

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS**

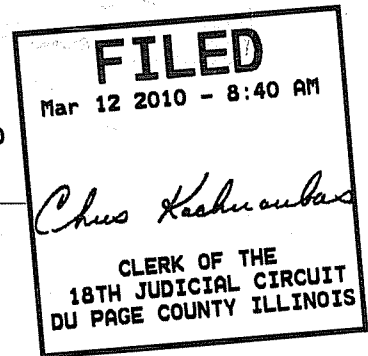
BARBARA ROMERO and)
ANDRES ROMERO, husband and)
Wife,)
)
Plaintiffs)
)
vs.)
)
NEEL SUBWAY, INC d/b/a)
Subway Restaurant, 1009 East)
Roosevelt Road, Lombard, DuPage)
County, Illinois,)
)
Defendant.)
)

2010L000360

Status Date: 08/09/10

Mgmt No. Date: 08/30/10

Assigned To: 2016



COMPLAINT AT LAW

COME NOW the plaintiffs, BARBARA ROMERO and ANDRES ROMERO, by and through their attorneys, MARLER CLARK, L.L.P., P.S. and NEWLAND, NEWLAND, AND NEWLAND, complaining of the defendant, NEEL SUBWAY, INC. d/b/a Subway Restaurant, 1009 East Roosevelt Road, Lombard, Illinois, and to allege and state as follows:

I.

PARTIES

1.1 The plaintiffs, Barbara Romero and Andres Romero, a married couple, reside in Lombard, DuPage County, Illinois.

1.2 At all times material, the defendant NEEL SUBWAY, INC., d/b/a Subway

Restaurant, owned and operated the Subway restaurant location at 1009 East Roosevelt Road, Lombard, DuPage County, Illinois. At all times material, the defendant carried on at that location in the ordinary course of its business the manufacture, preparation, service, distribution, and sale of food, including made-to-order, ready-to-eat sandwiches at that location.

II.

RELEVANT FACTS

2.1 THE OUTBREAK:

2.1.1 On March 4, 2010, the DuPage County Health Department closed the defendant's Subway restaurant located at 1009 East Roosevelt Road in Lombard, Illinois after receiving multiple reports of severe gastrointestinal illness from restaurant patrons.

2.1.2 DuPage County health officials have since confirmed at least twenty one cases of *Shigella* poisoning ("shigellosis") linked to food, including made-to-order, ready-to-eat sub sandwiches, manufactured and distributed to the public by the defendant. Of these twenty one confirmed cases, at least seven people, including the plaintiff Barbara Romero, have required hospitalization.

2.2 BARBARA ROMERO'S ILLNESS:

2.2.1 Barbara Romero, thirty years old, consumed a toasted chicken and onion teriyaki sandwich from the defendant's Subway restaurant located at 1009 East Roosevelt Road in Lombard, Illinois on February 23 and 25, 2010. She began to feel ill with vomiting, diarrhea, abdominal cramps, and a fever in the early morning hours of

Saturday, February 27, 2010.

2.2.2 Barbara Romero's symptoms became worse over the course of the day on Saturday, February 27. Finally, at approximately 3:00 PM, fearing that she might die if she did not get medical help, Mrs. Romero called her husband, who rushed home from an educational class to take Mrs. Romero to the emergency department at Adventist Hinsdale Hospital in Hinsdale, Illinois.

2.2.3 At the ER, Barbara Romero submitted a stool sample for testing, which ultimately tested positive for *Shigella sonnei*. She remained in the ER until approximately midnight on Saturday, February 27, 2010, during which time x-rays and a CT scan were done, and the attending physician began her on intravenous fluids and an antibiotic.

2.2.4 Barbara Romero was admitted to the regular hospital after her lengthy stay in the ER. She remained hospitalized until Tuesday, March 2, 2010, battling agonizingly severe gastrointestinal symptoms and high fevers.

2.2.5 At discharge, Barbara Romero was given a prescription for another antibiotic, and has since continued to suffer from gastrointestinal problems. She ultimately missed approximately a full week of work due to her illness.

III. COUNT I

(STRICT PRODUCT LIABILITY)

3.1. The plaintiffs incorporate the preceding paragraphs of this Complaint, by this reference, as if each and every of these paragraphs were set forth here in its entirety.

3.2. The defendant manufactured, distributed, and sold the adulterated food that injured the plaintiffs and caused plaintiff Barbara Romero to become infected with

Shigella.

3.3. The defendant manufactures food and drink products for sale to the public.

3.4. Food and drink that is contaminated with *Shigella* is unsafe when put to the use reasonably foreseeable considering the nature of the product. Namely, *Shigella* contaminated food and drink is unfit for human consumption.

3.5. The food that the plaintiff Barbara Romero purchased from the defendant was contaminated with *Shigella*. Ms. Romero's consumption of the contaminated food caused her to become infected with *Shigella* and caused the plaintiffs to suffer injuries as a direct and proximate result.

3.6. The food that the plaintiff purchased and consumed was contaminated with *Shigella* when it left the defendant's control.

3.7. The defendant is strictly liable to the plaintiffs for the harm proximately caused by its manufacture and sale of an unsafe and defective food product.

WHEREFORE, the plaintiffs, **BARBARA ROMERO and ANDRES ROMERO**, prays for judgment against the defendant, **NEEL SUBWAY, INC., d/b/a/Subway Restaurant**, in an amount in excess of the minimum amount allowed to establish jurisdiction in the Law Division of the Circuit Court of DuPage County, Illinois.

IV. COUNT II

(NEGLIGENCE)

4.1. The plaintiffs incorporate the preceding paragraphs of this Complaint, by this reference, as if each and every of these paragraphs were set forth here in its entirety.

4.2. The defendant designed, manufactured, distributed, and sold food and drink products that were adulterated with the *Shigella* bacteria, a potentially deadly

pathogen. These products, as a result of adulteration, were unfit for human consumption, and were not reasonably safe as designed, constructed, manufactured, and sold.

4.3. The defendant owed a duty to all persons who were the eventual consumers of its product, as well as all persons foreseeably at risk of secondary transmission of disease, to manufacture and sell food and drink that was safe to eat, that was not adulterated with potentially deadly pathogens, like *Shigella*, and that was not in violation of applicable food and safety regulations.

4.4. The defendant owed a duty to all persons who were the eventual consumers of its product, as well as all persons foreseeably at risk of secondary transmission of disease, to maintain its premises in a sanitary and safe condition so that no one eating food produced at the defendant's premises would be exposed to, or infected by, a potentially deadly pathogen, like *Shigella*.

4.5. The defendant breached the duties it owed to persons who were the eventual consumers of its product, as well as all persons foreseeably at risk of secondary transmission of disease, by committing the following acts and omissions of negligence:

4.5.1 Failed to adequately maintain or monitor the sanitary conditions of its food, drink, water, premises, and employees;

4.5.2 Failed to properly operate the locations where it manufactured its food in a safe, clean, and sanitary manner;

4.5.3 Failed to prevent the transmission of *Shigella* from its food, drink, water, premises, or employees to the ultimate consumers of its products, and those foreseeably at risk of secondary transmission of disease;

4.5.4 Failed to properly train its employees and agents how to prevent

the transmission of *Shigella* on its premises, or in its food, drink and water;

4.5.5 Failed to properly supervise its employees and agents to prevent the transmission of *Shigella* on its premises, or in its food, drink and water;

4.5.6 Manufactured and sold adulterated food in violation of 410 ILCS 620/3.2;

4.5.7 Stored, offered, and delivered food in violation of 410 ILCS 620/3.1 and 410 ILCS 620/3.4;

4.5.8 Failed to maintain its premises in a clean, sanitary, and healthful manner in violation of 410 ILCS 650/1 and 410 ILCS 650/2; and

4.5.9 Failed to properly and carefully select and monitor the entities from which it purchased and received raw materials used in the production of the its products.

4.6. The plaintiffs were injured and sustained personal injury and damages as the proximate result of the defendant's negligent acts and omissions, as set forth above.

WHEREFORE, the plaintiffs, **BARBARA ROMERO and ANDRES ROMERO**, prays for judgment against the defendant, **NEEL SUBWAY, INC., d/b/a/Subway Restaurant**, in an amount in excess of the minimum amount allowed to establish jurisdiction in the Law Division of the Circuit Court of DuPage County, Illinois.

V. COUNT III

(BREACH OF WARRANTY)

5.1. The plaintiffs incorporate the preceding paragraphs of this Complaint, by this reference, as if each and every of these paragraphs were set forth here in its entirety.

5.2. By offering food for sale to the general public, the defendant expressly

warranted that such food was safe to eat, that it was not adulterated with a deadly pathogen, and that the food had been safely prepared under sanitary conditions.

5.3. By offering food for sale to the general public, the defendant also impliedly warranted that such food was safe to eat, that it was not adulterated with a deadly pathogen, and that the food had been safely prepared under sanitary conditions.

5.4. The defendant breached its express and implied warranties with regard to the food it manufactured and that was ultimately consumed by Barbara Romero.

5.5. The plaintiffs suffered personal injury and damages as a foreseeable consequence of the defendant's breach of warranties, as set forth above, and are thus entitled to recover for all actual, consequential, and incidental damages that flow directly and in a foreseeable fashion from these breaches.

WHEREFORE, the plaintiffs, **BARBARA ROMERO and ANDRES ROMERO**, prays for judgment against the defendant, **NEEL SUBWAY, INC., d/b/a/Subway Restaurant**, in an amount in excess of the minimum amount allowed to establish jurisdiction in the Law Division of the Circuit Court of DuPage County, Illinois.

Respectfully submitted,

BARBARA ROMERO and ANDRES
ROMERO,

By: _____
One of Their Attorneys

Gary A. Newland
NEWLAND, NEWLAND & NEWLAND
121 S. Wilke Road, Ste. 101
Arlington Hts, IL 60005
Ph: 847-797-8000
Fax: 847-797-9090
Attorney No. 24954

And Co-Counsel (pending admission *pro hac vice*)
R. Drew Falkenstein
MARLER CLARK, LLP, PS
6600 Bank of America Tower
701 Fifth Ave.
Seattle, WA 98104
Ph: 206-346-1888
Fax: 206-346-1898

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

BARBARA ROMERO and)
ANDRES ROMERO, husband and)
Wife,)
)
Plaintiffs)

vs.)

NEEL SUBWAY, INC d/b/a)
Subway Restaurant, 1009 East)
Roosevelt Road, Lombard, DuPage)
County, Illinois,)
)
Defendant.)

No. _____

RULE 222 AFFIDAVIT

BARBARA ROMERO and ANDRES ROMERO, being first duly sworn on oath
depose and state as follows:

1. That we are the plaintiffs in the above captioned matter;
2. After investigating the facts which form the subject matter of this action we
are seeking compensatory damages in excess of \$50,000.00.



Gary A. Newland

Gary A. Newland
Newland, Newland & Newland
121 S. Wilke Road, Suite 101
Arlington Heights, IL 60005
Ph: (847) 797-8000
Attorney No. 24954

And Co-Counsel (pending admission *pro hac vice*)

R. Drew Falkenstein

MARLER CLARK, LLP, P.S.

6600 Bank of America Tower

701 Fifth Ave.

Seattle, WA 98104

T: 206-346-1888

F: 206-346-1898