

**NO
EXHIBITS**

CASE NO. 2018 CH 07232

DATE: 6/17/2018

CASE TYPE: Class Action

PAGE COUNT: 29

CASE NOTE

**IN THE CIRCUIT COURT OF THE COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

TAMARA STACKPOOLE, on behalf of)
herself and others similarly situated,)
)
Plaintiff,)
)
v.)
)
CUBIC CORPORATION, CUBIC)
TRANSPORTATION SYSTEMS, INC.,)
and DOE DEFENDANTS 1-20,)
)
Defendants.)

JURY TRIAL DEMANDED

No. 2018CH07232
CALENDAR/ROOM 16
TIME 00:00
Class Action

CLASS ACTION COMPLAINT

Plaintiff, Tamara Stackpoole, brings this action on behalf of herself and all others similarly situated, against Cubic Corporation and Cubic Transportation Systems, Inc. (collectively, “Cubic” or “Defendants”). Plaintiff’s allegations are based on information and belief and the investigation of counsel, except those pertaining to Plaintiff’s own actions, which are based on personal knowledge.

INTRODUCTION

1. Defendants are in charge of the Ventra card system that authorizes rides and charges and collects fares for public transportation in the Chicago, Illinois area, including rides provided by the Chicago Transportation Authority (CTA) and Pace Suburban Bus and Paratransit (Pace).¹
2. As demonstrated by Plaintiff’s experiences, in running the Ventra card program, Defendants have created and imposed fantasy debts for “Fees” akin to single-ride fares, which they wrongly charged to Ventra card holders with expired unlimited-ride passes. Defendants also

¹ In addition to employing Ventra cards, Defendants employ Single Ride Ventra Tickets and Link Up cards to operate the fare system.

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collected money for those debts, and continue to perpetuate the practice, leaving affected Ventra card holders with no practical recourse.

3. Plaintiff seeks commensurate relief for herself and other Ventra card holders who, like Plaintiff, purchased unlimited-ride passes and have been saddled with charges after their unlimited-ride passes expired: Defendants must cease their wrongful charge practice, they must extinguish the asserted debts, and they must compensate riders for the wrongful charges they collected.

PARTIES, JURISDICTION, AND VENUE

4. Plaintiff is a citizen of Illinois, and resides in Cook County, Illinois.

5. Defendant Cubic Corporation a corporation with its principle place of business in San Diego, California, and organized under Delaware law, implements and operates public transportation systems. Cubic Corporation has, at relevant times, implemented and operated the automated fare payment and revenue management system for Chicago's Ventra® system.

6. Defendant Cubic Transportation Systems, Inc., a corporate subsidiary and business segment of Defendant Cubic Corp. organized under California law, is a transportation system operator and operates the automated fare payment and revenue management system for Chicago's Ventra® system together with Cubic Corporation, and shares officers with co-Defendant Cubic Corporation.

7. Each Defendant aided, abetted or conspired to perpetrate the conduct herein alleged, or is obligated by law or contract to be responsible for such conduct. The acts of each Defendant were authorized or ratified by each other Defendant, and together constitute a single and continuing course of conduct.

8. Doe Defendants 1-20 are any officers, employees, and agents of Defendants or

other entities who are or may be liable for the wrongful conduct alleged herein, and/or who may have participated as co-conspirators with Defendants, whom Plaintiff may name as additional Defendants upon learning their true identities following discovery.

9. Defendants regularly do business in Cook County, Illinois.

10. Defendants have transacted business related to the matters complained of herein, and made or performed related contracts substantially connected with the State of Illinois and Cook County. Transactions and conduct giving rise to the claims below occurred in Cook County, Illinois.

FACTUAL ALLEGATIONS

Defendants' Ventra Card and Unlimited-Ride Passes Payment System

11. Ventra is the name of the ride and payment system that enables consumers to ride on Chicagoland public trains, buses and subways. Consumers use the Ventra system to pay for their rides on Chicagoland CTA buses and trains every day.

12. The Ventra fare system, officially launched in September 2013, processed more than one million rides per day for Chicagoland riders at relevant times.

13. Defendants are corporations that implemented and operate the Ventra system through which Plaintiff and other consumers pay and receive authorization for their rides.

14. Defendants are responsible for charging Ventra cards and authorizing rides. Defendants operate, control, maintain and provide the "Ventra machines" – that is, the equipment, hardware, software, card readers, computers and/or and computer servers operated, controlled, maintained, and provided by Defendants, including the machines used to buy Ventra cards and unlimited-ride passes at Chicagoland public transit terminals, and the machines used to swipe Ventra cards for ride authorization at the point of transit entry – responsible for debiting and

accounting for card charges and authorizing or denying authorization for rides.²

15. Defendants previously reportedly reimbursed the CTA authorities \$1.2 million due to the failure of Defendants' system to properly charge for free rides, illustrating Defendants' role as the entities that charge and collect payments for rides in addition to Defendants' spotted charge history.

16. Defendants decide when a Ventra card should be charged a fare or a fee; they then assert and effect the charge, or, where there is no balance to pay the charge, the debt.

17. Defendants' Ventra machines and fare system also collect the money due from the charges.

18. Defendants receive money from Pace and/or the CTA for operating the Ventra system. The arrangement for payment of money to the Defendants is such that the more Ventra card taps or rides Defendants charge, and the more money Defendants collect from riders, the more money Defendants receive or retain per their agreement with Chicagoland public transit entities. Defendants thus profit in proportion to the number of rides, or the amount of money, that they charge or collect – so that the charges at issue inure to their financial benefit.

19. Consumers can pay for CTA rides as they go on a per ride basis, or, as many consumers do, they can pay for a Ventra card and purchase rides on an ongoing basis using the card.

20. Ventra cards have economic and resale value and are bought and sold, for example, at Ventra vending machines and 1,000 retail locations.

21. A new, reusable Ventra card costs five dollars. Ventra cards are saleable, can be

² References herein to Ventra machines are thus to "Defendants' Ventra machines," irrespective of attribution of formal ownership of the machines.

gifted, and have economic value.

22. Unlimited-ride passes can be purchased or replenished on the same Ventra card by the Ventra card holder, and unlimited-ride pass holders present the same Ventra card for each ride.

23. Chicago Transit Authority schedules provide, “You can enjoy unlimited rides on all CTA buses and trains with our 1-Day, 3-day, 7-day or 30-day unlimited-ride passes. Your pass activates the first time you use it and is good for the full length of time from that moment.” (<https://www.transitchicago.com/passes/>, last visited May 25, 2018.)

24. Rides are cheaper—for example, on a per ride or per day basis—by buying an unlimited-ride pass, in lieu of paying a fare on a single-ride or pay-as-you-go basis. An unlimited-ride pass is virtually loaded to a Ventra card upon payment, and as the duration of the unlimited-ride pass increases, the cost of rides per day becomes cheaper. *Id.* Plaintiff and the Class save money by buying and using unlimited-ride passes to ride instead of paying to ride on a single-ride or pay-as-you-go basis.

25. Chicagoland public transit authorities require Defendants to implement and not to deviate from public transit fare schedule charges, which, among other things, enumerate the cost to ride, including, for example, the cost of unlimited-ride passes.

26. Each Ventra card has an individualized number or identifier, and Defendants’ machines and computers scan the Ventra card and thus use the card as an account to impose charges, keep balances, and track and authorize rides. On information and belief, Defendants must track and record Ventra card purchase and use history, *inter alia*, in order to process payments and authorize rides.

27. Defendants’ Ventra machines at public transit terminals permit payment and display balances due and owing.

28. Ventra machines at the point of entry for public transit (i.e., on the bus or at the train station inner turnstile) authorize or deny authorization to ride, but do not request or accept payment.

29. When riding a CTA bus or train, and at Ventra points of payment at the public transit terminal, Defendants' machines scan the Ventra card, and as applicable, credit or debit the Ventra card holder account, and/or permit or deny entry.

30. When a Ventra card holder boards the CTA bus or train, Defendants use their Ventra machines and technology to scan the Ventra pass and automatically determine what types of passes and transit value are in the card holder's account.

Defendants' Wrongful Charge Practice

31. When selling an unlimited-ride pass, Defendants represent, including for example on Chicago Ventra machine screens at Chicago public transit terminals where Plaintiff bought her Ventra card and CTA unlimited-ride passes at relevant times, that riders may buy a pass with unlimited rides, which lasts from the time of the first swipe until the expiration of the pass period.

32. At relevant times since the Ventra card system was implemented in 2014 until the present, Plaintiff and other Ventra card holders attempted to use Ventra cards with unlimited-ride passes that had expired and that lacked funds to cover the cost of the ride.

33. Plaintiff and other Class members presented their Ventra cards at the point of entry to Chicagoland public transit, by tapping their Ventra cards at one of Defendants' Ventra machines, just as any card holder would when seeking to board a bus or train.

34. In response, Defendants debited their Ventra cards a Fee, including Fees which cost more than the cost of a ride using an unlimited-ride pass.

35. Simply by virtue of scanning the Ventra cards at a point of transit entry – for

example, at a Ventra card scanning machine located on a city bus – Defendants’ computerized machines charged a Fee to the Ventra card, as Defendant’s Ventra machines showed an additional Fee loaded to the Ventra card balance post-scan.

36. Notably, Defendants machines at the point of transit entry did not signal that a Fee was being charged to the Ventra card. Defendants charged the Fee without card holders’ knowledge or consent.

37. At the same time, Defendants’ machines denied authorization to ride.

38. Because unlimited-ride passes, such as 30-day passes, provide unlimited rides for an extended period of time, these passes, by nature, do not compel riders to track exactly when the pass expires; nor do Defendants build in any safeguards to prevent or warn against any attempts to ride with a Ventra card that has an expired unlimited-ride pass and lacks funds for a ride.

39. Defendants have debited Ventra card holders a Fee on an ongoing basis when Ventra card holders have attempted to use public transportation, after expiration of their unlimited-ride pass (and when their Ventra cards did not otherwise have funds sufficient for the ride). This permits Defendants to collect more money and profits for the ride, and to pad Defendants’ pockets.

40. When Defendants impose the aforesaid Fees, or charges, on Ventra cards, the charges are not labeled, so that it is generally not easy to notice or ascertain what the aforesaid charges are for, which, in turn, enables the practice to perpetuate.

41. The Fees imposed create a negative balance on the Ventra cards, for which Defendants are wholly responsible.

42. Ventra card holders with a negative or insufficient transit value balance may be prohibited from travel.

43. Ventra card holders remain responsible for charges on a Ventra account upon

cancellation or termination, and card refunds are granted only in very limited circumstances not applicable here.

44. In addition to imposing the charges for the Fees, Defendants also collect money for the Fees charged, from Plaintiff and other Class members. Furthermore, Defendants' Ventra machines are programmed to sometimes force a Ventra card holder to pay a Fee in order to ride or use an already paid-for unlimited-ride pass on the same card, and Defendants compel payment as such without notice to riders or Ventra card holders.

45. Defendants perpetrated the above-described wrongful charge and collection practice without giving notice to or receiving the consent of Plaintiff and the Class.

46. At no time did Defendants represent that the Ventra card linked to an unlimited-ride pass, when swiped at a point of transit entry after expiration of the pass (and without having other sufficient funds on the card), may be automatically assessed a Fee; and at no time did Defendants represent that in such cases the Ventra card may be automatically assessed a Fee while the Ventra machine at the point of transit entry denied authorization to ride.

47. Ventra card terms and fare schedules, and Defendants' representations online and at Ventra machines, moreover, irrespective of whether or how they apply, give no clue that (1) Ventra card holders will be charged a Fee upon swiping a Ventra card at the point of transit entry with an expired unlimited-ride pass (that does not otherwise have sufficient funds to ride); that (2) these aforementioned Ventra card holders with expired unlimited-ride passes will be penalized by being charged a Fee when using a Ventra card with an unlimited-ride pass that happens to have expired; or that (3) these Ventra card holders will be charged a Fee even though Defendant's Ventra card reading machines at the point of transit entry deny authorization for the ride.

48. Defendants had no authority to impose these charges. Defendants' agreement

with Chicagoland public transit authorities, implemented to provide public transit customers with an open standards fare system, requires Defendants to implement the charges set by public transit schedules (or terms), and so prevents Defendants from imposing charges for fares beyond the Ventra card schedule (or terms), including the prohibited Fees at issue which are nowhere authorized in Ventra card terms or schedules.

49. Defendants are not new to payment problems involving public transit clientele in other communities where they operate public transportation payment systems. In Los Angeles, for example, Cubic reportedly installed public transportation fareboxes that jammed at a rate of nearly 250 times per day – six times more than the public transit authority contract permitted. In London, England, riders reported improper charges from Cubic-partnered public transit card swipes, and as of April 2013, there were more than 53 million pounds of unclaimed refunds. The city of Atlanta’s Cubic-operated public transit card also encountered double-charging issues. And in San Francisco, public transit riders were overcharged fees due to a purported glitch in Defendants’ smart card fare payment system.³

Plaintiff’s Experience

50. In around October 2016, Plaintiff paid for a Ventra card at a Ventra machine at a CTA public transportation terminal in Chicago.

51. Between October 2016 and the filing of this complaint, Plaintiff routinely bought

³ “Ventra’s Parent Company: An International History of Fare Card Glitches,” *The Gapers Block* (Nov. 11, 2013), by Jason Prechtel, <http://gapersblock.com/mechanics/2013/11/11/ventras-parent-company-an-international-history-of-fare-card-glitches/>, last visited May 27, 2018; “How Lawsuits, Lobbyists and Parking Meter Deals Led to Ventra,” *The Gapers Block* (Apr. 10, 2014), by Jason Prechtel, <http://gapersblock.com/mechanics/2014/04/10/how-lawsuits-lobbyists-and-parking-meters-led-to-ventra/>, last visited May 27, 2018; “Clipper Card glitch dealt losing cards to riders,” *The Examiner* (May 14, 2012), by Will Reisman, <https://archives.sfexaminer.com/sanfrancisco/clipper-card-glitch-dealt-losing-cards-to-riders/Content?oid=2198839>, last visited May 27, 2018.

or paid to replenish unlimited-ride Ventra passes, including 30-day passes, that were loaded onto her Ventra card.

52. Defendants recorded Plaintiff's payments associated with her unlimited-ride passes in its computerized systems and on an account associated with her Ventra card, and Plaintiff would use her Ventra card to ride routinely during the pass periods.

53. Plaintiff depended and continues to depend on the unlimited-ride pass for public transportation for everyday needs on an ongoing basis, including, for example, rides for work and basic living needs. Plaintiff chose to buy unlimited-ride passes because they were cheaper than the cost of single rides.

54. During this time period, Defendants repeatedly charged Plaintiff's Ventra card a Fee when she attempted to use her Ventra card to board public transportation after expiration of an unlimited-ride pass on the card. Plaintiff's Ventra card would not otherwise have sufficient funds available for a single ride, because Plaintiff typically purchased a single unlimited-ride pass at a time to save money and in lieu of paying more per ride on a single-ride basis.

55. Plaintiff's Ventra card was often charged this additional Fee when she unwittingly attempted to use an expired unlimited-ride pass on her Ventra card for CTA travel.

56. Defendants provided no practical means to for Plaintiff to ascertain at the point of transit entry exactly when Plaintiff's unlimited-ride passes expired or were about to expire, nor did Defendants provide any such warning.

57. Thus, upon presenting her Ventra card with an expired unlimited-ride pass at the point of transit entry, Plaintiff was denied authorization to ride by Defendants' Ventra machine, for example, by the machine making a sound and flashing a message indicating that the rider cannot ride; yet as a result, Defendants levied a new additional charge on Plaintiff's Ventra card

(the Fee), which, in effect, produced or added to a negative balance on her Ventra card.

58. This pattern of events happened repeatedly between October 2016 and the present. Defendants repeatedly imposed the Fees, which appear to be the amount of a single-ride fee or something close to it.

59. The negative balances and amounts due and owing by Plaintiff continued to accrue on Plaintiff's Ventra card as this practice continued as unlimited-ride passes expired and time went by. Plaintiff believes the negative balances on her card must be attributable solely to this practice.

60. In particular, on several occasions between October 2016 and the present, Plaintiff was subject to Defendants' wrongful charge practice, as follows:

- (a) Plaintiff unwittingly attempted to ride on the CTA after her monthly unlimited-ride pass expired and she did not have other sufficient funds on the card for the CTA ride;
- (b) She scanned her Ventra card at the point of entry or boarding for the ride, whereby Defendants' point-of-entry computerized machines denied authorization for the ride;
- (c) Thereafter, upon visiting a Defendant Ventra machine at a Chicago CTA public transit terminal to refill the Ventra card with a new unlimited-ride pass, Defendants' Ventra machine showed a new negative balance on the card (the Fee), akin to the cost of a single public transit ride;
- (d) The negative balance appeared on Plaintiff's Ventra card as a balance due and owing; and the negative balance remained on the card even after Plaintiff paid the full amount for a new unlimited-ride pass to be placed on her card.

61. In late February 2018, for example, Plaintiff tapped her Ventra card at a Defendant

Ventra machine while boarding a CTA bus in Chicago, but the machine made a sound, indicated an insufficient fare, and denied authorization to ride.

62. Thereafter, Plaintiff went to check her Ventra card at one of Defendants' Ventra machines—not a machine at the point of transit entry, but rather, a Chicago public transit terminal machine that accepts payment and registers balances.

63. When Plaintiff scanned her card at the terminal Ventra machine, it became clear that Plaintiff's pre-existing unlimited-ride pass had expired. However, the machine also showed a negative card balance higher than existed before; the balance due was now more than ten dollars, consisting of prior occasions, like this one, in which Defendants' machines charged her a Fee after expiration of her pass, in addition to a fresh Fee imposed resulting from the just-attempted ride.

64. Plaintiff replenished her Ventra card by paying for a new unlimited-ride pass at the Defendant Ventra machine at a Chicago CTA terminal (e.g., the Morse terminal in Rogers Park, Chicago), and the Ventra machine then accepted payment and indicated that she had a new monthly pass.

65. But, the card still showed a pre-existing Fee balance now in excess of 10 dollars.

66. Upon presenting her Ventra card, now equipped with a new, valid unlimited-ride pass, to ride the CTA, Defendants' Ventra machine at the point of transit again refused her entry due to the outstanding balance due. The denial of entry was processed by Defendants' Ventra machine, which as a matter of course employs rules and computer code to do so. This effectively ruined Plaintiff's plans for the day as Plaintiff had to return home to get additional money even though her card had a valid, loaded, fully-paid unlimited-ride pass.

67. Only after Plaintiff subsequently paid down the Fee balance due on her Ventra card to an amount less than ten dollars did Defendants' machines at the point of transit entry at the CTA

Morse terminal then allow her to ride the CTA and use the new unlimited-ride pass she had already recently purchased.

68. Plaintiff was thus forced to pay down the Fee balance – apparently, to an amount less than \$10.00 – in order to ride, and specifically, in order to be allowed to use her recently-purchased unlimited-ride pass. The balance on Plaintiff’s Ventra card had only exceeded \$10.00 due to the Fee placed on it by Defendants for attempting to use it when her previous unlimited-ride pass had unknowingly expired. Defendants provide no notice or rule disclosing exactly when or under what circumstances they will require Fees to be paid in order to ride.

69. Plaintiff continues to use her Ventra card to ride CTA buses and trains using unlimited-ride passes. Her Ventra card now shows a due and owing balance of \$8.75, consisting of prior occasions in which Defendants’ various machines wrongly charged her card a Fee after expiration of her card (after the machines denied authorization for a ride).

70. Defendants continue to assert the debts, for the balance of the Fees, which remain lodged on the reusable Ventra card that she paid for. Since the incident, and as recently as May 14, 2018, Defendants’ receipts and Ventra machines continue to show a due and owing Ventra card account balance of \$8.75.

71. In late March or early April 2018, moreover, Plaintiff was gifted a second Ventra card, with remaining unlimited-ride time, by a friend who had recently come to Chicago for a visit, and who, at a Chicago Ventra terminal machine employing the Ventra system operated by Defendants, while Plaintiff was present, paid 5 dollars for the Ventra card and paid for a 7-day pass that was loaded to that card.

72. When Plaintiff unwittingly used the second card to ride after that 7-day pass had expired, Defendants’ Ventra machine at the point of transit entry registered an insufficient fare and

denied her authorization to ride a CTA bus in Chicago. Quizzically, Defendants' Ventra vending machine at the CTA terminal then showed the card had a resulting negative balance due.

73. Thus, Plaintiff's second Ventra card, loaded with an unlimited-ride pass that had expired, was charged a Fee on the occasion when Defendants' Ventra machine at the point of transit entry denied authorization to ride due to insufficient fare. A \$2.00 negative balance was charged to the second card as a result of this event. Defendants' Ventra machines and receipts continue to show a due and owing account balance of \$2.00 on that Ventra card.

74. As a result, Defendants prevented Plaintiff from utilizing the benefits of her Ventra cards and unlimited-ride passes for which she paid and upon which she depends; Defendants wrongly collected Plaintiff's money for the aforementioned Fees; Defendants asserted, and continue to assert, an improper debt for their wrongful, self-imposed Fees; and Defendants have diminished the value of Plaintiff's Ventra cards and taxed her ability to ride public transit.

75. Defendants have a practice of imposing such Fees on Ventra cards, including cards with expired unlimited-ride passes, as set forth above. This has happened to Plaintiff on numerous occasions, via numerous computerized Defendant Ventra machines and multiple Ventra cards.

76. Defendants have computer and accounting records of Ventra card charges and the Fees. The repeat charges, incurred on multiple Ventra cards over a period of time, and imposed via Defendants' unilateral discretion, tell that Defendants knowingly or recklessly perpetrated the above-described conduct.

CLASS ACTION ALLEGATIONS

77. Plaintiff brings this action on behalf of herself, and pursuant to 735 ILCS 5/2-801 on behalf of the Class and Subclass initially defined as follows:

Class: All persons and entities whose Ventra card was charged upon

swiping the card at a public transit point of entry Ventra machine, when an unlimited-ride pass on the card had expired and the Ventra card did not have sufficient funds for a transit ride.

Subclass: All persons and entities whose Ventra card shows a balance due for a charge, incurred upon swiping the card at a public transit point of entry Ventra machine, when an unlimited-ride pass on the card had expired and the Ventra card did not have sufficient funds for a transit ride.⁴

Excluded from the Class are claims for Ventra accounts linked to a contactless credit or debit bank card or mobile wallet; Defendants' respective employees, officers, directors, agents, independent contractors, representatives, and counsel; Plaintiff's counsel; and any member of the judiciary presiding over this action and their immediate families.⁵

78. The Class is so numerous that joinder of all Class members is impracticable. The precise number of Class members are unknown to Plaintiff, but can be obtained from Defendants' records or the records of third parties.

79. Defendants' Ventra card system determines and imposes charges for rides and ride passes via computer, utilizing data warehousing to keep track of charges, when charges are imposed and collected, and when Ventra cards are swiped at the point of transit entry.

80. As such, the proceeds of the alleged wrongful conduct in this case are identifiable and traceable to Defendants' conduct with respect to Plaintiff and the Class.

81. Questions of fact or law are common to the Class, predominate over any questions

⁴ References in this Complaint to the "Class" are also to the "Subclass" unless stated otherwise.

⁵ Plaintiff reserves the right to modify the Class definition as appropriate or pursuant to discovery.

affecting only individual members, and frame issues for class-wide adjudication, including, by way of example, as follows:

- (a) Whether Defendants have a practice of charging Fees to Ventra cards with expired unlimited-ride passes, as set forth above;
- (b) Whether Defendants collected Fees imposed on Plaintiff and Class member Ventra cards;
- (c) Whether Defendants are permitted by law to continue to impose debts for the above-described Fees;
- (d) Whether Plaintiff and the Class are entitled to damages; and
- (e) Whether Plaintiff and the Class are entitled to injunctive or equitable relief.

82. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has no interests antagonistic to said Class members and has retained counsel competent and experienced in class action litigation.

83. A class action provides a manageable method for fairly and efficiently adjudicating this controversy because, among other things, addressing the common issues in one action will aid judicial administration and many members of the Class cannot feasibly vindicate their rights by individual suit because the monetary value of their recoveries are outweighed by the burden and expense of litigating against the corporate Defendants.

CAUSES OF ACTION

84. Plaintiff alleges the following causes of action individually, and on behalf of others similarly situated, and in the alternative to the extended permitted by facts or law.

COUNT I

VIOLATION OF ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT (ICFA), 815 ILCS § 505/1 *ET SEQ.* (UNFAIR CONDUCT)

85. Plaintiff repeats and re-alleges the preceding allegations as though fully set forth herein, and pleads Count I individually and on behalf of the Class.

86. The ICFA is a remedial statute designed to prohibit unfair conduct against consumers. 815 ILCS § 505/2 *et seq.*

87. Defendants are engaged in “trade” and/or “commerce” regarding “merchandise” as those terms are defined under the ICFA, 815 § ILCS 505/1(b), (f).

88. Plaintiff is a “consumer” within the meaning of the ICFA, 815 ILCS § 505/1(e).

89. Defendants unfairly imposed charges for Fees on Plaintiff’s and Class member Ventra cards upon presenting Ventra cards with an expired unlimited-ride pass at the point of transit entry, as fully set forth above.

90. Defendants unfairly collected payment for the Fees from Plaintiff and the Class upon presenting Ventra cards with an expired unlimited-ride pass at the point of transit entry, as fully set forth above.

91. Defendants had a practice of illegally imposing the charges and collecting monies for the aforesaid charge practice, which Defendants are not authorized to impose, or collect, under any authority.

92. Defendants required and compelled payment of such charges in order for Plaintiff and Class members to continue to use their Ventra cards, including, for example, as set forth above.

93. Plaintiff and Class members likewise had no way to avoid Defendants’ imposition of the charges at issue, as no notice was given, and had no meaningful choice to avoid being

charged the Fees.

94. Defendants had complete discretion to impose the Fees on Plaintiff's and Class members' Ventra cards, and to insist that Fees be paid in order to continue to use the cards.

95. Defendants were careless and reckless in permitting Plaintiff and the Class to incur Fees on their Ventra cards as set forth above.

96. Defendants intended that Plaintiff and the Class rely on Defendants' unfair conduct and imposition or collection of these Fees.

97. Plaintiff and other Class members purchased Ventra cards that have economic value, and Plaintiff and other Class members continue to use their Ventra cards.

98. The aforementioned Fees enhance Defendants' revenues and profits.

99. Defendants continue to impose and seek payment for the aforesaid Fees on Plaintiff and other Class and Subclass member Ventra cards as set forth above.

100. Such conduct is oppressive, unethical, immoral, unscrupulous, offends public policy, and caused substantial injury to Plaintiff and other Class members.

101. As a result, Defendants caused actual damage to Plaintiff and the Class in violation of the ICFA.

102. Under the ICFA, Plaintiff, the Class and the Subclass are entitled to damages, attorney fees and costs, and injunctive relief, including, for example, an order extinguishing the aforesaid unpaid Fees and the debts for those fees, and an order enjoining Defendants from continuing to impose and collect charges for the Fees.

COUNT II

VIOLATION OF ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT, 815 ILCS § 505/1 ET SEQ. (DECEPTIVE CONDUCT)

103. Plaintiff repeats and re-alleges paragraphs 1-84, and 87-88 as though fully set forth herein, and pleads Count II individually and on behalf of the Class.

104. The ICFA is a remedial statute designed to prohibit deceptive conduct against consumers. 815 ILCS § 505/2 *et seq.*

105. At the time Plaintiff and other Class members purchased their Ventra cards, and their unlimited-ride passes, respectively, Defendants, at the point of purchase, at Defendants' Ventra machines offering sale and processing purchase, and at any other location, concealed and failed to disclose the above-described charge practice to Plaintiff and the Class.

106. At the time Plaintiff and other Class members purchased their Ventra cards, and their unlimited-ride passes, respectively, Defendants, at the point of purchase, at Defendant's Ventra machines offering sale and processing purchase, and at any other location, concealed and failed to disclose to Plaintiff and other Class members that: (a) they could be charged a Fee if they presented their cards at the point of transit entry (and while Defendants' machines denied authorization to ride) upon expiration of an unlimited-ride pass loaded to their cards, as set forth more fully above; or (b) they could be subject to Defendants' forced Fee collection practice as set forth above.

107. Defendants intended that Plaintiff and the Class rely upon such omissions and concealments, at the time of purchase and thereafter.

108. The aforementioned charges enhance Defendants' revenues and profits.

109. Defendants continue to impose and seek payment for the aforesaid charges on Plaintiff and other Class and Subclass member Ventra cards.

110. Absent any of the above-described omissions and concealments, Plaintiff and the Class would have acted differently.

111. As a result of Defendants' conduct described herein, Plaintiff, the Class and the Subclass have been damaged and are entitled to damages, attorney fees and costs, and injunctive relief, including, for example, an order enjoining Defendants from continuing impose and collect the aforesaid charges.

COUNT III

MONEY HAD AND RECEIVED

112. Plaintiff repeats and re-alleges the preceding allegations as though fully set forth herein, and pleads Count III individually and on behalf of the Class.

113. Defendants received money from imposing and collecting the aforesaid charges from Plaintiff and the Class, which in equity and good conscience belong to Plaintiff and the Class.

114. Defendants collected Fee and Ventra card payments, compelled Plaintiff and Class members to pay them money for Fees, and received compensation due to the wrongful Fee practice.

115. Defendants had no legal right to demand money or payment for the Fees, but payment was necessary in order for Plaintiff to avoid further injury, including further injury to her property, and to the Ventra card and unlimited-ride pass that Plaintiff had purchased as set forth above.

116. As a result, Plaintiff and Class members have been harmed and Defendants have been unjustly enriched.

COUNT IV

BREACH OF CONTRACT IMPLIED IN LAW

117. Plaintiff repeats and re-alleges paragraphs 1-84 as if fully set forth herein, and pleads Count IV individually and on behalf of the Class.

118. Defendants have knowingly, voluntarily and willfully received and retained benefits from Plaintiff and the Class by imposing and collecting Fees on Ventra cards with expired unlimited-ride passes, and by retaining monies paid for Ventra cards, under circumstances that would render Defendants' retention of such benefits unjust, as set forth fully above.

119. The benefits received by Defendants from levying and collecting these charges are related to Defendants' obligation to run the Ventra fare system and impose and collect charges only as permitted in the Ventra schedule or terms setting forth types of rides and charges for rides on Chicagoland public transit, only as prescribed by applicable law.

120. Defendants' Fees, however, are not specifically authorized under Ventra schedule and terms, are not permitted by law, and go beyond Defendants' obligations.

121. Plaintiff's Ventra cards are their property, and Plaintiff and the Class have rights and expectations regarding if or how their cards are to be charged.

122. Yet, Defendants imposed charges for the Fees on Plaintiff and Class member Ventra cards, and collected Fees, without notice or consent, which served to pad Defendants' revenues.

123. It would be inequitable for Defendants to retain benefits received from their aforementioned Fees, in violation of Plaintiff and Class members' reasonable expectations and applicable law.

124. Defendants' above-described conduct violates principles of equity and justice, which prohibits Defendants from retaining the benefits of the Fees charged and collected.

125. As a result, Plaintiff and other Class members are entitled to disgorgement and restitution of revenues, profits and/or monies received by Defendants due to imposition and/or collection of the aforesaid charges.

COUNT V

UNJUST ENRICHMENT

126. Plaintiff repeats and re-alleges paragraphs 1-111 as though fully set forth herein, and pleads Count V individually and on behalf of the Class.

127. Defendants received money from their improper levy and collection of Fees and charges as set forth above.

128. Plaintiff and other Class members, to their detriment, conferred benefits upon Defendants by being charged and paying the above-described Fees.

129. Defendants' retention of monies received from their above-described improper charge and collection practice violates fundamental principles of justice, equity, and good conscience.

130. Plaintiff and the Class are therefore entitled to restitution and a refund or return of any monies paid for the Fees.

COUNT VI

ACCOUNTING

131. Plaintiff repeats and re-alleges paragraphs 1-84 as though fully set forth herein, and pleads Count VI in the alternative, individually and on behalf of the Class.

132. Due to an absence of an adequate remedy available at law, and due to Defendants' above-described fraudulent conduct, the need for discovery, and/or the existence of mutual accounts of a complex nature, Plaintiff, for herself and the Class, seeks an accounting of Defendants' Fees imposed.

133. It is infeasible, if not impossible for Plaintiff and the Class to account for records and charges at issue, since, for example, Defendants impose the Fees while Ventra card holders

are riding “on the go,” Defendants do not give notice of the Fee charge or amount, records of the charges, swipes and rides over time are detailed and complex, and Defendants assessed the charges over time.

134. An accounting would therefore permit Defendants to disclose the improper amount of Fees wrongly charged, and collected, respectively, from Plaintiff and the Class under the circumstances at bar.

135. Plaintiff requests that the Court order a proper accounting, and establish a constructive trust, for the benefit of Plaintiff and the Class, consisting of monies Defendants improperly retained due to the illicit charges, and provide any further equitable relief the Court deems fit.

COUNT VII

INJUNCTIVE RELIEF

VIOLATION OF THE ILLINOIS DECEPTIVE TRADE PRACTICES ACT

136. Plaintiff repeats and re-alleges the preceding allegations as though fully set forth herein, and pleads Count VII individually and on behalf of the Subclass.

137. Defendants have engaged in and continue to engage in conduct, within the meaning of the Illinois Deceptive Trade Practices Act, 815 ILCS § 510/1 *et seq.* (“IDTPA”), which creates a likelihood of confusion or misunderstanding. *E.g.*, 815 ILCS § 510/2(12).

138. Defendants’ practice is to impose Fees without telling riders that a Fee is being imposed.

139. Defendants continue to assert balances for Fees on Plaintiff and Subclass member Ventra cards. When Plaintiff uses a Defendant Ventra machine at a CTA public transit terminal to pay for a new unlimited-ride pass, the viewing screen on the machine (like receipts printable

from the machine) advises that Plaintiff has a negative account balance, as set forth above.

140. Defendants' above-described Fee practice does not comport with Ventra or CTA fare schedules or terms; and Defendants publish no rules or notices regarding when, or how much they will charge for a Fee, or compel a rider to pay it, or regarding when a rider will be prohibited from using a paid-for unlimited-ride pass, so that riders are not aware of precisely when, or for how much, a Fee will be charged, and riders are not made aware of precisely when they will be denied permission to use a valid and paid-for unlimited ride pass.

141. As set forth above, to pay the balance due for Fees on the Ventra card, Defendants may compel payment of a Fee, in order for a rider to be able to continue to use the card or an unlimited-ride pass purchased on the card. Defendants compel payment under circumstances that Defendants do not disclose and for which Defendants provide no published rule, notice, or fare media.

142. IDTPA provides needed relief because Defendants' compulsion of Fee payment—and the prospect of that happening—creates a likelihood of confusion or misunderstanding. Defendants could compel payment of Fees from Plaintiff and the Subclass (or deny use of their ride passes) at any time in the future, just as Defendants previously compelled Plaintiff to pay as set forth above, and Plaintiff and the Subclass are not advised accordingly.

143. IDTPA also provides needed relief because Defendants continue to impose and seek payment of Fees from Plaintiff and other Subclass members with remaining Fee balances on their Ventra cards; and Defendants' Ventra machines thus continue to portray such Fees as valid, due or owing balances on their Ventra cards. Defendants' continuing imposition of the Fees as a balance on the rider Ventra cards creates a likelihood of confusion or misunderstanding, because it is not clear whether the Fees are valid or legitimate, whether or why the Fees must be paid, or

exactly how the Fees or the amounts of the Fees were calculated.

144. Defendants' conduct is willful. For example, Defendants have continued to assert a repeated Fee and recklessly required Plaintiff to pay the Fee in order to be able to use an already paid-for unlimited-ride pass, without prior notice, disclosure or explanation.

145. Without being enjoined from continuing their conduct, Defendants will continue to engage in the deceptive business practices regardless of "proof of monetary damage, loss of profits or intent to deceive." 815 ILCS § 510/3.

146. Absent an injunctive remedy, Plaintiff and the Subclass are likely to be damaged and will be unable to obtain needed relief. Defendants are likely to again, and without notice, coerce payment of Fees and prohibit Plaintiff, and other riders in the midst of their busy days, from using a Ventra card or unlimited-ride pass until Fees are paid. And Defendants are likely to continue to assert charges and debts for improper Fees without notice or explanation.

147. Plaintiff and the Subclass are entitled to know whether the Fees are valid and must be paid, and they are entitled to an order of the court extinguishing these debts and prohibiting Defendants from continuing to collect or impose the Fees on their Ventra cards.

148. Plaintiff requests injunctive relief, for herself and other Subclass members, upon terms the court deems reasonable, including, for example, relief which, *inter alia*, (1) prohibits Defendants from continuing to compel payment of Fees as set forth above, (2) prohibits Defendants from continuing to impose charges or debts for Fees, (3) extinguishes the debts pending on Ventra cards for the Fees, and/or (4) compels Defendants to cause notice of Fee practice particulars to be properly given in fare media.

COUNT VIII

DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

149. Plaintiff repeats and re-alleges paragraphs 1-84 as though fully set forth herein, and pleads Count VIII individually and on behalf of the Subclass.

150. Plaintiff and other Subclass members on the one hand, and the Defendants on the other hand, have adverse legal interests, and there is an actual controversy between the parties that the Court can resolve by declaring the parties' respective rights.

151. Defendants' above-described conduct offends rights and protections afforded to Ventra card holders under applicable law, and Plaintiff and the Subclass are likely to be harmed thereby, absent declaratory and injunctive relief.

152. Plaintiff and the Subclass are entitled to a declaration of their rights, pursuant to 735 ILCS 5/2-701, as to whether they are entitled to be free of Defendants' Ventra card debts going forward, and whether Defendants can continue to compel, impose, and seek payment for existing balances for Fees levied on Plaintiff and Subclass member Ventra cards.

153. The Court can declare whether Defendants may continue to compel, assert and seek to collect the aforementioned charges and debts for Fees from Plaintiff and the Subclass; whether the asserted debts should be extinguished; whether Defendants' above-described charge and collection practice violates applicable law.

154. A declaration of the parties' rights under applicable law thus serves justice for the parties, and enables Ventra card holders like Plaintiff – who has no car and depends on her Ventra card for transportation for work, play and day-to-day life – to have a clear understanding of if and when Defendants can lawfully continue to impose Fees and compel or otherwise seek payment of Fee debts on their Ventra cards.

155. The balance of the hardships militates in favor of providing associated injunctive relief in addition to declaratory relief. Plaintiff requests equitable relief as the Court deems appropriate, including, for example: a Court order prohibiting Defendants from compelling payment of Fees as set forth above; a Court order requiring Defendants to stop continuing to assert a debt or amount due for above-described Fee balances on Plaintiff's and Subclass member Ventra cards; a Court order extinguishing Fee debts; and any further relief.

156. Defendants' continuing practice is likely to result in further undisclosed ride prohibitions and unannounced instances of payment coercion as set forth above, unless Plaintiff or other riders pay the asserted Fee balance, or a portion thereof, on their Ventra cards.

157. Defendants' continuing practice is likely to result in Defendants' further imposition of negative Fee balances on Plaintiff and Subclass member Ventra cards.

158. Defendants have no policy or practice in place to forgive outstanding Fees charged to Ventra cards, and Defendants continue to impose these debts. Indeed, Plaintiff's Ventra cards continue to show outstanding amounts due for Fees quietly imposed on her Ventra cards.

159. Defendants are endowed with all of the discretion to compel, assert, impose and collect payment of the Fee balances, and they continue to do so as set forth above.

160. Ventra card terms available online do not address and thus cannot resolve the controversy between the parties, assuming *arguendo* the terms are relevant.

161. As a result, absent declaratory and injunctive relief, Plaintiff and other Subclass members are thus likely to suffer harm, and continue to be "in limbo" by virtue of the above-described continuing practice, as they use, or are preventing from using or obtaining full benefits from, their Ventra cards loaded with the above-described Fee debts.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment, for Plaintiff individually and on behalf of all others similarly situated, and against Defendants, and that the Court order as follows:

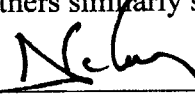
- a. Find that this case may be maintained as a class action, appoint Plaintiff as Class and Subclass representative, and appoint Plaintiff's counsel as counsel for the Class and Subclass;
- b. Declare the rights of the parties as set forth above;
- c. Find that Defendants violated applicable law as set forth above;
- d. Issue injunctive relief, including as set forth above, and enjoin Defendants from continuing their above-described conduct, require Defendants to provide an accounting of the above-described Fees imposed and collected, and void and extinguish the above-described debts and improper charges;
- e. Award appropriate restitution to Plaintiff and other Class members, order disgorgement of Defendants' profits stemming from the above-described practice, require Defendants to account for all monies improperly received as a result of their aforementioned conduct, enjoin Defendants from dispersing said monies, and establish a constructive trust consisting of monies Defendants improperly retained due to the illicit charges, for the benefit of Plaintiff and other Class members, until further order of the Court;
- f. Award commensurate damages permitted by applicable law, including any actual, economic, compensatory, and exemplary damages;
- g. Award reasonable attorney's fees and costs, including expert costs; and
- h. Provide such other and further relief that the Court deems proper.

JURY DEMAND

Plaintiff demands a trial by jury of all matters so triable.

Respectfully submitted,

Tamara Stackpoole, on behalf of herself
and all others similarly situated

By: 
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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Filed Over Alleged Improper Ventra Card Fees Charged to Unlimited-Ride Pass Holders](#)
