

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

In re:	)	
	)	Chapter 11
	)	
VERTEX ENERGY, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 24-90507(CML)
	)	
Debtors.	)	(Joint Administration Requested)
	)	(Emergency Hearing Requested)

**DEBTORS' EMERGENCY MOTION  
FOR ENTRY OF AN ORDER AUTHORIZING  
THE DEBTORS TO (I) PAY PREPETITION WAGES, SALARIES,  
OTHER COMPENSATION, AND REIMBURSABLE EXPENSES, (II) CONTINUE  
EMPLOYEE BENEFITS PROGRAMS AND (III) GRANTING RELATED RELIEF**

**Emergency relief has been requested. Relief is requested not later than 12:30 p.m. (prevailing Central Time) on September 25, 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 September 25, 2024, at 12:30 p.m. (prevailing Central Time) in Courtroom 401, 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 Lopez's conference room number is 590153. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Lopez's homepage. The meeting code is "JudgeLopez". 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 Lopez's homepage. Select the case name, complete the required fields and click "Submit" to complete your appearance.**

<sup>1</sup> A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://www.veritaglobal.net/vertex>. The location of Debtor Vertex Energy, Inc.'s corporate headquarters and the Debtors' service address in these chapter 11 cases is 1331 Gemini Street, Suite 250, Houston, Texas 77058.



The above-captioned debtors and debtors in possession (collectively, the “Debtors”) state as follows in support of this motion (this “Motion”):<sup>2</sup>

**Relief Requested**

1. The Debtors seek entry of an order, substantially in the form attached hereto (the “Order”), authorizing the Debtors to (a) pay prepetition wages, salaries, other compensation, and reimbursable expenses, (b) continue employee benefits programs in the ordinary course, including payment of certain prepetition obligations related thereto, and (c) granting related relief.

**Jurisdiction and Venue**

2. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Order of Reference to Bankruptcy Judges*, dated May 24, 2012, from the United States District Court for the Southern District of Texas. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The Debtors confirm their consent to the Court’s entry of a final order in connection with this Motion.

3. Venue is proper pursuant to 28 U.S.C. § 1408.

4. The bases for the relief requested herein are sections 105(a), 362(d), 363(b), 507(a), and 541(b)(1) 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”), rules 1075-1, 2002-1, and 9013-1 of the Bankruptcy Local Rules for

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<sup>2</sup> A description of the Debtors, their businesses, and the facts and circumstances supporting this Motion and the Debtors’ chapter 11 cases, are set forth in greater detail in the *Declaration of R. Seth Bullock, Chief Restructuring Officer of Vertex Energy, Inc., in Support of the Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith and incorporated by reference herein. Capitalized terms used but not otherwise defined in this Motion shall have the meanings ascribed to them in the First Day Declaration.

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 the date hereof (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors have filed a motion requesting joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases and no official committees have been appointed or designated.

### **The Debtors’ Workforce**

6. As of the Petition Date, Vertex and its affiliated Debtor entities employ a workforce of approximately 480 individuals on a part-or full-time basis (the “Employees”) spread across multiple states and numerous legal entities. Approximately 245 Employees are paid on an hourly basis, and approximately 235 Employees earn a salary. Of the hourly Employees, approximately 100 Employees are represented by a collective bargaining unit.<sup>3</sup> In addition to the Employees, the Debtors have historically retained and will continue to retain specialized individuals as independent contractors, temporary workers, and contract laborers (collectively, the “Independent Contractors”) to complete discrete projects, sourced periodically from various staffing agencies (the “Staffing Agencies”) to fulfill certain duties on a short-term basis. As of the Petition Date, the Debtors retain approximately five (5) Independent Contractors.

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<sup>3</sup> Employees at Vertex Refining Alabama LLC are represented by The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC and its Local 9-00265-01 as of May 1, 2022 (the “Collective Bargaining Agreement”).

7. The Employees and the Independent Contractors all perform a wide variety of job functions that are critical to the Debtors' business operations and the administration of these chapter 11 cases, including, engineering, health and safety oversight, construction, project management, supply chain management, shipping and trucking, and refining operations. In many instances, these individuals are highly trained and have an essential working knowledge of the Debtors' business that cannot be easily replaced. The Employees, along with the Independent Contractors, rely on their compensation and benefits to pay their daily living expenses and could experience significant hardship if the Court does not permit the Debtors to continue paying their compensation and providing them with health and other benefits. Without the continued, uninterrupted services of the Employees, the Debtors' ability to maintain and administer their estates will be materially impaired.

#### **Employee Compensation and Benefits**

8. The Debtors seek authority to: (a) pay and honor certain prepetition claims, if any, relating to, among other things, Wage Obligations, Staffing Agency Fees, Independent Contractor Obligations, the Cash Balance Plan, Reimbursable Expenses, Withholding Obligations, Employer Payroll Taxes, Wage and Benefit Service Provider Obligations, Health and Welfare Coverage and Benefits, Workers' Compensation Claims, CBAs (as defined below), Defined Contribution Pension Plans, PTO Benefits, Paid Leave Benefits, Non-Insider Severance Benefits, Impact Safety Bonus, Additional Benefit Programs, and certain other compensation or benefits that the Debtors provide in the ordinary course (each as defined below, and collectively, the "Employee Compensation and Benefits"); and (b) pay all costs related to or on account of the Employee Compensation and Benefits.

9. The Debtors seek to continue their applicable prepetition Employee Compensation and Benefits in the ordinary course. Out of an abundance of caution, the Debtors further request

confirmation of their right to modify, change, and/or discontinue any of their Employee Compensation and Benefits, and to implement new programs, policies, and benefits on a postpetition basis in the ordinary course of business, in the Debtors' sole discretion, and without the need for further Court approval, subject to applicable law.

10. The Debtors estimate that they owe prepetition amounts on account of the Employee Compensation and Benefits in approximately the following amounts:

<b>Relief Sought</b>	<b>Prepetition Amount</b>
<b>Compensation, Withholding, and Expense Reimbursement</b>	<b>\$1,709,000</b>
Wage Obligations	\$1,500,000
Staffing Agency Fees and Independent Contactor Obligations	\$110,000
Non-Insider Bonus	\$0
Impact Safety Bonus	\$9,000
Reimbursable Expenses	\$90,000
<b>Employer Payroll Taxes</b>	<b>\$140,000</b>
<b>Wage and Benefit Service Provider Obligations</b>	<b>\$9,000</b>
<b>Health and Welfare Coverage and Benefits</b>	<b>\$137,500</b>
Medical and Dental Plans	\$137,500
Life and AD&D Insurance Coverage	\$0
Other Coverage	\$0
<b>Workers' Compensation</b>	<b>\$250,000</b>
<b>Collective Bargaining Agreements</b>	<b>\$0</b>
<b>Retirement Programs</b>	<b>\$550,000</b>
401K Plan	\$550,000
Cash Balance Plans	\$0
<b>Paid Leave Benefits</b>	<b>\$2,050,000</b>
<b>Non-Insider Severance Benefits</b>	<b>\$0</b>
<b>Additional Benefits Program</b>	<b>\$40,000</b>
<b>Total</b>	<b>\$4,885,500</b>

**I. Compensation, Withholding, and Expense Reimbursement.**

**A. Wage Obligations.**

11. In the ordinary course, Vertex incurs obligations to its Employees for salaries and hourly wages, inclusive of overtime compensation and commissions (the "Wage Obligations"). During the previous three-month period, the Debtors paid approximately \$4.8 million a month on account of the Wage Obligations. As of the Petition Date, the Debtors estimate that approximately

\$1.5 million is accrued and outstanding on account of the Wage Obligations. The Debtors do not believe that they owe any Employees unpaid Wage Obligations in excess of the \$15,150 statutory cap set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. The Debtors request authority to pay all outstanding prepetition amounts incurred on account of the Wage Obligations and to continue to make all payments on a postpetition basis in the ordinary course of business and consistent with their prepetition practices.

**B. Staffing Agencies & Independent Contractors.**

12. Vertex retains certain Employees and Independent Contractors indirectly through external staffing agencies and labor sub-contractors or agents, including Express Employment Professionals (“Express”), among others (collectively, the “Staffing Agencies”). For example, the Debtors leverage Staffing Agencies such as Express to identify and hire Employees on the Debtors’ behalf and manage those Employees at the Debtors’ refineries. The Debtors make monthly lump-sum payments to the Staffing Agencies, including Express, which subsequently pay the base salaries and benefits of the applicable Employees. Similarly, certain Independent Contractors, who work side by side with Vertex’s Employees across a wide range of Vertex’s business operations, receive payment through the Staffing Agencies based on periodic invoices submitted to Vertex (such amounts, collectively with all amounts paid from Vertex to Staffing Agencies, the “Staffing Agency Fees”). On average, the Debtors pay approximately \$50,000 per month in Staffing Agency Fees.

13. In addition, the Debtors directly pay Independent Contractors approximately \$3,000 per month on account of services rendered and reimbursable expenses (the “Independent Contactor Obligations”).

14. As of the Petition Date, the Debtors estimate that they owe approximately \$110,000 in amounts accrued and unpaid on account of both the Staffing Agency Fees and Independent

Contractor Obligations. The Debtors believe the authority to pay Staffing Agency Fees and Independent Contractor Obligations is critical to maintaining and administering their estates. The Debtors request authority to pay all outstanding prepetition amounts incurred on account of the Staffing Agency Fees and Independent Contractor Obligations and to continue to make payments on these obligations in the ordinary course of business on a postpetition basis and consistent with their prepetition practices.

**C. Non-Insider Bonus Programs.**

15. Vertex maintains various bonus programs in the ordinary course of business, including tailored bonus plans designed to motivate, reward, encourage best safety practices, and retain certain of their non-insider Employees as an additional component of overall compensation (the “Non-Insider Bonus Programs”). The Non-Insider Bonus Programs offer Employees added incentive to meet predefined metrics applicable to their roles and the opportunity to earn bonus payments for outstanding performance. For example, the Debtors incentivize performance based on a site scorecard, which weighs factors such as safety, environmental compliance, reliability, and financial metrics. Currently, approximately 471 non-insider Employees are eligible for awards under the Bonus Programs (the “Eligible Employees”). Eligible Employees work in specialized areas, including engineering and refinery operations, all of which are crucial to the Debtors’ operations. Eligible Employees must remain employed with the Debtors as of certain dates to qualify for the Non-Insider Bonus Programs.

16. As of the Petition Date, the Debtors do not believe they have any accrued and outstanding obligations to Eligible Employees on account of the Non-Insider Bonus Programs. The next payment due under the Non-Insider Bonus Programs is currently scheduled for October 2024, and is payable to (a) the Employees critical to conversion of the Renewable Diesel facility

to hydrocarbon service and (b) for certain Employees who received small milestone-based bonuses as part of their employment offers.

17. The Debtors believe that the Non-Insider Bonus Programs drive employee performance, align Eligible Employees' interests with those of the Debtors generally, and promote the efficiency and safety of the Debtors' operations. Further, the Debtors believe that continuing the Non-Insider Bonus Programs is essential to maintaining Employee morale, meeting Employee expectations, and retaining Employees critical to operating the Debtors' businesses. The Debtors seek authority to honor all fully earned obligations incurred under the Non-Insider Bonus Programs in the ordinary course of business and consistent with their prepetition practices. For the avoidance of doubt, the Debtors do not seek authority to pay any obligations arising from the Non-Insider Bonus Programs to any Employees that are insiders (as such term is defined in section 101(31) of the Bankruptcy Code).

**D. Impact Safety Bonus**

18. Certain employees who are full-time commercial truck drivers may be eligible for the impact safety bonus (the "Impact Safety Bonus") provided they meet various productivity and safety criteria. Payments are made monthly, quarterly, or annually depending on the employees' start date. As of the Petition Date, Vertex estimates that \$9,000 of accrued but unpaid amounts are outstanding on account of the Impact Safety Bonus. The Debtors request authority to pay all outstanding prepetition amounts incurred on account of the Impact Safety Bonus on a postpetition basis in the ordinary course of business and consistent with their prepetition practices.

**E. Reimbursable Expenses.**

19. Vertex either pays business-related expenses directly, or Employees pay and subsequently seek reimbursement or file expense reports for such expenses. For example, Vertex reimburses expenses related to professional development, including registration fees, and training,



along with other expenses, including costs incurred in connection with commuting, business travel, hotel accommodations, and meals, which Employees pay directly by their own means before receiving reimbursement from the Debtors (collectively, the “Reimbursable Expenses”). Once Vertex determines that such charges comply with its reimbursement policies and procedures, Vertex typically reimburses the Employees for such Reimbursable Expenses within several days.

20. The Reimbursable Expenses are incurred by Employees performing their job functions in the ordinary course of business. It is essential to the continued operation of the Debtors’ businesses that the Debtors continue reimbursing, or making direct payments on behalf of, the Employees for such expenses. The Debtors’ inability to pay the Reimbursable Expenses could impose a hardship on Employees where such individuals incurred Reimbursable Expenses directly and with the understanding that such expenses would be reimbursed in short order. As of the previous twelve months, the Debtors have paid approximately \$80,000 monthly on average on account of Reimbursable Expenses. Additionally, as of the Petition Date, the Debtors estimate that they owe approximately \$90,000 on account of Reimbursable Expenses.<sup>4</sup> The Debtors request authority to pay all outstanding prepetition amounts incurred as Reimbursable Expenses on a postpetition basis in the ordinary course of business and consistent with their prepetition practices. For the avoidance of doubt, the Debtors will not seek to pay any outstanding Reimbursable Expenses or fees related thereto in advance of the date they come due.

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<sup>4</sup> Reimbursable Expenses are calculated based on historical data. On a go forward basis, no amount above \$5,000 will be reimbursed without approval from R. Seth Bullock, Chief Restructuring Officer of Vertex Energy, Inc.

**F. Employee Deductions and Taxes.**

21. During each applicable pay period, the Debtors routinely deduct certain amounts from Employees' paychecks, including, without limitation, garnishments, levies, child support, and related fees, and pre-tax deductions payable pursuant to certain of the Health and Welfare Programs (as defined below) (collectively, the "Deductions"). Some of the Deductions are forwarded to various third-party recipients. In the previous three-month period, Deductions have averaged approximately \$620,000 per month.

22. The Debtors are also required by law to withhold from Employee compensation amounts related to, among other things, federal, state, and local income taxes as well as Social Security and Medicare taxes (collectively, the "Employee Payroll Taxes") for remittance to the appropriate federal, state, and local taxing authorities. In the previous three-month period, Employee Payroll Taxes have averaged approximately \$1.0 million per month. The Debtors have already sought relief to pay Deductions and Employee Payroll Taxes as a part of their Wage Obligations; however, out of an abundance of caution, the Debtors request authority to continue to make remittances on behalf of the Employees in the ordinary course of business on a postpetition basis and consistent with their prepetition practices.

**G. Employer Taxes.**

23. The Debtors are also required by law to withhold from Employee compensation additional amounts for state and federal unemployment insurance (the "Employer Payroll Taxes" and together with the Employee Payroll Taxes and Deductions, the "Withholding Obligations"). The Debtors must match the Employee Payroll Taxes from their own funds and pay Employer Payroll Taxes, based upon a percentage of gross payroll, and forwarded to the appropriate federal, state, or local taxing authority at the same time Employees' payroll checks are disbursed. In the last three (3) months, Employer Payroll Taxes averaged approximately \$350,000 per month.

24. As of the Petition Date, the Debtors estimate that there are \$140,000 outstanding obligations on account of accrued but unpaid Employer Payroll Taxes. The Debtors request authority to honor any prepetition Employer Payroll Taxes to the appropriate third parties, and to continue to pay such Employer Payroll Taxes on a postpetition basis in the ordinary course of business and consistent with historical practice.

#### **H. Wage and Benefit Service Provider Obligations.**

25. The Debtors utilize certain human resource information systems and payroll processing software (“Paylocity”) to manage their biweekly payroll. In connection with maintaining and operating a biweekly payroll system, the Debtors must pay certain fees (the “Payroll Processing Fees”). During the previous three-month period, the Payroll Processing Fees averaged approximately \$9,000 per month. As of the Petition Date, the Debtors estimate that there is \$9,000 owed and outstanding on account of accrued but unpaid Payroll Processing Fees. The Debtors request authority to honor any prepetition Payroll Processing Fees to the appropriate third parties, and to continue to pay such Payroll Processing Fees on a postpetition basis in the ordinary course of business and consistent with historical practice.

#### **II. Health and Welfare Coverage and Benefits.**

26. Vertex offers various health and welfare benefits to eligible Employees for medical, prescription, dental, vision, and travel coverage and certain other welfare benefits, including life, accidental death & dismemberment insurance, and other insurance benefits (collectively, the “Health and Welfare Coverage and Benefits”). During the previous three-month period, the Debtors paid approximately \$485,000 a month on average account of the Health and Welfare Coverage and Benefits. Failure to continue the Health and Welfare Coverage and Benefits could cause Employees to experience severe hardship and make it difficult to retain the workforce.

27. In addition, the Debtors utilize Anco Insurance Managers, Inc. (“Anco”), an insurance broker, to select and manage the Health and Welfare Coverage and Benefits. The Debtors pay Anco approximately \$120,000 per quarter for the brokerage services. As of the Petition Date, the Debtors estimate that approximately \$130,000 is owed and outstanding on account of the Health and Welfare Coverage and Benefits and related broker fees. The Debtors believe they are authorized to continue the Health and Welfare Coverage and Benefits in the ordinary course; however, out of an abundance of caution, the Debtors seek authority to continue the Health and Welfare Coverage and Benefits on a postpetition basis in the ordinary course of business (including any prepetition amounts that may be outstanding) and consistent with their prepetition practices.

**A. Medical Coverage.**

28. The Debtors offer their Employees the opportunity to participate in a Medical Plan (the “Medical Plan”) through separate plans at BlueCross BlueShield of Texas and BlueCross BlueShield of Alabama, depending on the Employee’s employment entity. The Debtors also subsidize or continue to provide certain benefits to certain former Employees after their termination, retirement or disability leave, including (without limitation) benefits provided under the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”).

29. The majority of the Debtors’ Employees are enrolled in the Medical Plan. Under the Medical Plan, participants, and their eligible dependents (usually spouses; and, under certain plans, children, sometimes at an additional cost) receive coverage for, among other things, preventative care, doctor visits, hospital care, prescription drugs, and wellness treatments. As of the previous three-month period, the Debtors have incurred a monthly average of approximately \$440,000 on account of the Medical Plan. As of the Petition Date, the Debtors estimate that no balance is accrued and outstanding on account of the Medical Plan. The Debtors estimate an

accrued and outstanding balance of \$2,500 on account of COBRA. The Debtors request authority to pay all outstanding prepetition amounts incurred on account of the Medical Plan and to continue to make payments on these obligations in the ordinary course of business on a postpetition basis and consistent with their prepetition practices.

**B. Vision and Dental Coverage.**

30. Additionally, the Debtors offer their Employees the opportunity to participate in several health benefit plans, such as a dental plan and a vision plan (such coverage, the “Vision and Dental Plans”). The Vision and Dental Plans are administered by Guardian Life Insurance Company (“Guardian”). The majority of the Debtors’ Employees are enrolled in the Vision and Dental Plans in addition to the Medical Plan. Under the Vision and Dental Plans, participants and their eligible dependents receive coverage for, among other things, teeth cleaning, eye exams, vision correction, and various other vision and dental treatments. During the previous three-month period, the Debtors have incurred a monthly average of approximately \$8,000 on account of the Vision and Dental Plans. As of the Petition Date, the Debtors estimate that no balance is accrued and outstanding on account of the Vision and Dental Plans, but, out of an abundance of caution, the Debtors request authority to pay all outstanding prepetition amounts incurred on account of the Vision and Dental Plans and to continue to make payments on these obligations in the ordinary course of business on a postpetition basis and consistent with their prepetition practices.

**C. Life and AD&D Insurance Coverage, Short-Term and Long-Term Disability Coverage.**

31. Vertex provides several fully insured life insurance, AD&D insurance, and short- and long-term disability insurance plans, administered by Guardian, to all active, eligible Employees. From the date of hire, Employees are covered for the Basic life and AD&D coverage which includes \$50,000 of Basic Term Life coverage at no cost to the Employee, unless they elect

to purchase additional coverage for themselves and their dependents. During the previous three-month period, the Debtors have paid approximately \$14,000 monthly on average on account of the life and AD&D insurance.

32. Additionally, Vertex offers short-term and long-term disability, and hospitalization insurance through Guardian. During the same three-month period, the Debtors have paid approximately \$23,000 monthly on average on account of expenses incurred in connection with short-term and long-term disability. As of the Petition Date, the Debtors estimate that no balance is owed and outstanding on account of the life insurance, AD&D insurance, and short- and long-term disability insurance plans, but, out of an abundance of caution, the Debtors request authority to pay all outstanding prepetition amounts incurred and to continue to make payments on these obligations in the ordinary course of business on a postpetition basis and consistent with their prepetition practices.

#### **D. Other Coverage.**

33. Vertex offers additional Health and Welfare Coverage and Benefits, such as critical illness insurance, flexible spending accounts, and supplemental accident insurance, among others. These additional Health and Welfare Coverage and Benefits are at the election of each Employee and only require *de minimis* administrative costs or obligations to the Debtors. Additionally, the Debtors provide certain historic health benefits, including supplemental health benefit payments upon an employee's retirement. Out of an abundance of caution, the Debtors request authority to continue the additional coverage programs in the ordinary course of business on a postpetition basis and consistent with their prepetition practices.

### **III. Workers' Compensation.**

34. Vertex maintains workers' compensation insurance for its Employees (the "Workers' Compensation Program") supported with a guaranteed cost insurance policy with

Zurich Insurance Group. The Debtors pay a total annual amount of \$416,300 consisting of (a) \$415,000 paid to Zurich Insurance Group in monthly installments of approximately \$35,000 and (b) one annual payment of \$1,300 to the Ohio Bureau of Workers Compensation, to maintain their Workers' Compensation Program. As of the Petition Date, approximately \$250,000 of the annual premium remains outstanding. The Debtors seek authority to continue paying the annual premium in monthly installments on account of the Workers' Compensation Program consistent with their prepetition practices.

35. Additionally, the Debtors must continue the claim assessment, determination, adjudication, and payment pursuant to the Workers' Compensation Program and the related insurance policy, without regard to whether such liabilities are outstanding before the Petition Date, to ensure that the Debtors comply with applicable workers' compensation laws and requirements. As of the Petition Date, there are seven (7) open claims under the Workers' Compensation Program (such claims, collectively, the "Workers' Compensation Claims"). The Debtors seek authority to pay any amounts incurred on account of the Workers' Compensation Program and to continue this program on a postpetition basis in the ordinary course of business and consistent with their prepetition practices.<sup>5</sup>

#### **IV. Collective Bargaining Agreements.**

36. Certain of the Debtors' Employees are known to be members of a labor union and are covered by the collective bargaining agreement (the "CBA") with one union (the "Union," and such Employees, the "Represented Employees").

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<sup>5</sup> The Debtors' Workers' Compensation Program may change postpetition in the ordinary course due to changes in applicable laws and regulations and the Debtors' ability to meet requirements thereunder. By this Motion, the Debtors request authority to continue the Workers' Compensation Program postpetition, including making any changes to current policies and practices that become necessary.

37. At their election, the Represented Employees may authorize the Debtors to deduct union dues directly from their pay-check pursuant to the CBA (the “Union Dues”). During the previous three-month period, the Debtors have deducted a monthly average of approximately \$9,000 of Union Dues obligations withheld from Represented Employees’ pay-checks. Further, the Debtors request authority to continue to honor all obligations to the Represented Employees under the terms of the CBAs to which certain of the Debtors are a party on a postpetition basis in the ordinary course of business and consistent with their prepetition practices.

## **V. Retirement Programs.**

### **A. 401(k) Plans.**

38. The Debtors provide all Employees with the ability to participate in a 401(k) plan administered by Fidelity Investments (“Fidelity”). In addition, the Debtors utilize Wealth Partners Alliance as a broker to select and manage their 401(k) program and pay approximately \$10,000 per quarter in fees for the brokerage services. The plan provides for pre-tax salary deductions up to limits set by the Internal Revenue Code. The Debtors also provide certain matching contributions for eligible Employees (the “401(k) Matching Contributions”). Under the plan, the Debtors contribute 3% for all Employees, added to their 401(k) Plan. The Debtors provide additional 401(k) Matching Contributions or retirement benefits, ranging from 1% to 7%, depending on the employee’s length of service, employment entity, and contribution status. During the previous three-month period, the Debtors averaged approximately \$170,000 in 401(k) Matching Contributions, including administrative fees. Approximately \$370,000 is deducted from the Employees’ pay in the aggregate each monthly period on account of Employees 401(k) contributions to the 401(k) plan (the “401(k) Deductions”).

39. As of the Petition Date, the Debtors owe \$550,000 accrued and unpaid on account of the 401(k) Matching Contributions and the 401(k) Broker Fees. The Debtors request



authorization to pay all outstanding prepetition amounts incurred on account of the 401(k) plan, including 401(k) Matching Contributions, to remit any unpaid prepetition 401(k) Deductions, and to continue honoring their obligations on account of the 401(k) plan and 401(k) Matching Contributions on a postpetition basis in the ordinary course of business consistent with prepetition practices.

**B. Cash Balance Plans.**

40. Vertex maintains, but no longer funds principal credits to, a defined benefit pension plan administered by Empower Retirement, LLC (the “Cash Balance Plan”) covering approximately 40% of their Employees. Pursuant to the Cash Balance Plan, the Debtors made contributions ranging from 3% to 11% of Employees’ base salary based on a combination of age and years of service. In the last twelve (12) months, the Debtors incurred approximately \$1.6 million in connection with the Cash Balance Plan to fund the 2023 Plan Year, including administrative fees. The Cash Balance Plan is now frozen; therefore, the Debtors will not fund additional principal credits beyond the 2023 Plan Year. However, the Debtors are responsible for a 4% interest credit that is triggered if the Cash Balance Plan does not achieve 4% growth over the course of 2024.

41. Additionally, the Debtors have replaced the Cash Balance Plan with a non-qualified defined benefit plan (the “New Cash Balance Plan,” and together with the Cash Balance Plan, the “Cash Balance Plans”). The structure of the New Cash Balance Plan will mirror the Cash Balance Plan, with the Debtors making contributions ranging from 3% to 11%. The key distinction in its operation is that the New Cash Balance Plan is a non-qualified plan, allowing the Debtor to save resources around the management of the plan within ERISA guidelines. The New Cash Balance Plan is administered by Definiti, LLC (“Definiti”). The Debtors will owe their first principal credit for the New Cash Balance Plan 2024 Plan Year, estimated at \$1.6 million; however

this amount will not come due until Q1 of 2025. The Debtors also pay quarterly administrative fees in advance in connection with the services provided by Definiti.

42. As of the Petition Date, the Debtors do not believe they owe any amounts on account of the Cash Balance Plans. The Debtors believe they are authorized to continue making payments under the Cash Balance Plans in the ordinary course. The Debtors seek authority to continue the Cash Balance Plans on a postpetition basis in the ordinary course of business (including any prepetition amounts that may be outstanding) and consistent with their prepetition practices.

#### **VI. Paid Time Off and Paid Leave Benefits.**

43. The Debtors maintain several paid leave benefit programs for Employees, providing paid leave for PTO, FMLA Leave, paternity / maternity leave, among others (collectively, the “Paid Leave Benefits”).

44. In the ordinary course of business, the Debtors provide paid time off (“PTO”) to the Employees as one of the Paid Leave Benefits. PTO accrues at a specified rate based on the Employee’s years of service on a bi-weekly basis. Employees may carry over up to a maximum of 120 hours of unused PTO into the next calendar year. PTO may be used as a Paid Leave benefit for qualifying absences under the Family and Medical Leave Act (the “FMLA”). Employees who are terminated or resign are entitled to a cash payment in lieu of the accrued but unused PTO.

45. As of the Petition Date, the Debtors estimate that they owe approximately \$2.1 million on account of accrued but unpaid Paid Leave Benefits. The Debtors request authority to pay all outstanding prepetition amounts incurred on account of the Paid Leave Benefits as and when they come due, and to continue to make all payments on a postpetition basis, each in the ordinary course of business and consistent with their prepetition practices.

## **VII. Non-Insider Severance Benefits.**

46. In the ordinary course of business, the Debtors maintain a practice of paying severance to certain non-Insider Employees (the “Non-Insider Severance Benefits”). At the discretion of the Debtors, Employees are eligible for Non-Insider Severance Benefits upon their departure from the Company. The Non-Insider Severance Benefits are calculated by reference to the terminated Employee’s salary and their time of service with the Debtors prior to termination. Non-Insider Severance Benefits are either paid in a lump sum around the time of the Employee’s termination or consistent with the Employee’s schedule of salary payments, depending on the Employee’s contract, over a period of several bi-weekly pay periods.

47. The amount of Non-Insider Severance Benefits to which an Employee may receive fluctuates based on such Employee’s length of service. Employees are eligible for two weeks of severance per year of service, with a minimum Non-Insider Severance Benefit of four weeks and a maximum of twenty-six weeks. Non-Insider Severance Benefits are calculated on base salary only. All Non-Insider Severance Benefits are subject to applicable taxes. All non-Insider Employees are eligible for Non-Insider Severance Benefits, unless their employment contract says otherwise.

48. As of the Petition Date, the Debtors do not believe that there are any prepetition amounts outstanding on account of accrued but unpaid Non-Insider Severance Benefits. Out of an abundance of caution, however, the Debtors request authorization, but not direction, to pay prepetition amounts on account of the Non-Insider Severance Benefits and to continue honoring the Non-Insider Severance Benefits on a postpetition basis in the ordinary course of business consistent with prepetition practices.

49. The Debtors do not request authorization to make certain bonus or severance payments to Insiders. Consequently, the Debtors submit that section 503(c) of the

Bankruptcy Code with respect to bonus or severance payments to Insiders does not apply to the relief requested herein.

### **VIII. Additional Benefit Programs.**

50. In addition to the foregoing, Vertex offers Employees a range of ancillary benefits, including, for certain employees, a monthly allowance for a cellular phone, or a monthly allowance for a vehicle (collectively, the “Additional Benefits Program”). The aggregate monthly cost of the Additional Benefits Program is approximately \$40,000. The Debtors request authority to pay any amounts due with respect to these programs and to continue them on a postpetition basis in the ordinary course of business and consistent with their prepetition practices.

#### **Basis for Relief**

#### **I. Sufficient Cause Exists to Authorize the Debtors to Honor the Employee Compensation and Benefits Obligations.**

##### **A. Certain of the Employee Compensation and Benefits Are Entitled to Priority Treatment.**

51. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code entitle the majority of the Employee Compensation and Benefits to priority treatment. As priority claims, the Debtors are required to pay these claims in full to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(B). To the extent that an Employee receives no more than the statutory prescribed limit of \$15,150 on account of claims entitled to priority, the relief sought with respect to compensation only affects the timing of payments to Employees and does not have any material negative impact on recoveries for general unsecured creditors. The Debtors submit that payment of the Employee Compensation and Benefits at this time enhances value for the benefit of all interested parties. Finding, attracting, and training new qualified talent would be extremely difficult and would most likely require higher salaries, guaranteed bonuses, and more comprehensive compensation packages than are currently provided to Employees.

**B. Payment of Certain Employee Compensation and Benefits Is Required by Law.**

52. The Debtors seek authority to pay the Withholding Obligations to the appropriate third-party payees. These amounts principally represent Employee earnings that governments, Employees, and judicial authorities have designated for deduction from Employees' wages. Certain Withholding Obligations are not property of the Debtors' estates because the Debtors have withheld such amounts from Employees' wages on another party's behalf. *See* 11 U.S.C. § 541(b)(1), (d). Further, federal law requires the Debtors to withhold certain tax payments from Employees' wages 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). Because the Withholding Obligations may not be property of the Debtors' estates, the Debtors request authorization to transmit the Withholding Obligations to the proper parties in the ordinary course of business.

53. Similarly, the laws of some jurisdictions in which the Debtors operate require the Debtors to maintain the Workers' Compensation Program. If the Debtors fail to maintain the Workers' Compensation Program, the laws of those jurisdictions may prohibit the Debtors from continuing to operate in those jurisdictions. Payment of all obligations related to the Workers' Compensation Program is crucial to the Debtors' continued operations and the success of these chapter 11 cases.

**II. Payment of the Employee Compensation and Benefits and the Relief Sought Herein Is a Sound Exercise of the Debtors' Business Judgment and Necessary to Preserve the Value of the Estates.**

54. Courts generally acknowledge that it is appropriate to authorize the payment (or other special treatment) of prepetition obligations in appropriate circumstances. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 175 (Bankr. S.D.N.Y. 1989) (granting authority to pay prepetition wages). In authorizing payments of certain prepetition obligations, courts have relied on several legal theories, rooted in sections 1107(a), 1108, 363(b), 507, and 105(a) of the Bankruptcy Code.

55. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, debtors in possession 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 fiduciary duties of any debtor in possession is the obligation to “protect and preserve the estate, including an operating business’s going-concern value.” *Id.* Some courts have noted that there are instances in which a debtor can fulfill this fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” *Id.* The *CoServ* court specifically noted that satisfaction of prepetition claims would be a valid exercise of the debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate.” *Id.*

56. Section 363 of the Bankruptcy Code provides, in relevant part, that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 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 pursuant to section 363(b) of the Bankruptcy Code upon a finding that such use is supported by sound business

reasons. *See, e.g., Inst. Creditors of Cont'l Air Lines, Inc. v. Cont'l Air Lines, Inc. (In re Cont'l Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986).

57. Courts also apply section 105(a) pursuant to the “doctrine of necessity,” which functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition 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). Moreover, the doctrine of necessity is designed to foster a debtor’s rehabilitation, which courts have recognized is “the paramount policy and goal of Chapter 11.” *In re Ionosphere Clubs*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989).

58. The payment of the Employee Compensation and Benefits represents a sound exercise of the Debtors’ business judgment, is necessary to avoid immediate and irreparable harm to the Debtors’ estates and is therefore justified under sections 105(a) and 363(b) of the Bankruptcy Code. Paying prepetition wages, employee benefits, and similar obligations will benefit the Debtors’ estates and their creditors by allowing the Debtors’ business operations to continue without interruption. The Debtors believe that without the relief requested herein, Employees may seek alternative employment opportunities, perhaps with the Debtors’ competitors. Such a development would deplete the Debtors’ workforce, thereby hindering the Debtors’ ability to operate their businesses and, likely, diminishing stakeholder confidence in the Debtors’ ability to successfully reorganize. The loss of valuable Employees and the resulting need to recruit new personnel (and the costs attendant thereto) would be distracting at this crucial time when the Debtors need to focus on stabilizing their business operations. The Debtors must do their utmost to retain their workforce by, among other things, continuing to honor all wage, benefits, and related obligations, including the prepetition Employee Compensation and Benefits.

59. The majority of Employees rely exclusively on the Employee Compensation and Benefits to satisfy their daily living expenses. Many of the Debtors' Employees expect and require their wages to arrive on a timely basis. Employees will be exposed to significant financial difficulties if the Debtors are not permitted to honor their obligations related thereto expeditiously. Failure to satisfy such obligations will jeopardize Employee morale and loyalty at a time when Employee support is critical to the Debtors' businesses. Furthermore, if this Court does not authorize the Debtors to honor their various obligations under the Health and Welfare Coverage and Benefits described herein, Employees will not receive health coverage and, thus, may be obligated to pay certain health care claims that the Debtors have not satisfied. The loss of health care coverage will result in considerable anxiety for Employees (and likely attrition) at a time when the Debtors need such Employees to perform their jobs at peak efficiency. Additionally, as set forth above, Employee attrition would cause the Debtors to incur additional expenses to find appropriate and experienced replacements, severely disrupting the Debtors' operations at this critical juncture.

60. The Debtors request that this Court authorize, but not direct, the Debtors to pay and continue the Compensation and Benefits in the ordinary course of business and consistent with past practices on a final basis from the outset of these cases. The importance of a debtor's workforce to its operations has been repeatedly recognized by courts in this district, and such courts have granted relief similar to the relief requested herein. *See, e.g., In re Digit. Media Sols., Inc.*, No. 24-90468 (ARP) (Bankr. S.D. Tex. Sept. 13, 2024) (authorizing the debtors to (a) pay prepetition employee wages, salaries, other compensation, and reimbursable expenses, and (b) continue employee benefits program); *In re SmileDirectClub, Inc.*, No. 23-90786 (CML) (Bankr. S.D. Tex. Oct. 2, 2023) (same); *In re Genesis Care Pty Ltd.*, No. 23-90614 (DRJ) (Bankr.



S.D. Tex. June 1, 2023) (same); *In re Benefytt Techs., Inc.*, No. 23-90566 (CML) (Bankr. S.D. Tex. May 23, 2023) (same) *In re Envision Healthcare Corp.*, No. 23-90342 (CML) (Bankr. S.D. Tex. May 15, 2023) (same).<sup>6</sup>

### **III. A Limited Waiver of the Automatic Stay as It Applies to Workers' Compensation Claims Is Appropriate in This Case.**

61. Section 362(a)(1) of the Bankruptcy Code operates to stay:

[T]he 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[.]

Section 362 of the Bankruptcy Code, however, permits a debtor or other parties in interest to request a modification. The Debtors seek authorization, under section 362(d) of the Bankruptcy Code, to permit Employees to proceed with their Workers' Compensation Claims in the appropriate judicial or administrative forum. The Debtors believe that cause exists to modify the automatic stay because staying the Workers' Compensation Claims could have a detrimental effect on the financial wellbeing of Employees and Employee morale and lead to the departure of certain Employees who are critical at this juncture. Such departures could cause a severe disruption in the Debtors' businesses to the detriment of all parties in interest.

#### **Emergency Consideration**

62. Pursuant to Bankruptcy Local Rule 9013-1(i), the Debtors request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first twenty-one (21) days after the commencement of a chapter 11 case "to the extent that relief is necessary to avoid immediate and irreparable harm." An immediate and orderly

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<sup>6</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

transition into chapter 11 is critical to the viability of their operations and any delay in granting the relief requested could hinder the Debtors' operations and cause irreparable harm. Failure to receive the requested relief in this Motion during the first twenty-one (21) days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture. The Debtors have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 and request that the Court approve the relief requested in this Motion on an emergency basis.

**Processing of Checks and Electronic Fund Transfers Should Be Authorized**

63. The Debtors have sufficient funds to pay the amounts described herein in the ordinary course of business by virtue of expected cash flows from ongoing business operations, and the anticipated access to debtor-in-possession financing and the consensual use of cash collateral. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to any authorized payment in respect of the relief requested herein. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtors request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

**Waiver of Bankruptcy Rules 6004(a) and 6004(h)**

64. The Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the fourteen (14)-day stay period under Bankruptcy Rule 6004(h).

**Reservation of Rights**

65. Nothing contained herein or any actions taken pursuant to the relief requested or granted (including any payment made in accordance with any such order) is intended as or shall be construed as: (a) an admission as to the amount of, basis for, priority of, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (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 or any order granting the relief requested by this Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) 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; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's 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' or any other party in interest's rights to subsequently dispute such claim.

**Notice**

66. The Debtors will provide notice of this Motion to the following parties or their respective counsel: (a) the Office of the United States Trustee for the Southern District of Texas;

(b) the holders of the thirty (30) largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the Consenting Term Loan Lenders; (d) the agent under the Debtors' Term Loan Facility, and counsel thereto; (e) the agent under the Debtors' DIP Facility and counsel thereto; (f) counsel to Macquarie; (g) the United States Attorney's Office for the Southern District of Texas; (h) the Internal Revenue Service; (i) the United States Securities and Exchange Commission; (j) the state attorneys general for states in which the Debtors conduct business; (k) the Wage and Benefit Service Providers; and (l) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, no other or further notice need be given.

*[Remainder of page intentionally left blank]*

The Debtors request that the Court enter the Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Houston, Texas  
September 24, 2024

/s/ Jason G. Cohen

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**BRACEWELL LLP**

Jason G. Cohen (TX Bar No. 24050435)  
Jonathan L. Lozano (TX Bar No. 24121570)  
711 Louisiana Street, Suite 2300  
Houston, Texas 77002  
Telephone: (713) 223-2300  
Facsimile: (800) 404-3970  
Email: jason.cohen@bracewell.com  
jonathan.lozano@bracewell.com

-and-

Mark E. Dendinger (*pro hac vice* pending)  
31 W. 52nd Street, Suite 1900  
New York, NY 10019  
Telephone: (212) 508-6100  
Facsimile: (800) 404-3970  
Email: mark.dendinger@bracewell.com

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

**KIRKLAND & ELLIS LLP**

**KIRKLAND & ELLIS INTERNATIONAL LLP**

Brian Schartz, P.C. (TX Bar No. 24099361)  
601 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900  
Email: brian.schartz@kirkland.com

-and-

**KIRKLAND & ELLIS LLP**

**KIRKLAND & ELLIS INTERNATIONAL LLP**

John R. Luze (*pro hac vice* pending)  
Rachael M. Bentley (*pro hac vice* pending)  
333 West Wolf Point Plaza  
Chicago, Illinois 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200  
Email: john.luze@kirkland.com  
rachael.bentley@kirkland.com

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

**Certificate of Accuracy**

I certify that the foregoing statements are true and accurate to the best of my knowledge.  
This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ Jason G. Cohen

Jason G. Cohen

**Certificate of Service**

I certify that on September 24, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Jason G. Cohen

Jason G. Cohen

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

In re:

VERTEX ENERGY, INC., *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)  
) Case No. 24-90507(CML)  
)  
) (Joint Administration Requested)  
)  
) **Re: Docket No. \_\_\_\_**

**ORDER AUTHORIZING THE DEBTORS  
TO (I) PAY PREPETITION WAGES, SALARIES, OTHER  
COMPENSATION, AND REIMBURSABLE EXPENSES, (II) CONTINUE  
EMPLOYEE BENEFITS PROGRAMS AND (III) GRANTING RELATED RELIEF**

Upon the emergency motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), authorizing the Debtors to (a) pay certain prepetition wages, salaries, other compensation, and reimbursable expenses, (b) continue employee benefits programs in the ordinary course, including payment of certain prepetition obligations thereto, (c) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. § 1408; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates,

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<sup>1</sup> A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://www.veritaglobal.net/vertex>. The location of Debtor Vertex Energy, Inc.’s corporate headquarters and the Debtors’ service address in these chapter 11 cases is 1331 Gemini Street, Suite 250, Houston, Texas 77058.

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

their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Debtors are authorized, but not directed, to continue to provide, and to pay any claims or obligations on account of, the Employee Compensation and Benefits in the ordinary course and in accordance with the Debtors' prepetition policies and the terms of this Order.

2. The Debtors shall not make any bonus, incentive, retention, or severance payments to any Insiders (as such term is defined in section 101(31) of the Bankruptcy Code) without further order of this Court.

3. The Debtors are authorized, but not directed, to continue the Cash Balance Plans, Non-Insider Bonus Programs, Health and Welfare Coverage Benefits, Retirement Programs, Paid Time Off and Paid Leave Benefits, the Impact Safety Bonus, the Non-Insider Severance Benefits and any additional wage and benefit programs described in the Motion, in each case, in the ordinary course of business and consistent with historical practices, including making any payments or satisfying any obligations to non-insider employees with respect to the prepetition period.

4. The automatic stay of section 362(a) of the Bankruptcy Code, to the extent applicable, is hereby lifted to permit: (a) Employees to proceed with their claims under the Workers' Compensation Program in the appropriate judicial or administrative forum;



(b) the Debtors to continue the Workers' Compensation Program and pay all undisputed prepetition amounts relating thereto in the ordinary course; (c) insurers and third-party administrators to handle, administer, defend, settle, and/or pay Workers' Compensation Claims and direct action claims; and (d) insurers and third-party administrators providing coverage for any Workers' Compensation Claims or direct action claims to draw on any and all collateral provided by or on behalf of the Debtors therefor without further order of the Bankruptcy Court if and when the Debtors fail to pay and/or reimburse any insurers and third-party administrators for any undisputed amounts in relation thereto. This modification of the automatic stay pertains solely to claims under the Workers' Compensation Program and any such claims must be pursued in accordance with the applicable Workers' Compensation Program.

5. The Debtors are authorized, but not directed, to forward any unpaid amounts on account of Withholding Obligations to the appropriate third-party recipients or taxing authorities in accordance with the Debtors' prepetition policies and practices.

6. The Debtors are authorized, but not directed, to pay costs and expenses incidental to payment of the Employee Compensation and Benefits obligations, including all administrative and processing costs and payments to outside professionals.

7. The Debtors shall not (a) honor any prepetition Employee Compensation and Benefits to any individual that exceeds the priority amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code nor (b) pay any amounts to "insiders" of the Debtors as that term is defined in section 101(31) of the Bankruptcy Code under any bonus, incentive, or retention plan without seeking authority from this Court. However, if other unpaid prepetition claims or obligations to any Employee exceed the \$15,150 priority wages cap imposed by section 507(a)(4) of the Bankruptcy Code, the Debtors shall seek relief to pay such amounts pursuant to a separate

motion. Prior to paying any amounts to the Exception Employees over the \$15,150 statutory cap, the Debtors shall file and serve the U.S. Trustee, and counsel for any statutory committee, if appointed, a notice (the “Exception Notice”) of the amounts the Debtors intend to pay the Exception Employees (the “Noticed Amounts”). Provided no objections are received by the Debtors to the proposed payment of the Noticed Amounts within fourteen (14) days of filing the Exception Notice, the Debtors shall be authorized to pay the Noticed Amounts without further order of the Court.

8. Notwithstanding anything to the contrary set forth herein, any payment made hereunder, and any authorization contained herein, shall be subject to the requirements imposed under any interim or final orders authorizing the Debtors’ use of cash collateral and/or postpetition debtor-in-possession financing (any such order, a “DIP Order”) and any approved budget in connection therewith. To the extent there is any inconsistency between the terms of any DIP Order (including any approved budget in connection therewith) and any approval or action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

9. Nothing contained herein is intended or should be construed to create an administrative priority claim on account of the Employee Compensation and Benefits obligations.

10. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors’ or any other party in interest’s right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or any order granting the relief requested by the Motion or a finding that any particular claim is an

administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) 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; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

11. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order.

12. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

13. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

14. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

15. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final

Order are immediately effective and enforceable upon its entry.

16. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

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

Dated: \_\_\_\_\_, 2024

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CHRISTOPHER M. LOPEZ  
UNITED STATES BANKRUPTCY JUDGE