

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE MONTREAL
No: 500-06-000849-170

(ACTION COLLECTIVE)
COUR SUPÉRIEURE
(CHAMBRE CIVILE)

STÉPHANE DURAND,

demandeur

c.

**SUBWAY FRANCHISE SYSTEMS OF
CANADA, LTD.,**

-et-

DOCTOR'S ASSOCIATES INC.,

Défenderesses

DEMANDE D'AUTORISATION POUR SE DÉSISTER
(Art. 585 C.p.c.)

À L'HONORABLE JUGE SILVANA CONT DE LA COUR SUPÉRIEURE DU QUÉBEC, À QUI CE DOSSIER A ÉTÉ ATTRIBUÉ, SIÉGEANT EN CHAMBRE DE PRATIQUE, DANS ET POUR LE DISTRICT DE MONTRÉAL, LE DEMANDEUR EXPOSE RESPECTUEUSEMENT CE QUI SUIT :

1. Le 4 décembre 2020, le demandeur a été autorisé par la Cour d'appel d'intenter une action collective au nom du groupe suivant:

« Toute personne physique qui a acheté entre le 24 février 2014 et le 31 décembre 2017 un sandwich de poulet d'un restaurant Subway dans la province de Québec »

Tel qu'il appert au dossier de la Cour;

2. Les allégations de la demande d'autorisation pour intenter l'action collective reposaient sur les résultats des testes d'ADN effectués par le chercheur Matt Harnden sur les produits des défenderesses, tel qu'il apparait au dossier de la Cour;
3. Depuis l'autorisation de l'action collective, le procureur soussigné a tenté de contacter ledit chercheur à plusieurs reprises mais n'a jamais eu de réponse de la part dudit chercheur;
4. Le procureur soussigné a également engagé un autre expert pour tenter de préparer une preuve d'expertise à présenter à l'appui de ses allégations. Or, ledit expert n'a pu préparer une expertise à l'appui des allégations de la poursuite;
5. Entre autres, une difficulté importante au dossier est que le groupe est limité aux acheteurs de produits vendus par les franchisés des défenderesses entre 2014 et 2017. Aucun expert ne peut retourner dans le temps afin d'effectuer une expertise sur les produits vendus entre 2014 et 2017 par lesdits franchisés;
6. Par conséquent, la seule preuve disponible des événements entre 2014 et 2017 est entre les mains des représentants de la défenderesse;
7. En 2019, une représentante des défenderesses a déjà signé un affidavit détaillé dans un dossier connexe à Toronto où elle contredit les allégations de la demande de notre action collection dans le présent dossier, tel qu'il apparait de l'affidavit de Madame Chiara O'HARA-GONCLAVES produit au soutien des présentes sous la **cote R-1**;
8. Ledit affidavit est attesté par la personne qui a assermenté l'affiant, Me Kaitlin Soye de Toronto, tel qu'il apparait de sa lettre de confirmation produit au soutien des présentes sous la **cote R-2**;
9. Dans ces circonstances, le demandeur n'aura aucune preuve pertinente à présenter lors d'un procès sur les allégations de la demande de l'action collective;
10. Il est donc dans l'intérêt de la justice que le demandeur se désiste de sa demande;
11. Les procureurs des défendeurs ont indiqué que les défenderesses accepteraient un désistement sans frais;
12. Ni le demandeur ni le procureur n'ont reçu quelque compensation en échange du désistement proposé;
13. Le procureur soussigné a encouru plusieurs milliers de dollars de déboursés qui ne seront jamais remboursés;
14. La présente demande est bien fondée en faits et en droit.

PAR CES MOTIFS, PLAISE À LA COUR DE :

ACCUEILLIR la présente demande;

AUTORISER le demandeur et le groupe de se désister de l'action intentée au présent dossier contre les défenderesses sans frais;

PERMETTRE aux parties de déposer au dossier de la Cour un acte de désistement sans frais;

ORDONNER la publication dudit désistement sans frais sur le site actioncollective.com et au Registre des actions collectives, avec copie du jugement l'autorisant, pour une durée consécutive d'au moins 120 jours;

À DÉFAUT D'AUTORISER LE DÉSISTEMENT, **PROLONGER** le délai de la mise en état du dossier au 31 décembre 2023;

LE TOUT sans frais.

Montréal, le 1 mai 2023



James R. Nazem
Procureur du groupe
1010, rue de la Gauchetière O., bureau 950
Montréal (Québec), H3B 2N2, Canada
Tel. : (514) 392-0000
Télécopieur : 1 (855) 821-7904
Courriel : jrnazem@actioncollective.com

AFFIDAVIT

Je, soussigné, James R. Nazem, avocat, pratiquant au 1010 de la Gauchetière O., bureau 950, dans les ville et district de Montréal, arrondissement Ville-Marie, province de Québec, H3B 2N2, affirme solennellement ce qui suit :

1. QUE je suis le procureur du demandeur;
2. Et à ce titre, je suis au courant des faits du présent dossier;
3. QUE tous les faits allégués à la demande ci-jointe sont vrais;

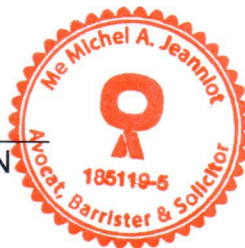
ET J'AI SIGNÉ:


James R. Nazem

AFFIRMÉ SOLENELLEMENT devant moi à Montréal
ce 1^e jour de mai 2023



COMMISSAIRE À L'ASSERMENTATION
Pour le District de Montréal



R-1

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

SUBWAY FRANCHISE SYSTEMS OF CANADA, INC., SUBWAY IP INC. and
DOCTORS ASSOCIATES INC.

Plaintiffs

and

CANADIAN BROADCASTING CORPORATION, TRENT UNIVERSITY,
CHARLSIE AGRO, KATHLEEN COUGHLIN and ERIC SZETO

Defendants

AFFIDAVIT OF CHIARA O'HARA-GONCALVES

I, Chiara O'Hara-Goncalves, of Middletown, Connecticut, MAKE OATH AND SAY:

1. I am a Food Scientist, in Quality Control at Franchise World Headquarters, LLC ("FWH"). FWH acts as a service organization for all the Plaintiffs ("Subway®"), wherein FWH provides services, including research and development services, to the Plaintiffs relating to its franchising operations. As such, I have knowledge of the matters contained in this affidavit. To the extent that anything in this affidavit is based on information and belief, I state the source of that information and verily believe it to be true.

Professional Background

2. I am a food science professional with over a decade of experience in the food service industry and over six years' experience in the food manufacturing industry.

3. I completed my Bachelor of Science in Nutritional Sciences at the University of Connecticut in 2008.

4. I worked at multiple of food production companies. In 2012, I worked at Carla's Pasta as a Quality Control Specialist. From 2012 to 2015, I worked at Boar's Head Provision Company as a food technologist. My roles with both companies included developing a Quality Control Training Manual, implementation and verification of Standard Operating Procedures ("SOP"), conducting audits of vendors, managing vendors, performing inspections, developing and implementing product specifications, and maintaining quality parameters through lab analysis.

5. Before joining FWH in 2016, I worked as a protein scientist at AdvancePierre Foods (now owned by Tyson Foods). My responsibilities included working with Food Safety teams, researching new ingredients and equipment for product development, writing product specifications, and reviewing and approving USDA ingredient declarations and nutrition fact panels prior to publication.

6. I worked at FWH since July 2016. My current role is food scientist. I am responsible for management of US beef, global tuna, and all Canadian meat proteins at Subway®. My responsibilities as it relates to Canadian Subway® Chicken Products (defined below) include, among other things: maintaining vendor relationships including attending at vendor sites; monitoring the quality of vendor products; finding secondary suppliers; and working on new product development and product improvements.

7. Attached as **Exhibit "1"** to my affidavit is my *curriculum vitae*.

The Action

8. The underlying action arises from an episode of *Marketplace*, a television program broadcast by the Canadian Broadcasting Corporation (“**CBC**”), on or about February 24, 2017. The episode was promoted as the “Chicken Challenge” (the “**Broadcast**”).

9. I reviewed the Broadcast. The Broadcast was hosted by Charlsie Agro, a television journalist employed by the CBC.

10. The Broadcast purported to compare various chicken products sold by Subway® and its competitors. In particular, the Broadcast purported to explore whether the chicken products were, in fact, comprised solely or even mostly of chicken meat. I am advised by counsel to Subway®’s that a USB key containing a video of the Broadcast is attached to the affidavit of Virginia Fletcher, sworn June 21, 2019, at Exhibit “KK”.

11. In understand that the Broadcast apparently relied on tests conducted by the Natural Resources DNA Profiling and Forensic Centre at Trent University (“**Trent**”) at the request of CBC. I am advised by counsel to Subway® that Trent is a Canadian university based in Peterborough, Ontario.

12. The Broadcast was accompanied by an article published by the CBC on its website (www.cbc.ca) on February 24, 2017 titled “What’s in your chicken sandwich? DNA tests show Subway sandwiches could contain just 50% chicken” (the “**Online Article**”). A copy of the Online Article is attached to my affidavit as **Exhibit “2”**. Also beginning on or about February 24, 2017, CBC and its lead journalist in the Broadcast, Charlsie Agro, used Twitter to promote and further disseminate statements about Subway® Chicken Products. CBC and Ms. Agro sent a variety of tweets and re-tweets through Twitter about Subway® Chicken Products and promoting the

Broadcast and the Online Article (the “**Tweets**”); together with the Broadcast and the Online Article, the “**Publications**”). A copy of Ms. Agro’s Tweets is attached to my affidavit as **Exhibit “3”**. A copy of CBC’s Tweets is attached to my affidavit as **Exhibit “4”**.

13. The CBC, through the Publications, disseminated a number of statements about the chicken used in Subway® Chicken Products, which Subway® claims to be false and defamatory.

14. The Chicken Products that were tested by Trent and are at issue in this case were manufactured by Grand River Foods (“**GRF**”) under specifications set out by Subway®.

15. Subway® works closely with its suppliers to develop products that meet our specifications. It is extremely important that Subway®’s suppliers accurately and reliably manufacture products according to the specifications provided by Subway®. For this reason, as a food scientist, I engage with Subway®’s vendors regularly and in a variety of ways. This includes regular product testing, annual or semi-annual site visits, annual facility audits, and regular communication. In addition, Subway® hosts regular chicken summits where the internal team at Subway® meets with our vendors to discuss the current status of Subway® chicken products and future product developments.

16. GRF has supplied Subway® with various products, including the Chicken Products (as defined below), for a number of years. I have been informed by Liz Whitney, Purchasing Manager, Proteins at Independence Purchasing Cooperative (“**IPC**”) that as of May 23, 2019, GRF is no longer producing the Chicken Products (as defined below) for Subway®. IPC is the purchasing cooperative for Subway® franchisees that negotiates the pricing of the ingredients purchased by franchisees.

The Chicken Product Specifications

17. The chicken products at issue include a chicken patty (sometimes called cutlette or cutlet) product (the “**Chicken Patty**”) and a chicken strip product (the “**Chicken Strips**”; together, the “**Chicken Products**”). Both are sold in Subway® restaurants in various sandwich and salad meals.

18. Subway® prepares the specifications for the food products to be sold at Subway®. Subway® then works with a manufacturer to ensure that the specification is met. Attached to my affidavit as Exhibit “**5**” is a copy of the Subway® Specification Information for the Chicken Patty with an effective date of October 1, 2015. Attached to my affidavit as Exhibit “**6**” is a copy of the Subway® Specification Information for the Chicken Patty with an effective date of January 18, 2016. Attached to my affidavit as **Exhibit “7”** is a copy of the Subway® Specification Information for the Chicken Patty with an effective date of October 13, 2016. Attached as **Exhibit “8”** is a copy of the Subway® Specification Information for the Chicken Strips with an effective date of October 30, 2015. Attached as **Exhibit “9”** is a copy of the Subway® Specification Information for the Chicken Strips with an effective date of April 12, 2016. Attached as **Exhibit “10”** is a copy of the Subway® Specification Information for the Chicken Strips with an effective date of July 25, 2016. Attached as **Exhibit “11”** is a copy of the Subway® Specification Information for the Chicken Strips with an effective date of October 13, 2016. Attached as **Exhibit “12”** is a copy of the Subway® Specification Information for the Chicken Strips with an effective date of December 9, 2016. These were all of the specifications for the Chicken Products that would have been in effect through 2016 and early 2017.

19. The specifications referred to above make reference to both “fowl” and “broiler”. In the food science industry, fowl is a mature chicken including laying hens (which provide table eggs)

and breeder flocks (which provide hatching eggs). A broiler is a chicken bred and raised for meat production.

20. Each of the aforementioned specifications provides that the Chicken Products' respective product formulations include 1% or less soy protein concentrate. In each of the Chicken Products, at least 83% of the raw product formulation is some form of chicken, and the vast majority of the balance is water and/or ice, most of which is either absorbed into the chicken or is lost during cooking and processing.

Ensuring Manufacturers Meet Subway® Specifications

21. It is my responsibility to work with protein manufacturers to ensure that they are meeting the Subway® product specification(s). I do this by meeting with the manufacturer, reviewing protocols and SOPs, conducting on-site visits, witnessing the manufacturing process, corresponding with the manufacturer, and reviewing annual and ongoing testing reports, among other tasks. I have conducted all the above-noted activities with GRF since July 2016 when I started at FWH.

22. Subway® obtains product testing reports on the Chicken Products produced by GRF in the usual course of business. At the times relevant to the issues in this case, the testing was conducted by an outside lab. These reports are obtained quarterly, or dependent on quality needs, or at the Food Scientist's direction. In all cases, they are obtained in the normal course of business. It is my responsibility, and has been so since July 2016, to review these documents as they are received from the lab. Attached as **Exhibit "13"** are copies of reports received from GRF on the Chicken Strips between November 2015 and August 2017. Attached as **Exhibit "14"** is a copy of the reports received from GRF on the Chicken Patty between March 2016 and July 2017.

23. These reports include a chemical analysis of the food. For example, in the July 2016 test of the Chicken Strips, the analysis indicates that the tested product contains 260mg/100g of sodium and 21.59 g/100g of protein:

RESULTS OF ANALYSES OF FOOD				
	Units	Standard	SPEC	Values
General Food Parameters				
Chloride as Sodium Chloride	g/100g	0.76	≤ 1.3	0.82
Nutritional Parameters				
Fat SOX	g/100g	2.27	≤ 2.49	2.59
Protein	g/100g	23.05	≥ 16.44	21.59
Moisture	g/100g	73	≤ 78.14	73.2
Metals				
Sodium (Na)	mg/100g	295	≤ 340	260

24. The reports Subway® receives from GRF also include a product evaluation. This includes product information, such as packaging and labeling information, as well as visual, taste and smell information. For example, the July 2016 Product Evaluation Report provides photographs of the Chicken Strips and sensory performance information:



GOLD STANDARD SENSORY PERFORMANCE	Standard	C005386C
Flavor	Slight savory chicken flavour.	Meets Gold Standard - Good Flavor, not too salty
Color/Appearance	Tannish hue with seasoning; natural muscle appearance with no excessive fat and minimal "fines". Grill marks should be present.	Meets Gold Standard - Grill marks present, tannish hue light
Texture	Tender, moist, and not spongy with firm bite. Less moist after hold.	Meets Gold Standard - Moist and Tender
Aroma	Slight savory chicken – no off odors.	Meets Gold Standard - Light chicken aroma

The Subway® Products Tested by Trent

25. The Chicken Patty has a freezer shelf life of six months from the date of production, while the Chicken Strips have a freezer shelf life of twelve months from the date of production. However, I have been advised by Richard Buttner, Senior Director of Supply Chain Operations at IPC that these products move quickly. I have been advised and understand that most of these products are sold by franchisees within six weeks of production, and almost all products are sold within three months.

26. I have been advised by counsel for Subway®, that the sandwiches tested by Trent were purchased by CBC on the following dates and at the following locations:

Purchase Date	Product	Location
25-Jul-16	Patty	1091 Chemong Rd. #6, Peterborough, Ontario, K9H 7R8
27-Jul-16	Strips	Unknown (Purchased by Trent)
14-Dec-16	Strips	Subway #21814, Toronto ON – 287 King Street West
14-Dec-16	Patty	Subway #21814, Toronto ON – 287 King Street West
14-Dec-16	Patty	Subway #42312, Toronto ON – 200 Front St. West
15-Dec-16	Strips	Subway #23521, Scarborough, ON – 1620 Birchmount Road

Purchase Date	Product	Location
15-Dec-16	Patty	Subway #23521, Scarborough, ON – 1620 Birchmount Road
15-Dec-16	Strips	Subway #48132, Oshawa ON – 191 Bloor St E
15-Dec-16	Patty	Subway #48132, Oshawa ON – 191 Bloor St E
15-Dec-16	Strips	Subway #54708, Peterborough ON – 1535 Water Street
15-Dec-16	Patty	Subway #54708, Peterborough ON – 1535 Water Street

27. With respect to the nine products purchased in December 2016, based on the information from Rick Buttner, the earliest production date for those products would be about September 2016. With respect to the two products purchased in July 2016, the earliest production date for those products would be about April 2016.

28. It would have been part of my regular responsibilities to review the product reports as they came in for the nine products made in or after September 2016. In addition, because the two products made in or after April 2016 were made very shortly before I started at Subway®, if there had been any concerns about those reports such concerns would have more than likely been brought to my attention so that I could follow up and monitor any response required by GRF.

29. In addition, after the Publications and as part of Subway®'s response to the story, I was asked to review recent GRF product records with Dave Theno, PhD., former Chief Global Food Safety and Quality officer for FWH. Additionally, in my role as protein scientist, I spoke with Dr. Theno, Dave Weakly, Senior Food Scientist at FWH, and Jim McCollum, Manager Quality Improvement at IPC, and I understand that they conducted a site visit at GRF.

30. Nothing in any of the reports or records provided to Subway® on the Chicken Products in the November 2015 to August 2017 time period provided or provides me with any indication that

the amount of chicken used in the Chicken Product formulations deviates substantially from the specifications. Occasionally, these reports indicate that the finished Chicken Products fall slightly outside of the standards set by Subway®. For example, a test at Exhibit “13” shows that the grill marks on the Chicken Strips tested were lighter in colour than the standard provided. However, these minor variances are common and expected in food product manufacturing. In addition, the chemical analyses of the Chicken Products indicate that the nutritional standards set by Subway® are met or almost met; including the amounts of protein, fat and moisture, all of which would vary significantly if the amount of chicken used to make the Chicken Products was outside the scope of the specification, as alleged in the Broadcast. Finally, the taste, texture and structure of the Chicken Products are what would be expected from a product made to the Subway® specification. In particular, nothing in any of the reports or records provided or provides me with any reason to believe that the Chicken Products contained substantially more soy than set out in the specifications. There is certainly nothing to suggest that the Chicken Products contained anywhere from 40 to 60% soy.

Communication with Trent University

31. On February 28, 2017, following the Publications, my colleague, Brad Clem (a FWH employee), and I called Bradley White at Trent University. My call was sent to voicemail, and I left a message. On March 1, 2017, I called Dr. White and left another voicemail message requesting that he call me on my mobile phone. To date, I have not received a return call from Dr. White.

32. On March 1, 2017, I reviewed the Trent website and located the name, email address, and laboratory phone number for Matthew Harnden. I called the laboratory number, and Brad Seyler answered the phone.

33. It is my understanding that when I spoke with Mr. Seyler, he was the University's Lab Manager IT Support and that he was familiar with the efforts to test chicken from Subway® and other Quick Service Restaurants for the Publications.

34. I requested to speak with Mr. Harnden. Mr. Seyler told me that they were "scrambling" and were not speaking with anyone at that time as the story was "blown out of proportion".

35. I told Mr. Seyler that I worked with Subway® proteins in Canada and that I wanted to learn about the technology and methodology used in the testing. Mr. Seyler stated that they "tested for plant DNA versus meat DNA". He further indicated that "it was the biggest misunderstanding... [they were] not saying the chicken is 50% soy". Mr. Seyler stated that they "were never using the word "50%" anyways... [they] were also saying that there is a pretty big, up to 20% difference in what this could be." Mr. Seyler also indicated that they "were saying the DNA, not the chicken itself" and "[CBC] jumped on the 50% soy DNA". Mr. Seyler stated that we would get back to me by the end of the day. However, to date, I have not received any response from him.

36. On March 1, 2017, I swore an affidavit setting out the information I have described above. Attached to my affidavit as **Exhibit "15"** is a copy of my affidavit dated March 1, 2017. That affidavit was true when I swore it, and it remains true today. I adopt that affidavit as part of my evidence here.

Testing at Subway®

37. Prior to and following the Broadcast, I communicated with Jeff Lanteigne at GRF. I requested confirmation of the ingredient statements for the Chicken Products. Attached to my affidavit as **Exhibit "16"** is a copy of my correspondence with Mr. Lanteigne dated February 15, 2017. Attached to my affidavit as **Exhibit "17"** is a copy of my correspondence with Mr.

Lanteigne dated February 16, 2017 where I provided him the report that Subway® received from CBC on February 15, 2017. Attached to my affidavit as **Exhibit "18"** is a copy of my correspondence with Mr. Lanteigne dated February 17, 2017 where I provide him with more information that Subway® received from CBC. Attached to my affidavit as **Exhibit "19"** is a copy of my correspondence with Mr. Lanteigne dated February 27, 2017 requesting a statement from GRF. Attached to my affidavit as **Exhibit "20"** is a copy of my correspondence with Mr. Lanteigne dated February 28, 2017.

38. I requested the technical data sheet and contact information for the vendor for the soy protein used by GRF in the Chicken Products. Attached to my affidavit as **Exhibit "21"** is a copy of my correspondence with Mr. Lanteigne and others of February 27, 2017. I also requested the technical data sheets for all the ingredients which GRF uses in the Chicken Products. GRF provided me with this information. Attached to my affidavit as **Exhibit "22"** is a copy of my email correspondence with Mr. Lanteigne of March 20, 2017 as it related to the Chicken Patties. Attached to my affidavit as **Exhibit "23"** is a copy of my email correspondence with attachments with Mr. Lanteigne of March 20, 2017 as it relates to the Chicken Strips.

39. I also requested the Blending/Injecting Reports and Oven Yield Reports from GRF following the Broadcast. Attached to my affidavit as **Exhibit "24"** is a copy of my correspondence with Mr. Lanteigne and others dated February 26, 2017. I requested these documents to further confirm that the Subway® specification for the Chicken Products was being followed. These documents demonstrate critical check-points in the production process. The Blending/Injecting Reports show the amount of ingredient, including the chicken that goes into a batch of Chicken Products, and the Oven Yield Reports show the oven temperatures. These documents did not indicate to me that there was anything incorrect or unusual about the amount of chicken added to

the chicken products. Attached to my affidavit as **Exhibit "25"** is a copy of two Blending/Injecting Reports and one Oven Yield Report.

40. Prior to the Publications, I am informed by Nancy Jo Seaton, Executive Officer at Seaton Food Consultants, LLC, and understand that she engaged two external vendors, Maxxam and ELISA Technologies Inc., to test the Chicken Products on behalf of Subway®.

41. I am informed by Ms. Seaton that the Chicken Products were sent directly Subway®'s distributor in Canada to Maxxam for testing on about February 23, 2017. Attached to my affidavit as **Exhibit "26"** are the Chain of Custody reports from Maxxam. Attached to my affidavit as **Exhibit "27"** is a copy of the Chain of Custody report from ELISA Technologies Inc. dated February 28, 2017.

42. Maxxam, an analytical services company, tested the Chicken Products for nutritional parameters as well as the presence of poultry and soy. Maxxam used an enzyme-linked immunosorbent assay ("**ELISA**") to screen for the presence of soy and poultry. The Maxxam tests of the Chicken Patty indicated that the Chicken Patty tested positive for poultry and that it contained 5.3 parts per million ("**ppm**") soy. Attached to my affidavit as **Exhibit "28"** is a copy of the Maxxam report for the Chicken Patty dated March 1, 2017. The Maxxam tests of the Chicken Strips indicated that the Chicken Strips tested positive for poultry and that they contained 2.5 ppm soy. Attached to my affidavit as **Exhibit "29"** is a copy of the Maxxam report for the Chicken Strips dated March 3, 2017. I believe that Maxxam completed these tests and reports in the ordinary course of its business. Ms. Seaton requested the underlying data to support the test results provided at Exhibits 22 and 23. Attached to my affidavit at **Exhibit "30"** is a copy of the supporting materials provided by Maxxam.

43. ELISA Technologies, Inc., a laboratory testing service company, also tested the Chicken Products. ELISA Technologies used an ELISA assay to screen for the presence of soy. The ELISA Technologies tests indicated that the Chicken Patty contained 3.0 ppm of soy and the Chicken Strips contained trace amounts of soy (in the range of 1.25 to 2.5 ppm). Attached to affidavit as **Exhibit "31"** is a copy of the report from ELISA Technologies dated March 1, 2017. I believe that ELISA Technologies Inc completed these tests and reports in the ordinary course of its business. Ms. Seaton requested the underlying data to support the test results provided at Exhibit 25. Attached to my affidavit at **Exhibit "32"** is a copy of the supporting materials provided by ELISA Technologies.

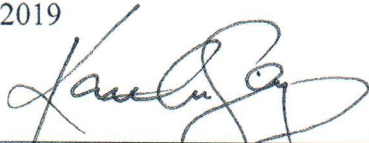
44. While the ELISA tests do not determine the amount of chicken in the Chicken Products, they do indicate that the amount of soy in the finished Chicken Products is between 1.25 ppm and 5.3 ppm range, which in percentage is between 0.000125% and 0.00053%. Given the ingredient specifications for these products, this range of soy amount is what I would expect to see in the finished Chicken Products.

45. My review of the materials provided to me by GRF and the tests described in paragraphs 44-45 confirmed for me that the information provided in the Publications did not reflect the composition of the Chicken Products. I do not have any reason to believe that the Chicken Products manufactured by GRF at any time, and specifically the Chicken Products manufactured by GRF prior to the Publications, do not meet the Subway® specification. I have not received any reports from GRF that suggest that the Chicken Products do not contain the proper amount of chicken or do not meet the Subway® specification. I have not received any communication from an employee at GRF, an employee at Subway® or a customer complaint that the Chicken Products are not chicken, until after the Publications.

46. I understand that the statements made about the Chicken Products in the Publications are purported to be based on DNA testing. I have conducted and reviewed many types of quality controls tests of food stuffs, and these have never included DNA testing. Based on my education, training and experience in food production, my understanding is that DNA tests are not commonly used in the food production industry to quantitatively determine the composition of food products. DNA test are commonly used to determine the animal species that is in a particular product. Rather, ELISA tests, chemical analyses and product evaluations of the types discussed above are the usual tools in the industry to ensure food products are meeting the relevant specifications and standards.

47. I make this affidavit in support of the Plaintiffs response in the Defendants' Anti-SLAPP motion and for no improper purpose.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario on July 26,
2019



A Commissioner for taking Affidavits (or as
may be)



Chiara O'Hara-Goncalves

R-2

To whom it may concern,

I hereby confirm that this is my signature and having acted as Commissioner for Taking Affidavits in respect of the affidavit that was signed by Ms. Chiara O'Hara Gonçalves on July 26, 2019, a copy of which is attached hereto.

Best regards,



Kaitlin Soye
Lawyer

James R Nazem

From: James R Nazem [jrnazem@actioncollective.com]
Sent: May 1, 2023 4:30 PM
To: 'Frédéric Paré'
Cc: 'Alexa Teofilovic'; 'Stephan Durand'
Subject: Stéphane Durand c. Subway Franchise Sysmtems of Canada, ULC et al. (C.S.M.: 500-06-000849-170; V/d: 22-0047; N/d: 1702JN3519).
Attachments: Désistement.pdf

NOTIFICATION PAR COURRIEL (Articles 109 et ss. C.p.c.)

Nature du document :	Demande d'autorisation de se désister.
N° de dossier:	500-06-000849-170
Nom des parties :	Stéphane Durand c. Subway Franchise Systems of Canada et al..
Nombre de pages du document :	23 pages
Notre dossier :	1704JN3553
Sender's e-mail address:	jrnazem@actioncollective.com
DATE:	Montréal, le 1 mai2023

DESTINATAIRES:

Me Frédéric Paré, STIKEMAN ELLIOT, PROCUREUR DES DÉFENDERESSES.

James R. Nazem

Place du Canada

1010, de la Gauchetière Ouest/West, bureau/Suite 950

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