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

COLBY HUTTON and KELLEY RICE, on
behalf of themselves and all others similarly
situated,

Case No.: _____

CLASS ACTION COMPLAINT

Plaintiffs,

vs.

PODS ENTERPRISES, LLC,

Defendant.

Plaintiffs Colby Hutton and Kelley Rice, on behalf of themselves and all others similarly situated, on information and belief except to their own experiences and matters of public record, complaint of Defendant Pods Enterprises, LLC (“Pods”) 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

1 or misleading information in the subject line" to the email address of a Washington resident. RCW
 2 19.190.020(1)(b).

3 3. Defendant Pods engages in the precise activity which CEMA prohibits.

4 4. Pods spams Washington consumers, including Plaintiffs, with commercial emails
 5 whose subject lines employ various tactics to create a false sense of urgency in consumers' minds—
 6 and ultimately, from consumers' wallets.

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

10 6. And through this deceptive time-sensitivity, Pods falsely narrows the field—steering
 11 consumers away from shopping for better deals—to its own products and services which must be
 12 purchased *now*.

13 7. Plaintiffs challenge the defendant's harassment of Washington consumers with
 14 deceptive marketing for violations of the Commercial Electronic Mail Act (RCW 19.190.020) and
 15 the Consumer Protection Act (RCW 19.86.020) for injuries caused, additionally seeking injunctive
 16 relief against such violations in the future.

17 II. JURISDICTION AND VENUE

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

19 9. Venue is proper in King County under RCW 4.12.020(3) because Plaintiffs' cause
 20 of action, or some part thereof, arose in King County.

21 III. PARTIES

22 10. Plaintiff Colby Hutton is a resident of Snohomish County, Washington.

23 11. Plaintiff Kelley Rice is a resident of King County, Washington.

12. Defendant Pods Enterprises, LLC, is a Florida limited liability company with its principal office at 13535 Feather Sound Drive, FL 4, Clearwater, FL, 33762, and a registered agent in the State of Washington registered at: Corporate Creations Network, Inc., 707 W. Main Avenue #B1, Spokane, WA 99201.

IV. FACTUAL ALLEGATIONS

A. CEMA protects Washington consumers from deceptive spam emails.

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

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

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

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

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

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

19. Even when bulk commercial email marketers are operating under color of consumer consent, the reality is that “[m]ost privacy consent”—especially under the “notice-and-choice”

1 approach predominant in the United States—“is a fiction.” Daniel J. Solove, *Murky Consent: An*
 2 *Approach to the Fictions of Consent in Privacy Law*, 104 Boston Univ. L. Rev. 593, 596 (2024).

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

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

7 22. Simply conducting the routine affairs of daily life often exposes consumers to
 8 unanticipated and unwanted volumes of commercial email. “Nowadays, you need an email address
 9 for everything from opening a bank account to getting your dog’s nails trimmed, and … [o]nce you
 10 hand over your email address, companies often use it as an all-access pass to your inbox: Think of
 11 shopping websites that send account updates, deals, ‘we miss you’ messages, and holiday
 12 promotions throughout the year. It’s too much.” Kaitlyn Wells, *Email Unsubscribe Services Don’t*
 13 *Really Work*, N.Y. Times Wirecutter (Aug. 19, 2024), <https://perma.cc/U8S6-R8RU/>.

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

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

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

22 26. CEMA’s “truthfulness requirements” thereby advance the statute’s aim of protecting
 23 consumers “from the problems associated with commercial bulk e-mail” while facilitating

1 commerce “by eliminating fraud and deception.” *Id.*

2 27. CEMA “mean[s] exactly what it says”: in “broad” but “patently clear” language,
 3 CEMA unambiguously prohibits “sending Washington residents commercial e-mails that
 4 contain *any* false or misleading information in the subject lines of such e-mails.” *Certification from*
 5 *U.S. Dist. Ct. for W. Dist. of Wash. in Brown v. Old Navy, LLC*, 567 P.3d 38, 44, 46–47 (Wash.
 6 2025).

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

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

12 **B. The subject lines of Defendant’s marketing emails make false time scarcity
 13 claims.**

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

19 31. The FTC has identified the “False Limited Time Message” as one example of false
 20 time scarcity claims, in which the marketer creates “pressure to buy immediately by saying the offer
 21 is good only for a limited time or that the deal ends soon—but without a deadline or with a
 22 meaningless deadline that just resets when reached.” *Bringing Dark Patterns to Light*, *supra*
 23 para. 26, at 22.

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

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

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

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

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

13 37. False time scarcity claims also harm market competition. Consumers learn to ignore
 14 scarcity claims, “meaning that when a product [or offer] is truly scarce, the seller will not be able
 15 to credibly communicate this information.” *Id.*

16 38. These false time scarcity claims are a staple of the defendant’s email scheme to
 17 compel consumers to purchase its products.

18 39. **Urgent Spam Emails.** Pods is practiced in this trick of luring in consumers through
 19 urgent subject headings in emails that do not reflect the true availability of the deal itself, as these
 20 examples demonstrate:

21 40. Pods has established a pattern of using emails with subject lines meant to compel
 22 consumers to purchase their products or services promptly, or else lose the opportunity for savings.

23 41. Moving can be one of the most stressful experiences in a consumer’s life. Pods takes

1 advantage of this already-disruptive experience through its pattern of sending time-pressure emails
 2 to consumers, from one month to the next.

3 42. Just this year, on February 10, 2025, Pods sent an email with the heading: “Time is
 4 ticking! Sale ending soon for your move to Seattle.”

5 43. And again, the following month, on March 3, 2025, Pods used another misleading
 6 subject line, “ Final hours – Book your move to Seattle today!” to urge recipients to purchase the
 7 same services offered the month before.

8 44. Two time scarcity claims, however, would not suffice.

9 45. On April 7, 2025, Pods transmitted an email with the subject line: “A fresh sale just
 10 bloomed in Seattle!”

11 46. Yet again, on May 12, 2025, Pods sent an email titled: “Final days! Secure savings
 12 on your move to Seattle now.”

13 47. So, for a consumer considering a move to Seattle, time was ticking in February
 14 because the sale on moving services was “ending soon.” For Pods, however, the sale was nowhere
 15 near over. In March 2025, that same consumer was told the offer was in its “final hours.”

16 48. Then, in April 2025, another offer for services in Seattle “bloomed.” Once more,
 17 with its May 2025 transmission, Pods informed the consumer that the deadline to save was fast
 18 approaching. Clearly and despite the content of its subject lines, Pods offers such deals on a
 19 continuous basis.

20 49. Pods has been sending misleading emails like this for years.

21 50. On November 27, 2023, Pods transmitted an email with the subject heading: “
 22 FINAL HOURS! Last Chance to Save This Season” which communicated a 25% off offer for their
 23 services.

1 51. The red-light alarm emoji adds a misleading sense of urgency to the email.

2 52. As demonstrated by an email sent on November 28, 2023, and with the subject
3 heading “Did You Miss Out? Up to 25% Off is BACK!” the call to urgency on November 27 was
4 misleading because the reduced pricing would be offered once again on the very next day.

5 53. Pods continued to deploy this same strategy to mislead, bait, and switch in 2024.

6 54. On March 11, 2024, Pods sent an email with the subject line: “Up to 20% Off Ends
7 TONIGHT[.]”

8 55. But March 11, 2024, was not the last day on which consumers could obtain such a
9 discount.

10 56. Approximately one week later, on March 18, 2024, Pods again utilized the call for
11 immediate action in an email titled “⌚ Hurry! Last Day to Secure Up to 20%.”

12 57. The alarm clock emoji adds urgency to mislead consumers that the sale is actually
13 ending when it is not.

14 58. The misleading nature of these communications could not be clearer. A customer in
15 receipt of the March 11 email is urged to buy immediately because the subject line advises that the
16 reduced pricing is ending that evening. However, in roughly a week’s time, Pods would offer that
17 same discount yet again.

18 59. Pods continues to deploy this strategy in 2025.

19 60. On February 17, 2025, Pods sent an email with the subject heading: “This offer
20 expires at midnight! Don’t miss out” which communicated a 20% off offer for their services.

21 61. Yet, the following day, on February 18, 2025, Pods sent another email with the
22 subject line “Oops... We forgot to end the Sale! (Lucky you!)” confirming that the pressure to
23 purchase on February 17 was entirely contrived.

1 62. Pods did not “forget” the sale. The email was part of a business strategy to mislead
 2 consumers with deceptive sale-ending emails like the ones above, and others.

3 63. These examples of the commercial emails that Pods has sent consumers containing
 4 subject lines with false or misleading statements are attached to this Class Action Complaint as
 5 Exhibit A.

6 **C. Pods knows when it sends emails to Washington residents.**

7 64. A sophisticated commercial enterprise, like Pods, which is engaged in persistent
 8 marketing through mass email campaigns across the United States, has several ways of knowing
 9 where the recipients of its marketing emails are located. The means it employs are peculiarly within
 10 its knowledge.

11 65. First, the sheer volume of email marketing that Pods engages in put it on notice that
 12 Washington residents would receive its emails.

13 66. Second, Pods may obtain location information tied to email addresses when
 14 consumers make purchases from Pods through digital platforms, including the Pods website, or
 15 otherwise self-report such information to Pods.

16 67. Third, Pods may obtain location information tied to email addresses by tracking the
 17 IP addresses of devices used to open its emails, which in turn can be correlated to physical location
 18 (as illustrated, for example, by the website <https://whatismyipaddress.com/>).

19 68. Specifically, Pods appears to use Salesforce Marketing Cloud, and other third party
 20 applications, to manage its email marketing campaigns. These platforms should allow Pods to
 21 access a list of every email address that was sent a marketing email. It should also allow Pods to
 22 determine which email recipients viewed the emails and who clicked on any links within them.

23 69. Pods is likely able to infer the general geographic location of recipients by state

1 based on their IP address at the time of email open or link click.

2 70. Fourth, Pods may obtain location information tied to email addresses by purchasing
 3 consumer data from commercial data brokers such as Acxiom, Oracle, and Equifax, which sell
 4 access to databases linking email addresses to physical locations, among other identifiers.

5 71. Fifth, Pods may obtain location information tied to email addresses by using
 6 “identity resolution” services offered by companies such as LiveRamp, which can connect
 7 consumers’ email addresses to their physical locations, among other identifiers.

8 72. Sixth, Pods may obtain information that the recipients of its marketing emails are
 9 Washington residents because that information is available, upon request, from the registrant of the
 10 Internet domain names contained in the recipients’ email addresses. *See* RCW 19.190.020(2).

11 73. It is thus highly probable that a seller with the size and sophistication of Pods
 12 employs not just one but several means of tying consumers’ email addresses to their physical
 13 locations, at least at the state level.

14 **D. Pods violated Plaintiffs’ right under CEMA to be free from deceptive
 15 commercial emails.**

16 74. Pods has spammed Plaintiffs with commercial emails whose subject lines contain
 17 false or misleading statements in violation of their right to be free from such annoyance and
 18 harassment under CEMA.

19 75. Plaintiffs received several of the email promotions described in Section B, above.

- 20 a. Plaintiff Hutton received the November 27, 2023, email with the subject
 21 heading: “ FINAL HOURS! Last Chance to Save This Season[.]”
- 22 b. Plaintiff Hutton received the March 11, 2024, email with the subject heading:
 23 “Up to 20% Off Ends TONIGHT[.]”

c. Plaintiff Hutton received the March 18, 2024, email with the subject heading:

“🕒 Hurry! Last Day to Secure Up to 20% Off.”

d. Plaintiff Rice received the February 10, 2025, email with the subject line:

“Time is ticking! Sale ending soon for your move to Seattle.”

e. Plaintiffs Hutton and Rice received the February 17, 2025, email with the subject heading: "This offer expires at midnight! Don't miss out."

f. Plaintiff Rice received the March 3, 2025, email with the subject heading:

“Final hours – Book your move to Seattle today!”

g. Plaintiff Rice received the May 12, 2025, email with the subject heading:

“Final days! Secure savings on your move to Seattle now.”

76. These emails were false or misleading in violation of CEMA, for misrepresenting the timing of the deals, as described herein.

77. These emails contained false statements of fact as to the “duration or availability of a promotion.” *Brown*, 567 P.3d at 47.

V. CLASS ALLEGATIONS

78. Plaintiffs bring this action under Civil Rule 23 on behalf of the following putative class (“Class”):

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

79. Excluded from this definition of the Class are Defendant's officers, directors, and employees; Defendant's parents, subsidiaries, affiliates, and any entity in which Defendant has a controlling interest; undersigned counsel for Plaintiffs; and all judges and court staff to whom this

1 action may be assigned, as well as their immediate family members.

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

4 81. Plaintiffs reserve the right to amend the Class definition as discovery reveals
 5 additional emails containing false or misleading information in the subject line that Defendant sent
 6 or caused to be sent during the Class Period to email addresses held by Washington residents.

7 82. The Class is so numerous that joinder of all members is impracticable because the
 8 Class is estimated to minimally contain thousands of members.

9 83. There are questions of law or fact common to the class, including without limitation
 10 whether Defendant sent commercial emails containing false or misleading information in the
 11 subject line; whether Defendant sent such emails to email addresses it knew or had to reason to
 12 know were held by Washington residents; whether Defendant's conduct violated CEMA; whether
 13 Defendant's violation of CEMA constituted a *per se* violation of the Consumer Protection Act,
 14 RCW 19.86.020 (CPA); and whether Defendant should be enjoined from such conduct.

15 84. Plaintiffs' claims are typical of the Class's because, among other reasons, Plaintiffs
 16 and Class members share the same statutory rights under CEMA and the CPA, which Defendant
 17 violated in the same way by the uniform false or misleading marketing messages it sent to all
 18 putative members.

19 85. Plaintiffs will fairly and adequately protect the Class's interests because, among
 20 other reasons, Plaintiffs share the Class's interest in avoiding unlawful false or misleading
 21 marketing; have no interest adverse to the Class; and have retained competent counsel extensively
 22 experienced in consumer protection and class action litigation.

23 86. Defendant has acted on grounds generally applicable to the Class, in that, among
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1 other ways, it engaged in the uniform conduct of sending uniform commercial emails to Plaintiffs
2 and the Class, which violate CEMA and the CPA in the same way, and from which it may be
3 enjoined as to Plaintiffs and all Class members, thereby making appropriate final injunctive relief
4 with respect to the Class as a whole.

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

10 88. A class action is superior to other available methods for the fair and efficient
11 adjudication of the controversy because, among other reasons, the claims at issue may be too small
12 to justify individual litigation and management of this action as a class presents no special
13 difficulties.

VI. CLAIMS TO RELIEF

First Claim to Relief

Violation of the Commercial Electronic Mail Act, RCW 19.190.020

89. Plaintiffs incorporate and reallege paragraphs 1-77 above.

18 90. CEMA provides that “[n]o person may initiate the transmission, conspire with
19 another to initiate the transmission, or assist the transmission, of a commercial electronic mail
20 message ... to an electronic mail address that the sender knows, or has reason to know, is held by a
21 Washington resident that ... [c]ontains false or misleading information in the subject line.”
22 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, including because Defendant knew that Plaintiffs 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).

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 CEMA, Plaintiffs are 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

96. Plaintiffs incorporate and reallege paragraphs 1-77 above.

97. 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.

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

99. 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).

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

6 101. Defendant is a "person" within the meaning of CEMA. RCW 19.190.010(1).

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

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

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

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

VII. JURY DEMAND

20 106. Plaintiffs will demand a jury trial by separate document in accordance with Local
21 Civil Rule 38(b).

VIII. PRAYER FOR BELIEF

Plaintiffs ask the Court to:

- 1 A. Certify the proposed Class, appoint Plaintiffs as Class representative, and appoint
2 undersigned counsel as Class counsel;
- 3 B. Enter a judgment in Plaintiffs' and the Class's favor permanently enjoining
4 Defendant from the unlawful conduct alleged;
- 5 C. Enter a judgment in Plaintiffs' and the Class's favor awarding actual or liquidated
6 damages, trebled, according to proof;
- 7 D. Award Plaintiffs' costs of suit, including reasonable attorneys' fees; and
- 8 E. Order such further relief the Court finds appropriate.

9
10
11 *[Attorney signature block to follow on next page.]*

1 Date: September 17, 2025

Respectfully submitted,

2 */s/ Samuel J. Strauss*

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