

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

ADAM S. LEVY on behalf of himself and
all others similarly situated,

Plaintiff,

v.

THOMAS GUTIERREZ, RICHARD J. GAYNOR,
RAJA BAL, J. MICHAL CONAWAY, KATHLEEN
A. COTE, ERNEST L. GODSHALK, MATTHEW E.
MASSENGILL, MARY PETROVICH, ROBERT E.
SWITZ, NOEL G. WATSON, THOMAS WROE,
JR., MORGAN STANLEY & CO. LLC, GOLDMAN,
SACHS & CO., CANACCORD GENUITY INC.,
AND APPLE, INC.,

Defendants.

No. 14-cv-443-JL

JUDGMENT APPROVING CLASS ACTION SETTLEMENT
WITH INDIVIDUAL DEFENDANTS

After proper notice and a hearing, the court granted lead plaintiff Douglas Kurz's motion¹ for final approval of individual and underwriter defendants' settlements and plan of allocation.² This order explains the court's reasoning as to the individual defendants' settlement.

¹ Doc. no. [183](#).

² Endorsed Order, June 28, 2018.

1. Lead Plaintiff Douglas Kurz ("Lead Plaintiff") and named plaintiffs Strategic Master Fund (Cayman) Limited ("Strategic Master Fund") and Highmark Limited, in respect of its Segregated Account Highmark Fixed Income 2 ("Highmark Limited," and together with Strategic Master Fund, the "Securities Act Plaintiffs"), on behalf of themselves and the Individual Defendant Settlement Class (defined below), and (b) defendants Thomas Gutierrez, Richard Gaynor, Kanwardev Raja Singh Bal, Hoil Kim, Daniel W. Squiller, J. Michal Conaway, Kathleen A. Cote, Ernest L. Godshalk, Matthew E. Massengill, Mary Petrovich, Robert E. Switz, Noel G. Watson, and Thomas Wroe, Jr. (collectively, the "Individual Defendants," and together with Lead Plaintiff and the Securities Act Plaintiffs, the "Settling Parties") have entered into a Stipulation and Agreement of Settlement With Individual Defendants dated January 26, 2018 (the "Individual Defendant Stipulation"), that provides for a complete dismissal with prejudice of the claims asserted against the Individual Defendants in the Action on the terms and conditions set forth in the Individual Defendant Stipulation, subject to the approval of this Court (the "Individual Defendant Settlement"). Unless otherwise defined in this Judgment, the capitalized terms herein shall have the same meaning as they have in the Individual Defendant Stipulation.

2. By Order dated February 13, 2018, as supplemented by Order dated February 23, 2018 (the "Preliminary Approval Order"), this Court: (a) preliminarily approved the Individual Defendant Settlement; (b) certified the Individual Defendant Settlement Class solely for purposes of effectuating the Individual Defendant Settlement; (c) ordered that notice of the proposed Individual Defendant Settlement be provided to potential Individual Defendant Settlement Class Members; (d) provided Individual Defendant Settlement Class Members with the opportunity either to exclude themselves from the Individual Defendant Settlement Class or to object to the proposed Individual Defendant Settlement; and (e) scheduled a hearing regarding final approval of the Individual Defendant Settlement.

3. Due and adequate notice has been given to the Individual Defendant Settlement Class.

4. The Court conducted a hearing on June 28, 2018 (the "Settlement Hearing") to consider, among other things, (a) whether the terms and conditions of the Individual Defendant Settlement are fair, reasonable and adequate to the Individual Defendant Settlement Class, and should therefore be approved; and (b) whether a judgment should be entered dismissing the Action with prejudice as against the Individual Defendants.

5. The Court having reviewed and considered the Individual Defendant Stipulation, all papers filed and

proceedings held herein in connection with the Individual Defendant Settlement, all oral and written comments received regarding the Individual Defendant Settlement, and the record in the Action, and good cause appearing therefor, NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

6. The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Individual Defendant Settlement, as well as personal jurisdiction over all of the Settling Parties and each of the Individual Defendant Settlement Class Members.

7. This Judgment incorporates and makes a part hereof: (a) the Individual Defendant Stipulation filed with the Court on January 26, 2018; and (b) the Notice and the Summary Notice, both of which were filed with the Court on May 24, 2018.

8. The Court hereby affirms its determinations in the Preliminary Approval Order certifying, for the purposes of the Settlement only, the Action as a class action pursuant to [Fed. R. Civ. P. 23\(a\)](#) and [\(b\) \(3\)](#) on behalf of the Individual Defendant Settlement Class consisting of all persons and entities who or which from November 5, 2013 through 9:40 a.m. Eastern Standard Time on October 6, 2014, inclusive (the "Class Period") purchased or otherwise acquired publicly traded GTAT common stock and/or GTAT 3.00% Convertible Senior Notes Due 2020, purchased or otherwise acquired publicly traded call

options on GTAT common stock, or sold (wrote) publicly traded put options on GTAT common stock, and were damaged thereby. Excluded from the Individual Defendant Settlement Class are Defendants; GTAT; the affiliates and subsidiaries of the Underwriter Defendants, GTAT, and Apple; the Officers, directors, and partners of the Underwriter Defendants, GTAT, and Apple during the Class Period; members of the Immediate Family of any excluded person; the heirs, successors, and assigns of any excluded person or entity; and any entity in which any excluded person or entity has or had during the Class Period a controlling interest; *provided, however*, that any Investment Vehicle (as defined in the Individual Defendant Stipulation) shall not be deemed an excluded person or entity by definition. Also excluded from the Individual Defendant Settlement Class are the persons and entities listed on Exhibit 1 hereto who or which are excluded pursuant to a request for exclusion accepted by the Court.

9. Pursuant to [Fed. R. Civ. P. 23](#), and for the purposes of the Settlement only, the Court hereby affirms its determinations in the Preliminary Approval Order certifying Lead Plaintiff Douglas Kurz and Securities Act Plaintiffs Strategic Master Fund and Highmark Limited as Class Representatives for the Individual Defendant Settlement Class and appointing Lead Counsel Bernstein Litowitz Berger & Grossmann LLP as Class

Counsel for the Individual Defendant Settlement Class. Lead Plaintiff, the Securities Act Plaintiffs, and Lead Counsel have fairly and adequately represented the Individual Defendant Settlement Class both in terms of litigating the Action and for purposes of entering into and implementing the Settlement and have satisfied the requirements of [Fed. R. Civ. P. 23\(a\)\(4\)](#) and [23\(g\)](#), respectively.

10. The Court finds that the dissemination of the Notice and the publication of the Summary Notice: (a) were implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Individual Defendant Settlement Class Members of (i) the pendency of the Action; (ii) the effect of the proposed Settlement (including the Releases to be provided thereunder); (iii) Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses; (iv) their right to object to any aspect of the Settlement, the Plan of Allocation, and/or Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses; (v) their right to exclude themselves from the Settlement Class; and (vi) their right to appear at the Settlement Hearing; (d) constituted due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (e)

satisfied the requirements of [Fed. R. Civ. P. 23](#), the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995, [15 U.S.C. §§ 77z-1, 78u-4](#), as amended (the "PSLRA"), and all other applicable law and rules.

11. Pursuant to, and in accordance with, [Fed. R. Civ. P. 23](#), this Court hereby fully and finally approves the Individual Defendant Settlement set forth in the Individual Defendant Stipulation in all respects (including, without limitation: the amount of the Settlement (\$27,000,000); the Releases provided for therein including the release of the Individual Defendant Released Plaintiffs' Claims as against the Individual Defendant Releasees; and the dismissal with prejudice of the claims asserted against the Individual Defendants in the Action), and finds that the Individual Defendant Settlement is, in all respects, fair, reasonable and adequate to the Individual Defendant Settlement Class. The Settling Parties are directed to implement, perform and consummate the Individual Defendant Settlement in accordance with the terms and provisions contained in the Individual Defendant Stipulation.

12. The Action and all of the claims asserted against the Individual Defendants in the Action by Plaintiffs and the other Individual Defendant Settlement Class Members are hereby dismissed with prejudice. The Settling Parties shall bear their

own costs and expenses, except as otherwise expressly provided in the Individual Defendant Stipulation.

13. The terms of the Individual Defendant Stipulation and of this Judgment shall be forever binding on the Individual Defendants, Plaintiffs and all other Individual Defendant Settlement Class Members (regardless of whether or not any individual Individual Defendant Settlement Class Member submits a Proof of Claim Form or seeks or obtains a distribution from the Individual Defendant Net Settlement Fund), as well as their respective successors and assigns. The persons and entities listed on Exhibit 1 hereto are excluded from the Individual Defendant Settlement Class pursuant to a request for exclusion accepted by the Court and are not bound by the terms of the Individual Defendant Stipulation or this Judgment.

14. The Releases set forth in paragraphs 5 - 7 of the Individual Defendant Stipulation, together with the definitions contained in paragraph 1 of the Individual Defendant Stipulation relating thereto, are expressly incorporated herein in all respects. For avoidance of doubt, "Individual Defendant Releasees" means (i) the Individual Defendants and their attorneys, (ii) the respective Immediate Family members, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, agents, affiliates, insurers, reinsurers, predecessors, predecessors-in-interest, successors, successors-

in-interest, assigns, attorneys, advisors, and associates of each of the foregoing, (iii) all current and former directors, officers, and employees of GTAT, and (iv) the Insureds, in their capacities as such; *provided, however*, that the Individual Defendant Releasees do not include the Underwriter Defendants or Apple. "Individual Defendant Released Plaintiffs' Claims" means any and all claims, rights, duties, controversies, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages, losses, judgments, liabilities, allegations, arguments, and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, local, common, statutory, administrative, or foreign law, or any other law, rule or regulation, at law or in equity, whether class or individual in nature, whether fixed or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured, that Plaintiffs or any other member of the Individual Defendant Settlement Class (a) asserted in the Action, or (b) could have asserted in any forum that arise out of, are based upon, or relate to the allegations, transactions, acts, facts, matters, occurrences, statements, representations or omissions involved, set forth, or referred to in the Complaint and that relate to the purchase or acquisition of GTAT publicly traded common stock, GTAT Senior Notes, or GTAT Call

Options, or the sale of GTAT Put Options, during the Settlement Class Period. Released Plaintiffs' Claims do not cover or include any Excluded Plaintiffs' Claims. "Excluded Plaintiffs' Claims" means (i) any claims by any governmental entity arising out of any governmental investigation of GTAT, the Individual Defendants, or any of GTAT's respective former or current officers or directors relating to the wrongful conduct alleged in the Action;³ (ii) any claims asserted, or which may be asserted, in the Action against any of the Underwriter Defendants or Apple; (iii) any claims of any person or entity who or which submits a request for exclusion from the Individual Defendant Settlement Class that is accepted by the Court; (iv) any claims asserted in the *Davis* Action; and (v) any claims relating to the enforcement of the Settlement. The Releases are effective as of the Effective Date of the Individual Defendant Settlement. Accordingly, this Court orders that:

(a) Without further action by anyone, and subject to paragraph 15 below, upon the Effective Date of the Individual

³For the avoidance of doubt, the above-referenced exclusion for claims by any governmental entity is set forth above only to clarify that the Individual Defendant Released Plaintiffs' Claims do not affect the rights that any governmental entity may have to assert a claim against any of the Individual Defendant Releasees, and it does not preserve for any Individual Defendant Settlement Class Member any right to assert a claim on the basis of that exclusion from the Individual Defendant Released Plaintiffs' Claims.

Defendant Settlement, Plaintiffs and each of the other Individual Defendant Settlement Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of this Judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived and discharged each and every Individual Defendant Released Plaintiffs' Claim (including Unknown Claims) against the Individual Defendants and the other Individual Defendant Releasees, and shall forever be barred and enjoined from the assertion, institution, maintenance, prosecution, or enforcement of any or all of the Individual Defendant Released Plaintiffs' Claims against any of the Individual Defendant Releasees. This Release shall not apply to any Excluded Plaintiffs' Claim.

(b) Without further action by anyone, and subject to paragraph 15 below, upon the Effective Date of the Individual Defendant Settlement, the Individual Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of this Judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived and discharged each and every Released Individual Defendants'

Claim against Plaintiffs and the other Plaintiff Releasees, and shall forever be barred and enjoined from the assertion, institution, maintenance, prosecution, or enforcement of any or all of the Released Individual Defendants' Claims against any of the Plaintiff Releasees. This Release shall not apply to any Excluded Individual Defendants' Claim.

15. Notwithstanding paragraphs 14(a) - (b) above, nothing in this Judgment shall bar any action by any of the Settling Parties to enforce or effectuate the terms of the Individual Defendant Stipulation or this Judgment.

16. Upon the Effective Date, to the fullest extent provided by law, the Individual Defendant Releasees are hereby discharged from and the Court hereby bars all future claims and claims over by any individual or entity against any of the Individual Defendant Releasees, and by the Individual Defendant Releasees against any individual or entity, for (a) contribution or indemnity (or any other claim or claim over, however denominated on whatsoever theory) arising out of or related to the claims or allegations asserted by Plaintiffs in the Action, or (b) any other claim of any type, whether arising under state, federal, common, or foreign law, for which the injury claimed is that person's or entity's actual or threatened liability to Plaintiffs and/or members of the Individual Defendant Settlement Class (the "Bar Order"); *provided, however*, the Bar Order shall

not (a) release any of the Excluded Plaintiffs' Claims; or (b) preclude the Individual Defendants from seeking to enforce any rights of contribution or indemnification that any Individual Defendant may have under any contract, and/or that any Individual Defendant may have against GTAT or any successor entity, including but not limited to under any corporate charter, bylaw, or contract.

17. Any final verdict or judgment that may be obtained by or on behalf of the Individual Defendant Settlement Class or an Individual Defendant Settlement Class Member against any person or entity subject to the Bar Order shall be reduced by the greater of: (a) an amount that corresponds to the percentage of responsibility of the Individual Defendants for common damages; or (b) the amount paid by or on behalf of the Individual Defendants to the Individual Defendant Settlement Class or Individual Defendant Settlement Class Member for common damages.

18. The Court finds and concludes that the Settling Parties and their respective counsel have complied in all respects with the requirements of Rule 11 of the Federal Rules of Civil Procedure in connection with the institution, prosecution, defense, and settlement of the Action.

19. Neither this Judgment, the Term Sheet, the Individual Defendant Stipulation (whether or not consummated), including the exhibits thereto and the Plan of Allocation contained

therein (or any other plan of allocation that may be approved by the Court), the MOU (as defined in the Underwriter Defendant Stipulation), the Underwriter Defendant Stipulation (together with the Individual Defendant Stipulation, the "Stipulations"), including the exhibits thereto and the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the Court), the negotiations leading to the execution of the Term Sheet, the MOU, or the Stipulations, nor any proceedings taken pursuant to or in connection with the Term Sheet, the MOU, the Stipulations and/or approval of the Individual Defendants Settlement or the Underwriter Defendant Settlement (including any arguments proffered in connection therewith):

(a) shall be offered against any of the Individual Defendant Releasees as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Individual Defendant Releasees with respect to the truth of any fact alleged by Lead Plaintiff or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation;

(b) shall be offered against any of the Individual Defendant Releasees as evidence of, or construed as, or deemed to be evidence of any liability, negligence, fault, or other

wrongdoing of any kind of any of the Individual Defendant Releasees or in any way referred to for any other reason as against any of the Individual Defendant Releasees, in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Individual Defendant Stipulation;

(c) shall be offered against any of the Plaintiff Releasees, as evidence of, or construed as, or deemed to be evidence of any presumption, concession or admission by any of the Plaintiff Releasees that any of their claims are without merit, that any of the Individual Defendant Releasees had meritorious defenses, or that damages recoverable in the Action would not have exceeded the Individual Defendant Settlement Amount or with respect to any liability, negligence, fault or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Plaintiff Releasees, in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Individual Defendant Stipulation; or

(d) shall be construed against any of the Releasees as an admission, concession, or presumption that the consideration to be given under the Individual Defendant Stipulation represents the amount which could be or would have been recovered after trial;

provided, however, that (i) the Settling Parties and the Releasees and their respective counsel may refer to this Judgment and the Individual Defendant Stipulation to effectuate the protections from liability granted hereunder and thereunder or otherwise to enforce the terms of the Individual Defendant Settlement, and (ii) the Released Persons may file the Stipulation and/or this Judgment in any action that may be brought against them in order to support a defense, claim, or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

20. Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over: (a) the Settling Parties for purposes of the administration, interpretation, implementation and enforcement of the Individual Defendant Settlement; (b) the disposition of the Individual Defendant Settlement Fund; (c) any motion for an award of attorneys' fees and/or Litigation Expenses by Lead Counsel in the Action that will be paid from the Individual Defendant Settlement Fund; (d) any motion to approve the Plan of Allocation; (e) any motion to approve the Class Distribution Order; and (f) the Individual Defendant Settlement Class Members for all matters relating to the Action.

21. Separate orders shall be entered regarding approval of a plan of allocation and the motion of Lead Counsel for an award of attorneys' fees and reimbursement of Litigation Expenses. Such orders shall in no way affect or delay the finality of this Judgment and shall not affect or delay the Effective Date of the Settlement. Any appeal regarding or any challenge regarding (a) the approval or modification of the proposed Plan of Allocation and/or (b) this Court's order or ruling regarding any attorneys' fee and expense application shall in no way disturb or affect the finality of this Judgment or the Effective Date of the Individual Defendant Settlement.

22. The Court finds that the Individual Defendants have satisfied their financial obligations under the Individual Defendant Stipulation by causing their insurers to pay twenty-seven million dollars (\$27,000,000.00) in cash to the Individual Defendant Settlement Fund.

23. Without further approval from the Court, Plaintiffs and the Individual Defendants are hereby authorized to agree to and adopt such amendments or modifications of the Individual Defendant Stipulation or any exhibits attached thereto to effectuate the Individual Defendant Settlement that: (a) are not materially inconsistent with this Judgment; (b) do not materially limit the rights of Individual Defendant Settlement Class Members in connection with the Settlement, and (c) are

consistent with paragraph 48 of the Individual Defendant Stipulation. Without further order of the Court, Plaintiffs and the Individual Defendants may agree to reasonable extensions of time to carry out any provisions of the Individual Defendant Settlement.

24. If the Individual Defendant Settlement is terminated as provided in the Individual Defendant Stipulation or the Effective Date of the Individual Defendant Settlement otherwise fails to occur, this Judgment shall be vacated, rendered null and void and be of no further force and effect, except as otherwise provided by the Individual Defendant Stipulation, and this Judgment shall be without prejudice to the rights of Plaintiffs, the other Individual Defendant Settlement Class Members and the Individual Defendants, and the Settling Parties shall revert to their respective positions in the Action as of immediately prior to the execution of the Term Sheet on October 13, 2017, as provided in the Individual Defendant Stipulation.

25. The Individual Defendants have provided notification to all appropriate federal and state officials regarding the Settlement as required by [28 U.S.C. § 1715](#).

26. There is no just reason to delay the entry of this Judgment as a final judgment in this Action as against the Individual Defendants pursuant to [Fed. R. Civ. P. 54\(b\)](#). Accordingly, the Clerk of the Court is expressly directed to

immediately enter this final judgment as against the Individual Defendants in this Action.

SO ORDERED.



Joseph N. Laplante
United States District Judge

Dated: July 27, 2018

Cc: Avi Josefson, Esq.
Gerald Silk, Esq.
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John E. Lyons, Jr., Esq.
Danielle S. Myers, Esq.
Robert M. Rothman, Esq.
Samuel H. Rudman, Esq.
Jake Nachmani, Esq.
Lauren Amy Ormsbee, Esq.
Ross Shikowitz, Esq.

Exhibit 1

**List of Persons and Entities Excluded from the Individual
Defendant
Settlement Class Pursuant to Request**

1. Scott Walker
Costa Mesa, CA
2. Yifeng Ren
Daly City, CA
3. Paul Edwards FBO Frederich Edwards UTMA
Bayfield, CO
4. Elias Izpisua Rodriguez
La Jolla, CA
5. Timothy A. Martin
Huntersville, NC