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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 10. Even worse, Travelers refused to review or correct its investigation so
2 as to properly address the coverage *actually* being requested and that is owed.
3 Plaintiffs therefore have been left with no choice but to sue to enforce their
4 coverage rights.

5 **The Policy**

6 11. To protect against loss or damage to its business property, FlorExpo
7 routinely purchases commercial property insurance for itself and its subsidiaries.
8 For January 1, 2020 to January 1, 2021, FlorExpo purchased Commercial
9 Insurance Policy No. Y-630-7506M235-TIL-20 from Travelers, with the Deluxe
10 Property Coverage feature, and adding FlorExpo’s subsidiary Kendal as an insured
11 (the “Policy”). On information and belief, **Exhibit A** is a true and correct copy of
12 the Policy and is incorporated by reference into this complaint.

13 12. As importers and distributors who routinely hold many millions of
14 dollars’ worth of physically sensitive merchandise in inventory at any given time,
15 the merchandise (or “stock”) component of their commercial property coverage
16 has been particularly important to FlorExpo and Kendal. Indeed, the Deluxe
17 Property Coverage in the Policy provides specially designated “Blanket coverage”
18 limits of \$5,421,748 for loss or damage to Plaintiffs’ “stock,” with further
19 increased limits for “stock” loss or damage at various storage locations during the
20 peak sales seasons. The Policy defines covered “stock” as “merchandise held in
21 storage or for sale, raw materials and in-process or finished goods, including
22 supplies used in their packing or shipping.” *Exh. A at 23.*

23 13. The Policy provides all-perils property damage coverage, meaning
24 that there is coverage unless a cause of loss or damage is expressly excluded. In
25 relevant part, the Deluxe Property Coverage part states, “We will pay for direct
26 physical loss of or damage to Covered Property caused by or resulting from a
27 Covered Cause of Loss.” *See Exh. A at 23.* “Covered Cause of Loss” in turn is
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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 24. For instance, even though Plaintiffs’ request for coverage made no
2 mention of business interruption, the denial begins by stating, “You presented a
3 claim for loss of income related to the Coronavirus (COVID-19) outbreak.” What
4 follows in the denial appears to be boilerplate pandemic business interruption
5 denial language that Travelers has used with numerous other policyholders.

6 25. Plaintiffs informed Travelers that the denial was incorrect and did not
7 meaningfully address the actual coverage claim, and requested that Travelers
8 review the claim and revise its response. Travelers refused, and instead stood by
9 its misdirected response and improper denial.

10 26. This conduct demonstrates that Travelers had no intention of honoring
11 its Policy obligations and decided it was going to deny coverage regardless of the
12 actual details or merit of the Coverage Claim.

13 27. FlorExpo and Kendal have now been forced to file this lawsuit to
14 vindicate their rights under the Policy and obtain the coverage determination and
15 payments required. FlorExpo and Kendal also include a cause of action for bad
16 faith as a result of Travelers unreasonable conduct regarding the Coverage Claim.

17 **FIRST CAUSE OF ACTION**

18 **(Declaratory Relief)**

19 28. Plaintiffs incorporate the allegations of the preceding paragraphs of
20 this complaint as though fully set forth herein.

21 29. On information and belief, Travelers disputes any obligation under the
22 Policy to provide coverage for the Coverage Claim.

23 30. Plaintiffs contend that Travelers is obligated to provide coverage for
24 the Coverage Claim, and in particular for the physical loss of and damage to
25 Plaintiffs’ covered stock at Locations 1 and 8, and for the other covered losses
26 associated with the disposal and mitigation efforts.

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1 31. Accordingly, an actual controversy now exists between Plaintiffs and
2 Travelers as to their respective rights and obligations under the Policy regarding
3 the Coverage Claim.

4 32. Therefore, a declaration as to the existence and extent of coverage for
5 the Coverage Claim is necessary and appropriate.

6 **SECOND CAUSE OF ACTION**

7 **(Breach of Contract)**

8 33. Plaintiffs incorporate the allegations of the preceding paragraphs of
9 this complaint as though fully set forth herein.

10 34. Travelers has a contractual obligation under the Policy to provide
11 confirmation of coverage and payment to Plaintiffs for the Coverage Claim.

12 35. For each of the Plaintiffs, all conditions and/or covenants for coverage
13 have been satisfied, or otherwise rendered inapplicable.

14 36. Travelers breached its obligations under the Policy to each Plaintiff by
15 failing to confirm and pay the required coverage for the Coverage Claim. To date,
16 Travelers has refused coverage and has made no payments.

17 37. As a direct and proximate result of Travelers' breach, each Plaintiff
18 has sustained substantial damages, including without limitation, the total value of
19 their lost or damaged stock for which they have sought coverage, and all other
20 covered losses associated with that loss or damage. The combined covered losses
21 total over \$2 million.

22 **THIRD CAUSE OF ACTION**

23 **(Breach of the Covenant of Good Faith and Fair Dealing)**

24 38. Plaintiffs incorporate the allegations of the preceding paragraphs of
25 this complaint as though fully set forth herein.

26 39. At all relevant times, Travelers had a duty to act fairly and in good
27 faith with respect to the Coverage Claim.
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1 40. Notwithstanding this duty, Travelers’ conduct has been unfair and
2 unreasonable. Travelers’ conduct shows that it has improperly prioritized its own
3 financial self-interest to limit, avoid, or delay coverage ahead of Plaintiffs’ rights
4 and expectations under the Policy.

5 41. Among other things, Travelers failed to properly investigate the
6 Coverage Claim. Instead, it obviously was pre-determined to deny coverage,
7 regardless of the actual details of the claim or type of coverage being sought.

8 42. As a result of the actions and inactions described herein, and such
9 other unreasonable conduct to be proven at trial, Travelers breached the covenant
10 of good faith and fair dealing.

11 43. As a proximate result of Travelers’ misconduct, Plaintiffs have
12 incurred substantial additional costs, including but not limited to their attorney’s
13 fees, expenses, and costs enforcing their coverage rights in this lawsuit.

14 44. Furthermore, on information and belief, Travelers’ bad faith conduct
15 appears to be willful and malicious, and intended to deter the tender and pursuit of
16 coverage claims, regardless of their merit. Accordingly, Plaintiffs may also be
17 entitled to recover exemplary damages, both to punish Travelers for its
18 transgressions and to deter similar, wrongful conduct. The full amount of these
19 various damages will be proven at trial.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE,** FlorExpo and Kendal each prays for judgment as follows:

22 **On The First Cause of Action:**

23 1. For an order and declaration that each Plaintiff is entitled to coverage
24 under the Policy for the Coverage Claim, as well as the extent of that coverage;

25 **On The Second Cause of Action:**

26 2. For an order and declaration that Travelers has breached its
27 obligations to each Plaintiff under the Policy regarding the Coverage 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

8
9 By /s/ Marc D. Halpern

Marc D. Halpern

Attorneys for Plaintiffs

FlorExpo LLC and Kendal Floral Supply, LLC

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