# UNITED STATES DISTRICT COURT DISTRICT OF NEW HAMPSHIRE

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

No. 1:14-cv-00443-JL

Plaintiff,

**ECF CASE** 

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.

DECLARATION OF JOHN C. BROWNE IN SUPPORT OF: (I) LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF INDIVIDUAL DEFENDANT AND UNDERWRITER DEFENDANT SETTLEMENTS AND PLAN OF ALLOCATION; AND (II) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

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#### I, JOHN C. BROWNE, declare as follows:

### I. INTRODUCTION

- 1. I am a partner of the law firm of Bernstein Litowitz Berger & Grossmann LLP ("BLB&G"), the Court-appointed Lead Counsel in the above-captioned action (the "Action"). BLB&G represents the Court-appointed Lead Plaintiff, Douglas Kurz ("Lead Plaintiff"), and the Settlement Classes in this Action. I have personal knowledge of the contents of this Declaration based on my active supervision of and participation in the prosecution and partial settlement of the claims asserted in the Action.
- 2. I respectfully submit this Declaration in support of (i) Lead Plaintiff's Motion for Final Approval of Proposed the Individual Defendant and Underwriter Defendant Settlements and Plan of Allocation (the "Final Approval Motion"); and (b) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Fee and Expense Application").<sup>2</sup>
- 3. The proposed Individual Defendant and Underwriter Defendant Settlements (the "Settlements") now before the Court provide for the resolution of all claims in the Action against the Individual Defendants and the Underwriter Defendants (but not Defendant Apple) in exchange for a total cash payment of \$36,700,000 (\$27,000,000 from the Individual Defendants

<sup>&</sup>lt;sup>1</sup> All capitalized terms used herein that are not otherwise defined herein shall have the meanings provided in the Stipulation and Agreement of Settlement with Individual Defendants, and Stipulation and Agreement of Settlement with Settling Underwriter Defendants (and the Supplement thereto), both of which were filed on January 26, 2018. Dkt. 178-1, 178-2.

<sup>&</sup>lt;sup>2</sup> In conjunction with this Declaration, Lead Plaintiff and Lead Counsel, respectively, are also submitting the Memorandum of Law in Support of Lead Plaintiff's Motion for Final Approval of Individual Defendant and Underwriter Defendant Settlements and Plan of Allocation (the "Settlement Memorandum") and the Memorandum of Law in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Fee Memorandum").

and \$9,700,000 from the Underwriter Defendants) to Settlement Class Members who purchased securities of GT Advanced Technologies Inc. ("GTAT").<sup>3</sup> As detailed herein, Lead Plaintiff and Lead Counsel respectfully submit that the Settlements – which are, taken together, the fourth-largest securities class action settlement in New Hampshire history – represent an excellent result for the Settlement Classes in light of the significant risks and extremely limited pool of available funds to pay any settlement or judgment in the Action.

- 4. As explained further below, the Settlements provide a considerable benefit to the Settlement Classes by conferring a substantial, certain, and immediate recovery while avoiding the significant risks and expense of continued litigation, including the risk that the Settlement Classes could recover nothing or less than the Settlement Amount after years of additional litigation and delay. Such risks are particularly acute here given the Individual Defendants' extremely limited ability to pay and GTAT's immunity from suit.
- 5. The proposed Settlements are the result of extensive efforts by Lead Counsel, which included, among other things detailed below:
  - (i) drafting and filing the first of at least thirteen securities class actions against Defendants, which the Court subsequently consolidated (Dkt. 72);
  - (ii) conducting a comprehensive investigation of the claims and potential claims against Defendants, which involved consulting with highly-regarded experts, and interviewing potential witnesses (including 132 former GTAT employees);

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<sup>&</sup>lt;sup>3</sup> As a result of GTAT's filing for bankruptcy protection on October 6, 2014, GTAT was not named as a defendant in the Action.

- (iii) reviewing the voluminous public record, including GTAT's and Apple's SEC filings, analyst reports, news articles, and transcripts of investor calls;
- (iv) drafting and filing the 131-page Consolidated Class Action Complaint (the "Complaint"), filed on July 20, 2015 (Dkt. 87);
- (v) opposing the five motions to dismiss filed by Defendants, which included researching and drafting over **292 pages of briefing and exhibits** in opposition to the more than 2,700 pages of briefing and exhibits submitted by Defendants;
- (vi) consulting with a damages expert;
- (vii) conducting due diligence discovery related to the Underwriter Settlement, which included the review of approximately 13,500 documents totaling approximately 70,000 pages from the files of the Underwriter Defendants concerning the December 2013 initial offering of GTAT Senior Notes and secondary offering of GTAT Common Stock;
- (viii) preparing a detailed mediation statement in connection with a mediation involving the Individual Defendants that addressed both liability and damages; and
- (ix) negotiating with the Settling Defendants on an arms'-length basis both directly and through the mediator to resolve the Action.
- 6. As discussed in further detail below, the excellent \$36.7 million total Settlements recovery has been achieved in the face of dogged opposition by well-represented Defendants and serious litigation risks. There is no guarantee that Lead Plaintiff could establish the Settling Defendants' liability. While Lead Plaintiff believes the Action has substantial merit, the Settling Defendants would have argued forcefully that Lead Plaintiff could not establish the elements of falsity and materiality.

- 7. This case involved a Company (GTAT) that was engaged in an indisputably high-risk venture the growth and manufacturing of artificial sapphire in sufficient quantities to be used as scratch-proof screens for advanced smartphones. There is no dispute that what GTAT set out to do had never been done before (and has not been done since), or that GTAT disclosed that the venture had significant risk. Indeed, the Company's SEC filings during the Class Period contained copious risk warnings asserting that there could be no guarantee of success.
- 8. In the face of this evidence, the Settling Defendants would have argued that they made no false and misleading statements and that, throughout the Class Period, the Individual Defendants believed that GTAT had a reasonable chance to successfully create sapphire for Apple under the terms of the Apple agreement. In essence, Defendants would have contended that they made a number of forward looking statements regarding a known risky venture and they adequately warned investors that the Apple agreement might not succeed. As a legal matter, Defendants would have argued that a number of the allegedly false statements would not withstand scrutiny at summary judgment on the grounds that the statements were either protected by the PSLRA's "safe harbor" provision—particularly in light of the many risk warnings—or were immaterial as a matter of law.
- 9. In addition, Lead Plaintiff faced (i) risk that the Court could ultimately conclude that the statements made at the start of the Class Period and at the time of the Offerings were not actionable, or (ii) risks that the Underwriter Defendants would be able to establish due diligence or related defenses. The Underwriter Defendants, who were being sued solely with respect to the December 2013 offerings of debt and equity securities, had no liability exposure with respect to the Plaintiffs' claims with respect to statements made by the Individual Defendants during most of the class period. The Underwriter Defendants have argued that the Offerings were effected

before GT had even begun to perform the Apple contract and, in any event, that they performed appropriate due diligence and thus had a complete defense to any claim under the securities laws. These risks would eliminate claims against the Underwriter Defendants in their entirety.

- 10. Further, even if Lead Plaintiff succeeded in proving that the existence of materially false statements and omissions, the Individual Defendants would have argued that Lead Plaintiff could not establish the element of scienter *i.e.*, that the Individual Defendants acted with a fraudulent state of mind and not merely negligence. They would have pointed to, among other things, the fact that Apple was making substantial partial payments to the Company during most of the Class Period hardly evidence of a venture that was known to be failing. Of course, even a jury finding of gross negligence, or "misconduct" that did not rise to the level of fraud, would be insufficient to support Lead Plaintiffs' fraud-based claims under the Securities Exchange Act of 1934 ("Exchange Act").
- 11. Moreover, even if Lead Plaintiff was successful in establishing falsity and scienter, there were significant risks relating to damages. The Individual Defendants would have argued that Lead Plaintiff could not establish the element of loss causation for some or all of the alleged partial disclosures. If the Individual Defendants were successful in advancing this argument, it could have reduced or eliminated the Class's damages.
- 12. A final major risk in this Action was that the Individual Defendants might not have been able to pay any judgment that Lead Plaintiff might have won. As detailed below, the Individual Defendants had access to a limited amount of directors' and officers' liability insurance to fund a settlement or judgment. The fact that Lead Plaintiff secured a \$27 million Settlement Amount from the Individual Defendants in the face of these limitations on collecting

any larger amount after trial (when the insurance proceeds would likely have been depleted substantially or entirely) demonstrates that this recovery is very favorable for the Class.

- 13. Lead Plaintiff and Lead Counsel believe that the Settlements are in the best interests of the Settlement Classes. Due to their extensive efforts in the litigation and mediation, Lead Plaintiff and Lead Counsel are well informed of the strengths and weaknesses of the claims and defenses in the Action, and they believe that the Settlements represent a favorable outcome for the Settlement Classes.
- 14. In addition to seeking final approval of the partial Settlement, Lead Plaintiff seeks approval of the proposed Plan of Allocation. Lead Plaintiff prepared the Plan of Allocation in consultation with an expert in the fields of damages and economics. Pursuant to the Plan of Allocation, the Settlement Amounts plus interest accrued, less Court-approved attorneys' fees and expenses, Notice and Administration Costs, and Taxes (the "Net Settlement Funds"), will be distributed on a *pro rata* basis to eligible Settlement Class Members who submit Claim Forms that are approved for payment by the Court. As discussed in more detail below, the Plan of Allocation follows standard practice regarding the distribution of equity or debt securities comprising some or all of the settlement proceeds.
- 15. In short, Lead Counsel worked hard, and with skill and diligence, to achieve two extremely beneficial Settlements for the Classes in the face of significant risks. For its efforts and success in prosecuting the case and negotiating the Settlements, Lead Counsel is applying for an award of attorneys' fees and reimbursement of Litigation Expenses pursuant to a retainer agreement entered between Lead Counsel and Lead Plaintiff before the start of this litigation. Specifically, Lead Counsel is applying for: (i) attorneys' fees in the amount of 22% of each Settlement Fund, or \$8,074,000 plus interest accrued at the same rate as earned by the Settlement

Funds; and (ii) reimbursement of expenses reasonably incurred by Plaintiffs' Counsel in the amount of \$227,402.76. The requested fee is well within the range of percentage awards granted by this Court, other courts in this Circuit, and across the country in securities class actions. Additionally, the requested fee results in a multiplier of approximately 1.61 on Plaintiffs' Counsel's lodestar, which is well within the range of multipliers routinely awarded by courts in this Circuit.

16. For all of the reasons set forth herein, including the excellent result obtained and the quality of work performed, I respectfully submit that the Settlements and Plan of Allocation are "fair, reasonable, and adequate" in all respects, and that the Court should approve them pursuant to Federal Rule of Civil Procedure Rule 23(e). For similar reasons, and for the additional reasons set forth below, I respectfully submit that Lead Counsel's request for attorneys' fees and reimbursement of Litigation Expenses is also fair and reasonable, and should be approved.

#### II. PROSECUTION OF THE ACTION

### A. Overview of the Action And Filing Of The Complaint

17. As the Court is aware, this securities class action asserts claims arising under Sections 10(b) and 20(a) of the Exchange Act and Section 11, 12(a)(2) and 15 of the Securities Act of 1933 ("Securities Act") on behalf of investors who purchased or otherwise acquired GTAT securities during the Settlement Class Period, including investors who obtained GTAT securities in GTAT's December 2013 Offerings. Lead Plaintiff brings Exchange Act claims against Settling Defendants Gutierrez, Squiller, Gaynor and Bal, and Defendant Apple; and Securities Act claims against the Individual Defendants, the Underwriter Defendants, and Apple.

- 18. GTAT is a public company listed on the NASDAQ Global Select Market. As the Complaint alleges, during the Class Period, GTAT's sapphire division was the most important segment of its business. In mid-2013, GTAT's sapphire business was struggling due to downturns in the solar industry. On November 4, 2013, GTAT's prospects appeared to improve when its executives announced a landmark deal with Apple. The Apple agreement provided that GTAT and Apple would work together on what was essentially a joint venture, with Apple providing a facility in Mesa, Arizona where GTAT would construct and operate more than 2,000 specialized furnaces that would produce sapphire exclusively for Apple.
- 19. GTAT's executives heralded the deal as a significant milestone that would increase the Company's 2014 revenue to a range of \$600 million to \$800 million, with 80% of that sum attributable to GTAT's sapphire business. This represented an enormous increase from GTAT's then-current revenue. In response, the price of GTAT stock rose over 20% on the first day of the Class Period. Taking advantage of the increased stock price, on December 3, 2013, GTAT commenced the Offerings to fund the Apple deal. Over the remainder of the Class Period, GTAT's executives consistently represented that the Company was experiencing great success in fulfilling the terms of the Apple agreement and that GTAT's cash position was strong.
- 20. As alleged, these statements were materially false and misleading. GTAT's production of sapphire boules for Apple was an unmitigated disaster. As of February 2014, GTAT had failed to produce a single usable sapphire boule in the Mesa facility, had experienced multiple delays and errors, and was already in violation of the Apple agreement's requirement (concealed from public view) that the production of the first 262 kg boule be complete by January 6, 2014. Regardless, on February 24, 2014 Gutierrez falsely told investors that GTAT's "arrangement to supply sapphire materials to Apple is progressing well" and reiterated guidance

of up to \$800 million in revenue for 2014, while assuring investors that "we generally don't give guidance unless we have a pretty good understanding that we're going to hit it."

- 21. The Complaint alleges that the Company even lacked an established, working recipe to produce boules of such size. Lacking the technological know-how, GTAT never came close to creating usable 262 kg boules, as confirmed by several former employees directly involved in sapphire production. A senior GTAT Sapphire Engineer who worked out of the Mesa facility on the Apple deal from February through October 2014, stated that "[n]o one knew what they were doing; they had no clue" and because of that "[t]here was no way they were going to be able to manufacture the volumes they had committed to." Multiple former employees explained that it was simply impossible for the Company to meet the growth and revenue projections it touted to investors because the Company needed at least two to five years to build out the facility and master production processes.
- 22. Despite the allegedly growing hopelessness of GTAT's performance under the Apple agreement, the Individual Defendants continued issuing overwhelmingly positive public statements. On May 7, 2014, for example, Defendant Gutierrez told investors that the Company's sapphire for Apple was "production ready," that he "expect[ed] the Sapphire that we produce will be fully utilized," and reiterated revenue guidance. None of these statements were true. On June 6, 2014, seven months after announcing the Apple agreement and less than one month after telling investors that the boules were "production ready," Gutierrez allegedly admitted to Apple in a secret meeting that GTAT could not produce 262 kg boules in the required size and quantity on the timetable required by the Apple agreement.
- 23. As reported in November 2014 by the *Wall Street Journal*, Gutierrez met with two Apple vice presidents and provided Apple with a document titled "What Happened" that

listed 17 problems at the Mesa facility and told Apple that he was there to "fall on his sword." From that point on, GTAT stopped even trying to produce the 262 kg sapphire boules required by the Apple Agreement.

- 24. These production fiascos were never revealed to investors during the Class Period. To the contrary, Gutierrez stated on August 5, 2014 that the Arizona facility "is nearly complete and we are commencing the transition to volume production," that "[w]e remain confident about the long-term potential of the sapphire materials business for GTAT," and that the Company would receive its final prepayment from Apple by the end of October 2014 because it expected to "achieve[] . . . certain operational targets."
- 25. The Complaint alleges that these statements were demonstrably false. Just one month later, Apple's announcement concerning its next iPhone release implicitly informed investors that GTAT would not be supplying sapphire for the new iPhones. On September 9, 2014, Apple unveiled two new models of its next generation iPhone and announced that both models would come not with sapphire cover screens but with standard reinforced glass display screens. On this news, the price of GTAT stock declined from \$17.21 per share to \$12.78 per share from September 8, 2014 to September 10, 2014, or over 25%. Similarly, the price of the debt issued pursuant to the debt offering declined from \$1,613 per note on September 8 to \$1,279 per note on September 10, 2014, or almost 21%.
- 26. Then, on October 6, 2014, GTAT announced that it filed for bankruptcy. According to GTAT, the Company had just \$85 million of cash and faced approximately \$1.3 billion in liabilities as of June 28, 2014. On October 6, 2014, the price of GTAT stock plummeted from \$11.06 per share to \$0.80 per share, a decline of almost 93%. Similarly, the

price of the debt issued pursuant to the debt offering declined from \$1,083 per note to \$315 per note, or almost 71%.

- 27. Documents filed in GTAT's bankruptcy proceeding show that from the very start of the Class Period, the Apple agreement was a disaster for the Company. Specifically, Defendant Squiller submitted a sworn declaration (the "Squiller Declaration") which stated that "Apple presented GTAT with an onerous and massively one-side deal in the fall of 2013" that GTAT was forced to accept because "GTAT was out of options" and "had no practical choice at that stage other than to concede to Apple's terms." Squiller described a contract negotiation process that was "anything but an arm's-length negotiation" whereby "Apple simply dictated the terms and conditions of the deal." When GTAT "expressed obvious concerns to Apple regarding the deal terms," Apple told them to "put on their big boy pants and accept the agreement" and to "not waste their time" trying to negotiate because "GTAT had to agree to all of Apple's material terms . . . or the deal was off."
- 28. Documents filed in GTAT's bankruptcy proceeding also show that the versions of the Apple Agreement that were publicly available to GTAT investors omitted material information. For instance, the publicly available versions of the Apple Agreement concealed that GTAT—a company with no prior experience creating useable sapphire boules larger than 115 kg—had just six months to not only construct 2,000 sapphire furnaces capable of creating usable sapphire boules weighing 262 kg, but to itself invent and perfect the technology to create and mass produce those boules. The publicly available versions of the Apple Agreement also concealed that the Agreement prohibited GTAT from generating meaningful sapphire revenue from other sources. The Individual Defendants neither disclosed these material terms to investors during the Class Period, nor the production issues that GTAT was having constructing

useable sapphire boules. To the contrary, GTAT was consistently assuring investors that the Company's arrangement to provide sapphire material to Apple was progressing well and that GTAT was on strong financial footing.

29. In addition to the above, GTAT's executives allegedly took advantage of their materially misleading statements and omissions to enrich themselves by nearly \$20 million in insider sales during the eleven-month Class Period.<sup>4</sup>

# 1. Commencement of the Litigation and Appointment of Lead Plaintiff and Lead Counsel

- 30. After GTAT filed for bankruptcy, BLB&G immediately began to investigate the matter and was contacted by a GTAT shareholder named Adam Levy. Days later, on October 9, 2014, BLB&G filed on behalf of Mr. Levy the first of thirteen securities class actions against certain of GTAT's executives, directors, and the underwriters of the Offerings. The Action was assigned to Chief Judge Joseph N. Laplante.
- 31. In accordance with the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), BLB&G published notice of the filing of the lawsuit on October 9, 2014. After the publication of notice, GTAT shareholder Douglas Kurz contacted BLB&G to inquire regarding his rights as well as the claims asserted in the lawsuit. After substantial discussions, Mr. Kurz

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<sup>&</sup>lt;sup>4</sup> Lead Plaintiff is continuing to prosecute the Exchange Act and Securities Act control-person claims asserted against Apple. Defendant Squiller stated in his declaration submitted in connection with GTAT's bankruptcy that Apple exercised "de facto control over GTAT" and had "inordinate control over GTAT's liquidity, operations (including control over product specifications) and decision making." The factual recitation of the facts alleged in the Complaint is made without prejudice to Lead Plaintiff as Lead Plaintiff is continuing to learn in discovery facts regarding the significant control that Apple exerted over GTAT.

retained BLB&G and, on December 8, 2014, timely moved for appointment as Lead Plaintiff and for approval of his counsel, BLB&G, as Lead Counsel.

32. By Order dated May 20, 2015, the Court appointed Mr. Kurz as Lead Plaintiff, and appointed BLB&G as Lead Counsel and Orr & Reno as local counsel. Dkt. 77. The filing of Lead Plaintiff's consolidated class action complaint was set for July 20, 2015 pursuant to the Stipulation and Proposed Order endorsed by the Court on November 26, 2014. Dkt. 14.

### 2. Lead Counsel's Extensive Investigation

- 33. After the May 20, 2015 Order appointing Lead Plaintiff and Lead Counsel, Lead Counsel accelerated its already ongoing investigation into potential claims and began drafting a consolidated class action complaint. To prepare the Complaint, Lead Counsel undertook an extensive investigation and analysis of the potential claims that could be asserted on behalf of investors in GTAT securities. This investigation included, among other things, a detailed review and analysis of a large volume of publicly available information concerning both GTAT and Apple that was issued during 2013 and 2014. For example, Lead Counsel reviewed all of GTAT (and many of Apple's) (i) filings with the U.S. Securities and Exchange Commission ("SEC") during the relevant time period; (ii) earnings announcement and press releases; (iii) transcripts of analyst conference calls; and (iv) investor presentations.
- 34. Lead Counsel reviewed a similarly large volume of news articles and all publicly available analysts' reports about GTAT and Apple (to the extent they concerned the Apple agreement with GTAT) issued during this time frame. Moreover, Lead Counsel also reviewed numerous documents filed in connection with GTAT's bankruptcy proceeding, including two versions of the Squiller Declaration. Based on Lead Counsel's extensive review of these materials, Lead Plaintiff alleged in the Complaint that the Individual Defendants had made

numerous false and misleading statements during the 11-month Class Period. Moreover, Lead Counsel concluded that Apple was also liable for those false and misleading statements through its control over GTAT and its officers during the relevant time period.

- 35. Lead Counsel and their investigators also contacted and communicated with 132 former GTAT employees who had worked at GTAT during the relevant time period, including a former Sapphire Product Manager who was intimately involved in GTAT's sapphire business. The former Sapphire Product Manager described to Lead Counsel how GTAT lacked the capability to produce sapphire boules of a sufficient size and quality required under the Apple agreement, and repeatedly warned GTAT's executives to walk away from the Apple Agreement because it had virtually no probability of success. The statements of the Sapphire Product Manager and other former GTAT employees were added to the Complaint and assisted Lead Plaintiff in ultimately overcoming Defendants' motions to dismiss. The type of thorough factual investigation conducted by Lead Counsel was critical to Lead Plaintiff's ability to ultimately plead a detailed Complaint sufficient to overcome the high pleading hurdles imposed on securities class actions by the PSLRA.
- 36. In addition to this factual research, Lead Counsel thoroughly researched the law applicable to the claims asserted and Defendants' potential defenses. Lead Counsel also retained and consulted with experts, including a financial expert who analyzed potentially recoverable damages.

#### 3. The Consolidated Class Action Complaint

37. On July 20, 2015, Lead Plaintiff filed and served its 131-page Consolidated Class Action Complaint (the "Complaint"). Dkt. 87.

- 38. Based on Lead Plaintiff's investigation, Lead Plaintiff included in the Complaint additional claims under the Securities Act (including control person claims against Apple) as well as under the Exchange Act against Defendants Kim, Squiller, and Apple. Lead Plaintiff also included in the Complaint additional plaintiffs that purchased GT securities pursuant to the Offerings to help prosecute the Securities Act Claims—Palisade Strategic Master Fund (Cayman) Limited, and Highmark Limited, in respect of its Segregated Account Highmark Fixed Income 2. (the "Securities Act Plaintiffs"). Lead Plaintiff also included an additional plaintiff for the Exchange Act claims, Vance K. Opperman.
- 39. This Complaint brings claims on behalf of all persons or entities who purchased or otherwise acquired GTAT publicly traded securities between November 5, 2013 and 9:40 a.m. Eastern Standard Time on October 6, 2014 (the "Class Period") and were damaged thereby. This securities class action is also brought on behalf of all persons or entities who purchased securities in or traceable to GTAT's offering of \$214 million in aggregate principal amount of its 3.00% Convertible Senior Notes due 2020 (the "Debt Offering"), as well as GTAT's offering of 9,942,196 shares of common stock ("Equity Offering") and together with the Debt Offering, the "Offerings") conducted in December 2013.
- 40. On August 28, 2015, Lead Plaintiff and Defendants filed a Stipulation and Proposed Order that set Defendants' deadline to dismiss the Complaint by October 7, 2015; Lead Plaintiff's opposition thereto to be filed by December 11, 2015, and Defendants' replies to be filed by January 29, 2016. The Court endorsed that stipulation on September 2, 2015.

#### B. Defendants' Extensive Motions to Dismiss the Complaint

41. On October 7, 2015, Defendants filed five separate motions to dismiss the Complaint, consisting of more than 2,460 pages of briefing and exhibits. Dkt. Nos. 105, 107-109,

- 111-112. Defendants challenged the sufficiency of the Complaint with respect to nearly every element of Lead Plaintiff's claims. Defendants argued, among other things, that the Complaint failed to allege that statements were false or misleading, that the Individual Defendants' acted with scienter, that Defendants' conduct caused Lead Plaintiff's losses, standing, and "control," (under either the Securities or the Exchange Acts.)
- 42. Defendants Gutierrez, Gaynor, and Bal argued, among other things, in their motion that: (i) the Complaint failed to allege any actionable misstatements or omissions; (ii) many of the statements identified in the Complaint were forward-looking in nature and are protected under the PSLRA's safe-harbor for such statements; (iii) the Complaint failed to plead specific facts that the Individual Defendants knew that the statements were false when made; (iv) the Complaint failed to plead loss causation; and (v) the Complaint's control person claims were deficient and should be dismissed.
- 43. Likewise, Defendant Kim argued that he did not "make" any statements under the federal securities laws and that, in any event, the Complaint failed to allege that he acted with the requisite scienter. Kim further argued, together with Defendant Squiller, that the Complaint's control person claims were insufficiently pleaded as to them and should be dismissed. The Director Defendants argued that the Complaint failed to allege any actionable misstatements or omissions given the warnings in the offering materials and the purported forward-looking nature of the alleged misstatements. The Director Defendants further argued that the Complaint's control-person claims failed to allege control with the requisite level of particularity, and that Plaintiffs failed to allege standing on the Equity Offering.
- 44. Similarly, the Underwriter Defendants claimed that the Complaint failed to allege any actionable misstatements or omissions, that many statements were forward-looking in nature

and were protected under the PSLRA's safe harbor for such statements, and that the Securities Act Plaintiffs lacked standing to prosecute claims on the Offerings. Defendant Apple argued that the Complaint failed to plead control-person claims against Apple, and that the Section 10(b) claim that the Complaint alleged against Apple failed to plead a strong inference of scienter, reliance, or loss causation as to Apple.

- 45. On December 18, 2015, Lead Plaintiff filed a 117-page Omnibus Memorandum of Law in Opposition to the Motions to Dismiss filed by Defendants Gutierrez, Gaynor, & Bal; Defendants Kim & Squiller; the Director Defendants; and the Underwriter Defendants. Dkt. 116. Lead Plaintiff also filed on December 18, 2015 a 24-page Memorandum of Law in Opposition to Defendant Apple Inc.'s Motion to Dismiss. Dkt. 115. Lead Plaintiff's oppositions were a substantial undertaking, requiring not only that Lead Counsel research the law on every disputed element of the claims, but also scour the material referenced in both the Complaint and Defendants' filings in order to marshal evidence to counter Defendants' assertions.
  - 46. Among other things, Lead Plaintiff argued that:
  - (i) The Complaint sufficiently pled scienter with respect to the Officer Defendants' actual knowledge from the first day of the Class Period, and that their overwhelmingly positive public statements about the Apple agreement were materially false and misleading, as evidenced by, among other things, the Company's admissions in the Squiller Declaration and the accounts of multiple former employees, including the former Sapphire Product Manager who personally warned the Individual Defendants that the Apple agreement's terms could not be met;

- (ii) The Complaint additionally pled scienter by showing that the Officer Defendants had motive and opportunity, including among other things that certain Defendants sold \$20 million worth of their personal holdings in GTAT stock during the Class Period;
- (iii) Statements concerning the Apple agreement and GTAT's performance under the Apple agreement were not immaterial puffery, and the PSLRA "Safe Harbor" did not shield Defendants' statements of present and historical facts;
- (iv) Defendants' "truth on the market" defense, based on a single blog post, failed to convey to the market "the truth" regarding the Officer Defendants' many alleged false statements and omissions;
- (v) The Complaint adequately alleged loss causation with respect to the two alleged corrective disclosures;
- (vi) The Securities Act claims related to the Offerings were adequately alleged, and the Underwriter Defendants' argument that investors should have known the true risks of the Apple agreement was without merit; and
- (vii) The Complaint adequately alleged Apple's "control" over the GTAT and the Individual Defendants' statements and conduct.
- 47. On March 2, 2016, Defendants filed they reply papers, which consisted of five separate reply briefs and 170 pages of additional briefing and exhibits. Dkt. 126-128, 130-131. In addition, on January 20, 2017, the Individual Defendants filed a notice of supplemental authority in support of their motions to dismiss the Complaint. Dkt. 136. In that notice, the Individual Defendants proffered five recent First Circuit decisions that the Individual Defendants claimed supported their motions to dismiss, primarily on the grounds of falsity, scienter, the

PSLRA safe-harbor for forward-looking statements, and lack of standing. Apple joined in that notice of supplemental authority and statement of position on January 23, 2017. Dkt. 138.

48. Lead Plaintiff responded to the Individual Defendants' notice of supplemental authority on January 27, 2017 and submitted a more relevant, recent First Circuit decision that the Individual Defendants failed to submit. Dkt. 139. The Individual Defendants responded to Lead Plaintiff's response on February 16, 2017. Dkt. 140.

# C. GTAT's Bankruptcy Trustee Files Complaint Against Gutierrez and Squiller

49. On April 19, 2017, Eugene I. Davis, as Trustee of the GTAT Litigation Trust (the "Trustee"), the duly authorized successor-in-interest to GTAT, filed a complaint against Defendants Gutierrez and Squiller asserting claims for breaches of the duties of care and loyalty, corporate waste, breach of contract, equitable subordination, and objection to claims related to the Apple agreement ("Trustee Action"). On July 19, 2017, the Court declined to consolidate the Trustee Action with this case.

# D. Lead Plaintiff and the Underwriter Defendants Reach a Settlement and Lead Plaintiff Conducts Due Diligence Discovery.

50. The Underwriter Defendant Settlement was achieved through an arms'-length negotiation process. Serious settlement talks between Lead Counsel and counsel for the Underwriter Defendants began in late 2016. Over the course of the next several weeks, following extensive, arms'-length negotiations, Lead Plaintiff and the Underwriter Defendants engaged in a serious of intensive negotiations and reached an agreement in principle to settle the Securities Act claims against the Underwriter Defendants. The agreement in principle to settle was memorialized in a Memorandum of Understanding (the "MOU") entered into by the Underwriter Defendants and Lead Plaintiff on March 17, 2017.

- 51. Because of the mandatory PSLRA stay of discovery pending resolution of the motion to dismiss, Lead Plaintiff had not been able to conduct formal discovery in the Action at the time the Underwriter Defendants and Lead Plaintiff agreed in principle to settle the litigation. As part of the agreement to settle, Lead Plaintiff obtained the Underwriter Defendants' agreement to provide due diligence discovery, including the production of documents regarding the allegations asserted against the Underwriter Defendants in the Complaint.
- 52. On April 7, 2017, the Underwriter Defendants produced approximately 13,500 documents (over 70,000 pages) to Lead Plaintiff, which included materials relevant to Lead Plaintiff's claims under the Securities Act on the Offerings, as well as other components of the case. Specifically, the Underwriter Defendants produced, among other things, collections of GTAT research reports, earnings call transcripts, and an investor presentations; e-mails regarding GTAT's efforts to raise capital while negotiating the Apple agreement with Apple; notes of meetings and other documents from representatives of the Underwriter Defendants who were involved in the due diligence process for the Offerings; and analyses of the key terms of the Apple agreement and how that agreement would impact the Company.
- 53. Lead Counsel acted promptly to review and analyze these documents over the course of roughly five weeks. During this time, Lead Counsel and Plaintiffs' Counsel reviewed, analyzed, and categorized the documents in the electronic database, making determinations as to their importance and relevance to the complex issues involved in the litigation and also in particular to the purposes of the Due Diligence Discovery. Lead Counsel and Plaintiffs' Counsel determined whether the documents were "hot" or on a scale of lower-order relevance. The reviewing attorneys circulated documents flagged as "hot" or otherwise of note on a weekly

basis. These documents were analyzed and discussed with senior members of Lead Counsel's litigation team.

- 54. After completing the due diligence discovery, Lead Plaintiff believed that the \$9.7 million Settlement in principle with the Underwriter Defendants was an excellent result for the Underwriter Defendant Settlement Class.
- 55. On April 27, 2017, Lead Plaintiff and the Underwriter Defendants informed the Court that Lead Plaintiff and the Underwriter Defendants reached a settlement in principal to resolve the claims asserted against the Underwriter Defendants. Lead Plaintiff and the Underwriter Defendants also requested that the Court defer ruling on the Underwriter Defendants' motion to dismiss until the confirmatory discovery process is complete and Lead Plaintiff and the Underwriter Defendants were able to execute a settlement agreement.

### E. The Court's Motion to Dismiss Opinion

56. On May 4, 2017, the Court issued a 78-page Memorandum Opinion denying in part and granting in part the motions to dismiss filed by the Individual Defendants and Apple, and denying the Underwriter Defendants' motion to dismiss without prejudice to their ability to re-submit the motion if necessary should the settlement fall through. Lead Plaintiff's remaining claims following the Court's ruling on Defendants' Motions to Dismiss include: (i) claims under Section 10(b) of the Exchange Act against Defendants Bal, Gaynor, and Gutierrez; (ii) claims under Section 20(a) of the Exchange Act against Defendants Bal, Gaynor, Gutierrez, Kim, and Squiller; (iii) a claim under Section 20(a) of the Exchange Act against Apple; (iv) claims under Section 11 of the Securities Act against Defendants Gaynor, Bal, Gutierrez, Conaway, Cote, Godshalk, Massengill, Petrovich, Switz, Watson, Wroe, and the Underwriter Defendants; (v) claims under Section 12(a)(2) of the Securities Act against the Underwriter Defendants; (vi)

claims under Section 15 of the Securities Act against Defendants Gutierrez, Gaynor, Kim, and Squiller; and (vii) a claim under Section 15 of the Securities Act against Apple.

# F. Lead Plaintiff Files for Preliminary Approval of the Underwriter Defendant Settlement

57. On August 18, 2017, Lead Plaintiff, the Securities Act Plaintiffs, and the Underwriter Defendants entered into the Stipulation and Agreement of Settlement with Settling Underwriter Defendants (the "Underwriter Defendant Stipulation") setting forth the final terms and conditions of the Underwriter Defendant Settlement. On September 11, 2017, Lead Plaintiff filed a Motion for (I) Preliminary Approval of the Underwriter Settlement, (II) Certification of the Underwriter Settlement Class, and (III) Approval of Notice to the Underwriter Settlement Class.

# G. Mediation And Settlement Negotiations With The Individual Defendants And Apple

- 58. After the Court's May 4, 2017 decision sustaining nearly all of Lead Plaintiff's claims against the Individual Defendants and Apple, Lead Counsel and the remaining Defendants' counsel decided to explore a resolution of the Action through mediation. Also involved in the Settlement negotiations and mediation were the attorneys for the bankruptcy trustee, whose claims implicated the insurance coverage. Over the course of the ensuing weeks, the parties conferred as to an appropriate mediator, and ultimately agreed on retired United States District Court Judge Layn R. Phillips (the "Mediator").
- 59. On October 2, 2017, Lead Counsel and the remaining Defendants' Counsel participated in a full day mediation session before the Mediator. In advance of that session, the Lead Plaintiff, the Individual Defendants, and Apple submitted mediation statements and exhibits to the Mediator, which addressed the issues of both liability and damages. Despite good

faith efforts by all parties, they were unable to reach agreement at the conclusion of the mediation session.

- 60. However, as a result of extensive, arms'-length negotiations at the mediation session, and subsequent continued negotiations following the October 2, 2017 mediation, Lead Plaintiff reached an agreement in principle to settle the Action as against the Individual Defendants for \$27,000,000 in cash on October 13, 2017.
- 61. On October 13, 2017, Lead Plaintiff and the Individual Defendants entered into a Settlement Term Sheet (the "Term Sheet") memorializing the Settling Parties' agreement to settle the Action as against the Individual Defendants, subject to the negotiation of the terms of a formal, final stipulation of settlement and approval of the Court.
- 62. The Settlement required that the Individual Defendants had to provide certain cooperation in ongoing litigation against Apple, including (1) copies of all documents the Settling Defendants had produced to the Bankruptcy Trustee; (2) all transcripts of any depositions in the Settling Defendants' possession, custody or control; (3) all documents produced to the Securities and Exchange Commission ("SEC") or other investigatory authority; and (4) the Settling Defendants' agreement to make themselves available for depositions.
- 63. On November 10, 2017, these Settling Parties informed the Court that they had reached an agreement-in-principle to settle the claims against the Individual Defendants, asked the Court to adjourn the Individual Defendants' deadline to file their Answer(s), and requested that the Court adjudicate preliminary approval of this Settlement with the Individual Defendants together with preliminary approval of the Settlement with the Underwriter Defendants. Dkt. 163. The Court granted the relief requested in the Notice of Partial Settlement on November 13, 2017, and by Orders dated December 20, 2017 and January 16, 2017, granted the Settling Parties'

request to extend the deadline by which they would finalize the settlement documentation for this Settlement.

### **H.** The Court Grants Preliminary Approval Of The Settlements

- 64. On January 26, 2018, Lead Plaintiffs filed their Unopposed Motion for (I) Preliminary Approval of Individual Defendant and Underwriter Defendant Settlements; (II) Certification of the Individual Defendant and Underwriter Defendant Settlement Classes; and (III) Approval of Notice to the Settlement Classes (the "Motion for Preliminary Approval"). In that Motion, Lead Plaintiff asserted that the Settlements should be preliminarily approved because of the substantial benefits they afforded to the Settlement Classes, and because they were the result of good faith negotiations. The Motion for Preliminary Approval also sought the certification of the Settlement Classes for settlement purposes, and approval of a proposal for notifying both Settlement Class Members of their rights with respect to the Settlements.
- 65. On February 13, 2018, the Court entered the Order Preliminarily Approving Settlements and Providing for Notice (the "Preliminary Approval Order") (Dkt. 179), which, among other things: (i) preliminarily approved the Individual Defendant and Underwriter Defendant Settlements; (ii) certified the Individual Defendant and Underwriter Defendant Settlement Classes for settlement purposes; (iii) approved the form of Notice, Summary Notice, and Claim Form, and authorized notice to be given to the Individual Defendant and Underwriter Defendant Settlement Class Members through first-class mailing of the Notice and Claim Form,

<sup>&</sup>lt;sup>5</sup> Also on January 26, 2018, Lead Plaintiff withdrew its September 11, 2017 Motion for (I) Preliminary Approval of the Underwriter Settlement, (II) Certification of the Underwriter Settlement Class, and (III) Approval of Notice to the Underwriter Settlement Class in light of the forthcoming Motion. Dkt. 177.

posting of the Notice and Claim Form on a Settlement website, and publication of the Summary Notice in the *Wall Street Journal* and over *PR Newswire*; (iv) established procedures and deadlines by which the Individual Defendant and Underwriter Defendant Settlement Class Members could participate in the Settlements; request exclusion from one or both of the Settlement Classes; or object to either or both of the Settlements, the proposed Plan of Allocation, or the fee and expense application; and (v) set a schedule for the filing of opening papers and reply papers, if any, in support of the proposed Settlements, Plan of Allocation, and the fee and expense application. The Court set a Settlement Hearing for June 14, 2018, to determine if the Settlement should be finally approved. That date was changed to June 28, 2018 by agreement of the Settling Parties.

#### III. RISKS OF CONTINUED LITIGATION

66. The Settlements provide an immediate and certain benefit to the Settlement Class in the form of a combined \$36,700,000 cash payment – the fourth-largest securities class action recovery in New Hampshire history. The benefits of the \$27 million cash Settlement from the Individual Defendants and the \$9.7 million cash settlement from the Underwriter Defendants must be must be weighed against the risks presented by continued litigation of the Action against these Defendants, including, as discussed below, the risks and hard limits to recovery posed by the Individual Defendants' financial condition and the risks of establishing Defendants' liability and damages.

### A. General Risks In Prosecuting Securities Actions On A Contingent Basis

67. In recent years, securities class actions have become riskier than they perhaps were in prior years. For example, data from Cornerstone Research shows that, in each year between 2008 and 2011, a majority of the securities class actions filed were dismissed, and the

percentage of dismissals was as high as 59% in 2010 and 58% in 2011. See Cornerstone Research, Securities Class Action Filings 2014 Year In Review (2015) at 12. In fact, the well-known economic consulting firm NERA found that, out of the securities class actions in which a motion to dismiss was decided from January 2000 through December 2014, 54% were dismissed. See Dr. Renzo Comolli and Svetlana Starykh, "Recent Trends in Securities Class Action Litigation: Full-Year Review" (NERA 2015 at p. 18, Figure 15).

- 68. Even when they have survived motions to dismiss, securities class actions are increasingly dismissed at the class certification stage, in connection with *Daubert* motions, or at summary judgment. For example, class certification has been denied in several recent securities class actions. *See, e.g., Gordon v. Sonar Cap. Mgmt. LLC*, No. 11–cv–9665 (JSR), 2015 WL 1283636 (S.D.N.Y. Mar. 19, 2015), *Sicav v. James Jun Wang*, No. 12 Civ. 6682(PAE), 2015 WL 268855 (S.D.N.Y. Jan. 21, 2015); *IBEW Local 90 Pension Fund v. Deutsche Bank AG*, No. 11 Civ. 4209(KBF), 2013 WL 5815472 (S.D.N.Y. Oct. 29, 2013); *George v. China Automotive Systems, Inc.*, No. 11 Civ. 7533(KBF), 2013 WL 3357170 (S.D.N.Y. July 3, 2013).
- 69. Courts have also recently dismissed multiple securities class actions at the summary judgment stage. See, e.g., In re Barclays Bank PLC Sec. Litig., No. 09-01989, 2017 WL 4082305 (S.D.N.Y. Sept. 13, 2017) (summary judgment granted on September 13, 2017 after eight years of litigation); In re Omnicom Grp., Inc. Sec. Litig., 541 F. Supp. 2d 546, 554-55 (S.D.N.Y. 2008), aff'd 597 F.3d 501 (2d Cir. 2010) (summary judgment granted after six years of litigation and millions of dollars spent by plaintiffs' counsel); see also In re Xerox Corp. Sec. Litig., 935 F. Supp. 2d 448, 496 (D. Conn. 2013), aff'd 766 F.3d 172 (2d Cir. 2014). And even cases that have survived summary judgment have been dismissed prior to trial in connection with Daubert motions. See Bricklayers & Trowel Trades Int'l Pension Fund v. Credit Suisse First

Boston, 853 F. Supp. 2d 181 (D. Mass. 2012), aff'd 752 F.752 F2d 82 (1st Cir. 2014) (granting summary judgment *sua sponte* in favor of defendants after finding that plaintiffs' expert was unreliable).

- 70. Even when securities class action plaintiffs are successful in getting a class certified, have prevailed at summary judgment, have overcome *Daubert* motions, and have gone to trial, there are still very real risks that there will be no recovery or substantially less recovery for class members. For example, in in one of the few federal securities fraud class actions to go to trial in the First Circuit, *Backman v. Polaroid Corp.*, 910 F.2d 10 at 13 (1st Cir. 1990) (en banc), the First Circuit reversed a jury verdict after eight years of litigation, a \$40 million jury verdict at trial, and an appellate ruling upholding the verdict. The First Circuit, ruling en banc, remanded *Polaroid* for dismissal. In another action, *In re BankAtlantic Bancorp, Inc.* (S.D. Fla. 2010), a jury rendered a verdict in plaintiffs' favor on liability in 2010, but the following year, the district court granted defendants' motion for judgment as a matter of law and entered judgment in favor of the defendants on all claims. 2011 WL 1585605 (S.D. Fla. Apr. 25, 2011). In 2012, the Eleventh Circuit affirmed the district court's ruling, finding that there was insufficient evidence to support a finding of loss causation. *Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012).
- 71. There is also the increasing risk that an intervening change in the law can result in the dismissal of a case after significant effort has been expended. The Supreme Court has heard several securities cases in recent years, often announcing holdings that dramatically changed the law in the midst of long-running cases. *See Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund*, 135 S. Ct. 1318 (2015); *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398 (2014); *Comcast Corp. v Behrend*, 569 U.S. 27 (2013); *Morrison v. Nat'l Austl. Bank*

Ltd., 561 U.S. 247 (2010). As a result, many cases have been lost after the plaintiffs have invested thousands of hours in briefing and discovery. For example, in *In re Vivendi Universal*, S.A. Sec. Litig., 765 F. Supp. 2d 512, 524, 533 (S.D.N.Y. 2011), after a verdict for class plaintiffs finding Vivendi acted recklessly with respect to 57 statements, the district court granted judgment for defendants following a change in the law announced in *Morrison*.

72. In sum, securities class actions face serious risks of dismissal and non-recovery at all stages of the litigation.

# B. The Substantial Risk That the Individual Defendants Would Be Unable To Satisfy A Judgment In Excess Of The Proposed Settlement

- 73. First and foremost, Lead Plaintiff faced the very significant risk that, even if Plaintiffs prevailed at trial, they would not be able to recover any substantially larger judgment against the Individual Defendants given the finite and wasting amount of liability insurance available to the Individual Defendants. Accordingly, if the Individual Defendants had been forced to spend millions of dollars in litigation, it would have substantially drained the finite amount of D&O insurance available to compensate the Classes for their losses. The documents and information related to insurance limits Lead Plaintiff received in connection with settlement negotiations, and Lead Plaintiff's independent investigation into the Individual Defendants' personal assets, have confirmed the Individual Defendants' inability to fund a settlement or pay a judgment materially in excess of the Settlements.
- 74. Moreover, in addition to the costs of this Action, costs in the Trustee action against Defendants Gutierrez and Squiller continue to accumulate. In addition, to the best of Lead Plaintiff's knowledge, regulatory investigations relating to GTAT's agreement with Apple are ongoing. Defense costs on both these fronts, combined with defense costs in this litigation

should it proceed, would continue to reduce the amount of insurance that would be available to pay any judgment or fines. As a result of these considerations, there is a risk that, even if Lead Plaintiff prevailed on all issues through the remainder of the litigation and secured a verdict at trial, such a victory might be meaningless to the Class because they would not be able to recover on that judgment. Securing \$27 million is a remarkable achievement here and ensures that the Class receives the maximum benefit available to them from the Individual Defendants.

### C. Lead Plaintiff Faced Substantial Risks In Proving Defendants' Liability

- 75. Even though Lead Plaintiff prevailed at the motion to dismiss stage, they continued to face the risk that the Court would find that Lead Plaintiff failed to establish liability or damages as a matter of law at summary judgment, or, if the Court were to permit the claims to proceed to trial, that a jury (or appeals court) would find against Lead Plaintiff. At the time the agreements in principle to settle with the Underwriter Defendants and the Individual Defendants were reached, Lead Plaintiff and Lead Counsel had a thorough understanding of the strengths and weaknesses of the case. While Lead Plaintiff and Lead Counsel believe that the claims asserted against Defendants have merit, they also recognize that there were risks as to whether Lead Plaintiff would ultimately prevail on the merits on certain issues. Indeed, all Defendants raised several defenses with respect to both liability, and damages, and these arguments created a significant risk that, after years of protracted litigation, Lead Plaintiff and the Settlement Classes could achieve no recovery at all, or a lesser recovery than the total Settlement Amount.
- 76. Moreover, while the agreement in principle to settle the claims brought against the Individual Defendants was reached after the Court denied, in large part, the remaining Defendants' motions to dismiss, the Individual Defendants vehemently disputed liability in this Action on a number of grounds that posed litigation risk to Lead Plaintiff and the Class. With

respect to scienter, typically the most difficult element to prove in an Exchange Act claim, the Individual Defendants argued that GTAT and its officers fully disclosed the risks of the Apple agreement and appropriately updated their disclosures accordingly as developments unfolded.

- 77. Defendants further argued that the allegedly false and misleading statements were not, in fact, false when made. For example, Defendants argued that many, if not all, of the allegedly false and misleading statements would ultimately be proven to be immaterial as a matter of law, or that the Defendants would be immunized from liability by virtue of the PSLRA's "safe harbor" provisions. The Individual Defendants would have argued at summary judgment or to a jury that the Apple venture was a uniquely risky project --- the Company was *literally* trying to do something that had never been done before (or since), and the Individual Defendants and the Company provided copious risk warnings such that investors were well aware that the project could fail. Moreover, the Individual Defendants would argue that, unlike other securities class actions with high risks of liability, none of the Individual Defendants had been charged with criminal or civil violations of the securities laws.
- 78. The Individual Defendants also argued that Lead Plaintiff would not be able to establish loss causation with respect to one or both of the alleged corrective disclosures. In addition to the risks that Lead Plaintiff might not be able to pursue their claims for years, and might not succeed on the merits before a jury, there was a very substantial risk that, even if Lead Plaintiff was to prevail, the Class might not be awarded as much as the Settlement Amount on a judgment.
- 79. In addition, at the time the agreement in principle to settle claims against the Underwriter Defendants was reached, Defendants' motions to dismiss the Complaint were pending, and the Court could have narrowed or eliminated Plaintiffs' Securities Act claims. In

their motion to dismiss, the Underwriter Defendants argued that the Complaint failed to adequately allege that the Offering Materials, which were issued less than a month after the start of the Class Period and before GTAT began production of the sapphire for Apple, misled investors about the terms of the Apple agreement and the risks to GTAT. The Underwriter Defendants also argued that the Securities Act Plaintiffs lacked standing to bring claims based on the Equity Offering because they only purchased securities in the Debt Offering. Finally, the Underwriter Defendants maintained that they would ultimately be able to establish a full defense of negative causation.

80. An adverse opinion on the Underwriter Defendants' motion would have eliminated Plaintiffs' Securities Act claims, and eliminated any chance of recovery from the Underwriter Defendants. Even if the claims against the Underwriter Defendants survived in all or part, the Underwriters Defendants would have advanced serious arguments that the statements in the Offering Documents at the beginning of the Class Period (the only statements the Underwriter Defendants were statutorily liable for) were simply not false when made and that they accurately described the Apple agreement, contained multiple explicit risk warnings, and did not misstate the lay of the land in any way. The Underwriter Defendants have also asserted that they performed customary and appropriate due diligence in connection with the Offerings, which is a complete defense to a claim under the Securities Act.

# D. Risk Of Appeal

81. Even if Lead Plaintiff prevailed at summary judgment and at trial, the Settling Defendants would likely have appealed the judgment—leading to many additional months, if not years, of further litigation. On appeal, Defendants would have renewed their numerous arguments as to why Lead Plaintiff had failed to establish liability and damages, thereby

exposing Lead Plaintiff to the risk of having any favorable judgment reversed or reduced below the Settlement Amount.

- 82. The risk that even a successful trial could be overturned by a later appeal is very real in securities class actions. There are numerous instances across the country where jury verdicts for plaintiffs in securities class actions were overturned after appeal. As discussed above, the First Circuit did just this in the *Polaroid* case. *See also Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015) (reversing and remanding jury verdict of \$2.46 billion after 13 years of litigation); *Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (reversing \$81 million jury verdict after 19-day trial and dismissing case with prejudice); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning plaintiffs' verdict obtained after two decades of litigation); *In re Apple Comp. Sec. Litig.*, 1991 U.S. Dist. LEXIS 15608 (N.D. Cal. Sept. 6, 1991) (\$100 million jury verdict vacated on post-trial motions).
- 83. Based on all the factors summarized above, Lead Plaintiff and Lead Counsel respectfully submit that it was in the best interest of the Class to accept the immediate and substantial benefit conferred by the Settlements, instead of incurring the significant risks that the Class could recover a lesser amount, or nothing at all, after several additional years of arduous litigation.

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84. In the context of these significant litigation risks and the immediacy and amount of the \$36,700,000 recovery for the Settlement Classes, Lead Plaintiff and Lead Counsel believe that the Settlements are an excellent result, and are fair, reasonable, adequate, and in the best interest of the Settlement Classes.

# IV. LEAD PLAINTIFF'S COMPLIANCE WITH THE COURT'S PRELIMINARY APPROVAL ORDER REQUIRING ISSUANCE OF NOTICE

- 85. The Court's Preliminary Approval Order directed that 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 (the "Notice") and Proof of Claim and Release Form ("Claim Form") be disseminated to the Settlement Classes. The Preliminary Approval Order also set a June 7, 2018 deadline for Settlement Class Members to submit objections to the Settlements, the Plan of Allocation, and/or the Fee and Expense Application or to request exclusion from one or both of the Settlement Classes, and set a final approval hearing date of June 28, 2018.
- 86. Pursuant to the Preliminary Approval Order, Lead Counsel instructed Garden City Group, LLC ("GCG"), the Court-approved Claims Administrator, to begin disseminating copies of the Notice and the Claim Form by mail and to publish the Summary Notice. The Notice contains, among other things, a description of the Action, the proposed Settlements, the proposed Plan of Allocation, and Settlement Class Members' rights to participate in the Settlements, object to the Settlements, the Plan of Allocation, and/or the Fee and Expense Application, or exclude themselves from one or both of the Settlement Classes. The Notice also informs Settlement Class Members of Lead Counsel's intent to apply for an award of attorneys' fees in an amount not to exceed 22% of each Settlement Fund, and for reimbursement of Litigation Expenses in an amount not to exceed \$450,000. To disseminate the Notice, GCG obtained information from the Settling Defendants and from banks, brokers, and other nominees regarding the names and addresses of potential Settlement Class Members. *See* Declaration of Jose C. Fraga Regarding

- (A) Mailing of Notice and Claim Form; (B) Publication of Summary Notice; and (C) Report on Requests for Exclusion Received to Date ("Fraga Decl."), attached hereto as Exhibit 6, at ¶2-7.
- 87. On March 14, 2018, GCG disseminated 1,829 copies of the Notice and Claim Form (together, the "Notice Packet") to potential Settlement Class Members and nominees by first-class mail. *See* Fraga Decl. ¶¶3-4. As of May 23, 2018, GCG disseminated a total of 179,435 Notice Packets. *Id.* ¶7.
- 88. On March 26, 2018, in accordance with the Preliminary Approval Order, GCG caused the Summary Notice to be published in the *Wall Street Journal* and to be transmitted over the *PR Newswire*. *See* Fraga Decl. ¶8.
- 89. Lead Counsel also caused GCG to establish a dedicated settlement website, <a href="https://www.GTATSecuritiesLitigation.com">www.GTATSecuritiesLitigation.com</a>, to provide potential Settlement Class Members with information concerning the Settlements and access to downloadable copies of the Notice and Claim Form, as well as copies of the Stipulations, Preliminary Approval Order, and Complaint. See Fraga Decl. ¶10.
- 90. As set forth above, the deadline for Settlement Class Members to file objections to the Settlements, the Plan of Allocation and/or the Fee and Expense Application, or to request exclusion from the Settlement Classes is June 7, 2018. As of May 23, 2018, 3 requests for exclusion have been received (*see* Fraga Decl. ¶11), and no objections to the Settlements, the Plan of Allocation, or Lead Counsel's Fee and Expense Application have been received. Lead Counsel will file reply papers on June 21, 2018 that will address all requests for exclusion, and any objections, received.

#### V. ALLOCATION OF THE PROCEEDS OF THE SETTLEMENT

- 91. Pursuant to the Preliminary Approval Order, and as set forth in the Notice, to be eligible for a payment from the proceeds of the Individual Defendant Settlement, you must be a member of the Individual Defendant Settlement Class, and to be eligible for a payment from the proceeds of the Underwriter Defendant Settlement, you must be a member of the Underwriter Defendant Settlement Class. As explained in the Notice, to be eligible for a payment from the Settlement(s), Settlement Class Members must submit a valid Claim Form with all required information postmarked no later than July 12, 2018.
- 92. As set forth in the Notice, the Net Settlement Funds will be distributed among Settlement Class Members according to the plan of allocation approved by the Court. The plan of allocation proposed by Lead Plaintiff (the "Plan of Allocation") is set forth in Appendix A to the Notice. *See* Fraga Decl. Ex. A at Appendix A. Lead Plaintiff's damages expert developed the Plan of Allocation in consultation with Lead Counsel. Lead Counsel believes that the Plan of Allocation provides a fair and reasonable method to equitably allocate the Net Settlement Funds among Settlement Class Members who suffered losses as result of the conduct alleged in the Complaint.
- 93. As described in Plan of Allocation, calculations under the Plan of Allocation are not intended to be estimates of, nor indicative of, the amounts that Settlement Class Members might have been able to recover at trial or estimates of the amounts that will be paid to Authorized Claimants pursuant to the Settlements. Instead, the calculations under the plan are only a method to weigh the claims of Settlement Class Members against one another for the purposes of making equitable allocations of the Net Settlement Funds.

- 94. As explained above, claims were asserted in the Action against the Individual Defendants under both the Securities Act and the Exchange Act, while claims were asserted against the Underwriter Defendants under the Securities Act only. Accordingly, under the Plan of Allocation, the Underwriter Defendant Net Settlement Fund will be allocated among eligible Underwriter Defendant Settlement Class Members based solely on the Securities Act Calculations set forth in the Plan of Allocation, while the Individual Defendant Net Settlement Fund will be allocated among eligible Individual Defendant Settlement Class Members based on both the Exchange Act and Securities Act Calculations set forth therein. *See* Plan of Allocation ¶16.
- 95. Under the Plan of Allocation, the sum of a Claimant's "Exchange Act Recognized Loss Amounts" as calculated with respect to all GTAT Securities is the Claimant's "Exchange Act Recognized Claim," and the sum of a Claimant's Securities Act Recognized Loss Amounts as calculated with respect to all GTAT Common Stock Offering Shares and GTAT Senior Notes is the Claimant's "Securities Act Recognized Claim". *Id.* ¶37-38. Further, the Individual Defendant Net Settlement Fund will be allocated among Individual Defendant Authorized Claimants on a *pro rata* basis based on the relative size of their Exchange Act Recognized Claims, and the Underwriter Defendant Net Settlement Fund will be allocated among Underwriter Defendant Authorized Claimants on a *pro rata* basis based on the relative size of their Securities Act Recognized Claims. *Id.* ¶50-51.
- 96. In sum, the Plan of Allocation was designed to fairly and rationally allocate the Net Settlement Funds among eligible Settlement Class Members based on the losses they suffered on transactions in the relevant GTAT Securities that were attributable to the conduct

alleged in the Complaint. Accordingly, Lead Counsel respectfully submits that the Plan of Allocation is fair and reasonable and should be approved by the Court.

97. As noted above, as of May 23, 2018, more than 179,400 copies of the Notice, which contains the Plan of Allocation, and advises Settlement Class Members of their right to object to the proposed Plan of Allocation, have been sent to potential Settlement Class Members. See Fraga Decl. ¶7. To date, no objections to the proposed Plan of Allocation have been received.

#### VI. THE FEE AND EXPENSE APPLICATION

98. In addition to seeking final approval of the Settlement and Plan of Allocation, Lead Counsel are applying to the Court on behalf of Plaintiffs' Counsel<sup>6</sup> for an award of attorneys' fees of 22% of each Settlement Fund, or \$8,074,000 plus interest earned at the same rate as the Settlement Funds (the "Fee Application"). Lead Counsel also requests reimbursement of Litigation Expenses that Plaintiffs' Counsel incurred in connection with the prosecution of the Action from the Settlement Fund in the amount of \$227,402.76. The legal authorities supporting the requested fee and expenses are discussed in Lead Counsel's Fee Memorandum. The primary factual bases for the requested fee and expenses are summarized below.

#### A. The Fee Application

99. For its efforts on behalf of the Settlement Class, Lead Counsel are applying for a fee award to be paid from the Settlement Fund on a percentage basis. As set forth in the

<sup>&</sup>lt;sup>6</sup> Plaintiffs' Counsel consists of (i) BLB&G, Lead Counsel for Plaintiffs and the Settlement Classes; (ii) Counsel for the Securities Act Plaintiffs, Berger & Montague, P.C. ("Berger & Montague"); (iii) Counsel for additional named plaintiff Vance K. Opperman, Lockridge Grindal Nauen P.L.L.P. ("Lockridge"); (iv) Bankruptcy Counsel for Plaintiffs, Lowenstein Sandler LLP, and (v) Local Counsel for Plaintiffs, Orr & Reno, P.A.

accompanying Fee Memorandum, the percentage method is the appropriate method of fee recovery because it aligns the lawyers' interest in being paid a fair fee with the interest of the Settlement Classes in achieving the maximum recovery in the shortest amount of time required under the circumstances and has been recognized as appropriate by the Supreme Court and First Circuit for cases of this nature.

100. Based on the quality of the result achieved, the extent and quality of the work performed, the significant risks of the litigation and the fully contingent nature of the representation, Lead Counsel respectfully submit that the requested fee award is reasonable and should be approved. As discussed in the Fee Memorandum, a 22% fee award is fair and reasonable for attorneys' fees in common fund cases such as this and is within the range of percentages awarded in securities class actions in this Circuit with comparable settlements.

# 1. Lead Plaintiff And The Securities Act Plaintiffs Support The Fee Application

101. Lead Plaintiff, who closely supervised, carefully monitored, and was actively involved in all material aspects of the prosecution of the Action, as well as of the negotiation of the Settlements, has evaluated the Fee Application and believes it to be fair and reasonable. *See* Declaration of Lead Plaintiff Douglas Kurz in Support of: (A) Lead Plaintiff's Motion for Final Approval of Individual Defendant and Underwriter Defendant Settlements and Plan of Allocation; and (B) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Lead Plaintiff Decl."), attached hereto as Exhibit 2, at ¶3-7. The fee requested is also consistent with the fee permitted in the retainer agreement entered into between Lead Plaintiff and Lead Counsel at the outset of the litigation. Lead

Plaintiff's endorsement of the requested fee demonstrate its reasonableness and should be given weight in the Court's consideration of the fee award.

102. The Fee Application is also fully supported by the two Securities Act Plaintiffs, both of which are sophisticated investors that closely supervised, carefully monitored, and were actively involved in the prosecution of the Action and resolution of the claims against the Settling Defendants. See Declaration of Bradley R. Goldman on Behalf of Plaintiff Palisade Strategic Master Fund (Cayman) Limited in Support of: (A) Lead Plaintiff's Motion for Final Approval of Individual Defendant and Underwriter Defendant Settlements and Plan of Allocation; and (B) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses ("Palisade Fund Decl."), attached to the Browne Decl. as Exhibit 3, at ¶4-7; Declaration of Robert C. Varnell on Behalf of Plaintiff Highmark Limited, in Respect of its Segregated Account Highmark Fixed Income 2, in Support of: (A) Lead Plaintiff's Motion for Final Approval of Individual Defendant and Underwriter Defendant Settlements and Plan of Allocation; and (B) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses ("Highmark Decl."), attached to the Browne Decl. as Exhibit 4, at ¶4-7.

#### 2. The Time And Labor Of Plaintiffs' Counsel

103. Attached hereto as Exhibits 7A-E are the declarations of Plaintiffs' Counsel in support of Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses (the "Fee and Expense Declarations"). Each Fee and Expense Declaration includes a schedule summarizing the total hours incurred by the law firm from inception of the Action through and including May 18, 2018 in connection with the prosecution and settlement of the claims asserted against the Settling Defendants in the Action, and the resulting lodestar based

on the firm's current billing rates. The Fee and Expense Declarations also set forth the expenses incurred by each firm, delineated by category.

104. The first page of Exhibit 7 to this Declaration contains a summary chart of the hours expended and lodestar amounts for each Plaintiffs' Counsel firm, as well as a summary of each firm's Litigation Expenses. As set forth in Exhibit 7 and in the Fee and Expense Declarations, through and including May 18, 2018, Plaintiffs' Counsel have collectively expended 8,794.95 hours in connection with the prosecution and settlement of the claims asserted against the Settling Defendants in the Action, translating into a lodestar of \$5,011,848.25 for this collective time. Under the lodestar approach, the requested fee results in a multiplier of approximately 1.61.

## 3. The Skill And Experience Of Plaintiffs' Counsel

105. As demonstrated by the firm résumé of BLB&G (attached as Exhibit 3 to BLB&G's Fee and Expense Declaration), BLB&G is among the most experienced and skilled law firms in the securities-litigation field, with a long and successful track record representing investors in cases of this kind. BLB&G is consistently ranked among the top plaintiffs' firms in the country. Further, BLB&G has taken similar complex cases like this to trial, and it is among the few firms with experience doing so on behalf of plaintiffs in securities class actions. I believe that this willingness and ability to take complex cases to trial added valuable leverage in the settlement negotiations.<sup>7</sup>

<sup>&</sup>lt;sup>7</sup> As demonstrated by its firm résumé submitted with their respective Fee and Expense Declarations, Berger & Montague (Counsel for the Securities Act Plaintiffs) and Lockridge (Counsel for additional named plaintiff Vance K. Opperman) are also class-action law firms with significant experience in the securities-litigation field. *See* Exhibit 3 to Exhibit 7B (Berger & Montague firm résumé) and Exhibit 3 to Exhibit 7C (Lockridge firm résumé).

## 4. Standing And Caliber Of Defendants' Counsel

106. The quality of the work performed by Lead Counsel in attaining the Settlement should be evaluated in light of the quality of its opposition. Here, the Individual Defendants were represented by Ropes & Gray LLP, Morgan, Lewis & Bockius LLP, Nutter McClennen & Fish LLP, and Wachtell, Lipton, Rosen & Katz; and the Underwriter Defendants were represented by Paul, Weiss, Rifkind, Wharton & Garrison LLP, all highly experienced and well-respected defense firms. Counsel for the Settling Defendants spared no effort in the defense of their clients and, as discussed in the Settlement Memorandum, launched a vigorous defense against Lead Plaintiff's claims. In the face of this knowledgeable, formidable, and well-financed opposition, Lead Counsel were nonetheless able to develop a case that was sufficiently strong to persuade the Settling Defendants and their counsel to settle on terms that will significantly benefit the respective Settlement Classes.

# 5. The Risks Of Litigation And The Need To Ensure The Availability Of Competent Counsel In High-Risk Contingent Cases

- 107. The prosecution of the claims asserted against the Settling Defendants was undertaken entirely on a contingent-fee basis. The risks assumed by Lead Counsel in bringing these claims to a successful conclusion are described above. Those risks are also relevant to an award of attorneys' fees.
- 108. From the outset, Lead Counsel understood that it was embarking on a complex, expensive, and lengthy litigation with no guarantee of ever being compensated for the substantial investment of time and money the case would require. In undertaking that responsibility, Lead Counsel was obligated to ensure that sufficient resources were dedicated to the prosecution of the Action, and that funds were available to compensate staff and to cover the considerable litigation

costs that a case like this requires. With an average lag time of several years for these cases to conclude, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis. Indeed, Plaintiffs' Counsel have received no compensation during the course of this Action and no reimbursement of out-of-pocket expenses, yet they have incurred a total of \$227,402.76 in expenses in prosecuting this Action for the benefit of the Settlement Classes through and including May 18, 2018

- 109. Lead Counsel also bore the risk that no recovery would be achieved. As discussed above, from the outset, this case presented multiple risks and uncertainties that could have prevented any recovery whatsoever. Despite the most vigorous and competent of efforts, success in contingent-fee litigation like this Action is never assured.
- 110. Lead Counsel knows from experience that the commencement of a class action does not guarantee a settlement. To the contrary, it takes hard work and diligence by skilled counsel to develop the facts and theories that are needed to sustain a complaint or win at trial, or to induce sophisticated defendants to engage in serious settlement negotiations at meaningful levels.
- 111. Moreover, courts have repeatedly recognized that it is in the public interest to have experienced and able counsel enforce the securities laws and regulations pertaining to the duties of officers and directors of public companies. As recognized by Congress through the passage of the PSLRA, vigorous private enforcement of the federal securities laws can only occur if private investors, particularly institutional investors, take an active role in protecting the interests of shareholders. To carry out this important public policy, the courts should award fees that adequately compensate plaintiffs' counsel in light of the risks undertaken in prosecuting a securities class action.

112. Lead Counsel's extensive and persistent efforts in the face of substantial risks and uncertainties have resulted in significant recoveries for the benefit of the respective Settlement Classes. In these circumstances, and in consideration of the hard work performed and the excellent result achieved, I believe the requested fee is reasonable and should be approved.

## 6. The Settlement Class's Reaction To The Fee Application

- 113. As noted above, as of May 23, 2018, a total of 179,435 Notice Packets have been mailed to potential Settlement Class Members and nominees advising them that Lead Counsel would apply for an award of attorneys' fees in an amount not to exceed 22% of each Settlement Fund. See Fraga Decl. ¶7. In addition, the Court-approved Summary Notice has been published in the Wall Street Journal and released via PR Newswire on March 26, 2018. Id. at ¶8. To date, no objection to the attorneys' fees stated in the Notice has been received. Should any objections be received, they will be addressed in Lead Counsel's reply papers to be filed on June 21, 2018, after the deadline for submitting objections has passed.
- 114. In sum, Lead Counsel accepted this case on a contingency basis, committed significant resources to it, and prosecuted it without any compensation or guarantee of success. Based on the favorable results obtained, the quality of the work performed, the risks of the Action, and the contingent nature of the representation, Lead Counsel respectfully submits that a fee award of 22% of each Settlement Fund is fair and reasonable and is supported by the fee awards courts have granted in comparable cases

### **B.** The Litigation Expense Application

115. Lead Counsel, on behalf of Plaintiffs' Counsel also seeks reimbursement from the Settlement Fund of \$227,402.76 in Litigation Expenses that were reasonably incurred by

Plaintiffs' Counsel in connection with the Action from inception through and including May 18, 2018 (the "Expense Application").

- been cognizant of the fact that they might not recover any of their expenses, and, further, if there were to be reimbursement of expenses, it would not occur until a recovery in the Action was achieved, which might not occur for several years. Lead Counsel also understood that, even assuming that the case was ultimately successful, reimbursement of expenses would not necessarily compensate them for the lost use of funds advanced by them to prosecute the Action. Consequently, Lead Counsel was motivated to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the case.
- 117. As shown in Exhibit 7 to this Declaration, Plaintiffs' Counsel have incurred a total of \$227,402.76 in unreimbursed Litigation Expenses in prosecuting the Action from inception through and including May 18, 2018. These expenses are summarized in Exhibit 8, which was prepared based on the declarations submitted by each firm and identifies each category of expense, *e.g.*, expert fees, online research, out-of-town travel, mediation fees, and photocopying expenses, and the amount incurred for each category. These expense items are billed separately by Plaintiffs' Counsel and are not duplicated in Plaintiffs' Counsel's billing rates.
- 118. Of the total amount of expenses, \$120,695.42, or approximately 53%, was incurred by Plaintiffs' Counsel for the retention of experts. As noted above, Lead Counsel consulted extensively with experts, including a financial expert who analyzed potentially recoverable damages.

- 119. Another large component of the Litigation Expenses was for online legal and factual research, which was necessary to prepare the complaints, research the law pertaining to the claims asserted in the Action, and oppose Defendants' motions to dismiss. The total charges for online legal and factual research amount to \$63,067.79, or approximately 28% of the total amount of Plaintiffs' Counsel' expenses.
- 120. Plaintiffs' Counsel have also incurred expenses totaling \$12,632.50 (approximately 6% of their total expenses) for fees charged by former Judge Phillips in connection with the mediation of the Individual Defendant Settlement.
- 121. The other expenses for which Lead Counsel seeks reimbursement are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, court fees, copying costs, and work-related transportation costs.
- 122. All of the Litigation Expenses incurred by Plaintiffs' Counsel were reasonable and necessary to the successful litigation of the Action, and have been approved by Lead Plaintiff and the Securities Act Plaintiffs. *See* Lead Plaintiff Decl. ¶7; Palisade Fund Decl. ¶7; Highmark Decl. ¶7.
- 123. Additionally, in accordance with the PSLRA, initial named plaintiff Adam S. Levy ("Levy") seeks reimbursement of his reasonable costs and expenses incurred directly in connection with his representation of the Settlement Classes, in the amount of \$3,990.00. *See* Declaration of Initial Plaintiff Adam S. Levy in Support of: (A) Lead Plaintiff's Motion for Final Approval of Individual Defendant and Underwriter Defendant Settlements and Plan of Allocation; and (B) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses ¶6-7.

124. The Notice informed potential Settlement Class Members that Lead Counsel would seek reimbursement of Litigation Expenses in an amount not to exceed \$450,000. The total amount requested, \$231,392.76, which includes \$227,402.76 in reimbursement of expenses incurred by Plaintiffs' Counsel and \$3,990.00 in reimbursement of costs and expenses incurred by initial named plaintiff Levy, is significantly below the \$450,000 that Settlement Class Members were notified could be sought. To date, no Settlement Class Member has objected to the maximum amount of expenses disclosed in the Notice. Lead Counsel will address any objections in its reply papers.

125. The expenses incurred by Plaintiffs' Counsel were reasonable and necessary to represent the Settlement Class and achieve the Settlements. Accordingly, Lead Counsel respectfully submits that the Litigation Expenses incurred should be reimbursed in full from the Settlement Funds.

#### VII. CONCLUSION

126. For all the reasons set forth above, Lead Plaintiff and Lead Counsel respectfully submit that the Settlements and the Plan of Allocation should be approved as fair, reasonable and adequate. Lead Counsel further submits that the requested fee in the amount of 22% of the Settlement Funds should be approved as fair and reasonable, and the request for reimbursement of total Litigation Expenses in the amount of \$231,392.76 incurred from the inception of the Action through and including May 18, 2018, should also be approved.

I declare, under penalty of perjury under the laws of the United States, that the foregoing is true and correct.

Executed this 24th day of May, 2018.

John C. Browne

# EXHIBIT 1

# UNITED STATES DISTRICT COURT DISTRICT OF NEW HAMPSHIRE

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

No. 1:14-cy-00443-JL

Plaintiff,

v.

**ECF CASE** 

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.

DECLARATION OF LAYN R. PHILLIPS IN SUPPORT OF LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF INDIVIDUAL DEFENDANT SETTLEMENT

- I, LAYN R. PHILLIPS, declare under penalty of perjury as follows:
- 1. I am filing this Declaration in my capacity as the mediator in connection with the proposed partial settlement of claims against the Individual Defendants in the above-captioned securities class action (the "Individual Defendant Settlement").
- 2. The parties' negotiations were conducted in confidence and under my supervision. All participants in the mediation and negotiations executed a confidentiality agreement indicating that the mediation process was to be considered settlement negotiations for the purpose of Rule 408 of the Federal Rules of Evidence, protecting disclosure made during such process from later discovery, dissemination, publication and/or use in evidence. By making this declaration, neither I nor the parties waive in any way the provisions of the confidentiality agreement or the protections of Rule 408. Although I cannot disclose the contents of the mediation negotiations, the parties have authorized me to inform the Court of the procedural and substantive matters set forth below to be used in support of approval of the Individual Defendant Settlement. Thus, without in any way waiving the mediation privilege, I make this declaration based on personal knowledge, and I am competent to testify as to the matters set forth herein.

### I. <u>BACKGROUND AND QUALIFICATIONS</u>

3. I am a former U.S. District Judge, a former United States Attorney, and a former litigation partner with the firm of Irell & Manella LLP. I currently serve as a mediator and arbitrator with my own alternative dispute resolution company, Phillips ADR Enterprises ("Phillips ADR"), which is based in Corona Del Mar, California. I am a member of the bars of Oklahoma, Texas, California and the District of Columbia, as well as the U.S. Courts of Appeals for the Ninth and Tenth Circuits and the Federal Circuit.

- 4. I earned my Bachelor of Science in Economics as well as my J.D. from the University of Tulsa. I also completed two years of L.L.M. work at Georgetown University Law Center in the area of economic regulation of industry. After serving as an antitrust prosecutor and an Assistant United States Attorney in Los Angeles, California, I was nominated by President Reagan to serve as a United States Attorney in Oklahoma, and did so for approximately four years.
- 5. I personally tried many cases and oversaw the trials of numerous other cases as a United States Attorney. While serving as a United States Attorney, I was nominated by President Reagan to serve as a United States District Judge for the Western District of Oklahoma. While on the bench, I presided over a total of more than 140 federal trials and sat by designation in the United States Court of Appeals for the Tenth Circuit. I also presided over cases in Texas, New Mexico and Colorado.
- 6. I left the federal bench in 1991 and joined Irell & Manella, where for 23 years I specialized in alternative dispute resolution, complex civil litigation and internal investigations. In 2014, I left Irell & Manella to found my own company, Phillips ADR, which provides mediation and other alternative dispute resolution services.
- 7. Over the past 25 years, I have devoted a considerable amount of my professional life to serving as a mediator and arbitrator in connection with large, complex cases such as this one. I have successfully mediated numerous complex commercial cases, including dozens of securities class action cases.

#### II. THE ARM'S-LENGTH SETTLEMENT NEGOTIATIONS

8. On October 2, 2017, counsel for Lead Plaintiff and the Individual Defendants participated in a full-day mediation session before me. The participants included (i) Lead Counsel, Bernstein Litowitz Berger & Grossmann LLP; (ii) counsel for Defendant Hoil Kim at Ropes & Gray LLP; (iii) counsel for Defendants Thomas Gutierrez, Daniel Squiller, and Richard Gaynor at

Morgan, Lewis & Bockius LLP; (iv) counsel for Defendant Kanwardev Raja Singh Bal at Nutter McClennan & Fish LLP; (v) counsel for Defendants J. Michael Conaway, Kathleen A. Cote, Ernest L. Godshalk, Matthew E. Massengill, Mary Petrovich, Robert E. Switz, Noel G. Watson, and Thomas Wroe, Jr. from Wachtell, Lipton, Rose & Katz; and (vi) representatives from the Individual Defendants' directors' and officers' liability insurance carriers.

- 9. In advance of the mediation session, the parties each exchanged and submitted to me detailed mediation statements, each of which included numerous exhibits addressing liability and damages. I found the discussions in the mediation statements to be extremely valuable in helping me to understand the relative merits of each party's positions, and to identify the issues that were likely to serve as the primary drivers and obstacles to achieving a settlement. Counsel for both Lead Plaintiff and the Individual Defendants advocated forcefully on behalf of their clients' respective positions, and it was apparent to me that each side possessed substantial, non-frivolous arguments based on the law and facts in dispute, and that neither side was assured of victory.
- 10. Because the parties submitted their mediation statements and arguments in the context of a confidential mediation process pursuant to Federal Rule of Civil Procedure 408, I cannot reveal their content. I can say, however, that the arguments and positions asserted by all involved were the product of much careful work and analysis, and that the legal and factual issues presented were complex and sharply contested. After reviewing all of the written mediation statements and exhibits, I believed that the negotiation would be a difficult and adversarial process through which all involved would adhere to their considered convictions that they had the better legal and substantive arguments, and that a resolution without further litigation or trial was by no means certain.

- October 2, 2017, I engaged in extensive discussions with counsel and the carriers in an effort to find common ground between the parties' respective positions. In addition, the parties engaged in discussion during the mediation in which they exchanged views regarding the relative strengths and weaknesses of their cases and the risks and uncertainties of continued litigation. Counsel for the Individual Defendants and the insurance carriers provided information regarding the available insurance available to the Individual Defendants for settlement of the claims in this Action. During the session, the parties also exchanged several rounds of settlement demands and offers. At the end of a long day, the Lead Plaintiff and Individual Defendants appeared close to an agreement in principle to settle and release all claims asserted against the Individual Defendants. However, no agreement was signed that day, and I am informed by the parties that negotiations continued for over ten days before the Lead Plaintiff and Individual Defendants ultimately signed an agreement in principle to settle on October 13, 2017.
- 12. As discussed above, this was an extremely hard-fought negotiation. I cannot delve into the specifics regarding each party's and the carriers' positions and thinking because these discussions occurred as part of confidential mediation communications. But I can say that there were many complex issues that required significant thought and practical solutions. I can also attest that the negotiations were vigorous, completely at arm's-length, and conducted in good faith throughout the mediation process.

#### III. <u>CONCLUSION</u>

13. Based on my experience as a litigator, a former U.S. District Judge and a mediator, I believe that the Individual Defendant Settlement represents a recovery and outcome that is reasonable and fair for the Individual Defendant Settlement Class and all parties involved. I further believe it was in the best interests of the parties that they avoid the burdens and risks associated

with taking a case of this size and complexity to trial, and that they agree on the Individual Defendant Settlement now before the Court. In sum, I strongly support the approval of the Individual Defendant Settlement in all respects.

14. Lastly, the advocacy on both sides of the case was outstanding. I have experience with attorneys from the law firms on both sides of this case, which are nationally recognized for their work prosecuting and defending large, complex securities class actions such as this. I am familiar with the effort, creativity, and zeal they put into their work. I expected that they would represent their clients in the same manner here, as they did. All counsel displayed the highest level of professionalism in carrying out their duties on behalf of their respective clients. The Individual Defendant Settlement is the direct result of all counsel's experience, reputation, and ability in these types of complex class actions.

I declare under penalty of perjury that the foregoing facts are true and correct and that this declaration was executed this 21st day of May, 2018.

JAYN R PHILLIPS

# EXHIBIT 2

# UNITED STATES DISTRICT COURT DISTRICT OF NEW HAMPSHIRE

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

No. 1:14-cy-00443-JL

Plaintiff,

**ECF CASE** 

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.

DECLARATION OF LEAD PLAINTIFF DOUGLAS KURZ IN SUPPORT OF: (A)
LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF INDIVIDUAL
DEFENDANT AND UNDERWRITER DEFENDANT SETTLEMENTS AND PLAN OF
ALLOCATION; AND (B) LEAD COUNSEL'S MOTION FOR AN AWARD OF
ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

- I, Douglas Kurz, hereby declare under penalty of perjury as follows:
- 1. I am the Court-appointed Lead Plaintiff in the above-captioned securities class action (the "Action"). I submit this declaration in support of: (a) Lead Plaintiff's motion for

<sup>&</sup>lt;sup>1</sup> Unless otherwise defined in this Declaration, all capitalized terms have the meanings defined in (a) the Stipulation and Agreement of Settlement With Individual Defendants dated January 26, 2018 (ECF No. 178-1); and (b) the Stipulation and Agreement of Settlement With Settling Underwriter Defendants dated August 18, 2017, and the Supplement thereto dated January 26, 2018 (ECF No. 178-2).

final approval of the Individual Defendant and Underwriter Defendant Settlements and approval of the proposed Plan of Allocation; and (b) Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses.

2. I am aware of and understand the requirements and responsibilities of a representative plaintiff in a securities class action, including those set forth in the Private Securities Litigation Reform Act of 1995 ("PSLRA"). I have personal knowledge of the matters set forth in this Declaration, as I have been directly involved in monitoring and overseeing the prosecution of the Action, as well as the negotiations leading to the respective Settlements, and I could and would testify competently to these matters.

### I. OVERSIGHT OF THE LITIGATION

- 3. In my capacity as the Lead Plaintiff in this Action, I had regular communications with the Court-appointed Lead Counsel, Bernstein Litowitz Berger & Grossmann LLP ("BLB&G"), throughout this litigation. I closely supervised, carefully monitored, and was actively involved in all material aspects of the prosecution of the Action. I received periodic status reports from BLB&G on case developments, and participated in regular discussions with attorneys from BLB&G concerning the prosecution of the Action, the strengths of and risks to the claims, and potential settlement of the claims against the Individual Defendants and Underwriter Defendants. In particular, throughout the course of this Action, I:
  - (a) regularly communicated with BLB&G by email and telephone regarding the posture and progress of the case;
  - (b) reviewed all significant pleadings and briefs filed in the Action;
  - (c) reviewed the Court's orders and discussed them with BLB&G;
  - (d) consulted with BLB&G regarding the settlement negotiations; and
  - (e) evaluated and approved the proposed Settlements.

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## II. ENDORSEMENT OF THE SETTLEMENTS

- 4. I was kept informed of the progress of the settlement negotiations in this litigation. Before and during the mediation process, I conferred with BLB&G regarding the parties' respective positions. I continued to confer with BLB&G during the months after the mediation process as the final terms of the settlement continued to be negotiated.
- 5. Based on my involvement throughout the prosecution and resolution of the claims asserted in the Action, I believe that the proposed Settlements are fair, reasonable, and adequate to the respective Settlement Classes. I believe that the Settlements provide an excellent recovery for the respective Settlement Classes, particularly in light of the risks of continued litigation. Therefore, I strongly endorse approval of the Settlements by the Court.

# III. LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

- 6. I believe that the request for an award of attorneys' fees in the amount of 22% of the Settlement Funds is fair and reasonable in light of the work that Plaintiffs' Counsel performed on behalf of the Settlement Classes. I take seriously my role as a Lead Plaintiff to ensure that attorneys' fees are fair in light of the result achieved for the Settlement Classes and reasonably compensate Plaintiffs' Counsel for the work involved and the substantial risks counsel undertook in litigating the Action. I have evaluated Lead Counsel's fee request in this Action by considering the work performed by Plaintiffs' Counsel and the substantial recoveries obtained for the Settlement Classes.
- 7. I further believe that the Litigation Expenses being requested for reimbursement to Plaintiffs' Counsel are reasonable, and represent costs and expenses necessary for the institution, prosecution and resolution of the claims in the Action. Based on the foregoing, and consistent with my obligation to the Settlement Classes to obtain the best result at the most

efficient cost, I fully support Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses.

8. I understand that reimbursement of a class representative's reasonable costs and expenses is authorized under the PSLRA. Even though I spent a considerable amount of time monitoring the litigation on behalf of the Class, I am not seeking reimbursement for my costs and expenses incurred in connection with this litigation.

### IV. <u>CONCLUSION</u>

9. In conclusion, I was closely involved throughout the prosecution and settlement of the claims asserted in this Action against the Individual Defendants and Underwriter Defendants, strongly endorse the Settlements as fair, reasonable, and adequate, and believe that the Settlements represent a significant recovery for the respective Settlement Classes. Accordingly, I respectfully request that the Court approve: (a) Lead Plaintiff's motion for final approval of the proposed Settlements and approval of the proposed Plan of Allocation; and (b) Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this  $2^{1/3}$  day of May, 2018.

Douglas Kurz

# EXHIBIT 3

# UNITED STATES DISTRICT COURT DISTRICT OF NEW HAMPSHIRE

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

No. 1:14-cv-00443-JL

Plaintiff,

**ECF CASE** 

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.

DECLARATION OF BRADLEY R. GOLDMAN ON BEHALF OF PLAINTIFF PALISADE STRATEGIC MASTER FUND (CAYMAN) LIMITED IN SUPPORT OF:
(A) LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF INDIVIDUAL DEFENDANT AND UNDERWRITER DEFENDANT SETTLEMENTS AND PLAN OF ALLOCATION; AND (B) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

- I. Bradley R. Goldman, hereby declare under penalty of perjury as follows:
- 1. I am the Managing Director, General Counsel and Chief Compliance Officer of Palisade Capital Management, L.L.C. ("PCM"), the investment manager to PCM's affiliate Palisade Strategic Master Fund (Cayman) Limited ("Strategic Master Fund"). The Strategic

Master Fund is a named plaintiff in the above-captioned securities class action (the "Action"). Along with Highmark Limited, in respect of its Segregated Account Highmark Fixed Income 2 ("Highmark"), the Strategic Master Fund and Highmark are referred to herein as the "Securities Act Plaintiffs." I submit this declaration in support of: (a) Lead Plaintiff's motion for final approval of the Individual Defendant and Underwriter Defendant Settlements and approval of the proposed Plan of Allocation; and (b) Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses.

- 2. I am aware of and understand the requirements and responsibilities of a representative plaintiff in a securities class action, including those set forth in the Private Securities Litigation Reform Act of 1995 ("PSLRA"). I have personal knowledge of the matters set forth in this Declaration, as I have been directly involved in monitoring and overseeing the prosecution of the Action on behalf of the Strategic Master Fund, and I could and would testify competently to these matters.
- 3. Strategic Master Fund is incorporated in the Cayman Islands as a Cayman Islands limited company.

# I. OVERSIGHT OF THE LITIGATION

4. On behalf of the Strategic Master Fund, I had regular communications with the Strategic Master Fund's counsel, Berger & Montague, P.C. ("Berger & Montague"), throughout this litigation. I closely supervised and carefully monitored all material aspects of the prosecution of the Action. I received periodic status reports on case developments from Berger & Montague,

<sup>&</sup>lt;sup>1</sup> Unless otherwise defined in this Declaration, all capitalized terms have the meanings defined in (a) the Stipulation and Agreement of Settlement With Individual Defendants dated January 26, 2018 (ECF No. 178-1); and (b) the Stipulation and Agreement of Settlement With Settling Underwriter Defendants dated August 18, 2017, and the Supplement thereto dated January 26, 2018 (ECF No. 178-2).

and participated in regular discussions with attorneys from Berger & Montague concerning the prosecution of the Action, the strengths of and risks to the claims, and potential settlement of the claims against the Individual Defendants and Underwriter Defendants. In particular, throughout the course of this Action, I:

- (a) regularly communicated with Berger & Montague by email and telephone regarding the posture and progress of the case;
- (b) reviewed all significant pleadings and briefs filed in the Action;
- (c) reviewed the Court's orders and discussed them with Berger & Montague;
- (d) consulted with Berger & Montague regarding the proposed Settlements; and
- (e) evaluated and approved the proposed terms of certain aspects of the Settlement documents, including the Plan of Allocation.

#### II. ENDORSEMENT OF THE SETTLEMENTS

5. Based on its involvement throughout the prosecution and resolution of the claims asserted in the Action, the Strategic Master Fund believes that the proposed Settlements are fair, reasonable, and adequate to the respective Settlement Classes. The Strategic Master Fund believes that the Settlements provide an excellent recovery for the respective Settlement Classes, particularly in light of the risks of continued litigation. Therefore, the Strategic Master Fund strongly endorses approval of the Settlements by the Court.

# III. LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

6. The Strategic Master Fund believes that the request for an award of attorneys' fees in the amount of 22% of the Settlement Funds is fair and reasonable in light of the work that Plaintiffs' Counsel performed on behalf of the Settlement Classes. The Strategic Master Fund takes seriously its role as a representative plaintiff to ensure that attorneys' fees are fair in light of the result achieved for the class and reasonable to compensate plaintiffs' counsel for the work

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involved given the substantial risks counsel undertook in litigating this action. I have evaluated Lead Counsel's fee request in this Action by considering the work performed by Plaintiffs' Counsel and the substantial recoveries obtained for the Settlement Classes.

- 7. The Strategic Master Fund further believes that the Litigation Expenses being requested for reimbursement to Plaintiffs' Counsel are reasonable, and represent costs and expenses necessary for the institution, prosecution and resolution of the claims in the Action. Based on the foregoing, the Strategic Master Fund fully supports Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses.
- 8. Although the reimbursement of a class representative's reasonable expenses is authorized under the PSLRA, the Strategic Master Fund does not seek reimbursement of its direct expenses incurred as a result of its representation of the Settlement Classes in the Action and its efforts leading to the creation of the Settlements.

## IV. CONCLUSION

9. In conclusion, the Strategic Master Fund was closely involved throughout the prosecution and settlement of the claims asserted in this Action, strongly endorses the Settlements as fair, reasonable, and adequate, and believes that the Settlements represent a significant recovery for the respective Settlement Classes. Accordingly, the Strategic Master Fund respectfully requests that the Court approve: (a) Lead Plaintiff's motion for final approval of the proposed Settlements and approval of the proposed Plan of Allocation; and (b) Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this  $17^{tL}$  day of May, 2018 in Fort Lee, New Jersey.

Bradley R Goldman, Esq.

Kal7977804

## EXHIBIT 4

## UNITED STATES DISTRICT COURT DISTRICT OF NEW HAMPSHIRE

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

No. 1:14-cv-00443-JL

Plaintiff,

**ECF CASE** 

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.

DECLARATION OF ROBERT C. VARNELL ON BEHALF OF PLAINTIFF
HIGHMARK LIMITED, IN RESPECT OF ITS SEGREGATED ACCOUNT
HIGHMARK FIXED INCOME 2, IN SUPPORT OF: (A) LEAD PLAINTIFF'S MOTION
FOR FINAL APPROVAL OF INDIVIDUAL DEFENDANT AND UNDERWRITER
DEFENDANT SETTLEMENTS AND PLAN OF ALLOCATION; AND (B) LEAD
COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND
REIMBURSEMENT OF LITIGATION EXPENSES

- I, Robert C. Varnell, hereby declare under penalty of perjury as follows:
- 1. I am the Vice President and General Counsel of Lockheed Martin Investment Management Company ("LMIMCo") and I am a Director of its affiliate, Highmark Limited, in respect of its Segregated Account Highmark Fixed Income 2 (the "Highmark Account"). Together with the Palisade Strategic Master (Cayman) Limited Fund, the Highmark Account (collectively, the "Securities Act Plaintiffs") is one of two entities that serves as named Plaintiffs

in the above-captioned securities class action (the "Action").<sup>1</sup> I submit this declaration in support of: (a) Lead Plaintiff's motion for final approval of the Individual Defendant and Underwriter Defendant Settlements and approval of the proposed Plan of Allocation; and (b) Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses.

- 2. I am aware of and understand the requirements and responsibilities of a representative plaintiff in a securities class action, including those set forth in the Private Securities Litigation Reform Act of 1995 ("PSLRA"). I have personal knowledge of the matters set forth in this Declaration, as I have been directly involved in monitoring and overseeing the prosecution of the Action on behalf of the Highmark Account, and I could and would testify competently to these matters.
- 3. Highmark Limited is incorporated in Bermuda as an exempted company and registered as a segregated accounts company pursuant to the Segregated Accounts Companies Act 2000 of Bermuda, as amended.

#### I. OVERSIGHT OF THE LITIGATION

4. On behalf of the Highmark Account, I have had regular communications with counsel for the Securities Act Plaintiffs, Berger & Montague, P.C. ("Berger & Montague"), throughout this litigation. I have closely supervised and carefully monitored all material aspects of the prosecution of the Action. I received periodic status reports from Berger & Montague on

<sup>&</sup>lt;sup>1</sup> Unless otherwise defined in this Declaration, all capitalized terms have the meanings defined in (a) the Stipulation and Agreement of Settlement With Individual Defendants dated January 26, 2018 (ECF No. 178-1); and (b) the Stipulation and Agreement of Settlement With Settling Underwriter Defendants dated August 18, 2017, and the Supplement thereto dated January 26, 2018 (ECF No. 178-2).

case developments, and participated in regular discussions with attorneys from Berger & Montague concerning the prosecution of the Action, the strengths of and risks to the claims, and potential settlement of the claims against the Individual Defendants and Underwriter Defendants. In particular, throughout the course of this Action, my colleague Christopher L. Bowlin, Associate General Counsel of LMIMCo, and I:

- (a) regularly communicated with Berger & Montague by email and telephone regarding the posture and progress of the case;
- (b) reviewed all significant pleadings and briefs filed in the Action;
- (c) reviewed the Court's orders and discussed them with Berger & Montague;
- (d) consulted with Berger & Montague regarding the proposed Settlements; and
- (e) evaluated and approved the proposed terms of certain aspects of the Settlement documents, including the Plan of Allocation.

#### II. ENDORSEMENT OF THE SETTLEMENTS

5. Based on its involvement throughout the prosecution and resolution of the claims asserted in the Action, the Highmark Account believes that the proposed Settlements are fair, reasonable, and adequate to the respective Settlement Classes. The Highmark Account believes that the Settlements provide an excellent recovery for the respective Settlement Classes, particularly in light of the risks of continued litigation. Therefore, the Highmark Account strongly endorses approval of the Settlements by the Court.

#### III. LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

6. The Highmark Account believes that the request for an award of attorneys' fees in the amount of 22% of the Settlement Funds is fair and reasonable in light of the work that Plaintiffs' Counsel performed on behalf of the Settlement Classes. The Highmark Account takes seriously its role as a representative plaintiff to ensure that attorneys' fees are fair in light of the

result achieved for the class and reasonable to compensate Plaintiffs' Counsel for the work involved and the substantial risks that counsel undertook in litigating the Action. I have evaluated Lead Counsel's fee request in this Action by considering the work performed by Plaintiffs' Counsel and the substantial recoveries obtained for the Settlement Classes.

- 7. The Highmark Account further believes that the Litigation Expenses requested for reimbursement to Plaintiffs' Counsel are reasonable, and represent costs and expenses necessary for the institution, prosecution and resolution of the claims in the Action. Based on the foregoing, the Highmark Account fully supports Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses.
- 8. Although the reimbursement of a class representative's reasonable expenses is authorized under the PSLRA, the Highmark Account does not seek reimbursement of its direct expenses incurred as a result of its representation of the Settlement Classes in the Action and its efforts leading to the creation of the Settlements.

#### IV. <u>CONCLUSION</u>

9. In conclusion, the Highmark Account was closely involved throughout the prosecution and settlement of the claims asserted in this Action, strongly endorses the Settlements as fair, reasonable, and adequate, and believes that the Settlements represent a significant recovery for the respective Settlement Classes. Accordingly, the Highmark Account respectfully requests that the Court approve: (a) Lead Plaintiff's motion for final approval of the proposed Settlements and approval of the proposed Plan of Allocation; and (b) Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 17th day of May, 2018, in Bethesda, Maryland.

Robert C. Varnell, Esq.

kal7977805

## EXHIBIT 5

## UNITED STATES DISTRICT COURT DISTRICT OF NEW HAMPSHIRE

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

No. 1:14-cv-00443-JL

Plaintiff,

**ECF CASE** 

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.

DECLARATION OF INITIAL PLAINTIFF ADAM S. LEVY IN SUPPORT OF: (A)
LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF INDIVIDUAL
DEFENDANT AND UNDERWRITER DEFENDANT SETTLEMENTS AND PLAN OF
ALLOCATION; AND (B) LEAD COUNSEL'S MOTION FOR AN AWARD OF
ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

- I, Adam S. Levy, hereby declare under penalty of perjury as follows:
- 1. I am the initial plaintiff in the above-captioned securities class action (the "Action"). I submit this declaration in support of: (a) Lead Plaintiff's motion for final approval

<sup>&</sup>lt;sup>1</sup> Unless otherwise defined in this Declaration, all capitalized terms have the meanings defined in (a) the Stipulation and Agreement of Settlement With Individual Defendants dated January 26, 2018 (ECF No. 178-1); and (b) the Stipulation and Agreement of Settlement With Settling Underwriter Defendants dated August 18, 2017, and the Supplement thereto dated January 26, 2018 (ECF No. 178-2).

of the Individual Defendant and Underwriter Defendant Settlements and approval of the proposed Plan of Allocation; and (b) Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, which includes my request to recover the reasonable costs and expenses that I incurred in connection with this litigation. I have personal knowledge of the matters set forth in this Declaration.

#### I. OVERSIGHT OF THE INITIAL STAGES OF THE LITIGATION

2. In my capacity as the initial plaintiff in this Action, I had communications with my counsel at Bernstein Litowitz Berger & Grossmann LLP ("BLB&G"), the law firm that was subsequently appointed as Lead Counsel in this Action. I closely supervised and carefully monitored the filing of the initial class complaint in this Action. In so doing, I had several communications with BLB&G by email and telephone regarding the posture and progress of the initial complaint and reviewed the initial complaint filed in this Action.

#### II. ENDORSEMENT OF THE SETTLEMENTS

3. Based on my involvement at the commencement of this Action, and my continued monitoring of the Action, I believe that the proposed Settlements are fair, reasonable, and adequate to the respective Settlement Classes. I believe that the Settlements provide an excellent recovery for the respective Settlement Classes, particularly in light of the risks of continued litigation. Therefore, I strongly endorse approval of the Settlements by the Court.

#### III. LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

4. I believe that the request for an award of attorneys' fees in the amount of 22% of the Settlement Funds is fair and reasonable in light of the work that Plaintiffs' Counsel performed on behalf of the Settlement Classes.

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- 5. I further believe that the Litigation Expenses being requested for reimbursement to Plaintiffs' Counsel are reasonable, and represent costs and expenses necessary for the institution, prosecution and resolution of the claims in the Action. Based on the foregoing, I fully support Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses.
- 6. I understand that reimbursement of a class representative's reasonable costs and expenses is authorized under the PSLRA. For this reason, in connection with Lead Counsel's request for reimbursement of Litigation Expenses, I respectfully seek reimbursement of my costs incurred directly relating to my role in representing the Class with respect to the initial complaint filed in this Action.
- 7. I am an attorney based in Oreland, Pennsylvania, and have practiced law for more than 25 years. The time that I spent devoted to the filing of the initial complaint was time that I otherwise would have spent on other work related to my legal career. I therefore seek reimbursement in the amount of \$3,990.00 based on the 7.6 hours I devoted to this case, based on my normal billing rate of \$525 per hour.

#### IV. <u>CONCLUSION</u>

8. In conclusion, I was closely involved in the filing of the initial complaint in this Action and strongly endorse the Settlements as fair, reasonable, and adequate, and believe that the Settlements represent a significant recovery for the respective Settlement Classes. Accordingly, I respectfully request that the Court approve: (a) Lead Plaintiff's motion for final approval of the proposed Settlements and approval of the proposed Plan of Allocation; and (b) Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation

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Expenses, which includes my request to recover the reasonable costs and expenses that I incurred in connection with this litigation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this **23** day of May, 2018.

## EXHIBIT 6

## UNITED STATES DISTRICT COURT DISTRICT OF NEW HAMPSHIRE

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

No. 1:14-cv-00443-JL

Plaintiff,

v.

ECF Case

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.

## DECLARATION OF JOSE C. FRAGA REGARDING (A) MAILING OF NOTICE AND CLAIM FORM; (B) PUBLICATION OF SUMMARY NOTICE; AND (C) REPORT ON REQUESTS FOR EXCLUSION RECEIVED TO DATE

I, JOSE C. FRAGA, declare as follows:

1. I am a Senior Director of Operations for The Garden City Group, LLC ("GCG"). Pursuant to the Court's February 13, 2018 Order Preliminarily Approving Settlements and Providing for Notice (the "Preliminary Approval Order"), GCG was authorized to act as the Claims Administrator in connection with the Settlements of the above-captioned action (the "Action"). I am over 21 years of age and am not a party to the Action. I have personal

<sup>&</sup>lt;sup>1</sup> Unless otherwise defined herein, all capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement with Individual Defendants dated January 26, 2018 (the "Individual Defendant Stipulation") and the Stipulation and Agreement of Settlement with Settling Underwriter Defendants dated August 18, 2017, together with the Supplement thereto dated January 26, 2018 (the "Underwriter Stipulation" and, collectively with the Individual Defendant Stipulation, the "Stipulations").

knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

#### MAILING OF NOTICE AND PROOF OF CLAIM

- 2. Pursuant to the Preliminary Approval Order, GCG mailed 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 (the "Notice") and the Proof of Claim and Release Form (the "Claim Form" and, collectively with the Notice, the "Notice Packet") to potential Settlement Class Members. A copy of the Notice Packet is attached hereto as Exhibit A.
- 3. Pursuant to the Stipulations, GCG received information from Settling Defendants' Counsel containing a total of 37 unique names and addresses of potential Settlement Class Members. On March 14, 2018, GCG caused Notice Packets to be sent by First-Class Mail to those potential Settlement Class Members.
- 4. As in most class actions of this nature, the large majority of potential Settlement Class Members are expected to be beneficial purchasers whose securities are held in "street name" *i.e.*, the securities are purchased by brokerage firms, banks, institutions, and other third-party nominees in the name of the respective nominees, on behalf of the beneficial purchasers. GCG maintains a proprietary database with names and addresses of the largest and most common banks, brokers, and other nominees. At the time of the initial mailing, this database contained 1,792 mailing records. On March 14, 2018, GCG caused Notice Packets to be sent by First-Class Mail to those 1,792 mailing records.

- 5. The Notice directed those nominees who purchased or otherwise acquired GTAT Common Stock and/or GTAT Senior Notes, purchased or otherwise acquired GTAT Call Options, and/or sold (wrote) GTAT Put Options during the Class Period for the beneficial interest of a person or organization other than themselves to either (a) within fourteen (14) calendar days of receipt of the Notice, request from GCG sufficient copies of the Notice Packet to forward to all such beneficial owners, or (b) within fourteen (14) calendar days of receipt of the Notice, provide to GCG the names and addresses of all such beneficial owners. *See* Notice ¶ 55.
- 6. As of May 23, 2018, GCG received an additional 120,016 names and addresses of potential Settlement Class Members from individuals or brokerage firms, banks, institutions, and other nominees. GCG has also received requests from brokers and other nominee holders for 57,590 Notice Packets to be forwarded by the nominees to their customers. All such requests have been, and will continue to be, complied with and addressed in a timely manner.
- 7. As of May 23, 2018, a total of 179,435 Notice Packets have been mailed to potential Settlement Class Members and their nominees. In addition, GCG has remailed 338 Notice Packets to persons whose original mailings were returned by the U.S. Postal Service ("USPS") and for whom updated addresses were provided to GCG by the USPS.

#### **PUBLICATION OF SUMMARY NOTICE**

8. In accordance with Paragraph 7(c) of the Preliminary Approval Order, GCG caused 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 (the "Summary Notice") to be published in the *Wall Street Journal* 

and released via *PR Newswire* on March 26, 2018. Copies of proof of publication of the Summary Notice in the *Wall Street Journal* and over *PR Newswire* are attached hereto as Exhibits B and C, respectively.

#### TELEPHONE HELP LINE

9. On March 14, 2018, GCG established a case-specific, toll-free telephone helpline, 1-866-562-8790, with an interactive voice response system and live operators, to accommodate potential Settlement Class Members with questions about the Action and the Settlements. The automated attendant answers the calls and presents callers with a series of choices to respond to basic questions. Callers requiring further help have had the option to be transferred to a live operator during business hours. GCG continues to maintain the telephone helpline and will update the interactive voice response system as necessary through the administration of the Settlement.

#### **SETTLEMENT WEBSITE**

10. In accordance with Paragraph 7(b) of the Preliminary Approval Order, GCG established and continues to maintain the Settlement website for this Action, www.GTATSecuritiesLitigation.com. The Settlement website includes information regarding the Action and the proposed Settlements, including the exclusion, objection, and claim-filing deadlines and the date and time of the Court's Settlement Hearing. In addition, copies of the Notice, Claim Form, Stipulations, Preliminary Approval Order, and Complaint are posted on the website and are available for downloading. The Settlement website was operational beginning on March 14, 2018, and is accessible 24 hours a day, 7 days a week.

#### REPORT ON REQUESTS FOR EXCLUSION RECEIVED TO DATE

11. The Notice informed potential Settlement Class Members that requests for exclusion are to be sent to the Claims Administrator, such that they are received no later than June 7, 2018. The Notice also sets forth the information that must be included in each request for exclusion. As of May 23, 2018, GCG received three (3) requests for exclusion. GCG will submit a supplemental declaration after the June 7, 2018 deadline addressing all requests for exclusion received.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 24, 2018.

Jose C. Fraga

# EXHIBIT A

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

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

No. 1:14-cv-00443-JL

Plaintiff,

**ECF CASE** 

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.

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

A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

NOTICE OF PENDENCY OF CLASS ACTION AND CERTIFICATION OF SETTLEMENT CLASSES: Please be advised that your rights may be affected by the above-captioned securities class action (the "Action") pending in the United States District Court for the District of New Hampshire (the "Court"), if, during the period from November 5, 2013 through 9:40 a.m. Eastern Standard Time on October 6, 2014, inclusive (the "Class Period"), you purchased or otherwise acquired publicly traded GT Advanced Technologies Inc. ("GTAT") common stock ("GTAT Common Stock") and/or publicly traded 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"), and/or sold (wrote) publicly traded put options on GTAT common stock ("GTAT Put Options," and together with GTAT Common Stock, GTAT Senior Notes, and GTAT Call Options, "GTAT Securities"). The full definitions of the Settlement Classes certified by the Court are set forth in ¶ 25 below.

NOTICE OF SETTLEMENTS: Please also be advised that the Court-appointed Lead Plaintiff Douglas Kurz ("Lead Plaintiff") and additional 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") (Highmark Limited and Strategic Master Fund together are the "Securities Act Plaintiffs," and together with Lead Plaintiff, the "Plaintiffs"), on behalf of themselves and the Individual Defendant Settlement Class (as defined in ¶ 25 below), have reached a proposed settlement of the Action with the Individual Defendants<sup>2</sup> for \$27,000,000 in cash (the "Individual Defendant Settlement") to settle claims brought under both the Securities Act (as defined in ¶ 14 below) and the Exchange Act (as defined in ¶ 14 below) relating to GTAT's secondary public offering of common stock and initial public offering of GTAT Senior Notes in December 2013 (respectively, "Common Stock Secondary Offering" and "Senior Notes Offering") and to the trading of GTAT Common Stock and GTAT Senior Notes during the Class Period. Plaintiffs, on behalf of themselves and the

<sup>&</sup>lt;sup>1</sup> Any capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement with Individual Defendants dated January 26, 2018 (the "Individual Defendant Stipulation") and the Stipulation and Agreement of Settlement With Settling Underwriter Defendants dated August 18, 2017, together with the Supplement thereto dated January 26, 2018 (the "Underwriter Defendant Stipulation"), which are available at www.GTATSecuritiesLitigation.com. The Individual Defendant Stipulation and the Underwriter Defendant Stipulation are collectively referred to as the "Stipulations".

<sup>&</sup>lt;sup>2</sup> The "Individual Defendants" consist of defendants Thomas Gutierrez, Richard Gaynor, Kanwardev Raja Singh Bal, Hoil Kim, and Daniel W. Squiller (collectively, the "Officer Defendants") and defendants J. Michal Conaway, Kathleen A. Cote, Ernest L. Godshalk, Matthew E. Massengill, Mary Petrovich, Robert E. Switz, Noel G. Watson, and Thomas Wroe, Jr. (collectively, the "Director Defendants").

Underwriter Defendant Settlement Class (as defined in ¶ 25 below), have also reached a proposed settlement of the Action with the Underwriter Defendants³ for \$9,700,000 in cash (the "Underwriter Defendant Settlement" and, together with the Individual Defendant Settlement, the "Settlements") to settle claims brought under the Securities Act only that relate solely to the Common Stock Secondary Offering and the Senior Notes Offering. The Individual Defendant Settlement, if approved, will resolve all claims in the Action as against the Individual Defendants, and the Underwriter Defendant Settlement, if approved, will resolve all claims in the Action as against the Underwriter Defendants. The proposed Settlements will be considered independently by the Court and will only resolve claims against the defendants covered by the respective Settlements. The proposed Settlements do not settle any of the claims asserted against the remaining defendant in the Action, Apple, Inc. ("Apple" or the "Non-Settling Defendant"), 4 which Lead Plaintiff continues to prosecute.

PLEASE READ THIS NOTICE CAREFULLY. This Notice explains important rights you may have, including the possible receipt of cash from the proposed Settlements. If you are a member of the Individual Defendant Settlement Class and/or the Underwriter Defendant Settlement Class,<sup>5</sup> your legal rights will be affected whether or not you act.

If you have any questions about this Notice, the proposed Individual Defendant and/or Underwriter Defendant Settlements, or your eligibility to participate in these proposed Settlements, please DO NOT contact the Court, GTAT, Defendants, or their counsel. All questions should be directed to Lead Counsel or the Claims Administrator (see ¶ 56 below).

- 1. <u>Description of the Action and the Settlement Classes</u>: This Notice relates to proposed Settlements in a pending securities class action brought by investors alleging that Defendants violated the federal securities laws by, among other things, making false and misleading statements regarding GTAT or were statutorily liable for false and misleading statements in GTAT's offering materials for GTAT's Senior Notes Offering and Common Stock Secondary Offering. A more detailed description of the Action and the claims asserted against the Individual Defendants and the Underwriter Defendants (and against the remaining Defendant in the Action, Apple), is set forth in ¶¶ 11-24 below. The Individual Defendant Settlement, if approved by the Court, will settle the claims of the Individual Defendant Settlement Class, as defined in ¶ 25 below, as against Individual Defendant Settlement Class, as defined in ¶ 25 below, as against the Underwriter Defendants only.
- 2. <u>Statement of the Settlement Classes' Recoveries</u>: Subject to Court approval, Plaintiffs on behalf of themselves and the other members of the respective relevant Settlement Classes, have agreed to settle with the Individual Defendants in exchange for a payment of \$27,000,000 in cash (the "Individual Defendant Settlement Amount") and to settle with the Underwriter Defendants in exchange for a payment of \$9,700,000 in cash (the "Underwriter Defendant Settlement Amount"), such amounts to be deposited into separate escrow accounts for the benefit of the Individual Defendant Settlement Class and the Underwriter Defendant Settlement Class, respectively. The respective Net Settlement Funds (*i.e.*, the respective Settlement Amounts plus any and all interest earned thereon (the "Settlement Funds") less (i) any Taxes, (ii) any Notice and Administration Costs, (iii) any Litigation Expenses awarded by the Court, and (iv) any attorneys' fees awarded by the Court) will be distributed in accordance with the plan of allocation that is approved by the Court. Lead Plaintiff's proposed plan of allocation for the distribution of the net settlement proceeds (the "Plan of Allocation") is attached at the end of this Notice as Appendix A.
- 3. <u>Estimate of Average Amount of Recovery Per Share, Note, or Option</u>: Lead Plaintiff's damages expert estimates that that the conduct at issue in the Action affected approximately 153,104,782 shares of GTAT Common Stock, approximately 219,474 GTAT Senior Notes, and approximately 101,793,200 GTAT Call Options purchased, and approximately 81,674,600 GTAT Put Options sold (written), during the Class Period.<sup>6</sup> Assuming both Settlements are approved, if all eligible Settlement Class Members elect to participate in the Settlements, the estimated average recovery from the Settlements (before the deduction of the amounts set forth in ¶ 2 above) would be: (i) approximately \$0.14 per affected share of GTAT Common Stock; (ii) approximately \$53.18 per affected GTAT Senior Note; (iii) approximately \$0.01 per affected GTAT Call Option; and (iv) approximately \$0.04 per affected GTAT Put Option.<sup>7</sup> Settlement Class

<sup>&</sup>lt;sup>3</sup> The "Underwriter Defendants" consist of defendants Morgan Stanley & Co. LLC, Goldman, Sachs & Co. LLC (f/k/a Goldman, Sachs & Co.), and Canaccord Genuity Inc.

<sup>&</sup>lt;sup>4</sup> The Individual Defendants, Underwriter Defendants, and Apple are collectively referred to as "Defendants". The Individual Defendants and Underwriter Defendants are collectively referred to as "Settling Defendants".

<sup>&</sup>lt;sup>5</sup> Members of the Individual Defendant Settlement Class are referred to as "Individual Defendant Settlement Class Members" and members of the Underwriter Defendant Settlement Class are referred to as "Underwriter Defendant Settlement Class Members". Individual Defendant Settlement Class Members and Underwriter Defendant Settlement Class Members shall be collectively referred to as "Settlement Class Members".

<sup>&</sup>lt;sup>6</sup> All options-related amounts in this paragraph are per share of the underlying security (i.e., 1/100 of a contract).

Assuming all eligible Individual Defendant Settlement Class Members elect to participate in the Individual Defendant Settlement, the estimated average recovery solely with respect to the Individual Defendant Settlement (before the deduction of the amounts set forth in ¶ 2 above) would be:

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Members should note, however, that the foregoing average recovery per share, note, or option is only an estimate. Some Settlement Class Members may recover more or less than these estimated amounts depending on, among other factors, which GTAT Securities they purchased/acquired or sold, when and at what prices they purchased/acquired or sold their GTAT Securities, and the total number of valid Claim Forms submitted. Distributions to eligible Settlement Class Members will be made based on the Plan of Allocation attached to this Notice or such other plan of allocation as may be approved by the Court.

- 4. <u>Statement of Potential Outcome of Case and Potential Damages</u>: The Settling Parties for each of the proposed Settlements do not agree on the average amount of damages per share, note, or option that would be recoverable if Lead Plaintiff were to prevail on the claims asserted in the Action against the Individual Defendants or the Underwriter Defendants, as applicable. Among other things, neither the Individual Defendants nor the Underwriter Defendants agree with Lead Plaintiff's assertions that: (i) they violated the federal securities laws; (ii) they made false or misleading statements; or (iii) damages were suffered by members of the respective Settlement Classes as a result of their alleged conduct.
- 5. Attorneys' Fees and Expenses: Plaintiffs' Counsel, who have been prosecuting the Action on a fully contingent basis since October 2014, have not received any payment of attorneys' fees for their representation of the Settlement Classes nor have they been reimbursed for the Litigation Expenses necessarily incurred to prosecute the Action. Before final approval of the Settlements, Court-appointed Lead Counsel, Bernstein Litowitz Berger & Grossmann LLP, will apply to the Court for an award of attorneys' fees on behalf of all Plaintiffs' Counsel in an amount not to exceed 22% of each Settlement Fund. Lead Counsel will also apply for reimbursement of Litigation Expenses in an amount not exceed \$450,000 (which may include an application for reimbursement of the reasonable costs and expenses incurred by Plaintiffs directly related to their representation of the Settlement Classes) to be paid from the Settlement Funds.<sup>8</sup>

The Court will determine the amount of any award of attorneys' fees and reimbursement of Litigation Expenses. Settlement Class Members are not personally liable for any such fees or expenses. Assuming both Settlements are approved, if the Court approves Lead Counsel's fee and expense application, the average cost per share, note, or option for attorneys' fees and Litigation Expenses would be: (i) approximately \$0.03 per affected share of GTAT Common Stock; (ii) approximately \$12.35 per affected GTAT Senior Note; (iii) approximately \$0.002 per affected GTAT Call Option; and (iv) approximately \$0.009 per affected GTAT Put Option.

- 6. <u>Identification of Attorneys' Representatives</u>: Lead Plaintiff and the Settlement Classes are represented by John C. Browne, Esq. of Bernstein Litowitz Berger & Grossmann LLP, 1251 Avenue of the Americas, 44th Floor, New York, NY 10020, 1-800-380-8496, blbg@blbglaw.com.
- 7. Reasons for the Settlements: Lead Plaintiff's principal reason for entering into the Settlements is the substantial immediate cash benefit for the respective Settlement Classes without the risk or the delays inherent in further litigation. Moreover, the substantial cash benefits provided under the proposed Settlements must be considered against the significant risk that a smaller recovery or indeed no recovery at all against the Individual Defendants and/or the Underwriter Defendants might be achieved after contested motions, a trial of the Action, and likely appeals that would follow a trial, a process that could be expected to last several years. The Individual Defendants and Underwriter Defendants deny all allegations of wrongdoing or liability whatsoever and they are entering into their respective Settlements solely to eliminate the uncertainty, burden, and expense of further protracted litigation.

<sup>(</sup>i) approximately \$0.13 per affected share of GTAT Common Stock; (ii) approximately \$10.44 per affected GTAT Senior Note; (iii) approximately \$0.01 per affected GTAT Call Option; and (iv) approximately \$0.04 per affected GTAT Put Option. Assuming all eligible Underwriter Defendant Settlement Class Members elect to participate in the Underwriter Defendant Settlement, the estimated average recovery solely with respect to the Underwriter Defendant Settlement (before the deduction of the amounts set forth in ¶ 2 above) would be: (i) approximately \$0.16 per affected share of GTAT Common Stock; and (ii) approximately \$46.08 per affected GTAT Senior Note.

<sup>&</sup>lt;sup>8</sup> Should the Court not approve the Individual Defendant Settlement or the Underwriter Defendant Settlement, attorneys' fees will be paid only on the Settlement Fund created by the approved Settlement. Similarly, approved Litigation Expenses will be paid from the Settlement Fund created by the approved Settlement.

<sup>&</sup>lt;sup>9</sup> With respect to the Individual Defendant Settlement only, if the Court approves Lead Counsel's fee and expense application from the Individual Defendant Settlement Fund, the average cost per share, note, or option would be: (i) approximately \$0.03 per affected share of GTAT Common Stock; (ii) approximately \$2.43 per affected GTAT Senior Note; (iii) approximately \$0.002 per affected GTAT Call Option; and (iv) approximately \$0.009 per affected GTAT Put Option. With respect to the Underwriter Defendant Settlement only, if the Court approves Lead Counsel's fee and expense application from the Underwriter Defendant Settlement Fund, the average cost per share or note would be: (i) approximately \$0.04 per affected share of GTAT Common Stock; and (ii) approximately \$10.70 per affected GTAT Senior Note.

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENTS:		
SUBMIT A CLAIM FORM POSTMARKED NO LATER THAN JULY 12, 2018.	This is the only way to be eligible to receive a payment from the proceeds of the Individual Defendant Settlement or the Underwriter Defendant Settlement.	
	If you are a member of the Individual Defendant Settlement Class and/or the Underwriter Defendant Settlement Class and you remain in the Settlement Class(es) in which are a member, you will be bound by the applicable Settlements as approved by the Court and, as applicable, you will give up any Individual Defendant Released Plaintiffs' Claims that you have against the Individual Defendants and the other Individual Defendant Releasees (as discussed in ¶ 32 below) and any Underwriter Defendant Released Plaintiffs' Claims that you have against the Settling Underwriter Defendants and the other Settling Underwriter Defendants' Releasees (as discussed in ¶ 33 below), so it is in your interest to submit a Claim Form.	
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS(ES) THAT APPLY TO YOU BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION SO THAT IT IS RECEIVED NO LATER THAN JUNE 7, 2018.	If you request to be excluded from the Individual Defendant Settlement Class, you will not be eligible to receive any payment from the Individual Defendant Settlement Fund. Similarly, if you request to be excluded from the Underwriter Defendant Settlement Class, you will not be eligible to receive any payment from the Underwriter Defendant Settlement Fund. Requesting exclusion is the only option that allows you ever to be part of any other lawsuit against the Individual Defendants or any of the other Individual Defendant Releasees or against the Settling Underwriter Defendants or any of the other Settling Underwriter Defendants' Releasees concerning the respective Released Plaintiffs' Claims.	
OBJECT TO THE INDIVIDUAL DEFENDANT SETTLEMENT, THE UNDERWRITER DEFENDANT SETTLEMENT, THE PLAN OF ALLOCATION, OR THE REQUEST FOR ATTORNEYS' FEES AND LITIGATION EXPENSES BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS RECEIVED NO LATER THAN JUNE 7, 2018.	If you do not like the proposed Individual Defendant Settlement, the proposed Underwriter Defendant Settlement, the proposed Plan of Allocation, or the request for attorneys' fees and reimbursement of Litigation Expenses, you may write to the Court and explain why you do not like them. You cannot object to the Individual Defendant Settlement or the Underwriter Defendant Settlement unless you are a member of the Settlement Class that applies to that Settlement and do not exclude yourself.	
GO TO A HEARING ON JUNE 28, 2018 AT 2:00 P.M., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS RECEIVED NO LATER THAN JUNE 7, 2018.	Filing a written objection and notice of intention to appear by June 7, 2018 allows you to speak in Court, at the discretion of the Court, about the fairness of the Individual Defendant Settlement if you are a member of the Individual Defendant Settlement Class, the Underwriter Defendant Settlement if you are a member of the Underwriter Defendant Settlement Class, or the Plan of Allocation and/or the request for attorneys' fees and reimbursement of Litigation Expenses if you are a member of one or both Settlement Classes. If you submit a written objection, you may (but you do not have to) attend the hearing and, at the discretion of the Court, speak to the Court about your objection.	
DO NOTHING.	If you are a member of one or both of the Settlement Classes and do not submit a valid Claim Form, you will not be eligible to share in the distribution of the net proceeds of the Settlement(s) obtained on behalf of the Class(es) in which you are a member. You will, however, remain a member of the Settlement Class(es) that apply to you, which means that you give up your right to sue about the claims that are resolved by the applicable Settlements and you will be bound by any judgments or orders entered by the Court with respect to those Settlements.	

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#### WHY DID I GET THIS NOTICE?

- 8. The Court directed that this Notice be mailed to you because you or someone in your family or an investment account for which you serve as a custodian may have purchased or otherwise acquired GTAT Common Stock, GTAT Senior Notes, and/or GTAT Call Options, and/or sold (wrote) GTAT Put Options, during the Class Period. The Court has directed us to send you this Notice because, as a potential Individual Defendant Settlement Class Member and/or Underwriter Defendant Settlement Class Member, you have a right to know about your options before the Court rules on the proposed Settlements and to understand how this class action lawsuit may generally affect your legal rights.
- 9. The purpose of this Notice is to inform you of the existence of this case, that it is a class action, how you might be affected, and how to exclude yourself from the Settlement Class(es) if you wish to so do. It is also being sent to inform you of the terms of the proposed Individual Defendant and Underwriter Defendant Settlements and of a hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the proposed Settlements, the proposed Plan of Allocation, and the motion by Lead Counsel for an award of attorneys' fees and reimbursement of Litigation Expenses (the "Settlement Fairness Hearing"). See ¶¶ 46-47 below for details about the Settlement Fairness Hearing, including the date and location of the hearing.
- 10. The issuance of this Notice is not an expression of any opinion by the Court concerning the merits of any claim in the Action, and the Court still has to decide whether to approve the proposed Settlements. If the Court approves the proposed Plan of Allocation (or some other plan of allocation), then payments pursuant to the approved Settlements and the Court-approved plan of allocation will be made to Authorized Claimants after any appeals are resolved and after the completion of all claims processing. Please be patient, as this process can take some time to complete.

#### WHAT IS THIS CASE ABOUT?

- 11. This is a securities class action brought against certain of the executive officers and directors of technology company GT Advanced Technologies Inc. ("GTAT" or the "Company"); the underwriters of the Company's public offering of 3.00% Convertible Senior Notes Due 2020 (the "Senior Notes Offering") and its secondary public offering of common stock (the "Common Stock Secondary Offering"), both conducted on or about December 5, 2013; and Apple. The Action alleges, among other things, that during the Class Period and/or in the offering materials for the Offerings, Defendants misled investors about the true nature, progress, and success of GTAT's joint venture agreement with Apple for the production of sapphire material. The Action further alleges that GTAT investors suffered economic harm when the truth about the Apple agreement was revealed upon the Company's filing for Chapter 11 bankruptcy protection on October 6, 2014.
- 12. This litigation was commenced on or about October 9, 2014, with the filing of multiple putative securities class action complaints 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 above-captioned Action.

<sup>&</sup>lt;sup>10</sup> As a result of the Company's filing for bankruptcy protection, GTAT was not named as a defendant in this Action.

- 13. 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.
- 14. On July 20, 2015, Lead Plaintiff filed and served the Consolidated Class Action Complaint (the "Complaint"), which included the Securities Act Plaintiffs and Vance K. Opperman as additional named plaintiffs. The Complaint asserted (i) claims under § 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), and Rule 10b-5 promulgated thereunder, against Defendants Bal, Gaynor, and Gutierrez; (ii) claims under § 20(a) of the Exchange Act against Defendants Bal, Gaynor, Gutierrez, Kim, Squiller, and Apple; (iii) claims under § 11 of the Securities Act of 1933 (the "Securities Act") against Defendants Gaynor, Bal, Gutierrez, Conaway, Cote, Godshalk, Massengill, Petrovich, Switz, Watson, Wroe, and the Underwriter Defendants; (iv) claims under § 12(a)(2) of the Securities Act against the Underwriter Defendants; and (v) claims under § 15 of the Securities Act against Defendants Gaynor, Kim, Gutierrez, Squiller, Conaway, Cote, Godshalk, Massengill, Petrovich, Switz, Watson, Wroe, and Apple.
- 15. On October 7, 2015, 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, Defendants filed and served their reply papers; and, on March 22, 2016, Lead Plaintiff filed his sur-reply.
- 16. On March 17, 2017, following extensive, arm's-length negotiations, Plaintiffs and the Underwriter Defendants entered into a Memorandum of Understanding (the "Underwriter Defendant 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 Underwriter Defendant MOU, the agreement to settle was conditioned on Plaintiffs confirming the fairness, reasonableness, and adequacy of the Underwriter Defendant Settlement based on due-diligence discovery to be provided by the Underwriter Defendants, including the production of certain documents and information regarding the allegations and claims asserted against the Underwriter Defendants in the Complaint. The settling parties agreed that any ruling by the Court in this Action, other than a ruling relating specifically to the Settlement, would not affect the validity or finality of the Settlement.
- 17. Following the execution of the Underwriter Defendant MOU, Lead Counsel reviewed, as part of the due-diligence discovery provided by the Underwriter Defendants, approximately 13,500 documents totaling approximately 70,000 pages from the files of the Underwriter Defendants concerning the Senior Notes Offering and the Common Stock Secondary Offering, and, based on this review, Plaintiffs and Lead Counsel confirmed that the Underwriter Defendant Settlement is fair, reasonable, and adequate.
- 18. On May 4, 2017, the Court entered its Memorandum Opinion denying in part and granting in part the motions to dismiss filed by the Individual Defendants and Apple, and denying the Underwriter Defendants' motion to dismiss without prejudice to their ability to re-submit the motion if necessary. Plaintiffs' remaining claims following the Court's ruling on Defendants' Motions to Dismiss include: (i) claims under Section 10(b) of the Securities Exchange Act against Defendants Bal, Gaynor, and Gutierrez; (ii) claims under Section 20(a) of the Exchange Act against Defendants Bal, Gaynor, Gutierrez, Kim, and Squiller; (iii) a claim under Section 20(a) of the '34 Act against Apple; (iv) claims under Section 11 of the Securities Act against Defendants Gaynor, Bal, Gutierrez, Conaway, Cote, Godshalk, Massengill, Petrovich, Switz, Watson, Wroe, and the Underwriter Defendants; (v) claims under Section 12(a)(2) of the Securities Act against the Underwriter Defendants; (vi) claims under Section 15 of the Securities Act against Defendants Gutierrez, Gaynor, Kim, and Squiller; and (vii) a claim under Section 15 of the Securities Act against Apple.
- 19. On August 18, 2017, Plaintiffs and the Underwriter Defendants entered into the Stipulation and Agreement of Settlement with Settling Underwriter Defendants (the "Underwriter Defendant Stipulation") setting forth the final terms and conditions of the Underwriter Defendant Settlement. The Underwriter Defendant Stipulation (including the Supplement thereto dated January 26, 2018) can be viewed at <a href="https://www.GTATSecuritiesLitigation.com">www.GTATSecuritiesLitigation.com</a>.
- 20. On October 2, 2017, Lead Counsel and the remaining Defendants' Counsel participated in a full day mediation session before retired United States District Court Judge Layn R. Phillips (the "Mediator"). In advance of that session, the parties exchanged detailed mediation statements and exhibits to the Mediator, which addressed the issues of both liability and damages. As a result of extensive, arm's-length negotiations at the mediation session, Lead Plaintiff and the Individual Defendants reached an agreement in principle to settle the Action as against the Individual Defendants for \$27,000,000 in cash, which was memorialized in a Settlement Term Sheet (the "Individual Defendant Term Sheet") executed on October 13, 2017.

<sup>&</sup>lt;sup>11</sup> Upon reaching their agreement-in-principle to settle the Action, the parties to the Underwriter Defendant Settlement informed the Court that they had reached a settlement and requested that the Court refrain from ruling on the Underwriter Defendants' motion to dismiss while the parties engaged in due-diligence discovery. Accordingly, in its May 4, 2017 Memorandum Opinion, the Court denied the Underwriter Defendants' motion to dismiss without prejudice to their ability to re-submit the motion if necessary.

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- 21. On January 26, 2018, Plaintiffs and the Individual Defendants entered into the Stipulation and Agreement of Settlement with Individual Defendants (the "Individual Defendant Stipulation") setting forth the final terms and conditions of the Individual Defendant Settlement. The Individual Defendant Stipulation can be viewed at www.GTATSecuritiesLitigation.com.
- 22. In connection with the Individual Defendant Settlement, the Individual Defendants agreed to produce and have produced to Lead Counsel within twenty (20) days following the signing of the Individual Defendant Term Sheet copies of (i) all documents produced by Individual Defendants directly or on their behalf by their counsel to the Trustee in *Davis v. Gutierrez, et al.*, Civil Action No. 1:17-cv-147-JL (D.N.H.) (the "*Davis* Action"); (ii) all transcripts of depositions in the Individual Defendants' possession, custody or control taken in the *Davis* Action and in any investigatory proceeding relating to these matters; and (iii) all documents produced by the Individual Defendants directly or on their behalf by their counsel to the Securities Exchange Commission ("SEC") or any other investigative authority. The Individual Defendants also agreed that for a period of one hundred-twenty (120) calendar days following the filing of the motion for preliminary approval of the Individual Defendant Settlement, the Individual Defendants will make themselves available for a reasonable number of depositions to occur at an agreed upon time and location convenient to the settling parties.
- 23. The Settling Defendants have entered into their respective Stipulations solely to eliminate the uncertainty, burden, and expense of further protracted litigation. Each of the Settling Defendants denies any wrongdoing.
- 24. On February 13, 2018, the Court preliminarily approved both the Individual Defendant Settlement and the Underwriter Defendant Settlement and authorized this Notice to be disseminated to potential Settlement Class Members; on February 23, 2018, the Court scheduled the Settlement Fairness Hearing to consider whether to grant final approval to the Settlements.

### HOW DO I KNOW IF I AM AFFECTED BY THE PROPOSED SETTLEMENTS? WHO IS INCLUDED IN THE INDIVIDUAL DEFENDANT AND UNDERWRITER DEFENDANT SETTLEMENT CLASSES?

25. If you are a member of the Individual Defendant Settlement Class and/or the Underwriter Defendant Settlement Class, you are subject to the terms of the applicable Settlements, unless you timely request to be excluded.

The Individual Defendant Settlement Class consists 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 GTAT common stock ("GTAT Common Stock") and/or publicly traded 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"), and/or sold (wrote) publicly traded put options on GTAT common stock ("GTAT Put Options"), and were damaged thereby.

The Underwriter Defendant Settlement Class consists 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").

Excluded from both the Individual Defendant and Underwriter Defendant Settlement Classes by definition are:

Defendants; GTAT; the affiliates and subsidiaries of the Underwriter Defendants, GTAT, and Apple; the Officers, <sup>12</sup> directors, and partners of the Underwriter Defendants, GTAT, and Apple during the Class Period; members of the Immediate Family<sup>13</sup> 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<sup>14</sup> shall not be

<sup>12 &</sup>quot;Officer" means any officer as that term is defined in Securities and Exchange Act Rule 16a-1(f).

<sup>&</sup>lt;sup>13</sup> "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.

<sup>&</sup>lt;sup>14</sup> "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

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deemed an excluded person or entity by definition. Also excluded from both the Individual Defendant and the Underwriter Defendant Settlement Classes are any persons and entities who or which exclude themselves by submitting a valid and timely request for exclusion from the Settlement Classes in accordance with the requirements set forth in this Notice. See "What if I Do Not Want To Be A Member Of One Or Both Of The Settlement Classes? How Do I Exclude Myself," on page 11 below.

RECEIPT OF THIS NOTICE DOES NOT MEAN THAT YOU ARE AN INDIVIDUAL DEFENDANT SETTLEMENT CLASS MEMBER OR AN UNDERWRITER DEFENDANT SETTLEMENT CLASS MEMBER OR THAT YOU WILL BE ENTITLED TO RECEIVE PROCEEDS FROM THE INDIVIDUAL DEFENDANT SETTLEMENT OR THE UNDERWRITER DEFENDANT SETTLEMENT.

IF YOU ARE A SETTLEMENT CLASS MEMBER AND YOU WISH TO BE ELIGIBLE TO PARTICIPATE IN THE DISTRIBUTION OF PROCEEDS FROM THE SETTLEMENT(S) PERTAINING TO THE SETTLEMENT CLASS(ES) IN WHICH YOU ARE A MEMBER, YOU ARE REQUIRED TO SUBMIT THE CLAIM FORM THAT IS BEING DISTRIBUTED WITH THIS NOTICE AND THE REQUIRED SUPPORTING DOCUMENTATION AS SET FORTH THEREIN POSTMARKED NO LATER THAN JULY 12, 2018.

#### WHAT ARE LEAD PLAINTIFF'S REASONS FOR THE PROPOSED SETTLEMENTS?

26. Lead Plaintiff and Lead Counsel believe that the claims asserted against the Individual Defendants and the Underwriter Defendants have merit. They recognize, however, the expense and length of continued proceedings necessary to pursue their claims against these Defendants through trial and appeals, as well as the very substantial risks they would face in establishing liability and damages. For example, with respect to claims under § 10(b) of the Exchange Act, Plaintiffs faced significant risks in proving that the alleged false statements made by the Individual Defendants during the Class Period were intentionally or recklessly made. Also, with respect to claims under § 11 of the Securities Act, Plaintiffs faced significant challenges associated with establishing that there were material misstatements and omissions in the public securities offering documents at issue and that the Underwriter Defendants failed to conduct adequate due diligence. In addition, Plaintiffs faced challenges with respect to proving loss causation and class-wide damages. Furthermore, Plaintiffs would have to prevail at several stages in this litigation – motions for summary judgment, trial, and if they prevailed on those, on the appeals that were likely to follow. Finally, with respect to the Individual Defendants, Lead Plaintiff recognized that there was a significant risk that the Individual Defendants would be unable to pay in whole or in part any ultimate judgment in this case. Thus, there were very significant risks attendant to the continued prosecution of the claims against the Settling Defendants.

27. In light of these risks, the amounts of the Individual Defendant and Underwriter Defendant Settlements, and the certainty of recovery to the Individual Defendant and Underwriter Defendant Settlement Classes, Lead Plaintiff and Lead Counsel believe that the proposed Settlements are fair, reasonable and adequate, and in the best interests of the Settlement Classes. Lead Plaintiff and Lead Counsel believe that the Settlements provide a substantial benefit to the respective Settlement Classes, namely \$27,000,000 in cash to the Individual Defendant Settlement Class (less the various deductions described in this Notice) and \$9,700,000 in cash to the Underwriter Defendant Settlement Class (less the various deductions described in this Notice), as compared to the risk that the claims in the Action against the Individual Defendants and/or the Underwriter Defendants might produce a smaller, or no recovery, after summary judgment, trial, and appeals.

28. The Settling Defendants have denied the claims asserted against them in the Action and deny having engaged in any wrongdoing or violation of law of any kind whatsoever. The Settling Defendants have agreed to their respective Settlements solely to eliminate the uncertainty, burden, and expense of continued litigation. Accordingly, the Settlements may not be construed as an admission of any wrongdoing by the Settling Defendants.

#### WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENTS?

29. If there were no Settlements and Plaintiffs failed to establish any essential legal or factual element of their claims against the Individual Defendants and the Underwriter Defendants, neither Plaintiffs nor the other members of the respective Settlement Classes would recover anything from the Individual Defendants or the Underwriter Defendants. Also, if the Individual Defendants or the Underwriter Defendants were successful in proving any of their defenses, either on the Underwriter Defendant's pending motion to dismiss, or with respect to both the Individual Defendants and the

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.

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Underwriter Defendants on motions for summary judgment, at trial, or on appeal, the Individual Defendant and Underwriter Defendant Settlement Classes could recover substantially less than the amounts provided in the respective Settlements, or nothing at all.

## HOW ARE SETTLEMENT CLASS MEMBERS AFFECTED BY THE ACTION AND THE RESPECTIVE SETTLEMENTS?

- 30. If you are an Individual Defendant Settlement Class Member or Underwriter Defendant Settlement Class Member, you are represented by Plaintiffs and Lead Counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file a notice of appearance on your behalf and must serve copies of his or her appearance on the attorneys listed in the section entitled, "When And Where Will The Court Decide Whether To Approve The Individual Defendant and Underwriter Defendant Settlements?," below.
- 31. If you are an Individual Defendant Settlement Class Member and you do not exclude yourself from the Individual Defendant Settlement Class, you will be bound by any orders issued by the Court relating to the Individual Defendant Settlement, and if you are an Underwriter Defendant Settlement Class Member and you do not exclude yourself from the Underwriter Defendant Settlement Class, you will be bound by any orders issued by the Court relating to the Underwriter Defendant Settlements.<sup>15</sup>
- 32. If the Individual Defendant Settlement is approved, the Court will enter a judgment (the "Individual Defendant Judgment"). The Individual Defendant Judgment will dismiss with prejudice the claims against the Individual Defendants and will provide that, upon the Effective Date of the Individual Defendant Settlement, Plaintiffs and each of the other Individual Defendant Settlement Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, will have fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Individual Defendant Released Plaintiffs' Claim<sup>16</sup> against the Individual Defendants and the other Individual Defendant Releasees,<sup>17</sup> and will forever be barred and enjoined from commencing, maintaining, or prosecuting any or all of the Individual Defendant Released Plaintiffs' Claims against any of the Individual Defendant Releasees.
- 33. If the Underwriter Defendant Settlement is approved, the Court will enter a judgment (the "Underwriter Defendant Judgment"). The Underwriter Defendant Judgment will dismiss with prejudice the claims against the Settling Underwriter Defendants (as defined in the Underwriter Defendant Stipulation) and will provide that, upon the Effective Date of the Underwriter Defendant Settlement, Lead Plaintiff, the Securities Act Plaintiffs and each of the other Underwriter Defendant Settlement Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, will have fully, finally, and forever compromised, settled, released,

<sup>&</sup>lt;sup>15</sup> If you are an Individual Defendant Settlement Class Member and/or Underwriter Defendant Settlement Class Member and do not wish to remain a member of the Settlement Class(es) in which you are member, you may exclude yourself from the Individual Defendant Settlement Class and/or the Underwriter Defendant Settlement Class by following the instructions in the section entitled, "What If I Do Not Want To Be A Member Of One Or Both Of The Settlement Classes? How Do I Exclude Myself?," below.

<sup>16 &</sup>quot;Individual Defendant Released Plaintiffs' Claims" means any and all claims, rights, duties, controversies, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages, losses, judgments, liabilities, allegations, arguments, and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, local, common, statutory, administrative, or foreign law, or any other law, rule or regulation, at law or in equity, whether class or individual in nature, whether fixed or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured, that Plaintiffs or any other member of the Individual Defendant Settlement Class (i) asserted in the Action, or (ii) could have asserted in any forum that arise out of, are based upon, or relate to the allegations, transactions, acts, facts, matters, occurrences, statements, representations or omissions involved, set forth, or referred to in the Complaint and that relate to the purchase or acquisition of GTAT Common Stock, GTAT Senior Notes, or GTAT Call Options, or the sale of GTAT Put Options, during the Class Period. Individual Defendant Released Plaintiffs' Claims do not cover or include: (i) any claims by any governmental entity arising out of any governmental investigation of GTAT, the Individual Defendants, or any of GTAT's respective former or current officers or directors relating to the wrongful conduct alleged in the Action; (ii) any claims asserted, or which may be asserted, in the Action against any of the Underwriter Defendants or Apple; (iii) any claims of any person or entity who or which submits a request for exclusion from the Individual Defendant Settlement Class that is accepted by the Court; (iv) any claims asserted in the Davis Action; and (v) any claims relating to the enforcement of the Individual Defendant Settlement. For the avoidance of doubt, the above-referenced exclusion for claims by any governmental entity is set forth above only to clarify that the Individual Defendant Released Plaintiffs' Claims do not affect the rights that any governmental entity may have to assert a claim against any of the Individual Defendant Releasees, and it does not preserve for any Individual Defendant Settlement Class Member any right to assert a claim on the basis of that exclusion from the Individual Defendant Released Plaintiffs' Claims.

<sup>&</sup>lt;sup>17</sup> "Individual Defendant Releasees" means (i) the Individual Defendants and their attorneys, (ii) the respective Immediate Family members, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, agents, affiliates, insurers, reinsurers, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, attorneys, advisors, and associates of each of the foregoing, (iii) all current and former directors, officers, and employees of GTAT, and (iv) the Insureds (as defined in the Individual Defendant Stipulation), in their capacities as such; *provided, however*, that the Individual Defendant Releasees do not include the Underwriter Defendants or Apple.

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resolved, relinquished, waived, and discharged each and every Underwriter Defendant Released Plaintiffs' Claim<sup>18</sup> against the Settling Underwriter Defendants and the other Settling Underwriter Defendants' Releasees, <sup>19</sup> and will forever be barred and enjoined from prosecuting any or all of the Underwriter Defendant Released Plaintiffs' Claims against any of the Settling Underwriter Defendants' Releasees.

34. "Unknown Claims" means any (i) Individual Defendant Released Plaintiffs' Claims which Lead Plaintiff or any other Individual Defendant 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, (ii) any Underwriter Defendant Released Plaintiffs' Claims which Lead Plaintiff, the Securities Act Plaintiffs, or any other Underwriter Defendant 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, (iii) any Released Individual Defendants' Claims (as defined in footnote 21 below) which any Individual Defendant does not know or suspect to exist in his or her favor at the time of the release of such claims, and (iv) and any Released Underwriter Defendants' Claims (as defined in footnote 23 below) which any Underwriter Defendant does not know or suspect to exist in its favor at the time of the release of such claims, which, if known by him, her or it, might have affected his, her or its decision(s) with respect to the Individual Defendant Settlement or Underwriter Defendant Settlement, as applicable. With respect to any and all Released Claims (as collectively defined in the Stipulations), the respective Settling Parties stipulate and agree that, upon the Effective Date of the Individual Defendant Settlement and upon the Effective Date of the Underwriter Defendant Settlement, Lead Plaintiff, the Securities Act Plaintiffs, the Individual Defendants, and the Underwriter Defendants shall expressly waive, and each of the other respective Settlement Class Members shall be deemed to have waived, and by operation of the respective Judgments 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.

Lead Plaintiff, the Securities Act Plaintiffs, the Individual Defendants, and the 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 respective Settlements.<sup>20</sup>

35. The Individual Defendant Judgment will also provide that, upon the Effective Date of the Individual Defendant Settlement, the Individual Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, will have fully, finally and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Individual Defendants Claim<sup>21</sup> against Lead Plaintiff, the Securities Act Plaintiffs, and the other Individual Defendant Plaintiff Releasees,<sup>22</sup> and will

<sup>&</sup>lt;sup>18</sup> "Underwriter Defendant 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 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. Underwriter Defendant Released Plaintiffs' Claims do not cover or include: (i) any claims asserted, or which may be asserted, in the Action against any of the Non-Settling Defendants (as defined in the Underwriter Defendant Stipulation) 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 Underwriter Defendant 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 Underwriter Defendant Settlement.

<sup>&</sup>lt;sup>19</sup> "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 (as defined in the Underwriter Defendant Stipulation).

<sup>&</sup>lt;sup>20</sup> With respect to the Individual Defendant Settlement, the Settling Parties acknowledge that they may hereafter discover facts in addition to or different from those which he, she, it or their counsel now knows or believes to be true with respect to the subject matter of the Released Claims, but, upon the Effective Date of the Individual Defendant Settlement, the Settling Parties shall expressly settle and release, and each Individual Defendant Settlement Class Member shall be deemed to have, and by operation of the Judgment shall have, settled and released, any and all of the Released Claims without regard to the subsequent discovery or existence of such different or additional facts.

<sup>&</sup>lt;sup>21</sup> "Released Individual 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 Individual Defendants. Released Individual Defendants' Claims do not include: (i) any claims against any person or entity who or which submits a request for exclusion from the Individual Defendant Settlement Class that is accepted by the Court; and (ii) any claims relating to the enforcement of the Individual Defendant Settlement.

<sup>&</sup>lt;sup>22</sup> "Individual Defendant Plaintiff Releasees" means (i) Plaintiffs, their attorneys, and all other Individual Defendant 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, Immediate Family members, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, agents, affiliates, insurers, reinsurers, predecessors, predecessors-in-interest, successors-in-interest, assigns, attorneys, advisors, and associates of the each of the foregoing in (i) and (ii), in their capacities as such.

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forever be barred and enjoined from commencing, maintaining, or prosecuting any or all of the Released Individual Defendant Claims against any of the Individual Defendant Plaintiff Releasees.

36. The Underwriter Defendant Judgment will also provide that, upon the Effective Date of the Underwriter Defendant Settlement, the Settling Underwriter Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, will have fully, finally and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Underwriter Defendants' Claim<sup>23</sup> against Lead Plaintiff, the Securities Act Plaintiffs, and the other Underwriter Defendant Plaintiffs' Releasees,<sup>24</sup> and will forever be barred and enjoined from prosecuting any or all of the Released Underwriter Defendants' Claims against any of the Underwriter Defendant Plaintiffs' Releasees.

### HOW MUCH WILL MY PAYMENT FROM THE SETTLEMENTS BE? HOW DO I PARTICIPATE IN THE SETTLEMENTS? WHAT DO I NEED TO DO?

- 37. At this time, it is not possible to make any determination as to how much any individual Settlement Class Member may receive from the proceeds of the Settlement(s) in which he, she, or it is eligible to participate. The proposed plan for the distribution of the settlement proceeds and what Settlement Class Members must do to be eligible to participate in the recoveries is set forth in the Plan of Allocation attached to this Notice as Appendix A.
- 38. To be eligible for a payment from the proceeds of the Individual Defendant Settlement, you must be a member of the Individual Defendant Settlement Class, and to be eligible for a payment from the proceeds of the Underwriter Defendant Settlement, you must be a member of the Underwriter Defendant Settlement Class. To be eligible for a payment from the Settlement(s), you must timely complete and return the Claim Form with adequate supporting documentation **postmarked no later than July 12, 2018**. Details of the requirements and process for submitting a Claim Form are set forth in the Plan of Allocation and in the Claim Form which accompanies this Notice. If you are a member of one or both of the Settlement Classes and do not submit a valid Claim Form, you will not be eligible to share in the distribution of the proceeds of the Settlement(s) obtained on behalf of the Settlement Class(es) in which you are a member.

#### WHAT PAYMENT ARE THE ATTORNEYS SEEKING? HOW WILL THE LAWYERS BE PAID?

- 39. Plaintiffs' Counsel have not received any payment for their services in pursuing claims on behalf of the Settlement Classes in the Action, nor have Plaintiffs' Counsel been reimbursed for their out-of-pocket expenses. Before final approval of the Settlements, Lead Counsel will apply to the Court for an award of attorneys' fees for all Plaintiffs' Counsel in an amount not to exceed 22% of each Settlement Fund. At the same time, Lead Counsel also intends to apply for reimbursement of Litigation Expenses from the Settlement Funds in an amount not to exceed \$450,000, which may include an application for reimbursement of the reasonable costs and expenses incurred by Plaintiffs directly related to their representation of the Settlement Classes.
- 40. The Court will determine the amount of any award of attorneys' fees or reimbursement of Litigation Expenses. Should the Court approve only one of the two Settlements, attorneys' fees will be paid only on the approved Settlement and the Litigation Expenses approved by the Court will be paid from the Settlement Fund created by the approved Settlement. Settlement Class Members are not personally liable for any such fees or expenses.

## WHAT IF I DO NOT WANT TO BE A MEMBER OF ONE OR BOTH OF THE SETTLEMENT CLASSES? HOW DO I EXCLUDE MYSELF?

41. Each Individual Defendant Settlement Class Member will be bound by the determinations, orders and judgments in this Action relating to the Individual Defendant Settlement, whether favorable or unfavorable, unless such person or entity submits a written request for exclusion from the Individual Defendant Settlement Class that is accepted by the Court. Similarly, each Underwriter Defendant Settlement Class Member will be bound by the determinations, orders and judgments in this Action relating to the Underwriter Defendant Settlement, whether favorable or unfavorable, unless such

<sup>&</sup>lt;sup>23</sup> "Released 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 Underwriter Defendants' Claims do not include: (i) any claims against any person or entity who or which submits a request for exclusion from the Underwriter Defendant Settlement Class that is accepted by the Court after notice to the Underwriter Defendants; and (ii) any claims relating to the enforcement of the Underwriter Defendant Settlement.

<sup>&</sup>lt;sup>24</sup> "Underwriter Defendant Plaintiffs' Releasees" means (i) Plaintiffs, their respective attorneys, and all other Underwriter Defendant 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.

person or entity submits a written request for exclusion from the Underwriter Defendant Settlement Class that is accepted by the Court. You have the right to exclude yourself from one of the Settlement Classes, while remaining a member of the other Settlement Class.

- 42. Each request for exclusion must be in writing and must be mailed or delivered to GTAT Securities Litigation, EXCLUSIONS, c/o GCG, P.O. Box 10463, Dublin, OH 43017-4063, such that it is received no later than June 7, 2018. You will not be able to exclude yourself from either of the Settlement Classes after that date. 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) for Individual Defendant Settlement Class Members 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)"; (iii) for Underwriter Defendant Settlement Class Members 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)"; (iv) 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; (v) 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 (vi) be signed by the person or entity requesting exclusion or an authorized representative. A request for exclusion shall not be valid and effective unless it provides all the information called for in this paragraph and is received within the time stated above, or is otherwise accepted by the Court.
- 43. If you do not want to be part of the Individual Defendant Settlement Class and/or the Underwriter Defendant Settlement Class, you must follow these instructions for exclusion even if you have pending, or later file, another lawsuit, arbitration, or other proceeding relating to any Individual Defendant Released Plaintiffs' Claim against any of the Individual Defendant Releasees or any Underwriter Defendant Released Plaintiffs' Claim against any of the Settling Underwriter Defendants' Releasees. Excluding yourself from the Individual Defendant Settlement Class is the only option that allows you to be part of any other lawsuit against any of the Individual Defendants or any of the other Individual Defendant Releasees concerning the Individual Defendant Released Plaintiffs' Claims, and excluding yourself from the Underwriter Defendant Settlement Class is the only option that allows you to be part of any other lawsuit against any of the Settling Underwriter Defendants or any of the other Settling Underwriter Defendants' Releasees concerning the Underwriter Defendant Released Plaintiffs' Claims. Please note, however, if you decide to exclude yourself from either of the Settlement Classes, you may be time-barred from asserting certain of the claims covered by the Action by a statute of repose.
- 44. If you are excluded from the Individual Defendant Settlement Class, you will not be eligible to receive any payment from the proceeds of the Individual Defendant Settlement Fund. Similarly, if you are excluded from the Underwriter Defendant Settlement Class, you will not be eligible to receive any payment from the proceeds of the Underwriter Defendant Settlement Fund.
- 45. The Individual Defendants have the right to terminate the Individual Defendant Settlement, and the Underwriter Defendants have the right to terminate the Underwriter Defendant Settlement, if valid and timely requests for exclusion are received from persons and entities entitled to be members of applicable Settlement Class in an amount that exceeds the amounts agreed to by Lead Plaintiff and the Individual Defendants and Lead Plaintiff and the Underwriter Defendants, respectively.

WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE INDIVIDUAL DEFENDANT AND UNDERWRITER DEFENDANT SETTLEMENTS? DO I HAVE TO COME TO THE HEARING? HOW DO I OBJECT? MAY I SPEAK AT THE HEARING IF I DON'T LIKE THE SETTLEMENTS?

46. Settlement Class Members do not need to attend the Settlement Fairness Hearing. The Court will consider any submission made in accordance with the provisions below even if a Settlement Class Member does not attend the hearing. Settlement Class Members can participate in the Settlements without attending the Settlement Fairness Hearing. Please Note: The date and time of the Settlement Fairness Hearing may change without further written notice to the Settlement Classes. You should monitor the Court's docket and the website maintained by the Claims Administrator, <a href="www.GTATSecuritiesLitigation.com">www.GTATSecuritiesLitigation.com</a>, before making plans to attend the Settlement Fairness Hearing. You may also confirm the date and time of the Settlement Fairness Hearing by contacting Lead Counsel.

- 47. The Settlement Fairness Hearing will be held on **June 28, 2018 at 2:00 p.m.**, before the Honorable Joseph N. Laplante at the United States District Court for the District of New Hampshire, Courtroom 2, 55 Pleasant Street, Concord, NH 03301-3941. The Court reserves the right to approve the Individual Defendant Settlement, the Underwriter Defendant Settlement, the proposed Plan of Allocation, Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, and/or any other related matter at or after the Settlement Fairness Hearing without further notice to Settlement Class Members.
- 48. Only members of the Individual Defendant Settlement Class (*i.e.*, any person or entity that comes with the definition of the Individual Defendant Settlement Class and does not request exclusion from that class) may object to the Individual Defendant Settlement. Similarly, only members of the Underwriter Defendant Settlement Class (*i.e.*, any person or entity that comes with the definition of the Underwriter Defendant Settlement Class and does not request exclusion from that class) may object to the Underwriter Defendant Settlement. However, any member of the Individual Defendant Settlement Class 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 or reimbursement of expenses. Objections must be in writing. You must file any written objection, together with copies of all other papers and briefs supporting the objection, with the Clerk's Office at the United States District Court for the District of New Hampshire at the address set forth below on or before June 7, 2018. You must also mail the papers to Lead Counsel and, if it is to one or both of the Settlements to which you are objecting, to the applicable designated Defendants' Counsel as well, at the addresses set forth below so that the papers are *received* on or before June 7, 2018.

#### Clerk's Office

U.S. District Court
District of New Hampshire
Clerk of the Court
55 Pleasant Street, Room 110
Concord, NH 03301-3941

#### Individual Defendants' Counsel

Ropes & Gray LLP Randall W. Bodner, Esq. 800 Boylston Street Boston, MA 02199

Morgan, Lewis, & Bockius LLP Jordan D. Hershman, Esq. One Federal Street Boston, MA 02110-1726

Wachtell, Lipton, Rosen & Katz David A. Katz, Esq. 51 West 52nd Street New York, NY 10019

Nutter McClennen & Fish LLP lan D. Roffman, Esq. 155 Seaport Blvd. Boston, MA 02210

#### **Lead Counsel**

Bernstein Litowitz Berger & Grossmann LLP John C. Browne, Esq. 1251 Avenue of the Americas, 44th Floor New York, NY 10020

#### Underwriter Defendants' Counsel

Paul Weiss Rifkind Wharton & Garrison LLP Richard A. Rosen, Esq. 1285 Avenue of the Americas New York, NY 10019-6064

49. Any objection: (i) must state the name, address, and telephone number of the person or entity objecting and must be signed by the objector; (ii) 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 (iii) 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 Underwriter Defendant Settlement Class Members, 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.

- 50. You may not object to the Individual Defendant Settlement if you exclude yourself from the Individual Defendant Settlement Class or if you are not a member of that class. Similarly, you may not object to the Underwriter Defendant Settlement if you exclude yourself from the Underwriter Defendant Settlement Class or if you are not a member of that class. Further, you may not object to the Plan of Allocation and/or the motion for attorneys' fees and expenses unless you are a member of at least one of the Settlement Classes and do not exclude yourself from that Settlement Class.
- 51. You may file a written objection without having to appear at the Settlement Fairness Hearing. You may not, however, appear at the Settlement Fairness Hearing to present your objection unless you first filed and served a written objection in accordance with the procedures described above, unless the Court orders otherwise.
- 52. If you wish to be heard orally at the hearing, you must also file a notice of appearance with the Clerk's Office and serve it on Lead Counsel and, if it is the Individual Defendant and/or Underwriter Defendant Settlement about which you wish to be heard, on Individual Defendants' Counsel and/or Underwriter Defendants' Counsel, as applicable, at the addresses set forth in ¶ 48 above so that it is *received* on or before June 7, 2018. Persons who intend to object and desire to present evidence at the Settlement Fairness Hearing 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. Such persons may be heard orally at the discretion of the Court.
- 53. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Fairness Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must file a notice of appearance with the Court and serve it on Lead Counsel and, if it is the Individual Defendant and/or Underwriter Defendant Settlement as to which you are objecting, on Individual Defendants' Counsel and/or Underwriter Defendants' Counsel, as applicable, at the addresses set forth in ¶ 48 above so that the notice is *received* on or before June 7, 2018.
- 54. Unless the Court orders otherwise, any Individual Defendant Settlement Class Member who does not object to the Individual Defendant Settlement and any Underwriter Defendant Settlement Class Member who does not object to the Underwriter Defendant Settlement in the manner described above will be deemed to have waived any objection to the Individual Defendant and/or Underwriter Defendant Settlement, as applicable, and shall be forever foreclosed from making any objection to the proposed Individual Defendant and/or Underwriter Defendant Settlement, and any member of the Individual Defendant and/or Underwriter Defendant Settlement Class who does not object to the proposed Plan of Allocation or requested attorneys' fees and expenses in the manner described above will be deemed to have waived any objection to the proposed Plan of Allocation or the requested fees and expenses and shall be forever foreclosed from making any such objection. Settlement Class Members do not need to appear at the Settlement Fairness Hearing or take any other action to indicate their approval.

#### WHAT IF I BOUGHT GTAT SECURITIES ON SOMEONE ELSE'S BEHALF?

55. If, during the period from November 5, 2013 through 9:40 a.m. Eastern Standard Time on October 6, 2014, inclusive, you purchased or otherwise acquired GTAT Common Stock and/or GTAT Senior Notes, purchased or otherwise acquired GTAT Call Options, and/or sold (wrote) GTAT Put Options, for the beneficial interest of persons or organizations other than yourself, you must either (a) within fourteen (14) calendar days of receipt of this 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 this Notice, provide a list of the names and addresses of all such beneficial owners to GTAT Securities Litigation, c/o GCG, P.O. Box 10463, Dublin, OH 43017-4063. If you choose the first option, you must send a statement to the Claims Administrator confirming that the mailing was made and you must retain your mailing records for use in connection with any further notices that may be provided in the Action. If you choose the second option, the Claims Administrator will send a copy of the Notice to the beneficial owners. Upon full compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred, by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Copies of this Notice may also be obtained from the website maintained by the Claims Administrator, www.GTATSecuritiesLitigation.com, by calling the Claims Administrator toll-free at 1-866-562-8790, or by emailing the Claims Administrator at info@GTATSecuritiesLitigation.com.

#### CAN I SEE THE COURT FILE? WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?

56. This Notice contains only a summary of the terms of the proposed Individual Defendant and Underwriter Defendant Settlements. For more detailed information about the matters involved in this Action, you are referred to the papers on file in the Action, including the Individual Defendant Stipulation and the Underwriter Defendant Stipulation, which may be inspected during regular office hours at the Office of the Clerk, United States District Court for the District of

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New Hampshire, 55 Pleasant Street, Concord, NH 03301-3941. Additionally, copies of the Stipulations, and any related orders entered by the Court, will be posted on the website maintained by the Claims Administrator, www.GTATSecuritiesLitigation.com.

### Requests for the Notice Packet should be made to:

GTAT Securities Litigation
c/o GCG
P.O. Box 10463
Dublin, OH 43017-4063
1-866-562-8790
info@GTATSecuritiesLitigation.com
www.GTATSecuritiesLitigation.com

### Inquiries, other than requests for the Notice Packet, should be made to Lead Counsel:

John C. Browne, Esq.
BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP
1251 Avenue of the Americas, 44th Floor
New York, NY 10020
1-800-380-8496
blbg@blbglaw.com

DO NOT CALL OR WRITE THE COURT, THE OFFICE OF THE CLERK OF THE COURT, GTAT, DEFENDANTS OR THEIR COUNSEL REGARDING THIS NOTICE.

Dated: March 14, 2018

By Order of the Court United States District Court District of New Hampshire

#### APPENDIX A TO THE NOTICE

#### PROPOSED PLAN OF ALLOCATION

1. If approved by the Court, the plan of allocation set forth below (the "Plan of Allocation") will determine how the net proceeds of the Settlements will be distributed to members of the respective Settlement Classes who submit timely and valid Claims.<sup>1</sup>

#### **GENERAL PROVISIONS**

- 2. At this time, it is not possible to make any determination as to how much a Settlement Class Member may receive from the Settlement(s) in which he, she or it is eligible.
- 3. If the Individual Defendant Settlement is approved by the Court and the Effective Date of the Individual Defendant Settlement occurs, the Net Settlement Fund for the Individual Defendant Settlement (the "Individual Defendant Net Settlement Fund") will be distributed to Authorized Claimants who are members of the Individual Defendant Settlement Class. Similarly, if the Underwriter Defendant Settlement is approved by the Court and the Effective Date of the Underwriter Defendant Settlement occurs, the Net Settlement Fund for the Underwriter Defendant Settlement (the "Underwriter Defendant Net Settlement Fund") will be distributed to Authorized Claimants who are members of the Underwriter Defendant Settlement Class. Please note, the same Proof of Claim and Release Form ("Claim Form") will be used for purposes of calculating Claims for both Settlements. Thus, even if you are a member of both Settlement Classes, you should only submit one Claim Form.
- 4. The respective Net Settlement Funds will not be distributed unless and until the Court has approved the Settlement and a plan of allocation, and the time for any petition for rehearing, appeal or review, whether by certiorari or otherwise, has expired.
- 5. Neither the Settling Defendants nor any other person or entity that paid any portion of their respective Settlement Amounts on their behalf are entitled to get back any portion of their Settlement Fund once the Court's Order approving their Settlement becomes Final. The Settling Defendants shall not have any liability, obligation, or responsibility for the administration of their respective Settlements or disbursement of the respective Net Settlement Funds or the Plan of Allocation or such other plan of allocation as may be approved by the Court.
- 6. Approval of the Settlements is independent from approval of a plan of allocation. Any determination as to a plan of allocation will not affect the Settlements. if approved.
- 7. Unless the Court otherwise orders, any Settlement Class Member who fails to submit a Claim Form postmarked no later than July 12, 2018 shall be forever barred from receiving payments pursuant to the Settlement(s) that apply to him, her or it but will in all other respects remain a member of the applicable Settlement Class(es) in which he, she, or it is a member and be subject to the provisions of the applicable Stipulations, including the terms of any Judgments entered and releases given.
- 8. The Court has reserved continuing jurisdiction to allow, disallow, or adjust the Claim of any Settlement Class Member on equitable grounds.
- 9. The Court has also reserved the right to modify the Plan of Allocation without further notice to Settlement Class Members. Any Orders regarding a modification of the Plan of Allocation will be posted on the settlement website, <a href="https://www.GTATSecuritiesLitigation.com">www.GTATSecuritiesLitigation.com</a>.
- 10. Payment pursuant to the plan of allocation approved by the Court shall be conclusive against all Authorized Claimants. No person or entity shall have any claim against Plaintiffs, Plaintiffs' Counsel, the Claims Administrator or other agent designated by Plaintiffs' Counsel arising from distributions made substantially in accordance with the Stipulations, the plan of allocation that is approved by the Court, or further orders of the Court. Plaintiffs, the Settling Defendants, their respective counsel, and all other Individual Defendants' Releasees and Underwriter Defendants' Releasees shall have no responsibility or liability whatsoever for the investment or distribution of their respective Settlement Funds or Net Settlement Funds, the Plan of Allocation or such other plan of allocation as may be approved by the Court, or the determination, administration, calculation, or payment of any claim or nonperformance of the Claims Administrator, the payment or withholding of taxes owed by the respective Settlement Funds, or any losses incurred in connection therewith.
- 11. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her or its Claim.

<sup>&</sup>lt;sup>1</sup> Unless otherwise defined in this Plan of Allocation or the Notice, the capitalized terms herein shall have the same meanings as they have in the Individual Defendant Stipulation and the Underwriter Defendant Stipulation.

- 12. Each Claim **must** provide all of the information requested therein and provide sufficient supporting documentation as stated therein.
- 13. Participants in and beneficiaries of a plan covered by ERISA ("ERISA Plan") should NOT include any information relating to their transactions in GTAT Securities held through an ERISA Plan in any Claim that they may submit in this Action. They should include ONLY those securities that they purchased, acquired, or sold outside of an ERISA Plan. Claims based on any ERISA Plan's purchases, acquisitions, or sales of GTAT Securities during the Class Period may be made by the plan's trustees. To the extent any of the Defendants or any of the other persons or entities excluded from one or both of the Settlement Classes are participants in an ERISA Plan, such persons or entities shall not receive, either directly or indirectly, any portion of the recovery that may be obtained from the Settlements by an ERISA Plan.
- 14. The objective of the Plan of Allocation is to equitably distribute the respective Net Settlement Funds to those Settlement Class Members who suffered economic losses as a result of the alleged violations of the federal securities laws. The Plan of Allocation generally measures the amount of loss that a Settlement Class Member can claim for purposes of making *pro rata* allocations of the cash in the respective Net Settlement Funds to Authorized Claimants who are members of the class for which the fund was created. The Plan of Allocation is not a formal damage analysis.
- 15. The calculations made pursuant to the Plan of Allocation are not intended to be estimates of, nor indicative of, the amounts that Settlement Class Members might have been able to recover after a trial. Nor are the calculations pursuant to the Plan of Allocation intended to be estimates of the amounts that will be paid to Authorized Claimants pursuant to the Settlements. The computations under the Plan of Allocation are only a method to weigh the claims of Claimants against one another for the purposes of making *pro rata* allocations of the Net Settlement Funds.
- 16. As discussed in the Notice above, claims were asserted in the Action against the Individual Defendants under both the Securities Act and the Exchange Act, while claims were asserted against the Underwriter Defendants under the Securities Act only. Accordingly, the Underwriter Defendant Net Settlement Fund will be allocated among eligible Underwriter Defendant Settlement Class Members based solely on the Securities Act Calculations set forth below, while the Individual Defendant Net Settlement Fund will be allocated among eligible Individual Defendant Settlement Class Members based on both the Exchange Act and Securities Act Calculations set forth below.

#### **SECURITIES ACT CALCULATIONS**

- 17. Securities Act claims were asserted with respect to (i) shares of GTAT Common Stock purchased or otherwise acquired during the Class Period pursuant or traceable to the Common Stock Secondary Offering; and (ii) GTAT Senior Notes purchased or otherwise acquired during the Class Period pursuant or traceable to the Senior Notes Offering. For shares of GTAT Common Stock to be traceable to the Common Stock Secondary Offering and potentially eligible for recovery under Section 11 of the Securities Act, the shares must have been purchased directly from an underwriter at the \$8.65 issue price as part of the Common Stock Secondary Offering, which occurred on or about December 5, 2013. Since the Senior Notes Offering was an initial offering of the security, all GTAT Senior Notes purchased from the initial offering date of the security through the end of the Class Period are traceable to the Senior Notes Offering and potentially eligible for recovery under Section 11 of the Securities Act.
- 18. The claims asserted in the Action under Section 11 of the Securities Act serve as the basis for the calculation of the Securities Act Recognized Loss Amounts under the Plan of Allocation. Section 11 of the Securities Act provides a statutory formula for the calculation of damages under that provision. The formulas stated below, which were developed by Lead Plaintiff's damages expert, generally track the statutory formula.

#### **GTAT Common Stock**

- 19. Based on the formulas stated below, a "Securities Act Recognized Loss Amount" will be calculated for each purchase/aquisition of GTAT Common Stock during the Class Period pursuant or traceable to the Common Stock Secondary Offering. If a Securities Act Recognized Loss Amount calculates to a negative number or zero under the formula below, that number will be zero.
- 20. For GTAT Common Stock purchased or otherwise acquired during the Class Period (*i.e.*, from November 5, 2013 through and including 9:40 a.m. EST on October 6, 2014) pursuant or traceable to the Common Stock Secondary Offering ("GTAT Common Stock Offering Shares"),<sup>2</sup> and

<sup>&</sup>lt;sup>2</sup> As noted in ¶ 17 above, for shares of GTAT Common Stock to be traceable to the Common Stock Secondary Offering, which occurred on or about December 5, 2013, the shares must have been purchased directly from an underwriter as part of the Common Stock Secondary Offering at the \$8.65 issue price.

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- (i) Sold before the close of trading on October 9, 2014,<sup>3</sup> the Securities Act Recognized Loss Amount will be the purchase price (not to exceed \$8.65, the issue price of the Common Stock Secondary Offering) *minus* the sale price.
- (ii) Held as of the close of trading on October 9, 2014, the Securities Act Recognized Loss Amount will be the purchase price (not to exceed \$8.65, the issue price of the Common Stock Secondary Offering) *minus* \$1.29, the closing price of GTAT Common Stock on October 9, 2014.

### **GTAT Senior Notes**

- 21. Based on the formulas stated below, a "Securities Act Recognized Loss Amount" will be calculated for each purchase/acquisition of GTAT Senior Notes during the Class Period. If a Securities Act Recognized Loss Amount calculates to a negative number or zero under the formula below, that number will be zero.
- 22. For each GTAT Senior Note purchased or otherwise acquired during the Class Period (*i.e.*, from the initial offering date of the security through and including 9:40 a.m. EST on October 6, 2014),<sup>4</sup> and
  - (i) Sold before the close of trading on October 9, 2014, the Securities Act Recognized Loss Amount will be the purchase/acquisition price (not to exceed \$1,000, the issue price of the Senior Notes Offering) *minus* the sale price.
  - (ii) Sold from October 10, 2014 through and including the close of trading on May 18, 2015,<sup>5</sup> the Securities Act Recognized Loss Amount will be the purchase/acquisition price (not to exceed \$1,000, the issue price of the Senior Notes Offering) *minus* the sale price (not to be less than \$310, the closing price of GTAT Senior Notes on October 9, 2014).
  - (iii) Held as of the close of trading on May 18, 2015, the Securities Act Recognized Loss Amount will be the purchase/acquisition price (not to exceed \$1,000, the issue price of the Senior Notes Offering) *minus* \$310, the closing price of GTAT Senior Notes on October 9, 2014.

### **EXCHANGE ACT CALCULATIONS**

- 23. Section 10(b) of the Exchange Act serves as the basis for the calculation of Exchange Act Recognized Loss Amounts under the Plan of Allocation. In developing the Plan of Allocation, Lead Plaintiff's damages expert calculated the estimated amount of artificial inflation in the closing prices of GTAT Securities which allegedly was proximately caused by Defendants' alleged false and misleading statements and material omissions. In calculating the estimated artificial inflation allegedly caused by Defendants' alleged misrepresentations and omissions, Lead Plaintiff's damages expert considered price changes in GTAT Securities in reaction to certain public announcements allegedly revealing the truth concerning Defendants' alleged misrepresentations and material omissions, adjusting for price changes that were attributable to market or industry forces. The estimated artificial inflation in GTAT Common Stock and GTAT Senior Notes is stated in Table A below. The estimated artificial inflation in GTAT Call Options is stated in Table D, which is available at <a href="https://www.GTATSecuritiesLitigation.com">www.GTATSecuritiesLitigation.com</a>, and the estimated artificial deflation in GTAT Put Options is stated in Table E, which is also available at <a href="https://www.GTATSecuritiesLitigation.com">www.GTATSecuritiesLitigation.com</a>.
- 24. For losses to be compensable damages under Section 10(b) of the Exchange Act, the disclosure of the allegedly misrepresented information must be, among other things, the cause of the decline in the price or value of the security. In this case, Lead Plaintiff alleges that Defendants made false statements and omitted material facts during the period between November 5, 2013 and 9:40 a.m. EST on October 6, 2014, inclusive, which had the effect of artificially inflating the prices of GTAT Common Stock, GTAT Senior Notes, and GTAT Call Options, and artificially deflating the price of GTAT Put Options. Lead Plaintiff further alleges that corrective information was released to the market at 1:12 p.m. EST on September 9, 2014 and at 9:40 a.m. EST on October 6, 2014, which partially removed the artificial inflation from the price of GTAT Common Stock, GTAT Senior Notes, and GTAT Call Options, and partially removed artificial deflation from the price of GTAT Put Options, on September 9, 2014, September 10, 2014, and October 6, 2014.

<sup>&</sup>lt;sup>3</sup> For purposes of the statutory calculations, October 9, 2014, the date of filing of the initial complaint in the Action, is the date of suit. For GTAT Common Stock Offering Shares, October 9, 2014 is also the proxy date for the date of judgment because after October 9, 2014 the price of GTAT Common Stock never traded above \$1.29, the closing price on that date.

<sup>&</sup>lt;sup>4</sup> As noted in ¶ 17 above, all GTAT Senior Notes purchased from the initial offering date of the security through the end of the Class Period are traceable to the Senior Notes Offering and potentially eligible for recovery under Section 11 of the Securities Act

<sup>&</sup>lt;sup>5</sup> For purposes of the statutory calculations, May 18, 2015 is the proxy date for the date of judgment because after May 18, 2015 the price of GTAT Senior Notes never traded above \$310, the closing price on October 9, 2014.

<sup>&</sup>lt;sup>6</sup> With respect to the alleged partial corrective disclosure that occurred on September 9, 2014, the alleged artificial inflation (deflation) was removed from the price of GTAT Securities over two days: September 9, 2014 and September 10, 2014.

25. Exchange Act Recognized Loss Amounts for transactions in GTAT Securities are calculated under the Plan of Allocation based primarily on the difference in the amount of alleged artificial inflation (or deflation in the case of put options) in the respective prices of the GTAT Securities at the time of purchase or acquisition and at the time of sale or the difference between the actual purchase/acquisition price and sale price. Accordingly, in order to have an Exchange Act Recognized Loss Amount under the Plan of Allocation, an Individual Defendant Settlement Class Member who or which purchased or otherwise acquired GTAT Common Stock, GTAT Senior Notes, or GTAT Call Options, or sold/wrote GTAT Put Options, prior to the first alleged corrective disclosure, which occurred at 1:12 p.m. EST on September 9, 2014, must have held the respective GTAT Security (or with respect to GTAT Call Options and GTAT Put Options (collectively, "GTAT Options"), not closed out his, her or its position in the security) through at least that time. A Settlement Class Member who or which purchased or otherwise acquired GTAT Common Stock, GTAT Senior Notes, or GTAT Call Options, or sold/wrote GTAT Put Options, at or after 1:12 p.m. EST on September 9, 2014, must have held the respective GTAT Security (or with respect to GTAT Options, not closed out his, her or its position in the security) through at least the second alleged corrective disclosure, which occurred at 9:40 a.m. EST on October 6, 2014.

### **GTAT Common Stock**

- 26. Based on the formula stated below, an "Exchange Act Recognized Loss Amount" will be calculated for each purchase or acquisition of GTAT Common Stock that is listed on the Claim Form and for which adequate documentation is provided. If an Exchange Act Recognized Loss Amount calculates to a negative number or zero under the formula below, that number will be zero.
- 27. For each share of GTAT Common Stock purchased or otherwise acquired during the Class Period (*i.e.*, from November 5, 2013 through and including 9:40 a.m. EST on October 6, 2014), and:
  - (i) Sold before September 9, 2014 or on September 9, 2014 before 1:12 p.m. EST, the Exchange Act Recognized Loss Amount will be \$0.00.
  - (ii) Sold from September 9, 2014 at or after 1:12 p.m. EST through and including the close of trading on October 3, 2014 or on October 6, 2014 before or at 9:40 a.m. EST, the Exchange Act Recognized Loss Amount will be **the lesser of**: (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table A *minus* the amount of artificial inflation per share on the date of sale as stated in Table A; or (ii) the purchase/acquisition price *minus* the sale price.
  - (iii) Sold from October 6, 2014 after 9:40 a.m. EST through and including the close of trading on January 2, 2015, the Exchange Act Recognized Loss Amount will be **the least of**: (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table A; (ii) the purchase/acquisition price *minus* the average closing price between October 6, 2014 and the date of sale as stated in Table B below; or (iii) the purchase/acquisition price *minus* the sale price.
  - (iv) Held as of the close of trading on January 2, 2015, the Exchange Act Recognized Loss Amount will be *the lesser of*: (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table A; or (ii) the purchase/acquisition price minus \$0.51.
- 28. For each share of GTAT Common Stock traceable to the Common Stock Secondary Offering that has both a Securities Act Recognized Loss Amount and an Exchange Act Recognized Loss Amount, the Exchange Act Recognized Loss Amount (as calculated pursuant to ¶ 27 above) multiplied by 0.93; or (ii) the product of the Securities Act Recognized Loss Amount (as calculated pursuant to ¶ 20 above) multiplied by 0.93.

### **GTAT Senior Notes**

29. Based on the formula stated below, an "Exchange Act Recognized Loss Amount" will be calculated for each purchase or acquisition of GTAT Senior Notes that is listed on the Claim Form and for which adequate documentation is provided. If an Exchange Act Recognized Loss Amount calculates to a negative number or zero under the formula below, that number will be zero.

<sup>&</sup>lt;sup>7</sup> Pursuant to Section 21(D)(e)(1) of the Exchange Act, "in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day look-back period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market." Consistent with the requirements of the Exchange Act, Exchange Act Recognized Loss Amounts are reduced to an appropriate extent by taking into account the closing prices of GTAT Common Stock during the 90-day look-back period, October 6, 2014 through and including January 2, 2015. The mean (average) closing price for GTAT Common Stock during this 90-day look-back period was \$0.51.

- 30. For each GTAT Senior Note purchased or otherwise acquired during the Class Period (*i.e.*, from the initial offering date of the security through and including 9:40 a.m. EST on October 6, 2014), and:
  - (i) Sold before September 9, 2014 or on September 9, 2014 before 1:12 p.m. EST, the Exchange Act Recognized Loss Amount will be \$0.00.
  - (ii) Sold from September 9, 2014 at or after 1:12 p.m. EST through and including the close of trading on October 3, 2014 or on October 6, 2014 before or at 9:40 a.m. EST, the Exchange Act Recognized Loss Amount will be **the lesser of**: (i) the amount of artificial inflation per note on the date of purchase/acquisition as stated in Table A *minus* the amount of artificial inflation per note on the date of sale as stated in Table A; or (ii) the purchase/acquisition price *minus* the sale price.
  - (iii) Sold from October 6, 2014 after 9:40 a.m. EST through and including the close of trading on January 2, 2015, the Exchange Act Recognized Loss Amount will be **the least of**: (i) the amount of artificial inflation per note on the date of purchase/acquisition as stated in Table A; (ii) the purchase/acquisition price *minus* the average closing price between October 6, 2014 and the date of sale as stated in Table C below; or (iii) the purchase/acquisition price *minus* the sale price.
  - (iv) Held as of the close of trading on January 2, 2015, the Exchange Act Recognized Loss Amount will be *the lesser of*: (i) the amount of artificial inflation per note on the date of purchase/acquisition as stated in Table A; or (ii) the purchase/acquisition price minus \$395.14.8
- 31. All GTAT Senior Notes purchased through the end of the Class Period are traceable to the Senior Notes Offering and may have both a Securities Act Recognized Loss Amount and an Exchange Act Recognized Loss Amount. For GTAT Senior Notes, the Exchange Act Recognized Loss Amount will be *the greater of*: (i) the product of the Exchange Act Recognized Loss Amount (as calculated pursuant to ¶ 30 above) multiplied by 0.93; or (ii) the product of the Securities Act Recognized Loss Amount (as calculated pursuant to ¶ 22 above) multiplied by 0.93.

### **GTAT Call and Put Options**

- 32. Exchange-traded options are traded in units called "contracts" which entitle the holder to buy (in the case of a call option) or sell (in the case of a put option) 100 shares of the underlying security, which in this case is GTAT Common Stock. Throughout this Plan of Allocation, all price quotations are *per share of the underlying security* (*i.e.*, 1/100 of a contract).
- 33. Each option contract specifies a strike price and an expiration date. Contracts with the same strike price and expiration date are referred to as a "series" and each series represents a different security that trades in the market and has its own market price (and thus artificial inflation or deflation). Under the Plan of Allocation, the dollar artificial inflation per share (*i.e.*, 1/100 of a contract) for each series of GTAT Call Options and the dollar artificial deflation per share (*i.e.*, 1/100 of a contract) for each series of GTAT Put Options has been calculated by Lead Plaintiff's damages expert. Table D, available at <a href="https://www.GTATSecuritiesLitigation.com">www.GTATSecuritiesLitigation.com</a>, sets forth the dollar artificial inflation per share in GTAT Call Options during the Class Period. Tables D and E list only series of exchange-traded GTAT Options that expired on or after September 9, 2014 the date of the first alleged corrective disclosure. Transactions in GTAT Options that expired before September 9, 2014 have an Exchange Act Recognized Loss Amount of zero under the Plan of Allocation. Any GTAT Options traded during the Class Period that are not found on Tables D and E have an Exchange Act Recognized Loss Amount of zero under the Plan of Allocation.
- 34. For each GTAT Call Option purchased or otherwise acquired during the Class Period (*i.e.*, from November 5, 2013 through and including 9:40 a.m. EST on October 6, 2014), and:
  - (i) closed (through sale, exercise, or expiration) before September 9, 2014 or on September 9, 2014 before 1:12 p.m. EST, the Exchange Act Recognized Loss Amount will be \$0.00.
  - (ii) closed (through sale, exercise, or expiration) during the period from September 9, 2014 at or after 1:12 p.m. EST through and including the close of trading on October 3, 2014 or on October 6, 2014 before or at 9:40 a.m. EST, the Exchange Act Recognized Loss Amount will be **the lesser of**: (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table D (available at <a href="https://www.GTATSecuritiesLitigation.com">www.GTATSecuritiesLitigation.com</a>) minus the amount of artificial inflation per share on the date of close as stated in Table D; or (ii) if closed through sale, the purchase/acquisition price minus the sale price, or if closed

<sup>&</sup>lt;sup>8</sup> As explained in footnote 7 above, Exchange Act Recognized Loss Amounts are reduced to an appropriate extent by taking into account the closing prices of GTAT Senior Notes during the 90-day look-back period, October 6, 2014 through and including January 2, 2015. The mean (average) closing price for GTAT Senior Notes during this 90-day look-back period was \$395.14.

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through exercise or expiration, the purchase/acquisition price *minus* the value per option on the date of exercise or expiration.<sup>9</sup>

- (iii) open after 9:40 a.m. EST on October 6, 2014, the Exchange Act Recognized Loss Amount will be **the lesser of**: (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table D (available at <a href="https://www.GTATSecuritiesLitigation.com">www.GTATSecuritiesLitigation.com</a>); or (ii) the purchase/acquisition price *minus* the closing price of that option on October 6, 2014 (*i.e.*, the "Holding Price") as stated in Table D.
- 35. For each GTAT Put Option sold (written) during the Class Period (*i.e.*, from November 5, 2013 through and including 9:40 a.m. EST on October 6, 2014), and:
  - (i) closed (through purchase, exercise, or expiration) before September 9, 2014 or on September 9, 2014 before 1:12 p.m. EST, the Exchange Act Recognized Loss Amount will be \$0.00.
  - (ii) closed (through purchase, exercise, or expiration) during the period from September 9, 2014 at or after 1:12 p.m. EST through and including the close of trading on October 3, 2014 or on October 6, 2014 before or at 9:40 a.m. EST, the Exchange Act Recognized Loss Amount will be **the lesser of**: (i) the amount of artificial deflation per share on the date of sale (writing) as stated in Table E (available at <a href="https://www.GTATSecuritiesLitigation.com">www.GTATSecuritiesLitigation.com</a>) minus the amount of artificial deflation per share on the date of close as stated in Table E; or (ii) if closed through purchase, the purchase price minus the sale price, or if closed through exercise or expiration, the value per option on the date of exercise or expiration minus the sale price.
  - (iii) open after 9:40 a.m. EST on October 6, 2014, the Exchange Act Recognized Loss Amount will be *the lesser of*: (i) the amount of artificial deflation per share on the date of sale (writing) as stated in Table E (available at <a href="https://www.GTATSecuritiesLitigation.com">www.GTATSecuritiesLitigation.com</a>); or (ii) the closing price on October 6, 2014 (*i.e.*, the "Holding Price") as stated in Table E *minus* the sale price.
- 36. **Maximum Recovery for Options:** The settlement proceeds available for GTAT Call Options purchased during the Class Period and GTAT Put Options sold (written) during the Class Period shall be limited to a total amount equal to 15% of the Individual Defendant Net Settlement Fund. Thus, if the cumulative Exchange Act Recognized Loss Amounts for GTAT Call Options and GTAT Put Options exceeds 15% of all Exchange Act Recognized Claims, then the Exchange Act Recognized Loss Amounts calculated for option transactions will be reduced proportionately until they collectively equal 15% of all Exchange Act Recognized Claims. In the unlikely event that the Individual Defendant Net Settlement Fund, allocated as such, is sufficient to pay 100% of the GTAT Common Stock and GTAT Senior Note-based claims, any excess amount will be used to pay the balance on the remaining option-based claims.

### **ADDITIONAL PROVISIONS**

- 37. Calculation of Claimant's "Exchange Act Recognized Claim": A Claimant's "Exchange Act Recognized Claim" will be the sum of his, her or its Exchange Act Recognized Loss Amounts as calculated above with respect to all GTAT Securities.
- 38. Calculation of Claimant's "Securities Act Recognized Claim": A Claimant's "Securities Act Recognized Claim" will be the sum of his, her or its Securities Act Recognized Loss Amounts as calculated above with respect to all GTAT Common Stock Offering Shares and GTAT Senior Notes.
- 39. **FIFO Matching:** If a Settlement Class Member made more than one purchase/acquisition or sale of any GTAT Security during the Class Period, all purchases/acquisitions and sales of the like security will be matched on a First In, First Out ("FIFO") basis. With respect to GTAT Common Stock, GTAT Senior Notes, and GTAT Call Options, sales will be matched first against any holdings at the beginning of the Class Period (as applicable), and then against purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisition made during the Class Period. For GTAT Put Options, purchases will be matched first to close out positions open at the beginning of the Class Period, and then against GTAT Put Options sold (written) during the Class Period in chronological order.
- 40. "Purchase/Sale" Dates: Purchases or acquisitions and sales of GTAT Securities will be deemed to have occurred on the "contract" or "trade" date as opposed to the "settlement" or "payment" date. The receipt or grant by gift,

<sup>&</sup>lt;sup>9</sup> The "value" of the call option on the date of exercise or expiration shall be the closing price of GTAT Common Stock on the date of exercise or expiration minus the strike price of the option. If this number is less than zero, the value of the call option is zero.

<sup>&</sup>lt;sup>10</sup> The "value" of the put option on the date of exercise or expiration shall be the strike price of the option minus the closing price of GTAT Common Stock on the date of exercise or expiration. If this number is less than zero, the value of the put option is zero.

inheritance, or operation of law of GTAT Securities during the Class Period shall not be deemed a purchase, acquisition or sale of these GTAT Securities for the calculation of a Claimant's Recognized Loss Amount, nor shall the receipt or grant be deemed an assignment of any claim relating to the purchase/acquisition/sale of such GTAT Securities unless (i) the donor or decedent purchased or otherwise acquired or sold such GTAT Securities during the Class Period; (ii) the instrument of gift or assignment specifically provides that it is intended to transfer such rights; and (iii) no Claim was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to such GTAT Securities.

- 41. **Short Sales:** With respect to GTAT Common Stock, the date of covering a "short sale" is deemed to be the date of purchase or acquisition of the common stock. The date of a "short sale" is deemed to be the date of sale of the GTAT Common Stock. In accordance with the Plan of Allocation, however, the Recognized Loss Amount on "short sales" and the purchases covering "short sales" is zero.
- 42. In the event that a Claimant has an opening short position in GTAT Common Stock, the earliest purchases or acquisitions of GTAT Common Stock during the Class Period will be matched against such opening short position, and not be entitled to a recovery, until that short position is fully covered.
- 43. If a Settlement Class Member has "written" GTAT Call Options, thereby having a short position in the call options, the date of covering such a written position is deemed to be the date of purchase or acquisition of the call option. The date on which the call option was written is deemed to be the date of sale of the call option. In accordance with the Plan of Allocation, however, the Recognized Loss Amount on "written" GTAT Call Options is zero. In the event that a Claimant has an opening written position in GTAT Call Options, the earliest purchases or acquisitions of like call options during the Class Period will be matched against such opening written position, and not be entitled to a recovery, until that written position is fully covered.
- 44. If a Settlement Class Member has purchased or acquired GTAT Put Options, thereby having a long position in the put options, the date of purchase/acquisition is deemed to be the date of purchase/acquisition of the put option. The date on which the put option was sold, exercised, or expired is deemed to be the date of sale of the put option. In accordance with the Plan of Allocation, however, the Recognized Loss Amount on purchased/acquired GTAT Put Options is zero. In the event that a Claimant has an opening long position in GTAT Put Options, the earliest sales or dispositions of like put options during the Class Period will be matched against such opening position, and not be entitled to a recovery, until that long position is fully covered.
- 45. **Common Stock Purchased/Sold Through the Exercise of Options:** With respect to GTAT Common Stock purchased or sold through the exercise of an option, the purchase/sale date of the common stock is the exercise date of the option and the purchase/sale price is the exercise price of the option.
- 46. **Exchange Act Market Gains and Losses:** With respect to all GTAT Common Stock shares, GTAT Senior Notes, and GTAT Call Options purchased or acquired, or GTAT Put Options sold, during the Class Period, the Claims Administrator will determine if the Claimant had an "Exchange Act Market Gain" or an "Exchange Act Market Loss" with respect to his, her, or its overall transactions during the Class Period in those shares, notes, and options. For purposes of making this calculation, with respect to GTAT Common Stock, GTAT Senior Notes, and GTAT Call Options, the Claimant Administrator shall determine the difference between (i) the Claimant's Total Purchase Amount and (ii) the sum of the Claimant's Total Sales Proceeds and the Claimant's Total Purchase Amount minus the sum of the Claimant's Total Sales Proceeds and the Holding Value is a positive number, that number will be the Claimant's "Exchange Act Market Loss"; if the number is a negative number or zero, that number will be the Claimant's "Exchange Act Market Gain". With respect to GTAT Put Options, the Claims Administrator shall determine the difference between (i) the sum of the Claimant's Total Purchase Amount and the Claimant's Holding Value and the Claimant's Total Purchase Proceeds. For GTAT Put Options, if the

<sup>&</sup>lt;sup>11</sup> For GTAT Common Stock, GTAT Senior Notes, and GTAT Call Options, the "Total Purchase Amount" is the total amount the Claimant paid (excluding all fees, taxes and commissions) for all such GTAT securities purchased/acquired during the Class Period.

<sup>&</sup>lt;sup>12</sup> For GTAT Common Stock and GTAT Call Options, the Claims Administrator shall match any sales of such GTAT securities during the Class Period first against the Claimant's opening position in the like GTAT securities (the proceeds of those sales will not be considered for purposes of calculating market gains or losses). The total amount received (excluding all fees, taxes and commissions) for sales of the remaining GTAT Common Stock and GTAT Call Options, and for sales of GTAT Senior Notes, sold during the Class Period is the "Total Sales Proceeds."

<sup>&</sup>lt;sup>13</sup> The Claims Administrator shall ascribe a "Holding Value" of \$0.80 to each share of GTAT Common Stock purchased/acquired during the Class Period that was still held as of 9:40 a.m. EST on October 6, 2014. For any GTAT Senior Note purchased/acquired during the Class Period that was still held as of 9:40 a.m. EST on October 6, 2014, the Claims Administrator shall ascribe a "Holding Value" of \$315.00. For each GTAT Call Option purchased/acquired during the Class Period that was still open as of 9:40 a.m. EST on October 6, 2014, the Claims Administrator shall ascribe a "Holding Value" for that option which shall be the Holding Price set forth on Table D.

<sup>&</sup>lt;sup>14</sup> For GTAT Put Options, the Claims Administrator shall match any purchases/acquisitions during the Class Period to close out positions in put options first against the Claimant's opening position in put options (the total amount paid with respect to those purchases/acquisitions will not be considered for purposes of calculating market gains or losses). The total amount paid (excluding all fees, taxes and commissions) for the remaining purchases/acquisitions during the Class Period to close out positions in put options is the "Total Purchase Amount."

sum of the Claimant's Total Purchase Amount and the Claimant's Holding Value <u>minus</u> the Claimant's Total Sales Proceeds is a positive number, that number will be the Claimant's "Exchange Act Market Loss"; if the number is a negative number or zero, that number will be the Claimant's "Exchange Act Market Gain".

- 47. If a Claimant had an Exchange Act Market Gain with respect to his, her, or its overall transactions in GTAT Securities during the Class Period, the value of the Claimant's Exchange Act Recognized Claim will be zero, and the Claimant will in any event be bound by the Settlements. If a Claimant suffered an overall Exchange Act Market Loss with respect to his, her, or its overall transactions in GTAT Securities during the Class Period but that Exchange Act Market Loss was less than the Claimant's Exchange Act Recognized Claim, then the Claimant's Exchange Act Recognized Claim will be limited to the amount of the Exchange Act Market Loss.
- 48. **Securities Act Market Gains and Losses:** With respect to all GTAT Common Stock Offering Shares and all GTAT Senior Notes (together, the "GTAT Offering Securities") purchased or acquired during the Class Period, the Claims Administrator will determine if the Claimant had a "Securities Act Market Gain" or a "Securities Act Market Loss" with respect to his, her, or its overall transactions during the Class Period in those shares and notes. For purposes of making this calculation, with respect to GTAT Offering Securities, the Claims Administrator shall determine the difference between (i) the Claimant's Total Offering Purchase Amount<sup>17</sup> and (ii) the sum of the Claimant's Total Offering Sales Proceeds<sup>18</sup> and the Claimant's Offering Holding Value. For GTAT Offering Securities, if the Claimant's Total Offering Purchase Amount *minus* the sum of the Claimant's Total Offering Sales Proceeds and the Offering Holding Value is a positive number, that number will be the Claimant's "Securities Act Market Loss"; if the number is a negative number or zero, that number will be the Claimant's "Securities Act Market Gain".
- 49. If a Claimant had a Securities Act Market Gain with respect to his, her, or its overall transactions in GTAT Offering Securities during the Class Period, the value of the Claimant's Securities Act Recognized Claim will be zero, and the Claimant will in any event be bound by the Settlements. If a Claimant suffered an overall Securities Act Market Loss with respect to his, her, or its overall transactions in GTAT Offering Securities during the Class Period but that Securities Act Market Loss was less than the Claimant's Securities Act Recognized Claim, then the Claimant's Securities Act Recognized Claim will be limited to the amount of the Securities Act Market Loss.
- 50. **Allocation of the Individual Defendant Net Settlement Fund:** Each Individual Defendant Settlement Class Member who submits a Claim that is approved by the Court for payment from the Individual Defendant Net Settlement Fund will be an "Individual Defendant Authorized Claimant". Each Individual Defendant Authorized Claimant will receive a *pro rata* share of the Individual Defendant Net Settlement Fund, which will be his, her or its Exchange Act Recognized Claim divided by the sum total of the Exchange Act Recognized Claims of all Individual Defendant Authorized Claimants, multiplied by the total amount in the Individual Defendant Net Settlement Fund.
- 51. **Allocation of the Underwriter Defendant Net Settlement Fund:** Each Underwriter Defendant Settlement Class Member who submits a Claim that is approved by the Court for payment from the Underwriter Defendant Net Settlement Fund will be an "Underwriter Defendant Authorized Claimant". Each Underwriter Defendant Authorized Claimant will receive a *pro rata* share of the Underwriter Defendant Net Settlement Fund, which will be his, her or its Securities Act Recognized Claim divided by the sum total of the Securities Act Recognized Claims of all Underwriter Defendant Authorized Claimants, multiplied by the total amount in the Underwriter Defendant Net Settlement Fund.
- 52. **Distribution Amount:** The Distribution Amount paid to an Authorized Claimant will be the sum of (i) his, her or its *pro rata* share, if any, of the Individual Defendant Net Settlement Fund; and (ii) his, her or its *pro rata* share, if any, of the Underwriter Defendant Net Settlement Fund. If an Authorized Claimant's Distribution Amount calculates to less than \$10.00, no distribution will be made to that Authorized Claimant.
- 53. After the initial distribution of the Net Settlement Funds, the Claims Administrator will make reasonable and diligent efforts to have Authorized Claimants cash their distribution checks. To the extent any monies remain in the Net Settlement Funds nine (9) months after the initial distribution, if Lead Counsel, in consultation with the Claims Administrator, determines that it is cost-effective to do so, the Claims Administrator will conduct a re-distribution of the

<sup>&</sup>lt;sup>15</sup> For each GTAT Put Option sold (written) during the Class Period that was still open as of 9:40 a.m. EST on October 6, 2014, the Claims Administrator shall ascribe a "Holding Value" for that option which shall be the Holding Price set forth on Table E.

<sup>&</sup>lt;sup>16</sup> For GTAT Put Options, the total amount received (excluding all fees, taxes and commissions) for put options sold (written) during the Class Period is the "Total Sales Proceeds."

<sup>&</sup>lt;sup>17</sup> For GTAT Offering Securities, the "Total Offering Purchase Amount" is the total amount the Claimant paid (excluding all fees, taxes and commissions) for all such Offering Securities purchased/acquired during the Class Period.

<sup>&</sup>lt;sup>18</sup> The total amount received (excluding all fees, taxes and commissions) for sales of GTAT Offering Securities sold during the Class Period is the "Total Offering Sales Proceeds."

<sup>&</sup>lt;sup>19</sup> The Claims Administrator shall ascribe an "Offering Holding Value" of \$0.80 to each GTAT Common Stock Offering Share purchased/acquired during the Class Period that was still held as of 9:40 a.m. EST on October 6, 2014. For each GTAT Senior Note purchased/acquired during the Class Period that was still held as of 9:40 a.m. EST on October 6, 2014, the Claims Administrator shall ascribe an "Offering Holding Value" of \$315.00.

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funds remaining after payment of any unpaid fees and expenses incurred in administering the Settlements, including for such re-distribution, to Authorized Claimants who have cashed their initial distributions and who would receive at least \$10.00 from such re-distribution. Additional re-distributions to Authorized Claimants who have cashed their prior checks and who would receive at least \$10.00 on such additional re-distributions may occur thereafter if Lead Counsel, in consultation with the Claims Administrator, determines that additional re-distributions, after the deduction of any additional fees and expenses incurred in administering the Settlements, including for such re-distributions, would be cost-effective. At such time as it is determined that the re-distribution of funds remaining in the Net Settlement Funds is not cost-effective, the remaining balance will be contributed to non-sectarian, not-for-profit organization(s), to be recommended by Lead Counsel and approved by the Court.

- 54. Payment pursuant to the Plan of Allocation, or such other plan of allocation as may be approved by the Court, shall be conclusive against all Authorized Claimants. No person shall have any claim against Plaintiffs, Plaintiffs' Counsel, Lead Plaintiff's damages expert, the Individual Defendants (or their counsel), the Underwriter Defendants (or their counsel), or any of the other Plaintiffs' Releasees or Settling Defendants' Releasees, or the Claims Administrator or other agent designated by Lead Counsel arising from distributions made substantially in accordance with the Stipulations, the plan of allocation approved by the Court, or further Orders of the Court. Plaintiffs, the Individual Defendants, and the Underwriter Defendants, and their respective counsel, and all other Settling Defendants' Releasees, shall have no responsibility or liability whatsoever for the investment or distribution of their respective Settlement Funds or Net Settlement Funds; the plan of allocation; the determination, administration, calculation, or payment of any Claim or nonperformance of the Claims Administrator; the payment or withholding of Taxes; or any losses incurred in connection therewith.
- 55. The Plan of Allocation set forth herein is the plan that is being proposed to the Court for its approval by Lead Plaintiff after consultation with its damages expert. The Court may approve this plan as proposed or it may modify the Plan of Allocation without further notice to the Settlement Classes. Any Orders regarding any modification of the Plan of Allocation will be posted on the settlement website, <a href="https://www.GTATSecuritiesLitigation.com">www.GTATSecuritiesLitigation.com</a>.

Estimated Artificial Inflation in GTAT Common Stock and GTAT Senior Notes From November 5, 2013 Through and Including 9:40 A.M. EST on October 6, 2014

**TABLE A** 

	STOCK	NOTES		STOCK	NOTES		STOCK	NOTES
Date	Artificial Inflation Per Share	Artificial Inflation Per Note	Date	Artificial Inflation Per Share	Artificial Inflation Per Note	Date	Artificial Inflation Per Share	Artificial Inflation Per Note
11/5/2013	\$9.59	N/A	1/14/2014	\$8.63	\$652.36	3/24/2014	\$13.89	\$1,102.03
11/6/2013	\$9.34	N/A	1/15/2014	\$8.65	\$677.36	3/25/2014	\$13.89	\$1,102.03
11/7/2013	\$8.80	N/A	1/16/2014	\$8.71	\$679.86	3/26/2014	\$13.89	\$1,102.03
11/8/2013	\$8.96	N/A	1/17/2014	\$8.55	\$647.13	3/27/2014	\$13.89	\$1,102.03
11/11/2013	\$9.73	N/A	1/21/2014	\$8.77	\$646.11	3/28/2014	\$13.89	\$1,102.03
11/12/2013	\$9.46	N/A	1/22/2014	\$8.71	\$669.86	3/31/2014	\$13.89	\$1,102.03
11/13/2013	\$9.89	N/A	1/23/2014	\$8.50	\$674.86	4/1/2014	\$13.89	\$1,102.03
11/14/2013	\$9.79	N/A	1/24/2014	\$8.58	\$650.84	4/2/2014	\$13.89	\$1,102.03
11/15/2013	\$9.68	N/A	1/27/2014	\$9.16	\$684.06	4/3/2014	\$13.89	\$1,102.03
11/18/2013	\$9.42	N/A	1/28/2014	\$9.31	\$695.40	4/4/2014	\$13.89	\$1,102.03
11/19/2013	\$9.05	N/A	1/29/2014	\$9.12	\$722.36	4/7/2014	\$13.89	\$1,102.03
11/20/2013	\$8.93	N/A	1/30/2014	\$9.57	\$709.86	4/8/2014	\$13.89	\$1,102.03
11/21/2013	\$9.41	N/A	1/31/2014	\$9.76	\$728.61	4/9/2014	\$13.89	\$1,102.03
11/22/2013	\$9.31	N/A	2/3/2014	\$9.26	\$698.65	4/10/2014	\$13.89	\$1,102.03
11/25/2013	\$9.35	N/A	2/4/2014	\$9.06	\$689.86	4/11/2014	\$13.89	\$1,102.03
11/26/2013	\$9.49	N/A	2/5/2014	\$8.67	\$689.86	4/14/2014	\$13.89	\$1,102.03
11/27/2013	\$9.31	N/A	2/6/2014	\$8.94	\$684.86	4/15/2014	\$13.89	\$1,075.86
11/29/2013	\$9.30	N/A	2/7/2014	\$10.23	\$763.86	4/16/2014	\$13.89	\$1,102.03
12/2/2013	\$9.43	N/A	2/10/2014	\$11.23	\$834.86	4/17/2014	\$13.89	\$1,102.03
12/3/2013	\$8.77	N/A	2/11/2014	\$10.37	\$783.30	4/21/2014	\$13.89	\$1,102.03
12/4/2013	\$8.41	N/A	2/12/2014	\$10.67	\$808.06	4/22/2014	\$13.89	\$1,102.03
12/5/2013	\$8.38	\$635.36	2/13/2014	\$11.20	\$807.36	4/23/2014	\$13.89	\$1,102.03
12/6/2013	\$8.16	\$612.52	2/14/2014	\$11.16	\$824.86	4/24/2014	\$13.89	\$1,102.03
12/9/2013	\$7.86	\$616.26	2/18/2014	\$12.13	\$896.11	4/25/2014	\$13.89	\$1,102.03
12/10/2013	\$8.04	\$612.36	2/19/2014	\$11.72	\$887.78	4/28/2014	\$13.89	\$1,102.03
12/11/2013	\$7.71	\$612.36	2/20/2014	\$11.99	\$881.11	4/29/2014	\$13.89	\$1,102.03
12/12/2013	\$7.54	\$619.86	2/21/2014	\$11.60	\$877.94	4/30/2014	\$13.89	\$1,102.03
12/13/2013	\$7.51	\$577.36	2/24/2014	\$13.63	\$1,011.66	5/1/2014	\$13.89	\$1,102.03
12/16/2013	\$7.88	\$604.86	2/25/2014	\$13.35	\$1,001.86	5/2/2014	\$13.89	\$1,102.03
12/17/2013	\$7.99	\$606.61	2/26/2014	\$13.89	\$1,038.77	5/5/2014	\$13.89	\$1,102.03
12/18/2013	\$7.98 \$8.03	\$593.70 \$593.70	2/27/2014 2/28/2014	\$13.89	\$1,029.86	5/6/2014 5/7/2014	\$13.89 \$13.89	\$1,102.03
12/19/2013	4		3/3/2014	\$13.82	\$1,024.44		4	\$1,102.03
12/20/2013 12/23/2013	\$7.86 \$8.06	\$592.99 \$606.11	3/4/2014	\$13.89 \$13.89	\$1,069.84 \$1,102.03	5/8/2014 5/9/2014	\$13.77 \$12.70	\$1,028.71 \$974.06
12/24/2013	\$8.10	\$604.86	3/5/2014	\$13.89	\$1,102.03	5/12/2014	\$12.70	\$990.39
12/26/2013	\$7.96	\$604.86	3/6/2014	\$13.89	\$1,102.03	5/13/2014	\$13.77	\$990.39
12/27/2013	\$8.06	\$628.36	3/7/2014	\$13.89	\$1,102.03	5/14/2014	\$13.77	\$1,036.34
12/30/2013	\$8.29	\$614.86	3/10/2014	\$13.89	\$1,102.03	5/15/2014	\$13.18	\$1,036.34
12/31/2013	\$8.21	\$619.86	3/11/2014	\$13.89	\$1,102.03	5/16/2014	\$13.38	\$1,001.11
1/2/2014	\$8.61	\$637.64	3/12/2014	\$13.89	\$1,102.03	5/19/2014	\$13.68	\$1,001.11
1/3/2014	\$8.81	\$648.66	3/13/2014	\$13.89	\$1,102.03	5/20/2014	\$13.51	\$1,034.02
1/6/2014	\$8.52	\$676.11	3/14/2014	\$13.89	\$1,102.03	5/21/2014	\$13.89	\$1,045.24
1/7/2014	\$8.80	\$664.86	3/17/2014	\$13.89	\$1,102.03	5/22/2014	\$13.89	\$1,087.72
1/8/2014	\$8.96	\$668.73	3/18/2014	\$13.89	\$1,102.03	5/23/2014	\$13.89	\$1,102.03
1/9/2014	\$8.79	\$670.49	3/19/2014	\$13.89	\$1,102.03	5/27/2014	\$13.89	\$1,102.03
1/10/2014	\$8.81	\$661.11	3/20/2014	\$13.89	\$1,102.03	5/28/2014	\$13.89	\$1,102.03
1/13/2014	\$8.23	\$623.98	3/21/2014	\$13.89	\$1,102.03	5/29/2014	\$13.89	\$1,102.03
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### TABLE A (continued)

Date	Artificial Inflation Per	Artificial Inflation Per	Date	Artificial Inflation Per	Artificial Inflation Per
Date	Share	Note	Date	Share	Note
5/30/2014	\$13.89	\$1,102.03	8/7/2014	\$13.89	\$1,096.78
6/2/2014	\$13.89	\$1,102.03	8/8/2014	\$13.89	\$1,096.78
6/3/2014	\$13.89	\$1,102.03	8/11/2014	\$13.89	\$1,102.03
6/4/2014	\$13.89	\$1,102.03	8/12/2014	\$13.89	\$1,102.03
6/5/2014	\$13.89	\$1,102.03	8/13/2014	\$13.89	\$1,102.03
6/6/2014	\$13.89	\$1,102.03	8/14/2014	\$13.89	\$1,102.03
6/9/2014	\$13.89	\$1,102.03	8/15/2014	\$13.89	\$1,102.03
6/10/2014	\$13.89	\$1,102.03	8/18/2014	\$13.89	\$1,102.03
6/11/2014	\$13.89	\$1,102.03	8/19/2014	\$13.89	\$1,102.03
6/12/2014	\$13.89	\$1,102.03	8/20/2014	\$13.89	\$1,102.03
6/13/2014	\$13.89	\$1,102.03	8/21/2014	\$13.89	\$1,102.03
6/16/2014	\$13.89	\$1,102.03	8/22/2014	\$13.89	\$1,102.03
6/17/2014	\$13.89	\$1,102.03	8/25/2014	\$13.89	\$1,102.03
6/18/2014	\$13.89	\$1,102.03	8/26/2014	\$13.89	\$1,102.03
6/19/2014	\$13.89	\$1,102.03	8/27/2014	\$13.89	\$1,102.03
6/20/2014	\$13.89	\$1,102.03	8/28/2014	\$13.89	\$1,102.03
6/23/2014	\$13.89	\$1,102.03	8/29/2014	\$13.89	\$1,102.03
6/24/2014	\$13.89	\$1,102.03	9/2/2014	\$13.89	\$1,102.03
6/25/2014	\$13.89	\$1,102.03	9/3/2014	\$13.89	\$1,102.03
6/26/2014	\$13.89	\$1,102.03	9/4/2014	\$13.89	\$1,102.03
6/27/2014	\$13.89	\$1,102.03	9/5/2014	\$13.89	\$1,102.03
6/30/2014	\$13.89	\$1,102.03	9/8/2014	\$13.89	\$1,102.03
7/1/2014	\$13.89	\$1,102.03	9/9/2014:	<b>#42.00</b>	¢4 400 00
7/2/2014	\$13.89	\$1,102.03	purchased/acquired/sold	\$13.89	\$1,102.03
			before 1:12 p.m. EST 9/9/2014:		
			sold at or after	\$12.15	\$931.98
7/3/2014	\$13.89	\$1,102.03	1:12 p.m. EST	Ψ12.10	Ψ001.00
			9/9/2014:		
7/7/0044	£40.00	Φ4 400 00	purchased/acquired	\$9.68	\$767.54
7/7/2014	\$13.89	\$1,102.03	at or after 1:12 p.m. EST		
7/8/2014	\$13.89	\$1,102.03	9/10/2014	\$9.68	\$767.54
7/9/2014	\$13.89	\$1,102.03	9/11/2014	\$9.68	\$767.54
7/10/2014	\$13.89	\$1,102.03	9/12/2014	\$9.68	\$767.54
7/11/2014	\$13.89	\$1,102.03	9/15/2014	\$9.68	\$767.54
7/14/2014	\$13.89	\$1,102.03	9/16/2014	\$9.68	\$767.54
7/15/2014	\$13.89	\$1,102.03	9/17/2014	\$9.68	\$767.54
7/16/2014	\$13.89	\$1,075.30	9/18/2014	\$9.68	\$767.54
7/17/2014	\$13.79	\$1,086.09	9/19/2014	\$9.68	\$767.54
7/18/2014	\$13.89	\$1,064.86	9/22/2014	\$9.68	\$767.54
7/21/2014	\$13.89	\$1,057.48	9/23/2014	\$9.68	\$767.54
7/22/2014	\$13.89	\$1,057.48	9/24/2014	\$9.68	\$767.54
7/23/2014	\$13.89	\$1,057.48	9/25/2014	\$9.68	\$767.54
7/24/2014	\$13.89	\$1,057.48 \$1,057.48	9/26/2014	\$9.68	\$767.54
7/25/2014 7/28/2014	\$13.89 \$13.72	\$1,057.48 \$1,057.48	9/29/2014 9/30/2014	\$9.68 \$9.68	\$767.54 \$767.54
7/28/2014	\$13.72 \$13.23	\$1,057.48 \$994.81	9/30/2014	\$9.68 \$9.68	\$767.54 \$767.54
7/30/2014	\$13.89	\$1,042.59	10/1/2014	\$9.68	\$767.54 \$767.54
7/30/2014	\$13.33	\$1,042.59	10/2/2014	\$9.68	\$767.54
8/1/2014	\$13.44	\$998.85	10/6/2014:	ψ3.00	Ψ101.34
		•	purchased/acquired/sold	\$9.68	\$767.54
8/4/2014	\$13.62	\$994.66	before or at 9:40 a.m. EST	ψυ.υυ	Ψ101.04
8/5/2014	\$13.89	\$1,070.71	10/6/2014:		
2, 3, 23 1 1	Ţ.5.55	+ -,0.0	purchased/acquired/sold	\$0.00	\$0.00
8/6/2014	\$13.89	\$1,085.88	after 9:40 a.m. EST		

**TABLE B** 

### 90-Day Lookback Table for GTAT Common Stock

(GTAT Common Stock Average Closing Price October 6, 2014 – January 2, 2015)

Date	Average Closing Price of GTAT Common Stock Between October 6, 2014 and Date Shown	Date	Average Closing Price of GTAT Common Stock Between October 6, 2014 and Date Shown
10/6/2014	\$0.80	11/18/2014	\$0.60
10/7/2014	\$1.01	11/19/2014	\$0.60
10/8/2014	\$1.04	11/20/2014	\$0.60
10/9/2014	\$1.10	11/21/2014	\$0.59
10/10/2014	\$1.04	11/24/2014	\$0.59
10/13/2014	\$0.93	11/25/2014	\$0.59
10/14/2014	\$0.86	11/26/2014	\$0.58
10/15/2014	\$0.81	11/28/2014	\$0.58
10/16/2014	\$0.76	12/1/2014	\$0.57
10/17/2014	\$0.72	12/2/2014	\$0.57
10/20/2014	\$0.69	12/3/2014	\$0.57
10/21/2014	\$0.68	12/4/2014	\$0.56
10/22/2014	\$0.67	12/5/2014	\$0.56
10/23/2014	\$0.68	12/8/2014	\$0.55
10/24/2014	\$0.69	12/9/2014	\$0.55
10/27/2014	\$0.70	12/10/2014	\$0.54
10/28/2014	\$0.70	12/11/2014	\$0.54
10/29/2014	\$0.69	12/12/2014	\$0.53
10/30/2014	\$0.67	12/15/2014	\$0.53
10/31/2014	\$0.67	12/16/2014	\$0.53
11/3/2014	\$0.67	12/17/2014	\$0.53
11/4/2014	\$0.66	12/18/2014	\$0.53
11/5/2014	\$0.66	12/19/2014	\$0.52
11/6/2014	\$0.65	12/22/2014	\$0.52
11/7/2014	\$0.65	12/23/2014	\$0.52
11/10/2014	\$0.64	12/24/2014	\$0.52
11/11/2014	\$0.63	12/26/2014	\$0.52
11/12/2014	\$0.62	12/29/2014	\$0.51
11/13/2014	\$0.62	12/30/2014	\$0.51
11/14/2014	\$0.61	12/31/2014	\$0.51
11/17/2014	\$0.61	1/2/2015	\$0.51

### **TABLE C**

### 90-Day Lookback Table for GTAT Senior Notes

(GTAT Senior Notes Average Closing Price October 6, 2014 – January 2, 2015)

Date	Average Closing Price of GTAT Senior Notes Between October 6, 2014 and Date Shown	Date	Average Closing Price of GTAT Senior Notes Between October 6, 2014 and Date Shown
10/6/2014	\$315.00	11/18/2014	\$350.73
10/7/2014	\$348.75	11/19/2014	\$353.19
10/8/2014	\$349.17	11/20/2014	\$353.19
10/9/2014	\$339.38	11/21/2014	\$353.19
10/10/2014	\$320.01	11/24/2014	\$355.55
10/13/2014	\$320.01	11/25/2014	\$357.54
10/14/2014	\$296.67	11/26/2014	\$357.54
10/15/2014	\$281.50	11/28/2014	\$357.54
10/16/2014	\$281.50	12/1/2014	\$359.36
10/17/2014	\$272.57	12/2/2014	\$362.78
10/20/2014	\$265.56	12/3/2014	\$365.37
10/21/2014	\$274.50	12/4/2014	\$367.95
10/22/2014	\$288.75	12/5/2014	\$367.95
10/23/2014	\$303.02	12/8/2014	\$370.97
10/24/2014	\$316.73	12/9/2014	\$372.92
10/27/2014	\$316.73	12/10/2014	\$375.24
10/28/2014	\$326.40	12/11/2014	\$377.33
10/29/2014	\$334.64	12/12/2014	\$377.33
10/30/2014	\$334.64	12/15/2014	\$381.02
10/31/2014	\$338.72	12/16/2014	\$384.02
11/3/2014	\$338.72	12/17/2014	\$386.84
11/4/2014	\$340.56	12/18/2014	\$386.84
11/5/2014	\$345.53	12/19/2014	\$386.84
11/6/2014	\$348.14	12/22/2014	\$386.84
11/7/2014	\$350.73	12/23/2014	\$386.84
11/10/2014	\$350.73	12/24/2014	\$390.00
11/11/2014	\$350.73	12/26/2014	\$390.00
11/12/2014	\$350.73	12/29/2014	\$390.00
11/13/2014	\$350.73	12/30/2014	\$390.00
11/14/2014	\$350.73	12/31/2014	\$392.36
11/17/2014	\$350.73	1/2/2015	\$395.14

Must be Postmarked No Later Than July 12, 2018

ase 1:14-cv-00443-JL GIAT Securities Litigation

close c/o GCG

Than P.O. Box 10463

Dublin, OH 43017-4063



1-866-562-8790 info@GTATSecuritiesLitigation.com www.GTATSecuritiesLitigation.com



Claim Number:

Control Number:

### PROOF OF CLAIM AND RELEASE FORM

TO BE ELIGIBLE TO RECEIVE A SHARE OF THE NET SETTLEMENT FUND(S) IN CONNECTION WITH THE PROPOSED SETTLEMENTS, YOU MUST COMPLETE AND SIGN THIS PROOF OF CLAIM AND RELEASE FORM ("CLAIM FORM") AND MAIL IT BY PREPAID, FIRST-CLASS MAIL TO THE ABOVE ADDRESS, **POSTMARKED NO LATER THAN JULY 12, 2018**.

FAILURE TO SUBMIT YOUR CLAIM FORM BY THE DATE SPECIFIED WILL SUBJECT YOUR CLAIM TO REJECTION AND MAY PRECLUDE YOU FROM BEING ELIGIBLE TO RECOVER ANY MONEY IN CONNECTION WITH THE PROPOSED SETTLEMENTS.

DO NOT MAIL OR DELIVER YOUR CLAIM FORM TO THE COURT, THE PARTIES TO THIS ACTION, OR THEIR COUNSEL. SUBMIT YOUR CLAIM FORM ONLY TO THE CLAIMS ADMINISTRATOR AT THE ADDRESS SET FORTH ABOVE.

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### PART I - CLAIMANT INFORMATION

The Claims Administrator will use this information for all communications regarding this Claim Form. If this information changes, you MUST notify the Claims Administrator in writing at the address above. Complete names of all persons and entities must be provided.							
Claimant Names(s) (as the na names of all beneficial owners	` '	if eligible for payment; if the securities are jointly owned, the					
Name of Person the Claims Ad	dministrator Should Contact Re	garding this Claim Form (Must Be Provided):					
Mailing Address – Line 1: Stre	et Address/P.O. Box:						
Mailing Address – Line 2 (If Ap	oplicable): Apartment/Suite/Floo	r Number:					
City:							
State/Province:	Zip Code:	Country (if other than U.S.):					
Last 4 digits of Claimant Social Security/Taxpayer Identification Number:1							
Daytime Telephone Number:		Evening Telephone Number:					
Email address (Email address is not required, but if you provide it you authorize the Claims Administrator to use it in providing you with information relevant to this claim.):							

Important - This form should be completed IN CAPITAL LETTERS using BLACK or DARK BLUE ballpoint/fountain pen. Characters and marks used should be similar in the style to the following:

ABCDEFGHIJKLMNOPQRSTUVWXYZ12345670

To view Garden City Group, LLC's Privacy Notice, please visit http://www.choosegcg.com/privacy-notice/

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### PART II - GENERAL INSTRUCTIONS

- 1. It is important that you completely read and understand 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 (the "Notice") that accompanies this Claim Form, including the proposed Plan of Allocation of the Net Settlement Funds attached to the Notice (the "Plan of Allocation"). The Notice describes the proposed Settlements, how Settlement Class Members are affected by the Settlements that apply to them, and the manner in which the Net Settlement Funds will be distributed if the Settlements and Plan of Allocation are approved by the Court. The Notice also contains the definitions of many of the defined terms (which are indicated by initial capital letters) used in this Claim Form. By signing and submitting this Claim Form, you will be certifying that you have read and that you understand the Notice, including the terms of the releases described therein and provided for herein.
- 2. YOUARE ONLY ELIGIBLE TO PARTICIPATE IN THE SETTLEMENT(S) APPLICABLE TO THE SETTLEMENT CLASS(ES) IN WHICH YOU ARE A MEMBER (see the definition of the Individual Defendant Settlement Class and the definition of the Underwriter Defendant Settlement Class in paragraph 25 of the Notice, which set forth who is included in and who is excluded from the respective Settlement Classes). Thus, to be eligible for a payment from the proceeds of the Individual Defendant Settlement, you must be a member of the Individual Defendant Settlement Class, and to be eligible for a payment from the proceeds of the Underwriter Defendant Settlement, you must be a member of the Underwriter Defendant Settlement Class.
- 3. By submitting this Claim Form, you will be making a request to share in the proceeds of the Settlements described in the Notice that are applicable to you. IF YOU ARE NOT A MEMBER OF AT LEAST ONE OF THE SETTLEMENT CLASSES, DO NOT SUBMIT A CLAIM FORM. You may not, directly or indirectly, participate in the Individual Defendant Settlement if you are not a member of the Individual Defendant Settlement Class or if you, or someone acting on your behalf, submitted a request for exclusion from that class, and you may not, directly or indirectly, participate in the Underwriter Defendant Settlement if you are not a member of the Underwriter Defendant Settlement Class or if you, or someone acting on your behalf, submitted a request for exclusion from that class.
- 4. Submission of this Claim Form does not guarantee that you will share in the proceeds of the Settlement(s) that apply to you. The distribution of the Net Settlement Funds will be governed by the Plan of Allocation, if it is approved by the Court, or by such other plan of allocation as the Court approves.
- 5. Use the Schedules of Transactions in Parts III to VI of this Claim Form to supply all required details of your transaction(s) (including free transfers and deliveries) in and holdings of the applicable GTAT Securities. On these schedules, provide all of the requested information with respect to your holdings, purchases, acquisitions, and sales of the applicable GTAT Securities, whether such transactions resulted in a profit or a loss. Failure to report all transaction and holding information during the requested time periods may result in the rejection of your claim.
- 6. You are required to submit genuine and sufficient documentation for all of your transactions in and holdings of the applicable GTAT Securities set forth in the Schedules of Transactions in Part III to VI of this Claim Form. Documentation may consist of copies of brokerage confirmation slips or monthly brokerage account statements, or an authorized statement from your broker containing the transactional and holding information found in a broker confirmation slip or account statement. The Settling Parties and the Claims Administrator do not independently have information about your investments in GTAT Securities. IF SUCH DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN COPIES OF THE DOCUMENTS OR EQUIVALENT DOCUMENTS FROM YOUR BROKER. FAILURE TO SUPPLY THIS DOCUMENTATION MAY RESULT IN THE REJECTION OF YOUR CLAIM. DO NOT SEND ORIGINAL DOCUMENTS. Please keep a copy of all documents that you send to the Claims Administrator. Also, do not highlight any portion of the Claim Form or any supporting documents.
- 7. Please Note: Documentation Requirement for Shares of GTAT Common Stock purchased pursuant or traceable to the Common Stock Secondary Offering: If you purchased GTAT Common Stock pursuant or traceable to the Common Stock Secondary Offering, which occurred on or about December 5, 2013, you must submit trade confirmations indicating that the shares were purchased directly from an underwriter as part of the Common Stock Secondary Offering at the \$8.65 issue price.
- 8. Please Note: Additional Documentation Requirement Regarding Purchases/Acquisitions and Sales of GTAT Senior Notes, GTAT Call Options, and GTAT Put Options on September 9, 2014 and October 6, 2014: If you purchased/acquired GTAT Senior Notes and/or GTAT Call Options, or sold (wrote) GTAT Put Options, on September 9, 2014 or October 6, 2014, you will also be required to submit supporting documentation that shows the time of day, Eastern Standard Time, when the transaction occurred.

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### PART II - GENERAL INSTRUCTIONS (CONTINUED)

- 9. All joint beneficial owners each must sign this Claim Form and their names must appear as "Claimants" in Part I of this Claim Form. The complete name(s) of the beneficial owner(s) must be entered. If you purchased or otherwise acquired GTAT Common Stock, GTAT Senior Notes or GTAT Call Options, or sold (wrote) GTAT Put Options, during the Class Period and held the securities in your name, you are the beneficial owner as well as the record owner. If you purchased or otherwise acquired GTAT Common Stock, GTAT Senior Notes or GTAT Call Options, or sold (wrote) GTAT Put Options, during the Class Period and the securities were registered in the name of a third party, such as a nominee or brokerage firm, you are the beneficial owner of these securities, but the third party is the record owner. The beneficial owner, not the record owner, must sign this Claim Form.
- 10. One Claim should be submitted for each separate legal entity. Separate Claim Forms should be submitted for each separate legal entity (e.g., a claim from joint owners should not include separate transactions of just one of the joint owners, and an individual should not combine his or her IRA transactions with transactions made solely in the individual's name). Conversely, a single Claim Form should be submitted on behalf of one legal entity including all transactions made by that entity on one Claim Form, no matter how many separate accounts that entity has (e.g., a corporation with multiple brokerage accounts should include all transactions made in all accounts on one Claim Form).
- 11. Agents, executors, administrators, guardians, and trustees must complete and sign the Claim Form on behalf of persons represented by them, and they must:
  - (a) expressly state the capacity in which they are acting;
  - (b) identify the name, account number, Social Security Number (or taxpayer identification number), address and telephone number of the beneficial owner of (or other person or entity on whose behalf they are acting with respect to) the GTAT Securities; and
  - (c) furnish herewith evidence of their authority to bind to the Claim Form the person or entity on whose behalf they are acting. (Authority to complete and sign a Claim Form cannot be established by stockbrokers demonstrating only that they have discretionary authority to trade securities in another person's accounts.)
  - 12. By submitting a signed Claim Form, you will be swearing that you:
    - (a) own(ed) the GTAT Securities you have listed in the Claim Form; or
    - (b) are expressly authorized to act on behalf of the owner thereof.
- 13. By submitting a signed Claim Form, you will be swearing to the truth of the statements contained therein and the genuineness of the documents attached thereto, subject to penalties of perjury under the laws of the United States of America. The making of false statements, or the submission of forged or fraudulent documentation, will result in the rejection of your claim and may subject you to civil liability or criminal prosecution.
- 14. If the Court approves the Settlement(s), payments to eligible Authorized Claimants pursuant to the Plan of Allocation (or such other plan of allocation as the Court approves) will be made after any appeals are resolved, and after the completion of all claims processing. The claims process will take substantial time to complete fully and fairly. Please be patient.
- 15. <u>Please note</u>: As set forth in the Plan of Allocation, each Authorized Claimant shall receive his, her or its *pro rata* share of the Net Settlement Fund(s) pertaining to the Settlement Class(es) in which he, she or it is a member. If the total prorated payment to any Authorized Claimant calculates to less than \$10.00, it will not be included in the calculation and no distribution will be made to that Authorized Claimant.
- 16. If you have questions concerning the Claim Form, or need additional copies of the Claim Form or the Notice, you may contact the Claims Administrator, GCG, at the above address, by email at info@GTATSecuritiesLitigation.com, or by toll-free phone at 1-866-562-8790, or you can visit the Settlement website, <a href="www.GTATSecuritiesLitigation.com">www.GTATSecuritiesLitigation.com</a>, where copies of the Claim Form and Notice are available for downloading.

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### PART II - GENERAL INSTRUCTIONS (CONTINUED)

17. NOTICE REGARDING ELECTRONIC FILES: Certain claimants with large numbers of transactions may request, or may be requested, to submit information regarding their transactions in electronic files. To obtain the *mandatory* electronic filing requirements and file layout, you may visit the settlement website at <a href="www.GTATSecuritiesLitigation.com">www.GTATSecuritiesLitigation.com</a> or you may email the Claims Administrator's electronic filing department at eclaim@choosegcg.com. Any file not in accordance with the required electronic filing format will be subject to rejection. Only one claim should be submitted for each separate legal entity (see paragraph 10 above) and the *complete* name of the beneficial owner of the securities must be entered where called for (see paragraph 9 above). No electronic files will be considered to have been properly submitted unless the Claims Administrator issues an email to that effect. Do not assume that your file has been received until you receive this email. If you do not receive such an email within 10 days of your submission, you should contact the Claims Administrator's electronic filing department at eclaim@choosegcg.com to inquire about your file and confirm it was received.

### **IMPORTANT: PLEASE NOTE**

YOUR CLAIM IS NOT DEEMED FILED UNTIL YOU RECEIVE AN ACKNOWLEDGEMENT POSTCARD. THE CLAIMS ADMINISTRATOR WILL ACKNOWLEDGE RECEIPT OF YOUR CLAIM FORM BY MAIL, WITHIN 60 DAYS. IF YOU DO NOT RECEIVE AN ACKNOWLEDGEMENT POSTCARD WITHIN 60 DAYS, CALL THE CLAIMS ADMINISTRATOR TOLL FREE AT 1-866-562-8790.

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### PART III - SCHEDULE OF TRANSACTIONS IN GTAT COMMON STOCK

Complete this Part III if and only if you purchased or acquired publicly traded GT Advanced Technologies Inc. common stock ("GTAT Common Stock") during the period from November 5, 2013 through and including 9:40 a.m. Eastern Standard Time on October 6, 2014. Please be sure to include proper documentation with your Claim Form as described in detail in Part II – General Instructions, paragraphs 6 and 7, above. Do not include information regarding securities other than GTAT Common Stock in this section.

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1.	. <b>HOLDINGS AS OF NOVEMBER 5, 2013</b> – State the total number of shares of GTAT Common Stock held as of the opening of trading on November 5, 2013. (Must be documented.) If none, write "zero" or "0."							
2.	PURCHASES/ACQUISITIONS FROM NOVEMBER 5, 2013 THROUGH JANUARY 2, 2015 <sup>2</sup> – Separately list each							
	and	l every purchase	e/acquisition (including free	receipts) of GTAT Common Stock nuary 2, 2015. (Must be document	from after the opening of trading			
(Lis	Date of Purchase/Acquisition (List Chronologically) (Month/Day/Year)  Number of Shares Purchase/Acquisition Price Per Share  Purchase/Acquisition (excluding taxes, commissions, and fees)							
	1	1						
	1	1						
	1	1						
	1	1						
	1	1						
	1	1						
	1	1						
	1	1						
	1	1						
	1	1						

IF YOU REQUIRE ADDITIONAL SPACE FOR THE SCHEDULE ABOVE, ATTACH EXTRA SCHEDULES IN THE SAME FORMAT. PRINT THE BENEFICIAL OWNER'S FULL NAME AND LAST FOUR DIGITS OF SOCIAL SECURITY/TAXPAYER IDENTIFICATION NUMBER ON EACH ADDITIONAL PAGE. IF YOU DO ATTACH EXTRA SCHEDULES, CHECK THIS BOX.

<sup>&</sup>lt;sup>2</sup> **Please note**: Information requested with respect to your purchases/acquisitions of GTAT Common Stock from after 9:40 a.m. Eastern Standard Time on October 6, 2014 through and including January 2, 2015 is needed in order to balance your claim; purchases/acquisitions during this period, however, are not eligible transactions and will not be used for purposes of calculating Recognized Loss Amounts pursuant to the Plan of Allocation.



### PART III - SCHEDULE OF TRANSACTIONS IN GTAT COMMON STOCK (CONTINUED)

Complete this Part III if and only if you purchased or acquired publicly traded GT Advanced Technologies Inc. common stock ("GTAT Common Stock") during the period from November 5, 2013 through and including 9:40 a.m. Eastern Standard Time on October 6, 2014. Please be sure to include proper documentation with your Claim Form as described in detail in Part II – General Instructions, paragraphs 6 and 7, above. Do not include information regarding securities other than GTAT Common Stock in this section.

an the	<b>SALES FROM NOVEMBER 5, 2013 THROUGH JANUARY 2, 2015</b> – Separately list each and every sale/disposition (including free deliveries) of GTAT Common Stock from after the opening of trading on November 5, 2013 through and including the close of trading on January 2, 2015. (Must be documented.)					
(List Chro	of Sale nologically) Day/Year)	Number of Shares Sold	Sale Price Per Share	Total Sale Price (excluding taxes, commissions, and fees)		
1	1					
1	1					
1	1					
1	1					
1	1					
1	1					
1	1					
1	1					
1	1					
1	1					
5. <b>HC</b>	ock held as of the ero" or "0."	e close of trading on October s	the total number of shares of GTA 9, 2014. (Must be documented.) If the total number of shares of GTA 2, 2015. (Must be documented.) If	none, write Γ Common		

IF YOU REQUIRE ADDITIONAL SPACE FOR THE SCHEDULE ABOVE, ATTACH EXTRA SCHEDULES IN THE SAME FORMAT. PRINT THE BENEFICIAL OWNER'S FULL NAME AND LAST FOUR DIGITS OF SOCIAL SECURITY/TAXPAYER IDENTIFICATION NUMBER ON EACH ADDITIONAL PAGE. IF YOU DO ATTACH EXTRA SCHEDULES, CHECK THIS BOX.

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### PART IV - SCHEDULE OF TRANSACTIONS IN GTAT 3.00% CONVERTIBLE SENIOR NOTES DUE 2020

Complete this Part IV if and only if you purchased or acquired publicly traded GT Advanced Technologies Inc. 3.00% Convertible Senior Notes Due 2020 ("GTAT Senior Notes") during the period from the initial offering of the GTAT Senior Notes, which occurred on or about December 5, 2013, through and including 9:40 a.m. Eastern Standard Time on October 6, 2014. Please include proper documentation with your Claim Form as described in detail in Part II – General Instructions, paragraphs 6 and 8, above. Do not include information regarding securities other than GTAT Senior Notes in this section.

1. PURCHASES/ACQUISITIONS FROM INITIAL PUBLIC OFFERING THROUGH MAY 18, 2015<sup>3</sup> – Separately list each and every purchase/acquisition (including free receipts) of GTAT Senior Notes from the initial public offering of the GTAT Senior Notes, which occurred on or about December 5, 2013, through and including May 18, 2015. (Must be documented.)

Date of Purchase/Acquisition (List Chronologically) (Month/Day/Year)	Face Value of Notes Purchased/Acquired	Purchase/Acquisition Price Per \$1,000 Face Value	Total Purchase/Acquisition Price (excluding taxes, commissions, and fees)
1 1			
1 1			
1 1			
1 1			
1 1			
1 1			
1 1			
1 1			
1 1			
1 1			

IF YOU REQUIRE ADDITIONAL SPACE FOR THE SCHEDULE ABOVE, ATTACH EXTRA SCHEDULES IN THE SAME FORMAT. PRINT THE BENEFICIAL OWNER'S FULL NAME AND LAST FOUR DIGITS OF SOCIAL SECURITY/TAXPAYER IDENTIFICATION NUMBER ON EACH ADDITIONAL PAGE. IF YOU DO ATTACH EXTRA SCHEDULES, CHECK THIS BOX.

<sup>&</sup>lt;sup>3</sup> Please note: Information requested with respect to your purchases/acquisitions of GTAT Senior Notes from after 9:40 a.m. Eastern Standard Time on October 6, 2014 through and including the close of trading on May 18, 2015 is needed in order to balance your claim; purchases/acquisitions during this period, however, are not eligible transactions and will not be used for purposes of calculating Recognized Loss Amounts pursuant to the Plan of Allocation.

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### PART IV - SCHEDULE OF TRANSACTIONS IN GTAT 3.00% CONVERTIBLE SENIOR NOTES DUE 2020 (CONTINUED)

Complete this Part IV if and only if you purchased or acquired publicly traded GT Advanced Technologies Inc. 3.00% Convertible Senior Notes Due 2020 ("GTAT Senior Notes") during the period from the initial offering of the GTAT Senior Notes, which occurred on or about December 5, 2013, through and including 9:40 a.m. Eastern Standard Time on October 6, 2014. Please include proper documentation with your Claim Form as described in detail in Part II – General Instructions, paragraphs 6 and 8, above. Do not include information regarding securities other than GTAT Senior Notes in this section.

List Chro	of Sale nologically) Day/Year)	Face Value of Notes Sold	Sale Price Per \$1,000 Face Value	Total Sale Price (excluding taxes, commissions, and fees)	
1	1				
1	1				
1	1				
1	1				
1	1				
1	1				
1	1				
1	1				
1	1				
1	1				
HOLDINGS AS OF OCTOBER 9, 2014 – State the total face value of GTAT Senior Notes held as of the close of trading on October 9, 2014. (Must be documented.) If none, write "zero" or "0."  HOLDINGS AS OF MAY 18, 2015 – State the total face value of GTAT Senior Notes held as of the close of trading on May 18, 2015. (Must be documented.) If none, write "zero" or "0."					

IN THE SAME FORMAT. PRINT THE BENEFICIAL OWNER'S FULL NAME AND LAST FOUR DIGITS OF SOCIAL SECURITY/TAXPAYER IDENTIFICATION NUMBER ON EACH ADDITIONAL PAGE. IF YOU DO

ATTACH EXTRA SCHEDULES, CHECK THIS BOX.



## PART V - SCHEDULE OF TRANSACTIONS IN GTAT CALL OPTIONS

Complete this Part V if and only if you purchased or acquired publicly traded call options on GTAT Common Stock ("GTAT Call Options") during the period from November 5, 2013 through and including 9:40 a.m. Eastern Standard Time on October 6, 2014. Please include proper documentation with your Claim Form as described in detail in Part II – General Instructions, paragraphs 6 and 8, above. Do not include information regarding securities other than GTAT Call Options in this section.



# PART V - SCHEDULE OF TRANSACTIONS IN GTAT CALL OPTIONS (CONTINUED)

Complete this Part V if and only if you purchased or acquired publicly traded call options on GTAT Common Stock ("GTAT Call Options") during the period from November 5, 2013 through and including 9:40 a.m. Eastern Standard Time on October 6, 2014. Please include proper documentation with your Claim Form as described in detail in Part II – General Instructions, paragraphs 6 and 8, above. Do not include information regarding securities other than GTAT Call Options in this section.

Total Sale Price (excluding ixes, commissions, and fees)						IF NONE, CHECK HERE				
Sale Price Per Call Option Contract ta						Il positions in GTAT Call Option /lust be documented.)	of Call Option Contracts in Which You Had an Open Interest			
Number of Call Option Contracts Sold						, <b>2014</b> – Separately list al ne on October 6, 2014. (N				
Expiration Date of Call Option Contract (Month/Day/Year)	1 1		1 1	, ,		ARD TIME ON OCTOBER 6 40 a.m. Eastern Standard Tin	Expiration Date of Call C (Month/Day/Y	1	/	_
Strike Price of Call Option Contract						:40 A.M. EASTERN STAND. I had an open interest as of 9	Strike Price of Call Option Contract			
Date of Sale (List Chronologically) (Month/Day/Year)	1 1		/ / /	1 1		4. HOLDINGS AS OF 9 contracts in which you				
	Strike Price of Call Option Expiration Date of Call Option Number of Call Option Sale Price Per Call Option .  Contract (Month/Day/Year) Contract Sold	Strike Price of Call Option Expiration Date of Call Option Number of Call Option Sale Price Per Call Option Contract Contract (Month/Day/Year) Contracts Sold Contract	Strike Price of Call Option	Strike Price of Call Option	Strike Price of Call Option	Strike Price of Call Option Contract (Month/Day/Year)  Contract (Month/Day/Year)  Contract Sold  Contract (Month/Day/Year)  Contract Sold  Contract (Month/Day/Year)  Contract (Month/Day/Year)	Strike Price of Call Option			



## PART VI - SCHEDULE OF TRANSACTIONS IN GTAT PUT OPTIONS

Complete this Part VI if and only if you sold (wrote) publicly traded put options on GTAT Common Stock ("GTAT Put Options") during the period from November 5, 2013 through and including 9:40 a.m. Eastern Standard Time on October 6, 2014. Please include proper documentation with your Claim Form as described in detail in Part II – General Instructions, paragraphs 6 and 8, above. Do not include information regarding securities other than GTAT Put Options in this section.

IF NONE, CHECK HERE				ly list each and every ling 9:40 a.m. Eastem	Exercise Date (Month/Day/Year)	1 1	/ /	/ /	/ /
nich you had an open interest	Number of Put Option Contracts in Which You Had an Open Interest			• OCTOBER 6, 2014 – Separate ember 5, 2013 through and includ	Total Sale Price if Exercised (excluding taxes, Insert an "X" commissions, and fees) if Expired				
list all positions in GTAT Put Option contracts in which you had an open interest be documented.)	Expiration Date of Put Option Number of Contract (Month/Day/Year)			<b>NUGH 9:40 A.M. EASTERN STANDARD TIME ON OCTOBER 6, 2014</b> – Separately list each and every on contracts from after the opening of trading on November 5, 2013 through and including 9:40 a.m. Eastern ed.)	Number of Put Sale Price Per Option Contracts Put Option Contract Sold (Written)				
113 – Separately list all positions is 5, 2013. (Must be documented				<b>3 5, 2013 THROUGH 9:40 A.M.</b> GTAT Put Option contracts from st be documented.)	Expiration Date of Numb Put Option Contract Option (Month/Day/Year) Sold i	1 1	1 1	/ /	1 1
<b>HOLDINGS AS OF NOVEMBER 5, 2013</b> – Separately list all positions ir as of the opening of trading on November 5, 2013. (Must be documented.)	Strike Price of Put Option Contract			SALES (WRITING) FROM NOVEMBER 5, 2013 THROUGH 9:40 A.M. EASTERN STANDARD TIME ON OCTOBER 6, 2014 – Separately list each and every sale (writing) (including free deliveries) of GTAT Put Option contracts from after the opening of trading on November 5, 2013 through and including 9:40 a.m. Eastern Standard Time on October 6, 2014. (Must be documented.)	(Writing) Strike Price of ogically) Put Option Contract //Year)	1		1	1
1. HOLI as of				2. SALE sale (v Stand	Date of Sale (Writing) (List Chronologically) (Month/Day/Year)	1	_	_	_



# PART VI - SCHEDULE OF TRANSACTIONS IN GTAT PUT OPTIONS (CONTINUED)

Complete this Part VI if and only if vol. sold (wrote) publicly traded put options on GTAT Common Stock ("GTAT Put Options") during the period from November 5 2013 through and

General Instructions,	IF NONE, CHECK HERE	Total Purchase/Acquisition Price (excluding taxes, commissions, and fees)					IF NONE, CHECK HERE				
documentation with your Claim Form as described in detail in Part II –	RD TIME ON OCTOBER 6, ntacts from after the opening (Must be documented.)	Purchase/Acquisition Price Tota Per Put Option Contract (ex					ositions in GTAT Put Option it be documented.)	Number of Put Option Contracts in Which You Had an Open Interest			
nentation with your Claim Form at Options in this section.	PURCHASES/ACQUISITIONS FROM NOVEMBER 5, 2013 THROUGH 9:40 A.M. EASTERN STANDARD TIME ON OCTOBER 6, 2014 – Separately list each and every purchase and acquisition (including free receipts) of GTAT Put Option contacts from after the opening of trading on November 5, 2013 through and including 9:40 a.m. Eastern Standard Time on October 6, 2014. (Must be documented.)	Number of Put Option Contracts Purchased/Acquired					<b>TIME ON OCTOBER 6, 2014</b> – Separately list all positions in GTAT Put Option m. Eastern Standard Time on October 6, 2014. (Must be documented.)		1		/
Please include proper docum g securities other than GTAT Pu	ER 5, 2013 THROUGH 9:40 acquisition (including free rec ng 9:40 a.m. Eastern Standa	Expiration Date of Put Option Contract (Month/Day/Year)	1 1	1	/ /	1 1	ARD TIME ON OCTOBER 6 40 a.m. Eastern Standard Tir	Expiration Date of Put Option Contract (Month/Day/Year)			
9:40 a.m. Eastern Standard Time on October 6, 2014. Please include proper is 6 and 8, above. Do not include information regarding securities other than G	PURCHASES/ACQUISITIONS FROM NOVEMBER 5, 2014 – Separately list each and every purchase and acqui of trading on November 5, 2013 through and including 9:	Strike Price of Put Option Contract					HOLDINGS AS OF 9:40 A.M. EASTERN STANDARD contracts in which you had an open interest as of 9:40 a.	Strike Price of Put Option Contract			
including 9:40 a.m. Eastern Standard Time on October 6, 2014. Please include proper documentation with your Claim Form as described in detail in Part II – General Instructions, paragraphs 6 and 8, above. Do not include information regarding securities other than GTAT Put Options in this section.	3. PURCHASES/ACQUI 2014 – Separately list e of trading on Novembe	Date of Purchase/Acquisition (List Chronologically) (Month/Day/Year)	1 1	1 1	1 1	1 1	4. HOLDINGS AS OF 9: contracts in which you				



### PART VII - RELEASE OF CLAIMS AND SIGNATURE

### YOU MUST ALSO READ THE RELEASE AND CERTIFICATION BELOW AND SIGN ON PAGE 15 OF THIS CLAIM FORM.

### Release of Claims by Individual Defendant Settlement Class Members:

I (we) hereby acknowledge that, pursuant to the terms set forth in the Individual Defendant Stipulation, upon the Effective Date of the Individual Defendant Settlement, I (we), on behalf of myself (ourselves) and my (our) 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 entered with respect to the Individual Defendant Settlement, shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, discharged and dismissed each and every Individual Defendant Released Plaintiffs' Claim (as defined in the Individual Defendant Stipulation and the Notice) against the Individual Defendants and the other Individual Defendant Released, and shall forever be barred and enjoined from prosecuting any or all of the Individual Defendant Released Plaintiffs' Claims against any of the Individual Defendant Releases.

### Release of Claims by Underwriter Defendant Settlement Class Members:

I (we) hereby acknowledge that, pursuant to the terms set forth in the Underwriter Defendant Stipulation, upon the Effective Date of the Underwriter Defendant Settlement, I (we), on behalf of myself (ourselves) and my (our) 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 entered with respect to the Underwriter Defendant Settlement shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, discharged and dismissed each and every Underwriter Defendant Released Plaintiffs' Claim (as defined in the Underwriter Defendant Stipulation and the Notice) against the Settling Underwriter Defendants and the other Settling Underwriter Defendants' Releases, and shall forever be barred and enjoined from prosecuting any or all of the Underwriter Defendants Released Plaintiffs' Claims against any of the Settling Underwriter Defendants' Releases.

### **CERTIFICATION**

By signing and submitting this Claim Form, the claimant(s) or the person(s) who represent(s) the claimant(s) agree(s) to the release above and certifies (certify) as follows:

- 1. that I (we) have read and understand the contents of the Notice and this Claim Form, including the releases provided for in the respective Settlements and the terms of the Plan of Allocation;
- 2. that the claimant(s) is a (are) member(s) of one or more of the Settlement Classes, as defined in the Notice, and is (are) not excluded by definition from such Settlement Class(es) as set forth in the Notice;
- 3. that the claimant has **not** submitted request(s) for exclusion from the Settlement Class(es) in which he, she or it would otherwise be a member;
- 4. that I (we) owned the GTAT Securities identified in the Claim Form and have not assigned the claims with respect to those securities to another, or that, in signing and submitting this Claim Form, I (we) have the authority to act on behalf of the owner(s) thereof;
- 5. that the claimant(s) has (have) not submitted any other claim covering the same purchases or sales of GTAT Securities and knows (know) of no other person having done so on the claimant's (claimants') behalf;
- 6. that the claimant(s) submit(s) to the jurisdiction of the Court with respect to claimant's (claimants') claim and for purposes of enforcing the releases set forth herein;
- 7. that I (we) agree to furnish such additional information with respect to this Claim Form as Lead Counsel, the Claims Administrator or the Court may require;
- 8. that the claimant(s) waive(s) the right to trial by jury, to the extent it exists, agree(s) to the determination by the Court of the validity or amount of this Claim, and waives any right of appeal or review with respect to such determination;
- 9. that I (we) acknowledge that the claimant(s) will be bound by and subject to the terms of any judgment(s) that may be entered in the Action; and

Case 1:14-cv-00443-JL Document 188-6 Filed 05/24/18 Page 50 of 61

15

### PART VII - RELEASE OF CLAIMS AND SIGNATURE (CONTINUED)

10. that the claimant(s) is (are) NOT subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code because (a) the claimant(s) is (are) exempt from backup withholding or (b) the claimant(s) has (have) not been notified by the IRS that he/she/it is subject to backup withholding as a result of a failure to report all interest or dividends or (c) the IRS has notified the claimant(s) that he/she/it is no longer subject to backup withholding. If the IRS has notified the claimant(s) that he/she/it is subject to backup withholding, please strike out the language in the preceding sentence indicating that the claim is not subject to backup withholding in the certification above.

UNDER THE PENALTIES OF PERJURY, I (WE) CERTIFY THAT ALL OF THE INFORMATION PROVIDED BY ME (US) ON THIS CLAIM FORM IS TRUE, CORRECT, AND COMPLETE, AND THAT THE DOCUMENTS SUBMITTED HEREWITH ARE TRUE AND CORRECT COPIES OF WHAT THEY PURPORT TO BE.

Signature of plaiment	Data
Signature of claimant	Date
Print claimant name here	
Signature of joint claimant, if any	Date
Print joint claimant name here	
If the claimant is other than an individual, or is not the person co	mpleting this form, the following also must be provided:
Signature of person signing on behalf of claimant	Date
Signature of person signing on behalf of claimant  Print name of person signing on behalf of claimant here	Date

individual, e.g., executor, president, trustee, custodian, etc. (Must provide evidence of authority to act on behalf of claimant – see paragraph 11 on page 4 of this Claim Form.)

### REMINDER CHECKLIST:

- 1. Sign the above release and certification. If this Claim Form is being made on behalf of joint claimants, then both must sign.
- 2. Attach only **copies** of acceptable supporting documentation as these documents will not be returned to you.
- 3. Do not highlight any portion of the Claim Form or any supporting documents.
- 4. Keep copies of the completed Claim Form and documentation for your own records.
- 5. The Claims Administrator will acknowledge receipt of your Claim Form by mail, within 60 days. Your claim is not deemed filed until you receive an acknowledgement postcard. If you do not receive an acknowledgement postcard within 60 days, please call the Claims Administrator toll-free at 1-866-562-8790.
- 6. If your address changes in the future, or if this Claim Form was sent to an old or incorrect address, you must send the Claims Administrator written notification of your new address. If you change your name, inform the Claims Administrator.
- 7. If you have any questions or concerns regarding your claim, please contact the Claims Administrator at the address below, by email at info@GTATSecuritiesLitigation.com, or by toll-free phone at 1-866-562-8790, or you may visit <a href="www.GTATSecuritiesLitigation.com">www.GTATSecuritiesLitigation.com</a>. DO NOT call GTAT or any of the Defendants or their counsel with questions regarding your claim.

THIS CLAIM FORM MUST BE MAILED TO THE CLAIMS ADMINISTRATOR BY FIRST-CLASS MAIL, **POSTMARKED NO LATER THAN JULY 12, 2018**, ADDRESSED AS FOLLOWS:

GTAT Securities Litigation c/o GCG P.O. Box 10463 Dublin, OH 43017-4063

A Claim Form received by the Claims Administrator shall be deemed to have been submitted when posted, if a postmark date on or before July 12, 2018 is indicated on the envelope and it is mailed First Class, and addressed in accordance with the above instructions. In all other cases, a Claim Form shall be deemed to have been submitted when actually received by the Claims Administrator.

You should be aware that it will take a significant amount of time to fully process all of the Claim Forms. Please be patient and notify the Claims Administrator of any change of address.

### EXHIBIT B

### **AFFIDAVIT**

STAT	E OF	TEXAS					)
						)	SS
CITY	AND	COUNTY	OF	DAL	LAS)		

I, Jeb Smith, being duly sworn, depose and say that I am the Advertising Clerk of the Publisher of THE WALL STREET JOURNAL, a daily national newspaper of general circulation throughout the United States, and that the notice attached to this Affidavit has been regularly published in THE WALL STREET JOURNAL for National distribution for

1 insertion(s) on the following date(s):

MAR-26-2018;

ADVERTISER: Levy v. Gutierrez, et al., Case No. 1:14-cv-00443-JL (D.N.H.) (GTAT Securities Litigation)

and that the foregoing statements are true and correct to the best of my knowledge.

Sworn to before me this 24 day of April 2018

Notary Public

TOBY A. BREITEN
Notary Public
STATE OF TEXAS
My Comm. Exp. April 24, 2018

### Notice of Class Action Settlement

If you transacted in Euroyen-Based Derivatives' from January 1, 2006 through June 30, 2011, inclusive, then your rights will be affected and you may be entitled to a benefit. This Notice is only a summary of the Settlement and is subject to the terms of the Settlement Agreement and other relevant documents (available as set forth below).

The purpose of this Notice is to inform you of your rights in connection with a proposed settlement with Settling Defendants The Bank of Tokyo-Misushishi, UFI, Ltd. (\*PBTMU") and Misushishi UFI Trust and Banking Copporation (\*PUIFB") in the eartions titled Japains va Meubo Bank Ltd., et al., 12x-4319 (GBD) (S.D.N.Y.) and Sonterra Capital Master Fund, Ltd., et al. v. UBS.46; et al., 15x-v.5844 (GBD) (S.D.N.Y.). The settlement with BTMU and MUTIF ("Settlement") is not settlement with any other Defendant and thus is not dispositive of any of Plaintiffs' claims against the remaining Defendants.

The Settlement has been proposed in two class action lawsuits concerning the alleged manipulation of the London Interbank Offered Rate for Japanese Yen ("Yen LIBOR") and the Euroyen Tolyon Interbank Offered Rate ("Euroyen TiBOR") from January 1, 2006 through June 30, 2011, inclusive. The Settlement will provide \$30 million to pay claims from persons who transacted in Euroyen-Based Derivatives from January 1, 2006 through June 30, 2011, inclusive. If you qualify, you may send in a Proof of Claim and Release form to potentially get benefits, or you can exclude yourself from the Settlement, or object to it.

The United States District Court for the Southern District of New York (500 Pearl St., New York, NY 10007-1312) authorized this Notice. Before any money is paid, the Court will hold a Fairness Hearing to decide whether to approve the Settlement.

### Who Is Included?

You are a member of the "Settlement Class" if you purchased, sold, held, traded, or otherwise had any interest in Euroyen-Based Derivatives at any time from January 1, 2006 through June 30, 2011, inclusive. Excluded from the Settlement Class are (j) the Defendants and any parent, subsidiary, affiliate or agent of any Defendant or any co-conspirator whether or not named as a defendant; and (ii) the United States Government.

Contact your brokerage firm to see if you purchased, sold, held, traded, or otherwise had any interest in Euroyen-Based Derivatives. If you are not sure you are included, you can get more information, including the Settlement Agreement, Mailed Notice, I pin or Allocation, Proof of Claim and Release, and other important documents, at <a href="https://www.euroyenSettlement.com">www.euroyenSettlement.com</a> ("Settlement Website") or by calling toll free 1-866-217-4453.

### What Is This Litigation About?

What is This Lingation Adout?

Plaintiffs allege that each Defendant, from January 1, 2006 through June 30, 2011, inclusive, manipulated or aided and abetted the manipulation of Yen LIBOR. Euroyen TIBOR, and the prices of Euroyen-Based Derivatives. Defendants allegelight disc by busing several means of manipulation. For example, panel banks that made the daily Yen LIBOR and/or Euroyen TIBOR administors to the British Bankers' Association and Japanese Bankers Association and Eaglanese Bankers Association respectively Collectively. Courthoritor Bank Defendants's use BETMU and MUTB, allegedly falsely reported their cost of borrowing in order to financially benefit their Euroyen-Based Derivatives positions. Contributor Bank Defendants ob allegedly requested that other Contributor Bank Defendants on the Contributor Bank Defendants on the Contributor Bank Defendants on the Defendants of the Contributor Bank Defendants on the Defendants on the Defendants of the Contributor Bank Defendants on the Defendant on the Contributor Bank Defendants on the Defendant on the Contributor Bank Defendants on the Defendant on the Def Euroyen-Based Derivatives positions.

Phinitiffs further allege that inter-dealer brokers, intermediaries between buyers and sellers in the money markets and derivatives markets (the "Broker Defendants"), had knowledge of, and provided substantial assistance to, the Contributor Bank Defendants' foregoing alleged manipulations of Euroyen-Based Derivatives in violation of Section 22(a)(1) of the Commodity Exchange Act, 7 U.S.C. § 25(d), for example, Contributor Bank Defendants flowedly used the Broker Defendants to manipulate Ven LIBOR, Euroyen TIBOR, and the prices of Euroyen-Based Derivatives by disseminating false "Suggested LIBORs," publishing false market rates on broker screens, and publishing false bids and offers into the market.

Plaintiffs have asserted legal claims under various theories, including federal antitrust law, the Commodity Exchange Act, the Racketeering Influenced and Corrupt Organizations Act, and common law

BTMU and MUTB have consistently and vigorously denied Plaintiffs, allegations. BTMU and MUTB entered into a Settlement Agreement with Plaintiffs, despite each believing that it is not liable for the claims asserted against it, to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, thereby putting this controversy to rest and avoiding the risks inherent in complex litigation.

### What Does the Settlement Provide?

What Dues the Settlement Provide?

Under the Settlement, BTMU and MUTB agreed to pay \$30 million into a Settlement Fund. If the Court approves the Settlement, potential members of the Settlement Class who qualify and send in valid Proof of Claim and Release forms may receive a share of the Settlement Fund after they are reduced by the payment of certain expenses. The Settlement Agreement, available at the Settlement Website, describes all of the details about the proposed Settlement. The exact amount each qualifying Settling Class Member will receive from the Settlement Fund cannot be calculated until (1) the Court approves the Settlement Fund cannot be calculated until (1) the Court approves the Settlement Fund; colorial mounts identified in the full Settlement Agreement are deducted from the Settlement Fund; and (3) the number of participating Class Members and the amount of their claims are determined. In addition, each Settlement Class Member provides on their Proof of Claim and Release form.

The number of claimants who send in claims varies widely from case to case. If less than 100% of the Settlement Class sends in a Proof of Claim and Release form, you could get more money.

### How Do You Ask For a Payment?

If you are a member of the Settlement Class, you may seek to participate in the Settlement by submitting a Proof of Claim and Release to the Settlement Administrator at the address provided submitting a Proof of Claim and Release to the Settlement Administrator at the address provided on the Settlement Website postmarked no later than September 25, 2018. You may obtain a Proof of Claim and Release on the Settlement Website or by calling the toil-free number referenced above. If you are a member of the Settlement Class but do not timely file a Proof of Claim and Release, you will still be bound by the releases set forth in the Settlement Agreement if the Court enters an order approving the Settlement Agreement.

approving the Settlement Agreement.

If you timely submitted a Proof of Claim and Release pursuant to the class notice dated June 22, 2016 (2016 Notice) 'related to the SSB million settlements with Defendants R.P. Martin Holdings Limited, Martin Brokers (UK) Ltd., Cliigroup Inc., Clitbank, N.A., Citibank Japan Ltd., Cliigroup Global Markets Japan the, ISBC Holdings plc. and HSBE Gamb, lep or pursuant to the August 3, 2017 Notice, amended September 14, 2017 (the "2017 Notice") related to the S148 million settlements with Defendants Deutsche Bank Ag, DB Group Services (UK) Ltd., PMorgan Chase Ro., DeMorgan Chase Ro. (Claim and Release to participate in this Settlement with BTMU and MUTB. Any member of the Settlement Class who previously submitted al Proof of Claim and Release in connection with the 2016 Notice or 2017 Notice will be subject to and bound by the releases set forth in the Settlement Agreement with BTMU and MUTB, unless such member submits a timely and valid request for exclusion, explained below.

### What Are Your Other Options?

All requests to be excluded from the Settlement must be made in accordance with the instructions set forth All requests to be excluded from the Settlement must be made in accordance with the instructions set forth in the Settlement Mohistarisation to later than 1 me?, 7,2018. The Settlement Administration to later than 1 me?, 7,2018. The Settlement Notice, available at the Settlement Website, explains how to exclude yourself or object. All requests for exclusion must comply with the requirements set forth in the Settlement Notice to be honored. If you exclude yourself from the Settlement Class, you will not be bound by the Settlement Agreement and can independently pursue claims at your own expense. However, if you exclude yourself, you will not be eligible to share in the Net Settlement Fund or otherwise participate in the Settlement.

engote to stare in the Net settlement rund or onervise participate in the settlement.

The Court will hold a Fairness Hearing in these cases on July 12, 2018, to consider whether to approve the Settlement and a request by the lawyers representing all members of the Settlement Class (Lowey Datmerberg, P.C.) for an award of attorneys' fees of no more than twenty-three percent (23%) of the Settlement Prund for investigating the facts, fallinging the cases, alligating the cases, allonging the cases, alligating the cases, along equitating the settlement, and for replenishment of the litigation fund created to reimburse their costs and expenses in the amount of momer than S500,000. The lawyers for the Settlement Class may also seek additional reimbursement of fees, costs, and expenses in connection with services provided after the Fairness Hearing. These payments will also be deducted from the Settlement Fund before any distributions are made to the Settlement Class.

You may ask to appear at the Fairness Hearing, but you do not have to. For more information, call toll free 1-866-217-4453 or visit the website <a href="https://www.EurovenSettlement.com">www.EurovenSettlement.com</a>.

"Euroyen-Bosed Derivatives" means (i) a Euroyen TIBOR finances contract on the Chicago Mercantile Exchange ("CME");
(ii) a Euroyen TIBOR finance contract on the Tokyo Financial Exchange, the. "CFEX"), Singapore Exchange ("SCEX"), to
Landon International Financial Finances and Options Exchange ("LEFT") extracted not by a U.S. Person, or by a Person from
or through a location within the U.S.; (iii) a Japanese Yen curvescy futures contract on the CME; (iv) a Yen LIBOR- and/or
Euroyen TIBOR-based directs tent sweep accreted into by a U.S. Person, or by a Person from or though a location within the
U.S.; (i) an option on a Yen LIBOR and/or Euroyen TIBOR-based interest rate wayer ("weighter") cuttered into by a U.S.
Person, or by a Person from or though a location within the U.S.; (ii) a Japanese Weighter ("Left and "Left and "Lef

The "Settlement Agreement" means the Stipulation and Agreement of Settlement with The Bank of Tokyo- Mitsubish FJ, Ltd. ("BTMU") and Mitsubishi UFJ Trust and Banking Corporation ("MUTB") entered into on January 23, 2018.

### ADVERTISEMENT

### **Legal Notices**

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### UNITED STATES DISTRICT COURT DISTRICT OF NEW HAMPSHIRE

ECF CASE

SUMMARY NOTICE OF (I) PENDENCY OF CLASS ACTION OF CERTIFICATION OF SETTLEMENT CLASSES; (II) PROPOSED EMENTS WITH INDIVIDUAL DEFENDANTS AND ENDERWERTED ENDANTS; (III) MOTION FOR AN AWARD OF ATTORNEYS; FEES AND RESEMBURSEMENT OF LITIGATION EXPENSES; AND (IV) SETTLEMENT FAIRNESS HEARING;

(a) All persons and entities who or which from November S, 2013 through 8-00 am. Bastern Stundard Time on October 6, 2014, inclusive (inc. "Las Persons Internation Foundation of Particle Parti

CCTAT Put Option<sup>57</sup>), and were damaged thereby (the "Individual Defendant Settlement Class"; and on the "Neith, during the Class Period, purchased or otherwise augment (i) CTAT Senior Notes pursuant or supported in CTAT Senior Notes pursuant or traces of the Class Period, purchased or otherwise augment of the CTAT Neither Notes' offering and/or (ii) shares of CTAT Common Stock pursuant for traces the CTAT's December 2011 registration of the CTAT Senior Notes' offering and/or (ii) shares of CTAT Common Stock pursuant for traces of the CTAT Senior Notes' offering of CTAT SENIOR SENIOR OF CTAT SENIOR

Defeations and Underwriter Defeations; (III) Mode not on Award of Autrescy: Tees and Reimbursement of Linguistic Expects; and (1V) Settlement Fairness; hearing (the "Outer," of Linguistic Expects; and (1V) Settlement Fairness; hearing (the "Outer," of Linguistic Expects; and (1V) Settlement Fairness; hearing (the "Outer," of Linguistic Christopies Master Fairned, Capming Limited, Carlot Eighnard, 1 Settlement, 1 Settlement, 1 Limited, in respect of its Sepregated Account Highmark Fairned, room and the Account Highmark Accounts, and the Account Highmark Accounts, and the Account Highmark Accounts (Indian Accounts, Accounts Accounts Highmark Limited, room and the Contract of the Accounts Highmark Limited, room behalf of thermselves and the Underwriter Defeations Settlement, "and (10) Lead Pairstail and additional mond plaintiff. Strategic Master Fand and Highmark Limited, no behalf of thermselves and the Underwriter Defeations Settlement Class. Nove reached a proposed settlement of the Accounts of the Acco

"Underwire Defendants") for \$9.70,000 in each (the "Underwire Defendant Stellement" on Update with the Individual Development, the "Sectionary," or settlement and update the Westlement of Development of the Common Stellement of the Common Stellement of the Action, Apple, Inc.

Requests for the Notice and Claim
Form should be made to:
GTAT Securities Litigation
cio GCG
D. Boke 10463
Dablin, OH 43017-4063
1-866-562-8790
1231 Avenue of the Americas, 44th Floor

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### Bernstein Litowitz Berger & Grossmann LLP Announces Proposed Settlements in Levy v. Gutierrez, et al., Case No. 1:14-cv-00443-JL (D.N.H.) (GTAT Securities Litigation)

NEWS PROVIDED BY **Bernstein Litowitz Berger & Grossmann LLP →**Mar 26, 2018, 09:00 ET

NEW YORK, March 26, 2018 /PRNewswire/ -- The following statement is being issued by Bernstein Litowitz Berger & Grossmann LLP regarding *Levy* v. *Gutierrez,* et al., Case No. 1:14-cv-00443-JL (D.N.H.) (GTAT Securities Litigation)

### UNITED STATES DISTRICT COURT DISTRICT OF NEW HAMPSHIRE

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

ಹ

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** 

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

TO: (a) 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 publicly traded GTAT 3.00% Convertible Senior Notes Due 2020 ("GTAT Senior Notes"), purchased or otherwise acquired publicly traded call options on GTAT

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common stock ("GTAT Call Options"), and/or sold (wrote) publicly traded put options on GTAT common stock ("GTAT Put Options"), and were damaged thereby (the "Individual Defendant Settlement Class"); and

(b) All persons and entities who or which, during 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 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 "Underwriter Defendant Settlement Class").

PLEASE READ THIS NOTICE CAREFULLY, YOUR RIGHTS WILL BE AFFECTED BY A CLASS ACTION LAWSUIT PENDING IN THIS COURT.

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the District of New Hampshire, that the above-captioned action (the "Action") has been certified as a class action for the purposes of settlement only on behalf of the Individual Defendant Settlement Class and the Underwriter Defendant Settlement Class, except for certain persons and entities who are excluded from those Settlement Classes by definition as set forth in the full printed 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 (the "Notice").

YOU ARE ALSO NOTIFIED that (i) the Court-appointed Lead Plaintiff Douglas Kurz ("Lead Plaintiff") and additional 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"), on behalf of themselves and the Individual Defendant Settlement Class, have reached a proposed settlement of the Action with 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") for \$27,000,000 in cash (the "Individual Defendant Settlement"); and (ii) Lead Plaintiff and additional named plaintiffs Strategic Master Fund and Highmark Limited, on behalf of themselves and the Underwriter Defendant Settlement Class, have reached a proposed settlement of the Action with defendants Morgan Stanley & Co. LLC, Goldman, Sachs & Co. LLC (f/k/a Goldman, Sachs & Co.), and Canaccord Genuity Inc. (collectively, the "Underwriter Defendants") for \$9,700,000 in cash (the "Underwriter Defendant Settlement" and, together with the Individual Defendant Settlement, the "Settlements"). These proposed Settlements will be considered independently by the Court and they do not resolve any of the claims asserted against the remaining defendant in the Action, Apple, Inc.

A hearing will be held on **June 28, 2018 at 2:00 p.m.**, before the Honorable Joseph N. Laplante at the United States District Court for the District of New Hampshire, Courtroom 2, 55 Pleasant Street, Concord, NH 03301-3941, to determine: (i) whether the proposed Individual Defendant Settlement should be approved as fair, reasonable, and adequate; (ii) whether the proposed Underwriter Defendant Settlement should be approved as fair, reasonable, and adequate; (iii) whether the Action should be dismissed with prejudice as against the Individual Defendants and the Releases specified and described in the Stipulation and Agreement of Settlement With Individual Defendants dated January 26, 2018 (and in the Notice) should be granted; (iv) whether the Action should be dismissed with prejudice as against the Underwriter Defendants and the Releases specified and described in the Stipulation and Agreement of Settlement With Settling Underwriter Defendants dated August 18, 2017,

together with the Supplement thereto dated January 26, 2018 (and in the Notice) should be granted; (v) whether the proposed Plan of Allocation for the proceeds of the Settlements is fair and reasonable and should be approved; and (vi) whether Lead Counsel's application for an award of attorneys' fees and reimbursement of Litigation Expenses should be approved.

If you are a member of the Individual Defendant and/or the Underwriter Defendant Settlement Class, your rights will be affected by the proposed Settlement(s) that apply to you and any orders or judgments related to those Settlements, and you may be entitled to share in the Individual Defendant and/or Underwriter Defendant Settlement Funds. If you have not yet received the Notice and Claim Form, you may obtain copies of these documents by contacting the Claims Administrator at GTAT Securities Litigation, c/o GCG, P.O. Box 10463, Dublin, OH 43017-4063, by toll-free phone at 1-866-562-8790, or by email at info@GTATSecuritiesLitigation.com. Copies of the Notice can also be downloaded from the website maintained by the Claims Administrator, www.GTATSecuritiesLitigation.com.

If you are a member of one or both Settlement Classes, in order to be eligible to receive a payment under the proposed Settlement(s) that apply to you, you must submit a Claim Form *postmarked no later than* July 12, 2018. If you are a Settlement Class Member and do not submit a proper Claim Form, you will not be eligible to share in the distribution of the net proceeds of the Settlement(s) but you will nevertheless be bound by any judgments or orders entered by the Court in the Action related to the Settlement(s) that apply to you.

If you are a member of one or both Settlement Classes and wish to exclude yourself from the Settlement Class(es) that apply to you, you must submit a written request for exclusion such that it is *received no later than* June 7, 2018, in accordance with the instructions set forth in the Notice. If you are a member of the Individual Defendant Settlement Class and properly exclude yourself from

that class, you will not be bound by any judgments or orders entered by the Court in the Action relating to the Individual Defendant Settlement, and you will not be eligible to share in the proceeds of the Individual Defendant Settlement. If you are a member of the Underwriter Defendant Settlement Class and properly exclude yourself from that class, you will not be bound by any judgments or orders entered by the Court in the Action relating to the Underwriter Defendant Settlement, and you will not be eligible to share in the proceeds of the Underwriter Defendant Settlement.

Any objections to the proposed Individual Defendant Settlement, the proposed Underwriter Defendant Settlement, the proposed Plan of Allocation, or Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses must be filed with the Court and delivered to Lead Counsel and, if the objection is to the Individual Defendant Settlement and/or the Underwriter Defendant Settlement, to designated counsel for those Settling Defendants such that they are *received no later than* June 7, 2018, in accordance with the instructions set forth in the Notice.

Please do not contact the Court, GTAT, Defendants, or their counsel regarding this notice. All questions about this notice, the proposed Settlements, or your eligibility to participate in the Settlements should be directed to the Claims Administrator or Lead Counsel.

### Requests for the Notice and Claim Form should be made to:

GTAT Securities Litigation c/o GCG P.O. Box 10463 Dublin, OH 43017-4063

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1-866-562-8790 info@GTATSecuritiesLitigation.com www.GTATSecuritiesLitigation.com

Inquiries, other than requests for the Notice and Claim Form, should be made to Lead Counsel:

John C. Browne, Esq.
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
1251 Avenue of the Americas, 44th Floor
New York, NY 10020
1-800-380-8496
blbg@blbglaw.com

By Order of the Court

SOURCE Bernstein Litowitz Berger & Grossmann LLP

Levy v. Gutierrez, et al. Case No. 1:14-cv-00443-JL

# SUMMARY OF PLAINTIFFS' COUNSEL'S LODESTAR AND EXPENSES

TAB	FIRM	HOURS	LODESTAR	EXPENSES
A	Bernstein Litowitz Berger & Grossmann LLP	6,841.00	\$3,661,200.00	\$207,612.85
В	Berger & Montague, P.C.	1,088.60	\$765,224.00	\$14,390.18
С	Lockridge Grindal Nauen P.L.L.P.	171.00	\$115,231.25	\$2,800.78
D	Lowenstein Sandler LLP	472.70	\$394,542.00	\$1,863.28
Е	Orr & Reno, P.A.	221.65	\$75,651.00	\$735.67
	TOTAL:	8,794.95	\$5,011,848.25	\$227,402.76

# EXHIBIT 7A

# UNITED STATES DISTRICT COURT DISTRICT OF NEW HAMPSHIRE

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

No. 1:14-cv-00443-JL

Plaintiff,

v.

**ECF CASE** 

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.

# DECLARATION OF JOHN C. BROWNE IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES FILED ON BEHALF OF BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

I, John C. Browne, hereby declare under penalty of perjury as follows:

1. I am a partner of the law firm of Bernstein Litowitz Berger & Grossmann LLP, Court-appointed Lead Counsel in the above-captioned action (the "Action"). I submit this declaration in support of Lead Counsel's application for an award of attorneys' fees in connection with services rendered in the Action, as well as for reimbursement of Litigation Expenses incurred in connection with the Action. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

<sup>&</sup>lt;sup>1</sup> All capitalized terms used herein that are not otherwise defined herein shall have the meanings provided in the Stipulation and Agreement of Settlement with Individual Defendants and the Stipulation and Agreement of Settlement with Settling Underwriter Defendants (as amended), both of which were filed with the Court on January 26, 2018. *See* ECF No. 178-1, 178-2.

- 2. My firm, as Lead Counsel of record in the Action, was involved in all aspects of the litigation of the Action and the proposed Settlements as set forth in the Declaration of John C. Browne in Support of: (I) Lead Plaintiff's Motion for Final Approval of Individual Defendant and Underwriter Defendant Settlements and Plan of Allocation; and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, filed herewith.
- 3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by attorneys and professional support staff employees of my firm who, from inception of the Action through and including May 18, 2018, billed ten or more hours to the prosecution and settlement of the claims asserted against the Settling Defendants in the Action, and the lodestar calculation for those individuals based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended on this application for fees and reimbursement of expenses has not been included in this request.
- 4. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 1 are the same as the regular rates charged for their services in non-contingent matters and/or which have been accepted in other securities or shareholder litigation.
- 5. The total number of hours reflected in Exhibit 1 is 6,841. The total lodestar reflected in Exhibit 1 is \$3,661,200.00, consisting of \$2,923,353.75 for attorneys' time and \$737,846.25 for professional support staff time.
- 6. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are

not duplicated in my firm's billing rates.

- 7. As detailed in Exhibit 2, my firm is seeking reimbursement for a total of \$207,612.85 in Litigation Expenses incurred from inception of the Action through and including May 18, 2018.
- 8. The Litigation Expenses reflected in Exhibit 2 are the actual incurred expenses or reflect "caps" based on the application of the following criteria:
  - (a) Out-of-town travel airfare is at coach rates; meals are capped at \$20 per person for breakfast, \$25 per person for lunch, and \$50 per person for dinner.
  - (b) Out-of-Office Meals Capped at \$25 per person for lunch and \$50 per person for dinner.
  - (c) In-Office Working Meals Capped at \$20 per person for lunch and \$30 per person for dinner.
    - (d) Internal Copying/Printing Charged at \$0.10 per page.
  - (e) On-Line Research Charges reflected are for out-of-pocket payments to the vendors for research done in connection with this litigation. On-line research is billed to each case based on actual time usage at a set charge by the vendor. There are no administrative charges included in these figures.
- 9. The Litigation Expenses incurred in the Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.
- 10. With respect to the standing of my firm, attached hereto as Exhibit 3 is a brief biography of my firm and attorneys in my firm who were involved in the Action.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on the 24<sup>th</sup> day of May, 2018.

John C. Browne

Levy v. Gutierrez, et al. Case No. 1:14-cv-00443-JL

# BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP TIME REPORT

Inception through and including May 18, 2018

		HOURLY	
NAME	HOURS	RATE	LODESTAR
Partners			
Max Berger	80.25	\$1,250	\$ 100,312.50
Michael Blatchley	72.50	\$750	54,375.00
John Browne	652.50	\$895	583,987.50
Avi Josefson	20.75	\$850	17,637.50
Lauren A. Ormsbee	842.50	\$750	631,875.00
Gerald Silk	148.50	\$995	147,757.50
Senior Counsel			
Rochelle Hansen	14.75	\$750	11,062.50
Associates			
Abe Alexander	56.50	\$625	35,312.50
Evan Berkow	14.00	\$450	6,300.00
John Mills	399.25	\$650	259,512.50
Jake Nachmani	732.00	\$500	366,000.00
Ross Shikowitz	835.50	\$550	459,525.00
Staff Attorneys			
Girolamo Brunetto	87.50	\$340	29,750.00
Alex Dickin	26.75	\$340	9,095.00
Daniel Gruttadaro	79.50	\$340	27,030.00
Stephen Imundo	66.00	\$395	26,070.00
Jeff Powell	219.50	\$395	86,702.50
Madeleine Severin	14.25	\$375	5,343.75
Emily Strickland	193.25	\$340	65,705.00
Financial Analysts			
Nick DeFilippis	21.00	\$550	11,550.00
Michelle Miklus	37.00	\$325	12,025.00
Tanjila Sultana	39.25	\$335	13,148.75
Adam Weinschel	88.50	\$465	41,152.50
Investigators			
Chris Altiery	106.00	\$255	27,030.00

		HOURLY	
NAME	HOURS	RATE	LODESTAR
Amy Bitkower	45.00	\$520	23,400.00
Jenna Goldin	272.25	\$275	74,868.75
Joelle (Sfeir) Landino	406.50	\$300	121,950.00
Litigation Support			
Babatunde Pedro	32.00	\$295	9,440.00
Jessica M. Wilson	24.25	\$295	7,153.75
Paralegals			
Erik Andrieux	10.25	\$245	2,511.25
Jose Echegaray	310.75	\$335	104,101.25
Matthew Mahady	60.50	\$335	20,267.50
Ruben Montilla	72.00	\$255	18,360.00
Virgilio Soler Jr	667.00	\$335	223,445.00
Case Analyst			
Sam Jones	65.50	\$335	21,942.50
Document Clerk			
Kevin Kazules	27.50	\$200	5,500.00
TOTALS	6,841.00		\$3,661,200.00

Levy v. Gutierrez, et al. Case No. 1:14-cv-00443-JL

### BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

# **EXPENSE REPORT**

Inception through and including May 18, 2018

CATEGORY	AMOUNT
Court Fees	\$1,412.45
Service of Process	\$4,874.50
On-Line Legal Research	\$48,304.32
On-Line Factual Research	\$13,216.51
Postage & Express Mail	\$444.72
Local Transportation	\$4,017.09
Internal Copying/Printing	\$614.00
Outside Copying	\$868.93
Out of Town Travel	\$1,077.70
Working Meals	\$5,027.84
Court Reporting & Transcripts	\$565.45
Special Publications	\$2,376.42
Experts	\$6,325.00
Mediation Fees	\$11,312.50
SUBTOTAL PAID EXPENSES:	\$100,437.43
Outstanding Expenses:	
Expert	\$105,855.42
Mediation Fees	\$1,320.00
SUBTOTAL OUTSTANDING EXPENSES:	\$107,175.42
TOTAL EXPENSES:	\$207,612.85

Levy v. Gutierrez, et al. Case No. 1:14-cv-00443-JL

# BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

# FIRM RESUME





Bernstein Litowitz Berger & Grossmann LLP Attorneys at Law

# Firm Resume

#### **New York**

1251 Avenue of the Americas, 44th Floor New York, NY 10020 Tel: 212-554-1400 Fax: 212-554-1444

#### California

12481 High Bluff Drive, Suite 300 San Diego, CA 92130 Tel: 858-793-0070 Fax: 858-793-0323

#### Louisiana

2727 Prytania Street, Suite 14 New Orleans, LA 70130 Tel: 504-899-2339 Fax: 504-899-2342

#### Illinois

875 North Michigan Avenue, Suite 3100 Chicago, IL 60611 Tel: 312-373-3880 Fax: 312-794-7801



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Evan M. Berkow	
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Since our founding in 1983, Bernstein Litowitz Berger & Grossmann LLP has obtained many of the largest monetary recoveries in history – over \$31 billion on behalf of investors. Unique among our peers, the firm has obtained the largest settlements ever agreed to by public companies related to securities fraud, including four of the ten largest in history. Working with our clients, we have also used the litigation process to achieve precedent-setting reforms which have increased market transparency, held wrongdoers accountable and improved corporate business practices in groundbreaking ways.

### FIRM OVERVIEW

Bernstein Litowitz Berger & Grossmann LLP ("BLB&G"), a national law firm with offices located in New York, California, Louisiana and Illinois, prosecutes class and private actions on behalf of individual and institutional clients. The firm's litigation practice areas include securities class and direct actions in federal and state courts; corporate governance and shareholder rights litigation, including claims for breach of fiduciary duty and proxy violations; mergers and acquisitions and transactional litigation; alternative dispute resolution; distressed debt and bankruptcy; civil rights and employment discrimination; consumer class actions and antitrust. We also handle, on behalf of major institutional clients and lenders, more general complex commercial litigation involving allegations of breach of contract, accountants' liability, breach of fiduciary duty, fraud, and negligence.

We are the nation's leading firm in representing institutional investors in securities fraud class action litigation. The firm's institutional client base includes the New York State Common Retirement Fund; the California Public Employees' Retirement System (CalPERS); the Ontario Teachers' Pension Plan Board (the largest public pension funds in North America); the Los Angeles County Employees Retirement Association (LACERA); the Chicago Municipal, Police and Labor Retirement Systems; the Teacher Retirement System of Texas; the Arkansas Teacher Retirement System; Forsta AP-fonden ("AP1"); Fjarde AP-fonden ("AP4"); the Florida State Board of Administration; the Public Employees' Retirement System of Mississippi; the New York State Teachers' Retirement System; the Ohio Public Employees Retirement System; the State Teachers Retirement System of Ohio; the Oregon Public Employees Retirement System; the Virginia Retirement System; the Louisiana School, State, Teachers and Municipal Police Retirement Systems; the Public School Teachers' Pension and Retirement Fund of Chicago; the New Jersey Division of Investment of the Department of the Treasury; TIAA-CREF and other private institutions; as well as numerous other public and Taft-Hartley pension entities.

#### More Top Securities Recoveries

Since its founding in 1983, Bernstein Litowitz Berger & Grossmann LLP has litigated some of the most complex cases in history and has obtained over \$31 billion on behalf of investors. Unique among its peers, the firm has negotiated the largest settlements ever agreed to by public companies related to securities fraud, and obtained many of the largest securities recoveries in history (including 6 of the top 12):



- *In re WorldCom, Inc. Securities Litigation* \$6.19 billion recovery
- *In re Cendant Corporation Securities Litigation* \$3.3 billion recovery
- *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation* \$2.43 billion recovery
- In re Nortel Networks Corporation Securities Litigation ("Nortel II") \$1.07 billion recovery
- *In re Merck & Co., Inc. Securities Litigation* \$1.06 billion recovery
- In re McKesson HBOC, Inc. Securities Litigation \$1.05 billion recovery

For over a decade, Securities Class Action Services (SCAS – a division of ISS Governance) has compiled and published data on securities litigation recoveries and the law firms prosecuting the cases. BLB&G has been at or near the top of their rankings every year – often with the highest total recoveries, the highest settlement average, or both.

BLB&G also eclipses all competitors on SCAS's "Top 100 Settlements" report, having recovered nearly 40% of all the settlement dollars represented in the report (nearly \$25 billion), and having prosecuted nearly a third of all the cases on the list (35 of 100).

# GIVING SHAREHOLDERS A VOICE AND CHANGING BUSINESS PRACTICES FOR THE BETTER

BLB&G was among the first law firms ever to obtain meaningful corporate governance reforms through litigation. In courts throughout the country, we prosecute shareholder class and derivative actions, asserting claims for breach of fiduciary duty and proxy violations wherever the conduct of corporate officers and/or directors, as well as M&A transactions, seek to deprive shareholders of fair value, undermine shareholder voting rights, or allow management to profit at the expense of shareholders.

We have prosecuted seminal cases establishing precedents which have increased market transparency, held wrongdoers accountable, addressed issues in the boardroom and executive suite, challenged unfair deals, and improved corporate business practices in groundbreaking ways.

From setting new standards of director independence, to restructuring board practices in the wake of persistent illegal conduct; from challenging the improper use of defensive measures and deal protections for management's benefit, to confronting stock options backdating abuses and other self-dealing by executives; we have confronted a variety of questionable, unethical and proliferating corporate practices. Seeking to reform faulty management structures and address breaches of fiduciary duty by corporate officers and directors, we have obtained unprecedented victories on behalf of shareholders seeking to improve governance and protect the shareholder franchise.

#### ADVOCACY FOR VICTIMS OF CORPORATE WRONGDOING

While BLB&G is widely recognized as one of the leading law firms worldwide advising institutional investors on issues related to corporate governance, shareholder rights, and securities litigation, we have also prosecuted some of the most significant employment discrimination, civil rights and consumer protection cases on record. Equally important, the firm has advanced novel and socially beneficial principles by developing important new law in the areas in which we litigate.



The firm served as co-lead counsel on behalf of Texaco's African-American employees in *Roberts v. Texaco Inc.*, which resulted in a recovery of \$176 million, the largest settlement ever in a race discrimination case. The creation of a Task Force to oversee Texaco's human resources activities for five years was unprecedented and served as a model for public companies going forward.

In the consumer field, the firm has gained a nationwide reputation for vigorously protecting the rights of individuals and for achieving exceptional settlements. In several instances, the firm has obtained recoveries for consumer classes that represented the entirety of the class's losses – an extraordinary result in consumer class cases.



### PRACTICE AREAS

#### SECURITIES FRAUD LITIGATION

Securities fraud litigation is the cornerstone of the firm's litigation practice. Since its founding, the firm has had the distinction of having tried and prosecuted many of the most high-profile securities fraud class actions in history, recovering billions of dollars and obtaining unprecedented corporate governance reforms on behalf of our clients. BLB&G continues to play a leading role in major securities litigation pending in federal and state courts, and the firm remains one of the nation's leaders in representing institutional investors in securities fraud class and derivative litigation.

The firm also pursues direct actions in securities fraud cases when appropriate. By selectively opting out of certain securities class actions, we seek to resolve our clients' claims efficiently and for substantial multiples of what they might otherwise recover from related class action settlements.

The attorneys in the securities fraud litigation practice group have extensive experience in the laws that regulate the securities markets and in the disclosure requirements of corporations that issue publicly traded securities. Many of the attorneys in this practice group also have accounting backgrounds. The group has access to state-of-the-art, online financial wire services and databases, which enable it to instantaneously investigate any potential securities fraud action involving a public company's debt and equity securities.

#### CORPORATE GOVERNANCE AND SHAREHOLDERS' RIGHTS

The Corporate Governance and Shareholders' Rights Practice Group prosecutes derivative actions, claims for breach of fiduciary duty, and proxy violations on behalf of individual and institutional investors in state and federal courts throughout the country. The group has obtained unprecedented victories on behalf of shareholders seeking to improve corporate governance and protect the shareholder franchise, prosecuting actions challenging numerous highly publicized corporate transactions which violated fair process and fair price, and the applicability of the business judgment rule. We have also addressed issues of corporate waste, shareholder voting rights claims, and executive compensation. As a result of the firm's high-profile and widely recognized capabilities, the corporate governance practice group is increasingly in demand by institutional investors who are exercising a more assertive voice with corporate boards regarding corporate governance issues and the board's accountability to shareholders.

The firm is actively involved in litigating numerous cases in this area of law, an area that has become increasingly important in light of efforts by various market participants to buy companies from their public shareholders "on the cheap."

#### EMPLOYMENT DISCRIMINATION AND CIVIL RIGHTS

The Employment Discrimination and Civil Rights Practice Group prosecutes class and multiplaintiff actions, and other high-impact litigation against employers and other societal institutions that violate federal or state employment, anti-discrimination, and civil rights laws. The practice group represents diverse clients on a wide range of issues including Title VII actions: race, gender, sexual orientation and age discrimination suits; sexual harassment, and "glass ceiling" cases in which otherwise qualified employees are passed over for promotions to managerial or executive positions.



Bernstein Litowitz Berger & Grossmann LLP is committed to effecting positive social change in the workplace and in society. The practice group has the necessary financial and human resources to ensure that the class action approach to discrimination and civil rights issues is successful. This litigation method serves to empower employees and other civil rights victims, who are usually discouraged from pursuing litigation because of personal financial limitations, and offers the potential for effecting the greatest positive change for the greatest number of people affected by discriminatory practice in the workplace.

# GENERAL COMMERCIAL LITIGATION AND ALTERNATIVE DISPUTE RESOLUTION

The General Commercial Litigation practice group provides contingency fee representation in complex business litigation and has obtained substantial recoveries on behalf of investors, corporations, bankruptcy trustees, creditor committees and other business entities. We have faced down powerful and well-funded law firms and defendants – and consistently prevailed. However, not every dispute is best resolved through the courts. In such cases, BLB&G Alternative Dispute practitioners offer clients an accomplished team and a creative venue in which to resolve conflicts outside of the litigation process. BLB&G has extensive experience – and a marked record of successes – in ADR practice. For example, in the wake of the credit crisis, we successfully represented numerous former executives of a major financial institution in arbitrations relating to claims for compensation. Our attorneys have led complex business-to-business arbitrations and mediations domestically and abroad representing clients before all the major arbitration tribunals, including the American Arbitration Association (AAA), FINRA, JAMS, International Chamber of Commerce (ICC) and the London Court of International Arbitration.

#### DISTRESSED DEBT AND BANKRUPTCY CREDITOR NEGOTIATION

The BLB&G Distressed Debt and Bankruptcy Creditor Negotiation Group has obtained billions of dollars through litigation on behalf of bondholders and creditors of distressed and bankrupt companies, as well as through third-party litigation brought by bankruptcy trustees and creditors' committees against auditors, appraisers, lawyers, officers and directors, and other defendants who may have contributed to client losses. As counsel, we advise institutions and individuals nationwide in developing strategies and tactics to recover assets presumed lost as a result of bankruptcy. Our record in this practice area is characterized by extensive trial experience in addition to completion of successful settlements.

#### CONSUMER ADVOCACY

The Consumer Advocacy Practice Group at Bernstein Litowitz Berger & Grossmann LLP prosecutes cases across the entire spectrum of consumer rights, consumer fraud, and consumer protection issues. The firm represents victimized consumers in state and federal courts nationwide in individual and class action lawsuits that seek to provide consumers and purchasers of defective products with a means to recover their damages. The attorneys in this group are well versed in the vast array of laws and regulations that govern consumer interests and are aggressive, effective, court-tested litigators. The Consumer Practice Advocacy Group has recovered hundreds of millions of dollars for millions of consumers throughout the country. Most notably, in a number of cases, the firm has obtained recoveries for the class that were the entirety of the potential damages suffered by the consumer. For example, in actions against MCI and Empire Blue Cross, the firm recovered all of the damages suffered by the class. The group achieved its successes by advancing innovative claims and theories of liabilities, such as obtaining decisions in Pennsylvania and Illinois appellate courts that adopted a new theory of consumer damages in mass marketing cases. Bernstein Litowitz Berger & Grossmann LLP is, thus, able to lead the way in protecting the rights of consumers.



# THE COURTS SPEAK

Throughout the firm's history, many courts have recognized the professional excellence and diligence of the firm and its members. A few examples are set forth below.

#### IN RE WORLD COM, INC. SECURITIES LITIGATION

THE HONORABLE DENISE COTE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

"I have the utmost confidence in plaintiffs' counsel...they have been doing a superb job.... The Class is extraordinarily well represented in this litigation."

"The magnitude of this settlement is attributable in significant part to Lead Counsel's advocacy and energy.... The quality of the representation given by Lead Counsel...has been superb...and is unsurpassed in this Court's experience with plaintiffs' counsel in securities litigation."

"Lead Counsel has been energetic and creative. . . . Its negotiations with the Citigroup Defendants have resulted in a settlement of historic proportions."

#### IN RE CLARENT CORPORATION SECURITIES LITIGATION

THE HONORABLE CHARLES R. BREYER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

"It was the best tried case I've witnessed in my years on the bench . . . "

"[A]n extraordinarily civilized way of presenting the issues to you [the jury].... We've all been treated to great civility and the highest professional ethics in the presentation of the case...."

"These trial lawyers are some of the best I've ever seen."

#### LANDRY'S RESTAURANTS, INC. SHAREHOLDER LITIGATION

VICE CHANCELLOR J. TRAVIS LASTER OF THE DELAWARE COURT OF CHANCERY

"I do want to make a comment again about the excellent efforts . . . put into this case. . . . This case, I think, shows precisely the type of benefits that you can achieve for stockholders and how representative litigation can be a very important part of our corporate governance system . . . you hold up this case as an example of what to do."

#### McCall v. Scott (Columbia/HCA Derivative Litigation)

THE HONORABLE THOMAS A. HIGGINS OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

"Counsel's excellent qualifications and reputations are well documented in the record, and they have litigated this complex case adeptly and tenaciously throughout the six years it has been pending. They assumed an enormous risk and have shown great patience by taking this case on a contingent basis, and despite an early setback they have persevered and brought about not only a large cash settlement but sweeping corporate reforms that may be invaluable to the beneficiaries."



### RECENT ACTIONS & SIGNIFICANT RECOVERIES

Bernstein Litowitz Berger & Grossmann LLP is counsel in many diverse nationwide class and individual actions and has obtained many of the largest and most significant recoveries in history. Some examples from our practice groups include:

#### SECURITIES CLASS ACTIONS

CASE: IN RE WORLD COM, INC. SECURITIES LITIGATION

**COURT:** United States District Court for the Southern District of New York

**HIGHLIGHTS:** \$6.19 billion securities fraud class action recovery – the second largest in history; unprecedented

recoveries from Director Defendants.

CASE SUMMARY: Investors suffered massive losses in the wake of the financial fraud and subsequent bankruptcy of

former telecom giant WorldCom, Inc. This litigation alleged that WorldCom and others disseminated false and misleading statements to the investing public regarding its earnings and financial condition in violation of the federal securities and other laws. It further alleged a nefarious relationship between Citigroup subsidiary Salomon Smith Barney and WorldCom, carried out primarily by Salomon employees involved in providing investment banking services to WorldCom, and by WorldCom's former CEO and CFO. As Court-appointed Co-Lead Counsel representing Lead Plaintiff the New York State Common Retirement Fund, we obtained unprecedented settlements totaling more than \$6 billion from the Investment Bank Defendants who underwrote WorldCom bonds, including a \$2.575 billion cash settlement to settle all claims against the Citigroup Defendants. On the eve of trial, the 13 remaining "Underwriter Defendants," including J.P. Morgan Chase, Deutsche Bank and Bank of America, agreed to pay settlements totaling nearly \$3.5 billion to resolve all claims against them. Additionally, the day before trial was scheduled to begin, all of the former WorldCom Director Defendants had agreed to pay over \$60 million to settle the claims against them. An unprecedented first for outside directors, \$24.75 million of that amount came out of the pockets of the individuals – 20% of their collective net worth. The Wall Street Journal, in its coverage, profiled the settlement as literally having "shaken Wall Street, the audit profession and corporate boardrooms." After four weeks of trial, Arthur Andersen, WorldCom's former auditor, settled for \$65 million. Subsequent settlements were reached with the former executives of WorldCom, and then with Andersen, bringing the total obtained for the Class to over \$6.19 billion.

CASE: IN RE CENDANT CORPORATION SECURITIES LITIGATION

**COURT:** United States District Court for the District of New Jersey

*HIGHLIGHTS:* \$3.3 billion securities fraud class action recovery – the third largest in history; significant corporate

governance reforms obtained.

CASE SUMMARY: The firm was Co-Lead Counsel in this class action against Cendant Corporation, its officers and

directors and Ernst & Young (E&Y), its auditors, for their role in disseminating materially false and misleading financial statements concerning the company's revenues, earnings and expenses for its 1997 fiscal year. As a result of company-wide accounting irregularities, Cendant restated its financial results for its 1995, 1996 and 1997 fiscal years and all fiscal quarters therein. Cendant agreed to settle the action for \$2.8 billion to adopt some of the most extensive corporate governance changes in history. E&Y settled for \$335 million. These settlements remain the largest sums ever recovered from a public company and a public accounting firm through securities class action litigation. BLB&G represented Lead Plaintiffs CalPERS – the California Public Employees' Retirement System, the New York State Common Retirement Fund and the New York City Pension Funds, the three largest public pension funds in America, in this action.



CASE: IN RE BANK OF AMERICA CORP. SECURITIES, DERIVATIVE, AND EMPLOYEE RETIREMENT

INCOME SECURITY ACT (ERISA) LITIGATION

**COURT:** United States District Court for the Southern District of New York

**HIGHLIGHTS:** \$2.425 billion in cash; significant corporate governance reforms to resolve all claims. This

recovery is by far the largest shareholder recovery related to the subprime meltdown and credit crisis; the single largest securities class action settlement ever resolving a Section 14(a) claim – the federal securities provision designed to protect investors against misstatements in connection with a proxy solicitation; the largest ever funded by a single corporate defendant for violations of the federal securities laws; the single largest settlement of a securities class action in which there was neither a financial restatement involved nor a criminal conviction related to the alleged misconduct;

and one of the 10 largest securities class action recoveries in history.

**DESCRIPTION:** The firm represented Co-Lead Plaintiffs the **State Teachers Retirement System of Ohio**, the

Ohio Public Employees Retirement System, and the Teacher Retirement System of Texas in this securities class action filed on behalf of shareholders of Bank of America Corporation ("BAC") arising from BAC's 2009 acquisition of Merrill Lynch & Co., Inc. The action alleges that BAC, Merrill Lynch, and certain of the companies' current and former officers and directors violated the federal securities laws by making a series of materially false statements and omissions in connection with the acquisition. These violations included the alleged failure to disclose information regarding billions of dollars of losses which Merrill had suffered before the BAC shareholder vote on the proposed acquisition, as well as an undisclosed agreement allowing Merrill to pay billions in bonuses before the acquisition closed despite these losses. Not privy to these material facts, BAC shareholders voted to approve the acquisition.

CASE: IN RE NORTEL NETWORKS CORPORATION SECURITIES LITIGATION ("NORTEL II")

**COURT:** United States District Court for the Southern District of New York

**HIGHLIGHTS:** Over \$1.07 billion in cash and common stock recovered for the class.

**DESCRIPTION:** This securities fraud class action charged Nortel Networks Corporation and certain of its officers

and directors with violations of the Securities Exchange Act of 1934, alleging that the Defendants knowingly or recklessly made false and misleading statements with respect to Nortel's financial results during the relevant period. BLB&G clients the **Ontario Teachers' Pension Plan Board** and the **Treasury of the State of New Jersey and its Division of Investment** were appointed as Co-Lead Plaintiffs for the Class in one of two related actions (Nortel II), and BLB&G was appointed Lead Counsel for the Class. In a historic settlement, Nortel agreed to pay \$2.4 billion in cash and Nortel common stock (all figures in US dollars) to resolve both matters. Nortel later announced that its insurers had agreed to pay \$228.5 million toward the settlement, bringing the total amount of the global settlement to approximately \$2.7 billion, and the total amount of the

Nortel II settlement to over \$1.07 billion.

CASE: IN RE MERCK & Co., INC. SECURITIES LITIGATION

**COURT:** United States District Court, District of New Jersey

**HIGHLIGHTS:** \$1.06 billion recovery for the class.

**DESCRIPTION:** This case arises out of misrepresentations and omissions concerning life-threatening risks posed by

the "blockbuster" Cox-2 painkiller Vioxx, which Merck withdrew from the market in 2004. In January 2016, BLB&G achieved a \$1.062 billion settlement on the eve of trial after more than 12 years of hard-fought litigation that included a successful decision at the United States Supreme Court. This settlement is the second largest recovery ever obtained in the Third Circuit, one of the top 11 securities recoveries of all time, and the largest securities recovery ever achieved against a pharmaceutical company. BLB&G represented Lead Plaintiff the **Public Employees' Retirement** 

System of Mississippi.



CASE: IN RE MCKESSON HBOC, INC. SECURITIES LITIGATION

**COURT:** United States District Court for the Northern District of California

**HIGHLIGHTS:** \$1.05 billion recovery for the class.

**DESCRIPTION:** This securities fraud litigation was filed on behalf of purchasers of HBOC, McKesson and

McKesson HBOC securities, alleging that Defendants misled the investing public concerning HBOC's and McKesson HBOC's financial results. On behalf of Lead Plaintiff the **New York State Common Retirement Fund**, BLB&G obtained a \$960 million settlement from the company; \$72.5 million in cash from Arthur Andersen; and, on the eve of trial, a \$10 million settlement from

Bear Stearns & Co. Inc., with total recoveries reaching more than \$1 billion.

CASE: IN RE LEHMAN BROTHERS EQUITY/DEBT SECURITIES LITIGATION

**COURT:** United States District Court for the Southern District of New York

**HIGHLIGHTS:** \$735 million in total recoveries.

**DESCRIPTION:** Representing the **Government of Guam Retirement Fund**, BLB&G successfully prosecuted this

securities class action arising from Lehman Brothers Holdings Inc.'s issuance of billions of dollars in offerings of debt and equity securities that were sold using offering materials that contained

untrue statements and missing material information.

After four years of intense litigation, Lead Plaintiffs achieved a total of \$735 million in recoveries consisting of: a \$426 million settlement with underwriters of Lehman securities offerings; a \$90 million settlement with former Lehman directors and officers; a \$99 million settlement that resolves claims against Ernst & Young, Lehman's former auditor (considered one of the top 10 auditor settlements ever achieved); and a \$120 million settlement that resolves claims against UBS Financial Services, Inc. This recovery is truly remarkable not only because of the difficulty in recovering assets when the issuer defendant is bankrupt, but also because no financial results were

restated, and that the auditors never disavowed the statements.

CASE: HEALTHSOUTH CORPORATION BONDHOLDER LITIGATION

**COURT:** United States District Court for the Northern District of Alabama

**HIGHLIGHTS:** \$804.5 million in total recoveries.

**DESCRIPTION:** In this litigation, BLB&G was the appointed Co-Lead Counsel for the bond holder class,

representing Lead Plaintiff the **Retirement Systems of Alabama**. This action arose from allegations that Birmingham, Alabama based HealthSouth Corporation overstated its earnings at the direction of its founder and former CEO Richard Scrushy. Subsequent revelations disclosed that the overstatement actually exceeded over \$2.4 billion, virtually wiping out all of HealthSouth's reported profits for the prior five years. A total recovery of \$804.5 million was obtained in this litigation through a series of settlements, including an approximately \$445 million settlement for shareholders and bondholders, a \$100 million in cash settlement from UBS AG, UBS Warburg LLC, and individual UBS Defendants (collectively, "UBS"), and \$33.5 million in cash from the company's auditor. The total settlement for injured HealthSouth bond purchasers exceeded \$230

million, recouping over a third of bond purchaser damages.

CASE: IN RE CITIGROUP, INC. BOND ACTION LITIGATION

**COURT:** United States District Court for the Southern District of New York

**HIGHLIGHTS:** \$730 million cash recovery; second largest recovery in a litigation arising from the financial crisis.

**DESCRIPTION:** In the years prior to the collapse of the subprime mortgage market, Citigroup issued 48 offerings of

preferred stock and bonds. This securities fraud class action was filed on behalf of purchasers of



Citigroup bonds and preferred stock alleging that these offerings contained material misrepresentations and omissions regarding Citigroup's exposure to billions of dollars in mortgage-related assets, the loss reserves for its portfolio of high-risk residential mortgage loans, and the credit quality of the risky assets it held in off-balance sheet entities known as "structured investment vehicles." After protracted litigation lasting four years, we obtained a \$730 million cash recovery – the second largest securities class action recovery in a litigation arising from the financial crisis, and the second largest recovery ever in a securities class action brought on behalf of purchasers of debt securities. As Lead Bond Counsel for the Class, BLB&G represented Lead Bond Plaintiffs Minneapolis Firefighters' Relief Association, Louisiana Municipal Police Employees' Retirement System, and Louisiana Sheriffs' Pension and Relief Fund.

CASE: IN RE WASHINGTON PUBLIC POWER SUPPLY SYSTEM LITIGATION

**COURT:** United States District Court for the District of Arizona

**HIGHLIGHTS:** Over \$750 million – the largest securities fraud settlement ever achieved at the time.

**DESCRIPTION:** BLB&G was appointed Chair of the Executive Committee responsible for litigating the action on

behalf of the class in this action. The case was litigated for over seven years, and involved an estimated 200 million pages of documents produced in discovery; the depositions of 285 fact witnesses and 34 expert witnesses; more than 25,000 introduced exhibits; six published district court opinions; seven appeals or attempted appeals to the Ninth Circuit; and a three-month jury trial, which resulted in a settlement of over \$750 million – then the largest securities fraud

settlement ever achieved.

CASE: IN RE SCHERING-PLOUGH CORPORATION/ENHANCE SECURITIES LITIGATION; IN RE

MERCK & Co., INC. VYTORIN/ZETIA SECURITIES LITIGATION

**COURT:** United States District Court for the District of New Jersey

HIGHLIGHTS: \$688 million in combined settlements (Schering-Plough settled for \$473 million; Merck settled for

\$215 million) in this coordinated securities fraud litigations filed on behalf of investors in Merck

against Merck and Schering-Plough, which stemmed from claims that Merck and Schering

and Schering-Plough.

**DESCRIPTION:** After nearly five years of intense litigation, just days before trial, BLB&G resolved the two actions

artificially inflated their market value by concealing material information and making false and misleading statements regarding their blockbuster anti-cholesterol drugs Zetia and Vytorin. Specifically, we alleged that the companies knew that their "ENHANCE" clinical trial of Vytorin (a combination of Zetia and a generic) demonstrated that Vytorin was no more effective than the cheaper generic at reducing artery thickness. The companies nonetheless championed the "benefits" of their drugs, attracting billions of dollars of capital. When public pressure to release the results of the ENHANCE trial became too great, the companies reluctantly announced these negative results, which we alleged led to sharp declines in the value of the companies' securities, resulting in significant losses to investors. The combined \$688 million in settlements (Schering-Plough settled for \$473 million; Merck settled for \$215 million) is the second largest securities recovery ever in the Third Circuit, among the top 25 settlements of all time, and among the ten largest recoveries ever in a case where there was no financial restatement. BLB&G represented

Lead Plaintiffs Arkansas Teacher Retirement System, the Public Employees' Retirement

System of Mississippi, and the Louisiana Municipal Police Employees' Retirement System.

CASE: IN RE LUCENT TECHNOLOGIES, INC. SECURITIES LITIGATION

**COURT:** United States District Court for the District of New Jersey



**HIGHLIGHTS:** \$667 million in total recoveries; the appointment of BLB&G as Co-Lead Counsel is especially

noteworthy as it marked the first time since the 1995 passage of the Private Securities Litigation Reform Act that a court reopened the lead plaintiff or lead counsel selection process to account for changed circumstances, new issues and possible conflicts between new and old allegations.

**DESCRIPTION:** BLB&G served as Co-Lead Counsel in this securities class action, representing Lead Plaintiffs the

Parnassus Fund, Teamsters Locals 175 & 505 D&P Pension Trust, Anchorage Police and Fire Retirement System and the Louisiana School Employees' Retirement System. The complaint accused Lucent of making false and misleading statements to the investing public concerning its publicly reported financial results and failing to disclose the serious problems in its optical networking business. When the truth was disclosed, Lucent admitted that it had improperly recognized revenue of nearly \$679 million in fiscal 2000. The settlement obtained in this case is

valued at approximately \$667 million, and is composed of cash, stock and warrants.

CASE: IN RE WACHOVIA PREFERRED SECURITIES AND BOND/NOTES LITIGATION

**COURT:** United States District Court for the Southern District of New York

**HIGHLIGHTS:** \$627 million recovery – among the 20 largest securities class action recoveries in history; third

largest recovery obtained in an action arising from the subprime mortgage crisis.

**DESCRIPTION:** This securities class action was filed on behalf of investors in certain Wachovia bonds and

preferred securities against Wachovia Corp., certain former officers and directors, various underwriters, and its auditor, KPMG LLP. The case alleges that Wachovia provided offering materials that misrepresented and omitted material facts concerning the nature and quality of Wachovia's multi-billion dollar option-ARM (adjustable rate mortgage) "Pick-A-Pay" mortgage loan portfolio, and that Wachovia's loan loss reserves were materially inadequate. According to the Complaint, these undisclosed problems threatened the viability of the financial institution, requiring it to be "bailed out" during the financial crisis before it was acquired by Wells Fargo. The combined \$627 million recovery obtained in the action is among the 20 largest securities class action recoveries in history, the largest settlement ever in a class action case asserting only claims under the Securities Act of 1933, and one of a handful of securities class action recoveries obtained where there were no parallel civil or criminal actions brought by government authorities. The firm represented Co-Lead Plaintiffs **Orange County Employees Retirement System** and

Louisiana Sheriffs' Pension and Relief Fund in this action.

CASE: OHIO PUBLIC EMPLOYEES RETIREMENT SYSTEM V. FREDDIE MAC

**COURT:** United States District Court for the Southern District of Ohio

**HIGHLIGHTS:** \$410 million settlement.

**DESCRIPTION:** This securities fraud class action was filed on behalf of the **Ohio Public Employees Retirement** 

System and the State Teachers Retirement System of Ohio alleging that Federal Home Loan Mortgage Corporation ("Freddie Mac") and certain of its current and former officers issued false and misleading statements in connection with the company's previously reported financial results. Specifically, the Complaint alleged that the Defendants misrepresented the company's operations and financial results by having engaged in numerous improper transactions and accounting machinations that violated fundamental GAAP precepts in order to artificially smooth the company's earnings and to hide earnings volatility. In connection with these improprieties, Freddie Mac restated more than \$5 billion in earnings. A settlement of \$410 million was reached

in the case just as deposition discovery had begun and document review was complete.

CASE: IN RE REFCO, INC. SECURITIES LITIGATION

**COURT:** United States District Court for the Southern District of New York



**HIGHLIGHTS:** Over \$407 million in total recoveries.

**DESCRIPTION:** The lawsuit arises from the revelation that Refco, a once prominent brokerage, had for years

secreted hundreds of millions of dollars of uncollectible receivables with a related entity controlled by Phillip Bennett, the company's Chairman and Chief Executive Officer. This revelation caused the stunning collapse of the company a mere two months after its initial public offering of common stock. As a result, Refco filed one of the largest bankruptcies in U.S. history. Settlements have been obtained from multiple company and individual defendants, resulting in a total recovery for the class of over \$407 million. BLB&G represented Co-Lead Plaintiff **RH** 

Capital Associates LLC.

### CORPORATE GOVERNANCE AND SHAREHOLDERS' RIGHTS

CASE: UNITED HEALTH GROUP, INC. SHAREHOLDER DERIVATIVE LITIGATION

**COURT:** United States District Court for the District of Minnesota

**HIGHLIGHTS:** Litigation recovered over \$920 million in ill-gotten compensation directly from former officers for

their roles in illegally backdating stock options, while the company agreed to far-reaching reforms

aimed at curbing future executive compensation abuses.

**DESCRIPTION:** This shareholder derivative action filed against certain current and former executive officers and

members of the Board of Directors of UnitedHealth Group, Inc. alleged that the Defendants obtained, approved and/or acquiesced in the issuance of stock options to senior executives that were unlawfully backdated to provide the recipients with windfall compensation at the direct expense of UnitedHealth and its shareholders. The firm recovered over \$920 million in ill-gotten compensation directly from the former officer Defendants – the largest derivative recovery in history. As feature coverage in *The New York Times* indicated, "investors everywhere should applaud [the UnitedHealth settlement].... [T]he recovery sets a standard of behavior for other companies and boards when performance pay is later shown to have been based on ephemeral earnings." The Plaintiffs in this action were the **St. Paul Teachers' Retirement Fund** 

Association, the Public Employees' Retirement System of Mississippi, the Jacksonville Police & Fire Pension Fund, the Louisiana Sheriffs' Pension & Relief Fund, the Louisiana Municipal Police Employees' Retirement System and Fire & Police Pension Association of Colorado.

CASE: CAREMARK MERGER LITIGATION

**COURT:** Delaware Court of Chancery – New Castle County

**HIGHLIGHTS:** Landmark Court ruling orders Caremark's board to disclose previously withheld information,

enjoins shareholder vote on CVS merger offer, and grants statutory appraisal rights to Caremark shareholders. The litigation ultimately forced CVS to raise offer by \$7.50 per share, equal to more

than \$3.3 billion in additional consideration to Caremark shareholders.

**DESCRIPTION:** Commenced on behalf of the **Louisiana Municipal Police Employees' Retirement System** and

other shareholders of Caremark RX, Inc. ("Caremark"), this shareholder class action accused the company's directors of violating their fiduciary duties by approving and endorsing a proposed merger with CVS Corporation ("CVS"), all the while refusing to fairly consider an alternative transaction proposed by another bidder. In a landmark decision, the Court ordered the Defendants to disclose material information that had previously been withheld, enjoined the shareholder vote on the CVS transaction until the additional disclosures occurred, and granted statutory appraisal rights to Caremark's shareholders—forcing CVS to increase the consideration offered to

shareholders by \$7.50 per share in cash (over \$3 billion in total).



CASE: IN RE PFIZER INC. SHAREHOLDER DERIVATIVE LITIGATION

**COURT:** United States District Court for the Southern District of New York

**HIGHLIGHTS:** Landmark settlement in which Defendants agreed to create a new Regulatory and Compliance

Committee of the Pfizer Board that will be supported by a dedicated \$75 million fund.

**DESCRIPTION:** In the wake of Pfizer's agreement to pay \$2.3 billion as part of a settlement with the U.S.

Department of Justice to resolve civil and criminal charges relating to the illegal marketing of at least 13 of the company's most important drugs (the largest such fine ever imposed), this shareholder derivative action was filed against Pfizer's senior management and Board alleging they breached their fiduciary duties to Pfizer by, among other things, allowing unlawful promotion of drugs to continue after receiving numerous "red flags" that Pfizer's improper drug marketing was systemic and widespread. The suit was brought by Court-appointed Lead Plaintiffs **Louisiana Sheriffs' Pension and Relief Fund** and **Skandia Life Insurance Company, Ltd.** In an

unprecedented settlement reached by the parties, the Defendants agreed to create a new Regulatory and Compliance Committee of the Pfizer Board of Directors (the "Regulatory Committee") to oversee and monitor Pfizer's compliance and drug marketing practices and to review the

compensation policies for Pfizer's drug sales related employees.

CASE: IN RE EL PASO CORP. SHAREHOLDER LITIGATION

**COURT:** Delaware Court of Chancery – New Castle County

**HIGHLIGHTS:** Landmark Delaware ruling chastises Goldman Sachs for M&A conflicts of interest.

**DESCRIPTION:** This case aimed a spotlight on ways that financial insiders – in this instance, Wall Street titan

Goldman Sachs – game the system. The Delaware Chancery Court harshly rebuked Goldman for ignoring blatant conflicts of interest while advising their corporate clients on Kinder Morgan's high-profile acquisition of El Paso Corporation. As a result of the lawsuit, Goldman was forced to relinquish a \$20 million advisory fee, and BLB&G obtained a \$110 million cash settlement for El Paso shareholders – one of the highest merger litigation damage recoveries in Delaware history.

CASE: IN RE DELPHI FINANCIAL GROUP SHAREHOLDER LITIGATION

**COURT:** Delaware Court of Chancery – New Castle County

**HIGHLIGHTS:** Dominant shareholder is blocked from collecting a payoff at the expense of minority investors.

**DESCRIPTION:** As the Delphi Financial Group prepared to be acquired by Tokio Marine Holdings Inc., the conduct

of Delphi's founder and controlling shareholder drew the scrutiny of BLB&G and its institutional investor clients for improperly using the transaction to expropriate at least \$55 million at the expense of the public shareholders. BLB&G aggressively litigated this action and obtained a settlement of \$49 million for Delphi's public shareholders. The settlement fund is equal to about

90% of recoverable Class damages – a virtually unprecedented recovery.

CASE: QUALCOMM BOOKS & RECORDS LITIGATION

**COURT:** Delaware Court of Chancery – New Castle County

**HIGHLIGHTS:** Novel use of "books and records" litigation enhances disclosure of political spending and

transparency.

**DESCRIPTION:** The U.S. Supreme Court's controversial 2010 opinion in *Citizens United v. FEC* made it easier for

corporate directors and executives to secretly use company funds – shareholder assets – to support personally favored political candidates or causes. BLB&G prosecuted the first-ever "books and records" litigation to obtain disclosure of corporate political spending at our client's portfolio



company – technology giant Qualcomm Inc. – in response to Qualcomm's refusal to share the information. As a result of the lawsuit, Qualcomm adopted a policy that provides its shareholders with comprehensive disclosures regarding the company's political activities and places Qualcomm as a standard-bearer for other companies.

CASE: IN RE NEWS CORP. SHAREHOLDER DERIVATIVE LITIGATION

**COURT:** Delaware Court of Chancery – Kent County

HIGHLIGHTS: An unprecedented settlement in which News Corp. recoups \$139 million and enacts significant

corporate governance reforms that combat self-dealing in the boardroom.

**DESCRIPTION:** Following News Corp.'s 2011 acquisition of a company owned by News Corp. Chairman and CEO

Rupert Murdoch's daughter, and the phone-hacking scandal within its British newspaper division, we filed a derivative litigation on behalf of the company because of institutional shareholder concern with the conduct of News Corp.'s management. We ultimately obtained an unprecedented settlement in which News Corp. recouped \$139 million for the company coffers, and agreed to enact corporate governance enhancements to strengthen its compliance structure, the independence

and functioning of its board, and the compensation and clawback policies for management.

CASE: IN RE ACS SHAREHOLDER LITIGATION (XEROX)

**COURT:** Delaware Court of Chancery – New Castle County

**HIGHLIGHTS:** BLB&G challenged an attempt by ACS CEO to extract a premium on his stock not shared with the

company's public shareholders in a sale of ACS to Xerox. On the eve of trial, BLB&G obtained a \$69 million recovery, with a substantial portion of the settlement personally funded by the CEO.

**DESCRIPTION:** Filed on behalf of the **New Orleans Employees' Retirement System** and similarly situated

shareholders of Affiliated Computer Service, Inc., this action alleged that members of the Board of Directors of ACS breached their fiduciary duties by approving a merger with Xerox Corporation which would allow Darwin Deason, ACS's founder and Chairman and largest stockholder, to extract hundreds of millions of dollars of value that rightfully belongs to ACS's public shareholders for himself. Per the agreement, Deason's consideration amounted to over a 50% premium when compared to the consideration paid to ACS's public stockholders. The ACS Board further breached its fiduciary duties by agreeing to certain deal protections in the merger agreement that essentially locked up the transaction between ACS and Xerox. After seeking a preliminary injunction to enjoin the deal and engaging in intense discovery and litigation in preparation for a looming trial date, Plaintiffs reached a global settlement with Defendants for \$69 million. In the settlement, Deason

agreed to pay \$12.8 million, while ACS agreed to pay the remaining \$56.1 million.

CASE: IN RE DOLLAR GENERAL CORPORATION SHAREHOLDER LITIGATION

**COURT:** Sixth Circuit Court for Davidson County, Tennessee; Twentieth Judicial District, Nashville

**HIGHLIGHTS:** Holding Board accountable for accepting below-value "going private" offer.

**DESCRIPTION:** A Nashville, Tennessee corporation that operates retail stores selling discounted household goods, in early March 2007, Dollar General announced that its Board of Directors had approved the

acquisition of the company by the private equity firm Kohlberg Kravis Roberts & Co. ("KKR"). BLB&G, as Co-Lead Counsel for the City of Miami General Employees' & Sanitation Employees' Retirement Trust, filed a class action complaint alleging that the "going private" offer was approved as a result of breaches of fiduciary duty by the board and that the price offered by KKR did not reflect the fair value of Dollar General's publicly-held shares. On the eve of the

shareholders, with a potential for \$17 million more for the Class.

summary judgment hearing, KKR agreed to pay a \$40 million settlement in favor of the



CASE: LANDRY'S RESTAURANTS, INC. SHAREHOLDER LITIGATION

**Delaware Court of Chancery – New Castle County** COURT:

Protecting shareholders from predatory CEO's multiple attempts to take control of Landry's HIGHLIGHTS:

Restaurants through improper means. Our litigation forced the CEO to increase his buyout offer by

four times the price offered and obtained an additional \$14.5 million cash payment for the class.

In this derivative and shareholder class action, shareholders alleged that Tilman J. Fertitta – DESCRIPTION:

> chairman, CEO and largest shareholder of Landry's Restaurants, Inc. - and its Board of Directors stripped public shareholders of their controlling interest in the company for no premium and severely devalued remaining public shares in breach of their fiduciary duties. BLB&G's prosecution of the action on behalf of Plaintiff Louisiana Municipal Police Employees'

Retirement System resulted in recoveries that included the creation of a settlement fund composed of \$14.5 million in cash, as well as significant corporate governance reforms and an increase in

consideration to shareholders of the purchase price valued at \$65 million.

#### EMPLOYMENT DISCRIMINATION AND CIVIL RIGHTS

CASE: ROBERTS V. TEXACO, INC.

United States District Court for the Southern District of New York COURT:

BLB&G recovered \$170 million on behalf of Texaco's African-American employees and HIGHLIGHTS:

engineered the creation of an independent "Equality and Tolerance Task Force" at the company.

Six highly qualified African-American employees filed a class action complaint against Texaco DESCRIPTION:

Inc. alleging that the company failed to promote African-American employees to upper level jobs and failed to compensate them fairly in relation to Caucasian employees in similar positions. BLB&G's prosecution of the action revealed that African-Americans were significantly underrepresented in high level management jobs and that Caucasian employees were promoted more frequently and at far higher rates for comparable positions within the company. The case settled for over \$170 million, and Texaco agreed to a Task Force to monitor its diversity programs for five years – a settlement described as the most significant race discrimination settlement in history.

CASE: ECOA - GMAC/NMAC/FORD/TOYOTA/CHRYSLER - CONSUMER FINANCE

DISCRIMINATION LITIGATION

Multiple jurisdictions COURT:

Landmark litigation in which financing arms of major auto manufacturers are compelled to cease HIGHLIGHTS:

discriminatory "kick-back" arrangements with dealers, leading to historic changes to auto financing

practices nationwide.

DESCRIPTION: The cases involve allegations that the lending practices of General Motors Acceptance Corporation,

Nissan Motor Acceptance Corporation, Ford Motor Credit, Toyota Motor Credit and

DaimlerChrysler Financial cause African-American and Hispanic car buyers to pay millions of dollars more for car loans than similarly situated white buyers. At issue is a discriminatory kickback system under which minorities typically pay about 50% more in dealer mark-up which is

shared by auto dealers with the Defendants.

NMAC: The United States District Court for the Middle District of Tennessee granted final approval of the settlement of the class action against Nissan Motor Acceptance Corporation ("NMAC") in which NMAC agreed to offer pre-approved loans to hundreds of thousands of current and potential African-American and Hispanic NMAC customers, and limit how much it raises the interest charged to car buyers above the company's minimum acceptable rate.



**GMAC:** The United States District Court for the Middle District of Tennessee granted final approval of a settlement of the litigation against General Motors Acceptance Corporation ("GMAC") in which GMAC agreed to take the historic step of imposing a 2.5% markup cap on loans with terms up to 60 months, and a cap of 2% on extended term loans. GMAC also agreed to institute a substantial credit pre-approval program designed to provide special financing rates to minority car buyers with special rate financing.

**DAIMLER CHRYSLER:** The United States District Court for the District of New Jersey granted final approval of the settlement in which DaimlerChrysler agreed to implement substantial changes to the company's practices, including limiting the maximum amount of mark-up dealers may charge customers to between 1.25% and 2.5% depending upon the length of the customer's loan. In addition, the company agreed to send out pre-approved credit offers of no-markup loans to African-American and Hispanic consumers, and contribute \$1.8 million to provide consumer education and assistance programs on credit financing.

**FORD MOTOR CREDIT**: The United States District Court for the Southern District of New York granted final approval of a settlement in which Ford Credit agreed to make contract disclosures informing consumers that the customer's Annual Percentage Rate ("APR") may be negotiated and that sellers may assign their contracts and retain rights to receive a portion of the finance charge.

### CLIENTS AND FEES

We are firm believers in the contingency fee as a socially useful, productive and satisfying basis of compensation for legal services, particularly in litigation. Wherever appropriate, even with our corporate clients, we will encourage retention where our fee is contingent on the outcome of the litigation. This way, it is not the number of hours worked that will determine our fee, but rather the result achieved for our client.

Our clients include many large and well known financial and lending institutions and pension funds, as well as privately-held companies that are attracted to our firm because of our reputation, expertise and fee structure. Most of the firm's clients are referred by other clients, law firms and lawyers, bankers, investors and accountants. A considerable number of clients have been referred to the firm by former adversaries. We have always maintained a high level of independence and discretion in the cases we decide to prosecute. As a result, the level of personal satisfaction and commitment to our work is high.



# IN THE PUBLIC INTEREST

Bernstein Litowitz Berger & Grossmann LLP is guided by two principles: excellence in legal work and a belief that the law should serve a socially useful and dynamic purpose. Attorneys at the firm are active in academic, community and *pro bono* activities, as well as participating as speakers and contributors to professional organizations. In addition, the firm endows a public interest law fellowship and sponsors an academic scholarship at Columbia Law School.

#### BERNSTEIN LITOWITZ BERGER & GROSSMANN PUBLIC INTEREST LAW FELLOWS

COLUMBIA LAW SCHOOL — BLB&G is committed to fighting discrimination and effecting positive social change. In support of this commitment, the firm donated funds to Columbia Law School to create the Bernstein Litowitz Berger & Grossmann Public Interest Law Fellowship. This newly endowed fund at Columbia Law School will provide Fellows with 100% of the funding needed to make payments on their law school tuition loans so long as such graduates remain in the public interest law field. The BLB&G Fellows are able to begin their careers free of any school debt if they make a long-term commitment to public interest law.

#### FIRM SPONSORSHIP OF HER JUSTICE

NEW YORK, NY — BLB&G is a sponsor of Her Justice, a non-profit organization in New York City dedicated to providing *pro bono* legal representation to indigent women, principally battered women, in connection with the myriad legal problems they face. The organization trains and supports the efforts of New York lawyers who provide *pro bono* counsel to these women. Several members and associates of the firm volunteer their time to help women who need divorces from abusive spouses, or representation on issues such as child support, custody and visitation. To read more about Her Justice, visit the organization's website at <a href="www.herjustice.org">www.herjustice.org</a>.

#### THE PAUL M. BERNSTEIN MEMORIAL SCHOLARSHIP

COLUMBIA LAW SCHOOL — Paul M. Bernstein was the founding senior partner of the firm. Mr. Bernstein led a distinguished career as a lawyer and teacher and was deeply committed to the professional and personal development of young lawyers. The Paul M. Bernstein Memorial Scholarship Fund is a gift of the firm and the family and friends of Paul M. Bernstein, and is awarded annually to one or more second-year students selected for their academic excellence in their first year, professional responsibility, financial need and contributions to the community.

#### FIRM SPONSORSHIP OF CITY YEAR NEW YORK

NEW YORK, NY — BLB&G is also an active supporter of City Year New York, a division of AmeriCorps. The program was founded in 1988 as a means of encouraging young people to devote time to public service and unites a diverse group of volunteers for a demanding year of full-time community service, leadership development and civic engagement. Through their service, corps members experience a rite of passage that can inspire a lifetime of citizenship and build a stronger democracy.

#### MAX W. BERGER PRE-LAW PROGRAM

BARUCH COLLEGE — In order to encourage outstanding minority undergraduates to pursue a meaningful career in the legal profession, the Max W. Berger Pre-Law Program was established at Baruch College. Providing workshops, seminars, counseling and mentoring to Baruch students, the program facilitates and guides them through the law school research and application process, as well as placing them in appropriate internships and other pre-law working environments.

### NEW YORK SAYS THANK YOU FOUNDATION

NEW YORK, NY — Founded in response to the outpouring of love shown to New York City by volunteers from all over the country in the wake of the 9/11 attacks, The New York Says Thank You Foundation sends volunteers from New York City to help rebuild communities around the country affected by disasters. BLB&G is a corporate sponsor of NYSTY and its goals are a heartfelt reflection of the firm's focus on community and activism.



### **OUR ATTORNEYS**

#### **MEMBERS**

**MAX W. BERGER**, the firm's senior founding partner, supervises BLB&G's litigation practice and prosecutes class and individual actions on behalf of the firm's clients.

He has litigated many of the firm's most high-profile and significant cases, and has negotiated seven of the largest securities fraud settlements in history, each in excess of a billion dollars: *Cendant* (\$3.3 billion); *Citigroup–WorldCom* (\$2.575 billion); *Bank of America/Merrill Lynch* (\$2.4 billion); *JPMorgan Chase–WorldCom* (\$2 billion); *Nortel* (\$1.07 billion); *Merck* (\$1.06 billion); and *McKesson* (\$1.05 billion).

Most recently, before the #metoo movement came alive, on behalf of an institutional investor client, he handled the prosecution of the unprecedented shareholder derivative litigation against Fox News parent 21st Century Fox, Inc. arising from the systemic sexual and workplace harassment at the embattled network. After nearly 18 months of litigation, discovery and negotiation related to the shocking misconduct and the Board's extensive alleged governance failures, the parties unveiled a landmark settlement with two key components: 1) the first ever Board-level watchdog of its kind – the "Fox News Workplace Professionalism and Inclusion Council" of experts (WPIC) – majority independent of the Murdochs, the Company and Board; and 2) one of the largest financial recoveries – \$90 million – ever obtained in a pure corporate board oversight dispute. The WPIC is expected to serve as a model for public companies in all industries.

Mr. Berger's work has garnered him extensive media attention, and he has been the subject of feature articles in a variety of major media publications. Unique among his peers, *The New York Times* highlighted his remarkable track record in an October 2012 profile entitled "Investors' Billion-Dollar Fraud Fighter," which also discussed his role in the Bank of America/Merrill Lynch Merger litigation. In 2011, Mr. Berger was twice profiled by *The American Lawyer* for his role in negotiating a \$627 million recovery on behalf of investors in the *In re Wachovia Corp. Securities Litigation*, and a \$516 million recovery in *In re Lehman Brothers Equity/Debt Securities Litigation*. Previously, Mr. Berger's role in the *WorldCom* case generated extensive media coverage including feature articles in *BusinessWeek* and *The American Lawyer*. For his outstanding efforts on behalf of WorldCom investors, *The National Law Journal* profiled Mr. Berger (one of only eleven attorneys selected nationwide) in its annual 2005 "Winning Attorneys" section. He was subsequently featured in a 2006 *New York Times* article, "A Class-Action Shuffle," which assessed the evolving landscape of the securities litigation arena.

#### One of the "100 Most Influential Lawyers in America"

Widely recognized for his professional excellence and achievements, Mr. Berger was named one of the "100 Most Influential Lawyers in America" by *The National Law Journal* for being "front and center" in holding Wall Street banks accountable and obtaining over \$5 billion in cases arising from the subprime meltdown, and for his work as a "master negotiator" in obtaining numerous multi-billion dollar recoveries for investors.

Described as a "standard-bearer" for the profession in a career spanning over 40 years, he is the 2014 recipient of *Chambers USA*'s award for Outstanding Contribution to the Legal Profession. In presenting this prestigious honor, *Chambers* recognized Mr. Berger's "numerous headline-grabbing successes," as well as his unique stature among colleagues — "warmly lauded by his peers, who are nevertheless loath to find him on the other side of the table."



Law360 published a special feature discussing his life and career as a "Titan of the Plaintiffs Bar," and also named him one of only six litigators selected nationally as a "Legal MVP" for his work in securities litigation.

For the past ten years in a row, Mr. Berger has received the top attorney ranking in plaintiff securities litigation by *Chambers* and is consistently recognized as one of New York's "local litigation stars" by *Benchmark Litigation* (published by *Institutional Investor* and *Euromoney*).

Since their various inceptions, he has also been named a "leading lawyer" by the *Legal 500 US* Guide, one of "10 Legal Superstars" by *Securities Law360*, and one of the "500 Leading Lawyers in America" and "100 Securities Litigators You Need to Know" by *Lawdragon* magazine. Further, *The Best Lawyers in America* guide has named Mr. Berger a leading lawyer in his field.

Considered the "Dean" of the U.S. plaintiff securities bar, Mr. Berger has lectured extensively for many professional organizations, and is the author and co-author of numerous articles on developments in the securities laws and their implications for public policy. He was chosen, along with several of his BLB&G partners, to author the first chapter – "Plaintiffs' Perspective" – of Lexis/Nexis's seminal industry guide *Litigating Securities Class Actions*. An esteemed voice on all sides of the legal and financial markets, in 2008 the SEC and Treasury called on Mr. Berger to provide guidance on regulatory changes being considered as the accounting profession was experiencing tectonic shifts shortly before the financial crisis.

Mr. Berger also serves the academic community in numerous capacities. A long-time member of the Board of Trustees of Baruch College, he is now the President of the Baruch College Fund. A member of the Dean's Council to Columbia Law School, he has taught Profession of Law, an ethics course at Columbia Law School, and serves on the Advisory Board of Columbia Law School's Center on Corporate Governance. In May 2006, he was presented with the Distinguished Alumnus Award for his contributions to Baruch College, and in February 2011, Mr. Berger received Columbia Law School's most prestigious and highest honor, "The Medal for Excellence." This award is presented annually to Columbia Law School alumni who exemplify the qualities of character, intellect, and social and professional responsibility that the Law School seeks to instill in its students. As a recipient of this award, Mr. Berger was profiled in the Fall 2011 issue of *Columbia Law School Magazine*.

Mr. Berger is currently a member of the New York State, New York City and American Bar Associations, and is a member of the Federal Bar Council. He is also a member of the American Law Institute and an Advisor to its Restatement Third: Economic Torts project. In addition, Mr. Berger is a member of the Board of Trustees of The Supreme Court Historical Society.

Mr. Berger lectures extensively for many professional organizations. In 1997, Mr. Berger was honored for his outstanding contribution to the public interest by Trial Lawyers for Public Justice, where he was a "Trial Lawyer of the Year" Finalist for his work in *Roberts, et al. v. Texaco*, the celebrated race discrimination case, on behalf of Texaco's African-American employees.

Among numerous charitable and volunteer works, Mr. Berger is an active supporter of City Year New York, a division of AmeriCorps, dedicated to encouraging young people to devote time to public service. In July 2005, he was named City Year New York's "Idealist of the Year," for his long-time service and work in the community. He and his wife, Dale, have also established The Dale and Max Berger Public Interest Law Fellowship at Columbia Law School and the Max Berger Pre-Law Program at Baruch College.

EDUCATION: Baruch College-City University of New York, B.B.A., Accounting, 1968; President of the student body and recipient of numerous awards. Columbia Law School, J.D., 1971, Editor of the *Columbia Survey of Human Rights Law*.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York; U.S. Court of Appeals for the Second Circuit; U.S. Supreme Court.



**GERALD H. SILK's** practice focuses on representing institutional investors on matters involving federal and state securities laws, accountants' liability, and the fiduciary duties of corporate officials, as well as general commercial and corporate litigation. He also advises creditors on their rights with respect to pursuing affirmative claims against officers and directors, as well as professionals both inside and outside the bankruptcy context.

Mr. Silk is a managing partner of the firm and oversees its New Matter department in which he, along with a group of attorneys, financial analysts and investigators, counsels institutional clients on potential legal claims. He was the subject of "Picking Winning Securities Cases," a feature article in the June 2005 issue of *Bloomberg Markets* magazine, which detailed his work for the firm in this capacity. A decade later, in December 2014, Mr. Silk was recognized by *The National Law Journal* in its inaugural list of "Litigation Trailblazers & Pioneers" — one of 50 lawyers in the country who have changed the practice of litigation through the use of innovative legal strategies — in no small part for the critical role he has played in helping the firm's investor clients recover billions of dollars in litigation arising from the financial crisis, among other matters.

In addition, *Lawdragon* magazine, which has named Mr. Silk one of the "100 Securities Litigators You Need to Know," one of the "500 Leading Lawyers in America" and one of America's top 500 "rising stars" in the legal profession, also recently profiled him as part of its "Lawyer Limelight" special series, discussing subprime litigation, his passion for plaintiffs' work and the trends he expects to see in the market. Recognized as one of an elite group of notable practitioners by *Chambers USA*, he is also named as a "Litigation Star" by *Benchmark*, is recommended by the *Legal 500 USA* guide in the field of plaintiffs' securities litigation, and has been selected by *New York Super Lawyers* every year since 2006.

In the wake of the financial crisis, he advised the firm's institutional investor clients on their rights with respect to claims involving transactions in residential mortgage-backed securities (RMBS) and collateralized debt obligations (CDOs). His work representing Cambridge Place Investment Management Inc. on claims under Massachusetts state law against numerous investment banks arising from the purchase of billions of dollars of RMBS was featured in a 2010 *New York Times* article by Gretchen Morgenson titled, "Mortgage Investors Turn to State Courts for Relief."

Mr. Silk also represented the New York State Teachers' Retirement System in a securities litigation against the General Motors Company arising from a series of misrepresentations concerning the quality, safety, and reliability of the Company's cars which resulted in a \$300 million settlement. In addition, he is actively involved in the firm's prosecution of highly successful M&A litigation, representing shareholders in widely publicized lawsuits, including the litigation arising from the proposed acquisition of Caremark Rx, Inc. by CVS Corporation — which led to an increase of approximately \$3.5 billion in the consideration offered to shareholders.

Mr. Silk was one of the principal attorneys responsible for prosecuting the *In re Independent Energy Holdings Securities Litigation*. A case against the officers and directors of Independent Energy as well as several investment banking firms which underwrote a \$200 million secondary offering of ADRs by the U.K.-based Independent Energy, the litigation was resolved for \$48 million. Mr. Silk has also prosecuted and successfully resolved several other securities class actions, which resulted in substantial cash recoveries for investors, including *In re Sykes Enterprises, Inc. Securities Litigation* in the Middle District of Florida, and *In re OM Group, Inc. Securities Litigation* in the Northern District of Ohio. He was also a member of the litigation team responsible for the successful prosecution of *In re Cendant Corporation Securities Litigation* in the District of New Jersey, which was resolved for \$3.2 billion.

A graduate of the Wharton School of Business, University of Pennsylvania and Brooklyn Law School, in 1995-96, Mr. Silk served as a law clerk to the Hon. Steven M. Gold, U.S.M.J., in the United States District Court for the Eastern District of New York.



Mr. Silk lectures to institutional investors at conferences throughout the country, and has written or substantially contributed to several articles on developments in securities and corporate law, including "Improving Multi-Jurisdictional, Merger-Related Litigation," American Bar Association (February 2011); "The Compensation Game," *Lawdragon*, Fall 2006; "Institutional Investors as Lead Plaintiffs: Is There A New And Changing Landscape?," 75 *St. John's Law Review* 31 (Winter 2001); "The Duty To Supervise, Poser, Broker-Dealer Law and Regulation," 3rd Ed. 2000, Chapter 15; "Derivative Litigation In New York after Marx v. Akers," *New York Business Law Journal*, Vol. 1, No. 1 (Fall 1997).

He is a frequent commentator for the business media on television and in print. Among other outlets, he has appeared on NBC's *Today*, and CNBC's *Power Lunch*, *Morning Call*, and *Squawkbox* programs, as well as being featured in *The New York Times*, *Financial Times*, *Bloomberg*, *The National Law Journal*, and the *New York Law Journal*.

EDUCATION: Wharton School of the University of Pennsylvania, B.S., Economics, 1991. Brooklyn Law School, J.D., *cum laude*, 1995.

BAR ADMISSIONS: New York; U.S. District Courts for the Southern and Eastern Districts of New York.

**JOHN C. BROWNE**'s practice focuses on the prosecution of securities fraud class actions. He represents the firm's institutional investor clients in jurisdictions throughout the country and has been a member of the trial teams of some of the most high-profile securities fraud class actions in history.

Mr. Browne was Lead Counsel in the *In re Citigroup, Inc. Bond Action Litigation*, which resulted in a \$730 million cash recovery – the second largest recovery ever achieved for a class of purchasers of debt securities. It is also the second largest civil settlement arising out of the subprime meltdown and financial crisis. Mr. Browne was also a member of the team representing the New York State Common Retirement Fund in *In re WorldCom, Inc. Securities Litigation*, which culminated in a five-week trial against Arthur Andersen LLP and a recovery for investors of over \$6.19 billion – one of the largest securities fraud recoveries in history.

Other notable litigations in which Mr. Browne served as Lead Counsel on behalf of shareholders include *In re Refco Securities Litigation*, which resulted in a \$407 million settlement, *In re the Reserve Fund Securities and Derivative Litigation*, which settled for more than \$54 million, *In re King Pharmaceuticals Litigation*, which settled for \$38.25 million, *In re RAIT Financial Trust Securities Litigation*, which settled for \$32 million, and *In re SFBC Securities Litigation*, which settled for \$28.5 million.

Most recently, Mr. Browne served as lead counsel in the *In re BNY Mellon Foreign Exchange Securities Litigation*, which settled for \$180 million, *In re State Street Corporation Securities Litigation*, which settled for \$60 million, and the *Anadarko Petroleum Corporation Securities Litigation*, which settled for \$12.5 million. Mr. Browne also represents the firm's institutional investor clients in the appellate courts, and has argued appeals in the Second Circuit, Third Circuit and, most recently, the Fifth Circuit, where he successfully argued the appeal in the *In re Amedisys Securities Litigation*.

In recognition for his achievements, *Law360* named Mr. Browne a "Class Action MVP," one of only four litigators selected nationally. He is also named a *New York Super Lawyer*, and is recommended by *Legal 500* for his work in securities litigation.

Prior to joining BLB&G, Mr. Browne was an attorney at Latham & Watkins, where he had a wide range of experience in commercial litigation, including defending corporate officers and directors in securities class actions and derivative suits, and representing major corporate clients in state and federal court litigations and arbitrations.



Mr. Browne has been a panelist at various continuing legal education programs offered by the American Law Institute ("ALI") and has authored and co-authored numerous articles relating to securities litigation.

EDUCATION: James Madison University, B.A., Economics, *magna cum laude*, 1994. Cornell Law School, J.D., *cum laude*, 1998; Editor of the *Cornell Law Review*.

BAR ADMISSIONS: New York; U.S. District Court for the Southern District of New York; U.S. Courts of Appeals for the Second, Third and Fifth Circuits.

**AVI JOSEFSON** prosecutes securities fraud litigation for the firm's institutional investor clients, and has participated in many of the firm's significant representations, including *In re SCOR Holding (Switzerland) AG Securities Litigation*, which resulted in a recovery worth in excess of \$143 million for investors. He was also a member of the team that litigated the *In re OM Group, Inc. Securities Litigation*, which resulted in a settlement of \$92.4 million.

As a member of the firm's New Matter department, Mr. Josefson counsels institutional clients on potential legal claims. He has presented argument in several federal and state courts, including an appeal he argued before the Delaware Supreme Court.

Mr. Josefson is also actively involved in the M&A litigation practice, and represented shareholders in the litigation arising from the proposed acquisitions of Ceridian Corporation and Anheuser-Busch. A member of the firm's subprime litigation team, he has participated in securities fraud actions arising from the collapse of subprime mortgage lender American Home Mortgage and the actions against Lehman Brothers, Citigroup and Merrill Lynch, arising from those banks' multi-billion-dollar loss from mortgage-backed investments. Mr. Josefson has prosecuted actions against Deutsche Bank and Morgan Stanley arising from their sale of mortgage-backed securities, and is advising U.S. and foreign institutions concerning similar claims arising from investments in mortgage-backed securities.

Mr. Josefson practices in the firm's Chicago and New York Offices.

EDUCATION: Brandeis University, B.A., *cum laude*, 1997. Northwestern University, J.D., 2000; *Dean's List*; Justice Stevens Public Interest Fellowship (1999); Public Interest Law Initiative Fellowship (2000).

BAR ADMISSIONS: Illinois, New York; U.S. District Courts for the Southern District of New York and the Northern District of Illinois.

**MICHAEL D. BLATCHLEY**'s practice focuses on securities fraud litigation. He is currently a member of the firm's New Matter department in which he, along with a team of attorneys, financial analysts, forensic accountants, and investigators, counsels the firm's clients on their legal claims.

Mr. Blatchley has also served as a member of the litigation teams responsible for prosecuting a number of the firm's significant cases. For example, Mr. Blatchley was a key member of the team that recovered \$150 million for investors in *In re JPMorgan Chase & Co. Securities Litigation*, a securities fraud class action arising out of misrepresentations and omissions concerning JPMorgan's Chief Investment Office, the company's risk management systems, and the trading activities of the so-called "London Whale." He was also a member of the litigation team in *In re Medtronic, Inc. Securities Litigation*, an action arising out of allegations that Medtronic promoted the Infuse bone graft for dangerous "off-label" uses, which resulted in an \$85 million recovery for



investors. In addition, Mr. Blatchley prosecuted a number of cases related to the financial crisis, including several actions arising out of wrongdoing related to the issuance of residential mortgage-backed securities and other complex financial products. Currently, Mr. Blatchley is a member of the team prosecuting *In re Allergan, Inc. Proxy Violation Securities Litigation*.

Mr. Blatchley was recently named to *Benchmark Litigation's* "Under 40 Hot List," which recognizes him as one the nation's most accomplished legal partners under the age of 40.

While attending Brooklyn Law School, Mr. Blatchley held a judicial internship position for the Honorable David G. Trager, United States District Judge for the Eastern District of New York. In addition, he worked as an intern at The Legal Aid Society's Harlem Community Law Office, as well as at Brooklyn Law School's Second Look and Workers' Rights Clinics, and provided legal assistance to victims of Hurricane Katrina in New Orleans, Louisiana.

EDUCATION: University of Wisconsin, B.A., 2000. Brooklyn Law School, J.D., *cum laude*, 2007; Edward V. Sparer Public Interest Law Fellowship, William Payson Richardson Memorial Prize, Richard Elliott Blyn Memorial Prize, Editor for the *Brooklyn Law Review*, Moot Court Honor Society.

BAR ADMISSIONS: New York, New Jersey; U.S. District Courts for the Southern District of New York and the District of New Jersey.

**LAUREN MCMILLEN ORMSBEE** practices out of the firm's New York office, focusing on complex commercial and securities litigation. She has prosecuted a variety of class and direct actions involving securities fraud and other fiduciary violations, obtaining hundreds of millions of dollars in recoveries on behalf of the firm's institutional and private investor clients.

Ms. Ormsbee has been an integral part of trial teams in numerous major actions, including: *In re HealthSouth Bondholder Litigation*, which obtained \$230 million for the HealthSouth bondholder Class; *In re New Century Securities Litigation*, which resulted in \$125 million for its investors after the mortgage originator became one of the first casualties of the subprime crisis; *In re State Street Corporation Securities Litigation*, which obtained \$60 million in the wake of a series of alleged misrepresentations about the company's own internal portfolio; *In re Ambac Financial Group Securities Litigation*, which obtained \$33 million from the now-bankrupt insurer; *In re Altisource Portfolio Solutions, S.A. Securities Litigation*, which obtained \$32 million from the mortgage loan servicer; *In re Goldman Sachs Mortgage Pass-Through Litigation*, which obtained \$26.6 million for the benefit of the class of RMBS purchasers; and *Barron v. Union Bancaire Privée*, which recovered \$8.9 million on behalf of the class of investors harmed by investments with Bernard Madoff, among others.

Ms. Ormsbee graduated from the University of Pennsylvania Law School, where she was an editor of the Law Review. Following law school, she served as a law clerk for the Honorable Colleen McMahon of the Southern District of New York. Prior to joining the firm in 2007, Ms. Ormsbee was a litigation associate at Paul, Weiss, Rifkind, Wharton & Garrison LLP, where she had extensive experience in securities litigation and complex commercial litigation.

EDUCATION: Duke University, B.A., History, 1996. University of Pennsylvania Law School, J.D., *cum laude*, 2000; Research Editor for the *University of Pennsylvania Law Review*.

BAR ADMISSIONS: New York; U. S. District Courts for the Eastern and Southern Districts of New York; U.S. Courts of Appeals for the Second and Third Circuits.



#### SENIOR COUNSEL

**ROCHELLE FEDER HANSEN** has handled a number of high-profile securities fraud cases at the firm, including *In re StorageTek Securities Litigation*, *In re First Republic Securities Litigation*, and *In re RJR Nabisco Securities Litigation*. Ms. Hansen has also acted as Antitrust Program Coordinator for Columbia Law School's Continuing Legal Education Trial Practice Program for Lawyers.

EDUCATION: Brooklyn College of the City University of New York, B.A., 1966; M.S., 1976. Benjamin N. Cardozo School of Law, J.D., *magna cum laude*, 1979; Member, *Cardozo Law Review*.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York; U.S. Court of Appeals for the Second Circuit.



#### ASSOCIATES

**ABE ALEXANDER** practices out of the New York office, where he focuses on securities fraud, corporate governance and shareholder rights litigation.

As a principal member of the trial team prosecuting *In re Merck Vioxx Securities Litigation*, Mr. Alexander helped recover over \$1.06 billion on behalf of injured investors. The case, which asserted claims arising out of the Defendants' alleged misrepresentations concerning the safety profile of Merck's pain-killer, VIOXX, was settled shortly before trial and after more than 10 years of litigation, during which time plaintiffs achieved a unanimous and groundbreaking victory for investors at the U.S. Supreme Court. The settlement is the largest securities recovery ever achieved against a pharmaceutical company and among the 15 largest recoveries of all time.

Mr. Alexander was also a principal member of the trial team that prosecuted *In re Schering-Plough Corp./ENHANCE Securities Litigation* and *In re Merck & Co., Inc. Vytorin/Zetia Securities Litigation*, which settled on the eve of trial for a combined \$688 million. This \$688 million settlement represents the second largest securities class action recovery against a pharmaceutical company in history and is among the largest securities class action settlements of any kind. As lead associate on the firm's trial team, Mr. Alexander helped achieve a \$150 million settlement of investors' claims against JPMorgan Chase arising from alleged misrepresentations concerning the trading activities of the so-called "London Whale." Mr. Alexander also played a key role in obtaining a substantial recovery on behalf of investors in *In re Penn West Petroleum Ltd. Securities Litigation*. He is currently prosecuting *Medina v. Clovis Oncology, Inc.*; *In re HeartWare International, Inc. Securities Litigation*; *Schaffer v. Horizon Pharma PLC*; and *Park v. Cognizant Technology Solutions Corp.*, among others.

Prior to joining the firm, Mr. Alexander represented institutional clients in a number of high-profile securities, corporate governance, and antitrust matters.

Mr. Alexander was an award-winning member of his law school's national moot court team. Following law school, he served as a judicial clerk to Chief Justice Michael L. Bender of the Colorado Supreme Court.

Super Lawyers has regularly selected Mr. Alexander as a New York "Rising Star" in recognition of his accomplishments.

EDUCATION: New York University – The College of Arts and Science, B.A., Analytic Philosophy, *cum laude*, 2003. University of Colorado Law School, J.D., 2008; Order of the Coif.

BAR ADMISSIONS: Delaware; New York; U.S. District Court for the District of Delaware; U.S. District Courts for the Eastern and Southern Districts of New York; U.S. Court of Appeals for the First Circuit.

**JOHN J. MILLS**' practice concentrates on Class Action Settlements and Settlement Administration. Mr. Mills also has experience representing large financial institutions in corporate finance transactions.

EDUCATION: Duke University, B.A., 1997. Brooklyn Law School, J.D., *cum laude*, 2000; Member of *The Brooklyn Journal of International Law*; Carswell Merit Scholar recipient.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York.



**ROSS SHIKOWITZ** focuses his practice on securities litigation and is a member of the firm's New Matter group, in which he, as part of a team attorneys, financial analysts, and investigators, counsels institutional clients on potential legal claims.

Mr. Shikowitz has also served as a member of the litigation teams responsible for successfully prosecuting a number of the firm's cases involving wrongdoing related to the securitization and sale of residential mortgage-backed securities ("RMBS"), including *Allstate Insurance Co. v. Morgan Stanley*, *Bayerische Landesbank*, *New York Branch v. Morgan Stanley*; and *Metropolitan Life Insurance Company v. Morgan Stanley*. Currently, he serves as a member of the litigation teams prosecuting *Dexia SA/NV v. Morgan Stanley*; and *Sealink Funding Limited v. Morgan Stanley*, which also involve the fraudulent issuance of RMBS.

While in law school, Mr. Shikowitz was a research assistant to Brooklyn Law School Professor of Law Emeritus Norman Poser, a widely respected expert in international and domestic securities regulation. He also served as a judicial intern to the Honorable Brian M. Cogan of the Eastern District of New York, and as a legal intern for the Major Narcotics Investigations Bureau of the Kings County District Attorney's Office.

EDUCATION: Skidmore College, B.A., Music, *cum laude*, 2003. Indiana University-Bloomington, M.M., Music, 2005. Brooklyn Law School, J.D., *magna cum laude*, 2010; Notes/Comments Editor, *Brooklyn Law Review*; Moot Court Honor Society; Order of Barristers Certificate; CALI Excellence for the Future Award in Products Liability, Professional Responsibility.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York.

**EVAN M. BERKOW** (former associate) litigated securities fraud, corporate governance and shareholder rights cases on behalf of the firm's institutional investor clients.

Before joining BLB&G, Mr. Berkow was a litigation associate at a prominent defense firm, where he represented clients in numerous shareholder class actions, complex commercial litigation, government investigations, and intellectual property matters.

EDUCATION: Wesleyan University, B.A., English and Anthropology, *with honors*, 2004. University of Chicago Law School, J.D., 2011; Topics and Submissions Editor for the *Chicago Journal of International Law*.

BAR ADMISSION: New York

**JAKE NACHMANI** (former associate) practiced out of the New York office, where he prosecuted securities fraud, corporate governance and shareholder rights litigation on behalf of the firm's institutional investor clients.

Prior to joining the firm, Mr. Nachmani represented clients in complex commercial litigation, consumer class actions, and False Claims Act cases. He also briefly served as Special Counsel and Policy Advisor in the Office of the Chief Advisor to Mayor Michael Bloomberg for Policy and Strategic Planning. During law school, Mr. Nachmani clerked for the Head Deputy District Attorney in the Major Crimes Division of the Office of the District Attorney in Los Angeles.

EDUCATION: Brown University, B.A., *magna cum laude*, History, 2002; Phi Beta Kappa. Georgetown University Law Center, J.D., 2010; Farrell Scholarship.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York.



#### STAFF ATTORNEYS

GIROLAMO BRUNETTO has worked on numerous matters at BLB&G, including *Town of Davie Police Pension Plan v. CommVault Systems, Inc., et al, In re Altisource Portfolio Solutions, S.A., Securities Litigation, In re Genworth Financial Inc. Securities Litigation, In re Facebook, Inc., IPO Securities and Derivative Litigation and In re JPMorgan Chase & Co. Securities Litigation.* Mr. Brunetto presently concentrates on the settlement of class actions and the administration of class action settlements.

Prior to joining the firm in 2014, Mr. Brunetto was a volunteer assistant attorney general in the Investor Protection Bureau at the New York State Office of the Attorney General.

EDUCATION: University of Florida, B.S.B.A. and B.A., *cum laude*, May 2007. New York Law School, J.D., *cum laude*, 2011.

BAR ADMISSIONS: New York.

**ALEX DICKIN** has worked on numerous matters at BLB&G, including *Hefler et al. v. Wells Fargo & Company et al., Fresno County Employees' Retirement Association v. comScore, Inc., In re Salix Pharmaceuticals, Ltd. Securities Litigation* and *In re Wilmington Trust Securities Litigation*.

Prior to joining the firm in 2014, Ms. Dickin was an associate at Herbert Smith Freehills.

EDUCATION: MacQuarie University, B.B.A. 2005; L.L.B. 2008, with *Honors*.

BAR ADMISSIONS: New York.

**DANIEL GRUTTADARO** has worked on numerous matters at BLB&G, including *Bach v. Amedisys, Inc., Medina et al v. Clovis Oncology, Inc., et al, In re Salix Pharmaceuticals, Ltd., Securities Litigation, General Motors Securities Litigation, In re Bank of New York Mellon Corp. Forex Transactions Litigation and In re Merck & Co., Inc., Securities Litigation (VIOXX-related).* 

Prior to joining the firm in 2014, Mr. Gruttadaro was a staff attorney at Stull, Stull & Brody.

EDUCATION: State University of New York at Geneseo, B.S., 2005. State University of New York at Buffalo Law School, J.D., *cum laude*, 2009.

BAR ADMISSIONS: New York, U.S. Dist. Ct. (E.D.N.Y, S.D.N.Y.).

**STEPHEN IMUNDO** has worked on numerous matters at BLB&G, including *Bach v. Amedisys, Inc., In re Salix Pharmaceuticals, Ltd. Securities Litigation, Kohut v. KBR, Inc. et al., In re Bank of New York Mellon Corp. Forex Transactions Litigation, Dexia Holdings, Inc. v. JP Morgan, In re Citigroup Inc. Bond Litigation and In re Huron Consulting Group, Inc. Securities Litigation.* 

Prior to joining the firm in 2010, Mr. Imundo worked as a contract attorney at Labaton Sucharow LLP and Constantine & Cannon, LLP.

EDUCATION: Mercy College, B.S., *summa cum laude*, 1994. Fordham University School of Law, J.D., 2002.

BAR ADMISSIONS: Connecticut, New York.



ROBERT JEFFREY POWELL has worked on numerous matters at BLB&G, including Bach v. Amedisys, Inc., Fernandez, et al v. UBS AG, et al ("UBS Puerto Rico Bonds"), In re Salix Pharmaceuticals, Ltd. Securities Litigation, In re Green Mountain Coffee Roasters, Inc. Securities Litigation, In re Genworth Financial Inc. Securities Litigation, In re Bank of New York Mellon Corp. Forex Transactions Litigation, Bear Stearns Mortgage Pass-Through Litigation, Cambridge Place Investment Management Inc. v. Morgan Stanley & Co., Inc., et al., SMART Technologies, Inc. Shareholder Litigation and In re Citigroup Inc. Bond Litigation.

Prior to joining the firm in 2011, Mr. Powell was a litigation associate at Pillsbury Winthrop LLP and Constantine Cannon LLP.

EDUCATION: University of the South, B.A., *magna cum laude*, 1992; *Phi Beta Kappa*. Harvard Law School, J.D., 2001.

BAR ADMISSIONS: New York.

**MADELEINE SEVERIN** has worked on numerous matters at BLB&G, including *Hefler et al. v. Wells Fargo & Company et al., Fresno County Employees' Retirement Association v. comScore, Inc., Medina et al v. Clovis Oncology, Inc., et al and In re Salix Pharmaceuticals, Ltd., Securities Litigation.* 

Prior to joining the firm in 2016, Ms. Severin was a staff attorney at Dewey & LeBoeuf LLP and a contract attorney at several firms in New York City.

EDUCATION: Sarah Lawrence College, B.A., 1997. Benjamin N. Cardozo School of Law, J.D., 2004.

BAR ADMISSIONS: New York.

**EMILY STRICKLAND** has worked on numerous matters at BLB&G, including the *RMBS* Trustees Litigation, Town of Davie Police Pension Plan v. CommVault Systems, Inc., et al, In re NII Holdings, Inc. Securities Litigation, General Motors Securities Litigation, In re Bank of New York Mellon Corp. Forex Transactions Litigation.

Prior to joining the firm in 2014, Ms. Strickland was Compliance Counsel for DCM, Inc.

EDUCATION: St. John's College, B.A., 2003. Suffolk University Law School, J.D., 2009.

BAR ADMISSIONS: Massachusetts, New York.

## EXHIBIT 7B

### UNITED STATES DISTRICT COURT DISTRICT OF NEW HAMPSHIRE

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

No. 1:14-cv-00443-JL

Plaintiff,

v.

**ECF CASE** 

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.

# DECLARATION OF SHERRIE R. SAVETT IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES FILED ON BEHALF OF BERGER & MONTAGUE, P.C.

- I, Sherrie R. Savett, hereby declare under penalty of perjury as follows:
- 1. I am the Chairwoman and a Managing Shareholder of the law firm of Berger & Montague, P.C., additional Plaintiffs' Counsel in the above-captioned action (the "Action"). I submit this declaration in support of Lead Counsel's application for an award of attorneys' fees in connection with services rendered in the Action, as well as for reimbursement of Litigation Expenses incurred in connection with the Action. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

<sup>&</sup>lt;sup>1</sup> All capitalized terms used herein that are not otherwise defined herein shall have the meanings provided in the Stipulation and Agreement of Settlement with Individual Defendants and the Stipulation and Agreement of Settlement with Settling Underwriter Defendants (as amended), both of which were filed with the Court on January 26, 2018. *See* ECF No. 178-1, 178-2.

- 2. My firm served as Plaintiffs' Counsel of record in the Action and represented named plaintiffs Highmark Limited, in respect of its Segregated Account Highmark Fixed Income 2 and Palisade Strategic Master Fund (Cayman) Limited Fund (collectively, the "Securities Act Plaintiffs"). The tasks undertaken by my firm in the Action include, among others, the following:
  - (a) Investigating the public information on GT Advanced Technologies, Inc. (GTAT) as well as analyzing the price, volume and daily performance of GTAT securities, with particular emphasis on the 3% Senior Convertible Notes and common stock issued by GTAT in its 2013 Offerings;
  - (b) Analyzing the trading and losses sustained by the Securities Act Plaintiffs, including working with consulting accountants on these calculations;
  - (c) Filing of a motion seeking the appointment of the Securities Act Plaintiffs as the lead plaintiff and related factual and legal research and briefing and analysis of other motions;
  - (d) Working with Lead Counsel on drafting and editing portions of the Consolidated Class Action Complaint and the briefs in opposition to the various motions to dismiss, as well as other tasks assigned to us by Lead Counsel;
  - (e) Coordinating closely with Lead Counsel and with the Securities Act Plaintiffs on the negotiations regarding the terms of the Settlements;
  - (f) Analyzing the documents produced to Lead Counsel by the Underwriters and sharing our analysis with Lead Counsel;
  - (g) Analyzing and editing the Notice and particularly all aspects and iterations of the Plan of Allocation, including negotiations with consultants for the Securities Act Plaintiffs and Lead Counsel; and
  - (h) Reporting to and advising the Securities Act Plaintiffs on a regular basis regarding material developments in the litigation and settlement of the Action.
- 3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by attorneys and professional support staff employees of my firm who, from inception of the Action through and including May 11, 2018, billed ten or more hours to the prosecution and settlement of the claims asserted against the Settling Defendants in the Action,

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and the lodestar calculation for those individuals is based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm in the normal course of business. Time expended on this application for fees and reimbursement of expenses has not been included in this request.

- 4. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 1 are the same as the regular rates charged for their services in non-contingent matters and/or which have been accepted in other securities or class action litigation.
- 5. The total number of hours reflected in Exhibit 1 is 1,088.6. The total lodestar reflected in Exhibit 1 is \$765,224.00, consisting of \$734,974.00 for attorneys' time and \$30,250.00 for professional support staff time.
- 6. My firm's lodestar figures are based upon my firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.
- 7. As detailed in Exhibit 2, my firm is seeking reimbursement for a total of \$14,390.18 in Litigation Expenses incurred from inception of the Action through and including May 11, 2018.
- 8. The Litigation Expenses reflected in Exhibit 2 are the actual incurred expenses or reflect "caps" based on the application of the following criteria:
  - (a) Standard Copying/Printing Charged at \$0.10 per page.
  - (b) On-Line Research Charges reflected are for out-of-pocket payments to the vendors for research done in connection with this litigation. On-line research is billed to each case based on actual time usage at a set charge by the vendor. There are no administrative charges included in these figures. Additionally, to the extent that a substantial amount of on-line factual and financial research was performed by our paralegals using our

Bloomberg terminal, there is no charge for this research since my firm pays a fixed monthly fee to Bloomberg.

- 9. The Litigation Expenses incurred in the Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.
- 10. With respect to the standing of my firm, attached hereto as Exhibit 3 is a brief biography of my firm and the attorneys in my firm who were involved in the Action.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on the 18 day of May, 2018.

Sherrie R. Savett

KAL7979364

#### **EXHIBIT 1**

Levy v. Gutierrez, et al. Case No. 1:14-cv-00443-JL

#### **BERGER & MONTAGUE, P.C.**

#### TIME REPORT

From inception through and including May 11, 2018 (see ¶3 of Declaration)

NAME	HOURS	HOURLY RATE	LODESTAR
Shareholders	HOURS	KATE	LODESTAR
Sherrie R. Savett	135.0	\$975	\$131,625.00
Gary E. Cantor	412.3	\$775	\$319,532.50
Glen L. Abramson	255.2	\$690	\$176,088.00
Phyllis M. Parker	51.0	\$625	\$31,875.00
Michael T. Fantini	43.1	\$685	\$29,523.50
Associates			
Eugene Tompkins	82.0	\$565	\$46,330.00
Paralegals*			
Kimberly A. Walker	36.0	\$275	\$9,900.00
Purushottam V. Telang	74.0	\$275	\$20,350.00
TOTALS	1,088.6		\$765,224.00

<sup>\*</sup> Both of the paralegals listed above retired or left Berger & Montague, P.C. after the start of the Action, and their rates have not been changed since the year of their departure.

#### **EXHIBIT 2**

Levy v. Gutierrez, et al. Case No. 1:14-cv-00443-JL

#### BERGER & MONTAGUE, P.C.

#### **EXPENSE REPORT**

Inception through and including May 11, 2018

CATEGORY	AMOUNT	
On-Line Legal Research	\$1,200.41	
Postage & Express Mail	\$21.50	
Internal Copying	\$2,129.81	
Transportation	\$55.61	
Conference Call, Facsimile	\$9.65	
Consultant, Expert Fees	\$8,515.00	
Adverting – PSLRA Notice	\$1,165.00	
Court Filing Fees	\$400.00	
Database Hosting of Underwriter Documents	\$893.20	
TOTAL EXPENSES:	\$14,390.18	

#### **EXHIBIT 3**

Levy v. Gutierrez, et al. Case No. 1:14-cv-00443-JL

#### FIRM RESUME



1622 Locust Street | Philadelphia, PA 19103 info@bm.net
bergermontague.com
800-424-6690

#### **About Berger & Montague**

Berger & Montague is a full-spectrum class action and complex civil litigation firm, with nationally known attorneys highly sought after for their legal skills. The firm has been recognized by courts throughout the country for its ability and experience in handling major complex litigation, particularly in the fields of antitrust, securities, mass torts, civil and human rights, whistleblower cases, employment, and consumer litigation. In numerous precedent-setting cases, the firm has played a principal or lead role.

The *National Law Journal*, which recognizes a select group of law firms each year that have done "exemplary, cutting-edge work on the plaintiffs side," has selected Berger & Montague in 12 out of the last 14 years (2003-05, 2007-13, 2015-16) for its "Hot List" of top plaintiffs' oriented litigation firms in the United States. The firm has also achieved the highest possible rating by its peers and opponents as reported in *Martindale-Hubbell*, and was ranked as a 2018 "Best Law Firm" by *U.S. News - Best Lawyers*.

Currently, the firm consists of 63 lawyers; 16 paralegals; and an experienced support staff. Few firms in the United States have our breadth of practice and match our successful track record in such a broad array of complex litigation.

#### **History of the Firm**

Berger & Montague was founded in 1970 by the late David Berger to concentrate on the representation of plaintiffs in a series of antitrust class actions. David Berger helped pioneer the

use of class actions in antitrust litigation and was instrumental in extending the use of the class action procedure to other litigation areas, including securities, employment discrimination, civil and human rights, and mass torts. The firm's complement of nationally recognized lawyers has represented both plaintiffs and defendants in these and other areas, and has recovered billions of dollars for its clients. In complex litigation, particularly in areas of class action litigation, Berger & Montague has established new law and forged the path for recovery.

The firm has been involved in a series of notable cases, some of them among the most important in the last 40 years of civil litigation. For example, the firm was one of the principal counsel for plaintiffs in the *Drexel Burnham Lambert/Michael Milken* securities and bankruptcy litigation. Claimants in these cases recovered approximately \$2 billion in the aftermath of the collapse of the junk bond market and the bankruptcy of *Drexel* in the late 1980's. The firm was also among the principal trial counsel in the *Exxon Valdez Oil Spill* litigation in Anchorage, Alaska, a trial resulting in a record jury award of \$5 billion against Exxon, later reduced by the U.S. Supreme Court to \$507.5 million. Berger & Montague was lead counsel in the *School Asbestos Litigation*, in which a national class of secondary and elementary schools recovered in excess of \$200 million to defray the costs of asbestos abatement. The case was the first mass tort property damage class action certified on a national basis. Berger & Montague was also lead/liaison counsel in the *Three Mile Island Litigation* arising out of a serious nuclear incident.

Additionally, in the human rights area, the firm, through its membership on the executive committee in the *Holocaust Victim Assets Litigation*, helped to achieve a \$1.25 billion settlement with the largest Swiss banks on behalf of victims of Nazi aggression whose deposits were not returned after the Second World War. The firm also played an instrumental role in bringing about a \$4.37 billion settlement with German industry and government for the use of slave and forced labor during the Holocaust.

#### **Practice Areas and Case Profiles**

#### **Antitrust**

In antitrust litigation, the firm has served as lead, co-lead or co-trial counsel on many of the most significant civil antitrust cases over the last 45 years, including *In re Corrugated Container Antitrust Litigation* (recovery in excess of \$366 million), the *Infant Formula* case (recovery of \$125 million), the *Brand Name Prescription Drug* price fixing case (settlement of more than \$700 million), the *State of Connecticut Tobacco Litigation* (settlement of \$3.6 billion), the *Graphite Electrodes Antitrust Litigation* (settlement of more than \$134 million), and the *High-Fructose Corn Syrup Litigation* (\$531 million).

The *Legal 500*, a guide to worldwide legal services providers, ranked Berger & Montague as a Top-Tier Firm for Antitrust: Civil Litigation and Class Actions in the United States in its 2017guide and states that Berger & Montague's antitrust department "has been a key player in high-profile antitrust class actions since the firm's inception in 1970."

Once again, Berger & Montague has been selected by *Chambers and Partners* for its 2018 *Chambers USA* Guide as one of Pennsylvania's top antitrust firms. *Chambers USA 2018* states that Berger & Montague's antitrust practice group is "a respected force in the Pennsylvania antitrust market, offering expert counsel to clients from a broad range of industries."

- In re Currency Conversion Fee Antitrust Litigation: Berger & Montague, as one of two co-lead counsel, spearheaded a class action lawsuit alleging that the major credit cards had conspired to fix prices for foreign currency conversion fees imposed on credit card transactions. After eight years of litigation, a settlement of \$336 million was approved in October, 2009, with a Final Judgment entered in November, 2009. Following the resolution of eleven appeals, the District Court, on October 5, 2011, directed distribution of the settlement funds to more than 10 million timely filed claimants, among the largest class of claimants in an antitrust consumer class action. A subsequent settlement with American Express increased the settlement amount to \$386 million. (MDL No. 1409 (S.D.N.Y)).
- In re Marchbanks Truck Service Inc., et al. v. Comdata Network, Inc.: Berger & Montague was co-lead counsel in this antitrust class action brought on behalf of a class of thousands of Independent Truck Stops. The lawsuit alleged that defendant Comdata Network, Inc. had monopolized the market for specialized Fleet Cards used by long haul truckers. Comdata imposed anticompetitive provisions in its agreements with Independent Truck Stops that artificially inflated the fees Independents paid when accepting the Comdata's Fleet Card for payment. These contractual provisions, commonly referred to as anti-steering provisions or merchant restraints, barred Independents from taking various competitive steps that could have been used to steer fleets to rival payment cards. The settlement for \$130 million and valuable prospective relief was preliminary approved on March 17, 2014, and finally approved on July 14, 2014. In its July 14, 2014 order approving Class Counsel's fee request, entered contemporaneously with its order finally approving the settlement, the Court described this outcome as "substantial, both in absolute terms, and when assessed in light of the risks of establishing liability and damages in this case."
- In re High Fructose Corn Syrup Antitrust Litigation: Berger & Montague was one of three co-lead counsel in this nationwide class action alleging a conspiracy to allocate volumes and customers and to price-fix among five producers of high fructose corn syrup. After nine years of litigation, including four appeals, the case was settled on the eve of trial for \$531 million. (MDL. No. 1087, Master File No. 95-1477 (C.D. Ill.)).

■ In re Linerboard Antitrust Litigation: Berger & Montague was one of a small group of court-appointed executive committee members who led this nationwide class action against producers of linerboard. The complaint alleged that the defendants conspired to reduce production of linerboard in order to increase the price of linerboard and corrugated boxes made therefrom. At the close of discovery, the case was settled for more than \$200 million. (98 Civ. 5055 and 99-1341 (E.D. Pa.)).

The firm has also played a leading role in cases in the pharmaceutical arena, especially in cases involving the delayed entry of generic competition, having achieved over \$1 billion in settlements in such cases over the past decade, including:

- King Drug Co. v. Cephalon, Inc.: Berger & Montague played a major role (serving on the executive committee) in this antitrust class action on behalf of direct purchasers of generic versions of the prescription drug Provigil (modafinil). After nine years of hardfought litigation, the court approved a \$512 million partial settlement, the largest settlement ever for a case alleging delayed generic competition. (Case No. 2:06-cv-01797 (E.D. Pa.)). The case is continuing against one defendant.
- In re Asacol Antitrust Litigation: The firm served as class counsel for direct purchasers of Asacol HS and Delzicol that alleged that defendants participated in a scheme to block generic competition for the ulcerative colitis drug Asacol. The case settled for \$15 million. (Case No. 15-cv-12730-DJC (D. Mass.)).
- In re Celebrex (Celecoxib) Antitrust Litigation: The firm represented a class of direct purchasers of brand and generic Celebrex (celecoxib) in an action alleging that Pfizer, in violation of the Sherman Act, improperly obtained a patent for Celebrex from the U.S. Patent and Trademark Office in a scheme to unlawfully extend patent protection and delay market entry of generic versions of Celebrex. The case settled for \$94 million. (Case No. 14-cv-00361 (E.D. VA.)).
- *In re K-Dur Antitrust Litigation:* Berger & Montague served as co-lead counsel for the class in this long-running antitrust litigation. Berger & Montague litigated the case before the Court of Appeals and won a precedent-setting victory, and continued the fight before the Supreme Court. On remand, the case settled for \$60.2 million. (Case No. 01-1652 (D.N.J.)).
- *In re Aggrenox Antitrust Litigation:* Berger & Montague represented a class of direct purchasers of Aggrenox in in an action alleging that defendants delayed the availability of less expensive generic Aggrenox through, inter alia, unlawful reverse payment agreements. The case settled for \$146 million. (Case No. 14-02516 (D. Conn.)).
- In re Solodyn Antitrust Litigation: Berger & Montague serves as co-lead counsel representing a class of direct purchasers of brand and generic Solodyn (extended-release minocycline hydrochloride tablets) alleging that defendants entered into agreements not to compete in the market for extended-release minocycline hydrochloride tablets in violation of the Sherman Act. The case settled for a total of more than \$76 million. Each of the

- settlements has been preliminarily approved, and the final approval hearing for the last two settlements is scheduled for July 18, 2018. (Case No. 14-MD-2503-DJC (D. Mass.)).
- *In re Prandin Direct Purchaser Antitrust Litigation:* Berger & Montague served as colead counsel and recovered \$19 million on behalf of direct purchasers of the diabetes medication Prandin. (Case No. 2:10-cv-12141 (E.D. Mich.)).
- *Mylan Pharmaceuticals, Inc. v. Warner Chilcott Public Ltd. Co.*: Berger & Montague was appointed as co-lead counsel in a case challenging Warner Chilcott's alleged anticompetitive practices with respect to the branded drug Doryx. The case settled for \$15 million. (Case No. 2:12-cv-03824 (E.D. Pa.)).
- *In re Neurontin Antitrust Litigation:* Berger & Montague served as part of a small group of firms challenging the maintenance of a monopoly relating to the pain medication Neurontin. The case settled for \$190 million. (Case No. 02-1830 (D.N.J.)).
- *In re Skelaxin Antitrust Litigation:* Berger & Montague was among a small group of firms litigating on behalf of direct purchasers of the drug Skelaxin. The case settled for \$73 million. (Case No. 2:12-cv-83 / 1:12-md-02343) (E.D. Tenn.)).
- In re Wellbutrin XL Antitrust Litigation: Berger & Montague served as co-lead counsel for a class of direct purchasers of the antidepressant Wellbutrin XL. A settlement of \$37.5 million was reached with Valeant Pharmaceuticals (formerly Biovail), one of two defendants in the case. (Case No. 08-cv-2431 (E.D. Pa.)).
- Rochester Drug Co-Operative, Inc. v. Braintree Labs., Inc.: Berger & Montague, appointed as co-lead counsel, prosecuted this case on behalf of direct purchasers alleging sham litigation led to the delay of generic forms of the brand drug Miralax. The case settled for \$17.25 million. (Case No. 07-142 (D. Del.)).
- *In re Oxycontin Antitrust Litigation:* Berger & Montague served as co-lead counsel on behalf of direct purchasers of the prescription drug Oxycontin. The case settled in 2011 for \$16 million. (Case No. 1:04-md-01603 (S.D.N.Y)).
- Meijer, Inc., et al. v. Abbott Laboratories: Berger & Montague served as co-lead counsel in a class action on behalf of pharmaceutical wholesalers and pharmacies charging Abbott Laboratories with illegally maintaining monopoly power and overcharging purchasers in violation of the federal antitrust laws. Plaintiffs alleged that Abbott had used its monopoly with respect to its anti-HIV medicine Norvir (ritonavir) to protect its monopoly power for another highly profitable Abbott HIV drug, Kaletra. This antitrust class action settled for \$52 million after four days of a jury trial in federal court in Oakland, California. (Case No. 07-5985 (N.D. Cal.)).
- In re Relafen Antitrust Litigation: Berger & Montague was one of a small group of firms who prepared for the trial of this nationwide class action against GlaxoSmithKline, which was alleged to have used fraudulently-procured patents to block competitors from

marketing less-expensive generic versions of its popular nonsteroidal anti-inflammatory drug, Relafen (nabumetone). Just before trial, the case was settled for \$175 million. (No. 01-12239-WGY (D. Mass.)).

- In re Cardizem CD Antitrust Litigation: Berger & Montague served on the executive committee of firms appointed to represent the class of direct purchasers of Cardizem CD. The suit charged that Aventis (the brand-name drug manufacturer of Cardizem CD) entered into an illegal agreement to pay Andrx (the maker of a generic substitute to Cardizem CD) millions of dollars to delay the entry of the less expensive generic product. On November 26, 2002, the district court approved a final settlement against both defendants for \$110 million. (No. 99-MD-1278, MDL No. 1278 (E.D. Mich.)).
- In re Buspirone Antitrust Litigation: The firm served on the court-appointed steering committee in this class action, representing a class of primarily pharmaceutical wholesalers and resellers. The Buspirone class action alleged that pharmaceutical manufacturer BMS engaged in a pattern of illegal conduct surrounding its popular anti-anxiety medication, Buspar, by paying a competitor to refrain from marketing a generic version of Buspar, improperly listing a patent with the FDA, and wrongfully prosecuting patent infringement actions against generic competitors to Buspar. On April 11, 2003, the Court approved a \$220 million settlement. (MDL No. 1410 (S.D.N.Y.)).

#### **Commercial Litigation**

Berger & Montague helps business clients achieve extraordinary successes in a wide variety of complex commercial litigation matters. Our attorneys appear regularly on behalf of clients in high stakes federal and state court commercial litigation across the United States. We work with our clients to develop a comprehensive and detailed litigation plan, and then organize, allocate and deploy whatever resources are necessary to successfully prosecute or defend the case.

- *Erie Power Technologies, Inc. v. Aalborg Industries A/S, et al.*: Berger & Montague represented a trustee in bankruptcy against officers and directors and the former corporate parent and obtained a very favorable confidential settlement. (No. 04-282E (W.D. Pa.)).
- Moglia v. Harris et al.: Berger & Montague represented a liquidating trustee against the officers of U.S. Aggregates, Inc. and obtained a settlement of \$4 million. (No. C 04 2663 (CW) (N.D. Cal.)).
- *Gray v. Gessow et al.*: The firm represented a litigation trust and brought two actions, one against the officers and directors of Sunterra Inc. an insolvent company, and the second against Sunterra's accountants, Arthur Andersen and obtained an aggregate settlement of \$4.5 million. (Case No. MJG 02-CV-1853 (D. Md.) and No. 6:02-CV-633-ORL-28JGG (M.D. Fla.)).
- *Fitz, Inc. v. Ralph Wilson Plastics Co.*: The firm served as sole lead counsel and obtained, after 7 years of litigation, in 2000 a settlement whereby fabricator class members could obtain full recoveries for their losses resulting from defendants' defective contact adhesives. (No. 1-94-CV-06017 (D.N.J.)).

Provident American Corp. and Provident Indemnity Life Insurance Company v. The Loewen Group Inc. and Loewen Group International Inc.: Berger & Montague settled this individual claim, alleging a 10-year oral contract (despite six subsequent writings attempting to reduce terms to writing, each with materially different terms added, all of which were not signed), for a combined payment in cash and stock of the defendant, of \$30 Million. (No. 92-1964 (E.D. Pa.)).

#### **Commodities and Options**

Berger & Montague ranks among the country's preeminent firms for managing and trying complex commodities and options related cases on behalf of individuals and as class actions. The Firm's commodities clients include individual hedge and speculation traders, hedge funds, energy firms, investment funds, and precious metals clients.

- In re MF Global Holdings Ltd. Investment Litigation: Berger & Montague is one of two co-lead counsel that represented thousands of commodities account holders who fell victim to the alleged massive theft and misappropriation of client funds at the former major global commodities brokerage firm MF Global. Berger & Montague reached a variety of settlements, including with JPMorgan Chase Bank, the MF Global SIPA Trustee, and the CME Group, that collectively helped to return approximately \$1.6 billion to the class. Ultimately, class members received more than 100% of the funds allegedly misappropriated by MF Global even after all fees and expenses. (No. 11-cv-07866 (S.D.N.Y.).
- In re Commodity Exchange, Inc., Gold Futures and Options Trading Litigation: Berger & Montague is one of two co-lead counsel representing traders of traders of gold-based derivative contracts, physical gold, and gold-based securities against The Bank of Nova Scotia, Barclays Bank plc, Deutsche Bank AG, HSBC Bank plc, Société Générale and the London Gold Market Fixing Limited. Plaintiffs allege that the defendants, members of the London Gold Market Fixing Limited, which sets an important benchmark price for gold, conspired to manipulate this benchmark for their collective benefit. (1:14-md-02548 (S.D.N.Y.)).
- **Brown, et al. v. Kinross Gold, U.S.A., et al.:** Berger & Montague was one of two co-lead counsel in this action alleging that a leading gold mining company illegally forced out preferred shareholders. The action resulted in a settlement of \$29.25 million in cash and \$6.5 million in other consideration (approximately 100% of damages and accrued dividends after fees and costs). (No. 02-cv-00605 (D.N.V.)).

#### **Consumer Protection**

Berger & Montague's Consumer Protection Group protects consumers when they are injured by false or misleading advertising, defective products, data privacy breaches, and various other unfair trade practices. Consumers too often suffer the brunt of corporate wrongdoing, particularly in the area of false or misleading advertising, defective products, and data or privacy breaches.

• *In re: CertainTeed Fiber Cement Siding Litigation*, MDL No. 2270 (E.D. Pa.). The firm, as one of two Co-Lead Counsel firms obtained a settlement of more than \$103 million in

this multidistrict products liability litigation concerning CertainTeed Corporation's fiber cement siding, on behalf of a nationwide class.

- Countrywide Predatory Lending Enforcement Action: Berger & Montague advised the Ohio Attorney General (and several other state attorneys general) regarding predatory lending in a landmark law enforcement proceeding against Countrywide (and its parent, Bank of America) culminating in 2008 in mortgage-related modifications and other relief for borrowers across the country valued at some \$8.6 billion.
- In re Pet Foods Product Liability Litigation: The firm served as one of plaintiffs' co-lead counsel in this multidistrict class action suit seeking to redress the harm resulting from the manufacture and sale of contaminated dog and cat food. The case settled for \$24 million. Many terms of the settlement are unique and highly beneficial to the class, including allowing class members to recover up to 100% of their economic damages without any limitation on the types of economic damages they may recover. (1:07-cv-02867 (D.N.J.), MDL Docket No. 1850 (D.N.J.)).
- In re TJX Companies Retail Security Breach Litigation: The firm served as co-lead counsel in this multidistrict litigation brought on behalf of individuals whose personal and financial data was compromised in the then-largest theft of personal data in history. The breach involved more than 45 million credit and debit card numbers and 450,000 customers' driver's license numbers. The case was settled for benefits valued at over \$200 million. Class members whose driver's license numbers were at risk were entitled to 3 years of credit monitoring and identity theft insurance (a value of \$390 per person based on the retail cost for this service), reimbursement of actual identity theft losses, and reimbursement of driver's license replacement costs. Class members whose credit and debit card numbers were at risk were entitled to cash of \$15-\$30 or store vouchers of \$30-\$60. (No. 1:07-cv-10162-WGY, (D. Mass.)).
- In re Educational Testing Service Praxis Principles of Learning and Teaching: Grades 7-12 Litigation: The firm served on the plaintiffs' steering committee and obtained an \$11.1 million settlement in 2006 on behalf of persons who were incorrectly scored on a teacher's licensing exam. (MDL No. 1643 (E.D. La.)).
- Vadino, et al. v. American Home Products Corporation, et al.: The firm filed a class complaint different from that filed by any other of the filing firms in the New Jersey State Court "Fen Phen" class action, and the class sought in the firm's complaint was ultimately certified. It was the only case anywhere in the country to include a claim for medical monitoring. In the midst of trial, the New Jersey case was folded into a national settlement which occurred as the trial was ongoing, and which was structured to include a medical monitoring component worth in excess of \$1 billion. (Case Code No. 240 (N.J. Super. Ct.)).
- Parker v. American Isuzu Motors, Inc.: The firm served as sole lead counsel and obtained a settlement whereby class members recovered up to \$500 each for economic damages

- resulting from accidents caused by faulty brakes. (Sept. Term 2003, No. 3476 (Pa. Ct. Com. Pl., Phila. Cty.)).
- Crawford v. Philadelphia Hotel Operating Co.: The firm served as co-lead counsel and obtained a settlement whereby persons who contracted food poisoning at a business convention recovered \$1,500 each. (March Term, 2004, No. 000070 (Pa. Ct. Com. Pl., Phila. Cty.)).

#### **Employment Law**

The Berger & Montague Employment Law group works tirelessly to safeguard the rights of employees, and devote all of their energies to helping our firm's clients achieve their goals. Our attorneys' understanding of federal and state wage and hour laws, federal and state civil rights and discrimination laws, ERISA, the WARN Act, laws protecting whistleblowers, such as federal and state False Claims Acts, and other employment laws, allows us to develop creative strategies to vindicate our clients' rights and help them secure the compensation to which they are entitled.

- Jantz v. Social Security Administration: The firm served as co-lead counsel and obtained a settlement on behalf of employees with targeted disabilities ("TDEs") alleged that SSA discriminated against TDEs by denying them promotional and other career advancement opportunities. The settlement was reached after more than ten years of litigation, and the Class withstood challenges to class certification on four separate occasions. The settlement includes a monetary fund of \$9.98 million and an unprecedented package of extensive programmatic changes valued at approximately \$20 million. EEOC No. 531-2006-00276X (2015).
- Ciamillo v. Baker Hughes, Incorporated: The firm served as lead counsel and obtained a settlement of \$5 million on behalf of a class of oil and gas workers who did not receive any overtime compensation for working hours in excess of 40 per week. (Civil Action No. 14-cv-81 (D. Alaska)).
- Employees Committed for Justice v. Eastman Kodak Company: The firm served as colead counsel and obtained a settlement of \$21.4 million on behalf of a nationwide class of African American employees of Kodak alleging a pattern and practice of racial discrimination (pending final approval). A significant opinion issued in the case is Employees Committed For Justice v. Eastman Kodak Co., 407 F. Supp. 2d 423 (W.D.N.Y. 2005) (denying Kodak's motion to dismiss). No. 6:04-cv-06098 (W.D.N.Y.)).
- Salcido v. Cargill Meat Solutions Corp.: The firm served as co-lead counsel and obtained a settlement of \$7.5 million on behalf of a class of thousands of employees of Cargill Meat Solutions Corp. alleging that they were forced to work off-the-clock and during their breaks. This is one of the largest settlements of this type of case involving a single plant in U.S. history. (Civil Action Nos. 1:07-cv-01347-LJO-GSA and 1:08-cv-00605-LJO-GSA (E.D. Cal.)).
- *Miller v. Hygrade Food Products, Inc.:* The firm served as lead counsel and obtained a settlement of \$3.5 million on behalf of a group of African American employees of Sara

Lee Foods Corp. to resolve charges of racial discrimination and retaliation at its Ball Park Franks plant. (No. 99-1087 (E.D. Pa.)).

- Chabrier v. Wilmington Finance, Inc.: The firm served as co-lead counsel and obtained a settlement of \$2,925,000 on behalf of loan officers who worked in four offices to resolve claims for unpaid overtime wages. A significant opinion issued in the case is Chabrier v. Wilmington Finance, Inc., 2008 WL 938872 (E.D. Pa. April 04, 2008) (denying the defendant's motion to decertify the class). (No. 06-4176 (E.D. Pa.)).
- Bonnette v. Rochester Gas & Electric Co.: The firm served as co-lead counsel and obtained a settlement of \$2 million on behalf of a class of African American employees of Rochester Gas & Electric Co. to resolve charges of racial discrimination in hiring, job assignments, compensation, promotions, discipline, terminations, retaliation, and a hostile work environment. (No. 07-6635 (W.D.N.Y.)).

#### **Environmental and Mass Tort**

Berger & Montague lawyers are trailblazers in the fields of environmental class action litigation and mass torts. Our attorneys have earned their reputation in the fields of environmental litigation and mass torts by successfully prosecuting some of the largest, most well-known cases of our time. Our Environmental & Mass Tort Group also prosecutes significant claims for personal injury, commercial losses, property damage, and environmental response costs. In 2016 Berger & Montague was named an Elite Trial Lawyer Finalist in special litigation (environmental) by The National Law Journal.

- Cook v. Rockwell International Corporation: In February 2006, the firm won a \$554 million jury verdict on behalf of thousands of property owners whose homes were exposed to plutonium or other toxins. Judgment in the case was entered by the court in June 2008 which, with interest, totaled \$926 million. Recognizing this tremendous achievement, the Public Justice Foundation bestowed its prestigious Trial Lawyer of the Year Award for 2009 on Merrill G. Davidoff, David F. Sorensen, and the entire trial team for their "long and hard-fought" victory against "formidable corporate and government defendants." (No. 90-cv-00181-JLK (D. Colo.)). The jury verdict in that case was vacated on appeal in 2010, but on a second trip to the Tenth Circuit, Plaintiffs secured a victory in 2015, with the case then being sent back to the district court. A \$375 million settlement was reached in May 2016, and final approval by the district court was obtained in April 2017.
- In re Exxon Valdez Oil Spill Litigation: On September 16, 1994, a jury trial of several months duration resulted in a record punitive damages award of \$5 billion against the Exxon defendants as a consequence of one of the largest oil spills in U.S. history. The award was reduced to \$507.5 million pursuant to a Supreme Court decision. David Berger was co-chair of the plaintiffs' discovery committee (appointed by both the federal and state courts). Harold Berger served as a member of the organizing case management committee. H. Laddie Montague was specifically appointed by the federal court as one of the four designated trial counsel. Both Mr. Montague and Peter Kahana shared (with the entire trial

team) the 1995 "Trial Lawyer of the Year Award" given by the Trial Lawyers for Public Justice. (No. A89-0095-CVCHRH (D. Alaska)).

- State of Connecticut Tobacco Litigation: Berger & Montague was one of three firms to represent the State of Connecticut in a separate action in state court against the tobacco companies. The case was litigated separate from the coordinated nationwide actions. Although eventually Connecticut joined the national settlement, its counsel's contributions were recognized by being awarded the fifth largest award among the states from the fifty states' Strategic Contribution Fund.
- In re School Asbestos Litigation: As co-lead counsel, the firm successfully litigated a case in which a nationwide class of elementary and secondary schools and school districts suffering property damage as a result of asbestos in their buildings were provided relief. Pursuant to an approved settlement, the class received in excess of \$70 million in cash and \$145 million in discounts toward replacement building materials. (No. 83-0268 (E.D. Pa.)).
- Drayton v. Pilgrim's Pride Corp.: The firm served as counsel in a consolidation of wrongful death and other catastrophic injury cases brought against two manufacturers of turkey products, arising out of a 2002 outbreak of Listeria Monocytogenes in the Northeastern United States, which resulted in the recall of over 32 million pounds of turkey the second largest meat recall in U.S. history at that time. A significant opinion issued in the case is Drayton v. Pilgrim's Pride Corp., 472 F. Supp. 2d 638 (E.D. Pa. 2006) (denying the defendants' motions for summary judgment and applying the alternative liability doctrine). All of the cases settled on confidential terms in 2006. (No. 03-2334 (E.D. Pa.)).
- *In re Three Mile Island Litigation:* As lead/liaison counsel, the firm successfully litigated the case and reached a settlement in 1981 of \$25 million in favor of individuals, corporations and other entities suffering property damage as a result of the nuclear incident involved. (C.A. No. 79-0432 (M.D. Pa.)).

#### **ERISA and Employee Benefits**

Berger & Montague represents employees who have claims under the federal Employee Retirement Income Security Act. We litigate cases on behalf of employees whose 401(k) and pension investments have suffered losses as a result of the breach of fiduciary duties by plan administrators and the companies they represent. Berger & Montague has recovered hundreds of millions of dollars in lost retirement benefits for American workers and retirees, and also gained favorable changes to their retirement plans.

• *In re Unisys Corp. Retiree Medical Benefits:* The firm, as co-lead counsel, handled the presentation of over 70 witnesses, 30 depositions, and over 700 trial exhibits in this action that has resulted in partial settlements in 1990 of over \$110 million for retirees whose health benefits were terminated. (MDL No. 969 (E.D. Pa.)).

- Local 56 U.F.C.W. v. Campbell Soup Co.: The firm represented a class of retired Campbell Soup employees in an ERISA class action to preserve and restore retiree medical benefits. A settlement yielded benefits to the class valued at \$114.5 million. (No. 93-MC-276 (SSB) (D.N.J.)).
- *Rose v. Cooney*: No. 5:92-CV-208 (D. Conn.) The firm, acting as lead counsel, obtained more than \$29 million in cash and payment guarantees from Xerox Corporation to resolve claims of breach of fiduciary duty for plan investments in interest contracts issued by Executive Life Insurance Company.
- In re Lucent Technologies, Inc. ERISA Litigation: No. 01-CV-3491 (D.N.J.) The firm served as co-lead counsel in this class action on behalf of participants and beneficiaries of the Lucent defined contribution plans who invested in Lucent stock, and secured a settlement providing injunctive relief and for the payment of \$69 million.
- **Diebold v. Northern Trust Investments, N.A.:** 1:09-cv-01934 (N.D. Ill.) As co-lead counsel in this ERISA breach of fiduciary duty case, the firm secured a \$36 million settlement on behalf of participants in retirement plans who participated in Northern Trust's securities lending program. Plaintiffs alleged that defendants breached their ERISA fiduciary duties by failing to manage properly two collateral pools that held cash collateral received from the securities lending program. The settlement represented a recovery of more than 25% of alleged class member losses.
- In re SPX Corporation ERISA Litigation: No. 3:04-cv-192 (W.D.N.C.) The firm recovered 90% of the estimated losses 401(k) plan participants who invested in the SPX stock fund claimed they suffered as a result of defendants' breaches of their ERISA fiduciary duties caused them.
- *In re Nortel Networks ERISA Litigation*: Civil Action No. 01-cv-1855 (MD Tenn.) The firm represented a class of former workers of the bankrupt telecommunications company of mismanaging their employee stock fund in violation of their fiduciary duties. The case settled for \$21.5 million.
- The firm served as co-lead counsel in this ERISA case that alleged that defendants breached their fiduciary duties to the retirement plans it managed by taking unreasonable compensation for managing the securities lending program in which the plans participated. After the court certified a class of the plans that participated in the securities lending program at issue, the case settled for \$10 million on behalf of 1,500 retirement plans that invested in defendants' collective investment funds.
- In re Eastman Kodak ERISA Litigation: Master File No. 6:12-cv-06051-DGL (W.D.N.Y.) The firm served as class counsel in this ERISA breach of fiduciary duty class action which alleged that defendants breached their fiduciary duties to Kodak retirement plan participants by allowing plan investments in Kodak common stock. The case settled for \$9.7 million.

#### **Insurance and Financial Services Products / Services**

When insurance companies and affiliated financial services entities engage in fraudulent, deceptive or unfair practices, Berger & Montague helps injured parties recover their losses. We focus on fraudulent, deceptive and unfair business practices across all lines of insurance and financial products and services sold by insurers and their affiliates, which include annuities, securities and other investment vehicles.

- Spencer v. Hartford Financial Services Group, Inc.: The firm, together with co-counsel, prosecuted this national class action against The Hartford Financial Services Group, Inc. and its affiliates in the United States District Court for the District of Connecticut (Spencer v. Hartford Financial Services Group, Inc., Case No. 05-cv-1681) on behalf of approximately 22,000 claimants, each of whom entered into structured settlements with Hartford property and casualty insurers to settle personal injury and workers' compensation claims. To fund these structured settlements, the Hartford property and casualty insurers purchased annuities from their affiliate, Hartford Life. By purchasing the annuity from Hartford Life, The Hartford companies allegedly were able to retain up to 15% of the structured amount of the settlement in the form of undisclosed costs, commissions and profit - all of which was concealed from the settling claimants. On March 10, 2009, the U.S. District Court certified for trial claims on behalf of two national subclasses for civil RICO and fraud (256 F.R.D. 284 (D. Conn. 2009)). On October 14, 2009, the Second Circuit Court of Appeals denied The Hartford's petition for interlocutory appeal under Federal Rule of Civil Procedure 23(f).On September 21, 2010, the U.S. District Court entered judgment granting final approval of a \$72.5 million cash settlement.
- Nationwide Mutual Insurance Company v. O'Dell: The firm, together with co-counsel, prosecuted this class action against Nationwide Mutual Insurance Company in West Virginia Circuit Court, Roane County (Nationwide Mutual Insurance Company v. O'Dell, Case No. 00-C-37), on behalf of current and former West Virginia automobile insurance policyholders, which arose out of Nationwide's failure, dating back to 1993, to offer policyholders the ability to purchase statutorily-required optional levels of underinsured ("UIM") and uninsured ("UM") motorist coverage in accordance with West Virginia Code 33-6-31. The court certified a trial class seeking monetary damages, alleging that the failure to offer these optional levels of coverage, and the failure to provide increased first party benefits to personal injury claimants, breached Nationwide's insurance policies and its duty of good faith and fair dealing, and violated the West Virginia Unfair Trade Practices Act. On June 25, 2009, the court issued final approval of a settlement that provided a minimum estimated value of \$75 million to Nationwide auto policyholders and their passengers who were injured in an accident or who suffered property damage.

#### **Lending Practices and Borrowers' Rights**

Berger & Montague's attorneys fight vigorously to protect the rights of borrowers when they are injured by the practices of banks and other financial institutions that lend money or service borrowers' loans. Berger & Montague has successfully obtained multi-million dollar class action settlements for nationwide classes of borrowers against banks and financial institutions and works

tirelessly to protect the rights of borrowers suffering from these and other deceptive and unfair lending practices.

- Coonan v. Citibank, N.A.: The firm, as Co-Lead Counsel, prosecuted this national class action against Citibank and its affiliates in the United States District Court for the Northern District of New York concerning alleged kickbacks Citibank received in connection with its force-placed insurance programs. The firm obtained a settlement of \$122 million on behalf of a class of hundreds of thousands of borrowers.
- Arnett v. Bank of America, N.A.: The firm, as Co-Lead Counsel, prosecuted this national class action against Bank of America and its affiliates in the United States District Court for the District of Oregon concerning alleged kickbacks received in connection with its force-placed flood insurance program. The firm obtained a settlement of \$31 million on behalf of a class of hundreds of thousands of borrowers.
- Clements v. JPMorgan Chase Bank, N.A.: The firm, as Co-Lead Counsel, prosecuted this national class action against JPMorgan Chase and its affiliates in the United States District Court for the Northern District of California concerning alleged kickbacks received in connection with its force-placed flood insurance program. The firm obtained a settlement of \$22,125,000 on behalf of a class of thousands of borrowers.

#### **Representing Opt-Outs in Class Actions**

Berger & Montague offers exceptional representation of businesses, institutional investors, employee benefit or ERISA plans and governmental entities when they wish to opt out of securities and antitrust class actions filed by others and file an individual lawsuit to maximize their recovery or have a say in the proceedings. We advise and represent clients who may opt out of class actions filed by others – often securities fraud cases and price-fixing and monopolization antitrust claims – and help them pursue their claims independently of the class action, where they often stand to receive a much greater financial recovery.

#### **Securities Litigation**

In the area of securities litigation, the firm has represented public institutional investors – such as the retirement funds for the States of Pennsylvania, Connecticut, New Hampshire, New Jersey, Louisiana and Ohio, as well as the City of Philadelphia and numerous individual investors and private institutional investors. The firm was co-lead counsel in the *Melridge Securities Litigation* in the Federal District Court in Oregon, in which jury verdicts of \$88.2 million and a RICO judgment of \$239 million were obtained. Berger & Montague has served as lead or co-lead counsel in numerous other major securities class action cases where substantial settlements were achieved on behalf of investors.

• *In re Merrill Lynch Securities Litigation:* Berger & Montague, as co-lead counsel, obtained a recovery of \$475 million for the benefit of the class in one of the largest recoveries among the recent financial crisis cases. (No. 07-cv-09633 (S.D.N.Y.)).

- *In re Sotheby's Holding, Inc. Securities Litigation*: The firm, as lead counsel, obtained a \$70 million settlement, of which \$30 million was contributed, personally, by an individual defendant. (No. 00-cv-1041 (DLC) (S.D.N.Y.)).
- *In re: Oppenheimer Rochester Funds Group Securities Litigation:* The firm, as co-lead counsel, obtained a \$89.5 million settlement on behalf of investors in six tax-exempt bond mutual funds managed by OppenheimerFunds, Inc. (No. 09-md-02063-JLK (D. Col.)).
- *In re KLA Tencor Securities Litigation:* The firm, as a member of Plaintiffs' Counsel's Executive Committee, obtained a cash settlement of \$65 million in an action on behalf of investors against KLA-Tencor and certain of its officers and directors. (No. 06-cv-04065 (N.D. Cal.)).
- Ginsburg v. Philadelphia Stock Exchange, Inc., et al.: The firm represented certain shareholders of the Philadelphia Stock Exchange in the Delaware Court of Chancery and obtained a settlement valued in excess of \$99 million settlement. (C.A. No. 2202-CC (Del. Ch.)).
- *In re Sepracor Inc. Securities Litigation:* The firm, as co-lead counsel, obtained a settlement of \$52.5 million for the benefit of bond and stock purchaser classes. (No. 02-cv-12235-MEL (D. Mass.)).
- *In re CIGNA Corp. Securities Litigation:* The firm, as co-lead counsel, obtained a settlement of \$93 million for the benefit of the class. (Master File No. 2:02-cv-8088 (E.D. Pa.)).
- *In re Fleming Companies, Inc. Securities Litigation:* The firm, as lead counsel, obtained a class settlement of \$94 million for the benefit of the class. (No. 5-03-MD-1530 (TJW) (E.D. Tex.)).
- In re Xcel Energy Inc. Securities, Derivative & "ERISA" Litigation: The firm, as colead counsel in the securities actions, obtained a cash settlement of \$80 million on behalf of investors against Xcel Energy and certain of its officers and directors. (No. 02-cv-2677 (DSD/FLN) (D. Minn.)).
- In re NetBank, Inc. Securities Litigation: The firm served as lead counsel in this certified class action on behalf of the former common shareholders of NetBank, Inc. The \$12.5 million settlement, which occurred after class certification proceedings and substantial discovery, is particularly noteworthy because it is one of the few successful securities fraud class actions litigated against a subprime lender and bank in the wake of the financial crisis. (No. 07-cv-2298-TCB (N.D. Ga.)).
- **Brown v. Kinross Gold U.S.A. Inc.:** The firm represented lead plaintiffs as co-lead counsel and obtained \$29.25 million cash settlement and an additional \$6,528,371 in dividends for

- a gross settlement value of \$35,778,371. (No. 02-cv-0605 (D. Nev.)) All class members recovered 100% of their damages <u>after</u> fees and expenses.
- In re Campbell Soup Co. Securities Litigation: The firm, as co-lead counsel, obtained a settlement of \$35 million for the benefit of the class. (No. 00-cv-152 (JEI) (D.N.J.)).
- In re Premiere Technologies, Inc. Securities Litigation: The firm, as co-lead counsel, obtained a class settlement of over \$20 million in combination of cash and common stock. (No.1:98-cv-1804-JOF (N.D. Ga.)).
- *In re PSINet, Inc., Securities Litigation:* The firm, as co-lead counsel, obtained a settlement of \$17.83 million on behalf of investors. (No. 00-cv-1850-A (E.D. Va.)).
- In re Safety-Kleen Corp. Securities Litigation: The firm, as co-lead counsel, obtained a class settlement in the amount of \$45 million against Safety-Kleen's outside accounting firm and certain of the Company's officers and directors. The final settlement was obtained 2 business days before the trial was to commence. (No. 3:00-cv-736-17 (D.S.C.)).
- The City Of Hialeah Employees' Retirement System v. Toll Brothers, Inc.: The firm, as co-lead counsel, obtained a class settlement of \$25 million against Home Builder Toll Brothers, Inc. (No. 07-cv-1513 (E.D. Pa.)).
- *In re Rite Aid Corp. Securities Litigation:* The firm, as co-lead counsel, obtained settlements totaling \$334 million against Rite Aid's outside accounting firm and certain of the company's former officers. (No. 99-cv-1349 (E.D. Pa.)).
- *In re Sunbeam Inc. Securities Litigation:* As co-lead counsel and designated lead trial counsel (by Mr. Davidoff), the firm obtained a settlement on behalf of investors of \$142 million in the action against Sunbeam's outside accounting firm and Sunbeam's officers. (No. 98-cv-8258 (S.D. Fla.)).
- *In re Waste Management, Inc. Securities Litigation:* In 1999, the firm, as co-lead counsel, obtained a class settlement for investors of \$220 million cash which included a settlement against Waste Management's outside accountants. (No. 97-cv-7709 (N.D. Ill.)).
- *In re IKON Office Solutions Inc. Securities Litigation:* The firm, serving as both co-lead and liaison counsel, obtained a cash settlement of \$111 million in an action on behalf of investors against IKON and certain of its officers. (MDL Dkt. No. 1318 (E.D. Pa.)).
- In re Melridge Securities Litigation: The firm served as lead counsel and co-lead trial counsel for a class of purchasers of Melridge common stock and convertible debentures. A four-month jury trial yielded a verdict in plaintiffs' favor for \$88.2 million, and judgment was entered on RICO claims against certain defendants for \$239 million. The court approved settlements totaling \$57.5 million. (No. 87-cv-1426 FR (D. Ore.)).

- Aldridge v. A.T. Cross Corp.: The firm represented a class of investors in a securities fraud class action against A.T. Cross, and won a significant victory in the U.S. Court of Appeals for the First Circuit when that Court reversed the dismissal of the complaint and lessened the pleading standard for such cases in the First Circuit, holding that it would not require plaintiffs in a shareholder suit to submit proof of financial restatement in order to prove revenue inflation. See Aldridge v. A.T. Cross Corp., 284 F.3d 72 (1st Cir. 2002). The case ultimately settled for \$1.5 million. (C.A. No. 00-203 ML (D.R.I.)).
- *Silver v. UICI:* The firm, as co-lead counsel, obtained a settlement resulting in a fund of \$16 million for the class. (No. 3:99-cv-2860-L (N.D. Tex.)).
- *In re Alcatel Alsthom Securities Litigation:* The firm, as co-lead counsel, obtained a class settlement for investors of \$75 million cash. (MDL Docket No. 1263 (PNB) (E.D. Tex.)).
- Walco Investments, Inc. et al. v. Kenneth Thenen, et al. (Premium Sales): The firm, as a member of the plaintiffs' steering committee, obtained settlements of \$141 million for investors victimized by a Ponzi scheme. Reported at: 881 F. Supp. 1576 (S.D. Fla. 1995); 168 F.R.D. 315 (S.D. Fla. 1996); 947 F. Supp. 491 (S.D. Fla. 1996)).
- *In re The Drexel Burnham Lambert Group, Inc.:* The firm was appointed co-counsel for a mandatory non-opt-out class consisting of all claimants who had filed billions of dollars in securities litigation-related proofs of claim against The Drexel Burnham Lambert Group, Inc. and/or its subsidiaries. Settlements in excess of \$2.0 billion were approved in August 1991 and became effective upon consummation of Drexel's Plan of Reorganization on April 30, 1992. (No. 90-cv-6954 (MP), Chapter 11, Case No. 90 B 10421 (FGC), Jointly Administered, reported at, *inter alia*, 960 F.2d 285 (2d Cir. 1992), *cert. dismissed*, 506 U.S. 1088 (1993) ("Drexel I") and 995 F.2d 1138 (2d Cir. 1993) ("Drexel II")).
- In re Michael Milken and Associates Securities Litigation: As court-appointed liaison counsel, the firm was one of four lead counsel who structured the \$1.3 billion "global" settlement of all claims pending against Michael R. Milken, over 200 present and former officers and directors of Drexel Burnham Lambert, and more than 350 Drexel/Milken-related entities. (MDL Dkt. No. 924, M21-62-MP (S.D.N.Y.)).
- *RJR Nabisco Securities Litigation:* The firm represented individuals who sold RJR Nabisco securities prior to the announcement of a corporate change of control. This securities case settled for \$72 million. (No. 88-cv-7905 MBM (S.D.N.Y.)).
- **Qwest Securities Action:** The firm represented New Jersey in an opt-out case against Qwest and certain officers, which was settled for \$45 million. (C.A. No. L-3838-02 (Superior Court New Jersey, Law Division)).

#### Whistleblower, Qui Tam, and False Claims Act

Berger & Montague has represented whistleblowers in matters involving healthcare fraud, defense contracting fraud, IRS fraud, securities fraud, and commodities fraud, helping to return more than \$1.1 billion to federal and state governments. In return, whistleblower clients retaining Berger & Montague to represent them in state and federal courts have received more than \$100 million in rewards. Berger & Montague's time-tested approach in Whistleblower/Qui Tam representation involves cultivating close, productive attorney-client relationships with the maximum degree of confidentiality for our clients.

#### **Judicial Praise for Berger & Montague Attorneys**

Berger & Montague's record of successful prosecution of class actions and other complex litigation has been recognized and commended by judges and arbitrators across the country. Some remarks on the skill, efficiency, and expertise of the firm's attorneys are excerpted below.

#### **Antitrust**

From **Judge Madeline Cox Arleo** of the U.S. District Court for the District of New Jersey praising the efforts of all counsel:

I just want to thank you for an outstanding presentation. I don't say that lightly . . . it's not lost on me at all when lawyers come very, very prepared. And really, your clients should be very proud to have such fine lawyering. I don't see lawyering like this every day in the federal courts, and I am very grateful. And I appreciate the time and the effort you put in, not only to the merits, but the respect you've shown for each other, the respect you've shown for the Court, the staff, and the time constraints. And as I tell my law clerks all the time, good lawyers don't fight, good lawyers advocate. And I really appreciate that more than I can express.

Transcript of the September 9 to 11, 2015 Daubert Hearing in Castro v. Sanofi Pasteur, No. 11-cv-07178 (D.N.J.) at 658:14-659:4.

From **Judge William H. Pauley, III**, of the U.S. District Court of the Southern District of New York:

"Class Counsel did their work on their own with enormous attention to detail and unflagging devotion to the cause. Many of the issues in this litigation . . . were unique and issues of first impression."

\* \* \*

"Class Counsel provided extraordinarily high-quality representation. This case raised a number of unique and complex legal issues .... The law firms of Berger & Montague and Coughlin Stoia were indefatigable. They represented the Class with a high degree of

professionalism, and vigorously litigated every issue against some of the ablest lawyers in the antitrust defense bar."

In re Currency Conversion Fee Antitrust Litigation, 263 F.R.D. 110, 129 (2009).

From Judge Faith S. Hochberg of the United States District court for the District of New Jersey:

"[W]e sitting here don't always get to see such fine lawyering, and it's really wonderful for me both to have tough issues and smart lawyers ... I want to congratulate all of you for the really hard work you put into this, the way you presented the issues, ... On behalf of the entire federal judiciary I want to thank you for the kind of lawyering we wish everybody would do."

In re Remeron Antitrust Litig., Civ. No. 02-2007 (Nov. 2, 2005).

From U.S. District **Judge Jan DuBois**, of the U.S. District Court of the Eastern District of Pennsylvania:

"[T]he size of the settlements in absolute terms and expressed as a percentage of total damages evidence a high level of skill by petitioners ... The Court has repeatedly stated that the lawyering in the case at every stage was superb, and does so again."

*In Re Linerboard Antitrust Litig.*, 2004 WL 1221350, at \*5-\*6 (E.D. Pa. 2004).

From Judge Nancy G. Edmunds, of the U.S. District Court of the Eastern District of Michigan:

"[T]his represents an excellent settlement for the Class and reflects the outstanding effort on the part of highly experienced, skilled, and hard working Class Counsel....[T]heir efforts were not only successful, but were highly organized and efficient in addressing numerous complex issues raised in this litigation[.]"

In re Cardizem CD Antitrust Litig., MDL No. 1278 (E.D. Mich., Nov. 26, 2002).

From Judge Charles P. Kocoras of the U.S. District Court for the Northern District of Illinois:

"The stakes were high here, with the result that most matters of consequence were contested. There were numerous trips to the courthouse, and the path to the trial court and the Court of Appeals frequently traveled. The efforts of counsel for the class has [sic] produced a substantial recovery, and it is represented that the cash settlement alone is the second largest in the history of class action litigation. . . . There is no question that the results achieved by class counsel were extraordinary [.]"

Regarding the work of Berger & Montague in achieving more than \$700 million in settlements with some of the defendants in *In Re Brand Name Prescription Drugs Antitrust Litigation*, 2000 U.S. Dist. LEXIS 1734, at \*3-\*6 (N.D. Ill. Feb. 9, 2000).

From **Judge Peter J. Messitte** of the U.S. District Court for the District of Maryland:

"The experience and ability of the attorneys I have mentioned earlier, in my view in reviewing the documents, which I have no reason to doubt, the plaintiffs' counsel are at the top of the profession in this regard and certainly have used their expertise to craft an extremely favorable settlement for their clients, and to that extent they deserve to be rewarded."

Settlement Approval Hearing, Oct. 28, 1994, in *Spawd, Inc. and General Generics v. Bolar Pharmaceutical Co., Inc.*, CA No. PJM-92-3624 (D. Md.).

From Judge Donald W. Van Artsdalen of the U.S. District Court for the Eastern District of Pennsylvania:

"As to the quality of the work performed, although that would normally be reflected in the not immodest hourly rates of all attorneys, for which one would expect to obtain excellent quality work at all times, the results of the settlements speak for themselves. Despite the extreme uncertainties of trial, plaintiffs' counsel were able to negotiate a cash settlement of a not insubstantial sum, and in addition, by way of equitable relief, substantial concessions by the defendants which, subject to various condition, will afford the right, at least, to lessee-dealers to obtain gasoline supply product from major oil companies and suppliers other than from their respective lessors. The additional benefits obtained for the classes by way of equitable relief would, in and of itself, justify some upward adjustment of the lodestar figure."

**Bogosian v. Gulf Oil Corp.**, 621 F. Supp. 27, 31 (E.D. Pa. 1985).

From **Judge Krupansky**, who had been elevated to the Sixth Circuit Court of Appeals:

Finally, the court unhesitatingly concludes that the quality of the representation rendered by counsel was uniformly high. The attorneys involved in this litigation are extremely experienced and skilled in their prosecution of antitrust litigation and other complex actions. Their services have been rendered in an efficient and expeditious manner, but have nevertheless been productive of highly favorable result.

In re Art Materials Antitrust Litigation, 1984 CCH Trade Cases ¶65,815 (N.D. Ohio 1983).

From Judge Joseph Blumenfeld of the U.S. District Court for the District of Connecticut:

"The work of the Berger firm showed a high degree of efficiency and imagination, particularly in the maintenance and management of the national class actions."

In re Master Key Antitrust Litigation, 1977 U.S. Dist. LEXIS 12948, at \*35 (Nov. 4, 1977).

#### **Securities Litigation**

From Judge Jed Rakoff of the U.S. District Court for the Southern District of New York:

Court stated that lead counsel had made "very full and well-crafted" and "excellent submissions"; that there was a "very fine job done by plaintiffs' counsel in this case"; and that this was "surely a very good result under all the facts and circumstances."

*In re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation*, Master File No. 07-cv-9633(JSR)(DFE) (S.D.N.Y., July 27, 2009).

From **Judge Michael M. Baylson** of the U.S. District Court for the Eastern District of Pennsylvania:

"The Court is aware of and attests to the skill and efficiency of class counsel: they have been diligent in every respect, and their briefs and arguments before the Court were of the highest quality. The firm of Berger & Montague took the lead in the Court proceedings; its attorneys were well prepared, articulate and persuasive."

In re CIGNA Corp. Sec. Litig., 2007 U.S. Dist. LEXIS 51089, at \*17-\*18 (E.D. Pa. July 13, 2007).

From Judge Stewart Dalzell of the U.S. District Court for the Eastern District of Pennsylvania:

"The quality of lawyering on both sides, but I am going to stress now on the plaintiffs' side, simply has not

been exceeded in any case, and we have had some marvelous counsel appear before us and make superb arguments, but they really don't come any better than Mrs. Savett... [A]nd the arguments we had on the motion to dismiss [Mrs. Savett argued the motion], both sides were fabulous, but plaintiffs' counsel were as good as they come."

In re U.S. Bioscience Secs. Litig., No. 92-0678 (E.D. Pa. April 4, 1994).

From Judge Wayne Andersen of the U.S. District Court for the Northern District of Illinois:

"[Y]ou have acted the way lawyers at their best ought to act. And I have had a lot of cases...in 15 years now as a judge and I cannot recall a significant case where I felt people were better represented than they are here...I would say this has been the best representation that I have seen."

In re: Waste Management, Inc. Secs. Litig., No. 97-C 7709 (N.D. Ill. 1999).

From Chancellor William Chandler, III of the Delaware Chancery Court:

"All I can tell you, from someone who has only been doing this for roughly 22 years, is that I have yet to see a more fiercely and intensely litigated case than this case. Never in 22 years have I seen counsel going at it, hammer and tong, like they have gone at it in this case. And I think that's a testimony – Mr. Valihura correctly says that's what they are supposed to do. I recognize that; that is their job, and they were doing it professionally."

Ginsburg v. Philadelphia Stock Exchange, Inc., No. 2202 (Del. Ch., Oct. 22, 2007).

From Judge Stewart Dalzell of the U.S. District Court for the Eastern District of Pennsylvania:

"Thanks to the nimble class counsel, this sum, which once included securities worth \$149.5 million is now all cash. Seizing on an opportunity Rite Aid presented, class counsel first renegotiated what had been stock consideration into Rite Aid Notes and then this year monetized those Notes. Thus, on February 11, 2003, Rite Aid redeemed those Notes from the class, which then received \$145,754,922.00. The class also received \$14,435,104 in interest on the Notes."

"Co-lead counsel ... here were extraordinarily deft and efficient in handling this most complex matter... they were at least eighteen months ahead of the United States Department of Justice in ferreting out the conduct that ultimately resulted in the write down of over \$1.6 billion in previously reported Rite Aid earnings. In short, it would be hard to equal the skill class counsel demonstrated here."

*In re Rite Aid Corp. Securities Litigation*, 269 F. Supp. 2d 603, 605, n.1, 611 (E.D. Pa. 2003).

From **Judge Helen J. Frye**, United States District Judge for the U.S. District Court for the District of Oregon:

"In order to bring about this result [partial settlements then totaling \$54.25 million], Class Counsel were required to devote an unusual amount of time and effort over more than eight years of intense legal litigation which included a four-month long jury trial and full briefing and argument of an appeal before the Ninth Circuit Court of Appeals, and which produced one of the most voluminous case files in the history of this District."

\* \* \*

"Throughout the course of their representation, the attorneys at Berger & Montague and Stoll, Stoll, Berne, Lokting & Shlachter who have worked on this case have exhibited an unusual degree of skill and diligence, and have had to contend with opposing counsel who also displayed unusual skill and diligence."

In Re Melridge, Inc. Securities Litigation, No. CV 87-1426-FR (D. Ore. April 15, 1996).

From Judge Marvin Katz of the U.S. District Court for the Eastern District of Pennsylvania:

"[T]he co-lead attorneys have extensive experience in large class actions, experience that has enabled this case to proceed efficiently and professionally even under short deadlines and the pressure of handling thousands of documents in a large multi-district action... These counsel have also acted vigorously in their clients' interests...."

\* \* \*

"The management of the case was also of extremely high quality.... [C]lass counsel is of high caliber and has extensive experience in similar class action litigation.... The submissions were of consistently high quality, and class counsel has been notably diligent in preparing filings in a timely manner even when under tight deadlines."

Commenting on class counsel, where the firm served as both co-lead and liaison counsel in *In re Ikon Office Solutions, Inc. Securities Litigation*, 194 F.R.D. 166, 177, 195 (E.D. Pa. 2000).

From **Judge William K. Thomas,** Senior District Judge for the United States District Court for the Northern District of Ohio:

"In the proceedings it has presided over, this court has become directly familiar with the specialized, highly competent, and effective quality of the legal services performed by Merrill G. Davidoff, Esq. and Martin I. Twersky, Esq. of Berger & Montague...."

\* \* \*

"Examination of the experience-studded biographies of the attorneys primarily involved in this litigation and review of their pioneering prosecution of many class actions in antitrust, securities, toxic tort matters and some defense representation in antitrust and other litigation, this court has no difficulty in approving and adopting the hourly rates fixed by Judge Aldrich."

Commenting in *In re Revco Securities Litigation*, Case No. 1:89CV0593, Order (N.D. Oh. September 14, 1993).

#### Civil/Human Rights Cases

#### From Deputy Treasury Secretary Stuart E. Eizenstat:

"We must be frank. It was the American lawyers, through the lawsuits they brought in U.S. courts, who placed the long-forgotten wrongs by German companies during the Nazi era on the international agenda. It was their research and their work which highlighted these old injustices and forced us to confront them. Without question, we would not be here without them.... For this dedication and commitment to the victims, we should always be grateful to these lawyers."

In his remarks at the July 17, 2000, signing ceremony for the international agreements which established the German Foundation to act as a funding vehicle for the payment of claims to Holocaust survivors.

#### **Insurance Litigation**

From Judge Janet C. Hall, of the U.S. District Court of the District of Connecticut:

Noting the "very significant risk in pursuing this action" given its uniqueness in that "there was no prior investigation to rely on in establishing the facts or a legal basis for the case....[and] no other prior or even now similar case involving parties like these plaintiffs and a party like these defendants." Further, "the quality of the representation provided to the plaintiffs ... in this case has been consistently excellent.... [T]he defendant[s] ... mounted throughout the course of the five years the case pended, an extremely vigorous defense.... [B]ut for counsel's outstanding work in this case and substantial effort over five years, no member of the class would have recovered a penny.... [I]t was an extremely complex and substantial class ... case ... [with an] outstanding result."

Regarding the work of Berger & Montague attorneys Peter R. Kahana and Steven L. Bloch, among other co-class counsel, in *Spencer, et al. v. The Hartford Financial Services Group, Inc., et al.*, in the Order approving the \$72.5 million final settlement of this action, dated September 21, 2010 (No. 3:05-cv-1681, D. Conn.).

#### **Managing Shareholders**

#### Sherrie R. Savett - Chairwoman of the Firm

Sherrie R. Savett, Chairwoman of the Firm, Chair of the Securities Litigation Department and *Qui Tam*/False Claims Act Department, and member of the Firm's Management Committee, has practiced in the area of securities litigation and class actions since 1975.

Ms. Savett serves or has served as lead or co-lead counsel or as a member of the executive committee in a large number of important securities and consumer class actions in federal and state courts across the country, including:

*In re Alcatel Alsthom Securities Litigation*: The firm, as co-lead counsel, obtained a class settlement for investors of \$75 million cash. (MDL Docket No. 1263 (PNB) (E.D. Tex.));

*In re CIGNA Corp. Securities Litigation*: The firm, as co-lead counsel, obtained a settlement of \$93 million for the benefit of the class. (Master File No. 2:02-cv-8088 (E.D. Pa.));

*In re Fleming Companies, Inc. Securities Litigation*: The firm, as lead counsel, obtained a class settlement of \$94 million for the benefit of the class. (No. 5-03-MD-1530 (TJW) (E.D. Tex.));

*In re KLA Tencor Securities Litigation*: The firm, as a member of Plaintiffs' Counsel's Executive Committee, obtained a cash settlement of \$65 million in an action on behalf of investors against KLA-Tencor and certain of its officers and directors. (No. 06-cv-04065 (N.D. Cal.));

*Medaphis/Deloitte & Touche* (class settlement of \$96.5 million) (No. 1:96-CV-2088-FMH (N.D. GA));

*In re Rite Aid Corp. Securities Litigation*: The firm, as co-lead counsel, obtained settlements totaling \$334 million against Rite Aid's outside accounting firm and certain of the company's former officers. (No. 99-cv-1349) (E.D. Pa.));

*In re Sotheby's Holding, Inc. Securities Litigation:* The firm, as lead counsel, obtained a \$70 million settlement, of which \$30 million was contributed, personally, by an individual defendant (No. 00-cv-1041 (DLC) (S.D.N.Y.));

*In re Waste Management, Inc. Securities Litigation:* In 1999, the firm, as co-lead counsel, obtained a class settlement for investors of \$220 million cash, which included a settlement against Waste Management's outside accountants. (No. 97-cv-7709 (N.D. Ill.)); and

*In re Xcel Inc. Securities, Derivative & "ERISA" Litigation*: The firm, as co-lead counsel in the securities actions, obtained a cash settlement of \$80 million on behalf of investors against Xcel Energy and certain of its officers and directors. (No. 02-cv-2677 (DSD/FLN) (D. Minn.)).

Ms. Savett has helped establish several significant precedents. Among them is the holding (the first ever in a federal appellate court) that municipalities are subject to the anti-fraud provisions of SEC Rule 10b-5 under § 10(b) of the Securities Exchange Act of 1934, and that municipalities that issue bonds are not acting as an arm of the state and therefore are not entitled to immunity from

suit in the federal courts under the Eleventh Amendment. Sonnenfeld v. City and County of Denver, 100 F.3d 744 (10th Cir.1996).

In the *U.S. Bioscience* securities class action, a biotechnology case where critical discovery was needed from the federal Food and Drug Administration, the court ruled that the FDA may not automatically assert its administrative privilege to block a subpoena and may be subject to discovery depending on the facts of the case. *In re U.S. Bioscience Secur. Litig.*, 150 F.R.D. 80 (E.D. Pa. 1993).

In the CIGNA Corp. Securities Litigation, the Court denied defendants' motion for summary judgment, holding that a plaintiff has a right to recover for losses on shares held at the time of a corrective disclosure and his gains on a stock should not offset his losses in determining legally recoverable damages. In re CIGNA Corp. Securities Litigation, 459 F. Supp. 2d 338 (E.D. Pa. 2006).

In the past decade, she has also actively worked in the False Claims Act arena and was a part of the team that litigated and settled the Average Wholesale Price qui tam cases, which collectively settled for more than \$1 billion. She has advanced investor protection by helping to establish several significant legal precedents.

Ms. Savett speaks and writes frequently on securities litigation, consumer class actions and complex litigation, and is acknowledged for her leadership in the business and civic community. Most recently, in 2015 and 2016, she served as a panelist in American Law Institute programs held in New York City called "Securities and Shareholder Litigation: Cutting-Edge Developments, Planning and Strategy."

In addition to the 2015 and 2016 ALI programs, Ms. Savett spoke at the 2013 ABA Litigation Section Annual Conference in Chicago on two panels. One program on securities litigation was entitled "The Good, The Bad, and The Ugly: Ethical Issues in Class Action Settlements and Opt Outs." The other program focused on consumer class actions in the real estate area and was entitled "The Foreclosure Crisis Puzzle: Navigating the Changing Landscape of Foreclosure."

Ms. Savett has lectured at the Wharton School of the University of Pennsylvania and at the Stanford Law School on prosecuting shareholder class actions. She is frequently invited to present and serve as panelist in American Bar Association, American Law Institute/American Bar Association and Practicing Law Institute (PLI) conferences on securities class action litigation and the use of class actions in consumer litigation. She has been a presenter and panelist at PLI's Securities Litigation and Enforcement Institute annually from 1995 to 2010. She has also spoken at major institutional investor and insurance industry conferences, and DRI – the Voice of the Defense Bar. In February 2009, she was a member of a six-person panel who presented an analysis of the current state of securities litigation before more than 1,000 underwriters and insurance executives at the PLUS (Professional Liability Underwriting Society) Conference in New York City. She has presented at the Cyber-Risk Conference in 2009, as well as the PLUS Conference in Chicago on November 16, 2009 on the subject of litigation involving security breaches and theft of personal information.

Ms. Savett is widely recognized as a leading litigator and a top female leader in the profession by local and national legal rating organizations.

The Legal Intelligencer and Pennsylvania Law Weekly named her one of the "56 Women Leaders in the Profession" in 2004.

In 2003-2005 and 2007-2009, Berger & Montague was named to the *National Law Journal's* "Hot List" of 12-20 law firms nationally "who specialize in plaintiffs' side litigation and have excelled in their achievements." Having achieved this designation in 6 out of 7 years, the firm is on the *National Law Journal's* "Hall of Fame." Ms. Savett's achievements were mentioned, among others, in each year.

Ms. Savett was named a "Pennsylvania Top 50 Female Super Lawyer" and a "Pennsylvania Super Lawyer" from 2004 through 2009 by *Philadelphia Magazine* after an extensive nomination and polling process among Pennsylvania lawyers.

In 2006 and 2007, she was named one of the "500 Leading Litigators" and "500 Leading Plaintiffs' Litigators" in the United States by *Lawdragon*. In 2008, Ms. Savett was named as one of the "500 Leading Lawyers in America." Also in 2008, she was named one of 25 "Women of the Year" in Pennsylvania by *The Legal Intelligencer* and *Pennsylvania Law Weekly* which stated on May 19, 2008 in the *Women in the Profession* in *The Legal Intelligencer* that she "has been a prominent figure nationally in securities class actions for years, and some of her recent cases have only raised her stature."

In June 2008, Ms. Savett was named by *Lawdragon* as one of the "100 Lawyers You Need to Know in Securities Litigation."

#### **Shareholders**

#### Glen L. Abramson - Shareholder

Glen L. Abramson is a shareholder in the Consumer Protection, Lending Practice and Borrowers' Rights, Securities Litigation, and Insurance and Financial Services practice groups at Berger & Montague. He concentrates his practice on complex consumer protection and financial services litigation. Mr. Abramson represents consumers in financial services and product defect class actions, as well as public and private institutional investors in securities fraud class actions and commercial litigation.

Mr. Abramson is currently involved in numerous class actions and investigations involving insurance products, including cases against Applied Underwriters, Inc. in connection with the deceptive sale of workers' compensation insurance policies and against Genworth Life Insurance Company involving long-term care insurance. Mr. Abramson also currently is involved in numerous class actions involving product defects, and is Co-Lead Counsel in a nationwide MDL involving defective water supply lines, *In re Fluidmaster, Inc., Water Connector Components Products Liability Litigation*, MDL No. 2575 (N.D. Ill.).

In addition, Mr. Abramson also has served as co-lead counsel in numerous successful consumer protection and securities fraud class actions, including:

Casey v. Citibank, N.A., No. 5:12-cv-00820 (N.D.N.Y.). Co-Lead Counsel. Mr. Abramson obtained a settlement valued at \$110 million in this consolidated class action on behalf of nationwide classes of borrowers whose mortgage loans were serviced by Citibank or CitiMortgage and who were force-placed with hazard, flood or wind insurance by Citi.

In re Oppenheimer Rochester Funds Group Securities Litigation, No. 09-md-02063-JLK-KMT (D. Colo.) – Co-Lead Counsel. Mr. Abramson represented shareholders in Oppenheimer municipal bond funds in connection with losses suffered during the financial crisis of 2008. The case settled in 2014 for \$89.5 million.

*In re Tremont, Securities Law, State Law, and Insurance Litig.*, No. 1:08-cv-11117-TPG – Mr. Abramson represented insurance policyholders who lost money in connection with the Madoff Ponzi scheme. The combined cases were settled for more than \$100 million.

*In re Mutual Fund Investment Litig.*, No. 04-md-15861-CCB – Co-Lead Counsel. Mr. Abramson represented shareholders of various mutual fund families who lost money as the result of market timing in mutual funds. Mr. Abramson was lead counsel for Scudder/Deutsche Bank mutual fund shareholders and helped orchestrate combined settlements of more than \$14 million.

*In re Fleming Companies, Inc. Sec. Litig.*, No. 03-md-1530 (E.D. Tex.) – Co-Lead Counsel. Mr. Abramson represented shareholders of Fleming Companies, Inc. in connection with losses suffered as a result of securities fraud by Fleming and its auditors and underwriters. The case resulted in a \$93.5 million settlement.

Prior to joining Berger & Montague, Mr. Abramson practiced at Dechert LLP in Philadelphia, where he handled complex commercial litigation, product liability, intellectual property, and civil rights disputes. While at Dechert, Mr. Abramson co-chaired a civil rights trial in federal court that led to a six-figure verdict. Mr. Abramson also spent three years as a professional equities trader.

Mr. Abramson is a graduate of Cornell University (B.A. with distinction 1993) and Harvard Law School (*cum laude* 1996). He is a past member of the Harvard Legal Aid Bureau and is a member of Cornell University's Phi Beta Kappa honors society.

#### Gary E. Cantor - Shareholder

Gary E. Cantor is a shareholder in the Securities and Commodities practice groups at Berger & Montague. He concentrates his practice on complex litigation and derivatives valuations.

Mr. Cantor served as co-lead counsel in *Steiner v. Phillips, et al.* (Southmark Securities), Consolidated C.A. No. 3-89-1387-X (N.D. Tex.), (class settlement of \$82.5 million), and *In re Kenbee Limited Partnerships Litigation*, Civil Action No. 91-2174 (GEB), (class settlement involving 119 separate limited partnerships resulting in cash settlement, oversight of partnership governance and debt restructuring (with as much as \$100 million in wrap mortgage reductions)). Mr. Cantor also represented plaintiffs in numerous commodity cases.

In recent years, Mr. Cantor played a leadership role in: *In re: Oppenheimer Rochester Funds Group Securities Litigation* (\$89.5 million settlement on behalf of investors in six tax-exempt bond mutual funds managed by Oppenheimer Funds, Inc.), No. 09-md-02063-JLK (D. Col.); *In re KLA-Tencor Corp. Securities Litigation*, Master File No. C-06-04065-CRB (N.D. Cal.) (\$65 million class settlement); *In re Sepracor Inc. Securities Litigation*, Civil Action no. 02-12235-MEL (D. Mass.) (\$52.5 million settlement); *In re Sotheby's Holding, Inc. Securities Litigation*, No. 00 Civ. 1041 (DLC) (S.D.N.Y.) (\$70 million class settlement). He was also actively involved in the *Merrill Lynch Securities Litigation* (class settlement of \$475 million) and *Waste Management Securities Litigation* (class settlement of \$220 million).

For over 20 years, Mr. Cantor also has concentrated on securities valuations and the preparation of event or damage studies or the supervision of outside damage experts for many of the firm's cases involving stocks, bonds, derivatives, and commodities. Mr. Cantor's work in this regard has focused on statistical analysis of securities trading patterns and pricing for determining materiality, loss causation and damages as well as aggregate trading models to determine class-wide damages.

Mr. Cantor was a member of the Moot Court Board at University of Pennsylvania Law School where he authored a comment on computer-generated evidence in the University of Pennsylvania Law Review. He graduated from Rutgers College with highest distinction in economics and was a member of Phi Beta Kappa.

#### Michael T. Fantini - Shareholder

Michael T. Fantini is a shareholder in the Consumer Protection and Commercial Litigation practice groups with Berger & Montague. Mr. Fantini concentrates his practice on consumer class action litigation.

Mr. Fantini has considerable experience in notable consumer cases such as: In re TJX Companies Retail Security Breach Litigation, Master Docket No. 07-10162 (D. Mass) (class action brought on behalf of persons whose personal and financial data were compromised in the largest computer theft of personal data in history - settled for various benefits valued at over \$200 million); In re Educational Testing Service Praxis Principles of Learning and Teaching: Grade 7-12 Litigation, MDL No. 1643 (E.D. La. 2006) (settlement of \$11.1 million on behalf of persons who were incorrectly scored on a teachers' licensing exam); Block v. McDonald's Corporation, No: 01CH9137 (Cir. Ct. Of Cook County, Ill.) (settlement of \$12.5 million where McDonald's failed to disclose beef fat in french fries); Fitz, Inc. v. Ralph Wilson Plastics Co., No. 1-94-CV-06017 (D. N.J.) (claims-made settlement whereby fabricators fully recovered their losses resulting from defective contact adhesives); Parker v. American Isuzu Motors, Inc.; No: 3476 (CCP, Philadelphia County) (claims-made settlement whereby class members recovered \$500 each for their economic damages caused by faulty brakes); Crawford v. Philadelphia Hotel Operating Co., No: 04030070 (CCP Phila. Cty. 2005) (claims-made settlement whereby persons with food poisoning recovered \$1,500 each); Melfi v. The Coca-Cola Company (settlement reached in case involving alleged misleading advertising of Enviga drink); Vaughn v. L.A. Fitness International LLC, No. 10-cv-2326 (E.D. Pa.) (claims made settlement in class action relating to failure to cancel gym memberships and improper billing); In re Chickie's & Pete's Wage and Hour Litigation, Master File No. 12-cv-6820 (E.D. Pa.) (settled class action relating to failure to pay proper wage and overtime under FLSA).

Notable security fraud cases in which Mr. Fantini was principally involved include: *In re PSINet Securities Litigation*, No: 00-1850-A (E.D. Va.) (settlement in excess of \$17 million); *Ahearn v. Credit Suisse First Boston, LLC*, No: 03-10956 (D. Mass.) (settlement of \$8 million); and *In re Nesco Securities Litigation*, 4:01-CV-0827 (N.D. Okla.).

Mr. Fantini is currently representing the City of Chicago in an action against certain online travel companies, such as Expedia, Hotels.com, and others, for their failure to pay hotel taxes. He also represented the City of Philadelphia in a similar matter.

Prior to joining Berger & Montague, Mr. Fantini was a litigation associate with Dechert LLP. At George Washington University Law School, he was a member of the Moot Court Board.

#### Phyllis Maza Parker - Shareholder

Phyllis Maza Parker is a shareholder at Berger & Montague. She concentrates her practice primarily on complex securities litigation, representing both individual and institutional investors such as pension funds in a broad range of class actions alleging violation of the antifraud provisions of the federal securities laws, including cases alleging market manipulation.

Among her notable achievements on behalf of investors, Ms. Parker served on the team as co-lead counsel for the Class in *In re Xcel Energy, Inc. Securities Litigation* (D. Minn.), which settled for \$80 million. She served as co-lead counsel in *In re Reliance Group Holdings, Inc. Securities Litigation* (\$15 million settlement); *In re The Loewen Group, Inc. Securities Litigation* (\$6 million settlement); as the lead counsel in *In re Veeco Instruments Inc. Securities Litigation* (\$5.5 million settlement reached on the eve of trial); as co-lead counsel in *In re Nuvelo, Inc. Securities Litigation* (\$8.9 million settlement); and as co-lead counsel in *Coady v. Perry, et al.* (*In re IndyMac Bancorp, Inc.*) (\$6.5 million settlement). In approving the settlement and award of attorney fees at the close of the *Veeco* case in which Berger & Montague was sole lead counsel for the Class, the Court remarked: "This was a hard-fought battle. It was a well and at times bitterly litigated case. Plaintiff's counsel was tenacious."

Ms. Parker earned a B.A. cum laude from Yeshiva University, an M.A. in French and Romance Philology from Columbia University, and an M.S. in Management from Boston University-Brussels, Belgium. She received her J.D. cum laude from Temple University Beasley School of Law where she was a member of the Temple Law Review. She published a Note on the subject of the Double Jeopardy Clause and the Federal Sentencing Guidelines in the *Temple Law Review*, Vol. 67, No. 4 (1994) which has been cited by one court and a number of legal journals.

After her first year of law school, Ms. Parker interned with the Honorable Dolores K. Sloviter of the Third Circuit Court of Appeals. Following law school, Ms. Parker served as law clerk to the Honorable Murray C. Goldman of the Philadelphia Court of Common Pleas. Among other bar memberships, Ms. Parker is admitted to the Bar of the U.S. Supreme Court. She is fluent in Hebrew and French.

#### **Senior Associate**

#### **Eugene R. Tompkins - Senior Associate**

Mr. Tompkins is a senior associate in Berger & Montague's Commercial Litigation practice group. He concentrates on complex, technically-oriented disputes and business-related matters under antitrust, securities and corporate governance areas of federal and state law. His prior experience in numerous facets of the international transportation and oil and gas industries complements his efforts in many of the areas encountered in increasingly complex litigation.

Mr. Tompkins is a graduate of Temple University of Law, J.D. (1987), New York University Graduate School of Business Administration, M.B.A. – Finance, summa cum laude (1974) and the United States Merchant Marine Academy, B.S. – M.E., magna cum laude (1971).

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## EXHIBIT 7C

## UNITED STATES DISTRICT COURT DISTRICT OF NEW HAMPSHIRE

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

No. 1:14-cv-00443-JL

Plaintiff,

v.

**ECF CASE** 

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.

# DECLARATION OF KAREN HANSON RIEBEL IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES FILED ON BEHALF OF LOCKRIDGE GRINDAL NAUEN P.L.L.P.

- I, Karen Hanson Riebel, hereby declare under penalty of perjury as follows:
- 1. I am a partner of the law firm of Lockridge Grindal Nauen P.L.L.P., additional Plaintiffs' Counsel in the above-captioned action (the "Action"). I submit this declaration in support of Lead Counsel's application for an award of attorneys' fees in connection with services rendered in the Action, as well as for reimbursement of Litigation Expenses incurred in connection with the Action. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

<sup>&</sup>lt;sup>1</sup> All capitalized terms used herein that are not otherwise defined herein shall have the meanings provided in the Stipulation and Agreement of Settlement with Individual Defendants and the Stipulation and Agreement of Settlement with Settling Underwriter Defendants (as amended), both of which were filed with the Court on January 26, 2018. *See* ECF No. 178-1, 178-2. 527774.1

- 2. My firm serves as Plaintiffs' Counsel of record in the Action and we represent named plaintiff Vance K. Opperman. The tasks undertaken by my firm in the Action can be summarized as follows: initial research prior to filing Mr. Opperman's complaint and work with lead counsel on various pleadings.
- 3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by attorneys and professional support staff employees of my firm who, from inception of the Action through and including May 18, 2018, billed ten or more hours to the prosecution and settlement of the claims asserted against the Settling Defendants in the Action, and the lodestar calculation for those individuals based on my firm's current billing rates. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended on this application for fees and reimbursement of expenses has not been included in this request.
- 4. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 1 are the same as the regular rates charged for their services in non-contingent matters and/or which have been accepted in other securities or shareholder litigation.
- 5. The total number of hours reflected in Exhibit 1 is 171.00. The total lodestar reflected in Exhibit 1 is \$115,231.25, consisting of \$111,431.25 for attorneys' time and \$3,800.00 for professional support staff time.
- 6. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

- 7. As detailed in Exhibit 2, my firm is seeking reimbursement for a total of \$2,800.78 in Litigation Expenses incurred from inception of the Action through and including May 18, 2018.
- 8. The Litigation Expenses reflected in Exhibit 2 are the actual incurred expenses or reflect "caps" based on the application of the following criteria:
  - (a) In-Office Working Meals Capped at \$20 per person for lunch and \$30 per person for dinner.
    - (b) Internal Copying/Printing Charged at \$0.10 per page.
- 9. The Litigation Expenses incurred in the Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.
- 10. With respect to the standing of my firm, attached hereto as Exhibit 3 is a brief biography of my firm and attorneys in my firm who were involved in the Action.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on the 18th day of May, 2018.

Karen Hanson Riebel

Levy v. Gutierrez, et al. Case No. 1:14-cv-00443-JL

#### LOCKRIDGE GRINDAL NAUEN P.L.L.P.

#### TIME REPORT

Inception through and including May 18, 2018

		HOURLY	
NAME	HOURS	RATE	LODESTAR
Partners			
Richard A. Lockridge	35.50	\$900.00	\$31,950.00
Charles N. Nauen	10.50	\$850.00	\$8,925.00
Karen H. Riebel	38.75	\$780.00	\$30,225.00
Gregg M. Fishbein	27.50	\$780.00	\$21,450.00
Associates			
Kate M. Baxter-Kauf	39.75	\$475.00	\$18,881.25
Paralegals			
Carey R. Johnson	19.00	\$200.00	\$3,800.00
TOTALS	171.00		\$115,231.25

Levy v. Gutierrez, et al. Case No. 1:14-cv-00443-JL

#### LOCKRIDGE GRINDAL NAUEN P.L.L.P.

#### **EXPENSE REPORT**

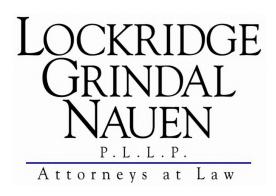
Inception through and including May 18, 2018

CATEGORY	AMOUNT
Consulting Fees (Local Counsel)	\$2,477.50
Messenger Services	\$59.00
Online Legal Research	\$62.93
Photocopy/Print/Facsimile	\$19.05
Postage	\$0.69
Publication Fee	\$180.00
Telephone	\$1.61
TOTAL EXPENSES:	\$2,800.78

Levy v. Gutierrez, et al. Case No. 1:14-cv-00443-JL

#### LOCKRIDGE GRINDAL NAUEN P.L.L.P.

#### FIRM RESUME



Founded in 1978, Lockridge Grindal Nauen P.L.L.P. has extensive experience in complex litigation of all types, including health care, consumer, antitrust, securities, data breach, data privacy, environmental, employment, commercial, intellectual property, and telecommunications law. Our clients include individual consumers, pension funds, unions, agribusinesses, business enterprises, banks, local governments, trade and industry associations, real estate developers, telecommunications providers, health care professionals, casualty insurers, publishers and authors, and a major computer manufacturer and retailer.

Lockridge Grindal Nauen attorneys are assisted by more than 20 paralegals and government relations specialists, and an extensive support staff. The firm has offices in Minneapolis, Minnesota, North Dakota and Washington, D.C.

With respect to experience, Lockridge Grindal Nauen is one of the preeminent class action law firms in the country, has vast experience representing banks, financial institutions, shareholders, and other institutional investors in complex litigation, and has

extensive experience litigating cases in Minnesota and across the country.

#### Richard A. Lockridge

Richard A. Lockridge is a partner in Lockridge Grindal Nauen P.L.L.P. He is a graduate of the University of Iowa Law School (J.D., with high distinction, 1974) where he served as Managing Editor of the *Iowa Law Review*. Thereafter, from 1974 to 1976, he served as a law clerk to the Honorable Myron H. Bright of the United States Court of Appeals for the Eighth Circuit. From 1976 to 1978, he handled civil litigation as a Minnesota Special Assistant Attorney General.

During his forty years of practice, Mr. Lockridge has been continuously active in class action and other complex litigation. Mr. Lockridge was co-lead defense counsel for the target defendant in *Mid-State Oil v. Simonson Oil* (price fixing) Civil No. A3-79-18 (D.N.D.); plaintiff's counsel in *Superlines Co. v. E.W. Wylie Corp.*, 1981-2 Trade Cases (CCH) (D. Minn. 1981); and one of the defense counsel in *Ray Adduono v. World Hockey Association*, Master File No. 3-82-586 (D. Minn.).

Mr. Lockridge spent one year in Houston, Texas working on the trial of the *Corrugated Container Antitrust Litigation*, MDL No. 310 (S.D. Tex.), a case which resulted in one of the largest verdicts (in excess of \$1 billion) ever awarded by a jury in antitrust litigation. He was also part of the plaintiffs' trial team for *In re High Pressure Laminates Antitrust Litigation*, MDL No. 1368 (S.D.N.Y.), which was tried in the Southern District of New York; a case in which settlements totaled over \$40 million.

Mr. Lockridge also was one of the attorneys who successfully represented West Publishing Company in a monopolization and attempted monopolization case brought by West

against Mead Corporation (the then owner of "LEXIS"), and in a monopolization and attempted monopolization case brought by Mead against West (the "LEXIS v. Westlaw" antitrust cases).

#### **Charles N. Nauen**

Charles N. Nauen has over thirty-five years of environmental and business litigation experience and trial practice in federal, state, and administrative courts. He represents many government, business, and political entities.

Mr. Nauen was co-lead counsel for Minnesota Governor Mark Dayton in the 2010 gubernatorial election recount and he represented a group of individual voters in an effort to have their absentee ballots counted in connection with the 2008 senatorial election recount of U.S. Senator Al Franken.

He has been named a "Super Lawyer" every year since 1994 and was recognized as one of the Top 100 Minnesota Super Lawyers in 2010, 2013-2016. He was also named a 2011 Attorney of the Year by *Minnesota Lawyer* and a 2010, 2012 and 2017 Minneapolis Lawyer of the Year for Environmental Law or Litigation by *Best Lawyers*.

Mr. Nauen received the 2016 Eldon G. Kaul Distinguished Service Award recognizing him for significant commitment and outstanding contribution to Environmental, Natural Resources or Energy Law in the state of Minnesota. Mr. Nauen received the Sidney Barrows Lifetime Commitment Award from the Twin Cities Cardozo Society at their 17th annual dinner recognizing his service to the legal and Jewish communities.

Mr. Nauen has served as an adjunct professor of environmental law at the University of Minnesota Law School since 1991. He is admitted to practice in Minnesota Wisconsin and South Dakota, and the U.S. District Courts for the Districts of Minnesota, Colorado, South Dakota, the Eastern and Western Districts of Wisconsin, and Central District of Illinois, as well

as the United States Court of Appeals for the Eighth, Eleventh and Federal Circuits and the United States Supreme Court.

#### Karen H. Riebel

Karen Hanson Riebel is a partner in Lockridge Grindal Nauen P.L.L.P. A 1991 dual-degree program graduate (J.D., B.A., *cum laude*) from the Boston University School of Law and the Boston University College of Liberal Arts, Ms. Riebel joined the firm in 1992.

During her tenure at the firm, Ms. Riebel has been active in class action, consumer fraud, data breach, data privacy, securities, antitrust, and other complex litigation. Ms. Riebel was a member of the team of lawyers that tried the *In re ICN/Viratek Securities Litigation* in the Southern District of New York before the Honorable Kimba Wood. The case was settled for \$14.5 million after the jury returned a partial verdict.

In 1994, Ms. Riebel spent seven months in Anchorage, Alaska, as a member of the trial team that secured a jury verdict for punitive damages in the amount of \$5 billion for a mandatory punitive damages class in *In re The Exxon Valdez*, Case No. A89-0095-CV (D. Alaska). For their efforts, Ms. Riebel and the other members of the trial team were awarded the Trial Lawyers' For Public Justice Trial Lawyers of the Year award in 1994. In addition, Ms. Riebel was extensively involved in the administration and evaluation of the more than 50,000 claims submitted in that litigation.

Currently, Ms. Riebel is working on the forefront of data breach litigation in the United States. She serves as Co-Lead Counsel for financial institution plaintiffs in *In re Arby's Restaurant Group, Inc. Data Security Litigation*, 17-00514 (N.D. Ga.); and on the Executive Committees for financial institution plaintiffs in *In re Home Depot, Inc., Customer Data Security Breach Litig.*, No. 14-02583-TWT (N.D. Ga.), *Bellwether Community Credit Union v. Chipotle* 

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Mexican Grill, Inc., 17-01102 (D. Co.), Veridian Credit Union v. Eddie Bauer LLC, No. 17-00356 (W.D. Wa.), Shores et al v. Premera Blue Cross, No. 15-01268 (D. Or.), First Choice Federal Credit Union et al. v. The Wendy's Company et al., No. 16-00506 (W.D. PA), and In re Equifax, Inc. Customer Data Security Breach Litigation, 17-02800, MDL 2800 (N.D. GA). In addition, Ms. Riebel was appointed as co-lead counsel for plaintiffs in In re Community Health Systems, Inc., Customer Security Data Breach Litig., No. Civil No. 15-00222, MDL 2595 (N.D. Ala.) and Dittman, et al. v. UPMC, No. GD-14-003285 (Allegheny Cty., Pa.), and to the four member Executive Committee for plaintiffs in In re Yahoo! Inc. Customer Data Security Breach Litigation, No. 16-02752 (N.D. CA).

Ms. Riebel is admitted to practice before the United States Court of Appeals for the Eighth Circuit, the United States Court of Appeals for the Third Circuit, and the federal and state courts of Minnesota. She was a member of the United States District Court for the District of Minnesota's ECM/ECFE Advisory Committee, has served as an officer of the National Association of Shareholder and Consumer Attorneys (NASCAT) since 2007, is a member of the Board of Advisors for the Page Education Foundation, and is a member of the Board of Directors of Project for Pride in Living.

#### Gregg M. Fishbein

Gregg M. Fishbein is a partner in the Lockridge Grindal Nauen P.L.L.P. firm. He is a 1989 graduate (J.D., *with honors*) of Drake University Law School. He graduated from the University of Northern Iowa (B.A. Accounting) in 1986 and is a Certified Public Accountant. He was admitted to the bar in 1989, Minnesota, U.S. District Court, District of Minnesota and United States Tax Court. He is also admitted to the bar for United States Court of Appeals for the First, Sixth and Eighth Circuits and to the United States Supreme Court. He is a member of

the Minnesota State Bar Association and Hennepin County Bar Association.

Since joining the firm in July of 1994, Mr. Fishbein has specialized in class action and other complex commercial litigation. During the past twenty-three years of practice, he has been continuously active in class and complex litigation, including representation of plaintiff classes. He was on the trial team in *Rainforest Café, Inc. v. State of Wisconsin Investment Board, et al.*, a shareholder rights action tried in the State Court of Minnesota on behalf of the State of Wisconsin Investment Board, Central Florida Investments, and 70 other former investors in the Rainforest Café. Mr. Fishbein was also part of the team that assisted plaintiffs' lead counsel in the *In Re Worldcom Securities Litigation*, a case that settled for over \$6.1 billion. Mr. Fishbein is currently representing shareholders of Medtronic, Inc. and Johnson Controls, Inc. who were required to pay significant capital gains taxes as a result of tax inversions with Irish entities. He also represents a number of institutional entities that are involved in proceedings under Minnesota's Trust Instruction Proceedings statute.

#### Kate M. Baxter-Kauf

Kate M. Baxter-Kauf is an associate with Lockridge Grindal Nauen P.L.L.P. She is a 2011 graduate of the University of Minnesota Law School (J.D., *magna cum laude*, Order of the Coif) and a 2007 graduate of Macalester College (B.A., *magna cum laude*). During law school, she served as an Articles Editor for the *Minnesota Law Review*, and as a law clerk at the firm from 2009-2011. Thereafter, she served as a law clerk to the Honorable Associate Justices Alan C. Page, Helen M. Meyer, and Christopher J. Dietzen of the Minnesota Supreme Court during the 2011-2012 Court Term. She is a member of the Federal Bar Association, Minnesota State Bar Association, Hennepin County Bar Association, and Minnesota Women Lawyers. She currently serves as Chair of the Minnesota Urban Debate League Young Professionals Board, in

addition to other pro bono and volunteer activities. In 2015, she was named one of Minnesota's Rising Stars by Minnesota Law & Politics Magazine. Ms. Baxter-Kauf was admitted to the bar in October 2011, and is admitted to practice before Minnesota state and federal courts.

Ms. Baxter-Kauf's practice is concentrated in the firm's data breach, antitrust law, business litigation, and securities litigation practice groups.

## EXHIBIT 7D

## UNITED STATES DISTRICT COURT DISTRICT OF NEW HAMPSHIRE

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

No. 1:14-cv-00443-JL

Plaintiff,

v.

**ECF CASE** 

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.

# DECLARATION OF MICHAEL S. ETKIN IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES FILED ON BEHALF OF LOWENSTEIN SANDLER LLP

- I, Michael S. Etkin, hereby declare under penalty of perjury as follows:
- 1. I am a partner of the law firm of Lowenstein Sandler LLP ("Lowenstein"). I submit this declaration in support of Lead Counsel's application for an award of attorneys' fees in connection with services rendered in the Action, as well as for reimbursement of Litigation Expenses incurred in connection with the Action. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.
- 2. My firm acted as bankruptcy counsel for the Plaintiffs in this Action. The work performed by my firm for the benefit of the Class, through the direction and supervision of Lead

<sup>&</sup>lt;sup>1</sup> All capitalized terms used herein that are not otherwise defined herein shall have the meanings provided in the Stipulation and Agreement of Settlement with Individual Defendants and the Stipulation and Agreement of Settlement with Settling Underwriter Defendants (as amended), both of which were filed with the Court on January 26, 2018. See ECF No. 178-1, 178-2.

Counsel, included the following tasks in connection with the GT Advanced Technologies Inc. Chapter 11 bankruptcy proceeding pending in this District, In re GT Advanced Technologies Inc., et al., Case No. 14-11916-HJB (D.N.H. Bankr.): monitoring of the Chapter 11 proceeding, review pleadings potentially relevant to the Class, its claim and the claims of individual named plaintiffs and prepare and file objections where necessary, prepare proofs of claim on behalf of the Class and named plaintiffs, review documents relevant to SEC investigation, review issues and pleadings related to D&O insurance coverage, review the Debtor's proposed plan of reorganization and disclosure statement and numerous supporting and related pleadings and documents, conduct legal research with respect to the plan, disclosure statement and related documents, prepare substantive objections to the disclosure statement and plan of reorganization, prepare notice to potential class members accompanying solicitation package for the plan, preparation for and attendance at relevant hearings at United States Bankruptcy Court for the District of New Hampshire, both in person and via telephone, review and revise various versions of plan of reorganization based upon negotiations with the Debtor, communications via telephone and e-mail with counsel for the Debtors and counsel for the Creditors' Committee, and numerous communications via e-mail and telephone with Lead Counsel.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by attorneys and professional support staff employees of my firm who, from inception of the Action through and including December 12, 2017, billed hours to the prosecution and settlement of the claims asserted against the Settling Defendants in the Action, and the lodestar calculation for those individuals based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by my firm. The schedule

was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended on this application for fees and reimbursement of expenses has not been included in this request.

- 4. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 1 are the same as the regular rates charged for their services in non-contingent matters and/or which have been accepted in other securities or shareholder litigation.
- 5. The total number of hours reflected in Exhibit 1 is 472.7. The total lodestar reflected in Exhibit 1 is \$394,542.00, consisting of \$394,490.00 for attorneys' time and \$52.00 for professional support staff time.
- 6. My firm's lodestar figures are based upon the firm's current billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.
- 7. As detailed in Exhibit 2, my firm is seeking reimbursement for a total of \$1,863.28 in Litigation Expenses incurred from inception of the Action through and including May 18, 2018.
- 8. The Litigation Expenses reflected in Exhibit 2 are the actual incurred expenses or reflect "caps" based on the application of the following criteria:
  - (a) In-Office Working Meals Capped at \$20 per person for lunch and \$30 per person for dinner.
    - (b) Internal Copying/Printing Charged at \$0.10 per page.
- 9. The Litigation Expenses incurred in the Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.
  - 10. With respect to the standing of my firm, attached hereto as Exhibit 3 is a brief

biography of my firm and attorneys in my firm who were involved in the Action.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed

on the 23 day of May, 2018.

Michael S. Etkin

Levy v. Gutierrez, et al. Case No. 1:14-cv-00443-JL

#### LOWENSTEIN SANDLER PC

#### TIME REPORT

Inception through and including May 18, 2018

NAME	HOURS	HOURLY RATE	LODESTAR
Partners			
Michael S. Etkin	225.20	\$1,005.00	\$226,326.00
Counsel		<del>                                     </del>	
Andrew Behlmann	247.30	\$680.00	\$168,164.00
Paralegals		+	
Zoraida Michaud	.20	\$260.00	\$52.00
TOTALS	472.7		\$394,542.00
			0071,012100

Levy v. Gutierrez, et al. Case No. 1:14-cv-00443-JL

#### LOWENSTEIN SANDLER PC

#### **EXPENSE REPORT**

Inception through and including May 18, 2018

CATEGORY	AMOUNT	
Messenger and delivery charges	\$ 91.40	
Printing and Duplicating Services - Internal	61.56	
Meals	55.25	
Bulk rate/special postage	41.02	
Professional services	110.38	
Computerized legal research	283.62	
Telecommunications	392.79	
Travel	827.26	
TOTAL BILLED AND UNBILLED DISBURSEMENTS	\$1.863.28	

Levy v. Gutierrez, et al. Case No. 1:14-cv-00443-JL

#### LOWENSTEIN SANDLER PC

FIRM RESUME



### Bankruptcy, Financial Reorganization & Creditors' Rights

Our lawyers are in demand by business leaders, credit managers, financial advisors, and restructuring professionals seeking a resourceful, aggressive, well-connected bankruptcy team. We understand how to reach a settlement yet have a strong track record at trial. We represent debtors, creditors' committees, individual parties, and trustees in Chapter 11 proceedings throughout the United States.

A reorganization may be the most practical and promising strategy for a troubled company. We advise on prepackaged and prenegotiated plans, which implement quick restructurings that might otherwise take years to complete. We also counsel debtors, creditors, and financial institutions in nonjudicial debt restructurings or workouts involving publicly and privately held companies.

In some instances, a business is not in distress but wishes to retire debt at a discount, restructure operations, or recapitalize. Our lawyers work with healthy companies seeking creative techniques to achieve specific business goals.

A company's fiscal difficulty affects various other parties, such as those who have provided loans, supplied goods and services, or invested capital. We represent official and unofficial creditors' committees and equity committees in diverse Chapter 11 and other insolvency matters. We collaborate with commercial and investment banks, savings institutions, mutual funds, and other financial firms in their management of troubled credit. Our lawyers also advise clients who are interested in buying assets from Chapter 11 debtors. We structure and secure bankruptcy court approval of debtor-in-possession financing, represent lenders in exploring and establishing these and other financing opportunities, and represent asset purchasers.

When appropriate, we consult with the firm's corporate and tax groups to structure transactions that minimize future complications and liability, and to avoid the domino effect that one bad deal can have on a company's overall well-being. We also advise on the significant bankruptcy aspects of various transactions, including commercial finance transactions, as well as on mergers, acquisitions, and divestitures of solvent, insolvent, and other highly leveraged companies. Our lawyers are involved in large and complex commercial, industrial, and residential real estate insolvencies, and they assist companies in emerging from bankruptcy with controlled environmental liabilities.

We also prosecute and defend all types of litigation related to bankruptcy proceedings. We are noted for representing the interests of shareholders and investors in securities fraud class actions against corporate defendants that are in bankruptcy. Such representation helps protect a class of creditors that generally receives little or no recovery in Chapter 11 reorganizations or liquidations.

#### **EXPERIENCE**

#### **Representative Creditors' Committees**

- > Lily Robotics
- > Vitamin World
- Verso-NewPage
- > CST Industries
- > Standard Register
- > Coldwater Creek
- > Borders Bookstores
- Gander Mountain
- > Gulf Chemical & Metallurgical
- Crumbs Bake Shop
- > Interstate Bakeries (Hostess Brands)
- > Horsehead Holding
- > Exide Technologies
- > Xtera Communications
- > Noranda Aluminum
- > Malibu Lighting
- > Liberty Medical Supply

- > Draw Another Circle (Hastings Entertainment)
- > Nebraska Book Company

#### **Representative Debtors**

- > Binder & Binder
- > Dots Stores
- > Mountain Creek Resort
- > East Orange General Hospital
- > New York City Opera
- Big M (Mandee, Annie Sez)
- > RoomStore
- > Love Culture Stores
- > Admiral Wine & Liquor Distributors
- > Coach America
- > Daytop Village
- > New Century Transportation
- > Earth Color Printing
- > Newark Group
- > ConnectEDU
- > Strauss Discount Auto

#### Other Representations

- > Hanjin Shipping: counsel to several container companies, terminal operators, and railway carrier
- > Archer Danlels Midland: creditors' rights counsel to company
- > BGI (Borders): counsel to liquidating trust
- > Marvel Comics: counsel to litigation trustee
- > Penguin Random House: creditors rights counsel to company
- > Imerys: creditors' rights counsel to company
- > Bristol-Myers Squibb: creditors' rights counsel to company
- > International Paper: creditors' rights counsel to company

#### **HONORS & AWARDS**

- > The Best Lawyers in America (2012-2018)
- New Jersey Super Lawyers (2005-2018)
  Recognized for work in Bankruptcy: Business
- > The M&A Advisor: Turnaround Awards (2014)
- > Legal Services of New Jersey: Equal Justice Award (2006)





### Michael S. Etkin

Partne

New Jersey T: +1 973.597.2312 | F: +1 973.597.2313 metkin@lowenstein.com

A senior bankruptcy practitioner and commercial litigator, Mickey brings significant experience to his practice, which focuses on complex business reorganizations, investor litigation in a bankruptcy context, and high-stakes Chapter 11 issues. Mickey is consistently recognized by *Chambers USA* as "a strong lawyer," "fantastic," "very plugged in," and "instrumental in providing tactical advice," noting his skill in "anticipating all the key issues that are likely to arise," Clients have commended his "technical knowledge, attention to detail, and honest and straightforward legal advice."

A key member of the firm's successful bankruptcy and complex business litigation practices, Mickey has represented debtors, trustees, creditors, and investors in a variety of noteworthy bankruptcies and bankruptcy-related litigation. He currently represents a number of institutional shareholder and investor interests in several large and complex Chapter 11 proceedings, including cross-border insolvencies such as Performance Sports Group, Adeptus Health, Novation/NovaStar, SandRidge Energy, Lehman Brothers, Nortel, and SFX Entertainment, among others. He also represents debtors and purchasers in acquisitions of assets of Chapter 11 and Chapter 7 bankruptcy estates.

In addition, Mickey represents major energy companies in connection with bankruptcy proceedings involving their customers and counterparties. He has been invited to speak before financial institutions, bar association groups, and credit associations regarding the rights of counterparties to derivatives and other energy-related contracts in a bankruptcy context, including cutting-edge issues emerging from the Lehman Brothers Chapter 11 and SIPC proceedings. Mickey also is routinely asked to speak at programs discussing the rights of securities fraud claimants and class action plaintiffs in a Chapter 11 context and on the interplay between bankruptcy law and product liability litigation.

#### **NEWS & INSIGHTS**

#### **Publications**

> May 8, 2017

"Fisker Decision Further Demonstrates that Section 510(b) Subordination of Investor Claims Is Not Absolute," Bankruptcy, Financial Reorganization & Creditors' Rights Client Alert

Michael S. Etkin, Nicole Fulfree

> 2015

"Third-Party Releases? - Not So Fast! Changing Trends and Heightened Scrutiny," AIRA Journal, Vol. 29 No. 3 Michael S. Etkin, Nicole Fulfree

#### **Press Mentions**

> February 14, 2018

Michael S. Etkin is quoted in Law 360 from his argument in the pending bankruptcy case of Millennium Lab Holdings II LLC where our client, Voya Investment Management and other opt-out lenders, objected to the closing of the Chapter 11 case because of the pendency of Voya's appeal of the confirmation order.

> November 7, 2017

Michael S. Etkin is quoted in Law360 regarding his representation as bankruptcy counsel of a putative class of 2.2 million patients in connection with the 2015 data breach involving bankrupt cancer treatment center operator 21st Century Oncology that exposed their personal health information. Etkin represents the putative class of patients, which argued, among other things, that the automatic bankruptcy stay be lifted in order allow the data breach litigation pending in Florida to go forward with any recovery limited to available insurance coverage or, in the alternative, that the class proof of claim filed on behalf of the putative class be allowed to proceed in bankruptcy court.

> September 26-28, 2017

As bankruptcy counsel to lead plaintiffs in the securities litigation and the bankruptcy proceedings involving Adeptus Health Inc., Michael S. Etkin is quoted from the trial and oral arguments in Reorg Research regarding the Adeptus Health confirmation hearing. The primary confirmation issues were the standards for substantive consolidation and the impact of the U.S. Supreme Court's 2017 Jevic decision and other relevant case law on a settlement with the equity committee contained in the plan of reorganization.

> August 25, 2017

Michael S. Etkin is highlighted in Reorg Research, speaking on behalf of the proposed lead plaintiffs in the securities litigation proceedings involving Adeptus Health Inc. Etkin spoke at a status conference about his concerns regarding the announcement of an agreement between the equity committee, the unsecured creditors' committee, prepetition

lender Deerfield, and the debtors.

> March 30, 2017

Michael S. Etkin is quoted in The Street about the implications of the Chapter 11 filing of Westinghouse Electric Co., including the impact on its parent company, Toshiba

> January 11, 2017

Michael S. Etkin is quoted in Law360 regarding the decision by the bankruptcy court in the Fisker Automotive Chapter 11 case in favor of our clients overruling the objections to claims based upon the mandatory subordination provisions of the Bankruptcy Code. Our clients purchased membership units of a non-debtor special purpose vehicle which itself invested in the preferred stock of Fisker Automotive. Etkin, representing these membership unit purchasers in the bankruptcy proceedings of the electric car maker, argued that the claims of these creditors against Fisker should not be subordinated and junior to all other unsecured creditor claims. In a 21-page opinion, the court agreed.

> January 4, 2017

Michael S. Etkin comments in Law360 about the U.S. Trustee's objection to confirmation of the plan of reorganization in the Caesars' Chapter 11 case, which focuses on the U.S. Trustee's role as independent watchdog and the propriety of the third-party releases under the plan.

> September 29, 2016

Michael S. Etkin is mentioned in Reorg Research regarding the approval of the SFX Entertainment debtors' disclosure statement, it was noted that Etkin, representing the securities plaintiffs, confirmed that while various disclosure statement objections were resolved by changes to the disclosure statement and plan of reorganization, he reserved all rights with respect to confirmation of the plan of reorganization and the confirmation hearing, scheduled for November 9, 2016.

March 16, 2016

Michael S. Etkin is quoted in Law360 from oral argument during the Chapter 11 bankruptcy proceedings of Molycorp. On behalf of defrauded shareholders, Etkin expressed concern that certain notice provisions in connection with the plan of reorganization failed to make purchasers of Molycorp stock aware of the debtor's attempt to release their claims against non-debtor defendants in pending securities litigation.

> March 8, 2016

Michael S. Etkin is quoted in Law360 regarding certain disclosure issues and the Chapter 11 plan in rare earth miner Molycorp's bankruptcy proceedings. Etkin is bankruptcy counsel to the court-appointed lead plaintiffs in the case.

> June 2015

Michael S. Etkin comments on the bankruptcy court's recent decision regarding the enforceability of the GM Chapter 11 sale order to enjoin certain claims associated with the well-publicized ignition switch defect in General Motors products. In the June issue of the **Turnarounds & Workouts** newsletter, Etkin doubts that the decision will have a broad effect on Chapter 11 cases in general given the uniqueness of the GM case.

> March 2015

Michael S. Etkin discusses the status of the restructuring landscape and factors affecting change in the year ahead in the March issue of the Turnarounds & Workouts newsletter,

> January 2, 2015

Michael S. Etkin comments in Debtwire regarding a recap of restructuring in 2014 and anticipated trends and issues to look for in 2015.

> November 2014

Michael S. Etkin is featured and recognized in IECA Insights, the newsletter of the International Energy Credit Association. Etkin's longtime involvement to the IECA spans over eight years, as, among other contributions, a speaker and a member of the Contracts and Legal Education Group Committee.

> July 14, 2014

Michael S. Etkin is quoted in Law360 from his oral argument before the Delaware Bankruptcy Court in connection with the objection of defrauded purchasers, who are plaintiffs in a federal securities class action suit, to the scope of the injunction sought by Furniture Brands International Inc. in its Chapter 11 liquidating plan. The Bankruptcy Court sustained that part of the objection. Etkin represents the lead plaintiff.

> May 15, 2014

Michael S. Etkin is quoted in The National Law Journal as objecting to the proposed scheduling order in the General Motors bankruptcy case relating to the ignition switch litigation and claims. Etkin, co-counsel of plaintiffs, requested more information about a proposal to stay the litigation, as well as adequate communication amongst lawyers with cases against GM.

#### SPEAKING ENGAGEMENTS

- International Energy Credit Association (IECA), Palm Desert, CA, March 21, 2017
- > International Energy Credit Association (IECA), New York, NY, April 10, 2016

#### **EDUCATION**

- > St. John's University School of Law (J.D. 1978), with honors
- > Boston University (B.S. 1975), cum laude

#### **ADMISSIONS**

- > New York
- > New Jersey

## EXHIBIT 7E

### UNITED STATES DISTRICT COURT DISTRICT OF NEW HAMPSHIRE

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

No. 1:14-cy-00443-JL

Plaintiff,

v.

**ECF CASE** 

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.

# DECLARATION OF JENNIFER A. EBER IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES FILED ON BEHALF OF ORR & RENO, P.A.

I, Jennifer A. Eber, hereby declare under penalty of perjury as follows:

1. I am of counsel at the law firm of Orr & Reno, P.A. My firm served as Local Counsel for Lead Plaintiff and the Settlement Classes in the above-captioned action (the "Action"). I submit this declaration in support of Lead Counsel's application for an award of attorneys' fees in connection with services rendered in the Action, as well as for reimbursement of Litigation Expenses incurred in connection with the Action. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

<sup>&</sup>lt;sup>1</sup> All capitalized terms used herein that are not otherwise defined herein shall have the meanings provided in the Stipulation and Agreement of Settlement with Individual Defendants and the Stipulation and Agreement of Settlement with Settling Underwriter Defendants (as amended), both of which were filed with the Court on January 26, 2018. *See* ECF No. 178-1, 178-2.

- 2. My firm, as Local Counsel, participated in, among other tasks (1) reviewed, analyzed, edited and provided feedback on pleadings; (2) involved in service of process issues; (3) filed pleadings; (4) consulted with Lead Counsel regarding case strategy; (5) interfaced with the Court clerk on case filing and hearings and transcripts; (6) advised Lead Counsel on local rules, practice and procedures; and (7) monitored and provided legal counsel regarding related bankruptcy proceeding.
- 3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by attorneys and professional support staff employees of my firm who, from inception of the Action through and including May 18, 2018, billed ten or more hours to the prosecution and settlement of the claims asserted against the Settling Defendants in the Action, and the lodestar calculation for those individuals based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended on this application for fees and reimbursement of expenses has not been included in this request.
- 4. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 1 are the same as the regular rates charged for their services in non-contingent matters and/or which have been accepted in other securities or shareholder litigation.
- 5. The total number of hours reflected in Exhibit 1 is 221.65. The total lodestar reflected in Exhibit 1 is \$75,651, consisting of \$75,148 for attorneys' time and \$503 for professional support staff time.
  - 6. My firm's lodestar figures are based upon the firm's billing rates, which rates do

not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

- 7. As detailed in Exhibit 2, my firm is seeking reimbursement for a total of \$735.67 (Total expenses incurred of \$3,609.45 with \$2,873.78 paid by Lead Counsel) in Litigation Expenses incurred from inception of the Action through and including May 18, 2018.
- 8. The Litigation Expenses reflected in Exhibit 2 are the actual incurred expenses or reflect "caps" based on the application of the following criteria:
- 9. The Litigation Expenses incurred in the Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.
- 10. With respect to the standing of my firm, attached hereto as Exhibit 3 is a brief biography of my firm and attorneys in my firm who were involved in the Action.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on the 18<sup>th</sup> day of May, 2018.

Jennifer A. Eber

Levy v. Gutierrez, et al. Case No. 1:14-cv-00443-JL

#### ORR & RENO, P.A.

#### TIME REPORT

Inception through and including May 18, 2018

		HOURLY	
NAME	HOURS	RATE	LODESTAR
Partners			
Jeffrey Spear, Esq.	13.00	\$300	\$3,900
	12.4	\$325	\$4,030
	17.0	\$350	\$5,950
Of Counsel			
Jennifer Eber, Esq.	174.80	\$350	\$61,180
Associates			
Nathaniel Morse, Esq.	.4	\$220	\$88
Paralegals			
Genevieve VanBeaver	2.8	\$135	\$378
Mary McFall	1.25	\$100	\$125
TOTALS			\$75,651

Levy v. Gutierrez, et al. Case No. 1:14-cv-00443-JL

#### ORR & RENO, P.A.

#### EXPENSE REPORT

Inception through and including May 18, 2018

CATEGORY	AMOUNT
Court Fees (filing, service of process, court	
stenographer, certified copies)	\$3,457.95
Postage & Express Mail (and travel)	\$127.06
Internal Copying (computer research)	\$24.44
TOTAL EXPENSES:	\$3,609.45

Levy v. Gutierrez, et al. Case No. 1:14-cv-00443-JL

ORR & RENO, P.A.

FIRM RESUME

### Orr&Reno

#### **ABOUT US**

#### **Our History:**

Orr & Reno has played an important role in New Hampshire's evolution and growth since 1946. Founders Dudley Orr and Bob Reno created a firm where some of the state's best legal minds work to provide transformational legal counsel. Their founding principles of providing the best legal advice, outstanding service and community support to individuals and businesses throughout the region continue to guide and inspire us to this day.

#### Who Are We?

- · We are highly educated, skilled and experienced attorneys.
- We strive for professional excellence, integrity and happy clients.
- We believe negotiation and collaboration bring you efficient and effective solutions, but we stand ready to litigate to protect our clients' interests.
- We proudly support our community and environment.
- We foster a collegial working environment that promotes teamwork.

#### Why should you work with us?

- We combine knowledge, experience and personal pride with a desire to make your experience with us positive and successful.
- We provide counsel that considers the legal, personal and professional aspects of your matter.
- You deserve the best; it is our goal to provide it.

#### **Giving Back**

Orr & Reno recognizes the importance of giving back to the community, both with contributions of money and commitments of time. Our attorneys are active on boards, committees and as volunteers in a variety of organizations throughout New Hampshire including:

- Capitol Center for the Arts
- Boys and Girls Club of Central New Hampshire
- Concord Hospital
- Greater Concord Chamber of Commerce
- Kimball-Jenkins School of Art
- New Hampshire Business Committee for the Arts
- New Hampshire Humanities Council
- New Hampshire Public Radio
- Red River Theatres
- United Way of Merrimack County

Our attorneys are also active participants in the New Hampshire Bar Association and American Bar Association, serving on committees that are designed to improve the quality and effectiveness of the legal profession. Clients benefit because our attorneys will always be at the forefront of their specialty area.

### Orr&Reno

#### **PRACTICES**

#### **Business & Commercial**

- · Business and Succession Planning
- Immigration
- Real Estate and Land Use
- Commercial Finance
- Employment
- Hospitality

- Intellectual Property and Technology
- Mergers and Acquisitions
- E-Commerce and Marketing
- Non-Profits
- Securities
- Taxation

#### Litigation

- Appeals
- Civil Rights and Discrimination
- Complex Commercial Litigation
- Criminal Defense
- Divorce and Family Law
- Employment Disputes
- Intellectual Property Disputes
- Legal Malpractice and Professional Conduct

- Media and First Amendment
- Medical Malpractice
- Occupational Safety and Health (OSHA)
- Personal Injury
- Property Disputes
- Trusts, Estates and Probate Disputes
- Zoning, Land Use and Tax Abatement

### Regulated Industries & Health Care

- Administrative Law
- Arbitration and Mediation
- Energy
- Environmental Law
- Governmental Relations

- Health Care Practices
- Insurance
- Telecommunications
- Utilities

#### **Personal & Families**

- Criminal Law
- Divorce and Family Law

- Immigration
- Trusts and Estates

Levy v. Gutierrez, et al. Case No. 1:14-cv-00443-JL

## BREAKDOWN OF PLAINTIFFS' COUNSEL'S LITIGATION EXPENSES BY CATEGORY

CATEGORY	AMOUNT
Service of Process	\$ 4,874.50
On-Line Legal Research	49,851.28
On-Line Factual Research	13,216.51
Postage & Express Mail	634.99
Messenger Services	150.40
Local Transportation	4,072.70
Court Fees	2,396.62
Internal Copying/Printing	2,848.86
Outside Copying	868.93
Out of Town Travel	1,904.96
Working Meals	5,083.09
Court Reporting & Transcripts	565.45
Experts	120,695.42
Mediation Fees	12,632.50
Special Publications/PSLRA Notice	3,721.42
Telephone	404.05
Local Counsel	2,477.50
Professional Services	110.38
Database Hosting	893.20
TOTAL EXPENSES:	\$227,402.76

USDC SDNY
DOCUMENT

L'ECTRONICALLY FILED

DOC #: ## 25/15

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE MF GLOBAL HOLDINGS LIMITED SECURITIES LITIGATION

Civil Action No. 1:11-CV-07866-VM

THIS DOCUMENT RELATES TO:

All Securities Actions (DeAngelis v. Corzine)

**ECF CASE** 

#### ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

This matter came on for hearing on November 20, 2015 (the "Settlement Hearing") on Co-Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses. The Court having considered all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that notice of the Settlement Hearing substantially in the form approved by the Court was mailed to all Settlement Class Members who or which could be identified with reasonable effort, and that a summary notice of the hearing substantially in the form approved by the Court was published in the *Wall Street Journal* and *Investor's Business Daily* and was transmitted over the *PR Newswire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and Litigation Expenses requested,

#### NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Joint Declaration of Salvatore J. Graziano and Javier Bleichmar in Support of: (I) Lead Plaintiffs' Motion for Final Approval of Class Action Settlements and Plan of Allocation, and (II) Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (ECF No.

- 1002) ("Joint Declaration") and all terms not otherwise defined herein shall have the same meanings as set forth in the Joint Declaration.
- 2. The Court has jurisdiction to enter this Order and over the subject matter of the Action and all parties to the Action, including all Settlement Class Members.
- 3. Notice of Co-Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses was given to all members of the Settlement Classes who could be identified with reasonable effort. The form and method of notifying the Settlement Class Members of the motion for attorneys' fees and expenses satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act of 1995 (15 U.S.C. § 78u-4(a)(7)), due process, and all other applicable law and rules, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.
- 4. Co-Lead Counsel are hereby awarded attorneys' fees in the amount of 19% of each of the Settlement Funds of the approved Settlements (the Underwriter Settlement, Commerz Settlement, PwC Settlement and Individual Defendant Settlement) and \$3,131,337.34 in reimbursement of litigation expenses (which expenses shall be paid from the Settlement Funds in proportion to the size of the Settlement Funds), which sums the Court finds to be fair and reasonable. Co-Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel in a manner which they, in good faith, believe reflects the contributions of such counsel to the institution, prosecution and settlement of the Action.
- 5. In making this award of attorneys' fees and reimbursement of expenses to be paid from the Settlement Funds, the Court has considered and found that:
- (a) The Settlements have created a total fund of \$204.4 million in cash that has been funded into escrow pursuant to the terms of the Settlements, and that numerous

Settlement Class Members who submit acceptable Claim Forms will benefit from the Settlements that occurred because of the efforts of Co-Lead Counsel;

- (b) The fee sought by Co-Lead Counsel has been reviewed and approved as fair and reasonable by Lead Plaintiffs, who are institutional investors that oversaw the prosecution and resolution of the Action;
- (c) Copies of the Notice were mailed to over 77,900 potential Settlement Class Members and nominees stating that Co-Lead Counsel would apply for attorneys' fees in the amount of 19% of the each of the Settlements and reimbursement of Litigation Expenses in an amount not to exceed \$5,200,000, and there were no objections to the requested attorneys' fees and expenses;
- (d) Co-Lead Counsel have conducted the litigation and achieved the Settlements with skill, perseverance and diligent advocacy;
  - (e) The Action raised a number of complex issues;
- (f) Had Co-Lead Counsel not achieved the Settlements there would remain a significant risk that Plaintiffs and the other members of the Settlement Classes may have recovered less or nothing from the Settling Defendants;
- (g) Plaintiffs' Counsel devoted over 109,000 hours, with a lodestar value of approximately \$47.9 million, to achieve the Settlements; and
- (h) The amount of attorneys' fees awarded and expenses to be reimbursed from the Settlement Funds are fair and reasonable and consistent with awards in similar cases.
- 6. Lead Plaintiff Virginia Retirement System is hereby awarded \$43,272.50 from the Settlement Funds as reimbursement for its reasonable costs and expenses directly related to its representation of the Settlement Classes.

- 7. Lead Plaintiff Her Majesty the Queen in Right of Alberta is hereby awarded \$45,650 from the Settlement Funds as reimbursement for its reasonable costs and expenses directly related to its representation of the Settlement Classes.
- 8. Named Plaintiff Government of Guam Retirement Fund is hereby awarded \$9,700 from the Settlement Funds as reimbursement for its reasonable costs and expenses directly related to its representation of the Settlement Classes.
- 9. Named Plaintiff West Virginia Laborers' Pension Trust Fund is hereby awarded \$18,100 from the Settlement Funds as reimbursement for its reasonable costs and expenses directly related to its representation of the Settlement Classes.
- 10. Named Plaintiff LRI Invest S.A. is hereby awarded \$6,825 from the Settlement Funds as reimbursement for its reasonable costs and expenses directly related to its representation of the Settlement Classes.
- 11. Named Plaintiff Jerome Vrabel is hereby awarded \$20,374 from the Settlement Funds as reimbursement for his reasonable costs and expenses directly related to his representation of the Settlement Classes.
- 12. Any appeal or any challenge affecting this Court's approval regarding any attorneys' fees and expense application shall in no way disturb or affect the finality of the Judgment.
- 13. Exclusive jurisdiction is hereby retained over the parties and the members of the Settlement Classes for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Stipulations and this Order.
- 14. In the event that any of the Settlements is terminated or the Effective Date of any of the Settlements otherwise fails to occur, this Order shall be rendered null and void to the extent provided by the Stipulations.

15. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

SO ORDERED this 2 day of Wormby

The Honorable Victor Marrero United States District Judge

#940338

SEP 27 2011

### UNITED STATES DISTRICT COURT DISTRICT OF NEW HAMPSHIRE

**FILED** 

IRVING S. BRAUN, individually and on behalf of all others similarly situated,

Plaintiff,

vs.

CIVIL ACTION NO. 1:08-CV-00312-JL
(MAIN CASE)

GT SOLAR INTERNATIONAL, INC., et al.,

The alarm Defendants.

PROPOSED ORDER AND FINAL JUDGMENT

On the 27° day of \_\_\_\_\_\_, 2011, a hearing having been held before this Court to determine: (a) whether the above-captioned federal securities class action (the "Action") satisfies the applicable prerequisites for class action treatment under Rule 23 of the Federal Rules of Civil Procedure; (b) whether the terms of the proposed settlement ("Settlement") described in the Stipulation of Settlement dated May 4, 2011 (the "Stipulation"), are fair, reasonable and adequate, and should be approved by the Court; (c) whether the proposed allocation of the Settlement Fund (the "Plan of Allocation") is fair and reasonable and should be approved by the Court; (d) whether the Order and Final Judgment as provided under the Stipulation should be entered, dismissing the Action on the merits and with prejudice, and to determine whether the release of the Released Claims as against the Released Persons, as set forth in the Stipulation, should be ordered; (e) whether the Fee and Expense Application should be approved; and (f) such other matters as the Court might deem appropriate; and

The Court having considered all matters submitted to it at the hearing held on \_\_\_\_\_\_\_, 2011 and otherwise; and

It appearing that a Notice of Proposed Settlement of Class Action, Motion for Attorneys' Fees and Reimbursement of Expenses and Settlement Fairness Hearing ("Notice") substantially in the form approved by the Order for Notice and Hearing dated May 13, 2011 was mailed to all persons and entities reasonably identifiable who purchased the common stock that is the subject of the Action, except those persons and entities excluded from the definition of the Class; and

It appearing that a Summary Notice of Pendency and Proposed Settlement of Class Action ("Summary Notice") substantially in the form approved by the Court in the Order for Notice and Hearing was published pursuant to the specifications of the Court, and that a website was used for further availability of the Notice to the Class;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

- The Court has jurisdiction over the subject matter of the Action,
   Plaintiffs, all Class Members and Defendants.
- 2. Unless otherwise defined herein, all capitalized terms used herein shall have the same meanings as set forth and defined in the Stipulation.
- 3. The Court finds that the prerequisites for a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of the Lead Plaintiff are typical of the claims of the Class it seeks to represent; (d) Lead Plaintiff fairly and adequately represents the interests of the Class; (e) the questions of law and fact common to the members of the Class predominate over any questions

affecting only individual members of the Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

- 4. The Court hereby finds that the Notice distributed to the Class provided the best notice practicable under the circumstances. The Notice provided due and adequate notice of these proceedings and the matters set forth herein, including the Settlement and Plan of Allocation of the Settlement Fund, to all persons and entities entitled to such notice, and the Notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, Section 27 of the Securities Act of 1933, 15 U.S.C. § 77z-1(a)(7), as amended by the Private Securities Litigation Reform Act of 1995, due process, and any other applicable law. A full opportunity has been offered to the Class Members to object to the proposed Settlement and to participate in the hearing thereon. Thus, it is hereby determined that all Class Members who did not timely elect to exclude themselves by written communication are bound by this Order and Final Judgment.
- 5. Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and for purposes of the Settlement only, the Court hereby certifies the Action as a class action on behalf of all persons or entities who purchased or otherwise acquired the common stock of GT Solar from the effective date of the Company's Registration Statement, through and including July 24, 2008, or who purchased or otherwise acquired the common stock of GT Solar pursuant or traceable to the Registration Statement, and who were damaged thereby. Excluded from the Class are Defendants and their affiliates; members of their immediate families and their legal representatives, heirs, successors or assigns; any entity in which Defendants have or had a controlling interest; and the current and former officers and directors of the Company. Also excluded from the Class are any

putative Class Members who have excluded themselves by filing a request for exclusion in accordance with the requirements set forth in the Notice; these persons and entities are listed on Exhibit A attached hereto.

- 6. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for purposes of the Settlement only, Lead Plaintiff is certified as the class representative and Lead Plaintiff's selection of Cohen Milstein Sellers & Toll PLLC as counsel for the Class is approved.
- 7. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Settlement is approved as fair, reasonable and adequate, and in the best interests of the Class. Lead Plaintiff and Defendants are directed to consummate the Settlement in accordance with the terms and provisions of the Stipulation.
  - 8. The Federal Action is hereby dismissed with prejudice and without costs.
- 9. Upon the Effective Date of this Settlement, Plaintiffs and members of the Class on behalf of themselves and each of their past or present subsidiaries, affiliates, parents, successors and predecessors, estates, heirs, trustees, executors, administrators, and their respective officers, directors, shareholders, employees, members, partners, assigns, agents, legal representatives, spouses and any persons they represent, shall, with respect to each and every Released Claim, release and forever discharge, and shall forever be enjoined from prosecuting, any Released Claims against any of the Released Persons.
- (a) "Released Claims" means any and all claims, rights or causes of action or liabilities whatsoever, direct, derivative, or otherwise, contingent or absolute, matured or unmatured, whether based on federal, state, local, statutory or common law or any other

law, rule or regulation, including both known and Unknown Claims (as defined below), that Plaintiffs or any other member of the Class (a) asserted in the operative Complaint or any other complaint in either the Federal or State Action, (b) could have asserted in any forum, that arise out of, are based upon, or relate in any way, directly or indirectly, to the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the operative Complaint or in any other complaint in either the Federal or State Action; or (c) could have asserted in any forum, that in any way relate to the purchase or acquisition of GT Solar common stock from the effective date of the Company's Registration Statement, through and including July 24, 2008. Released Claims does not include any present claims in the consolidated derivative action, Fan v. GT Solar Int'l, Inc., et al., No. 09-C-030, pending in New Hampshire state court, nor does it include any claims to enforce the Settlement.

- (b) "Released Persons" means each and all of Defendants and their Related Parties. "Related Parties" means each of Defendants' past or present subsidiaries, parents, affiliates, successors and predecessors, and their respective past or present officers, directors, shareholders, partners, members, principals, agents, employees, attorneys, insurers, spouses and any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any of the Defendants, and the legal representatives, heirs, successors in interest or assigns of the Defendants.
- 10. Upon the Effective Date of this Settlement, each of the Defendants and Related Parties, on behalf of themselves and each of their past or present subsidiaries, affiliates, parents, successors and predecessors, estates, heirs, executors, administrators,

and the respective officers, directors, shareholders, agents, legal representatives, spouses and any persons they represent, shall, with respect to each and every Settled Defendants' Claims, shall release and forever discharge each and every of the Settled Defendants' Claims, and shall forever be enjoined from prosecuting the Settled Defendants' Claims.

- 11. The Court finds that all Parties to the Action and their counsel have complied with each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings herein.
- 12. The Stipulation and all negotiations, statements, and proceedings in connection with the Settlement shall not, in any event, be construed or deemed to be evidence of an admission or concession on the part of Plaintiffs, the Defendants, any member of the Class, or any other person or entity, of any liability or wrongdoing by them, or any of them, and shall not be offered or received in evidence in any action or proceeding (except an action to enforce the Stipulation and the Settlement contemplated hereby), or be used in any way as an admission, concession, or evidence of any liability or wrongdoing of any nature, and shall not be construed as, or deemed to be evidence of, an admission or concession that Plaintiffs, any member of the Class, any present or former stockholder of GT Solar, or any other person or entity, has or has not suffered any damage, except that the Released Persons may file the Stipulation and/or this Order and Final Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

- 13. The Plan of Allocation is approved as fair and reasonable, and Lead Counsel and the Claims Administrator are directed to administer the Stipulation in accordance with its terms and provisions.
- attorneys' fees of heart heart (25%) of the Settlement Amount, plus interest at the same rate as earned by the Settlement Fund, which shall be paid out of the Settlement Fund. This award of attorneys' fees is reasonable, and represents a reasonable percentage of the Settlement Fund, in view of the applicable legal principles and the particular facts and circumstances of this action. The award of attorneys' fees shall be allocated among Plaintiffs' Counsel in a manner which, in the opinion and sole discretion of Lead Counsel, fairly compensates Plaintiffs' Counsel for their respective contributions to the prosecution of the action.
- 15. Lead Counsel, on behalf of itself and Plaintiffs' counsel, are awarded reimbursement of expenses in the aggregate amount of \$\frac{192/68.38}{}\), which shall be paid out of the Settlement Fund. These expenses are fair, reasonable, and were necessarily incurred in connection with the prosecution and settlement of this litigation.
- 16. The Claims Administrator is awarded \$ 3 \( \frac{919.91}{919.91} \) for fees and expenses accrued through August 23, 2011, which shall be paid out of the Settlement Fund.
- 17. State Action Plaintiff Joyce T. Hamel, in recognition of her efforts on behalf of the Class and as an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the [Settlement Class]" as provided for in 15 U.S.C. § 78u-4(a)(4), is awarded \$ 3,654.00, which shall be paid out of the

Settlement Fund. This award is reasonable and represents a fair and reasonable amount in view of the work performed, applicable legal principles, and benefit obtained for the Class.

- 18. The attorneys' fees, case contribution award, and expenses approved by the Court in ¶¶ 14-16 hereof shall be payable from the Settlement Fund to Lead Counsel, on behalf of itself, Plaintiffs' Counsel, and Plaintiffs immediately upon entry of this Order, notwithstanding the existence of any potential appeal or collateral attack on this Order.
- 19. Exclusive jurisdiction is hereby retained over the Parties and the Class Members for all matters relating to the Action, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Order and Final Judgment, and including any application for fees and expenses incurred in connection with administering and distributing the settlement proceeds to the Class Members.
- 20. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.
- 21. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered, including those certifying a settlement Class, and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

22. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

SIGNED this 27th day of Set

2011.

THE HONORABLE JOSEPH N. LAPLANTE UNITED STATES DISTRICT JUDGE

## UNITED STATES DISTRICT COURT DISTRICT OF NEW HAMPSHIRE

IRVING S. BRAUN, individually and on behalf of all others similarly situated,

Plaintiff,

VS.

CIVIL ACTION NO. 1:08-CV-00312-JL (MAIN CASE)

GT SOLAR INTERNATIONAL, INC., et al.,

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION <u>EXPENSES</u>

#### I. PRELIMINARY STATEMENT

Cohen Milstein Sellers & Toll PLLC ("Cohen Milstein" or "Lead Counsel"), the Courtappointed Lead Counsel for Lead Plaintiff, Arkansas Public Employees Retirement System ("APERS" or "Lead Plaintiff") and the Class (collectively, "Plaintiffs"), respectfully submits this memorandum of law in support of its petition (1) on behalf of Cohen Milstein; Bouchard, Kleinman and Wright PA ("Liaison Counsel"); and Scott & Scott, LLP ("State Plaintiff's Counsel" and collectively with Lead Counsel and Liaison Counsel, "Plaintiffs' Counsel"), pursuant to Rules 23(h) and 54(d)(2) of the Federal Rules of Civil Procedure, for an award of attorneys' fees and for reimbursement of expenses.

Through its litigation efforts, Lead Counsel has obtained a benefit of \$10,500,000 for the Class (the "Settlement Amount")<sup>2</sup> paid by Defendants. The Settlement Fund has been fully funded, has accrued interest since May 31, 2011, and represents the culmination of Lead Counsel's litigation efforts since this Court approved APERS' selection of Lead Counsel on October 29, 2008.<sup>3</sup>

As compensation for these successful efforts, Lead Counsel respectfully requests that the Court (1) award attorneys' fees to Plaintiffs' Counsel of twenty-five percent of the Settlement Amount, or \$2.625 million, plus interest on such fee at the same rate and for the same period as earned by the Settlement Fund; and (2) order reimbursement of Plaintiffs' Counsel's litigation

<sup>&</sup>lt;sup>1</sup> Counsel for the State Action Plaintiff, Joyce T. Hamel, also request a case contribution award to Ms. Hamel in the amount of \$3,643.

<sup>&</sup>lt;sup>2</sup> All capitalized terms are defined in the Stipulation of Settlement dated May 4, 2011. Dkt. No. 58-1.

<sup>&</sup>lt;sup>3</sup> The proposed Settlement, if approved by the Court, will result in the resolution of both this action and the substantially similar State Action. Accordingly, Lead Counsel includes in this petition information relevant to the fees and expenses of State Action Plaintiff's Counsel. State Action Plaintiff's Counsel will receive any fees and will be reimbursed any expenses as a result of this petition and will not seek further compensation in a separate petition from this Court or the state court.

## UNITED STATES DISTRICT COURT DISTRICT OF PUERTO RICO

RUSSELL HOFF, Individually and on Behalf: of All Others Similarly Situated, :

Civil Action No. 3:09-cv-01428-GAG (Consolidated)

Plaintiff,

**CLASS ACTION** 

VS.

ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

POPULAR INC., et al.,

Defendants.



This matter came before the Court for hearing on November 2, 2011 pursuant to the Order Preliminarily Approving Settlement and Providing for Notice dated June 20, 2011 (the "Preliminary Approval Order"), on the application of Co-Lead Counsel for an award of attorneys' fees and expenses in the above-captioned consolidated class action litigation (the "Action"). Due and adequate notice having been given to the Settlement Class as required in the Preliminary Approval Order, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

- 1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated June 10, 2011 (the "Settlement Agreement"), and all terms used herein shall have the same meanings as set forth in the Settlement Agreement, unless otherwise set forth herein.
- 2. This Court has jurisdiction over the subject matter of the Action and over all Parties to the Action, including all Class Members.
- 3. Notice of Co-Lead Counsel's motion for an award of attorneys' fees and expenses was given to all Class Members who could be identified with reasonable effort, and the form and method of notifying the Settlement Class was in compliance with the Preliminary Approval Order, and said notice met the requirements of Rule 23 of the Federal Rules of Civil Procedure, Section 27(a)(7) of the Securities Act of 1933, 15 U.S.C. §77z-1(a)(7), as amended by the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. §78u-4(a)(7), as amended by the PSLRA, and due process, and constituted the best notice practicable under the circumstance.

- 4. Plaintiffs' Counsel are hereby awarded 27% of the Settlement Fund in attorneys' fees, which sum the Court finds to be fair and reasonable, and \$435,416.15 in expenses plus interest thereon at the same rate and for the same period as earned by the Settlement Fund, to be paid from the Settlement Fund. The award of attorneys' fees shall be allocated among Plaintiffs' Counsel in a fashion which, in the opinion of Co-Lead Counsel, fairly compensates Plaintiffs' Counsel for their respective contributions to the prosecution of the Action.
- 5. In making this award of attorneys' fees and expenses to be paid from the Settlement Fund, the Court has considered and found that:
  - a. The Settlement has created a \$37.5 million Settlement Fund from which numerous Class Members who submit acceptable Proofs of Claim will benefit;
  - b. Over 65,000 copies of the Notice were disseminated to putative Class Members stating that Co-Lead Counsel were applying for attorneys' fees in an amount not to exceed twenty-seven percent (27%) of the Settlement Fund and for expenses in an amount not to exceed \$1,000,000 (plus interest) and no objections to the requested attorneys' fees and expenses were filed;
  - c. Plaintiffs' Counsel have conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;
  - d. The Action involves complex factual and legal issues and was actively prosecuted and, in the absence of a settlement, would involve further lengthy proceedings with uncertain resolution of the complex factual and legal issues;
  - e. Had Plaintiffs' Counsel not achieved the Settlement there would remain a significant risk that the Settlement Class may have recovered less or nothing from the Defendants; and

f. Plaintiffs' Counsel have devoted over 6,200 hours, with a lodestar value of

over \$3.23 million, to achieve the Settlement.

6. Any appeal or any challenge affecting this Court's award of attorneys' fees and

expenses shall in no way disturb or affect the finality of the Judgment entered with respect to the

Settlement.

7. The Court retains exclusive jurisdiction over the parties and the Class Members

for all matters relating to this Action, including the administration and the distribution of the

Settlement proceeds to the members of the Settlement Class.

8. If the Settlement is terminated or does not become Final or the Effective Date

does not occur pursuant to the terms of the Settlement Agreement, this Order shall be rendered

null and void to the extent provided by the Settlement Agreement, and shall be vacated in

accordance with the terms thereof.

9. There is no just reason for delay in the entry of this Order, and immediate entry by

the Clerk of the Court is expressly directed.

IT IS SO ORDERED

DATED: //- 2 - //

THE HONORABLE GUSTAVÓ A. GELPÍ

UNITED STATES DISTRICT JUDGE

#### UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

IN RE SEPRACOR INC. SECURITIES LITIGATION

C.A. No. 02-12235-MEL

THIS DOCUMENT RELATES TO: ALL ACTIONS

C.A. No. 02-12338-MEL

### [PEDD] FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

WHEREAS, two consolidated class actions are pending in this Court against Defendants, and styled *In re Sepracor Inc. Securities Litigation: Debt Purchasers Action*, C.A. No. 02-12235-MEL (the "Debt Purchasers Litigation") and *In re Sepracor Inc. Securities Litigation: Equity Securities Purchasers Consolidated Action*, C.A. No. 02-12338-MEL (the "Equity Securities Action"); and

WHEREAS, the Debt Purchasers Action and the Equity Securities Action, and all actions consolidated in the above-captioned matter, are collectively referred to as the "Action"; and

WHEREAS, pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil

Procedure and by Order dated September 8, 2005, as modified by the Stipulation and Order of

Notice of Pendency of Class Action, entered on April 13, 2006, this Court certified both the Debt

Purchasers Action and the Equity Securities Action to proceed as class actions, with Berger &

Montague, P.C. as Lead Counsel in the Debt Purchasers Action, Wolf Haldenstein Adler

Freeman Herz LLP as Lead Counsel in the Equity Securities Action, and Shapiro Haber & Urmy

LLP as Liaison Counsel in both the Debt Purchasers Action and the Equity Securities Action;

and

WHEREAS, this matter came before the Court for hearing pursuant to the Order of this Court, dated June 20, 2007, on the application of the parties for approval of the Settlement set forth in the Stipulation of Settlement dated as of June 15, 2007 (the "Stipulation"); and

WHEREAS, due and adequate notice having been given to the Debt Class and the Equity Class (defined in paragraph 3 below, and collectively referred to as the "Classes") as required in the said Order Granting Preliminary Approval to Class Settlement, entered on June 20, 2007, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefore;

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

- 1. This Judgment incorporates by reference the definitions in the Stipulation and all terms used herein shall have the same meanings as set forth in the Stipulation.
- 2. This Court has jurisdiction over the subject matter of the Action, and over all parties to the Action, including all Members of the Classes.
- 3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court previously certified the Debt Purchasers Action and the Equity Securities Action as class actions, as defined in the Order entered on April 13, 2006 and as follows:
  - (a) The Debt Class in the Debt Purchasers Action is defined as follows:

All persons or entities who purchased the convertible debt securities of Sepracor Inc. ("Sepracor") between May 17, 1999 and March 6, 2002 inclusive (the "Class Period") and were damaged thereby (the "Debt Class"). The three classes of Sepracor's debt securities are: (1) the 5% due in 2007, (2) the 5.75% due in 2006, and (3) the 7% due in 2005 (the "Debt Securities"). Excluded from the Debt Class are the defendants, members of the immediate family of each of the Individual Defendants, any parent, subsidiary, affiliate, officer or director of defendant Sepracor, any entity in which any excluded person has a controlling interest, and the legal representatives, heirs, successors, and assigns of any excluded person.

(b) The Equity Class in the Equity Securities Action is defined as follows:

All persons or entities who purchased the common stock or call options, or who sold put options ("Equity Securities"), of Sepracor Inc. ("Sepracor") on the open market between May 17, 1999 and March 6, 2002 inclusive (the "Class Period") and suffered damages (the "Equity Class"). Excluded from the Equity Class are the defendants, members of the immediate family of each of the Individual Defendants, any parent, subsidiary, affiliate, officer or director of defendant Sepracor, any entity in which any excluded person has a controlling interest, and the legal representatives, heirs, successors, and assigns of any excluded person.

- (c) Collectively, the Debt Class and the Equity Class are referred to as the "Classes."
- 4. Also excluded from the Classes are those persons listed in Exhibit 1 hereto, who include: (a) those Persons who previously excluded themselves from the Classes in accordance with the requirements set forth in the Notice of Pendency of Class Actions, dated May 12, 2006, sent to Members of the Classes pursuant to the Order entered on April 13, 2006, and (b) those persons who filed timely requests for exclusion pursuant to the Notice of Proposed Settlement of Class Actions, dated July 3, 2007, sent to Member of the Classes pursuant to the Order dated June 20, 2007.
- 5. Pursuant to Federal Rule of Civil Procedure 23, this Court hereby approves the Settlement set forth in the Stipulation and finds that said Settlement is, in all respects, fair, reasonable and adequate to the Classes.
- 6. The Action and all claims included therein, as well as all of the Settled Claims (defined in the Stipulation and in paragraphs 12 and 13 below) are dismissed with prejudice as to the Plaintiffs and the other members of the Classes, and as against each and all of the Released Parties (defined in the Stipulation and in paragraph 11 below). The Parties are to bear their own costs, except as otherwise provided in the Stipulation.

- 7. The Court finds that the Stipulation and Settlement contained therein is fair, reasonable and adequate as to each of the Settling Parties, and that the Stipulation and Settlement contained therein is hereby finally approved in all respects. The Settling Parties are hereby directed to perform its terms.
- 8. Upon the Effective Date hereof, each Plaintiff and each of the Members of the Classes on behalf of themselves and each of their predecessors, successors, parents, subsidiaries, affiliates, custodians, agents, attorneys, assigns, representatives, heirs, executors, trustees, Estates, administrators, spouses, immediate family members, and any other person having legal or beneficial interests in the Subject Securities shall be deemed to have, and by operation of this Judgment shall have, fully, finally, unconditionally, and forever released, relinquished and discharged with prejudice all Settled Claims against each and all of the Released Parties, whether or not such member of the Classes executes and delivers the Proof of Claim and Release, and the Action shall be dismissed with prejudice.
- 9. All Members of the Classes are hereby forever barred and enjoined from prosecuting the Settled Claims against the Released Parties.
- past, present or future directors, officers, employees, partners, members, auditors, principals, agents, associates, controlling shareholders, attorneys, administrators, executors, personal or legal representatives, predecessors, successors, parents, subsidiaries, divisions, joint ventures, assigns, spouses, heirs, related or affiliated entities, any entity in which a Defendant has a controlling interest, any members of their immediate families, or any trust of which any Defendant is the settlor or which is for the benefit of any Defendant and/or member(s) of his family and shall include any insurer who contributes to or reimburses Sepracor and/or the

Individual Defendants for a portion of its or their contributions to the settlement or defense costs and who receives a release from Sepracor and the Individual Defendants in connection with the Settlement.

- 11. Consistent with the Stipulation, "Released Parties" means each and all of the Defendants and their Related Parties.
- claims (including "Unknown Claims" as defined in ¶ 2(34) of the Stipulation), allegations, demands, rights, liabilities, and causes of action of every nature and description whatsoever, whether or not class, direct, representative, or individual in nature, known or unknown, concealed or hidden, foreseen or unforeseen, including, without limitation, claims for violations of any state or federal statutes, common law, rules and regulations, asserted or that might have been asserted, by any Plaintiff or Member of the Classes, or their respective executors, administrators, representatives, agents, attorneys, heirs, successors or assigns, against the Released Parties arising out of or relating in any way to: (i) any transaction, purchase, sale or holding of the Subject Securities by any Member of the Classes during the Class Period, (ii) any facts, transactions, events, occurrences, acts, omissions, disclosures, statements, or failures to act of the Released Parties during the Class Period, or (iii) any claims, allegations, demands, rights, liabilities, and causes of action that were or could have been alleged in the Action.
- 13. Consistent with the Stipulation, the term "Settled Claims" expressly excludes any claims concerning stock option policies or practices, including public disclosures relating hereto, that have been asserted in the following actions, and any actions consolidated within any of the following actions, as of the date of this Stipulation:

- (i) In re: Sepracor Inc. Derivative Litigation pending in the United States

  District Court for the District of Massachusetts (Master File No. 06-CA-1 1759-RGS; and
- (ii) In re: Sepracor Inc. Derivative Litigation pending in the Suffolk Superior Court, Business Litigation Session (Civil Action No. 06-4057).
- 14. Upon the Effective Date hereof, each of the Released Parties shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished and discharged each and all of the Class Members and counsel for the Plaintiffs from all claims (including Unknown Claims), arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement or resolution of the Action.
- 15. The Notice of Proposed Settlement of Class Actions (the "Notice") given to the Classes was the best notice practicable under the circumstances, including the individual notice to all members of the Classes who could be identified through reasonable effort. The Notice provided the best notice practicable under the circumstances of those proceedings and of the matters set forth therein, including: the Settlement Hearing, the proposed Settlement set forth in the Stipulation, the applications for an award of Attorneys' Fees and Expenses, the Plans of Distribution, the applications for awards to the Class Representatives, and other matters set forth in the Notice, to all Persons entitled to such notice, and the Notice fully satisfied the requirements of Federal Rule of Civil Procedure 23, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7) and the requirements of due process, and constituted the due and sufficient notice to all Persons entitled thereto.
- 16. Any order, including paragraphs 18 to 20 of this Final Judgment of Order of Dismissal with Prejudice (the "Judgment"), approving or modifying the Plans of Distribution set

forth in the Notice, the application for the Attorneys' Fees and Expenses, or any application for payments to the Class Representatives, shall not disturb or affect the finality of this Judgment.

- 17. Neither the Stipulation nor the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (i) is or may be deemed to be or may be used as evidence of a presumption, concession or admission of, or evidence of, the validity of any Settled Claim, or of any negligence, fault, wrongdoing or liability of or by the Defendants or any of them, (ii) is or may be deemed to be or may be used as evidence of a presumption, concession or admission of, or evidence of, any negligence, fault, wrongdoing, liability or omission of any of the Defendants in any other civil, criminal or administrative action or proceeding in any court, administrative agency or other tribunal; or (iii) is or may be deemed to be an admission or concession that the consideration to be given hereunder represents the amount which could or would have been recovered after trial. Defendants may file the Stipulation and/or the Judgment from this action in any other action that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar, merger or reduction or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.
- 18. Plaintiffs' Counsel are hereby awarded attorneys' fees in the amounts of: (a) 30% of the \$40,110,000 (plus interest) Equity Fund portion of the Settlement Fund (the "Equity Fund"), and (b) 27.5% of the \$12,390,000 (plus interest) Debt Fund portion of the Settlement Fund (the "Debt Fund"), which sums the Court finds to be fair and reasonable. Plaintiffs' Counsel are hereby awarded a total of \$1,299,636.58 in reimbursement of expenses, of which:

  (a) \$153,070.70 shall be allocated to the Equity Fund, (b) \$207,541.97 shall be allocated to the

Debt Fund, and (c) \$939,023.91 shall be allocated to the full \$52,500,000 (plus interest)

Settlement Fund. The foregoing awards of fees and expenses shall be paid to Plaintiffs' Co-Lead

Counsel from the Settlement Fund, the Equity Fund and the Debt Fund as specified in this

paragraph, and such payments shall be made at the time and in the manner provided in the

Stipulation, with interest from the date the Settlement Fund was funded to the date of payment at
the same net rate that interest is earned by the Settlement Fund. The award of attorneys' fees and
expenses shall be allocated among Plaintiffs' Counsel in a fashion which, in the opinion of

Plaintiffs' Co-Lead Counsel, fairly compensates Plaintiff's Counsel for their respective
contributions in the prosecution of the Action.

- 19. The Court finds that Plaintiffs' Co-Lead Counsel's request for attorneys' fees and reimbursement of expenses is reasonable, and that the request is supported by the relevant factors, which have been considered by this Court.
- 20. The Court hereby awards the Class Representatives their reasonable costs and expenses incurred in serving as the Class Representatives in this Action. The amounts awarded are below the amounts of such awards specified in the Notice as follows: (a) to Staro Asset Management LLC, \$40,685; (b) to Westmont Venture Partners, LLC, \$41,400; and (c) to Howard Galbut, \$16,500. The award to Plaintiff Staro Asset Management LLC shall be deducted from the Debt Fund, and the awards to Plaintiffs Westmont and Galbut shall be deducted from the Equity Fund.
- 21. The awards set forth above in Paragraphs 18 to 20 shall be returned to Defendants within the time frame and in the manner set forth in the Stipulation in the event that the Settlement does not become effective in accordance with the terms of the Stipulation.

- 22. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over (a) implementing this Settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund, including the administration of all claims submitted; (c) hearing and determining applications for attorneys' fees, interest and reimbursement of expenses in the Action; (d) hearing and determining any application for payments to the Class Representatives of their expenses; and (e) all parties hereto for the purpose of construing, enforcing and administering the Stipulation.
- 23. The Court finds that during the course of the Action, the Settling Parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11.
- 24. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation or in the event that the Settlement Fund, or any portion thereof, is returned to the Defendants, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.
- 25. There is no reason for delay in the entry of this Final Judgment and Order of Dismissal With Prejudice and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

### Case 1:02-cv-12235-MEL Document 1747 Filed 05/06/07 Page 10 of 17

IT IS SO ORDERED, this 6 day of Sept, 2007:

THE HONORABLE MORRIS E. LASKER UNITED STATES DISTRICT JUDGE EXHIBIT 1

### Case 1:02-cv-12235-MEL Document 1747 Filed 09/06/07 Page 12 of 178

**EXCSMA** EXCSMA020

Exclusion Report - Exhibit E SEPRACOR, INC. SECURITIES REPS Page of 6 28-Aug-07 3:02 PM

IdNo Description

Name/Address

Postmark Date

1000507 TIDWELL, HAL E

HAL E TIDWELL 112 TIDEWATER LANE OAK RIDGE TN 37830

05/26/06

Purchase Qty:

Associated Claims

IdNo Description

Name/Address

Postmark Date

1005337 BLON, LINDA KEN

LINDA KENT VON BLON 53 NORTON AVE **GUILFORD CT 06437** 

06/06/06

Purchase Qty:

.00

Associated Claims

IdNo Description

Name/Address

Postmark Date

1050832 MILLER, ALLEN S

MR ALLEN S MILLER CGM IRA CUSTODIAN MID CAP 40 PORFOLIO

9602 WEST MARCO POLO RD PEORIA AZ 85382

Purchase Qty:

.00

06/06/06

Associated Claims

IdNo Description

Name/Address

Postmark Date

2860 HERNANDEZ, ELDA

ELDA HERNANDEZ 8321 SW 27TH LN MIAMI FL 33155

06/13/06

Purchase Qty:

:00

Associated Claims

1002919 ELDA MERCEDES HERNANDEZ CHAPLES SCHOOL & CO

EXCSMA EXCSMA020 Exclusion Report - Exhibit E SEPRACOR, INC. SECURITIES REPS

Page 2 of 6 28-Aug-07 3:02 PM

dNo Description

1051852 PORUPSKI, ANDRE

Name/Address

ANDREW J PORUPSKI

CGM IRA ROLLOVER CUSTODIAN

SBAM MDA0 2710 S AIDA AVE TUCSON AZ 85730

Purchase Qty:

06/26/06

Postmark Date

Associated Claims

dNo Description

Name/Address

Postmark Date 06/26/06

1042672 THORNE, GERALDI

GERALDINE THORNE

CGM IRA ROLLOVER CUSTODIAN 1822 MADISON VILLAGE DRIVE

APT C23

INDIANAPOLIS IN 46227

Purchase Qty:

.00

7

Associated Claims

IdNo Description

Name/Address

Postmark Date 06/26/06

1051814 WILSON, RONALD

RONALD G WILSON, TTEE FBO SEAMAN FAMILY TRUST U/A/D 07/20/00-SBAM LARGE CAP

GROWTH

2619 MAPLE AVENUE

Purchase Qfy:

.00

MANHATTAN BEACH CA 90266

**Associated Claims** 

kiNo Description

1004791 F, JOYCE

Name/Address

JOYCE F ANDERSON 643 E PERALTA WAY FRESNO CA 93764 Postmark Date

07/06/06

Purchase Qty:

.00

**EXCSMA** EXCSMA020

Exclusion Report - Exhibit E SEPRACOR, INC. SECURITIES REPS

28-Aug-07 3:02 PM

IdNo Description

Name/Address

Postmark Date

1031640 FRIEFELD, ARTHU

MR ARTHUR FRIEFELD AND MRS FRANCES A FRIEFELD JTWROS MGR: SBAM - SOCIAL AWARE LG GR

234 DUXBURY ROAD PURCHASE NY 10577

Purchase Qty:

07/06/06

Associated Claims

IdNo Description

Name/Address

Postmark Date 07/18/06

5025 GANEY, WILIAM &

WILLIAM AND KAREN GANEY 4971 SOUTHRIDGE PARK DR ST LOUIS, MO ME 63129

Purchase Qty:

.00

**Associated Claims** 

IdNo Description

Name/Address

Postmark Date 07/18/06

1004405 HALL, JOEL JAN

JOEL JAN HALL

CHARLES SCHWAB & CO INC CUST 611 TIPPECANOE SPRINGS RD

MONTICELLO IN 47960

Purchase Qty:

.00

**Associated Claims** 

IdNo Description

Name/Address

Postmark Date

1015980 MOLNARI, DOLORE

DOLORES D MOLNARI 21946 COUNTY ROAD 2147

**TROUP TX 75789** 

07/18/06

Purchase Qty:

.00

EXCEMA EXCSMA020

Exclusion Report - Exhibit E SEPRACOR, INC. SECURITIES REPS Page 4 28-Aug-07 3:02 PM

IdNo Description 1001133 SEVERONI, ALMA Name/Address ALMA M SEVERONI & ANTHONY SEVERONI

10 WILLIAM HOWARD DR

07/20/06

Postmark Date

GLEN MILLS PA 19342

Purchase Qty: .00

Associated Claims

IdNo Description

Name/Address

Postmark Date 08/09/06

2012005 SBRACCIA, BERNA

BERNARD D SBRACCIA TTEE SBRACCIA FAMILY REV TRUST U/A 4/30/97

159 PAGE ST AVON MA 02322

Purchase Qty:

Associated Claims

idNo Description

Name/Address

Postmark Date 08/21/06

1047904 STEINER, LINDA

LINDA S.G. STEINER TTEE FBO LINDA S.G. STEINER REV TR

U/A/D 04/14/99

NAVELLIER MID CAP GROWTH

4313 NICOLET AVENUE

Purchase Qty:

.00

FREMONT: CA 94536

Associated Claims

idNo Description

2001302 CAREY, ALICE L

Name/Address

ALICE L CAREY

515 FITZSIMMONS ST #B HENDERSONVILLE NC 28792 Postmark Date

09/16/06

Purchase Qty: 100.00

EXCSMA EXCSMA020

Exclusion Report - Exhibit E SEPRACOR, INC. SECURITIES REPS Page 5 of 28-Aug-07 3:02 PM

IdNo Description

Name/Address

Postmark Date

2007778 HERMAN, LINDA M

LINDA M HERMAN IRA ROLLOVER 54 EMERALD POINT ROCHESTER NY 14624 07/16/07

Purchase Qty:

**Associated Claims** 

2016095 LINDA HERMAN 54 EMERALD POINT

IdNo Description

Name/Address

Postmark Date 07/27/07

5717 CHARITABLE REM-

CHARITABLE REM-MC

ATTN: MR. & MRS. JON KAYYEM 1137 PARKVIEW AVENUE

PASADENA CA 91103

Purchase Qty:

400.00

**Associated Claims** 

IdNo Description

Name/Address

Postmark Date 07/27/07

5715 IFIN, LP-MC

IFIN, LP-MC

ATTN: MR. & MRS. JON KAYYEM 1137 PARKVIEW AVENUE PASADENA CA 91103

Purchase Qty:

505.00

**Associated Claims** 

IdNo Description

Name/Address

Postmark Date 07/30/07

1040862 BOOTH, NANCY

NANCY BOOTH CGM IRA ROLLOVER CUSTODIAN

527 N.W. PORTOFINO LANE

PORT ST LUCIE FL 34986

Purchase Qty:

.00

EXCSMA EXCSMA020 Exclusion Report - Exhibit E SEPRACOR, INC. SECURITIES REPS Page 6 of 6 28-Aug-07 3:02 PM

IdNo Description

Name/Address

Postmark Date

6067 WINGARD, RICHAR RICHARD L. WINGARD

314 E. CLARK ST. FLORA IN 46929 08/08/07

Purchase Qty:

.00

Associated Claims

idNo Description

Name/Address

Postmark Date 08/14/07

1025104 NICOLAUS, STIFE

STIFEL NICOLAUS CUST FOR RICHARD J WALLACE ROTH IRA 771 STEELE ST

DENVER CO 80206

Purchase Qty:

.00

**Associated Claims** 

Total Purchase Qty:

1,005.00

Claims With Purch Trans: 3

Claims Without Purch Trans: 19

Total Claims: 22

## EXHIBIT 13

# FILED MOLEPKS OFFICE UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS AR 31 P 3: 11

IN RE SONUS NETWORKS, INC. SECURITIES LITIGATION	) Civil Action No. 04-10294-DPW ) (Lead Case) )
THIS DOCUMENT RELATES TO: ALL CASES	) ) ) )

## FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

WHEREAS, multiple consolidated class actions are pending in this Court against

Defendants as captioned above; and are collectively referred to herein as the "Class Action";

WHEREAS, pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3), by Order dated September 25, 2007, this Court certified the above-captioned action to proceed as a class action, with Gold Bennett Cera & Sidener LLP as Lead Counsel; and

WHEREAS by Stipulation and Agreement of Settlement dated as of December 21, 2007 (the "Stipulation"), Lead Plaintiff and Defendants Sonus Networks, Inc., Hassan M. Ahmed, and Stephen J. Nill entered into a proposed settlement of the Class Action; and

WHEREAS by the Preliminary Order in Connection with Settlement Proceedings, dated January 18, 2008 (the "Preliminary Approval Order"), this Court preliminarily approved the Settlement and directed that notice thereof be given to Class Members in advance of a final settlement approval hearing; and

WHEREAS, such notice of the final settlement approval hearing was mailed to all reasonably identifiable persons or entities in the Class and that a Summary Notice of the final settlement approval hearing was published in *The Wall Street Journal* pursuant to the specifications of the Court;

WHEREAS on March 31, 2008, this Court held a final hearing to consider whether to approve the Settlement under Federal Rule of Civil Procedure 23(e), after due and adequate notice of said hearing was given to Class Members as well as to all parties in the Class Action; and

WHEREAS the Court has considered the Stipulation, the information provided to the Court before and at the final settlement hearing, all papers filed and proceedings had herein and all oral and written comments received regarding the Settlement, and has reviewed and considered the entire record in the Class Action, and otherwise being fully informed in the premises and good cause appearing therefor;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

- 1. This Judgment incorporates by reference the definitions in the Stipulation other than "Settled Claims," which is defined below, and all other terms used herein shall have the same meanings as set forth in the Stipulation.
- 2. The Court has jurisdiction over the subject matter of the Class Action, and personal jurisdiction over the Lead Plaintiff, all Class Members, and each of the Settling Defendants.
- 3. Notice of the pendency of this action as a class action and of the proposed settlement was given to all Class Members who could be identified with reasonable effort. The #118929

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form and method of notifying the Class Members of the pendency of this action as a class action and of the Settlement and its terms and conditions meet the requirements of Federal Rule of Civil Procedure 23, Section 21D(a)(7) of the Securities Exchange Act of 1934 as amended by the Private Securities Litigation Reform Act of 1995, 15 U.S.C. 78u-4(1)(7), and due process, and constitutes the best notice practicable under the circumstances, and due and sufficient notice to all persons and entities entitled thereto.

- 4. Pursuant to Federal Rule of Civil Procedure 23(e), this Court hereby approves the Settlement set forth in the Stipulation and finds that said Settlement is, in all respects, fair, reasonable and adequate to the Class, and the parties are directed to consummate the Stipulation in accordance with its terms and provisions.
- 5. The First Amended Class Action Complaint and all other complaints comprising the Class Action are hereby dismissed with prejudice and without costs as against the Settling Defendants.
- 6. Members of the Class and their respective predecessors, affiliates, heirs, agents, executors, administrators, attorneys, successors and assigns and any persons they represent, are hereby permanently barred and enjoined from instituting, commencing or prosecuting, either directly or in any other capacity, any of the Settled Claims against the Settling Defendants. "Settled Claims" means any and all direct, individual, or class claims (including, without limitation, any Unknown Claims), debts, demands, rights or causes of action or liabilities whatsoever (including, but not limited to, any claims for compensatory damages, punitive damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses, liability or relief, monetary, injunctive, or otherwise), whether based on federal, state, local, foreign, international, statutory or common law or any other law, rule or regulation, whether #118929

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fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, whether class or individual in nature, including both known claims and unknown, pleaded or unpleaded, suspected or unsuspected claims, (i) that arise from the purchase or other acquisition of Sonus stock during the Class Period and have been asserted in this Action by the Lead Plaintiff, Class Members or any of them against any of the Released Persons, or (ii) that arise from the purchase or other acquisition of Sonus stock during the Class Period and could have been, were, or could in the future be, asserted in any forum by the Lead Plaintiff, Class Members or any of them against any of the Released Persons in connection with, based upon, related to, or arising out of in any way the claims, allegations, acts, transactions, facts, events, matters or occurrences, disclosures, representations or omissions involved, described, set forth, or referred to in the Class Action and/or the Complaint; (iii) that arise from the purchase or other acquisition of Sonus stock during the Class Period and are based upon, related to, or arising out of in any way the subject matters, claims, allegations, acts, transactions, facts, events, matters or occurrences, disclosures, representations or omissions involved, described, set forth, or referred to in the Class Action and/or the Complaint, or (iv) that arise out of (v) or relate in any way to the defense or settlement of this Action (except for claims to enforce this Settlement). On behalf of Lead Plaintiff and each Class Member (other than those listed on Exhibit 1 hereto who have validly excluded themselves from this Class Action), the Settled Claims are hereby compromised, settled, released, discharged and dismissed as against the Settling Defendants on the merits and with prejudice by virtue of the proceedings herein and this Judgment.

7. The Settling Defendants, and each of their successors and assigns, are hereby permanently barred and enjoined from instituting, commencing or prosecuting, either directly or #118929

in any other capacity, any and all claims relating to the institution or prosecution of the Class Action (the "Settled Defendants' Claims") against any of the Lead Plaintiff, Class Members or their attorneys. The Settled Defendants' Claims are hereby compromised, settled, released, discharged and dismissed on the merits and with prejudice by virtue of the proceedings herein and this Judgment.

- 8. Neither this Judgment, the Stipulation, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein shall be:
- (a) offered or received against the Settling Defendants as evidence of, or construed as or deemed to be evidence of, any presumption, concession, or admission by the Settling Defendants 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 in the Class Action or in any litigation or other proceeding, or the deficiency of any defense that has been or could have been asserted in the Class Action or in any litigation or other proceeding, or of any liability, negligence, fault, or wrongdoing of the Settling Defendants;
- (b) offered or received against the Settling Defendants as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or document written, signed, approved or made by them or against the Lead Plaintiff and the Class Members as evidence of any infirmity in the claims of Lead Plaintiff and the Class Members;
- (c) offered or received against the Settling Defendants or against the Lead

  Plaintiff and the Class Members as evidence of a presumption, concession or admission with

  respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other

reason as against any of the parties to the Stipulation, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; provided, however, that the Settling Defendants may refer to the Stipulation to effectuate the liability protection granted them thereunder;

- (d) construed against the Settling Defendants or the Lead Plaintiff and the Class Members as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; or
- (e) construed as or received in evidence as an admission, concession or presumption against Lead Plaintiff or the Class Members that any of their claims are without merit or that damages recoverable pursuant to the Complaint would not have exceeded the amount paid by the Settling Defendants in settlement.
- 9. The Plan of Allocation is approved as fair and reasonable, and Lead Plaintiff's Counsel and the Claims Administrator are directed to administer the Stipulation in accordance with its terms and provisions.
- 10. Plaintiff's Counsel is hereby awarded attorneys' fees in the amount of 25% of the Settlement Fund (plus interest at the same rate as earned by the Settlement Fund from the date of deposit). Plaintiff's Counsel is hereby awarded \$383,790.94 in reimbursement of expenses, to be paid from the Settlement Fund (plus interest thereon at the same rate as earned by the Settlement Fund from the date of deposit). The Court finds that Plaintiff's Counsel's request for attorneys' fees and reimbursement of expenses is reasonable, and that the request is supported by the relevant factors, which have been considered by the Court.

- 11. The Court finds that Lead Plaintiff and the Settling Defendants and their respective counsel have complied with each requirement of Federal Rule of Civil Procedure 11 as to all proceedings herein.
- 12. If the Settlement does not become final in accordance with the terms of the Stipulation, then this Final Judgment and Order of Dismissal with Prejudice and all orders entered in connection therewith shall be rendered null and void and shall be vacated. However, any appeal of the Plan of Allocation or the attorneys' fees or costs and expenses shall not prevent the Settlement from becoming effective.
- 13. This judgment constitutes the final discharge of all obligations of Settling

  Defendants to the Class arising out of the Class Action. The terms of Settlement and this Final

  Judgment and Order of Dismissal with Prejudice shall be forever binding on the Lead Plaintiff

  and members of the Class and shall have res judicata and other preclusive effect in all pending

  and future claims, litigation or other proceedings maintained by or on behalf of the Lead Plaintiff

  or any Class Member to the extent those claims, litigation or other proceedings involve or arise

  from, directly or indirectly, any of the Settled Claims.
- 14. Exclusive jurisdiction is hereby retained over the parties to the Class Action and the Class Members (whether or not such Class Member submits a claim, becomes an Authorized Claimant or receives a distribution from the Settlement Fund) for all matters relating to this Class Action, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Judgment.
- 15. Without further order of the Court, the parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

16. Plaintiff's Counsel is authorized to direct the distribution of the Net Settlement Fund as soon as reasonably practicable following the occurrence of the Effective Date and the resolution of any appeal based solely on the Plan of Allocation or attorneys' fees, costs or expenses.

IT IS SO ORDERED.

Dated: March 31, 2008

Douglas P. Woodlock

United States District Judge

### Exhibit 1 to Final Judgment

### In re Sonus Networks, Inc., Securities Litigation

#### **Class Members Requesting Exclusion**

William H. Lynn

Mr. and Mrs. Jon Kayyem

Cindy A. Poirer

David B. Rees

Rocky Lynn Valentine

## UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

IN RE SONUS NETWORKS, INC. SECURITIES LITIGATION	) Civil Action No. 04-10294-DPW ) (Lead Case) )
THIS DOCUMENT RELATES TO: ALL CASES	) ) ) )

## LEAD PLAINTIFF'S COUNSEL'S MEMORANDUM IN SUPPORT OF APPLICATION FOR AWARD OF ATTORNEY'S FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

GOLD BENNETT CERA & SIDENER LLP Solomon B. Cera Gwendolyn R. Giblin Pamela A. Markert Kenneth A. Frost 595 Market Street, Suite 2300 San Francisco, California 94105 Telephone: (415) 777-2230 Facsimile: (415) 777-5189

Attorneys for Lead Plaintiff BPI Global Asset Management LLP

#### I. PRELIMINARY STATEMENT

Counsel for Lead Plaintiff, Gold Bennett Cera & Sidener LLP ("GBCS"), respectfully submits this memorandum of law in support of its application for an award of attorneys' fees and reimbursement of litigation expenses. GBCS undertook the prosecution of this action on a fully contingent basis, and now seeks an award of attorneys' fees of 25% of the \$40,000,000 settlement fund, together with interest earned on the Settlement Fund since deposit, as well as reimbursement of out-of-pocket litigation expenses. This application is submitted in conjunction with the proposed settlement between Lead Plaintiff and defendants Sonus Networks, Inc. ("Sonus"), Hassan M. Ahmed and Stephen J. Nill (hereinafter referred to as the "Proposed Settlement").

The excellent recovery for the Class and Subclass represented by the Proposed Settlement was achieved despite difficult and challenging circumstances and is attributable to the tenacity, skill, and creativity of GBCS. The firm devoted more than 12,000 hours of attorney and paraprofessional time to prosecuting this action over a four (4) year period. ¶52, 64. This case was in large part based on the accounting treatment of highly complex transactions, was governed primarily by a statute which demands almost unprecedented exactitude in pleading and proof, and was aggressively contested and defended from beginning to end. ¶7, 14, 49.

Moreover, although the Securities and Exchange Commission ("SEC") commenced a formal investigation of Sonus based on the same transactions as were challenged in this action, it

Filed concurrently with this memorandum is the Declaration of Solomon B. Cera, which supports this memorandum and provides a full description of, *inter alia*, the claims brought in this litigation, the background and procedural history of the litigation, the investigation and discovery efforts that took place, the motions, settlement negotiations, terms of settlement, and various factors affecting the Proposed Settlement, the proposed Plan of Allocation of Settlement Proceeds, and the requested award of attorneys' fees and reimbursement of litigation expenses. All references to "¶\_\_" are to the Cera Declaration.

## EXHIBIT 14

Case 1:03-cv-10165-RWZ

Document 186

Filed 06/03/2008

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### UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

In re: Transkaryotic Therapies, Inc. Securities Litigation

Civil Action No. 03-10165-RWZ

#### PROPOSED FINAL ORDER AND JUDGMENT WITH PREJUDICE

WHEREAS, a consolidated class action is pending in this Court against Defendants, and styled *In re Transkaryotic Therapies, Inc. Sec. Litig.*, Civil Action No. 03-10165-RWZ (the "Action"); and

WHEREAS, pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure and by Order dated November 29, 2005, as modified by the Stipulation and Order for Notice and Hearing, dated February 20, 2008, this Court certified the Action to proceed as a class action, with Schiffrin Barroway Topaz & Kessler, LLP as Lead Counsel and Gilman & Pastor, LLP as Liaison Counsel; and

WHEREAS, this matter came before the Court for hearing pursuant to the Order of this Court, dated February 20, 2008, on the application of the Parties for approval of the Settlement set forth in the Stipulation and Agreement of Settlement dated as of February 11, 2008 (the "Stipulation"); and

WHEREAS, due and adequate notice having been given to the Class as required in the Order for Notice and Hearing, dated February 20, 2008, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefore;

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

- This Final Order and Judgment incorporates by reference the definitions in the
   Stipulation and all terms used herein shall have the same meanings as set forth in the Stipulation.
- This Court has jurisdiction over the subject matter of the Action, and over all parties to the Action, including all members of the Class.
- 3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court certified the Class of all persons and entities who purchased or otherwise acquired common stock of Transkaryotic Therapies, Inc. from January 4, 2001 through January 10, 2003, inclusive. Excluded from the Class are Defendants, Selden's immediate family, any subsidiary, affiliate, or control person of either Defendant, the officers and directors of TKT during the Class Period and the legal representatives, heirs, successors or assigns of any such excluded party.
- 4. Also excluded from the Class are those persons who filed timely requests for exclusion pursuant to the Notice of Pendency and Proposed Settlement of Class Action, Motion for Attorneys' Fee and Settlement Hearing ("Notice"). As of the date of this Order, no requests for exclusion have been received.
- 5. Pursuant to Federal Rule of Civil Procedure 23, this Court hereby approves the Settlement set forth in the Stipulation and the Plan of Allocation set forth in the Notice and finds that said Settlement and Plan of Allocation are, in all respects, fair, reasonable and adequate to the Class.
- 6. The Action and all claims included therein, as well as all of the Settled Claims (defined in the Stipulation and in paragraph 11 below) are dismissed with prejudice as to the Class Representatives and the other members of the Class, and as against each and all of the Released Parties (defined in the Stipulation and in paragraph 10 below). The Parties are to bear their own costs, except as otherwise provided in the Stipulation.

- 7. The Court finds that the Stipulation and Settlement contained therein is fair, reasonable and adequate as to each of the Parties, and that the Stipulation and Settlement contained therein is hereby finally approved in all respects. The Parties are hereby directed to perform its terms.
- 8. Upon the Effective Date hereof, each Class Representative and each of the members of the Class on behalf of themselves and each of their predecessors, successors, parents, subsidiaries, affiliates, custodians, agents, attorneys, assigns, representatives, heirs, executors, trustees, Estates, administrators, spouses, immediate family members, and any other person having legal or beneficial interests in the TKT common stock shall (i) be deemed to have, and by operation of this Final Order and Judgment shall have, fully, finally, unconditionally, and forever released, relinquished and discharged with prejudice all Settled Claims against each and all of the Released Parties, whether or not such member of the Class executes and delivers the Proof of Claim, and (ii) be forever enjoined from prosecuting the Settled Claims against each and all of the Released Parties, whether or not such member of the Class executes and delivers the Proof of Claim and Release.
- All members of the Class are hereby forever barred and enjoined from prosecuting the Settled Claims against the Released Parties.
- 10. Consistent with the Stipulation, "Released Parties" means Defendants, their successors, past or present subsidiaries, parents, principals, affiliates, general or limited partners or partnerships, successors and predecessors, heirs, assigns, officers, directors, agents, employees, attorneys, advisors, insurers, co-insurers, re-insurers, consultants, administrators, estates, executors, trustees, personal representatives, immediate family members and any person, firm, trust, partnership, corporation, officer, director or other individual or entity in which either

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Defendant has a controlling interest or which is related to or affiliated with either Defendant, and the legal representatives, heirs, executors, administrators, trustees, successors in interest, or assigns.

- claims, debts, demands, rights or causes of action, suits, matters, and issues or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, including both known claims and Unknown Claims (as defined in ¶1(dd) of the Stipulation), (i) that have been asserted in the Action against any of the Released Parties, or (ii) that could have been asserted in any forum by the Class Members or any of them or the successors and assigns of any of them against any of the Released Parties which arise out of, are based upon, or relate to the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Action and related to the purchase or acquisition of TKT common stock during the Class Period.
- 12. Upon the Effective Date hereof, the Defendants, on behalf of themselves, their personal representatives, heirs, executors, administrators, trustees, successors and assigns, release and forever discharge each and every one of the Settled Defendants' Claims (as defined in ¶ 1(aa) of the Stipulation) and are forever enjoined from prosecuting the Settled Defendants' Claims against Class Representatives, all Class Members and their respective counsel, including Lead Counsel and the members of the Executive Committee.

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- 13. The Notice given to the Class was the best notice practicable under the circumstances, including the individual notice to all members of the Class who could be identified through reasonable effort. The Notice provided the best notice practicable under the circumstances of those proceedings and of the matters set forth therein, including: the Settlement Hearing, the proposed Settlement set forth in the Stipulation, the applications for an award of Attorneys' Fees and Expenses, the Plan of Allocation, the application for awards for reimbursement of time and expense to the Class Representatives, and other matters set forth in the Notice, to all Persons entitled to such notice, and the Notice fully satisfied the requirements of Federal Rule of Civil Procedure 23, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7) and the requirements of due process, and constituted due and sufficient notice to all Persons entitled thereto.
- Any order, including paragraphs 5, 15 and 17, herein, approving or modifying the Plan of Allocation set forth in the Notice, the application for Attorneys' Fees and Expenses, or any application for reimbursement of time and expenses to the Class Representatives, shall not disturb or affect the finality of this Final Order and Judgment ("Judgment"), the Stipulation or the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (i) is or may be deemed to be or may be used as evidence of a presumption, concession or admission of, or evidence of, the validity of any Settled Claim, or of any negligence, fault, wrongdoing or liability of or by the Defendants or any of them, (ii) is or may be deemed to be or may be used as evidence of a presumption, concession or admission of, or evidence of, any negligence, fault, wrongdoing, liability or omission of any of the Defendants in any other civil, criminal or administrative action or proceeding in any court, administrative agency or other tribunal; or (iii) is or may be deemed to be an admission or

concession that the consideration to be given hereunder represents the amount which could or would have been recovered after trial. Defendants may file the Stipulation and/or the Judgment from this action in any other action that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar, merger or reduction or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

- 15. Plaintiffs' Counsel are hereby awarded attorneys' fees in the amounts of 24 % of the Gross Settlement Fund, which sum the Court finds to be fair and reasonable. Plaintiffs' Counsel are hereby awarded a total of \$653,002.15 in reimbursement of expenses. The foregoing awards of fees and expenses shall be paid to Lead Counsel from the Gross Settlement Fund, and such payment shall be made at the time and in the manner provided in the Stipulation, with interest from the date the Gross Settlement Fund was funded to the date of payment at the same net rate that interest is earned by the Gross Settlement Fund. The award of attorneys' fees and expenses shall be allocated among Plaintiffs' Counsel in a fashion which, in the opinion of Lead Counsel, fairly compensates Plaintiff's Counsel for their respective contributions in the prosecution of the Action.
- 16. The Court finds that the request for attorneys' fees and reimbursement of expenses is reasonable, and that the request is supported by the relevant factors, which have been considered by this Court.
- 17. The Court hereby awards the Class Representatives reimbursement for their reasonable time and expenses incurred in serving as the Class Representatives in this Action.

  The amounts awarded are as follows: (a) Forstmann Asset Management LLC, \$21,250; (b)

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Market Street Securities, Inc., \$\(\frac{2c\_4a\cdot}{a}\); and (c) City of Philadelphia, Board of Pensions and Retirement, \$\(\frac{4c\_5}{a}\).

- 18. The awards set forth above in Paragraphs 15 and 17 shall be returned to

  Defendants within the time frame and in the manner set forth in the Stipulation in the event that
  the Settlement does not become effective in accordance with the terms of the Stipulation.
- 19. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over (a) implementing this Settlement and any award or distribution of the Gross Settlement Fund, including interest earned thereon; (b) disposition of the Gross Settlement Fund, including the administration of all claims submitted; (c) hearing and determining applications for attorneys' fees, interest and reimbursement of expenses in the Action; (d) hearing and determining any application for payments to the Class Representatives for reimbursement of their time expenses; and (e) all parties hereto for the purpose of construing, enforcing and administering the Stipulation.
- 20. The Court finds that during the course of the Action, the Parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11.
- 21. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation or in the event that the Settlement Fund, or any portion thereof, is returned to the Defendants, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

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22. There is no reason for delay in the entry of this Final Order and Judgment With Prejudice and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED, this (14) day of \_\_\_\_\_\_, 2008:

THE HONORABLE RYA W. ZOBEL UNITED STATES DISTRICT JUDGE

## UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

In re: Transkaryotic Therapies, Inc.

Securities Litigation

Civil Action No. 03-10165-RWZ

# MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES AND REIMBURSEMENT TO THE CLASS REPRESENTATIVES

Michael K. Yarnoff Mark S. Danek Jennifer L. Enck

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Robert M. Kornreich Robert C. Finkel WOLF POPPER LLP

845 Third Avenue New York, NY 10022 Telephone: (212) 759-4600 In connection with the Court's approval of the Settlement<sup>1</sup> in the above-captioned action (the "Action"), Plaintiffs' Counsel<sup>2</sup> respectfully move this Court for: (i) an award of attorneys' fees in the amount of twenty-five percent (25%) of the Settlement Fund, and (ii) reimbursement of \$658,102.15 in expenses that Plaintiffs' Counsel incurred in successfully prosecuting the claims in this Action, plus interest earned on both amounts at the same rate as earned by the Class. Plaintiffs' Counsel also respectfully move this Court for reimbursement to the Class Representatives in the aggregate amount of \$42,550.00 for their reasonable costs and expenses (including lost wages) directly relating to their representation of the Class.

### I. PRELIMINARY STATEMENT

As described more fully in the Declaration of Michael K. Yarnoff in Support of Final Approval of Settlement, Plan of Allocation and Application for an Award of Attorneys' Fees and Expenses and Reimbursement to the Class Representatives (the "Declaration" or "Yarnoff Decl."), the proposed Settlement of \$50,000,000.00 in cash, plus interest -- among the largest recoveries ever obtained in a securities fraud class action against a biotechnology company concerning the U.S. Food and Drug Administration ("FDA") approval process -- is, by any measure, an excellent result for the Class. Notably, this recovery represents a significant percentage of the Class' damages, calculated separately by both an expert retained by the Class Representatives and a neutral expert agreed to by the Parties, as well as three times the maximum

<sup>&</sup>lt;sup>1</sup> This Memorandum incorporates by reference the definitions in the Stipulation and Agreement of Settlement (the "Stipulation") dated February 11, 2008.

Plaintiffs' Counsel refers collectively to (i) Lead Counsel, Schiffrin Barroway Topaz & Kessler, LLP ("SBTK"); (ii) the members of Plaintiffs' Executive Committee -- Wolf Haldenstein Adler Freeman & Herz, LLP ("Wolf Haldenstein"), Berger Montague, P.C. ("Berger Montague"), Pomerantz Haudek Block Grossman & Gross LLP ("Pomerantz") and Wolf Popper LLP ("Wolf Popper"); and (iii) Co-Liaison Counsel -- Gilman and Pastor, LLP ("Gilman and Pastor") and Shapiro Haber & Urmy LLP ("Shapiro Haber").

### UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

In re: Altisource Portfolio Solutions, S.A. Securities Litigation

Case 14-81156 CIV-WPD

### ORDER AWARDING ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

This matter came on for hearing on May 30, 2017 (the "Settlement Hearing") on Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses. The Court having considered all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that notice of the Settlement Hearing substantially in the form approved by the Court was mailed to all Settlement Class Members who could be identified with reasonable effort, and that a summary notice of the hearing substantially in the form approved by the Court was published in the national edition of *The Wall Street Journal* and was transmitted over the *PR Newswire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and Litigation Expenses requested,

### NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated February 8, 2017 (the "Stipulation"), and all capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.

- 2. The Court has jurisdiction to enter this Order and over the subject matter of the Action and all parties to the Action, including all Settlement Class Members.
- 3. Notice of Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of the motion for an award of attorneys' fees and expenses satisfied 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. § 78u-4, as amended, and all other applicable law and rules; constituted the best notice practicable under the circumstances; and constituted due and sufficient notice to all persons and entities entitled thereto.
- 4. Plaintiffs' Counsel are hereby awarded attorneys' fees in the amount of 22% of the Settlement Fund and \$988,206.72 in reimbursement of Plaintiffs' Counsel's Litigation Expenses (which fees and expenses shall be paid from the Settlement Fund), which sums the Court finds to be fair and reasonable. Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel in a manner which they, in good faith, believe reflects the contributions of such counsel to the institution, prosecution, and settlement of the Action.
- 5. In making this award of attorneys' fees and reimbursement of Litigation Expenses to be paid from the Settlement Fund, the Court has considered and found that:
  - (a) The Settlement has created a fund of \$32,000,000 in cash that has been funded into escrow pursuant to the terms of the Stipulation, and that numerous Settlement Class Members who submit acceptable Claim Forms will benefit from the Settlement that occurred because of the efforts of Plaintiffs' Counsel;

- (b) The fee sought by Lead Counsel has been reviewed and approved as reasonable by the Court-appointed Lead Plaintiffs the Pension Fund for the Painters and Allied Trades District Council 35 and Annuity Fund for the Painters and Allied Trades District Council 35, who are institutional investors that oversaw the prosecution and resolution of the Action;
- (c) Copies of the Notice were mailed to over 19,000 potential Settlement Class Members and nominees stating that Lead Counsel would apply for attorneys' fees in an amount not to exceed 22% of the Settlement Fund and reimbursement of Litigation Expenses in an amount not to exceed \$1,200,000, and there were no objections to the requested attorneys' fees and expenses;
- (d) Lead Counsel have conducted the litigation and achieved the Settlement with skill, perseverance, and diligent advocacy;
  - (e) The Action raised a number of complex issues;
- (f) Had Lead Counsel not achieved the Settlement there would remain a significant risk that Lead Plaintiffs and the other members of the Settlement Class may have recovered less or nothing from the Settling Defendants;
- (g) Plaintiffs' Counsel devoted over 14,400 hours, with a lodestar value of approximately \$7,443,000 to achieve the Settlement; and
- (h) The amount of attorneys' fees awarded and Litigation Expenses to be reimbursed from the Settlement Fund are fair and reasonable and consistent with awards in similar cases.
- 6. Lead Plaintiffs the Pension Fund for the Painters and Allied Trades District Council 35 and Annuity Fund for the Painters and Allied Trades District Council 35 are hereby

awarded \$15,265.81 from the Settlement Fund as reimbursement for their reasonable costs and

expenses directly related to their representation of the Settlement Class.

7. Named Plaintiff West Palm Beach Firefighters' Pension Fund is hereby awarded

\$2,712.50 from the Settlement Fund as reimbursement for its reasonable costs and expenses

directly related to its representation of the Settlement Class.

8. Any appeal or any challenge affecting this Court's approval regarding any

attorneys' fees and expense application shall in no way disturb or affect the finality of the

Judgment.

9. Exclusive jurisdiction is hereby retained over the parties and the Settlement Class

Members for all matters relating to this Action, including the administration, interpretation,

effectuation, or enforcement of the Stipulation and this Order.

10. In the event that the Settlement is terminated or the Effective Date of the

Settlement otherwise fails to occur, this Order shall be rendered null and void to the extent

provided by the Stipulation.

**DONE AND ORDERED** in Chambers in Fort Lauderdale, Broward County, Florida,

this 30th day of May, 2017.

Ollain P. Simberleas

United States District Judge

4

Copies to:

All counsel of record

## UNITED STATES DISTRICT COURT EASTERN DISTRICT OF PENNSYLVANIA

IN RE DFC GLOBAL CORP. SECURITIES LITIGATION

Civ. A. No. 2:13-cv-06731-BMS

## ORDER GRANTING CO-LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

#### WHEREAS:

- A. On September 19, 2017, a hearing was held before this Court to consider, among other matters: (1) Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Fee and Expense Application"); and (2) the fairness and reasonableness of the Fee and Expense Application to the Class Members. All interested persons were afforded the opportunity to be heard;
- B. The maximum amount of fees and expenses that would be requested by Co-Lead-Counsel was set forth in the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice") that was disseminated in accordance with the Court's Order entered on March 8, 2017;
- C. The Notice advised that any objections to the Fee and Expense Application were required to be filed with the Court no later than June 16, 2017, and mailed to counsel for the parties such that they were received no later than June 16, 2017;

- D. On June 1, 2017, Co-Lead Counsel filed their Fee and Expense Application, supported by declarations and a memorandum of law;
- E. This Court has duly considered Co-Lead Counsel's Fee and Expense Application, the declarations and memorandum of law submitted in support thereof, and all of the submissions and arguments presented with respect thereto.

NOW, THEREFORE, after due deliberation, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

- 1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated February 28, 2017 (ECF 131-1) (the "Stipulation"), as well as the provisions set forth in paragraph 15 of the Stipulation. All capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.
- 2. The Court has jurisdiction to enter this Order and over the subject matter of the Action and all parties to the Action, including all Class Members.
- 3. The Fee and Expense Application is GRANTED. Co-Lead Counsel are awarded the sum of 25% of the Settlement Fund) in attorneys' fees, plus interest at the same rate earned by the Settlement Fund.
- 4. Co-Lead Counsel's motion for reimbursement of litigation expenses is GRANTED. Lead Counsel are awarded the sum of \$472,462.44 in litigation expenses.
- 5. In making this award of attorneys' fees and reimbursement of Litigation Expenses to be paid from the Settlement Fund, the Court has considered and found that:

- (a) The Settlement has created a fund of \$30,000,000 in cash that has been funded into escrow pursuant to the terms of the Stipulation, and that numerous Class Members who submit acceptable Claim Forms will benefit from the Settlement that occurred because of the efforts of Plaintiffs' Counsel;
- (b) The fee sought by Co-Lead Counsel has been reviewed and approved as reasonable by the Court-appointed Lead Plaintiffs, Arkansas Teacher Retirement System ("ATRS"), Macomb County Employees Retirement System ("Macomb County"), and Laborers' District Council and Contractors' Pension Fund of Ohio ("Ohio Laborers"), who are institutional investors that oversaw the prosecution and resolution of the Action;
- (c) Copies of the Notice were mailed to over 19,800 potential Class Members and nominees stating that Co-Lead Counsel would apply for attorneys' fees in an amount not to exceed 25% of the Settlement Fund and reimbursement of Litigation Expenses in an amount not to exceed \$700,000;
- (d) Co-Lead Counsel have conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;
  - (e) The Action raised a number of complex issues;
- (f) Had Co-Lead Counsel not achieved the Settlement there would remain a significant risk that Lead Plaintiffs and the other members of the Class may have recovered less or nothing from Defendants;
- (g) Plaintiffs' Counsel devoted over 20,800 hours, with a lodestar value of approximately \$9,891,000, to achieve the Settlement; and

- (h) The amount of attorneys' fees awarded and Litigation Expenses to be reimbursed from the Settlement Fund are fair and reasonable and consistent with awards in similar cases.
- 6. Co-Lead Counsel's motion for reimbursement of costs and expenses incurred by the Lead Plaintiffs directly related to their representation of the Class, as authorized by the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(a)(4), is GRANTED. Lead Plaintiff ATRS is hereby awarded \$5,560; Lead Plaintiff Macomb County is hereby awarded \$7,080; and Lead Plaintiff Ohio Laborers is hereby awarded \$9,000.
- 7. Co-Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel in a manner which they, in good faith, believes reflects the contributions of such counsel to the institution, prosecution and settlement of the Action.
- 8. The Notice provided the best notice practicable under the circumstances. Said Notice provided due and adequate notice of these proceedings and the matters set forth therein, including the fee and expense request, to all persons entitled to such Notice, and said Notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process.
- 9. Any appeal or any challenge affecting this Court's approval regarding any attorneys' fees and expense application shall in no way disturb or affect the finality of the Judgment.
- 10. Exclusive jurisdiction is hereby retained over the parties and the Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Order.

- 11. In the event that the Settlement is terminated or the Effective Date of the Settlement otherwise fails to occur, this Order shall be rendered null and void to the extent provided by the Stipulation.
- 12. There is no just reason for delay in the entry of this Order Granting Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, and immediate entry of this Order by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

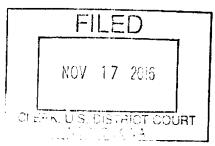
SO ORDERED:

Berle M. Schiller

United States District Judge

Case 4:13-cv-00157-AWA-LRL Document 199-4 Filed 11/10/16 Page 1 of 5 PageID# 5158

### UNITED STATES DISTRICT COURT EASTERN DISTRICT OF VIRGINIA NEWPORT NEWS DIVISION



IN RE LUMBER LIQUIDATORS HOLDINGS, INC. SECURITIES LITIGATION

Master File No.: 4:13-cv-00157-AWA Hon. Arenda L. Wright Allen

**CLASS ACTION** 

[PROPOSED] ORDER AWARDING ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

This matter came before the Court for hearing on November 17, 2016, to consider, among other things, Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (ECF No. 190, the "Fees and Expenses Motion"). The Court having reviewed and considered all documents, evidence, and arguments related to the Fees and Expenses Motion, the Notice having been sent to potential Settlement Class Members and the Summary Notice having been published in *Investor's Business Daily* and transmitted over the *PR Newswire*, and the Court having considered and determined the reasonableness of the attorneys' fees and expenses requested:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

- 1. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Settlement Class Members;
- Notice of Lead Counsel's motion for attorneys' fees and payment of expenses was given to all Settlement Class Members who could be identified with reasonable effort. The form

<sup>&</sup>lt;sup>1</sup> All capitalized terms not defined herein have the same meanings set forth and defined in the Stipulation and Agreement of Settlement, dated June 15, 2016 (ECF No. 174-1).

and method of notifying the Settlement Class of the motion for attorneys' fees and expenses met the requirements of Rules 23 and 54 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995, and other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto;

- 3. Lead Counsel are hereby awarded attorneys' fees in the amount of 23.75% of the Settlement Cash, or \$6.175 million, plus interest at the same rate earned by the Settlement Fund, and 23.75% of the Settlement Stock, or 237,500 shares of the Settlement Stock, and are hereby awarded reimbursement for Plaintiffs' Counsel's Litigation Expenses in the amount of \$357,389.69, plus interest at the same rate earned by the Settlement Fund, to be paid out of the Settlement Cash. The Court finds these amounts to be fair and reasonable under the particular circumstances of this case;
- 4. In accordance with 15 U.S.C. §78u-4(a)(4), Lead Plaintiffs Gregg Kiken, Keith Foster, David Lorenzo and the estate of the late Charles Hickman are hereby reimbursed \$4,800, \$2,500, \$5,655, and \$8,295, respectively, to be paid out of the Settlement Cash, each of which amounts the Court finds to represent reimbursement for fair and reasonable expenses and costs directly related to Lead Plaintiffs' representation of the Settlement Class;
- 5. In making the award to Lead Counsel of reasonable attorneys' fees and Litigation Expenses, and to Lead Plaintiffs for reimbursement of reasonable expenses and costs, the Court has considered and found that:

- a. The Settlement has created a common fund consisting of \$26 million in cash
   and 1 million shares Lumber Liquidators common stock, from which
   Settlement Class Members who submit acceptable Claim Forms will benefit;
- b. The attorneys' fees and Litigation Expenses requested by Lead Counsel were reviewed and approved as fair and reasonable by Lead Plaintiffs;
- c. Lead Plaintiffs have been directly involved in the prosecution and resolution of the Action and have a substantial interest in ensuring that any fees paid to Plaintiffs' Counsel are duly earned and not excessive;
- d. Notice was disseminated to potential Settlement Class Members stating that Lead Counsel would be moving for attorneys' fees in an amount not to exceed 30% of the Settlement Fund, and for reimbursement of Litigation Expenses in an amount not to exceed \$800,000, and of Lead Plaintiffs' reasonable expenses and costs directly related to their representation of the Settlement Class;
- e. There were no objections to the requested award of attorneys' fees, to the requested reimbursement of Litigation Expenses, or to reimbursement of Lead Plaintiffs' reasonable expenses and costs;
- f. Plaintiffs' Counsel have expended substantial time and effort pursuing the Action on behalf of the Settlement Class;
- g. The Action involves complex factual and legal issues and, in the absence of settlement, would involve lengthy proceedings whose resolution would be uncertain;

- h. Plaintiffs' Counsel pursued the Action on a contingent basis, and received no compensation during the Action's pendency;
- Plaintiffs' Counsel conducted the Action and achieved the Settlement with skillful and diligent advocacy;
- Public policy considerations favor the award of reasonable attorneys' fees in securities class action litigation; and
- k. The amount of attorneys' fees awarded is fair, reasonable, and consistent with awards in similar cases:
- 6. The attorneys' fees and Litigation Expenses described above are to be paid according to the terms, conditions, and obligations of the Stipulation, which this Order hereby incorporates by reference;
- 7. The attorneys' fees and Litigation Expenses awarded above may be paid to Lead Counsel immediately upon the entry of this Order, notwithstanding any appeal, on the terms set forth in Paragraph 19 of the Stipulation;
- 8. Any appeal or any challenge affecting any aspect of this Order shall in no way disturb or affect the finality of the Judgment entered with respect to the Settlement;
- 9. This Court retains exclusive jurisdiction over the subject matter of this Action and over all parties to the Action, including jurisdiction over the administration and distribution of the Net Settlement Fund to Settlement Class Members;
- 10. In the event that the Settlement is terminated or does not become Final or the Effective Date does not occur in accordance with the terms of the Stipulation, this order shall be rendered null and void to the extent provided by the Stipulation and shall be vacated in accordance with the Stipulation; and

Case 4:13-cv-00157-AWA-LRL Document 199-4 Filed 11/10/16 Page 5 of 5 PageID# 5162

11. There is no just reason for delay in the entry of this Order, and immediate entry of this Order by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

SO ORDERED this 17 day of November 2016.

Arenda L. Wright Allen United States District Judge

The Honorable Arenda L. Wright Allen United States District Judge

### UNITED STATES DISTRICT COURT EASTERN DISTRICT OF VIRGINIA Alexandria Division

IN	RE	NII	HO	LD	NGS	, INC.	
SE	CU	RITI	ES	LIT	IGA'	ΓΙΟΝ	

Civ. No. 1:14-cv-00227-LMB-JFA

### ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

This matter having come before the Court for hearing on September 16, 2016 (the "Settlement Hearing") on Class Counsel's motion for an award of attorneys' fees, payment of litigation expenses incurred by Plaintiffs' counsel, and reimbursement of costs and expenses to Class Representatives in connection with their representation of the Class in the above-captioned class action ("Action"); the Court having considered all matters submitted to it at the Settlement Hearing and otherwise; it appearing that notice of the Settlement Hearing substantially in the form approved by the Court was mailed to all Class Members who or which could be identified with reasonable effort, and that a summary notice of the hearing substantially in the form approved by the Court was published in the *Wall Street Journal* and was transmitted over PR Newswire in accordance with the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested,

### NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated April 18, 2016 (the "Stipulation"), and all capitalized terms not otherwise defined in this Order have the same meanings as defined in the Stipulation.

- The Court has jurisdiction to enter this Order and over the subject matter of the
   Action and all parties to the Action, including all Class Members.
- 3. Notice of Class Counsel's motion for an award of attorneys' fees, payment of litigation expenses incurred by Plaintiffs' counsel, and reimbursement of costs and expenses to Class Representatives in connection with their representation of the Class was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Class of the motion for an award of attorneys' fees and expenses satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. §78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995; constituted the best notice practicable under the circumstances; and constituted due and sufficient notice to all persons and entities entitled to notice.
- 4. Class Counsel are awarded attorneys' fees in the amount of 25% of the Settlement Fund (which amount includes accrued interest) and payment of litigation expenses in the amount of \$1,467,617.60, plus interest earned on this amount at the same rate earned by the Settlement Fund, which sums the Court finds to be fair and reasonable. Class Counsel will allocate the attorneys' fees awarded amongst Plaintiffs' counsel.
- 5. In making this award of attorneys' fees and expenses to be paid from the Settlement Fund, the Court has considered and found that:
- (a) The Settlement has created a fund of \$41,500,000 in cash that has been funded into escrow under the Stipulation, and numerous Class Members who submit acceptable Claim Forms will benefit from the Settlement that occurred because of the efforts of Plaintiffs' counsel;

- (b) The fee sought by Class Counsel has been reviewed and approved as reasonable by Class Representatives, institutional investors that oversaw the prosecution and resolution of the Action;
- (c) Copies of the Notice were mailed to over 188,000 potential Class

  Members and nominees stating that Class Counsel, on behalf of Plaintiffs' Counsel, would

  apply to the Court for an award of attorneys' fees from the Settlement Fund in an amount not to

  exceed 25% of the Settlement Fund and payment of litigation expenses incurred in prosecuting
  the Action in an amount not to exceed \$1.75 million, plus interest. The Notice advised Class

  Members of their right to object to Class Counsel's motion for attorneys' fees and expenses,
  and a full and fair opportunity was accorded to Persons who are Class Members to be heard

  with respect to the motion. No objections to the fees and expenses requested by Class Counsel
  have been received;
- (d) Plaintiffs' counsel have conducted the litigation and achieved the Settlement with skill, perseverance, and diligent advocacy;
- (e) The Action involves complex factual and legal issues, and, in the absence of settlement, would involve further lengthy proceedings with uncertain resolution if the case were to proceed to trial;
- (f) Class Counsel pursued the Action on a contingent basis, having received no compensation during the Action, and any fee award has been contingent on the result achieved;
- (g) Plaintiffs' counsel have devoted more than 39,000 hours to this Action, with a lodestar value of \$19,191,280.25, to achieve the Settlement;

(h) The amount of attorneys' fees is consistent with awards in similar cases

and supported by public policy; and

(i) The amount of expenses awarded is fair and reasonable and was

necessarily incurred in the prosecution and settlement of the Action.

6. The Court awards the following amounts from the Settlement Fund to Class

Representatives as reimbursement for their reasonable costs and expenses directly related to their

representation of the Class: \$15,150.00 to Danica Pension, Livsforsikringsaktieselskab;

\$6,795.00 to Industriens Pensionsforsikring A/S; \$8,720.00 to IBEW Local No. 58 / SMC NECA

Funds; and \$6.696.00 to Jacksonville Police & Fire Pension Fund.

7. Any appeal or any challenge affecting this Court's approval of any attorneys' fees

and expense application will in no way disturb or affect the finality of the Judgment entered with

respect to the Settlement.

8. The Court retains exclusive jurisdiction over the parties and the Class Members

for all matters relating to this Action, including the administration, interpretation, effectuation, or

enforcement of the Stipulation and this Order.

9. If the Settlement is terminated or the Effective Date of the Settlement otherwise

fails to occur, this Order will be rendered null and void to the extent provided by the Stipulation.

10. There is no just reason for delay in the entry of this Order, and immediate entry

by the Clerk of the Court is expressly directed.

IT IS SO ORDERED.

Dated: September 16, 2016

Leonie M. Brinkema

United States District Judge

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK	TUSDC SDNY DOCUMENT DOCUMENT ELECTROMICALLY FILED DOC R DOC
IN RE TRONOX, INC. SECURITIES LITIGATION	) Civil Action No. 09-CV-06220-SAS ) Electronically filed )
THIS DOCUMENT RELATES TO ALL CLASS ACTIONS	) ) )

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#### ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

This matter came on for hearing on November 19, 2012 (the "Settlement Hearing") on Class Counsel's motion to determine whether and in what amount to award Plaintiffs' Counsel in the above-captioned consolidated class action (the "Action") attorneys' fees and reimbursement of Litigation Expenses. The Court having considered all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that notice of the Settlement Hearing substantially in the form approved by the Court was mailed to all Class Members who or which could be identified with reasonable effort, except those persons or entities excluded from the definition of the Class, and that a summary notice of the hearing substantially in the form approved by the Court was published in *Investor's Business Daily* and was transmitted over the *PR Newswire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and Litigation Expenses requested.

#### NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated August 3, 2012 (ECF No. 186-1) (the "Stipulation") and all terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.

- 2. The Court has jurisdiction to enter this Order and over the subject matter of the Action and all parties to the Action, including all Class Members.
- 3. Notice of Class Counsel's application for attorneys' fees and reimbursement of Litigation Expenses was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Class of the application for attorneys' fees and expenses satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act of 1995 (15 U.S.C. § 78u-4(a)(7)), due process, and all other applicable law and rules, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.
- 4. Plaintiffs' Counsel are hereby awarded attorneys' fees in the amount of  $\frac{25}{8}$ % of the Settlement Fund, which sum the Court finds to be fair and reasonable, and  $\frac{1}{9}$ 85,000 in reimbursement of Litigation Expenses, which fees and expenses shall be paid to Plaintiffs' Counsel from the Settlement Fund.
- 5. Lead Plaintiffs LaGrange Capital Partners, LP and LaGrange Capital Partners Offshore Fund, Ltd. are hereby awarded 129, 804 from the Settlement Fund as reimbursement for the reasonable costs and expenses directly related to their representation of the Class.
- 6. Named Plaintiff The San Antonio Fire and Police Pension Fund is hereby awarded 19 030 from the Settlement Fund as reimbursement for the reasonable costs and expenses directly related to its representation of the Class.
- 7. Named Plaintiff The Fire and Police Pension Association of Colorado is hereby awarded 15,000 from the Settlement Fund as reimbursement for the reasonable costs and expenses directly related to its representation of the Class.

- 8. In making this award of attorneys' fees and reimbursement of expenses to be paid from the Settlement Fund, the Court has considered and found that:
- (a) The Settlement has created a fund of \$37 million in cash that has been funded into an escrow account pursuant to the terms of the Stipulation, and that numerous Class Members who submit acceptable Claim Forms will benefit from the Settlement that occurred because of the efforts of Plaintiffs' Counsel;
- (b) Copies of the Notice were mailed to over 80,000 potential Class Members or their nominees stating that Class Counsel would apply for attorneys' fees in an amount not to exceed 25% of the Settlement Fund and reimbursement of Litigation Expenses in an amount not to exceed \$1,985,000, which may include the reasonable costs and expenses of Plaintiffs directly related to the representation of the Class, and there are no objections to the requested award of attorneys' fees or expenses;
- (c) Plaintiffs' Counsel have conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;
- (d) The Action involves complex factual and legal issues and was actively prosecuted for three years;
- (e) Had Plaintiffs' Counsel not achieved the Settlement there would remain a significant risk that Plaintiffs and the other members of the Class may have recovered less or nothing from the Defendants;
- (f) Plaintiffs' Counsel devoted over 17,000 hours, with a lodestar value of approximately \$8,477,000, to achieve the Settlement; and
- (g) The amount of attorneys' fees awarded and expenses to be reimbursed from the Settlement Fund are fair and reasonable and consistent with awards in similar cases.

9. Pursuant to Paragraph 20 of the Stipulation, Lead Counsel shall have the sole authority to allocate the Court-awarded attorneys' fees amongst Plaintiffs' Counsel in a manner which it, in good faith, believes reflects the contributions of such counsel to the prosecution and

settlement of the Action.

10. Any appeal or any challenge affecting this Court's approval regarding any attorneys' fees and expense application shall in no way disturb or affect the finality of the

Judgment.

11. Exclusive jurisdiction is hereby retained over the parties and the Class Members

for all matters relating to this Action, including the administration, interpretation, effectuation or

enforcement of the Stipulation and this Order.

12. In the event that the Settlement is terminated or the Effective Date of the

Settlement otherwise fails to occur, this Order shall be rendered null and void to the extent

provided by the Stipulation.

13. There is no just reason for delay in the entry of this Order, and immediate entry

by the Clerk of the Court is expressly directed.

SO ORDERED this <u>Hovekl</u>, 2012.

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The Honorable Shira A. Scheindlin

United States District Judge

## UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Jet 12 ZW1

KEVIN CORNWELL, Individually and On Behalf of All Others Similarly Situated,

Plaintiff, : <u>CI</u>

vs.

CREDIT SUISSE GROUP, et al.,

Defendants.

Civil Action No. 08-cv-03758(VM) (Consolidated)

**CLASS ACTION** 

ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED:

THIS MATTER having come before the Court on July 18, 2011, on the motion of Lead Plaintiffs' counsel for an award of attorneys' fees and expenses incurred in the Action; the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of the Action to be fair, reasonable, and adequate and otherwise being fully informed in the premises and good cause appearing therefore;

#### IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

- 1. All of the capitalized terms used herein shall have the same meanings as set forth in the Settlement Agreement dated March 7, 2011.
- 2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all members of the Settlement Class who have not timely and validly requested exclusion.
- 3. Counsel for the Lead Plaintiffs are entitled to a fee paid out of the common fund created for the benefit of the Settlement Class. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478-79 (1980). In class action suits where a fund is recovered and fees are awarded therefrom by the court, the Supreme Court has indicated that computing fees as a percentage of the common fund recovered is the proper approach. *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). The Second Circuit recognizes the propriety of the percentage-of-the-fund method when awarding fees. *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005).
- 4. Lead Plaintiffs' counsel have moved for an award of attorneys' fees of 27.5% of the Settlement Fund, plus interest.
- 5. This Court adopts the percentage-of-recovery method of awarding fees in this case, and concludes that the percentage of the benefit is the proper method for awarding attorneys' fees in this case.

-1-

- 6. The Court hereby awards attorneys' fees of 27.5% of the Settlement Fund, plus interest at the same rate as earned on the Settlement Fund. The Court finds the fee award to be fair and reasonable. The Court further finds that a fee award of 27.5% of the Settlement Fund is consistent with awards made in similar cases.
- 7. Said fees shall be allocated among plaintiffs' counsel by Co-Lead Counsel in manner which, in their good faith judgment, reflects each counsel's contribution to the institution, prosecution and resolution of the Action.
- 8. The Court hereby awards expenses in an aggregate amount of \$285,072.62, plus interest.
- 9. In making this award of attorneys' fees and expenses to be paid from the Settlement Fund, the Court has considered each of the applicable factors set fort in *Goldberger v. Integrated Res.*, *Inc.*, 209 F.3d 43, 50 (2d Cir. 2000). In evaluating the *Goldberger* factors, the Court finds that:
- (a) Counsel for Lead Plaintiffs expended considerable effort and resources over the course of the Action researching, investigating and prosecuting Lead Plaintiffs' claims. Lead Plaintiffs' counsel have represented that they have reviewed tens of thousands of pages of documents, interviewed witnesses and opposed legally and factually complex motions to dismiss. The parties also engaged in settlement negotiations that lasted several months. The services provided by Lead Plaintiffs' counsel were efficient and highly successful, resulting in an outstanding recovery for the Settlement Class without the substantial expense, risk and delay of continued litigation. Such efficiency and effectiveness supports the requested fee percentage.
- (b) Cases brought under the federal securities laws are notably difficult and notoriously uncertain. *In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, No. MDL 1500, 2006 U.S. Dist. LEXIS 17588, at \*31 (S.D.N.Y. Apr. 6, 2006). "[S]ecurities actions have become more

difficult from a plaintiff's perspective in the wake of the PSLRA." *In re Ikon Office Solutions, Inc., Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000). Despite the novelty and difficulty of the issues raised, and the procedural posture of the case, Lead Plaintiffs' counsel secured an excellent result for the Settlement Class.

- The recovery obtained and the backgrounds of the lawyers involved in the (c) lawsuit are the best evidence that the quality of Lead Plaintiffs' counsel's representation of the Settlement Class supports the requested fee. Lead Plaintiffs' counsel demonstrated that notwithstanding the barriers erected by the PSLRA, they would develop evidence to support a convincing case. Based upon Lead Plaintiffs' counsel's diligent efforts on behalf of the Settlement Class, as well as their skill and reputations, Lead Plaintiffs' counsel were able to negotiate a very favorable result for the Settlement Class. Lead Plaintiffs' counsel are among the most experienced and skilled practitioners in the securities litigation field, and have unparalleled experience and capabilities as preeminent class action specialists. Their efforts in efficiently bringing the Action to a successful conclusion against the Defendants are the best indicator of the experience and ability of the attorneys involved. In addition, Defendants were represented by highly experienced lawyers from a prominent firm. The standing of opposing counsel should be weighed in determining the fee, because such standing reflects the challenge faced by plaintiffs' attorneys. The ability of Lead Plaintiffs' counsel to obtain such a favorable settlement for the Settlement Class in the face of such formidable opposition confirms the superior quality of their representation and the reasonableness of the fee request.
- (d) The requested fee of 27.5% of the settlement is within the range normally awarded in cases of this nature.

(e) Public policy supports the requested fee, because the private attorney general role is "vital to the continued enforcement and effectiveness of the Securities Acts." *Taft v. Ackermans*, No. 02 Civ. 7951(PKL), 2007 U.S. Dist. LEXIS 9144, at \*33 (S.D.N.Y. Jan. 31, 2007) (citation omitted).

(f) Lead Plaintiffs' counsel's total lodestar is \$4,049,631.50. A 27.5% fee represents a multiplier of 4.7. Given the public policy and judicial economy interests that support the expeditious settlement of cases, *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 373 (S.D.N.Y. 2002), the requested fee is reasonable.

10. The awarded attorneys' fees and expenses, and interest earned thereon, shall be paid to Co-Lead Counsel from the Settlement Fund immediately after the date this Order is executed subject to the terms, conditions, and obligations of the Settlement Agreement and in particular ¶6.2 thereof, which terms, conditions, and obligations are incorporated herein.

IT IS SO ORDERED.

Dated: New York, NY

, 2011

THE HONORABLE VICTOR MARRERO

UNITED STATES DISTRICT JUDGE

 $^{\prime\prime}$ 

#### **CERTIFICATE OF SERVICE**

I hereby certify that on July 11, 2011, I submitted the foregoing to <u>orders and judgments@nysd.uscourts.gov</u> and e-mailed to the e-mail addresses denoted on the Court's Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 11, 2011.

s/ Ellen Gusikoff Stewart

**ELLEN GUSIKOFF STEWART** 

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## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE

U.S. DISTRICT COURT DISTRICT OF M.H. FILED

3509 JUL 20 A 10: 29

JAMES SLOMAN, on behalf of himself and all others similarly situated,

Plaintiff.

Civil Action No. 06-cv-377-JL

v.

PRESSTEK, INC., EDWARD J. MARINO and MOOSA E. MOOSA,

Defendants.

### FINAL JUDGMENT

WHEREAS, the parties to the above-described action (the "Action") entered into a Stipulation of Settlement dated as of March 11, 2009 (the "Settlement"); and

WHEREAS, on May 1, 2009, the Court entered an Order of Preliminary Approval which, *inter alia*: (i) preliminarily approved the Settlement; (ii) confirmed the Action has been certified as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure; (iii) approved the forms of notice of the Settlement to the Class Members; (iv) directed that appropriate notice of the Settlement be given to the Class; and (v) set a hearing date for final approval of the Settlement; and

WHEREAS, notice of the Settlement was mailed to Class Members and the Summary Notice of the Settlement was published in the national edition of The Wall Street Journal, as attested to in the Affidavit of the Claims Administrator filed herein; and

WHEREAS, on July 20, 2009, a hearing was held on whether the Settlement was fair, reasonable, adequate, and in the best interests of the Class ("Settlement Hearing"); and

WHEREAS, based on the foregoing, having heard the statements of counsel for the parties and of such persons as chose to appear at the Settlement Hearing, having considered all of the pleadings and proceedings in the Action, and being otherwise fully advised,

#### IT IS HEREBY ORDERED that:

- 1. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including Class Members.
- 2. The form, content, and method of dissemination of the notice given to the Class, including both published notice and individual notice to all Class Members who could be identified through reasonable effort, was adequate and reasonable, and constituted the best notice practicable under the circumstances.
- 3. The notice, as given, complied with the requirements of 15 U.S.C. § 78u-4(a)(7) and of Rule 23 of the Federal Rules of Civil Procedure, satisfied the requirements of due process, and constituted due and sufficient notice of the matters set forth therein.
- 4. The Plan of Distribution described in the notice to Class Members is fair and reasonable and it is hereby approved.
- 5. Lead Plaintiff James Sloman, the "Representative Plaintiff," has fairly and adequately represented the interests of the Class Members in connection with the Settlement.
- 6. The Representative Plaintiff and the Class Members, and all and each of them, are hereby bound by the terms of the Settlement set forth in the Stipulation of Settlement.

- 7. The provisions of the Stipulation of Settlement, including definitions of the terms used therein, are hereby incorporated by reference as though fully set forth herein.
- 8. All parties and counsel appearing herein have complied with their obligations under Rule 11(b) of the Federal Rules of Civil Procedure.
- 9. This action is certified as a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, as previously determined by this Court in its Order dated May 1, 2009. The Class consists of all persons or entities who during the period from July 27, 2006 through September 28, 2006, inclusive ("Class Period"), purchased common stock of Presstek, Inc. ("Presstek"), and were damaged thereby. Excluded from the Class are Defendants Presstek, Edward J. Marino, and Moosa E. Moosa; any parent, subsidiary, affiliate, current or former officer or director of Presstek; members of the immediate family of any excluded person; any entity in which any excluded person has a controlling interest; and the legal representatives, heirs, successors, predecessors in interest, affiliates, or assigns of any excluded person.
- 10. Excluded from the Class as well are those persons who filed timely and valid requests for exclusion: NONE
- 11. The Settlement set forth in the Stipulation of Settlement is fair, reasonable, adequate, and in the best interests of the Class, and it shall be consummated in accordance with the terms and provisions of the Stipulation of Settlement.
- 12. Judgment shall be, and hereby is, entered dismissing the Action with prejudice and without taxation of costs in favor of or against any party except as provided in the Stipulation of Settlement.

The Representative Plaintiff and all Class Members are hereby conclusively 13. deemed to have released Defendants, the past and present parents, subsidiaries, and affiliated corporations and entities of Presstek, the predecessors and successors in interest of any of them. and all of their respective past and present officers, directors, employees, agents and assigns (the "Released Parties"), from any and all Released Claims (the "Released Claims"). As defined in the Stipulation of Settlement, "Released Claims" means any and all claims, debts, actions, causes of action, suits, dues, sums of money, accounts, liabilities, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, awards, extents, executions, and demands whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses or liabilities), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including without limitation the federal securities laws, whether fixed or contingent, whether accrued or un-accrued, whether asserted or unasserted, whether liquidated or un-liquidated, whether at law or in equity, whether matured or unmatured, whether direct, indirect or consequential, whether class or individual in nature, whether suspected or unsuspected, and whether known claims or Unknown Claims (as defined below), which the Lead Plaintiff and the Class Members on behalf of themselves, their heirs, executors, representatives, administrators, predecessors, successors, assigns, officers and directors, any and all other persons they represent and any other person or entity claiming (now or in the future) through or on behalf of them, in their individual capacities and in their capacities as purchasers of Pressetek securities, ever had, now has or hereafter can, shall or may have, from the beginning of time through and including the present, whether in their own right or by assignment, transfer or grant from any

other person, thing or entity that (i) have been asserted in this Litigation by the Lead Plaintiff and Class Members, or any of them, against any of the Released Parties, or (ii) could have been asserted in any forum by the Lead Plaintiff or Class Members, or any of them, against any of the Released Parties which arise out of, are based upon or relate to, directly or indirectly, the allegations, transactions, facts, statements, matters or occurrences, representations or omissions involved, set forth, or referred to in the Complaint or relate to the purchase and/or other acquisition of shares of common stock of Presstek during the Class Period. Released claims do not include any individual claims that a Class Member may have against his/her/its broker or financial advisor with respect to Presstek securities.

- 14. The Representative Plaintiff and all Class Members are hereby barred and permanently enjoined from instituting, asserting or prosecuting, either directly, representatively, derivatively or in any other capacity, or assisting in the commencement or prosecution of, any and all Released Claims which they or any of them had, have or may have against the Released Parties.
- 15. Any claim, counterclaim, cross-claim, third-party claim or other actions based upon, relating to, or arising out of the Released Claims (including, without limitation, any claim or action seeking indemnification and/or contribution, however denominated) against any of the Released Parties, whether such claims are legal or equitable, known or unknown, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, or are asserted under federal, foreign, state, local or common law are permanently and forever barred. This includes any claims, counterclaims, cross-claims, third party claims or other actions in this or any other court, arbitration, administrative agency or forum, or brought in any matter.

- 16. The Court appoints the law firms of Shapiro Haber & Urmy LLP and Mallory and Friedman PLLC as Class Counsel for purposes of administration of the Settlement.
- The Plan of Distribution of the Settlement Fund as described in the notice to Class Members is hereby approved, subject to modification by further order of this Court. Any order or proceedings relating to the Plan of Distribution or amendments thereto shall not operate to terminate or cancel the Stipulation of Settlement or affect the finality of this Order approving the Stipulation of Settlement.
- 18. The Court hereby decrees that neither the Stipulation of Settlement nor this Final Judgment nor the fact of the Settlement is an admission or concession by Defendants of any liability or wrongdoing. This Final Judgment is not a finding of the validity or invalidity of any of the claims asserted or defenses raised in the Action. Neither the Stipulation of Settlement nor this Final Judgment nor the fact of Settlement nor the settlement proceedings nor the settlement negotiations nor any related documents shall be offered or received in evidence as an admission, concession, presumption or inference against Defendants in any proceeding, other than such proceedings as may be necessary to consummate or enforce the Stipulation of Settlement.
- 19. The parties to the Stipulation of Settlement, their agents, employees, and attorneys, and the Claims Administrator and the Escrow Agent, shall not be liable for anything done or omitted in connection with these proceedings, the entry of this Final Judgment, or the administration of the payments to Authorized Claimants as provided in the Stipulation of Settlement and this Order, except for their own willful misconduct. No Class Member shall have any claim against the Representative Plaintiff or Class Counsel based on distributions made

substantially in accordance with the Distribution Plan and orders of the Court. No Class Member shall have any further rights or recourse against the Defendants for any matter related to the Plan of Allocation, distributions thereunder, or the claims process generally.

- 20. Class Counsel are awarded attorneys' fees in the amount of \$\frac{4/2,500.00}{26,829.00}\$ and reimbursement of expenses, including experts' fees and expenses, in the amount of \$\frac{26,829.00}{26,829.00}\$, such amounts to be paid from out of the Settlement Fund.

  Lead Plaintiff is hereby awarded \$\frac{15,000.00}{20}\$ in compensation for his expenses, including lost wages.
- 21. Such Fees and Expenses shall be payable from the Settlement Fund within seven (7) days following the entry of this Order and (i) the expiration of the time to appeal or seek reargument, certification, certiorari or other review with respect to such Order where no such appeal or reargument, certification, certiorari or other review is sought or, if any appeal, reargument, certification, certiorari or other review is sought and not dismissed, after such Order is upheld in all material respects and is no longer subject to appeal, reargument, certification, certiorari or other review, and (ii) expiration of the time to appeal or seek reargument, certification, certiorari or other review with respect to any award of attorneys' fees, costs and expenses where no such appeal, reargument, certification, certiorari or other review is sought, or if any appeal, reargument, certification, certiorari or other review is sought and not dismissed, after such award of attorneys' fees, costs or expenses is upheld and no longer subject to appeal, reargument, certification, certiorari or other review.

22. The Court hereby retains and reserves jurisdiction over implementation of this

Settlement and any distribution to Authorized Claimants under the terms and conditions of the

Stipulation of Settlement and pursuant to further orders of this Court.

23. There being no just reason for delay, the Clerk of Court is hereby directed to enter

final judgment forthwith pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. The

direction of the entry of final judgment pursuant to Rule 54(b) is appropriate and proper because

this judgment fully and finally adjudicates the claim of the Representative Plaintiff and the Class

against Defendants in this Action, it allows consummation of the Settlement, and it will expedite

the distribution of the Settlement proceeds to the Class Members.

July 20, 2009

Honorable Joseph N. LaPlante

United States District Judge