

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 STEVEN L. VICTOR 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**

I, Steven L. Victor, hereby declares as follows:

1. I am a Senior Managing Director with Development Specialists, Inc. ("DSI"), which has its principal office at 10 South LaSalle Street, Suite 3300, Chicago, Illinois 60603. DSI is the financial advisor and investment banker for the above-captioned debtors (the "Debtors").

2. 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*

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.



*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, 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 BioFules, LLC*, dated September 10, 2024 (the "Stalking Horse Agreement") [D.I. 12-2].

3. 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 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 Switch Sale Order, the "Sale Orders").

4. Unless otherwise indicated, all facts set forth in this Declaration are based on my personal knowledge, my discussions with the Debtors' management, other professional, or other interested parties, review of relevant documents, including the Bidding Procedures, the Switch

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

APA, and the *Declaration of Mark Smith, Restructuring Advisor to Fulcrum BioEnergy, Inc., in Support of the Chapter 11 Petitions and First Day Motions* [D.I. 9] (the “First Day Declaration”), or my opinion based upon my experience, knowledge, and information concerning the Debtors’ sale process, operations and financial affairs. If called upon to testify, I would testify competently to the facts set forth in this Declaration.

THE SALE PROCESS

5. Prior to the Petition Date, the Debtors received an initial bid from Switch for the purchase of the Acquired Assets. Thereafter, the Debtors, with the assistance of the Debtors’ counsel engaged in extensive at arms-length negotiations with Switch. Numerous offers and counteroffers were exchanged between the Debtors and Switch.

6. Ultimately, the Debtors accepted a bid from Switch, who served as the Stalking Horse Bidder and whose bid served as the Stalking Horse Bid (as defined below).

7. On October 11, 2024, the Court entered an Order approving the Bidding Procedures as set forth in the Sale Motion (the “Bidding Procedures Order”) [D.I. 153], which set the key dates and deadlines related to the sale of the Debtors’ assets. Pursuant to the Bid Procedures Order, the Court approved the Debtors’ entry into the Stalking Horse Agreement with Switch, whereby Switch’s bid served as the stalking horse bid (the “Stalking Horse Bid”), subject to higher and better bids.

8. With a primary goal to sell the Debtors’ assets to maximize recovery for creditors, DSI executed a robust mass marketing strategy, including contacting both strategic and financial purchasers, the broad distribution of sale materials, and the strategic publication of notice of the sale. As a result of the comprehensive marketing approach, DSI received thirty-five (35) signed non-disclosure agreements (“NDA”). The Official Creditors’ Committee’s investment banker,

Layer 7 Capital, brought further potentially interested parties into the process, resulting in two (2) additional signed NDAs, totaling thirty-seven (37) NDAs.

9. DSI worked closely with all these potentially interested parties to facilitate their consideration of bidding on the Debtors' assets. This included establishing a data room whereby interested parties could obtain crucial information regarding the Debtors' businesses and facilitating the active parties to visit the Debtors' facilities.

10. These efforts also included eleven (11) site visits by interested parties and further engagement via email and phone calls during the weeks leading up to the Bid Deadline. Throughout the marketing process, DSI engaged in constant communication with the Debtors' management team and counsel.

11. Pursuant to the Bidding Procedures Order, the Bid Deadline was November 4, 2024 at 5:00 p.m. (ET) and an Auction was scheduled to take place on November 7, 2024 at 10:00 a.m. (ET). Prior to the Bid Deadline, the Debtors received seven (7) bids, some of which sought to acquire different assets of the Debtors. After consulting with the Consultation Parties, the Debtors determined that five (5) out of the seven (7) bids were Qualified Bids. The Debtors, through their advisors, negotiated with certain of the Qualified Bidders on the terms of their respective asset purchase agreements to improve their terms until the Auction.

12. The Auction was held 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.

13. The Auction ultimately encompassed a total of fifty-seven (57) rounds of bidding from the Qualified Bidders, which covered multiple lots and included one hundred and twenty-two (122) separate bids. At the conclusion of the Auction and following consultation with the

Consultation Parties, the Debtors selected Switch and Refuse, Inc. as the successful bidders. Switch's prevailing bid consists of a \$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"). Refuse's prevailing bid consists of a \$3 million bid (the "Refuse Bid") 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"). On a combined basis, the final bids total \$58 million, which is \$43 million above the Stalking Horse Bid.

14. At all times, 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 believe that Switch has acted at all times in good faith, and I am not aware of any evidence of collusion in the sale process for the Biorefinery Assets or that Switch is an "insider" of the Debtors (as defined in section 101(31) of title 11 of the United States Code). I am not aware of any facts demonstrating or suggesting that the purchase process for the Biorefinery Assets in the *Amended and Restated Asset Purchase Agreement by and between Switch Ltd. and Fulcrum Sierra BioFuels* (the "Biorefinery Purchase Agreement") was controlled by any agreement among potential bidders.

15. I further believe that Refuse has acted at all times in good faith, and I am not aware of any evidence of collusion in the sale process for the Feedstock Assets or that Refuse is an "insider" of the Debtors (as defined in section 101(31) of title 11 of the United States Code). I am

not aware of any facts demonstrating or suggesting that the purchase process for the Feedstock Assets in the *Asset Purchase Agreement by and between Refuse, Inc. and Fulcrum Sierra BioFuels* (the “Feedstock Purchase Agreement”, together, with Biorefinery Purchase Agreement, the “APAs”) was controlled by any agreement among potential bidders.

16. Based on my experience and the circumstances of these chapter 11 cases, I believe that the proposed sales to Switch and Refuse are the product of a competitive sale process. The marketing and sale process was conducted in a manner that afforded a full, fair, and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase the Debtors’ assets. The Debtors and their representatives conducted the marketing and sale process for the Debtors’ assets in accordance with the Bidding Procedures Order and the Bidding Procedures in all respects. The marketing process was effective in testing the market value of the Debtors’ assets, the time-period for marketing the Debtors’ assets was adequate, and the outcome from the sale process yielded the highest and best value for the Debtors’ assets, and the best possible outcome for the Debtors and their estates under the circumstances. No other person or entity has offered to purchase the Debtors’ assets on acceptable or more favorable terms for an amount that would give greater economic value to the Debtors compared to the value being provided by Switch and Refuse under their respective APA.

17. I further believe that the Debtors have explored all available alternatives for their assets and, with the assistance of their advisors, conducted a fair and open marketing and sale process in a manner reasonably calculated to produce the highest or otherwise best offer for their assets in compliance with the Bidding Procedures Order.

18. I also believe that the Debtors have sound business justification for, and compelling circumstances to promptly consummate the APAs and the other transactions contemplated by the

APAs. Entry into the APAs, and the consummation of the transactions contemplated thereby, constitute a reasonable exercise of the Debtors' sound business judgment and are in the best interests of the Debtors, their estates, and all parties in interest.

19. Based on the foregoing, I believe that the sales of the Debtors' assets to Switch and Refuse, under the terms of their respective APA, are in the best interests of the Debtors, their estates and their creditors because the Switch Bid and the Refuse Bid are the best offers available for such assets and will maximize recoveries for creditors. In light of the Debtors' comprehensive sale and marketing process, I do not believe that further marketing of the assets would have resulted in higher or otherwise better offers for the Debtors' assets. Finally, in my opinion, the Debtors have demonstrated compelling circumstances for consummating the transactions contemplated by the APAs outside the ordinary course of business in order to maximize the value of the Debtors' estates for the benefit of all of their stakeholders. Therefore, I believe that the Court should enter the Sale Orders and approve the sale of the Debtors' assets to Switch and Refuse, respectively.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: November 10, 2024

/s/ Steven L. Victor
Steven L. Victor
Senior Managing Director of DSI