

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

In re:	§	
	§	Case No. 24-90507 (CML)
	§	
VERTEX ENERGY, INC. <i>et al.</i> , ¹	§	Chapter 11
	§	
	§	
Debtors.	§	(Jointly Administered)
	§	

**KSM’S LIMITED OBJECTION AND RESERVATION OF RIGHTS REGARDING
ASSUMPTION OF EXECUTORY CONTRACT AND RELATED CURE COSTS**
[Relates to Docket Nos. 425, 431]

Kelly S. Mathews LLC (“KSM”), by and through its undersigned counsel, hereby files this limited objection and reservation of rights (the “Limited Objection”) regarding the assumption of its executory contract and payment of relevant cure costs, and in support of the Limited Objection, KSM respectfully states as follows:

Background

I. The Bankruptcy Case

1. On September 24, 2024 (the “Petition Date”), Vertex Energy, Inc. and its affiliated debtors (collectively, the “Debtors”) filed voluntary petitions for relief under Chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “Court”).

¹ A complete list of each of the Debtors in these chapter 11 cases and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.veritaglobal.net/vertex>. The location of Debtor Vertex Energy, Inc.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 1331 Gemini Street, Suite 250, Houston, Texas 77058.



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2. On November 17, 2024, the Debtors filed the *First Amended Joint Chapter 11 Plan of Vertex Energy, Inc. and its Debtor Affiliates* [Docket No. 425] (the “Plan”). Pursuant to Article V of the Plan, “on the Effective Date, except as otherwise provided herein . . . all other Executory Contracts or Unexpired Leases that are not otherwise rejected will be deemed assumed by the applicable Reorganized Debtor or Reorganized Vertex, as applicable, in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code.”² Moreover, “[e]ntry of the Confirmation Order shall constitute an order of the Bankruptcy Court approving the assumptions, assumptions and assignments, or rejections of the Executory Contracts or Unexpired Leases as set forth in the Plan . . .”³

3. On December 13, 2024, the Debtors filed the *Notice of Filing of Plan Supplement* [Docket No. 531] (as amended by the *First Amended Plan Supplement* at Docket No. 540, the “Plan Supplement”). As of the filing of this Limited Objection, the Debtors have not yet filed the portion of the Plan Supplement that includes the Assumed Executory Contracts and Unexpired Leases List or the Rejected Executory Contracts and Unexpired Leases List contemplated in the Plan.

4. The confirmation hearing is scheduled to commence on December 20, 2024 (the “Confirmation Hearing”).

II. KSM’s Business Relationship with the Debtors

5. On September 9, 2021, Vertex Energy, Inc., on behalf of itself and its affiliates, entered into the “Engagement Letter” (the “Engagement Letter”) and “Statement of Work Compliance Services” (“Statement of Work,” and together with the Engagement Letter, any

² Plan, Art. V.A.

³ *Id.*

mutually agreed proposals, and any amendments or modifications thereto, the “Agreement”) with KSM. Pursuant to the Agreement, KSM provides state and federal motor fuel tax compliance services to certain Debtors. KSM has continued to provide its services to the Debtors postpetition as an ordinary course professional pursuant to the *Order Authorizing the Retention and Compensation of Certain Professionals Utilized in the Ordinary Course of Business* [Docket No. 448]. See *Declaration of Disinterestedness of Kelly S Mathews LLC Pursuant to the Order Authorizing the Retention and Compensation of Certain Professionals Utilized in the Ordinary Course of Business* [Docket No. 458].

6. On November 26, 2024, KSM filed proofs of claim (the “Proofs of Claim”) asserting, among other things, that certain of the Debtors owe KSM a total of \$142,818.75 for services rendered to the Debtors under the Agreement prior to the Petition Date. See Case No. 24-90522, Claim No. 4; Case No. 24-90527, Claim No. 3.

Limited Objection

7. As noted above, the Debtors have not yet filed the Assumed Executory Contracts and Unexpired Leases List or the Rejected Executory Contracts and Unexpired Leases List contemplated in the Plan. KSM therefore cannot yet determine whether the Debtors are proposing to assume or reject the Agreement under the Plan. In an abundance of caution, KSM files this Limited Objection to assert that it is entitled to payment of all outstanding prepetition and postpetition amounts owed under the Agreement in the event the Debtors seek to assume the Agreement under the Plan.

8. Section 365(b) of the Bankruptcy Code does not permit assumption of executory contracts or unexpired leases without first curing (or providing adequate assurance of prompt cure of) all defaults and monies owed. 11 U.S.C. § 365(b); see also *Century Indem. Co. v. Nat’l Gypsum*

Co. Settlement Trust (In re Nat'l Gypsum Co.), 208 F.3d 498, 506 (5th Cir. 2000) (“[T]he debtor party must take full account of the cost to cure all existing defaults owed to the non-debtor party when assessing whether the contract is beneficial to the estate.”); *Official Comm. of Unsecured Creditors v. Aust (In re Network Access Solutions, Corp.)*, 330 B.R. 67, 76 (Bankr. D. Del. 2005) (“[W]hen a contract is assumed under section 365, all unpaid amounts due under the agreement must be paid.”).

9. In the event the Debtors seek to assume the Agreement, the Debtors must pay all amounts owed under the Agreement, including the prepetition amount of \$142,818.75 and any postpetition amounts that remain unpaid as of the Effective Date of the Plan. KSM objects to any purported assumption of the Agreement without payment of all amounts owed thereunder.

Reservation Rights

10. KSM expressly reserves the right to supplement, modify, or amend the Limited Objection at any time. KSM reserves all its rights in connection with the Limited Objection, the Agreement, any schedule the Debtors file regarding assumed or rejected executory contracts, any cure costs related thereto, the Plan Supplement, and any hearing regarding assumption of the Agreement (including, without limitation, the right to further object and raise any additional objections or arguments it may have at such hearing). KSM also reserves all rights as a creditor in the Debtors’ chapter 11 cases, including in connection with the Proofs of Claim.

WHEREFORE, KSM respectfully requests that the Court: (i) sustain the Limited Objection; (ii) condition the Debtors’ assumption of the Agreement on payment of all outstanding

amounts owed under the Agreement as of the Effective Date of the Plan; and (iii) for such other and further relief as is just and proper.

Dated: December 18, 2024

/s/ Kelli S. Norfleet

HAYNES AND BOONE, LLP

Kelli S. Norfleet (TX Bar No. 24070678)

Imaan Patel (TX Bar No. 24139247)

1221 McKinney Street, Suite 4000

Houston, Texas 77010

Telephone: (713) 547-2000

Email: kelli.norfleet@haynesboone.com

Email: imaan.patel@haynesboone.com

COUNSEL TO KELLY S. MATHEWS LLC

CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2024, the foregoing document was served via electronic mail by the Court's ECF system to all parties authorized to receive electronic notice in this case.

/s/ Kelli S. Norfleet

Kelli S. Norfleet