

CANADA

SUPERIOR COURT
(Class Action)

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-06-000849-170

STÉPHANE DURAND

Applicant

v.

SUBWAY FRANCHISE SYSTEMS OF
CANADA, LTD.

-and-

DOCTOR'S ASSOCIATES INC.

Defendants

APPLICATION FOR LEAVE TO FILE ADDITIONAL EVIDENCE
(Art. 574 C.p.c.)

IN SUPPORT OF THEIR APPLICATION, DEFENDANTS SUBWAY FRANCHISE SYSTEMS OF CANADA, LTD. AND DOCTOR'S ASSOCIATES INC. RESPECTFULLY SUBMIT AS FOLLOWS:

1. Applicant Stéphane Durand (the "**Applicant**") filed an *Application for Authorization to Institute a Class Action* (the "**Application for Authorization**") against Subway Franchise Systems of Canada, Ltd. and Doctor's Associates Inc. (collectively, the "**Defendants**") in which it is basically alleged that *Subway® "chicken sandwiches contained approximately fifty (50%) other products than chicken"*;
2. The Application for Authorization was launched on behalf of the following proposed class:

"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";
3. The Defendants seek leave to adduce certain evidence, relevant during the debate on the Application for Authorization, specifically:
 - (i) an affidavit accompanied by supporting documents;
 - (ii) a very short expert report; and
 - (iii) the examination of the Applicant;

a) The Presentation of Relevant Evidence Through the Filing of an Affidavit

4. At paragraphs 2.18 to 2.24 of the Application for Authorization, based only on certain DNA tests mentioned in a CBC News article (Exhibit P-5) that were performed on *Subway*® chicken sandwiches, the Applicant makes certain statements regarding the chicken content of *Subway*® chicken sandwiches;
5. For instance, at paragraph 2.23, the Applicant states that "*Defendants never divulged the fact that the so-called chicken in their sandwiches contained approximately fifty (50%) other products than chicken*";
6. The Defendants seek to file an affidavit with supporting documents to complete the evidence on record in order to:
 - (a) Complete the record on the preparation process and content of *Subway*® chicken sandwiches; and
 - (b) Respond to the specific allegations of paragraphs 2.18 to 2.24 of the Application for Authorization;
7. It would be contrary to the interests of justice that this Honourable Court be asked to analyse the Application for Authorization, on the sole basis of a newspaper article, without a more complete comprehension of the situation than that presented in the Application for Authorization;
8. This information is useful to this Honourable Court in its analysis of article 575 CCP, as well as, if necessary, to identify the issues to be dealt with collectively and determine the description of the class pursuant to article 576 CCP;
9. A draft affidavit to this effect is therefore attached to the present application as **Annex A**;

b) The Presentation of Relevant Evidence Through the Filing of a Very Short Expert Report

10. At paragraphs 2.18 to 2.24 of the Application for Authorization, the Applicant makes reference to a DNA test allegedly performed on *Subway*® chicken sandwiches by Matt Harnden of Trent University, and mentioned in a CBC News article (Exhibit P-5) entitled "*What's in your chicken sandwich? DNA test shows Subway sandwiches could contain just 50% chicken*";
11. However, it is scientifically impossible to draw a conclusion about the amounts of specific ingredients included in a product based only on the comparative amounts of DNA in a product, as reported in the CBC News article (Exhibit P-5);

12. The Defendants therefore seek leave to file a very short (1-2 page) expert report in order respond to the allegations at paragraphs 2.18 to 2.24 and enlighten this Honourable Court about why DNA analysis alone cannot support the Applicant's claims;
13. It would be contrary to the interests of justice that this Honourable Court be asked to analyse the Application for Authorization without a more complete comprehension of the limits of DNA analysis, which has apparently been used, based on the CBC News article (Exhibit P-5);
14. It is also in the interest of proportionality of proceedings that this expert evidence be administered at the authorization stage given that the testing reported in the CBC News article (Exhibit P-5) simply cannot be used to draw the conclusions mentioned in the article, and consequently class proceedings should not be authorized on the basis of this evidence alone.
15. This information is useful to this Honourable Court in its analysis of the second paragraph of article 575 CCP;
 - c) **An Examination of the Applicant**
16. The Defendants would like to examine the Applicant on the following subjects:
 - (a) His knowledge of *Subway*® products, *Subway*® advertisements and representations to the public, and his understanding of the preparation process for *Subway*® products containing chicken;
 - (b) The circumstances leading him to purchase *Subway*® oven roasted chicken sandwiches "*because he believed them to be made of chicken*", as alleged in paragraph 2.3 of the Application for Authorization;
 - (c) The specific facts relating to his ability to adequately represent the members of the proposed class; and
 - (d) The circumstances pursuant to which he agreed to act as Applicant, as well as his efforts and steps to identify other members of the proposed class;
17. The Defendants submit that it is in the interest of justice that it be allowed to examine the Applicant and suggest that a duration of 90 minutes would be sufficient;
18. This information is useful to this Honourable Court in its analysis of article 575 CCP, as well as, if necessary, to identify the issues to be dealt with collectively and determine the description of the class pursuant to article 576 CCP;
19. The Defendants respectfully seek the authorization to present this evidence in order to exercise its right to be heard per the principle of *audi alteram partem*;

THEREFORE, MAY IT PLEASE THE COURT TO:

ALLOW Defendants Subway Franchise Systems of Canada, Ltd. and Doctor's Associates Inc. to file an affidavit substantially similar to that filed as Annex A hereto, including **Exhibit D-1** and **Exhibit D-2** attached thereto;

ALLOW Defendants Subway Franchise Systems of Canada, Ltd. and Doctor's Associates Inc. to file an expert report with a maximum length of two (2) pages on the subjects identified in paragraph 12 of the present application;

ALLOW Defendants Subway Franchise Systems of Canada, Ltd. and Doctor's Associates Inc. to examine the Applicant on the subjects identified in paragraph 16 of the present application for an approximate length of 90 minutes;

THE WHOLE, without costs, save in case of contestation.

Montréal, June 15, 2017

Stikeman Elliott LLP

STIKEMAN ELLIOTT LLP
Attorneys for Defendants
Subway Franchise Systems of Canada, Ltd.
and Doctor's Associates Inc.

1155 René-Lévesque Blvd. W., 41st Floor
Montréal, Québec H3B 3V2

Mtre. Frédéric Paré
Tel: 514-397-3690
Fax: 514-397-5429
Email: fpare@stikeman.com

Mtre. Matthew Angelus
Tel: 514-397-3287
Fax: 514-397-5434
Email: mangelus@stikeman.com

NOTICE OF PRESENTATION

To: **Mtre. James Reza Nazem**
1010 de la Gauchetière Street West
Suite 1315
Montréal, Québec H3B 2N2

Attorney to Applicant Stéphane Durand

TAKE NOTICE that the present *APPLICATION FOR LEAVE TO FILE ADDITIONAL EVIDENCE* will be presented for adjudication before the Superior Court (Class Actions Division) at the Montreal Courthouse located at 1 Notre-Dame Street East, Montréal, Québec, H2Y 1B6, at a date and time and in a room to be communicated by the Court.

DO GOVERN YOURSELF ACCORDINGLY.

Montréal, June 15, 2017

Stikeman Elliott LLP

STIKEMAN ELLIOTT LLP
Attorneys for Defendants
Subway Franchise Systems of Canada, Ltd.
and Doctor's Associates Inc.

1155 René-Lévesque Blvd. W., 41st Floor
Montréal, Québec H3B 3V2

Mtre. Frédéric Paré
Tel: 514-397-3690
Fax: 514-397-5429
Email: fpare@stikeman.com

Mtre. Matthew Angelus
Tel: 514-397-3287
Fax: 514-397-5434
Email: mangelus@stikeman.com

CANADA

SUPERIOR COURT
(Class Action)

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-06-000849-170

STÉPHANE DURAND

Applicant

v.

SUBWAY FRANCHISE SYSTEMS OF
CANADA, LTD.

-and-

DOCTOR'S ASSOCIATES INC.

Defendants

AFFIDAVIT OF ●

I, the undersigned, ● of ● solemnly declare the following :

1. I am the ● for Subway Franchise Systems of Canada, Ltd. ("SFSC") and Doctor's Associates Inc. ("DAI", and collectively with SFSC the "Defendants").
2. I am advised that an Application for Authorization to Institute a Class Action dated February 27, 2017 was filed against the Defendants regarding the chicken content of (i) *Subway*® oven roasted chicken sandwiches; (ii) *Subway*® chicken and bacon ranch melt sandwiches and (iii) *Subway*® sweet onion chicken teriyaki sandwiches. These three sandwiches are made with one of two chicken products - the Chicken Breast Cutlets and the Grilled Chicken Breast Strips (collectively, the "*Subway*® Chicken").
3. All *Subway*® Chicken is made from 100 percent pure chicken breast meat. The chicken is then mixed with spices, seasoning and marinade (which include dried soy protein).
4. When the chicken and marinade are mixed together, *Subway*® Chicken contains 1% or less of soy protein.
5. All *Subway*® Chicken is prepared by *Subway*® suppliers in accordance with the approved specification (recipe). The supplier is inspected to ensure compliance with the specification. Every inspection of the supplier of *Subway*® Chicken showed that the chicken was made in accordance with the specification.

6. Using the specification, an accurate ingredient statement is prepared for each Subway® product, including Subway® Chicken. For the entire class period, this list has been available in all Subway® stores and on Subway®'s website: <http://www.subway.com/~media/canada/documents/nutrition/canprodingredients.pdf>. A copy of this list is attached hereto as **Exhibit D-1**.

7. The specific type of DNA testing described in the CBC News article dated February 24, 2017 (Exhibit P-5 in the present proceedings) is not used in the food industry to quantify the ingredients in a food product. More specifically, I understand that government regulators do not use nor rely on such tests.

8. A similar class action complaint relying on the CBC News article dated February 24, 2017 (Exhibit P-5 in the present proceedings) was filed in the United States District Court for the District of Connecticut. The case was captioned *Craig Moskowitz v. Doctor's Associates Inc.*, Case No. 3:17-cv-00387. This complaint has now been voluntarily dismissed as appears from the Notice of Voluntary Dismissal and the Order of Judge Alvin W. Thompson dated May 26, 2017 attached *en liasse* hereto as **Exhibit D-2**. This case was not dismissed as part of a settlement.

9. All the facts alleged herein are true.

AND I HAVE SIGNED

●

Solemnly declared before me in
_____, on _____, 2017

Notary Public

Exhibit D-1



Canada Product Ingredients

(Revised January 2017)

This list is compiled based on product information provided by Subway® approved food manufacturers. Every effort is made to keep this information current however it is possible that ingredient changes and substitutions may occur before this list is updated. This list does not include regional or special promotional items as ingredients vary.

BREADS

9-GRAIN WHEAT BREAD Whole wheat flour, enriched flour, yeast, sugar, wheat gluten, wheat, soybean oil, salt, yellow corn, rye, oats, sunflower lecithin, brown rice, flax seed, millet, sorghum, barley, triticale, refiners syrup, natural flavour, honey, ascorbic acid, xylanase, lipase, yeast extract, glucose oxidase, amylase.

DELI ROLL: Enriched flour, water, yeast, sugar, soybean oil, wheat gluten, salt, sunflower lecithin, refiners syrup, turmeric, honey, yeast extract, ascorbic acid, natural flavours, pentosanase, lipase, glucose oxidase.

FLATBREAD Enriched unbleached wheat flour, water, yeast, soyabean oil, skim milk powder, wheat gluten, salt, sugar, distilled vinegar, dough conditioner (enzymes (amylase, lipase, glucose oxidase, protease, xylanase), oat fiber, ascorbic acid, calcium sulfate, salt), cultured wheat flour, baking powder, flavour (sea salt, sugar, yeast extract).

HEARTY ITALIAN BREAD SUBWAY® Italian bread, yellow cornmeal.

HONEY OAT BREAD Subway® 9-Grain Wheat Bread, honey oat topping (rolled oats, brown sugar, honey, wheat starch, and natural flavor).

ITALIAN (WHITE) BREAD Enriched wheat flour, water, yeast, sugar, soybean oil, wheat gluten, salt, sunflower lecithin, yeast extract, ascorbic acid, enzymes (xylanase, lipase, amylase).

ITALIAN HERBS & CHEESE BREAD Subway® Italian Bread, Monterey Jack cheese [milk, modified milk ingredients, bacterial culture, salt, microbial enzyme, colour, cellulose (to prevent caking), natamycin, may contain calcium chloride], corn maltodextrin, ground rice, toasted wheat crumbs, salt, spices (including oregano), dehydrated garlic, parmesan cheese solids, natural flavour, high oleic sunflower oil, citric acid, yeast extract, lactic acid, silicon dioxide.

LIGHT WHEAT ENGLISH MUFFIN Water, enriched flour, whole wheat flour, modified wheat starch, wheat gluten, yeast, degermed yellow corn meal, wheat fibre, salt, sugar, calcium propionate, potassium sorbate, calcium sulphate, lactic acid, ascorbic acid, sulphites.

MONTEREY CHEDDAR BREAD Subway® Italian Bread, Monterey Jack cheese (milk, modified milk ingredients, bacterial culture, salt, rennet and/or microbial enzyme, colour, cellulose [to prevent caking]). May contain calcium chloride.

MULTIGRAIN FLATBREAD Whole grain whole wheat flour, water, yeast, soyabean oil, sugar, whole wheat flakes, oats, wheat gluten, skim milk powder, salt, distilled vinegar, chia seeds, amaranth seeds, cultured wheat flour, whole grain barley, corn, flax seeds, whole rye, whole grain triticale, baking powder, wheat germ flakes, enzyme (amylase, lipase, oxidase, protease, xylanase), oat fiber, sea salt, yeast extract, ascorbic acid, calcium sulphate.

PARMESAN/OREGANO BREAD SUBWAY® Italian Bread, garlic powder, corn maltodextrin, ground rice, toasted wheat crumbs, salt, spices (including oregano), dehydrated garlic, parmesan cheese solids, natural flavour, high oleic sunflower oil, citric acid, yeast extract, lactic acid, silicon dioxide.

ROASTED GARLIC BREAD Subway® Italian Bread, roasted garlic topping (cornmeal, salt, sugar, dehydrated vegetables [green bell pepper, garlic, onion], spice [including red pepper], sodium acetate, acetic acid, hydrogenated soybean and cottonseed oil, disodium inosinate and guanylate, calcium silicate, ascorbic acid, modified cornstarch, gum arabic, extractives of celery and garlic).

WRAP Unbleached wheat flour (wheat flour, niacin, reduced iron, thiamine mononitrate, riboflavin, folic acid), water, organic palm fruit oil, cultured wheat flour, leavening (sodium acid pyrophosphate, sodium bicarbonate, corn starch, monocalcium phosphate), sugar, salt, inactive dry yeast, guar gum, citric acid.

MEAT, POULTRY, SEAFOOD & EGGS

BACON SLICES Pork, water, salt, sugar, natural smoke flavour, sodium phosphates, sodium erythorbate, sodium nitrite, smoke.

BMT® Meats: Salami: Pork, beef, salt, water, corn syrup, dextrose, sugar, wine, sodium erythorbate, flavorings, spices, sodium nitrate, garlic, bacterial culture, sodium nitrite. **Pepperoni:** Pork, beef, salt, dextrose, water, mustard, spices, corn syrup, paprika, oleoresin of paprika, flavorings, sodium erythorbate, bacterial culture, sodium nitrite. **Ham:** Pork, water, rice starch, sugar, salt, vinegar, sodium phosphate, dehydrated pork broth, dextrose, carrageenan, sodium erythorbate, sodium nitrite, smoke.

CHICKEN PATTY: Chicken breast meat, water, seasoning (sea salt, sugar, chicken stock, salt, flavours, canola oil, onion powder, garlic powder, spice, chicken fat, honey), soy protein, sodium phosphates.

CHICKEN STRIPS: Boneless, skinless, chicken breasts, water, soy protein concentrate, modified potato starch, sodium phosphate, potassium chloride, salt, maltodextrin, yeast extract, flavours, spices, dextrose, onion powder, caramelized sugar, paprika, chicken broth, vinegar solids, paprika extract.

CHICKEN STRIPS (teriyaki glazed) Chicken breast strips (see above), teriyaki (water, corn syrup, soy sauce (water, wheat, soybean, salt, sodium benzoate [a preservative]), rice vinegar, modified corn starch, sugar, tomato paste, ginger, vinegar, garlic, sesame oil, sesame seed, salt, dehydrated green onion, dehydrated red bell pepper, natural flavours, autolyzed yeast extract, dehydrated garlic, sodium benzoate (a preservative), spices, citric acid, soybean oil, dry yeast (torula), dehydrated onion).

COLD CUT COMBO MEATS Bologna: Pork, chicken, water, modified corn starch, salt, potassium lactate, modified milk ingredients, sodium phosphate, mustard, spice, sodium erythorbate, sodium diacetate, sodium nitrite, garlic powder, smoke. **Cooked Salami:** Pork, chicken, water, salt, potassium lactate, mustard, spice, sugar, sodium phosphate, sodium erythorbate, garlic powder, sodium diacetate, sodium nitrite, smoke. **Luncheon Loaf:** Pork, water, modified corn starch, salt, potassium lactate, sugar, mustard, spice, sodium phosphate, onion powder, sodium erythorbate, garlic powder, sodium diacetate, sodium nitrite, smoke.

EGG OMELET PATTY (Regular): Liquid whole egg, liquid egg white, water, skim milk powder, canola oil, butter flavour (liquid and hydrogenated soybean oil, salt, soy lecithin, natural flavor, tocopherols), natural corn starch, salt, xanthan gum, citric acid, white pepper.

EGG (WHITE) OMELET PATTY Liquid egg white, natural corn starch, butter flavour (soybean oil, natural flavour), salt, xanthan gum, white pepper.

EGG SALAD Hard boiled eggs, mayonnaise (soybean oil, water, liquid whole egg mix (liquid whole egg, salt), liquid egg yolk mix [liquid egg yolks, salt], vinegar, sugar, salt, mustard flour, lemon juice concentrate, calcium disodium EDTA. Contains: egg, mustard.

HAM Pork, water, rice starch, sugar, salt, vinegar, sodium phosphate, dehydrated pork broth, dextrose, carrageenan, sodium erythorbate, sodium nitrite, smoke.

MEATBALLS Beef, water, bread crumbs (toasted wheat crumbs [enriched wheat flour {wheat flour, niacin, reduced iron, thiamine mononitrate, riboflavin, folic acid}], sugar, salt, soybean oil, yeast), textured soy protein concentrate, seasoning (dehydrated onion and garlic, salt, spice, dehydrated parsley, soybean oil), soy protein concentrate, Romano cheese (made from pasteurized part-skim cow's milk, cheese cultures, salt, enzymes). **Marinara Sauce:** Tomatoes, tomato puree (water, tomato paste), sugar, soybean oil, modified food starch, salt, dehydrated onions, spices, onion powder.

ROAST BEEF Beef, water, potato starch, corn syrup solids, vinegar, salt, soy protein concentrate, potassium chloride, cane sugar, sodium phosphate, spices, flavour.

SAUSAGE, BREAKFAST Pork, water, salt, pepper, sage, spices, corn syrup solids, dextrose, spice extractives.

STEAK Beef, water, salt, modified corn starch, sugar, dextrose, sodium phosphate, autolyzed yeast, tomato powder, natural flavor, natural brown color blend (vegetable juice color, turmeric), lemon juice powder, garlic, onion, citric acid, hydrolyzed corn protein.

SEAFOOD SENSATION Seafood Sensation (Alaskan Pollock, water, potato starch, wheat starch, corn starch, sugar, sorbitol, salt, natural crab flavor [contains blue crab, snow crab, maltodextrin], spices (allspice, bay, black pepper, cardamom, cassia, celery, clove, ginger, mace, nutmeg, red pepper), carrageenan, pollock oil, calcium carbonate, snow crabmeat, egg whites, sodium tripolyphosphate, tetrasodium phosphate, citric acid, color (lycopene, paprika oleoresin), soy lecithin, mayonnaise (soybean oil, water, liquid whole egg mix [liquid whole egg, salt], liquid egg yolk mix (liquid egg yolks, salt), vinegar, sugar, salt, mustard flour, lemon juice concentrate, calcium disodium EDTA).

TUNA Tuna (tuna, water, salt), mayonnaise (soybean oil, water, liquid whole egg mix [liquid whole egg, salt], liquid egg yolk mix (liquid egg yolks, salt), vinegar, sugar, salt, mustard flour, lemon juice concentrate, calcium disodium EDTA.

TURKEY BREAST Turkey breast, water, modified potato starch, potassium lactate, salt, dextrose, carrageenan, sodium phosphate, turkey flavor, sodium diacetate, spice, caramel.

CHEESE

CHEDDAR CHEESE PRODUCT, PROCESSED Cheese (milk, modified milk ingredients, bacterial culture, salt, rennet and/or microbial enzyme, calcium chloride, lipase, sorbic acid), modified milk ingredients, water, glucose, sodium citrate and/or sodium phosphate, salt, sorbic acid, soy lecithin, carboxymethylcellulose, citric acid.

MONTEREY CHEESE BLEND (shredded) Milk, modified milk ingredients, bacterial culture, salt, microbial enzyme, colour, cellulose (to prevent caking), natamycin. May contain calcium chloride. Contains: Milk

MONTEREY JACK Milk, modified milk ingredients, bacterial culture, salt, rennet and/or microbial enzymes. May contain calcium chloride.

NATURAL CHEDDAR Milk, modified milk ingredients, bacterial culture, salt, colour, rennet and/or microbial enzyme. May contain calcium chloride.

NATURAL SWISS (sliced) Pasteurized milk, modified milk ingredients, bacterial culture, salt, calcium chloride, microbial enzyme. Contains: Milk

VEGETABLES

AVOCADO PUREE Avocado pulp, water, ascorbic acid.

BANANA PEPPERS Banana peppers, water, distilled vinegar, salt, calcium chloride, sodium benzoate (preservative), turmeric, sodium metabisulfite (preservative), natural flavors and polysorbate 80.

CUCUMBERS Fresh ripe cucumbers

GREEN PEPPERS Fresh green bell

GRILLED ONIONS AND PEPPERS Red bell peppers, green bell peppers, red onions and extra virgin olive oil

JALAPEÑO PEPPER SLICES Jalapeno peppers, water, distilled vinegar, salt, natural flavorings, calcium chloride, sodium benzoate (preservative).

PICKLES Cucumbers, water, distilled vinegar, salt, calcium chloride, sodium benzoate as a preservative, alum, natural flavors, polysorbate 80 and turmeric.

LETTUCE Fresh iceberg variety

OLIVES Ripe olives, water, salt, ferrous gluconate

ONIONS Jumbo red onions

TOMATOES Fresh red ripe

CONDIMENTS

CHIPOTLE SOUTHWEST Soybean oil, water, chipotle sauce (chipotle pepper, water, vinegar, salt, sugar, dehydrated onion), buttermilk (cultured skim milk and milk, sodium citrate, salt), vinegar, liquid egg yolks, skim milk powder, salt, modified corn starch, sugar, dehydrated onion, phosphoric acid, xanthan gum, dehydrated garlic, dry yeast (torula), autolyzed yeast extract, lactic acid, sodium benzoate (a preservative), potassium sorbate (a preservative), dehydrated parsley, polysorbate 60,

disodium inosinate, disodium guanylate, extractive of paprika, natural flavour, sucralose, calcium disodium EDTA (to protect flavor).

FAT FREE HONEY MUSTARD Water, sugar, prepared mustard (vinegar, water, mustard seed, salt), Dijon mustard (vinegar, water, mustard seed, salt, white wine, citric acid, turmeric, spices, tartaric acid), country Dijon mustard (vinegar, water, mustard seed, salt, white wine, spice), vinegar, modified corn starch, honey, cider vinegar, lemon juice concentrate, salt, phosphoric acid, colour, xanthan gum, dehydrated onion, sodium benzoate (a preservative), potassium sorbate (a preservative), liquid egg yolks*, dehydrated garlic.

FAT-FREE SWEET ONION Sugar, water, corn vinegar, dehydrated onion, corn starch, modified corn starch, salt, mustard seed, spices, onion juice, poppy seed, dehydrated mince onion, potassium sorbate (a preservative), sodium benzoate (a preservative), dehydrated red bell pepper, dimethylpolysiloxane (an anti-foaming agent), cucumber juice, vinegar, celery seed.

HOUSE SANDWICH SAUCE (ZESTY ITALIAN) Water, soybean oil, vinegar, sugar, salt, modified corn starch, spices, lactic acid, hydrolyzed corn and soy protein, dehydrated parsley, xanthan gum, dehydrated garlic, potassium sorbate, sodium benzoate, autolyzed yeast extract, citric acid, dehydrated onion, calcium disodium EDTA.

LIGHT MAYONNAISE TYPE DRESSING Water, soybean oil, frozen yolk (egg), modified corn starch, vinegar, glucose-fructose, salt, mustard flour, concentrated lemon juice, potassium sorbate, sodium benzoate, xanthan gum, calcium disodium EDTA.

MAYONNAISE, REGULAR Soybean oil, water, liquid whole egg mix (liquid whole egg, salt), liquid egg yolk mix (liquid egg yolks, salt), vinegar, sugar, salt, mustard flour, lemon juice concentrate, calcium disodium EDTA. Contains: egg, mustard.

MUSTARD (Deli Brown) Distilled vinegar, mustard seed, water, salt, spices, turmeric, natural flavor.

MUSTARD (Yellow) Distilled vinegar, water, No. 1 grade yellow mustard seed, salt, turmeric, paprika, spices, garlic powder, natural flavor.

RANCH Soybean oil, water, distilled vinegar, sugar, liquid egg yolk mix (liquid egg yolks, salt), salt, buttermilk (cultured pasteurized skim milk and milk, sodium citrate and salt), contains less than 2% of dehydrated garlic, dehydrated onion, phosphoric acid, sodium benzoate and potassium sorbate (as preservatives), xanthan gum, natural flavor (includes milk), polysorbate 60, spice, dehydrated parsley, disodium inosinate & disodium guanylate, whey protein concentrate, autolyzed yeast extract, calcium disodium EDTA added to protect flavor.

RED WINE VINAIGRETTE Water, glucose syrup, red wine vinegar (contains sulphites), sugar, parmesan cheese (modified milk ingredients, bacterial culture, salt, calcium chloride, microbial enzyme, lipase, cellulose, potassium sorbate), salt, white vinegar, modified corn starch, natural flavour, xanthan gum, spices, dehydrated red bell pepper, dehydrated onion, dehydrated garlic, sodium benzoate, colour (red #40 and blue #1).

COOKIES

CHOCOLATE CHIP Enriched flour (wheat flour, malted barley flour, niacin, iron, thiamine mononitrate, riboflavin, folic acid), semi-sweet chocolate chips (sugar, unsweetened chocolate, cocoa butter, soy

lecithin, vanilla extract), sugar, palm oil, eggs, butter (cream [milk], natural flavor), water, contains 2% or less of: molasses, baking soda, salt, soy lecithin, wheat starch, natural flavors (contains milk).

Contains egg, milk, soy, wheat. *(Due to the nature of how these cookies are displayed they may come in contact with other peanut or tree nut-containing cookies.)*

CHOCOLATE CHIP WITH RAINBOW GEM Enriched wheat flour (contains barley), sugar, palm oil, semi-sweet chocolate chips (sugar, unsweetened chocolate, cocoa butter, soy lecithin, vanilla extract), milk chocolate gems (milk chocolate [sugar cane syrup, cocoa butter, unsweetened chocolate, whole milk powder, soy lecithin, vanilla], sugar, sugar cane syrup, rice starch, colour [turmeric oleoresin, beta carotene, beet juice, spirulina extract], gum arabic, confectioner's glaze [shellac, carnauba wax beeswax]), liquid whole eggs, water, molasses, salt, sodium bicarbonate, whey (milk), natural flavour. **Contains barley, egg, milk, soy, wheat.**

CHOCOLATE CHUNK enriched wheat flour (contains barley), sugar, semi-sweet chocolate chunks (sugar, unsweetened chocolate, cocoa butter, dextrose, soy lecithin, vanilla extract, milk), palm oil, liquid whole eggs, invert sugar, water, molasses, sodium bicarbonate, salt, whey (milk), natural flavours. **Contains egg, barley, milk, soy, wheat.** *(Due to the nature of how these cookies are displayed they may come in contact with other peanut or tree nut-containing cookies.)*

DOUBLE CHOCOLATE CHIP Sugar, enriched wheat flour (contains barley), white confectionery chips (sugar, palm kernel and palm oil, skim milk powder, soy lecithin, vanilla extract), palm oil, semi-sweet chocolate chips (sugar, unsweetened chocolate, cocoa butter, soy lecithin, vanilla extract), liquid whole eggs, butter (cream [milk], lactic acid), cocoa (processed with alkali), water, molasses, sodium bicarbonate, salt, natural flavours (contains milk), wheat starch, soy lecithin. **Contains barley, egg, soy, milk, wheat.** *(Due to the nature of how these cookies are displayed they may come in contact with other peanut or tree nut-containing cookies.)*

OATMEAL RAISIN Sugar, enriched wheat flour, palm oil, raisins, rolled oats, liquid whole eggs, water, molasses, natural flavour, whey (milk), sodium bicarbonate, corn starch, salt, spice. **Contains egg, milk, wheat.** *(Due to the nature of how these cookies are displayed they may come in contact with other peanut or tree nut-containing cookies.)*

PEANUT BUTTER Enriched wheat flour, sugar, peanut butter (peanuts, sugar, palm oil, salt), peanut butter drops (sugar, palm kernel oil, peanuts, partially defatted peanut flour, lactose [milk], whey [milk], anhydrous milk fat, skim milk powder, sodium caseinate [milk], powdered buttermilk, soy lecithin, salt, natural flavour), palm oil, liquid whole eggs, butter (cream [milk], lactic acid), molasses, water, invert sugar, sodium bicarbonate, salt, soy lecithin, natural flavour (contains milk), wheat starch. **Contains eggs, peanuts, milk, soy, and wheat.** *Due to the nature of how these cookies are displayed they may come in contact with other tree nut-containing cookies.)*

RASPBERRY CHEESECAKE Enriched wheat flour, sugar, white confectionery chips (sugar, palm kernel and palm oil, skim milk powder, soy lecithin, vanilla extract), palm oil, liquid whole eggs, raspberry flavored bits (dextrose, palm oil, sugar, corn flour, raspberry powder, vegetable extracts [red cabbage, beet juice], citric acid, natural flavour), water, invert sugar, cream cheese product (cultured milk ingredients, salt, carob bean gum), sodium bicarbonate, salt, wheat starch, soy lecithin, natural flavours (contains milk), raspberry juice concentrate, colours added (pumpkin concentrate, turmeric, annatto). **Contains wheat, milk, soy, eggs.** *(Due to the nature of how these cookies are displayed they may come in contact with other tree nut-containing cookies.)*

SUGAR Enriched wheat flour (contains barley), sugar, palm oil, liquid whole eggs, water, sodium bicarbonate, whey (milk), salt, soybean oil, natural flavour (contains milk). **Contains barley, egg, milk,**

and wheat. (Due to the nature of how these cookies are displayed they may come in contact with other peanut or tree nut-containing cookies.)

WHITE CHOCOLATE MACADAMIA NUT Enriched wheat flour (contains barley), sugar, white confectionery chips (sugar, palm kernel and palm oil, skim milk powder, soy lecithin, vanilla extract), palm oil, macadamia nuts, liquid whole eggs, water, butter (cream [milk], lactic acid), molasses, salt, sodium bicarbonate, corn starch, natural flavours (contains milk). **Contains barley, eggs, macadamia nuts, milk, soy, and wheat.** (Due to the nature of how these cookies are displayed they may come in contact with peanut cookies.)

YOGURT PARFAIT Yogurt: Partly skimmed milk*, vanilla syrup* (sugar*, water, vanilla extract*, natural flavours, pectin, citric acid), milk protein concentrate, bacterial cultures. Muesli: Rolled oats*, wheat flakes*, cane sugar*, dried cranberries*, canola oil*, brown rice flour*, soy flour*, sugar*, molasses*, natural flavor, sunflower oil, sea salt. *Organic. **Contains: Wheat, milk and soy. May contain tree nuts and sesame.**

SOUPS

(Not available in all locations)

BEEF CHILI WITH BEANS Ground beef, water, tomatoes (diced tomatoes, tomato juice, citric acid, calcium chloride), dark red kidney beans [kidney beans (water, kidney beans), salt], seasoning (spices, brown sugar, salt, hydrolyzed soy, corn and wheat protein, wheat flour, dextrose, sugar, yeast extract, garlic powder, maltodextrin, soy lecithin, onion powder and not more than 2% soybean oil and silicon dioxide added to aid processing), celery, tomato paste, contains less than 2% of the following: green bell peppers, modified corn starch, dehydrated onion, salt, beef fat type flavor (beef fat and natural flavor). **Contains soy and wheat.**

BLACK BEAN Black beans (water, black beans, and salt), water, tomatoes (diced tomatoes, tomato juice, citric acid, calcium chloride), onions, celery, tomato paste (tomatoes), contains 2% or less of the following: brown sugar, vegetarian flavor (water, salt, hydrolyzed soy and corn protein, soy protein concentrate, corn oil, onion powder, yeast extract, flavoring, soy protein isolate, sugar, garlic powder and turmeric), garlic puree, corn starch, orange juice concentrate, lime juice, onion juice concentrate, sea salt, seasoning blend (spices, yeast extract, and paprika), oregano and yeast extract. **Contains soy.**

CHICKEN AND WILD RICE Water, fully cooked diced white chicken meat (chicken white meat, water, modified potato starch, salt, sodium phosphates), whipping cream, seasoning [modified corn starch, whey protein concentrate, whole milk, wheat flour, yeast extract, salt, skim milk powder, natural flavors, sugar, sodium caseinate (from milk), brown sugar, spices, chicken fat, sesame oil], cooked wild rice (water, wild rice), celery, cooked brown rice (water, brown rice), carrots, contains less than 2% of the following: chicken stock concentrate (chicken broth, salt, organic cane sugar, yeast extract, cornstarch, chicken fat, ascorbic acid, sunflower oil, natural flavor, lactic acid), onions, chicken fat, unsalted butter, wheat flour, dehydrated parsley. **Contains milk, wheat, sesame.**

CREAMY CHICKEN AND DUMPLINGS Water, dumplings (water, wheat flour, eggs, durum wheat flour, salt, oleoresin turmeric), fully cooked diced white chicken meat (chicken white meat, water, modified potato starch, salt, sodium phosphates), carrots, celery, whipping cream, contains 2% or less of the following: modified corn starch, onions, seasoning (maltodextrin, salt, chicken fat, chicken broth, yeast extract, whey protein concentrate, sugar, natural flavors, chicken powder, modified corn starch, corn starch, sodium phosphate, soy protein concentrate, sodium caseinate, beta carotene, garlic powder, onion powder), chicken broth, mirepoix base (sautéed vegetables [carrot, onion, celery], salt,

sugar, corn oil, potato flour, carrot powder), wheat flour, whey protein concentrate, chicken fat (chicken fat, natural flavor), umami flavor (natural flavors, safflower oil), dehydrated parsley.

Contains egg, milk, soy, wheat.

CREAM OF BROCCOLI Water, Broccoli, Whole Milk (Milk, Vitamin D3), Whipping Cream, Seasoning (Corn Syrup Solids, Wheat Flour, Modified Corn Starch, Yeast Extract, Natural Flavor [contains milk], Dehydrated Onion, Garlic Powder, Spice), Skim Milk Powder, Contains 2% or less of the following: Modified Corn Starch, Onions, Sea Salt, Cream Flavor (Cream, Skim Milk), Soybean Oil, Lemon Juice, Natural Flavor. **Contains milk, wheat.**

CREAM OF MUSHROOM Water, Mushrooms, Whipping Cream, Skim Milk (Vitamins A and D added), Skim Milk Powder, Contains 2% Or Less Of The Following: Wheat Flour, Modified Corn Starch, Whey Protein Concentrate, Salted Butter, Soybean Oil, Seasoning (Salt, Yeast Extract, Xanthan Gum). **Contains milk, wheat.**

FRENCH ONION (does not include bread or cheese toppings) Water, onions, roasted beef flavored base [dextrose, salt, beef type flavor (hydrolyzed soy protein, maltodextrin, corn syrup solids, soybean oil), beef fat, onion powdered, chicken fat, corn starch, natural flavors, sugar, paprika, garlic powdered], modified corn starch, no salt sherry (california white wine), tomato paste, onion juice concentrate, unsalted butter, seasoning [salt, flavor (onion, yeast extract), yeast extract, beef extract, malt extract, maltodextrin, natural flavor], vegetarian flavor (filtered water, yeast extract, dextrose, salt, corn starch, corn oil, flavoring, onion powder, garlic powder, turmeric), light brown sugar, beef base (roasted beef and concentrated beef stock, salt, yeast extract, corn oil, maltodextrin from corn, sugar, natural flavorings), thyme. **Contains milk and soy.**

HOMESTYLE CHICKEN NOODLE WATER, noodles (water, durum wheat flour, egg whites, eggs, wheat gluten), all natural fully cooked seasoned chicken pieces (chicken breast with rib meat, chicken thigh meat, water, rice starch and salt), carrots, green cabbage, celery, chicken stock (chicken stock and flavor), contains 2% or less of the following: seasoning (corn starch, sugar, guar gum and xanthan gum, spice, extractive of turmeric), wheat flour, unsalted butter (pasteurized cream, natural flavors), sea salt, chicken flavor concentrate (chicken, yeast extract, salt and flavorings), parsley, and natural flavors. **Contains egg, milk, wheat.**

LOADED BAKED POTATO Water potatoes, whole milk (milk, vitamin d3), whipping cream, cream cheese (pasteurized milk and cream, cheese culture, salt, stabilizers [carob bean and/or xanthan and/or guar gums]), onion, seasoning (modified corn starch, salt, wheat flour, sugar, flavor [yeast extract, canola oil], whey, flavor [medium chain triglycerides, natural flavor, smoke flavor], spice and not more than 2% soybean oil added to aid processing), bacon topping (bacon [cured with water, salt, sugar, sodium erythorbate, sodium nitrite. may also contain dextrose, flavoring, honey, dehydrated pork broth, potassium chloride, potassium lactate, smoke flavoring, sodium diacetate, sodium phosphate]), contains 2% or less of the following: dehydrated potatoes (potatoes, mono and diglycerides and disodium pyrophosphate), chicken broth, green onion, canola oil, parmesan cheese (pasteurized part-skim milk, cheese culture, salt, enzymes), cheese (parmesan type) [granular and parmesan cheese (pasteurized milk, cheese cultures, salt, enzymes), water, salt, lactic acid, citric acid], pepper sauce (distilled vinegar, red pepper, salt). **Contains milk, wheat**

TOMATO BASIL Water, tomatoes (diced tomatoes, tomato juice, citric acid, calcium chloride), tomatoes (tomatoes, tomato puree, citric acid), whipping cream, tomato paste, onions, contains less than 2% of the following: parmesan cheese (pasteurized part-skim milk, cheese cultures, salt, enzymes), sea salt, spice, modified corn starch, natural flavors, seasoning (yeast extract, garlic powder, spice), and yeast extract. **Contains milk.**

Exhibit D-2
en liasse

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

_____	:	
Craig Moskowitz, <i>on behalf of himself and</i>	:	
<i>all others similarly situated,</i>	:	Civil Action No. 3:17-cv-00387-AWT
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
DOCTOR'S ASSOCIATES, INC.,	:	
a Florida Corporation,	:	
	:	
Defendant.	:	
_____	:	

NOTICE OF DISMISSAL

Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i), Plaintiff Craig Moskowitz hereby gives notice of and dismisses this action without prejudice.

Dated: May 25, 2017

Respectfully submitted,

/s/ Sergei Lemberg
Sergei Lemberg
LEMBERG LAW, LLC
43 Danbury Road, 3rd Floor
Wilton, CT 06897
Telephone: (203) 653-2250
Facsimile: (203) 653-3424
Email: slemberg@leberglaw.com
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2017, a true and correct copy of the foregoing Notice of Dismissal was filed with the Clerk of the Court through the Electronic Document Filing (ECF) system, which sent notice of such filing to the following:

John Matthew Doroghazi
Wiggin & Dana-NH
One Century Tower
265 Church Street, P.O. Box 1832
New Haven, CT 06508-1832

Kim E. Rinehart
Wiggin & Dana-NH
One Century Tower
265 Church Street, P.O. Box 1832
New Haven, CT 06508-1832

/s/ Sergei Lemberg
Sergei Lemberg

De: CMECF@ctd.uscourts.gov
Envoyé: Friday, May 26, 2017 6:56 PM
À: CMECF@ctd.uscourts.gov
Objet: Activity in Case 3:17-cv-00387-AWT Moskowitz v. Doctor's Associates, Inc. Order

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

United States District Court for the District of Connecticut

Notice of Electronic Filing

The following transaction was entered on 5/26/2017 at 6:55 PM EDT and filed on 5/26/2017

Case Name: Moskowitz v. Doctor's Associates, Inc.

Case Number: 3:17-cv-00387-AWT

Filer:

Document Number: 13(No document attached)

Docket Text:

ORDER: The Notice of Dismissal (Doc. No. [12]) is hereby **APPROVED**. This case is **DISMISSED** without prejudice and with each party to bear its own costs and fees. It is so ordered. Signed by Judge Alvin W. Thompson on 5/26/17. (Rafferty, M.)

3:17-cv-00387-AWT Notice has been electronically mailed to:

Kim E. Rinehart krinehart@wiggin.com, eleavitt@wiggin.com

Sergei Lemberg slemberg@lemlaw.com, filings@lemlaw.com

John Matthew Doroghazi jdoroghazi@wiggin.com, LKoleci@wiggin.com, nchavez@wiggin.com

3:17-cv-00387-AWT Notice has been delivered by other means to:

SUPERIOR COURT
(Class Action)

N°. 500 -06-000849-170

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

STÉPHANE DURAND

Applicant

- v. -

SUBWAY FRANCHISE SYSTEMS OF CANADA,
LTD.

-and-

DOCTOR'S ASSOCIATES INC.

Defendants

BS0350

File: 130296-1007

APPLICATION FOR LEAVE TO FILE
ADDITIONAL EVIDENCE
(Art. 574 C.p.c.)
NOTICE OF PRESENTATION
and ANNEX A: DRAFT AFFIDAVIT OF ●
EXHIBITS D-1 AND D-2 (*en liasse*)

ORIGINAL

Mtre. Frédéric Paré Telephone: 514-397-3690
Email : fpare@stikeman.com

Mtre. Matthew Angelus Telephone: 514-397-3287
Email : mangelus@stikeman.com

STIKEMAN ELLIOTT
Stikeman Elliott LLP BARRISTERS & SOLICITORS
1155 René-Lévesque Blvd. West, 41st Floor
Montréal, Québec, Canada H3B 3V2