

FILED
2025 SEP 10 10:28 AM
KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE #: 25-2-26334-7 SEA

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

VALERIE HALEY, on her own behalf and on
behalf of others similarly situated,

Plaintiff,

vs.

TOMMY BAHAMA GROUP, INC.,

Defendant.

Case No.: _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Valerie Haley, on her own behalf and on behalf of others similarly situated, on information and belief except to her own experiences and matters of public record, complains of Defendant Tommy Bahama Group, Inc., ("Tommy Bahama") as follows:

I. INTRODUCTION

1. In 1998, to protect Washington consumers from the annoyance and harassment caused by the burgeoning spam email industry, the Washington State Legislature enacted the Commercial Electronic Mail Act (CEMA), codified at chapter 190 of title 19 of the Revised Code of Washington (RCW).

2. Among other things, CEMA prohibits transmitting a commercial email with "false or misleading information in the subject line" to the email address of a Washington resident. RCW 19.190.020(1)(b).

3. Defendant Tommy Bahama, a clothing retailer, engages in the precise activity

1 which CEMA prohibits.

2 4. Tommy Bahama spams Washington consumers, including Plaintiff, with
3 commercial emails whose subject lines employ various tactics to create a false sense of urgency in
4 consumers' minds—and ultimately, from consumers' wallets.

5 5. This false urgency wastes consumers' time by enticing them to engage with Tommy
6 Bahama's marketing efforts for fear of missing out. It also floods consumers' email inboxes with
7 repeated false notifications that the time to act—*i.e. purchase*—is short.

8 6. And through this deceptive time-sensitivity, Tommy Bahama falsely narrows the
9 field—steering consumers away from shopping for better deals—to its own products that must be
10 purchased *now*.

11 7. Plaintiff challenges Tommy Bahama's harassment of Washington consumers with
12 deceptive marketing for violations of the Commercial Electronic Mail Act (RCW 19.190.020) and
13 the Consumer Protection Act (RCW 19.86.020) for injuries caused, additionally seeking injunctive
14 relief against such violations in the future.

15 II. JURISDICTION AND VENUE

16 8. The Court has jurisdiction of this case under RCW 2.08.010.

17 9. Venue is proper in King County under RCW 4.12.020(3) because Defendant resides
18 in King County.

19 III. PARTIES

20 10. Plaintiff Valerie Haley is a resident of Clark County, Washington.

21 11. Defendant Tommy Bahama Group, Inc., is a corporation incorporated in Delaware
22 with its principal place of business at 400 Fairview Avenue North, Suite 488, Seattle, WA 98109.

23 IV. FACTUAL ALLEGATIONS

24 A. CEMA protects Washington consumers from deceptive spam emails.

25 12. The Supreme Court of Washington has made clear: “[A]ll Internet users ... bear the
26 cost of deceptive spam.” *State v. Heckel*, 143 Wn. 2d 824, 835 (2001) (en banc).

1
2 13. In 1998, the Legislature found that the “volume of commercial electronic mail” was
3 “growing,” generating an “increasing number of consumer complaints.” Laws of 1998, ch. 149,
4 § 1.

5 14. In the nearly three decades since, the problems caused by unsolicited commercial
6 email, *i.e.* spam email, have grown exponentially.

7 15. The problems, however, are not limited to email content. Subject lines of emails are
8 framed to attract consumers’ attention away from the spam barrage to a message that entices
9 consumers to click and, ultimately, *purchase*.

10 16. In 2003, the United States Congress found that “[m]any senders of unsolicited
11 commercial electronic mail purposefully include misleading information in the messages’ subject
12 lines in order to induce the recipients to view the messages.” 15 U.S.C. § 7701(a)(8).

13 17. In 2012, one study estimated that Americans bear “costs of almost \$20 billion
14 annually” due to unsolicited commercial email. Justin M. Rao & David H. Reiley, *The Economics*
15 *of Spam*, 26 J. of Econ. Perspectives 87, 88 (2012).

16 18. Even when bulk commercial email marketers are operating under color of consumer
17 consent, the reality is that “[m]ost privacy consent”—especially under the “notice-and-choice”
18 approach predominant in the United States—“is a fiction.” Daniel J. Solove, *Murky Consent: An*
19 *Approach to the Fictions of Consent in Privacy Law*, 104 Boston Univ. L. Rev. 593, 596 (2024).

20 19. Consumers therefore routinely “consent” to receive flurries of commercial emails
21 which they did not meaningfully request and in which they have no genuine interest.

22 20. This includes emails sent to consumers from businesses with which they have no
23 prior relationship—by virtue of commercial data brokers and commercial data sharing agreements.

24 21. Simply conducting the routine affairs of daily life often exposes consumers to
25 unanticipated and unwanted volumes of commercial email. “Nowadays, you need an email address
26 for everything from opening a bank account to getting your dog’s nails trimmed, and ... [o]nce
27 you hand over your email address, companies often use it as an all-access pass to your inbox:

1
 1 Think of shopping websites that send account updates, deals, ‘we miss you’ messages, and holiday
 2 promotions throughout the year. It’s too much.” Kaitlyn Wells, *Email Unsubscribe Services Don’t*
 3 *Really Work*, N.Y. Times Wirecutter (Aug. 19, 2024), <https://perma.cc/U8S6-R8RU/>.

4 22. The Legislature presciently intended CEMA to “provide some immediate relief”
 5 for these problems by prohibiting among other things commercial emails that “contain untrue or
 6 misleading information in the subject line.” Laws of 1998, ch. 149, § 1.

7 23. CEMA thereby protects Washington consumers against the “harms resulting from
 8 deceptive commercial e-mails,” which “resemble the type of harms remedied by nuisance or fraud
 9 actions.” *Harbers v. Eddie Bauer, LLC*, 415 F. Supp. 3d 999, 1008 (W.D. Wash. 2019).

10 24. CEMA’s “truthfulness requirements” increase the costs of sending deceptive
 11 commercial emails and thereby reduce their volume. *Heckel*, 143 Wn. 2d at 836.

12 25. CEMA’s “truthfulness requirements” thereby advance the statute’s aim of
 13 protecting consumers “from the problems associated with commercial bulk e-mail” while
 14 facilitating commerce “by eliminating fraud and deception.” *Id.*

15 26. CEMA “mean[s] exactly what it says”: in “broad” but “patently clear” language,
 16 CEMA unambiguously prohibits “sending Washington residents commercial e-mails that
 17 contain *any* false or misleading information in the subject lines of such e-mails.” *Certification from*
 18 *U.S. Dist. Ct. for W. Dist. of Wash. in Brown v. Old Navy, LLC*, 567 P.3d 38, 44, 46–47 (Wash.
 19 2025).

20 27. CEMA’s protections do not depend on whether any email was (really or fictively)
 21 solicited by consumers, nor on whether consumers relied on any false or misleading statement
 22 contained in its subject line. *See Harbers*, 415 F. Supp. 3d at 1011.

23 28. The statute’s only concern is to suppress false or misleading information in the
 24 subject line of commercial emails. *See Brown*, 567 P.3d at 44–45.

25 \\\

26 \\\

B. The subject lines of Defendant's marketing emails make false time scarcity claims.

29. One common way online marketers “manipulate consumer choice by inducing false beliefs” is to create a false sense of urgency or to falsely claim that consumers’ time to act is scarce. Fed. Trade Comm’n, *Bringing Dark Patterns to Light* 4 (2022), <https://perma.cc/847M-EY69/>; see also U.K. Competition & Mkts. Auth., *Online Choice Architecture—How Digital Design Can Harm Competition and Consumers* 26 (2022), <https://perma.cc/V848-7TVV/>.

30. The FTC has identified the “False Limited Time Message” as one example of false time scarcity claims, in which the marketer creates “pressure to buy immediately by saying the offer is good only for a limited time or that the deal ends soon—but without a deadline or with a meaningless deadline that just resets when reached.” *Bringing Dark Patters to Light*, *supra* para. 29, at 22.

31. False scarcity claims are psychologically effective. As “considerable evidence” suggests, “consumers react to scarcity and divert their attention to information where they might miss opportunities.” *Online Choice Architecture*, *supra* para. 29, at 26.

32. Invoking this time pressure achieves a seller’s aim to narrow the field of competitive products and deals, by “induc[ing] consumers to rely on heuristics (mental shortcuts), like limiting focus to a restricted set of attributes or deciding based on habit.” *Id.*

33. Under time pressure, “consumers might take up an offer to minimise the uncertainty of passing it up.” *Id.*

34. False time scarcity claims thus *harm consumers* by manipulatively distorting their decision-making to *their detriment—and the seller’s benefit*.

35. Indeed, one 2019 study found that “customers who took timed deals rather than waiting to see wider options ended up worse off than those who waited.” *Id.* at 27.

36. False time scarcity claims also harm market competition. Consumers learn to ignore scarcity claims, “meaning that when a product [or offer] is truly scarce, the seller will not be able

1
2 to credibly communicate this information.” *Id.*

3 37. False time scarcity claims are a staple of Tommy Bahama’s email scheme to compel
4 consumers to purchase its products.

5 38. Tommy Bahama is practiced in this trick of luring in consumers through urgent
6 subject headings in emails that do not reflect the true availability of the deal itself, as the following
7 examples demonstrate.

8 39. For example, on August 9, 2025, Tommy Bahama sent consumers a mass
9 commercial email with the subject line, “2 Days Only! Get Early Access to 25% OFF”. The email
10 announced a “Friends & Family” sale offering 25 percent discounts.

11 40. The subject line of this August 9 email was false and misleading.

12 41. As subsequent emails illustrate, Tommy Bahama’s “Early Access” marketing is a
13 sham designed to break up the same 25 percent off sale into two phases, allowing Tommy Bahama
14 twice the opportunities to create time pressure in consumers’ minds. In fact, consumers could
15 receive 25 percent off as late as August 17, a week after the end of “Early Access.”

16 42. At the end of the same day, August 9, 2025, Tommy Bahama sent consumers a mass
17 commercial email with the subject line, “ENDS TOMORROW! Early Access to 25% Off”.

18 43. The subject line of this August 9 email was false and misleading.

19 44. As noted above, no sale or promotion was in fact “ending tomorrow.”

20 45. The next day, August 10, 2025, Tommy Bahama sent consumers a mass commercial
21 email with the subject line, “Final Day for First Dibs & 25% OFF”.

22 46. The subject line of this August 10 email was false and misleading.

23 47. As noted above, August 10 wasn’t the “final day” for anything; an identical
24 promotion would continue until August 17.

25 48. At the end of the same day, August 10, 2025, Tommy Bahama sent consumers a
26 mass commercial email with the subject line, “Final Hours for Early Access to 25% OFF”.

27 49. The subject line of this August 10 email was false and misleading.

1
2 50. As noted above, nothing was ending on August 10 except Tommy Bahama's
fictitious "Early Access" to a sale it intended to and did run from August 8 through August 17.

3 51. On August 11, 2025, Tommy Bahama sent consumers a mass commercial email
4 with the subject line, "👑 25% Off at Our Friends & Family Event". This fictitious "start" to the
5 "Friends & Family Event" allowed Tommy Bahama to send *eight* further emails between August
6 11 and August 17 creating time pressure in consumers' minds with phrases like "Almost Over!",
7 "FINAL WEEKEND", "LAST CALL!", and "Just Hours Left!"

8 52. In short, Tommy Bahama's "Early Access" scheme allowed it to create two distinct
9 peaks of time pressure, imposed by no fewer than twelve emails, for one modest nine-day sale.

10 53. This fictitious "Early Access" scheme is a favorite of Tommy Bahama's. It
11 deployed same anti-consumer strategy twice in 2024 and once in 2023.

12 54. These and other examples of the commercial emails that Tommy Bahama has sent
13 consumers containing subject lines with false or misleading statements are attached to this Class
14 Action Complaint as Exhibit A.

15 **C. Tommy Bahama knows when it sends emails to Washington residents.**

16 55. A sophisticated commercial enterprise, like Tommy Bahama, which is engaged in
17 persistent marketing through mass email campaigns across the United States has several ways of
18 knowing where the recipients of its marketing emails are located. The means it employs are
19 peculiarly within its knowledge.

20 56. First, the sheer volume of email marketing that Tommy Bahama engages in put it
21 on notice that Washington residents would receive its emails. From 2022 to 2024, Tommy Bahama
22 sent marketing emails at a rate averaging roughly (at least) 542 per year, 45 per month, and 3 every
23 other day.

24 57. Second, Tommy Bahama may obtain location information tied to email addresses
25 when consumers make purchases from Tommy Bahama through digital platforms, including the
26 Tommy Bahama website, or otherwise self-report such information to Tommy Bahama.

1
2 58. Third, Tommy Bahama may obtain location information tied to email addresses by
3 tracking the IP addresses of devices used to open its emails, which in turn can be correlated to
4 physical location (as illustrated, for example, by the website <https://whatismyipaddress.com/>).

5 59. Specifically, Tommy Bahama appears to use Klaviyo to manage its email marketing
6 campaigns. Klaviyo's analytics appear to track recipients' locations and IP addresses. Tommy
7 Bahama is likely able to infer the general geographic location of recipients by state based on their
8 IP address at the time of email open or link click.

9 60. Fourth, Tommy Bahama may obtain location information tied to email addresses
10 by purchasing consumer data from commercial data brokers such as Acxiom, Oracle, and Equifax,
11 which sell access to databases linking email addresses to physical locations, among other
12 identifiers.

13 61. Fifth, Tommy Bahama may obtain location information tied to email addresses by
14 using "identity resolution" services offered by companies such as LiveRamp, which can connect
15 consumers' email addresses to their physical locations, among other identifiers.

16 62. Sixth, Tommy Bahama may obtain information that the recipients of its marketing
17 emails are Washington residents because that information is available, upon request, from the
18 registrant of the Internet domain names contained in the recipients' email addresses. *See*
19 RCW 19.190.020(2).

20 63. It is thus highly probable that a seller with the size and sophistication of Tommy
21 Bahama employs not just one but several means of tying consumers' email addresses to their
22 physical locations, at least at the state level.

23 **D. Tommy Bahama violated Plaintiff Haley's right under CEMA to be free from**
24 **deceptive commercial emails.**

25 64. Tommy Bahama has spammed Plaintiff Haley with commercial emails whose
26 subject lines contain false or misleading statements in violation of her right to be free from such
27 annoyance and harassment under CEMA.

1
1 65. For example, Haley received the series of deceptive emails relating to the August
2 2025 "Friends & Family" sale described at paragraphs 39–52 above, including the August 10,
3 2025, emails described at paragraph 45 and 48 above, at 5:01 a.m. and 3:00 p.m., respectively, at
4 a personal email address.

5 66. These emails' subject lines were false or misleading in violation of CEMA for
6 misrepresenting the timing of the deals.

7 67. These emails' subject lines contained false statements of fact as to the "duration or
8 availability of a promotion." *Brown*, 567 P.3d at 47.

9 V. CLASS ALLEGATIONS

10 68. Plaintiff brings this action under Civil Rule 23 on behalf of the following putative
11 class ("Class"):

12 All Washington citizens holding an email address to which
13 Defendant sent or caused to be sent any email listed in Exhibit A
14 during the Class Period.

15 69. Excluded from this definition of the Class are Defendant's officers, directors, and
16 employees; Defendant's parents, subsidiaries, affiliates, and any entity in which Defendant has a
17 controlling interest; undersigned counsel for Plaintiff; and all judges and court staff to whom this
18 action may be assigned, as well as their immediate family members.

19 70. The Class Period extends from the date four years before this Class Action
20 Complaint is filed to the date a class certification order is entered in this action.

21 71. Plaintiff reserves the right to amend the Class definition as discovery reveals
22 additional emails containing false or misleading information in the subject line that Defendant sent
23 or caused to be sent during the Class Period to email addresses held by Washington residents.

24 72. The Class is so numerous that joinder of all members is impracticable because the
25 Class is estimated to minimally contain thousands of members.

26 73. There are questions of law or fact common to the class, including without limitation
27

1
2 whether Defendant sent commercial emails containing false or misleading information in the
3 subject line; whether Defendant sent such emails to email addresses it knew or had to reason to
4 know were held by Washington residents; whether Defendant's conduct violated CEMA; whether
5 Defendant's violation of CEMA constituted a *per se* violation of the Consumer Protection Act,
6 RCW 19.86.020 (CPA); and whether Defendant should be enjoined from such conduct.

7 74. Plaintiff's claims are typical of the Class's because, among other reasons, Plaintiff
8 and Class members share the same statutory rights under CEMA and the CPA, which Defendant
9 violated in the same way by the uniform false or misleading marketing messages it sent to all
10 putative members.

11 75. Plaintiff will fairly and adequately protect the Class's interests because, among
12 other reasons, Plaintiff shares the Class's interest in avoiding unlawful false or misleading
13 marketing; has no interest adverse to the Class; and has retained competent counsel extensively
14 experienced in consumer protection and class action litigation.

15 76. Defendant has acted on grounds generally applicable to the Class, in that, among
16 other ways, it engaged in the uniform conduct of sending uniform commercial emails to Plaintiff
17 and the Class, which violate CEMA and the CPA in the same way, and from which it may be
18 enjoined as to Plaintiff and all Class members, thereby making appropriate final injunctive relief
19 with respect to the Class as a whole.

20 77. The questions of law or fact common to the members of the Class predominate over
21 any questions affecting only individual members, in that, among other ways, Defendant has
22 violated their rights under the same laws by the same conduct, and the only matters for individual
23 determination are the number of false or misleading emails received by each Class member and
24 that Class member's resulting damages.

25 78. A class action is superior to other available methods for the fair and efficient
26 adjudication of the controversy because, among other reasons, the claims at issue may be too small
27 to justify individual litigation and management of this action as a class action presents no special

difficulties.

VI. CLAIMS TO RELIEF

First Claim to Relief

Violation of the Commercial Electronic Mail Act, RCW 19.190.020

79. Plaintiff incorporates and realleges paragraphs 1–67 above.

80. CEMA provides that “[n]o person may initiate the transmission, conspire with another to initiate the transmission, or assist the transmission, of a commercial electronic mail message ... to an electronic mail address that the sender knows, or has reason to know, is held by a Washington resident that ... [c]ontains false or misleading information in the subject line.” RCW 19.190.020(1)(b).

81. Defendant is a “person” within the meaning of CEMA. RCW 19.190.010(11).

82. Defendant initiated the transmission, conspired with another to initiate the transmission, or assisted the transition of “commercial electronic mail messages” within the meaning of CEMA. RCW 19.190.010(2).

83. Defendant initiated the transmission, conspired with another to initiate the transmission, or assisted the transmission of such messages to electronic mail addresses that Defendant knew, or had reason to know, were held by Washington residents, including because Defendant knew that Plaintiff and putative members were Washington residents as such “information is available, upon request, from the registrant of the internet domain name contained in the recipient’s electronic mail address.” RCW 19.190.020(b)(2).

84. Defendant initiated the transmission, conspired with another to initiate the transmission, or assisted the transmission of such messages that contained false or misleading information in the subject line, as described herein, in violation of CEMA. RCW 19.190.020(1)(b).

85. For Defendant’s violation of CEMA, Plaintiff is entitled to all available relief, including an injunction against further violations.

Second Claim to Relief

Violation of the Consumer Protection Act, RCW 19.86.020

86. Plaintiff incorporates and realleges paragraphs 1–67 above.

87. The CPA provides that “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” RCW 19.86.020.

88. A violation of CEMA is a *per se* violation of the CPA. RCW 19.190.030.

89. A violation of CEMA establishes all the elements necessary to bring a private action under the CPA. *Wright v. Lyft*, 189 Wn. 2d 718 (2017).

90. CEMA provides that “[n]o person may initiate the transmission, conspire with another to initiate the transmission, or assist the transmission, of a commercial electronic mail message ... to an electronic mail address that the sender knows, or has reason to know, is held by a Washington resident that ... [c]ontains false or misleading information in the subject line.” RCW 19.190.020(1)(b).

91. Defendant is a “person” within the meaning of CEMA. RCW 19.190.010(11).

92. Defendant initiated the transmission, conspired with another to initiate the transmission, or assisted the transition of “commercial electronic mail messages” within the meaning of CEMA. RCW 19.190.010(2).

93. Defendant initiated the transmission, conspired with another to initiate the transmission, or assisted the transmission of such messages to electronic mail addresses that Defendant knew, or had reason to know, were held by Washington residents.

94. Defendant initiated the transmission, conspired with another to initiate the transmission, or assisted the transmission of such messages that contained false or misleading information in the subject line, as described herein, in violation of CEMA. RCW 19.190.020(1)(b).

95. For Defendant’s violation of the CPA, Plaintiff and putative members are entitled to an injunction against further violations; the greater of Plaintiff’s actual damages or liquidated damages of \$500 per violation, trebled; and costs of the suit, including a reasonable attorney’s fee.

VII. JURY DEMAND

96. Plaintiff will demand a jury trial by separate document in accordance with Local Civil Rule 38(b).

VIII. PRAYER FOR RELIEF

Plaintiff asks that the Court:

A. Certify the proposed Class, appoint Plaintiff as Class representative, and appoint undersigned counsel as Class counsel;

B. Enter a judgment in Plaintiff's and the Class's favor permanently enjoining Defendant from the unlawful conduct alleged;

C. Enter a judgment in Plaintiff's and the Class's favor awarding actual or liquidated damages, trebled, according to proof;

D. Award Plaintiff's costs of suit, including reasonable attorneys' fees; and

E. Order such further relief the Court finds appropriate.

[Attorney signature block to follow on next page.]

1
1 Date: September 10, 2025:

Respectfully submitted,

2 /s/ Samuel J. Strauss

3 Samuel J. Strauss, WSBA #46971

4 Raina C. Borrelli*

STRAUSS BORRELLI, LLP

980 N. Michigan Avenue, Suite 1610

5 Chicago, IL 60611

6 Tel.: (872) 263-1100

sam@straussborrelli.com

7 raina@straussborrelli.com

8 Lynn A. Toops*

9 Natalie A. Lyons*

Ian R. Bensberg*

COHENMALAD, LLP

10 One Indiana Square, Suite 1400

11 Indianapolis, IN 46204

12 Tel.: (317) 636-6481

ltoops@cohenmalad.com

13 ibensberg@cohenmalad.com

14 Gerard J. Stranch, IV*

Michael C. Tackeff*

STRANCH, JENNINGS &

GARVEY, PLLC

16 223 Rosa L. Parks Avenue, Suite 200

17 Nashville, TN 37203

18 Tel.: (615) 254-8801

gstranch@stranchlaw.com

19 mtackeff@stranchlaw.com

Attorneys for Plaintiff

20 * Applications for admission *pro hac*
21 *vice* forthcoming