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11
12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF NEVADA**

14 SECURITIES AND EXCHANGE
15 COMMISSION,

16 Plaintiff,

17 vs.

18 CAPSOURCE, INC.,
19 STEPHEN J. BYRNE, and
20 GREGORY P. HERLEAN
21 Defendants.

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

**FINAL JUDGMENT AS TO
DEFENDANT STEPHEN J. BYRNE**

22 Plaintiff, the United States Securities and Exchange Commission (the
23 “Commission”) having filed a Complaint and Defendant Stephen J. Byrne (“Byrne”
24 or “Defendant”) having entered a general appearance; consented to the Court’s
25 jurisdiction over Defendant and the subject matter of this action; consented to entry
26 of this Final Judgment; waived findings of fact and conclusions of law; and waived
27 any right to appeal from this Final Judgment:

28 I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is
permanently restrained and enjoined from violating, directly or indirectly, Section

1 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. §
2 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using
3 any means or instrumentality of interstate commerce, or of the mails, or of any
4 facility of any national securities exchange, in connection with the purchase or sale of
5 any security:

- 6 (a) to employ any device, scheme, or artifice to defraud;
7 (b) to make any untrue statement of a material fact or to omit to state a
8 material fact necessary in order to make the statements made, in the light
9 of the circumstances under which they were made, not misleading; or
10 (c) to engage in any act, practice, or course of business which operates or
11 would operate as a fraud or deceit upon any person.

12 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as
13 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also
14 binds the following who receive actual notice of this Final Judgment by personal
15 service or otherwise: (a) Defendant’s officers, agents, servants, employees, and
16 attorneys; and (b) other persons in active concert or participation with Defendant or
17 with anyone described in (a).

18 II.

19 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
20 Defendant is permanently restrained and enjoined from violating Section 17(a) of the
21 Securities Act of 1933 (the “Securities Act”) [15 U.S.C. § 77q(a)] in the offer or sale
22 of any security by the use of any means or instruments of transportation or
23 communication in interstate commerce or by use of the mails, directly or indirectly:

- 24 (a) to employ any device, scheme, or artifice to defraud;
25 (b) to obtain money or property by means of any untrue statement of a
26 material fact or any omission of a material fact necessary in order to
27 make the statements made, in light of the circumstances under which
28 they were made, not misleading; or

- 1 (c) to engage in any transaction, practice, or course of business which
2 operates or would operate as a fraud or deceit upon the purchaser.

3 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as
4 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also
5 binds the following who receive actual notice of this Final Judgment by personal
6 service or otherwise: (a) Defendant's officers, agents, servants, employees, and
7 attorneys; and (b) other persons in active concert or participation with Defendant or
8 with anyone described in (a).

9 III.

10 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
11 Defendant is permanently restrained and enjoined from violating Sections 5(a) and
12 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)] by, directly or indirectly,
13 in the absence of any applicable exemption:

- 14 (a) Unless a registration statement is in effect as to a security, making use of
15 any means or instruments of transportation or communication in
16 interstate commerce or of the mails to sell such security through the use
17 or medium of any prospectus or otherwise;
- 18 (b) Unless a registration statement is in effect as to a security, carrying or
19 causing to be carried through the mails or in interstate commerce, by any
20 means or instruments of transportation, any such security for the purpose
21 of sale or for delivery after sale; or
- 22 (c) Making use of any means or instruments of transportation or
23 communication in interstate commerce or of the mails to offer to sell or
24 offer to buy through the use or medium of any prospectus or otherwise
25 any security, unless a registration statement has been filed with the
26 Commission as to such security, or while the registration statement is the
27 subject of a refusal order or stop order or (prior to the effective date of
28 the registration statement) any public proceeding or examination under

1 Section 8 of the Securities Act [15 U.S.C. § 77h].

2 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as
3 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also
4 binds the following who receive actual notice of this Final Judgment by personal
5 service or otherwise: (a) Defendant's officers, agents, servants, employees, and
6 attorneys; and (b) other persons in active concert or participation with Defendant or
7 with anyone described in (a).

8 IV.

9 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
10 Defendant is permanently restrained and enjoined from violating Section 15(a) of the
11 Exchange Act [15 U.S.C. § 78o(a)] by using any means or instrumentality of
12 interstate commerce, to effect any transactions in, or to induce or attempt to induce
13 the purchase or sale of, any security (other than an exempted security or commercial
14 paper, bankers' acceptances, or commercial bills) while not associated with a broker
15 or dealer registered in accordance with subsection Section 15(b) of the Exchange Act
16 [15 U.S.C. § 78o(b)].

17 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as
18 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also
19 binds the following who receive actual notice of this Final Judgment by personal
20 service or otherwise: (a) Defendant's officers, agents, servants, employees, and
21 attorneys; and (b) other persons in active concert or participation with Defendant or
22 with anyone described in (a).

23 V.

24 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
25 Defendant is liable for disgorgement of \$1,538,990, representing profits gained as a
26 result of the conduct alleged in the Complaint, together with prejudgment interest
27 thereon in the amount of \$200,844, and a civil penalty in the amount of \$192,768
28 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section

1 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Defendant shall satisfy this
2 obligation by paying \$1,932,602 to the Securities and Exchange Commission
3 pursuant to the terms of the payment schedule set forth in paragraph VI below after
4 entry of this Final Judgment.

5 Defendant may transmit payment electronically to the Commission, which will
6 provide detailed ACH transfer/Fedwire instructions upon request. Payment may also
7 be made directly from a bank account via Pay.gov through the SEC website at
8 <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified
9 check, bank cashier's check, or United States postal money order payable to the
10 Securities and Exchange Commission, which shall be delivered or mailed to

11 Enterprise Services Center
12 Accounts Receivable Branch
13 6500 South MacArthur Boulevard
14 Oklahoma City, OK 73169

15 and shall be accompanied by a letter identifying the case title, civil action number,
16 and name of this Court; Stephen J. Byrne as a defendant in this action; and specifying
17 that payment is made pursuant to this Final Judgment.

18 Defendant shall simultaneously transmit photocopies of evidence of payment
19 and case identifying information to the Commission's counsel in this action. By
20 making this payment, Defendant relinquishes all legal and equitable right, title, and
21 interest in such funds and no part of the funds shall be returned to Defendant.

22 The Commission may enforce the Court's judgment for disgorgement and
23 prejudgment interest by using all collection procedures authorized by law, including,
24 but not limited to, moving for civil contempt at any time after 30 days following entry
25 of this Final Judgment.

26 The Commission may enforce the Court's judgment for penalties by the use of
27 all collection procedures authorized by law, including the Federal Debt Collection
28 Procedures Act, 28 U.S.C. § 3001 *et seq.*, and moving for civil contempt for the

1 violation of any Court orders issued in this action. Defendant shall pay post
2 judgment interest on any amounts due after 30 days of the entry of this Final
3 Judgment pursuant to 28 U.S.C. § 1961. The Commission shall hold the funds,
4 together with any interest and income earned thereon (collectively, the “Fund”),
5 pending further order of the Court.

6 The Commission may propose a plan to distribute the Fund subject to the
7 Court’s approval. Such a plan may provide that the Fund shall be distributed
8 pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of
9 2002. The Court shall retain jurisdiction over the administration of any distribution
10 of the Fund and the Fund may only be disbursed pursuant to an Order of the Court.

11 Regardless of whether any such Fair Fund distribution is made, amounts
12 ordered to be paid as civil penalties pursuant to this Judgment shall be treated as
13 penalties paid to the government for all purposes, including all tax purposes. To
14 preserve the deterrent effect of the civil penalty, Defendant shall not, after offset or
15 reduction of any award of compensatory damages in any Related Investor Action
16 based on Defendant’s payment of disgorgement in this action, argue that he is entitled
17 to, nor shall he further benefit by, offset or reduction of such compensatory damages
18 award by the amount of any part of Defendant’s payment of a civil penalty in this
19 action (“Penalty Offset”). If the court in any Related Investor Action grants such a
20 Penalty Offset, Defendant shall, within 30 days after entry of a final order granting
21 the Penalty Offset, notify the Commission’s counsel in this action and pay the amount
22 of the Penalty Offset to the United States Treasury or to a Fair Fund, as the
23 Commission directs. Such a payment shall not be deemed an additional civil penalty
24 and shall not be deemed to change the amount of the civil penalty imposed in this
25 Judgment. For purposes of this paragraph, a “Related Investor Action” means a
26 private damages action brought against Defendant by or on behalf of one or more
27 investors based on substantially the same facts as alleged in the Complaint in this
28 action.

VI.

Stephen J. Byrne shall pay the total of disgorgement, prejudgment interest, and penalty due of \$1,932,602 in four installments to the Commission according to the following schedule: (1) \$483,150.50, within 14 days of entry of this Final Judgment; (2) \$483,150.50, within 180 days of entry of this Final Judgment; 3) \$483,150.50, within 270 days of entry of this Final Judgment; and 4) \$483,150.50, within 360 days of entry of this Final Judgment. Payments shall be deemed made on the date they are received by the Commission and shall be applied first to post judgment interest, which accrues pursuant to 28 U.S.C. § 1961 on any unpaid amounts due after 30 days of the entry of Final Judgment. Prior to making the final payment set forth herein, Stephen J. Byrne shall contact the staff of the Commission for the amount due for the final payment.

If Stephen J. Byrne fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Final Judgment, including post-judgment interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Court.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the agreements set forth therein, including, but not limited to:

- (a) Defendant shall immediately resign from any position(s) of management of CapSource, Inc. (“CapSource”) upon appointment of a Chief Restructuring Officer for CapSource (the “CRO”), and not resume such position(s) or any employment with CapSource after the date of this Final Judgment;

- 1 (b) Defendant shall preserve and turn over all books, records, documents,
2 and accounts relating to CapSource to the CRO;
- 3 (c) Defendant shall not request or receive, directly or indirectly, any
4 payment or other benefit from CapSource after the date of this Final
5 Judgment;
- 6 (d) Defendant shall cooperate with all requests made by the CRO, including
7 providing information or taking those actions needed to transfer control
8 of CapSource's property to the CRO;
- 9 (e) Defendant shall take such actions as are necessary to install the CRO as
10 manager of ARC RE, LLC ("ARC-RE") and, immediately thereafter,
11 resign as manager of ARC-RE;
- 12 (f) Defendant shall be responsible for and pay the CRO's fees (jointly and
13 severally with Defendant Gregory P. Herlean);
- 14 (g) If the CRO resigns or is otherwise unwilling or unable to perform his
15 duties, the Commission may petition the Court for appointment of a
16 receiver over CapSource, which the Defendant will not oppose; and
- 17 (h) Defendant shall, upon request by Commission, certify, in writing,
18 compliance with the agreements set forth above. The certification shall
19 provide written evidence of compliance in the form of a narrative, and be
20 supported by exhibits sufficient to demonstrate compliance. The
21 Commission staff may make reasonable requests for further evidence of
22 compliance, and Defendant agrees to provide such evidence. Defendant
23 shall submit the certification and supporting material to Ian S. Karpel,
24 Assistant Regional Director, with a copy to the Office of Chief Counsel
25 of the Enforcement Division, no later than sixty (60) days from the date
26 of the request for certification.

27 If Defendant fails to comply any of the agreements set forth in this paragraph, the
28 Commission may petition the Court for the appointment of a receiver over

1 CapSource, which Defendant will not oppose. Defendant will also not oppose any
2 petition for appointment of a receiver over CapSource filed by the Commission based
3 on the failure of any other defendant in this action to comply with agreements set
4 forth in their consents and judgments.

5 VIII.

6 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, for
7 purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code,
8 11 U.S.C. §523, the allegations in the complaint are true and admitted by Defendant,
9 and further, any debt for disgorgement, prejudgment interest, civil penalty or other
10 amounts due by Defendant under this Final Judgment or any other judgment, order,
11 consent order, decree or settlement agreement entered in connection with this
12 proceeding, is a debt for the violation by Defendant of the federal securities laws or
13 any regulation or order issued under such laws, as set forth in Section 523(a)(19) of
14 the Bankruptcy Code, 11 U.S.C. §523(a)(19).

15 IX.

16 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court
17 shall retain jurisdiction of this matter for the purposes of enforcing the terms of this
18 Final Judgment.

19 X.

20 There being no just reason for delay, pursuant to Rule 54(b) of the Federal
21 Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith
22 and without further notice.

23
24 Dated: May 5, 2021.

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26 

27
28 _____
RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE