

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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In re: : Chapter 11
: :
THE CONTAINER STORE GROUP, INC., *et al.*, : Case No. 24-90627 (ARP)
: :
Debtors.¹ : (Joint Administration Requested)
: :
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EMERGENCY MOTION OF DEBTORS FOR ENTRY OF AN ORDER (I) AUTHORIZING THE DEBTORS TO (A) PAY CERTAIN EMPLOYEE COMPENSATION AND BENEFITS, (B) MAINTAIN AND CONTINUE SUCH BENEFITS AND OTHER EMPLOYEE-RELATED PROGRAMS, AND (C) PAY PREPETITION CLAIMS OF CONTRACTED LABOR; (II) GRANTING RELIEF FROM AUTOMATIC STAY WITH RESPECT TO WORKERS' COMPENSATION CLAIMS; AND (III) GRANTING RELATED RELIEF

Emergency relief has been requested. Relief is requested not later than 1:00 p.m. (prevailing Central Time) on December 23, 2024.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on December 23, 2024 at 1:00 p.m. (prevailing Central Time) in Courtroom 400, 4th floor, 515 Rusk Street, Houston, Texas 77002. Participation at the hearing will only be permitted by an audio and video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at 832-917-1510. Once connected, you will be asked to enter the conference room number. Judge Perez's conference room number is 282694. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Perez's home page. The meeting code is "JudgePerez". Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the "Electronic Appearance" link on

¹ The Debtors in these cases, together with the last four digits of each Debtor's taxpayer identification number, are: The Container Store Group, Inc. (5401); The Container Store, Inc. (6981); C Studio Manufacturing Inc. (4763); C Studio Manufacturing LLC (5770); and TCS Gift Card Services, LLC (7975). The Debtors' mailing address is 500 Freeport Parkway, Coppell, TX 75019.



Judge Perez’s home page. Select the case name, complete the required fields and click “Submit” to complete your appearance.

The above-captioned debtors in possession (collectively, the “*Debtors*”) respectfully state as follows in support of this motion (this “*Motion*”):

RELIEF REQUESTED

1. By this Motion, the Debtors seek entry of an order (the “*Proposed Order*”), substantially in the form attached hereto:

- (i) authorizing, but not directing, the Debtors, in their discretion, to satisfy the Petition Workforce Obligations (as defined below);
- (ii) confirming the Debtors’ right to continue postpetition, in the ordinary course of business, the workforce-related plans, programs, and policies in effect immediately prior to the filing of these cases (collectively, the “*Workforce Programs*”);
- (iii) modifying the automatic stay under section 362 of the Bankruptcy Code with respect to the Workers’ Compensation Claims to allow Workers’ Compensation Claims to proceed under the applicable Workers’ Compensation Policy and to allow the Debtors, their affiliates, their insurance providers, and/or their third-party administrators to negotiate, settle, and/or litigate Workers’ Compensation Claims, and pay resulting amounts, whether such claims arose before or after the Petition Date (each as defined below); and
- (iv) granting related relief.

JURISDICTION AND VENUE

2. The United States Bankruptcy Court for the Southern District of Texas (the “*Court*”) has jurisdiction to consider this Motion under 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and the Court may enter a final order consistent with Article III of the United States Constitution.

3. Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

4. The statutory and legal predicates for the relief requested herein are sections 105(a), 362(d), 363(b), 507(a), 541, 1107(a), and 1108 of title 11 of the United States Code, 11 U.S.C. §§

101–1532 (the “**Bankruptcy Code**”), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), Rule 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “**Bankruptcy Local Rules**”), and the Procedures for Complex Cases in the Southern District of Texas (the “**Complex Case Procedures**”).

BACKGROUND

5. On December 22, 2024 (the “**Petition Date**”), the Debtors filed voluntary petitions in the Court commencing cases for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”). The Debtors continue to manage and operate their businesses as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested and no committee has been appointed in the Chapter 11 Cases.

6. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the *Declaration of Chad E. Coben, Chief Restructuring Officer, in Support of Chapter 11 Petitions and First Day Motions*, filed contemporaneously herewith (the “**First Day Declaration**”), which is fully incorporated herein by reference.²

7. Contemporaneously with the filing of the Motion, the Debtors filed a motion with the Court pursuant to Bankruptcy Rule 1015(b) requesting joint administration of the Chapter 11 Cases for procedural purposes only.

8. The Chapter 11 Cases are “prepackaged” cases commenced for the purpose of implementing agreed restructuring and recapitalization transactions among the Debtors and their key stakeholders. Prior to the Petition Date, the Debtors entered into that certain Transaction Support Agreement, dated as of December 21, 2024 (as may be amended, modified or

² Capitalized terms used but not defined herein have the meanings given to them in the First Day Declaration.

supplemented, the “*Transaction Support Agreement*”) with lenders that collectively hold over 90% of the outstanding principal amount of term loans under the Debtors’ Term Loan Facility (the “*Consenting Term Lenders*”), including those certain members of an ad hoc term lender group represented by Paul Hastings LLP (the “*Ad Hoc Group*”). The holders of the outstanding principal amount of asset-backed loans under the Debtors’ Prepetition ABL Facility (the “*Prepetition ABL Lenders*”) are not parties to the Transaction Support Agreement.

9. Contemporaneously herewith, the Debtors will file a prepackaged chapter 11 plan of reorganization reflecting the terms of the Transaction Support Agreement (as may be amended, modified or supplemented, the “*Plan*”), along with (a) a corresponding disclosure statement (as may be amended, modified or supplemented, the “*Disclosure Statement*”) and (b) a motion seeking, among other things, (i) conditional approval of the Disclosure Statement, (ii) approval of the solicitation and notice procedures, and (iii) to schedule a combined hearing to consider approval of the Disclosure Statement on a final basis and confirmation of the Plan.

10. The Plan contemplates that all Allowed General Unsecured Claims (as defined in the Plan) will be paid in full or will otherwise be unimpaired and “ride through” the Chapter 11 Cases, and brings in at least approximately \$60 million of new liquidity for the Debtors to fund go forward operations. The Debtors are seeking confirmation of the Plan as quickly as the Court’s schedule and requisite notice periods will permit to implement the proposed restructuring and recapitalization transactions under the Transaction Support Agreement and Plan.

THE DEBTORS’ WORKFORCE AND WORKFORCE OBLIGATIONS

I. DEBTORS’ WORKFORCE

11. The Debtors are a leading retailer of storage and organizational products, operating 104 store locations in 34 states. The Debtors employ approximately 3,850 employees (the “*Employees*”), of whom 2,920 work in the Debtors’ store locations. The majority of

employees are employed by Debtor The Container Store, Inc., although approximately 45 are employed by Debtor C Studio Manufacturing LLC. None of the Employees are represented by a union.

12. As of the Petition Date, approximately 750 of the current Employees are salaried Employees (such Employees, the “*Salaried Employees*”) and approximately 3,100 are hourly Employees (such Employees, the “*Hourly Employees*”). Approximately 880 of the Hourly Employees work full-time (such Employees, the “*Full Time Hourly Employees*”) whereas approximately 2,220 of the Hourly Employees work part-time (such Employees, the “*Part Time Hourly Employees*”).³ The Employees perform a variety of critical functions throughout the Debtors’ businesses, including, among other things, operating and managing the Debtors’ stores across the country, procuring raw materials and goods, and providing necessary administrative, managerial, and financial support services.

13. The Debtors also utilize the services of contract workers (the “*Contracted Labor*”) and, together with the Employees, the “*Workforce*”) from time to time to provide a variety of services. The Debtors engage Contracted Labor in various capacities, such as independent contractors, temporary staff, and independent consultants, who provide interim or specialty services for the Debtors’ distribution and manufacturing centers. Contracted Labor fills immediate business needs of the Debtors with a flexible workforce enabling the Debtors to meet their operational needs in a cost-effective manner.

³ Certain of the Employees are “insiders,” as such term is defined in section 101(31) of the Bankruptcy Code (the “*Insiders*”), but the Debtors believe all Insiders bear the title of “Senior Vice President,” “Executive Vice President,” or “Officer,” with the exception of one Insider who is a Vice President.

II. PREPETITION WORKFORCE OBLIGATIONS

14. In the ordinary course, the Debtors incur a number of obligations to, or for the benefit of, their Workforce, which include:⁴

- (i) Employee-related wage and salary obligations (the “*Wage Obligations*”) described in Section II.A, the payroll processing services described in Section II.B, the other compensation programs described in Section II.C (including the Employee Incentive Programs, the Non-Insider Retention Programs, PTO, the Director Compensation, and the Severance Plans), the Expense Reimbursements described in Section II.D, and all related administrative and incidental costs (collectively, the “*Employee Compensation Obligations*”);
- (ii) obligations for the Health and Welfare Benefits described in Section II.E and the savings, pension, and other retirement programs described in Section II.F (collectively, the “*Employee Benefit Obligations*”);
- (iii) obligations for all Contracted Labor (collectively, the “*Contracted Labor Obligations*”);
- (iv) obligations for all employment, unemployment, Social Security, and foreign, federal, state, and local taxes relating to the Employee Compensation Obligations and Employee Benefit Obligations (collectively, the “*Payroll Taxes*”);
- (v) obligations for other payroll deductions, including, but not limited to, retirement and other employee benefit plan contributions, and voluntary deductions (the “*Other Payroll Deduction Obligations*,” and collectively with the Payroll Taxes, the “*Payroll Deduction Obligations*,”); and
- (vi) certain garnishments from Employees’ paychecks (the “*Garnishments*,” and collectively with the Employee Compensation Obligations, the Employee Benefit Obligations, the Payroll Deduction Obligations, the workers’ compensation obligations described in Section II.G, and the payments to administrators described in Section II.H, the “*Prepetition Workforce Obligations*”).

15. The Debtors seek authority to pay amounts due on account of the Prepetition Workforce Obligations to the Workforce or the applicable third-party administrator, consultant, agent, or provider, as and when they come due, as further described herein.

⁴ Capitalized terms used but not defined in this paragraph have the meanings given to them elsewhere in this Motion.

16. The Debtors estimate that, as of the Petition Date, Prepetition Workforce Obligations total an aggregate amount of approximately \$21,073,000, which are summarized in the following table and further discussed below:

Prepetition Workforce Obligations	Estimated Prepetition Amounts
Wage and Salary Obligations	\$6,333,000
<i>Employees</i>	\$6,130,000
<i>Contracted Labor Obligations</i>	\$203,000
<i>Payroll Deduction Obligations and Garnishments</i>	\$1,841,000
Payroll Processing Services	\$36,000
Other Compensation Programs	\$6,519,000
<i>Hourly Employee Incentive Programs</i>	\$1,440,000
<i>Salaried Employee Incentive Programs</i>	\$4,630,000
<i>Long Term Incentive Plan</i>	N/A
<i>Commissions</i>	\$239,000
<i>Non-Insider Retention Programs</i>	\$150,000
<i>Director Compensation</i>	\$0
<i>Severance Plans</i>	\$60,000
Expense Reimbursements	\$345,000
<i>Credit Card Program</i>	\$252,000
Health and Welfare Benefits	\$2,738,000
<i>Life and Disability Programs</i>	\$71,000
Retirement Obligations	\$3,786,000
<i>401(k)</i>	\$10,000
<i>Deferred Compensation Plan</i>	\$3,776,000
Workers' Compensation	\$1,182,000
Payments to Administrators	\$134,000
<i>Prepetition Workforce Obligations</i>	<i>\$21,073,000⁵</i>

⁵ The amounts set forth in this chart are estimates. For the avoidance of doubt, the Debtors are seeking authority in this Motion to pay all Prepetition Workforce Obligations.

A. Wage and Salary Obligations

1. Employees

17. Most Employees are paid in arrears every two weeks, with an aggregate average payroll of approximately \$4,920,000 for each pay period. Certain Employees that work at the Debtors' stores and distribution centers are paid in arrears every week, with an aggregate average payroll of approximately \$526,000 for each pay period. The Debtors estimate that, as of the Petition Date, they owe approximately \$6,130,000 in Wage Obligations to Employees.

2. Contracted Labor

18. The Debtors work with numerous staffing agencies such as Adecco USA, Inc.; Staffmark Investment LLC; Randstad General Partner (US), LLC; Frontline Work LLC; and Diverse Staffing Services, Inc. (collectively, the "*Staffing Agencies*") to engage certain Contracted Labor to provide their services. The Debtors primarily work with seven Staffing Agencies, although they also occasionally utilize independent contractors not affiliated with a Staffing Agency on an ad hoc basis. Annually, the Debtors average approximately \$1,120,000 in payments to the Staffing Agencies and \$910,000 to Contracted Labor. The Debtors estimate that, as of the Petition Date, they owe approximately \$112,000 to the Staffing Agencies and \$91,000 to Contracted Labor.

3. Payroll Deduction Obligations and Garnishments

19. The Debtors' aggregate average monthly Payroll Deduction Obligations for Employees total approximately \$3,730,000. As of the Petition Date, the Debtors estimate that they owe approximately \$1,838,000 in accrued but unpaid obligations on account of the Payroll Deduction Obligations, including Payroll Taxes and the amounts withheld from Employees and not yet remitted.

20. In the ordinary course of processing payroll checks for the Employees, applicable law requires the withholding of certain amounts for various Garnishments, such as tax levies, child support, and other court-ordered obligations. When required, Garnishments are withheld from the applicable Employees' paychecks and remitted to the appropriate garnishers on the applicable weekly or bi-weekly pay day. Garnishments average approximately \$6,000 per month. As of the Petition Date, the total accrued but unpaid obligations owed in connection with the Garnishments approximate \$3,000.

B. Payroll Processing Services

21. Payroll, including Payroll Taxes and Garnishments, is administered through UKG Inc. ("*UKG*"). The ongoing services of UKG are imperative to payroll processing, and more broadly, the smooth functioning of the Debtors' operations. In the aggregate, on an annual basis, the Debtors pay fees of approximately \$370,000 for UKG's services, which amounts are paid monthly out of the Debtors' accounts payable. As of the Petition Date, the Debtors estimate that they owe approximately \$36,000 in accrued but unpaid obligations on account of UKG's services.

C. Other Compensation Programs⁶

1. Employee Incentive and Other Compensation Programs

22. In the ordinary course of business, to encourage and reward outstanding performance, both Salaried Employees and Hourly Employees may earn bonuses under various bonus and incentive programs, specifically, the Hourly Employee Incentive Programs, the Salaried Employee Incentive Programs, and the LTI Plan (each as further described herein and each defined below) based on specified individual and business targets (collectively, the "*Employee Incentive*

⁶ Any description of the Employee Incentive Programs is for illustration purposes only, is not intended to be a comprehensive recitation of all of the applicable terms and conditions and is qualified in its entirety by the governing agreements.

Programs”). Further, the Debtors offer certain other compensation programs to eligible Employees and non-Employee Directors (as defined herein), namely, the Non-Insider Retention Programs, PTO, Director Compensation, and Severance Plans (each as defined below, and together with the Employee Incentive Programs, the “*Employee Incentive & Compensation Programs*”).

23. *Hourly Employee Incentive Programs.* The Debtors offer a number of incentive programs to Hourly Employees who work in the Debtors’ stores, distribution centers, and store support centers (the “*Hourly Employee Incentive Programs*”). Under the Hourly Employee Incentive Programs, Employees can earn cash awards for meeting specified EBITDA and store sales goals.

24. Based on historical payments and if applicable targets are met, the Debtors estimate that approximately \$1,440,000 will be payable under the Hourly Employee Incentive Programs on account of the prepetition services of applicable Employees. By this Motion, the Debtors seek authority to pay any unpaid amounts on account of the Hourly Employee Incentive Programs to non-Insiders as they become due in the ordinary course.

25. *Salaried Employee Incentive Programs.* Similar to the Hourly Employee Incentive Programs, the Debtors offer incentive programs to Salaried Employees, based on regional sales and the Debtors’ adjusted EBITDA (the “*Salaried Employee Incentive Programs*”). The Salaried Employee Incentive Programs that are based on regional sales are paid out quarterly while incentives that are based on EBITDA are paid out annually. Based on historical payments and if applicable targets are met, the Debtors estimate that approximately \$4,630,000 will be payable under the Salaried Employee Incentive Programs on account of the prepetition services of applicable Employees. By this Motion, the Debtors seek authority to pay any unpaid amounts on

account of the Salaried Employee Incentive Programs to non-Insiders as they become due in the ordinary course.

26. *Long Term Incentive Plan.* The Debtors offer certain Employees long term equity-based incentive awards (the “**LTI Plan**”) in the form of restricted stock awards, based on the achievement of specified EBITDA goals. As of the Petition Date, the Debtors have granted a total of approximately 121,000 restricted stock awards covering shares of common stock. Restricted stock awarded under the LTI Plan typically vests after three years. By this Motion, the Debtors seek authority to continue the LTI Plan in the ordinary course of business for non-Insider Employees.

27. *Commissions.* Approximately 140 of the Debtors’ Employees sell the Debtors’ products to other businesses through a business-to-business sales model or otherwise are eligible to receive commissions (such Employees are collectively referred to herein as the “**Sales Representatives**”). The Debtors pay the Sales Representatives commissions (the “**Commissions**”) for meeting the monthly goal of net revenue sales. A Sales Representative’s Commission goals are based on the volume of sales made and, for certain Sales Representatives, on which products are sold. The criteria and conditions used by the Debtors to determine Commissions are periodically set and communicated by the Debtors to the Sales Representatives. Commissions are calculated and paid to Sales Representatives on a monthly basis. Based on historical payments and if applicable targets are met, the Debtors estimate that approximately \$239,000 will be payable in Commissions on account of the prepetition services of applicable Sales Representatives. By this Motion, the Debtors seek authority to pay any unpaid amounts on account of the Commissions to non-Insiders as they become due in the ordinary course.

2. *Non-Insider Retention Programs*⁷

28. In the ordinary course of business, the Debtors offer various retention programs instituted prepetition to certain eligible non-Insider Employees on an ad hoc basis (collectively, the “*Non-Insider Retention Programs*”). Under the Non-Insider Retention Programs, non-Insider Employees are eligible to receive a bonus in varying cash amounts with vesting periods generally within two (2) years. Eligibility for bonuses under each of the Non-Insider Retention Programs as of the Petition Date is subject to the condition that the participating Employee does not voluntarily terminate his/her employment or is not terminated by the Debtors for cause before the vesting date. In the aggregate, the outstanding awards owed under the Non-Insider Retention Programs total approximately \$150,000.

29. By this Motion, the Debtors request that the Court authorize the Debtors to continue making retention payments under the Non-Insider Retention Programs, in the ordinary course of business. For the avoidance of doubt, the Debtors are not seeking relief in connection with Non-Insider Retention Programs for any amounts to be paid to an Insider.

3. *Leave Policies*

30. Qualified Employees also receive other forms of compensation, including: paid time off pursuant to the Debtors’ applicable policies, such as vacation (“*PTO*”) and certain other paid and unpaid leave such as sick leave, parental leave, civic duties leave, medical leave, disability

⁷ Separate from and unrelated to the Non-Insider Retention Programs, the Debtors approved and/or paid certain retention bonuses – which must be repaid if the recipient does not continue working for the applicable entity for the specified retention period – to certain Insider and non-Insider Employees during the weeks ending July 2, 2024 and December 20, 2024. The Debtors do not seek approval or authorization from the Court or any other relief with respect to such awards, none of which will be paid during the Chapter 11 Cases.

leave, bereavement days, personal leave, and holidays (“*PSSL*”) which give rise to the Debtors’ paid time off obligations (collectively, the “*PTO Obligations*”).

31. Employees are eligible to receive PTO as part of their overall compensation pursuant to, among other things, the Debtors’ vacation and sick day policies. The Employees receive an annual PTO allowance depending on length of service and seniority level. Unused PTO is forfeited at the end of the year, unless otherwise mandated by state or local law.

32. The Debtors provide paid holidays for several dates annually which vary by the business segment in which the Employees work. Full Time Hourly Employees are immediately entitled to seven paid holidays per year, based on scheduled holidays, along with one floating holiday. The Debtors also provide paid sick leave to Employees. Generally, Employees are provided with 40 hours of sick leave per fiscal year. Unused sick leave is forfeited at the end of the year, unless otherwise mandated by state or local law.

33. The Debtors also offer bereavement leave to Employees following the death of a family member. Full Time Hourly Employees are granted three days of paid leave following the death of an immediate family member, and Part Time Hourly Employees are granted three days of unpaid leave following the death of immediate family members. At the discretion of the applicable Employees’ manager, Employees may be granted up to three unpaid days of leave following the death of other family members.

34. The Debtors submit that the aggregate amount of any accrued but unpaid PTO Obligations does not represent a true “cash” liability for the Debtors, as the Debtors anticipate that Employees will use most of their PTO and PSSL in the ordinary course of business. Further, only twenty-five percent of eligible Employees receive cash payments on account of accrued but unused PTO upon termination or resignation based on state law requirements.

35. The PTO and PSSSL constitute essential features of the employment package provided to the Debtors' Employees, and failure to provide these benefits would harm Employee morale and encourage the premature departure of valuable Employees. Furthermore, these forms of compensation are, in certain cases, required by applicable law and usual, customary, and necessary if the Debtors are to retain qualified Employees for business operations. Thus, failure to provide these benefits could contravene applicable law, harm Employee morale, and precipitate the departure of Employees. Accordingly, the Debtors request authority to honor all of their PTO Obligations as and when they come due in the ordinary course of business.

4. *Director Compensation*

36. In the ordinary course of business, the Debtors pay fees (the "***Director Compensation***") for the services of non-Employee directors of Debtor The Container Store Group, Inc. (the "***Directors***"). The Directors are paid on a quarterly basis in advance for services conducted. The Directors also receive an annual grant of an equity award of stock, restricted stock, or restricted stock units as determined by the board of directors of Debtor The Container Store Group, Inc.

37. The Directors' services are necessary for the continued management of the Debtors and, accordingly, it is essential that the Debtors continue to pay all Director Compensation in the ordinary course. By this Motion the Debtors request authority to (a) pay the Director Compensation as it comes due in the ordinary course of business, and (b) continue to grant equity awards to Directors in the ordinary course of business.

5. *Severance Plans*

38. Prior to the Petition Date and in the ordinary course of business, the Debtors maintain a severance policy (the "***Severance Policy***") through which certain Employees, including

both Insiders⁸ and non-Insiders, are eligible to receive severance benefits. The Severance Policy applies to eligible Employees upon a qualifying termination of employment or other qualifying event, such as the closure of one of the Debtors' stores. The amount of severance varies from a minimum of two weeks to a maximum of 20 weeks, depending on the Employee's role. The Debtors have discretion over the size of severance amounts, but generally, unless otherwise indicated in a written agreement that specifically provides for other severance benefits, the Debtors pay out as severance less than one week's salary for every year of service.

39. In addition, prior to the Petition Date and in the ordinary course of business, the Debtors provided specific severance benefits to certain Employees through separate severance agreements or employment agreements (collectively, the "*Severance Packages*"). For instance, the Debtors entered into employment agreements with certain executive Employees pursuant to which such executive Employees are eligible to receive, subject to certain terms and conditions, a Severance Package in an amount individually negotiated between the Employee and the respective Debtor for which it performs services.

40. Upon termination, former Employees are entitled to continue their coverage under the Medical Plans, Dental Plan, Vision Plan, and FSAs (each as defined below) under the Consolidated Omnibus Budget Reconciliation Act ("*COBRA*"), which allows covered Employees and their family members to continue their group coverage entirely at their own cost without contributions by the former employer. However, there may be instances when the Debtors decide to pay for a part of COBRA coverage (as determined on a case-by-case basis), and in these

⁸ Certain Employees who are covered by the Severance Policy constitute Insiders of the Debtors. The Debtors seek authority to continue the Severance Policy in the ordinary course of business postpetition with respect to both Insider Employees and non-Insider Employees subject to section 503(c) of the Bankruptcy Code. For the avoidance of doubt, however, the Debtors do not by this Motion seek authority to pay any amounts with respect to the Severance Policy to Insider Employees, and the Debtors will file a subsequent motion seeking approval from this Court prior to making any payments to Insiders under the Severance Policy.

instances, the Debtors pay COBRA directly on behalf of the former Employee if the former Employee elects coverage (the “*COBRA Reimbursement*,” and together with the Severance Policy and Severance Packages, the “*Severance Plans*”). As of the Petition Date, the Debtors estimate that they do not owe any unpaid amounts to former Employees on account of COBRA Reimbursement obligations.

41. In the year-to-date period prior to the Petition Date, the Debtors have paid approximately \$2,200,000 in severance to 108 former Employees. As of the Petition Date, the Debtors estimate that they owe approximately \$60,000 to former non-Insider Employees on account of the Severance Plans.

42. The Debtors believe it is important that they honor their severance commitments. In doing so, the Debtors will show their current Employees that the Company fulfills the promises that it makes to its Employees; promises on which the Employees have relied in contributing their time and hard work. The Debtors feel such assurances are invaluable not only to maintain and boost the morale of the current Employees, but also to attract and retain new Employees. These severance benefits are typically provided in exchange for a general release of liability from the terminated Employees in favor of the Debtors. Therefore, the Debtors believe that it is important that they have the flexibility to maintain their current practice of honoring their severance program for Employee retention and morale. By this Motion, the Debtors request authority, in their sole discretion, to continue the Severance Plans in the ordinary course of business, to provide any eligible non-Insider Employee with severance benefits in the event such Employee is terminated postpetition, and to pay any outstanding prepetition amounts in connection with the Severance Plans (all of which are owed to non-Insiders). However, for the avoidance of doubt, the Debtors do not seek by this Motion the authority to make any payments to Insiders under the Severance

Plans, and the Debtors will file a subsequent motion seeking approval from this Court prior to making any payments to Insiders under the Severance Plans, if necessary.

D. Expense Reimbursements

43. The Debtors, in the ordinary course of business, pay for a variety of ordinary, necessary, and reasonable business-related expenses (or pay for reimbursement of such expenses) that the Employees and Directors incur on behalf of the Debtors in the scope of their employment (all such obligations described in this section, the “*Expense Reimbursements*”). Expense Reimbursements may include expenses for business travel (including lodging, automobile rentals, and meals), business-related transportation and mileage costs, and other general business-related expenses. Employees are expected to use sound judgment and good business sense when incurring such expenses.

44. Although not necessary for Employees to receive an Expense Reimbursement, in certain instances, Employees may be issued corporate credit cards to pay for Expense Reimbursements. Such Employees are issued a company credit card through American Express (“*AmEx*”) to be utilized for travel and other business-related expenses, subject to an internal review and approval process (the “*Credit Card Program*”).⁹ Expense Reimbursements made to Employees outside of the Credit Card Program are processed using software that the Debtors license from Concur Technologies, Inc. (“*Concur*”) on a weekly basis, and all claimed business expenses are subject to a review and approval process.

⁹ The Credit Card Program is backed by an approximately \$275,000 letter of credit issued to AmEx on behalf of Debtor The Container Store, Inc., as applicant, for the benefit of the Debtors. The Debtors seek relief with respect to such letter of credit in the *Emergency Motion of Debtors for Entry of an Order (I) Authorizing the Debtors to (A) Pay the Prepetition Insurance Programs Obligations, (B) Maintain the Insurance Programs Postpetition, (C) Maintain the Bonding Program and Honor Related Obligations, and (D) Honor Letters of Credit, and (II) Granting Related Relief.*

45. Approximately 560 Employees have a company credit card, and the average aggregate monthly amount incurred on the company credit cards is approximately \$252,000. As of the Petition Date, the Debtors estimate that they owe approximately \$345,000 in accrued but unpaid Expense Reimbursements.

46. By this Motion, the Debtors seek authority to pay all prepetition Expense Reimbursements accrued and unpaid as of the Petition Date, including those under the Credit Card Program, and to continue such practices on a postpetition basis in the ordinary course of business.

E. Health and Welfare Benefits

47. Eligible Employees may elect from a portfolio of benefits, including medical and prescription drug coverage, dental coverage, vision coverage, COBRA coverage, flexible spending accounts, life insurance, disability insurance, and other benefit programs provided to Employees in the ordinary course of business (the health and welfare benefits obligations described in this section, the “*Health and Welfare Benefits*”). The Debtors seek authority to continue the Health and Welfare Benefits.

1. General

48. To procure the Health and Welfare Benefits for the Employees, the Debtors utilize a broker, Marsh McLennan Agency LLC, (“*MMA*” or the “*Benefits Broker*”). The Debtors pay approximately \$200,000 in annual fees to the Benefits Broker, paid in quarterly installments.

49. Salaried Employees, Full Time Hourly Employees, and Employees eligible under the Affordable Care Act are eligible to receive Health and Welfare Benefits. Part Time Hourly Employees are also eligible for more limited Health and Welfare Benefits. As of the Petition Date, the Debtors estimate that they owe approximately \$2,738,000 in accrued but unpaid obligations on account of the Health and Welfare Benefits.

2. *Medical and Dental Plans*

50. Eligible Employees have the opportunity to obtain basic medical, prescription drug, vision, and dental coverage, and related benefits (the “**Medical and Dental Benefits**”). Medical and Dental Benefits are primarily provided through self-insured programs administered by UnitedHealthcare (“**UHC**”), and the Debtors pay monthly stop-loss premiums totaling approximately \$87,000 per month to Stealth Partner Group, an Am Wins Company (“**Highmark**”).

51. Generally, eligible Full Time Hourly Employees and Salaried Employees are offered two coverage options: a Performance PPO plan or a Surest Choice Plus Network plan (collectively, the “**Full-Time Medical Plan**”). Two more-limited medical plans are offered to Part Time Hourly Employees that are ineligible for the Full-Time Medical Plan (collectively, the “**Part-Time Medical Plan**,” and together with the Full-Time Medical Plan, the “**Medical Plans**”). The Part-Time Medical Plan is administered by Hooray Health (“**Hooray**”). As of the Petition Date, approximately 1,440 Employees participate in the Medical Plans.

52. Eligible Employees may also obtain dental benefits through one of two dental plans, which are also administered by UHC: a DHMO plan or a PPO plan (collectively, the “**Dental Plan**”). As of the Petition Date, approximately 1,160 Employees participate in the Dental Plan.

53. Eligible employees also have the option to enroll in vision benefits administered by UHC (the “**Vision Plan**”). The Vision Plan generally covers Employees’ routine eye exams, eyeglass frames and lenses, and contact lenses to varying degrees depending on the service and whether the provider is within UHC’s network or is outside the network (the latter option being more costly to the Employee). As of the Petition Date, approximately 1,060 Employees participate in the Vision Plan.

54. The Medical and Dental Benefits are self-insured, including with respect to prescription drug coverage.

3. *Pre-Tax Contribution Flexible Savings Accounts*

55. Eligible Employees have the opportunity to contribute, through pre-tax compensation deductions, to flexible spending accounts (“*FSAs*”) to be used for healthcare related expenses or and dependent care expenses, subject to limits imposed by federal law. Wex Inc. (“*Wex*”), which administers the claims under the FSAs, provides participating Employees a debit card that may be used to pay for eligible expenses directly. To be reimbursed for eligible expenses not paid with the debit card, Employees must submit eligible claims to Wex, which then remits reimbursements to the Employees. As of the Petition Date, the Debtors estimate that they are holding FSA deductions to be remitted to Wex of approximately \$521,000.

4. *Life and Disability Insurance*

56. Eligible Employees receive, at the Debtors’ cost, basic life insurance and accidental death and dismemberment (“*AD&D*”) insurance. The basic life insurance plan pays Employee’s designated beneficiary a life insurance benefit of \$15,000. Employees may purchase more substantial life and AD&D insurance (including for dependents), in addition to short-term disability (“*STD*”) insurance or long-term disability insurance (collectively, with basic life insurance, STD insurance, and AD&D insurance, the “*Life and Disability Programs*”). Employees’ eligibility to receive, and the scope of, the Life and Disability Programs varies depending on various factors, such as the Employee’s classification as full or part-time. The Life and Disability Programs are administered by Life Insurance Company of North America, New York Life Insurance Company, or Cigna Life Insurance Company of New York depending on the specific insurance policy.

57. As of the Petition Date, the Debtors estimate that they owe approximately \$71,000 in accrued but unpaid obligations on account of Life and Disability Program for Employees.

5. *Additional Employer-Provided Programs*

58. Employees, at the expense of the Debtors, may utilize counseling services through an employee assistance program (the “*EAP*”) operated by New York Life Insurance Company (“*New York Life*”). Eligible employees may utilize EAP for telephonic or face-to-face counseling services. Additionally, eligible employees, at the Debtors’ expense, receive access to 24/7 digital fertility and maternity support through Maven, and the Debtors provide financial support to eligible employees’ adoption or surrogacy through a reimbursement of up to \$5,000 on eligible expenses per child.

59. The Debtors also provide a travel assistance program to eligible Employees through New York Life, provide a stipend for a certain amount of Employees’ cell-phone-related expenses, and recognize Employees’ valuable citizenship and cultural contributions to the Debtors through a non-monetary employee service awards program administered by O.C. Tanner Company (“*OC Tanner*”).

6. *Voluntary Additional Benefits*

60. The Debtors offer a number of additional voluntary benefits for Employees (the “*Voluntary Additional Benefits*”). These benefits include access to accident, critical illness, hospital indemnity, and pet insurance plans. The Debtors incur no costs on account of the benefits described above; however, Employees may choose to pay premiums via payroll deductions.

F. Savings, Pension, and Other Retirement Obligations

1. *401(K)*

61. Eligible Employees may elect to participate in the Debtors’ 401(k) savings plan, a qualified defined contribution plan (the “*401(k) Plan*”), for retirement savings for eligible Employees pursuant to section 401 of the Internal Revenue Code. Employees may contribute up

to the federal statutory cap of \$23,000 per year (or \$30,500 per year for those Employees aged 50 or over).

62. The 401(k) Plan is administered by Fidelity Brokerage Services LLC (“**Fidelity Brokerage**”). Aside from annual administrative fees of approximately \$8,700 that are paid by the Debtors, costs attributable to the 401(k) Plan are initially borne by Employee contributions and later offset by revenue sharing credits applied to the accounts of Employees participating in the 401(k) Plan. Additionally, the Debtors pay, in quarterly installments, an annual aggregate amount of approximately \$49,000 to CapFinancial Partners, LLC (“**CapTrust**”) on account of advisory and co-fiduciary services that CapTrust provides as part of the 401(k) Plan. As of the Petition Date, the Debtors estimate they owe approximately \$10,000 on account of the 401(k) Plan. By this Motion, the Debtors request authority, but not direction, to continue sponsoring the 401(k) Plan and pay fees owed to Fidelity Brokerage and CapTrust on account of the 401(k) Plan in the ordinary course.

2. *Deferred Compensation Plan*

63. In addition to the 401(k) Plan, the Debtors have historically maintained The Container Store Non-Qualified Retirement Plan (the “**Deferred Compensation Plan**”), a deferred compensation plan whereby eligible Employees could defer a portion of their compensation pre-tax to be withdrawn during retirement. The Deferred Compensation Plan was funded through a “rabbi trust” (the “**Rabbi Trust**”) managed by Fidelity Management Trust Company as trustee (“**Fidelity Management**” and together with Fidelity Brokerage, “**Fidelity**”).

64. Historically, certain Employees were given the opportunity to contribute up to 50% of their base salary and 100% of their bonus, pre-tax to the Rabbi Trust. Pursuant to such Employees’ elections, the Debtors reduced the salary paid to such Employees and made a

corresponding contribution to the Rabbi Trust. Retired Employees then receive distributions from the Rabbi Trust pursuant to the terms of the Deferred Compensation Plan.

65. The Debtors stopped offering Employees the opportunity to make contributions to the Rabbi Trust in August 2024. However, there are 38 current and former Employees who are owed deferred compensation pursuant to the Deferred Compensation Plan, some of whom currently receive regular distributions under the Deferred Compensation Plan. As of the Petition Date, there is approximately \$3,776,000 in total obligations owed under the Deferred Compensation Plan. The Debtors obligations under the Deferred Compensation Plan are fully funded by amounts already contributed to the Rabbi Trust, so the Debtors do not anticipate the need for additional cash outlays during the Chapter 11 Cases to fund such obligations. Additionally, no further obligations are being incurred under the Deferred Compensation Plan. The Debtors do not seek relief for the Deferred Compensation Plan pursuant to this Motion but intend to continue to honor their obligations on a postpetition basis in the ordinary course of business.

G. Workers' Compensation

66. The Debtors carry workers' compensation insurance that provides coverage for Employee-related injuries, disability, or death, as prescribed by state and federal workers' compensation laws and other statutes. In connection with these requirements, the Debtors maintain workers' compensation insurance policies, depending upon the state or other non-U.S. jurisdiction in which the covered Employees work.

67. The Debtors maintain a workers' compensation policy for Ohio and Washington, which are monopolistic states, through state-specific funds (the "*Monopolistic Workers' Compensation Policies*"). The Debtors pay any related premiums directly to the applicable monopolistic state, each of which also manages its own respective claims. The Debtors estimate

that, as of the Petition Date, they owe approximately \$14,400 in premiums on account of the current Monopolistic Workers' Compensation Policies.

68. The Debtors primarily self-insure their workers' compensation programs. The Debtors' workers' compensation obligations are backed by an approximately \$3,900,000 letter of credit by JPMorgan Chase Bank, N.A. on behalf of Debtor The Container Store, Inc. as applicant, for the benefit of the Debtors.¹⁰

69. In non-monopolistic states, the Debtors' Employees are covered under two policies (the "*Non-Monopolistic Workers' Compensation Policies*", and together with the Monopolistic Workers' Compensation Policies, the "*Workers' Compensation Policies*") through ACE American Insurance Co. or an affiliate ("*ACE*") under which Debtor The Container Store, Inc. is the insured party; one policy provides coverage for workers' compensation claims in Wisconsin and the other policy provides coverage for workers' compensation claims in all other states. The Debtors paid two equally sized up-front premium installments in aggregate annual of \$567,000 to fund the current policies, which run from September 15, 2024 through September 15, 2025. Under these policies, ACE provides insurance for workers' compensation claims in excess of the \$1,000,000 deductible per accident or disease, up to applicable statutory limits.

70. Year to date, the Debtors have paid approximately \$1,139,000 on account of claims for and relating to workers' compensation (collectively, the "*Workers' Compensation Claims*"). As of the Petition Date, there are approximately 54 current Workers' Compensation Claims open against the Debtors.¹¹ The Debtors estimate that, as of the Petition Date, they owe approximately

¹⁰ For the avoidance of doubt, by this Motion, the Debtors seek authority to honor any obligations allocable to the Debtors for the Workforce with respect to the \$3,900,000 letter of credit addressed herein, including, without limitation, any obligations to post collateral as required by the institutions issuing such letter of credit.

¹¹ To the best of the Debtors' knowledge, this Motion accurately reflects all current outstanding obligations relating to Workers' Compensation Claims. Nonetheless, out of an abundance of caution, to the extent that any formerly closed Workers' Compensation Claims are re-opened during the pendency of these Debtors' Chapter 11 Cases,

\$1,182,000 in accrued but unpaid obligations on account of the current Workers' Compensation Claims.

71. Furthermore, to facilitate the ordinary course handling of Workers' Compensation Claims, the Debtors request authority, in their discretion, to agree to the modification of the automatic stay of section 362 of the Bankruptcy Code to allow Workers' Compensation Claims to proceed under the applicable Workers' Compensation Policy and to allow the Debtors, their affiliates, their insurance providers, and/or their third-party administrators to negotiate, settle, and/or litigate Workers' Compensation Claims, and pay resulting amounts, whether such claims arose before or after the Petition Date.

H. Payments to Administrators

72. The Debtors rely on certain third-party providers or administrators to administer and deliver other payments and benefits to the Employees (collectively, the "*Administrators*"), including UKG, Concur, MMA, Wex, Fidelity, CapTrust, New York Life, UHC, Highmark, Hooray, OC Tanner, and others, all as described herein.

73. In conjunction with the Debtors' payment of their prepetition Workforce obligations and continued performance under Workforce programs, the Debtors believe that it is necessary to obtain specific authorization to pay any claims of the Administrators on a postpetition basis, including prepetition claims to the extent necessary, to ensure uninterrupted delivery of certain benefits to the Workforce. The Debtors believe that the Administrators may fail to adequately and timely perform or may terminate their services to the Debtors unless the Debtors pay the Administrators' prepetition claims for administrative services rendered and expenses

the Debtors also seek authority, by this Motion, to apply the relief requested in this Motion to such claims. The Debtors reserve all rights related thereto.

incurred. If the Debtors were required to replace the Administrators postpetition, it likely would cause significant disruption to the payment of benefits and other obligations to the Workforce. Accordingly, the Debtors submit that paying claims owed to the Administrators is in the best interest of the Debtors' estates. As of the Petition Date, the Debtors estimate that they owe approximately \$134,000 in accrued but unpaid obligations on account of payments to Administrators.

BASIS FOR RELIEF

I. PAYING THE PREPETITION WORKFORCE OBLIGATIONS IS WARRANTED UNDER SECTIONS 105(A), 363(B), AND 1107 OF THE BANKRUPTCY CODE

74. To the extent that payment of any of the Prepetition Workforce Obligations sought to be paid under this Motion would be deemed to constitute a use of property outside the ordinary course of business, a basis for authorizing payment of the amounts associated with such obligations is found under section 363(b) of the Bankruptcy Code. Section 363(b)(1) authorizes courts, after notice and a hearing, to permit a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1); *see also In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (“Section 363(b) gives the court broad flexibility in tailoring its orders to meet a wide variety of circumstances.”). Courts in the Fifth Circuit have granted a debtor’s request to use property of the estate outside of the ordinary course of business upon a finding that such use is supported by sound business reasons. *See, e.g., In re BNP Petrol. Corp.*, 642 F. App’x 429, 434-35 (5th Cir. 2016) (*citing In re Cont’l Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986)) (“[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business”); *see also ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO L.L.C.)*, 650 F.3d 593 (5th Cir. 2011) (“Section 363 of the

Bankruptcy Code addresses the debtor's use of property of the estate and incorporates a business judgment standard. . . . The business judgment standard in section 363 is flexible and encourages discretion.”).

75. Further, section 105(a) of the Bankruptcy Code provides that a court “may issue any order, process, or judgement that is necessary or appropriate to carry out the provisions of” the Bankruptcy Code, pursuant to the “doctrine of necessity.” 11 U.S.C. § 105(a). The “doctrine of necessity” functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical claims not explicitly authorized by the Bankruptcy Code and further supports the relief requested herein. *See In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (recognizing the “doctrine of necessity”). Additionally, section 1107 of the Bankruptcy Code provides that a debtor in possession has, among other things, an “implied duty of the debtor-in-possession to ‘protect and preserve the estate, including an operating business’ going-concern value.” *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. at 497).

76. The Debtors do not seek to alter their compensation, vacation, or other benefit policies at this time. This Motion is intended only to permit the Debtors, in their reasonable discretion, to make payments consistent with the Debtors' existing policies to the extent that, without the benefit of an order approving this Motion, such payments may be inconsistent with the relevant provisions of the Bankruptcy Code, and to permit the Debtors, in their reasonable discretion, to continue to honor their practices, programs, and policies with respect to their Workforce, as such practices, programs, and policies were in effect as of the Petition Date. Consistent with prepetition practice, however, the Debtors request authority to offer reasonable, ordinary course, cost of living wage increases to their Employees.

77. The relief requested in this Motion represents a sound exercise of the Debtors' business judgment as it is directed at preserving the resources and value of their estates. Continued payment, without interruption, of the Prepetition Workforce Obligations, and the continued funding, without interruption, of the compensation and benefits plans, policies, programs, and practices attendant to such obligations, as described in this Motion, are vital to the Debtors' businesses and will ensure a smooth transition into chapter 11 and enhance the success of these cases. If the relief requested in this Motion is not granted, the Debtors' business operations will suffer to the detriment of the Debtors' estates, creditors, and other stakeholders.

78. Any delay or failure to pay wages, salaries, benefits, retention programs, incentive programs, and other similar items would irreparably impair Workforce morale, dedication, confidence, and cooperation. Also, any such delay or failure would adversely impact the Debtors' relationships with their Workforce, at a time when the support of their Workforce is critical to the success of the Chapter 11 Cases. The Debtors simply cannot risk the substantial damage to their businesses that would result from any decline in Workforce morale.

79. Without the relief requested in this Motion, the Workforce could also suffer undue hardship and, in many instances, serious financial difficulties, as some of the Workforce will likely need the amounts in question to meet their own personal financial obligations. Failure to reimburse business-related expenses will cause the Workforce to worry about personal liability for business-related charges, a concern that would discourage the Workforce from devoting their full attention to the Debtors' businesses and restructuring efforts.

80. Similarly, continued payment of administrative fees to the Administrators, including UKG, that administer the Debtors' Workforce Obligations and related Workforce Programs. Without the continued services of the Administrators, including UKG, the Debtors will

be unable to continue to honor their Workforce Obligations and related Employee Benefits in an efficient and cost-effective manner.

81. Finally, continuation of the Credit Card Program and payment of any prepetition amounts related thereto is also warranted under section 363(b) of the Bankruptcy Code. The Credit Card Program allows Employees to make necessary business-related purchases and provides the Debtors with a streamlined system for processing such expenses. If the Credit Card Program were discontinued, the Debtors would no longer be able to fund purchases directly, and Employees would be burdened with carrying the costs. Therefore, the Debtors request authority to maintain the Credit Card Program in the ordinary course of business, subject to the terms and conditions thereof.¹²

82. Accordingly, the Debtors have determined that paying the Workforce Obligations and continuing all of the Employee Benefits described in this Motion is, in each case, vital to preventing the loss of key members of the Workforce during the pendency of the Chapter 11 Cases and to maintaining the continuity and stability of the Debtors' operations.

II. THE PREPETITION WORKFORCE OBLIGATIONS CONSTITUTE PRIORITY CLAIMS

83. Most, if not all, of the Prepetition Workforce Obligations constitute priority claims under sections 507(a)(4) and (5) of the Bankruptcy Code. Pursuant to section 507(a)(4)(A) of the Bankruptcy Code, claims for "wages, salaries, or commissions, including vacation, severance, and sick leave pay" earned within 180 days before the Petition Date are afforded priority unsecured status to the extent of \$15,150 per Employee. Similarly, section 507(a)(5) of the Bankruptcy Code provides that claims for contributions to certain employee benefit plans also are afforded priority

¹² Continuation of the Credit Card Program and payment of prepetition amounts related thereto is also warranted under section 364 of the Bankruptcy Code.

unsecured status to the extent of \$15,150 per member of the Workforce covered by such plan, less any amount paid pursuant to section 507(a)(4). As priority claims, the Prepetition Workforce Obligations must be paid in full before any general unsecured obligations of the Debtors may be satisfied. Accordingly, the relief requested herein may affect only the timing of the payment of these priority obligations and should not prejudice the rights of general unsecured creditors or other parties in interest.

84. Virtually all of the Prepetition Workforce Obligations are priority claims that, in any event, will have to be paid in full. To the extent that Employees are owed aggregate amounts in excess of the priority cap, or amounts that may otherwise not be entitled to priority status, the Debtors submit that payment of their Prepetition Workforce Obligations in such higher or otherwise non-priority amounts is nonetheless justified under the authority discussed above. Accordingly, the Debtors request entry of the Proposed Order authorizing the Debtors to pay all Prepetition Workforce Obligations.

III. FUNDS RELATED TO THE PAYROLL TAXES AND PAYROLL DEDUCTION OBLIGATIONS MAY BE HELD IN TRUST AND MAY NOT BE PROPERTY OF THE ESTATES

85. Payroll Taxes withheld from an Employee's wages and any other Payroll Deduction Obligations are collected or withheld by the Debtors and may be held in trust for the benefit of the applicable taxing authority. As a result, the Debtors' estates may lack any beneficial interest in the Payroll Taxes and other Payroll Deduction Obligations, and those funds, therefore, may not be available for the satisfaction of creditors' claims. *See Begier v. IRS*, 496 U.S. 53, 58-59 (1990); *see also In re Columbia Gas Sys., Inc.*, 997 F.2d 1039, 1059 (3d Cir. 1993) (concluding that property that debtor holds in trust – either express or constructive – for another does not become property of the estate when the debtor files for bankruptcy, and stating that “Congress clearly intended the exclusion by section 541(d) to include not only funds held in express trust, but also

funds held in constructive trust.”); *EBS Pension L.L.C. v. Edison Bros. Stores, Inc. (In re Edison Bros., Inc.)*, 243 B.R. 231 (Bankr. D. Del. 2000) (same). Furthermore, federal and state laws require the Debtors to withhold certain tax payments from the Employees’ paychecks and to pay such amounts to the appropriate taxing authority. 26 U.S.C. §§ 6672, 7501(a); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95-97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees’ wages created a trust relationship between debtor and the city for payment of withheld income taxes); *In re DuCharmes & Co.*, 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes); *In re Chabrand*, 301 B.R. 468, 475-81 (Bankr. S.D. Tex. 2003) (same).

86. With respect to Payroll Taxes in particular, the payment of such taxes will not prejudice other creditors of the Debtors’ estates, as the relevant taxing authorities generally would hold priority claims under section 507(a)(8) of the Bankruptcy Code in respect of such obligations.

87. For these reasons, the Debtors submit that the relief requested is essential, appropriate, and in the best interests of their estates and creditors, and any parties in interest, and therefore, should be granted.

IV. THE COURT SHOULD AUTHORIZE THE CONTINUATION OF WORKFORCE PROGRAMS

88. With respect to the aspects of the Motion that seek authorization to satisfy all of the Debtors’ postpetition commitments with respect to the Workforce Programs, section 363(c) of the Bankruptcy Code authorizes such actions. In pertinent part, section 363(c)(1) of the Bankruptcy Code provides that “unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without

notice or a hearing.” 11 U.S.C. § 363(c)(1). The maintenance of the Workforce Programs and honoring postpetition obligations arising thereunder, including undertaking renewals of Workforce Programs as they expire, or entering into new arrangements, fits squarely within the foregoing provision. To the extent, however, that this Court finds that any such actions are not properly characterized as transactions in the ordinary course of the Debtors’ business, the Debtors respectfully request that this Court authorize the Debtors to take such actions pursuant to section 363(b) of the Bankruptcy Code as a reasonable exercise of their business judgment.

V. THE COURT SHOULD AUTHORIZE BANKS TO HONOR AND PAY CHECKS ISSUED AND ELECTRONIC FUNDS TRANSFERRED TO PAY THE PREPETITION WORKFORCE OBLIGATIONS

89. The Debtors further request that the Court authorize and direct their banking institutions and all other applicable banks and other financial institutions to receive, process, honor, and pay any and all checks drawn or electronic funds relating to the Prepetition Workforce Obligations, whether such checks were presented before or after the Petition Date; *provided* that sufficient funds are on deposit in the applicable bank accounts to cover such payments. The Debtors have sufficient liquidity to pay such amounts as they become due in the ordinary course of business, and under the Debtors’ existing cash management system, checks or wire transfer requests can be readily identified as relating to an authorized payment of the Prepetition Workforce Obligations. For that reason, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. The Debtors also seek authority to issue new postpetition checks or effect new electronic fund transfers, on account of the Prepetition Workforce Obligations to replace any prepetition checks or electronic fund transfer requests that may be dishonored or rejected as a result of the commencement of the Chapter 11 Cases.

VI. THE AUTOMATIC STAY SHOULD BE MODIFIED FOR WORKERS' COMPENSATION CLAIMS

90. Section 362(a) of the Bankruptcy Code “operates as a stay, applicable to all entities, of—the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.” *See* 11 U.S.C. § 362(a)(1).

91. Section 362(d) of the Bankruptcy Code, however, permits a debtor or other party-in-interest to request a modification or termination of the automatic stay for “cause.” There is cause to modify the automatic stay, because staying the Workers’ Compensation Claims could cause employee departures or otherwise harm Employee morale, which could severely disrupt the Debtors’ businesses and prevent a successful reorganization. Accordingly, the Debtors request the Court authorize the Debtors, in their discretion, to agree to modify the automatic stay under Section 362 of the Bankruptcy Code with respect to the Workers’ Compensation Claims.

EMERGENCY CONSIDERATION

92. The Debtors respectfully request emergency consideration of this Motion pursuant to Bankruptcy Local Rule 9013-1(i), the Complex Case Procedures, and Bankruptcy Rule 6003, which authorizes a court to grant relief within the first 21 days after the commencement of a chapter 11 case “to the extent that relief is necessary to avoid immediate and irreparable harm.” The Debtors believe that an immediate and orderly transition into chapter 11 is critical to the viability of their operations and the success of the Chapter 11 Cases. As discussed in detail above, immediate and irreparable harm would result if the relief requested herein is not granted. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm”

standard of Bankruptcy Rule 6003, and the Debtors believe that emergency consideration is necessary and respectfully request that this Motion be heard on an emergency basis.

WAIVER OF BANKRUPTCY RULE 6004(a) AND (h)

93. Additionally, with respect to any aspect of the relief sought herein that constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a), to the extent not otherwise satisfied, and of the fourteen-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors seek in this Motion is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of their estates. The Debtors thus submit that the requested waiver of the notice requirements of Bankruptcy Rule 6004(a) and of the fourteen-day stay imposed by Bankruptcy Rule 6004(h) is appropriate, as the exigent nature of the relief sought herein justifies immediate unstayed relief.

RESERVATION OF RIGHTS

94. Nothing in this Motion shall be deemed: (a) an implication or admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) a concession by the Debtors that any lien (contractual, common, statutory or otherwise) satisfied pursuant to the Motion is valid (and all rights to contest the extent, validity, or perfection or seek avoidance of all such liens are expressly reserved); (f) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (g) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (h) a waiver of the obligation

of any party in interest to file a proof of claim; or (i) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. If the Court enters any order granting the relief sought herein, any payment made pursuant to such order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

95. Nothing in the Proposed Order or this Motion shall be construed to (a) create or perfect, in favor of any person or entity, any interest in cash of any Debtor that did not exist as of the Petition Date or (b) alter or impair any security interest or perfection thereof, in favor of any person or entity, that existed as of the Petition Date.

96. Nothing in the Proposed Order or this Motion shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by any party.

NOTICE

97. Notice of the Motion will be given to: (a) the Office of the United States Trustee for the Southern District of Texas; (b) counsel to the DIP Term Loan Agents; (c) counsel to the DIP ABL Loan Agent; (d) counsel to the Ad Hoc Group and DIP Lenders; (e) counsel to the Prepetition Term Loan Agent; (f) counsel to the Prepetition ABL Agent; (g) the creditors listed on the Debtors' consolidated list of thirty (30) creditors holding the largest unsecured claims; (h) the Administrators; (i) the United States Attorney for the Southern District of Texas; (j) the Internal Revenue Service; (k) the Securities and Exchange Commission; (l) the state attorneys general for states in which the Debtors conduct business; and (m) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, under the circumstances, no other or further notice is required.

98. A copy of the Motion is available on (a) the Court's website, at www.txs.uscourts.gov, and (b) the website maintained by the Debtors' proposed claims and noticing

agent, Kurtzman Carson Consultants, LLC d/b/a Verita Global, at
<https://www.veritaglobal.net/thecontainerstore>.

[Remainder of page intentionally left blank.]

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: December 23, 2024
Houston, Texas

Respectfully submitted,

/s/ Timothy A. ("Tad") Davidson II

HUNTON ANDREWS KURTH LLP

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*Proposed Co-Counsel for the Debtors
and Debtors in Possession*

CERTIFICATE OF SERVICE

I certify that on December 23, 2024, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on those parties registered to receive electronic notices.

/s/ Timothy A. ("Tad") Davidson II
Timothy A. ("Tad") Davidson II

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

	X	
	:	
In re:	:	Chapter 11
	:	
THE CONTAINER STORE GROUP, INC., <i>et al.</i> ,	:	Case No. 24-90627 (ARP)
	:	
Debtors. ¹	:	(Jointly Administered)
	:	
	X	

**ORDER (I) AUTHORIZING THE DEBTORS
TO (A) PAY CERTAIN EMPLOYEE COMPENSATION
AND BENEFITS, (B) MAINTAIN AND CONTINUE SUCH
BENEFITS AND OTHER EMPLOYEE-RELATED PROGRAMS,
AND (C) PAY PREPETITION CLAIMS OF CONTRACTED LABOR;
(II) GRANTING RELIEF FROM AUTOMATIC STAY WITH RESPECT TO
WORKERS’ COMPENSATION CLAIMS; AND (III) GRANTING RELATED RELIEF
[Relates to Docket No. ____]**

Upon the emergency motion (the “*Motion*”)² of the Debtors for entry of an order (this “*Order*”) (i) authorizing, but not directing, the Debtors, in their discretion, to satisfy the Prepetition Workforce Obligations; (ii) confirming the Debtors’ right to continue postpetition, in the ordinary course of business, the Workforce Programs; (iii) modifying the automatic stay under section 362 of the Bankruptcy Code with respect to the Workers’ Compensation Claims to allow Workers’ Compensation Claims to proceed under the applicable Workers’ Compensation Policy and to allow the Debtors, their affiliates, their insurance providers, and/or their third-party administrators to negotiate, settle, and/or litigate Workers’ Compensation Claims, and pay resulting amounts, whether such claims arose before or after the Petition Date; and (iv) granting related relief, all as

¹ The Debtors in these cases, together with the last four digits of each Debtor’s taxpayer identification number, are: The Container Store Group, Inc. (5401); The Container Store, Inc. (6981); C Studio Manufacturing Inc. (4763); C Studio Manufacturing LLC (5770); and TCS Gift Card Services, LLC (7975). The Debtors’ mailing address is 500 Freeport Parkway, Coppell, TX 75019.

² Capitalized terms used but not defined herein shall have the meanings given to them in the Motion.

more fully set forth in the Motion; and the Court having reviewed the Motion and the First Day Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. § 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary, except as set forth in the Motion with respect to entry of this Order; and upon the record herein; and after due deliberation thereon; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Debtors are authorized but not directed, in their discretion and business judgment, to (a) pay or otherwise honor all Prepetition Workforce Obligations, *provided* that the Debtors are not authorized to pay any prepetition or postpetition bonus, severance, or retention obligations to any Insiders without further order of the Court, *provided further* that if unpaid prepetition claims or obligations to any employee exceed the priority wage cap imposed by Section 507(a)(4) of the Bankruptcy Code, the Debtors shall seek such relief pursuant to a separate motion; (b) honor, continue, and renew their programs, policies, and practices with respect to the Workforce, including the Prepetition Workforce Obligations and the Director Compensation that were in effect as of the Petition Date, in the ordinary course of business, and in the same manner and on the same basis as the Debtors honored and continued such programs, policies, and practices before the Petition Date; and (c) withhold all federal, state, and local taxes relating to the Employee Compensation Obligations and the Employee Benefit Obligations as required by applicable law.

2. The Debtors are authorized, in their sole discretion, to transmit any Payroll Deduction Obligations previously withheld or deducted from the Employee payroll to the appropriate third-party recipient.

3. The Debtors are authorized to pay any and all Payroll Taxes including, but not limited to, all local, state, and federal withholding and payroll-related taxes, social security taxes, Medicare taxes, or similar taxes related to the Prepetition Workforce Obligations, whether withheld from Employees' wages or paid directly by the Debtors to governmental entities and whether such taxes relate to the period before or after the Petition Date.

4. Nothing herein shall be deemed to authorize the Debtors to cash out or set off unpaid PTO Obligations, except upon termination of an Employee to the extent required by applicable non-bankruptcy law.

5. Nothing herein shall be deemed to authorize the Debtors to make any payment that violates section 503(c) of the Bankruptcy Code during the Chapter 11 Cases; *provided that* the Debtors are authorized to seek approval of any payments to Insiders under the Employee Incentive Programs, any retention program, and the Severance Programs by separate motion.

6. The Debtors' banks and financial institutions are authorized to receive, process, honor, and pay all checks, drafts, electronic fund transfers, or other forms of payment drawn or issued on the Debtors' bank accounts before the Petition Date for the Prepetition Workforce Obligations and the Director Compensation that have not been honored and paid as of the Petition Date (or to reissue checks, drafts, electronic fund transfers, or other forms of payment drawn or issued on the Debtors' bank accounts, as may be necessary), and are authorized to rely on the Debtors' directions or representations as to which checks, drafts, transfers, or other forms of payment drawn or issued on the Debtors' bank accounts are subject to this Order; *provided that*

sufficient funds are on deposit in the applicable bank accounts to cover such payments, and any such banks and financial institutions shall not have any liability to any party for relying on such directions or representations by the Debtors as provided in this Order.

7. The Debtors are authorized, but not directed, to reissue payment for the Prepetition Workforce Obligations and the Director Compensation and to replace any inadvertently dishonored or rejected payments. Further, the Debtors are authorized to reimburse any expenses that Employees or Contracted Labor may incur as a result of any bank's failure to honor a prepetition check.

8. The Debtors are authorized, but not directed, to continue their workers' compensation programs and to pay or set off any outstanding prepetition claims, taxes, charges, assessments, premiums, and third-party administrator fees arising under the Workers' Compensation Policies and or programs in which they participate. In addition, the Debtors are authorized, in their discretion, (a) to agree to modify the automatic stay of section 362 of the Bankruptcy Code, without further order of this Court, (i) to allow Workers' Compensation Claims to proceed under the applicable Workers' Compensation Policies and (ii) to allow the Debtors' insurance providers and/or third party-administrators to negotiate, settle, and/or litigate Workers' Compensation Claims, and (b) to pay resulting amounts, whether such claims arose before or after the Petition Date.

9. Any authorization under this Order to pay, and the payment of, any amounts on account of the Prepetition Workforce Obligations shall not affect the Debtors' right to contest the amount or validity of any of the Prepetition Workforce Obligations including, without limitation, any amounts that may be due to any taxing authority.

10. The Debtors are authorized, but not directed, to continue the Workforce Programs in the ordinary course of business during the Chapter 11 Cases and without the need for further Court approval, subject to applicable law.

11. Notwithstanding anything to the contrary in the Motion or this Order, the Debtors retain their right to, in the ordinary course of business, (a) modify, change, and discontinue any program, policy, or practice with respect to the Prepetition Workforce Obligations and (b) implement new programs, policies, and practices with respect to the Prepetition Workforce Obligations during the Chapter 11 Cases without the need for further Court approval to the extent such action is authorized by applicable law; *provided, however*, that the Debtors shall seek Court approval, on notice, of any modification that would implicate any portion of section 503(c) of the Bankruptcy Code.

12. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in the Motion or this Order shall create any rights in favor of, or enhance, limit, or change the status of any claim held by, any member of the Workforce or other person.

13. Nothing in the Motion or this Order, or the relief granted herein (including any actions taken or payments made by the Debtors), is to be construed as: (a) an implication or admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) a concession by the Debtors that any lien (contractual, common, statutory or otherwise) satisfied pursuant to the Motion is valid (and all rights to contest the extent, validity or perfection or seek avoidance of all such liens are expressly reserved); (f) a request or authorization

to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (g) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (h) a waiver of the obligation of any party in interest to file a proof of claim; or (i) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. Nothing contained in this Order shall be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

14. Nothing in this Order shall be construed to (a) create or perfect, in favor of any person or entity, any interest in cash of a Debtor that did not exist as of the Petition Date or (b) alter or impair any security interest or perfection thereof, in favor of any person or entity, that existed as of the Petition Date.

15. Nothing in this Order, nor as a result of any payment made pursuant to this Order, shall be deemed or construed as a waiver of the right of the Debtors, or shall impair the ability of Debtors, to contest the validity and amount of any payment made pursuant to this Order.

16. Notwithstanding anything to the contrary contained herein, any payment to be made hereunder, and any authorization contained herein, shall be subject to any interim and final orders, as applicable, approving the use of such cash collateral and/or the Debtors' entry into any postpetition financing facilities or credit agreements, and any budgets in connection therewith governing any such postpetition financing and/or use of cash collateral (each such order, a "**DIP Order**"). To the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

17. Nothing in the Motion or this Order waives or modifies the requirements of the Transaction Support Agreement, including, without limitation, the consent and consultation rights contained therein.

18. The requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

19. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Order shall be effective and enforceable immediately upon entry hereof.

20. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied because the relief set forth in this Order is necessary to avoid immediate and irreparable harm.

21. The Debtors are authorized and empowered to take all actions necessary or appropriate to implement the relief granted in this Order.

22. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Signed: _____

UNITED STATES BANKRUPTCY JUDGE