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CASE #: 23-2-07103-4 SEA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
COUNTY OF KING

ROXANN BROWN and MICHELLE SMITH,  
on their own behalf and on behalf of others  
similarly situated,

Plaintiffs,

v.

OLD NAVY, LLC; OLD NAVY (APPAREL),  
LLC; OLD NAVY HOLDINGS, LLC; GPS  
SERVICES, INC.; and THE GAP, INC.,  
inclusive,

Defendants.

Case No.:

**CLASS ACTION COMPLAINT FOR  
VIOLATION OF THE CONSUMER  
PROTECTION ACT, RCW 19.86, AND  
THE COMMERCIAL ELECTRONIC  
MAIL ACT, RCW 19.190**

**DEMAND FOR TRIAL BY JURY**

**I. NATURE OF THE ACTION**

1. This is a class action against Defendants Old Navy, LLC, Old Navy (Apparel), LLC, Old Navy Holdings, LLC, GPS Services, Inc., and The Gap, Inc. (collectively, “Old Navy” or “Defendants”) for false and misleading email marketing.

2. Old Navy sends emails to Washington consumers which contain false or misleading information in the subject lines. For example, Old Navy sends emails that mis-state the duration of given promotions, in an apparent effort to drive sales by creating a false sense of urgency. The subject line of these kinds of emails falsely claims that a certain sale or discount is limited to a specific time, such as “today only” or “3 DAYS ONLY,” when, in reality, the offer lasts longer than advertised or the item has already been on sale for longer than advertised. As

1 another example, Old Navy sends emails with subject lines claiming that a sale or discount has  
2 been “extended,” when, in reality, Old Navy always planned the sale to continue during the  
3 advertised extension.

4 3. Old Navy also uses its preconceived “sale extensions” as an excuse to send  
5 consumers additional emails purporting to notify them that a sale is ending or that a sale has been  
6 extended. This practice causes consumers’ inboxes to become inflated with spam.

7 4. Old Navy’s practice of sending serial emails about sales with imaginary time  
8 limits, fake extensions, and more illusory special offers violates the Washington Commercial  
9 Electronic Mail Act (“CEMA”), RCW 19.190, and the Washington Consumer Protection Act,  
10 RCW 19.86.

11 5. By sending emails with false and misleading information to Plaintiffs and the  
12 Class (defined below), Old Navy clogs emails inboxes with false information and violates  
13 Plaintiffs’ and Class members’ right to be free from deceptive commercial e-mails.

14 6. Plaintiffs bring this action as a class action on behalf of persons residing in  
15 Washington who also received Old Navy’s false and misleading emails. Plaintiffs’ requested  
16 relief includes an injunction to end these practices, an award to Plaintiffs and Class members of  
17 statutory and exemplary damages for each illegal email, and an award of attorneys’ fees and  
18 costs.

## 19 II. PARTIES

20 7. Plaintiff Roxann Brown is a citizen of Washington State, residing in Pierce  
21 County, Washington.

22 8. Plaintiff Michelle Smith is a citizen of Washington State, residing in Clark  
23 County, Washington.

24 9. Defendant Old Navy, LLC is a wholly-owned subsidiary of The Gap, Inc., and is  
25 a limited liability company chartered under the laws of the State of Delaware. Old Navy, LLC  
26 currently is, and at all relevant times in the past has, engaged in substantial business activities in  
27 the State of Washington and in King County.



1 alleged in this civil action arose from, without limitation, Old Navy’s purposeful transmission of  
 2 electronic mail messages to consumers within the State of Washington. In addition, Old Navy  
 3 intended, knew, or is chargeable with the knowledge that its out-of-state actions would have a  
 4 consequence within Washington.

5 17. This also Court has personal jurisdiction over Old Navy under RCW 19.86.160.  
 6 For example, and without limitation, Old Navy engaged and is continuing to engage in conduct  
 7 in violation of RCW 19.86 which has had and continues to have an impact in Washington which  
 8 said chapter reprehends.

9 18. Venue is proper in King County Superior Court because Old Navy is made up of  
 10 corporations that have their residence in King County. RCW 4.12.025. Currently and at all  
 11 relevant times, Old Navy has transacted business in King County, including without limitation  
 12 by sending the marketing emails alleged herein to residents of King County, and maintaining  
 13 stores for the transaction of business within King County.

#### 14 IV. FACTUAL ALLEGATIONS

##### 15 A. The CEMA prohibits initiating or conspiring to initiate the transmission of 16 commercial e-mails with false or misleading subject lines.

17 19. Washington’s Commercial Electronic Mail Act (CEMA) regulates deceptive  
 18 email marketing.

19 20. “CEMA was enacted to protect concrete interests in being free from deceptive  
 20 commercial e-mails. CEMA’s prohibition on sending commercial e-mails with false or  
 21 misleading subject lines . . . creates a substantive right to be free from deceptive commercial e-  
 22 mails.” *Harbers v. Eddie Bauer, LLC*, 415 F. Supp. 3d 999, 1011 (W.D. Wash. 2019 Nov. 27,  
 23 2019) (holding that the plaintiff sufficiently pleaded concrete injury-in-fact for alleged CEMA  
 24 violations based on her receipt of marketing emails from the defendant containing allegedly false  
 25 “xx% off” statements in the subject line). Washington courts have held that “[t]he harms  
 26 resulting from deceptive commercial e-mails resemble the type of harms remedied by nuisance  
 27 or fraud actions.” *Id.* at 1008.

1           21.     An injury occurs anytime a commercial e-mail is transmitted that contains false or  
2 misleading information in the subject line. *Id.* at 1011.

3           22.     Under CEMA, it is irrelevant whether misleading commercial e-mails were  
4 solicited. *Id.*

5           23.     CEMA creates an independent but limited private of right of action which can be  
6 asserted by a person who is the recipient of a commercial electronic mail message which  
7 contains false or misleading information in the subject line. RCW 19.190.030(1)(b). A plaintiff  
8 who successfully alleges and proves such a violation may obtain, among other things, an  
9 injunction against the person who initiated the transmission. RCW 19.190.090(1). *Wright v.*  
10 *Lyft, Inc.*, 189 Wn.2d 718, 728 n. 3 (2017) (“we note that a plaintiff may bring an action to  
11 enjoin any CEMA violation.”).

12           24.     It is a violation of the consumer protection act, RCW 19.86 *et seq.*, to initiate the  
13 transmission or conspire with another person to initiate the transmission of a commercial  
14 electronic mail message that contains false or misleading information in the subject line. RCW  
15 19.190.030(1). *See also* RCW 19.190.030(2) (providing “that the practices covered by this  
16 chapter are matters vitally affecting the public interest for the purpose of applying the consumer  
17 protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the  
18 development and preservation of business and is an unfair or deceptive act in trade or commerce  
19 and an unfair method of competition for the purpose of applying the consumer protection act,  
20 chapter 19.86 RCW.”).

21           25.     To establish a violation of Washington’s CPA, a claimant must establish five  
22 elements: (1) an unfair or deceptive act or practice, (2) in trade or commerce, (3) that affects the  
23 public interest, (4) injury to plaintiff’s business or property, and (5) causation. *Hangman Ridge*  
24 *Stables, Inc. v. Safeco Title Ins. Co.*, 719 P.2d 531, 533 (Wash. 1986).

25           26.     Washington and federal courts have held that a plaintiff states a CPA claim solely  
26 by alleging a violation of the CEMA. *See State v. Heckel*, 143 Wash.2d 824, 24 P.3d 404, 407  
27 (2001) (“RCW 19.190.030 makes a violation of [CEMA] a per se violation of the [CPA].”).

1 Indeed, by alleging a CEMA violation of RCW 19.190.020, a plaintiff alleges all five elements  
2 of a CPA violation. *See Gordon v. Virtumundo, Inc.*, 575 F.3d 1040, 1065 (9th Cir. 2009) (citing  
3 *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wash.2d 778, 719 P.2d 531,  
4 535-37 (1986)); *Wright*, 406 P.3d at 1155 (“We conclude that RCW 19.190.040 establishes the  
5 injury and causation elements of a CPA claim as a matter of law.”).

6 **B. Old Navy initiates (or conspires to initiate) the transmission of commercial e-mails**  
7 **with false or misleading subject lines.**

8 27. Old Navy has initiated (or conspired to initiate) the transmission of dozens of  
9 commercial electronic mail messages with false or misleading subject lines to Plaintiffs and the  
10 Class. The emails were electronic mail messages, in that they were each an electronic message  
11 sent to an electronic mail address; the emails from Old Navy also referred to an internet domain,  
12 whether or not displayed, to which an electronic mail message can or could be sent or delivered.

13 28. Old Navy sent the emails for the purpose of promoting its goods for sale.

14 29. The emails were sent at Old Navy’s direction and were approved by Old Navy.

15 30. Old Navy’s emails frequently advertise the “limited” nature of sales, discounts,  
16 and prices. For example, on April 30, 2022, Old Navy sent an email with a subject line, “No  
17 joke! \$12.50 JEANS (today only) . . .” By stating that a sale is only on for a limited time, Old  
18 Navy suggests an offer’s rarity or urgency, stimulating consumers’ desire to get the deal before  
19 its gone while simultaneously inducing fear of missing a good buy. With this simple technique, a  
20 consumer can be seduced into making an impulsive purchase in a hurry.

21 31. Old Navy designs the subject lines of its marketing emails to tap into these  
22 consumer urges—going so far as to feature images of clocks in the email subject line itself next  
23 to words such as “tick-tock” and “Time’s almost out.” Other email subject lines spur the  
24 recipient to make purchases, prompting the recipient to “Hurry!,” “OPEN QUICKLY,” and “Go,  
25 go, go!”

1 32. The fact that such statements are false and misleading has been recognized by the  
2 Federal Trade Commission, which directs that sellers should not “make a ‘limited’ offer which,  
3 in fact, is not limited.” 16 C.F.R. § 233.5.

4 33. Old Navy uses the purportedly limited nature of its offers to send *more* emails to  
5 consumers than it otherwise might. Old Navy may send a single consumer up to five marketing  
6 emails *per day*, and commonly sends three marketing emails *every day*, many of them  
7 advertising “limited time” offers. For example, Old Navy will send an email (i) when a limited  
8 time offer starts, (ii) while the offer is ongoing, (iii) when the offer is getting close to ending, (iv)  
9 when the offer is in its final hours, and (v) when the offer as been “extended.” When several  
10 emails contain the same false and misleading information about the limited nature of an offer, the  
11 emails clog up inboxes with spam email and waste limited data space.

12 34. Old Navy violates CEMA because many of the statements in the email subject  
13 lines intended to seduce consumers into making a purchase are false and misleading on several  
14 fronts. There are numerous examples of Old Navy emails that can be shown to have false and  
15 misleading information in the subject lines just by reviewing the subject lines of other Old Navy  
16 emails. While there are too many examples to include them all here, the facts alleged below  
17 show the types of false and misleading email subject lines Old Navy deploys.

18 **1. The offer is available longer than stated in the subject line of the email.**

19 35. Old Navy commonly claims or suggests that sales will only be available for a  
20 certain amount of time in the email subject line. However, in many instances, the sale is  
21 available for longer than the time period stated in the email subject line.

22 36. For example, on May 15, 2021, Old Navy sent an email with a subject line stating  
23 “\$12 women's compression leggings, today only”. However, the next day, Old Navy sent an  
24 email with a subject line advertising “TWELVE DOLLAR compression leggings”.

1           37.     The subject line of the email sent on May 15, 2021, stating that the leggings  
2 would be offered at that price for “today only,” was therefore false and misleading because the  
3 leggings were offered at the same price the next day.

4           38.     As a second example, the jeans Old Navy advertised via email on April 30, 2022,  
5 with the subject line “No joke! \$12.50 JEANS (today only) . . . ,” were also advertised in the  
6 email subject line the *next day* with a nearly identical subject line: “No joke! \$12.50 JEANS (you  
7 earned it).”

8           39.     The subject line of the email sent on April 30, 2022, stating that the jeans would  
9 be offered at that price for “today only,” was false and misleading because the jeans were offered  
10 at the same price the next day.

11          40.     As another example, on April 15, 2022, Old Navy sent an email with a subject  
12 line stating “3 DAYS ONLY! 50% OFF DRESSES, SHORTS, & ACTIVE!” But, on April 18,  
13 more than three days after the sale was first advertised in Old Navy’s marketing emails, Old  
14 Navy sent another email with the subject line stating “50% OFF ACTIVE.”

15          41.     The subject line of the email sent on April 15, 2022, stating that active wear  
16 would be 50% off for “3 DAYS ONLY,” was therefore false and misleading because active wear  
17 was offered at 50% for more than three days.

18          42.     As another example, on June 4, 2022, Old Navy sent an email with a subject line  
19 stating “Today Only: \$12 cami tops + \$12 shorts.” However, two days later, on June 6, 2022,  
20 Old Navy sent an email advertising cami tops at the same price with a subject line stating: “. . .  
21 \$12 cami tops (this week only!).”<sup>1</sup>

22          43.     The subject line of the email sent on June 4, 2022, stating that the cami tops were  
23 \$12 for “today only,” was therefore false and misleading because the cami tops were offered at  
24 the same price in the following days.

25 \_\_\_\_\_  
26 <sup>1</sup> An email with the subject line “Snag \$19 and under styles for the fam + \$12 cami tops (this week only!!)  
27 ,” was also sent on June 2, 2022, meaning the sale on cami tops was already ongoing when it was advertised  
as “today only” on June 4, 2022 at the same price. The June 4, 2022 email is therefore also false and  
misleading for the reasons outline in Section B.2 below.



1           44.     As another example, starting on June 7, 2022, Old Navy sent emails advertising in  
2 the subject lines “\$29 matching tops & bottoms (this week only!).” The “one week” sale was  
3 advertised in email subject lines on June 7, June 8, June 12, and June 15, 2022. However, the  
4 same price continued to be advertised in email subject lines eight days after the first email, on  
5 June 15, 2022, and the fine print at the bottom of the email stated the price would be offered for  
6 nine days, until June 16, 2022, i.e., more than one week.

7           45.     The subject lines of the emails sent on June 7, June 8, June 12, and June 15, 2022,  
8 advertising the “one week” sale, were therefore false and misleading because the sale was  
9 offered for more than one week.

10           **2.     The email states or suggests that the offer is new, but the offer was already**  
11           **available.**

12           46.     Old Navy’s commonly misleads consumers into thinking that a sale or discount is  
13 new or is only being offered for a limited time, when the offer or sale has already been ongoing.  
14 Such false and misleading statements trick the consumer into thinking that the offer is rarer than  
15 it really is and that they should act to take advantage of the special offer.

16           47.     For example, Old Navy began advertising OG Straight shorts for \$16 in email  
17 subject lines on the May 3, 2022. On May 5, 2022, the OG straight shorts were advertised in an  
18 email subject line stating “THIS WEEK ONLY! \$16 OG Straight shorts.” However, on May 9,  
19 2022, Old Navy sent an email with a subject line stating “ONE DAY ONLY ! 50% OFF jeans +  
20 \$16 OG Straight shorts.”

21           48.     The subject line of the email sent on May 9, 2022, stating that the \$16 OG  
22 Straight shorts was “ONE DAY ONLY,” was therefore false and misleading because the sale  
23 was offered for more than one day.

24           49.     As another example, on June 18, 2022, Old Navy sent an email with a subject line  
25 stating “@You: FIFTY PERCENT OFF all dresses (today only!).” However, Old Navy  
26 advertised all dresses at 50% off the day before in an email subject line stating “You heard  
27 correctly, 50% off ALL dresses . . .”

1 50. The subject line of the email sent on June 18, 2022, stating that 50% off dresses  
2 was being offered for “today only,” was therefore false and misleading because the sale was  
3 offered for more than one day.

4 51. As a third example, on July 31, 2022, Old Navy sent an email with a subject line  
5 stating “A Sunday treat \* Half off ALL jeans + \$3 kids deals.” However, the same two offers  
6 were also advertised the day before in *three* emails sent on July 30 with different subject lines.

7 52. The subject line of the email sent on July 31, 2022, stating that the offered deal  
8 was a “Sunday treat,” was therefore false and misleading because the advertised deals were not  
9 limited to that Sunday.

10 **3. The email states or suggests that the sale is ending, but the sale continues.**

11 53. Old Navy often sends marketing emails with subject lines stating or suggesting  
12 that a sale is ending soon but the sale continues after the email. These emails give consumers a  
13 false sense of urgency and spur impulse buys by consumers who do not want to miss the deal.

14 54. For example, on February 10, 2019, Old Navy sent an email with the subject line:  
15 “GAH! This is the last chance to get up to 50% OFF . . .” However, the next day, Old Navy sent  
16 an email with a subject line stating “We’ve announced UP TO 50% OFF STOREWIDE (starting  
17 now).” The 50% off storewide promotion continued to be advertised through February 16, 2019.

18 55. The subject line of the email sent on February 10, 2019, stating that it was the  
19 “last chance” to get 50% off, was therefore false and misleading because 50% continued to be  
20 offered in the following days.

21 56. As another example, on March 17, 2019, Old Navy sent an email with a subject  
22 line stating “\$20 Rockstars + 40% OFF (final reminder!).” However, the next day, on March 18,  
23 2019, Old Navy sent an email with a subject line stating “Urgent: You’re getting FORTY  
24 PERCENT OFF EVERYTHING online for one more day!”

25 57. The subject line of the email sent on March 17, 2019, stating that it was the “final  
26 reminder” to get 40% off was therefore false and misleading because the promotion continued  
27 into the next day and Old Navy sent additional reminders.

1 58. As another example, on November 26, 2021, Old Navy sent an email with the  
2 subject line “FINAL HOURS: \$5 PJ pants + 50% off — get your gift list ready”. Old Navy  
3 continued to advertise “50% off” through November 28, 2021, when it sent an email with the  
4 subject line “Last chance for \$8 thermal leggings + 50% OFF & sooo many cyber deals.” Old  
5 Navy continued to advertise “50% off” through November 29, 2021, when it sent an email with  
6 the subject line stating “FINAL HOURS: 50% OFF \*and\* \$7 PJ pants.” However, Old Navy  
7 continued to advertise the 50% off sale in email subject lines the following day.

8 59. The subject lines of the emails sent on November 26, 2021, November 28, 2021,  
9 and November 29, 2021 stating that it was the “FINAL HOURS” or “last chance” to get 50% off  
10 were therefore false and misleading because the same offer was advertised for days after those  
11 emails were sent.

12 **4. The email states that the sale has been “extended,” but Old Navy always**  
13 **planned for the sale to be offered during the purported “extension.”**

14 60. Old Navy also misrepresents the length of time sales will be offered by sending  
15 emails stating that a sale has been “EXTENDED!!” These emails are often sent following long  
16 holiday weekends when consumers are back at their computers or on their phones after a  
17 weekend of activity. However, discovery will show that Old Navy employees did not gather at  
18 the end of the planned sale and determine that the sale should be extended. Instead, the sale was  
19 always planned to continue and the advertised “extension” is fake. For example, as detailed in  
20 paragraph 59 above, Old Navy advertised a 50% off sale in 2021 for “Black Friday” and “Cyber  
21 Monday.” However, around 2:00 AM on Tuesday, November 30, 2021, Old Navy sent an email  
22 with a subject line stating “No joke, it's CYBER TUESDAY! 50% off has been extended for  
23 ONE. MORE. DAY.” Old Navy continued to advertise the “extended” sale, with emails that  
24 same day stating in the subject lines “FIFTY PERCENT OFF has been extended + 60% off  
25 ~these~ picks” and “Ooooooh! SIXTY percent off cozy faves for the fam + we're extending 50%  
26 off online until midnight”.

1           61.     The subject lines of the three emails sent on November 30, 2021, stating that the  
2 50% off sale had been extended, were therefore false and misleading because, as discovery will  
3 show, Old Navy had long planned to offer the 50% off sale on Tuesday, November 30, 2021.

4           62.     This inference is further supported by the fact that Old Navy sent the same false  
5 and misleading “sale extended” emails on the Tuesday following Thanksgiving the next year, in  
6 2022. Old Navy sent an email on Saturday, November 26, 2022 stating in the subject line  
7 “CYBER WEEKEND OFFICIAL: 50% off EVERYTHING (for real!) + \$12 jeans & \$2 cozy  
8 socks.” Old Navy continued to advertise the sale on the following Sunday and on Cyber  
9 Monday. Then, around 5:30 AM on Tuesday, November 29, 2022, Old Navy sent an email with  
10 the subject line “Special alert: 50% off EVERYTHING extended just for you + \$10 turtlenecks”.

11           63.     The subject line of the email sent on November 29, 2022, stating that the 50% off  
12 sale had been extended, was therefore false and misleading because, as discovery will show, Old  
13 Navy had long planned to offer the 50% off sale on Tuesday, November 29, 2022.

14 **C.     Old Navy Sends Commercial Emails to Consumers Whom It Knows, Or Has**  
15 **Reason to Know, Reside In Washington.**

16           64.     Old Navy sent the misleading commercial emails to email addresses that Old  
17 Navy knew, or had reason to know, were held by Washington residents, either because (i) Old  
18 Navy had a physical Washington address that was associated with the recipient; (ii) Old Navy  
19 had access to data regarding the recipient indicating that they were in Washington state; or (iii)  
20 information was available to Old Navy upon request from the registrant of the internet domain  
21 name contained in the recipient’s electronic mail address.

22           65.     Old Navy knows where many of its customers reside through several methods.

23           66.     First, for any person that places an order online from Old Navy, Old Navy  
24 associates an email address with a shipping address and/or billing address for that order.

25           67.     Second, Old Navy encourages online shoppers to create online accounts.  
26 Customers save information in their Old Navy accounts along with their email address, such as  
27 shipping addresses, billing addresses, and phone numbers.

1           68.     Third, Old Navy offers consumers credit cards. Consumers who apply or sign up  
2 for such cards must provide additional identifying information, such as a social security number,  
3 and provide a billing address to Old Navy. Old Navy also pulls information related to the  
4 consumer, such as their past addresses.

5           69.     Fourth, discovery will show that Old Navy employs methods to track the  
6 effectiveness of its marketing emails and to identify consumers that click on links contained in  
7 Old Navy's marketing emails, including by identifying their physical location. For example,  
8 discovery will also show that Old Navy gathers information such as geocoordinates and IP  
9 addresses from individuals who click on links in Old Navy commercial emails, and that Old  
10 Navy can use such information to determine whether the recipient is in Washington.

11           70.     Fifth, Old Navy also utilizes cookies, pixels, and other online tracking  
12 technologies to identify and locate the consumers that click on links contained in Old Navy's  
13 marketing emails and that visit its website. For example, Old Navy has installed the Meta Pixel  
14 on its website, which identifies website visitors and can identify specific Facebook and  
15 Instagram users that visit the Old Navy website; information that can be associated with the data  
16 collected by Meta on where that consumer resides. Old Navy also employs tracking technologies  
17 provided by Google, Inc., Yahoo! Inc., FullStory, Inc., Twitter, Inc., Microsoft, Inc., and others  
18 that may be able to locate consumers in the state of Washington.

19           71.     Sixth, discovery will also show that Old Navy employs sophisticated third parties  
20 who create profiles of customers and potential customers, including their email address and  
21 physical location.

22           72.     Lastly, Old Navy also knew, should have known, or had reason to know that it  
23 sends marketing emails to Washington residents due to its large presence in the state and the  
24 volume of marketing emails it sends to people around the country. *See Heckel*, 122 Wash. App.  
25 at 6 (holding as a matter of law that a defendant had a reason to know that he sent emails to  
26 Washington residents by sending over 100,000 emails a week to people around the country).

1 73. Discovery will show that, at the time it sent the emails with false and misleading  
2 subject lines, Old Navy had access to the data described above regarding the location of  
3 consumers in Washington to whom it sent the emails.

4 **D. Old Navy initiated (or conspired to initiate) the transmission of illegal emails to**  
5 **Plaintiffs.**

6 74. At all times relevant to this Complaint, Plaintiff Brown resided in Washington  
7 State.

8 75. Plaintiff Brown has received Old Navy emails since at least September 2017.  
9 Plaintiff Brown has received thousands of marketing emails from Old Navy since that date, and  
10 typically receives 2-3 emails every day.

11 76. Plaintiff Brown receives emails from Old Navy at a yahoo.com email address.  
12 Plaintiff Brown has a 1000 GB limit of free data from yahoo. Plaintiff Brown currently has at  
13 least 1,243 emails from Old Navy in her inbox, but discovery will show that she has received  
14 many more emails that she has deleted to conserve the finite space available in her email inbox.

15 77. Old Navy knows, or has reason to know, that Plaintiff Brown's email address is  
16 held by a Washington resident. Plaintiff Brown has an account with Old Navy that reflects her  
17 home address in the State of Washington. Plaintiff Brown had made several purchases from the  
18 Old Navy website that have been delivered to her home in Washington and she has shopped in  
19 Old Navy stores in Washington with her account. Plaintiff Brown has also repeatedly clicked on  
20 links contained in Old Navy emails from her computer, which was registered to an IP address in  
21 Washington at all relevant times, or from her smart phone, which was located in Washington  
22 unless Plaintiff Brown happened to be traveling.

23 78. Plaintiff Brown received the emails with false and misleading subject lines  
24 described in paragraphs 37, 39, 41, 45, 50, 55, 57, 59, 61, and 63, above. Plaintiff Brown  
25 received additional emails with false and misleading subject lines from Old Navy as identified  
26 Exhibit A. The emails that Plaintiffs allege are misleading are bolded in Exhibit A and the  
27 remaining emails provide the context showing why each subject line is false or misleading.

1 79. Old Navy sent these emails to Plaintiff Brown for the purpose of promoting Old  
2 Navy's goods for sale.

3 80. Old Navy initiated the transmission or conspired to initiate the transmission of  
4 these commercial electronic mail messages to Plaintiff Brown.

5 81. Plaintiff Brown does not want to receive emails with false and misleading subject  
6 lines from Old Navy, though she would like to continue receiving truthful information from Old  
7 Navy regarding its products. However, due to Old Navy's conduct, Plaintiff Brown cannot tell  
8 which emails from Old Navy contain truthful information or which emails are spam with false  
9 and misleading information designed to spur her to make a purchase.

10 82. At all times relevant to this Complaint, Plaintiff Smith resided in Washington  
11 State.

12 83. Plaintiff Smith has received Old Navy emails since at least December 2021.  
13 Plaintiff Brown has received hundreds of marketing emails from Old Navy since that date, and  
14 typically receives 2-3 emails every day.

15 84. Plaintiff Smith receives emails from Old Navy at a gmail.com email address.  
16 Plaintiff Smith has a 15 GB limit of free data from Gmail. Plaintiff Smith currently has at least  
17 614 emails from Old Navy in her inbox, but it is likely that she has received more emails that she  
18 has deleted to conserve the finite space available in her email inbox.

19 85. Old Navy knows, or has reason to know, that Plaintiff Smith's email address is  
20 held by a Washington resident. Plaintiff Smith has an account with Old Navy that reflects her  
21 home address in the State of Washington. Plaintiff Smith has made several purchases from the  
22 Old Navy website that have been delivered to her home in Washington and she has shopped in  
23 Old Navy stores in Washington with her account. Plaintiff Smith has also repeatedly clicked on  
24 links contained in Old Navy emails from her computer, which was registered to an IP address in  
25 Washington at all relevant times, or from her smart phone, which was located in Washington  
26 unless Plaintiff Smith happened to be traveling.





1 All Washington residents<sup>2</sup> who, within four years before the date of  
 2 the filing of this complaint until the date any order certifying a class  
 3 is entered, received an email from or at the behest of Old Navy, LLC  
 4 that contained a subject line stating or implying that (1) a sale,  
 5 discount, price, or other offer would only be available for a limited  
 6 time, and the sale, discount, price, or other offer was in fact offered  
 7 for a longer period of time; (2) a sale, discount, price, or other offer  
 8 was new or only offered that day, and the sale, discount, price, or  
 9 other offer was in fact already being offered; (3) a sale, discount,  
 10 price, or other offer would ending soon, and the sale, discount, price,  
 11 or other offer continued to be offered for at least another day; or (4)  
 12 a sale, discount, price, or other offer was being extended, when the  
 13 sale, discount, price, or other offer was previously planned to  
 14 continue through the extension advertised.

15 Excluded from the Class are Old Navy, any entity in which Old Navy has a controlling  
 16 interest or that has a controlling interest in Old Navy, and Old Navy's legal representatives,  
 17 assignees, and successors. Also excluded are the judge to whom this case is assigned and any  
 18 member of the judge's immediate family.

19 92. Numerosity. The Class is so numerous that joinder of all members is  
 20 impracticable. The Class has more than 1,000 members. Moreover, the disposition of the claims  
 21 of the Class in a single action will provide substantial benefits to all parties and the Court.

22 93. Commonality. There are numerous questions of law and fact common to Plaintiffs  
 23 and members of the Class. The common questions of law and fact include, but are not limited to:

24 a. Whether Old Navy sent commercial electronic mail messages with false  
 25 and misleading information in the subject lines;

26 b. Whether Old Navy initiated the transmission or conspired to initiate the  
 27 transmission of commercial electronic mail messages to recipients residing in Washington State  
 28 in violation of RCW 19.190.020;

c. Whether a violation of RCW 19.190.020 establishes all the elements of a  
 claim under Washington's Consumer Protection Act, RCW 19.86 *et seq.*;

<sup>2</sup> "Residents" shall have the same meaning as "persons" as defined in RCW 19.190.010(11) and  
 RCW 19.86.010(a).

1 d. Whether Plaintiffs and the proposed Class are entitled to an injunction  
2 enjoining Old Navy from sending the unlawful emails in the future; and

3 e. The nature and extent of Class-wide injury and damages.

4 94. Typicality. Plaintiffs' claims are typical of the claims of the Class. Plaintiffs'  
5 claims, like the claims of the Class arise out of the same common course of conduct by Old Navy  
6 and are based on the same legal and remedial theories.

7 95. Adequacy. Plaintiffs will fairly and adequately protect the interests of the Class.  
8 Plaintiffs have retained competent and capable attorneys with significant experience in complex  
9 and class action litigation, including consumer class actions and class actions involving  
10 violations of CEMA. Plaintiffs and their counsel are committed to prosecuting this action  
11 vigorously on behalf of the Class and have the financial resources to do so. Neither Plaintiffs nor  
12 their counsel have interests that are contrary to or that conflict with those of the proposed Class.

13 96. Predominance. Old Navy has a standard practice of initiating or conspiring to  
14 initiate commercial electronic mail messages to email addresses held by Washington State  
15 residents. The common issues arising from this conduct predominate over any individual issues.  
16 Adjudication of these issues in a single action has important and desirable advantages of judicial  
17 economy.

18 97. Superiority. Plaintiffs and members of the Class have been injured by Old Navy's  
19 unlawful conduct. Absent a class action, however, most Class members likely would find the  
20 cost of litigating their claims prohibitive. Class treatment is superior to multiple individual suits  
21 or piecemeal litigation because it conserves judicial resources, promotes consistency and  
22 efficiency of adjudication, provides a forum for small claimants, and deters illegal activities. The  
23 members of the Class are readily identifiable from Old Navy's records and there will be no  
24 significant difficulty in the management of this case as a class action.

25 98. Injunctive Relief. Old Navy's conduct is uniform as to all members of the Class.  
26 Old Navy has acted or refused to act on grounds that apply generally to the Class, so that final  
27 injunctive relief or declaratory relief is appropriate with respect to the Class as a whole. Plaintiffs

1 further allege, on information and belief, that the emails described in this Complaint are  
2 substantially likely to continue in the future if an injunction is not entered.

3 **VI. CAUSES OF ACTION**

4 **FIRST CLAIM FOR RELIEF**

5 **(Violations of Washington’s Commercial Electronic Mail Act, RCW 19.190 *et seq.*)**

6 99. Plaintiffs reallege and incorporate by reference each and every allegation set forth  
7 in the preceding paragraphs.

8 100. Washington’s CEMA prohibits any “person,” as that term is defined in RCW  
9 19.190.010(11), from initiating or conspiring to initiate the transmission of a commercial  
10 electronic mail message from a computer located in Washington or to an electronic mail address  
11 that the sender knows, or has reason to know, is held by a Washington resident that contains  
12 false or misleading information in the subject line.

13 101. Old Navy is a “person” within the meaning of the CEMA, RCW 19.190.010(11).

14 102. Old Navy initiated the transmission or conspired to initiate the transmission of  
15 one or more commercial electronic mail messages to Plaintiffs and proposed Class members with  
16 false or misleading information in the subject line.

17 103. Old Navy’s acts and omissions violated RCW 19.190.020(1)(b).

18 104. Old Navy’s acts and omissions injured Plaintiffs and proposed Class members.

19 105. The balance of the equities favors the entry of permanent injunctive relief against  
20 Old Navy. Plaintiff, the members of the Class and the general public will be irreparably harmed  
21 absent the entry of permanent injunctive relief against Old Navy. A permanent injunction against  
22 Old Navy is in the public interest. Old Navy’s unlawful behavior is, based on information and  
23 belief, ongoing as of the date of the filing of this pleading; absent the entry of a permanent  
24 injunction, Old Navy’s unlawful behavior will not cease and, in the unlikely event that it  
25 voluntarily ceases, is likely to reoccur.

26 106. Plaintiffs and Class members are therefore entitled to injunctive relief in the form  
27 of an order enjoining further violations of RCW 19.190.020(1)(b).

**SECOND CLAIM FOR RELIEF**

**(Per se violation of Washington’s Consumer Protection Act, RCW 19.86 et seq.)**

107. Plaintiffs reallege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

108. Plaintiffs and Class members are “persons” within the meaning of the CPA, RCW 19.86.010(1).

109. Old Navy violated the CEMA by initiating or conspiring to initiate the transmission of a commercial electronic mail messages to Plaintiffs and Class members’ that contain false or misleading information in the subject line.

110. A violation of CEMA is a “per se” violation of the Washington Consumer Protection Act (“CPA”), RCW 19.86.010, et seq. RCW 19.190.030.

111. A violation of the CEMA establishes all five elements of Washington’s Consumer Protection Act as a matter of law.

112. Old Navy’s violations of the CEMA are unfair or deceptive acts or practices that occur in trade or commerce under the CPA. RCW 19.190.100.

113. Old Navy’s unfair or deceptive acts or practices vitally affect the public interest and thus impact the public interest for purposes of applying the CPA. RCW 19.190.100.

114. Pursuant to RCW 19.19.040(1), damages to each recipient of a commercial electronic mail message sent in violation of the CEMA are the greater of \$500 for each such message or actual damages, which establishes the injury and causation elements of a CPA claim as a matter of law. *Lyft*, 406 P.3d at 1155.

115. Old Navy engaged in a pattern and practice of violating the CEMA. As a result of Old Navy’s acts and omissions, Plaintiffs and Class members have sustained damages, including \$500 in statutory damages, for each and every email that violates the CEMA. The full amount of damages will be proven at trial. Plaintiffs and Class members are entitled to recover actual damages and treble damages, together with reasonable attorneys’ fees and costs, pursuant to RCW 19.86.090.

1 116. Under the CPA, Plaintiffs and members of the Class are also entitled to, and do  
2 seek, injunctive relief prohibiting Old Navy from violating the CPA in the future.

3 **VII. REQUEST FOR RELIEF**

4 WHEREFORE, Plaintiffs, on their own behalf and on behalf of the members of the Class,  
5 request judgment against Old Navy as follows:

- 6 A. That the Court certify the proposed Class;
- 7 B. That the Court appoint Plaintiffs as Class Representatives.
- 8 C. That the Court appoint the undersigned counsel as counsel for the Class;
- 9 D. That the Court should grant injunctive relief as permitted by law to ensure that  
10 Old Navy will not continue to engage in the unlawful conduct described in this Complaint;
- 11 E. That the Court enter a judgment awarding any other injunctive relief necessary to  
12 ensure Old Navy's compliance with the CEMA;
- 13 F. That Old Navy be immediately restrained from altering, deleting or destroying  
14 any documents or records that could be used to identify members of the Class;
- 15 G. That Plaintiffs and all Class members be awarded statutory damages in the  
16 amount of \$500 for each violation of the CEMA pursuant to RCW 19.190.020(1)(b) and treble  
17 damages pursuant to RCW 19.86.090;
- 18 H. That the Court enter an order awarding Plaintiffs reasonable attorneys' fees and  
19 costs; and
- 20 I. That Plaintiffs and all Class members be granted other relief as is just and  
21 equitable under the circumstances.

22 **VIII. TRIAL BY JURY**

23 Plaintiffs demand a trial by jury for all issues so triable.  
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25  
26  
27  
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1 RESPECTFULLY SUBMITTED AND DATED this 19th day of April, 2023.

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