

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
)	Chapter 11
SUNPOWER CORPORATION, <i>et al.</i> , ¹)	Case No. 24-11649 (CTG)
)	
Debtors.)	(Jointly Administered)
)	
)	Re: Docket Nos. 15, 16, 17, 290, 545, 546

**DECLARATION OF RICK POLHEMUS
IN SUPPORT OF ENTRY OF ORDERS (I) APPROVING CERTAIN ASSET
PURCHASE AGREEMENTS, (II) AUTHORIZING AND APPROVING THE SALE OF
CERTAIN ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES
AND OTHER INTERESTS, IN EACH CASE PURSUANT TO THE APPLICABLE
ASSET PURCHASE AGREEMENT, (III) APPROVING THE ASSUMPTION
AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED
LEASES IN CONNECTION THEREWITH, AND (IV) GRANTING RELATED RELIEF**

I, Rick Polhemus, do hereby declare under penalty of perjury:

1. I am a Managing Director at Moelis & Company LLC (“Moelis”), a leading international investment banking and financial advisory firm (NYSE: MC) that has its principal office at 399 Park Avenue, 4th Floor New York, NY 10022. Moelis is the investment banker to the above-captioned debtors and debtors in possession (collectively, the “Debtors”).

2. I am authorized to submit this declaration (this “Declaration”) on the Debtors’ behalf in support of the proposed (a) *Order (A) Approving and Authorizing Sale of the Going-Concern Assets, Free and Clear of all Liens, Claims, Encumbrances, and Other Interests*, (B) *Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases*,

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: SunPower Corporation (8969); SunPower Corporation, Systems (8962); SunPower Capital, LLC (8450); SunPower Capital Services, LLC (9910); SunPower HoldCo, LLC (0454); SunPower North America, LLC (0194); Blue Raven Solar, LLC (3692); Blue Raven Solar Holdings, LLC (4577); BRS Field Ops, LLC (2370); and Falcon Acquisition HoldCo, Inc. (3335). The location of the Debtors’ service address for purposes of these chapter 11 cases is: 880 Harbour Way South, Suite 600, Richmond, CA 94804.

and (C) Granting Related Relief [Docket No. 545] (the “Going-Concern Assets Sale Order”); and (b) the proposed Order (I) Authorizing and Approving the Sale of SunStrong Equity Interests and Related Assets to HA SunStrong Capital LLC and GF SunStrong Capital, LLC Free and Clear of all Liens, Claims, Encumbrances, and Other Interests and (II) Granting Related Relief [Docket No. 546] (the “SunStrong Assets and Loans and Leases Sale Order,” and together with the Going-Concern Assets Sale Order, the “Sale Orders”). On August 6, 2024, I submitted a declaration in support of the entry of the Bidding Procedures Order [Docket No. 16], which is incorporated by reference herein.²

3. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, my discussions with other members of the Moelis team, the Debtors’ management team and employees, and the Debtors’ other advisors, my review of relevant documents and information concerning the Debtors’ operations and financial affairs, or my opinions based upon my experience and knowledge. If called as a witness, I could and would testify competently to the facts set forth in this Declaration on that basis. I am not being specifically compensated for this testimony other than through payments received by Moelis as a professional proposed to be retained by the Debtors, subject to approval by this Court. I am over the age of 18 years and authorized to submit this Declaration on behalf of the Debtors.

Professional Background and Qualifications

4. Moelis is an investment banking firm with its principal office located in New York, New York. Moelis is a registered broker-dealer with the United States Securities and Exchange

² A detailed description of the Debtors and their business, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the *Declaration of Matthew Henry, Chief Transformation Officer of SunPower Corporation, in Support of Debtors’ Chapter 11 Petitions and First Day Motions* [Docket No. 9] (the “First Day Declaration”). Capitalized terms used but not otherwise defined shall have the meaning ascribed to them in the Bidding Procedures Motion, the Bidding Procedures Order, the Notices of Winning Bidders, the Sale Orders, or the First Day Declaration, as applicable.

Commission and is a member of the Financial Industry Regulatory Authority. Moelis was founded in 2007 and is a wholly-owned subsidiary of Moelis & Company Group LP. Moelis & Company Group LP, together with its subsidiaries, has approximately 1,090 employees in locations around the world.

5. Moelis provides a broad range of financial advisory and investment banking services to its clients, including: (a) mergers and acquisitions; (b) recapitalization and restructuring; (c) capital markets advisory; and (d) private funds advisory. Moelis and its senior professionals have extensive experience in the reorganization and restructuring of distressed companies, both out-of-court and in chapter 11 cases. Moelis' business reorganization professionals have served as financial advisors and/or investment bankers in numerous cases, including, in recent years: *In re Express, Inc.*, No. 24-10831 (KBO) (Bankr. D. Del. June 5, 2024); *In re Invitae Corporation*, No. 24-11362 (MBK) (Bankr. D. N.J. Apr. 23, 2024); *In re Proterra Inc.*, No. 23-11120 (BLS) (Bankr. D. Del. Sept. 21, 2023); *In re Orbital Infrastructure Group, Inc.*, No. 23-90763 (CML) (Bankr. S.D. Tex. Aug. 23, 2023); *In re Proterra Inc.*, No. 23-11120 (BLS) (Bankr. D. Del. Aug. 7, 2023); *In re Venator Materials PLC*, No. 23-90301 (DRJ) (Bankr. S.D. Tex. July 27, 2023); *In re Diamond Sports Group, LLC*, No. 23-90116 (CML) (Bankr. S.D. Tex. June 13, 2023); *In re MD Helicopters, Inc.*, No. 22-10263 (KO) (Bankr. D. Del. May 6, 2022); *In re Knotel, Inc.*, No. 21-10146 (MFW) (Bankr. D. Del. Mar. 12, 2021); *In re CBL & Assocs. Props., Inc.*, No. 20-35226 (DRJ) (Bankr. S.D. Tex. Dec. 30, 2020); *In re Energy Alloys Holdings, LLC*, No. 20-12088 (MFW) (Bankr. D. Del. Nov. 23, 2020); *In re Jason Indus., Inc.*, No. 20-22766 (RDD) (Bankr. S.D.N.Y. Aug. 27, 2020); *In re The Hertz Corp.*, No. 20-11218 (MFW) (Bankr. D. Del. July 30, 2020); *In re Extraction Oil & Gas, Inc.*, No. 20-11548 (CSS) (Bankr. D. Del. Aug. 11, 2020); *In re The McClatchy Co.*, No. 20-10418 (MEW) (Bankr. S.D.N.Y. May 18, 2020);

In re Internap Technology Solutions Inc., No. 20-22393 (RDD) (Bankr. S.D.N.Y. May 5, 2020);
In re Rentpath Holdings, Inc., No. 20-10312 (BLS) (Bankr. D. Del. Mar. 10, 2020).

6. I am based in Moelis's San Francisco office, located at One Maritime Plaza, San Francisco, California 94111 and have approximately twenty-five (25) years of investment banking and related experience. I have extensive experience executing public and private buy-side and sell-side transactions, mergers, and joint ventures across a broad range of industries. My sell-side experience includes, among other engagements not listed, the sale of Snap One to Resideo, the sale of Synagro to Goldman Sachs, the sale of the assets of Proterra, the sale of Tunnel Hill Partners to Macquarie, the sale of Excelitas to AEA, and the sale of Checkpoint Systems to CCL Industries.

7. I joined Moelis in 2022. Prior to joining Moelis, I was a Managing Director at Morgan Stanley, where I was Head of West Region Investment Banking and advised clients across clean technology, services, industrial technology, and various other sectors. Prior to joining Morgan Stanley, I held senior investment banking roles as a Managing Director at JP Morgan.

8. I graduated with a B.A. in Economics from Pomona College and an M.B.A. from The Wharton School at the University of Pennsylvania.

Retention of Moelis

9. In January 2024, the Debtors retained Moelis as investment banker to assist with navigating challenges in the current market environment. Since being engaged by the Debtors, Moelis has rendered investment banking advisory services to the Debtors in connection with the Debtors' evaluation and execution of financing, restructuring, and strategic alternatives. Additionally, Moelis has worked with the Debtors' management and other professionals retained by the Debtors and has become familiar with the Debtors' business and financial affairs.

The Marketing and Sale Process

10. On July 17, 2024, Moelis commenced a marketing process for the sale of all, substantially all, or any combination of, the Debtors' assets (the "Marketing and Sale Process"). As part of this effort, Moelis contacted approximately one hundred and thirty-seven (137) potential purchasers, which included a mix of strategic acquirers and financial sponsors. This list of potential purchasers included parties that: (a) already operate in the industries in which the Debtors operate; (b) are financial sponsors with current or former investments in such industries; or (c) are believed to have an interest in investing in such industries generally. This list also includes a number of inbound inquiries to which Moelis responded. This list of potential purchasers was developed by Moelis in consultation with the Debtors, their other advisors, as well as in consultation with the Prepetition First Lien Secured Parties and their advisors. Furthermore, once the Unsecured Creditors' Committee (the "UCC") was appointed in these chapter 11 cases, this list of potential purchasers was further vetted by the financial advisors to the UCC. Approximately seventy-two (72) of these potential purchasers entered into non-disclosure agreements and received access to a data room, access to the management team, and detailed diligence materials.

11. For approval at this hearing, the Debtors received bids with respect to three buckets of assets: (a) the Going-Concern Assets subject to the Complete Solaria Stalking Horse Bid (the "Going-Concern Assets Sale"); (b) membership interests in SunStrong Capital Holdings, LLC (the "SunStrong Assets," and the sale thereof, the "SunStrong Assets Sale"); and (c) certain loans and leases (the "Loans and Leases" and the sale thereof, the "Loans and Leases Sale").

The Winning Bidders and Asset Purchase Agreements

12. **Going-Concern Assets Sale.** The Debtors entered chapter 11 with the Complete Solaria Stalking Horse Bid for the Going-Concern Assets, and the Debtors subsequently conducted

a market test for the Complete Solaria Stalking Horse Bid pursuant to the Bidding Procedures.³ The Debtors received one (1) additional bid for the Going-Concern Assets (the “Alternate Bid,” and such bidder, the “Alternate Bidder”), which the Debtors, in consultation with Moelis and their other advisors, determined was not a higher or otherwise better offer than the Complete Solaria Stalking Horse Bid.

13. In consultation with Moelis and their other advisors, the Debtors determined that the Alternate Bid did not constitute a higher or better offer as compared to the Complete Solaria Stalking Horse Bid. The Alternate Bid was not a Qualified Bid, as it was not a fully financed bid, required substantial additional time to conduct diligence for its potential financing sources to secure such financing, and hence contained substantial process risk for the Debtors that the sale would not close at all.

14. Subsequent to making this determination, the Debtors selected Complete Solaria as the Winning Bidder for the Going-Concern Assets, filed the *Notice of (I) (A) Winning Bidders for Certain of the Debtors’ Assets, (B) Filing of Asset Purchase Agreements Related Thereto, and (C) Cancellation of Auction with Respect Thereto, and (II) Adjournment of Auction for Other Assets* [Docket No. 398] (the “Initial Notice of Winning Bidders”), and cancelled the auction with respect to the Going-Concern Assets.

15. **SunStrong Assets Sale and the Loans and Leases Sale.** The Debtors received a joint bid (the “Joint Bid”) for the SunStrong Assets and the Loans and Leases from HA SunStrong Capital LLC and GF SunStrong Capital, LLC. The Debtors received one (1) additional bid for the SunStrong Assets (the “Alternate SunStrong Bid,” and such bidder, the “Alternate SunStrong Bidder”), which the Debtors, in consultation with Moelis and their other advisors, determined was

³ The Bidding Procedures are attached as Exhibit 1 to the Bidding Procedures Order [Docket No. 290].

not a higher or otherwise better offer. The Debtors received no alternative competing bids for the Loans and Leases.

16. In consultation with Moelis and their other advisors, the Debtors determined that the Alternate SunStrong Bid did not constitute a higher or better offer. The Alternate SunStrong Bid was not a Qualified Bid, as the Alternate SunStrong Bidder did not have a fully financed bid, was not able to provide the Debtors with proof of funds or financing, and could not provide a reasonable timeline to providing such proof of funds or financing. Hence, the Alternate SunStrong Bid contained substantial process risk for the Debtors that the sale would not close at all.

17. The Debtors selected HA SunStrong Capital LLC and GF SunStrong Capital, LLC as the Winning Bidders for the SunStrong Assets and the Loans and Leases, filed the *Notice of (I) (A) Winning Bidders for the SunStrong Assets, (B) Filing of Asset Purchase Agreement Related Thereto, and (C) Cancellation of Auction with Respect Thereto, and (II) Adjournment of Auction with Respect to Other Remaining Assets* [Docket No. 443] (the “Notice of Winning Bidders for the SunStrong Assets and the Loans and Leases”), and cancelled the auction with respect to the SunStrong Assets and the Loans and Leases.

18. The Debtors intend to continue discussions with the parties who have expressed an interest in the Debtors’ Other Remaining Assets and may seek Court approval to enter into one or more additional asset purchase agreements at a later date.

19. Based on my involvement in the Marketing and Sale Process and my experience, I believe that the Marketing and Sale Process and Bidding Procedures provided the Debtors with reasonable opportunity to solicit, negotiate, and evaluate the bids for the Sale Assets, and afforded interested parties a reasonable opportunity to conduct due diligence prior to submitting their bids.

Moreover, I believe that the Marketing and Sale Process was comprehensive, transparent, and was conducted in good faith in accordance with the Court-approved Bidding Procedures.

Key Terms of the Asset Purchase Agreements

20. The Going-Concern Asset Sale proposes a sale of certain of the Debtors' business lines to the Stalking Horse Bidder for \$45 million in cash consideration, plus additional non-cash consideration, such as the payment of certain cure costs and the assumption of certain liabilities of approximately \$51 million. The terms of the Going-Concern Assets Sale are memorialized in the asset purchase agreement (the "Complete Solaria Asset Purchase Agreement"), substantially in the form attached as Schedule 1 to the Initial Notice of Winning Bidders.

21. The SunStrong Assets Sale contemplates a purchase price of \$1.5 million in cash consideration. The Loans and Leases Sale contemplates a purchase price of \$10 million in cash consideration. The terms of the SunStrong Assets Sale and the Loans and Leases Sale are memorialized in the asset purchase agreement (the "SunStrong Asset Purchase Agreement" and together with the Complete Solaria Asset Purchase Agreement, the "Asset Purchase Agreements") substantially in the form attached as Schedule 1 to the Notice of Winning Bidders for the SunStrong Assets and the Loans and Leases (the SunStrong Assets and the Loans and Leases, together with the Going-Concern Assets, the "Sale Assets" and the transactions related thereto, the "Sale Transactions").

22. Each of the Asset Purchase Agreements contemplates the purchase of the Sale Assets free and clear of all liens, claims, encumbrances, and other interests (other than Permitted Encumbrances and Assumed Liabilities as set forth in the Asset Purchase Agreements). The Asset Purchase Agreements also contemplate the assumption and assignment to the Winning Bidders of certain Assumed Contracts as set forth on their respective Assumed Contracts Exhibits, with the

cure costs associated therewith to be borne by the Winning Bidders pursuant to the terms of the Asset Purchase Agreements.

23. Based on the extensive marketing efforts described above and my experience, I believe that the Sale Transactions reflected in the Asset Purchase Agreements represent the highest or otherwise best offers for the Sale Assets currently available to the Debtors under the circumstances of these chapter 11 cases. Additionally, based upon my observations during the Marketing and Sale Process, I believe the Debtors selected the Winning Bidders in good faith and without collusion or fraud. Based on my observations, knowledge, and interactions during the Marketing and Sale Process, I believe that each Winning Bidder has transacted with the Debtors in good faith throughout this process.

Conclusion

24. Accordingly, for all the foregoing reasons, I believe that (a) the Debtors engaged in a robust and thorough Marketing and Sale Process; (b) the terms of the Complete Solaria Asset Purchase Agreement, taken as a whole, reflect the highest or otherwise best offer for the Going-Concern Assets currently available under the circumstances of these chapter 11 cases; (c) the terms of the SunStrong Asset Purchase Agreement, taken as a whole, reflect the highest or otherwise best offer for the SunStrong Assets and the Loans and Leases currently available under the circumstances of these chapter 11 cases; and (d) entry into the Asset Purchase Agreements is in the best interest of the Debtors' estates. Accordingly, and given the details described above and based on my experience, I believe that the Court should enter the Sale Orders and approve the Sale Transactions on the terms and conditions set forth in the Asset Purchase Agreements.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the facts set forth in the foregoing declaration are true and correct to the best of my knowledge, information, and belief.

Dated: September 22, 2024

/s/ Rick Polhemus

Rick Polhemus

Managing Director, Moelis & Company LLC