

1 TERRY R. MILLER (Colo. Bar No. 39007)
2 admitted *pro hac vice*
3 Email: millerte@sec.gov
4 Attorney for Plaintiff
5 Securities and Exchange Commission
6 1961 Stout Street, Suite 1700
7 Denver, Colorado 80294
8 Telephone: (303) 844-1000
9 Facsimile: (303) 297-3529

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

CAPSOURCE, INC.,
STEPHEN J. BYRNE, and
GREGORY P. HERLEAN
Defendants.

Case No. 2:20-cv-02303-RFB-DJA

**UNOPPOSED MOTION TO ENFORCE
STAY OF LITIGATION**

Plaintiff Securities and Exchange Commission moves for entry of an order enforcing a stay of litigation ordered by the Court as to certain nonparties who have filed complaints subject to the Court's Order staying litigation against Defendant CapSource Inc. ("CapSource") and its principals.

I. Background – The Stay Order

As background, the Court entered consent judgments against all Defendants on May 5, 2021, ECF Nos. 7-9, and appointed a receiver over CapSource on August 26, 2022. ECF No. 17. The Receiver has exclusive authority and control over CapSource and is working to identify, locate, and prevent the dissipation of CapSource's assets for the benefit of CapSource investors. *See, e.g.*, Third Status Report of Geoff Winkler, Receiver CapSource, Inc., ECF No. 50. To aid the work of the Receiver, the Court exercised its broad discretionary equitable powers to impose a stay of

1 litigation involving CapSource. Specifically, the Court ordered that all persons are stayed from
2 commencing, prosecuting, or continuing certain proceedings, including civil legal proceedings
3 involving CapSource, property of CapSource, and CapSource’s past or present officers, directors,
4 managers, agents, or partners. ECF No. 17 ¶ 29 (“Stay Order”). The Court also enjoined all parties
5 to such proceedings from commencing or continuing those proceedings, or from taking any action
6 in connection with the proceedings including but not limited to the issuance or employment of
7 process. ECF No. 17 ¶ 30.

8 **II. New Civil Proceedings**

9 A group of related plaintiffs have recently filed three civil lawsuits in the district court of
10 Clark County, Nevada, against various defendants:

- 11 1. *Arizona Rehab Campuses, LLC, et al. v. CapSource, Inc. et al*, No. A-23-869439-B,
12 filed on 04/21/2023;
- 13 2. *5th Avenue Estates, LLC, et al. v. CapSource, Inc. et al*, No. A-23-869523-B, filed
14 on 04/24/2023; and
- 15 3. *Texas 156, LLC et al. v. CapSource, Inc. et al.*, No. A-23-8699520-B, filed on
16 04/24/2023.

17 Each of the three proceedings (“Civil Proceedings”) is subject to the Stay Order because,
18 among other things, CapSource and its principals are named defendants in these proceedings. ECF
19 No. 17 ¶ 29. The SEC understands from counsel for plaintiffs in the Civil Proceedings that they
20 have not attempted service of process in connection with the Civil Proceedings.

21 **III. Request for Relief**

22 The SEC contends that the plaintiffs in the Civil Proceedings violated the Stay Order by
23 filing the complaints in each of the Civil Proceedings. However, to avoid unnecessary litigation and
24 to preserve the assets of CapSource, the SEC has agreed to submit this motion for relief from the
25 Stay Order. In order to bring the Civil Proceedings into compliance with the Stay Order, the SEC
26 requests an order (i) granting leave from the Stay Order to file the complaints in the three
27 proceedings and (ii) directing counsel for plaintiffs in the Civil Proceedings to notify the named
28 defendants and the court in each of the Civil Proceedings that these actions are stayed by order of

1 this Court and, further, pursuant to Paragraph 30 of ECF No. 17, all parties to these proceedings are
2 enjoined from continuing the Civil Proceedings or taking any action in connection with the
3 proceedings without further order from this Court.

4 The SEC has conferred with the CapSource Receiver and counsel for the plaintiffs in the
5 Civil Proceedings about the relief requested in this motion. These parties consent to such relief.

6 Accordingly, the SEC respectfully requests that the Court grant this motion. A proposed
7 order is submitted with this motion.

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10 Dated: June 7, 2023

11 */s/Terry R. Miller*

12 Terry R. Miller (*pro hac vice*)

13 Attorney for Plaintiff

14 United States Securities and Exchange
15 Commission

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of June, 2023, I served a copy of the foregoing was filed electronically via the Court's CM/ECF system and notice of filing will be served on all parties registered to this case via the Court's CM/ECF system.

/s/ Terry R. Miller

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SECURITIES AND EXCHANGE
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CAPSOURCE, INC.,

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Defendants.

Case No. 2:20-cv-02303-RFB-DJA

**[PROPOSED] ORDER ENFORCING STAY
OF LITIGATION**

This matter has come before this Court upon motion of the Plaintiff United States Securities and Exchange Commission (“SEC”) to enforce an order staying certain litigation.

On August 26, 2022, the Court entered an order appointing a receiver of Defendant CapSource, Inc. (“CapSource”). Among other things, the order contained the following provisions that stayed certain litigation involving the Receiver, CapSource, or both:

29. As set forth in detail below, the following proceedings, excluding the instant proceeding and all police or regulatory actions and actions of the Commission related to the above-captioned enforcement action, until further Order of this Court:

All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other actions of any nature involving: (a) the Receiver, in his capacity as Receiver; (b) any Receivership Property, wherever located; (c) any of the Receivership Defendants, including subsidiaries and partnerships; or, (d) any of the Receivership Defendants’ past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as “Ancillary Proceedings”).

1 30. The parties to any and all Ancillary Proceedings are enjoined from
2 commencing or continuing any such legal proceeding, or from taking any action,
3 in connection with any such proceeding, including, but not limited to, the issuance
4 or employment of process.

ECF No. 17 ¶¶ 29-30 (“Stay Order”).

5 On April 21 and 24, 2023, certain parties filed three separate civil proceedings (“Civil
6 Proceedings”) that named CapSource and CapSource’s former principals as defendants:

- 7 1. *Arizona Rehab Campuses, LLC, et al. v. CapSource, Inc. et al*, No. A-23-869439-B,
8 filed on 04/21/2023;
- 9 2. *5th Avenue Estates, LLC, et al. v. CapSource, Inc. et al*, No. A-23-869523-B, filed
10 on 04/24/2023; and
- 11 3. *Texas 156, LLC et al. v. CapSource, Inc. et al.*, No. A-23-8699520-B, filed on
12 04/24/2023.

13 In its motion to enforce, the SEC contends that the plaintiffs in the Civil Proceedings
14 violated the Stay Order but, to avoid unnecessary litigation and to preserve the assets of CapSource
15 Inc., the SEC has agreed to relief designed to bring the Civil Proceedings into compliance with the
16 Stay Order. The CapSource Receiver and the plaintiffs to the Civil Proceedings consent to the
17 request.

18 Based on the above, **IT IS HEREBY ORDERED:**

- 19 1. The Stay Order is modified to retroactively permit the filing of complaints in the
20 three Civil Proceedings;
- 21 2. Consistent with paragraph 29 of the Stay Order, the Civil Proceedings are stayed in
22 all respects, and any applicable statutes of limitation are tolled, until further Order of this Court;
- 23 3. Consistent with paragraph 30 of the Stay Order, the parties to the Civil Proceedings
24 are enjoined from commencing or continuing any such legal proceeding, or from taking any action,
25 in connection with any such proceeding, including, but not limited to, the issuance or employment
26 of process.
- 27 4. The SEC is directed to provide a copy of this Order to counsel for plaintiffs in the
28 Civil Proceedings;

1 5. Counsel for plaintiffs in the Civil Proceedings are directed to take reasonable steps to
2 ensure that the court and named parties in each of Civil Proceedings receive notice of the Stay
3 Order and this Order, and to confirm to counsel for the SEC in this case that such steps have been
4 taken.

5
6 **IT IS SO ORDERED, this _____ day of _____, 2023,**

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10 _____