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SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

JILL MERRICK,
for herself, as a private attorney general, and/or
on behalf of all others similarly situated,

Plaintiff,

v.

PREMIUM BRANDS OPCO LLC,

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**

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1 Plaintiff Jill Merrick, 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 upon the investigation of
3 her counsel, against Premium Brands Opco LLC (“Defendant” or “Loft”):

4 **INTRODUCTION AND SUMMARY**

5 1. This is a class action against Premium Brands Opco LLC d/b/a Loft for false or
6 misleading email marketing in violation of the Washington Consumer Protection Act (“CPA”),
7 RCW 19.86, and the Washington Commercial Electronic Mail Act, (“CEMA”), RCW 19.190.

8 2. Premium Brands Opco LLC owns and operates the Loft brand, including the
9 retail website www.loft.com and 372 Loft retail stores across the United States, including 6 in
10 Washington State. The Loft website and retail stores sell casual and business casual attire for
11 women throughout the United States. Almost all the items offered for sale by Loft on its
12 website and in its retail stores, and advertised in its email marketing, are branded as “Loft”
13 products or as Loft sub-brand “Lou & Grey” products, and are offered and sold exclusively by
14 Loft.

15 3. For years, Loft has engaged in a massive and consistent false discount
16 advertising scheme across its website, in its retail stores, and in its marketing emails.
17 Specifically, Loft advertises perpetual or near-perpetual discounts—typically 30% to 60%
18 off—on all its items. These discounts are taken from Loft’s inflated and self-created list prices
19 for its items. Loft’s advertised discounts are viewed both under the law and by reasonable
20 consumers to refer to discounts from Loft’s own regular offering prices for the items. However,
21 Loft’s advertised discounts are false because Loft never or almost never offers or sells the items
22 at their list price.


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

1 However, because the item is “discounted” by up to 60% off the list price at all other times, this
2 means Loft is directly recovering all of the cost, or even more than the cost, of the “free”
3 item(s) by increasing the price of the first item, such that the free offer is illusory, and the
4 consumer is not getting any deal at all.

5 5. Loft also falsely advertises that the purported savings are for a limited time and
6 indicates that its items will return to the full price after the sale ends, when in fact the
7 advertised savings are perpetual and never-ending.

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

12 7. For example, Loft sends emails with subject lines that advertise false discounts
13 at a specified purported percentage off (e.g., “**Get a fresh start with 50% off tops &**
14 **sweaters**”). The stated discounts in the subject lines are materially false or misleading because,
15 in reality, the discounts are being calculated from inflated and fictitious list prices at which Loft
16 has never or almost never offered its items for sale.

17 8. Loft also sends emails with subject lines that advertise false “free” offers
18 (e.g., “ **Holiday Hoorays: Buy one, get one free our fave sweaters + more**”). The subject
19 lines are materially false or misleading because, in reality, the “free” items are not actually free;
20 Loft directly recovers all of the cost, or even more than the cost, of the “free” item(s) by
21 increasing the price of the first item to the inflated—and otherwise never charged—list price.

22 9. The subject lines of the emails are also materially false or misleading because
23 they advertise that the purported savings are for a limited time and indicate that the items will
24 return to the full price after the sale ends (e.g. “**24 HRS ONLY: 50% off sweaters!**”), when in
25 fact the advertised savings are perpetual and never-ending.

26 10. The Washington Supreme Court recently held that CEMA “prohibits sending
27 Washington residents commercial e-mails that contain *any* false or misleading information in
28 the subject lines of such e-mails.” *Brown v. Old Navy, LLC*, 567 P.3d 38, 47 (Wash. 2025)

1 (emphasis in original). This includes false or misleading information about promotions, sales
2 events, or discounts. **“CEMA protects consumers by requiring that commercial e-mails
3 communicate honestly about the terms of a given promotion or sale in the subject line.”**

4 *Id.* “A violation of CEMA’s e-mail regulations is a per se violation of the Consumer Protection
5 Act (CPA).” *Id.* at *2.

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

12 **THE PARTIES**

13 12. Plaintiff Jill Merrick is a citizen and resident of the city of Sammamish, in King
14 County, Washington. Ms. Merrick has resided in Washington for approximately 23 years.

15 13. Ms. Merrick has been receiving Loft’s promotional emails ever since she made a
16 purchase from Loft in May 2025. Ms. Merrick received, while residing in Washington, all of
17 the violative emails described herein that Defendant sent since May 2025.

18 14. Defendant Premium Brands Opco LLC is an Ohio limited liability company
19 headquartered at 7 Times Square, New York, New York 10036. Premium Brands Opco LLC
20 owns and operates the Loft brand¹, including the Loft website and approximately 372 Loft
21 retail stores across the United States. Almost all the items offered for sale by Loft on its
22 website, in its retail stores, and advertised in its email marketing are branded as “Loft” products
23 or as Loft sub-brand “Lou & Grey” products and are offered and sold exclusively by Loft.
24 Premium Brands Opco LLC is responsible for the marketing operations of the Loft brand and
25 the perpetration of the unlawful actions described herein—including the creation and sending
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27

28 ¹ Prior to 2009, Loft was known as Ann Taylor Loft.

1 of the violative emails. Premium Brands Opco LLC is referred to as “Loft” or Defendant” in
2 this Complaint.

3 **JURISDICTION AND VENUE**

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

9 16. This Court has personal jurisdiction over Defendant pursuant to, without
10 limitation, RCW 4.28.185, in that: (1) Defendant is registered to do business in Washington
11 State, (2) Defendant has transacted and continues to transact business within Washington State
12 including via its Loft retail website and 6 Loft retail stores in Washington State, and/or (3)
13 Defendant has committed tortious acts within the State of Washington or has committed
14 tortious acts outside the State of Washington which had an impact within the State of
15 Washington, including sending the violative emails to consumers in Washington State. In
16 addition, Defendant intended, knew, or is chargeable with the knowledge that its out-of-state
17 actions would have a consequence within Washington State.

18 17. With regard to the cause of action brought pursuant to the Washington
19 Consumer Protection Act, this Court has personal jurisdiction over Defendant pursuant to RCW
20 19.86.160. For example, and without limitation, Defendant has engaged and is continuing to
21 engage in conduct in violation of RCW 19.86 which has had and continues to have an impact in
22 Washington State which said chapter reprehends.

23 18. Venue is proper in King County Superior Court because, without limitation,
24 Plaintiff resides in King County; a significant portion of the acts giving rise to this civil action
25 occurred in King County; and/or Defendant intended to and did have a substantial and
26 foreseeable effect on trade or commerce in King County, including operating 2 retail stores in
27 King County and sending the violative emails to consumers in King County.

FACTUAL ALLEGATIONS

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2 19. Premium Brands Opco LLC owns and operates the Loft brand, including the
3 retail website www.loft.com and 372 Loft retail stores across the United States, including 6 in
4 Washington State. The Loft website and retail stores sell casual and business casual attire for
5 women throughout the United States. Almost all the items offered for sale by Loft on its
6 website and in its retail stores, and advertised in its email marketing, are branded as “Loft”
7 products or as Loft sub-brand “Lou & Grey” products and are offered and sold exclusively by
8 Loft.

9 20. Defendant markets Loft by sending promotional emails to consumers across the
10 United States which advertise false discounts in the subject line.

11 **A. Background Information: Loft’s Advertised Discounts Are False.**

12 21. For years, Loft has engaged in a massive and consistent false discount
13 advertising scheme both on its website and in its retail stores. Specifically, Loft advertises
14 perpetual or near-perpetual discounts—typically 30% to 60% off—on all of its products. These
15 discounts are taken from Loft’s advertised list prices for its products. Loft’s advertised
16 discounts are viewed both under the law and by reasonable consumers to refer to discounts
17 from Loft’s own regular offering prices for its products. However, Loft’s advertised discounts
18 are false. Loft never or almost never offers or sells its products at their list price on its website
19 or in its retail stores.

20 22. Loft also advertises “free” offers such as “Buy one, get one free,” “Buy one, get
21 two free,” or “BOGO FREE” where Loft represents that it will include one or two more of a
22 given item (or of a specified similar item) for “free” if the consumer pays the list price for the
23 item. Loft’s advertised “free” offers are viewed both under the law and by reasonable
24 consumers to mean that the consumer is getting the “free” item(s) at no cost in conjunction with
25 the purchase of the first item at no more than that first item’s regular price. However, because
26 the item is “discounted” by up to 60% off the list price at all other times, this means Loft is
27 directly recovering all of the cost, or even more than the cost, of the “free” item(s) by
28

1 increasing the price of the first item, such that the free offer is illusory, and the consumer is not
2 getting any deal at all.

3 23. Loft also falsely advertises that the purported savings are for a limited time and
4 indicates that its items will return to the full price after the sale ends, when in fact the
5 advertised savings are perpetual and never-ending.

6 24. Plaintiff's allegations concerning Loft's false discount advertising are based on a
7 comprehensive investigation by Plaintiff's counsel of Loft's pricing practices for a period of
8 nearly 7 years. Plaintiff's counsel has been monitoring and scraping the Loft website on an
9 automated daily basis with a proprietary software program since November 16, 2018.

10 25. Plaintiff's counsel has compiled and extracted daily pricing and marketing data
11 from the website for most of the products Loft has offered during this time. In total, Plaintiff's
12 counsel has assembled and analyzed an exhaustive historical database of daily prices and time-
13 stamped screenshots of over 6.7 million daily offerings of approximately 55,000 products over
14 this nearly 7-year period.

15 26. Plaintiff's counsel's investigation and data shows that Loft advertises perpetual
16 discounts for nearly all of its products, typically ranging from 30% to 60% off every product.

17 27. The percentage-off and other discounts are always false, and Loft's list prices to
18 which the discounts are applied are false and inflated. In fact, for the overwhelming majority of
19 the products that Loft advertises with a discount or with a "free" offer, Loft has never—not
20 even for a single day—offered the product at the list price without a discount or "free" offer.

21 28. Plaintiff's counsel has also investigated and reviewed years of marketing emails
22 sent by Loft to its customers. The percentage-off discounts and "free" offers which Loft
23 advertised, and continues to advertise, in the subject lines of its marketing emails are consistent
24 with the false discounts and pricing on the Loft website.

25 29. Plaintiff's counsel has also investigated Loft's physical retail stores on an at
26 least monthly basis since September 2024. Plaintiffs' counsel has compared the Loft retail store
27 reference prices and discounts (including those printed on product tags and the percentage-off
28 signage posted throughout the stores), to the Loft website strikethrough prices and discounts for

1 those products. Plaintiff’s counsel has found that Loft’s reference prices, advertised percentage-
 2 off discounts, and the resulting “discounted” prices for its products have been and continue to
 3 be substantially the same for its products both online and in-store.

4 30. Loft’s false discount advertising is so pervasive across all of its products and in
 5 all of its advertising and promotional emails that it is apparent that the heart of Loft’s marketing
 6 plan is to deceive the public.

7 31. Loft advertises these false and deceptive discounts because they work and
 8 increase sales and profits. Decades of academic research has established that the use of
 9 discount advertising like that utilized by Loft materially impacts consumers’ behavior by
 10 affecting the consumer’s perception of the value of the transaction, the consumer’s willingness
 11 to make the purchase, and the amount of money the consumer is willing to pay for the item.²

12 32. Consumers that are presented with discounts are substantially more likely to
 13 make the purchase. “Nearly all consumers (94%) search for a deal or offer when shopping
 14 online,” “81% of [consumers] say finding a great offer or discount is on their mind throughout
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16 ² See, e.g., Richard Staelin, Joel E. Urbany & Donald Ngwe, *Competition and the*
 17 *Regulation of Fictitious Pricing*, 87 J. of Mktg. 826 (2023); Mark Armstrong & Yongmin
 18 Chen, *Discount Pricing*, 58 Econ. Inquiry 1614 (2020); Rajesh Chandrashekar & Dhruv
 19 Grewal, *Assimilation of Advertised Reference Prices: The Moderating Role of Involvement*, 79
 20 J. Retailing 53 (2003); Pilsik Choi & Keith S. Coulter, *It’s Not All Relative: The Effects of*
 21 *Mental and Physical Positioning of Comparative Prices on Absolute Versus Relative Discount*
 22 *Assessment*, 88 J. Retailing 512 (2012); Larry D. Compeau & Dhruv Grewal, *Comparative*
 23 *Price Advertising: An Integrative Review*, 17 J. Pub. Pol’y & Mktg. 257 (1998); Larry D.
 24 Compeau, Dhruv Grewal & Rajesh Chandrashekar, *Comparative Price Advertising: Believe*
 25 *It or Not*, 36 J. Consumer Aff. 284 (2002); David Friedman, *Reconsidering Fictitious Pricing*,
 26 100 Minn. L. Rev. 921 (2016); Dhruv Grewal & Larry D. Compeau, *Consumer Responses to*
 27 *Price and its Contextual Information Cues: A Synthesis of Past Research, a Conceptual*
 28 *Framework, and Avenues for Further Research*, in 3 Rev. of Mktg. Res. 109 (Naresh K.
 Malhotra ed., 2007); Daniel J. Howard & Roger A. Kerin, *Broadening the Scope of Reference*
Price Advertising Research: A Field Study of Consumer Shopping Involvement, 70 J. Mktg. 185
 (2006); Aradhna Krishna, Richard Briesch, Donald R. Lehmann & Hong Yuan, *A Meta-*
Analysis of the Impact of Price Presentation on Perceived Savings, 78 J. Retailing 101 (2002);
 Balaji C. Krishnan, Sujay Dutta & Subhash Jha, *Effectiveness of Exaggerated Advertised*
Reference Prices: The Role of Decision Time Pressure, 89 J. Retailing 105 (2013); Gorkan
 Ahmetoglu, Adrian Furnham, & Patrick Fagan, *Pricing Practices: A Critical Review of their*
Effects on Consumer Perceptions and Behavior, 21 J. of Retailing & Consumer Servs. 696
 (2014); Bruce L. Alford & Abhijit Biswas, *The Effects of Discount Level, Price Consciousness*
and Sale Proneness on Consumers’ Price Perception and Behavioral Intention, 55 J. Bus. Res.
 775 (2002); and Tridib Mazumdar, S. P. Raj & Indrahit Sinha, *Reference Price Research:*
Review and Propositions, 69 J. Mktg. 84 (2005).

1 the entire purchase journey,” and “two-thirds of consumers have made a purchase they weren’t
2 originally planning to make solely based on finding a coupon or discount.” RetailMeNot
3 Survey: Deals and Promotional Offers Drive Incremental Purchases Online, Especially Among
4 Millennial Buyers (prnewswire.com).

5 33. The Ninth Circuit has also acknowledged and explained how false discount
6 advertising materially affects consumer behavior: “Most consumers have, at some point,
7 purchased merchandise that was marketed as being ‘on sale’ because the proffered discount
8 seemed too good to pass up. Retailers, well aware of consumers’ susceptibility to a bargain,
9 therefore have an incentive to lie to their customers by falsely claiming that their items have
10 previously sold at a far higher ‘original’ price in order to induce customers to purchase
11 merchandise at a purportedly marked-down ‘sale’ price.” *Hinojos v. Kohl’s Corp.*, 718 F.3d
12 1098, 1101 (9th Cir. 2013).

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

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

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

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

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

8 38. An injury occurs any time a commercial email is transmitted that contains false
9 or misleading information in the subject line. *Harbers*, 415 F. Supp. 3d at 1011. Under CEMA,
10 it is irrelevant whether the misleading commercial emails were solicited. *Id.*

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

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

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

25 42. A person is entitled to \$500 statutory damages “anytime a prohibited message is
26 transmitted.” *Harbers*, 415 F. Supp. 3d at 1009; *see also In re Classmates.com Consol. Litig.*,
27 No. C09-45RAJ, 2011 WL 744664, at *7 (W.D. Wash. Feb. 23, 2011) (“[CEMA] provides
28 statutory damages of \$500 for every email that violates it.”). “Unlike the CPA, CEMA’s \$500

1 penalty does not require a showing of actual damages.” *Brown*, 567 P.3d at 42.

2 **C. Loft Has Transmitted Numerous Commercial Emails With False Or**
 3 **Misleading Subject Lines In Violation Of CEMA.**

4 43. Loft has transmitted numerous commercial emails with false or misleading
 5 subject lines to Plaintiff and other Washington residents in violation of CEMA. As used in this
 6 Complaint, allegations that Loft “transmitted” or “sent” an email are allegations that Loft
 7 initiated the transmission of the email, conspired with another to initiate the transmission of the
 8 email, and/or assisted the transmission of the email.

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

11 **1. Loft Transmits Emails With Subject Lines Advertising False**
 12 **Percentage-Off Discounts.**




13 45. Loft transmits commercial emails with subject lines advertising large
 14 percentage-off discounts (typically between 30% to 60% off). These email subject lines are
 15 materially false or misleading in violation of CEMA and the CPA because the advertised
 16 percentage-off discounts are phony and are calculated from inflated and fictitious list prices at
 17 which Loft never or almost never offered its items.

18 46. Based on the investigation of Plaintiff’s counsel, Loft sent Washington State
 19 residents, including Plaintiff since she began receiving Loft’s promotional emails in May 2025,
 20 numerous violative percentage-off emails. The following is a non-exhaustive list of such emails
 21 sent on the date, and containing the email subject line, specified below:

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<u>Date</u>	<u>Email Subject Line</u>
10/08/2025	50% off LOFT Versa Collection? We (almost) never do this.
10/07/2025	70% OFF so many styles (including sale) ends tonight
10/07/2025	Today’s deal: 70% OFF select styles (!!!)
10/06/2025	NEW arrivals just dropped (+ it’s all 40% off)*
10/05/2025	60% off ENDS TONIGHT*

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1	10/05/2025	 24HRS ONLY: Enjoy 60% OFF* 
2	10/04/2025	48% off + FREE shipping ends so soon
3	10/02/2025	10% off: They're baaaaack (your favorites, that is)
4	09/28/2025	50% off + extra 15% off + FREE shipping & more ends in hours
5	09/28/2025	TODAY ONLY: 50% off + extra 15% off + free shipping
6	09/27/2025	STARTS NOW: \$25 sweaters & 50% off EVERYTHING else*
7	09/26/2025	Join us in stores tomorrow for a shopping party + 50% off everything* 
8	09/26/2025	New fall layers + 50% off everything*
9	09/25/2025	Top off your look + everything's 50% off!*
10	09/15/2025	Last chance for 50% off + FREE shipping
11	09/15/2025	50% off + FREE shipping is NOW EXTENDED
12	07/02/2025	The 4th of July Event is on! Enjoy 50% off!
13	06/28/2025	This is kind of a big deal: Enjoy 50% off
14	06/24/2025	60% off the Vacation Shop—today only!
15	06/22/2025	Date night picks now 50% off
16	06/21/2025	60% off all dresses for a VERY limited time
17	06/20/2025	50% OFF new arrivals you need now
18	06/20/2025	Celebrate summer with 50% off!
19	03/02/2025	It just got better: 40% off + EXTRA 20% off!
20	03/01/2025	50% off tops & sweaters is NOW EXTENDED for 1 more day
21	02/28/2025	TODAY ONLY: 50% off tops & sweaters
22	12/24/2024	GO, GO, GO: Up to 60% off ends tonight
23	12/23/2024	Up to 60% off officially ends tomorrow!
24	12/22/2024	TODAY ONLY: 60% off sweaters
25	12/20/2024	Up to 60% off to finish your holiday shopping!
26	11/20/2024	QUICK: 50% off sale + extra 20% off ends at midnight
27	11/20/2024	1 DAY ONLY: 50% off sale + EXTRA 20% off
28		

1	11/18/2024	Until midnight: 60% off wear-now faves
2	10/03/2024	24 HRS ONLY: 50% off sweaters!
3	09/06/2024	NOW EXTENDED: 40% off + extra 20% off!
4	09/05/2024	40% off + extra 20% off new fall tops ENDS TONIGHT!
5	09/05/2024	TODAY ONLY: 40% off + EXTRA 20% off!
6	08/25/2024	TONIGHT ONLY: Up to 75% off + EXTRA 15% off!
7	07/03/2024	Sun up to sun down styles NOW 50% OFF!
8	07/02/2024	This calls for a parade: 50% off starts NOW
9	07/01/2024	ENDS TODAY: 40% off + EXTRA 20% off (+ SO many steals!)
10	06/30/2024	STARTS NOW: 40% off + EXTRA 20% off!
11	06/29/2024	Red, white NEW and 40% off (!)
12	04/28/2024	📣 TODAY ONLY: 40% off + extra 15% off! 📣
13	04/25/2024	Shop 40% off your purchase + extra 20% off 250 new markdowns ASAP
14	02/28/2024	TONIGHT ONLY: 50% off ALL tops & sweaters
15	02/26/2024	STARTS TODAY: 40% off NEW spring tops & sweaters!
16	02/22/2024	LIMITED TIME ONLY: up to 50% off Lou & Grey!
17	02/07/2024	TODAY ONLY: 50% off Lou & Grey!
18	12/06/2023	STARTS NOW: 40% off + EXTRA 15% off!
19	12/03/2023	TONIGHT ONLY: 70% off 3+ sale styles
20	12/02/2023	50% off Lou & Grey + so much more
21	10/22/2023	TODAY ONLY: 50% off sale + EXTRA 20% off \$150+!
22	10/15/2023	Final call! Up to 60% off ends tonight!
23	10/15/2023	TODAY ONLY: up to 60% off!
24	10/13/2023	Up to 50% off starts NOW!
25	10/12/2023	LAST CHANCE: 40% off ALL tops & sweaters!
26	10/12/2023	NOW EXTENDED: 50% off Lou & Grey is back!
27	10/11/2023	1 day only: 50% off Lou & Grey!
28		

1	04/01/2023	TONIGHT ONLY: up to 60% off + EXTRA 20% off sale
2	03/31/2023	New dresses are 30% off
3	03/28/2023	TODAY ONLY: 50% off Lou & Grey
4	01/21/2023	30% off stripes, florals and SO much more
5	01/20/2023	Our NEW Lou & Grey collection is 30% off!
6	01/19/2023	30% off our best sellers!
7	01/17/2023	ENDS TONIGHT: 50% off (!!!)
8	01/17/2023	24 hrs only: 50% OFF!!!
9	01/16/2023	Psst! 70% off ENDS TONIGHT!
10	11/14/2022	STARTS NOW: 40% off *all* the sparkle
11	11/13/2022	40% off + EXTRA 20% off sale ends tonight!
12	11/11/2022	An 11/11 treat: 44% off + EXTRA 11% off!
13	08/31/2022	Up to 75% OFF?!!! 🎉
14	08/28/2022	ENDS TONIGHT: 60% off sale + extra 20% off
15	08/26/2022	60% off sale + EXTRA 20% off (!!!)
16	08/25/2022	Starting now: 25% off tops & sweaters!
17	08/21/2022	Shop FAST! 25% off + extra 20% off ENDS TONIGHT!
18	06/23/2022	50% off 1 full-price item starts now!
19	06/22/2022	TODAY ONLY: 60% off tees, tanks & shorts
20	06/17/2022	Psst—50% off outfit-making tops
21	06/17/2022	Start your spree: 50% off your purchase!
22	06/16/2022	50% off your purchase STARTS NOW!
23	06/12/2022	50% off sale styles + extra 15% off ends TODAY!
24	01/27/2022	Layer up with 50% off tops, sweaters & coats
25	01/23/2022	For one day only: 60% off sweaters & more
26	01/06/2022	ENDS TODAY: 50% off tops & sweaters
27	01/05/2022	Get a fresh start with 50% off tops & sweaters
28		

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

8 **2. Loft Transmits Emails With Subject Lines Advertising False “Free”**
 9 **Offers.**

10 48. Loft also sends commercial emails with subject lines advertising “free” offers
 11 such as “Buy one, get one free,” “Buy one, get two free,” or “BOGO FREE.” The “free” offers
 12 advertised in these email subject lines are materially false or misleading in violation of CEMA
 13 and the CPA because Loft inflates the first item’s selling price (typically at least doubling it
 14 from the true regular price) to recover the cost of the “free” item(s), such that the “free” offer is
 15 phony.

16 49. For example, Loft sent Washington State residents the following violative “free”
 17 offer emails on the date, and containing the email subject line, specified below:

<u>Date</u>	<u>Email Subject Line</u>
11/21/2024	🌟 Holiday Hoorays: Buy one, get one free our fave sweaters + more
08/20/2024	LAST CHANCE! buy one, get one FREE pants & jeans!
08/15/2024	FINAL Weekend: buy one, get one FREE pants & jeans!
08/10/2024	Our FAVE pants & jeans, buy one get one FREE!
07/02/2024	\$9.99 TANKS! \$19.99 SHORTS! TEES buy one, get one FREE!
06/18/2024	Buy one, get one FREE TEES! \$12.99 TANKS! \$24.99 DRESSES!
06/11/2024	Buy one, get one FREE shorts & tees!
06/08/2024	Shorts & tees, BOGO FREE!
06/01/2024	DRESSES buy one, get one FREE!

05/25/2024	Tees buy one, get TWO FREE & more Memorial Day deals!
07/01/2023	\$9.99 tanks! buy one, get TWO FREE tees! \$19.99 shorts!
06/13/2023	LAST CHANCE: BOGO FREE tees and shorts
06/10/2023	BOGO FREE tees and shorts – don’t miss out!
06/06/2023	Happening Now: BOGO FREE dresses, up to 50% OFF and more!
06/01/2023	The Summer Dress Event: Buy one, get one FREE!
05/28/2023	Buy one, get TWO FREE tees! BOGO shorts! \$12.99 tanks!
05/16/2023	BOGO FREE tees & tanks! BOGO \$10 shorts! up to 60% OFF!

50. 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 Loft makes such a purported “free” offer, Loft inflates the first item’s selling price to its never otherwise charged list price. Because the item is “discounted” by up to 60% off the list price at all other times, this means Loft 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.

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

52. Accordingly, it is deceptive for a seller making a “Free” offer to “increase[] his regular price of the article required to be bought.” 16 C.F.R § 233.4(b). “Regular price” means

1 “the price, in the same quantity [and] quality, ... at which the seller or advertiser of the item or
2 service has openly and actively sold the item or service in the geographic market or trade area
3 in which he is making a ‘Free’ or similar offer in the most recent and regular course of
4 business, for a reasonably substantial period of time, i.e., a 30–day period.” 16 C.F.R. §
5 251.1(b)(2).

6 53. The above violative emails are only a fraction of the hundreds of such violative
7 emails Loft sent to Washington State residents within the applicable limitations period.

8 54. As of the date of the filing of this Complaint, Plaintiff is still receiving Loft’s
9 commercial emails. Plaintiff would like to continue receiving Loft’s commercial emails,
10 provided that the subject lines of the emails do not contain false or misleading information.

11 **D. Loft Sent Commercial Emails To Consumers Whom It Knew, Or Had**
12 **Reason To Know, Resided In Washington State.**

13 55. Loft sent the false and misleading commercial emails to email addresses that
14 Loft knew, or had reason to know, were held by Washington State residents (i.e., Plaintiff and
15 members of the Class), because Loft had a physical Washington State address that was
16 associated with the recipient and/or Loft had access to data regarding the recipient indicating
17 that they were in Washington State. Loft knew or should have known that Plaintiff and the
18 members of the Class were residents of Washington State.

19 56. Loft knows where the overwhelming majority of the recipients of its commercial
20 emails reside because nearly all of the recipients have previously purchased products from Loft
21 and have previously provided their address to Loft.

22 57. First, whenever a person places an order through the Loft website, Loft
23 associates that email address with a shipping address and billing address for that order.

24 58. Second, Loft encourages its customers to create online accounts. Customers save
25 their contact information in their Loft accounts, including their email address, shipping address,
26 billing address, and phone number.

1 59. Discovery will show that, at the time Loft sent the commercial emails to the
2 members of the Class, Loft had the physical address for virtually every consumer to whom it
3 sent commercial emails.³

4 **CLASS ALLEGATIONS**

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

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

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

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

21 ³ Loft also has other methods by which it could have determined whether the consumers
22 to whom it sent the violative emails resided in Washington. Loft employs online tracking
23 methods including “pixel tags” to track the effectiveness of its marketing emails and to identify
24 consumers who click on links contained in Loft’s marketing emails, including by identifying
25 their physical location, as Loft states in the privacy policy posted on the Loft retail website.
26 Loft could have used the information obtained through these online tracking technologies to
27 identify which consumers are in Washington.

28 Additionally, Loft knew, or had reason to know, that the email addresses were held by
Washington residents because this information was available to Loft upon request from the
registrant of the internet domain name contained in each recipient’s email address. *See* RCW
19.190.020(2). Loft 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 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 63. **Commonality and Predominance.** This action involves multiple common legal
2 or factual questions which are capable of generating class-wide answers that will drive the
3 resolution of this case. These common questions predominate over any questions affecting
4 individual Class members, if any. These common questions include, but are not limited to, the
5 following:

6 a. Whether Defendant sent commercial emails with false or misleading
7 information in the subject lines;

8 b. Whether Defendant initiated the transmission or conspired to initiate the
9 transmission of such commercial emails to recipients residing in Washington State;

10 c. Whether Defendant should be ordered to pay statutory damages to
11 Plaintiff and Class members; and

12 d. Whether Defendant should be enjoined from further engaging in the
13 misconduct alleged herein.

14 64. **Typicality.** Plaintiff's claims are typical of Class members' claims. Defendant
15 transmitted, conspired to transmit, or assisted to transmit emails with false or misleading
16 information in the subject line to Plaintiff and to each Class member. Plaintiff and Class
17 members all bring the same claims and face the same potential defenses.

18 65. **Adequacy.** Plaintiff and her counsel will fairly and adequately protect Class
19 members' interests. Plaintiff has no interests antagonistic to Class members' interests and is
20 committed to representing the best interests of the Class members. Moreover, Plaintiff has
21 retained counsel with considerable experience and success in prosecuting complex class action
22 and consumer protection cases.

23 66. **Superiority.** A class action is superior to all other available methods for fairly
24 and efficiently adjudicating this controversy. Each Class member's interests are small
25 compared to the burden and expense required to litigate each of his or her claims individually,
26 so it would be impractical and would not make economic sense for Class members to seek
27 individual redress for Defendant's conduct. Individual litigation would add administrative
28 burden on the courts, increasing the delay and expense to all parties and to the court system.

1 Individual litigation would also create the potential for inconsistent or contradictory judgments
2 regarding the same uniform conduct. A single adjudication would create economies of scale
3 and comprehensive supervision by a single judge. Moreover, Plaintiff does not anticipate any
4 difficulties in managing a class action trial.

5 67. By its conduct and omissions alleged herein, Defendant has acted and refused to
6 act on grounds that apply generally to the Class members, such that final injunctive relief
7 and/or declaratory relief is appropriate respecting the Class as a whole.

8 68. Defendant is primarily engaged in the business of selling goods. Each cause of
9 action asserted by Plaintiff against Defendant in this Complaint arises out of and is limited to
10 communications related to Defendant's sale of goods.

11 **CAUSES OF ACTION**

12 **COUNT I**

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

15 69. Plaintiff realleges and incorporates by reference all paragraphs previously
16 alleged herein.

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

20 71. The Washington Consumer Protection Act (the "CPA"), RCW 19.86, is
21 Washington's principal consumer protection statute. The CPA's primary substantive provision
22 declares unfair methods of competition and unfair or deceptive acts or practices to be unlawful.
23 RCW 19.86.020.

24 72. The CPA recognizes and incorporates *per se* violations. "Per se CPA violations
25 are predicated on the Legislature's recognition that certain conduct is categorically against the
26 public interest." *Brown v. Old Navy, LLC*, 567 P.3d 38, 46 (Wash. 2025). The Washington
27 Legislature routinely prohibits certain specified conduct but, instead of, or in addition to,
28 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.

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

6 74. A plaintiff can plead a violation of the CPA by pleading that the CPA was
 7 violated *per se* due to a violation of the Washington Commercial Electronic Mail Act
 8 (“CEMA”). *See Brown*, 567 P.3d at 42 (“A violation of CEMA’s e-mail regulations is a *per se*
 9 violation of the Consumer Protection Act (CPA).”); *see also* RCW 19.190.030(1)(b) (“It is a
 10 violation of the consumer protection act, chapter 19.86 RCW . . . to initiate the transmission of
 11 a commercial electronic mail message that . . . [c]ontains false or misleading information in the
 12 subject line.”).

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

20 76. “CEMA was enacted to protect concrete interests in being free from deceptive
 21 commercial e-mails. CEMA’s prohibition on sending commercial e-mails with false or
 22 misleading subject lines . . . creates a substantive right to be free from deceptive commercial e-
 23 mails.” *Harbers v. Eddie Bauer, LLC*, 415 F. Supp. 3d 999, 1011 (W.D. Wash. Nov. 27, 2019)

24 _____
 25 ⁴ CEMA also prohibits a person from initiating the transmission from a computer
 26 located in Washington State of a commercial electronic mail message which contains false or
 27 misleading information in the subject line. RCW 19.190.020(1)(b). Plaintiff is not alleging a
 28 CEMA violation under this prong because, as of the filing of this lawsuit, she does not possess
 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 (holding that the plaintiff sufficiently pleaded a concrete injury-in-fact for alleged CEMA
2 violations based on her receipt of marketing emails from defendant containing allegedly false
3 “xx% off” statements in the subject line).

4 77. Under CEMA, it is irrelevant whether the commercial emails were solicited.
5 *Harbers*, 415 F. Supp. 3d at 1011.

6 78. Generally, a plaintiff pleading a claim under the CPA must plead five necessary
7 elements: (1) an unfair or deceptive act or practice (2) in trade or commerce (3) that affects the
8 public interest, (4) injury to plaintiff’s business and property, and (5) causation. *Wright v. Lyft,*
9 *Inc.*, 189 Wn.2d 718, 728 (2017). **Because Plaintiff alleges a *per se* CPA violation by**
10 **alleging a CEMA violation, all of these five elements are satisfied as a matter of law.** *Id.* at
11 724; *see also Brown*, 567 P.3d at 42.

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

18 80. A plaintiff who successfully pleads and proves a CEMA violation as a *per se*
19 violation of the CPA may recover the remedies which the plaintiff chooses to seek that are
20 available under the CPA (e.g., injunctive relief, treble damages, attorneys’ fees and costs (RCW
21 19.86.090)) and/or the remedies available under CEMA (e.g., statutory damages of \$500 per
22 email sent in violation of CEMA and injunctive relief (RCW 19.190.040, RCW 19.190.090)).

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

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

1 83. Defendant has initiated the transmission, conspired with another to initiate the
2 transmission, and/or assisted the transmission of numerous commercial emails with subject
3 lines containing false or misleading information to Plaintiff and the Class. RCW
4 19.190.030(1)(b).

5 84. The subject lines of Loft's emails contained materially false or misleading
6 information.

7 85. The false or misleading information in the subject lines of Loft's emails was
8 intended to, or had the capacity to, deceive a substantial portion of the public.

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

12 87. The emails were "commercial electronic mail messages," in that they were sent
13 for the purpose of promoting goods or services for sale or lease. RCW 19.190.010(2).

14 88. Loft was the original sender of the emails.

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

18 90. Loft initiated the transmission, conspired with another to initiate the
19 transmission, and/or assisted the transmission of the emails to one or more email addresses that
20 Loft knew, or had reason to know, was held by a Washington State resident, i.e., Plaintiff and
21 members of the Class.

22 91. At all relevant times, Loft knew, or had reason to know, that the intended
23 recipients (Plaintiff and members of the Class) were residents of the State of Washington
24 because, without limitation: (1) Loft possessed actual knowledge of Plaintiff's and each Class
25 member's state of residence; (2) Loft possessed constructive knowledge of Plaintiff's and each
26 Class member's state of residence; (3) information was available to Loft upon request from the
27 registrant of the internet domain name contained in each recipient's email address; and/or (4)
28

1 Loft otherwise knew or should have known or had reason to know that Plaintiff and the
2 members of the Class were residents of the State of Washington.

3 92. For example, without limitation, Loft knew or had reason to know that it sent
4 emails to Washington residents because the vast majority of consumers who received its
5 commercial emails had provided Loft with their shipping address and billing address when they
6 placed an order on Loft and/or when they created an online account.

7 93. Loft engaged in a pattern and practice of violating CEMA. As a result of Loft's
8 acts and omissions, Plaintiff and Class members are entitled to \$500 in statutory damages for
9 each and every email that violated CEMA that was transmitted to them. Plaintiff and Class
10 members are also entitled to recover actual damages, treble damages, and attorneys' fees and
11 costs, pursuant to RCW 19.86.090.

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

16 95. **Permanent public injunctive relief.** Plaintiff, acting as a private attorney
17 general, seeks public injunctive relief under the CPA to protect the general public from Loft's
18 misconduct.

19 96. The Washington Supreme Court treats consumers as "private attorneys general,"
20 and has held that consumers' ability to enjoin unlawful conduct is a primary purpose of the
21 CPA:

22 Private actions by private citizens are ... an integral part of CPA enforcement.
23 **Private citizens act as private attorneys general** in protecting the public's
24 interest against unfair and deceptive acts and practices in trade and commerce.
25 **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."**

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

27 97. This type of injunctive relief has been referred to as "public injunctive relief."
28 *See McGill v. Citibank, N.A.*, 2 Cal. 5th 945, 393 P.3d 85, 90 (2017) ("[P]ublic injunctive relief

1 ... is relief that has ‘the primary purpose and effect of’ prohibiting unlawful acts that threaten
2 future injury to the general public.’) (quoting *Broughton v. Cigna Healthplans of California*, 21
3 Cal. 4th 1066, 988 P.2d 67, 74 (1999)). The *Broughton* court likewise referred to consumers
4 seeking public injunctive relief as “private attorneys general.” See *Broughton*, 21 Cal. 4th at
5 1077.

6 98. Loft’s misconduct, which affects and harms the general public, is ongoing in
7 part or in whole and even if such conduct were to cease, it is behavior that is capable of
8 repetition or re-occurrence by Loft absent a permanent public injunction. Accordingly, Plaintiff
9 seeks an order enjoining Loft from committing the unlawful conduct alleged herein.

10 99. The balance of the equities favors the entry of permanent public injunctive relief
11 against Loft. Plaintiff, the members of the Class, honest competing businesses, and the general
12 public will be irreparably harmed from Loft’s ongoing misconduct absent the entry of
13 permanent public injunctive relief against Loft.

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

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

1 by Class members, Plaintiff, and the general public for future violations of the law by Loft.

2 **COUNT II**
3 **Violation of the Washington Commercial Electronic Mail Act**
4 **RCW Chapter 19.190**

5 102. Plaintiff realleges and incorporates by reference all paragraphs alleged
6 hereinabove.

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

10 104. The Washington Commercial Electronic Mail Act (“CEMA”), RCW 19.190,
11 creates an independent private of right of action which can be asserted by, among others, a
12 person who is the recipient of a commercial electronic mail message which contains false or
13 misleading information in the subject line. RCW 19.190.030(1)(b). A plaintiff who successfully
14 alleges and proves such a violation may obtain, among other things, an injunction against the
15 person who initiated the transmission. RCW 19.190.090(1). It is Plaintiff’s intent in this count
16 to plead an independent CEMA cause of action only to the extent that it is recognized by law,
17 e.g., when a plaintiff seeks injunctive relief. *Wright v. Lyft, Inc.*, 189 Wn.2d 718, 728 n. 3
18 (2017) (“we note that a plaintiff may bring an action to enjoin any CEMA violation.”); *Gragg*
19 *v. Orange Cab Co.*, 145 F. Supp. 3d 1046, 1052 (W.D. Wash. 2015).

20 105. Defendant has violated CEMA on the grounds alleged in Count I above.

21 106. For the reasons alleged in Count I, Plaintiff seeks, and may obtain, a permanent
22 public injunction against Defendant.

23 **PRAYER FOR RELIEF**

24 A. Plaintiff Jill Merrick, on behalf of herself and the proposed Class, requests that
25 the Court order relief and enter judgment against Defendant Premium Brands Opco LLC, as
26 follows:

- 27 1. Declare this action to be a proper class action, certify the proposed Class,
28 and appoint Plaintiff and her counsel to represent the Class;
2. Permanently enjoin Defendant from engaging in the unlawful conduct

1 alleged herein, pursuant to, without limitation, RCW 19.86.090; RCW 19.190.090(1);

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

6 4. Order Defendant to pay treble damages pursuant to RCW 19.86.090;

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

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

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff demands trial by jury on all issues so triable.

12
13 Date: October 10, 2025

Submitted by:

14 HATTIS LUKACS & CORRINGTON

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17 By: 
18 Che Corrington

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