

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

TODD BENJAMIN, INTERNATIONAL, LTD.
and TODD BENJAMIN, individually and on
behalf of all others similarly situated,

Case No. 1:20-cv-21808-RNS

Plaintiffs,

vs.

GRANT THORNTON CAYMAN ISLANDS
and GRANT THORNTON IRELAND,

Defendants.

**DEFENDANT GRANT THORNTON IRELAND'S ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S SECOND AMENDED COMPLAINT**

Defendant, Grant Thornton Ireland (“GT Ireland”), by and through its undersigned counsel for its Answer and Affirmative Defenses to Plaintiff’s Second Amended Complaint, states as follows:

INTRODUCTION

As set forth in its responses to specific allegations in the Second Amended Complaint, GT Ireland admits it provided certain auditing services to TCA Global Credit Master Fund, LP (or the “Master Fund”), TCA Global Credit Fund, LP (or the “Partnership”), and TCA Global Credit Fund, Ltd. (or the “Fund”) (together the “Cayman Funds”) for the year ended 31 December 2017, pursuant to the Engagement Letter entered between the Cayman Funds, GT Ireland and GT Cayman. Furthermore, GT Ireland admits it provided certain auditing services to TCA Global Credit Master Fund, LP, TCA Global Credit Fund, LP, and TCA Global Credit Fund, Ltd. for the year ended 31 December 2018, pursuant to the Engagement Letter entered between the Cayman Funds, GT Ireland and GT Cayman.

GT Ireland admits Plaintiffs purport to assert claims against it for negligent misrepresentation, aiding and abetting fraud, and aiding and abetting breach of fiduciary duty. GT Ireland denies that Plaintiffs are entitled to any relief against GT Ireland on any of these claims. GT Ireland denies the remaining allegations in Plaintiffs' Introduction section of the Second Amended Complaint.

THE PARTIES

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

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

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

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

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

6. GT Ireland admits it is organized under the laws of Ireland and that its principal place of business is in Ireland. GT Ireland admits it is a member firm of GTIL. GT Ireland is without knowledge or information sufficient to form a belief as to what Plaintiffs mean by "provid[ing] services under the 'Grant Thornton' brand" and, therefore, denies the remaining allegations in this paragraph.

RELEVANT NON-PARTIES

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

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

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

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

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

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

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

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

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

JURISDICTION AND VENUE

16. This paragraph includes legal conclusions to which no response is required. To the extent a response is required, GT Ireland admits GT Ireland is not a citizen of the United States. GT Ireland denies that subject matter jurisdiction lies in this Court. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, therefore, denies them.

17. This paragraph includes legal conclusions to which no response is required. To the extent a response is required, GT Ireland denies the allegations in this paragraph and in each of the sub-paragraphs 17.a – 17.c.

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

SUMMARY

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

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

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

22. GT Ireland admits Plaintiffs have attached as Exhibit 1 a document dated December 14, 2018, which document speaks for itself. GT Ireland denies the allegations in this paragraph to the extent that they are inconsistent with the terms of the document.

23. GT Ireland admits Plaintiffs have attached as Exhibit 1 a document dated December 14, 2018, which document speaks for itself. GT Ireland denies the allegations in this paragraph to the extent that they are inconsistent with the terms of the document.

24. GT Ireland admits Plaintiffs have attached as Exhibit 1 a document dated December 14, 2018, which document speaks for itself. GT Ireland further admits that the image cut and paste into paragraph 24 appears on page 2 of the document Plaintiffs have attached as Exhibit 1. GT Ireland denies the remaining allegations in this paragraph to the extent that they are inconsistent with the terms of the document.

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

26. GT Ireland admits Plaintiffs have attached as Exhibit 1 a document dated December 14, 2018, which document speaks for itself. GT Ireland denies the allegations in this paragraph to the extent that they are inconsistent with the terms of the document.

27. GT Ireland admits Plaintiffs have attached as Exhibit 2 a document purporting to be a December 2019 Newsletter, which document speaks for itself. GT Ireland denies the allegations in this paragraph to the extent that they are inconsistent with the terms of the document.

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

FACTUAL ALLEGATIONS

I. Plaintiffs' Investments

A. Todd Benjamin International, Ltd. and Todd Benjamin

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

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

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

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

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

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

B. Zbynek Dvorak

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

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

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

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

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

C. Fawzi Bawab

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

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

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

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

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

II. The Whistleblowers

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

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

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

III. TCA's Questionable Financial Accounting Practices

A. Grant Thornton

48. GT Ireland admits it provided certain auditing services to TCA Global Credit Master Fund, LP (or the "Master Fund"), TCA Global Credit Fund, LP (or the "Partnership"), and TCA Global Credit Fund, Ltd. (or the "Fund") (together the "Cayman Funds") for the year ended 31 December 2017, pursuant to the Engagement Letter entered between the Cayman Funds, GT Ireland and GT Cayman. GT Ireland admits it provided certain auditing services to TCA Global Credit Master Fund, LP, TCA Global Credit Fund, LP, and TCA Global Credit Fund, Ltd. for the year ended 31 December 2018, pursuant to the Engagement Letter entered between the Cayman Funds, GT Ireland and GT Cayman. GT Ireland denies that it served as an independent auditor to evaluate TCA Management's statements because it was retained to audit the statement of financial position of Cayman Funds. Further, GT Ireland denies that it undertook the duty to evaluate TCA Management's accounting policies and TCA Management's reasonableness of management's accounting estimates. GT Ireland denies the remaining allegations in this paragraph.

49. GT Ireland admits that it executed the Engagement Letters. GT Ireland admits that GT Cayman also executed the Engagement Letters. Further, GT Ireland admits that when it

provided the auditing services pursuant to the Engagement Letters it was a member firm of GTIL, which is a separate legal entity from GT Ireland. GT Ireland denies that it provided the auditing services as representatives of GTIL using the “Grant Thornton” brand. GT Ireland denies the remaining allegations in this paragraph.

50. The Engagement Letters speak for themselves. GT Ireland denies the allegations in this paragraph to the extent they are inconsistent with the terms of the Engagement Letters.

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

52. GT Ireland denies that it provided any auditing services to TCA Management. GT Ireland and GT Cayman, pursuant to the Engagement Letters, provided certain auditing services to the Cayman Funds. GT Ireland denies the remaining allegations in this paragraph

53. GT Ireland denies the allegations in this paragraph.

54. GT Ireland denies that it provided any auditing services to TCA Management. GT Ireland and GT Cayman, pursuant to the Engagement Letters, provided certain auditing services to the Cayman Funds. GT Ireland denies the remaining allegations in this paragraph.

55. GT Ireland denies the allegations in this paragraph.

56. The draft audit report speaks for itself. GT Ireland denies the allegations in this paragraph to the extent they are inconsistent with the terms of the draft audit report.

57. GT Ireland denies the allegations in this paragraph.

58. GT Ireland denies the allegations in this paragraph.

59. GT Ireland admits that it provided a qualified audit report for the year of 2017 for the Master Fund, however, the qualified audit report noted “[w]e were unable to verify the revenue recognized by the Master Fund in relation to investment banking income has met the revenue recognition criteria of IFRS 15.” GT Ireland denies the remaining allegations in this paragraph.

60. GT Ireland denies the allegations in this paragraph.

61. GT Ireland denies the allegations in this paragraph.

62. GT Ireland denies the allegations in this paragraph.

63. GT Ireland denies the allegations in this paragraph.

64. GT Ireland denies the allegations in this paragraph.

65. GT Ireland admits that it contacted various borrowers of the Master Fund as part of the audit procedures and that the responses received speak for themselves. GT Ireland denies the remaining allegations in this paragraph.

66. GT Ireland denies the allegations in this paragraph.

67. GT Ireland denies the allegations in this paragraph.

68. GT Ireland denies the allegations in this paragraph.

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

70. GT Ireland admits that an independent valuation of the SPVs was requested as part of analyzing whether the SPVs were valued in accordance with the IFRS. GT Ireland and GT

Cayman admit they provided a qualified audit report as outlined in the ‘Basis for qualified opinion’ section of the 2018 audit report. GT Ireland denies the remaining allegations in this paragraph.

71. GT Ireland denies the allegations in this paragraph.

72. GT Ireland admits a qualified audit opinion was issued for the year ending 31 December 2018, which qualified audit opinion speaks for itself. GT Ireland denies the remaining allegations in this paragraph.

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

74. GT Ireland denies the allegations in this paragraph.

75. The qualified opinions speak for themselves and GT Ireland denies the allegations in this paragraph as misstating the qualified opinions.

76. GT Ireland denies the allegations in this paragraph.

77. GT Ireland denies the allegations in this paragraph.

V. Liquidation

78. GT Ireland admits Plaintiffs have attached as Exhibit 3 a letter dated January 21, 2020, which letter speaks for itself. GT Ireland denies the allegations in this paragraph to the extent that they are inconsistent with the terms of the document.

79. GT Ireland admits Plaintiffs have attached as Exhibit 3 a letter dated January 21, 2020, which letter speaks for itself. GT Ireland denies the allegations in this paragraph to the extent that they are inconsistent with the terms of the document.

80. GT Ireland admits Plaintiffs have attached as Exhibit 3 a letter dated January 21, 2020, which letter speaks for itself. GT Ireland denies the allegations in this paragraph to the extent that they are inconsistent with the terms of the document.

81. GT Ireland admits Plaintiffs have attached as Exhibit 3 a letter dated January 21, 2020, which letter speaks for itself. GT Ireland denies the allegations in this paragraph to the extent that they are inconsistent with the terms of the document.

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

VI. The Securities and Exchange Commission's Enforcement Action

83. GT Ireland admits that U.S. Securities and Exchange Commission ("SEC") brought the action *SEC v. TCA Fund Mgmt. Grp. Corp. et al.*, No. 1:20-cv-21964 (S.D. Fla.) ("SEC Action"). The complaint in the SEC Action speaks for itself. GT Ireland denies the allegations in this paragraph to the extent that they are inconsistent with the terms of the complaint.

84. The filings in the SEC Action speak for themselves. GT Ireland denies the allegations in this paragraph to the extent that they are inconsistent with the terms of the filings.

85. GT Ireland denies the order granting the SEC's expedited motion for appointment of receiver was entered on May 11, 2021. The order [ECF 5], was entered in the SEC Action on May 11, 2020 and speaks for itself.

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

86. GT Ireland denies that it provided false information. GT is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph and each sub-paragraph 86.a – 86.c and, therefore, denies same.

87. GT Ireland denies that it provided false information. GT Ireland is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph and, therefore, denies same.

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

88. GT Ireland denies the allegations in this paragraph and each sub-paragraph 88.a – 88.k.

IX. Grant Thornton Substantially Assisted TCA Management’s Fraud and Breaches of its Fiduciary Duties.

89. GT Ireland denies the allegations in this paragraph and each sub-paragraph 89.a – 89.f.

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

90. GT Ireland denies the allegations in this paragraph and each sub-paragraph 89.a – 89.f.

91. GT Ireland denies the allegations in this paragraph.

92. GT Ireland denies the allegations in this paragraph.

93. GT Ireland denies the allegations in this paragraph.

94. GT Ireland denies the allegations in this paragraph.

95. GT Ireland denies the allegations in this paragraph.

CLASS ACTION ALLEGATIONS

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

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

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

99. GT Ireland is without knowledge as to the allegations in this paragraph regarding the alleged number of beneficial owners and, therefore, denies same. The SEC disclosures referenced in this paragraph speak for themselves. GT Ireland denies the remaining allegations in this paragraph.

100. GT Ireland denies the allegations in this paragraph.

101. GT Ireland denies the allegations in this paragraph.

102. GT Ireland denies the allegations in this paragraph and in each sub-paragraph 102.a – 102.f.

103. GT Ireland denies the allegations in this paragraph.

EQUITABLE TOLLING AND DISCOVERY OF THE WRONGDOING

104. GT Ireland denies the allegations in this paragraph.

105. GT Ireland denies the allegations in this paragraph.

106. GT Ireland denies the allegations in this paragraph.

107. GT Ireland denies the allegations in this paragraph.

108. GT Ireland denies the allegations in this paragraph.

CAUSES OF ACTION

COUNT I

Negligent Misrepresentation

109. GT Ireland realleges and incorporates by reference its responses to paragraphs 1 through 108 as and for its response to this paragraph.

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

111. GT Ireland denies the allegations in this paragraph.

112. GT Ireland denies the allegations in this paragraph.

113. GT Ireland denies the allegations in this paragraph.

114. GT Ireland denies the allegations in this paragraph.

115. GT Ireland denies the allegations in this paragraph.

COUNT II
Aiding and Abetting Breach of Fiduciary Duty

116. GT Ireland realleges and incorporates by reference its responses to paragraphs 1 through 108 as and for its response to this paragraph.

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

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

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

120. GT Ireland denies the allegations in this paragraph.

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

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

123. GT Ireland denies the allegations in this paragraph.

124. GT Ireland denies the allegations in this paragraph.

125. GT Ireland denies the allegations in this paragraph.

126. GT Ireland denies the allegations in this paragraph.

127. GT Ireland denies the allegations in this paragraph.

COUNT III
Aiding and Abetting Fraud

128. GT Ireland realleges and incorporates by reference its responses to paragraphs 1 through 108 as and for its response to this paragraph.

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

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

131. GT Ireland denies the allegations in this paragraph.

132. GT Ireland denies the allegations in this paragraph.

133. GT Ireland denies the allegations in this paragraph.

134. GT Ireland denies the allegations in this paragraph.

135. GT Ireland denies the allegations in this paragraph.

PRAYER FOR RELIEF

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

AFFIRMATIVE DEFENSES

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

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

While GT Ireland denies any liability to Plaintiffs, GT Ireland affirmatively states that, if liability is determined, then Plaintiffs' damages are subject to apportionment by the jury of the total fault of all non-parties responsible in whole or in part, for the damages in question, pursuant to *Fabre v. Marin*, and Florida Statute § 768.81, 623 So. 2d 1182 (Fla. 1993); *and see Reyes v.*

Barnett Outdoors, LLC, 2022 WL 1619430, at *4 (M.D. Fla. Mar. 29, 2022)(“[A] court must determine a party’s percentage of fault based on “all ... entities who contributed to the accident, regardless of whether they have been or could have been joined as defendants.”). To the extent that the Plaintiffs has suffered any damages, the damages were caused by in whole or in part, by the acts or omissions, carelessness and negligence of persons and/or entities over whom Grant Thornton Ireland had no control, supervisory duties, or dominion including, but not limited to, TCA Management, Matthew Wrigley, MJ Hudson, Bolder Fund Services (USA), LLC; Bolder Fund Services (Cayman), LLC; Circle Partners; TCA Global Credit Master Fund, L.P.; TCA Global Credit Fund, LP; TCA Global Credit Fund, Ltd.; Robert Darryl (Bob) Press; Alyce Schreiber; William (Bill) Fickling; Thomas Day; Donna Marie Silverman; Patrick Primavera; Tara Antel; Michael Attar; Heidi de Vries; Nuri Feder; Jacquelyn (Jacky) Gogin; Carlos Mandino; Jose (Joe) Rodriquez; Steven Rosen; Carl Schoeppel; Matthew Anthony Lucian; Bruce John Wookey; MNP experts; Kedi Chang; Chad Fairchild; Dominic Petracca; Keith Schult; Walid Phul; Bernard Sumner; Bousted Securities LLC; The Garner Partnership Pty Ltd.; PricewaterhouseCoopers; all other parties to this action; and all others to be identified in the future.

GT Ireland does not currently know the identities of all nonparties who may be partially responsible for Plaintiffs’ alleged damages. As discovery proceeds, GT Ireland reserves the right to amend this affirmative defense to identify additional nonparties. GT Ireland incorporates by reference herein all *Fabre* defendants identified by all other defendants. GT Ireland is entitled to list on the verdict form all parties and non-parties who may be responsible for causing the alleged damages as permitted by Florida Statute § 768.81.

FOURTH AFFIRMATIVE DEFENSE

GT Ireland affirmatively states that Plaintiffs are barred from recovery to the extent that they were comparatively negligent, pursuant to Florida Statute §768.81 and *Hoffman v. Jones*,280

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

GT Ireland affirmatively states that, at the time and place set forth in the Complaint, it was not the proximate cause, and therefore not negligent, for any damages alleged in the Plaintiffs’ Complaint and therefore should not be held liable for any of the damages. Florida Statute § 768.81. *See Dyer v. United States*, 2017 WL 88955, at *2 (M.D. Fla. Jan. 10, 2017). *and see Hoffman, supra* at 438 (Fla. 1973); Notably, the Brochure sets forth a variety of reports and information that contribute to the status of the Fund and corresponding Brochure. *See* Brochure, Section 8. GT Ireland prepared audit reports for the years of 2017 and 2018 that were never intended to be

addressed to prospective investors but were specifically for regulatory filing purposes only and cannot be said to be the proximate cause of any such investment. Here, GT Ireland is not the cause of the harm done, if any.

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

GT Ireland affirmatively states that Plaintiffs’ action is barred, in whole or in part, to the extent that the audit reports are predicated on good faith tactical decision made by GT Ireland, and for which they are immune under the doctrine of judgmental immunity. Defendant acted accordingly based upon a reasonable interpretation of existing law as the facts were presented to them and exercised its professional judgment in doing so. GT Ireland notes in its audit that it

conducted the audit in accordance with auditing standards generally accepted in the United States of America. *See* Audits from 2017 and 2018, pg. 3. Such reporting amount to good faith under, *Fehribach v. Ernst & Young LLP*, which explains that the role of an auditor is “to state whether, in his opinion, the financial statements are presented in conformity with generally accepted accounting principles and to identify those circumstances in which such principles have not been consistently observed in the preparation of the financial statements of the current period in relation to those of the preceding period.” 493 F.3d 905, 910 (7th Cir. 2007). GT Ireland’s actions were clearly predicated on good faith. Notably, Plaintiffs even acknowledge in their Complaint that GT Ireland raised issues and noted certain deficiencies with the Cayman Funds. *See* Complaint at 2. GT Ireland, as an entity acting independent of GT Cayman, and any other party, acted reasonable in the circumstances and, therefore, the doctrine of judgmental immunity bars GT Ireland from liability as alleged in Plaintiffs’ Complaint.

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

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

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

The claims asserted in the Complaint are barred, in whole or in part, because Plaintiffs could not justifiably rely on any alleged misrepresentation or omissions of GT Ireland. Plaintiffs were qualified investors and the relevant audit opinions were qualified opinions.

SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

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

EIGHTEENTH AFFIRMATIVE DEFENSE

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

NINETEENTH AFFIRMATIVE DEFENSE

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

TWENTIETH AFFIRMATIVE DEFENSE

GT Ireland was the victim of fraud, deceit, misrepresentation, concealment, negligence, and/or breach of contract practiced on it by others, in that information was not provided to GT Ireland, was misrepresented to GT Ireland, and/or was concealed from GT Ireland while GT Ireland was rendering professional services, and any recovery against GT Ireland shall be barred or diminished as a result.

TWENTY-FIRST AFFIRMATIVE DEFENSE

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

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

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiffs have failed to mitigate their alleged damages.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

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

TWENTY-FIFTH AFFIRMATIVE DEFENSE

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

TWENTY-SIXTH AFFIRMATIVE DEFENSE

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

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to allege a cognizable claim for attorneys' fees because they fail to cite to any statute, contract, or other applicable authority that authorizes the recovery of attorneys' fees for the claims asserted against GT Ireland. GT Ireland hereby moves to strike Plaintiffs' requests for attorneys' fees from their Complaint.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

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

TWENTY-NINTH AFFIRMATIVE DEFENSE

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

THIRTIETH AFFIRMATIVE DEFENSE

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

THIRTY-FIRST AFFIRMATIVE DEFENSE

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

THIRTY-SECOND AFFIRMATIVE DEFENSE

Plaintiffs have failed to allege a valid claim against GT Ireland for aiding and abetting any breach of fiduciary because Plaintiffs have not alleged sufficient, ultimate facts establishing the existence of any fiduciary duty that GT Ireland allegedly aided and abetted the breach of.

THIRTY-THIRD AFFIRMATIVE DEFENSE

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

THIRTY-FOURTH AFFIRMATIVE DEFENSE

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

THIRTY-FIFTH AFFIRMATIVE DEFENSE

GT Ireland is not subject to personal jurisdiction in this Court.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrine of *in pari delicto*.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

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

DEMAND FOR JURY TRIAL

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

Dated: November 7, 2023

s/ Barbara Fernandez

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Attorneys for Grant Thornton Ireland

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 7, 2023, I electronically filed the foregoing with the Clerk of the Court by using CM/ECF system which will serve an electronic copy upon all counsel of record.

s/ Barbara Fernandez

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