

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. 10

**CERTIFICATION OF COUNSEL REGARDING DEBTORS' MOTION FOR INTERIM
AND FINAL ORDERS (I) AUTHORIZING DEBTORS TO (A) CONTINUE
INSURANCE PROGRAMS AND SURETY BOND PROGRAM, (B) PAY
ALL OBLIGATIONS WITH RESPECT THERETO, AND
(II) GRANTING RELATED RELIEF**

The undersigned counsel to the above-captioned debtors and debtors in possession
(the "Debtors") hereby certifies as follows:

1. On September 9, 2024, the Debtors filed voluntary petitions for relief under
chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of
Delaware (the "Court").

2. On September 11, 2024, the Debtors filed the *Debtors' Motion for Interim
and Final Orders (I) Authorizing Debtors to (A) Continue Insurance Programs and Surety Bond
Program, (B) Pay All Obligations With Respect Thereto, and (II) Granting Related Relief* (the
"Motion") (D.I. 10). Attached to the Motion as Exhibit A was a proposed form of interim order
(the "Proposed Interim Order").

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>.



3. The Debtors received informal comments from the Office of the United States Trustee (the “U.S. Trustee”) and have revised the Proposed Interim Order to incorporate those comments (the “Revised Proposed Interim Order”). The U.S. Trustee has reviewed the Revised Proposed Interim Order, attached hereto as **Exhibit A**, and has no objection to its entry.

4. Attached hereto as **Exhibit B** is a redline comparing the Revised Proposed Interim Order to the Proposed Interim Order.

WHEREFORE, the Debtors respectfully request that the Court enter the Revised Proposed Interim Order.

Dated: September 11, 2024
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Clint M. Carlisle

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*Proposed Counsel to the Debtors and
Debtors in Possession*

Exhibit A

Revised Proposed Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
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In re:

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Chapter 11

Case No. 24-12008 (TMH)

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Re: D.I. 10

**INTERIM ORDER AUTHORIZING DEBTORS TO (A) CONTINUE
INSURANCE POLICIES AND AGREEMENTS RELATING THERETO, (B) HONOR
CERTAIN PREPETITION OBLIGATIONS IN RESPECT THEREOF, AND (C)
CONTINUE TO HONOR INSURANCE PREMIUM FINANCING OBLIGATIONS**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (the “Debtors”) for entry of an interim order (this “Interim Order”) and final order pursuant to sections 105(a), 363(b), 363(c) and 1107(a) of the Bankruptcy Code, as supplemented by Bankruptcy Rules 6003 and 6004(h), authorizing the Debtors to (a) continue insurance policies and agreements relating thereto, (b) honor certain prepetition obligations in respect thereof, and (c) continue to honor insurance premium financing obligations; and upon consideration of the First Day Declaration; and due and sufficient notice of the Motion having been given under the circumstances; and it appearing that no other or further notice need be provided under the circumstances; and it appearing that the relief requested by this Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, 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: <https://www.veritaglobal.net/Fulcrum>.

² Capitalized terms not defined in this Order are used as defined in the Motion.

1. The Motion is granted as set forth herein.
2. The Final Hearing shall be held on **October 2, 2024, at 11:00 a.m.**, prevailing Eastern Time. Any objections or responses to entry of the Final Order shall be filed on or before **4:00 p.m., prevailing Eastern Time on September 25, 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, (a) 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 B** attached to the Motion, which may be entered with no further notice or need for the Final Hearing.
3. The Debtors are authorized, but not directed, to maintain their Insurance Policies and to pay the Insurance Obligations and Premium Financing Obligations arising under or in connection with the Insurance Policies in the ordinary course of business as such Insurance Obligations and Premium Financing Obligations become due, without regard to whether such Insurance Policies are listed on **Exhibit C** to the Motion, and without regard to whether such Insurance Obligations relate to the period before or after the Petition Date or whether due and payable before, on, or after the Petition Date.

4. The Debtors are authorized, but not directed, to renew or obtain, in their sole discretion and consistent with the ordinary course of their business, new insurance policies or surety bonds or execute other agreements in connection with their Insurance Policies and Surety Bond Programs, including upon the expiration or termination of any Insurance Program or Surety Bond Program.

5. The Debtors are authorized, but not directed, to continue their insurance premium financing and to make payments under the Debtors' Premium Financing Agreement as the same become due, and, as necessary, to renew or enter into new premium financing arrangements in the ordinary course of business, provided that if the Debtors seek to enter into post-petition premium financing agreements on terms more onerous than the Premium Financing Agreement currently in place, the Debtors will seek authority to do so on notice and motion.

6. This Interim Order shall not create any obligation on the part of the Debtors or their officers, directors, attorneys or agents to pay any of the obligations discussed herein or in the Motion, and none of the foregoing persons shall have any liability on account of any decision by the Debtors not to pay such obligations, and nothing in this order shall be deemed to increase, reclassify, elevate to an administrative expense status or otherwise affect such obligations to the extent they are not paid.

7. All applicable banks and other financial institutions are hereby authorized and required to receive, process, honor, and pay any and all checks and transfer requests evidencing amounts paid by the Debtors under this Interim Order whether presented prior to or after the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Interim Order.

8. Nothing in this Interim Order (i) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors; (ii) shall impair, prejudice, waive or otherwise affect the rights of the Debtors or their estates with respect to the validity, priority or amount of any claim against the Debtors and their estates; (iii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action; or (iv) shall be construed as a promise to pay a claim.

9. Nothing in this Interim Order or the Motion is intended or shall be construed to grant relief from the automatic stay pursuant to section 362 of the Bankruptcy Code.

10. The Debtors are authorized to take any and all actions necessary to effectuate the relief granted herein.

11. The requirements of Bankruptcy Rule 6003(b) have been satisfied because the relief set forth in this Interim Order is necessary to avoid immediate and irreparable harm.

12. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order shall be effective and enforceable immediately upon its entry.

13. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Interim Order.

Exhibit B

Redline

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FOR THE DISTRICT OF DELAWARE**

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5. The Debtors are authorized, but not directed, to continue their insurance premium financing and to make payments under the Debtors' ~~premium financing agreement~~Premium Financing Agreement as the same become due, and, as necessary, to renew or enter into new premium financing arrangements in the ordinary course of business, provided that if the Debtors seek to enter into post-petition premium financing agreements on terms more onerous than the Premium Financing Agreement currently in place, the Debtors will seek authority to do so on notice and motion.

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