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SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

JULIE ARCAND,
for herself, as a private attorney general, and
on behalf of all others similarly situated,

Plaintiff,

v.

CATALYST BRANDS LLC d/b/a
JCPENNEY,

Defendant.

Case No.

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

1 Plaintiff Julie Arcand, demanding trial by jury as to all issues so triable in a separate
 2 document to be filed, alleges as follows, on personal knowledge and investigation of her
 3 counsel, against Defendant Catalyst Brands LLC d/b/a JCPenney (hereinafter “Defendant” or
 4 “JCPenney”):

5 **INTRODUCTION AND SUMMARY**

6 1. This is a class action against JCPenney for false or misleading email marketing
 7 in violation of the Washington Consumer Protection Act (“CPA”), RCW 19.86, and the
 8 Washington Commercial Electronic Mail Act, (“CEMA”), RCW 19.190.

9 2. JCPenney operates JCPenney retail stores and its website jcpenney.com, where
 10 it advertises, markets, and sells clothing, footwear, accessories, jewelry, home furnishings,
 11 beauty products, and other related items throughout Washington and the United States.
 12 JCPenney predominately sells private and exclusive products of in-house brands that are only
 13 available from JCPenney (e.g., Liz Claiborne, St. John’s Bay, Arizona, a.n.a.). JCPenney also
 14 sells some products from national brands.

15 3. For years, JCPenney has engaged in a massive false discount advertising scheme
 16 across more than 90% of its products on the JCPenney website and in its retail stores.
 17 JCPenney advertises perpetual or near-perpetual discounts—typically 25% to 70% off—from a
 18 false higher list price which is printed on its product tags and displayed on its website.
 19 JCPenney’s advertised discounts are viewed both under the law and by reasonable consumers
 20 to refer to discounts from JCPenney’s own regular offering prices for those products. However,
 21 JCPenney’s advertised discounts are false because JCPenney never or almost never offers or
 22 sells its products at their list price.

23 4. JCPenney also falsely advertises “free” offers such as “Buy 1 Get 1 Free,” “Buy
 24 1 Get 2 Free,” or “BOGO Free” where JCPenney represents that it will include one or two more
 25 of a given item (or of a specified similar item) for “free” if the consumer pays the list price for
 26 the item. JCPenney’s advertised “free” offers are viewed both under the law and by reasonable
 27 consumers to mean that the consumer is getting the “free” item(s) at no cost in conjunction with
 28 the purchase of the first item at no more than that first item’s regular price. However, because

1 the item is “discounted” by up to 70% off the list price at all other times, this means JCPenney
2 is directly recovering all of the cost, or even more than the cost, of the “free” item(s) by
3 increasing the price of the first item, such that the free offer is illusory, and the consumer is not
4 getting any deal at all.

5 5. JCPenney also falsely advertises that the discounts are for a limited time, when
6 in fact the advertised savings are perpetual and never-ending.

7 6. JCPenney’s false discount advertising is so pervasive across all of its products
8 and all of its advertising that it is apparent that the heart of JCPenney’s marketing plan is to
9 deceive the public.

10 7. An important part of JCPenney’s false discount advertising scheme is to send a
11 constant stream of marketing emails to consumers that prominently advertise these false
12 discounts in the subject line. Many of the consumers who receive these emails with deceptive
13 email subject lines include Washington residents.

14 8. For example, JCPenney sends emails with subject lines that advertise false
15 discounts at a specified purported percentage off (e.g., “Shop now! 30% Off Liz Claiborne &
16 St. John’s Bay”). The stated discounts in the subject lines are materially false or misleading
17 because, in reality, the discounts are being calculated from inflated and fictitious list prices at
18 which JCPenney has never or almost never offered the products for sale.

19 9. JCPenney also sends emails with subject lines that advertise false “free” offers
20 (e.g., “*BOGO Free!* Arizona jeans & pants”). The subject lines are materially false or
21 misleading because, in reality, the “free” items are not actually free; JCPenney directly
22 recovers all of the cost, or even more than the cost, of the “free” item(s) by increasing the price
23 of the first item to the inflated—and otherwise never charged—list price.

24 10. The subject lines of the emails are also materially false or misleading because
25 they advertise the purported savings are for a limited time and indicate that the products will
26 return to the full price after the sale ends (e.g. “Last chance! Buy 1 Get 2 FREE towels”), when
27 in fact the advertised savings are perpetual and never-ending.

11. The Washington Supreme Court recently held that CEMA “prohibits sending Washington residents commercial e-mails that contain *any* false or misleading information in the subject lines of such e-mails.” *Brown v. Old Navy, LLC*, 567 P.3d 38, 47 (Wash. 2025) (emphasis in original). This includes false or misleading information about promotions, sales events, or discounts. **“CEMA protects consumers by requiring that commercial e-mails communicate honestly about the terms of a given promotion or sale in the subject line.”** *Id.* (emphasis added). “A violation of CEMA’s e-mail regulations is a per se violation of the Consumer Protection Act (CPA).” *Id.* at *2.

12. Ms. Arcand brings this lawsuit individually and on behalf of a class of consumers residing in Washington who also received emails from JCPenney which contained false or misleading discount advertising in the subject line. Ms. Arcand’s requested relief includes an injunction to end the unlawful practices alleged herein. Ms. Arcand also requests an award to herself and to each class member of \$500 in statutory damages for each and every violative email received, and an award of attorneys’ fees and costs.

THE PARTIES

13. Plaintiff Julie Arcand is a citizen of the United States of America and an individual and a natural adult person who currently resides and who, at all relevant times in the past resided in, North Bend, King County, Washington.

14. Defendant Catalyst Brands LLC is a limited liability company that was formed in January 2025 following a merger between SPARC Group LLC and Penney OpCo LLC d/b/a JCPenney. Catalyst Brands LLC is headquartered in Plano, Texas, at the former JCPenney corporate location. Catalyst Brands LLC also has an office in Seattle, Washington.¹

15. From December 7, 2020, until the January 2025 merger, Penney OpCo LLC owned and managed the retail, website and marketing operations of the JCPenney brand and conducted the unlawful actions described herein that took place between December 7, 2020,

¹ See <https://corporate.jcpenny.com/2025/01/08/sparc-group-has-merged-with-jcpenny-to-form-catalyst-brands/> (announcing the merger and stating where Catalyst Brands LLC’s headquarters and other offices are located).

1 and the 2025 merger—including the creation and sending of the violative emails. Catalyst
 2 Brands LLC is the successor to Penney OpCo LLC, and Catalyst Brands LLC is liable for all
 3 unlawful actions pled herein that were conducted by Penney OpCo LLC from December 7,
 4 2020, until the 2025 merger.

5 16. Since the January 2025 merger, Catalyst Brands LLC has been directly
 6 responsible for the retail, website, and marketing operations of the JCPenney brand—including
 7 the creation and sending of the violative emails. Catalyst Brands LLC continues to own and
 8 operate the approximately 659 brick-and-mortar JCPenney retail stores throughout the United
 9 States, including 15 in Washington. Catalyst Brands LLC also continues to own and operate the
 10 JCPenney retail website, and continues to manage the email marketing operations of JCPenney.
 11 Catalyst Brands LLC (hereinafter “Defendant” or “JCPenney”) continues to be responsible and
 12 liable for all of the unlawful actions pled herein that took place after the January 2025 merger,
 13 including the continued creation and sending of the violative emails.²

14 **JURISDICTION AND VENUE**

15 17. This Court has subject matter jurisdiction over this civil action pursuant to,
 16 without limitation, Section 6 of Article IV of the Washington State Constitution (Superior
 17 Court jurisdiction, generally), RCW 19.86.090 (Superior Court jurisdiction over Consumer
 18 Protection Act claims) and RCW 19.190.090 (Superior Court jurisdiction over Commercial
 19 Electronic Mail Act claims).

20 18. This Court has personal jurisdiction over Defendant pursuant to, without
 21 limitation, RCW 4.28.185, in that: (1) Defendant is registered to do business in the State of
 22 Washington; (2) Defendant has transacted and continues to transact business within the State of
 23 Washington; and/or (3) Defendant has committed tortious acts within the State of Washington
 24 or has committed tortious acts outside the State of Washington which had an impact within the

25 _____
 26 ² Based on publicly available information, Plaintiff’s counsel has determined that Penney
 27 OpCo LLC was merged into Catalyst Brands LLC in January 2025, and that Catalyst Brands
 28 LLC is the relevant defendant in this action. However, the JCPenney website continues to
 reference Penney OpCo LLC and Penney IP LLC as of the date of the filing of this Complaint.
 Plaintiff reserves the right to amend this Complaint to add other defendants based on
 information obtained through discovery.

1 State of Washington. In addition, Defendant intended, knew, or is chargeable with the
2 knowledge that its out-of-state actions would have a consequence within the State of
3 Washington.

4 19. With regard to the cause of action brought pursuant to the Washington
5 Consumer Protection Act, this Court has personal jurisdiction over Defendant pursuant to RCW
6 19.86.160. For example, and without limitation, Defendant has engaged and is continuing to
7 engage in conduct in violation of RCW 19.86 which has had and continues to have an impact in
8 Washington State which said chapter reprehends.

9 20. Venue is proper in King County Superior Court because, without limitation,
10 Plaintiff resides in King County; a significant portion of the acts giving rise to this civil action
11 occurred in King County; and/or Defendant intended to and did have a substantial and
12 foreseeable effect on trade or commerce in King County.

13 **FACTUAL ALLEGATIONS**

14 21. JCPenney operates JCPenney retail stores and the JCPenney website, where it
15 advertises, markets, and sells clothing, footwear, accessories, jewelry, home furnishings, beauty
16 products, and other related items throughout Washington and the United States.

17 22. JCPenney currently operates approximately 659 retail stores throughout the
18 United States, with at least 15 locations in Washington State. The JCPenney website is
19 accessible from Washington State, and consumers in Washington State view the contents of the
20 JCPenney website and purchase goods from JCPenney's website. JCPenney sends marketing
21 emails to consumers throughout the country, including thousands of consumers in Washington
22 State.

23 23. JCPenney predominately sells private and exclusive products of in-house brands
24 that are only available from JCPenney (e.g., Liz Claiborne, St. John's Bay, Arizona, a.n.a.).
25 JCPenney also sells some products from national brands.

A. Background Information: JCPenney's Advertised Discounts And "Free" Offers Are False.

24. For years, JCPenney has engaged in a massive false discount advertising scheme across over 90% of its products on the JCPenney website and in its retail stores. JCPenney advertises perpetual or near-perpetual discounts—typically 25% to 70% off—from a false higher list price which is printed on its product tags and displayed on its website. JCPenney's advertised discounts are viewed both under the law and by reasonable consumers to refer to discounts from JCPenney's own regular offering prices for those products. However, JCPenney's advertised discounts are false because JCPenney never or almost never offers or sells its products at their list price.

25. JCPenney also advertises "free" offers such as "Buy 1 Get 1 Free," "Buy 1 Get 2 Free," or "BOGO Free" where JCPenney represents that it will include one or two more of a given item (or of a specified similar item) for "free" if the consumer pays the list price for the item. JCPenney's advertised "free" offers are viewed both under the law and by reasonable consumers to mean that the consumer is getting the "free" item(s) at no cost in conjunction with the purchase of the first item at no more than that first item's regular price. However, because the item is "discounted" by up to 70% off the list price at all other times, this means JCPenney is directly recovering all of the cost, or even more than the cost, of the "free" item(s) by increasing the price of the first item, such that the free offer is illusory, and the consumer is not getting any deal at all.

26. JCPenney also falsely advertises that the purported savings are for a limited time and indicates that the products will return to the full price after the sale ends, when in fact the advertised savings are perpetual and never-ending.

27. Plaintiff's allegations concerning JCPenney's false discount advertising are based on a comprehensive investigation by Plaintiff's counsel of JCPenney's pricing practices for a period of over 10 years, including the period December 2020 to the present (which is the period Defendant has conducted the unlawful actions described herein as Catalyst Brands LLC and as the predecessor company Penney OpCo LLC).

1 28. Plaintiff's counsel has been monitoring and scraping the JCPenney website on
2 an automated daily basis with a proprietary software program since March 7, 2014. Plaintiff's
3 counsel has compiled and extracted daily pricing and marketing data from the website for
4 nearly all of the products JCPenney has offered during this time. In total, Plaintiff's counsel has
5 assembled and analyzed an exhaustive historical database of daily prices and time-stamped
6 screenshots of over 245 million daily product offerings for over 900,000 products over this
7 period.

8 29. Plaintiff's counsel's investigation and data shows that JCPenney advertises
9 perpetual discounts for more than 90% of its products, typically ranging from 25% to 70% off.

10 30. The percentage-off and other discounts are *always* false, and JCPenney's list
11 prices to which the discounts are applied are false and inflated. In fact, for the overwhelming
12 majority of the products that JCPenney advertises with a discount or with a "free" offer,
13 JCPenney has *never*—not even for a single day—offered the product at the list price without a
14 discount or "free" offer.

15 31. Plaintiff's counsel also investigated multiple JCPenney retail stores across
16 multiple years in multiple different states, including dozens of store visits in Washington State.
17 Plaintiff's counsel has compared the JCPenney retail store prices and discounts (including the
18 list prices printed on the product tags, the percentage-off and "free" offer signage posted
19 throughout the stores, and the resulting "discounted" prices for JCPenney products), to the
20 JCPenney website prices and discounts for those products (including the list prices and
21 "discounted" prices). Plaintiff's counsel found that JCPenney's list prices, advertised
22 percentage-off and "free"-offer discounts, and the resulting "discounted" prices for its products
23 have been and continue to be substantially the same for its products both online and in-store.
24 Plaintiff's counsel also found that JCPenney's prices and discounts have been and continue to
25 be substantially the same across JCPenney retail stores in different states.

26 32. In fact, JCPenney effectively treats its online and in-store sales channels as the
27 same. Customers can make purchases through the JCPenney website and pick the items up
28 from any JCPenney retail store that same day. JCPenney also encourages its customers, in-

1 store, to view JCPenney’s website for additional colors or styles of the items that the customers
2 are looking at in the retail store.

3 33. Plaintiff’s counsel has also investigated and reviewed years of marketing emails
4 sent by JCPenney to its customers. The percentage-off discounts and “free” offers which
5 JCPenney has advertised, and continues to advertise, in the subject lines of its marketing emails
6 are consistent with the discounts and pricing on the JCPenney website and in JCPenney retail
7 stores.

8 **B. CEMA Prohibits Sending Washington Residents Commercial Emails**
9 **With False Or Misleading Subject Lines.**

10 34. Washington’s Commercial Electronic Mail Act (CEMA) regulates deceptive
11 email marketing.

12 35. CEMA prohibits a person from initiating or conspiring to initiate the
13 transmission to an email address that the sender knows, or has reason to know, is held by a
14 Washington State resident of a commercial email that contains false or misleading information
15 in the email’s subject line. RCW 19.190.020(1)(b).

16 36. The Washington Supreme Court has recently confirmed that CEMA “prohibits
17 sending Washington residents commercial e-mails that contain *any* false or misleading
18 information in the subject lines of such e-mails.” *Brown v. Old Navy, LLC*, 567 P.3d 38, 47
19 (Wash. 2025) (emphasis in original). This includes false or misleading information about
20 promotions, sales, or other pricing information. **“CEMA protects consumers by requiring**
21 **that commercial e-mails communicate honestly about the terms of a given promotion or**
22 **sale in the subject line.”** *Id.* (emphasis added).

23 37. “CEMA was enacted to protect concrete interests in being free from deceptive
24 commercial e-mails. CEMA’s prohibition on sending commercial e-mails with false or
25 misleading subject lines . . . creates a substantive right to be free from deceptive commercial e-
26 mails.” *Harbers v. Eddie Bauer, LLC*, 415 F. Supp. 3d 999, 1011 (W.D. Wash. Nov. 27, 2019)
27 (holding that the plaintiff sufficiently pleaded a concrete injury-in-fact for alleged CEMA
28 violations based on her receipt of marketing emails from defendant containing allegedly false

1 “xx% off” statements in the subject line); *see also Brown*, 567 P.3d at 45 (“CEMA sought to
 2 give consumers relief from commercial spam e-mail by requiring accuracy and truthfulness in
 3 the subject lines of such e-mails.”). “The harms resulting from deceptive commercial emails
 4 resemble the type of harms remedied by nuisance or fraud actions.” *Harbers*, 415 F. Supp. 3d
 5 at 1008.

6 38. An injury occurs any time a commercial email is transmitted that contains false
 7 or misleading information in the subject line. *Harbers*, 415 F. Supp. 3d at 1011.

8 39. Under CEMA, it is irrelevant whether the misleading commercial emails were
 9 solicited. *Id.*

10 40. “A violation of CEMA’s e-mail regulations is a per se violation of the Consumer
 11 Protection Act (CPA).” *Brown*, 567 P.3d at 42.

12 41. Generally, a plaintiff pleading a claim under the CPA must plead five necessary
 13 elements: (1) an unfair or deceptive act or practice (2) in trade or commerce (3) that affects the
 14 public interest, (4) injury to plaintiff’s business and property, and (5) causation. *Wright v. Lyft,*
 15 *Inc.*, 189 Wn.2d 718, 728 (2017). **However, because a violation of CEMA is a per se**
 16 **violation of the CPA, all five elements are satisfied as a matter of law.** *Id.* at 724; *see also*
 17 *Brown*, 567 P.3d at 42.

18 42. “Under CEMA, the injury is receiving an e-mail that violates its regulations.”
 19 *Brown*, 567 P.3d at 42. Accordingly, **“CEMA does not require a showing of injury for**
 20 **statutory damages to be awarded because the injury is receiving the e-mail that violates**
 21 **CEMA.”** *Id.* at 45 (emphasis added); *see also Wright*, 189 Wn.2d at 729 (“[CEMA] does not
 22 condition the award of damages on proving either injury or causation. In fact, damages for
 23 CEMA violations are *automatic.*”) (emphasis in original).

24 43. A person is entitled to \$500 statutory damages “anytime a prohibited message is
 25 transmitted.” *Harbers*, 415 F. Supp. 3d at 1009; *see also In re Classmates.com Consol. Litig.*,
 26 No. C09-45RAJ, 2011 WL 744664, at *7 (W.D. Wash. Feb. 23, 2011) (“[CEMA] provides
 27 statutory damages of \$500 for every email that violates it.”). “Unlike the CPA, CEMA’s \$500
 28 penalty does not require a showing of actual damages.” *Brown*, 567 P.3d at 42.

C. JCPenney Has Transmitted Numerous Commercial Emails With False Or Misleading Subject Lines In Violation of CEMA.

44. JCPenney has transmitted numerous commercial emails with false or misleading subject lines to Ms. Arcand and other Washington residents in violation of CEMA. (As used in this Complaint, allegations that JCPenney “transmitted” or “sent” an email are allegations that JCPenney initiated the transmission of the email, conspired with another to initiate the transmission of the email and/or assisted the transmission of the email.)









45. These violative emails have subject lines advertising materially false percentage-off discounts or materially false “free” offers.

1. JCPenney Transmits Emails With Subject Lines Advertising False Discounts.

46. JCPenney transmits commercial emails with subject lines advertising large percentage-off discounts (typically between 25-70% off). These email subject lines are materially false or misleading in violation of CEMA and the CPA because the advertised percentage-off discounts are phony and are calculated from inflated, and never-charged, list prices.

47. **For example, Plaintiff received each of the following violative percentage-off emails while residing in Washington State, on the date, and containing the email subject line, specified below:**

<u>Date</u>	<u>Email Subject Line</u>
06/10/2025	Get ready to stun! 25% Off dresses & jumpsuits
05/24/2025	BOGO FREE swim 🧢 Shorts from \$14.99 🧢 50% Off dress shirts 🧢
05/11/2025	DOORBUSTERS: 50% Off Clarks sandals + \$14.99 St. John's Bay capris
09/24/2024	40% Off Liz Claiborne in your Weekly Ad!
09/21/2024	40% Off Liz Claiborne + Extra 25% Off!
09/06/2024	Fab for fall! 30% Off Liz Claiborne + FREE shipping over \$49
09/04/2024	Everyday faves: 30% Off St. John's Bay + FREE shipping over \$49

08/21/2024	Feel-good fall styles, up to 40% off St. John's Bay + FREE shipping over \$49
08/20/2024	Levi's® for less! 30% Off + FREE shipping over \$49
08/11/2024	Sneaker Sale! 25% Off adidas, PUMA & Skechers
08/06/2024	Shop now! 30% Off Liz Claiborne & St. John's Bay
07/28/2024	Lovin' that Liz comfort! Up to 30% Off Liz Claiborne
07/23/2024	Sneaker Sale! 25% Off adidas, PUMA & Skechers
06/22/2024	Go 4th in    30% Off St. John's Bay
06/21/2024	30% Off St. John's Bay & Liz Claiborne + coupon savings
06/16/2024	Final hours  DoorBusters: 30% Off haircare, kids' PUMA & adidas
06/15/2024	Run for it!  25% Off adidas, Reebok, PUMA & more
02/16/2024	OMG: 40% Off Levi's®
11/25/2023	Winning Black Friday: Champion at 50% Off! 
11/23/2023	Black Friday Sale! 40% OFF Levi's® 
10/31/2023	Oooh  Liz Claiborne • Levi's® • St. John's Bay, all up to 55% Off

48. The advertised percentage-off discounts in these email subject lines are viewed both under the law and by reasonable consumers to refer to discounts from JCPenney's own regular offering prices for its products. In reality, JCPenney calculated the "% Off" statements from fictitious list prices at which JCPenney never or almost never offered its products. Meanwhile, there was no qualifier or other indicator in the subject line to notify the email recipients that JCPenney had assigned these words and symbols an invented or unusual subjective meaning rather than their ordinary or objective meaning.

2. JCPenney Transmits Emails With Subject Lines Advertising False "Free" Offers.

49. JCPenney also sends commercial emails with subject lines advertising "free" offers such as "Buy 1 Get 1 Free," "BOGO Free," "Buy 1 Get 2 Free," and "B1G2 Free." The "free" offers advertised in these email subject lines are materially false or misleading in

violation of CEMA and the CPA because JCPenney inflates the first item's selling price (typically at least doubling it from the true regular price) to recover the cost of the "free" item, such that the "free" offer is phony.

50. For example, Plaintiff received each of the following violative "free" offer emails while residing in Washington State, on the date, and containing the email subject line, specified below:

<u>Date</u>	<u>Email Subject Line</u>
05/26/2025	Last chance! B1G2 FREE towels
05/24/2025	BOGO FREE swim 🧘 Shorts from \$14.99 🧘 50% Off dress shirts 🧘
05/23/2025	Really BIG Deal! Buy 1 Get 2 FREE towels
04/25/2025	Really BIG Deal! Buy 1 Get 2 FREE Curtains
09/15/2024	Last chance! Buy 1 Get 2 FREE towels
09/13/2024	REALLY BIG DEAL! Buy 1 Get 2 FREE towels
07/26/2024	Buy 1 get TWO Free sandals! 🧘

51. The "free" offer statements in these email subject lines are false and misleading. Advertised "free" offers such as these are viewed both under the law and by reasonable consumers to mean that the consumer is getting the "free" item(s) at no cost in conjunction with the purchase of the first item at no more than that first item's regular price. However, whenever JCPenney makes such a purported "free" offer, JCPenney inflates the first item's selling price to its never otherwise charged list price. Because the item is "discounted" by up to 70% off the list price at all other times, this means JCPenney is directly recovering all of the cost, or even more than the cost, of the "free" item(s) by increasing the price of the first item, such that the free offer is illusory, and the consumer is not getting any deal at all.

52. The Federal Trade Commission warns sellers advertising "Free" offers that "such offers must be made with extreme care so as to avoid any possibility that consumers will be misled or deceived." 16 C.F.R. § 251.1(a)(2). "[W]hen the purchaser is told that an article is 'Free' to him if another article is purchased, the word 'Free' indicates that he is paying

1 **nothing for that article and no more than the regular price for the other.** Thus, a purchaser
 2 has a right to believe that the merchant will not directly and immediately recover, in whole or
 3 in part, the cost of the free merchandise or service by marking up the price of the article which
 4 must be purchased[.]” 16 C.F.R. § 251.1(b)(1) (emphasis added).

5 53. Accordingly, it is deceptive for a seller making a “Free” offer to “increase[] his
 6 regular price of the article required to be bought.” 16 C.F.R. § 233.4(b). “Regular price” means
 7 “the price, in the same quantity [and] quality, ... at which the seller or advertiser of the product
 8 or service has openly and actively sold the product or service in the geographic market or trade
 9 area in which he is making a ‘Free’ or similar offer in the most recent and regular course of
 10 business, for a reasonably substantial period of time, i.e., a 30–day period.” 16 C.F.R. §
 11 251.1(b)(2).

12 54. The above violative emails are only a fraction of the total number of violative
 13 emails that JCPenney sent to Washington residents within the applicable limitations period.

14 55. Attached as **Exhibit A** to this Complaint is a non-exhaustive list of 72 violative
 15 emails that JCPenney sent within the applicable limitations period to Washington residents. All
 16 of these 72 emails contain subject lines which advertise false or misleading percentage-off
 17 discounts, false “free” offers, and/or false or misleading limited-time savings. JCPenney also
 18 transmitted many other similar violative emails within the applicable limitations period to
 19 Washington residents, including Plaintiff.

20 56. As of the date of the filing of this Complaint, Plaintiff is still receiving
 21 JCPenney’s commercial emails. Plaintiff would like to continue to receive JCPenney’s
 22 commercial emails, provided that the subject lines of the emails do not contain false or
 23 misleading information.

24 **D. JCPenney Sent Commercial Emails To Consumers Whom It Knew, Or Had**
 25 **Reason To Know, Resided In Washington.**

26 57. JCPenney sent the false and misleading commercial emails to email addresses
 27 that JCPenney knew, or had reason to know, were held by Washington residents (i.e., Plaintiff
 28 and members of the Class), because JCPenney had a physical Washington address that was

1 associated with the recipient and/or JCPenney had access to data regarding the recipient
2 indicating that they were in Washington State. JCPenney knew or should have known that
3 Plaintiff and the members of the Class were residents of Washington State.

4 58. JCPenney knows where the overwhelming majority of its customers reside
5 through several methods.

6 59. First, for any person that places an order through the JCPenney website,
7 JCPenney associates that email address with a shipping address and billing address for that
8 order.

9 60. Second, JCPenney encourages online shoppers to create online accounts.
10 Customers save their contact information in their JCPenney accounts, including their email
11 address, shipping address, billing address, and phone number.

12 61. Third, JCPenney aggressively signs up its in-store customers for its Rewards
13 program, which includes signing up customers for an online account if they do not already have
14 one.

15 62. Discovery will show that, at the time JCPenney sent the commercial emails,
16 JCPenney knew or had access to data showing that the email recipient was a Washington
17 resident. Indeed, the vast majority of consumers who received commercial emails from
18 JCPenney signed up to receive those emails either when they placed an order online or when
19 they created an online account. Thus, discovery will show that JCPenney has the physical
20 address for virtually every consumer that it sends commercial emails to.³

21 ³ JCPenney also has other methods by which it could have determined whether the
22 consumers to whom it sent the violative emails resided in Washington. Discovery will show
23 that JCPenney employs methods to track the effectiveness of its marketing emails and to
24 identify consumers who click on links contained in JCPenney's marketing emails, including by
25 identifying their physical location. Discovery will also show that Aéropostale utilizes online
26 tracking technologies to identify and locate the consumers who click on links contained in
27 JCPenney's marketing emails and that visit its website. JCPenney could have used the
28 information obtained through these online tracking technologies to identify which consumers
are in Washington.

Additionally, JCPenney knew, or had reason to know, that the email addresses were
held by Washington residents because this information was available to JCPenney upon request
from the registrant of the internet domain name contained in each recipient's email address. *See*
RCW 19.190.020(2). JCPenney also knew or had reason to know that it sent emails to
Washington residents due to its large presence in the state and the volume of marketing emails

CLASS ALLEGATIONS

63. Plaintiff brings this lawsuit on behalf of herself and the members of the following Washington State class (the “Class”):

All residents of the State of Washington who, within the applicable limitations period, received an email from or at the behest of JCPenney that contained in the subject line: (a) a “xx% Off” or similar percentage-off statement and/or (b) a statement advertising a “free” offer.

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

65. **Numerosity.** The number of members of the Class are so numerous that joinder of all members would be impracticable. Plaintiff does not know the exact number of Class members prior to discovery. However, based on information and belief, the Class comprises thousands of individuals. The exact number and identities of Class members are contained in Defendant’s records and can be easily ascertained from those records.

66. **Commonality and Predominance.** This action involves multiple common legal or factual questions which are capable of generating class-wide answers that will drive the resolution of this case. These common questions predominate over any questions affecting individual Class members, if any. These common questions include, but are not limited to, the following:

- a. Whether JCPenney sent commercial emails with false or misleading information in the subject lines;
- b. Whether JCPenney initiated the transmission or conspired to initiate the transmission of such commercial emails to recipients residing in Washington State;
- c. Whether JCPenney should be ordered to pay statutory damages to

it sends to people around the country. *See State v. Heckel*, 122 Wash. App. 60, 69 (2004) (holding as a matter of law that a defendant had a reason to know that he sent emails to Washington residents by sending over 100,000 emails a week to people around the country).

1 Plaintiff and Class members; and

2 d. Whether JCPenney should be enjoined from further engaging in the
3 misconduct alleged herein.

4 67. **Typicality.** Plaintiff's claims are typical of Class members' claims. Defendant
5 transmitted, conspired to transmit, or assisted to transmit emails with false or misleading
6 information in the subject line to Plaintiff and to each Class member. Plaintiff and Class
7 members all bring the same claims and face the same potential defenses.

8 68. **Adequacy.** Plaintiff and her counsel will fairly and adequately protect Class
9 members' interests. Plaintiff has no interests antagonistic to Class members' interests and is
10 committed to representing the best interests of the Class members. Moreover, Plaintiff has
11 retained counsel with considerable experience and success in prosecuting complex class action
12 and consumer protection cases.

13 69. **Superiority.** A class action is superior to all other available methods for fairly
14 and efficiently adjudicating this controversy. Each Class member's interests are small
15 compared to the burden and expense required to litigate each of his or her claims individually,
16 so it would be impractical and would not make economic sense for Class members to seek
17 individual redress for Defendant's conduct. Individual litigation would add administrative
18 burden on the courts, increasing the delay and expense to all parties and to the court system.
19 Individual litigation would also create the potential for inconsistent or contradictory judgments
20 regarding the same uniform conduct. A single adjudication would create economies of scale
21 and comprehensive supervision by a single judge. Moreover, Plaintiff does not anticipate any
22 difficulties in managing a class action trial.

23 70. By its conduct and omissions alleged herein, JCPenney has acted and refused to
24 act on grounds that apply generally to the Class members, such that final injunctive relief
25 and/or declaratory relief is appropriate respecting the Class as a whole.

26 71. JCPenney is primarily engaged in the business of selling goods. Each cause of
27 action asserted by Plaintiff against JCPenney in this Complaint arises out of and is limited to
28 communications related to JCPenney's sale of goods.

CAUSES OF ACTION

COUNT I

**Violation of the Washington Consumer Protection Act
RCW Chapter 19.86**

72. Plaintiff realleges and incorporates by reference all paragraphs previously alleged herein.

73. Plaintiff pleads this count in three separate capacities: in her individual capacity, as a private attorney general, and as a proposed class representative serving on behalf of all others similarly situated.

74. The Washington Consumer Protection Act (the “CPA”), RCW 19.86, is Washington’s principal consumer protection statute. The CPA’s primary substantive provision declares unfair methods of competition and unfair or deceptive acts or practices to be unlawful. RCW 19.86.020.

75. The CPA recognizes and incorporates *per se* violations. “Per se CPA violations are predicated on the Legislature’s recognition that certain conduct is categorically against the public interest.” *Brown v. Old Navy, LLC*, 567 P.3d 38, 46 (Wash. 2025). The Washington Legislature routinely prohibits certain specified conduct but, instead of, or in addition to, creating a new and independent private right of action to enforce the prohibition, the Legislature deems the unlawful conduct to be a *per se* violation of the CPA.

76. If a defendant engages in that unlawful conduct, a plaintiff may file a CPA complaint alleging the *per se* violation and seek the remedies available under the CPA and/or the remedies available under the statute which forbids the *per se* violation. *See* Washington Pattern Jury Instruction Civil No. 310.03 (*Per Se* Violation of Consumer Protection Act) and Appendix H (Consumer Protection Act *Per Se* Violations).

77. A plaintiff can plead a violation of the CPA by pleading that the CPA was violated *per se* due to a violation of the Washington Commercial Electronic Mail Act (“CEMA”). *See Brown*, 567 P.3d at 42 (“A violation of CEMA’s e-mail regulations is a per se violation of the Consumer Protection Act (CPA).”); *see also* RCW 19.190.030(1)(b) (“It is a violation of the consumer protection act, chapter 19.86 RCW . . . to initiate the transmission of

1 a commercial electronic mail message that . . . [c]ontains false or misleading information in the
2 subject line.”).

3 78. CEMA prohibits a person from initiating the transmission to an email address
4 that the sender knows or has reason to know is held by a Washington State resident of a
5 commercial email that contains false or misleading information in the email’s subject line.
6 RCW 19.190.020(1)(b). The Washington Supreme Court has held that this includes subject
7 lines with *any* false or misleading information. *Brown*, 567 P.3d at 47 (“[CEMA] prohibits
8 sending Washington residents commercial e-mails that contain *any* false or misleading
9 information in the subject lines of such e-mails.”) (emphasis in original).⁴

10 79. “CEMA was enacted to protect concrete interests in being free from deceptive
11 commercial e-mails. CEMA’s prohibition on sending commercial e-mails with false or
12 misleading subject lines . . . creates a substantive right to be free from deceptive commercial e-
13 mails.” *Harbers v. Eddie Bauer, LLC*, 415 F. Supp. 3d 999, 1011 (W.D. Wash. Nov. 27, 2019)
14 (holding that the plaintiff sufficiently pleaded a concrete injury-in-fact for alleged CEMA
15 violations based on her receipt of marketing emails from defendant containing allegedly false
16 “xx% off” statements in the subject line); *see also Brown*, 567 P.3d at 45 (“CEMA sought to
17 give consumers relief from commercial spam e-mail by requiring accuracy and truthfulness in
18 the subject lines of such e-mails.”).

19 80. Under CEMA, it is irrelevant whether the commercial emails were solicited.
20 *Harbers*, 415 F. Supp. 3d at 1011.

21 81. Generally, a plaintiff pleading a claim under the CPA must plead five necessary
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 and property, and (5) causation. *Wright v. Lyft*,

24 ⁴ CEMA also prohibits a person from initiating the transmission from a computer located
25 in Washington State of a commercial electronic mail message which contains false or
26 misleading information in the subject line. RCW 19.190.020(1)(b). Plaintiff is not alleging a
27 CEMA violation under this prong because, as of the filing of this lawsuit, she does not possess
28 information that the offending emails were transmitted from a computer located in Washington
State. Plaintiff reserves the right to seek to amend this pleading in the event that she obtains
information, through discovery or otherwise, which indicates that the offending emails were
transmitted from a computer located in Washington State.

1 *Inc.*, 189 Wn.2d 718, 728 (2017). **Because Plaintiff alleges a *per se* CPA violation by**
 2 **alleging a CEMA violation, all of these five elements are satisfied as a matter of law.** *Id.* at
 3 724; *see also Brown*, 567 P.3d at 42.

4 82. “Under CEMA, the injury is receiving an e-mail that violates its regulations.”
 5 *Brown*, 2025 WL 1132243, at *2. Accordingly, **“CEMA does not require a showing of**
 6 **injury for statutory damages to be awarded because the injury is receiving the e-mail that**
 7 **violates CEMA.”** *Id.* at 45 (emphasis added); *see also Wright*, 189 Wn.2d at 729 (“[CEMA]
 8 does not condition the award of damages on proving either injury or causation. In fact, damages
 9 for CEMA violations are *automatic*.”) (emphasis in original).

10 83. A plaintiff who successfully pleads and proves a CEMA violation as a *per se*
 11 violation of the CPA may recover the remedies which the plaintiff chooses to seek that are
 12 available under the CPA (e.g., injunctive relief, treble damages, attorneys’ fees and costs (RCW
 13 19.86.090)) and/or the remedies available under CEMA (e.g., statutory damages of \$500 per
 14 email sent in violation of CEMA and injunctive relief (RCW 19.190.040, RCW 19.190.090)).

15 84. **“Unlike the CPA, CEMA’s \$500 penalty does not require a showing of**
 16 **actual damages.”** *Brown*, 567 P.3d at 42 (emphasis added). A person is entitled to \$500
 17 statutory damages “anytime a prohibited message is transmitted.” *Harbers*, 415 F. Supp. 3d at
 18 1009; *see also In re Classmates.com Consol. Litig.*, No. C09-45RAJ, 2011 WL 744664, at *7
 19 (W.D. Wash. Feb. 23, 2011) (“[CEMA] provides statutory damages of \$500 for every email
 20 that violates it.”).

21 85. JCPenney is a “person” within the meaning of CEMA. RCW 19.190.010(11).

22 86. JCPenney has initiated the transmission, conspired with another to initiate the
 23 transmission, and/or assisted the transmission of numerous commercial emails with subject
 24 lines containing false or misleading information to Plaintiff and the Class. RCW
 25 19.190.030(1)(b).

26 87. The subject lines of JCPenney’s emails contained materially false or misleading
 27 information.

28 88. The false or misleading information in the subject lines of JCPenney’s emails

1 was intended to, or had the capacity to, deceive a substantial portion of the public.

2 89. The emails were electronic mail messages, in that they were emails sent to an
3 email address; the emails also referred to an internet domain, whether or not displayed, to
4 which an email can or could be sent or delivered. RCW 19.190.010(5).

5 90. The emails were “commercial electronic mail messages,” in that they were sent
6 for the purpose of promoting goods or services for sale or lease. RCW 19.190.010(2).

7 91. JCPenney was the original sender of the emails.

8 92. Plaintiff and the Class members each received the emails at their electronic mail
9 addresses, which are the destinations, commonly expressed as a string of characters, at which
10 they receive and to which electronic mail may be sent or delivered. RCW 19.190.010(4).

11 93. JCPenney initiated the transmission, conspired with another to initiate the
12 transmission, and/or assisted the transmission of the emails to one or more email addresses that
13 JCPenney knew, or had reason to know, was held by a Washington State resident, i.e., Plaintiff
14 and members of the Class.

15 94. At all relevant times, JCPenney knew, or had reason to know, that the intended
16 recipients (Plaintiff and members of the Class) were residents of the State of Washington
17 because, without limitation: (1) JCPenney possessed actual knowledge of Plaintiff’s and each
18 Class member’s state of residence; (2) JCPenney possessed constructive knowledge of
19 Plaintiff’s and each Class member’s state of residence; (3) information was available to
20 JCPenney upon request from the registrant of the internet domain name contained in each
21 recipient’s email address; and/or (4) JCPenney otherwise knew or should have known or had
22 reason to know that Plaintiff and the members of the Class were residents of the State of
23 Washington.

24 95. For example, without limitation, JCPenney knew or had reason to know that it
25 sent emails to Washington residents because the vast majority of consumers who receive
26 commercial emails from JCPenney have provided JCPenney with their shipping address and
27 billing address when they placed an order online and/or when they created an online account.
28

1 96. JCPenney engaged in a pattern and practice of violating CEMA. As a result of
 2 JCPenney's acts and omissions, Plaintiff and Class members are entitled to \$500 in statutory
 3 damages for each and every email that violated CEMA that was transmitted to them. Plaintiff
 4 and Class members are also entitled to recover actual damages, treble damages, and attorneys'
 5 fees and costs, pursuant to RCW 19.86.090.

6 97. Treble damages are appropriate under these circumstances because, without
 7 limitation, JCPenney's misconduct has been "an ongoing course of conduct affecting thousands
 8 of consumers" and thus has a "strong public interest impact." *See Matheny v. Unumprovident*
 9 *Corp.*, 594 F. Supp. 2d 1212, 1225 (E.D. Wash. 2009).

10 98. **Permanent public injunctive relief.** Plaintiff, acting as a private attorney
 11 general, seeks public injunctive relief under the CPA to protect the general public from
 12 JCPenney's misconduct.

13 99. The Washington Supreme Court treats consumers as "private attorneys general,"
 14 and has held that consumers' ability to enjoin unlawful conduct is a primary purpose of the
 15 CPA:

16 Private actions by private citizens are ... an integral part of CPA enforcement.
 17 **Private citizens act as private attorneys general** in protecting the public's
 18 interest against unfair and deceptive acts and practices in trade and commerce.
 19 **Consumers bringing actions under the CPA do not merely vindicate their
 own rights; they represent the public interest and may seek injunctive
 relief even when the injunction would not directly affect their own
 private interests."**

20 *Scott v. Cingular Wireless*, 160 Wash. 2d 843, 161 P.3d 1000, 1006 (2007) (emphasis added).

21 100. This type of injunctive relief has been referred to as "public injunctive relief."
 22 *See McGill v. Citibank, N.A.*, 2 Cal. 5th 945, 393 P.3d 85, 90 (2017) ("[P]ublic injunctive relief
 23 ... is relief that has 'the primary purpose and effect of' prohibiting unlawful acts that threaten
 24 future injury to the general public.") (quoting *Broughton v. Cigna Healthplans of California*, 21
 25 Cal. 4th 1066, 988 P.2d 67, 74 (1999)). The *Broughton* court likewise referred to consumers
 26 seeking public injunctive relief as "private attorneys general." *See Broughton*, 21 Cal. 4th at
 27 1077.

1 101. JCPenney's misconduct, which affects and harms the general public, is ongoing
2 in part or in whole and even if such conduct were to cease, it is behavior that is capable of
3 repetition or re-occurrence by JCPenney absent a permanent public injunction. Accordingly,
4 Plaintiff seeks an order enjoining JCPenney from committing the unlawful conduct alleged
5 herein.

6 102. The balance of the equities favors the entry of permanent public injunctive relief
7 against JCPenney. Plaintiff, the members of the Class, honest competing businesses, and the
8 general public will be irreparably harmed from JCPenney's ongoing misconduct absent the
9 entry of permanent public injunctive relief against JCPenney.

10 103. Plaintiff lacks an adequate remedy at law to prevent JCPenney from engaging in
11 the unlawful conduct alleged herein. Plaintiff continues to receive commercial emails from
12 JCPenney, and she wants to continue receiving commercial emails from JCPenney in the
13 future, provided that the subject lines of the emails do not contain false or misleading
14 information. Plaintiff will be harmed if, in the future, she receives commercial emails from
15 JCPenney that have false or misleading information in their subject lines.

16 104. Monetary damages are not an adequate remedy at law for future harm. *Clark v.*
17 *Eddie Bauer LLC*, 2024 WL 177755, at *3 (9th Cir. Jan. 17, 2024). Monetary damages are
18 inadequate for future harm for the following reasons, without limitation: First, damages are not
19 an adequate remedy for future harm because they will not prevent JCPenney from engaging in
20 its unlawful conduct. Second, damages for future harm cannot be calculated with certainty and
21 thus cannot be awarded. For example, it is impossible to know how many violative emails
22 JCPenney will send Plaintiff in the future. Third, injunctive relief is necessary (and monetary
23 damages do not provide a plain, adequate and complete remedy) because, without forward-
24 looking injunctive relief enjoining the unlawful conduct, the courts may be flooded with future
25 lawsuits by Class members, Plaintiff, and the general public for future violations of the law by
26 JCPenney.

COUNT II
Violation of the Washington Commercial Electronic Mail Act
RCW Chapter 19.190

105. Plaintiff realleges and incorporates by reference all paragraphs alleged hereinabove.

106. Plaintiff pleads this count in three separate capacities: in her individual capacity, as a private attorney general, and as a proposed class representative serving on behalf of all others similarly situated.

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

108. JCPenney has violated CEMA on the grounds alleged in Count I above.

109. For the reasons alleged in Count I, Plaintiff seeks, and may obtain, a permanent public injunction against JCPenney.

PRAYER FOR RELIEF

A. Plaintiff Julie Arcand, on behalf of herself individually, as a private attorney general, and/or on behalf of the proposed Class, requests that the Court order relief and enter judgment against JCPenney as follows:

1. Declare this action to be a proper class action, certify the proposed Class, and appoint Plaintiff and her counsel to represent the Class;

2. Permanently enjoin JCPenney from engaging in the unlawful conduct alleged herein, pursuant to, without limitation, RCW 19.86.090; RCW 19.190.090(1);

1 3. Order JCPenney to pay Plaintiff and each member of the Class statutory
2 damages of \$500 for each and every commercial email that JCPenney transmitted to them that
3 contained false or misleading information in the subject line in violation of CEMA pursuant to,
4 without limitation, RCW 19.190.020(1)(b), RCW 19.190.030(1)(b), RCW 19.190.040(1);

5 4. Order JCPenney to pay treble damages pursuant to RCW 19.86.090;

6 5. Order JCPenney to pay attorneys' fees, costs, and pre-judgment and
7 post-judgment interest to the extent allowed by law; and

8 6. Grant such other relief as this Court deems just and proper.

9
10 Respectfully submitted on July 1, 2025, by:

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