

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. 12 and 153

**DECLARATION OF MARK J. SMITH IN SUPPORT OF DEBTORS' MOTION
FOR ENTRY OF AN ORDER (A) AUTHORIZING THE SALE OF CERTAIN
ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, INTEREST AND OTHER
ENCUMBRANCES; (B) AUTHORIZING THE ASSUMPTION
AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND
UNEXPIRED LEASES; AND (C) GRANTING RELATED RELIEF**

Pursuant to 28 U.S.C. § 1746, I, Mark J. Smith, hereby declare as follows under the penalty of perjury to the best of my knowledge, information, and belief:

1. Since April 2024, I have served as the Chief Restructuring Officer (the “CRO”) of Fulcrum BioEnergy, Inc. and its affiliates in the above-captioned chapter 11 cases (the “Debtors”). In my capacity as the Debtors’ CRO, I am knowledgeable and familiar with the Debtors’ day-to-day operations, business, financial affairs, books and records, and the circumstances leading to the commencement of these chapter 11 cases. As CRO, one of my duties is to oversee the administration of the Debtors’ estates to maximize value for the benefit of all of the Debtors’ stakeholders, including, but not limited to, overseeing the Debtors’ sale process.

2. I submit this declaration (the “Declaration”) in support of the entry of the Debtors’ proposed Revised (a) *Order (I) Approving the Sale of the Debtors’ Biorefinery Assets Free 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 Debtors’ service address is: Fulcrum BioEnergy Inc., P.O. Box 220 Pleasanton, CA 94566.



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Clear of Claims, Liens, and Encumbrances, (II) Approving the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases, and (III) Granting Related Relief [D.I. 244-1] (the “Biorefinery Sale Order”) and (b) *Order (I) Approving the Sale of Debtors’ Feedstock Assets Free and Clear of Claims, Liens, and Encumbrances, (II) Approving the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases, and (III) Granting Related Relief* [D.I. 244-3] (the “Feedstock Sale Order,” together, with Biorefinery Sale Order, the “Sale Orders”). Except as otherwise indicated herein, the facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents, information provided to me by employees of or advisors of the Debtors, or my opinion based upon my experience, knowledge, and information concerning the Debtors’ affairs. If called upon to testify, I would testify competently to the facts set forth in this Declaration.

3. Pursuant to the *Debtors’ Motion for (I) an Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors’ Assets; (B) Approving the Debtors’ Entry Into Stalking Horse Agreement and Related Bid Protections (C) Approving Procedures for the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (D) Scheduling an Auction and Sale Hearing; (E) Approving Forms and Manner of Notice of Respective Dates, Times, and Places in Connection Therewith; and (F) Granting Related Relief; (II) an Order (A) Approving the Sale of the Debtors’ Assets Free and Clear of Claims, Liens, and Encumbrances; and (B) Approving the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases; and (III) Certain Related Relief* (the “Sale Motion”)² [D.I. 12] filed on September 11,

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

2024, the Debtors seek entry of an order, among other things, authorizing and approving (i) the sale of certain of the Debtors' assets to Switch Ltd. ("Switch") pursuant to that *Asset Purchase Agreement by and between Switch, Ltd. and Fulcrum Sierra BioFuels, LLC*, dated September 10, 2024 (the "Stalking Horse Agreement") [D.I. 12-2].

4. On August 8, 2024, the Debtors engaged Development Specialists, Inc. ("DSI") as the Debtors' financial advisor and investment banker. DSI managed the marketing and sale process during these cases. Filed concurrently with this Declaration is the *Declaration of Steven L. Victor in Support of Debtors' Motion for Entry of an Order Authorizing the Sale of Certain Assets Free and Clear of All Liens, Claims, Interest and Other Encumbrances; (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (C) Granting Related Relief* (the "Victor Declaration"). The Victor Declaration accurately sets forth the robust marketing and sale strategy and process which I oversaw.

5. Through the sale process, DSI regularly reported updates to the Debtors' board of directors, the Debtors' bankruptcy counsel, and myself, seeking our direction when appropriate. I held videoconference calls with DSI and the Debtors' bankruptcy counsel regularly during the sale process.

6. Based on these updates and discussions, I understand that DSI broadly marketed the Debtors' assets and facilitated extensive due diligence to ensure all potentially interested parties had a full and fair opportunity to submit a bid for the Debtors' assets. DSI contacted over 200 potential bidders throughout the sale process. Further, DSI spent a considerable amount of time facilitating buyer due diligence right until the Bid Deadline.

7. I understand that thirty-seven (37) parties executed non-disclosure agreements in the sale process. I also understand that these parties were provided access to the Debtors' data

room containing financial, operational and legal information about the Debtors and the Debtors' assets.

8. At the conclusion of a thorough marketing process, the Debtors received seven (7) bids before the Bid Deadline. After consulting with the Consultation Parties, the Debtors determined that five (5) of the bids were Qualified Bids for the Debtors' assets, some of which sought to acquire different assets of the Debtors.

9. The Debtors conducted the Auction on November 7, 2024. All Qualified Bidders and/or their counsel or advisors and the Consultation Parties participated in the Auction in person or by videoconference.

10. At the conclusion of the Auction and following consultation with the Consultation Parties, the Debtors selected two separate successful bids: (a) Switch's \$55 million bid (the "Switch Bid") for the Debtors' real property at assessor's parcel number 005-071-49 (the "Biorefinery Real Property") and certain utility rights, including electrical and water, easements, improvements, and other rights and credits appurtenant to the Biorefinery Real Property (together, the "Biorefinery Assets"), and (b) Refuse Inc.'s \$3 million bid ("Refuse Bid," together, with Switch Bid, the "Sales") for the Debtors' real property at assessor's parcel number 004-111-37 (the "Feedstock Real Property"), as well as certain utility rights, including electrical and water, easements, improvements, and other rights and credits appurtenant to the Feedstock Real Property, including any and all fixtures, improvements, and appurtenances thereto (the "Feedstock Assets").

11. In my business judgment, the Switch Bid and the Refuse Bid represent the highest and best value for the Debtors' assets. I also believe that the Switch Bid and Refuse Bid represent a fair and reasonable offer to purchase the Debtors' assets because, among other things, they are the result of a comprehensive and transparent marketing, auction and sale process. In short, I

believe that the Debtors' decision to sell their assets to Switch and Refuse constitute a reasonable and sound exercise of the Debtors' business judgment, is in the best interests of the Debtors, their estates, and their creditors, and should be approved.

12. I believe that the Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for approval of the Sales. The sound business reasons for the Sales include, but are not limited to, the following: (a) the Switch Bid and Refuse Bid constitute the highest and best value for the Debtors' assets after a thorough months-long marketing and sale process conducted by an experienced investment banker; (b) the Sales represent the best opportunity under the circumstances to realize the value of the Debtors' assets, and (c) any other transactions, including a piecemeal liquidation of the Debtors' assets, would not have yielded as favorable an economic result.

13. To the extent of my knowledge, the Debtors' discussions with the potential bidders for the assets were conducted in good faith and at arm's length, and by parties who were represented by their own counsel or advisors. I am unaware of any collusion in the sale process by either Switch or Refuse, Inc.

14. I believe that the Debtors have explored all available alternatives for their assets and, with the assistance of their advisors, including DSI, conducted a fair and open marketing and sale process in a manner reasonably calculated to produce the highest or otherwise best offers for the Debtors' assets.

15. The Debtors have determined in the exercise of their business judgment that under the circumstances of these chapter 11 cases and the sale process, the Sales represent the best way to maximize the value of the Debtors' assets.

Dated: November 10, 2024

/s/ Mark J. Smith
Mark J. Smith
Chief Restructuring Officer
to Fulcrum Bioenergy, Inc.