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

In re:	§	
	§	**Chapter 11**
THE CONTAINER STORE GROUP, INC.,	§	
***et al.*,**[1]	§	**Case No. 24-90627 (APR)**
	§	
Debtors.	§	**(Jointly Administered)**

**THE UNITED STATES TRUSTEE'S REPLY
IN SUPPORT OF HIS EMERGENCY MOTION FOR A
STAY OF CONFIRMATION ORDER PENDING APPEAL**

TO THE HONORABLE ALFREDO R PÉREZ,
UNITED STATES BANKRUPTCY JUDGE:

Kevin M. Epstein, the United States Trustee for the Southern District of Texas ("United States Trustee"), respectfully submits this reply to the *Reorganized Debtors' Objection to the United States Trustee's Emergency Motion for a Stay of Confirmation Order Pending Appeal* (ECF No. 232) ("Response"). The balance of equities favors granting a stay of the third-party release provisions here. The Court should grant the United States Trustee's request for a stay.

I. The United States Trustee Has a Likelihood of Success on The Merits

A. There Is No Binding Precedent on Consent by Failure to Opt-Out

1. The Debtors argue that the United States Trustee's "objection to third-party releases with opt-out mechanisms contradicts settled law in this District." Response at ¶ 35, *see generally*

---

[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.

Reply at ¶ 35-40. The United States Trustee recognizes that many bankruptcy courts in this jurisdiction have approved opt-out procedures, however, the law is not "settled" because, as Debtors recognize, there is an "absence of binding precedent" on this issue. Response at ¶ 40.

2. The Court overruled the United States Trustee's objection to the third-party release based on this district's non-binding decisions that "giving the opportunity for the Debtors [sic] to opt out is consistent with having consensual third-party releases," (ECF No. 201, Tr. at 41-42). But the question for purposes of a stay is not whether this Court agrees with its own order or local practice. Rather, the appropriate inquiry is whether there is a likelihood of success on appeal on this important issue for which there is no binding authority. *See, e.g.*, *Arnold v. Garlock*, 278 F.3d 426, 439 (5th Cir. 2001). As to that question, this Court acknowledged that "if we were writing on a blank slate, I think that [United States Trustee's] arguments would be fairly persuasive." (ECF No. 201, Tr. at 41).

3. Appellate courts considering this issue will be "writing on a blank slate," and the United States Trustee's more than "fairly persuasive" arguments are likely to succeed on appeal.

B. The Debtors' Responses to the United States Trustees Merits Arguments Fail

4. As an initial matter, the Debtors misread the United States Trustee's arguments by suggesting he "concede[s] . . . that [consensual] releases are authorized by the Bankruptcy Code." Response at ¶ 42. The relevant question is not whether consensual releases may be included in a chapter 11 plan, but the source of authority for establishing whether a third-party release is consensual. As the United States Trustee has consistently argued, that authority does not come from the Bankruptcy Code. The foundation of a consensual release is an agreement between the parties under state law. Whether parties have reached an agreement—including an agreement not to sue—is governed by state law and no Bankruptcy Code provision changes that. The United States'

consistent position, including in *Purdue*, is that a consensual third-party release is a separate agreement between non-debtors governed by nonbankruptcy law. *See* Motion (ECF 210) at ¶ 68-76 (citing United States' argument in *Purdue* and *Patterson v. Mahwah Bergen Retail Grp., Inc.*, 636 B.R. 641, 684-85 (E.D. Va. 2022) (describing bankruptcy courts in the District of New Jersey as "look[ing] to the principles of contract law rather than the bankruptcy court's confirmation authority to conclude that the validity of the releases requires affirmative consent"); *Smallhold, Inc.*, No. 14-10267, 2024 WL 4296938, at *11 (Bankr. D. Del. Sept. 25, 2024) (recognizing that "some sort of affirmative expression of consent that would be sufficient as a matter of contract law" is required); *In re SunEdison, Inc.*, 576 B.R. 453, 458 (Bankr. S.D.N.Y. 2017) ("Courts generally apply contract principles in deciding whether a creditor consents to a third-party release."); *In re Arrowmill Dev. Corp.*, 211 B.R. 497, 506 (Bankr. D.N.J. 1997) (holding that a third-party release "is no different from any other settlement or contract")).

5. The Debtors argue that this "theory of state contract law ignores that the releases at issue here are not simply free-floating contracts; they are part of a federally approved bankruptcy plan." Response at ¶ 50. The Debtors' logic that because a release is in a plan, it has been given "a stamp of approval by the court" and is therefore consensual is exactly backwards. Whether consent was obtained is the threshold question before a third-party release can be a part of a "federally approved bankruptcy plan." If a claim has been extinguished by virtue of a contractual agreement of the parties, the court can memorialize that agreement in the plan, and then the court is not using the forcible authority of the Bankruptcy Code or the bankruptcy court to extinguish the property right. Not the other way around.

6. The Debtors concede that "the validity of any interest that may have accrued prior to the filing of the petition is resolved generally by state law." Response at ¶ 47. But they suggest

"once the petition is filed, federal law controls" as to matters other than validity of an interest. *Id.* (citing *In re W. Texas Mktg. Corp.*, 54 F.3d 1194, 1196 (5th Cir. 1995); *cf., e.g.*, *In re Artha Mgmt., Inc.*, 91 F.3d 326, 328-29 (2d Cir. 1996)). Even if correct, this proposition is irrelevant because the third-party release applies to claims between non-debtors, including claims that existed prepetition. *See* Dkt.181 at 51-52, 133-34 (defining the release to include nine categories of claims plus "any other act, or omission, transaction, agreement, event, or other occurrence relating to any of the foregoing *and taking place on or before the Effective Date*") (emphasis added).

7. And the cases relied on by the Debtors are inapposite because they involve claims and interests—unlike third-party releases—governed by the Bankruptcy Code. *See In re W. Texas Mktg. Corp.*, 54 F.3d at 1197 (holding federal law applied to obligation to pay post-petition interest because there was a specific Bankruptcy Code provision that "sets forth a general rule that claims for post-petition interest are not allowed against the estate"); *In re Artha Mgmt., Inc.*, 91 F.3d at 327-28 (holding attorney's authority to settle claims was governed by federal law because the claims filed by a bankruptcy trustee on behalf of a bankruptcy estate "arose under the Bankruptcy Code").

8. Further, the Debtors' argument ignores that bankruptcy courts apply state law when the question is whether a debtor has entered a valid settlement agreement. *See Houston v. Holder (In re Omni Video, Inc.)*, 60 F.3d 230, 232 (5th Cir. 1995) ("Federal bankruptcy law fails to address the validity of settlements and this gap should be filled by state law."); *De La Fuente v. Wells Fargo Bank, N.A. (In re De La Fuente)*, 409 B.R. 842, 845 (Bankr. S.D. Tex. 2009) ("Where the United States is not a party, it is well established that settlement agreements in pending bankruptcy

cases are considered contract matters governed by state law."). The third-party claims extinguished here are state-law claims held by non-debtors against other non-debtors; not claims held by a bankruptcy estate or that arose under the Bankruptcy Code.

9. Contrary to the Debtors' suggestion, applying state contract law in this context does not "raise more questions than answers." Response at ¶ 49. There is no complex choice of law question here. Forum law applies because no one has argued that there would be a different outcome under any other jurisdiction's law, so no choice of law analysis is required. *See, e.g.*, *Aggreko, L.L.C. v. Chartis Specialty Ins. Co.*, 942 F.3d 682, 687, 697 (5th Cir. 2019); *Excess Underwriters at Lloyd's, London v. Frank's Casing Crew & Rental Tools, Inc.*, 246 S.W.3d 42, 53 (Tex. 2008). The Debtors also argue that the United States Trustee's reliance on the Restatement of Contracts is misplaced because the "commentary from the Restatement of Contracts . . . is not the law anywhere." Response at ¶ 49. But the Debtors fail to acknowledge that Texas follows the Restatement. *See, e.g., Excess Underwriters at Lloyd's, London v. Frank's Casing Crew & Rental Tools, Inc.*, 246 S.W.3d 42, 52 (Tex. 2008); *The Levin Law Grp., P.C. v. Sigmon*, No. 14-08-01165-CV, 2010 WL 183525, at *3 (Tex. App. 2010); *Texas v. Triax Oil & Gas, Inc.*, 966 S.W. 2d 123, 128 (Tex. App. 1998). And they again fail to argue that another jurisdiction's law applies that differs meaningfully from the Restatement's foundational black-letter legal principles.

10. Further, although the Debtors nominally quibble with the United States Trustee's suggestion that "Texas law applies here," Response at ¶ 49, puzzling out what law governs is the Debtors' responsibility. If they cannot figure it out, they should not be putting third-party releases into plans. Their self-professed difficulty in understanding state law is nothing more than an ad-

ditional reason for rejecting this plan. Put simply, even if the Debtors find the legal analysis difficult, it is still their job to engage in that analysis to show there was consent to give up state-law rights against non-debtors as proposed by their plan.

11. The Debtors' final arguments are mere observations that laws inapplicable here sometimes allow opt-out or negative notice in other contexts. Response at ¶ 43-46. But none of those laws govern what the Debtors are doing here—using a plan to involuntarily extinguish non-debtors' state law claims against other non-debtors. The fact that inapposite laws permit what Congress did not authorize in the Bankruptcy Code is a powerful additional ground for rejecting the Debtors' plan. *See* Motion at ¶¶ 108-113.

12. The Bankruptcy Code addresses the rights and debts of creditors vis-à-vis debtors, not the rights and claims of claim and interest holders against parties that are not debtors themselves. As the Court in *Smallhold* recognized in rejecting a default theory of consent, a third-party release is not "an ordinary plan provision that can properly be entered by 'default' in the absence of an objection." *Smallhold*, 2024 WL 4296938, at *2. "It is unlike the listed cure amount where one can properly impose on a creditor the duty to object, and in the absence of such an objection bind the creditor to the judgment." *Id*. That is because, unlike for a creditor's claims against the debtor, the Bankruptcy Code affords no authority to order a release of claims against third parties. Because imposition of a nonconsensual non-debtor release is not relief available through a debtor's chapter 11 plan, it is not "appropriate to require creditors to object or else be subject to (or be deemed to 'consent' to) such a third-party release." *Id*. at *10.

13. Finally, the Debtors argue that imposing releases on those who fail to opt out is appropriate because "the same sort of 'opt out' procedures used here suffice to 'provide[e] consent' by class members to be bound by the judgment." Response at ¶ 45 (citing *In re Robertshaw US*

Holding Corp., 662 B.R. 300, 323 (Bankr. S.D. Tex. 2024)). This violates federal law. The Supreme Court has unanimously admonished: "[C]ourts may not 'recognize a common-law kind of class action' or 'create *de facto* class actions at will.'" *United States v. Sanchez-Gomez*, 584 U.S. 381, 389 (2018) (quoting *Taylor v. Sturgell*, 553 U.S. 880, 901 (2008)) (cleaned up). And it has consistently rejected attempts to apply class-action rules to non-class actions that allegedly were "sufficiently similar" to class actions. *See, e.g.*, *Sanchez-Gomez*, 584 U.S. at 387, 390; *Genesis HealthCare Corp. v. Symczyk*, 569 U.S. 66, 74 (2013). There is no such thing as a "functional class action" that can preclude claims "outside the formal class action context." *Sanchez-Gomez*, 584 U.S. at 389-90. Bankruptcy courts thus cannot unilaterally transplant Rule 23(b)(3)'s class-action opt-out procedure to impose third-party releases in violation of state law. As one court explained, "people who fail to respond to class action notices are bound because that is the legal consequence that the Rule specifies, and not on the theory that their inaction is the equivalent of an affirmative joinder in an action." *In re Chassix Holdings, Inc.*, 533 B.R. 64, 78 (Bankr. S.D.N.Y. 2015); *see also Patterson*, 636 B.R. at 686 ("[T]he comparison to class action litigation highlights the impropriety of finding releases consensual based merely on a failure to opt out" because in class actions, unlike chapter 11 plan confirmations, "courts must ensure that the class action complies with the unique requirements of Rule 23.").

14. The United States Trustee is likely to succeed on this appeal—at the very least, this case raises sufficiently serious questions to make them a fair ground for litigation.

II. The Balance of Harms Weighs in Favor of a Stay

15. Not only does the United States Trustee have a likelihood of success on appeal, the balance of the harms also weighs in favor of granting a stay.

16. As set forth in his Motion, the harm to the United States Trustee and the public interest is not speculative as the Debtors suggest. *See* Response at ¶¶ 3, 32. Although the United

States Trustee contends that equitable mootness should not apply in this case, the threat of equitable mootness resulting in no appellate review of these issues is real. *See In re VeroBlue Farms USA, Inc.*, 6 F.4th 880, 889 (8th Cir. 2021) ("[i]ronically . . . a motion to dismiss an appeal as equitably moot has become 'part of the Plan.'" (quoting *In re One2One Commc'ns, LLC*, 805 F.3d 428, 446 (3d Cir. 2015) (Krause, J. concurrence)).[2]

17. Importantly, far from agreeing that the appeal is not equitably moot, the Debtors make statements suggesting they will argue that it is. In opposition to this stay motion, the Debtors make equitable-mootness type arguments that "'[t]he strong public interest in the finality of bankruptcy reorganizations is particularly compelling' when a reorganization plan has been substantially consummated." Response at ¶ 56 (citing *Alberta Energy Partners v. Blast Energy Servs., Inc.*, 2008 WL 1858919, at *2 (S.D. Tex. Apr. 24, 2008)). And they note that "the plan has been substantially consummated" and assert "that the request for a stay would severely hinder the public interest by delaying the reorganization process, causing uncertainty and potential harm to creditors and other stakeholders who are relying upon the finality of the Confirmation Order, and undermining the success of the recently emerged Reorganized Debtors' reorganization." Response at ¶ 57. "Proponents of reorganization plans now rush to implement them so they may avail themselves of an equitable mootness defense," much like Debtors seem to be doing here. *In re VeroBlue Farms USA, Inc.*, 6 F.4th at 889. A stay will prevent any such gamesmanship.

---

[2] Debtors rely on a non-precedential decision, *In re Nat'l CineMedia, LLC*, 2023 WL 5030098 (S.D. Tex. Aug. 4, 2023), for the proposition that the "possibility of the application of equitable mootness" on appeal does not "demonstrate[] irreparable injury." Response at ¶ 45. However, the court in *CineMedia* recognized that some "bankruptcy courts have taken the opposite approach." *Id.* at *9 n. 13 (citing *In re Herrera*, 2010 WL 148182, *3 (Bankr. W.D. Tex. Jan. 8, 2010); *In re Westwood Plaza Apartments, Ltd.*, 150 B.R. 163, 169 (Bankr. E.D. Tex. 1993)).

18. Fewer than 1% of nearly 17,000 claim and interest holders returned the form necessary to opt out of the third-party release. (ECF 179 at 2-3). The order not only imposes a non-consensual third-party release and enjoins the released claims, it also requires *anyone* with a claim "reasonably likely to relate to" a released claim to obtain permission from the bankruptcy court before suing. While the overall extent of the released and enjoined claims may be unknowable, Response at ¶ 57, it is not speculative that the confirmation order precludes claims between non-debtors because that is exactly what the confirmation order says it does. Such claims broadly include, for example, claims relating to the Debtors' or their non-debtor affiliates' business such as claims against their employees for workplace harassment, *see, e.g.*, Complaint, *Menor v. The Container Store, et al.*, No. 24STCV21333 (Cal. Super.) (filed July 30, 2024). A stay will also ensure that the rights of thousands of people to sue thousands of mostly unidentified non-debtors will not be deprived without appellate scrutiny.

19. In contrast, the Debtors fail to establish any irreparable harm from a stay. The Debtors assert that "[t]he Trustee does not dispute that a stay would result in substantial disruption, producing confusion and uncertainty for the Reorganized Debtors and their employees, vendors, and commercial counterparties, while also inviting needless litigation over claims that the Plan releases and the Reorganized Debtors assert will remain released following the instant appeal." Response at ¶ 5, ¶¶ 53-55. In fact, the United States Trustee disputes that a stay of the confirmation order here, particularly his alternative request for a stay of only the release provisions, would cause any harm to the Debtors. As set forth the United States Trustee's motion, "there is no articulable prejudice to Debtors from entry of a stay order. The Plan is a debt for equity transaction with Class 3, which has already been completed, *see* ECF No. 200." Motion at ¶ 125. To the extent the

United States Trustee did not specifically reference the harm now alleged in Debtors' Response to the Stay Motion, it is because the Debtors had not previously alleged it.

20. In any event, the Debtors assertions of a "substantial disruption" are speculative and not supported by the record. The Debtors have provided no evidence that the Plan's success was contingent on the third-party releases. Indeed, neither the Plan nor the Transaction Support Agreement included a minimum number of consensual releases as a condition precedent for confirmation. In other words, if 100% of parties had returned an opt-out, there would be no third-party releases. Yet, the Plan would have still gone forward.

21. The Debtors point to the Declaration in Support of the Plan to suggest that "the Third-Party Release Provisions were an integral component of the global settlement reflected in the Plan," but, in the same sentence, say only that the parties to the Transaction Support Agreement "*may* have been unwilling to support" without Third-Party releases. Response at ¶ 8 (emphasis added) (citing ECF 162 at ¶ 56). The use of "may" instead of "would" is telling, as is the lack of any statement from the actual parties to the Transaction Support Agreement. And the Debtors' speculation is outweighed by the fact noted above that there was no threshold number of opt outs that would have triggered abandonment of the Plan or the Transaction Support Agreement.

22. The Debtors argue that a stay will "undermine the restructuring process," Response at ¶ 54, but that statement is inconsistent with the Debtors' representation that the Plan has already been "substantially consummated." Response at ¶ 57. They cite no evidence and give no examples of any steps in the restructuring process that have not already occurred or that would be put on hold if a stay were entered. Likewise, the Debtors argue against themselves by arguing in one breath that there would be substantial harm from "[g]ranting the Trustee's request for a stay" because it "would pave the way for litigation [against parties who have relied on the third-party

release provisions] to forge ahead." Response at ¶ 59. Yet, in the next breath the Debtors assert that there are no such claimants so there is no need for a stay because such claims belong to "hypothetical (and quite possibly nonexistent) claimants who did not opt out of the Third-Party Release Provisions, have not raised these claims, and yet might seek to bring unknown hypothetical claims." Response at ¶ 59.

III. CONCLUSION

23. For these reasons, and the reasons set forth in the United States Trustee's Motion, the United States Trustee respectfully asks this Court to grant a stay of the confirmation order, or in the alternative a stay of the plan's third-party release, injunctive, and gatekeeping provisions, pending appeal.

Date: March 4, 2025

Respectfully Submitted,

KEVIN M. EPSTEIN
UNITED STATES TRUSTEE
REGION 7, SOUTHERN AND WESTERN
DISTRICTS OF TEXAS

By: */s/ Ha M. Nguyen*
Ha Nguyen, Trial Attorney
CA Bar #305411
FED ID NO. 3623593
United States Department of Justice
Office of the United States Trustee
515 Rusk Street, Suite 3516
Houston, Texas 77002
E-mail: Ha.Nguyen@usdoj.gov
Cell: 202-590-7962

CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2025 a copy of the foregoing *United States Trustee's Motion For A Stay Of Confirmation Order Pending Appeal*, was served by electronic means for all Pacer system participants requesting notice.

/s/ Ha M. Nguyen
Ha Nguyen