

1 PRESTON DuFAUCHARD  
California Corporations Commissioner  
2 WAYNE STRUMPFER  
Deputy Commissioner  
3 ALAN S. WEINGER (CA BAR NO. 86717)  
Lead Corporations Counsel  
4 LINDA A. STELLA (CA BAR NO. 161903)  
Senior Corporations Counsel  
5 MARLOU DE LUNA (CA BAR NO. 162259)  
Senior Corporations Counsel  
6 320 West 4<sup>th</sup> Street, Suite 750  
Los Angeles, California 90013-2344  
7 Telephone: (213) 576-7594 Fax: (213) 576-7181

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		)	
14	THE CALIFORNIA CORPORATIONS	)	AGENCY FILE NO. 41400
15	COMMISSIONER,	)	
16	Complainant,	)	SETTLEMENT AGREEMENT
17	v.	)	
18	CAPSTONE INVESTMENTS AND	)	
19	ANTHONY CAPOZZA,	)	
20	Respondents.	)	
21		)	

22  
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. 4<sup>th</sup> 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.

23 [signatures on following pages]  
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Dated: \_\_\_\_\_

California Corporations Commissioner  
PRESTON DuFAUCHARD

\_\_\_\_\_  
By: Alan S. Weinger  
Lead Corporations Counsel

Dated: \_\_\_\_\_

CAPSTONE INVESTMENTS

\_\_\_\_\_  
By: Anthony Capozza

Dated: \_\_\_\_\_

ANTHONY CAPOZZA

\_\_\_\_\_  
Anthony Capozza

APPROVED AS TO FORM:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Marlou de Luna  
Senior Corporations Counsel

Dated: \_\_\_\_\_

\_\_\_\_\_  
Stephen Young  
Keesal, Young & Logan  
Attorneys for CAPSTONE INVESTMENTS