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ELECTRONICALLY FILED
Superior Court of California
County of Sonoma
5/13/2020 9:10 PM
Arlene D. Junior, Clerk of the Court
By: Cyndi Nguyen, Deputy Clerk

5 Attorneys for Plaintiff
6 Spaghettoni, A California Limited Partnership,
7 d/b/a/ Spaghettoni Italian Grill

8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SONOMA

10
11 **Spaghettoni, a California Limited**
12 **Partnership, d/b/a Spaghettoni Italian Grill,**
a California limited partnership,

13 Plaintiff,

14 v.

15 **Fireman's Fund Insurance Company,** a
16 California corporation, and **DOES 1** through
20,

17 Defendants.

Case No. SCV-266378

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

1 1. Defendant Fireman’s Fund Insurance Company was once a proud American firm,
2 founded in the late 19th Century. The company’s headquarters was destroyed in the 1906 San
3 Francisco earthquake, along with all of the documents proving the existence of policies. But the
4 carrier nevertheless was so focused on its customers that it took their word, and paid all claims
5 out of company cash and stock.

6 2. Unfortunately, Fireman’s Fund no longer has any reason to be proud. Now, when
7 its customers face a similar crisis, the carrier has focused on its profits, not its policyholders’
8 well-being.

9 3. In 2015, the company was purchased by Allianz SE (“Allianz”), a global
10 conglomerate headquartered in Germany. As relates to the recent global pandemic, here is what
11 Allianz has to say: “**A Friend in Need** - As the coronavirus pandemic impairs lives and
12 livelihoods across the world, how are Allianz entities supporting customers and communities in
13 their battle for survival? . . . Allianz, as a company well-aware of its responsibilities, has always
14 strived to support customers and communities in the best possible ways. The current situation is
15 no different. Our motto, **We secure your future**, is more important today than it has ever been.”

16 4. Plaintiff, a beloved Orange County institution that has been in business for more
17 than three decades, relied on the promise that Fireman’s Fund, and its new parent company,
18 Allianz, would live up to that promise in a time of crisis. Plaintiff relied on the promise that its
19 insurer would help the restaurant weather the brutal storm that is COVID-19, so that it can
20 continue to provide jobs and health insurance to hundreds of California residents. Instead, when
21 after years of paying tens of thousands of dollars in premiums to Fireman’s Fund, Spaghetini
22 sought benefits under its insurance policy to sustain its business, the carrier refused to investigate
23 the loss, never visited the property, and paid nothing.

1 **PARTIES¹**

2 5. Plaintiff Spaghetini, A California Limited Partnership, d/b/a Spaghetini Italian
3 Grill ("Spaghetini"), is a California limited partnership organized and authorized to do business
4 in the State of California. Plaintiff owns and operates the restaurant known as Spaghetini Italian
5 Grill located at 3005 Old Ranch Parkway in Seal Beach, Orange County, California
6 ("Spaghetini" or the "Property").

7 6. Fireman's Fund Insurance Company ("FFIC") is a California corporation licensed
8 to conduct business in the State of California.

9 7. The true names and capacities of Defendants DOES 1 - 20 are unknown; they are
10 therefore sued by fictitious names. Each of the DOE Defendants is, in some manner, responsible
11 for the damages alleged.

12 **VENUE AND JURISDICTION**

13 8. Venue is proper in the Superior Court of California for the County of Sonoma.
14 The allegations and claims for relief set forth in this Complaint arise out of unlawful acts
15 committed in that county. The contract of insurance at issue in this Complaint was formed in that
16 county. FFIC's principle place of business is in Sonoma County. The acts alleged to have been
17 committed in breach of the contract occurred in that county. Venue is based on Defendant
18 FFIC's location, the place of contract formation, the site of FFIC's unlawful conduct, FFIC's
19 transacting business in Sonoma County, and its deriving substantial revenue from its activities in
20 Sonoma County.

21 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

22 9. COVID-19 is a deadly infectious disease caused by the recently discovered
23 coronavirus, known as SARS-CoV-2. Because the virus is highly transmissible, it has been and
24 is rapidly spreading throughout the world, including in Orange County, California, and
25

26 ¹ All allegations in this Complaint are based upon information and belief, except those
27 allegations which pertain to Plaintiff, which are based on personal knowledge. The allegations of
28 this Complaint stated on information and belief are likely to have evidentiary support after a
reasonable opportunity for further investigation and discovery.

1 constitutes a recognized pandemic.

2 10. The coronavirus that causes COVID-19 is contained in and transmitted by
3 physical droplets that land indiscriminately on the surfaces of property with potentially fatal
4 consequences.

5 11. The coronavirus can remain infectious on a variety of surfaces and objects for an
6 unknown period, but at least hours to many days. The United States Center for Disease Control
7 has reported that the coronavirus was detected on various surfaces inside the cruise ship cabins
8 of both symptomatic and asymptomatic passengers 17 days after the cabins had been vacated.²

9 12. On March 12, 2020, California Governor Gavin Newsom issued Executive Order
10 N-25-20 (“March 12 Executive Order”), ordering that: “All residents are to heed any orders and
11 guidance of state and local public health officials, including but not limited to the imposition of
12 social distancing measures, to control the spread of COVID-19.” This Order took effect on
13 March 12, 2020, and has remained continuously in effect through the date of this Complaint, and
14 applies to the residents of Orange County, California, where Spaghettni is located.

15 13. On March 18, 2020, the County Health Officer for Orange County, California—
16 where Spaghettni is located—issued an order revising its March 17, 2020 Order (“March 18
17 Orange County Order”)³, prohibiting public or private gatherings as defined by the California
18 Department of Public Health (“CDPH”).

19 14. As of the filing of this Complaint, Orange County’s “Coronavirus COVID-19
20 Guidance for Restaurant/Cafeteria” provides that “Restaurants and other facilities that prepare
21 and serve food may remain open, but only for delivery or take-out or drive-through ordering. All
22 on-site dining shall be closed as well as any self-service food operations.”⁴

23 15. On March 19, 2020, the State of California issued an Order of the State Public
24

25 ² See Leah E. Moriary, et al., “Public Health Responses to COVID-19 Outbreaks on Cruise Ships
26 — Worldwide, February–March 2020,” 69 *Morbidity and Mortality Weekly Report* 347 (released
27 online Mar. 23, 2020), available at [https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6912e3-
28 H.pdf](https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6912e3-H.pdf)

³ https://www.ochealthinfo.com/phs/about/epidasmt/epi/dip/prevention/covid_19_order

⁴ <http://www.ocfoodinfo.com/documents/FoodFacilityCovid19RestaurantGuidance41320.pdf>

1 Health Officer, which set baseline statewide restrictions on non-essential business activities
2 effective until further notice.

3 16. On that same date, Governor Newsom issued Executive Order N-33-20, expressly
4 requiring California residents to follow the March 19 Order of the State Public Health Officer,
5 and incorporating by reference California Government Code 8665, which provides that “[a]ny
6 person . . . who refuses or willfully neglects to obey any lawful order . . . issued as provided in
7 this chapter, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punishable
8 by a fine of not to exceed one thousand dollars (\$1,000) or by imprisonment for not to exceed six
9 months or by both such fine and imprisonment” (Cal. Gov. Code § 8665). The March Order of
10 the State Public Health Officer and Executive Order N-33-20 (collectively, the “Statewide
11 Shelter Orders”) took immediate effect on March 19, 2020, and both have remained continuously
12 in effect through the date of this Complaint.

13 17. Spaghetini consists of more than 11,000 square feet of interior space and
14 substantial exterior grounds. It is located in one of the most heavily trafficked areas in Southern
15 California, which includes attractions such as the Old Ranch Country Club, Leisure World, the
16 Naval Weapons Station, and the Seal Beach Pier. It is also adjacent to a large business park.

17 18. From March 1, 2020 through March 15, 2020:

- 18 (a) The restaurant was open to customers at least 85 hours a week and—given
19 off-hours use of the premises by staff, vendors, and cleaning crews—was
20 occupied by people approximately 100 hours a week;
- 21 (b) approximately 180 non-customer persons were on the restaurant premises
22 for differing periods, including employees, vendors, and contractors such
23 as musicians and outside catering staff; and
- 24 (c) the restaurant had more than 3,000 customers on its premises.

25 19. A large number of potential carriers of communicable disease, including COVID-
26 19, passed through Spaghetini and its immediate environs in the weeks prior to closure.

27 20. Of the people who were in Spaghetini in the two weeks prior to its closure, at
28 least one and likely several were infected with COVID-19, and came into contact with surfaces

1 and persons both at the restaurant and within a one-mile radius around it.

2 21. Given the significant human traffic through the restaurant premises, its owners
3 concluded the 11,000-plus square-foot restaurant interior space, and its contents, were
4 contaminated.

5 22. Due to the contamination, for the safety of its employees and customers,
6 Spaghettini closed its doors to the public on March 16, 2020.

7 23. Separately, and independently, Spaghettini closed due to the orders of Civil
8 Authorities, including California and Orange County, which prevented and precluded public
9 access to the restaurant for the foreseeable future.

10 24. Since closing the restaurant, Plaintiff has discovered that at least one regular
11 employee who was on premises routinely from March 1, 2020 until the restaurant closed, tested
12 positive for COVID-19.

13 25. It is probable that a number of people on the restaurant premises from March 1 to
14 March 15, 2020, were positive for COVID-19, and thereby distributed the virus to the premises
15 and its contents.

16 26. It is probable that between March 1, 2020 and March 15, 2020, a number of
17 people who passed through the one-mile radius of the restaurant were positive for COVID-19,
18 and thereby distributed the virus to the objects and surfaces in that area, including in the interior
19 of buildings, and the surfaces of outside spaces.

20 27. FFIC entered an insurance contract with Plaintiff whereby Plaintiff agreed to
21 make payments to FFIC in exchange for FFIC's promise to indemnify Plaintiff for losses,
22 including but not limited to business income losses at its restaurant, and damage to the physical
23 property.

24 28. The Policy (policy number USC013120200) (the "Policy") is attached to this
25 Complaint as **Exhibit A**; its terms are incorporated here by reference as if set forth in full.

26 29. The Policy provides coverage for damage to business personal property, business
27 income and extra expense, and other coverages for the period 2/3/2020 to 2/3/2021, up to the
28 Policy limit of \$7,373,900, with applicable sub-limits as set forth in the Policy.

1 30. The Policy is all-risk, providing coverage for all non-excluded losses.

2 31. The Policy separately and expressly provides additional coverages for loss from
3 “Communicable Disease” and the actions of “Civil Authority,” each of which provide for the
4 payment of benefits in the event the covered cause of loss results in property damage or business
5 interruption losses.

6 32. Plaintiff paid premiums additional to the premiums due for the base coverage to
7 obtain coverage for losses due to Communicable Disease and the actions of Civil Authority.

8 33. The Communicable Disease coverage affords \$250,000 in benefits for property
9 damage and business interruption, among other coverages.

10 34. The Civil Authority coverage affords \$500,000 in benefits for property damage
11 and business interruption, among other coverages.

12 35. Plaintiff has sustained significant and ongoing business losses and property
13 damage as a result of direct physical damage and loss at the restaurant due to the presence of a
14 communicable disease. Spaghetini therefore requires intensive remediation to its premises and
15 contents, as well as post-remediation clearance testing, to correct the physical damage and
16 physical loss caused by the presence of the coronavirus in the restaurant.

17 36. Plaintiff has sustained significant and ongoing business losses as a result of direct
18 physical damage and loss relating to the presence of the coronavirus in the environs of the
19 restaurant, as such physical damage and loss has resulted in the orders of Civil Authority
20 precluding public entry into and access to the restaurant.

21 37. Specifically:

- 22 • Spaghetini has suffered business interruption losses in excess of \$750,000;
- 23 • Spaghetini has suffered property damage in excess of \$200,000; and
- 24 • Spaghetini has suffered ongoing additional property damage and business losses
25 in an amount to be established, but all of which is covered under the Policy.

26 38. Plaintiff delivered proof of its losses and anticipated losses to FFIC, as well as
27 evidence of direct physical loss and damage, as required by the Policy.

28 39. Those proofs have included, but were not limited to, proof of: (a) sustained and

1 anticipated business interruption to exceed \$750,000; (b) \$1,500 in incurred investigative costs;
2 (c) \$223,588.36 in anticipated remediation costs; and (d) \$4,200 in anticipated post-remediation
3 clearance testing.

4 40. Plaintiff alerted FFIC to the presence of infected persons on the Property in the
5 period prior to the closure.

6 41. Plaintiff alerted FFIC to the presence of infected persons in the environs of the
7 Property in the period prior to and after the closure.

8 42. Plaintiff communicated to FFIC that these massive, ongoing losses, which are
9 expressly covered under the Policy, threaten the existence of the restaurant and the long-term
10 employment of more than 100 California residents.

11 43. Plaintiff likewise communicated to FFIC that prompt investigation and payment
12 of Policy benefits was critical due to the acute financial pressures resulting from the abrupt
13 closure of the restaurant and furloughing of most of the restaurants employees.

14 44. Spaghettini's losses—business interruption and property damage—were the result
15 of direct physical loss and damage to the premises, and surrounding area.

16 45. There was direct physical damage and loss caused by contamination by the
17 coronavirus to the restaurant premises and its contents.

18 46. There was direct physical damage and loss in the area surrounding Spaghettini
19 which resulted in the Order from a Civil Authority blocking access to the restaurant.

20 47. Plaintiff timely reported its property and business-interruption loss to FFIC in
21 March 2020.

22 48. Plaintiff has otherwise satisfied all conditions precedent to coverage under the
23 Policy.

24 49. Under the Policy and California law, given the timely report of the loss, FFIC was
25 obligated to perform under the Policy and to abide by the regulations set forth in 10 CCR
26 §2695.1 et seq.

27 50. Instead, without proper cause or justification, with knowledge that its failure to
28 perform under the contract could and would result in the likely failure of the restaurant as a

1 business, and with the intent of violating Plaintiff's rights under the insurance contract and state
2 law, FFIC breached the Policy.

3 51. Having received a report of loss from a California insured, pursuant to 10 CCR
4 §2695.7(d), it was solely FFIC's obligation to timely carry out a thorough and objective
5 investigation of all potential bases for the claim.

6 52. Although it was aware of the high risk of contamination at the Property, and the
7 long-standing presence on the Property of one or more infected persons, FFIC conducted no
8 investigation of the existence of physical loss or damage to the Property.

9 53. No FFIC adjuster, investigator, or agent has ever been to the Property.

10 54. FFIC hired no licensed professionals to determine the existence of physical loss or
11 damage to the Property.

12 55. FFIC conducted no investigation regarding the existence of physical loss or
13 damage to the area covering a one-mile radius from the Property, or to determine if such physical
14 loss or damage led to orders of any Civil Authority interfering with public access to the
15 restaurant.

16 56. Having conducted no meaningful investigation of any basis for the claim under
17 any coverage afforded by the Policy, on April 27, 2020, FFIC denied the claim without basis or
18 proper cause in its entirety, in a two-line email to Plaintiff.

19 **FIRST CAUSE OF ACTION**

20 **INSURANCE BAD FAITH**

21 **(AGAINST FFIC AND DOES 1-20)**

22 57. Plaintiff incorporates by reference the preceding paragraphs as though fully set
23 forth here in this first cause of action against Defendants FFIC and DOES 1-20.

24 58. FFIC insured Spaghetini under the Policy, number USC013120200, insuring all
25 risks of loss at the restaurant, and affording additional express coverages as set forth above.

26 59. While the policy was in effect, on or about March 16, 2020, the restaurant and
27 area one-mile in radius surrounding the restaurant suffered direct physical loss and/or property
28 damage (the "Loss").

1 60. As a result of the direct physical loss or damage, Plaintiff suffered and expects to
2 continue to suffer losses including but not limited to costs of investigation, costs to remediate
3 property damage, costs for post-remediation clearance, and business interruption.

4 61. Plaintiff provided prompt notice to FFIC, and FFIC assigned claim numbers SF-
5 USCC03341320 and CHI20361200 to the Loss (the "Claims").

6 62. FFIC and DOES 1-20 breached the covenant of good faith and fair dealing by,
7 among other things:

- 8 (a) Improperly, unreasonably, maliciously, and without proper cause delaying,
9 denying and/or underpaying the Claims, which are for an amount to exceed
10 \$750,000;
- 11 (b) Fraudulently misrepresenting and/or concealing benefits under the Policy for the
12 Claims and Plaintiff's rights under California law and regulations as applies to
13 property claims;
- 14 (c) Failing to conduct and diligently pursue a thorough, fair, and objective
15 investigation of all bases of the Claims, in violation of 10 CCR §2695.7(d);
- 16 (d) Intentionally violating Insurance Code §790.03(h) and Fair Claims Settlement
17 Practices Regulations §§2695.1 et seq. in denying the Claims; and
- 18 (e) requiring Plaintiff to obtain counsel and file a lawsuit in order to obtain amounts
19 owed under the Policy, in violation of Insurance Code §790.03(h)(6).

20 63. As a direct and proximate result of FFIC's and DOES 1-20's breach of the
21 covenant of good faith and fair dealing, malice, fraud, and oppression by the intentional delay
22 and withholding of benefits under the policy, Plaintiff has lost contract benefits under the Policy,
23 sustained consequential damages, and incurred attorneys' fees and costs in seeking enforcement
24 of the rights under the Policy.

25 64. In doing the things set forth above, FFIC and DOES 1-20 acted intentionally with
26 fraud, malice, and oppression in that they knowingly and intentionally violated Plaintiff's rights
27 under the Policy for the purpose of depriving Plaintiff of the Policy benefits.

28 65. Specifically:

- 1
- 2 • FFIC fraudulently promised and represented to Plaintiff that it would be insured
3 for losses caused by communicable disease up to \$250,000, and for losses relating
4 to orders of any Civil Authority which prevented it from operating up to
5 \$500,000. FFIC intended Plaintiff to rely on those promises, but FFIC did not
6 intend to perform those promises.
 - 7 • As a clear indicator that FFIC never intended to make good on its promises and
8 deny Plaintiff the promised benefits, FFIC failed to undertake any type of
9 investigation—let alone a full, thorough, objective one as it is required to do by
10 California law—of whether and the extent to which the coronavirus caused
11 Plaintiff direct physical harm or damage.
 - 12 • Moreover, as a result of FFIC’s false promises, the restaurant—a long-standing
13 contributor to the community, which has employed 100 Californians on a long-
14 term basis—sits contaminated, with all of the physical damage and physical loss
15 caused by the virus uncorrected; it cannot maintain its once-thriving business
16 despite having paid FFIC premiums to support the Policy that was to act as a
17 safeguard during this unforeseen catastrophe, given the acute financial pressure
18 resulting from the forced, abrupt closure of the restaurant and furloughing of most
19 of the restaurant’s employees.
 - 20 • FFIC denied the claim in a short time, in an email, in violation of 10 CCR
21 §2695.7;
 - 22 • FFIC became aware that at least one COVID-positive employee was on the
23 restaurant premises prior to the closure, but did nothing to inspect or investigate
24 the impact of that potential contamination at the restaurant;
 - 25 • FFIC knew that the failure to pay benefits properly due under the Policy had a
26 high probability of forcing Spaghetini to close permanently, thus causing
27 between 50 and 100 California residents to lose their jobs, and health insurance,
28 but nevertheless failed to investigate all bases for coverage and failed to pay the
claims; and

- 1 • FFIC has an institutional practice of failing to investigate communicable disease
2 claims, and denying those claims without regard for evidence in support of the
3 claims.

4 66. Plaintiff is therefore entitled to exemplary damages in an amount in accordance
5 with the evidence introduced at trial.

6 67. As further evidence that the various acts of bad faith, malice, fraud, and
7 oppression set forth above were done knowingly, deliberately, and intentionally, each of the acts
8 of bad faith, malice, fraud, and oppression set forth above are part of a pattern of institutional bad
9 faith by FFIC, designed to reduce claims costs and expenses, and increase profits for its parent
10 company, Allianz—even while Allianz touts that its “business is about trust” and “[g]oing
11 ‘above and beyond’ on our clients behalf.”⁵

12 68. Specifically, in the event of claims by business owners for direct physical loss and
13 damage, property damage, and business interruption, caused by communicable disease, and/or by
14 the actions of Civil Authority, FFIC routinely engages in the following acts of bad faith, which
15 violate California law:

- 16 (a) failing to conduct and diligently pursue thorough, fair, and objective
17 investigations of claims in violation of 10 CCR §2695.7(d);
18 (b) unreasonably, maliciously, and without proper cause, failing to pay and delaying
19 payment of policy benefits in violation of §790.03(h)(5); and
20 (c) requiring insureds to obtain counsel and file a lawsuit in order to obtain amounts
21 owed under the Policy in violation of Insurance Code §790.03(h)(6).

22 69. FFIC claims personnel, including managers and supervisors, who participated in
23 the investigation and adjusting of Plaintiff’s claims are likewise part of FFIC’s institutional bad
24 faith and have themselves engaged in each of the foregoing practices deliberately designed by
25 FFIC to increase its profitability and the profitability of its parent company, Allianz SE, by
26 reducing indemnity payments and claims expenses.

27 _____
28 ⁵ <http://www.allianzusa.com/companies/allianz-global-corporate-specialty/>

1 70. David Melton, Paul Blanchard, and Scott Shumaker, among others, either made,
2 authorized, or ratified all of the investigation, claims handling, claims adjustment, and payment
3 decisions vis a vis Plaintiff's Claims. They are the managing agents of FFIC and/or DOES 1-20
4 pursuant to Civil Code §3294 because they exercised substantial independent authority and
5 judgment in their corporate decision-making such that their decisions ultimately determined
6 corporate policy for Plaintiff's Claims.

7 **SECOND CAUSE OF ACTION**

8 **BREACH OF CONTRACT**

9 **(AGAINST FFIC AND DOES 1-20)**

10 71. Plaintiff incorporates by reference the preceding paragraphs as though fully set
11 forth here in this second cause of action against Defendants FFIC and DOES 1-20.

12 72. Plaintiff suffered losses covered under the Policy.

13 73. Plaintiff provided timely notice of the losses to FFIC.

14 74. As a direct and proximate result of FFIC's and DOES 1-20's breach, Plaintiff
15 sustained an uncompensated loss.

16 75. As a direct and proximate result of FFIC's and DOES 1-20's breach, Plaintiff
17 suffered foreseeable consequential damages.

18 76. As a direct and proximate result of FFIC's and DOES 1-20's breach, Plaintiff has
19 been damaged in the amount of coverage to which it is entitled under the Policy, in an amount to
20 be proved at trial, and for which Plaintiff seeks compensatory damages with interest thereon.

21 **THIRD CAUSE OF ACTION**

22 **FALSE PROMISE**

23 **(AGAINST FFIC AND DOES 1-20)**

24 77. Plaintiff incorporates by reference the preceding paragraphs as though fully set
25 forth here in this third cause of action against Defendants FFIC and DOES 1-20.

26 78. On or about February 3, 2020, FFIC falsely promised Plaintiff that it would be
27 insured for losses caused by communicable disease up to \$250,000.

28 79. On or about February 3, 2020, FFIC falsely promised Plaintiff that it would be

1 insured up to \$500,000 for losses relating to the orders of any Civil Authority which prevented
2 the restaurant from operating.

3 80. FFIC intended Plaintiff to rely on those promises.

4 81. FFIC did not intend to perform the promised acts.

5 82. Plaintiff reasonably relied on the promises that it would receive benefits for
6 property and business interruption losses for the perils covered under the Policy, as FFIC had
7 promised.

8 83. As a result of the foregoing false promises, Plaintiff was harmed, in that it
9 suffered uninsured losses, including costs of investigation, costs for remediation, costs of
10 clearance testing, and business interruption.

11 84. Plaintiff's reliance on the false promises was a substantial factor in causing the
12 harm suffered.

13 85. In doing the things set forth above, FFIC acted intentionally and with fraud,
14 malice, and oppression. Specifically, FFIC and its managing agents made, approved, and ratified
15 the misrepresentations. Plaintiff is therefore entitled to exemplary damages in an amount in
16 accordance with the evidence introduced at trial.

17 **FOURTH CAUSE OF ACTION**

18 **NEGLIGENT MISREPRESENTATION**

19 **(AGAINST FFIC AND DOES 1-20)**

20 86. Plaintiff incorporates by reference the preceding paragraphs as though fully set
21 forth here in this fourth cause of action against Defendants FFIC and DOES 1-20.

22 87. FFIC and DOES 1-20 made affirmative misrepresentations to and concealed
23 material facts to Plaintiff.

24 88. On or about February 3, 2020, FFIC falsely informed Plaintiff that it would be
25 insured for losses caused by communicable disease up to \$250,000.

26 89. On or about February 3, 2020, FFIC falsely informed Plaintiff that it would be
27 insured up to \$500,000 for losses relating to the orders of any Civil Authority which prevented
28 the restaurant from operating.

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90. At all relevant times, these representations were not true.

91. Even if Defendants believed that the representations were true, they had no reasonable grounds to believe the representations were true when they made them because it was FFIC's position that property and business interruption losses caused by communicable disease and the actions of Civil Authority were non-compensable in the event of a global pandemic which caused premises and local contamination.

92. Defendants intended that Plaintiff rely on their false representations.

93. Plaintiff reasonably and actually relied on Defendants' misrepresentations and concealments.

94. As a direct and proximate result of such unlawful conduct, Plaintiff was harmed, in that it suffered uninsured losses, including costs of investigation, costs for remediation, costs of clearance testing, and business interruption.

95. Plaintiff's reliance on the false representations set forth was a substantial factor in causing the harm suffered.

96. In doing the things set forth above, FFIC acted intentionally and with fraud, malice, and oppression. Specifically, FFIC and its managing agents made, approved, and ratified the misrepresentations. Plaintiff is therefore entitled to exemplary damages in an amount in accordance with the evidence introduced at trial.

PRAYER FOR RELIEF

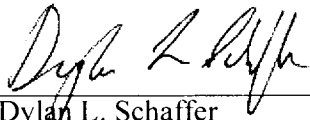
Plaintiff prays for judgment against Defendants as follows:

1. for general, special, economic, and consequential damages;
2. for pre-judgment interest;
3. for attorneys' fees;
4. for costs of suit;
5. for exemplary damages; and
6. for such other relief the Court finds just and proper.

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Date: May 13, 2020

Kerley Schaffer LLP



Dylan L. Schaffer
Attorneys for Plaintiff