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California Corporations Commissioner
2 WAYNE STRUMPFER
Deputy Commissioner
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Lead Corporations Counsel
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Senior Corporations Counsel
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8 Attorneys for Complainant

9
10 BEFORE THE DEPARTMENT OF CORPORATIONS
11 OF THE STATE OF CALIFORNIA

12 In the Matter of)	OAH FILE No. L2006120213
)	
13 THE CALIFORNIA CORPORATIONS)	AGENCY FILE NO. 41400
14 COMMISSIONER,)	
)	
15 Complainant,)	SETTLEMENT AGREEMENT
16 v.)	
)	
17 CAPSTONE INVESTMENTS AND)	
18 ANTHONY CAPOZZA,)	
)	
19 Respondents.)	
)	
20)	
21)	

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23
24 This Settlement Agreement and Release (“Agreement”) shall be binding on the
25 CALIFORNIA CORPORATIONS COMMISSIONER and its officers, employees, agents,
26 representatives, successors, and attorneys (collectively, the “Commissioner”); and CAPSTONE
27 INVESTMENTS (“Capstone”), ANTHONY CAPOZZA (“Capozza”), and their subsidiaries,
28 officers, employees, agents, representatives, successors, insurers, attorneys, affiliated and related

1 entities, principals, assignors, and assignees (collectively, “Respondents”). The Commissioner,
2 Capstone, and Capozza shall collectively be referred to as the “Parties.”

3 **I.**

4 **PARTICULARS**

5 The Commissioner has filed an Accusation and Statement in Support re Intent to
6 Issue Order captioned In the Matter of THE CALIFORNIA CORPORATIONS COMMISSIONER,
7 Complainant v. CAPSTONE INVESTMENTS AND ANTHONY CAPOZZA, Respondents, OAH
8 No. L2006120213, Agency File No. 41400, before the Department of Corporations of the State of
9 California (hereinafter the “Action”) seeking among other things, certain penalties against Capstone
10 and Capozza. The Action alleges that Capstone and Capozza violated certain provisions of the
11 Corporate Securities Law of 1968. The Parties agree that nothing in this Agreement shall be
12 deemed an admission of any wrongdoing on the part of Capstone or Capozza.

13 The Parties now desire to resolve each and every aspect of the Action in consideration
14 of the terms and conditions described below.

15 Now, therefore, in consideration of the terms and conditions contained herein and
16 without any admission of liability on the part of Capstone or Capozza, the Parties agree as follows:

17 **II.**

18 **TERMS AND CONDITIONS**

19 1. **Issuance of Final Order Pursuant to Corporations Code Section 25249.** The
20 Parties hereby agree to the issuance of the Final Order Issued Pursuant to Corporations Code Section
21 25249 (hereinafter, the “Final Order”) to become effective upon the execution of this Agreement. A
22 true and correct copy of the Final Order is attached hereto and incorporated herein by reference as
23 **Exhibit 1.**

24 2. **Cessation of Liquidation Business.** Capstone and Capozza represent that they have
25 previously voluntarily discontinued the liquidation services provided in California that are the
26 subject of the Action. Capstone and Capozza further agree that they will not provide these
27 liquidation services in California in the future. However, nothing in this Agreement or the Final
28

1 Order shall be deemed an admission of any wrongdoing on the part of Capstone or Capozza in
2 connection with the liquidation services.

3 3. **Reimbursement of Costs.** Respondents agree to reimburse the Commissioner in the
4 amount of Fifty Thousand Dollars(\$50,000) for attorney’s fees, investigation costs, and other
5 expenses related to the investigation and resolution of this matter. Such reimbursement shall be
6 made by Respondents within 14 days of the execution of this Agreement. The check shall be made
7 payable to “The Department of Corporations,” and shall be sent by Respondents to the following
8 address:

9 **Marlou de Luna, Esq.**
10 **Senior Corporations Counsel**
11 **Department of Corporations**
12 **320 W. 4th Street, Suite 750**
13 **Los Angeles, CA 90013**

14 4. **Dismissal With Prejudice and Waiver of Further Action.** The Commissioner
15 agrees to dismiss the Action with prejudice immediately upon receipt of the reimbursement
16 described in Paragraph 3. In addition, the Commissioner agrees that it will not seek any additional
17 penalties, suspensions, or restitution from Respondents in connection with the Action or the facts
18 underlying the Action. Similarly, Capstone and Capozza agree not to file any action against the
19 Commissioner arising from the allegations or the facts underlying the Action.

20 5. **Compromise of a Disputed Claim.** The Parties recognize that this Agreement is
21 entered into for the purpose of fully and completely resolving a disputed claim. The Parties do not
22 admit or deny any of the allegations in the Action.

23 6. **Admissibility.** The Parties agree that this Agreement shall not be admissible against
24 Respondents in any action(s) brought against Respondents including actions by third parties that are
25 not signatories to this Agreement.

26 7. **Governing Law.** This Agreement shall be valid, binding and enforceable in the
27 United States of America, the State of California, and/or any other state where the Action could have
28 been brought. This Agreement shall be construed and interpreted in accordance with the laws of the
State of California. If any provision or any part of any provision of this Agreement is for any reason

1 held to be invalid, unenforceable, or contrary to public policy or any law, then the remainder of this
2 Agreement shall not be affected thereby. Further, this Agreement shall not be construed against any
3 party due to that party's participation in the drafting of it.

4 8. **Contractual Nature of Agreement.** The Parties understand that the terms of this
5 Agreement are contractual and not mere recitals. It is executed without reliance upon any oral
6 representation of the Parties or their attorneys, or any other person or entity not expressly set forth
7 herein, or upon the failure of any party or any other person or entity to make any statement,
8 representation or disclosure of anything whatsoever. The Parties have included this clause: (1) to
9 preclude any claim that any Party was in any way fraudulently induced to execute this Settlement
10 Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret, supplement, or
11 contradict the terms of this Settlement Agreement.

12 9. **Filing of Settlement Agreement.** The Commissioner shall cause this Agreement to
13 be filed with the Office of Administrative Hearings immediately upon its execution.

14 10. **Signatures.** A fax signature or e-mail scanned signature of this Agreement shall be
15 as effective as an original ink signature.

16 11. **Counterparts.** This Agreement may be executed in one or more counterparts, each
17 of which shall be deemed an original, and will become effective and binding upon the Parties at such
18 time as all of the signatories hereto have signed a counterpart of this Agreement. All counterparts so
19 executed shall constitute one Agreement binding on all of the Parties hereto, notwithstanding that all
20 of the Parties are not a signatory to the same counterpart.

21 12. **Warranty of Capacity to Execute Agreement.** Each signatory hereto covenants
22 that he/she possesses the necessary capacity and authority to sign and enter into this Agreement.

[signatures on following pages]

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1 Dated: _____

California Corporations Commissioner
PRESTON DuFAUCHARD

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By: Alan S. Weinger
Lead Corporations Counsel

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7 Dated: _____

CAPSTONE INVESTMENTS

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By: Anthony Capozza

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13 Dated: _____

ANTHONY CAPOZZA

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Anthony Capozza

18 APPROVED AS TO FORM:

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20 Dated: _____

Marlou de Luna
Senior Corporations Counsel

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24 Dated: _____

Stephen Young
Keesal, Young & Logan
Attorneys for CAPSTONE INVESTMENTS

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