

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

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

Plaintiff,

v.

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

Defendants.

No. 1:14-cv-00443-JL

ECF CASE

**STIPULATION AND AGREEMENT OF SETTLEMENT
WITH DEFENDANT APPLE INC.**

This Stipulation and Agreement of Settlement With Defendant Apple Inc. (“Apple”), dated as of January 10, 2020 (the “Stipulation”) is entered into between (a) lead plaintiff Douglas Kurz (“Lead Plaintiff”) and plaintiff Palisade Strategic Master Fund (Cayman) Limited (the “Securities Act Plaintiff” and, collectively with Lead Plaintiff, “Plaintiffs” or the “Class Representatives”), on behalf of themselves and the Class (defined below) and (b) Apple (together with Plaintiffs, the “Settling Parties”), and embodies the terms and conditions of the settlement between the Settling Parties.¹ Subject to the approval of the Court and the terms and conditions expressly provided herein, this Stipulation is intended to fully, finally, and forever compromise, settle, release, resolve,

¹ All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in ¶ 1 herein.

and dismiss with prejudice the Released Claims (as defined below), subject to the approval of the Court and the terms and conditions set forth in this Stipulation.

This Stipulation does not impact the previously settled claims between the Class Representatives and (a) Thomas Gutierrez (“Gutierrez”), Richard Gaynor (“Gaynor”), Kanwardev Raja Singh Bal (“Bal”), Hoil Kim (“Kim”), Daniel W. Squiller (“Squiller”), J. Michal Conaway (“Conaway”), Kathleen A. Cote (“Cote”), Ernest L. Godshalk (“Godshalk”), Matthew E. Massengill (“Massengill”), Mary Petrovich (“Petrovich”), Robert E. Switz (“Switz”), Noel G. Watson (“Watson”), and Thomas Wroe, Jr. (“Wroe”) (collectively, the “Individual Defendants”); and (b) Morgan Stanley & Co. LLC, Goldman, Sachs & Co. LLC (f/k/a Goldman Sachs & Co.), and Canaccord Genuity Inc. (collectively, the “Underwriter Defendants”).

WHEREAS:

A. Beginning on or about October 9, 2014, multiple putative securities class action complaints were filed in the United States District Court for the District of New Hampshire (the “Court”). By Order dated February 4, 2015, the Court consolidated the related actions into the present action (the “Action”).

B. Pursuant to the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §§ 77z-1 and 78u-4, as amended (the “PSLRA”), notice to the public was issued setting forth the deadline by which putative class members could move the Court to be appointed to act as lead plaintiff. On May 20, 2015, the Court entered an Order appointing Douglas Kurz as Lead Plaintiff in the Action, and approving Lead Plaintiff’s selection of Bernstein Litowitz Berger & Grossmann LLP as Lead Counsel and Orr & Reno as Local Counsel.

C. On July 20, 2015, Lead Plaintiff filed and served the Consolidated Class Action Complaint (the “Complaint”), which included Vance K. Opperman (“Opperman”), the Securities

Act Plaintiff, and Highmark Limited, in respect of its Segregated Account Highmark Fixed Income 2 (“Highmark Limited”) as additional named plaintiffs. The Complaint asserted (a) claims under § 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”), and Rule 10b-5 promulgated thereunder, against Defendants Bal, Gaynor, Gutierrez, Kim, and Apple; (b) claims under § 20(a) of the Exchange Act against Defendants Bal, Gaynor, Gutierrez, Kim, Squiller, and Apple; (c) claims under § 11 of the Securities Act of 1933 (the “Securities Act”) against Defendants Gaynor, Bal, Gutierrez, Conaway, Cote, Godshalk, Massengill, Petrovich, Switz, Watson, Wroe, and the Underwriter Defendants; (d) claims under § 12(a)(2) of the Securities Act against the Underwriter Defendants; and (e) claims under § 15 of the Securities Act against Defendants Gaynor, Kim, Gutierrez, Squiller, Conaway, Cote, Godshalk, Massengill, Petrovich, Switz, Watson, Wroe, and Apple.

D. On October 7, 2015, Apple and the other Defendants filed and served motions to dismiss the Complaint. On December 18, 2015, Lead Plaintiff filed and served his papers in opposition to the motions to dismiss; on March 2, 2016, Apple and the other Defendants filed and served reply papers; and, on March 22, 2016, Lead Plaintiff filed his sur-reply.

E. On March 17, 2017, Lead Plaintiff, the Securities Act Plaintiff, Highmark Limited, and the Underwriter Defendants entered into a Memorandum of Understanding memorializing their agreement in principle to settle the Action as against the Underwriter Defendants for \$9,700,000 in cash (the “Underwriter Defendant Settlement”).

F. On May 4, 2017, the Court entered its Memorandum Opinion denying in part and granting in part the motions to dismiss filed by the Individual Defendants and Apple, and denying the Underwriter Defendants’ motion to dismiss without prejudice to their ability to re-submit the motion if necessary. Lead Plaintiff’s remaining claims following the Court’s ruling on Defendants’

Motions to Dismiss include: (a) claims under Section 10(b) of the Exchange Act against Defendants Bal, Gaynor, and Gutierrez; (b) claims under Section 20(a) of the Exchange Act against Defendants Bal, Gaynor, Gutierrez, Kim, and Squiller; (c) a claim under Section 20(a) of the Exchange Act against Apple; (d) claims under Section 11 of the Securities Act against Defendants Gaynor, Bal, Gutierrez, Conaway, Cote, Godshalk, Massengill, Petrovich, Switz, Watson, Wroe, and the Underwriter Defendants; (e) claims under Section 12(a)(2) of the Securities Act against the Underwriter Defendants; (f) claims under Section 15 of the Securities Act against Defendants Gutierrez, Gaynor, Kim, and Squiller; and (g) a claim under Section 15 of the Securities Act against Apple.

G. On August 18, 2017, Lead Plaintiff, the Securities Act Plaintiff, Highmark Limited, and the Underwriter Defendants entered into the Stipulation and Agreement of Settlement with Settling Underwriter Defendants (the “Underwriter Defendant Stipulation”) setting forth the final terms and conditions of the settlement with the Underwriter Defendants (the “Underwriter Defendant Settlement”).

H. On October 2, 2017, Lead Counsel and counsel for the Individual Defendants and Apple participated in a full-day mediation session before retired United States District Court Judge Layn R. Phillips (the “Mediator”). In advance of that session, the parties exchanged detailed mediation statements and exhibits to the Mediator, which addressed the issues of both liability and damages. As a result of extensive, arm’s-length negotiations at the mediation session, Lead Plaintiff and the Individual Defendants reached an agreement in principle to settle the Action as against the Individual Defendants for \$27,000,000 in cash. Lead Plaintiff and Apple were unable to reach a settlement at that time.

I. On October 13, 2017, Lead Plaintiff and the Individual Defendants entered into a Settlement Term Sheet (the “Term Sheet”) memorializing the agreement in principle to settle the Action as against the Individual Defendants, subject to the negotiation of the terms of a formal, final stipulation of settlement and approval of the Court.

J. On January 26, 2018, Lead Plaintiff, the Securities Act Plaintiff, Highmark Limited, and the Individual Defendants entered into the Stipulation and Agreement of Settlement with Individual Defendants (the “Individual Defendant Stipulation”) setting forth the final terms and conditions of the settlement with the Individual Defendants (the “Individual Defendant Settlement”).

K. On February 13, 2018, the Court granted preliminary approval of the Individual Defendant Settlement and Underwriter Defendant Settlement. The Court entered judgments approving the Individual Defendant Settlement and Underwriter Defendant Settlement on July 27, 2018.

L. Lead Plaintiff continued to prosecute his case against Apple. Fact discovery commenced in March 2018 and was substantially completed in April 2019. Lead Plaintiff sought, received, and reviewed 400,972 documents, totaling 2,317,704 pages, including documents from Apple (196,014 documents, totaling 790,851 pages); non-party GTAT (190,961 documents, totaling 1,454,786 pages)²; the Underwriter Defendants (13,481 documents, totaling 69,240 pages); and the Individual Defendants and several former individual employees of GTAT (290 documents, totaling 2,216 pages). Apple also sought discovery of the Class Representatives. In sum, the Class Representatives produced 20,106 documents, totaling 198,296 pages. The Class Representatives also prepared hundreds of pages of written discovery.

² Certain of these documents were subpoenaed by Apple.

M. Fact depositions commenced in December 2018 and closed in April 2019. The parties collectively deposed more than twenty (20) fact witnesses, including the Individual Defendants in the Action, several of the Director Defendants, various current and former employees of GTAT and Apple who were involved in the project at issue in the Action, Lead Plaintiff, and three representatives of Palisade Strategic Master Fund (Cayman) Limited.

N. On September 20, 2018, Lead Plaintiff filed his Motion for Class Certification and Appointment of Class Representatives and Class Counsel. Attached to the Motion was the Expert Report of Chad Coffman, CFA, who opined that the markets for GTAT Securities were efficient throughout the Class Period and that damages for each of the GTAT Securities could be calculated using a common class-wide methodology. On December 21, 2018, Apple filed a brief in opposition to Lead Plaintiff's motion and attached an expert report challenging certain of Mr. Coffman's opinions. Lead Plaintiff filed a reply on February 22, 2019, which was accompanied by a rebuttal expert report authored by Mr. Coffman. Apple filed a brief sur-reply on March 8, 2019.

O. Lead Plaintiff and Apple had commenced merits expert discovery in Summer 2019. Lead Plaintiff submitted another Expert Report of Chad Coffman, CFA, who opined on the issues of loss causation and damages. Apple submitted four rebuttal Expert Reports, one in response to Mr. Coffman's report, and three related to various defenses to liability in this Action.

P. The Court heard oral argument on the Motion for Class Certification on July 23, 2019. On September 30, 2019, after months of briefing and a full hearing, the Court granted Lead Plaintiff's motion, finding that the Class satisfied each of the Federal Rules of Civil Procedure 23(a) and 23(b)(3) requirements, and appointing Lead Plaintiff and the Securities Act Plaintiff as Class Representatives and Bernstein Litowitz Berger & Grossmann LLP as Class Counsel.

Q. On September 27, 2019, Apple filed a Motion for Summary Judgment. In support of this Motion, Apple filed two memoranda: one arguing that Apple was not liable as a control person under the federal securities laws and the other disputing GTAT's primary liability under the federal securities laws. Apple also filed a related motion and memorandum to exclude the opinions of Lead Plaintiff's expert, Chad Coffman. Opposition to these motions was due on November 25, 2019.

R. Following extensive arm's-length negotiations in September, October, and November 2019, the Class Representatives and Apple reached an agreement in principle to settle the remaining control-person claims asserted in the Action against Apple.

S. On November 22, 2019, the Class Representatives and Apple filed a Joint Notice of Settlement and Motion to Stay Summary Judgment Schedule, which the Court so-ordered on November 25, 2019.

T. This Stipulation (together with the exhibits hereto) reflects the final and binding agreement between the Class Representatives and Apple.

U. Based upon their investigation, prosecution, and settlement of the case, the Class Representatives and Class Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable, and adequate to the Class Representatives and the Class, and in their best interests. Based on the Class Representatives' direct oversight of the prosecution of this matter and with the advice of their counsel, the Class Representatives have agreed to settle and release the Released Plaintiffs' Claims (as defined below), after considering, among other things: (a) the financial benefit that the Class will receive under the proposed Apple Settlement; and (b) the significant risks and costs of continued litigation and trial.

V. Apple denies, and continues to deny, that it has committed any act or omission giving rise to any liability or violation of law, including the U.S. securities laws. Specifically, Apple expressly has denied, and continues to deny, each and all of the claims alleged in the Action, including without limitation, any liability arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Action. Apple also has denied, and continues to deny, among other allegations, the allegations that the Class Representatives or the Class have suffered any damage, or that the Class Representatives or the Class were harmed by the conduct alleged in the Action or that could have been alleged as part of the Action. In addition, Apple maintains that it has meritorious defenses to all claims alleged in the Action.

W. As set forth below, neither this Settlement nor any of the terms of this Stipulation shall constitute an admission or finding of any fault, liability, wrongdoing, or damage whatsoever or any infirmity in the defenses that Apple has, or could have, asserted. Apple is entering into this Stipulation solely to eliminate the burden and expense of further litigation. Apple has determined that it is desirable and beneficial to Apple that the Action be settled in the manner and upon the terms and conditions set forth in this Stipulation. Similarly, this Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of the Class Representatives of any infirmity in any of the claims asserted in the Action, or an admission or concession that any of Apple's defenses to liability had any merit. Each of the Settling Parties recognizes and acknowledges, however, that the Action has been initiated, filed, and prosecuted by Plaintiffs in good faith and defended by Apple in good faith, and that the Action as to Apple is being voluntarily settled with the advice of counsel.

NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and among the Class Representatives (individually and on behalf of the Class) and Apple, by and through their

respective undersigned attorneys and subject to the approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, that, in consideration of the benefits flowing to the Settling Parties from the Settlement, all Released Plaintiffs' Claims as against the Apple Releasees and all Released Apple Claims as against the Plaintiff Releasees shall be fully, finally, and forever compromised, settled, released, discharged, and dismissed with prejudice, and without costs (except as provided in the Stipulation), upon and subject to the terms and conditions set forth below.

DEFINITIONS

1. As used in this Stipulation and any exhibits attached hereto and made a part hereof, the following capitalized terms shall have the following meanings:

(a) "Action" means the consolidated securities class action in the matter styled *Levy v. Gutierrez, et al.*, Case No. 1:14-cv-00443-JL, and includes all actions consolidated therein.

(b) "Apple" means defendant Apple Inc.

(c) "Apple Releasees" means Apple and Apple's Counsel, and each of their respective past or present subsidiaries, parents, affiliates, principals, successors, predecessors, assigns, officers, directors, underwriters, trustees, partners, members, agents, employees, insurers, co-insurers, reinsurers, controlling shareholders, attorneys, accountants, auditors, financial or investment advisors or consultants, investment bankers, personal or legal representatives, any entity in which Apple has a controlling interest, and each of the predecessors, successors, and assigns of the foregoing, in their capacities as such; *provided, however*, that the Apple Releasees do not include the Individual Defendants or Underwriter Defendants.

(d) "Apple's Counsel" means the law firm of Latham & Watkins LLP and the law firm of Preti, Flaherty, Beliveau & Pachios, Chartered, LLP.

(e) “Authorized Claimant” means either (i) an Apple Class Member who or which submitted a valid Claim to the Claims Administrator on or before November 6, 2019 that is approved by the Court for payment from the Individual Defendant Settlement; or (ii) an Apple Class Member who or which previously submitted or submits a valid Claim to the Claims Administrator after November 6, 2019 that is approved by the Court for payment from the Net Apple Settlement Fund.

(f) “Claim” means a Proof of Claim Form submitted to the Claims Administrator.

(g) “Claim Form” or “Proof of Claim Form” means the form previously approved by the Court in the Earlier Preliminary Approval Order and available at <http://www.gtatsecuritieslitigation.com>, that a Claimant either must have previously completed and submitted to the Claims Administrator with respect to the Earlier Settlements or must now complete and submit with respect to this Settlement in order to be eligible to share in a distribution of the Net Apple Settlement Fund.

(h) “Claimant” means a person or entity who or which previously submitted a Claim to the Claims Administrator seeking to be eligible to share in the net proceeds of the Earlier Settlements or who or which will now submit a Claim to the Claims Administrator seeking to be eligible to share in the Net Apple Settlement Fund.

(i) “Claims Administrator” means Epiq Class Action and Claims Solutions, Inc. (“Epiq”), the successor to Garden City Group, LLC (“GCG”), the firm retained by Lead Plaintiff and Lead Counsel and approved by the Court in the Earlier Preliminary Approval Order to provide all notices approved by the Court to potential class members in the Action and to

administer settlements or other recoveries achieved in the Action. GCG was acquired by Epiq on June 15, 2018.

(j) “Class” or “Apple Class” means the class certified in the Court’s Memorandum Order dated September 30, 2019 (ECF No. 245). Specifically, the Apple Class includes all persons and entities who or which from November 5, 2013 through 9:40 a.m. Eastern Standard Time on October 6, 2014, inclusive (the “Class Period”) purchased or otherwise acquired publicly traded GTAT common stock (“GTAT Common Stock”) and/or GTAT Senior Notes, purchased or otherwise acquired GTAT Call Options, or sold (wrote) publicly traded GTAT Put Options, and were damaged thereby. Excluded from the Apple Class are Defendants; GTAT; the affiliates and subsidiaries of the Underwriter Defendants, GTAT, and Apple; the Officers, directors, and partners of the Underwriter Defendants, GTAT, and Apple during the Class Period; members of the Immediate Family of any excluded person; the heirs, successors, and assigns of any excluded person or entity; and any entity in which any excluded person or entity has or had during the Class Period a controlling interest; *provided, however*, that any Investment Vehicle (as defined herein) shall not be deemed an excluded person or entity by definition. Also excluded from the Apple Class are any persons and entities who or which exclude themselves from the Apple Class by submitting a request for exclusion from the Apple Class that is accepted by the Court.

(k) “Class Distribution Order” means an order entered by the Court authorizing and directing that the Net Settlement Fund be distributed, in whole or in part, to Authorized Claimants.

(l) “Class Member” or “Apple Class Member” means each person and entity who or which is a member of the Apple Class.

(m) “Class Period” or “Apple Class Period” means the period from November 5, 2013 through 9:40 a.m. Eastern Standard Time on October 6, 2014, inclusive.

(n) “Complaint” means the Consolidated Class Action Complaint filed in the Action on July 20, 2015.

(o) “Court” means the United States District Court for the District of New Hampshire.

(p) “Defendants” means the Individual Defendants, the Underwriter Defendants, and Apple.

(q) “Earlier Preliminary Approval Order” means the Court’s Order Preliminarily Approving Settlements and Providing for Notice dated February 13, 2018 (ECF No. 179).

(r) “Earlier Settlements” means the Individual Defendant Settlement and Underwriter Defendant Settlement, which were finally approved by the Court by judgments entered on July 27, 2018 (ECF Nos. 192, 193).

(s) “Effective Date” with respect to the Settlement means the first date by which all of the events and conditions specified in ¶ 37 of this Stipulation have been met and have occurred or have been waived.

(t) “Escrow Account” means an account maintained at Valley National Bank wherein the Apple Settlement Amount shall be deposited and held in escrow under the control of Lead Counsel.

(u) “Escrow Agent” means Valley National Bank.

(v) “Escrow Agreement” means the agreement between Lead Counsel and the Escrow Agent setting forth the terms under which the Escrow Agent shall maintain the Escrow Account.

(w) “Excluded Plaintiffs’ Claims” means (i) any claims by any governmental entity arising out of any governmental investigation of Apple or any of Apple’s respective former or current officers or directors relating to the wrongful conduct alleged in the Action;³ (ii) any claims asserted in the Action against any of the Individual Defendants or Underwriter Defendants; (iii) any claims of any person or entity who or which submits a request for exclusion from the Apple Class that is accepted by the Court; and (iv) any claims relating to the enforcement of the Settlement.

(x) “Excluded Apple Claims” means (i) any claims against any person or entity who or which submits a request for exclusion from the Apple Class that is accepted by the Court; and (ii) any claims relating to the enforcement of the Settlement.

(y) “Final,” with respect to the Judgment, or any other court order, means when the last of the following shall occur: (i) the expiration of the time to file a motion to alter or amend the Judgment under Federal Rule of Civil Procedure 59(e) without any such motion having been filed; (ii) if no appeal is filed, the expiration date of the time provided for filing or noticing any appeal under the Federal Rules of Appellate Procedure, *i.e.*, thirty (30) days after entry of the judgment or order; or (iii) if a motion to alter or amend is filed or if there is an appeal from the judgment or order, (a) the date of final dismissal of all such motions or appeals, or the final

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

dismissal of any proceeding on certiorari or otherwise, or (b) the date the judgment or order is finally affirmed on a motion or appeal, the expiration of the time to file a petition for a writ of certiorari or other form of review, or the denial of a writ of certiorari or other form of review, and, if certiorari or other form of review is granted, the date of final affirmance following review pursuant to that grant. However, any appeal or proceeding seeking subsequent judicial review pertaining solely to an order issued with respect to (i) attorneys' fees, costs or expenses, or (ii) the plan of allocation of Settlement proceeds (as submitted or subsequently modified), shall not in any way delay or preclude the Judgment from becoming Final.

(z) "GTAT" means GT Advanced Technologies Inc.

(aa) "GTAT Call Options" means publicly traded call options on GTAT Common Stock.

(bb) "GTAT Put Options" means publicly traded put options on GTAT Common Stock.

(cc) "GTAT Securities" means GTAT Common Stock, GTAT Senior Notes, GTAT Call Options, and GTAT Put Options.

(dd) "GTAT Senior Notes" means GTAT 3.00% Convertible Senior Notes Due 2020.

(ee) "Immediate Family" means children, stepchildren, parents, stepparents, spouses, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-in-law. As used in this definition, "spouse" shall mean a husband, a wife, or a partner in a state-recognized domestic relationship or civil union.

(ff) "Individual Defendants" means defendants Thomas Gutierrez, Richard Gaynor, Kanwardev Raja Singh Bal, Hoil Kim, and Daniel W. Squiller (the "Officer Defendants")

and defendants J. Michal Conaway, Kathleen A. Cote, Ernest L. Godshalk, Matthew E. Massengill, Mary Petrovich, Robert E. Switz, Noel G. Watson, and Thomas Wroe, Jr. (the “Director Defendants”).

(gg) “Individual Defendant Settlement” means the resolution of the Action as against the Individual Defendants on the terms and conditions set forth in the Stipulation and Agreement of Settlement with Settling Individual Defendants filed with the Court on January 26, 2018 (ECF No. 178-1).

(hh) “Investment Vehicle” means any investment company or pooled investment fund, including, but not limited to, mutual fund families, exchange-traded funds, fund of funds, and hedge funds, in which any of the Underwriter Defendants have, has, or may have a direct or indirect interest, or as to which any of their respective affiliates may act as an investment advisor but of which any of the Underwriter Defendants or any of their respective affiliates is not a majority owner or does not hold a majority beneficial interest. This definition of Investment Vehicle does not bring into the Class any of the Underwriter Defendants themselves.

(ii) “Judgment” means the final judgment, substantially in the form attached hereto as Exhibit B, to be entered by the Court approving the Apple Settlement.

(jj) “Lead Counsel” or “Class Counsel” means the law firm of Bernstein Litowitz Berger & Grossmann LLP.

(kk) “Lead Plaintiff” means Douglas Kurz.

(ll) “Litigation Expenses” means reasonable costs and expenses incurred in connection with commencing, prosecuting, and settling the Action (which may include the costs and expenses of Plaintiffs directly related to their representation of the Apple Class), for which Lead Counsel intends to apply to the Court for reimbursement from the Settlement Fund.

(mm) “Local Counsel” means Orr & Reno P.A.

(nn) “Net Settlement Fund” or “Apple Net Settlement Fund” means the Apple Settlement Fund less: (i) any Taxes and Tax Expenses; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court; and (iv) any attorneys’ fees awarded by the Court.

(oo) “Notice and Administration Costs” means the reasonable costs, fees, and expenses that are incurred by the Claims Administrator and/or Lead Counsel in connection with: (i) providing notice of the Apple Settlement to the Apple Class (including, without limitation, mailing of the Settlement Notice to Class Members and publication of the Summary Settlement Notice); and (ii) administering the Apple Settlement, including but not limited to the Claims process, as well as the reasonable costs, fees, and expenses incurred in connection with the Escrow Account.

(pp) “Officer” means any officer as that term is defined in Securities and Exchange Act Rule 16a-1(f).

(qq) “Plaintiffs” or “Class Representatives” means Lead Plaintiff and the Securities Act Plaintiff.

(rr) “Plaintiffs’ Counsel” means Class Counsel and all other legal counsel who, at the direction and under the supervision of Class Counsel, performed services on behalf of the Class in the Action.

(ss) “Plaintiff Releasees” means (i) Plaintiffs, their attorneys, and all other Class Members; (ii) the past or present subsidiaries, parents, affiliates, principals, successors, predecessors, assigns, officers, directors, underwriters, trustees, partners, members, agents, employees, insurers, co-insurers, reinsurers, controlling shareholders, attorneys, accountants,

auditors, financial or investment advisors or consultants, investment bankers, and personal or legal representatives of each of the foregoing in (i), and any entity in which any of the foregoing in (i) has a controlling interest; and (iii) the current and former officers, directors, Immediate Family members, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, agents, affiliates, insurers, reinsurers, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, attorneys, advisors, and associates of the each of the foregoing in (i) and (ii), in their capacities as such.

(tt) “Plan of Allocation” means the Plan of Allocation approved by the Court by Order dated July 27, 2018 (ECF No. 191), which has been utilized for determining the allocation of the net proceeds of the Earlier Settlements and will also be utilized for determining the allocation of the Net Apple Settlement Fund.

(uu) “Preliminary Approval Order” means the order, substantially in the form attached hereto as Exhibit A, to be entered by the Court preliminarily approving the Apple Settlement and directing that notice of the Apple Settlement be provided to the Class.

(vv) “PSLRA” means the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §§ 77z-1 and 78u-4, as amended.

(ww) “Released Claims” means all Released Plaintiffs’ Claims and Released Apple Claims.

(xx) “Released Apple Claims” means all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, common, or foreign law, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims against Apple. Released Apple Claims do not include any Excluded Apple Claims.

(yy) “Released Plaintiffs’ Claims” or “Apple Released Plaintiffs’ Claims” means any and all claims, rights, duties, controversies, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages, losses, judgments, liabilities, allegations, arguments, and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, local, common, statutory, administrative, or foreign law, or any other law, rule or regulation, at law or in equity, whether class or individual in nature, whether fixed or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured, that Plaintiffs or any other member of the Apple Class (a) asserted in the Action, or (b) could have asserted in the Action or in any other forum that both (i) arise out of, are based upon, or relate to the allegations, transactions, acts, facts, claims, matters, transactions, events, occurrences, disclosures, statements, representations, omissions, or failures to act involved, set forth, or referred to in the Complaint and (ii) relate to any purchase, acquisition, disposition, sale, or holding of GTAT publicly traded Common Stock, GTAT Senior Notes, GTAT Call Options, or GTAT Put Options during the Class Period. Released Plaintiffs’ Claims do not cover or include any Excluded Plaintiffs’ Claims.

(zz) “Releasee(s)” means each and any of the Apple Releasees and each and any of the Plaintiff Releasees.

(aaa) “Releases” means the releases set forth in ¶¶ 4-6 of this Stipulation.

(bbb) “Securities Act Plaintiff” means Palisade Strategic Master Fund (Cayman) Limited.

(ccc) “Settlement” or “Apple Settlement” means the resolution of the Action as against Apple on the terms and conditions set forth in this Stipulation.

(ddd) “Settlement Amount” or “Apple Settlement Amount” means Three Million Five Hundred Thousand Dollars (\$3,500,000.00) in cash to be paid by wire transfer or check to the Escrow Account pursuant to ¶ 8 of this Stipulation.

(eee) “Settlement Fund” or “Apple Settlement Fund” means the Settlement Amount plus any and all interest earned thereon.

(fff) “Settlement Hearing” means the hearing set by the Court under Rule 23(e)(2) of the Federal Rules of Civil Procedure to consider final approval of the Apple Settlement.

(ggg) “Settlement Notice” or “Apple Settlement Notice” means the Notice of (i) Certification of Apple Class; (ii) Proposed Settlement with Apple; (iii) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses; and (iv) Settlement Fairness Hearing, substantially in the form attached hereto as Exhibit 1 to Exhibit A, which is to be mailed to Class Members.

(hhh) “Settling Parties” means (i) Apple and (ii) the Class Representatives, on behalf of themselves and the Class.

(iii) “Summary Settlement Notice” or “Apple Summary Settlement Notice” means the Summary Notice of (i) Certification of Apple Class; (ii) Proposed Settlement with Apple; (iii) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses; and (iv) Settlement Fairness Hearing, substantially in the form attached hereto as Exhibit 2 to Exhibit A, to be published as set forth in the Preliminary Approval Order.

(jjj) “Taxes” means: (i) all federal, state, and/or local taxes of any kind (including any estimated taxes, interest, or penalties thereon) arising with respect to any income earned by the Settlement Fund, including any including any taxes or tax detriments that may be

imposed upon the Released Persons or their counsel with respect to any income earned by the Settlement Fund for any period after the deposit of the Settlement Amount in the Escrow Account during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes; and (ii) all taxes imposed on payments by the Settlement Fund, including withholding taxes.

(kkk) “Tax Expenses” means the expenses and costs incurred by Lead Counsel in connection with determining the amount of, and paying, any taxes owed by the Settlement Fund (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) tax returns for the Settlement Fund.

(lll) “Underwriter Defendant Settlement” means the resolution of the Action as against the Underwriter Defendants on the terms and conditions set forth in the Stipulation and Agreement of Settlement with Settling Underwriter Defendants, and the Supplement thereto, filed with the Court on January 26, 2018 (ECF No. 178-2).

(mmm) “Underwriter Defendants” means defendants Morgan Stanley & Co. LLC, Goldman, Sachs & Co. LLC (f/k/a Goldman, Sachs & Co.), and Canaccord Genuity Inc.

(nnn) “Unknown Claims” means any Released Plaintiffs’ Claims which Plaintiffs or any other Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, and any Released Apple Claims that Apple does not know or suspect to exist in its favor at the time of the release of such claims, which, if known by him, her, or it, might have affected his, her, or its decision(s) with respect to this Settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date of the Settlement, Plaintiffs and Apple shall expressly waive, and each of the other Class Members

shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

The Settling Parties acknowledge that they may hereafter discover facts in addition to or different from those which he, she, it or their counsel now knows or believes to be true with respect to the subject matter of the Released Claims, but, upon the Effective Date of the Settlement, the Settling Parties shall expressly settle and release, and each Class Member shall be deemed to have, and by operation of the Judgment shall have, settled and released any and all Released Claims without regard to the subsequent discovery or existence of such different or additional facts. Plaintiffs and Apple acknowledge, and each of the other Class Members shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement.

PRELIMINARY APPROVAL OF SETTLEMENT

2. Promptly upon execution of this Stipulation, Class Representatives will move for preliminary approval of the Apple Settlement, authorization to provide notice of the Apple Settlement to the Apple Class, and the scheduling of a hearing for consideration of final approval of the Apple Settlement, which motion shall be unopposed by Apple. Concurrently with the motion for preliminary approval, the Class Representatives shall apply to the Court for, and Apple shall agree to, entry of the Preliminary Approval Order, substantially in the form attached hereto as Exhibit A.

RELEASE OF CLAIMS

3. The obligations incurred pursuant to this Stipulation are in consideration of: (i) the full and final disposition of the Action as against Apple only; and (ii) the Releases provided for herein.

4. Pursuant to the Judgment, without further action by anyone, upon the Effective Date of the Settlement, the Class Representatives and each of the other Apple Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiffs' Claim (including Unknown Claims) against Apple and the other Apple Releasees, whether or not such Class Member executes and delivers the Proof of Claim Form or shares in the Net Settlement Fund. Any Proof of Claim Form that has been or will be executed by a Class Member shall be deemed to include a release that permanently bars and enjoins such Class Member from bringing any action asserting any of the Released Plaintiffs' Claims against any and all Apple Releasees. This Release shall not apply to any Excluded Plaintiffs' Claim.

5. If the Settlement is approved by the Court and the Effective Date occurs, any Class Member who or which does not timely and validly request exclusion from the Apple Class in the manner stated in the Preliminary Approval order: (a) shall be deemed to have waived his, her, or its right to be excluded from the Apple Class; (b) shall be forever barred from requesting exclusion from the Apple Class in this or any other proceeding; (c) shall be bound by the provisions of this Stipulation, the Apple Settlement, and all proceedings, determinations, orders, and judgments in the Action relating to the Apple Settlement, whether favorable or unfavorable to the Apple Class,

including but not limited to, the Judgment, and the release of the Released Plaintiffs' Claims against the Apple Releasees provided for therein; and (d) shall be barred and enjoined from commencing, maintaining, or prosecuting any of the Released Plaintiffs' Claims against any of the Apple Releasees.

6. Pursuant to the Judgment, without further action by anyone, upon the Effective Date of the Settlement, Apple, on behalf of itself, and its respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Apple Claim (including Unknown Claims) against the Class Representatives and the other Plaintiff Releasees, and shall forever be barred and enjoined from commencing, maintaining, or prosecuting any or all of the Released Apple Claims against any of the Plaintiff Releasees. This Release shall not apply to any Excluded Apple Claim.

7. Notwithstanding ¶¶ 4-6 above, nothing in the Judgment shall bar any action by any of the Settling Parties to enforce or effectuate the terms of this Stipulation or the Judgment.

THE SETTLEMENT CONSIDERATION

8. In consideration of the full settlement of the claims asserted in the Action against Apple and the Releases specified in ¶¶ 4-6 above, Apple shall deposit the Settlement Amount into the Escrow Account within fifteen (15) business days of the later of: (a) the entry of the Preliminary Approval Order substantially in the form attached hereto as Exhibit A; or (b) the provision to Apple's Counsel of all information necessary to effectuate a transfer of funds to the Escrow Account, including the bank name and ABA routing number, account number, and a signed Form W-9 reflecting the taxpayer identification number for the Settlement Fund.

9. If the entire Settlement Amount is not timely deposited into the Escrow Account, the Class Representatives may terminate the Settlement but only if: (a) Lead Counsel has notified Apple's Counsel of Lead Counsel's intention to terminate the Settlement, and (b) the entire Settlement Amount is not transferred to the Escrow Account within five (5) business days after Apple's Counsel receives such notice. If the Settlement is terminated pursuant to this ¶ 9, the provisions of ¶ 39 below shall apply.

10. Apple shall deposit the Settlement Amount into the Escrow Account pursuant to ¶ 8 above, but shall have no individual obligation to make any additional payment into the Settlement Fund, and shall have no responsibility or liability with respect to the Escrow Account or the monies maintained in the Escrow Account, including, without limitation, any responsibility or liability related to any fees, Taxes, Tax Expenses, investment decisions, maintenance, supervision or distribution of any portion of the Settlement Amount. Other than its payment obligation described in ¶ 8 above, Apple shall have no obligation to make any payment into the Escrow Account pursuant to this Stipulation, and shall have no responsibility or liability with respect to the Escrow Account or the funds maintained in the Escrow Account, including, without limitation, any responsibility or liability related to any fees, Taxes, Tax Expenses, investment decisions, maintenance, supervision or distribution of any portion of the Settlement Amount.

USE OF SETTLEMENT FUND

11. The Settlement Fund shall be used to pay: (a) any Taxes and Tax Expenses; (b) any Notice and Administration Costs; (c) any Litigation Expenses awarded by the Court; and (d) any attorneys' fees awarded by the Court. The balance remaining in the Settlement Fund, that is, the Net Settlement Fund, shall be distributed to Authorized Claimants as provided in ¶¶ 22-34 below.

12. Except as provided herein or pursuant to orders of the Court, the Net Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds held by the Escrow Agent shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned pursuant to the terms of this Stipulation and/or further order of the Court. The Escrow Agent shall invest any funds in the Escrow Account exclusively in United States Treasury Bills (or a mutual fund invested solely in such instruments) and shall collect and reinvest all interest accrued thereon, except that any residual cash balances up to the amount that is insured by the FDIC may be deposited in any account that is fully insured by the FDIC. In the event that the yield on United States Treasury Bills is negative, in lieu of purchasing such Treasury Bills, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States. Additionally, if short-term placement of the funds is necessary, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States. All risks related to the investment of the Settlement Fund shall be borne solely by the Settlement Fund, and Apple Releasees (as defined above) shall have no responsibility for, interest in, or liability whatsoever with respect to investment decisions or the actions of the Escrow Agent, or any transactions executed by the Escrow Agent.

13. The Escrow Agent shall not disburse the Settlement Fund except as provided in this Stipulation. The Settling Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that Lead Counsel, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax

returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the Settlement Fund. Lead Counsel shall also be responsible for causing payment to be made from the Settlement Fund of any Taxes or Tax Expenses owed with respect to the Settlement Fund. The Apple Releasees shall not have any liability or responsibility for any such Taxes or Tax Expenses. Upon written request, Apple will provide to Lead Counsel the statement described in Treasury Regulation § 1.468B-3(e). Lead Counsel, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this paragraph, including, as necessary, making a “relation back election,” as described in Treasury Regulation § 1.468B-1(j), to cause the Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

14. All Taxes and Tax Expenses shall be paid out of the Settlement Fund, and in all events the Apple Releasees and their counsel shall have no liability or responsibility whatsoever for the payment of Taxes or Tax Expenses. The Settlement Fund shall indemnify and hold each of the Apple Releasees and their counsel harmless for Taxes and Tax Expenses (including, without limitation, taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be timely paid by Lead Counsel out of the Settlement Fund without prior order from the Court and Lead Counsel shall be authorized (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-2(l)(2)). The Settling Parties agree to

cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of ¶¶ 14 and 15 of this Stipulation.

15. The Settlement is not a claims-made settlement. Upon the occurrence of the Effective Date, not Apple nor any Apple Releasee or any other person or entity that paid any portion of the Settlement Amount shall have any right to the return of the Settlement Fund or any portion thereof for any reason whatsoever, including without limitation, the number of Claim Forms submitted, the collective amount of Recognized Claims of Authorized Claimants, the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants from the Net Settlement Fund.

16. Notwithstanding the fact that the Effective Date of the Settlement has not yet occurred, Lead Counsel may pay from the Settlement Fund, without further approval from Apple or further order of the Court, all Notice and Administration Costs actually incurred and paid or payable. Such costs and expenses shall include, without limitation, the actual costs of printing and mailing the Settlement Notice, publishing the Summary Settlement Notice, reimbursements to nominee owners for forwarding the Settlement Notice to their beneficial owners, the administrative expenses incurred and fees charged by the Claims Administrator in connection with providing notice, administering the Settlement (including processing the submitted Claims), and the fees, if any, of the Escrow Agent. In the event that the Settlement is terminated pursuant to the terms of this Stipulation, all Notice and Administration Costs paid or incurred, including any related fees, shall not be returned or repaid to Apple, any of the other Apple Releasees, or any other person or entity who or which paid any portion of the Settlement Amount.

ATTORNEYS' FEES AND LITIGATION EXPENSES

17. Lead Counsel will apply to the Court for an award of attorneys' fees to Plaintiffs' Counsel to be paid from (and out of) the Settlement Fund. Lead Counsel also will apply to the Court for reimbursement of Litigation Expenses which were not previously applied for in connection with the Earlier Settlements, which may include a request pursuant to the PSLRA for reimbursement of the Class Representatives' reasonable costs and expenses directly related to their representation of the Class, to be paid from (and out of) the Settlement Fund. Lead Counsel's application for an award of attorneys' fees and/or Litigation Expenses is not the subject of any agreement between Apple and the Class Representatives other than what is set forth in this Stipulation.

18. Any attorneys' fees and Litigation Expenses that are awarded by the Court shall be paid to Lead Counsel immediately upon final approval of the Settlement by the Court and the Court's entry of the order awarding such fees and Litigation Expenses, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to Lead Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund, plus accrued interest at the same net rate as is earned by the Settlement Fund, if the Settlement is terminated pursuant to the terms of this Stipulation or if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the award of attorneys' fees and/or Litigation Expenses is reduced or reversed and such order reducing or reversing the award has become Final. Lead Counsel shall make the appropriate refund or repayment in full no later than twenty (20) business days after: (a) receiving from Apple's Counsel notice of the termination of the Settlement; or (b) any order reducing or reversing the award of attorneys' fees and/or Litigation Expenses has become Final. Any refunds

required pursuant to this section shall be the joint and several obligation of Lead Counsel, Plaintiffs' Counsel, and the Class Representatives that received fees or expenses to make appropriate refunds or repayments to the Settlement Fund. Each such Lead Counsel, Plaintiffs' Counsel, or Class Representatives receiving fees and expenses, as a condition of receiving such fees and expenses, on behalf of itself and each partner and/or shareholder of it, agrees that such person or entity and its partners, shareholders, and/or members are subject to the jurisdiction of the Court for the purpose of enforcing the provisions of this paragraph.

19. An award of attorneys' fees and/or Litigation Expenses is not a necessary term of this Stipulation, is not a condition of the Settlement embodied herein, and shall be considered separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. Neither the Class Representatives nor Lead Counsel may cancel or terminate the Settlement based on this Court's or any appellate court's ruling with respect to attorneys' fees and/or Litigation Expenses, and any appeal from any order awarding attorneys' fees and/or Litigation Expenses or any reversal or modification of any such order shall not affect or delay the finality of the Judgment.

20. Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel in a manner which it, in good faith, believes reflects the contributions of such counsel to the institution, prosecution, and settlement of the Action. The Apple Releasees shall have no responsibility for or liability whatsoever with respect to the allocation or award of attorneys' fees or Litigation Expenses.

21. The attorneys' fees and Litigation Expenses that are awarded to Plaintiffs' Counsel pursuant to this Stipulation shall be payable solely from the Settlement Fund. Apple shall have no

responsibility for, and no liability whatsoever with respect to, any payment of attorneys' fees and/or Litigation Expenses to Plaintiffs' Counsel pursuant to this Stipulation.

NOTICE AND SETTLEMENT ADMINISTRATION

22. Pursuant to the Court's Earlier Preliminary Approval Order, Lead Counsel was authorized to retain Garden City Group, LLC ("GCG") as the Claims Administrator to supervise and administer the notice procedure in connection with the Earlier Settlements and any other settlement or other recovery that may be achieved in this Action as well as the processing of Claims. Subsequent to the entry of the Earlier Preliminary Approval Order, Epiq Class Action and Claims Solutions, Inc. ("Epiq") acquired GCG and is acting as the Claims Administrator for the Earlier Settlements. The Claims Administrator has administered the Earlier Settlements and shall administer the Apple Settlement, including but not limited to the process of receiving, reviewing, and approving or denying Claims, under Lead Counsel's supervision and subject to the jurisdiction of the Court. Neither Apple, nor any other Apple Releasees, shall have any involvement in or any responsibility, authority, or liability whatsoever concerning the Claims Administrator, the administration of the Settlement, the Claims process, or disbursement of the Net Settlement Fund, and shall have no liability whatsoever to any person or entity, including, but not limited to, the Class Representatives, any other Class Members, or Lead Counsel in connection with the foregoing. Apple's Counsel shall cooperate in the administration of the Settlement to the extent reasonably necessary to effectuate its terms.

23. In accordance with the terms of the Preliminary Approval Order to be entered by the Court, Lead Counsel shall cause the Claims Administrator to mail the Settlement Notice to those members of the Class as have been and may be identified through reasonable effort. Lead Counsel shall also cause the Claims Administrator to have the Summary Settlement Notice

published in accordance with the terms of the Preliminary Approval Order to be entered by the Court.

24. The Claims Administrator has reviewed and processed all Claims received on or before November 6, 2019. On November 26, 2019, Lead Plaintiff filed a Motion for Approval of Distribution Plan for Individual Defendant and Underwriter Defendant Settlements which sets forth the Claims Administrator's administrative recommendations accepting and rejecting all Claims received on or before November 6, 2019.

25. All Claims received by the Claims Administrator after November 6, 2019, including all such Claims submitted with respect to this Settlement, shall be reviewed and processed by the Claims Administrator. The Claims Administrator shall receive such Claims and determine first, whether the Claim is a valid Claim, in whole or part, and second, each Authorized Claimant's *pro rata* share of the Net Settlement Fund as calculated pursuant to the Plan of Allocation previously approved by the Court.

26. The Claims of Apple Class Members will be calculated under the Court-approved Plan of Allocation in the same manner that the Claims of members of the Individual Defendant Settlement Class are calculated under the Plan of Allocation. The Plan of Allocation is not a necessary term of the Settlement or of this Stipulation.

27. Any Apple Class Member who or which has not or does not submit a valid Claim will not be entitled to receive any distribution from the Net Apple Settlement Fund, but will otherwise be bound by all of the terms of this Stipulation and the Apple Settlement, including the terms of the Judgment to be entered in the Action and the Releases provided for herein and therein, and will be permanently barred and enjoined from bringing any action, claim, or other proceeding

of any kind against the Apple Releasees with respect to the Released Plaintiffs' Claims in the event that the Effective Date occurs with respect to the Settlement.

28. Lead Counsel shall be responsible for supervising the administration of the Apple Settlement and the disbursement of the Net Apple Settlement Fund subject to Court approval. Lead Counsel shall have the right, but not the obligation, to waive what it deems to be formal or technical defects in any Claims submitted in the interests of achieving substantial justice. Neither Apple, nor any other Apple Releasees, shall be permitted to review, contest, or object to any Claim, or any decision of the Claims Administrator or Lead Counsel with respect to accepting or rejecting any Claim for payment. Notwithstanding the foregoing, upon request from Apple's Counsel or Apple, the Claims Administrator and/or Class Counsel shall provide Apple's Counsel or Apple with individual Claimant information for the limited purpose of determining whether any individual Apple Class Member was mailed a Settlement Notice, filed a Claim in this Action, or received a payment in this Action.

29. Each member of the Apple Class who or which submitted a valid Claim to the Claims Administrator on or before November 6, 2019 that is approved by the Court for payment from the net proceeds of the Individual Defendant Settlement shall be treated as an Authorized Claimant and will be eligible to share in the Net Apple Settlement Fund. For purposes of determining the extent, if any, to which an Apple Class Member who or which has or will submit a Claim after November 6, 2019 will be entitled to be treated as an Authorized Claimant, the following conditions shall apply:

(a) Each Apple Class Member, who or which did not previously submit a Claim, shall be required to submit a Claim Form supported by such documents as are designated therein,

including proof of the Claimant's loss, or such other documents or proof as the Claims Administrator or Lead Counsel, in their discretion, may deem acceptable;

(b) All Claims must be submitted by the date set by the Court in the Preliminary Approval Order and specified in the Settlement Notice. Any Apple Class Member who or which does not timely and validly submit a Claim or whose Claim is not otherwise approved by the Court shall be forever barred from receiving any distribution from the Net Apple Settlement Fund or payment pursuant to this Stipulation, but shall in all other respects be bound by all of the terms of this Stipulation and the Apple Settlement, including the terms of the Judgment and the Releases provided for herein and therein, and will be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against any Apple Releasees with respect to any Released Plaintiffs' Claim. Provided that it is mailed by the claim-submission deadline, a Claim Form shall be deemed to be submitted when postmarked, if received with a postmark indicated on the envelope and if mailed by first-class mail and addressed in accordance with the instructions thereon. In all other cases, the Claim Form shall be deemed to have been submitted on the date when actually received by the Claims Administrator;

(c) Each Claim shall be submitted to and reviewed by the Claims Administrator who shall determine in accordance with this Stipulation and the Plan of Allocation the extent, if any, to which each Claim shall be allowed, subject to review by the Court pursuant to subparagraph (e) below as necessary;

(d) Claims that do not meet the submission requirements may be rejected. Prior to rejecting a Claim in whole or in part, the Claims Administrator shall communicate with the Claimant in writing, to give the Claimant the chance to remedy any curable deficiencies in the Claim submitted. The Claims Administrator shall notify, in a timely fashion and in writing, all

Claimants whose Claim the Claims Administrator proposes to reject in whole or in part, setting forth the reasons therefor, and shall indicate in such notice that the Claimant whose Claim is to be rejected has the right to a review by the Court if the Claimant so desires and complies with the requirements of subparagraph (e) below; and

(e) If any Claimant whose Claim has been rejected in whole or in part desires to contest such rejection, the Claimant must, within twenty (20) days after the date of mailing of the notice required in subparagraph (d) above or a lesser time period if the Claim was untimely, serve upon the Claims Administrator a notice and statement of reasons indicating the Claimant's grounds for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If a dispute concerning a Claim cannot be otherwise resolved, Lead Counsel shall thereafter present the request for review to the Court.

30. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the Claimant's Claim, and the Claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, *provided, however*, that such investigation and discovery shall be limited to that Claimant's status as a Class Member and the validity and amount of the Claimant's Claim. No discovery shall be allowed on the merits of this Action or of the Settlement in connection with the processing of Claims.

31. Lead Counsel will apply to the Court, on notice to Apple's Counsel, for a Class Distribution Order: (a) approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the Claims submitted after November 6, 2019; (b) approving payment of any administration fees and expenses associated with the administration of the Settlement from the Escrow Account; and (c) if the Effective Date has occurred, directing payment of the Net Apple Settlement Fund to Authorized Claimants from the Escrow Account.

32. Payment pursuant to the Class Distribution Order shall be final and conclusive against all Apple Class Members. All Apple Class Members whose Claims are not approved by the Court for payment shall be barred from participating in distributions from the Net Apple Settlement Fund, but otherwise shall be bound by all of the terms of this Stipulation and the Apple Settlement, including the terms of the Judgment to be entered in this Action and the Releases provided for herein and therein, and will be permanently barred and enjoined from bringing any action against any and all Apple Releasees with respect to any and all of the Released Plaintiffs' Claims.

33. No person or entity shall have any claim against the Class Representatives, Plaintiffs' Counsel, the Claims Administrator or any other agent designated by Class Counsel, or the Apple Releasees and/or their respective counsel, arising from distributions made substantially in accordance with the Stipulation, the plan of allocation approved by the Court, or any order of the Court. The Class Representatives and Apple, and their respective counsel, and Lead Plaintiff's damages expert and all other Releasees shall have no liability whatsoever for the investment or distribution of the Apple Settlement Fund or the Net Apple Settlement Fund, the Plan of Allocation, or the determination, administration, calculation, or payment of any claim or nonperformance of the Claims Administrator, the payment or withholding of Taxes (including interest and penalties) or Tax Expenses owed by the Apple Settlement Fund, or any losses incurred in connection therewith.

34. All proceedings with respect to the administration, processing, and determination of Claims and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of Claims, shall be subject to the jurisdiction of the Court. All Apple Class Members, other Claimants, and the Settling Parties expressly waive trial

by jury (to the extent any such right may exist) and any right of appeal or review with respect to such determinations.

TERMS OF THE JUDGMENT

35. If the Settlement contemplated by this Stipulation is approved by the Court, Lead Counsel and Apple's Counsel shall request that the Court enter a Judgment, substantially in the form attached hereto as Exhibit B.

36. The Judgment shall contain a bar order ("Bar Order") substantially in the form set forth in Exhibit B that shall, upon the Effective Date, to the fullest extent provided by law, bar all future claims and claims over by any individual or entity against any of the Apple Releasees, and by the Apple Releasees against any individual or entity, for (a) contribution or indemnity (or any other claim or claim over, however denominated on whatsoever theory) arising out of or related to the claims or allegations asserted by the Class Representatives in the Action, or (b) any other claim of any type, whether arising under state, federal, common, or foreign law, for which the injury claimed is that person's or entity's actual or threatened liability to Plaintiffs and/or members of the Class; *provided, however*, the Bar Order shall not release any of the Excluded Plaintiffs' Claims. The Bar Order shall also provide that any final verdict or judgment that may be obtained by or on behalf of the Apple Class or an Apple Class Member against any individual or entity subject to the Bar Order shall be reduced by the greater of: (a) an amount that corresponds to the percentage of responsibility of Apple for common damages; or (b) the amount paid by or on behalf of Apple to the Apple Class or Apple Class Member for common damages. Inclusion of the Bar Order in the Judgment is material to the Parties' decision to participate in this Stipulation. If the Judgment fails to include the Bar Order, or if appellate review of the Bar Order is sought and on

such review the Bar Order is vacated, modified, or reversed, then the conditions of this Stipulation shall not be met.

**CONDITIONS OF SETTLEMENT AND EFFECT OF
DISAPPROVAL, CANCELLATION OR TERMINATION**

37. The Effective Date of the Settlement shall be deemed to occur on the occurrence or waiver of all of the following events:

(a) the Court has entered the Preliminary Approval Order, substantially in the form set forth in Exhibit A attached hereto, as required by ¶ 2 above;

(b) the Settlement Amount has been deposited into the Escrow Account in accordance with the provisions of ¶ 8 above;

(c) Apple has not exercised its option to terminate the Settlement pursuant ¶¶ 40 or 41 of this Stipulation;

(d) the Class Representatives have not exercised their option to terminate the Settlement pursuant to ¶¶ 9 or 40 of this Stipulation; and

(e) the Court has approved the Settlement as described herein, following notice to the Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure, and entered the Judgment and the Judgment has become Final.

38. Upon the occurrence of all of the events referenced in ¶ 37 above, any and all remaining interest or right of Apple in or to the Settlement Fund, if any, shall be absolutely and forever extinguished and the Releases herein shall be effective.

39. If (i) Apple exercises its right to terminate the Settlement as provided in this Stipulation; (ii) the Class Representatives exercise their right to terminate the Settlement as provided in this Stipulation; (iii) the Court disapproves the Settlement; or (iv) the Effective Date as to the Settlement otherwise fails to occur, then:

(a) the Settlement and the relevant portions of this Stipulation shall be canceled and terminated;

(b) the Settling Parties shall revert to their respective positions in the Action as of immediately prior to the execution of this Stipulation on January 10, 2020;

(c) the terms and provisions of this Stipulation, with the exception of this ¶ 39 and ¶¶ 16, 18, 42 and 62 of this Stipulation, shall have no further force and effect with respect to the Settling Parties and shall not be used in the Action or in any other proceeding for any purpose, and any Judgment or order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*; and

(d) within five (5) business days after joint written notification of termination is sent by Apple's Counsel and Lead Counsel to the Escrow Agent, the Settlement Fund (including accrued interest thereon and change in value as a result of the investment of the Settlement Fund, and any funds received by Lead Counsel consistent with ¶ 18 above), less any Notice and Administration Costs actually incurred, paid, or payable and less any Taxes and Tax Expenses paid, due, or owing, shall be returned by the Escrow Agent to Apple (or such other persons and entities who contributed to the payment of the Settlement Amount in the same proportions as their respective contributions) as instructed by Apple's Counsel. In the event that the funds received by Lead Counsel consistent with ¶ 18 above have not been returned to the Settlement Fund within the five (5) business days specified in this paragraph, those funds shall be returned by the Escrow Agent to Apple (or such other persons or entities as Apple's Counsel may direct) immediately upon their deposit into the Escrow Account consistent with ¶ 18 above.

40. It is further stipulated and agreed that the Class Representatives, on the one hand, and Apple, on the other hand, shall each have the right to terminate the Settlement and this

Stipulation, by providing written notice of their election to do so (“Termination Notice”) to the other Settling Parties within thirty (30) days of: (a) the Court’s final refusal to enter the Preliminary Approval Order in any material respect; (b) the Court’s final refusal to approve the Settlement or any material part thereof; (c) the Court’s final refusal to enter the Judgment in any material respect as to the Settlement; or (d) the date upon which the Judgment is modified or reversed in any material respect by the United States Court of Appeals for the First Circuit or the United States Supreme Court, and the provisions of ¶ 39 above shall apply. However, any decision or proceeding, whether in this Court or any appellate court, with respect to an application for attorneys’ fees or reimbursement of Litigation Expenses or with respect to any plan of allocation shall not be considered material to the Settlement, shall not affect the finality of the Judgment and shall not be grounds for termination of the Settlement.

41. In addition to the grounds set forth in ¶ 40 above, Apple shall have the unilateral right to terminate the Settlement in the event that Class Members timely and validly requesting exclusion from the Class meet the conditions set forth in Apple’s confidential supplemental agreement with the Class Representatives (the “Supplemental Agreement”), in accordance with the terms of that agreement. The Supplemental Agreement, which is being executed concurrently herewith, shall not be filed with the Court and its terms shall not be disclosed in any other manner (other than the statements herein and in the Settlement Notice, to the extent necessary, or as otherwise provided in the Supplemental Agreement) unless and until the Court otherwise directs or a dispute arises between the Class Representatives and Apple concerning its interpretation or application, in which event the Settling Parties shall submit the Supplemental Agreement to the Court in camera and request that the Court afford it confidential treatment.

NO ADMISSION OF WRONGDOING

42. Neither this Stipulation (whether or not consummated), including the exhibits hereto and the Plan of Allocation approved by the Court, the negotiations leading to the execution of this Stipulation, nor any proceedings taken pursuant to or in connection with this Stipulation, and/or approval of the Settlement (including any arguments proffered in connection therewith):

(a) shall be offered against any of the Apple Releasees as evidence of, or construed as, or deemed to be evidence of, any presumption, concession, or admission by any of the Apple Releasees with respect to the truth of any fact alleged by the Class Representatives or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Apple Releasees or in any way referred to for any other reason as against any of the Apple Releasees, in any civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;

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

(c) shall be construed against any of the Releasees as an admission, concession, or presumption that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; *provided, however*, that if this Stipulation is approved by the Court, the Settling Parties and the Releasees and their respective counsel may refer to it to effectuate the protections from liability granted hereunder or otherwise to enforce the terms of the Settlement.

MISCELLANEOUS PROVISIONS

43. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, in the event that there exists a conflict or inconsistency between the terms of this Stipulation and the terms of any exhibit attached hereto, the terms of the Stipulation shall prevail.

44. In the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money to the Settlement Fund or any portion thereof by or on behalf of Apple to be a preference, voidable transfer, fraudulent transfer, or similar transaction and any portion thereof is required to be returned and is in fact returned, and such amount that is in fact returned is not promptly deposited into the Settlement Fund by others, then, at the election of the Class Representatives, the Settling Parties shall jointly move the Court to vacate and set aside the Releases given and the Judgment entered pursuant to this Stipulation in which event the Releases and Judgment shall be null and void, and the Settling Parties shall revert to their respective positions in the Action as of immediately prior to the execution of this Stipulation and any cash amounts in the Settlement Fund (less any Taxes and Tax Expenses paid, due or owing with respect to the Settlement Fund and less any Notice and Administration Costs actually incurred, paid or payable) shall be returned as provided in ¶ 39 above.

45. The Settling Parties intend this Stipulation and the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by the Class Representatives and any other Class Members against the Apple Releasees with respect to the Released Plaintiffs' Claims. Accordingly, the Class Representatives and their counsel and Apple and its counsel agree not to assert in any forum that this Action was brought by the Class Representatives or defended by Apple in bad faith or without a reasonable basis. No Settling Party shall assert any claims of any violation of Rule 11 of the Federal Rules of Civil Procedure relating to the institution, prosecution, defense, or settlement of this Action. The Settling Parties agree that the amounts paid and the other terms of the Settlement were negotiated at arm's length and in good faith by the Settling Parties and reflect the Settlement that was reached voluntarily after extensive negotiations and consultation with experienced legal counsel, who were fully competent to assess the strengths and weaknesses of their respective clients' claims or defenses.

46. While retaining their right to deny that the claims asserted in the Action were meritorious, Apple and its counsel, in any statement made to any media representative (whether or not for attribution) will not assert that the Action was commenced or prosecuted in bad faith, nor will they deny that the Action was commenced and prosecuted in good faith and is being settled voluntarily after consultation with competent legal counsel. In all events, the Class Representatives and their counsel and Apple and its counsel shall not make any accusations of wrongful or actionable conduct by any Settling Party concerning the prosecution, defense, and resolution of the Action, and shall not state that the Settlement constitutes an admission of any claim or defense alleged.

47. The terms of the Settlement, as reflected in this Stipulation, may not be modified or amended, nor may any of its provisions be waived except by a writing signed on behalf of both by the Class Representatives and Apple (or its successor-in-interest).

48. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

49. Pending approval of the Court of this Stipulation and its exhibits, all proceedings in this Action shall be stayed with respect to Apple and all members of the Class shall be barred and enjoined from prosecuting any of the Released Plaintiffs' Claims against any of the Apple Releasees.

50. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and Litigation Expenses to Plaintiffs' Counsel and enforcing the terms of this Stipulation, the Plan of Allocation, and the distribution of the Net Settlement Fund to Class Members.

51. The waiver by one Settling Party of any breach of this Stipulation by any other Settling Party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

52. This Stipulation and its exhibits and the Supplemental Agreement constitute the entire agreement by the Class Representatives and Apple concerning the Settlement and this Stipulation and its exhibits. All Settling Parties acknowledge that no other agreements, representations, warranties, or inducements have been made by any Settling Party concerning this Stipulation, its exhibits, or the Supplemental Agreement other than those contained and memorialized in such documents.

53. This Stipulation may be executed in one or more counterparts, including by signature transmitted via facsimile, or by a .pdf or .tif image of the signature transmitted via email. All executed counterparts and each of them shall be deemed to be one and the same instrument.

54. This Stipulation shall be binding upon and inure to the benefit of the successors and assigns of the Settling Parties, including any and all Releasees and any corporation, partnership, or other entity into or with which any Settling Party may merge, consolidate, or reorganize.

55. The construction, interpretation, operation, effect, and validity of this Stipulation, the Supplemental Agreement, and all documents necessary to effectuate it shall be governed by the internal laws of the State of New Hampshire without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

56. Any action arising under or to enforce this Stipulation or any portion thereof, shall be commenced and maintained only in the Court.

57. This Stipulation shall not be construed more strictly against one Settling Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Settling Parties, it being recognized that it is the result of arm's-length negotiations between the Settling Parties and all Settling Parties have contributed substantially and materially to the preparation of this Stipulation.

58. All counsel and any other person executing this Stipulation and any of the exhibits hereto, or any related Settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

59. Lead Counsel and Apple's Counsel agree to cooperate fully with one another in seeking Court approval of the Preliminary Approval Order and the Settlement, as embodied in this

Stipulation, and to use best efforts to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement.

60. If any Settling Party is required to give notice to another Settling Party under this Stipulation, such notice shall be in writing and shall be deemed to have been duly given upon receipt of hand delivery or facsimile or email transmission, with confirmation of receipt. Notice shall be provided as follows:

If to the Class Representatives or
Lead Counsel:

Bernstein Litowitz Berger & Grossmann LLP
Attn: Lauren A. Ormsbee, Esq.
1251 Avenue of the Americas
New York, New York 10020
Telephone: (212) 554-1400
Facsimile: (212) 554-1444
Email: lauren@blbglaw.com

If to Apple or Apple's Counsel:

Latham & Watkins LLP
Attn: Jason C. Hegt, Esq.
885 Third Avenue
New York, NY 10022
Telephone: (212) 906-1200
Facsimile: (212) 751-4864
Email: jason.hegt@lw.com

61. Except as otherwise provided herein, each Settling Party shall bear its own costs.

62. Whether or not the Stipulation is approved by the Court and whether or not the Stipulation is consummated, or the Effective Date occurs, the Settling Parties and their counsel shall use their best efforts to keep all negotiations, discussions, acts performed, agreements, drafts, documents signed, and proceedings in connection with the Stipulation confidential.

63. All agreements made and orders entered during the course of this Action relating to the confidentiality of information shall survive this Settlement.


64. No opinion or advice concerning the tax consequences of the proposed Settlement to individual Class Members is being given or will be given by the Settling Parties or their counsel;

nor is any representation or warranty in this regard made by virtue of this Stipulation. Each Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Class Member.

65. Apple shall issue notice of the Settlement contemplated by the Class Action Fairness Act of 2005 ("CAFA") within ten (10) calendar days of the Class Representatives filing this Stipulation with the Court. All costs related to provision of notice under CAFA shall be borne by Apple and shall not be paid out of the Settlement Fund.


IN WITNESS WHEREOF, the Settling Parties have caused this Stipulation to be executed, by their duly authorized attorneys, as of January 10, 2020.

**BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP**

By: 
John C. Browne (admitted *pro hac vice*)
Lauren A. Ormsbee (admitted *pro hac vice*)
1251 Avenue of the Americas
New York, New York 10020
Telephone: (212) 554-1400
Facsimile: (212) 554-1444
johnb@blbglaw.com
lauren@blbglaw.com

***Class Counsel for Class Representatives
and the Class***

LATHAM & WATKINS LLP

By: 
Miles N. Ruthberg (admitted *pro hac vice*)
Jason C. Hegt (admitted *pro hac vice*)

885 Third Avenue
New York, NY 10022-4834
212-906-1200
miles.ruthberg@lw.com
jason.hegt@lw.com

Matthew Rawlinson (admitted *pro hac vice*)
Hilary H. Mattis (admitted *pro hac vice*)
140 Scott Drive
Menlo Park, CA 94025
650-328-4600
matt.rawlinson@lw.com
hilary.mattis@lw.com

Counsel for Defendant Apple Inc.