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15 FOO FIGHTERS, L.L.C.

16 **UNITED STATES DISTRICT COURT**
17 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

18 FOO FIGHTERS, L.L.C.,

19 Plaintiff,

20 v.

21 CERTAIN UNDERWRITERS AT
22 LLOYD’S, LONDON AND CERTAIN
23 LONDON MARKET INSURANCE
24 COMPANIES, ROBERTSON TAYLOR
25 INSURANCE BROKERS LIMITED,
26 ROBERTSON TAYLOR
27 INTERNATIONAL INSURANCE
28 BROKERS, INC., and DOES 1-10,

Defendants.

Civil Case No.: 16-cv-04208

COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Foo Fighters, L.L.C. (“Band” or “Foo Fighters”) alleges the following
2 claims against Certain Underwriters at Lloyd’s, London and Certain London Market
3 Insurance Companies (collectively, “London Market Insurers” or “Insurers”), as well as
4 Robertson Taylor Insurance Brokers Limited and Robertson Taylor International
5 Insurance Brokers, Inc. (collectively “Robertson Taylor”), arising out of the cancellation
6 of eleven European performances during the Band’s Sonic Highways World Tour in
7 2015.

8 THE NATURE OF THE ACTION

9 1. This is a civil action arising from the refusal of defendant London Market
10 Insurers to pay amounts due and owing to the Band under two insurance policies – a
11 Cancellation Policy and a Terrorism Policy.

12 2. As described more fully herein, London Market Insurers have failed to pay
13 amounts that even they appear to recognize are due and owing under the Cancellation
14 Policy in connection with seven performances that were cancelled in June 2015 after
15 Band member Dave Grohl was injured during a performance.

16 3. The London Market Insurers have also failed to pay anything under the
17 Terrorism Policy toward losses suffered by Foo Fighters when the horrific November
18 2015 terrorist attacks in Paris, and specific threats to the Band, forced the cancellation of
19 four additional shows scheduled to take place in the days immediately following the
20 attacks. Indeed, the Insurers have failed to pay a *single cent* toward the losses caused by
21 the unavoidable cancellation of performances that were scheduled to take place in Paris
22 less than 72 hours after the attacks.

23 4. These were losses that London Market Insurers specifically promised to
24 cover when the Band paid substantial premiums for the Cancellation Policy and
25 Terrorism Policy.

26 5. The damages suffered by the Band were exacerbated when the their own
27 insurance broker, Robertson Taylor, breached its obligations by placing its interests and
28 relationship with London Market Insurers ahead of the Band’s interests, all the while

1 insisting that the Band “remember...that we act on YOUR behalf, not on behalf of the
2 insurers...We are on your team and if we’re joined up we are stronger as far as
3 negotiations with insurers are concerned.” Robertson Taylor’s representations in this
4 regard were false, as further described below.

5 6. On account of the breaches and improper conduct by London Market
6 Insurers and Robertson Taylor, Foo Fighters have suffered damages in the form of losses
7 that should have been paid under the Policies but were not, attorneys’ fees and others
8 costs incurred negotiating with the Insurers to prove the Band’s entitlement to coverage,
9 attorneys’ fees and other costs the Band was forced to incur in its dispute with London
10 Market Insurers on account of Robertson Taylor’s breaches, and other consequential
11 losses and damages subject to proof at trial. Due to the ongoing nature of the breaches
12 and the damages they are causing, Foo Fighters’ damages are increasing with each
13 passing day and are already many times the jurisdictional limit of \$75,000.

14 **PARTIES**

15 7. Plaintiff Foo Fighters, L.L.C. is a Washington Limited Liability Company
16 qualified to do business in California, with its principal place of business at 10510
17 Northup Way, Suite 300, Kirkland, WA 98033.

18 8. Defendant London Market Insurers comprises individuals, unincorporated
19 associations, partnerships and/or corporations existing under the laws of various
20 jurisdictions, and is currently doing business in California. London Market Insurers
21 include Lloyd’s Syndicates LIB 4472, CHB 1882, WRB 1967, PSI 1110, BRT 2987,
22 AFB 2623, AFB 623, Swiss Re International, UK branch, and Great Lakes Reinsurance
23 (UK) Plc, which subscribed to the Cancellation Policy, and Lloyd’s Syndicates TAL
24 1183, BRT 2987, AFB 2623, and AFB 623, which subscribed to the Terrorism Policy.

25 9. Defendant Robertson Taylor Insurance Brokers Limited is a company
26 incorporated in the United Kingdom with its principal place of business in London,
27 England, and is currently doing business in California.

28

1 **FACTUAL BACKGROUND**

2 18. Foo Fighters are an American rock band.

3 19. The Band undertook the “Sonic Highways World Tour” consisting of nearly
4 100 performances (the “Tour”). As is not uncommon for a tour of this magnitude, Foo
5 Fighters purchased insurance coverage to protect against, *inter alia*, the risk that
6 performances might need to be cancelled, including on account of injuries to band
7 members or terrorist activities. As discussed in greater detail below, this coverage is
8 provided under separate policies, both of which happened to be triggered during the Tour.

9 **The Cancellation Policy**

10 20. With the assistance of its insurance broker, Robertson Taylor, the Band
11 purchased from London Market Insurers a “Contingency Non-Appearance and
12 Cancellation Insurance Cancellation, Abandonment, Postponement or Interruption of
13 Events Policy” Number B0638C153925-B0638C153929 (the “Cancellation Policy”).

14 21. The London Market Insurers promised to pay under the Cancellation policy
15 “70% of the Gross Guarantees and Overages and Production and Airfare/Charter/Media
16 Contribution (where applicable) should any Insured Performance(s) or Events specified
17 in the Tour Schedule be necessarily Cancelled, Abandoned, Postponed or Interrupted.”

18 22. The term “Gross Guarantee” is not specifically defined in the Policy, but on
19 information and belief it is generally understood within the music business as meaning
20 the minimum amount guaranteed to be paid for a given performance, regardless of ticket
21 sales, pursuant to the band’s agreement with the promoter for that performance.

22 23. The term “Overages” is not specifically defined in the Policy, but on
23 information and belief it is generally understood within the music business as meaning a
24 band’s right to receive a percentage of gross box office receipts after applicable tax and
25 approved expenses, if that amount exceeds the Gross Guarantee.

26 24. The term “Production” is not specifically defined in the Policy, but on
27 information and belief it is generally understood within the music business as referring to
28

1 costs incurred by the band and sometimes paid directly to vendors by promoters for items
2 including but not limited to sound, light, trucking, video, busing and staging.

3 25. London Market Insurers also promised to pay under the Cancellation Policy
4 “100% of proven additional costs and charges reasonably and necessarily paid by the
5 Assured to avoid or diminish a loss in respect of the original Insured Performance(s) or
6 Event(s).”

7 26. The Policy defines “Cancellation or Cancelled” to mean “the inability to
8 proceed at the Venue with any or all of the Insured Performance(s) or Event(s) prior to
9 commencement.”

10 27. The Policy defines “Postponement or Postponed” to mean “the unavoidable
11 deferment of any or all of the Insured Performance(s) or Event(s) to another time.”

12 28. in addition to promising coverage for “Cancelled” and “Postponed”
13 performances, as described above, the Cancellation Policy provides that:

14 Should any Insured Performance(s) or Event(s) be rescheduled, the
15 insurers will pay:

- 16 a) 100% of rescheduling costs and/or
17 b) any reduction in box office income resulting in a reduced
18 Guarantee and/or income subject to (a) and (b) above not
19 exceeding 70% of the Gross Guarantees and Overages and
20 Production and Airfare/Charter/Freight/Media Contribution
(where applicable) for the Insured Performance(s) or
Event(s). Insurers agree not to take into account savings
made following cancellation of the original Insured
Performance(s) or Event(s).

21 29. The Cancellation Policy does not define the terms “rescheduled” or
22 “rescheduling costs” or explain the distinction between, for example, a “Cancelled” or
23 “Postponed” performance, on the one hand, and a “rescheduled” performance, on the
24 other.

25 30. As amended by endorsement, the Cancellation Policy provided coverage for
26 scheduled performances taking place between January 9, 2015 and November 20, 2015.
27 Each of the relevant performances were covered under the Cancellation Policy.
28

1 31. Foo Fighters timely paid the substantial premiums due and owing under the
2 Cancellation Policy and complied with all other conditions that may be imposed under
3 the terms of the Policy.

4 **Dave Grohl's Injury Forces The Band To Cancel A Limited Number Of Shows**

5 32. On June 12, 2015, the Band was performing at Gothenberg, Sweden, when
6 lead singer Dave Grohl fell off the stage and suffered severe injuries to his right leg and
7 ankle.

8 33. Despite his injuries, and after a delay while Mr. Grohl received medical
9 attention backstage, Mr. Grohl returned to the stage. He was able to complete the June
10 12, 2015 performance by performing seated, with his severely injured leg and ankle
11 elevated and braced, and with a paramedic stabilizing his ankle while he performed.

12 34. Immediately upon completing the performance Mr. Grohl was rushed to the
13 hospital where he again received medical attention. Two days later, Mr. Grohl underwent
14 orthopedic surgery with Dr. James Calder in London, England on June 15, 2015.

15 35. Mr. Grohl's surgery and recovery from his injury would ultimately
16 necessitate the cancellation of seven scheduled Tour performances in June 2015: at the
17 Pinkpop Festival (June 14, 2015), AFG Arena in St. Gallen, Switzerland (June 16, 2015),
18 Wembley Stadium, London, England (June 19 and 20, 2015), BT Murrayfield Stadium,
19 Edinburgh (June 23, 2015), Festivalpark Werchter, Belgium (June 25, 2015), and the
20 Glastonbury Festival (June 26, 2015).

21 36. Shortly after Mr. Grohl's injury, and before announcing the cancellation of
22 the aforementioned performances, London Market Insurers were notified of the
23 circumstances.

24 37. Following consultation with London Market Insurers, on June 13, 2015 Foo
25 Fighters publicly announced the cancellation of their performances at Pinkpop Festival
26 and AFG Arena.

27 38. After a series of discussions and emails with Robertson Taylor, acting as the
28 agent for providing notice to London Market Insurers, Foo Fighters received a message

1 on June 16, 2015 stating that “the lead insurers have now confirmed that they agree to the
2 cancellation of the remaining European concerts.” Promptly thereafter, on June 16, 2015,
3 the Band publicly announced in a press release that all of the Band’s remaining June
4 2015 performances were “cancelled.” Refunds were provided to ticket holders for the
5 AFG Arena, Wembley Stadium, and BT Murrayfield Stadium Foo Fighters
6 performances.¹ All monies previously received by the Band in advance of those
7 cancelled performances were refunded to the promoters almost immediately.

8 39. Despite the serious nature of his injuries, and notwithstanding the Insurers’
9 agreement to the cancellation of the remaining European concerts, Mr. Grohl began
10 considering options for how to play as many of the remaining shows as possible.
11 Following his physician’s orders to refrain from standing on his injured leg, Mr. Grohl
12 devised a dramatic, stadium-worthy mechanical chair, nicknamed a “throne.”

13 40. With a daily regime of physical therapy, which required a physician-
14 recommended physical therapist to travel with him at all times, Mr. Grohl was able to
15 perform while seated in the throne and with the aid of crutches at 53 performances from
16 July 4, 2015 through the end of the Tour in November 2015.

17 41. Upon learning that Mr. Grohl was considering performing in spite of his
18 injuries and during his rehabilitation, and reflective of the substantial savings his grit
19 would provide to the Insurers, the London Market Insurers communicated through
20 Robertson Taylor that:

21 the feedback . . . from London has been very favorable from
22 underwriters point of view. They are looking at Dave’s actions with
23 ‘Great Intent.’ Let’s face it, the guys a Beast!

24 42. Similar messages of gratitude for Mr. Grohl’s perseverance would be
25 repeated on several occasions throughout the balance of the Tour. Such expressions

26 ¹ Festival ticket holders did not receive refunds because the three festivals still went forward without
27 Foo Fighters’ performance.

1 reflect, in part, that Foo Fighters' decision to continue playing saved the London Market
2 Insurers tens of millions of dollars in claim payments that would have been owing had
3 Foo Fighters simply cancelled the balance of the tour, which would have been easily
4 justifiable under the circumstances.

5 43. Foo Fighters resumed the Tour on July 4, 2015 at RFK Stadium in
6 Washington, D.C. as a test for whether Mr. Grohl's injuries would be exacerbated by
7 performing. Following that performance, and based on a physician's assessment, Foo
8 Fighters confirmed that the balance of the Tour could go forward provided that Mr. Grohl
9 remained off his injured ankle and leg, observed his physical therapy regime, and
10 checked in regularly with his physicians.

11 **LMI And Robertson Taylor's Tortious Handling Of The Cancellation Claim**

12 44. Given the plain language of the Cancellation Policy, Foo Fighters reasonably
13 expected that the Policy would provide them coverage for the seven cancelled
14 performances in the amount of at least 70% of the Gross Guarantees and Overages and
15 Production and Airfare/Charter/Freight/Media Contribution (as defined in the Policy) for
16 each performance, as expressly promised in Insuring Clause 1.1 of the Policy.

17 45. The London Market Insurers apparently had other ideas. After paying
18 certain amounts owed under the Cancellation Policy for four of the cancelled
19 performances, they began searching for ways to limit their payment obligations on the
20 other three performances, including the two Wembley Stadium shows, which represented
21 the largest potential gross income of the Tour.

22 46. After five successful shows in the throne, successful physical therapy and
23 positive feedback from Mr. Grohl's physicians, the Band announced on July 13, 2015
24 that it would be adding new performances at Milton Keynes National Bowl, England on
25 September 5 and 6, 2015, and at BT Murrayfield Stadium, Edinburgh, Scotland on
26 September 8, 2015.

27 47. In addition to relying on Robertson Taylor to interface and negotiate with
28 London Market Insurers concerning coverage for the already cancelled performances, as

1 discussed elsewhere, Foo Fighters also sought the assistance of Robertson Taylor in
2 securing new insurance for these performances.

3 48. But despite numerous discussions, Robertson Taylor failed to adequately
4 advise the Band of the potential impact these additional shows could have on their claim
5 for coverage for the losses already suffered in connection with the previously cancelled
6 performances. Specifically, Robertson Taylor failed to adequately inform the Band that,
7 if it decided to add these shows to the Tour, the London Market Insurers would attempt to
8 recharacterize the cancelled Wembley Stadium and BT Murrayfield Stadium
9 performances *from* “Cancelled” or “Postponed” (which afford the Band full coverage) *to*
10 “rescheduled” (which, according to London Market Insurers, could mean that the Insurers
11 would pay less).

12 49. Worse yet, Robertson Taylor failed to disclose that, if the Band decided to
13 add these shows, Robertson Taylor would affirmatively assist the London Market
14 Insurers in characterizing them as “rescheduled” by, *inter alia*, preparing and ostensibly
15 authorizing on behalf of Foo Fighters purported endorsements to the Cancellation Policy
16 that recharacterized the Milton Keynes National Bowl and BT Murrayfield Stadium
17 performances as “rescheduled,” while simultaneously concealing from the Band the fact
18 that those endorsements had been issued.

19 50. Nevertheless, and incurring significant additional expenses, Foo Fighters
20 added three new shows to the already-packed tour itinerary. New contracts were entered,
21 new tickets were sold, and new travel, lodging and other arrangements for a return to
22 Europe for the additional performances.

23 51. But as the date approached for these shows the insurance situation remained
24 unclear. Indeed, despite numerous discussions, the London Market Insurers—acting
25 through Robertson Taylor—did not confirm that Foo Fighters had insurance for the
26 performances until September 3, 2015, less than two days before the first show at Milton
27 Keynes National Bowl was scheduled to take place.

28

1 52. Even then, neither Robertson Taylor nor London Market Insurers disclosed
2 to the Band the complete terms under which that coverage was being offered.

3 53. Unknown to Foo Fighters, Robertson Taylor had previously prepared a
4 purported endorsement to the Cancellation Policy, Endorsement No. 008, with an
5 effective date of July 9, 2015 (“Endorsement 8”), describing the Milton Keynes National
6 Bowl and BT Murrayfield Stadium concerts as “rescheduled” performances. Stamps
7 from the London Market Insurers indicate that they approved the endorsement on July 9,
8 2015. Foo Fighters did not learn of the existence of purported Endorsement 8 until long
9 after the Milton Keynes National Bowl and BT Murrayfield Stadium shows were
10 concluded.

11 54. Also unknown to Foo Fighters, Robertson Taylor prepared another
12 purported endorsement to the Cancellation Policy, Endorsement No. 011, with an
13 effective date of September 3, 2015 (“Endorsement 11”). Like Endorsement 8, purported
14 Endorsement 11 describes the Milton Keynes National Bowl and BT Murrayfield
15 Stadium concerts as “rescheduled” performances. Stamps from the London Market
16 Insurers indicate that they approved the endorsement on September 3, 2015. Foo
17 Fighters did not learn of the existence of purported Endorsement 11 until long after the
18 Milton Keynes National Bowl and BT Murrayfield Stadium shows were concluded.

19 55. In retrospect it appears that, as discussed in greater detail below, during the
20 July through September 2015 period Robertson Taylor was quietly working with the
21 London Market Insurers to implement a scheme to recharacterize the new BT
22 Murrayfield Stadium and Milton Keynes National Bowl performances as “rescheduled”
23 from the previously “Cancelled” designation, without consulting with or advising Foo
24 Fighters that such characterization would become the asserted basis by the Insurers for
25 delays in payment and a dramatic reduction in the value of the claim.

26 56. For instance, on September 2, 2015, while purporting to be acting on behalf
27 of Foo Fighters in their efforts to secure payment for the cancelled performances,
28 Robertson Taylor promised in an email to Foo Fighters that if they could summarize their

1 costs they had already incurred, the London Market Insurers would promptly pay the
2 claim:

3 The Loss Adjuster has agreed that if we can show to him a summary
4 of the current position confirming that the costs exceed the 70%
5 figure, then he may be able to finalise your claim at this stage, without
6 the need for a full audit once the shows have taken place. He will still
7 need to review a sample of the estimates, but it would not be
8 necessary to provide all of the invoices.

9 57. Despite Foo Fighters providing the requested information, the London
10 Market Insurers did not pay as promised. Rather, it appears Robertson Taylor and the
11 London Market Insurers were using the promise of a prompt payment as pretense for
12 securing information about the claim.

13 58. As another example from that same time period, Robertson Taylor engaged
14 the Band in a discussion that, in retrospect, appears to have been intended to distract
15 attention from Robertson Taylor's double-dealing and to give the false impression that
16 moving forward with the Milton Keynes National Bowl and BT Murrayfield Stadium
17 performances would not compromise Foo Fighters' claim for coverage.

18 59. Responding to a question from the Band about why the cancelled Wembley
19 Stadium and BT Murrayfield Stadium performances would not be considered either
20 "Cancelled" or "Postponed" for purposes of coverage under the Cancellation Policy, on
21 September 1, 2015 Robertson Taylor shared the London Market Insurers' view that they
22 might consider a performance "rescheduled"—and therefore subject to potentially
23 dramatically reduced coverage—even if it otherwise fit within the Policy's definitions of
24 a "Cancelled" or "Postponed" performance:

25 I am not trying to teach my granny here but a postponement occurs
26 rarely. Perhaps most frequently when adverse weather or travel delay
27 may prevent the performance/event going ahead on the scheduled date
28 and possibly being held 24 hours later. I appreciate there is nothing
that says the postponed performance/event has to take place within a
certain time frame but it is known at the time of loss that the
performance/event is postponed to a later date. In other words, the
Performance/Event is unavoidably deferred to another time....

I agree that a postponed performance/event can later become a
cancelled event.

1 ... If a performance/event cannot go ahead for whatever reason and it
2 is not known at that time whether or not the performance/event will be
3 taking place at some future point, it is cancelled. If it subsequently
transpires the performance/event can take place at another time it is
cancelled and rescheduled.

4 60. Responding to the point that such an interpretation would render illusory the
5 Policy's promise of full coverage for "Postponed" events, Robertson Taylor responded on
6 September 1, 2015 that it had "raised this issue with the loss adjuster, as this is an
7 interesting point, and to an extent calls into question the interpretation of the wording
8 versus customs and practice." While this appears to have been an open acknowledgment
9 that the Cancellation Policy is ambiguous on this point, given that Robertson Taylor had
10 already generated Endorsement 8 characterizing the performances as "rescheduled" this
11 communication was at best disingenuous and, at worse, indicative of an intent to mislead
12 Foo Fighters into believing the characterization of the performances remained an open
13 issue from the perspective of the London Market Insurers.

14 61. The Band played the Milton Keynes National Bowl and BT Murrayfield
15 Stadium shows as scheduled.

16 62. The notion that the Milton Keynes National Bowl performances were
17 effectively the same performances as the originally-scheduled Wembley Stadium
18 performances, and were not "cancelled" but were only "rescheduled" to a later date, is
19 without merit.

20 63. Milton Keynes National Bowl was the best available venue for the narrow
21 window of time in which Foo Fighters could sandwich the new concerts. However,
22 Milton Keynes National Bowl is a much smaller venue than Wembley Stadium. Milton
23 Keynes National Bowl is an open-air amphitheater where all tickets to Foo Fighters'
24 performance were general admission, while Wembley Stadium would have provided both
25 reserved seating and general admission tickets. Milton Keynes National Bowl is 55 miles
26 from central London, in the northern part of the County of Buckinghamshire, whereas
27 Wembley Stadium is readily accessible to central London. The difference in ticket sales
28 was substantial: whereas Foo Fighters sold nearly 150,000 tickets when the performances

1 were scheduled for Wembley Stadium, less than 110,000 were sold for the Milton
2 Keynes National Bowl performances, a difference of nearly 42,000 tickets.

3 64. Under custom and practice in the industry, there is no reasonable dispute that
4 the performances were “cancelled.” New tickets were sold for the new dates. Refunds
5 were provided to ticket holders for the Wembley Stadium and BT Murrayfield Stadium
6 performances. No credits or exchanges were provided to holders of tickets for the
7 cancelled shows.

8 65. Despite the foregoing, the London Market Insurers assert that the original
9 Wembley Stadium and BT Murrayfield Stadium performances were “rescheduled,” not
10 “Cancelled” or “Postponed” within the meaning of the Cancellation Policy, and therefore
11 the only payments required under the policy are for “rescheduling” costs. But even if
12 “rescheduling” costs were the only item owed under the policy, the London Market
13 Insurers have failed to pay even those amounts.

14 66. In addition to failing to pay amounts even they seemingly acknowledge are
15 owed, the London Market Insurers have engaged in a range of dilatory tactics from
16 seeking detailed information not reasonably required to assess the merits of the claim to
17 conditioning any offer of settlement on the Band’s first waiving its right to sue the
18 Insurers for acting in bad faith if they made a low-ball settlement offer.

19 67. Indeed, even though it has been an entire year since Mr. Grohl was injured,
20 the London Market Insurers have yet to pay significant portions of the Band’s claim,
21 even amounts that appear to be indisputably owed.

22 68. The London Market Insurers’ unfair and unreasonable handling of the claim
23 has not only deprived the Band of the benefits promised by the Cancellation Policy, but
24 also forced the Band to incur the substantial cost of retaining attorneys to vindicate its
25 rights under the policy.

26 **The Terrorism Policy**

27 69. Foo Fighters also purchased from London Market Insurers a “Contingency
28 Non-Appearance and Cancellation Insurance Cancellation, Abandonment, Postponement

1 or Interruption of Events Caused By Terrorism Policy” Number B0638C153924 (the
2 “Terrorism Policy”). London Market Insurers offered, and through Robertson Taylor
3 encouraged Foo Fighters to purchase, an expensive policy for cancellation of shows due
4 to actual, perceived, or threatened terrorism and associated events such as a period of
5 National Mourning following a terrorist attack.

6 70. Under that Policy, the London Market Insurers promised to pay:

7 . . . Ascertained Net Loss should an Insured Performance(s) or Event(s)
8 specified in the Tour Schedule be necessarily Cancelled, Abandoned,
9 Postponed, Interrupted, Curtailed or Relocated as a direct result of

10 1.1.1 Terrorism and/or Sabotage...

11 whether actual or perceived and including the threat thereof

12

13 1.1.4 National Mourning resulting from any insured peril specified
14 above...

15 and subject to the circumstance giving rise to the loss first occurring
16 during the Period of Insurance stated in the Schedule.

17 71. “Ascertained Net Loss” is defined as follows:

18 . . . sums in excess of any deductible stated in the schedule as represent:

19 2.1.1 that part of the Expenses which have been irrevocably expended in
20 connection with the Insured Performance(s) or Event(s), less such
21 part of the Gross Revenue received or receivable less any savings
22 the Assured is able to effect to mitigate such loss and

23 2.1.2 the reduction in Profit (when Profit is insured and stated in the
24 Schedule) which the Assured can satisfactorily prove would have
25 been earned had the Insured Performance(s) or Event(s) taken
26 place.”

27 72. “Terrorism” is defined as “an unlawful act, including but not limited to the
28 use of force or violence and/or the threat thereof, of any person or group(s) of persons,
whether acting alone or on behalf of or in connection with any organization(s) or
government(s), committed for political, religious, ideological or similar purposes
including the intention to influence any government and/or to put the public or any
section of the public in fear, including the performer(s), the event organizer(s), and any
other participants of the Insured Performance(s) or Event(s).”

1 ran for their lives or tried to hide. Over a period of several hours, the terrorists patiently,
2 mercilessly, and methodically shot to death anyone in the theater, often executing victims
3 who continued to show signs of life. When the French police finally entered the building
4 behind metal shields, hours after the attacks began, they shot one terrorist, after which the
5 remaining two terrorists blew themselves up with suicide vests.

6 81. According to CNN, after the initial wave of killing, the gunmen stopped and
7 asked each other: “Where is the singer? Where are those Yanks? It’s an American group,
8 you’re bombing us with the Americans, so we’re going to hit the Americans and you.” A
9 crewmember of the band playing that night was among those killed.

10 82. Survivors of the Bataclan terrorist attack described wading through pools of
11 blood and climbing over dead bodies to escape the grisly theater.

12 83. On November 14, 2015, the Islamic State militant jihadist group, also known
13 as “Islamic State”, “ISIL” or “ISIS,” claimed responsibility for the Attacks. ISIS is
14 known for inflicting mass casualties through terrorist attacks as well as its videos of
15 beheadings of prisoners. ISIS has been designated as a terrorist organization by the
16 United Nations, the European Union, the United States, and many other countries.

17 84. On November 14, 2015, President Hollande of France announced a three-
18 day period of National Mourning, the imposition of a State of Emergency, and that the
19 borders of France would be closed, as a result of the Attacks and fear of further attacks.

20 85. On November 15, 2015, the United States Embassy in Paris issued a
21 “Security Message for U.S. Citizens” stating that the “authorities believe the likelihood of
22 terror attacks in Europe will continue as European members of ISIL return from Syria
23 and Iraq” and that “there is a continuing threat in Europe from unaffiliated persons
24 planning attacks inspired by major terrorist organizations but conducted on an individual
25 basis.”

26 86. Also on November 15, 2015, the United States Embassy in Paris reported
27 that “[p]ublic events in Paris have been cancelled, and public monuments, tourist sites,
28 and many retail outlets may remain closed.”

1 87. On November 16, 2015, the United States Department of Defense's
2 European Command announced a travel ban prohibiting unofficial travel within France
3 by all Department of Defense personnel and their families.

4 88. News reports indicated that in Lyon, France on November 16, 2015 (the day
5 before Foo Fighters' scheduled performance in that city), in an anti-terror raid, French
6 police arrested five people and seized a rocket launcher, bulletproof vests, and a
7 Kalashnikov assault rifle.

8 89. News reports indicated that on November 17, 2015, "serious plans for
9 explosions" forced the evacuation of a stadium in Hannover, Germany, where a soccer
10 match had been scheduled. On that same date, two Air France flights from the United
11 States to Paris were diverted due to bomb threats.

12 90. On November 19, 2015, ISIS released a video threatening additional attacks
13 in Europe.

14 91. On November 20, 2015, the French government extended the State of
15 Emergency in France for an additional three months. To this day, France remains under a
16 national State of Emergency.

17 92. News reports indicate that between November 13 and 20, 2015, French
18 authorities carried out hundreds of raids and seized weapons arsenals, including "at least
19 18 weapons of war" according to a Wall Street Journal article dated November 21, 2015.

20 **The Insurers' And Robertson Taylor's Tortious Handling Of**

21 **The Terrorism Claim**

22 93. Foo Fighters' performance in Turin was scheduled to take place less than 24
23 hours after the Attacks.

24 94. As the Band assessed the situation on November 14, 2015, Foo Fighters
25 learned that the website, www.foofighterstours2015.com, had been hacked to display a
26 chilling image (attached as Exhibit A) depicting the ISIS flag, an automatic weapon, a
27 terrorist, and the following threat of violence:

28 I love you Islamic State & Jihad

1 Islamic State remain and expand, God willing

2 We will restore the dignity of Muslims

3 Glory will return to Islam...

4 *Be prepared*

5 95. This threat (“Threat”) was claimed by the hacker collective “Team System
6 DZ” and was forwarded to the FBI cyber division. Team System DZ are known ISIS
7 sympathizers who hack websites globally to spread pro-ISIS statements. In light of the
8 warning to “be prepared” specifically directed by a Pro-ISIS group at Foo Fighters, in an
9 environment of fear of further terror attacks throughout Europe, the band cancelled the
10 final four performances of the Tour (Turin, Paris, Lyon, and Barcelona). This difficult
11 decision was made out of concern not only for the safety of the band, their fans and crew,
12 but also due to the potential impossibility of traveling in the wake of the Attacks across
13 the closed borders of France, or within Europe generally—let alone with a massive
14 convoy of approximately 120 people on 10 buses, and 14 semi trucks filled with sound,
15 lighting, staging equipment and more.

16 96. Foo Fighters promptly provided notice to London Market Insurers as
17 specified in the Policy that the Turin, Italy; Paris, France; Lyon, France; and Barcelona,
18 Spain performances were being cancelled due to the Attacks and the Threat.

19 97. Given the plain language of the Policy, the dire circumstances at hand and
20 assurances from Robertson Taylor, Foo Fighters reasonably expected that the Terrorism
21 Policy would provide them coverage for the four November 2015 performances, which
22 were necessarily cancelled as a direct result of terrorism, in the amount of their
23 Ascertained Net Loss for each performance, as promised in Insuring Clause 1.1 of the
24 Policy.

25 98. While London Market Insurers have engaged in a seemingly never-ending
26 series of requests for increasingly irrelevant information, particularly as to the necessity
27 of cancelling the Turin and Barcelona performances, they have not provided Foo Fighters
28

1 with any indication that they dispute coverage for the cancellation of the Paris, France
2 and Lyon, France performances.

3 99. The Band is informed and believes, and on that basis alleges, that London
4 Market Insurers do not dispute coverage for the cancellation of the Lyon and Paris
5 performances.

6 100. To date, seven months later, however, London Market Insurers have not paid
7 or offered to pay a single penny of Foo Fighters' terrorism coverage claim.

8 101. The Band is informed and believes, and on that basis alleges, that London
9 Market Insurers contend that the cancellation of either or both the Turin and/or Barcelona
10 performances do not bear a sufficient connection to the Attacks and the Threat to be
11 covered under the Terrorism Policy. The Band is informed and believes, and on that
12 basis alleges, that such position has been developed by the loss adjuster that Robertson
13 Taylor instructed on behalf of London Market Insurers and with the advice, guidance
14 and/or input of Robertson Taylor. London Market Insurers have not, however, conveyed
15 any inkling of their coverage decision, leaving Foo Fighters in the dark in violation of the
16 custom and practice of the insurance industry and California regulations applicable to the
17 handling of claims.

18 102. London Market Insurers have requested on multiple occasions that Foo
19 Fighters waive its right to have its claim handled fairly and in good faith by signing what
20 its lawyers refer to as a "*White waiver*."

21 103. London Market Insurers' inconsistent, erratic and unreasonable behavior
22 partially detailed above has caused significant financial harm to Foo Fighters. The
23 Insurers' failure to fulfill their coverage obligations has forced Foo Fighters to incur
24 ongoing legal fees and now to litigate to obtain the benefits of coverage.

25 **Robertson Taylor's Double-Dealing**

26 104. The Policies state that Robertson Taylor Insurance Brokers Limited is a
27 "fully accredited Lloyd's broker" and is authorized to arrange and advise on general
28 insurance contracts. This means, among other things, that Robertson Taylor is authorized

1 to act on behalf of Lloyd’s insurers and underwriters to bind coverage, draft and issue
2 policy wordings on their behalf, and direct their adjustment of claims.

3 105. Each of the Policies nevertheless represents that “[w]hen administrating
4 business under this Contract Robertson Taylor are acting as Agent for the Assured.”

5 106. Despite the latter representations, Foo Fighters is informed and believes, and
6 on that basis alleges, that Robertson Taylor has acted on behalf of London Market
7 Insurers in connection with the Band’s claim for coverage. These acts included, on
8 information and belief, retaining a loss adjuster on behalf of London Market Insurers
9 (believed to be Howard Diamant of Focus Claim & Risk Management), acting as an
10 intermediary between the Insurers and the loss adjuster, providing the loss adjuster with
11 facts supportive of and/or deleterious to coverage, rendering advice to the loss adjuster
12 concerning interpretations of the Policies and/or the availability or non-availability of
13 coverage, drafting and issuance of endorsements the Insurers have invoked as reducing or
14 minimizing their obligations under the Policies, and advocating interpretations of the
15 Policies designed to minimize the amounts payable by the Insurers rather than maximize
16 the coverage available to the Band.

17 107. Despite having an extensive relationship with the London Market Insurers
18 that included, *inter alia*, instructing a loss adjuster on their behalf, Robertson Taylor
19 affirmatively represented that it was acting solely on behalf of the Band without
20 disclosing the nature and extent of its relationship with the Insurers. For instance, on
21 November 18, 2015, Robertson Taylor sent Foo Fighters an email in which it urged the
22 Band to “remember...that we act on YOUR behalf, not on behalf of the insurers.... We
23 are on your team and if we’re joined up we are stronger as far as negotiations with
24 insurers are concerned.” Robertson Taylor confirmed this again on January 27, 2016,
25 stating “[a]s I/we have said many times, we are on the band’s team.”

26 108. Robertson Taylor’s responsibilities and duties under these circumstances are
27 different from, and substantially more expansive than, the ordinary duties a broker
28 ordinarily undertakes when acting solely as an intermediary for placing insurance. In

1 particular, Robertson Taylor undertook a fiduciary duty by, *inter alia*, holding itself out
2 as acting, and purporting to act, on behalf of Foo Fighters when issuing endorsements to
3 the Cancellation Policy or negotiating the Band’s claim for coverage under both policies
4 as more fully described herein.

5 109. The Band is informed and believes, and on that basis alleges, that Robertson
6 Taylor breached its duties by, *inter alia*, engaging in a scheme to recharacterize cancelled
7 shows as “rescheduled,” issuing allegedly coverage-destroying endorsements purportedly
8 on behalf of Foo Fighters without their consent, knowledge and/or against their express
9 instructions to the contrary, concealing from the Band that the endorsements had been
10 issued, instructing the loss adjuster that certain aspects of the Band’s claim may or should
11 not be covered, and other harmful conduct that may be revealed during discovery in this
12 action.

13 110. Contrary to its own affirmative representations, and the obligations placed
14 on it by law, by acting in the manner alleged above Robertson Taylor has not acted as a
15 faithful agent for and in the interests of Foo Fighters, but rather has acted on behalf of the
16 Insurers in connection with many if not most aspects of Foo Fighters dealings with
17 London Market Insurers.

18 111. Had Robertson Taylor disclosed the true nature of its relationship with the
19 Insurers, and its loyalty to them, Foo Fighters would have acted sooner to protect its
20 interests by, *inter alia*, objecting to the purported issuance of Endorsement Nos. 8 and 11
21 and preventing Robertson Taylor's deleterious meddling in the Bands coverage claims.

22 112. But because Robertson Taylor concealed these facts, and affirmatively
23 represented that it was acting solely in the interest of Foo Fighters, the Band has suffered
24 losses subject to proof at trial which may include, among other damages, a loss of
25 coverage if, as the London Market Insurers contend, Endorsement Nos. 8 and 11 are
26 dispositive of whether the Milton Keynes National Bowl and BT Murrayfield Stadium
27 shows are considered “rescheduled” under the Cancellation Policy.
28

1 **FIRST CLAIM**
2 **FOR DECLARATORY RELIEF**
3 **AGAINST LONDON MARKET INSURERS SUBSCRIBING TO THE**
4 **CANCELLATION POLICY**

5 113. Foo Fighters repeat and incorporate by reference each and every allegation
6 contained in the preceding paragraphs as though fully set forth herein.

7 114. Foo Fighters allege that the June 2015 Wembley Stadium and BT
8 Murrayfield Stadium performances were “Cancelled” or “Postponed” within the meaning
9 of the Cancellation Policy.

10 115. Foo Fighters allege that the Cancellation Policy requires London Market
11 Insurers to pay its claim including but not limited to 70% of Gross Guarantees and
12 Overages and Production and Airfare/Charter/Freight/Media Contribution for the June
13 2015 Wembley Stadium and BT Murrayfield Stadium performances, plus its Additional
14 Costs incurred to avoid or diminish further loss following Dave Grohl’s injury.

15 116. Alternatively, Foo Fighters allege that the Cancellation Policy and its terms,
16 including but not limited to the terms “Cancelled,” “Postponed,” “rescheduled,” and
17 “rescheduling costs,” are ambiguous and conflicting and that any ambiguity must be
18 construed for the benefit of Foo Fighters and to provide the greatest amount of coverage
19 for Foo Fighters’ losses.

20 117. The Band is informed and believes, and on that basis alleges, that London
21 Market Insurers dispute the foregoing either in whole or in part.

22 118. By reason of the foregoing, an actual and justiciable controversy presently
23 exists between Foo Fighters and London Market Insurers regarding the extent of
24 coverage for Foo Fighters’ claims under the Cancellation Policy.

25 119. A judicial determination of this controversy is necessary and appropriate for
26 the parties to ascertain their respective rights and duties under the Cancellation Policy.
27
28

1 performances, including but not limited to 70% of the Gross Guarantees and Overages
2 and Production and Airfare/Charter/Freight/Media Contribution for the Wembley
3 Stadium (June 19 and 20, 2015) and BT Murrayfield Stadium (June 23, 2015)
4 performances, and the Additional Costs paid by Foo Fighters to avoid or diminish further
5 loss following Dave Grohl's injury for the remainder of the Tour.

6 128. Foo Fighters have incurred amounts in excess of the applicable deductible,
7 thereby triggering London Market Insurers' duty to pay under the Policy.

8 129. London Market Insurers have breached and continue to breach their
9 contractual obligations by, *inter alia*, refusing to pay amounts admittedly due and owing
10 under the Cancellation Policy, clearly and positively indicating that they will not pay
11 other amounts covered by the Cancellation Policy, and/or by unfairly interfering with Foo
12 Fighters' rights to receive benefits under the Cancellation Policy.

13 130. As a direct and proximate result of London Market Insurers' breach of
14 contract, which is continuing to this date, Foo Fighters have been damaged in an amount
15 to be proven at trial.

16 **FOURTH CLAIM**

17 **FOR BREACH OF CONTRACT AGAINST LONDON MARKET INSURERS**
18 **SUBSCRIBING TO THE TERRORISM POLICY**

19 131. Foo Fighters repeat and incorporate by reference each and every allegation
20 contained in the preceding paragraphs as though fully set forth herein.

21 132. The Terrorism Policy constitutes a written contract under which London
22 Market Insurers agreed, in consideration of the premiums paid, to provide certain
23 insurance benefits to Foo Fighters.

24 133. London Market Insurers were and are obligated to provide certain insurance
25 benefits in connection with the Cancellation of Foo Fighters' November 14-19, 2015
26 performances, including but not limited to its Ascertained Net Loss (including expenses
27 irrevocably expended, and reduction in profit) for those performances, and the Additional
28 Costs paid by Foo Fighters to avoid or diminish further loss.

1 134. Foo Fighters have incurred amounts in excess of the applicable deductible,
2 thereby triggering London Market Insurers' duty to pay under the Policy.

3 135. London Market Insurers have breached and continue to breach their
4 contractual obligations by, *inter alia*, refusing to pay amounts admittedly due and owing
5 under the Terrorism Policy, clearly and positively indicating that they will not pay other
6 amounts covered by the Terrorism Policy, and/or by unfairly interfering with Foo
7 Fighters' rights to receive benefits under the Terrorism Policy.

8 136. As a direct and proximate result of London Market Insurers' breach of
9 contract, which is continuing to this date, Foo Fighters have been damaged in an amount
10 to be proven at trial.

11 **FIFTH CLAIM**
12 **FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR**
13 **DEALING**
14 **AGAINST LONDON MARKET INSURERS**

15 137. Foo Fighters repeat and incorporate by reference each and every allegation
16 contained in the preceding paragraphs as though fully set forth herein.

17 138. Foo Fighters have suffered losses that are covered under the Policies.
18 Despite having been notified of those losses, London Market Insurers have unreasonably
19 and without justification refused to provide and/or delayed the payment of policy
20 benefits, as further detailed herein. London Market Insurers' unreasonable refusal to
21 timely provide policy benefits due and owing to Foo Fighters resulted in substantial
22 economic harm suffered by Foo Fighters, including but not limited to harm occasioned by
23 being forced to pay attorneys to vindicate their rights under the Policies, amounts that the
24 Insurers should have paid under the Policies, and the loss of use of the funds expended.

25 139. Implied in each of the Policies is a covenant that London Market Insurers
26 would, *inter alia*, act in good faith and deal fairly with Foo Fighters, that they would do
27 nothing to interfere with Foo Fighters' right to receive the benefits of the Policies, that
28 they would not place their interests ahead of their insured, that they would not force their

1 insured to litigate to obtain the benefits of the Policies, that the Insurers would not seek
2 information not reasonably necessary to the adjustment of the claim, and that they would
3 generally treat Foo Fighters fairly and in good faith. Instead of complying with these
4 duties, London Market Insurers have breached the implied covenant of good faith and fair
5 dealing by:

- 6 a. refusing to acknowledge their duty to indemnify Foo Fighters without
7 a reasonable basis or adequate justification;
- 8 b. taking positions regarding their obligations that they knew or
9 reasonably should have known were contrary to the expressed,
10 reasonable expectations of Foo Fighters and/or the mutual intent of
11 the parties to the insurance contract;
- 12 c. deciding without any reasonable basis in fact or law, and for their own
13 purposes and to serve their own desires, to take unreasonable
14 positions concerning the meaning of the Policies;
- 15 d. construing facts to support their own position rather than construing
16 the facts in favor of coverage as required by law;
- 17 e. intentionally and willfully refusing to respond in a meaningful fashion
18 to requests that they honor their obligations under the Policies to pay
19 the benefits due thereunder;
- 20 f. failing to promptly pay the undisputed portion of Foo Fighters'
21 claims;
- 22 g. unreasonably delaying in responding to Foo Fighters' requests for
23 payment of policy benefits;
- 24 h. deliberately failing to conduct a reasonable and thorough investigation
25 of the facts and claims and of possible bases for coverage, all in
26 violation of accepted insurance industry custom, practice and
27 standards, and its duties to Foo Fighters; and
- 28 i. forcing its insured to litigate to obtain benefits under the Policies.

1 140. London Market Insurers committed the acts alleged above for the purpose of
2 consciously withholding from Foo Fighters the rights and benefits to which the Band is
3 entitled under the Policies.

4 141. The Insurers' acts are inconsistent with the reasonable expectations of the
5 insured, are contrary to established norms, practices and legal requirements related to
6 insurance claims, are contrary to the express terms of the Policies, and constitute a breach
7 of the implied covenant of good faith and fair dealing.

8 142. The Band is informed and believes and thereon alleges that Insurers' acts
9 were performed, authorized and/or ratified by their officers, directors, and/or managing
10 agents, and/or with the advance knowledge or conscious disregard of its officers,
11 directors, and/or managing agents.

12 143. London Market Insurers' conduct is despicable and has been done with a
13 conscious disregard of Foo Fighters' rights, constituting oppression, fraud and/or malice,
14 in that the Insurers engaged in a series of acts designed to deny the benefits due or that it
15 reasonably expected would be due under the Policies. Specifically, in light of
16 information, facts, and relevant law to the contrary, London Market Insurers, by acting as
17 alleged above and as will be proved at trial, have consciously disregarded Foo Fighters'
18 rights and forced them to incur substantial and oppressive financial losses, have
19 misrepresented the nature of coverage provided by the policy and have intentionally
20 inflicted financial harm on Foo Fighters in an effort to avoid their obligations under the
21 policy. The conduct alleged herein amounts to oppressive, malicious and fraudulent
22 conduct within the meaning of California Civil Code Section 3294. Therefore, the Band
23 is entitled to recover punitive damages from London Market Insurers in an amount
24 sufficient to punish the Insurers and to deter similar conduct in the future.

25 144. As a direct and proximate result of London Market Insurers' breaches and
26 violations, Foo Fighters have suffered and continues to suffer substantial damages, in an
27 amount exceeding the jurisdictional minimum of this Court, and to be determined at trial.
28 Such damages include, among other things, amounts that should have been paid under the

1 Cancellation Policy, loss of use of funds, and the cost to prove Foo Fighters' entitlement
2 to coverage, which are recoverable under *Brandt v. Superior Court*, 37 Cal. 3d 813
3 (1985).

4 **SIXTH CLAIM**
5 **FOR BREACH OF FIDUCIARY DUTY**
6 **AGAINST ROBERTSON TAYLOR**

7 145. Foo Fighters repeat and incorporate by reference each and every allegation
8 contained in the preceding paragraphs as though fully set forth herein.

9 146. Each of the Robertson Taylor defendants had a fiduciary duty to Foo
10 Fighters with respect to the Policies, including but not limited to a fiduciary duty when
11 purchasing coverage, negotiating endorsements to those Policies, and in administering
12 Foo Fighters' claims under the Policies.

13 147. Each of the Robertson Taylor defendants breached its fiduciary duty to Foo
14 Fighters by, *inter alia*, acting to benefit the Insurers, not Foo Fighters, in its acts and
15 omissions as a broker between Foo Fighters and London Market Insurers as set forth in
16 detail herein, including but not limited to the negotiation of policy endorsements and
17 administering Foo Fighters' claims.

18 148. As a result of Robertson Taylor's breaches of fiduciary duty, Foo Fighters
19 have incurred damages in an amount to be proven at trial.

20 149. The Band is informed and believed and thereon alleges that Robertson
21 Taylor's acts were performed, authorized and/or ratified by their officers, directors,
22 and/or managing agents, and/or with the advance knowledge or conscious disregard of its
23 officers, directors, and/or managing agents.

24 150. Robinson Taylor's conduct is despicable and has been done with a conscious
25 disregard of Foo Fighters' rights, constituting oppression, fraud and/or malice, in that the
26 Robinson Taylor has consciously disregarded Foo Fighters' rights and forced them to
27 incur substantial and oppressive financial losses, has misrepresented the nature and extent
28 of its relationship with and loyalty to London Market Insurers, and has intentionally

1 inflicted financial harm on Foo Fighters in an effort to advance its own interests and
2 those of London Market Insurers. The conduct alleged herein amounts to oppressive,
3 malicious and fraudulent conduct within the meaning of California Civil Code Section
4 3294. Therefore, the Band is entitled to recover punitive damages from Robertson Taylor
5 in an amount sufficient to punish it and to deter similar conduct in the future.

6 **SEVENTH CLAIM**

7 **FRAUDULENT CONCEALMENT**

8 **AGAINST ROBERTSON TAYLOR**

9 151. Foo Fighters repeat and incorporate by reference each and every allegation
10 contained in the preceding paragraphs as though fully set forth herein.

11 152. Robertson Taylor concealed the material fact that it was not acting for the
12 benefit of Foo Fighters, but in truth was acting for the benefit of London Market Insurers.

13 153. Robertson Taylor purported to be the “agent” of Foo Fighters and had a duty
14 to disclose to Foo Fighters that it was not acting for the benefit of Foo Fighters, but in
15 truth was acting for the benefit of the Insurers.

16 154. Robertson Taylor intended to defraud Foo Fighters by intentionally
17 concealing and suppressing the fact that it was not acting for the benefit of Foo Fighters,
18 but in truth was acting for the benefit of the Insurers.

19 155. Foo Fighters were unaware that Robertson Taylor was not acting for their
20 benefit, but in truth was acting for the benefit of London Market Insurers, and would not
21 have acted as they did if they had known of the concealed and suppressed facts.

22 156. Foo Fighters suffered damage as a result of the concealment and suppression
23 of facts by Robertson Taylor.

24 **EIGHTH CLAIM**

25 **NEGLIGENCE**

26 **AGAINST ROBERTSON TAYLOR**

27 157. Foo Fighters repeat and incorporate by reference each and every allegation
28 contained in the preceding paragraphs as though fully set forth herein.

