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10 Attorneys for Plaintiffs

11 FlorExpo LLC and Kendal Floral Supply, LLC

12 **UNITED STATES DISTRICT COURT**

13 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

14 FlorExpo LLC and Kendal Floral
15 Supply, LLC,

16 Plaintiffs,

17 v.

18 Travelers Property Casualty Company
19 of America,

20 Defendant.

Case No. '20CV1024 JLS DEB

Complaint For:

(1) Declaratory Relief;

(2) Breach Of Contract; and

**(3) Breach Of The Covenant Of Good
Faith And Fair Dealing**

Jury Trial Demanded

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1 Plaintiffs FlorExpo LLC (“FlorExpo”) and Kendal Floral Supply, LLC
2 (“Kendal”) (together, “Plaintiffs”), for their complaint against defendant Travelers
3 Property Casualty Company of America (“Travelers”), allege as follows:

4 **The Parties**

5 1. FlorExpo is a California limited liability company with its principal
6 place of business located in Carlsbad, California. FlorExpo has two members:
7 Kenneth Baca, who is domiciled in and a citizen of California, and Herbert Jordan,
8 who is domiciled in and a citizen of Florida. Accordingly, FlorExpo is a citizen of
9 California and Florida.

10 2. Kendal is a California limited liability company with its principal
11 place of business located in Carlsbad, California. Kendal has one member:
12 FlorExpo LLC, which is a citizen of California and Florida. Accordingly, Kendal
13 is a citizen of California and Florida.

14 3. Plaintiffs are informed and believe, and based thereon allege, that
15 Travelers is a Connecticut corporation doing business in the State of California.
16 On information and belief, Travelers has its principal place of business in Hartford,
17 Connecticut. Accordingly, Travelers is a citizen of Connecticut.

18 **Jurisdiction And Venue**

19 4. This complaint has an independent basis of jurisdiction based upon
20 the complete diversity of the parties, and because the amount in controversy set
21 forth in this complaint exceeds \$75,000, exclusive of costs. *See* 28 U.S.C. § 1332.

22 5. Venue is proper in this District under 28 U.S.C. §1391 because
23 jurisdiction is based only upon diversity of citizenship, and a substantial part of the
24 events giving rise to this claim occurred in this District.

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1 **General Allegations**

2 6. This lawsuit concerns insurance claims by FlorExpo and Kendal
3 under a Deluxe Property Coverage policy, issued by Travelers, for loss and
4 damage to millions of dollars' worth of Plaintiffs' merchandise (referred to in the
5 insurance policy as covered "stock").

6 7. FlorExpo and Kendal are leading importers and distributors of fresh-
7 cut flowers from South America. As Travelers knows from underwriting the
8 policy, Plaintiffs' business requires constant access to its stock, and any loss of
9 access can result in significant loss of stock. Plaintiffs' cut flowers have a very
10 short window to be distributed and sold before they perish—a time period measured
11 in days.

12 8. As detailed in this complaint, FlorExpo and Kendal lost millions of
13 dollars' worth of covered stock in their warehouses when they were prevented
14 from accessing the stock and it all perished before access was restored. Protection
15 against such loss or damage to their valuable merchandise is exactly why FlorExpo
16 and Kendal purchased commercial property coverage.

17 9. However, when FlorExpo and Kendal notified Travelers, the insurer
18 quickly and incorrectly denied coverage. Furthermore, rather than investigating
19 and properly addressing the property damage claim for the damaged stock,
20 Travelers instead treated the claim as a pandemic business interruption claim
21 (which it is not), and returned the type of boilerplate denial that it has apparently
22 been using for such claims.¹ It is no secret that Travelers has been inundated with
23 business interruption claims during the pandemic, but that does not give Travelers
24 license to ignore its other property coverage responsibilities.

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¹ Plaintiffs are not waiving any rights regarding their business interruption
28 coverage, but that is not what is at issue.

1 defined as all “RISKS OF DIRECT PHYSICAL LOSS unless the loss is 1.
2 Excluded in Section C., Exclusions, 2. Limited in Section D., Limitations; or 3.
3 Excluded or limited in the Declarations or by endorsement.” *See* Exh. A at 40.
4 The term “RISKS OF DIRECT PHYSICAL LOSS” is emphasized, but not
5 separately defined, and simply means exactly that: *all* such risks.

6 14. “Covered Property” under the Policy expressly includes FlorExpo’s
7 and Kendal’s “stock” that is “located in or on the designated building or structure
8 at the premises described in the Declarations or in the open (or in a vehicle) within
9 1,000 feet of the described premises.” *See* Exh. A at 23. The covered “stock”
10 plainly includes FlorExpo’s and Kendal’s stored cut-flowers that are the subject of
11 the loss at issue in this case. The Location Schedule in the Policy Declarations
12 includes the warehouse at 1960 Kellogg Avenue in Carlsbad, California (“Location
13 1”) and the warehouse at 5860 Obata Way in Gilroy, California (“Location 8”),
14 which are the locations where Plaintiffs’ merchandise perished. *See* Exh. A at 11.

15 15. At all relevant times, the required premiums were paid and the Policy
16 was in full force and effect.

17 **FlorExpo and Kendal Suffer The Loss Of Nearly All Of Their**
18 **Cut Flower Stock In Two Warehouses**

19 16. Between March 16 and March 22, 2020, FlorExpo and Kendal were
20 suddenly prevented by government authorities from accessing the Location 8
21 warehouse, where significant cut flower stock had just been stored for sale and
22 distribution.

23 17. Similarly, between March 20, 2020 and March 22, 2020, FlorExpo
24 and Kendal were prevented from accessing Location 1, and the remaining cut
25 flower stock at that warehouse.

26 18. As soon as Plaintiffs became aware that they may be unable to access
27 Locations 1 and 8, they took all reasonable measures to transfer stock from those
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1 warehouses to other warehouses, where the stock could be maintained and
2 distributed or sold. Despite those efforts, a significant amount of stock in
3 Locations 1 and 8 was unable to be transferred.

4 19. When Plaintiffs re-obtained access to the two locations, there had
5 been the total loss of the remaining stock at those locations, which had all perished.
6 That stock was disposed, both because it was worthless and because it posed a
7 hazard to the conditions at the warehouses and to incoming fresh stock.

8 20. Notwithstanding the many hundreds of thousands of dollars (or more)
9 worth of cut flowers that FlorExpo and Kendal were able to transfer to other
10 locations, the perished stock totaled over \$2 million. This loss falls within the
11 Policy's coverage limits for "physical loss of or damage to" Plaintiffs' stock.

12 21. FlorExpo incurred additional related losses for the disposal of the
13 perished stock and for the mitigation efforts that qualify for coverage under the
14 Policy's provisions regarding such Extra Expenses and Preservation of Property.
15 *See* Exh. A at 17-18.

16 **Travelers Mishandles and Incorrectly Denies The Coverage Claim**

17 22. On or about April 21, 2020, Plaintiffs tendered the loss and damage
18 claim to Travelers, through their insurance broker (the "Coverage Claim"). The
19 "Description of Incident" in the tender reads: "Loss of stock/damage claim. The
20 insured has valued this loss at roughly \$2m."

21 23. Without any legitimate effort to obtain additional details regarding the
22 Coverage Claim, Travelers responded with a written denial just nine days later on
23 April 30, 2020. Indicative of Traveler's failure to truly investigate the Coverage
24 Claim, the denial did not meaningfully address the *actual* coverage being
25 requested. Although Plaintiffs made clear they were seeking coverage for the
26 physical loss of and damage to their stock of cut flowers, Travelers
27 mischaracterized the tender as a business interruption claim.
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1 3. For compensatory damages in the amount of coverage owed to each
2 Plaintiff;

3 **On The Third Cause of Action:**

4 4. For an order and declaration that Travelers has breached its duty of
5 good faith and fair dealing to each Plaintiff under the Policy;

6 5. For compensatory damages in an amount to be proven at trial,
7 including the attorney’s fees, expenses, and costs incurred by each Plaintiff in
8 prosecuting the First and Second Causes of Action;

9 6. For exemplary damages, if appropriate, in an amount sufficient to
10 punish and make an example of Travelers;

11 **On All Causes of Action:**

12 7. For costs of suit incurred herein;

13 8. For pre-judgment and post-judgment interest at the maximum legal
14 rate on all sums awarded; and

15 9. For such other and further relief as the Court may deem just and
16 proper.

17 Dated: June 3, 2020

HALPERN MAY YBARRA GELBERG LLP
Marc D. Halpern
Douglas J. Brown

By /s/ Marc D. Halpern
Marc D. Halpern

Attorneys for Plaintiffs
FlorExpo LLC and Kendal Floral Supply, LLC

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JURY TRIAL DEMAND

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2 Plaintiffs FlorExpo LLC and Kendal Floral Supply, LLC hereby demand a
3 trial by jury of the claims set forth in the accompanying complaint, and each of
4 them.

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6 Dated: June 3, 2020

HALPERN MAY YBARRA GELBERG LLP

Marc D. Halpern
Douglas J. Brown

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9 By /s/ Marc D. Halpern
Marc D. Halpern

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11 *Attorneys for Plaintiffs*
FlorExpo LLC and Kendal Floral Supply, LLC

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