

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. 7 and 51

**CERTIFICATION OF COUNSEL REGARDING FINAL ORDER
(I) AUTHORIZING THE DEBTORS TO CONTINUE TO OPERATE THEIR CASH
MANAGEMENT SYSTEM; 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 Continue to Operate their Cash Management System and (II) Granting Related Relief* [D.I. 7] (the “Motion”).

3. On September 12, 2024, the Court entered an *Interim Order (I) Authorizing Debtors to Continue to Operate their Cash Management System and (II) Granting Related Relief* [D.I. 51] (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>.



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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

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*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. 7 and 51

**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 the Court having previously entered the Interim Order [D.I. 51]; 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

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

this Court having found that proper and adequate notice of the 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, *provided however*, for the avoidance of doubt, despite use of a consolidated cash management system, the Debtors shall calculate quarterly fees under 28 U.S.C. section 1930(a)(6) based on the disbursements of each debtor, regardless of which Debtor pays those disbursements, (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; *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 non-material 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 seek consent of the DIP Lender for any material change to the Cash Management System and give five (5) days advance notice of any material change to the Cash Management System to the U.S. Trustee and counsel to the Official Committee of Unsecured Creditors (the “Committee”); *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 and that is party to the Uniform Depository Agreement with the U.S. Trustee for the District of Delaware.

4. For banks at which the Debtors hold accounts that are not party to a Uniform Depository Agreement with the U.S. Trustee, the Debtors shall use their good-faith efforts to cause the banks to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee within thirty (30) days of the date of this Order. The U.S. Trustee’s rights to seek further relief from this Court on notice in the event that the aforementioned banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved.

5. If any Bank Accounts or Investment Accounts existing as of the Petition Date are not in compliance with section 345(b) of the Bankruptcy Code or Local Rules 4001-3 (the “Non-Compliant Accounts”), the Debtors shall have until December 1, 2024, without prejudice to seeking additional extensions, to come into compliance with section 345(b) of the Bankruptcy Code; *provided* that the Debtors maintain a zero balance in the Non-Compliant Accounts and close the Non-Compliant Accounts as soon as reasonably practicable after the closing of a sale; *provided further* 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.

6. 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.

7. 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

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.

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.

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

9. 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.

10. 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.

11. 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.

12. 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.

13. 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, subject to the provisions of this Final Order.

14. Any reporting regarding the Debtors' Cash Management System that the Debtors provide to the DIP Lender or prepetition secured lenders shall also simultaneously be provided to counsel for the Committee.

15. 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.

16. 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.

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

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

19. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement 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)

(~~Joint Administration Requested~~ [Jointly Administered](#))

Re: D.I. 7 and 51

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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 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”).
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~~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 non-material 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~~seek consent of the DIP Lender for any material change to the Cash Management System and give five (5) days advance 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~~the Official Committee of Unsecured Creditors (the “Committee”); *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 and that is party to the Uniform Depository Agreement with the U.S. Trustee for the District of Delaware.

4. For banks at which the Debtors hold accounts that are not party to a Uniform Depository Agreement with the U.S. Trustee, the Debtors shall use their good-faith efforts to cause the banks to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee within thirty (30) days of the date of this Order. The U.S. Trustee’s rights to seek further relief from this Court on notice in the event that the aforementioned banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved.

5. ~~4.~~ If any Bank Accounts or Investment Accounts existing as of the Petition Date are not in compliance with section 345(b) of the Bankruptcy Code or Local Rules 4001-3 (the “Non-Compliant Accounts”), the Debtors shall have until ~~October 10~~December 1, 2024, without

prejudice to seeking additional extensions, to come into compliance with section 345(b) of the Bankruptcy Code; *provided* that the Debtors maintain a zero balance in the Non-Compliant Accounts and close the Non-Compliant Accounts as soon as reasonably practicable after the closing of a sale; *provided further 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.

6. ~~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 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

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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.

7. ~~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.

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

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are dishonored as a consequence of these Chapter 11 Cases with respect to prepetition amounts owed in connection with the relief granted herein.

11. ~~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.

12. ~~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.

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15. ~~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.

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

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

19. ~~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.