

ORIGINAL

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FILED
Superior Court of California
County of Los Angeles

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Sherri R. Carter, Executive Officer/Clerk of Court
By Tanya Herrera Deputy
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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

AAERO SWEET CORPORATION;
AAERO SWEET COMPANY; BASE
ITALY d/b/a 800 DEGRESS LYNBROOK;
GOLDEN GOOSE FAMILY, INC; OSEN
IZAKAYA; HUGO'S RESTAURANT;
PASTA MAMA, INC.; TACO BOYS, INC.;
HUGO'S TACOS; PASTA PAPA, INC.;
TACO BOYS ATWATER LP;
INTERNATIONAL GRILL, INC.;
AGOURA RESTAURANT, LP;
THOUSAND OAKS RESTAURANTS LP;
BRENTWOOD CAFE, INC.; JINKY'S
STUDIO CAFE; CALCULATED
FREEDOM, INC.; JINKY'S CAFE;
GREAT GOING FOOD CORP.; MEGNA
HOLDINGS, INC.; LARS RESTAURANT
FLIP, INC.; MARMALADE CAFE; LE
CHENE FRENCH CUISINE; MALIBU
HOUSE L.L.C.; THE CLIFF DIVER; MR.
BABY INC.; FRAME; ROBERTA HART;
MELEA HAIR, SKIN & NAIL SALON;
SAECULARIA, LLC a/k/a CASEY
FELTON, LLC d/b/a BANH OUI;
CUTTING CATERING COMPANY; CCC
ENTERTAINMENT; STRONG WATER
GROUP, LLC; STRONGWATER; WEZY
HOSPITALITY LLC d/b/a WEZY

Plaintiffs,

vs.

FARMERS GROUP INC., a corporation;
TRUCK INSURANCE EXCHANGE, a
corporation; and; DOES 1 to 25, inclusive,

Defendants.

CASE NO.

21STCV06338

**PLAINTIFFS' COMPLAINT FOR
DECLARATORY RELIEF**

1 Plaintiffs AAERO SWEET CORPORATION; AAERO SWEET COMPANY; BASE
2 ITALY d/b/a 800 DEGRESS LYNBROOK; GOLDEN GOOSE FAMILY, INC; OSEN IZAKAYA;
3 HUGO'S RESTAURANT; PASTA MAMA, INC.; TACO BOYS, INC.; HUGO'S TACOS; PASTA
4 PAPA, INC.; TACO BOYS ATWATER LP; INTERNATIONAL GRILL, INC.; AGOURA
5 RESTAURANT, LP; THOUSAND OAKS RESTAURANTS LP; BRENTWOOD CAFE, INC.;
6 JINKY'S STUDIO CAFÉ; CALCULATED FREEDOM, INC.; JINKY'S CAFÉ; GREAT GOING
7 FOOD CORP.; MEGNA HOLDINGS, INC.; LARS RESTAURANT FLIP, INC.; MARMALADE
8 CAFÉ; LE CHENE FRENCH CUISINE; MALIBU HOUSE L.L.C.; THE CLIFF DIVER; MR.
9 BABY INC.; FRAME; ROBERTA HART; MELEA HAIR, SKIN & NAIL SALON;
10 SAECULARIA, LLC a/k/a CASEY FELTON, LLC d/b/a BANH OUI; CUTTING CATERING
11 COMPANY; CCC ENTERTAINMNET; STRONG WATER GROUP, LLC; STRONGWATER;
12 WEZY HOSPITALITY LLC d/b/a WEZY (collectively "Plaintiffs"), by their undersigned counsel,
13 allege as follows:

14 INTRODUCTION

15 1. This matter arises over the dispute of insurance coverage resulting from a natural
16 disaster, which is the COVID-19 pandemic (hereinafter, "COVID-19", "pandemic", or "COVID-19
17 pandemic"). Plaintiffs sought and obtained coverage from Defendants to cover a myriad of risks
18 for all aspects of their business operations, including, but not limited to, liability, property damage,
19 property loss, and business income.

20 2. Plaintiffs purchased property casualty insurance from Defendants for the purpose
21 of transferring its risk and its exposure from sudden catastrophic loss and to reduce financial
22 uncertainty which make accidental loss manageable which allows it to enable its owners, suppliers,
23 investors and creditors to have confidence in its continuing operations and viability.

24 3. Plaintiffs – a broad and diverse group of businesses – assert claims for physical loss
25 resulting in business interruption. Under longstanding principles of insurance law, Plaintiffs are
26 entitled to payment under its insurance policy from Defendants for physical loss it suffered.
27 Specifically, the pandemic caused direct physical loss of or damage to Plaintiffs' operations by
28 physically impairing, detrimentally altering, rendering them nonfunctional, and by depriving them

1 of the ability to function and operate. The threshold legal question that Plaintiffs come to this Court
2 with is whether Defendants must provide coverage under an all-risk commercial insurance policy
3 for direct physical loss and/or damage caused by the pandemic, which has physically impaired,
4 detrimentally altered, and rendered Plaintiffs' operations and properties nonfunctional.

5 4. Prior to the pandemic, Plaintiffs' establishments were thriving. Their services,
6 dining rooms, bars, and other physical spaces were places where people congregated. Families and
7 friends gathered to celebrate special occasions, have their meals, or obtain the desired services.

8 5. The pandemic brought an end to all of that activity by imposing direct
9 physical restrictions that impaired Plaintiffs' operations and properties and rendered them
10 nonfunctional for their intended purposes. Salons were closed. Dining rooms were off-limits.
11 Tables verboten. Bars shuttered. The physical premises of each of its establishments, including
12 their appearance, shape, physical layout, the arrangement of seats and furniture, and the physically
13 demarcated routes for customer traffic – all of which are critical to its operations – were materially
14 and detrimentally altered. Vast amounts of square footage in its properties – many painstakingly
15 designed to maximize the customer's experience and the establishment's revenue – were lost and
16 rendered nonfunctional for their intended purposes. Plaintiff's business operations were directly
17 and physically altered to a material degree, in that no customers, employees, suppliers, or humans
18 were allowed to occupy the interior of the restaurants as would be the normal function.

19 6. Plaintiffs reasonably believed and expected that the pandemic was among the risks
20 covered under its insurance policy with Defendants.

21 7. Accordingly, Plaintiffs seek a declaratory judgment that Defendants have a duty to
22 Plaintiffs, pursuant to terms under their insurance policies with Defendants, for the loss and
23 damage caused to Plaintiffs because of the pandemic.

24 PARTIES

25 8. At all relevant times, Plaintiff AAERO SWEET CORPORATION, AAERO SWEET
26 COMPANY ("Aero Sweet"), is a corporation authorized to do business in the State of California,
27 County of Orange. Aero Sweet owns, operates, manages, and/or controls a used car dealership
28

1 located at 2926 E. Miraloma Avenue, Anaheim, CA 92806 ("insured property"). This insured
2 property is listed as an insured location in the Aaero Sweet Policy.

3 9. At all relevant times, Plaintiff BASE ITALY d/b/a 800 DEGRESS LYNBROOK
4 ("800 Degrees"), is a corporation authorized to do business in the State of California, County of Los
5 Angeles. 800 Degrees owns, operates, manages, and/or controls a restaurant located at 10889
6 Lindbrook Drive, Los Angeles, CA 90024 ("insured property"). This insured property is listed as an
7 insured location in the 800 Degrees Policy.

8 10. At all relevant times, Plaintiff GOLDEN GOOSE FAMILY, INC. and ONSEN
9 IZAKAYA ("Golden Goose"), are authorized to do business in the State of California, County of
10 Los Angeles. Golden Goose owns, operates, manages, and/or controls a restaurant located at 2903
11 West Sunset Blvd., Los Angeles, CA 90026 ("insured property"). This insured property is listed as
12 an insured location in the Golden Goose Policy.

13 11. At all relevant times, Plaintiff HUGO'S RESTAURANT and PASTA MAMA, INC.,
14 (collectively "Hugo's"), is a corporations authorized to do business in the State of California, County
15 of Los Angeles. Hugo's owns, operates, manages, and/or controls two restaurants located at 12851
16 Riverside Drive, Valley Village, CA 91607 and 8401 Santa Monica Blvd., West Hollywood, CA
17 90069 ("insured properties"). The insured properties are listed as insured locations in the Pasta Mama
18 Policies.

19 12. At all relevant times, HUGO'S TACOS ("Hugo's Tacos") is a corporation authorized
20 to do business in the State of California, County of Los Angeles.

21 13. At all relevant times, Plaintiff TACO BOYS, INC. ("Taco Boys") is a corporation
22 authorized to do business in the State of California, County of Los Angeles. Taco Boys owns,
23 operates, manages, and/or controls two restaurants located at 4749 Coldwater Canyon Ave., Studio
24 City, CA 91604 and 12910 Riverside, Valley Village, CA 91607 ("insured properties"). These
25 insured properties are both listed as insured locations in the Taco Boy's Policy.

26 14. At all relevant times, Plaintiff PASTA PAPA, INC. ("Pasta Papa") was a corporation
27 authorized to do business in the State of California, County of Los Angeles. Pasta Papa owns,
28 operates, manages, and/or controls a restaurant located at 614-616 North Detroit Street, Los Angeles,

1 CA 90036 ("insured property"). These insured properties are both listed as insured location in the
2 Pasta Papa Policy.

3 15. At all relevant times, Plaintiff TACO BOYS ATWATER LP ("Taco Boys Atwater")
4 was a corporation authorized to do business in the State of California, County of Los Angeles. Taco
5 Boys Atwater owns, operates, manages, and/or controls a restaurant located at 3300 Glendale Blvd.,
6 Los Angeles, CA 90039 ("insured property"). This insured property is listed as insured location in
7 the Taco Boys Atwater Policy.

8 16. At all relevant times, Plaintiff INTERNATIONAL GRILL, INC., ("International
9 Grill"), is a corporation authorized to do business in the State of California, County of Los Angeles.
10 International Grill owns, operates, manages, and/or controls restaurants located at 1132 Glendale
11 Galleria, Glendale, CA 91210; 14006 Riverside Drive, Suite 250a, Sherman Oaks, CA 91423; 10250
12 Santa Monica Blvd., Los Angeles, CA 90067; 6000 Sepulveda Blvd., Ste. 3266, Culver City, CA
13 90230; 6600 Topanga Canyon Blvd. Fc7, Canoga Park, CA 91303; and 400 S. Baldwin Ave #Fc6,
14 Arcadia, CA 91007 ("insured properties"). This insured's properties are listed as insured locations
15 in the International Grill Policy.

16 17. At all relevant times, Plaintiffs AGOURA RESTAURANT, LP and THOUSAND
17 OAKS RESTAURANTS, LP ("Agoura") were limited partnerships authorized to do business in the
18 State of California, County of Ventura. Agoura owns, operates, manages, and/or controls a restaurant
19 located at 1724 E. Avenida De Los Arboles, Thousand Oaks, CA 91362 ("insured property"). This
20 insured property is listed as insured location in the Agoura Policy.

21 18. At all relevant times, Plaintiffs BRENTWOOD CAFE, INC. and JINKY'S STUDIO
22 CAFÉ ("Brentwood Café") was a corporation authorized to do business in the State of California,
23 County of Los Angeles. Brentwood Café owns, operates, manages, and/or controls a restaurant
24 located at 4000 Colfax Avenue, Studio City, CA 91604 ("insured property"). This insured property
25 is listed as an insured location in the Brentwood Café Policy.

26 19. At all relevant times, Plaintiffs CALCULATED FREEDOM, INC. and JINKY'S
27 CAFÉ ("Calculated Freedom") was a corporation authorized to do business in the State of California,
28 County of Los Angeles. Calculated Freedom owns, operates, manages, and/or controls restaurants

1 located at 14120 Ventura Blvd., Sherman Oaks, CA 91423 and 7851 Alabama Avenue #4, Canoga
2 Park, CA 91304 ("insured properties"). Each insured property is listed as an insured location in the
3 Calculated Freedom Policy.

4 20. At all relevant times, Plaintiff GREAT GOING FOOD CORP. ("Great Going"), is a
5 corporation authorized to do business in the State of California, County of Los Angeles. Great Going
6 owns, operates, manages, and/or controls a restaurant located at 22818 Vanowen Street, West Hills,
7 CA 91307 ("insured property"). This insured property is listed as an insured location in the Great
8 Going Policy.

9 21. At all relevant times, Plaintiff MEGNA HOLDINGS, INC. ("Megna Holdings"), was
10 a corporation authorized to do business in the State of California, County of Los Angeles. Megna
11 Holdings owns, operated, manages, and/or controls restaurants located at 29001 Canwood Street,
12 Agoura Hills, CA 91301 and 1447 2nd Street, Santa Monica, CA 90401 ("insured properties"). This
13 insured property is listed as an insured location in the Megna Holdings Policy and the Jinky's Café
14 Policy.

15 22. At all relevant times, Plaintiff LARS RESTAURANT FLIP, INC. and
16 MARMALADE CAFE, ("Marmalade Cafe"), is a corporation authorized to do business in the State
17 of California, County of Los Angeles. The Marmalade Café Plaintiffs own, operate, manage, and/or
18 control a restaurant located at 710 Montana Avenue, Santa Monica, CA 90403 ("insured property").
19 This insured property is listed as an insured location in the Marmalade Cafe Policy.

20 23. At all relevant times, Plaintiff LE CHENE FRENCH CUISINE, ("Le Chene"), is a
21 corporation authorized to do business in the State of California, County of Los Angeles. Le Chene
22 owns, operates, manages, and/or controls a restaurant located at 12625 Sierra Highway, Santa Clarita,
23 CA 91390 ("insured property"). This insured property is listed as an insured location in the Le Chene
24 Policy.

25 24. At all relevant times, Plaintiff MALIBU HOUSE L.L.C.; THE CLIFF DIVER
26 ("Malibu House"), is a limited liability company authorized to do business in the State of California,
27 County of Los Angeles. Malibu House owns, operates, manages, and/or controls a restaurant located
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1 at 21337 Pacific Coast Hwy, Malibu, CA 90265 ("insured property"). This insured property is listed
2 as an insured location in the Malibu House Policy.

3 25. At all relevant times, Plaintiff MR. BABY, INC.; FRAME, ("Frame"), is a
4 corporation authorized to do business in the State of California, County of San Francisco. Frame
5 owns, operates, manages, and/or controls a custom frame store located at 1926 Lombard Street, San
6 Francisco, CA 94123 ("insured property"). This insured property is listed as an insured location in
7 the Frame Policy.

8 26. At all relevant times, Plaintiff ROBERTA HART; MELEA HAIR, SKIN & NAIL
9 SALON, ("Melea Hair"), is an individual authorized to do business in the State of California, County
10 of Ventura. Melea Hair owns, operates, manages, and/or controls a hair salon located at 2642 E.
11 Main Street, Ventura, CA 93003 ("insured property"). This insured property is listed as an insured
12 location in the Melea Hair Policy.

13 27. At all relevant times, Plaintiff SAECULARIA, LLC a/k/a CASEY FELTON, LLC
14 d/b/a BANH OUI ("Saecularia"), is a limited liability company authorized to do business in the
15 State of California, County of Los Angeles. Saecularia owns, operates, manages, and/or controls
16 restaurants located at 1552 N. Cahuenga Blvd., Los Angeles, CA 90028 and 6909 Melrose Ave., Los
17 Angeles, CA 90038 ("insured properties"). These insured properties are listed as insured locations
18 in the Saecularia Policy.

19 28. At all relevant times, Plaintiffs CUTTING CATERING COMPANY and CCC
20 ENTERTAINMENT ("Slater's 50/50"), are authorized to do business in the State of California,
21 County of Los Angeles and County of San Diego. Slater's 50/50 owns, operates, manages, and/or
22 controls restaurants located at 11 Pier Ave, Hermosa Beach, CA 90254 and 110 Knoll Road, San
23 Marcos, CA 92069 ("insured properties"). These insured properties are listed as insured locations in
24 the Slater's 50/50 Policy.

25 29. At all relevant times, Plaintiff STRONG WATER GROUP LLC; STRONGWATER,
26 ("Strongwater"), is a limited liability company authorized to do business in the State of California,
27 County of Orange. Strongwater owns, operates, manages, and/or controls a restaurant located at 270
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1 S. Clementine Street, Anaheim, CA 92805 ("insured property"). This insured property is listed as an
2 insured location in the Strongwater Policy.

3 30. At all relevant times, Plaintiff WEZY HOSPITALITY LLC d/b/a WEZY ("Wezy"),
4 is a limited liability company authorized to do business in the State of California, County of Alameda.
5 Wezy owns, operates, manages, and/or controls a restaurant located at 2430 Whipple Road,
6 Hayward, CA 94544.

7 31. At all relevant times, Defendant FARMERS GROUP INC. ("FGI"), is a corporation
8 with its headquarters and principal place of business doing business in the State of California, County
9 of Los Angeles. FGI does business as Farmers Underwriters Association, a California Corporation.
10 FGI owns the service marks "Farmers Insurance Group of Companies" and "Farmers Insurance
11 Group."

12 32. At all relevant times, Defendant Truck Insurance Exchange ("TIE"), is and was a
13 reciprocal or inter-insurance exchange, and member of the Farmers Insurance Group of Companies,
14 and a corporation doing business in the County of Los Angeles, State of California.

15 33. TIE is authorized to conduct insurance business and does in fact conduct insurance
16 business in the State of California, in the County of Los Angeles. TIE's operations, include but are
17 not limited to, its claims and underwriting operations and procedures, are managed, overseen,
18 controlled, and directed in whole or in part by Defendant FGI.

19 34. FGI and TIE (collectively "FARMERS") are transacting the business of insurance in
20 the state of California and the basis of this suit arises out of such conduct.

21 35. Defendant FGI and Defendant TIE are alter egos. Defendant FGI and various
22 exchanges form an insurance company holding system. Defendant FGI acts as the attorney-in-fact
23 for Defendant TIE. As an attorney-in-fact for Defendant TIE, Defendant FGI appointed *itself* to
24 provide management services to the insuring entities for a fee. This fee represents a substantial
25 portion of the gross premiums taken in by these insuring entities. FGI, either directly or through
26 other subsidiaries, performs all underwriting, product development, sales, actuarial and strategic
27 planning functions for TIE. FGI holds the service mark, "Farmers Insurance Group of Companies,"
28 under which Defendant TIE operates. Employees of each entity regard themselves as working for

1 a unified entity known as "Farmers." In advertising, FGI and TIE make no distinction among
2 themselves, and hold themselves out to the public in the collective, as "Farmers" or as "Farmers
3 Insurance Group of Companies." Defendants share the same agent for service of process.
4 Defendant Fire Insurance Exchange uses common forms developed and produced by FGI.

5 36. If the alter ego relationship among Defendants FGI and TIE is not recognized, an
6 inequity would also result because the entity which would be held liable, i.e., Defendant TIE, has
7 no employees and takes no independent action. Thus, Plaintiffs would be forced to seek redress for
8 the wrongdoing against a shell corporation, while the entities with the employees who make the
9 decisions, and who are responsible for the wrongful acts, escape liability. This would be
10 inequitable.

11 37. Defendants FGI and TIE share the same principal place of business, 6301
12 Owensmouth Ave, Woodland Hills, CA 91367.

13 38. Defendant FGI controls, as that term is defined in the California Insurance Holding
14 Company Act, Defendant TIE.

15 39. At all relevant times mentioned herein, the true names and capacities, whether
16 individual, corporate, associate or otherwise, of Defendants and DOES 1 through 25, inclusive, are
17 currently unknown to Plaintiff, who therefore bring suit against these Defendants by their fictitious
18 names and capacities. Plaintiff is informed and believes and thereupon alleges that each fictitiously
19 named Defendant, whether acting for itself or as an agent, corporation, association, or otherwise, is
20 liable or responsible to Plaintiff and proximately caused injuries and damages to Plaintiff as alleged
21 herein. While at this time Plaintiff is unaware of the true names and capacities of the DOE
22 Defendants, Plaintiff will amend its Complaint to show the true names and capacities of DOES 1
23 through 25, inclusive, when those identities have been ascertained.

24 40. At all relevant times mentioned herein, Defendants were the agents, employees,
25 supervisors, servants and joint venturers of each other, and in doing the things hereafter alleged,
26 were acting within the course, scope and authority of such agency, employment and joint venture
27 and with the consent and permission of each of the other Defendants. All actions of each Defendant
28

1 alleged in the causes of action into which this paragraph is incorporated by reference were ratified
2 and approved by the officers or managing agents of every other Defendant.

3 41. All allegations in this Complaint are based on information and belief and/or are
4 likely to have evidentiary support after a reasonable opportunity for further investigation or
5 discovery. Whenever allegations in this Complaint are contrary or inconsistent, such allegations
6 shall be deemed alternative.

7 **JURISDICTION AND VENUE**

8 42. Jurisdiction is proper pursuant to Cal. Code Civ. Proc. §§ 410.10, 410.50 and 1060.

9 43. Venue is proper in this judicial district pursuant to Cal. Code Civ. Proc. § 395.

10 **FACTUAL BACKGROUND**

11 44. Defendant TIE entered into a contract of insurance with Plaintiffs in the event of a
12 covered loss or damage. The policies issued by Defendants were policies covering Plaintiffs'
13 business operations and property (collectively "Policies"). The contract of insurance or Policies
14 issued by Defendant TIE to Plaintiffs are the following:

- 15 a. From February 12, 2020 to November 1, 2020, Defendants issued policy
16 number believed to be 60238-02-20 (hereinafter "Aaero Sweet Policy") to
17 Plaintiff Aaero Sweet. A true and correct copy of the declarations page of the
18 Aaero Sweet Policy is attached hereto as **Exhibit 1**.
- 19 b. From April 1, 2019 to April 1, 2020, Defendants issued policy number
20 believed to be 60673-54-25 (hereinafter "800 Degrees Policy") to Plaintiff
21 800 Degrees. A true and correct copy of the 800 Degrees Policy is attached
22 hereto as **Exhibit 2**.
- 23 c. From July 17, 2019 to July 17, 2020, Defendants issued policy number
24 believed to be 60667-61-12 (hereinafter "Golden Goose Policy") to Plaintiff
25 Golden Goose. A true and correct copy of the declarations page of the Golden
26 Goose Policy is attached hereto as **Exhibit 3**.
- 27 d. From September 1, 2019 to September 1, 2020, Defendants issued policy
28 number believed to be 60668-50-61 to Hugo's Restaurant and Pasta Mama,

1 Inc. ("Pasta Mama Studio City Policy"). A true and correct copy of the
2 declarations page of the Pasta Mama Studio City Policy is attached hereto as
3 **Exhibit 4.**

4 e. From September 1, 2019 to September 1, 2020, Defendants issued policy
5 number believed to be 60668-49-75 to Taco Boys, Inc. and Hugo's Tacos
6 ("Taco Boy's Policy"). A true and correct copy of the declarations page of the
7 Taco Boy's Policy is attached hereto as **Exhibit 5.**

8 f. From September 1, 2019 to September 1, 2020, Defendants issued policy
9 number believed to be 60668-50-89 to Pasta Papa ("Pasta Papa Policy"). A
10 true and correct copy of the declarations page of the Pasta Papa Policy is
11 attached hereto as **Exhibit 6.**

12 g. From September 1, 2019 to September 1, 2020, Defendants issued policy
13 number believed to be 60668-49-96 to Taco Boy's Atwater LP and Hugo's
14 Tacos ("Taco Boy's Atwater Policy"). A true and correct copy of the
15 declarations page of the Taco Boy's Atwater Policy is attached hereto as
16 **Exhibit 7.**

17 h. From February 13, 2020 to September 1, 2020, Defendants issued policy
18 number believed to be 60668-50-45 to Pasta Mama, Inc. and Hugo's
19 Restaurant (Pasta Mama West Hollywood Policy). A true and correct copy of
20 the declarations page of the Pasta Mama West Hollywood Policy is attached
21 hereto as **Exhibit 8.**

22 i. From January 11, 2020 to January 11, 2021, Defendants issued policy number
23 believed to be 60149-54-44 (hereinafter "International Grill Policy") to
24 Plaintiff International Grill. A true and correct copy of the declarations page
25 of the International Grill Policy is attached hereto as **Exhibit 9.**

26 j. From May 15, 2020 to February 11, 2021, Defendants issued policy number
27 believed to be 60488-41-57 (hereinafter "Agoura Policy") to Plaintiff Agoura.
28

1 A true and correct copy of the declarations page of the Agoura Policy is
2 attached hereto as **Exhibit 10**.

3 k. From October 12, 2019 to October 12, 2020, Defendants issued policy number
4 60437-30-76 (hereinafter "Brentwood Café Policy") to Plaintiff Brentwood
5 Café. A true and correct copy of the declarations page of the Brentwood Café
6 Policy is attached hereto as **Exhibit 11**.

7 l. From October 12, 2019 to October 12, 2020, Defendants issued policy number
8 believed to be 60175-50-73 (hereinafter "Calculated Freedom Policy") to
9 Plaintiff Calculated Freedom and Jinky's Café. A true and correct copy of the
10 declarations page of the Calculated Freedom Policy is attached hereto as
11 **Exhibit 12**.

12 m. From December 2, 2019 to December 2, 2020, Defendants issued policy
13 number believed to be 60677-29-22 (hereinafter "Great Going Policy") to
14 Plaintiff Going Great. A true and correct copy of the declarations page of the
15 Great Going Great Policy is attached hereto as **Exhibit 13**.

16 n. From July 17, 2019 to July 17, 2020, Defendants issued policy number
17 believed to be 60667-74-12 (hereinafter "Megna Holdings Policy") to Plaintiffs
18 Megna Holdings and Jinky's Café. A true and correct copy of the declarations
19 page of the Megna Holdings Policy is attached hereto as **Exhibit 14**.

20 o. From February 15, 2020 to February 15, 2021, Defendants issued policy
21 number believed to be 09415-47-71 (hereinafter "Jinky's Café Policy") to
22 Plaintiffs Megna Holdings and Jinky's Café. A true and correct copy of the
23 declarations page of the Jinky's Café Policy is attached hereto as **Exhibit 15**.

24 p. From April 1, 2019 to April 1, 2020, Defendant issued policy number believed
25 to be 60665-57-11 (hereinafter "Lars Restaurant Policy") to Plaintiffs Lars
26 Restaurant and Marmalade Café. A true and correct copy of the declarations
27 page of the Lars Restaurant Policy is attached hereto as **Exhibit 16**.

28 ///

- 1 q. From November 9, 2019 to November 9, 2020, Defendants issued policy
2 number believed to be 60541-84-82 (hereinafter "Le Chene Policy"). A true
3 and correct copy of the declarations page of the Le Chene Policy is attached
4 hereto as **Exhibit 17**.
- 5 r. From October 1, 2019 to October 01, 2020, Defendants issued policy number
6 believed to be 60676-49-11 (hereinafter "Malibu House Policy") to Plaintiffs
7 Malibu House and the Cliff Diver. A true and correct copy of the declarations
8 page of the Malibu House Policy is attached hereto as **Exhibit 18**.
- 9 s. From April 6, 2019 to April 6, 2020, Defendants issued policy number
10 believed to be 60622-69-36 (hereinafter "Frame Policy") to Plaintiff Frame.
11 A true and correct copy of the declarations page of the Frame Policy is
12 attached hereto as **Exhibit 19**.
- 13 t. From May 12, 2019 to May 12, 2020, Defendants issued policy number
14 believed to be 60666-68-34 (hereinafter "Melea Hair Policy") to Plaintiff
15 Melea Hair. A true and correct copy of the declarations page of the Melea Hair
16 Policy is attached hereto as **Exhibit 20**.
- 17 u. From July 2, 2019 to July 2, 2020, Defendants issued policy number believed
18 to be 60670-58-04 (hereinafter "Saecularia Policy") to Plaintiff Saecularia. A
19 true and correct copy of the declarations page of the Saecularia Policy is
20 attached hereto as **Exhibit 21**.
- 21 v. From August 16, 2019 to August 16, 2020, Defendants issued policy number
22 believed to be 60668-17-52 (hereinafter "Slater's 50/50 Policy") to Plaintiff
23 Slater's 50/50. A true and correct copy of the declarations page of the Slater's
24 50/50 Policy is attached hereto as **Exhibit 22**.
- 25 w. From May 13, 2019 to May 13, 2020, Defendants issued policy number
26 believed to be 60674-39-97 (hereinafter "Strongwater Policy") to Plaintiff
27 Strongwater. A true and correct copy of the declarations page of the
28 Strongwater Policy is attached hereto as **Exhibit 23**.

1 x. From February 8, 2020 to February 8, 2021, Defendants issued policy number
2 believed to be 60664-97-30 (hereinafter "Wezy Policy") to Plaintiff Wezy. A
3 true and correct copy of the declarations page of the Wezy Policy is attached
4 hereto as **Exhibit 24**.

5 45. Under said Policies, Plaintiffs agreed to make premium payments to Defendant TIE
6 in exchange for Farmers' promise to indemnify the Plaintiffs for losses including, but not limited to,
7 physical loss resulting in business income losses at several insured properties (collectively "Insured
8 Business(es)").

9 46. The Insured Businesses include different well-known restaurants, salons, car
10 dealerships, and custom framing businesses.

11 47. At all relevant times, the Policies were in full effect, providing property, business
12 personal property, business income and extra expense, and additional coverages.

13 48. Plaintiffs faithfully paid policy premiums to FARMERS.

14 49. The Policies cover direct physical loss of or damage to covered property.

15 50. The "Businessowners Special Property Coverage" (form BP 00 02 01 97) which is
16 contained in the 800 Degrees Policy, Golden Goose Policy, International Grill Policy, Lars
17 Restaurant Policy, Le Chene Policy, Malibu House Policy, Melea Hair Policy, Frame Policy,
18 Saecularia Policy, Slater's 50/50 Policy, Strongwater Policy, Wezy Policy, Pasta Mama Studio
19 City Policy, Taco Boy's Policy, Pasta Papa Policy, Taco Boys Atwater Policy, Pasta Mama West
20 Hollywood Policy, Augora Policy, Brentwood Café Policy, Calculated Freedom Policy, Great
21 Going Policy, and Megna Holdings Policy expressly covers direct physical loss of or damage to
22 covered property and operations and provides for coverage of the following types: off premises
23 event calculation, tips, lost profits and continuing expenses.

24 51. Under "Businessowners Special Property Coverage" (form BP 00 02 01 97),
25 "Business Income" is listed as an additional coverage under 5f. Under this additional coverage,
26 Defendants pay for the actual loss of business income due to the necessary suspension of
27 operations. The suspension must be caused by direct physical loss of or damage to property and the
28 loss or damage must be caused by or result from a "Covered Causes of Loss."

1 52. “Covered Causes of Loss” means risks of direct physical loss.

2 53. “Operations” means business activities occurring at the described premises.

3 54. The 800 Degrees Policy, Golden Goose Policy, International Grill Policy, Lars
4 Restaurant Policy, Le Chene Policy, Malibu House Policy, Melea Hair Policy, Frame Policy,
5 Saecularia Policy, Slater’s 50/50 Policy, Strongwater Policy, Wezy Policy, Pasta Mama Studio
6 City Policy, Taco Boy’s Policy, Pasta Papa Policy, Taco Boys Atwater Policy, Pasta Mama West
7 Hollywood Policy, Augora Policy, Brentwood Café Policy, Calculated Freedom Policy, Great
8 Going Policy, and Megna Holdings Policy, also provide coverage styled “Civil Authority.” Civil
9 Authority pays for the actual loss of business income and necessary extra expense caused when an
10 action of civil authority prohibits access to the insured property as the result of direct physical loss
11 of or damage to properties, other than the insured property.

12 55. The “Off Premises Event Calculation” is provided under the “Restaurant Premier
13 Package Endorsement” (form E3443-ED5 6-16). Under that coverage the Defendants pay if special
14 events are cancelled. This form is located in the 800 Degrees Policy, International Grill Policy,
15 Lars Restaurant Policy, Le Chene Policy, Malibu House Policy, Saecularia Policy, Slater’s 50/50
16 Policy, Strongwater Policy, Pasta Mama Studio City Policy, Taco Boy’s Policy, Taco Boys
17 Atwater Policy, Pasta Mama West Hollywood Policy, Augora Policy, Brentwood Café Policy,
18 Calculated Freedom Policy, Great Going Policy, and Megna Holdings Policy.

19 56. “Property damage” is defined in the 800 Degrees Policy, Golden Goose Policy,
20 International Grill Policy, Lars Restaurant Policy, Le Chene Policy, Malibu House Policy, Melea
21 Hair Policy, Frame Policy, Saecularia Policy, Slater’s 50/50 Policy, Strongwater Policy, Wezy
22 Policy, Pasta Mama Studio City Policy, Taco Boy’s Policy, Pasta Papa Policy, Taco Boys Atwater
23 Policy, Pasta Mama West Hollywood Policy, Augora Policy, Brentwood Café Policy, Calculated
24 Freedom Policy, Great Going Policy, and Megna Holdings Policy in the “Businessowners Liability
25 Coverage Form” (form BP 00 06 01 97), and is defined as follows: “Physical injury to tangible
26 property, including all resulting loss of use of that property...Loss of use of tangible property that
27 is not physically injured.”

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1 57. “Property Damage” is defined in the Aaero Sweet Policy as “damage to or loss of
2 use of tangible property.”

3 58. Plaintiffs’ reasonable expectation is that its Insured Businesses would be covered
4 due to physical damage or loss of ability to operate the insured properties as defined under the
5 Policies.

6 59. An unprecedented event in the form of a world pandemic has occurred. A novel
7 coronavirus, known as COVID-19, began infecting humans in China in December 2019. By March
8 11, 2020, the World Health Organization officially recognized the COVID-19 pandemic.

9 60. The COVID-19 pandemic got to California in January 2020 as more particularly set
10 forth below. According to the Center for Disease Control (“CDC”), from January 21, through
11 February 23, 2020, 14 U.S. cases of COVID-19, all related to travel from China, were detected by
12 public health agencies. Two of the first reported cases of COVID-19 nontravel-related deaths
13 occurred in Santa Clara County, California: the first involved a woman who died on February 6,
14 2020, after becoming ill with the virus on January 31, 2020, and another in a man who passed
15 between February 13 and 17¹. By March 27, 2020, The California Department of Public Health
16 announced that California had 3,801 confirmed COVID-19 positive cases and 78 deaths due to the
17 virus². On June 17, 2020, California was reported to have 157,015 confirmed COVID-19 positive
18 and 5,208 COVID-19 deaths since the start of the pandemic³. By September 20, 2020, those
19 numbers rose to 778,400 and 14,987, respectively⁴. And the numbers continue to spike. As of
20 January 6, 2021, there has been 2,482,226 million confirmed cases and 27,462 death in California.⁵

21 61. The pandemic is a natural disaster. The business loss caused by the pandemic is
22 indistinguishable from those caused by other natural disasters like earthquakes, hurricanes, and
23 fires. Plaintiffs’ Policies were intended to provide coverage for loss and damage resulting from
24 natural disasters such as the pandemic.

25 ¹ <https://www.cdc.gov/mmwr/volumes/69/wr/mm6922e1.htm>

26 ² <https://www.cdph.ca.gov/Programs/OPA/Pages/NR20-035.aspx>

27 ³ <https://www.cdph.ca.gov/Programs/OPA/Pages/NR20-127.aspx>

28 ⁴ <https://www.cdph.ca.gov/Programs/OPA/Pages/NR20-240.aspx>

⁵ <https://covid19.ca.gov/state-dashboard/>

62. The State of California and the various counties issued general orders pursuant to their emergency powers regulating natural disasters by suspending and restricting access to Plaintiffs' operations as well as to the businesses and other properties other than at Plaintiffs' premises. These general orders first mandated closures of businesses and operations, including Plaintiffs', for the public good, welfare and benefit.

63. Subsequently, various public entities issued general orders mandating businesses and operations, including Plaintiffs', to physically alter its property, if they wished to continue any aspect of operations.

64. Plaintiffs have sustained direct, physical loss of and/or damage to its Insured Businesses. Specifically, all of the physical spaces, tables and dining spaces were rendered nonfunctional because Plaintiffs were required to make substantial detrimental physical alterations and tangible damage to its premises. Additionally, Plaintiffs' operations were inexorably altered, in that patrons were no longer able to physically occupy the interior of Plaintiffs' businesses, restaurants, dining room operations were completely lost, employees were lost, and suppliers were lost.

FIRST CAUSE OF ACTION

DECLARATORY RELIEF

(Against All Defendants and DOES 1 to 25)

65. Plaintiffs re-allege and incorporate by reference into this cause of action each and every allegation set forth in each and every paragraph of this Complaint.

66. Under California Code of Civil Procedure §1060 et seq., the court may declare rights, status, and other legal relations whether or not further relief is or could be claimed.

67. An actual controversy has arisen between Plaintiffs and FARMERS as to their rights, duties, responsibilities and obligations of the parties under the Policies. Resolution of the duties, responsibilities and obligation of the parties is necessary as no adequate remedy at law exists and a declaration of the Court is needed to resolve the dispute and controversy.

68. Plaintiffs seek a declaratory judgment that Defendants must provide coverage to

1 Plaintiff, pursuant to terms under its insurance policy with Defendants, for the loss and damage
2 caused to Plaintiffs Businesses.

3 69. Plaintiffs seek a Declaratory Judgment to determine whether the government orders
4 constitute a direct physical loss of or damage to the Insured Premises as defined in the Policy.

5 70. Plaintiff seeks a Declaratory Judgment to determine whether the necessary suspension
6 of Plaintiffs' business operations caused by the government orders constitute a direct physical loss
7 as defined in The Policies.

8 71. Plaintiff seeks a Declaratory Judgement to determine whether the government orders
9 constitute a prohibition of access to Plaintiff's Insured Premises by a Civil Authority as defined in
10 The Policy.

11 72. Plaintiff further seeks a Declaratory Judgement to determine whether the government
12 orders trigger coverage under The Policies if Plaintiffs can prove that there has been a direct physical
13 loss of or damage to the property as defined in The Policies.

14 73. Plaintiff seeks a Declaratory Judgement to determine whether the COVID-19
15 pandemic constitutes a direct physical loss as defined in The Policies.

16 74. Plaintiff seeks a Declaratory Judgement to determine whether the required physical
17 alterations constitute a direct physical loss as defined in The Policies.

18 **PRAYER FOR RELIEF**

19 Wherefore, Plaintiffs herein, AAERO SWEET CORPORATION; AAERO SWEET
20 COMPANY; BASE ITALY d/b/a 800 DEGRESS LYNBROOK; GOLDEN GOOSE FAMILY,
21 INC; OSEN IZAKAYA; HUGO'S RESTAURANT; PASTA MAMA, INC.; TACO BOYS, INC.;
22 HUGO'S TACOS; PASTA PAPA, INC.; TACO BOYS ATWATER LP; INTERNATIONAL
23 GRILL, INC.; AGOURA RESTAURANT, LP; THOUSAND OAKS RESTAURANTS LP;
24 BRENTWOOD CAFE, INC.; JINKY'S STUDIO CAFÉ; CALCULATED FREEDOM, INC.;
25 JINKY'S CAFÉ; GREAT GOING FOOD CORP.; MEGNA HOLDINGS, INC.; LARS
26 RESTAURANT FLIP, INC.; MARMALADE CAFÉ; LE CHENE FRENCH CUISINE; MALIBU
27 HOUSE L.L.C.; THE CLIFF DIVER; MR. BABY INC.; FRAME; ROBERTA HART; MELEA
28 HAIR, SKIN & NAIL SALON; SAECULARIA, LLC a/k/a CASEY FELTON, LLC d/b/a BANH

1 OUI; CUTTING CATERING COMPANY; CCC ENTERTAINMNET; STRONG WATER
2 GROUP, LLC; STRONGWATER; WEZY HOSPITALITY LLC d/b/a WEZY pray as follows:

- 3 1) For a declaration that Defendants have a duty to pay Plaintiffs, pursuant to the terms
4 under its insurance policies with Defendants, for the loss and damage caused to
5 Plaintiffs including their business interruption losses.
- 6 2) For a declaration that the government orders constitute a direct physical loss of or
7 damage to the Insured Premises as defined in the Policy.
- 8 3) For a declaration that the necessary suspension of Plaintiffs' business operations
9 caused by the government orders constitute a direct physical loss as defined in The
10 Policies.
- 11 4) For a declaration that the government orders constitute a prohibition of access to
12 Plaintiff's Insured Premises by a Civil Authority as defined in The Policy.
- 13 5) For a declaration that the government orders trigger coverage under The Policies if
14 Plaintiffs can prove that there has been a direct physical loss of or damage to the
15 property as defined in The Policies.
- 16 6) For a declaration that the COVID-19 pandemic constitutes a direct physical loss as
17 defined in The Policies.
- 18 7) Plaintiff seeks a Declaratory Judgement to determine whether the required physical
19 alterations constitute a direct physical loss as defined in The Policies.
- 20 8) For such other relief as the Court may deem proper.

21
22 DATED: February 12, 2021

KABATECK LLP

23
24
25 BY: 

26 BRIAN S. KABATECK
27 MICHAEL CHILDRESS
28 MARINA R. PACHECO
NINELI SARKISSIAN
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