

**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

**ORDER PRELIMINARILY APPROVING
SETTLEMENTS AND PROVIDING FOR NOTICE**

WHEREAS, a consolidated class action is pending in this Court entitled *Levy v. Gutierrez, et al.*, Case No. 1:14-cv-00443-JL (the “Action”);

WHEREAS, (a) Lead Plaintiff Douglas Kurz (“Lead Plaintiff”) and named plaintiffs Strategic Master Fund (Cayman) Limited (“Strategic Master Fund”), and Highmark Limited, in respect of its Segregated Account Highmark Fixed Income 2 (“Highmark Limited,” and together with Strategic Master Fund, the “Securities Act Plaintiffs”), on behalf of themselves and the Individual Defendant Settlement Class (defined below), and (b) defendants Thomas Gutierrez, Richard Gaynor, Kanwardev Raja Singh Bal, Hoil Kim, Daniel W. Squiller, J. Michal Conaway, Kathleen A. Cote, Ernest L. Godshalk, Matthew E. Massengill, Mary Petrovich, Robert E. Switz,

Noel G. Watson, and Thomas Wroe, Jr. (collectively, the “Individual Defendants”) have determined to settle all claims asserted against the Individual Defendants in this Action with prejudice on the terms and conditions set forth in the Stipulation and Agreement of Settlement With Individual Defendants dated January 26, 2018 (the “Individual Defendant Stipulation”), subject to approval of this Court (the “Individual Defendant Settlement”).

WHEREAS, (a) Lead Plaintiff and the Securities Act Plaintiffs, on behalf of themselves and the Underwriter Defendant Settlement Class (defined below); and (b) defendants Morgan Stanley & Co. LLC, Goldman, Sachs & Co. LLC (f/k/a Goldman, Sachs & Co.), and Canaccord Genuity Inc. (collectively, the “Underwriter Defendants”) have determined to settle all claims asserted against the Underwriter Defendants in this Action with prejudice on the terms and conditions set forth in the Stipulation and Agreement of Settlement With Settling Underwriter Defendants dated August 18, 2017, and the Supplement thereto dated January 26, 2018 (the “Underwriter Defendant Stipulation”), subject to approval of this Court (the “Underwriter Defendant Settlement”);

WHEREAS, for the purposes of this Order, (a) the Individual Defendant Stipulation and the Underwriter Defendant Stipulation shall be collectively referred to as the “Stipulations”; (b) the Individual Defendant Settlement and the Underwriter Defendant Settlement shall be collectively referred to as the “Settlements”; (c) the Individual Defendants and the Underwriter Defendants shall be collectively referred to as the “Settling Defendants”; (d) the Individual Defendant Settlement Class and the Underwriter Defendant Settlement Class shall be collectively referred to as the “Settlement Classes”; (e) members of the Individual Defendant Settlement Class shall be referred to as Individual Defendant Settlement Class Members; members of the Underwriter Defendant Settlement Class shall be referred to as Underwriter

Defendant Settlements Class Members, and Individual Defendant Settlement Class Members and Underwriter Defendant Settlement Class Members shall be collectively referred to as “Settlement Class Members”; (f) the Settling Defendants, Lead Plaintiff, and the Securities Act Plaintiffs, shall be collectively referred to as the “Settling Parties”; and (g) unless otherwise defined herein, all other capitalized words contained herein shall have the same meanings as set forth in the respective Stipulations;

WHEREAS, Lead Plaintiff has made an application, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for an order preliminarily approving the Settlements in accordance with the respective Stipulations, certifying the Settlement Classes for purposes of the respective Settlements only, and allowing notice to Settlement Class Members as more fully described herein; and

WHEREAS, the Court has read and considered: (a) Lead Plaintiff’s motion for preliminary approval of the Settlements, and the papers filed and arguments made in connection therewith; and (b) the Stipulations and the respective exhibits attached thereto.

NOW THEREFORE, IT IS HEREBY ORDERED:

1. **Certification of the Individual Defendant Settlement Class**

(a) **Class Certification for Settlement Purposes** – Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Court certifies, solely for purposes of effectuating the proposed Individual Defendant Settlement, a class consisting of all persons and entities who or which from November 5, 2013 through 9:40 a.m. Eastern Standard Time on October 6, 2014, inclusive (the “Class Period”) purchased or otherwise acquired publicly traded GT Advanced Technologies Inc. (“GTAT”) common stock (“GTAT Common Stock”) and/or GTAT 3.00% Convertible Senior Notes Due 2020 (“GTAT Senior Notes”), purchased or

otherwise acquired publicly traded call options on GTAT common stock (“GTAT Call Options”), or sold (wrote) publicly traded put options on GTAT common stock (“GTAT Put Options”), and were damaged thereby (the “Individual Defendant Settlement Class”). Excluded from the Individual Defendant Settlement Class are the Individual Defendants, the Underwriter Defendants, and defendant Apple, Inc. (“Apple,” and together with the Individual Defendants and Underwriter Defendants, the “Defendants”); GTAT; the affiliates and subsidiaries of the Underwriter Defendants, GTAT, and Apple; the Officers, directors, and partners of the Underwriter Defendants, GTAT, and Apple during the Class Period; members of the Immediate Family of any excluded person; the heirs, successors, and assigns of any excluded person or entity; and any entity in which any excluded person or entity has or had during the Class Period a controlling interest; *provided, however*, that any Investment Vehicle (as defined in the Individual Defendant Stipulation) shall not be deemed an excluded person or entity by definition. Also excluded from the Individual Defendant Settlement Class are any persons and entities who or which exclude themselves by submitting a request for exclusion that is accepted by the Court.

(b) **Class Findings** – Solely for purposes of the proposed Individual Defendant Settlement, the Court finds that each element required for certification of the Individual Defendant Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure has been met: (a) the members of the Individual Defendant Settlement Class are so numerous that their joinder in the Action would be impracticable; (b) there are questions of law and fact common to the Individual Defendant Settlement Class which predominate over any individual questions; (c) the claims of Lead Plaintiff and the Securities Act Plaintiffs in the Action are typical of the claims of the Individual Defendant Settlement Class; (d) Lead Plaintiff, the Securities Act Plaintiffs, and Lead Counsel have and will fairly and adequately represent and

protect the interests of the Individual Defendant Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the Action.

(c) The Court hereby finds and concludes that pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Individual Defendant Settlement only, Plaintiffs Douglas Kurz, Strategic Master Fund, and Highmark Limited are adequate class representatives and certifies them as Class Representatives for the Individual Defendant Settlement Class. The Court also appoints Lead Counsel as Class Counsel for the Individual Defendant Settlement Class, pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

2. **Certification of the Underwriter Defendant Settlement Class**

(a) **Class Certification for Settlement Purposes** – Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Court certifies, solely for purposes of effectuating the proposed Underwriter Defendant Settlement, a class consisting of all persons and entities who or which from November 5, 2013 through 9:40 a.m. Eastern Standard Time on October 6, 2014, inclusive (the “Class Period”) purchased or otherwise acquired (i) GTAT Senior Notes pursuant or traceable to GTAT’s December 2013 registration statement and prospectus supplement for the GTAT Senior Notes’ offering (the “Senior Notes Offering”) and/or (ii) shares of GTAT Common Stock pursuant or traceable to GTAT’s December 2013 registration statement and prospectus supplement for the secondary offering of GTAT common stock (the “Common Stock Secondary Offering”) (the “Underwriter Defendant Settlement Class”). Excluded from the Underwriter Defendant Settlement Class are Defendants; GTAT; the affiliates and subsidiaries of the Underwriter Defendants, GTAT, and Apple; the Officers, directors, and partners of the Underwriter Defendants, GTAT, and Apple during the Class Period; members of the Immediate Family of any excluded person; the heirs, successors, and

assigns of any excluded person or entity; and any entity in which any excluded person or entity has or had during the Class Period a controlling interest; *provided, however*, that any Investment Vehicle (as defined in the Underwriter Defendant Stipulation) shall not be deemed an excluded person or entity by definition. Also excluded from the Underwriter Defendant Settlement Class are any persons and entities who or which exclude themselves by submitting a request for exclusion that is accepted by the Court after notice to the Settling Underwriter Defendants.

(b) **Class Findings** – Solely for purposes of the proposed Underwriter Defendant Settlement, the Court finds that each element required for certification of the Underwriter Defendant Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure has been met: (a) the members of the Underwriter Defendant Settlement Class are so numerous that their joinder in the Action would be impracticable; (b) there are questions of law and fact common to the Underwriter Defendant Settlement Class which predominate over any individual questions; (c) the claims of Lead Plaintiff and the Securities Act Plaintiffs in the Action are typical of the claims of the Underwriter Defendant Settlement Class; (d) Lead Plaintiff, the Securities Act Plaintiffs, and Lead Counsel have and will fairly and adequately represent and protect the interests of the Underwriter Defendant Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the Action.

(c) The Court hereby finds and concludes that pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Underwriter Defendant Settlement only, Plaintiffs Douglas Kurz, Strategic Master Fund, and Highmark Limited are adequate class representatives and certifies them as Class Representatives for the Underwriter Defendant Settlement Class. The Court also appoints Lead Counsel as Class Counsel for the Underwriter Defendant Settlement Class, pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

3. **Preliminary Approval of the Individual Defendant Settlement** – The Court hereby preliminarily approves the Individual Defendant Settlement, as embodied in the Individual Defendant Stipulation, as being fair, reasonable, and adequate to the Individual Defendant Settlement Class, subject to further consideration at the Settlement Hearing to be conducted as described below.

4. **Preliminary Approval of the Underwriter Defendant Settlement** – The Court hereby preliminarily approves the Underwriter Defendant Settlement, as embodied in the Underwriter Defendant Stipulation, as being fair, reasonable, and adequate to the Underwriter Defendant Settlement Class, subject to further consideration at the Settlement Hearing to be conducted as described below.

5. **Settlement Hearing** – The Court will hold a settlement hearing (the “Settlement Hearing”) on _____, 2018 at __:__ .m. in Courtroom 2 of the United States District Court for the District of New Hampshire, 55 Pleasant Street, Concord, NH 03301, for the following purposes: (a) to determine whether the proposed Settlements on the terms and conditions provided for in the respective Stipulations are fair, reasonable and adequate to the respective Settlement Classes, and should be approved by the Court; (b) to determine whether the Judgments substantially in the form attached as Exhibit B to each of the Stipulations should be entered dismissing the Action with prejudice against the respective Settling Defendants; (c) to determine whether the proposed Plan of Allocation for the proceeds of the Settlements is fair and reasonable and should be approved by the Court; (d) to determine whether the motion by Lead Counsel for an award of attorneys’ fees and reimbursement of Litigation Expenses should be approved; and (e) to consider any other matters that may properly be brought before the Court in

connection with the Settlements. Notice of the Settlements and the Settlement Hearing shall be given to Settlement Class Members as set forth in paragraph 7 of this Order.

6. The Court may adjourn the Settlement Hearing without further notice to Settlement Class Members, and may approve the proposed Settlements with such modifications as the affected Settling Parties may agree to, if appropriate, without further notice to Settlement Class Members. The Court further reserves the right to (a) enter the Judgment approving the Individual Defendant Settlement and dismissing the Complaint on the merits and with prejudice as against the Individual Defendants, and (b) enter the Judgment approving the Underwriter Defendant Settlement and dismissing the Complaint on the merits and with prejudice as against the Settling Underwriter Defendants, regardless of whether it has approved the Plan of Allocation or awarded attorneys' fees and expenses.

7. **Retention of Claims Administrator and Manner of Giving Notice** – Lead Counsel is hereby authorized to retain Garden City Group, LLC (“GCG” or the “Claims Administrator”) to supervise and administer the notice procedure in connection with the proposed Settlements and any other settlement or other recovery that may be achieved in this Action as well as the processing of Claims as more fully set forth below. Notice of the Settlements and the Settlement Hearing shall be given by Lead Counsel as follows:

(a) not later than twenty (20) business days after the date of entry of this Order (the “Notice Date”), the Claims Administrator shall cause a copy of the Notice of (I) Pendency of Class Action and Certification of Settlement Classes; (II) Proposed Settlements with Individual Defendants and Underwriter Defendants; (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 (the “Notice”), and the Proof of

Claim and Release Form, substantially in the form attached hereto as Exhibit 2 (the “Claim Form,” and together with the Notice, the “Notice Packet”), to be mailed by first-class mail to brokers and other nominees who, during the Class Period, may have purchased or otherwise acquired GTAT Common Stock and/or GTAT Senior Notes, purchased or otherwise acquired GTAT Call Options, or sold (wrote) publicly traded GTAT Put Options for the benefit of persons or entities other than themselves;

(b) contemporaneously with the mailing of the Notice Packet, the Claims Administrator shall cause a copy of the Notice and Claim Form to be posted on a website to be developed for the Settlements, from which copies of the Notice and Claim Form can be downloaded;

(c) not later than ten (10) business days after the Notice Date, the Claims Administrator shall cause the Summary Notice of (I) Pendency of Class Action and Certification of Settlement Classes; (II) Proposed Settlements with Individual Defendants and Underwriter Defendants; (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 3 (the “Summary Notice”), to be published once in *The Wall Street Journal* and to be transmitted once over the *PR Newswire*; and

(d) not later than seven (7) calendar days prior to the Settlement Hearing, Lead Counsel shall serve on counsel for the Individual Defendants and Underwriter Defendants and file with the Court proof, by affidavit or declaration, of such mailing and publication.

8. **Approval of Form and Content of Notice** – The Court: (a) approves, as to form and content, the Notice, the Claim Form, and the Summary Notice, attached hereto as Exhibits 1, 2, and 3, respectively; and (b) finds that the mailing and distribution of the Notice and Claim

Form and the publication of the Summary Notice in the manner and form set forth in paragraph 7 of this Order: (i) is the best notice practicable under the circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and the certification of the Settlement Classes, of the effect of the proposed Settlements (including the Releases to be provided thereunder), of Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, of their right to object to the Settlements, the Plan of Allocation, and/or Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses, of their right to exclude themselves from the Settlement Classes, and of their right to appear at the Settlement Hearing; (iii) constitutes due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlements; and (iv) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §§ 77z-1, 78u-4, as amended, and all other applicable law and rules. The date and time of the Settlement Hearing shall be included in the Notice and Summary Notice before they are mailed and published, respectively.

9. **Nominee Procedures** – Brokers and other nominees who, during the Class Period, may have purchased or otherwise acquired GTAT Common Stock and/or GTAT Senior Notes, purchased or otherwise acquired GTAT Call Options, or sold (wrote) publicly traded GTAT Put Options shall (a) within fourteen (14) calendar days of receipt of the Notice, request from the Claims Administrator sufficient copies of the Notice to forward to all such beneficial owners and within fourteen (14) calendar days of receipt of those Notices forward them to all such beneficial owners; or (b) within fourteen (14) calendar days of receipt of the Notice, send a list of the names and addresses of all such beneficial owners to the Claims Administrator in

which event the Claims Administrator shall promptly mail the Notice to such individuals or entities. Nominees who elect to send the Notice to their beneficial owners shall send a statement to the Claims Administrator confirming that the mailing was made and shall retain their mailing records for use in connection with any further notices that may be provided in the Action. Upon full compliance with this Order, such nominees may seek reimbursement of their reasonable expenses actually incurred in complying with this Order by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Such properly documented expenses incurred by nominees in compliance with the terms of this Order shall be paid from the Settlement Funds, with any disputes as to the reasonableness or documentation of expenses incurred subject to review by the Court.

10. **Participation in the Settlements** – Individual Defendant Settlement Class Members who or which wish to participate in the Individual Defendant Settlement and to be eligible to receive a distribution from the Individual Defendant Net Settlement Fund and Underwriter Defendant Settlement Class Members who or which wish to participate in the Underwriter Defendant Settlement and to be eligible to receive a distribution from the Underwriter Defendant Net Settlement Fund must complete and submit a Claim Form in accordance with the instructions contained therein. Unless the Court orders otherwise, all Claim Forms must be postmarked no later than one hundred twenty (120) calendar days after the Notice Date. Notwithstanding the foregoing, Lead Counsel may, at its discretion, accept for processing late Claims provided such acceptance does not delay the distribution of the Net Settlement Funds to Authorized Claimants. By submitting a Claim, a person or entity shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her, or its Claim and the subject matter of the applicable Settlements.

11. Each Claim Form submitted must satisfy the following conditions: (a) it must be properly completed, signed, and submitted in a timely manner in accordance with the provisions of the preceding paragraph; (b) it must be accompanied by adequate supporting documentation for the transactions and holdings reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional and holding information found in a broker confirmation slip or account statement, or such other documentation as is deemed adequate by Lead Counsel or the Claims Administrator; (c) if the person executing the Claim Form is acting in a representative capacity, a certification of his, her or its current authority to act on behalf of the Settlement Class Member must be included in the Claim Form to the satisfaction of Lead Counsel or the Claims Administrator; and (d) the Claim Form must be complete and contain no material deletions or modifications of any of the printed matter contained therein and must be signed under penalty of perjury.

12. Any Individual Defendant Settlement Class Member who or which does not timely and validly submit a Claim or whose Claim is not otherwise approved by the Court: (a) shall be deemed to have waived his, her or its right to share in the Individual Defendant Net Settlement Fund; (b) shall be forever barred from participating in any distributions therefrom; (c) shall be bound by the provisions of the Individual Defendant Stipulation and Individual Defendant Settlement and all proceedings, determinations, orders, and judgments in the Action relating thereto, including, without limitation, the Judgment entered with respect to the Individual Defendant Settlement and the Releases provided for therein, whether favorable or unfavorable to the Individual Defendant Settlement Class; and (d) shall be forever barred from commencing, maintaining, or prosecuting any of the Individual Defendant Released Plaintiffs' Claims against each and all of the Individual Defendant Releasees, as more fully described in the

Individual Defendant Stipulation and the Notice. Any Underwriter Defendant Settlement Class Member that does not timely and validly submit a Claim Form or whose Claim is not otherwise approved by the Court: (a) shall be deemed to have waived his, her or its right to share in the Underwriter Defendant Net Settlement Fund; (b) shall be forever barred from participating in any distributions therefrom; (c) shall be bound by the provisions of the Underwriter Defendant Stipulation and Underwriter Defendant Settlement and all proceedings, determinations, orders, and judgments in the Action relating thereto, including, without limitation, the Judgment entered with respect to the Underwriter Defendant Settlement and the Releases provided for therein, whether favorable or unfavorable to the Underwriter Defendant Settlement Class; and (d) shall be forever barred from commencing, maintaining, or prosecuting any of the Underwriter Defendant Released Plaintiffs' Claims against each and all of the Settling Underwriter Defendants' Releasees, as more fully described in the Underwriter Defendant Stipulation and the Notice. Notwithstanding the foregoing, late Claim Forms may be accepted for processing as set forth in paragraph 10 above.

13. **Exclusion From the Settlement Classes** – Any putative Individual Defendant Settlement Class Member who wishes to exclude himself, herself, or itself from the Individual Defendant Settlement Class and/or any putative Underwriter Defendant Settlement Class Member who wishes to exclude himself, herself, or itself from the Underwriter Defendant Settlement Class must request exclusion in writing within the time and in the manner set forth in the Notice, which shall provide that: (a) any such request for exclusion from the respective Settlement Classes must be mailed or delivered such that it is received no later than twenty-one (21) calendar days prior to the Settlement Hearing, to: GTAT Securities Litigation, EXCLUSIONS, c/o GCG, P.O. Box 10463, Dublin, OH 43017-4063; and (b) each request for

exclusion must (i) state the name, address and telephone number of the person or entity requesting exclusion, and in the case of entities the name and telephone number of the appropriate contact person; (ii) with respect to putative members of the Individual Defendant Settlement Class who wish to request exclusion from that class, state that such person or entity “requests exclusion from the Individual Defendant Settlement Class in *Levy v. Gutierrez, et al.*, Case No. 1:14-cv-00443-JL (GTAT Securities Litigation)” and, with respect to putative members of the Underwriter Defendant Settlement Class who wish to request exclusion from that class, state that such person or entity “requests exclusion from the Underwriter Defendant Settlement Class in *Levy v. Gutierrez, et al.*, Case No. 1:14-cv-00443-JL (GTAT Securities Litigation)”; (iii) state the amount of each GTAT Security (in terms of number of shares of GTAT Common Stock, GTAT Call Options, GTAT Put Options, and/or face value of GTAT Senior Notes) that the person or entity requesting exclusion purchased/acquired and/or sold during the Class Period (*i.e.*, from November 5, 2013 through 9:40 a.m. Eastern Standard Time on October 6, 2014, inclusive), as well as the dates and prices of each such purchase/acquisition and sale; (iv) with respect to any Class Period purchases of GTAT Common Stock and/or GTAT Senior Notes, identify any shares of GTAT Common Stock purchased in or traceable to the Common Stock Secondary Offering and/or any GTAT Senior Notes purchased in or traceable to the Senior Notes Offering; and (v) be signed by the person or entity requesting exclusion or an authorized representative. A request for exclusion shall not be effective unless it provides all the required information and is received within the time stated above, or is otherwise accepted by the Court. Every putative Settlement Class Member shall have the right to request exclusion from both of the Settlement Classes, as well as the right to exclude themselves from one Settlement Class while remaining a member of the other Settlement Class.

14. Any person or entity who or which timely and validly requests exclusion from the Individual Defendant Settlement Class in compliance with the terms stated in this Order and is excluded from the Individual Defendant Settlement Class shall not be a member of the Individual Defendant Settlement Class, shall not be bound by the terms of the Individual Defendant Settlement or any orders or judgments in the Action relating to the Individual Defendant Settlement, and shall not receive any payment out of the Individual Defendant Settlement Net Settlement Fund. Any person or entity who or which timely and validly requests exclusion from the Underwriter Defendant Settlement Class in compliance with the terms stated in this Order and is excluded from the Underwriter Defendant Settlement Class shall not be a member of the Underwriter Defendant Settlement Class, shall not be bound by the terms of the Underwriter Defendant Settlement or any orders or judgments in the Action relating to the Underwriter Defendant Settlement, and shall not receive any payment out of the Underwriter Defendant Net Settlement Fund.

15. Any Individual Defendant Settlement Class Member who or which does not timely and validly request exclusion from the Individual Defendant Settlement Class in the manner stated in this Order: (a) shall be deemed to have waived his, her, or its right to be excluded from the Individual Defendant Settlement Class; (b) shall be forever barred from requesting exclusion from the Individual Defendant Settlement Class in this or any other proceeding; (c) shall be bound by the provisions of the Individual Defendant Stipulation, the Individual Defendant Settlement, and all proceedings, determinations, orders, and judgments in the Action relating to the Individual Defendant Settlement, including, but not limited to, the Judgment entered with respect to the Individual Defendant Settlement and the Releases provided for therein whether favorable or unfavorable to the Individual Defendant Settlement Class; and

(d) shall be barred from commencing, maintaining, or prosecuting any of the Individual Defendant Released Plaintiffs' Claims against each and all of the Individual Defendant Releasees, as more fully described in the Individual Defendant Stipulation and the Notice. Any Underwriter Defendant Settlement Class Member who or which does not timely and validly request exclusion from the Underwriter Defendant Settlement Class in the manner stated in this Order: (a) shall be deemed to have waived his, her, or its right to be excluded from the Underwriter Defendant Settlement Class; (b) shall be forever barred from requesting exclusion from the Underwriter Defendant Settlement Class in this or any other proceeding; (c) shall be bound by the provisions of the Underwriter Defendant Stipulation, the Underwriter Defendant Settlement, and all proceedings, determinations, orders, and judgments in the Action relating to the Underwriter Defendant Settlement, including, but not limited to, the Judgment entered with respect to the Underwriter Defendant Settlement and the Releases provided for therein whether favorable or unfavorable to the Underwriter Defendant Settlement Class; and (d) shall be barred from commencing, maintaining, or prosecuting any of the Underwriter Defendant Released Plaintiffs' Claims against each and all of the Settling Underwriter Defendants' Releasees, as more fully described in the Underwriter Defendant Stipulation and the Notice.

16. **Appearance and Objections at Settlement Hearing** – Any Settlement Class Member who or which does not request exclusion from the Settlement Class(es) that apply to him, her, or it may enter an appearance in the Action, at his, her, or its own expense, individually or through counsel of his, her, or its own choice, by filing with the Clerk of Court and delivering a notice of appearance: (a) to both Lead Counsel and Individual Defendants' Counsel if the purpose of the appearance is to object to the proposed Individual Defendant Settlement; (b) to both Lead Counsel and Underwriter Defendants' Counsel if the purpose of the appearance is to

object to the proposed Underwriter Defendant Settlement; and (c) to Lead Counsel if the purpose of the appearance is to object to the proposed Plan of Allocation and/or Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses. Any notice of appearance must be filed with the Clerk of the Court and delivered to the required counsel at the addresses set forth in paragraph 17 below, such that it is received no later than twenty-one (21) calendar days prior to the Settlement Hearing, or as the Court may otherwise direct. Any Settlement Class Member who or which does not enter an appearance will be represented by Lead Counsel.

17. Any member of the Individual Defendant Settlement Class who or which does not request exclusion from the Individual Defendant Settlement Class may file a written objection to the proposed Individual Defendant Settlement and show cause, if he, she, or it has any cause, why the proposed Individual Defendant Settlement should not be approved; any member of the Underwriter Defendant Settlement Class who or which does not request exclusion from the Underwriter Defendant Settlement Class may file a written objection to the proposed Underwriter Defendant Settlement and show cause, if he, she, or it has any cause, why the proposed Underwriter Defendant Settlement should not be approved; and any member of the Individual Settlement Class and/or the Underwriter Defendant Settlement Class may object to the proposed Plan of Allocation and/or Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses and show cause, if he, she, or it has any cause, why the proposed Plan of Allocation and/or Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses should not be approved; *provided, however*, that no Settlement Class Member shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlements that apply to him, her, or it, the proposed Plan of

Allocation, and/or Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, unless that person or entity has (a) filed a written objection with the Court and served copies of such objection on Lead Counsel, (b) if the objection is to the Individual Defendant Settlement, on Individual Defendants' Counsel, and (c) if the objection is to the Underwriter Defendant Settlement, on Underwriter Defendants' Counsel, at the addresses set forth below such that they are received no later than twenty-one (21) calendar days prior to the Settlement Hearing.

Lead Plaintiff's Counsel

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Individual Defendants' Counsel

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Settling Underwriter Defendants' Counsel

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1285 Avenue of the Americas
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18. Any objections, filings, and other submissions by the objecting Settlement Class Member: (a) must state the name, address, and telephone number of the person or entity objecting and must be signed by the objector; (b) must contain a statement of the Settlement Class Member's objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Settlement Class Member wishes to bring to the Court's attention; and (c) must include documents sufficient to prove Settlement Class membership, including the amount of each GTAT Security (in terms of number of shares of GTAT Common Stock, GTAT Call Options, GTAT Put Options, and/or face value of GTAT Senior Notes) that the person or entity requesting exclusion purchased/acquired and/or sold during the Class Period (*i.e.*, from November 5, 2013 through 9:40 a.m. Eastern Standard Time on October 6, 2014,

inclusive), as well as the dates and prices of each such purchase/acquisition and sale, and with respect to members of the Underwriter Defendant Settlement Class, identification of those shares of GTAT Common Stock purchased in or traceable to the Common Stock Secondary Offering and/or those GTAT Senior Notes purchased in or traceable to the Senior Notes Offering. Objectors who enter an appearance and desire to present evidence at the Settlement Hearing in support of their objection must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and any exhibits they intend to introduce into evidence at the hearing.

19. Any Settlement Class Member who or which does not make his, her, or its objection in the manner provided herein shall be deemed to have waived his, her, or its right to object to any aspect of the proposed Settlements that apply to him, her, or it, the proposed Plan of Allocation, and/or Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses and shall be forever barred and foreclosed from objecting to the fairness, reasonableness, or adequacy of the applicable proposed Settlements, the proposed Plan of Allocation, and/or the requested attorneys' fees and Litigation Expenses, or from otherwise being heard concerning the applicable proposed Settlements, the Plan of Allocation, and/or the requested attorneys' fees and Litigation Expenses in this or any other proceeding.

20. **Stay and Temporary Injunction** – Until otherwise ordered by the Court, the Court stays all proceedings in the Action between the respective Settling Parties other than proceedings necessary to carry out or enforce the terms and conditions of the respective Stipulations. Pending final determination of whether the respective Settlements should be approved, the Court hereby: (a) bars and enjoins Lead Plaintiff, the Securities Act Plaintiffs, and all other members of the Individual Defendant Settlement Class, from commencing, maintaining,

or prosecuting any and all of the Released Plaintiffs' Claims, as defined in the Individual Defendant Stipulation, against each and all of the Individual Defendant Releasees, as defined in the Individual Defendant Stipulation; and (b) bars and enjoins Lead Plaintiff, the Securities Act Plaintiffs, and all other members of the Underwriter Defendant Settlement Class, from commencing, maintaining, or prosecuting any and all of the Released Plaintiffs' Claims, as defined in the Underwriter Defendant Stipulation, against each and all of the Settling Underwriter Defendants' Releasees, as defined in the Underwriter Defendant Stipulation.

21. **Settlement Administration Fees and Expenses** – All reasonable costs incurred in identifying Settlement Class Members and notifying them of the Settlements as well as in administering the Settlements shall be paid as set forth in the Stipulations without further order of the Court.

22. **Settlement Funds** – The contents of the Settlement Funds held by Valley National Bank (which the Court approves as the Escrow Agent), shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as they shall be distributed pursuant to the respective Stipulations and/or further order(s) of the Court. No person other than Individual Defendant Settlement Class Members and Plaintiffs' counsel shall have any right to any portion of or distribution of the Individual Defendant Settlement Fund and no person other than Underwriter Defendant Settlement Class Members and Plaintiffs' counsel shall have any right to any portion of or distribution of the Underwriter Defendant Settlement Fund, unless otherwise ordered by the Court or otherwise provided in the respective Stipulations.

23. **Taxes** – Lead Counsel is authorized and directed to prepare any tax returns and any other tax reporting form for or in respect to the Settlement Funds, to pay from the Settlement

Funds any Taxes owed with respect to the Settlement Funds, and to otherwise perform all obligations with respect to Taxes and any reporting or filings in respect thereof without further order of the Court in a manner consistent with the provisions of the respective Stipulations.

24. **Termination of Settlement** – If either of the Settlements is terminated pursuant to the terms of the respective Stipulations or is not approved, or the Effective Date otherwise fails to occur as to either of the Settlements, this Order shall become null and void as to that particular Settlement and, shall be without prejudice to the rights of Plaintiffs, the Settlement Class Members and the affected Settling Defendants, all of whom shall revert to their respective positions in the Action as provided for in the relevant Stipulation(s). If one of the Settlements is terminated (or is not approved or the Effective Date otherwise fails to occur as to that Settlement) but not the other, this Order shall remain in full force as to that other surviving Settlement, which shall be consummated according to the terms set forth herein.

25. **Use of this Order** – (a) With respect to the Individual Defendant Settlement, neither this Order, the Term Sheet (as defined in the Individual Defendant Stipulation), the MOU (as defined in the Underwriter Defendant Stipulation), the Stipulations (whether or not consummated), including the exhibits thereto and the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the Court), the negotiations leading to the execution of the Term Sheet, the MOU, and the Stipulations, nor any proceedings taken pursuant to or in connection with the Term Sheet, the MOU, the Stipulations, and/or approval of the Settlements (including any arguments proffered in connection therewith): (i) shall be offered against any of the Individual Defendant Releasees as evidence of, or construed as, or deemed to be evidence of, any presumption, concession, or admission by any of the Individual Defendant Releasees with respect to the truth of any fact alleged by Lead Plaintiff or the validity of any

claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation; (ii) shall be offered against any of the Individual Defendant Releasees as evidence of, or construed as, or deemed to be evidence of any liability, negligence, fault, or other wrongdoing of any kind of any of the Individual Defendant Releasees or in any way referred to for any other reason as against any of the Individual Defendant Releasees, in any civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Individual Defendant Stipulation; (iii) shall be offered against any of the Plaintiff Releasees, as evidence of, or construed as, or deemed to be evidence of, any presumption, concession, or admission by any of the Plaintiff Releasees that any of their claims are without merit, that any of the Individual Defendant Releasees had meritorious defenses, or that damages recoverable under the Complaint would not have exceeded the Individual Defendant Settlement Amount or with respect to any liability, negligence, fault, or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Plaintiff Releasees, in any civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Individual Defendant Stipulation; or (iv) shall be construed against any of the Releasees as an admission, concession, or presumption that the consideration to be given under the Individual Defendant Stipulation represents the amount which could be or would have been recovered after trial; *provided, however*, that if the Individual Defendant 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 under thereunder or otherwise to enforce the terms of the Individual Defendant Settlement; and (b) with respect to the Underwriter Defendant Settlement, neither this Order, the Term Sheet, the MOU, the Stipulations (whether or not consummated),

including the exhibits thereto and the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the Court), the negotiations leading to the execution of the Term Sheet, MOU, and the Stipulations, nor any proceedings taken pursuant to or in connection with the Term Sheet, MOU, the Stipulations, and/or approval of the Settlements (including any arguments proffered in connection therewith): (i) shall be offered against any of the Settling Underwriter Defendants' Releasees as evidence of, or construed as, or deemed to be evidence of, any presumption, concession, or admission by any of the Settling Underwriter Defendants' Releasees with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation; (ii) shall be offered against any of the Underwriter Defendants' Releasees as evidence of, or construed as, or deemed to be evidence of any liability, negligence, fault, or other wrongdoing of any kind of any of the Settling Underwriter Defendants' Releasees or in any way referred to for any other reason as against any of the Settling Underwriter Defendants' Releasees, in any civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; (iii) shall be offered against any of the Plaintiffs' Releasees, as evidence of, or construed as, or deemed to be evidence of, any presumption, concession, or admission by any of the Plaintiffs' Releasees that any of their claims are without merit, that any of the Settling Underwriter Defendants' Releasees had meritorious defenses, or that damages recoverable under the Complaint would not have exceeded the Underwriter Defendant Settlement Amount or with respect to any liability, negligence, fault, or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Plaintiffs' Releasees, in any civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to

effectuate the provisions of the Underwriter Defendant Stipulation; or (iv) shall be construed against any of the Releasees as an admission, concession, or presumption that the consideration to be given under the Stipulation represents the amount which could be or would have been recovered after trial; *provided, however*, that if the Underwriter Defendant 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 under thereunder or otherwise to enforce the terms of the Underwriter Defendant Settlement.

26. **Supporting Papers** – Lead Counsel shall file and serve the opening papers in support of the proposed Settlements, the proposed Plan of Allocation, and Lead Counsel’s motion for an award of attorneys’ fees and reimbursement of Litigation Expenses no later than thirty-five (35) calendar days prior to the Settlement Hearing; and reply papers, if any, shall be filed and served no later than seven (7) calendar days prior to the Settlement Hearing.

27. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlements.

SO ORDERED this 13th day of February, 2018.



The Honorable Joseph N. Laplante
United States District Judge