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., AND CANACCORD GENUITY INC., Defendants.	No. 1:14-cv-00443-JL **CONSOLIDATED CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED** **ECF CASE**

ORR & RENO, P.A.
Jennifer A. Eber N.H. Bar No. 8775
Jeffrey C. Spear N.H. Bar No. 14938
45 S. Main Street, PO Box 3550
Concord, New Hampshire 03302-3550
Tel: (603) 224-2381
Fax: (603) 224-2318

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
John C. Browne
Lauren A. Ormsbee
Ross Shikowitz
Jake Nachmani
1285 Avenue of the Americas, 38th Floor
New York, NY 10019
Tel: (212) 554-1400
Fax: (212) 554-1444

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Court-appointed Lead Plaintiff Douglas Kurz ("Lead Plaintiff"), together with the additional named plaintiffs (*see* ¶¶31, 332-34) (collectively, "Plaintiffs"), by their counsel, hereby bring this securities class action on behalf of themselves and other entities who purchased or otherwise acquired the publicly traded securities of GT Advanced Technologies Inc. ("GTAT" or the "Company") between November 5, 2013 and 9:40 a.m. Eastern Standard Time on October 6, 2014 (the "Class Period") as more fully defined below in paragraph 291.

I. NATURE OF THE ACTION

1. This case arises from an audacious securities fraud perpetrated by the executives and controlling entity of a now-bankrupt technology company called GTAT. At the start of the Class Period, GTAT's executives touted a supposedly transformative business venture with Apple Inc. ("Apple") that they secretly knew was doomed to fail. In less than a year, those executives made huge profits from sales of their own holdings in GTAT stock while misleading investors about the venture's progress and success. Then, only weeks after assuring investors that GTAT was financially sound, the Company filed for bankruptcy and shareholders lost nearly all their investment.

2. Before its recent sudden collapse, GTAT was a publicly-traded company that produced and sold equipment used in the solar, polysilicon and sapphire industries. On November 4, 2013, GTAT's executives told investors that the Company had reached a landmark agreement with technology giant Apple that would transform the Company and provide an enormous boost to its annual revenue. This was false. In reality, as GTAT knew from the outset and has since admitted, the Apple agreement was a "massively one-sided" contract of "adhesion" that placed Apple in "*de facto* control" of GTAT while giving the Company virtually no chance to succeed, let alone increase its revenues or expand its business.

3. Over the course of the next eleven months, GTAT's executives continued to mislead investors by falsely stating that the Company was progressing well in its agreement with Apple. At the same time, they sold huge percentages of their own GTAT stock, reaping nearly ***$20 million*** in illicit profits. Investors did not learn the truth until October 6, 2014 when GTAT filed for bankruptcy. GTAT's collapse wiped out more than $1.4 billion in shareholder value and launched an investigation by the Securities and Exchange Commission ("SEC").

4. Investors are now entitled to recover from those individuals who made material misrepresentations (GTAT's insider executives), the professional gatekeepers who marketed and sold $300 million of GTAT securities to investors while negligently failing to investigate the accuracy of GTAT's public statements (GTAT's Underwriters), and the entity that controlled GTAT throughout the Class Period and drove it into bankruptcy (Apple).[1]

Background

5. The most important part of GTAT's business during the Class Period was its sapphire segment. While sapphires are best known as the rare blue gemstones that form naturally, sapphire also can be manufactured synthetically by superheating certain compounds in specially designed industrial furnaces. As the second hardest substance on Earth (after diamonds), sapphire is highly scratch-resistant, transparent, and durable. These properties and others make it well suited for use in a wide variety of consumer and industrial electronics.

6. Prior to the Class Period, GTAT focused its sapphire business on the design and construction of the specialized furnaces—called advanced sapphire crystallization furnaces ("ASFs")—used to manufacture synthetic sapphire. GTAT itself did not actually sell synthetic

[1] GT is not named as a Defendant in this Action because it filed for bankruptcy under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of New Hampshire on October 6, 2014. All emphases herein is added unless otherwise noted.

sapphire except on a limited scale. Rather, it primarily generated revenues in its sapphire business by selling ASF systems to third-party customers. GTAT's customers, in turn, would use the ASFs to produce sapphire for use in products such as watches, camera lenses and LED devices.

7. By mid-2013, GTAT's business was struggling. Downturns in the solar industry and sharply declining sales in the Company's sapphire business had led to severe reductions in revenue. The Company was also hemorrhaging cash. The Company's condition was so poor that analysts were openly questioning GTAT's "overall liquidity picture" and its stock was trading in the range of $3 to $4 per share.

The Apple Agreement

8. The Company's prospects appeared to improve on November 4, 2013—the first day of the Class Period—when GTAT's executives announced an agreement with Apple. The agreement provided that GTAT and Apple would work together on what was in essence a joint venture, with Apple providing a facility in Mesa, Arizona where GTAT would construct and operate more than 2,000 ASFs engaged in the production of sapphire. According to the Company's executives, GTAT's costs under the agreement were going to be fully covered by $578 million in prepayments that Apple would make in four installments. In a surprising twist, GTAT announced that it would not be selling the furnaces to Apple, per its usual business practices, but would instead own and operate them itself to produce sapphire material exclusively for Apple.

9. The market was quick to connect the dots between this announcement and the long-discussed possibility that Apple might use sapphire for the display screens on its next generation smartphone. Indeed, GTAT's executives were extremely bullish in their public disclosures about the Apple agreement. On a November 4, 2013 conference call, Defendant Gutierrez told investors that he was "confiden[t]" and "excited" about the value of the Apple agreement "as it represents a

significant milestone" for GTAT. The Company also told investors to expect 2014 revenue in the range of $600 to $800 million, with 80% attributable to the sapphire business. This was an enormous increase from GTAT's current revenue (which was $40.3 million for the third quarter of 2013, with only $7 million from the sapphire business).

10. GTAT's executives, however, refused to disclose all of the details about the Apple agreement, even to the Company's own investors. Defendant Gutierrez repeatedly stated that he was "not at liberty" to answer certain analyst questions because of confidentiality provisions in the agreement. In particular, analysts sought more information about the agreement's "exclusivity" provisions and GTAT's ability to "ramp[] up" its production capabilities in accordance with the agreement. While GTAT's executives (at Apple's direction and control) refused to disclose details, they assured investors that the exclusivity provisions would not impair GTAT's business and that GTAT would be able to satisfy the requirements of the agreement.

11. These statements were important because they assuaged concerns that the Apple agreement imposed unrealistic obligations on GTAT or contained restrictions that could negatively impact the Company's ability to grow. With these concerns satisfied, analysts jumped aboard, proclaiming that GTAT "sign[ed] A 'Gem' of a Deal With Apple" and universally raising their price targets for GTAT's stock. In response, GTAT's stock price rose 20% in a single day from a close of $8.38 per share on November 4, 2013 to $10.10 per share at the close on November 5, 2013.

GTAT Assures Investors It Was Performing Well

12. Over the remainder of the Class Period, GTAT's executives repeatedly told the market that the Company was experiencing great success with the sapphire production facility in Arizona and in its dealings with Apple. For example, on February 24, 2014, Defendant Gutierrez told investors that "our arrangement to supply sapphire materials to Apple is progressing well."

In early May 2014, GTAT announced more good news. On a conference call with investors, Gutierrez stated that GTAT had "developed more advanced ASF technology capable of producing boules significantly greater than 165 kg," and that the results from this new technology were "production ready," and would be used in connection with the Apple agreement.

13. "Boule" is an industry term referring to the logs of synthetic sapphire created in an ASF during the production process. GTAT's announcement was highly significant because, if GTAT was able to grow larger sapphire boules, it was more likely to be able to produce sapphire at the cost-effective level necessary to justify its widespread use in smartphones.

14. At no point did Defendants suggest that GTAT was experiencing any difficulties in performing under the Apple agreement. To the contrary, throughout the summer of 2014, GTAT's executives stated that they "remain very positive about our Sapphire materials business," with Gutierrez saying on August 5, 2014 that the Arizona facility "is nearly complete and we are commencing the transition to volume production." These statements had their desired effect. By August 26, 2014, GTAT's stock price had soared to $18.60—more than double its price at the start of the Class Period.

Massive Insider Selling By GTAT's Executives

15. GTAT's executives promptly took advantage of GTAT's rising stock price to enrich themselves by millions of dollars through enormous insider selling. Defendant Gutierrez made approximately ***$10.6 million*** from sales of nearly 700,000 shares of GTAT stock during the Class Period—representing a staggering ***fifty percent of his total holdings in just 7 months.*** Similarly, the Company's Vice President and General Counsel, Defendant Hoil Kim, sold ***fifty-nine percent*** of his holdings of GTAT stock during the Class Period, raking in more than $4 million. And

Defendant Gaynor sold more than thirty-six percent of his holdings. In total, GTAT's executives reaped nearly $20 million for themselves in Class Period stock sales.

<u>GTAT Declares Bankruptcy</u>

16. On September 9, 2014, Apple unveiled two new models of its next generation iPhone and announced that both would come not with sapphire cover screens but with standard reinforced glass display screens. On September 15, 2014 GTAT announced a conference call to be scheduled the week of September 29, 2014. Then, on October 2, 2014, GTAT postponed the call until the week of October 6, 2014. On October 6, 2014, rather than having a conference call, GTAT shocked investors by announcing that it had filed for bankruptcy. The price of GTAT's common stock dropped almost 93%, declining to $0.80 per share and wiping out nearly $1.4 billion in market value. The price of GTAT's 3.00% Convertible Senior Notes due 2020 issued in December 2013 similarly declined more than 70 percent in a single day.

17. In the following weeks, information emerged in the bankruptcy proceedings making clear that GTAT's executives believed from the very start of the Class Period (but concealed from investors) that the agreement with Apple was a disaster for GTAT. For example, in sworn declarations, Defendant Daniel Squiller, GTAT's Chief Operating Officer, admitted that "Apple presented GTAT with an ***onerous and massively one-side deal in the fall of 2013.***" Squiller avowed that the Apple agreement "shifted all economic risk to GTAT" and "constrained GTAT from doing business with any other manufacturer . . . or supplier." Astonishingly, Squiller declared that the agreement was an "adhesions contract" and "even if this business transaction worked exactly as contemplated" GTAT would not earn a penny of income unless Apple bought significant sapphire material well in excess of the $578 million prepayment amount.

18. Squiller further stated that GTAT only accepted the terms of the Apple agreement in November 2013 because "GTAT was ***out of options***" and "had no practical choice at that stage other than to concede to Apple's terms." He described a contract negotiation process that was "anything but an arm's-length negotiation" whereby "Apple simply dictated the terms and conditions of the deal." Squiller's belated description of GTAT's true view of the Apple agreement is at breathtaking variance from the statements made to GTAT's investors during the Class Period.

19. Squiller's declaration has been corroborated by multiple former employees of GTAT. For instance, as discussed below, GTAT's former Sapphire Product Manager (who was involved in the Apple negotiations) told Lead Counsel that he resigned in December 2013 over GTAT's entry into the Apple agreement after warning Gutierrez and Squiller that it was completely unrealistic. Numerous other former employees have described the notion that GTAT could comply with the onerous terms of the agreement as ***"completely out of line with reality,"*** "a shot in the dark," a "leap of faith," and a deal that "no reasonable person could think that was going to be profitable given what was going on."

20. Remarkably, as reported by the *Wall Street Journal* in November 2014, Gutierrez met with two Apple executives on June 6, 2014 and secretly ***admitted to Apple*** that GTAT could not successfully produce sapphire boules of the size and quality required by Apple. Gutierrez told Apple he was there to "fall on his sword" and distributed a document titled "What Happened" listing 17 problems at the Arizona facility. Soon after that, GTAT stopped production at the Arizona facility for several weeks.

21. Defendants never disclosed this highly material information. They instead put their own interests first by actively misleading investors regarding the Apple agreement, while earning

millions of dollars for themselves through illicit stock sales. As discussed in more detail below, investors are now entitled to recover against the individuals and entities responsible for their losses.

II. THE CLAIMS ASSERTED IN THE COMPLAINT

22. In this Complaint, Plaintiffs assert two different sets of claims on behalf of purchasers of GTAT's securities during the Class Period. Counts One, Two, Three and Four assert fraud claims under Section 10(b) and Section 20(a) of the Securities Exchange Act of 1934 ("Exchange Act") against the Officer Defendants and Apple.

23. Counts Five, Six, Seven and Eight assert strict-liability and negligence causes of action under the Securities Act of 1933 ("Securities Act") against those Defendants who are statutorily responsible under Sections 11 and 12(a)(2) of the Securities Act for materially untrue statements and misleading omissions made in connection with GTAT's Offerings, and control person claims related to the Offerings under Section 15 of the Securities Act.

24. Plaintiffs specifically disclaim any allegations of fraud in the non-fraud claims brought under the Securities Act, which are pleaded separately in this Complaint from Plaintiffs' Exchange Act claims, except that any challenged statements of opinion or belief made in connection with the Offerings are alleged to have been materially misstated statements of opinion or belief when made and at the time of the Offerings.

III. JURISDICTION AND VENUE

25. This Court has jurisdiction of the subject matter of this action pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and Section 22 of the Securities Act (15 U.S.C. § 77v); and 28 U.S.C. § 1331 and 1337. The claims asserted herein arise under (i) Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b), 78t(a), 78t-1), and the rules and regulations promulgated thereunder, including Rule 10b-5 (17 C.F.R. §240.10b-5); and (ii) Sections 11, 12, and 15 of the Securities Act (15 U.S.C. §§ 77k, 77l, and 77o). In connection with the acts alleged

in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the United States mails, interstate telephone communications, and the facilities of the national securities markets.

26. Venue is proper in this District pursuant to Section 27 of the Exchange Act, Section 22 of the Securities Act, and 28 U.S.C. § 1391(b), (c) and (d). Many of the acts and transactions giving rise to the violations of law complained of herein occurred in this District. In addition, GTAT maintained its corporate headquarters and principal executive offices in this District throughout the Class Period.

IV. RELEVANT NON-PARTY

A. GTAT

27. During the Class Period, GT Advanced Technologies Inc. (defined above as "GTAT" or the "Company") was a diversified technology company producing materials and equipment for the global consumer electronics, power electronics, solar and LED industries with its headquarters and principal executive offices located at 243 Daniel Webster Highway, Merrimack, New Hampshire, 03054.

28. During the Class Period, the Company was listed on The NASDAQ Global Select Market ("NASDAQ"), an efficient market, where its stock was publicly traded under the symbol, "GTAT."

29. On October 6, 2014, the Company filed for bankruptcy under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of New Hampshire. On October 16, 2014, the Company's common stock was suspended from trading by NASDAQ and was formally delisted effective December 21, 2014. GTAT's common stock remains eligible to trade on the OTC Markets Group, Inc. under the symbol "GTATQ."

V. THE EXCHANGE ACT PARTIES

A. Lead Plaintiff

30. Court-appointed Lead Plaintiff Douglas Kurz ("Lead Plaintiff") is an investor who purchased GTAT securities during the Class Period and suffered damages as a result of the violations of the federal securities laws alleged herein. On May 20, 2015, this Court appointed Mr. Kurz as Lead Plaintiff for this litigation. All of Mr. Kurz's purchases and sales in GTAT securities during the Class Period are set out in the certification filed in connection with Mr. Kurz's motion for appointment as lead plaintiff in this action on December 8, 2014 (DN 35-3). Lead Plaintiff brings the claims asserted herein on his behalf and on behalf of all other investors who were injured by the same course of conduct.

B. Additional Named Plaintiff For Exchange Act Claims

31. Named Plaintiff Vance K. Opperman is an investor who, as set forth in the accompanying certification, purchased GTAT securities during the Class Period and suffered damages as a result of the violations of the federal securities laws alleged herein. All of Mr. Opperman's purchases and sales in GTAT securities during the Class Period are set out in the certification attached as Exhibit A hereto.

C. Exchange Act Defendants

1. Officer Defendants

32. Defendant Thomas Gutierrez ("Gutierrez") was at all relevant times GTAT's President, Chief Executive Officer, and Director. During the Class Period, Gutierrez reviewed, approved and signed GTAT's filings with the SEC that contained false and misleading statements and participated in conference calls with securities analysts during which he made false and misleading statements, as detailed herein.

33. Defendant Richard Gaynor ("Gaynor") was at all relevant times the Vice President and Chief Financial Officer of GTAT from the beginning of the Class Period until his resignation on March 11, 2014. During the Class Period, Gaynor reviewed, approved and signed GTAT's filings with the SEC that contained false and misleading statements and participated in conference calls with securities analysts during which he made false and misleading statements, as detailed herein.

34. Defendant Raja Singh Bal ("Bal") joined GTAT on January 13, 2014 as Vice President, Corporate Controller and Chief Accounting Officer and became Vice President and Chief Financial Officer on March 12, 2014 upon Defendant Gaynor's retirement on March 11, 2014. Defendant Bal reviewed, approved and signed GTAT's filings with the SEC that contained false and misleading statements and participated in conference calls with securities analysts during which he made false and misleading statements, as detailed herein.

35. Defendant Hoil Kim ("Kim") served as Chief Administrative Officer of GTAT since February 2010 and as Vice President, General Counsel and Secretary since December 2008. As General Counsel of GTAT, Defendant Kim was a signatory to and had responsibility for negotiating and entering into the Apple agreement. Defendant Kim also reviewed, approved and signed GTAT's materially false and misleading public filings on Forms 8-K which contained as exhibits GTAT's materially false and misleading press releases during the Class Period.

36. Defendant Daniel W. Squiller ("Squiller") was at all relevant times GTAT's Chief Operating Officer. During the Class Period, Squiller was the GTAT executive who supervised the Company's sapphire operations in Mesa, Arizona and reviewed and approved GTAT's filings with the SEC that contained false and misleading statements. In his sworn declarations filed in connection with GTAT's bankruptcy, Defendant Squiller states that he is "particularly familiar with

GTAT's business relationship with Apple, Inc. ('Apple') and GTAT's operations at a facility in Mesa, Arizona (the 'Mesa Facility') that is owned by an affiliate of Apple."

37. Defendants Gutierrez, Gaynor, Bal, Kim and Squiller are collectively referred to herein as the "Officer Defendants." During their tenures at the Company, the Officer Defendants directly participated in the management of GTAT's operations and, because of their positions at GTAT, were involved in the drafting, reviewing, publishing and/or disseminating the false and misleading statements and information alleged herein, and possessed the power and authority to control the contents of GTAT's reports to the SEC, press releases, conference calls to investors, and presentations to securities analysts, money and portfolio managers, and institutional investors. Because of their positions and access to material, non-public information available to them, each of the Officer Defendants knew that the adverse facts and omissions specified herein had not been disclosed to, and were being concealed from, the public, and that the positive representations and omissions were then materially false and/or misleading.

2. Apple Inc.

38. Defendant Apple Inc. (defined above as "Apple") is a California corporation with its headquarters and executive office located at 1 Infinite Loop, Cupertino, California, 95014. Apple designs, manufactures and markets mobile communication and media devices, personal computers and portable digital music players, and sells a variety of related software, services, accessories, networking solutions and third-party digital content and applications. Apple is the world's largest provider of smartphones through its iPhone brand.

VI. FACTUAL BACKGROUND

A. Background On GTAT And Its Business

39. On July 24, 2008, GTAT conducted a $500 million initial public offering on the NASDAQ Global Select Market and became a publicly traded company. At that time, the

Company traded under the name GT Solar International, Inc., and its business focused on the manufacture of equipment for the solar industry, including furnaces and other material used to make photovoltaic ("PV") solar cells and wafers and produce polysilicon.

40. As the Solar industry began to struggle, GTAT expanded into producing sapphire crystal growth equipment and materials for businesses in the solar industry. Although sapphire is best known as a naturally occurring gemstone, it can also be manufactured synthetically in specially designed furnaces—called advanced sapphire crystallization furnaces (defined above as "ASFs")—that heat selected compounds to enormously high temperatures approaching 3600 degrees Fahrenheit. Sapphire is one of the hardest substances on Earth and is recognized for its scratch-resistance, durability, chemical resistivity and transparency. Sapphire historically was used in light-emitting diodes ("LEDs"), high-power lasers, windows for the aerospace and defense industries, semiconductors, barcode sensors, and the displays in luxury watches.

41. Between June 2010 and May 2013, GTAT acquired four companies (Crystal Systems, Confluence Solar, Twin Creeks Technologies and Thermal Technology) that provided the Company with an entry into the sapphire business. Through these acquisitions GTAT began to design and produce ASFs, which GTAT would then sell to third-party customers who used the ASFs to produce sapphire material. As GTAT noted in its pre-Class Period Form 10-K for the year ended December 31, 2012, its "sapphire business is primarily related to the commercialization of our ASF systems"—in other words, the Company largely limited its sapphire business to the production and sale of ASF furnaces and not the production of sapphire material itself.

42. GTAT experienced an initial increase in revenue by adding the sapphire line of business to its polysilicon and photovoltaic business, with its sapphire business adding $216.9

million in revenue as of the fiscal year ended March 31, 2012. But the Company's sapphire business—along with the rest of GTAT's operations—soon began to flounder.

43. From the fiscal year ended March 31, 2012 to the transition fiscal year ended December 31, 2012, the Company's revenues declined sharply from $955.7 million to only $379.64 million, with just $55.43 million attributable to its sapphire business.[2] The Company experienced sharp declines in revenue again the following year, with total revenue declining to $299 million and the revenue attributable to its sapphire business falling to $47.8 million.

44. The Company also was hemorrhaging cash, going from net income of $183.39 million at the end of the fiscal year ended March 31, 2012 to a net loss of $142.3 million by the end of 2012, a decline of $326.7 million in just nine months. In the first two quarters of 2013, GTAT's revenue fell again to $226 million, with $21.6 million of that being generated from its sapphire business. The deteriorating condition of the Company's business is illustrated in the following chart:

	Polysilicon Revenue	Photovoltaic Revenue	Sapphire Revenue	TOTAL REVENUE
2011 (FY ended March 31, 2012)	$363.3 mm	$375.6 mm	$216.9 mm	$955.7 mm
2012 (FY ended December 31, 2012)	$17.55 mm	$306.66 mm	$55.43 mm	$379.64 mm
2013 (FY ended December 31, 2013)	$31.4 mm	$219.7 mm	$47.8 mm	$299 mm

[2] GT changed its fiscal year reporting period to close at the end of the calendar year starting as of December 31, 2012. As a result, that reporting period covered only the last three quarters of 2012.

45. GTAT's stock price declined in the wake of these setbacks, as analysts and market observers expressed concern about the Company's poor prospects. By the end of July 2013, GTAT's stock was trading at approximately $5 per share, far below its IPO price of $16.50 per share, and it was clear that GTAT's prospects were dim absent a drastic change to either its business model or the sapphire or solar industries.

B. GTAT Looks To Benefit From Additional Sapphire Use In The Manufacture of Smartphones

46. Industry observers had long believed that sapphire's strength, high transparency, and durability made it an ideal material to replace the reinforced glass display screens used on most smartphones. Analysts recognized that adoption of sapphire for use on smartphone screens could increase the global sapphire demand significantly and "would drive the demand for advanced sapphire furnaces (ASF) from GTAT."

47. But analysts also warned that a sapphire smartphone screen would be viable only "if it could be produced in required thinness and [at] acceptable cost." By the start of the Class Period, aside from using sapphire crystal on small components of smartphones such as camera lenses, no mass-produced smartphone provider had been able to utilize sapphire crystal that was adequately transparent and sufficiently cost effective for widespread use as smartphone display screens.

48. Indeed, the primary limitation on using sapphire for smartphone display screens was that the cost of producing large amounts of high-quality sapphire material with suitable clarity, thinness and strength was prohibitively expensive. To produce synthetic sapphire of high quality, certain compounds are heated to extreme temperatures in ASF furnaces, which, over a period of weeks, grow large crystal logs of sapphire called "boules." These boules, once tested for clarity and other qualities, are fabricated and separated into wafers for use in consumer and other products.

In order to lower costs and produce the most affordable high-quality sapphire material, sapphire manufacturers attempt to make the largest boules possible.

49. By mid-2013, the maximum boule size that any manufacturer had been able to produce was 115 kg (by GTAT). Even achieving this size had been quite an accomplishment. As GTAT has subsequently disclosed, it took three years (from March 2010 to early 2013) for the Company to figure out how to increase boule size by just 30 kg, from 85 kg to 115 kg. But even 115 kg was far too small to enable the cost-effective production of sufficient high-quality quantities of sapphire for use as smartphone display screens. Indeed, it was understood that boules larger than 165 kg were necessary to justify widespread use as a smartphone display screen.

50. In August 2013, GTAT made an extremely encouraging announcement about its sapphire business. On an August 6, 2013 conference call, Defendant Gutierrez informed investors of a "significant opportunity in developing our sapphire business beyond the LED market [based on] [c]onversations with potential non-LED customers." While Defendant Gutierrez would provide no details on the "significant opportunity" in the sapphire business, he concluded that GTAT "remain[ed] as optimistic as ever about [its] ability to expand [its] sapphire business beyond the LED market" and emphasized that "we're very confident about our business and our sapphire business through the back end of the year and going into next year."

51. The market began to suspect that this announcement was tied to the long-discussed possibility of using sapphire for smartphone display screens. Other developments increased industry speculation about a near-term unprecedented demand for sapphire. On September 10, 2013, during an Apple iPhone event, Apple confirmed the existence of the long-awaited, long-rumored sapphire fingerprint sensor. In the same week Apple filed a patent that involved using sapphire in the cover screen, another development viewed by the industry as an indication that

technological advances had progressed far enough for sapphire cover glass to be a reality. In response, UBS upgraded GTAT on September 19, 2013 and added the stock as a "U.S. Key Call," as the analyst estimated that "the sapphire equipment product upgrade story for mobile device covers (replacing glass based covers) develops sooner than expected and the size of the sapphire market for use in mobile devices will be larger than we expected."

52. Notably, the market presumed that GTAT's business would benefit from increased sapphire use because GTAT was the primary manufacturer of the ASFs necessary for sapphire production. No analyst even considered the possibility that GTAT would actually produce the sapphire materials for the cover glass itself given its lack of any experience in that market.

C. GTAT Announces A Landmark Agreement With Apple, Purportedly Transforming Its Business Overnight

53. On November 4, 2013, the first day of the Class Period, GTAT announced that it had entered into an agreement with Apple to provide Apple with sapphire material. The Apple agreement provided that GTAT and Apple would jointly develop a site in Mesa, Arizona where GTAT would employ upwards of 700 people, and over 2000 ASFs would be used to manufacture sapphire exclusively for use by Apple. In a surprising twist, GTAT announced that it would itself develop and own the sapphire furnaces, rather them selling them to Apple as per the Company's usual practice. In short, GTAT was changing the direction of its business from an equipment manufacturer to a manufacturer and seller of sapphire material.

54. In a November 4, 2013 press release, the Company explained that:

> GT will own and operate ASF® furnaces and related equipment to produce the material at an Apple facility in Arizona where GT expects to employ over 700 people. Apple will provide GT with a prepayment of approximately $578 million. GT will reimburse Apple for the prepayment over five years, starting in 2015…
>
> GT expects this arrangement to be cash positive and accretive to earnings starting in 2014.

55. GTAT's executives told the market that in order to fulfill the terms of the Apple agreement, "GT has accelerated the development of its next generation, large capacity ASF furnaces to deliver low cost, high volume manufacturing of sapphire material" and "has dedicated the vast majority of its ASF capacity in the second half of 2013 to expanding its own materials capacity."

56. According to the Company's executives, GTAT's costs under the agreement were going to be covered in full by $578 million in prepayments that Apple would make in four installments. GTAT's executives assured investors that its existing cash combined with the money it expected from Apple "will be sufficient to satisfy working capital requirements, commitments for capital expenditures, and other cash requirements for at least the next twelve months."

57. Defendant Gutierrez stated in the November 4, 2013 press release that the work being done for Apple would "leverage[]" the Company to "be well positioned to drive the growth of other sapphire opportunities, including the expansion of our LED and industrial sapphire businesses in partnership with our ASF customers."

58. Primarily as a result of the Apple agreement, GTAT's executives expected the Company's 2014 revenue to more than double in one year and provided revenue guidance in the range of $600 to $800 million, 80% of which would be attributable to its sapphire business. This was an immense increase from the Company's current revenue. Indeed, that same day, the Company announced poor third quarter revenue of $40.3 million, only $7.3 million of which was due to sapphire. Those results were among the worst reported by GTAT since early 2011, when it first commenced its sapphire operations.

59. GTAT's executives, however, did not reveal all of the details about the Apple agreement, even to the Company's own investors. On the November 4, 2013 conference call,

Defendant Gutierrez repeatedly stated that he "was not at liberty" to answer certain analyst questions because of confidentiality provisions insisted upon by Apple and that "all of the information that we're at liberty to disclose about our agreement with Apple has been disclosed."

60. Analysts pressed for more information about key aspects of the agreement. In particular, they sought more information about the agreement's "exclusivity" provisions and GTAT's "capability of ramping up" its production of ASFs to meet the requirements of the agreement. In response, GTAT's executives repeatedly assured analysts that the exclusivity provisions would not impair GTAT's business and that GTAT would be able to ramp up its production in accordance with the agreement. For example, Defendant Gutierrez stated that "the exclusivity, undefined as it is, does not really restrain us from continuing to grow the business." He also expressed no concerns about GTAT's ability to ramp up its production, pointing investors to the fact that GTAT's "capacity as an equipment provider is well documented" and noting that the Company "does not have much competition technologically."

61. These assurances were important to analysts and the market because they dispelled fears that GTAT had entered into an overly one-sided agreement with unachievable goals that would negatively impact the Company's business and restrict its ability to grow.

62. The Company reiterated its positive guidance in a third quarter 2013 Form 10-K filed on November 7, 2013, and stated that it "expect[ed] to commence manufacturing of sapphire material in the near future in Arizona." Copies of the contracts comprising the Apple agreements signed on GTAT's behalf by Defendant Kim were attached to the Form 10-Q, but large portions of the documents were redacted and blocked from investors' view pursuant to confidentiality stipulations imposed by Apple. Among other things, details about the size and specifications of the sapphire boules to be produced for Apple were redacted, as were the target dates for

completion, the liquidated damages figures for breaches of the contracts, and certain details concerning the exclusivity provisions. Defendants did not indicate to investors that any of the redacted information conveyed essential or even material elements of the agreement between the two companies.

63. With their concerns about the Apple agreement assuaged by the assurances of GTAT's executives, analysts reacted favorably, calling the agreement "significant and possibly transformative" and proclaiming that GTAT "sign[ed] A 'Gem' of a Deal With Apple." Analysts particularly focused on GTAT's revenue expectations, with an analyst from Piper Jaffray writing on November 5, 2013 that "we believe the longer term Apple supply agreement provides visibility into 2016 with revenues exceeding $1bn by 2015 and potentially doubling from '14 to $1.4bn in 2016." Piper Jaffray also issued a favorable report and commented on the Apple agreement's exclusivity terms, stating "[w]hile GTAT's agreement with Apple potentially restricts it from selling to other competitors, GTAT remains upbeat that it could continue to sell furnaces to other Asian customers given that this Apple order will be predominantly based in the US[]."

64. In response, GTAT's stock price rose more than 20% in a single day, from a close of $8.38 per share on November 4, 2013 to a close of $10.10 per share on November 5, 2013.

D. Defendants Raise Nearly $300 Million From Investors To Fund The Apple Deal

65. On December 2, 2013, GTAT issued a press release announcing that it would offer convertible senior notes and shares of its common stock to the public and use the proceeds for "working capital and general corporate purposes." The next day, on December 3, 2013, the Company commenced the two Offerings and raised nearly $300 million in additional cash to fund its operations. Specifically, GTAT raised $214 million through an offering of 3.00% Convertible

Senior Notes due 2020 and $81.6 million through an offering of common stock valued at $8.65 per share.

66. The Offering Materials (discussed more fully below) incorporated by reference the statements made in certain documents GTAT previously filed with the SEC, including the November 4, 2013 press release and the November 7, 2013 Form 10-Q. In addition, GTAT stated in the Prospectuses filed in connection with the Offerings that it "expect[ed] to commence manufacturing of sapphire material in the near future at our leased facility in Arizona," "expect[ed] that our sapphire material operations will constitute a larger portion of our business going forward than in the past as a result of our supply arrangement with Apple," and would "continue to sell our ASF systems to sapphire manufacturers in certain select markets, including the LED industry, subject to certain exclusivity rights that we have granted Apple."

E. Over The Next Three Quarters, Defendants Assure Investors That The Apple Agreement Is Progressing Well And That GTAT Expected An Enormous Revenue Increase From Its Sapphire Business

67. From the time the Apple agreement was announced to the end of the Class Period, Defendants Gutierrez, Gaynor and Bal repeatedly told the market that GTAT was experiencing great success with the sapphire production at the Mesa facility.

68. Almost immediately after the Apple agreement was signed, Defendant Squiller (Gutierrez's direct report) moved to Mesa, Arizona to oversee for GTAT all aspects of the facility, including interfacing with Apple's onsite representatives and employees, and GTAT's sapphire materials production. In that role, he held regular meetings with the staff at Mesa and interacted daily with onsite representatives from Apple. The Company's top two executives, Defendants Gutierrez and Bal (and prior to his departure, Defendant Gaynor) were primarily focused on the Apple deal given that the Company's revenues and entire future depended upon its success. According to the former Controller who directed financial planning and analysis at GTAT's New

Hampshire headquarters and who reported directly to Defendants Gaynor and then Bal, both Gutierrez and Bal "spent an awful lot of time" at the Mesa facility, consistently flying back and forth between Arizona and New Hampshire to fix problems and assess production. This former employee described how Gutierrez was in Mesa on a regular basis from the time GTAT began operating furnaces at the facility to meet with the operational staff and Defendant Squiller. The former Controller added that the frequency of both Defendants Gutierrez and Bal's trips to Mesa increased as time went on.

69. GTAT's executives provided investors with an initial update on the progress of the Apple deal on February 24, 2014, when GTAT filed a Form 8-K and accompanying press release quoting Defendant Gutierrez as stating, "Our arrangement to supply sapphire materials to Apple is progressing well and we started to build out the facility in Arizona and staff the operation during the quarter." He continued, "We are pleased to have Apple as a sapphire customer and to be in a position to leverage our proprietary know-how to enable the supply of this versatile material . . . our aim is to position GT not only as an exceptional sapphire supplier to Apple but also as an unparalleled world-class supplier of sapphire material and equipment to a variety of customers."

70. Defendant Gutierrez also expressed conviction that new non-Apple sapphire orders were expected by the end of 2014 and reiterated GTAT's strong revenue guidance for 2014 of $600 to $800 million. On a conference call with investors that day, Gutierrez responded to a question from a UBS analyst concerning the source of the Company's "confidence [that] you can successfully generate a profit in this business of selling sapphire materials," stating:

> Our confidence comes from deep understanding of the unique technology that we've developed for these applications. And, as I've indicated before, we've continued to progress on the performance of our ASF furnaces and the cost per millimeter that we expect to achieve, and so we're quite confident in our technology. . . . [W]e

> generally don't give guidance unless we have a pretty good understanding that we're going to hit it."

71. Defendants also made statements concerning the costs of getting the sapphire production in the Arizona facility fully operational. Defendant Gaynor stated that "[w]e expect that the combination of Apple prepayments received to date, and to be received in the future, will fully fund the capital outlay in Arizona." The Company's Form 10-K for 2013 (filed on March 10, 2014) made similar representations, stating "[w]e believe that our existing cash, customer deposits and prepayment installment proceeds will be sufficient to satisfy working capital requirements, commitments for capital expenditures and other cash requirements for at least the next twelve months."

72. GTAT shares rose nearly 17% and the December 2013 debt securities rose over 10% following the February 24, 2014 announcements, and analysts again reacted positively to these disclosures. In a February 24, 2014 report titled "Raised Guide Improves Visibility Into Apple," Canaccord Genuity wrote:

> The company raised its 2016 EPS target above $1.50 from above $1.00 previously. We view this as further confidence that the Apple ramp is on or ahead of schedule and helps to de-risk investor expectations of poor economics for the deal.
>
> Given the size of the expected sapphire revenues this year as well as anticipated revenue growth going forward plus our own checks in Asia, we continue to believe that GT will be primarily supplying sapphire for an upcoming iPhone.

73. Just days later, on March 7, 2014, Credit Suisse upgraded GTAT's stock to "Outperform" due to "continued progression on the recently-awarded Apple supply agreement." Credit Suisse reported how "GTAT is up over 400% in the last 12 months especially due to the introduction of sapphire into mobile devices and the Apple supply agreement announced in November 2013."

74. On May 5, 2014, the Company issued a press release announcing a new product—a "next generation" ASF that could create 165 kg sapphire boules that would be 50 kg heavier than its latest marketed technology. The Company indicated, however, "that it has developed more advanced ASF technology capable of producing boules significantly greater than 165 kg," and that it "intend[ed] to keep this more advanced ASF system captive for some period of time." GTAT's announcement was highly significant because, as discussed above, technological limitations on boule size made it very expensive to mass produce sapphire. In other words, if GTAT was able to grow larger sapphire boules, it was more likely that the Company could produce sapphire at the cost-effective level necessary to justify its widespread use in smartphones.

75. During a May 8, 2014 conference call held to discuss GTAT's first quarter results, a Pacific Crest analyst asked whether GTAT would use this "captive technology." *i.e.*, the larger boule technology, for its "sapphire materials business" with Apple. Defendant Gutierrez responded affirmatively and stated that the new "captive technology" was "significantly greater" in size than the 165 kg and was "production ready."

76. On May 7, 2014, now over six months into the agreement with Apple, GTAT issued a press release filed with a Form 8-K announcing the Company's first quarter results and providing an update on the Apple deal. Defendant Gutierrez stated in the press release that "2014 will be a transformational and significant year for GT as our sapphire materials business ramps up and we continue to execute on our strategy of investing in new technologies that will help drive growth in 2015 and beyond." He further stated, "[w]ith respect to our Arizona project, we have now received three of the four prepayments from Apple," and that "[w]e continue to expect our sapphire segment to contribute meaningfully to revenue this year."

77. GTAT's executives also assured investors that they were adhering to their budget and not suffering from cost overruns: "[t]he company expects that the total prepayments it receives from Apple will fully fund its capital outlays related to the project in Arizona." Defendant Bal also stated that Apple's prepayments "will fully fund[] our capital outlays related to the Arizona project." GTAT also reiterated that it expected "[r]evenue in the range of $600 to $800 million." Later that day, Defendant Gutierrez told investors that "I remain very enthusiastic about our Sapphires materials and equipment business. While we cannot be specific with respect to the production ramp in Arizona, we continue to expect our Sapphire business to contribute over 80% of our revenue this year."

78. Six months into the Apple agreement, analysts asked more detailed questions about its terms during the May 8, 2014 conference call. For example, a Raymond James & Associates analyst asked GTAT management, "[e]verybody out there is trying to figure out which product Apple will be applying Sapphire to, and I know you can't disclose that, but do you believe that Apple will eventually disclose what those products are, and if so, what might the timetable be for that announcement be?" Defendant Gutierrez responded, "I can tell you that <u>we are producing Sapphire and that I expect the Sapphire that we produce will be fully utilized</u>." Defendant Gutierrez concluded the May 8, 2014 conference call with a positive outlook, stating that "I just wanted to sort of take the moment to reflect on <u>how incredibly positive I am and my team is about the future of the business</u>."

79. Analysts were encouraged by Defendants' upbeat statements and representations concerning the Apple deal. For example, on May 7, 2014, UBS issued a report titled "Sapphire Factory Appears On Track for Big 2H14 Ramp," stating that "[s]teady progress on [GTAT's] sapphire factory keeps us positive on the stock." On May 8, 2014, Canaccord Genuity expressed

optimism, reporting, "We did not see or hear anything in the company's financial statements or remarks that would change our very bullish opinion that both GT and Apple are ramping for a major handset launch with sapphire cover glass."

80. In an August 4, 2014 press release filed with the SEC on a Form 8-K, Defendant Gutierrez stated that the Mesa facility build-out "is nearly complete and we are commencing the transition to volume production." Gutierrez explained that he "remain[ed] confident about the long-term potential of the sapphire materials business for GT." In a conference call with analysts the next day, on August 5, 2014, Defendant Gutierrez reiterated the above statements and stated that GTAT had "taken [the Mesa facility] from a shell to a fully operating entity."

81. GTAT's executives directly addressed the Company's relationship with Apple in the August 5, 2014 conference call. Defendant Gutierrez assured analysts that GTAT expected to hit Apple's targets and "receive the final $139 million prepayment by the end of October 2014," stating "[w]e remain very positive about our Sapphire materials business." Defendant Bal confirmed that, "[a]s Tom [Gutierrez] noted earlier, the fourth prepayment is contingent on achievement of certain operational targets by GT. We expect to attain these targets and receive the final $139 million prepayment by the end of October."

82. Defendant Gutierrez stated on the conference call that, even if the final payment from Apple was not received in October 2014 it would not be a problem because GTAT purportedly had sufficient liquidity on hand, stating:

> I feel very confident, based on the progress that we're making, that we will achieve the milestone [payment] in that timeframe. But as I indicated with a projection of having close to $400 million in the bank at the end of the year, ***it's not a world-ending event if it slides.*** Although, again, I don't anticipate that it will slide.

83. Defendants also reiterated the Company's strong guidance of over $600 million in revenue for 2014, 80% of which would be attributed to sapphire. Defendant Bal stated, "[w]e

continue to expect more than 80% of the year's revenue to come from our Sapphire segment . . . $600 million to $700 million, reflecting our current view of volumes associated with the Arizona project, as well as our expectations for Sapphire equipment shipments for the second half." Gutierrez stated with confidence that GTAT's "revenue target for 2015 remains unchanged."

84. Analysts responded positively to Defendants' statements. On August 5, 2014, Canaccord Genuity noted that "[w]e believe GTAT is positioned to benefit from a move to sapphire cover glass in the handset market" and that "we are cautiously optimistic on the cost structure in order to make this a reality." Similarly, on August 6, 2014, Dougherty & Company issued a glowing report of GTAT, maintaining its "Buy" recommendation and its high $29.00 price target for GTAT shares, noting that "[w]e continue to be very positive about GTAT and recommend buying at current undervalued levels." Investors understood that GTAT was on track with Apple, and GTAT's stock increased throughout August, soaring to a near Class Period-high of $18.60 at the close of the market on August 26, 2014.

85. Defendants' statements caused GTAT's stock price to rise dramatically in the months following the Apple agreement. Specifically, GTAT's common stock price more than doubled, from $8.38 per share on November 4, 2013 to a Class Period high of $19.77 per share on July 2, 2014. The December 2013 Notes' value likewise rose more than 83% from the December Debt Offering to a Class Period high of nearly $1,837 per note on July 2, 2014.

VII. THE FULL TRUTH IS REVEALED WHEN GTAT UNEXPECTEDLY FILES FOR BANKRUPTCY

86. Just weeks after Defendants (i) reconfirmed the Company's revenue targets and expressed confidence in GTAT's ability to generate 80% of the Company's expected $600 to $700 million from its sapphire sales; (ii) emphasized that they "remain[ed] very positive about our Sapphire materials business" and "confident about the long-term potential of the sapphire materials

business for GT;" (iii) told investors that it ***"would not be a world-ending event"*** if the final prepayment from Apple slipped past October 2014 because the Company had sufficient liquidity; (iv) relayed that GTAT was "commencing the transition to volume production" in fulfillment of the Apple agreement; and (v) stated that the Mesa production facility was a "fully operating entity," investors learned that GTAT's agreement with Apple was in serious jeopardy.

87. On September 9, 2014, Apple unveiled two new models of its iPhone: the iPhone 6 and the iPhone 6 Plus. During the iPhone 6 Launch, Apple announced that both models of the new iPhone would come with displays produced from "ion-strengthened" glass, a term associated with Gorilla Glass, a product manufactured by Corning, a competitor product of GTAT's sapphire material.

88. Apple's failure to use the sapphire glass purportedly being produced by GTAT was negative news for GTAT, and its stock price plummeted from $17.21 per share to $12.78 per share from September 8 to September 10, or over 25% on heavy trading volume of 78,938,000 shares. Similarly, the price of the debt issued pursuant to the Debt Offering, which had a face value of $1,000 per note, declined from $1,613 per note on September 8 to $1,279 per note on September 10, 2014, or almost 21%.

89. In light of GTAT's prior statements about its deal with Apple, analysts were surprised by this news. Canaccord Genuity lowered its previous price target of $16.00 to $13.00 and noted that "we don't see how GT can meet its $600-$700M guidance." Similarly, on September 10, 2014, in response to the Apple disclosure, Cowen and Company stated that "the ramp at the Mesa, Arizona facility has been slower than expected."

90. Also on September 10, 2014, Dougherty & Company (research analysts who had routinely provided the most glowing outlooks for the Company), changed its "Buy"

recommendation to "Sell" and dramatically lowered its previous price target of GTAT stock from $29.00 to $9.00. Dougherty & Company noted that Apple's use of Gorilla Glass was "extremely negative news for GTAT," that "[p]revious guidance by management for 2014 needs to be cut in half," and that "[w]e have turned negative on the GTAT story."

91. In response, GTAT's executives made no effort to correct or update their previous misrepresentations. Instead, on September 15, 2014, the Company issued a press release announcing a conference call to be scheduled during the week of September 29, 2014 "to provide a business update." Then, on October 2, 2014, GTAT filed another press release postponing the "business update" until the week of October 6, 2014.

92. On October 6, 2014, however, rather than hold a conference call to "provide a business update," GTAT shocked the market by announcing that it had filed for bankruptcy under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of New Hampshire. The October 6, 2014 press release reported that, as of September 29, 2014, GTAT had just $85 million of cash (as opposed to the $400 million of expected cash reported just two months earlier) and faced approximately $1.3 billion in liabilities as of June 28, 2014.

93. GTAT's bankruptcy announcement destroyed the value of the Company. On October 6, 2014, the price of GTAT stock crashed from $11.06 per share to $0.80 per share, almost 93%, on the heaviest trading volume in the history of the Company, and wiped out nearly $1.4 billion in market value. In less than one month, GTAT's shares had dropped from $17.15 per share to $0.80 per share, losing over 95% of their value. Similarly, the price of the debt issued pursuant to the Debt Offering, which had a face value of $1,000 per note, declined from $1,083 per note to $315 per note, or almost 71%.

94. On October 16, 2014, the NASDAQ suspended trading of the Company's common stock, and GTAT was formally delisted effective December 21, 2014. GTAT's common stock now trades on the OTC Markets Group, Inc. under the symbol "GTATQ."

95. The Company's spectacular demise following a year of positive and confident statements about its future, combined with irregular and significant insider trading (discussed further below), prompted the SEC to commence an investigation of the Company. On November 6, 2014, GTAT disclosed to investors that the SEC sent a letter to GTAT on October 15, 2014, stating that it was investigating "trading activity in the Company's securities, as well as the Company's sapphire business and securities offering going back to January 1, 2013." The SEC's investigation is open and ongoing.

VIII. DEFENDANTS KNEW THEIR STATEMENTS TO INVESTORS WERE MATERIALLY FALSE AND MISLEADING

96. Throughout the Class Period, GTAT's executives knew that their representations regarding the Company's agreement with Apple were materially misleading. Documents filed in the Bankruptcy Proceeding, together with multiple consistent accounts from former GTAT employees, demonstrate that GTAT signed a "contract of adhesion" with Apple, and it was well known at the highest levels of the Company that GTAT had little chance of satisfying its obligations under the Apple agreement.

97. Among other things, GTAT's executives knew from the very first day of the Class Period that: (i) the agreement was a massively one-side "adhesion contract" that was "dictated" by Apple and only accepted because GTAT was "out of options;" (ii) GTAT did not have the capability to perform its obligations under the agreement and, in fact, was not performing them during the Class Period; (iii) the agreement would place an irreversible strain on the Company's

liquidity; and (iv) the agreement had exclusivity provisions that made GTAT's predicted revenue increases in its sapphire business literally impossible.

A. GTAT Has Admitted That The Apple Agreement Was A "Massively One-Sided" Contract of "Adhesion" That GTAT Signed Only Because It Was "Out Of Options"

98. GTAT has now ***admitted*** that its top executives knew from the first day of the Class Period that the Apple agreement was an "onerous" and "massively one-sided" agreement that was unlikely to generate any significant income or revenue for the Company.

99. In sworn declarations submitted in the Bankruptcy Proceedings, Defendant Squiller recently admitted the truth about the Apple agreement and how it was viewed within GTAT from the very first day of the Class Period. In connection with its bankruptcy filing, GTAT filed a motion to reject the Apple agreement. That motion was supported by a sworn "Supplemental Squiller Declaration" signed by Defendant Squiller. The Supplemental Declaration was initially filed under seal pursuant to a joint motion by both GTAT and Apple. On October 28, 2014, GTAT filed a second Supplemental Declaration signed by Defendant Squiller.

100. On November 4, 2014, the Bankruptcy Court largely denied the motion to seal. The two Squiller Declarations were placed on the public docket and are referred to herein as the "Bankruptcy Declarations." The sworn Bankruptcy Declarations were based on Defendant Squiller's own knowledge, discussions with GTAT's "senior management and advisors" (which includes Defendants Gutierrez, Bal and Kim), and his personal observation of relevant documents. GTAT also submitted unredacted copies of the Apple agreement in the Bankruptcy Proceedings that were eventually unsealed and revealed the full terms of the Agreement for the first time.

101. The Bankruptcy Declarations reveal an astonishing inside glimpse into how GTAT's executives ***actually*** viewed the Apple agreement throughout the Class Period, and make

it clear that these executives were deliberately misleading GTAT's investors. According to the Bankruptcy Declarations, in mid-2013, GTAT and Apple began negotiations for what would have been GTAT's "largest sale ever: an order for 2,600 sapphire growing furnaces." GTAT viewed this deal "as a potential game-changer," and these negotiations likely spurred GTAT's August 2013 pre-Class Period projections about a "significant opportunity in developing our sapphire business beyond the LED market [based on] [c]onversations with potential non-LED customers."

102. But this "game-changer" soon proved illusory, and the sale of 2,600 furnaces to Apple never came to fruition. According to Squiller, "after months of extensive negotiations over price and related terms," Apple changed course and "presented GTAT with an ***onerous and massively one-side deal in the fall of 2013.***" In what the Company has now called "a classic bait and switch" (a characterization that GTAT never uttered publicly during the Class Period) Apple refused to purchase furnaces from GTAT. Instead, Apple was now insisting upon an entirely different agreement—one that "required GTAT to borrow money from Apple to purchase furnace components and assemble furnaces that would be used to grow sapphire for Apple."

103. Under the new terms being dictated by Apple, GTAT was required to build and assemble 2,036 sapphire furnaces that GTAT would operate itself in order to produce sapphire material that would be sold exclusively to Apple. The furnaces would be operated at the Mesa, Arizona facility owned by Apple. In return, the agreements required Apple to make four installment payments totaling $578 million to GTAT upon the completion of certain milestones. While GTAT publicly characterized the $578 million as a "prepayment," the Bankruptcy Declarations describe how "unlike most customer-supplier relationships, Apple treat[ed] the payments it ma[de] for GTAT's products as a 'loan' and ha[d] taken liens on assets in GTAT's business to secure repayment of those loans."

104. Moreover, contrary to Defendants' statements that the $578 million would fully cover the Company's capital outlay for the Mesa facility, the Bankruptcy Declarations reveal that the $578 million figure "was calculated based on the cost to GTAT of the furnaces and related equipment used to produce sapphire material," but did not include any additional risks or costs, including "the costs of more than 1,300 temporary and permanent personnel, utilities, insurance, repairs, and raw materials." Indeed, by the end of the Class Period, GTAT spent more than $900 million—more than twice the $439 million Apple ultimately provided after withholding its final payment—to get the factory up and running.

105. In return for these and many other "onerous" provisions, Apple promised GTAT nothing. As Squiller avowed in the Bankruptcy Declarations, even if Apple eventually purchased sapphire material from GTAT and "the business transaction worked exactly as contemplated in the original agreements [and GTAT did not need to spend an additional half billion dollars to get the factory in workable condition], GTAT would not earn any income at all unless Apple opted to "buy" sapphire material in excess of [its] loan 'repayment' obligations."

106. For example, the agreement provided—in portions that were again redacted from the versions made public during the Class Period—that Apple could cancel a purchase order at any time without charge. The redacted, publicly available version of the Apple agreement stated (redactions indicated by "[***]"):

> 4.2 Authorized Purchasers [Apple] may, [***] or (ii) reschedule the shipment date of undelivered Goods and/or redirect shipments of Goods to alternate locations.

107. The unredacted version of the agreement that was not revealed until after the Class Period makes clear that GTAT was subject to the whim of Apple, which could cancel a purchase order at any time without reimbursing GTAT a single penny (redacted language in bold):

> 4.2 Authorized Purchasers [Apple] may, **without charge, (i) cancel any Purchase Order, or any portion thereof;** or (ii) reschedule the shipment date of undelivered Goods and/or redirect shipments of Goods to alternate locations.

108. Juxtaposed against Apple's unfettered rights to cancel orders under the agreement at any time and without charge, were egregious liquidated damages provisions (that were largely redacted from public view) providing that, effective almost immediately if GTAT failed to fulfill a purchase order, GTAT was subject to enormous penalties. As Squiller stated after the Class Period, GTAT was obligated to "accept and fulfill any purchase order placed by Apple on the date selected by Apple."

109. In redacted language, the agreement provided that if GTAT missed a required delivery date for a sapphire boule, then on the "***fourth calendar day*** following the required delivery date" for delivery of a sapphire boule GTAT was required to pay Apple $320,000—an amount that was more than sixteen times the actual cost of a boule. Further, if delivery was not made by the "***fifth calendar day***," GTAT was required to pay Apple an ***additional*** $320,000 and these remedies were "non-exclusive and Apple will be entitled to pursue any other legal or equitable remedies." These liquidated damages provisions also provided (again in redacted form) that GTAT was required to pay Apple $640,000 for every boule of sapphire sold to a third party in violation of the exclusivity terms of the Apple agreement.

110. GTAT's management privately recognized that the agreement proposed by Apple was not a good deal for the Company. By the Company's own admission, the negotiation process was "anything but an arm's-length negotiation"; instead, "Apple simply dictated the terms and conditions of the deal" to GTAT, and GTAT was forced to accept. When GTAT's management "expressed obvious concerns to Apple regarding the deal terms" they were told by Apple to "put on their big boy pants" and were advised to "not waste their time" trying to negotiate because

"GTAT had to agree to all of Apple's material terms and the draft agreements prepared by Apple's attorneys or the deal was off." These facts were never disclosed to investors.

111. The admissions made in the Bankruptcy Declarations regarding the Apple agreement have been confirmed by former senior employees of GTAT. For instance, as described in more detail below, GTAT's former sapphire ASF Product Manager from 2010 through January 2014 (defined herein as the "Sapphire Product Manager") told Lead Counsel that he resigned in December 2013 over GTAT's entry into the Apple agreement, after warning Gutierrez and others that GTAT would not be able to satisfy the terms.

B. GTAT Did Not Have The Capability To Produce And Could Not Produce The Sapphire Material Required By Apple

112. GTAT's executives deliberately concealed from the Company's investors one of the most important and material terms of the Apple deal: the fact that GTAT was required to produce a usable sapphire boule nearly double the size of the largest boule ever produced in "quantities, size and quality never before achieved." Notably, this provision of the agreement, which, if disclosed, would have allowed investors at a minimum to assess the true risk inherent in the Apple agreement, was redacted from the publicly filed versions of the agreement.

113. This was materially misleading. As described below, it was widely known within the Company that GTAT stood virtually no chance of producing a usable high-quality sapphire boule of the required 262 kg size on the time schedule required by the Apple agreement. Indeed, the Company secretly missed deadline after deadline and failed to perform under the agreement.

114. Moreover, and remarkably, in June 2014 Defendant Gutierrez held a meeting with Apple executives where he secretly ***admitted*** that GTAT could not comply with the terms of the agreement. Instead of revealing this material information to investors, Defendants continued to

actively mislead them while GTAT's executives sold millions of dollars of their personal holdings in the Company's stock.

1. GTAT Was Required To Produce Sapphire Boules Weighing An Unprecedented 262 kg—More Than Double The Size Of The Largest Boules That Had Ever Been Successfully Produced

115. It is now known that in order to comply with the Apple agreement, GTAT had barely six months to construct over 2,000 sapphire furnaces and to invent the technology to create and mass produce high quality sapphire boules weighing at least 262 kg (or 578 pounds) usable for smartphone screens. Even though this was an unprecedented undertaking that had never been accomplished by any company, GTAT did not disclose this requirement during the Class Period. To the contrary, all references to it were redacted from public versions of the Apple agreement until they were unsealed by court order in the Bankruptcy Proceedings. Consequently, investors were deprived of the opportunity to assess and evaluate this material risk.

116. Indeed, the publicly-filed versions of the contracts comprising the Apple agreement concealed numerous highly material terms under the guise of "confidentiality." These concealed terms, examples of which are included in the attached Exhibit B, were essential to an understanding of the true requirements and feasibility of the Apple agreement.

117. For example, the publicly-filed version of the "Statement of Work" that was part of the Apple agreement filed with GTAT's November 7, 2013 Form 10-Q, contained the following language (with redacted language indicate with a "[***]"):

> 1.6 GTAT will timely purchase, install, qualify and operate [***] (the "*Furnaces*") by the applicable dates specified in <u>Attachment 1 hereto.</u>
>
> 1.7 The parties intend that (a) GTAT will begin occupying the Mesa Facility by **[***]** (b) GTAT will begin installing Furnaces and other Equipment in the Mesa Facility by [***] and (c) that GTAT will grow [***] sapphire boule at the Mesa

> Facility by [***]. Apple will otherwise provide GTAT access to the Mesa Facility as soon as practicable.

118. The unredacted Statement of Work contained the information about the size of the boule to be produced, and therefore concealed from investors the immense risk GTAT had assumed and imposed on its investors in entering into the agreement with Apple (redacted language in bold):

> 1.6 GTAT will timely purchase, install, qualify and operate **no fewer than 2,036 ASF262VHP sapphire growing furnaces in the Mesa Facility and will retrofit, qualify and operate no fewer than 54 existing furnaces in GTAT's Salem facility to make such furnaces equivalent in function to the ASF262VHP sapphire growing furnace** (the "*Furnaces")* by the applicable dates specified in Attachment 1 hereto.
>
> 1.7 The parties intend that (a) GTAT will begin occupying the Mesa Facility by **December 7, 2013**, (b) GTAT will begin installing Furnaces and other Equipment in the Mesa Facility by **December 10, 2013,** and (c) that GTAT will grow **the first 262 Kg** sapphire boule at the Mesa Facility by **January 6, 2014**. Apple will otherwise provide GTAT access to the Mesa Facility as soon as practicable.

119. To put the 262 kg boule requirement into perspective, in November 2003, most sapphire materials producers in the world could create boules no larger than 100 kg. GTAT—a Company that had never before manufactured sapphire boules for commercial use—had only recently created a furnace that could produce commercial amounts of sapphire boules that weighed 115 kg.

120. Even achieving capability to manufacture boules at the 115 kg level had been a monumental task that took GTAT years of effort and expense. In a Form 8-K filed with the SEC on June 1, 2015, GTAT attached a presentation that discussed GTAT's "Development of Sapphire Technology." In that presentation, GTAT described how it spent three-and-a-half years from April 2011 until October 31, 2013 developing the technology to increase boule production from 85 kg to 115 kg boules, an increase of just 30 kg. Yet, unbeknownst to GTAT's investors, the Apple

agreement required GTAT to increase boule size by a further astonishing 147 kg on an impossible time schedule.

121. As GTAT admitted in its June 1, 2015 Form 8-K, when it entered into the Apple agreement in November 2013, the Company lacked the technology to create even a 165 kg sapphire boule, let alone a 262 kg boule. Indeed, the Company also admitted that it did not even begin its "research and experimentation . . . for technology to produce 262 kg boules for Apple" ***until October 31, 2013***—five days before the Apple agreement was announced to investors.

122. This new information is consistent with a November 2014 report in the *Wall Street Journal* stating that the Company's solitary experience producing a 262 kg sapphire boule prior to the Apple agreement occurred just days before GTAT announced the Apple agreement, and was a complete failure that generated a flawed and unusable specimen. None of this material information was ever communicated to investors, and was in stark contrast to the public statements by GTAT's executives that the Company was "excited" and "confident" about the Apple agreement.

123. Indeed, it was widely known inside the Company that GTAT lacked the capability to produce 262 kg sapphire boules and that the terms of the Apple agreement were unacceptable and unfeasible. For example, GTAT's former Sapphire Product Manager, who was the "heart and soul" of the sapphire furnace business at GTAT and intimately involved with the Company's sapphire capabilities, repeatedly warned Defendants Gutierrez and Squiller to walk away from the Apple agreement because it had little to no probability of success.

124. The Sapphire Product Manager was in a position to know. Throughout the Spring and Summer of 2013, he constantly traveled to Cupertino, where Apple is located, in connection with the negotiations between GTAT and Apple, and fielded questions from and provided data to Defendants Gutierrez, Squiller and Kim, the GTAT executives who negotiated the Apple deal. The

Sapphire Product Manager explained to Lead Counsel how he, Gutierrez, Squiller, Kim, and sometimes Gaynor, along with other GTAT employees, would travel to Cupertino for days at a time to work in an offsite hotel running numbers and vetting proposals from Apple.

125. The Sapphire Product Manager confirmed that GTAT and Apple initially discussed a sale of furnaces to Apple, not the provision of sapphire materials. In that context, his role was to create data models for Defendants Gutierrez and Squiller regarding the feasibility of Apple's desire to quickly ramp up and produce massive quantities of sapphire for its next-generation iPhones in a cost-effective manner. The Sapphire Product Manager recalled that every model he created showed that Apple's goals could not be accomplished, and indeed, the technology and ability to do so was "***light years***" and not months away.

126. The Sapphire Product Manager explained to Lead Counsel that at the time GTAT entered into talks with Apple, the Company had only successfully created a furnace and technology to create 115 kg sapphire boules. When GTAT acquired Crystal Systems in 2010, the ASF capability was 85 kg boules. It took the Company an entire year to raise capability to 100 kg, and another six months to get to 115 kg. By Spring 2013, the Company had spent months and months trying—unsuccessfully—to create 140 kg and 160 kg boules, but experienced multiple failures.

127. Consequently, once Apple and GTAT started discussing the production and commercialization of 262 kg boules as the only way to achieve desired economies of scale, he "knew there was no data to support that 262 kg was doable in [GTAT's] furnaces or any furnaces," and that the technology to do so was "light years away." He personally ran models at the direction of Defendant Gutierrez, and the "models proved that we could not do it."

128. This information was communicated directly to Defendants Gutierrez, Squiller and Kim by the Sapphire Product Manager himself, who sent his models and their results to those

individuals via email, and also presented his conclusions during the offsite meetings in Cupertino during the negotiations with Apple. He advised Defendants Gutierrez and Squiller not to sign with Apple and specifically warned them that the cost models that he created for them showed that the probability of success was too low.

129. When he was told before the November 4, 2013 Press Release that the Apple agreement had been signed despite his warnings, and that not only was GTAT required to produce 262 kg boules of sapphire for Apple (as opposed to merely selling Apple furnaces), but also would have to do so in the matter of months, he was shocked. He said it was "just ridiculous" because GTAT did not have the technological capability to make the 262 kg boules in accordance with Apple's terms and timing. The Sapphire Product Manager believed that by signing the agreement Defendants bet the whole company on an agreement that was not realistically achievable. Rather than stay with a sinking ship, he removed himself from the project immediately, and resigned from GTAT at the end of 2013.

130. Yet another former GTAT Sapphire Engineer, who worked out of the Mesa facility on the Apple deal from February through October 2014, described how the "timeline [for the production of 262 kg sapphire boules] was ***completely out of line with reality***." This engineer confirmed that no one had ever grown 262 kg usable sapphire boules before and GTAT's commitment to do so was "***a shot in the dark***." He explained how no one [at GTAT] knew what they were doing, stating "they had no clue," and there was "no way" GTAT's sapphire business could have contributed 80% of the Company's revenue in 2014.

131. In the words of GTAT's Senior Director of Quality from October 2013 through October 2014—who began his tenure at the Company in 2011—because the Company had no experience growing sapphire in any significant volume, GTAT's entering into the Apple agreement

was "a leap of faith" and that GTAT woefully underestimated the technical and operational sophistication necessary for growing sapphire at the scale and volume required by Apple, leading to results which he described as "just absolutely horrible." Indeed, the Senior Director of Quality stated that "no reasonable person could think that was going to be profitable given what was going on" at Mesa once production commenced.

2. The "Boule Graveyard": GTAT Conceals Material Problems From Investors

132. Unsurprisingly, GTAT's production of sapphire materials for Apple was a disaster from the start. The Bankruptcy Declarations detailed how "the first phase of the Mesa Facility was not operational until December 2013—which was only 6 months before GTAT was expected to be operating at full capacity in order to meet its "Minimum Supply Commitments" to Apple. Additionally, the Bankruptcy Declarations revealed that:

> Additional unplanned delays continued to surface because the Mesa Facility required a significant amount of reconstruction, including reconstruction of floors roughly the size of multiple football fields. The build-out of the Mesa Facility, delays in available power, and power interruptions, further delayed the ramp-up of sapphire growth and fabrication by approximately three months. <u>This was critical lost time during which GTAT could not begin manufacturing sapphire for sale to Apple and recoup its massive investment in furnaces for Apple</u>.

133. Thus, in February 2014, contrary to Defendants' statements to investors that GTAT's "arrangement to supply sapphire materials to Apple [was] progressing well" and that GTAT's "confidence . . . from [its] deep understanding of the unique technology" supported its strong guidance for 2014 of up to $800 million in revenue, GTAT had not yet produced a single usable sapphire boule in the Mesa facility and had experienced multiple delays and errors.

134. This was already a violation of the Apple agreement, which provided in Section 1.7 of the Statement of Work that the parties intended "that GTAT will grow the first 262 Kg sapphire

boule at the Mesa Facility by January 6, 2014." Of course, as discussed, the "262 Kg" was redacted from the public versions of the contract.

135. Matters worsened once GTAT finally did install its furnaces and began production of the sapphire materials. By the time the Company moved into Mesa, GTAT still did not have an established, working recipe for producing high quality 262 kg boules. In order for a sapphire boule to be usable and cost-effective, the "yield rate" (percentage of sapphire that was usable from a given boule) had to exceed ninety percent. GTAT never achieved any yields even approaching this order of magnitude. As a result, any sapphire that was produced by GTAT in the Mesa facility was almost entirely unusable and unsalable. For instance, a Production Technician at Mesa from February 2014 to October 2014 responsible for monitoring the sapphire furnaces in operation at the Mesa Facility, stated that GTAT was constantly running various experiments with different sapphire recipes in order to grow larger and higher-quality sapphire boules because the Company from the get-go had such a terrible yield rate.

136. Indeed, as relayed to Lead Counsel by the Director of Operations for the Sapphire Fabrication Business Unit at Mesa beginning from January 2014 until December 2014 with over 25 years of industry experience, the Company's sapphire yields for its large boules at Mesa were approximately only 30%, and that yields must be in the "high 90s, like 97% or 98%" in order to manufacture sapphire at a reasonable cost.

137. These poor yields were a direct result of the fact that the Company simply did not know what it was doing and did not have time to develop any expertise given the rigorous requirements of the Apple agreement. According to a Global Logistics Manager at Mesa from March 2014 through the middle of December 2014, "there was no organization to [the sapphire production] process—it was "unreal the amount of confusion," and the company was "throwing

everything at the wall they could trying to figure out how to get larger boules." The former Global Logistics Manager explained how, even when larger boules were produced, they could not be shipped out because they were not of acceptable quality. Because there was "no precedent on that size of boule"—something that was "crystal clear"—"there was no continuity in the process" which was "chaos." GTAT's complete lack of experience in the production of commercial sapphire materials ensured that there would be insurmountable problems at the Mesa facility from the very beginning. The former senior GTAT Sapphire Engineer discussed above stated that "[n]o one knew what they were doing; they had no clue" and because of that "[t]here was no way they were going to be able to manufacture the volumes they had committed to."

138. Because of GTAT's poor yield rates and its lack of experience growing sapphire, former GTAT employees explained that it was impossible for the Company to meet the growth and revenue projections it touted to investors. For example, GTAT's former Growth Support Supervisor of Sapphire Equipment and Materials at Mesa, who had worked at GTAT since 2013 and before that at Thermal Technologies, which was acquired by GTAT in 2013, explained that it was "impossible" for GTAT to achieve the type of growth it was touting. The Growth Support Supervisor of Sapphire Equipment and Material believed that GTAT "was just setting ourselves up to fail" because the Company needed at least two to five years to build out the facility and master production processes, an achievement which under no circumstances could be done in the time allowed under the Apple agreement. Moreover, according to this Growth Support Supervisor of Sapphire Equipment and Materials, GTAT did not have an adequately trained staff onsite and was just throwing untrained personnel at problems. As a result, there was no way GTAT's sapphire business could contribute 80% of the Company's 2014 revenue.

139. An article published by the *Wall Street Journal* in November 2014 confirmed the disastrous results experienced at the Mesa facility. The *Wall Street Journal* reported that "people familiar with Apple operations said more than half the boules were unusable." These unusable boules were a complete loss for GTAT. According to the "people close to GT's operations," these unusable boules were simply "stored . . . in an area of the Mesa factory that employees labeled the 'boule graveyard.'"

140. The November 2014 *Wall Street Journal* article also described serious errors at the Mesa facility caused by the chaotic production environment. For example, the article described an incident in August 2014 where GTAT discovered that 500 sapphire bricks (valued at hundreds of thousands of dollars) were missing because a manager had sent them to be recycled. GTAT's former Director of Operations for the Sapphire Fabrication Business Unit at Mesa described other manufacturing failures that resulted in the loss of all the sapphire being produced in 20% of all of the operating furnaces. For example, the former Director recalled production interruptions due to the lack of sufficiently cool water supply that caused GTAT to lose sapphire furnaces numerous times. The former Director recounted one instance where the Company lost sapphire materials from 300 to 400 furnaces, resulting in huge financial losses.

141. From March 2014 through May 2014, GTAT continued to fail to adequately produce sapphire for Apple while struggling to determine a working recipe for large-size boules and a cost-effective procedure for volume production. In other words, just weeks before the Company was supposed to meet its supply demands for Apple, GTAT was still trying to develop the basic process to start acceptable sapphire material production.

3. Gutierrez Secretly Meets With Apple And "Falls On His Sword": In Early June 2014 GTAT Admits To Apple (But Conceals From Investors) That It Could Not Produce Acceptable 262 kg Boules And Shuts Down Production At The Mesa Facility

142. On June 6, 2014—one month after informing investors that the larger boules being produced exclusively for Apple were "production ready"—Defendant Gutierrez admitted to Apple in a secret meeting that GTAT could not successfully produce the 262 kg boules in the required size and quantity required by the Apple agreement.

143. The November 2014 *Wall Street Journal* article revealed that Gutierrez met with two Apple vice presidents on June 6, 2014 in an attempt to explain GTAT's production problems. At that time, Gutierrez provided Apple with a document titled "What Happened" that listed 17 problems at the facility and told Apple that he was there to "fall on his sword." From that point on, GTAT stopped even trying to produce the 262 kg sapphire boules required by the Apple agreement.

144. Once GTAT abandoned attempts to produce 262 kg boules, production at the Mesa facility effectively ceased. A Production Technician at Mesa who monitored the operational furnaces confirmed that in July 2014, GTAT shut down all of its furnaces and only started a few furnaces back up to experiment with various recipes from July to October. After the shutdown in the summer of 2014, the facility was never again up to full production or running at capacity.

145. Defendants concealed these critical facts from GTAT's investors. Even worse, as described above, Defendants Gutierrez and Bal actively lied to investors when they stated in early August 2014 that GTAT was "commencing the transition to volume production" and that the Company would receive its final prepayment from Apple by the end of October 2014 because it expected to "achieve[] . . . certain operational targets." These statements were outrageously false.

C. Apple's Prepayments Could Not "Fully Fund" The Sapphire Materials Operations At Mesa

146. Throughout the Class Period, investors were told that the $578 million that Apple was to lend to GTAT in the form of "prepayments" for sapphire materials would "fully fund its capital outlays related to the project in Arizona," and that the prepayment amount, together with the Company's existing cash and cash from the Offerings, would satisfy all capital and cash requirements for the following year.

147. This information was highly material to investors. By the start of the Class Period, GTAT's current and expected revenues from its historical businesses were floundering with little hope of recovery in the near term. Investors relied on the Company's statements that it had sufficient cash reserves and ability to pay for a venture as large and expensive as the creation and operation of thousands of ASFs, the purchase of the expensive sapphire raw materials needed to feed the ASF furnaces, and the employment of hundreds of new employees dedicated to the Apple project.

148. In reality, Defendants knew from the start that the $578 million would be insufficient to cover the costs of the Mesa facility. As admitted in the Bankruptcy Declarations (but undisclosed to investors), the $578 million figure "was calculated based ***on the cost to GTAT of the furnaces and related equipment*** used to produce sapphire material" (emphasis in original), and not the raw materials, employee costs and cost overruns or unplanned for expenses. As a result, GTAT "[bore] all of the risk and all of the cost, including the costs of more than 1,300 temporary and permanent personnel, utilities, insurance, repairs and raw materials."

149. Moreover, once operations at Mesa commenced, the project faced immediate and continuous cost overruns, errors and waste (as described herein) such that costs ballooned even further out of control. In fact, as detailed in the Bankruptcy Declarations, "the total cost incurred

by GTAT pursuant to the project with Apple has [as of October 6, 2013] amounted to approximately **$900 million**" (emphasis in original), more than double the amount of money ultimately loaned to GTAT by Apple.

D. Apple's Exclusivity Terms Barred GTAT From Generating Meaningful Sapphire Revenue From Other Customers

150. Defendants also misled investors about the impact that the draconian exclusivity provisions in the Apple agreement would have on the Company. Throughout the Class Period, in both SEC filings and during conference calls, GTAT's executives represented that the exclusivity terms in the Apple agreement (many of which were redacted in part or in whole in public filings) did not bar GTAT from taking advantage of "other opportunities in the sapphire industry." For example, on November 4, 2013, Defendant Gutierrez assured investors that "we have a significant amount of opportunity to continue selling [sapphire] equipment and materials" and the Apple agreement's "exclusivity . . . does not really restrain us from growing the business."

151. These statements were false. GTAT admitted in the Bankruptcy Declarations that in reality the Apple agreement "shut [GTAT] out of the global market for its highly valuable sapphire material and equipment." Defendant Squiller explained that, rather than having a "significant amount of opportunity to continue selling [sapphire] equipment and materials," the Apple agreement "prevented GTAT from marketing its furnaces—and thus finding alternative value-maximizing uses for them—through sales to third party purchasers and suppliers to competitors of Apple."

152. The Apple publicly-released version of the Apple agreement stated as follows (redacted language indicated by "[***]"):

> 9.1.1 neither GTAT, nor any GTAT Related Entities, will directly or indirectly, without Apple's express written permission: (i) supply to any entity (other than Apple) any [***], nor (ii) license to any entity (other than Apple) [***] nor (iii) provide

> services [***] to any entity (other than Apple) or otherwise enable any such entity to use or produce sapphire goods (whether for the benefit of such entity or for any third party), in each case for use in or connection with Consumer Electronics Products[.]

153. The unredacted version of the Apple agreement, which was released only after the end of the Class Period makes clear that the exclusivity provisions were extremely broad and applied to virtually all of GTAT's sapphire business (redacted language in bold):

> 9.1.1 neither GTAT, nor any GTAT Related Entities, will directly or indirectly, without Apple's express written permission: (i) supply to any entity (other than Apple) any **sapphire growing furnaces or sapphire materials whether sold in boules, Bricks, Blanks or any other form**, nor (ii) license to any entity (other than Apple) **any Sapphire Technology or Intellectual Property Rights related thereto** nor (iii) provide services **using Sapphire Technology** to any entity (other than Apple) or otherwise enable any such entity to use or produce sapphire goods (whether for the benefit of such entity or for any third party), in each case for use in or connection with Consumer Electronics Products[.]

154. Under the Apple agreement, then, as Defendant Squiller declared in his sworn declarations, "GTAT was prohibited, for years to come, from conducting any sapphire business with any conceivable Apple competitor or any direct and indirect supplier to an Apple competitor."

155. Moreover, should GTAT have violated the exclusivity provisions and sold any sapphire equipment or materials to any unapproved entity other than Apple, GTAT would have to pay exorbitant "liquidated damages." The agreement provided that Apple would owe "$650,000 per month for any sapphire furnace that is used in violation of GTAT's exclusivity obligations to Apple." Aside from sales to Apple—that were not guaranteed and never came to fruition—GTAT was permitted only a "very limited exception" under the Apple agreement that allowed the Company to fulfill pre-existing yet unfulfilled orders for older sapphire furnaces. These pre-

existing orders had been sitting on GTAT's "backlog" for years, and were unlikely to ever be fulfilled. No new orders could be solicited or fulfilled.

156. The former Supervisor of GTAT's Sapphire Growth Department from December 2010 to November 2014 confirmed that after entering the Apple agreement, GTAT cut off relationships with all its pre-existing customers, a development that "shocked" the Supervisor because GTAT had other sapphire customers. By February or March 2014, GTAT's other sapphire business was shut off.

157. The Bankruptcy Declarations further explained how Apple prevented GTAT from using its Salem facility for other sapphire revenue streams. While the Mesa facility was dedicated to Apple, GTAT's Salem facility was ostensibly free to pursue other revenue and fulfill backlog orders. In reality, however, Squiller stated that "Apple also embedded itself in [the Salem facility] that took on the function of an experimental research and development center for the Apple project." Squiller confirmed that "GTAT has been unable to use that facility for other revenue streams" since November 2013.

E. The Officer Defendants Reaped $20 Million From Insider Sales

158. GTAT's insiders sold $20 million worth of their personal holdings of GTAT stock in a nine month period prior the Company's bankruptcy filing. Defendants Gutierrez's, Squiller's, Gaynor's and Kim's ("Selling Defendants") sales started just one month after the Company announced that it entered into the Apple agreement and continued at a faster pace as the price of GTAT stock more than doubled, culminating in Defendants Gutierrez's, Squiller's Kim's sales of GTAT stock in the weeks and days prior to Apple's disastrous September 9, 2014 announcement.

159. To evaluate the Selling Defendants' selling activity, Lead Counsel analyzed the publicly-available trading data that is required to be reported to the SEC. Lead Counsel compared Defendants' trades during the eleven-month Class Period to their trading activity during the eleven

months immediately preceding the Class Period, beginning on December 5, 2012 and ending on November 4, 2013 (the "Control Period"). This analysis reveals that the Selling Defendants' Class Period sales were extremely large, highly unusual, and wildly inconsistent with their prior trading history. Specifically, while none of the Selling Defendants sold any shares of GTAT stock during the Control Period, the Selling Defendants collectively sold almost $20 million worth of their personal holdings during the Class Period ***and did not purchase a single share of GTAT stock***.

160. **Gutierrez.** CEO Gutierrez sold almost 700,000 shares of GTAT stock between February 2014 and September 2014—over 50% of his personal holdings that were available for sale—and garnered approximately ***$10.6 million in proceeds***. Just one day before Apple announced that its new iPhones would not be equipped with GTAT's sapphire material, CEO Gutierrez sold over 9,000 shares of GTAT stock at an average price of $17.38 per share for over $160,000 in proceeds. The next day, after Apple's announcement, the price of GTAT stock fell 13% to $14.94 per share. In total, between May 1, 2014 and July 1, 2014, at a time when Defendant Gutierrez himself secretly admitted to Apple that it could not successfully comply with the terms of the Apple agreement and GTAT ceased production of the 262 kg boules (in violation of the Apple agreement), Gutierrez sold a total of over 255,000 shares for profits of nearly $4.4 million.

161. **Squiller.** Defendant Squiller sold approximately 121,000 shares of Company stock between May 23, 2014 and September 2, 2014—over 12% of his GTAT stock that was available for disposal—taking in over $2 million in proceeds, or four times his annual salary. Like CEO Gutierrez, COO Squiller sold 15,000 shares of GTAT stock for approximately $270,000 in proceeds in the week before Apple's devastating September 9, 2014 announcement. Squiller sold these shares at an average of $18.00 per share.

162. **Gaynor.** Former CFO Gaynor sold over 216,000 shares of GTAT stock between December 2013 and his resignation in February 2014, garnering over $2 million in proceeds. The 216,000 shares that Defendant Gaynor sold represent over 36% of his personal holdings of GTAT stock.

163. **Kim.** Vice President and General Counsel Kim sold over 276,000 shares of GTAT stock between February 2014 and September 8, 2014, representing a ***staggering 59%*** of his personal holdings available for disposal. Through these sales, Defendant Kim garnered almost $4.2 million in proceeds—ten times his annual salary for 2014. Like Gutierrez, Kim sold a substantial number of GTAT shares on the day prior to Apple's September 9, 2013 announcement, unloading over 3,500 shares for over $61,000 in proceeds.

164. The table below depicts the sharp contrast between the Selling Defendants' insider trading in GTAT stock during the Control Period and during the Class Period. This wide disparity supports a strong inference of scienter.

	CLASS PERIOD			CONTROL PERIOD		
	Shares Sold	Proceeds	Percentage of Holdings Sold	Shares Sold	Proceeds	Percentage of Holdings Sold
Gutierrez	679,873	$10,562,322	50%	0	0	0
Squiller	121,190	$2,034,497	12%	0	0	0
Gaynor	216,750	$2,007,310	36%	0	0	0
Kim	276,374	$4,159,708	59%	0	0	0
TOTAL	1,294,187	$18,763,838	N/A	0	0	0

165. Virtually all of the Selling Defendants' sales of GTAT stock were either conducted outside of a Rule 10b5-1 insider trading plan or were conducted pursuant to a plan that was adopted ***during*** the Class Period. For example, CEO Gutierrez utilized two plans, one adopted on December 16, 2013 and another on March 14, 2014. On March 12 and 13, 2014, Defendant Gutierrez sold 90,000 shares of Company stock outside of his trading plan, generating a total of $1.5 million in proceeds. Significantly, the 75,000 shares that Gutierrez sold on March 12, 2014

for approximately $1.25 million was his single-largest sale in terms of dollar amount during the Class Period.

166. Likewise, COO Squiller sold 45,000 shares of Company stock during the Class Period under a trading plan adopted on May 27, 2014. Prior to the adoption of that plan, however, while Squiller had no plan in place, he sold over 76,000 shares of GTAT stock on May 23, 2014, generating over $1.2 million in proceeds. The $1.2 million that Squiller garnered from this sale is 40% more than he earned from every other sale that he made during the Class Period ***combined***. The 76,000 shares that Squiller sold outside of the trading plan are almost 63% more than he sold in all other sales during the Class Period under his plan.

167. All of Defendant Kim's sales of GTAT stock ($4.2 million worth) were conducted pursuant to a trading plan adopted on December 16, 2013—soon after the start of the Class Period—and former CFO Gaynor sold approximately $1.3 million worth of Company stock pursuant to a trading plan adopted on December 13, 2013.

168. The only relevant sales of GTAT stock that were conducted under a trading plan that was enacted prior to the start of the Class Period are Defendant Gaynor's sales of approximately 92,500 shares on December 12 to 13, 2013. Those sales were conducted pursuant to a trading plan adopted on August 28, 2012 and generated almost $740,000 in proceeds for Gaynor. Importantly, however, Gaynor sold over 57% more shares and generated over 40% more in proceeds by selling shares under his trading plan adopted during the Class Period as compared to the trading plan adopted prior to the start of the Class Period.

169. Significantly, each of the Selling Defendants reaped many magnitudes more in proceeds from their illicit sales of GTAT stock during the Class Period than they earned in salary

in 2014. On average, the Insider Defendants garnered 921% more from these sales than they received in salary.

170. For instance, CEO Gutierrez, who earned a salary of $725,000 in 2014, garnered over $10.5 million from his insider sales during the Class Period—which is an astounding 1,457%, or more than 14.5 times, his fiscal 2014 salary. Similarly, COO Squiller made 395% more from selling over $2 million worth of his personal holdings of Company stock during the Class Period than he earned in salary in 2014 ($515,000). Defendant Gaynor was projected to earn $412,000 in 2014, but that was trivial compared to the over $2 million he garnered from his insider sales. Finally, Defendant Kim, who sold almost $4.2 million worth of GTAT stock during the Class Period, made a staggering 1,077% more from those sales than the Company paid to him in salary in 2014 ($386,250). The fact that the Selling Defendants earned vastly more from selling their GTAT stock based on non-public information than they earned in salary further supports a strong inference of intentional or reckless misconduct.

IX. APPLE ACTED AS A CONTROL PERSON OVER GTAT THROUGHOUT THE CLASS PERIOD

171. GTAT has admitted that Apple controlled the Company during the Class Period. The sworn Bankruptcy Declarations of Defendant Squiller state that Apple exercised "*de facto* control of GTAT" and exercised "inordinate control over GTAT's liquidity, operations (including control over product specifications), and decision making." Apple also exercised control over GTAT's statements to investors through draconian confidentiality provisions in the Apple agreement. As discussed below, these provisions precluded the Company from making any public statements regarding its sapphire operations without Apple's prior written approval. If GTAT made any unauthorized disclosure, GTAT would be forced to pay Apple $50 million per occurrence.

172. Apple's control over the Company was further cemented by its status as GTAT's most significant lender—forcing the Company to pay off its credit facility and coopting a significant amount of the proceeds from GTAT's bond offering in order to finance the consummation of the Apple agreement and allow Apple to take a lien on GTAT's assets.

173. Apple reaped significant benefits from its pervasive control over the Company. In exchange for the $578 million prepayments—which Apple could withhold or recall if GTAT failed to perform or if Apple chose not to purchase sapphire material—GTAT became a captive supplier to Apple that was forced to operate largely for Apple's benefit. Further, because Apple's $578 million loan was secured by GTAT's equipment and Apple required the Company to terminate its credit facility and raise a substantial amount of capital in the bond offering, Apple greatly minimized the costs and risks to itself in attempting to develop a below-market price source for sapphire, and shifted them onto GTAT's investors.

A. Apple Exercised *De Facto* Control Over GTAT's Business And Decision-Making Process

174. The Bankruptcy Declarations acknowledge that Apple exercised total control during the Class Period over the Company's decisions regarding its sapphire segment—the most critical aspect of the Company's business. For example, Apple selected and owned the Mesa Facility, which housed GTAT's sapphire business, and exercised complete authority over the power and construction contracts necessary to design and build-out the facility—overruling GTAT's decisions on these critical matters and barring GTAT from having direct communications with the Apple subcontractors that were building out the Mesa Facility.

175. Moreover, as detailed in the Bankruptcy Declarations, prior to entering into the Apple agreement, GTAT told Apple that a necessary prerequisite to successfully producing sapphire was the implementation of uninterruptable power systems and generators. The quality

and reliability of the power infrastructure is critical to the sapphire growth process because any interruptions in power would place at significant risk the quality of the sapphire that is ultimately produced. This is especially true in the case of GTAT which was attempting to operate over 2,000 furnaces at once.

176. Even though GTAT told Apple that the implementation of these power systems and generators was essential, Apple overruled GTAT and determined that installing an uninterruptable power system was simply too expensive and, therefore, not essential. Apple's control over this decision had a materially negative impact on the Company's sapphire business, yet GTAT did nothing to change the power system.

177. As a result, after the Mesa Facility was operational, power interruptions occurred on at least three occasions leading to significant delays and losses of whole production runs of sapphire boules. The losses to GTAT as a result of these power interruptions exceeded $10 million and hindered the Company's ability to develop and optimize its process for growing sapphire material.

178. In addition to controlling the decisions regarding the build-out of the Mesa Facility itself, Apple also hand-picked the equipment that it required GTAT to use in order to manufacture sapphire material and was the exclusive contact-point for third-party suppliers of GTAT's sapphire cutting and polishing equipment. If GTAT wanted to make any changes to the equipment, manufacturing processes or materials to be used in the sapphire project, the Company was required to obtain Apple's consent.

179. Former GTAT employees confirmed that Apple controlled virtually every aspect of the Company's sapphire operations. A former employee with the title Process Engineer IV who worked in Industrial Engineering at Mesa from March 2014 until October 2014, stated that because

Apple was supplying the funding to get the Mesa Facility running, Apple defined what tools GTAT was required to use. Similarly, a Global Logistics Manager for GTAT from March 2014 until December 2014, stated that Apple was involved in all aspects of the Mesa Facility and had access to the Company's senior executives, including CEO Gutierrez.

180. Apple's control over GTAT was documented in the express terms of the Apple agreement. For instance, Section 4(b) of the Prepayment Agreement that GTAT and Apple executed on October 31, 2013, (the "Prepayment Agreement") obligated GTAT to "participate in conference calls or meetings with Apple regarding GTAT's financial condition, at least once each quarter, or more frequently as requested by Apple." GTAT was also obligated to send to Apple the Company's annual and quarterly financial reports as soon as they were prepared, even if they had not yet been filed with the Securities and Exchange Commission. The Prepayment Agreement was executed by defendant Kim in his capacity as Vice President and General Counsel of GTAT as well as by Peter Oppenheimer, Senior Vice President and Chief Financial Officer of Apple.

181. Similarly, the Master Development and Supply Agreement ("MDSA") entered into between GTAT and Apple on October 31, 2013 allowed Apple representatives to have access to all relevant GTAT facilities and records and required the Company to provide to Apple written monthly reports summarizing the progress of GTAT's work. The MDSA, which was signed by Duco Pasmooij, Apple's Vice President of Operations, and Defendant Kim in his capacity as the Company's Vice President and General Counsel, also made ***Apple*** solely responsible for any reporting to government agencies regarding the sapphire project.

182. Specifically, Section 3.4 of Attachment 2 to the MDSA states that "GTAT will provide Apple with a written monthly report summarizing the progress of the Development Services and any new Project Work Product developed since the last written report." Further,

Section 3.6 of Attachment 2 to the MDSA provides that "GTAT will permit Apple's representatives to access all relevant GTAT facilities to perform quality assurance audits, observe progress of the Development Services, discuss the Development Services with relevant GTAT personnel, and inspect records and data relevant the Development Services." Similarly, Section 11 of Attachment 1 to the MDSA states that "During the Term and for two (2) years thereafter, Apple or its representatives may inspect GTAT facilities and audit GTAT's records to verify that GTAT has complied with its obligations under this Agreement. GTAT will provide Apple or its representatives any information and documentation that is reasonably requested in connection with such audit or inspection."

183. In fact, Apple's own representations to federal regulators acknowledged that it would be Apple in control of the Company's sapphire production equipment and processes, and would be leading the activity at the Mesa Facility. For instance, on December 17, 2013, Apple's Deputy Director of Global Trade Compliance, James J. Patton, submitted a Product Notification Application to the Foreign Trade Zone Board in Washington D.C. requesting expedited approval of the operation of the Mesa Facility, in which Apple told the Foreign Trade Zone Board that "Apple will be using cutting edge, new technology to enhance and improve the consumer products, making them best in class per product type."

184. Further, according to Apple's and GTAT's Statement of Work #1 to the MDSA entered into between GTAT and Apple on October 31, 2013 ("Statement of Work"), the equipment relevant to the sapphire project was "Apple Equipment" and was simply to be "held by GTAT as a bailee for purposes of producing Goods for Apple." GTAT was only allowed to purchase the Apple Equipment upon prior written approval by Apple. For the avoidance of any doubt, the Statement of Work further provided that "Apple owns all Apple Equipment . . . . Apple will at all

times maintain full and exclusive ownership of and title to the Apple Equipment as bailor." GTAT could not sell, lease or loan any of the Apple Equipment without Apple's consent, and was obligated to use the equipment solely for Apple's benefit.

185. In addition to the Statement of Work, on October 31, 2013, GTAT also entered into an Apple Restricted Project Agreement ("ARPA"), which refers to the sapphire project as "a highly confidential Apple project." Also on October 31, 2013, GTAT entered into an Apple Restricted Information Agreement ("ARIA") that similarly characterizes the sapphire material supplied by GTAT as an Apple component to be used in an Apple product. The ARPA and ARIA were both executed by Defendant Kim in his capacity as the Company's Vice President and General Counsel.

186. Apple's control over the sapphire fabrication equipment and processes caused significant problems for GTAT. For example, according to the Bankruptcy Declarations, the diamond wire tool intended to cut sapphire boules was specified to perform this task in 3.6 hours. But the tool that Apple selected had significant operating issues resulting in a process that took more than 20 hours—approximately six times longer than specified—resulting in increased costs and decreased production. According to the former Process Engineer IV discussed above, GTAT had to replace the cutting tools used to cut the boules of sapphire into bricks of sapphire three times at the bequest of Apple. Ultimately, the cutting tools and a majority of the fabrication tools dictated by Apple had to be replaced with alternative tools, resulting in additional capital investment and operating costs to GTAT and months of lost time in production.

187. The Bankruptcy Declarations further demonstrate that Apple exercised control over GTAT's operations by sending a significant number of employees to the Mesa and Salem Facilities, including supply chain, manufacturing, and quality engineers. These employees were involved on

a full-time basis in GTAT's sapphire growth and fabrication processes, taking up as much as 30% of GTAT's research and development and the manufacturing teams' time. Significantly, Apple's employees assumed a level of authority in the Mesa and Salem Facilities that was disruptive and prevented GTAT from managing its operations at it saw fit.

188. GTAT's quality control process was another important aspect of the Company's sapphire business that was under Apple's control. In particular, Apple sat on the Company's Material Review Board ("MRB"), which was ostensibly tasked with determining the root cause of any defective sapphire material. The MRB conducted daily meetings until it could determine the cause of any issues with the sapphire material and whether GTAT or another party was at fault. The MRB's determination was based on a majority vote of its designated voting representatives, including one vote from Apple, one vote from one of Apple's beholden vendors based in Asia that Apple authorized to procure the sapphire material, and one vote from GTAT. If the MRB found GTAT to be at fault, the Company would be subject to penalties and would be required to accept the return of the defective goods—given that two members of the three-person MRB were Apple and one of its captive vendors, Apple controlled the MRB.

189. The MRB did not even exist until Apple began to control GTAT's business. The MRB came into existence only when Apple insisted upon its inclusion in Section 9.2 of the MDSA as a remedy for defective goods that GTAT produced. Accordingly, not only did Apple control the Company's quality control process in this respect, but Apple essentially invented it, tailored it to its own benefit, staffed it with vendors that Apple knew would acquiesce to Apple's desires, and utilized the MRB to control the type and quality of sapphire that Apple demanded. Apple also established for itself through the MRB another vehicle through which it could oversee and control the quality of the product GTAT produced on a daily basis.

190. Moreover, Apple and its employees had unfettered access to detailed reports and information concerning the Mesa Facility, its dismal production metrics, and the Company's finances. For instance, as noted above, the MDSA provided Apple with access to all relevant GTAT facilities and records and required the Company to furnish Apple with written monthly reports summarizing the progress of GTAT's work. Further, the Prepayment Agreement obligated GTAT to participate in quarterly conference calls with Apple to discuss the Company's financial condition and to furnish Apple with other information regarding GTAT's finances. The ARPA also allowed Apple to audit GTAT's records and information systems, inspect its facilities, and interview GTAT personnel.

191. Indeed, the Bankruptcy Declarations make clear that not only did Apple control all aspects of the Mesa Facility, but it also embedded itself in GTAT's Salem Facility which functioned as an experimental research and development facility for Apple's sapphire project.

B. Apple Controlled GTAT's Statements And The Flow Of Information To Investors

192. Not only did Apple control the Company's decisions regarding its business and operations, it also controlled GTAT's statements to investors and the flow of information throughout the Company. The confidentiality provisions in the Apple agreement obligated GTAT to send to Apple all of the Company's prospective public statements to investors that even remotely concerned the Apple agreement—including statements regarding sapphire production, problems the Company was having meeting the terms of the Apple agreement, the onerousness of the Apple agreement, as well as concerns GTAT was having regarding its cash flow, capital expenditures, losses, and guidance.

193. All of GTAT's statements to investors during the Class Period regarding the Apple agreement and its substance had to be approved by Apple per the confidentiality provisions and

the draconian $50 million liquidated damages clause per violation. For example, the MDSA provided that GTAT would not issue press releases, or make any public statements whatsoever, regarding the MDSA or the sapphire project without Apple's prior written approval.

194. The MDSA further provided that any information and intellectual property arising out of the sapphire project became the sole property of Apple and subject to the confidentiality agreements. This includes "all results, reports, findings, conclusions, work papers, notebooks, electronic records, samples, prototypes, deliverables, and any other information or materials in any form or format." GTAT was required to deliver this information to Apple and was not allowed to destroy or dispose of any of this information without Apple's prior authorization.

195. Further, on August 24, 2012, Apple and GTAT entered into a confidentiality agreement ("2012 Confidentiality Agreement") that was executed by Defendant Kim in his capacity of Vice President and General Counsel on behalf of the Company, and by Vashist Vasanthakumar, ASM Manager of iPhone Operations, on behalf of Apple. The 2012 Confidentiality Agreement precluded public disclosure of a broad range of information, such as the nature of GTAT's business relationship with Apple, any details regarding the sapphire project (such as product plans, designs, costs, prices, names, finances, marketing plans, business opportunities, forecasts, orders, personnel, customer, research, or development), and "any other nonpublic information which one party . . . discloses to the other party. . . in the course of their communications regarding the Project."

196. GTAT's wholly-owned subsidiary that was formed in connection with the Apple agreement, GTAT Advanced Equipment Holding LLC, entered into a substantially similar confidentiality agreement with Apple on October 31, 2013 ("2013 Confidentiality Agreement" and together with the 2012 Confidentiality Agreement, the "Confidentiality Agreements"). The 2013

Confidentiality Agreement was executed by Duco Pasmooij, Apple's Vice President of Operations, and Defendant Gutierrez, in his capacity as President of GT Advanced Equipment Holding LLC.

197. Given these strict confidentiality requirements and the level of authority that Apple had over Defendants' statements, it is reasonable to infer that Apple actively pressured GTAT and the Insider Defendants to conceal any problems relating to the Mesa Facility or sapphire production process if revealing the problems could potentially leak details about the Apple agreement that were confidential. For instance, any disclosure by GTAT that it had failed to produce a usable recipe for the 262 kg boule necessarily would have revealed the "confidential" fact that a 262 kg sapphire boule was part of the agreement in the first place—critical information to investors.

198. As demonstrated by Apple's confidentiality agreements, as well as described by numerous media reports, Apple is one of the most notoriously secretive companies in the world and is extremely punitive to those that dare violate the company's rules. According to the *New York Times,* Apple "[e]mployees have been fired for leaking news tidbits to outsiders, and the company has been known to spread disinformation about product plants to its own workers." Indeed, the *New York Times* quoted a Piper Jaffray analyst who characterized Apple as "a total black box," and described that Apple strictly controls how information concerning the company is disseminated to the public.

199. The primary means by which Apple publicly unveils new or updated products is through sporadic keynote or special presentations, which are hotly anticipated day-long events that are watched closely by Apple investors, analysts, competitors, and the public. According to Regis McKenna, a well-known Silicon Valley marketing veteran who previously advised Apple on its media strategy, Apple's culture of secrecy "started around trying to keep the surprise aspect to

product launches, which can have a lot of power." As such, it was critical to Apple to strictly control the flow of information to the public regarding its devices and especially its signature iPhone, which accounted for approximately 55% of Apple's net sales during Apple's 2014 fiscal year.

200. One of the most important special events in Apple's history, which heightened the need for strict non-disclosure regarding anything pertaining to Apple products—and especially problems pertaining to those products—was the September 9 event. The exact date and content of that event were first publicly reported at least as early as August 5, 2014, and a news report published on July 23, 2014 stated that Apple was planning to hold an iPhone event in mid-September. According to these reports, Apple was expected to unveil on September 9 two new versions of its iPhone 6 armed with sapphire-based displays which would improve durability and resistance to scratches and shattering.

201. Because the public expected that Apple would announce that its signature product would contain a sapphire screen, any disclosure regarding problems that GTAT was having producing the necessary sapphire for those screens would be extremely deleterious to the atmosphere of positivity, anticipation, excitement, and surprise that Apple sought to imbue in its product announcements.

202. Accordingly, it is reasonable to infer that Apple did not want GTAT to reveal that it was not making sapphire glass for Apple's iPhone prior to Apple's own September 9, 2014 announcement on the subject. Thus, when GTAT made its statements to investors on August 5, 2014, it is plausible to assume that GTAT's insiders felt that they would expose the Company to huge liquidated damages liability if they disclosed this information prior to Apple's doing so. Critically, August 5, 2014 was the same day that it was first revealed that Apple planned to hold a

keynote address on September 9, and approximately two weeks after reports surfaced stating that Apple was planning to hold an iPhone event in mid-September 2014. Apple pressured GTAT to perpetrate a fraud on its investors in order to ensure that Apple's historic September 9 event would be a success.

203. In addition to the Confidentiality Agreements, under the ARPA, Apple assigned the code name "Project Onyx" to the sapphire project, which was intended to ensure its secrecy. Under the ARPA, GTAT was obligated "not to disclose any confidential information related to the project to any of your personnel other than those who have been expressly approved by Apple." If Apple had not approved the personnel, GTAT was required to submit a request to Apple, and Apple could withdraw its approval at any time.

204. Further, under the ARPA, Apple required GTAT employees to adhere to specific Apple confidentiality guidelines and security requirements regarding the sapphire project including: (i) only referring to Apple by the code name provided by the Company—and not by Apple's actual name; (ii) only referring to the project by the code name provide by GTAT; (iii) keeping confidential all sensitive information related to the project unless the person was approved by Apple; (iv) complying with the Apple Security Requirements; and (v) maintaining Apple's confidentiality even after the employee left GTAT.

205. The Process Engineer IV referenced above stated that Apple strictly enforced its security requirements. According to this former employee, whenever the Company's employees walked in and out of an area where the sapphire boules were cut, Apple required the employees to go through a security screening which included a wand and/or a pat-down, and which could last for up to 20 minutes. Apple would not even allow the Process Engineer to bring suppliers into the building unless the Process Engineer had approval from an Apple overseer. In fact, the Process

Engineer confirmed that GTAT employees were not even allowed to say Apple's name within the facility, and were required to use the code-name "Cascade."

206. The ARPA also allowed Apple to verify that GTAT was in compliance with the ARPA as well as the August 2012 Confidentiality Agreement and other related agreements, through regular audits of the Company's records and information systems, inspecting GTAT's facilities, and interviewing GTAT employees. GTAT was obligated to provide Apple with immediate access to these items so that Apple could verify compliance. If an audit revealed that GTAT was deficient in any area, GTAT was required to pay Apple $135,000 as reimbursement for the cost of the audit and the increase in Apple's security efforts to maintain the secrecy of the project.

C. Apple's Economic Leverage And Status As A Significant Lender Cemented Apple's Control Over GTAT's Financing

207. Apple used its economic leverage over GTAT to begin to control GTAT's decision-making process even before the Company entered into the Apple agreement. The two companies spent months negotiating the Apple agreement, but it was only after GTAT allocated virtually all of its resources to the Apple agreement and abandoned other business opportunities that Apple foisted a "classic bait-and-switch strategy" upon the Company, knowing that GTAT had no choice but to accept the agreement. The Bankruptcy Declarations characterized this new deal, which gave Apple the control it so desired, as a "'heads I win, tails you lose' proposition for Apple." When the Company expressed concerns regarding the deal terms to Apple (but never to investors during the Class Period), Apple told GTAT not to even bother negotiating and to "put on your big boy pants and accept the agreement."

208. This new Apple agreement was a fundamentally different, onerous, and one-sided deal to GTAT and its shareholders. While Apple's initial contract positioned it as a customer of

the Company, Apple's new deal positioned it as a secured lender: Apple would provide $578 million to finance GTAT's purchase of the sapphire furnaces, which GTAT would operate to produce sapphire material, and Apple would take a lien on the Company's business to secure repayment of Apple's loans. This $578 million is nearly double the amount that GTAT earned in revenue in all of 2013, and is approximately six times larger than the gross profit the Company earned during that year.

209. Critically, Apple had the ability to call its loans or to withhold portions of them if Apple chose not to purchase sapphire material or if GTAT failed to perform under the Apple agreement. Given Apple's significant discretion in determining whether or not to extend its loans to the Company—which was completely reliant on Apple's prepayments to continue operating—GTAT was captive and completely beholden to Apple.

210. The onerous non-competition provisions in the Apple agreement further bolstered Apple's control over the Company and its finances. For instance, these non-competition provisions allowed Apple to dictate to whom GTAT could sell its sapphire material and related equipment, and barred the Company for years from participating in the global market for the Company's sapphire material and equipment. If GTAT sold any sapphire to a third-party, the Company would be required to pay to Apple $640,000 per boule, an amount far in excess of the cost of a boule.

211. Apple also barred GTAT from marketing its furnaces—and thus finding alternative value-maximizing uses for them—to third-party purchasers and suppliers. Similar to the extensive damages provisions that would apply if GTAT sold its sapphire to a third-party other than Apple, if the Company allowed a sapphire furnace to be used by a third-party, GTAT would be forced to pay $650,000 per month to Apple. To put this figure in perspective, furnaces provided as part of the transactions with Apple cost just $200,000 per furnace. Through these non-competition and

non-marketing provisions, Apple controlled from whom the Company was able to generate revenue, and ultimately, GTAT's overall financial condition.

212. Significantly, according to Defendant Squiller in the Bankruptcy Declarations, at all relevant times during the Class Period, Apple knew of the financial condition of GTAT and of the fact that GTAT was losing hundreds of millions of dollars under the Apple agreement. In fact, as reported in the *Wall Street Journal* in November 2014, Defendant Gutierrez met with Apple on June 6 to "fall on his sword" and admit that GTAT could not produce the sapphire material it had promised. Further, according to the Bankruptcy Declarations, GTAT made a secret, detailed presentation to the Apple senior management in charge of the sapphire growth project in the weeks leading up to the Company's bankruptcy and advised them very clearly that GTAT was losing substantial amounts and that it was projected to run out of cash in a few weeks. The Company made similar presentations to Apple throughout the Class Period, as it was obligated to do under the Apple agreement. These presentations were never made available to investors.

213. Apple even controlled GTAT's corporate structure, financing, and who the Company could hire to replace critical employees. Specifically, in October 2013, Apple required GTAT to form a wholly-owned bankruptcy-remote subsidiary, GT Advanced Equipment Holding LLC ("GT Equipment"), to protect Apple's security interest in the Company's assets. GTAT could not even sell its assets without consulting Apple. If GTAT violated this provision, it had to pay Apple $1 billion.

214. Further, Apple demanded that GTAT terminate its revolving credit agreement with Bank of America and pay off all outstanding debt owed to Bank of America in order to allow Apple to take a lien on the assets of GT Equipment and GTAT Corporation. According to Squiller, Apple also required GTAT to use a significant portion of the proceeds the Company received from the

issuance of $214 million worth of convertible notes in order to finance GTAT's consummation of the Apple transactions. As such, Apple had significant influence over the bond offering described herein. Apple also had the unilateral power to approve and reject replacements for one dozen of GTAT's most critical employees, including Defendant Squiller.

215. While Apple strategically positioned itself as a secured lender of GTAT, in reality, Apple's investment was more akin to a significant equity position given the level of control it assumed at the Company.

216. As discussed above, Apple exercised its unrelenting control over every aspect of the Company including owning and controlling the Mesa Facility, controlling the sapphire production process and other significant operational aspects of GTAT, including to whom the Company could sell its sapphire, controlling the Company's statements to investors through the confidentiality agreements and liquidated damages provisions, forcing the Company to terminate its credit facility and influencing the bond offering in order to raise capital, having the ability to approve or deny replacements for key GTAT employees, and Apple having unparalleled access to GTAT's business and finances. This level of control rendered Apple's investment tantamount to an equity investment. Apple simply strategically structured its investment in a way to limit its downside risk. Through these and the other measures discussed above, Apple was a controlling person of GTAT as defined by the federal securities laws.

X. DEFENDANTS' MATERIALLY FALSE AND MISLEADING STATEMENTS AND OMISSIONS

217. GTAT and Defendants Gutierrez, Gaynor, Bal and Kim made materially false and misleading statements and omissions during the Class Period concerning, among other things, (i) the Apple agreement, which they secretly considered to be "onerous," "inequitable" and "massively one-sided;" (ii) GTAT's ability to satisfy its obligations under the Apple agreement by

developing and mass-producing a new sapphire technology in approximately eight months; (iii) the Company's financial guidance based on the Apple agreement; (iv) the impact of the Apple agreement on the Company's existing sapphire business; (v) Apple's effective control and ownership interest in GTAT; and (vi) the Company's cash flow and other financial resources.

218. Including and in addition to the materially false and misleading statements and omissions set forth above, Defendants made the following materially false and misleading statements and omissions during the Class Period.

A. Third Quarter 2013 and Apple Agreement Announcement

219. On November 4, 2013, after the close of trading, GTAT filed with the SEC a Form 8-K and press release announcing the Company's results for the third quarter of 2013 and its entry into the Apple agreement (the "November 4 Press Release"). The November 4 Press Release was signed by Defendant Kim and included statements made by Defendant Gutierrez. That same day, Defendants Gutierrez and Gaynor held a conference call with analysts in connection with the November 4 Press Release (the "November 4 Conference Call"). On November 7, 2013, GTAT filed a Form 10-Q for the third quarter of 2013 that was signed by Defendants Gutierrez and Gaynor (the "November 2013 10-Q"). Defendants made numerous material misrepresentations in the November 4 Press Release, the November 4 Conference Call and the November 2013 10-Q.

220. **Viability and Benefits of the Apple Agreement.** In the November 4 Press Release, Gutierrez stated that "[w]e are very excited about this agreement with Apple as it represents a significant milestone in GT's long term diversification strategy." During the November 4 Conference Call, Gutierrez reiterated that "[w]e are very excited about the opportunities that lie ahead for our sapphire business." Gutierrez also emphasized that the Company had "confidence in the long-term value of this opportunity given the financial and technical resources that both parties are dedicating to the project." On the November 4 Conference

Call, Defendant Gutierrez explained that the Apple agreement "provides a path to add a recurring revenue stream to our otherwise cyclical equipment business model."

221. These statements were materially false and misleading because they failed to disclose GTAT's true view that the Apple agreement was an "onerous," "inequitable" and "massively one-sided" "adhesion contract." The Bankruptcy Declarations detailed how, rather than being "excited about this agreement with Apple" and the "opportunities it presented," GTAT believed that the Apple agreement was "an onerous and massively one-sided deal." As has now been revealed, unknown to investors during the Class Period, "Apple simply dictated the terms and conditions of the deal to GTAT" and refused to negotiate with GTAT's management or listen to their concerns about the Apple agreement, instructing them to "[p]ut on your big boy pants and accept the agreement."

222. As described above, GTAT's management's concerns about the Apple agreement were substantial. The Apple agreement required GTAT to: (i) develop and perfect a completely new technology that would be able to mass produce 262 kg sapphire boules—nearly double the size of the largest boules currently in production worldwide—without adequate research and development time; (ii) manufacture over 2,000 ASF furnaces to be installed and fully operational within just a few months; (iii) hire over 1,000 people to staff the Mesa facility that was halfway across the US from GTAT's headquarters; (iv) accept Apple's control over the equipment purchased and used in the production and fabrication of the sapphire boules; and (v) operate for the first time a sapphire material factory. Given GTAT's perceived entrapment by Apple, Defendant Gutierrez's statements professing excitement for and confidence in the long-term value of this opportunity presented by the Apple agreement were false and misleading when made.

223. The November 4 Press Release also stated that "GT has accelerated the development of its next generation, large capacity ASF furnaces to deliver low cost, high volume manufacturing of sapphire material" and that "[t]hese R&D efforts will support its non-LED initiative with its new customer [Apple] and are expected to enable the expansion of GT's LED, industrial and specialty sapphire businesses by positioning GT and its equipment customers as the industry's lowest cost." In the November 2013 10-Q, GTAT stated that "[o]ur sapphire material operations will grow due to our supply arrangements with Apple and we expect that sapphire material sales will account for a larger percentage of our revenue than in the past." GTAT also stated that "we expect to commence manufacturing of sapphire material in the near future in Arizona."

224. A UBS analyst questioned GTAT's "capability of ramping up the sapphire furnaces" in order to meet its manufacturing obligations under the Apple agreement during the November 4 Conference Call. Defendant Gutierrez expressed no reservations about GTAT's capabilities, and instead responded that "I think our capacity as an equipment provider is well documented in the past, and I would point you toward our traditional capabilities in that area." During this same conference call, management was asked by a Piper Jaffray analyst, "how would your customers respond now that you are moving more downstream into the supplying sapphire material directly [instead] of equipment?" Defendant Gutierrez again expressed confidence, stating that "we really don't have much competition technologically."

225. These statements were materially false and misleading and concealed material facts. In contrast to Defendants' statements and unknown to investors during the Class Period, GTAT was required to build and install thousands of ASF furnaces to produce 262 kg sapphire boules—something that had never been accomplished—in just eight months. As admitted in the

Bankruptcy Declarations, because of Apple's last minute "bait and switch," GTAT knowingly entered into an "onerous" "adhesion contract" that required GTAT to transform its sapphire business and mass produce sapphire materials in "quantities, size and quality never before achieved." The new and untested "quantities, size and quality" of the sapphire boules required by Apple were actively concealed from investors, who were deliberately misled regarding the venture's likelihood of success.

226. As described above, former employees with personal knowledge of GTAT's sapphire capabilities have described how GTAT's entry into the Apple agreement was "just ridiculous" because there was no conceivable way for the Company to invent the necessary technology and ramp up production in the following months.

227. The November 4 Press Release also stated that GTAT "expects 2014 revenue to be in the range of $600 to $800 million with its sapphire segment comprising up to 80% of the year's total revenue." This communicated to investors that GTAT's sapphire business would generate $480 to $640 million in 2014, a staggering amount when compared to the $21.6 million the sapphire business generated in the first half of 2013. Defendant Gutierrez further stated that "we expect revenues in 2015 …. to exceed $1 billion," and "by 2016, driven largely by the incremental strength from our equipment businesses and continued contribution from our sapphire materials business, we expect our revenue to nearly double from 2014 levels." He concluded, "[t]aking all factors into account, we expect to deliver substantial year-over-year earnings growth over the next three years." and "position[] GT and its equipment customers as the industry's lowest cost sapphire producers."

228. The above statements were false and misleading because, as discussed above, Defendants had no basis to believe that GTAT could comply with the terms of the Apple agreement

and mass-produce usable 262 kg boules of sapphire by the second half of 2014, and thus had no basis to believe that they could generate hundreds of millions of dollars from sales to Apple. Indeed, GTAT has admitted that the Company's 2014-2016 guidance lacked a reasonable basis. Defendant Squiller, in the Bankruptcy Declarations, described how—even if GTAT could create and produce the 262 kg boules (which it could not)—there was little to no revenue upside to the Apple agreement for GTAT:

> Even if this business transaction worked exactly as contemplated in the original agreements, GTAT would not earn any income at all unless Apple opted to "buy" sapphire material in excess of loan "repayment" obligations. By failing to compensate GTAT for losses associated with the development of the technology due to Apple's constant interference over which GTAT had little or no control, including losses caused by Apple's changes in product specifications, GTAT was forced into the role of a "captive" supplier to Apple, bearing all of the risk and all of the cost, including the costs of more than 1,300 temporary and permanent personnel, utilities, insurance, repairs, and raw materials.

229. **GTAT's Ability To Generate Non-Apple Sapphire Revenue.** During the Class Period, Defendants assured investors that the Company's sapphire business would not be limited exclusively to Apple's needs, but would remain diversified among GTAT's existing and potential sapphire equipment customers. Defendant Gutierrez stated in the November 4 Press Release, that "[b]y leveraging the new materials operation and our enhanced R&D efforts, we will be well positioned to drive the growth of other sapphire opportunities, including the expansion of our LED and industrial sapphire businesses in partnership with our ASF customers."

230. On the November 4 Conference Call, Defendant Gutierrez again discussed the Company's ability to generate any significant non-Apple revenue from its sapphire business in the foreseeable future. Specifically, Defendant Gutierrez stated that, "our ASF customers continue to operate at a high utilization rate, increasing our confidence that ASF equipment customers are likely to start taking delivery of backlog at a faster pace as our capacity opens up again." Similarly,

when asked directly about GTAT's ability to service other potential clients in light of its commitments to Apple, Defendant Gutierrez stated that "[w]e have lots of opportunities in the sapphire industry, ranging from other equipment opportunities to opportunities in industrial and other materials. We have fairly decent visibility, sufficient to give us comfort in providing a range of revenue for the coming year. . . . our ability to increase capacity and to service some of those other opportunities is still there." And, in response to a Piper Jaffray analyst's question concerning how the Apple agreement's might constrain GTAT from doing business with other entities, Defendant Gutierrez responded, "[w]hat I can tell you is that we have a significant amount of opportunity to continue selling equipment and materials … My view is the exclusivity …. does not really restrain us from continuing to grow the Business." The November 2013 10-Q stated that "w[e] intend to continue to sell our ASF systems to sapphire manufacturers in certain select markets, including the LED industry."

231. The above statements were materially false and misleading when made because, in reality, the Apple agreement prevented the Company from growing, or even sustaining its non-Apple lines of sapphire business.

232. As discussed above, Defendants admitted in the Bankruptcy Declarations that the Company knew that the exclusivity terms in the Apple agreement actually prohibited GTAT from marketing its products and generating any alternative sapphire revenue during the life of the Apple agreement. In addition, GTAT faced debilitating penalties fashioned as "liquidated damages" for any violations of the exclusivity terms. The Bankruptcy Declarations detailed how "[a]s a result of the onerous non-competition provisions in the Apple agreement[], GTAT has been shut out of the global market for its highly valuable sapphire material and equipment" and that "[w]ith the very limited exception for pre-existing orders, Apple also prevented GTAT from marketing its

furnaces—and thus finding alternative value-maximizing uses for them—through sales to third party purchasers and suppliers to competitors of Apple." In other words, the Bankruptcy Declarations explained that "GTAT was prohibited, for years to come, from conducting any sapphire business with any conceivable Apple competitor or any direct and indirect supplier to an Apple competitor." Should GTAT have sold any sapphire to any entity other than Apple, GTAT would have to pay Apple "$650,000 per month for any sapphire furnace that is used in violation of GTAT's exclusivity obligations to Apple." The Company concealed these "onerous" liquidated damages and other exclusivity terms from investors by filing redacted copies of the Apple agreement in its November 2013 10-Q.

233. The Bankruptcy Declarations also explained how the terms of the Apple agreement prevented GTAT from using its Salem facility for other sapphire revenue streams. While the Mesa facility was dedicated to Apple, GTAT's Salem facility was ostensibly free to pursue other revenue. In reality, the Bankruptcy Declarations described how because of Apple's control over GTAT, "Apple also embedded itself in [the Salem facility] that took on the function of an experimental research and development center for the Apple project." The Bankruptcy Declarations confirmed that "GTAT has been unable to use that facility for other revenue streams."

234. **GTAT's Financial Resources.** During the November 4 Conference Call, Defendant Gaynor represented that GTAT "was confident that our projected cash levels are adequate to run the business for the foreseeable future." As a result, Defendant Gaynor stated that "we don't have "[any capital raises] on the horizon right now" and Defendant Gutierrez stated that, with respect to capital, GTAT was "in a good position now." In the Company's Third Quarter 2013 10-Q, Defendants also misrepresented GTAT's liquidity and capital resources when Defendants stated that "[m]anagement believes that the Company has sufficient cash resources to fund

operations for at least the next twelve months." Similarly, the Company stated in the same Form 10-Q, "[w]e believe that our existing cash, as well as cash that we are eligible to receive under the Prepayment Agreement with Apple Inc. which will be used principally in connection with our sapphire material operations at our Arizona facility … will be sufficient to satisfy working capital requirements, commitments for capital expenditures, and other cash requirements for at least the next twelve months."

235. These statements were materially false and misleading when made because GTAT knew but failed to disclose that the Company lacked sufficient cash resources to operate under the aggressive terms and supply schedule of the Apple agreement. Indeed, by the end of the third quarter of 2013, GTAT's revenue was only $40.3 million, down from the 2012 third quarter revenue of $110.06 million (which itself was a deflated figure from $217.7 million in the third quarter of 2011). GTAT also experienced a net decrease in cash of $159.6 million, down from third quarter of 2012's net increase in cash of $272.3 million. All of GTAT's business segments were stagnating or failing, with the Company's sapphire business performing the worst—producing a revenue stream of only $7.35 million in the third quarter of 2013. Moreover, despite the Company's statement that "no capital raises were on the horizon," the Company needed to raise $300 million in a debt and common stock Offering just weeks later.

236. The Controller at GTAT from May 2011 through the fall of 2014 who focused on financial planning and analysis directly refuted the Company's representations concerning the sufficiency of its cash levels by stating that by the time of the Apple agreement "[t]he company was very cash poor … we had a lot of money tied up in letters of credit with those customers that had agreed to buy furnaces but had not installed them yet" and as a result the Company was suffering from a significant cash-flow problem. Additionally, the Director of Operations for the

Sapphire Fabrication Business Unit at Mesa from January 2014 through December 2014 explained that, at the time of the Apple agreement, if GTAT missed any of the supply milestones for Apple and therefore did not receive the scheduled payments, there would be a major cash crisis.

237. The November 2013 10-Q also contained Sarbanes-Oxley-required certifications, signed by Defendants Gutierrez and Gaynor. These certifications stated, in relevant part: (i) "I have reviewed this Quarterly Report on Form 10-Q"; (ii) "Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;" and (iii) "Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report." These statements were materially false and misleading because, as set forth above, the report omitted to disclose the true nature of GTAT's relationship with Apple and GTAT's artificially inflated guidance based on the "onerous" and "inequitable" terms of the Agreement.

B. The December 2013 Offering Materials

238. In December 2013, GTAT raised approximately $300 million in capital through two offerings: (i) an offering of $214 million in principal amount of 3.00% Convertible Senior Notes due 2020 (the "Notes" and the "Debt Offering"); and (ii) the offering of 9,942,196 shares of its common stock priced at $8.65 per share (the "Equity Offering," and together with the Debt Offering, the "Offerings"). Each $1,000 Note registered in the Debt Offering was convertible into 82.5764 shares of GTAT common stock at a conversion price of $12.11 per share. The Offerings were conducted pursuant to numerous SEC filings, including a Registration Statement (No. 333-192628) that was filed with the SEC on December 2, 2013. Exchange Act Defendants Gutierrez

and Gaynor signed the Registration Statement. The Registration Statement was supplemented through draft and final Prospectus Supplements (one for each of the Offerings) filed with the SEC on December 3, 3013 and December 5, 2013 (the "Prospectus Supplements"). The Registration Statement and Prospectus Supplements are referred to herein collectively as the "Offering Materials."

239. The Offering Materials incorporated by reference certain documents previously filed by GTAT with the SEC, including the November 4 Press Release and the November 2013 10-Q. For all of the reasons stated above, Defendants made materially false and misleading statements and omissions in those documents.

240. The Prospectus Supplements reiterated some of the false statements made in the November 2013 10-Q. For example, the Prospectus Supplement stated that:

> We manufacture sapphire material using our advanced sapphire crystal growth furnace, or ASF system, at our facility in Salem, Massachusetts and expect to commence manufacturing of sapphire material in the near future at our leased facility in Arizona. We recently entered into an agreement to supply sapphire material to Apple Inc., or Apple. We expect that proposed sapphire material production operations in Arizona will principally be used to satisfy our obligations under this supply agreement. We expect that our sapphire material operations will constitute a larger portion of our business going forward than in the past as a result of our supply arrangement with Apple.
>
> We intend to continue to sell our ASF systems to sapphire manufacturers in certain select markets, including the LED industry, subject to certain exclusivity rights that we have granted Apple.

241. These statements were materially false and misleading because GTAT did not "expect to commence manufacturing of sapphire material in the near future." As described above, GTAT had never created the sapphire in the 262 kg size required by the Apple agreement, did not perform the research and development to successfully develop the technology to create the 262 kg

sapphire; and lacked a viable "recipe" for 262 kg sapphire. GTAT admitted in the Bankruptcy Declarations that "the first phase of the Mesa facility was not operational until December 2013."

242. Moreover, as discussed above, the Prospectus Supplement statement that GTAT "intend[s] to continue to sell our ASF systems to sapphire manufacturers in certain select markets, including the LED industry, subject to certain exclusivity rights that we have granted Apple" was false and misleading because, in reality, "[a]s a result of the onerous non-competition provisions in the Apple agreement[], GTAT has been shut out of the global market for its highly valuable sapphire material and equipment" and that "[w]ith the very limited exception for pre-existing orders, Apple also prevented GTAT from marketing its furnaces—and thus finding alternative value-maximizing uses for them—through sales to third party purchasers and suppliers to competitors of Apple."

C. Fourth Quarter and Year-End 2014 Statements

243. On February 24, 2014, before the close of trading, GTAT issued and filed with the SEC a Form 8-K and press release announcing "progress" on the Apple agreement together with the Company's results for the fourth quarter of 2013 (the "February 24 Press Release"). The February 24 Press Release was signed by Defendant Kim and included materially false and misleading statements by Defendant Gutierrez. Also on February 24, 2014, before the close of trading, GTAT held its earnings conference call with analysts discussing the Company's fourth quarter 2013 financial results (the "February 24 Conference Call").

244. In the February 24 Press Release, Defendant Gutierrez stated "the anticipated growth trajectory of our business remains unchanged. . . . Our arrangement to supply sapphire materials to Apple is progressing well and we started to build out the facility in Arizona and staff the operation during the quarter." Gutierrez continued, stating "We are pleased to have Apple as a sapphire customer and to be in a position to leverage our proprietary know-how to enable the

supply of this versatile material." Defendant Gutierrez reiterated those statements in the February 24 Conference Call. During that call, Gutierrez also stated:

> As we indicated on our last call, we expect revenues in 2014 to range from $600 million to $800 million, with approximately 15% of the total revenues occurring in the first half of the year. We expect our Sapphire segment to account for more than 80% of total revenue in 2014. The Sapphire segment includes the Company's ASF equipment, the materials businesses in the LED, industrial and consumer electronics markets.
>
> *****
>
> We believe that our revenues in 2015 will exceed $1 billion, and profits will sequentially improve.

245. During the February 24 Conference Call, a UBS analyst asked what "gives [Gutierrez] confidence you can successfully generate a profit in this business of selling sapphire materials." Gutierrez did not "break down sapphire materials' profitability versus the entire sapphire segment," but did state that "[w]e expect our sapphire segment to be profitable in the year, on balance." He continued:

> Our confidence comes from deep understanding of the unique technology that we've developed for these applications. And, as I've indicated before, we've continued to progress on the performance of our ASF furnaces and the cost per millimeter that we expect to achieve, and so we're quite confident in our technology.
>
> And the rest of it is execution. These are sizable projects and so execution has always an impact. But we're confident. And, as you know, we generally don't give guidance unless we have a pretty good understanding that we're going to hit it.

246. These statements were materially false and misleading because, as set forth above (and admitted by GTAT), GTAT was, in fact, not "pleased to have Apple as a sapphire customer" under the terms provided by the Apple agreement. As set forth in GTAT's Bankruptcy Declarations, GTAT's plan had been to sell Apple 2,600 ASF furnaces, in line with its traditional business model. Because of Apple's last minute "bait and switch," GTAT knowingly entered into

an "onerous," "inequitable" and "massively one-sided" agreement under which GTAT was required to transform its sapphire business and mass produce sapphire materials in "quantities, size and quality never before achieved."

247. These statements were also false and misleading because the "arrangement to supply sapphire materials to Apple" was not "progressing well." In fact, as discussed above, GTAT was already months behind schedule in the build-out of the Mesa facility, had ceded all control to Apple with respect to the most salient aspects of the build out, and was not on track to meet the requirements of the Apple agreement. The Bankruptcy Declarations revealed that "[t]he build-out of the Mesa Facility, delays in available power, and power interruptions, further delayed the ramp-up of sapphire growth and fabrication by approximately three months."

248. Defendant Gutierrez's statements concerning his "confidence" in the Company's guidance of $600 to $800 million in revenue for 2014, 80% of which would be attributable to sapphire sales, were also materially false and misleading. Defendant Gutierrez had been told by GTAT's former Sapphire Product Manager that production of 262 kg boules for Apple could not be accomplished in the allotted time frame, and would require "light years" of research and development to be considered feasible. Moreover, as GTAT admitted in the Bankruptcy Declarations, in February 2014, just a few months before GTAT's sapphire production capabilities at Mesa had to be fully operational, the Mesa facility was dysfunctional and non-operational and was already months behind schedule. In addition, the Company still lacked the technology and formula to create the 262 kg sapphire boule, and the vast majority of the product that was being produced was "junk."

249. Defendants also made false and misleading statements about the costs of the Mesa facility to GTAT and the sufficiency of the Apple loan to cover those expenses. During the

February 24 Conference Call, Defendant Gaynor stated that "[w]e expect that the combination of Apple prepayments received to date, and to be received in the future, will fully fund the capital outlay in Arizona."

250. This statement was false and misleading because, as set forth above (and as admitted by GTAT), the cost of constructing and running the Mesa facility required a capital outlay of nearly double the $578 million that the Company expected to be advanced by Apple. In fact, as GTAT admitted in the Bankruptcy Declarations, "GTAT has incurred approximately $900 million in costs in connection with the Apple project, and, at Apple's dictated pricing, GTAT would never realize a profit" under the Apple agreement. As discussed above, these problems and cost overruns were evident to GTAT by February 2013 given the problems with construction of the facility, operation of the furnaces and inadequate equipment that needed to be replaced.

251. On March 10, 2014, before the close of trading, GTAT filed with the SEC its Form 10-K for year ended December 31, 2013, signed by Defendants Gutierrez and Gaynor (the "2013 10-K"). The 2013 10-K stated: "We will continue to market and sell this equipment to our current and new customers to support their expansion plans and to customers that will use the ASF equipment for applications not prohibited under the [Apple agreement]."

252. This statement was false and misleading because, unknown to investors, the Apple agreement's terms prohibited any significant sales of equipment or material to GTAT's "current and new customers." As discussed above, and as GTAT admitted and numerous former employees confirmed, "[a]s a result of the onerous non-competition provisions in the Apple agreement[], GTAT has been shut out of the global market for its highly valuable sapphire material and equipment" and that "[w]ith the very limited exception for pre-existing orders, Apple also prevented GTAT from marketing its furnaces—and thus finding alternative value-maximizing uses

for them—through sales to third party purchasers and suppliers to competitors of Apple." Moreover, the Bankruptcy Declarations explained how, as the result of Apple's assumption of control over sapphire operations at both Mesa and GTAT's Salem, Massachusetts facility, "GTAT has been unable to use [the Salem] facility for other revenue streams," such as manufacturing furnaces to be shipped out to other customers.

253. The 2013 10-K also stated, "[w]e believe that our existing cash, customer deposits and prepayment installment proceeds will be sufficient to satisfy working capital requirements, commitments for capital expenditures and other cash requirements for at least the next twelve months."

254. This statement was false and misleading because, as set forth above (and as admitted by GTAT), the cost of constructing and running the Mesa facility required a capital outlay of nearly double the $578 million that the Company expected to be advanced by Apple. In fact, as GTAT admitted in the Bankruptcy Declarations, "GTAT has incurred approximately $900 million in costs in connection with the Apple project, and, at Apple's dictated pricing, GTAT would never realize a profit" under the Apple agreement. As discussed above, these problems and cost overruns were evident to GTAT by February 2013 given the problems with construction of the facility, operation of the furnaces and inadequate equipment that needed to be replaced.

255. The 2013 10-K also contained Sarbanes-Oxley-required certifications, signed by Defendants Gutierrez and Gaynor. These certifications stated, in relevant part: (i) "I have reviewed this annual report on Form 10-K"; (ii) "Based on my knowledge, this report does not contain any untrue statements of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;" and (iii) "Based on my knowledge, the financial

statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report."

256. These statements were materially false and misleading because, as set forth above, the 2013 10-K misrepresented the true nature of GTAT's relationship with Apple and GTAT's artificially inflated guidance based on the "onerous" and "inequitable" terms of the Agreement.

D. The March 14, 2014 New Product And Technology Briefing

257. On March 14, 2014, before the close of trading, GTAT held a New Product and Technology Briefing conference call for investors (the "March 14 Conference Call"). During the call, Defendant Gutierrez allayed investors' potential concerns that GTAT was "abandoning [its sapphire] equipment business," explaining that such a scenario was "the farthest from the truth." He stated, "<u>We have a robust set of customers that are very happy with us. And we expect to start shipping against our backlog this year</u>."

258. These statements were materially false and misleading because, in reality, as admitted by GTAT in the Bankruptcy Declarations and confirmed by numerous former employees, "[a]s a result of the onerous non-competition provisions in the Apple agreement[], GTAT ha[d] been shut out of the global market for its highly valuable sapphire material and equipment" and that "[w]ith the very limited exception for pre-existing orders, Apple also prevented GTAT from marketing its furnaces—and thus finding alternative value-maximizing uses for them—through sales to third party purchasers and suppliers to competitors of Apple." Moreover, the Bankruptcy Declarations explained how, as the result of Apple's assumption of control over sapphire operations at both Mesa and GTAT's Salem, Massachusetts facility, "GTAT ha[d] been unable to use [the Salem] facility for other revenue streams," such as manufacturing furnaces to be shipped out to other customers. Moreover, as discussed above, a former Supervisor of GTAT's Sapphire

Growth Department from December 2010 to November 2014 confirmed that after entering the Apple agreement, GTAT cut off relationships with all its pre-existing customers, a development that "shocked" the Supervisor because GTAT had other sapphire customers. By February or March 2014, GTAT's other sapphire business was shut off.

E. First Quarter 2014 Statements

259. On May 5, 2014, the Company issued a press release announcing a "next generation" ASF furnace that could create 165 kg sapphire boules commercially available in the third quarter of 2014, called the "ASF165." (the "May 5 Press Release") The ASF165 promised to create sapphire boules 50 kg greater than GTAT's latest ASF115 model. In the May 5, 2014 press release, the Company "indicated that it has developed more advanced ASF technology capable of producing boules significantly greater than 165 kg," but that it "intend[ed] to keep this more advanced ASF system captive for some period of time."

260. On May, 7 2014, after the close of trading, GTAT issued and filed with the SEC a Form 8-K and press release announcing, together with the Company's results for the first quarter of 2014, its progress under the Apple agreement (the "May 7 Press Release"). The May 7 Press Release was signed by Defendant Kim and included materially false and misleading statements by Defendant Gutierrez. On May 8, 2014, Defendants held a conference call to discuss the May 7 Press Release (the "May 2014 Conference Call"). That same day, GTAT filed its Form 10-Q for the first quarter of 2014, signed by Defendants Gutierrez and Bal (the "May 2014 10-Q").

261. Defendant Gutierrez, during the May 2014 Conference Call, remarked on the May 5 Press Release and stated that investors "should also infer from some of the [earlier] comments that I made, that <u>165-kilograms is not the top end of what we've been able to accomplish from a technology standpoint</u>." An analyst from Pacific Crest sought clarification of Defendant Gutierrez's statements in the May 5, 2014 press release, asking whether the technology being kept

"captive" was "something you might be using in your materials business sooner than later," and whether the technology could create "significantly greater" sapphire boules that were "production ready this year." Defendant Gutierrez responded unequivocally that "I can say that it's significantly greater, and I can say, yes, that it is production ready."

262. Similarly, on the May 2014 Conference Call, a Raymond James & Associates analyst remarked that "[e]verybody out there is trying to figure out which product Apple will be applying Sapphire to," and asked whether "you believe that Apple will eventually disclose what those products are, and if so, what might the timetable be for that announcement be?" Defendant Gutierrez responded, "I can tell you that we are producing Sapphire and that I expect the Sapphire that we produce will be fully utilized."

263. In the May 7 Press Release, Defendant Gutierrez informed investors that "[w]e continue to expect our sapphire segment to contribute meaningfully to revenue this year." The Company reiterated its guidance for fiscal year 2014 of "[r]evenue in the range of $600 to $800 million." Defendant Gutierrez spoke to investors and analysts during the May 2014 Conference Call, and emphasized his confidence in the Apple agreement:

> With respect to our Arizona project, we have continued to staff up and GT's worldwide workforce has reached approximately 1,000 people. In addition, we have now received three of the four prepayments we expected from Apple. The second prepayment was received in Q1 and the third in Q2. This brings total cash received from April to date to approximately $440 million. I remain very enthusiastic about our Sapphires materials and equipment business. While we cannot be specific with respect to the production ramp in Arizona, we continue to expect our Sapphire business to contribute over 80% of our revenue this year.

264. Defendant Bal also stated on the May 8 Conference Call that "[w]e continue to expect that 2014 will be a year of transition, as our Sapphire materials business ramps, while we invest in new product offerings to drive future growth. 2014 is all about execution, as we laid a

foundation for growth for 2015 and beyond. Our guidance for the year remains consistent with the outlook that we provided last quarter. More specifically, we expect revenues of $600 million to $800 million concentrated in the second half of the year, with more than 80% coming for our Sapphire segment." Defendant Gutierrez ended the May 2014 Conference Call with a positive outlook, stating that "I just wanted to sort of take the moment to reflect on how <u>incredibly positive I am and my team is about the future of the business</u>."

265. These statements concerning the Company's "enthusias[m]" about the sapphire materials business initiated for Apple, the status of the Company's large boule technology created for Apple, and the Company's continued guidance of revenues of $600 to $800 million, 80% of which would be attributable to sapphire sales, were materially false and misleading. As Defendants admitted in the Bankruptcy Declarations, the Officer Defendants knew from the first day of the Class Period that the Apple agreement was "onerous," "inequitable," and "massively one-sided." Moreover, the Officer Defendants were directly warned by GTAT's former Sapphire Product Manager that the production of 262 kg boules could not be accomplished in the timeframe required by Apple and was, indeed, "light years" away. As discussed fully above, by May 2014, the Company had not developed a reliable technology to create the 262 kg boules, and the Mesa facility was rife with construction problems and errors that prevented the orderly research and development required to produce sapphire materials. In reality, it was clear by May 2015 that GTAT had no way of producing sapphire in the quantities, quality and size required by Apple. Indeed, as reported by the *Wall Street Journal*, less than one month later, Defendant Gutierrez went to Apple executives to "fall on his sword" and admit that the Company simply could not produce the 262 kg boules for Apple's use. Within a few weeks of assuring investors that the large-capacity

sapphire created for Apple was "production ready," GTAT halted production at Mesa due to its inability to produce the sapphire.

266. The May 7 Press Release further stated that "[w]ith respect to our Arizona project, we have now received three of the four prepayments from Apple," and **"**[t]he company expects that the total prepayments it receives from Apple will fully fund its capital outlays related to the project in Arizona." In addition, Defendant Bal explained during the May 2014 Conference Call that the money advances as "prepayments" by Apple "will fully fund[] our capital outlays related to its Arizona project."

267. These statement were materially false and misleading because, as set forth above (and as admitted by GTAT), the cost of constructing and running the Mesa facility required a capital outlay of nearly double the $578 million that the Company could be advanced by Apple under the terms of the Apple agreement. In fact, as GTAT admitted in the Bankruptcy Declarations, "GTAT has incurred approximately $900 million in costs in connection with the Apple project, and, at Apple's dictated pricing, GTAT would never realize a profit" under the Apple agreement. As discussed above, these problems and cost overruns were evident from the start because the $578 million prepayment amount covered only the cost of equipment and not personnel and cost overruns, and because, by no later than February 2013, GTAT already faced problems with construction of the facility, operation of the furnaces and inadequate equipment that needed to be replaced.

F. Second Quarter 2014

268. On August 4, 2014, after the close of trading, GTAT issued and filed with the SEC a Form 8-K and press release announcing the Company's results for the second quarter of 2014 (the "August 4 Press Release"). The August 4 Press Release was signed by Defendant Kim and included materially false and misleading statements by Defendant Gutierrez. On August 5, 2014,

the Company held its quarterly earnings conference call with analysts discussing the Company's financial results for the second quarter of 2014 (the "August 5 Conference Call"). On August 7, 2014, the Company filed a Form 10-Q with the SEC, signed by Defendants Gutierrez and Bal (the "August 2014 10-Q").

269. In the August 4 Press Release, Defendant Gutierrez addressed the status of the sapphire production at the Mesa Facility, stating:

> The build-out of our Arizona facility, which has involved taking a 1.4 million square foot facility from a shell to a functional structure as well as the installation of sapphire growth and fabrication equipment, is nearly complete and we are commencing the transition to volume production. We remain confident about the long-term potential of the sapphire materials business for GT.

270. For the first time, Defendant Gutierrez informed investors that "[w]e do not expect to reach full operational efficiency in Arizona until early 2015," but emphasized that "w[e] remain very positive about our Sapphire materials business."

271. These statements were materially false and misleading when made. GTAT has admitted through the Bankruptcy Declarations, and both Apple and numerous former GTAT employees have confirmed, that by July 2014, production at the Mesa Facility was non-operational and the Company had ceased development of the 262 kg boules that were required by the Apple agreement.

272. In the August 2014 Press Release and August 2014 Conference Call, the Company updated its guidance for fiscal year 2014, announcing expected revenue of "$600 to $700 million" at "the lower end of the previously provided guidance range." During the August 5 Conference Call, Defendant Bal explained that GTAT "continue[d] to expect more than 80% of the year's revenue to come from our Sapphire segment."

273. The August 4 Press Release also addressed the still-unpaid fourth Apple prepayment by stating that while "[t]he fourth prepayment from Apple is contingent upon the achievement of certain operational targets by GT[,] GT expects to achieve these targets and receive the final $139 million prepayment by the end of October 2014." Defendant Bal reiterated the receipt of prepayments on the August 5 Conference Call, stating that GTAT "expects to . . . receive the final $139 prepayment by the end of October."

274. Analysts tried to reconcile how the Company expected to generate hundreds of millions of dollars in additional sapphire revenue in the second half of 2014 given Defendant Gutierrez's remarks that the Mesa facility was not yet at full production and that GTAT did not expect to receive the final prepayment until late October. A Goldman Sachs analyst remarked that "[i]t seems difficult to see how the Apple relationship results in much revenue this year," and asked "[a]re there just very short lead times once this facility is up and running?" Defendant Gutierrez stated that he would "sidestep" the question "a little bit" because he "[could] not speak to the volumes or the applications or the timing of Apple's business." But, he did "speak to the fact that we are starting to ramp our production and move into volume manufacturing."

275. An analyst from Canaccord Genuity pushed for more details on how the Company would achieve its guidance—*i.e.*, "$570 million of additional revenue" by year-end—given the final prepayment timing. Defendant Gutierrez responded that "I would say that you should assume that the fourth quarter is very heavily loaded relative to the third quarter, though, without giving specific numbers." Another analyst, from UBS, asked whether the Company would "need to raise more cash, if you don't get that [October] prepayment." Defendants Gutierrez answered that "I feel very confident, based on the progress that we're making, that we will achieve the milestone in that timeframe." He continued, explaining that since the Company projected "$400 million [cash]

in the bank at the end of the year, it's not a world-ending event if [the October prepayment] slides. Although, again, I don't anticipate that it will slide." Similarly, in response to a Goldman Sachs analyst's question about the potential for GTAT to need to raise further capital in order to ramp up production at the Mesa facility, Defendant Gutierrez assured investors that the Company was financially secure, stating that "[a]s our guidance for the year suggests, we're expecting to end the year with approximately $400 million of cash on the balance sheet. And as you know from prior history, this business really starts to generate cash once the order flow and the revenue flow starts to move. So at the moment, we don't expect to need to go out into the marketplace to raise additional capital."

276. These statements were materially false and misleading. As stated above, sapphire operations at Mesa had effectively ceased in August 2014, and there was no way that GTAT could achieve any milestones sufficient to trigger the last prepayment amount.

277. In regard to the Company's servicing its other clients, an analyst from Canaccord Genuity asked Gutierrez whether the Apple exclusivity provisions allowed GTAT to sell ASF equipment "to other vendors that may be using [sapphire] for cover glass applications" such that GT "can be an arms dealer to other non-Apple related suppliers." While Defendant Gutierrez responded that there were "significant" "exclusivity provisions that we have to be true to," "those exclusivity provisions are not all-encompassing" and are "not a complete chokehold on our ability to be able to sell our advanced Sapphire technology."

278. These statements were false and misleading because, in reality, as admitted by Defendant Squiller and confirmed by numerous former employees, "[a]s a result of the onerous non-competition provisions in the Apple agreement[], GTAT ha[d] been shut out of the global market for its highly valuable sapphire material and equipment" and that "[w]ith the very limited

exception for pre-existing orders, Apple also prevented GTAT from marketing its furnaces—and thus finding alternative value-maximizing uses for them—through sales to third party purchasers and suppliers to competitors of Apple." Moreover, Squiller admitted how, as the result of Apple's assumption of control over sapphire operations at both Mesa and GTAT's Salem, Massachusetts facility, "GTAT ha[d] been unable to use [the Salem] facility for other revenue streams," such as manufacturing furnaces to be shipped out to other customers. Moreover, as discussed above, a former Supervisor of GTAT's Sapphire Growth Department from December 2010 to November 2014 confirmed that after entering the Apple agreement, GTAT cut off relationships with all its pre-existing customers, a development that "shocked" the Supervisor because GTAT had other sapphire customers.

279. The August 2014 10-Q, signed by Defendants Gutierrez and Bal, communicated to investors that, in connection with the Apple agreement and the Mesa facility, GTAT had "incurred approximately $524 million related to capital expenditures, primarily to obtain sapphire material growth and related production equipment." But the Company assured investors that it had sufficient cash to fund the production of sapphire materials for Apple, stating: "<u>We believe that our existing cash, customer deposits and prepayment installment proceeds will be sufficient to satisfy working capital requirements, commitments for capital expenditures and other cash requirements for at least the next twelve months</u>. This belief is founded on our current expectations of both prospective cash inflows and outflows during this time period."

280. These statements were materially false and misleading because, as set forth above (and as admitted by GTAT), the cost of constructing and running the Mesa facility far exceeded $524 million and, in fact, required a capital outlay of nearly double the $578 million that the Company could be advanced by Apple under the terms of the Apple agreement. In fact, as GTAT

admitted in the Bankruptcy Declarations just two months later, "GTAT has incurred approximately $900 million in costs in connection with the Apple project." GTAT had no reasonable basis to assert that the Company had sufficient cash, deposits and proceeds to "to satisfy working capital requirements, commitments for capital expenditures and other cash requirements for at least the next twelve months."

281. The August 2014 10-Q also contained Sarbanes-Oxley-required certifications, signed by Defendants Gutierrez and Bal. These certifications stated, in relevant part: (i) "I have reviewed this Quarterly Report on Form 10-Q"; and (ii) "Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;" and (iii) "Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report."

282. These statements were materially false and misleading because, as set forth above, the report misrepresented the costs of the Mesa facility, the ability of the Apple prepayments and existing cash and deposits to fund the Company for the foreseeable future, and the true nature of GTAT's relationship with Apple that was controlled by the "onerous," "massively one-sided" and "inequitable" terms of the Agreement.

XI. LOSS CAUSATION/ECOMONIC LOSS

283. Defendants' wrongful conduct, as alleged herein, directly and proximately caused the losses incurred by Plaintiffs and the Class. During the Class Period, Plaintiffs and the Class purchased GTAT common stock, options and Notes at artificially inflated prices and were damaged thereby when the price of GTAT securities declined when the truth was revealed. The price of

GTAT's common stock significantly declined (causing investors to suffer losses) when Defendants' misrepresentations, and/or the information alleged herein to have been concealed from the market, and/or the effects thereof, were revealed, and/or the risks that had been fraudulently concealed by Defendants materialized. The prices for GTAT publicly traded options were also distorted during the Class Period on account of the artificially inflated price of GTAT common stock. The prices of GTAT publicly traded options also suffered significant declines when Defendants' misrepresentations, and/or the information alleged herein to have been concealed from the market, and/or the effects thereof, were revealed, and/or the risks that had been fraudulently concealed by Defendants materialized, causing substantial damage to members of the Class who purchased publicly traded call options on GTAT common stock or sold publicly traded put options on GTAT common stock during the Class Period.

284. Specifically, the false and misleading statements and omissions set forth above were widely disseminated to the securities markets, investment analysts, and the investing public, misrepresenting (i) GTAT's inability to fulfill the terms of the Apple agreement; (ii) the Company's inability to produce 262 kg (or any) sapphire materials for commercial consumption; (iii) the illusory 2014 revenue guidance $600 to $800 million; (iv) the Company's ability to generate additional revenue from its sapphire business to offset any losses with respect to the Apple agreement; and (v) the Company's available cash flow. Those materially false and misleading statements and omissions artificially inflated GTAT's securities price.

285. That artificial inflation was removed when the conditions misstated and omitted by Defendants were revealed to the market through partial disclosures on September 9, 2014 and October 6, 2014. Investors suffered losses as the price of GTAT's securities declined when those statements were corrected and the risks concealed by Defendants materialized.

286. On September 9, 2014, while the market was open, Apple announced that, contrary to public indications, it would not utilize GTAT's sapphire in its next-generation iPhone or other products. In response to these disclosures, GTAT's common stock dropped from a closing price of $17.15 per share on September 8, 2014 to a closing price of $14.94 per share on September 9, 2014, a 12.89% decline, on very heavy trading volume. The common stock dropped another 14.46% on September 10, 2014, closing at $12.78 per share. Similarly, the price of the Notes issued in the Debt Offering declined from a closing price of $1,613 per $1,000 Note on September 8, 2014 to a closing price of $1,443 on September 9, 2014, a decline of 10.54%. These Notes further declined another 11.4% on September 10, 2014, to a close of $1,279 per $1,000 boule.

287. On October 6, 2014, the full truth was disclosed when GTAT announced that it would be filing for Chapter 11 bankruptcy protections, described in detail above.

288. In response to these disclosures, GTAT's stock plummeted by nearly 93% in one day, from a closing price of $11.05 per share on October 3, 2014 to a closing price of $0.80 per share on October 6, 2014 on extraordinary and historic volume of 183,290,799 shares, which dwarfed the volume of any day since the IPO. Similarly, in response to these disclosures, the price of the Notes declined from nearly $1,085 per $1,000 Note to $315 per $1,000 Note, a decline of nearly 71% on unusually high volume that dwarfed the volume of any day since the Notes were first traded following the Debt Offering.

289. Accordingly, the decline in the prices of GTAT's stock and Notes was a direct and proximate result of Defendants' fraudulent conduct being revealed to investors and to the market. The timing and magnitude of the decline in the prices of GTAT's stock and Notes negates any inference that the economic losses and damages suffered by Plaintiffs and the other members of

the Class were caused by changed market conditions, macroeconomic factors, or even Company-specific facts unrelated to Defendants' fraudulent conduct.

XII. THE INAPPLICABILITY OF THE STATUTORY SAFE HARBOR

290. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false or misleading statements pleaded in this Complaint. The statements alleged to be false or misleading herein all relate to then-existing facts and conditions. In addition, to the extent certain of the statements alleged to be false or misleading may be characterized as forward-looking, they were not adequately identified as forward-looking statements when made, and there were no meaningful cautionary statements identifying important facts that could cause actual results to differ materially from those in the purportedly forward-looking statements. To the extent that the statutory safe harbor is intended to apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, each of these Defendants had actual knowledge that the particular forward-looking statement was materially false or misleading.

XIII. CLASS ACTION ALLEGATIONS

291. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a Class consisting of all persons and entities who: (i) purchased or otherwise acquired GTAT's publicly traded common stock and/or debt securities; purchased or otherwise acquired publicly traded call options on GTAT common stock; or sold publicly traded put options on GTAT common stock during the Class Period from November 5, 2013 through 9:40am Eastern Standard Time on October 6, 2014, inclusive; (ii) securities in or traceable to the Company's Debt Offering; or (iii) securities in or traceable to the Company's Equity Offering, and were damaged thereby (the "Class"). Excluded from the Class are Defendants; Defendants'

affiliates and subsidiaries; the officers and directors of GTAT and Apple and their subsidiaries and affiliates at all relevant times; members of the immediate family of any excluded person; heirs, successors, and assigns of any excluded person or entity; and any entity in which any excluded person has or had a controlling interest.

292. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. Throughout the Class Period, GTAT's common stock was actively traded on the NASDAQ, an efficient market. As of June 28, 2014, there were approximately 138 million shares of GTAT stock outstanding, owned by hundreds or thousands of investors. Similarly, there were $214 million in face amount of the Notes registered in the Debt Offering that were actively traded, with over $581 million in face amount of the Notes traded in the open market following the Debt Offering. While the exact number of Class members is unknown to Lead Plaintiff at this time, and can only be ascertained through appropriate discovery, Lead Plaintiff believes that there are at least hundreds or thousands of members in the Class.

293. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class predominate over questions that may affect individual Class members, including:

a. Whether Defendants violated the Securities Act and/or the Exchange Act;

b. Whether Defendants omitted and/or misrepresented material facts;

c. Whether Defendants' statements omitted material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

d. Whether the Officer Defendants and the Director Defendants are personally liable for the alleged misrepresentations and omissions described herein;

e. Whether the prices of GTAT securities were artificially inflated;

f. Whether Defendants' conduct caused the members of the Class to sustain damages; and

g. The extent of damage sustained by Class members and the appropriate measure of damages.

294. The claims of Lead Plaintiff are typical of those of the Class.

295. Lead Plaintiff will adequately protect the interests of the Class and have retained counsel experienced in class action securities litigation. Lead Plaintiff has no interests that conflict with those of the Class.

296. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Joinder of all Class members is impracticable. Additionally, the damage suffered by some individual Class members may be small relative to the burden and expense of individual litigation, making it practically impossible for such members to redress individually the wrongs done to them. There will be no difficulty in the management of this action as a class action.

297. The names and addresses of those persons and entities that purchased or acquired GTAT's publicly traded common stock, debt securities and call options (or who sold put options) during the Class Period are available from GTAT's transfer agent(s) or other sources. Notice may be provided to such class members via first-class mail using techniques and a form of notice similar to those customarily used in securities class actions.

XIV. PRESUMPTION OF RELIANCE

298. Plaintiffs are entitled to a presumption of reliance under *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972), because the claims asserted herein against Defendants are predicated upon omissions of material fact that there was a duty to disclose.

299. Plaintiffs are also entitled to a presumption of reliance on Defendants' material misrepresentations and omissions pursuant to the fraud-on-the-market doctrine because, during the Class Period:

a. GTAT's common stock was actively traded in an efficient market on the NASDAQ;

b. GTAT common stock traded at high weekly volumes, with an average of over 43.05 million shares traded each week during the Class Period. The average weekly turnover as a percentage of shares outstanding was approximately 31.48% (median of 29.85%), well surpassing the 2% threshold level of average weekly trading volume necessary for an efficient market;

c. Each of GTAT's $1,000 Notes registered in the Debt Offering was convertible into 82.5764 shares of GTAT common stock at a conversion price of $12.11 per share, and GTAT's Notes were actively traded in an efficient and transparent market, with trades reported on FINRA's Trade Reporting And Compliance Engine – ("TRACE");

d. GTAT's Notes traded at high weekly volumes, with an average of over $13.2 million in face amount of Notes traded on a weekly basis during the Class Period. This average weekly turnover as a percentage of the notes outstanding was approximately 6.17% (median of 3.31%), surpassing the 2% threshold level of average weekly trading volume necessary for an efficient market;

e. GTAT publicly-traded options were listed and actively traded on national options exchanges, highly efficient markets;

f. As a regulated issuer, GTAT filed periodic public reports with the SEC;

g. GTAT was eligible to file registration statements with the SEC on Form S-3;

h. GTAT regularly communicated with public investors by means of established market communication mechanisms, including through regular dissemination of press releases on the major news wire services and through other wide-ranging public disclosures, such as communications with the financial press, securities analysts and other similar reporting services;

i. The market reacted promptly to public information disseminated by GTAT;

j. GTAT securities were covered by numerous securities analysts employed by major brokerage firms, including Piper Jaffray & Co., UBS Securities LLC, Canaccord Genuity, Ardour Capital and Cowen & Company. Each of these reports was publicly available and entered the public marketplace;

k. The material misrepresentations and omissions alleged herein would tend to induce a reasonable investor to misjudge the value of GTAT securities; and

l. Without knowledge of the misrepresented or omitted material facts alleged herein, Lead Plaintiff and other members of the Class purchased or acquired GTAT securities between the time Defendants misrepresented or failed to disclose material facts and the time the true facts were disclosed.

300. Accordingly, the market for GTAT's publicly traded common stock, debt securities and options promptly digested current information with respect to GTAT from all publicly-available sources and reflected such information in the prices of those securities. Under these circumstances, all purchasers of the Company's publicly traded common stock, debt securities and call options during the Class Period suffered similar injury through their purchases at artificially inflated prices, and a presumption of reliance applies. Likewise, all sellers of the Company's publicly-traded put options during the Class Period suffered similarly injury through their transactions at prices that were distorted by the artificially inflated price of GTAT common stock, and a presumption of reliance applies.

XV. CLAIMS FOR RELIEF UNDER THE EXCHANGE ACT

COUNT I

For Violations of Section 10(b) of the Exchange Act and Rule 10b-5 (Against Defendants Gutierrez, Gaynor, Bal and Kim)

301. Plaintiffs repeat and re-allege each and every allegation contained above as if fully set forth herein.

302. During the Class Period, Defendants Gutierrez, Gaynor, Bal and Kim carried out a plan, scheme, and course of conduct that was intended to and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiffs and other Class members, as alleged herein; and (ii) caused Plaintiffs and other members of the Class to purchase GTAT securities at artificially inflated prices. In furtherance of this unlawful scheme, plan, and course of conduct, these Defendants took the actions set forth herein.

303. Defendants Gutierrez, Gaynor, Bal, and Kim: (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (iii) engaged in acts, practices, and a course of business that operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially high market prices for GTAT's securities in violation of Section 10(b) and Rule 10b-5.

304. Defendants Gutierrez, Gaynor, Bal, and Kim, individually and in concert, directly and indirectly, by the use, means, or instrumentalities of interstate commerce and/or of the mails, engaged in a continuous course of conduct to conceal the truth about, among other things, the Company's obligations under and performance of the terms of the Apple agreement, the Company's financial resources, and the impact of the Apple agreement on the Company's ability to generate sapphire-related revenue from sales to its non-Apple customers. These Defendants had actual knowledge of the misrepresentations and omissions of material facts as set forth herein, or acted with reckless disregard for the truth, in that they failed to ascertain and to disclose such facts, even though such facts were available to them.

305. As a direct and proximate result of these Defendants' wrongful conduct, Plaintiffs and the Class suffered damages in connection with their purchases of GTAT securities during the Class Period.

COUNT II

For Violations of Section 20(a) of the Exchange Act (Against The Officer Defendants)

306. Plaintiffs repeat and re-allege every allegation contained above as if fully set forth herein.

307. Defendants Gutierrez, Gaynor, Bal, Kim, and Squiller acted as controlling persons of GTAT within the meaning of Section 20(a) of the Exchange Act.

308. By reason of their high-level positions of control and authority as the Company's most senior officers, participation in, awareness of direct control of and/or supervisory involvement in GTAT's day-to-day operations during the Class Period, Defendants Gutierrez, Gaynor, Bal, Kim, and Squiller had the power to, and did control and influence the decision-making of the Company and the conduct of GTAT's business, including the wrongful conduct complained of herein. Defendants Gutierrez, Gaynor, Bal, Kim, and Squiller were able to and did influence and control, directly and indirectly, the content and dissemination of the statements Plaintiffs allege to be materially false and misleading. Moreover, these Defendants had a duty to disseminate accurate and truthful information regarding GTAT's operations to correct any previously issued statements that had become untrue so that the market price of GTAT securities would be based upon truthful and accurate information.

309. In their capacities as senior corporate officers of the Company, and as more fully described above, Defendants Gutierrez, Gaynor, Bal, Kim and Squiller had direct involvement in the day-to-day operations of the Company, and, therefore, are presumed to have had the power to

control or influence the particular transactions giving rise to the securities law violations as alleged herein. Defendants Gutierrez, Gaynor, Bal and Kim were also directly involved in providing false information and certifying and/or approving the false financial statements disseminated by GTAT during the Class Period. Further, as detailed above, Defendants Gutierrez, Gaynor, Bal and Kim had direct involvement in the presentation and/or manipulation of false financial reports included within the Company's press releases and filings with the SEC. Moreover, Defendant Squiller was the GTAT executive in control of the Company's sapphire operations at Mesa, and Defendant Kim was responsible for negotiating and entering into the Apple agreement. As a result of the foregoing, the Officer Defendants, as a group and individually, were controlling persons of GTAT within the meaning Section 20(a) of the Exchange Act.

310. As a direct and proximate cause of Defendants Gutierrez, Gaynor, Bal, Kim and Squiller's wrongful conduct as set forth in this Count, Plaintiff and other members of the Class suffered damages in connection with their purchases of GTAT securities during the Class Period.

311. By virtue of their positions as controlling persons of GTAT and as a result of their own aforementioned conduct, Defendants Gutierrez, Gaynor, Bal, Kim and Squiller, together and individually, are liable pursuant to Section 20(a) of the Exchange Act, jointly and severally.

COUNT III
For Violations of Section 20(a) of the Exchange Act
(Against Apple)

312. Plaintiffs re-allege every allegation set forth above as if fully set forth herein.

313. Defendant Apple acted as a controlling person of GTAT within the meaning of Section 20(a) of the Exchange Act. Defendant Apple was a controlling person of GTAT through its *de facto* control over GTAT's operations and decision-making processes. Specifically, Apple exercised pervasive, *de facto* control over GTAT by: (i) selecting and owning the Mesa facility;

(ii) negotiating all power concerning the build-out of Mesa while overruling GTAT's decisions on these critical matters; (iii) selecting the equipment used to fabricate sapphire at Mesa, which, if GTAT wanted to make any changes to, GTAT needed to request Apple's consent; (iv) the presence and authority of the Apple representatives stationed at Mesa to manage and oversee GTAT's sapphire growth and fabrication processes; and (v) the terms of the various ancillary agreements, including the Prepayment Agreement, the MDSA and the Statement of Work, which provided Apple with unprecedented control over the Company's operations and decision-making processes. As Defendant Squiller acknowledged in the sworn Bankruptcy Declarations filed as part of the Bankruptcy proceeding, by the time GTAT entered into the Apple agreement, GTAT had relinquished control of its sapphire operations, and Apple was in "*de facto* control" of GTAT.

314. Defendant Apple was also a controlling person of GTAT through its control over the content and dissemination of the statements Plaintiffs allege to be materially false and misleading. Specifically, the confidentiality provisions in the Apple agreement, including provisions in the MDSA Agreement, the ARPA, and the ARIA, obligated GTAT to send to Apple all of the Company's prospective public statements to investors that even remotely concerned the Apple agreement. All of GTAT's statements to investors during the Class Period regarding the Apple agreement and its substance were required to be approved by Apple. If GTAT made an unauthorized disclosure, the Company would be required to pay Apple a staggering $50 million per occurrence. If Apple did not approve GTAT's statements regarding the Company's sapphire business, Defendants did not make them.

315. Moreover, Defendant Apple was also a controlling person of GTAT through its control over financing through its status as a significant lender to GTAT. Specifically, Apple exercised its control over GTAT through its $578 million loan (the final $139 million of which was

withheld by Apple) that was established to enable GTAT to purchase the sapphire furnaces necessary to perform its obligations under the Apple agreement. By virtue of this loan, Apple had the ability to call for the repayment of this $578 million or to withhold portions of it if Apple chose not to purchase sapphire material or if GTAT failed to perform under the Apple agreement. Given the Company's significant cash-flow problems at the time of the Agreement, Apple's potential retention of any of this $578 million meant that GTAT was forced to comply with Apple's onerous terms and pervasive control. Indeed, after Apple withheld the final $139 million payment, GTAT was forced to file for bankruptcy.

316. As a direct and proximate cause of Defendant Apple's wrongful conduct as set forth in this Count, Plaintiffs and other members of the Class suffered damages in connection with their purchases of GTAT securities during the Class Period.

317. By virtue of its position as controlling persons of GTAT and as a result of its own aforementioned conduct, Defendant Apple is jointly and severally liable pursuant to Section 20(a) of the Exchange Act.

COUNT IV
For Violations of Section 10(b) of the Exchange Act, and Rule 10b-5(a) and (c)
(Against Apple)

318. Plaintiffs re-allege every allegation set forth above as if fully set forth herein.

319. As alleged above, throughout the Class Period, Apple directly or indirectly, by the use of the means or instrumentalities of interstate commerce, the mails, and/or of the facilities of any national securities exchange, carried out a plan, scheme and course of conduct described at length above which was intended to and did: (i) deceive the investing public, including Plaintiffs and the other members of the Class; (ii) artificially create, inflate and maintain the market for, and market prices of, GTAT securities; and (iii) cause Plaintiffs and the other members of the Class to

purchase GTAT securities at artificially inflated prices. In furtherance of this unlawful plan, scheme and course of conduct, Apple took the actions alleged above in contravention of Rule 10b-5(a) and (c) promulgated by the SEC.

320. Apple employed manipulative or deceptive devices and/or contrivances, schemes and/or artifices to defraud, and engaged in acts, practices, and a course of conduct as alleged herein in an effort to deceive Plaintiffs and Class members as to the success and viability of GTAT's business by, in particular, concealing that (i) GTAT's agreement with Apple was "onerous," "inequitable" and "massively one-sided" in favor of Apple; (ii) Apple required GTAT to mass-produce 262 kg sapphire boules, a size that had never before been produced for commercial use, in eight months; (iii) GTAT was in violation of the Apple agreements; (iv) GTAT was burning cash at a tremendous rate far in excess of Apple's $578 million loan; (v) GTAT was unable to produce sapphire to Apple's satisfaction in any material volumes; (vi) GTAT was incurring staggering losses as a result of operational and production issues at the Mesa Facility; (vii) Apple was providing the prepayments to GTAT notwithstanding the fact that GTAT was in violation of the Apple agreements and was unable to produce sufficient sapphire product; and (viii) Apple intended to withhold the final prepayment, among the other facts discussed above. In light of these facts, concealed by Apple and by GTAT (in part, at Apple's direction), Plaintiffs and Class Members believed that the prices at which they purchased GTAT securities were not artificially inflated.

321. As described above, Apple engaged in the fraudulent activity described herein knowingly and intentionally, or in such an extremely reckless manner as to constitute willful deceit and fraud upon Plaintiffs and the other members of the Class who purchased GTAT securities during the Class Period. As such, Apple acted with scienter and is subject to liability under Section 10(b) and Rule 10b-5(a) and (c).

322. Apple's fraudulent activities occurred in connection with the purchase or sale of GTAT securities.

323. In ignorance of Apple's fraudulent conduct, and relying directly or indirectly on the integrity of the market price for GTAT securities, Plaintiffs and the other members of the Class purchased GTAT securities at artificially inflated prices during the Class Period.

324. But for Apple's fraud, Class members would not have purchased GTAT securities at artificially inflated prices, or at all.

325. The market prices for GTAT securities declined materially upon the public disclosure of the true facts regarding the fraud perpetrated by Apple, as described above.

326. As a direct and proximate cause of Defendant Apple's wrongful conduct as set forth in this Count, Plaintiffs and other members of the Class suffered damages in connection with their purchases of GTAT securities during the Class Period.

XVI. <u>CLAIMS BROUGHT PURSUANT TO THE SECURITIES ACT</u>

327. In this part of the Complaint, Plaintiffs assert strict liability and negligence claims under Sections 11, 12 and 15 of the Securities Act on behalf of the Class. These claims are asserted based on false statements and omissions made in connection with GTAT's December 2013 Offerings. Plaintiffs incorporate the above paragraphs by reference, but expressly disclaim any allegations of scienter or fraud for these Securities Act claims.

328. This action was brought within one year after the discovery of the untrue statements and omissions (and within one year after such discovery should have been made in the exercise of reasonable diligence) and within three years of the Offerings.

329. These Securities Act claims concern two simultaneous offerings: (i) an offering to the public of $214 million aggregate principal amount of its 3.00% Convertible Senior Notes due 2020 (the "Debt Offering"); and (ii) an offering to the public of 9,942,196 shares of common stock

at an offering price of $8.65 per share, raising approximately $86 million (the "Equity Offering" and, collectively with the Debt Offering, the "Offerings"). As more fully described below, the Offerings were conducted pursuant to a registration statement that was filed with the SEC on Form S-3ASR under the Securities Act (Registration No. 333-192628) on December 2, 2013 (the "Registration Statement"). The Registration Statement was supplemented through two separate preliminary prospectuses (one for each of the Offerings) both filed with the SEC on December 3, 2013, a Pricing Term Sheet filed with the SEC on December 5, 2013 (the "Pricing Term Sheet"), and two separate Prospectus Supplements (one for each of the Offerings) also filed with the SEC on December 5, 2013 (the "Prospectus Supplements"). The Registration Statement, Pricing Term Sheet and Prospectus Supplements are referred to herein collectively as the "Offering Materials."

330. The Offering Materials incorporated by reference various documents filed with the SEC during 2013, including (but not limited to) the Company's Quarterly Report on Form 10-Q for the period ended September 28, 2013, dated November 7, 2013 (the "November 2013 10-Q") and the Company's Current Report on Form 8-K dated November 4, 2013 (the "November 2013 Press Release").

331. As a result, the Offering Materials contained untrue statements of material fact and omitted to state material facts required to make the statements therein not misleading.

A. The Securities Act Plaintiffs

332. Palisade Strategic Master Fund (Cayman) Limited ("Palisade Fund") is incorporated in the Cayman Islands as a limited company, and the Palisade Fund is an exempted company under The Companies Law of the Cayman Islands. Palisade Fund's principal place of business is One Bridge Plaza, Suite 695, Fort Lee, New Jersey 07024. During the Class Period, investment decisions for the Palisade Fund, including decisions relating to the purchase or sale of GTAT securities on behalf of the Palisade Fund, were made by Palisade Capital Management

L.L.C. acting as investment adviser to the Palisade Fund. All of the Palisade Fund's purchases and sales in GTAT securities during the Class Period, are set out in a certification filed in this action on December 8, 2014 (DN 22-3).

333. Highmark Limited, in respect of its Segregated Account Highmark Fixed Income 2 ("Highmark"), is incorporated as a Bermuda exempted company, with its principal place of business at 6901 Rockledge Dr., 9th Floor, Bethesda, Maryland 20817. During the Class Period, investment decisions for Highmark, including decisions relating to the purchase or sale of GTAT securities for Highmark, were made by Palisade Capital Management L.L.C. acting as investment manager for Highmark. All of the Highmark's purchases and sales in GTAT securities during the Class Period, are set out in a certification filed in this action on December 8, 2014 (DN 22-5).

334. During the Class Period, both the Palisade Fund and Highmark (collectively, the "Palisade Group") purchased GTAT's 3.00% Convertible Senior Notes due 2020 (the "Notes") that were registered in and traceable to the Debt Offering. Each $1,000 Note registered in the Debt Offering was convertible into 82.5764 shares of GTAT common stock at a conversion price of $12.11 per share. Thus, the prices of the Notes were directly tied to and affected by the market prices of GTAT's common stock. At the time the Palisade Group purchased their GTAT Notes, the price of GTAT common stock was approaching or was above the $12.11 per share conversion price.

B. Securities Act Defendants

335. In addition to Defendants Gutierrez, Gaynor, Squiller, Kim and Apple, the following parties are named herein as Defendants under the Securities Act claims. The Defendants appearing in ¶¶336-50 below are not named as Defendants in the Exchange Act claims.

1. Director Defendants

336. Defendant J. Michal Conaway ("Conaway") is, and was at all relevant times, a Director of GTAT. Defendant Conaway signed the Registration Statement in connection with the Offerings.

337. Defendant Kathleen A. Cote ("Cote") is, and was at all relevant times, a Director of GTAT. Defendant Cote signed the Registration Statement in connection with the Offerings.

338. Defendant Ernest L. Godshalk ("Godshalk") is, and was at all relevant times, a Director of GTAT. Defendant Godshalk signed the Registration Statement in connection with the Offerings.

339. Defendant Matthew E. Massengill ("Massengill") is, and was at all relevant times, a Director of the Company as well as GTAT's Chairman of the Board. Defendant Massengill signed the Registration Statement in connection with the Offerings.

340. Defendant Mary Petrovich ("Petrovich") was, at all relevant times, a Director of GTAT until her resignation from the Board on January 7, 2014. Defendant Petrovich signed the Registration Statement in connection with the Offerings.

341. Defendant Robert E. Switz ("Switz") is, and was at all relevant times, a Director of GTAT. Defendant Switz signed the Registration Statement in connection with the Offerings.

342. Defendant Noel G. Watson ("Watson") is, and was at all relevant times, a Director of GTAT. Defendant Watson signed the Registration Statement in connection with the Offerings.

343. Defendant Thomas Wroe, Jr. ("Wroe") is, and was at all relevant times, a Director of GTAT. Defendant Wroe signed the Registration Statement in connection with the Offerings.

344. Defendants Conaway, Cote, Godshalk, Massengill, Petrovich, Switz, Watson, and Wroe are collectively referred to herein as the "Director Defendants."

2. Underwriter Defendants

345. On or about December 4, 2013, the Underwriter Defendants purchased, sold and distributed 8,650,000 shares of GTAT common stock. Under the underwriting agreement, the Underwriter Defendants had an option—which was exercised on December 6, 2013—to buy up to an additional 1,292,196 shares of common stock from GTAT in the same proportionate allotment as on December 4, 2013. Also on or about December 4, 2013, the Underwriter Defendants purchased, sold and distributed $190 million aggregate principal amount of the Company's 3.00% Convertible Senior Notes due 2020. Under the underwriting agreement, the Underwriter Defendants had an option—which was exercised on December 6, 2013—to buy up to an additional $24 million aggregate principal amount of the Company's 3.00% Convertible Senior Notes due 2020.

346. Defendant Morgan Stanley & Co. LLC ("Morgan Stanley") is an investment banking firm that provides securities underwriting, financial advisory, and other services. Morgan Stanley acted as an underwriter of the Offerings, and was responsible for ensuring the truthfulness and accuracy of the various statements contained in or incorporated by reference into the Offering Materials. Morgan Stanley purchased, sold and distributed 55% of the common stock shares and 3.00% Convertible Senior Notes.

347. Defendant Goldman, Sachs & Co. ("Goldman Sachs") is an investment banking firm that provides securities underwriting, financial advisory, and other services. Goldman Sachs acted as an underwriter of the Offerings, and was responsible for ensuring the truthfulness and accuracy of the various statements contained in or incorporated by reference into the Offering Materials. Goldman Sachs purchased, sold and distributed 35% of the common stock shares and 3.00% Convertible Senior Notes.

348. Defendant Canaccord Genuity Inc. ("Canaccord Genuity") is an investment banking firm that provides securities underwriting, financial advisory, and other services. Canaccord Genuity acted as an underwriter of the Offerings, and was responsible for ensuring the truthfulness and accuracy of the various statements contained in or incorporated by reference into the Offering Materials. Canaccord Genuity purchased, sold and distributed 10% of the common stock shares and 3.00% Convertible Senior Notes.

349. Goldman Sachs, Canaccord Genuity and Morgan Stanley are collectively referred to herein as the "Underwriter Defendants."

350. As part of their duties as underwrites, the Underwriter Defendants were required to conduct, prior to the Offerings, a reasonable investigation of the company to ensure that the statements contained in the Offering documents contained no misstatement or omission of material fact. As described below, prior to underwriting the Offerings, none of the Underwriter Defendants made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Offering Materials were accurate and complete in all material respects.

351. Defendants Gutierrez, Gaynor, Squiller, Kim, Apple, the Director Defendants and the Underwriter Defendants are collectively referred to as the "Securities Act Defendants."

C. BACKGROUND TO THE SECURITIES ACT CLAIMS

352. The background of the Company's entry into the Apple agreements, its Class Period activities, and its eventual collapse into bankruptcy are set forth in detail above. Those allegations are incorporated herein except that Plaintiffs expressly disclaim any allegations of fraud in these non-fraud Securities Act claims. The following facts are meant to summarize and supplement the facts set forth above.

353. On or about December 5, 2013, the Company completed the Offerings, raising $300 million through the Equity and Debt Offerings. As described above, the Offering Materials

include, through their incorporation by reference, numerous other GTAT public filings, including (but not limited to) GTAT's November 2013 10-Q and November 2013 Press Release.

354. Goldman Sachs, Canaccord Genuity and Morgan Stanley acted as the underwriters of the Offerings by selling and distributing the common stock shares and 3.00% Convertible Senior Notes to the investing public, were obligated to ensure the truthfulness and accuracy of the various statements contained in or incorporated by reference into the Offering Materials.

355. The Offerings were conducted at a critical time for GTAT, because they allowed the Company to raise capital that was necessary to commence the installation and operation of the 2,036 ASF sapphire furnaces in the Mesa Facility, as required by the Apple agreement. As described above, on November 4, 2013, GTAT announced through the November 2013 Press Release that the Company had entered into an agreement with Apple—the world's largest smartphone maker—that transformed the nature of GTAT's business from a manufacturer of sapphire equipment to a provider and retailer of sapphire material itself. GTAT surprised the market by revealing that the Company would itself develop and own sapphire furnaces that would be operated by GTAT to produce sapphire material exclusively for Apple in a joint venture that would create the first mass-produced sapphire cover glass for smartphones.

356. In the November 2013 Press Release, GTAT told the market that in order to fulfill the terms of the Apple agreement, "GT has accelerated the development of its next generation, large capacity ASF furnaces to deliver low cost, high volume manufacturing of sapphire material" and "has dedicated the vast majority of its ASF capacity in the second half of 2013 to expanding its own materials capacity." GTAT disclosed that its sapphire production for Apple would occur at a facility leased from Apple located in Arizona and not at the Company's northeast hub locations in New Hampshire and Massachusetts.

357. GTAT reported that, prior to the close of the third quarter 2013, "the company used approximately $96 million of cash pay down its credit facility and terminate its credit agreement in order to eliminate restrictions that would have impeded its ability to pursue the [Apple agreement]." Without the ability to make use of the cash available through a credit facility, GTAT turned to investors for capital to fund its operations, which now included fulfillment of the Apple agreement.

358. The influx of $300 million in capital the Company received from the Offerings enabled the Company to manufacture, install and operate the over 2,000 ASF furnaces required by the Apple agreement and to hire and fund the salaries of the over 1,000 employees hired by GTAT to staff the Mesa, Arizona Apple facility. As of the end of the third quarter of 2013, GTAT reported cash and cash equivalents on its balance sheet totaling only $258.5 million and total debt of $261.3 million. Moreover, as described above, while the Company expected to receive $578 million in "prepayments" from Apple, Apple was not scheduled to make the bulk of its "prepayment" amounts until 2014, and those amounts were conditional upon GTAT achieving certain undisclosed milestones. Therefore, the Company needed the cash generated from the Offerings in order to fulfill its contractual obligations under the Apple agreement in advance of and/or in excess of the Apple "prepayments."

A. The Offering Materials Contained Untrue and Misleading Statements

359. The Offering Materials contained untrue statements of material fact and omitted material facts required to be stated therein or necessary to make the statements therein not misleading regarding: (i) the terms of the Apple agreement and its likely impact on GTAT's revenue and business; (ii) the exclusivity provisions of the Apple agreement and GTAT's ability to generate non-Apple revenue; and (iii) GTAT's liquidity and capital resources.

1. Misstatements And Omissions About The Terms Of The Apple Agreement And Its Likely Impact On GTAT's Revenue And Business

360. On November 4, 2013, GTAT filed a Form 8-K, which attached GTAT's press release issued the same day (the "November 2014 Press Release"). In that press release, entitled "GT Advanced Technologies Inc. Announces Results for Third Quarter Fiscal Year 2013; Signs Multi-Year Sapphire Materials Agreement With Apple®," Defendant Gutierrez stated, in relevant part: "[w]e are very excited about this agreement with Apple as it represents a significant milestone in GT's long term diversification strategy."

361. These statements set forth above were materially false and misleading and omitted material information because they failed to disclose that GTAT was an unwilling party to the Apple agreement and believed that the terms of the Apple agreement were "onerous and inequitable" and a "massively one-sided" contract of "adhesion." The Bankruptcy Declarations admitted that, rather than being "excited about this agreement with Apple," GTAT believed that the Apple agreement was "an onerous and massively one-sided deal" that "shifted all economic risk to GTAT and was executed because the Company "was out of options."

362. The November 4 Press Release also stated that "GT has accelerated the development of its next generation, large capacity ASF furnaces to deliver low cost, high volume manufacturing of sapphire material" and that "[t]hese R&D efforts will support its non-LED initiative with its new customer [Apple] and are expected to enable the expansion of GT's LED, industrial and specialty sapphire businesses by positioning GT and its equipment customers as the industry's lowest cost sapphire producers."

363. These statements were materially false and misleading and omitted material information because they concealed key terms of the Apple agreement that would have been highly material to investors and would have allowed investors to accurately assess the risk GTAT was

exposed to under the Apple agreement. Specifically, investors were not informed that, under the terms of the Apple agreement, GTAT was required to not only develop a completely new technology that would be able to mass produce 262 kg sapphire boules—nearly double the size of the largest boules currently in production worldwide—without even a modicum of adequate research and development time, but would do so, as admitted by GTAT in the Bankruptcy Declarations, in "quantities, size and quality never before achieved."

364. Former employees with personal knowledge of GTAT's sapphire capabilities have described how there was no conceivable way for the Company to invent the necessary technology and ramp up production in the following months. For example, the former Sapphire Product Manager for GTAT's entire ASF systems resigned over GTAT's entry into the Apple agreement after he warned Defendants that "there was no data to support that 262 kg was doable in [GTAT's] furnaces or any furnaces."

365. The November 4 Press Release also stated that GTAT "expects 2014 revenue to be in the range of $600 to $800 million with its sapphire segment comprising up to 80% of the year's total revenue." This communicated to investors that GTAT's sapphire business would generate $480 to $640 million in 2014, a staggering amount when compared to the $21.6 million the sapphire business generated in the first half of 2013. Defendant Gutierrez further stated that "we expect revenues in 2015 …. to exceed $1 billion," and "by 2016, driven largely by the incremental strength from our equipment businesses and continued contribution from our sapphire materials business, we expect our revenue to nearly double from 2014 levels." Gutierrez concluded, "[t]aking all factors into account, we expect to deliver substantial year-over-year earnings growth over the next three years." and "position[] GT and its equipment customers as the industry's lowest cost sapphire producers."

366. On November 7, 2013, GTAT filed a Form 10-Q for the third quarter 2013 (the "November 2013 10-Q"). In the November 2013 10-Q, GTAT stated that "[o]ur sapphire material operations will grow due to our supply arrangements with Apple and we expect that sapphire material sales will account for a larger percentage of our revenue than in the past."

367. The above statements were false and misleading and omitted material information because, as discussed above, Defendants had no basis to believe that GTAT could comply with the terms of the Apple agreement and mass-produce usable 262 kg boules of sapphire by the second half of 2014, and thus had no basis to believe that they could generate hundreds of millions of dollars from sales to Apple. Indeed, GTAT has now admitted that the Company's 2014-2016 guidance lacked a reasonable basis. Defendant Squiller, in the Bankruptcy Declarations, described how—even if GTAT could create and produce the 262 kg boules (which it could not)—there was little to no revenue upside to the Apple agreement for GTAT:

> Even if this business transaction worked exactly as contemplated in the original agreements, GTAT would not earn any income at all unless Apple opted to "buy" sapphire material in excess of loan "repayment" obligations. By failing to compensate GTAT for losses associated with the development of the technology due to Apple's constant interference over which GTAT had little or no control, including losses caused by Apple's changes in product specifications, GTAT was forced into the role of a "captive" supplier to Apple, bearing all of the risk and all of the cost, including the costs of more than 1,300 temporary and permanent personnel, utilities, insurance, repairs, and raw materials.

2. Misstatements And Omissions About The Exclusivity Provisions And GTAT's Ability To Generate Non-Apple Revenue

368. Defendant Gutierrez stated in the November 4 Press Release, that "[b]y leveraging the new materials operation and our enhanced R&D efforts, we will be well positioned to drive the growth of other sapphire opportunities, including the expansion of our LED and industrial sapphire businesses in partnership with our ASF customers." While the Company disclosed in the

November 2013 Press Release that it would "be subject to certain exclusivity terms during the duration of the [A]greement," it assured investors that any lost business would be neutralized because "GT expects this arrangement to be cash positive and accretive to earnings starting in 2014." The November 2013 10-Q also stated that "w[e] intend to continue to sell our ASF systems to sapphire manufacturers in certain select markets, including the LED industry."

369. The above statements were materially false and misleading and omitted material information when made because, in reality, the Apple agreement prevented the Company from growing, or even sustaining its non-Apple lines of sapphire business.

370. As discussed above, the Bankruptcy Declarations demonstrated that GTAT knew that "the certain exclusivity terms" in the Apple agreement were actually draconian "onerous and one-sided" "adhesion contract" terms that prohibited GTAT from marketing its products and generating any alternative sapphire revenue during the life of the Apple agreement. In addition, GTAT faced debilitating penalties fashioned as "liquidated damages" for any violations of the exclusivity terms. The Bankruptcy Declarations detailed how "[a]s a result of the onerous non-competition provisions in the Apple agreement[], GTAT has been shut out of the global market for its highly valuable sapphire material and equipment" and that "[w]ith the very limited exception for pre-existing orders, Apple also prevented GTAT from marketing its furnaces—and thus finding alternative value-maximizing uses for them—through sales to third party purchasers and suppliers to competitors of Apple."

371. In other words, the Bankruptcy Declarations explained that "GTAT was prohibited, for years to come, from conducting any sapphire business with any conceivable Apple competitor or any direct and indirect supplier to an Apple competitor." Should GTAT have sold any sapphire to any entity other than Apple, GTAT would have to pay Apple "$650,000 per month for any

sapphire furnace that is used in violation of GTAT's exclusivity obligations to Apple." The Company concealed these "onerous" "liquidated damages" and other exclusivity terms from investors by filing redacted copies of the Apple agreement in its November 2013 10-Q.

372. The Bankruptcy Declarations also explained how the terms of the Apple agreement prevented GTAT from using its Salem, Massachusetts facility for other sapphire revenue streams. While the Mesa facility was dedicated to Apple, GTAT's Salem facility was ostensibly free to pursue other revenue. In reality, the Bankruptcy Declarations described how, because of Apple's control over GTAT, "Apple also embedded itself in [the Salem facility] that took on the function of an experimental research and development center for the Apple project." GTAT confirmed that "GTAT has been unable to use that facility for other revenue streams."

3. Misstatements And Omissions About GTAT's Liquidity and Capital Resources

373. In the November 2013 10-Q, Defendants misrepresented GTAT's liquidity and capital resources when Defendants stated that "[m]anagement believes that the Company has sufficient cash resources to fund operations for at least the next twelve months." Similarly, the Company stated in the same Form 10-Q, "[w]e believe that our existing cash, as well as cash that we are eligible to receive under the Prepayment Agreement with Apple Inc. which will be used principally in connection with our sapphire material operations at our Arizona facility … will be sufficient to satisfy working capital requirements, commitments for capital expenditures, and other cash requirements for at least the next twelve months."

374. The November 2013 10-Q also contained Sarbanes-Oxley-required certifications, signed by Defendants Gutierrez and Gaynor. These certifications stated, in relevant part: (i) "I have reviewed this Quarterly Report on Form 10-Q"; and (ii) "Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary

to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;" and (iii) "Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report."

375. These statements were materially false and misleading and omitted material information when made because GTAT knew but failed to disclose that the Prepayment Agreement with Apple would not cover the costs of creating, staffing and operating the Mesa Facility under the aggressive terms and supply schedule of the Apple agreement. GTAT admitted in the Bankruptcy Declarations that the maximum "prepayment" from Apple covered, at best, only "the cost to GTAT of the furnaces and related equipment used to produce sapphire material," but did not include any additional risks or costs, including "the costs of more than 1,300 temporary and permanent personnel, utilities, insurance, repairs, and raw materials."

376. Moreover, the Controller at GTAT from May 2011 through the fall of 2014 directly refuted the Company's representations concerning the sufficiency of its cash levels by stating that by the time of the Apple agreement "[t]he company was very cash poor … we had a lot of money tied up in letters of credit with those customers that had agreed to buy furnaces but had not installed them yet" and as a result the Company was suffering from a significant cash-flow problem. Additionally, the former Director of Operations for the Sapphire Fabrication Business Unit at Mesa explained that at the time of the Apple agreement, the Company was in such need of cash that if GTAT missed any of the supply milestones for Apple and did not secure payments as expected, that there would be a major cash crisis.

B. The Underwriter Defendants Failed To Conduct A Reasonable Investigation Into GTAT's Statements

377. The Underwriter Defendants were required to conduct, prior to the Offerings, a reasonable investigation of the Company to ensure that the statements set forth in the Offering documents contained no misstatement or omission of material fact. The Underwriter Defendants completely failed to conduct such a reasonable investigation.

378. The Apple agreement concerned the most critical aspect of GTAT's business—its sapphire business segment. At the time of the Offerings, the Sapphire business segment was supposed to comprise 80% of the Company's revenue for the upcoming year. The terms and conditions of the Apple agreement, its feasibility, and whether it restricted GTAT's ability to expand and grow would have been the primary area of investigation for any underwriter performing its obligations under the securities laws.

379. The Underwriter Defendants, however, did not conduct a reasonable investigation of the statements in the Offering materials about the Apple agreement, and did not possess reasonable grounds for believing that those statements were accurate, not misleading and did not omit information that would be material to a reasonable investor. If the Underwriter Defendants had conducted a reasonable investigation, they would have, at a minimum, investigated the background of GTAT's entry into the Apple agreement, including the March 2013 to August 2013 discussions that initially contemplated GTAT making a sale of ASFs to Apple, as per GTAT's standard business practices.

380. Any reasonable investigation would have also included discussions with GTAT's senior management, including Defendant and Chief Operating Officer Squiller, regarding the reasons for entering into the agreement and GTAT's true view as to whether the agreement was appropriate for GTAT. Any such discussions and or investigation would have revealed that,

contrary to their public representations, GTAT's executives actually believed that the Apple agreement they signed was a "bait and switch" that was "dictated" by Apple and which GTAT was forced to sign because it was "out of options."

381. Further, a reasonable investigation would have involved obtaining and reviewing unredacted versions of the agreements, which would have revealed the one-sided and onerous terms that GTAT has now admitted rendered the agreement a contract of "adhesion," including, among other things, that:

- It required the production of 262 kg boules starting on January 6, 2014—a patently unreasonable undertaking, rendering GTAT's revenue expectations implausible;
- It did not obligate Apple to purchase any material because Apple could cancel any Purchase Order at any time free of charge;
- The exclusivity provisions in the Apple agreement severely restricted GTAT's ability to grow its business; and
- It exposed GTAT to disproportionate and unreasonable liquidated damages provisions.

382. Finally, if the Underwriter Defendants had performed a reasonable investigation they would have learned of the delays in the performance of the agreement that were already obvious as of December 2013.

XVII. CLAIMS FOR RELIEF UNDER THE SECURITIES ACT

COUNT V
For Violations Of Section 11 Of The Securities Act In Connection With The Offerings (Against The Securities Act Defendants Except Defendants Apple, Kim and Squiller)

383. Plaintiffs repeat and re-allege each and every allegation above relating to the Securities Acts claims as if fully set forth herein.

384. This Count is brought pursuant to Section 11 of the Securities Act, 15 U.S.C. § 77k, on behalf of all members of the Class who purchased or otherwise acquired securities sold pursuant or traceable to the Offerings, and who were damaged thereby.

385. At the time of each of the Offerings, the Offering Materials and the documents incorporated by reference therein contained false statements of material fact and/or omitted facts that were required to be disclosed or necessary to make the statements contained therein not misleading.

386. Liability of Defendants Gutierrez and Gaynor and the Director Defendants under this Count is predicated on the signing of the Registration Statement for the Offerings by Gutierrez, Gaynor and the Director Defendants and their respective participation in the Offerings, which were conducted pursuant to the Offering Materials. The Offering Materials were false and misleading, contained untrue statements of material facts, omitted to state facts necessary to make the statements not misleading, and omitted to state material facts required to be stated therein.

387. The Underwriter Defendants are unable to establish an affirmative defense based on a reasonable and diligent investigation of the statements contained in the Offering Materials and documents incorporated by reference therein. The Underwriter Defendants named in this Count did not make a reasonable investigation or possess reasonable grounds to believe that those statements were true and that there were no omissions of any material fact. Accordingly, the Underwriter Defendants named in this Count acted negligently and are therefore liable to Plaintiffs and the other members of the Class who purchased securities pursuant or traceable to the Offerings.

388. Less than one year has elapsed since the time that Plaintiffs discovered, or could reasonably have discovered, the facts upon which this Complaint is based. Less than three years

has elapsed since the time that the securities at issue in this Complaint were bona fide offered to the public.

389. This claim does not sound in fraud. For purposes of asserting this claim under the Securities Act, Plaintiffs do not allege that any Defendant acted with scienter or fraudulent intent, which are not elements of a Section 11 claim.

390. By reason of the foregoing, the Securities Act Defendants named in this Count are each jointly and severally liable for violations of Section 11 of the Securities Act to Plaintiffs and the other members of the Class who purchased or otherwise acquired GTAT securities pursuant and/or traceable to the Offering Materials.

COUNT VI
For Violations Of Section 12(a)(2) Of The Securities Act In Connection With The Offerings (Against The Underwriter Defendants)

391. Plaintiffs repeat and re-allege each and every allegation above relating to the Securities Act claims as if fully set forth herein.

392. This Count is brought pursuant to Section 12(a)(2) of the Securities Act, 15 U.S.C. § 77k, against the Underwriter Defendants on behalf of all members of the Class who purchased or otherwise acquired GTAT securities in and/or traceable to the Offerings and who were damaged thereby.

393. The Underwriter Defendants were statutory sellers of GTAT securities that were registered in the Offerings pursuant to the Registration Statement and sold by means of the Offering Materials. By means of the Offering Materials, the Underwriter Defendants sold approximately 10 million shares of stock through the Equity Offering and $214 million in principal amount of Notes through the Debt Offering to members of the Class. The Underwriter Defendants were at all relevant times motivated by their own financial interests. In sum, the Underwriter

Defendants were sellers, offerors, and/or solicitors of sales of the securities that were sold in the Offerings by means of the materially false and misleading Offering Materials.

394. The Underwriter Defendants: (i) transferred title to Plaintiffs and other members of the Class who purchased securities pursuant and/or traceable to the Offerings; (ii) transferred title of securities offered in the Offerings to other underwriters and/or broker-dealers that sold those securities as agents for the Underwriter Defendants; and (iii) solicited the purchase of securities by Plaintiffs and other members of the Class by means of the Offering Materials, motivated at least in part by the desire to serve the Underwriter Defendants' own financial interest and the interests of GTAT, including but not limited to commissions on their own sales of securities and separate commissions on the sale of those securities by non-underwriter broker-dealers.

395. The Underwriter Defendants used means and instrumentalities of interstate commerce and the U.S. mails.

396. The Offering Materials contained untrue statements of material fact and omitted other facts necessary to make the statements not misleading, and failed to disclose material facts, as set forth herein.

397. Members of the Class purchased GTAT shares of stock in or traceable to the Offerings by means of the materially misstated Offering Materials. At the time they purchased these securities, no member of the Class knew, or by the reasonable exercise of care could have known, of the material misstatements in and omissions from the Offering Materials.

398. The value of the common stock and debt securities issued in connection with the Offerings has declined substantially subsequent to the consummation of the Offerings, and Plaintiffs and the other members of the Class have sustained damages.

399. Less than one year has elapsed since the time that Plaintiffs discovered, or could reasonably have discovered, the facts upon which this Complaint is based. Less than three years has elapsed since the time that the securities at issue in this Complaint were bona fide offered to the public.

400. This claim does not sound in fraud. For purposes of asserting this claim under the Securities Act, Plaintiffs do not allege that any Defendant acted with scienter or fraudulent intent, which are not elements of a Section 12(a)(2) claim

401. By reason of the foregoing, the Underwriter Defendants are liable for violations of Section 12(a)(2) of the Securities Act to Plaintiffs and the other members of the Class who purchased securities in or traceable to the Offerings, and who were damaged thereby.

COUNT VII
For Violations Of Section 15 Of The Securities Act In Connection With The Offerings (Against Defendants Gutierrez, Gaynor, Kim and Squiller And The Director Defendants)

402. Plaintiffs repeat and re-allege each and every allegation above relating to the Securities Acts claims.

403. This Count is brought pursuant to Section 15 of the Securities Act, 15 U.S.C. § 77o, against Defendants Gutierrez, Gaynor, Kim and Squiller, and the Director Defendants.

404. At all relevant times, Defendants Gutierrez, Gaynor, Kim, Squiller, Conaway, Cote, Goshalk, Massengill, Petrovich, Switz, Watson and Wroe were controlling persons of GTAT within the meaning of Section 15 of the Securities Act. As set forth herein, because of their positions at GTAT and/or because of their positions on GTAT's Board, Defendants Gutierrez, Gaynor, Kim, Squiller, Conaway, Cote, Goshalk, Massengill, Petrovich, Switz, Watson and Wroe had the requisite power to directly or indirectly control or influence the decision-making of the Company and the conduct of GTAT's business, including the wrongful conduct complained of herein.

405. In their capacities as senior corporate officers of the Company, and as more fully described above, Defendants Gutierrez, Gaynor, Kim and Squiller had direct involvement in the day-to-day operations of the Company, and, therefore, are presumed to have had the power to control or influence the particular transactions giving rise to the securities law violations as alleged herein. Defendants Gutierrez, Gaynor, and Kim were also directly involved in providing false information and certifying and/or approving the false financial statements disseminated by GTAT during the Class Period. Further, as detailed above, Defendants Gutierrez, Gaynor, and Kim had direct involvement in the presentation and/or manipulation of false financial reports included within the Company's press releases and filings with the SEC. Moreover, Defendant Squiller was the GTAT executive in control of the Company's sapphire operations at Mesa, and Defendants Gutierrez, Squiller and Kim were responsible for negotiating and entering into the Apple agreement. As a result of the foregoing, Defendants Gutierrez, Gaynor, Kim and Squiller, as a group and individually, were controlling persons of GTAT within the meaning Section 15 of the Exchange Act.

406. Similarly, the Director Defendants served as Directors of GTAT's Board at the time the Offerings were conducted and/or at the time that the Registration Statement was signed. As Directors of a publicly owned company, these Defendants had a duty to disseminate accurate and truthful information with respect to GTAT's financial condition and results of operations. These Director Defendants each signed the Registration Statement in connection with the Offerings, the Offering Materials were disseminated to the investing public and the Registration Statement became effective. Thus, these Defendants controlled the contents and dissemination of the Offering Materials.

407. This claim does not sound in fraud. For purposes of asserting this claim under the Securities Act, Plaintiffs do not allege that any Defendant acted with scienter or fraudulent intent, which are not elements of a Section 15 claim.

408. By reason of the aforementioned conduct, each of the Defendants named in this Count is liable under Section 15 of the Securities Act to Plaintiffs and the other members of the Class who have asserted claims pursuant to Sections 11 or 12(a)(2) of the Securities Act, as set forth above. As a direct and proximate result of the conduct of these Defendants, Plaintiffs and members of the Class suffered damages in connection with their purchase or acquisition of securities pursuant and/or traceable to the Offerings.

COUNT VIII
For Violations Of Section 15 Of The Securities Act In Connection With The Offerings
(Against Apple)

409. Plaintiffs repeat and re-allege each and every allegation above relating to the Securities Acts claims as if fully set forth herein and expressly exclude from this Count any allegations of fraud or intentional misconduct.

410. This Count is brought pursuant to Section 15 of the Securities Act, 15 U.S.C. § 77o, against Defendant Apple.

411. At all relevant times, Defendant Apple was a controlling person of GTAT within the meaning of Section 15 of the Securities Act. Defendant Apple was a controlling person of GTAT through its *de facto* control over GTAT's operations and decision-making processes. Specifically, Apple exercised pervasive, *de facto* control over GTAT by: (i) selecting and owning the Mesa facility; (ii) negotiating all power concerning the build-out of Mesa while overruling GTAT's decisions on these critical matters; (iii) selecting the equipment used to fabricate sapphire at Mesa, which, if GTAT wanted to make any changes to, GTAT needed to request Apple's consent;

(iv) the presence and authority of the Apple representatives stationed at Mesa to manage and oversee GTAT's sapphire growth and fabrication processes; and (v) the terms of the various ancillary agreements, including the Prepayment Agreement, the MDSA and the Statement of Work, which provided Apple with unprecedented control over the Company's operations and decision-making processes. As Defendant Squiller acknowledged in the sworn Bankruptcy Declarations filed as part of the Bankruptcy proceeding, by the time GTAT entered into the Apple agreement, GTAT had relinquished control of its sapphire operations, and Apple was in "*de facto* control" of GTAT.

412. Defendant Apple was also a controlling person of GTAT through its control over the content and dissemination of the statements Plaintiffs allege to be materially false and misleading in the Offering Materials. Specifically, the confidentiality provisions in the Apple agreement, including provisions in the MDSA Agreement, the ARPA, and the ARIA, obligated GTAT to send to Apple all of the Company's prospective public statements to investors that even remotely concerned the Apple agreement, including the Offering Materials. All of GTAT's statements to investors during the Class Period regarding the Apple agreement and its substance were required to be approved by Apple. If GTAT made an unauthorized disclosure, the Company would be required to pay Apple a staggering $50 million per occurrence. If Apple did not approve GTAT's statements regarding the Company's sapphire business, Defendants did not make them.

413. Moreover, Defendant Apple was also a controlling person of GTAT through its control over financing through its status as a significant lender to GTAT. Specifically, Apple exercised its control over GTAT through its $578 million loan (the final $139 million of which was withheld by Apple) that was established to enable GTAT to purchase the sapphire furnaces necessary to perform its obligations under the Apple agreement. By virtue of this loan, Apple had

the ability to call for the repayment of this $578 million or to withhold portions of it if Apple chose not to purchase sapphire material or if GTAT failed to perform under the Apple agreement. Given the Company's significant cash-flow problems at the time of the Agreement, Apple's potential retention of any of this $578 million meant that GTAT was forced to comply with Apple's onerous terms and pervasive control. Indeed, after Apple withheld the final $139 million payment, GTAT was forced to file for bankruptcy.

414. Apple also exercised direct control over the Offerings because, as discussed above, Apple insisted that GTAT repay its bank lenders as part of the Apple agreement (so that Apple could take liens on GTAT's equipment). This forced repayment compelled GTAT to conduct the Offerings to raise working capital from investors.

415. This claim does not sound in fraud. For purposes of asserting this claim under the Securities Act, Plaintiffs do not allege that any Defendant acted with scienter or fraudulent intent, which are not elements of a Section 15 claim.

416. By reason of the aforementioned conduct, Apple is liable under Section 15 of the Securities Act to Plaintiffs and the other members of the Class who have asserted claims pursuant to Sections 11 or 12(a)(2) of the Securities Act, as set forth above. As a direct and proximate result of the conduct of these Defendants, members of the Class suffered damages in connection with their purchase or acquisition of the securities.

XVIII. PRAYER FOR RELIEF

WHEREFORE, Lead Plaintiff prays for judgment individually and on behalf of the Class, as follows:

a) Declaring this action to be a proper class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

b) Awarding Lead Plaintiff and the class members damages, including interest;

c) Awarding Lead Plaintiff reasonable costs, including attorneys' and experts' fees; and

d) Awarding such equitable/injunctive or other relief for the benefit of the Class as the court may deem just and proper.

XIX. JURY TRIAL DEMAND

Lead Plaintiff demands a trial by jury for all issues so triable.

Dated: July 20, 2015

BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP

/s/ John C. Browne
John C. Browne
Lauren A. Ormsbee
Ross Shikowitz
Jake Nachmani
1285 Avenue of the Americas, 38th Floor
New York, NY 10019
Tel: (212) 554-1400
Fax: (212) 554-1444
johnb@blbglaw.com
lauren@blbglaw.com
ross@blbglaw.com
jake.nachmani@blbglaw.com
Lead Counsel for Lead Plaintiff Douglas Kurz

ORR & RENO, P.A.
/s/ Jeffrey C. Spear
Jennifer A. Eber N.H. Bar No. 8775
Jeffrey C. Spear N.H. Bar No. 14938
45 S. Main Street, PO Box 3550
Concord, New Hampshire 03302-3550
Tel: (603) 224-2381
Fax: (603) 224-2318
jeber@orr-reno.com
jspear@orr-reno.com
Liaison Counsel for Lead Plaintiff Douglas Kurz

BERGER & MONTAGUE, P.C.
Sherrie Savett
Gary E. Cantor
Glen Abramson
1622 Locust Street

Philadelphia, PA 19103
Tel: (215) 875-3082
Fax: (215) 875-4604
ssavett@bm.net
gcantor@bm.net
gabramson@bm.net
Counsel for Named Plaintiffs the Palisade Fund and Highmark

LOCKRIDGE GRINDAL NAUEN P.L.L.P.
Richard A. Lockridge
Karen Riebel
Suite 22200
100 Washington Avenue South
Minneapolis, MN 55401-2179
Tel: (612) 339-6900
Fax: (612) 339-0981
ralockridge@locklaw.com
Counsel for Named Plaintiff Vance Opperman

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of July, 2015, the above Consolidated Class Action Complaint was electronically served through ECF on all registered attorneys in the case under Civil Action No. 14-cv-00443-JL. I hereby further certify that any parties that have not appeared in this action via ECF will be served via summons.

/s/ Jeffrey C. Spear
Jeffrey C. Spear
45 S. Main Street, P.O. Box 3550
Concord, New Hampshire 03302-3550
Telephone: (603) 223-9115
Facsimile: (603) 223-9015
jcspear@orr-reno.com