

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

FULCRUM BIOENERGY, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-12008 (TMH)

**Hearing Date**

**March 10, 2025 at 11:00 a.m. (ET)**

**Objection Deadline**

**March 4, 2025 at 4:00 p.m. (ET)**

**Re: D.I. 415, 431**

**NOTICE OF DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) APPROVING THE DISCLOSURE STATEMENT; (II) ESTABLISHING PROCEDURES FOR THE 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 (IV) GRANTING RELATED RELIEF**

On February 3, 2025, the above-captioned debtors and debtors in possession (the "Debtors") filed the *Disclosure Statement for Joint Chapter 11 Plan of Liquidation* (the "Disclosure Statement") [D.I. 415] and *Joint Chapter 11 Plan of Liquidation* (the "Plan") [D.I. 415-1] (as may be amended, modified, or supplemented).

On February 17, 2025, the Debtors filed the *Debtors' Motion for Entry of an Order (I) Approving the Disclosure Statement; (II) Establishing Procedures for the 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 (IV) Granting Related Relief* [D.I. 431] (the "Motion").<sup>2</sup>

A hearing on the approval of the Disclosure Statement is scheduled for **March 10, 2025, at 11:00 a.m. (prevailing Eastern Time)** before the Honorable Thomas M. Horan at the United States Bankruptcy Court for the District of Delaware (the "Court"), 824 North Market Street, Courtroom 7, Wilmington, Delaware 19801 (the "Disclosure Statement Hearing"). At the Disclosure Statement Hearing, the Debtors intend to seek an order granting approval of the Disclosure Statement (the "Disclosure Statement Order") for use by the Debtors in soliciting acceptances or rejections to the Plan from those entitled to vote on the Plan. Copies of the Disclosure Statement Order (once entered), the Disclosure Statement, and the Plan may be

<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used but not defined herein are defined in the Motion.



obtained free of charge at the website maintained by Kurtzman Carson Consultants LLC dba Verita Global (the “Voting Agent” or “Verita”) at <https://www.veritaglobal.net/fulcrum>; or by contacting the Voting Agent via email at [FulcrumInfo@veritaglobal.com](mailto:FulcrumInfo@veritaglobal.com); or by phone at (866) 967-0676 (U.S./Canada) or (310) 751-2676 (International).

Upon entry of the Disclosure Statement Order, holders of Claims in Classes 2A-2C, 3A-3C, and 4A-4C (the “Voting Classes”) will be entitled to vote to accept or reject the Plan. Holders of Claims in Class 1 are Unimpaired and presumed to accept the Plan. Holders of Claims in Class 5 are Impaired and deemed to reject the Plan.

**If you are a holder of a Claim against the Debtors as of March 6, 2025 (the “Voting Record Date”), and in the Voting Classes, the proposed deadline by which ballots accepting or rejecting the Plan must be received is March 31, 2025 at 4:00 p.m. (prevailing Eastern Time) (the “Voting Deadline”). If you are in the Voting Classes, for your vote to be counted, your Ballot must be properly completed, signed, and returned so that it is actually received by the Voting Agent before the Voting Deadline, unless extended in writing by the Debtors. The Ballot must be returned by (a) first-class mail (using the reply envelope provided or otherwise), (b) overnight mail, or (c) courier at Fulcrum BioEnergy, Inc., c/o Kurtzman Carson Consultants, LLC dba Verita Global, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245. In addition, Ballots will be accepted if properly completed through the online balloting portal maintained by the Voting Agent. Nominees and Beneficial Holders of Claims for Classes 2B, 2C, 3B and 3C shall be permitted to deliver Master Ballots and Pre-Validated Beneficial Holder Ballots via electronic mail to the Voting Agent by emailing [FulcrumBallots@veritaglobal.com](mailto:FulcrumBallots@veritaglobal.com). For the avoidance of doubt, Master Ballots and Beneficial Holder Ballots cannot be submitted via the E-Ballot Portal.**

**ANY BALLOT TRANSMITTED TO VERITA BY TELECOPY, FACSIMILE, EMAIL (OTHER THAN MASTER BALLOTS OR PRE-VALIDATED BENEFICIAL HOLDER BALLOTS), OR OTHER ELECTRONIC MEANS OF TRANSMISSION (OTHER THAN VERITA’S E-BALLOT PORTAL) WILL NOT BE COUNTED.**

A hearing to consider the confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code is proposed to take place on April 14, 2025 at 10:00 a.m. (prevailing Eastern Time) before the Honorable Thomas M. Horan (the “Confirmation Hearing”) at the Court, 824 North Market Street, Courtroom 4, Wilmington, Delaware 19801, which may be continued from time to time without further notice other than by the filing of a notice on the docket of these chapter 11 cases.

The proposed deadline for filing objections to the confirmation of the Plan is March 31, 2025 at 4:00 p.m. (prevailing Eastern Time). Any objection must (a) be in writing, (b) comply with the Bankruptcy Rules and the Local Rules, and (c) be filed with the Court and served upon the following parties: (i) counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, Wilmington, Delaware 19801, Attn: Robert J. Dehney, Sr. ([rdehney@morrisnichols.com](mailto:rdehney@morrisnichols.com)), Curtis S. Miller ([cmiller@morrisnichols.com](mailto:cmiller@morrisnichols.com)), and Clint M. Carlisle ([ccarlisle@morrisnichols.com](mailto:ccarlisle@morrisnichols.com)); (ii) Counsel for the Committee: (a) Eversheds Sutherland (US) LLP, The Grace Building, 40th Floor, 1114 Avenue of the Americas, New York, New York 10036, Attn: Jennifer Kimble ([jenniferkimble@eversheds-sutherland.com](mailto:jenniferkimble@eversheds-sutherland.com)) and Sameer M. Alifarag ([sameeralifarag@eversheds-sutherland.com](mailto:sameeralifarag@eversheds-sutherland.com)); Evershed Sutherland (US) LLP, 999 Peachtree Street NW, Suite 2300, Atlanta, Georgia 30309, Attn: Todd C. Meyers ([2](mailto:toddmeyers@eversheds-</a></p></div><div data-bbox=)

sutherland.com), and (b) Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, DE 19801, Attn: Jeffrey R. Waxman (jwaxman@morrisjames.com); Eric J. Monzo (emonzo@morrisjames.com); and Christopher M. Donnelly (cdonnelly@morrisjames.com); (iii) Counsel for UMB Bank, N.A.: (a) Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10065, Attn: Alexander Woolverton (awoolverton@kramerlevin.com), and Douglas Buckley (dbuckley@kramerlevin.com), and (b) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Andrew Magaziner (amagaziner@ycst.com); (iii) Counsel for PCL Administration LLC, Katten Muchin Rosenman LLP, 525 West Monroe Street, Chicago, IL 60661, Attn: Steven J. Reisman (sreisman@katten.com) Peter P. Knight (peter.knight@katten.com), and Joshua M. Altman (josh.altman@katten.com); and (iv) the Office of the United States Trustee, Caleb Boggs Federal Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Rosa Sierra-Fox (rosa.sierra.fox@usdoj.gov) (collectively, the “Notice Parties”).

**Unless an objection is timely filed and served, it may not be considered by the Court at the Confirmation Hearing.**

**Summary of Proposed Key Dates.** A table summarizing the key dates the Debtors have requested the Court establish to govern the approval of the Plan are included below for ease of reference:

<b>Summary of Proposed Key Dates</b>	
<b><u>Event</u></b>	<b><u>Date</u></b>
Voting Record Date	March 6, 2025 at 4:00 p.m. (ET)
Solicitation Deadline	Four business days after entry of the Disclosure Statement Order, or as soon as reasonably practicable thereafter
Deadline to File Rule 3018 Motions	March 24, 2025 at 4:00 p.m. (ET)
Plan Supplement Deadline	March 24, 2025 at 11:59 (ET)
Deadline to Object to Rule 3018 Motions	March 31, 2025 at 4:00 p.m. (ET)
Voting Deadline	March 31, 2025 at 4:00 p.m. (ET)
Deadline to Object to Confirmation	March 31, 2025 at 4:00 p.m. (ET)
Deadline to Reply to Objections to Confirmation of the Plan	April 9, 2025 at 4:00 p.m. (ET)
Confirmation Hearing	April 14, 2025 at 10:00 a.m. (ET)

**The foregoing dates and deadlines may be extended or otherwise modified by the Disclosure Statement Order. You should carefully review the case website for any modifications at <https://www.veritaglobal.net/fulcrum>.**

**PLEASE TAKE FURTHER NOTICE THAT EXHIBIT 1 ATTACHED HERETO SETS FORTH THE INJUNCTION, EXCULPATION AND RELEASE PROVISIONS SET FORTH IN SECTION 12 OF THE PLAN.**

**YOU ARE ADVISED TO REVIEW AND CONSIDER THE PLAN CAREFULLY, PARTICULARLY SECTION 12 THEREOF, BECAUSE YOUR RIGHTS MIGHT BE AFFECTED THEREUNDER.**

**Binding Nature of the Plan:**

**If confirmed, the Plan will bind all holders of Claims and Interests to the maximum extent permitted by applicable law, whether or not such holder will receive or retain any property or interest in property under the Plan, has filed a Proof of Claim in these cases, or failed to vote to accept or reject the Plan or voted to reject Plan.**

Dated: February 17, 2025  
Wilmington, Delaware

**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**

/s/ Avery Jue Meng

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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*

**Exhibit 1**

**RELEASE PROVISIONS, EXCULPATION, AND RELATED INJUNCTIONS**

*12.1 Release of Liens.*

**Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, and compromised and all property of the Estates shall revert to the Debtors and vest in the Liquidation Trust free and clear of any liens, security interests, or other interests.**

*12.1 Binding Effect.*

**Confirmation of the Plan does not provide the Debtors with a discharge under section 1141 of the Bankruptcy Code because the Plan is a liquidating chapter 11 plan. Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code and subject to the occurrence of the Effective Date, on and after the Effective Date, the provisions of the Plan shall bind any holder of a Claim against, or Interest in, the Debtors, and such holder's respective successors and assigns, whether or not the Claim or Interest of such holder is Impaired under the Plan and whether or not such holder has accepted the Plan.**

*12.3 Term of Injunctions or Stays.*

**Unless otherwise provided herein, all injunctions or stays arising under or entered during the Chapter 11 Cases under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.**

*12.4 Releases by the Debtors.*

**As of the Effective Date, except (i) for the rights that remain in effect from and after the Effective Date to enforce the Plan, the Confirmation Order, the Liquidation Trust Agreement, or any Sale Transaction; and (ii) as otherwise provided in the Plan or in the Confirmation Order, for good and valuable consideration, including their cooperation and contributions to the Chapter 11 Cases, the Released Parties<sup>3</sup> will be deemed conclusively,**

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<sup>3</sup> **"Released Parties"** means collectively and in each case, solely in their respective capacities as such: (i) the Debtors; (ii) the Debtors' directors and officers that have served in such capacity postpetition, as set forth in Exhibit A to the Plan; (iii) the Holdings Trustee, Holdings Collateral Agent, BioFuels Trustee and BioFuels Collateral Agent, (iv) the Prepetition Agent and each Prepetition Fulcrum Lenders, (v) the Consenting Bondholders, (vi) the Committee and each of its members, (vii) the Agent and lenders under the BioFuels Unsecured Term Loan Facility; (viii) the Wind-Down Estates; and (ix) with respect to any Person or Entity in the foregoing clauses (i) through (viii), current and former affiliates' directors, managers, officers, shareholders, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, predecessors, participants, successors, assigns (whether by operation of law or otherwise), subsidiaries, current, former, and future associated

absolutely, unconditionally, irrevocably, and forever released, to the maximum extent permitted by law, by the Debtors and the Estates (including the Wind-Down Estates), in each case, on behalf of themselves and their respective successors (including the Liquidation Trust), assigns, and representatives, and any and all other persons that may purport to assert any Cause of Action derivatively, by, through or on behalf of the foregoing Persons and Entities, from any and all Claims and Causes of Action, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise that the Debtors or the Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other Person, based on or relating to, in whole or in part, the Debtors, the Chapter 11 Cases, the pre- and post-petition marketing and sale process, any Sale Transaction, the purchase, sale, or rescission of the purchase or sale of any securities issued by the Debtors, the ownership of any securities issued by the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the administration or implementation of the Plan, including the issuance or distribution of the Liquidation Trust Assets pursuant to the Plan, the creation of the Liquidation Trust, the business or contractual arrangements between any Debtor and any Released Party, the Disclosure Statement, the Plan (including the Plan Supplement), or the solicitation of votes with respect to the Plan, or any other act or omission, in all cases based upon any act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date related or relating to the foregoing; provided that nothing in Section 12.4 of the Plan shall act as a release of a direct claim any holder of a Claim or Interest or other Entity may have against any Released Party or a release of any claim or Cause of Action specifically preserved herein.

Notwithstanding anything to the contrary to the foregoing, the release set forth above does not release (i) any post-Effective Date obligations of any Person under the Plan, the Confirmation Order, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan or a Sale Transaction. Moreover, the foregoing release shall have no effect on the liability of, or any Causes of Action against, any Entity that results from any act or omission that is determined in a Final Order to have constituted actual fraud, willful misconduct, criminal acts, or gross negligence.

#### *12.5 Releases By Holders of Claims and Interests.*

As of the Effective Date, except (i) for the right to enforce the Plan, the Confirmation Order, and any Sale Transactions, and (ii) as otherwise expressly provided in the Plan or in the Confirmation Order, in exchange for good and valuable consideration,

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entities, managed or advised entities, accounts or funds, partners, limited partners, general partners, principals, members, management companies, fund advisors, managers, fiduciaries, trustees, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, other representatives, and other professionals, representatives, advisors, predecessors, successors, and assigns, each solely in their capacities as such (including any other attorneys or professionals retained by any current or former director or manager in his or her capacity as director or manager of a Person), and the respective heirs, executors, estates, servants, and nominees of the foregoing (collectively, the “Related Parties”); provided that if any of the foregoing parties object to the releases in Section 12.5 of the Plan, such objecting party will no longer be considered a Released Party; provided further that none of the former directors, managers or officers of the Debtors’ or the Debtors’ affiliates shall be a “Released Party”.

including the obligations of the Debtors under the Plan, to the fullest extent permissible under applicable law, the Released Parties shall be deemed conclusively, absolutely, unconditionally, irrevocably and forever released by the Releasing Parties<sup>4</sup> in each case, from any and all Claims and Causes of Action, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, existing or hereinafter arising, in law or equity, whether arising under federal or state statutory or common law, or any other applicable international, foreign, or domestic law, rule, statute, regulation, treaty, right, duty, requirement or otherwise, that such entity would have been legally entitled to assert in their own right (whether individually, derivatively, or collectively) or on behalf of the holder of any Claim or Interest or other Person, based on or relating to, or in any manner arising prior to the Effective Date, from, in whole or in part, the Debtors, the Chapter 11 Cases, the pre- and post-petition marketing and sale process, a Sale Transaction, the purchase, sale, or rescission of the purchase or sale of any securities issued by the Debtors, the ownership of any securities issued by the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the administration or implementation of the Plan, including the issuance or distribution of the Liquidation Trust Assets pursuant to the Plan, the creation of the Liquidation Trust, the business or contractual arrangements between any Debtor and any Released Party, the Disclosure Statement, the Plan (including the Plan Supplement), or the solicitation of votes with respect to the Plan, or any other act or omission, in all cases based upon any act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date related or relating to the foregoing.

Notwithstanding anything to the contrary, the release set forth above does not release any post-Effective Date obligations of any Person under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan. Moreover, the foregoing release shall have no effect on the liability of, or any causes of action against, any Entity that results from any act or omission that is determined in a Final Order to have constituted actual fraud, willful misconduct, criminal acts, or gross negligence.

#### 12.6 *Exculpation.*

To the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each of the Exculpated Parties are hereby exculpated from, any Claim, obligation, suit, judgment, damage, demand, debt, right, causes of action, remedy, loss, and liability for any Claim arising on or after the Petition Date through the Effective Date in connection with, related to, or arising out of the filing or administration of the Chapter 11 Cases, the postpetition marketing and sale process, the postpetition purchase, sale, or rescission of the purchase or sale of any security or asset of the Debtors; the negotiation and

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<sup>4</sup> “*Releasing Parties*” means collectively, and in each case, solely in their respective capacities as such: (i) the Released Parties; (ii) all holders of Secured Claims in Classes 2A-2C, Deficiency Claims in Classes 3A-3C, and Undersecured and General Unsecured Claims in Classes 4A-4C, who vote to accept the Plan and do not opt out of the voluntary release contained in Section 12.5 of the Plan by checking the “opt out” box on the ballot and returning it in accordance with the instructions set forth thereon.



pursuit of the Disclosure Statement, any Sale Transactions, the Plan, or the solicitation of votes for, or confirmation of, the Plan; the funding or consummation of the Plan; the occurrence of the Effective Date; the property to be distributed under the Plan (including Liquidation Trust Assets); the creation and administration of the Liquidation Trust; or the transactions in furtherance of any of the foregoing; except for actual fraud, gross negligence, criminal acts or willful misconduct, as determined by a Final Order. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations and any other applicable law or rules protecting such Exculpated Parties from liability. Notwithstanding anything to the contrary in the foregoing, the exculpation set forth herein does not release any post-Effective Date obligation or liability of any Entity or Person under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

#### *12.7 Injunction.*

(a) Upon entry of the Confirmation Order, all holders of Claims and Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors, principals, and affiliates, shall be enjoined from taking any actions to interfere with the implementation or Consummation of the Plan in relation to any such Claims and Interests.

(b) Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court or as agreed to by the Debtors and a holder of a Claim against or Interest in the Debtors, all Releasing Parties who have held, hold, or may hold Claims against or Interests in the Released Parties that have been released or exculpated in Section 12 of this Plan (the “Released and Exculpated Claims”) are permanently enjoined, on and after the Effective Date, solely with respect to any Released and Exculpated Claims, from (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtors, the Liquidation Trust, the Liquidation Trustee, or the property of any of the Debtors or the Liquidation Trust; (ii) enforcing, levying, attaching (including, without limitation, any prejudgment attachment), collecting, or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against the Debtors, and the Liquidation Trust; or the property of any of the Debtors or the Liquidation Trust; (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtors or the Liquidation Trust, the Liquidation Trustee, or the property of any of the Debtors or the Liquidation Trust; (iv) asserting any right of setoff (except to the extent exercised prepetition), directly or indirectly, against any obligation due from the Debtors or the Liquidation Trust, or against property or interests in property of any of the Debtors or the Liquidation Trust except as contemplated or allowed by the Plan; and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

(c) The benefit of the injunctions in Section 12.7 of the Plan shall extend to any successors of the Debtors, the Liquidation Trust, the Liquidation Trustee, and their respective property and interests in property.