

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

(CLASS ACTION)  
**SUPERIOR COURT**  
(CIVIL DIVISION)

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**STÉPHANE DURAND**, businessman,  
domiciled and residing at 3205 Port-au-  
Persil, in the City and District of Laval,  
Province of Quebec, H7E 4R1,

Plaintiff

v.

**SUBWAY FRANCHISE SYSTEMS OF  
CANADA, ULC.**, a legal person,  
incorporated according to the *Business  
Corporations Act* (Alberta), having its  
head office at 3489 Allan Drive S.W., in  
the City of Edmonton, Province of Alberta,  
T6W 3G9, previously known as SUBWAY  
FRANCHISE SYSTEMS OF CANADA,  
LTD.,

--and-

**DOCTOR'S ASSOCIATES LLC**, a legal  
person, incorporated according to the  
*Florida Corporation Business Act*, having  
its head office at 325 Sub Way, in the City  
of Milford, State of Connecticut, 06461,  
United States of America, previously  
know as DOCTOR'S ASSOCIATES INC.,

Defendants

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**ORIGINATING DEMAND**  
*(Art. 583 & ssq. C.c.p.)*

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**IN SUPPORT OF THIS CLASS ACTION, THE PLAINTIFF, BY AND THROUGH HIS COUNSEL, ALLEGES THE FOLLOWING:**

**THE CLASS ACTION AUTHORIZATION**

1. On December 4, 2020, the plaintiff was authorized by the Court of Appeal of Quebec to institute a class action against the defendants and was ascribed the status of representative on behalf of the following class:

“All natural persons who have purchased between February 24, 2014 and December 31, 2017 a chicken sandwich from a Subway restaurant in the Province of Quebec”

(hereinafter referred to as “the Class”)

In its judgement, the Court of Appeal of Quebec affirmed the Superior Court’s decision rendered on February 19, 2019 which had originally dismissed the plaintiff’s application for authorization to institute a class action;

2. The Court of Appeal authorized the institution of a class action in restitution or, *SUBSIDIARILY*, in reduction of the purchase price as well as a claim in punitive damages for the Class;
3. Furthermore, the Court of Appeal of Quebec identified the following principal questions of fact and law to be dealt with collectively:
  - a) Did the defendants accurately describe the content of their Subway chicken sandwiches to the Class members?
  - b) Did the defendants misinform, mislead or deceive the Class members in their description of their Subway chicken sandwiches?
  - c) Are the defendants at fault towards the plaintiff and other Class members, and did they misrepresent the specifications of their Subway chicken sandwiches?
  - d) Did the defendants fail in their duties and obligations under contract, the Consumer Protection Act, civil law or any statutory law respecting sale of food products to the Class members?
  - e) Were the products sold to the plaintiff and other Class members affected by any hidden defect?
  - f) Are Class members, including the plaintiff, entitled to the restitution or reduction of the purchase price of their Subway chicken sandwiches?

- g) Are the defendants liable towards the plaintiff and other Class members for punitive damages?
- h) Are the defendants jointly and severally (solidarily) liable towards the plaintiff and the Class members?

### **THE CLASS MEMBERS**

- 4. At all relevant times, the Class members were Quebec consumers subject to the application of the Consumer Protection Act;
- 5. The Class members, from time to time, purchased and consumed food from Subway franchisee restaurants, while in search of chicken sandwiches;

### **THE DEFENDANTS**

- 6. The defendant Doctor's Associates LLC. (hereinafter Doctor's Associates) is a Florida limited liability company resulting from the conversion of its predecessor, Doctor's Associates Inc., as appears from excerpts of the division of the Florida Department of State website as well as the relevant articles of conversion to be filed together at trial as **exhibit P-1**;
- 7. The defendant Subway Franchise Systems of Canada, ULC. (hereinafter Subway Canada) is an Alberta corporation, resulting from the conversion of its predecessor, Subway Franchise Systems of Canada, Ltd., as appears from excerpts of the government of Alberta Corporate Registration System and Corporations Canada's Federal Corporation Information to be filed together at trial as **exhibit P-2**;
- 8. The defendant Doctor's Associates is the founder of a fast food restaurant franchise system operating under the trade name Subway;
- 9. The Subway fast food restaurant franchise primarily sells submarine sandwiches, salads and beverages. Since the 1990's, it has expanded to become a global franchise with tens of thousands of locations in more than one hundred countries;
- 10. In 2017, the defendants' website indicated that there were 3,267 Subway restaurants in Canada. Taking into consideration the proportion of the Province of Quebec's population in Canada, it would be reasonable to conclude that there were over 700 Subway restaurants in the Province of Quebec;
- 11. At all relevant time, the defendant Subway Canada was licensed by the defendant Doctor's Associates to establish and operate Subway restaurants in Canada. In fact, Subway Canada operated and franchised to third party franchisees Subway restaurants in Canada;

12. In doing so, the defendant Subway Canada required the franchisees to construct, equip and open every restaurant according to the specifications dictated by both defendants;
13. Furthermore, franchise agreements prohibited franchisees from conducting any business or selling any product at a Subway restaurant that had not been fully approved by the defendants. The franchise agreements also required all Subway franchisees to use, and the franchisees did use, the trademark "Subway";
14. The Subway trademark was originally registered in Canada by the defendant Doctor's Associates in 1987. Other Subway trademarks with different designs were also registered by the defendant Doctor's Associates in the following years, the whole as appears from different excerpts from the Canadian Trademarks Database to be filed together at trial as **exhibit P-3**;
15. As appears from the said exhibit P-3, in 2016, the original Subway trademark and its other different designs were subsequently assigned to a related entity, Subway IP, LLC;
16. Not only every Subway franchisee had to use the Subway trademark, but it also had to purchase all its required food and equipment solely from a distribution center or other source designated by the defendants;
17. In addition, each franchisee operated its Subway restaurant in compliance with the defendants' operation manual which contained mandatory specifications, standards and operating procedures. Each franchisee also adhered to the defendants' quality control standards with respect to the character or quality of the products sold;
18. In order to supply their franchisees with chicken products, the defendants produced and/or ordered specific chicken products which were subsequently delivered to their franchisees by distributors selected by the defendants;
19. The raw chicken products were delivered to the defendants' franchisees in boxes bearing the defendants' mark, Subway. The defendants had provided and ordered the recipe for the preparation of the chicken products;
20. Furthermore, the raw chicken products for all franchisees in Canada were supplied from the same distribution centers;
21. The defendants' franchisees used their raw chicken products in compliance with their operation manual in order to prepare the sandwiches eventually sold to the Class members;
22. In compliance with their franchise agreements, the franchisees used and sold only the products supplied by the defendants and/or their designated suppliers;

23. Therefore, the defendants were jointly involved in the chain of events preceding the sale of Subway products to the Class;

#### **REPRESENTATIONS MADE TO THE CLASS**

24. Through their franchise network, the defendants offered a variety of sandwiches to the Class as appears from an excerpt from their website in 2017 to be filed at the trial as **exhibit P-4**;
25. At all relevant time, messages and images similar to the ones shown in exhibit P-4 were shown to the Class in Subway restaurants. They listed to the Class the Subway products offered for sale by the defendants' and/or their franchisees;
26. It is noteworthy to mention that neither in exhibit P-4 nor in messages shown in Subway restaurants any mention was made of the fact that the chicken used in Subway products was reconstructed chicken and poultry product extenders;
27. The impression given to the Class members was actually the opposite:
- a) **CHOICE OF NAMES:** The names of many Subway sandwiches suggested the sandwiches were made out of pure meat, ham or chicken: Carved Turkey, Ham, Chicken & Bacon Ranch Melt, Oven Roasted Chicken and Sweet Onion Chicken Teriyaki;
  - b) **CHOICE OF WORDS:** The use of the word chicken in "Roasted Chicken", "Teriyaki Chicken" and "Chicken & Bacon Ranch Melt" further emphasized the impression that the sandwiches were made out of pure chicken and not reconstituted components;
  - c) **CHOICE OF IMAGES:** The use of images similar to the ones shown in exhibit P-4 also accentuated the pure chicken impression. For the Oven Roasted Chicken, a **chicken patty with grill marks** gave the impression that a chicken breast was used for the sandwich. For the Sweet Onion Chicken Teriyaki, **chicken strips with grill marks** gave the impression that the sandwich was made out of pure chicken and not reconstituted components. For the Chicken & Bacon Ranch Melt, **chicken strips with grill marks** gave the impression that sandwiches were made with pure chicken. No chicken in these images looked like a chicken meatball;
  - d) **THE DESCRIPTION:** Descriptions such as 1) "Tender **chicken patty**" with its French translation "*Du poulet tendre*", 2) "teriyaki-glazed **chicken strips**" with its French translation "*Lanières de poulet relevées à la sauce teriyaki*" and 3) "**rotisserie-style chicken**" with its French translation "**tranches de viande blanche de poulet**" on the defendant's website added to the

impression that sandwiches were made out of pure chicken;

28. The Class members were therefore under the impression that Subway chicken sandwiches were made out of pure chicken patties and strips;
29. As a consequence of the defendants' marketing and the above impression conveyed to them, the Class members purchased Subway products for the purpose of obtaining sandwiches made with pure chicken patties and strips;
30. However, Subway sandwiches were in fact made of reconstituted chicken and poultry product extenders. The defendants' franchise system failed to mention this important fact in its representation to the Class;

### **CBC NEWS ARTICLE**

31. 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 and its report on DNA analysis to be filed together at trial as **exhibit P-5**;
32. The DNA test was conducted by DNA researcher Matt Harnden, at Trent University's Wildlife Forensic DNAS Laboratory;
33. The said test involved determining the percentage of chicken DNA in the unadulterated pieces of chicken from different fast food restaurant chains;
34. In the specific case of Subway, the test results determined that the Subway samples were close to fifty percent (50%) chicken both for the oven roasted chicken sandwiches and the sweet onion chicken teriyaki sandwiches;
35. The rest of the Subway samples seemed to contain soy DNA which was less expensive. In other words, the defendants had altered and mixed the chicken with cheaper products in order to lower their production costs;
36. The defendants, neither directly nor through their franchisees, divulged the fact that the so-called chicken in their Subway chicken sandwiches contained approximately fifty percent (50%) other products than chicken. In fact, the impression left by the defendants and their franchise network was that their sandwiches contained pieces of one hundred percent (100%) pure chicken;
37. The chicken used in a chicken sandwich is its most important component. Without a one hundred percent (100%) pure chicken, the chicken sandwich is void of its key component;
38. The defendants' intentional behaviour was therefore in total disregard towards the Class, the consumer protection laws, and the Food and Drug Regulations;

39. The defendants are wealthy and the number of Class members is very high. In addition, the seriousness of the breach concerning food products is significant;
40. Many years after the launch of the present proceedings, the defendants have not yet changed their behaviour nor the representations made to the Class in their franchise restaurants. The defendants never admitted their fault, nor did they admit their ploy to hide the composition of their chicken products;
41. The defendants have not compensated the Class or even admitted their wrongdoing;
42. The defendants had knowingly put their ploy in action and knew or should have known the consequences of their behaviour;
43. The defendants did not pay any fine nor were they penalized for their breaches to the Consumer Protection Act and/or the Food and Drug Regulations;
44. It is therefore appropriate to denounce the defendants' behaviour and to prevent the repetition of such behaviour by awarding punitive damages to the Class;

#### **THE CLAIM**

45. Based on the above circumstances, it is clear that the defendants have misled the Class on the content of their Subway chicken sandwiches;
46. For Subway sandwiches wrapped in paper, it was not possible for a consumer to evaluate the quality of the chicken piece at the time of purchase;
47. The Class therefore requires for the cancellation of the relevant transactions with the defendants and/or their franchisees. Accordingly, the Class is entitled to full restitution of the sandwich prices paid. *SUBSIDIARILY*, the Class is entitled to a reduction of the purchase price paid;
48. The Class is also entitled to claim jointly and severally (solidarily) from the defendants punitive damages equivalent to the above amount;
49. The present Class action is well founded in fact and in law.

**WHEREFORE, THE CLASS PRAYS THIS HONOURABLE COURT THAT BY JUDGEMENT TO INTERVENE HEREIN:**

- (A) **MAINTAIN** and **GRANT** the present Class Action;
- (B) **DEFINE** the Class as:

"All natural persons who have purchased between February 24, 2014 and December 31, 2017 a chicken sandwich from a Subway restaurant in the Province of Quebec";

- (C) **ORDER** a collective recovery for the Class;
- (D) **CONDEMN** the defendants jointly and severally (solidarily) to pay to each Class member the purchase price of his/her chicken sandwich plus an equivalent amount as punitive damages;
- (E) **ORDER** the defendants to deposit the said amount within thirty (30) days in a financial institution operating in the Province of Quebec;
- (F) **ORDER** that the interest on the said fund benefit the Class;
- (G) **APPOINT** a claims administrator for the distribution of the funds to each Class member;
- (H) **THE WHOLE** with court costs, including all expertise;

Montreal, March 8<sup>th</sup>, 2021

  
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**ATTORNEY FOR THE CLASS**



## AVIS D'ASSIGNATION

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

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 du demandeur ou, si ce dernier n'est pas représenté, au demandeur lui-même.

Si vous ne répondez pas dans le délai prévu, de 15 ou de 30 jours, selon le cas, un jugement par défaut pourra être rendu contre vous sans autre avis dès l'expiration de ce délai et vous pourriez, selon les circonstances, être tenu au paiement des frais de justice.

Dans votre réponse, vous devez indiquer votre intention, soit :

- de convenir du règlement de l'affaire;
- de proposer une médiation pour résoudre le différend;
- de contester cette demande et, dans les cas requis par le Code, d'établir à cette fin, en coopération avec le demandeur, le protocole qui régira le déroulement de l'instance. Ce protocole devra être déposé au greffe de la Cour du district mentionné plus haut dans les

## SUMMONS

TAKE NOTICE that the plaintiff has filed this originating application in the office of the Superior Court in 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 or, if the plaintiff is not represented, to the plaintiff.

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the plaintiff in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no

45 jours de la signification du présent avis ou, en matière familiale, ou, si vous n'avez ni domicile, ni résidence, ni établissement au Québec, dans les trois mois de cette signification;

- de proposer la tenue d'une conférence de règlement à l'amiable.

Cette réponse doit mentionner vos coordonnées et, si vous êtes représenté par un avocat, le nom de celui-ci et ses coordonnées.

Vous pouvez demander au tribunal le renvoi de cette demande introductive d'instance dans le district où est situé votre domicile ou, à défaut, votre résidence ou, le domicile que vous avez élu ou convenu avec le demandeur.

Si la demande porte sur un contrat de travail, de consommation ou d'assurance ou sur l'exercice d'un droit hypothécaire sur l'immeuble vous servant de résidence principale et que vous êtes le consommateur, le salarié, l'assuré, le bénéficiaire du contrat d'assurance ou le débiteur hypothécaire, vous pouvez demander ce renvoi dans le district où est situé votre domicile ou votre résidence ou cet immeuble ou encore le lieu du sinistre. Vous présentez cette demande au greffier spécial du district territorialement compétent après l'avoir notifiée aux autres parties et au greffe du tribunal qui en était déjà saisi.

Si vous avez la capacité d'agir comme demandeur suivant les règles relatives au recouvrement des petites créances, vous pouvez également communiquer avec le greffier du tribunal pour que cette demande soit traitée selon ces règles. Si vous faites cette demande, les frais de justice du demandeur ne pourront alors excéder le montant des frais prévus pour le recouvrement des

domicile, residence or establishment in Québec, within 3 months after service;

- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the

petites créances.

Dans les 20 jours suivant le dépôt du protocole mentionné plus haut, le tribunal pourra vous convoquer à une conférence de gestion en vue d'assurer le bon déroulement de l'instance. À défaut, ce protocole sera présumé accepté.

Au soutien de sa demande introductive d'instance, la partie demanderesse invoque les pièces ci-jointes.

Ces pièces sont disponibles sur demande.

S'il s'agit d'une demande présentée en cours d'instance ou d'une demande visée par les Livres III, V, à l'exception de celles portant sur les matières familiales mentionnées à l'article 409, ou VI du Code, la préparation d'un protocole de l'instance n'est pas requise; toutefois, une telle demande doit être accompagnée d'un avis indiquant la date et l'heure de sa présentation.

orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

In support of the originating application, the plaintiff intends to use the herewith attached exhibits.

These exhibits are available on request.

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

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**(CLASS ACTION)**

No: 500-06-000849-170  
Court: Superior  
District of Montreal

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**Plaintiff**

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**-and-**

**DOCTOR'S ASSOCIATES LLC,**

**Defendants**

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***ORIGINATING DEMAND***

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Our file: 1702JN3519

AN-1795

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

(CLASS ACTION)  
**SUPERIOR COURT**  
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--and--  
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Defendants

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***LIST OF PLAINTIFF'S EXHIBITS***

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- EXHIBIT P-1: Excerpts of the division of the Florida Department of State website as well as the relevant articles of conversion;
- EXHIBIT P-2: Excerpts of the government of Alberta Corporate Registration System and Corporations Canada's Federal Corporation Information;
- EXHIBIT P-3: Different excerpts from the Canadian Trademarks Database on Subway trademarks;
- EXHIBIT P-4: An excerpt from the defendants' website in 2017;
- EXHIBIT P-5: The February 24, 2017, CBC News article and its report on DNA analysis;

Montreal, March 8<sup>th</sup>, 2021

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**ATTORNEY FOR THE CLASS**

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**(CLASS ACTION)**

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