

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
(HOUSTON DIVISION)

In re:

VERTEX ENERGY, INC. *et al.*,

Debtors.

Chapter 11

Case No. 24-90507

(Jointly Administered)

**OBJECTION AND RESERVATION OF RIGHTS OF CINTAS CORPORATION TO  
NOTICE OF CURE COSTS AND POTENTIAL ASSUMPTION AND ASSIGNMENT OF  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES  
IN CONNECTION WITH SALE**

Cintas Corporation (“Cintas”), by their undersigned counsel, Frost Brown Todd LLP, files this objection and reservation of rights (this “Objection”) to the *Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale* [Docket No. 158] (the “Cure Notice”).<sup>1</sup> In support of this Objection, Cintas respectfully states:

**BACKGROUND**

**A. The Cintas Agreement**

1. Cintas and Debtor, Vertex Energy, Inc. entered into that certain Standard Rental Service Agreement dated March 22, 2022, which was amended by and between Cintas and Debtor, Vertex Refining Alabama, LLC (“Vertex Refining Alabama”) pursuant to that certain Amended Agreement CW405024 #1 dated September 30, 2022 (collectively, the “Cintas Agreement”).

2. Pursuant to the Cintas Agreement, Cintas provides routine rental facilities and uniform

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<sup>1</sup> Capitalized terms used herein but undefined shall have the meanings ascribed to them in the Cure Notice, the Bid Procedures Motion or the Bid Procedures Order, as applicable.



services to Vertex Refining Alabama on a regular basis through its local location at 5679 Commerce Blvd. E, Mobile, AL 36619 (the “Location Address”).

**B. Debtors’ Relevant Bankruptcy Pleadings**

3. On September 24, 2024 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas (this “Court”).

4. Upon information and belief, 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.

5. On September 24, 2024, the Debtors filed their *Emergency Motion for Entry of an Order (I) Approving Bidding Procedures and Auction, (II) Scheduling Bid Deadlines, an Auction, Objection Deadlines, and a Sale Hearing, (III) Approving the Assumption and Assignment Procedures, (IV) Approving the Form and Manner of Notice of a Sale Transaction, the Auction, the Sale Hearings, and Assumption and Assignment Procedures, and (V) Granting Related Relief* (the “Bid Procedures Motion”) [Docket No. 5].

6. On September 25, 2024, the Court entered an Order granting the Bid Procedures Motion (the “Bid Procedures Order”) [Docket No. 55].

7. Pursuant to the Bid Procedures Order, on October 9, 2024, the Debtors filed the Cure Notice. The Cure Notice identifies an agreement with Cintas described as the “Amending Agreement Dated 9/30/2022” with Vertex Refining Alabama. The Debtors proposed cure amount is \$5,972.50 (the “Proposed Cure”).

8. The Cure Notice provides that contract counterparties had ten (10) days from service of the Cure Notice to object to the Proposed Cure.

9. However, there was a delay in Cintas receiving the Cure Notice due to the Cure Notice being sent to a P.O. Box, rather than the Location Address, Cintas' corporate address, or the address to remit payment identified on the Invoices. *See Certificate of Service* [Docket No. 188]. Upon receipt of the Cure Notice, Cintas' counsel promptly reached out to Debtors' counsel to request an extension of the Objection Deadline in order to consensually resolve this matter. The Debtors initially provided Cintas until October 24, 2024. When the Debtors failed to provide a response to Cintas' supporting documentation by October 24, 2024, upon Cintas' request, the Debtors provided an additional limited extension to October 25, 2024, at 12pm CT.

### **OBJECTION**

10. Although Cintas does not object to the Debtors' right to sell substantially all of the Debtors' assets, Cintas does object to any proposed Sale to the extent such sale seeks to impair, limit and/or modify Cintas' rights under the Cintas Agreement, the Bankruptcy Code and applicable law. Moreover, any assumption of the Cintas Agreement must be conditioned on the Debtors' compliance with the requirements of section 365 of the Bankruptcy Code and the Cintas Agreement, including, but not limited to, paying all amounts due and owing under the Cintas Agreement through the effective date of the assumption of the Cintas Agreement and providing adequate assurance of future performance information to Cintas.

#### **A. The Proposed Cure Amount Must Provide for Payment of all Obligations Due Under the Cintas Agreement.**

11. As of the date of this Objection, the aggregate cure amount owing under the Cintas Agreement is not less than **\$96,981.20** (the "Cure Amount").

12. Because Cintas is continuing to provide goods to the Debtors under the Cintas Agreement, the Cure Amount may increase prior to any actual date of assumption and assignment of

the Cintas Agreement if the Debtors do not pay all amounts that accrue from and after the date of this Objection.

13. In connection with the proposed assumption and assignment of the Cintas Agreement, all rights of Cintas under the Cintas Agreement (including defenses thereto) are specifically reserved. As such, any order approving the proposed Sale should specify that Cintas' setoff, recoupment, and additional rights under the Cintas Agreement are preserved.

14. In addition, Cintas requests that any order approving the assumption and assignment of the Cintas Agreement provide that the Debtors, or any subsequent assignee, remain responsible for all accrued but unbilled amounts owed under the Cintas Agreement regardless of when such charges become due in accordance with the terms of the Cintas Agreement. This result is mandated by the requirement that the Debtors cure all arrears and that the Debtors or any subsequent assignee provide adequate assurance of future performance of the Cintas Agreement. *See* 11 U.S.C. § 365(b)(1).

15. The proposed order approving the Sale or any order approving the assumption and assignment of the Cintas Agreement must provide, among other things, that the Debtors, the Successful Bidder or the proposed assignee promptly pay to Cintas all amounts due and owing under the Cintas Agreement through the effective date of assumption and assignment of the Cintas Agreement (i.e., the Cure Amount), as the same may increase to reflect other amounts that become due or are determined to be due after the date of this Objection.

16. Ultimately, any order approving the Sale and the assumption and assignment of the Cintas Agreement should specify that Cintas' setoff, recoupment, and subrogation rights are preserved, and that the Debtors and any proposed assignee remain liable to Cintas for (i) any accrued but unbilled charges under the Cintas Agreement; (ii) any non-monetary defaults; and/or (iii) any insurance, indemnification and other contractual obligations under the Cintas Agreement regardless

of when such obligations accrued.

**B. Debtors Must Demonstrate Adequate Assurance of Future Performance**

17. In accordance with section 365 of the Bankruptcy Code, Cintas must be provided with sufficient information with respect to adequate assurance of future performance prior to the potential assumption and assignment of Cintas Agreement to the Successful Bidder or proposed assignee.

18. Cintas demands proof of the Successful Bidder's or the proposed assignee's ability to establish adequate assurance of future performance with respect to the Cintas Agreement. Cintas is entitled to the full benefit of its bargain under the Cintas Agreement. Cintas is further entitled to the full protections provided by section 365 of the Bankruptcy Code. Any assumption and assignment of the Cintas Agreement must be in accordance with all provisions of the Cintas Agreement and the Bankruptcy Code.

**RESERVATION OF RIGHTS**

19. Nothing contained herein shall be deemed an admission or waiver by Cintas. Cintas expressly reserves the right to amend or supplement this Objection, including the Cure Amount.

20. Nothing in this Objection is intended to be, or should be construed as, a waiver by Cintas of any of its rights under the Cintas Agreement, the Bankruptcy Code, or applicable law. Cintas expressly reserves all such rights, including, without limitation, the right to: (a) supplement and/or amend this Objection and to assert any additional objections with respect to the Proposed Cure Amount, adequate assurance of future performance, the Sale itself; (b) amend the Cure Amount; (c) assert any nonmonetary defaults under the Cintas Agreement; and (d) assert any further objections as it deems necessary or appropriate.

**WHEREFORE**, Cintas respectfully requests that this Court sustain this Objection and grant Cintas such other and further relief as this Court deems just and appropriate under the circumstances.

Dated: October 25, 2024

**FROST BROWN TODD LLP**

*By: /s/ Rebecca L. Matthews*

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**CERTIFICATE OF SERVICE**

I certify that on October 25, 2024, I served or caused to be served Cintas Corporation's Objection and Reservation of Rights to Debtors' Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale via this Court's CM/ECF electronic delivery system to all parties who have appeared in this case.

Date: October 25, 2024

**FROST BROWN TODD LLP**

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