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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

Case No.

**CLASS ACTION COMPLAINT  
FOR VIOLATIONS OF THE  
FEDERAL SECURITIES LAWS**

Plaintiff,

v.

ROBERT C. FLEXON, DARREN R.  
JAMISON, JOHN J. JURIC, SCOTT W.  
ROBINSON, and FREDERICK S.  
HENCKEN III,

Defendants.

1 Plaintiff individually and on behalf of all others  
2 similarly situated, by and through his attorneys, alleges the following upon  
3 information and belief, except as to those allegations concerning Plaintiff, which are  
4 alleged upon personal knowledge. Plaintiff's information and belief is based upon,  
5 among other things, his counsel's investigation, which includes without limitation:  
6 (a) review and analysis of regulatory filings made by Capstone Green Energy Corp.  
7 ("Capstone" or the "Company") with the United States ("U.S.") Securities and  
8 Exchange Commission ("SEC"); (b) review and analysis of press releases and media  
9 reports issued by and disseminated by Capstone; and (c) review of other publicly  
10 available information concerning Capstone.

### 11 **NATURE OF THE ACTION AND OVERVIEW**

12 1. This is a class action on behalf of persons and entities that purchased or  
13 otherwise acquired Capstone securities between June 14, 2021 and September 22,  
14 2023, inclusive (the "Class Period"). Plaintiff pursues claims against the Defendants  
15 under the Securities Exchange Act of 1934 (the "Exchange Act").

16 2. Capstone is a California based gas turbine manufacturer that specializes  
17 in microturbine power along with heating and cooling cogeneration systems.

18 3. On August 15, 2023, after the closing of trading, the Company  
19 announced its inability to timely file a Form 10-Q due to an "ongoing review and  
20 investigations by the Audit Committee of financial reporting and other matters."

21 4. On this news, the Company's stock price fell \$0.05, or 5%, to close at  
22 \$0.89 per share August 16, 2023, on unusually high trading volume. The Company's  
23 stock price continued to fall the next trading session by \$0.05, or 5%, to close at \$0.84  
24 per share on August 17, 2023.

25 5. Then, on August 18, 2023, after trading hours, the Company announced  
26 it had entered into a Fifth Amendment to its Amended and Restated Note Purchase  
27 Agreement among the Company, Goldman Sachs Specialty Lending Group, L.P. and  
28 a purchaser party. Capstone also reported receipt of a notice from the NASDAQ

1 exchange that the Company was not in compliance with listing requirements due to  
2 its failure to file periodic financial reports.

3 6. On this news, the Company's stock price fell \$0.26, or 30%, to close at  
4 \$0.58 per share on August 21, 2023, on unusually high trading volume.

5 7. Then, on September 22, 2023, after trading hours, the Company  
6 disclosed that certain financial statements could no longer be relied upon "as a result  
7 of apparent errors primarily related to revenue recognition associated with bill and  
8 hold transactions that were identified in the course a review by the Audit  
9 Committee[.]" The Company disclosed there were "numerous instances where bill  
10 and hold transactions did not appear to meet the requirements for revenue recognition  
11 under GAAP."

12 8. Then, on September 28, 2023, the Company announced it had filed for  
13 Chapter 11 bankruptcy. On this news, the Company's stock price fell \$0.10, or 17%,  
14 to close at \$0.50 per share on September 28, 2023.

15 9. Then, on October 4, 2023, after trading hours, it was announced that the  
16 company would be delisted, and the ticker symbol changed from CGRN to CGRNQ.

17 10. Throughout the Class Period, Defendants made materially false and/or  
18 misleading statements, as well as failed to disclose material adverse facts about the  
19 Company's business, operations, and prospects. Specifically, Defendants failed to  
20 disclose to investors: (1) that the Company had engaged in "bill and hold transactions"  
21 with customers; (2) that these transactions were not reported pursuant to generally  
22 accepted accounting principles ("GAAP"); (3) that, "as a result of apparent errors  
23 primarily related to revenue recognition associated with bill and hold transactions"  
24 the Company lacked a reasonable basis to report certain financial results and was  
25 reasonably likely to restate its financial statements; and (4) that, as a result of the  
26 foregoing, Defendant's positive statements about the Company's business,  
27 operations, and prospects were materially misleading and/or lacked a reasonable  
28 basis.

1 **JURISDICTION AND VENUE**

2 11. The claims asserted herein arise under Sections 10(b) and 20(a) of the  
3 Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated  
4 thereunder by the SEC (17 C.F.R. § 240.10b-5).

5 12. This Court has jurisdiction over the subject matter of this action pursuant  
6 to 28 U.S.C. § 1331 and Section 27 of the Exchange Act (15 U.S.C. § 78aa).

7 13. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b)  
8 and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)). Substantial acts in  
9 furtherance of the alleged fraud or the effects of the fraud have occurred in this  
10 Judicial District. Many of the acts charged herein, including the dissemination of  
11 materially false and/or misleading information, occurred in substantial part in this  
12 Judicial District.

13 14. In connection with the acts, transactions, and conduct alleged herein,  
14 Defendants directly and indirectly used the means and instrumentalities of interstate  
15 commerce, including the United States mail, interstate telephone communications,  
16 and the facilities of a national securities exchange.

17 **PARTIES**

18 15. Plaintiff Thomas Spitzer, as set forth in the accompanying certification,  
19 incorporated by reference herein, purchased Capstone securities during the Class  
20 Period, and suffered damages as a result of the federal securities law violations and  
21 false and/or misleading statements and/or material omissions alleged herein.

22 16. Defendant Robert C. Flexon (“Flexon”) has been the Company’s Chief  
23 Executive Officer (“CEO”) since August 22, 2023.

24 17. Defendant Darren R. Jamison (“Jamison”) has been the Company’s  
25 President, CEO and Director from 2006 until August 22, 2023.

26 18. Defendant John J. Juric (“Juric”) has been the Company’s Chief  
27 Financial Officer (“CFO”) since March 6, 2023.



**Materially False and Misleading**  
**Statements Issued During the Class Period**

23. The Class period begins on June 14, 2021.<sup>1</sup> On that date, the Company submitted to the SEC its Annual Report Form 10-K for the fiscal year ended March 31, 2021 (“2021 10-K”). The 2021 10-K reported the following revenue (amounts in millions):

	Year Ended March 31,					
	2021			2020		
	Revenue	Megawatts	Units	Revenue	Megawatts	Units
Microturbine Product	\$ 34.1	33.5	234	\$ 33.8	33.2	214
Accessories	2.4			1.5		
<b>Total Product and Accessories</b>	<b>36.5</b>			<b>35.3</b>		
Parts and Service	31.1			33.6		
<b>Total</b>	<b>\$ 67.6</b>			<b>\$ 68.9</b>		

24. The 2021 10-K further reported the below table indicating revenue:

(Unaudited)	Year Ended March 31, 2021			
	Fourth Quarter	Third Quarter	Second Quarter	First Quarter
Revenue	\$ 17,862	\$ 20,676	\$ 14,906	\$ 14,193
Cost of goods sold	20,413	17,204	12,344	10,820
Gross margin	(2,551)	3,472	2,562	3,373
Operating expenses:				
R&D	714	735	599	370
SG&A	5,158	4,816	4,872	3,546
Loss from operations	(8,423)	(2,079)	(2,909)	(543)
Net loss (1)	\$ (4,757)	\$ (7,595)	\$ (4,212)	\$ (1,823)
Net loss per common share—basic and diluted (1)	\$ (0.39)	\$ (0.69)	\$ (0.38)	\$ (0.17)

25. The 2021 10-K describes the Company’s revenue recognition policy as follows:

***Our revenue consists of sales of products, parts, accessories and service, which includes FPPs, net of discounts. Our distributors purchase products, parts and FPPs for sale to end users and are also required to provide a variety of additional services, including application engineering, installation, commissioning and post-commissioning service. Our standard terms of sales to distributors and***

<sup>1</sup> Unless otherwise stated, all emphasis in bold and italics hereinafter is added.

1 direct end users include transfer of title, care, custody and control at the  
 2 point of shipment, payment terms ranging from full payment in  
 3 advance of shipment to payment in 90 days, no right of return or  
 4 exchange, and no post-shipment performance obligations by us except  
 5 for warranties provided on the products and parts sold. ***We recognize  
 revenue when all of the following criteria are met: persuasive  
 evidence of an arrangement exists, delivery has occurred or service  
 has been rendered, selling price is fixed or determinable and  
 collectability is reasonably assured.***

6 26. The 2021 10-K stated that Capstone’s “disclosure control and  
 7 procedures were effective as of March 31, 2021[.]” It also stated that “management  
 8 concluded that [Capstone] maintained effective internal control over financial  
 9 reporting as of March 31, 2021.”

10 27. On July 14, 2022, the Company filed Annual Report Form 10-K for the  
 11 fiscal year ended March 31, 2022 (“2022 10-K”). The 2022 10-K reported the  
 12 following financial results (amounts in thousands, except for share amounts):

	Year Ended March 31,	
	2022	2021
Revenue:		
Product and accessories	\$ 37,181	\$ 36,517
Parts and service	32,464	31,119
Total revenue	69,645	67,636
Cost of goods sold:		
Product and accessories	40,483	42,025
Parts and service	20,624	18,756
Total cost of goods sold	61,107	60,781
Gross margin	8,538	6,855
Operating expenses:		
Research and development	3,359	2,417
Selling, general and administrative	22,980	18,391
Total operating expenses	26,339	20,808
Loss from operations	(17,801)	(13,953)
Other income	642	4,993
Interest income	21	30
Interest expense	(5,004)	(5,156)
Gain (loss) on debt extinguishment	1,950	(4,282)
Loss before provision for income taxes	(20,192)	(18,368)
Provision for income taxes	19	19
Net loss	(20,211)	(18,387)
Less: Deemed dividend on purchase warrant for common shares	—	15
Net loss attributable to common stockholders	\$ (20,211)	\$ (18,402)
Net loss per common share attributable to common stockholders —basic and diluted	\$ (1.37)	\$ (1.63)
Weighted average shares used to calculate basic and diluted net loss per common share attributable to common stockholders	14,727	11,280

1 28. The 2022 10-K described Capstone’s backlog as follows:

2 Net product orders for Fiscal 2022 were \$31.8 million and contributed to  
3 an ending **backlog of \$25.3 million at March 31, 2022**. The book-to-bill  
4 ratio was 1.1:1 for Fiscal 2022. **Book-to-bill ratio is the ratio of new**  
5 **orders we received to units shipped and billed during a period.**  
6 **However, because our backlog represents only the estimated amount**  
7 **of future product revenue to be recognized under negotiated contracts**  
8 **as shipments convert backlog to recognized revenue for accounting**  
9 **purposes, we may not be able to fully realize the revenue value reported**  
10 **in our backlog, and our backlog may not be indicative of future revenues.**  
11 A portion of our backlog is concentrated in the international oil and gas  
12 market which may impact the overall timing of shipments or the  
13 conversion of backlog to revenue.

14 29. The 2022 10-K described the Company’s revenue recognition policy:

15 **Our revenue consists of sales of products, parts, accessories and**  
16 **service, which includes FPPs, net of discounts.** Our distributors purchase  
17 products, parts and FPPs for sale to end users and are also required to  
18 provide a variety of additional services, including application  
19 engineering, installation, commissioning and post-commissioning  
20 service. Our standard terms of sales to distributors and direct end users  
21 include transfer of title, care, custody and control at the point of  
22 shipment, payment terms ranging from full payment in advance of  
23 shipment to payment in 90 days, no right of return or exchange, and no  
24 post-shipment performance obligations by us except for warranties  
25 provided on the products and parts sold. **We recognize revenue when all**  
26 **of the following criteria are met: persuasive evidence of an**  
27 **arrangement exists, delivery has occurred or service has been**  
28 **rendered, selling price is fixed or determinable and collectability is**  
**reasonably assured.**

29 30. The 2022 10-K further stated that Capstone’s “disclosure controls and  
30 procedures were effective as of March 31, 2022[.]” The report also stated that  
31 “management concluded that we maintained effective internal control over financial  
32 reporting as of March 31, 2022.”

33 31. On August 11, 2022, Capstone announced its first quarter 2023 financial  
34 results in a press release that stated, in relevant part:

35 First Quarter Fiscal 2023 Highlights:

36 ■ Revenues for the first quarter ending June 30, 2022 were \$18.7  
37 million, up 18% from \$15.8 million in revenue during the fourth quarter  
38 ended March 31, 2022, and up 16% from revenues of \$16.1 million in  
39 the year-ago June quarter.

40 \* \* \*







1 into a waiver and amendment, and such waiver and amendment will  
2 likely impose additional burdens on the Company.

3 38. The above statements identified in ¶¶ 23-37 were materially false and/or  
4 misleading, and failed to disclose material adverse facts about the Company’s  
5 business, operations, and prospects. Specifically, Defendants failed to disclose to  
6 investors: (1) that the Company had engaged in “bill and hold transactions” with  
7 customers; (2) that these transactions were not reported pursuant to GAAP; (3) that,  
8 “as a result of apparent errors primarily related to revenue recognition associated with  
9 bill and hold transactions,” the Company lacked a reasonable basis to report certain  
10 financial results and was reasonably likely to restate its financial statements; and (4)  
11 that, as a result of the foregoing, Defendant’s positive statements about the  
12 Company’s business, operations, and prospects were materially misleading and/or  
13 lacked a reasonable basis.

14 **Disclosures at the End of the Class Period**

15 39. On August 15, 2023, after the closing of trading, the Company  
16 announced its inability to timely file a Form 10-Q due to an “ongoing review and  
17 investigations by the Audit Committee of financial reporting and other matters.”  
18 Specifically, the Company stated, in relevant part:

19 *The Company needs additional time because the Company still in the*  
20 *process of compiling information* necessary to complete both the  
21 Quarterly Report and the Company’s Annual Report on Form 10-K for  
22 the fiscal year ended March 31, 2023 (the “Annual Report”), and  
23 Marcum LLP (“Marcum”), the Company’s independent registered  
24 public accounting firm, *requires additional time to complete its audit of*  
*the consolidated financial statements* as of and for the year ended March  
31, 2023 to be incorporated in the Annual Report, and will *need*  
*additional time to review* the consolidated financial statements as of and  
for the year ended March 31, 2023 to be included in the Quarterly Report,  
once the Company has completed their preparation.

25 40. On this news, the Company’s stock price fell \$0.05, or 5%, to close at  
26 \$0.89 per share on August 16, 2023 on unusually high trading volume. The  
27 Company’s stock price continued to fall another \$0.05, or 5%, to close at \$0.84 per  
28 share on August 17, 2023.

1           41. Then, on August 18, 2023, after trading hours, the Company announced  
2 it had entered into a Fifth Amendment to its Amended and Restated Note Purchase  
3 Agreement among the Company, Goldman Sachs Specialty Lending Group, L.P. and  
4 a purchaser party. Capstone also reported receipt of a notice from the NASDAQ  
5 exchange that the Company was not in compliance with listing requirements due to  
6 its failure to file periodic financial reports. On this news, the Company's stock price  
7 fell \$0.26, or 30%, to close at \$0.58 per share on August 21, 2023, on unusually high  
8 trading volume.

9           42. Then, on September 22, 2023, after trading hours, the Company  
10 disclosed that following an audit, certain financial statements could no longer be  
11 relied upon "as a result of apparent errors primarily related to revenue recognition  
12 associated with bill and hold transactions that were identified in the course a review  
13 by the Audit Committee[.]" The Company disclosed that "the Audit Committee  
14 identified numerous instances where bill and hold transactions did not appear to meet  
15 the requirements for revenue recognition under GAAP. As a result, the Audit  
16 Committee has concluded that, in most such cases, revenue should not have been  
17 recognized until a later time when the products were subsequently shipped to the  
18 customer." The Audit Committee determined that

19           the Company's previously issued consolidated financial statements as of  
20 each and for each of the following fiscal periods are *materially incorrect*,  
require restatement and should no longer be relied upon:

- 21           ● The first three fiscal quarters of the fiscal year ended March  
22           31, 2023 and the comparable periods of the fiscal year ended  
23           March 31, 2022;
- 24           ● The fiscal year ended March 31, 2022; and
- 25           ● The fiscal year ended March 31, 2021 (the "Subject  
26           Periods").

27           43. The Company's September 22, 2023 filing further disclosed:

28           ***Due to the impact of the above matters on the presentation of the  
Company's financial statements*** in its Form 10-K for the fiscal year  
ended March 31, 2023, in its Form 10-Q for the quarter ended June 30,

1 2023 and in its Form 10-Q for the quarter ended September 30, 2023, *the*  
2 *Company has not timely filed its Annual Report on Form 10-K for the*  
3 *fiscal year ended March 31, 2023 or its Quarterly Report on Form 10-*  
4 *Q for the quarterly period ended June 30, 2023* with the SEC, and may  
5 not timely file its Quarterly Report on Form 10-Q for the quarterly period  
6 ended September 30, 2023.

7 44. Then, on September 28, 2023 the Company announced it had filed for  
8 Chapter 11 bankruptcy. On this news, the Company’s stock price fell \$0.10, or 17%,  
9 to close at \$0.50 per share on September 28, 2023.

10 45. Then, on October 4, 2023, after trading hours, it was announced that the  
11 company would be delisted, and the ticker symbol changed from CGRN to CGRNQ.

12 **CLASS ACTION ALLEGATIONS**

13 46. Plaintiff brings this action as a class action pursuant to Federal Rule of  
14 Civil Procedure 23(a) and (b)(3) on behalf of a class, consisting of all persons and  
15 entities that purchased or otherwise acquired Capstone securities between June 14,  
16 2021 and September 22, 2023, inclusive, and who were damaged thereby (the  
17 “Class”). Excluded from the Class are Defendants, the officers and directors of the  
18 Company, at all relevant times, members of their immediate families and their legal  
19 representatives, heirs, successors, or assigns, and any entity in which Defendants have  
20 or had a controlling interest.

21 47. The members of the Class are so numerous that joinder of all members  
22 is impracticable. Throughout the Class Period, Capstone’s shares actively traded on  
23 the NASDAQ. While the exact number of Class members is unknown to Plaintiff at  
24 this time and can only be ascertained through appropriate discovery, Plaintiff believes  
25 that there are at least hundreds or thousands of members in the proposed Class.  
26 Millions of Capstone shares were traded publicly during the Class Period on the  
27 NASDAQ. Record owners and other members of the Class may be identified from  
28 records maintained by Capstone or its transfer agent and may be notified of the  
pendency of this action by mail, using the form of notice similar to that customarily  
used in securities class actions.



1 the market price of the Company's securities and market information relating to  
2 Capstone, and have been damaged thereby.

3 53. During the Class Period, Defendants materially misled the investing  
4 public, thereby inflating the price of Capstone's securities, by publicly issuing false  
5 and/or misleading statements and/or omitting to disclose material facts necessary to  
6 make Defendants' statements, as set forth herein, not false and/or misleading. The  
7 statements and omissions were materially false and/or misleading because they failed  
8 to disclose material adverse information and/or misrepresented the truth about  
9 Capstone's business, operations, and prospects as alleged herein.

10 54. At all relevant times, the material misrepresentations and omissions  
11 particularized in this Complaint directly or proximately caused or were a substantial  
12 contributing cause of the damages sustained by Plaintiff and other members of the  
13 Class. As described herein, during the Class Period, Defendants made or caused to  
14 be made a series of materially false and/or misleading statements about Capstone's  
15 financial well-being and prospects. These material misstatements and/or omissions  
16 had the cause and effect of creating in the market an unrealistically positive  
17 assessment of the Company and its financial well-being and prospects, thus causing  
18 the Company's securities to be overvalued and artificially inflated at all relevant  
19 times. Defendants' materially false and/or misleading statements during the Class  
20 Period resulted in Plaintiff and other members of the Class purchasing the Company's  
21 securities at artificially inflated prices, thus causing the damages complained of herein  
22 when the truth was revealed.

23 **LOSS CAUSATION**

24 55. Defendants' wrongful conduct, as alleged herein, directly and  
25 proximately caused the economic loss suffered by Plaintiff and the Class.

26 56. During the Class Period, Plaintiff and the Class purchased Capstone's  
27 securities at artificially inflated prices and were damaged thereby. The price of the  
28 Company's securities significantly declined when the misrepresentations made to the

1 market, and/or the information alleged herein to have been concealed from the market,  
2 and/or the effects thereof, were revealed, causing investors' losses.

3 **SCIENTER ALLEGATIONS**

4 57. As alleged herein, Defendants acted with scienter since Defendants knew  
5 that the public documents and statements issued or disseminated in the name of the  
6 Company were materially false and/or misleading; knew that such statements or  
7 documents would be issued or disseminated to the investing public; and knowingly  
8 and substantially participated or acquiesced in the issuance or dissemination of such  
9 statements or documents as primary violations of the federal securities laws. As set  
10 forth elsewhere herein in detail, the Individual Defendants, by virtue of their receipt  
11 of information reflecting the true facts regarding Capstone, their control over, and/or  
12 receipt and/or modification of Capstone's allegedly materially misleading  
13 misstatements and/or their associations with the Company which made them privy to  
14 confidential proprietary information concerning Capstone, participated in the  
15 fraudulent scheme alleged herein.

16 **APPLICABILITY OF PRESUMPTION OF RELIANCE**

17 **(FRAUD-ON-THE-MARKET DOCTRINE)**

18 58. The market for Capstone's securities was open, well-developed and  
19 efficient at all relevant times. As a result of the materially false and/or misleading  
20 statements and/or failures to disclose, Capstone's securities traded at artificially  
21 inflated prices during the Class Period. On June 16, 2021, the Company's share price  
22 closed at a Class Period high of \$7.35 per share. Plaintiff and other members of the  
23 Class purchased or otherwise acquired the Company's securities relying upon the  
24 integrity of the market price of Capstone's securities and market information relating  
25 to Capstone, and have been damaged thereby.

26 59. During the Class Period, the artificial inflation of Capstone's shares was  
27 caused by the material misrepresentations and/or omissions particularized in this  
28 Complaint causing the damages sustained by Plaintiff and other members of the Class.



1 As described herein, during the Class Period, Defendants made or caused to be made  
2 a series of materially false and/or misleading statements about Capstone's business,  
3 prospects, and operations. These material misstatements and/or omissions created an  
4 unrealistically positive assessment of Capstone and its business, operations, and  
5 prospects, thus causing the price of the Company's securities to be artificially inflated  
6 at all relevant times, and when disclosed, negatively affected the value of the  
7 Company shares. Defendants' materially false and/or misleading statements during  
8 the Class Period resulted in Plaintiff and other members of the Class purchasing the  
9 Company's securities at such artificially inflated prices, and each of them has been  
10 damaged as a result.

11 60. At all relevant times, the market for Capstone's securities was an  
12 efficient market for the following reasons, among others:

13 (a) Capstone shares met the requirements for listing, and was listed  
14 and actively traded on the NASDAQ, a highly efficient and automated market;

15 (b) As a regulated issuer, Capstone filed periodic public reports with  
16 the SEC and/or the NASDAQ;

17 (c) Capstone regularly communicated with public investors via  
18 established market communication mechanisms, including through regular  
19 dissemination of press releases on the national circuits of major newswire services  
20 and through other wide-ranging public disclosures, such as communications with the  
21 financial press and other similar reporting services; and/or

22 (d) Capstone was followed by securities analysts employed by  
23 brokerage firms who wrote reports about the Company, and these reports were  
24 distributed to the sales force and certain customers of their respective brokerage firms.  
25 Each of these reports was publicly available and entered the public marketplace.

26 61. As a result of the foregoing, the market for Capstone's securities  
27 promptly digested current information regarding Capstone from all publicly available  
28 sources and reflected such information in Capstone's share price. Under these

1 circumstances, all purchasers of Capstone’s securities during the Class Period  
2 suffered similar injury through their purchase of Capstone’s securities at artificially  
3 inflated prices and a presumption of reliance applies.

4 62. A Class-wide presumption of reliance is also appropriate in this action  
5 under the Supreme Court’s holding in *Affiliated Ute Citizens of Utah v. United States*,  
6 406 U.S. 128 (1972), because the Class’s claims are, in large part, grounded on  
7 Defendants’ material misstatements and/or omissions. Because this action involves  
8 Defendants’ failure to disclose material adverse information regarding the Company’s  
9 business operations and financial prospects—information that Defendants were  
10 obligated to disclose—positive proof of reliance is not a prerequisite to recovery. All  
11 that is necessary is that the facts withheld be material in the sense that a reasonable  
12 investor might have considered them important in making investment decisions.  
13 Given the importance of the Class Period material misstatements and omissions set  
14 forth above, that requirement is satisfied here.

15 **NO SAFE HARBOR**

16 63. The statutory safe harbor provided for forward-looking statements under  
17 certain circumstances does not apply to any of the allegedly false statements pleaded  
18 in this Complaint. The statements alleged to be false and misleading herein all relate  
19 to then-existing facts and conditions. In addition, to the extent certain of the  
20 statements alleged to be false may be characterized as forward looking, they were not  
21 identified as “forward-looking statements” when made and there were no meaningful  
22 cautionary statements identifying important factors that could cause actual results to  
23 differ materially from those in the purportedly forward-looking statements. In the  
24 alternative, to the extent that the statutory safe harbor is determined to apply to any  
25 forward-looking statements pleaded herein, Defendants are liable for those false  
26 forward-looking statements because at the time each of those forward-looking  
27 statements was made, the speaker had actual knowledge that the forward-looking  
28 statement was materially false or misleading, and/or the forward-looking statement

1 was authorized or approved by an executive officer of Capstone who knew that the  
2 statement was false when made.

3 **FIRST CLAIM**

4 **Violation of Section 10(b) of The Exchange Act and**

5 **Rule 10b-5 Promulgated Thereunder**

6 **Against All Defendants**

7 64. Plaintiff repeats and re-alleges each and every allegation contained  
8 above as if fully set forth herein.

9 65. During the Class Period, Defendants carried out a plan, scheme and  
10 course of conduct which was intended to and, throughout the Class Period, did: (i)  
11 deceive the investing public, including Plaintiff and other Class members, as alleged  
12 herein; and (ii) cause Plaintiff and other members of the Class to purchase Capstone's  
13 securities at artificially inflated prices. In furtherance of this unlawful scheme, plan  
14 and course of conduct, Defendants, and each defendant, took the actions set forth  
15 herein.

16 66. Defendants (i) employed devices, schemes, and artifices to defraud; (ii)  
17 made untrue statements of material fact and/or omitted to state material facts  
18 necessary to make the statements not misleading; and (iii) engaged in acts, practices,  
19 and a course of business which operated as a fraud and deceit upon the purchasers of  
20 the Company's securities in an effort to maintain artificially high market prices for  
21 Capstone's securities in violation of Section 10(b) of the Exchange Act and Rule 10b-  
22 5. All Defendants are sued either as primary participants in the wrongful and illegal  
23 conduct charged herein or as controlling persons as alleged below.

24 67. Defendants, individually and in concert, directly and indirectly, by the  
25 use, means or instrumentalities of interstate commerce and/or of the mails, engaged  
26 and participated in a continuous course of conduct to conceal adverse material  
27 information about Capstone's financial well-being and prospects, as specified herein.

28

1           68. Defendants employed devices, schemes and artifices to defraud, while in  
2 possession of material adverse non-public information and engaged in acts, practices,  
3 and a course of conduct as alleged herein in an effort to assure investors of Capstone's  
4 value and performance and continued substantial growth, which included the making  
5 of, or the participation in the making of, untrue statements of material facts and/or  
6 omitting to state material facts necessary in order to make the statements made about  
7 Capstone and its business operations and future prospects in light of the circumstances  
8 under which they were made, not misleading, as set forth more particularly herein,  
9 and engaged in transactions, practices and a course of business which operated as a  
10 fraud and deceit upon the purchasers of the Company's securities during the Class  
11 Period.

12           69. Each of the Individual Defendants' primary liability and controlling  
13 person liability arises from the following facts: (i) the Individual Defendants were  
14 high-level executives and/or directors at the Company during the Class Period and  
15 members of the Company's management team or had control thereof; (ii) each of  
16 these defendants, by virtue of their responsibilities and activities as a senior officer  
17 and/or director of the Company, was privy to and participated in the creation,  
18 development and reporting of the Company's internal budgets, plans, projections  
19 and/or reports; (iii) each of these defendants enjoyed significant personal contact and  
20 familiarity with the other defendants and was advised of, and had access to, other  
21 members of the Company's management team, internal reports and other data and  
22 information about the Company's finances, operations, and sales at all relevant times;  
23 and (iv) each of these defendants was aware of the Company's dissemination of  
24 information to the investing public which they knew and/or recklessly disregarded  
25 was materially false and misleading.

26           70. Defendants had actual knowledge of the misrepresentations and/or  
27 omissions of material facts set forth herein, or acted with reckless disregard for the  
28 truth in that they failed to ascertain and to disclose such facts, even though such facts

1 were available to them. Such defendants' material misrepresentations and/or  
2 omissions were done knowingly or recklessly and for the purpose and effect of  
3 concealing Capstone's financial well-being and prospects from the investing public  
4 and supporting the artificially inflated price of its securities. As demonstrated by  
5 Defendants' overstatements and/or misstatements of the Company's business,  
6 operations, financial well-being, and prospects throughout the Class Period,  
7 Defendants, if they did not have actual knowledge of the misrepresentations and/or  
8 omissions alleged, were reckless in failing to obtain such knowledge by deliberately  
9 refraining from taking those steps necessary to discover whether those statements  
10 were false or misleading.

11       71. As a result of the dissemination of the materially false and/or misleading  
12 information and/or failure to disclose material facts, as set forth above, the market  
13 price of Capstone's securities was artificially inflated during the Class Period. In  
14 ignorance of the fact that market prices of the Company's securities were artificially  
15 inflated, and relying directly or indirectly on the false and misleading statements made  
16 by Defendants, or upon the integrity of the market in which the securities trades,  
17 and/or in the absence of material adverse information that was known to or recklessly  
18 disregarded by Defendants, but not disclosed in public statements by Defendants  
19 during the Class Period, Plaintiff and the other members of the Class acquired  
20 Capstone's securities during the Class Period at artificially high prices and were  
21 damaged thereby.

22       72. At the time of said misrepresentations and/or omissions, Plaintiff and  
23 other members of the Class were ignorant of their falsity, and believed them to be  
24 true. Had Plaintiff and the other members of the Class and the marketplace known  
25 the truth regarding the problems that Capstone was experiencing, which were not  
26 disclosed by Defendants, Plaintiff and other members of the Class would not have  
27 purchased or otherwise acquired their Capstone securities, or, if they had acquired  
28

1 such securities during the Class Period, they would not have done so at the artificially  
2 inflated prices which they paid.

3 73. By virtue of the foregoing, Defendants violated Section 10(b) of the  
4 Exchange Act and Rule 10b-5 promulgated thereunder.

5 74. As a direct and proximate result of Defendants' wrongful conduct,  
6 Plaintiff and the other members of the Class suffered damages in connection with  
7 their respective purchases and sales of the Company's securities during the Class  
8 Period.

9 **SECOND CLAIM**

10 **Violation of Section 20(a) of The Exchange Act**

11 **Against the Individual Defendants**

12 75. Plaintiff repeats and re-alleges each and every allegation contained  
13 above as if fully set forth herein.

14 76. Individual Defendants acted as controlling persons of Capstone within  
15 the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their  
16 high-level positions and their ownership and contractual rights, participation in,  
17 and/or awareness of the Company's operations and intimate knowledge of the false  
18 financial statements filed by the Company with the SEC and disseminated to the  
19 investing public, Individual Defendants had the power to influence and control and  
20 did influence and control, directly or indirectly, the decision-making of the Company,  
21 including the content and dissemination of the various statements which Plaintiff  
22 contends are false and misleading. Individual Defendants were provided with or had  
23 unlimited access to copies of the Company's reports, press releases, public filings,  
24 and other statements alleged by Plaintiff to be misleading prior to and/or shortly after  
25 these statements were issued and had the ability to prevent the issuance of the  
26 statements or cause the statements to be corrected.

27 77. In particular, Individual Defendants had direct and supervisory  
28 involvement in the day-to-day operations of the Company and, therefore, had the

1 power to control or influence the particular transactions giving rise to the securities  
2 violations as alleged herein, and exercised the same.

3 78. As set forth above, Capstone and Individual Defendants each violated  
4 Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint.  
5 By virtue of their position as controlling persons, Individual Defendants are liable  
6 pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of  
7 Defendants' wrongful conduct, Plaintiff and other members of the Class suffered  
8 damages in connection with their purchases of the Company's securities during the  
9 Class Period.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

12 (a) Determining that this action is a proper class action under Rule 23 of the  
13 Federal Rules of Civil Procedure;

14 (b) Awarding compensatory damages in favor of Plaintiff and the other  
15 Class members against all defendants, jointly and severally, for all damages sustained  
16 as a result of Defendants' wrongdoing, in an amount to be proven at trial, including  
17 interest thereon;

18 (c) Awarding Plaintiff and the Class their reasonable costs and expenses  
19 incurred in this action, including counsel fees and expert fees; and

20 (d) Such other and further relief as the Court may deem just and proper.

21 **JURY TRIAL DEMANDED**

22 Plaintiff hereby demands a trial by jury.  
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