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Superior Court of California,
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Clerk of the Superior Court
By Georgina Ramirez, Deputy Clerk

5 Attorneys for Plaintiff

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ORANGE

11 Judge Thierry Patrick Colaw

12 CYNTIA ERICKSON, individually, and
13 on behalf of other members of the
general public similarly situated,

14 Plaintiffs,

15 vs.

16 V & J SUSHI, INC., a California
17 Corporation doing business as Maki
Yaki Costa Mesa; IN WON KO; and
18 DOES 1 TO 10,

19 Defendants.

Case No. : 30-2015-00801352-CU-BT-CXC

CLASS ACTION COMPLAINT: CX-105

(1) UNFAIR, UNLAWFUL, AND DECEPTIVE
BUSINESS PRACTICES (Bus. & Prof. Code § 17200,
et seq.);

(2) DECEPTIVE ADVERTISING (Bus. & Prof. Code
§ 17500, *et seq.*);

(3) VIOLATION OF THE CONSUMER LEGAL
REMEDIES ACT (Civil Code § 1750 *et seq.*);

REQUESTS FOR DAMAGES, RESTITUTION,
INJUNCTION, PUNITIVE DAMAGES, ATTORNEY
FEES AND OTHER EQUITABLE RELIEF

1 Plaintiff alleges on information and belief as follows:

2 **INTRODUCTION**

3 1. On October 22, 2014, Cyntia Erickson ("Plaintiff") purchased sushi from V & J Sushi,
4 Inc., doing business as Maki Yaki Costa Mesa, located in Orange County, California. Maki Yaki Costa
5 Mesa is a restaurant. Plaintiff ordered certain items off the restaurant menu including fish labeled
6 "White Tuna". Plaintiff discovered through a species identification test that the "White Tuna" was
7 actually escolar, a completely different family of fish.

8 2. In Won Ko intentionally participated in the deceptive mislabeling of escolar by the
9 combination of: (1) ratifying the restaurant menu that omits the word escolar and (2) approving
10 purchases of escolar with knowledge that the restaurant menu omitted the word escolar and called it
11 "White Tuna."

12 **PARTIES**

13 3. Plaintiff is an individual and is suing both in an individual capacity and on behalf of all
14 others similarly situated.

15 4. Defendant V & J Sushi, Inc. is a California corporation with its principal place of
16 business in Orange County, California, doing business as Maki Yaki Costa Mesa.

17 5. Defendant In Won Ko is the owner of V & J Sushi, Inc. and is an individual.

18 6. The true names and capacities, whether individual, corporate, associate, or otherwise, of
19 defendants sued herein as Does 1 through 10 are unknown to Plaintiff, who therefore sues the Doe
20 defendants by such fictitious names. Plaintiff will amend this complaint to show true names and
21 capacities when they have been ascertained. "Defendants" will refer to V & J Sushi, Inc., In Won Ko,
22 and Does 1 through 10.

23 **CLASS ACTION ALLEGATIONS**

24 7. Class Definition. Plaintiff brings this suit as a class action pursuant to Business and
25 Professions Code section 17203 and Code of Civil Procedure section 382 as well as Civil Code section
26 1781, on behalf of Plaintiff and all other similarly-situated persons as members of the "Proposed Class"
27 that is defined as follows:

28 All persons who reside in California, paid any of the Defendants for "White Tuna", and

1 without their knowledge were instead served escolar (*lepidocybium flavobrunneum*) by any
2 of the Defendants within the last four years of the date of the filing of this Complaint.

3 8. Numerosity. The Proposed Class is so numerous and dispersed throughout California
4 that joinder of all members is impracticable. While the precise number of the proposed class members
5 has not been determined at this time, Plaintiff is informed and believes that at least hundreds of
6 misleading fish sales were made by Defendants. Proposed Class members can be identified by, *inter*
7 *alia*, records maintained by Defendants.

8 9. Common Questions of Fact and Law. Common questions of fact and law exist as to all
9 members of the Class and predominate over any questions affecting solely individual members of the
10 Proposed Class. Among the questions of fact and law that predominate over any individual issues are:

- 11 A. Whether Defendants violated Bait Advertisement 16 C.F.R. § 238, 238.1 (1967),
12 Cal. Bus. & Prof. Code § 17500 *et seq.* ("FAL"), Cal. Civil Code § 1572, Cal. Civil
13 Code § 1573, Cal. Civil Code § 1770 *et seq.*;
- 14 B. Whether Defendants' advertisements and other statements were likely to mislead
15 within the meaning of Bus. and Prof. Code § 17200, *et seq.* ("UCL") and the FAL;
- 16 C. Whether Defendants' practice was "unfair" within the meaning of the UCL;
- 17 D. Whether Class members lost money or property as a result of Defendants' violations
18 of section 17200 or 17500;
- 19 E. Whether Defendants' actions violated Civil Code § 1770(a)(9);
- 20 F. Whether Class members lost money or property as a result of Defendants' violations
21 of Civil Code § 1770(a)(9); and
- 22 G. Whether Defendants' made material misrepresentations to Plaintiff and Proposed
23 Class members.

24 10. Typicality. The claims of the named Plaintiff are typical of the claims of the Proposed
25 Class. Plaintiff and all members of the Proposed Class sustained loss of money arising out of and
26 caused by Defendants' unlawful, unfair, and fraudulent business acts and practices and deceptive
27 advertising in the marketing and sale of their mislabeled seafood to consumers as alleged herein.

28 11. Adequacy of Representation. Plaintiff will fairly and adequately represent and protect

1 the interests of the Proposed Class. Counsel who represents Plaintiff is competent and has experience
2 litigating class actions.

3 12. Superiority of Class Action. A class action is superior to other means for the fair and
4 efficient adjudication of this controversy. Individual joinder of all Proposed Class members is not
5 practicable, and questions of law and fact common to the Proposed Class predominate over any
6 questions affecting only individual members of the Proposed Class. Each member of the Proposed
7 Class has been damaged and is entitled to recover from Defendants' unlawful, unfair, and fraudulent
8 business acts and practices and deceptive advertising in their marketing and sale of seafood.

9 Class action treatment will allow those similarly situated to Plaintiff to litigate their claims in
10 the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is
11 unaware of any difficulties that are likely to be encountered in the management of this action that
12 would preclude its maintenance as a class action.

13 **FIRST CAUSE OF ACTION**

14 (Against All Defendants for Violations of Bus. & Prof. Code § 17200)

15 13. Plaintiff incorporates by reference each paragraph above as though set forth in full here.

16 14. Beginning at an exact date unknown to Plaintiff but at least four years prior to the filing
17 date of this Complaint, Defendants have committed acts of unfair competition, as defined by Business
18 and Professions Code section 17200, by intentionally selling escolar as "White Tuna."

19 15. On October 22, 2014, Plaintiff ordered "White Tuna" from the menu. Defendants
20 served Plaintiff escolar without Plaintiff's knowledge and charged Plaintiff for "White Tuna."

21 16. These acts and practices, as described in the paragraph above, violate Business &
22 Professions Code section 17200 in the following respects:

23 A. Defendants' policy/practice of selling cheaper mislabeled seafood to the Proposed
24 Class instead of what they actually ordered from Defendants violates Bait
25 Advertisement 16 C.F.R. § 238, 238.1 (1967), Misleading Advertisement Cal. Bus.
26 & Prof. Code § 17500, Cal. Civil Code § 1770(a)(9) and, consequently, constitutes
27 an unlawful business act or practice within the meaning of Cal. Business and
28 Professions Code section 17200.

- 1 B. The harm to Plaintiff and the Proposed Class outweighs the utility of Defendants’
2 policy/practice and, consequently, Defendants' practice of selling cheaper mislabeled
3 seafood to the Proposed Class instead of what they actually ordered from
4 Defendants' menu constitutes an unfair business act of practice within the meaning
5 of Business and Professions Code section 17200.
- 6 C. Defendants' practice/policy of selling cheaper mislabeled seafood to consumers
7 instead of what they actually ordered from Defendants' menu is likely to mislead the
8 general public and, consequently, constitutes a fraudulent business act or practice
9 within the meaning of Business and Professions Code section 17200.
- 10 D. Defendants' acts of untrue and misleading advertising, as more fully set forth below,
11 are incorporated herein by this reference and are, by definition, violations of
12 Business and Professions Code section 17200.

13 17. As a result of the acts above, Plaintiff and Proposed Class members have lost money or
14 property and suffered injury in fact. Defendants received and continue to hold profit gained from
15 serving a different lower priced seafood in place of what Proposed Class members actually ordered.

16 **SECOND CAUSE OF ACTION**

17 (Against All Defendants for Violations of Bus. & Prof. Code § 17500)

18 18. Plaintiff incorporates by reference the paragraphs above as though set forth in full here.

19 19. Beginning at an exact date unknown to Plaintiff but at least four years prior to the filing
20 date of this Complaint, Defendants have committed acts of untrue and misleading advertising, as
21 defined by Business and Professions Code section 17500, with the intent to induce members of the
22 public to enter into contracts for the purchase of seafood that Defendants knew, or by the exercise of
23 reasonable care should have known, was different seafood from what Defendants advertised.

24 20. Plaintiff relied on Defendants’ advertisement of “White Tuna” and would not have
25 ordered had Plaintiff known Defendants would serve Plaintiff escolar.

26 21. The false or misleading advertisements include, but are not limited to, Defendants'
27 menu.

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1 **THIRD CAUSE OF ACTION**

2 (Against All Defendants for Violations of California Civil Code § 1770)

3 22. Plaintiff incorporates by reference the paragraphs above as though set forth in full here.

4 23. Beginning at an exact date unknown to Plaintiff but at least since three years from the
5 filing of this complaint, Defendants intentionally sold seafood to consumers using unfair or deceptive
6 business practices, as defined by Civil Code section 1770(a)(9), by deceptively or unfairly selling
7 escolar labeled on Defendants' menu as White Tuna to Plaintiff and the Proposed Class without
8 notifying those consumers of the switch.

9 24. The harm to Plaintiff and Proposed Class members outweighs the utility of Defendants'
10 policy/practice and, consequently, Defendants' practice of bait and switch sale of seafood constitutes a
11 violation of Civil Code section 1750 *et seq.*

12 25. As a result of the aforementioned acts, Plaintiff and Proposed Class members have lost
13 money or property and suffered injury in fact. Defendants' received and continue to hold profit gained
14 from serving a different and lower priced seafood in place of what Proposed Class members actually
15 ordered from Defendants' menu.

16 26. In accordance with section 1782(a) of the Consumer Legal Remedies Act ("CLRA"),
17 Plaintiff's counsel sent a demand letter to Defendants on January 15, 2015, by certified mail return
18 receipt requested, with notice of the alleged violation of the CLRA Civil Code section 1770(a)(9),
19 relating to the falsely labeled seafood.

20 27. Defendants responded to Plaintiff's demand letter, but failed to comply with the
21 reasonable requests of relief in Plaintiff's letter. Importantly, Defendants' actions were intentional and
22 fraudulent.

23 28. Defendants failed to provide appropriate relief for their violations of the CLRA within
24 30 days of receipt of Plaintiff's letter. Therefore, Plaintiff and the Proposed Class are entitled, under
25 Civil Code section 1780, to obtain relief.

26 29. Defendants' violations of Civil Code section 1750 *et seq.*, as described above, present a
27 continuing threat to members of the public in that future consumers of Defendants will continue to be
28 harmed by the Defendants' bait and switch tactics when they order a certain seafood and Defendants'

1 serve the consumer something else without notice.

2 30. Plaintiff and other members of the general public have no other adequate remedy of law
3 in that the Proposed Class may not receive restitution for Defendants' future bait and switch actions, as
4 described above.

5 WHEREFORE, Plaintiff prays for relief as set forth hereinafter.

6 **RELIEF DEMANDED**

7 Plaintiff prays for relief against all Defendants as follows:

8 1. Actual Damages - Pursuant to Civil Code section 1780(a)(1) and pursuant to the
9 equitable powers of this Court, Plaintiff prays that Defendants be ordered to restore to Plaintiff and the
10 Proposed Class actual damages caused by means of any act or practice declared by this Court to in
11 violation of Civil Code section 1770 *et seq.*

12 2. Restitution - Pursuant to Business and Professions Code sections 17203 and 17535,
13 Civil Code section 1780(a)(3), and the equitable powers of this Court, Plaintiff prays that the
14 Defendants be ordered to restore to the general public all funds acquired by means of any act or
15 practice declared by this Court to be unlawful or fraudulent or to constitute unfair competition under
16 Business and Professions Code section 17200 *et seq.*, or untrue or misleading advertising under section
17 17500 *et seq.* and Civil Code section 1780(a)(3).

18 3. Injunction - Pursuant to Civil Code section 1780(a)(2), Plaintiff prays for an order
19 enjoining the methods, acts, and practices described in this complaint.

20 4. Attorney Fees & Court Costs - For attorney fees and court costs pursuant to Civil Code
21 section 1780(e), Code of Civil Procedure section 1021.5 and any other legal basis as may be proven.

22 5. Punitive Damages - Pursuant to Civil Code section 1780(a)(4).

23 6. Other Relief - For such other relief as the Court may deem appropriate.

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26 DATED: July 29, 2015

27 /s/ Wade Miller

28 WADE MILLER
Attorney for Plaintiff