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 6 Venice, L.P., and Erwin H. Sokol, as Trustee of
 the Frances Sokol Trust
 7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 FOR THE COUNTY OF LOS ANGELES

10 MARINA PACIFIC HOTEL & SUITES, LLC, a
 11 limited liability company; VENICE
 WINDWARD, LLC, a limited liability company;
 12 LARRY’S VENICE, L.P., a limited partnership;
 and ERWIN H. SOKOL, as Trustee of the Frances
 13 Sokol Trust, an individual,

14 Plaintiffs,

15 v.

16 FIREMAN’S FUND INSURANCE COMPANY,
 a corporation; and DOES 1 through 50, inclusive,
 17

18 Defendants.

Case No. 20SMCV00952

COMPLAINT FOR:

- 1) **BREACH OF CONTRACT;**
- 2) **TORTIOUS BREACH OF CONTRACT;**
- 3) **FINANCIAL ELDER ABUSE; AND**
- 4) **UNFAIR COMPETITION**

1 Plaintiffs Marina Pacific Hotel & Suites, LLC, Venice Windward, LLC, Larry’s Venice, L.P.,
2 and Erwin H. Sokol, as Trustee of the Frances Sokol Trust, allege as follows:

3 **FIRST CAUSE OF ACTION**

4 (Breach of Contract Against Defendant Fireman’s Fund Insurance Company)

5 1. Plaintiff Marina Pacific Hotel & Suites, LLC (“Marina Pacific”) is, and at all relevant
6 times has been, a limited liability company duly organized under the laws of California and doing
7 business in the County of Los Angeles, State of California.

8 2. Plaintiff Venice Windward, LLC (“Venice Windward”) is, and at all relevant times
9 has been, a limited liability company duly organized under the laws of California and doing business
10 in the County of Los Angeles, State of California.

11 3. Plaintiff Larry’s Venice, L.P. (“Larry’s Venice”) is, and at all relevant times has been,
12 a limited partnership duly organized under the laws of California and doing business in the County of
13 Los Angeles, State of California.

14 4. Plaintiff Erwin H. Sokol (“Sokol”), as Trustee of the Frances Sokol Trust, is and as at
15 all relevant times has been an individual who resides in Los Angeles County, California. Sokol was
16 born in 1934.

17 5. Marina Pacific, Venice Windward, Larry’s Venice, and Sokol are sometimes
18 collectively hereinafter referred to as “Plaintiffs or the “Insureds.”

19 6. Plaintiffs are informed and believe, and on the basis of such information and belief
20 alleges, that Defendant Fireman’s Fund Insurance Company (“FFIC”) is, and all relevant times: (a)
21 has been a California corporation; and (b) has engaged in the business of providing insurance to
22 persons and entities in the County of Los Angeles, State of California.

23 7. The names and true capacities, whether individual, corporate or otherwise, of
24 defendants named herein as Does 1 through 50, inclusive, are unknown to Plaintiffs, who therefore
25 sues said defendants by such fictitious names. Plaintiffs are informed and believe, and on the basis of
26 such information and belief allege, that defendants Does 1 through 50, inclusive, or some of them,
27 participated in some or all of the acts as hereinafter alleged and are liable to Plaintiffs. FFIC and
28 Does 1 through 50, inclusive, are sometimes hereinafter collectively referred to as “Defendants.”

1 8. FFIC issued its Policy No. USC007058190 (“Policy”) with a policy period of July 1,
2 2019 to July 1, 2020. The Policy contains, *inter alia*, all risk first party commercial property
3 coverage for the properties located at 1697 Pacific Avenue, Venice, CA 90291 and 24 Windward
4 Avenue, Venice, CA 90291 (collectively, the “Insured Properties”) including, without limitation,
5 coverages for “Business Income, Extra Expense” with limits of \$22 million, “Civil Authority
6 Coverage” with limits of \$2.5 million, and Communicable Disease Coverage with limits of \$1
7 million. Plaintiffs are named insureds under the Policy.

8 9. Commencing in or about March 2020, Plaintiffs have suffered loss arising from direct
9 physical loss or damage to the Insured Properties (and/or within the covered radius) based on, *inter*
10 *alia*, the existence of COVID-19 (the “Loss”), which Loss is covered under the Policy. For example
11 and in addition other means by which COVID-19 has come to exist at the Insured Properties,
12 employees of the Insureds have tested positive for COVID-19 resulting in the existence of COVID-
13 19 at, and direct physical loss and damage to, the Insured Properties. Additionally, the Insureds have
14 been subject to various government orders providing, *inter alia*, that the Insured Properties be
15 evacuated, decontaminated, and/or disinfected due to the Loss.

16 10. Plaintiffs gave timely notice of the loss under the Policy and have cooperated in the
17 adjustment of the claim at all times.

18 11. Plaintiffs have duly performed all conditions on their part under the Policy except as
19 excused by FFIC’s conduct and breaches of contract.

20 12. FFIC has breached the Policy by denying coverage for the Loss and refusing to pay
21 any Policy benefits in connection with the Loss. Plaintiffs repeatedly pleaded with FFIC to advance
22 Policy benefits to avoid financial calamity to Plaintiffs through written correspondence to both (1) J.
23 Leigh Fisher (a Senior Claims Adjuster for North America Claims at FFIC) and (2) Bruce Celebrezze
24 and Kathryn Ashton of Clyde & Co (FFIC’s outside counsel), but all the while FFIC remained
25 steadfast in its refusal to pay a single dollar toward the Loss with full knowledge that such failure
26 would result in an extinction-level event for the Insureds.

27 13. The aforesaid conduct of FFIC constitutes material breaches of the Policy.
28

1 14. As a direct and proximate result of FFIC's breaches of contract, Plaintiffs have
2 suffered damages in an amount to be proven at trial.

3 **SECOND CAUSE OF ACTION**

4 (Tortious Breach of Contract Against Defendant Fireman's Fund Insurance Company)

5 15. Plaintiffs incorporate by reference each and every allegation contained in Paragraphs 1
6 through 14, above, as though fully set forth herein.

7 16. The Policy contains an implied covenant of good faith and fair dealing requiring, *inter*
8 *alia*, that FFIC act in good faith and deal fairly with Plaintiffs and take no action to interfere with
9 Plaintiffs' rights to receive benefits which they reasonably expected to receive under the Policy.
10 FFIC has tortiously breached that implied covenant of good faith and fair dealing, as hereinabove
11 alleged, in that it, among other things:

- 12 a. Wrongfully, intentionally, unreasonably and in bad faith refused to honor its
13 obligations under the Policy;
- 14 b. Wrongfully, intentionally, unreasonably and in bad faith failed and refused to
15 evaluate Plaintiffs' claim in an objective fashion and instead wrongfully,
16 intentionally, and unreasonably denied coverage at the outset without conducting
17 any adequate investigation;
- 18 c. Wrongfully and in bad faith engaged in an unreasonable and arbitrary
19 interpretation of the Policy;
- 20 d. Wrongfully, intentionally, unreasonably and in bad faith failed and refused to fully
21 and fairly pay a covered loss under the Policy;
- 22 e. Fraudulently misrepresented and falsely promised that it would indemnify and pay
23 the losses incurred by Plaintiffs under the Policy for covered loss when it had no
24 intention of doing so. Among other things and without limitation, in connection
25 with the issuance of the Policy on June 1, 2019, FFIC's President William
26 Scaldaferrri, among other authorized FFIC officers, falsely represented that FFIC
27 would provide the coverage promised in the Policy;

- 1 f. Wrongfully, intentionally, unreasonably and in bad faith failed and refused to
2 inform Plaintiffs of their rights under the Policy, but instead sought to impose
3 impermissible conditions on those benefits;
- 4 g. Wrongfully, intentionally, unreasonably and in bad faith failed to conduct and
5 diligently pursue a thorough, fair and reasonable investigation of the claim;
- 6 h. Wrongfully, intentionally, unreasonably and in bad faith failed and refused to
7 adjust the claim in compliance with, among others, Sections 2695.7 and 2695.9 of
8 the Fair Claims Settlement Practices Regulations and Section 790.03(h) of the
9 California Insurance Code;
- 10 i. Wrongfully, intentionally, unreasonably and in bad faith persisted in seeking
11 information not reasonably required for or material to the resolution of the claim in
12 violation of, *inter alia*, Section 2695.7(d) of the Fair Claims Settlement Practices
13 Regulations;
- 14 j. Wrongfully, intentionally, unreasonably and in bad faith forced Plaintiffs to incur
15 the expense of filing the within action to recover benefits owing under the Policy;
16 and
- 17 k. Wrongfully, intentionally, unreasonably and in bad faith placed its own interests
18 above those of its insureds, including but not limited to Plaintiffs.

19 17. Plaintiffs are informed and believe, and based thereon allege, that FFIC has engaged in
20 similar bad faith conduct with respect to its other insureds in connection with both COVID-19 claims
21 and otherwise as a matter of course.

22 18. In order to recover the Policy benefits sought herein, and as a result of FFIC's bad
23 faith and tortious breach of contract, Plaintiffs have been and will be forced to incur attorneys' fees
24 and related expenses and costs.

25 19. Additionally, Sokol has endured pain and suffering as a direct result of the conduct of
26 FFIC.

27 20. As a direct, proximate and foreseeable result of the aforesaid intentional and wrongful
28 conduct, Plaintiffs have suffered damages in an amount to be proven at trial.

1 cruel and unjust hardships in disregard of his rights such as to constitute oppression, fraud and malice
2 under California Civil Code Section 3294. By reason of the foregoing, Sokol is entitled to recover
3 damages from Defendants for the sake of example and to punish and deter Defendants in a sum to be
4 determined by the trier of fact.

5 28. Sokol is a “senior citizen” as defined California Civil Code Section 1761(f) and,
6 pursuant to California Civil Code Section 3345, is entitled to trebling of the statutory damages under
7 California Civil Code Section 3294, California Welfare and Institutions Code Sections 15610.30 and
8 15657.5 and otherwise, to be awarded against Defendants and in favor of Sokol.

9 **FOURTH CAUSE OF ACTION**

10 (Unfair Competition Against Defendant Fireman’s Fund Insurance Company
11 and Does 1 through 50, inclusive)

12 29. Plaintiffs incorporate by reference each and every allegation contained in Paragraphs 1
13 through 28 above as though fully set forth herein.

14 30. Defendants’ conduct alleged herein constitutes unlawful business practices in violation
15 of the California Unfair Competition Law (“UCL,” Cal. Bus. & Prof. Code § 17200 *et seq.*) Among
16 other things and without limitation, Defendants’ bad faith refusal to comply with their coverage
17 obligations was unlawful and constituted a tortious breach of the subject Policy as hereinabove
18 alleged.

19 31. Plaintiffs have lost money as a result of Defendants’ unfair competition.

20 32. In light of the foregoing, Plaintiffs are entitled to an injunction under the UCL
21 restraining the Defendants from engaging in the unlawful, unfair and fraudulent conduct alleged
22 herein, as well as to restitution of those amounts obtained by the Defendants through their unfair
23 competition.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs pray for judgment as follows:

26 1. Under the First Cause of Action, for compensatory damages in excess of \$5 million
27 according to proof;

1 2. Under the Second Cause of Action, for compensatory damages in excess of \$5 million,
2 punitive damages according to proof, consequential damages for the destruction of Insureds'
3 businesses, pain and suffering endured by Sokol, and reasonable attorney's fees and costs incurred in
4 obtaining the benefits due under the Policy;

5 3. Under the Third Cause of Action, for compensatory damages, attorneys' fees, treble
6 damages, and for treble punitive damages according to proof;

7 4. Under the Fourth Cause of Action, for restitution and temporary, preliminary and
8 permanent injunctive relief restraining Defendants from engaging in acts of unfair competition as
9 alleged herein;

10 5. For pre-judgment interest in accordance with law;

11 6. For expenses and costs incurred herein; and

12 7. For such other and further relief as this Court deems just and proper.

13
14 **BARNES & THORNBURG LLP**

15
16 Dated: July 21, 2020

17 By: 

18 David P. Schack
19 Matthew B. O'Hanlon
20 Attorneys for Plaintiffs Marina Pacific Hotel
21 & Suites, LLC, Venice Windward, LLC,
22 Larry's Venice, L.P., and Erwin H. Sokol, as
23 Trustee of the Frances Sokol Trust
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