant moves to dismiss on the basis of a forum selection clause and the defendant's proposed mandatory forum is a foreign country, the motion is properly brought under Rule 12(b)(3) of the Federal Rules of Civil Procedure. *See Lipcon v. Underwriters at Lloyd's London*, 148 F.3d 1285, 1290 (11th Cir.1998). To defeat application of a forum selection clause, the plaintiffs have the burden of showing that venue in their chosen forum is proper. *See Gulf Power Co. v. Coalsales II, LLC*, Case No. 06-cv-270, 2008 WL 563484, at *5 (N.D. Fla. Feb. 27, 2008). In considering such a motion, the court accepts the facts in the plaintiffs' complaint as true. *Wai v. Rainbow Holdings*, 315 F.Supp.2d 1261, 1268 (S.D. Fla. 2004). A court may also "consider matters outside the pleadings if presented in proper form by the parties." *MGC Commc'ns, Inc. v. BellSouth Telecomms., Inc.*, 146 F.Supp.2d 1344, 1349 (S.D. Fla. 2001).

[83] Perlman Dec. Ex. 38 (September 24, 2018 email from Laura Collins of GT Cayman and attached, completed questionnaire).

Where conflicts exist between allegations in the complaint and evidence outside the pleadings, the court "must draw all reasonable inferences and resolve all factual conflicts in favor of the plaintiff." *Wai*, 315 F. Supp. 2d at 1268. If there is no evidentiary hearing, courts will allow a plaintiff to carry the burden by establishing facts, taken as true, that establish venue. *Kozial v. Bombardier–Rotax GmbH*, 129 Fed. Appx. 543, 545 (11th Cir. 2005).

A. The at-issue forum selection and venue clauses

The primary marketing and subscription document for the U.S. Feeder, through which Plaintiffs invested, is the Private Placement Memorandum for TCA Global Credit Fund, LP (the "PPM").[84] The PPM defines the scope of Bolder Fund Services' predecessor, Circle Partners', role.[85]

Defendants avoided placing the PPM in the record and instead just included an exhibit to the PPM titled "Subscription Documents" (the "Exhibit"). Defendants cite the Exhibit to support their contention that a mandatory forum selection clause requires dismissal.[86] (Motion at 24-28.) The PPM itself, however, contradicts the Exhibit's choice of venue and law clause in two ways.

First, the PPM contains its own permissive choice of law and venue provision, providing in relevant part:

> Neither the General Partner nor the Investment Manager shall be liable to the Partnership or the Limited Partners for any action or inaction in connection with the business of the Partnership unless such action or inaction is determined by a final, non-appealable ***court of competent jurisdiction*** to constitute gross negligence (***as interpreted in accordance with the laws of the State of Delaware, U.S.***) or willful misconduct.[87]

As discussed below, a "court of competent jurisdiction" is any court with subject matter jurisdiction, though sometimes that phrase also refers to courts with personal jurisdiction over a defendant. That, and the application of Delaware law, conflict with the choice of law and forum selection clause in the Exhibit. And, while the permissive clause in the PPM only refers to the General Partner and Investment Manager (TCA Management), Defendants' forum rights are derivative thereof.

Second, the PPM incorporates an "Administration Agreement" governing the relationship

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[84] *See* Perlman Dec. Ex. 39.
[85] *Id.* at 29.
[86] *See* Motion, Ex. A, Ex. A (noting on the front cover of the "Subscription Document" that it is an Exhibit to the "Offering Memorandum").
[87] *See* Perlman Dec. Ex. 39, at 22 (emphasis added).

between TCA and Circle Partners Support Services (Cayman) (the "Circle Partners Agreement"). The Circle Partners Agreement[88] also includes a permissive venue clause rather than a mandatory one, providing only for "non-exclusive jurisdiction" in the Cayman Islands.[89]

Thus, the PPM has conflicting venue and choice of law clauses—a permissive clause in the PPM itself and a mandatory clause in the Exhibit—and also, in connection with the liability of Circle Partners to investors like Plaintiffs, incorporates another agreement (the Circle Partners Agreement) with a permissive venue clause.

B. Venue in this forum is proper.

Plaintiffs meet their burden of showing that venue in this forum is proper. Bolder Fund Services can't invoke the mandatory forum selection clause in the Exhibit for any number of reasons: (1) because a ***permissive*** venue clause in the Circle Partners Agreement trumps the mandatory venue clause in the Exhibit; (2) because that clause has been waived by the Receiver; and (3) because conflicting provisions in the PPM and its exhibits and incorporated agreements create an ambiguity that should be resolved against the Bolder Defendants. Even if the mandatory clause in the Exhibit is enforceable (it is not), the only Defendant that provision could benefit is Bolder Cayman. Grant Thornton, for its part, can't enforce the mandatory clause in the Exhibit as a third-party beneficiary, nor can Grant Thornton obtain a dismissal of Plaintiffs' claims based on the Cayman Islands venue provision in its engagement letters. This is so because Plaintiffs aren't "closely related" to Grant Thornton or TCA and Plaintiffs are expressly excluded from the engagement letters.

And separately, but for related reasons, Defendants fail to meet their request for dismissal on *forum non conveniens* grounds.

1. As to Bolder Fund Services, the permissive forum selection clause in the Circle Partners Agreement trumps the mandatory clause in the Exhibit.

Defendants rely on the mandatory forum selection clause in the Exhibit, purportedly favoring the Cayman Islands, but fail to discuss the permissive clauses in the PPM itself (permitting determinations by any court of competent jurisdiction) or the Circle Partners Agreement (providing for ***non-exclusive*** jurisdiction in the Caymans). The question of which clause applies

[88] According to the PPM, the Circle Partners Agreement covers Circle Partners' liability to investors. *Id.* at 29 ("The Administration Agreement provides that…***investors***, shareholders, employees, and agents…will not be liable to the Fund….") (emphasis added).
[89] *See* Perlman Dec. Ex. 40, at § 16, p. 7.

is a mixed question of fact and law. *See Asoma Corp. v. SK Shipping Co.*, 467 F.3d 817, 822 (2d Cir. 2006). In such cases, courts "often decline to enforce both clauses because of the waste of judicial and party resources" and instead "undertake a 'fact-intensive' analysis to determine which clause should be enforced." *Fortune-Johnson, Inc. v. Master Woodcraft Cabinetry, LLC*, No. 1:15-cv-4123-SCJ, 2016 WL 3128536, at *3 (N.D. Ga. Feb. 3, 2016); *see also Bio World Merch., Inc. v. Interactive Bus. Info. Sys., Inc.*, No. 3:19-cv-2072-E, 2020 WL 6047605, at *4 (N.D. Tex. Oct. 9, 2020).[90]

The foundation of Plaintiffs' claims against Bolder Fund Services are the accounting services provided by its predecessors, Circle Partners, including Circle Partners' willingness to break its own internal rules to calculate the Funds' monthly NAV. (¶¶ 70-79.) The permissive venue clause in the Circle Partners Agreement trumps the mandatory venue clause in the Exhibit because the Circle Partners Agreement was incorporated into the PPM specifically in connection with Circle Partners' liability to investors like Plaintiffs.[91] As a matter of contractual interpretation, the more specific clause should govern over the general forum selection clause. *See Itel Container Corp. v. M/V Titan Scan*, 139 F.3d 1450, 1455 (11th Cir. 1998) ("[U]nder generally accepted principles of contract construction, specific clauses take precedence over general ones.")

Alternatively, when presented with conflicting forum selection clauses, a court may simply reject both clauses and apply the traditional *forum non conveniens* factors. *See Samuels v. Medytox Sols., Inc.*, No. CIV.A. 13-7212 SDW, 2014 WL 4441943, at *8 (D.N.J. Sept. 8, 2014). Those factors, discussed below, also weigh against Defendants' attempt to invoke the mandatory clause in the Exhibit. Further, at this juncture, with the dispute having been pending for over three years, it would be unfair to dismiss the case. *See Poole v. Transcon. Fund Admin., Ltd.*, No.

[90] The analysis in *Bio World* is consistent with the position taken by district courts in the Eleventh Circuit. *See, e.g., Schrenkel v. LendUS, LLC*, No. 2:18-cv-382-FTM-29CM, 2018 WL 5619358, at *6 (M.D. Fla. Oct. 30, 2018) ("In determining which forum-selection clause to enforce, several courts (including this one) have examined the claims at issue to determine which contract, and therefore which forum-selection clause, applies."); *Blue Ocean Corals, LLC v. Phoenix Kiosk, Inc.*, No. 14-CIV-61550, 2014 WL 4681006, at *7 (S.D. Fla. Sept. 19, 2014) ("[W]here parties have entered into multiple contracts with differing forum [ ] selection provisions governing the same transaction or relationship, a court must decide based on the particular facts which clause governs."); *Drax Biomass, Inc. v. Lamb*, No. 1:20-CV-04727-SDG, 2021 WL 1439932, at *4–5 (N.D. Ga. Apr. 16, 2021).

[91] *See* Perlman Dec. Ex. 39, at 29.

CIV.A. 6:12-2943-BHH, 2015 WL 1298578, at *9–10 (D.S.C. Mar. 23, 2015) (denying dismissal in favor of the Cayman Islands under a subscription agreement where doing so would create a grave inconvenience and unfairness to the plaintiff).

2. The forum selection clause invoked by Defendants is waived.

Bolder Fund Services next argues that it is entitled to enforce the forum selection clause in the Exhibit because Bolder Fund Services is an express third-party beneficiary of that provision. As an initial matter, Defendants' third-party beneficiary argument applies only to Bolder Cayman as the successor entity. That's because the PPM defines only the Caymans-based Circle Partners entity, Circle Partners Support Services (Cayman), Ltd., as the "Administrator" pursuant to the Administration Agreement incorporated into the PPM. The U.S.-based entity, Circle Partners Support Services (USA), LLP, in contrast, is an affiliate and therefore indemnified party.[92]

As a purported third-party beneficiary, Bolder Cayman's rights are derivative of the rights of TCA. *See Matuszevoska v. Princess Cruise Lines, Ltd.*, Case No. 06-CV-21975, 2007 WL 7728281, at *6-7 (S.D. Fla. Feb. 12, 2007) (citing and discussing *Lipcon* for the proposition that a third-party beneficiary's rights are only enforceable if the primary party to the contract can enforce the forum selection clause). All the TCA Companies, however, have waived their forum selection and choice of law rights in connection with investor-related claims.[93] Any purported third-party beneficiary rights of Bolder Fund Services, therefore, are also waived.

Moreover, TCA consented to jurisdiction and venue in the United States when it was sued by the SEC.[94] Thus, even if TCA once had rights to enforce a mandatory forum selection clause, those rights were waived over three years ago in connection with the SEC Receivership Case. *See Se. Power Grp., Inc. v. Vision 33, Inc.*, 855 Fed. Appx. 531, 533-538 (11th Cir. 2021) (holding that a party's involvement in litigation waives the right to the effect of a forum selection clause). The derivative rights of Bolder Fund Services, then, are also waived given the Funds' consent to jurisdiction and venue in the SEC Receivership Case. *See Lipcon*, 148 F.3d at 1299;

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[92] *See id.* (defining the Administrator as that entity defined in the Administration Agreement, which is the Cayman entity, and any affiliates, like the U.S. affiliate, as an indemnified affiliated party).
[93] *See* Perlman Dec. at ¶ 4.
[94] *See* SEC Receivership Case, Dkt. 6, at p. 1.

Matuszevoska, 2007 WL 7728281, at *6-7. Either way, the forum selection clause relied upon by Bolder Fund Services is no longer enforceable.

3. Because Circle Partners' and Bolder Fund Services' rights under the PPM are derivative of the rights of the Funds, any ambiguities in the PPM should be resolved against Bolder Fund Services.

The permissive forum selection clause in the PPM itself conflicts with the mandatory clause in the Exhibit invoked by Defendants. Those conflicting clauses create an ambiguity that should be construed against the drafter—TCA. *See White v. Coca-Cola Co*., 542 F.3d 848, 855 (11th Cir. 2008) ("Coca–Cola concedes that the district court correctly concluded that the proviso clause creates an ambiguity that the district court was permitted to construe against Coca–Cola as the drafter of the document."); *Cuevas v. Verizon Wireless Pers. Commc'ns, LLP*, No. 2:18-CV-371-FTM-99CM, 2018 WL 6011876, at *5 (M.D. Fla. Nov. 16, 2018) ("the Court must also construe ambiguous language against the drafter. . ."). Because Bolder Fund Services' predecessor Circle Partners was not a signatory to the PPM, Bolder Fund Services' rights under the PPM are derivative of TCA's rights. *See Lipcon*, 148 F.3d at 1299. The ambiguity, therefore, should be construed against Bolder Fund Services and it should not benefit (in the form of a dismissal) from application of the mandatory clause in the Exhibit.

4. Even if the mandatory forum selection clause in the Exhibit is enforceable, Bolder Cayman is the only Defendant that it could benefit.

As discussed above, the only purported, express third-party beneficiary under the PPM and Circle Partners Agreement is Bolder Cayman. Neither the predecessor to Bolder USA nor any of the Grant Thornton entities are express third-party beneficiaries. Thus, even if Defendants can invoke the mandatory forum selection clause in the Exhibit, then, under Cayman law, they would need to show that third-party beneficiary status extends to Defendants other than Bolder Cayman. Defendants make no such showing in their expert declaration.[95]

5. Even if the mandatory forum selection clause in the Exhibit is enforceable, Grant Thornton can't invoke it.

Even if the mandatory forum selection clause in the Exhibit were to be enforceable by Bolder Cayman as a purported third-party beneficiary (it is not), Grant Thornton has no basis to invoke it.

[95] *See* Motion, Ex. F.

Given that Grant Thornton is otherwise identified in the PPM,[96] but is not named as an express third-party beneficiary of the forum selection clause, the PPM indicates TCA's intent to exclude Grant Thornton from the benefits of that clause unlike Circle Partners (Cayman). *See Elite Storage Sols., LLC v. Sig Sys, Inc*., No. 1:19-CV-03430-SDG, 2020 WL 10056403, at *4 (N.D. Ga. Mar. 20, 2020) (holding that a party was not closely related to the dispute because the contract indicated no intent to bind the party and a second contract addressed the same clause); *Verizon Fla., LLC v. Fishel Co*., No. 6:08-CV-277-ORL-18DAB, 2009 WL 10669934, at *7 (M.D. Fla. May 14, 2009) (In the context of interpreting an insurance contract, explaining that, "under the principle of '*expressio unius est exclusio alterius*' typically referred to in the short-hand as *expressio exclusio*—the inclusion of one is the exclusion of another"); *see also Green v. United States,* No. CR405-139, 2017 WL 819680, at *3 (S.D. Ga. Mar. 1, 2017), report and recommendation adopted in part, rejected in part, No. CR405-139, 2017 WL 2692409 (S.D. Ga. June 22, 2017).

Further, Defendants base their argument on a misstatement of the applicable legal standard, claiming that the applicable test is whether a "non-party can show that it is closely related to the dispute and that it was foreseeable that the non-party might eventually seek to avail itself of the forum selection clause. . ." (Motion at 30.) The Eleventh Circuit's decision in *Lipcon* provides otherwise: "In order to bind a non-party to a forum selection clause, the party must be closely related to the dispute such that it becomes foreseeable that ***it will be bound***." *Lipcon*, 148 F.3d at 1299 (quotation omitted) (emphasis added). Defendants fail to make the requisite showing under *Lipcon*.

Because Grant Thornton was identified in the PPM but not named as an express third-party beneficiary of the forum selection clause, it's not foreseeable that Grant Thornton would be bound by the Exhibit's forum selection clause. And Grant Thornton is not "closely related" to any of the PPM contracting parties—neither the investors nor TCA. Defendants do not show—as they're required to do—that Grant Thornton's rights are derivative of a contracting party's rights or that Grant Thornton is otherwise integral to the PPM or a corporate affiliate of TCA or Plaintiffs. *Cf. Lipcon,* 148 F.3d at 1299; *Gonzalez v. Watermark Realty Inc*., No. 09-60265-Civ, 2010 WL 1299740, at *4 (S.D. Fla. Mar. 30, 2010); *Coastal Steel Corp. v. Tilghman*

[96] *See* Perlman Dec. Ex. 39, at 23, 23.

Wheelabrator Ltd., 709 F.2d 190, 203 (3d Cir. 1983); *Marano Enters, of Kan. V. Z-Teca Rests., L.P.*, 254 F.3d 753, 757 (8th Cir. 2001); *Manetti-Farrow, Inc. v. Gucci Am., Inc.*, 858 F.2d 509, 514 n.5 (9th Cir. 1988); *HNA LH OD, LLC v. Loc. House Int'l, Inc.*, Case No. 21-CV-21022, 2021 WL 4459404, at *5 (S.D. Fla. Sept. 29, 2021). Grant Thornton served as the Funds' supposedly independent auditor. Grant Thornton wasn't closely related to TCA or Plaintiffs as a corporate affiliate, owner, or otherwise, and wasn't an integral part of Plaintiffs' subscription agreement with TCA.

Lastly, the doctrine of *mutuality* discussed in a Seventh Circuit opinion cited by Defendants (Motion at 30) highlights why Grant Thornton can't invoke the mandatory forum selection clause in the Exhibit. In *Frietsch v. Refco, Inc.*, 56 F.3d 825 (7th Cir. 1995), the court emphasized that an affiliate of investment promoters, Refco, could be sued on the investment contract between plaintiffs and the promoters, so, in turn, Refco was entitled to enforce the contractual venue provision favoring Germany. *See id.* at 827-28. Here, by contrast, there would be no basis for either Grant Thornton or Plaintiffs to sue each other on the terms of the PPM. Because there's no basis for Grant Thornton to invoke the PPM in a lawsuit against Plaintiffs, under the reasoning of *Frietsch*, there's no basis for Grant Thornton to rely on the forum selection clause in the Exhibit in its pursuit of a dismissal.

6. Grant Thornton can't enforce the forum selection clause in its engagement letters against Plaintiffs.

Defendants also seek dismissal as to Grant Thornton based on a Cayman Islands venue provision in Grant Thornton's engagement letters. (Motion at 28-32.) Defendants argue that: (1) Plaintiffs are closely related and should have foreseen being subject to Grant Thornton's engagement letters; and (2) the theory of equitable estoppel applies because Plaintiffs benefited from Grant Thornton's services. (*See id.*) For the following reasons, these arguments fail.

First, Plaintiffs are not "closely related" to Grant Thornton or TCA such that the forum selection clause between Grant Thornton and TCA would bind Plaintiffs. Under the case law, "closely related" relationships between a non-signatory and signatory fall into one of three categories: familial, controlling, or quasi-contractual. None of these relationships exist here.

A familial relationship can be either personal (for example, a husband and wife) or corporate (for example, subsidiary, parent, or sibling entities). Invoking close familial relationships, which aren't at issue here, Defendants cite cases involving family members, including cases where spouses affirmatively signed letters of credit or waivers of liability for the other spouse. *See*

Lipcon, 148 F.3d at 1299; *Wylie v. Island Hotel Co.,* Case No. 15- 24113-JLK, 2018 WL 3421374, at *3 (S.D. Fla. July 13, 2018). There are no corporate-familial relationships at issue here either. In *Direct Mail Production Services Ltd. v MBNA Corporation*, 2000 WL 1277597, (S.D.N.Y. Sept. 7, 2000), another case cited by Defendants, the relevant non-parties were part of a corporate family: one non-signatory defendant was "both subsidiary of [a co-defendant], as well as the parent of MBNA International Bank Limited . . ., which in turn is the parent of" MBNA Direct, the signatory. *See id.* at *1. Plaintiffs are investors; they have no close corporate relationships with any of the Defendants, signatories or not.

Similarly, Plaintiffs are not closely related to Grant Thornton by way of a controlling relationship. A controlling relationship is one where the non-signatory (Plaintiffs here) exercised a heightened level of control over a party to the contract (Grant Thornton). "Courts have, for example, found that a non-party has a sufficiently close relationship with a signatory . . . where the non-party is an alter-ego of the signatory, a successor entity to the signatory, or is owned or primarily owned by the signatory." *Sealord Marine Co., Ltd. v. Amer. Bureau of Shipping*, 220 F.Supp.2d 260, 270 (S.D.N.Y. Sept. 13, 2002); *see also Maale v. Kirchgessner*, No. 08-80131-CIV., 2011 WL 1565912, *10 (S.D. Fla. Feb. 18, 2011). And "[w]here courts have found such a 'close business relationship' to exist, the facts typically indicated that the parties' business operations were essentially 'intertwined.'" *Power Up Lending Group, Ltd. v. Murphy*, 16-CV-1454 (ADS) (AYS), 2016 WL 6088332, *7 (E.D.N.Y. Oct. 18, 2016); *see also Hugel v. Corporation of Lloyd's*, 999 F.2d 206 (7th Cir. 1993); *Frietsch*, 56 F.3d at 828 (non-signatory "totally controlled the" contracting parties, who were "simply cat's paws of" Refco); *XR Co. v. Block & Balestri, P.C.*, 44 F. Supp. 2d 1296, 1301 (S.D. Fla. 1999) (non-signatory was "sole and controlling shareholder" of signatory). Plaintiffs were investors; they had no business relationship with and exercised no control over Grant Thornton, the Funds' auditor.

The last potential basis for a close relationship—a quasi-contractual one—is also not present here. Such a relationship exists where the non-signatory is expressly mentioned or referenced in the agreement itself or intimately intertwined with the agreement. In this way, it could be "foreseeable" for a non-signatory to be sufficiently closely related so as to be bound by a forum selection clause. *MoistTech Corp. v. Sensortech Sys., Inc*., No. 8:15-CV-00434-EAK-TBM, 2015 WL 3952341 (M.D. Fla. June 26, 2015) is instructive: "Much like the parties in *Lipcon* and *Hugel*, [non-signatory] *MoistTech* [was] 'so closely related' to the dispute that it was foreseeable

that it would be bound by the forum-selection clause. While MoistTech [was] omitted as a signatory, MoistTech [was] omnipresent throughout the Agreement." *Id.* at *2. Similarly, in *Direct Mail*, "a number of other clauses in the Agreement between Direct Mail and MBNA Direct indicate[d] that the signatories intended the contract to benefit related [non-signatory] MBNA companies." 2000 WL 1277597, at *4. As such, the "provisions of the Agreement plainly gave Direct Mail reason to know that one of the reasons motivating MBNA Direct to enter the contract was a desire to confer a pecuniary benefit on related [non-signatory] MBNA companies." *Id*. And in *Woods v. Christensen Shipyards, Ltd*., No. 04-61432-CIV-ZLOCH, 2005 WL 5654643, at *5 (S.D. Fla. Sept. 23, 2005), Tiger Woods was held to a forum selection clause because he was referenced throughout the agreement at issue, while his then-wife Elin Woods was not mentioned and, as a result, was not bound by the forum selection clause. *Woods*, 2005 WL 5654643, at *5. In contrast, here, Plaintiffs were not mentioned in, nor involved in, Grant Thornton's engagement letters or the auditing services Grant Thornton rendered under those agreements. Defendants' "closely related" argument falls flat under cases like *MoistTech*, *DirectMail*, and *Woods*.

Plaintiffs have no familial or corporate relationship to Grant Thornton or TCA, and were not mentioned, nor involved in, Grant Thornton's engagement agreements or services rendered thereunder. Investors, including Plaintiffs are expressly excluded from being a third-party beneficiary and Grant Thornton's declarations confirm they were not intended third-party beneficiaries.

Thus, Plaintiffs are not closely related to Grant Thornton or TCA such that Plaintiffs can be bound by the forum selection clause in Grant Thornton's engagement agreements.

Second, investors, including Plaintiffs, are expressly excluded from being third-party beneficiaries to Grant Thornton's engagement letters. Those letters include the following provision:

> The member firms of Grant Thornton International are intended third-party beneficiaries of this Engagement Letter and shall be entitled to all the benefits and protections contained herein. **No other third-party beneficiaries are intended under this Engagement Letter.**[97]

The sworn statements of Grant Thornton's auditors also make it clear that Grant Thornton didn't

[97] Motion, Ex. D, Ex. 1 ("Use of third-party service providers" on page six of each agreement) (emphasis added).

intend there to be any third-party beneficiaries to its engagements with TCA.[98]

Plaintiffs, therefore, aren't bound by Grant Thornton's contracts with the Funds. It's not foreseeable for Plaintiffs to be bound by those engagement letters given that Plaintiffs are expressly excluded from benefitting from those agreements. *See Lipcon*, 148 F.3d at 1299 ("in order to bind a non-party to a forum selection clause, the party must be 'closely related' to the dispute such that it becomes 'foreseeable' that it will be bound"); *see also Venezia Lakes Homeowner's Ass'n, Inc. v. CSX Transp., Inc.,* 43 So.3d 93, 95 (Fla. Dist. Ct. App. 2010) (holding that a third-party is considered a beneficiary only if the contracting parties intended to benefit the third-party, and denying the third-party beneficiary status because the contract expressly excluded third-party beneficiaries); *Moore v. Grady Mem'l Hosp. Corp*., 834 F.3d 1168, 1175 (11th Cir. 2016) (rejecting the notion that third-party beneficiary status applies to any party that benefits from a contract, particularly where the contract itself indicates that there are no third-party beneficiaries). Additionally, unlike the Circle Partners Agreement, Grant Thornton's engagement letters are not incorporated into the PPM subscription documents.

Third, for principles of equitable estoppel to apply, as argued by Defendants, there must be some level of "relatedness" between the parties. *See Kakawi Yachting, Inc. v. Marlow Marine Sales, Inc*., Case No. 8-CV-1408, 2014 WL 12650701, at *9 (M.D. Fla. Oct 3, 2014) (finding forum selection clause would be enforced due to "the benefit obtained . . . under the contract [and] the relatedness of the parties"); *XR Co*., 44 F. Supp.2d at 1301 (non-party was "the sole and controlling shareholder"). As discussed above, Plaintiffs are not closely related to TCA or Grant Thornton, and Grant Thornton, likewise, isn't closely related to TCA or Plaintiffs. Moreover, the cases relied upon by Grant Thornton are inapposite because, here, Plaintiffs received no benefit from the contracts according to the GT Ireland and GT Cayman auditors.[99] Moreover, the equitable estoppel doctrine only applies when a non-party claims the benefit of a contract or is interdependent with the contract, which is not the case here. *See Kakawi Yachting*, 2014 WL 12650701, at *4-6. Plaintiffs don't claim the benefits of Grant Thornton's engagements with the Funds. Rather, Plaintiffs causes of action against Grant Thornton stem

[98] *See* Motion, Ex. D, at ¶ 40 ("At all times, the independent auditor's reports were prepared only for the Directors of the General Partner or the Fund."); Motion, Ex. C, at ¶ 23 ("GT Cayman did not prepare the audits for prospective subscriptions or private placement.")

[99] *See* Motion, Ex. D, at ¶ 40; Motion, Ex. C, at ¶ 23.

from Grant Thornton's misconduct in connection with that auditing work.

For these reasons, Grant Thornton can't enforce the forum selection clause in either its own engagement letters with TCA or the forum selection clause in the Exhibit.

C. Defendants fail to satisfy the requirements for a *forum non conveniens* dismissal.

Defendants acknowledge that their request for dismissal based on a foreign forum selection clause falls under the doctrine of *forum non conveniens*. (Motion at 1, 2, 3, fn.3, 24, 28.) *See also Atlantic Marine Constr. Co. v. U.S. Dist. Ct. for the W. Dist. Of Tex*., 571 U.S. 49, 60 (2013) (holding that proper vehicle to enforce a forum selection clause directing litigation in state forum is a motion based on doctrine of *forum non conveniens*). However, Defendants haven't satisfied the requirements for a *forum non conveniens* dismissal.

"A district court must consider the following private factors when ruling on a motion to dismiss on *forum non conveniens*: the relative ease of access to sources of proof; the availability of compulsory processes for unwilling witnesses; the cost of witnesses; the ability to view premises, if such viewing is relevant and appropriate to the case; and all other practical problems relating to the ease, expeditiousness, and expense of trial." *McLane v. Los Suenos Marriott Ocean & Golf Resort*, 476 Fed. Appx. 831, 832-33 (11th Cir. 2012). "In its evaluation of these private factors, the district court should 'weigh in the balance a strong presumption against disturbing plaintiffs' initial forum choice.'" *Id*. at 833 (quoting *Wilson v. Island Seas Invs., Ltd*., 590 F.3d 1264, 1269 (11th Cir.2009)). The court should also consider public factors, which are generally considered less important. *See Leon v. Millon Air, Inc*., 251 F.3d 1305, 1311 (11th Cir. 2001) (discussing that private factors are generally considered more important).

Defendants have not addressed the public and private factors, and therefore have not met their burden. However, even if they had done so, those factors favor Plaintiffs. Regarding the private factors, the lion's share of documentary proof and witnesses are in Florida, where Circle Partners conducted its financial administrative services,[100] where Florida-based TCA Management managed the Funds and where key executives reside, and where the Receiver has taken custody of documents and business records.[101] Compulsory process for most witnesses, therefore, is available here. While some Grant Thornton auditors and documents may be in

[100] Perlman Dec. Ex. 42 –54. (Dozens of email chains between TCA Management and Orlando-based employees for Circle Partners discussing Net Asset Valuation and accounting issues.)
[101] *See* Perlman Dec. at ¶¶ 5-6.

Ireland or the Cayman Islands, Defendants identify no primary witnesses for Bolder Fund Services in the Caymans. And Circle Partners' prospectus shows that it had no office in the Caymans.[102] Thus, the practical problem of litigating this matter in the Cayman Islands is that sources of proof—witnesses and documents—are not located there.

Likewise, public factors weigh in favor of maintaining the action here, as this District is already handling a related matter and Plaintiffs may be significantly prejudiced by having to litigate this matter in the Caymans given possible statute of limitations and jurisdictional barriers that Defendants fail to even address, as discussed below.

Further, dismissal on *forum non conveniens* grounds is only appropriate "when an alternative forum has jurisdiction to hear a case, and when trial in the chosen forum would establish oppressiveness and vexation to a defendant out of all proportion to plaintiff's convenience, or when the chosen forum is inappropriate because of considerations affecting the court's own administrative and legal problems." *Wilson*, 590 F.3d at 1269-73 (reversing dismissal based on *forum non conveniens* where the district court did not ensure that the action could be reinstated in the foreign jurisdiction, among other reasons).

Defendants again fail to make the requisite showing. Dismissal on *forum non conveniens* grounds, therefore, is not warranted. *See id.* at 1272-73. Each Defendant has not indicated that it's amenable to service in the Cayman Islands, that it consents to jurisdiction in the Cayman Islands, and that the statute of limitations on Plaintiffs' claims has not expired or would be waived. That is what's required. *See Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 254 n.22 (1981) (quotation omitted); *see also Doe v. Ritz Carlton Hotel Co., LLC*, 666 F. App'x 180, 183 (3d Cir. 2016). Defendants Cayman expert addresses only the viability of Plaintiffs' causes of action, which is insufficient because key questions related to jurisdiction and statute of limitations remain unanswered.[103] Likewise, Defendants' other supporting declarations do not address the statute of limitations, acceptance of jurisdiction in the Caymans, or any Defendant's willingness to accept service in an action there, among other things necessary for a dismissal on *forum non conveniens* grounds.[104]

III. Adequacy of Plaintiffs' Causes of Action

[102] Perlman Dec. Ex. 55 at p. 14.
[103] *See* Motion, Ex. F.
[104] *See* Motion, Exs. B (Bolder Fund Services), C (GT Cayman), D (GT Ireland), E (GTIL).

A. Plaintiffs properly allege aiding and abetting.

A plaintiff alleging aiding and abetting must plead "(1) an underlying violation on the part of the primary wrongdoer, (2) knowledge of the underlying violation by the aider and abettor, and (3) the rendering of substantial assistance to the wrongdoer by the aider and abettor." *Gevaerts v. TD Bank, N.A.*, 56 F. Supp. 3d 1335, 1341 (S.D. Fla. 2014). GT argues that Rule 9(b) applies to Plaintiffs' aiding and abetting claim and challenges the sufficiency of Plaintiffs' allegations in support of the third element—substantial assistance.[105] (Motion at 32-33.)

As a threshold matter, Defendants overstate the applicability of Rule 9(b). Rule 9(b) applies only in cases where the substantial assistance by the defendant is premised on fraud. *See Perlman v. PNC Bank, N.A.*, No. 19-61390-CIV, 2020 WL 13390040, at *6-*7 (S.D. Fla. Mar. 6, 2020) (rejecting application of Rule 9(b)). Similarly, the heightened pleading standard does not apply to the knowledge element of Plaintiffs' claims because 9(b) provides that "knowledge, and other conditions of a person's mind may be alleged generally." *See also Gilbert & Caddy, P.A. v. JP Morgan Chase Bank, N.A.*, 15-CV-60653, 2015 WL 12862724, at *4 (S.D. Fla. Aug. 20, 2015).

Moreover, "it is the law of this Circuit that Rule 9(b)'s heightened pleading standard may be relaxed . . . where the facts of the alleged fraud are peculiarly within the Defendants' knowledge." *Noboa v. Castillo*, 21-23952-CIV, 2022 WL 2191687, at *5 (S.D. Fla. June 17, 2022); *see also MeterLogic, Inc. v. Copier Sols., Inc.*, 126 F. Supp. 2d 1346, 1360–61 (S.D. Fla. 2000). The relaxed Rule 9(b) standard also applies in the case of "prolonged, multi-act schemes," like the one alleged here. *See Fla. Emergency Physicians Kang & Assocs., M.D., Inc. v. United Healthcare of Fla., Inc.*, 526 F. Supp. 3d 1282, 1295 (S.D. Fla. 2021).

Accordingly, because the exact nature of Defendants' misconduct is known only by them and other participants in the multi-year scheme, the relaxed 9(b) standard applies and only to the

[105] Defendants state that, "[t]hese [a]rguments equally apply to the Bolder Defendants." (Motion at 3). But this is not enough to preserve the argument for the Bolder Defendants, and it is thus waived. *See In re W. Carribean Crew Members*, 07-22015-CIV, 2008 WL 11331917, at *1 (S.D. Fla. Oct. 1, 2008) ("The Court finds Boeing's single footnote included in its motion to dismiss [on an issue] insufficiently preserved this argument"); *Hamilton v. Southland Christian Sch., Inc.*, 680 F.3d 1316, 1319 (11th Cir. 2012) ("A passing reference to an issue in a brief is not enough, and the failure to make arguments and cite authorities in support of an issue waives it."). To be sure, "these arguments" refer to GT's arguments that Plaintiffs' claims should be dismissed under Fed. R. Civ. P. 12(b)(6).

extent their conduct constitutes fraud.[106] Plaintiffs have met the threshold standard by sufficiently pleading each Defendant's involvement in the underlying fraud and breach of fiduciary duty. (¶¶ 17, 91, 99, 134-35, 141. 159-60, 166.) Specifically, Plaintiffs makes clear the precise nature of the wrongful conduct: that Defendants substantially assisted TCA Management's underlying fraud and breach of fiduciary duties through Grant Thornton's audit services and Bolder Fund Services' administrator services from 2017 to 2019. *Id*. Plaintiffs allege how GT Ireland and GT Cayman both provided auditing services used by TCA Management to further the scheme.[107] (¶¶ 17, 42-69, 91.) Plaintiffs also allege how both Bolder entities performed fund administrator services in a manner that validated TCA Management's misleading statements. (¶¶ 18, 70-79, 99.) In other words, GT Ireland and GT Cayman worked in tandem, while the two Bolder entities did the same. To the extent Defendants seek a detailed account of which specific entity performed each specific act complained of and when, that is not required under Rule 9(b) because that level of detail is held exclusively by the Defendants. Accordingly, Plaintiffs allege aiding and abetting with the requisite particularity.

B. Plaintiffs state a claim for negligent misrepresentation.

Defendants argue that Plaintiffs' negligent misrepresentation counts should be dismissed because: (i) they are not pled with the specificity required by Rule 9; and (ii) Plaintiffs do not allege an intent to deceive. (Motion at 33-35.) The first argument may be discarded summarily. As noted above, Rule 9(b)'s relaxed standard applies here. Plaintiffs' complaint is replete with specific allegations. In particular, Plaintiffs detail the misrepresentations and omissions made in Grant Thornton's 2017 and 2018 audits (¶ 92); allege that Grant Thornton knew or should have known of the falsity of these misrepresentations, (¶¶ 57-58, 66, 122); makes clear that Grant Thornton knew its statements would reach current and prospective investors, thus intending to induce Plaintiffs to rely on their misrepresentations and omissions in investing in the Master Fund or maintain their investments (¶¶ 96, 104); and allege that Plaintiffs acted in justifiable reliance upon these misrepresentations, resulting in injury (¶¶ 96, 104). The same is true for the Bolder Defendants. Plaintiffs allege how they prepared for consumption and distribution various valuation reports that misrepresented TCA Management's NAVs, internal controls, and risk

[106] For these same reasons, this Court should examine Plaintiffs' negligent misrepresentation claim under a "relaxed" Rule 9(b) as well.

[107] As discussed below, GTIL's liability is based on agency, and this is clearly pled.

monitoring. (¶¶ 100, 146.) Defendants' argument is therefore belied by the pleadings.[108]

Next, Defendants argue that Florida law requires an "intent to deceive" for negligent misrepresentation claims. (Motion at 35.) There is no such requirement. Defendants rely on a misreading of *Gilchrist Timber Co. v. ITT Rayonier, Inc*., 696 So. 2d 334 (Fla. 1997). The Florida Supreme Court did not, as Defendants argue, find that an intent to deceive is necessary for negligent misrepresentation. Just the opposite. In *Gilchrist*, the Court distinguished such claims from fraudulent misrepresentation claims on the basis that, unlike fraudulent misrepresentation, negligent misrepresentation does not require an intent to deceive. *Id*. at 336-37. The Eleventh Circuit then confirmed that reasoning: "negligent representation, as distinguished from fraudulent representation, [is] '[w]hen there is no intent to deceive but only good faith coupled with negligence.'" *Gilchrist Timber Co. v. ITT Rayonier, Inc*., 127 F.3d 1390, 1395 (11th Cir. 1997) (quoting Restatement (Second) of Torts § 552 cmt. a). In fact, this Court recently rejected the same argument Defendants make here. *Atl. Corp. of Wilmington, Inc. v. TBG Tech Co., LLC*, the defendant similarly tried to argue that, under *Gilchrist*, negligent misrepresentation requires an intent to deceive. 21-24317-CIV, 2022 WL 18495866, at *9 (S.D. Fla. Mar. 2, 2022). Defendants' attempt to fabricate an element of a negligent misrepresentation claim should fare no better. Plaintiffs adequately allege negligent misrepresentation.

C. Plaintiffs allege actual and apparent agency.

Defendants' argument regarding actual and apparent agency fails at this stage in the pleadings. Indeed, as discussed above in the context of this Court's exercise of personal jurisdiction over GTIL, Plaintiffs allege that GTIL "exercise[d] control over GT Ireland and GT Cayman in their management, marketing, and provision of services under the 'Grant Thornton' name." (¶¶ 3, 43.) Plaintiffs allege that this control included control over the language in the

[108] Defendants also assert that because Fed. R. Civ. P. 10(b) states that, "each claim founded on a separate transaction or occurrence . . . must be stated in a separate count or defense," Plaintiffs' purported "comingling" of the GT entities is grounds for dismissal. But Defendants omit a critical clause of that Rule: each claim must be stated in a separate count only, "if doing so would promote clarity." Because of the agency relationship between the GT entities and because Plaintiffs have yet to be afforded discovery to precisely know which of these entities did what and when, and the extent and nature of GTIL's control over GT Cayman and GT Ireland, Rule 10(b) is not instructive and is certainly not grounds for dismissal. *Piccard v. Deedy,* 1:21-CV-558-MLB, 2021 WL 4846132, at *5 (N.D. Ga. Oct. 15, 2021) ("[T]he proper remedy for a violation of Rule 10(b) is not a Rule 12(b)(6) motion to dismiss, but instead is a motion for more definite statement under Rule 12(e).").

engagement letters, as well as permitting or requiring the use the "Grant Thornton" brand letterhead on the engagement letters and audits and the "Grant Thornton" signatures[109] on the audits. (¶¶ 41-43.) That is sufficient to allege that GTIL created the appearance of agency. *See, e.g., Borg-Warner Leasing v. Doyle Elec. Co*., 733 F.2d 833, 836 (11th Cir. 1984 ("[A] trier of fact could reasonably conclude Borg-Warner gave that impression by appointing Myers as the bearer of its letterhead documents and as the exclusive negotiator of its demands."); *Marchisio v. Carrington Mortgage Servs., LLC*, 919 F.3d 1288, 1312 (11th Cir. 2019) (concluding a jury could reasonably find that the purported agent acted with apparent authority where "Defendant dictated, or at least allowed, Southwest to issue those letters, not just under Defendant's letterhead, but as signed by 'Fire Insurance Processing Center, Carrington Mortgage Services, L.L.C.'"); *Semoran Pines Condo. Ass'n v. Arab Termite & Pest Control of Fla., Inc*., 543 So. 2d 417, 418 (Fla. Dist. Ct. App. 1989) (reversing summary judgment, finding evidence that there was "correspondence on the letterhead of Arab of Florida, signed by its agents, [] created a question of fact as to whether Funk, even if he had no actual authority, had the apparent authority to bind Arab of Florida").

"Under Florida case law, a question of agency is reserved to the trier of fact." *Id*.; *see also Marchisio*, 919 F.3d at 1312. Defendants rely heavily on *Mobil Oil Corp. v. Bransford*, 648 So. 2d 119 (Fla. 1995), which is a franchise case that was decided at the summary judgment stage. There, the Court explained that the franchise context is unique because "[i]n today's world, it is well understood that the mere use of ***franchise*** logos and related advertisements does not necessarily indicate that the franchisor has actual or apparent control over any substantial aspect of the franchisee's business or employment decisions." *Id*. at 120 (emphasis added). For that reason, the Court found that "the franchise context requires an enhanced showing of agency." *Id.* Unlike *Bransford*, this case is at the pleading stage. The heightened standard in *Bransford* also doesn't apply because this case does not involve a franchise or the mere use of logos. It involves representations that GT Cayman and GT Ireland were "member firms representing [GTIL]" for

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[109] Defendants argue that there "is no indication that either signature is associated with GTIL." (Motion at 38.) However, Plaintiffs allege that the audits were signed on behalf of the "Grant Thornton" brand as a result of the management and marketing arrangement with GTIL and the control exerted by GTIL. (¶¶ 3, 42-44).

the audit services, as well as GTIL's authorization and control over the use of the "Grant Thornton" brand letterhead, and "Grant Thornton" signatures. (¶¶ 41-43.)

Additionally, Defendants argue that Plaintiffs have not alleged that they relied on the apparent agency relationship with GTIL. To the contrary, Plaintiffs allege that GTIL lent the "Grant Thornton" brand name and credibility to TCA Management, and Plaintiffs relied on the purported "independent" audits provided from that well-known and seemingly credible brand. (¶¶ 91, 93, 96.) In sum, Plaintiffs have sufficiently alleged that GT Cayman and GT Ireland were acting as the apparent agents of GTIL and the motion to dismiss on this basis should be denied.

Conclusion

Plaintiffs respectfully request that the Court deny Defendants' motion to dismiss.

Request for Hearing

Pursuant to Local Rule 7.1(b)(2), Plaintiffs respectfully request oral argument on the pending motion to dismiss. Plaintiffs believe that oral argument will assist the Court and parties given the nature of the motion and scope of issues presented. Plaintiffs believe 20 minutes of argument per side would suffice.

Date: May 3, 2023

Respectfully submitted,

/s/ Jeffrey C. Schneider

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the forgoing document was served on May 3, 2023 via the Court's CM/ECF filing system to all recipients registered to receive notices of electronic filings generated by CM/ECF for this case.

By: */s/ Jeffrey C. Schneider*
Jeffrey C. Schneider, P.A.

EXHIBIT “1”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 21-21905-CIV-ALTONAGA

IN THE MATTER OF:

TCA GLOBAL CREDIT FUND LTD.,

Debtor in a Foreign Proceeding.
_____/

AGREED ORDER GRANTING RECOGNITION OF FOREIGN NONMAIN PROCEEDING AND CERTAIN RELATED RELIEF

THIS CAUSE came before the Court upon the Stipulated Joint Motion for (I) Withdrawal of Reference of Chapter 15 Case, and (II) Entry of Agreed Order Granting Recognition of Foreign Nonmain Proceeding, and Incorporated Memorandum of Law [ECF No. 1] (the "Stipulated Motion") filed by Jonathan E. Perlman, the court-appointed receiver (the "Receiver") for TCA Global Credit Fund Ltd. (the "Debtor") in the civil action pending before this Court as Case No. 20-CIV-21964 (the "Receivership Case"),[1] in which the Debtor is named as a Relief Defendant, and supported by Eleanor Fisher and Tammy Fu, the duly authorized and appointed joint official liquidators (in such capacity, the "JOLs")[2] of the Debtor in the Chapter 15 case pending in the United States Bankruptcy Court for the Southern District of Florida (the "Bankruptcy Court") as

[1] The term "Receivership Case" applies solely to matters involving the receivership over the Receivership Entities (as defined herein) and does not apply to the claims asserted by the Securities and Exchange Commission or any relief sought by the Securities and Exchange Commission against any of the Defendants or Relief Defendants therein. Notwithstanding, the Securities and Exchange Commission has the right to appear and be heard in the Chapter 15 Case.

[2] In agreeing to the Stipulated Motion, the JOLs expressly have reserved their rights under section 1510 of the Bankruptcy Code, 11 U.S.C. § 1510, and appear specially through counsel for the sole purpose of obtaining the relief sought in this Stipulated Motion; provided that upon entry of this Order and the separate Intervention Order referenced and defined in paragraph 14 of this Order, the provisions of paragraph 10 of this Order shall apply.

Case No. 21-11513-RAM (the "Chapter 15 Case").

As set forth in the Stipulated Motion, the Receiver and JOLs stipulate and agree to the entry of a series of Orders (a) amending, upon proper motion, that certain Order Granting Plaintiff Securities and Exchange Commission's Unopposed Expedited Motion for Appointment of Receiver in this case [ECF No. 5] (as amended, expanded or re-issued, the "Receivership Order") in connection with the Chapter 15 Case (the "Amendment Order"), (b) withdrawing the reference of the Chapter 15 Case to this Court (a "Withdrawal Order"); (c) granting recognition as set forth herein under Chapter 15 to the winding up proceeding (the "Winding Up Proceeding") pending before the Grand Court of the Cayman Islands pursuant to the Cayman Islands Companies Act (2020 Revision) (the "Cayman Companies Act") of the laws of the Cayman Islands ("Cayman Islands") as a foreign nonmain proceeding with respect to the Debtor pursuant to section 1517(b)(2) of title 11 of the United States Code (the "Bankruptcy Code"); (d) recognizing the JOLs as the "foreign representatives," as defined in section 101(24) of the Bankruptcy Code, of the Debtor with respect to the Winding Up Proceeding; (e) granting limited relief to the JOLs with respect to the recognition of the Winding Up Proceeding as a foreign nonmain proceeding; (f) upon recognition and motion, granting the JOLs leave to intervene and appear and be heard in the Receivership Case pursuant to Fed. R. Civ. P. 24(b); and granting such other and further relief as the Court deems just and proper. Having entered the Withdrawal Order as requested in the Stipulated Motion, the Court proceeds now to address the recognition and the limited relief sought in the Chapter 15 Case.

The Chapter 15 Case comes before the Court upon the form of a voluntary petition [Case No. 21-11513-RAM, ECF No. 1] and the Verified Petition for Recognition of Foreign Proceeding and Motion for Order Granting Related Relief Pursuant to 11 U.S.C. §§ 1515, 1517, and 1520

[Case No. 21-11513-RAM, ECF No. 7] (collectively, the "Petition") filed by the JOLs in the Bankruptcy Court, seeking recognition pursuant to section 1517(b) of the Bankruptcy Code. It appearing that the Court has jurisdiction to consider the Petition pursuant to sections 157(d) and 1334 of title 28 of the United States Code; and the Court having reviewed the Petition; and appropriate and timely notice of the filing of the Petition having been given; and no other or further notice being necessary or required; and the Court having determined that the Petition, the Stipulated Motion and all other pleadings and papers submitted to the Court establish just cause to grant the relief ordered herein in light of the Receivership Order as will be amended by the Amendment Order, and after notice and due deliberation therefor;

THE COURT HEREBY FINDS AND DETERMINES THAT:

A. The Court has jurisdiction to consider this matter pursuant to sections 157(d) and 1334 of title 28 of the United States Code. Venue for this proceeding is proper before the Court pursuant to section 1410 of title 28 of the United States Code.

B. On February 16, 2021, the JOLs commenced the Chapter 15 Case in the Bankruptcy Court pursuant to and in accordance with sections 1504 and 1515 of the Bankruptcy Code. Upon proper motion, the Court will amend the Receivership Order related to the filing of the Chapter 15 Case ("Amendment Order"). Pursuant to the Withdrawal Order, the Court properly withdrew the reference of the Chapter 15 Case.

C. The JOLs are the duly appointed "foreign representatives" of the Debtor within the meaning of section 101(24) of the Bankruptcy Code.

D. In filing the Petition, the JOLs have satisfied the requirements of section 1515 of the Bankruptcy Code.

E. The Winding Up Proceeding is a "foreign proceeding" pursuant to section

101(23) of the Bankruptcy Code.

F. As agreed by the JOLs and the Receiver in the Stipulated Motion and set forth below, the Winding Up Proceeding will be recognized by the Court as a foreign nonmain proceeding pursuant to section 1517(b)(2) of the Bankruptcy Code subject to the limitations contained in this Order.

G. Subject to the limitations contained in this Order, recognition of the Winding Up Proceeding as a foreign nonmain proceeding is appropriate to effectuate the purposes and objectives of Chapter 15, including cooperation between the courts of the United States and the courts and other competent authorities of foreign countries; advancing the fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, investors and other interested entities, including the Debtor; and protecting and maximizing the value of the Debtor's assets. *See* 11 U.S.C. § 1501(a)(1), (3), (4). The limited relief granted hereby is authorized pursuant to sections 1515, 1517, and 1521 of the Bankruptcy Code.

H. All creditors, investors and other parties in interest, including the Debtor, are sufficiently protected in the grant of the limited relief ordered hereby, in compliance with section 1522(a) of the Bankruptcy Code, which relief is limited so as not to be inconsistent with the rights, powers and duties granted to the Receiver with respect to assets and liabilities of the Debtor within the territorial United States under the Receivership Order.

I. The relief granted here is specifically tailored to (i) foster cooperation between the Receiver and the JOLs in respect of the Debtor; (ii) avoid any interference with the rights, powers and duties granted to the Receiver under the Receivership Order with respect to assets and liabilities of the Debtor within the territorial jurisdiction of the United States; (iii) avoid duplication of effort between the Receiver and the JOLs; (iv) minimize the unnecessary expenditure of the

Receivership's resources; (v) provide a central forum in this Court for the resolution of issues between and among the JOLs, the Receiver and other parties in interest relating to the administration of the Debtor's assets and liabilities within the territorial jurisdiction of the United States; and (vi) provide a forum for the JOLs to be heard on any matters that have the requisite effect on the Debtor in the Chapter 15 Case and/or the Receivership Case, as appropriate, before this Court as more fully set forth in paragraph 8 below on matters other than Non-Debtor Matters (as defined below). Nothing in this Order is intended to impair or abridge the ability of the JOLs or the Receiver to appear and seek relief in courts outside the United States in furtherance of the respective rights, duties and responsibilities imposed upon the JOLs by the laws and regulations of the Cayman Islands; or upon the Receiver in furtherance of the rights, duties and responsibilities imposed upon him by orders of the Court, it being agreed that the JOLs and the Receiver reserve any and all rights that they have in connection therewith.

For the foregoing reasons, and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Petition is **GRANTED** as set forth and limited herein.

2. The Winding Up Proceeding is granted recognition as a foreign nonmain proceeding pursuant to section 1517(b)(2) of the Bankruptcy Code with respect to the Debtor, and the effect of such recognition and the discretionary relief available upon such recognition under section 1521 of the Bankruptcy Code are limited as set forth herein.

3. The JOLs are the duly appointed foreign representatives of the Debtor within the meaning of section 101(24) of the Bankruptcy Code and are authorized to act on behalf of the Debtor within the territorial jurisdiction of the United States solely in accordance with the powers

and rights granted and as set forth in this Order and such other and further orders as may be entered by the Court consistent herewith; *provided however*, that in no event shall such powers and rights within the jurisdiction of the United States be inconsistent with or duplicative of any of the rights, powers and duties of the Receiver under the Receivership Order.

4. The JOLs' right to sue and be sued in a court in the United States, whether by virtue of their "right of direct access" to courts in the United States pursuant to section 1509(b)(1) or otherwise, shall be limited to proceedings before this Court; *provided however*, that in seeking relief from the Court, the JOLs shall be required, in addition to the other applicable requirements of this Order, to demonstrate to the Court, subject to the objection of the Receiver, the Securities and Exchange Commission, or other party in interest, why such relief is not inconsistent with or duplicative of any of the rights, powers and duties granted to the Receiver under the Receivership Order with respect to assets and liabilities of any Receivership Entity within the territorial jurisdiction of the United States. Consistent with the foregoing provision, absent consent of the Receiver or further order of the Court after the required meet and confer as set forth in paragraph 18 below, the JOLs shall not bring any action in any court in the United States in respect of a claim or cause of action owned or held by Debtor against any person or entity.

5. Pursuant to section 1521(a)(4) of the Bankruptcy Code, the JOLs may seek leave of the Court, subject to the objection of the Receiver and the Securities and Exchange Commission, to examine witnesses, take evidence, and seek the delivery of information relating to the Debtor's assets, affairs, rights, obligations, or liabilities, including such information as may be in the possession and custody of the Receiver; *provided* that such rights (i) do not interfere with or duplicate the efforts of the Receiver, and (ii) protect the assets of the Debtor or the interests of all stakeholders to the extent not already being protected by the actions of the Receiver.

Notwithstanding anything herein or in Chapter 15 of the Bankruptcy Code to the contrary, no relief shall be granted to the JOLs under any subsection of Section 1521(a) if that relief is inconsistent with or duplicative of any of the rights, powers and duties of the Receiver under the Receivership Order.

6. For avoidance of doubt, and notwithstanding the foregoing paragraph 5, the JOLs shall have a right to be heard and seek relief in the Receivership Case regarding access to or control over (i) some or all of the funds on deposit in the Debtor's Receivership Account (the "Guernsey Funds") that were secured by the Receiver pursuant to the Receivership Order from a bank account titled in the name of the Debtor previously located at Butterfield Bank in Guernsey, and/or (ii) any other asset of the Debtor that was located outside the territorial jurisdiction of the United States as of the date of the Receivership Order and repatriated or domesticated back to the United States by the Receiver thereafter (the "Other Foreign Assets"). If the JOLs may seek such relief, the Receiver and the Securities and Exchange Commission shall have the right to oppose any such relief.

7. Notwithstanding any provision of Chapter 15 of the Bankruptcy Code, including section 1511, the JOLs shall not commence a voluntary or involuntary case with respect to the Debtor or any Receivership Entity under Chapter 7 or 11 of the Bankruptcy Code.

8. Nothing contained in this Order shall operate to preclude or impair the right of the JOLs to appear and be heard in this Chapter 15 Case or, as appropriate, the Receivership Case upon entry of the Intervention Order (as defined below), in respect of (i) any liquidation plan proposed by the Receiver for the Receivership Entities, including any proposed distribution scheme contained therein; and (ii) any issue that has a direct material impact on the Debtor, its assets or liabilities, or the respective rights and obligations of the JOLs and the Receiver in

connection therewith; *provided however*, that notwithstanding anything herein to the contrary, the JOLs shall not have a right to appear and be heard in respect of any issue relating to any other Receivership Entity or the assets or liabilities of any such other Receivership Entity unless that issue has a substantial and material adverse impact on the Debtor as outlined below. The JOLs shall have the burden of establishing (on a clear and convincing basis) any such substantial and material adverse impact on the Debtor, and no issue shall have a substantial and material adverse impact if the amount at issue in connection therewith is less than $5,000,000, as reflected on the books and records of the applicable Receivership Entity as of the date of the Receivership Order. If and to the extent the Receiver asserts that such amount at issue is less than $5,000,000, then the Receiver shall disclose such information to the JOLs during the applicable "meet and confer" required in paragraph 18 below.

9. In the event the JOLs meet their burden of establishing that any such issue has a substantial and material adverse impact on the Debtor, then in advancing any objection to the relief being sought by the Receiver in connection therewith, the JOLs will also be required to show that such relief is inconsistent with the business judgment rule that governs the acts and decisions of a receiver under the laws of the United States (of which rule the JOLs acknowledge the Receiver has the benefit); and for any proposed settlement or compromise of a claim or cause of action, that such settlement or compromise is not fair, reasonable and equitable. In no event shall the JOLs have a right to appear and be heard in respect of any of the "Non-Debtor Matters," which for purposes of this Order shall mean (i) any activities undertaken in the ordinary course of business, or other activities for which the Receiver is not required to seek approval from the Court, even if the Receiver elects to seek Court approval of such activities; (ii) any actions of the Receiver or matters that occurred in the Receivership prior to the date hereof, other than with respect to the

Guernsey Funds and the Other Foreign Assets as set forth in paragraph 6 above; (iii) the retention of professionals, staff, vendors or employees by the Receiver, or any compensation arrangements for such persons or entities; (iv) motions for approval of the payment of any fees or expenses by the Receiver for the Receiver or his professionals; and (v) motions of the Receiver for approval to assert claims or causes of action of the Debtor within the territorial jurisdiction of the United States, or in respect of claims or causes of action of any other Receivership Entity wherever located.

10. The JOLs and/or each of their respective successors, agents, representatives, advisors, and counsel shall be entitled to the protections contained in sections 306 and 1510 of the Bankruptcy Code; *provided, however*, that upon entry of this Order and the Intervention Order (as defined below), the JOLs and/or each of their respective successors, agents, representatives, advisors, and counsel shall be subject to the jurisdiction of the Court in connection with any matters involving the Debtor within the territorial jurisdiction of the United States or otherwise covered by this Order, including in respect of any matter for which the JOLs have a right to be heard and/or seek relief from the Court.

11. Nothing in this Order shall enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, to the extent set forth in sections 362(b) and 1521(d) of the Bankruptcy Code.

12. The grant of foreign nonmain recognition to the JOLs and the Winding Up Proceeding as limited herein is the product of a stipulation reached between the Receiver and the JOLs as set forth in the Stipulated Motion. The parties have agreed to the provisions of the Stipulated Motion, and to the entry of this Agreed Order, in a mutual, cooperative effort to preserve and enhance the Debtor's receivership estate, and to avoid wasteful and expensive litigation over disputed issues, including (i) whether the Debtor's center of main interests, or COMI, is located in

the Cayman Islands or the United States; (ii) whether the Debtor has an establishment in the Cayman Islands; and (iii) whether the recognition of the Winding Up Proceeding as a foreign nonmain proceeding would otherwise provide the JOLs with any rights in respect of the Debtor within the territorial jurisdiction of the United States other than as specifically provided for herein. As a result, nothing contained in the Stipulated Motion, nor in the grant of foreign nonmain recognition as provided in this Order (i) shall constitute a finding or adjudication on the issues of "COMI" or "establishment" in this case or any other case, including in any other court in the United States or in connection with any ancillary case that may be commenced by the JOLs and/or Receiver in any court outside the United States; (ii) shall in any way diminish or impair the legitimacy or legal effect of the JOLs' appointment by the Grand Court of the Cayman Islands; (iii) shall in any way diminish, impair or give greater weight to any of the arguments to be made by the JOLs or the Receiver in respect of the Court's consideration of any matter brought before the Court, whether those arguments are based on the laws and regulations of the United States and/or the Cayman Islands or principles of international comity; or (iv) shall in any way enlarge or improve the entitlement or argument for relief of either the JOLs or the Receiver in respect of the Court's consideration of any matter based on the grant of foreign nonmain recognition rather than foreign main recognition, including by reference to principles of international comity or cooperation that might otherwise have been applicable if such "COMI" or "establishment" findings had been made and this limited stipulated Order not entered.

13. Notwithstanding any provision of applicable law to the contrary: (a) this Order shall be effective immediately and enforceable upon entry; (b) the JOLs are not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order; and (c) the JOLs are authorized and empowered, and may, in their discretion and without further delay, take

any action and perform any act necessary to implement and effectuate the terms of this Order consistent with the terms hereof.

14. Upon motion, the Court will enter a separate order authorizing the JOLs to intervene and appear and be heard in the Receivership Case pursuant to Rule 24(b) of the Federal Rules of Civil Procedure (the "Intervention Order") consistent with the terms hereof.

15. Unless specifically set forth in this Order or further order of the Court consistent herewith, the JOLs shall not have any other powers or rights in respect of the Debtor within the territorial jurisdiction of the United States, under Chapter 15 or otherwise.

16. The Court shall retain jurisdiction with respect to the enforcement, amendment, or modification of this Order and any requests for additional relief.

17. Except as set forth in or authorized by this Order, nothing contained herein shall amend or modify the Receivership Order or the rights, powers and/or duties of the Receiver thereunder, including in respect of the Debtor and its property located within the territorial jurisdiction of the United States.

18. In order to avoid any actions that are inconsistent with or duplicative of any of the rights, powers, and duties of the Receiver under the Receivership Order with respect to assets and liabilities of the Debtor located within the territorial jurisdiction of the United States, counsel for the parties shall meet and confer in accordance with Local Rule 7.1(a)(3) of this Court prior to seeking any relief in the Receivership Case or the Chapter 15 Case consistent with the terms hereof, and each such counsel shall respond promptly to any such request to meet and confer. Unless otherwise agreed by the Receiver and the JOLs or ordered by the Court, the deadlines to respond in opposition to any relief sought by the JOLs consistent herewith, or to any relief sought by the Receiver on which the JOLs have a right to be heard consistent herewith, shall be reduced to five

(5) business days for a response and three (3) business days for a reply, if any. In addition, the Court *sua sponte* may deny any requested relief by either the JOLs or the Receiver that fails to include a certification as required under Local Rule 7.1(a)(3), without prejudice to the right to seek similar or related relief upon satisfaction of the requirements of that Rule.

DONE AND ORDERED in Miami, Florida, this 4th day of June, 2021.

CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record