

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, 153, 367

**DECLARATION OF MARK J. SMITH IN SUPPORT OF DEBTORS' MOTION
FOR ENTRY OF AN ORDER (I) APPROVING THE SALE OF CERTAIN OF THE
DEBTORS' 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**

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.

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. I submit this declaration (the “**Declaration**”) in support of the entry of the Debtors’ proposed *Order (I) Approving the Sale of Certain of the Debtors’ 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. 367-2] (the “**Agent Sale Order**”), pursuant to the *Asset Purchase Agreement* by and between PCL Administration LLC, as Prepetition Agent on behalf of the Prepetition Fulcrum Lenders (as defined below) or its designee, (“**Prepetition Agent**” or “**Purchaser**”) and Fulcrum BioEnergy, Inc. (“**Fulcrum Parent**” or “**Seller**”), dated January 3, 2025 (the “**Agent Transaction APA**”) for the sale of certain Fulcrum Parent’s assets (the “**Subject Assets**”).

3. 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.

I. The Debtors’ Sale Motion.

4. On September 11, 2024, the Debtors filed the motion (the “**Motion**”)² [D.I. 12], seeking for an entry of (i) an order (a) approving the bidding procedures (the “**Bidding Procedures**”), in connection with the sale of all or substantially all of the Debtors’ assets; (b) approving various forms and the manner of notice of respective dates, times and places in connection therewith; (c) authorizing the Debtors to enter into and perform under a stalking horse asset purchase agreement (the “**Stalking Horse Agreement**”) between the Debtor Fulcrum Sierra

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms the Bidding Procedures Order (as defined below) or in the Agent Transaction APA, as applicable.

BioFuels, LLC (“**BioFuels**”) and Switch, Ltd. (“**Switch**”), subject to the solicitation of higher or otherwise better offers for certain of the Debtors’ assets; (d) approving the Bid Protections associated therewith; (e) approving procedures for the assumption and assignment of certain designated executory contracts and unexpired leases; (f) scheduling an auction (the “**Auction**”) and the date and time of the hearing to approve the sale (the “**Sale Hearing**”) of certain of the Debtors’ assets and assumption of certain liabilities of the Debtors; and (g) granting related relief; and (ii) an order (a) authorizing the sale (the “**Sale**”) of certain assets to the Purchaser 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.

5. On October 11, 2024, the Court entered the *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* [D.I. 153] (the “**Bidding Procedures Order**”) approving, among other things, the Bidding Procedures attached thereto as **Exhibit 1**. The Bidding Procedures Order contemplated the possible sale of the Subject Assets as expanded assets to the Stalking Horse Agreement.

II. The Debtors Conducted a Thorough Marketing Process.

6. Development Specialists, Inc. (“**DSI**”), the Debtors’ investment banker and financial advisor, managed the marketing and sale process during these cases – including the sale of the assets of Fulcrum Parent.

7. Through the marketing and 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. 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.

8. At the conclusion of a thorough marketing process, the Debtors received only one bid for the Subject Assets – a credit bid from the Prepetition Agent.

9. I was advised during the marketing process that the Prepetition Agent was entitled to credit bid for the Subject Assets as a result of the outstanding Obligations related to the Financing Documents, secured by the first priority lien in favor of the Prepetition Agent.

10. The Debtors performed a perfection analysis and concluded that the Prepetition Agent’s liens on the Subject Assets are properly perfected, allowing the Prepetition Agent to credit bid on the Subject Assets under the Bidding Procedures Order.

III. The Agent Transaction APA Represents the Best and Only Offer for the Subject Assets.

11. Among the assets being purchased by the Purchaser are claims against the Prepetition Agent and its related parties. The Debtors and the Prepetition Agent engaged in extensive negotiation, and the Prepetition Agent agreed that as consideration for the purchase of the claims that the Prepetition Agent will consent to the use of the Catalyst Proceeds (which

constitute the Prepetition Agent's cash collateral and are more fully described in the *Debtors' Motion for Entry of an Order (I) Authorizing the Sale of Certain of the Debtors' Assets Free and Clear of all Encumbrances; (II) Approving the Debtors' Entry into the Asset Purchase Agreement; (III) Authorizing the Use of Proceeds as Cash Collateral; and (IV) Granting Related Relief* [D.I. 334]) to pay the costs of administering Fulcrum Parent's chapter 11 case with the balance being made available for distribution to the Seller's unsecured creditors under its plan.

12. The Debtors are unaware of claims against the Prepetition Agent and believe that the sale of the claims to the Prepetition Agent in exchange for the Catalyst Proceeds is in the best interest of the estates as it will enable the Seller to confirm a plan.

13. In my business judgment, the terms and conditions set forth in the Agent Transaction APA represent a fair and reasonable offer to purchase the Subject Assets because, among other things, they are the result of a good faith, arm's length sale process. I am unaware of any collusion in the sale process by the Prepetition Agent. The Agent Transaction APA represented the highest, best, and only offer. The Sale constitutes 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.

14. I believe that the Debtors have explored all available alternatives for the sale of the Subject 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 Subject 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 Sale represents the best way to maximize the value of the Subject assets.

Dated: January 13, 2025

/s/ Mark J. Smith

Mark J. Smith
Chief Restructuring Officer
to Fulcrum BioEnergy, Inc.