

FILED
10/2/2025
Timothy W Fitzgerald
Spokane County Clerk

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

JESSICA L. JACKSON, on her own behalf
and on behalf of others similarly situated,

Plaintiff,

vs.

HANESBRANDS, INC.,

Defendant.

25-2-04876-32

Case No.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Jessica L. Jackson, 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 Hanesbrands, Inc. ("Hanes") 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 Hanes engages in the precise activity which CEMA prohibits.

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

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

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

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

II. JURISDICTION AND VENUE

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

9. Venue is proper in Spokane County under RCW 4.12.020(3) because Defendant is an entity registered in Spokane County, Washington.

III. PARTIES

10. Plaintiff Jessica Jackson is a resident of Thurston County, Washington.

11. Defendant Hanesbrands, Inc., is a Maryland corporation with its principal address at 101 N. Cherry St., Winston-Salem, NC, 27101, with a registered agent in Washington State: United Agent Group, Inc., 707 W. Main Ave., #B1, Spokane, WA, 99201.

IV. FACTUAL ALLEGATIONS

A. CEMA protects Washington consumers from deceptive spam emails.

12. 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).

13. 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.

14. While it’s been nearly three decades since CEMA’s enactment, the problems caused by unsolicited commercial email, *i.e.* spam email, have grown exponentially.

15. 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*.

16. 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).

17. 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).

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

19. Consumers therefore routinely “consent” to receive flurries of commercial emails

1 which they did not meaningfully request and in which they have no genuine interest.

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

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

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

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

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

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

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

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

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

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10 **B. The subject lines of Hanes’ marketing emails make false time scarcity claims.**

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

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

21 31. “False or misleading scarcity claims can change the behaviour of consumers.”
22 *Online Choice Architecture*, *supra* para. 29, at 27.

23 32. Representations about the timing and duration of sales, discounts, and other special
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1 offers are fundamentally representations about prices, and such representations matter to ordinary
2 consumers. *See, e.g., Huiliang Zhao et al., Impact of Pricing and Product Information on*
3 *Consumer Buying Behavior with Consumer Satisfaction in a Mediating Role*, 12 *Frontiers in*
4 *Psychology* 720151 (2021), available at
5 <https://pmc.ncbi.nlm.nih.gov/articles/PMC8710754/pdf/fpsyg-12-720151.pdf/>.

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

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

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

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

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

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

21 39. These false time scarcity claims are a staple of the defendant’s email scheme to
22 compel consumers to purchase its products.

23 40. **Urgent Spam Emails.** Hanes is practiced in this trick of luring in consumers
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1 through urgent subject headings in emails that do not reflect the true availability of the deal itself,
2 as the examples below demonstrate.

3 41. The defendant's use of false time scarcity claims to entice consumers to purchase
4 its products is no more readily apparent than in its free shipping promotions.

5 42. For example, on October 25, 2024, Hanes informed consumers of a new shipping
6 offer by transmitting an email with the subject line: "No Tricks, Just FREE Shipping!"

7 43. On the contrary, the October promotion would exemplify the precise trickery that
8 so often plagues this retailer's deceptive spam campaigns.

9 44. The following day, on October 26, 2024, Hanes sent consumers two additional
10 emails reminding them of the free shipping offer. The respective subject lines were: "All Your Fave
11 Bras Ship FREE 🚚" and "🔴 Absolutely Everything SHIPS FREE!"

12 45. The real trickery began thereafter.

13 46. After spamming consumers with those reminder emails, Hanes then decided to use
14 the subject line of its October 27, 2024, email, "Don't Wait, FREE Shipping Ends Tmrw!" to exert
15 false time pressure upon recipients. Even the abbreviated use of the word "tomorrow" as "Tmrw"
16 connotes urgency, as though the sender was so short on time, they couldn't spare the additional
17 second needed to complete the full word.

18 47. Hanes would ratchet up that pressure again the following day, October 28, 2024,
19 with two additional deceptive marketing emails. The first message, titled, "🔴 LAST DAY!
20 Sitewide Free Shipping" was sent in the early morning. Later in the day, Hanes sent yet another
21 warning in an email with the subject line: "🔴 Only Hours Left for FREE Shipping!"

22 48. Regardless of whether they succumb to the time pressures that Hanes' emails thrust
23 upon them, consumers might expect a promotion's conclusion to end the barrage of messages
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1 concerning that offer. Those consumers would be wrong.

2 49. Within days, Hanes returned to consumer inboxes with an October 31, 2024, email
3 titled: “ Happy Halloween! SHIP FREE Today Only[.]” While the body of the message invited
4 recipients to “Trick or Treat Yourself!” Hanes was quite clearly the party opting for deceit. Mere
5 days after pelting consumers with warnings of the promotion’s impending expiration, Hanes was
6 back in their inbox with an identical offer. The October 31 subject line confirms that the urgency
7 deployed in Hanes’ October 27 and 28 emails was nothing more than fabrication meant to compel
8 consumers to buy fast lest they lose the supposedly scarce opportunity.

9 50. Wont to let a holiday pass without warning consumers of promotional deadlines,
10 Hanes was back at it for St. Patrick’s Day.

11 51. On March 26, 2025, Hanes utilized another call to urgency in an email sent to
12 consumers with the subject line: “Hurry, Free Shipping with Code GREEN Ends Tmrw!”

13 52. Consistent with its typical strategy, on March 17, 2025, Hanes layered additional
14 pressure onto consumers by transmitting at least two emails with subject lines reiterating the time
15 scarcity of the shipping offer: “Last Chance to Get Lucky with Free Shipping  ” and “The Jig Is
16 Up! Free Shipping Ends Today[.]”

17 53. A jig indeed. The dance, though, didn’t end on March 17. Proof that Hanes misled
18 consumers would not arrive until March 21, 2025, in an email titled: “ Panty-palooza! 10/\$40
19 Undies[.]” Within the body of that message, Hanes advised “everything ships free[.]”

20 54. Thus, despite Hanes’ March 27 representation that its free shipping offer was
21 subject to time limits, it quickly transmitted the same offer again, a mere four days later.

22 55. However, to the detriment of consumers, the jig was anything but up.

23 56. A few days later, on March 24, 2025, Hanes would deploy its strategy yet again in
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1 two separate emails meant to pressure consumers using the subject lines: “🕒 Tick, Tock! FREE
2 Shipping Ends Today” and “Last Call 🚧 Free Shipping Ends Tonight!”

3 57. And, yet again, those subject lines would prove deceptive.

4 58. On March 28, 2025, mere days later, Hanes sent an email titled: “Flash Sale ⚡
5 This Weekend Only!” The message’s contents stated, “everything ships free!” The lightning emoji
6 emphasized the ephemeral nature of an offer that is “striking” now.

7 59. The March 28, 2025, message confirmed that the March 24 emails were anything
8 but a “last call.” They were simply repeat examples of the defendant’s deceptive strategy:
9 manufacturing false pressure meant to drive consumers to its website and, ultimately, the checkout
10 screen.

11 60. Wrapping its misleading message in a patriotic theme, Hanes repeated its trick in a
12 May 26, 2025, message titled: “Last Chance! us Let Free Shipping Ring[.]” The text within the
13 message reinforced the subject line, announcing that the promotion was on its last day in a banner
14 placed above the American flag.

15 61. That warning would ring hollow. The following day, May 27, 2025, Hanes
16 confirmed the falsity of the May 26 email in a message with the heading: “EXTENDED! Free
17 Shipping on All Orders[.]”

18 62. Upon information and belief, shipping costs are significant enough to influence the
19 purchasing decisions for many, if not most, consumers. An offer of time-limited free shipping
20 entices customers to shop and pay more now lest they miss out on cheaper shipping. As these
21 promotions demonstrate, Hanes employs a strategy where it pressures consumers to purchase its
22 products by falsely representing the limited availability of its shipping offers; offers that are
23 repackaged, repeated, and redeployed.
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63. Hanes does not limit its false time pressure strategy to promoting shipping offers. Instead, it custom fits its deceptive approach to suit a variety of promotions.

64. For example, Hanes sent a December 3, 2024, email advertising savings on a variety of products as part of its Cyber Deals promotion. The email's subject line warned: "Cut! Cyber Deals End Tonight[.]"

65. Upon information and belief, time pressures such as those deployed by Hanes are even more effective in the latter months of the year when consumer spending is at its highest and the holidays are fast approaching.

66. True to form, Hanes leveraged such urgency against consumers twice, regarding the same Cyber Deals promotion. On December 4, 2024, Hanes sent another email announcing that the promotion had not ended. The subject line of the email proclaimed: "NOW EXTENDED! Cyber Deals Up To 50% Off[.]"

67. Consumers in receipt of the December 3, 2024, email were not at risk of missing the deal, had they ignored the subject line, because Hanes did not end the promotion on December 3. The false conclusion of the Cyber Deals offer was simply a marketing strategy meant to compel consumers to purchase the defendant's products.

68. Hanes stretches its deceptions to fit other holidays as well.

69. On May 11, 2025, Hanes transmitted an email with the subject line: "Happy Mother's Day! Extra 20% Off Ends Today[.]"

70. However, the claim made in the email's subject line was untrue.

71. The very next day, on May 12, 2025, Hanes transmitted another email titled: "LAST DAY! Extra 20% Off Sitewide[.]" The May 12 email confirms the falsity of the May 11 message. Despite the contrived time scarcity, consumers in fact had an additional day during which

1 they could accept the defendant's offer.

2 72. Hanes also tailors its misleading strategy for use in promoting specific products.
3 The 18 Hour Bra, for example.

4 73. On July 3, 2022, Hanes sent consumers an email with the subject line: "👉 Ends
5 Soon: \$14.99 Playtex 18 Hour Bras!" Text within the email indicates the price is offered as part of
6 a "big summer sale." Fine print at the bottom of the message states the pricing is valid until 11:59
7 that evening.

8 74. Within days, the same pricing would be available again as reflected in a July 8,
9 2022, email sent to consumers with the heading: "It's Time to Sale-A-Brate You 🐻 [.]". Yet again
10 indicating that the offer was only for a limited time, the email message presented the 18 Hour Bra
11 for \$14.99. The pricing available in the July 3 email was clearly in no jeopardy of ending.

12 75. Indeed, the defendant's deception concerning the product's pricing would endure
13 for 18 hours and well beyond.

14 76. Hanes revived the allegedly limited pricing again in a July 18, 2022, email titled:
15 "Last Call for \$14.99 Bras 🐻 [.]". An image inside the message confirmed that 18 hour bras were
16 included in the \$14.99 offer.

17 77. An unaware underwear consumer might be compelled to act in response to Hanes'
18 misleading warning. However, there was nothing scarce about the \$14.99 offer.

19 78. While the July 18 message declared itself a "last call," the defendant's deceitful
20 marketing campaign was effectively on spin cycle. The falsity of the July 18 subject line was made
21 clear by Hanes' July 31, 2022, email titled: "Limited Time Only: \$14.99 Bras!" The contents of
22 the message confirm it was the Playtex 18 Hour Bras that were subject to the limited pricing.

23 79. Despite Hanes' repetitive warnings, consumers would have regular access to 18
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Hour Bras at the \$14.99 pricing as demonstrated in subject lines sent in the months to follow:

- a. July 31, 2022: "Limited Time Only: \$14.99 Bras!"
- b. August 28, 2022: "\$14.99 Bras— Limited Time for Labor Day"
- c. September 3, 2022: "Hurry, \$14.99 Bras Won't Last Long!"
- d. October 8, 2022: "LIMITED TIME ONLY: Playtex 18 Hour Bras \$14.99"
- e. October 16, 2022: "LAST CHANCE for \$14.99 Playtex 18 Hour Bras!"
- f. December 17, 2022: "ENDS TMRW: Playtex 18 Hour Bras \$14.99"

80. Thus, Hanes used its spam email campaign to consistently warn consumers that the availability of \$14.99 pricing was scarce, even though the same offer would be available well into the future at different intervals as determined by Hanes.

81. As these subject lines demonstrate, Hanes engages in an email marketing strategy whereby it creates a false sense of urgency, misrepresents when sales end, advertises time-limited free shipping, and strategically extends or revives those sales to pull in consumers with subject headings misrepresenting the availability of deals.

82. These and other examples of the commercial emails that Hanes has sent consumers containing subject lines with false or misleading statements are attached to this Class Action Complaint as Exhibit A.

C. Hanes knows when it sends emails to Washington residents.

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

84. First, the sheer volume of email marketing that Hanes engages in put it on notice

1 that Washington residents would receive its emails. From 2022 to 2024, Hanes sent marketing
2 emails at a rate averaging roughly: 638 per year, 53 per month, and 1.75 per day.

3 85. Second, Hanes may obtain location information tied to email addresses when
4 consumers make purchases from Hanes through digital platforms, including the Hanes website, or
5 otherwise self-report such information to Hanes.

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

9 87. Specifically, Hanes likely uses dotdigital to manage its email marketing campaigns.
10 This platform should allow Hanes to access a list of every email address that was sent a marketing
11 email. It should also allow Hanes to determine who viewed each of the emails and who clicked on
12 any links within them.

13 88. Hanes is likely able to infer the general geographic location of recipients by state
14 based on their IP address at the time of email open or link click.

15 89. Fourth, Hanes may obtain location information tied to email addresses by
16 purchasing consumer data from commercial data brokers such as Acxiom, Oracle, and Equifax,
17 which sell access to databases linking email addresses to physical locations, among other
18 identifiers.

19 90. Fifth, Hanes may obtain location information tied to email addresses by using
20 “identity resolution” services offered by companies such as LiveRamp, which can connect
21 consumers’ email addresses to their physical locations, among other identifiers.

22 91. Sixth, Hanes may obtain information that the recipients of its marketing emails are
23 Washington residents because that information is available, upon request, from the registrant of
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1 the Internet domain names contained in the recipients' email addresses. *See* RCW 19.190.020(2).

2 92. It is thus highly probable that a seller with the size and sophistication of Hanes
3 employs not just one but several means of tying consumers' email addresses to their physical
4 locations, at least at the state level.

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6 **D. Hanes violated Plaintiff's right under CEMA to be free from deceptive**
7 **commercial emails.**

8 93. Hanes has spammed Plaintiff with commercial emails whose subject lines contain
9 false or misleading statements in violation of her right to be free from such annoyance and
10 harassment under CEMA.

11 94. Plaintiff received a number of the email promotions described above in Section B,
12 including the December 3, 2024, email titled: "📺 Cut! Cyber Deals End Tonight"; the March 17,
13 2025, email titled: "Last Chance to Get Lucky with Free Shipping 🌟"; and the May 26, 2025,
14 email titled: "Last Chance! us Let Free Shipping Ring[.]"

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

17 96. These emails contained false statements of fact as to the "duration or availability of
18 a promotion." *Brown*, 567 P.3d at 47.

19 **V. CLASS ALLEGATIONS**

20 97. Plaintiff bring this action under Civil Rule 23 on behalf of the following putative
21 class ("Class"):

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

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

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

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

13 101. The Class is so numerous that joinder of all members is impracticable because the
14 Class is estimated to minimally contain thousands of members.

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

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

2 104. Plaintiff will fairly and adequately protect the Class's interests because, among
3 other reasons, Plaintiff shares the Class's interest in avoiding unlawful false or misleading
4 marketing; have no interest adverse to the Class; and have retained competent counsel extensively
5 experienced in consumer protection and class action litigation.

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

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

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

20 VI. CLAIMS TO RELIEF

21 First Claim to Relief

22 Violation of the Commercial Electronic Mail Act, RCW 19.190.020

23 108. Plaintiff incorporates and realleges paragraphs 1–96 above.

109. 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).

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

111. 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).

112. 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).

113. 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).

114. 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

115. Plaintiff incorporates and realleges paragraphs 1–96 above.

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

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

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

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

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

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

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

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

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

2 **VII. JURY DEMAND**

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

5 **VIII. PRAYER FOR RELIEF**

6 Plaintiff asks that the Court:

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

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

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

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

14 E. Order such further relief the Court finds appropriate.

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16 *[Attorney signature block to follow on next page.]*
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1 DATE: October 2, 2025

Respectfully submitted,

2 /s/ Samuel J. Strauss

3 Samuel J. Strauss, WSBA No. 46971

4 Raina C. Borrelli*

STRAUSS BORRELLI PLLC

980 N. Michigan Avenue, Suite 1610

Chicago, IL 60611

5 Tel.: (872) 263-1100

sam@straussborrelli.com

6 raina@straussborrelli.com

7 Lynn A. Toops*

Natalie A. Lyons*

8 Ian R. Bensberg*

COHENMALAD, LLP

One Indiana Square, Suite 1400

Indianapolis, IN 46204

10 Tel.: (317) 636-6481

ltoops@cohenmalad.com

11 nylons@cohenmalad.com

ibensberg@cohenmalad.com

12 Gerard J. Stranch, IV*

13 Michael C. Tackeff*

Andrew K. Murray*

14 **STRANCH, JENNINGS &**

GARVEY, PLLC

15 223 Rosa L. Parks Avenue, Suite 200

Nashville, TN 37203

16 Tel.: (615) 254-8801

gstranch@stranchlaw.com

17 mtackeff@stranchlaw.com

amurray@stranchlaw.com

19 *Attorneys for Plaintiff*

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