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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

CAPSOURCE, INC., *et al.*

Defendants.

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

**JOINT MOTION AND [PROPOSED]
ORDER AUTHORIZING RECEIVER'S
COMPROMISE AND WAIVER OF
INTEREST ON BEHALF OF
DEFENDANT CAPSOURCE, INC., IN
ANCILLARY PROCEEDING
PENDING IN NEVADA STATE
COURT**

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

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

2. Mr. Winkler had previously been retained as the Chief Restructuring Officer ("CRO") of CapSource, *see* ECF No. 9, as part of final consent judgment agreements reached between the SEC and Defendants CapSource, Byrne, and Herlean. *See id.*; *see also* ECF Nos. 7 and 8.

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1 3. The final judgments against Byrne and Herlean also required them to take or refrain
2 from taking certain actions. *See id.* Many of these requirements were designed to aid the CRO in
3 his responsibilities and/or prevent Byrne and Herlean from interfering with those duties.

4 4. On March 21, 2022, the SEC submitted its Motion to Appoint Receiver over
5 Defendant CapSource, Inc. *See* Mot. to Appt. Receiver, ECF No. 12. On August 26, 2022, having
6 found that “the appointment of a receiver in this action is necessary and appropriate for the
7 purposes of marshaling and preserving all assets of the Defendant CapSource, Inc.,” the Court
8 granted the SEC’s motion and appointed Winkler as Receiver for CapSource. *See* Order Appnt.
9 Receiver, ECF No. 17.

10 5. After his appointment, the Receiver discovered at least four (4) lawsuits against
11 CapSource, each of which qualify as Ancillary Proceedings under Section VII of the Order
12 Appointing Receiver, which were previously not disclosed to the Receiver or CRO.

13 6. The Receiver has provided notice of the Receivership to counsel in the Ancillary
14 Proceedings, including counsel identified in a case styled as *the Entrust Group fbo Paul Uwe*
15 *Pawlik v. Southern Highlands Community Association, et al.*, Case No. A-22-848762-C, Eighth
16 Judicial District Court for the State of Nevada (the “Entrust Lawsuit”).

17 7. The Entrust Lawsuit names CapSource as a defendant in a quiet title claim related
18 to real property that was the subject of a tax lien foreclosure sale in 2013 (the “Subject Property”).

19 8. Prior to the tax foreclosure, CapSource was the beneficiary of a Deed of Trust
20 recorded against the Subject Property.

21 9. Entrust Group is the current title holder of the Subject Property by way of a County
22 Treasurer’s Deed and seeks to “clean up” the title to the Subject Property through its request for
23 quiet title relief in the Lawsuit.

24 10. The Receiver has investigated plaintiff Entrust Group’s allegations, including by
25 reviewing a Litigation Guarantee regarding the Subject Property issued by Ticor Title and
26 obtaining the advice of counsel regarding the effect of tax foreclosure sales under
27 NRS Chapter 271.

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1 11. The Receiver has concluded that, as Entrust Group alleges, CapSource's interest in
2 the Deed of Trust was extinguished by operation of the 2013 tax foreclosure sale.

3 12. The Receiver's investigation further revealed that all applicable redemption periods
4 under applicable tax foreclosure sale law have run, and CapSource no longer has any valid interest
5 or right of redemption in the Subject Property.

6 13. Under these circumstances, the Receiver has determined in his business judgment
7 that defending or otherwise participating in the Entrust Lawsuit has no benefit and would result in
8 significant cost to the Receivership Estate and therefore seeks authorization to compromise the
9 claim against CapSource in exchange for dismissal of CapSource as a defendant.

10 14. Entrust Group has agreed that in exchange for CapSource's waiver of interest in the
11 Subject Property, Entrust Group will dismiss and waive all claims against CapSource with
12 prejudice and set aside a clerk's default obtained by Entrust Group against CapSource prior to the
13 Receiver's knowledge of the Lawsuit.

14 15. The Receiver and Entrust Group have agreed that the parties will each bear their
15 own fees and costs.

16 16. For the avoidance of doubt, the only consideration offered or proposed by
17 CapSource in compromising the claim is CapSource's written waiver of its interest in the Subject
18 Property, which interest was already extinguished by operation of the tax foreclosure sale –
19 CapSource will not be paying any form of monetary settlement or agreeing to any judgment.

20 17. A proposed form of stipulation and order memorializing the foregoing agreements
21 and effecting the dismissal of CapSource from the Entrust Lawsuit is attached as **Exhibit A**.

22 18. The Receiver and counsel for Entrust Group have agreed to submit the stipulation
23 and order to the Entrust Lawsuit court, subject to the authorization of this Court, which the
24 Receiver seeks through this Stipulation and Order.

25 19. The Receiver continues to investigate the claims asserted against CapSource in the
26 other three Ancillary Proceedings he has discovered and anticipates providing further information
27 and recommendations to the Court regarding those matters once his investigation has concluded.

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1 **ACCORDINGLY, IT IS STIPULATED AND AGREED** by and between the
2 undersigned counsel that:

3 A. Notwithstanding the Litigation Stay in Section VII of this Court's Order
4 Appointing Receiver, the Receiver be, and hereby is, authorized to compromise the claim asserted
5 against CapSource in the Entrust Lawsuit by entering the stipulation and order attached here as
6 **Exhibit A;** and

7 B. Upon entry of the Entrust Lawsuit stipulation and order by the Eighth Judicial
8 District Court for the State of Nevada, the Receiver shall file a notice of the entry of the stipulation
9 and order with this Court, attaching the signed order as an exhibit, within ten court days of its
10 entry.

11 DATED this 15th day of December, 2022.

DATED this 15th day of December, 2022.

12 **GREENBERG TRAUIG, LLP**

**SECURITIES & EXCHANGE
COMMISSION**

13
14 /s/ Kyle A. Ewing

/s/ Terry R. Miller

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19 *Attorneys for Receiver Geoff Winkler*

*Attorneys for Plaintiff Securities and
Exchange Commission*

IT IS SO ORDERED.

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23 _____
UNITED STATES DISTRICT JUDGE

24 Dated this ____ day of _____, 2022.
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CERTIFICATE OF SERVICE

I hereby certify that, on the **15th day of December, 2022**, a true and correct copy of the foregoing 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 TRAURIG, LLP

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