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Attorneys for Defendant Specialized Rail Service, Inc.

SURFACE TRANSPORTATION BOARD

UTAH CENTRAL RAILWAY COMPANY,
LLC,

Petitioner,

v.

KENCO LOGISTIC SERVICES, LLC, a
Delaware limited liability company, KENCO
GROUP, and SPECIALIZED RAIL
SERVICE, INC.

Respondents.

**SPECIALIED RAIL SERVICE, INC.'s
RESPONSE TO PETITION FOR
DECLARATORY ORDER**

Docket No. FD 361310

Respondent Specialized Rail Service, Inc. ("SRS"), through counsel and pursuant to 49 C.F.R. § 1111.4, responds to the petition filed by Utah Central Railway Company, LLC ("Petitioner" or "URCY"). SRS responds to the equivalently numbered paragraphs in the Petition, as follows:

PARTIES

1. SRS admits that UCRY is subject to the jurisdiction of the STB. SRS is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 1 and on that basis, denies the same.

2. SRS is without information or knowledge sufficient to form a belief as to the truth of the allegations related to co-respondent, Kenco Logistics Services, LLC and therefore denies the same.

3. SRS is a Nevada corporation with its principal place of business in Utah.

BACKGROUND OF THE ACTION

4. SRS acknowledges that UCRY filed a complaint against SRS in the United States District Court for the District of Utah, *Utah Central Railway Company, LLC v. Specialized Rail Service, Inc.*, Civil No. 1: 17-cv-00019-RJS. SRS filed an answer and counterclaim vigorously denying the charges and denying that UCRY is entitled to any judgment or payment. SRS further alleged that UCRY breached an agreement to switch cars at SRS' facility every day before noon. UCRY is not entitled to assess, impose or collect demurrage charges against UCRY for the reasons set forth below and in the attached exhibits.

5. SRS is without information or knowledge sufficient to form a belief as to the truth of the allegations related to co-respondent, Kenco Logistics Services, LLC and therefore denies the same.

6. SRS did deny the fact, amount, reasonableness, and calculation of the alleged demurrage charges. As will be discussed below, UCRY improperly charged SRS demurrage in numerous instances where any delay in releasing cars was not the fault of SRS. Rather, the delay

was a result of bunching, stacking, breakdowns in UCRY's equipment, UCRY's admitted inability to handle cars coming from the Class I line, and failure to switch cars as promised.

7. Admitted.

8. Admitted.

9. Admitted.

10. SRS does not oppose consolidation of these matters. However, while the defenses raised by the respondents are similar and based on similar facts and events, the respondents themselves are completely separate and independent entities. Thus, the individual invoices and demurrage charges for each respondent should be addressed separately.

DEFENSES

FIRST DEFENSE

For purposes of efficiency and judicial economy, SRS specifically incorporates herein and refers to the defenses it raised in its Answer and Counterclaim, attached as **Exhibit A**, as if fully set forth herein.

SECOND DEFENSE

SRS incorporates Kenco's Response to UCRY's Petition as if fully set forth herein. Although the specific demurrage charges are different, many of the issues raised in Kenco's response are equally applicable to SRS. This includes, but is not limited to, the opinions, analysis and discussions attached to Kenco's Response with respect to bunching, stacking, UCRY's inconsistent service, lack of service, and UCRY's locomotive and other track problems. Because SRS and Kenco both operate out of the BDO, SRS experienced the same and/or very similar problems as Kenco during the same periods of time.

THIRD DEFENSE

UCRY's demurrage charges are unreasonable because they stem from car hire charges (charges for cars by mileage or time while in another railroad's possession) between BNSF and UCRY. The demurrage charges are directly related to rail cars that were unreasonably bunched as a result of service related and operational challenges between the Class I rail carrier and UCRY. (*See* Declaration of Jeff Armstrong dated September 14, 2017 ("Armstrong Decl."), attached hereto as **Exhibit B**).

FOURTH DEFENSE

The Petition fails to state a claim upon which relief can be granted. Indeed, UCRY has utterly failed to meet its burden of showing that the demurrage charges assessed on the invoices reference in its Petition are reasonable. That burden rests solely with UCRY. *See, e.g., Unger – Pet. For Decl. Order – Assessment and Collection of Demurrage and Switching Charges*, NOR 42030, slip op at 9 (STB served June 14, 2000) ("In a court action to collect demurrage charges, the burden of proof is on the railroad to provide evidence of actual or constructive dates of car placement and release and to show how the assessed charges were computed."). Here, UCRY failed to even present the STB with the invoices that UCRY claims provide the basis for the assessed demurrage. Instead, UCRY simply attaches its complaint, identifies the invoices by reference, and asks that the STB accept its demurrage calculations without question. UCRY does not provide the STB with any analysis regarding why demurrage was assessed, when cars were placed (constructive or actual), whether SRS had access to cars once they were placed, when cars were spotted, whether UCRY's interchanges with the Class I rail line were so infrequent that rail cars consigned to SRS were brought in bunches rather than adequately spaced as SRS intended and anticipated, why there was a delay between constructive and actual placement, how

frequently (or infrequently) cars were switched, or any other factor contributing to the assessment of demurrage. This analysis is completely lacking from the Petition. SRS will provide its own analysis of these factors below.

Typical rail tariffs, including freight tariffs PRC1000 and PRC6004-3 at issue here, which UCRY did not attach to its Petition, provide that demurrage begins only when a car cannot be “placed” due to a condition attributable to the consignor or consignee. PRC1000 and PRC6004-3 require UCRY to send notice that the car is being held. As will be evident in this case, many of the conditions giving rise to the demurrage assessment stem from conditions that are not attributable to SRS. Thus, UCRY’s claims fail under its own tariffs.

FIFTH DEFENSE

The alleged demurrage should not have been charged or assessed to SRS under the tariff because it was a result of conditions caused by persons and entities other than SRS.

SIXTH DEFENSE

All demurrage that allegedly accrued prior to February 6, 2014 is barred by the statute of limitations, 49 U.S.C. § 11705.

SEVENTH DEFENSE

Any amounts owed to UCRY must be set off by amounts that UCRY owes SRS as damages pursuant to 49 U.S.C. § 11704(b), including, but not limited to, failure to provide service upon reasonable request pursuant to 49 U.S.C. § 11101—failing and/or refusing to provide reasonable and timely switching services, failing to provide switching services as agreed, failing to reasonably and timely remove cars from the Class I line, allowing cars to become stacked and bunched to prevent SRS from unloading them in a timely manner, charging SRS demurrage when UCRY’s equipment fails.

EIGHTH DEFENSE

Some or all of the demurrage are unreasonable contrary to 49 U.S.C. § 10702.

NINTH DEFENSE

The rules and practices—including, but not limited to, bunching, stacking, and insufficient and inconsistent switching—established by UCRY are unreasonable, contrary to 49 U.S.C. § 10702.

TENTH DEFENSE

The Petition does not establish that the requirements of 49 U.S.C. § 10746 are met. UCRY cannot establish that its demurrage charges fulfill national needs related to (1) freight car use and distribution; or (2) maintenance of an adequate supply of freight cars to be available for transportation of property. UCRY cannot prove that it was not at fault for the demurrage or delay between constructive placement and release.

ELEVENTH DEFENSE

UCRY's claims are barred, in whole or in part to the extent they are barred by the doctrines of estoppel, waiver, consent, license, laches, and/or unclean hands.

TWELFTH DEFENSE

UCRY's Petition should be denied, in whole or in part, to the extent the claims are barred by the doctrines of reliance, release, acquiescence, accord and satisfaction, ratification, discharge, and/or settlement.

THIRTEENTH DEFENSE

The relief requested in the Petition is barred, in whole or in part, by election of remedies, double recovery, and/or mistake.

FOURTEENTH DEFENSE

The relief requested in the Petition is barred, in whole or in part, by reason of set off, amounts UCRY owes SRS, and the Counterclaims asserted in the federal case.

FIFTEENTH DEFENSE

The relief requested in the Petition is barred in whole, or in part, by UCRY's breaches of any agreement, including, but not limited to, breach of the covenant of good faith and fair dealing.

SIXTEENTH DEFENSE

The relief requested in the Petition is barred, in whole or in part, by lack of and/or failure of consideration.

SEVENTEENTH DEFENSE

The relief requested in the Petition is barred, in whole or in part, by UCR's actions which prevented SRS from unloading cars in a timely manner, including, without limitation, failing to timely deliver cars to SRS, intentionally and/or negligently bunching and stacking cars, charging SRS for cars not consigned to SRS, and charging SRS for cars that UCRY misplaced.

EIGHTEENTH DEFENSE

The relief requested in the Petition is barred, in whole or in part, by UCRY's failure to mitigate its damages, if any.

NINETEENTH DEFENSE

The alleged obligations UCRY seeks to enforce are either illegal or violate public policy, and are therefore void and unenforceable. To the extent the granting of relief sought by UCR would violate law or public policy, that relief should be denied.

TWENTIETH DEFENSE

UCRY's claims are barred, in whole or in part, by the economic loss doctrine.

TWENTY-FIRST DEFENSE

UCRY's claims are barred, in whole or in part, by the acts or omissions of third-parties over whom SRS had no control or right to control.

TWENTY-SECOND DEFENSE

UCRY is pursuing its claim without a reasonable basis, in bad faith, and for no purpose other than to harass SRS. UCRY's claim being without merit, SRS is entitled to an award of all expenses incurred, including attorneys' fees.

TWENTY-THIRD DEFENSE

SRS may possess additional defenses that it has yet to identify and which may be identified in the course of discovery in this case. SRS specifically reserves all other affirmative defenses and the right to amend to plead additional defenses that are not yet known and which may become known and identified in the course of discovery in this matter.

TWENTY-FOURTH DEFENSE

In addition to the above defenses, SRS alleges the following facts in support of its defense and in response to the demurrage charged by UCRY:

A. SRS' Operations

1. UCRY operates one or more short lines at the Business Depot Ogden ("BDO"). UCRY is responsible for moving railcars to various spurs at the BDO.
2. SRS receives and unloads cars containing wood pulp, sawdust, and similar materials. SRS then delivers those raw materials to its customers. SRS must rely on UCRY to

bring cars loaded with materials, remove empty cars, and bring a new set of cars to be unloaded. Armstrong Decl. at ¶¶ 5, 8.

3. SRS' unloading facilities are on a spur that typically holds six railcars at a time, depending on the length of the cars. *Id.* ¶ 5.

4. SRS' customers use specialized logistical software to ensure that only five or six cars arrive a day. *Id.* ¶ 7.

5. SRS has not always had operations at the BDO. *Id.* ¶ 9.

6. UCRY convinced SRS to begin operations at BDO by making representations and promises. UCRY promised that if SRS came to the BDO, UCRY would switch cars or "spot" SRS every morning, Monday through Friday, except on certain UCRY holidays. *Id.* ¶ 10.

7. Relying on these representations and promises, SRS agreed to come to BDO and receive rail service from UCRY. *Id.* ¶ 11.

8. SRS employs a full time unloading crew five days a week to unload the six or seven cars that fit on its spur, maintain a steady flow of materials to its customers, and avoid demurrage charges. When UCRY complies with its duty to spot SRS before noon, SRS is almost always able to unload and release all six or seven cars in less than a day. *Id.* ¶¶ 12-13.

9. At various times, UCRY's service has been infrequent and inconsistent. At times, UCRY has gone an entire week without switching any cars for SRS, even though there was space on SRS' spur and there were railcars waiting to be delivered to SRS. *Id.* ¶ 14.

10. When UCRY fails to switch cars every day, or switches cars later in the afternoon, SRS' unloading crew has nothing to do until the cars arrive. UCRY does not notify SRS that it does not intend to spot or switch cars, or that it will be late in switching cars. *Id.* ¶ 15-16.

11. UCRY's breaches force SRS to pay its crew overtime because the crew does nothing during the morning hours while waiting for a spot from UCRY and then had to work well into the evening or on Saturday to unload the cars. On other occasions when UCRY breaches the agreement, members of SRS' crew are unable to stay late and the cars do not get unloaded until the following day. *Id.* ¶ 17-18.

B. UCRY's Creation of the Problem and Failure to Address it

12. UCRY's failure to spot SRS every morning and/or failure to spot SRS every day can cause a significant backlog of cars. Cars that should have been spotted and could have been unloaded are joined by additional cars that need to be spotted and unloaded. In addition, UCRY's lack of sufficient and consistent interchange with the Class I line results in bunching and stacking of cars. *Id.* ¶¶ 19, 27-59, 63, 66, 74.

13. It is unreasonable for UCRY to negligently or intentionally cause bunching and stacking on the line and then charge SRS demurrage for problems caused by parties other than SRS. *Id.* ¶¶ 59, 63, 74.

14. SRS has timely and consistently disputed demurrage charges when they are result from circumstances that are not attributable to SRS, such as UCRY's failure to switch cars or bring SRS a spot, whether due to broken track, broken switches, broken equipment, UCRY's allocation of resources, or unexplained reasons. *Id.* ¶ 19.

15. Each time SRS disputed an invoice, UCRY and/or its parent company, Patriot Rail, stated that it received the dispute and would look into it. *Id.* ¶ 20.

16. SRS would hear nothing more about the matter for several months or even a year, leading it to conclude that the matter was resolved. *Id.* ¶ 21.

17. Several months or a year later, UCRY or its parent would send a demand letter for payment on the disputed invoice, and SRS would remind UCRY of the pending dispute. *Id.* ¶ 22.

18. UCRY or its parent would acknowledge the invoice had been disputed, apologize for sending the demand letter, and indicate that it was investigating the matter. *Id.* ¶ 23.

19. SRS would hear nothing further about the matter for several months or a year, and then the process would begin again with UCRY or its parent demanding payment on the invoice, SRS reminding UCRY of the dispute, and UCRY acknowledging the dispute and stating that was investigating the matter. *Id.* ¶ 24.

20. This cycle has occurred on multiple occasions. UCRY never informed SRS that it completed its investigation. *Id.* ¶ 25.

C. Response to Specific Invoices

21. Exhibit 2 to UCRY's Complaint is an invoice dated November 7, 2013 relating to cars released in October 2013. Under 49 U.S.C. § 11705(a), UCRY had three years, until October 2016 and no certainly no later than November 7, 2016, to bring an action to recover these charges. UCRY did not file a claim in federal court until February 6, 2017 and did not file this petition before the STB until late June 2017. Thus, UCRY is barred from recovering these charges.

22. In addition, SRS timely disputed the charges in this invoice and UCRY's response, or lack thereof, led SRS to believe that the matter had been resolved. UCRY's delay in seeking to recover these charges has resulted in a loss of records that SRS might have used in its defense. *Id.* ¶ 26.

23. The demurrage charges in Exhibit 2 resulted from conditions that were not attributable to SRS, including bunching, stacking, infrequent and inconsistent interchanges with

the Class I rail, and inconsistent switching at SRS' spur. *Id.* ¶ 27. UCRY's Petition contains no evidence to the contrary.

24. Exhibit 3 to UCRY's Complaint is an invoice dated December 4, 2013 relating to cars released in November 2013. UCRY had three years, until November 2016 and no certainly no later than December 4, 2016, to bring an action to recover these charges. UCRY did not file a claim in federal court until February 6, 2017 and did not file this petition before the STB until late June 2017. Thus, UCRY is barred from recovering these charges.

25. In addition, SRS timely disputed the charges in this invoice and UCRY's response, or lack thereof, led SRS to believe that the matter had been resolved. UCRY's delay in seeking to recover these charges has resulted in a loss of records that SRS might have used in its defense. *Id.* ¶ 28.

26. The demurrage charges in Exhibit 3 resulted from conditions that were not attributable to SRS, including bunching, stacking, infrequent and inconsistent interchanges with the Class I rail, and inconsistent switching at SRS' spur. *Id.* ¶ 29. UCRY's Petition contains no evidence to the contrary.

27. Exhibit 4 to UCRY's Complaint is an invoice dated February 4, 2014 relating to cars released in January 2014. UCRY had three years, until January 2017 and no certainly no later than February 4, 2017, to bring an action to recover these charges. UCRY did not file a claim in federal court until February 6, 2017 and did not file this petition before the STB until late June 2017. Thus, UCRY is barred from recovering these charges.

28. In addition, the demurrage in Exhibit 4 should not have been charged to SRS because it related to a car that was not consigned to SRS. As noted on the invoice, the car contained corn syrup; SRS does not receive cars containing corn syrup. *Id.* ¶ 30.

29. Even if the car had been consigned to SRS, the demurrage charges in Exhibit 4 likely resulted from conditions that were not attributable to SRS, including bunching, stacking, infrequent and inconsistent interchanges with the Class I rail, and inconsistent switching at SRS' spur. *Id.* ¶ 31. UCRY's Petition contains no evidence to the contrary.

30. SRS timely disputed the charges in this invoice and UCRY's response, or lack thereof, led SRS to believe that the matter had been resolved. UCRY's delay in seeking to recover these charges may have resulted in a loss of records that support UCRY's charges or SRS' defense. *Id.* ¶ 32.

31. Exhibits 5 through 11 to UCRY's Complaint are invoices dated March through August 2014. These charges resulted from conditions that were not attributable to SRS, including bunching, stacking, infrequent and inconsistent interchanges with the Class I rail, inconsistent switching at SRS' spur, and UCRY's failure to switch cars daily. *Id.* ¶¶ 33-43. At times, UCRY would go days without spotting any cars for SRS, allow cars to stack and bunch on the main line, and then hit SRS with dozens of cars all at once. *Id.* at ¶ 43.

32. SRS was at UCRY's mercy to timely interchange and spot cars. Had UCRY provided consistent interchange service, not allowed the cars to be bunched, and spotted cars to SRS, there would have been no demurrage. At a minimum, had SRS been given the opportunity to unload the cars that these cars that were supposedly sitting in constructive placement (*i.e.*, had UCRY provided timely switches) then it could have avoided all, or most, of the assessed demurrage because it could have unloaded the cars quickly. *Id.* ¶¶ 19, 27-59, 63, 66, 74-76. UCRY's Petition contains no evidence to the contrary.

33. Cars were not physically placed with SRS because of conditions attributable to UCRY and/or the Class I rail line. Therefore, under the Tariffs, they cannot be considered

constructively placed. Demurrage therefore cannot accrue. And to allow demurrage to accrue under these conditions violates 49 U.S.C. § 10746

34. SRS timely disputed the charges in these invoices and UCRY's response, or lack thereof, led SRS to believe that the matter had been resolved. UCRY's delay in seeking to recover these charges may have resulted in a loss of records that support UCRY's charges or SRS' defense. *Id.* ¶ 19-24, 33-46.

35. Exhibits 12 and 15 to UCRY's Complaint are invoices dated October and November 2015. As before, these charges resulted from conditions that were not attributable to SRS, including bunching, stacking, infrequent and inconsistent interchanges with the Class I rail, inconsistent switching at SRS' spur, and UCRY's failure to switch cars daily. *Id.* ¶¶ 47-50. UCRY's Petition contains no evidence to the contrary.

36. SRS timely disputed the charges in these invoices and UCRY's response, or lack thereof, led SRS to believe that the matter had been resolved. UCRY's delay in seeking to recover these charges may have resulted in a loss of records that support UCRY's charges or SRS' defense. *Id.*

37. Exhibit 16 to UCRY's Complaint is an invoice dated January 2016 relating to cars placed in November and December and released in December 2015. These charges resulted from problems attributable to UCRY, not SRS, and UCRY's Petition contains no evidence to the contrary. Late November and all of December 2015 was a difficult time for UCRY. *Id.* ¶ 51.

38. UCRY's engine broke down just before Thanksgiving in 2015. UCRY acknowledged the problem and apologized. *Id.*

39. Shortly after fixing its engine, UCRY's track broke, and it was unable to switch any cars for SRS for several days. *Id.* ¶ 52.

40. When the equipment was finally working again, UCRY continued its practice of inconsistent switching—bringing cars late in the day or not at all—making it impossible for SRS to unload cars or unload them in a timely manner. *Id.* ¶ 53.

41. Specifically, UCRY did not bring SRS any cars on the Tuesday before Thanksgiving (Nov. 24), brought cars after 5 pm on Wednesday, brought cars late in the day on November 30, and did not bring any cars on December 1, 2015.¹ *Id.* ¶ 52-54. This caused significant backup and it is unreasonable to require SRS to immediately unload the backlog of cars caused by UCRY.

42. UCRY's track broke in early December and it did not switch any cars for SRS from Saturday, December 5 until Monday December 14. In the week after that, UCRY's service was hit and miss—bringing cars late on December 15, no cars on December 16; late on December 17; no cars on Friday, December 18; no cars on Monday, December 21; on time on December 22, late on December 23; no cars on December 24; no cars December 28; late on December 29; late on December 30; and no cars on December 31. *Id.* ¶ 55.

43. In each instance, there were cars on UCRY's track waiting to be unloaded and SRS had room on its track or empty cars waiting to be removed. The delayed or missed switches were not due to conditions attributable to SRS. *Id.* ¶¶ 56-57.

44. Cars continued to arrive during this same period, causing bunching, stacking, and a significant backlog of cars to be unloaded. SRS would have begun unloading if it could, but UCRY did not actually place them or would only switch them every other day, despite the fact

¹ UCRY did not bring cars November 26 through 29, during the Thanksgiving holiday. SRS recognizes that UCRY does not operate on those days, but the lack of switches and timely switches in the days leading up to the holiday and lack of switches during the four-day holiday weekend made it impossible for SRS to unload any cars and makes it unreasonable to charge demurrage.

that SRS had unloaded and released the empty cars and was waiting for a new set of full cars. *Id.* ¶ 58.

45. It is an unreasonable business practice, and contrary to the terms of the tariff, for UCRY to fail to switch cars, delay switching cars, create bunching, stacking, and a backlog that cannot be immediately released, and then charge SRS demurrage for these conditions caused by UCRY or parties other than SRS. *Id.* ¶ 58-59.

46. Exhibits 17 and 18 to UCRY's Complaint are invoices dated February and March 2016 relating to cars placed between December 2015 and February 2016. As noted in the preceding paragraphs, problems and conditions attributable to UCRY—broken engine, broken tracks, failure to switch cars daily despite empty cars and room on SRS tracks, failure to switch cars until late in the day—created a backlog of cars that could not immediately be unloaded and released. *Id.* ¶ 60. UCRY's Petition has no evidence to the contrary.

47. UCRY's pattern of missed and late switches continued through January and February 2016: late switch on January 4, no switch on January 5, late switch on January 6, no switch on January 7, late switch on January 8; late switches January 11-13; no switch January 14; normal switch January 15; no switch January 18; late switch January 19; no switch January 20; late switches January 28-29; no switch February 1; late switch February 2; late switch February 5. The resulting backlog, a condition created by UCRY, took all of January and into February to clear. *Id.* ¶ 61-62.

48. SRS' customers use specialized logistical software to ensure that only five or six cars arrive a day, but due to inconsistent switches, bunching, stacking, and lack of coordinating between UCRY and the Class I line, forty-one cars arrived for SRS between January 4 and 8. *Id.* ¶ 63.

49. In addition to the above problems, UCRY did not properly record cars that were placed and released. Car SMW536116 was placed on January 19 and released as empty on January 20, but UCRY failed to clear it from its records until February 2, generating \$1,400 in wrongful charges. *Id.* ¶ 64.

50. Similarly, car KRR7021 was placed on January 19, released empty on January 20, but UCRY charged SRS as if it were loaded until January 22. *Id.* ¶ 65.

51. Exhibits 19 and 20 to UCRY's Complaint are invoices dated August and September 2016 relating to cars placed in July and August 2016.

52. In July 2016, UCRY failed to bring SRS cars for several days in a row, experienced significant problems with bunching and stacking, and had system problems that prevented SRS from releasing cars. *Id.* ¶ 66.

53. UCRY brought cars late on June 30, did not bring any cars on July 1 or over the next several days because of the holiday weekend. UCRY did not bring any cars to SRS July 6 through 10 and on July 11, twenty new cars appeared on SRS' inventory. UCRY switched cars only later in the day during July 11 through 13, did not switch any cars on July 14, and was late on July 15, which prevented SRS from unloading the cars. UCRY did not bring SRS any cars July 18 through 25, then placed thirty-four cars on SRS' inventory on July 25 and 27. UCRY was late in switching cars on July 25, did not switch any cars on July 26, and was late July 28-29. *Id.* ¶¶ 67-71.

54. UCRY did not switch any cars until later in the day during August 1-4. On August 3 and August 10, UCRY did not bring any cars until 6 pm, after SRS's crew was gone for the day, and despite UCRY's prior representations that it would switch SRS' cars daily and early in the day. UCRY was late again on August 8; did not switch cars on August 9; was late on August 10;

did not switch cars August 11-12; was late August 15-19; did not switch cars August 24; was late August 25-26. *Id.* ¶ 72-73.

55. UCRY acknowledged that railcar stacking and bunching created problems for SRS. *Id.* ¶ 74.

56. Had UCRY provided consistent switching and interchange services, SRS could have unloaded the cars without incurring any demurrage. *Id.* ¶ 75.

57. Holding SRS responsible for delays and problems created by UCRY is improper, contrary to the provisions of the tariff schedule, and an unreasonable and unfair practice. *Id.* ¶¶ 1-76.

DATED this 14th day of September, 2017

KIRTON McCONKIE

/s/ Shawn T. Richards
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Attorneys for Specialized Rail Services, LLC

I, Shawn T. Richards, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this document.

/s/ Shawn T. Richards

CERTIFICATE OF SERVICE

I certify that on the 14th day of September, 2017, I caused a true and correct copy of the foregoing **SRS' RESPONSE TO PETITION FOR DECLARATORY ORDER** to be served on the foregoing by email and U.S. Mail, postage prepaid:

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Exhibit A

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

UTAH CENTRAL RAILWAY COMPANY,
LLC,

Plaintiff,

v.

SPECIALIZED RAIL SERVICE, INC.,

Defendant.

ANSWER AND COUNTERCLAIM

Case No. 1:17-cv-00019-BCW

Magistrate Judge Brooke C. Wells

Defendant Specialized Rail Service, Inc. (“SRS” or “Defendant”) respectfully submits its answer and counterclaim in response to Plaintiff Utah Central Railway Company’s (“UCRY”) Complaint (the “Complaint”) as follows:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

SRS responds to the numbered paragraphs in the Complaint as follows:

PARTIES

1. SRS is without information or knowledge sufficient to form a belief as to the truth of the allegations and therefore denies the same.

2. SRS admits that it is a Nevada Corporation and denies that its principal place of business is not in Utah. The Utah Department of Commerce website speaks for itself. All other allegations are denied.

3. Paragraph 3 consists of legal conclusions, to which no response is required. To the extent a response is required, SRS denies the same.

4. Paragraph 4 consists of legal conclusions, to which no response is required. To the extent a response is required, SRS denies the same.

5. Paragraph 5 consists of legal conclusions, to which no response is required. To the extent a response is required, SRS denies the same.

6. Paragraph 6 consists of legal conclusions, to which no response is required. To the extent a response is required, SRS denies the same.

FIRST CAUSE OF ACTION

7. SRS incorporates its responses to paragraphs 1-6 as if fully set forth herein.

8. SRS admits that Local Freight Tariff PRC6004-3 is one of the documents that governed the relationship between SRS and UCRY between April 10, 2014 and October 31, 2015.

9. The quoted section of PRC6004-3 speaks for itself; any factual allegations or legal conclusions intended or implied are denied.

10. The PRC6004-3 speaks for itself; any factual allegations or legal conclusions intended or implied are denied.

11. Exhibit 2 appears to be a copy of an invoice. SRS disputes the demurrage charges and denies that it is responsible to pay them.

12. Exhibit 3 appears to be a copy of an invoice. SRS disputes the demurrage charges and denies that it is responsible to pay them.

13. Exhibit 4 appears to be a copy of an invoice. SRS disputes the demurrage charges and denies that it is responsible to pay them.

14. Exhibit 5 appears to be a copy of an invoice. SRS disputes the demurrage charges and denies that it is responsible to pay them.

15. Exhibit 6 appears to be a copy of an invoice. SRS disputes the demurrage charges and denies that it is responsible to pay them.

16. Exhibit 7 appears to be a copy of an invoice. SRS disputes the demurrage charges and denies that it is responsible to pay them.

17. Exhibit 8 appears to be a copy of an invoice. SRS disputes the demurrage charges and denies that it is responsible to pay them.

18. Exhibit 9 appears to be a copy of an invoice. SRS disputes the demurrage charges and denies that it is responsible to pay them.

19. Exhibit 10 appears to be a copy of an invoice. SRS disputes the demurrage charges and denies that it is responsible to pay them.

20. Exhibit 11 appears to be a copy of an invoice. SRS disputes the demurrage charges and denies that it is responsible to pay them.

21. Exhibit 12 appears to be a copy of an invoice. SRS disputes the demurrage charges and denies that it is responsible to pay them.

22. Deny. SRS disputes the demurrage charges and denies that it is responsible to pay them.

23. PRC6004-3 speaks for itself; any factual allegations or legal conclusions intended or implied are denied. SRS denies that it is responsible for any demurrage or interest.

24. Deny.

25. Deny.

26. Deny.

27. Deny.

28. Deny.

29. Deny.

30. Deny.

31. Deny.

32. Deny.

33. Deny.

34. Deny.

35. Deny.

SECOND CAUSE OF ACTION

36. SRS incorporates its responses to paragraphs 1 through 35 as if fully set forth herein.

37. Deny.

38. PRC1000 speaks for itself; any factual allegations or legal conclusions intended or implied are denied.

39. PRC1000 and CC2000 speak for themselves; any factual allegations or legal conclusions intended or implied are denied.

40. Exhibit 15 appears to be a copy of an invoice. SRS disputes the demurrage charges and denies that it is responsible to pay them.

41. Exhibit 16 appears to be a copy of an invoice. SRS disputes the demurrage charges and denies that it is responsible to pay them.

42. Exhibit 17 appears to be a copy of an invoice. SRS disputes the demurrage charges and denies that it is responsible to pay them.

43. Exhibit 18 appears to be a copy of an invoice. SRS disputes the demurrage charges and denies that it is responsible to pay them.

44. Exhibit 19 appears to be a copy of an invoice. SRS disputes the demurrage charges and denies that it is responsible to pay them.

45. Exhibit 20 appears to be a copy of an invoice. SRS disputes the demurrage charges and denies that it is responsible to pay them.

46. Deny.

47. PRC1000 speaks for itself; any factual allegations or legal conclusions intended or implied are denied.

48. Deny.

49. Deny.

50. Deny.

51. Deny.

52. Deny.

53. Deny.

54. Deny.

55. SRS additionally denies all allegations not expressly admitted.

THIRD DEFENSE

Plaintiff's claims fail, in whole or in part, to the extent they are barred by the doctrines of estoppel, waiver, consent, license, laches, and/or unclean hands.

FOURTH DEFENSE

Plaintiff's claims fail, in whole or in part, to the extent they are barred by the doctrines of reliance, release, acquiescence, accord and satisfaction, ratification, discharge, and/or settlement.

FIFTH DEFENSE

The Complaint is barred, in whole or in part, by election of remedies, double recovery, and/or mistake.

SIXTH DEFENSE

The Complaint is barred in whole, or in part, by Plaintiff's breaches of any agreement, including, but not limited to, breach of the covenant of good faith and fair dealing.

SEVENTH DEFENSE

The Complaint is barred, in whole or in part, by lack of and/or failure of consideration.

EIGHTH DEFENSE

The Complaint is barred, in whole or in part, by Plaintiff's actions which prevented SRS from unloading cars in a timely manner, including, without limitation, failing to timely deliver cars to SRS, intentionally and/or negligently bunching and stacking cars, charging SRS for cars not consigned to SRS, and charging SRS for cars that Plaintiff misplaced.

NINTH DEFENSE

The Complaint is barred, in whole or in part, by reason of the Counterclaims asserted herewith.

TENTH DEFENSE

Plaintiff's damages, if any, are reduced and/or barred, in whole or in part, by the doctrine of offset and amounts Plaintiff owes Defendant.

ELEVENTH DEFENSE

Plaintiffs' claims fail to the extent they are filed after the expiration of any applicable statute of limitations.

TWELFTH DEFENSE

The Complaint is barred, in whole or in part, by Plaintiff's failure to mitigate its damages, if any.

THIRTEENTH DEFENSE

This matter involves a dispute over demurrage charges and primary jurisdiction over Plaintiff's claims rests with the Surface Transportation Board. For this reason, Plaintiff is not entitled to a trial by jury of its claims.

FOURTEENTH DEFENSE

To the extent Plaintiff seeks costs or attorney's fees pursuant to statute or contract, Defendant is entitled to reciprocal attorney's fees claims on prevailing in this action, including, but not limited to, any contract between the parties and Utah Code § 78B-5-826.

FIFTEENTH DEFENSE

Plaintiff's Second Cause of Action fails for lack of standing.

SIXTEENTH DEFENSE

The alleged obligations Plaintiff seeks to enforce are either illegal or violate public policy, and are therefore void and unenforceable. To the extent the granting of relief sought by Plaintiff would violate law or public policy, that relief should be denied.

SEVENTEENTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the economic loss doctrine.

EIGHTEENTH DEFENSE

Plaintiff is pursuing its claim without a reasonable basis, in bad faith, and for no purpose other than to harass SRS. Plaintiff's claim being without merit, SRS is entitled to an award of all expenses incurred, including attorneys' fees, pursuant to Utah Code Ann. § 78B-5-825.

NINETEENTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the acts or omissions of third-parties over whom Defendant had no control or right to control.

TWENTIETH DEFENSE

SRS may possess additional defenses that it has yet to identify and which may be identified in the course of discovery in this case. SRS specifically reserves all other affirmative defenses and the right to amend to plead additional defenses that are not yet known and which may become known and identified in the course of discovery in this matter.

RELIANCE UPON THE JURY DEMAND

Although Defendant denies that Plaintiff is entitled to a jury for this demurrage claims, Defendant gives notice to the Court and all counsel that it does now and will rely upon the demand for trial by jury and fee previously filed in this case.

PRAYER FOR RELIEF

WHEREFORE, SRS requests judgment as follows:

1. That Plaintiff's Complaint and claims against SRS be dismissed in their entirety with prejudice and that Plaintiff take nothing thereby;
2. That the Court award SRS its costs and expenses incurred in defending against Plaintiff's Complaint, including reasonable attorneys' fees; and
3. That the Court grant such further relief as the Court deems just and appropriate.

COUNTERCLAIM

Counterclaim Plaintiff, Specialized Railway Service, Inc. ("SRS") alleges as follows:

PARTIES JURISDICTION, AND VENUE

1. SRS is a Nevada corporation with its principal place of business in Utah.
2. On information and belief, Counterclaim defendant Utah Central Railway Company, LLC is a Delaware LLC with its principal place of business in Utah.
3. This Court has jurisdiction pursuant to 28 USC §§ 1331, 1332, 1337, 1367 and 49 USC § 10746.
4. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

FACTS

A. Background--Business Depot Ogden

5. SRS is in the business of shipping materials.
6. In the Ogden area, and as relevant to this case, materials are shipped to the Business Depot Ogden ("BDO") in railcars via Class I rail. The railcars destined for BDO are removed from the main Class I rail line and moved to "spurs" adjacent to unloading facilities via short lines.

7. UCRY operates one or more short lines at the BDO. It is responsible for moving or “**placing**” cars to the various unloading locations. Once materials are unloaded from the railcars, UCRY takes the unloaded cars to their next destination and places a new set of cars to be unloaded.

8. UCRY is the only rail company authorized to operate at the BDO.

9. Companies that operate unloading facilities are completely dependent on UCRY to bring them cars to unload and cannot hire anyone else to provide this service.

10. Railcars’ mobility and location are limited by the number and length of tracks that are clear of cars and on which cars can be moved, switched, and stored.

11. Because of this limitation, any delays in moving cars already on a line can quickly cause serious congestion where cars become backed-up on the line. This is known as “**bunching**” or “**stacking**”.

12. To avoid bunching, keep cars moving, and ensure efficient use of rail lines and cars, railroad tariff schedules include “**demurrage**” and “**car hire**” charges based on the number of days a car is stored on tracks operated by a particular railroad.

13. Operators of a class I rail line will typically charge a short line “car hire” if the short line is so congested that it cannot accept additional cars.

14. Rail operators that deliver cars to customers for unloading and reloading charge the customer “demurrage” if it takes the customer more than a certain number of days to unload or reload the car and release it to the railroad.

15. Typical tariffs, including freight tariffs PRC1000 and PRC6004-3 attached to UCRY’s Complaint, provide that when a car cannot be “placed” due to a condition attributable to the consignor or consignee, the railroad will hold the car and begin charging demurrage.

16. PRC1000 and PRC6004-3 require UCRY to send notice that the car is being held.

B. SRS' Operations

17. SRS operates unloading facilities at the BDO. It unloads materials from railcars and sends the materials to various customers in Utah.

18. SRS' customers rely on a constant stream of materials to keep their production lines operational. Shutting down a production line for any period of time results in significant losses.

19. SRS' unloading facilities are on a spur that typically holds six railcars at a time, depending on the length of the cars.

20. SRS does not have a locomotive and must rely on UCRY to bring cars loaded with materials, remove empty cars, and bring a new set of cars to be unloaded.

21. The removal of empty cars and placement of cars on SRS' spur for unloading is referred to as a "spot."

22. SRS has not always had operations at the BDO.

23. UCRY convinced SRS to begin operations at BDO by making representations and promises.

24. UCRY promised that if SRS came to the BDO, UCRY would spot SRS every day, Monday through Friday, except on certain UCRY holidays.

25. UCRY also agreed that the daily spot would occur in the morning by 10:30 am.

26. Relying on these representations and promises, SRS agreed to come to BDO and receive rail service from UCRY.

27. SRS employs a full time unloading crew five days a week to unload as many cars as possible each day, maintain a steady flow of materials to its customers, and avoid demurrage charges.

28. When UCRY complies with its duty to spot SRS by 10:30 am, SRS' three person unloading crew is almost always able to unload all six cars in less than a day.

29. Once the cars are unloaded, SRS "releases" the empty cars to UCRY.

30. Once released, UCRY is supposed to remove the cars to make room for a full spot the next day.

31. As noted above, SRS began operations at BDO in reliance on UCRY's promise to spot SRS every day by 10:30 am.

32. A daily spot by 10:30 am is necessary so that SRS' crew can unload all the cars and be ready to receive a new set of cars the following day.

33. At various times, UCRY experiences problems with its line—broken switches, broken track, power outages, broken locomotives—and fails to bring SRS a spot or brings it late.

34. At times the BDO becomes clogged with cars which results in the Class I rail carriers stacking several days' worth of cars for delivery by UCRY.

35. At times, UCRY has gone an entire week without bringing SRS a spot, even though there were cars in the BDO waiting to be delivered to SRS.

36. When UCRY fails to deliver the daily spot of cars, those cars spend additional days on UCRY's tracks.

37. If UCRY fails to deliver the daily spot of cars, SRS' unloading crew has nothing to unload for the entire day.

38. On numerous occasions UCRY breaches the agreement and places cars on SRS' spur after 2 pm. On these days, SRS' crew has nothing to do for most of the day and has only a few hours to unload six full rail cars.

39. UCRY does not notify SRS that it does not intend to bring SRS a spot or that it will be late.

40. UCRY's breaches force SRS to pay its crew overtime because the crew did nothing during the morning hours while waiting for a spot from UCRY and then had to work well into the evening or on Saturday to unload the cars.

41. On other occasions when UCRY breaches the agreement, members of SRS' crew are unable to stay late and the cars do not get unloaded until the following day.

42. UCRY's failure to spot SRS every morning and/or failure to spot SRS until the afternoon can cause a significant backlog of cars. Cars that should have been spotted and unloaded are joined by additional cars that need to be spotted and unloaded.

43. UCRY acts in bad faith by negligently or intentionally causing bunching and stacking on the line and then charging SRS demurrage for problems caused by UCRY.

44. SRS has consistently disputed demurrage charges when they are a result of UCRY's failure to bring SRS a spot, whether due to broken track, broken switches, broken equipment, UCRY's allocation of resources, or unexplained reasons.

45. Each time SRS disputed an invoice, UCRY and/or its parent company, Patriot Rail, stated that it received the dispute and would look into it.

46. SRS would hear nothing more about the matter for several months or even a year, leading it to conclude that the matter was resolved.

47. Several months or a year later, UCRY or its parent would send a demand letter for payment on the disputed invoice and SRS would remind UCRY of the dispute. UCRY or its parent would acknowledge the invoice had been disputed, apologize for sending the demand letter, and indicate that it was investigating the matter.

48. SRS would hear nothing further about the matter for several months or a year, and then the process would begin again with UCRY or its parent demanding payment on the invoice, being reminded of the dispute, and stating that was investigating the matter.

49. This cycle has occurred on multiple occasions.

FIRST CAUSE OF ACTION
Breach of Contract

50. SRS incorporates the previous paragraphs as if fully stated herein.

51. UCRY represented and promised SRS that if SRS opened operations and signed up for rail service at the BDO, UCRY would spot SRS every day by 10:30 am.

52. SRS relied on UCRY's promises and representations and opened operations at the BDO.

53. The agreement between SRS and UCRY requires UCRY to spot SRS every day by 10:30 am.

54. The tariff schedules provide that demurrage will not be charged if a car cannot be placed due to a condition attributable to something other than SRS or its consignor.

55. The tariff schedules require UCRY to give SRS notice if a car cannot be placed due to a condition attributable to SRS and if demurrage will be incurred.

56. UCRY breached the agreements on multiple occasions by failing to bring SRS a spot or bringing a spot well into the afternoon even though there were cars at the BDO waiting to be unloaded by SRS.

57. UCRY breached the agreements on multiple occasions by charging SRS demurrage when cars were not placed due to conditions attributable to UCRY.

58. UCRY breached the agreements on multiple occasions by charging SRS demurrage when UCRY failed to bring SRS a spot or brought it late in the day making it impossible for SRS to unload all the cars.

59. UCRY breached the agreements on various occasions by charging SRS demurrage for cars that already had been released to UCRY or that were never consigned to SRS.

60. UCRY breached the agreements by demanding SRS to pay a deposit based on UCRY's breaches and improper demurrage charges.

61. UCRY breached the agreements on multiple occasions by not providing SRS with proper notice.

62. UCRY's breaches resulted in damages to SRS in the form of lost wages and equipment expense by causing SRS to pay for employees and equipment to do nothing.

63. UCRY's breaches resulted in damages to SRS by requiring SRS to pay employees overtime to unload cars that would have been unloaded within normal working had UCRY not breached.

64. SRS has only begun looking at its records to calculate its damages, but by way of example, for the period from November 2015 to February 2016, there were 24 days when UCRY did not bring a spot and 21 days when UCRY did not bring a spot until late afternoon.

65. Damages based on unnecessary regular wages in that period are over \$30,000.

66. Damages based on unnecessary overtime wages to have crews stay late and work weekends after UCRY finally brought a spot are over \$10,000.

67. SRS has only begun its review of records, but estimates that for the period from January 2013 until present, its damages in unnecessary expenses, including, but not limited to regular and overtime wages, are well over \$100,000.

68. In addition, SRS' reputation has suffered because UCRY has prevented it from keeping its customers supplied with materials.

SECOND CAUSE OF ACTION
Breach of the Covenant of Good Faith and Fair Dealing

69. SRS incorporates the previous paragraphs as if fully stated herein.

70. The covenant of good faith and fair dealing inures to every contract.

71. Tariff PRC1000 and PRC6004-3 require SRS to pay a demurrage fee based on the extra days that loaded cars are on UCRY's track waiting to be unloaded.

72. UCRY has agreed to place at least six cars at SRS' unloading facilities by 10:30 am every day unless there are no cars consigned to SRS to be unloaded.

73. UCRY controls when cars are placed at SRS' spur and made available for unloading.

74. SRS is unable to unload any cars unless and until UCRY places them on SRS' spur for unloading.

75. On numerous occasions, UCRY breached the covenant of good faith and fair dealing by preventing SRS from unloading cars that have arrived for SRS, causing backlogs, stacking, and bunching of cars, and causing damages in the form of wasted resources including wages and equipment costs.

76. On numerous occasions, UCRY breached the covenant of good faith and fair dealing by charging SRS demurrage when UCRY failed to place cars, placed cars late, caused backlogs, stacking, bunching, and otherwise made it impossible for SRS to unload cars.

77. UCRY breached the covenant of good faith and fair dealing on various occasions by charging SRS demurrage for cars that already had been released to UCRY or that were never consigned to SRS.

78. UCRY breached the covenant of good faith and fair dealing by demanding that SRS pay a deposit based on UCRY's breaches and improper demurrage charges.

79. UCRY breached the covenant of good faith and fair dealing on multiple occasions by not providing SRS with proper notice.

80. Specifically, UCRY fails or refuses to place cars for SRS to unload or places the cars later in the afternoon shortly before SRS' unloading crew leaves for the day.

81. UCRY's conduct has caused SRS damages, including but not limited to, unnecessary wages, overtime, and equipment costs.

82. UCRY's conduct damages SRS' reputation with its customers by preventing SRS from keeping its customers supplied with raw materials.

83. UCRY's conduct also creates a backlog of cars waiting to be unloaded such that when UCRY finally does place cars, it can take several weeks to work through the backlog.

84. When SRS disputes the demurrage charges, UCRY and/or its parent, Patriot Rail, lead SRS to believe that the matter has been resolved.

85. Months or years later, UCRY demands payment plus interest without explanation.

86. As a result of UCRY's breaches of the covenant of good faith and fair dealing, SRS has suffered damages in the form of lost reputation, unnecessary expenses, increased operating expenses, unnecessary deposits, in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, SRS prays for judgment against UCRY as follows:

1. Compensatory, consequential, and incidental damages in amounts to be proven at trial, but not less than \$100,000.00.
2. Pre-judgment and post-judgment interest on the foregoing damages at the maximum rate allowed by law;
3. Reasonable attorneys' fees and costs in amounts to be determined at trial; and
4. For any other relief as the court deems just.

JURY TRIAL DEMAND

SRS demands a jury trial on all issues that are triable by a jury.

DATED this 10th day of March, 2017.

KIRTON McCONKIE

/s/ Jackie Bosshardt
Shawn T. Richards
Jackie Bosshardt
Attorneys for Specialized Rail Service, Inc.

CERTIFICATE OF SERVICE

I certify that on the 10th day of March, 2017, I caused a true and correct copy of the foregoing **ANSWER TO PLAINTIFF'S COMPLAINT AND COUNTERCLAIM** to be served via the Court's electronic notification system and via U.S. Mail, first-class postage pre-paid on the following:

SAVAGE, YEATES, & WALDRON, PC
E. Scott Savage
Stephen R. Waldron
170 South Main Street, Suite 1075
Salt Lake City, Utah 84101
Attorneys for Plaintiff

/s/ Kimberly Giron

Exhibit B

Shawn T. Richards (11949)
Jackie Bosshardt (14139)
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Attorneys for Defendant Specialized Rail Service, Inc.

SURFACE TRANSPORTATION BOARD

UTAH CENTRAL RAILWAY COMPANY,
LLC,

Petitioner,

v.

KENCO LOGISTIC SERVICES, LLC, a
Delaware limited liability company, KENCO
GROUP, and SPECIALIZED RAIL
SERVICE, INC.

Respondents.

**DECLARATION OF
JEFF ARMSTRONG**

Docket No. FD 361310

I, Jeff Armstrong, hereby declare as follows:

1. I am over the age of 21, have personal knowledge of the facts stated herein and would testify thereto if called upon to do so.

2. I am a part owner of Specialized Rail Service, Inc. ("SRS"). I have held this position for 24 years.

3. I am familiar with the alleged demurrage charges assessed by plaintiff Utah Central Railway Company, LLC ("UCRY") in this matter. Indeed, I have personally

communicated multiple times with UCRY's representatives regarding the assessed demurrage charges.

4. Through my experience, I understand how SRS operates out of its facility located in Ogden, Utah and its relationship with UCRY.

5. SRS receives and unloads cars containing wood pulp, sawdust, and similar materials and delivers those raw materials to its customers.

6. SRS' unloading facilities are on a spur that typically holds six railcars at a time, depending on the length of the cars.

7. SRS' customers use specialized logistical software to ensure that only five or six cars arrive a day.

8. SRS must rely on UCRY to bring cars loaded with materials, remove empty cars, and bring a new set of cars to be unloaded.

9. SRS has not always had operations at the BDO.

10. UCRY convinced SRS to begin operations at BDO by making representations and promises. UCRY promised that if SRS came to the BDO, UCRY would switch cars or "spot" SRS every morning, Monday through Friday, except on certain UCRY holidays.

11. Relying on these representations and promises, SRS agreed to come to BDO and receive rail service from UCRY.

12. SRS employs a full time unloading crew five days a week to unload the six or seven cars that fit on its spur, maintain a steady flow of materials to its customers, and avoid demurrage charges.

13. When UCRY complies with its agreement and obligation to spot SRS before noon, SRS' three person unloading crew is almost always able to unload and release all six or seven cars in less than a day.

14. At various times, UCRY's service has been infrequent and inconsistent. At times, UCRY has gone an entire week without switching any cars for SRS, even though there was space on SRS' spur and there were cars in the BDO waiting to be delivered to SRS.

15. When UCRY fails to switch cars every day, or switches cars later in the afternoon, SRS' unloading crew has nothing to do until the cars arrive.

16. UCRY does not notify SRS that it does not intend to spot or switch cars, or that it will be late in switching cars.

17. UCRY's breaches force SRS to pay its crew overtime because the crew does nothing during the morning hours while waiting for a spot from UCRY and then had to work well into the evening or on Saturday to unload the cars.

18. On other occasions when UCRY breaches the agreement, members of SRS' crew are unable to stay late and the cars do not get unloaded until the following day.

19. SRS has timely and consistently disputed demurrage charges when they are result from circumstances that are not attributable to SRS, such as UCRY's failure to switch cars or bring SRS a spot, whether due to broken track, broken switches, broken equipment, UCRY's allocation of resources, or unexplained reasons.

20. Each time SRS disputed an invoice, UCRY and/or its parent company, Patriot Rail, stated that it received the dispute and would look into it.

21. SRS would hear nothing more about the matter for several months or even a year, leading it to conclude that the matter was resolved.

22. Several months or a year later, UCRY or its parent would send a demand letter for payment on the disputed invoice, and SRS would remind UCRY of the pending dispute.

23. UCRY or its parent would acknowledge that the invoice had been disputed, apologize for sending the demand letter, and indicate that it was investigating the matter.

24. SRS would hear nothing further about the matter for several months or a year, and then the process would begin again with UCRY or its parent demanding payment on the invoice, SRS reminding UCRY of the dispute, and UCRY acknowledging the dispute and stating that was investigating the matter. See Email exchanges dated July 2014 and Nov. 17, 2014, attached as **Exhibit 1**.

25. This cycle has occurred on multiple occasions. I do not recall UCRY ever informing SRS that it completed its investigation.

26. Exhibit 2 to UCRY's Complaint is an invoice dated November 7, 2013 relating to cars released in October 2013. SRS disputed the charges in this invoice and UCRY's response, or lack thereof, led SRS to believe that the matter had been resolved. UCRY's delay in seeking to recover these charges has resulted in a loss of records that SRS might have used in its defense.

27. The demurrage charges in Exhibit 2 resulted from conditions that were not attributable to SRS, including bunching, stacking, infrequent and inconsistent interchanges with the Class I rail, and inconsistent switching at SRS' spur.

28. Exhibit 3 to UCRY's Complaint is an invoice dated December 4, 2013 relating to cars released in November 2013. SRS timely disputed the charges in this invoice and UCRY's response, or lack thereof, led SRS to believe that the matter had been resolved. UCRY's delay in seeking to recover these charges has resulted in a loss of records that SRS might have used in its defense.

29. The demurrage charges in Exhibit 3 resulted from conditions that were not attributable to SRS, including bunching, stacking, infrequent and inconsistent interchanges with the Class I rail, and inconsistent switching at SRS' spur.

30. Exhibit 4 to UCRY's Complaint is an invoice dated February 4, 2014 relating to cars released in January 2014. The demurrage in Exhibit 4 should not have been charged to SRS

because it related to a car that was not consigned to SRS. The car contained corn syrup, but SRS does not receive cars containing corn syrup.

31. Even if the car had been consigned to SRS, the demurrage charges in Exhibit 4 likely resulted from conditions that were not attributable to SRS, including bunching, stacking, infrequent and inconsistent interchanges with the Class I rail, and inconsistent switching at SRS' spur.

32. SRS timely disputed the charges in this invoice and UCRY's response, or lack thereof, led SRS to believe that the matter had been resolved. UCRY's delay in seeking to recover these charges may have resulted in a loss of records that support UCRY's charges or SRS' defense.

33. Exhibit 5 to UCRY's Complaint is an invoice dated March 4, 2014 relating to cars released in February 2014. These charges resulted from conditions that were not attributable to SRS, including bunching, stacking, infrequent and inconsistent interchanges with the Class I rail, inconsistent switching at SRS' spur, and UCRY's failure to switch cars every morning.

34. SRS timely disputed the charges in this invoice and UCRY's response, or lack thereof, led SRS to believe that the matter had been resolved. UCRY's delay in seeking to recover these charges may have resulted in a loss of records that support UCRY's charges or SRS' defense.

35. Exhibit 6 to UCRY's Complaint is an invoice relating to cars released in March 2014. These charges resulted from conditions that were not attributable to SRS, including bunching, stacking, infrequent and inconsistent interchanges with the Class I rail, inconsistent switching at SRS' spur, and UCRY's failure to switch cars daily.

36. SRS timely disputed the charges in this invoice and UCRY's response, or lack thereof, led SRS to believe that the matter had been resolved. UCRY's delay in seeking to

recover these charges may have resulted in a loss of records that support UCRY's charges or SRS' defense.

37. Exhibits 7 and 8 to UCRY's Complaint are invoices relating to cars released in April 2014. These charges resulted from conditions that were not attributable to SRS, including bunching, stacking, infrequent and inconsistent interchanges with the Class I rail, inconsistent switching at SRS' spur, and UCRY's failure to switch cars daily.

38. SRS timely disputed the charges in this invoice and UCRY's response, or lack thereof, led SRS to believe that the matter had been resolved. UCRY's delay in seeking to recover these charges may have resulted in a loss of records that support UCRY's charges or SRS' defense.

39. Exhibit 9 to UCRY's Complaint is an invoice relating to cars released in May 2014. These charges resulted from conditions that were not attributable to SRS, including bunching, stacking, infrequent and inconsistent interchanges with the Class I rail, inconsistent switching at SRS' spur, and UCRY's failure to switch cars daily.

40. SRS timely disputed the charges in this invoice and UCRY's response, or lack thereof, led SRS to believe that the matter had been resolved. UCRY's delay in seeking to recover these charges may have resulted in a loss of records that support UCRY's charges or SRS' defense.

41. Exhibit 10 to UCRY's Complaint is an invoice dated July 2014 relating to cars released in June 2014. These charges resulted from conditions that were not attributable to SRS, including bunching, stacking, infrequent and inconsistent interchanges with the Class I rail, inconsistent switching at SRS' spur, and UCRY's failure to switch cars each morning.

42. SRS timely disputed the charges in this invoice and UCRY's response, or lack thereof, led SRS to believe that the matter had been resolved. UCRY's delay in seeking to

recover these charges may have resulted in a loss of records that support UCRY's charges or SRS' defense.

43. Exhibit 11 to UCRY's Complaint is an invoice relating to cars released in July 2014. During this month, UCRY went several days without switching any cars for SRS, allowed cars to stack and bunch on the main line, and then hit SRS with 27 cars all at once. See Email exchange dated July 1 (asking for cars to be switched and noting that four cars have been sitting empty since June 26; UCRY acknowledged that it was UCRY's error and SRS should not be charged demurrage), attached as **Exhibit 2**.

44. SRS disputed the demurrage charges in this invoice and UCRY agreed that it was looking into the problem. See Exhibit 1.

45. However, UCRY did not provide a further response until it demanded payment many months later. When SRS reminded UCRY that it had disputed the charges, UCRY agreed that the dispute was pending and that SRS could ignore the payment demand. *Id.*

46. UCRY's lack of further response led SRS to believe that the matter had been resolved. UCRY's delay in seeking to recover these charges may have resulted in a loss of records that support UCRY's charges or SRS' defense.

47. Exhibit 12 to UCRY's Complaint is an invoice dated October 2015 relating to cars released in September 2015. These charges resulted from conditions that were not attributable to SRS, including bunching, stacking, infrequent and inconsistent interchanges with the Class I rail, inconsistent switching at SRS' spur, and UCRY's failure to switch cars daily. See emails dated September 18, 2015 (requesting that cars be switched), attached as **Exhibit 3**.

48. SRS timely disputed the charges in this invoice and UCRY's response, or lack thereof, led SRS to believe that the matter had been resolved. UCRY's delay in seeking to

recover these charges may have resulted in a loss of records that support UCRY's charges or SRS' defense.

49. Exhibit 15 to UCRY's Complaint is an invoice dated November 2015 relating to cars released in October 2015. These charges resulted from conditions that were not attributable to SRS, including bunching, stacking, infrequent and inconsistent interchanges with the Class I rail, inconsistent switching at SRS' spur, and UCRY's failure to switch cars daily.

50. SRS timely disputed the charges in this invoice and UCRY's response, or lack thereof, led SRS to believe that the matter had been resolved. UCRY's delay in seeking to recover these charges may have resulted in a loss of records that support UCRY's charges or SRS' defense.

51. Exhibit 16 to UCRY's Complaint is an invoice dated January 2016 relating to cars placed in November and December and released in December 2015. Late November and all of December 2015 was a difficult time for UCRY. UCRY's engine broke down just before Thanksgiving in 2015. UCRY acknowledged the problem and apologized. See email exchanges dated November 24 through 25, 2015, attached as **Exhibit 4**.

52. Shortly after fixing its engine, UCRY's track broke, and it was unable to switch any cars for SRS for several days. See email exchanges dated December 9, 2015 (discussing UCRY's repairs), attached as **Exhibit 5**.

53. When the equipment was finally working again, UCRY continued its practice of inconsistent switching—bringing cars late in the day or not at all—making it impossible for SRS to unload cars or unload them in a timely manner. This extended the time it took to clear out the backlog that UCRY created in the preceding months.

54. Specifically, UCRY did not bring SRS any cars on the Tuesday before Thanksgiving (Nov. 24), brought cars after 5 pm on Wednesday, brought cars late in the day on November 30, and did not bring any cars on December 1, 2015.¹

55. UCRY's track broke in early December and it did not switch any cars for SRS from Saturday, December 5 until Monday December 14. In the week after that, UCRY's service was hit and miss—bringing cars late on December 15, no cars on December 16; late on December 17; no cars on Friday, December 18; no cars on Monday, December 21; on time on December 22, late on December 23; no cars on December 24; no cars December 28; late on December 29; late on December 30; and no cars on December 31.

56. In each instance, there were cars on UCRY's track waiting to be unloaded and SRS had room on its track or empty cars waiting to be removed.

57. This lack of service caused significant backup and it is unreasonable to require SRS to immediately unload the backlog of cars caused by UCRY, especially when UCRY's service after this incident was so inconsistent. The delayed or missed switches were not due to conditions attributable to SRS.

58. Cars continued to arrive during this same period, causing bunching, stacking, and a significant backlog of cars to be unloaded. SRS would have begun unloading if it could, but UCRY did not actually place the cars or would only place and switch them every other day, despite the fact that SRS had unloaded and released the empty cars and was waiting for a new set of full cars.

¹ UCRY did not bring cars November 26 through 29, during the Thanksgiving holiday. I recognizes that UCRY does not operate on those days, but the lack of switches and timely switches in the days leading up to the holiday and lack of switches during the four-day holiday weekend made it impossible for SRS to unload any cars and makes it unreasonable to charge demurrage.

59. It is unreasonable and unfair for UCRY to fail to switch cars, delay switching cars, create bunching, stacking, and a backlog that cannot be immediately released, and then charge SRS demurrage for these conditions caused by UCRY or parties other than SRS.

60. Exhibits 17 and 18 to UCRY's Complaint are invoices dated February and March 2016 relating to cars placed between December 2015 and February 2016. As noted in the preceding paragraphs, problems and conditions attributable to UCRY—broken engine, broken tracks, failure to switch cars daily despite empty cars and room on SRS tracks, failure to switch cars until late in the day—created a backlog of cars that could not immediately be unloaded and released.

61. UCRY's pattern of missed and late switches that started in November and December 2015 continued through January and February 2016: late switch on January 4, no switch on January 5, late switch on January 6, no switch on January 7, late switch on January 8; late switches January 11-13; no switch January 14; normal switch January 15; no switch January 18; late switch January 19; no switch January 20; late switches January 28-29; no switch February 1; late switch February 2; late switch February 5.

62. The resulting backlog, a condition created by UCRY, took all of January and into February to clear because UCRY's service continued to be hit and miss.

63. SRS' customers use specialized logistical software to ensure that only five or six cars arrive a day, but due to inconsistent switches, bunching, stacking, and lack of coordinating between UCRY and the Class I line, forty-one cars arrived for SRS between January 4 and 8.

64. In addition to the above problems, UCRY did not properly record cars that were placed and released. Car SMW536116 was placed on January 19 and released as empty on January 20, but UCRY failed to clear it from its records until February 2, generating \$1,400 in wrongful charges.

65. Similarly, car KRR7021 was placed on January 19, released empty on January 20, but UCRY charged SRS as if it were loaded until January 22.

66. Exhibits 19 and 20 to UCRY's Complaint are invoices dated August and September 2016 relating to cars placed in July and August 2016. In July 2016, UCRY failed to bring SRS cars for several days in a row, experienced significant problems with bunching and stacking, and had system problems that prevented SRS from releasing cars. See email exchanges dated July 5, July 22, Sept. 12, Sept. 15, 2016, attached as **Exhibit 6**.

67. UCRY brought cars late on June 30, did not bring any cars on July 1 or over the next several days because of the holiday weekend.

68. UCRY did not bring any cars to SRS July 6 through 10 and on July 11, twenty new cars appeared on SRS' inventory.

69. UCRY switched cars only later in the day during July 11 through 13, did not switch any cars on July 14, and was late on July 15, which prevented SRS from unloading the cars.

70. UCRY did not bring SRS any cars July 18 through 25, and then placed thirty-four cars on SRS' inventory on July 25 and 27.

71. UCRY was late in switching cars on July 25, did not switch any cars on July 26, and was late July 28-29.

72. UCRY did not switch any cars until later in the day during August 1-4. On August 3 and August 10, UCRY did not bring any cars until 6 pm, after SRS's crew was gone for the day, and despite UCRY's prior representations that it would switch SRS' cars daily and early in the day.

73. UCRY was late again on August 8; did not switch cars on August 9; was late on August 10; did not switch cars August 11-12; was late August 15-19; did not switch cars August 24; was late August 25-26.

74. UCRY acknowledged that railcar stacking and bunching created problems for SRS. See email dated August 30, 2016, attached as **Exhibit 7**.

75. Had UCRY provided consistent switching and interchange services, SRS could have unloaded the cars without incurring any demurrage.

76. I believe that holding SRS responsible for delays and problems created by UCRY is improper, contrary to the provisions of the tariff schedule, and an unreasonable and unfair practice.

DATED this 14th day of September, 2017

/s/ Jeff Armstrong
Jeff Armstrong

EXHIBIT 1

Jeff Armstrong

From: Beall, Leann [Leann.Beall@patriotrail.com]
Sent: Monday, November 17, 2014 9:54 AM
To: Jeff Armstrong
Subject: RE: Notice of Collection

Jeff,

I am very sorry you received the letter. These were sent to all customers with balances. We have your disputes on record and our Commercial group is researching the issues.

Leann

From: Jeff Armstrong [mailto:jeffa@specializedrail.com]
Sent: Monday, November 17, 2014 8:48 AM
To: Beall, Leann
Cc: RevenueGroup
Subject: FW: Notice of Collection

Leann – I received the attached letter today. I have responded twice that we dispute these charges for the reasons outlined below. Please remove these from our account . Jeff Armstrong

From: Jeff Armstrong [mailto:jeffa@specializedrail.com]
Sent: Friday, July 25, 2014 11:09 AM
To: 'Beall, Leann'
Cc: 'revenuegroup@patriotrail.com'
Subject: FW: Notice of Collection

Leann – I received a letter from Dan Freeman concerning these charges . Per my email sent on July 15 , we are disputing these charges. Our dispute is based on the inconsistent switching that we receive at our facility. We have a constant flow of cars and if we miss even 1 switch , cars begin to stack up on the UCRY . If we receive our switch as promised, once per day Monday thru Friday , we can unload within the free time. We also frequently receive our cars late in the day which leaves us with our crew standing around waiting for the cars. This results in fewer cars being unloaded in a day than we would otherwise be able to unload had we received the cars early in the day. For these reasons we dispute the charges and ask that they be removed from our account. Thank You. Jeff Armstrong

From: Jeff Armstrong [mailto:jeffa@specializedrail.com]
Sent: Tuesday, July 15, 2014 8:59 AM
To: 'Beall, Leann'; 'JoyceM@Specilaizedrail.com'
Subject: RE: Notice of Collection

We are not responsible for these charges. Cars back up due to UCRY not spotting us on a daily basis and spotting us too late in the day to get cars done. We often have crews standing around waiting for a spot so that we can unload the cars. Please remove these charges from our account.
Jeff Armstrong

From: Beall, Leann [mailto:Leann.Beall@patriotrail.com]
Sent: Monday, July 14, 2014 8:51 PM
To: JoyceM@Specilaizedrail.com; Jeffa@specializedrail.com
Subject: Notice of Collection

Please be advised of the attached notice of collection.

Leann Beall
Revenue Manager
Patriot Rail Company LLC

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10060 Skinner Lake Drive
Jacksonville, FL 32246
Phone: (904) 423-2540
Fax: (904) 423-2544

11/7/2014

Specialized Rail
120 East 700 South
Clearfield, UT 84015

Dear Utah Central Railroad Customer,

Your account is currently in past due status in the amount of \$23,795.00. We have tried numerous times to reach you by phone, mail, and email but have still not received your payment. As a reminder, the credit terms under Article 4 of the Service Agreement dated July 29, 2008 are net 30 days and your past due invoices are now subject to a 1.5% monthly service charge on the unpaid balance.

We have attached a statement including the details of the past due amounts. If you are disputing the attached charges, please forward your dispute for our consideration via email to RevenueGroup@PatriotRail.com or call Leann Beall, Revenue Manager at (360) 501-2184.

Please be advised that continued delinquent status may result in your account being placed in prepayment status, referred to an outside collection agency or referred for legal action.

We appreciate your business and expect that we will receive your payment within the next 17 days to settle your account and avoid accruing any late fees.

Sincerely,

Dan Freeman
VP- Commercial
Patriot Rail Company LLC

Jennifer Whiteman
VP- Finance and Accounting
Patriot Rail Company LLC



S T A T E M E N T
Utah Central Railroad
PAST DUE NOTICE

CUSTOMER: SPECIALIZED RAIL
AMOUNT DUE: \$ 23,795.00 PAST DUE
AMOUNT DUE: \$ - CURRENT
TOTAL: \$ 23,795.00

REMIT TO:
1460 MOMENTUM PLACE
CHICAGO, IL 60689-5334

Invoice Date	Invoice Number	Inv Type	0-29	30-59	> 60	Total	Status
11/07/13	101240	D4	0.00	0.00	280.00	280.00	PAST DUE
12/04/13	101245	D4	0.00	0.00	160.00	160.00	PAST DUE
02/04/14	101269	D4	0.00	0.00	160.00	160.00	PAST DUE
03/04/14	101280	D4	0.00	0.00	480.00	480.00	PAST DUE
04/02/14	101288	D4	0.00	0.00	80.00	80.00	PAST DUE
05/05/14	101299	D4	0.00	0.00	40.00	40.00	PAST DUE
05/05/14	101300	D4	0.00	0.00	1,640.00	1,640.00	PAST DUE
06/03/14	101305	D4	0.00	0.00	3,525.00	3,525.00	PAST DUE
07/07/14	101323	D4	0.00	0.00	600.00	600.00	PAST DUE
08/05/14	101331	D4	0.00	0.00	16,830.00	16,830.00	PAST DUE

EXHIBIT 2

Jeff Armstrong

From: James Kennedy [jamesk@specializedrail.com]
Sent: Tuesday, July 01, 2014 11:58 AM
To: 'Jeff Armstrong'
Subject: FW: Online Inventory
Attachments: UCRY000072.pdf

These are the cars he is referring to for your records in case they do try to come back on us.

Justin

-----Original Message-----

From: Quintana, Paul [mailto:Paul.Quintana@patriotrail.com]
Sent: Tuesday, July 01, 2014 11:41 AM
To: James Kennedy
Cc: 'Jeff Armstrong'
Subject: RE: Online Inventory

We will be out there tomorrow morning. Please request all remaining cars through ShipperConnect. I want to make sure we do not send out a demurrage invoice due to our error. Thank you.

Paul Quintana
Operations Manager
Utah Central Railway
Ogden, UT 84401
(801) 732-8906 (office)
E-mail: Paul.Quintana@Patriotrail.com

-----Original Message-----

From: James Kennedy [mailto:jamesk@specializedrail.com]
Sent: Tuesday, July 01, 2014 11:39 AM
To: Quintana, Paul
Cc: 'Jeff Armstrong'
Subject: RE: Online Inventory

Paul,
Are we going to get a spot today? We have had 4 empty since Thursday night and all empty since Friday.

Let me know

Thanks

-----Original Message-----

From: pquintana@ucry.net [mailto:pquintana@ucry.net]
Sent: Tuesday, July 01, 2014 9:10 AM
To: jamesk@specializedrail.com
Subject: Online Inventory

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EXHIBIT 3

Jeff Armstrong

From: James Kennedy [jamesk@specializedrail.com]
Sent: Friday, September 18, 2015 11:29 AM
To: 'Jeff Armstrong'
Subject: RE: Online Inventory

I released all cars last night and still haven't received a car spot. I have asked when we will be receiving one. Haven't heard anything back

-----Original Message-----

From: Jeff Armstrong [mailto:jeffa@specializedrail.com]
Sent: Friday, September 18, 2015 10:07 AM
To: 'James Kennedy'; 'Justin Bowden'
Subject: FW: Online Inventory

25 cars in town . pls put enough guys on cars to get 6 spots per day. thx

-----Original Message-----

From: pquintana@ucry.net [mailto:pquintana@ucry.net]
Sent: Friday, September 18, 2015 9:10 AM
To: jeffa@specializedrail.com
Subject: Online Inventory

Jeff Armstrong

From: Jeff Armstrong [jeffa@specializedrail.com]
Sent: Friday, September 18, 2015 11:42 AM
To: 'paul quintana'
Cc: 'James Kennedy'
Subject: FW: Online Inventory

Paul - can you get us a spot soon ? we have a crew waiting to unload them. thx Jeff

EXHIBIT 4

Jeff Armstrong

From: Quintana, Paul [Paul.Quintana@patriotrail.com]
Sent: Tuesday, November 24, 2015 6:17 PM
To: Peter Benanti
Cc: Poore, Ben; Golian, Jeff; Jeff Armstrong; James Kennedy; Rhonda Davis
Subject: RE: RAILCARS NOT SPOTTED TO SPECIALIZED RAIL SERVICES

We have a contractor locating a part for an emergency repair, they will be on-site tomorrow AM to help with the repairs. Once it is confirmed if the locomotive is operational I will let everyone know. We will switch out your location as early as possible.

Paul Quintana
Operations Manager
Utah Central Railway
Ogden, UT 84401
(801) 732-8906 (office)
E-mail: Paul.Quintana@Patriotrail.com

-----Original Message-----

From: Quintana, Paul
Sent: Tuesday, November 24, 2015 2:02 PM
To: Peter Benanti
Cc: Poore, Ben; Golian, Jeff; Jeff Armstrong; James Kennedy; Rhonda Davis
Subject: Re: RAILCARS NOT SPOTTED TO SPECIALIZED RAIL SERVICES

I will update all. The mechanic is on site.

Paul

Sent from my iPhone

> On Nov 24, 2015, at 1:06 PM, Peter Benanti <Peter.Benanti@SSAMarine.com> wrote:
>
> Please let us know when this is completed. We are hearing reports of engine trouble.
>
> Kindest Regards,
> Peter Benanti
> SSA Marine, Mobile, AL
> 251 441 0560
> C 251 421 1391
> peter.benanti@ssamarine.com<mailto:peter.benanti@ssamarine.com>
>
>
>
> "Quintana, Paul" <Paul.Quintana@patriotrail.com> wrote:
>
> We are out here now.
>
> Paul
>
> Sent from my iPhone
>

>> On Nov 24, 2015, at 9:18 AM, Peter Benanti <Peter.Benanti@SSAMarine.com> wrote:

>>

>> Good morning, Please help with spotting cars to the SRS facility. For some reason we are delayed. We are OUT OF PRODUCT at SRS and we need to have some cars placed to that facility, asap.

>>

>> Procter & Gamble is depending on this product and we cannot stay this low on inventory through the holiday weekend. Please see cars, below, and place those available, asap.

>>

>> Consignee: Specialized Rail Services - 29 Items 11/10/2015 Port Arthur, TX
Clearfield, UT 14 Specialized Rail Services 81.9999 UP 0 Depart
BRICITY 11/26/2015 740855

>>

>> TBOX666105 11/03/2015 Port Arthur, TX Clearfield, UT 16 Specialized Rail
Services 81.9999 UCRY 5 Cons Plc HARRISVIL 11/19/2015 740748
>> TBOX668137 11/03/2015 Port Arthur, TX Clearfield, UT 16 Specialized Rail
Services 81.9999 UCRY 5 Cons Plc HARRISVIL 11/19/2015 740750
>> TBOX670736 11/04/2015 Port Arthur, TX Clearfield, UT 15 Specialized Rail
Services 81.9999 UCRY 5 Cons Plc HARRISVIL 11/19/2015 740749
>> TBOX662795 11/04/2015 Port Arthur, TX Clearfield, UT 15 Specialized Rail
Services 81.9999 UCRY 5 Cons Plc HARRISVIL 11/19/2015 740751
>> TBOX665437 11/06/2015 Port Arthur, TX Clearfield, UT 17 Specialized Rail
Services 81.9999 UCRY 1 Cons Plc HARRISVIL 11/23/2015 740803
>> TBOX660122 11/06/2015 Port Arthur, TX Clearfield, UT 17 Specialized Rail
Services 81.9999 UCRY 1 Cons Plc HARRISVIL 11/23/2015 740802
>> TBOX670052 11/06/2015 Port Arthur, TX Clearfield, UT 17 Specialized Rail
Services 81.9999 UCRY 1 Cons Plc HARRISVIL 11/23/2015 740752
>> TBOX671286 11/06/2015 Port Arthur, TX Clearfield, UT 17 Specialized Rail
Services 81.9999 UCRY 1 Cons Plc HARRISVIL 11/23/2015 740769
>> TBOX666820 11/06/2015 Port Arthur, TX Clearfield, UT 17 Specialized Rail
Services 81.9999 UCRY 1 Cons Plc HARRISVIL 11/23/2015 740753
>> TBOX662849 11/10/2015 Port Arthur, TX Clearfield, UT 14 Specialized Rail
Services 81.9999 UP 0 Arrived BRIGHMCTY 11/28/2015 740856
>> TBOX665920 11/10/2015 Port Arthur, TX Clearfield, UT 14 Specialized Rail
Services 81.9999 UP 0 Depart BRICITY 11/26/2015 740852
>> TBOX661063 11/10/2015 Port Arthur, TX Clearfield, UT 14 Specialized Rail
Services 81.9999 UP 0 Depart BRICITY 11/26/2015 740804
>> TBOX667278 11/10/2015 Port Arthur, TX Clearfield, UT 14 Specialized Rail
Services 81.9999 UP 0 Depart BRICITY 11/26/2015 740854
>> TBOX889386 11/10/2015 Port Arthur, TX Clearfield, UT 14 Specialized Rail
Services 81.9999 UP 0 Depart BRICITY 11/26/2015 740855
>> UP 369117 11/10/2015 Port Arthur, TX Clearfield, UT 14 Specialized
Rail Services 81.9999 UP 0 Depart BRICITY 11/26/2015 740853

>>

>>

>>

>> Kindest Regards,

>> Peter J. Benanti

>> Logistics/Operations/Supply Chain Planning SSA - Gulf 251-441-0560 c

>> 251-421-1391

>

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Jeff Armstrong

From: Quintana, Paul [Paul.Quintana@patriotrail.com]
Sent: Wednesday, November 25, 2015 9:50 AM
To: Jeff Armstrong
Cc: Jeff Armstrong; Justin; James Kennedy
Subject: Re: Railcars

Jeff

Lost power again. The contractor is coming back out. Sorry for all the frustration. I'll keep you posted.

Paul

Sent from my iPhone

> On Nov 25, 2015, at 9:32 AM, Rhonda Davis <Rhonda.Davis@SSAMarine.com> wrote:
>
> I would appreciate it if you would email us and tell us when this has actually occurred.
>
> Rhonda C. Davis
> SSA Marine
> Mobile, AL
> 251-441-0343
>
> -----Original Message-----
> From: Quintana, Paul [mailto:Paul.Quintana@patriotrail.com]
> Sent: Wednesday, November 25, 2015 10:30 AM
> To: Rhonda Davis
> Cc: Jeff Armstrong; Justin; James Kennedy; Peter Benanti; Brian Frennea
> Subject: Re: Railcars
>
> We are operational. We will have cars placed shortly. Second switch later this afternoon.
>
> Paul
>
> Sent from my iPhone
>
> On Nov 25, 2015, at 9:28 AM, Rhonda Davis
> <Rhonda.Davis@SSAMarine.com<<mailto:Rhonda.Davis@SSAMarine.com>>> wrote:
>
> Please be advised that we are needing you'll to work the weekend to get these cars
unloaded.
>
> Rhonda C. Davis
> SSA Marine
> Mobile, AL
> 251-441-0343
>
> From: Jeff Armstrong [mailto:jeffa@specializedrail.com]
> Sent: Wednesday, November 25, 2015 10:27 AM
> To: Rhonda Davis
> Cc: 'Justin'; 'James Kennedy'; Peter Benanti; Brian Frennea; 'paul quintana'
> Subject: RE: Railcars
>

> Rhonda - I awaiting word from the UCRY regarding a spot today and whether we can get another spot on Friday . Thx Jeff

>

> From: Rhonda Davis [mailto:Rhonda.Davis@SSAMarine.com]

> Sent: Wednesday, November 25, 2015 8:39 AM

> To: 'Jeff Armstrong'

> Cc: Justin; James Kennedy; Peter Benanti; Brian Frennea

> Subject: Railcars

>

> Good morning Jeff,

>

> As you are aware we are out of inventory with our pulp in your warehouse and there are 9 railcars waiting to be unloaded. These cars must be received. I understand that UCRY has engine issue but need these cars received no later than Saturday. Please advise!

>

> Rhonda C. Davis

> SSA Marine

> Mobile, AL

> 251-441-0343

>

>

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Jeff Armstrong

From: Quintana, Paul [Paul.Quintana@patriotrail.com]
Sent: Wednesday, November 25, 2015 3:31 PM
To: Jeff Armstrong
Cc: James Kennedy
Subject: Re:

We will swap them up now we're off Friday but first thing Monday we can give you some more cars

Again sorry for the frustrations hope both of you have a happy Thanksgiving and the best your family's

Paul

Sent from my iPhone

On Nov 25, 2015, at 1:51 PM, Jeff Armstrong
<jeffa@specializedrail.com<<mailto:jeffa@specializedrail.com>>> wrote:

Paul, we would be able to take 3 more Fibria cars in an hour to an hour and a half. Thx.
Jeff

Sent from my T-Mobile 4G LTE Device

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EXHIBIT 5

Jeff Armstrong

From: Quintana, Paul [Paul.Quintana@patriotrail.com]
Sent: Wednesday, December 09, 2015 3:31 PM
To: Jeff Armstrong
Cc: 'James Kennedy'; Quintana, Paul
Subject: RE: Online Inventory

It looks like Monday. Can you send me a list of which railcars to place first. Let me know if two-a-day switches will help for next week.

The contractor was asked to put a good sub-base and base of rock along with new hardwood ties through-out the s-curve to your building. The excavation should be completed tomorrow, then the re-build can start.

Paul Quintana
Operations Manager
Utah Central Railway
Ogden, UT 84401
(801) 732-8906 (office)
E-mail: Paul.Quintana@Patriotrail.com

-----Original Message-----

From: Jeff Armstrong [mailto:jeffa@specializedrail.com]
Sent: Wednesday, December 09, 2015 3:20 PM
To: Quintana, Paul
Cc: 'James Kennedy'
Subject: FW: Online Inventory

Paul - any chance for a spot tomorrow? thx Jeff

-----Original Message-----

From: pquintana@ucry.net [mailto:pquintana@ucry.net]
Sent: Wednesday, December 09, 2015 9:06 AM
To: jeffa@specializedrail.com
Subject: Online Inventory

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EXHIBIT 6

Jeff Armstrong

From: Justin Bowden [justinb@specializedrail.com]
Sent: Tuesday, July 05, 2016 5:31 PM
To: pquintana@ucry.net
Cc: jeffa@specializedrail.com
Subject: RE: Online Inventory

Paul,

The 3 cars spotted today are not showing spotted in the system so I cannot release. Please show released at 17:30 today.

Thanks
Justin

-----Original Message-----

From: pquintana@ucry.net [mailto:pquintana@ucry.net]
Sent: Tuesday, July 05, 2016 9:07 AM
To: jamesk@specializedrail.com
Subject: Online Inventory

Jeff Armstrong

From: Jeff Armstrong [jeffa@specializedrail.com]
Sent: Friday, July 22, 2016 10:33 AM
To: 'Jeff Golian'
Cc: 'Justin Bowden'
Subject: FW: Warehouse cars on the way

Jeff - Again cars are getting bunched in Ogden . Can you find out why ? We could have been unloading cars all week to keep them flowing , but now we are going to get 20 to 30 at once . We cannot be held responsible for demurrage when the railroads do not interchange and switch efficiently for their own convenience. thank You. Jeff Armstrong

From: Justin Bowden [mailto:justinb@specializedrail.com]
Sent: Friday, July 22, 2016 10:04 AM
To: 'Jeff Armstrong'
Subject: RE: Warehouse cars on the way

I show 28 railcars in town, screenshot below shows some of them have been in Ogden since 7/14!

Jeff Armstrong

From: Jeff Golan [Jeff.Golan@patriotrail.com]
Sent: Friday, July 22, 2016 10:33 AM
To: Jeff Armstrong
Subject: RE: Warehouse cars on the way

Jeff,

I have requested BNSF review their operations and advise remedy.
Will let you know their offering.

Jeff Golan - UCRY

From: Jeff Armstrong [mailto:jeffa@specializedrail.com]
Sent: Friday, July 22, 2016 9:33 AM
To: Jeff Golan
Cc: 'Justin Bowden'
Subject: FW: Warehouse cars on the way

Jeff - Again cars are getting bunched in Ogden . Can you find out why ? We could have been unloading cars all week to keep them flowing , but now we are going to get 20 to 30 at once . We cannot be held responsible for demurrage when the railroads do not interchange and switch efficiently for their own convenience. thank You. Jeff Armstrong

From: Justin Bowden [mailto:justinb@specializedrail.com]
Sent: Friday, July 22, 2016 10:04 AM
To: 'Jeff Armstrong'
Subject: RE: Warehouse cars on the way

I show 28 railcars in town, screenshot below shows some of them have been in Ogden since 7/14!

REDACTED

-----Original Message-----

From: Jeff Armstrong [<mailto:jeffa@specializedrail.com>]
Sent: Monday, September 12, 2016 3:00 PM
To: 'lindsay.stoll@bnsf.com'
Cc: 'Jeff Golian'
Subject: FW: UCRY Specialized Invoice 101706

Lindsay - attached is the invoice we received from UCRY for August demurrage. Please note , we did not receive any cars from 7/16 until 7/25 .
then on 7/25 we received 17 cars , then on 7/27 we received 27 cars . This bunching of cars resulted in the demurrage charges during the first half of
August during which we had to catch up on unloading the 44 cars. Please
call if you have any questions. Thank You. Jeff Armstrong

-----Original Message-----

From: Lisette Leavens [<mailto:Lisette.Leavens@PatriotRail.com>]
Sent: Thursday, September 08, 2016 9:04 AM
To: Jeff Armstrong (jeffa@specializedrail.com)
Cc: Jim Bulone; Lisette Leavens; Ryan Durant; Shayna Countryman
Subject: UCRY Specialized Invoice 101706

Hello,

Please find the attached invoice(s) covering railroad charges:

When submitting payment, include invoice number(s) to which the payment is to be applied. A 2% finance charge may be charged on all past due 30 day accounts.

Make checks payable to:

Utah Central Railway
3460 Momentum Place
Chicago, IL 60689-5334

Disputes are to be submitted via email to
Revenuegroup@patriotrail.com<<mailto:Revenuegroup@patriotrail.com>> within 30
days of receipt of invoice. The dispute/exception should include invoice
number, car initial and number, and the reason you are disputing. Customer
must pay the undisputed amount at the time the dispute is filed, according

to normal bill paying procedures.

Please provide a Point of Contact with an email address for all questions and/or concerns regarding invoices.

Thank you and have a safe day,

Lisette Leavens
Revenue Specialist

[cid:image001.jpg@01CDE416.45D01290]

10060 Skinner Lake Dr.

Jacksonville, FL 32246

Lisette.Leavens@patriotrail.com<mailto:Lisette.Leavens@patriotrail.com>

P: (904) 516-5040

F: (904) 516-5041

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REDACTED

-----Original Message-----

From: Lisette Leavens [<mailto:Lisette.Leavens@PatriotRail.com>]

Sent: Thursday, September 15, 2016 6:27 AM

To: Jeff Armstrong

Cc: Jeff Golian; Jack Burgess; Jim Bulone; Ryan Durant; Shayna Countryman; 'Brian Frennea'; Lisette Leavens

Subject: RE: UCRY Specialized Invoice 101706

Good Morning Jeff,

Thank you for contacting me regarding your dispute. We are looking into it.
Hope you have a great day.

Thank you and have a safe day,

Lisette Leavens
Senior Revenue Specialist

10060 Skinner Lake Dr.

Jacksonville, FL 32246

Lisette.Leavens@patriotrail.com

P: (904) 516-5040

F: (904) 516-5041

-----Original Message-----

From: Jeff Armstrong [<mailto:jeffa@specializedrail.com>]

Sent: Wednesday, September 14, 2016 6:00 PM

To: Lisette Leavens

Cc: Jeff Golian; Jack Burgess; Jim Bulone; Ryan Durant; Shayna Countryman; 'Brian Frennea'

Subject: FW: UCRY Specialized Invoice 101706

Lisette - We dispute the charges per the attached invoice. After not receiving any cars from 7/16 until 7/25 , 46 cars arrived on 7/25 and 7/27 .

Due to this bunching of cars by the rails , we were unable to unload the cars within the free time and were not able to recover until mid month .

Then another group of 30 cars arrived on 8/12 and 8/15 , and 15 cars on 8/18 . Our shippers are not loading this many cars on a single day. We are not going to pay demurrage when the rails bunch cars while enroute and provide 1.5 interchanges per week to the UCRY , as the BNSF currently does . The BNSF is able to enjoy the cost savings of reduced service levels and yet expects to receive car hire on the cars. this is not a fair business practice. They are putting

our company in an impossible situation , driving our costs up beyond what we can recoup. Until the BNSF and the UCRY get this worked out whereby cars are not bunching enroute and in the Ogden area, we will not accept any demurrage charges. Thank You. Jeff Armstrong

-----Original Message-----

From: Lisette Leavens [<mailto:Lisette.Leavens@PatriotRail.com>]
Sent: Thursday, September 08, 2016 9:04 AM
To: Jeff Armstrong (jeffa@specializedrail.com)
Cc: Jim Bulone; Lisette Leavens; Ryan Durant; Shayna Countryman
Subject: UCRY Specialized Invoice 101706

Hello,

Please find the attached invoice(s) covering railroad charges:

When submitting payment, include invoice number(s) to which the payment is to be applied. A 2% finance charge may be charged on all past due 30 day accounts.

Make checks payable to:

Utah Central Railway
3460 Momentum Place
Chicago, IL 60689-5334

Disputes are to be submitted via email to Revenuegroup@patriotrail.com<<mailto:Revenuegroup@patriotrail.com>> within 30 days of receipt of invoice. The dispute/exception should include invoice number, car initial and number, and the reason you are disputing. Customer must pay the undisputed amount at the time the dispute is filed, according to normal bill paying procedures.

Please provide a Point of Contact with an email address for all questions and/or concerns regarding invoices.

Thank you and have a safe day,

Lisette Leavens
Revenue Specialist

[[cid:image001.jpg@01CDE416.45D01290](#)]

10060 Skinner Lake Dr.
Jacksonville, FL 32246
Lisette.Leavens@patriotrail.com<<mailto:Lisette.Leavens@patriotrail.com>>
P: (904) 516-5040
F: (904) 516-5041

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EXHIBIT 7

REDACTED

From: Brian Frennea [<mailto:Brian.Frennea@SSAMarine.com>]

Sent: Wednesday, October 12, 2016 3:52 PM

To: Jeff Armstrong

Subject: FW: bnsf switching

What is the status of the dispute/resolution?

From: Jack Burgess [<mailto:Jack.Burgess@patriotrail.com>]

Sent: Tuesday, August 30, 2016 8:33 AM

To: Jeff Armstrong <jeffa@specializedrail.com>

Cc: Brian Frennea <Brian.Frennea@SSAMarine.com>; hokada@specializedrail.com; Jeff Golian <Jeff.Golian@patriotrail.com>; Paul Quintana <Paul.Quintana@patriotrail.com>

Subject: RE: bnsf switching

Jeff Thank you for actively helping to address this issue Given the encouraging feedback from BNSF (after both Herb's call and Patriot's face to face reinforcement last Thursday) to support a meeting either 8 or 9 September at your facility and on the UCRY, I would propose that we initially see how that meeting goes and the immediate feedback from the BNSF Last Thursday BNSF committed to engage their local operations personnel immediately while they planned to bring some one from both their Service Design and Network Strategy (Kristy Clark) groups as well as their Short Line Group to the meeting I would propose to give them the opportunity to address it in more detail before the end of next week. If that turns unfavorable then I would suggest a regroup and adding in Brian's network.

Meanwhile the daily cars provided to the UCRY from both the Union Pacific and Burlington Northern for the months of July and August to date are noted below.

Challenging days resulting from both railroads bunching: 03 Aug (74 cars), 10 Aug (65 cars), 12 August (39 cars), 17 Aug (40 cars), 08 July (40 cars), 11 July (133 cars), 13 July (62 cars), 19 July (54 cars), 22 July (53 cars), 27 July (91 cars)

Challenging BNSF days: 09 Aug (22 cars), 16 Aug (18 cars), 22 Aug (24 cars), 26 Aug (19 cars), 11 July (21 cars), 19 July (17 cars).

When the deliveries are heavy on consecutive days or three or four in a row then the UCRY has little room to maneuver both loads and empties to support switching in and out for the class I railroads while also servicing the customers. Customers like Specialized Rail have a processing through-put of about 7-8 cars per day, so stacking several days worth of cars right upon their docks is not realistic or even possible to think that would not cause an issue. In an ideal world the scheduling and flow of cars would be consistent. This is the information I am sharing with Brian and everyone to present the facts of the existing conditions. What I do not have is the details associated with conflicts that occur between the UP, BNSF and Utah railroad that like further agitate the bunching issue. That's why I think we should give the BNSF a chance during next week's meeting before ramping up additional influence to exert more pressure on the BNSF.....
Respectfully ... Jack

Month: August													
Year: 2016		Day of Month											
Customer Name		1	2	3	4	5	6	7	8	9	10	11	
Carloads:		0	0	74	7	1	41	0	11	22	65	0	
BNSF		0	0	12	7	0	0	0	0	22	0	0	
UP		0	0	62	0	1	41	0	11	0	65	0	

Month: July													
Year: 2016		Day of Month											
Customer Name		1	2	3	4	5	6	7	8	9	10	11	
Carloads:		34	5	0	0	0	34	0	40	0	0	133	
BNSF		0	0	0	0	0	1	0	13	0	0	21	
UP		34	5	0	0	0	33	0	27	0	0	112	

From: Jeff Armstrong [mailto:jeffa@specializedrail.com]
Sent: Monday, August 29, 2016 7:03 PM
To: Jack Burgess
Cc: 'Brian Frennea'; hokada@specializedrail.com
Subject: bnsf switching

Jack - I spoke with Brian Frennea of SSA Marine on Friday of last week. I discussed the switching issues we are experiencing with the BNSF in conjunction with the UCRY in Ogden, UT. Brian would like some detailed information indicating that the UCRY is receiving infrequent and erratic switching from them which is leading to the bunching of rail cars in Ogden/Salt Lake City which is negatively affecting the even flow of cars to our facility and subsequently product to P&G. Brian will then approach his contacts at the BNSF to assist in resolving the issue. would you be able to advise on the situation from UCRY's perspective and to provide data to Brian which supports the fact that the switching from the BNSF to the UCRY is an issue? Thank You, Jeff Armstrong

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