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(April 14, 2014.)

THE COURT: 13-SC-1650 is Suburban Express against Minnis, Cater Minis.

MR. BETZ: He's present, Your Honor, and we're prepared for trial today.

THE COURT: All right. And the plaintiff appears by Mr. Powell, is it?

MR. POWELL: Yes, Judge.

THE COURT: All right. Is it in fact set for trial?

MR. POWELL: Yes.

THE COURT: All right. We'll call it for trial shortly.

13-SC-1653 is Suburban Express against Mauro. We'll show the same appearances. Still at issue, gentlemen?

MR. BETZ: Still at issue, ready for trial today.

THE COURT: All right. We'll call the case for trial in just a few minutes.

(Proceedings had as to other cases.)

THE COURT: Let's first call 13-SC-1653, which is Suburban Express against Mauro.

Ms. Mauro appears personal together with her

1 attorney, Mr. Betz. Mr. Powell appears on behalf of
2 the plaintiff.

3 We'll show the cause called for trial on the
4 merits of the amended complaint filed March 26th.

5 Mr. Powell, you can proceed at your convenience.

6 MR. POWELL: Does Your Honor like opening
7 statements or do you want to get right to witnesses?

8 THE COURT: It's entirely up to you, sir.

9 MR. POWELL: Okay. Judge, I would just
10 like to make an opening statement real quick.

11 THE COURT: All right. You certainly
12 may.

13 MR. POWELL: Thank you, Judge.

14 May it please the court, counsel.

15 THE COURT: Sir.

16 MR. POWELL: Your Honor, this is a --
17 this is a case where Ms. Mauro electronically purchased
18 a bus ticket to -- for a fare to ride on a Suburban
19 Express bus on a given date and time. She went online.
20 There was a contract presented to her, several screen
21 shots, nine, ten, eleven, so forth, warning each step
22 of the way of the term -- of the contract conditions,
23 you know, if you don't agree, don't go forward and so
24 forth. She purchases it. One of those contract terms

1 is is that you have to have a printed ticket to board
2 the bus. No exceptions.

3 Ms. Mauro shows up to the bus, which she just
4 got the ticket less than hour before its departure
5 time, trying to convince the bus driver to let her on
6 the bus with her iPhone screen shot. She was denied.
7 Later purchased -- that same day purchased another
8 ticket that was leaving an hour and 45 minutes later.
9 She gets on that bus.

10 Subsequently, she contacts her credit card
11 company to reverse the charges. She reversed the
12 charges on the second ticket which she purchased and
13 did, in fact, ride.

14 Subsequently, after Suburban Express showed
15 proof of the contract terms, they then funded Suburban
16 Express back the cost of the ticket but, in doing so,
17 Suburban Express was charged a \$16 fee for the
18 chargeback transaction. The way I relate that is if,
19 you know, in our terms, if somebody gives us a check
20 and we deposit it in our account and it's a bad check,
21 we, having the privity of contract with our bank, get
22 charged the transaction fee for reversal of that check.
23 That's what's happened here to Suburban Express.

24 On top of that, Suburban Express then, as the

1 evidence will show, sent Ms. Mauro a collections letter
2 explaining to her that she owes a \$16 chargeback fee
3 plus \$10 for the internal process of the attempts to
4 collect that, so the collection letter that went out,
5 and warning Ms. Mauro that if the terms are -- or if
6 the payments aren't made, then, you know, she's also,
7 pursuant to the contract, would be responsible for
8 attorney's fees, costs, et cetera. So we have filed
9 this complaint, Your Honor, to recoup the \$16
10 chargeback fee, plus the \$10 collections fee, but this
11 case is much bigger than \$26, Your Honor and you'll,
12 you'll hear testimony of why it is important for
13 Suburban Express to move forward with this case. This
14 isn't just one single \$26 case, it's a much bigger
15 picture.

16 At the evidence end of the evidence, Your Honor,
17 of this trial, we're quite confident that you will find
18 in favor of Plaintiff Suburban Express and against
19 Defendant Mauro for her breach of contract and the
20 damages that resulted therefrom.

21 Thank you.

22 THE COURT: All right. Thank you.

23 Mr. Betz, did you care to make any opening
24 statement on behalf of Ms. Mauro whether at this or

1 other any other juncture?

2 MR. BETZ: We would reserve, Your Honor.

3 THE COURT: All right. We'll note that
4 reservation and, before we proceed, let me inquire of
5 counsel in 14-LM-137, Price against Mannen, are you
6 ready to proceed or are we waiting the arrival of Ms.
7 Lyons now?

8 (Proceedings had as to another case.)

9 THE COURT: All right. Let's revisit
10 13-SC-1653, Suburban Express versus Mauro.

11 Mr. Powell, you may proceed.

12 MR. POWELL: Thank you, Your Honor.

13 We would call Defendant Mauro as an adverse
14 witness.

15 THE COURT: All right. Ma'am, this is a
16 civil case in which one party can call the other as a
17 witness. I think you can remain seated wherever you're
18 most comfortable. If you care to take the witness
19 stand, you may. If you'd care to remain seated at
20 table -- the table, you may. The audio system will
21 pick you up either way.

22 And while you're doing that, Ms. VanDeventer,
23 have you resolved the other cases?

24 (Proceedings had as to other cases.)

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THE COURT: All right. Mr. Powell.

MR. POWELL: Thank you, Judge.

THE COURT: Yes, sir.

MS. MAURO

called as a witness, was examined and testified as follows:

DIRECT EXAMINATION:

BY MR. POWELL

Q. Good afternoon, Ms. Mauro.

A. Good afternoon.

Q. Am I pronouncing your name correctly?

A. Yes.

Q. Okay. If you can't hear me, just let me know and I'll repeat the question for you, okay?

On February 22nd, 2013, isn't it true that you went online to purchase a Suburban Express ticket?

A. Yes.

Q. And where were your plans? Where were you going to leave from, where were you going to go?

A. I'm sorry. I couldn't hear with you the door.

Q. Where were you leaving from and where were you -- where was it taking you to?

A. The ticket that I purchased was leaving from

1 Champaign to Woodfield Mall.

2 Q. All right. And you went online to your
3 Smartphone to purchase this ticket?

4 A. Yes.

5 Q. And do you remember that there was a
6 process, by process I mean several screens that you had
7 to go through before you could actually pay for that
8 ticket and receive a copy of that ticket; is that
9 correct?

10 A. Yes.

11 Q. All right. Let me show you --

12 MR. POWELL: Your Honor, may I approach?

13 THE COURT: Yes, sir.

14 BY MR. POWELL: Show you what's been
15 marked as Exhibit 1A through I.

16 MR. POWELL: Here you go, Judge.

17 You printed this?

18 MR. BETZ: Yes.

19 BY MR. POWELL: So when did you determine
20 that or -- or when did you go online to try to purchase
21 this, Ms. Mauro?

22 A. Like what time that day?

23 Q. Yeah.

24 A. It must have been somewhere between 1 and

1 1:30.

2 Q. Okay. And you chose a bus that left at 2
3 p.m.; correct?

4 A. Correct.

5 Q. And when you said between 1 and 1:30, that
6 is p.m.; right?

7 A. Correct.

8 Q. So it left you less than an hour --

9 A. Yes.

10 Q. -- to purchase a ticket, follow the, the
11 contract terms and board the bus; correct?

12 A. Yes.

13 Q. And the packet that I had put in front of
14 you, for example, Exhibit 1A, does that look familiar
15 as to the first page that you went on the site to begin
16 purchasing this ticket?

17 A. I don't --

18 MR. BETZ: Your Honor, objection. This
19 is dated 2014, not 2013.

20 MR. POWELL: May I respond, Judge?

21 THE COURT: Well, there's a foundation
22 objection I take this as, and the objection will be
23 sustained. You can establish an adequate foundation
24 for the document, the Exhibit 1, if you will, sir.

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MR. POWELL: Sure, Judge.

Actually, my client and I on Friday, April 18, went online, because to show each and every step that must take place to purchase a ticket, you have to go online and go through those steps. So you can see Exhibit 1A is the first page. We picked from Champaign-Urbana to Chicago area and we picked the date that we did this on.

THE COURT: Okay. Counsel --

MR. BETZ: Objection.

THE COURT: -- I realize it's a small claim case, but there's been no request that we invoke Rule 286(b) and you're making a proffer, which essentially is testifying. Now you've got one of two choices. You can appear as an advocate or you can appear as a witness. Rule 3.7 of the Rules of Professional Conduct don't permit you to do both, so your proffer's stricken. The objection to the foundation remains sustained. You may otherwise continue.

MR. POWELL: Judge, could I ask then that the rules be relaxed? I'm going to be offering my witness as far as foundation for the documents.

THE COURT: Okay. You're almost asking

1 the court to make Anglo-American legal history by
2 applying Rule 286(b) in a small claims case in which
3 both parties are represented by counsel.

4 Mr. Betz, what's your position with regard to
5 the court applying Rule 286(b)?

6 MR. BETZ: I object, Your Honor, quite
7 frankly. I'd assumed we were having two attorneys
8 following the rules of evidence and rules of procedure
9 on this matter. I would have brought in -- since this
10 has happened so quickly from the date of filing to the
11 date of trial, I assumed normal rules and so I do
12 object.

13 THE COURT: All right. Well, the court's
14 mindful that it is a matter of discretion, however,
15 Rule 286(b) was enacted by the supreme court to be an
16 aid to pro se litigants in small claims cases so that
17 pro se litigants don't have to be subjected to the
18 rigors of procedure and evidence that lawyers are
19 called upon to and expected to follow. And, again, the
20 court thinks it would be contrary to the purpose of
21 Rule 286(b) to apply it in a case over objection
22 whereas here both parties are represented by able
23 counsel, so the objection's sustained, the foundation
24 objection remains sustained and the case will proceed.

1 Sir, you may continue your examination of Ms.
2 Mauro.

3 BY MR. POWELL: So, Ms. Mauro, you do
4 recall that there was several screens that you had to
5 go through which finally led you to inputting your
6 credit card information and purchasing a ticket;
7 correct?

8 A. Yes.

9 Q. And you remember that confirmation page was
10 then sent to you saying that here's the information,
11 here's the terms and conditions of the contract which
12 you agree to?

13 A. Yes.

14 Q. Okay.

15 MR. POWELL: May I approach, Judge?

16 THE COURT: Yes, sir.

17 BY MR. POWELL: I'm going to hand you
18 what's been marked as Exhibit 4 and can you take a look
19 at that document and tell me if that looks like a copy
20 -- or if that is a copy of the confirmation that you
21 received after you purchased the ticket online with
22 your Smartphone?

23 A. No.

24 Q. What's not (inaudible) about it?

1 A. This was not the first ticket that I
2 purchased. This was the second. I, I printed this
3 one.

4 Q. Okay. Did you purchase that ticket?

5 A. Yes.

6 Q. Okay. And you purchased this ticket to ride
7 the 3:45 bus?

8 A. Yes.

9 Q. Again, from Champaign to where?

10 A. To Woodridge Jewel, which is a different
11 location.

12 Q. Okay. And when you, you purchased this
13 ticket, you looked down at the bottom, three lines up
14 from the bottom it says reservation number 945688; is
15 that correct?

16 A. I assume so.

17 Q. Okay. We'll go ahead and turn to page two.
18 That says that you were -- on February 22nd, 2013, you
19 were departing UIUC in Champaign and you were going to
20 be taken to Armory -- or the UIU -- UIUC Armory in
21 Champaign and they are taking you to Woodridge Jewel;
22 is that correct?

23 A. Yes.

24 Q. And is that, in fact, the trip that you took

1 on February 22nd --

2 A. Yes.

3 Q. -- 2013?

4 Boarding at 3:45 p.m.?

5 A. Yes.

6 Q. And you arrived at 6:15 p.m.?

7 A. Somewhere around there.

8 Q. And did you -- if you continue down there,
9 that again reminds you, does it not, of the terms of
10 the contract that you agreed to in order to purchase
11 this ticket?

12 A. Yes.

13 Q. And, in fact, in order to purchase the
14 ticket, you had to read through the terms and
15 conditions and check the box that says you agreed with
16 those terms, the contract terms; correct?

17 A. Yes.

18 MR. POWELL: May I approach, Your Honor?

19 THE COURT: Yes, sir.

20 BY MR. POWELL: I'm now showing you
21 what's marked as Exhibit 5. Ms. Mauro, is this a copy
22 of the ticket that you actually printed off?

23 A. Yes.

24 Q. And handed to the driver or someone

1 accepting the tickets to get on the bus?

2 A. Yes.

3 Q. And again that's ticket number 945688.1;
4 correct?

5 A. Yes.

6 Q. And it says that you paid \$27.95 on that day
7 at 2:19 p.m.?

8 A. Yes.

9 Q. So am I correct then that the first ticket
10 that you had purchased, you did not have a printed
11 ticket to get on board; correct?

12 A. Correct.

13 Q. And when you were denied, then you went in
14 and you purchased a ticket so that you could print one
15 off and get on the next bus; correct?

16 A. Yes.

17 Q. On the terms and conditions for this ticket

18 --

19 MR. POWELL: May I approach, Your Honor?

20 THE COURT: Yes, sir.

21 BY MR. POWELL: This has previously been
22 marked as Exhibit 3, and please feel free, but go ahead
23 and look -- the terms and conditions, the contract
24 terms on Exhibit 3, and go ahead and compare that to

1 Exhibit 4 and those are one and the same; correct? In
2 other words, each paragraph is the same on those two
3 documents?

4 A. Yeah. Yes, sir.

5 Q. Look at the fourth paragraph on Exhibit 3 or
6 you can use the confirmation ticket. It says you must,
7 in all caps, print out your ticket and present it to
8 the bus driver to board. You will not be permitted to
9 board without a printed ticket. Is that correct?

10 A. Yep.

11 Q. And on this occasion, you actually again
12 presented this ticket to the bus driver and they, as
13 you -- as they agreed when you purchased this ticket,
14 they took you from that location in Champaign and
15 dropped you off to the location up north; correct?

16 A. In Woodridge, yes.

17 Q. Did you at any time contact your credit card
18 company telling them that you were charged for -- or
19 wrongfully charged for a ticket you were not able to
20 use?

21 A. No.

22 Q. Okay. How did -- how -- are you aware that
23 the price of the ticket for the 2:00 bus was reversed
24 and charged back to your account out of Suburban

1 Express's account?

2 A. No.

3 Q. Were you aware that the 3:45 ticket was
4 reversed out of the Suburban Express account and back
5 into your account?

6 A. I'm a little confused.

7 Q. Okay. Let me ask it this way. Did you have
8 any communication with your credit card company
9 regarding the ticket that you purchased or a ticket
10 that you purchased on February 22nd, 2013 to take that
11 trip on Suburban Express from Champaign up north?

12 A. No.

13 Q. Are you aware --

14 MR. BETZ: Asked and answered.

15 THE COURT: Well, I don't know whether
16 it's been asked or answered yet. It hasn't been asked
17 the second time, so let him ask the question.

18 But before you get to that, let me inquire of
19 counsel in the LM case, counsel, have you resolved your
20 scheduling issue?

21 (Proceedings had as to another case.)

22 THE COURT: All right. Apologies for the
23 interruption.

24 There was an asked and answered objection that

1 wasn't justiciable just yet.

2 Continue asking the question, Mr. Powell.

3 MR. POWELL: And, Judge, I apologize. I
4 forget what I was even going to ask.

5 THE COURT: Okay. Well, the objection's
6 withdrawn.

7 MR. BETZ: I'll withdraw it --

8 THE COURT: You may proceed.

9 MR. BETZ: -- because I forget the basis.

10 BY MR. POWELL: Let me -- let me start
11 over. There's no transcript here, Ms. Mauro, so let me
12 think -- let me draw you back to my train of thought.
13 I think you told me that you were not aware -- or no.
14 I'm sorry. You told us that you did not call your
15 credit card company to reverse any charges for the
16 purchase of a ticket on Suburban Express on February
17 22nd, 2013; is that correct?

18 A. Right. I did not.

19 Q. And were you aware that the credit card
20 charge had been reversed?

21 A. Yes.

22 Q. When did you become aware of that?

23 A. It, it must have been March. We waited 30
24 days.

1 Q. Okay. So you, you do admit that Exhibit 5
2 is a copy of the ticket that you used to get on the
3 bus; correct?

4 A. Yes.

5 MR. POWELL: May I approach, Your Honor?

6 THE COURT: Yes.

7 BY MR. POWELL: Let me show you Exhibit
8 7. Have you ever seen this document before?

9 A. Yes.

10 Q. And that's a chargeback debit advice from
11 your credit card company to Suburban Express; correct?

12 A. Yes.

13 Q. Okay. And could you tell me the original
14 reference? Can you read that number? Do you see it
15 there? It's on the left-hand column, typed, go to the
16 bottom, original reference?

17 A. 945688.

18 Q. Okay. And how did you get a copy of this
19 document?

20 A. When I received my summons in December or
21 January.

22 Q. Okay. And if you look at Exhibit 5 again,
23 the ticket that you just agreed and testified under
24 oath that you purchased, printed and boarded and took

1 the ride, what is that ticket number?

2 A. 945688.

3 Q. Same as what's on the chargeback?

4 A. Correct.

5 MR. POWELL: May I approach, Your Honor?

6 THE COURT: Yes, sir.

7 BY MR. POWELL: I'm going to hand you
8 what we've marked as Exhibit 6. Are you familiar with
9 this document, Ms. Mauro?

10 A. Yes.

11 Q. What is it?

12 A. This is the refund request form that I
13 filled out five days after I purchased both of those
14 tickets in a request to get a refund for the first
15 ticket that I didn't get to ride. That received no
16 response until June or July.

17 Q. Okay. And here you were admitting that you,
18 in fact, purchased a ticket and did not print off the
19 first trip; correct?

20 A. I'm sorry. Can you repeat the question?

21 Q. Sure. You said you had to buy tickets from
22 your phone. There was no opportunity for you to print
23 the ticket before you had to be at the bus stop?

24 A. Correct.

1 Q. This is your typing?

2 A. Yes.

3 Q. And you dated it February 27, 2013, which is
4 five days after you bought it; correct?

5 A. Yep.

6 Q. And you instruct that the bus driver would
7 not let you on the bus; correct?

8 A. Correct.

9 Q. And have you read the terms and conditions
10 of the ticket that you purchased?

11 A. Yes.

12 Q. And, and right there it says you must
13 present a printed ticket?

14 A. Am I allowed to ask a question?

15 Q. No.

16 A. Okay. Sorry.

17 Q. So you're not surprised by the fact that you
18 couldn't get on without a ticket, printed ticket;
19 correct?

20 A. I was surprised.

21 Q. Even though the contract conditions that you
22 agreed to before being able to purchase the ticket said
23 you had to have a printed ticket?

24 A. Yes.

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Q. Correct?

And does that language mean to you that I have to present a printed ticket to get on the bus?

A. Yes.

Q. Okay. But yet you were surprised that you couldn't get on without one, is that what you're telling us to believe?

A. Yes.

Q. And you also said that you recalled getting a confirmation from the 2:00 ticket that you had purchased less than an hour before that; correct?

A. Yes.

MR. POWELL: May I approach, Your Honor?

THE COURT: Yes, sir.

MR. POWELL: Show you what's been marked as Exhibit 18A through C, if you will look at Exhibit 18B for me, please. Eighteen A I will use later on. And 18B, is this a confirmation or does this look like an accurate copy of the confirmation that you had received from the ticket that you purchased online with a credit card payment for the 2:00 fare?

A. Yes.

Q. And as you can see here, and this was sent to you at 1:27:07 p.m on February 22nd, 2013; correct?

1 A. Yes.

2 Q. And, again, if you turn to the second page,
3 again it has a date, the trip, departure location,
4 arrival location and the times for those; correct?

5 A. Yes.

6 Q. And, again, it gives you another reminder of
7 your terms -- or I should say the contract terms that
8 you agreed to to purchase this; correct?

9 A. Yes.

10 Q. And on the fourth paragraph, again, just
11 like the second ticket you purchased, it says you must
12 print out your ticket and present it to the bus driver
13 to board, you will not be permitted to board without a
14 printed ticket; correct?

15 A. Yes.

16 Q. And, again, you understood that to mean for
17 me to get on the bus, I have to present a printed
18 ticket; correct?

19 A. Yes.

20 Q. Were you at -- in school at this time?

21 A. Yep.

22 Q. What, what year?

23 A. Freshman.

24 Q. Okay. If you'd look at the last paragraph,

1 part of the contract terms for checking the box,
2 printing off the ticket and paying it and for Suburban
3 Express to provide you with a seat on that bus, you
4 also had agreed to pay any all collection costs,
5 including attorney's fees, should collection or other
6 legal action become necessary for that; correct?

7 A. Correct.

8 Q. Have you since learned how your credit card
9 was contacted to reverse the payment for the 2:00
10 ticket?

11 A. Yes.

12 Q. How?

13 A. My mother.

14 Q. Okay. Again, looking at the ticket, you
15 personally contracted, right, you and your -- your name
16 is Anne Mauro; correct?

17 A. Yes.

18 Q. On Exhibit 5, the ticket is in your name,
19 Anne Mauro; correct?

20 A. Yes.

21 Q. The e-mail confirmation from Exhibit 18B was
22 to Anne Mauro; correct?

23 A. Yes.

24 Q. You checked the box on the contract terms as

1 Anne Mauro; correct?

2 A. Yes.

3 Q. And you used a credit card?

4 A. Yes.

5 Q. What credit card did you use?

6 A. It's my mother card's that I'm an authorized
7 user on.

8 Q. Okay. So you personally have signature
9 authorization on that credit card?

10 A. Yes.

11 MR. POWELL: May I approach, Your Honor?

12 THE COURT: Yes, sir.

13 BY MR. POWELL: Let me show you what's
14 been marked as Exhibit 9. Do you recognize this as
15 correspondence from Suburban Express dated October 5 --

16 A. Yes.

17 Q. -- 2013?

18 And in this letter, they're -- Suburban Express
19 is informing you, are they not, of the \$16 fee incurred
20 by them due to your actions as well as a \$10 collection
21 expense to date totaling \$26?

22 A. Yes.

23 Q. And they told you that, if they did not
24 receive this and they had to file suit to collect this

1 debt, you'd be responsible for filing fees, cost of
2 serving you with a lawsuit, attorney's fees, et cetera;
3 correct?

4 A. Yes.

5 Q. And those fees can add up to 200 or more;
6 correct?

7 A. Yes.

8 Q. So you had an appreciation, did you not,
9 after receipt of this letter that, if legal proceedings
10 had to be filed and that you were found in breach of
11 contract, you'd be responsible for those costs?

12 A. Yes.

13 MR. POWELL: That's all I have at this
14 time, Judge.

15 Thank you.

16 THE COURT: All right. Mr. Betz, did you
17 wish to make any inquiry of Ms. Mauro at this point or,
18 or reserve?

19 MR. BETZ: Yes, Your Honor, I think I
20 will.

21 THE COURT: Mr. Betz, do you wish to
22 reserve or do you wish to inquire?

23 MR. BETZ: No. I wish to ask her.

24 THE COURT: All right. You may.

1 CROSS EXAMINATION:

2 BY MR. BETZ

3 Q. Have you ridden Suburban Express a number of
4 times before this incident?

5 A. Yes.

6 Q. Did you subsequently use Suburban Express
7 after this incident?

8 A. No.

9 Q. Okay. On the day in which the two tickets
10 were purchased, when you went and you testified that
11 you went to try to catch the bus on the first ticket,
12 what happened?

13 A. Well, we --

14 Q. Who's we?

15 A. Sorry. My brother and I share a car on
16 campus and the car wasn't starting. That's what we
17 were both going to use to take home. And since it
18 wasn't starting, we had to make other arrangements. He
19 was able to get a ride with a friend and then I was
20 going to purchase a bus ticket on my phone. And I said
21 to my brother, well, I don't have any time to print
22 this out. I don't think I can take it at this time.
23 And he says no. I've done it before. I've ridden the
24 bus without printing my ticket before.

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MR. POWELL: Objection, Your Honor.

Hearsay.

THE COURT: It appears to be -- well, the inquiry would be this, counsel. Is the statement of the brother being offered to establish that that's, in fact, the policy of Suburban Express or is it being offered for a so-called nonhearsay purpose to establish Ms. Mauro's reasons for proceeding with the purchase of the ticket?

MR. BETZ: It's to establish her rationale for proceeding with the ticket.

THE COURT: That would be a nonhearsay purpose and, accordingly, the hearsay objection's overruled. The answer, to the extent it's been made, will stand.

Did you wish to augment the answer at all?

THE WITNESS: I'm not sure what that means.

THE COURT: Okay. Well, I think -- I think the lady answered the question so that the answer will stand and you may further inquire.

Thank you.

THE WITNESS: Okay.

BY MR. BETZ: Did you go to the bus stop

1 location and try to board the bus?

2 A. Yes.

3 Q. And what did you show, if anything, to the
4 bus driver?

5 A. I walked up to him with tears already
6 rolling down my face with my phone in my hand with the
7 e-mail confirmation, the ticket on there, and I told
8 him that I could provide a photo ID. I had my I-card.
9 I was willing to provide any information to prove that
10 this was the ticket that I had purchased.

11 Q. Okay. And were you denied the ability to
12 take the bus?

13 A. Yes.

14 Q. Okay. So subsequently you purchased another
15 ticket?

16 A. Yes.

17 Q. Because you needed to get back to Greater
18 Chicago?

19 A. Yes.

20 Q. Okay. There came a time in which you,
21 according to Plaintiff's Exhibit 6, filed a written
22 complaint; is that true?

23 A. Yes.

24 Q. What, what date was -- did you file that?

1 A. February 27th, 2013.

2 Q. And at the very bottom of this complaint,
3 what does it state?

4 A. Typical turnaround time is 30 days from when
5 you receive request.

6 Q. Did you receive any information or response
7 within 30 days?

8 A. No.

9 Q. When did you -- to the best of your
10 recollection, when did you receive a response?

11 A. June or July.

12 Q. Okay. It says on that contract on that
13 terms and conditions that it's irrevocable, the, the
14 agreement. Did you understand that?

15 A. Yes, but I was confused because there's a
16 refund request form online.

17 Q. Okay. Why, why is that confusing?

18 A. Because if a ticket is irrevocable, then why
19 is there an opportunity to revoke the ticket?

20 Q. Okay. You personally did not dispute the
21 credit card charge?

22 A. Correct.

23 Q. Have you ever had occasion to dispute a
24 credit card charge?

1 A. Not me personally.

2 Q. Okay. The person who did so was --

3 A. My mother.

4 Q. -- your mother?

5 During the time of, of these transactions, let's
6 say from June until August, were you living on campus
7 or were you living at home?

8 A. I moved back to campus mid August.

9 Q. Mid August. Did you at your campus address
10 ever, ever receive any mail from Suburban Express?

11 A. No.

12 Q. Did you personally -- are you personally
13 aware of mail that you had received in your home
14 address?

15 A. Yes.

16 Q. And that would be the information that the
17 plaintiff alluded to regarding the Exhibit 9; is that
18 correct?

19 A. Yes.

20 Q. And did you read that?

21 A. No.

22 Q. Who, who received it?

23 A. My mother.

24 Q. So did your mother share it with you?

1 A. She didn't share the exact letter, but she
2 told me that we did receive a letter.

3 Q. Okay. Is it fair to say your mother is kind
4 of in charge of your finances?

5 A. Yes.

6 Q. Okay. On Exhibit 4 --

7 MR. BETZ: It's Plaintiff's Exhibit 4,
8 Your Honor.

9 BY MR. BETZ: Second page, one, two,
10 second paragraph from the bottom, could you read that
11 into the record?

12 A. You agree to all direct -- to direct all
13 questions and concerns pertaining to credit card
14 charges or credits to Suburban Express/Illini Shuttle
15 in writing at P.O. Box 2400, Champaign, Illinois,
16 61825.

17 Q. Did you direct the issue to -- in writing?

18 A. Yes.

19 Q. Did you get a response?

20 A. No.

21 MR. BETZ: Nothing further, Your Honor.

22 THE COURT: Any redirect, counsel?

23 MR. POWELL: Yes, Judge.

24 REDIRECT EXAMINATION:

1 BY MR. POWELL

2 Q. Didn't you already tell us that you did get
3 a response for that inquiry from the credit card
4 company?

5 A. From the credit card company --

6 Q. Yes.

7 A. -- or Suburban Express?

8 Q. From the credit card company?

9 A. I'm sorry. I'm a little confused.

10 Q. So Suburban Express did respond to you,
11 correct, in July or August?

12 A. Not in the 30-day turnaround time.

13 Q. But did they respond to you?

14 A. In -- several months later.

15 Q. Okay. And you said -- you had mentioned
16 that when you went to the bus to try to board, you were
17 already in tears. Why were you already in tears?

18 Q. Because I thought I wasn't going to be able
19 to get home that weekend.

20 Q. So you were crying like as you were
21 purchasing the ticket?

22 A. No. When our car wasn't starting.

23 Q. Oh, okay. So before that.

24 All right. So your mother contacted you and

1 told you that Suburban Express was seeking to collect
2 what they were saying they were owed pursuant to this
3 transaction; correct?

4 A. Yes.

5 Q. And you understand at that point in time
6 that you, as an adult, contracted for the purchase of
7 that ticket using a credit card that you had authority,
8 signage authority for; correct?

9 A. Yes.

10 Q. Did you tell your mother I'm on the hook for
11 this, mom, not you?

12 A. No.

13 Q. Did you ever have that discussion with her
14 at all?

15 A. No.

16 Q. What did your mother tell you about that?

17 A. She didn't -- she's the card holder --

18 Q. Okay.

19 A. -- so she was taking care of it --

20 Q. Okay.

21 A. -- and teaching me how to dispute a credit
22 card charge and teaching me that I have a right to do
23 that.

24 Q. Okay. And after you got the collection

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letter, did she tell you that you should ignore that?

A. We didn't ignore it.

Q. No. When you get the letter on October 5, 2013, did you just ignore that or did you do anything further?

A. I, I ignored it because I wasn't handling it.

Q. Thank you.

MR. POWELL: Nothing further.

THE COURT: Anything further, Mr. Betz?

MR. BETZ: No, Your Honor.

THE COURT: All right. Further evidence, Mr. Powell?

You may step down.

Thank you.

(Witness excused.)

MR. POWELL: Yes, Judge. At this time, we'd call Dennis Toeppen to the stand.

THE COURT: All right.

(Witness sworn.)

THE COURT: All right. Thank you.

Mr. Powell, you may proceed.

MR. POWELL: Judge, if I may?

DENNIS TOEPPEN

1 called as a witness, after having been duly sworn, was
2 examined and testified as follows:

3 DIRECT EXAMINATION:

4 BY MR. POWELL

5 Q. Dennis, could you please state your name for
6 the record?

7 A. Dennis Toeppen.

8 Q. And who are you employed by or with?

9 A. I am the owner of Suburban Express.

10 Q. And how long have you owned Suburban
11 Express?

12 A. Since November of 1983.

13 Q. And as the owner of Suburban Express, what
14 are your job duties and responsibilities?

15 A. I have a wide variety of responsibilities.
16 I do programming. I do marketing. I do everything
17 from washing buses to filing tax returns, the whole
18 gamut.

19 Q. So the company lives and dies by your sword;
20 is that correct?

21 A. Sure, yes.

22 Q. All right. I had told the court in opening
23 statement that this was not a case about \$26. Do you
24 agree with that?

1 A. Yes.

2 Q. In today's social media, the social media
3 that's available (inaudible) today, can you explain to
4 the court why this is more than just a \$26 collection
5 case against Ms. Mauro?

6 A. Yes. Social media has the power to
7 communicate everything from important information to
8 trivial trash quickly and efficiently through a large
9 number of people. And when, when somebody discovers a
10 way to defraud my company, that information tends to
11 get disseminated. When it becomes known that we --

12 MR. BETZ: Objection. There is no
13 allegation of fraud in these pleadings.

14 THE COURT: There seems to be no evidence
15 of that factual premise, counsel.

16 MR. POWELL: If you'll just give me a
17 little leniency, Judge, we're just --

18 THE COURT: Pardon me?

19 MR. POWELL: If you'll just give us a
20 little leniency, this isn't a fraud --

21 THE COURT: Well, the objection is to the
22 adumbration by Mr. Toeppen that Ms. Mauro perpetrated a
23 fraud in the case and there's no evidence of that.
24 That's the objection. What's your position on the

1 objection?

2 MR. POWELL: We'll rephrase.

3 THE COURT: The objection's sustained.

4 The answer's stricken.

5 You may continue.

6 BY MR. POWELL: Dennis, can you tell the
7 court, I'm sure fraud isn't a component, but are there
8 reasons why you have contractual terms that you require
9 your passengers to abide by?

10 A. We handled 119,000 some passengers last
11 year. We have high volume work flows and we are
12 concerned with providing speedy, reliable service at a
13 reasonable price. To provide speedy, reliable
14 transportation at a reasonable price with a high work
15 -- or a high volume like that, we have to have
16 consistent procedures and policies. And one of the
17 very important components of our system is that, in
18 order to board a bus, you must have a printed ticket.
19 A printed ticket is something that has been used I
20 would imagine for centuries in many different venues,
21 theaters, sporting events, all kind of things. It's a
22 wildly accepted means of, you know -- for a person -- a
23 person who has purchased a performance or
24 transportation to prove to the person that is admitting

1 people to that venue that they have -- that they have
2 the, the right to do that.

3 Q. Okay.

4 A. Now --

5 Q. Well, let me -- so hold on. So you, you
6 heard Ms. Mauro state that she understood on both
7 tickets that she purchased on, on that same day that
8 part of those contract terms was is that she had to
9 have a printed ticket?

10 A. Yes.

11 Q. Okay. Why -- what's the importance to your
12 business of why that printed ticket is necessary?

13 A. Well, one, one reason it's important is so
14 that the person can be admitted to the bus rapidly
15 without having to evaluate different types of proof of
16 admission. If everybody showed up at the bus with a
17 different kind of -- kind of proof of admission, then
18 the boarding process would slow way down.

19 It's very important to us that we have something
20 that we can take possession of, a hard copy, so that we
21 have an audit trail. And what happens when a bus
22 departs is the driver collects the tickets, he numbers
23 the tickets as he takes them, he puts the ticket into a
24 ticket envelope and then the ticket envelope gets

1 returned to our office.

2 Now if we were just glancing at iPhones and
3 confirmation e-mails and scribbles on matchbooks and
4 things like that, we would have no audit trail because
5 the driver would be the final arbiter of everything
6 happening at the bus and, if the driver made a mistake,
7 we wouldn't be able to detect that. And so we have an
8 audit trail. And the printed ticket is a very
9 important part of that audit trail.

10 But, you know, the more important thing here is
11 that we want to be able to board passengers rapidly and
12 we can do that with printed tickets. Other systems of
13 boarding people are not satisfactory to us. We
14 communicate our system to the passengers prior to them
15 making payment to us. The passenger has the option of
16 declining our offer to sell them transportation on our
17 terms. If somebody doesn't like that you have to have
18 a printed ticket, they have the option of hitting
19 cancel and not making the purchase.

20 Q. Okay.

21 A. So I, I'm aware that other carriers do
22 things differently. And I, I'm accustomed to people
23 saying that they've been allowed to board the bus with
24 an iPhone ticket before. And when I hear that, I just

1 assume that they're talking about another carrier
2 because we never do that.

3 Q. So let me ask this question then.

4 A. Uh-huh.

5 Q. How long has Suburban Express, your company,
6 been offering electronic tickets to be purchased on the
7 -- over the Internet?

8 A. Since spring of 2008.

9 Q. And since spring of 2008, have you always
10 required a paperless ticket?

11 A. Yes.

12 Q. Ever changed?

13 A. No.

14 Q. So when you hear Ms. Mauro testify that her
15 brother told her that it's no problem, you can just use
16 your iPhone --

17 A. I would you assume that she's talking about
18 one of the two other carriers that go to Woodridge and
19 Woodfield and accept iPhone tickets.

20 Q. Okay. But under no circumstance would
21 Suburban Express --

22 A. Absolutely --

23 Q. -- accept those tickets?

24 A. -- not.

1 Q. I would like you to look at Exhibit 1A
2 through I, and can you tell us why this document was
3 created?

4 A. This document is a printout of the different
5 steps. It's the ordering process. We made this to
6 demonstrate to the court the steps that you must take
7 to order a ticket. And I, I designed these pages. I,
8 I made (inaudible). I made the CSS. And this -- the
9 design here has not changed except that in about 2008
10 -- no, sorry, not 2008 -- in about 2010 we added a link
11 on 1A that offers people the ability to use the Java
12 Script free version of the site. Other than that, this
13 is unchanged since it was started in 2000 -- 2008 with
14 the exception of the terms and conditions, which have
15 changed a couple of times over the years.

16 Q. I was going to ask you, why is that?

17 A. The, the -- well, we've, we've made some
18 modifications to the terms and conditions in response
19 to market feedback.

20 Let me point out that the terms and conditions
21 exist in one text file on the server that sells the
22 tickets. The text file is used by both the website and
23 by the, the program that sends the confirmation e-mail.
24 So whenever you see terms and conditions in a

1 confirmation e-mail, those are the terms and conditions
2 that were displayed on the website at time that the
3 ticket was purchased.

4 Q. Okay.

5 A. And then that would also mean that the terms
6 and conditions that are displayed on this particular
7 exhibit are not necessarily the exact terms and
8 conditions that were displayed once she made her
9 purchase, but we have those in the form of the other
10 exhibits.

11 Q. That's correct. And we'll get to that here
12 in a second, so let's just start on the first page.
13 Since it's origination in 2008, you have testified and
14 you've always required that there be tickets to board;
15 right?

16 A. Right.

17 Q. And Exhibit 1A, right there in blue it says
18 you must print out your tickets at the end of the order
19 process and you must have a working e-mail address.
20 Please note that tickets cannot be refunded, exchanged
21 or used at a different time. Did that -- was that on
22 the website at the time Ms. Mauro purchased her ticket?

23 A. Absolutely.

24 Q. Looking at page two, once you select your

1 origin, once you select the area and the date, is page
2 two then the options of the -- of those things to
3 choose?

4 A. Page two is the, the schedules that you can
5 choose from, which is kind of a macro view of
6 everything that's available on that day.

7 Q. Okay. And then if you look at C, that's
8 confirming where they're --

9 A. C is where they're -- where they're -- the
10 purchaser is picking their specific point of origin and
11 their specific destination.

12 Q. Okay. And then look at Exhibit 1D.

13 A. Yes.

14 Q. That is the first time that they're asking
15 or the site is asking the, the customer to confirm
16 their selection; is it not?

17 A. Correct.

18 Q. And, again, in red, warning, in all caps,
19 you must print out your tickets after paying. Do not
20 proceed if you are not able to print your tickets right
21 now. This ticket is nonrefundable or exchangeable and
22 it cannot be used at a different date or time. Is that
23 what that says?

24 A. Yes.

1 Q. And was that also on your website since its
2 inception?

3 A. Yes.

4 Q. Never changed?

5 A. No.

6 Q. Now I want to show you Exhibit 1E. Again,
7 this is another snapshot again warning please do not
8 proceed if you are not able to print out your tickets
9 right now. You must have your printed ticket to board
10 the bus. Please note that this ticket is not
11 refundable or exchangeable. Sorry. No exceptions. Is
12 that what that says?

13 A. Yes.

14 Q. Has that ever changed since the inception of
15 the site in 2000?

16 A. No.

17 Q. Exhibit 1F, that's where the customer puts
18 in her personal information; is it not?

19 A. Yes.

20 Q. They have to put their name, address, e-mail
21 and then a credit card payment; correct?

22 A. Yes.

23 Q. Once they put that in, what's the next thing
24 to pop up?

1 A. Well, before they can proceed, they must
2 check the I agree to all of the -- all of the above
3 terms and conditions, the check box next to that
4 statement. If they do not click that or if they try to
5 proceed with payment without checking that box, you get
6 what you see in Exhibit 1A or Exhibit H, which is you
7 must agree to the terms and conditions to purchase
8 tickets, so it declines the transaction if they don't
9 agree with the terms of the contract.

10 Q. Okay. So that's requiring them then to read
11 the terms of the contract, actually check the box that
12 says they agree?

13 A. Right.

14 Q. Then they can proceed. If they don't do
15 that, they get a warning and they have to go back and
16 check it before they can proceed?

17 A. That's correct.

18 Q. And that is what is shown on Exhibit 1H;
19 correct?

20 A. Uh-huh.

21 Q. Okay. Then what's Exhibit H say once they
22 provide that? Is this the next step of the process?

23 A. Well, H is -- H was the, the example of the
24 deal being rejected because they did not check the I

1 agree to all of the above terms and conditions --

2 Q. Okay.

3 A. -- check box.

4 Q. And then, if they do agree to the terms and
5 conditions and check it, then what's the next step of
6 the process?

7 A. Then the system displays their ticket and
8 they print it out. However, before the display of the
9 ticket completes, it displays an alert that says this
10 is your ticket. You must have it to board the bus.
11 Please print it out now. Please do not hit the back
12 button or leave this page without printing.

13 Q. So if I add that up correctly, the fact that
14 you have to print your ticket out to be able to board
15 appears one, two, three, four, five times counting the
16 terms and conditions?

17 A. Yes, because it is very important.

18 Q. I want to show you --

19 MR. POWELL: May I approach, Your Honor?

20 THE COURT: Yes, sir.

21 BY MR. POWELL: I'm going to show you
22 what we've marked as Exhibit 2. And I've got a couple
23 of them circled there. Can you -- can you tell us what
24 Exhibit 2 is?

1 A. Exhibit 2 is a printout showing all of the
2 tickets purchased in the name Anne Mauro.

3 Q. All right. And when it says reservation
4 945688, which ticket was that for?

5 A. That was the ticket for the 3 p.m. bus.

6 Q. And when it says reservation 945666, what
7 was that one for?

8 A. That was the ticket for the 2 p.m. bus.

9 Q. Take a look at Exhibit 3 and 4.

10 A. Yes, 3.

11 Q. And, first of all, for Exhibit 2, is that a
12 document that's kept on Suburban Express's system?

13 A. I'm sorry. Which exhibit?

14 Q. Is that a document -- Exhibit 2, is that --

15 A. Yes, yes.

16 Q. -- a document -- is that a document that's
17 kept on Suburban Express's system?

18 A. That is normal business records.

19 Q. Okay. And you -- and you printed those out
20 and brought those?

21 A. That's correct.

22 Q. Is that a true and accurate copy of the
23 documents kept on the system?

24 A. Yes, it is.

1 MR. POWELL: I would move to enter
2 Exhibit 2 into evidence at this time, Judge.

3 THE COURT: Mr. Betz, on the offer of
4 Exhibit 2?

5 MR. BETZ: Provisionally, no objection.
6 I'm sorry. I, I --

7 THE COURT: What's that mean?

8 MR. BETZ: Well, I, I assumed he was
9 going to ask more questions. If he's not, then I
10 accept it.

11 MR. POWELL: Yes.

12 THE COURT: Okay. No objection then?

13 MR. BETZ: No objection, Your Honor.

14 THE COURT: All right. Exhibit 2,
15 Plaintiff's Exhibit 2 will be admitted without
16 objection.

17 BY MR. POWELL: Now please take a look at
18 Exhibit 3.

19 A. Yes.

20 Q. And what is this?

21 A. These are the terms and conditions that were
22 displayed when Anne Mauro purchased her ticket.

23 Q. Okay. And would this term and condition be
24 the exact same since both of them are purchased on the

1 same day?

2 A. Yes.

3 Q. It wasn't changed mid day?

4 A. No, it was not.

5 Q. And looking at Exhibit 4, what is that?

6 A. Exhibit 4 is the confirmation e-mail for
7 945688.

8 Q. Okay. And when you look through those two,
9 those are the exact same contract terms; correct?

10 A. They're the same.

11 Q. Are these documents saved on your system?

12 A. Yes.

13 Q. Did you print these from your system?

14 A. Yes.

15 Q. Are they held in the ordinary course of
16 business in your system?

17 A. Yes.

18 MR. POWELL: I would move at this time,
19 Your Honor, to enter Exhibits 3 and 4 into evidence.

20 THE COURT: As to 3 and 4, Mr. Betz?

21 MR. BETZ: No objection.

22 THE COURT: Plaintiff's Exhibits 3 and 4
23 are admitted without objection.

24 BY MR. POWELL: Take a look at Exhibit 5,

1 please.

2 A. Yes.

3 Q. What is this?

4 A. This is a printout of ticket 945688, which
5 is the ticket for the 3 p.m. bus that was subsequently
6 disputed.

7 Q. Now when you say subsequently disputed, so
8 this is the second ticket that was purchased and, and
9 she used, correct, Ms. Mauro used?

10 A. Yes. This was the ticket that she purchased
11 and used.

12 Q. And, again, this ticket can be reprinted off
13 of your system; is that correct?

14 A. Yes.

15 Q. Did you, in fact, reprint this ticket off
16 your system?

17 A. Yes, I did.

18 Q. Is this a true and accurate copy of that
19 document on your system?

20 A. Yes, it is.

21 Q. This document is kept in the ordinary course
22 of business?

23 A. Yes.

24 MR. POWELL: I would move to introduce

1 Exhibit 5 into evidence.

2 MR. BETZ: I'm checking my record to see
3 if I got it. I probably --

4 THE COURT: Okay. Go ahead.

5 MR. BETZ: I probably did but -- 3, 4.
6 It's hidden under. We have it. And no objection.

7 THE COURT: All right. And that's
8 exhibit what number?

9 MR. POWELL: Five.

10 THE COURT: Five will be admitted without
11 objection.

12 Thank you.

13 Proceed.

14 BY MR. POWELL: I believe you have
15 Exhibit 7 in front of you --

16 A. I do.

17 Q. -- Dennis.

18 Can you tell me what that is?

19 A. This is a document that is actually a credit
20 card processor advising us that the charge, the
21 principal amount of 27.95 for ticket 945688 has -- was
22 disputed by the card holder and it says that the reason
23 for the dispute was services not provided or
24 merchandise not received.

1 Q. And can you remind the court again on
2 Exhibit 5 what was the ticket number?

3 A. 945688.

4 Q. So, according to Ms. Mauro's testimony and
5 now your testimony, the actual ticket that was disputed
6 in which the credit card payment was reversed was
7 actually the ticket that Ms. Mauro used to take her to
8 the destination?

9 A. Yeah.

10 Q. Is that correct?

11 A. Yeah.

12 MR. POWELL: I would move at this time to
13 introduce Exhibit 7 into evidence.

14 THE COURT: With regard to 7, Mr. Betz?

15 MR. BETZ: Your Honor, may I voir dire
16 the witness on --

17 THE COURT: Foundation?

18 MR. BETZ: Excuse me?

19 THE COURT: On foundation?

20 MR. BETZ: Yes.

21 THE COURT: You may.

22 VOIR DIRE EXAMINATION:

23 BY MR. BETZ

24 Q. I show you Exhibit 7 right up here. Who is

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Sage?

A. That's our credit card processor.

Q. That is who you hire to process your credit cards; is that correct?

A. That's right.

Q. So that is not my client's credit card company?

A. I don't know who your client's credit card company is.

Q. Okay. Thank you.

MR. BETZ: No further questions.

MR. POWELL: Just a couple of follow-ups, Judge, if I may?

THE COURT: Pardon me?

MR. POWELL: A couple of follow-ups, if I may?

THE COURT: Yes. Go ahead.

FURTHER DIRECT EXAMINATION:

BY MR. POWELL

Q. So the -- when you say it's your credit card company, that's a credit card company that you have to enter into a contract with that allows Suburban Express to accept credit card payments?

A. It's a credit card processor, yes. We

1 compensate them for, for receiving and transmitting
2 funds to us.

3 Q. Okay. And, and so you got this from them
4 disputing ticket 945688?

5 A. Right.

6 Q. And then this is kept in your system?

7 A. Yes.

8 Q. Is this a true and accurate copy of the
9 document kept in your system?

10 A. Yes, it is.

11 Q. Is it held in the ordinary course of
12 business?

13 A. Yes.

14 MR. POWELL: Again, I would renew our
15 admission of Exhibit 7 into evidence at this time,
16 Judge.

17 MR. BETZ: No further objection.

18 THE COURT: All right. Seven will be
19 admitted without objection.

20 MR. POWELL: May I -- may I approach,
21 Your Honor?

22 THE COURT: Yes.

23 BY MR. POWELL: I'm going to show you
24 what we've marked as Exhibit 8. Can you tell us what

1 Exhibit 8 is?

2 A. Exhibit 8 was our response to the chargeback
3 debited by -- Exhibit 7 is a chargeback debt advice,
4 that's where the credit card processor tells us that
5 money has been removed from our account. And Exhibit 8
6 is our response to the credit card processor explaining
7 that the transaction was valid and requesting that the
8 funds be returned to us.

9 Q. And the writing at the bottom is what?

10 A. I'm sorry?

11 Q. What's the writing at the bottom of that?

12 A. Customer also has to click okay on the
13 pop-up window, which tells her that she will be
14 required to present a printed ticket. See Exhibit 4,
15 referring to the exhibits that were in the packet that
16 we sent to the credit card processor and Exhibit 4 was
17 a picture of the pop-up, I'm sure.

18 Q. Okay. And so this is your response to the
19 chargeback?

20 A. Yes.

21 Q. And when you were sending exhibits and these
22 forms you're referring to, can you explain to the court
23 exactly what that consists of?

24 A. It's very time consuming. We receive the

1 chargeback debit advice and it contains the first four
2 and last four digits of the credit card number.
3 Sometimes the first four and last four aren't unique.
4 It sometimes takes us a little time to figure out who
5 exactly has disputed the charge. Once we know who
6 disputed the charge, we then look at the evidence that
7 we have available to us and then, based on the evidence
8 we have available us to, we write a response, we attach
9 the evidence as exhibits and forward that to the credit
10 card company. This can take, you know, 20 or 30
11 minutes or it can take an hour, hour and a half. It's
12 -- it can be very long and time consuming.

13 Q. Case-by-case basis?

14 A. Yep.

15 Q. And you and/or your staff prepares those
16 services?

17 A. That's correct.

18 MR. POWELL: At this time, I would move
19 to admit Exhibit 8 -- well, sorry.

20 THE COURT: As to 8, Mr. Betz?

21 MR. BETZ: Your Honor, I want to voir
22 dire on the handwritten --

23 THE COURT: All right. Go ahead.

24 VOIR DIRE EXAMINATION:

1 BY MR. BETZ

2 Q. Is -- this handwritten material, is that
3 your handwriting?

4 A. No, it is not.

5 Q. Do you know whose it is?

6 A. Yes. It's the, the bookkeeper.

7 Q. And who is the bookkeeper?

8 A. Her name is Jennifer.

9 Q. Do you know what date that was placed on
10 there?

11 A. Looking at this, I don't. If I had the
12 entire packet, I imagine I could tell. However, the
13 chargeback response has to be within 30 days, so I
14 would hazard to guess that the handwriting was put on
15 there between 3/22 -- I'm sorry -- received it -- 4/5
16 is when we received the dispute, so we would have had
17 to respond by 5/5.

18 Q. Okay. But that is a guess on your part --

19 A. No. It --

20 Q. -- because there's nothing dated?

21 A. It's not a guess because, if we had not
22 responded within 30 days, they would have kicked the --
23 they would have kicked the issue and we wouldn't have
24 gotten our money back.

1 MR. BETZ: Your Honor, I object to the
2 admission of this exhibit, at least as to the
3 handwritten additions to it because there's no
4 foundation really as to time, date and manner in which
5 it was placed there. It could have been yesterday for
6 all we know.

7 THE COURT: All right. Mr. Powell?

8 MR. POWELL: Yes, Judge.

9 Dennis clearly testified that this is his office
10 procedure. Jenny is, is the person that does these.
11 He's testified to that, Jennifer. He's already
12 testified as to the procedure of the business. If they
13 don't do it within 30 days, then it gets kicked out.
14 We know that the money was returned to Suburban Express
15 upon documents here coming forthwith on the next one
16 so, you know, we have laid, laid foundation as part of
17 this. It's a document kept in the ordinary course of
18 business. It's held in their system. We've laid all
19 of the proper foundations as a business record
20 exception, Judge.

21 THE COURT: How did you want to explain
22 the last entry on this handwritten notice or
23 handwritten addition to the correspondence, Mr. Powell,
24 quote, see Exhibit 4, unquote? That would suggest that

1 this document was added to sometime while you were
2 preparing for trial.

3 MR. POWELL: No, Judge, this is not --
4 our exhibits are presented here at trial. Each of them
5 has an exhibit sticker done by my office.

6 THE COURT: Then what's the reference to
7 Exhibit 4 mean?

8 MR. POWELL: As Dennis has already
9 testified, Judge, there's a packet that has to be sent
10 requesting that that chargeback be reversed.

11 THE COURT: So there was -- was there
12 some other document that accompanied this one?

13 MR. POWELL: This was -- this is 104. I
14 can -- I can -- I'd be more than happy --

15 THE COURT: Okay. Do we have a
16 completeness rule issue here?

17 MR. POWELL: Your Honor, you know, this
18 is -- this is small claims. I could have brought Jenny
19 in. No. The rules are relaxed in that sense. We're
20 trying --

21 THE COURT: They're not, sir. I've
22 already explicitly rejected the proposition that we
23 follow Rule 286(b), so the rules of evidence apply in
24 this case the same way as if we were in some Microsoft

1 antitrust litigation. So even though we have an amount
2 in controversy of \$26, the rules still apply. The
3 objection will be sustained with regard to the
4 handwritten additions to the exhibit. The exhibit will
5 otherwise be admitted.

6 And, Mr. Powell, you may otherwise continue.

7 MR. POWELL: Thank you, Judge.

8 THE WITNESS: I believe you have the
9 entire --

10 MR. BETZ: Objection.

11 THE COURT: There's no question before
12 you, Mr. Toeppen.

13 MR. POWELL: Judge, I'm just looking to
14 see if I have it in my file, the remainder of the
15 exhibit.

16 MR. FLETCHER: Your Honor, I apologize
17 for interrupting the proceedings. I have a matter that
18 was scheduled at 2:30. If the court would allow it, I
19 would like to run to my office briefly.

20 THE COURT: For the record, that's Mr.
21 Fletcher who's counsel of record in the 2:30 cases,
22 13-MR-1039 and 14-MR-122.

23 You may be excused, sir, and come back at your
24 convenience.

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MR. FLETCHER: Thank you, Your Honor.

(Counsel hold an inaudible conversation.)

MR. POWELL: May I approach, Judge?

THE COURT: Yes, sir.

FURTHER DIRECT EXAMINATION:

BY MR. POWELL:

Q. And I just -- Dennis, I looked in my file. I don't have all five exhibits, but we did attach as Exhibit B to the amended verified small claims complaint a document and, if you'll look at that, is that not the exact same verification page that was from Exhibit 4, which has already been admitted into evidence minus the handwriting?

A. I'm sorry. What's the question?

Q. Is not Exhibit B to the amended verified small claims complaint an exact true copy of what's been marked as Exhibit 4 in this trial and admitted into evidence minus the handwriting that is now on Exhibit B to the complaint?

A. Correct.

Q. And can you tell the court what that handwriting is on Exhibit B attached to the complaint?

A. That's Jennifer attempting to explain to the reader at the credit card company what --

1 MR. BETZ: Objection. We need to find
2 out who Jennifer is, some foundation.

3 THE COURT: Sustained.

4 MR. POWELL: Judge, may I respond?

5 THE COURT: The gentleman can't testify
6 to the set of mind of a second party, so the
7 objection's sustained.

8 Continue your examination.

9 BY MR. POWELL: Okay. Dennis, as the
10 owner of Suburban Express, do you oversee what your
11 staff does?

12 A. Yes.

13 Q. And part of the overseeing is to make sure
14 that these chargebacks are handled correctly?

15 A. Yes.

16 Q. And what do you do to ensure that the
17 chargebacks are handled correctly?

18 A. Well, we have a -- the goal in, in writing a
19 credit -- a response to a credit card chargeback is to
20 clearly communicate to the other party the elements of
21 the, you know, of our position that are important. And
22 to that end, we may in some cases use all capital
23 letters, in other cases, we may circle things and
24 that's what we're seeing here is emphasis being placed

1 on part of the e-mail.

2 Q. Who handles the chargeback issue? In other
3 words, when a chargeback comes TO your attention, who
4 in your office handles that correspondence with the
5 credit card company requesting it to be returned to
6 you?

7 A. The bookkeeper, Jennifer.

8 Q. And Jennifer is your only bookkeeper?

9 A. Yes.

10 Q. How long has she been with you?

11 A. Since 2008.

12 Q. And who taught her how to do that?

13 A. I did.

14 Q. As the owner?

15 A. Yes.

16 Q. And just like the other handwriting was
17 referencing to an exhibit, can you tell me what that
18 exhibit, exhibit is referencing on Exhibit B to the
19 verified amended complaint?

20 A. I'm sorry?

21 Q. What is that handwriting referencing to the
22 amended complaint?

23 A. I don't understand.

24 Q. Exhibit B to the verified amended complaint

1 has handwriting on it?

2 A. Yes.

3 Q. What is it -- what's the handwriting
4 referencing to?

5 A. The handwriting is highlighting --

6 MR. BETZ: Objection. He still hasn't
7 established who, who wrote it.

8 THE COURT: Sustained.

9 BY MR. POWELL: Who wrote that?

10 A. That is Jennifer's handwriting.

11 MR. BETZ: May I voir dire?

12 BY MR. POWELL: You've been --

13 MR. BETZ: Your Honor, objection.

14 May I voir dire?

15 THE COURT: You may.

16 And just for the record, Mr. Powell, there are
17 no attachments to the verified amended complaint.

18 MR. POWELL: It may not have come in on
19 the copy. Do you have the original complaint?

20 THE COURT: That's what I'm looking at.

21 There are --

22 MR. POWELL: Yeah.

23 THE COURT: -- copies attached to --

24 MR. POWELL: Yeah.

1 THE COURT: -- the original complaint
2 that's been superseded by the amended complaint.

3 MR. POWELL: You may not have gotten --
4 there was multiple copies made from our office. It may
5 -- the one that went into the court file may not have
6 had them. You'll see from the amended complaint, it
7 didn't change anything.

8 THE COURT: How can I tell that when
9 there aren't any exhibits attached to the amended
10 complaint?

11 The amended complaint superseded the original
12 complaint.

13 MR. POWELL: I understand that, Judge.

14 THE COURT: Okay. And there are no
15 attachments, no exhibits attached to the amended
16 complaint, so your inquiry of Mr. Toeppen with regard
17 to exhibits attached to the amended complaint are
18 absolutely meaningless to the court as trier of fact
19 because those aren't before the court.

20 MR. POWELL: And my comment to that,
21 Judge, is that the exhibits in the original complaint
22 and to the amended complaint are identical. The only
23 thing the amended complaint did was take away the --

24 THE COURT: Okay. How is the court to

1 determine that?

2 MR. POWELL: It's verbatim.

3 I understand, and I apologize to the court if
4 the copy we sent in did not have those attachments, but
5 they are -- the paragraphs are verbatim. The exhibits
6 are verbatim. Nothing was changed. The only thing
7 between those two complaints was taking out the
8 request.

9 THE COURT: Inquiry in regard to the
10 foundation, Mr. Betz?

11 VOIR DIRE EXAMINATION:

12 BY MR. BETZ

13 Q. The only question I had is did you
14 personally witness this individual write that material?

15 A. No.

16 Q. Okay. So you do not know as a fact that it
17 was her that did it?

18 A. I answered that question.

19 MR. BETZ: Your Honor, I, I continue to
20 object because I didn't receive those exhibits and,
21 Your Honor, I specifically, when we were in court on
22 the first appearance, because this was a case that was
23 moving quickly, I said, Your Honor, I request that the
24 amendment be in writing so that we could figure out

1 what was going on. And Your Honor, said, yes, I agree,
2 I order it to be done in writing, and we did not
3 receive exhibits, so I object.

4 MR. POWELL: May I respond, Your Honor?

5 THE COURT: Let me inquire, Mr. Powell,
6 what -- where are you going with this? What are you
7 endeavoring to establish with Exhibit 8 that hasn't
8 been established already?

9 MR. POWELL: I'm just -- I'm, I'm
10 informing the court of the procedure, Judge. There is
11 a -- there is a specific procedure in these cases.
12 Procedures have to be followed, not only when one
13 purchased the tickets to follow the contract
14 procedures, but then when, when it's refuted, there are
15 procedures that have to be followed. All of the
16 procedures were followed here and, ultimately, which is
17 the next document or two, the money was returned, so
18 we're following a set of procedures.

19 And, and in response to Mr. Betz's continuing
20 objection, he called our office to ask us for a copy of
21 the amended complaint. He said he could not read the
22 first page. He did not say that he didn't have the
23 exhibits, which were on the original complaint, when
24 clearly the amended complaint has four exhibits listed

1 in it. So, you know, again, my apologies if that
2 happened, I don't think that happened, but needless to
3 say, we can wrap this all up in the next exhibit. I
4 mean, we're fighting over whose handwriting that was
5 and --

6 THE COURT: Mr. Betz, did you receive the
7 original complaint with the exhibits attached?

8 MR. BETZ: Yes, Your Honor. I receive
9 the original complaint --

10 THE COURT: All right. Then I think --

11 MR. BETZ: -- with the exhibits attached.

12 THE COURT: -- the remedy under all of
13 the circumstances is to recess for a decent interval,
14 permit you to compare the exhibits that Mr. Toeppen has
15 been testifying to that are apparently attached to the
16 amended complaint and apparently Mr. Powell didn't
17 think court's or counsel's security clearance was high
18 enough to see these exhibits. Mr. Betz, compare those
19 exhibits on this exhibit to which Mr. Toeppen's been
20 testifying with the exhibits that are attached to the
21 original complaint. If they're the same, we'll proceed
22 apace and your objection will be overruled. If they're
23 not, we'll address the issue with professional calm.

24 We'll be in recess until you're ready to go.

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(Recess taken.)

THE COURT: Let's go on the record once again in 13-SC-1653. The parties and counsel are again present.

We are convening in open court in the wake of a recess.

Mr. Betz, did you have occasion to review those documents and are those the same exhibits?

MR. BETZ: Yes. We have reviewed the documents and they appear to be the same to me, so I don't have any objection arising (inaudible). My objection, which the court has already upheld regarding the extraneous comments I'm not going to concern myself with since that's already been ruled out.

THE COURT: All right. The prior ruling will remain. The inquiry may otherwise proceed.

Mr. Powell, you may proceed.

MR. POWELL: Yes, Judge. And, again, I apologize on behalf of myself and my office staff.

THE COURT: It's quite all right.

MR. POWELL: Those were inadvertently left off.

THE COURT: Okay. Quite all right.

MR. POWELL: I want to go -- Judge, can

1 you confirm for me, I believe Exhibits 2 through 8 have
2 been admitted into evidence with the -- I'm sorry -- 2,
3 3, 4, 5, 7 and 8 with the exception of the written
4 language on 8?

5 THE COURT: Yes, sir.

6 MR. POWELL: Okay. Thank you.

7 FURTHER DIRECT EXAMINATION:

8 BY MR. POWELL

9 Q. Can you please take a look at Exhibit 1A
10 through I again, Dennis?

11 A. I have it.

12 Q. All right. And, again, I know you created
13 those for the purpose of the trial. Other than the
14 terms and conditions that are included on Exhibit 1G,
15 is everything else the same as it was on February --

16 A. 22nd.

17 Q. -- I think, 22nd, 2013?

18 A. Yes.

19 Q. And, again, the terms and conditions we've
20 already admitted into evidence as a different exhibit;
21 correct?

22 A. Yes.

23 MR. POWELL: Judge, at this time we would
24 move to introduce Exhibits 1A through I with the

1 exception of the terms and conditions on 1G
2 (inaudible).

3 MR. BETZ: No objection.

4 THE COURT: Admitted without objection
5 are Exhibits 1A through I.

6 MR. POWELL: Thank you, Judge.

7 BY MR. POWELL: Can you now please take a
8 look, Dennis, at Exhibit 9 in front of you.

9 A. Yes, the demand letter.

10 Q. Do you recognize this document?

11 A. I do.

12 Q. Is this document a true and accurate copy of
13 the letter sent to Ms. Anne Mauro on October 5, 2013?

14 A. It is.

15 Q. Is it a document held in the ordinary course
16 of business on your system?

17 A. Yes.

18 Q. Is this a true and accurate copy of the
19 letter, demand letter, that's kept in your system?

20 A. Yes.

21 MR. POWELL: We'd move at this time
22 introduce Exhibit 9 into evidence.

23 THE COURT: Mr. Betz?

24 MR. BETZ: May I have a moment, Your

1 Honor?

2 THE COURT: Yes, sir.

3 MR. BETZ: No objection, Your Honor.

4 THE COURT: Exhibit 9 is admitted without
5 objection.

6 (Inaudible discussion held between
7 counsel.)

8 MR. POWELL: May I approach, Your Honor?

9 THE COURT: Yes, sir.

10 BY MR. POWELL: Dennis, I want to show
11 you what's previously been marked as Exhibit 11. Can
12 you please tell the court what that is?

13 A. Yes. This is a reversal denial. This means
14 that our request to have the 27.95 funds returned to us
15 was denied.

16 Q. Okay. Initially, correct?

17 A. Yes.

18 Q. Okay.

19 MR. POWELL: May I approach, Your Honor?

20 THE COURT: Yes, sir.

21 BY MR. POWELL: Let me show you what's
22 been marked as Exhibit 12. So am I correct that, when
23 it was initially denied, then you had to provide
24 further support of the reason why you should get the

1 money back; is that correct?

2 A. Yes.

3 Q. All right. Can you tell us what Exhibit 12
4 is?

5 A. Yes. In response to the reversal denial,
6 Exhibit 11, we submitted information again to the
7 credit card company and Exhibit 12 is the information
8 that we submitted.

9 Q. And that includes the four exhibits with
10 handwritten notes that was sent back to the credit card
11 company; correct?

12 A. That's correct.

13 Q. And whose writing is on Exhibit 1?

14 A. Exhibit, Exhibit 1, so Exhibit 12, sub 1 is
15 Jennifer's handwriting.

16 Q. And Exhibit 4, whose handwriting -- I'm
17 sorry -- Exhibit 12, Sub Exhibit 4, whose handwriting?

18 A. Jennifer.

19 Q. Was this document kept in the ordinary
20 course of business in relation to this chargeback that
21 you guys were challenging?

22 A. Yes.

23 Q. Are these true and accurate copies of the
24 second request to have your money returned with the

1 attached exhibits?

2 A. Yes.

3 MR. POWELL: I would move to admit
4 Exhibit 12 into evidence at this time, Judge.

5 THE COURT: As to 12, Mr. Betz?

6 MR. BETZ: I'm not going to make a
7 technical objection. I don't object.

8 THE COURT: Exhibit 12, accordingly, will
9 be admitted without objection.

10 MR. POWELL: May I approach, Your Honor?

11 THE COURT: Yes.

12 BY MR. POWELL: Dennis, I'm showing you
13 what has been marked as Exhibit 13. Can you please
14 tell the court what this document is?

15 A. This is a reversal acceptance received
16 subsequent to Exhibit 12 being sent to the credit card
17 company.

18 Q. And it's informing you, is it not, that her
19 credit card company is now giving you the money back?

20 A. It's informing that the credit card
21 processor is giving me the money back.

22 Q. Yes. And what was the original reference
23 number again of the chargeback?

24 A. On Exhibit 13, Exhibit 13 refers to ticket

1 number 94688 --

2 Q. And --

3 A. -- in the field labeled original reference
4 number.

5 Q. -- again, that's the same ticket number that
6 Ms. Mauro actually rode on; correct?

7 A. Yes.

8 MR. POWELL: We would at this time enter
9 Exhibit 13 into evidence.

10 THE COURT: As to 15 -- 13, Mr. Betz?

11 MR. BETZ: No objection.

12 THE COURT: Admitted without objection.

13 MR. POWELL: May I approach, Your Honor?

14 THE COURT: Yes, sir.

15 BY MR. POWELL: I would like to show you
16 what's marked as Exhibit 13B. Can you tell the court
17 what that is?

18 A. Yes. This is a photocopy of the ticket
19 envelope that contained her ticket. The ticket
20 envelope was provided to the driver (inaudible). The
21 driver collected the ticket. Anne Mauro's ticket was
22 the 41st ticket to be collected. He placed the pile of
23 tickets into the ticket envelope, which is sitting on
24 the table there, and I went into our, our records this

1 weekend, pulled the envelope and located her ticket in
2 the pile and photocopied the envelope and her ticket.

3 Q. And is this the procedure that you required
4 every one of your bus drivers is when they get the
5 ticket, they write the number of the ticket --

6 A. Yes. They write -- yes.

7 Q. They give it back to you?

8 A. They, they number the tickets as the
9 passengers are boarding. We then do an announcement
10 and take the ticket envelope from the driver. We
11 return the ticket envelope, envelope to the office
12 where it is then scanned, and then the, the, the
13 passenger count is written on the envelope. It's also
14 entered into a loading report, which then feeds into
15 the accounts payable system and the ticket envelopes
16 are boxed in banker's boxes and transported to storage.

17 Q. And this document is a true and accurate
18 copy of the document kept in storage in the ordinary
19 course of business at your office?

20 A. That's correct.

21 MR. POWELL: I would move at this time,
22 Judge, to enter Exhibit 13B into evidence.

23 THE COURT: As to 13B, Mr. Betz?

24 MR. BETZ: No objection.

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THE COURT: Thirteen B is admitted without objection.

MR. POWELL: I have nothing further at this time.

Thank you.

THE COURT: Cross examination, Mr. Betz?

MR. BETZ: Thank you, Your Honor.

I promise to be brief.

THE COURT: All right. That's all right. Take your time, gentlemen.

CROSS EXAMINATION:

BY MR. BETZ

Q. Exhibit 12 that's been admitted into evidence, one, two, three, four -- the fifth paragraph of -- down in Exhibit 12, could you read that into the record for the court where it begins also?

A. Also, customer agreed to contact us in writing regarding questions pertaining to the charge. She did not contact us.

Q. I show you Exhibit 6 which was admitted into evidence by the plaintiff. Did you have an opportunity to see that?

A. Yes. Exhibit 6 has a date on it of 2014-2-28. In the fax section, it says student legal

1 service. This is the first time that I've seen this --
2 that I saw this refund request.

3 Q. Okay. It is your exhibit being proffered.
4 What is the date on the bottom?

5 A. 2/27/13.

6 Q. Might that be an indicator that that was
7 when it was sent?

8 A. I have no way of knowing that.

9 Q. Well, it's your exhibit?

10 A. The exhibit says -- is dated 2/27/13. I
11 have way of knowing when the exhibit was sent to us, if
12 it was ever sent to us at all.

13 Q. Well, your attorney proffered it, not me.

14 Did you ever have an occasion to have contact
15 with Robin Mauro, the mother of Ms. Anne Mauro?

16 A. Not that I recall.

17 Q. Okay. Did you receive any letters or
18 anything like that from her?

19 A. I don't recall seeing anything.

20 MR. BETZ: Okay. Nothing further, Your
21 Honor.

22 THE COURT: Redirect, Mr. Powell?

23 MR. POWELL: Yes, I do, Judge.

24 REDIRECT EXAMINATION:

1 BY MR. POWELL

2 Q. Regarding I believe was it reference to
3 Exhibit 6 --

4 THE COURT: Six.

5 THE WITNESS: The refund request?

6 BY MR. POWELL: Yes. In your search for
7 all of the documentation in this -- in this case, did
8 you come across that in your file?

9 A. No. This was forwarded to me by you after
10 you received it from Mr. Betz.

11 Q. Thank you.

12 MR. POWELL: Nothing further at this
13 time.

14 THE COURT: Anything further, Mr. Powell?
15 Anything further, Mr. Powell?

16 MR. POWELL: No, Judge.

17 THE COURT: Any further inquiry of
18 Mr. Toeppen about those matters, Mr. Betz?

19 MR. BETZ: No, Your Honor.

20 THE COURT: All right. Thank you,
21 Mr. Toeppen.

22 You may step down.

23 (Witness excused.)

24 THE COURT: Further evidence for the

1 plaintiff then, Mr. Powell?

2 MR. POWELL: No, Your Honor. I would
3 just ask to reserve the right to bring Dennis Toeppen
4 back as a rebuttal witness, if necessary, after
5 defendant's case-in-chief.

6 THE COURT: All right. There's a prayer
7 for an award of attorney's fees, Mr. Powell. Do you
8 intend to proceed under Rule 1.5(c) at this point or do
9 you want the question reserved. What's your
10 preference?

11 MR. POWELL: Judge, I actually in
12 rebuttal was going to do that. I can do it now, if you
13 wish.

14 THE COURT: Whatever you wish, sir.

15 MR. POWELL: I can do it in our
16 case-in-chief.

17 (Inaudible conversation held between
18 counsel.)

19 MR. POWELL: Judge, at this time, I will
20 proffer Exhibit 14, which is a copy of the filing fees
21 for costs. Exhibit 15 is the process server for costs.

22 THE COURT: All right.

23 MR. POWELL: Exhibit 17 is proof of the
24 \$16 chargeback fee. And then I would offer an

1 affidavit of itemized and verified fees and costs at
2 this time, which has everything to date except for the
3 appearance at trial.

4 THE COURT: Okay. All right. Mr. Betz,
5 is there any objection to the court receiving these
6 respective proffers?

7 MR. BETZ: I don't object to the filing
8 fees, the service of process fees because they were
9 incurred. I would like to reserve argument on the
10 (inaudible) trial attorney costs should the plaintiff
11 prevail.

12 THE COURT: All right. I'll receive --
13 the court will receive Exhibits 14 through 6 -- or
14 pardon me -- 14 through 17 without objection and the
15 defendant is obviously not required to confess any of
16 the claims. The costs are taxed as a matter of law in
17 favor of a prevailing party. The amount of a fee award
18 is subject to the criteria of RPC 1. -- 1.5(c) and it
19 is also a matter of judicial discretion. With those
20 understandings, the exhibits will be admitted.

21 Does the plaintiff rest at this point?

22 MR. POWELL: Your Honor, could I just --
23 two seconds -- two minutes to call my client back up to
24 get one more document into evidence that I failed --

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THE COURT: You may.

MR. POWELL: Thank you.

I would call Dennis Toeppen.

May I approach, Judge?

THE COURT: Yes.

DENNIS TOEPPEN

recalled as a witness, after having been previously
duly sworn, was further examined and testified as
follows:

DIRECT EXAMINATION:

BY MR. POWELL

Q. Dennis, I'll hand you what was marked as
Exhibits 19A, B and C. And starting with Exhibit 19A,
can you explain to the court what this is?

A. Yes. Each row on the exhibit on 15 -- or
19A is -- yeah, each row on 19A represents a trip which
goes from one point to another point with intermediate
stops.

The tickets that Anne Mauro purchased were for
schedule 520IS, which is about halfway down, and when
she was unable to board the bus because she didn't have
a printed ticket, she purchased a ticket for schedule
530. The important thing about 520IS is that the
capacity of that trip was 76 seats and 76 seats were,

1 in fact, sold. And because Anne Mauro purchased a
2 ticket, a seat was held for her and unable for anybody
3 else to purchase, unavailable to be purchased by
4 somebody else.

5 Q. Okay. And then you said 530. Do you mean
6 520ISU?

7 A. No. A schedule 530 is the -- is ticket
8 number -- or ticket number 945688 was on schedule 530
9 which departs ISR at 3:10 and Armory at 3:40 or 3:45.

10 Q. Okay. And what about 520ISU?

11 A. 520ISU is in conjunction with 520IS. The
12 sum of the capacities of 520IS and 520ISU is 112. One
13 hundred and twelve seats is two 56 passenger buses.
14 There were two buses running on that schedule and, had
15 Anne Mauro's seat remained unsold, it would have been
16 available for purchase by anybody wanting to travel
17 from University of Illinois or Illinois State
18 University an hour and 15 minutes.

19 Q. So, if I understand you correctly, there
20 was two buses leaving at Anne Mauro's location?

21 A. Yes.

22 Q. Each bus had a capacity of 50 --

23 A. Fifty-six.

24 Q. -- 56 people?

1 The first bus of 56 was going to leave the --

2 A. The first bus of 56 filled on the U of I
3 campus and headed directly to the Chicago area.

4 Q. Yes.

5 A. The second bus -- if everybody showed up,
6 the second bus would have had 20 passengers on it
7 before it headed to ISU and then an additional 36
8 boarded at -- would have boarded at ISU making a full
9 bus there and off, off it would go to the Chicago area.

10 Q. All right. So on the -- on this particular
11 time, every ticket was sold out?

12 A. Every ticket was sold.

13 Q. All right. Go to -- move to 19B, please.

14 A. Okay.

15 Q. What is this document?

16 A. Okay.

17 Q. Can you explain what this document is?

18 A. I'm sorry. I didn't hear that.

19 Yes. Nineteen B is the sales history for
20 Schedule 520IS, which is the Champaign portion of that,
21 that schedule. And the third column under the label
22 created indicates the date and time that the ticket --
23 that the ticket was purchased. So what you have here
24 is a list going from the first ticket purchased to the

1 last ticket purchased. And you'll see that the last
2 ticket purchased was Anne Mauro. And the reason the
3 time stamp is important is because it shows that -- you
4 know, it demonstrates that we would have been able to
5 sell her ticket to somebody else. The, the ticket
6 prior to hers was sold at 12:17 -- or 1:17, ten minutes
7 prior. The one before that was sold at 12:52. And so
8 you can see that, on the day of departure, we had a
9 fair amount of activity there. And it's my experience
10 that had Ms. Mauro not purchased that ticket at 1:27
11 that by, by the departure time of 2 p.m. from the
12 Armory, 3:15 from Illinois State University, we would
13 have sold her ticket.

14 MR. BETZ: Objection. Pure speculation.

15 THE COURT: Sustained.

16 BY MR. POWELL: So if I look at this
17 exhibit, 19B --

18 A. Yes.

19 Q. -- and let's just use the last seven or
20 eight here, a ticket was purchased at 1:23?

21 A. That's 1:23 a.m.

22 Q. Oh, a.m. All right. And then 10:01 a.m.?

23 A. Yes.

24 Q. 11:33 a.m.?

1 A. Yes.

2 Q. 11:42 a.m.?

3 A. Yes.

4 Q. 11:44 a.m.?

5 A. Yes.

6 Q. 12:52 p.m.?

7 A. Yes.

8 Q. 1:17 p.m.?

9 A. Yes.

10 Q. And then Ms. Mauro's at 1:27 p.m.?

11 A. That's correct.

12 Q. Once the system reaches its maximum, which

13 it did here; correct?

14 A. Yes.

15 Q. Then anyone else that gets online to

16 purchase a ticket for that trip at that time would be

17 rejected; correct?

18 A. That's correct.

19 Q. All right. Can you now move to Exhibit

20 19C?

21 A. All right. Nineteen C is the ISU portion

22 of that trip and the same information is relevant here.

23 We sold the last ISU ticket at 2:31 p.m. and -- oh,

24 that's interesting, so actually Mauro's ticket wasn't

1 the -- wasn't the last sale. A ticket was, in fact,
2 sold after Mauro's ticket at 2:31. And so then prior
3 to that we had one at 1:32, 11:31 and (inaudible).

4 Q. And, again, looking at Exhibit 19B at the
5 bottom of page two, 76 sold with a capacity of 76;
6 correct?

7 A. Uh-huh.

8 Q. Yes?

9 A. Yes.

10 Q. And then Exhibit 19C, looking at the legend
11 at the bottom, 36 sold with a capacity of 36?

12 A. That's right.

13 Q. So, likewise, anybody that gets and wants
14 to buy a ticket on just the leg from ISU to the final
15 destination would have also been rejected because the
16 seats were sold out?

17 A. That's correct.

18 Q. So this was produced by your system?

19 A. Yes.

20 Q. And your system keeps these running totals
21 on each and every trip purchased?

22 A. Yes, it does.

23 Q. And these are held in the ordinary course
24 of business?

1 A. Yes.

2 Q. Is this a true and accurate copy --

3 A. It is.

4 Q. -- of the document produced by your
5 computer system?

6 A. It is.

7 MR. POWELL: At this time, Your Honor,
8 we would move to introduce Exhibit 19A, B and C into
9 evidence.

10 THE COURT: With regard to those
11 exhibits, Mr. Betz?

12 MR. BETZ: I guess, Your Honor, I, I
13 object because I'm not sure the purpose of the exhibit.
14 If the purpose of the exhibit is to prove that but for
15 my client cancelling, someone else would have
16 definitely been able to order a ticket, that's not
17 established by this. It is definitely -- we have a
18 record here of lots of purchases and there is legs of
19 this, but we don't have it established that anyone was
20 denied the right to use --

21 THE COURT: So it's a relevance--

22 MR. BETZ: -- the bus.

23 THE COURT: -- objection?

24 MR. BETZ: It is a relevance objection.

1 THE COURT: On the relevance objection,
2 Mr. Powell?

3 MR. POWELL: Yes, Your Honor. We wanted
4 to get this introduced into evidence in our
5 case-in-chief to speed up the process. If it does not
6 become relevant, then we will not move to have it
7 entered at the end.

8 THE COURT: What do you mean if it
9 doesn't become relevant? It's got to be relevant from
10 square one, so --

11 MR. POWELL: Yes. Yes, Judge.

12 THE COURT: -- evidence is relevant if
13 it tends to make any material fact that's being
14 disputed more or less likely true. So what relevance
15 does this evidence have?

16 MR. POWELL: The --

17 THE COURT: It doesn't -- go ahead.

18 MR. POWELL: The relevance from this
19 document shows that -- I guess it's more of an
20 anticipatory document, Judge. If the argument that Ms.
21 Mauro makes is that she -- that we received no damages
22 because we received payment by both tickets, then
23 clearly it shows the likelihood that her ticket took up
24 a spot for a seat to still be reserved. Regardless is

1 the fact that, because she reversed a ticket, or the
2 charge of a ticket, and therefore we were charged \$16
3 because of privity of contract with our bank, we've
4 still been damaged by her breach of the terms of
5 contract. So this shows for Your Honor that this was a
6 full trip and that her what she is clarifying as a
7 mistake was not an irrelevant one, Judge.

8 THE COURT: Mr. Betz?

9 MR. BETZ: Well, again, it's interesting
10 because at the point in time in which this generated
11 she had hasn't reversed anything. It's the day of this
12 event, so we don't know. She had not reversed her
13 credit card, so I do not see how it is relevant to
14 prove anything.

15 THE COURT: The objection's overruled.
16 I'll consider the exhibits mindful of the fact that the
17 court's the trier of fact and can afford it whatever
18 weight it properly observes appropriate.

19 Mr. Betz, any cross examination of Mr. Toeppen?

20 MR. BETZ: No, Your Honor.

21 THE COURT: All right. Thank you, Mr.
22 Toeppen.

23 (Witness excused.)

24 MR. POWELL: Nothing further.

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Plaintiff rests at this time, Judge.

THE COURT: Okay. Plaintiff rests.

Mr. Betz, any evidence on behalf of Ms. Mauro?

MR. BETZ: Yes, Your Honor. I would call Robin Mauro to the stand.

THE COURT: All right.

(Witness sworn.)

THE COURT: All right. Have a seat in the witness chair, please.

THE COURT: Mr. Betz.

MR. BETZ: May I approach, Your Honor?

THE COURT: Yes.

ROBIN MAURO

called as a witness, after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION:

BY MR. BETZ

Q. Good afternoon.

Could you please state your name and current address for the record?

A. Robin Mauro.

Q. And your current address?

A. My address is 333 Woodside Drive in Bloomingdale, Illinois.

1 Q. Okay. What is your relationship to Anne
2 Mauro?

3 A. I'm her mother.

4 Q. Okay. You heard testimony to the effect
5 that there is a credit card here. Is it your credit
6 card held with authority of your daughter to sign?

7 A. Correct. I am the credit card holder. My
8 son and daughter who both are University of Illinois
9 students each have an authorized user card.

10 Q. Okay. Do you manage the financial aspects
11 of this credit card?

12 A. Yes.

13 Q. Did there come a time in which you learned
14 about your daughter trying to take Suburban Express to
15 come back to Chicagoland?

16 A. Yes. It was very rare, the situation with
17 the car not being able to start that day and all the
18 drama surrounding that and trying to get them home. My
19 son has ridden Suburban Express on several occasions
20 without a printed ticket and Suburban Express is the
21 only company that our children have ever ridden as far
22 as a bus company goes. They have taken Amtrak, but
23 Suburban Express is the only one.

24 Q. Okay. Did there come a time -- do you --

1 first of all, did she make it to Chicago that day?

2 A. She finally did.

3 Q. And where did she make it to?

4 A. She made it to I think Westmont or wherever
5 the Woodridge Mall is. I'm not exactly sure where it
6 is. But it's further south. And obviously she was
7 refused to be able to get on that bus and it was
8 purchased obviously in a parking lot in very close
9 proximity at the bus stop.

10 Q. Did you pick her up that day?

11 A. Actually, her -- I think her brother did.

12 Q. Okay.

13 A. 'Cause he got home -- he got home earlier
14 (inaudible).

15 Q. And it's your credit card. Are you the
16 person who filed the dispute with the credit card
17 company?

18 A. Correct.

19 Q. And what is the credit card company name?

20 A. Chase.

21 Q. And have you ever filed a dispute before
22 regarding a transaction?

23 A. Yes.

24 Q. And could you describe briefly what the

1 process of filing a dispute is?

2 A. Well, the process is, first of all, you
3 have to go ahead and try and rectify the situation with
4 the merchant first and that's the first question they
5 ask you when you file a dispute. In this case --

6 Q. Did you do so?

7 A. Yes, we did.

8 Q. What did you do?

9 A. Annie, under the direction -- because on
10 the website, there's clearly a refund request form, she
11 filled it out and, as it was put into evidence, it was
12 filled out on February 27th and mailed directly to the
13 address noted.

14 Q. To the best of your knowledge and
15 information and belief, did you ever receive a reply to
16 that?

17 A. We did not receive a reply until about July

18 --

19 Q. Okay. When --

20 A. -- of 2013, which was four months later.

21 Q. When did you dispute the credit card
22 charge?

23 A. At the end of March.

24 Q. And who did you dispute it with?

1 A. With Chase.

2 Q. And how do you -- how do you go about doing
3 that?

4 A. I make a phone call and explain the
5 situation. And, in this case, since there were two
6 charges for Suburban Express on the same day, and
7 knowing that they were purchased, you know, what I
8 would deem sequentially, we disputed the first charge
9 believing that to be the ticket that she did not ride.

10 Q. Okay.

11 A. And that was based on the direction that --
12 what Chase was directing me to do.

13 Q. Do you recall who at Chase directed you to
14 do that?

15 A. I don't remember the -- customer service.

16 Q. Okay. And what, what was the result of
17 that when you disputed this with Chase?

18 A. They put a temporary credit on my card and
19 (unintelligible). But prior to doing that, in addition
20 to writing the letter, I also made several phone calls
21 to Suburban Express's office of which I just got an
22 automated machine and, in addition, and on a couple of
23 occasions went by their office and it was always dark,
24 the one on Sixth Street.

1 Q. Okay. Do you recall how many phone calls
2 you might have made?

3 A. I think it was like eight or nine.

4 Q. Okay.

5 MR. BETZ: These exhibits are getting
6 out of control.

7 THE COURT: That's okay.

8 BY MR. BETZ: I'll show you -- I'll mark
9 it in the presence of the court as Defendant's Exhibit
10 1. Could you describe what this is?

11 A. It's a copy of my AT&T wireless cell phone
12 bill.

13 Q. And there are areas that are marked in
14 yellow. What do they reflect?

15 A. That's the number of -- the only number
16 (inaudible) Suburban Express here in Champaign.

17 Q. And how many times did you call that number
18 and what dates?

19 A. It looks like it was nine. The first call
20 was about a week after they would have received the
21 letter on March 6th. I tried at a couple of points in
22 time that day, didn't get -- just got an automated
23 machine that directed me to the website.

24 Q. Did you go to the website?

1 A. Yes. I went to the website and all that's
2 on there is a claim request form and their phone
3 number. There's no place to send an e-mail or anything
4 like that.

5 Q. Okay. Did you continue to make phone
6 calls?

7 A. Yes, I did. I tried again thinking maybe
8 they work on Saturdays since that's when they are
9 transporting the students, so I tried on Saturday
10 morning, the 9th. I tried again on Monday, the 11th,
11 oh, later again in the afternoon on Monday, the 11th,
12 tried again Tuesday, March 12th in the morning,
13 Wednesday, March 13th and then again I tried again in
14 the afternoon. And then, at that point, I got a little
15 frustrated, still wasn't getting a response from the
16 letter, so then I tried one more time on March 22nd and
17 again got the automated machine so, at that point, I
18 sort of gave up.

19 Q. Okay. Did you ever at any time get through
20 to anyone in telephonic conversation?

21 A. No. It was just an automated machine that
22 directed me to their website.

23 Q. As -- later on in the summer of 2013, were
24 you able to talk to someone?

1 A. The first time I actually spoke to someone
2 was after the letter came in October. Anne -- the
3 letter came to our address in Bloomingdale. Anne, as a
4 University of Illinois student, was, of course, away at
5 school.

6 Q. Did you open the letter?

7 A. Yes, I did, because the window envelope
8 clearly said Anne E. Mauro, the address, and then it
9 said regarding your debt in big bold letters so, of
10 course, I opened it.

11 Q. Okay. And as a result of that opening that
12 letter in October, what did you do, if anything?

13 A. I read it, got pretty irritated, of course,
14 'cause at this point I knew everything was resolved
15 with the credit card company. And the next morning I
16 tried that number once again. And I had the
17 opportunity to talk to a girl named Denise in the
18 office here in Champaign.

19 Q. Okay. And what did you ask Denise?

20 A. I asked Denise how can we resolve this? We
21 thought this was all behind us. I never got any
22 response and it was within my right to go ahead and
23 dispute the credit card charge.

24 Q. And did anything happen as a result of

1 that?

2 A. She said she was relatively new and that
3 she'd try and get back to me.

4 Q. Did she get back to you?

5 A. No. I had to call again.

6 Q. And --

7 A. And then she said she would get back to me.
8 And then, when she got back to me, she said just send a
9 letter.

10 Q. To do what?

11 A. She said just send a letter.

12 Q. Did you send a letter?

13 A. Yes, I did.

14 Q. Okay.

15 A. I sent it on March -- or excuse me --
16 October 16th. The issue, I know it said -- the letter,
17 the October 5th said we had to have payment within 10
18 days, but that letter was not received until after the
19 Columbus Day holiday because of mailing deadlines.

20 Q. Is this a copy of the letter that you sent?

21 A. Yes.

22 Q. Did you get any response to that letter?

23 A. Well, not to the letter. The response was
24 someone, someone was showing up to my door serving

1 papers to my daughter.

2 Q. So you are the individual who made the
3 decision with regard to disputing the credit card?

4 A. Correct. She did not ride the bus.

5 Q. Okay.

6 A. And she was there at the stop ready to
7 board it.

8 Q. Did you -- have you ever ridden Suburban
9 Express?

10 A. I may have when I was college.

11 Q. Okay.

12 A. I was here '81 through '85. I'm a
13 graduate.

14 Q. Okay. Did you have an occasion as a result
15 of this situation with your daughter to read the terms
16 of agreement in terms of this purchase?

17 A. Yes. We -- yes, I did.

18 Q. Okay.

19 A. And I realize it says it's a printed
20 ticket, but I also know that plenty of people I know
21 have ridden without a printed ticket, so --

22 MR. BETZ: Okay. Nothing further, Your
23 Honor.

24 THE COURT: Cross examination,

1 Mr. Powell?

2 MR. POWELL: Thank you, Judge.

3 CROSS EXAMINATION:

4 BY MR. POWELL

5 Q. So am I correct, Ms. Mauro, that your
6 October 16, 2013 correspondence to Suburban Express
7 marked as Defendant's Exhibit 2, that was in response
8 to their demand letter of October 5?

9 A. Right. And with that, in addition to that
10 letter, I also attached the original claim request form
11 from February 27th, 2013 with that.

12 Q. But this is the letter you sent --

13 A. Correct.

14 Q. -- in response to the October 15 --

15 A. Correct.

16 Q. -- or October 5 letter from Suburban
17 Express?

18 A. Correct. And I didn't get a response.

19 Q. But you understood that they were telling
20 your daughter, which you opened and read and informed
21 your daughter, that they were claiming these fees and
22 costs as a result OF your daughter's --

23 A. Right. But I also understand -- I'm in the

24 --

1 Q. Was that correct?

2 A. Yes.

3 Q. And then you sent a response letter on
4 October 16?

5 A. Uh-huh.

6 Q. Did you ever send them a check for \$26?

7 A. No. I, I talked to my credit card company
8 and they said not to.

9 Q. Okay.

10 A. Because they said it's against the law in
11 credit card relations.

12 Q. So you did not send a check for \$26?

13 A. I called Chase and they told me that it's
14 your cost of doing business and that I am not obligated
15 to pay those costs.

16 Q. So you relied upon a third party to tell
17 you what you had to do or what not to do?

18 A. I of course relied on my credit card
19 company. They've been loyal to me since 1985.

20 Q. Did you send Chase a copy of the -- of the
21 contract?

22 A. They have the copy of the contract.

23 Q. Did you specifically talk to them about --

24 A. Uh-huh.

1 Q. -- the contract?

2 A. Uh-huh.

3 Q. And you chose not to send in the \$26;
4 correct?

5 A. I'm in the finance industry and I know that
6 --

7 Q. Ms. Mauro --

8 A. -- you don't do that.

9 Q. -- did you or did you not turn in --

10 A. I'm not -- no. Of course, I made a
11 decision not to pay the \$26, so the reality is you
12 should not be suing Anne Mauro, you should be suing
13 me.

14 Q. Well, how old was your daughter when you
15 gave her signatory powers on your credit card?

16 A. I'm sorry?

17 Q. How old was your daughter --

18 A. When she was just starting to drive. When
19 she was 16.

20 Q. So at age 16, you allowed her to sign your
21 credit card as an additional assignee?

22 A. Correct.

23 Q. And my mother did that same thing when I
24 was in school. It was a nice gesture.

1 How old was your son when you gave him
2 signatory power?

3 A. Same thing, when they both got their
4 driver's license and had to be driving that car and
5 needed gasoline or emergency credit.

6 Q. And, and you understood, did you not, that
7 by giving them the signatory power, they could be bound
8 by contracts for payment?

9 A. This is true.

10 MR. POWELL: That's all I have.

11 Thank you.

12 THE COURT: Anything further, sir?

13 MR. POWELL: No, Judge.

14 THE COURT: Redirect, Mr. Betz?

15 REDIRECT EXAMINATION:

16 BY MR. BETZ

17 Q. What business are you in?

18 A. I'm a CPA and I have my MBA in finance and
19 I'm a consultant.

20 Q. Have you -- you, you've testified on direct
21 that you had, in fact, had other credit card disputes
22 over the years?

23 A. Yes.

24 Q. Have you ever been charged for such a

1 dispute?

2 A. No. Because it's, it's the merchant's cost
3 of doing business and that's a known fact.

4 Q. Okay.

5 MR. BETZ: Nothing further.

6 THE COURT: Any cross examination on
7 those matters, Mr. Powell?

8 MR. POWELL: No, Judge.

9 THE COURT: All right. Thank you,
10 madam.

11 You may step down.

12 (Witness excused.)

13 THE COURT: Any further evidence,
14 Mr. Betz?

15 MR. BETZ: No, Your Honor.

16 THE COURT: Any rebuttal evidence,
17 Mr. Powell?

18 MR. POWELL: I rest.

19 THE COURT: Any rebuttal evidence,
20 Mr. Powell?

21 MR. POWELL: No, Judge.

22 THE COURT: All right. Then argument in
23 support of the prayer of the complaint, Mr. Powell?

24 MR. POWELL: Thank you, Your Honor.

1 Judge, this is a, a very simple case. There was
2 an offer. There was an acceptance by an adult who had
3 signatory power on a credit card given by her mother.
4 Ms. Mauro testified that she knew the terms, understood
5 the terms of having to have a printed out ticket.

6 If you look at exhibit -- the exhibit where she
7 had wrote in and gave it to her attorney that sent it
8 to you -- to us where she said I was running late, I
9 had a car break down, she was trying to get on a bus
10 hurriedly, she saw the first one that was available,
11 she made the purchase and disregarded the fact that she
12 had to print it out. Obviously, there was a printer
13 available because she took the 3:45 bus only an hour
14 and 45 minutes later. And if you look at Exhibit 1,
15 Judge, all of those bus options from destination to
16 pick-up and drop-off are all available on there. So
17 it's obvious what happened. It was about 1:15 or so,
18 she saw that a 2:00 was left and she hurriedly tried to
19 get on with an iPhone because supposedly somebody told
20 her that it was okay to do that when the contract term
21 specifically stated five times you must present a
22 printed ticket, warning, you must present a printed
23 ticket. Five times. She agrees to that. But now she
24 doesn't want to take responsibility for the fact that

1 she didn't have a printed ticket. So she goes back and
2 she purchases another ticket that was leaving just an
3 hour and 45 minutes later, clearly finds a place to
4 print off a ticket, boards, and is taken home to her
5 destination.

6 She then sees that she had two credit card
7 disputes. What's her reasoning for disputing the first
8 charge? Because they wouldn't let me on the bus
9 without a printed ticket, the same thing she agreed to
10 when she bought the ticket. The simple fact of the
11 matter is it's a simple breach of contract. Here's the
12 terms. You either agree to them and click, because if
13 she wouldn't have, she never could have purchased the
14 ticket and she admitted -- and she admitted on the
15 stand she saw that requirement, so --

16 THE COURT: So the evidence establishes
17 that --

18 MR. POWELL: -- offer --

19 THE COURT: -- albeit that Ms. Mauro
20 didn't tender a written ticket for the first trip, the
21 credit transaction was processed and the plaintiff was
22 paid for that ticket?

23 MR. POWELL: Yes. Yes.

24 THE COURT: Okay. So none of that is of

1 any consequence to the outcome of this case.

2 MR. POWELL: Well, you're right, Judge,
3 which is fine.

4 THE COURT: Okay. Then why are you
5 discussing it?

6 MR. POWELL: Because that's going to be
7 the argument.

8 So here's the second piece of the puzzle. So
9 now she purchases her second ticket under the exact
10 same terms and conditions and that's the one that she
11 actually uses, hands to the bus driver to get on the
12 bus and gets dropped off to her destination and that's
13 the one, ironically, that gets reversed. So the simple
14 fact of the matter is, on that ticket, what is she
15 reversing? What's her beef? And if her beef is, which
16 I suspect, as we've seen here in trial, is that, well,
17 but really we meant to reverse the first one because
18 that's the one that she didn't ride on, but her mother
19 took care of that transaction for her. So where it
20 becomes relevant, Judge, is regardless of which one got
21 reversed, if look on the letter of the law, you're
22 right. The relevance is the second one she used and
23 reversed, therefore, we're owed. If you'd listen to
24 their argument, we're still owed because it was still a

1 breach of contract.

2 THE COURT: But after this skein of
3 transactions between Chase, which was what, the elder
4 and the younger Ms. Mauro's credit card holder and then
5 the plaintiff's credit card servicer, you ultimately
6 got credit for the second ticket.

7 MR. POWELL: That's correct, which is why
8 we're not -- why that's not a part of our damages.

9 THE COURT: Precisely.

10 MR. POWELL: We were paid. But to accept
11 the argument that we took it upon ourselves to be
12 liable for any chargeback fees is absurd. And here's
13 why. Just like in opening statement where I correlated
14 this with the bank and checks, right, the recourse, the
15 bank, you, as a customer at the bank is contracting
16 with your bank to deposit funds and to -- and to
17 collect the money from your account and among other
18 things, but that's what relevant here, right, so you
19 sell a product or a service to Mr. Smith and he writes
20 you a bad check. And I tender to the court who gets
21 charged by your bank, Judge, for the tendering of that
22 bad check? It's you because the bank has privity of
23 contract with you, not the third party. And then you
24 have to go after the third party to get your funds back

1 and any consequential damage that result therefrom.

2 I have that contract, Your Honor, which, not
3 that it's really relevant, but it, it's the contract
4 that says you agree to that chargeback, so you get
5 charged this.

6 MR. BETZ: Objection. That was not
7 introduced into evidence.

8 THE COURT: Sustained. It's stricken.
9 It's not in evidence, counsel.

10 MR. POWELL: Fine. So we disputed it.
11 We got the money back and we were assessed \$16 for
12 which Ms. Mauro nor her mother -- here the relevancy is
13 Ms. Mauro, Anne Mauro, has not paid us that. They then
14 request us to not charge them that fee because she
15 wasn't able to ride, although it was Suburban Express's
16 position, as you've heard in evidence today, that they
17 breached the contract. The breach of that caused them
18 damages and, in this case, it was because they reversed
19 an appropriate contractually agreed charge. Suburban
20 Express then charges the mere \$10 for the office of
21 having to look this information up, send out the
22 collection check and they only requested \$10 for that.
23 When I said this is much more than a \$26 case, Judge,
24 it's because this type of behavior cannot be

1 acceptable. The contract terms are there for a purpose
2 and Suburban Express has a legitimate business where
3 they want and they need their customers to follow in
4 order to provide the quick and reliable service at a
5 small rate. So --

6 THE COURT: So the remedy to vindicate
7 that business purpose, assuming that there is a
8 business purpose to be legitimate and salutary and even
9 compelling, is to file a small claims case seeking an
10 award of \$26 that takes three-and-a-half hours of trial
11 with a proposed fee award of \$1,182.28 up to the date
12 of trial with another what, we've been here for another
13 two-and-a-half hours, so it looks like you bill \$200
14 per hour. so another \$500, that's, that's the remedy
15 you think is viable here, counsel?

16 MR. POWELL: Judge --

17 THE COURT: Have you ever heard of the
18 common law maxim of de minimis non curat lex?

19 MR. POWELL: I have, Judge. And I have
20 -- and I have case law on that.

21 THE COURT: All right.

22 MR. POWELL: Okay. If I may approach?

23 THE COURT: You may submit those in due
24 course. Please --

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MR. POWELL: Okay.

THE COURT: -- finish your argument.

MR. POWELL: So, you know, a corporation as Suburban Express cannot, under the supreme court rules, bring an action on its own behalf.

THE COURT: That's correct.

MR. POWELL: So that they have to hire counsel. And the hope is that they hire competent counsel. And there is many things that you look at when you're seeing -- and the case law specifically states that, you know, yes, it's the court's discretion, but is -- as you're saying just because it's \$26 is not something you consider. There's other elements that you consider, but that's not one of them. And, again, Judge, it's not \$26 on this case, it's 26 times a hundred, times a thousand. I mean, I currently have on file right now numerous cases with these chargeback issues, so it's not just -- yes, well, against Ms. Mauro it's one, but it multiplies and it has multiplied.

The costs -- you know, the court's cost is \$77 to file a small claims complaint. The service fee was \$95 dollars to have her served. All requirements under the law. But what you have to look at is she was told

1 pay the \$26 that your breach caused us to incur and it
2 all goes away and, if you don't, this is what can
3 happen.

4 And so, you know, in summation, when you look at
5 the fees, Judge, I reviewed the file and filed a
6 verified complaint in .4 hours. I've only spent 5 --
7 until this trial, I have only spent 5.4 hours on the
8 entire case. Our fee is \$250 an hour. I reduced that
9 by 20 percent. I am only charging \$150 for round trip
10 from Bloomington to Champaign for a 2.2 round trip
11 cost.

12 I think when you look at the case law that I
13 will hand you, *Esker & Sons, Inc. versus Cle-Pa's*
14 *Partnership*, you'll see that the fees aren't
15 outrageous. You can see exactly what we billed for
16 item by line item. It takes time, any lawsuit takes
17 time and I did it minus the trial in 5.4 hours.

18 We have to consider what's going on here and my
19 client is asking the court for your help. If this was
20 a one instance and done, do you think my client would
21 spend --

22 MR. BETZ: Objection.

23 THE COURT: Where's the evidence, first,
24 that there's some what -- as Mr. Toeppen put it early

1 in his testimony that there's some, I don't know even
2 how to put it, some, some, some epidemic of, of fraud
3 by, by passengers? Where, where in the -- where in the
4 record is there any evidence beyond the face of this
5 case, sir, and how, how would that inform the court as
6 a trier of fact in resolving this case?

7 MR. POWELL: Okay, Judge.

8 THE COURT: This is -- this is a legal
9 forum. And it may be a small claims case, literally a
10 \$26 small claims case, counsel, but it is nonetheless a
11 case that's governed by objective application of the
12 rule of law, which I might remind you we are both under
13 respective oaths to uphold. So this is not a political
14 arena. This isn't a business administration class.
15 This isn't some sort of model problem at night MBA
16 school. It's a case litigated under the rule of law.
17 Objective rules and dispassionate analysis are to be
18 brought to bear. So mindful of that mode of analysis,
19 Mr. Powell, what findings of fact and conclusions of
20 law would you suggest the court make?

21 MR. POWELL: That Ms. Mauro breached the
22 terms of a contract. That, number one, there was a
23 contract, that she breached it and that damages
24 resulted therefrom. And upon the court's finding that

1 there was a valid contract, that there was a breach of
2 that contract and that damages did result, then you
3 follow the law where attorney's fees may be reasonable
4 if the fees are -- they are reasonable if they're
5 disproportionate to the monetary amount of an award.
6 In determining the reasonableness, the court may look
7 to various factors, the skill and standing of the
8 attorney, the nature of the case, the novelty of the
9 issues involved, the significance of the case, the
10 degree of responsibility required, the customary
11 charges for comparable service, the benefit to the
12 client, the reasonable connection between fees sought
13 and the amount involved in the litigation. Those are
14 all elements, Judge.

15 And you ask what relevance does this have to my
16 client? The relevance is is that it was a breach and
17 it's one of many that we're dealing with. And so if we
18 take each of these cases singularly, I can't answer
19 that question for you. But I can tell you when you
20 look at the benefit of the client and the detriment to
21 the client if this doesn't stop, you have to all come
22 back to was there a contract and was there a breach and
23 was there damages. And then you look at my bills.
24 And, yes, my fee is 200 an hour reduced 20 percent, but

1 I did this entire thing in 5.4 hours, costs of which
2 were warned of the defendant that would happen, so the
3 \$26 payment was her option and she chose not to do it
4 following her breach that she acknowledged that she
5 didn't follow the terms of the contract.

6 For that reason, Judge, we'd ask for the \$16 for
7 the charges filed against us, the \$10 in an early and
8 cheap attempt to collect it and for costs and
9 attorney's fees pursuant to the terms of the contract.

10 Thank you.

11 THE COURT: All right. Thank you,
12 Mr. Powell.

13 A couple of questions, sir. Among these
14 exhibits, what, what language in the terms and
15 conditions are you relying on with regard to the \$16
16 chargeback fee? There is a liquidated damages
17 provision of \$500, which the plaintiff has apparently
18 abandoned.

19 MR. POWELL: That's correct. We didn't
20 ask for that. We could have, but we didn't.

21 THE COURT: So where -- looking at the
22 exhibits attached to the complaint, which the record
23 establishes are also attached to the amended complaint,
24 which of the terms and conditions?

1 MR. POWELL: Okay, Judge. Let me refer
2 you to Exhibit 3 because that's the actual contract
3 terms that was admitted into evidence.

4 THE COURT: Okay.

5 MR. POWELL: Paragraph four, bullet point
6 four for the breach of not having a printed ticket.

7 THE COURT: Okay. That's -- I'm asking
8 where in this -- these written terms and conditions
9 there's, there's any text or intendment that would
10 warrant recovery of the \$16 chargeback fee?

11 MR. POWELL: The very last bullet point
12 of Exhibit 3. You agree to pay any and all collection
13 costs, including attorney's fees, should collection or
14 other legal action become necessary and that the agreed
15 venue for any legal action arising would be Ford
16 County, which now, again, we've changed and brought it
17 here in Champaign County. So --

18 THE COURT: All right. And another
19 question, Mr. Powell, this \$10 fee, what -- how did you
20 arrive at \$10?

21 MR. POWELL: Mr. Toeppen hires staff to
22 -- and pays them a salary and they get these cases in
23 and a mere \$10 is all that he is charging for his
24 office staff.

1 THE COURT: That's true, but the law
2 requires that the \$10, the collection fee, be
3 reasonable, so what evidentiary basis is there for a
4 finding of reasonableness aside from your ipse dixit
5 that this time expended was even quantified much less
6 monetized?

7 MR. POWELL: If you look at Exhibit,
8 Exhibit 9 --

9 THE COURT: Exhibit 9.

10 Okay. Go ahead.

11 MR. POWELL: -- for \$10, Mr. Toeppen or
12 his staff has to take time away from their day to find
13 out the violation, to place the terms and conditions of
14 the violation in the collection letter, every case is
15 different, and then they place it in the mail and pay
16 for postage and they send it.

17 THE COURT: Okay. You're up to about 49
18 cents --

19 MR. POWELL: The stamp.

20 THE COURT: -- for the stamp.

21 MR. POWELL: Yes.

22 THE COURT: Now -- all right. Thank you,
23 counsel.

24 Mr. Betz, what's the defendant's position here?

1 MR. BETZ: May it please the court and
2 counsel.

3 It has been a long afternoon and, and I didn't
4 quite anticipate it was going to be that long. I'm
5 going to try to make it a little briefer.

6 THE COURT: Well, counsel, I'll say the
7 same thing to you as I said to Mr. Powell, it's the
8 court's -- not the court's case, it's the party's case.

9 MR. BETZ: That's correct.

10 THE COURT: Take as much time as you
11 reasonably need. We've been here we're going on three
12 hours or more and that's, that's fine. One of the few
13 things the court has in relative abundance is time, so
14 don't truncate your presentation for any reason, much
15 less that one.

16 MR. BETZ: Thank you, Your Honor.

17 I will still try to be succinct and brief.

18 Your Honor, I really think that the issue here,
19 the analogy to this being like writing out a check is
20 in apropos. There is a state law regarding writing,
21 writing checks. If you bounce a check, you can get
22 attorney's fees. It's written into state law. It can
23 also be criminally prosecuted. As someone who has
24 represented folks in those kind of cases, I have dealt

1 with that issue, uttering and publishing, and banks, of
2 course, can charge the fee because it is allowed under
3 the law.

4 The difference, this is not a check. This is a
5 credit card. And there is a bilateral agreement
6 between Ms. Mauro and the credit card company. And as
7 part of that agreement, they have a right to dispute
8 credit charges. It is one of the few things in federal
9 banking law that is an absolute right. They have under
10 the 15 U.S.C. Section 1643, which is the Federal Truth
11 in Lending Act and the Banking Act, which subsequently
12 became Dodd-Frank and Regulation Z, you have a right
13 when you get notice of that charge, you have 30 days in
14 which to dispute it. It is an absolute right under
15 federal law. Federal law also states there can be no
16 charge for that dispute. The section is charges for
17 error resolution. If a billing error occurred, whether
18 as alleged or in a different amount or matter, the
19 creditor may not impose a charge related to any aspect
20 of the error resolution process, including charges for
21 documentation or investigation and must credit the
22 consumer's account if such charge was assessed pending
23 resolution. The act grants the consumer error
24 resolution rights. The creditor should avoid any

1 chilling effect on good faith assertion of errors that
2 might result if charges are assessed when no billing
3 error has occurred.

4 What we have here is an attempt to circumvent
5 the federal law by this agreement. In fact, the
6 agreement states that you are to direct all questions
7 and concerns pertaining to the credit card charges or
8 credits to Suburban Express. He is modifying the
9 bilateral agreement between the credit card holder and
10 the credit card company. He does not have the power to
11 do that. He is not a part of that bilateral agreement.
12 He is also trying to very directly circumvent the
13 federal right to challenge a credit transaction, which
14 they did, in fact, do and Ms. Mauro's mother did it a
15 few days later.

16 They also -- in his contract he says that it's
17 irrevocable, et cetera, yet online they went within
18 five days and filed a written challenge, which they
19 have a right to do according to his own website and
20 that he's supposed to respond within 30 days, and it
21 was late the next summer in which there was some sort
22 of response. This is an extremely one sided, almost
23 bullying sort of contract.

24 Now people can enter into bad contracts. I've

1 done it a few times myself. However, this is so one
2 sided as to almost shock the conscience that you're not
3 -- you're not permitted to challenge the terms and
4 conditions. You're not permitted to follow federal law
5 when you have the federal right to dispute that ticket.
6 To me, the printing issue is almost irrelevant here.
7 It's the intimidation that's going on trying to -- an
8 original filing, which included -- which was 43 dollars
9 some odd cents which included that ticket on a verified
10 complaint and then we have this amended complaint down
11 to 26, which is really nothing more than the \$10 and
12 the \$16 because it acknowledged the illegitimacy of the
13 original charges because they'd already been solved at
14 the time the pleading was filed.

15 I have a problem with that particular issue that
16 this is such an onerous sort of environment, in fact,
17 it confers jurisdiction in Ford County. I haven't
18 raised the jurisdictional issue simply because they
19 couldn't afford an attorney that went to Ford County, *hunny, betz*
20 but it does suggest to me the intent here to discourage
21 and chill anyone challenging any of the terms and
22 conditions. If you have an error, it's very difficult
23 to challenge. You have to do it in writing. Well,
24 they did it in writing, got nowhere. The mother

1 testified without objection to numerous phone calls
2 that she made without answer and finally got through to
3 someone late in the summer. This is like a, a game of
4 gotcha. If you -- if you do it on Tuesday, it's
5 (inaudible) on Wednesday. I don't think there's a way
6 to challenge an error here. They have made it
7 extremely difficult. Again, I believe several
8 provisions of this contract are absolutely void and
9 unenforceable. And I'd point to the agreement
10 regarding questions regarding the credit card. That's
11 not the proper party to do it. The -- I think
12 everything flows from that because that's where the
13 gravamen of the case is is that she chose to challenge
14 the credit card charge. Everything else flows from
15 that particular point.

16 I would ask that the court find in favor of the
17 defendant in whole.

18 THE COURT: Thank you, Mr. Betz.

19 Mr. Powell, argument in rebuttal and what at
20 last would you offer on the common law doctrine of de
21 minimis non curat lex? I don't need to read any cases
22 necessarily. I'm familiar with the law. What
23 propositions of law would you have the court invoke?

24 MR. POWELL: The proposition of the law,

1 Your Honor, is that there was a time in this dispute --

2 THE COURT: There was what?

3 MR. POWELL: There was a time in this
4 dispute where it was -- they were asking for \$26. And
5 knowing what was coming, of what our only option was,
6 it does -- you know, it's meaningless on how many times
7 they were contacted. There's no law that says that we
8 have to accept someone's breach. The damages were made
9 known. They offered here's the \$26 to send us and it's
10 all done and they chose to ignore it and now it's
11 turned into exactly what they were warned of.

12 MR. BETZ: Objection.

13 MR. POWELL: Be advised.

14 MR. BETZ: Objection. It was admitted
15 into evidence that she replied to that offer.

16 MR. POWELL: Again -- I don't understand
17 what that objection was.

18 THE COURT: Okay. Well, it's simply
19 argument. I'm not taking it as an evidentiary proffer.

20 Go ahead.

21 MR. POWELL: That's fine.

22 So, so the court understands, you know, there
23 was an offer. Here's, here's your breach -- here's
24 your breach and here's our damages, \$26. Pay it and be

1 done. No. That wasn't acceptable. So they, they want
2 to fight this. Well, there's nothing by law that
3 requires us to say, oh, okay. We'll, we'll waive it
4 and forgive it. That's, that's not a requirement. And
5 we didn't do that. And when we warned what would have
6 happened, we're following through.

7 If you listen to Mr. Betz's argument, Suburban
8 Express should have no recourse to anyone that files a
9 chargeback request regardless of what the reasoning is
10 because, in this case, we had a breach and they still
11 requested a chargeback. So -- and, again, Judge, this
12 is one case. Okay. So now, oh, well, all you have to
13 do is cancel the credit card payment saying you didn't
14 authorize it, saying that you didn't get the services
15 that you bought with no recourse. The next person does
16 it because there's no recourse, the next person does it
17 because there's no recourse. This isn't a \$26 case,
18 Judge. Yes -- and we had other options and I, I chose
19 not to file and request those, so \$26 actual damages
20 initially was done -- was done at my advice.

21 THE COURT: Do you think your -- a prayer
22 for \$500 in liquidated damages would have withstood
23 scrutiny under the law?

24 MR. POWELL: That -- I'm sorry, Judge.

1 That's --

2 THE COURT: Well, you're suggesting that,
3 that with great magnanimity the plaintiff has forsworn
4 any claim under the terms and conditions to seek a \$500
5 liquidated damages award. Do you think that --

6 MR. POWELL: That's --

7 THE COURT: -- liquidated damages clause
8 is valid?

9 MR. POWELL: That's not a part of this
10 case, Judge.

11 THE COURT: I understand it isn't, but
12 you're suggesting that, that you're, you're simply
13 pursuing a 26 hundred -- or a \$26 claim here and, and
14 that you've voluntary forsworn seeking liquidated
15 damages of 500. Do you think the \$500 liquidated
16 damage award would be valid under the law given the
17 purpose and definition of liquidated damages?

18 MR. POWELL: In this case, I chose not to
19 file it because I questioned it.

20 THE COURT: I understand that. Please
21 answer my question.

22 MR. POWELL: Under, under this case?

23 THE COURT: Yes.

24 MR. POWELL: I can't say it is, but I

1 didn't do it.

2 THE COURT: Okay.

3 MR. POWELL: You know, I didn't plead it.

4 THE COURT: All right.

5 MR. POWELL: Under other circumstances,
6 absolutely it would be valid but, in this case, I, I
7 didn't plead that.

8 THE COURT: Okay.

9 MR. POWELL: So, so again, if I may
10 approach, Judge, I just -- I have the cases here that I
11 would like to give you.

12 THE COURT: All right. Why don't you
13 cite for them for the record as well, please.

14 MR. POWELL: Okay. As far as privity of
15 contract, when there is actually --

16 THE COURT: And I don't believe there's
17 been any privity issue raised. I don't think we're at
18 issue with regard to, to privity; are we?

19 MR. POWELL: Yes. It's been raised by
20 defendant saying that they have an automatic right to
21 dispute anything they want at no ramification to them.
22 And we're -- and, and the argument which I made through
23 this trial is that we only have privity of contract
24 with our holder. And this case law says on a breach of

1 contract, that's true. This is *Barbara Mellander*
2 *versus Kileen* --

3 THE COURT: All right.

4 MR. POWELL: -- Fourth District Appellate
5 Court, 1980.

6 THE COURT: All right.

7 MR. POWELL: Again, not that Your Honor
8 needs this, but just so the record is complete, we've
9 got the elements for breach of contract, *Finch versus*
10 *Illinois Community College Board*, Fifth District
11 Appellate Court, Illinois, 2000. And the attorney's
12 fees, just so you -- the elements, which also
13 establishes attorney's fees may be reasonable even if
14 the fees are disproportionate to the monetary amount of
15 the award is *J.B. Esker & Sons, Inc. versus Cle-Pa's,*
16 *C L E dash P A apostrophe S, Partnership*, Illinois
17 Fifth District Appellate Court, 2001.

18 THE COURT: All right. And you
19 suggested, Mr. Powell, that you had -- you were
20 familiar with the doctrine of *de minimis non curat lex*
21 and that you had some case law with regard to that
22 legal doctrine. Have you any such authority?

23 MR. POWELL: Judge, I -- this -- what was
24 done today could not be done in 5.4 hours. All right.

1 So here's how conscience I was of that law, Judge. I
2 told my client --

3 THE COURT: Are you familiar with the
4 doctrine?

5 MR. POWELL: I am familiar with the
6 doctrine.

7 THE COURT: All right. And how do you
8 think it applies to this case, if at all?

9 MR. POWELL: I don't think that does
10 apply to this case.

11 THE COURT: Okay. Why not?

12 MR. POWELL: Because everything done here
13 was done with a conscious regard for that. It was done
14 at my suggestion. We billed the client anything
15 additional above us. I think Your Honor knows that 5.4
16 hours for what we've done so far is very, very
17 reasonable and low. It just -- it wasn't applicable
18 because I made it not applicable.

19 THE COURT: All right. Thank you.

20 Well, this case is remarkable at various levels
21 and the court will incorporate by reference into this
22 ruling from the bench some of the comments that the
23 court made during the course of colloquy with counsel.

24 The court is neither cognizant of nor does the

1 court deem a matter of consequence to the outcome of
2 this case that there might be some concern on the part
3 of the plaintiff beyond the scope of the record in this
4 case to somehow send messages to past, present or
5 prospective clients. Courts don't send messages.
6 Courts render judgments on matters that are raised by
7 pleadings in the case at hand. And this is a contract
8 case. And that's all it is.

9 Now the court isn't entirely convinced that
10 Mr. Powell understands the legal maxim of which the
11 court made mention, the doctrine of de minimis non
12 curat lex. And even so, his proposed application of
13 this and his explanation as to why that doctrine is
14 potentially of no application is circular and he's
15 assuming as a premise the fact that it doesn't apply
16 and circular reasoning is simply neither fodder nor
17 firmament for any court in rendering a decision.
18 The doctrine goes back centuries and it essentially
19 translates to this English notion, and that is that the
20 law doesn't concern itself with trifles. And we're
21 dealing here with a claim for \$26, a claim,
22 litigation, the trial of which has now entered its
23 fourth hour and the prelitigation of which purportedly
24 took some \$1,182.20 in attorney's fees, not including

1 three hours for the trial.

2 Now one valid point, albeit not a dispositive
3 point, that Mr. Powell makes is that under Part I of
4 the Illinois Supreme Court Rules, a corporation such as
5 Suburban Express has no choice but to hire a lawyer to
6 pursue a small claim and so this isn't a case in which
7 absent a waiver of the application of the court of the
8 pertinent Part I Supreme Court Rules Mr. Toeppen or a
9 corporate agent could himself or herself have pursued
10 this claim and thus avoid incurring attorney's fees.
11 And that's certainly something to be taken into account
12 in this case. But be that as it may, we have here a
13 claim for \$26.

14 Now as the appellate court observed in *People*
15 *versus Durham*, and the court is quoting here from 391
16 Ill.App.3d at 1102 through 1103, quote, litigation like
17 this brings the judicial system into disrepute.
18 Rational citizens not connected to the law would deem
19 this appeal an utter waste of time and resources for
20 all concerned. The time and money already spent during
21 this appeal amounts to squandered resources. We will
22 not be part of further squandering. The maxim de
23 minimis non curat lex, again, the law does not concern
24 itself with trifles, retains force in Illinois and is

1 wholly applicable in this case. The maxim applies even
2 to constitutional claims and it's function is to place
3 outside the scope of legal relief the sorts of injuries
4 that are so small that they must be accepted as a price
5 of living in society rather than made a federal case
6 out of. Period. And the court will, for the purpose
7 of this quotation, omit reference to the internal
8 quotation marks and citations.

9 It's really noteworthy that the *Durham* case
10 dealt with an appeal from and criminal conviction in
11 which a defendant claimed that he was entitled to
12 relief for time spent in custody against a \$300 fine
13 that had been imposed as part and parcel of a criminal
14 conviction. And there was some suspicion, albeit no
15 evidence of record, that the defendant had perhaps met
16 -- spent a matter of days in custody, and so those who
17 are unfamiliar with that phase of the law or area of
18 the law know it, under the Illinois law one is entitled
19 credit against a fine for time spent in pretrial
20 custody at the rate of \$5 per day. And the appellate
21 court held that this doctrine of *de minimis non curat*
22 *lex* was applicable to the facts of record in the *Durham*
23 case and that it was just a trifle and a waste of
24 resources for the appellate court to remand the case to

1 the trial court to further litigate a claim that had an
2 amount in controversy of roughly 10 to \$15. And we've
3 got a similar situation here, a claim for \$26. And
4 with all due respect, one could read a transcript of
5 this case or listen to the audiotape or just look at
6 the common law record, the docket sheet, and see all of
7 the time that's been brought to bear in this case, all
8 of the expense to which the parties have respectively
9 been put, all of the efforts of truly able counsel in
10 the case, and both lawyers are truly capable members of
11 the bar as to whom the court implies no criticism, but
12 one could look at this case globally and objectively
13 knowing nothing about the law or the legal system and
14 wonder just what on earth the parties and the court
15 have been doing all of these months.

16 Now the court doesn't necessarily believe that
17 that common law doctrine is of dispositive application
18 here, nor does the court believe that it is a matter of
19 consequence, much less a dispositive facet of this case
20 that the parties have this dispute and couldn't resolve
21 it between themselves. The court has chosen to apply
22 rules of contract law objectively and dispassionately
23 in this case in arriving at its conclusion.

24 There are two elements of damages here, a \$16

1 chargeback from the plaintiff's credit card processor
2 and a \$10 fee for apparently sending a letter to either
3 the elder or younger Ms. Mauro or both and perhaps even
4 looking at the Suburban Express records during the
5 course of endeavoring to resolve this dispute. There's
6 also a prayer for \$1,182.20 in attorney's fees,
7 apparently to be awarded in pursuit of recovery of this
8 \$26 claim, plus -- and we're now well into our third
9 hour -- three plus hours of expenses at \$250 an hour
10 for trying the case, or discounted to \$200 as the case
11 may be. So even assuming that Mr. Powell's discounted
12 rate of \$200 is applicable, we're looking at roughly
13 \$1,782.28 in a proposed attorney fee award to recover
14 \$26 plus court costs. And if I could channel Glenn
15 Beck all I could say is really?

16 Now just because there is a disproportion
17 between an amount in controversy and an ultimate award
18 of damages on the one hand and a fee award on the other
19 does not necessarily defeat a claim that a proposed fee
20 award is reasonable. The ultimate standard under the
21 law, and Illinois law is no exception, is that any fee
22 has to be reasonable. The amount in controversy and
23 the ultimate yield of a case if the claimant is
24 successful is not a matter of consequence. There have

1 been cases in which a court simply entered declaratory
2 relief and and awarded no monetary damages which have
3 involved attorney fee awards of hundreds of thousands
4 of dollars, so I'm not suggesting that the
5 disproportionality between a \$26 claim and a proposed
6 award of some \$1,700 is per se unreasonable but,
7 nonetheless, the nature of the claim here would cause
8 the court to harbor grave concerns about whether the
9 proposed award of fees is even close to being
10 reasonable.

11 That said, the bottom line is this. The court's
12 of the view that Mr. Betz's claim that federal law
13 precludes recovery of this chargeback fee is
14 well-taken. In addition, even if that legal premise is
15 an errant one, there's simply nothing in the text of
16 this somewhat draconian set of rules and regulations
17 that would permit recovery of this. The bullet point
18 on which able counsel relies suggests that there's a
19 right to recovery -- recover collection costs and that
20 textually would include and it would also implicitly
21 include fees incurred, costs incurred during the course
22 of collection and not a freestanding element of
23 damages. And it seems to the court that the recovery
24 of this \$16 fee is a dispute that exists as and between

1 Suburban Express and its credit card manager and
2 neither the elder or the younger Ms. Mauro can be
3 looked to to compensate the plaintiff for that.

4 With regard to the \$10 fee, the law requires,
5 and there's a Fourth District Appellate Court case
6 right on point, that a collection agent is entitled to
7 fees. As is the case with attorney's fees, although
8 they're governed by evidentiary rules and elemental
9 rules that are stripped from and different from the
10 rules of professional conduct, the collection fees have
11 to be reasonable. And there is nothing on this record
12 that would establish this \$10 collection fee as being
13 anything beyond speculative and subjective.

14 Now it's readily evident that the plaintiff and
15 able counsel think that they're being reasonable and
16 magnanimous by just charging \$10, but that begs the
17 question of reasonableness and there's simply no
18 objective basis on this record with regard to how the
19 court could objectively determine, one, what amount of
20 time went into this collection activity and, two, how
21 that time spent by the Suburban Express employees could
22 be reasonably monetized. So, accordingly, the court
23 finds that this claim is without factual and legal
24 basis.

1 The court enters a finding and judgment in favor
2 of the defendant and against the plaintiff. costs are
3 taxed to the plaintiff. Judgment is entered
4 accordingly. There is no written judgment order
5 required.

6 Now it is now well past closing time, so to say.
7 The court is under instructions from the presiding
8 judge to not stay late given scheduling and union
9 contract concerns and so the court is unable to address
10 for trial 13-SC-1650, Suburban Express against
11 Mr. Cater Minnis and I apologize to the parties and
12 able counsel for its inability to preside.

13 I'm simply going to show, gentlemen, that
14 13-SC-1650 is continued until further order of court.

15 Mr. Powell, the court is not going to hold you
16 and your client to trial in this courtroom. It appears
17 as though the legal landscape of the case is the very
18 same as Ms. Mauro's. And the court has articulated as
19 best it can what the court's understanding of the
20 applicable law is. And the court will not take umbrage
21 and will perfectly well understand, sir, if you should
22 care to invoke Section 2-1001 of the Code of Civil
23 Procedure in the other case and seek assignment to
24 another judge, that's a perfectly legitimate tactical

1 decision and it's an absolute right that you and your
2 client have. If you wish to try the case in Courtroom
3 D here, confer with Mr. Betz and contact Madam Clerk
4 and get date for trial. If you should decide to
5 exercise your right for substitution of judge, the
6 Section is 2-1001 of the Code of Civil Procedure, just
7 file the motion. It will be referred here and they're
8 granted by law as a matter of course. The matter will
9 be allotted or assigned to another judge for trial.

10 Thank you, able counsel, for your patience.

11 Thanks to the parties.

12 The court will be in recess.

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1 IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
2 CHAMPAIGN COUNTY, ILLINOIS

3 I, LAURA B. WORKMAN, an Official Court Reporter
4 for the Circuit Court of Champaign County, Sixth
5 Judicial Circuit of Illinois, transcribed the
6 electronic recording of the proceeding in the
7 above-entitled cause to the best of my ability and
8 based on the quality of the recording, and I hereby
9 certify the foregoing to be a true and accurate
10 transcript of said electronic recording.

11
12 
13 Official Court Reporter

14 Dated this 24th day
15 of April, 2014.
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