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8 *Attorney for Plaintiff*

9 MONTANA'S EIGHTEENTH JUDICIAL DISTRICT, GALLATIN COUNTY

10 JONATHAN VENTURA, as personal
11 representative of, and on behalf of, THE ESTATE
12 OF DONNA VENUTRA, and on behalf of her
13 heirs, JONATHAN VENTURA and
14 CHRISTOPHER VENTURA;

15 Plaintiff,

16 vs.

17 APCH, INC., a Montana Corporation doing
18 business as "DAVE'S SUSHI"; 115 APCH, LLC, a
19 Montana limited liability company; ANP, LLC, a
20 Montana limited liability company doing business
21 as "REVELRY"; JAM FUSION, LLC, a Montana
22 limited liability company doing business as
23 "JAM!"; ABC COMPANIES 1-10; and DOES 1-
24 10.

25 Defendants.

26 APCH, INC., Montana corporation doing business
27 as "DAVE'S SUSHI";

28 Third-Party Plaintiff,

vs.

SIERRA MADRE MUSHROOMS, INC., FOUR
STAR SEAFOOD, INC., and JOHN DOES 1-10;

Third-Party Defendants.

CASE NO. DV-16-2023-0000463-WF

FIRST AMENDED COMPLAINT FOR
WRONGFUL DEATH AND DAMAGES

JURY TRIAL DEMANDED

1 Plaintiff, Jonathan Ventura, as personal representative of The Estate of Donna Ventura, hereby
2 files this First Amended Complaint, pursuant to Montana Code Annotated (“Mont. Code Ann.”) §27-1-
3 501, for claims held by decedent Donna Ventura, and a cause of action for wrongful death on behalf of
4 Donna Ventura’s heirs, Christopher Ventura, and Jonathan Ventura, pursuant to Mont. Code Ann. §27-
5 1-513. These causes of action are brought, by and through undersigned counsel, against Defendants
6 APCH, Inc., 115 APCH, LLC, ANP, LLC, Jam Fusion, LLC, ABC Companies, 1-10 and Does 1-10
7 (collectively “Defendants”) as follows:
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9 **PARTIES**

- 10 1. Plaintiff Jonathan (“Jon”) Ventura is a resident of Gallatin County, Montana.
11 2. Decedent Donna Ventura was a resident of Gallatin County, Montana.
12 3. At all times alleged herein, Plaintiff Jon Ventura was married to Donna Ventura.
13 4. Christopher Ventura is the son of Donna Ventura and Plaintiff Jon Ventura and is
14 currently a resident of South Carolina.
15 5. Plaintiff Jon Ventura is the personal representative of The Estate of Donna Ventura,
16 which is open in Gallatin County District Court.
17 6. Pursuant to Mont. Code Ann. §§27-1-501 and 27-1-513, Plaintiff Jon Ventura has
18 standing to bring the causes of action alleged herein on behalf of The Estate of Donna Ventura and on
19 behalf of her heirs—Christopher Ventura and Jon Ventura.
20 7. Defendant APCH, Inc. is a Montana corporation that owns and operates a restaurant in
21 Gallatin County, Montana called Dave’s Sushi.
22 8. At all times alleged herein, Defendant APCH, Inc. was doing business as “Dave’s Sushi”
23 in Gallatin County, Montana.
24 9. Plaintiff Ventura is informed and believes that, at all times alleged herein, APCH, INC.’s
25 (hereinafter “Dave’s Sushi”) principal place of business was in Gallatin County, Montana.
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1 10. Defendant 115 APCH, LLC is a Montana limited liability company that owns and the
2 real property where Dave's Sushi is located.

3 11. Plaintiff Ventura is informed and believes that, at all times alleged herein, 115 APCH,
4 LLC's principal place of business was in Gallatin County, Montana.

5 12. Defendant ANP, LLC is a Montana limited liability company that owns and operates a
6 restaurant in Gallatin County called "Revelry".

7 13. At all times alleged here in, Defendant ANP, LLC was doing business as "Revelry" in
8 Gallatin County, Montana.

9 14. Plaintiff Ventura is informed and believes that, at all times alleged herein, ANP, LLC's
10 (hereinafter "Revelry") principal place of business was in Gallatin County, Montana.

11 15. Defendant Jam Fusion, LLC is a Montana limited liability company that owns and
12 operates a restaurant in Gallatin County, Montana called "Jam!".

13 16. At all times alleged here in, Defendant Jam Fusion, LLC was doing business as "Jam!"
14 in Gallatin County, Montana.

15 17. Plaintiff Ventura is informed and believes that, at all times alleged herein, Jam Fusion,
16 LLC's (hereinafter "Jam") principal place of business was in Gallatin County, Montana.

17 18. Plaintiff Ventura is informed and believes that Dave's Sushi, Revelry, and Jam share a
18 "prep-kitchen", share resources, share employees, share executive staff, and share ownership, among
19 other things, and have formed a partnership and/or joint venture that carries out the business operations
20 of the restaurants for profit.

21 19. Dave's Sushi and 115 APCH, LLC share owners, and have also formed a joint venture
22 that carries out the operations of Dave's Sushi for profit.

23 20. At the time this Complaint was filed, Plaintiff Ventura was ignorant of the true names
24 and capacities of ABC Companies 1-10 and Does 1-10, and therefore sues these defendants by such
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1 fictitious names. Plaintiff is informed and believes that each of the fictitiously named defendants is
2 liable or responsible in some manner for the damages alleged. Plaintiff Ventura will amend this
3 Complaint to allege ABC Companies 1-10's and Does 1-10,'s true names and capacities when the same
4 are ascertained.

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6 21. Plaintiff Ventura is informed and believes that at all times alleged herein, each of the
7 defendants, including the defendants sued as ABC Companies 1-10 and Does 1-10, were acting as the
8 agent, servant, partner, joint venturer, and/or employee of their co-defendants, and were acting within
9 the scope of that authority with the full knowledge, permission, and express or implied consent of each
10 of those defendants.

11 **JURISDICTION AND VENUE**

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13 22. Plaintiff Ventura re-alleges and incorporates by this reference each and every allegation
14 in the preceding paragraphs.

15 23. Injuries alleged herein occurred in Gallatin County, Montana.

16 24. Venue is proper in Gallatin County, Montana pursuant to Mont. Code Ann. §§25-2-
17 122(1) and (2)(b).

18 25. This Court has jurisdiction over both the parties and the subject matter of this lawsuit.

19 **GENERAL ALLEGATIONS**

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21 26. Plaintiff Ventura re-alleges and incorporates by this reference each and every allegation
22 in the preceding paragraphs.

23 27. On June 10, 1989, Jon Ventura and Donna Ventura (f/k/a Donna Stelmar) married in
24 Virginia.

25 28. Approximately three-years later, on June 1, 1992, Donna Ventura gave birth to their only
26 child, Christopher Ventura.

27 29. Jon and Donna Ventura raised Christopher together and in 2018 Christopher joined the
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1 Marine Corps and was ultimately sworn into the Judge Advocate General's Corps.

2 30. In 2019, Jon and Donna Ventura retired and moved to Gallatin County, Montana to enjoy
3 their retirement-years together.

4 31. On Monday, April 17, 2023, Jon and Donna Ventura decided to have lunch at Dave's
5 Sushi and arrived around approximately 12:30 p.m. with two friends.

6 32. Dave Sushi's daily special roll for Monday, April 17, 2023, was advertised as containing,
7 among other ingredients, salmon, and "morel" mushrooms (hereinafter "daily special roll").

8 33. Jon, Donna, and their friends ordered appetizers and entrees.

9 34. Donna Ventura ordered the daily special roll for an entree.

10 35. Donna was the only person at their table to order the daily special roll.

11 36. After the appetizers were delivered, the four friends shared the appetizers, and Donna
12 awaited her entree—the daily special roll.

13 37. After the entrees were delivered, Donna consumed the entirety of the daily special roll
14 that she ordered.

15 38. Within approximately one-hour of consuming the daily special roll, Donna Ventura
16 began experiencing extreme symptoms and later collapsed at the Ventura residence.

17 39. Jon Ventura called an ambulance to their residence, which transported Donna Ventura to
18 the hospital where she went into cardiac arrest.

19 40. Donna then experienced multiple organ failure.

20 41. For the next twelve-nights and thirteen-days Donna Ventura fought to survive in the
21 intensive care unit at Bozeman Deaconess Hospital.

22 42. Jon Ventura and Christopher Ventura were by her side during her fight for life.

23 43. Donna Ventura succumbed to her injuries on the morning of Saturday, April 29, 2023,
24 leaving behind her husband and child.

CAUSE OF ACTION I:
SURVIVAL CLAIMS – MONT. CODE ANN. § 27-1-501
(Jonathan Ventura, for Donna Ventura, against Defendants)

44. Plaintiff Ventura re-alleges and incorporates by this reference each and every allegation in the preceding paragraphs.

45. Prior to her death on April 29, 2023, Defendants caused Donna Ventura significant and life-threatening injuries.

46. For twelve-nights and thirteen-days, Donna Ventura endured damages, including extreme mental and physical pain and suffering, prior to succumbing to these personal injuries.

47. Jon Ventura, as personal representative of The Estate of Donna Ventura, brings this “Cause of Action I” on her behalf.

48. Defendants are responsible for the injuries and damages suffered by Donna Ventura as set forth below.

PRODUCT LIABILITY—STRICT LIABILITY
MONT. CODE ANN. §27-1-719

49. Plaintiff Ventura re-alleges and incorporates by this reference each and every allegation in the preceding paragraphs.

50. Dave’s Sushi is a retailer of food and beverage.

51. Donna Ventura was a consumer of Dave’s Sushi’s food and beverage.

52. The daily special roll, including its ingredients and preparation, was marketed by Defendants, and sold to consumers, including Donna Ventura.

53. Regardless of the care exercised in the preparation and sale of the food, food sold and served by a restaurant, like Dave’s Sushi, should not kill a consumer, like Donna Ventura.

54. The daily special roll that was sold and served to Donna Ventura by Defendants was unreasonably dangerous for consumption by consumers and was defective.

55. The daily special roll was expected to, and did reach consumers, including Donna

Ventura, without substantial change in the condition in which it was sold.

56. The daily special roll caused significant injury, including physical injury, and ultimately death to Donna Ventura.

**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
MONT. CODE ANN. §30-2-314**

57. Plaintiff Ventura re-alleges and incorporates by this reference each and every allegation in the preceding paragraphs.

58. Defendants sold the daily special roll to Donna Ventura for value.

59. In selling the daily special roll to Donna Ventura, Defendants warranted that the daily special roll would be fit for the ordinary purpose of human consumption.

60. Donna Ventura consumed the daily special roll and as a result incurred life-threatening personal injuries that she ultimately succumbed to.

61. The daily special roll was not fit for human consumption.

62. Defendants breached the implied warranty of merchantability.

63. Donna Ventura suffered incidental and consequential damages as a result of Defendant's breach.

**NEGLIGENCE
MONTANA CODE ANN. §27-1-701**

64. Plaintiff Ventura re-alleges and incorporates by this reference each and every allegation in the preceding paragraphs.

65. Defendants owed a duty to Dave's Sushi's customers, including Donna Ventura, to, among other things, provide food that was safe for human consumption.

66. Plaintiff Ventura is informed and believes that Defendants breached their duties to Dave's Sushi's customers, including Donna Ventura, when they, among other things:

a. Used the mushrooms contained in the daily special roll that were obtained from a

1 person or entity that was not qualified or competent to provide the mushrooms;

2 b. Failed to properly train employees on how to identify toxic mushrooms and
3 distinguish them from edible mushrooms;

4 c. Failed to properly store or prepare morel mushrooms that may have been contained
5 in the daily special roll; and/or

6 d. Failed to follow industry standard precautions prior to serving mushrooms to
7 customers, like Donna Ventura.
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9 67. Defendants' conduct proximately and directly caused injury, death, and other damages
10 to Donna Ventura and may be negligence *per se*.

11 68. Plaintiff Ventura is informed and believes that Defendants intentionally disregarded facts
12 that created a high probability of injury to Donna Ventura.
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14 69. Plaintiff Ventura is informed and believes that Defendants deliberately proceeded to act
15 with indifference to the high probability of injury to Donna Ventura.

16 WHEREFORE, Plaintiff Jon Ventura, on behalf of The Estate of Donna Ventura, prays for
17 judgment against Defendants, and each of them, as set forth in the prayer for relief.

18 **CAUSE OF ACTION II:**
19 **WRONGFUL DEATH CLAIM – MONT. CODE ANN. § 27-1-513**
20 **(Jonathan Ventura, for Donna Ventura's heirs, against Defendants)**

21 70. Plaintiff Ventura re-alleges and incorporates by this reference each and every allegation
22 in the preceding paragraphs.

23 71. Jon Ventura, as the husband of Donna Ventura, is an heir of Donna Ventura under
24 Montana law.

25 72. Christopher Ventura, as the son of Donna Ventura, is an heir of Donna Ventura under
26 Montana law.

27 73. During her life Donna Ventura provided Jon Ventura with the love, companionship, care,
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1 and support of a spouse.

2 74. During her life Donna Ventura provided Christopher Ventura with the love,
3 companionship, care, and support of a mother.

4 75. During her life Donna Ventura provided Jon and Christopher with contributions to
5 support, education, training, and care, and would have reasonably made these contributions, as needed
6 by the heirs, had she survived.

7 76. Due to direct and proximate conduct of Defendants, Jon Ventura has been deprived of
8 his wife, and Christopher Ventura have been deprived of his mother.

9 WHEREFORE, Plaintiff Jon Ventura, on behalf of Donna Ventura's heirs, prays for judgment
10 against Defendants, and each of them, as set forth in the prayer for relief.

11 **JURY DEMANDED**

12 Plaintiff hereby demands a jury trial on all issues so triable.

13 **PRAYER FOR RELIEF**

14 WHEREFORE Jon Ventura, on behalf of The Estate of Donna Ventura, and the heirs of Donna
15 Ventura, prays for judgment in his favor and against Defendants as follows:

- 16 1. For general damages in a sum to be determined at trial;
 - 17 2. For special damages, including but not limited to lost wages, medical expenses, and other
18 special damages in a sum to be determined at trial;
 - 19 3. Incidental and consequential damages for breach of the implied warranty of merchantability;
 - 20 4. For punitive damages in a sum to be determined at trial;
 - 21 5. For reasonable attorney's fees as permitted by law;
 - 22 6. For costs of suit;
 - 23 7. Pre-Judgment and post-judgment interest; and
 - 24 8. Such other relief as this Court deems just and appropriate.
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2 Dated: October 19, 2023

THE RABB LAW FIRM, PLLC

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5 MICHAEL L. RABB
6 *Attorney for Plaintiff*
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CERTIFICATE OF SERVICE

I, Cole A. Radovich, hereby certify that I have served true and accurate copies of the foregoing Complaint - Amended Complaint to the following on 10-19-2023:

Bryan Michael Kautz (Attorney)
175 North 27th Street, Suite 1206
Billings MT 59101
Representing: APCH, Inc.
Service Method: eService

Paul Robert Haffeman (Attorney)
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Representing: Sierra Madre Mushrooms, Inc.
Service Method: eService

Stephanie A. Hollar (Attorney)
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Representing: Sierra Madre Mushrooms, Inc.
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Michael Lloyd Rabb (Attorney)
3950 Valley Commons Drive
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Representing: Jonathan Ventura
Service Method: eService

Patrick M. Sullivan (Attorney)
49 N. Main St. Suite D
Butte MT 59701
Representing: Four Star Seafood, Inc.
Service Method: eService

Electronically Signed By: Cole A. Radovich
Dated: 10-19-2023