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AVI WAGNER (SBN 226688)  
THE WAGNER FIRM  
1925 Century Park East, Suite 2100  
Los Angeles, CA 90067  
Telephone: (310) 491-7949

*Attorney for Plaintiffs*

[Additional Counsel on Signature Page]

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

IN RE CAPSTONE TURBINE CORP.  
STOCKHOLDER DERIVATIVE  
LITIGATION

Master File No.: 2:16-cv-01569

**NOTICE OF PLAINTIFFS’  
MOTION FOR FINAL  
APPROVAL OF SETTLEMENT  
AND FEE AND EXPENSE  
AMOUNT**

THIS DOCUMENT RELATES TO:  
All Actions

DATE: October 30, 2020  
TIME: 10:00 a.m.  
CTRM: 8C  
JUDGE: Hon. Dolly M. Gee

**TO: ALL PARTIES AND THEIR COUNSEL OF RECORD**

PLEASE TAKE NOTICE that on October 30, 2020, at 10:00 a.m., or at such other date and time as ordered by the Court, in Courtroom 8C of the United States District Court for the Central District of California, 350 West 1<sup>st</sup> Street, Los Angeles, CA, 90012, plaintiffs in the above captioned consolidated shareholder derivative action (the “Federal Consolidated Action”) will appear either telephonically or virtually before the Honorable Dolly M. Gee to move (the “Motion”), pursuant to Rule 23.1 of the Federal Rules of Civil Procedure and Local Rule 7 of this District, for entry of an order granting final approval of a July 14, 2020 Stipulation of Settlement (the “Stipulation”)<sup>1</sup> entered between and among the Parties to the Federal Consolidated Action.

The Motion seeks, *inter alia*, an order (the “Final Approval Order”)<sup>2</sup>: a) granting final approval of the settlement embodied within the Stipulation (the “Settlement”); and b) granting Plaintiffs’ Counsel’s agreed-to Fee and Expense Amount. The Motion is based on this Notice of Motion, the Memorandum of Points and Authorities filed in support of the Motion, the Declaration of Thomas J. McKenna filed in support of the Motion, the pleadings, records, and papers on file in the Actions, and such oral argument of counsel that is presented in connection with the Motion.

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<sup>1</sup> The Stipulation is 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). All capitalized terms herein, unless otherwise defined, have the same meaning as set forth in the Stipulation.

<sup>2</sup> The proposed Final Approval Order is filed with the Motion and also attached as Exhibit C to the Stipulation.

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This Motion is brought pursuant to the terms of the Stipulation, and accordingly counsel for all Parties have conferred over a period of several months concerning Plaintiffs’ filing of this Motion pursuant to Local Rule 7-3.

Dated: September 28, 2020

/s/ Avi Wagner  
Avi Wagner (SBN 226688)  
**THE WAGNER FIRM**  
1925 Century Park East, Suite 2100  
Los Angeles, CA 90067  
Telephone: (310) 201-9150

*Liaison Counsel for Plaintiffs*

Michael J. Hynes  
Ligaya T. Hernandez  
**HYNES & HERNANDEZ, LLC**  
101 Lindenwood Drive, Suite 225  
Malvern, PA 19355  
Telephone: (484) 875-3116  
Facsimile: (914) 752-3041

Thomas J. McKenna  
Gregory M. Egleston  
**GAINEY McKENNA & EGLESTON**  
501 Fifth Avenue, 19th Floor  
New York, NY 10017  
Telephone: (212) 983-1300  
Facsimile: (212) 983-0383

*Co-lead Counsel for Plaintiffs*

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**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

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

IN RE CAPSTONE TURBINE CORP.  
STOCKHOLDER DERIVATIVE  
LITIGATION

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THIS DOCUMENT RELATES TO: All  
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

1 This matter came before the Court for a hearing pursuant to the Order of this  
2 Court entered on August 28, 2020 (the “Preliminary Approval Order”), on the  
3 application of the parties for approval of the Settlement set forth in the Stipulation  
4 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.

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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.

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

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The Honorable Dolly M. Gee.  
United States District Court Judge

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