

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

In re:

VERTEX ENERGY, INC., *et al.*,¹

Debtors.

) Chapter 11

) Case No. 24-90507 (CML)

) (Joint Administration Requested)

) (Emergency Hearing Requested)

**DEBTORS' EMERGENCY MOTION
SEEKING ENTRY OF AN ORDER AUTHORIZING
THE DEBTORS TO REDACT AND FILE THE UNREDACTED
CONFIDENTIAL INTERMEDIATION EXHIBITS UNDER SEAL**

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.

¹ 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.



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

Relief Requested

1. The Debtors seek entry of an order, substantially in the form attached hereto (the “Order”): (a) authorizing the Refining Debtors to redact and file under seal the Confidential Intermediation Exhibits (as defined below), of which the Debtors are seeking approval pursuant to, or otherwise submitting in support of, 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, (III) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (IV) Modifying the Automatic Stay, (V) Setting a Final Hearing, and (VI) Granting Related Relief* (the “Intermediation Motion”)³ filed contemporaneously herewith, (b) directing that the unredacted Confidential Intermediation Exhibits shall remain under seal and confidential and not be made available to anyone, without the prior written consent of, as applicable, the Debtors and Macquarie (defined below, and together with the Debtors, the “Intermediation Parties”), except to (i) the Court, (ii) the U.S. Trustee, (iii) the counsel and financial advisors to any statutory committee that may be appointed in these cases (on a confidential and professional eyes only basis), (iv) the Consenting Term Loan Lenders and counsel thereto, (v) the DIP Lenders and counsel thereto, and (vi) any other party as may be ordered by the Court or agreed upon by, as

² A description of the Debtors, their businesses, and the facts and circumstances supporting this Sealing 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 with this Sealing Motion and incorporated by reference herein.

³ Capitalized terms used but not defined in this Sealing Motion shall have the meanings set forth in the First Day Declaration or the Intermediation Motion, as applicable.

applicable, the Intermediation Parties, in each case under appropriate confidentiality agreements reasonably satisfactory to, as applicable, each of the Intermediation Parties that preserve the confidentiality of the Confidential Intermediation Exhibits (and any information derived therefrom), 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 Sealing Motion.

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

4. The bases for the relief requested herein are sections 105(a) and 107(b) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Bankruptcy Rule 9018, and rules 9013-1(i) and 9037-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”).

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.

6. By the Intermediation Motion, the Debtors seek entry of interim and final orders authorizing certain of the Debtors to, among other things, enter into, honor, and/or perform under certain prepetition Intermediation Contracts and Post-Petition Documents and obtain related relief. In support of the Intermediation Motion, the Debtors have attached the following exhibits (collectively, the “Confidential Intermediation Exhibits”):

- a. the Assurance and Amendment and Restatement Agreement (the “Assurance Agreement”) entered into for the purpose of, among other things, obtaining Macquarie’s agreement to continue intermediation activities after the Petition Date;
- b. the Supply and Offtake Agreement, dated as of April 1, 2022, by and among Vertex Refining and Macquarie (as amended and restated, and together with the related ancillary agreements, the “Post-Petition Intermediation Agreement”);
- c. the Schedules to the Post-Petition Intermediation Agreement (the “Schedules”);
- d. the Amended and Restated Storage Facilities Agreement, as amended and restated by the Assurance Agreement (the “Facilities Agreement”);
- e. that certain letter from Macquarie, pursuant to which the Parties have set forth the amounts for and other terms relating to certain fees payable under the Post-Petition Intermediation Agreement and other amounts determined for purposes thereof (the “Fee Letter”); and
- f. that certain letter from Macquarie, pursuant to which the Parties have set forth the amounts for and other terms relating to the transfer of Independent Amount as determined for the purposes of the Prepetition Intermediation Agreement Letter (the “Independent Amount Letter”).

7. In connection with the Intermediation Motion, the Debtors seek authorization to redact the Confidential Intermediation Exhibits where practicable and file unredacted versions of the Confidential Intermediation Exhibits under seal. The Confidential Intermediation Exhibits contain sensitive and confidential commercial information regarding the structure and obligations of the parties under the transactions contemplated by the Intermediation Motion. Because the disclosure of this information could harm the Debtors and Macquarie, the Debtors seek authority to redact (where practicable) and file under seal unredacted copies of the Confidential

Intermediation Exhibits and to provide for the limited disclosure of the Confidential Intermediation Exhibits as provided herein.

Basis for Relief

8. Section 105(a) of the Bankruptcy Code empowers bankruptcy courts to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

9. Section 107(b) of the Bankruptcy Code provides bankruptcy courts with the power to issue orders that will protect entities from potential harm that may result from the disclosure of certain confidential information. *See In re Gen. Homes Corp.*, 181 B.R. 898, 903 (Bankr. S.D. Tex. 1995). This section provides, in relevant part:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may:

- (1) protect an entity with respect to a trade secret or confidential research, development, or ***commercial information***; or
- (2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

11 U.S.C. § 107(b) (emphasis added).

10. Bankruptcy Rule 9018 defines the procedures by which a party may move for relief under section 107(b) of the Bankruptcy Code, providing that:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information”

Fed. R. Bankr. P. 9018. Further, Bankruptcy Local Rule 9037-1 provides, in relevant part, that, when it may be practicable to redact confidential information from a document, “(i) a redacted

document should be filed, not under seal; and (ii) the unredacted document should simultaneously be filed, under seal.” Bankruptcy Local Rule 9037-1(c).

11. If the material sought to be protected satisfies one of the categories identified in section 107(b) of the Bankruptcy Code, “the court is *required* to protect a requesting party and has no discretion to deny the application.” *In re Orion Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994) (emphasis in original). Stated differently, section 107(b) of the Bankruptcy Code does not require a party seeking its protections to demonstrate “good cause.” *Orion Pictures*, 21 F.3d at 28. “Courts have supervisory power over their records and files and may deny access to those records and files to prevent them from being used for an improper purpose.” *In re Kaiser Aluminum Corp.*, 327 B.R. 554, 560 (D. Del. 2005). Courts are required to provide such protections “generally where open inspection may be used as a vehicle for improper purposes.” *Orion Pictures*, 21 F.3d at 27. Indeed, the “authority goes not just to the protection of confidential documents, but to other confidentiality restrictions that are warranted in the interests of justice.” *See In re Glob. Crossing Ltd.*, 295 B.R. 720, 724 (Bankr. S.D.N.Y. 2003).

12. Confidential commercial information “has been defined as information which would cause ‘an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.’” *In re Faucett*, 438 B.R. 564, 567–68 (Bankr. W.D. Tex. 2010) (quoting *Orion Pictures Corp.*, 21 F.3d at 27). Commercial information need not rise to the level of a trade secret to be protected under section 107(b) of the Bankruptcy Code. *See In re Northstar Energy, Inc.*, 315 B.R. 425, 429 (Bankr. E.D. Tex. 2004) (“A bankruptcy court is required to seal ‘documentary information filed in court that does not rise to the level of a trade secret but that is so critical to the operations of the entity seeking the protective order that its disclosure will unfairly benefit that entity’s competitors.’”); *see also Orion Pictures*, 21 F.3d

at 27–28 (holding that section 107(b)(1) creates an exception to the general rule that court records are open to examination by the public and, under this exception, an interested party must show only that the information it wishes to seal is “confidential” and “commercial” in nature).

13. The terms of the Confidential Intermediation Exhibits are the product of good faith negotiations. The disclosure of the terms of the Confidential Intermediation Exhibits would likely cause substantial harm to the Intermediation Parties, create an unfair advantage for competitors, and violate the Debtors’ agreement with Macquarie to keep the Confidential Intermediation Exhibits confidential. The Confidential Intermediation Exhibits reflect the concessions and consideration embodied in the transactions contemplated by the Intermediation Motion, which information is considered by the Debtors and Macquarie, in particular, as well as the refining industry, in general, to be highly sensitive and confidential information not typically disclosed to the public. Given the highly competitive nature of the feedstock refining industry, it is of the utmost importance that the details regarding these key details in the Confidential Intermediation Exhibits be kept confidential so that competitors cannot use the information contained therein to gain a strategic advantage in the marketplace.

14. Good cause exists to authorize the Debtors to redact and file unredacted copies of the Confidential Intermediation Exhibits under seal because of the harm that would ensue if the sensitive and confidential commercial information contained in the Confidential Intermediation Exhibits became public information. Pursuant to Bankruptcy Local Rule 9037-1(d), the Debtors have filed redacted versions of the Confidential Intermediation Exhibits other than Schedules C and H, the Fee Letter, and the Independent Amount Letter, for which the Debtors have determined redaction is not practicable. Further, the Debtors will make unredacted copies of the Confidential Intermediation Exhibits available to (a) the Court, (b) the U.S. Trustee, (c) the counsel and

financial advisors to any statutory committee that may be appointed in these cases (on a confidential and professional eyes only basis), (d) the Consenting Term Loan Lenders and counsel thereto, (e) the DIP Lenders and counsel thereto and (f) any other party as may be ordered by the Court or agreed to by, as applicable, the Intermediation Parties, in each case, under appropriate confidentiality agreements that (i) are reasonably satisfactory to, as applicable, each of the Intermediation Parties, and (ii) preserve the confidentiality of the Confidential Intermediation Exhibits (and any information derived therefrom).

15. Courts in this district have granted relief similar to the relief requested herein. *See, e.g., In re SmileDirectClub, Inc.*, No. 23-90786 (CML) (Bankr. S.D. Tex. Nov. 29, 2023) (authorizing the debtors to redact and file under seal the names of confidential parties); *In re Cineworld Group PLC*, No. 22-90168 (MI) (Bankr. S.D. Tex. Mar. 9, 2023) (same); *In re Carlson Travel, Inc.*, No. 21-90017 (MI) (Bankr. S.D. Tex. Jan. 10, 2022) (same).

Emergency Consideration

16. The Debtors request emergency consideration of this Sealing 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.” In light of the time-sensitive nature of the Intermediation Motion and the confidential information contained in the Confidential Intermediation Exhibits, 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 Sealing Motion on an emergency basis.

Notice

17. 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 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) Macquarie; 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.

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

Houston, Texas
September 25, 2024

/s/ Jason G. Cohen

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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 25, 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:)	
)	Chapter 11
)	
VERTEX ENERGY, INC., <i>et al.</i> , ¹)	Case No. 24-90507 (CML)
)	
Debtors.)	(Joint Administration Requested)
)	
)	Re: Docket No. ____

**ORDER AUTHORIZING THE DEBTORS TO REDACT
AND FILE THE CONFIDENTIAL INTERMEDIATION EXHIBITS UNDER SEAL**

Upon the motion (the “Sealing Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”): (a) authorizing the Debtors to redact and file the Confidential Intermediation Exhibits under seal, (b) directing that the unredacted Confidential Intermediation Exhibits shall remain under seal and confidential and not be made available to anyone, without the prior written consent of each of, as applicable, the Debtors and Macquarie, except to (i) the Court, (ii) the U.S. Trustee, (iii) the counsel and financial advisors to any statutory committee that may be appointed in these cases (on a confidential and professional eyes only basis), (iv) the Consenting Term Loan Lenders and counsel thereto, (v) the DIP Lenders and counsel thereto and (vi) any other party as may be ordered by the Court or agreed to by the Debtors, in each case under appropriate confidentiality agreements reasonably satisfactory to, as applicable, the Debtors and Macquarie that preserve the confidentiality of the Confidential Intermediation Exhibits (and any information derived therefrom), and (c) granting

¹ 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.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Sealing Motion.

related relief; 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 Sealing Motion in this district is proper pursuant to 28 U.S.C. § 1408; and this Court having found that the relief requested in the Sealing 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 Sealing Motion and opportunity for a hearing on the Sealing Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Sealing Motion and having heard the statements in support of the relief requested therein; and this Court having determined that the legal and factual bases set forth in the Sealing Motion 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 to redact and file under seal unredacted copies of the Confidential Intermediation Exhibits. Each of the unredacted Confidential Intermediation Exhibits shall remain confidential, and shall not be made available to anyone, other than as provided in paragraph 2 of this Order, without the prior written consent of the Debtors and Macquarie, or further order of the Court.

2. The Debtors are authorized to cause each of the unredacted copies of the Confidential Intermediation Exhibits to be served on and made available, on a confidential basis, to: (a) the Court; (b) the U.S. Trustee; (c) counsel and financial advisors to any statutory committee that may be appointed in these cases (on a confidential and professionals' eyes only basis); (d) the Consenting Term Loan Lenders and counsel thereto, (e) the DIP Lenders and counsel thereto, and

and (f) any other party as may be ordered by the Court or agreed to by the Debtors and Macquarie, in each case under appropriate confidentiality agreements reasonably satisfactory to the Debtors and Macquarie, that preserve the confidentiality of the applicable Confidential Intermediation Exhibit (and any information derived therefrom).

3. The Debtors and any party authorized to receive any of the Confidential Intermediation Exhibits shall be authorized and directed, subject to Bankruptcy Local Rule 9037-1, to redact specific references to the information set forth therein from pleadings filed on the public docket maintained in these chapter 11 cases.

4. The terms and conditions of this Order are immediately effective and enforceable upon its entry.

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

6. 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

CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY JUDGE