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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN DIEGO

10 MICHAEL SHAMES, individually and on
11 behalf of all others similarly situated;

12 Plaintiff,

13 v.

14 JACK IN THE BOX, INC., a Delaware
Corporation; AMSU FINANCIAL, INC., a
15 California Corporation; SYED IRFAN
AHMAD, INC., a California Corporation;
16 CALIFORNIA SUNRISE,
INCORPORATED, a California
17 Corporation; CEO FOODS, a California
Corporation; DESERT JACK, LLC, a
18 California Limited Liability Company;
19 DHILLON FOODS, INC., a California
Corporation; FORWES FOODS, INC., a
20 California Corporation; JIB
MANAGEMENT, INC., a California
21 Corporation; KIPER ENTERPRISES,
INC., a California Corporation; MRG
22 RESTAURANT GROUP, INC., a California
Corporation; FAROOQI RESTAURANT
23 MANAGEMENT, INC., a California
Corporation; NOR-CAL VENTURE
24 GROUP, INC., a California Corporation;
25 and DOES 1-100, inclusive,

26 Defendants.
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CASE NO.

CLASS ACTION

COMPLAINT

1. Violation of the Consumers Legal Remedies Act – Class Claim
2. Unlawful, Unfair, Fraudulent Business Acts & Practices – Class Claim

1 Plaintiff MICHAEL SHAMES, individually and on behalf of all others similarly-
2 situated, alleges as follows on information and belief, formed after an inquiry reasonable
3 under the circumstances:

4 INTRODUCTION

5 1. Defendant Jack in the Box, Inc., and its franchisees' leading food product
6 is the Jumbo Jack sandwich. The Jumbo Jack is available both as part of a "Combo"
7 meal, with fries and a drink, or separately as a sandwich only on the restaurant's Value
8 Menu. The sandwich can also be ordered as a sandwich only from the "Combo" meal.
9 The "Combo" meal price for the "sandwich only" exceeds the Value Menu price for the
10 same product.

11 2. When customers purchase a Jumbo Jack and add cheese to their
12 sandwich, the price charged to customers automatically defaults to the higher-priced
13 "Combo – Sandwich Only" resulting in systematic overcharges of between \$.10-\$.25 per
14 Jumbo Jack sandwich. Defendant Jack in the Box, Inc., created the software program
15 used by its own stores and those of its franchisees which automatically converts the
16 Value Menu pricing to a "Jumbo Cheese" item priced at a higher cost. By falsely and
17 systematically overcharging customers who purchase Jumbo Jack sandwiches,
18 Defendants violated California's consumer protection statutes.

19 3. Plaintiff Michael Shames is one of thousands of California residents who,
20 in the three years prior to the filing of this action, purchased Jumbo Jack sandwiches
21 with cheese, and instead of being charged the Value Menu price were charged for the
22 higher-priced "Combo – Sandwich Only." The conduct herein described violates, *inter*
23 *alia*, the Consumers Legal Remedies Act ("CLRA") (Civil Code § 1750, *et seq.*) and the
24 Unfair Competition Law ("UCL") (Bus. & Prof. Code § 17200, *et seq.*).

25 JURISDICTION AND VENUE

26 4. This Court has jurisdiction over all causes of action asserted herein
27 pursuant to the California Constitution, Article VI, Section 10, because this case is a
28 cause not given by statute to other trial courts.

1 5. This Court has jurisdiction over Defendants because each are individuals,
2 associations, or corporations that are either authorized to conduct or, in fact, do conduct
3 substantial business in the State of California, County of San Diego.

4 6. Venue is proper in this County pursuant to Code of Civil Procedure
5 § 395(b) because the acts upon which this action is based occurred in this County. Goods
6 at issue in this case were purchased in this County and communications from
7 Defendants were received in this County. Thereby, Plaintiff and Class members were
8 injured and/or subjected to irreparable harm in this venue. Defendants received
9 substantial compensation and profits from its products and services in this County,
10 caused misrepresentations to be disseminated, entered into agreements and
11 transactions, and breached agreements in this County. Thus, Defendants' liability arose
12 primarily in this County.

13 **PARTIES**

14 7. Plaintiff Michael Shames is an individual residing in the City of San Diego,
15 County of San Diego, State of California.

16 8. Defendant Jack in the Box, Inc., is a Delaware Corporation doing business
17 as and through its company-owned stores and through its franchises with corporate
18 headquarters at 9330 Balboa Avenue, San Diego, California. Jack in the Box, Inc.
19 ("JBX") is a publicly traded corporation licensed to do business and doing business
20 throughout the State of California and in San Diego, California.

21 9. Defendant AMSU Financial, Inc., is a franchisee of JBX with headquarters
22 at 3064 Payne Ranch Road, Chino Hills, California. AMSU Financial, Inc., is a
23 corporation licensed to do business and doing business in Riverside County, California.

24 10. Defendant Syed Irfan Ahmad, Inc., is a franchisee of JBX with
25 headquarters at 6919 Roddick Drive, Highland, California. Syed Irfan Ahmad, Inc., is a
26 corporation licensed to do business and doing business in San Bernardino, California.

27 11. Defendant California Sunrise Incorporated is a franchisee of JBX with
28 headquarters at 1420 Tanglewood Drive, Corona, California. California Sunrise

1 Incorporated is a corporation licensed to do business and doing business in Los Angeles
2 County, California.

3 12. Defendant CEO Foods is a franchisee of JBX with headquarters at 17378
4 Main Street, Hesperia, California. CEO Foods is a corporation licensed to do business
5 and doing business in San Bernardino, California.

6 13. Defendant Desert Jack, LLC, is a franchisee of JBX with headquarters at
7 6519 Victor Street, Victorville, California. Desert Jack, LLC, is a limited liability
8 company licensed to do business and doing business in Riverside County, California.

9 14. Defendant Dhillon Foods, Inc., is a franchisee of JBX with headquarters at
10 18869 S. Jeffrey Avenue, Cerritos, California. Dhillon Foods, Inc., is a corporation
11 licensed to do business and doing business in Los Angeles County, California.

12 15. Defendant Forwes Operations, Inc., is a franchisee of JBX with
13 headquarters at 101 W. Foothill Boulevard, Pomona, California. Forwes Operations,
14 Inc., is a corporation licensed to do business and doing business in Los Angeles County,
15 California.

16 16. Defendant JIB Management, Inc., is a franchisee of JBX with
17 headquarters at 3550 Mowry Avenue, Suite 301, Fremont, California. JUB
18 Management, Inc., is a corporation licensed to do business and doing business
19 throughout the State of California.

20 17. Defendant Kiper Enterprises, Inc., is a franchisee of JBX with
21 headquarters at 25800 Jeronimo Road, Mission Viejo, California. Kiper Enterprises,
22 Inc., is a corporation licensed to and doing business in Orange County, California.

23 18. Defendant MRG Restaurant Group, Inc., is a franchisee of JBX with
24 headquarters at 1420 Tanglewood Drive, Corona, California. MRG Restaurant Group,
25 Inc., is a corporation licensed to do business and doing business in San Bernardino
26 County and Los Angeles County, California.

27 19. Defendant Farooqi Restaurant Management, Inc., is a franchisee of JBX
28 with headquarters at 30 Poppy Hills Road, Laguna Niguel, California. Farooqi

1 Restaurant Management, Inc., is a corporation licensed to do business and doing
2 business in San Diego County and Orange County, California.

3 20. Defendant Nor-Cal Venture Group, Inc., is a franchisee of JBX with
4 headquarters at 3550 Mowry Avenue, Suite 301, Fremont, California. Nor-Cal Venture
5 Group, Inc., is a corporation licensed to do business and doing business throughout the
6 State of California.

7 21. Plaintiff does not know the true names and capacities, whether corporate,
8 partnership, associate, individual, or otherwise of Defendants sued herein as Does 1
9 through 100, inclusive, under the provisions of § 474 of the California Code of Civil
10 Procedure. Defendants Does 1 through 100, inclusive, are in some manner responsible
11 for the acts, occurrences, and transactions set forth herein, and are legally liable to
12 Plaintiff and the class. Plaintiff will set forth the true names and capacities of the
13 fictitiously-named Defendants together with appropriate charging allegations when
14 ascertained.

15 22. Each Defendant, whether actually or fictitiously-named herein, was the
16 principal, agent (actual or ostensible), or employee of each other Defendant and in
17 acting as such principal or within the course and scope of such employment or agency,
18 took some part in the acts and omissions hereinafter set forth by reason of which each
19 Defendant is liable to Plaintiff and the class for the relief prayed for herein.

20 **CLASS ALLEGATIONS**

21 23. This action is brought, and may properly be maintained, as a class action
22 pursuant to the provisions of California Code of Civil Procedure § 382 and Civil Code
23 § 1781.

24 24. Plaintiff brings this action on behalf of himself and all others similarly-
25 situated as a representative member of the following proposed class:

26 All California residents who, in the three years prior to the filing of this
27 complaint, purchased Jumbo Jacks with cheese and were charged for the
28 higher-priced “Combo – sandwich only” instead of the Value Menu price.

1 25. In this lawsuit, Plaintiff and the Class seek both equitable relief, including
2 declaratory, injunctive, restitutionary, and other equitable monetary relief as set forth
3 more fully below.

4 26. Specifically excluded from the proposed Class is the Court and its staff,
5 Defendants, any entity in which any of the Defendants has a controlling interest, and the
6 officers, directors, affiliates, legal representatives, heirs, successors, subsidiaries, and/or
7 assigns of any such individual or entity.

8 **A. NUMEROSITY OF THE CLASS**

9 27. The proposed Class is so numerous that the individual joinder of the Class
10 Members in one action is impracticable. The exact number and the identities of the
11 Members of the Class are unknown at this time and can only be ascertained through
12 appropriate investigation and discovery. Plaintiff believes there are at least 100
13 members of the class.

14 **B. EXISTENCE AND PREDOMINANCE OF COMMON QUESTIONS**
15 **OF LAW AND FACT**

16 28. Common questions of law and fact arising out of the claims here at issue
17 exist as to all members of the Class and predominate over any individual issues. These
18 common legal and factual questions include, but are not limited to, the following:

19 a. Whether JBX's and its franchisees' practice of overcharging
20 customers who purchase Jumbo Jack sandwiches with cheese
21 violates the Consumers Legal Remedies Act and the Unfair
22 Competition Law;

23 b. the amount of revenues and profits JBX and its franchisees
24 received, and/or the amount of monies or other obligations
25 imposed on, or lost by, Class Members as a result of such
26 wrongdoing;

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1 c. whether Class Members are threatened with irreparable harm and
2 are entitled to injunctive and other equitable relief and, if so, what
3 is the nature of such relief; and

4 d. whether Class Members are entitled to restitution, payment of
5 actual, incidental, consequential, exemplary, and/or punitive
6 damages plus interest thereon, and, if so, what is the nature of such
7 relief.

8 **C. TYPICALITY OF CLAIMS**

9 29. Plaintiff's claims are typical of the claims of the Class Members.

10 30. During the class period, Defendants JBX and its franchisees engaged,
11 intentionally or unintentionally, in the standard practice and/or procedure of
12 overcharging customers who ordered Jumbo Jacks sandwiches and added cheese. When
13 Plaintiff ordered a Jumbo Jack and added cheese, he was charged for the higher-priced
14 "Combo – Sandwich Only," resulting in systematic overcharges of between \$.10-\$.25
15 per Jumbo Jack sandwich.

16 31. Accordingly, Plaintiff and all Members of the Class had their legal rights
17 infringed upon, sustained injuries, losses, and damages as described herein, and/or are
18 facing irreparable harm arising out of JBX's and its franchisees' common course of
19 conduct. The rights of Plaintiff and each Class Member to payment of any actual,
20 incidental, consequential, exemplary, and/or restitution resulting therefrom were
21 proximately caused by Defendants' wrongful conduct, in violation of state law as alleged
22 herein.

23 **D. ADEQUATE REPRESENTATION**

24 32. Plaintiff will fairly and adequately protect the interests of the members of
25 the Class in that he does not have irreconcilable conflicts with or interests materially
26 antagonistic to those of other Class Members.

27 33. Plaintiff retained attorneys experienced in the prosecution of class actions,
28 including consumer class actions.

1 **E. SUPERIORITY AND SUBSTANTIAL BENEFITS OF CLASS**
2 **LITIGATION**

3 34. To the extent it is an element for establishing class certification for certain
4 causes of action, a class action is superior to other available methods for the fair and
5 efficient group-wide adjudication of this controversy and, as applicable, possesses
6 substantial benefits. Individual joinder of all Class Members is impracticable, and no
7 other group method of adjudication of all claims asserted herein is more efficient and
8 manageable while at the same time provides all the remedies available to ensure the full
9 purpose of this State's consumer protection laws are effectuated. Furthermore, as the
10 damages suffered by each individual Class Member is relatively small and the relief
11 sought discrete, the expense and burden of individual Class Members to redress the
12 wrongs done to them, and the cost to the court system of adjudicating such litigation on
13 an individual basis, would be substantial. To counsel's knowledge there has not been
14 any substantial litigation concerning this controversy commenced against the parties. It
15 is not anticipated that there will be any difficulties in the management of this litigation
16 due to the focus of the wrongdoing on JBX's and its franchisees' conduct and their
17 knowledge of the true facts. Individualized litigation would also present the potential for
18 varying, inconsistent, or contradictory judgments and would magnify the delay and
19 expenses of all parties and the court system resulting from multiple trials asserting the
20 same factual issues. The conduct of this action as a class action presents fewer
21 management difficulties, conserves the resources of the parties and the court system,
22 and protects the rights of each Class Member as compared to other methods for the
23 group-wide adjudication of this controversy. Thus, the Class and the court system
24 achieve substantial benefits by the prosecution of this action on a class-wide basis by
25 avoiding the burden of multiple litigation involving identical claims, as well as by aiding
26 legitimate business enterprises in curtailing illegitimate competition and ensuring a
27 therapeutic effect on those companies such as JBX and its franchisees that indulge in
28 illegal practices.

1 35. Notice of the pendency of any resolution of this action can be provided to
2 the Class Members by publication and/or individual mailed notice, as appropriate under
3 California law, and the costs of such notice are properly imposed on JBX and its
4 franchisees.

5 36. This action should be certified to proceed on a class-wide basis because:

6 a. the prosecution of separate actions by the individual Class Members
7 would create a risk of inconsistent or varying adjudications with
8 respect to individual Class Members, thus establishing
9 incompatible standards of conduct for JBX and its franchisees;

10 b. due to the nature of the relief sought, the prosecution of separate
11 actions by individual Class Members would create a risk of
12 adjudication with respect to them that would, as a practical matter,
13 be dispositive of the interests of the other Class Members not
14 parties to such adjudications or could substantially impair or
15 impede the ability of such Class Members to protect their interests;
16 and

17 c. JBX and its franchisees have acted or refuse to act in respects
18 generally applicable to the Class, thereby making appropriate final
19 injunctive relief with regard to the Class Members as a whole in
20 terms of the equitable relief sought.

21 **SUMMARY OF FACTS COMMON TO THE CLASS**

22 37. During the Class period, it was JBX's and its franchisees' practice and/or
23 procedure to overcharge customers who ordered Jumbo Jack sandwiches with cheese on
24 their sandwiches. Rather than charge customers the price of the Value Meal Jumbo Jack
25 plus the price of added cheese, JBX and its franchisees charged customers for the
26 higher-priced "Combo - sandwich only."

27 38. Each Class Member is a California resident who purchased a Jumbo Jack
28 and added cheese. JBX and its franchisees charged each Class Member the "Combo -

1 sandwich only” price instead of the price of a Value Menu Jumbo Jack plus the menu
2 price for added cheese.

3 **SUMMARY OF FACTS RELATIVE TO PLAINTIFF’S PURCHASES**

4 39. In November and December 2013, Plaintiff Michael Shames purchased
5 Jumbo Jack sandwiches with cheese added from the Jack in the Box restaurants owned
6 and operated by Defendants. Mr. Shames was charged by Defendants at the higher rate
7 from the “Combo – Sandwich Only” menu by an amount between \$.10-\$.25 per
8 sandwich that he ordered.

9 **FIRST CAUSE OF ACTION**

10 **Violation of Consumers Legal Remedies Act, Civil Code Section 1750, et seq.**

11 **– Class Claim – Injunctive Relief Only –**

12 **As Against Defendants and Does 1-100**

13 40. Plaintiff, on his own behalf and on behalf of the Class Members,
14 incorporates by reference each and every allegation set forth in Paragraphs 1 through 39
15 inclusive, of this Complaint and further allege as follows.

16 41. The sandwiches purchased by Plaintiff and each Class Member constitute
17 “goods” bought for use primarily for personal, family, or household purposes pursuant
18 to Civil Code Section 1761(a).

19 42. Plaintiff and each Class 1 Member are “consumers” pursuant to Civil Code
20 Section 1761(d).

21 43. Defendants are “persons” pursuant to Civil Code Section 1761(c).

22 44. The advertisement and sale of the Jumbo Jack Value Meal sandwiches to
23 Plaintiff and each Class Member are “transactions” pursuant to Civil Code
24 Section 1761(e).

25 45. The acts and/or practices engaged in by JBX and its franchisees and
26 alleged herein were intended to, and did, result in the sales of sandwiches to Plaintiff
27 and the Class Members primarily for personal, family, or household purposes, and
28 violated and continued to violate the CLRA in at least the following respects:

- 1 (a) Defendants represented the transactions had been supplied in
- 2 accordance with previous representations when they had not;
- 3 (b) Defendants advertised goods with intent not to sell them as
- 4 advertised; and
- 5 (c) Defendants represented that the transactions involved obligations
- 6 which they did not have or involve.

7 46. Plaintiff alleges JBX and its franchisees sold him and Class Members
8 Jumbo Jack sandwiches with cheese added for an amount higher than the advertised
9 price. Instead of charging Plaintiff and Class Members the Value Menu price for the
10 Jumbo Jack sandwiches plus the menu price for added cheese, JBX and its franchisees
11 charged Plaintiff and Class Members for the higher priced “Combo –Sandwich Only.”

12 47. On June 18, 2014, Plaintiff served Defendants via certified mail, return
13 receipt requested, a Consumers Legal Remedies Act notification and demand letter,
14 seeking both individual relief and relief on behalf of the Class identified above.

15 48. Plaintiff and the Class Members relied on JBX and its franchisees to
16 charge the correct amount for Value Menu Jumbo Jack sandwiches with cheese added.
17 Plaintiff and the Class Members suffered damages by paying more for Value Menu
18 Jumbo Jack sandwiches with added cheese than the advertised price.

19 49. The Consumers Legal Remedies Act provides a complaint for violation of
20 the Act may be amended without leave of court should the violation not be remedied
21 within thirty (30) days of notification. Plaintiff will amend this Complaint to add a claim
22 for damages under the Consumers Legal Remedies Act for violation of Civil Code
23 Sections 1770(a)(9), (14) and (16), should the statutory thirty-day period expire without
24 a complete cure of Defendants’ violations.

25 50. Section 1780(a)(2) of the Act provides a consumer is entitled to an
26 injunction prohibiting acts or practices which violate the Act. Plaintiff alleges JBX and
27 its franchisees sold Value Menu Jumbo Jack sandwiches with added cheese for more
28

1 than the advertised price, and therefore seeks an injunction to prevent such future
2 misconduct.

3 51. Pursuant to Civil Code Section 1780, Plaintiff seeks all available relief,
4 except for damages at this time, including an order enjoining Defendants from the acts,
5 methods, and practices as set forth in this Complaint, and attorneys' fees and costs
6 according to proof at time of trial.

7 **SECOND CAUSE OF ACTION**

8 **Commission of Unlawful and/or Unfair Business Acts and Practices, Bus. &**

9 **Prof. Code Section 17200, et seq. – Class Claim –**

10 **As Against Defendants and Does 1-100**

11 52. Plaintiff, on his own behalf and on behalf of the Class Members,
12 incorporates by reference each and every allegation set forth in Paragraphs 1 through 51,
13 inclusive, of this Complaint and further allege as follows.

14 53. Defendants' acts, omissions, misrepresentations, practices, and/or non-
15 disclosures constituted unlawful and/or unfair business acts and/or practices within the
16 meaning of California Business & Professions Code Sections 17200, et seq.

17 54. Plaintiff and the Class Members suffered injury in fact and lost money as a
18 result of Defendants' unfair competition.

19 55. Defendants engaged in "unlawful" business acts and practices by charging
20 customers who purchased Value Menu Jumbo Jack sandwiches with cheese added more
21 than the advertised price for the sandwiches. These business policies, acts, and/or
22 practices were intended to and did violate, *inter alia*, California Civil Code Section 1709,
23 et seq., and the CLRA. Accordingly, Defendants violated Business & Professions Code
24 Section 17200's proscription against engaging in an "unlawful" business act or practice.
25 Plaintiff seeks an order enjoining Defendants from engaging in the acts, methods,
26 and/or practices as set forth in this Complaint and for payment of restitution.

27 56. Defendants also engaged in an "unfair" business act or practice in that the
28 justification for selling its products based on the misrepresentations and omissions of

1 material fact delineated above is outweighed by the gravity of the resulting harm,
2 particularly considering the available alternatives, and offends public policy, is immoral,
3 unscrupulous, unethical, and offensive, or causes substantial injury to consumers.

4 57. The above-described unlawful or unfair business acts and practices
5 conducted by Defendants continue to this day and present a threat to Plaintiff and the
6 Class Members, and the general public in that Defendants failed to publicly
7 acknowledge the wrongfulness of their actions and provide full equitable injunctive and
8 monetary relief as required by the statute.

9 58. Pursuant to California Business & Professions Code Section 17203,
10 Plaintiff seeks an order of this Court requiring Defendants to immediately cease such
11 acts of unfair competition and enjoining Defendants from continuing to conduct
12 business via the unlawful and/or unfair business acts and practices set forth in this
13 Complaint and from failing to fully disclose the true nature of its misrepresentations,
14 and ordering Defendants to engage in a corrective notice and advertising campaign.
15 Plaintiff additionally requests an order from the Court requiring Defendants to provide
16 complete equitable monetary relief so as to prevent Defendants from benefitting from
17 the practices that constitute unfair competition or the use or employment of any monies
18 resulting from the sale of these goods, including requiring the payment of restitution of
19 any monies as may be necessary to restore any money or property which may have been
20 acquired by means of such acts of unfair competition.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays for judgment as follows, on behalf of himself, and
23 the members of the Class, as appropriate for the particular causes of action:

- 24 1. An Order certifying the Class under the appropriate provisions of
25 California law, and appointing Plaintiff and his counsel to represent the
26 Class.

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2. For the declaratory, equitable, and/or injunctive relief requested as permitted under the Consumers Legal Remedies Act and Business & Professions Code Section 17203.
3. For general, special, and actual damages according to proof at trial.
4. For restitution of all monies required to be expended.
5. For incidental and consequential damages according to proof at trial.
6. For the specified causes of action, punitive and/or statutory damages.
7. For pre-judgment interest at the legal rate.
8. For reasonable attorneys' fees and costs of suit as specified under, inter alia, Code of Civil Procedure Section 1021.5, and Civil Code Section 1780(d).
9. For such other and further relief as the Court deems just and proper under the circumstances.

DATED: June 18, 2014

ROSNER, BARRY & BABBITT, LLP

By: 

HALLEN D. ROSNER
Attorneys for Plaintiff