

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)

Objection Deadline:

April 17, 2025, at 4:00 pm (ET)

Hearing Date:

April 28, 2025, at 10:00 a.m. (ET)

**DEBTORS' SECOND MOTION FOR ENTRY OF AN ORDER EXTENDING
THE EXCLUSIVE PERIODS DURING WHICH ONLY THE DEBTORS
MAY FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES**

The above-captioned debtors and debtors in possession (the “Debtors”) respectfully move (the “Motion”) as follows:

RELIEF REQUESTED

1. By this Motion, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), extending the periods during which (i) the Debtors have the exclusive right to file a chapter 11 plan (the “Exclusive Filing Period”) by approximately three months from April 7, 2025, to June 5, 2025, and (ii) the Debtors have the exclusive right to solicit acceptances (the “Exclusive Solicitation Period” and together with the Exclusive Filing Period, the “Exclusive Periods”) by approximately three months from June 6,

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 Debtors’ service address is: Fulcrum BioEnergy Inc., P.O. Box 220 Pleasanton, CA 94566.



2025, to September 4, 2025, without prejudice to the Debtors' right to seek further extensions of the Exclusive Periods.

JURISDICTION

2. This Court has jurisdiction to consider 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 under 28 U.S.C. § 157(b). Venue of these cases and the Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The Debtors consent 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") to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

4. The statutory basis for the relief requested herein is section 1121(d) of title 11 of the United States Code (the "Bankruptcy Code"), as supplemented by Local Rule 9006-2.²

BACKGROUND

5. On September 9, 2024 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to manage their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On September 19, 2024, the Office of the United States Trustee appointed an

² Pursuant to Local Rule 9006-2, the filing of this Motion prior to the expiration of the Removal Deadline automatically extends the Removal Deadline until the Court acts on this Motion, without the necessity for entry of a bridge order.

Official Committee of Unsecured Creditors (the “Committee”) pursuant to 11 U.S.C. § 1102(a)(1). No trustee or examiner has been appointed in these chapter 11 cases.

6. Additional information about the Debtors’ businesses and affairs, capital structure, and prepetition indebtedness, and the events leading up to the Petition Date, can be found in the *Declaration of Mark Smith, Restructuring Advisor to Fulcrum BioEnergy, Inc., in Support of the Chapter 11 Petition and First Day Motions* [D.I. 9] (the “First Day Declaration”), which is incorporated herein by reference.

7. As more thoroughly detailed in the First Day Declaration, the Debtors filed these chapter 11 cases to pursue a sale of all or substantially all of their assets with the goal of maximizing the recovery for their estates and creditors (the “Sale Process”).

8. Prior to the Petition Date, the Debtors and Switch negotiated a “stalking horse” asset purchase agreement (the “Switch APA”), contemplating a total purchase price of \$15 million. At the time, the Switch APA represented the best and highest offer for the purchase of certain of the Debtors’ assets.

9. On October 11, 2024, the Court entered an order approving the bidding procedures for the sale of substantially all of the Debtors’ assets and scheduling an auction and sale hearing. *See* D.I. 153. Subsequently, the Debtors held an auction on November 7, 2024 and filed the *Notice of Successful Bidder for the Sale of Certain of the Debtors’ Assets* on the same day [D.I. 238], designating two successful bidders.

10. On November 14, 2024, the Court entered orders approving the sales of substantially all of the Debtors assets. [D.I. 265, 266]. The sales contemplated by the sale orders closed on November 19, 2024.

11. On February 3, 2025, the Debtors filed the *Disclosure Statement for Joint Chapter 11 Plan of Liquidation* (the “Disclosure Statement”) [D.I. 415]. Attached to the Disclosure Statement as Exhibit A was the *Joint Chapter 11 Plan of Liquidation* (the “Plan”) [D.I. 415-1]. On February 17, 2025, the Debtors filed the *Debtors’ Motion for Entry of an Order (I) Approving the Disclosure Statement; (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan; (III) Approving the Form of Ballots and Solicitation Packages; (IV) Establishing the Voting Record Date; (V) Scheduling a Hearing and Establishing Notice and Objection Procedures in Respect of Confirmation of Plan; and (VI) Granting Related Relief* (the “Solicitation Procedures Motion”) [D.I. 431].

12. On March 7, 2025, the Court entered an *Order (I) Approving the Disclosure Statement; (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan; (III) Approving the Form of Ballot and Solicitation Packages; (IV) Establishing the Voting Record Date; (V) Scheduling a Hearing and Establishing Notice and Objection Procedures in Respect of Confirmation of the Plan; and (VI) Granting Related Relief* (the “Solicitation Procedures Order”) [D.I. 458].

13. As set forth in the Solicitation Procedures Order, the hearing on the approval of the Plan is scheduled for April 14, 2025, at 10:00 a.m. (ET) (the “Confirmation Hearing”). With the Confirmation Hearing only two weeks away, the Debtors file this Motion out of an abundance of caution to provide them with sufficient time to achieve confirmation of the Plan.

BASIS FOR RELIEF

14. Section 1121(b) of the Bankruptcy Code provides for an initial period of 120 days after the commencement of a chapter 11 case during which a debtor has the exclusive right to propose and file a plan. Section 1121(c)(3) of the Bankruptcy Code provides that if the debtor proposes and files a plan within the initial 120-day exclusive period, the debtor then has

until 180 days after the commencement of the chapter 11 case to solicit and obtain acceptances of such plan. Pursuant to section 1121(d)(1) of the Bankruptcy Code, “on request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.” 11 U.S.C. § 1121(d)(1).³

15. Although the term “cause” is not defined in the Bankruptcy Code, the legislative history indicates that it is to be viewed flexibly “in order to allow the debtor to reach an agreement” with its creditors. H.R. Rep. No. 595, 95th Cong., 1st Sess. 232 (1977); *see also In re McLean Indus., Inc.*, 87 B.R. 830, 833 (Bankr. S.D.N.Y. 1987); *In re Public Serv. Co. of N.H.*, 88 B.R. 521, 534 (Bankr. D.N.H. 1988) (“[T]he legislative intent . . . [is] to promote maximum flexibility.”). To facilitate this legislative intent, a debtor should be given a reasonable opportunity to negotiate an acceptable plan with creditors and to prepare adequate financial and non-financial information concerning the ramifications of any proposed plan for disclosure to creditors. *See, e.g., McLean*, 87 B.R. at 833–34; *In re Texaco, Inc.*, 76 B.R. 322, 327 (Bankr. S.D.N.Y. 1987).

16. The decision to extend a debtor’s exclusive periods is committed to the bankruptcy court’s sound discretion, guided by the facts and circumstances of each case. *See, e.g., First Am. Bank of N.Y. v. S.W. Gloves & Safety Equip., Inc.*, 64 B.R. 963, 965 (D. Del. 1986). Courts consider a variety of factors in determining whether “cause” exists to warrant an extension of the exclusive periods, including: (i) the size and complexity of the case; (ii) the debtor’s progress in resolving issues facing the estate; (iii) the fact that the debtors are paying their bills as they become due; and (iv) whether an extension of time will harm the debtor’s creditors. *See, e.g., In*

³ Such extensions are capped by section 1121(d)(2) of the Bankruptcy Code, which limits any extension of the exclusive filing period to eighteen (18) months after the petition date and any extension of the solicitation period to twenty (20) months after the petition date.

re Adelphia Commc'ns Corp., 336 B.R. 610, 674 (Bankr. S.D.N.Y. 2006); *In re Gibson & Cushman Dredging Corp.*, 101 B.R. 405, 409–10 (Bankr. E.D.N.Y. 1989); *In re Dow Corning Corp.*, 208 B.R. 661, 664–65 (Bankr. E.D. Mich. 1997) (citing *In re Express One Int'l, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996) (listing factors)). Not all of the factors are necessary or relevant in determining whether cause exists to support an extension. *In re Express One Int'l, Inc.* 194 B.R. at 100-01. Good faith progress and the need for additional time to continue such progress are particularly significant factors in support of extending the exclusive periods under section 1121(d) of the Bankruptcy Code. *See id.* at 101; *In re Pine Run Trust, Inc.*, 67 B.R. 432, 435 (Bankr. E.D. Pa. 1986).

17. Cause exists here for the Court to extend the Exclusive Periods. As an initial matter, the Debtors have made substantial progress in these chapter 11 cases, including: (a) protecting the value of their business and transitioning to their role as debtors in possession; (b) securing critical first- and second-day relief, including authority to pay certain prepetition claims and access to debtor-in-possession financing; (c) communicating with the Committee and other interested parties; (d) filing the Debtors' Schedules and Statement of Financial Affairs [D.I. 66-73]; (e) attending the 341 creditor meeting and addressing questions and comments from the Debtors' creditor constituencies; (f) completing a successful sale process to sell substantially all of the Debtors' assets and obtaining Court approval of the sales [D.I. 265, 266]; and (g) meeting established deadlines and milestones to further progress these chapter 11 cases.

18. Most significantly, however, the Debtors spent a significant portion of these chapter 11 cases crafting a chapter 11 plan that is best for the Debtors' estates and creditors, which included rigorous negotiations with the Official Committee of Unsecured Creditors and other parties-in-interest.

19. Allowing the Exclusive Filing Period to lapse on April 7, 2025 would defeat the purpose of section 1121 and deprive the Debtors of the benefit of a meaningful and reasonable opportunity to confirm the Plan. If a competing plan were filed at this stage of these chapter 11 cases, it would have a disruptive and detrimental effect on these cases that could result in the potential delay of the Debtors' exit from chapter 11 or a conversion of the chapter 11 cases to chapter 7. Consequently, the requested extension is reasonable and is consistent with the efficient prosecution of these chapter 11 cases as it will provide the Debtors the time necessary to obtain confirmation of their Plan and maximize the value of their estates for the benefit of their stakeholders.

20. The relief requested herein is routinely granted by this Court under section 1121 of the Bankruptcy Code. *See, e.g., In re Number Holdings Inc. et al.*, Case No. 24-10179 (JKS) (Bankr. D. Del. Nov. 20, 2024), D.I. 1499 (extending the exclusivity period by approximately 90 days); *In re Coach USA, Inc., et al.*, Case No. 24-11258 (MFW) (Bankr. D. Del. Oct. 18, 2024), D.I. 834 (same); *In re iSun Inc.*, Case No. 24-11144 (TMH) (Bankr. D. Del. October 10, 2024), D.I. 526 (extending the debtors' removal deadline by 60 days); *In re Cano Health, Inc., et al.*, Case No. 24-10164 (KBO) (Bankr. D. Del. June 20, 2024), D.I. 1057 (extending the exclusivity period by approximately 90 days); *In re DMK Pharmaceuticals Corporation*, Case No. 24-10153 (MFW) (Bankr. D. Del. June 14, 2024), D.I. 353 (extending the exclusivity period by approximately 60 days).

21. For all the foregoing reasons, the Debtors submit that sufficient cause exists to extend the Exclusive Filing Period through and including June 5, 2025, and the Exclusive Solicitation Period through and including September 4, 2025.

NOTICE

22. Notice of this Motion will be provided to the following parties: (a) the U.S. Trustee; (b) the Official Committee of Unsecured Creditors; (c) the Securities and Exchange Commission; (d) the Internal Revenue Service; (e) the United States Attorney's Office for the District of Delaware; (f) the state attorneys general for states in which the Debtors conduct business; and (g) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "Notice Parties"). Based on the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no other or further notice is required.

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CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order substantially in the form of the Proposed Order attached hereto as **Exhibit A** and grant such other relief as is just and proper under the circumstances.

Dated: April 3, 2025
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Avery Jue Meng

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

Curtis S. Miller (No. 4583)

Clint M. Carlisle (No. 7313)

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Counsel to the Debtors and Debtors in Possession

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

In re:

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

Debtors.⁴

Chapter 11

Case No. 24-12008 (TMH)

(Jointly Administered)

Objection Deadline:

April 17, 2025, at 4:00 pm (ET)

Hearing Date:

April 28, 2025, at 10:00 a.m. (ET)

**NOTICE OF DEBTORS' MOTION FOR ENTRY OF
AN ORDER EXTENDING THE EXCLUSIVE PERIODS
DURING WHICH ONLY THE DEBTORS MAY FILE
A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES**

PLEASE TAKE NOTICE that, on April 3, 2025, the above-captioned debtors and debtors in possession (the "Debtors") filed the *Debtors' Second Motion for Entry of an Order Extending the Exclusive Periods During Which Only the Debtors may File a Chapter 11 Plan and Solicit Acceptances* (the "Motion").

PLEASE TAKE FURTHER NOTICE that, objections, if any, to the Motion must (a) be in writing; (b) be filed with the Clerk of the Bankruptcy Court, 824 Market Street, Wilmington, Delaware 19801, on or before **April 17, 2025, at 4:00 p.m. (ET)** (the "Objection Deadline"); and (c) be served so as to be received on or before the Objection Deadline by counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16th Floor, Wilmington, Delaware, 19801, Attn: Robert J. Dehney Sr. (rdehney@morrisnichols.com); Curtis S. Miller (cmiller@morrisnichols.com), Clint M. Carlisle (ccarlisle@morrisnichols.com), and Avery Jue Meng (ameng@morrisnichols.com).

PLEASE TAKE FURTHER NOTICE that, a hearing on the Motion will take place on **April 28, 2025, at 10:00 a.m. (ET)** before the Honorable Thomas M. Horan, United States Bankruptcy Judge for the District of Delaware, at 824 Market Street, Wilmington, Delaware, 19801.

⁴ 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 Debtors' service address is: Fulcrum BioEnergy Inc., P.O. Box 220 Pleasanton, CA 94566.

PLEASE TAKE FURTHER NOTICE that, only objections made in writing and timely filed and received, in accordance with the procedures above, will be considered by the Bankruptcy Court at such hearing.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: April 3, 2025
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Avery Jue Meng

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Counsel to the Debtors and Debtors in Possession

Exhibit A

Proposed 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. ____

**ORDER EXTENDING THE EXCLUSIVE PERIODS DURING WHICH ONLY THE
DEBTORS MAY FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (the “Debtors”), pursuant to section 1121(d) of the Bankruptcy Code and Local Rule 9006-2, extending the exclusive period during which the Debtors have the exclusive right to file a chapter 11 plan (the “Exclusive Filing Period”) through and including June 5, 2025, and extending the period during which the Debtors have the exclusive right to solicit acceptances (the “Exclusive Solicitation Period” and together with the Exclusive Filing Period, the “Exclusive Periods”) through and including September 4, 2025; 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, and their creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefor;

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 Debtors’ service address is: Fulcrum BioEnergy Inc., P.O. Box 220 Pleasanton, CA 94566.

² Capitalized terms not defined herein are defined in the Motion.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Exclusive Filing Period is hereby extended through and including June 5, 2025, pursuant to section 1121(d) of the Bankruptcy Code.
3. The Exclusive Solicitation Period is hereby extended through and including September 4, 2025, pursuant to section 1121(d) of the Bankruptcy Code.
4. This Order is without prejudice to the Debtors' right to seek further extensions of the Exclusive Periods.
5. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
6. The Court shall retain jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.