

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

In re

FULCRUM BIOENERGY, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-12008 (TMH)

(Jointly Administered)

**ORDER ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION AND
REIMBURSEMENT OF EXPENSES FOR RETAINED PROFESSIONALS**

Upon the motion (the “Motion”)² of the Debtors for entry of an order (this “Order”), pursuant to sections 105(a), 330(a) and 331 of the Bankruptcy Code, Bankruptcy Rule 2016 and Local Rule 2016-2, establishing interim compensation and reimbursement procedures; and the Court having reviewed the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein 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 consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion being adequate and appropriate under the particular circumstances; and upon consideration of the First Day Declaration, the record of any hearing and all proceedings had before the Court; and the Court

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.

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

having found and determined that the relief sought in the Motion is in the best interests of the Debtors' estates, their creditors and 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in the Motion establish just cause for the relief granted herein and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

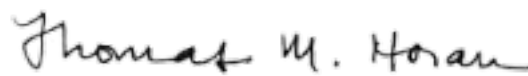
1. The Motion is GRANTED as set forth herein.
2. Except as otherwise provided in this Court's orders, all Professionals may seek interim compensation and reimbursement in accordance with the procedures (the "Compensation Procedures") described in **Exhibit 1** attached hereto.
3. All Professionals who have been or are hereafter retained under sections 327 or 1103 of the Bankruptcy Code, except those that the Debtors retain in the ordinary course, shall apply for compensation for professional services rendered and reimbursement of expenses incurred in connection with these chapter 11 cases in compliance with this Order, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Court's orders.
4. The Professionals shall be required to serve the Applications only on the Notice Parties. All other parties that have filed a notice of appearance shall be entitled to receive only Hearing Notices on the Applications.
5. The Debtors shall include in their monthly operating reports all payments to Professionals.
6. All time periods referenced in this Order and the Compensation Procedures shall be calculated in accordance with Bankruptcy Rule 9006(a).

7. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, this Order shall be immediately effective and enforceable upon its entry.

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

9. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.

Dated: October 15th, 2024
Wilmington, Delaware



THOMAS M. HORAN
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Compensation Procedures

**IN THE UNITED STATES BANKRUPTCY COURT
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COMPENSATION PROCEDURES

Pursuant to the *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals* (the “Order”),² the following compensation procedures (collectively, the “Compensation Procedures”) shall apply with respect to the allowance and payment of compensation for professional services rendered and reimbursement of expenses incurred by attorneys and other professionals who will be retained pursuant to sections 327 or 1103 of the Bankruptcy Code and are required to file applications pursuant to sections 330 and 331 of the Bankruptcy Code on terms that satisfy the requirements of Bankruptcy Rule 2016 and Local Rule 2016-2 (each a “Professional” and collectively, the “Professionals”). Specifically, the Compensation Procedures are as follows:

- a. On or as soon as practicable after the fifteenth (15th) day of each month, each Professional may file with the Court an application, which will include the relevant time entry and description and expense detail, for a monthly, interim allowance of compensation for services rendered and

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² Capitalized terms used but not defined herein are defined in the Order or the Motion.

reimbursement of expenses incurred during the preceding month or months (a “Monthly Fee Application”).

- b. Each Professional may submit its first Monthly Fee Application no earlier than the later of (i) entry of this Order or (ii) October 15, 2024. This initial Monthly Fee Application will cover the period from the Petition Date through and including September 30, 2024. Thereafter, the Professionals may submit Monthly Fee Applications in the manner described above.

Each such Professional shall serve such Monthly Fee Application by email on the following parties: (a) proposed counsel for the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, Wilmington, DE 19801, Attn: Robert J. Dehney, Sr., rdehney@morrisnichols.com; Curtis S. Miller, cmiller@morrisnichols.com; Daniel B. Butz, dbutz@morrisnichols.com; Clint M. Carlisle, ccarlisle@morrisnichols.com; and Avery Jue Meng, ameng@morrisnichols.com; (b) proposed counsel to the Committee, Eversheds Sutherland (US) LLP, The Grace Building, 40th Floor, 1114 Avenue of the Americas, New York, New York 10036, Attn: Todd C. Meyers, toddmeyers@eversheds-sutherland.com, Jennifer Kimble, jenniferkimble@eversheds-sutherland.com, Sameer M. Alifarag, sameeralifarag@eversheds-sutherland.com, Evershed Sutherland (US) LLP, 999 Peachtree Street NW, Suite 2300, Atlanta, Georgia 30309, Attn: Todd C. Meyers, toddmeyers@eversheds-sutherland.com, and Morris James LLP, 500 Delaware Avenue, Suite 1500 Wilmington, DE 19801, Attn: Jeffrey R. Waxman, jwaxman@morrisjames.com, Eric J. Monzo, emonzo@morrisjames.com, Christopher M. Donnelly, cdonnelly@morrisjames.com, and (c) the U.S. Trustee, Caleb Boggs Federal Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Rosa Sierra-Fox, Rosa.Sierra-Fox@usdoj.gov (each a “Notice Party,” and, collectively the “Notice Parties”).

- c. Any Professional that does not file a Monthly Fee Application for a particular month or months may subsequently submit a consolidated Monthly Fee Application that includes a request for compensation earned or expenses incurred during previous months. All Monthly Fee Applications shall comply with the Bankruptcy Code,

the Bankruptcy Rules, the Local Rules and applicable non-bankruptcy law.

- d. Parties in interest will have 14 days (or the next business day if such day is not a business day) after the service of a Monthly Fee Application (the “Objection Deadline”) to object to the requested fees and expenses in accordance with the procedures described in subparagraph (f) below. After expiration of the Objection Deadline, each Professional may file with the Court a certificate of no objection (“CNO”) with respect to the unopposed portion of the fees and expenses requested in its Monthly Fee Application. After a CNO is filed, the Debtors are authorized to pay the applicable Professional an amount (the “Actual Monthly Payment”) equal to the lesser of (i) 80 percent of the fees and 100 percent of the expenses requested in the Monthly Fee Application (the “Maximum Monthly Payment”) or (ii) 80 percent of the fees and 100 percent of the expenses not subject to an objection pursuant to subparagraph (f) below. The Objection Deadline shall be conspicuously noted on a Professional’s Monthly Fee Application.

- e. If any party in interest wishes to object to a Professional’s Monthly Fee Application, it must (i) file a written objection (each, an “Objection”) with the Court on or before the Objection Deadline and (ii) serve the Objection on the affected Professional and each of the other Notice Parties so that it is **actually received** on or before the Objection Deadline. Any such Objection shall identify, with specificity, the objectionable fees or expenses, including the amount of such objected-to fees or expenses and the basis for such Objection. Thereafter, the objecting party and the affected Professional may attempt to resolve the Objection on a consensual basis. If the parties are unable to reach a resolution of the Objection within 14 days after service of the Objection, the affected Professional may either: (i) file a request with the Court for payment of the difference, if any, between the Maximum Monthly Payment and the Actual Monthly Payment made to the affected Professional (the “Incremental Amount”); or (ii) forego payment of the Incremental Amount until the next interim or final fee application hearing, at which time the Court will consider and rule on the Objection if requested by the parties. Payment of the Incremental Amount will be allowed upon the Court’s disposal of the Objection.

- f. At three-month intervals or such other intervals convenient to the Court (the “Interim Fee Period”), each Professional may file with the Court and serve upon the Notice Parties a request (an “Interim Fee Application Request”) for interim Court approval and allowance of the compensation and reimbursement of expenses sought by such Professional in its Monthly Fee Applications, including any holdbacks filed during the Interim Fee Period, pursuant to section 331 of the Bankruptcy Code. The Interim Fee Application Request must include a brief summary identifying:
- (i) the Monthly Fee Applications that are the subject of the request;
 - (ii) the amount of fees and expenses requested;
 - (iii) the amount of fees and expenses approved to date or subject to an Objection;
 - (iv) any other information requested by the Court or required by the Bankruptcy Rules or Local Rules, including Bankruptcy Rule 2016(a) and Local Rule 2016-2.

Each Professional shall file its first Interim Fee Application on or before December 31, 2024 and the first Interim Fee Application Request shall cover the period from the Petition Date through November 30, 2024. Thereafter, each Professional may file its Interim Fee Application after the end of the applicable Interim Fee Period.

- g. The Debtors will request that the Court schedule a hearing on Interim Fee Application Requests at least once every three months or at such other intervals as the Court deems appropriate. Parties in interest will have 14 days (or the next business day if such day is not a business day) after the service of an Interim Fee Application to file an Objection. The Court, in its discretion, may approve an uncontested Interim Fee Application without the need for a hearing, upon the Professional’s filing of a CNO. Upon allowance by the Court of a Professional’s Interim Fee Application, the Debtors will be authorized to promptly pay such Professional all allowed fees (including the 20 percent holdback) and expenses not previously paid.
- h. The pendency of an Objection to payment of compensation or reimbursement of expenses shall not disqualify a

Professional from the future payment of compensation or reimbursement of expenses pursuant to the Compensation Procedures. Any Professional that fails to file an Interim Fee Application Request when permitted will be ineligible to receive further interim payments of fees or expenses under the Compensation Procedures until such time as an Interim Fee Application Request is submitted by the Professional.

- i. Professionals will each file a final application for compensation and reimbursement (the "Final Fee Application") on or before the deadline set in a confirmed chapter 11 plan or an order of the Court. Each Final Fee Application must comply with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and this Court's orders.
- j. Neither (i) the payment of or the failure to pay, in whole or in part, monthly or interim compensation and reimbursement of expenses under the Compensation Procedures nor (ii) the filing of or failure to file an Objection will bind any party in interest or the Court with respect to the final allowance of applications for compensation and reimbursement of expenses of Professionals. All fees and expenses paid to Professionals under the Compensation Procedures are subject to disgorgement until final allowance by the Court.