

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 UNDERWRITER 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 underwriter 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," and together with Lead Plaintiff, "Plaintiffs"), on behalf of themselves and the Underwriter Defendant Settlement Class (defined below); and (b) defendants Morgan Stanley & Co. LLC, Goldman Sachs & Co. LLC (f/k/a Goldman, Sachs & Co.), and Canaccord Genuity LLC (f/k/a Canaccord Genuity Inc.) (collectively, the "Settling Underwriter Defendants," and together with Plaintiffs, the "Settling Parties") have entered into a Stipulation and Agreement of Settlement With Settling Underwriter Defendants dated August 18, 2017, and the Supplement thereto dated January 26, 2018 (the "Stipulation"), that provides for a complete dismissal with prejudice of the claims asserted against the Settling Underwriter Defendants in the Action on the terms and conditions set forth in the Stipulation, subject to the approval of this Court (the "Settlement"). Unless otherwise defined in this Judgment, the capitalized terms herein shall have the same meaning as they have in the 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 Settlement; (b) certified the Underwriter Defendant Settlement Class solely for purposes of effectuating the Settlement; (c) ordered that notice of the proposed Settlement be provided to potential Settlement Class Members; (d) provided Settlement Class Members with the opportunity either to exclude themselves from the Underwriter Defendant Settlement Class or to object to the proposed Settlement; and (e) scheduled a hearing regarding final approval of the Settlement.

3. Due and adequate notice has been given to the Underwriter 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 Settlement are fair, reasonable, and adequate to the Underwriter Defendant Settlement Class, and should therefore be approved; and (b) whether a judgment should be entered dismissing the Action with prejudice as against the Settling Underwriter Defendants.

5. The Court having reviewed and considered the Stipulation, all papers filed and proceedings held herein in connection with the Settlement, all oral and written comments received regarding the 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 Settlement, as well as personal jurisdiction over all of the Settling Parties and each of the Settlement Class Members.

7. This Judgment incorporates and makes a part hereof: (a) the 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 a 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 (i) GTAT 3.00% Convertible Senior Notes Due 2020 (the "GTAT Senior Notes") pursuant or traceable to GTAT's December 2013 registration statement and prospectus supplement for the GTAT Senior Notes' offering (the "Senior Notes Offering") and/or (ii) shares of GTAT common stock pursuant or traceable to GTAT's December 2013 registration statement and prospectus supplement for the secondary offering of GTAT common stock (the "Common Stock Secondary Offering") (the "Settlement Class" or "Underwriter Defendant Settlement Class"). Excluded from the

Underwriter 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 Stipulation) shall not be deemed an excluded person or entity by definition. Also excluded from the Underwriter Defendant Settlement Class are the persons listed on Exhibit 1 hereto who or which are excluded pursuant to request.

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 Plaintiffs Douglas Kurz, Strategic Master Fund, and Highmark Limited as Class Representatives for the Underwriter Defendant Settlement Class and appointing Lead Counsel as Class Counsel for the Underwriter Defendant Settlement Class. Plaintiffs and Lead Counsel have fairly and adequately represented the Underwriter 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 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) their right to object to any aspect of the Settlement; (iv) their right to exclude themselves from the Underwriter Defendant Settlement Class; and (v) 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](#), as amended, 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 Settlement set forth in the Stipulation in all respects (including, without limitation: the amount of the Settlement (\$9,700,000); the

Releases provided for therein, including the release of the Released Plaintiffs' Claims as against the Settling Underwriter Defendants' Releasees; and the dismissal with prejudice of the claims asserted against the Settling Underwriter Defendants in the Action), and finds that the Settlement is, in all respects, fair, reasonable, and adequate to the Underwriter Defendant Settlement Class. The Settling Parties are directed to implement, perform, and consummate the Settlement in accordance with the terms and provisions contained in the Stipulation.

12. All of the claims asserted against the Settling Underwriter Defendants in the Action by Plaintiffs and the other 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 Stipulation.

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

14. The Releases set forth in paragraphs 5 and 6 of the Stipulation, together with the definitions contained in paragraph 1 of the Stipulation relating thereto, are expressly incorporated herein in all respects. The Releases are effective as of the Effective Date. Accordingly, this Court orders that:

(a) Without further action by anyone, and subject to paragraph 15 below, upon the Effective Date of the Settlement, Plaintiffs and each of the other 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 Released Plaintiffs' Claim against the Settling Underwriter Defendants and the other Settling Underwriter Defendants' Releasees, and shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs' Claims against any of the Settling Underwriter Defendants' 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 Settlement, the Settling Underwriter 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 Settling Underwriter Defendants' Claim against Plaintiffs and the other Plaintiffs' Releasees, and shall forever be barred and enjoined from prosecuting any or all of the Released Settling Underwriter Defendants' Claims against any of the Plaintiffs' Releasees. This Release shall not apply to any Excluded Settling Underwriter 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 Stipulation or this Judgment.

16. The Court hereby bars all future claims and claims over by any individual or entity against any of the Settling Underwriter Defendants' Releasees, and by the Settling Underwriter Defendants' Releasees against any individual or entity ("Barred Claims"), 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 Underwriter Defendant Settlement Class; *provided, however,* (i) nothing in the Bar Order alters the rights between and among the Settling Underwriter Defendants under the terms of any written agreements governing the underwriting syndicates involved in the Action, as to which claims are not barred, released or discharged; and (ii) Barred Claims does not include any claims for contribution or indemnity arising under the Underwriting Agreements relating to the December offerings of 2013 Common Stock or 3.00% Convertible Senior Notes. Nothing in the Bar Order or the Stipulation shall release any proofs of claim that any of the Settling Underwriter Defendants has filed in the GTAT bankruptcy.

17. Any final verdict or judgment that may be obtained by or on behalf of the Underwriter Defendant Settlement Class or a Settlement Class Member against any individual 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 Settling Underwriter Defendants for common damages; or (b) the amount paid by or on behalf of the Settling Underwriter Defendants to the Underwriter Defendant Settlement Class or 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 MOU, the 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 negotiations leading to the execution of the MOU and the Stipulation, nor any proceedings taken pursuant to or in connection with the MOU, the Stipulation, and/or approval of the Settlement (including any arguments proffered in connection therewith):

(a) shall be offered against any of the Settling Underwriter Defendants' Releasees as evidence of, or construed as, or deemed to be evidence of, any presumption, concession, or admission by any of the Settling Underwriter Defendants' Releasees with respect to the truth of any fact alleged by Plaintiffs 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, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Settling Underwriter Defendants' Releasees or in any

way referred to for any other reason as against any of the Settling Underwriter Defendants' Releasees, in any civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation;

(b) shall be offered against any of the Plaintiffs' Releasees, as evidence of, or construed as, or deemed to be evidence of, any presumption, concession, or admission by any of the Plaintiffs' Releasees that any of their claims are without merit, that any of the Settling Underwriter Defendants' Releasees had meritorious defenses, or that damages recoverable under the Complaint would not have exceeded the 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 Plaintiffs' Releasees, in any civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; or

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

provided, however, that the Settling Parties and the Releasees and their respective counsel may refer to this Judgment and the Stipulation to effectuate the protections from liability granted hereunder or thereunder or otherwise to enforce the terms of the Settlement.

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 Settlement; (b) the disposition of the 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 Settlement Fund; (d) any motion to approve a plan of allocation for the proceeds of the Settlement Fund; (e) any motion to approve the Class Distribution Order; and (f) the Settlement Class Members for all matters relating to the Settlement.

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.

22. Without further approval from the Court, Plaintiffs and the Settling Underwriter Defendants are hereby authorized to agree to and adopt such amendments or modifications of the Stipulation or any exhibits attached thereto to effectuate the Settlement that: (a) are not materially inconsistent with this Judgment; and (b) do not materially limit the rights of Settlement Class Members in connection with the Settlement. Without further order of the Court, Plaintiffs and the Settling Underwriter Defendants may agree to reasonable extensions of time to carry out any provisions of the Settlement.

23. If the Settlement is terminated as provided in the Stipulation or the Effective Date of the 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 Stipulation, and this Judgment shall be without prejudice to the rights of Plaintiffs, the other Settlement Class Members, and the Settling Underwriter Defendants, and the Settling Parties shall revert to their respective positions in the Action as of immediately prior to the execution of the MOU on March 17, 2017, as provided in the Stipulation.

24. There is no just reason to delay the entry of this Judgment as a final judgment in this Action as against the Settling Underwriter 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 Settling Underwriter Defendants.

SO ORDERED.



Joseph N. Laplante
United States District Judge

Dated: July 27, 2018

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Jake Nachmani, Esq.
Lauren Amy Ormsbee, Esq.
Ross Shikowitz, Esq.

Exhibit 1

**List of Persons Excluded from the Underwriter Defendant
Settlement Class Pursuant to Request**

1. Scott Walker
Costa Mesa, CA

2. Elias Izpisua Rodriguez
La Jolla, CA