

KATHY WARD

From: STEVEN WEINBERG <sweinberg@DanaPoint.org>
Sent: Monday, February 06, 2012 6:13 PM
To: steven@peddlermanagement.com
Subject: FW: Legal objections to plastic bag ban; notice of intent to litigate
Attachments: STPB objections to Dana Point plastic bag ban.pdf; Exh. 1. University of Florida - burns.pdf; Exh. 2. Safety Facts on Scalding Injuries St. Francis.pdf; Exh. 3. Hot coffee case photos WARNING DISTURBING IMAGES.pdf; Exh. 4. Subway Soup Severely Burns Woman, Lawsuit Claims.pdf

From: Stephen L. Joseph
Sent: Monday, February 06, 2012 6:12:12 PM (UTC-08:00) Pacific Time (US & Canada)
To: SCOTT SCHOEFFEL; LARA ANDERSON; LISA BARTLETT; BILL BROUGH; STEVEN WEINBERG; jlitter@danapoint.org
Subject: Legal objections to plastic bag ban; notice of intent to litigate

To the City Manager and the City Council:

I have attached our legal objections to the proposed plastic bag ban.

The City of Dana point may not ban plastic bags at restaurants or any other food facility as such bans are preempted by state law, namely the California Retail Food Code.

We sued Santa Cruz County for banning plastic bags at restaurants and other food facilities.

Tomorrow morning (Tuesday), Santa Cruz County will be REPEALING its ordinance banning plastic bags at restaurants and other food facilities.

Further, the reusable bag definition in the draft ordinance is unconstitutional. It is inconsistent with the Los Angeles County and proposed Laguna Beach definitions and all other definitions of reusable bags adopted in city and county ordinances.

Please contact me if you are interested in discussing this matter. You might want to have the City Attorney contact me. Thank you.

(Please note that I tried to send an e-mail earlier but I am not sure if you received it. The PDF file of the objections letter attached to that e-mail contained an error.)

Regards,

Stephen L. Joseph, Counsel
SAVE THE PLASTIC BAG COALITION
350 Bay Street, Suite 100-328
San Francisco, CA 94133
Phone: (415) 577-6660
Fax: (415) 869-5380

Agenda Item No. 12
2/7/12

SAVE THE PLASTIC BAG COALITION

350 Bay Street, Suite 100-328
San Francisco, CA 94133
Phone: (415) 577-6660
Fax: (415) 869-5380
E-mail: savetheplasticbag@earthlink.net
Website: www.savetheplasticbag.com

February 6, 2012

City Manager
and City Council
City of Dana Point
33282 Street of the Golden Lantern
Dana Point, CA 92629

VIA E-MAIL

RE: Legal objections to (i) inclusion of restaurants and other food facilities in proposed carryout bag ordinance; and (ii) reusable bag definition; notice of intent to litigate

THE COALITION

Save The Plastic Bag Coalition (“STPB”) was formed in 2008. STPB’s membership includes (but is not limited to) companies and individuals engaged in the manufacture and distribution of plastic carryout bags and polyethylene reusable bags. They manufacture plastic carryout bags and polyethylene reusable bags that are marketed, sold, and/or distributed in Dana Point, including but not limited to plastic carryout bags provided to consumers by supermarkets, grocery stores, and food establishments (including but not limited to restaurants) in Dana Point.

In *Save the Plastic Bag v. City of Manhattan Beach* (2011), the California Supreme Court in a unanimous decision granted STPB standing to legally challenge plastic bag bans. The court stated: (<http://www.courtinfo.ca.gov/opinions/documents/S180720.PDF>)

Corporate purposes are not necessarily antithetical to the public interest.... Corporations [may] have particular expertise and thus may have an enhanced understanding of the public interests at stake.

STPB believes and contends that some environmental groups seeking to have plastic bags banned have used environmental myths, misinformation, exaggerations, and false statistics, and selective photography to promote their goal. Such groups are often driven by ideological motives excessive “green” zeal, rather than the facts.

Note: STPB is not, and has never been, connected with or financed by the American Chemistry Council or Progressive Bag Affiliates.

**THE CITY OF DANA POINT IS MISINFORMING
AND MISLEADING ITS CITIZENS**

Dana Point has produced the most inaccurate, biased, and dishonest “study” that we have ever seen.

The allegations about the so-called “Great Pacific Garbage Patch” have been debunked. Heal the Bay does not make the allegation any more saying that the term is “misleading.” Even Dr. Eriksen of the Algalita Marine Research Foundation now says it’s a media myth. Scripps and Oregon State University have been doing their utmost to try to prevent the myth from spreading. Their efforts are unwound every time a “study” like Dana Point’s is issued and appears to have credibility because it is issued by a city.

The allegation that it costs \$375 million to clean up and landfill discarded plastic bags is not true. That was the litter budget for the *entire state* for *all* kinds of litter. Plastic bags account for about 0.6% (six-tenths of one percent) of statewide litter.

You cite the South African report which is based on a report commissioned by the European paper manufacturers that studied *55lb animal feed distribution bags*, not plastic carryout bags. You do not mention these facts in your study.

You have cited virtually every myth and wild exaggeration put out there by extreme environmental groups, without any fact checking whatsoever.

There are so many inaccuracies in the “study” that it is pointless to try to address them. Clearly, the purpose of the study is to support a predetermined conclusion. The fact that we are not challenging the “study” should not be taken to mean that we agree with any part of it. If any of the members of the City Council are interested in learning the facts, we will be glad to sit down with them. They can also visit our website at www.savetheplasticbag.com.

At this point, we will focus on the legal objections regarding restaurant bags and the reusable bag definition.

FAILING TO IMPOSE A FEE OF PAPER BAGS IS A MISTAKE

Every jurisdiction that has banned plastic bags has imposed a fee on paper bags, except for the City of Manhattan Beach ordinance passed in 2008. We have no doubt that Manhattan Beach would impose a fee on paper bags if it were considering an ordinance today. Los Angeles County imposed a 10-cent fee on paper bags. San Francisco is expected to place a 10-cent fee on paper bags on February 7, 2012.

Dana Point’s proposal to provide no disincentive whatsoever for consumers to take paper bags is environmentally irresponsible. Despite the *incorrect* allegations in your study about the environmental impacts of plastic versus paper bags, including your reliance on a study by the paper industry about *55lb animal feed distribution bags*, paper bags are *far* worse for the environment than plastic bags.

THE RESTAURANT BAG SAFETY ISSUE

The draft ordinance bans plastic bag distribution by “restaurants” and other retailers providing prepared food items. STPB objects to the inclusion of such establishments in the ban.

Food establishments sell freshly cooked foods that may contain extremely hot liquid, grease, oil, sauce, or soup. Plastic is obviously safer than paper for transporting hot and liquid foods.

- Plastic is a waterproof and greaseproof material. Paper is not.
- Plastic bag handles can be tightly tied. Paper bags cannot be tied at the top. Liquids are far less likely to seep out of tied plastic bags. Chinese food is often placed in cardboard containers that are placed in plastic carryout bags that are tied at the top to prevent hot soups and juices from spilling and causing scalding or burns.
- When liquids spill inside a paper bag, the bag can break. That does not happen to a plastic bag.
- Plastic bags may be transparent. Paper bags cannot be transparent. It may be important for consumers to be able to see what is inside a bag without opening it, especially if there are hot liquids or grease that could cause scalding or burns.
- Some types of containers do not fit well in paper bags, which create a spillage risk if the container is ill-fitted to the bag. Whereas plastic bags conform to the size of the container, paper bags do not. The bottom of paper bags is generally rectangular shaped which doesn't work when you have a standard, large square container.
- Checkout bags from food establishments are often opened in moving cars or buses, so proper packaging is essential. One can imagine the impact on a young child of hot liquid or hot oil seeping or spilling from a paper bag in a vehicle onto his or her legs.

The Burn Center at the University of Florida states: **(Exh. 1)**

Examples of hot liquids which can cause burns include hot water, coffee, grease and hot soup.

The Burn Center at Saint Francis Memorial Hospital in San Francisco states as follows on its website: **(Exh. 2)**

Hot liquids can cause life threatening burn injuries and are the leading cause of burn injuries in children under the age of 4 years. The experts in burn treatment at Saint Francis Memorial Hospital's Both Burn Center want you to know:

Scalds and burn accidents frequently occur when parents or caregivers are in a hurry, angry, or under a lot of pressure or stress

Coffee, tea, soup and hot tap water can be hot enough to cause serious burn injury...

60-70% of all pediatric patients seen in the Bothin Burn Center have a scald injury.

The lady who sued in the McDonald's hot coffee case was burned so severely on her thighs and legs that her doctors didn't think she would live. If you watch the full movie about the hot coffee case, you will see horrific photographs of her injuries. <http://hotcoffeethemovie.com/>.

PHOTOGRAPHS OF THE PLAINTIFF'S INJURIES CAUSED BY THE HOT COFFEE SPILL ARE CONTAINED IN EXH. 3. THEY MAY CAUSE DISTRESS TO PEOPLE SENSITIVE TO SUCH IMAGES.

Her cotton sweatpants absorbed the coffee and held it against her skin, scalding her thighs, buttocks, and groin. She was taken to the hospital where it was determined that she had suffered third-degree burns on 6% of her skin and lesser burns over 16%. She remained in the hospital for eight days while she underwent skin grafting. During this period, she lost 20 pounds (nearly 20% of her body weight), reducing her down to 83 pounds. Two years of medical treatment followed.

A jury awarded her \$200,000 in compensatory damages, which was then reduced by 20% to \$160,000. In addition, they awarded her \$2.7 million in punitive damages. The judge reduced the punitive damages to \$480,000, three times the compensatory amount, for a total of \$640,000. The decision was appealed by both McDonald's and the plaintiff, but the parties settled out of court for an undisclosed amount less than \$600,000.

From 1982 to 1992, McDonald's received more than 700 reports of people burned by its coffee to varying degrees of severity and had settled claims arising from scalding injuries for more than \$500,000.

Another incident is related in the following news story: **(Exh. 4)**

A Miami-Dade woman says that the soup she bought from Subway scalded her thigh, hip, and buttocks so extensively that she had to rush to the hospital -- and undergo emergency treatment for second-degree burns, according to a recently filed lawsuit.

On July 30, Claudia Vargas purchased soup and a sub from the Hollywood sandwich store, located at 6582 Taft St.

When she returned to her car, she tried to take the soup out of the

bag. But the container was too full and the lid was not attached correctly, so the soup spilled on her lap, Vargas says.

Because the soup was extremely hot, 23-year old Vargas says that she suffered from second-degree burns that will leave her with permanent scarring.

Richard Lydecker, the lawyer representing Subway, says that his client did nothing wrong.

“The investigation is still ongoing, but this soup was not any hotter than soup served normally,” Lydecker tells the Pulp. “There was nothing special about this soup.”

Lydecker insists that the soup was cooked and served at a reasonable temperature.

“I mean, soup is hot. And people want their soup hot. You're not supposed to spill it on yourself. My client just wanted to serve a good tasting, hot soup. He looks forward to exonerating himself in court.”

Still, Vargas stands by her claim, and insists that Subway was negligent in how it prepped, marketed, and served her the soup.

Medical records furnished to the Pulp by Vargas' representative confirm that Vargas had to go to the emergency room after the accident, where she was given antibiotics, a tetanus shot, and topical ointment for the wounds.

Vargas thinks that this could have been avoided if Subway hadn't served overly hot soup -- or if she'd had some kind of warning that the soup would be scalding and hazardous.

Vargas is suing Subway, in hopes of getting money for her medical bills.

A plastic surgeon who examined Vargas shortly after the accident has said that chances for full recovery are grim: The burns will take at least 6 months to heal. And, “despite laser intervention, the patient will always have some residual scarring,” medical documents note.

A restaurant owner has the legal right and duty to take reasonable steps to prevent such injuries. It is for the restaurant owner, not a governmental entity, to decide whether a plastic bag is the safest for its food. Denying restaurant owners this discretion could have disastrous consequences. It just takes one tragic incident!

CLAUDIA VARGAS'S HOT SOUP BURNS



CALIFORNIA STATE LAW PREEMPTION

The State of California regulates food safety in the California Retail Food Code. (Health and Safety Code Div. 104, Part 7.) Health and Safety Code § 113705 states as follows:

Legislative intent to preempt local standards

The Legislature finds and declares that the public health interest requires that there be uniform statewide health and sanitation standards for retail food facilities to assure the people of this state that the food will be pure, safe, and unadulterated. Except as provided in Section 113709, it is the intent of the Legislature to *occupy the whole field* of health and sanitation standards for retail food facilities, and the standards set forth in this part and regulations adopted pursuant to this part shall be exclusive of all local health and sanitation standards relating to retail food facilities.

Health and Safety Code § 113709 states as follows:

Authority to establish local requirements

This part does not prohibit a local governing body from adopting an evaluation or grading system for food facilities, from prohibiting any type of food facility, from adopting an employee health certification program, from regulating the provision of consumer toilet and handwashing facilities, or from adopting requirements for the public safety regulating the type of vending and the time, place, and manner of vending from vehicles upon a street pursuant to its authority under subdivision (b) of section 22455 of the Vehicle Code.

Health and Safety Code § 113789 defines a “food facility” as follows:

- (a) “Food facility” means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following:
- (1) An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.
 - (2) Any place used in conjunction with the operations described in this subdivision, including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

(b) "Food facility" includes permanent and nonpermanent food facilities, including, but not limited to, the following:

- (1) Public and private school cafeterias.
- (2) Restricted food service facilities.
- (3) Licensed health care facilities.
- (4) Commissaries.
- (5) Mobile food facilities.
- (6) Mobile support units.
- (7) Temporary food facilities.
- (8) Vending machines.
- (9) Certified farmers' markets, for purposes of permitting and enforcement pursuant to Section 114370.
- (10) Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.

[§113789(c) contains exclusions from the above definition.]

Only the state Legislature, not a city or county, may enact a law regarding whether restaurants and other food facilities can take actions that affect whether the way food is served and provided is "sanitary" or "safe" or "healthy."

Health and Safety Code § 113914 defines "single-use" articles as including single-use "carry-out utensils" and "bags" and "wrappers." The statute uses the word "bags," leaving no room for doubt.

- § 114081 states: "Single-use articles [including bags] shall not be reused."
- § 114130.2 states: "**Materials** that are used to make single-use articles [including bags] shall not allow the migration of deleterious substances or impart colors, odors, or tastes to food, and shall be safe and clean."

As we can see, the Retail Food Code regulates the "material" from which bags are made and their "reuse."

The Retail Food Code also regulates how food is wrapped. For example, Health and Safety Code §114063(c) states that "French style, hearth-baked, or hard-cruste loaves and rolls shall be considered properly wrapped if contained in an open-end bag of sufficient size to

enclose the loaves or rolls.”

By banning restaurant plastic bags, the city would be implicitly and effectively determining that eliminating restaurant plastic bags is a sanitary, safe, and healthy food practice. **This determination is preempted by the Retail Food Code.** It is not covered by the exemptions in §113709.

In *California Grocers Assn. v. City of Los Angeles* (2011) 52 Cal.4th 177, the Supreme Court decided a case concerning the Retail Food Code preemption section. The court stated as follows:

Express field preemption turns on a comparative statutory analysis: What field of exclusivity does the state preemption clause define, what subject matter does the local ordinance regulate, and do the two overlap?

(*Id.* at 188.)

Purpose alone is not a basis for concluding a local measure is preempted. While we and the Courts of Appeal have occasionally treated an ordinance’s purpose as relevant to state preemption analysis, we have done so in the context of a nuanced inquiry into the ultimate question in determining field preemption: whether the **effect** of the local ordinance is in fact to regulate in the very field the state has reserved to itself.

(*Id.* at 190, emphasis added, footnote and citations omitted.)

The Supreme Court stated that “food transportation, storage, and preparation” and “food display and service” are among the subject matters preempted by the Retail Food Code. (*Id.* at 189.)

While the **purpose** of the proposed plastic bag ban at restaurants may be to protect the environment, the **effect** is to intrude into an area that the State of California has reserved to itself.

Based on the foregoing, STPB objects to the proposed ordinance as the banning of restaurant plastic bags is preempted and invalid.

CALIFORNIA RESTAURANT BAG BANS

The only jurisdictions in California that have banned restaurant plastic bags are Santa Cruz County and the City of Manhattan Beach.

We have sued Santa Cruz County to invalidate the ban on restaurant plastic bags. As a result of the lawsuit, **Santa Cruz County is repealing its restaurant plastic bag ban.** See news story about the Santa Cruz County restaurant ban repeal at:

http://www.santacruzsentinel.com/localnews/ci_19899518

We plan to sue Manhattan Beach regarding its restaurant bag ban.

The City of Santa Monica banned all kinds of plastic carryout bags, except restaurant plastic bags. The City of Santa Monica stated:

Restaurants and other food vendors may provide single-use plastic carryout bags to customers only for the transportation of take-out food and liquids intended for consumption off of the food provider's premises. This exemption is included as a public health safeguard based on input from restaurant owners who expressed concern that some hot and liquid foods could leak from take-out containers and potentially cause paper bags to weaken and fail.

http://www.smgov.net/uploadedFiles/Departments/OSE/Business/Bag_Ban_Summary.pdf.

All other jurisdictions that have banned plastic bags have specifically excluded restaurant plastic bags, including but not limited to Los Angeles County, the City of Santa Monica, the City of San Jose, the City of Long Beach, and the City of Calabasas. Some cities and counties are proposing to ban restaurant plastic bags, but we will litigate to invalidate any such bans.

The City and County San Francisco may ban plastic bags. We have notified the City Attorney that we will sue the city to invalidate the ordinance of restaurant plastic bags are banned.

THE REUSABLE BAG DEFINITION IS UNCONSTITUTIONAL

The draft ordinance contains the following definition of a reusable bag that would be unique to Dana Point.

“Reusable bag” means a bag with handles that is specifically designed and manufactured for multiple reuse and is made of cloth or other machine washable fabric, including but not limited to bags made from polyethylene terephthalate polymer (“PET”) or recycled PET (“RPET”).

STPB objects as the proposed definition is unconstitutional for the following reasons:

1. Void for vagueness

The draft ordinance is a penal statute that is void for vagueness. Legislation “may run afoul of the Due Process Clause because it fails to give adequate guidance to those who would be law-abiding, to advise defendants of the nature of the offense with which they are charged, or to guide courts in trying those who are accused.” (*Musser v. Utah*, 333 U.S. 95, 97 (1948).) “Men of common intelligence cannot be required to guess at the meaning of [an] enactment.” (*Winters*

v. New York, 333 U.S. 507, 515-16 (1948). “[T]he void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.” (*Kolender v. Lawson* (1983) 461 U.S. 352, 357.)

The term “machine washable fabric” is vague. It is made even more vague because the example given, PET bags, are not “machine washable” and are not “fabric.”

2. Commerce clause

The proposed definition of reusable bags is different than the definition in Los Angeles County and everywhere else that has banned or is proposing to ban plastic bags. Here is the Los Angeles County definition:

“Reusable bag” means a bag with handles that is specifically designed and manufactured for multiple reuse and meets all of the following requirements:

which for purposes of this subsection, means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet; (2) has a minimum volume of 15 liters; (3) is machine washable or is made from a material that can be cleaned or disinfected; (4) does not contain lead, cadmium, or any other heavy metal in toxic amounts, as defined by applicable state and federal standards and regulations for packaging or reusable bags; (5) has printed on the bag, or on a tag that is permanently affixed to the bag, the name of the manufacturer, the location (country) where the bag was manufactured, a statement that the bag does not contain lead, cadmium, or any other heavy metal in toxic amounts, and the percentage of postconsumer recycled material used, if any; and (6) if made of plastic, is a minimum of at least 2.25 mils thick.

(1) has a minimum lifetime c

This is the definition used throughout Southern California and is consistent with the statewide definition in AB 2449. **Note that neighboring City of Laguna Beach is proposing to copy the Los Angeles County definition in its proposed ordinance.**

Reusable bags are distributed by statewide and interstate distribution networks. Different definitions in different cities and counties hinder and impose an excessive burden interstate commerce, especially with respect to franchises and chain stores. There is no justification for a different (and vague) definition in Dana Point that would justify the excessive hindrance to interstate commerce.

If the burden imposed on interstate commerce is clearly excessive in relation to the putative local benefits, it is invalid under the Commerce Clause of the U.S. Constitution. If a legitimate local purpose is found, then the question becomes one of degree. The extent of the burden that will be tolerated depends on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities. (*Pike v. Bruce Church*,

397 U.S. 137, 142 (1970).)

The proposed definition in the draft ordinance violates the Commerce Clause. Adopting the Los Angeles County definition would avoid an unconstitutional impact on interstate commerce.

CONCLUSION

We urge the city not to ban plastic bags. However, if the city does decide to ban plastic bags, then restaurants and other food facilities covered by the California Retail Food Code must be exempted and the reusable bag definition must be changed to conform to the Los Angeles County definition. STPB will litigate to enforce the objections herein and have the entire ordinance invalidated.

No rights are waived by any statement or omission herein. All rights are reserved.

I request that you send me by e-mail and regular mail any future public notices regarding the proposed ordinance and any public hearings.

Dated: February 6, 2012



STEPHEN L. JOSEPH
Counsel, Save The Plastic Bag Coalition


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Safety Facts on Scalding Injuries

Hot Liquids Burn Like Fire

Hot liquids can cause life threatening burn injuries and are the leading cause of burn injury. The experts in burn treatment at Saint Francis Memorial Hospital's Bothin Burn Center warn:

- Scalds and burn accidents frequently occur when parents or caregivers are in a hurry or under stress
- Coffee, tea, soup and hot tap water can be hot enough to cause serious burn injuries
- Scald and steam burns are often associated with microwave oven use
- When tap water reaches 140 degrees Fahrenheit, it can cause a third degree (full thickness) burn
- Hot tap water accounts for 17% of all childhood scald hospitalizations
- 60-70% of all pediatric patients seen in the Bothin Burn Center have a scald injury

The Bothin Burn Center staff recommends you take the following steps to prevent scald injuries:

- Provide continuous supervision of children in the kitchen and bathroom
- Keep all hot liquids at a safe distance from children - keep pot handles turned toward the wall
- Test all heated liquid/food before giving it to a child or placing it within his/her reach
- Never hold a child while drinking a hot liquid
- Purchase appliances with short cords, and keep all cords from dangling over counter
- Before placing a child into the bath or getting into the tub yourself, test the temperature of the water for several seconds. The temperature should not exceed 120 degrees Fahrenheit (delicate skin burns more quickly than an adult's).
- Never leave a child unattended in the bathroom or tub
- Use extreme caution bathing a child in a kitchen sink with a single-lever faucet - turn the faucet off before adjusting the temperature
- Adjust your thermostat setting on your water heater to produce a water temperature of 120 degrees Fahrenheit

HOT WATER CAUSES THIRD DEGREE BURNS:

- in 1 second at 156 degrees
- in 2 seconds at 149 degrees
- in 5 seconds at 140 degrees
- in 15 seconds at 133 degrees

If you have questions regarding burn care or treatment, call the Bothin Burn Center staff at (415) 776-2222.



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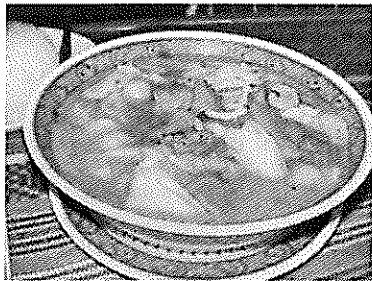
By Matthew Hendley

Law Subway Soup Severely Burns Woman, Lawsuit Claims

By Victoria Bekiempis Sat., Sep. 10 2011 at 10:15 AM Categories: Law

Comments (15)

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Claudia Vargas, 23, says she was burned by soup.

A Miami-Dade woman says that the soup she bought from Subway scalded her thigh, hip, and buttocks so extensively that she had to rush to the hospital -- and undergo emergency treatment for second-degree burns, according to a recently filed lawsuit.

On July 30, Claudia Vargas purchased soup and a sub from the Hollywood sandwich store, located at 6582 Taft St.

When she returned to her car, she tried to take the soup out of the bag. But the container was too full and the lid was not attached correctly, so the soup spilled on her lap, Vargas says.

Because the soup was extremely hot, 23-year old Vargas says that she suffered from second-degree burns that will leave her with permanent scarring.

The Pulp has acquired a photo of Vargas' injuries, but has posted it after the jump because of the disturbing nature of the image.

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Vargas' burns.

Richard Lydecker, the lawyer representing Subway, says that his client did nothing wrong.

"The investigation is still ongoing, but this soup was not any hotter than soup served normally," Lydecker tells the Pulp. "There was nothing special about this soup."

Lydecker insists that the soup was cooked and served at a reasonable temperature.

"I mean, soup is hot. And people want their soup hot. You're not supposed to spill it on yourself. My client just wanted to serve a good tasting, hot soup. He looks forward to exonerating himself in court."

Still, Vargas stands by her claim, and insists that Subway was negligent in how it prepped, marketed, and served her the soup.

Medical records furnished to the Pulp by Vargas' representative confirm that Vargas had to go to the emergency room after the accident, where she was given antibiotics, a tetanus shot, and topical ointment for the wounds.

A plastic surgeon who examined Vargas shortly after the accident has said that chances for full recovery are grim: The burns will take at least 6 months to heal. And, "despite laser intervention, the patient will always have some residual scarring," medical documents note.

Vargas thinks that this could have been avoided if Subway hadn't served overly hot soup -- or if she'd had some kind of warning that the soup would be scalding and hazardous.

Vargas is suing Subway, in hopes of getting money for her medical bills.

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Tags:
lawsuit, sandwiches, soup, stew, Subway

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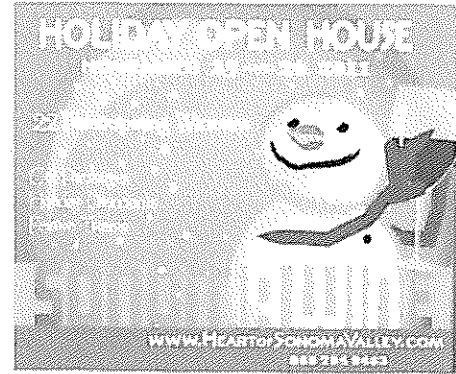
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Types of Burns

The following are common types of burns:

- chemical burns
- electrical burns
- thermal burns

Chemical burns

Chemical burns are tissue damage caused by exposure to a strong acid or alkali, such as phenol, creosol, mustard gas or phosphorus.

Chemical burns result from the conversion of chemical energy to thermal energy. Emergency treatment includes washing the surface of the wound with large amounts of water to remove the chemical. As long as the chemical is in contact with the skin, the burn usually continues to progress.

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Electrical burns

An electrical injury occurs when an electrical current from an external source runs through the body as heat. Electrical burns are the result of tissue damage from heat of up to 5,000 degrees Celsius generated by an electric current. The heat causes extensive damage and usually follows the current, but it can damage other structures such as muscle and bone. This electrical current usually flows along the blood vessels and nerves.

This type of electrical current can cause the following three burns:

- contact burn injury
- flash burn
- flame burn

The points of entrance and exit on the skin are burned, along with the muscle and subcutaneous tissues through which the current passes. It is possible that fatal cardiac arrhythmia may result. In this situation contact your local burn center or emergency room immediately.

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Make an Appointment

To make a new patient appointment or find out more information about the Burn Center at Shands at the University of Florida, please call 352.265.0943 .

You may also email our Consultation Center (consult@shands.ufl.edu) or use our secure online form.

Thermal burns

Thermal burns are the most common types of burns. These often occur from residential fires, automobile accidents, playing with matches, improperly stored gasoline, space heaters, electrical malfunctions, or arson.

Flame burns are often deep burns, causing partial- to full-thickness burns.

Hot liquid burns are not as deep as flame burns, but they can still produce deep burns. Examples of hot liquids which can cause burns include hot water, coffee, grease and hot soup.

Burns from **touching hot objects** vary in depth, since people's reflexes cause them to react quickly. These burns can be caused by touching a stove, skillet or grill.

Flash injuries are burns that involve exposed parts of the skin and vary in depth depending on the proximity on the flash and the intensity. Automobile, gas tank and airplane explosions are causes of flash burns.

Sunburns can be extremely painful, but the pain is relieved as the wound is soothed and injury progression is stopped. Sunburns are usually superficial burns or first-degree burns.

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WARNING

**THE FOLLOWING PAGES
CONTAIN PHOTOGRAPHS
OF THE PLAINTIFF'S
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DISTURBING AND MAY
CAUSE DISTRESS TO PEOPLE
SENSITIVE TO SUCH
IMAGES.**