

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. 10 and 47

**CERTIFICATION OF COUNSEL REGARDING FINAL ORDER
(I) AUTHORIZING THE 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 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 (A) Continue Insurance Programs and Surety Bond Program, (B) Pay all Obligations with Respect thereto, and (II) Granting Related Relief [D.I. 10] (the “Motion”)*.

3. On September 12, 2024, the Court entered an *Interim Order Authorizing Debtors to (A) Continue Insurance Policies and Agreements Relating thereto, (B) Honor Certain*

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>.



Prepetition Obligations in Respect thereof and (C) Continue to Honor Insurance Premium Financing Obligations [D.I. 47] (the “Interim Order”).

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 the 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.

Dated: October 7, 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 Final Order

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

In re:

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Chapter 11

Case No. 24-12008 (TMH)

(Jointly Administered)

Re: D.I. 10 and 47

**FINAL 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 (the “Interim Order”) and a final order (this “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 the Court having previously entered the Interim Order [D.I. 47]; 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

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

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 as set forth herein.
2. 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.
3. The Debtors are authorized, but not directed, to continue their insurance premium financing and make payments under the Debtors' Premium Financing Agreement as the same become due, and, as necessary, to renew or enter into new premium arrangements in the ordinary course of business; *provided* that the Debtors provide notice to counsel to the Official Committee of Unsecured Creditors (the "Committee") if any payments are made under an existing or new premium financing agreement in excess of \$50,000; *provided further* 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 Debtor will seek authority to do so on notice and motion.
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 Program, including upon the expiration or termination of any Insurance Program or Surety Bond Program; *provided* that the Debtors provide notice to counsel to the Committee if the Debtors

renew or terminate existing insurance policies or surety bonds or obtain new insurance policies or surety bonds.

5. This 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 nothing in this Final 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.

6. 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 Final 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 Final Order.

7. Nothing in 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.

8. Nothing in this Final 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

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

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

11. 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**

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3. The Debtors are authorized, but not directed, to continue their insurance premium financing and 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 arrangements in the ordinary course of business; provided that the Debtors provide notice to counsel to the Official Committee of Unsecured Creditors (the “Committee”) if any payments are made under an existing or new premium financing agreement in excess of \$50,000; provided further 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 Debtor will seek authority to do so on notice and motion.
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Surety Bond Program; provided that the Debtors provide notice to counsel to the Committee if the Debtors renew or terminate existing insurance policies or surety bonds or obtain new insurance policies or surety bonds.

5. This 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 Final 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.

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