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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

In re CAPSTONE TURBINE  
CORPORATION SECURITIES  
LITIGATION

Case No.: CV 15-8914-DMG (RAOx)

**ORDER AND JUDGMENT  
APPROVING CLASS ACTION  
SETTLEMENT AND MOTION FOR  
ATTORNEYS' FEES AND COSTS**

This matter came before the Court upon Plaintiffs Elizabeth R. Kay, Randall G. Kay, David Kinney, and John Perez's unopposed motion for final approval of the class action settlement and plan of allocation and Plaintiffs' unopposed motion for attorneys' fees and reimbursement of litigation expenses. [Doc. ## 125, 128.] Due and adequate notice having been given to the Settlement Class, and the Court having considered all papers filed and proceedings held herein and otherwise being fully informed in the premises, and good cause having been shown for issuance of this Order,

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

2 1. **Jurisdiction** – The Court has jurisdiction over the subject matter of the  
3 Action, and all matters relating to the Settlement, as well as personal jurisdiction over  
4 all of the Parties and each of the Settlement Class Members.

5 2. **Incorporation of Settlement Documents** – This Order incorporates and  
6 makes a part hereof: (a) the Stipulation filed with the Court on April 12, 2019; and (b)  
7 the Notice, the Summary Notice, and the Postcard Notice, all of which were filed with  
8 the Court on April 12, 2019.

9 3. **Class Certification for Settlement Purposes** – The Court hereby affirms  
10 its determinations in the Preliminary Approval Order certifying, for the purposes of the  
11 Settlement only, the Action as a class action pursuant to Rules 23(a) and (b)(3) of the  
12 Federal Rules of Civil Procedure on behalf of the Settlement Class consisting of all  
13 persons and entities who or which purchased or otherwise acquired Capstone common  
14 stock between June 12, 2014 and November 5, 2015, inclusive (the “Settlement Class  
15 Period”) and were damaged thereby. Excluded from the Settlement Class are  
16 Defendants; members of the Immediate Family of each of the Individual Defendants;  
17 the Officers and/or directors of Capstone; any person, firm, trust, corporation, Officer,  
18 director or other individual or entity in which any Defendant has a controlling interest  
19 or which is related to or affiliated with any of the Defendants; and the legal  
20 representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such  
21 excluded party. Also excluded from the Settlement Class are the persons and entities  
22 listed on Exhibit 1 attached to this Order, who or which are excluded from the  
23 Settlement Class pursuant to request.

24 4. **Adequacy of Representation** – Pursuant to Rule 23 of the Federal Rules  
25 of Civil Procedure, and for the purposes of the Settlement only, the Court hereby  
26 affirms its determinations in the Preliminary Approval Order certifying Lead Plaintiffs  
27 as Class Representatives for the Settlement Class and appointing Lead Counsel as Class  
28 Counsel for the Settlement Class. Lead Plaintiffs and Lead Counsel have fairly and

1 adequately represented the Settlement Class both in terms of litigating the Action and  
2 for purposes of entering into and implementing the Settlement and have satisfied the  
3 requirements of Federal Rules of Civil Procedure 23(a)(4) and 23(g), respectively.

4       5.     **Notice** – The Court finds that the dissemination of the Postcard Notice, the  
5 online posting of the Notice, and the publication of the Summary Notice: (a) were  
6 implemented in accordance with the Preliminary Approval Order; (b) constituted the  
7 best notice practicable under the circumstances; (c) constituted notice that was  
8 reasonably calculated, under the circumstances, to apprise Settlement Class Members of  
9 (i) the pendency of the Action; (ii) the effect of the proposed Settlement (including the  
10 Releases to be provided thereunder); (iii) Lead Counsel’s motion for an award of  
11 attorneys’ fees and reimbursement of Litigation Expenses; (iv) their right to object to  
12 any aspect of the Settlement, the Plan of Allocation, and/or Lead Counsel’s motion for  
13 attorneys’ fees and reimbursement of Litigation Expenses; (v) their right to exclude  
14 themselves from the Settlement Class; and (vi) their right to appear at the Settlement  
15 Hearing; (d) constituted due, adequate, and sufficient notice to all persons and entities  
16 entitled to receive notice of the proposed Settlement; and (e) satisfied the requirements  
17 of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution  
18 (including the Due Process Clause), and the Private Securities Litigation Reform Act of  
19 1995, 15 U.S.C. § 78u-4, as amended.

20       6.     **Plan of Allocation** – Pursuant to the Stipulation, the Court has separately  
21 considered the Plan of Allocation proposed in the Notice and hereby finds and  
22 concludes that the formula for the calculation of the claims of Claimants as set forth in  
23 the Plan of Allocation provided to Settlement Class Members provides a fair and  
24 reasonable basis upon which to allocate the proceeds of the Net Settlement Fund among  
25 Settlement Class Members with due consideration having been given to administrative  
26 convenience and necessity. The Court therefore approves the Plan of Allocation.

27       7.     **Final Settlement Approval and Dismissal of Claims** – Pursuant to, and  
28 in accordance with, Rule 23 of the Federal Rules of Civil Procedure, this Court hereby

1 fully and finally approves the Settlement set forth in the Stipulation in all respects  
2 (including, without limitation: the amount of the Settlement; the Releases provided for  
3 therein; and the dismissal with prejudice of the claims asserted against Defendants in  
4 the Action), and finds that the Settlement is, in all respects, fair, reasonable and  
5 adequate to the Settlement Class. The Parties are directed to implement, perform and  
6 consummate the Settlement in accordance with the terms and provisions contained in  
7 the Stipulation.

8       8.     The Action and all of the claims asserted against Defendants in the Action  
9 by Plaintiffs and the other Settlement Class Members are hereby dismissed with  
10 prejudice. The Parties shall bear their own costs and expenses, except as otherwise  
11 expressly provided in the Stipulation.

12       9.     **Binding Effect** – The terms of the Stipulation and of this Judgment shall  
13 be forever binding on Defendants, Plaintiffs, and all other Settlement Class Members  
14 (regardless of whether or not any individual Settlement Class Member submitted a  
15 Claim Form or sought or seeks or obtains a distribution from the Net Settlement Fund),  
16 as well as their respective successors and assigns. The persons and entities listed on  
17 Exhibit 1 hereto are excluded from the Settlement Class pursuant to request and are not  
18 bound by the terms of the Stipulation or this Judgment.

19       10.    **Releases** – The Releases set forth in paragraphs 6 and 8 of the Stipulation,  
20 together with the definitions contained in paragraph 1 of the Stipulation relating thereto,  
21 are expressly incorporated herein in all respects. The Releases are effective as of the  
22 Effective Date. Accordingly, this Court orders that:

23           (a)   Without further action by anyone, and subject to paragraph 10  
24 below, upon the Effective Date of the Settlement, Plaintiffs and each of the other  
25 Settlement Class Members, on behalf of themselves, and their respective heirs,  
26 executors, administrators, predecessors, successors, and assigns in their capacities as  
27 such, shall be deemed to have, and by operation of law and of this Judgment shall have,  
28 fully, finally and forever compromised, settled, released, resolved, relinquished, waived

1 and discharged each and every Released Plaintiffs' Claim (including, without  
2 limitation, Unknown Claims) against the Defendants and the other Defendants'  
3 Releasees (whether or not such Settlement Class Member executed and delivered a  
4 Proof of Claim form or obtains a distribution from the Net Settlement Fund).

5 (b) Without further action by anyone, upon the Effective Date of the  
6 Settlement, Plaintiffs and each of the Settlement Class Members and anyone claiming  
7 through or on behalf of them, shall be permanently barred and enjoined from (i) the  
8 commencement, assertion, institution, maintenance, prosecution, or enforcement  
9 against any Defendant or any other Defendants' Releasee of any action or other  
10 proceeding in any court of law or equity, arbitration, tribunal, administrative forum, or  
11 forum of any kind, asserting any of Plaintiffs' Released Claims (including, without  
12 limitation, Unknown Claims), and/or (ii) appealing any prior rulings in this case.

13 (c) Without further action by anyone, and subject to paragraph 10  
14 below, upon the Effective Date of the Settlement, Defendants, on behalf of themselves,  
15 and their respective heirs, executors, administrators, predecessors, successors, and  
16 assigns in their capacities as such, shall be deemed to have, and by operation of law and  
17 of this Judgment shall have, fully, finally and forever compromised, settled, released,  
18 resolved, relinquished, waived and discharged each and every Released Defendants'  
19 Claim against Plaintiffs and the other Plaintiffs' Releasees, and shall forever be  
20 enjoined from prosecuting any or all of the Released Defendants' Claims against any of  
21 the Plaintiffs' Releasees. This Release shall not apply to any person or entity listed on  
22 Exhibit 1 hereto.

23 11. Notwithstanding paragraphs 9(a) – (c) above, nothing in this Judgment  
24 shall bar any action by any of the Parties to enforce or effectuate the terms of the  
25 Stipulation or this Judgment.

26 12. **Rule 11 Findings** – The Court finds and concludes that the Parties and  
27 their respective counsel have complied in all respects with the requirements of Rule 11  
28 of the Federal Rules of Civil Procedure in connection with the institution, prosecution,

1 defense, and settlement of the Action.

2 13. **No Admissions** – Neither this Judgment, the term sheets, or the  
3 Stipulation (whether or not consummated), including the exhibits thereto and the Plan  
4 of Allocation contained therein (or any other plan of allocation that may be approved by  
5 the Court), the negotiations leading to the execution of the term sheets and the  
6 Stipulation, nor any proceedings taken pursuant to or in connection with the term  
7 sheets, Stipulation and/or approval of the Settlement (including any arguments  
8 proffered in connection therewith):

9 (a) is or may be deemed to be or may be used as an admission of, or  
10 evidence of, the validity of any Released Claim, or of any wrongdoing or liability of  
11 Defendants or the other Defendants' Releasees;

12 (b) is or may be deemed to be or may be used as an admission of, or  
13 evidence of, any fault or omission of any of Defendants or the other Defendants'  
14 Releasees in any civil, criminal or administrative proceeding in any court,  
15 administrative agency or other tribunal. Defendants and the other Defendants'  
16 Releasees may file the Stipulation and Judgment in any action that may be brought  
17 against them in order to support a defense or counterclaim based on principles of *res*  
18 *judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction  
19 or any other theory of claim preclusion or issue preclusion or similar defense or  
20 counterclaim, or in connection with any proceeding to enforce the terms of the  
21 Stipulation;

22 (c) shall be offered against any of the Plaintiffs' Releasees, as evidence  
23 of, or construed as, or deemed to be evidence of any presumption, concession or  
24 admission by any of the Plaintiffs' Releasees that any of their claims are without merit,  
25 that any of the Defendants' Releasees had meritorious defenses, or that damages  
26 recoverable under the Complaint would not have exceeded the Settlement Amount or  
27 with respect to any liability, negligence, fault or wrongdoing of any kind, or in any way  
28 referred to for any other reason as against any of the Plaintiffs' Releasees, in any civil,

1 criminal or administrative action or proceeding, other than such proceedings as may be  
2 necessary to effectuate the provisions of this Stipulation; or

3 (d) shall be construed against any of the Releasees as an admission,  
4 concession, or presumption that the consideration to be given under the Settlement  
5 represents the amount which could be or would have been recovered after trial;  
6 *provided, however*, that the Parties and the Releasees and their respective counsel may  
7 refer to this Judgment and the Stipulation to effectuate the protections from liability  
8 granted hereunder and thereunder or otherwise to enforce the terms of the Settlement.

9 14. **Attorneys' Fees, Litigation Expenses, and Class Representative**  
10 **Payments** – As contemplated by the Stipulation, Lead Counsel have filed a motion for  
11 approval of attorneys' fees and reimbursement of litigation expenses. The Court finds  
12 that the form and method of notifying the Settlement Class of the motion for an award  
13 of attorneys' fees and expenses satisfied the requirements of Rule 23 of the Federal  
14 Rules of Civil Procedure, the Private Securities Litigation Reform Act of 1995 (15  
15 U.S.C. § 78u-4(a)(7)) and due process, constituted the best notice practicable under the  
16 circumstances, and constituted due and sufficient notice to all persons and entities  
17 entitled thereto. The Court has approved the following payments: (a) attorneys' fees  
18 payable to Class Counsel in this matter in the amount of \$1,454,100; (b) allowable  
19 costs in this matter in the amount of \$78,084.47, and (c) \$31,000 in reimbursements to  
20 Lead and Named Plaintiffs, in the amount of \$22,500 for Lead Plaintiff Randall Kay,  
21 \$3,500 for Lead Plaintiff Elizabeth Kay, \$2,500 for Named Plaintiff David Kinney, and  
22 \$2,500 for Named Plaintiff John Perez.

23 15. **Retention of Jurisdiction** – Without affecting the finality of this  
24 Judgment in any way, this Court retains continuing and exclusive jurisdiction over:  
25 (a) the Parties for purposes of the administration, interpretation, implementation, and  
26 enforcement of the Settlement; (b) the disposition of the Settlement Fund; (c) any  
27 motion for an award of attorneys' fees and/or Litigation Expenses by Lead Counsel in  
28 the Action that will be paid from the Settlement Fund; (d) any motion to approve the

1 Plan of Allocation; (e) any motion to approve the Class Distribution Order; and (f) the  
2 Settlement Class Members for all matters relating to the Action.

3 16. **Modification of the Agreement of Settlement** – Without further approval  
4 from the Court, Plaintiffs and Defendants are hereby authorized to agree to and adopt  
5 such amendments or modifications of the Stipulation or any exhibits attached thereto to  
6 effectuate the Settlement that: (a) are not materially inconsistent with this Judgment;  
7 and (b) do not materially limit the rights of Settlement Class Members in connection  
8 with the Settlement. Without further order of the Court, Plaintiffs and Defendants may  
9 agree to reasonable extensions of time to carry out any provisions of the Settlement.

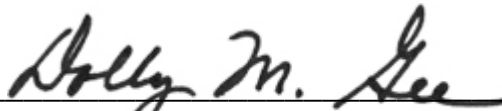
10 17. **Termination of Settlement** – In the event the Settlement does not become  
11 effective in accordance with the terms of the Stipulation or the Effective Date of the  
12 Settlement otherwise fails to occur, this Judgment shall be vacated, rendered null and  
13 void and be of no further force and effect, except as otherwise provided by the  
14 Stipulation, and this Judgment shall be without prejudice to the rights of Plaintiffs, the  
15 other Settlement Class Members, and Defendants, and the Parties shall revert to their  
16 respective positions in the Action as of November 16, 2018, as provided in the  
17 Stipulation.

18 18. Without further order of the Court, the Settling Parties may agree to  
19 reasonable extensions of time to carry out any of the provisions of the Stipulation.

20 19. **Entry of Final Judgment** – The Clerk of the Court is expressly directed  
21 to immediately enter this final judgment in this Action. This document shall constitute  
22 a judgment for the purposes of Federal Rule of Civil Procedure 58.

23 **IT IS SO ORDERED.**

24 DATE: November 15, 2019

  
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DOLLY M. GEE  
UNITED STATES DISTRICT JUDGE



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**Exhibit 1**

**List of Persons and Entities Excluded from the Settlement Class**

**Pursuant to Request**

- 1. Philip Hubbell
- 2. David & Sharon Mullikin
- 3. Barbara Wolford
- 4. Roy Fersch