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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., STEPHEN J. BYRNE,
16 AND GREGORY P. HERLEAN,

17 Defendants.

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

**MOTION TO SEAL EXHIBITS A
AND B TO CERTIFICATE OF
SERVICE REGARDING HEARING
NOTICE**

18
19 Geoff Winkler of American Fiduciary Services, LLC, the Receiver for CapSource, Inc.,
20 submits this Motion to Seal **Exhibit A and Exhibit B** to the Receiver’s Certificate of Service of
21 Notice of the February 23, 2023, hearing, in accordance with the Court’s minute orders issued on
22 January 26, 2023 (ECF No. 27), and February 2, 2023 (ECF No. 31), and under Rule 5.2(d) of the
23 Federal Rules of Civil Procedure and Local Rule IA 10-5.

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1 This Motion is based upon the pleadings and papers on file, the attached memorandum of
2 points and authorities, and any oral argument the Court may permit at the hearing of this matter.

3 DATED this 8th day of February, 2023.

4 **GREENBERG TRAUIG, LLP**

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6 By: */s/ Kara B. Hendricks*

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15 *Attorneys for Receiver Geoff Winkler*

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I. INTRODUCTION**

18 On August 26, 2022, the Court entered an order appointing Geoff Winkler of American
19 Fiduciary Services LLC to serve as the Receiver for the estate of Defendant CapSource, Inc (the
20 “Appointment Order”). Since that time, the Receiver has filed two Status Reports, (ECF Nos. 21¹
21 and 28), as well as an Application for Payment of Fees and Reimbursement of Expenses of
22 Receiver and Receivers’ Counsel Greenberg Traurig. (ECF No. 23).² In minute orders issued on
23 January 26, 2023 (ECF No. 27), and February 2, 2023 (ECF No. 31), the Court scheduled a hearing
24 on the pending motions for February 23, 2023, and instructed the receiver to “provide the notice
25 required by Local Rule 66-5” and further indicated the Receiver could seek to file the certificate
26 of service under seal in accordance with Local Rule IA 10-5 due to privacy concerns raised in the
27 filings. This Motion is brought in furtherance of the same.

28 ¹ With the first quarterly status report, the Receiver also petitioned for instructions regarding the handling of certain matters for the Receivership Estate. (See ECF No. 22).

² The Receiver filed his Second Application for Payment of Fees and Reimbursement of Expenses of Receiver and Receivers’ Counsel Greenberg Traurig, but the Court has not yet set that Application for hearing. (ECF No. 32).

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1 Under Rule 5.2(d), a court “may order that a filing be made under seal without redaction,”
 2 and the Supreme Court has acknowledged that the decision to seal documents is “one best left to
 3 the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and
 4 circumstances of the particular case.”³ In deciding the degree of protection required, courts should
 5 consider “the interests [of] the parties in light of the public interest and the duty of the courts.”⁴
 6 “A party seeking to seal judicial records can overcome the strong presumption of access by
 7 providing ‘sufficiently compelling reasons’ that override the public policies favoring disclosure.”⁵
 8 Compelling reasons for sealing such documents exist ‘when such “court files might have become
 9 a vehicle for improper purposes,’ such as the use of records to gratify private spite, promote public
 10 scandal, circulate libelous statements, or release trade secrets.”⁶

11 Here, **Exhibits A and B** to the Certificate of Service contain contact information for
 12 investors and creditors of CapSource. Specifically, **Exhibit A** contains names and email addresses
 13 of investors and creditors, and **Exhibit B** contains names and mailing addresses of creditors.⁷
 14 Compelling reasons exist for sealing such exhibits as they are comprised – almost entirely – of
 15 confidential and private information: the names, emails, and residential addresses of defrauded
 16 investors and other creditors. As a preliminary matter, the names of investors and creditors of
 17 CapSource included alongside their email/addresses are presumptively private information.⁸

18
 19 ³ F.R.C.P. 5.2(d); *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 599 (1978).

20 ⁴ *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995), quoting *Nixon*, 435 U.S. at 602; *see*
 21 *also Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984) (interpreting FRCP 26(a) as conferring
 “broad discretion” upon trial courts in deciding “when a protective order is appropriate and what
 degree of protection is required”).

22 ⁵ *Aerodynamics Inc. v. Ceasars Entm’t Operating Co., Inc.*, 2:15-CV-01344-JAD-PAL, 2015 WL
 23 5679843, at *13, 2015 U.S. Dist. LEXIS 129588, at *43 (D. Nev. Sept. 24, 2015) (sealing portions
 24 of exhibit when “releasing the information ... could result in the invasion of several non-parties’
 privacy” and the exhibit contained a non-party’s “private personal information ... like his home
 address”) (quoting *In re Midland Nat. Life Ins. Co. Annuity Sales Practices Litig.*, 686 F.3d 1115,
 1119 (9th Cir. 2012).

25 ⁶ *Kamanakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (quoting *Nixon*
 26 *v. Warner Comm’ns, Inc.*, 435 U.S. 589, 598 (1978)).

27 ⁷ The Receiver emailed notice of the hearing to known investors and creditors of CapSource when
 28 an email address was available to the Receiver. When no email address was available, notice was
 sent via U.S. Mail.

⁸ *See* LR IC 6-1(a)(5) & (b); *cf.* 18 U.S.C. § 3771.

1 Further, the need to protect the personal information of the investors is amplified here due to the
2 allegations in the underlying Complaint. Moreover, such information should not be disclosed to
3 and/or accessed by third-parties that may seek to prey on such individuals.

4 The exhibits the Receiver asks the Court to seal consist almost entirely of such confidential
5 and sensitive personal information. Given the sensitive nature of such information and the
6 exposure to further exploitation by those monitoring court dockets such as these, the sealing of
7 this personal information is justified by compelling privacy and public interests that outweigh the
8 limited public interest in access to the court record.

9 For these reasons, the Receiver requests an order sealing **Exhibit A and Exhibit B** to the
10 Receiver's Certificate of Service of Notice of the February 23, 2023, hearing, in accordance with
11 the Court's minute orders issued on January 26, 2023 (ECF No. 27), and February 2, 2023
12 (ECF No. 31).

13 DATED this 8th day of February, 2023.

14 **GREENBERG TRAUIG, LLP**

15
16 By: */s/ Kara B. Hendricks*

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Attorneys for Receiver Geoff Winkler

CERTIFICATE OF SERVICE

I hereby certify that, on the 8th day of February, 2023, a true and correct copy of the foregoing **MOTION TO SEAL EXHIBITS A AND B TO CERTIFICATE OF SERVICE REGARDING HEARING NOTICE** was filed electronically via the Court’s CM/ECF system. Notice of filing will be served on all parties by operation of the Court’s CM/ECF system, and parties may access this filing through the Court’s CM/ECF system.

/s/ Evelyn Escobar-Gaddi
An employee of GREENBERG TRAUIG, LLP

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INDEX OF EXHIBITS

EXHIBIT	DESCRIPTION
Exhibit A	n of Geoff Winkler and Supporting Documents
Exhibit B	

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