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Attorneys for Defendants CATHEDRAL SYNDICATE: 2010, a.k.a. CATHEDRAL SYNDICATE MMX, AT LLOYD'S OF LONDON, a foreign company; LIBERTY SYNDICATE 4472 AT LLOYD'S OF LONDON, a foreign company; XL CATLIN SYNDICATE 2003 OF LLOYD'S OF LONDON, a foreign company; MARKEL SYNDICATE 3000 OF LLOYD'S OF LONDON, a foreign company; ALLIANZ GLOBAL CORPORATE & SPECIALTY SE, a foreign company (erroneously sued as ALLIANZ SYNDICATE OF LLOYD'S OF LONDON, a foreign company)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VERY GOOD TOURING, INC.,

Plaintiff,

vs.

CATHEDRAL SYNDICATE: 2010, a.k.a. CATHEDRAL SYNDICATE MMX, AT LLOYD'S OF LONDON, a foreign company; LIBERTY SYNDICATE 4472 AT LLOYD'S OF LONDON, a foreign company; XL CATLIN SYNDICATE 2003 OF LLOYD'S OF LONDON, a foreign company; MARKEL SYNDICATE 3000 OF LLOYD'S OF LONDON, a foreign company; ALLIANZ SYNDICATE OF LLOYD'S OF LONDON, a foreign company,

Defendants.

CASE NO. 2:17-cv-05693

[Assigned to the Hon. Charles F. Eick, United States Magistrate Judge, Courtroom 750]

ANSWER AND COUNTERCLAIM FOR DECLARATORY RELIEF OF DEFENDANTS AND COUNTERCLAIMANTS CATHEDRAL SYNDICATE: 2010, a.k.a. CATHEDRAL SYNDICATE MMX, AT LLOYD'S OF LONDON, a foreign company; LIBERTY SYNDICATE 4472 AT LLOYD'S OF LONDON, a foreign company; XL CATLIN SYNDICATE 2003 OF LLOYD'S OF LONDON, a foreign company; MARKEL SYNDICATE 3000 OF LLOYD'S OF LONDON, a foreign company; ALLIANZ GLOBAL CORPORATE & SPECIALTY SE, a foreign company

DEMAND FOR JURY TRIAL

Complaint Filed: August 1, 2017
 Trial Date: N/A

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OF LONDON, a foreign company;
MARKEL SYNDICATE 3000 OF
LLOYD’S OF LONDON, a foreign
company; ALLIANZ GLOBAL
CORPORATE & SPECIALTY SE, a
foreign company,

Counterclaimants,

vs.

VERY GOOD TOURING, INC. a
California Corporation; DOES 1-75,
inclusive,

Counterdefendants.

Defendants and Counterclaimants CATHEDRAL SYNDICATE: 2010,
a.k.a. CATHEDRAL SYNDICATE MMX, AT LLOYD’S OF LONDON, a
foreign company; LIBERTY SYNDICATE 4472 AT LLOYD’S OF LONDON, a
foreign company; XL CATLIN SYNDICATE 2003 OF LLOYD’S OF LONDON,
a foreign company; MARKEL SYNDICATE 3000 OF LLOYD’S OF LONDON,
a foreign company; ALLIANZ GLOBAL CORPORATE & SPECIALTY SE, a
foreign company (collectively, “Defendants” or “Counterclaimants”), by and
through their undersigned counsel of record, hereby respond to the Complaint
(“Complaint”) of Plaintiff, VERY GOOD TOURING, INC., with the following
Answer, Defenses, Counterclaim for Declaratory Relief, and Demand for Jury
Trial. For the convenience of a reader of Defendants’ Answer, Defendants have
numbered the paragraphs to correspond to the numbered paragraphs of the
Complaint, and have used the headings used by Plaintiff in the Complaint, without

1 admitting the truth of the timeline expressed in the paragraphs and without
 2 admitting the truth of the phrasing or substance of the headings. Except as
 3 expressly admitted below, Defendants deny each and every allegation and
 4 mischaracterization in Plaintiff's Complaint.

5 I. ANSWER TO COMPLAINT

6 INTRODUCTION

7 1. Defendants deny the allegations in Paragraph 1 of the Complaint.

8 2. Defendants admit the allegations in Paragraph 2 of the Complaint that
 9 Very Good Touring submitted a claim to Defendants on November 23, 2016 over
 10 the cancellation of the remaining shows in Kanye West's Saint Pablo Tour.
 11 Defendants admit that the claim has not been paid or denied. Defendants deny
 12 that they have not provided an explanation as to why they have not paid the claim.
 13 Defendants deny that they have implied that Kanye West's use of marijuana
 14 provides the sole basis to deny the claim. Defendants (and Plaintiff) are, or were,
 15 bound by a non-disclosure agreement precluding Defendants from elaborating
 16 further at this time, publicly, regarding the basis for non-payment of the claim,
 17 notwithstanding Plaintiff's reference to use of marijuana in its complaint. This
 18 will be the subject of further direction from the Court. As a result, Defendants can
 19 only deny the remaining allegations in Paragraph 2 of the Complaint without
 20 further explanation. Except as expressly admitted herein, Defendants deny any
 21 remaining allegations in paragraph 2.

22 3. Defendants deny the allegations in the first sentence of paragraph 3 of
 23 the complaint, which mischaracterize the discussions between the parties over the
 24 dates identified. Defendants deny the allegations in the second sentence of
 25 paragraph 3 of the complaint. Defendants deny the allegation that Plaintiff "was
 26 left with no choice but to file this action." Defendants deny the allegations in the
 27 fourth sentence of paragraph 3 which states as follows, "As a parting shot, in a
 28 move intended to intimidate and dissuade Plaintiff from filing suit, Plaintiff is

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informed and believes, the insurers and/or their agents purposely and maliciously caused to be disseminated to news outlets, privileged, private and personal information ('Confidential Information') regarding Kanye and the dialogue between Very Good and the insurers." Plaintiff's complaint is the first and only time during since the claim was made that Plaintiff has ever suggested such has occurred, and it is alleged on information and belief. Not surprisingly, Plaintiff offers no specifics regarding this allegation, which Defendants deny¹. Defendants similarly deny the remaining sentences of paragraph 3 of the complaint which related to alleged "planting" of confidential information, the first suggestion of which appeared in the complaint. Except as expressly admitted herein, Defendants deny any remaining allegations in paragraph 3.

4. Defendants admit the allegations in paragraph 4, on information and belief, regarding three other insurers with substantially smaller shares of various risks which, Defendants have been informed, reached settlements with Plaintiff. Except as expressly admitted herein, Defendants deny any remaining allegations in paragraph 4.

THE PARTIES

5. With the exception of the correction of the identity of "ALLIANZ GLOBAL CORPORATE & SPECIALTY SE, a foreign company" in place of the erroneously sued "ALLIANZ SYNDICATE OF LLOYD'S OF LONDON, a foreign company," Defendants admit the remaining allegations in paragraph 5 of the Complaint.

6. Defendants admit the allegations in paragraph 6 of the Complaint.

7. Defendants admit the first sentence of paragraph 7 of the Complaint. Defendants deny the second sentence of paragraph 7 of the Complaint, including the suggestion that they were asked to disclose that information or had an

¹ Indeed, contrary to plaintiff's complaint, reports in the press since the filing of the Complaint have cited "family insiders" and "a Kanye insider" as the sources for leaked information.

obligation to do so in connection with their investigation into Plaintiff's claim. Except as expressly admitted herein, Defendants deny any remaining allegations in paragraph 7.

JURISDICTION AND VENUE

8. With respect to paragraph 8 of the Complaint, Defendants reserve the right to challenge whether there is sufficient and/or complete diversity jurisdiction under 28 U.S.C. §1332.

9. Defendants admit that they issued insurance policies described in the first sentence of paragraph 9 of the Complaint. Defendants admit that Very Good's broker (and therefore its agent) obtained the policies for Very Good Touring. Defendants admit that the policies insure an entity having its principal place of business within this judicial district, and that California law applies to the interpretation of the contracts. Defendants admit that there is personal jurisdiction over Defendants. Except as expressly admitted herein, Defendants deny any remaining allegations in paragraph 9.

10. Defendants admit that venue is proper in this District under 28 U.S.C. § 1391 as stated in paragraph 10 of the Complaint. .

11. Defendants admit the allegations in paragraph 11 of the Complaint.

THE SAINT PABLO TOUR, RESCHEDULED SHOWS,

AND THE TOUR CANCELLATION

12. Defendants admit the first sentence of paragraph 12 of the Complaint. Answering the second sentence of paragraph 12 of the Complaint, defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said sentence, and on that basis deny each and every allegation contained therein. Answering the third sentence of paragraph 12 of the Complaint, Defendants admit that the statement set forth in the Complaint is among the reasons that an insured generally will obtain non-appearance and cancellation insurance. Except as expressly admitted herein, Defendants deny any

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1 remaining allegations in paragraph 12.

2 13. Answering the allegations in paragraph 13 of the Complaint,
3 Defendants admit that the insured's broker (and therefore its agent), contacted the
4 Lloyd's market regarding placement of the subject Policies, obtained a premium
5 quote, and thereafter entered into the "Leg 1 Policy." Except as expressly
6 admitted herein, Defendants deny any remaining allegations in paragraph 13.

7 14. Answering the allegations in paragraph 14 of the Complaint,
8 Defendants admit that two of the shows in early October 2016 were cancelled
9 after Kanye West's wife, Kim Kardashian-West, was the victim of a reported
10 robbery in Paris, France. Defendants admit that those two shows were
11 rescheduled for the subsequent Leg 2 of the Tour. Except as expressly admitted
12 herein, Defendants deny any remaining allegations in paragraph 14.

13 15. Defendants admit the allegations in paragraph 15 of the Complaint.

14 16. Answering the allegations in paragraph 16 of the Complaint,
15 Defendants admit that the November 3, 2016 date was cancelled following a
16 reported throat illness, and that the show was rescheduled to November 20, 2016.
17 Except as expressly admitted herein, Defendants deny any remaining allegations
18 in paragraph 16.

19 17. Answering the allegations in paragraph 17 of the Complaint,
20 Defendants admit that additional dates were arranged for Leg 2 of the Tour, to
21 commence November 16, 2016 and to end on New Year's Eve, 2016.
22 Underwriters admit that the insured's broker (and therefore its agent), contacted
23 Defendants, provided a schedule of event dates, was quoted a premium, paid the
24 premium, and as a result the parties entered into the second of the two policies (the
25 "Leg 2 Policy"). Except as expressly admitted herein, Defendants deny any
26 remaining allegations in paragraph 17.

27 18. Defendants admit, on information and belief, the allegations of the
28 first sentence of paragraph 18 of the Complaint. Defendants admit the second

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1 sentence of paragraph 18 of the Complaint. Defendants lack sufficient
 2 information to form a belief as to the truth of the allegation in the last sentence of
 3 paragraph 18 of the Complaint and on that basis deny. Except as expressly
 4 admitted herein, Defendants deny any remaining allegations in paragraph 18.

5 19. Defendants admit that on November 20, 2016, Defendants are
 6 informed and believe based upon their investigation that the insured decided to
 7 cancel the show scheduled for that evening at the Los Angeles Forum. Defendants
 8 deny that, “all concerned” were involved in the decision to cancel as Defendants
 9 were not consulted in any way in advance of the decision to cancel. Similarly,
 10 defendants deny that, “all concerned” were involved in the decision to cancel the
 11 remainder of the Tour, which was cancelled without prior consultation with
 12 Defendants. Defendants lack sufficient information to form a belief as to the truth
 13 of the allegations in the last sentence of paragraph 19 and on that basis deny.
 14 Except as expressly admitted herein, Defendants deny any remaining allegations
 15 in paragraph 19.

16 20. Defendants admit that Kanye West was hospitalized at UCLA
 17 Neuropsychiatric Hospital Center on November 21, 2016. Except as expressly
 18 admitted, Defendants deny the allegations in paragraph 20.

19 21. Defendants admit the allegations in paragraph 21 of the Complaint.

20 22. Defendants admit that Kanye West remained hospitalized at UCLA
 21 for 8 days, and was released on November 29, 2016, all of which and other
 22 medical issues are placed in issue by Plaintiff. Except as expressly admitted,
 23 Defendants deny the remaining allegations in paragraph 22, as Defendants lack
 24 sufficient information to form a belief as to the truth of the allegations.

25 23. Defendants lack sufficient information to form a belief as to the truth
 26 of the allegations in the first sentence of paragraph 23, and on that basis, deny.
 27 Defendants are limited by the agreed upon nondisclosure agreement as to what can
 28 be publicly disclosed in this answer regarding Kanye West’s treating physician’s

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testimony concerning Mr. West's condition and the reasons for the cancellation, subject to a protective order or other court order permitting disclosure of the same, for reasons to be addressed with the Court. Defendants admit the allegation in the second sentence of paragraph 23 that Kanye West's treating physician testified that Kanye West could not resume touring as of the date of that doctor's examination under oath. Defendants admit that the doctor who performed the Independent Medical Examination confirmed that Kanye West was not in a condition to resume touring. Subject to a protective order or court order permitting the disclosure of additional medical information placed at issue by Plaintiff's complaint, Defendants cannot respond any further to these allegations in this answer. Except as expressly admitted, Defendants deny the remaining allegations of paragraph 23 of the Complaint.

24. Defendants deny the allegations in paragraph 24 of the Complaint.

25. Answering the allegations in paragraph 25 of the Complaint, Defendants admit that they requested, as is their right pursuant to the terms of the Insurance Policies, that Kanye West submit to an Independent Medical Examination, and further admit that the doctor who performed the Independent Medical Examination stated that Kanye West was not in condition to resume touring. Defendants admit that Kanye West testified, under penalty of perjury, in an examination under oath, as did at least eleven other persons affiliated with Kanye West and the Plaintiff. Subject to a protective order or court order permitting the disclosure of additional medical information placed at issue by Plaintiff's complaint, Defendants cannot respond any further to these allegations. Except as expressly admitted above, Defendants deny the remaining allegations in paragraph 25 of the Complaint.

26. Defendants admit that Very Good Touring provided documentation regarding the amount of the claim, including its calculation of the amount due. Except as expressly admitted, Defendants deny the remaining allegations in

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paragraph 26 of the Complaint.

27. Defendants admit the first sentence of paragraph 27 of the Complaint. Defendants deny the second sentence of paragraph 27 of the Complaint. Defendants admit that they have attempted to work with Plaintiff and its lawyers who were involved early on in the claim to resolve the claim given the evidence obtained during Underwriters' investigation. Defendants admit that the insured has refused to compromise the claim. Except as expressly admitted herein, Defendants deny any remaining allegations in paragraph 27.

THE INSURANCE POLICIES

28. Defendants admit the allegations in paragraph 28 of the Complaint.

29. Defendants admit the allegations in paragraph 29 of the Complaint.

30. Defendants admit that the selected portions of the Policies are properly quoted in paragraph 30 of the Complaint. Defendants deny that the paragraph contains a complete summary of the terms of the policies. As has been repeatedly referenced in communications to Plaintiff's representatives, additional relevant Policy Provisions include the following:

The Policy is subject to the following Conditions Precedent to liability:

1.1 The Underwriters will indemnify the Insured for their Ascertained Net Loss arising from the Insured Event(s) being necessarily Cancelled, Abandoned, Postponed, Interrupted, Curtailed or Relocated.

Provided that:

(1.1.1) the necessary Cancellation, Abandonment, Postponement, Interruption, Curtailment or Relocation is the sole and direct result of one or more of the Perils, as more fully described in 3 below; and

(1.1.2) such Peril is stated in the Schedule to be insured; and

(1.1.3) the cause of such Peril is beyond the control of:

- (i) the Insured and
- (ii) each and every Insured Person; and

(iii) in respect of 3.4 below the Insured, the Insured Person and each and every other Participant.

(1.1.4) the Peril which is the sole and direct cause of the necessary Cancellation, Abandonment, Postponement, Interruption, Curtailment or Relocation occurs during the Period of Insurance.

5. CONDITIONS PRECEDENT

It is a condition precedent to any liability of the Underwriters that

5.1 the Insured has:

5.1.1 truthfully declared all Material Facts having made all reasonable inquiries, including of any Insured Person, to establish those facts;

5.1.2 established to its best knowledge and belief after making reasonable inquiry that no Insured Person has any physical or psychological medical condition or is undergoing any treatment, medical or otherwise, other than those disclosed in writing to the Underwriters prior to the inception of this Insurance and agreed by them in writing; and

5.1.3 declared that all information contained in any completed Proposal Form and/or supplied to support such Proposal Form or other application for this Insurance is in all respects true and complete and unchanged at the inception of this Insurance. Further the Insured agrees that such information is material to the Underwriters' acceptance of this risk, and forms the basis of this Insurance and is incorporated herein.

5.2 each Insured Person is in all respects fit and able to fulfil the commitments Insured herein;

5.3 coverage provided hereunder for any pre-existing physical or psychological medical condition disclosed to and accepted by the Underwriters pursuant to Section 5.1.2, shall cease from the beginning of this Insurance if the Insured Person fails to continue to follow any prescribed regime, medical or otherwise, essential to the Insured Person's well-being during the Period of Insurance;

5.4 the Insured has:

5.4.1 no knowledge at the inception of this insurance, of any undisclosed matter, fact or circumstance, actual or threatened, that increases or could increase the possibility of a loss under this insurance;

5.4.2 confirmed that no Insured Person has knowledge at inception, of any undisclosed matter, fact or circumstance, actual or threatened, that increases or could increase the possibility of a loss under this Insurance.

5.5 the Insured will at all times do all things necessary to avoid, diminish or otherwise mitigate a loss under this insurance, including where appropriate rescheduling of the Insured Event;

5.6 the Insured shall, in the event of any happening or circumstance which could give rise to a claim, comply with Section 9.”

Furthermore, as Defendants have repeatedly explained to the Plaintiff’s representatives, additional relevant Policy Provisions include the following:

The Policies are subject to various General Conditions, *inter alia*, at clause 7 including:

“7.10 Any fraud, concealment, intentional misstatement or negligent statement relating to the information provided or in the making of a claim shall entitle the Underwriters to refuse payment of a claim or treat this Insurance as though it was void from its inception.

7.11 The Insured shall observe and fulfil the terms and conditions contained in this Policy or endorsed hereon.

...

7.13 The Insured shall maintain adequate records in connection with the subject matter insured hereunder.”

Furthermore, the Policies exclude coverage, at clause 8, as follows:

“This Insurance does not cover any loss directly or indirectly arising out of, contributed to by, or resulting from:

...

8.3 the non-appearance at an Insured Event of any Insured Person due to:

...

(8.3.4) any pre-existing physical or psychological medical condition known to the Insured or Insured Person unless disclosed in writing

to the Underwriters prior to the inception of this Insurance, and otherwise agreed in writing by the Underwriters,

...

(8.3.7) the possession or use of illegal drugs by an Insured Person,

(8.3.8) the effects on an Insured Person of prescription drugs when not taken as medically prescribed,

(8.3.9) the consumption of alcohol which renders and Insured Person(s) unfit to perform contracted duties.

8.4 the Insured's or any Insured Person's lack of care, diligence or prudent behavior, the result of which would increase the risk, and/or likelihood of a loss, hereunder."

Finally, Underwriters admit that additional Relevant Policy Provisions include the following under the Claims Procedure at Clause 9:

"It is a condition precedent to any liability of the Underwriters that in the event of any happening or circumstances which could give rise to a claim under this Insurance, the Insured shall:

9.1 not misrepresent or conceal facts in the making of a claim.

...

(9.2.2) confirm the facts in writing as soon as possible, with as much information and detail as available,

(9.2.3) forward immediately to the Underwriters or their representatives any letter, writ or other document received in connection with any claim made under this insurance,

(9.2.4) provide the Underwriters or their appointed representatives with:

- a) all necessary assistance in a timely manner,
- b) all required medical information,
- c) all further information required,
- d) all documentation and records necessary to establish and assess the full amount of any indemnity that may be due hereunder and copies or extracts as may be required,

(9.2.5) take all steps to minimize, avoid or otherwise mitigate any loss hereunder,

(9.2.6) prove the loss to the satisfaction of the Underwriters,

...

9.3 as often as may be reasonably required submit to examination under oath on all matters connected with a claim, by any person named by the Underwriters at such reasonable time and place as may be designated by the Underwriters or their representatives.

So far as is in its power the Insured shall cause its employees and all other persons interested in the Insured Event, to comply with the foregoing.

No such examination under oath or examination of books or documents, nor any other act of the Underwriters or their representatives in connection with any investigation hereunder, shall be deemed a waiver of any defence which the Underwriters might otherwise have. All such examinations and acts shall be deemed to have been made or done without prejudice to the Underwriters' liability.

9.4 as soon as is practicable provide to the Underwriters or their representatives a signed and sworn proof of loss, in such form as may be required by the Underwriters, to substantiate the occurrence, nature, cause and amount of loss claimed under this Insurance.

9.5 allow the Underwriters the right, if they so wish, to:

(9.5.1) take such steps as they deem necessary to prevent, mitigate or minimize a loss.

...

(9.5.4) require independent medical examination of any Insured Person who gives rise to a claim hereunder."

Except as expressly admitted herein, Defendants deny any remaining allegations in paragraph 30.

**COVERAGE UNDER THE INSURANCE POLICIES FOR
CANCELLATION AND ABANDONMENT
OF SHOWS, AND OF THE TOUR**

31. Defendants admit the allegations in paragraph 31 of the Complaint.

32. Defendants admit the allegations in paragraph 32 of the Complaint.

33. Defendants admit the allegations in paragraph 33 of the Complaint.

34. In answer to paragraph 34 of the Complaint, Defendants deny each and every allegation contained therein.

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35. In answer to paragraph 35 of the Complaint, Defendants deny each and every allegation contained therein.

36. In answer to paragraph 36 of the Complaint, Defendants deny each and every allegation contained therein.

37. In answer to paragraph 37 of the Complaint, Defendants deny each and every allegation contained therein.

FIRST CAUSE OF ACTION

(Against Defendants for Breach of Contract)

38. Defendants admit that Plaintiff re-alleges the allegations of paragraphs 1-37, and in answering this paragraph Underwriters incorporate by reference the above with respect to paragraphs 1-37.

39. Defendants admit the allegations in paragraph 39 of the Complaint.

40. In answer to paragraph 40 of the Complaint, Defendants deny each and every allegation contained therein.

41. In answer to paragraph 41 of the Complaint, Defendants deny each and every allegation contained therein.

42. In answer to paragraph 42 of the Complaint, Defendants deny each and every allegation contained therein.

43. In answer to paragraph 43 of the Complaint, Defendants deny each and every allegation contained therein.

SECOND CAUSE OF ACTION

(Against Defendants for Breach Of the Implied Covenant of Good Faith and Fair Dealings)

44. Defendants admit that Plaintiff realleges the allegations of paragraphs 1-43, and in answering this paragraph Underwriters incorporate by reference the above with respect to paragraphs 1-43.

45. Defendants admit the allegations in paragraph 45 of the Complaint.

46. Defendants admit the allegations in paragraph 46 of the Complaint.

47. In answer to paragraph 47 of the Complaint, Defendants deny each and every allegation contained therein.

48. In answer to paragraph 48 of the Complaint, Defendants deny each and every allegation contained therein.

49. In answer to paragraph 49 of the Complaint, Defendants deny each and every allegation contained therein.

50. In answer to paragraph 50 of the Complaint, Defendants deny each and every allegation contained therein.

51. In answer to paragraph 51 of the Complaint, Defendants deny each and every allegation contained therein.

II. AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to Cooperate)

52. Plaintiff has failed to cooperate as required by the terms and conditions of the policies and/or California law, including but not limited to, the failure and refusal to provide information, documents and writings.

SECOND AFFIRMATIVE DEFENSE

(Waiver)

53. Plaintiff waived its right to any or all relief asserted in the Complaint.

THIRD AFFIRMATIVE DEFENSE

(Failure to Mitigate)

54. Any and all damages sustained by Plaintiff, if any, are or were the direct and proximate result of its failure to mitigate damages, if any.

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FOURTH AFFIRMATIVE DEFENSE

(Unclean Hands)

55. The Complaint and each part thereof are barred or limited by application of the doctrine of unclean hands as to the acts, omissions, statements or conduct of Plaintiff and/or its agents or employees.

FIFTH AFFIRMATIVE DEFENSE

(Estoppel)

56. The Complaint and/or each part thereof are barred or limited by application of the doctrine of estoppel based upon the circumstances and the acts, omissions, statements or conduct of Plaintiff, upon which defendants relied to their detriment.

SIXTH AFFIRMATIVE DEFENSE

(Consent)

57. The Complaint and/or each part thereof are barred or limited to the extent that Plaintiff consented to any and all acts, omissions, statements or conduct alleged against the Defendants, if any. Further, Plaintiff was on notice of the terms and conditions of the subject insurance policy in a reasonable time relevant to the facts and circumstances and was bound by the terms and conditions of the subject insurance policy.

SEVENTH AFFIRMATIVE DEFENSE

(Misrepresentation or Failure to Provide Material Information)

58. The Complaint and/or each part thereof are barred or limited to the extent Plaintiff and/or its representatives misrepresented material information or omitted to provide material information to Defendants.

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EIGHTH AFFIRMATIVE DEFENSE

(Good Faith of Defendants)

59. The conduct of these answering Defendants has at all times been in good faith, with reason, and without malice, fraud or oppression, and further, in conformance with California or other applicable law.

NINTH AFFIRMATIVE DEFENSE

(Genuine Dispute Doctrine)

60. To the extent there is a genuine dispute among the Plaintiff and Defendants regarding the interpretation or enforcement of the policy, the Defendants are not liable for breach of the implied covenant of good faith and fair dealing.

TENTH AFFIRMATIVE DEFENSE

(Policy Provisions Preclude or Limit Coverage)

61. Plaintiff has no right to assert or maintain any claim against these answering Defendants, in whole or in part, to the extent that the terms, definitions, exclusions, conditions and/or limitations contained in any policy issued by Defendants precludes or limits coverage for the claim for which Plaintiff seeks coverage.

ELEVENTH AFFIRMATIVE DEFENSE

(Failure to Perform All Obligations)

62. Plaintiff has no right to assert or maintain any right against these answering Defendants, to the extent that Plaintiff has failed to perform all of its respective obligations under the insurance policy issued by Defendants.

TWELFTH AFFIRMATIVE DEFENSE

(Offset)

63. Plaintiff's damages, if any, are offset by any and all income to the Plaintiff, including but not limited to, ticketing income, secondary ticketing

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income, merchandising income, memorabilia and or its agreement(s) with its promoter(s).

THIRTEENTH AFFIRMATIVE DEFENSE

(Laches)

64. The complaint and each part thereof is barred by the doctrine of laches.

FOURTEENTH AFFIRMATIVE DEFENSE

(Ratification)

65. Plaintiff ratified the actions, omissions, statements or conduct of Defendants, if any.

FIFTEENTH AFFIRMATIVE DEFENSE

(Excuse)

66. The actions, omissions, statements or conduct of Plaintiff, if any, excuses the performance, if any, or breach, if any, Defendants.

SIXTEENTH AFFIRMATIVE DEFENSE

(Punitive Damages Unconstitutional)

67. Plaintiff's request for punitive damages violates the Fifth Amendment and the Fourteenth Amendment and said claim is not recoverable in this matter.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Comparative Fault of Plaintiff)

68. Plaintiff did not conduct itself, and did not manage and/or conduct its affairs in a reasonable manner, or as a reasonable person or entity would have done in like or similar circumstances, and by reason of such conduct, Plaintiff legally caused and/or contributed, in whole or in part, to its damages and losses, if any.

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EIGHTEENTH AFFIRMATIVE DEFENSE

(Comparative Negligence, Fault or Other
Legal Responsibility of Other Tortfeasors)

69. Should it be found that Defendants are liable in any manner for any damages claimed by Plaintiff, which liability Defendants specifically deny, the proportionate degree of negligence, fault, and/or legal responsibility of each and every other person or entity must be determined and prorated and any judgment which may be rendered against Defendants must be reduced not only by the degree of negligence, fault or legal responsibility attributable to Plaintiff, but also by the total of that degree of negligence, fault and/or other legal responsibility found to exist as to other parties, persons and/or entities as well.

NINETEENTH AFFIRMATIVE DEFENSE

(Additional, Unknown Affirmative Defenses)

70. Defendants reserve their rights as permitted by law to assert additional affirmative defenses and offsets.

III. COUNTERCLAIM

Defendants and Counterclaimants, CATHEDRAL SYNDICATE: 2010, a.k.a. CATHEDRAL SYNDICATE MMX, AT LLOYD'S OF LONDON, a foreign company; LIBERTY SYNDICATE 4472 AT LLOYD'S OF LONDON, a foreign company; XL CATLIN SYNDICATE 2003 OF LLOYD'S OF LONDON, a foreign company; MARKEL SYNDICATE 3000 OF LLOYD'S OF LONDON, a foreign company; ALLIANZ GLOBAL CORPORATE & SPECIALTY SE, a foreign company (collectively, "Defendants", "Counterclaimants", or "Underwriters") by and through their counsel of record and on information and belief, hereby counterclaim against Plaintiff and Counter-Defendant VERY GOOD TOURING, INC. (hereinafter "VGT" or "Plaintiff") as follows:

///

///

INTRODUCTION

1. This is an insurance dispute between sophisticated parties to cancellation, abandonment and non-appearance insurance Policies. Plaintiff was represented by sophisticated insurance brokers in the placement of this policy and in the presentation of the claim and was represented by legal counsel from inception of the claim. Counterclaimants (“Underwriters”) seek a judicial determination there is no coverage for any claims made by VGT for benefits under Underwriters’ Policies Numbered B1333ECB160331–335 (the “Policies”) because of various terms, conditions and exclusions contained within the Policies, including, but not limited to the following:

As is pertinent to this dispute, the Policies exclude coverage, *inter alia*, at clause 8, as follows:

“This Insurance does not cover any loss directly or indirectly arising out of, contributed to by, or resulting from:

...

8.3 the non-appearance at an Insured Event of any Insured Person due to:

...

(8.3.7) the possession or use of illegal drugs by an Insured Person,

(8.3.8) the effects on an Insured Person of prescription drugs when not taken as medically prescribed,

(8.3.9) the consumption of alcohol which renders and Insured Person(s) unfit to perform contracted duties.

8.4 the Insured’s or any Insured Person’s lack of care, diligence or prudent behavior, the result of which would increase the risk, and/or likelihood of a loss, hereunder.”

The claim made by VGT relates to the November 2016 cancellation of twenty one performance dates of Kanye West’s “Saint Pablo” tour. In order to protect the privacy of Mr. West from public disclosure of details of his private

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life, the foregoing allegations omit references to the specific information obtained by Underwriters in connection with the claim during their investigation and Underwriters reference such facts only with sufficient specificity to apprise Defendants of the claims asserted herein.

2. Underwriters issued the Policies to VGT with respect to a series of shows to be performed by the Artist, Kanye West, for the period October 11, 2016 to January 1, 2017, which were part of Mr. West's series of concerts known as the "Saint Pablo" tour which was to include shows in North America between November and December 31, 2016. The Insured under the Policy is Mr. West's touring company, VGT.

3. On or about November 21, 2016, Underwriters were informed that Kanye West was being admitted to UCLA Medical Center (as has been widely publicized in the press) and that the remainder of the tour would be cancelled.

4. Thereafter, VGT made a claim for coverage under the Policies. Since that time, Underwriters have sought to obtain documents and other information necessary to determine VGT's entitlement to coverage under the policy. The parties now have an actual and present controversy regarding whether any coverage is afforded under the Policies as more fully set forth below. Underwriters' investigation indicates substantial irregularities in Mr. West's medical history. Furthermore the insured's failure to cooperate in Underwriters' investigation is contrary to the duties of cooperation VGT agreed to as a condition precedent to any obligation of Underwriters to pay any claim arising under the Policies. Throughout Underwriters' investigation, VGT and its legal, medical and other agents and representatives have delayed, hindered, stalled and or refused to provide information both relevant and necessary for Underwriters to complete their investigation of the claim. Underwriters are informed and believe, and thereon these same persons have willfully concealed and or misrepresented relevant facts in an effort to thwart Underwriters' investigation.

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PARTIES

5. Counterclaimants are CATHEDRAL SYNDICATE: 2010, a.k.a. CATHEDRAL SYNDICATE MMX, AT LLOYD'S OF LONDON, a foreign company; LIBERTY SYNDICATE 4472 AT LLOYD'S OF LONDON, a foreign company; XL CATLIN SYNDICATE 2003 OF LLOYD'S OF LONDON, a foreign company; MARKEL SYNDICATE 3000 OF LLOYD'S OF LONDON, a foreign company; ALLIANZ GLOBAL CORPORATE & SPECIALTY SE, a foreign company, Subscribing to Cancellation, Abandonment and Non-Appearance Policy Numbered B1333ECB160331 -- 335 ("Underwriters"). Underwriters are authorized to and do issue insurance to California residents through licensed surplus line brokers in accordance with the laws of the State of California.

6. Underwriters are informed and believe and thereon allege that Plaintiff VGT is a corporation existing and doing business pursuant to the laws of the State of California and identified in the Policies at issue in this proceeding as Very Good Touring, c/o Boulevard Management, 21731 Ventura Blvd., Suite 300, Woodland Hills, CA 91364.

7. Underwriters are informed and believe and thereon allege that the complaint is filed in the judicial district which is the principal place where Plaintiff does business.

FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

A. The Policies

8. In or about late-September/early-October 2016, VGT, by and through its agent and insurance broker, sought insurance coverage from Underwriters for 21 shows which were added to Kanye West's then ongoing Saint Pablo Tour. Those additional 21 shows were scheduled to commence in North America on or about November 17, 2016.

9. Thereafter, and in exchange for valuable consideration, Underwriters issued Cancellation, Abandonment and Non-Appearance Policy Nos. B1333ECB160331-335 (the “Policies”) to Very Good Touring c/o Boulevard Management, effective 11 October 2016 to January 1, 2017.

10. The insurance was issued via several policies as a series of layers with limits of indemnity (80% To Pay of the Guarantees) as follows:

<u>Policy No.</u>	<u>Limit of Indemnity</u>
B1333ECB160331	\$440,000
B1333ECB160332	\$1,560,000
B1333ECB160333	\$2,000,000
B1333ECB160334	\$4,360,000
<u>B1333ECB160335</u>	<u>\$2,400,000</u>
Total:	\$10,760,000

11. The Policies provide coverage for “Insured Performance(s) or Event(s)” with respect to Kanye West for November 17, 2016 to December 31, 2016.

12. As has been widely discussed in the press, Kanye West’s November 20, 2016 show at the Forum in Los Angeles was cancelled. The following day, the remainder of the tour was cancelled and Mr. West was admitted to UCLA Medical Center.

13. The Policies provide under the insuring clause as follows:

1.1 The Underwriters will indemnify the Insured for their Ascertained Net Loss arising from the Insured Event(s) being necessarily Cancelled, Abandoned, Postponed, Interrupted, Curtailed or Relocated.

Provided that:

(1.1.1) the necessary Cancellation, Abandonment, Postponement, Interruption, Curtailment or Relocation is the sole and direct result of one or more of the Perils, as more fully described in 3 below; and

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(1.1.2) such Peril is stated in the Schedule to be insured; and

(1.1.3) the cause of such Peril is beyond the control of:

- (iv) the Insured and
- (v) each and every Insured Person; and
- (vi) in respect of 3.4 below the Insured, the Insured Person and each and every other Participant.

(1.1.4) the Peril which is the sole and direct cause of the necessary Cancellation, Abandonment, Postponement, Interruption, Curtailment or Relocation occurs during the Period of Insurance.

14. The Policies' "Perils" include, at clause 3:

...

3.2 ACCIDENTAL BODILY INJURY to or ILLNESS of any Insured Person which, in the opinion of an independent medical practitioner approved by the Underwriters, prevents any Insured Person from appearing or continuing to appear in any or all of the Insured Events.

...

3.5 ALL OTHER PERILS not specifically limited or excluded elsewhere in this Insurance.

15. The Policies define Material Facts as follows:

...

4.11 Material Facts means those facts which the Underwriters conclude, in their sole discretion, are necessary for their determination of:

4.11.1 the acceptance or otherwise of the risk or any subsequent amendment; or

4.11.2 the premium; or

4.11.3 the application of any additional Terms, Conditions, Exclusions, Warranties and Limitations.

16. Furthermore, the Policies are subject to the following Conditions Precedent to liability:

5. CONDITIONS PRECEDENT

It is a condition precedent to any liability of the Underwriters that

5.1 the Insured has:

5.1.1 truthfully declared all Material Facts having made all reasonable inquiries, including of any Insured Person, to establish those facts;

5.1.2 established to its best knowledge and belief after making reasonable inquiry that no Insured Person has any physical or psychological medical condition or is undergoing any treatment, medical or otherwise, other than those disclosed in writing to the Underwriters prior to the inception of this Insurance and agreed by them in writing; and

5.1.3 declared that all information contained in any completed Proposal Form and/or supplied to support such Proposal Form or other application for this Insurance is in all respects true and complete and unchanged at the inception of this Insurance. Further the Insured agrees that such information is material to the Underwriters' acceptance of this risk, and forms the basis of this Insurance and is incorporated herein.

5.2 each Insured Person is in all respects fit and able to fulfil the commitments Insured herein;

5.3 coverage provided hereunder for any pre-existing physical or psychological medical condition disclosed to and accepted by the Underwriters pursuant to Section 5.1.2, shall cease from the beginning of this Insurance if the Insured Person fails to continue to follow any prescribed regime, medical or otherwise, essential to the Insured Person's well-being during the Period of Insurance;

5.4 the Insured has:

5.4.1 no knowledge at the inception of this insurance, of any undisclosed matter, fact or circumstance, actual or threatened, that increases or could increase the possibility of a loss under this insurance;

5.4.2 confirmed that no Insured Person has knowledge at inception, of any undisclosed matter, fact or circumstance, actual or threatened, that increases

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or could increase the possibility of a loss under this Insurance.

5.5 the Insured will at all times do all things necessary to avoid, diminish or otherwise mitigate a loss under this insurance, including where appropriate rescheduling of the Insured Event;

5.6 the Insured shall, in the event of any happening or circumstance which could give rise to a claim, comply with Section 9.

...

17. The Policies are subject to various General Conditions, *inter alia*, at clause 7 including:

7.10 Any fraud, concealment, intentional misstatement or negligent statement relating to the information provided or in the making of a claim shall entitle the Underwriters to refuse payment of a claim or treat this Insurance as though it was void from its inception.

7.11 The Insured shall observe and fulfil the terms and conditions contained in this Policy or endorsed hereon.

...

7.13 The Insured shall maintain adequate records in connection with the subject matter insured hereunder.

18. The Policies also exclude coverage, *inter alia*, at clause 8, as follows:

This Insurance does not cover any loss directly or indirectly arising out of, contributed to by, or resulting from:

...

8.3 the non-appearance at an Insured Event of any Insured Person due to:

...

(8.3.4) any pre-existing physical or psychological medical condition known to the Insured or Insured Person unless disclosed in writing to the Underwriters prior to the inception of this Insurance, and otherwise agreed in writing by the Underwriters,

...

(8.3.7) the possession or use of illegal drugs by an Insured Person,

(8.3.8) the effects on an Insured Person of prescription drugs when not taken as medically prescribed,

(8.3.9) the consumption of alcohol which renders and Insured Person(s) unfit to perform contracted duties.

8.4 the Insured's or any Insured Person's lack of care, diligence or prudent behavior, the result of which would increase the risk, and/or likelihood of a loss, hereunder.

19. The Policies also include the following claims procedure at Clause 9 as follows:

It is a condition precedent to any liability of the Underwriters that in the event of any happening or circumstances which could give rise to a claim under this Insurance, the Insured shall:

9.1 not misrepresent or conceal facts in the making of a claim.

...

(9.2.2) confirm the facts in writing as soon as possible, with as much information and detail as available,

(9.2.3) forward immediately to the Underwriters or their representatives any letter, writ or other document received in connection with any claim made under this insurance,

(9.2.4) provide the Underwriters or their appointed representatives with:

e) all necessary assistance in a timely manner,

f) all required medical information,

g) all further information required,

h) all documentation and records necessary to establish and assess the full amount of any indemnity that may be due hereunder and copies or extracts as may be required,

(9.2.5) take all steps to minimize, avoid or otherwise mitigate any loss hereunder,

(9.2.6) prove the loss to the satisfaction of the Underwriters,

...

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9.3 as often as may be reasonably required submit to examination under oath on all matters connected with a claim, by any person named by the Underwriters at such reasonable time and place as may be designated by the Underwriters or their representatives.

So far as is in its power the Insured shall cause its employees and all other persons interested in the Insured Event, to comply with the foregoing.

No such examination under oath or examination of books or documents, nor any other act of the Underwriters or their representatives in connection with any investigation hereunder, shall be deemed a waiver of any defence which the Underwriters might otherwise have. All such examinations and acts shall be deemed to have been made or done without prejudice to the Underwriters' liability.

9.4 as soon as is practicable provide to the Underwriters or their representatives a signed and sworn proof of loss, in such form as may be required by the Underwriters, to substantiate the occurrence, nature, cause and amount of loss claimed under this Insurance.

9.5 allow the Underwriters the right, if they so wish, to:

9.5.1 take such steps as they deem necessary to prevent, mitigate or minimize a loss.

...

9.5.4 require independent medical examination of any Insured Person who gives rise to a claim hereunder.

B. The Insurance Claim

20. Following Kanye West's reported illness and admission to UCLA Medical Center, VGT made a claim for benefits under the Policies. As has been widely reported in the media, Mr. West was hospitalized at UCLA for approximately a week after his admission.

21. In connection with the claim, Underwriters thereafter engaged in a series of communications with the insured's representatives and obtained documentation and other information with respect to the claim. Based upon the results of that investigation to date, Underwriters are informed and believe that coverage is likely precluded under the Policies in light of the language cited

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above, but have not been able to reach a final conclusion in that respect as of this date because of the insured's failure and/or refusal to produce additional information that was requested by Underwriters in connection with the investigation into the claim, and further have been unable to obtain information from third-parties. Because of the confidential nature of the issues involved with the claim, and out of respect for the insured's privacy as to those matters, Underwriters do not herein set forth the specifics with regard to the information that has been provided to date, or as to the information requested but as of yet not provided by the insured or its representatives, or as to the third-parties from which Underwriters seek information.

22. Underwriters are informed and believe, and thereon allege, that their ability to investigate and evaluate the claim remains impaired because of the above.

23. While Underwriters have continued to conduct their investigation, they have continued to reserve all of their rights under the Policy's terms and conditions and California law.

FIRST CAUSE OF ACTION

(For Declaratory Relief – No Duty to Indemnify Against All Defendants)

24. Underwriters incorporate paragraphs 1 through 25 as if set forth in full.

25. An actual controversy has arisen and now exists between Underwriters and Plaintiff. Underwriters contend that they have no duty to indemnify defendants because the insuring clause has not been triggered and the tender is expressly excluded by Conditions Additional, Conditions Precedent, General Conditions, and Exclusions in the Policy and because defendants are in breach of the Policy conditions regarding providing necessary information, assistance, and documentation.

Peril Not Beyond the Control of the Insured

26. Underwriters contend that they have no duty to indemnify Plaintiff based upon the Policies' Insurance Clause because such peril, as described in the Policies, was not beyond the control of Plaintiff and each and every Insured Person. The Insurance Clause states:

1.2 The Underwriters will indemnify the Insured for their Ascertained Net Loss arising from the Insured Event(s) being necessarily Cancelled, Abandoned, Postponed, Interrupted, Curtailed or Relocated.

Provided that:

(1.1.1) the necessary Cancellation, Abandonment, Postponement, Interruption, Curtailment or Relocation is the sole and direct result of one or more of the Perils, as more fully described in 3 below; and

(1.1.2) such Peril is stated in the Schedule to be insured; and

(1.1.3) the cause of such Peril is beyond the control of:

- (vii) the Insured and
- (viii) each and every Insured Person; and
- (ix) in respect of 3.4 below the Insured, the Insured Person and each and every other Participant.

(1.1.4) the Peril which is the sole and direct cause of the necessary Cancellation, Abandonment, Postponement, Interruption, Curtailment or Relocation occurs during the Period of Insurance.

27. Underwriters allege on information and belief that the "peril" was not beyond the control of the Plaintiff. Underwriters are informed and believe, and on that basis allege, that Plaintiff has contended or will contend to the contrary. Underwriters request that this Court make and enter its binding judicial declarations in accordance with their contentions above. The requested declarations are both necessary and proper at this time under the circumstances in that the interests of judicial economy and substantial justice will be served thereby.

Pre-existing Medical and Other Conditions

28. Underwriters contend that they do not have a duty to indemnify Plaintiff based upon the Policies' applicable Conditions Precedent:

4. CONDITIONS PRECEDENT

It is a condition precedent to any liability of the Underwriters that

5.1 the Insured has:

5.1.1 truthfully declared all Material Facts having made all reasonable inquiries, including of any Insured Person, to establish those facts;

5.1.2 established to its best knowledge and belief after making reasonable inquiry that no Insured Person has any physical or psychological medical condition or is undergoing any treatment, medical or otherwise, other than those disclosed in writing to the Underwriters prior to the inception of this Insurance and agreed by them in writing; and

5.1.3 declared that all information contained in any completed Proposal Form and/or supplied to support such Proposal Form or other application for this Insurance is in all respects true and complete and unchanged at the inception of this Insurance. Further the Insured agrees that such information is material to the Underwriters' acceptance of this risk, and forms the basis of this Insurance and is incorporated herein.

5.2 each Insured Person is in all respects fit and able to fulfil the commitments Insured herein;

5.3 coverage provided hereunder for any pre-existing physical or psychological medical condition disclosed to and accepted by the Underwriters pursuant to Section 5.1.2, shall cease from the beginning of this Insurance if the Insured Person fails to continue to follow any prescribed regime, medical or otherwise, essential to the Insured Person's well-being during the Period of Insurance;

5.4 the Insured has:

5.4.1 no knowledge at the inception of this insurance, of any undisclosed matter, fact or circumstance, actual or threatened, that increases or could

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increase the possibility of a loss under this insurance;

5.4.2 confirmed that no Insured Person has knowledge at inception, of any undisclosed matter, fact or circumstance, actual or threatened, that increases or could increase the possibility of a loss under this Insurance.

5.5 the Insured will at all times do all things necessary to avoid, diminish or otherwise mitigate a loss under this insurance, including where appropriate rescheduling of the Insured Event;

5.6 the Insured shall, in the event of any happening or circumstance which could give rise to a claim, comply with Section 9.

29. Underwriters are informed and believe and thereon allege that they have no duty to indemnify Plaintiff based upon the aforementioned conditions. Underwriters' investigation continues, and Underwriters contend that the additional information requested by Underwriters that has not been provided is material to Underwriters' investigation into these issues.

30. Underwriters request that this Court make and enter its binding judicial declarations in accordance with their contentions above. The requested declarations are both necessary and proper at this time under the circumstances in that the interests of judicial economy and substantial justice will be served thereby.

General Conditions

31. Underwriters are further informed and believe and thereon allege that they have no duty to indemnify Plaintiff based upon the Policies' General Conditions. The Policies set forth the following General Conditions:

The Policies are subject to various General Conditions, *inter alia*, at clause 7 including:

7.10 Any fraud, concealment, intentional misstatement or negligent statement relating to the information provided or in the making of a claim shall entitle the Underwriters to refuse

payment of a claim or treat this Insurance as though it was void from its inception.

7.11 The Insured shall observe and fulfil the terms and conditions contained in this Policy or endorsed hereon.

...

7.13 The Insured shall maintain adequate records in connection with the subject matter insured hereunder.

32. Underwriters are informed and believe and thereon allege that there is no duty to indemnify Plaintiff based upon the above, and that Plaintiffs contend otherwise.

33. Underwriters request that this Court make and enter its binding judicial declarations in accordance with their contentions above. The requested declarations are both necessary and proper at this time under the circumstances in that the interests of judicial economy and substantial justice will be served thereby.

No Duty to Indemnify – Policy Exclusions

34. Underwriters further allege on information and belief that they have no duty to indemnify Plaintiff based upon the Policies' applicable Exclusions as set forth below:

8. EXCLUSIONS

This Insurance does not cover any loss directly or indirectly arising out of, contributed to by, or resulting from:

...

8.3 the non-appearance at an Insured Event of any Insured Person due to:

...

(8.3.4) any pre-existing physical or psychological medical condition known to the Insured or Insured Person unless disclosed in writing to the Underwriters prior to the inception of this Insurance, and otherwise agreed in writing by the Underwriters,

...

(8.3.7) the possession or use of illegal drugs by an Insured Person,

(8.3.8) the effects on an Insured Person of prescription drugs when not taken as medically prescribed,

(8.3.9) the consumption of alcohol which renders and Insured Person(s) unfit to perform contracted duties.

8.4 the Insured's or any Insured Person's lack of care, diligence or prudent behavior, the result of which would increase the risk, and/or likelihood of a loss, hereunder.

35. Underwriters request that this Court make and enter its binding judicial declarations in accordance with their contentions above. The requested declarations are both necessary and proper at this time under the circumstances in that the interests of judicial economy and substantial justice will be served thereby.

Failure to Cooperate and Provide Necessary Information

36. Underwriters further allege on information and belief that they have no duty to indemnify VGT based upon condition precedent 9 of the Policy which states that PLAINTIFF shall comply with the claims procedure as follows:

8. CLAIMS PROCEDURE

It is a condition precedent to any liability of the Underwriters that in the event of any happening or circumstances which could give rise to a claim under this Insurance, the Insured shall:

9.1 not misrepresent or conceal facts in the making of a claim.

...

(9.2.2) confirm the facts in writing as soon as possible, with as much information and detail as available,

(9.2.3) forward immediately to the Underwriters or their representatives any letter, writ or other document received in connection with any claim made under this insurance,

(9.2.4) provide the Underwriters or their appointed representatives with:

i) all necessary assistance in a timely manner,

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j) all required medical information,

k) all further information required,

l) all documentation and records necessary to establish and assess the full amount of any indemnity that may be due hereunder and copies or extracts as may be required,

(9.2.5) take all steps to minimize, avoid or otherwise mitigate any loss hereunder,

(9.2.6) prove the loss to the satisfaction of the Underwriters,

...

9.3 as often as may be reasonably required submit to examination under oath on all matters connected with a claim, by any person named by the Underwriters at such reasonable time and place as may be designated by the Underwriters or their representatives.

So far as is in its power the Insured shall cause its employees and all other persons interested in the Insured Event, to comply with the foregoing.

No such examination under oath or examination of books or documents, nor any other act of the Underwriters or their representatives in connection with any investigation hereunder, shall be deemed a waiver of any defence which the Underwriters might otherwise have. All such examinations and acts shall be deemed to have been made or done without prejudice to the Underwriters' liability.

9.4 as soon as is practicable provide to the Underwriters or their representatives a signed and sworn proof of loss, in such form as may be required by the Underwriters, to substantiate the occurrence, nature, cause and amount of loss claimed under this Insurance.

9.5 allow the Underwriters the right, if they so wish, to:

9.5.1 take such steps as they deem necessary to prevent, mitigate or minimize a loss.

...

9.5.4 require independent medical examination of any Insured Person who gives rise to a claim hereunder.

37. Underwriters desire a judicial determination and declaration of their rights and obligations under the Policy with respect to the Insurance Clause and

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Conditions Additional, Conditions Precedent, General Conditions, and Exclusions in the Policy, including, *inter alia*, a declaration VGT failed in its duty to cooperate with respect to Underwriters' investigation into VGT's claim, which cooperation was a condition precedent to any obligation of Underwriters to make any payment on any claim of VGT.

38. A judicial determination of the respective obligations of the parties to this Complaint is appropriate under the circumstances, and no other adequate remedy is available to Underwriters.

PRAYER FOR RELIEF

WHEREFORE, Counterclaimants pray for judgment as follows:

1. That Plaintiff take nothing by way of its Complaint, or any of the causes of action contained therein;

2. An order declaring and adjudging that Underwriters have no duty to indemnify Plaintiff because the insuring clause has not been triggered and Plaintiff's claim is expressly excluded by Conditions Additional, Conditions Precedent, General Conditions, and/or Exclusions in the Policy, in addition to Plaintiff's failure to cooperate;

3. An order entering judgment in favor of Defendants/Counterclaimants and against Plaintiff;

4. That Defendants/Counterclaimants be awarded costs of suit incurred herein;

5. That Defendants/Counterclaimants be awarded attorneys' fees incurred herein; and

6. For such other and further relief as the Court may deem just and proper.

///

///

///

JURY TRIAL DEMAND

Pursuant to Fed. R. Civ. P. 38, Counterclaimants hereby demand a trial by jury on all claims so triable.

Dated: August 29, 2017

P.K. SCHRIEFFER LLP

By: /s/ Paul K. Schrieffer
Paul K. Schrieffer, Esq.
Wayne H. Hammack, Esq.
Attorneys for
Defendants/Counterclaimants
CATHEDRAL SYNDICATE: 2010,
a.k.a. CATHEDRAL SYNDICATE
MMX, AT LLOYD'S OF LONDON,
a foreign company; LIBERTY
SYNDICATE 4472 AT LLOYD'S
OF LONDON, a foreign company;
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Certificate of Service

I hereby certify that on August 29, 2017, I electronically filed the foregoing **ANSWER AND COUNTERCLAIM FOR DECLARATORY RELIEF OF DEFENDANTS AND COUNTERCLAIMANTS CATHEDRAL SYNDICATE: 2010, a.k.a. CATHEDRAL SYNDICATE MMX, AT LLOYD'S OF LONDON, a foreign company; LIBERTY SYNDICATE 4472 AT LLOYD'S OF LONDON, a foreign company; XL CATLIN SYNDICATE 2003 OF LLOYD'S OF LONDON, a foreign company; MARKEL SYNDICATE 3000 OF LLOYD'S OF LONDON, a foreign company; ALLIANZ GLOBAL CORPORATE & SPECIALTY SE, a foreign company** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following counsel of record:

Howard E. King
Seth Miller
King, Holmes, Paterno & Soriano
1900 Avenue of the Stars
Twenty Fifth Floor
Los Angeles, CA 90067
Counsel for Plaintiff and Counter-Defendant, Very Good Touring, Inc.

P.K. SCHRIEFFER LLP

By: /s/ Paul K. Schrieffer
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Attorneys for Defendants and Counter-Claimants