

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

In re:

ABENGOA BIOENERGY US HOLDING,  
LLC, *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 16- 41161 (659)

Joint Administration Pending

**DECLARATION OF SANDRA PORRAS SERRANO, CHIEF FINANCIAL OFFICER,  
IN SUPPORT OF CHAPTER 11 PETITIONS AND FIRST DAY PLEADINGS**

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<sup>1</sup> The Debtors in these bankruptcy cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Abengoa Bioenergy US Holding, LLC (2217), Abengoa Bioenergy Company, LLC (1658); Abengoa Bioenergy of Nebraska, LLC (1343); Abengoa Bioenergy Engineering & Construction, LLC (2441); Abengoa Bioenergy Trading US, LLC (2469); Abengoa Bioenergy Outsourcing, LLC (9794). The mailing address for the Debtors, solely for purposes of notices and communications, is: 16150 Main Circle Drive, Suite 300, Chesterfield, MO 63017.

I, Sandra Porras Serrano, hereby declare as follows:

1. I am the chief financial officer (“CFO”) of Abengoa Bioenergia, S.A. The above-captioned debtors and debtors in possession are collectively referred to as the “Debtors” in this declaration (the “First Day Declaration”).

2. I have worked for the bioenergy subsidiaries of Abengoa, S.A. (“Abengoa Bioenergia”) since March 2006. As CFO, I am generally familiar with the Debtors’ businesses, day-to-day operations, financial matters, results of operations, cash flows, and underlying books and records. In my capacity as CFO, I work with the Debtors’ operational and financial management on a regular basis. Except as otherwise indicated in this First Day Declaration, all the facts set forth in this declaration are based upon my best personal knowledge of the Debtors’ businesses, operations, and related financial information gathered from my review of their books and records, relevant documents, and information supplied to me by members of the Debtors’ management team and advisors. I am over the age of 18 and authorized by the Debtors’ respective Boards of Directors to submit this declaration on behalf of the Debtors. If called upon to testify, I could and would competently testify to the facts set forth in this First Day Declaration.

3. The Debtors have requested a variety of relief in the “first day” motions and applications (the “First Day Motions”) filed concurrently with this First Day Declaration, to ensure a smooth transition into chapter 11. I am generally familiar with the contents of each of the First Day Motions, and I believe that the relief sought in them, including the ability to obtain post-petition financing, make certain essential payments, and otherwise to continue business operations, is necessary to recommence and continue efficient operations of the Debtors’ businesses during these chapter 11 cases.

4. In my opinion, this Court's approval of the relief requested in the First Day Motions will preserve and maximize the value of the Debtors' estates and assist the Debtors in successfully managing their chapter 11 process. A complete description of the relief requested under the Debtors' First Day Motions, and evidentiary support for those motions, is set forth below in Part III of this First Day Declaration.

5. To familiarize the Court with the Debtors and the relief they are seeking, this First Day Declaration provides an overview of the Debtors and their non-debtor affiliates (collectively referred to herein as Abengoa Bioenergy as defined above), the facts and circumstances surrounding these bankruptcy cases, and the Debtors' anticipated restructuring. The First Day Declaration is organized as follows:

- **Part I** describes Abengoa Bioenergy's businesses, its operations, and its capital structure;
- **Part II** describes the events that led to the commencement of these bankruptcy cases; and
- **Part III** provides an overview of the relief requested in the First Day Motions.

#### **DEBTORS' BUSINESSES AND CAPITAL STRUCTURE**

6. Abengoa Bioenergy is a collection of indirect subsidiaries of Abengoa S.A. ("Abengoa"), a Spanish company founded in 1941. Abengoa is a leading engineering and clean technology company with operations in more than 50 countries worldwide that provides innovative solutions for a diverse range of customers in the energy and environmental sectors. Over the course of Abengoa's 70-year history, it has developed a unique and integrated business model that applies its accumulated engineering expertise to promoting sustainable development solutions, including delivering new methods for generating solar power, developing biofuels, producing potable water from seawater and efficiently transporting electricity. A cornerstone of Abengoa's business model has been investment in proprietary technologies, particularly in areas

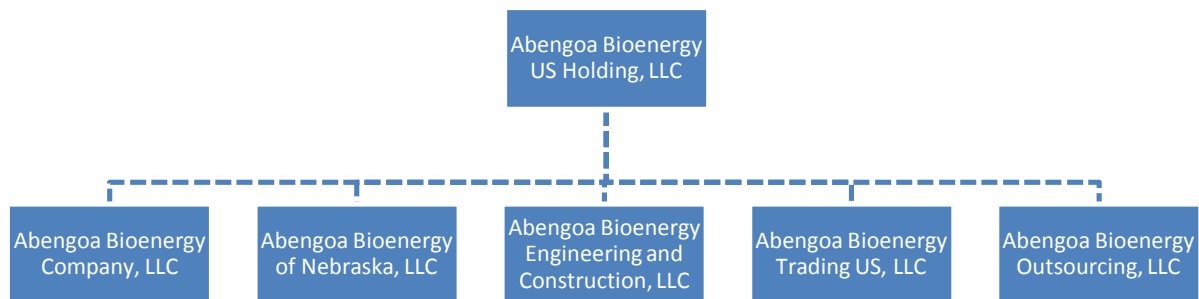
with relatively high barriers to entry. Abengoa organizes its businesses into the following three activities: Engineering and Construction, Concession-Type Infrastructure, and Industrial Production. The Industrial Production activity produces a variety of biofuels (ethanol and biodiesel) in Europe, Brazil and the US. The global headquarters of Abengoa Bioenergy is in Chesterfield, Missouri. With a total investment of \$3.3 billion, the United States has become Abengoa's largest market in terms of sales volume, particularly from developing solar, bioethanol, and water projects.

7. For the nine month period ended on September 30, 2015, Abengoa's average number of employees was approximately 32,000 people worldwide across all Abengoa's business activities, approximately 6,000 of whom are employed by the bioenergy segment, of which the Debtors in these cases employ approximately 170.

#### **I. Overview of the Debtors' Corporate Structure and Business Operations**

8. Abengoa initially expanded into the United States in the February 2002, creating a number of subsidiaries within the energy and engineering segments of its operations. After a restructuring of U.S. subsidiaries in 2013, substantially all of Abengoa's companies with operations in the United States became subsidiaries of Abengoa US, LLC, an intermediate holding company formed under the laws of the state of Delaware. The majority owner of Abengoa US, LLC is Abengoa Bioenergy Holdco, Inc., also a Delaware corporation that as of December 31, 2014 owned approximately 72% of Abengoa US, LLC, with the remaining members consisting of Abengoa's other business segments in the solar, water, and engineering, procurement, and construction businesses.

9. The following chart shows the corporate structure of the Debtors that are subject to these bankruptcy cases



A full representation of Abengoa Bioenergy’s US corporate structure is attached hereto as **Exhibit A.**

## **II. Debtors’ Business Operations**

10. The US operations of Abengoa Bioenergy consist of a “first generation” operations and a “second generation” research and development project. The first generation operations consist of plants that convert food-based grains into ethanol at several locations in the United States. This business consists of the following four plants operated by the Debtors: Ravenna, Nebraska; York, Nebraska; Colwich, Kansas; and Portales, New Mexico, and the two plants referred to as “the Maple operations,” which are located in Illinois and Indiana. The second generation operations consist of research and development into converting non-food based matter into ethanol. These operations including but not limited to a pilot plant in York, Nebraska plant and a new plant in Hugoton, Kansas. The entities that make up the Maple operations and the second generation research companies are not debtors in these cases. The US

operations of Abengoa Bioenergy also include certain companies that serve as corporate structure entities, providing legal, accounting and trading services, amongst others.

11. The Debtors are six US companies that make up Abengoa Bioenergy's first generation business. Specifically, each of the Debtors' business operations are listed below:

- a) Abengoa Bioenergy US Holding, LLC ("ABUS") is a limited liability company organized under the laws of Missouri that indirectly owns the other US entities of Abengoa Bioenergy through its ownership of non-debtor Abengoa Bioenergy Operations, LLC. ABUS is a corporate guarantor on many of the other Debtors' obligations.
- b) Abengoa Bioenergy Company, LLC ("ABC") is a limited liability company organized under the laws of the state of Kansas. This is the oldest company in the US of Abengoa Bioenergy. ABC operated three ethanol plants located in Portales, New Mexico; Colwich, Kansas and York, Nebraska. As of the Petition Date, ABC has fifty-nine employees and operations at all three ethanol plants have been idled due to working capital issues. ABC is the main entity that manages the Debtors' cash and as a result, it has many liabilities but also has several corresponding intercompany receivables owed to it by the other Debtors. ABC is also a guarantor of corporate debt of Abengoa and related entities.
- c) Abengoa Bioenergy of Nebraska, LLC ("ABNE") is a limited liability company organized under the laws of the state of Nebraska. ABNE owns an ethanol plant in Ravenna, Nebraska. Due to working capital issues, the plant's operations were idled in the last quarter of 2015. ABNE is also a guarantor of corporate debt of Abengoa and related entities.
- d) Abengoa Bioenergy Engineering & Construction, LLC ("ABEC") is a limited liability company organized under the laws of the state of Missouri. ABEC has three employees and provides engineering and consulting services.
- e) Abengoa Bioenergy Trading US, LLC ("ABT") is a limited liability company organized under the laws of the state of Missouri. ABT employs about thirteen employees who mainly manage, among other matters, grain purchases for Abengoa Bioenergy's plants, main supplies procurement services, and manage the sale, marketing and logistics of ethanol that the plants produce.
- f) Abengoa Bioenergy Outsourcing, LLC ("ABO") is a limited liability company organized under the laws of the state of Missouri. This entity employs thirty-eight employees used in the Debtors' operations and thus is

the primary entity that either leases employees to the other Debtors or employs people directly for use in the Debtors' operations.

### III. Debtors' Capital Structure

12. As of the Petition Date, on a consolidated basis the Debtors owned assets of approximately \$1.3 billion. The Debtors' revenue for the period ending 31 December 2015 was approximately \$366 million. As of the Petition Date, the Debtors had aggregate liabilities of approximately \$1.2 billion.

13. Much of the Debtors working capital has historically been funded through unsecured confirming bank lines ("PPB Lines") that enabled the Debtors to provide its suppliers with timely payment from a third-party bank on regular terms (e.g., 30 days), which banks the Debtors would repay on longer terms (usually 180 days) enabling them to produce and sell ethanol, thus generating revenue that they would use to repay the PPB Lines. The debt obligation on these PPB Lines, approximately \$129 million<sup>2</sup> resides with ABC, which has paid it as the cash management bank on behalf of the other Debtors, generating a large intercompany balance in favor of ABC owing from the other Debtors on account of these PPB Lines.

14. The Debtors have also purchased supplies directly from third parties outside of the PPB Lines, and, once Abengoa commenced its Article 5bis proceeding under Spanish law (described below), the PPB Lines ceased and the Debtors incurred additional debt to trade suppliers in the last month of 2015. These direct purchases resulted in general trade debt of the following approximate amounts: (i) \$14.9 at ABC, which is also potentially obligated on another approximately \$78 million for invoices owed to suppliers that those suppliers sold on an internet platform called The Receivables Exchange, (ii) \$20.4 million at ABNE, and (iii) \$26 million at

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<sup>2</sup> This amount represents the total amount of obligations on the PPB Lines outstanding less collateral securing the debt.

ABT. The external trade debt of ABO and ABEC, exclusive of their intercompany obligations, is collectively less than approximately \$1 million, with ABO owing approximately \$700,000 and ABEC owing about \$200,000.

15. Additionally, ABC is counterparty to sale-leaseback transactions totaling \$53.7 million, consisting of \$34.2 million for the York plant, \$10.4 million for the Colwich plant, and \$9.1 million at the Portales plant.<sup>3</sup>

16. In addition, ABC and ABNE are each guarantors on notes issued by Abengoa, S.A., Abengoa Finance, S.A.U, or Abengoa Greenfield, S.A. in the approximate amount of \$6.86 billion as set forth below:

| Financial Instrument  | Principal Amount                                   | Issuer or Borrower       | Debtor Guarantor(s) |
|---|--|--------------------------|---------------------|
| 8.5% Senior Unsecured Notes due 2016 under a fiscal agency agreement dated as of March 31, 2010           | €500 millior                                       | Abengoa, S.A.            | ABC and ABNE        |
| 8.875% Senior Notes due 2017 under an indenture dated as of October 28, 2010                              | \$650 million                                      | Abengoa Finance, S.A.U   | ABC and ABNE        |
| 8.875% Senior Notes due 2018 under an indenture dated as of February 5, 2013                              | €550 millior                                       | Abengoa Finance, S.A.U   | ABC and ABNE        |
| 5.5% Senior Notes due 2019 issued under an indenture dated as of September 30, 2014                       | €265 millior                                       | Abengoa Greenfield, S.A. | ABC and ABNE        |
| 6.5% Senior Notes due 2019 issued under an indenture dated as of September 30, 2014                       | \$300 million                                      | Abengoa Greenfield, S.A. | ABC and ABNE        |
| 6.25% Senior Unsecured Convertible Notes due 2019 issued under and indenture dated as of January 17, 2013 | \$400 million (approx.. \$160 million outstanding) | Abengoa, S.A.            | ABC and ABNE        |
| 7.75% Senior Notes due 2020 issued under an indenture dated as of December 13, 2013                       | \$450 million                                      | Abengoa Finance, S.A.U   | ABC and ABNE        |

<sup>3</sup> By referring to these transactions as “sale-leasebacks,” the Debtors do not waive any right with respect to whether such transactions should be treated as or recharacterized as financings.



| <b>Financial Instrument</b>   | <b>Principal Amount</b>                | <b>Issuer or Borrower</b>             | <b>Debtor Guarantor(s)</b> |
|---|--|---------------------------------------|----------------------------|
| 7.0% Senior Notes due 2020 issued under an indenture dated as of April 21, 2015 | €375 millior                           | Abengoa Finance, S.A.U                | ABC and ABNE               |
| 6.0% Senior Notes due 2021 issued under an indenture dated as of March 27, 2014 | €500 millior                           | Abengoa Finance, S.A.U                | ABC and ABNE               |
| \$279 million 5.125% Exchangeable Notes due 2017                                | € 279 millior (€1 million outstanding) | Abengoa, S.A.                         | ABC and ABNE               |
| That certain syndicated credit facility dated September 30, 2014                | €1,321.( million                       | Abengoa, S.A. and related companies   | ABC and ABNE               |
| That certain revolving credit agreement dated September 23, 2015                | €165 millior (€125 million drawn)      | Abengoa, S.A. and related companies   | ABC and ABNE               |
| That certain finance contract dated July 6, 2015                                | €125 millior                           | Abengoa , S.A.                        | ABC and ABNE               |
| That certain emergency credit facility dated December 24, 2015                  | €106 millior                           | Abengoa Concession Investment Limited | ABC and ABNE               |
| That certain ICO credit agreement dated July 30, 2015                           | €30 millior                            | Abengoa, S.A. and related companies   | ABC and ABNE               |

## **THE EVENTS LEADING TO THE BANKRUPTCY CASES**

### **II. History of the Debtors**

17. In 2002, Abengoa expanded its global bioenergy operations into the United States by forming ABC to commence operations. Since inception, Abengoa Bioenergy's presence in the United States has grown exponentially and Abengoa Bioenergy has achieved a leading position with the renewable energy construction and technology sector in the United States, through its efforts in developing and producing advanced biofuels at a commercial scale. Abengoa Bioenergy's global operations are now headquartered in Chesterfield, Missouri. As stated above, this growth has allowed Abengoa Bioenergy to build three plants and commence

development on a second generation of technology for the production of ethanol. The plants that make up the Maple operations and the second generation business line (including the plant in Hugoton, Kansas) are not subject of these cases. As such, these cases are designed at this time to address Abengoa Bioenergy's first generation operations with the expectation that this business will either be restructured or its assets sold in an organized and competitive process in order to maximize recovery for the Debtors' estates and creditors.

### **III. Cancellation of Subsidies and Investment Agreements**

18. At the height of Spain's economic crisis in early 2013, the Spanish government, struggling to pay the interest due on sovereign debt, cut subsidies for solar and wind power companies. The cutbacks devastated Spain's renewable energy sector and many companies liquidated as a result. Though it did not have to shut down its businesses, Abengoa was forced to issue debt to continue its global operations. Since 2013, Abengoa entered into or issued syndicated, bilateral, and other debt instruments. As part of these transactions and as set forth above, ABNE and ABC provided guarantees for certain of this debt.

#### **A. Abengoa's Financial Position and The Gonvarri Investment Agreement**

19. On July 31 2015, during Abengoa's results presentation for the first six months of 2015, Abengoa lowered its guidance for 2015 corporate free cash flow, which deepened existing market concerns regarding Abengoa's liquidity position, as well as raised concerns with its business partners and other shareholders regarding liquidity. These concerns adversely affected Abengoa's cash position, had a disruptive effect on its operations, contributed to a 27% decline in engineering and construction revenues in the third quarter of 2015 compared to the same period in the prior year, and caused the trading prices of Abengoa's Class A and Class B shares and outstanding bonds to fluctuate significantly during the third quarter and beginning of the fourth quarter of the 2015 fiscal year. The main impact on Abengoa's liquidity has been higher

consumption of cash resulting from accelerated payments to suppliers related to the delay in the renewal of a portion of the “confirming without recourse” agreements with several financial institutions on which Abengoa Bioenergy relies to generate cash flows from working capital through the outsourcing of trade payables (described as the PPB Lines above). Due to these circumstances, Abengoa’s financial results for the first nine months of 2015 showed a deterioration in consolidated working capital of €69 million and a reduction of immediately available liquidity from €831 million to €346 million as of September 30, 2015.

20. In light of these developments, on September 24, 2015, Abengoa announced a comprehensive action plan aimed at improving its liquidity position, reducing corporate leverage and strengthening our corporate governance. A key element of a plan was the underwritten equity raise with various financial institutions, which was not secured. Further, Abengoa sought to secure an investment from Gonvarri Corporacion Financiera, S.L. (“Gonvarri”), a Gonvarri Steel Industries group company and one of the main shareholders of Abengoa. Unfortunately, the Company was unable to consummate the Gonvarri transaction.

**B. 5BIS and Abengoa’s Reorganization Efforts**

21. Upon the termination of the Gonvarri transaction, Abengoa was left without sufficient capital to operate. On Wednesday, November 25, 2015 in Spain, Abengoa announced its intention to seek protection under Article 5bis of Spanish insolvency law, a pre-insolvency statute that permits a company to enter into negotiations with certain creditors for restricting of its financial affairs. Under Article 5bis, Abengoa has until March 2016 to negotiate and reach an agreement with its creditors. On December 24, 2015, Abengoa was granted a €106 million emergency loan from certain of its lenders to ensure that certain obligations, such as payroll, could be met. As of the date hereof, Abengoa is engaged in negotiations with its creditors with a goal of reaching an agreement to ensure its financial viability.

22. On February 16, 2016, Abengoa made public an Industrial Viability Plan,<sup>4</sup> which contemplates the financial restructuring of Abengoa through the disposition of certain assets and to discontinue some activities in certain geographies, either through straight sales or through agreements with local players. As part of this strategy, it is contemplated that the first generation businesses of Abengoa Bioenergy will be sold or restructured as a stand-alone business.

**C. Involuntary Petitions**

23. On February 1, 2016, Gavilon Grain, LLC, Farmers Cooperative Association, and The Andersons, Inc. commenced a case in the United States Bankruptcy Court for the District of Nebraska against ABNE by filing involuntary petitions for relief under Chapter 7 of the Bankruptcy Code. Subsequently, on February 11, 2016, Gavilon Grain, LLC, Farmers Cooperative, and Central Valley Ag Cooperative commenced a case in the United States Bankruptcy Court for the District of Kansas (Kansas City) against ABC by filing involuntary petitions for relief under Chapter 7 of the Bankruptcy Code.

24. It is important to note that in advance of the chapter 7 filings and consistent with the Viability Plan, the Debtors' management, in conjunction with their advisors, had already been working on restructuring Abengoa Bioenergy. Since the commencement of the chapter 7 cases, the Debtors have been focusing their efforts on solicitation of potential debtor in possession financing and preparing for voluntary chapter 11 petitions to permit the Debtors to sell or restructure their businesses.

25. Contemporaneously with filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code for the Debtors, ABNE and ABC each filed (i) a motion to convert their

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<sup>4</sup> The Industrial Viability Plan is available on the internet at:  
[http://www.abengoa.com/export/sites/abengoa\\_corp/resources/pdf/gobierno\\_corporativo/hr\\_y\\_otras\\_comunicaciones\\_cnvm/hechos\\_relevantes/2016/20160216\\_en\\_0.pdf](http://www.abengoa.com/export/sites/abengoa_corp/resources/pdf/gobierno_corporativo/hr_y_otras_comunicaciones_cnvm/hechos_relevantes/2016/20160216_en_0.pdf).

respect involuntary chapter 7 cases into cases under chapter 11 of the Bankruptcy Code and (ii) a motion to transfer venue of those involuntary chapter 7 case to this Court.

**D. Debtors' Financial Outlook and Business Strategy Going Forward**

26. As set forth above, the Debtors currently have assets of \$1.3 billion and liabilities of \$1.2 billion on a consolidated basis. Collectively, the Debtors own, operate, and/or service four ethanol plants: Ravenna, York, Colwich, and Portales. Having negotiated DIP financing to provide the necessary liquidity, Debtors intend to resume operations in their most profitable ethanol plants, Ravenna and York. Resumption of ethanol plant operations will generate value to the Debtors' estates and provide recovery for its creditors. In fact, other plants in Nebraska continue to operate in the current market environment. Indeed, the Debtors believe that operating both Ravenna and York will not only stabilize the Debtors' operations, but will maximize the value of these estate for the creditors through either a going-concern sale under section 363 of the Bankruptcy Code or through a plan of reorganization. The Debtors intend to use the "breathing room" permitted by the Bankruptcy Code and DIP financing to carefully plan the course that will maximize the value to all stakeholders in these cases.

27. While the strategy remains in development due to the expedited need to file these cases as a result of the pending ABNE and ABC involuntary petitions, the Debtors have worked tirelessly with their advisors since February 1, 2016, and well before to prepare these Debtors for a stand-alone transaction. Specifically, the Debtors' investment banker, Lazard, has been developing a sale process for certain of the bioenergy assets. In the wake of the involuntary petitions, the Debtors and their advisors have to obtain adequate DIP financing to allow for not only the stabilization of this business, but a process that with time, should realize a significant return to the Debtors' creditors.

## OVERVIEW OF FIRST DAY RELIEF

28. The Debtors have filed or expect to file a number of First Day Motions,<sup>5</sup> customary in bankruptcy cases such as these, designed to minimize the adverse effects of the commencement of the bankruptcy cases on their ongoing business operations. I believe that court approval of the relief requested in the First Day Motions is essential to providing the Debtors with an opportunity to successfully meet their obligations by maintaining baseline operations, providing for a smooth transition into the bankruptcy cases, and minimizing any loss of value to the Debtors' businesses.

29. The First Day Motions seek authority to, among other things, continue to pay employee compensation and benefits in order to maintain morale and retention as the Debtors transition into chapter 11, thus avoiding the potential for catastrophic "brain drain";<sup>6</sup> ensure the continuation of the Debtors' cash management systems and other business operations without interruption; provide the Debtors the ability to pay certain critical vendors and certain other vendors who could assert liens against the Debtors property; and to provide adequate assurance of future performance to their utility providers, as detailed below:

### **I. Joint Administration Motion**

30. The Debtors seek entry of an order directing joint administration of these bankruptcy cases for procedural purposes only. I believe that joint administration will also save time and money and avoid duplicative and potentially confusing filings by permitting counsel for all parties in interest to (a) use a single caption on the numerous documents that will be served

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<sup>5</sup> Capitalized terms used but not otherwise defined in this declaration shall have the meanings given them in the respective First Day Motion.

<sup>6</sup> The Debtors anticipate that they may need to file a more traditional employee retention program or key executive incentive program in order to ensure that the remaining employees stay with the company to assist it with its objectives in chapter 11; however, at this time, the First Day Motion related to employees seeks only to maintain existing employee programs and to ensure all outstanding employee obligations that may have arisen pre-petition may be paid post-petition.

and filed herein and (b) file the papers in one case rather than in multiple cases. I understand that joint administration will also protect parties in interest by ensuring that parties in each of the Debtors' respective bankruptcy cases will consist of the various matters before the Court in these cases.

31. I have also been advised that rights of the respective creditors and stakeholders of each of the Debtors will not be adversely affected by joint administration of these cases inasmuch as the relief sought is purely procedural and is in no way intended to affect substantive rights or permit substantive consolidation of the separate Debtors' estates.

## **II. Consolidated Creditors List Motion**

32. The Debtors request that the Court (a) authorize them to prepare a consolidated list of creditors in the format currently maintained in the ordinary course of business in lieu of submitting any required mailing matrix and to file a consolidated list of the Debtors' 50 largest unsecured creditors and (b) approve the form and manner of notice of notifying creditors of the commencement of these bankruptcy cases through the mailing of the Notice of Commencement (as defined in the Consolidated Credit List Motion) by Prime Clerk (the "Claims Agent").

33. The Debtors estimate that they have well over 200 creditors on a consolidated basis. Contemporaneously with the filing of the motion, the Debtors have filed an application to retain Prime Clerk as their notice and claims agent in these bankruptcy cases. The Debtors believe that using the Claims Agent for this purpose will maximize administrative efficiency in these bankruptcy cases and reduce the administrative burdens that would otherwise fall upon this Court and the Clerk of the Court.

34. The Debtors believe that preparing the consolidated list in the format or formats currently maintained by the Debtors in the ordinary course of business will be sufficient to permit the Claims Agent to promptly provide notices to all applicable parties. Accordingly, the

Debtors believe that maintaining their lists of creditors and equity holders in an electronic format rather than preparing and filing separate matrices will maximize efficiency, increase accuracy, and reduce costs to the benefit of these estates.

### **III. Cash Management Motion**

35. Prior to the Petition Date, the Debtors employed a cash management system to efficiently collect, transfer, and disburse the funds generated by its business operations (the “Cash Management System”). The Cash Management System facilitates the Debtors’ cash forecasting and reporting and enables the Debtors to monitor and record the collection and disbursement of funds and maintain control over the administration of their Bank Accounts (as defined in the Cash Management Motion).

36. The Cash Management System is an ordinary course, essential business practice of the Debtors. The Cash Management System currently in place enables the Debtors to (a) closely control and monitor corporate funds, (b) ensure cash availability, and (c) reduce administrative expenses by facilitating the efficient movement of funds. Altering the Cash Management System may disrupt payments to key vendors and employees. Therefore, it is essential that the Debtors be permitted to continue to use their Cash Management System in accordance with their existing cash management procedures.

37. I believe that changing the Bank Accounts could significantly and negatively impact Debtors’ cash flow as it takes a substantial amount of time to open new accounts. To protect against the unauthorized payment of prepetition obligations, the Debtors represent that if they are authorized to continue to use the Bank Accounts, they will not pay, and each Bank in which the Debtors hold a Bank Account will be directed not to pay, any debts incurred before the Petition Date, other than as authorized by this Court.



38. To minimize expenses to their estates, the Debtors also request authority to use all checks and other business forms, including electronic forms and paper forms, preprinted letterhead and related documents (collectively, the “Business Forms”) that were in existence immediately before the Petition Date. Given that the Business Forms were used prepetition, they do not include references to the Debtors’ current status as debtors in possession. As is the case with the existing Cash Management System, I believe that requiring the Debtors to change existing Business Forms would unnecessarily distract the Debtors from their efforts away from administering these bankruptcy cases and impose needless expenses on the estates, without any meaningful corresponding benefit.

39. Due to the nature and scope of the Debtors’ business operations and the large number of suppliers of goods and services with whom the Debtors deal on a regular basis, it is important that the Debtors be permitted to continue to use the Business Forms without alteration or change and without the “Debtor in Possession” designation.

40. Accordingly, the Debtors believe that it is in the best interests of their creditors, stakeholders and estates continue to maintain and use their existing Cash Management System, Bank Accounts, and Business Forms.

#### **IV. Utilities Motion**

41. In connection with the operation of their businesses and the management of their properties, the Debtors obtain water, gas, electricity, and similar utility products and services (collectively, the “Utility Services”) from various utility companies (the “Utility Companies”) covering a number of utility accounts. The relief requested in the First Day Motion related to utilities is for all Utility Companies providing Utility Services to the Debtors and is not limited to those listed on the list attached to the motion.

42. On average, prior to the Petition Date and when operating the Plants, the Debtors spent approximately \$1,249,680.65 each month on account of Utility Services . Going forward, the Debtors estimate that they will spend \$1,038,538.20 per month for Utility Services to resume operations in the ethanol plants located in Ravenna, Nebraska and York, Nebraska, and continue to make payments to the Utility Companies for all ethanol plants.

43. Uninterrupted Utility Services are essential to the Debtors' business operations during the pendency of these cases. Should any Utility Company alter, refuse or discontinue service, even for a brief period, the Debtors' business operations could be severely disrupted, and such disruption would jeopardize the Debtors' efforts. It is essential that the Utility Services continue uninterrupted.

#### **V. Employee Wage Motion**

44. The Debtors' workforce is comprised of full-time salaried employees (the "Salaried Employees"), contractors and full-time hourly employees (the "Hourly Employees," and together with the Salaried Employees, the "Employees"). As of the Petition Date, the Debtors employ 169 Employees, including one contractor.

45. All Employees are paid bi-weekly by either check or direct deposit. All Employees are paid through and including the previous Sunday. For the last payroll, paid on February 12, 2016 for the period ending on February 7, 2016, the amount, including employer-paid taxes, was \$458,979.09 for all the Employees. The Debtors' next scheduled payroll date is February 26, 2016.

46. The Debtors request that the Court enter an order, authorizing, but not directing, the Debtors: (a) to pay and/or perform, as applicable, prepetition obligations to current employees, retirees and independent contractors, including accrued prepetition wages, salaries and other cash and non-cash compensation claims, except as otherwise set forth therein

(collectively, the “Employee Claims”); (b) to honor and continue in the ordinary course of business until further notice (but not assume), certain of the Debtors’ vacation, sick time and holiday time policies, workers’ compensation, employee and retiree benefit plans and programs (collectively, the “Employee Benefit Obligations”) and to pay all fees and costs in connection therewith, except as otherwise set forth in the motion; (c) to reimburse Employees for prepetition expenses that Employees incurred on behalf of the Debtors in the ordinary course of business up to a cap of \$10,000 (the “Employee Expense Obligations”); (d) to pay all related prepetition withholdings, and payroll-related taxes associated with the Employee Claims and the Employee Benefit Obligations (the “Employee Taxes”); and (e) to pay all administrative fees and employee contributions to Employee 401(k) plan (the “401(k) Obligations” and, together with the Employee Claims, the Employee Benefit Obligations, the Employee Expense Obligations and the Employee Taxes collectively, the “Prepetition Employee Obligations”), all as described in detail in the Employee Wage Motion.

47. The Debtors believe, in the exercise of their business judgment, that relief is necessary to avoid immediate and irreparable harm to the Debtors’ estates. Paying prepetition wages, employee benefits and similar items will benefit the Debtors’ estates and their creditors by maintaining the Debtors’ workforce and allowing the Debtors to conduct the post-petition restructuring process effectively. Indeed, the Debtors believe that without the relief requested in the Employee Wage Motion being granted, their Employees may seek alternative opportunities sooner than these bankruptcy cases are complete. Such a development would deplete the Debtors’ already small workforce, thereby hindering the Debtors’ ability to conduct an orderly restructuring.

48. Accordingly, the Debtors believe that it is in the best interests of their creditors, stakeholders and estates to continue to honor and pay the Prepetition Employee Obligations.

#### **VI. DIP Motion**

49. The Debtors require immediate access to funding, as defined in the DIP Motion, to ensure that they are able to recommence and continue the operations of their businesses during the pendency of these cases while they restructure. The funds provided as the DIP Facility will be the Debtors' sole source of funding for operations and the costs of administering these cases. Absent authority to obtain DIP financing immediately, the Debtors would be unable to restart operations at its plants, crippling the Debtors' ability to restructure and causing irreparable harm to the Debtors' creditors and their estates.

50. I believe that access to this funding on an interim basis will provide the Debtors with the liquidity necessary to ensure that the Debtors have sufficient working capital and liquidity to restart the plants and operate their businesses, thereby maximizing value for the Debtors' estates and creditors. Without such access to liquidity, the Debtors' ability to navigate through the bankruptcy process will be jeopardized, to the detriment of all of the Debtors' stakeholders.

#### **VII. Claims Agent Application**

51. The Debtors request that Prime Clerk be appointed as the claims and noticing agent for the Debtors, including assuming full responsibility for the distribution of notices and the maintenance, processing and docketing of proofs of claim filed in these bankruptcy cases.

52. The Debtors have obtained and reviewed engagement proposals from two other court-approved claims and noticing agents to ensure selection through a competitive process. After initial proposals were received from all three potential claims and noticing agents, certain of the claims agents were asked to improve those bids and provide proposed budgets. The

Debtors submit, based on all proposals obtained and reviewed, that Prime Clerks rates are competitive and reasonable given the quality of services and expertise. Accordingly, the Debtors believe that it is in the best interests of their creditors, stakeholders and estates to retain the Claims Agent for these bankruptcy cases.

### **VIII. Insurance Motion**

53. In the ordinary course of business, the Debtors maintain various insurance programs providing coverage for, among other things, property, workers' compensation liability, automobile liability, general and umbrella liability and property. As of the Petition Date, the Debtors believe that they are current on their payment obligation under the Insurance Policies. Out of an abundance of caution, the Debtors seek authorization to make payments of Insurance Obligations plus any unforeseen deductible payment amounts for prepetition claims. I have been advised that the payment of Insurance Obligations and maintenance of the Insurance Programs is necessary to comply with the requirements set forth by the U.S. Trustee for this district. The Debtors believe that it is in the best interest of their estate, and therefore the best interest of their creditors, to continue to make payments on the Insurance Obligations.

### **IX. Tax Motion**

54. Prior to the Petition Date, the Debtors in their ordinary course of business, incurred various Taxes, including corporate franchise taxes, real property taxes, personal property taxes, inventory tax on ethanol and sales and use taxes. The Debtors estimate that they may be liable for approximately \$2.2 million in Taxes, excluding the taxes payable by Debtor Abengoa Bioenergy US Holding, LLC on behalf of its non-debtor subsidiaries, as of the Petition Date or shortly after the Petition Date.

55. As of the Petition Date, the Debtors were substantially current in the payment of assessed and undisputed Taxes; however, certain Taxes attributable to the pre-petition period

were not yet due. Further, the Debtors believe they may have outstanding checks that were sent to Taxing Authorities but have not yet cleared before the Petition Date. Out of an abundance of caution, the Debtors are also seeking authority to pay any other pre-petition Taxes that may remain outstanding.

56. Payment of the Taxes is necessary to avoid disruption to the Debtors' business operations. Delayed payment of the Taxes may cause the Taxing Authorities to take precipitous action, including a marked increase in state audits, a flurry of lien filings, and significant administrative maneuvering at the expense of the Debtors' time and resources. Prompt and regular payment of the Taxes will avoid this unnecessary governmental action. Accordingly, the Debtors seek authorization to pay the Taxes as it is in the best interests of their estates and creditors.

**X. Motion to Extend Time to File SOFAs and Schedules**

57. The Debtors seek an extension of time to file the required Schedules and Statement of Financial Affairs (the "Schedules and SOFAs") until April 8, 2016. The Debtors provided a list to Prime Clerk of over 2,700 creditors. The preparation of the Schedules and SOFAs will require much time and manpower. During the days leading up to the Petition Date, the Debtors have worked tirelessly to seek financing, address critical operational matters, and meet the demands and pressures incident to the commencement of a Chapter 11 case. Given the volume of material that must be compiled and reviewed by the Debtors' limited staff and professionals and the work required to stabilize the Debtors' business operations and resume operations at the plants in Ravenna and York, Nebraska, the Debtors believe that they should be granted an extension to file their Schedules and SOFAs.

I have reviewed each of the First Day Motions, the facts stated in them, and the descriptions of the relief they request. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the contents of the First Day Motions and the contents of the foregoing declaration are true and correct to the best of my information and belief.



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Sandra Porrás Serrano  
Chief Financial Officer, Abengoa Bioenergy

**EXHIBIT A:  
CORPORATE STRUCTURE**



