

**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 SETTLING UNDERWRITER DEFENDANTS**

This Stipulation and Agreement of Settlement With Settling Underwriter Defendants, dated as of August 18, 2017 (the “Stipulation”) is entered into between (a) lead plaintiff Douglas Kurz (“Lead Plaintiff”) and plaintiffs Strategic Master Fund (Cayman) Limited and Highmark Limited (collectively, the “Securities Act Plaintiffs,” and together with Lead Plaintiff, “Plaintiffs”), on behalf of themselves and the 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 “Settling Underwriter Defendants,” and together with Plaintiffs, the “Settling Parties”), and embodies the terms and conditions of the settlement of the above-captioned action (the “Action”).<sup>1</sup> Subject to the approval of the Court and the terms and

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

conditions expressly provided herein, this Stipulation is intended to fully, finally, and forever compromise, settle, release, resolve, and dismiss with prejudice all claims asserted in the Action against the Settling 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 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 the Securities Act Plaintiffs as additional named plaintiffs. The Complaint asserts (a) claims under § 11 of the Securities Act of 1933 (the “Securities Act”) against the Underwriter Defendants, the Director Defendants, and certain of the Officer Defendants; (b) claims under § 12(a)(2) of the Securities Act against the Underwriter Defendants; (c) claims under § 15 of the Securities Act against the Director Defendants, certain of the Officer Defendants, and Apple; (d) claims under § 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”), and Rule 10b-5 promulgated thereunder, against certain of the Officer

Defendants; and (e) claims under § 20(a) of the Exchange Act against the Officer Defendants and Apple.

D. On October 7, 2015, the Underwriter Defendants (and the other Defendants) filed and served their 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, the Underwriter Defendants (and the other Defendants) filed and served their reply papers; and, on March 22, 2016, Lead Plaintiff filed his sur-reply.

E. On March 17, 2017, following extensive, arm's-length negotiations, Plaintiffs and the Settling Underwriter Defendants entered into a Memorandum of Understanding (the "MOU") memorializing the Settling Parties' agreement in principle to settle the Action as against the Settling Underwriter Defendants for \$9,700,000 in cash. Pursuant to the MOU, the agreement to settle was conditioned on Plaintiffs confirming the fairness, reasonableness, and adequacy of the Settlement based on due-diligence discovery to be provided by Defendants, which would include the production of certain documents and information regarding the allegations and claims asserted against the Settling Underwriter Defendants in the Complaint. Following execution of the MOU, Plaintiffs and the Settling Underwriter Defendants informed the Court that they had reached a settlement and requested that the Court refrain from ruling on the Settling Underwriter Defendants' motion to dismiss while the parties engaged in due-diligence discovery.

F. On May 4, 2017, the Court entered its Memorandum Opinion denying in part and granting in part the Non-Settling Defendants' motions to dismiss, and denying the Underwriter Defendants' motion to dismiss without prejudice to their ability to re-submit the motion if necessary.

G. This Stipulation (together with the exhibits hereto) reflects the final and binding agreement between the Settling Parties.

H. Based upon their investigation, prosecution, and settlement of the case, and further confirmation through due-diligence discovery, Plaintiffs and Lead Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable, and adequate to Plaintiffs and the Settlement Class, and in their best interests. Based on Plaintiffs' direct oversight of the prosecution of this matter and with the advice of their counsel, each of the Plaintiffs has agreed to settle and release the claims raised in the Action against the Settling Underwriter Defendants pursuant to the terms and provisions of this Stipulation, after considering, among other things: (a) the substantial financial benefit that the Settlement Class will receive under the proposed Settlement; and (b) the significant risks and costs of continued litigation and trial.

I. This Stipulation constitutes a compromise of matters that are in dispute between the Settling Parties. The Settling Underwriter Defendants are entering into this Stipulation solely to eliminate the uncertainty, burden, and expense of further protracted litigation. Each of the Settling Underwriter Defendants denies any wrongdoing, and this Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any of the Settling Underwriter Defendants with respect to any claim or allegation of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that the Settling Underwriter Defendants have, or could have, asserted. The Settling Underwriter Defendants expressly deny that Plaintiffs have asserted any valid claims as to any of them, and expressly deny any and all allegations of fault, liability, wrongdoing, or damages whatsoever. Similarly, this Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any Plaintiff of any infirmity in any of the claims asserted in the Action, or an admission or

concession that any of the Settling Underwriter Defendants' 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 the Settling Underwriter Defendants in good faith, and that the Action as to the Settling Underwriter Defendants is being voluntarily settled with the advice of counsel.

NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and among Plaintiffs (individually and on behalf of the Settlement Class) and the Settling Underwriter Defendants, 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 Settling Underwriter Defendants' Releasees and all Released Settling Underwriter Defendants' Claims as against the Plaintiffs' Releasees shall be settled and released, 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) "Authorized Claimant" means a Settlement Class Member who or which submits a Proof of Claim Form to the Claims Administrator that is approved by the Court for payment from the Net Settlement Fund.

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

(e) “Claim Form” or “Proof of Claim Form” means the form, substantially in the form to be approved by the Court and disseminated at a future date to Settlement Class Members, that a Claimant will be required to complete and submit to the Claims Administrator in order to be eligible to share in a distribution of the Net Settlement Fund (and, if applicable, the net proceeds of any other recoveries obtained in the Action).

(f) “Claimant” means a person or entity who or which submits a Claim Form to the Claims Administrator seeking to be eligible to share in the Net Settlement Fund (and, if applicable, the net proceeds of any other recoveries obtained in the Action).

(g) “Claims Administrator” means the firm retained by Lead Plaintiff and Lead Counsel, subject to approval of the Court, to provide all notices approved by the Court to potential Settlement Class Members and to administer settlements or other recoveries achieved in the Action.

(h) “Class Distribution Order” means an order entered by the Court authorizing and directing that the Net Settlement Fund (and, if applicable, the net proceeds of any other recoveries obtained in the Action) be distributed, in whole or in part, to Authorized Claimants.

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

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

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

(l) “Director Defendants” means 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.

(m) “Effective Date” with respect to the Settlement means the first date by which all of the events and conditions specified in ¶ 36 of this Stipulation have been met and have occurred or have been waived.

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

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

(p) “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.

(q) “Excluded Plaintiffs’ Claims” means (i) any claims asserted, or which may be asserted, in the Action against any of the Non-Settling Defendants or any person or entity with whom or which Lead Plaintiff has a tolling agreement; (ii) any claims of any person or entity who or which submits a request for exclusion from the Settlement Class that is accepted by the Court after notice to the Settling Underwriter Defendants; and (iii) any claims relating to the enforcement of the Settlement.

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

(s) “Final,” with respect to the Judgment, or any other court order, means: (i) 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 (ii) if there is an appeal from the judgment or order, (a) the date of final dismissal of all such appeals, or the final dismissal of any proceeding on certiorari or otherwise, or (b) the date the judgment or order is finally affirmed on an 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.

(t) “GTAT” means GT Advanced Technologies Inc.

(u) “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.

(v) “Individual Defendants” means the Officer Defendants and the Director Defendants.

(w) “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 Settlement Class any of the Underwriter Defendants themselves.

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

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

(z) “Lead Plaintiff” means Douglas Kurz.

(aa) “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 Settlement Class), for which Lead Counsel intends to apply to the Court for reimbursement from the Settlement Fund.

(bb) “Local Counsel” means Orr & Reno.

(cc) “Net Settlement Fund” means the Settlement Fund less: (i) any Taxes; (ii) any Notice and Administration Costs (to be paid in accordance with ¶ 17 below); (iii) any Litigation Expenses awarded by the Court; and (iv) any attorneys’ fees awarded by the Court.

(dd) “Non-Settling Defendants” means the Individual Defendants and Apple, as well as any Settling Underwriter Defendant which is converted into a Non-Settling Defendant pursuant to the terms of ¶¶ 10 or 44 below.

(ee) “Notice” means the Notice of (I) Certification of Settlement Class; (II) Proposed Settlement With Settling Underwriter Defendants; and (III) Settlement Hearing, substantially in the form attached hereto as Exhibit 1 to Exhibit A, which is to be mailed to Settlement Class Members.

(ff) “Notice and Administration Costs” means the reasonable costs, fees, and expenses that are incurred by the Claims Administrator and/or Lead Counsel, to be paid in accordance with ¶ 17 below, in connection with: (i) providing notices to the Settlement Class (including, without limitation, mailing of the Notice to Settlement Class Members and publication of the Summary Notice); and (ii) administering the 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.

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

(hh) “Officer Defendants” means defendants Thomas Gutierrez, Richard Gaynor, Raja Singh Bal, Hoil Kim, and Daniel W. Squiller.

(ii) “Plaintiffs” means Lead Plaintiff and the Securities Act Plaintiffs.

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

(kk) “Plaintiffs’ Releasees” means (i) Plaintiffs, their respective attorneys, and all other Settlement Class Members; (ii) the current and former parents, affiliates, subsidiaries, successors, predecessors, assigns, and assignees of each of the foregoing in (i); and (iii) the current and former officers, directors, agents, employees, attorneys, and advisors of the each of the foregoing in (i) and (ii), in their capacities as such.

(ll) “Plan of Allocation” means the plan that Lead Plaintiff will submit to the Court at a later date and upon notice to the Settlement Class to be utilized for determining the allocation of the Net Settlement Fund.

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

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

(oo) “Released Claims” means all Released Plaintiffs’ Claims and Released Settling Underwriter Defendants’ Claims.

(pp) “Released Plaintiffs’ 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 were or could have been asserted in the Action arising out of or relating to (i) the purchase, acquisition, sale, or holding of GTAT Senior Notes or GTAT publicly traded common stock by Plaintiffs and/or Settlement Class Members during the Class Period, and (ii) the facts, matters, allegations, transactions, events, disclosures, statements, acts, or omissions involved, set forth, or referred to in the Complaint. Released Plaintiffs’ Claims do not cover or include any Excluded Plaintiffs’ Claims.

(qq) “Released Settling Underwriter Defendants’ 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 the Settling Underwriter Defendants. Released Settling Underwriter Defendants’ Claims do not include any Excluded Settling Underwriter Defendants’ Claims.

(rr) “Releasee(s)” means each and any of the Settling Underwriter Defendants’ Releasees and each and any of the Plaintiffs’ Releasees.

(ss) “Releases” means the releases set forth in ¶¶ 5-6 of this Stipulation.

(tt) “Securities Act Plaintiffs” means named plaintiffs Strategic Master Fund (Cayman) Limited and Highmark Limited.

(uu) “Securities Act Plaintiffs’ Counsel” means the law firm of Berger & Montague, P.C.

(vv) “Settlement” means the resolution of the Action as against the Settling Underwriter Defendants on the terms and conditions set forth in this Stipulation.

(ww) “Settlement Amount” means \$9,700,000 in cash.

(xx) “Settlement Class” or “Underwriter Settlement Class” means all persons and entities who or which from November 5, 2013 through 9:40 a.m. Eastern Standard Time on October 6, 2014, inclusive (the “Class Period”) purchased or otherwise acquired (i) GTAT 3.00% Convertible Senior Notes Due 2020 (the “GTAT Senior Notes”) pursuant or traceable to GTAT’s December 2013 registration statement and prospectus supplement for the GTAT Senior Notes’ offering (the “Senior Notes Offering”) and/or (ii) shares of GTAT common stock pursuant or traceable to GTAT’s December 2013 registration statement and prospectus supplement for the secondary offering of GTAT common stock (the “Common Stock Secondary Offering”). Excluded from the 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 herein) shall not be deemed an excluded person or entity by definition. Also excluded from the Settlement Class

are any persons and entities who or which exclude themselves from the Settlement Class by submitting a request for exclusion that is accepted by the Court after notice to the Settling Underwriter Defendants.

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

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

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

(bbb) “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 Settlement.

(ccc) “Settling Parties” means the Settling Underwriter Defendants and Plaintiffs, on behalf of themselves and the Settlement Class.

(ddd) “Settling Underwriter Defendants” means defendants Morgan Stanley & Co. LLC, Goldman, Sachs & Co. LLC (f/k/a Goldman, Sachs & Co.), and Canaccord Genuity Inc., except to the extent any of the foregoing is converted into a Non-Settling Defendant pursuant to the terms of ¶¶ 10 or 44 below.

(eee) “Settling Underwriter Defendants’ Counsel” means the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP.

(fff) “Settling Underwriter Defendants’ Releasees” means (i) the Settling Underwriter Defendants; (ii) the current and former parents, affiliates, subsidiaries, successors, predecessors, assigns, and assignees of each of the Settling Underwriter Defendants; and (iii) the current and former officers, directors, agents, employees, attorneys, and advisors of each of the

foregoing in (i) and (ii), in their capacities as such. Notwithstanding the foregoing, the Settling Underwriter Defendants' Releasees do not include any of the Non-Settling Defendants.

(ggg) "Summary Notice" means the Summary Notice of (I) Certification of Settlement Class; (II) Proposed Settlement With Settling Underwriter Defendants; and (III) Settlement Hearing, substantially in the form attached hereto as Exhibit 2 to Exhibit A, to be published as set forth in the Preliminary Approval Order.

(hhh) "Taxes" means: (i) all federal, state, and/or local taxes of any kind (including any interest or penalties thereon) on any income earned by the Settlement Fund; (ii) 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 accountants); and (iii) all taxes imposed on payments by the Settlement Fund, including withholding taxes.

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

(jjj) "Unknown Claims" means any Released Plaintiffs' Claims which Plaintiffs or any other Settlement 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 Settling Underwriter Defendants' Claims which any Settling Underwriter Defendant does not know or suspect to exist in his, her, or 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 the Settling Underwriter Defendants shall expressly waive, and each of the other Settlement 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 which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Plaintiffs and the Settling Underwriter Defendants acknowledge, and each of the other Settlement 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.

### **CLASS CERTIFICATION**

2. Solely for purposes of the Settlement and for no other purpose, the Settling Underwriter Defendants stipulate and agree to: (a) certification of the Action as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the Settlement Class; (b) certification of Plaintiffs as Class Representatives for the Settlement Class; and (c) appointment of Lead Counsel as Class Counsel for the Settlement Class pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

### **PRELIMINARY APPROVAL OF SETTLEMENT**

3. Promptly upon execution of this Stipulation, Lead Plaintiff will move for preliminary approval of the Settlement, certification of the Settlement Class for settlement purposes only, and the scheduling of a hearing for consideration of final approval of the Settlement, which motion shall be unopposed by the Settling Underwriter Defendants. Concurrently with the motion for preliminary approval, Lead Plaintiff shall apply to the Court for, and the Settling Defendants shall agree to, entry of the Preliminary Approval Order, substantially in the form attached hereto as Exhibit A.

**RELEASE OF CLAIMS**

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

5. Pursuant to the Judgment, without further action by anyone, upon the Effective Date of the Settlement, Plaintiffs and each of the other Settlement Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiffs' Claim against the Settling Underwriter Defendants and the other Settling Underwriter Defendants' Releasees, and shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs' Claims against any of the Settling Underwriter Defendants' Releasees. This Release shall not apply to any Excluded Plaintiffs' Claim.

6. Pursuant to the Judgment, without further action by anyone, upon the Effective Date of the Settlement, the Settling Underwriter Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Settling Underwriter Defendants' Claim against Plaintiffs and the other Plaintiffs' Releasees, and shall forever be barred and enjoined from prosecuting any or all of the Released Settling Underwriter Defendants' Claims against any of the Plaintiffs' Releasees. This Release shall not apply to any Excluded Settling Underwriter Defendants' Claim.

7. Notwithstanding ¶¶ 5-6 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 settlement of the Released Plaintiffs' Claims against the Settling Underwriter Defendants and the other Settling Underwriter Defendants' Releasees, the Settling Underwriter Defendants shall pay or cause to be paid the Settlement Amount into the Escrow Account no later than fifteen (15) business days after the later of: (a) the date of entry by the Court of an order preliminarily approving this Settlement; or (b) Settling Underwriter Defendants' Counsel's receipt from Lead Counsel of the information necessary to effectuate a transfer of funds to the Escrow Account, including wiring instructions that include the bank name and ABA routing number, account name, and account number, and a signed W-9 reflecting a valid taxpayer identification number for the Qualified Settlement Fund in which the Settlement Amount is to be deposited.

9. The Settlement Amount is to be paid by the Settling Underwriter Defendants, severally and not jointly, pursuant to such confidential allocation as the Settling Underwriter Defendants alone determine. No Settling Underwriter Defendant shall be liable for more than its agreed share of the Settlement Amount. In the event that one or more of the Settling Underwriter Defendants fails to pay its agreed share of the Settlement Amount, the remaining Settling Underwriter Defendants shall have the right, but not the obligation, to fund the shortfall.

10. Should the Settlement Amount not be fully and timely paid, (a) Lead Plaintiff shall have an absolute right to terminate the Settlement, in which case the provisions of ¶ 38 below shall apply shall apply; or (b) Lead Plaintiff may in his sole discretion elect to go forward with the Settlement, with each non-paying Settling Underwriter Defendant immediately, without further

action or notice, becoming a Non-Settling Defendant. Any such non-paying Settling Underwriter Defendant will no longer be included within the defined term “Settling Underwriter Defendants” as used in this Stipulation and the exhibits hereto; and Plaintiffs and such Non-Settling Defendant(s) will revert to their respective positions in the Action as of immediately prior to the execution of the MOU on March 17, 2017. To facilitate Lead Plaintiff’s election to proceed with the Settlement, the Settling Underwriter Defendants shall, within two (2) business days after the last day for funding the Settlement Amount, identify for Lead Counsel any Settling Underwriter Defendant(s) which did not pay its/their respective share(s) and their allocated amount(s).

11. Plaintiffs recognize that the Settling Underwriter Defendants will not participate in any ongoing discovery in the Action or appear at any depositions of parties or non-parties taken in the Action, *provided, however*, that Lead Plaintiff reserves the right to subpoena the Settling Underwriter Defendants in connection with the prosecution of the claims against the Non-Settling Defendants. Plaintiffs agree that they will not assert that the Settling Underwriter Defendants have waived any rights they have with respect to such ongoing discovery in the event that the Settlement is terminated pursuant to the terms of this Stipulation.

#### **USE OF SETTLEMENT FUND**

12. The Settlement Fund shall be used to pay: (a) any Taxes; (b) any Notice and Administration Costs, to be paid in accordance with ¶ 17 below; (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 ¶¶ 21-33 below.

13. 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.

14. 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 owed with respect to the Settlement Fund. The Settling Underwriter Defendants' Releasees shall not have any liability or responsibility for any such Taxes. Upon written request, the Settling Underwriter Defendants 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.

15. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid by the Escrow Agent pursuant to the disbursement instructions to be set forth in the Escrow Agreement, and without further order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with the previous paragraph and in all events shall reflect that all Taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein. The Settling Underwriter Defendants’ Releasees shall have no responsibility or liability for the acts or omissions of Lead Counsel or its agents with respect to the payment of Taxes, as described herein.

16. The Settlement is not a claims-made settlement. Upon the occurrence of the Effective Date, no Settling Underwriter Defendant, Settling Underwriter Defendants’ Releasee, or any other person or entity who or which 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 (as will be defined in a subsequent notice that includes the Plan of Allocation) of Authorized Claimants, the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants from the Net Settlement Fund.

17. Prior to the Effective Date, Lead Counsel may pay up to \$350,000 from the Settlement Fund, without further approval from the Settling Underwriter Defendants or further

order of the Court, for 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 Notice, publishing the Summary Notice, reimbursements to nominee owners for forwarding the 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 the Settling Underwriter Defendants, any of the other Settling Underwriter Defendants' Releasees, or any other person or entity who or which paid any portion of the Settlement Amount. In the event that Lead Plaintiff reaches a settlement with any of the Non-Settling Defendants and notice of that settlement is disseminated simultaneously with notice of this Settlement, all Notice and Administration Costs paid or incurred, including any related fees, shall be fairly allocated among the Settlement Fund and the settlement proceeds recovered from such Non-Settling Defendants.

#### **ATTORNEYS' FEES AND LITIGATION EXPENSES**

18. Lead Counsel will apply to the Court for a collective 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 may include a request for reimbursement of Plaintiffs' reasonable costs and expenses directly related to their representation of the Settlement 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 the Settling Underwriter Defendants and Plaintiffs other than what is set forth in this Stipulation. The Settling Underwriter Defendants shall have no responsibility for or liability

whatsoever with respect to the further notice sent to members of the Settlement Class in connection with Lead Counsel's application for an award of attorneys' fees and/or Litigation Expenses.

19. Any attorneys' fees and Litigation Expenses that are awarded by the Court shall be paid to Lead Counsel immediately upon award, 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 thirty (30) days after: (a) receiving from Settling Underwriter Defendants' 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. An award of attorneys' fees and/or Litigation Expenses is not a necessary term of this Stipulation and is not a condition of the Settlement embodied herein. Neither Plaintiffs nor Plaintiffs' 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.

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 Settling Underwriter Defendants' Releasees shall have no responsibility for or liability whatsoever with respect to the allocation or

award of attorneys' fees or Litigation Expenses. The attorneys' fees and Litigation Expenses that are awarded to Plaintiffs' Counsel shall be payable solely from the Escrow Account.

**NOTICE AND SETTLEMENT ADMINISTRATION**

21. As part of the Preliminary Approval Order, Lead Plaintiff shall seek appointment of a Claims Administrator. The Claims Administrator shall administer the 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. None of the Settling Underwriter Defendants, nor any other Settling Underwriter Defendants' Releasees, shall have any involvement in or any responsibility, authority, or liability whatsoever for the selection of the Claims Administrator, the Plan of Allocation, 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, Plaintiffs, any other Settlement Class Members, or Lead Counsel in connection with the foregoing. Settling Underwriter Defendants' Counsel shall cooperate in the administration of the Settlement to the extent reasonably necessary to effectuate its terms.

22. 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 Notice to those members of the Settlement Class as may be identified through reasonable effort. Lead Counsel shall also cause the Claims Administrator to have the Summary Notice published in accordance with the terms of the Preliminary Approval Order to be entered by the Court.

23. After a plan of allocation is approved by the Court, the Claims Administrator shall receive Claims and determine first, whether the Claim is a valid Claim, in whole or part, and second, each Authorized Claimant's share of the Net Settlement Fund as calculated pursuant to

the Plan of Allocation to be proposed by Lead Plaintiff or such other plan of allocation as the Court approves.

24. The Plan of Allocation to be proposed by Lead Plaintiff is not a necessary term of the Settlement or of this Stipulation and it is not a condition of the Settlement or of this Stipulation that any particular plan of allocation be approved by the Court. Lead Plaintiff and Lead Counsel may not cancel or terminate the Settlement (or this Stipulation) based on the Court's or any appellate court's ruling with respect to the Plan of Allocation or any other plan of allocation in this Action. The Settling Underwriter Defendants and the other Settling Underwriter Defendants' Releasees shall not object in any way to the Plan of Allocation that will be proposed by Lead Plaintiff or to any other plan of allocation in this Action.

25. Any Settlement Class Member who or which does not submit a valid Claim Form will not be entitled to receive any distribution from the Net Settlement Fund, but will otherwise be bound by all of the terms of this Stipulation and 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 Settling Underwriter Defendants' Releasees with respect to the Released Plaintiffs' Claims in the event that the Effective Date occurs with respect to the Settlement.

26. Any Settlement Class Member who or which does not timely and validly request exclusion from the Settlement 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 Settlement Class; (b) shall be forever barred from requesting exclusion from the Settlement Class in this or any other proceeding; (c) shall be bound by the provisions of this Stipulation, the Settlement, and all proceedings, determinations, orders, and judgments in the Action relating to the Settlement,

including, but not limited to, the Judgment, and the Releases provided for therein whether favorable or unfavorable to the Settlement Class; and (d) shall be barred and enjoined from commencing, maintaining, or prosecuting any of the Released Plaintiffs' Claims against any of the Settling Underwriter Defendants' Releasees.

27. Lead Counsel shall be responsible for supervising the administration of the Settlement and the disbursement of the Net Settlement Fund subject to Court approval. No Settling Underwriter Defendant, or any other Settling Underwriter Defendants' Releasees, shall be permitted to review, contest, or object to any Claim Form, or any decision of the Claims Administrator or Lead Counsel with respect to accepting or rejecting any Claim for payment by a Settlement Class Member. Lead Counsel shall have the right, but not the obligation, to waive what it deems to be formal or technical defects in any Claim Forms submitted in the interests of achieving substantial justice.

28. For purposes of determining the extent, if any, to which a Settlement Class Member shall be entitled to be treated as an Authorized Claimant, the following conditions shall apply:

(a) Each Settlement Class Member 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 Claim Forms must be submitted by the date to be set by the Court. Any Settlement Class Member who or which fails to submit a Claim Form by such date shall be forever barred from receiving any distribution from the Net Settlement Fund or payment pursuant to this Stipulation (unless by Order of the Court such Settlement Class Member's Claim Form is accepted), but shall in all other respects be bound by all of the terms of this Stipulation and the

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 Settling Underwriter Defendants' 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 Form 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) Claim Forms 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 Form 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, 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.

29. 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 Settlement 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 Claim Forms.

30. Lead Counsel will apply to the Court, on notice to Settling Underwriter Defendants' Counsel, for a Class Distribution Order: (a) approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the Claims submitted by or on behalf of persons and entities seeking to share in the distribution of the Net Settlement Fund; (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 Settlement Fund to Authorized Claimants who or which are eligible to receive a distribution from that fund from the Escrow Account.

31. Payment pursuant to the Class Distribution Order shall be final and conclusive against all Settlement Class Members. All Settlement Class Members whose Claims are not approved by the Court for payment shall be barred from participating in distributions from the Net Settlement Fund, but otherwise shall be bound by all of the terms of this Stipulation and the 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 Settling Underwriter Defendants' Releasees with respect to any and all of the Released Plaintiffs' Claims.

32. No person or entity shall have any claim against Plaintiffs, Plaintiffs' Counsel, the Claims Administrator or any other agent designated by Lead Counsel, or the Settling Underwriter Defendants' 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. Plaintiffs and the Settling Underwriter Defendants, 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 Settlement Fund or the Net 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) owed by the Settlement Fund, or any losses incurred in connection therewith.

33. 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 Settlement 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**

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

35. The Judgment shall contain a bar order ("Bar Order") substantially in the form set forth in Exhibit B that shall bar all future claims and claims over by any individual or entity against any of the Settling Underwriter Defendants' Releasees, and by the Settling Underwriter Defendants' Releasees against any individual or entity, for (a) contribution or indemnity (or any other claim or claim over, however denominated on whatsoever theory) arising out of or related to the claims or allegations asserted by Plaintiffs in the Action, or (b) any other claim of any type, whether arising under state, federal, common, or foreign law, for which the injury claimed is that person's or entity's actual or threatened liability to Plaintiffs and/or members of the Settlement Class; *provided, however*, the order shall not preclude the Settling Underwriter Defendants from seeking to enforce any right of indemnification or contribution with respect to the payment of the Settlement Amount or defense costs. The Bar Order shall also provide that any final verdict or judgment that may be obtained by or on behalf of the Settlement Class or a Settlement Class Member against any individual or entity subject to the Bar Order shall be reduced by the greater of: (a) an amount that corresponds to the percentage of responsibility of the Settling Underwriter Defendants for common damages; or (b) the amount paid by or on behalf of the Settling Underwriter Defendants to the Settlement Class or Settlement Class Member for common damages. Nothing in the Bar Order or this Stipulation shall release any proofs of claim that any of the Settling Underwriter Defendants has filed in the GTAT bankruptcy.

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

36. 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 ¶ 3 above;

(b) the Settlement Amount has been deposited into the Escrow Account in accordance with the provisions of ¶ 8 above, or less than the Settlement Amount was deposited and Lead Plaintiff elected to go forward with the Settlement;

(c) the Settling Underwriter Defendants have not exercised their option to terminate the Settlement pursuant to the provisions of this Stipulation (including the Supplemental Agreement described in ¶ 40 below);

(d) Lead Plaintiff has not exercised his option to terminate the Settlement pursuant to the provisions of this Stipulation; and

(e) the Court has approved the Settlement as described herein, following notice to the Settlement 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.

37. The occurrence of the Effective Date is not conditioned on the Court having approved a plan of allocation for the Settlement proceeds or a claims process having begun. It is expressly understood and agreed that the determination of when the Plan of Allocation for the proceeds of the Settlement should be presented to the Court for approval is to be made solely by Lead Plaintiff. Upon the occurrence of all of the events referenced in ¶ 36 above, any and all remaining interest or right of Settling Underwriter Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished and the Releases herein shall be effective.

38. If (i) the Settling Underwriter Defendants exercise their right to terminate the Settlement as provided in this Stipulation; (ii) Lead Plaintiff exercises his 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) Plaintiffs and the Settling Underwriter Defendants shall revert to their respective positions in the Action as of immediately prior to the execution of the MOU on March 17, 2017;

(c) the documents produced pursuant to due diligence discovery may not be used in the connection with the Action, unless such documents are subsequently produced in connection with discovery in the Action;

(d) the terms and provisions of this Stipulation, with the exception of this ¶ 38 and ¶¶ 17, 19, 41 and 61 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

(e) within five (5) business days after joint written notification of termination is sent by Settling Underwriter Defendants' Counsel and Lead Counsel to the Escrow Agent, the Settlement Fund (including accrued interest thereon and any funds received by Lead Counsel consistent with ¶ 19 above), less any Notice and Administration Costs actually incurred, paid, or payable and less any Taxes paid, due, or owing, shall be refunded by the Escrow Agent to the Settling Underwriter Defendants (or such other persons or entities as the Settling Underwriter

Defendants may direct). In the event that the funds received by Lead Counsel consistent with ¶ 19 above have not been refunded to the Settlement Fund within the five (5) business days specified in this paragraph, those funds shall be refunded by the Escrow Agent to the Settling Underwriter Defendants immediately upon their deposit into the Escrow Account consistent with ¶ 19 above.

39. It is further stipulated and agreed that Lead Plaintiff, on the one hand, and the Settling Underwriter Defendants (provided the Settling Underwriter Defendant unanimously agree amongst themselves), 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 ¶ 38 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.

40. In addition to the grounds set forth in ¶ 39 above, the Settling Underwriter Defendants, provided they unanimously agree amongst themselves, shall have the unilateral right to terminate the Settlement in the event that Settlement Class Members timely and validly requesting exclusion from the Settlement Class meet the conditions set forth in the Settling Underwriter Defendants’ confidential supplemental agreement with Lead Plaintiff (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 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 Lead Plaintiff and the Settling Underwriter Defendants 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**

41. Neither the MOU, this Stipulation (whether or not consummated), including the exhibits hereto, the Plan of Allocation to be proposed by Lead Plaintiff (or any other plan of allocation that may be approved by the Court), the negotiations leading to the execution of the MOU and this Stipulation, nor any proceedings taken pursuant to or in connection with the MOU, this Stipulation, and/or approval of the Settlement (including any arguments proffered in connection therewith):

(a) shall be offered against any of the Settling Underwriter Defendants’ Releasees as evidence of, or construed as, or deemed to be evidence of, any presumption, concession, or admission by any of the Settling Underwriter Defendants’ Releasees with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Settling Underwriter Defendants’ Releasees or in any way referred to for any other reason as against any of the Settling Underwriter Defendants’ Releasees, in any civil, criminal, or

administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;

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

42. 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.

43. Each Settling Underwriter Defendant warrants as to itself that, as to the payments made or to be made by or on behalf of it, at the time of entering into this Stipulation and at the time of such payment, it or to its knowledge any persons or entities contributing to the payment of the Settlement Amount, were not insolvent, nor will the payment required to be made by or on behalf of it render them insolvent, within the meaning of and/or for the purposes of the United States Bankruptcy Code, including §§ 101 and 547 thereof. This representation is made by each of the Settling Underwriter Defendants and not by their counsel.

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 any Settling Underwriter Defendant to be a preference, voidable transfer, fraudulent transfer, or similar transaction and any portion thereof is required to be returned, and such amount is not promptly deposited into the Settlement Fund by others, then, at the election of Lead Plaintiff, (a) 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 the MOU on March 17, 2017 upon repayment to the Settling Underwriter Defendants of the full amount paid into the Settlement Fund pursuant to ¶ 8 above (less any Notice and Administration Costs incurred and paid or payable and less any Taxes paid or due with respect to the Settlement Fund) as provided in ¶ 38 above, or (b) the Settling Parties shall jointly move the Court to vacate and set aside the Releases given and the Judgment entered pursuant to this Stipulation as to that Settling Underwriter Defendant which is the subject of such order, in which event the Releases and Judgment as to that Settling Underwriter Defendant shall be null and void, such Settling Underwriter Defendant shall become a Non-Settling

Defendant for purposes of this Settlement, and Plaintiffs and such Settling Underwriter Defendant shall revert to their respective positions in the Action as of immediately prior to the execution of the MOU on March 17, 2017, but the Settlement and Judgment shall remain effective as between Plaintiffs and the other Settling Underwriter Defendants. To facilitate Lead Plaintiff's election to determine whether to proceed with the Settlement, the Settling Underwriter Defendants shall, within two (2) business days of being requested to do so by Lead Counsel, disclose to Lead Counsel the amount contributed to the Settlement Amount by that Settling Underwriter Defendant which is the subject of such order.

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 Plaintiffs and any other Settlement Class Members against the Settling Underwriter Defendants' Releasees with respect to the Released Plaintiffs' Claims. Accordingly, Plaintiffs and their counsel and the Settling Underwriter Defendants and their counsel agree not to assert in any forum that this Action was brought by Plaintiffs or defended by the Settling Underwriter Defendants 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, the Settling Underwriter Defendants and their 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, Plaintiffs and their counsel and the Settling Underwriter Defendants and their 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 otherwise suggest 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 Plaintiffs and the Settling Underwriter Defendants (or their successors-in-interest).

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

49. 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 (or such other plan of allocation as may be approved by the Court), and the distribution of the Net Settlement Fund to Settlement Class Members.

50. 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.

51. This Stipulation and its exhibits and the Supplemental Agreement constitute the entire agreement among Plaintiffs and the Settling Underwriter Defendants 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.

52. This Stipulation may be executed in one or more counterparts, including by signature transmitted via facsimile, or by a .pdf/.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.

53. 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.

54. 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.

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

56. 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.

57. 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.

58. Lead Counsel and Settling Underwriter Defendants' Counsel agree to cooperate reasonably 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.

59. 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 Plaintiffs or Lead Counsel:	Bernstein Litowitz Berger & Grossmann LLP Attn: John C. Browne, Esq. 1251 Avenue of the Americas New York, New York 10020 Telephone: (212) 554-1400 Facsimile: (212) 554-1444 Email: johnb@blbglaw.com
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If to the Settling Underwriter Defendants:	Paul Weiss Rifkind Wharton & Garrison LLP Attn: Richard A. Rosen, Esq. 1285 Avenue of the Americas New York, NY 10019-6064 Telephone: (212) 373-3305 Facsimile: (212) 492-0305 Email: rrosen@paulweiss.com
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60. Except as otherwise provided herein, each Settling Party shall bear its own costs.

61. 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.

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

63. No opinion or advice concerning the tax consequences of the proposed Settlement to individual Settlement 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 Settlement Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Settlement Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Settlement Class Member.

**IN WITNESS WHEREOF**, the Settling Parties have caused this Stipulation to be executed, by their duly authorized attorneys, as of August 18, 2017.

**BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP**

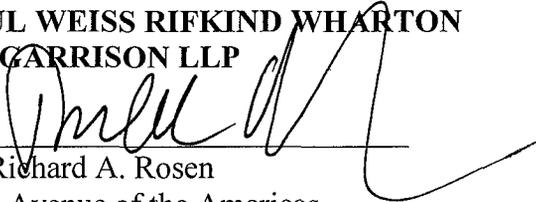
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***Counsel for Settling Underwriter Defendants***

**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

**SUPPLEMENT TO STIPULATION AND AGREEMENT OF SETTLEMENT  
WITH SETTLING UNDERWRITER DEFENDANTS**

The parties to the Stipulation and Agreement of Settlement With Settling Underwriter Defendants filed with the Court on September 11, 2017 (the “Underwriter Defendant Stipulation”) (ECF No. 158-2), by and through their respective undersigned counsel, have agreed to enter into this Supplement to the Underwriter Defendant Stipulation, which provides as follows:

1. Paragraph 35 of the Underwriter Defendant Stipulation is deleted in its entirety and replaced with the following:

35. The Judgment shall contain a bar order (“Bar Order”) substantially in the form set forth in Exhibit B that shall bar all future claims and claims over by any individual or entity against any of the Settling Underwriter Defendants’ Releasees, and by the Settling Underwriter Defendants’ Releasees against any individual or entity (“Barred Claims”), for (a) contribution or indemnity (or any other claim or claim over, however denominated on

whatsoever theory) arising out of or related to the claims or allegations asserted by Plaintiffs in the Action, or (b) any other claim of any type, whether arising under state, federal, common, or foreign law, for which the injury claimed is that person's or entity's actual or threatened liability to Plaintiffs and/or members of the Settlement Class; *provided, however*, (i) nothing in the Bar Order alters the rights between and among the Settling Underwriter Defendants under the terms of any written agreements governing the underwriting syndicates involved in the Action, as to which claims are not barred, released or discharged; and (ii) Barred Claims does not include any claims for contribution or indemnity arising under the Underwriting Agreements relating to the December offerings of 2013 Common Stock or 3.00% Convertible Senior Notes. The Bar Order shall also provide that any final verdict or judgment that may be obtained by or on behalf of the Settlement Class or a Settlement Class Member against any individual or entity subject to the Bar Order shall be reduced by the greater of: (a) an amount that corresponds to the percentage of responsibility of the Settling Underwriter Defendants for common damages; or (b) the amount paid by or on behalf of the Settling Underwriter Defendants to the Settlement Class or Settlement Class Member for common damages. Nothing in the Bar Order or this Stipulation shall release any proofs of claim that any of the Settling Underwriter Defendants has filed in the GTAT bankruptcy.

2. The proposed Preliminary Approval Order attached as Exhibit A to the Underwriter Defendant Stipulation will be replaced by the proposed Order Preliminarily Approving Settlements and Providing for Notice attached hereto as Exhibit A, and its accompanying Exhibit 1 (Notice), Exhibit 2 (Claim Form), and Exhibit 3 (Summary Notice) thereto.

3. The proposed Judgment attached as Exhibit B to the Underwriter Defendant Stipulation will be replaced by the proposed Judgment Approving Class Action Settlement attached hereto as Exhibit B.

4. Lead Plaintiff will file today a Notice of Withdrawal of the Motion for Preliminary Approval of the Underwriter Defendant Settlement filed with the Court on September 11, 2017 (ECF No. 158), and its accompanying Exhibits, and will resubmit the Underwriter Defendant Stipulation, together with this Supplement and the revised Exhibits A and B thereto, in connection with a joint Motion for Preliminary Approval of the Individual Defendant Settlement and the Underwriter Defendant Settlement.

**IN WITNESS WHEREOF**, the undersigned have caused this Supplement to be executed, by their duly authorized attorneys, as of January 26, 2018.

**BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP**

By: John C. Browne  
John C. Browne

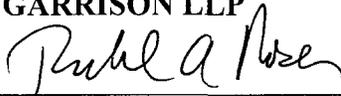
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