

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

In re	)	
	)	
SURGE TRANSPORTATION, INC., <sup>1</sup>	)	Case No.: 3:23-bk-1712
	)	
Debtor.	)	Chapter 11
	)	
	)	
	)	

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**DEBTOR’S MOTION FOR CONTEMPT AND  
SANCTIONS AGAINST AA AUTO TRANSPORT, INC.  
FOR ITS INTENTIONAL VIOLATION OF THE AUTOMATIC STAY**

Aa Auto Transport, Inc. (“AAAT”) has decided that it is a law unto itself by perpetrating a premeditated (and entirely post-petition) fraud to take hostage a shipment of goods belonging to one of Surge Transportation, Inc.’s (“Surge” or “Debtor”) customers in an attempt to extort the Debtor’s payment to AAAT of an unsecured, prepetition claim. AAAT took this action despite the pre-petition amount owed by Debtor being just \$950. Despite being aware of the bankruptcy filing and receiving follow-up notices from counsel for Debtor, AAAT has held the load for over 55 days and still refuses to deliver the hostage load absent a payment of \$12,000. If AAAT gets away with these actions without penalty, the Bankruptcy Code and the authority of this Court in implementing it will mean very little. Accordingly, Surge moves the Court for a finding of contempt and for the imposition of sanctions, both compensatory and punitive, against AAAT.

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

### **Background**

1. On July 24, 2023 (the “Petition Date”), Surge filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code.

2. Surge is continuing in possession of its property and managing its business as debtor in possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 1334 and 157. This is a core matter.

4. Surge is a Jacksonville based trucking/freight broker licensed with the U.S. Department of Transportation and the United States Federal Motor Carrier Safety Administration which specializes in sourcing extra truckload capacity during peak season periods and on short lead times. Surge maintains satellite offices in Chicago, Illinois and Ashburn, Virginia.

5. Surge’s customers are suppliers of consumer goods, including large Fortune 1000 shippers and manufacturers like Kraft Heinz, Anheuser Busch, Dannon, Ace Hardware, and Chewy. Surge has 60,000 motor carriers under contract. Of these carriers, Surge has active business with approximately 5,000 at any given time.

6. AAAT is a motor carrier that, prepetition, delivered truckloads of freight pursuant agreements with the Debtor. As of the Petition Date, AAAT held an unsecured claim against the Debtor for unpaid motor carrier delivery charges in the amount of \$950.

7. After the Petition Date, AAAT engaged in a corrupt and dishonest scheme to extort payment from Surge of its prepetition claim. Four days after the bankruptcy filing, on July 28, 2023, AAAT, pretending to be willing to provide routine freight

delivery services for Surge, picked up a load of food-grade phosphates (the “Goods”) from ICL Specialty Products (“ICL” or the “Shipper”) and agreed to deliver the Goods to Univar Solutions on July 31, 2023, in Morrisville, Pennsylvania. Surge and AAAT agreed that AAAT would be paid \$2,600 for delivery of the Goods which have a value of \$86,700.20.<sup>2</sup>

8. But it was all a ruse. After failing to deliver the Goods, AAAT initially claimed the delay was due to its delivery truck breaking down. Despite numerous follow-up e-mails requesting details on the issues and the status of the repair, AAAT provided no detail on the supposed mechanical issues. In fact, AAAT took the load “hostage” at its facility in Pennsylvania and refused to deliver the Goods unless Surge paid its pre-petition claim:

**From:** Paul Smith <[paul.smith@surgetransportation.com](mailto:paul.smith@surgetransportation.com)>  
**Sent:** Thursday, September 7, 2023 3:17:56 PM  
**To:** Azizjon Mansurov <[azizjon\\_99@hotmail.com](mailto:azizjon_99@hotmail.com)>  
**Subject:** Re: 10260000- Lawrence, KS to Morrisville, PA

According to our accounting department, you have one outstanding invoice for \$950 for load 10254923. Is the axle on the trailer broken, or are you holding the load hostage? This has been going on for over a month, and we need to get this freight back to our customer.

**Paul Smith**  
Operations Supervisor  
**please reply all:** [tracktrace@surgetransportation.com](mailto:tracktrace@surgetransportation.com)  
**O:** 844-591-6090 | **EXT:** 319  
**F:** 904-212-2172  
**E:** [paul.smith@surgetransportation.com](mailto:paul.smith@surgetransportation.com)

On September 7, 2023 at 3:23 PM EDT [azizjon\\_99@hotmail.com](mailto:azizjon_99@hotmail.com) wrote:

We matter what we need our payment for this load and as well as other load with your company you cannot treat carriers with non payment service and also abuse them with your words I have this load and it's been 30 days over ...

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<sup>2</sup> AAAT factored the pre-petition receivable through RTS Financial.

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9. Surge informed AAAT of the bankruptcy filing on August 22, 2023, making it clear that it could not pay carriers for loads delivered before the Petition Date:

On August 22, 2023 at 10:57 AM EDT  
[paul.smith@surgetransportation.com](mailto:paul.smith@surgetransportation.com) wrote:

Surge Transportation has filed for Chapter 11 bankruptcy as of Monday, July 24th at 8:31 pm EST. This filing is different than Chapter 7 bankruptcy which eliminates debt completely and has no intention of paying any debtors. Under Chapter 11, Surge's intention is to pay the debts owed, especially prioritizing carriers who have hauled before July 24th.

If you are a carrier who delivered a Surge load before Monday, July 24th at 8:31 pm EST your payment is included in these filings. You should have already received paperwork from the court confirming Surge's filing. If you did not receive paperwork from the court or have questions for loads before July 25th please contact TriumphPay at [SurgeReorg@tfin.com](mailto:SurgeReorg@tfin.com) or 972-779-0595 with your accurate mailing address, email and phone number. Carriers have the option to file on Surge Transportation's bond with ITS before it is completely depleted. The courts are reviewing Surge's financials and will set up a payment schedule for all debtors and carriers owed as a part of this filing but that timeframe has yet to be set up by the court.

In order to ensure that the load is included in the filing please be sure to send in your invoice, BOL and any applicable unloading receipts, detention or layovers to [invoice@surgetransportation.com](mailto:invoice@surgetransportation.com)

If you delivered a load after Monday, July 24th at 8:31 pm EST then we are authorized to pay carriers and factors via TriumphPay for no fee 3-day quickpay. Please ensure that you have sent your invoice, BOL and any applicable unloading receipts to [invoice@surgetransportation.com](mailto:invoice@surgetransportation.com)

We know this is incredibly difficult and detrimental to the carriers with loads that were delivered before July 24th and are sorry to all those affected. We are working with the courts to remedy this as soon as possible.

**Paul Smith**

Operations Supervisor

**please reply all:** [tracktrace@surgetransportation.com](mailto:tracktrace@surgetransportation.com)

**O:** 844-591-6090 | **EXT:** 319

**F:** 904-212-2172

**E:** [paul.smith@surgetransportation.com](mailto:paul.smith@surgetransportation.com)

10. After AAAT took the pre-petition load hostage, counsel for Surge again reminded AAAT about the bankruptcy filing and that its actions were in violation the automatic stay:

**From:** David Swan  
**Sent:** Saturday, September 9, 2023 8:39 AM  
**To:** 'Azizjon Mansurov' <[azizjon\\_99@hotmail.com](mailto:azizjon_99@hotmail.com)>;  
[paul.smith@surgetransportation.com](mailto:paul.smith@surgetransportation.com)  
**Subject:** RE: 10260000- Lawrence, KS to Morrisville, PA

Mr. Mansurov – you cannot charge storage fees and other expenses for a load you are holding hostage. I am bankruptcy counsel to Surge Transportation, which filed Chapter 11 on July 24<sup>th</sup>. Surge, as a matter of bankruptcy law, is not allowed to pay pre-petition claims at this time. Your refusal to deliver unless paid a pre-petition claim - and those other improper charges - is a blatant violation of the automatic stay, as set forth in section 362(a) of the Bankruptcy Code. If you do not deliver the load immediately, and pay Surge for any delay damages you have caused, we will bring this matter to the attention of the Bankruptcy Court, and ask the Court to impose sanctions against you for willfully violating the automatic stay. Do not hesitate to call me if you or your legal counsel would like to discuss these matters.

David Swan, Esq.  
703-584-8911

11. In an attempt to avoid litigation, on September 27, 2023, Surge and its counsel gave AAAT another opportunity to release the hostage load:

**From:** David Swan <[DSwan@hirschlerlaw.com](mailto:DSwan@hirschlerlaw.com)>  
**Sent:** Wednesday, September 27, 2023 10:47 AM  
**To:** Paul Smith <[paul.smith@surgetransportation.com](mailto:paul.smith@surgetransportation.com)>;  
'Azizjon Mansurov' <[azizjon\\_99@hotmail.com](mailto:azizjon_99@hotmail.com)>  
**Subject:** RE: 10260000- Lawrence, KS to Morrisville, PA

Mr. Mansurov – Attached is the Order that Paul is referring to. It was just entered by the Bankruptcy Court this afternoon. Pay some attention to pages 13 – 14, as the Court ordered the representative who sent the hostage demand emails to appear in Court on Oct 25 in Jacksonville for a hearing to determine the amount of additional damages and sanctions. It appears that Paul is giving you until end day tomorrow to potentially avoid a similar fate. Also, please have your lawyer call me if you choose to engage one in this matter.

**From:** Paul Smith <[paul.smith@surgetransportation.com](mailto:paul.smith@surgetransportation.com)>  
**Sent:** Wednesday, September 27, 2023 10:47 AM  
**To:** David Swan <[DSwan@hirschlerlaw.com](mailto:DSwan@hirschlerlaw.com)>; 'Azizjon Mansurov' <[azizjon\\_99@hotmail.com](mailto:azizjon_99@hotmail.com)>

**Subject:** [EXTERNAL] Re: 10260000- Lawrence, KS to Morrisville, PA

Good morning,

You have not responded to our attorney, so Surge has no choice but to bring this to the Bankruptcy Court's attention. The Court ruled in our favor in another hostage load situation, and I will provide you with a copy of that order, which should be entered today or tomorrow. Absent you agreeing to release the hostage load by the end of business tomorrow, Surge will file the necessary motion.

Thank you,

**Paul Smith**  
Operations Supervisor

12. Surge owed AAAT \$950 for the pre-petition load and \$2,600 for the hostage load had it been delivered. Despite this, AAAT demanded a \$12,000 payment to release or deliver the load:

**From:** Paul Smith <[paul.smith@surgetransportation.com](mailto:paul.smith@surgetransportation.com)>  
**Sent:** Thursday, September 7, 2023 3:26:43 PM  
**To:** Azizjon Mansurov <[azizjon\\_99@hotmail.com](mailto:azizjon_99@hotmail.com)>  
**Subject:** Re: 10260000- Lawrence, KS to Morrisville, PA

The payment is not the issue. The issue we are trying to confirm is if the trailer is broken or not. If the "axle" is now fixed, tell us how much you want to deliver this load upfront.

On September 7, 2023 at 3:52 PM EDT [azizjon\\_99@hotmail.com](mailto:azizjon_99@hotmail.com) wrote:

12000\$

**From:** Paul Smith <[paul.smith@surgetransportation.com](mailto:paul.smith@surgetransportation.com)>  
**Sent:** Thursday, September 7, 2023 3:56:05 PM  
**To:** Azizjon Mansurov <[azizjon\\_99@hotmail.com](mailto:azizjon_99@hotmail.com)>  
**Subject:** Re: 10260000- Lawrence, KS to Morrisville, PA

How do you come up with \$12000? We owe you \$950 for load # 10254923 and \$2600 for the load you are currently holding hostage. That is a total of \$3,550.

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**From:** Azizjon Mansurov <[azizjon\\_99@hotmail.com](mailto:azizjon_99@hotmail.com)>  
**Sent:** Friday, September 8, 2023 10:52 PM  
**To:** [paul.smith@surgetransportation.com](mailto:paul.smith@surgetransportation.com)  
**Subject:** [EXTERNAL] Re: 10260000- Lawrence, KS to Morrisville, PA

That's cost of our time and as well as storage fees transportation and trailer payment and insurance payment and parking fee and let's of expenses involved surge company brought as damages for not paying on time ... kindly make the payment we will deliver the load after payment is made ! For now, since 30 days past being load in our possession loads belongs to us and it's in our property as well it's been 43 days since we have the load of customer wants the load send the payment to aa auto transport inc 12000\$ or charges will be increasing every 24 hours which brings lot of demages and expenses to our company there for we won't be giving anymore explanation cuz of surge has been bankrupt since July and has filed chapter 11 all we asking for our service and additional charges which brought to company you can do ach or wire or send us certified check thanks !!!

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13. At this point, Surge risks losing ICL as a shipper/customer as a result of AAAT's actions. Surge has updated ICL throughout but given the over 55-day delay, ICL is to the point of getting its legal team involved.

14. It is hard to imagine that ICL will not be concerned about other carriers engaging in similar tactics if AAAT is not sanctioned for its misconduct.

15. While not one of Surge's largest customers, ICL represents the type of customer Surge needs to maintain for this reorganization to be successful. Since contracting with ICL in August 2022, Surge has moved 31 loads with an average margin return of 12.44% on overall freight/brokerage charges of \$75,500.

### **Argument**

16. AAAT's actions were a premeditated and outrageous violation of 11 U.S.C. §§ 362(a)(3) and (a)(6), in that AAAT's fraudulently obtained control over property of the estate in an effort to try and coerce payment of a prepetition claim from Surge. AAAT still has the Goods it agreed to deliver for Surge some 55 days ago.

Letting AAAT's fraud and coercion go unpunished would undercut the integrity of the federal bankruptcy system which rests on the principle that self-help and vigilantism must yield to the automatic stay so that similarly situated pre-petition creditors all receive equal treatment. The alternative is not just a race to the courthouse, but as shown so vividly here, a free-for-all.

17. The automatic stay of 11 U.S.C. § 362 is one of the most important protections available to debtors and is necessary for a successful reorganization. *In re Briskey*, 258 B.R. 473, 477 (Bankr. M.D. Ala. 2001) (“The automatic stay is necessary to permit the debtor breathing space so that he may reorganize his affairs. [T]he automatic stay is necessarily broad so that debtors may reorganize their affairs in an orderly and equitable fashion”).

18. In addition, AAAT's actions have damaged Surge's contract rights, goodwill, reputation, and customer relationships, all of which are key assets of the estate.

19. In *In re Jotan, Inc.*, 229 B.R. 218 (Bankr. M.D. Fla. 1998), this court held that intangibles, like goodwill and the reputation of a debtor in Chapter 11, are assets of the estate, interference with which is a violation of the automatic stay:

The Court notes at the outset of its discussion that the goodwill and reputation of a corporation in Chapter 11, to the extent that there is one, is property of the bankruptcy estate. . . . Parties interfering with or trying to take away from such goodwill and reputation are in violation of the automatic stay afforded to debtors seeking bankruptcy relief and subject to this Court's authority with respect to violations of that stay.

20. Protecting customer relationships and goodwill are critical not only to Surge's current operations, but also to the viability of a Chapter 11 plan or a sale of the business. *See Jotan* at 222.

21. Dispatchers and carriers must be strongly discouraged from self-help. If AAAT gets away with what it has done, what will stop other carriers from doing the same? On top of that, shippers will cease to place orders with Surge over concerns their products will be held hostage or lost altogether. This will undermine Surge's prospect of a successful reorganization, which not only impacts Surge, but creditors of the estate.

22. The Debtor has already filed a motion to enforce the automatic stay against OTR Solutions, LLC [Docket No. 61] and ADR Logistics, LLC [Docket No. 119] for stay violations relating to attempts to coerce Debtor's payment of pre-petition claims outside the processes authorized under the Bankruptcy Code.

23. Here, AAAT's conduct was in bad faith and blatant disregard for the automatic stay. Surge gave AAAT warnings and opportunities to follow the law and correct its misbehavior. Sanctions against AAAT are warranted, to (a) reimburse the bankruptcy estate for the fees and costs of bringing this motion, (b) compensate Surge for the damages it has suffered as a result of AAAT's conduct, (c) punish AAAT for its willful violation of the automatic stay, and (d) deter AAAT (and other creditors) from such conduct in the future.

24. Because of section 362(a)'s central role in the administration of the Code, it is vital the bankruptcy court has tools at its disposal to enforce it, including contempt:

It is quite evident and obvious that the only way the bankruptcy court can put teeth into its power to enforce the automatic stay is through the threat of contempt

proceedings. The court must have a way to enforce its own orders and a contempt order is an appropriate way to carry out the purpose of the automatic stay provision of the Code.

*In re Crum*, 55 B.R. 455, 458 (Bankr. M.D. Fla. 1985).

25. A contempt order and the levying of sanctions is therefore appropriate to enforce the automatic stay to further advance its goal of providing “the debtor a breathing spell from his creditors.” *Malloy v. Phillips*, 197 B.R. 721, 722 (M.D. Ga. 1996).

26. AAAT’s actions were contemptable, and sanctions are necessary to put teeth into section 362. AAAT should be punished, not only because it took a load hostage in a continuing attempt to coerce the payment of a pre-petition claim and damaged Surge’s customer relationship and goodwill, but because its violations of the automatic stay were intentional and pre-meditated.

27. AAAT should therefore be ordered to show cause why it should not be held responsible for payment of compensatory damages, punitive damages, including all fees and costs incurred by Surge in bringing this motion.

WHEREFORE, Surge requests the entry of an order (i) finding AAAT in contempt for violation of the automatic stay, (ii) requiring AAAT to immediately release the Goods to Surge so it can complete the delivery; (iii) awarding damages, both compensatory and punitive, plus all attorney fees and costs incurred in bringing this action, against AAAT for violation of the automatic stay, and (iv) such other relief as is appropriate.

**THAMES | MARKEY**

*/s/ Bradley R. Markey*

By \_\_\_\_\_

Richard R. Thames  
Bradley R. Markey

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Attorneys for Surge Transportation, Inc.

**Certificate of Service**

I hereby certify that on October 4, 2023, the foregoing was transmitted to the Clerk of the Court for uploading to the Case Management/Electronic Case files (“CM/ECF”) System, which will send a notice of electronic filing to all creditors and parties in interest who have consented to receiving electronic notices in this case. A copy of the foregoing was also furnished by U.S. Mail and electronic mail to:

Aa Auto Transport, Inc.  
Attn: Azizjon Mansurov  
2651 Woodsvie Drive  
Bensalem, Pennsylvania 19020

E-mail: [azizjon\\_99@hotmail.com](mailto:azizjon_99@hotmail.com)

*/s/ Bradley R. Markey*

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Attorney