

# Exhibit A

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Scott G. Weber, Clerk  
Clark County

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK

54-40 BREWING COMPANY LLC, a  
Washington limited liability company,  
individually and on behalf of others similarly  
situated,

Plaintiff,

v.

TRUCK INSURANCE EXCHANGE, a  
reciprocal insurance exchange,

Defendant.

Case No. 21-2-00492-06

CLASS ACTION ALLEGATION  
COMPLAINT

JURY DEMAND

Plaintiff on behalf of itself and others similarly situated, by its undersigned counsel,  
alleges the following upon personal knowledge as to its own acts, and upon information and  
belief as to all other matters. Plaintiff's information and belief are based upon an investigation  
conducted by counsel.

**INTRODUCTION**

1. This is a civil action to recover damages for Washington businesses caused by  
Defendant Truck Insurance Exchange's ("Truck" or "Defendant") refusal to provide coverage  
for damages and losses sustained by Washington businesses as a result of governmental orders  
that have either closed or significantly limited the operations of those Washington businesses.  
Contrary to the coverage provisions in their insurance policies, and in violation of Washington

1 law, Defendant has universally denied coverage to Plaintiff and members of the Classes and has  
2 refused to honor the contractual obligations Defendant has under the policies.

3 **THE PARTIES**

4 2.1 Plaintiff 54-40 BREWING COMPANY LLC owns and operates a brewery and  
5 restaurant commonly known as 54-40 Brewing located at 3801 S Truman Rd., Suite 1,  
6 Washougal, Washington 98671.

7 2.2 Defendant is a California reciprocal insurance exchange. Defendant maintains its  
8 principal place of business in Woodland Hills, California. Defendant was licensed to issue, and  
9 did issue, the insurance policy at issue in this litigation.

10 **JURISDICTION AND VENUE**

11 3.1 The Court has jurisdiction over the subject matter of this action pursuant to RCW  
12 2.08.010.

13 3.2 The Court has personal jurisdiction over Defendant because it advertised, marketed,  
14 sold, and distributed the policies of insurance in Washington to Washington consumers, including  
15 the policy of insurance purchased by Plaintiff.

16 3.3 Venue in this Court is proper pursuant to RCW 48.05.220 and 4.12.020 because the  
17 causes of action stated herein arose in Clark County, Washington.

18 **FACTS**

19 4.1 The insurance was obtained to protect Plaintiff's business and its business income,  
20 among other things. Truck issued to Plaintiff an "all risk" insurance policy effective at all relevant  
21 times alleged in this complaint (the "Policy").

22 4.2 Plaintiff paid, and Defendant accepted, all premiums as they became due.

23 4.3 The Policy constitutes a valid and enforceable contract between Plaintiff and  
24 Defendant.

1           4.4 The Policy promises to pay Plaintiff for all risks of direct physical loss or damage  
2 to covered property, and includes, among others, Business Income coverage, Extra Expense  
3 coverage and Civil Authority coverage.

4           4.5 In or about January 2020, the United States of America saw its first cases of people  
5 infected with COVID-19.

6           4.6 Beginning in March 2020, Plaintiff was forced to suspend, in whole or in part, its  
7 business operations due to certain orders and directives issued by Washington Governor Jay  
8 Inslee and local civil authorities which, among other things, restricted access to and operation of  
9 Plaintiff's business, limited groups of people, curtailed travel, and generally limited commercial  
10 activity, each and all of which caused Plaintiff to suffer loss or damage (the "Orders").

11           4.6 As a direct result of the Orders, Plaintiff was unable to operate its businesses, in  
12 whole or in part, while the Orders remained in effect. In addition, and due to the geographical  
13 breadth of the Orders, access to premises other than Plaintiff's were also prohibited and limited,  
14 resulting in loss or damage to those premises as well. When Plaintiff and other similarly situated  
15 businesses were permitted to re-open, they could only do so with significant alterations to their  
16 premises and business models at great cost, including, among other things, loss of use of space,  
17 installation of barriers, increased cleaning and sanitation protocols, changing business hours and  
18 employee hours, decreased customer traffic, and generally more expensive operations in order to  
19 comply with the Orders.

20           4.7 As a result, Plaintiff's business property cannot be used for its intended purposes  
21 and its business activities have necessarily been suspended or interrupted.

22           4.8 Plaintiff sustained direct physical loss or damage caused by the Orders.

23           4.9 The direct, predominant, and efficient cause of Plaintiff's direct physical loss or  
24 damage is the Orders.

1 4.10 Plaintiff has and will continue to sustain direct physical loss or damage covered by  
2 the Policy, including, among other coverages, Business Income, Extra Expense and Civil  
3 Authority.

4 4.11 Plaintiff tendered a claim under the Policy to Defendant for the loss and/or damage  
5 outlined herein.

6 4.12 The Policy initially premises coverage upon the trigger of “direct physical loss of  
7 or damage.” Throughout the Policy, the terms “loss” or “damage” refer to different concepts, yet  
8 sometimes uses such terms interchangeably. For example, when referring to economic harm, the  
9 Policy refers to such harm as “loss”, including when referring to Business Income, where, as  
10 described below, Truck promises to pay for “the actual loss of business income” sustained by  
11 Plaintiff. In other sections, however, when referring to material harm, the Policy refers to such  
12 harm as “damage.” Throughout the Policy, the terms “loss” or “damage” are used to describe  
13 Truck’s coverage obligations, and often refer to distinct harms: that is, economic loss and  
14 material, physical damage.

15 4.13 The Policy promises that Defendant will provide Business Interruption coverage  
16 for Plaintiff’s “actual loss of Business Income [it] sustain[s] due to the necessary ‘suspension’ of  
17 [its] ‘operations’ during the ‘period of restoration.’” It goes on to provide that the “suspension”,  
18 however, must be caused by “direct physical loss of or damage to” Plaintiff’s property, and states  
19 that such “loss or damage” must be caused by or result from a Covered Cause of Loss.” Plaintiff’s  
20 “loss of Business Income” was directly, efficiently, and proximately caused by the Orders, which  
21 resulted in the economic loss and property damage discussed above.

22 4.14 The Policy further promises that Defendant will provide Extra Expense coverage  
23 for the “necessary expenses you incur during the ‘period of restoration’ that you would have not  
24 incurred if there had been no direct physical loss or damage to property caused by or resulting  
25 from a Covered Cause of Loss,” including such costs to “avoid or minimize the ‘suspension’ of  
26 business.” The Policy further clarifies that such Extra Expense benefits are available to “repair

1 or replace property” to the extent such payment “reduces the amount of loss” payable to Plaintiff.  
2 Plaintiff’s Extra Expenses were directly, efficiently, and proximately caused by the Orders, which  
3 resulted in the economic loss and property damage discussed above. Such expenses were incurred  
4 to reduce the “amount of loss . . . payable” by Defendant.

5 4.15 The Policy promises Civil Authority coverage for the “actual loss of Business  
6 Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits  
7 access” to Plaintiff’s business premises due to “direct physical loss of or damage to property  
8 other than” at Plaintiff’s business premises “caused by or resulting from any Covered Cause of  
9 Loss.” The Orders caused “damage” to other properties and Plaintiff incurred “loss” as a result  
10 of “civil authority that prohibits access” to Plaintiff’s property.

11 4.16 Despite the promised coverages set forth above, among others, Defendant cursorily  
12 denied Plaintiff’s claim for coverage under the Policy.

13 4.17 Despite the Policy language and the coverage it promises, Defendant refuses to  
14 acknowledge that “loss” and “damage” refer to distinct harms, resulting in additional protection  
15 for Plaintiff’s loss and damage directly, efficiently, and proximately caused by the Orders.

16 4.18 As a result of the above, Plaintiff has experienced and will continue to experience  
17 loss or damage covered by the Policy, and continued harm naturally and foreseeably occurring  
18 as a result of Defendant’s refusal to accept coverage and pay for Plaintiff’s covered loss and  
19 damage.

20 4.19 Upon information and belief, Defendant denied coverage for other similarly  
21 situated policyholders.

22 **CLASS ACTION ALLEGATIONS**

23 5.1 This matter is brought by Plaintiff on behalf of itself and those businesses similarly  
24 situated under CR 23. This action satisfies the numerosity, commonality, typicality, adequacy,  
25 predominance, and superiority requirements of CR 23.  
26

1           5.2 As authorized by CR 23(a), 23(b)(1), 23(b)(2), 23(b)(3), and 23(c)(4), Plaintiff  
2 brings its claims on behalf of itself and a class (“Direct Physical Loss or Damage Class”) of:

3           All persons and entities in the state of Washington insured under a policy issued or  
4 underwritten by Defendant providing all risk coverage for direct physical loss of or  
5 damage to covered property that sustained direct physical loss or damage to its  
6 business as a direct, efficient, and proximate cause of the Orders and for which  
7 Defendant has denied or stated it will deny a claim, or otherwise have failed to  
8 acknowledge, accept, or pay for the covered loss or damage.

9           5.3 As authorized by CR 23(a), 23(b)(1), 23(b)(2), 23(b)(3), and 23(c)(4), Plaintiff  
10 brings its claims on behalf of itself and a class (“Business Interruption Coverage Class”) of:

11           All persons and entities in the state of Washington insured under a policy issued or  
12 underwritten by Defendant with Business Interruption coverage whose business  
13 activities were actually and necessarily suspended or interrupted as a direct,  
14 efficient, and proximate cause of the Orders and for which Defendant has denied or  
15 stated it will deny a claim, or otherwise have failed to acknowledge, accept, or pay  
16 for the covered loss or damage.

17           5.4 As authorized by CR 23(a), 23(b)(1), 23(b)(2), 23(b)(3), and 23(c)(4), Plaintiff  
18 brings its claims on behalf of itself and a class (“Extra Expenses Coverage Class”) of:

19           All persons and entities in the state of Washington insured under a policy issued or  
20 underwritten by Defendant with Extra Expense coverage that incurred expenses  
21 while seeking to minimize the suspension of business at the covered premises as a  
22 direct, efficient, and proximate cause of the Orders and for which Defendant has  
23 denied or stated it will deny a claim, or otherwise have failed to acknowledge,  
24 accept, or pay for the covered loss or damage.

25           5.5 As authorized by CR 23(a), 23(b)(1), 23(b)(2), 23(b)(3), and 23(c)(4), Plaintiff  
26 brings its claims on behalf of itself and a class (“Civil Authority Coverage Class”) of:

          All persons and entities in the state of Washington insured under a policy issued or  
underwritten by Defendant with Civil Authority coverage that incurred loss of  
Business Income and necessary Extra Expense due to action of civil authority that  
prohibits access to the covered premises as a direct, efficient, and proximate cause  
of the Orders and for which Defendant has denied or stated it will deny a claim, or  
otherwise have failed to acknowledge, accept, or pay for the covered loss or  
damage.

          5.6 Excluded from each Class are Defendant and any of its members, affiliates, parents,  
subsidiaries, officers, directors, employees, successors or assigns; the judicial officers and  
associated court staff assigned to this case; the immediate family members of such officers and

1 staff; governmental entities; and Class Counsel and their employees. Plaintiff reserves the right  
2 to amend the Class definition based on information obtained during discovery.

3       **5.7 Numerosity.** The members of the Class are so numerous that joinder of all  
4 members is impractical. Upon information and belief, the number of members in the proposed  
5 Class is in the hundreds, if not thousands. The precise number of Class members will be  
6 ascertained through discovery, which will include Defendant's record of policyholders. Class  
7 members may be notified of the pendency of this action by recognized, Court-approved  
8 dissemination methods, which may include U.S. mail, electronic mail, internet postings, and/or  
9 published notice.

10       **5.8 Commonality.** There are many questions of law and fact common to Plaintiff and  
11 Class Members. These common questions of law and fact include, but are not limited to:

12           5.8.1 Whether the Class members suffered loss or damage under insurance  
13 policies issued to members of the Class.

14           5.8.2 Whether Defendant wrongfully denied claims for coverage related to loss  
15 or damages based on the facts set forth herein.

16           5.8.3 Whether Defendant's Business Income coverage applies based on the facts  
17 set forth herein.

18           5.8.4 Whether Defendant's Extra Expense coverage applies based on the facts set  
19 forth herein.

20           5.8.5 Whether Defendant's Civil Authority coverage applies based on the facts  
21 set forth herein.

22           5.8.6 Whether Defendant breached its insurance policies through a uniform and  
23 blanket denial of claims for loss or damage under the circumstances alleged  
24 herein.

25           5.8.7 Whether Plaintiff and the members of the proposed Class have suffered  
26 damages as a result of Defendant's actions.



1           5.8.8 Whether Plaintiff and the members of the proposed Class are entitled to  
2           equitable or declaratory relief because of Defendant's conduct and, if so,  
3           the nature of such relief.

4           5.8.9 Whether Plaintiff and the members of the proposed Class are entitled to an  
5           award of reasonable attorneys' fees, interests, and costs.

6           **5.9 Typicality.** Plaintiff's claims are typical of the claims of the members of the  
7           proposed Class and arise from the same course of conduct by Defendant. Plaintiff and the  
8           members of the proposed Class are all similarly affected by Defendant's refusal to pay under  
9           their property insurance policies. Plaintiff's claims are based upon the same legal theories as  
10          those of other class members. Plaintiff and the other Class members have sustained damages as  
11          a direct and proximate result of the same wrongful practices in which Defendant engaged. The  
12          relief Plaintiff seeks is typical of the relief sought for the absent Class members.

13          **5.10 Adequacy.** Plaintiff will fully and adequately assert and protect the interests of the  
14          proposed Classes and has retained Class counsel who are experienced and qualified in  
15          prosecuting Class Actions and have the financial resources to do so. Neither Plaintiff nor its  
16          attorneys have any interest contrary to or in conflict with the Class.

17          **5.11 Risk of Inconsistent or Varying Adjudications and Impairment to Washington**  
18          **Class Members' Interests.** Plaintiff seeks class-wide adjudication as to the interpretation, and  
19          resultant scope, of coverage available under Defendant's insurance policies, which is common to  
20          all members of the proposed Class. The prosecution of separate actions by individual members  
21          of the Class would risk inconsistent or varying interpretations of those policy terms and create  
22          inconsistent standards of conduct for Defendant. The policy interpretations sought by Plaintiff  
23          could also impair the ability of absent Class members to protect their interests. Consequently,  
24          the proposed Class satisfies the criteria for certification under CR 23(b)(1).

25          **5.12 Declaratory and Injunctive Relief.** Defendant acted or refused to act on grounds  
26          generally applicable to Plaintiff and other members of the proposed Class making declaratory

1 relief appropriate on a Class-wide basis. The Class members' claims all derive directly from  
2 Defendant's systematic and uniform refusal to pay policyholders for any loss or damage suffered  
3 as the direct, efficient, and proximate cause of the Orders. Defendant's actions or refusal to act  
4 are grounded upon the same generally applicable legal theories. Plaintiff and Class members are  
5 entitled to a declaration regarding their rights and obligations under such agreements, including  
6 whether Defendant is obligated to pay claims under the Policy and similar policies based on the  
7 facts and circumstances alleged above and the "all risk" nature of such insurance policies and  
8 whether the claims at issue constituted covered causes of loss or damage. Consequently, the  
9 proposed Class also satisfies the criteria for certification under CR 23(b)(2).

10       5.13 **Superiority.** A class action is superior to all other available methods of fair and  
11 efficient adjudication of this lawsuit. While the aggregate damages sustained by the members of  
12 the proposed Class are likely to be in the millions of dollars, the individual damages incurred by  
13 each Class member may be too small to warrant the expense of individual lawsuits. Individual  
14 litigation creates the risk of inconsistent and/or contradictory decisions and the Court system  
15 would be unduly burdened by individual litigation of such cases. A class action would result in  
16 a unified adjudication, with the benefits of economies of scale and supervision by a single Court.  
17 The common questions of law and of fact regarding Defendant's conduct and the interpretation  
18 of the common language in their property insurance policies predominate over any questions  
19 affecting only individual Class members. Compared to the expense, burden, inconsistencies,  
20 economic infeasibility, and inefficiencies of individualized litigation, the challenges of managing  
21 this action as a class action are substantially outweighed by the benefits to the legitimate interests  
22 of the parties, the Court, and the public of class treatment in this Court, making class adjudication  
23 superior to other alternatives. Consequently, the proposed Class also satisfies the criteria for  
24 certification under CR 23(b)(3).

25       5.14 Plaintiff and other members of the proposed Class have suffered damages as a result  
26 of Defendant's unlawful and wrongful conduct. Absent a class action, Defendant will retain

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1 substantial funds received as a result of its wrongdoing, and such unlawful and improper conduct  
2 shall, in large measure, not go remedied. Absent a class action, the members of the proposed  
3 Class will not be able to effectively litigate these claims and will suffer further losses, as  
4 Defendant will be allowed to continue such conduct with impunity and retain the proceeds of its  
5 ill-gotten gains.

6 .5.15 Particularly as to the interpretation of the uniform provisions of the Policy set forth  
7 above, certification may also be appropriate with respect each particular issue under CR 23(c).  
8 Plaintiff reserves the right to propose one or more sub-classes if discovery reveals that such  
9 subclasses are appropriate.

10 **FIRST CLAIM FOR RELIEF**

11 **(Declaratory Relief)**

12 6.1 Plaintiff incorporates the preceding paragraphs as if fully stated herein.

13 6.2 There is an actual and justiciable dispute regarding whether Plaintiff and the  
14 members of the Classes are entitled to coverage under Defendant's insurance policy for the loss  
15 or damage described herein.

16 6.3 **Direct Physical Loss or Damages.** Plaintiff and members of the Classes are  
17 entitled to a declaration as follows:

18 6.3.1 Plaintiff and members of the Classes suffered "direct physical loss of or  
19 damage" as defined by Defendant's insurance policy; and

20 6.3.2 The Orders were the direct, predominant, and efficient cause of the "direct  
21 physical loss of or damage" suffered by Plaintiff and members of the Class.

22 6.4 **Business Interruption.** Plaintiff and members of the Classes are entitled to a  
23 declaration as follows:

24 6.4.1 The damages sustained by Plaintiff and members of the Class are covered  
25 by the provision of Defendant's insurance policy providing for coverage for  
26 business interruption;

1 6.4.2 No exclusion under Defendant's policies apply to bar or limit coverage for  
2 Plaintiff's and the members of the Classes' claims;

3 6.4.3 Plaintiff and members of the Class incurred, as provided in the terms of  
4 Defendant's insurance policy:

5 6.4.3.1 actual loss of business income;

6 6.4.3.2 sustained due to necessary suspension of their operations;

7 6.4.3.3 during the period of restoration;

8 6.4.3.4 caused by physical loss of or damage to property at the insured  
9 premises by a covered cause of loss;

10 6.5 **Extra Expense.** Plaintiff and members of the Classes are entitled to a declaration  
11 as follows:

12 6.5.1 The damages sustained by Plaintiff and members of the Class are covered  
13 by the provision of Defendant's insurance policy providing for coverage for  
14 extra expense;

15 6.5.2 No exclusion under Defendant's policies apply to bar or limit coverage for  
16 Plaintiff's and the members of the Classes' claims;

17 6.5.3 Plaintiff and members of the Class incurred, as provided in the terms of  
18 Defendant's insurance policy:

19 6.5.3.1 necessary extra expenses;

20 6.5.3.2 during the period of restoration;

21 6.5.3.3 that would not have been incurred if there had been no directly  
22 physical loss or damage to property;

23 6.5.3.4 caused by or resulting from a covered cause of loss,

24 6.5.3.5 incurred to avoid or minimize the suspension of business;

25 6.5.3.6 to continue operations at the insured premises and/or to minimize  
26 the suspension of business that could not continue operations.

1       6.6   **Civil Authority** Plaintiff and members of the Classes are entitled to a declaration  
2 as follows:

3           6.6.1 The damages sustained by Plaintiff and members of the Class are covered  
4           by the provision of Defendant’s insurance policy providing for coverage for  
5           civil authority;

6           6.6.2 No exclusion under Defendant’s policies apply to bar or limit coverage for  
7           Plaintiff’s and the members of the Classes’ claims;

8           6.6.3 As provided in Defendant’s insurance policy:

9                   6.6.3.1 Plaintiff and members of the Class incurred actual loss of business  
10                   income sustained and necessary extra expense;

11                   6.6.3.2 caused by the Orders prohibiting access to the insured premises;

12                   6.6.3.3 due to direct physical loss of or damage to property other than the  
13                   insured premises;

14                   6.6.3.4 caused by or resulting from a covered cause of loss.

15   **SECOND CLAIM FOR RELIEF**

16   **(Breach of Contract)**

17           7.1 Plaintiff incorporates the preceding paragraphs as though fully stated herein.

18           7.2 Defendant incorrectly denied coverage for Plaintiff’s claim for the loss or damage  
19 described more fully above.

20           7.3 Upon information and belief, Defendant incorrectly denied coverage for similarly  
21 situated policyholders’ claims, who are members of the Classes, on the same grounds as  
22 Defendant incorrectly denied coverage for Plaintiff’s claim for loss or damage.

23           7.4 Defendant’s denials of coverage constitute a breach of the Policy.

24           7.5 Plaintiff and members of the Classes have suffered harm, in an amount to be proven  
25 at the time of trial, because of Defendant’s incorrect denial of their claims.  
26

**JURY DEMAND**

8. Plaintiff and members of the Class demand a jury on all issues so triable.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff seeks judgment against Defendant and the following relief:

1. An order certifying this matter as a Class Action under CR 23.
2. On the First Claim for Relief, a declaration that Plaintiff and members of the proposed class are entitled to coverage under the Policy for the loss and/or damage described herein.
3. On the Second Claim for Relief, damages in an amount to be proven at trial.
4. Pre- and post-judgment interest at the maximum legal rate.
5. Attorney fees, costs, and disbursements pursuant to *Olympic S.S. Co. v. Centennial Ins. Co.*, 117 Wn.2d 37, 811 P.2d 679 (1991).
6. Such other relief as the Court deems just and proper.

DATED this 16th day of March, 2021

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