

1 KARA B. HENDRICKS, Bar No. 7743
 hendricksk@gtlaw.com
 2 KYLE A. EWING, Bar No 14051
 ewingk@gtlaw.com
 3 CHRISTIAN T. SPAULDING, Bar No. 14277
 spauldingc@gtlaw.com
 4 **GREENBERG TRAUIG, LLP**
 5 10845 Griffith Peak Drive, Suite 600
 Las Vegas, Nevada 89135
 6 Telephone: (702) 792-3773
 7 Facsimile: (702) 792-9002
 8 *Attorneys for Receiver Geoff Winkler*

9 **UNITED STATES DISTRICT COURT**
 10 **DISTRICT OF NEVADA**

11 SECURITIES AND EXCHANGE
 12 COMMISSION;

13 Plaintiff,

14 vs.

15 CAPSOURCE, INC., et al.

16 Defendants.
 17

CASE NO. 2:20-CV-02303-RFB-DJA

**ORDER TO LIFT STAY OF
 LITIGATION FOR A LIMITED
 PURPOSE**

18 Plaintiff Securities and Exchange Commission and Receiver Geoff Winkler of American
 19 Fiduciary Services, in his capacity as court-appointed Receiver (the "Receiver") for Defendant
 20 CapSource, Inc., stipulate and agree that:

21 1. On August 26, 2022, the Court issued its Order Appointing Receiver, in which
 22 the Court appointed Geoff Winkler receiver of Defendant CapSource, Inc. *See* ECF No. 17.

23 2. CapSource is a defendant in a lawsuit pending in the Eighth Judicial District
 24 Court of the State of Nevada styled *CAC Investment Ventures, LLC, et al. v. Andrew Jolley, et*
 25 *al.*, Case No. A-19-802088-B (the "CAC State Court Action"). Stephen Byrne and Andrew
 26 Jolley are also named as defendants in the CAC State Court Action.

27 ///

28 ///

1 The Order Appointing Receiver includes a Stay of Litigation, (*see* ECF No. 17, ¶29),
2 whereby all persons are stayed from commencing, prosecuting, or continuing, until further Order
3 of this Court:

4 All civil legal proceedings of any nature...involving...(c) any of the
5 Receivership Defendants, including subsidiaries and partnerships; or
6 (d) any of the Receivership Defendants' past or present officers,
7 directors, managers, agents, or general or limited partners sued for, or
8 in connection with, any action taken by them while acting in such
9 capacity of any nature, whether as plaintiff, defendant, third-party
10 plaintiff, third-party defendant or otherwise...

9 3. The CAC State Court Action is a civil legal proceeding involving CapSource as
10 a defendant and is therefore subject to the Stay of Litigation. The CAC State Court Action also
11 involves claims against Stephen Byrne and Andrew Jolley relating, in part, to actions taken by
12 Byrne and Jolley as officers, directors, managers, or agents of CapSource. These claims involve
13 CapSource's issuance of certain loans to Panorama WON, LLC, and Byrne and Jolley's
14 involvement in the procurement and issuance of these loans.

15 4. The CAC State Court Action was scheduled to begin trial before the Honorable
16 Nancy Allf on August 30, 2022. Notice of the Order Appointing Receiver was filed in the CAC
17 State Court Action, and the Action was accordingly stayed before trial began.

18 5. The parties in the CAC State Court Action have had ongoing discussions to
19 determine if trial of the Action may proceed without violating this Court's Stay of Litigation.

20 6. Accordingly, the plaintiffs in the CAC State Court Action have agreed to proceed
21 to trial against all named defendants other than CapSource, and plaintiffs agree that no claims
22 against CapSource will be tried or determined in the CAC State Court Case.

23 7. Additionally, to the extent the CAC State Court Action asserts claims against
24 Byrne and Jolley related to their roles as officers, directors, managers, or agents of CapSource,
25 those claims will not proceed in the trial. Plaintiffs may proceed with any claims against Byrne
26 and Jolley to the extent that such claims are unrelated to their role as officers, directors,
27 managers, or agents of CapSource. Plaintiffs may proceed with any claims and theories where
28 loans to Panorama Won, LLC from CapSource are referenced. For example and not by way of

1 limitation, claims and theories against Byrne and Jolley alleging they, as officers, directors,
2 managers, or agents of Panorama Won, LLC ("PanWon"), breached fiduciary duties to PanWon
3 based on the loan PanWon obtained from CapSource.

4 8. By limiting the scope of the claims in the CAC State Court Action to exclude
5 claims asserted against CapSource and against Byrne and Jolley as officers, directors, managers,
6 or agents of CapSource, the parties believe the CAC State Court Action may proceed to trial
7 without infringing upon the Receiver's ability to perform his duties in marshaling and preserving
8 the assets of CapSource in this proceeding.

9 **ACCORDINGLY, IT IS STIPULATED AND REQUESTED** by the parties through
10 their undersigned counsel of record that the Stay of Litigation be lifted for the limited purpose
11 of permitting the CAC State Court Action to proceed to trial: (1) against all parties other than
12 Capsource, Inc. and (2) against Stephen Byrne and Andrew Jolley for claims that are unrelated
13 to their roles as officers, directors, managers, or agents of CapSource. Plaintiffs may proceed
14 with any claims and theories where loans to Panorama Won, LLC from CapSource are
15 referenced. For example and not by way of limitation, claims and theories against Byrne and
16 Jolley alleging they, as officers, directors, managers, or agents of Panorama Won, LLC
17 ("PanWon"), breached fiduciary duties to PanWon based on the loan PanWon obtained from
18 CapSource.

19 Dated this 9th day of ~~January~~ February, 2023

20 **GREENBERG TRAUERIG, LLP**

21 */s/ Kara B. Hendricks*

22

KARA B. HENDRICKS,
23 Nevada Bar No. 7743
KYLE A. EWING
24 Nevada Bar No 14051
CHRISTIAN T. SPAULDING
25 Nevada Bar No. 14277
10845 Griffith Peak Drive, Suite 600
26 Las Vegas, Nevada 89135

27 *Attorneys for Receiver Geoff Winkler*

19 Dated this 9th day of ~~January~~ February, 2023

20 **SECURITIES & EXCHANGE
COMMISSION**

21 */s/ Terry Miller*

22

TERRY MILLER
23 Colorado Bar No. 39007
1961 Stout Street, Suite 1700
24 Denver, Colorado 80294
25 Email: millerte@sec.gov

26 *Attorneys for Plaintiffs Securities and
Exchange Commission*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO STIPULATED AND AGREED

Dated this 8 day of ~~January~~^{FEB}, 2023

Dated this 8 day of ~~January~~^{FEB.}, 2023



GREGORY P. HERLEAN
Defendant

STEPHEN J. BYRNE
Defendant

ACKNOWLEDGED BY

Dated this ____ day of January, 2023

signature on next page

ROBERT G. MASSI, ESQ.
Nevada Bar No. 13719
MASSI & MASSI, ATTORNEYS AT LAW
2510 Wigwam Parkway, Suite 206
Henderson, Nevada 89074

ROGER BEHLE, ESQ.
CA Bar No. 174755
KEVIN GAMARNIK, ESQ.
CA Bar No, 273445
FOLEY BEZEK BEHLE & CURTIS, LLP
575 Anton Boulevard, Suite 710
Costa Mesa, California 92626

*Counsel for Plaintiffs CAC Investment Ventures,
LLC, Cris Cannon and David Zebrowski in Case
No. A-19-802088-B pending in the Eighth
Judicial District Court of Clark County, Nevada*

IT IS SO ORDERED.

UNITED STATES DISTRICT JUDGE

Dated this ____ day of _____, 2023

IT IS SO STIPULATED AND AGREED

Dated this ____ day of January, 2023

Dated this ____ day of January, 2023

signature on previous page

signature on previous page

GREGORY P. HERLEAN
Defendant

STEPHEN J. BYRNE
Defendant

ACKNOWLEDGED BY

Dated this 27 day of January, 2023



ROBERT G. MASSI, ESQ.
Nevada Bar No. 13719
MASSI & MASSI, ATTORNEYS AT LAW
2510 Wigwam Parkway, Suite 206
Henderson, Nevada 89074

ROGER BEHLE, ESQ.
CA Bar No. 174755

KEVIN GAMARNIK, ESQ.
CA Bar No, 273445

FOLEY BEZEK BEHLE & CURTIS, LLP
575 Anton Boulevard, Suite 710
Costa Mesa, California 92626

*Counsel for Plaintiffs CAC Investment Ventures,
LLC, Cris Cannon and David Zebrowski in Case
No. A-19-802088-B pending in the Eighth
Judicial District Court of Clark County, Nevada*

IT IS SO ORDERED.



DANIEL J. ALBREGTS
United States Magistrate Judge

Dated this 23rd day of February, 2023.