

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

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In re: : Chapter 11  
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THE CONTAINER STORE GROUP, INC., *et al.*, : Case No. 24-90627 (ARP)  
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Debtors.<sup>1</sup> : (Joint Administration Requested)  
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**EMERGENCY MOTION OF DEBTORS FOR ENTRY  
OF AN ORDER (I) AUTHORIZING THE DEBTORS  
TO (A) HONOR PREPETITION OBLIGATIONS TO CUSTOMERS AND  
(B) CONTINUE CUSTOMER PROGRAMS AND (II) 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 Judge Perez’s home page. Select the case name, complete the required fields and click “Submit” to complete your appearance.**

<sup>1</sup> 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.



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, substantially in the form attached hereto (the “*Proposed Order*”), (i) authorizing, but not directing, the Debtors to (a) fulfill and honor (through payment, credit, setoff, or otherwise) the Customer Obligations (as defined below) as they deem appropriate and (b) continue, renew, replace, terminate, and implement new Customer Programs (as defined below) and any other customer practices as they deem appropriate, without further application to the Court, and (ii) 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), 363, 1107(a), and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “*Bankruptcy Code*”), Rule 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.<sup>2</sup>

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 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

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

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 in order to implement the proposed restructuring and recapitalization transactions under the Transaction Support Agreement and Plan.

## **THE DEBTORS' CUSTOMER PROGRAMS**

### **I. THE DEBTORS' PRODUCTS AND CUSTOMER BASE**

11. The Debtors are a leading national specialty retail chain offering, among other things, storage and organizational products for homes and offices, reaching customers nationwide through their brick-and-mortar stores and e-commerce platform. As described in the First Day Declaration, the Debtors are comprised of two main product segments: (a) Custom Spaces and (b) General Merchandise. The Debtors serve an expansive customer base including individuals and businesses (the "*Customers*").

## II. OVERVIEW OF CUSTOMER PROGRAMS

12. To preserve the Debtors' critical and essential relationships with their Customers and maximize Customer loyalty, in the ordinary course of business the Debtors provide certain pricing, incentives, discounts, warranties and other accommodations and programs to their Customers (collectively, the "***Customer Programs***" and the obligations incurred thereunder, the "***Customer Obligations***"). The Customer Programs include Gift Cards, Promotions and Rewards Programs, Product Returns, Customer Warranties, Customer Deposits, TCS Credit Cards and Charitable Programs (each as defined below).

13. As further described below, the Debtors estimate that the aggregate value of accrued prepetition Customer Obligations is approximately \$61,010,000. A majority of the Customer Obligations are non-cash performance obligations, with accrued prepetition cash Customer Obligations comprising a very small portion of the total prepetition Customer Obligations.

### A. Gift Cards

14. Like many other retail businesses, the Debtors have available for purchase in their stores and online prepaid, non-expiring gift cards (the "***Gift Cards***") in various denominations. The Debtors also offer for purchase Gift Cards through a partnership program with Blackhawk Network ("***Blackhawk***"), a business-to-business distributor of gift cards. Blackhawk is the sole distributor of the Debtors' Gift Cards to certain brick and mortar grocery retailers (the "***Blackhawk Partners***").<sup>3</sup> The Blackhawk Partners, in turn, offer Gift Cards for sale in their stores. Further,

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<sup>3</sup> As of the Petition Date, the Blackhawk Partners include: The Kroger Company, New Seasons Market LLC, Riser Foods, Inc., SVU Corporate, SVU Independent, and Whole Food Market, Inc.

the Debtors offer for purchase Gift Cards online through digital partnership programs.<sup>4</sup> The Debtors have historically given Gift Cards to customers as an incentive for certain spend levels, however, the Debtors no longer engage in this practice. The Gift Cards can be redeemed in stores or online for the purchase of products at a later date.

15. The Debtors estimate they have outstanding Gifts Cards with an aggregate value of approximately \$23 million that have not yet been redeemed by Customers as of December 2024.<sup>5</sup> While the Debtors do not believe that all outstanding Gift Cards will be redeemed, the Debtors seek authority to honor all Gift Cards and obligations thereunder, including those Gift Cards purchased or issued prepetition, consistent with their prior practices and to continue the sale, issuance, and honoring of Gift Cards postpetition.

**B. Promotions and Rewards Program**

16. The Debtors regularly conduct sales promotions in their stores and online communicated via numerous media channels (collectively, the “*Promotions*”). The Debtors’ Promotions, which may vary on a daily basis, include pricing discounts, “buy x get y” offers, birthday rewards, and other similar Promotions. While most Promotions are consistent between the Debtors’ physical locations and their website and mobile applications, there are occasions where they may be different, or additional promotions may be made available in different channels. Thus, at any one time, including as of the Petition Date, different Promotions may be available to different Customers across the country and online. The Promotions are an important part of the

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<sup>4</sup> In connection with certain digital partnership programs, certain of the Debtors’ vendors offer redemption of awards tied to the Gift Cards.

<sup>5</sup> The Debtors do not track and have no information about the holders of Gift Cards.

Debtors' overall marketing strategy, as they help attract new Customers and retain existing ones by encouraging purchases of the Debtors' products.

17. The Debtors' marketing team also runs an "Organized Insider Program," which offers tiered discounts to Customers based on the Customers' spend while including other benefits such as bonus savings during store wide promotions, receipt free returns, sign up discounts, and free gifts. This program builds Customer loyalty and promotes sales.

18. By this Motion, the Debtors seek authority to continue utilizing the Promotions and the Organized Insider Program in the ordinary course of their business and consistent with prior practice, including any Promotions ongoing as of the Petition Date, and to honor any obligations in connection therewith whether arising prior to or after the Petition Date.

### **C. Product Returns**

19. Like most large retailers, the Debtors accept returns or exchanges from their Customers if, following its purchase, the Debtors' product does not meet the Customer's expectations (the "***Refund and Exchange Policy***"). Under the Refund and Exchange Policy, a Customer is entitled to: (a) a refund of the full purchase price of the product in the original form of payment, if the return is accompanied by an original sales receipt within 120 days of the date of the Customer's purchase or (b) an exchange or store credit in the form of store merchandise credit, which can be redeemed in stores or online for products at a later date ("***Store Credit***"). As to the latter, the amount of the Store Credit is based on either (x) the lowest price listed during the prior 90 days, if the return does not have an original sales receipt or (y) the actual purchase price listed on the original receipt, if the return is accompanied by an original sales receipt but was made after 120 days of the date of the Customer's purchase. Typically, if the Customer does not return the product to one of the Debtors' stores, the Customer is responsible for the shipping fee associated

with returning a product to the Debtors. Additionally, the Debtors extend a price adjustment if the Debtors reduce the full original retail price of a product within seven (7) days of the Customer's original product purchase date. Such adjustment is issued in the form of Store Credit or the original tender, when accompanied by the Customer's original receipt.

20. The Debtors periodically maintain reserves for anticipated returns associated with the Refund and Exchange Policy on the Debtors' balance sheet. The Debtors also estimate they have outstanding liabilities on account of Store Credit issued but not yet redeemed by Customers as of December 2024 in connection with the Refund and Exchange Policy in an aggregate amount of approximately \$14 million.

21. By this Motion, the Debtors seek authority to continue to utilize the Refund and Exchange Policy and the foregoing price adjustment policy in the ordinary course and consistent with past practices, and to honor any obligations in connection therewith whether arising prior to or after the Petition Date.

**D. Customer Warranties**

22. The Debtors offer standard warranties on the Debtors' Preston and Avera product lines (the "*Customer Warranties*"). The length of the warranty is dependent on the part or service involved. Non-moving Thermally fused wood and metal components have a limited "lifetime" nontransferable warranty. "Lifetime" is defined by the lifetime of the owner of the home at installation, or alternatively, in cases where the issue cannot be repaired, "lifetime" is defined as the period the Debtors can reasonably obtain the original materials. All movable components, lighting, and installation services come with a limited one-year, nontransferable, warranty from the date of installation.



23. As of the Petition Date, the Debtors do not believe there are any outstanding obligations owed under the Customer Warranties. For the avoidance of doubt, to the extent any obligations under Customer Warranties come due and payable during the Chapter 11 Cases, the Debtors intend to pay those in the ordinary course, and to the extent such obligations are deemed to have accrued prepetition, the Debtors seek authority to pay all such amounts.

**E. Customer Deposits**

24. As described in the First Day Declaration, the Debtors' products are divided into two main product segments: (a) Custom Spaces and (b) General Merchandise. The Debtors often require Customers to deposit funds to be used in connection with the Debtor's product segments (including but not limited to, the Debtors' Custom Spaces, uninstalled Elfa Spaces and Customer pickup orders) (the "*Customer Deposits*"). A Customer generally pays an initial deposit at the time of purchase and the remainder of the purchase price is due when the Customer receives its product.<sup>6</sup> In the event a Customer has paid a Customer Deposit, but no longer wants the product, such Customer Deposit may be handled through the Refund and Exchange Policy, or the order may be cancelled and the Customer Deposit refunded.

25. The Debtors estimate that, as of the Petition Date, the total amount of Customer Deposits is approximately \$24 million.<sup>7</sup> To maintain Customer goodwill, the Debtors seek authority to honor the Customer Deposits, consistent with their historical and prior practices. Further, and for the same reason, the Debtors also seek authority, upon a Customer request, to

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<sup>6</sup> Most of the Debtors' products require the Customer to make a deposit equal to 100% of the product's purchase price. The Debtors' Preston product line requires a 50% non-refundable deposit of the purchase price at the time of purchase and the remainder of the purchase price to be paid upon installation.

<sup>7</sup> Approximately \$107,000.00 of Customer Deposits are classified as deposits held for Customers in connection with the Promotions.

refund Customer Deposits for orders placed prior to the Petition Date in the full amounts of the Customer Deposit, consistent with their historical and prior practices.<sup>8</sup>

**F. TCS Credit Cards Program**

26. The Debtors maintain a private label credit card program for Customers with Synchrony Bank (“*Synchrony*”) based on a proprietary credit card (the “*TCS Credit Card*” and such program, the “*TCS Credit Card Program*”). The TCS Credit Card Program is governed by an agreement by and between Debtor The Container Store, Inc. and Synchrony (as amended, modified, supplemented, and/or restated from time to time, the “*Synchrony Agreement*”). Under the Synchrony Agreement, qualifying Customers can apply for a TCS Credit Card that can be used only to purchase the Debtors’ products and services. Synchrony offers, issues, and services the TCS Credit Cards, which are accepted solely at the Debtors’ products in-store, online or by phone. The Debtors are responsible for marketing and promoting the TCS Credit Card Program and paying certain fees to Synchrony.

27. When a Customer makes a purchase using a TCS Credit Card, the Customer finances his or her purchase through Synchrony Bank. Customer payment plans vary depending on (i) the type of promotional financing offer (past promotions have included offers of deferred interest, equal pay with no interest, and reduced interest rates with fixed monthly payments); (ii) the length of the promotion period; and (iii) the size of the purchase being financed. For example, certain promotions allow Customers to finance their purchase and pay no interest if the full amount of the purchase price is paid within a certain timeframe. Once the Customer chooses an applicable promotional financing offer, the Customer pays Synchrony directly. Pursuant to the Synchrony

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<sup>8</sup> For the avoidance of doubt, there are no additional cash obligations owed by the Debtors with respect to the Customer Deposits.

Agreement, the Debtors generally receive an amount equal to the net Customer purchase price amount, less any chargeback, interest, and/or processing fees charged by Synchrony. Fees owed to Synchrony are set off from the funds that are remitted to the Debtors on a daily basis.

28. The Debtors' ability to continue offering the TCS Credit Card Program and honoring the Synchrony Agreement is critical to the Debtors because the program drives sales to Customers who may not have had the ability to pay the full purchase price of certain products in one lump sum. The TCS Credit Card Program also promotes Customer loyalty by providing Customers with helpful financing options associated with the Debtors' brand. The TCS Credit Card Program does not require any cash outlay from the Debtors, as fees under the Synchrony Agreement are deducted from amounts remitted to the Debtors by Synchrony. The Debtors therefore request (i) the authority to continue the TCS Credit Card Program in the ordinary course in accordance with the Synchrony Agreement; and (ii) as part of the continuation of such programs, that the Court authorize Synchrony to continue to set off payments against amounts remitted to the Debtors in the ordinary course of business.

#### **G. Charitable Programs**

29. The Debtors participate in a number of charitable programs (the "***Charitable Programs***"). To optimize their charitable giving impact, the Debtors have partnered with the American Heart Association ("***AHA***"). The Charitable Programs include: (a) donations from Customers collected at checkout that are then donated to certain Charitable Partners ("***Round-Up Donation Programs***"); and (b) an agreement between the Debtors and AHA (the "***AHA Donation Program***") to remit a percentage of sales of certain stock-keeping units ("***SKUs***"). The SKUs are marketed in-store and online as 10% of profits going to AHA. As of the Petition Date, 2024, the

Debtors held approximately \$10,000 in sales of SKUs that will ultimately be payable under the Charitable Programs and remitted to AHA.

30. By this Motion, the Debtors seek authority to continue to participate in and operate the Charitable Programs, including but not limited to, the Round-Up Donation Programs and the AHA Donation Program, in the ordinary course and consistent with past practices.

### **BASIS FOR RELIEF**

31. The Debtors' goodwill and ongoing business relationships may erode if the Customers perceive that the Debtors are unable or unwilling to fulfill the prepetition commitments they have made through the Customer Programs. If the Debtors are unable to preserve the loyalty of their Customers, the Debtors' businesses would likely suffer material harm at this critical juncture. It is essential, therefore, that the Debtors be able to fulfill their Customer Obligations and continue the Customer Programs to ensure customer satisfaction and maintain the goodwill of their Customers during the pendency of these cases. Doing so is critical to the Debtors' ongoing operations and ability to preserve and maximize value for all parties in interest. Indeed, without the ability to continue the Customer Programs and satisfy the Customer Obligations, the Debtors risk losing market share, harming their future business and revenue growth, and potentially reducing the recoveries of all the Debtors' stakeholders.

#### **I. PAYING PREPETITION CUSTOMER OBLIGATIONS IS WARRANTED UNDER SECTIONS 105(a) AND 363(b) OF THE BANKRUPTCY CODE**

32. The Court may authorize the Debtors' payment of the Customer Obligations under section 363(b)(1) of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code authorizes the trustee to use property of the estate other than in the ordinary course of business after notice and a hearing. 11 U.S.C. § 363(b)(1). 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.”). In addition, courts may authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code, which codifies the Court’s inherent equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”

33. The Debtors submit that the requested relief represents a sound exercise of the Debtors’ business judgment, is necessary to avoid immediate and irreparable harm, and is justified under sections 105(a) and 363(b) of the Bankruptcy Code. If the Debtors are prohibited from honoring the Customer Obligations and maintaining the Customer Programs consistent with their past business practices, the Customers may lose confidence in the Debtors’ ability to provide products and services on competitive terms, and will likely cause some of the Customers to seek alternative stores to meet their demands. In addition, the damage from refusing to honor these obligations far exceeds the cost associated with honoring prepetition obligations and continuing these practices. The relief requested herein will protect the Debtors’ goodwill with their Customers during this critical time and enhance the Debtors’ ability to generate revenue. Consequently, all of the Debtors’ creditors will benefit if the requested relief is granted.

34. Accordingly, the Debtors request that, in their discretion and as they deem appropriate, they be authorized to (a) fulfill and honor (through payment, setoff, credit, or otherwise) such of the Customer Obligations, whether arising prepetition or postpetition, as they deem appropriate, and (b) continue, renew, replace, terminate, and implement new Customer Programs and any other customer practices as they deem appropriate, without further application to the Court.

**II. THE COURT SHOULD AUTHORIZE THE HONORING AND PAYMENT OF ANY PREPETITION CUSTOMER OBLIGATIONS AS A VALID EXERCISE OF THE DEBTORS' FIDUCIARY DUTIES**

35. Authority for the payment of prepetition Customer Obligations is also found in sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors, operating their businesses as debtors-in-possession under sections 1107(a) and 1108 of the Bankruptcy Code, are fiduciaries “holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners.” *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor-in-possession is the duty “to protect and preserve the estate, including an operating business’s going-concern value.” *Id.*

36. The *CoServ* court held that there are instances in which a debtor-in-possession can fulfill its fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” *Id.* That court specifically held that preplan satisfaction of prepetition claims would be a valid exercise of a debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate,” and also when the payment was to “sole suppliers of a given product.” *Id.* at 497-98. The court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor’s fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to

the estate or the debtor's going concern value, which is disproportionate to the amount of the claimant's prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

*Id.*

37. The Customer Obligations sought to be paid pursuant to this Motion satisfy each element of the *CoServ* standard. The disruption of the Debtors' operations attendant to the failure to pay the Customer Obligations would cause the Debtors' estates to lose revenue, which could negatively impact the Debtors' ability to achieve their chapter 11 objectives. The potential harm and economic disadvantage that would stem from the failure to honor any of the Customer Obligations is grossly disproportionate to the amount of the prepetition claims that may be paid. Finally, with respect to each Customer Obligation, the Debtors have examined other options in place of payment of the Customer Obligations and have determined that, to avoid significant disruption of the Debtors' business operations, there exists no practical or legal alternative to payment of the Customer Obligations. Therefore, the Debtors can only meet their fiduciary duties as debtors-in-possession under sections 1107(a) and 1108 of the Bankruptcy Code by payment of the Customer Obligations.

### **III. CERTAIN CUSTOMER PROGRAM OBLIGATIONS MAY BE ENTITLED TO PRIORITY PURSUANT TO SECTION 507 OF THE BANKRUPTCY CODE**

38. Certain Customers who are owed refunds on account of Customer Deposits may be entitled to priority treatment of their claims under section 507(a)(7) of the Bankruptcy Code, which establishes a priority for "unsecured claims of individuals, to the extent of [the Priority Cap<sup>9</sup>] for each such individual, arising from the deposit, before the commencement of the case, of money in connection with the purchase, lease, or rental of property, or the purchase of services, . . . that were

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<sup>9</sup> Claims for refunds of Customer Deposits would also be entitled to priority under section 507 of the Bankruptcy Code, in each case, in an amount up to \$3,350 (the "*Priority Cap*").

not delivered or provided.” *See* 11 U.S.C. § 507(a)(7). As such, qualifying payments, including but not limited to refunds on account of Customer Deposits, would be paid up to the amount of the statutory cap provided under section 507 of the Bankruptcy Code prior to the satisfaction of any general unsecured obligations of the Debtors.

39. Accordingly, the Debtors’ payment to Customers who have deposits within the Priority Cap now, in all likelihood, will affect only the timing of the payment of these priority obligations and not the amounts to be received by the Customers entitled to these payments. Moreover, as further described below, all general unsecured creditors are unimpaired under the Plan. Thus, the Debtors’ payment to Customers who have deposits in excess of the Priority Cap should not prejudice the rights of general unsecured creditors or other parties in interest and such payment will still be paid in full.

**IV. NO PARTY WILL BE PREJUDICED BY THE RELIEF REQUESTED IN THIS MOTION**

40. No party in interest will be prejudiced by the relief requested by this Motion because general unsecured claims, including claims attendant to the Customer Obligations, are unimpaired under the Plan and will be paid in full. Thus, the relief requested herein seeks to alter only the timing, not the amount or priority, of such payments. Moreover, as described more fully herein authority to pay the Customer Obligations in the ordinary course of business is necessary to avoid the risk of disruption to the Debtors’ businesses from Customers reducing or discontinuing their dealings with the Debtors.

**V. THE COURT SHOULD AUTHORIZE BANKS TO HONOR AND PAY CHECKS ISSUED AND ELECTRONIC FUNDS TRANSFER REQUESTS MADE TO PAY THE PREPETITION CUSTOMER OBLIGATIONS**

41. Although, as noted above, satisfaction of many of the Customer Programs will not involve cash outlays, to the extent they do, the Debtors further request that the Court authorize,



but not 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 transfer requests made relating to the Prepetition Customer Obligations, whether such checks were presented or such transfer requests were made before or after the Petition Date. The Debtors expect to 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 Customer Obligations. As such, 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 Customer 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.

#### **EMERGENCY CONSIDERATION**

42. The Debtors respectfully request emergency consideration of this Motion pursuant to 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 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)**

43. 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**

44. 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.

45. 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.

46. 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**

47. 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 United States Attorney for the Southern District of Texas; (i) the Internal Revenue Service; (j) the Securities and Exchange Commission; (k) the state attorneys general for states in which the Debtors conduct business; and (l) 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.

48. A copy of the Motion is available on (a) the Court's website, at [www.txs.uscourts.gov](http://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>.

**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*

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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. <sup>1</sup>	:	(Jointly Administered)
	:	
	x	

**ORDER (I) AUTHORIZING THE DEBTORS TO  
(A) HONOR CUSTOMER OBLIGATIONS TO CUSTOMERS AND  
(B) CONTINUE CUSTOMER PROGRAMS AND (II) GRANTING RELATED RELIEF**  
**[Relates to Docket No. \_\_]**

Upon the emergency motion (the “*Motion*”)<sup>2</sup> of the Debtors for an order (this “*Order*”) (i) authorizing, but not directing, the Debtors to (a) fulfill and honor (through payment, credit, or otherwise) their Customer Obligations as they deem appropriate and (b) continue, renew, replace, implement new and/or terminate their Customer Programs and any other customer practices as they deem appropriate, without further application to the Court, and (ii) granting related relief; and the Court having reviewed the Motion and the First Day Declaration; 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; 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

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<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used but not defined herein have the meanings given to them in the Motion.

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; 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 to pay, exercise or agree to setoffs, or provide credits to their Customers for any amounts owed on account of the Customer Obligations, whether incurred prepetition or postpetition, without further application to or order of the Court.

2. The Debtors are authorized, but not directed to (a) fulfill and honor all Customer Obligations as they deem appropriate and (b) continue, renew, replace, implement new and/or terminate the Customer Programs and any other customer practices as they deem appropriate, without further application to the Court, including making all payments, honoring all discounts and credits, and satisfying all obligations in connection therewith as they come due in the ordinary course of business, in each case whether related to the prepetition period or the postpetition period; *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.

3. The Debtors are authorized, upon a Customer request, to refund Customer Deposits for orders placed prior to the Petition Date in the full amounts of the Customer Deposit.

4. 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 Customer Obligations 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.

5. 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 are 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.



6. 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.

7. 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 Debtors, or shall impair the ability of Debtors, to contest the validity and amount of any payment made pursuant to this Order.

8. 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.

9. 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.

10. The requirements set forth in Bankruptcy Rule 6004(a), to the extent applicable, are hereby waived.

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

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

13. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation, interpretation or enforcement of this Order.

Signed: \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE