

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

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

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

Plaintiffs,

v.

**GRANT THORTON CAYMAN ISLANDS, and
GRANT THORNTON IRELAND,**

Defendants.

**GRANT THORNTON CAYMAN ISLANDS' ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFFS' SECOND AMENDED COMPLAINT**

Defendant Grant Thornton Cayman Islands (“GT Cayman”) answers and asserts its affirmative and other defenses to the Second Amended Class Action Complaint and Demand for Jury Trial, ECF No. 105 (“Complaint”), filed by Plaintiffs Todd Benjamin International, Ltd., Todd Benjamin, Zbynek Dvorak, and Fawzi Bawab (“Plaintiffs”), as follows:

INTRODUCTION

GT Cayman denies that Plaintiffs are entitled to any relief against GT Cayman in this action. Further, GT Cayman denies Plaintiffs’ self-serving characterization of the alleged conduct of GT Cayman and other persons and entities contained in Plaintiffs’ “Introduction” to the Complaint. Otherwise, GT Cayman denies the allegations contained in Plaintiffs’ “Introduction” to the Complaint, and specifically denies any and all allegations of wrongdoing.

The TCA Cayman Funds are all fully domiciled in the Cayman Islands. GT Cayman admits that the auditing services were performed pursuant to Engagement Letters with the TCA Cayman Funds entered into under applicable Cayman Islands law and intended to meet Cayman Islands

regulatory requirements. GT Cayman admits that the TCA Cayman Funds were created under Cayman Islands law and regulated by the Cayman Islands Monetary Authority. GT Cayman admits that the subscription documents received and signed by investors provided that Cayman Islands law is applicable to investments in the TCA Cayman Funds and that the Cayman Islands courts shall be the exclusive forum for the resolution of any disputes.

As stated in the Engagement Letters, the audit opinions were communicated to the Board of Directors of the General Partner of the TCA Cayman Funds. Further, the audit opinions stated: “This report, including the opinion, has been prepared for and only for the Master Fund’s General Partner as a body and for regulatory filing purposes only. We do 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.”

GT Cayman specifically denies that GT Cayman had any knowledge of, active assistance in, or downplayed any significant control issues and misleading accounting practices allegedly engaged in by TCA Fund Management Group Corp. (“TCA Management”) or the TCA Cayman Funds. GT Cayman denies coordinating with TCA Management in any improper respect. GT Cayman further denies any “downplaying” or “omitting” of information supporting its auditors’ conclusions, which were stated in its qualified opinions. Given the nature and extent of the qualifications stated, GT Cayman denies that Plaintiffs relied on the qualified opinions.

The communications in the audit reports and any other report to those charged with corporate governance fully met GT Cayman’s professional requirements in accordance with Generally Accepted Auditing Standards, which were observed at all times.

Unless specifically admitted herein, all other allegations in the “Introduction” are denied.

THE PARTIES

1. Without knowledge.

2. Without knowledge.

3. Without knowledge.

4. Without knowledge.

5. Admitted that GT Cayman is a legal entity organized under the laws of the Cayman Islands with its principal place of business in the Cayman Islands, is a member firm of Grant Thornton International, Ltd. (“GTIL”), and provides services under the Grant Thornton brand. Otherwise, denied.

6. Admitted that GT Ireland is a legal entity organized under the laws of Ireland with its principal place of business in Ireland, is a member firm of GTIL, and provides services under the Grant Thornton brand. Otherwise, denied.

RELEVANT NON-PARTIES

7. Without knowledge.

8. Admitted that SEC-filed forms speak for themselves. Otherwise, without knowledge.

9. Without knowledge.

10. Without knowledge.

11. Without knowledge.

12. Without knowledge.

13. Without knowledge.

14. Without knowledge.

15. Without knowledge.

JURISDICTION AND VENUE

16. This paragraph includes legal conclusions to which no response is required. To the extent a response is required, GT Cayman responds as follows: Without knowledge regarding the

citizenship of Plaintiffs, other putative class members, and Defendants other than GT Cayman. Admitted that GT Cayman is an entity organized under the laws of the Cayman Islands and is not a citizen of the United States. Admitted that the Plaintiffs allege the Court possesses subject matter jurisdiction under the Class Action Fairness Act of 2005, but denied that the Court possesses subject matter jurisdiction. Denied that Plaintiffs are entitled to any relief against GT Cayman in this action. Otherwise, denied.

- 17. Denied.
 - a. Denied.
 - b. Denied.
 - c. Denied.
- 18. Denied.

SUMMARY

- 19. Without knowledge.
- 20. Admitted that SEC-filed forms speak for themselves. Otherwise, without knowledge.
 - a. Admitted that SEC-filed forms speak for themselves. Otherwise, without knowledge.
 - b. Admitted that SEC-filed forms speak for themselves. Otherwise, without knowledge.
 - c. Admitted that SEC-filed forms speak for themselves. Otherwise, without knowledge.
- 21. Without knowledge.
- 22. Admitted that the document attached to the Complaint as Exhibit 1 speaks for itself. Otherwise, without knowledge.

23. Admitted that the document attached to the Complaint as Exhibit 1 speaks for itself. Otherwise, without knowledge.

24. Admitted that the Offering Memorandum referenced in this paragraph and Exhibit 1 speaks for itself. Otherwise, without knowledge.

25. Without knowledge.

26. Admitted that the document attached to the Complaint as Exhibit 1 speaks for itself. Otherwise, without knowledge.

27. Admitted that the document attached to the Complaint as Exhibit 2 speaks for itself. Otherwise, without knowledge.

28. Without knowledge.

FACTUAL ALLEGATIONS

29. Without knowledge.

30. Without knowledge.

31. Denied that any information provided by GT Cayman was inaccurate, and denied that GT Cayman supplied any information to Plaintiffs. Further denied that Plaintiffs were entitled to rely on any such information, or that Plaintiffs would have been entitled to rely on any such information, because of the qualifications included in the audit opinions. Otherwise, without knowledge regarding documents provided by TCA Management.

32. Without knowledge regarding documents provided by TCA Management. Otherwise, denied.

33. Denied that any information provided by GT Cayman was inaccurate, and denied that GT Cayman supplied any information to Plaintiffs. Further denied that Plaintiffs were entitled to rely on any such information, or that Plaintiffs would have been entitled to rely on any such information, because of the qualifications included in the audit opinions. Otherwise, without

knowledge regarding documents provided by TCA Management.

34. Denied that any information provided by GT Cayman was inaccurate, and denied that GT Cayman supplied any information to Plaintiffs. Further denied that Plaintiffs were entitled to rely on any such information, or that Plaintiffs would have been entitled to rely on any such information, because of the qualifications included in the audit opinions. Otherwise, without knowledge regarding documents provided by TCA Management.

35. Without knowledge.

36. Denied that any information provided by GT Cayman was inaccurate, and denied that GT Cayman supplied any information to Plaintiffs. Further denied that Plaintiffs were entitled to rely on any such information, or that Plaintiffs would have been entitled to rely on any such information, because of the qualifications included in the audit opinions. Otherwise, without knowledge regarding documents provided by TCA Management.

37. Without knowledge regarding documents provided by TCA Management. Otherwise, denied.

38. Denied that any information provided by GT Cayman was inaccurate, and denied that GT Cayman supplied any information to Plaintiffs. Further denied that Plaintiffs were entitled to rely on any such information, or that Plaintiffs would have been entitled to rely on any such information, because of the qualifications included in the audit opinions. Otherwise, without knowledge regarding documents provided by TCA Management.

39. Denied that any information provided by GT Cayman was inaccurate, and denied that GT Cayman supplied any information to Plaintiffs. Further denied that Plaintiffs were entitled to rely on any such information, or that Plaintiffs would have been entitled to rely on any such information, because of the qualifications included in the audit opinions. Otherwise, without knowledge regarding documents provided by TCA Management.

40. Without knowledge.

41. Denied that any information provided by GT Cayman was inaccurate, and denied that GT Cayman supplied any information to Plaintiffs. Further denied that Plaintiffs were entitled to rely on any such information, or that Plaintiffs would have been entitled to rely on any such information, because of the qualifications included in the audit opinions. Otherwise, without knowledge regarding documents provided by TCA Management.

42. Without knowledge regarding documents provided by TCA Management. Otherwise, denied.

43. Denied that any information provided by GT Cayman was inaccurate, and denied that GT Cayman supplied any information to Plaintiffs. Further denied that Plaintiffs were entitled to rely on any such information, or that Plaintiffs would have been entitled to rely on any such information, because of the qualifications included in the audit opinions. Otherwise, without knowledge regarding documents provided by TCA Management.

44. Denied that any information provided by GT Cayman was inaccurate, and denied that GT Cayman supplied any information to Plaintiffs. Further denied that Plaintiffs were entitled to rely on any such information, or that Plaintiffs would have been entitled to rely on any such information, because of the qualifications included in the audit opinions. Otherwise, without knowledge regarding documents provided by TCA Management.

45. Without knowledge.

46. Without knowledge.

47. Without knowledge.

48. Admitted that GT Cayman and GT Ireland entered into engagement letters (“Engagement Letters”) with the Cayman Master Fund and Cayman Feeder Funds, as defined in the Complaint, and that the terms and conditions of GT Cayman’s and GT Ireland’s services are

set forth in the Engagement Letters. GT Cayman 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. Otherwise, denied.

49. Admitted that the Engagement Letters speak for themselves and that GT Cayman and GT Ireland performed services in accordance with the terms and conditions of the Engagement Letters. Further, GT Cayman 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 Cayman. Otherwise, denied.

50. Admitted that the Engagement Letters speak for themselves. GT Cayman denies the allegations in this paragraph to the extent they are inconsistent with the terms of the Engagement Letters. Otherwise, denied.

51. Without knowledge.

52. Denied that GT Cayman provided auditing services to TCA Management. Denied that GT Cayman had knowledge of any fraud involving senior management at TCA Management or their accounting practices. Otherwise, denied.

53. GT Cayman denies that it provided any auditing services to TCA Management. GT Cayman admits GT Ireland and GT Cayman, pursuant to the Engagement Letter, provided certain auditing services to the Cayman Funds for the year ended 31 December 2017. GT Cayman admits GT Ireland and GT Cayman, pursuant to the Engagement Letter, provided certain auditing services to the Cayman Funds for the year ended 31 December 2018. Otherwise, denied.

54. GT Cayman denies that it provided any auditing services to TCA Management. Admitted that GT Cayman and GT Ireland performed services pursuant to the terms and conditions of the Engagement Letters, which were entered into under applicable Cayman Islands law and

intended to meet Cayman Islands regulatory requirements. Otherwise, denied.

55. Denied.

56. Admitted that the referenced draft audit for 2017 speaks for itself. Otherwise, denied.

57. Denied.

58. Denied.

59. Admitted that the referenced final qualified audit report for 2017 speaks for itself, including that “[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.” Otherwise, denied.

60. Denied.

61. Denied.

62. Denied.

63. Denied.

64. Denied.

65. Admitted that various borrowers were contacted regarding investment advisory fees or investment banking fees payable to TCA Management and that any responses received speak for themselves. GT Ireland and GT Cayman admit they provided a qualified audit report as outlined in the “Basis for qualified opinion” section of the 2017 and 2018 audit reports. Otherwise, denied.

66. Denied.

67. Denied.

68. Denied.

69. Admitted that the referenced 2017 audit was not withdrawn, amended, or restated.

Denied that the 2017 audit needed to be withdrawn, amended, or restated. Otherwise, denied.

70. Admitted that an independent valuation of “SPVs” was required to obtain sufficient and appropriate evidence on the TCA Cayman Funds’ valuation assertion with regard to that specific class of investments. Further, GT Cayman admits that an independent valuation of the SPVs was provided prior to the completion of the 2018 audit. 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. Otherwise, denied.

71. Denied.

72. GT Cayman admits that an independent third-party valuation of the SPVs was completed prior to the completion of the 2018 audit opinion. 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. Admitted that the qualified audit opinion issued for 2018 speaks for itself. Otherwise, denied.

73. Denied that investors were entitled to receive or rely on the qualified 2018 audit opinion. Otherwise, without knowledge.

74. Denied.

75. Admitted that the referenced qualified audit opinions speak for themselves. Otherwise, denied.

76. Denied.

77. Denied.

78. Admitted that Exhibit 3 speaks for itself. Otherwise, without knowledge.

79. Admitted that Exhibit 3 speaks for itself. Otherwise, without knowledge.

80. Admitted that Exhibit 3 speaks for itself. Otherwise, without knowledge.

81. Admitted that Exhibit 3 speaks for itself. Otherwise, without knowledge.

82. Without knowledge.

83. Admitted that the U.S. Securities and Exchange Commission brought the referenced civil enforcement action (“SEC Enforcement Action”) and that the filings in that proceeding speak for themselves. Otherwise, without knowledge.

84. Admitted that filings in the SEC Enforcement Action speak for themselves. Otherwise, without knowledge.

85. Admitted that filings in the SEC Enforcement Action speak for themselves. Otherwise, without knowledge.

86. Denied that GT Cayman provided any false information of any kind in connection with the services it performed pursuant to the Engagement Letters. Without knowledge regarding what documents and information TCA Management provided to Plaintiffs and putative class members. Otherwise, denied.

a. Denied that GT Cayman provided any false information of any kind in connection with the services it performed pursuant to the Engagement Letters. Without knowledge regarding what documents and information TCA Management provided to Plaintiffs and putative class members. Otherwise, denied.

b. Denied that GT Cayman provided any false information of any kind in connection with the services it performed pursuant to the Engagement Letters. Without knowledge regarding what documents and information TCA Management provided to Plaintiffs and putative class members. Otherwise, denied.

c. Denied that GT Cayman provided any false information of any kind in connection with the services it performed pursuant to the Engagement Letters.

Without knowledge regarding what documents and information TCA Management provided to Plaintiffs and putative class members. Otherwise, denied.

87. Denied that GT Cayman provided any false information of any kind in connection with the services it performed pursuant to the Engagement Letters and that Plaintiffs and other investors were entitled to rely on any information provided by GT Cayman in connection with its services. Without knowledge regarding what documents and information TCA Management provided to Plaintiffs and putative class members and whether Plaintiffs and other class members relied on such documents and information. Otherwise, denied.

88. Denied.

a. Denied.

b. Denied.

c. Denied.

d. Denied.

e. Denied.

f. Denied.

g. Denied.

h. Denied.

i. Denied.

j. Denied.

k. Denied.

89. Denied.

a. Denied.

b. Denied.

- c. Denied.
 - d. Denied.
 - e. Denied.
 - f. Denied.
90. Denied.
- a. Admitted that the qualified audit reports prepared pursuant to the Engagement Letters speak for themselves. Otherwise, denied.
 - b. Admitted that the qualified audit reports prepared pursuant to the Engagement Letters speak for themselves. Otherwise, denied.
 - c. Admitted that the qualified audit reports prepared pursuant to the Engagement Letters speak for themselves. Otherwise, denied.
 - d. Admitted that the qualified audit reports prepared pursuant to the Engagement Letters speak for themselves. Otherwise, denied.
 - e. Admitted that the qualified audit reports prepared pursuant to the Engagement Letters speak for themselves. Otherwise, denied.
 - f. Admitted that the qualified audit reports prepared pursuant to the Engagement Letters speak for themselves. Otherwise, denied.
91. Denied.
92. Denied that the qualified audit reports prepared pursuant to the Engagement Letters contained any false and misleading representations and omissions of any kind, that Plaintiffs and other investors were entitled to rely on such qualified audit reports, and that GT Cayman knew about and failed to disclose any of the alleged wrongful acts or the true value and issues allegedly plaguing TCA Management's investments. Otherwise, without knowledge.
93. Denied that the qualified audit reports prepared pursuant to the Engagement Letters

contained any false and misleading representations and omissions of any kind and that Plaintiffs and other investors were entitled to rely on such qualified audit reports. Otherwise, without knowledge.

94. Denied.

95. Denied.

CLASS ACTION ALLEGATIONS

96. Admitted that Plaintiffs purport to bring this action as a putative class action and that Plaintiffs' proposed class definition speaks for itself. Denied that any class should be certified and that Plaintiffs and the putative class members are entitled to any relief against GT Cayman in this action. Otherwise, denied.

97. Admitted that Plaintiffs' proposed class period speaks for itself. Denied that any class should be certified and that Plaintiffs and the putative class members are entitled to any relief against GT Cayman in this action. Otherwise, denied.

98. Admitted that Plaintiffs' proposed class definition speaks for itself. Denied that any class should be certified and that Plaintiffs and the putative class members are entitled to any relief against GT Cayman in this action. Otherwise, denied.

99. Without knowledge regarding the number of "beneficial owners" referenced in this paragraph. Denied that any class should be certified and that Plaintiffs and the putative class members are entitled to any relief against GT Cayman in this action. Otherwise, denied.

100. Denied.

101. Denied.

102. Denied.

a. Denied.

b. Denied.

c. Denied.

d. Denied.

e. Denied.

f. Denied.

103. Denied.

EQUITABLE TOLLING AND DISCOVERY OF THE WRONGDOING

104. Denied.

105. Denied.

106. Denied.

107. Denied.

108. Denied.

CAUSES OF ACTION

COUNT I

109. GT Cayman realleges and incorporates by reference in responses to paragraphs 1 through 108 as if set forth in full herein.

110. Admitted that this count purports to allege a claim for negligent misrepresentation, but denied that GT Cayman engaged in any negligent misrepresentation, and denied that Plaintiffs are entitled to any relief against GT Cayman in this action. Otherwise, denied.

111. Denied.

112. Denied.

113. Denied.

114. Denied.

115. Denied.

COUNT II

116. GT Cayman realleges and incorporates by reference in responses to paragraphs 1 through 108 as if set forth in full herein.

117. Without knowledge.

118. Without knowledge.

119. Without knowledge.

120. Denied.

121. Without knowledge.

122. Without knowledge.

123. Denied.

124. Denied.

125. Denied.

126. Denied.

127. Denied.

COUNT III

128. GT Cayman realleges and incorporates by reference in responses to paragraphs 1 through 108 as if set forth in full herein.

129. Without knowledge.

130. Admitted that the Engagement Letters set forth the terms and conditions of GT Cayman's services under the Engagement Letters, and that GT Cayman fully and properly performed its services in accordance with the terms and conditions of the Engagement Letters and applicable accounting principles. Otherwise, denied.

131. Denied.

132. Denied.

133. Denied.

134. Denied.

135. Denied.

PRAYER FOR RELIEF

GT Cayman denies that Plaintiffs are entitled to any relief against GT Cayman in this action, including, without limitation, the relief requested in paragraphs A through G of Plaintiffs' Prayer for Relief.

GENERAL DENIAL

To the extent not expressly admitted above, the allegations of the Complaint are hereby denied.

AFFIRMATIVE AND OTHER DEFENSES

Unless otherwise provided by law, GT Cayman does not accept the burden of proof or persuasion for any defense asserted herein.

First 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 TCA Cayman Funds.

Second Affirmative Defense

Plaintiffs fail to state a claim upon which relief may be granted. Plaintiffs have failed to state claims 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 Cayman render substantial assistance to any alleged wrongdoer.

Third Affirmative Defense

Plaintiffs' claims are barred in whole or in part because of lack of privity between Plaintiffs

and GT Cayman and Plaintiffs have failed to allege any applicable exception to overcome lack of privity. GT Cayman's services were performed for the relevant funds pursuant to the Engagement Letters. GT Cayman did not know at the time it performed its services that any limited group of third persons intended to rely upon GT Cayman's work for any specific transaction.

Fourth Affirmative Defense

The Complaint fails to plead any alleged fraud and negligent misrepresentation with particularity.

Fifth Affirmative Defense

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

Sixth Affirmative Defense

The alleged misrepresentations or omissions by GT Cayman were based on good faith, with the absence of fraudulent intent, and in reasonable reliance upon information provided by others upon whom GT Cayman was entitled to rely.

Seventh Affirmative Defense

GT Cayman's conduct was within the accepted standards of practice for auditors. GT Cayman complied with all applicable professional standards and principles. GT Cayman affirmatively states that at all times it acted in compliance with the IFRS and with CIMA regulations.

Eighth 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.

Ninth Affirmative Defense

The alleged misrepresentations constitute inactionable statements of opinion. *Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund*, 575 U.S. 175 (2015).

Tenth Affirmative Defense

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

Eleventh 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).

Twelfth Affirmative Defense

The claims asserted in the Complaint are barred, in whole or in part, for lack of causation. Plaintiffs have sustained no legally cognizable damages as a result of any alleged misrepresentations or omissions made by GT Cayman because Plaintiffs were not entitled to rely on any misrepresentation or omission allegedly made by GT Cayman.

Thirteenth Affirmative Defense

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

Fourteenth Affirmative Defense

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

Fifteenth 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.

Sixteenth 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.

Seventeenth 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.

Eighteenth Affirmative Defense

GT Cayman 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 Cayman, was misrepresented to GT Cayman, and/or was concealed from GT Cayman while GT Cayman was rendering professional services, and any recovery against GT Cayman shall be barred or diminished as a result.

Nineteenth Affirmative Defense

Plaintiffs' damages, if any, were caused solely by the conduct of others and are not the result of any conduct by GT Cayman.

Twentieth Affirmative Defense

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

Twenty-First Affirmative Defense

GT Cayman respectfully denies that it has any liability as alleged by Plaintiffs. To the extent, however, that GT Cayman and/or the other defendants are found liable, any damages awarded to Plaintiffs are subject to the comparative fault provisions of Florida Statutes Section 768.81. GT Cayman cannot be held liable for more than its proportionate share of any damages awarded.

Twenty-Second Affirmative Defense

While GT Cayman denies any liability to Plaintiffs, GT Cayman 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*, 623 So. 2d 1182 (Fla. 1993); *Allied-Signal, Inc. v. Fox*, 623 So. 2d 180 (Fla. 1993); and *Messmer v. Teacher's Insurance Co.*, 588 So. 2d 610 (Fla. 5th DCA 1991). To the extent that the Plaintiffs suffered any damages, Plaintiffs' alleged damages were solely the result of the negligence, acts, omissions, wanton lack of care, misuse or other conduct, wrongdoing, or fault of other persons, entities, or parties, that may not be joined in this action, and are not under the care and control of GT Cayman, including without limitation, responsible persons or parties whose specific identities are currently unknown to GT Cayman if different from and/or in addition to those identified as follows: TCA Management; Matthew Wrigley; MJ Hudson, Ltd.; Bolder Fund Services (USA), LLC; Bolder Fund Services (Cayman), LLC; Circle Partners; TCA Fund Management Group Corp.; 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 Antal; Michael Attar; Matthew Anthony Luciano; Bruce John Wookey; Bernard Sumner; Nuri Feder; Jacquelyn (Jacky) Gogin; Carlos Mandino; Jose (Joe) Rodriguez; Steven Rosen; Carl Schoeppel; Heidi de Vries; putative class members; MNP LLP; Boustead Securities; The Garner Partnership Pty Ltd.; PricewaterhouseCoopers; BDO Cayman; Kedi Chang; Chad Fairchild; Dominic Petracca; Keith Schult; Walid Phul; Glen Trenouth; all other parties to this action; and all others to be identified in the future.

GT Cayman does not currently know the identities or roles of all nonparties who may be at least partially responsible for Plaintiffs' alleged damages. GT Cayman reserves the right to identify additional nonparties to whom it may seek to allocate fault as discovery proceeds, evidence is made available, and additional facts become known and/or evaluated including any and all current parties to this action who settle claims asserted against them prior to trial. GT Cayman also incorporates by reference herein all *Fabre* defendants identified by all other defendants in their Affirmative Defenses, as well as all subsequently identified *Fabre* defendants at any time prior to trial. GT Cayman 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 Section 768.81(3), *Florida Statutes*.

Twenty-Third Affirmative Defense

Any recovery is barred in whole or in part by any and all applicable offsets to any losses Plaintiffs may have received from any collateral source, potential tortfeasor, or any other source, including insurance payments, settlement amounts that Plaintiffs receive from any other parties, persons, or entities, and any other recoveries obtained by Plaintiffs mitigating their alleged damages.

Twenty-Fourth Affirmative Defense

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

Twenty-Fifth Affirmative Defense

Plaintiffs have failed to mitigate their alleged damages.

Twenty-Sixth Affirmative Defense

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

Twenty-Seventh Affirmative Defense

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

Twenty-Eighth Affirmative Defense

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

Twenty-Ninth 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 Cayman. GT Cayman hereby moves to strike Plaintiffs' requests for attorneys' fees from their Complaint.

Thirtieth 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.

Thirty-First Affirmative Defense

Plaintiffs' aiding and abetting claims fail, including, without limitation, because GT Cayman lacked actual knowledge of any fraud, fiduciary duty, or breach of such duty on the part of TCA Management and/or its directors and managers, GT Cayman lacked any duty of disclosure regarding Plaintiffs and the putative class members, GT Cayman lacked the conscious intent required to establish that GT Cayman 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.

Thirty-Second 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/or its directors and managers, the relevant funds, the Receiver in the SEC Enforcement Action, and/or any other alleged wrongdoers.

Thirty-Third Affirmative Defense

Any recovery against GT Cayman 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-Fourth Affirmative Defense

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

Thirty-Fifth Affirmative Defense

GT Cayman lacked actual knowledge of any alleged fraud, breach of fiduciary duty, or

other wrongdoing of any kind of nature by TCA Management and/or its directors and managers.

Thirty-Sixth Affirmative Defense

GT Cayman lacked any duty to make disclosures of any kind or nature to Plaintiffs and putative class members.

Thirty-Seventh Affirmative Defense

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

Thirty-Eighth Affirmative Defense

The claims and conduct alleged in the Complaint do not support an award of punitive damages in this action. Additionally, although GT Cayman denies that any punitive damages are recoverable in this action, any punitive damages award is subject to the limitations set forth in Section 768.73, *Florida Statutes*.

Thirty-Ninth Affirmative Defense

Plaintiffs' claims are barred in whole or in part under the judgmental immunity doctrine. GT Cayman acted in good faith based upon a reasonable interpretation of existing law and the facts presented to it and exercised its professional judgment in doing so.

Fortieth Affirmative Defense

Plaintiffs and putative class members are barred in whole or in part from any recovery in this action to the extent of their comparative fault pursuant to Section 768.81, *Florida Statutes*.

Forty-First Affirmative Defense

Plaintiffs' claims are barred in whole or in part under the *in pari delicto* doctrine. This common law defense is based on the principle that a plaintiff who has participated in wrongdoing may not recover damages resulting from the wrongdoing. The Receiver in the SEC Enforcement Action has effectively assigned the present claims against GT Cayman and GT Ireland to Plaintiffs,

as evidenced by the Coordination Agreement between the Receiver and Plaintiffs that provides not only for cooperation and sharing of information, but also for an automatic transfer of any recovery realized by Plaintiffs in this action to the Receiver. Because Plaintiffs are simply acting as the Receiver's proxy, and because the Receiver stands in the shoes of the TCA entities that are responsible for any damages to the Plaintiffs, Plaintiffs are subject to the same defenses as the Receiver, including the doctrine of *in pari delicto*.

Forty-Second Affirmative Defense

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

Forty-Third Affirmative Defense

GT Cayman reserves the right to plead additional affirmative or other defenses as discovery and GT Cayman's investigation continues.

WHEREFORE, GT Cayman respectfully requests that the Court enter judgment in its favor dismissing all counts asserted by Plaintiffs and awarding all costs and expenses of litigation to GT Cayman, denying all relief requested by Plaintiffs with respect to GT Cayman, and granting any other and further relief as the Court deems just and proper.

Date: November 7, 2023

/s/ John D. Mullen

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the forgoing document was served on November 7, 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.

/s/ John D. Mullen

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