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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 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND FEE AND EXPENSE AMOUNT** DATE: October 30, 2020 TIME: 10:00 a.m. CTRM: 8C JUDGE: Hon. Dolly M. Gee

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I. INTRODUCTION

Federal Plaintiffs respectfully submit this memorandum in support of their Motion for Final Approval of the Derivative Settlement (the "Settlement")[1] of stockholder derivative claims brought on behalf of nominal defendant Capstone Turbine Corporation ("Capstone" or the "Company") against certain of its current and former directors and officers. The Settlement resolves: (1) the consolidated derivative action pending in this Court, captioned *In re Capstone Turbine Corp. Stockholder Derivative Litigation*, Case No. 2:16-cv-01569 (C.D. Cal.) (the "Federal Consolidated Action"); and (2) related shareholder derivative actions pending in California state court, captioned *Stesiak v. Jameson, et al.*, C.A. No. BC610782 (Super. Ct. L.A.) (the "*Stesiak* Action") and *Kilpatrick v. Simon, et al.*, C.A. No. BC623167 (Super. Ct. L.A.) (the "*Kilpatrick* Action") (the "State Actions," and collectively with the Federal Consolidated Action, the "Actions").[2] The Settlement is the product of extensive arm's-length negotiations between Plaintiffs, the Individual Defendants, and Nominal Defendant Capstone (collectively, the "Settling Parties"), overseen by a mediator experienced in complex stockholder litigation.

Pursuant to the Settlement, Capstone agreed to adopt and/or enact and maintain for at least four (4) years important corporate governance reforms designed to address the alleged wrongdoing in the Actions (the "Corporate Governance Measures"). As set forth in more detail below, the Corporate Governance Measures provide a substantial benefit to the Company and its shareholders. *See* §§ III & V.B *infra*. When weighed against the substantial risks, the Settlement's guarantee of substantial benefits in the

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[1] All capitalized terms, unless otherwise defined herein, have the same meaning as defined in the Stipulation of Settlement executed July 14, 2020 ("Stipulation" or "Stip.") attached as Exhibit A to the Declaration of Ligaya T. Hernandez in Support of Unopposed Motion for Preliminary Approval of Settlement filed on July 27, 2020 (Dkt. 55).

[2] Per the Stipulation, within five business days after the Judgment in the Federal Actions becomes Final, the State Plaintiffs shall file notices of dismissal with prejudice in the State Actions.

form of the strong governance processes, policies, and procedures embodied in the Corporate Governance Measures is fair, reasonable and adequate.

Capstone and its Board of Directors (the "Board") (i) acknowledge and agree that the Corporate Governance Measures confer substantial benefits upon Capstone; and (ii) 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. Stip., §IV.2.1. After agreeing to the material terms of the Settlement, Defendants' and Plaintiffs' Counsel negotiated the amount of attorneys' fees and expenses that Defendants' insurer would pay to Plaintiffs' Counsel. As a result of those negotiations, and in recognition of the substantial benefits conferred by Plaintiffs' Counsel on the Company, the Company's insurer, on behalf of Defendants, has agreed to pay Plaintiffs' Counsel $500,000 in attorneys' fees and expenses (the "Fee and Expense Amount"). This amount was negotiated by the Settling Parties at arm's-length, separate and apart from the material terms of the Settlement, and is fair and reasonable in light of the substantial benefits achieved by the Settlement. Plaintiffs respectfully submit that the Settlement is a sound resolution of this complex derivative litigation and merits final approval in all respects.

II. SETTLEMENT TERMS[3]

The Settlement addresses the core concerns raised in the Actions and offers Capstone and Current Capstone Shareholders the benefit of substantial, immediate, and lasting corporate governance reforms including, among others:

Separate Chairman/CEO or Lead Independent Director. The Company will amend its Corporate Governance Measures to require that either: (a) the Chairman and

[3] The factual and procedural background of the Actions is set forth in the Declaration of Thomas J. McKenna in Support of Plaintiffs' Motion for Final Approval of Derivative Settlement (the "McKenna Fact Decl."), which is an integral part of this submission. For the sake of brevity, Plaintiffs respectfully refer the Court thereto for a detailed description of: (i) the factual background and procedural history (McKenna Fact Decl., ¶16); (ii) the Settling Parties' settlement negotiations (*id.*, ¶¶8-15); and (iii) the issuance of Notice (*id.*, ¶17).

Chief Executive Office ("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.

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 Chief Financial Officer ("CFO") and Chief Accounting Officer ("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.

Disclosure Committee. The Company will amend its Disclosure Committee Charter to include provisions covering the following procedures and responsibilities:

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 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, with the Audit Committee, each Form 10-K and Form 10-Q filed by the Company with the U.S. 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.

3. 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.

4. 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.

5. The Disclosure Committee may invite other Company personnel and/or the Company's external auditors, outside counsel, or other outside advisors to attend Committee meetings, as deemed necessary by the Committee in performing its duties and responsibilities.

6. 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.

7. 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.

Separation of CFO and CAO Positions, and Appointment of New CAO. Capstone will use its best efforts to separate the CFO and CAO positions and give its Corporate Controller the title of CAO.[4] In addition, the separation of the CFO and CAO positions shall become mandatory upon the Company attaining total quarterly revenue of $20 million.

Enhanced Monitoring and Disclosure of Key Distributors.

[4] Capstone will use "best efforts" due to the ongoing, global economic impact from the COVID-19 pandemic.

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 regarding potential new distributors and ongoing credit review of 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.

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.

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.

Taken together, the agreed-to reforms will enhance shareholder value by improving decision-making, communications, and Board oversight of core operations, and enhancing investor confidence in the Company.

III. THE STANDARDS FOR JUDICIAL APPROVAL OF DERIVATIVE SETTLEMENTS

It is well-settled that compromises of disputed claims are favored by the courts. *Officers for Justice v. Civil Serv. Comm'n of San Francisco*, 688 F.2d 615, 635 (9th Cir. 1982) (recognizing that the "settlement process [is] favored in the law"); *United States v. McInnes*, 556 F.2d 436, 441 (9th Cir. 1977) (explaining that "there is an overriding public interest in settling and quieting litigation"). Further, "[s]ettlements of shareholder derivative actions are particularly favored because such litigation is 'notoriously difficult and unpredictable.'" *Maher v. Zapata Corp.*, 714 F.2d 436, 455 (5th Cir. 1983); *In re NVIDIA Corp. Derivative Litig.*, 2008 U.S. Dist. LEXIS 117351, at *7 (N.D. Cal. Dec. 19, 2008); *see also In re Xoma Corp. Sec. Litig.*, 1992 U.S. Dist. LEXIS 10502, at *3-4 (N.D. Cal. July 10, 1992) ("The law favors settlement of cases and quieting of litigation, particularly in complex class actions and derivative litigation.").

Under Rule 23.1, a derivative action "may be settled, voluntarily dismissed, or compromised only with the court's approval." Fed. R. Civ. P. 23.1(c). While the district court must exercise "sound discretion" in evaluating a settlement, in exercising its discretion "the court's intrusion upon what is otherwise a private consensual agreement

negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Officers for Justice*, 688 F.2d at 625; *see also In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 377-78 (9th Cir. 1995) (upholding district court's determination that shareholder derivative settlement was "'fair, reasonable and adequate to [the company]'"). In determining whether a settlement is fair, reasonable, and adequate, courts consider the following factors: (i) the benefits conferred on the corporation; (ii) the risks, costs, and delays of continued litigation; (iii) the stage of proceedings; (iv) whether the settlement is the product of arm's-length negotiations by experienced counsel; and (v) the reaction of shareholders to the proposed settlement. *See Officers for Justice*, 688 F.2d at 625. As discussed below, each of these factors supports final approval of the Settlement.

IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE AND WARRANTS FINAL APPROVAL

A. The Settlement Merits a Presumption of Fairness Because It Is the Product of Arm's-Length Negotiations by Experienced and Well-Informed Counsel with the Assistance of a Skilled Mediator

A settlement enjoys a presumption of fairness if it "is recommended by ... counsel after arm's-length bargaining." *Villanueva v. Morpho Detection, Inc.*, 2015 WL 4760464, at *6 (N.D. Cal. Aug. 12, 2015). Such a presumption applies here because the Settlement is the product of arm's-length negotiations conducted by experienced counsel knowledgeable in complex shareholder derivative litigation, with the oversight and assistance of a skilled Mediator. *See, e.g.*, *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a "mediator's involvement in … settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure").[5] These negotiations

[5] As provided in the Stipulation, the Settling Parties did not begin negotiating the amount of fees and expenses payable to Plaintiffs' Counsel until after all of the substantive terms of the Settlement were agreed upon. *See* Stip., §II. This further illustrates the fairness of

included extensive negotiations and countless revisions to a corporate governance term sheet, as well as numerous conference calls regarding the Company's existing governance structure and necessary governance enhancements for any settlement. Stip., §I.D.; McKenna Fact Decl., ¶¶16, 19-21. The negotiations were conducted by highly qualified counsel that have litigated scores of shareholder derivative actions to successful resolution, and whose lawyers are nationally recognized as leaders in the field of shareholder rights litigation. Copies of the firm resumes of Gainey McKenna & Egleston, Hynes Hernandez, LLC, Robbins LLP, Lifshitz Law Firm, P.C., Bragar, Eagel & Squire P.C., The Rosen Law Firm, P.A., Stull Stull & Brody, and The Wagner Firm are attached to the accompanying fee declarations of each firm, which are attached hereto as Exhibits A-H respectively. Wilson Sonsini Goodrich & Rosati Professional Corporation ("Wilson Sonsini"), a nationally recognized corporate defense firm, represents the Defendants in the Actions and also served as defense counsel in the Securities Class Action. This supports a presumption that the Settlement is fair and reasonable. *See*, *e.g.*, *Nat'l Rural Telecomms Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) ("'Great weight' is accorded to the recommendation of counsel, who are most closely acquainted with the facts underlying litigation."); *In re Atmel Corp. Derivative Litig.*, 2010 WL 9525643, at *13 (N.D. Mar. 31, 2010) ("[T]he involvement of multiple counsel from different firms suggests a lack of collusion."); *Hughes v. Microsoft Corp.*, 2001 U.S. Dist. LEXIS 5976, at *21 (W.D. Wash. Mar. 21, 2001) ("[C]ounsel's opinion is accorded considerable weight and supports the fairness and adequacy of the proposed settlement.").[6]

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the arm's-length Settlement because "the amount of attorneys' fees could not have affected the amount of [the] recovery." *In re Chickie's & Pete's Wage & Hour Litig.*, 2014 WL 911718, at *4 (E.D. Pa. Mar. 7, 2014).

[6] *See also Manual for Complex Litigation* 4th §21.662 (4th ed.) ("A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arms-length negotiations between experienced, capable counsel after meaningful discovery") (citing *Manual for Complex Litigation* §30.42 (3d ed. 1995)); *Lake v. First Nationwide Bank*, 900 F. Supp. 726, 732 (E.D. Pa. 1995) (approving settlement and observing that "[s]ignificant weight should be attributed to the belief of experienced counsel that

Plaintiffs and their counsel acted on an informed basis in negotiating the Settlement. "'[F]ormal discovery is not a necessary ticket to the bargaining table' where the parties have sufficient information to make an informed decision about settlement.'" *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000).[7] That is because "the question is not whether the parties have completed a particular amount of discovery, but whether the parties have obtained sufficient information about the strengths and weaknesses of their respective cases to make a reasoned judgment about the desirability of settling the case on the terms proposed or continuing to litigate it." *In re Educ. Testing Serv. Praxis Principles of Learning & Teaching, Grades 7-12 Litig.*, 447 F. Supp. 2d 612, 620-21 (E.D. La. 2006). Here, as detailed in the Stipulation and the McKenna Fact Decl., Plaintiffs, by and through Plaintiffs' Counsel, engaged in extensive investigation and other litigation efforts throughout the prosecution of the Actions, and have accumulated sufficient information discovered through these efforts to be well-informed about the strengths and weaknesses of their case and to engage in effective settlement discussions with Defendants. Stip., §II; McKenna Fact Decl., ¶¶19-21. Plaintiffs' efforts included, among other things: (i) reviewing Capstone's press releases, public statements, SEC filings, and securities analysts' reports and advisories about the Company; (ii) reviewing media reports about the Company; (iii) researching the applicable law with respect to the claims alleged in the Actions and the potential defenses thereto; (iv) preparing and filing stockholder derivative complaints; (v) reviewing and analyzing relevant non-public documents produced by the Defendants over the course of the litigation; (vi) participating in informal conferences with Defendants' Counsel regarding the specific facts of the cases, the perceived strengths and weaknesses of the cases, and other issues in an effort to facilitate negotiations and fact gathering; (vii)

settlement is in the best interest of the class").

[7] *See also Sved v. Chadwick*, 783 F. Supp. 2d 851, 861 (N.D. Tex. 2009) (Courts "look[] not to the amount of discovery, but rather to whether the parties have obtained sufficient information about the strengths and weaknesses of their respective cases to make a reasoned judgment about the desirability of settl[ement].").

conducting extensive research into corporate governance at Capstone and peer companies, as well as industry-wide best practices; and (viii) negotiating the Settlement with Defendants, including before, at, and after the September 24, 2018 mediation.

Courts also traditionally afford substantial deference to directors' exercise of independent business judgment. *See generally Zapata Corp. v. Maldonado*, 430 A.2d 779, 782 (Del. 1981); *see also Brooks v. Am. Exp. Indus., Inc.*, 1977 U.S. Dist. LEXIS 17313, at *10 (S.D.N.Y. Feb. 17, 1977) ("The Court is of the view that in this case, the decision of the [] board to approve this settlement is appropriately afforded certain deference; it is a business judgment with presumptive validity."); *H-M Wexford LLC v. Encorp, Inc.*, 832 A.2d 129, 150 (Del. Ch. 2003) (because plaintiff failed to show a majority of the board was interested in the settlement agreement, "the Board's decision on the matter is protected by the business judgment rule"). Here, Capstone's Board (i) acknowledges and agrees that the Corporate Governance Measures confer substantial benefits upon Capstone; and (ii) acknowledges 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. Stip., §IV.2.1. The fact that the Settlement is the product of arm's-length negotiations by experienced counsel, with the assistance of a respected mediator, supports a presumption of fairness and final approval of the Settlement.[8]

[8] "A[nother] … factor to consider in evaluating a proposed derivative settlement is shareholder opposition." *In re Apple Computer, Inc. Derivative Litig.*, 2008 U.S. Dist. LEXIS 108195, at *12 (N.D. Cal. Nov. 5, 2008). The deadline for Current Capstone Shareholders to object to the proposed Settlement is October 12, 2020. To date, counsel has not heard from any stockholders indicating that they are not satisfied with the Settlement. McKenna Fact Decl., ¶17. *See, e.g.*, *Roberti v. OSI Sys.*, No. CV-13-09174 MWF (MRW), 2015 U.S. Dist. LEXIS 164312, at *16 (C.D. Cal. Dec. 8, 2015) ("By any standard, the lack of objections favors final approval."); *In re MRV Communs., Inc., Derivative Litig.*, No. CV 08-03800 GAF (MANx), 2013 U.S. Dist. LEXIS 86295, at *16-17 (approving settlement of derivative action where "Plaintiffs [were] not aware of a single objection to any aspect of the Settlement."). Even where a handful of objections are made, this factor weighs in favor of approval. *See, e.g., In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008) (three objections out of tens of thousands of shareholders "'raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members'").

B. The Substantial Benefits Conferred on the Company

The "principal factor" in determining whether to approve the settlement of a shareholder derivative action "is the benefit to [the company] as compared to the risks" of continued litigation. *Apple*, 2008 U.S. Dist. LEXIS 108195, at *8. "[S]trong corporate governance is fundamental to the economic well-being and success of a corporation;" accordingly, courts have long "'recognized that corporate governance reforms such as those achieved here provide valuable benefits for public companies.'"); *NVIDIA*, 2008 U.S. Dist. LEXIS 117351, at *3; *see also Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 395 (1970) ("[A] corporation may receive a 'substantial benefit' from a derivative suit ... regardless of whether the benefit is pecuniary in nature."); *Maher*, 714 F.2d at 461 ("[T]he effects of the suit on the functioning of the corporation may have a substantially greater economic impact on it, both long- and short-term, than the dollar amount of any likely judgment in its favor."). Courts approve settlements supported by consideration in the form of corporate governance reforms "specifically designed to minimize the probability of violations of fiduciary duties and federal securities laws[.]" *Cohn v. Nelson*, 375 F. Supp. 2d 844, 853 (E.D. Mo. 2005). Among other benefits, such reforms make it "far less likely [that the corporation will] become subject to long and costly securities litigation in the future, as well as prosecution or investigation by regulators or prosecutors." *Id*; *see also In re Pfizer Inc. S'holder Derivative Litig.*, 780 F. Supp. 2d 336, 342 (S.D.N.Y. 2011) (approving settlement of shareholder derivative action where the corporate benefits included "a significantly improved institutional structure for detecting and rectifying the types of wrongdoing that have, in recent years, caused extensive harm to the company"); *Unite Nat'l Ret. Fund v. Watts*, 2005 WL 2877899, at *2 (D.N.J. Oct. 28, 2005) (non-monetary benefits support settlement where "the relief is intended to prevent future harm"). Here, the Settlement achieves for Capstone and Current Capstone Shareholders the substantial benefit of numerous reforms that will materially improve the Company's corporate governance. *See* Stipulation, Exhibit A. The bulk of the allegations in the Actions stem from failures of accounting and disclosure

and that these failures in turn led to the propagation of misleading information regarding Capstone. The Corporate Governance Measures directly address the above allegations, which form the basis of the Actions, to include, *inter alia*, well-targeted fail-safes to the enhanced accounting and disclosure requirements, including, but not limited to the following provisions:

The requirement of an independent Board Chairman or Lead Independent Director (Stip., Ex. A, §I.A) will ensure that the person charged with leading the Board's oversight of management—including that of the CEO—is not a member of management. When these offices are not separated and/or a Lead Independent Director is not in place, it is often due to the power of the Chairman/CEO, not the product of good governance.

The enhancements to the duties and responsibilities of the Audit Committee (Stip., Ex. A, §I.B), among other things, provide for increased oversight with respect to Capstone's revenue recognition and other accounting practices, including improved requisite communications and reporting between the Audit Committee and Capstone's CFO and/or CAO. This will help ensure the propriety of the Company's revenue recognition practices (and accounting practices, generally) and the accuracy of the Company's related public statements. The enhancements to the duties and responsibilities of the Disclosure Committee (Stip., Ex. A, §I.C) will further improve the effectiveness of management-level oversight of the Company's disclosures and internal controls, including by ensuring sufficient communication and information-sharing between the Disclosure Committee and the Audit Committee.

The Settlement provides for enhanced monitoring and disclosure reforms overseen by a senior employee (Stip., Ex. A, §I.E), which will help ensure that the Company and the Board are able to better monitor macroeconomic developments, regional conditions overseas, and the international politico-regulatory environment for changes that might impact key distributors.

The Settlement also provides for enhanced backlog transparency, whereby the Company shall develop a written policy concerning the Company's backlog disclosures

(Stip., Ex. A, I.F), including the criteria for decisions to include and withdraw orders from the Company's backlog. This will ensure that the Company maintains a more accurate record of its backlog, thus preventing misstatements about the Company's operations and inaccuracies in its financial statements.

The Settlement also requires the separation of the positions of CFO and CAO (Stip., Ex. A, §I.D). The CAO will oversee all accounting functions at the Company, including ledger accounts, financial statements, and cost control systems, with a focus on regulatory compliance and practices. This separation will ensure improved and more direct oversight of the Company's accounting procedures.

The Settlement also requires independent members of the Board to meet in executive session following each regularly scheduled board meeting (Stip., Ex. A, §I.A.6). Such regular meetings may very well have allowed the Board's independent directors to possibly prevent future litigation, including but not limited to the allegations at the heart of the Actions, and remedy them before the Company suffered harm as a result of the failures.

Taken together, the Corporate Governance Measures directly address the wrongdoing in the Actions and will bring immediate and substantial benefits to the Company that far outweigh the speculative potential of any monetary recovery that may or may not be realized years down the road. *See In re Intel Corp. Derivative Litig.*, No. 09-867-JJF, 2010 U.S. Dist. LEXIS 74661, at *6-7 (D. Del. July 22, 2010) ("the Court finds that the corporate governance reforms initiated by Intel as a result of the parties' negotiations and this Settlement have value to both the Company and its shareholders both currently and in the long-term, and that these benefits outweigh the speculative potential of any monetary payment from the relevant insurance policies."); *Maher*, 714 F.2d at 466 (5th Cir. 1983) ("Parties to the settlement of a shareholders' derivative action are, however, permitted great freedom in shaping the form of the settlement consideration ... a settlement may fairly, reasonably, and adequately serve the best interest of a corporation, on whose behalf the derivative action is brought, even though no direct

monetary benefits are paid by the defendants to the corporation.").

Finally, the Settlement requires Capstone to maintain the Corporate Governance Measures for not less than four (4) years—time enough for them to become embedded in Capstone's corporate culture and governance practices. Stip., §III.2; *see also, e.g.*, *Cohn*, 375 F. Supp. 2d at 850 (finding that corporate governance measures which must be in place for no less than three years will "provide meaningful ways of avoiding the problems [the company] experienced in the recent past").[9]

C. The Risks, Costs and Delays of Continued Litigation

In assessing the fairness, reasonableness, and adequacy of a settlement, the Court should balance the benefits of the settlement against the continuing risks of litigation. *Officers for Justice*, 688 F.2d at 625. What constitutes a reasonable recovery depends on the facts of each case, and an evaluation of the benefits of settlement must be tempered by recognition that any compromise involves concessions by all settling parties. Indeed, "the very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Id.* at 624. Here, weighed against the substantial risk that continued litigation would yield no benefit, the Settlement's guaranteed and immediate benefits are plainly fair, reasonable, and adequate.

There is no question that derivative actions are fraught with risk. The Ninth Circuit has held that "the odds of winning [a] derivative lawsuit [are] extremely small." *Pac. Enters.*, 47 F.3d at 378. In fact, it has been commented by courts that a derivative failure of oversight claim – the type of breach of fiduciary duty claim brought by Plaintiffs here – "is possibly the most difficult theory in corporation law upon which a plaintiff might hope to win a judgment." *In re Caremark Int'l Inc. Derivative Litig.*, 698 A.2d 959, 967 (Del. Ch. 1996). Plaintiffs would face motions to dismiss challenging the sufficiency of the

[9] The four-year duration was negotiated by the Settling Parties and certainly does not mean that the Company will necessarily abandon the reforms after four years. On the contrary, once new policies and procedures are in place, Plaintiffs submit that the Company is unlikely to alter the Corporate Governance Measures absent a compelling reason since strong corporate governance is correlated with strong company performance.

allegations, as well as whether demand futility was adequately pled. *See* Stip., §III; *see also*, *e.g.*, Delaware Chancery Court Rules, Rule 23.1 ("The complaint shall … allege with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the directors … and the reasons for the plaintiff's failure to obtain the action or for not making the effort."); *Kamen v. Kemper Fin. Servs. Inc.*, 500 U.S. 90, 96 (1991) (demand futility requirement is satisfied only under "'extraordinary conditions'").

Even if Plaintiffs defeated those motions, litigation would be extremely complex, costly, and of substantial duration. Document discovery would need to be conducted, depositions taken, experts designated, and expert discovery conducted. Motions for summary judgment would have to be briefed and argued and a trial would have to be held. The Individual Defendants would likely continue to assert that their conduct was protected by the business judgment rule, which creates the powerful presumption that the Board and management acted in the best interests of the Company. *See, e.g.*, *In re Walt Disney Co. Derivative Litig.*, 907 A.2d 693, 746-47 (Del. Ch. 2005), *aff'd*, 906 A.2d 27 (Del. 2006) (business judgment presumption applies when there is no evidence of fraud, bad faith, or self-dealing, and the board's decision will be upheld unless it cannot be attributed to any rational business purpose). This presumption, applicable to most derivative actions, would have been even harder to rebut in the Actions because the issues involve exceedingly complex matters of regulatory law relating to the Company's duty to disclose financial information concerning accounting, metrics, and financial prospects, making establishing liability in the Actions uncertain, at best.

Even if liability were established, the amount of recoverable damages would still have posed significant issues and would have been subject to further litigation. *See In re Lloyd's Am. Tr. Fund Litig.*, 2002 WL 31663577, at *21 (S.D.N.Y. Nov. 26, 2002) ("The determination of damages ... is a complicated and uncertain process, typically involving conflicting expert opinions. The reaction of a jury to such complex expert testimony is highly unpredictable."). And it is not clear or certain what amount of damages or corporate governance reforms Plaintiffs could achieve on behalf of Capstone at trial.

While Capstone may have suffered losses as a result of the conduct challenged in the Actions, the question of whether it suffered legal, non-exculpated damages is a much more complicated question.[10]

Moreover, the issue of damages to Capstone would have been hotly disputed and clearly would have been the subject of expert testimony proffered by all parties.[11] The damages assessments of experts retained by the parties would surely vary substantially, and the assessment of this crucial element of Plaintiffs' claims would likely be reduced at trial to a "battle of the experts." *See, e.g.*, *In re Emerging Commc'ns S'holders Litig.*, 2004 Del. Ch. LEXIS 70, at *40 (Del. Ch. May 3, 2004). It is far from certain that a jury would have disregarded Defendants' experts' opinions. Indeed, defense experts seeking to establish that damages were caused by factors other than Defendants' wrongdoing, or, alternatively, trying to minimize the amount of the Company's damages might very well sway a jury. *See, e.g.*, *In re PaineWebber P'ships Litig.*, 171 F.R.D. 104, 129 (S.D.N.Y. 1997). Conceivably, a jury could find that there were no damages at all, or that damages were a fraction of the amount asserted by Plaintiffs.

Moreover, a victory at trial is no guarantee that the judgment would ultimately be sustained on appeal or by the trial court. *See, e.g.*, *Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F.2d 263 (2d Cir. 1979) (reversing $87 million judgment after trial). Add to these post-trial and appellate risks, the difficulty and unpredictability of a lengthy and complex trial—where witnesses could suddenly become unavailable or the fact finder could react to the

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[10] For instance, Defendants would have likely argued that while the Company may have suffered losses, it was not actually damaged. On November 15, 2019, this Court approved a settlement of the Securities Class Action for approximately $5.5 million (although originally the maximum damages in the case were estimated to be approximately $29.8 million), which was entirely paid by insurance proceeds. The fact that the Securities Class Action was resolved with insurance proceeds surely would have been raised in litigation. Moreover, not only did the Securities Class Action release claims, the settlement approved by this Court contains denials of fault, wrongdoing and liability by the defendants.

[11] *See Lloyd's.*, 2002 WL 31663577,, at *21 ("The determination of damages ... is a complicated and uncertain process, typically involving conflicting expert opinions. The reaction of a jury to such complex expert testimony is highly unpredictable.").

evidence in unforeseen ways—and the benefits of the Settlement become all the more apparent. *Grant v. Bethlehem Steel Corp.*, 823 F.2d 20, 24 (2d Cir. 1987) (affirming settlement where potential defenses presented the "possibility of 'a lesser or no recovery after trial'"). The Settlement eliminates these and other risks of continued litigation, including the very real risk of no recovery after years of litigation, while providing the Company and its stockholders substantial benefits now. The immediate implementation of the Corporate Governance Measures is far more favorable than "the lengthy, costly, and uncertain course of further litigation." *In re Prudential Sec. Inc. Ltd. P'ships Litig.*, 163 F.R.D. 200, 210 (S.D.N.Y. 1995).

Even setting aside the significant risks inherent in proceeding, the expense and likely duration of the Actions would yield diminishing returns for the Company. The Settlement's immediate, certain, and substantial benefits of the significant reforms to the Company's corporate governance are preferable to pursuing years of uncertain litigation in the speculative hope of obtaining an even better result down the road.

V. THE NEGOTIATED FEE AND EXPENSE AMOUNT IS FAIR AND REASONABLE

A. The Fee and Expense Amount Was Agreed to at Arm's-Length

The United States Supreme Court has endorsed the consensual resolution of attorneys' fees issues as the ideal toward which litigants should strive. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) ("A request for attorney's fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of a fee."); *see also Cohn*, 375 F. Supp. 2d at 861 ("[W]here, as here, the parties have agreed on the amount of attorneys' fees and expenses, courts give the parties' agreement substantial deference."). Where there is no evidence of collusion and no detriment to the parties, as here, the court should give "'substantial weight to a negotiated fee amount." *Ingram v. Coca-Cola Co.*, 200 F.R.D. 685, 695 (N.D. Ga. 2001). "[T]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching

by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Officers for Justice*, 688 F.2d at 625. Here, the Court is not being called upon to fashion a fee and expense award; rather, it is being asked to determine whether the Fee and Expense Amount agreed to by well-represented parties at arm's-length falls within the range of reasonableness. Unlike in class actions, where the diverging interests of class counsel and absent class members at the fee stage warrant close judicial scrutiny, in this shareholder derivative matter, Capstone and its insurer participated in the negotiations, were represented by counsel, and had every incentive to pay the lowest possible fee for the services rendered by Plaintiffs' Counsel. The Settling Parties' conclusion that the agreed upon Fee and Expense Amount is fair and reasonable is entitled to substantial deference.

B. The Applicable Factors Support Approval of the Agreed-to Fee and Expense Amount

The Ninth Circuit has enumerated several factors to consider when determining the reasonableness of attorneys' fees, including: (1) the results achieved; (2) the risks of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee; (5) the burdens carried by plaintiffs' counsel; and (6) attorneys' fees in similar cases. *In re MRV Commc'ns, Inc. Derivative Litig.,* No. 08-cv-03800, 2013 WL 2897874, at *6 (C.D. Cal. June 6, 2013). As set forth below, the Fee and Expense Amount is reasonable and appropriate in light of the factors the Ninth Circuit traditionally considers in determining reasonable fee amounts

1. The Agreed-to Fee and Expense Amount Is Fair and Reasonable in Light of the Benefits Achieved and Attorneys' Fees in Similar Cases

The Supreme Court has stated that "the most critical factor in determining the reasonableness of a fee award is the degree of success obtained." *Klein v. City of Laguna Beach,* 810 F.3d 693, 698-99 (9th Cir. 2016) (quoting *Farrar v. Hobby*, 506 U.S. 103, 114 (1992)). "Under the 'substantial benefit' doctrine, counsel who prosecute a

shareholders' derivative case which confers benefits on the corporation are entitled to an award of attorneys' fees and costs." *In re NVIDIA Corp. Derivative Litig.*, No. 06-cv-06110, 2009 U.S. Dist. LEXIS 24973, at *12 (N.D. Cal. Mar. 18, 2009) (citing *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375 (1970)). "[A] corporation may receive a 'substantial benefit' from a [stockholder's action], justifying an award of counsel fees, regardless of whether the benefit is pecuniary in nature.... [P]rivate stockholders' actions of this sort 'involve corporate therapeutics,' and furnish a benefit to all stockholders[.]" *Id*; *see also In re Oracle Sec. Litig.*, 852 F. Supp. 1437, 1445-50 (N.D. Cal. 1994) (changes in governance or procedures likely to produce monetary benefits or cost avoidance are "'fund creating actions"' meriting attorneys' fees and expenses) (quoting *Tandycrafts, Inc. v. Initio Partners*, 562 A.2d 1162, 1164-65 (Del. 1989)). Here, Plaintiffs' Counsel's efforts produced a strong Settlement that provides for valuable and sweeping corporate governance reforms for Capstone, for which the agreed-to Fee and Expense Amount is fair and reasonable compensation. As discussed above, the Corporate Governance Measures confer a substantial benefit upon the Company and its shareholders. *See* §§ III & V.B *supra*; Stip., Ex. A.

Moreover, the reforms to Capstone's internal controls produced under the Settlement directly address the claims alleged in the Complaint (*i.e.*, that the Company had accounting problems and, as a result, issued false and misleading statements regarding its account receivables and its backlog with respect to one of the Company's main distributors) and are designed to prevent the recurrence of the alleged misconduct. McKenna Fact Decl., ¶¶18, 26-34, 46-49. The Settlement also provides for significant reforms to Capstone's overall corporate governance practices and policies, including reforms at both the Board- and management-level, which will improve the internal policies and procedures of Capstone, generally. *Id.*

The cumulative value of the Corporate Governance Measures easily justifies the negotiated Fee and Expense Amount. *See, e.g.*, *In re Schering-Plough Corp. S'holders Derivative Litig.*, 2008 WL 185809, at *1, *5 (D.N.J. Jan. 14, 2008) (approving $9.5

million fee based on benefits conferred by governance reforms) ("This litigation provides an example of how derivative actions that result in the adoption of rigorous compliance standards confer tangible benefits to the corporation and its shareholders…. The adoption of the corporate governance and compliance mechanisms required by the settlement can prevent breakdowns in oversight that would otherwise subject the company to the risk of regulatory action, or uncover and remedy a problem at the early stages before it becomes the subject of a government investigation. Effective corporate governance can also affect stock price by bolstering investor confidence and improving consumer perceptions."); *Unite Nat'l*, 2005 WL 2877899, at *5 (approving $9.2 million fee for governance reforms).[12] Accordingly, Plaintiffs respectfully submit that the Fee and Expense Amount is fair and reasonable in light of the benefits obtained in the Settlement.

2. The Risks of Litigation

As discussed above, Plaintiffs' Counsel faced tremendous litigation risk in the Actions as "derivative lawsuits are rarely successful."[13] These risks weighed against the benefits secured for Capstone and its shareholders fully justify the proposed fee amount. *See, e.g.*, *Cohn*, 375 F. Supp. 2d at 865-66 ("[I]t is imperative that the filing of contingent

[12] *See also City of Pontiac Gen. Emps.' Ret. Sys. v. Langone*, No. 2006-cv-122302, slip op. (Ga. Super. Ct.-Fulton Cty. June 10, 2008) ($14.5 million fee in settlement involving corporate therapeutics), McKenna Fact Decl., Ex. I; *In re Motorola, Inc., Derivative Litig.*, No. 07CH23297, slip op. (Ill. Cir. Ct.-Cook Cty. Nov. 29, 2012) ($9.5 million fee in settlement involving corporate therapeutics), Ex. J; *Warner v. Lesar*, Cause No. 2011-09567, slip op. (Tex. Dist. Ct., Harris Cty. Oct. 1, 2012) ($7.75 million attorneys' fees in governance-only settlement), Ex. K; *In re Alphatec Holdings, Inc., Derivative S'holder Litig.*, No. 37-2010-58586-CU-BT-NC, slip op. (Cal. Super. Ct.-San Diego Cty. Aug. 18, 2014) ($5.25 million fee in settlement involving corporate therapeutics), Ex. L; *In re F5 Networks, Inc. Derivative Litig.*, Case No. 2:06-cv-00794-RSL, slip op. (W.D. Wash. Jan. 6, 2011) ($5 million fee in governance-only settlement), Ex. M; *Rubery v. Kleinfeld*, No. 2:12-cv-00844-DWA, slip op. (W.D. Pa. Jan. 20, 2015) ($3.75 million fee in governance-only settlement), Ex. N; *In re Rambus Inc. Derivative Litig.*, No. 06-cv-3513, 2009 U.S. Dist. LEXIS 131845 (N.D. Cal. Jan. 20, 2009) ($2 million in attorneys' fees for settlement of shareholder derivative actions consisting of corporate governance reforms and no monetary contribution).

[13] *Pac. Enters.*, 47 F.3d at 378 (affirming approval of derivative settlement and noting that "the odds of winning [a] derivative lawsuit [are] extremely small" because "derivative lawsuits are rarely successful").

class action and derivative lawsuits not be chilled by the failure to award attorneys' fees or by the imposition of fee awards that fail to adequately compensate counsel for the risks of pursuing such litigation.… [B]ecause of the complexity and societal importance of stockholder and derivative litigation, the most able counsel should be obtained. The attorneys' fees awarded should reflect this goal.") (citing *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985)).

3. The Skill Required and the Quality of Work

The skill required by Plaintiffs' Counsel to prosecute and settle the Actions and Plaintiffs' Counsel's quality of work are additional factors that support Plaintiffs' requested Fee and Expense Amount. *See MRV*, 2013 WL 2897874, at *6 (approving fee and finding that "the successful prosecution of this action required knowledge and expertise in the fields of shareholder derivative litigation[.]"). Plaintiffs' Counsel are nationally recognized law firms that specialize in stockholder litigation. *See* McKenna Fact Decl., Exs. A-H. Here, Plaintiffs' Counsel provided extensive, high-quality representation throughout the pendency of the Actions. Plaintiffs' Counsel expended significant time prosecuting the Actions and negotiating the Settlement. *Id.*, ¶¶55-61. The quality of Plaintiffs' Counsel's work and their efforts throughout the Actions warrant the approval of the Fee and Expense Amount. *See Del Monte Foods Co. S'holder Litig.*, No. Consol. C.A. 6027-VCL, 2011 WL 2535256, at *13 (Del. Ch. June 27, 2011) ("More important than hours is effort, as in what plaintiffs' counsel actually did."); *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 749 (S.D.N.Y. 1985) ("The quality of opposing counsel is also important in evaluating the quality of plaintiffs' counsels' work."), *aff'd*, 798 F.2d 35 (2d Cir. 1986).[14]

[14] As discussed above, Wilson Sonsini, a nationally recognized corporate defense firm, represents Capstone and also served as defense counsel in the Securities Class Action. McKenna Fact Decl., ¶¶20, 52.

4. The Contingent Nature of the Fee and Burdens on Plaintiffs' Counsel

Plaintiffs' Counsel undertook the litigation of the Actions with the expectation that they would have to devote many hours of hard work to the prosecution of a case involving complex factual and legal issues without any guarantee of successful resolution or of compensation for their efforts. *See* McKenna Fact Decl., ¶54. Plaintiffs' Counsel diligently investigated the claims, commenced litigation of the Actions, pursued the interests of their clients and nominal defendant Capstone with appropriate aggressiveness, and successfully brought the Actions to an amicable resolution. *Id*. The prosecution of the Actions involved the expenditure of significant resources, including the time spent by attorneys and professional staff, as well as the substantial expenses that were incurred during the litigation, for which Plaintiffs' Co-Lead Counsel received no compensation during the course of litigation. *Id*. Accordingly, the contingent nature of Plaintiffs' Counsel's representation fully supports the requested Fee and Expense Amount.[15]

C. A Lodestar "Cross-Check" Further Supports the Agreed-to Fee and Expense Amount

A so-called "lodestar cross-check" also supports the reasonableness of the agreed-to Fee and Expense Amount. *See Roberti v. OSI Sys., Inc.*, No. 13-cv-09174, 2015 WL 8329916, at *7 (C.D. Cal. Dec. 8, 2015) ("The reasonableness of [the fee amount] is confirmed by a cross-check with a lodestar comparison."); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002) ("Calculation of the lodestar, which measures the lawyers' investment of time in the litigation, provides a check on the reasonableness of the percentage award."). The "lodestar" is produced by multiplying the number of hours

[15] *See In re MRV Commc'ns, Inc. Derivative Litig.*, No. 08-cv-03800, 2013 WL 2897874, at *6 (C.D. Cal. June 6, 2013) ("the fifth factor is clearly satisfied here as well, as [t]he litigation was undertaken by Plaintiffs' Counsel on a wholly contingent basis with the understanding that they were embarking on a complex, expensive, and lengthy litigation with no guarantee of ever being compensated for the investment of time and money the case required.").

expended by counsel's hourly rate. *Roberti*, 2015 WL 8329916, at *6.[16] Here, Plaintiffs' Counsel and liaison counsel expended 1,627.73 hours and incurred $963,453.51 in lodestar during the successful prosecution of the Actions. *See* McKenna Fact Decl., ¶¶55-61. In connection therewith, Plaintiffs' Counsel and liaison counsel also incurred $26,318.61 in unreimbursed expenses in connection with the litigation of the Actions. *Id*. After subtracting these expenses, the requested Fee and Expense Amount represents a fractional lodestar multiplier of 0.49%.[17] The fractional multiplier is eminently reasonable under Ninth Circuit law, which holds that lodestar multipliers can range from two to four or even higher. *See, e.g.*, *Vizcaino*, 290 F.3d at 1051 (affirming fee amount equal to lodestar multiplier of 3.65, and listing 23 settlements and multipliers for each where the average multiplier is 3.28); *Buccallato v. AT&T Operations, Inc.,* No. 10-cv-00463-LHK, 2011 WL 3348055, at *2 (N.D. Cal. June 30, 2011) (approving 4.3 lodestar multiplier and listing cases approving multipliers ranging from 4.3 to 9.3); *Destefano v. Zynga, Inc.*, No. 12-cv-04007-JSC, 2016 WL 537946, at *21 (N.D. Cal. Feb. 11, 2016) ("Multipliers of 1 to 4 are commonly found to be appropriate in complex class action cases.").

The time spent by Plaintiffs' Counsel and liaison counsel is reasonable under the circumstances of the Actions. In addition, the hourly rates charged by Plaintiffs' Counsel and liaison counsel are unquestionably reasonable. *See Roberti*, 2015 WL 8329916, at *7 (holding that lead counsel's attorney rates—between $525 to $975 – are reasonable). Accordingly, the lodestar "cross-check" confirms that the agreed-to Fee and Expense Amount is fair and reasonable compensation for the time and labor Plaintiffs' Counsel

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[16] "[W]here [the lodestar method is] used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized." *Young v. Polo Retail, LLC*, No. 02-cv-4546 VRW, 2007 WL 951821, at *6 (N.D. Cal. Mar. 8, 2007).

[17] $500,000 requested Fee and Expense Award - $26,318.61 in case expenses = $473,681.39, which is approximately 0.49% of total lodestar of $963,453.51.

and liaison counsel expended in achieving the benefits of the Settlement.[18]

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[18] Plaintiffs are seeking service awards of $3,000 each, all to be paid from the Fee and Expense Amount. *See* Stipulation, §IV(4.4). The Settlement would not have been achieved but for the participation of the Plaintiffs, and by taking action on behalf of Capstone, the Plaintiffs have enhanced the corporate governance of the Company. "[Service] awards are payments to class representatives for their service . . . in bringing the lawsuit...." *Arnett v. Bank of Am.*, N.A., No. 3:11-cv-1372, 2014 U.S. Dist. LEXIS 130903, at *30 (D. Or. Sep. 18, 2014). Service awards for plaintiffs in derivative actions are routinely awarded and "are granted to reward the public service performed by ... plaintiffs in contributing to the vitality and enforcement of securities laws." *In re Cendant Corp. Derivative Action Litig.*, 232 F. Supp. 2d 327, 344 (D.N.J. 2002) (approving a $25,000 service award). Where, as here, the service award is to be paid from the Fee and Expense Amount, it "need not be subject to intensive scrutiny, as the interests of the corporation, the public and the defendants are not directly affected." *Id.*

PROOF OF SERVICE BY ELECTRONIC POSTING

I, the undersigned say:

I am not a party to the above case, and am over eighteen years old. On September 28, 2020, I served true and correct copies of the foregoing document, by posting the document electronically to the ECF website of the United States District Court for the Central District of California, for receipt electronically by the parties listed on the Court's Service List.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on September 28, 2020, at Los Angeles, California.

s/ Avi Wagner
Avi Wagner