

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

FULCRUM BIOENERGY, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-12008 (TMH)

(Joint Administration Requested)

DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING THE DEBTORS TO CONTINUE TO OPERATE
THEIR CASH MANAGEMENT SYSTEM AND
(II) GRANTING RELATED RELIEF

The above-captioned debtors and debtors in possession (collectively, the “Debtors” and, together with their non-debtor affiliates, “Fulcrum”) respectfully state as follows in support of this motion (this “Motion”):

RELIEF REQUESTED

1. The Debtors seek entry of interim and final orders, substantially in the form attached hereto as **Exhibit B** (the “Interim Order”) and **Exhibit C** (the “Final Order”), (i) authorizing, but not directing, the Debtors to (a) continue their existing cash management system, (b) honor certain prepetition obligations related thereto, (c) maintain their existing bank accounts and business forms, (d) implement any changes to the existing cash management system as the Debtors deem necessary or appropriate, including, without limitation, opening new bank accounts or closing existing bank accounts; (ii) extending the Debtors’ time to comply with the requirements

¹ The debtors and debtors in possession in these chapter 11 cases, along with each debtor’s federal tax identification numbers are: Fulcrum BioEnergy, Inc. (3733); Fulcrum Sierra BioFuels, LLC (1833); Fulcrum Sierra Finance Company, LLC (4287); Fulcrum Sierra Holdings, LLC (8498). The location of the Debtors’ service address is: Fulcrum BioEnergy Inc., P.O. Box 220 Pleasanton, CA 94566. All Court filings can be accessed at: <https://www.veritaglobal.net/Fulcrum>.



of section 345(b) of the Bankruptcy Code and the operating guidelines (the “U.S. Trustee Guidelines”) established by the Office of the United States Trustee (the “U.S. Trustee”) on an interim basis; (iii) scheduling a Final Hearing to consider entry of the Proposed Final Order; and (iv) granting any related relief that is necessary to carry out the foregoing or continued operation of the cash management system, or is otherwise appropriate under the circumstances.

JURISDICTION AND VENUE

2. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over these chapter 11 cases and this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these cases and the Motion is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtors consent to the entry of a final order with respect to this Motion if it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

4. The statutory bases for the relief requested herein are sections 105, 345, and 363 of Title 11 of the United States Code (the “Bankruptcy Code”), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rules 2015-2 and 9013-1(m).

BACKGROUND

5. On September 9, 2024 (the “Petition Date”), the Debtors commenced these cases by filing voluntary petitions for relief under chapter 11 of title 11 of the Bankruptcy Code. The Debtors are authorized to continue managing their properties as debtors in possession pursuant to

sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have requested that their cases be consolidated for procedural purposes only and administered jointly. No trustee, examiner, or official committee has been appointed in these chapter 11 cases.

6. The Debtors were formed in 2007 to develop and implement a commercially viable “waste to fuel” process whereby trash is converted into usable fuel through the utilization of gasification and other technologies. The Debtors’ Sierra BioFuels Plant (the “Sierra Plant”) located approximately twenty miles east of Reno, Nevada, began successfully producing low carbon synthetic crude oil from landfill waste in December 2022.

7. Despite the Debtors’ successful proof of concept at the Sierra Plant and substantial progress with ongoing research and development, the Debtors have faced significant liquidity issues in the last few years and were forced to cease operations at the Sierra Plant in May 2024. The Debtors have determined that a comprehensive financial restructuring, through chapter 11 bankruptcy is the only path forward to realize value on the Debtors assets for the benefit of its stakeholders.

8. Additional details regarding the Debtors and the circumstances that led to the filing of these chapter 11 cases and the facts and circumstances supporting the relief requested herein is set forth in the *Declaration of Mark Smith, Restructuring Advisor to Fulcrum, BioEnergy, Inc. in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”) filed simultaneously herewith and incorporated herein by reference.

FACTS SPECIFIC TO THE RELIEF REQUESTED

I. The Cash Management System.

9. While the Debtors maintained an integrated centralized cash management system to collect, transfer, manage and disburse funds generated in their business in the ordinary course

in the past, as described more fully in the First Day Declaration, the Debtors only maintain a handful of accounts today (the “Cash Management System”).

10. The current Cash Management System includes a total of twelve bank accounts held by the Debtors (the “Bank Accounts”), but only four are actively used by the Debtors today. A list of the Bank Accounts is attached hereto as **Exhibit A**.² The Bank Accounts are maintained by two Debtors, Fulcrum BioEnergy, Inc. (“Fulcrum”) and Sierra BioFuels, LLC (“Sierra”). The Bank Accounts are located at three different financial institutions: Wells Fargo Bank, N.A. (“Wells Fargo”), Allspring Global Investments (“Allspring”), and J.P. Morgan Chase & Co. (“JP Morgan,” and together with Wells Fargo and Allspring, the “Banks”). The Debtors maintain a majority of their Bank Accounts with Wells Fargo.

11. The Cash Management System primarily consists of one operating account maintained by Fulcrum (the “Fulcrum Operating Account”) and three (3) operating accounts maintained by Sierra (the “Sierra Operating Accounts,” and with the Fulcrum Operating Account, the “Operating Accounts”) for operations within the United States. Funds received via check, wire transfer and/or electronic funds transfer may be received in the Fulcrum Operating Account or in one of the Sierra Operating Accounts (primarily in account ending in 9666).

12. The following table categorizes each Bank Account in the Cash Management System:³

Account	Account Description
<u>Fulcrum Operating Account</u> <i>U.S.: Wells Fargo Bank Account ending in 9641</i>	Funds received by Fulcrum flow through the Fulcrum Operating Account before being disbursed.

² The Debtors believe that **Exhibit A** is a complete list of the Debtors’ Bank Accounts. To the extent that any Bank Account has been inadvertently omitted from the list, the Debtors request that the Orders granting the relief sought herein apply to such Bank Account.

³ These descriptions and categories of Bank Accounts are for illustrative purposes only.

Account	Account Description
<u>Sierra Operating Accounts</u> <i>Wells Fargo Bank Accounts ending in 9666, 1347, 2986, and 6055</i>	Sierra primarily receive funds in account 9666 to fund expenses or to transfer funds to accounts 1347 or 2986 to fund expenses. Bank Account ending in 6055 has a zero balance and is no longer in use as of the Petition Date.
<u>Payroll Account</u> <i>Wells Fargo Bank Account ending in 9658</i>	The Payroll Account funds the Debtors' payroll as necessary through direct disbursements. This account is funded through the Fulcrum Operating Account. This account has a zero balance and is no longer in use as of the Petition Date.
<u>Debtors' Investment Accounts</u> <i>JP Morgan Bank Account ending in 1655 and Allspring Bank Account ending in 4680</i>	Bank Accounts in the Cash Management System that are ancillary to the Main Operating Account. These high interest-bearing accounts are where the Debtors deposit excess cash in the Cash Management System. These accounts have a zero balance and are no longer in use as of the Petition Date.
<u>Escrow Accounts</u> <i>JP Morgan Bank Accounts ending in 0769 and 0975</i>	Bank Accounts in the Cash Management System established under escrow for bridge loan financing to Fulcrum.
<u>Certificate of Deposit Accounts</u> <i>Wells Fargo Bank Accounts ending in 2912 and 2209</i>	Bank Accounts in the Cash Management System established to hold funds for specific purposes. Bank Account ending in 2912 was established to cover some Sierra closing costs under the State of Nevada's Department of Conservation and National Resources. Bank Account ending in 2209 was established to hold cash collateral for Wells Fargo credit cards. The Wells Fargo credit cards have since been closed.

II. Bank Fees.

13. In the ordinary course of business, the Debtors incur periodic service charges and other fees in connection with maintaining the Bank Accounts (the "Bank Fees"), which are automatically debited from the Fulcrum Operating Account in accordance with applicable agreements or schedules of fees governing the Bank Accounts.

14. The Bank Fees have historically totaled approximately \$1,400 per month in the aggregate. The Debtors estimate that there are approximately \$1,400 accrued but unpaid Bank

Fees outstanding as of the Petition Date (collectively, the “Prepetition Bank Fees”), all of which, will become due and owing during the first 21 days of these chapter 11 cases. Accordingly, the Debtors request authority, but not direction, to honor and pay the Prepetition Bank Fees in an amount not to exceed \$2,000.

III. Compliance with the U.S. Trustee Guidelines and the Bankruptcy Code.

15. Section 345(a) of the Bankruptcy Code governs a debtor’s cash deposits during a chapter 11 case and authorizes deposits of money as “will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment.” 11 U.S.C. § 345(a). In order to comply with section 345 of the Bankruptcy Code, the U.S. Trustee Guidelines generally require chapter 11 debtors to, among other things, deposit all estate funds into an account with an authorized depository that agrees to comply with the requirements of the U.S. Trustee. Section 345(b) of the Bankruptcy Code requires a debtor’s bank to post a bond unless a debtor’s funds are “insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States.” 11 U.S.C. § 345(b).

16. The Debtors are in substantial compliance with section 345(b) of the Bankruptcy Code. Currently, only AllSpring, is not an approved depository under the U.S. Trustee Guidelines while Wells Fargo and JP Morgan are approved depositories. However, the Debtors will not be utilizing the AllSpring bank account during the duration of these chapter 11 cases.

17. Further, the majority of the Bank Accounts are insured by the FDIC and held within Banks that are well-capitalized and sophisticated financial institutions. To the extent the Court does not determine that the requirements of section 345(b) of the Bankruptcy Code are satisfied, the Debtors request a thirty (30) day waiver of the requirements of section 345(b) of the Bankruptcy Code, subject to the Debtors’ rights to seek further extensions thereof.

18. The Cash Management System is critical to a smooth transition into these chapter 11 cases. Requiring the Debtors to transfer any of the above-described Bank Accounts to a designated authorized depository would place a needless and excessive administrative burden on the Debtors and impose significant, value destructive costs to the Debtors' estates. In any event, the Debtors will continue to work in good faith with the U.S. Trustee to address any concerns regarding the continued use of the Bank Accounts on a postpetition basis.

BASIS FOR RELIEF

I. The Court Should Approve the Debtors' Continued Use of the Cash Management System.

19. Continuing the Cash Management System is permitted pursuant to section 363(c)(1) of the Bankruptcy Code, which authorizes the debtor in possession to "use property of the estate in the ordinary course of business without notice or a hearing." Additionally, courts in this and other districts have recognized that an integrated cash management system "allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash." *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *aff'd* in part and *rev'd* in part, 997 F.2d 1039 (3d Cir. 1993). The United States Court of Appeals for the Third Circuit has agreed, emphasizing that requiring a debtor to maintain separate accounts "would be a huge administrative burden and economically inefficient." *Columbia Gas*, 997 F.2d at 1061; *see also In re Southmark Corp.*, 49 F.3d 1111, 1114 (5th Cir. 1995) (finding cash management system allows a debtor "to administer more efficiently and effectively its financial operations and assets").

20. The U.S. Trustee Guidelines require debtors in possession to, among other things:

- a. establish one debtor in possession bank account for all estate monies required for the payment of taxes, including payroll taxes;
- b. close all existing bank accounts and open new debtor in

possession accounts;

- c. maintain a separate debtor in possession account for cash collateral; and
- d. obtain checks that bear the designation “debtor in possession” and reference the bankruptcy case number and type of account on such checks.

21. These requirements are designed to provide a clear line of demarcation between prepetition and postpetition claims and payments and help protect against the inadvertent payment of prepetition claims by preventing banks from honoring checks drawn before the Petition Date. The Debtors respectfully request that the Court allow them to operate each of their Bank Accounts as they were maintained in the ordinary course of business before the Petition Date.

22. Bankruptcy courts treat requests for authority to continue utilizing existing cash management systems as a relatively “simple matter.” *In re Baldwin-United Corp.*, 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987). In *In re Charter Co.*, 778 F.2d 617 (11th Cir. 1985), for example, the bankruptcy court entered an order authorizing the debtor and certain of its subsidiaries “to continue to consolidate the management of their cash as has been usual and customary in the past, and to transfer monies from affiliated entity to entity, including operating entities that are not debtors.” *Id.* at 620. The Eleventh Circuit Court of Appeals then affirmed a subsequent district court decision denying a creditor’s motion for leave to appeal the bankruptcy court’s cash management order, holding that authorizing the debtors to utilize their prepetition “routine cash management system” was “entirely consistent” with applicable provisions of the Bankruptcy Code. *Id.* at 621. Indeed, in large chapter 11 cases, bankruptcy courts in this district routinely grant chapter 11 debtors similar authority to continue using existing cash management system.

23. Here, the Debtors utilize the Cash Management System in its current form as part of their ordinary and usual business practices, and as such, the Debtors believe the continued use

of the Cash Management System falls within the purview of ordinary course transactions permitted under section 363(c)(1) of the Bankruptcy Code. Moreover, appropriate circumstances exist for the Court to authorize the Debtors' continued use of the Cash Management System under sections 363(b)(1) and 105(a) of the Bankruptcy Code.

24. The Debtors should be allowed to continue using the Cash Management System and Bank Accounts consistent with historical practice.

II. Authorizing the Banks to Continue to Maintain, Service, and Administer the Bank Accounts in the Ordinary Course of Business Is Warranted.

25. The Debtors request that the Court authorize the Banks to receive, process, honor, and pay, to the extent funds are available in each applicable Bank Account, any and all checks, electronic fund transfers, ACH payments and other instructions, and drafts payable through, or drawn or directed on, such Bank Accounts after the Petition Date by holders, makers, or other parties entitled to issue instructions with respect thereto, irrespective of whether such checks, drafts, electronic fund transfers, or ACH payments are dated prior or subsequent to the Petition Date. The Debtors also request that, to the extent a Bank honors a prepetition check or other item drawn on any account that is the subject of this Motion, either at the direction of the Debtors or in a good-faith belief that the Court has authorized such prepetition check or item to be honored, such Bank will not be deemed to be liable to the Debtors or their estates on account of such prepetition check or other item honored postpetition. Such relief is reasonable and appropriate because the Banks are not in a position to independently verify or audit whether the Debtors may pay a particular item in accordance with a Court order or otherwise.

III. Payment of Bank Fees Related to the Bank Accounts Will Facilitate a Smooth Transition into Chapter 11 and Benefit the Estates.

26. The Debtors also respectfully request that the Court authorize them to continue to pay all Bank Fees even where such fees were incurred or accrued prior to the Petition Date or that

accrued postpetition on account of prepetition transactions. The Debtors submit that the Court has the authority to authorize payment of such fees under section 363(b) of the Bankruptcy Code, which permits a debtor to, subject to court approval, pay prepetition obligations where a sound business purpose exists for doing so. *See In re Ionosphere Clubs*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (noting that section 363(b) of the Bankruptcy Code provides “broad flexibility” to authorize a debtor to honor prepetition claims where supported by an appropriate business justification.) Paying such fees is unquestionably supported by the Debtors’ business judgment.

27. In addition, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, debtors in possession are fiduciaries “holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners.” *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002); *see also Unofficial Comm. of Equity Holders v. McManigle (In re Penick Pharm., Inc.)*, 227 B.R. 229, 232-33 (Bankr. S.D.N.Y. 1998) (“Upon filing its petition, the Debtor became a debtor in possession and, through its management . . . was burdened with the duties and responsibilities of a bankruptcy trustee.”). Implicit in the fiduciary duties of any debtor in possession is the obligation to “protect and preserve the estate, including an operating business’s going-concern value.” *In re CoServ*, 273 B.R. at 497.

28. Some courts have noted that there are instances in which a debtor can fulfill their fiduciary duties “only . . . by the preplan satisfaction of a prepetition claim.” *Id.* The *CoServ* court specifically noted that the preplan satisfaction of prepetition claims would be a valid exercise of the debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate” *Id.*

29. Finally, under section 105(a) of the Bankruptcy Code, “the 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); *see also In re CoServ*, 273 B.R. at 497 (finding that sections 105 and 1107 of the Bankruptcy Code provide the authority for a debtor in possession to pay prepetition claims). Section 105(a) has been interpreted to authorize postpetition payment of prepetition claims when the payments are critical to preserving the going-concern value of the debtor’s estate, as is the case here. *See, e.g., In re CoServ*, at 497 (“[I]t 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.”)

30. In light of the material benefit of paying the Bank Fees in the ordinary course, the Debtors respectfully submit that the requested relief is warranted under the circumstances.

THE REQUIREMENTS OF BANKRUPTCY RULE 6003(b) ARE SATISFIED

31. In order for a debtor to obtain relief to make payments within 21 days of the Petition Date, it must establish that making such payments satisfies the requirements mandated by Bankruptcy Rule 6003—namely, the relief requested is necessary to avoid “immediate and irreparable harm.” If a debtor’s prospect of reorganizing is threatened, or swift diminution in value of the debtor’s estate is likely absent the granting of the requested relief, immediate and irreparable harm likely exists. *See In re WorldSpace, Inc.*, 2008 WL 8153639, at *2 (Bankr. D. Del. Oct. 20, 2008) (finding that relief requested by the debtors was necessary to avoid irreparable harm to the debtors and their estates because such relief was essential for the continued operation of the debtors’ businesses).

32. Immediate and irreparable harm would result if the relief requested herein is not granted. Inability to continue their Cash Management System would expose the Debtors to significant additional expenditure of time and resources in order to implement an alternative cash management system, distract the Debtors from an orderly transition into chapter 11 and disrupt the Debtors’ operations. These effects would have an adverse impact to the Debtors’ business, thereby

causing immediate and irreparable harm. Failure to receive the requested relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors' operations at this important juncture. For the reasons discussed herein, the relief requested is necessary for the Debtors to operate their businesses in the ordinary course and preserve the value of the Debtors' assets and maximize the value of the estates for the benefit of all stakeholders. Accordingly, the Debtors respectfully submit that it has satisfied Bankruptcy Rule 6003 as it relates to the relief requested herein.

WAIVER OF BANKRUPTCY RULE 6004(a) and 6004(h)

33. Given the nature of the relief requested herein, the Debtors respectfully request a waiver of (a) the notice requirements under Bankruptcy Rule 6004(a) and (b) the 14-day stay under Bankruptcy Rule 6004(h). Pursuant to Bankruptcy Rule 6004(h), "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until expiration of 14 days after entry of the order, unless the court orders otherwise." For the reasons described above, the relief requested is essential to prevent potentially irreparable damage to the Debtors' operations, value and ability to reorganize.

RESERVATION OF RIGHTS

34. Nothing contained herein or any actions taken pursuant to such relief requested is intended or shall be construed as (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law, (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds, (c) a promise or requirement to pay any claim, (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested in 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

35. The Debtors will provide notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware, Attn: Rosa Sierra-Fox, 844 King Street, Suite 2207, Wilmington, Delaware 19801, rosa.sierra@usdoj.gov; (b) the holders of the 30 largest unsecured claims against the Debtors; (c) UMB Bank, N.A. and its counsel; (d) counsel to the DIP Lender; (e) the Internal Revenue Service; (f) the United States Attorney for the District of Delaware; (g) the state attorneys general in states where the Debtors are authorized to do business; (h) the Securities and Exchange Commission; (i) the Banks; and (j) all parties entitled to notice pursuant to Bankruptcy Rule 2002-1. As this Motion is seeking first-day relief, the Debtors will serve copies of this Motion and any order entered in respect of this Motion as required by Local Rule 9013-1(m). The Debtors respectfully submit that no further notice of this Motion is required under the circumstances.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court (a) enter the Interim Order, substantially in the form attached hereto as **Exhibit B**, (b) enter the Final Order, substantially in the form attached hereto as **Exhibit C**, and (c) grant such other and further relief as is just and proper.

Dated: September 10, 2024
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Clint M. Carlisle

Robert J. Dehney, Sr. (No. 3578)

Curtis S. Miller (No. 4583)

Daniel B. Butz (No. 4227)

Clint M. Carlisle (No. 7313)

Avery Jue Meng (No. 7238)

1201 N. Market Street, 16th Floor

P.O. Box 1347

Wilmington, Delaware 19899-1347

Telephone: (302) 658-9200

Facsimile: (302) 658-3989

Email: rdehney@morrisnichols.com

cmiller@morrisnichols.com

dbutz@morrisnichols.com

ccarlisle@morrisnichols.com

ameng@morrisnichols.com

Proposed Counsel for the Debtors and Debtors in Possession

Exhibit A

Bank	Account	Type	Entity	Account Name
Wells Fargo	9641	Checking w/ daily sweep	Fulcrum BioEnergy, Inc.	Fulcrum BioEnergy -Op
Wells Fargo	9658	Checking	Fulcrum BioEnergy, Inc.	Fulcrum BioEnergy - Pyr
Wells Fargo	9666	Checking	Fulcrum Sierra BioFuels, LLC	Fulcrum Sierra Biofuels
Wells Fargo	6055	Checking	Fulcrum Sierra BioFuels, LLC	Business Checking
Wells Fargo	2986	Checking	Fulcrum Sierra BioFuels, LLC	Subcontractor Direct Pymt Acct
Wells Fargo	1347	Checking	Fulcrum Sierra BioFuels, LLC	FULCRUM SIERRA BIOFUELS
Wells Fargo	2912	CD	Fulcrum Sierra BioFuels, LLC	NV Dept of Conservation and Nat'l Resources SBLC
Wells Fargo	2209	CD	Fulcrum BioEnergy, Inc.	Collateral for WF Credit Cards
JP Morgan Chase	1655	Investment	Fulcrum BioEnergy, Inc.	Managed Income Fund - L (fund 2119) & Prime Money Market Fund Agency Shares (fund 349)
Allspring Global	4680	Investment	Fulcrum BioEnergy, Inc.	Allspring Conservative Income-I
JP Morgan Chase	0975	Checking	Fulcrum BioEnergy, Inc.	Escrow Account
JP Morgan Chase	0769	Checking	Fulcrum BioEnergy, Inc.	Escrow Account

Exhibit B

Proposed Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

FULCRUM BIOENERGY, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-12008 (TMH)

(Joint Administration Requested)

Re: D.I. __

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO
(A) CONTINUE TO OPERATE THEIR CASH MANAGEMENT SYSTEM AND
MAINTAIN EXISTING BANK ACCOUNTS AND
(II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for the entry of an interim order (this “Interim Order”) (a) authorizing the Debtors to (i) continue to operate their Cash Management System and maintain their existing Bank Accounts, including honoring certain prepetition obligations related thereto, and (ii) granting related relief, all as more fully set forth in the Motion; and this Court having jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of these chapter 11 cases and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that proper and adequate notice of the

¹ The debtors and debtors in possession in these chapter 11 cases, along with each debtor’s federal tax identification numbers are: Fulcrum BioEnergy, Inc. (3733); Fulcrum Sierra BioFuels, LLC (1833); Fulcrum Sierra Finance Company, LLC (4287); Fulcrum Sierra Holdings, LLC (8498). The location of the Debtors’ service address is: Fulcrum BioEnergy Inc., P.O. Box 220 Pleasanton, CA 94566. All Court filings can be accessed at: <https://www.veritaglobal.net/Fulcrum>.

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

Motion and the relief requested therein has been provided in accordance with the Bankruptcy Rules and the Local Rules, and that, except as otherwise ordered herein, no other or further notice is necessary; and objections (if any) to the Motion having been withdrawn, resolved or overruled on the merits; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties-in-interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth herein (the “Interim Order”).
2. The Final Hearing shall be held on , **2024**, at **(ET)**. Any objections or responses to entry of the Final Order shall be filed on or before **4:00 p.m. (ET) on** , **2024**, (the “Objection Deadline”), and served on the following parties: (i) the Debtors, P.O. Box 220 Pleasanton, CA 94566; (ii) proposed counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16th Floor, P.O. Box 1347, Wilmington, DE 19899-1347, Attn: Robert J. Dehney Sr. (rdehney@morrisnichols.com); Curtis S. Miller (cmiller@morrisnichols.com); Dan B. Butz (dbutz@morrisnichols.com); (iii) counsel to the DIP Lender, Latham & Watkins LLP, 1271 Avenue of the Americas, New York, NY 10020, Attn: Brian S. Rosen (Brian.Rosen@lw.com) and Adam Goldberg (Adam.Goldberg@lw.com); (iv) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Rosa Sierra-Fox (rosa.sierra-fox@usdoj.gov); and (v) any statutory committee appointed in these chapter 11 cases. If no objections or responses are timely filed and served as set forth herein, the Debtors may, in accordance with the Local Rules, submit to the Court the Final Order, substantially in the form

of **Exhibit C** attached to the Motion, which may be entered with no further notice or need for the Final Hearing.

3. The Debtors are authorized, on an interim basis and in their sole discretion, to continue operating their Cash Management System.

4. The Debtors are authorized to (a) pay the Prepetition Bank Fees, in addition to any other Bank Fees for prepetition transactions that are charged postpetition in an aggregate amount not to exceed \$2,000 in the ordinary course of business and (b) pay any ordinary course Bank Fees incurred postpetition.

5. The Debtors are authorized to implement any changes to the Cash Management System they may deem necessary and appropriate in their sole discretion, in the ordinary course of business consistent with past practices, including opening any additional bank account or closing any Bank Account; *provided* that the Debtors shall give notice of any material change to the Cash Management System to the U.S. Trustee and counsel to any official statutory committee appointed in these chapter 11 cases, within 15 days of such change; *provided further* that any new bank account opened by the Debtors shall be maintained with a bank that is an approved depository institution in accordance with the U.S. Trustee Guidelines.

6. If any Bank Accounts existing as of the Petition Date are not in compliance with section 345(b) of the Bankruptcy Code, the Debtors shall have until October 10 2024, without prejudice to seeking additional extensions, to come into compliance with section 345(b) of the Bankruptcy Code; *provided* that nothing herein shall prevent the Debtors or the U.S. Trustee from seeking further relief from the Court to the extent that an agreement cannot be reached. The Debtors may obtain further extensions of the period referenced above by entering into written

stipulations with the U.S. Trustee and filing such stipulations on the Court's docket without the need for further Court order.

7. Each Bank³ is authorized to permit the Debtors to continue to use the Cash Management System currently in place, as such Cash Management System is more fully described in the Motion and manage the Debtors' cash in a manner consistent with the Debtors' prepetition practices. The Banks are hereby authorized to continue to maintain, service and administer all of the Bank Accounts as accounts of the Debtors as debtors in possession without interruption and in the ordinary course of business in a manner consistent with any agreements between the Banks and the Debtors that existed prior to and as of the Petition Date, and to receive, process, honor and pay any and all checks, drafts, wires, ACH transfers, credit card payments, other electronic transfer requests and other items which originated (a) prepetition and were presented prepetition but honored postpetition, (b) prepetition but presented to the Banks for payment on a postpetition basis and (c) postpetition and are presented to the Banks for payment on a postpetition basis; *provided, however*, the Debtors may provide the Banks specific instructions to dishonor or refuse to pay particular prepetition checks, drafts and other items presented for payment against the Bank Accounts, subject to the normal procedures, fees and charges set forth in the account agreements relating to the Bank Accounts, and the Banks shall use commercially reasonable efforts to comply with all such specific instructions.

8. The Banks participating in the Cash Management System shall not be liable to the Debtors, their estates or creditors for honoring or dishonoring a prepetition or postpetition check or other item drawn on any of the Bank Accounts as a result of this Interim Order or at the direction

³ The term "Bank" as used in this Interim Order shall include, in addition to the Bank with which the Debtors already maintain accounts, any other banks with which the Debtors open new accounts pursuant to the terms of this Interim Order.

of the Debtors. No Bank shall have any liability to any person for a good faith error made despite implementation of reasonable item handling procedures, including, without limitation, any inadvertent dishonoring of any payment or other disbursement directed to be made by the Debtors. No Bank shall be responsible for monitoring, or liable to any person for honoring, any payment or other transfer made or directed by the Debtors in contravention of the terms of this Interim Order or any other order of the Court.

9. The Debtors shall maintain accurate and detailed records of all transfers and transactions within the Cash Management System such that all postpetition transfers and transactions are adequately and promptly documented in, and readily ascertainable from, and traced and recorded properly on, their books and records.

10. The Banks shall not honor or pay any bank payments drawn on the Bank Accounts or otherwise issued before the Petition Date for which the Debtors specifically issue stop payment orders in accordance with applicable account agreements.

11. To the extent not already done, the Debtors shall promptly advise the Banks of the commencement of these chapter 11 cases, and within one business day from the date of entry of this Interim Order, the Debtors shall (a) serve a copy of this Interim Order on the Banks and (b) request that the Banks internally code each of the Bank Accounts as “debtors in possession” accounts.

12. Those certain existing deposit agreements between the Debtors and their existing Cash Management Banks shall continue to govern the post-petition cash management relationship between the Debtors and the Cash Management Banks, and all of the provisions of such agreements, including, without limitation, the termination and fee provisions, shall remain in full force and effect. Either the Debtors or the Cash Management Banks may, without further Order

of this Court, implement changes to the cash management systems and procedures in the ordinary course of business pursuant to terms of those certain existing deposit agreements, including, without limitation, the opening and closing of bank accounts.

13. 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.

14. The Debtors are authorized and empowered to execute and deliver such documents, and to take and perform all actions necessary to implement and effectuate the relief granted in this Interim Order.

15. Nothing in the Motion or this Interim Order, nor as a result of any payment made pursuant to this Interim Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code or a waiver of the right of the Debtors or of any claims or causes of action which may exist against the Banks, or shall impair the ability of the Debtors to contest or seek relief under any section of the Bankruptcy Code in respect of the validity and amount of any payment made pursuant to this Interim Order.

16. Each of the Debtors' Cash Management Banks are authorized to debit the Debtors' Bank Accounts in the ordinary course of business without the need for further order of this Court for: (i) all checks drawn on the Debtors' Bank Accounts which are cashed at such Cash Management Bank's counters or exchanged for cashier's checks by the payees thereof prior to the Petition Date; (ii) all checks or other items deposited in one of the Debtors' Bank Accounts with such Cash Management Bank prior to the Petition Date which have been dishonored or returned

unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtors were responsible for such items prior to the Petition Date; and (iii) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any Cash management Bank as service charges for the maintenance of the Cash Management System.

17. Any of the Debtors' Cash Management Banks may rely on the representations of the Debtors with respect to whether any check or other payment order drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this or any other order of this Court, and such Cash Management Bank shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

18. 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 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 in the Motion or a finding that any particular claim is an administrative expense claim or other priority claim, (e) an 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 granted herein 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.

19. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

20. The requirements set forth in Bankruptcy Rule 6004(a) are waived.

21. This Interim Order is immediately effective and enforceable, notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise.

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

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

Exhibit C

Proposed Final Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

FULCRUM BIOENERGY, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-12008 (TMH)

(Joint Administration Requested)

Re: D.I. __

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO CONTINUE TO OPERATE
THEIR CASH MANAGEMENT SYSTEM AND MAINTAIN EXISTING BANK
ACCOUNTS AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for the entry of a final order (this “Final Order”) (a) authorizing the Debtors to (i) continue to operate their Cash Management System and maintain their existing Bank Accounts, including honoring certain prepetition obligations related thereto, (ii) granting related relief, all as more fully set forth in the Motion; and this Court having jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of these chapter 11 cases and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that proper and adequate notice of the

¹ The debtors and debtors in possession in these chapter 11 cases, along with each debtor’s federal tax identification numbers are: Fulcrum BioEnergy, Inc. (3733); Fulcrum Sierra BioFuels, LLC (1833); Fulcrum Sierra Finance Company, LLC (4287); Fulcrum Sierra Holdings, LLC (8498). The location of the Debtors’ service address is: Fulcrum BioEnergy Inc., P.O. Box 220 Pleasanton, CA 94566. All Court filings can be accessed at: <https://www.veritaglobal.net/Fulcrum>.

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

Motion and the relief requested therein has been provided in accordance with the Bankruptcy Rules and the Local Rules, and that, except as otherwise ordered herein, no other or further notice is necessary; and objections (if any) to the Motion having been withdrawn, resolved or overruled on the merits; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties-in-interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein (the “Final Order”).
2. Subject to the limitations of this Final Order, the Debtors are authorized, but not directed, on a final basis, to (a) continue operating the Cash Management System, (b) continue to use the Bank Accounts in existence as of the Petition Date, including those Bank Accounts identified on Exhibit A to the Motion, in the names and with the account numbers existing immediately before the Petition Date, (c) pay any Bank Fees related to the Bank Accounts, irrespective of whether such fees arose prior to the Petition Date, and perform their obligations under the documents and arrangements governing the Bank Accounts; and (d) and take any actions related thereto in the ordinary course of business consistent with the Debtors’ prepetition practice; *provided* that in the case of each of (a) through (d), such action is taken in the ordinary course of business and consistent with prepetition practices.
3. The Debtors are authorized to implement any changes to the Cash Management System they may deem necessary and appropriate in their sole discretion, in the ordinary course of business consistent with past practices, including opening any additional bank accounts or closing any Bank Account; *provided* that the Debtors shall give notice of any material change to

the Cash Management System to the U.S. Trustee and counsel to any official statutory committee appointed in these chapter 11 cases, within 15 days of such change; *provided further* that any new bank account opened by the Debtors shall be maintained with a bank that is an approved depository institution in accordance with the U.S. Trustee Guidelines

4. If any Bank Accounts existing as of the Petition Date are not in compliance with section 345(b) of the Bankruptcy Code, the Debtors shall have until October 10, 2024, without prejudice to seeking additional extensions, to come into compliance with section 345(b) of the Bankruptcy Code; *provided* that nothing herein shall prevent the Debtors or the U.S. Trustee from seeking further relief from the Court to the extent that an agreement cannot be reached. The Debtors may obtain further extensions of the period referenced above by entering into written stipulations with the U.S. Trustee and filing such stipulations on the Court's docket without the need for further Court order.

5. Each Bank³ is authorized to permit the Debtors to continue to use the Cash Management System currently in place, as such Cash Management System is more fully described in the Motion, and manage the Debtors' cash in a manner consistent with the Debtors' prepetition practices. The Banks are hereby authorized to continue to maintain, service and administer all of the Bank Accounts as accounts of the Debtors as debtors in possession without interruption and in the ordinary course of business in a manner consistent with any agreements between the Banks and the Debtors that existed prior to and as of the Petition Date, and to receive, process, honor and pay any and all checks, drafts, wires, ACH transfers, credit card payments, other electronic transfer requests and other items which originated (a) prepetition and were presented prepetition but

³ The term "Bank" as used in this Final Order shall include, in addition to the Bank with which the Debtors already maintain accounts, any other banks with which the Debtors open new accounts pursuant to the terms of this Final Order.

honored postpetition, (b) prepetition but presented to the Banks for payment on a postpetition basis and (c) postpetition and are presented to the Banks for payment on a postpetition basis; *provided, however*, the Debtors may provide the Banks specific instructions to dishonor or refuse to pay particular prepetition checks, drafts and other items presented for payment against the Bank Accounts, subject to the normal procedures, fees and charges set forth in the account agreements relating to the Bank Accounts, and the Banks shall use commercially reasonable efforts to comply with all such specific instructions.

6. The Banks participating in the Cash Management System shall not be liable to the Debtors, their estates or creditors for honoring or dishonoring a prepetition or postpetition check or other item drawn on any of the Bank Accounts as a result of this Final Order or at the direction of the Debtors. No Bank shall have any liability to any person for a good faith error made despite implementation of reasonable item handling procedures, including, without limitation, any inadvertent dishonoring of any payment or other disbursement directed to be made by the Debtors. No Bank shall be responsible for monitoring, or liable to any person for honoring, any payment or other transfer made or directed by the Debtors in contravention of the terms of this Final Order or any other order of the Court.

7. The Debtors shall maintain accurate and detailed records of all transfers and transactions within the Cash Management System such that all postpetition transfers and transactions are adequately and promptly documented in, and readily ascertainable from, and traced and recorded properly on, their books and records.

8. The Banks shall not honor or pay any bank payments drawn on the Bank Accounts or otherwise issued before the Petition Date for which the Debtors specifically issue stop payment orders in accordance with applicable account agreements.

9. 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.

10. The Debtors are authorized and empowered to execute and deliver such documents, and to take and perform all actions necessary to implement and effectuate the relief granted in this Final Order.

11. Nothing in the Motion or this Final Order, nor as a result of any payment made pursuant to this Final Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code or a waiver of the right of the Debtors or of any claims or causes of action which may exist against any Bank, or shall impair the ability of the Debtors to contest or seek relief under any section of the Bankruptcy Code in respect of the validity and amount of any payment made pursuant to this Final Order.

12. Those certain existing deposit agreements between the Debtors and their existing Cash Management Banks shall continue to govern the post-petition cash management relationship between the Debtors and the Banks, and all of the provisions of such agreements, including, without limitation, the termination and fee provisions, shall remain in full force and effect. Either the Debtors or the Banks may, without further Order of this Court, implement changes to the cash management systems and procedures in the ordinary course of business pursuant to terms of those certain existing deposit agreements, including, without limitation, the opening and closing of Bank Accounts.

13. 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 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 in the Motion or a finding that any particular claim is an administrative expense claim or other priority claim, (e) an 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 granted herein 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.

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

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

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

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