

**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 INTERIM AND FINAL  
ORDERS (I) AUTHORIZING THE DEBTORS TO  
PAY CERTAIN PREPETITION CLAIMS OF (A) 503(B)(9)  
CLAIMANTS, (B) LIEN CLAIMANTS, (C) CRITICAL VENDORS,  
AND (D) HSE SUPPLIERS, (II) CONFIRMING ADMINISTRATIVE EXPENSE  
PRIORITY OF OUTSTANDING ORDERS, 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"**

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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.



**link on Judge Lopez’s homepage. Select the case name, complete the required fields, and click “Submit” to complete your appearance.**

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 interim and final orders, substantially in the forms attached hereto (respectively, the “Interim Order” and “Final Order”), (a) authorizing the Debtors to pay, in the ordinary course of business, certain prepetition amounts owing on account of (i) 503(b)(9) Claims, (ii) Lien Claims, (iii) Critical Vendor Claims, and (iv) HSE Claims ((i)-(iv), each as defined herein), (b) confirming the administrative expense priority status of Outstanding Orders and authorizing, but not directing, the payment of such obligations in the ordinary course of business, and (c) granting related relief. The Debtors request that the Court schedule a final hearing within approximately twenty-one (21) days after the commencement of these chapter 11 cases to consider entry of the Final Order.

### **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

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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.

Motion.

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

4. The bases for the relief requested herein are sections 105(a), 363, 503(b), 1107(a), and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101 – 1532 (the “Bankruptcy Code”), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), rules 1075-1 and 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 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.

### **Overview of the Trade Claimants and the Trade Claims**

6. As set forth more fully in the First Day Declaration, the Debtors operate a crude oil refinery in Alabama, a large used motor oil refinery in Louisiana, and certain other used motor oil and recycling facilities. To maintain the Debtors’ facilities and operate in the ordinary course, the Debtors require continued access to critical goods and services provided by the Debtors’ trade vendors and suppliers. The Debtors’ businesses rely on continued access to, and relationships with, the Trade Claimants (as defined herein), which include a network of highly-specialized vendors, suppliers, and other business partners that provide the Debtors with essential goods and

services. Many of the Trade Claimants are virtually irreplaceable due to the specialized nature of the products and services they provide, and, even where alternatives may exist, the time and costs associated with switching to a new provider would likely be significant and detrimental to the Debtors' estates.

7. The Debtors therefore request authorization to pay certain outstanding prepetition claims of the 503(b)(9) Claimants, the Lien Claimants, the Critical Vendors, and HSE Suppliers (collectively, the "Trade Claimants," and such claims, collectively, the "Trade Claims"),<sup>3</sup> subject to the limitations set forth in the Interim Order and the Final Order. The following table summarizes the categories of Trade Claims that the Debtors request authority to pay pursuant to this Motion and the estimated prepetition amounts outstanding within each such category:

<b>Category</b>	<b>Description of Services Provided</b>	<b>Estimated Amount Due or Due to be Paid Within 21 Days (Interim Order)</b>	<b>Estimated Amount Outstanding as of Petition Date (Final Order)</b>
503(b)(9) Claimants	Suppliers that provided goods to the Debtors that were received within twenty days before the Petition Date.	\$3.4 million	\$5.3 million
Lien Claimants	Suppliers of goods or services utilized by or provided to the Debtors that may assert mechanic's, possessory, construction, transportation, or other similar liens.	\$5.1 million	\$7.2 million
Critical Vendors	Specialized suppliers of goods and services that are critical to maintain the Debtors' day-to-day operations, or which are sole or limited-source providers of the goods and services necessary for the uninterrupted operations of the Debtors' businesses.	\$10.4 million	\$19.1 million
HSE	Suppliers of goods or services that may be	\$1.3 million	\$2.6 million

<sup>3</sup> For the avoidance of doubt, the Debtors do not seek authority to pay prepetition claims to any non-Debtor affiliates, any insiders (as such term is defined in section 101(31) of the Bankruptcy Code), or any affiliate of any insiders.

Category	Description of Services Provided	Estimated Amount Due or Due to be Paid Within 21 Days (Interim Order)	Estimated Amount Outstanding as of Petition Date (Final Order)
Suppliers	reasonably necessary to ensure the health, safety, regulatory, and environmental compliance of the Debtors' operations or are otherwise reasonably necessary to maintain the integrity of the Debtors' operations, but which are not Lien Claimants, 503(b)(9) Claimants, Critical Vendors, or other suppliers.		
<b>Total amount of Trade Claims:</b>		\$20.2 million	\$34.2 million
<b>Total as percentage of total funded debt:</b>		4.3%	7.3%

8. The Debtors will use their business judgment and discretion on a claim-by-claim basis and pay only those Trade Claims, or a portion thereof, that are critical to maintaining the Debtors' supply chain and continued operations and to provide the Debtors with favorable postpetition terms.

**I. 503(b)(9) Claimants.**

9. The Debtors may have received certain goods, such as feedstock, inventory, chemicals, equipment, and other supplies, from their vendors (the "503(b)(9) Claimants") within the twenty days immediately preceding the Petition Date, thereby giving rise to claims that are accorded administrative priority under section 503(b)(9) of the Bankruptcy Code (the "503(b)(9) Claims"). Many of the Debtors' relationships with the 503(b)(9) Claimants are not governed by long-term contracts. Instead, the Debtors obtain much of their goods and other materials on an order-by-order basis. As a result, a 503(b)(9) Claimant may refuse to supply new orders or otherwise interfere with the Debtors' receipt of goods and materials if their 503(b)(9) Claims remain unpaid. Any such refusal or interference could negatively affect the Debtors' estates as the

Debtors depend on the steady flow of goods and materials to continue ordinary course operations.

10. Certain of the 503(b)(9) Claimants supply goods or materials that are critical to the Debtors' ongoing operations. For example, certain 503(b)(9) Claimants provide the Debtors with certain chemicals required to process waste at the Debtors' refinery or which are government-mandated in the production of certain fuel products. Because many of the 503(b)(9) Claimants are highly specialized, the Debtors have few alternative suppliers should the existing 503(b)(9) Claimants stop providing goods or materials to the Debtors. Thus, any interruption in the flow of these goods would upend the Debtors' operations and destroy value for the Debtors' businesses.

11. In light of the immense importance of the 503(b)(9) Claimants to the Debtors' operations, the Debtors believe that payment of the 503(b)(9) Claimants is essential to avoid disruption to the Debtors' operations. As of the Petition Date, the Debtors owe approximately \$5.3 million on account of the 503(b)(9) Claims, of which approximately \$3.4 million is due or will become due within the first twenty-one days of these chapter 11 cases.<sup>4</sup> For the avoidance of doubt, the Debtors do not seek to accelerate or modify existing payment terms with respect to any 503(b)(9) Claims. Rather, the Debtors will pay the applicable 503(b)(9) Claims (if any) as they come due and in the ordinary course of business.

## **II. Lien Claimants.**

12. The Debtors routinely do business with vendors that may be able to assert a variety of statutory, common law, or possessory liens against the Debtors and their property if the Debtors fail to pay for certain goods delivered or services rendered (collectively, the "Lien Claimants").

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<sup>4</sup> For the avoidance of doubt, such amounts exclude 503(b)(9) Claims that are classified as Lien Claims, Critical Vendor Claims, or HSE Supplier Claims for purposes of this Motion.

These Lien Claimants provide key goods and services for the maintenance and operation of the Debtors' facilities and supply chain, including manufacturing, mechanical, construction, transportation, and freight services.

13. The Debtors require certain maintenance, construction, and repair services necessary to maintain their critical infrastructure and ensure the Debtors can continue operating in the ordinary course of business. For example, the Debtors' refinery in Mobile, Alabama is currently undergoing periodic maintenance that began September 6, 2024, and is scheduled to be completed by September 30, 2024. This maintenance is required every two years for the continued safe and reliable operation of the Mobile, Alabama refinery. Additional construction and maintenance events are also ongoing at the Debtors' various facilities. Further, the Debtors' businesses depend on the continuous flow of materials and products through their supply chain and distribution network. The Debtors' supply chain relies on services provided by various freight and logistics providers. Possible loss of long-term relationships with such providers could result in significant business disruption and financial harm to the Debtors' businesses.

14. Under certain non-bankruptcy laws, the Lien Claimants may be able to assert liens on the products in their possession or on the property they improved, as applicable, to secure payment of the charges or expenses incurred in connection with these prepetition obligations (the "Lien Claims"). Should these Lien Claims remain unpaid, the Lien Claimants will likely discontinue services and refuse to release the Debtors' property or products. Such actions would impede the Debtors' use of this property until their claims are satisfied and their liens redeemed. The Lien Claimants' possession (and retention) of the Debtors' property and products or enforcement of a mechanic's, construction, warehousing, transportation, or other statutory or common law lien would disrupt the Debtors' operations and affect the Debtors' ability to

efficiently administer these chapter 11 cases. The cost of such disruption to the Debtors' estates would in many cases likely be greater than the applicable Lien Claims. Further, pursuant to section 363(e) of the Bankruptcy Code, the Lien Claimants may be entitled to adequate protection of any valid possessory lien, which would drain estate assets.

15. The Debtors estimate that, as of the Petition Date, approximately \$7.2 million is outstanding on account of Lien Claims, of which approximately \$5.1 million is due or will become due within the first twenty-one days of these chapter 11 cases. To continue benefiting from the Lien Claimants' services, the Debtors request authority to pay the prepetition Lien Claims as they become due and payable and to continue paying the Lien Claims in the ordinary course of business. For the avoidance of doubt, the Debtors seek authority to pay only those amounts of Lien Claims that the Debtors determine, in their sole discretion, to be necessary or appropriate to (a) obtain release of critical or valuable goods, (b) maintain reliable, efficient, and smooth distribution systems, and (c) induce the Lien Claimants to continue performing and otherwise supporting the Debtors' operations on a postpetition basis.

### **III. Critical Vendors.**

16. In the ordinary course of their business, the Debtors engage providers for certain critical services, logistics, refinery expenses, capital expenditures, raw materials, regulatory and environmental compliance, and other materials the Debtors depend upon to operate their businesses. The Debtors obtain such services, equipment, and parts from a number of highly specialized vendors, service providers, and other businesses (collectively, the "Critical Vendors")—often on an order-by-order basis and without long-term contracts—replacement of which likely would be impossible or would result in substantially higher costs for the Debtors. Further, certain Critical Vendors are the sole source providers of replacement parts necessary to maintain the Debtors' equipment, and the inability to acquire these parts would result in the deterioration of the Debtors'



equipment.

17. The Debtors rely on timely and frequent delivery of these materials, equipment, parts, and services, and any interruption in this supply—however brief—would disrupt the Debtor’s operations and could cause irreparable harm to the Debtors’ businesses, goodwill, employees, customer base, market share, and, potentially, compromise the Debtors’ ability to comply with certain health and safety regulations. Such harm would likely far outweigh the cost of payment of certain of the prepetition claims held by certain Critical Vendors and accrued in the ordinary course of business (collectively, the “Critical Vendor Claims”).

18. Furthermore, the Debtors believe some of their Critical Vendors may be unfamiliar with the chapter 11 process and unwilling to do business on existing terms—assuming such parties will continue to supply the Debtors at all. Indeed, prior to the Petition Date, certain of the Debtors’ vendors cancelled existing favorable trade terms due to rumors of a bankruptcy filing. As a result, certain vendors that previously allowed payment on a “net 30” basis instead began requiring the Debtors to prepay. Any further deterioration in trade terms, whether on account of demands for cash in advance, prepay, cash on delivery, or otherwise, will negatively impact the Debtors’ liquidity and jeopardize their ability to maintain and service their equipment and to purchase any additional equipment required for their operations.

19. The Critical Vendors generally fall into the following categories:

- Logistics. Vendors relating to the transportation of feedstock and/or refined product to and from the refinery. These vendors provide transportation of feedstock and/or refined product by ship, pipeline, rail, etc., as well as provide storage, customs services, and brokerage/trading and marketing services.
- Refinery Expenses. Suppliers, service providers, and vendors relating to refinery operations. These vendors include contractors, equipment and supplies providers, parts and service providers, and other industrial services providers.
- Capital Expenditures. Suppliers, service providers, and vendors relating to refinery maintenance, repairs, and construction. These vendors include engineering services

providers, equipment and supplies providers, construction services, contractors, and other industrial services.

- Raw Materials. Vendors relating to the purchase of feedstock and refined products from suppliers outside of the Debtors' intermediation arrangement. These vendors provide products and chemicals used in the production of refined products sold by the refinery.<sup>5</sup>
- Regulatory & Environmental Compliance. Suppliers, service providers, and vendors relating to regulatory and environmental compliance. These vendors provide products and services to ensure the Company meets its obligations relating to, among others, air emission standards, water runoff and pollution, and waste storage and treatment.

20. The ultimate goal of the Debtors' chapter 11 cases is to preserve the value of their assets for all stakeholders. Accordingly, it is important that the Debtors maintain positive relationships with the Critical Vendors that are essential to their business operations throughout the course of these chapter 11 cases. An adequate and timely supply of goods and services from the Critical Vendors is vital to ensure that the Debtors can maintain operations and meet their contractual obligations in the ordinary course.

21. For the twelve months before the Petition Date, on average, the Debtors' paid the Critical Vendors approximately \$7.6 million per month. The Debtors estimate that, as of the Petition Date, in the aggregate, the Debtors owe approximately \$19.1 million on account of prepetition obligations to the Critical Vendors, of which approximately \$10.4 will become due within the first twenty-one days of these chapter 11 cases.

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<sup>5</sup> For the avoidance of doubt the Debtors do not seek authority, through this Motion, to pay any amounts in connection with the Debtor' intermediation facilities. The Debtors seek such relief pursuant to the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing Continuation of the Intermediation Contracts, as Amended, (II) Authorizing the Debtors to Enter Into and Perform Postpetition Intermediation Transactions and Postpetition Hedging Transactions, (III) Providing Superpriority Administrative Expense Status and Liens in Respect of Postpetition Intermediation Transactions and Postpetition Hedging Transactions, (IV) Granting Adequate Protection to the Intermediation Provider, (V) Providing Superpriority Administrative Expense Status in Respect of Purchaser Support Agreements, (VI) Modifying the Automatic Stay, (VII) Setting a Final Hearing, and (VIII) Granting Related Relief*, filed contemporaneously herewith.

#### **IV. The Debtors' Process for Identifying Critical Vendors.**

22. In the weeks leading up to the Petition Date, the Debtors, with the assistance of their advisors, spent significant time reviewing and analyzing their books and records, consulting operations management and purchasing personnel, reviewing contracts, supply agreements and purchase orders, and analyzing applicable laws, regulations, and historical practice to identify the Critical Vendors that supply the products and services most vital to the Debtors' go-forward operations—the loss of which could materially harm their businesses. Specifically, in identifying the Critical Vendors, the Debtors examined each of their vendor relationships with the following criteria in mind:

- whether a vendor is a sole-source, limited-source, or high-volume supplier for goods or services critical to the Debtors' business operations;
- whether alternative vendors are available that can provide requisite volumes of similar goods or services on equal (or better) terms and, if so, whether the Debtors would be able to continue operating while transitioning business thereto;
- whether an agreement exists by which the Debtors could compel a vendor to continue performing on prepetition terms and whether failure to pay under an agreement would result in the vendor refusing to ship goods or provide critical services under other non-contractual arrangements;
- whether failure to pay all or part of a particular vendor's claim could cause the vendor to refuse to ship goods or to provide critical services on a postpetition basis; and
- whether failure to pay a particular vendor could result in contraction of trade terms as a matter of applicable non-bankruptcy law or regulation.

23. In addition to these factors, the Debtors and their advisors examined the health of each vendor relationship and the extent to which each vendor's prepetition claim could be satisfied elsewhere in the chapter 11 process. This process resulted in the Debtors identifying approximately 104 Critical Vendors, which account for approximately 16 percent of the Debtors'

prepetition vendors that have amounts outstanding as of the Petition Date.<sup>6</sup>

24. The Debtors' selection process balanced the need to ensure that these chapter 11 cases do not disrupt their operations with the need to limit the expenditure of estate resources. To that end, the Debtors undertook a lengthy process to ensure that the Critical Vendors truly represent those vendors that are vital to the Debtors' operations. Paying targeted Critical Vendor Claims renders a benefit to the Debtors' estates both monetarily and operationally by preserving liquidity and enabling the Debtors to operate smoothly during the chapter 11 cases.

25. To maintain stability during this critical stage of these chapter 11 cases and to avoid jeopardizing the Debtors' operations going forward, the Debtors request authority to pay the Critical Vendor Claims as they become due and to continue paying the Critical Vendor Claims in the ordinary course of business, including on account of prepetition claims. For the avoidance of doubt, the Debtors intend to pay the Critical Vendor Claims only where they believe, in their business judgment, that the benefit to their estates from making such payments will exceed the costs.

## **V. HSE Suppliers.**

26. In the ordinary course of business, the Debtors incur obligations to suppliers of services utilized in the Debtors' operations, the payment of which may be reasonably necessary to ensure the health, safety, environmental, and regulatory compliance of the Debtors' operations or to otherwise maintain the integrity of the Debtors' operations but which are not otherwise 503(b)(9) Claims, Lien Claims, or Critical Vendor Claims (such suppliers, the "HSE Suppliers," and such obligations, the "HSE Claims"). As a result of the highly regulated nature of the Debtors'

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<sup>6</sup> These amounts exclude approximately 286 Critical Vendors that are feedstock suppliers to Debtor H&H Oil, L.P. Although this represents a significant number of Critical Vendors, as of the Petition Date, the Debtors only owe these Critical Vendors an aggregate amount of approximately \$0.2 million.

businesses, as well as the potential health and safety risks associated with the production and transportation of oil and refined products, the Debtors rely on the HSE Suppliers to provide services such as health and safety inspections of the Debtors' facilities, equipment, safety training for operating the Debtor's facilities, and processes to ensure compliance with government safety regulations and industry standards. Examples of such goods and services include, among others, protecting the Debtors' personnel from environmental and safety hazards, on call emergency response services, environmental monitoring, defining protocols for onsite hazards, and suppliers of safety uniforms. Many of the HSE Suppliers are difficult to replace due to technical service expertise specific to the Debtors' operations, systems, safety protocols, and facilities.

27. For the twelve months before the Petition Date, on average, the Debtors paid the HSE Suppliers approximately \$0.7 million per month. The Debtors estimate that, as of the Petition Date, approximately \$2.6 million in HSE Claims are outstanding, of which approximately \$1.3 million are due or will become due within the first twenty-one days of these chapter 11 cases.

28. Any attempt by the HSE Suppliers to refuse delivery of goods or to refuse to provide services on account of nonpayment of prepetition HSE Claims could increase the risk of injury or accident at the Debtors' various sites, facilities, and refineries, and result in significant expense to the Debtors' estates. Accordingly, the Debtors request authority to pay the HSE Claims as they become due and payable and to continue paying the HSE Claims in the ordinary course of business.

## **VI. Customary Trade Terms.**

29. Subject to the Court's approval, the Debtors intend to pay the Trade Claims only to the extent necessary to preserve the value of their estates. To that end, in return for paying a portion of the Trade Claims, the Debtors propose that they be authorized, within their sole discretion, to require the Trade Claimants to provide favorable trade terms for the postpetition

procurement of their goods and services.

30. The Debtors seek authorization to condition payment of the Trade Claims upon each Trade Claimant's agreement to (a) continue—or recommence—providing goods and/or services to the Debtors in accordance with trade terms (including credit limits, pricing, timing of payments, availability, and other terms) at least as favorable to the Debtors as those in place during the twelve months prior to the Petition Date (collectively, the “Customary Trade Terms”), and (b) agree that they shall not be permitted to cancel any contract, agreement, or arrangement pursuant to which they provide such goods and/or services to the Debtors during the course of these chapter 11 cases; *provided* that the Debtors continue to pay for such goods and services and are not otherwise in breach of such contract or agreement. The Debtors also seek authorization to require, at their discretion, certain Trade Claimants to enter into a contractual agreement evidencing such Customary Trade Terms. The Debtors reserve the right to require, at their discretion, that the Customary Trade Terms be made in writing, either by e-mail or use of a trade agreement.

31. In addition, the Debtors request that if any party accepts payment pursuant to the relief requested by this Motion and thereafter does not continue to provide goods or services on Customary Trade Terms or as otherwise agreed to by the Debtors, then: (a) any payment on account of a prepetition claim received by such party shall be deemed, in the Debtors' sole discretion, an improper postpetition transfer and, therefore, immediately recoverable by the Debtors in cash upon written request by the Debtors; (b) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made; and (c) if there exists an outstanding postpetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the relief requested by this Motion to such outstanding postpetition balance and such supplier or vendor will

be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or otherwise; and (d) the Debtors may pursue any other available remedy available to them under the applicable law or any executed writing with such party.

## **VII. Payment of Outstanding Orders.**

32. Before the Petition Date and in the ordinary course of business, the Debtors may have ordered goods that will not be delivered until after the Petition Date (collectively, the “Outstanding Orders”). To avoid the risk of becoming general unsecured creditors of the Debtors’ estates with respect to such goods, certain suppliers may refuse to ship or transport such goods (or may recall such shipments) with respect to such Outstanding Orders unless the Debtors issue substitute purchase orders postpetition. To prevent any disruption to the Debtors’ business operations, and given that goods delivered after the Petition Date are afforded administrative expense priority under section 503(b) of the Bankruptcy Code, the Debtors seek an order (a) granting administrative expense priority under section 503(b) of the Bankruptcy Code to all undisputed obligations of the Debtors arising from the acceptance of goods subject to Outstanding Orders, and (b) authorizing the Debtors to satisfy such obligations in the ordinary course of business.

### **Basis for Relief**

#### **I. The Court Should Authorize Payment of the Trade Claims.**

33. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business’s going-concern value. *See, e.g., In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (“Cases cited by the Debtors that refer to necessity of payment to preserve going concern value imply such a rule, and this Court is prepared to apply the Doctrine of Necessity to authorize

payment of prepetition claims in appropriate cases.”); *see also In re Scotia Dev., LLC*, No. 07-20027, 2007 WL 2788840, at \*2 (Bankr. S.D. Tex. Sep. 21, 2007) (outlining the factors for when a critical vendor payment is necessary); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (“The ability of a Bankruptcy Court to authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.”). In so doing, these courts acknowledge that several legal theories rooted in section 105(a), 363(b), and 1107(a) of the Bankruptcy Code support the payment of prepetition claims as provided herein.

34. Section 363(b) of the Bankruptcy Code permits a debtor, subject to court approval, to pay prepetition obligations where a sound business purpose exists for doing so. *See In re Ionosphere Clubs, Inc.*, 98 B.R. at 175 (noting that section 363(b) provides “broad flexibility” to authorize a debtor to honor prepetition claims where supported by an appropriate business justification). Under section 1107(a) of the Bankruptcy Code, a debtor in possession is given the same rights and powers as a trustee appointed in a bankruptcy case, including the “implied duty of the debtor-in-possession to ‘protect and preserve the estate, including an operating business’ going-concern value.” *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ*, 273 B.R. at 497). Under section 105(a) of the Bankruptcy Code, “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a); *CoServ, L.L.C.*, 273 B.R. at 497 (“These are simply examples of claims that may require satisfaction for the debtor in possession to perform its fiduciary obligations. In such instances, it is only logical that the bankruptcy court be able to use Section 105(a) of the [Bankruptcy] Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate.”).



35. No provision of the Bankruptcy Code expressly prohibits the postpetition payment of prepetition trade claims. The above-referenced sections of the Bankruptcy Code authorize such payments when the payments are critical to preserving the going-concern value of a debtor's estate, as is the case here.

36. There are instances in which a debtor in possession can fulfill their fiduciary duties “only . . . by the preplan satisfaction of a prepetition claim.” *CoServ, L.L.C.*, 273 B.R. at 497. The court in *CoServ* specifically noted that the 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 498. Courts in the Fifth Circuit, including the Southern District of Texas, have followed *CoServ*'s three-part test to determine whether a prepetition claim of a “critical vendor” may be paid outside of the plan process on a postpetition basis:

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 pre-petition 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.* at 498.

37. Allowing the Debtors to pay the Trade Claims is especially appropriate where, as here, doing so is consistent with the “two recognized policies” of chapter 11 of the Bankruptcy Code—preserving the going-concern value of the Debtors' businesses and maximizing the value of property available to satisfy creditors. *See Bank of Am. Nat'l Trust & Savs. Ass'n v. 203 N. LaSalle St. P'Ship*, 526 U.S. 434, 453 (1999) (describing a reconciliation of “the two recognized policies under [c]hapter 11 . . . preserving going concerns and maximizing property available to satisfy creditors”). Reflecting the recognition that payment of prepetition

claims of certain essential suppliers and vendors is, in fact, both critical to a debtor's ability to preserve going-concerns and maximize creditor recovery, courts regularly grant relief consistent with that which the Debtors are seeking in this Motion. *See CoServ, L.L.C.*, 273 B.R. at 497 (noting that "it is only logical that the bankruptcy court be able to use [s]ection 105(a) of the [Bankruptcy] Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate").

**A. The Court Should Authorize the Payment of the 503(b)(9) Claims.**

38. Section 503(b)(9) of the Bankruptcy Code provides administrative priority for the "value of any goods received by the debtor within [twenty] days before the date of commencement of a case under this title in which goods have been sold to the debtor in the ordinary course of such debtor's business." The 503(b)(9) Claims must be paid in full for the Debtors to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(A). Payment of such claims now only provides such parties with what they would be entitled to receive under a chapter 11 plan unless they consented otherwise. The timing of such payments also lies squarely within the Court's discretion. *See In re Glob. Home Prods., LLC*, No. 06-10340 (KG), 2006 WL 3791955, at \*3 (Bankr. D. Del. Dec. 21, 2006) (agreeing with parties that "the timing of the payment of that administrative expense claim is left to the discretion of the Court"). The Debtors' ongoing ability to obtain feedstock, inventory, and other goods and supplies as provided herein is key to their survival and necessary to preserve the value of their estates. Absent payment of the 503(b)(9) Claims at the outset of these chapter 11 cases—which merely accelerates the timing of payment and not the ultimate treatment of such claims—the Debtors could be denied access to critical supplies and other goods necessary to maintain the Debtors' business operations and maximize the value of the

Debtors' estates.

**B. The Court Should Authorize the Payment of the Lien Claims.**

39. Certain Lien Claimants may be entitled under applicable non-bankruptcy law to assert certain possessory liens on the Debtors' goods or equipment in their possession (notwithstanding the automatic stay under section 362 of the Bankruptcy Code) in an attempt to secure payment of their prepetition claim. Under section 362(b)(3) of the Bankruptcy Code, the act of perfecting such liens, to the extent consistent with section 546(b) of the Bankruptcy Code, is expressly excluded from the automatic stay. *See* 11 U.S.C. § 546(b)(1)(A) (providing that a debtor's lien avoidance powers "are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection"). The Debtors anticipate that certain of the Lien Claimants may assert or perfect liens, simply refuse to turn over goods in their possession, or stop performing their ongoing obligations. Even absent a valid lien, to the extent certain Lien Claimants have possession of the Debtors' inventory, equipment, or materials, mere possession or retention could disrupt the Debtors' operations.

40. Paying the Lien Claims should not impair unsecured creditor recoveries in these chapter 11 cases. In instances where the amount owed to a Lien Claimant is less than the value of the goods that could be held to secure a Lien Claimant's claim, such party may be a fully-secured creditor of the Debtors' estates. In such instances, payment now only provides the Lien Claimants with what they might be entitled to receive under a chapter 11 plan, without any interest costs that might otherwise accrue during these chapter 11 cases. Conversely, all creditors will benefit from the seamless transition of the Debtors' operations into bankruptcy.

**C. The Court Should Authorize the Payment of the Critical Vendor and HSE Claims.**

41. The Debtors require a steady provision of goods and services provided by the Critical Vendors and the services provided by the HSE Suppliers to continue operating their businesses and maintain operational stability. Without such products and services, the Debtors could be forced to unexpectedly halt operations while they search for substitute vendors and service providers and may have to forego existing favorable trade terms as a result of their haste to find new vendors, thereby hindering the Debtors' ability to generate revenue. Importantly, any disruption to the Debtors' supply chain could result in a significant loss of operational efficiency, decreasing the value of the Debtors' business, which could impair stakeholder value at the outset of these chapter 11 cases, as well as potentially pose a risk to the environment and the safety of those in and around the Debtors' facilities.

**II. The Court Should Confirm That Outstanding Orders Are Administrative Expense Priority Claims and That Payment of Such Claims Is Authorized.**

42. Pursuant to section 503(b)(1) of the Bankruptcy Code, obligations that arise in connection with the postpetition delivery of goods and services, including goods ordered prepetition, are administrative expense priority claims because they benefit the Debtors' estates postpetition. Granting the relief sought herein with respect to the Outstanding Orders will not afford such claimants any greater priority than what they would otherwise be entitled to if the relief requested herein were not granted, and it will not prejudice any other party in interest.

43. Absent such relief, however, the Debtors may be required to expend substantial time and effort reissuing the Outstanding Orders to provide certain suppliers with assurance of such administrative priority status. The disruption to the continuous and timely flow of critical goods and inventory to the Debtors would force the Debtors to potentially halt operations and production, damage the Debtors' business reputation, erode the Debtors' customer base, and

ultimately lead to a loss of revenue, all to the detriment of the Debtors and their creditors. Given the foregoing, the Court should confirm the administrative expense priority status of the Outstanding Orders and authorize the Debtors to pay the Outstanding Orders in the ordinary course of business.

**III. Payment of the Trade Claims and the Relief Sought Herein is a Sound Exercise of the Debtors' Business Judgment and Necessary to Preserve the Value of the Estates.**

44. 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., In re BNP Petroleum Corp.*, 632 F. App’x 429, 435 (5th Cir. 2016); *In re Cont’l Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986) (“That is, for 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.” (citation omitted)).

45. Section 105(a) of the Bankruptcy Code provides that a court “may issue any order process, or judgment that is necessary or appropriate to carry out the provisions of” the Bankruptcy Code. 11 U.S.C. § 105(a). Courts 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) (recognizing the “doctrine of necessity”).

46. 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); *see also In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“The payment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code,” but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”).

47. As discussed above, every segment of the Debtors’ supply chain is indispensable to the safe and economic operation of the Debtors’ assets. To ensure that the Debtors continue to maintain their historically excellent operational standards, it is imperative that the Debtors have the authority to pay all of the Trade Claimants if determined necessary to preserve the Debtors’ operations, reputation, and the go-forward success of the Debtors’ businesses. The relief requested herein 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), 363(b), 1107(a), and 1108 of the Bankruptcy Code.

48. Courts in this district and other jurisdictions have granted relief similar to the relief requested herein under sections 105(a) and 363 of the Bankruptcy Code. *See, e.g., In re Digital Media Sols., Inc.*, No. 24-90468 (ARP) (Bankr. S.D. Tex. Sept. 13, 2024) (authorizing the debtors to pay certain prepetition critical vendor claims on an interim basis); *In re SmileDirectClub, Inc.*, No. 23-90786 (CML) (Bankr. S.D. Tex. Oct. 10, 2023) (authorizing the debtors to pay certain prepetition critical vendor claims on a final basis); *In re Envision Healthcare Corp.*, No. 23-90342 (CML) (Bankr. S.D. Tex. June 27, 2023) (same); *In re Benefytt Techs. Inc.*, No. 23-90566 (CML) (Bankr. S.D. Tex. June 20, 2023) (same); *In re Genesis Care Pty Limited*, No. 23-90614 (DRJ)

(Bankr. S.D. Tex. June 1, 2023) (same).<sup>7</sup>

### **Emergency Consideration**

49. 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 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**

50. 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

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<sup>7</sup> Due to 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 of the Debtors’ proposed counsel.

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)**

51. 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**

52. 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**

53. 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; and (k) 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 Interim Order and the Final 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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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. \_\_**

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS  
TO PAY CERTAIN PREPETITION CLAIMS OF (A) 503(B)(9)  
CLAIMANTS, (B) LIEN CLAIMANTS, (C) CRITICAL VENDORS, AND  
(D) HSE SUPPLIERS, (II) CONFIRMING ADMINISTRATIVE EXPENSE  
PRIORITY OF OUTSTANDING ORDERS, 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 interim order (this “Interim Order”), (a) authorizing the Debtors to pay, in the ordinary course of business, certain prepetition amounts owing on account of (i) 503(b)(9) Claims, (ii) Lien Claims, (iii) Critical Vendor Claims, and (v) HSE Claims (collectively, the “Trade Claims”), (b) confirming the administrative expense priority status of Outstanding Orders and authorizing, but not directing, the payment of such obligations in the ordinary course of business; and (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 venue of this proceeding and the

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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.

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, 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 final hearing (the "Final Hearing") on the Motion shall be held on \_\_\_\_\_, 2024, at \_\_:\_\_.m., prevailing Central Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Central Time, on \_\_\_\_\_, 2024. In the event no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.

2. The Debtors are authorized in the reasonable exercise of their business judgment to pay all or part of, and discharge, on a case-by-case basis, the prepetition Trade Claims described in the Motion, in the ordinary course of business and consistent with their prepetition practices in an aggregate amount not to exceed \$20.2 million on an interim basis as set forth in the categories and amounts in the Motion and as the Debtors deem necessary in their sole discretion. The Debtors are authorized to pay all undisputed amounts related to the Outstanding Orders in the ordinary course of business consistent with the parties' customary practices in effect prior to the Petition Date. In the event the Debtors will exceed the aggregate amounts in any category as detailed in

the Motion during the interim period, the Debtors shall file a notice with the Court describing the category and overage amount prior to payments. If no objections are filed with the Court and served on the Debtors within five (5) business days, such overage shall be authorized to be paid.

3. As a condition to receiving payment on account of a Trade Claim under this Interim Order, any Trade Claimant that accepts payment pursuant to the authority granted in this Interim Order shall agree to: (a) continue—or recommence—supplying goods and services to the Debtors on Customary Trade Terms, and (b) agree that they shall not be permitted to cancel any contract, agreement, or arrangement pursuant to which they provide such goods and/or services to the Debtors during the course of these chapter 11 cases. The Debtors may require, in their sole discretion, that the Customary Trade Terms be made in writing, including by email or through a trade agreement, as condition to payment. The Debtors reserve the right to require additional favorable trade terms with any Trade Claimant as a condition to payment of any Trade Claim. Any party that accepts payment from the Debtors on account of a Trade Claim shall be provided with a copy of this Interim Order.

4. All undisputed obligations related to the Outstanding Orders are granted administrative expense priority status in accordance with section 503(b)(1)(A) of the Bankruptcy Code.

5. Prior to entry of a Final Order, the Debtors shall not pay any obligations under this Interim Order unless they are due or deemed necessary to be paid in the Debtors' reasonable business judgment to ensure ongoing provision of goods or services or otherwise to avoid an adverse effect on operations.

6. The Debtors shall maintain a matrix/schedule of all amounts directly or indirectly paid under the terms and conditions of this Interim Order (the "Vendor Matrix"), including the

following information: (a) the category of Trade Claims for amount paid, applied, offset or setoff, as further described and classified in the Motion; (b) the amount of the payment, application, offset or setoff by category; (c) the Debtor or Debtors that made the payment, application, offset or setoff; (d) the recipient of the payment, application, offset or setoff; and (e) the date of the payment, application, offset or setoff. The Debtors shall provide a copy of such Vendor Matrix on a confidential basis to the United States Trustee for the Southern District of Texas, counsel to the Consenting Term Loan Lenders, and counsel to any statutory committee appointed in this case no later than ten (10) business days following the last day of each calendar month.

7. If any party accepts payment hereunder for a prepetition obligation of the Debtors, and the party thereafter fails to comply with Customary Trade Terms or other such terms as agreed to by the Debtors, then: (a) any payment on account of a prepetition claim received by such party shall be deemed, in the Debtors' sole discretion, an improper postpetition transfer and, therefore, immediately recoverable by the Debtors in cash upon written request by the Debtors; (b) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made; and (c) if there exists an outstanding postpetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the relief requested by the Motion to such outstanding postpetition balance and such supplier or vendor will be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or otherwise; and (d) the Debtors may pursue any other available remedy available to them under this Interim Order, applicable law, or any executed writing with such party.

8. Notwithstanding anything to the contrary herein, prior to making any payment pursuant to this Interim Order to a Trade Claimant on account of an Outstanding Order, the Debtors

shall provide a copy of this Interim Order to the applicable party (unless previously provided to such Trade Claimant). Any party that accepts payment from the Debtors on account of a Trade Claim shall be deemed to have agreed to the terms and provisions of this Interim Order.

9. For the avoidance of doubt, this Interim Order does not authorize payments to insiders (as such term is defined in section 101(31) of the Bankruptcy Code) of the Debtors.

10. 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.

11. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this Interim 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 particular 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.

12. Nothing in the Motion or this Interim Order, nor the Debtors' implementation of the relief granted in this Interim Order, shall be deemed to modify or waive any of the Debtors' rights with respect to goods and services requested or received from the Critical Vendors, including the Debtors' rights to (a) cancel a purchase order, (b) decline the acceptance of goods and/or services, (c) return any defective, nonconforming or unacceptable goods, or (d) contest the amount of any invoice or claim on any grounds.

13. 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 Interim Order.

14. 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.

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

16. 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.

17. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

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

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

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

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CHRISTOPHER M. LOPEZ  
UNITED STATES BANKRUPTCY JUDGE

**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. \_\_**

**FINAL ORDER (I) AUTHORIZING THE DEBTORS  
TO PAY CERTAIN PREPETITION CLAIMS OF (A) 503(B)(9)  
CLAIMANTS, (B) LIEN CLAIMANTS, (C) CRITICAL VENDORS, AND  
(D) HSE SUPPLIERS, (II) CONFIRMING ADMINISTRATIVE EXPENSE  
PRIORITY OF OUTSTANDING ORDERS, 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 a final order (this “Final Order”), (a) authorizing the Debtors to pay, in the ordinary course of business, certain prepetition amounts owing on account of (i) 503(b)(9) Claims, (ii) Lien Claims, (iii) Critical Vendor Claims, and (v) HSE Claims (collectively, the “Trade Claims”), (b) confirming the administrative expense priority status of Outstanding Orders and authorizing, but not directing, the payment of such obligations in the ordinary course of business; and (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

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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.

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, 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 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 in the reasonable exercise of their business judgment to pay all or part of, and discharge, on a case-by-case basis, the prepetition Trade Claims described in the Motion, in the ordinary course of business and consistent with their prepetition practices in an aggregate amount not to exceed \$34.2 million on a final basis as set forth in the categories and amounts in the Motion and as the Debtors deem necessary in their sole discretion. The Debtors are authorized to pay all undisputed amounts related to the Outstanding Orders in the ordinary course of business consistent with the parties' customary practices in effect prior to the Petition Date.

2. As a condition to receiving payment on account of a Trade Claim under this Final Order, any Trade Claimant that accepts payment pursuant to the authority granted in this Final Order shall agree to: (a) continue—or recommence—supplying goods and services to the Debtors on Customary Trade Terms, and (b) agree that they shall not be permitted to cancel any contract,

agreement, or arrangement pursuant to which they provide such goods and/or services to the Debtors during the course of these chapter 11 cases. The Debtors may require, in their sole discretion, that the Customary Trade Terms be made in writing, including by e-mail or through a trade agreement, as condition to payment. The Debtors reserve the right to require additional favorable trade terms with any Trade Claimant as a condition to payment of any Trade Claim. Any party that accepts payment from the Debtors on account of a Trade Claim shall be provided with a copy of this Final Order.

3. All undisputed obligations related to the Outstanding Orders are granted administrative expense priority status in accordance with section 503(b)(1)(A) of the Bankruptcy Code.

4. If any party accepts payment hereunder for a prepetition obligation of the Debtors, and the party thereafter fails to comply with Customary Trade Terms or other such terms as agreed to by the Debtors, then: (a) any payment on account of a prepetition claim received by such party shall be deemed, in the Debtors' sole discretion, an improper postpetition transfer and, therefore, immediately recoverable by the Debtors in cash upon written request by the Debtors; (b) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made; and (c) if there exists an outstanding postpetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the relief requested by the Motion to such outstanding postpetition balance and such supplier or vendor will be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or otherwise, and (d) the Debtors may pursue any other available remedy available to them under this Final Order, applicable law, or any executed writing with such party.

5. Notwithstanding anything to the contrary herein, prior to making any payment pursuant to this Final Order to a Trade Claimant on account of an Outstanding Order, the Debtors shall provide a copy of this Final Order to the applicable party (unless previously provided to such Trade Claimant). Any party that accepts payment from the Debtors on account of a Trade Claim shall be deemed to have agreed to the terms and provisions of this Final Order.

6. For the avoidance of doubt, this Final Order does not authorize payments to insiders (as such term is defined in section 101(31) of the Bankruptcy Code) of the Debtors.

7. 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.

8. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this Final 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 particular 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.

9. 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 Final Order.

10. 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.

11. 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.

12. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

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

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

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

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CHRISTOPHER M. LOPEZ  
UNITED STATES BANKRUPTCY JUDGE