IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

JEREMY LEVAL, Plaintiff, v. SUBURBAN EXPRESS, INC., an Illinois corporation, and DENNIS TOEPPEN, Defendants, And SUBURBAN EXPRESS, INC., an Illinois corporation, and DENNIS TOEPPEN, Counter-Plaintiffs/Defendants, v. JEREMY LEVAL, Counter-Defendant/Plaintiff.	Case No. 2015 L 002119 Judge Daniel T. Gillespie

FILED B - 15
2015 DEC 11 PM 3:35
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

NOTICE OF FILING

To: Counsel of Record (as set forth in the attached service list)

PLEASE TAKE NOTICE that, on December 11, 2015, Counter-Plaintiffs/Defendants Suburban Express, Inc. and Dennis Toeppen filed their **Answer and Affirmative Defenses to Counter-Defendant/Plaintiff's Verified Complaint for Defamation and Counterclaim** with the Clerk of the Circuit Court of Cook County, Illinois, Law Division. The pleading is attached to this Notice and is hereby served upon you.

[SIGNATURE BLOCK ON NEXT PAGE]

DATED this 11th day of December 2015.

Respectfully submitted on behalf of Defendants SUBURBAN EXPRESS, INC. and DENNIS TOEPPEN

By: _____

Charles E. Harris, II
Frank M. Dickerson
MAYER BROWN LLP
71 South Wacker Drive
Chicago, Illinois 60606
Phone: (312) 782-0600
Firm ID: 43948

Edward Gower
Adam S. Guetzow
HINSHAW & CULBERTSON LLP
222 North LaSalle Street, Suite 300
Chicago, Illinois 60601-1081
Phone: (312) 704-3000
Firm ID: 90384

FIRM I.D. 43948

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

JEREMY LEVAL,

Plaintiff,

v.

SUBURBAN EXPRESS, INC., an Illinois corporation, and DENNIS TOEPPEN,

Defendants,

And

SUBURBAN EXPRESS, INC., an Illinois corporation, and DENNIS TOEPPEN,

Counter-Plaintiffs/Defendants,

v.

JEREMY LEVAL,

Counter-Defendant/Plaintiff.

Case No. 2015 L 002119

Judge Daniel T. Gillespie

JURY DEMAND

FILED 8 - 15
2015 DEC 11 PM 3:35
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

SUBURBAN EXPRESS, INC. AND DENNIS TOEPPEN'S ANSWER AND AFFIRMATIVE DEFENSES TO COUNTER-DEFENDANT/PLAINTIFF'S VERIFIED COMPLAINT FOR DEFAMATION AND COUNTERCLAIM

Counter-Plaintiffs/Defendants SUBURBAN EXPRESS, INC. ("Suburban") and DENNIS TOEPPEN ("Toeppen" and together with Suburban, "Defendants") respectfully submit this Answer and Affirmative Defenses to Counter-Defendant/Plaintiff Jeremy Leval's Verified Complaint for Defamation (the "Complaint"), pursuant to sections 2-610 and 2-613 of the Code of Civil Procedure (the "Code"), 735 ILCS 5/2-610, 2-613, as follows:

THE PARTIES

1. Jeremy Leval is a resident of the State of Illinois, County of Lake.

ANSWER: Based on information and belief, Defendants admit the allegation in paragraph 1 of the Complaint.

2. Defendant Suburban Express is an Illinois Corporation providing transportation services and doing business in the State of Illinois.

ANSWER: Defendants admit the allegations in paragraph 2 of the Complaint.

3. Defendant Toeppen is a resident of the State of Illinois.

ANSWER: Defendants admit the allegation in paragraph 3 of the Complaint.

JURISDICTION AND VENUE

4. This Court has personal jurisdiction over Defendants Suburban Express and Toeppen pursuant to 735 ILCS 5/2-209(a)(2) because the Defendants committed a tortious act within the State of Illinois.

ANSWER: The allegation in paragraph 4 of the Complaint states a legal conclusion to which no answer is required. To the extent a response is required, paragraph 4 of the Complaint is denied.

5. Venue is proper in Lake County pursuant to 735 ILCS 5/2-101 because Suburban Express is an Illinois Corporation, does business in Lake County, and the cause of action arose in Lake County, Illinois and that the cause of action against Defendant Toeppen arose in Lake County.

ANSWER: Defendants deny the allegations in paragraph 5 of the Complaint.

COUNT I — DEFAMATION PER SE AS AGAINST SUBURBAN EXPRESS, INC.

6. On or about September 21, 2014, Defendant Suburban Express published and posted on its website an image of a digitized arrest photograph image ("mug shot") with text above the mug shot stating "JEREMY LEVAL, UNIVERSITY OF ILLINOIS MBA STUDENT". The "mug shot" of the individual arrested for and/or convicted of criminal offense(s) was not that of the Plaintiff.

ANSWER: Defendants deny the first sentence of paragraph 6 of the Complaint and they have no knowledge sufficient to form a belief as to the truth or falsity of the second sentence in paragraph 6 of the Complaint.

7. A true and correct copy of the web page is attached hereto marked as "Exhibit A" and incorporated herein by reference.

ANSWER: Defendants admit the first clause of paragraph 7 of the Complaint. The allegation in the second clause of paragraph 7 of the Complaint states a legal conclusion to which no answer is required. To the extent a response is required, the second clause of paragraph 7 of the Complaint is denied.

8. Defendant Suburban Express knew and was aware that the digitized arrest photograph image ("mug shot") was not that of the Plaintiff, but nonetheless maliciously posted the image in an attempt to identify Plaintiff as having been arrested for and/or convicted of committing a criminal offense.

ANSWER: Defendants deny the allegation in paragraph 8 of the Complaint.

9. The post of the digitized arrest photograph image ("mug shot") was published to third parties and has severely prejudiced and damaged the Plaintiff in his personal, professional, and business life.

ANSWER: The allegation in the first clause of paragraph 9 of the Complaint states a legal conclusion to which no answer is required. To the extent a response is required, the first clause of paragraph 9 of the Complaint is denied. Defendants have no knowledge sufficient to form a belief as to the truth or falsity of the remaining allegation in paragraph 9 of the Complaint.

10. That the false publishing and posting identifying the Plaintiff as having been arrested for and/or convicted of a criminal offense is presumed as a matter of law to have severely injured and caused damage to his reputation.

ANSWER: The allegation in paragraph 10 of the Complaint states a legal conclusion to which no answer is required. To the extent a response is required, paragraph 10 of the Complaint is denied.[1]

[1] Count II of the Complaint, "Negligent Defamation," was dismissed and Plaintiff did not amend the Complaint to re-plead the count. Accordingly, Defendants do not answer that count.

COUNT III — DEFAMATION PER SE AS AGAINST DENNIS TOEPPEN

6. Plaintiff incorporates Paragraphs 1 thru 5 of Count I as though fully set forth herein as Paragraph 6 of Count III.

ANSWER: In response to paragraph 6 of the Complaint, Defendants restate and incorporate by reference their responses to paragraphs 1 through 5 above as if fully set forth herein.

7. On or about September 21, 2014, Defendant Toeppen individually uploaded, published, and posted on a website an image of a digitized arrest photograph image ("mug shot") with text above the mug shot stating "JEREMY LEVAL, UNIVERSITY OF ILLINOIS MBA STUDENT". The "mug shot" of the individual arrested for and/or convicted of criminal offense(s) was not that of the Plaintiff.

ANSWER: Defendants admit that, on September 20, 2014, Toeppen posted the mug shot at issue in paragraph 7 of the Complaint. Defendants have no knowledge sufficient to form a belief as to the truth or falsity of the second sentence in paragraph 7 of the Complaint.

8. A true and correct copy of the web page is attached hereto marked as "Exhibit A" and incorporated herein by reference.

ANSWER: Defendants admit the first clause of paragraph 8 of the Complaint. The allegation in the second clause of paragraph 8 of the Complaint states a legal conclusion to which no answer is required. To the extent a response is required, the second clause of paragraph 8 of the Complaint is denied.

9. Defendant Toeppen knew, was aware, and openly admitted that the digitized arrest photograph image ("mug shot") was not that of the Plaintiff, but nonetheless maliciously posted the image in an attempt to identify Plaintiff as having been arrested for and/or convicted of committing a criminal offense.

ANSWER: Defendants deny the allegation in paragraph 9 of the Complaint.

10. The post of the digitized arrest photograph image ("mug shot") was published to third parties and has severely prejudiced and damaged the Plaintiff in his personal, professional, and business life.

ANSWER: The allegation in the first clause of paragraph 10 of the Complaint states a legal conclusion to which no answer is required. To the extent a response is required, the first clause

of paragraph 10 of the Complaint is denied. Defendants have no knowledge sufficient to form a belief as to the truth or falsity of the remaining allegation in paragraph 10 of the Complaint.

11. That the false publishing and posting identifying the Plaintiff as having been arrested for and/or convicted of a criminal offense is presumed as a matter of law to have severely injured and caused damage to his reputation.

ANSWER: The allegation in paragraph 11 of the Complaint states a legal conclusion to which no answer is required. To the extent a response is required, paragraph 11 of the Complaint is denied.[2]

AFFIRMATIVE DEFENSES

In support of further and separate defenses to Plaintiff's claims, and without admitting that it has the burden of proof on any fact, issue, element of a claim or any of these matters or that anything stated herein is intended or shall be construed as an acknowledgement that any particular issue or subject is relevant to Plaintiff's allegations, Defendants state as follows:

First Affirmative Defense
(No Actionable Assertion of Fact)

1. The allegedly *per se* defamatory statement set forth in the Complaint, a mug shot with text above the image stating "Jeremy Leval, University of Illinois MBA Student," contains no provable assertion of fact, and thus is not actionable.

Second Affirmative Defense
(Fair Comment)

2. The allegedly *per se* defamation statement set forth in the Complaint, if made by Defendants, was a fair comment made as private citizens exercising their right of free speech, discussing matters of public importance, as concerned citizens of the community.

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[2] The Affidavit of Toeppen for the Truth of the Statement of Want of Knowledge is attached hereto as Exhibit 1.

Third Affirmative Defense
(Qualified or Conditional Privilege)

3. The matters addressed in the allegedly *per se* defamatory statement set forth in the Complaint were made in good faith and to protect the interests of the Defendants or third parties, and/or to protect the interest of the public. Accordingly, the statement is protected by a qualified or conditional privilege.

Fourth Affirmative Defense
(Truth or Substantial Truth)

4. The allegedly *per se* defamatory statement set forth in the Complaint was either true or substantially true (*i.e.*, the "gist" or "sting" of the statement was true), and thus the statement cannot support a defamation *per se* action.

Fifth Affirmative Defense
(Failure to State a Claim)

5. For the reasons stated in Defendants' Motion to Dismiss, Motion to Reconsider, and the related motion papers, the Complaint fails to state a claim upon which relief can be granted and respectfully should have been dismissed under section 2-615 of the Code of Civil Procedure, 735 ILCS 5/2-615.

Sixth Affirmative Defense
(Lack of Damages Caused by Defendants)

6. No act or omission on the part of Defendants either caused or contributed to whatever injury, if any, that Plaintiff may have suffered.

Seventh Affirmative Defense
(Immunity Pursuant to Federal Communications Decency Act)

7. Suburban is immune from this suit under the Communications Decency Act, 47 U.S.C. § 230(c), which provides that no provider or user of an interactive computer service shall be treated as the publisher of any information provided by another information content provider.

Eighth Affirmative Defense
(No Actual Malice)

8. The allegedly *per se* defamatory statement set forth in the Complaint, if made by Defendants, was not made with actual malice (*i.e.*, with knowledge that it was false or reckless disregard for its truth), and thus is not actionable.

Defendants reserve the right to make and do not waive additional defenses, including those that may become apparent from further investigation and discovery.

[COUNTERCLAIM BEGINS ON NEXT PAGE]

SUBURBAN EXPRESS, INC. AND DENNIS TOEPPEN 'S COUNTERCLAIM

Counter-Plaintiffs/Defendants SUBURBAN EXPRESS, INC. ("Suburban") and DENNIS TOEPPEN ("Toeppen" and together with Suburban, "Defendants") respectfully submit this Counterclaim against Counter-Defendant/Plaintiff Jeremy Leval ("Counter-Defendant"), pursuant to section 2-608 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-608, as follows:

NATURE OF THE ACTION

1. This is an action for tortious interference with business relations and prospective economic advantage, as well as violations of the Illinois Uniform Deceptive Trade Practices Act (the "UDTPA"), 815 ILCS 510/1 *et seq.*, the Illinois Consumer Fraud and Deceptive Business Practices Act (the "Consumer Fraud Act"), 815 ILCS 505/1 *et seq.*, and the Stored Communications Act (the "SCA"), 18 U.S.C. § 2701 *et seq.*

2. Suburban brings this action to (a) recover monetary damages resulting from false and misleading statements that Counter-Defendant posted about Suburban on various online forums during a period when Counter-Defendant launched or was planning to launch a business that would directly compete with Suburban, and (b) seek equitable relief restraining Counter-Defendant from further disparaging Suburban.

3. Toeppen brings this action to collect actual and punitive damages due to Counter-Defendant intentionally accessing Toeppen's "Reddit" accounts without authorization, and altering those accounts and preventing Toeppen from accessing the accounts.

PARTIES

4. Counter-Plaintiff Suburban is an Illinois corporation with its principal place of business in Champaign, Illinois.

5. Counter-Plaintiff Toeppen is an individual who resides in Champaign County, Illinois. Toeppen is the owner of Suburban.

6. Counter-Defendant Leval is an individual who, on information and belief; resides in Lake County, Illinois.

JURISDICTION AND VENUE

7. Jurisdiction is proper under section 2-209 of the Code, 735 ILCS 5/2-209, because, among other reasons, Counter-Defendant committed tortious acts within Illinois.

8. Venue is proper under section 2-101 of the Code, 735 ILCS 5/2-101, because, among other reasons, some transactions giving rise to this action occurred in Cook County.

FACTUAL BACKGROUND COMMON TO ALL COUNTS

Counter-Defendant Considers Launching a College-Based File Sharing Network that Would Compete with Suburban

9. Suburban, which has been operating since 1983, is a bus service that transports college students between their respective college campuses and the Chicago area. Particularly, Suburban operates routes that transport students between stops in the Chicago suburbs and stops on the campus of the University of Illinois at Urbana-Champaign ("UIUC"). Virtually all of the ridership using this route are students at UIUC or their friends or relatives.

10. From about February 2011 to May 2013, Counter-Defendant worked to launch a college-based ride sharing network, CollegeRides Inc., which operated under the assumed names Illinirides.com and Collegrides.com. Counter-Defendant was the company's co-founder and he boasted about this business on his LinkedIn page. A true and correct copy of the described LinkedIn page is attached hereto as Exhibit A.

11. Illinirides.com (or Collegerides.com) was an online carpooling system for college students seeking to travel from college campuses to home or to other campuses. The website provided a platform where students with cars on campus could sell rides in their automobiles. The website was integrated with both Google Maps and Facebook to make it user-friendly.

12. Counter-Defendant intended to focus his efforts on growing the ride-sharing network at Illinois schools, including UIUC, and stated in an online blog that he intended for Illinirides.com to compete with bus companies like Suburban: "[C]ollege students every year become desperate to find a ride to and from school. . . . I thought, if only I could create a ride sharing website (now CollegeRides.com) that could facilitate this task specifically for college students. Students could stop paying exorbitant fees to disorganized [sic] and unprofessional bus companies. . . . " A true and correct copy of this blog post is attached hereto as Exhibit B.

13. Counter-Defendant initiated a campaign on social media and Internet blogs to disparage Suburban and interfere with its business relationships as a means of generating Internet traffic for his college-based ride sharing network and potential future businesses, and for his Facebook page where he announced his business plans and ideas.

Counter-Defendant Disparages Suburban

14. On March 31, 2013, Counter-Defendant boarded a bus traveling from Woodfield Mall in Schaumburg, Illinois, to the UIUC. This bus route was marketed by Suburban but operated by another company. As such, the bus driver was not a Suburban employee. At a stop on this route, the bus driver apparently said that a foreign student who could not speak or understand English should not attend college in the United States. Counter-Defendant overhead this comment and instigated a verbal exchange with the bus driver. He disturbed riders who were on the bus and those who boarded later by repeatedly rehashing his account of the incident.

15. Less than an hour later, while apparently still on the bus, Counter-Defendant posted his account of the incident on his Facebook page. In a comment following the post, Counter-Defendant falsely described Suburban as a racist bus company and one that fosters a "prejudice" culture. He stated: "I encourage everyone to take a stand against prejudice. . . . A

company who commits such acts needs to be exposed . . . and I truly think that it is about time we as students take a stand against [Suburban]. Since [Toeppen] has fostered a culture that has given employees the confidence to commit such verbal acts of prejudice, action needs to be taken. If enough people take a stand against this company, it will be horrific PR which may finally expóse [Suburban] for [sic] type of company it truly is. Please keep sharing!" A true and correct copy of this post is attached hereto as Exhibit C.

16. Counter-Defendant also falsely described Suburban as an extortionist and claimed that it uses "intimidation" tactics to collect its fare from customers. For instance, on April 28, 2013, Counter-Defendant posted in a comment following an Internet article that: "I have witnessed [Toeppen] send threatening offensive emails to people as a means to intimidate them into submission. When one girl posted about [Toeppen] trying to collect money from her (which he successfully did), [he] quickly emailed her saying in short that she better remove her comment or she will be sued." A true and correct copy of this post is attached hereto as Exhibit D.

17. Counter-Defendant also falsely accused Suburban of employing substandard bus drivers and poor customer service. In an August 10, 2013 post on an online forum for UIUC students, Counter-Defendant said that "[p]eople have complained about [Suburban] drivers" and "if you even attempt to complain to [Suburban], [Toeppen] viciously verbally (and legally) attacks you[.]" A true and correct copy of this post is attached hereto as Exhibit E.

18. Counter-Defendant bragged about his disparagement of Suburban and interference with its business relationships. On May 12, 2013, a Suburban employee who was giving out coupons in front of the UIUC Armory overheard Counter-Defendant say to the driver of an express van service that "I am the guy who has been causing" Suburban "all their trouble." On May 9, 2013, Counter-Defendant also threatened Suburban after receiving a marketing email

from Suburban that was distributed to a large number of its current and prospective customers. He said: "This is my final warning. Do not contact me in any way [sic] otherwise I will proceed with harassment. . . . and as I hope you are now aware, I make good on my promises." A true and correct copy of this email is attached hereto as Exhibit F.

19. Counter-Defendant's disparagement of Suburban persisted for more than two years and, on information and belief, continues today.

Counter-Defendant's Actions Interfered With Suburban's Business Relationships and Damaged the Company

20. Suburban's current and prospective customers rely on forums such as online review websites and social media to guide their purchase decisions. Therefore, Suburban has invested considerable resources in creating and maintaining an effective online presence.

21. Suburban's current and prospective customers who read or otherwise learned about Counter-Defendant's false and misleading statements regarding Suburban wrongly believe that the company is racist, unscrupulous and unreliable. To be sure, in the midst of Counter-Defendant's fallacious online campaign against Suburban, countless customers forwarded emails to Suburban referencing Counter-Defendant's statements and indicating that they would no longer use Suburban's services as a result of those statements.

22. For example, in May 2013, Vincent Zheng ("Zheng"), a then-current Suburban customer, sent Suburban an email describing its "employees" as "racist." He said "[m]y advice is to treat everyone with respect, regardless of race and the ability to speak [E]nglish. Comments such as 'You should not be here if you can't understand/speak English' is just plain out wrong. Sorry but, no business from me, or my friends." Similarly, in May 2013, Weihao Ge ("Ge"), another then-current Suburban customer, sent Suburban an email stating emphatically: "[A] COMPANY [THAT] SHOW[S] RACIAL DISCRIMINATION SHOULD BE PUNISHED

RIGHTFULLY" and that Suburban's actions "REFLECT[] [ITS] DISCRIMINATIVE ATTITUDE!" Also in May 2013, Hu Peng ("Peng"), a prospective customer forwarded Suburban an email stating "[w]hat's more critical is the discrimination incident a few months ago and it is widely spread among [F]acebook and [the] Chinese student network. That has already done a major damage to your reputation." True and correct copies of these emails are attached hereto as Exhibits G, H and I, respectively.

23. According to Suburban's records, the two current customers mentioned in the preceding paragraphs used Suburban's services before Counter-Defendant's false and misleading statements were posted and never used Suburban's services again, while the prospective customer never used Suburban's services after Counter-Defendant's statements.

Counter-Defendant Intentionally Accesses Toeppen's Reddit Accounts without Authorization

24. Reddit is a social networking, and news website where registered accountholders can submit content, such as texts, posts or links to online content, blog posts, pictures and video, as well as send and receive messages.

25. In or about May 2013, Toeppen registered several Reddit accounts that, on information and belief, were accessed by Counter-Defendant without authorization. Toeppen had a habit of using the username of these accounts as their passwords and Counter-Defendant was aware of this practice. He said so in one of his Reddit posts: "You are sloppy in the details and are VERY predictable. You gave yourself away . . . and those who I informed know how." Further, a blog author told Toeppen that Counter-Defendant had admitted to him that he was accessing Toeppen's Reddit accounts.

26. Counter-Defendant posted several offensive messages once he accessed Toeppen's Reddit accounts and Counter-Defendant altered the passwords for the accounts so that Toeppen could no longer access them to remove the distasteful material.

COUNT I-TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS AND PROSPECTIVE ECONOMIC ADVANTAGE/BUSINESS EXPECTANCY

27. Suburban re-alleges and incorporates by reference paragraphs 1 through 24 of this Counterclaim as though fully set forth herein.

28. Suburban has and had a reasonable expectation of entering into valid business relationships with its existing customer base, new students matriculating at UIUC and others seeking bus services, including Zheng, Ge and Peng. Suburban has cultivated long-standing relationships with this customer base at considerable expense, and given its tenure in this market, Suburban had a reasonable expectation that such relationships would continue.

29. Counter-Defendant knew of Suburban's relationships with its primary ridership, such as Zheng, Ge and Peng, as well as Suburban's reasonable expectation that the relationships would continue. He also knew that Suburban's primary ridership frequented the online forums where he posted false and misleading statements about Suburban.

30. Counter-Defendant purposefully and intentionally interfered with Suburban's business expectancy of maintaining its current customer relationships and receiving new customers by posting false and misleading statements about Suburban on these online forums.

31. On information and belief, as a result of Counter-Defendant's actions, Suburban lost previous and prospective customers, including Zheng, Ge and Peng, and has, therefore, been damaged as a result of Counter-Defendant's actions.

WHEREFORE, Suburban prays for judgment in its favor and against Counter-Defendant in an amount in excess of $50,000 to be proven at trial, together with pre-judgment interests, costs and for such other relief as this Court deems just and equitable, including, but not limited to, exemplary damages and Suburban's reasonable attorneys' fees.

COUNT II-VIOLATION OF THE UNIFORM DECEPTIVE TRADE PRACTICES ACT

32. Suburban re-alleges and incorporates by reference paragraphs 1 through 29 of this Counterclaim as though fully set forth herein.

33. A person engages in a deceptive trade practice in violation of the UDTPA, when, in the course of his business, vocation, or occupation, he disparages the goods, services or business of another by false or misleading representations of fact. 815 ILCS 510(2)(a)(8).

34. In the course of establishing a competing ride-sharing network, Counter-Defendant disparaged Suburban through his false and misleading statements described herein, including but not limited to Counter-Defendant's statements that Suburban (a) is a racist company that fosters an environment where prejudice is accepted, (b) extorts and intimidates its ridership, (c) employs substandard bus drivers and (d) provides inadequate customer service.

35. Suburban has been damaged, and is likely to continue to be damaged, due to these misleading representations.

WHEREFORE, Suburban prays for judgment in its favor and against Counter-Defendant and requests the Court to grant it relief, including, but not limited to, an order preventing Counter-Defendant from disparaging Suburban, the immediate removal of all disparaging content regarding Suburban, reasonable attorneys' fees and such other relief as the Court deems to be just and appropriate.

COUNT III-VIOLATION OF THE CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT

36. Suburban re-alleges and incorporates by reference paragraphs 1 through 33 of this Counterclaim as though fully set forth herein.

37. Counter-Defendant has violated the Consumer Fraud Act by engaging in numerous deceptive practices, including posting misleading information about Suburban's

business practices such as Counter-Defendant's statements that Suburban (a) is a racist company that fosters an environment where prejudice is accepted, (b) extorts and intimidates its ridership, (c) employs substandard bus drivers and (d) provides inadequate customer service.

38. On information and belief, Counter-Defendant intended that consumers rely on his deception.

39. Counter-Defendant's actions occurred during conduct involving trade and commerce; particularly, the sale of bus services.

40. Also, Counter-Defendant's deceptive conduct implicates consumer protection concerns because he was disseminating false and misleading information about Suburban's services at the same time that he was attempting to launch a competing ride-sharing network. Consumers benefit from Suburban's and Counter-Defendant's businesses competing based on legitimate information, not based on false and misleading information about Suburban.

41. Suburban has been damaged, and is likely to continue to be damaged, due to Counter-Defendant's actions.

WHEREFORE, Suburban prays for judgment in its favor and against Counter-Defendant in an amount in excess of $50,000 to be proven at trial, together with pre-judgment interests, costs and for such other relief as this Court deems just and equitable, including, but not limited to, Suburban's reasonable attorneys' fees.

COUNT IV-VIOLATION OF THE STORED COMMUNICATIONS ACT

42. Toeppen re-alleges and incorporates by reference paragraphs 1 through 39 of this Counterclaim as though fully set forth herein.

43. The SCA prohibits persons from intentionally accessing without authorization a facility through which an electronic communication service is provided. 18 U.S.C. § 2701(a)(1). An "electronic communication service" means "any service which provides to users thereof the

ability to send or receive wire or electronic communications." *Id.* § 2510(15).

44. Reddit is an electronic communication service as that term is defined in the SCA and Counter-Defendant violated the SCA by accessing Toeppen's Reddit accounts without authorization, altering the passwords on those accounts and preventing Toeppen from accessing the accounts.

45. The SCA permits an aggrieved accountholder such as Toeppen to bring a civil action to recover from any person who has violated the SCA.

WHEREFORE, Toeppen prays for judgment in his favor and against Counter-Defendant in the sum of his actual damages and any profits made by Counter-Defendant as a result of his violation of the SCA, but in no case less than $1,000. Since the violation was intentional, Toeppen also requests punitive damages from Counter-Defendant. Lastly, to the extent that Toeppen is successful in enforcing liability under the SCA, he requests that the court assess against Counter-Defendant the costs of this action, together with reasonable attorneys' fees.

DATED this 11th day of December 2015.

Respectfully submitted on behalf of Defendants SUBURBAN EXPRESS, INC. and DENNIS TOEPPEN

By: _____

Charles E. Harris, II
Frank M. Dickerson
MAYER BROWN LLP
71 South Wacker Drive
Chicago, Illinois 60606
Phone: (312) 782-0600
Firm ID: 43948

Edward Gower
Adam S. Guetzow
HINSHAW & CULBERTSON LLP
222 North LaSalle Street, Suite 300
Chicago, Illinois 60601-1081
Phone: (312) 704-3000
Firm ID: 90384

CERTIFICATE OF SERVICE

The undersigned attorney certifies that, on December 11, 2015, **Counter-Plaintiffs/Defendants' Answer and Affirmative Defenses to Counter-Defendant/Plaintiff's Verified Complaint for Defamation and Counterclaim** was served on the following counsel of record by electronic and/or United States mail, first-class postage:

Alain Leval
Law Offices Of Alain Leval
2755 Arlington Avenue
Highland Park, Illinois 60035
Phone: (847) 331-7843
Attorney for Plaintiff Jeremy Leval

One of Defendants' Attorneys

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

JEREMY LEVAL, Plaintiff, v. SUBURBAN EXPRESS, INC., an Illinois corporation, and DENNIS TOEPPEN, Defendants, And SUBURBAN EXPRESS, INC., an Illinois corporation, and DENNIS TOEPPEN, Counter-Plaintiffs/Defendants, v. JEREMY LEVAL, Counter-Defendant/Plaintiff.	Case No. 2015 L 002119 Judge Daniel T. Gillespie

AFFIDAVIT OF DENNIS TOEPPEN FOR THE TRUTH OF THE STATEMENT OF WANT OF KNOWLEDGE

I, Dennis Toeppen, being first duly sworn, depose and state that I have personal knowledge of the following facts and can testify competently thereto:

1. I submit this Affidavit in support of Suburban Express, Inc. ("Suburban") and my Answer and Affirmative Defenses to Counter-Defendant/Plaintiff's Verified Complaint for Defamation (the "Complaint") and Counterclaim.

2. I am the owner of Suburban.

3. Defendants have no knowledge sufficient to form a belief as to the truth or falsity of certain allegations contained in paragraphs 6 and 9, and the second paragraphs 7 and 10 of the Complaint.

[SIGNATURE BLOCK ON NEXT PAGE]

FURTHER AFFIANT SAYETH NAUGHT

Dennis Toeppen

Subscribed and sworn before me on this 9 day of December 2015,

"OFFICIAL SEAL"
VICKI WYATT
Notary Public, State of Illinois
My commission expires 07/10/17

Notary Public

My commission expires 7-10-17

F

Jeremy <leval jeremy@gmail com> May 9, 2013 1 30 AM
To Dennis Toeppen <ideas@busline com>
Return-Path <leval jeremy@gmail com>
X-Original-To ideas@66 net
Delivered-To ideas@66 net
Received from smtp01-forward-0 daemonmail net (smtp01-forward-0 daemonmail net [216 104 162 150]) by 66 net (Postfix) with ESMTP id 09F4C5A8DED for <ideas@66 net>, Thu, 9 May 2013 01 30 38 -0500 (CDT)
Received from mxw08 daemonmail net (unknown [216 104 161 18]) by smtp01-forward-0 daemonmail net (Postfix) with ESMTP id 6EED084F80 for <ideas@66 net>, Wed, 8 May 2013 23 30 37 -0700 (PDT)
Received from localhost (localhost [127 0 0 1]) by mxw08 daemonmail net (Postfix) with ESMTP id B78E9182911 for <ideas@busline com>, Wed, 8 May 2013 23 30 36 -0700 (PDT)
Received from mxw08 daemonmail net ([127 0 0 1]) by localhost (mxw08 daemonmail net [127 0 0 1]) (amavisd-new, port 10024) with ESMTP id j8oguuQNRPPk for <ideas@busline com>, Wed, 8 May 2013 23 30 34 -0700 (PDT)
Received from mail-ia0-f171 google com (mail-ia0-f171 google com [209 85 210 171]) by mxw08 daemonmail net (Postfix) with ESMTPS id 4B66B18296E for <ideas@busline com>, Wed, 8 May 2013 23 30 34 -0700 (PDT)
Received by mail-ia0-f171 google com with SMTP id r13so2899895iar 2 for <ideas@busline com>, Wed, 08 May 2013 23 30 34 -0700 (PDT)
Received from [192 168 2 4] (s-24-242 flex volo net [76 191 24 242]) by mx google com with ESMTPSA id p10sm5763189igj 5 2013 05 08 23 30 32 for <ideas@busline com> (version=TLSv1 cipher=ECDHE-RSA-RC4-SHA bits=128/128), Wed, 08 May 2013 23 30 33 -0700 (PDT)
X-Virus-Scanned Debian amavisd-new at mxw08 daemonmail net
X-Spam-Flag NO
X-Spam-Score -0 098
X-Spam-Level
X-Spam-Status No, score=-0 098 tagged_above=-20 required=8 tests=[DKIM_SIGNED=0 1, DKIM_VALID=-0 1, DKIM_VALID_AU=-0 1, FREEMAIL_FROM=0 001, MIME_QP_LONG_LINE=0 001, SPF_PASS=-0 001, URIBL_BLOCKED=0 001] autolearn=disabled
Authentication-Results mxw08 daemonmail net (amavisd-new), dkim=pass header i=@gmail com
Dkim-Signature v=1, a=rsa-sha256, c=relaxed/relaxed, d=gmail com, s=20120113, h=x-received subject references from content-type x-mailer in-reply-to message-id date to content-transfer-encoding mime-version, bh=wrHlh0Smh+X8IVffN/rUGN35Bsc0FJl6BuZOAE/1GSY=, b=KGAYQNWzTjxumIQbIXYEp7l1V6ldMOZpdB1T1+dqFK8HLb82zXrZITjxN9fyBX9Hw4 ql3DO0la78kY0Pd472hhQOtQ/WldZ9FbNNLff6vM +WeaQtk79hlGaxGH497onKrSmtHO +GG4sDwSrb7oKVfOE/raZUJvxlvi7fzof6XthWp/okPUgbPmmj0rWkZDhgISJOoANH6v 0vVrBvAJnedsgj34MQGoyKQtFx4HYpIZegn0V93URNOiRvTgBSTQxdFD9qDKTXOaGnME QN1Sn7ic2QGc8BCuclw5s85gsMFChUscVS7/ nx77mvIAYTiBDEDn/OweUyCUBCNdejeu hX9A==
X-Received by 10 50 12 133 with SMTP id y5mr7624274igb 108 1368081034623, Wed, 08 May 2013 23 30 34 -0700 (PDT)
References <20130509061703 967F95A8A36@66 net>
Content-Type text/plain, charset=us-ascii
X-Mailer iPhone Mail (10B329)
In-Reply-To <20130509061703 967F95A8A36@66 net>
Message-Id <B50664E9-D375-46AC-AE85-96EFEDC13A8D@gmail com>
Content-Transfer-Encoding quoted-printable
Mime-Version 1 0 (1 0)
Status RO
Re Concerns about our terms and conditions

Sir,

This is my final warning. Do not contact me in any way otherwise I will proceed with harassment....and as I hope you are now aware, I make good on my promises.

On May 9, 2013, at 1:17 AM, Dennis Toeppen <ideas@busline.com> wrote:

> Hello!
>
> In light of recent, sometimes misleading media reports focused on the terms and conditions of the Suburban Express ticket-purchase agreement, we want to set the record straight on behalf of our hard-working employees and valued customers.
>
> We place tremendous value on the customer relationships we've developed during our 30 years in business. Relationships are built on trust, and with good reason Suburban Express customers have come to trust that we will

consistently provide them with speedy, reliable transportation at a reasonable price.

Unfortunately, there have been times when passengers cheated with tickets, and caused disruptions and delays. The terms and conditions of our ticket-purchase agreement, including our attempts at collection through legal channels, were designed to deter fraudulent ticket practices and to help ensure a fair, convenient and efficient process for all of our customers. Nevertheless, we've recognized and regret that our approach of trying to uphold the terms and conditions of our agreement carried with it a negative perception we did not intend. Accordingly, we are revising the language of our ticket-purchase agreement, and we're exploring alternative ways of communicating and upholding its terms and conditions.

Suburban Express will always be driven by the goal of satisfying our customers and earning their trust. We take great pride in our unparalleled ability to get passengers where they need to go, quickly, safely and at a convenient time. Rest assured that any revisions to the terms and conditions of our ticket-purchase agreement will be focused on maximizing convenience, speed and reliability for all of our customers.

We've served over a million passengers during the past three decades, and we welcome your input as we look forward to providing high levels of service for many years to come. If you have questions or ideas for us, please let us know ideas@illinibus.com

Meanwhile, please accept the following coupons as a gesture of our appreciation for your continued loyalty and support:

This coupon code is valid through 5/30/13 for tickets from Champaign-Urbana to O'Hare Airport and is good for $7 off:

EDHPEY-PXYMWM-QVWVEE-RSPVTE

This one is valid through 9/30/13 and is good for $9 off a round-trip ticket between Champaign-Urbana and the Chicago area:

ERHVEY-PEYMWT-QVMPEE-BSPVOE

This coupon is valid 8/1/13 to 8/30/13 and is good for $15 off a one-way ticket between O'Hare Airport and Champaign-Urbana:

EXHNEV-PMYMWA-QVMMEE-ZSPVAE

And finally, this one is valid 8/25/13-12/1/13 and is good for $20 off a round-trip ticket between Champaign-Urbana and the Chicago area.

EZHDEQ-PDYMWY-QVMXEE-ZSPVWE

To use a coupon code, select a ticket and proceed to the payment screen. On the payment screen, paste the coupon code into the correct field and press "apply".

Thanks for riding Suburban Express in the past, and we look forward to seeing you soon!

Regards,
The Suburban Express Team

This message was sent to: leval.jeremy@gmail.com
Please include this address with any correspondence.