

ORDERED.

Dated: June 18, 2024



Jacob A. Brown
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re)	
SURGE TRANSPORTATION, INC., ¹)	Case No.: 3:23-bk-1712-JAB
Debtor.)	Chapter 11
_____)	

**ORDER (I) APPROVING DISCLOSURE STATEMENT
ON PRELIMINARY BASIS, (II) DETERMINING DATES, PROCEDURES
AND FORMS FOR PLAN SOLICITATION PROCESS, (III) ESTABLISHING
VOTE TABULATION PROCEDURES, (IV) ESTABLISHING OBJECTION
DEADLINES, AND (V) SCHEDULING CONFIRMATION HEARING**

This Chapter 11 case came before the Court on June 17, 2024, upon the motion of the debtor, Surge Transportation, Inc. (the “Debtor” or “Surge”), for entry of an order (i) approving the dates, procedures, and forms applicable to the plan solicitation, noticing, and implementation process; (ii) approving vote tabulation procedures; (iii) establishing the deadline for filing objections to the Plan of Reorganization; and (iv) scheduling the hearing

¹ The Federal Employer Identification Number of the Debtor is 81-224742. The principal address of the Debtor is 7077 Bonneval Road, Suite 550, Jacksonville, Florida 32216.

to consider confirmation of the Plan [Docket 600]. The Court has reviewed the motion and has considered the representations of counsel. Based upon the representations of counsel and without objection by the United States Trustee or any other interested party, it is

ORDERED:

1. The motion is granted.
2. The Amended Disclosure Statement dated June 13, 2024 (the “Disclosure Statement”) [Docket 782] is approved on a preliminary basis, and the Debtor is authorized to utilize same in connection with the solicitation of acceptances and rejections of the Amended Plan of Reorganization dated June 13, 2024 (the “Plan”) [Docket 781].
3. As soon as practicable but in no event later than seven (7) business days after the date of entry of this Order (the “Solicitation Commencement Date”), the Debtor shall commence the solicitation and noticing process by placing the Solicitation Package and notices approved in this Order in the mail, first class postage prepaid, to all creditors and parties in interest listed on the Official Mailing Matrix. Only one set of the Solicitation Materials need be mailed to Claimants holding multiple claims, though separate ballots for each claim may be included with the mailing. The Debtor shall file proof of service within three (3) days of service of the Solicitation Package.
4. The Debtor is excused from distributing a Solicitation Package to those addresses from which one or more prior notices served in this Chapter 11 case were returned as undeliverable or from which mailings made pursuant to this Order are returned as undeliverable unless the Debtor is provided with updated addresses for such entities before the Solicitation Commencement Date. The Debtor is excused from any obligation

to re-deliver Solicitation Packages to entities with addresses that are deemed undeliverable and who have not provided a forwarding or more updated address.

5. The solicitation materials may include a solicitation letter proposed by the Debtor and a letter approved by the Official Committee of Unsecured Creditors and signed by the Chair on behalf of the Committee or its counsel. No other solicitation letters are authorized.

6. The record date for determining the holders of claims and interests entitled to receive solicitation and noticing materials as provided for in this Order is **June 17, 2024** (the “Voting Record Date”). Only the holders of claims and interests as of the Voting Record Date are entitled to the voting and notice rights provided for in this Order.

7. The date by which all ballots cast to accept or reject the Plan must be received by the Clerk is **July 17, 2024 at 4:00 p.m. (Eastern Time)** which is one week before the confirmation hearing (the “Voting Deadline”). Ballots may be filed by mail addressed to the Clerk of the Court, United States Bankruptcy Court, 300 North Hogan Street, Suite 3-150, Jacksonville Florida 32202 or filed electronically through the Chapter 11 eballots hyperlink on the Court’s website, <https://pacer.flmb.uscourts.gov/cmecf/ballots/submission.asp>. Ballots not received by the Voting Deadline, or by any extended voting deadline as provided for in this Order, shall not be counted.

8. The proposed ballot for presentation to holders of Claims in Classes 2 and 3 (the “Ballot”) attached to the motion is approved, subject in all cases to the right of the Debtor to make additional corrections, conforming and formatting changes to the Ballot as appropriate. Factors electing to receive treatment of their Claims as a Class 2 creditor must

affirmatively make such election on the face of their Ballot and file same with the Court on or before **July 17, 2024 at 4:00 p.m. (Eastern Time)**. Thereafter, the election may only be made upon the written consent of Surge and its counsel.

9. Only the holders of claims as of the Voting Record Date classified within Classes 1 through 3 are entitled to vote on the Plan.

10. Any holder of a claim whose claim is (a) asserted as wholly unliquidated or wholly contingent, (b) asserted in an untimely proof of claim (unless allowed as timely prior to the Voting Record Date), (c) based upon a pending lawsuit as to which no judgment has been rendered, (d) included in a proof of claim or scheduled liability in favor of a factor or assignee of such claim, or (e) asserted in a proof of claim as to which an objection to the entirety of the claim is pending as of the Voting Record Date (collectively, the “Disputed Claimants”) shall not be permitted to vote on the Plan except as provided in this paragraph. Disputed Claimants shall be permitted to vote only by filing a motion under Fed. R. Bankr. P. 3018(a) seeking to have their claims temporarily allowed for voting purposes (a “Rule 3018 Motion”). Any such Rule 3018 Motion must be filed with the Court and served upon counsel for the Debtor no later than **July 17, 2024 at 4:00 p.m. (Eastern Time)** (the “Rule 3018 Motion Deadline”). If and to the extent that the Debtor and such party are unable to resolve the issues raised by the Rule 3018 Motion prior to the Voting Deadline, then at the Confirmation Hearing the Court shall determine whether the provisional ballot should be counted as a vote on the Plan. With respect to claims which have been assigned, the ballot cast by the earlier assignee of such claim shall be counted unless and until the notice of assignment provided to Surge has been released.

11. Nothing in this Order affects the Debtor's right (or any other party's right, if applicable) to object to any proof of claim after the Voting Record Date. With respect to any such objection, the Debtor may request, on notice, that any vote cast by the holder of the disputed claim be disallowed and not counted in determining whether the requirements of 11 U.S.C. § 1126(c) have been met. In the absence of any such request, the disputed claim shall be allowed for voting purposes only.

12. Unless otherwise directed by the Court, the procedures set forth below shall be applied in tabulating the votes to accept or reject the Plan, and any provision of Local Rule 3018-1 to the contrary is waived:

- a. Subject to subparagraph (b) below, any Ballot that is timely received, that contains sufficient information to permit the identification of the claimant and that is cast as an acceptance or rejection of the Plan shall be counted and shall be deemed to be cast as an acceptance or rejection, as the case may be, of the Plan. Ballots timely received that are cast in a manner that indicates neither an acceptance nor rejection of the Plan or that indicates both an acceptance and rejection of the Plan shall not be counted.
- b. The following Ballots shall not be counted or considered for any purpose in determining whether the Plan has been accepted or rejected: (i) any Ballot received after the Voting Deadline unless the Debtor has granted an extension of the Voting Deadline with respect to such Ballot; (ii) any Ballot that is illegible or otherwise contains insufficient information to permit the identification of the claimant; (iii) any Ballot cast by a person or entity that does not hold a claim in a class that is entitled to vote to accept or reject the Plan, except as otherwise provided in this Order; (iv) any Ballot cast for a claim designated as unliquidated, contingent or disputed or as zero or unknown in amount and for which no Rule 3018 Motion has been filed by the Rule 3018 Motion Deadline; or (v) any unsigned Ballot.
- c. Notwithstanding Fed. R. Bankr. P. 3018(a), whenever two or more Ballots are cast voting the same claim prior to the Voting Deadline, the last Ballot received prior to the Voting Deadline shall be deemed to reflect the voter's intent and thus to supersede any prior Ballots, without prejudice to the Debtor's right (or the right of any other

party, if applicable) to object to the validity of the second Ballot on any basis permitted by law, including under Fed. R. Bankr. P. 3018(a), and, if the objection is sustained, to count the first Ballot for all purposes.

- d. Claim splitting shall not be permitted. Creditors who vote must vote all of their claims within a particular class to either accept or reject the Plan. Accordingly, a Ballot that partially rejects and partially accepts the Plan will not be counted.
- e. The amount of the claim listed in the Debtor's schedules of assets and liabilities (the "Schedules"), adjusted for post-petition reduction in such claims, if any, shall be the amount of the claim for voting purposes; provided that (i) such claim is not scheduled as contingent, unliquidated, undetermined, disputed, and/or in a zero dollar amount, and (ii) no proof of claim has been timely filed (or otherwise deemed timely filed by the Bankruptcy Court under applicable law) with respect to such claim. The noncontingent and liquidated amount specified in a proof of claim timely filed with the Bankruptcy Court (or otherwise deemed timely filed by the Bankruptcy Court under applicable law) shall be the amount of the claim for voting purposes to the extent the proof of claim is not the subject of an objection (or, if such claim has been resolved for allowance and/or voting purposes pursuant to a stipulation or order entered by the Bankruptcy Court, or otherwise resolved by the Bankruptcy Court, the amount set forth in such stipulation or order). Any creditor disputing the amount listed in the Schedules or in the Ballot provided by the Debtor may (a) move pursuant to Fed. R. Bankr. P. 3018(a) to estimate and allow its claim in a higher or different amount, or (b) vote the amount stated on the Ballot without waiver of claimant's right to assert a higher or different amount for distribution purposes. **THE TEMPORARY ALLOWANCE OF CLAIMS FOR VOTING PURPOSES DOES NOT CONSTITUTE AN ALLOWANCE OF CLAIMS FOR PURPOSES OF DISTRIBUTION UNDER THE PLAN.**
- f. The holder of any claim that has been indefeasibly paid, in full or in part, shall only be permitted to vote the unpaid amount of such claim, if any, to accept or reject the Plan.
- g. Ballots filed by counterparties to any executory contract or unexpired lease whose contracts or leases have been assumed, will not be counted.
- h. Any creditor who holds duplicate claims within the same class shall be provided with only one Solicitation Package and one Ballot for

voting a single claim in such class, regardless of whether the Debtor has objected to such duplicate claims.

- i. For claims for which the Debtor has received a notice of assignment, only the original assignee may cast a vote on the Plan unless and until a release of the notice of assignment is provided to the Debtor prior to the Voting Deadline. Where there have been multiple assignments of a claim, assignments and voting privileges will be honored in the order of their priority unless the assignment has been released, with the earliest assignee's Ballot being the sole Ballot counted.
- j. For purposes of the numerosity requirement of 11 U.S.C. § 1126(c), separate claims held by a single creditor in a particular class will be aggregated as if such creditor held one claim against the Debtor in such class, and the votes related to such claims will be treated as a single vote to accept or reject the Plan.
- k. Any party who has delivered a valid Ballot for the acceptance or rejection of the Plan may withdraw such acceptance or rejection by delivering a written notice of withdrawal to Richard R. Thames, Esq., Thames | Markey, 50 North Laura Street, Suite 1600, Jacksonville, Florida 32202 at any time prior to the Voting Deadline. A notice of withdrawal, to be valid, must (i) contain the description of the Claim(s) to which it relates and the aggregate principal amount represented by such Claim(s), (ii) be signed by the withdrawing party in the same manner as the Ballot being withdrawn, (iii) contain a certification that the withdrawing party owns the Claim(s) and possesses the right to withdraw the vote sought to be withdrawn and be received by Thames | Markey prior to the Voting Deadline.

13. The hearing to consider confirmation of the Plan and final approval of the Disclosure Statement shall be held on **July 24, 2024 at 2:00 p.m. (Eastern Time)**, and the deadline for filing objections to the Disclosure Statement or confirmation of the Plan is **July 17, 2024 at 4:00 p.m. (Eastern Time)**.

14. An election under § 1111(b) must be filed no later than fourteen (14) days prior to the Confirmation Hearing.

15. In accordance with Local Rule 3018-1(a), the Plan Proponent must file a ballot tabulation no later than two (2) days prior to the Confirmation Hearing.

16. Two (2) days prior to the Confirmation Hearing, the Plan proponent should file a confirmation affidavit containing the factual bases upon which the Plan proponent relies in establishing that each of the applicable requirements of § 1129 is met.

17. A party asserting entitlement to allowance of an administrative expense under § 503(b), including professionals seeking compensation and expense reimbursement under §§ 328 and 330, must file an application for allowance of the administrative expense no later than fourteen (14) days before the Confirmation Hearing. The Court will consider the application at the Confirmation Hearing if the notice period described in paragraph 17(a) below has expired. Otherwise, the Court will consider applications for allowance of administrative expenses with an unexpired notice period or applications that accrue after the Administrative Expense Application Deadline in the normal course.

18. The following procedures apply to fee applications by professionals seeking compensation and expense reimbursement:

- a. Applicants must file and serve a notice of the filing of the fee application on the “Short List” established by this Court’s order of July 28, 2023, Establishing Notice Procedures [Docket No. 36]. The notice must conform to the Court’s Negative Notice Legend for All Fee Applications as published in the Court’s Procedure Manual, available on the Court’s website (www.flmb.uscourts.gov).
- b. Fee applications must comply with Local Rule 2016-1 and include the total amount of fees and costs sought to be approved, without deduction of any prepetition retainer and interim fee awards. The fee application may include estimates of fees and costs expected to be incurred subsequent to the date of those included in the fee application through the time of the hearing on the fee application. If the actual fees and costs incurred during this period are less than the estimated amount, Court approval of the fee application will authorize payment of the actual fees and costs. If the actual fees and

costs exceed the estimated amount, the applicant may file a supplemental fee application.

Richard R. Thames, Esq. is directed to serve this Order on all interested parties concomitantly with the Solicitation Package and provide proof of service of same within 3 days of such service.