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**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

**REPLY IN FURTHER SUPPORT  
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

1 On September 28, 2020, Plaintiffs Isaac Haber and Andrew Tuttle  
2 (collectively, “Federal Plaintiffs”) filed a Motion for Final Approval of Settlement  
3 and Fee and Expense Amount (the “Motion”) in the above-captioned consolidated  
4 derivative action.<sup>1</sup> In accordance with this Court’s August 28, 2020 Preliminary  
5 Approval Order (“Preliminary Approval Order”), on September 11, 2020, Capstone  
6 filed a Form 8-K with the SEC attaching the Notice, and also published a copy of  
7 the Summary Notice in the *Investors’ Business Daily* on September 7, 2020.<sup>2</sup> The  
8 Notice was also posted on the investor relations section of Capstone’s corporate  
9 website. *Id.* In addition, Plaintiffs’ Counsel also posted the Stipulation and Notice  
10 on their respective firm websites. *Id.* Pursuant to the Preliminary Approval Order,  
11 all objections to the Settlement, including the agreed-to Fee and Expense Amount,  
12 were due by October 12, 2020. *See* Dkt. 61 at ¶¶9,10. That date has now passed  
13 and neither Plaintiffs’ Counsel nor Defendants’ counsel have received a single  
14 objection to the Settlement or the Fee and Expense Amount.

15 The reaction of stockholders to a settlement is one of the key factors that  
16 courts in the Ninth Circuit and elsewhere take into consideration in determining  
17 whether a settlement is fair, reasonable, and adequate. *Officers for Justice v. Civil*  
18 *Serv. Comm’n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). Here, there  
19 were no objections, which clearly supports Plaintiffs’ contention that the proposed  
20 Settlement is fundamentally fair, reasonable, and adequate. *Roberti v. OSI Sys.,*  
21 *Inc.*, No. 2:13-cv-09174-MWF (MRW), 2015 WL 8329916, at \*5 (C.D. Cal. Dec.

22 <sup>1</sup> All capitalized terms herein, unless otherwise defined, have the same meaning as  
23 set forth in the July 14, 2020 Stipulation of Settlement (“Stipulation”). The  
24 Stipulation is attached as Exhibit A to the Declaration of Ligaya T. Hernandez in  
25 Support of Unopposed Motion for Preliminary Approval of Settlement filed on  
26 July 27, 2020 (Dkt. 55).

26 <sup>2</sup> *See* Declaration of Thomas J. McKenna in Support of Plaintiffs’ Motion for Final  
27 Approval of Derivative Settlement filed on September 28, 2020 at ¶17 (Dkt. 66).

1 8, 2015) (“By any standard, the lack of objection [of the class members] favors  
2 final approval.”); *In re MRV Commc’ns, Inc. Deriv. Litig.*, No. CV 08-03800 GAF  
3 (MANx), 2013 WL 2897874, at \*5 (C.D. Cal. June 6, 2013) (approving settlement  
4 of derivative action where “Plaintiffs [were] not aware of a single objection to any  
5 aspect of the Settlement.”); *In re AOL Time Warner S’holder Deriv. Litig.*, No. 02  
6 Civ. 6302 (SWK), 2006 WL 2572114, at \*6 (S.D.N.Y. Sept. 6, 2006) (in  
7 shareholder derivative action, “the lack of objections may well evidence the  
8 fairness of the Settlement”); *In re Rambus Inc. Derivative Litig.*, No. C. 06-3513  
9 JF (HRL), 2009 WL 166689, at \*3 (N.D. Cal. Jan. 20, 2009) (“Given the benefits  
10 to Rambus and the lack of objections, the Court finds the Settlement to be fair,  
11 adequate, reasonable, and a sound alternative to continued litigation.”).

12 Similarly, the lack of objections to the requested Fee and Expense Amount  
13 and Service Awards evidences support for the effort and results achieved by  
14 Plaintiffs and their counsel, and weighs in favor of a finding that the requested Fee  
15 and Expense Amount and Service Awards are reasonable under the circumstances  
16 of this litigation. *See In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir.  
17 2005) (stating that the fact that only two class members objected to the fee request  
18 supports approval of the fee); *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246,  
19 261-62 (E.D. Va. 2009) (only two objections to fee and expense application from  
20 128,000 potential class members “[f]urther indicate[d] the Class’ approval of the  
21 result realized by this Settlement”).

22 Accordingly, Federal Plaintiffs respectfully submit that the lack of objections  
23 further weighs in favor of final approval of the Settlement, including the agreed-to  
24 Fee and Expense Amount and the Service Awards.  
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1 Dated: October 22, 2020

/s/ Avi Wagner  
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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 October 22, 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 October 22, 2020, at Los Angeles, California.

*s/ Avi Wagner* \_\_\_\_\_  
Avi Wagner