

SUPERIOR COURT OF WASHINGTON  
FOR KING COUNTY

JENNIFER HARBERS,  
for Herself, as a Private Attorney  
General, and/or On Behalf Of All  
Others Similarly Situated,

Plaintiff,

v.

EDDIE BAUER LLC,  
and DOES 1–20, inclusive,

Defendants.

No. \_\_\_\_\_

CLASS ACTION COMPLAINT FOR  
DAMAGES AND INJUNCTIVE  
RELIEF UNDER THE CONSUMER  
PROTECTION ACT, RCW 19.86 AND  
FOR INJUNCTIVE RELIEF UNDER  
THE COMMERCIAL ELECTRONIC  
MAIL ACT, RCW 19.190

Plaintiff JENNIFER HARBERS, demanding trial by jury as to all issues so triable in a separate document to be filed, alleges as follows, on personal knowledge and/or on information and belief and/or upon the investigation of Plaintiff's counsel, against Defendant EDDIE BAUER LLC ("Eddie Bauer"), and Defendants Does 1 through 20, inclusive:

**I. INTRODUCTION**

1. Defendant Eddie Bauer LLC ("Eddie Bauer") is a retailer of outdoor clothing, accessories, and gear for men and women ([www.eddiebauer.com](http://www.eddiebauer.com)). As alleged herein, Eddie Bauer has violated and continues to violate the Washington Consumer Protection Act,

1 RCW 19.86, and/or the Washington Commercial Electronic Mail Act, RCW 19.190, by  
2 transmitting emails to consumers in Washington and nationwide which contain false or  
3 misleading information in the subject lines.

4 2. In short, Eddie Bauer transmits emails to consumers in Washington and  
5 nationwide which state in the subject lines that Eddie Bauer is offering discounts at a specified  
6 percentage off and/or that the discounts apply to “everything.” These statements are false or  
7 misleading because, in reality, Eddie Bauer is not offering the products at the promised  
8 discount and/or Eddie Bauer is not offering the discounts on “everything.”

9 3. Consequently, Plaintiff and the applicable class of consumers she represents are  
10 entitled to damages and injunctive relief under the Washington Consumer Protection Act and  
11 injunctive relief under the Washington Commercial Electronic Mail Act, as well as attorneys’  
12 fees and costs.

13  
14 **II. PARTIES**

15 4. Plaintiff Jennifer Harbers is a citizen of the United States of America and a  
16 citizen of the State of Washington. She is an adult who resides in the City of Redmond, King  
17 County, Washington State.

18 5. Defendant Eddie Bauer LLC is a limited liability company chartered under the  
19 laws of the State of Delaware and which currently has and at all relevant times in the past had  
20 its headquarters, executive office, principal place of business or nerve center in Bellevue,  
21 Washington.

22 6. Defendants Doe 1 through Doe 20, inclusive, aided, abetted and/or dominated  
23 Defendant Eddie Bauer LLC in such a manner that Doe 1 through Doe 20, inclusive, are each  
24 directly, contributorily, vicariously, derivatively and/or otherwise liable for the acts or  
25 omissions of Defendant Eddie Bauer LLC. Plaintiff is currently unaware of the true identities  
26 of Doe 1 through Doe 20, inclusive; Plaintiff anticipates that, upon learning the true identities  
27 of any of Doe 1 through Doe 20, inclusive, Plaintiff will either freely amend the operative  
28 complaint or request leave from the Court to amend the operative complaint.

1     **III.     JURISDICTION AND VENUE**

2             7.       This Court has subject matter jurisdiction over this civil action pursuant to,  
3     without limitation, Section 6 of Article IV of the Washington State Constitution (Superior  
4     Court jurisdiction, generally) and RCW 19.86.090 (Superior Court jurisdiction over Consumer  
5     Protection Act claims).

6             8.       This Court has personal jurisdiction over each of the defendants pursuant to,  
7     without limitation, RCW 4.28.185, in that: (1) Defendant Eddie Bauer LLC is headquartered in  
8     Washington State and is authorized to do business and regularly conducts business in  
9     Washington State; (2) the claims alleged herein arise from Defendant Eddie Bauer LLC's  
10    activities within Washington State; and/or (3) Defendant Eddie Bauer LLC has committed  
11    tortious acts within the State of Washington (as alleged, without limitation, throughout this  
12    Complaint).

13            9.       With regard to the cause of action brought pursuant to the Washington  
14    Consumer Protection Act, this Court has personal jurisdiction over each of the defendants  
15    pursuant to RCW 19.86.160. For example, and without limitation, Defendant Eddie Bauer LLC  
16    has engaged in conduct in violation of RCW Chapter 19.86 which has had an impact in  
17    Washington State which said chapter reprehends.

18            10.      Venue is proper in King County Superior Court because, without limitation,  
19    Plaintiff Harbers resides in King County; Defendant Eddie Bauer LLC is headquartered in King  
20    County; a significant portion of the acts giving rise to this civil action occurred in King County;  
21    and/or Defendant Eddie Bauer LLC intended to and did have a substantial and foreseeable  
22    effect on trade or commerce in King County.

23            11.      Within the jurisdiction of King County Superior Court, this civil action is  
24    assigned to the Seattle Case Assignment Area because, without limitation, Defendant Eddie  
25    Bauer LCC is headquartered in the City of Bellevue, King County, and Plaintiff resides in the  
26    City of Redmond, King County.

27

28

1 **IV. FACTUAL ALLEGATIONS**

2 12. Defendant Eddie Bauer is a popular retailer which claims to offer “premium-  
3 quality clothing, accessories, and gear for men and women that complement today’s modern  
4 outdoor lifestyle.”

5 13. Eddie Bauer sells its products through its website, [www.eddiebauer.com](http://www.eddiebauer.com), and in  
6 its retail stores. Eddie Bauer currently operates approximately 370 stores in North America,  
7 with at least eight locations in Washington State. The Eddie Bauer website is accessible from  
8 Washington State and nationwide, and consumers in Washington State and nationwide view the  
9 contents of the Eddie Bauer website and purchase goods from Eddie Bauer’s website.

10 14. Almost all the products sold by Eddie Bauer are branded as Eddie Bauer  
11 products, and are exclusively sold by Eddie Bauer.

12 **A. Background Information: Eddie Bauer’s “Sales” Are False, And Not**  
13 **“Everything” Is On Sale.**

14 15. Eddie Bauer creates purported list prices for its Eddie Bauer-branded products  
15 which are inflated far above Eddie Bauer’s intended and regular true selling prices for the  
16 products. However, for nearly all of its products, these list prices are fake and inflated where  
17 Eddie Bauer rarely, if ever, offers the products at the list price. The list prices do not in fact  
18 represent the value or regular selling price of the products. Eddie Bauer invents the inflated list  
19 prices, which act as false reference prices for advertised fake perpetual discounts, in order to  
20 create the illusion that Eddie Bauer is offering “premium-quality” clothing and gear.

21 16. Eddie Bauer advertises perpetual “sales” where its products are consistently  
22 discounted by 30% to 50% from Eddie Bauer’s self-created list price. For most days of the  
23 year, Eddie Bauer advertises store-wide and website-wide sales of a fixed percentage (ranging  
24 from 30% to 50%) off. For the other days of the year, Eddie Bauer continues to advertise sales  
25 and discounts for the large majority of its products. Based on investigation of Plaintiff’s  
26 counsel and on information and belief, Eddie Bauer’s online and in-store list and sales prices  
27 are the same or substantially the same.

28 17. For example, based on Plaintiff’s counsel’s investigation, in 2017 there were a

1 total of 290 days in which Eddie Bauer advertised on its website a site-wide sale of either “xx%  
2 Off Everything” or “xx% Off Your Entire Purchase.” For the remaining 75 days of 2017, Eddie  
3 Bauer continued to offer approximately 60–70% of its products at a discounted price. There  
4 was not a single day in 2017 where Eddie Bauer did not offer the majority of its products for  
5 sale at a discounted price or offer a fixed percentage off (typically between 30-50% off) of  
6 one’s entire purchase.

7 18. Plaintiff’s counsel has been monitoring Eddie Bauer’s website since  
8 January 16, 2016, and has assembled a comprehensive historical database of daily prices and  
9 screenshots of approximately 1.9 million daily offerings for approximately 8,000 products over  
10 these 1,217 days.

11 19. Plaintiff’s counsel’s investigation and data demonstrates that only a tiny fraction  
12 of products offered by Eddie Bauer in its stores and on its website is consistently offered  
13 without an advertised discount. These few non-discounted products primarily consist of  
14 sleeping bags, tents, and non-Eddie Bauer brand (i.e., third party brand) products.

15 20. For the rest of Eddie Bauer’s products (more than 90% of its products), Eddie  
16 Bauer perpetually or nearly perpetually offers the products at a discount of 30% to 50% from  
17 the list price.

18 21. Eddie Bauer concocts its list prices principally so that it can fabricate perpetual  
19 “sales” and discounts. Based on information and belief, Eddie Bauer utilizes a formula to set  
20 the list price for its perpetually discounted products at a dollar amount which is 43% to 100%  
21 higher than the sales price at which Eddie Bauer intends to actually offer and sell its products.  
22 For example, for a product Eddie Bauer intends to regularly sell at \$20.00, Eddie Bauer will set  
23 a fake list price of between \$28.00 and \$40.00, so that it can offer a perpetual discount of  
24 between 30% and 50% off and still meet its revenue and profit margin targets.

25 22. Also, as noted below, when Eddie Bauer claims that “everything” (or a similar  
26 word) is on sale, not “everything” is on sale. Typically, “everything” does not in fact include  
27 sleeping bags, tents, and non-Eddie Bauer brand (i.e. third party brand) products.

**B. Eddie Bauer Routinely Transmits Commercial Emails Containing False Or Misleading Information In The Subject Lines.**

23. As part of its regular marketing plan, Eddie Bauer routinely transmits commercial emails containing false or misleading information in the subject lines. (As used in this Complaint, allegations that Eddie Bauer “transmitted” an email are allegations that Eddie Bauer initiated the transmission of the email, conspired with another to initiate the transmission of the email and/or assisted the transmission of the email.)

24. From at least November 24, 2017, Defendant Eddie Bauer has transmitted numerous electronic mail messages to Plaintiff Jennifer Harbers (and to a nationwide class of consumers similarly situated to Ms. Harbers) containing false or misleading information in the subject line.

25. Eddie Bauer transmitted at least twenty-seven (27) emails which falsely or misleadingly stated “xx% Off Everything” or “xx% Off Your Purchase” or similar language in the subject line. Plaintiff received each of these emails on the date specified below and containing the email subject line specified below (listed below in the format: [date]: “[email subject line]”):

- December 16, 2017: “🎉 Ho-Ho-Whoa! 50% Off Everything.”
- December 17, 2017: “Limited Time! 50% Off EVERYTHING.”
- February 13, 2018: “Starts Today! 40% Off Everything.”
- March 8, 2018: “Take 30% Off EVERYTHING.”
- March 13, 2018: “Starts Today! 40% Off Everything.”
- March 30, 2018: “50% Off Everything? This Is MADNESS!”
- March 31, 2018: “Spring Madness! 50% OFF EVERYTHING.”
- April 8, 2018: “Last Day! 40% Off Everything.”
- April 26, 2018: “Limited Time! 40% Off Your Purchase.”
- June 18, 2018: “Last Day! 40% Off Everything.”
- June 28, 2018: “🌟 Starts Today! 50% OFF EVERYTHING.”
- July 2, 2018: “Oooh! Ahhh! Everything's 50% Off.”

- 1 • July 17, 2018: “50% Off E-V-E-R-Y-T-H-I-N-G!”
- 2 • August 3, 2018: “Take 40% OFF EVERYTHING!”
- 3 • August 31, 2018: “Starts Today! 50% Off Everything.”
- 4 • September 4, 2018: “Last Day! 50% Off Everything.”
- 5 • November 29, 2018: “🔴 FINAL HOURS! 50% Off Your Purchase.”
- 6 • December 16, 2018: “50% Off Everything + Special Deals!”
- 7 • December 17, 2018: “50% Off Everything + 60% Off Fleece!”
- 8 • February 12, 2019: “STARTS TODAY! 40% Off Everything!”
- 9 • February 19, 2019: “LAST DAY! 40% Off Everything.”
- 10 • March 22, 2019: “STARTS TODAY! Save 40% On EVERYTHING!”
- 11 • March 28, 2019: “STARTS TODAY! 50% Off Everything.”
- 12 • March 30, 2019: “Spring Madness! 50% off EVERYTHING!”
- 13 • April 5, 2019: “50% Off Everything? This Is MADNESS!”
- 14 • April 8, 2019: “50% Off Everything ENDS TODAY!”
- 15 • April 8, 2019: “LAST SHOT! 50% Off EVERYTHING!”

16 26. The “xx% Off” statements in these email subject lines are false or misleading.  
 17 Plaintiff thought—as would an ordinary and reasonable consumer—that the “xx% Off”  
 18 statements were a percentage off the price at which Eddie Bauer previously offered its products  
 19 in good faith for a significant period of time. In reality, Eddie Bauer calculated the “% Off”  
 20 statements from fictitious list prices at which Eddie Bauer never offered its products, rarely  
 21 offered its products, and/or temporarily offered its product in bad faith to concoct the so-called  
 22 discount. There was no asterisk or other indicator in the subject line to notify the email  
 23 recipients that Eddie Bauer had assigned these words and symbols an invented or subjective  
 24 meaning rather than their ordinary or objective meaning.

25 27. The language in these email subject lines that the purported discounts were off  
 26 of “Everything” was a second false statement in each of these email subject lines. Plaintiff  
 27 thought—as would an ordinary and reasonable consumer—that the off “Everything” statements  
 28 indicated that *all* of the products offered at Eddie Bauer’s stores and website were being

1 offered at a discount. In fact, some products were not discounted, consisting primarily of  
 2 sleeping bags, tents, and non-Eddie Bauer brand (i.e., third party brand) products. There was no  
 3 asterisk or other indicator in the subject line to notify the email recipients that Eddie Bauer had  
 4 assigned “Everything” an invented or subjective meaning rather than its ordinary or objective  
 5 meaning.

6 28. Likewise, the statements in the April 26, 2018 and November 29, 2018 email  
 7 subject lines that the purported discounts were “Off Your Purchase” were false or misleading.  
 8 Plaintiff thought—as would an ordinary and reasonable consumer—that “Off Your Purchase”  
 9 indicated that *all* of the products offered at Eddie Bauer’s stores and website were being  
 10 offered at a discount. In reality, some products were not discounted, consisting primarily of  
 11 sleeping bags, tents, and non-Eddie Bauer brand (i.e., third party brand) products. There was no  
 12 asterisk or other indicator in the subject line to notify consumers that Eddie Bauer had assigned  
 13 the words “Off Your Purchase” an invented or subjective meaning rather than their ordinary or  
 14 objective meaning.

15 29. Eddie Bauer also transmitted another sixteen (16) emails which falsely or  
 16 misleadingly stated “xx% Off”, “Take xx% Off”, “Get xx% Off” or similar language in the  
 17 subject line (unlike the email subject lines above, there was not a second and simultaneous false  
 18 or misleading statement that “Everything” was discounted). Plaintiff received each of these  
 19 emails on the date specified below and containing the email subject line specified below (listed  
 20 below in the format: [date]: “[email subject line]”):

- 21 • November 24, 2017: “☒ Final Hours! 50% Off + Free Shipping.”
- 22 • November 26, 2017: “Sunday Funday! 50% Off + Free Shipping.”
- 23 • November 27, 2017: “Cyber Monday! 50% Off + Free Shipping.”
- 24 • November 27, 2017: “Final Hours! 50% Off + Free Shipping.”
- 25 • November 28, 2017: “Cyber Monday EXTENDED! 50% Off + Free Shipping.”
- 26 • November 28, 2017: “Hours Left! 50% Off + Free Shipping.”
- 27 • December 12, 2017: “☒ Final Hours! 50% Off + Free Shipping.”
- 28 • December 23, 2017: “Semi-Annual Sale – 50% Off”



- 1 • March 16, 2018: “40% Off + FREE SHIPPING!”
- 2 • April 2, 2018: “It’s Not T  late! Take 50% Off!”
- 3 • July 17, 2018: “Final Hours! 50% Off Ends Soon”
- 4 • October 23, 2018: “Shop ASAP! 40% Off Ends Today.”
- 5 • October 25, 2018: “Use Code Inside. GET 50% OFF!”
- 6 • November 22, 2018: “Happy Thanksgiving! Take 50% Off.”
- 7 • December 8, 2018: “50% Off + SPECIAL DEALS INSIDE!”
- 8 • December 11, 2018: “ Final Hours! 50% Off Ends Soon.”

9 30. Plaintiff thought—as would an ordinary and reasonable consumer—that the  
10 “xx% Off”, “Take xx% Off”, and “Get xx% Off” statements were a percentage off the price at  
11 which Eddie Bauer previously offered that product in good faith for a significant period of  
12 time. In reality, Eddie Bauer calculated the “% Off” statements from fictitious list prices at  
13 which Eddie Bauer never offered that product, rarely offered that product, and/or temporarily  
14 offered that product in bad faith to concoct the so-called discount. There was no asterisk or  
15 other indicator in the subject line to notify the email recipients that Eddie Bauer had assigned  
16 these words and symbols an invented or subjective meaning rather than their ordinary or  
17 objective meaning.

18 31. Based on information and belief, Eddie Bauer transmitted, within the applicable  
19 limitations period, other emails with similarly false or misleading information in the subject  
20 line which were received by Plaintiff and/or by others similarly situated.

21 32. The false or misleading nature of Eddie Bauer’s statements was not obvious and  
22 was not reasonably ascertainable by Plaintiff or another ordinary and reasonable consumer; as  
23 such, the discovery rule should enlarge the applicable limitations period.

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1    **V. CLASS ACTION ALLEGATIONS**

2           33. Plaintiff Harbers brings this class-action lawsuit on behalf of herself and the  
3 members of the following nationwide class (the “National Class”):

4                   **All residents of the United States of America who, within the**  
5                   **applicable limitations period, received an email from or at the**  
6                   **behest of Eddie Bauer LLC that contained in the subject line:**  
7                   **(a) a “xx% Off” or similar statement and/or (b) a statement**  
8                   **indicating a discount on “Everything,” “Your Purchase,” or**  
                  **similar language when one or more products were excluded**  
                  **from the discount.**

9           34. In the alternative, Plaintiff Harbers brings this class-action lawsuit on behalf of  
10 herself and the members of the following Washington State class (the “Washington Class”):

11                   **All residents of the State of Washington who, within the**  
12                   **applicable limitations period, received an email from or at the**  
13                   **behest of Eddie Bauer LLC that contained in the subject line:**  
14                   **(a) a “xx% Off” or similar statement and/or (b) a statement**  
15                   **indicating a discount on “Everything,” “Your Purchase,” or**  
                  **similar language when one or more products were excluded**  
                  **from the discount.**

16           35. Plaintiff pleads the National Class and the Washington Class as alternatives  
17 because a discrete factual issue may determine whether Eddie Bauer is liable to the National  
18 Class or to the Washington Class. If Plaintiff establishes by the requisite burden of persuasion  
19 that Eddie Bauer transmitted one or more emails with a false or misleading subject line from “a  
20 computer located in Washington” (RCW 19.190.020(1)), then Eddie Bauer faces liability to the  
21 National Class for its misconduct within the State of Washington. *See also Thornell v. Seattle*  
22 *Service Bureau, Inc.*, 184 Wn.2d 793, 796 (2015) (nationwide liability under Consumer  
23 Protection Act for defendant headquartered in Washington State). In the unlikely event Plaintiff  
24 cannot establish said fact, then Eddie Bauer still faces significant alternative liability—to the  
25 class of Washington State residents to whom Eddie Bauer transmitted emails with false or  
26 misleading subject lines. *See* RCW 19.190.020(1) (“to an electronic mail address that the  
27 sender knows, or has reason to know, is held by a Washington resident”).

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1           36.     The term “Class” as used in this Complaint is a reference to either or both of the  
2 National Class and/or the Washington Class as context dictates.

3           37.     Specifically excluded from the Class are each defendant, any entity in which a  
4 defendant has a controlling interest or which has a controlling interest in a defendant, a  
5 defendant’s agents and employees and attorneys, the bench officers to whom this civil action is  
6 assigned, and the members of each bench officer’s staff and immediate family.

7           38.     **Numerosity.** Plaintiff does not know the exact number of Class members but is  
8 informed and believes that the Class easily comprises tens of thousands of people in  
9 Washington State alone. As such, Class members are so numerous that joinder of all members  
10 is impracticable.

11           39.     **Commonality and Predominance.** Well-defined, nearly identical legal or factual  
12 questions affect the members of the Class. These questions predominate over questions that  
13 might affect individual Class members. These common questions include, but are not limited  
14 to, the following:

- 15                   a.     Eddie Bauer’s policies and actions regarding the content of its  
16 promotional emails;
- 17                   b.     The accuracy of the subject lines of Eddie Bauer’s promotional emails;
- 18                   c.     Whether the pled conduct of Eddie Bauer is injurious to the public  
19 interest;
- 20                   d.     Whether Eddie Bauer should be ordered to pay damages; and/or
- 21                   e.     Whether Eddie Bauer should be enjoined from further engaging in the  
22 misconduct alleged herein.

23           40.     The prosecution of separate actions by individual members of the Class would  
24 create a risk of inconsistent or varying adjudications with respect to individual members of the  
25 Class which would establish incompatible standards of conduct for the party opposing the class.

26           41.     The party opposing the Class has acted or refused to act on grounds generally  
27 applicable to the Class, thereby making appropriate final injunctive relief or corresponding  
28 declaratory relief with respect to the Class as a whole.

1           42.     ***Typicality.*** Plaintiff's claims are typical of Class members' claims. Plaintiff and  
2 Class members all received emails from Eddie Bauer with false or misleading information in  
3 the subject line.

4           43.     ***Adequacy.*** Plaintiff will fairly and adequately protect Class members' interests.  
5 Plaintiff has no interests antagonistic to Class members' interests. Plaintiff has retained counsel  
6 who has considerable experience and success in prosecuting complex class action and  
7 consumer protection cases.

8           44.     ***Superiority.*** A class action is the superior method for fairly and efficiently  
9 adjudicating this controversy for the following reasons, without limitation:

10               a.     Class members' interests are relatively small compared to the burden and  
11 expense required to litigate each of their claims individually, so it would be impracticable for  
12 Class members to seek individual redress for each defendant's illegal and deceptive conduct;

13               b.     Even if Class members could afford individual litigation, the court  
14 system could not. Individual litigation creates the potential for inconsistent or contradictory  
15 judgments and increases the delay and expense to all parties and to the court system. By  
16 contrast, a class action presents far fewer management difficulties and provides the benefits of  
17 single adjudication, economy of scale, and comprehensive supervision by a single court; and

18               c.     Plaintiff anticipates no unusual difficulties in managing this class action.

19                               **CAUSES OF ACTION**

20                                       **COUNT I**

21                               **Violation of the Washington Consumer Protection Act**  
22                                       **(RCW Chapter 19.86)**

23                                       **(For Damages and All Other Available Relief)**  
24                                       **AGAINST DEFENDANT EDDIE BAUER LLC**  
25                                       **AND DEFENDANTS DOES 1 THROUGH 20**

26           45.     Plaintiff realleges and incorporates by reference all paragraphs alleged  
27 hereinbefore.

28           46.     Plaintiff Harbers pleads this count in three separate capacities: in her individual  
capacity, as a private attorney general seeking the imposition of public injunctive relief, and/or  
as a putative class representative serving on behalf of all others similarly situated.

1           47.     The Washington Consumer Protection Act (the “CPA”), RCW 19.86, was first  
2     enacted in 1961 and is Washington’s principal consumer protection statute. The CPA “replaces  
3     the now largely discarded standard of *caveat emptor* with a standard of fair and honest  
4     dealing.” Washington Pattern Jury Instruction Civil No. 310.00 (Consumer Protection Act—  
5     Introduction).

6           48.     The CPA’s primary substantive provision declares unfair methods of  
7     competition and unfair or deceptive acts or practices to be unlawful. RCW 19.86.020. “Private  
8     rights of action may now be maintained for recovery of actual damages, costs, and a reasonable  
9     attorney’s fee. RCW 19.86.090. A private plaintiff may be eligible for treble damages . . . .  
10    Private consumers may obtain injunctive relief, even if the injunction would not directly affect  
11    the individual’s own rights. RCW 19.86.090.” Washington Pattern Jury Instruction Civil No.  
12    310.00 (Consumer Protection Act—Introduction).

13          49.     The CPA recognizes and incorporates *per se* violations. The Washington  
14    Legislature routinely prohibits certain specified conduct but, instead of creating a new and  
15    independent private right of action to enforce the prohibition, the Legislature deems the  
16    unlawful conduct to be a *per se* violation of the CPA. If a defendant engages in that unlawful  
17    conduct, a plaintiff may file a CPA complaint alleging the *per se* violation and seek the  
18    remedies available under the CPA and/or also seek the remedies available under the statute  
19    which forbids the *per se* violation. *See* Washington Pattern Jury Instruction Civil No. 310.03  
20    (*Per Se* Violation of Consumer Protection Act) and Appendix H (Consumer Protection Act *Per*  
21    *Se* Violations).

22          50.     A plaintiff can plead a violation of the Washington Consumer Protection Act by  
23    pleading that the CPA was violated *per se* due to a violation of the Washington Commercial  
24    Electronic Mail Act. *See* RCW 19.190.030(1)(b) (“It is a violation of the consumer protection  
25    act, chapter 19.86 RCW . . . to initiate the transmission of a commercial electronic mail  
26    message that . . . [c]ontains false or misleading information in the subject line.”); Washington  
27    Statutes of 1998, chapter 149, § 4 (approved by Governor on March 25, 1998).

28          51.     The Washington Commercial Electronic Mail Act (“CEMA”) prohibits a person

1 from initiating the transmission from a computer located in Washington State of a commercial  
2 electronic mail message which contains false or misleading information in the subject line.  
3 RCW 19.190.020(1)(b). CEMA also prohibits a person from initiating the transmission to an  
4 electronic mail address that the sender knows, or has reason to know, is held by a Washington  
5 State resident of a commercial electronic mail message that contains false or misleading  
6 information in the subject line. RCW 19.190.020(1)(b).

7 52. A plaintiff who successfully pleads and proves a CEMA violation as a *per se*  
8 violation of the CPA may recover the remedies available under the CPA (e.g., actual damages,  
9 increased damages of up to treble actual damages (subject to a statutory maximum), injunctive  
10 relief, attorneys' fees and costs (RCW 19.86.090)) and/or the remedies available under CEMA  
11 (e.g., actual damages or statutory damages of \$500 per email sent in violation of CEMA and  
12 injunctive relief (RCW 19.190.040, RCW 19.190.090)).

13 53. Defendant Eddie Bauer LLC has initiated the transmission of numerous  
14 commercial electronic mail messages to Plaintiff Harbers (the "Emails"). The Emails were  
15 electronic mail messages, in that they were electronic messages sent to an electronic mail  
16 address; the Emails from Eddie Bauer also referred to an internet domain, whether or not  
17 displayed, to which an electronic mail message can or could be sent or delivered.

18 54. Eddie Bauer sent the Emails for the purpose of promoting goods or services for  
19 sale or lease. Eddie Bauer was the original sender of the Emails.

20 55. Plaintiff Harbers received the Emails at her electronic mail address, which is the  
21 destination, commonly expressed as a string of characters, at which she receives and to which  
22 electronic mail may be sent or delivered.

23 56. Eddie Bauer initiated the transmission, conspired with another to initiate the  
24 transmission and/or assisted the transmission of the Emails from a computer located in  
25 Washington State. In the alternative and/or cumulatively, Eddie Bauer initiated the  
26 transmission, conspired with another to initiate the transmission and/or assisted the  
27 transmission of the Emails to one or more electronic mail addresses that Eddie Bauer knew, or  
28 had reason to know, were held by a Washington State resident, i.e., Ms. Harbers and/or others

1 similarly situated.

2 57. At all relevant times, Eddie Bauer knew that the intended recipient  
3 (Ms. Harbers) was a resident of the State of Washington because, without limitation, Eddie  
4 Bauer possessed actual knowledge of Ms. Harbers' state of residence, Eddie Bauer possessed  
5 constructive knowledge of Ms. Harbers' state of residence, information was available to Eddie  
6 Bauer upon request from the registrant of the internet domain name contained in the recipient's  
7 electronic mail address, and/or Eddie Bauer otherwise knew or should have known or had  
8 reason to know that Ms. Harbers was a resident of the State of Washington.

9 58. The subject line of each Email contained "xx% Off" language and/or the words  
10 "Everything" or "Your Purchase." None of the Emails had a subject line containing an asterisk  
11 or other indication that the words in the subject line had a special or invented meaning.

12 59. In violation of the Washington Consumer Protection Act (as based *per se* upon a  
13 violation of the Washington Commercial Electronic Mail Act) and for the reasons alleged  
14 hereinabove, the subject line of each Email contained false or misleading information.

15 60. Generally, a plaintiff pleading a claim under the Washington Consumer  
16 Protection Act must plead five necessary elements: (1) an unfair or deceptive act or practice (2)  
17 in trade or commerce (3) that affects the public interest, (4) injury to plaintiff's business and  
18 property, and (5) causation. *Wright v. Lyft, Inc.*, 189 Wn.2d 718, 728 (2017). Because Plaintiff  
19 alleges a *per se* CPA violation by alleging a CEMA violation, all of these five elements are  
20 satisfied as a matter of law. *Id.* at 724.

21 61. Eddie Bauer's misconduct as alleged herein was not performed in good faith.  
22 Eddie Bauer's misconduct as alleged herein was not reasonable in relation to the development  
23 and preservation of business.

24 62. The balance of the equities favors the entry of permanent injunctive relief  
25 against Defendant Eddie Bauer. Plaintiff, the members of the Class and the general public will  
26 be irreparably harmed absent the entry of permanent injunctive relief against Defendant.  
27 Plaintiff, the members of the Class and the general public lack an adequate remedy at law. A  
28 permanent injunction against Defendant is in the public interest. Defendant's unlawful behavior

1 is, based on information and belief, ongoing as of the date of the filing of this pleading; absent  
 2 the entry of a permanent injunction, Defendant's unlawful behavior will not cease and, in the  
 3 unlikely event that it voluntarily ceases, is likely to reoccur.

#### 4 **COUNT II**

#### 5 **Violation of the Washington Commercial Electronic Mail Act (RCW Chapter 19.190)**

#### 6 **(For Injunctive Relief Only)**

#### 7 **AGAINST DEFENDANT EDDIE BAUER LLC AND DEFENDANTS DOES 1 THROUGH 20**

8 63. Plaintiff realleges and incorporates by reference all paragraphs alleged  
 9 hereinbefore.

10 64. Plaintiff Harbers pleads this count in three separate capacities: in her individual  
 11 capacity, as a private attorney general seeking the imposition of public injunctive relief and/or  
 12 as a putative class representative serving on behalf of all others similarly situated.

13 65. The Washington Commercial Electronic Mail Act ("CEMA"), RCW 19.190,  
 14 creates an independent but limited private of right of action which can be asserted by, among  
 15 others, a person who is the recipient of a commercial electronic mail message which contains  
 16 false or misleading information in the subject line. RCW 19.190.030(1)(b). A plaintiff who  
 17 successfully alleges and proves such a violation may obtain, among other things, an injunction  
 18 against the person who initiated the transmission. RCW 19.190.090(1). It is Plaintiff's intent in  
 19 this count to plead an independent CEMA cause of action only to the limited extent that it is  
 20 recognized by law, e.g., when a plaintiff seeks injunctive relief. *Wright v. Lyft, Inc.*, 189 Wn.2d  
 21 718, 728 n. 3 (2017) ("we note that a plaintiff may bring an action to enjoin any CEMA  
 22 violation."); *Gragg v. Orange Cab Co.*, 145 F. Supp. 3d 1046, 1052 (W.D. Wash. 2015).

23 66. Defendant Eddie Bauer LLC has initiated the transmission of numerous  
 24 commercial electronic mail messages to Plaintiff Harbers (the "Emails"). The Emails were  
 25 electronic mail messages, in that they were each an electronic message sent to an electronic  
 26 mail address; the Emails from Eddie Bauer also referred to an internet domain, whether or not  
 27 displayed, to which an electronic mail message can or could be sent or delivered.

28 67. Eddie Bauer sent the Emails for the purpose of promoting goods or services for



1 sale or lease. Eddie Bauer was the original sender of the Emails.

2 68. Plaintiff Harbers received the Emails at her electronic mail address, which is the  
3 destination, commonly expressed as a string of characters, at which she receives and to which  
4 electronic mail may be sent or delivered.

5 69. Eddie Bauer initiated the transmission, conspired with another to initiate the  
6 transmission and/or assisted the transmission of the Emails from a computer located in  
7 Washington State. In the alternative and/or cumulatively, Eddie Bauer initiated the  
8 transmission, conspired with another to initiate the transmission and/or assisted the  
9 transmission of the Emails to one or more electronic mail addresses that Eddie Bauer knew, or  
10 had reason to know, were held by a Washington State resident, i.e., Ms. Harbers and/or others  
11 similarly situated.

12 70. At all relevant times, Eddie Bauer knew that the intended recipient  
13 (Ms. Harbers) was a resident of the State of Washington because, without limitation, Eddie  
14 Bauer possessed actual knowledge of Ms. Harbers' state of residence, Eddie Bauer possessed  
15 constructive knowledge of Ms. Harbers' state of residence, information was available to Eddie  
16 Bauer upon request from the registrant of the internet domain name contained in the recipient's  
17 electronic mail address, and/or Eddie Bauer otherwise knew or should have known or had  
18 reason to know that Ms. Harbers was a resident of the State of Washington.

19 71. The subject line of each Email contained "xx% Off" language and/or the words  
20 "Everything" or "Your Purchase." None of the Emails had a subject line containing an asterisk  
21 or other indication that the words in the subject line had a special or invented meaning.

22 72. In violation of CEMA and for the reasons alleged hereinabove, the subject line  
23 of each Email contained false or misleading information.

24 73. The balance of the equities favors the entry of permanent injunctive relief  
25 against Defendant Eddie Bauer. Plaintiff, the members of the Class and the general public will  
26 be irreparably harmed absent the entry of permanent injunctive relief against Defendant.  
27 Plaintiff, the members of the Class and the general public lack an adequate remedy at law. A  
28 permanent injunction against Defendant is in the public interest. Defendant's unlawful behavior

1 is, based on information and belief, ongoing as of the date of the filing of this pleading; absent  
2 the entry of a permanent injunction, Defendant's unlawful behavior will not cease and, in the  
3 unlikely event that it voluntarily ceases, is likely to reoccur.

4 **PRAYER FOR RELIEF**

5 Plaintiff JENNIFER HARBERS, on behalf of herself individually, as a private attorney  
6 general, and/or on behalf of the Class of all others similarly situated, hereby respectfully  
7 requests that this Court order relief and enter judgment against Defendant Eddie Bauer LLC  
8 and/or Defendants Does 1 through 20, inclusive, individually, jointly, severally and/or as  
9 otherwise appropriate, as follows:

10 **As To The First Claim (Violation of the Washington Consumer Protection Act):**

11 A. For actual damages pursuant to, without limitation, RCW 19.86.090;

12 B. For an increase in the award of actual damages of up to treble the actual  
13 damages (up to the statutory maximum of \$25,000 to be awarded to Plaintiff and to each  
14 member of the Class for each violative email) pursuant to, without limitation, RCW 19.86.090;

15 C. For damages which are the greater of (a) the actual damages incurred by  
16 Plaintiff and each member of the Class or (b) the statutory damages of \$500 to be awarded to  
17 Plaintiff and to each member of the Class for each instance in which a defendant initiated (or  
18 conspired with another to initiate or assisted) the transmission of a commercial electronic mail  
19 message which contained false or misleading information in the subject line (an amount of  
20 statutory damages which will be proven at trial but which Plaintiff estimates will be at least \$25  
21 million per violative email multiplied by more than 43 violative emails) pursuant to, without  
22 limitation, RCW 19.190.040;

23 D. For nominal damages;

24 E. For an order that each Defendant be permanently enjoined from the unlawful  
25 conduct alleged herein pursuant to, without limitation, RCW 19.86.090;

26 **As To The Second Claim (Violation of the Washington Commercial Electronic**  
27 **Mail Act):**

28 F. For an order that each Defendant be permanently enjoined from the unlawful

1 conduct alleged herein pursuant to, without limitation, RCW 19.190.090(1);

2 **As To Each And Every Claim:**

3 G. For an order certifying the proposed Class and appointing Plaintiff and her  
4 counsel to represent the Class;

5 H. For an order that each Defendant be permanently enjoined from the unlawful  
6 conduct alleged herein;

7 I. For an order that the Court retain jurisdiction to police Defendants' compliance  
8 with the permanent injunctive relief;

9 J. For pre-judgment and/or post-judgment interest to the extent allowed by law;

10 K. For attorneys' fees to the extent allowed by law;

11 L. For costs to the extent allowed by law; and/or

12 M. For any other relief the Court deems just and proper, including, without  
13 limitation, temporary, preliminary and/or permanent injunctive relief.

14 DATED this 20<sup>th</sup> day of May, 2019.

15 Presented by:

16 HATTIS & LUKACS  
17

18 By: \_\_\_\_\_  
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26 and the Proposed Class  
27  
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