

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
No: 500-06
500-06-000849-170

(CLASS ACTION)
SUPERIOR COURT
(CIVIL DIVISION)

STÉPHANE DURAND, businessman,
domiciled and residing at 3205 Port-au-
Persil, in the city and district of Laval,
province of Quebec, H7E 4R1,

Applicant

v.

**SUBWAY FRANCHISE SYSTEMS OF
CANADA, LTD.**, a legal person,
incorporated according to the *Canada
Business Corporations Act*, having its
head office at 11210- 107th Avenue, main
floor, **c/o Monarch Registry**, in the city of
Edmonton, province of Alberta, T5H 0Y1,

-and-

DOCTOR'S ASSOCIATES INC., a legal
person, incorporated according to the
Florida Corporation Business Act, having
its head office at 700 S. Royal Poinciana
Boulevard, Suite 500, in the city of Miami
Springs, State of Florida, 33166, United
States of America,

Defendants

**APPLICATION FOR AUTHORIZATION
TO INSTITUTE A CLASS ACTION
(Art. 574 & ssq. C.c.p.)**

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN
PRACTICE DIVISION FOR AND IN THE DISTRICT OF MONTREAL, APPLICANT
RESPECTFULLY SUBMITS AS FOLLOWS:

1. Applicant Stéphane DURAND, desires to institute a class action on behalf of the following natural persons forming part of the class (as hereinafter defined) and of which applicant is a member, namely,:

“All natural persons who have purchased in 2014, 2015, 2016 and/or 2017 a sandwich containing chicken from a Subway restaurant in the Province of Quebec”;

2. THE FACTS GIVING RISE TO AN INDIVIDUAL RECOURSE AGAINST DEFENDANTS BY APPLICANT, WHO REQUESTS TO ACT AS THE DESIGNATED PERSON ON BEHALF OF THE CLASS, ARE:

APPLICANT

- 2.1 Applicant is a consumer who from time to time purchases and consumes food from restaurants;
- 2.2 On a regular basis, applicant has purchased and eaten sandwiches from a Subway restaurant. Usually, he purchased the oven roasted chicken sandwich because he believed them to be made of chicken;
- 2.3 In the past three (3) years, applicant has purchased and consumed a Subway sandwich at least 25 times;

DEFENDANTS

- 2.4 Defendant Doctor's Associates Inc. (hereinafter Doctor's Associates) is a Florida profit corporation resulting from the merger of two different corporations, as appears from an extract from the website of a division of the Florida Department of State as well as the relevant certificate of Merger herewith attached altogether as **exhibit P-1**;
- 2.5 Defendant Subway Franchise Systems of Canada, Ltd. (hereinafter Subway Canada) is a Canadian corporation, as appears from an extract of Corporations Canada's website herewith attached as **exhibit P-2**;
- 2.6 Defendant Doctor's Associates is the founder of a fast food restaurant franchise system operating under the trade name Subway;
- 2.7 Defendant Subway Canada is licensed by defendant Doctor's Associates for establishing and operating Subway restaurants in Canada. In fact, Subway Canada operates and franchises third party franchisees to operate Subway restaurants in Canada;
- 2.8 In doing so, Subway Canada requires the franchisees to construct, equip and

open every restaurant to the specifications dictated by defendant Doctor's Associates;

- 2.9 Furthermore, no franchisee is allowed to conduct any business or sell any product at a Subway restaurant that has not been fully approved by defendants;
- 2.10 In fact, every franchisee has to purchase all required food and equipment from a distribution center or another source approved and/or designated by defendants;

PURCHASES BY APPLICANT

- 2.11 In order to supply franchisees in Quebec, defendants produce and/or request specific chicken products which are subsequently delivered to Subway franchisee by a distributor selected by defendants;
- 2.12 Each franchisee is obligated by the franchise agreement to use and sell only the products supplied by defendants;
- 2.13 Therefore, both defendants are involved in the chain of events preceding the sale of Subway products, including the chicken to applicant and members of the class;
- 2.14 Through their franchise network, defendants offer a variety of sandwiches as appears from an extract of their website herewith attached as **exhibit P-3**;
- 2.15 Applicant usually purchases and eats the oven roasted chicken. As the name suggests, this sandwich is marketed as a chicken sandwich, giving the impression that the consumer buys a sandwich made with chicken breast;
- 2.16 In consideration of the low price, usually applicant pays his sandwich purchases with cash money. However, on August 24, 2015, he paid his purchase with a debit card as appears from the statement of his joint account with his spouse herewith attached as **exhibit P-4**;
- 2.17 To applicant's best recollection, about three quarters of his purchases were oven roasted chicken. The other purchases were the specials of the day;

CBC NEWS ARTICLE

- 2.18 On February 24, 2017, CBC News posted an article detailing a DNA test conducted on chicken sandwiches from different fast food restaurant chains in order to determine the quality of their products, as appears from the said article herewith attached as **exhibit P-5**;

- 2.19 The DNA test was conducted by DNA researcher Matt Harnden, at Trent University's Wildlife Forensic DNAS Laboratory;
- 2.20 The said test involved determining the percentage of chicken DNA in the unadulterated pieces of chicken from the fast food restaurants;
- 2.21 In the specific case of Subway, the test results determined that the samples were only approximately fifty percent (50%) chicken both for the oven roasted chicken sandwich and the sweet onion chicken teriyaki sandwich;
- 2.22 The rest of the Subway samples seemed to contain soy DNA which is less expensive. In other words, defendants alter and mix the chicken with cheaper products in order to lower their production cost;
- 2.23 Defendants never divulged the fact that the so-called chicken in their chicken sandwiches contained approximately fifty percent (50%) other products than chicken. In fact, the impression left by defendants is that their sandwiches contain pieces of one hundred percent (100%) pure chicken;
- 2.24 Defendants were given the opportunity to comment the test results. Without confirming the veracity of the results, they did not deny them;

THE PERSONAL CLAIM

- 2.25 Under the above circumstances, it is clear that defendants have misled applicant on the content of their chicken sandwiches;
 - 2.26 In cases of chicken sandwiches it is even more difficult for a consumer and the applicant to evaluate the quality of the supposed chicken piece as it is in a sandwich, which is in turn wrapped in paper;
 - 2.27 Applicant is therefore entitled to ask for the cancellation of the relevant transactions with defendants. Accordingly, applicant claims solidarily from defendants the sum of ONE HUNDRED FORTY-TWO DOLLARS AND THIRTY-ONE CENTS (\$142.31) representing the amount paid for nineteen (19) purchases;
 - 2.28 Applicant is also entitled to claim punitive damages of ONE HUNDRED FORTY-TWO DOLLARS AND THIRTY-ONE CENTS (\$142.31) solidarily from defendants;
3. THE FACTS GIVING RISE TO PERSONAL CLAIMS BY EACH OF THE MEMBERS OF THE CLASS AGAINST THE DEFENDANTS ARE AS FOLLOWS:
 - 3.1 Defendants operate Subway restaurants through a network of franchisees who are closely monitored and obliged to purchase all their required chicken

from the distribution centers approved by defendants;

- 3.2 In fact, the chicken raw products are delivered to the franchisees in boxes bearing defendants' marks, Subway;
- 3.3 The chicken products for all franchisees in Canada are supplied from the same distribution centers;
- 3.4 More importantly, the distribution centers distribute products in containers that bear defendants' marks. This fact clearly shows that defendants have clearly commanded the recipe for the preparation of the chicken products;
- 3.5 Accordingly, all the so-called chicken found in Subway chicken sandwiches are made of the same products with the same recipe required by defendants;
- 3.6 The sandwich purchases made by members of the class are subject to consumer protection laws applicable in the province of Quebec;
- 3.7 The class consists of all natural persons who have purchased in the province of Quebec, a Subway chicken sandwich, including 1) chicken and bacon ranch melt sandwiches, 2) oven roasted chicken sandwiches and 3) sweet onion chicken teriyaki sandwiches;
- 3.8 The claims of all of the members of the class are based upon the same facts as those set forth by applicant for his personal claim;
- 3.9 The same so-called chicken was manufactured, imported and distributed by defendants to their network of franchisees for use the Subway chicken sandwiches eventually sold to the members of the class;
- 3.10 Each Member of the class has sustained damages and has been deceived in a similar way as was applicant;
- 3.11 Each member of the class is entitled to claim restitution of the purchase price and punitive damages as a result of the same deception, negligent behaviour and/or misconduct displayed by defendants, the whole as set forth herein;
- 3.12 Each member of the class, for the purchase of his/her own Subway chicken sandwich(es), has relied on the labelling and marketing for which defendants are responsible;
- 3.13 Since the recipe and the source of the chicken supplied by the distribution centers to defendants' franchisees are the same, each member of the class has purchased a Subway chicken sandwich with about fifty per cent (50%) chicken lower than what defendants have lead members of the class to believe;

- 3.14 All members of the class have therefore suffered from the same inconvenience and have been deceived in the same way as was applicant;
 - 3.15 Due to defendants' ill intention, wrongdoings and defects in the so-called chicken products purchased, each and every member of the class as described hereinabove has the same rights and recourses against defendants as applicant does;
 - 3.16 The chicken used in a chicken sandwich is its most important component. Without a real chicken, the chicken sandwich is void of its crucial component;
4. THE COMPOSITION OF THE CLASS MAKES IT DIFFICULT OR IMPRACTICABLE TO APPLY THE RULES FOR MANDATES TO SUE ON BEHALF OF OTHERS OR FOR CONSOLIDATION OF PROCEEDINGS:
- 4.1 Defendants' website indicates that there are 3,267 Subway restaurants in Canada. Taking into consideration the proportion of Quebec's population in Canada, it would be reasonable to conclude that there are over 700 Subway restaurants in Quebec;
 - 4.2 From the above data, one might easily conclude that the number of all purchasers of Subway chicken sandwiches in the province of Quebec well exceeds one hundred thousand (100,000);
 - 4.3 However, there exists no list of persons who have purchased Subway chicken sandwiches in the province of Quebec;
 - 4.4 Nor does applicant possess a list of persons that purchased Subway chicken sandwiches;
 - 4.5 A significant number of natural persons that are part of the class have their principal residences, employment or places of business at various geographical distances within the province of Quebec;
 - 4.6 It would therefore be impossible for applicant to track down each and every individual to obtain their mandate or authorization to proceed by consolidation of proceedings;
5. THE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT BETWEEN EACH MEMBER OF THE CLASS AND THE DEFENDANTS WHICH APPLICANT WISHES TO HAVE DECIDED BY THE CLASS ACTION ARE:
- 5.1 Did defendants accurately describe the content of their Subway chicken sandwiches to the members of the class?

- 5.2 Did defendants misinform, mislead or deceive the members of the class in their description of their Subway chicken sandwich?
 - 5.3 Are defendants at fault towards applicant and other members of the class and did they misrepresent the specifications of their Subway chicken sandwiches?
 - 5.4 Did defendants fail in their duties and obligations under contract, consumer protection law, civil law as well as statutory law respecting sale of food products to the proposed class members?
 - 5.5 Were the products sold to applicant and other members of the class affected by any hidden defect?
 - 5.6 Are members of the class, including applicant, entitled to restitution of the purchase price of the Subway chicken sandwich?
 - 5.7 Are defendants liable towards applicant and other members of the class for punitive damages?
 - 5.8 Are defendants jointly and severally (solidarily) liable towards applicant and the members of the class?
6. THE QUESTIONS OF FACT OR LAW PARTICULAR TO EACH MEMBER OF THE CLASS:
- 6.1 There exists no substantial questions of fact or law particular to each member of the class save for the slight variation in the extent of the quantum of the claim, depending on the purchase price paid for the Subway chicken sandwich bought and the number of Subway chicken sandwiches purchased;
7. IT IS APPROPRIATE AND EXPEDIENT THAT THE INSTITUTION OF A CLASS ACTION FOR THE BENEFIT OF THE MEMBERS OF THE CLASS BE AUTHORIZED, BECAUSE:
- 7.1 Class action is the best procedural vehicle available to the members of the class in order to protect and enforce their rights herein;
 - 7.2 There exists veritably no particular individual difference in the position of members of the class, except for the number of purchases and the possibly of having purchased their chicken sandwiches at different prices;
 - 7.3 While the amount of claim for each member of the class may differ, the faults, misrepresentations, wrongdoings, negligence and shortfalls committed by defendants and their liabilities are identical with respect to each member;

- 7.4 Members of the class who may relatively have minor claims, in the absence of a class action, could be prevented from instituting a separate recourse against defendants in view of the costs involved to enforce their rights compared to the value of the claim they may have;
- 7.5 In the absence of a class action, the immense number of the affected consumers would result in a multitude of recourses against defendants that may lead to contradictory judgements on questions of fact and law which are identical for each member of the class;
8. THE NATURE OF THE RECOURSE THAT APPLICANT INTENDS TO EXERCISE ON BEHALF OF THE MEMBERS OF THE CLASS IS:
- 8.1 An action in restitution of the purchase price and punitive damages plus interest in addition to the recovery of damages sustained;
- 8.2 The action is based on sections 40, 41, 42, 216, 218, 219, 221, 228, 253 and 272 of the Quebec Consumer protection Act as well as sections 1399, 1401 and 1407 of the civil code of Quebec;
9. THE CONCLUSIONS THAT APPLICANT SEEKS ARE TO:
- GRANT** applicant's action;
- CONDEMN** defendants jointly and severally (solidarily) to restore (restitute) applicant the full purchase price paid for the chicken sandwiches purchased, being ONE HUNDRED FORTY-TWO DOLLARS AND THIRTY-ONE CENTS (\$142.31) or **SUBSIDIARILY REDUCE** the purchase price and **CONDEMN** defendants jointly and severally (solidarily) to reimburse to applicant a sum equivalent to same;
- CONDEMN** defendants jointly and severally (solidarily) to pay to applicant punitive damages of ONE HUNDRED FORTY-TWO DOLLARS AND THIRTY-ONE CENTS (\$142.31);
- THE WHOLE** with costs, including the costs for all experts, expertise, exhibits and publication notices;
10. APPLICANT REQUESTS THAT HE BE ASCRIBED THE STATUS OF REPRESENTATIVE;
11. APPLICANT IS IN A POSITION TO REPRESENT THE MEMBERS OF THE CLASS ADEQUATELY FOR THE FOLLOWING REASONS:
- 11.1 Applicant is well informed of and understands the facts giving rise to the present action and the nature of this action;

- 11.2 Having purchased and eaten many Subway chicken sandwiches, he knows some other members of the class;
- 11.3 He has the best interest of the class at heart;
- 11.4 He personally has a claim as a result of defendants' negligence, misrepresentations, shortfalls, wrongdoings and fault and readily understands the position of the members of the group;
- 11.5 He has taken the necessary time and made the effort for this claim and is determined to act as a representative of the class in the present action;
- 11.6 He has retained competent counsel with considerable experience in litigation as appears from a copy of the professional mandate signed with the undersigned attorney herewith attached as **exhibit P-6**;
- 11.7 Applicant has fully cooperated with the undersigned attorney in the context of this action, including answering diligently and intelligently to his questions and there is every reason to believe that he will continue to do so;
- 11.8 He is in at least as good a position to represent the group as any other member may be;

12. **APPLICANT PROPOSES THAT THE CLASS ACTION BE FILED BEFORE THE SUPERIOR COURT SITTING IN AND FOR THE DISTRICT OF MONTREAL FOR THE FOLLOWING REASONS:**

- 12.1 Applicant works in the District of Montreal. As a consequence, he is readily available to be present before this honourable court in the context of the proposed class action;
- 12.2 Numerous members of the class, if not the majority, live and/or work and/or study on the island of Montreal and are thus subjected to the jurisdiction of this honourable Court in the District of Montreal;
- 12.3 Applicant has retained counsel with an office in the judicial District of Montreal;

13. **APPLICANT'S MOTION IS WELL FOUNDED IN FACT AND IN LAW;**

WHEREFORE, APPLICANT PRAYS THIS HONOURABLE COURT THAT BY JUDGEMENT TO INTERVENE HEREIN:

- (A) MAINTAIN and GRANT** the present application;

(B) AUTHORIZE the institution of a class action in restitution or *SUBSIDIARILY* in reduction of the purchase price and punitive damages;

(C) ATTRIBUTE to applicant the status of designated representative for purposes of exercising the class action recourse on behalf of the following Group, namely:

“All natural persons who have purchased in 2014, 2015, 2016 and/or 2017 a sandwich containing chicken from a Subway restaurant in the Province of Quebec”;

(D) IDENTIFY the following principal questions of fact and law to be dealt with collectively:

- Did defendants accurately describe the content of their Subway chicken sandwiches to the members of the class?
- Did defendants misinform, mislead or deceive the members of the class in their description of their Subway chicken sandwich?
- Are defendants at fault towards applicant and other members of the class and did they misrepresent the specifications of their Subway chicken sandwiches?
- Did defendants fail in their duties and obligations under contract, consumer protection law, civil law as well as statutory law respecting sale of food products to the proposed class members?
- Were the products sold to applicant and other members of the class affected by any hidden defect?
- Are members of the class, including applicant, entitled to restitution or reduction of the purchase price of the Subway chicken sandwich?
- Are defendants liable towards applicant and other members of the class for punitive damages?
- Are defendants jointly and severally (solidarily) liable towards applicant and the members of the class?

(E) IDENTIFY the conclusions sought with relation to such questions as follows:

GRANT applicant's action;

CONDEMN defendants jointly and severally (solidarily) to restore (restitute) all members of the class, including applicants, the full purchase price paid for the chicken sandwiches purchased or *SUBSIDIARILY REDUCE* the purchase price and **CONDEMN** defendants jointly and severally (solidarily) to reimburse to applicant a sum equivalent to same;

CONDEMN defendants jointly and severally (solidarily) to pay to applicant and members of the class punitive damages of ONE HUNDRED FORTY-TWO DOLLARS AND THIRTY-ONE CENTS (\$142.31);

THE WHOLE with costs, including the costs for all experts, expertise, exhibits and publication notices;

(F) **DECLARE** that any member who has not requested his/her exclusion from the class be bound by any judgement to be rendered on the class action, in accordance with the law;

(G) **FIX** the delay for exclusion at sixty (60) days from the date of notice to the members of the class; and

(H) **ORDER** that a notice to the members of the class be published on the date to be determined by this honourable Court in the following manner and form attached hereto:

A notice published in the following newspaper:

- La Presse;
- The Montreal Gazette

(I) **THAT** the present court record be referred to the Chief Justice so that he may fix the district in which the class action is to be brought and the judge before whom it will be heard.

(J) **THAT** in the event that the class action is to be brought in another district, the clerk of this Court be ordered, upon receiving the decision of the Chief Justice, to transmit the present record to the clerk of the district designated.

(K) **THE WHOLE** with costs to follow suit, save in case of contestation;

Montreal, February 27, 2017

James Reza Nazem
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Annexe (Article 145 C.p.c.)

AVIS À LA PARTIE DÉFENDERESSE

PRENEZ AVIS que la partie demanderesse a déposé au greffe de la Cour Supérieure du Québec du district judiciaire de Montréal la présente demande.

Vous devez répondre à cette demande par écrit, personnellement ou par avocat, au palais de justice de Montréal situé au 1, rue Notre-Dame Est, dans la ville de Montréal, province de Québec, dans les 15 jours de la signification de la présente demande ou, si vous n'avez ni domicile, ni résidence, ni établissement au Québec, dans les 30 jours de celle-ci. Cette réponse doit être notifiée à l'avocat de la partie demanderesse.

La demande sera présentée devant le tribunal le **1 mai 2017, à 9h00 le matin, en salle 2.16** du palais de justice de Montréal, au 1 Notre-Dame est, à Montréal. À cette date, le tribunal pourra exercer les pouvoirs nécessaires en vue d'assurer le bon déroulement de l'instance ou la cour pourra entendre la cause, à moins que vous ayez conclu une entente écrite avec la partie demanderesse ou son avocat pour un protocole d'instance. Ledit protocole devra être déposé au greffe du tribunal.

Au soutien de sa demande, la partie demanderesse annexe les pièces ci-jointes. (Voir l'inventaire)

Schedule (Article 145 C.c.p.)

NOTICE TO DEFENDANT

TAKE NOTICE that plaintiff has filed this application in the office of the Superior Court of Quebec for the judicial district of Montreal.

You must answer the application in writing, personally or through a lawyer, at the Montreal courthouse situated at 1 Notre-Dame Street East, in the city of Montreal, province of Quebec, within 15 days of service of the application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the plaintiff's lawyer.

The application will be presented before the Court on **May 1st, 2017, at 9:00 a.m., in room 2.16** of the Montreal courthouse situated at 1 Notre-Dame East, in Montreal. On that date, the Court may exercise such powers as are necessary to ensure the orderly progress of the proceeding or the court may hear the case, unless you have made a written agreement with the plaintiff or the plaintiff's advocate on a protocol for the orderly progress of the proceeding. The protocol must be filed in the office of the Court.

In support of his application, plaintiff herewith annexes the following exhibits (see attached list).

No: 500-06-
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District of Montreal

STÉPHANE DURAND,

Plaintiff

v.

SUBWAY FRANCHISE SYSTEMS OF
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-and-

DOCTOR'S ASSOCIATES INC.,

Defendants

*APPLICATION FOR
AUTHORIZATION TO INSTITUTE
A CLASS ACTION*

James Reza Nazem

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Our file: 1702JN3519

AN-1795

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
No: 500-06-

(CLASS ACTION)
SUPERIOR COURT
(CIVIL DIVISION)

STÉPHANE DURAND,

Applicant

v.

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CANADA, LTD.,**

-and-

DOCTOR'S ASSOCIATES INC.,

Defendants

LIST OF EXHIBITS

- EXHIBIT P-1: An extract from the website of a division of the Florida Department of State as well as the relevant certificate of Merger;
- EXHIBIT P-2: An extract of Corporations Canada's website;
- EXHIBIT P-3: An extract from defendants' website;
- EXHIBIT P-4: A copy the statement of account of applicant with his spouse;
- EXHIBIT P-5: A copy of the CBC News article dated February 24, 2017;

EXHIBIT P-6: A copy of the professional mandate signed with the undersigned attorney;

Montreal, February 27, 2017



James Reza Nazem
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LIST OF EXHIBITS

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**APPLICATION FOR
AUTHORIZATION TO INSTITUTE
A CLASS ACTION, LIST OF
EXHIBITS AND EXHIBITS
P-1 TO P-6**

ORIGINAL

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