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8  
9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11 IN RE CAPSTONE TURBINE CORP.  
12 STOCKHOLDER DERIVATIVE  
13 LITIGATION

14  
15 THIS DOCUMENT RELATES TO: All  
16 Actions

Master File No.: 2:16-cv-01569- DMG  
(RAOx)

STIPULATION OF SETTLEMENT

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1 This Stipulation of Settlement, dated July 14, 2020 (the “Stipulation” or the  
2 “Settlement”), is made and entered into by and among the following Settling  
3 Parties, by and through their respective counsel of record: (i) Isaac Haber, Andrew  
4 Tuttle, and Brandon Boll (“Federal Plaintiffs”), derivatively on behalf of nominal  
5 defendant Capstone Turbine Corporation (“Capstone” or the “Company”); (ii)  
6 Velma Kilpatrick and James Giannone<sup>1</sup> (“State Plaintiffs”), derivatively on behalf  
7 of Capstone (collectively, Federal Plaintiffs and State Plaintiffs are referred to  
8 herein as “Plaintiffs”); (iii) Darren R. Jamison (“Jamison”), Jayme L. Brooks  
9 (“Brooks”), James D. Crouse, Gary D. Simon, Noam Lotan, Gary J. Mayo, Eliot  
10 G. Protsch, Holly A. Van Deursen, Darrell J. Wilk, and John V. Jagers  
11 (collectively, with Richard K. Atkinson and Edward I. Reich (“Reich”),<sup>2</sup> the  
12 “Individual Defendants”, and together with Capstone, “Defendants”); and  
13 (iv) nominal defendant Capstone. This Stipulation is intended by the Settling  
14 Parties<sup>3</sup> to fully, finally, and forever compromise, resolve, discharge, and settle the  
15 Released Claims (as defined in section IV, ¶1.17), subject to the terms and  
16 conditions set forth herein.

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18 <sup>1</sup> Mr. Giannone – a current Capstone stockholder who has owned Capstone stock  
19 continuously since before any of the alleged wrongdoing in this matter occurred –  
20 stands ready and able to substitute in as the named plaintiff in *Stesiak v. Jamison,*  
21 *et al.*, No. BC610782 (Cal. Super. Ct. – Los Angeles Cty.) (“*Stesiak* Action”), one  
22 of the related derivative actions pending in state court, in place of the original  
23 named plaintiff, Gregory Stesiak, who no longer holds shares of Capstone stock.  
24 The Settling Parties agree that given the settlement and procedural posture of this  
25 multi-jurisdictional derivative litigation, it is not necessary for Mr. Giannone to  
26 formally substitute in as a named plaintiff in the *Stesiak* Action. However, to the  
27 extent it is required at any point and for any reason, Defendants will not oppose  
28 any such motion to substitute Mr. Giannone in as the named plaintiff in the *Stesiak*  
Action.

26 <sup>2</sup> Messrs. Atkinson and Reich are deceased.

27 <sup>3</sup> All capitalized terms not otherwise defined are defined in section IV, ¶1.  
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1 **I. FACTUAL AND PROCEDURAL BACKGROUND**

2 **A. The Federal Actions**

3 On March 7, 2016, Plaintiff Isaac Haber (“Haber”) filed a verified  
4 stockholder derivative complaint in this Court (the “*Haber* Action”). On July 12,  
5 2016 and July 18, 2016, stockholders Andrew Tuttle (“Tuttle” and the “*Tuttle*  
6 *Action*”) and Brandon Boll (“Boll” and the “*Boll* Action”), respectively, filed  
7 related verified stockholder derivative complaints in this Court.

8 The *Haber* Action and the *Tuttle* Action were consolidated by order of the  
9 Court on August 22, 2016, with plaintiffs Haber and Tuttle appointed as Lead  
10 Plaintiffs, and Hynes Keller & Hernandez, LLC<sup>4</sup> and Gainey McKenna & Egleston  
11 appointed as Co-Lead Counsel in the consolidated derivative action (the “Federal  
12 Consolidated Action”, together with the *Boll* Action,<sup>5</sup> the “Federal Actions”).

13 The Federal Actions allege that between at least November 2013 and  
14 October 2015, the Individual Defendants made repeated false and/or misleading  
15 statements about Capstone’s business and business prospects that led stockholders  
16 and the investing public to believe the Company was on an upward trajectory.  
17 Specifically, the Federal Actions allege that the Individual Defendants failed to  
18 disclose that: (1) BPC Engineering (“BPC”), one of the Company’s main Russian  
19 distributors, was unlikely to be able to fulfill many of its legal and financial  
20 obligations to Capstone; (2) Capstone failed to make appropriate adjustments to its  
21 accounts receivable and backlog to account for BPC’s inability to fulfill its  
22 obligations to Capstone; (3) as such, Capstone issued financial statements in

23 \_\_\_\_\_  
24 <sup>4</sup> Hynes Keller & Hernandez, LLC has since become Hynes & Hernandez, LLC.

25 <sup>5</sup> On April 28, 2017, a Notice of Related Action was filed in the *Boll* Action by  
26 Plaintiffs Haber and Tuttle relating the *Boll* Action to the Federal Consolidated  
27 Action. The Settlement in this Stipulation resolves the claims in the *Boll* Action  
28 and will result in the *Boll* Action being dismissed with prejudice.

1 violation of Generally Accepted Accounting Principles; (4) the Company lacked  
2 adequate internal controls over accounting; and (5) as a result of the foregoing, the  
3 Company's financial statements, as well as the Individual Defendants' statements  
4 about Capstone's business, operations, and prospects, were false and misleading  
5 and/or lacked a reasonable basis. The Federal Actions allege that once the truth  
6 was revealed, Capstone's market capitalization plunged more than 97%, its stock  
7 price fell significantly below the \$1 per share listing requirement to stay on the  
8 NASDAQ, and the Company faced significant liability in numerous actions  
9 alleging violations of the federal securities laws.

10 On March 9, 2018, the parties to the Federal Actions stipulated to, and on  
11 March 13, 2018 the Court ordered, a stay pending the close of discovery in the  
12 related Securities Class Action (defined herein), in exchange for the Federal  
13 Plaintiffs' right to (among other things) discovery provided in the Securities Class  
14 Action and any documents provided to the plaintiff in the Securities Class Action  
15 in connection with any mediation or settlement discussions. The Federal Plaintiffs  
16 thereafter received, reviewed, and evaluated non-public documents produced by  
17 the Defendants.

#### 18 **B. The Related State Actions**

19 The first state derivative action, the *Stesiak* Action, was commenced in the  
20 Superior Court of the State of California, County of Los Angeles on February 18,  
21 2016. A second related state derivative action captioned, *Kilpatrick v. Simon*, et  
22 al., C.A. No. BC623167 (Super. Ct. L.A.) was commenced in the Superior Court of  
23 the State of California, County of Los Angeles on June 8, 2016 (the "*Kilpatrick*  
24 *Action*"), collectively, the "State Actions," and together with the Federal Actions,  
25 the "Actions"). The State Actions allege breaches of fiduciary duty and unjust  
26 enrichment against certain of the Company's current and former officers and  
27 directors, arising out of substantially similar facts and containing substantially  
28 similar allegations to those in the Federal Actions.

1 In the interests of efficiency and to avoid duplication of efforts and any  
2 unnecessary use of resources, the parties to the State Actions negotiated a  
3 temporary stay of the State Actions requiring Defendants to provide plaintiffs  
4 Kilpatrick and Stesiak in the State Actions with (among other things) all discovery  
5 produced by defendants in the Securities Class Action and to provide all plaintiffs  
6 in the State Actions with any documents provided by the defendants in connection  
7 with any future mediations or settlement negotiations. The plaintiffs in the State  
8 Actions thereafter received, reviewed, evaluated non-public documents produced  
9 by the Defendants.

10 **C. The Related Securities Class Action**

11 In connection with the same alleged false and misleading misstatements at  
12 issue in the Actions, Capstone, as well as certain of its current and former officers  
13 (defendants Jamison, Reich, and Brooks) were sued in this Court in a federal  
14 securities fraud class action, titled *In re Capstone Turbine Corporation Securities*  
15 *Litigation*, Case No. 2:15-cv-08914-DMG (RAOx) (the “Securities Class  
16 Action”).<sup>6</sup>

17 On November 15, 2018, the parties to the Securities Class Action reached an  
18 agreement in principle to settle the action, pursuant to which Capstone agreed to  
19 pay \$5,550,000.00, all of which was paid by Capstone’s insurer.

20 On November 15, 2019, the Court approved the settlement and entered a  
21 final judgment dismissing the Securities Class Action.

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25 <sup>6</sup> On July 12, 2016, the parties to the Securities Class Action filed a Joint  
26 Stipulation of Dismissal of Claims against Edward I. Reich due to the fact that Mr.  
27 Reich passed away after the case was initiated, and on July 13, 2016, the Court  
28 entered an order dismissing the claims against Mr. Reich without prejudice.

1           **D.     Settlement Efforts in the Actions**

2           On September 24, 2018, Plaintiffs' Counsel and counsel for Capstone and  
3 the Individual Defendants held a mediation session in Newport Beach, California  
4 (the "Mediation"). The Mediation was conducted under the mediation privilege  
5 and supervised by Michelle Yoshida of Phillips ADR (the "Mediator"). Prior to  
6 the Mediation, Plaintiffs' Counsel sent comprehensive settlement demands to  
7 counsel for the Defendants, and the Settling Parties, as well as other parties from  
8 related litigation, exchanged mediation briefs and mediation reply briefs (that  
9 included Plaintiffs' evaluation of the non-public documents produced to Plaintiffs  
10 by Defendants). Despite their good faith efforts and significant progress made,  
11 after a full day of hard fought, arm's-length negotiations, the Settling Parties were  
12 unable to reach agreement on the substantive consideration for a settlement. The  
13 Settling Parties, with the assistance of the Mediator, continued to engage in good  
14 faith settlement negotiations for more than six months following the mediation,  
15 and ultimately reached agreement on the substantive consideration for the  
16 Settlement (i.e., the corporate governance measures outlined in Exhibit A) (the  
17 "Corporate Governance Measures"). The Settling Parties separately negotiated in  
18 good faith and on an informed basis the amount of attorneys' fees to be paid to  
19 Plaintiffs' Counsel in recognition of the substantial benefits Plaintiffs' Counsel's  
20 efforts and the Settlement have conferred on Capstone. The Settling Parties then  
21 documented the Settlement in this Stipulation.

22           **II.     PLAINTIFFS' CLAIMS AND THE BENEFITS OF SETTLEMENT**

23           Plaintiffs believe that the Actions have substantial merit, and Plaintiffs'  
24 entry into this Stipulation and Settlement is not intended to be and shall not be  
25 construed as an admission or concession concerning the relative strength or merit  
26 of the claims alleged in the Actions. However, Plaintiffs and Plaintiffs' Counsel  
27 recognize and acknowledge the significant risk, expense, and length of continued  
28 proceedings necessary to prosecute the Actions against the Individual Defendants

1 through trial and possible appeals. Plaintiffs' Counsel also have taken into account  
2 the uncertain outcome and the risk of any litigation, especially in complex cases  
3 such as the Actions, as well as the difficulties and delays inherent in such  
4 litigation. Plaintiffs' Counsel are also mindful of the inherent problems of  
5 establishing standing in derivative litigation and the possible defenses to the claims  
6 alleged in the Actions.

7 Plaintiffs' Counsel have conducted extensive investigations and analyses,  
8 including, *inter alia*: (i) reviewing Capstone's press releases, public statements,  
9 U.S. Securities and Exchange Commission ("SEC") filings, and securities analysts'  
10 reports and advisories about the Company; (ii) reviewing related media reports  
11 about the Company; (iii) researching applicable law with respect to the claims  
12 alleged in the Actions and potential defenses thereto; (iv) preparing and filing  
13 derivative complaint(s); (v) conducting extensive damages analyses; (vi) reviewing  
14 and analyzing relevant non-public documents produced by the Defendants over the  
15 course of the litigation; (vii) conducting extensive research into corporate  
16 governance at Capstone and peer companies, as well as industry-wide best  
17 practices, and preparing comprehensive settlement demands in furtherance of  
18 Plaintiffs' efforts to resolve the Actions in the best interests of the Company and its  
19 shareholders; (viii) evaluating the merits of, and the defendants' potential liability  
20 in connection with the Securities Class Action; and (ix) negotiating this Settlement  
21 with Defendants, including before, at, and after the September 24, 2018 Mediation.

22 Based on Plaintiffs' Counsel's thorough review and analysis of the relevant  
23 facts, allegations, defenses, and controlling legal principles, Plaintiffs' Counsel  
24 believe that the Settlement set forth in this Stipulation is fair, reasonable, and  
25 adequate, and confers substantial benefits upon Capstone. Based upon Plaintiffs'  
26 Counsel's evaluation, Plaintiffs have determined that the Settlement is in the best  
27 interests of Capstone and have agreed to settle the Actions upon the terms and  
28 subject to the conditions set forth herein.

### **III. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

The Individual Defendants have denied and continue to deny each and all of the claims and contentions alleged by Plaintiffs in the Actions. The Individual Defendants expressly deny all allegations of wrongdoing or liability against them arising out of, based upon, or related to any of the conduct, statements, acts, or omissions alleged, or that could have been alleged in the Actions. Without limiting the foregoing, each of the Individual Defendants denies, among other things, that they or any other current or former Capstone directors or officers breached their fiduciary duties or any other duty owed to Capstone, or that Plaintiffs, Capstone, or Capstone's stockholders suffered any damage or were harmed as a result of any conduct alleged in the Actions or otherwise. Each of the Individual Defendants has further asserted and continues to assert that at all relevant times, he or she acted in good faith and in a manner he or she reasonably believed to be in the best interests of Capstone and its stockholders. Furthermore, Plaintiffs in the Actions have not made a litigation demand on Capstone's Board of Directors and Capstone believes the operative complaints in the Actions do not contain allegations demonstrating that such demand would be futile.

Nonetheless, and without admitting that Plaintiffs in the Actions have standing to bring any claims in any of the Actions, the validity of any of the claims the Plaintiffs have asserted in the Actions, or any liability with respect thereto, the Individual Defendants have concluded that further proceedings would be protracted and expensive and have determined that it is desirable that the claims against them be settled on the terms reflected in this Stipulation. The Individual Defendants and Capstone are entering into this Settlement because it will eliminate the uncertainty, distraction, disruption, burden, risk, and expense of further litigation, and without admitting any wrongdoing or liability whatsoever. Capstone believes that the Settlement is fair, reasonable, adequate, and in the best interests of Capstone and its shareholders.

Neither this Stipulation, nor any of its terms or provisions, nor entry of the Judgment, nor any document or exhibit referred or attached to this Stipulation, nor any action taken to carry out this Stipulation, is, may be construed as, or may be used as evidence of the validity of any of the Released Claims or an admission by or against Defendants of any fault, damage, wrongdoing, or concession of liability whatsoever.

#### **IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, between Plaintiffs and Defendants represented in the Actions by undersigned counsel, by and through their undersigned counsel, in consideration of the benefits flowing to the Settling Parties from the Settlement, and subject to the approval of the Court pursuant to Federal Rule of Civil Procedure 23.1, that the claims asserted in the Actions and the Released Claims shall be fully, finally and forever compromised, settled, discharged, relinquished, and released, and the Actions shall be dismissed with prejudice and with full preclusive effect, upon and subject to the terms and conditions of this Stipulation, as set forth below.

##### **1. Definitions**

As used in this Stipulation, the following terms have the meanings specified below:

1.1 “Actions” means the Federal Actions and the State Actions.

1.2 “Capstone” or the “Company” means Capstone Turbine Corporation and includes all of its subsidiaries, predecessors, successors, affiliates, assigns, officers, directors, employees, and agents.

1.3 “Court” means the United States District Court for the Central District of California.

1.4 “Current Capstone Shareholders” means all record holders and beneficial owners of the common stock of Capstone Turbine Corporation as of July 14, 2020 who continue to own Capstone common stock as of the date of the

1 Settlement Hearing, and their successors-in-interest, excluding Defendants and  
2 other officers and directors of Capstone, as well as members of their families, their  
3 legal representatives, heirs, successors, or assigns, and any entity in which they  
4 have or had a controlling interest.

5 1.5 “Defendants” means, collectively, nominal defendant Capstone and  
6 the Individual Defendants.

7 1.6 “Defendants’ Counsel” means Wilson Sonsini Goodrich & Rosati  
8 Professional Corporation.

9 1.7 “Effective Date” means the date by which the events and conditions  
10 specified in Section IV, ¶6.1 of this Stipulation have been met and have occurred.

11 1.8 “Federal Actions” means the consolidated case captioned: *In re*  
12 *Capstone Turbine Corporation Stockholder Derivative Litigation*, C.A. No. CV16-  
13 01569-DMG (C.D. Cal.); and (2) *Boll v. Jamison, et al.*, C.A. No. 2:16-cv-05282-  
14 DMG-RAO (C.D. Cal).

15 1.9 “Final” means when the last of the following, with respect to the  
16 Judgment approving this Stipulation, substantially in the form of Exhibit C,  
17 attached hereto, shall have occurred: (1) the expiration of the time to file a notice  
18 of appeal from the Judgment; or (2) if an appeal has been filed, the court of appeal  
19 has either affirmed the Judgment or dismissed that appeal and the time for any  
20 reconsideration or further appellate review has passed; or (3) if a higher court has  
21 granted further appellate review, that court has either affirmed the underlying  
22 Judgment or affirmed the court of appeal’s decision affirming the Judgment or  
23 dismissing the appeal. For purposes of this paragraph, an “appeal” shall not  
24 include any appeal that concerns only the issue of attorneys’ fees and expenses or  
25 the payment of a service award. Any proceeding or order, or any appeal or petition  
26 for review pertaining solely to the application for attorneys’ fees, costs, or  
27 expenses, shall not in any way delay or preclude the Judgment from becoming  
28 Final.

1           1.10 “Individual Defendants” means Darren R. Jamison, Jayme L. Brooks,  
2 James D. Crouse, Gary D. Simon, Richard K. Atkinson, Noam Lotan, Gary J.  
3 Mayo, Eliot G. Protsch, Holly A. Van Deursen, Darrell J. Wilk, Edward I. Reich,  
4 and John V. Jagers.

5           1.11 “Judgment” means the Final Order and Judgment to be rendered by  
6 the Court upon final approval of the Settlement, substantially in the form attached  
7 hereto as Exhibit C.

8           1.12 “Notice” means the Notice of Proposed Settlement and of Settlement  
9 Hearing, substantially in the form attached hereto as Exhibit D.

10          1.13 “Person” means an individual, corporation, limited liability  
11 corporation, professional corporation, partnership, limited partnership, limited  
12 liability partnership, association, joint venture, joint stock company, estate, legal  
13 representative, trust, unincorporated association, government or any political  
14 subdivision or agency thereof, and any business or legal entity, and each of their  
15 spouses, heirs, predecessors, successors, representatives, or assignees.

16          1.14 “Plaintiffs” means Isaac Haber, Andrew Tuttle, Brandon Boll, Velma  
17 Kilpatrick, and James Giannone, together with any of their respective agents, heirs,  
18 assigns, predecessors, and/or successors.

19          1.15 “Plaintiffs’ Counsel” means (i) Hynes & Hernandez LLC, (ii) Gainey  
20 McKenna & Eggleston, (iii) Robbins LLP, (iv) Lifshitz Law Firm, P.C, and (v) The  
21 Rosen Law Firm, P.A.

22          1.16 “Related Persons” means each of the Defendants’ past or present  
23 agents, officers, directors, attorneys, accountants, auditors, advisors, insurers, co-  
24 insurers, reinsurers, spouses, immediate family members, heirs, executors, personal  
25 representatives, estates, administrators, trusts, predecessors, successors, and  
26 assigns, or other individual or entity in which any Defendant has a controlling  
27 interest, and each and all of their respective past and present officers, directors,  
28 employees, agents, affiliates, parents, subsidiaries, divisions, attorneys,

1 accountants, auditors, advisors, insurers, co-insurers, re-insurers, heirs, executors,  
2 personal representatives, estates, administrators, trusts, predecessors, successors,  
3 and assigns.

4 1.17 “Released Claims” shall collectively mean: (i) any and all claims for  
5 relief (including Unknown Claims, as defined in ¶1.25 below), actions, suits,  
6 claims, debts, disputes, demands, rights, liabilities, sums of money due, judgments,  
7 matters, issues, charges of any kind (including, but not limited to, any claims for  
8 interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses,  
9 amounts, or liabilities whatsoever), and claims of relief or causes of action of every  
10 nature and description whatsoever, known or unknown, whether or not concealed  
11 or hidden, asserted or unasserted, fixed or contingent, accrued or unaccrued,  
12 liquidated or unliquidated, at law or in equity, matured or unmatured, foreseen or  
13 unforeseen, whether arising under federal or state statutory or common law, or any  
14 other law, rule, or regulation, whether foreign or domestic, that have been asserted  
15 in any of the Actions or could have been asserted in any of the Actions or in any  
16 other action or forum by Plaintiffs, Capstone, or by any other shareholder of  
17 Capstone against each and every Defendant and the Released Persons, arising out  
18 of, relating to, or based upon the facts, transactions, matters, events, occurrences,  
19 acts, disclosures, statements, SEC filings, practices, omissions, or failures to act  
20 that were alleged or referred to in any of the complaints filed in the Actions; and  
21 (ii) any claims in connection with, based upon, arising out of, or relating to the  
22 Settlement, but excluding any claims to enforce the Settlement set forth in this  
23 Stipulation.

24 1.18 “Released Persons” means collectively, Capstone, the Individual  
25 Defendants, and their respective Related Persons. “Released Person” means,  
26 individually, any of the Released Persons.

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1           1.19   “Securities Class Action” means the securities class action styled as *In*  
2 *re Capstone Turbine Corporation Securities Litigation*, Case No. 2:15-cv-08914-  
3 DMG (RAOx) (C.D. Cal.).

4           1.20   “Settlement” means the settlement and compromise of the Actions  
5 upon the terms and conditions contained in this Stipulation.

6           1.21   “Settlement Hearing” means the hearing or hearings at which the  
7 Court will review the adequacy, fairness, and reasonableness of the Settlement.

8           1.22   “Settling Parties” means, collectively, each of the Plaintiffs (on behalf  
9 of themselves and derivatively on behalf of Capstone), and Defendants represented  
10 in the Actions by undersigned counsel. “Settling Party” means, individually, any  
11 of the Settling Parties.

12           1.23   “State Actions” means *Stesiak v. Jamison, et al.*, C.A. No. BC610782  
13 (Super. Ct. L.A.) and *Kilpatrick v. Simon, et al.*, C.A. No. BC623167 (Super. Ct.  
14 L.A.).

15           1.24   “Summary Notice” means the Summary Notice of Pendency and  
16 Proposed Settlement of Shareholder Derivative Actions, substantially in the form  
17 attached hereto as Exhibit E.

18           1.25   “Unknown Claims” means any Released Claim(s) that Plaintiffs,  
19 Capstone or a Capstone stockholder does not know of or suspect to exist in his,  
20 her, or its favor at the time of the release of the Released Persons, including claims  
21 which, if known by him, her or it, might have affected his, her or its settlement  
22 with and release of the Released Persons, or might have affected his, her or its  
23 decision not to object to this Settlement. In this regard, with respect to any and all  
24 Released Claims, the Settling Parties stipulate and agree that, upon the Effective  
25 Date, Plaintiffs, Capstone, and its stockholders shall be deemed to have, and by  
26 operation of the Judgment shall have, expressly waived, the provisions, rights and  
27 benefits conferred by or under California Civil Code section 1542, and any other  
28 law of the United States or any state or territory of the United States or any other

1 state, sovereign, or jurisdiction, or any principle of common law that is similar,  
2 comparable, or equivalent to section 1542, which provides:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
4 WHICH THE CREDITOR OR RELEASING PARTY DOES NOT  
5 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT  
6 THE TIME OF EXECUTING THE RELEASE AND THAT, IF  
7 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY  
8 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR  
9 OR RELEASED PARTY.

10 Plaintiffs, Capstone and each Capstone stockholder acknowledge that they  
11 may hereafter discover facts in addition to or different from those which he, she, or  
12 it now knows or believes to be true with respect to the subject matter of the  
13 Released Claims, but they stipulate and agree that, upon the Effective Date of the  
14 Settlement, Plaintiffs, Capstone, and each Capstone stockholder shall expressly  
15 waive and by operation of the Judgment, shall have, fully, finally, and forever  
16 compromised, settled, released, discharged, and extinguished any and all Released  
17 Claims, known or unknown, suspected or unsuspected, contingent or non-  
18 contingent, accrued or unaccrued, apparent or unapparent, whether or not  
19 concealed or hidden, which now exist, or heretofore have existed, or may hereafter  
20 exist upon any theory of law or equity now existing or coming into existence in the  
21 future, including, but not limited to, conduct that is negligent, intentional, with or  
22 without malice, or a breach of any duty, law, or rule, without regard to the  
23 subsequent discovery of additional or different facts. The Settling Parties  
24 acknowledge, and the Capstone stockholders shall be deemed by operation of the  
25 Judgment to have acknowledged, that the foregoing waiver was separately  
26 bargained for and is a key element of this Stipulation of which this release is a part.

## 27 **2. Terms of the Settlement**

28 Plaintiffs and Capstone have agreed that the Company shall, within ninety  
(90) days of final approval of the Settlement, take all necessary steps to adopt and  
implement the Corporate Governance Measures identified in Exhibit A attached

1 hereto, to the extent such Corporate Governance Measures have not already been  
2 adopted and implemented. The Corporate Governance Measures shall remain in  
3 place for a period of no less than four (4) years. To the extent any of the  
4 Corporate Governance Measures conflicts with any applicable law or rule of any  
5 relevant governmental body, self-regulatory organization, or national securities  
6 exchange, the Company will comply with such law or rule notwithstanding the  
7 provisions of the Stipulation of Settlement or any orders implementing the  
8 Settlement. In the event the Board makes such a determination, the Board shall  
9 (a) state the basis for its determination in a formal resolution; (b) adopt modified  
10 or substitute measures designed to accomplish the same or similar purpose(s); and  
11 (c) cause the Company to disclose such determination and the modified substitute  
12 measures to Capstone shareholders in a filing with the SEC. Additionally, copies  
13 of any pertinent Board resolutions shall be provided to Plaintiffs' Counsel upon  
14 request.

15       2.1 Capstone and its Board of Directors acknowledge and agree that the  
16 Corporate Governance Measures confer substantial benefits upon Capstone.  
17 Capstone and its Board of Directors also acknowledge that the filing, prosecution,  
18 and resolution of the Actions was a substantial and material factor in the Board's  
19 adoption, implementation, and maintenance of the Corporate Governance  
20 Measures.

### 21       **3. Approval and Notice**

22       3.1 Promptly after execution of this Stipulation, Plaintiffs shall submit  
23 this Stipulation together with its exhibits to the Court and apply for entry of an  
24 order (the "Preliminary Approval Order"), substantially in the form of Exhibit B  
25 attached hereto, requesting: (i) preliminary approval of the Settlement set forth in  
26 this Stipulation; (ii) approval of the form and manner of providing notice of the  
27 Settlement; and (iii) a date for the Settlement Hearing as described below.

1           3.2 Notice to Current Capstone Shareholders shall consist of a Notice of  
2 Pendency of Proposed Settlement of Shareholder Derivative Action (“Notice”),  
3 which shall summarize the general terms of the Settlement set forth in this  
4 Stipulation and shall specify the date of the Settlement Hearing, substantially in the  
5 form attached hereto as Exhibit D, as well as a Summary Notice of Pendency and  
6 Proposed Settlement of Shareholder Derivative Action (“Summary Notice”),  
7 substantially in the form attached hereto as Exhibit E.

8           3.3 Within fifteen (15) business days after the entry of the Preliminary  
9 Approval Order, Capstone shall cause the Notice to be given in the following  
10 manner: (i) disclosure of the terms of the Settlement through the filing of a Form 8-  
11 K with the SEC, attaching the Notice; (ii) publication of the Summary Notice one  
12 time in *Investors’ Business Daily*; and (iii) posting of a copy of the Notice on  
13 Capstone’s investor relations website, the address of which shall be contained in  
14 the Notice and Summary Notice. All costs of such Notice and the filing,  
15 publishing and posting set forth above shall be paid by Capstone and/or its  
16 insurers. In addition, Plaintiffs’ Counsel will post the Stipulation and Notice on  
17 their respective firm websites. The Settling Parties believe the content and manner  
18 of the notice, as set forth in this paragraph, constitutes adequate and reasonable  
19 notice to Current Capstone Shareholders pursuant to applicable law and due  
20 process requirements. Prior to the Settlement Hearing, Defendants’ Counsel shall  
21 file with the Court an appropriate affidavit or declaration attesting to the filing and  
22 posting of the Notice and Summary Notice.

23           3.4 Plaintiffs will also request that approximately fifty (50) days after the  
24 Notice is given, the Court hold a joint hearing in the Actions (the “Settlement  
25 Hearing”) to consider and determine whether the Final Order and Judgment,  
26 substantially in the form of Exhibit C hereto, should be entered.

27           3.5 Pending the Effective Date, all proceedings in the Federal Actions  
28 shall be stayed except as otherwise provided herein, Plaintiffs are barred and

1 enjoined from commencing, prosecuting, instigating, or in any way participating in  
2 the commencement or prosecution of any action asserting any Released Claim  
3 against any of the Released Persons.

4       3.6     Within five (5) business days after the Court's entry of the Judgment,  
5 the State Plaintiffs shall file notices of dismissal with prejudice in the State  
6 Actions, and shall use their reasonable best efforts to take, or cause to be taken, all  
7 actions, and to do, or cause to be done, all things reasonably necessary, proper and  
8 appropriate to secure dismissal with prejudice of the State Actions. In the event  
9 the *Boll* Action file remains open after the Court's entry of Judgment, within five  
10 (5) business days after the Court's entry of the Judgment, the Federal Plaintiffs  
11 shall cause to be filed a notice of dismissal with prejudice in the *Boll* Action, and  
12 shall use their reasonable best efforts to take, or cause to be taken, all actions, and  
13 to do, or cause to be done, all things reasonably necessary, proper and appropriate  
14 to secure dismissal with prejudice of the *Boll* Action. The Settling Parties shall  
15 cooperate to secure or maintain a stay of all actions in the State Actions and the  
16 *Boll* Action, including, but not limited to, securing a postponement of any hearing  
17 or trial date(s) while this Settlement is under consideration by this Court.

18       **4.     Plaintiffs' Counsel's Attorneys' Fees and Reimbursement of**  
19       **Expenses**

20       4.1     In recognition of the substantial benefits conferred upon Capstone as a  
21 direct result of the filing, prosecution and Settlement of the Actions, and subject to  
22 Court approval, Capstone shall cause its insurers to pay Plaintiffs' Counsel the  
23 agreed-to amount of \$500,000 (the "Fee and Expense Amount"). Plaintiffs'  
24 Counsel shall seek approval of the Fee and Expense Amount only in this Court and  
25 shall not seek additional attorneys' fees, or incentive awards for Plaintiffs (as  
26 described below), in any other jurisdiction. The Fee and Expense Amount shall be  
27 paid to Plaintiffs' Counsel within fifteen (15) business days of the entry of the  
28 Judgment, including approval of the Fee and Expense Amount (and upon provision  
by Plaintiffs' Counsel of all required funding information and tax identification

1 numbers to Defendants' Counsel). The failure of the Court to approve the  
2 negotiated Fee and Expense Amount, in whole or in part, shall have no effect on  
3 the Settlement set forth in this Stipulation.

4 4.2 Neither Capstone nor any other Released Persons shall have any  
5 obligations with respect to Plaintiffs' Counsel's fees and/or expenses beyond the  
6 Fee and Expense Amount awarded by the Court, and neither Capstone nor any  
7 other Released Persons shall have any responsibility for the allocation of the Fee  
8 and Expense Amount among Plaintiffs' Counsel.

9 4.3 In the event that the Judgment fails to become Final as defined in ¶1.9  
10 herein, then each Plaintiffs' Counsel and their successors shall be obligated to  
11 repay, within thirty (30) business days, the amount of any Fee and Expense  
12 Amount each may have received from the Defendants and/or their successor(s) or  
13 insurer(s). Each Plaintiffs' Counsel which receives any portion of any Fee and  
14 Expense Amount is subject to this Court's jurisdiction for purposes of enforcing  
15 this paragraph or the provisions related to any Fee and Expense Amount.

16 4.4 Plaintiffs' Counsel may apply to the Court for a service award of up to  
17 \$3,000 for each of the Plaintiffs, only to be paid upon Court approval, and to be  
18 paid out of Plaintiffs' Counsel's Fee and Expense Amount, in recognition of  
19 Plaintiffs' participation and effort in the prosecution and settlement of the Actions.  
20 The failure of the Court to approve any requested service award, in whole or in  
21 part, shall have no effect on the Settlement set forth in this Stipulation. Defendants  
22 take no position on the service awards, and neither Capstone nor any of the  
23 Individual Defendants shall be liable for any portion of any service award.

24 4.5 The payment of the Fee and Expense Amount approved by the Court  
25 shall constitute final and complete payment for Plaintiffs' attorneys' fees and  
26 expenses that have been incurred or will be incurred in connection with the  
27 Actions. Except as otherwise provided herein or except as provided pursuant to  
28

1 indemnification or insurance rights, each of the Settling Parties shall bear his, her,  
2 or its own costs, expenses, and attorneys' fees.

3       **5.     Releases**

4       5.1     Upon the Effective Date, the Plaintiffs (acting on their own behalf and  
5 derivatively on behalf of Capstone), Capstone, and each of Capstone's  
6 stockholders (solely in their capacity as Capstone stockholders), shall be deemed to  
7 have, and by operation of the Judgment shall have, fully, finally, and forever  
8 waived, released, relinquished, discharged and dismissed all Released Claims  
9 (including Unknown Claims) against the Released Persons, including any and all  
10 claims (including Unknown Claims) against the Released Persons arising out of,  
11 relating to, or in connection with the defense, Settlement, or resolution of the  
12 Actions.

13       5.2     Upon the Effective Date, Plaintiffs (acting on their own behalf and  
14 derivatively on behalf of Capstone), Capstone, and each of Capstone's  
15 stockholders (solely in their capacity as Capstone stockholders) shall be forever  
16 barred, estopped, and enjoined from commencing, instituting, or prosecuting any  
17 of the Released Claims (including Unknown Claims) or any action or other  
18 proceeding against any of the Released Persons based on the Released Claims, or  
19 any action or proceeding arising out of, relating to, or in connection with the  
20 Released Claims or the filing, prosecution, defense, settlement, or resolution of the  
21 Actions. Nothing herein shall in any way impair or restrict the rights of any  
22 Settling Party to enforce the terms of this Stipulation.

23       5.3     Upon the Effective Date, each of the Defendants represented in the  
24 Actions by undersigned counsel shall be deemed to have fully, finally, and forever  
25 released, relinquished, and discharged Plaintiffs and Plaintiffs' Counsel from all  
26 claims (including Unknown Claims), arising out of, relating to, or in connection  
27 with the institution, prosecution, assertion, settlement, or resolution of the Actions  
28

1 or the Released Claims. Nothing herein shall in any way impair or restrict the  
2 rights of any Settling Party to enforce the terms of this Stipulation.

3           **6. Conditions of Settlement; Effect of Disapproval, Cancellation, or**  
4           **Termination**

5           6.1 The Settlement shall be conditioned on the occurrence of all of the  
6 following events:

7                   a. Court approval of the Settlement, following dissemination of  
8 Notice to stockholders and the Settlement Hearing;

9                   b. entry of the Judgment, in all material respects in the form set  
10 forth as Exhibit C annexed hereto, providing for dismissal of the Federal Actions  
11 with prejudice, without the award of any damages, costs, fees, or the grant of any  
12 further relief to any party, except as provided in paragraph 4 of this Stipulation;

13                   c. the State Actions have been dismissed with prejudice; and

14                   d. the passing of the date upon which the Judgment becomes  
15 Final.

16           6.2 If any of the conditions specified above in paragraph 6.1 are not met,  
17 then this Stipulation shall be deemed canceled and terminated unless counsel for  
18 the Settling Parties mutually agree in writing to proceed with this Stipulation.

19           6.3 If for any reason the Effective Date of this Stipulation does not occur,  
20 or if this Stipulation is in any way canceled, terminated, or fails to become Final in  
21 accordance with its terms: (a) the Settling Parties and Released Persons shall be  
22 restored to their respective positions as of the date immediately preceding the full  
23 execution of this Stipulation; (b) any payments made to Plaintiffs' Counsel  
24 pursuant to paragraph 4 shall be refunded and returned to the payor within thirty  
25 (30) calendar days of the event that triggered the repayment obligation; (c) the  
26 terms and provisions of this Stipulation (other than those set forth in Section IV,  
27 ¶¶6.2-.6.3, ¶¶7.5-.7.6) shall have no further force or effect with respect to the  
28 Settling Parties and shall not be used in the Actions or in any other proceeding for

1 any purpose; and (d) all negotiations, proceedings, documents prepared, and  
2 statements made in connection herewith shall be without prejudice to the Settling  
3 Parties, shall not be deemed or construed to be an admission by a Settling Party of  
4 any act, matter, or proposition, and shall not be used in any manner for any  
5 purpose (other than to enforce the terms remaining in effect) in the Actions or in  
6 any other action or proceeding. In such event, the terms and provisions of this  
7 Stipulation shall have no further force and effect with respect to the Settling Parties  
8 and shall not be used in the Actions or in any other proceeding for any purpose,  
9 and any Judgment or other order entered in accordance with the terms of this  
10 Stipulation shall be treated as vacated, *nunc pro tunc*.

11         6.4 No order of the Court, modification, or reversal on appeal of any order  
12 of the Court concerning the amount of attorneys' fees, costs, expenses and interest  
13 (including the Fee and Expense Amount) or service award(s) awarded by the Court  
14 to Plaintiffs' Counsel or Plaintiffs shall constitute grounds for cancellation or  
15 termination of the Stipulation, affect the enforceability of the Stipulation, or delay  
16 or preclude the Judgment from becoming Final.

## 17         **7. Miscellaneous Provisions**

18         7.1 The Settling Parties: (a) acknowledge that it is their intent to  
19 consummate this Stipulation; and (b) agree to act in good faith and cooperate to  
20 take all reasonable and necessary steps to expeditiously implement the terms and  
21 conditions of this Stipulation.

22         7.2 Pending the Effective Date of this Stipulation or the termination of the  
23 Stipulation according to its terms, Plaintiffs and Capstone stockholders, and  
24 anyone who acts or purports to act on their behalf, are barred and enjoined from  
25 commencing, prosecuting, instigating, continuing directly, representatively,  
26 derivatively or in any other capacity, or in any way participating in the  
27 commencement or prosecution of any action asserting any Released Claims against  
28 any of the Released Persons.

1           7.3    The Settling Parties intend this Settlement to be a final and complete  
2 resolution of all disputes between Plaintiffs and Capstone and its stockholders, on  
3 the one hand, and the Released Persons, on the other hand, arising out of, based  
4 upon, or related to the Released Claims.

5           7.4    The Settlement compromises claims that are contested and shall not  
6 be deemed an admission by any Settling Party as to the merits of any claim,  
7 allegation, or defense. The Settling Parties agree that the parties and their  
8 respective counsel at all times during the course of the Actions have complied with  
9 the requirements of the applicable laws and rules, including, without limitation,  
10 F.R.C.P. 11, California Code of Civil Procedure §128.7 and all other similar laws  
11 and/or rules governing professional conduct. The Settling Parties agree that the  
12 claims are being settled voluntarily after consultation with competent legal  
13 counsel.

14           7.5    Neither the Settlement, this Stipulation (including any exhibits  
15 attached hereto) nor any act performed or document executed pursuant to or in  
16 furtherance of the Stipulation or Settlement: (a) is or may be deemed to be or may  
17 be offered, attempted to be offered or used in any way as a presumption, a  
18 concession, admission, or evidence of the validity of any Released Claims, or of  
19 any fault, wrongdoing or liability of the Released Persons; or (b) is, may be  
20 deemed to be, or may be used as a presumption, concession, admission or evidence  
21 of any liability, fault, or omission of any of the Released Persons in any civil,  
22 criminal, or administrative, or other proceeding in any court, administrative  
23 agency, tribunal, or other forum. Neither this Stipulation nor the Settlement, nor  
24 any act performed or document executed pursuant to or in furtherance of this  
25 Stipulation or the Settlement, shall be admissible in any proceeding for any  
26 purpose, except to enforce the terms of the Settlement, and except that the  
27 Released Persons may file or use the Stipulation and/or the Judgment in any action  
28 that may be brought against them to support a defense or counterclaim based on

1 principles of *res judicata*, collateral estoppel, full faith and credit, release,  
2 standing, good faith settlement, judgment bar or reduction, or any other theory of  
3 claim preclusion or issue preclusion, or similar defense or counterclaim.

4       7.6 All designations and agreements made during the course of the  
5 Actions relating to the confidentiality of documents or information shall survive  
6 this Stipulation.

7       7.7 This Stipulation may be modified or amended only by a written  
8 instrument signed by, or on behalf of, all the Settling Parties or their respective  
9 successors-in-interest.

10       7.8 In construing this Stipulation, no presumption shall be made against  
11 any Settling Party on the basis that it was a drafter of this Stipulation.

12       7.9 The Stipulation and the Exhibits attached hereto constitute the entire  
13 agreement between the Settling Parties, and no representations, warranties, or  
14 inducements have been made to any Settling Party concerning this Stipulation or  
15 any of its exhibits other than the representations, warranties, and covenants  
16 contained and memorialized in such documents. The Stipulation supersedes and  
17 replaces any prior or contemporaneous writing, statement, or understanding  
18 pertaining to the Actions and no parole or other evidence may be offered to  
19 explain, construe, contradict, or clarify its terms, the intent of the Settling Parties or  
20 their counsel, or the circumstances under which the Stipulation was made or  
21 executed. It is understood by the Settling Parties that, except for matters expressly  
22 represented herein, the facts or law with respect to which this Stipulation is entered  
23 into may turn out to be other than or different from the facts now known to each  
24 party or believed by such party to be true; each party therefore expressly assumes  
25 the risk of facts or law turning out to be different, and agrees that this Stipulation  
26 shall be in all respects effective and not subject to termination by reason of any  
27 such different facts or law.

1           7.10 Counsel for the Settling Parties are expressly authorized by their  
2 respective clients to take all appropriate actions required or permitted to be taken  
3 pursuant to the Stipulation to effectuate its terms and conditions.

4           7.11 Plaintiffs represent and warrant they have not assigned or transferred,  
5 or attempted to assign or transfer, any rights, claims, or causes of action that were  
6 asserted or could have been asserted in connection with, under, or arising out of  
7 any of the claims being settled or released herein.

8           7.12 The Settling Parties agree that they intend to confer on all Released  
9 Persons the benefit of all releases and other protections set forth herein. The  
10 Settling Parties agree that each of the Released Persons who is not a Settling Party  
11 is an express third-party beneficiary of those releases and other protections to the  
12 same extent that such Released Persons who are not Settling Parties could enforce  
13 such terms if they were party to the Stipulation. All provisions in the Stipulation  
14 providing that nothing herein shall in any way impair or restrict the rights of any  
15 Settling Party to enforce the terms of the Stipulation are agreed to mean  
16 additionally that nothing herein shall in any way impair or restrict the rights of any  
17 Released Person who is not a Settling Party to enforce the terms of the Stipulation.

18           7.13 Each counsel or other Person executing this Stipulation or its exhibits  
19 on behalf of any of the Settling Parties hereby warrants that such Person has the  
20 full authority to do so.

21           7.14 The exhibits to this Stipulation are material and integral parts hereof  
22 and are fully incorporated herein by this reference.

23           7.15 In the event that there exists a conflict or inconsistency between the  
24 terms of this Stipulation and the terms of any exhibit hereto, the terms of this  
25 Stipulation shall prevail.

26           7.16 This Stipulation may be executed in one or more counterparts,  
27 including by signature transmitted by facsimile or e-mailed PDF files. Each  
28

1 counterpart, when so executed, shall be deemed to be an original, and all such  
2 counterparts together shall constitute the same instrument.

3       7.17 This Stipulation and the Settlement shall be binding upon, and inure to  
4 the benefit of, the successors and assigns of the Settling Parties and Released  
5 Persons.

6       7.18 This Stipulation shall be considered to have been negotiated,  
7 executed, and delivered, and to be wholly performed, in the State of California, and  
8 the rights and obligations of the parties to this Stipulation shall be construed and  
9 enforced in accordance with, and governed by, the internal, substantive laws of the  
10 State of California without giving effect to that State's choice of law principles.

11       7.19 Any dispute arising out of or relating to the Settlement shall be  
12 resolved by the Mediator, first by way of mediation and, if unsuccessful, then by  
13 way of final, binding, non-appealable resolution on the terms and subject to the  
14 processes and procedures set forth by the Mediator.

15       7.20 In the event any proceedings by or on behalf of Capstone, whether  
16 voluntary or involuntary, are initiated under any chapter of the United States  
17 Bankruptcy Code, including an act of receivership, asset seizure, or similar federal  
18 or state law action ("Bankruptcy Proceedings"), the Settling Parties agree to use  
19 their reasonable best efforts to obtain all necessary orders, consents, releases, and  
20 approvals for effectuation of this Stipulation in a timely and expeditious manner. In  
21 the event of any Bankruptcy Proceedings by or on behalf of Capstone, the Settling  
22 Parties agree that all dates and deadlines set forth herein will be extended for such  
23 periods of time as are necessary to obtain necessary orders, consents, releases and  
24 approvals from the Bankruptcy Court to carry out the terms and conditions of the  
25 Stipulation.

26       7.21 After prior notice to the Court, but without further order of the Court,  
27 the Settling Parties may agree to reasonable extensions of time to carry out any  
28 provisions of this Stipulation.

1 IN WITNESS WHEREOF, the Settling Parties have caused this Stipulation  
2 to be executed by their duly authorized attorneys.

3 Dated: July 14 , 2020

ROBBINS LLP  
BRIAN J. ROBBINS  
CRAIG W. SMITH  
SHANE P. SANDERS

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17 *Corporation*

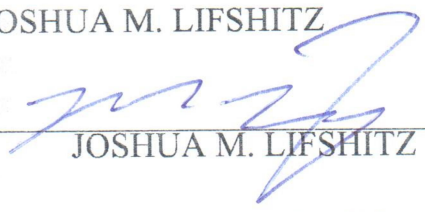
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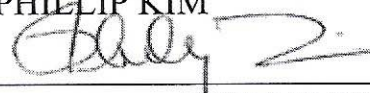
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1 IN WITNESS WHEREOF, the Settling Parties have caused this Stipulation  
2 to be executed by their duly authorized attorneys.

3 Dated: \_\_\_\_\_, 2020

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23 Dated: July 14, 2020

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25 THOMAS J. MCKENNA  
26 GREGORY M. EGLESTON

Thomas J. McKenna  
THOMAS J. MCKENNA

1 Dated: July 14, 2020

  
NINA F. LOCKER

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Jamison, Jayme Brooks, James Crouse,  
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Holly Van Deursen, Darrell Wilk, Gary  
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Defendant Capstone Turbine  
Corporation*

## Exhibit A

### **I. CORPORATE GOVERNANCE REFORMS TO BE IMPLEMENTED AND MAINTAINED BY CAPSTONE AS A RESULT OF THE SETTLEMENT**

Defendants agree that the provisions detailed herein shall remain in effect for no less than four (4) years.

Capstone Turbine Corporation ("Capstone" or the "Company") and its Board acknowledge that the filing, prosecution, and resolution of the derivative actions was a substantial and material factor in the Board's adoption, implementation, and maintenance of the following corporate governance reforms ("Reforms"), and that the Reforms confer a substantial benefit upon the Company.

#### **A. Board Independence**

##### **1. Separate Chairman/CEO or Lead Independent Director**

Capstone's Corporate Governance Principles currently state: "The Board recognizes the current debate relating to the separation of roles of the Chairman of the Board and CEO. While the positions of Chairman and CEO are currently separated, the Board will continue to monitor this issue and may reconsider this matter in the future." The Company will amend its Corporate Governance Principles to require that either: (a) the Chairman and CEO positions will be occupied by different individuals; or (b) if the Company's Chairman is not an independent director, then the Board shall appoint a Lead Independent Director. The Lead Independent Director shall be empowered to chair all meetings of the Board when the Chairman is not present, call and chair executive session meetings of independent directors, set agendas for meetings of the independent directors with input from the independent directors, place items on the agenda for full Board meetings, call special meetings of the Board, and serve as a liaison between the independent directors and the Chairman and CEO.

##### **2. Board Chair Rotation**

Capstone's Corporate Governance Principles currently state: "Although not required, the Board believes that an effort should be made to appropriately rotate committee chairmanships among the Directors." The Company will amend its Corporate Governance Principles to require that the role of Chairman of the Board, if held by an independent director, will be rotated among the independent directors at least every five (5) years. In the event the Company's CEO is Chairman of the Board, the role of Lead Independent Director will be rotated among the independent directors at least every five (5) years.

##### **3. Limits on Service on Other Boards**

Capstone will amend its Corporate Governance Principles to establish an official policy requiring that directors refrain from serving on more than four (4) other public company boards.

4. At Least Three-Fourths of the Board Must Be Independent

Capstone's Corporate Governance Principles currently state: "A majority of the Board's members shall satisfy the independent requirements under the applicable rules of The Nasdaq Stock Market or any other securities exchange on which the Company's shares are traded." The Company will revise its Corporate Governance Principles to require that, at all times, at least 75% of the Board will satisfy the independence requirements under the applicable rules of The Nasdaq Stock Market or any other securities exchange on which the Company's shares are traded.

5. Disclosure of Independence Evaluations and Determinations

The Company will continue to publicly disclose in its proxy statements filed with the U.S. Securities and Exchange Commission the information the Company considered when designating a director as independent.

6. Meetings in Executive Session

Capstone's Corporate Governance Principles currently state: "The independent Directors shall meet in executive session, without members of the Company's management present, on a regular basis but at least once a year. Such meetings usually take place at the time of regularly scheduled Board meetings but may be called at any time. One of the independent Directors shall serve as the presiding Director at each meeting of the independent Directors." Capstone will amend its Corporate Governance Principles to require that the Company's independent directors meet in executive session following each regularly scheduled board meeting, and in no event less than four (4) times per year.

7. Mandatory Attendance at Annual Meetings

Absent extraordinary circumstances, each member of the Board shall attend each annual shareholder meeting in person. Shareholders shall have the right to submit questions in advance of the annual shareholder meeting in writing, and receive answers and hold discussion where appropriate from/with the CEO and members of the Board during that meeting.

**B. Audit Committee Supervision and Oversight**

The Company agrees to mandate the following processes as part of the Audit Committee review and auditing functions:

1. The Audit Committee must meet a minimum of five (5) times per year. During these meetings, the Audit Committee shall review and discuss, on an as needed basis, with the independent auditors, management, the internal auditors, and outside consultants engaged in the review of Company financial reporting:
  - (a) Financial reporting issues and practices, and critical accounting policies and estimates;
  - (b) Significant financial risks and exposures and assess the steps management has taken to monitor such controls;

- (c) Issues regarding accounting principles and financial statement presentation (including any significant changes in the Company's selection or application of accounting principles);
  - (d) Issues as to the adequacy of the Company's internal controls systems and compliance with applicable laws and regulations; and
  - (e) The effectiveness of any special auditing steps adopted in light of identified significant and/or material control deficiencies.
2. The CFO and CAO, or either individually should the other not be available (to the extent the CFO and CAO roles are separated), shall report to the Audit Committee regarding all unusual significant revenue recognition decisions prior to the issuance of each quarterly and annual financial statement.
  3. Implementation of a policy requiring that, at least quarterly, the CAO, or in the absence of the CAO the Chief Financial Officer (to the extent the CFO and CAO roles are separated), will report to the Audit Committee on any critical issues impacting the Company's recognition of revenue, which shall include, at a minimum: any such issues relating to Capstone's Days Sales Outstanding ("DSO") and any potential issues that may substantially negatively impact sales to a particular distributor and/or the Company's ability to collect payments from that distributor.
  4. Under the Company's Whistleblower Policy, the submission procedures for complaints made shall include a method for interested parties with bona fide complaints to communicate with the chair of the Audit Committee. The Audit Committee shall be responsible for overseeing procedures for the receipt, retention, and treatment of complaints about accounting, internal accounting control, and auditing matters, and for confidential, anonymous submissions by employees of concerns about questionable accounting or auditing matters.
  5. The Audit Committee as a whole shall annually perform a self-assessment of the committee's performance. This self-assessment shall include consideration of such factors as: (1) attendance at Board and committee meetings; (2) preparedness for Board and committee meetings; (3) objectivity in exercising business judgment; (4) participation at Board and committee meetings; and (5) candor toward other directors, management, and professionals retained by the Company.

### **C. Disclosure Committee**

The Company will amend its Disclosure Committee Charter to ensure the inclusion of provisions covering the following procedures and responsibilities:

### Membership

1. The Disclosure Committee shall be comprised of (at least) the following (subject to availability and change of titles):
  - (a) The CEO;
  - (b) The CFO;
  - (c) Staff Counsel;
  - (d) The CAO;
  - (e) The Director of Cost Accounting; and
  - (f) A representative from the Company's Internal Audit function.
2. The Disclosure Committee may invite other Company personnel, outside auditors, outside counsel, or other outside advisors to attend its meetings, as it deems necessary and appropriate to perform its duties and responsibilities. A representative of each major department in the Company shall be invited to participate in the meetings held to review the Forms 10-Q and 10-K.
3. A majority of the members of the Disclosure Committee shall constitute a quorum for purposes of holding a meeting.

### Responsibilities

1. The Disclosure Committee will be responsible for, among other things:
  - (a) Evaluating the materiality of information and events relating to or affecting the Company, and determining the timing and appropriate method of disclosure of information deemed material;
  - (b) Reviewing in advance, in conjunction with the Audit Committee, each Form 10-K and Form 10-Q filed by the Company with the Securities and Exchange Commission ("SEC") to determine the adequacy and accuracy of the disclosures included therein; and
  - (c) Reporting and advising the Company's CEO and CFO with respect to the certifications they must provide for the Company's quarterly and annual reports.

### Process

1. The Disclosure Committee shall hold regular meetings and record meeting minutes in connection with the preparation and review of each of the Company's Forms 10-K and Forms 10-Q.

2. The Disclosure Committee shall also hold *ad hoc* meetings as necessary or appropriate (and record meeting minutes), including, in its discretion, upon the occurrence of an unusual or significant event that may require the filing of a Form 8-K report by the Company.
3. The Disclosure Committee may invite other Company personnel and/or representatives of the Company's external auditors, outside counsel, or other outside advisors to attend Committee meetings, as deemed necessary or appropriate by the Committee in performing its duties and responsibilities.
4. Before each Form 10-K and Form 10-Q is finalized, the Disclosure Committee shall report to the CEO, CFO and Audit Committee regarding the Disclosure Committee's deliberations, activities, and disclosure recommendations sufficiently prior to the filing or distribution of the final document for the CEO and CFO to satisfy themselves as to the adequacy of the process and to provide their own input on disclosure.
5. At least on a quarterly basis, the Disclosure Committee Chairperson shall report any concerns regarding disclosure issues, should they have any, to the Audit Committee of the Board.

**D. Separation of CFO and CAO Positions, and Appointment of New CAO**

1. Capstone will use its best efforts to separate the CFO and CAO positions and give its Corporate Controller the title of Chief Accounting Officer.<sup>1</sup> In addition, the separation of the CFO and CAO positions shall become mandatory upon the Company attaining total quarterly revenue of \$20 million.
2. The CAO's responsibilities shall continue to include overseeing all accounting functions at the Company, including ledger accounts, financial statements, and cost control systems. The CAO's focus shall include regulatory compliance and practices, and the CAO will collaborate with the CFO (to the extent the CFO and CAO roles are separated) in developing financial strategies.
3. The CAO's duties and responsibilities shall also include:
  - (a) To the extent the CFO and CAO roles are separated, working with the CFO to determine accounting and tax implications for all material business decisions;
  - (b) Reviewing material documentation and contracts in order to develop and improve internal controls;

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<sup>1</sup> Capstone will use "best efforts" due to the ongoing, global economic impact from the COVID-19 pandemic.

- (c) Assisting with quarterly financial reporting - including drafting and reviewing SEC documents, ensuring quality, and administering strict timeline;
- (d) Managing transaction accounting, SOX, the closing process, and other financial controls;
- (e) Overseeing general ledger functions and assuring accuracy, timeliness, and conformity with professional accounting standards and best practices in accordance with GAAP;
- (f) Acting as a liaison to external auditing firms, while owning primary responsibility for the Company's views on technical accounting matters;
- (g) Providing quarterly reports to the Audit Committee that address any critical issues impacting the Company's ability to collect revenue and recognition of such revenue, including any such issues relating to DSOs and any potential issues that may substantially negatively impact sales to a particular distributor and/or the Company's ability to collect payments from that distributor;
- (h) Regularly reviewing the DSO for all of the Company's distributors and/or customers and the Company's backlog;
- (i) Vetting all prepared public statements in press releases and earnings calls by members of senior management regarding the Company's accounting for sales to its distributors;
- (j) Overseeing tax compliance and strategy, as well as, capital assets; and
- (k) Working with senior management to ensure internal compliance.

**E. Enhanced Monitoring and Disclosure**

1. The Company shall identify a senior employee who shall, in consultation with the sales team, evaluate and monitor macroeconomic developments, regional conditions overseas, and the international politico-regulatory environment for changes that might impact key distributors.
2. This senior employee shall work with the CFO and CAO (to the extent the CFO and CAO roles are separated) to develop, implement, and maintain a program for due diligence with respect to potential new distributors and ongoing credit review of the Company's current distributors that account for 10% or more of the Company's sales and/or accounts receivable outstanding in any quarter over the preceding four (4) quarters ("Key Distributors").

3. This review shall include, at a minimum, each Key Distributor's credit history and financial history and determinations as to whether credit should be extended (or continue to be extended) to that distributor, in what limits and on what terms. Any significant and/or potentially material issues with respect to particular distributors shall be escalated for review by the CFO, the CAO (to the extent the CFO and CAO roles are separated), with notice as needed to the Disclosure Committee and the Audit Committee.

**F. Enhanced Backlog Transparency**

1. The Company shall develop a written policy concerning the Company's backlog disclosures. The policy shall state the criteria for decisions to include and withdraw orders from the Company's backlog.
2. Decisions to remove sales orders from the Company's backlog must be based on the Company's written policy and the rationale for withdrawal of material orders in their entirety must be explained in the Company's next SEC filing following the decision to withdraw an order from the backlog.

**G. Customer Credit Procedures**

1. Within six months of the conclusion of the Company's annual internal review cycle following the adoption of these Reforms, the Company will complete an evaluation of the sufficiency of its existing process for performing reassessments of assigned credit limits for existing customers. Upon completion of this evaluation, the Company will add language to its annual revenue cycle narrative describing its process for periodically reevaluating customers' assigned credit limits.
2. The Company will add language to its annual revenue cycle narrative describing the process by which management deems it appropriate to lift customer credit holds for purposes of selling additional products. The process described in the annual revenue cycle narrative will include an approval authority matrix and a requirement that approvals be documented.

**H. Executive Reports**

The Company will continue its practice of having, at each regularly scheduled Board meeting, the Company's CFO (or his or her designee) provide a report as to the Company's financial condition and prospects, including, but not limited to, a discussion of all reasons for material increases in expenses and liabilities, if any, and material decreases in revenues and earnings, if any, management plans for ameliorating or reversing such negative trends and the success or failure of any such plans presented in the past. The Company will also continue its practice of having all Vice Presidents and the CFO make reports to the Board regarding their respective areas of responsibility at least annually.

## **I. Management Assessment of Internal Controls**

Management will continue to annually assess the adequacy of the Company's internal controls, and shall report in the Company's Annual Report on Form 10-K any identified material weaknesses, and will continue to evaluate any change in the Company's internal control over financial reporting that occurred during a fiscal quarter that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

## **J. Whistleblower Policy**

1. Capstone shall amend Company documents describing its Whistleblower Policy to include additional language encouraging employees to bring forward good faith or bona fide concerns or complaints regarding ethical and legal violations. The added language will further emphasize that Capstone is serious about adherence to its codes of conduct and that whistle blowing is an important tool in achieving this goal.
2. The Company shall remind employees of whistleblower options, including the Company's telephone, mail, e-mail, and intranet reporting mechanisms, and whistleblower protections in employee communications provided at least twice a year.

## **K. Enhanced Governance Committee Responsibilities**

1. In accordance with its duties to develop principles of corporate governance and recommend such principles to the Board, the Governance Committee shall ensure that any agreed upon corporate governance principles or guidelines are widely available to the public, through the Company's website or otherwise.
2. Capstone shall post the amended Corporate Governance Principles on its website.

## **II. CORPORATE GOVERNANCE REFORMS AND OTHER CHANGES PROMPTED BY THE DERIVATIVE ACTIONS**

The Defendants acknowledge that the filing and maintenance of the derivative actions was a material factor in the adoption of the following corporate governance policies enacted and other changes made at Capstone since the derivative litigation was commenced, including the following:

- Certain amendments to the Company's Audit Committee Charter, adopted on June 15, 2018, including:
  - The revised language in the first bullet under Section V.D. ("Audited Financial Statements and Annual Audit") of the Audit Committee Charter (page 5), which states: "The Audit Committee shall review the overall audit plan (both internal and external) with the independent auditors and the members of management who are responsible for preparing the Company's financial statements, including the Company's Chief Financial Officer and/or principal accounting officer or principal financial officer";

- The revised language in the second bullet under Section V.D. ("Audited Financial Statements and Annual Audit") of the Audit Committee Charter (page 5), which states: "(b) the Company's disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations" prior to the filing of the Company's Annual Report on Form 10-K";
  - The revised language in subsection (1) under Section V.F. ("Unaudited Quarterly Financial Statements") of the Audit Committee Charter (page 7), which states the Audit Committee shall discuss with management and the independent auditors prior to the filing of the Company's Quarterly Reports on Form 10-Q: "the Company's related disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations";
  - The revised language in the second bullet under Section V.I. ("Procedures for Addressing Complaints and Concerns") of the Audit Committee Charter (page 8), which states: "The Audit Committee may review and reassess the adequacy of these procedures periodically and adopt any changes to such procedures that the Audit Committee deems necessary or appropriate"; and
  - The revised language in the third bullet, subsection (i), under Section VI.D. ("General") of the Audit Committee Charter (page 9), which states: "The Audit Committee is authorized to request that any officer or employee of the Company, the Company's outside legal counsel, the Company's independent auditors or any other professional retained by the Company to render advice to the Company attend a meeting of the Audit Committee or meet with any members of or advisors to the Audit Committee."
- The appointment of Robert C. Flexon to Capstone's Audit and Compensation Committee.
  - The appointment of Yon Y. Jorden to Capstone's Audit Committee and Compensation Committee.
  - The appointment of Paul DeWeese as Chairman of the Nominating and Corporate Governance Committee.
  - The engagement of Pearl Meyer as a new compensation consultant in November 2017.

1                                   **IN THE UNITED STATES DISTRICT COURT**  
2                                   **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

3                   IN RE CAPSTONE TURBINE CORP.  
4                   STOCKHOLDER DERIVATIVE  
5                   LITIGATION

6                   \_\_\_\_\_  
7                   THIS DOCUMENT RELATES TO: All  
8                   Actions

Master File No.: 2:16-cv-01569-DMG  
(RAOx)

**EXHIBIT B - [PROPOSED]  
PRELIMINARY APPROVAL ORDER**

Judge: Hon. Dolly M. Gee  
Courtroom: 8C  
Action Filed: March 7, 2016

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1 Presented to the court for preliminary approval is a settlement of all claims  
2 asserted against all Defendants in the above-captioned action (the “Action”). The  
3 terms of the Settlement are set out in a Stipulation of Settlement executed by  
4 counsel for the Parties as of July 14, 2020 (the “Stipulation”). All capitalized terms  
5 used herein have the meanings set forth and defined in the Stipulation.

6 The Court, upon reviewing the Stipulation, declares that it is hereby  
7 ORDERED, ADJUDGED AND DECREED as follows:

8 1. The Court has jurisdiction over the subject matter of the Action, the  
9 Settlement, and over the Parties to the Action.

10 2. The Court preliminarily finds that the proposed Settlement should be  
11 approved as being fair, reasonable, adequate, and in the best interests of Capstone  
12 Turbine Corporation (“Capstone”) and its shareholders, subject to further  
13 consideration at the Settlement Hearing described below.

14 4. A hearing (“Settlement Hearing”) will be held on \_\_\_\_\_  
15 \_\_\_\_\_, 2020 at \_\_\_\_:\_\_\_\_ a.m./p.m. before the Honorable Dolly M. Gee in  
16 Courtroom 8C of the United States District Court for the Central District of  
17 California, First Street Federal Courthouse, 350 W. 1st Street, Los Angeles, CA  
18 90012, pursuant to Federal Rule of Civil Procedure 23.1, to among other things: (i)  
19 determine whether the proposed Settlement, as set forth in the Stipulation, is fair,  
20 reasonable and adequate and in the best interests of Capstone and its shareholders,  
21 and should be approved by the Court; (ii) consider any objections to the Settlement  
22 submitted in accordance with the Notice; (iii) determine whether a Final Judgment  
23 substantially in the form attached as Exhibit C to the Stipulation should be entered,  
24 dismissing all claims in the Actions with prejudice, directing State Plaintiffs to file  
25 notices of dismissal with prejudice in the State Actions as against Defendants  
26 pursuant to the Stipulation, and releasing the Released Claims against the  
27 Released Persons; (iv) consider the payment to Plaintiffs’ Counsel of attorneys’  
28 fees and for the reimbursement of case related expenses; (v) consider the payment

1 of Service Awards to Plaintiffs to be paid from the Fee and Expense Amount; and  
2 (vi) consider any other matters that may properly be brought before the Court in  
3 connection with the Settlement.

4 5. The Court approves, as to form and content, the Notice (annexed as  
5 Exhibit D to the Stipulation) and finds that the distribution of the Notice  
6 substantially, in the manner and form set forth in this Preliminary Approval Order,  
7 meets the requirements of due process and applicable law, and shall constitute due  
8 and sufficient notice to all Persons entitled thereto.

9 6. Within fifteen (15) business days after the entry of this Preliminary  
10 Approval Order, Capstone shall file a Form 8-K with the SEC, which shall attach  
11 the Notice, and shall cause the Summary Notice to be published in the *Investors'*  
12 *Business Daily*. The Notice and Summary Notice shall each be in substantially the  
13 same form as Exhibits D and E respectively to the Stipulation. A copy of the  
14 Notice shall be made available on Capstone's investor relations website, the  
15 address of which shall be contained in the Notice and Summary Notice. Non-  
16 material changes to the form of the Notice may be made upon agreement by the  
17 Settling Parties without further approval of the Court.

18 6. At least ten (10) days prior to the Settlement Hearing, counsel for  
19 Capstone shall file with the Court an appropriate affidavit or declaration with  
20 respect to providing the Notice in compliance with this Preliminary Approval  
21 Order.

22 7. Any Current Capstone Shareholder who wishes to object to the  
23 fairness, reasonableness, or adequacy of the Settlement or to the proposed Fee and  
24 Expense Amount and Service Awards, may file an objection. An objector must file  
25 with the Court a written statement of his, her or its objection(s): (a) stating the case  
26 name and number: *In re Capstone Turbine Corp. Stockholder Derivative Action*,  
27 Master File No.: 2:16-cv-01569-DMG (RAOx); (b) clearly indicate that objector's  
28 name, mailing address, daytime telephone number, and e-mail address (if any); (c)

1 stating that the objector is objecting to the proposed Settlement and/or proposed  
2 Fee and Expense Amount and Service Awards; (d) specifying the reason(s), if any,  
3 for each such objection made, including any legal support and/or evidence that  
4 such objector wishes to bring to the Court's attention or introduce in support of  
5 such objection; and (e) identifying and supplying documentation showing how  
6 many shares of Capstone common stock the objector owned as of July 14, 2020,  
7 when the objector purchased or otherwise acquired such shares, and whether the  
8 objector still owns any such Capstone shares.

9       8.     The objector must file such objections and supporting documentation  
10 with the Clerk of the Court, U.S. District Court Central District of California,  
11 Western Division, First Street Federal Courthouse, 350 W. 1st Street Los Angeles,  
12 CA 90012, not later than fourteen (14) business days prior to the Settlement  
13 Hearing, and, by the same date, copies of all such papers must also be received by  
14 each of the following persons:

15                                   Counsel for Plaintiffs:

16                                   Michael J. Hynes

17                                   Ligaya Hernandez

18                                   HYNES & HERNANDEZ LLC.

19                                   101 Lindenwood Drive, Suite 225

20                                   Malvern, PA 19355

21                                   -- and --

22                                   Thomas J. McKenna

23                                   Gregory M. Egleston

24                                   GAINEY McKENNA & EGLESTON

25                                   501 Fifth Avenue, 19th Floor

26                                   New York, NY 10017

27                                   Counsel for Defendants and Capstone:

28                                   Nina F. Locker

                                  Stephen B. Strain

                                  Drew Liming

1 WILSON SONSINI GOODRICH & ROSATI  
2 650 Page Mill Road  
3 Palo Alto, CA 94304

4 An objector may file an objection on his, her or its own or through an  
5 attorney hired at his, her or its own expense. If an objector hires an attorney to  
6 represent him, her or it for the purposes of making such objection pursuant to this  
7 paragraph, the attorney must effect service of a notice of appearance on the counsel  
8 listed above and file such notice with the Court no later than fourteen business (14)  
9 days before the Settlement Hearing. Any Current Capstone Shareholder who does  
10 not timely file and serve a written objection complying with the terms of this  
11 paragraph shall be deemed to have waived, and shall be foreclosed from making,  
12 any objection to the Settlement, and any untimely objection shall be barred. Any  
13 submissions by the Settling Parties in support of final approval of the Settlement  
14 shall be filed with the Court and served at least twenty-one (21) calendar days  
15 before the Settlement Hearing, and any submissions by the Settling Parties in  
16 opposition or response to objections shall be filed with the Court no later than  
17 seven (7) calendar days before the Settlement Hearing.

18 9. Any objector who files and serves a timely, written objection in  
19 accordance with the instructions above and herein, may appear at the Settlement  
20 Hearing either in person or through counsel retained at the objector's expense.  
21 Objectors need not attend the Settlement Hearing, however, in order to have their  
22 objections considered by the Court. Timely objectors or their attorneys intending to  
23 appear at the Settlement Hearing are required to indicate in their written objection  
24 (or in a separate writing submitted to the counsel listed in the preceding paragraph  
25 no later than fourteen (14) business days prior to the Settlement Hearing) that they  
26 intend to appear at the Settlement Hearing and identify any witnesses they may call  
27 to testify and exhibits they intend to introduce into evidence at the Settlement  
28 Hearing. Objectors or their attorneys intending to appear at the Settlement Hearing  
must also, no later than fourteen (14) business days prior to the Settlement

1 Hearing, file with the Court, and serve upon counsel listed in the above paragraph,  
2 a notice of intention to appear, setting forth the name and address of anyone  
3 intending to appear. Any objector who does not timely file and serve a notice of  
4 intention to appear in accordance with this paragraph shall not be permitted to  
5 appear at the Settlement Hearing, except for good cause shown.

6 10. Defendants' Counsel and Plaintiffs' Counsel shall promptly furnish all  
7 Settling Parties with copies of any and all objections and notices of intention to  
8 appear that come into their possession.

9 11. Pending final determination of whether the Settlement should be  
10 approved, Plaintiffs and all other Current Capstone Shareholders, and anyone who  
11 acts or purports to act on their behalf, shall not institute, prosecute, participate in,  
12 or assist in the institution, prosecution, or assertion of, any Released Claim against  
13 any of the Released Persons.

14 12. This Order shall become null and void, and shall be without prejudice  
15 to the rights of the Settling Parties if the Settlement is terminated in accordance  
16 with the Stipulation. In such event, Section 6 of the Stipulation shall govern the  
17 rights of the Settling Parties.

18 13. This Order shall not be construed or used as an admission, concession,  
19 or presumption by or against any of the Released Persons of any fault, wrongdoing,  
20 breach, or liability or as a waiver by any Party of any arguments, defenses, or  
21 claims he, she, or it may have in the event that the Stipulation is terminated, nor  
22 shall it be used in any manner prohibited by Paragraphs 6.3 & 7.5 of the  
23 Stipulation. In the event this Order becomes of no force or effect, it shall not be  
24 construed or used as an admission, concession, or presumption by or against the  
25 Released Persons or the Plaintiffs.

26 14. All proceedings in the Federal Actions are stayed until further order of  
27 the Court, except as may be necessary to implement the Settlement or comply with  
28 the terms of the Stipulation and this Order. Pending final determination of whether

1 the Stipulation should be approved, Plaintiffs, Capstone, and all of Capstone's  
2 stockholders, and any of them, are barred and enjoined from commencing,  
3 prosecuting, instigating, or in any way participating in the commencement or  
4 prosecution of any action asserting any Released Claims against any Released  
5 Persons. This Court retains exclusive jurisdiction over this Action to consider all  
6 further matters arising out of or connected with the Settlement.

7 15. The Court reserves the right to approve the Stipulation and the  
8 Settlement with modifications agreed to by the Settling Parties and without further  
9 notice to any Current Capstone Shareholders. The Court further reserves the right  
10 to adjourn the date of the Settlement Hearing without further notice to Current  
11 Capstone Shareholders, and retains jurisdiction to consider all further matters  
12 related to the Action or the Settlement.

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14  
15 SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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18 \_\_\_\_\_  
19 The Honorable Dolly M. Gee  
20 United States District Court Judge  
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1  
2 **IN THE UNITED STATES DISTRICT COURT**  
3 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

4 IN RE CAPSTONE TURBINE CORP.  
5 STOCKHOLDER DERIVATIVE  
6 LITIGATION

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7 THIS DOCUMENT RELATES TO: All  
8 Actions

Master File No.: 2:16-cv-01569-DMG  
(RAOx)

**EXHIBIT C – [PROPOSED] FINAL  
JUDGMENT**

Judge: Hon. Dolly M. Gee  
Courtroom: 8C  
Action Filed: March 7, 2016

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1           This matter came before the Court for a hearing pursuant to the Order of this  
2 Court entered on \_\_\_\_\_, 2020 (the “Preliminary Approval Order”),  
3 on the application of the parties for approval of the Settlement set forth in the  
4 Stipulation of Settlement, dated as of July 14, 2020 (the “Stipulation”).

5           Due and adequate notice having been given, as required by the Preliminary  
6 Approval Order, and the Court having considered all papers filed and proceedings  
7 in this Action and otherwise being fully informed of the matters herein, and good  
8 cause appearing therefore,

9           IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

10          1.     This Final Approval Order incorporates by reference the definitions in  
11 the Stipulation, and all capitalized terms used herein shall have the same meanings  
12 as those set forth in the Stipulation, unless otherwise set forth herein.

13          2.     This Court has jurisdiction over the subject matter over the Federal  
14 Derivative Actions, including the terms and conditions of the Stipulation and all  
15 exhibits thereto, and over the Settling Parties.

16          3.     The Court hereby approves the Settlement set forth in the Stipulation  
17 and finds that the Settlement is, in all respects, fair, reasonable, and adequate to  
18 each of the Settling Parties, Capstone, and Current Capstone shareholders, and  
19 hereby directs the Settling Parties to perform the terms of the Settlement as set  
20 forth in the Stipulation.

21          4.     This Court hereby dismisses the Federal Derivative Actions with  
22 prejudice. Each party shall bear its own fees and costs, except as set forth herein.  
23 The Court also directs Plaintiffs to file notices of dismissals with prejudice in the  
24 State Derivative Actions and the *Boll* Action as against the Defendants pursuant to  
25 the Stipulation.

26          5.     Upon the Effective Date, Plaintiffs (acting on their own behalf and  
27 derivatively on behalf of Capstone and its stockholders) and Capstone shall have,  
28 and Current Capstone Stockholders by operation of this this Final Judgment shall

1 be deemed to have, fully, finally, and forever waived, released, relinquished,  
2 discharged, and dismissed all Released Claims (including Unknown Claims)  
3 against the Released Persons and their Related Persons, including any and all  
4 claims (including Unknown Claims) against the Released Persons and their  
5 Related Persons arising out of, relating to, or in connection with the defense,  
6 Settlement, or resolution of the Actions.

7         6.       Upon the Effective Date, Plaintiffs (acting on their own behalf and  
8 derivatively on behalf of Capstone), Capstone, and each of Capstone's  
9 stockholders (solely in their capacity as Capstone stockholders) shall be forever  
10 barred, estopped, and enjoined from commencing, instituting, or prosecuting any  
11 of the Released Claims (including Unknown Claims) or any action or other  
12 proceeding against any of the Released Persons based on the Released Claims, or  
13 any action or proceeding arising out of, relating to, or in connection with the  
14 Released Claims or the filing, prosecution, defense, settlement, or resolution of the  
15 Actions. Nothing herein shall in any way impair or restrict the rights of any  
16 Settling Party to enforce the terms of this Stipulation.

17         7.       Upon the Effective Date, each of the Defendants represented in the  
18 Actions by undersigned counsel shall be deemed to have fully, finally, and forever  
19 released, relinquished, and discharged Plaintiffs and Plaintiffs' Counsel from all  
20 claims (including Unknown Claims), arising out of, relating to, or in connection  
21 with the institution, prosecution, assertion, settlement, or resolution of the Actions  
22 or the Released Claims. Nothing herein shall in any way impair or restrict the  
23 rights of any Settling Party to enforce the terms of this Stipulation.

24         8.       The Court finds that the Notice given to Current Capstone  
25 Stockholders of the Settlement, Stipulation, and Settlement Hearing was the best  
26 notice practicable under the circumstances and that said Notice fully satisfied the  
27 requirements of due process and applicable law.  
28

1           10. Pursuant to the Stipulation, the Effective Date of the Settlement shall  
2 not occur until, among other things, the State Actions and the *Boll* Action have  
3 been dismissed with prejudice and those dismissal orders are Final.

4           11. The Court hereby approves the Fee and Expense Amount in  
5 accordance with the terms of the Stipulation, and directs payment of the Fee and  
6 Expense Amount as provided in the Stipulation.

7           12. Plaintiffs are each awarded Service Awards in the amount of \$3,000,  
8 which shall be funded from Plaintiffs' Counsel's Fee and Expense Amount.

9           13. Neither this Final Judgment, the Settlement, the Stipulation (including  
10 any exhibits attached hereto) nor any act performed or document executed pursuant  
11 to or in furtherance of the Stipulation or Settlement: (a) is or may be deemed to be  
12 or may be offered, attempted to be offered or used in any way as a presumption, a  
13 concession, admission, or evidence of the validity of any Released Claims, or of  
14 any fault, wrongdoing or liability of the Released Persons; or (b) is, may be  
15 deemed to be, or may be used as a presumption, concession, admission or evidence  
16 of any liability, fault, or omission of any of the Released Persons in any civil,  
17 criminal, or administrative, or other proceeding in any court, administrative  
18 agency, tribunal, or other forum. Neither this Stipulation nor the Settlement, nor  
19 any act performed or document executed pursuant to or in furtherance of this  
20 Stipulation or the Settlement, shall be admissible in any proceeding for any  
21 purpose, except to enforce the terms of the Settlement, and except that the  
22 Released Persons may file or use the Stipulation and/or the Judgment in any action  
23 that may be brought against them to support a defense or counterclaim based on  
24 principles of *res judicata*, collateral estoppel, full faith and credit, release,  
25 standing, good faith settlement, judgment bar or reduction, or any other theory of  
26 claim preclusion or issue preclusion, or similar defense or counterclaim.

27           14. The Court finds that during the course of the Action, the Settling  
28 Parties and their respective counsel at acted in good faith and complied with the

1 requirements of Rule 11 of the Federal Rules of Civil Procedure and all other  
2 similar laws relating to the institution, prosecution, defense, or settlement of the  
3 Actions.

4 15. Without affecting the finality of this Final Judgment in any way, this  
5 Court shall retain jurisdiction over the Action and the parties to the Stipulation to  
6 enter any further order as may be necessary to effectuate the Stipulation,  
7 Settlement provided therein, and provisions of this Final Judgment.

8 16. Any order regarding an award of attorneys' fees and expenses, or any  
9 appeal, modification or change of such an order, shall in no way disturb or affect  
10 the finality of this Final Judgment and shall be considered separate from this Final  
11 Judgment.

12 17. This Settlement shall be a final and complete resolution of all disputes  
13 among the parties. No party to the Stipulation may assert in any forum that the  
14 Actions were brought, commenced or prosecuted by the Plaintiffs or their counsel  
15 in bad faith or that the Actions were not filed or raised in good faith or was not  
16 settled voluntarily after negotiating at arm's-length and in good faith after  
17 consultation with competent legal counsel.

18 18. The Settling Parties are hereby authorized, without further approval of  
19 the Court, to unanimously agree to and adopt in writing such amendments,  
20 modifications, and expansions of the Stipulation and all exhibits attached thereto,  
21 provided that such amendments, modifications, and expansions of the Stipulation  
22 are done in accordance with the terms of Section IV, ¶¶7.7, 7.21 of the Stipulation,  
23 are not materially inconsistent with this Final Judgment and do not materially limit  
24 the rights of Current Capstone Shareholders or the Released Persons under the  
25 Stipulation.

26 19. In the event that the Settlement does not become effective in  
27 accordance with the terms of the Stipulation, then this Final Judgment shall be  
28 rendered null and void to the extent provided by and in accordance with the

1 Stipulation and shall be vacated, and in such event, all orders entered and releases  
2 delivered in connection herewith shall be null and void to the extent provided by  
3 and in accordance with the Stipulation.

4 20. The provisions of this Final Judgment constitute a full and complete  
5 adjudication of the matters considered and adjudged herein, and the Court  
6 determines that there is no just reason for delay in the entry of judgment. The Clerk  
7 is hereby directed to immediately enter this Final Judgment.

8  
9 SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2020.

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13 The Honorable Dolly M. Gee.  
14 United States District Court Judge  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

IN RE CAPSTONE TURBINE CORP.  
STOCKHOLDER DERIVATIVE  
LITIGATION

THIS DOCUMENT RELATES TO: All  
Actions

Master File No.: 2:16-cv-01569-DMG  
(RAOx)

Exhibit D  
Judge: Hon. Dolly M. Gee  
Courtroom: 8C  
Action Filed: March 7, 2016

**NOTICE OF PENDENCY AND PROPOSED SETTLEMENT  
OF STOCKHOLDER DERIVATIVE ACTIONS**

**TO: ALL RECORD HOLDERS AND BENEFICIAL OWNERS OF THE COMMON STOCK OF CAPSTONE TURBINE CORPORATION (“CAPSTONE” OR THE “COMPANY”) STOCK AS OF JULY 14, 2020**

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR LEGAL RIGHTS. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF STOCKHOLDER DERIVATIVE ACTIONS AND CLAIMS ASSERTED ON BEHALF OF CAPSTONE (THE “ACTIONS”).**

**IF THE COURT APPROVES THE SETTLEMENT AND DISMISSAL OF THE ACTIONS, STOCKHOLDERS OF CAPSTONE AND CAPSTONE WILL BE FOREVER BARRED FROM CONTESTING THE APPROVAL OF THE PROPOSED SETTLEMENT AND FROM PURSUING THE RELEASED CLAIMS.**

**THESE ACTIONS ARE NOT “CLASS ACTIONS.” THUS, THERE IS NO COMMON FUND UPON WHICH YOU CAN MAKE A CLAIM FOR A MONETARY PAYMENT.**

**PURPOSE OF THIS NOTICE**

YOU ARE HEREBY NOTIFIED, pursuant to an order of the United States District Court for the Central District of California (the “Court”), that a proposed settlement has been reached by the parties to the following derivative actions brought on behalf of Capstone: (i) In Re Capstone Turbine Corp. Stockholder Derivative Litigation, 2:16-cv-01569-DMG (RAOx) (C.D. Cal.) (the “Federal Consolidated Action”); (ii) *Boll v. Jamison*, et al., 2:16-cv-05282-DMG (RAOx) (C.D.

Cal.) (the “*Boll* Action”);<sup>1</sup> and (iii) two actions filed in the Superior Court of California, Los Angeles County, styled *Stesiak v. Jamison, et al.*, No. BC610782 (Cal. Super. Ct. – Los Angeles Cty.) (“*Stesiak* Action”) and *Kilpatrick v. Simon, et al.*, C.A. No. BC623167 (Super. Ct. L.A.) (“*Kilpatrick* Action”), collectively “the State Actions” (together, with the Federal Consolidated Action and the *Boll* Action, the “Actions”). This Notice is not intended to be an expression of any opinion by the Court with respect to the merits of the claims made in the Actions, but is merely to advise you of the pendency and settlement of the Actions.

The Stipulation of Settlement executed by counsel for the parties to the Actions on July 14, 2020 (the “Stipulation”) and the Settlement contemplated therein (the “Settlement”) is subject to approval by the Court, and is contingent on, among other things, the California state court granting voluntary dismissal with prejudice of the State Actions. As discussed in further detail below, the proposed Settlement requires Capstone to adopt and implement the corporate governance measures outlined in Exhibit A to the Stipulation, and provides for an agreed-to Fee and Expense Amount to Plaintiffs’ Counsel of \$500,000.00, both of which are subject to Court approval.

This Notice is a summary only and does not describe all the details of the Stipulation. For full details of the matters discussed in this Notice, please see the full Stipulation and its attached exhibits by visiting Plaintiffs’ Counsel’s websites at [www.hh-lawfirm.com](http://www.hh-lawfirm.com) or [www.gme-law.com](http://www.gme-law.com), or by contacting Plaintiffs’ Counsel at the address listed below. All capitalized terms used in this Notice, unless otherwise defined herein, are defined as set forth in the Stipulation.

**THERE IS NO CLAIMS PROCEDURE.** This case was brought to protect the interests of Capstone. The Settlement will not result in payment to individuals, and accordingly, there will be no claims procedure.

### **Final Settlement Hearing**

On \_\_\_\_\_, 2020, the Court entered an order preliminarily approving the Stipulation and the Settlement contemplated therein and providing for notice of the Settlement (the “Preliminary Approval Order”). The Preliminary Approval Order further provides that the Court will hold a hearing (“Settlement Hearing”) on \_\_\_\_\_, 2020 at \_\_\_\_ a.m./p.m. before the Honorable Dolly M. Gee in Courtroom 8C of the United States District Court for the Central District of California, First Street Federal Courthouse, 350 West 1st Street, Los Angeles, CA 90012, pursuant to Federal Rule of Civil Procedure 23.1, to among other things: (i) determine whether the proposed Settlement is fair, reasonable and adequate and in the best interests of Capstone and its shareholders; (ii) consider any objections to the Settlement submitted in accordance with the Notice; (iii) determine whether a Final Judgment substantially in the form attached as Exhibit C to the Stipulation should be entered dismissing all claims in the Actions with prejudice, directing State Plaintiffs to file notices of dismissal with prejudice in the State Actions, and releasing the Released Claims against the Released Persons; (iv) consider the payment to Plaintiffs’ Counsel

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<sup>1</sup> On April 28, 2017, a Notice of Related Action was filed in the *Boll* Action by Federal Consolidated Action Plaintiffs Isaac Haber and Andrew Tuttle relating the *Boll* Action to the Federal Consolidated Action.

of attorneys' fees and for the reimbursement of expenses; (v) consider the payment to Plaintiffs of Service Awards in an amount not to exceed \$3,000 each, which will be funded from the Fee and Expense Amount; and (vi) consider any other matters that may properly be brought before the Court in connection with the Settlement. You have an opportunity to be heard at this hearing.

## **I. FACTUAL AND PROCEDURAL BACKGROUND**

### **A. The Federal Actions**

On March 7, 2016, Plaintiff Isaac Haber ("Haber") filed a verified stockholder derivative complaint in the Court (the "*Haber* Action"). On July 12, 2016 and July 18, 2016, stockholders Andrew Tuttle ("Tuttle" and the "*Tuttle* Action") and Brandon Boll ("Boll"), respectively, filed related verified stockholder derivative complaints in the Court.

The *Haber* Action and the *Tuttle* Action were consolidated by order of the Court on August 22, 2016, with plaintiffs Haber and Tuttle appointed as Lead Plaintiffs, and Hynes Keller & Hernandez, LLC and Gainey McKenna & Egleston appointed as Co-Lead Counsel in the Federal Consolidated Action (together with the *Boll* Action, the "Federal Actions").

The Federal Actions allege that between at least November 2013 and October 2015, the Individual Defendants made repeated false and/or misleading statements about Capstone's business and business prospects that led stockholders and the investing public to believe the Company was on an upward trajectory. Specifically, the Federal Actions allege that the Individual Defendants failed to disclose that: (1) BPC Engineering ("BPC"), one of the Company's main Russian distributors, was unlikely to be able to fulfill many of its legal and financial obligations to Capstone; (2) Capstone failed to make appropriate adjustments to its accounts receivable and backlog to account for BPC's inability to fulfill its obligations to Capstone; (3) as such, Capstone issued financial statements in violation of Generally Accepted Accounting Principles; (4) the Company lacked adequate internal controls over accounting; and (5) as a result of the foregoing, the Company's financial statements, as well as the Individual Defendants' statements about Capstone's business, operations, and prospects, were false and misleading and/or lacked a reasonable basis. The Federal Actions allege that once the truth was revealed, Capstone's market capitalization plunged more than 97%, its stock price fell significantly below the \$1 per share listing requirement to stay on the NASDAQ, and the Company faced significant liability in numerous actions alleging violations of the federal securities laws.

On March 9, 2018, the parties to the Federal Actions stipulated to, and on March 13, 2018 the Court ordered, a stay pending the close of discovery in a related action captioned *In re Capstone Turbine Corporation Securities Litigation*, Case No. 2:15-cv-08914-DMG (RAOx) (the "Securities Class Action"), in exchange for the Federal Plaintiffs' right to (among other things) discovery provided in the Securities Class Action and any documents provided to the plaintiff in the Securities Class Action in connection with any mediation or settlement discussions. The Federal Plaintiffs thereafter received, reviewed, and evaluated non-public documents produced by the Defendants.

## **B. The Related State Actions**

The first state derivative action, the *Stesiak* Action, was commenced in the Superior Court of the State of California, County of Los Angeles on February 18, 2016. A second related state derivative action captioned, the *Kilpatrick* Action, was commenced in the Superior Court of the State of California, County of Los Angeles on June 8, 2016. The State Actions, together with the Federal Actions, are referred to as the “Actions”. The State Actions allege breaches of fiduciary duty and unjust enrichment against certain of the Company’s current and former officers and directors, arising out of substantially similar facts and containing substantially similar allegations to those in the Federal Actions.

In the interests of efficiency and to avoid duplication of efforts and any unnecessary use of resources, the parties to the State Actions negotiated a temporary stay of the State Actions requiring Defendants to provide plaintiffs Kilpatrick and Stesiak in the State Actions with (among other things) all discovery produced by defendants in the Securities Class Action and to provide all plaintiffs in the State Actions with any documents provided by the defendants in connection with any future mediations or settlement negotiations. The plaintiffs in the State Actions thereafter received, reviewed, evaluated non-public documents produced by the Defendants.

## **C. Settlement Efforts in the Actions**

On September 24, 2018, Plaintiffs’ Counsel and counsel for Capstone and the Individual Defendants held a mediation session in an effort to settle the Actions (the “Mediation”). The Mediation was conducted under the mediation privilege and supervised by Michelle Yoshida of Phillips ADR (the “Mediator”). Prior to the Mediation, Plaintiffs’ Counsel sent comprehensive settlement demands to counsel for the Defendants, and the Settling Parties, as well as other parties from related litigation, exchanged mediation briefs and mediation reply briefs (that included Plaintiff’s evaluation of the non-public documents produced to Plaintiffs by Defendants). Despite their good faith efforts and significant progress made, after a full day of hard fought, arm’s-length negotiations, the Settling Parties were unable to reach agreement on the substantive consideration for a settlement. The Settling Parties, with the assistance of the Mediator, continued to engage in good faith settlement negotiations for more than six months following the mediation, and ultimately reached agreement on the substantive consideration for the Settlement (found in the corporate governance measures outlined in Exhibit A to the Stipulation). Thereafter, the Settling Parties separately negotiated in good faith and on an informed basis the amount of attorneys’ fees to be paid to Plaintiffs’ Counsel in recognition of the substantial benefits Plaintiffs’ Counsel’s efforts and the Settlement have conferred on Capstone. The Settling Parties then documented the Settlement in the Stipulation.

## **II. PLAINTIFFS’ CLAIMS AND THE BENEFITS OF SETTLEMENT**

Plaintiffs believe that the Actions have substantial merit, and Plaintiffs’ entry into the Stipulation and Settlement is not intended to be and shall not be construed as an admission or concession concerning the relative strength or merit of the claims alleged in the Actions. However, Plaintiffs and Plaintiffs’ Counsel recognize and acknowledge the significant risk, expense, and

length of continued proceedings necessary to prosecute the Actions against the Individual Defendants through trial and possible appeals. Plaintiffs' Counsel also have taken into account the uncertain outcome and the risk of any litigation, especially in complex cases such as the Actions, as well as the difficulties and delays inherent in such litigation. Plaintiffs' Counsel are also mindful of the inherent problems of establishing standing in derivative litigation and the possible defenses to the claims alleged in the Actions.

Plaintiffs' Counsel have conducted extensive investigations and analyses, including, inter alia: (i) reviewing Capstone's press releases, public statements, U.S. Securities and Exchange Commission ("SEC") filings, and securities analysts' reports and advisories about the Company; (ii) reviewing related media reports about the Company; (iii) researching applicable law with respect to the claims alleged in the Actions and potential defenses thereto; (iv) preparing and filing derivative complaint(s); (v) conducting extensive damages analyses; (vi) reviewing and analyzing relevant non-public documents produced by the Defendants over the course of the litigation; (vii) conducting extensive research into corporate governance at Capstone and peer companies, as well as industry-wide best practices, and preparing comprehensive settlement demands in furtherance of Plaintiffs' efforts to resolve the Actions in the best interests of the Company and its shareholders; (viii) evaluating the merits of, and the defendants' potential liability in connection with the Securities Class Action; and (ix) negotiating this Settlement with Defendants, including before, at, and after the September 24, 2018 Mediation.

Based on Plaintiffs' Counsel's thorough review and analysis of the relevant facts, allegations, defenses, and controlling legal principles, Plaintiffs' Counsel believe that the Settlement set forth in the Stipulation is fair, reasonable, and adequate, and confers substantial benefits upon Capstone. Based upon Plaintiffs' Counsel's evaluation, Plaintiffs have determined that the Settlement is in the best interests of Capstone and have agreed to settle the Actions upon the terms and subject to the conditions set forth herein.

### **III. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

The Individual Defendants have denied and continue to deny each and all of the claims and contentions alleged by Plaintiffs in the Actions. The Individual Defendants expressly deny and continue to deny all allegations of wrongdoing or liability against them arising out of, based upon, or related to any of the conduct, statements, acts, or omissions alleged, or that could have been alleged in the Actions. Without limiting the foregoing, each of the Individual Defendants denies, among other things, that they or any other current or former Capstone directors or officers breached their fiduciary duties or any other duty owed to Capstone, or that Plaintiffs, Capstone, or Capstone's stockholders suffered any damage or were harmed as a result of any conduct alleged in the Actions or otherwise. Each of the Individual Defendants has further asserted and continues to assert that at all relevant times, he or she acted in good faith and in a manner he or she reasonably believed to be in the best interests of Capstone and its stockholders. Furthermore, Plaintiffs in the Actions have not made a litigation demand on Capstone's Board of Directors and Capstone believes the operative complaints in the Actions do not contain allegations demonstrating that such demand would be futile.

Nonetheless, and without admitting that Plaintiffs in the Actions have standing to bring any claims in any of the Actions, the validity of any of the claims the Plaintiffs have asserted in the Actions, or any liability with respect thereto, the Individual Defendants have concluded that further proceedings would be protracted and expensive and have determined that it is desirable that the claims against them be settled on the terms reflected in this Stipulation. The Individual Defendants and Capstone are entering into this Settlement because it will eliminate the uncertainty, distraction, disruption, burden, risk, and expense of further litigation, and without admitting any wrongdoing or liability whatsoever. Capstone believes that the Settlement is fair, reasonable, adequate, and in the best interests of Capstone and its shareholders..

Neither the Stipulation, nor any of its terms or provisions, nor entry of the Judgment, nor any document or exhibit referred or attached to the Stipulation, nor any action taken to carry out the Stipulation, is, may be construed as, or may be used as evidence of the validity of any of the Released Claims or an admission by or against the Defendants of any fault, damage, wrongdoing, or concession of liability whatsoever.

#### **IV. TERMS OF THE SETTLEMENT**

The terms and conditions of the proposed Settlement are set forth in the Stipulation, which has been filed with the Court and is available for viewing on Plaintiffs' Counsel's websites at [www.hh-lawfirm.com](http://www.hh-lawfirm.com) or [www.gme-law.com](http://www.gme-law.com). The following is only a summary of its terms.

Plaintiffs and Capstone have agreed that the Company shall, within ninety (90) days of final approval of the Settlement, take all necessary steps to adopt and implement the corporate governance measures identified in Exhibit A to the Stipulation, to the extent such corporate governance measures have not already been adopted and implemented. The corporate governance measures shall remain in place for a period of no less than four (4) years. Capstone and its Board of Directors acknowledge and agree that the corporate governance measures identified in Exhibit A to the Stipulation confer substantial benefits upon Capstone. Capstone and its Board of Directors also acknowledge that the filing, prosecution, and resolution of the Actions was a substantial and material factor in the Board's adoption, implementation, and maintenance of the corporate governance measures.

Plaintiffs believe the Corporate Governance Measures, among other things, increase board independence requirements; enhance the Board-level Audit Committee's supervision and oversight duties and responsibilities, including in connection with the Company's recognition of revenue and Whistleblower Policy; enhance the duties and responsibilities of the management-level Disclosure Committee to ensure sufficient oversight of and to ensure the timeliness and accuracy of the Company's public disclosures; require the separation of the positions of Chief Financial Officer and Chief Accounting Officer; provide for the appointment of a new Chief Accounting Officer; enhance monitoring and disclosure practices and requirements relating specifically to the Company's key distributors; provide for new written policies and requirements relating to the Company's sales backlog to ensure accurate disclosures concerning the Company's true revenue and business prospects; require additional procedures related to the credit extended by Capstone to its customers; and improve the Company's Whistleblower Policy.

## **V. DISMISSAL AND RELEASES**

The Settlement is conditioned upon the occurrence of certain events, which include, among other things: (i) final approval of the Settlement by the Court following notice to Capstone Shareholders and the Settlement Hearing contemplated by the Stipulation; (ii) Court entry of the Judgment, in all material respects in the form set forth as Exhibit C to the Stipulation, dismissing the Federal Actions with prejudice; (iii) the passing of the date upon which the Judgment becomes Final; and (iv) the State Court's dismissal of the State Actions with prejudice (the "Effective Date").

Upon the Effective Date, the Plaintiffs (acting on their own behalf and derivatively on behalf of Capstone), Capstone, and each of Capstone's stockholders (solely in their capacity as Capstone stockholders), shall be deemed to have, and by operation of the Judgment shall have fully, finally, and forever waived, released, relinquished, discharged, and dismissed the Released Claims (including Unknown Claims) against the Released Persons, including any and all claims (including Unknown Claims) against the Released Persons arising out of, relating to, or in connection with the defense, settlement, or resolution of the Actions. Also upon the Effective Date, Plaintiffs (acting on their own behalf and derivatively on behalf of Capstone), Capstone, and each of Capstone's stockholders (solely in their capacity as Capstone stockholders) shall be forever barred, estopped, and enjoined from commencing, instituting, or prosecuting any of the Released Claims (including Unknown Claims) or any action or other proceeding against any of the Released Persons based on the Released Claims, or any action or proceeding arising out of, relating to, or in connection with the Released Claims or the filing, prosecution, defense, settlement, or resolution of the Actions. Moreover, each of the Defendants represented in the Actions by counsel as stated in the Stipulation, shall be deemed to have fully, finally, and forever released, relinquished, and discharged Plaintiffs and Plaintiffs' Counsel from all claims (including Unknown Claims), arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the Actions or the Released Claims.

## **VI. PLAINTIFFS' ATTORNEYS' FEES AND EXPENSES**

In recognition of the substantial benefits conferred upon Capstone as a direct result of the filing, prosecution and Settlement of the Actions, and subject to Court approval, Capstone's insurers shall pay Plaintiffs' Counsel the agreed-to amount of \$500,000 (the "Fee and Expense Amount"). To date, Plaintiffs' Counsel have neither received any payment for their services in conducting the Actions, nor have counsel been reimbursed for their out-of-pocket expenses incurred. Plaintiffs believe that the sum agreed to is within the range of attorneys' fees and expenses approved by courts under similar circumstances in litigation of this type. Capstone shareholders are not personally liable for the payment of any award of attorneys' fees and expenses.

Plaintiffs' Counsel may apply to the Court for service awards of up to \$3,000 for each of the Plaintiffs, only to be paid upon Court approval, and to be paid from the Fee and Expense Amount in recognition of Plaintiffs' participation and effort in the prosecution of the Actions. Defendants take no position on the service awards and neither Capstone nor any of the Individual Defendants shall be liable for any portion of any service awards.

## **VII. CURRENT CAPSTONE SHAREHOLDER REVIEW**

Any Current Capstone Shareholder who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, or to the proposed Fee and Expense Amount and Service Awards, may file an objection. An objector must file with the Court a written statement of his, her or its objection(s): (a) stating the case name and number: *In re Capstone Turbine Corp. Stockholder Derivative Action*, Master File No.: 2:16-cv-01569-DMG (RAOx); (b) identifying the objector's name, mailing address, daytime telephone number, and e-mail address (if any); (c) stating that the objector is objecting to the proposed Settlement and/or proposed Fee and Expense Amount and Service Awards; (d) specifying the reason(s), if any, for each such objection made, including any legal support and/or evidence that such objector wishes to bring to the Court's attention or introduce in support of such objection; and (e) identifying and supplying documentation showing how many shares of Capstone common stock the objector owned as of July 14, 2020, when the objector purchased or otherwise acquired such shares, and proof that the objector still owns such Capstone shares.

The objector must file such objections and supporting documentation with the Clerk of the Court, U.S. District Court Central District of California, Western Division, First Street Federal Courthouse, 350 West 1st Street Los Angeles, CA 90012, not later than fourteen (14) business days prior to the Settlement Hearing, and, by the same date, copies of all such papers must also be received by each of the following persons:

**Counsel for Plaintiff Andrew Tuttle:**

Thomas J. McKenna  
Gregory M. Egleston  
GAINEY McKENNA & EGLESTON  
501 Fifth Avenue, 19th Floor  
New York, NY 10017

**Counsel for Plaintiff Isaac Haber:**

Michael J. Hynes  
Ligaya Hernandez  
HYNES & HERNANDEZ LLC.  
101 Lindenwood Drive, Suite 225  
Malvern, PA 19355

**Counsel for Defendants and Capstone:**

Nina F. Locker  
Stephen B. Strain  
Drew Liming  
WILSON SONSINI GOODRICH & ROSATI  
650 Page Mill Road  
Palo Alto, CA 94304

An objector may file an objection on his, her or its own or through an attorney hired at his, her or its own expense. If an objector hires an attorney to represent him, her or it for the purposes of making such objection pursuant to this paragraph, the attorney must effect service of a notice of appearance on the counsel listed above and file such notice with the Court no later than fourteen business (14) days before the Settlement Hearing. Any Current Capstone Shareholder who does not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall be foreclosed from making, any objection to the Settlement, and any untimely objection shall be barred. Any submissions by the Parties in opposition or response to objections shall be filed with the Court no later than seven (7) days before the Settlement Hearing.

Any objector who files and serves a timely, written objection in accordance with the instructions above and herein, may appear at the Settlement Hearing either in person or through counsel retained at the objector's expense. Objectors need not attend the Settlement Hearing, however, in order to have their objections considered by the Court. Timely objectors or their attorneys intending to appear at the Settlement Hearing are required to indicate in their written objection (or in a separate writing submitted to the counsel listed in the preceding paragraph no later than fourteen (14) business days prior to the Settlement Hearing) that they intend to appear at the Settlement Hearing and identify any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Final Hearing. Objectors or their attorneys intending to appear at the Final Hearing must also, no later than fourteen (14) business days prior to the Settlement Hearing, file with the Court, and serve upon counsel listed in the above paragraph, a notice of intention to appear, setting forth the name and address of anyone intending to appear. Any objector who does not timely file and serve a notice of intent to appear in accordance with this paragraph shall not be permitted to appear at the Settlement Hearing, except for good cause shown.

If you are a Current Capstone Shareholder and do not take steps to appear in this Action and object to the proposed Settlement, you will be bound by the Final Judgment of the Court and will forever be barred from raising an objection to such settlement in this or any other action or proceeding, and from pursuing any of the Released Claims.

## **VIII. EXAMINATION OF PAPERS AND INQUIRIES**

There is additional information concerning the Settlement available in the Stipulation, which is available for viewing on Plaintiffs' Counsel's websites at [www.hh-lawfirm.com](http://www.hh-lawfirm.com) or [www.gme-law.com](http://www.gme-law.com). You may also inspect the Stipulation during business hours at the office of the Clerk of the Court, U.S. District Court for the Central District of California, United States Courthouse, 350 West 1st Street, Los Angeles, CA, 90012. Or you can contact Plaintiffs' Counsel at (484) 875-3116 or (212) 983-1300 for additional information concerning the Settlement.

**PLEASE DO NOT TELEPHONE THE COURT, COURT CLERK'S OFFICE, OR ANY REPRESENTATIVE OF CAPSTONE REGARDING THIS NOTICE.**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

IN RE CAPSTONE TURBINE CORP.  
STOCKHOLDER DERIVATIVE  
LITIGATION

THIS DOCUMENT RELATES TO: All  
Actions

Master File No.: 2:16-cv-01569-DMG  
(RAOx)

Exhibit E  
**SUMMARY NOTICE OF PENDENCY  
AND PROPOSED SETTLEMENT OF  
CLASS ACTION**

**SUMMARY NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF  
STOCKHOLDER DERIVATIVE ACTIONS**

**TO: ALL RECORD OR BENEFICIAL OWNERS OF CAPSTONE TURBINE  
CORPORATION SECURITIES AS OF JULY 14, 2020 AND THEIR  
SUCCESSORS-IN-INTEREST:**

PLEASE TAKE NOTICE that the parties to the above-captioned shareholder derivative action, the related action captioned *Boll v. Jamison*, et al., 2:16-cv-05282-DMG (RAOx) (C.D. Cal.), and two actions filed in the Superior Court of California, Los Angeles County, styled *Stesiak v. Jamison, et al.*, No. BC610782 (Cal. Super. Ct. – Los Angeles Cty.), and *Kilpatrick v. Simon, et al.*, C.A. No. BC623167 (Super. Ct. L.A.) (collectively, the “Actions”), have reached an agreement to settle the Actions.

The terms of the settlement are set forth in a Stipulation of Settlement dated July 14, 2020 (the “Stipulation”).<sup>1</sup> This notice should be read in conjunction with, and is qualified in its entirety by reference to, the text of the Stipulation, which has been filed with the U.S. District Court for the Central District of California. A link to the text of the Stipulation and the full-length Notice of Pendency and Proposed Settlement of Shareholder Derivative Action may be found on the Plaintiffs’ Counsel’s websites at [www.hh-lawfirm.com](http://www.hh-lawfirm.com) or [www.gme-law.com](http://www.gme-law.com).

Under the terms of the Stipulation, as a part of the proposed Settlement, Capstone will adopt and/or implement the corporate governance measures listed in Exhibit A to the Stipulation, which all parties agree confer substantial benefits upon Capstone. In light of the substantial benefits conferred upon Capstone by Plaintiffs’ Counsel’s efforts, the Company’s insurers will pay Plaintiffs’ Counsel’s attorney’s fees, costs, and expenses of \$500,000, subject to Court approval (the “Fee and Expense Amount”).

Pursuant to the Court’s Preliminary Approval Order, a hearing will be held on \_\_\_\_\_ 2020, at \_\_\_\_:\_\_\_\_ a.m./p.m., before the Honorable Hon. Dolly M. Gee or such other judge as may

<sup>1</sup> All capitalized terms herein have the same meanings as set forth in the Stipulation.

be sitting in her place and stead, in Courtroom 8C of the United States District Court for the Central District of California, First Street Federal Courthouse, 350 West 1st Street, Los Angeles, CA 90012 (or at such a date and time as the Court may direct without further notice) for the purpose of determining: (i) whether the terms of a proposed settlement, in accordance with the Stipulation of Settlement entered into by the Settling Parties, dated July 14, 2020 (the “Stipulation”) are fair, reasonable, and adequate, and in the best interests of Capstone Turbine, Inc. (“Capstone”) and its shareholders; (ii) whether the Notice of Pendency and Proposed Settlement of Stockholder Derivative Actions (“Notice”) fully satisfies the requirements of Rule 23.1 of the Federal Rules of Civil Procedure and due process; (iii) whether the Final Order and Judgment should be entered dismissing the Actions with prejudice, directing State Plaintiffs to file notices of dismissal with prejudice in the State Actions as against Defendants pursuant to the Stipulation, and releasing the Released Persons from the Released Claims; (iv) whether the Court the agreed-to Fee and Expense Amount should be approved; (v) whether the Court should approve Plaintiffs’ request for Incentive Awards in the amount of \$3,000; and (vi) any other matters that may come before the Court.

The Actions are not “class actions” and no individual stockholder has the right to receive any direct recovery from the Settlement. The Settlement, if approved by the Court, will fully and finally resolve the issues raised in the Actions. Upon entry of the Final Judgment, all of Plaintiffs’ Released Claims against the Defendants shall be dismissed with prejudice and the Released Persons shall be released from the Released Claims.

If you are a record or beneficial holder of Capstone securities as of July 14, 2020, your rights will be affected by this Settlement, including the release and extinguishment of derivative claims you may possess on behalf of and for the benefit of Capstone. Any Current Capstone Stockholder may appear at the Settlement Hearing and show cause, if he, she, or it has any reason why the Settlement of the Actions embodied in the Stipulation should not be approved as fair, reasonable, and adequate, or why the Final Order and Judgment should or should not be entered, or why the Fee and Expense Amount should not be awarded (an “Objection”). Stockholders cannot ask the Court to order a different settlement; the Court can only approve or reject the Settlement.

To object, the stockholder must: (a) file a written Objection stating name, legal address and telephone number, the case name and number (*In Re Capstone Turbine Corp. Stockholder Derivative Litigation*) Master File No.: 2:16-cv-01569- DMG (RAOx) and stating all reasons for the Objection; (b) give proof that he, she, or it is a shareholder of record or beneficial owner of Capstone common stock and was a shareholder of record or beneficial owner of Capstone common stock as of July 14, 2020, including the number of shares and documentary evidence of when such stock ownership was acquired; (c) clearly identify any and all evidence that would be presented at the Settlement Hearing in connection with such Objection, along with the names of any witness(es) you intend to call to testify at the Settlement Hearing and the subject(s) of their testimony; and (d) identify any case, by name, court, and docket number, in which the objector or his, her, or its attorney, if any, has objected to a settlement in the last three years. Any written Objection shall be filed with the Clerk of the Court at least fourteen (14) business days prior to the Settlement Hearing, at the below address:

**CLERK OF COURT**

United States Courthouse  
Central District of California  
First Street Federal Courthouse  
350 W. 1st Street  
Los Angeles, CA 90012

By the same date, copies of all such papers must also be received by each of the following persons:

Counsel for Plaintiff Isaac Haber:

Michael J. Hynes  
Ligaya Hernandez  
HYNES & HERNANDEZ LLC.  
101 Lindenwood Drive, Suite 225  
Malvern, PA 19355

Counsel for Defendants:

Nina F. Locker  
Stephen B. Strain  
Drew Liming  
WILSON SONSINI GOODRICH & ROSATI  
650 Page Mill Road  
Palo Alto, CA 94304

– and –

Counsel for Plaintiff Andrew Tuttle:

Thomas J. McKenna  
Gregory M. Egleston  
GAINEY McKENNA & EGLESTON  
501 Fifth Avenue, 19th Floor  
New York, NY 10017

If you wish to object to the proposed Settlement, you must file the written objection described above with the Court on or before \_\_\_\_\_, 2020. Unless the Court otherwise directs, any Current Capstone Stockholder who does not make his, her, or its Objection in the manner provided in the preceding paragraph of this Summary Notice shall be deemed to have waived such Objection, shall be bound by the Final Order and Judgment, and shall forever be foreclosed from making any objections to the Settlement or making any objections to the fairness and reasonableness of the Fee and Expense Amount.

**PLEASE DO NOT TELEPHONE THE COURT, COURT CLERK'S OFFICE, OR ANY REPRESENTATIVE OF CAPSTONE REGARDING THIS NOTICE. ALL INQUIRIES SHOULD BE MADE TO PLAINTIFFS' COUNSEL.**