

**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
_____)

**NOTICE AND MOTION FOR APPROVAL OF
STIPULATION BETWEEN SURGE TRANSPORTATION, INC.
AND OTR CAPITAL, LLC A/K/A OTR SOLUTIONS**

NOTICE OF OPPORTUNITY TO OBJECT AND REQUEST FOR HEARING

If you object to the relief requested in this paper you must file a response with the Clerk of Court at 300 North Hogan Street, Suite 3-150, Jacksonville, Florida 32202, and serve a copy on (i) Richard R. Thames, Esq., Thames | Markey, 50 North Laura Street, Suite 1600, Jacksonville, Florida 32202, and (ii) David I. Swan, Esq., Hirschler Fleischer, 1676 International Drive, Suite 1350, Tysons, Virginia 22102-4940 within fourteen (14) days from the date of the attached proof of service, plus an additional three days if this paper was served on any party by U.S. Mail. If you file and serve a response within the time permitted, the Court will either notify you of a hearing date or the Court will consider the response and grant or deny the relief requested in this paper without a hearing. If you do not file a response within the time permitted, the Court will consider that you do not oppose the relief requested in the paper, and the Court may grant or deny the relief requested without further notice or hearing. You should read these papers carefully and discuss them with your attorney if you have one. If the paper is an objection to your claim in this bankruptcy case, your claim may be reduced, modified, or eliminated if you do not timely file and serve a response.

Debtor, Surge Transportation, Inc. (“Debtor” or “Surge”), moves the Court, pursuant to § 105(a) of title 11 of the United States Code, and Rule 9019 of the Federal

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.

Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for entry of an order authorizing and approving that certain Stipulation dated August 29, 2023 (the “Stipulation”) by and between Surge and OTR Capital, LLC, also known as OTR Solutions (“OTR”), and in support of this motion states:

Jurisdiction And Venue

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicate for the relief sought herein is § 105(a) of the Bankruptcy Code, as supplemented by

Background

4. On July 24, 2023 (the “Petition Date”), Surge filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code (the “Bankruptcy Case”).
5. Surge is a Jacksonville, Florida based trucking/freight broker, engaged in, among other things, sourcing extra truckload capacity during peak season periods and on short lead times. As a broker, Surge economically acts as a middleman between its customers (the “Customers”), who are generally suppliers/shippers of consumer goods, and motor carriers (“Carriers”) who provide freight delivery services for the goods.
6. Since the Petition Date Surge has continued to operate as a trucking/freight broker and to manage its financial and business affairs as a debtor in possession under sections 1107(a) and 1108 of the Code.

7. OTR is a factoring company that factors accounts receivable for various Carriers that provide freight delivery services for, among others, Surge and its Customers. OTR asserts that as of August 18, 2023, Surge and its customers were separately and independently indebted to OTR in the approximate amount of \$624,698.45 on account of pre-Petition Date accounts receivable assigned to OTR by Carriers. Surge disputes this contention.

8. Following the Petition Date, representatives of OTR contacted multiple Surge Customers with the stated intention of collecting from those Customers amounts due to OTR on account of pre-Petition Date accounts receivable assigned to OTR by Carriers.

9. DAT Freight & Analytics (“DAT”) is a software company that operates the “DAT Load Board” which is used by Carriers throughout the United States to connect them with available loads being offered by shippers and trucking brokers, including Surge and Surge’s Customers. Surge uses the DAT Load Board to list loads it is offering for its Customers. The DAT Load Board identifies not only broker company contact information, and details on load origin and destination, weights, and routes, but also whether Carrier invoices arising from a particular broker’s loads are deemed eligible to be factored by companies such as OTR. Brokers whose invoices are eligible to be factored are identified with a “checkmark” (the “Checkmark”) on the DAT Load Board.

10. Pursuant to a contractual relationship between OTR and DAT, OTR controls the Checkmark as to Surge, and following the Petition Date, removed the Surge Checkmark. The absence of a Checkmark generally indicates that the broker posting load opportunities is not creditworthy. As a result, Surge contends that it is experiencing difficulty in placing loads for its Customers with Carriers.

11. In response, on August 4, 2023, Surge filed its “*Debtor’s Emergency Motion For An Order (I) To Show Cause Why OTR Solutions F/K/A OTR Capital Should Not Be Held In Contempt For Violation Of The Automatic Stay, And (II) To Enforce Automatic Stay*” (the “Sanctions Motion”) [Docket No. 61], seeking to have the Bankruptcy Court hold OTR in contempt for (i) violating the automatic stay of section 362(a) of the Code and the Bankruptcy Court’s Interim Order of July 28, 2023 approving a post-petition financing agreement (the “DIP Agreement”) between Surge and Triumph Financial Services, LLC (“Triumph”).

12. On August 9, 2023, OTR filed a Response (the “Response”) [Docket No. 71] to the Sanctions Motion, denying that its conduct violated the automatic stay of the Code or the Bankruptcy Court’s July 28, 2023 Interim Order, or was in any other way improper and sanctionable. The Bankruptcy Court has scheduled an evidentiary hearing on the Sanctions Motion and the Response for September 28, 2023.

13. The DIP Agreement permits Carriers providing post-petition services to Surge to have their resulting invoices paid on an expedited basis through Triumph’s “TriumphPay” payment service. Nonetheless, because of contractual arrangements between OTR and the Carriers who factor their invoices with OTR, those Carriers are not currently able to utilize the TriumphPay “quick-pay” service or receive payments directly from Triumph or Surge when the Carriers wish to accept loads from Surge.

14. Since the filing of the Sanctions Motion, Surge and OTR have worked diligently to resolve the issues identified in the Sanctions Motion, resulting in the entry into the Stipulation which is attached hereto as **Exhibit A**.

The Stipulation

15. The material terms of the Stipulation are as follows:
- a. Reinstatement of Checkmark. Within three (3) business days of the execution of the Agreement, OTR shall direct and cause DAT to reinstate the Checkmark for Surge on the DAT Load Board, thereby indicating that Carrier invoices to Surge are eligible to be factored. OTR shall not thereafter remove the Checkmark for Surge except as provided in paragraph c. below.
 - b. Release of Carriers. Within three (3) business days of the execution of this Agreement, subject to the provisions listed below in Paragraph 3, and notwithstanding any contractual arrangement between OTR and Carriers that factor invoices with OTR, OTR shall (a) notify in writing and permit Carriers factoring through OTR that they may accept loads from Surge and receive payment of their invoices directly through TriumphPay, (b) notify Triumph and Surge in writing that they may pay Carriers providing post-petition services to Surge directly notwithstanding any prior notices of assignment delivered to either Surge or Triumph, and (c) refrain from placing any statement or indication on the OTR portal intended to discourage Carriers from doing business with Surge. OTR shall provide proof of compliance with subparts (a) and (b) following the provision of the required notice. For the avoidance of doubt, any letters of release provided shall be limited to post-petition invoices.
 - c. Invoice Payment Benchmark. Notwithstanding anything herein to the contrary, in the event that this Bankruptcy Case is converted to a Chapter 7 case, or if Surge or TriumphPay fails to pay post-petition OTR Carrier customer invoices within thirty (30) days of submission to Surge of the routine paperwork necessary for invoice processing, OTR shall be released from its obligations under this Stipulation. Any dispute that Surge has with any OTR factored invoices must be submitted to OTR within fourteen (14) days and with all support for Surge's dispute. In the event a dispute is timely raised by Surge, Surge shall request that TriumphPay hold an amount equal to the invoice amount due the OTR Carrier pending resolution of any claim. In addition, OTR shall have the right to request from the Bankruptcy Court relief from its obligations under this Stipulation, and relief from the automatic stay of section 362(a) of the Code to allow it to cause DAT to remove the Checkmark for Surge from the DAT Load Board; provided that Surge shall be afforded three (3) days from notice of default to establish that it is not in default or violation of the foregoing benchmark.

16. The Stipulation is the product of good faith, arm's-length negotiations between the Debtor and OTR. As set forth below, approval of the Stipulation is in the best interests of the Debtor, the Debtor's estate, and its creditors.

Basis for Relief

17. Eleven U.S.C. § 362(a), known as the bankruptcy stay, prohibits any act to collect a prepetition debt owed by a debtor absent permission from the bankruptcy court. Persons or entities who willfully violate the automatic stay are subject to sanctions, including both compensatory and exemplary damages. Surge contends that OTR's actions in contacting its shipping customers, coupled with its demand for compensation to restore its Checkmark, constitute a willful violation of § 362(a). Surge seeks both compensatory and exemplary damages for that alleged conduct. OTR naturally opposes that contention, arguing that the shipping customers are severally liable for the unpaid Carrier claims and therefore, its conduct does not violate the automatic stay. OTR further argues that the bankruptcy court has no authority to require it to restore Surge's Checkmark as the decision to remove the Checkmark was based solely on its opinion as to Surge's creditworthiness.

18. The resolution of these issues is, however, secondary to Surge's need to have its Checkmark restored on the DAT Load Board. The vast majority of the Carrier community utilizes the DAT Load Board to bid on loads. Without its Checkmark therefore, Carriers will not bid on shipments being brokered through Surge. Indeed, Surge has experienced significant difficulty in placing shipping orders with Carriers since the Checkmark was removed by OTR.

19. Though an award of damages could conceivably compensate Surge for the loss in volume attributable to OTR's alleged conduct, a damage award is by no means certain. Furthermore, there are questions as to whether the bankruptcy court can order OTR to restore the Checkmark. The proposed compromise, however, eliminates these risks through voluntary restoration of the Checkmark by OTR in exchange for dismissal of the Sanctions Motion. OTR has also agreed to release carrier customers providing postpetition services to Surge from the assignment of receivables, which in turn will permit Surge to pay the Carriers directly on an expedited basis through the "quick pay" program established under the recently approved factoring agreement between Surge and Triumph Business Credit.

20. Bankruptcy Rule 9019(a) provides that on a motion by the trustee, or in this case, a debtor in possession, and after notice and a hearing the court may approve a compromise or settlement. "The decision of a [t]rustee in Bankruptcy to enter a settlement is made within his or her business judgment. Compromises are generally approved if the Bankruptcy Court finds that they meet the business judgment of the trustee." *U.S. v. Hartog*, 597 B.R. 673, 679 (S.D. Fla. 2019) (internal citations omitted). When considering compromises or settlements for approval, the bankruptcy court is to "determine whether the proposed settlement is fair and equitable." *In re Air Safety Int'l, L.C.*, 336 B.R. 843, 852 (S.D. Fla. 2005). Settlements or compromises should be approved unless they "fall below the lowest point in the range of reasonableness." *In re Bicoastal Corp.*, 164 B.R. 1009, 1016 (Bankr. M.D. Fla. 1993).

21. In the Eleventh Circuit, the factors courts consider in determining whether to approve the settlement include: (i) the probability of success in the litigation; (ii) the

difficulties, if any, to be encountered in the matter of collection; (iii) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and (iv) the paramount interest of the creditors and proper deference to their reasonable views in the premises. *In re Justice Oaks II, Ltd.*, 898 F.2d 1544, 1549 (11th Cir. 1990) (establishing the legal standard for approval of settlements). In evaluating the settlement, the Court “need not rest its decision whether to approve a settlement upon a resolution of ultimate factual and legal issues which underlie the disputes that are proposed to be compromised ... rather, the Court may, and should, make a pragmatic decision on the basis of all equitable factors.” *In re Holywell Corp.*, 93 B.R. 291 (Bankr. S.D. Fla. 1988) (emphasis in original, citations omitted).

22. Application of the *Justice Oaks II* factors to the justifications outlined above establishes that the settlement between Surge and OTR, as memorialized in the Stipulation, is well within the range of reasonableness and in the best interests of the estate and its creditors. Accordingly, Surge respectfully submits that the Stipulation should be approved.

THAMES | MARKEY

/s/ Richard R. Thames

By _____
Richard R. Thames

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- and -

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Attorneys for Surge Transportation, Inc.

Certificate of Service

I hereby certify that on August 30, 2023, the foregoing pleading was transmitted to the Clerk of the Court for uploading to the Case Management/Electronic Case Files (“CM/ECF”) System, which will send a notice of electronic filing to the persons who have consented to the receipt of pleadings through electronic means. I further certify that on August 30, 2023, a copy of the foregoing was served by U.S. Mail, postage prepaid to the Rule 1007(d) list of creditors and parties in interest listed on the mailing matrix attached hereto.

/s/ Richard R. Thames

Attorney

Jill E. Kelso, Esq.
Office of the U.S. Trustee
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Orlando, FL 32801

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c/o Michael W. Ullman, Esq.
Ullman & Ullman, P.A.
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New York, New York 10013

JPMorgan Chase Bank, N.A.
Attn: Vice President
10 S. Dearborn
Mailcode IL-1-P001
Chicago, Illinois 60603-2300

Bank of America
Attn: Vice President
900 W. Trade Street
Charlotte, North Carolina 28255

Citibank Europe, PLC
Attn: Vice President
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Quay Dublin, DU / IRL

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Services
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St. Louis, Missouri 63150

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Fort Worth, Texas 76161

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General Counsel, Legal Dept.
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Crestmark TPG, LLC
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Franklin, Tennessee 37067

E2Open
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General Counsel
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Austin, Texas 78759

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Carlsbad, California 92008

England Carrier Services
d/b/a CR England
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St. Louis, Missouri 63195

Firstline Funding Group
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Madison, South Dakota 57042

Love's Solutions, LLC
Attn: John Akers,
Senior Group Manager
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Oklahoma City, Oklahoma 73120

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Chicago Heights, Illinois 60412

OTR Solutions
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Phoenix Capital Group
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Des Moines, Iowa 50305

Project44
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Park Ridge, Illinois 60068

TBS Factoring Service
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Oklahoma City, Oklahoma 73132

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Triumph Financial Services
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GrayRobinson
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U.S. Securities & Exchange
Commission
Office of Reorganization
950 E. Paces Ferry Rd., NE, Ste. 900
Atlanta, Georgia 30326-1382

Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-7346

U.S. Small Business Administration
7825 Baymeadows Way, Suite 100-B
Jacksonville, Florida 32256

MDD d/b/a Denney Transport, Ltd.
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Commerce City, Colorado 80022

Apex Capital Corp.
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Fort Worth, Texas 76102-4193

Advance Business Capital, LLC
c/o Jason Burnette, Esq.
GrayRobinson, P.A.
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Jacksonville, Florida 32202

U.S. Small Business Administration
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Birmingham, Alabama 35203

Illinois Department of Revenue
Post Office Box 19035
Springfield, Illinois 62794-9035

Florida Department of Revenue
5050 W. Tennessee Street
Tallahassee, Florida 32399-0100

EXHIBIT “A”

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
(Jacksonville Division)

In re:

SURGE TRANSPORTATION INC.¹,
Debtor.

Case No. 3:23-bk-1712-JAB

Chapter 11

STIPULATION

THIS STIPULATION is made and entered into this _____ day of August, 2023 (the “**Effective Date**”), by and between SURGE TRANSPORTATION, INC. (“**Surge**”) and OTR Capital, LLC a/k/a OTR Solutions (“**OTR**”) (each a “**Party**” and collectively, the “**Parties**”), who intending to be legally bound, hereby stipulate and agree as follows:

RECITALS

1. On July 24, 2023 (the “**Petition Date**”), Surge filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code (the “**Code**”) in the United States Bankruptcy Court for the Middle District of Florida, Jacksonville Division (the “**Bankruptcy Court**”), commencing bankruptcy Case No. 3:23-bk-01712-JAB (the “**Bankruptcy Case**”).

2. Surge is a Jacksonville, Florida based trucking/freight broker, engaged in, among other things, sourcing extra truckload capacity during peak season periods and on short lead times. As a broker, Surge economically acts as a middleman between its customers (the “**Customers**”), who are generally suppliers/shippers of consumer goods, and motor carriers (“**Carriers**”) who provide freight delivery services for the goods.

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.

3. Since the Petition Date Surge has continued to operate as a trucking/freight broker and to manage its financial and business affairs as a debtor in possession under sections 1107(a) and 1108 of the Code.

4. OTR is a factoring company that factors accounts receivable for various Carriers that provide freight delivery services for, among others, Surge and its Customers. OTR asserts that as of August 18, 2023, Surge and its customers were separately and independently indebted to OTR in the approximate amount of \$624,698.45 on account of pre-Petition Date accounts receivable assigned to OTR by Carriers. Surge disputes this contention.

5. Following the Petition Date, representatives of OTR contacted multiple Surge Customers with the stated intention of collecting from those Customers amounts due to OTR on account of pre-Petition Date accounts receivable assigned to OTR by Carriers.

6. DAT Freight & Analytics (“DAT”) is a software company that operates the “DAT Load Board” which is used by Carriers throughout the United States to connect them with available loads being offered by shippers and trucking brokers, including Surge and Surge’s Customers. Surge uses the DAT Load Board to list loads it is offering for its Customers. The DAT Load Board identifies not only broker company contact information, and details on load origin and destination, weights, and routes, but also whether Carrier invoices arising from a particular broker’s loads are deemed eligible to be factored by companies such as OTR. Brokers whose invoices are eligible to be factored are identified with a “checkmark” (the “Checkmark”) on the DAT Load Board.

7. Pursuant to a contractual relationship between OTR and DAT, OTR controls the Checkmark as to Surge and following the Petition Date removed the Surge Checkmark. As a result, Surge contends that it is experiencing difficulty in placing loads for its Customers with Carriers.

8. As a result of the foregoing, on August 4, 2023, Surge filed its “*Debtor’s Emergency Motion For An Order (I) To Show Cause Why OTR Solutions F/K/A OTR Capital Should Not Be Held In Contempt For Violation Of The Automatic Stay, And (II) To Enforce Automatic Stay*” (the “**Sanctions Motion**”) [ECF Docket No. 61], seeking to have the Bankruptcy Court hold OTR in contempt for (i) violating the automatic stay of section 362(a) of the Code and the Bankruptcy Court’s Interim Order of July 28, 2023 approving a post-petition financing agreement (the “**DIP Agreement**”) between Surge and Triumph Financial Services, LLC (“**Triumph**”).

9. On August 9, 2023, OTR filed a *Response* (the “**Response**”) [ECF Docket No. 71] to the Sanctions Motion, denying that its conduct violated the automatic stay of the Code or the Bankruptcy Court’s July 28, 2023 Interim Order, or was in any other way improper and sanctionable. The Bankruptcy Court has scheduled an evidentiary hearing on the Sanctions Motion and the Response for September 28, 2023.

10. The DIP Agreement permits Carriers providing post-petition services to Surge to have their resulting invoices paid on an expedited basis through Triumph’s “TriumphPay” payment service. Nonetheless, because of contractual arrangements between OTR and the Carriers who factor their invoices with OTR, those Carriers are not currently able to utilize the TriumphPay “quick-pay” service or receive payments directly from Triumph or Surge when the Carriers wish to accept loads from Surge.

11. Surge and OTR have engaged in good faith negotiations to resolve the issues identified in the Sanctions Motion and the Response.

12. To avoid the expense of further litigation and the uncertainties related thereto, and without any admission of liability, the Parties have agreed to resolve the Sanctions Motion and Response as set forth herein below.

NOW, THEREFORE, in consideration of the Recitals set forth above, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby stipulate and agree as follows:

AGREEMENT

1. **Reinstatement of Checkmark.** Within three (3) business days of the execution of this Agreement, OTR shall direct and cause DAT to reinstate the Checkmark for Surge on the DAT Load Board, thereby indicating that Carrier invoices to Surge are eligible to be factored. OTR shall not thereafter remove the Checkmark for Surge except as provided in paragraph 3 below.

2. **Release of Carriers.** Within three (3) business days of the execution of this Agreement, subject to the provisions listed below in Paragraph 3, and notwithstanding any contractual arrangement between OTR and Carriers that factor invoices with OTR, OTR shall (a) notify in writing and permit Carriers factoring through OTR that they may accept loads from Surge and receive payment of their invoices directly through TriumphPay, (b) notify Triumph and Surge in writing that they may pay Carriers providing post-petition services to Surge directly notwithstanding any prior notices of assignment delivered to either Surge or Triumph, and (c) refrain from placing any statement or indication on the OTR portal intended to discourage Carriers from doing business with Surge. OTR shall provide proof of compliance with subparts (a) and (b) following the provision of the required notice. For the avoidance of doubt, any letters of release

provided shall be limited to post-petition invoices.

3. **Invoice Payment Benchmark.** Notwithstanding anything herein to the contrary, in the event that this Bankruptcy Case is converted to a Chapter 7 case, or if Surge or TriumphPay fails to pay post-petition OTR Carrier customer invoices within thirty (30) days of submission to Surge of the routine paperwork necessary for invoice processing, OTR shall be released from its obligations under this Stipulation. Any dispute that Surge has with any OTR factored invoices must be submitted to OTR within fourteen (14) days and with all support for Surge's dispute. In the event a dispute is timely raised by Surge, Surge shall request that TriumphPay hold an amount equal to the invoice amount due the OTR Carrier pending resolution of any claim. In addition, OTR shall have the right to request from the Bankruptcy Court relief from its obligations under this Stipulation, and relief from the automatic stay of section 362(a) of the Code to allow it to cause DAT to remove the Checkmark for Surge from the DAT Load Board; provided that Surge shall be afforded three (3) days from notice of default to establish that it is not in default or violation of the foregoing benchmark.

4. **Consent Order.** Within three (3) business days of the Effective Date above, the Parties will file a Consent Order with the Bankruptcy Court providing for (a) approval of this Stipulation in all respects, and (b) withdrawal of the Sanctions Motion without prejudice to the right of Surge to seek sanctions and other relief against OTR based on only future OTR conduct.

5. **Bankruptcy Court Approval.** This Stipulation shall be null and void *ab initio* and no statement or agreement herein shall be an admission against interest or have any evidentiary effect should the Bankruptcy Court decline to approve and enter the Consent Order in the form substantially similar to that proposed by the Parties.

6. **No Waiver.** Nothing in this Stipulation acts as a waiver of any rights the Parties may have within or outside of this Bankruptcy Case, or of OTR's right to participate in the Bankruptcy Case. No failure of a Party to exercise any power or right given under this Stipulation or to insist upon strict compliance with any of the terms or conditions specified herein shall constitute a waiver of such Party's right to demand strict compliance with the terms of this Stipulation.

7. **Entire Agreement.** This Stipulation contains the entire agreement between the Parties, and they represent by their signatures below their approval of the form and content of same and acknowledge that they have completely read and fully understand the terms of this Stipulation.

8. **Advice of Counsel.** Each Party represents that it has received independent advice from legal counsel of its own choosing with respect to the advisability of entering into this Stipulation or has had the opportunity to obtain such counsel and has declined to exercise its right to do so.

9. **Authority.** Each person who signs this Stipulation represents and warrants that he or she has the authority and capacity to act on behalf of the Party for whom they are signing and to bind the Party and all who might claim through it to the terms of this Stipulation.

10. **No Construction Against Drafter.** The Parties acknowledge and agree that the terms and form of this Stipulation were negotiated by and are the result of the combined efforts of all Parties and their respective counsel and that no Party shall be deemed to be the drafter of this Stipulation for purposes of construing same.

11. **Binding Effect.** This Stipulation is and shall be binding upon and inure to the benefit of the Parties, their heirs, personal representatives, successors and assigns.

12. **Modification.** The terms of this Stipulation may not be changed, modified, waived, discharged or terminated except by an instrument in writing, signed by the Parties.

13. **Counterparts.** For the convenience of the Parties, this Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Telefacsimile or email transmissions of any executed original and/or retransmission of any executed telefacsimile or email transmission shall be deemed to be the same as the delivery of an executed original.

14. **Attorneys' Fees.** Each Party shall bear its own fees and costs in connection with the Sanctions Motion, the Response, this Stipulation, and the Consent Order.

SURGE TRANSPORTATION, INC.

By _____
Omar Singh
Its President

OTR CAPITAL, LLC

By _____
Name _____
Its _____