IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
FULCRUM BIOENERGY, INC., *et al.*,	Case No. 24-12008 (TMH)
Debtors.[1]	(Jointly Administered)

DECLARATION OF MARK J. SMITH IN SUPPORT OF CONFIRMATION OF THE DEBTORS' SECOND AMENDED JOINT CHAPTER 11 PLAN OF LIQUIDATION

I, Mark J. Smith, hereby declare under penalty of perjury:

1. I submit this declaration (this "Declaration") in support of confirmation of the Debtors' *Second Amended Joint Chapter 11 Plan of Liquidation* filed on April 9, 2025 [D.I. 522-1] (as may be supplemented, amended, or modified, the "Plan").[2] I am over the age of 18 and am authorized to make this Declaration on behalf of the Debtors.

2. Unless otherwise indicated, all facts set forth in this Declaration are based on my personal knowledge, my discussions with the Debtors' management and other advisors, my review of relevant documents, including the Disclosure Statement and the Plan, or my opinion based upon my experience, knowledge, and information concerning the Debtors' chapter 11 cases, operations and financial affairs. If called upon to testify, I would testify competently to the facts set forth in this Declaration.

[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. All Court filings can be accessed at: https://www.veritaglobal.net/Fulcrum.

[2] Capitalized terms used but not defined herein are defined in the Plan.

Qualifications and the Debtors' Chapter 11 Cases

3. I have more than three years of experience in restructuring and bankruptcy. My background includes executive management, operations management, M&A support, stakeholder negotiations and insurance recoveries. I have served as the Chief Restructuring Officer of the Debtors since April 2024.

4. On September 9, 2024 (the "Petition Date"), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On September 19, 2024, the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed the Official Committee of Unsecured Creditors (the "Committee") pursuant to section 1102 of the Bankruptcy Code. No trustee or examiner has been appointed in these cases.

5. The Debtors filed their initial *Disclosure Statement for the Joint Chapter 11 Plan of Liquidation* on February 3, 2025 [D.I. 415]. On March 6, 2025, the Debtors filed an *Amended Disclosure Statement to Joint Chapter 11 Plan of Liquidation* [D.I. 455-1] (the "Disclosure Statement") and an *Amended Joint Chapter 11 of Liquidation* [D.I. 456-1]. On April 9, 2025, the Debtors filed the Plan [D.I. 522-1]. The Plan contemplates a chapter 11 plan of liquidation that centers on the transfer of the Debtors' assets, including cash on hand and estates' causes of action, into a liquidating trust which will then be distributed to holders of Allowed Claims.

6. I have reviewed and am generally familiar with the terms and provisions of the Plan. With the Debtors' bankruptcy counsel, I was personally involved in the development

and negotiation of the Plan. The Plan is the result of good faith arms'-length negotiations among the Debtors and key stakeholders, including the Committee, PCL, and the Bonds Trustee. The Debtors and their stakeholders have resolved all informal comments to the Plan.

7. Based on my work in these chapter 11 cases and my understanding of the Debtors' intent in proposing the Plan, I believe the Plan has been proposed in good faith, maximizes value for the Debtors' estates, and is in the best interests of the Debtors' creditors and all parties in interest.

8. On March 7, 2025, the Court entered an order (the "Solicitation Procedures Order") approving the adequacy of the Disclosure Statement and the Debtors' proposed solicitation procedures. To the best of my knowledge, with the assistance of Kurtzman Carson Consultants, LLC dba Verita Global ("Verita"), the Debtors' claims, noticing, and balloting agent, the Debtors have complied with the solicitation and noticing procedures approved by the Solicitation Procedures Order, as well as applicable provisions of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, as evidenced by the applicable certificate of service filed by Verita on April 1, 2025 [D.I. 510].

9. I also believe that the Plan satisfies the applicable provisions of the Bankruptcy Code and represents the Debtors' best option for distributing their remaining assets to creditors. As demonstrated by the Debtors' liquidation analysis, and as described further below, holders of Claims in Impaired Classes are expected to receive equal or greater recovery under the Plan compared to the recovery available in a chapter 7 liquidation.

The Plan Satisfies the Bankruptcy Code's Requirements for Confirmation

10. I am aware that the Debtors must demonstrate that the Plan satisfies the requirements of section 1129 of the Bankruptcy Code. Based on my understanding of the Plan,

the events that have occurred throughout these chapter 11 cases, and my discussions with the Debtors' professionals, advisors, directors, officers, and management team, I believe that the Plan satisfies the confirmation requirements of sections 1129(a) and (b) of the Bankruptcy Code and should be confirmed.

11. Section 1129(a)(1). I understand that section 1129(a)(1) of the Bankruptcy Code requires the Plan to comply with the applicable provisions of the Bankruptcy Code. As detailed below, I have been made aware of information that leads me to conclude that the Plan satisfies this requirement.

12. Section 1122. I am familiar with the Plan's classification of Claims, and I believe after discussions with the Debtors' advisors that valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims created under the Plan. Further, each Class contains only Claims that are substantially similar to other Claims therein. Therefore, it is my understanding that the Plan complies with section 1122(a) of the Bankruptcy Code.

13. Section 1123(a). I believe the Plan complies with section 1123(a) of the Bankruptcy Code, which I understand to set forth the following seven requirements with which every plan under chapter 11 of the Bankruptcy Code must comply.

a. Section 1123(a)(1). Section 4 of the Plan designates all Claims that I understand to require classification under section 1123(a)(1) of the Bankruptcy Code.

b. Section 1123(a)(2). Section 4 of the Plan specifies that Class 1 (Other Priority Claims) is Unimpaired.

c. Section 1123(a)(3). Section 5 of the Plan sets forth the treatment of Impaired Classes of Claims: Class 2A (Fulcrum Prepetition Loan Secured Claims), Class 2B (Holdings Prepetition Bond Secured Claims), Class 2C (BioFuels Prepetition Bond Secured

Claims), Class 3A (Fulcrum Deficiency Claims), Class 3B (Holdings Deficiency Claims), Class 3C (BioFuels Deficiency Claims), Class 4A (Fulcrum Undersecured and General Unsecured Claims), Class 4B (Holdings Undersecured and General Unsecured Claims), Class 4C (BioFuels Undersecured and General Unsecured Claims), and Class 5 (Interests).

d. Section 1123(a)(4). I understand that the Plan provides the same treatment for each Claim in a given Class unless the Holder of such Claim agrees to less favorable treatment.

e. Section 1123(a)(5). I believe that Section 6 of the Plan provides adequate means for the implementation of the Plan. The Plan provides for, among other things:

- distributions under the Plan to be funded from Cash on hand including the proceeds of the Sale Transactions;
- the establishment of a Liquidating Trust to govern the liquidation of the Debtors' Estates and remaining assets following the Effective Date; and
- appointment of the Liquidation Trustee to coordinate the liquidation and dissolution of the Debtors and distribution of recoveries to creditors.

f. Section 1123(a)(6). I understand that section 1123(a)(6) of the Bankruptcy Code is not applicable in these chapter 11 cases because the Plan does not contemplate the issuance of equity securities.

g. Section 1123(a)(7). The Plan Supplement identifies Wilmington Savings Fund Society, FSB as the Liquidation Trustee, which is consistent with the interests of creditors and equity holders, and public policy.

14. Section 1123(b). I have been advised that section 1123(b) of the Bankruptcy Code sets forth permissive provisions that may be incorporated into a chapter 11 plan. As detailed below, I believe the Plan is consistent with section 1123(b).

a. Section 1123(b)(1). As I understand is permitted by section 1123(b)(1), Section 5 of the Plan describes the treatment for the only Unimpaired Class, Class 1 (Other Priority Claims).

b. Section 1123(b)(2). As I understand is permitted by section 1123(b)(2), Section 9 of the Plan provides for the assumption, assumption and assignment, or rejection of the Debtors' executory contracts and unexpired leases that have not been previously assumed, assumed and assigned, or rejected pursuant to section 365 of the Bankruptcy Code and prior orders of the Court, or are subject to pending motions at the time of confirmation. I understand that section 365(a) of the Bankruptcy Code provides that a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor" and that the "business judgment" standard applies to determine whether the rejection of an executory contract or unexpired lease should be approved. 11 U.S.C. § 365(a). Given this standard, the Debtors conducted an extensive review and analysis in determining which Executory Contracts and Unexpired Leases to assume or reject. I believe that the contracts to be rejected under the Plan no longer provide sufficient benefit or value to the Debtors to justify the cost. Absent rejection, such contracts would impose ongoing obligations on the Debtors and their estates that constitute an unnecessary drain on the Debtors' resources without sufficient corresponding benefits associated therewith. The rejection of these contracts will relieve the Debtors of these unnecessary obligations and, thus, it is in the best interests of their creditors and other parties in interest.

c. Section 1123(b)(3). As I understand is permitted by section 1123(b)(3), the Plan provides for the releases of certain potential Claims and Causes of Action of the Debtors in Section 12.4 of the Plan and the releases of certain claims held by non-Debtors against other non-Debtors in Section 12.5, each as discussed in more detail below.

d. Section 1123(b)(5). As I understand is permitted by section 1123(b)(5), the Plan modifies the rights of holders of Claims in the Impaired Classes as provided in the Plan and leaves unaffected the rights of holders of Claims in the Unimpaired Class.

e. Section 1123(b)(6). It is my understanding that section 1123(b)(6) of the Bankruptcy Code provides that a plan may include any other appropriate provision not inconsistent with the applicable provisions of the Bankruptcy Code. There are no provisions in the Plan that are inconsistent with the Bankruptcy Code. As discussed further below, Section 12 of the Plan provides for certain releases, exculpations and injunction. These provisions are integral components of the Plan, and I believe such provisions are fair and equitable, are given for valuable consideration, and are in the best interests of the Debtors and their estates. Moreover, I understand that no party has objected to such provisions.

15. Release Provisions. The Plan provides for releases of Claims by the Debtors and their Estates as well as releases of certain Claims held by certain of the Debtors' creditors. I believe that the release provisions included in the Plan are integral components of the Plan and the transactions and compromises embodied therein and are appropriate and necessary under the circumstances. It is my understanding that the release provisions are consistent with the Bankruptcy Code and comply with applicable case law, including because any "third party" release being granted under the plan is consensual under prevailing law.

16. The Plan contains a release of Claims of the Debtors and their estates against Released Parties relating to, in whole or in part, the Debtors, their estates, these chapter 11 cases or the other subject matter described in Section 12.4 of the Plan (the "Debtor Releases"). It is my understanding that the Debtor Releases do not (a) release any Released Party from Claims or Causes of Action arising from an act or omission that is judicially determined by a Final Order to

have constituted actual fraud, willful misconduct, or gross negligence, or (b) release any post-Effective Date obligations of any party or Entity under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

17. I believe that the Debtor Releases are warranted because, among other things, the Released Parties have provided substantial contributions to these chapter 11 cases. The Debtors' directors, officers, and management substantially contributed to these cases by assisting with the Sale Transactions and the Plan processes to maximize value for the Debtors' estates. Among other things, the Debtors' management oversaw and meaningfully participated in the successful sales of the Debtors' assets, which were ultimately approved by the Court, and yielded over $58 million in cash to the Debtors' Estates, reduced obligations through PCL's credit bid, and the assumption or elimination of millions of dollars of liabilities. The Debtors' directors, officers, and management were critical to preserving the value of the Debtors' assets and administering these chapter 11 cases smoothly and efficiently. I believe the Debtor Releases are fair, reasonable, and necessary to protect these individuals who stayed with the Debtors and aided them through their orderly liquidation and wind-down prospect, particularly knowing that there was no reasonable prospect of continued employment by the Debtors. Without the service of these individuals, significant value of the Debtors' estates and assets very likely would have been lost to the detriment of creditors. Finally, I am not aware there is any colorable basis to assert any claim or cause of action that the Debtors have against any party being released by the Debtors under the Debtor Releases.

18. Moreover, I believe that the Debtor Releases are an essential component of the Plan, constitute a sound exercise of the Debtors' business judgment, and are in the best interests of the Debtors, their estates, and creditors. And for the reasons set forth in the *Memorandum of*

Law in Support of Confirmation of the Amended Joint Chapter 11 Plan of Liquidation, filed contemporaneously herewith, I am advised that the Debtor Releases are appropriate and should be approved.

19. The Plan also contains consensual releases by certain non-Debtor holders of Claims against the Released Parties, to the maximum extent permitted by law, for liability relating to, in whole or in part, the Debtors, their estates, these chapter 11 cases and the other subject matter described in Section 12.5 of the Plan (collectively, the "Third-Party Releases"). I have been advised that under prevailing law, where releasing parties have consented to a provision in a plan of reorganization that releases claims against nondebtors, the releases will be approved on the basis of general principles of contract law. Here, I have been advised that the Third-Party Releases are consensual because the Releasing Parties have voted in favor of the Plan and failed to opt out of the Third-Party Releases.

20. Exculpation Provision. In addition to the releases discussed above, I am advised that Section 12.6 of the Plan contains an exculpation for the Exculpated Parties for Claims arising out of or relating to, among other things, the Debtors' restructuring, these chapter 11 cases, and the negotiations and agreements made in connection therewith (the "Exculpation Provision"). I am further advised that the Exculpation Provision carves out acts or omissions that are determined in a Final Order to have constituted bad faith, gross negligence, or willful misconduct. For much the same reasons supporting the Debtor Releases, I believe that the Exculpated Parties have participated in the Debtor's restructuring in good faith and the Exculpation Provision is necessary to protect those parties who have contributed to the Debtors' reorganization from collateral attacks related to any good faith acts or omissions related to the Debtors' restructuring. Further, I believe that the scope of the Exculpation Provision is appropriately tailored to conform to what I am

advised are the applicable legal standards for such exculpation provisions that have been determined to be appropriate by this Court and others.

21. Injunction Provision. I am advised that the injunction provision contained in Section 12.7 of the Plan is necessary to, among other things, enforce the Debtor Releases, the Third-Party Releases, and the Exculpation Provision. I am further advised that the injunction provision is appropriately tailored to achieve that purpose.

22. Section 1129(a)(2). Based on my review of the Plan and my discussions with the Debtors' advisors, it is my understanding that the Debtors have complied with all notice, solicitation and disclosure requirements set forth in the Bankruptcy Code and the Bankruptcy Rules in connection with the Plan. It is also my understanding that, as evidenced by the affidavit of service filed on March 11, 2025 [D.I. 463], the Debtors have complied with all previous orders of the Court regarding solicitation and tabulation of votes, including the Solicitation Procedures Order, and the Bankruptcy Code, the Bankruptcy Rules, and other applicable law with respect to the foregoing. *See* D.I. 510.

23. Section 1129(a)(3). I believe that the Debtors have proposed the Plan in good faith and not by any means forbidden by law. The Debtors' good faith and honest purpose in proposing and pursuing the Plan has always been and remains to maximize recoveries to creditors and provide distributions as expeditiously as possible under the circumstances. Good faith is further evidenced by the overwhelming acceptance of the Plan by the voting creditors. I believe that the Plan is fundamentally fair to all stakeholders and has been proposed with the legitimate purpose of maximizing value for the Debtors' creditors.

24. Section 1129(a)(4). Based on my review of the Plan and my discussions with the Debtors' advisors, it is my understanding that all payments made or to be made by the

Debtors for services or for costs or expenses in connection with these chapter 11 cases, including all Fee Claims, have been approved by, or remain subject to approval of, the Court as reasonable. Therefore, it is my understanding that the Plan complies with section 1129(a)(4) of the Bankruptcy Code.

25. Section 1129(a)(5). In Exhibit B to the Plan Supplement, the Debtors identified Wilmington Savings Fund Society, FSB as the Liquidation Trustee. Therefore, it is my understanding, in consultation with the Debtors' advisors, that the Plan satisfies the requirements of section 1129(a)(5) of the Bankruptcy Code.

26. Section 1129(a)(6). I am advised that, because the Plan does not provide for any rate changes by the Debtors, section 1129(a)(6) of the Bankruptcy Code is inapplicable.

27. Section 1129(a)(7). I understand from the Debtor's advisors that the Bankruptcy Code requires, with respect to each Impaired Class of Claims, each holder of such Claim must either (a) accept the Plan or (b) receive or retain under the Plan on account of such Claim property of a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain if the Debtor was liquidated under chapter 7 of the Bankruptcy Code.

28. I am familiar with the Liquidation Analysis annexed as Exhibit B to the Disclosure Statement, as well as the underlying financial and asset data and the assumptions upon which the Liquidation Analysis is based. I believe that the Liquidation Analysis incorporates reasonable assumptions and estimates regarding (i) the liquidation values of the Debtors' assets and satisfaction of their claims, and (ii) the ultimate amount of Allowed Claims against, and expenses of, the hypothetical chapter 7 estate. I believe that the Liquidation Analysis provides a fair and reasonable assessment of the effects that a conversion of these chapter 11 cases to cases

under chapter 7 of the Bankruptcy Code would have on the process available for distribution to holders of Claims of the Debtors.

29. Together with the Debtors' advisors, I have reviewed the requirements for confirmation of the Plan under section 1129(a)(7) of the Bankruptcy Code. The Liquidation Analysis demonstrates that each holder of an Allowed Claim will receive or retain under the Plan on account of such Claim property of a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. Accordingly, I believe that the Plan satisfies section 1129(a)(7) of the Bankruptcy Code.

30. Section 1129(a)(8). Although Class 1 is Unimpaired under the Plan and Classes 2A-2C, 3A-3C, and 4A-4C have voted to accept the Plan, Class 5 is Impaired and deemed to reject the Plan because they will not receive or retain any property on account of their Interests. Based on discussions with the Debtors' advisors, however, it is my understanding that the Plan is nonetheless confirmable because it satisfies section 1129(a)(10) and section 1129(b) of the Bankruptcy Code as to Class 5.

31. Section 1129(a)(9). It is my understanding that Section 2.1 of the Plan provides for payment in full of Allowed Administrative Claims, Section 2.4 of the Plan provides for payment in full of Allowed Priority Tax Claims, and Section 4.1 of the Plan provides for payment in full of Other Priority Claims. Thus, I believe that the Plan satisfies section 1129(a)(9) of the Bankruptcy Code.

32. Section 1129(a)(10). As indicated in the *Declaration of James Lee of Kurtzman Carson Consultants, LLC dba Verita Global Regarding the Solicitation and Tabulation of Ballots Cast on the Amended Joint Chapter 11 Plan of Liquidation* [D.I. 524], Classes 2A-2C

are Impaired and have voted to accept the Plan; Classes 3A-3C are Impaired and have voted to accept the Plan; Classes 4A-4C are Impaired and have voted to accept the Plan. Thus, I believe that the Plan satisfies section 1129(a)(10) of the Bankruptcy Code.

33. Section 1129(a)(11). I believe that the Debtors will be able to meet their obligations under the Plan, and, thus, the Plan is feasible. The Plan provides for the creation of the Liquidation Trust to liquidate and distribute all of the Debtors' assets. I expect sufficient liquidity to fund distributions and other financial obligations under the Plan based on the Debtors' cash on hand, proceeds from the asset sales, and potential liquidation of the Debtors' remaining assets.

34. Section 1129(a)(12). Based on my review of the Plan, and my discussions with the Debtors' advisors, Section 14.3 of the Plan provides for the payment, on or before the Effective Date, of any fees due pursuant to section 1930 of title 28 of the United States Code or other statutory requirement, and there is sufficient cash to pay these fees on the Effective Date.

35. Sections 1129(a)(13)–(16). Based on my discussions with the Debtors' advisors, section 1129(a)(13) is inapplicable to the Plan because the Debtors do not have any "retiree benefits" as that term is defined in section 1114(a) of the Bankruptcy Code. Additionally, based on my review of the Plan and my discussions with the Debtors' advisors, sections 1129(a)(14)–(16) are inapplicable because the Debtors are not (a) required to pay any domestic support obligations, (b) an individual, or (c) a nonprofit corporation or trust.

36. Section 1129(b). Based on my discussions with the Debtors' advisors, it is my understanding and belief that the Plan does not discriminate unfairly and I believe the Plan is fair and equitable with respect to each Class of Claims that is Impaired under, and has not accepted or is deemed to reject, the Plan. Specifically, I understand that Class 5 (Interests) is Impaired and

deemed to reject the Plan. It is my understanding that the Plan is fair and equitable with respect to, and does not discriminate unfairly against, Class 5 because no Claims or Interests junior to such Class will receive or retain property under the Plan on account of such junior Claims or Interests. Further, there is no Class of equal priority to Class 5, and therefore the Plan does not discriminate between such Class and any class of equal priority.

37. Section 1129(d). The Plan has not been filed for the purpose of avoiding taxes or the application of Section 5 of the Securities Act of 1933.

II. CAUSE EXISTS TO WAIVE THE STAY OF THE CONFIRMATION ORDER

38. I am advised that, generally, Bankruptcy Rule 3020(e) imposes a 14-day stay of the effectiveness of an order confirming a chapter 11 plan, unless the bankruptcy court orders otherwise. I believe that a waiver of the stay, which would permit the Debtors to consummate the Plan and commence its implementation without delay after the entry of the Confirmation Order, is in the best interests of the Debtors' estates and creditors.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on: April 9, 2025

/s/ Mark J. Smith
Mark J. Smith