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8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

9 **COUNTY OF LOS ANGELES**

10
11 SCRATCH RESTAURANTS LLC dba
12 Phillip Douglas LLC and Scratch Bar and
13 Kitchen and Sushi Bar Los Angeles and
Sushi Bar Montecito, a limited liability
company,

14 Plaintiff,

15 vs.

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

19 Defendants.

CASE NO. **20STCP01233**

**COMPLAINT FOR DECLARATORY RELIEF
AND DEMAND FOR JURY TRIAL**

1 Plaintiff SCRATCH RESTAURANTS LLC dba Phillip Douglas LLC and Scratch Bar and
2 Kitchen, Sushi Bar Los Angeles, and Sushi Bar Montecito; (collectively “Plaintiff”), by their
3 undersigned counsel, allege as follows:

4 **PARTIES**

5 1. At all relevant times, Plaintiff SCRATCH RESTAURANTS LLC dba Phillip
6 Douglas LLC, Scratch Bar and Kitchen (“Scratch Bar”), Sushi Bar Los Angeles (“Sushi Bar LA”) is a limited liability company, authorized to do business in the State of California, County of Los
7 Angeles. SCRATCH RESTAURANTS LLC owns, operates, manages, and/or controls the
8 restaurants Scratch Bar and Sushi Bar LA.
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10 2. At all relevant times, Plaintiff SCRATCH RESTAURANTS LLC, dba Sushi Bar
11 Montecito is a limited liability company, authorized to do business in the State of California,
12 County of Santa Barbara. Scratch Restaurants LLC owns, operates, manages, and/or controls the
13 restaurant Sushi Bar Montecito.

14 3. At all relevant times, Plaintiff SCRATCH RESTAURANTS LLC, is the managing
15 entity for the Scratch Bar, Sushi Bar LA, and Sushi Bar Montecito, Plaintiff herein.

16 4. At all relevant times, Defendant FARMERS GROUP INC. (“FGI”), is a corporation
17 with its headquarters and principal place of business doing business in the State of California,
18 County of Los Angeles. FGI does business as Farmers Underwriters Association, a California
19 Corporation. FGI owns the service marks “Farmers Insurance Group of Companies” and “Farmers
20 Insurance Group.”

21 5. At all relevant times, Defendant Truck Insurance Exchange (“TIE”), is and was a
22 reciprocal or inter-insurance exchange, and member of the Farmers Insurance Group of
23 Companies, and a corporation doing business in the County of Los Angeles, State of California,
24 subscribing to Policy Number 60624-65-71. TIE issued the policy for Plaintiff’s properties for the
25 period of December 1, 2019 through December 1, 2020.

26 6. TIE is authorized to conduct insurance business, and does in fact conduct insurance
27 business in the State of California, in the County of Los Angeles. TIE’s operations, including but
28

1 not limited to, its claims and underwriting operations and procedures, are managed, overseen,
2 controlled, and directed in whole or in part by Defendant FGI.

3 7. FIG and TIE (collectively “FARMERS”) are transacting the business of insurance
4 in the state of California and the basis of this suit arises out of such conduct.

5 8. Defendant FGI and Defendant TIE are alter egos. Defendant FGI and various exchanges
6 form an insurance company holding system. Defendant FGI acts as the attorney-in-fact for
7 Defendant TIE. As an attorney-in-fact for Defendant TIE, Defendant FGI appointed *itself* to
8 provide management services to the insuring entities for a fee. This fee represents a substantial
9 portion of the gross premiums taken in by these insuring entities. FGI, either directly or through
10 other subsidiaries, performs all underwriting, product development, sales, actuarial and strategic
11 planning functions for TIE. FGI holds the service mark, “Farmers Insurance Group of Companies,”
12 under which Defendant TIE operates. Employees of each entity regard themselves as working for
13 a unified entity known as “Farmers.” In advertising, FGI and TIE make no distinction among
14 themselves, and hold themselves out to the public in the collective, as “Farmers” or as “Farmers
15 Insurance Group of Companies.” Defendants share the same agent for service of process.
16 Defendant Fire Insurance Exchange uses common forms developed and produced by FGI.

17 9. If the alter ego relationship among Defendants FGI and FIE is not recognized, an inequity
18 would also result because the entity which would be held liable, i.e., Defendant FIE, has no
19 employees and takes no independent action. Thus, Plaintiff would be forced to seek redress for the
20 wrongdoing against a shell corporation, while the entities with the employees who make the
21 decisions, and who are responsible for the wrongful acts, escape liability. This would be
22 inequitable.

23 10. Defendants FGI and TIE share the same principal place of business, 6301 Owensmouth
24 Ave, Woodland Hills, CA 91367.

25 11. Defendant FGI controls, as that term is defined in the California Insurance Holding
26 Company Act, Defendant TIE.

27 12. At all relevant times mentioned herein, the true names and capacities, whether individual,
28 corporate, associate or otherwise, of Defendants and DOES 1 through 25, inclusive, are currently

1 unknown to Plaintiff, who therefore bring suit against these Defendants by their fictitious names
2 and capacities. Plaintiff is informed and believes and thereupon alleges that each fictitiously named
3 Defendant, whether acting for itself or as an agent, corporation, association, or otherwise, is liable
4 or responsible to Plaintiff and proximately caused injuries and damages to Plaintiff as alleged
5 herein. While at this time Plaintiff is unaware of the true names and capacities of the DOE
6 Defendants, Plaintiff will amend its Complaint to show the true names and capacities of DOES 1
7 through 25, inclusive, when those identities have been ascertained.

8 13. At all relevant times mentioned herein, Defendants were the agents, employees,
9 supervisors, servants and joint venturers of each other, and in doing the things hereafter alleged,
10 were acting within the course, scope and authority of such agency, employment and joint venture
11 and with the consent and permission of each of the other Defendants. All actions of each
12 Defendant alleged in the causes of action into which this paragraph is incorporated by reference
13 were ratified and approved by the officers or managing agents of every other Defendant.

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

18 **JURISDICTION AND VENUE**

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

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

21 **FACTUAL BACKGROUND**

22 17. On or around December 1, 2019, Defendant TIE entered into a contract of insurance
23 with Plaintiff in the event of a covered loss or damage.

24 18. Under said contract, Plaintiff agreed to make cash payments to Defendant TIE in
25 exchange for Farmers' promise to indemnify the Plaintiff for losses including, but not limited to,
26 business income losses at several properties (hereinafter "Insured Properties").

27 19. The Insured Properties include three different well-known, dine-in only restaurants.
28 Two are located in Los Angeles County, and one is located in located in Santa Barbara County.

1 The restaurants include Scratch Bar, Sushi Bar LA, and Sushi Bar Montecito which are owned,
2 leased by, managed, and/or controlled by the Plaintiff.

3 20. Scratch Bar is located at 1601 Ventura Blvd. #255, in Encino, CA 91436. This
4 address is listed as an Insured Property under the Policy.

5 21. Sushi Bar LA is located at 1601 Ventura Blvd. #242, in Encino, CA 91436. This
6 address is listed as an Insured Property under the Policy.

7 22. Sushi Bar Montecito is located at 1295 Coast Village Rd., in Santa Barbara, CA
8 93108. This address is listed as an Insured Property under the Policy.

9 23. The Insured Properties are covered under a policy issued by Defendant TIE with
10 policy number believed to be 60624-65-71 (hereinafter "Policy"). A true and correct copy of the
11 Policy is attached hereto as Exhibit 1.

12 24. The policy is currently in full effect, providing property, business personal property,
13 business income and extra expense, and additional coverages between the period of December 1,
14 2019 through December 1, 2020.

15 25. The Businessowners Special Property Coverage explicitly provides for business
16 income coverage of the following types: franchise royalties, off premises event calculation, tips,
17 civil authority, and food borne illness.

18 26. The insurance applies to the actual loss of business income sustained and necessary
19 and reasonable extra expenses incurred when access to the scheduled premises is specifically
20 prohibited when it occurs as the result of a risk of direct physical loss, which is not excluded under
21 Plaintiff's policy.

22 27. Under "Civil Authority" coverage is provided to pay for the actual loss of business
23 income and necessary extra expense caused by an action of civil authority that prohibits access to
24 the insured property due to direct physical loss of use and function of the property.

25 28. The Policy further provides for additional coverages regarding "Claim Expenses."
26 This includes "the preparation of claim data" in the amount of \$10,000.

27 29. Plaintiff faithfully paid policy premiums to FARMERS to specifically provide all
28 risk coverage, including the actual loss of business income due to the necessary interruption of

1 business operations due to direct physical loss or direct physical damage to property as well as a
2 civil authority shutdown.

3 30. As now commonly known, an unprecedented event in the form of a world pandemic
4 is occurring. By March 11, 2020, the World Health Organization officially recognized the COVID-
5 19 pandemic.

6 31. It is the public policy intent and intent of each county to close businesses including
7 Plaintiff's for the public good, welfare, and benefit.

8 32. In order to protect the public, on March 15, 2020, Mayor Eric Garcetti of Los
9 Angeles issued an order placing restrictions on certain establishments throughout the City of Los
10 Angeles. Within this order included the prohibition of dine-in food service. A true and correct copy
11 of Mayor Eric Garcetti's Order ("Garcetti Order") is attached hereto as Exhibit 2.

12 33. In order to protect the public, on March 16, 2020, the Health Officer of Los Angeles
13 County, Muntu Davis, M.D., MPH, issued an order directing all individuals living in the county to
14 stay at home except that they may leave to provide or receive certain essential services or engage in
15 certain essential activities ("Los Angeles Order"). A true and correct copy of the Los Angeles
16 Order is attached hereto as Exhibit 3.

17 34. In order to protect the public, on March 16, 2020, the Santa Barbara City Council
18 issued an order placing restrictions on certain establishments throughout the City of Santa Barbara.
19 Within this order included the prohibition of serving food for consumption on premises. A true and
20 correct copy of Santa Barbara City Council's Order ("SB Council Order") is attached hereto as
21 Exhibit 4.

22 35. In order to protect the public, on March 17, 2020, the Santa Barbara Public Health
23 Department issued an order directing all individuals living in the county to stay at home except that
24 they may leave to provide or receive certain essential services or engage in certain essential
25 activities ("SBPHD Order"). A true and correct copy of the SBPHD Order is attached hereto as
26 Exhibit 5.

27 36. As a result of the Garcetti Order, the Los Angeles Order, the SB Council Order and
28 SBPHD Order (collectively "Orders"), Plaintiff has had to completely shut down its business

1 operations and access to the insured properties is specifically prohibited. Plaintiff has incurred
2 expenses due to the necessary interruption of their business operations at the Insured Properties.

3 37. As a further direct and proximate result of the Orders, Plaintiff has been forced to
4 furlough 55 employees.

5 38. A declaratory judgment interpreting the impact of the Los Angeles and Montecito
6 Orders on the insurance coverage provided by FARMERS will prevent the Plaintiff from being left
7 without vital coverage acquired to ensure the survival of their businesses due to the shutdown
8 caused by the civil authorities' response is necessary. As a result of this order, Plaintiff has
9 incurred, and continue to incur, a substantial loss of business income and additional expenses.

10 **FIRST CAUSE OF ACTION**

11 **DECLARATORY RELIEF**

12 **(Against All Defendants and DOES 1 to 25)**

13 39. Plaintiff re-alleges and incorporates by reference into this cause of action each and
14 every allegation set forth in each and every paragraph of this Complaint.

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

17 41. An actual controversy has arisen between Plaintiff and FARMERS as to their rights,
18 duties, responsibilities and obligations of the parties under the Policy as a result of the Orders.
19 Resolution of the duties, responsibilities and obligation of the parties is necessary as no adequate
20 remedy at law exists and a declaration of the Court is needed to resolve the dispute and
21 controversy.

22 42. Plaintiff seeks a Declaratory Judgement to determine whether the Orders constitute
23 a prohibition of access to Plaintiff's Insured Premises by a Civil Authority as defined in the Policy.

24 43. Plaintiff further seeks a Declaratory Judgement to determine whether the Los
25 Angeles Order triggers coverage under The Civil Authority provision of the Policy if Plaintiff can
26 prove that there has been a physical loss and damage to the property in the immediate area of the
27 Insured Properties.

28

JURY TRIAL DEMAND

Plaintiffs hereby demand a jury trial for all claims and issues so triable.

DATED: April 1, 2020

KABATECK LLP



By: _____

Brian S. Kabateck
Attorney for Plaintiff(s)

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