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 8 *CapSource, Inc., et al.*

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

11 SECURITIES AND EXCHANGE
 12 COMMISSION,

13 Plaintiff,

14 v.

15 CAPSOURCE, INC., STEPHEN J. BYRNE, and
 16 GREGORY P. HERLEAN

17 Defendants.

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

**FIRST STATUS REPORT OF GEOFF
 WINKLER, RECEIVER CAPSOURCE,
 INC., AND PETITION FOR
 INSTRUCTIONS**

18 Geoff Winkler of American Fiduciary Services, LLC (the “Receiver”), the Court-appointed
 19 receiver for defendant CapSource, Inc., et al., dated August 26, 2022 (ECF No. 17), submits his
 20 First Quarterly Report and Petition for Instructions (“Report”) for the period August 26, 2022,
 21 through September 30, 2022 (“Reporting Period”), regarding the receivership pursuant to Local
 22 Rule 66-4(b).

23 **I. PRELIMINARY STATEMENT**

24 As reflected in the Court's record and discussed further in this Report, the Receiver has
 25 been authorized, empowered, and directed to, among other things: (1) take exclusive authority
 26 and control over the Receivership Defendant; (2) conduct such investigation and discovery as
 27 necessary to identify and locate outstanding assets of the Receivership Defendants; (3) preserve
 28 and prevent the dissipation of such assets.

1 The Receiver has diligently pursued these goals since August 26, 2022, at the inception of
2 the receivership. As detailed herein, since the entry of the Order Appointing Receiver (the
3 “Appointment Order”) (ECF No. 17), the Receiver has made substantial progress, particularly in
4 connection with his efforts to assert control over the Receivership Entities and identify and marshal
5 their assets for the benefit of the receivership estate, investors, and other creditors. However,
6 because the Receiver's work is ongoing, the conclusions presented herein are preliminary and
7 subject to modification or supplementation as more information becomes available. As of the date
8 of this Report, the Receiver has not completed an investigation or accounting, nor arrived at any
9 definitive conclusions, including as to the allegations made by the plaintiff Securities and
10 Exchange Commission in the above-entitled matter.

11 **II. BACKGROUND**

12 CapSource is a real estate investment and mortgage broker company based out of Las
13 Vegas, Nevada, which was founded in 1997 by Mr. Byrne. In 2009, Mr. Herlean joined as partner
14 and Andrew Jolley joined as the third partner in 2011. CapSource’s staff comprises a team of
15 veteran real estate finance professionals with an average of over 20 years' experience and has
16 facilitated hundreds of millions in loans. At the commencement of the SEC’s investigation,
17 CapSource had approximately \$140,000,000 in active trust deeds.

18 CapSource’s business operations include generally: one employee would raise funds for
19 new opportunities, another employee would manage the client life cycle, i.e., set up appointments,
20 engage in new-client acquisition, and then transition into focusing on investor relations, another
21 employee would actually close trust deed deals, and another employee would work with loan
22 servicing to produce investor reporting. Historically, some roles had commission-based
23 compensation structures but by the end of 2019, all CapSource employees were salaried.

24 CapSource does not utilize trust accounts or handle loan servicing in-house. Instead, all
25 loans are funded through large title and escrow companies and investors make payments directly
26 to the companies handling the transaction. Their Investors are automatically and routinely
27 supplied copies of all closing documents, including title insurance, showing each investor as a
28 beneficiary and as owner of the loan proportional to their level of interest. After closing, loan

1 payments are made to Weststar Loan Servicing, a bonded third-party loan servicing company with
 2 a strong regional presence, which handles all payment processing and investor distribution
 3 activities.

4 Typical deals closed by CapSource would yield interest rates between 11% and 12.5%,
 5 with default interest up to 21.5%, and the selling investors make about 9%. CapSource's revenue
 6 is principally based on that 2.0%-3.5% spread. Loan terms were generally twelve to eighteen
 7 months in length, loan modifications extending the terms are common, and a couple foreclosures
 8 over the years were unavoidable.

9 CapSource uses QuickBooks Online for financial record keeping but does not use it to
 10 record any investor information, principal balances due or interest liabilities, nor is it used to accrue
 11 accounts receivables, which are effectively captured on a cash basis.

12 CapSource uses Infusionsoft for their Customer Relationship Management (CRM) system.
 13 Although this system is designed to manage investor information, it is primarily used to set
 14 appointments, make client notes, and to put in orders. CapSource generally uses its onsite server
 15 to store files digitally but has a legacy physical filing system housed in a secured offsite warehouse
 16 as well. These offsite physical records were never digitized.

17 **III. SUMMARY OF THE RECEIVER'S OPERATIONS (LR 66-4(b)(1))**

18 ***A. THE RECEIVER'S INVESTIGATIVE AND MARSHALLING ACTIVITIES***

19 The Receiver was appointed by the Court on August 26, 2022. The following Monday,
 20 August 29, 2022, the Receiver received a phone call from an attorney indicating he represented
 21 CapSource's and notifying him of a pending lawsuit against CapSource in the Eighth Judicial
 22 District Court, *CAC Investment Ventures, LLC et al. v. Andrew Jolley et al.*, Case No. A-19-
 23 802088-B, in which CapSource, Inc. was a named defendant, and indicating that a bench trial
 24 would start the next day. The Receiver was never informed of this lawsuit during his time
 25 managing CapSource as the Chief Restructuring Officer even though the same counsel represented
 26 CapSource during that period. Additional information on this matter can be found in section VII,
 27 subsection A.

1 The Receiver was successfully able to secure outstanding note receivables with outstanding
2 balances, in the aggregate, at over \$18.8 million. A description of all assets in the custody and
3 control of the Receiver is included in Section IV, below.

4 ***B. INVESTOR AND CREDITOR COMMUNICATION***

5 The Receiver has established a website (<http://www.capsource-receiveship.com>), email
6 address (contact@capsource-receivership.com) and direct dial phone number ((971) 357-2220) to
7 provide interested parties with a method of communication with the Receiver and his team. The
8 Receiver is using this information to update his list of investors. The investor list as of
9 September 30, 2022, had roughly 332 individuals. The Receiver will be holding a creditor and
10 investor meeting on November 14, 2022.

11 ***C. COOPERATION OF DEFENDANTS***

12 The Receiver would like to acknowledge the cooperation of the Defendants and related
13 parties since the receivership appointment. This cooperation includes the turnover of CapSource
14 bank account, compilation of bank statements and investor contact information, and assistance
15 with the disposition of remaining loans. This cooperation helps reduce the cost to administer the
16 receivership estate and maximize return to investors. To the extent that any individuals or entities
17 subject to the provisions of the Appointment Order fail to provide the Receiver with the required
18 information, documents, or assets, the Receiver will file additional motions to compel compliance
19 and turnover.

20 ***D. THE RECEIVER'S FORENSIC ACCOUNTING ACTIVITIES***

21 During the reporting period, the Receiver requested bank statements from CapSource and
22 EquiSource. These records were compiled with the intent to be turned over during a scheduled
23 on-site visit from the Receiver in the following reporting period. The bank statements will allow
24 the Receiver to complete a forensic accounting review.

25 Additionally, the Receiver is working with the Defendants to obtain an investor list. This
26 will be critical in the verification of their investments. The Receiver will continue to keep the
27 Court and all other parties updated on the progress of the accounting and the steps necessary to
28 obtain additional information.

1 **IV. INVENTORY OF ASSETS AND ESTIMATED VALUE (LR 66-4(b)(2))**

2 **A. CASH**

3 From August 26 to September 30, 2022, the Receiver was able to recover approximately
 4 \$618,781.17. The Standardized Fund Accounting Report for the period is attached to this report
 5 as **Exhibit A**. This cash is made up of \$530,833.17 for interest and deferred interest payments for
 6 ARC – RE, \$50,000 for an extension deposit on the 5th Avenue Estate disposition, and \$37,948
 7 from liquidation of the defendant bank account. There were expenses of \$24,501.43 related to
 8 property tax payment of \$23,411.60 for Fillmore RE Partner land and \$1,089.83 to release
 9 CapSource documents from storage facility.

10 Aside from the cash, the major assets in this case consist of note receivables. The total
 11 value of assets collected during the reporting period is \$19,448,123.26, inclusive of the
 12 \$618,781.17 in cash.

13 **B. NOTE RECEIVABLES**

14 The note receivables secured by the Receiver during the Reporting Period consists of:

<i>Loan Name</i>	<i>Outstanding Balance</i>	<i>Proposed Disposition</i>
5 th Avenue	\$857,313	\$700,000
Texas 156	\$42,000	Under Review
Texas 156	\$106,521	Under Review
Texas 156	\$111,883	Under Review
King 261	\$515,000	Under Review
Meadows 78	\$1,327,500	Under Review
Fillmore RE Partners	\$559,388	Under Review
JC Commercial	\$1,510,000	Under Review
ARC RE	\$13,799,737	Under Review
<i>Approximate Total</i>	<i>\$18,829,342</i>	

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1 The following is a summary of the outstanding loans and current plans for winddown.

2 **A. Texas 156**

3 Mike Zipprich (“Zipprich”) is the borrower/sponsor on this project/loan. The last few loans
4 for Texas 156 are secured by the last four (4) one to two acre lots in a development called “Chaney
5 Ranch” in Midland, Texas. CapSource financed the entire 120-lot project, but four lots remain
6 after 116 lots were previously sold and investors were paid current. Currently, the principal and
7 interest on the remaining loans have been in default.

8 Mr. Zipprich’s counsel indicated that four lots remaining are the least desirable out of the
9 development project. The lots include two flag lots, a lot with no ingress or egress options, and a
10 lot with development restrictions due to wetlands. The Receiver is in conversation with
11 Mr. Zipprich’s counsel to discuss the next steps with these lots.

12 **B. 5th Avenue**

13 Mr. Zipprich is the sponsor on this project as well. Mr. Zipprich defaulted approximately
14 two years ago and CapSource negotiated a deed in lieu of foreclosure. CapSource completed
15 preparation of the last 80 lots and sold them to DR Horton. At closing, investors were paid all net
16 proceeds. CapSource charged zero developer fees and absorbed the legal fees and other travel and
17 development costs associated with the deed in lieu and completion of the 80 lots. The remaining
18 balance is less than 20% of the total CapSource financing for this project. Reductions to the loan
19 have come from the finished lot sales to DR Horton. The Receiver is currently under contract to
20 sell the remaining land for \$700,000. Closing is anticipated to be completed in the next reporting
21 period.

22 **C. King 261**

23 Mr. Zipprich is also the sponsor on King 261. CapSource arranged loans totaling
24 approximately \$12 million for three residential lot development projects in Midland, Texas. These
25 three projects required that Mr. Zipprich obtain many approvals for water and sewer utilities,
26 mapping, zoning, and others. Mr. Zipprich failed to obtain any of these and defaulted
27 approximately 30 months ago. He brought in a new partner, Trevor Hill, a utility expert he had
28 worked with in the past. In the last 3 years, Mr. Hill has corrected all development issues and

1 injected several million in new capital and at this juncture, he has a fully functioning water and
2 sewer company delivering water and sewer service and all other dry utilities (gas, cable, electricity)
3 to the properties and has now sold approximately 200 lots to DR Horton and other local Midland
4 homebuilders. DR Horton has completed a dozen or so homes and there are families living there
5 now. Meanwhile Mr. Hill has paid down the original CapSource loans by over 90% and has made
6 monthly interest payments consistently since taking over this project approximately 3 years ago.
7 The developer anticipates making a normal pay down on the loan and payment of any accrued
8 interest as lots are sold.

9 **D. Meadows 78**

10 Mr. Zipprich is also the sponsor for Meadows 78. CapSource arranged loans totaling
11 approximately \$3.225 million for two residential lot development projects in Greenwood, Texas.
12 In early 2019, Mr. Zipprich brought in his partner Trevor Hill to invest into this project as well.
13 Mr. Hill has paid down the original CapSource loans by over 60% and has made monthly interest
14 payments consistently since taking over this project approximately 3 years ago. The developer
15 anticipates making a normal pay down on the loan and payment of any accrued interest as lots are
16 sold.

17 **E. Fillmore Real Estate Partners**

18 Capsource originated this loan over eight years ago. During the time the loan was made,
19 the oil & gas industry in North Dakota was strong. This would have made for a well secured loan
20 and a profitable real estate project for the original borrower. However, when the market slowed
21 in the area, the property remained unsold, and the original borrower defaulted. The property is a
22 “hard corner” in Minot, North Dakota and the surrounding property had been developed as
23 apartments by Bill Dyer. Bill Dyer is an apartment developer based in Las Vegas, Nevada.
24 CapSource contacted Mr. Dyer and negotiated an assumption of the property and the CapSource
25 loan, albeit at a lower, negotiated rate of 5%. Mr. Dyer continued making interest payments until
26 September 2021. The Receiver is in discussion with Mr. Dyer to determine the next steps for this
27 loan.

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1 **F. JC Commercial**

2 This loan was made to a borrower who defaulted approximately 3 years ago. The property
3 is in Minneapolis, Minnesota and currently has a used car lot as the tenant. When the borrower
4 defaulted, CapSource negotiated a deed in lieu of foreclosure and put the property in an LLC in
5 the names of the investors. CapSource then negotiated a new lease with the car dealership, and
6 they have made their lease payments as agreed upon for approximately 24 months. CapSource
7 continued to pay all lease payments to the investors as they were received. This equates to
8 approximately a 5% return to the investors. CapSource expects there to be a substantial loss on
9 this loan to the investors as the market in Minneapolis has slowed down substantially and the rents
10 and the strength of the tenant and their business operation do not justify a price that would retire
11 the loan. At the appropriate time, the Receiver intends to reopen negotiations with the tenant to
12 either purchase the property from the investors or sell the property.

13 **G. ARC RE**

14 America's Rehab Campuses, LLC ("ARC") is a holding company for entities that own and
15 operate drug addiction facilities across the United States. Mr. Zipprich owns 100% of ARC and
16 is the CEO and founder. ARC owns 97% of its subsidiaries Americas Rehab Campuses-Arizona,
17 LLC, ("ARC-AZ") and Arizona Rehab Campus, LLC ("ARC-Op").

18 From October 2016 to March 2017, CapSource arranged the first Deed Note offering for
19 ARC-AZ to issue interests in a promissory note to raise approximately \$13 million from 165
20 investors. Mr. Zipprich was the personal guarantor on the note. The offering memorandum stated
21 the note would be used to acquire a hotel in Tucson, Arizona (the "Tucson Facility") and renovate
22 it into a drug addiction treatment facility and cover start-up costs and interest reserves. Cost
23 overruns at the Tucson Facility and financial difficulties within ARC occurred months after the
24 first Deed Note was completed, which led to the depletion of the reserve accounts. Additional
25 funds were necessary to continue to cover operating expenses and interest payments. In order to
26 continue this project Mr. Zipprich appropriated and transferred investor funds from other real
27 estate development projects that he managed to cover these expenses. By the end of 2017, ARC
28

1 had incurred nearly \$6 million in operating losses at the Tucson Facility and the company
2 determined they needed to repay the transfers from other projects previously discussed.

3 This need for additional funding led to CapSource arranging the second Deed Note offering
4 from December 2017 to August 2018 for ARC-AZ to raise approximately \$5.7 million from 123
5 investors. Mr. Zipprich was the personal guarantor on the second Deed Note and the note was
6 secured by the Tucson facility's real estate. The offering memorandum stated the intent of this
7 note was to continue renovations at the Tucson facility to create profit. However, over half of the
8 proceeds were used to repay transfers from unrelated projects, past operating expenses and
9 establishing additional interest reserves in ARC's investments.

10 The second Deed Note offering was followed by a secondary offering, referred to as Reg.
11 D, which occurred from August to September 2018. CapSource raised \$4 million through Reg. D
12 for Mr. Zipprich by selling equity in ARC's subsidiaries, ARC-AZ and ARC-Op. The offering
13 memorandum again stated that the proceeds would be used for continued renovation at Tucson
14 facility as well as covering the lapse in timing delays of payments from insurance companies.
15 However, approximately half of the proceeds were used to repay funds from other development
16 projects and commissions to CapSource for facilitating the offering.

17 In January 2019, ARC was unable to meet its debt obligations and defaulted on the first
18 and second Deed Notes. From January to May 2019, Mr. Zipprich created a Debt Conversion
19 offering with CapSource that allowed investors to convert their interests in defaulted notes of
20 ARC-AZ and another ARC subsidiary, America's Rehab Campuses – Texas, LLC ("ARC-TX"),
21 into equity within a newly-created entity. During the Debt Conversion offering, Mr. Zipprich
22 indicated the reason for not being able to meet debt payments for the first and second Deed Notes
23 was due to insurance companies withholding claim payments because of a change in software used
24 to process payments.

25 On March 22, 2019, the final agreements were executed to complete the debt restructure
26 of Tucson first Deed Note (\$13 million), Tucson second Deed Note (\$5.65 million), Indian Ruins
27 loan (\$2.45 million) and Texas loan (\$2.65 million). Investors restructured their debt interest into
28 three tranches that were orchestrated by CapSource. The first tranche of investors was to continue

1 to receive monthly interest payments. 28 investors holding approximately \$3 million in interest
2 elected this option. The second tranche of investors would defer current monthly interest for two
3 years and receive accrued interest and an additional 1.5%. 119 investors holding approximately
4 \$7 million in interest in ARC loans elected this option. The third tranche of investors would elect
5 to convert debt interest into equity interest in the new entity, ARC RE, LLC (“ARC RE”). ARC
6 RE, LLC would own 97% of membership interest in ARC-AZ and investors would receive
7 monthly rent from ARC-OP for the use of the facility. ARC-OP would pay ARC RE a minimum
8 \$10,000 per month or 3% gross monthly revenue if revenues exceeded \$1.1 million, were less than
9 \$1.3 million. If revenues exceeded \$1.3 million ARC RE would receive 4% of monthly gross
10 revenue. ARC-OP would receive an option to repurchase membership interest from investors on
11 or before May 22, 2021 in return for their monthly rent payments. These payments would be
12 released to the investors and the investors would also receive monthly payments of \$167,000 each
13 month starting in May 2020 or earlier if their membership interest was repurchased by ARC-OP
14 and going to May 2021. Approximately 327 investors converted their note interest into equity,
15 allowing ARC to reduce its debt by approximately \$13.9 million.

16 In February 2020, ARC-AZ executed a Purchase and Sale agreement with STORE Capital
17 LLC (“STORE”) to acquire the facility for \$16,750,000 and ARC-OP would lease the facility for
18 30 years. CapSource sent a proposal to all CapSource investors explaining the plan to pay out
19 investors in each tranche. First and second tranche investors would receive all principal and unpaid
20 interest. and third tranche investors would receive 9.1% interest for the period from February 2019
21 through February 2020, plus 5% of their principal, instead of the \$165,000 monthly payments.
22 The letter also explained a new option for the third tranche to secure a new loan with
23 CapSource/ARC.

24 The transaction closed on March 2, 2020, with net proceeds of \$12,029,252. ARC delivered
25 the STORE transaction proceeds to Westar Loan Service. The proceeds were split \$70,000 of this
26 went to CapSource and \$11,958,252 went to the CapSource investors. Following the transaction,
27 ARC claimed to have received investor calls regarding not receiving payments in line with the
28 proposal. ARC reached out to investors that claimed nearly \$55,000 of the rent payments from

1 ARC-OP were not distributed to first and second tranche investors. ARC also claims that investors
 2 did not receive approximately \$616,000 of the proceeds from the STORE transaction, and it was
 3 believed to have been paid to CapSource instead. ARC stated repeated efforts were made to obtain
 4 an accounting from CapSource and/or Weststar but were unsuccessful in obtaining these
 5 documents. Mr. Zipprich stated that CapSource altered and forged investor documents relating to
 6 ARC loans. The Receiver is reviewing these claims and will provide findings as soon as
 7 ascertainable.

8 A reconciliation from debt restructuring (March 22, 2019) to after the STORE closing was
 9 conducted by American Fiduciary Services, LLC to determine the amount due to the investors.
 10 The start of the reconciliation was determined based on the accessibility of information from that
 11 date and beyond. A full reconciliation is recommended, but in-depth forensic accounting of
 12 EquiSource accounts and CapSource accounts would be necessary in order to confirm the investor
 13 balances at the time of debt restructuring.

14 The summary of the ARC RE outstanding loans and the investor elected options as of
 15 March 22, 2019, are listed below and this is deemed as the beginning balances for the
 16 reconciliation:

	ARC - TX	ARC - AZ Ruins	ARC - AZ	ARC -2nd	Total
Tranche 1	159,000	188,300	2,335,700	335,000	3,018,000
Tranche 2	653,800	1,101,400	3,516,700	1,741,100	7,013,000
Tranche 3	1,836,700	1,255,300	7,147,600	3,573,900	13,813,500
Total	2,649,500	2,545,000	13,000,000	5,650,000	23,844,500

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 21 The interest owed for the ten months from the date of the debt restructuring and the
 22 STORE transaction are listed below:

	ARC - TX	ARC - AZ Ruins	ARC - AZ	ARC -2nd	Total
Interest Rate	12.50%	12.50%	9%	13%	
Tranche 1	16,562.50	19,614.58	175,177.50	36,291.67	247,646.25
Tranche 2*	76,276.67	128,496.67	307,711.25	210,382.92	722,867.50
Tranche 3**					1,670,000.00
Total	92,839.17	148,111.25	482,888.75	246,674.58	2,640,513.75

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 27 * 1.5% of additional interest is included in the calculations as a part of compensation for
 deferring interest payments

28 ** \$167,000 monthly payments stated in the Assignment Agreements

1 The total amount of interest due to the investors for the ten-month period between the debt
2 restructuring and the STORE transaction was \$2,640,513.75. This amount is reduced by \$667,040
3 as Weststar received this total amount of monthly interest payments prior to the closing of the
4 STORE transaction. The remaining interest balance prior to the STORE transaction was
5 \$1,973,473.75.

6 The STORE transaction closed on March 2, 2020, with net proceeds of \$12,029,252. The
7 amount of \$11,958,237 was sent from escrow to Weststar and \$70,000 was sent from ARC to
8 CapSource after closing. Weststar provided payoff calculations for each of the loans. Payoff
9 statements from Weststar showed a total of \$10,061,000 for the outstanding principal for tranche
10 one and two investors. The interest shown in the payoff statements totaled \$253,849.99 for the
11 tranche one and two investors. The principal amount in the payoff statements is \$30,000 higher
12 than the total outstanding principal for these investors and the additional funds have been allocated
13 to interest in the reconciliation creating a total of \$283,849.99 of interest paid through Weststar
14 principal paydown of \$690,650, and interest paydown of \$942,737 for tranche three investors were
15 payment instructions provided by CapSource. Based on the information provided by Weststar, we
16 were unable to break out tranche one and two investors. Below is a summary of use of the proceeds
17 from the STORE transaction.

Prior to STORE Closing	Principal	Interest	Total
Tranche 1 & Tranche 2	10,031,000.00	919,797.05	10,950,797.05
Tranche 3	13,813,500.00	1,053,676.70	14,867,176.70
Total	23,844,500.00	1,973,473.75	25,817,973.75

Payment from STORE Transaction	Principal	Interest	Total
Net Proceeds			11,958,237.00
Tranche 1 & Tranche 2	10,031,000.00	283,850.00	10,314,850.00
Tranche 3	690,650.00	942,737.00	1,633,387.00
Total*	10,721,650.00	1,226,587.00	11,948,237.00

Payment after Closing	Principal	Interest	Total
Tranche 1 & Tranche 2	-	70,000.00	70,000.00
Tranche 3	-	-	-
Total	-	70,000.00	70,000.00

Remaining Balance after Closing	Principal	Interest	Total
Tranche 1 & Tranche 2	-	565,947.05	565,947.05
Tranche 3	13,122,850.00	110,939.70	13,233,789.70
Total	13,122,850.00	676,886.75	13,799,736.75

*\$10,000 remaining in ARC-AZ loan showed a payment to CapSource on 4/1/2020

1 Weststar distributed STORE proceeds to tranche one and two investors but did not
2 distribute proceeds to tranche three investors. The proceeds for tranche three investors were sent
3 to EquiSource which is an affiliated company with CapSource. American Fiduciary Services
4 requested documentation showing the proceeds had been sent to the investors and received an
5 excel spreadsheet showing allocation of payments to investors. We are not able to fully verify the
6 payments to the option 3 investors as the spreadsheet was not an audited financial document or a
7 bank statement. However, based on the unverified information provided the outstanding amount
8 to tranche three investors is \$13,233,789.70, which is broken down to \$13,122,850 in outstanding
9 principal and \$110,939.70 in outstanding interest. Tranche one and two investors had \$565,947.05
10 in interest outstanding to the investors after allocating the proceeds from the STORE transaction.
11 An estimated total is due to the investors of \$13,799,736.75.

12 The outstanding investor amount identified in the reconciliation had a slight variance from
13 the amount CapSource's counsel created in the forbearance agreement document, which showed
14 \$13,798,653.75. However, this amount differs from the calculated amount stated by the consultant
15 for ARC. The total amount stated during call with ARC's consultant was just over \$13 million.
16 The difference is in the remaining interest on the tranche one and two investor balances, CapSource
17 showed \$564,863.75 instead of American Fiduciary's \$565,947.05. The difference in the balance
18 due to the investors was due to the application of the monthly payments made between the date of
19 the debt restructure and the STORE transaction. America Rehab Campus LLC percentage rent
20 payments of \$143,271.44 was applied to tranche investor's interest. The consultant stated the
21 application of the monthly payments should have been applied to interest for tranche one and two
22 investors while CapSource applied most of these payments to interest for tranche three investors.

23 American Fiduciary Services asked the consultant to provide the executed legal documents
24 that provided the language for the option priority, the documents stating rent payments should be
25 applied to tranche three investor's outstanding balances and documents showing the interest that
26 should be used instead of the \$167,000 per month. The consultant was not able to provide the
27 documentation due to the tolling agreement not being executed between CapSource and ARC.
28 American Fiduciary Services requested the executed debt restructuring agreements from

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1 CapSource. The documents provided by CapSource’s counsel were assignment agreements for
2 tranche investors for each of the loans, purchase option agreement for Americas Rehab to purchase
3 ARC RE’s membership interest and a commercial lease agreement for America Rehab Campus
4 LLC. The assignment agreements show in section 2.2 that the expected return would be \$167,000
5 per month, which is the monthly amount used for tranche three investor’s interest in the Receiver’s
6 reconciliation. The documents provided did not show that tranche one and two investors should
7 receive priority for interest payments paid by ARC and did not state the rent payments by America
8 Rehab Campus LLC should be applied to tranche three investor’s outstanding interest. Additional
9 documentation would need to be provided by CapSource or ARC to determine if the outstanding
10 amount should be adjusted based on the legal documents.

11 ARC RE LLC processed the Reg D Payments from August 2018 to June 2020. CapSource
12 stated at that time Americas Rehab Campuses took over payments to these investors. The balance
13 was \$4,000,000 when Americas Rehab Campuses took over payments.

14 The Receiver has been working with ARC’s consultant and estimates a final resolution for
15 ARC RE in early to mid-2023.

16 **V. SCHEDULE OF RECEIVER’S RECEIPTS & DISBURSEMENTS (LR 66- 4(b)(3))**

17 Below is the schedule of Receiver’s Receipts and Disbursements pursuant to the Order
18 Appointing Receiver and Local Rule 66-4(b)(3).

19 ***A. EAST WEST BANK RECEIVERSHIP ACCOUNT (A/E 0057)***

- 20 • Total inflows: \$618,781.17
- 21 • Total outflows: \$24,501.43
- 22 • Balance (9/30/22): \$594,279.74

23 See **Exhibit B** for a complete list of transactions.

24 In addition to the foregoing, please see the Standardized Financial Accounting Report
25 attached as Exhibit A and the Summary Cash Flow Statement and Summary Balance Sheet
26 attached as **Exhibit C**.

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28 ///

1 **VI. CREDITORS LIST**

2 LR 66-4 requires that the Receiver file a list of all currently known creditors with their
 3 addresses and the amounts of their claims. The Receiver has compiled a preliminary list of trade
 4 creditors from CapSource's books and records, although he cannot yet confirm its accuracy.
 5 However, the Receiver is concerned about publicly disclosing the names, addresses, and claim
 6 amounts of CapSource's investors out of concern for maintaining their privacy and to prevent them
 7 from being targeted for fraudulent investment schemes by other parties who may seek to prey upon
 8 them. Accordingly, the Receiver requests that he be excused from filing a list of investors with
 9 their addresses and claim amounts or alternatively be allowed to submit the same to the Court in
 10 camera. In addition, the Receiver requests that when he is required by LR 66-5 to serve notice of
 11 a hearing on the investors, that, as detailed below, he be deemed to have served such notice by
 12 posting a copy of the notice on the receivership website and emailing investors (where possible),
 13 and that the proof of service filed with the Court use only the investors' first initial and last name,
 14 and not include their street address. Counsel for the Receiver will, however, maintain a complete
 15 proof of service in its records for this case.

16 **VII. OTHER ITEMS TO REPORT**

17 **A. *CURRENT AND FUTURE LITIGATION***

18 Within days after the Receivership Order was entered, the Receiver was notified regarding
 19 a pending lawsuit against Capsource in the Eighth Judicial District Court, *CAC Investment*
 20 *Ventures, LLC et al. v. Andrew Jolley et al.*, Case No. A-19-802088-B, in which Capsource, Inc.
 21 is a named defendant (the "CAC Action").¹ The CAC Action was initiated on September 17,
 22 2019, and per the case docket report, CapSource was named as a defendant on December 29, 2020.
 23 A bench trial in the State Court action was scheduled to begin on August 30, 2022 and was halted
 24 after counsel for Plaintiffs learned of the Receivership Order. At the request of Judge Nancy Allf,
 25 who precedes over the CAC Action, counsel for the Receiver has made special appearances at

26 _____
 27 ¹ Although the Receiver, Geoff Winkler, previously served as the Chief Restructuring Officer
 28 of Capsource, he had no knowledge of the pending State Court Action until after the
 Appointment Order was entered because Defendant and their counsel failed to notify him of
 the same.

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1 several status hearings in the CAC Action. Additionally, counsel for the Receiver has been
2 analyzing the issues and working with counsel for the other parties in the CAC Action, which want
3 the trial to proceed in short order. During the Reporting Period a resolution could not be reached
4 regarding the CAC Action that satisfied the Receiver’s concerns to protect CapSource. However,
5 it is anticipated that a stipulation will be filed in the near term herein to facilitate the trial going
6 forward in November against all parties except CapSource, with this Court’s stay issued as to
7 CapSource unaltered.

8 The Receiver is concerned that there may be additional lawsuits filed against CapSource
9 that he was previously not advised of. Notably, the Receiver was recently made aware of a case
10 filed against an entity identified as CapSource, LLC, pending in the Eighth Judicial District Court,
11 as Case No. A-22-850573 brought against CapSource LLC, Greg Herlean and Steve Bryne (and
12 others) by Vantage Enterprises, LLC and Vantage Holdings, LLC (the “Vantage Entities”).
13 Greenberg Traurig, the law firm that represents the Receiver herein also represents the Vantage
14 Entities and when a potential concern was identified, appropriate disclosures were made and
15 waivers and precautions established.²

16 During the next reporting period, the Receiver intends to conduct further research and
17 ascertain if there are additional legal proceedings pending against CapSource. Additionally, the
18 Receiver will evaluate if additional litigation may be necessary to secure funds for the Receivership
19 Estate. As additional information is reviewed and developed, the Receiver will update the Court
20 regarding his findings and intended next steps.

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25 ² The parties do not believe a conflict exists or that representation of both entities by
26 Greenberg Traurig is prohibited by the applicable rules of professional responsibility.
27 However, out of an abundance of caution, the Receiver has agreed that the law firm of
28 Greenberg Traurig will not have any direct and/or decision making involvement in matters
involving the Vantage Entities, including but not limited to evaluating and/or making any
determinations regarding claims that may be filed by the same. Additionally, out of an
abundance of caution, the Greenberg Traurig attorneys representing the Receiver will be
walled off from matters involving the Vantage Entities.

1 **B. THE RECEIVER REQUESTS INSTRUCTIONS FROM THE COURT**

2 **The Receiver Requests That Local Rule 66-5 Be Modified to Permit Notices of Hearings to**
3 **Be Served on Investors by Email and Posting on the Receivership Website.**

4 LR 66-5 requires that notice of the time and place of the hearings on reports of the Receiver,
5 petitions for confirmation of sales of property, applications for fees, and petitions for authority to
6 sell property at a private sale be given to all interested parties and creditors “unless the court orders
7 otherwise.” It does not specify the manner of notice. Due to the unique circumstances of this case
8 and the inherent costs associated with mailing notices, the Receiver requests that he not be required
9 to mail notices unless a specific request by an investor is received requesting notices by United
10 States mail and/or if the court specifically orders otherwise. *See LRIA1-4.*

11 Additionally, because of the privacy concerns referenced above, the Receiver also requests
12 that when service is accomplished by email, a proof of service will be prepared and maintained
13 concurrently but that he be excused from filing the proof of service with the Court. This will
14 prevent the investor email addresses from becoming part of the public record.

15 **VIII. RECOMMENDATION OF THE RECEIVER (LR 66-4(b)(5))**

16 At this juncture, the Receiver is evaluating the outstanding loans and identifying the
17 investors related to these loans. The Receiver recommends that the receivership continues to
18 identify assets and claims and pursue them for the benefit of the receivership estate.

19 **IX. CONCLUSION AND REQUESTED RELIEF**

20 Assuming the Court authorizes the Receiver to undertake the actions recommended herein,
21 as well as to continue those actions provided for in the Appointment Order, any amendments
22 thereto and any subsequent orders, the Receiver proposes to submit further interim reports to this
23 Court, addressing his progress, findings, final conclusions, and additional recommendations,
24 approximately every 90 days. Accordingly, and based on the foregoing, the Receiver respectfully
25 requests that the Court enter the Order, attached herewith as **Exhibit D:**

- 26 1. Accepting this First Status Report;
- 27 2. Authorizing the Receiver to continue to administer the Receivership Entities and
28 their estate in accordance with the terms of the Appointment Order;

1 3. Modifying Local Rule 66-4 and excuse the Receiver from filing a list of investors
2 with their addresses and claim amounts due to privacy reasons;

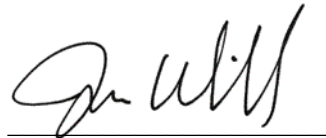
3 4. Modifying Local Rule 66-5 to permit notice of hearings and other activity to be
4 served on the investors by email and posting on the Receivership Website unless the Receiver
5 receives a specific request for written notice or the Court orders otherwise;

6 5. Authorizing the Receiver to undertake the recommendations presented herein,
7 including a continued engagement of those professionals he deems necessary for the proper
8 administration of the Receivership Entities and their estate; and

9 6. Providing such other and further relief as the Court deems necessary and
10 appropriate.

11 I, Geoff Winkler, verify under penalty of perjury that the statements made in the foregoing
12 report are true and correct to the best of my knowledge.

13 DATED this 1st day of November, 2022.

14 
15 _____
16 Geoff Winkler, Receiver

17 DATED this 1st day of November, 2022.

18 **GREENBERG TRAUIG, LLP**

19 _____
20 KARA B. HENDRICKS
21 Nevada Bar No. 07743
22 KYLE A. EWING
23 Nevada Bar No. 014051
24 CHRISTIAN T. SPAULDING
25 Nevada Bar No. 14277
26 10845 Griffith Peak Drive, Suite 600
27 Las Vegas, Nevada 89135

28 *Attorneys for Receiver Geoff Winkler*

GREENBERG TRAUIG, LLP
10845 GRIFFITH PEAK DRIVE SUITE 600
LAS VEGAS, NEVADA 89135
TELEPHONE: (702) 938-6856

CERTIFICATE OF SERVICE

1 I hereby certify that, on the 1st day of November, 2022, a true and correct copy of the
2 foregoing **FIRST STATUS REPORT OF GEOFF WINKLER, RECEIVER CAPSOURCE,**
3 **INC., AND PETITION FOR INSTRUCTIONS** was filed electronically via the Court’s
4 CM/ECF system. Notice of filing will be served on all parties by operation of the Court’s CM/ECF
5 system, and parties may access this filing through the Court’s CM/ECF system.
6

7 /s/ Evy Escobar-Gaddi

8 An employee of GREENBERG TRAUIG, LLP
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SECURITIES & EXCHANGE COMMISSION v. CAPSOURCE, INC., ET AL.,
USDC CASE NO. 2:20-cv-02303-RFB-DJA

EXHIBIT	DESCRIPTION
EXHIBIT A	Standardized Fund Accounting Report
EXHIBIT B	East West Bank Receivership Account
EXHIBIT C	Summary Cash Flow Statement and Summary Balance Sheet
EXHIBIT D	[Proposed] Order Approving First Status Report of Geoff Winkler, Receiver for CapSource, Inc., and Petition for Instructions

EXHIBIT A

EXHIBIT A

Standardized Fund Accounting Report

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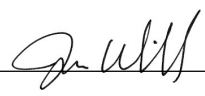
	D r	D		r d
	Increases in Fund Balance:	-		
	d r r	10,833.33		
	r D d d	-		
	d	607,947.84		
	r d r	-		
	M r	-		
	d	-		
		618,781.17		
	Decreases in Fund Balance:			
	D r r			
	D r r R r r			
Line 10a	Disbursements to Receiver or Other Professionals	-		
Line 10b	Business Asset Expenses	(24,501.43)		
Line 10c	Personal Asset Expenses	-		
Line 10d	Investment Expenses	-		
Line 10e	Third-Party Litigation Expenses	-		
	1. Attorney Fees	-		
	2. Litigation Expenses	-		
	Total Disbursements for Receivership Operations	(24,501.43)		
Line 10f	Tax Administrator Fees and Bonds	-		
Line 10g	Federal and State Tax Payments	-		
	D r r R r r			
Line 11a	Distribution Plan Development Expenses:			
	1. Fees:			
	Fund Administrator.....	-		
	Independent Distribution Consultant (IDC).....	-		
	Distribution Agent.....	-		
	Consultants.....	-		
	Legal Advisers.....	-		
	Tax Advisers.....	-		
	2. Administrative Expenses	-		
	3. Miscellaneous	-		
	Total Plan Development Expenses	-		
Line 11b	Distribution Plan Implementation Expenses:			
	1. Fees:			
	Fund Administrator.....	-		
	IDC.....	-		
	Distribution Agent.....	-		
	Consultants.....	-		
	Legal Advisers.....	-		
	Tax Advisers.....	-		
	2. Administrative Expenses	-		
	3. Investor Identification:			
	Notice/Publishing Approved Plan.....	-		
	Claimant Identification.....	-		
	Claims Processing.....	-		
	Web Site Maintenance/Call Center.....	-		
	4. Fund Administrator Bond	-		
	5. Miscellaneous	-		
	6. Federal Account for Investor Restitution (FAIR) Reporting Expenses	-		
	Total Plan Implementation Expenses	-		
	D r r D r d d			
Line 12a	Investment Expenses/Court Registry Investment System (CRIS) Fees	-		
Line 12b	Federal Tax Payments	-		
	D r r r			
	d D r d			
	d			
Line 14a	Cash & Cash Equivalents		594,279.74	
Line 14b	Investments		-	
Line 14c	Other Assets or Uncleared Funds		-	
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<i>Line 15a</i>	D r r d r d d Plan Development Expenses Not Paid by the Fund 1. Fees: Fund Administrator - IDC - Distribution Agent - Consultants - Legal Advisers - Tax Advisers - 2. Administrative Expenses - 3. Miscellaneous - Total Plan Development Expenses Not Paid by the Fund -					
<i>Line 15b</i>	Plan Implementation Expenses Not Paid by the Fund: 1. Fees: Fund Administrator - IDC - Distribution Agent - Consultants - Legal Advisers - Tax Advisers - 2. Administrative Expenses - 3. Investor Identification: Notice/Publishing Approved Plan - Claimant Identification - Claims Processing - Web Site Maintenance/Call Center - 4. Fund Administrator Bond - 5. Miscellaneous - 6. FAIR Reporting Expenses - Total Plan Implementation Expenses Not Paid by the Fund -					
<i>Line 15c</i>	Tax Administrator Fees & Bonds Not Paid by the Fund Total Disbursements for Plan Administration Expenses Not Paid by the Fund -					
<i>Line 16a</i>	Disbursements to Court/Other Not Paid by the Fund Investment Expenses/CRIS Fees -					
<i>Line 16b</i>	Federal Tax Payments - Total Disbursements to Court/Other Not Paid by the Fund: - DC & State Tax Payments -					
No. of Claims:						
<i>Line 18a</i>	# of Claims Received This Reporting Period			-		
<i>Line 18b</i>	# of Claims Received Since Inception of Fund			-		
<i>Line 19a</i>	# of Claimants/Investors Paid This Reporting Period			-		
<i>Line 19b</i>	# of Claimants/Investors Paid Since Inception of Fund			-		

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EXHIBIT B

EXHIBIT B

at e t an Recei er ip Account

EAST WEST BANK RECEIVERSHIP ACCOUNT (A/E 0057)
 AUGUST 26, 2022 - SEPTEMBER 30, 2022

<i>Date</i>	<i>Type</i>	<i>Amount</i>	<i>Payee</i>	<i>Description</i>
	r		M	r
	r		r	d d d
	r		r	d d d
			rd d r d	
			r d r	r M r r
	r		r	r r d
	Total	\$ 594,279.74		

EXHIBIT

EXHIBIT

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SEC C S r I ,S B r , dGr r P H r S r C S S r 30,2022
<i>as at e innin o Period</i>
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Total as n lo s ,7
as ut lo s
r M r r
Total as ut lo s 24,5
as at nd o Period 594,2

SEC C S r I ,S B r , dGr r P H r S r B S S r 30,2022
<i>Assets</i>
Total Assets 9,42 , 22
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 7 *Attorneys for Geoff Winkler Receiver for*
 8 *CapSource, Inc., et al.*

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

11 SECURITIES AND EXCHANGE
 12 COMMISSION,

13 Plaintiff,

14 v.

15 CAPSOURCE, INC., STEPHEN J. BYRNE, and
 16 GREGORY P. HERLEAN

Defendants.

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

**[PROPOSED] ORDER APPROVING
 FIRST STATUS REPORT OF GEOFF
 WINKLER, RECEIVER CAPSOURCE,
 INC., AND PETITION FOR
 INSTRUCTIONS**

17
 18 The Court has reviewed the *First Status Report of Geoff Winkler, Receiver CapSource,*
 19 *Inc., and Petition for Instructions* (the “Status Report”) and held a hearing at which appearances
 20 were noted on the record. For the reasons set forth on the record,

21 **IT IS HEREBY ORDERED AS FOLLOWS:**

22 1. The Status Report and the actions of Geoff Winkler (the “Receiver”) described in
 23 the Status Report are approved, and the Court finds that the receivership should continue under the
 24 terms of the Order Appointing Receiver, ECF No. 17 (the “Appointment Order”);

25 2. The Receiver is authorized to continue to administer the Receivership Entities and
 26 their estate in accordance with the terms of the Appointment Order;

27 ///

28 ///

