

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)

(Jointly Administered)

Re: D.I. 6 and 38

**CERTIFICATION OF COUNSEL REGARDING FINAL ORDER
(I) AUTHORIZING THE DEBTORS TO PAY PREPETITION WAGES,
SALARIES, OTHER COMPENSATION, AND REIMBURSABLE
EXPENSES, AND (II) GRANTING RELATED RELIEF**

The undersigned counsel to the above-captioned debtors and debtors in possession (the “Debtors”) hereby certify as follows:

1. 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 United States Code.

2. On September 10, 2024, the Debtors filed the *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses, and (II) Granting Related Relief* [D.I. 6] (the “Motion”).

3. On September 12, 2024, the Court entered an *Interim Order (I) Authorizing the Debtors to Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses, and (II) Granting Related Relief* [D.I. 38] (the “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); and 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>.



2412008241007000000000007

4. Pursuant to the Interim Order, the deadline to file objections or responses to the entry of an order on a final basis granting the relief requested in the Motion was September 25, 2024 at 4:00 p.m. (ET) (the “Objection Deadline”).

5. The Debtors agreed to extend the Objection Deadline for the Office of the United States Trustee (the “U.S. Trustee”) and the Official Committee of Unsecured Creditors (the “Committee”) to October 2, 2024 at 4:00 p.m. (ET).

6. The Debtors have revised the proposed final order granting the Motion (the “Revised Proposed Final Order”) to incorporate informal comments received from the U.S. Trustee and the Committee. The Debtors have received no other objections, responses, or comments to the Motion, and no objections or other responsive pleadings to the Motion appear on the docket.

7. The Revised Proposed Final Order is attached hereto as **Exhibit A**. For the convenience of the Court and all parties in interest, a redline comparing the Revised Proposed Final Order to the proposed form of final order attached to the Motion is attached hereto as **Exhibit B**.

8. The U.S. Trustee and counsel to the Committee have reviewed the Revised Proposed Final Order and do not object to its entry.

WHEREFORE, the Debtors respectfully request that the Court enter the Revised Proposed Final Order, substantially in the form attached hereto as **Exhibit A**, at its earliest convenience.

[Remainder page intentionally left blank]

Dated: October 7, 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

Wilmington, Delaware 19801

Telephone: (302) 658-9200

Email: rdehney@morrisnichols.com

cmiller@morrisnichols.com

dbutz@morrisnichols.com

ccarlisle@morrisnichols.com

ameng@morrisnichols.com

*Proposed Counsel to the Debtors and
Debtors in Possession*

EXHIBIT A

Revised 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)

(Jointly Administered)

Re: D.I. 6 and 38

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO PAY PREPETITION WAGES,
SALARIES, OTHER COMPENSATION, AND REIMBURSABLE EXPENSES,
AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”) pursuant to sections 105(a), 363, 507 and 541 of the Bankruptcy Code, Bankruptcy Rules 6003(b) and 6004 and Local Rule 9013-1(m): (i) authorizing the Debtors to pay and honor certain prepetition compensation obligations and (ii) granting related relief, all as more fully described in the Motion; and the Court having previously entered the Interim Order [D.I. 38]; and upon consideration of the First Day Declaration; and this Court having found that (i) this Court has jurisdiction to consider the Motion and the relief requested therein under 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, (ii) this Court may enter a final order consistent with Article III of the United States Constitution, (iii) this is a core proceeding under 28 U.S.C. § 157(b)(2)(A), and (iv) venue of this proceeding and the Motion in this District is proper under 28 U.S.C. §§ 1408 and

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); and 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 herein are used as defined in the Motion.

1409; and due and sufficient notice of the Motion having been given; and it appearing that the relief requested by the 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 Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, in a reasonable exercise of their business judgment, to: (i) pay or otherwise honor the outstanding prepetition Employee obligations; and (ii) honor and continue the Employee obligations that were in effect as of the Petition Date, each in the ordinary course consistent with the Debtors' practices as of the Petition Date; provided, however, that aggregate payments on account of prepetition outstanding Employee obligations will not exceed \$61,500 pursuant to this Final Order.
3. Subject to the requirements of this Final Order, the Debtors are authorized, but not directed, to modify, change and/or discontinue any of the Employee agreements in the ordinary course of business during the pendency of these chapter 11 cases in their discretion without the need for further Court approval, *provided, however*, that the Debtors shall seek court approval, upon a motion on notice, of any modification that would implicate any portion of section 503(c) of the Bankruptcy Code; *provided further* that the Debtors will (i) provide advance notice to counsel to the Official Committee of Unsecured Creditors (the "Committee") of any modifications or changes to Employee agreements that could increase the obligations owed by the Debtors to any Employee and (ii) provide notice of any discontinuance of an Employee agreement within three (3) business days following the discontinuance and such notice shall include the amount of unpaid wages, if any. Nothing herein shall be deemed to (i) authorize the payment of any amounts in satisfaction of bonus or severance obligations, or which are subject to section

503(c) of the Bankruptcy Code; or (ii) authorize the Debtors to cash out unpaid vacation/leave time except upon termination of an employee, if applicable state law requires such payment.

4. Nothing in the Motion or this Final 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.

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

6. Notwithstanding Bankruptcy Rule 6004(h), this Final Order shall be effective and enforceable immediately upon its entry.

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

EXHIBIT B

Redline

**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)

(Jointly Administered)

Re: D.I. 6 and 38

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO PAY PREPETITION WAGES,
SALARIES, OTHER COMPENSATION, AND REIMBURSABLE EXPENSES,
AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”) pursuant to sections 105(a), 363, 507 and 541 of the Bankruptcy Code, Bankruptcy Rules 6003(b) and 6004 and Local Rule 9013-1(m): (i) authorizing the Debtors to pay and honor certain prepetition compensation obligations and (ii) granting related relief, all as more fully described in the Motion; and the Court having previously entered the Interim Order ([D.I. 38]); and upon consideration of the First Day Declaration; and this Court having found that (i) this Court has jurisdiction to consider the Motion and the relief requested therein under 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, (ii) this Court may enter a final 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); [and](#) 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 herein are used as defined in the Motion.

consistent with Article III of the United States Constitution, (iii) this is a core proceeding under 28 U.S.C. § 157(b)(2)(A), and (iv) venue of this proceeding and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409; and due and sufficient notice of the Motion having been given; and it appearing that the relief requested by the 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 Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, in a reasonable exercise of their business judgment, to: (i) pay or otherwise honor the outstanding prepetition Employee obligations; and (ii) honor and continue the Employee ~~agreements~~obligations that were in effect as of the Petition Date, each in the ordinary course consistent with the Debtors' practices as of the Petition Date; provided, however, that aggregate payments on account of prepetition outstanding Employee obligations will not exceed \$61,500 pursuant to this Final Order.
3. Subject to the requirements of this Final Order, the Debtors are authorized, but not directed, to modify, change and/or discontinue any of the Employee agreements in the ordinary course of business during the pendency of these chapter 11 cases in their discretion without the need for further Court approval. ~~Notwithstanding the foregoing, nothing in this Final Order authorizes or approves any payments or transfers,~~ provided, however, that the Debtors shall seek court approval, upon a motion on notice, of any modification that would implicate any portion of section 503(c) of the Bankruptcy Code; provided further that the Debtors will (i) provide advance notice to counsel to the Official Committee of Unsecured Creditors (the "Committee") of any modifications or changes to Employee agreements that could increase the

obligations owed by the Debtors to any Employee and (ii) provide notice of any discontinuance of an Employee agreement within three (3) business days following the discontinuance and such notice shall include the amount of unpaid wages, if any. Nothing herein shall be deemed to (i) authorize the payment of any amounts in satisfaction of bonus or severance obligations, or which are subject to section 503(c) of the Bankruptcy Code; or (ii) authorize the Debtors to cash out unpaid vacation/leave time except upon termination of an employee, if applicable state law requires such payment.

4. Nothing in the Motion or this Final 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.

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

6. Notwithstanding Bankruptcy Rule 6004(h), this Final Order shall be effective and enforceable immediately upon its entry.

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