

*E-FILED
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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF ISLAND**

VERONICA REPPERGER, AMBER
LAMAR, CHARRA CALDWELL, and
REBEKAH CLARK, on their own behalf
and on behalf of all others similarly situated,

Plaintiffs,

v.

ULTA SALON, COSMETICS &
FRAGRANCE, INC.

Defendant.

Case No. 25-2-00608-15

**CLASS ACTION COMPLAINT
(RCW 19.190, 19.86) AND
REQUEST FOR JURY TRIAL**

1 I. NATURE OF THE ACTION

2 1. This is a class action brought by Named Plaintiffs Veronica Repperger
3 ("Repperger"), Amber Lamar ("Lamar"), Charra Caldwell ("Caldwell"), Rebekah Clark
4 ("Clark") (collectively "Named Plaintiffs") against Defendant Ulta Salon, Cosmetics &
5 Fragrance, Inc. ("Defendant") for false and misleading email marketing.

6 2. Defendant sends two types of emails to Washington consumers which
7 contain false or misleading information in the subject lines.

9 3. First, Defendant sends emails with subject lines that falsely represent offers
10 as “free gifts” (“Free Gift Emails”) without disclosing required conditions, such as
11 minimum purchase amounts.

12 4. The subject line of the Free Gift Emails falsely imply that “free” gifts are
13 being provided unconditionally and at no cost to the recipient. However, upon opening the
14 email, the body reveals that the “free” gifts require qualifying purchases.

15 5. The Free Gift Emails contain subject lines that are false or misleading
16 because they omit material conditions and lead reasonable consumers to believe the gifts
17 are truly free without having to make a minimum purchase. These omissions are material
18 as they induce reasonable consumers to open emails and consider purchases they might
19 otherwise ignore, affecting purchasing decisions.

20 6. Under FTC guidelines at 16 C.F.R. § 251.1(b), the term “free” indicates that
21 the recipient pays nothing for the item and no more than the regular price for any required
22 purchase. Defendant’s Free Gift Emails “free gift” offers are not free but contingent on
23 purchases, and these conditions are not disclosed “at the outset” as required by 16 C.F.R.
24 § 251.1(c), creating a reasonable probability of misunderstanding. Defendant knowingly
25 omits these conditions in the Free Gift Emails subject lines to entice opens and purchases,
26 as evidenced by their pattern of conditional promotions and repeated use of similar subject
27 lines across campaigns for years.

28 7. Second, Defendant sends emails with subject lines that falsely represent
29 unqualified discounts on purchases without disclosing material exclusions (“Percentage
30 Discount Emails”). The subject lines of the Percentage Discount Emails imply a
31 straightforward percentage discount on the recipient’s entire purchase (such as “20% off

32 your purchase”), without limitations or exclusions, enticing consumers to open the email
33 in anticipation of a broad bargain. Upon opening the email, however, the body reveals that
34 there are significant exclusions that do not qualify for the percentage discount.

35 8. The Percentage Discount Emails contain subject lines that are false or
36 misleading because they omit material exclusions, leading reasonable consumers to believe
37 that they will receive the promised percentage discount on their entire purchase. These
38 omissions are material as they mislead reasonable consumers about the discount’s scope,
39 inducing interest in purchases that may not qualify and affect purchasing decisions.

40 9. Under FTC Guides Against Deceptive Pricing at 16 C.F.R. § 233.1, bargain
41 advertising like percentage-off offers must be genuine and not deceptive; reductions should
42 be from a regular price without undisclosed limitations that undermine the claimed savings.

43 10. Defendant’s Free Gift Emails that contain subject lines with unqualified
44 percentage discounts “off your purchase” are misleading as the exclusions contained in the
45 fine print within the body of the email substantially restrict the offer’s applicability, failing
46 to disclose terms “at the outset” in a manner that avoids misunderstanding. Defendant
47 knowingly omits these exclusions in Free Gift Emails subject lines to drive email opens
48 and engagement, as evidenced by their consistent use of fine-print disclaimers in
49 promotional emails.

50 11. Defendant’s practice of sending Free Gift Emails and Percentage Discount
51 Emails that contain false and misleading information in the subject line violates the
52 Washington Commercial Electronic Mail Act (“CEMA”), RCW 19.190, and the
53 Washington Consumer Protection Act, RCW 19.86.

54 12. By sending Free Gift Emails and Percentage Discount Emails with false and
55 misleading information to Named Plaintiffs and the Class (defined below), Defendant clogs
56 email inboxes with false information and violates Named Plaintiffs and Class members
57 right to be free from deceptive commercial emails.

58 13. Named Plaintiffs bring this action as a class action on behalf of persons
59 residing in Washington who also received Defendant's false and misleading emails. Named
60 Plaintiffs requested relief includes an injunction to end these practices, an award to Named
61 Plaintiffs and Class members of statutory damages under RCW 19.190.040 (1) and treble
62 damages under RCW 19.86.090 for each illegal email sent, and an award of attorneys' fees
63 and costs.

64 **II. PARTIES**

65
66 14. Named Plaintiff Repperger is a citizen of Washington State, residing in
67 Island County, Washington.

68 15. Named Plaintiff Lamar is a citizen of Washington State, residing in Cowlitz
69 County, Washington.

70 16. Named Plaintiff Caldwell is a citizen of Washington State, residing in
71 Pierce County, Washington.

72 17. Named Plaintiff Clark is a citizen of Washington State, residing in Benton
73 County, Washington.

74 18. Defendant Ulta Salon, Cosmetics & Fragrance, Inc. is a corporation
75 chartered under the laws of the State of Delaware. Defendant currently is, and at all relevant
76 times in the past has, engaged in substantial business activities in the State of Washington
77 and in Island County.

78 19. Defendant owns and operates a large online marketplace, maintains more
79 than thirty (30) physical stores in the state, and sends the marketing emails at issue in this
80 Complaint to consumers throughout Washington.

81 **III. JURISDICTION AND VENUE**

82 20. This Court has subject matter jurisdiction over this civil action pursuant to,
83 without limitation, Section 6 of Article IV of the Washington State Constitution (Superior
84 Court jurisdiction, generally), RCW 19.86.090 (Superior Court jurisdiction over Consumer
85 Protection Act claims) and RCW 19.190.090 (Superior Court jurisdiction over Commercial
86 Electronic Mail Act claims).

87 21. This Court has personal jurisdiction over Defendant under RCW 4.28.185.
88 This Court may exercise personal jurisdiction over the out-of-state Defendant because the
89 claims alleged in this civil action arose from, without limitation, Defendant's purposeful
90 transmission of electronic mail messages to consumers within the State of Washington. In
91 addition, Defendant intended, knew, or is chargeable with the knowledge that its out-of-
92 state actions would have a consequence within Washington.

93 22. This Court also has personal jurisdiction over Defendant under RCW
94 19.86.160. For example, and without limitation, Defendant engaged and is continuing to
95 engage in conduct in violation of RCW 19.86 which has had and continues to have an
96 impact in Washington which said chapter reprehends.

97 23. Venue is proper in Island County Superior Court because Defendant has its
98 residence in Island County. RCW 4.12.025. Currently and at all relevant times, Defendant
99 has transacted business in Island County, including without limitation by sending the

100 marketing emails alleged herein to residents of Island County, and maintaining stores for
101 the transaction of business within Island County.

102 **IV. FACTUAL ALLEGATIONS**

103 **A. The CEMA prohibits initiating or conspiring to initiate the**
104 **transmission of commercial emails that contain any false or misleading**
105 **information in the subject lines.**

106
107 24. Washington's Commercial Electronic Mail Act ("CEMA") regulates
108 deceptive email marketing.

109 25. "CEMA was enacted to protect concrete interests in being free from
110 deceptive commercial e-mails. CEMA's prohibition on sending commercial e-mails with
111 false or misleading subject lines . . . creates a substantive right to be free from deceptive
112 commercial emails." *Harbers v. Eddie Bauer, LLC*, 415 F. Supp. 3d 999, 1011 (W.D.
113 Wash. 2019).

114 26. The Washington Supreme Court recently confirmed this understanding,
115 holding that RCW 19.190.020(1)(b) "prohibits the use of any false or misleading
116 information in the subject line of a commercial e-mail." *Brown v. Old Navy, LLC*, 4 Wn.3d
117 580, 583 (2025).

118 27. An injury occurs anytime a commercial email is transmitted that contains
119 false or misleading information in the subject line. *Id.* at 1011. In *Brown*, the Washington
120 Supreme Court reaffirmed that "the injury is receiving the e-mail that violates CEMA,"
121 and that a plaintiff need not show actual damages to recover statutory penalties. *Brown*, 4
122 Wn.3d at 585.

123 28. Under CEMA, it is irrelevant whether misleading commercial emails were
124 solicited. *Harbers*, 415 F. Supp. 3d at 1011. The Washington Supreme Court echoed this

125 point in *Brown*, emphasizing that the statute is not limited to deception about the nature or
126 solicitation of the message but applies broadly to any false or misleading subject line.
127 *Brown*, 4 Wn.3d at 590, 594.

128 29. CEMA creates an independent but limited private right of action which can
129 be asserted by a person who is the recipient of a commercial electronic mail message which
130 contains false or misleading information in the subject line. RCW 19.190.030(1)(b). A
131 plaintiff who successfully alleges and proves such a violation may obtain, among other
132 things, an injunction against the person who initiated the transmission. RCW
133 19.190.090(1). In addition, the statute authorizes statutory damages of \$500 per violation.
134 RCW 19.190.040(1); *see also* *Brown*, 4 Wn.3d at 585 (confirming that no showing of
135 actual damages is required to recover statutory damages under CEMA).

136 30. It is a violation of the Consumer Protection Act, RCW 19.86 *et seq.*, to
137 initiate the transmission or conspire with another person to initiate the transmission of a
138 commercial electronic mail message that contains false or misleading information in the
139 subject line. RCW 19.190.030(1). As the Washington Supreme Court explained, CEMA
140 violations are *per se* violations of the CPA because the Legislature recognized that such
141 conduct is categorically contrary to the public interest. *Brown*, 4 Wn.3d at 592.

142 31. To establish a violation of Washington's CPA, a claimant must establish
143 five elements: (1) an unfair or deceptive act or practice, (2) in trade or commerce, (3) that
144 affects the public interest, (4) injury to plaintiff's business or property, and (5) causation.
145 *Hangman Ridge Stables, Inc. v. Safeco Title Ins. Co.*, 719 P.2d 531, 533 (Wash. 1986).

146 32. Washington and federal courts have held that a plaintiff states a CPA claim
147 solely by alleging a violation of the CEMA. *See State v. Heckel*, 143 Wash.2d 824, 24 P.3d
148 404, 407 (2001).

149 **B. Defendant initiates or conspires to initiate the transmission of**
150 **commercial emails that contain false or misleading information in the**
151 **subject lines.**

152 33. Defendant has initiated (or conspired to initiate) the transmission of
153 hundreds of commercial electronic mail messages with false or misleading subject lines to
154 Named Plaintiffs and the Class. The emails were electronic mail messages, in that they
155 were each an electronic message sent to an electronic mail address; the emails from
156 Defendant also referred to an internet domain, whether or not displayed, to which an
157 electronic mail message can or could be sent or delivered.

159 34. Defendant sent the emails for the purpose of promoting its goods for sale.

160 35. The emails were sent at Defendant's direction and were approved by
161 Defendant.

162 **1. “Free Gift” Emails**

163 36. Defendant frequently sends emails with subject lines stating that a “free”
164 gift is available to the recipient of the email. However, the body of these emails (and fine
165 print) contains conditions that must be satisfied in order for the recipient to receive their
166 promised “free gift” that, as it turns out, is not actually free.

167 37. For example, on January 8, 2022, Defendant sent Named Plaintiffs and
168 Class members an email with a subject line that stated: “Free 8 PC prep & set gift inside[.]”
169 This subject line implies that a gift is being provided unconditionally and at no cost to the

170 recipient just by opening the email. However, upon opening the email, the body reveals
171 that the “free” gifts require qualifying purchases.

172 38. On April 6, 2022, Defendant sent Named Plaintiffs and Class members an
173 email with a subject line that stated: “Click for a free Benefit Cosmetics gift[.]”

174 39. On November 20, 2022, Defendant sent Named Plaintiffs and Class
175 members an email with a subject line that stated: “Oh HI, TWO free gifts[.]”

176 40. On November 26, 2022, Defendant sent Named Plaintiffs and Class
177 members an email with a subject line that stated: “FREE gift for you! Choose from 7[.]”

178 41. On December 14, 2022, Defendant sent Named Plaintiffs and Class
179 members an email with a subject line that stated: “FREE gift for you!”

180 42. On March 3, 2023, Defendant sent Named Plaintiffs and Class members an
181 email with a subject line that stated: “A FREE gift is just a click away[.]”

182 43. On March 7, 2023 Defendant sent Named Plaintiffs and Class members an
183 email with a subject line that stated: “So good: FREE 16 PC gift!”

184 44. On July 1, 2023, Defendant sent Named Plaintiffs and Class members an
185 email with a subject line that stated: “Holy WOW: FREE 20 PC (\$125 value) Beauty
186 Bag[.]”

187 45. On November 25, 2023, Defendant sent Named Plaintiffs and Class
188 members an email with a subject line that stated: “Did someone say FREE GIFT? (Choose
189 from 8!)[]”

190 46. On March 15, 2024, Defendant sent Named Plaintiffs and Class members
191 an email with a subject line that stated: “FREE 17 PC gift, Beauty Steals & what we [heart
192 emoji.]”

193 47. On June 4, 2024, Defendant sent Named Plaintiffs and Class members an
194 email with a subject line that stated: “FREE bucket hat & hair clip combo[.]”

195 48. On September 4, 2024, Defendant sent Named Plaintiffs and Class members
196 an email with a subject line that stated: “Oh wow FREE 4 PC Tarte gift inside[.]”

197 49. On June 4, 2025, Defendant sent Named Plaintiffs and Class members an
198 email with a subject line that stated: “[Heart emoji] Get a FREE 6 PC Olaplex gift!”

199 50. These subject lines imply that one or more “free gifts” are being provided
200 unconditionally and at no cost to the recipient.

201 51. Upon opening the email, however, the body reveals that the “free gifts”
202 require a qualifying minimum purchase.

203 52. In addition, Defendant further restricts the “free gift” offer in the fine print
204 of the email by noting that exclusions apply, that the “free gift” is only valid while supplies
205 last, and that “[g]ift item cannot be used to satisfy the dollar purchase requirement for the
206 free gift.”

207 53. Because the recipient is required to spend a certain dollar amount before
208 being entitled to a “free” gift, any subject line that contains a statement implying that the
209 recipient will receive an unconditional “free gift” is false.

210 54. By Defendant’s own admission, there is a “dollar purchase requirement for
211 the free gift.”

212 55. And Defendant understands how to restrict an offer in the subject line of an
213 email because from time to time, Defendant does in fact restrict the availability of the “free
214 gift” in the subject line.

215 56. For instance, on December 5, 2022, Defendant sent Named Plaintiffs and
216 Class members an email with a subject line that stated: “FREE 25 PC gift with any \$80
217 online purchase[.]”

218 57. On August 11, 2024, Defendant sent Class members an email with a subject
219 line that stated: “FREE 19 PC gift with select \$75 fragrance purchase? It’s yours! [present
220 emoji.]”

221 58. Moreover, from time to time Named Plaintiffs and Class members have
222 received emails with subject lines promising a “free” gift or item from Defendant where
223 Defendant will in fact provide a “free” gift or item without the need to make a purchase.

224 59. For instance, on January 1, 2025, Named Plaintiff Repperger received an
225 email with a subject line that stated: “Veronia, your FREE bday gift is inside + 2X points
226 [heart emoji.]”

227 60. Named Plaintiff Repperger simply need to show a barcode in store to
228 receive the “FREE bday gift” from Defendant promised in the subject line of the January
229 1, 2025 email.

230 **2. Percentage Discount Emails**

231 61. Defendant frequently sends emails with subject lines promising a
232 percentage off the recipient’s purchase. However, the body of these emails (and fine print)
233 contains significant and material exclusions.

234 62. For example, on March 9, 2024, Defendant sent Named Plaintiffs and Class
235 members an email with a subject line that stated: “20% off your purchase! Just because...”

236 63. Likewise, on July 15, 2024, Defendant sent Named Plaintiffs and Class
237 members an email with a subject line that stated: “Take 10% off your next purchase and
238 ~~👉~~ get glowing ~~👉~~ [.]”

239 64. On April 10, 2025, Defendant sent Named Plaintiffs and Class members an
240 email with a subject line that stated: “20% off your ENTIRE purchase[.]”

241 65. On July 24, 2025, Defendant sent Plaintiff and Class members an email with
242 a subject line that stated: “FINAL HOURS [yield sign with exclamation point emoji] 15%
243 off your purchase in the app[.]”

244 66. These subject lines imply that a straightforward discount will be applied on
245 the recipient’s purchase, without limitations or exclusions.

246 67. However, the fine print at the bottom of each email identifies several major
247 exclusions from the unqualified offer in the subject line.

248 68. The exclusion in the body of the emails state that these offers “Excludes
249 The Salon at Ulta Beauty, Ear Piercing, Skin Bar at Ulta Beauty and Benefit Brow Bar
250 services, CHANEL, N°1 DE CHANEL, Dyson, Early Black Friday Deals, Black Friday
251 Deals, 5 for \$5, 5 for \$10, Beauty Steals®, Beauty Deals™, Spring Haul Offers & Fall
252 Haul Offers, and clearance items.” Additionally, the offer cannot be combined with other
253 coupons, is not valid on prior purchases, and is limited to one per customer.

254 69. Thus, if the recipient purchases any product or service that is excluded from
255 the discount, they will not receive the discount offered in the subject line.

256 70. In addition, the body of the email will refer to a “qualifying purchase” rather
257 than “next purchase” as stated in the subject line to further qualify any offer made in the
258 subject line of the email.

259 71. Such omissions as to what constitutes a “qualifying purchase” in the subject
260 lines of these types of emails create a reasonable probability that consumers will be misled
261 about the true scope of the discount.

262 **C. Named Plaintiffs and Washington residents have received commercial**
263 **emails from Defendant that contain false or misleading information in**
264 **the subject lines.**

265 72. Defendant sent the misleading commercial emails to email addresses that
266 Defendant knew, or had reason to know, were held by Washington residents, either because
267 (i) Defendant had a physical Washington address that was associated with the recipient;
268 (ii) Defendant had access to data regarding the recipient indicating that they were in
269 Washington state; or (iii) information was available to Defendant upon request from the
270 registrant of the internet domain name contained in the recipient's electronic mail address.

272 73. Defendant knows where many of its customers reside through several
273 methods.

274 74. First, for any person that places an order online from Defendant, Defendant
275 associates an email address with a shipping address and/or billing address for that order.

276 75. Second, Defendant encourages online shoppers to create online accounts.
277 Customers save information in their Defendant accounts along with their email address,
278 such as shipping addresses, billing addresses, and phone numbers.

279 76. Third, Defendant offers consumers credit cards. Consumers who apply or
280 sign up for such cards must provide additional identifying information, such as a social
281 security number, and provide a billing address to Defendant.

282 77. Fourth, discovery will show that Defendant employs methods to track the
283 effectiveness of its marketing emails and to identify consumers that click on links contained
284 in Defendant's marketing emails, including by identifying their physical location.

285 78. Fifth, Defendant also utilizes cookies, pixels, and other online tracking
286 technologies to identify and locate the consumers that click on links contained in
287 Defendant's marketing emails and that visit its website.

288 79. Sixth, discovery will also show that Defendant employs sophisticated third
289 parties who create profiles of customers and potential customers, including their email
290 address and physical location.

291 80. Lastly, Defendant also knew, should have known, or had reason to know
292 that it sends marketing emails to Washington residents due to its large presence in the state
293 and the volume of marketing emails it sends to people around the country.

294 81. At all times relevant to this Complaint, Named Plaintiffs resided in
295 Washington State.

296 82. Named Plaintiffs have received Defendant's emails since at least November
297 30, 2018.

298 83. Named Plaintiffs have each received hundreds of marketing emails from
299 Defendant since that date, and typically receive more than five emails every week.

300 84. Named Plaintiffs receive emails from Defendant through email providers
301 that have data limits. Named Plaintiffs currently have more than one thousand emails from
302 Defendant in their inboxes, but discovery will show that they have received more emails
303 that they have deleted to conserve the finite space available in their email inbox.

304 85. Defendant knows, or has reason to know, that Named Plaintiffs' email
305 addresses are held by Washington residents. Named Plaintiffs have accounts with
306 Defendant that reflect their home address in the State of Washington. Named Plaintiffs
307 have made several purchases from the Defendant's website that have been delivered to
308 their homes in Washington. Named Plaintiffs have also shopped in Defendant's stores in
309 Washington with their account. Named Plaintiffs have also repeatedly clicked on links
310 contained in Defendant's emails from their computer, which was registered to an IP address
311 in Washington at all relevant times, or from their smart phone, which was located in
312 Washington unless Plaintiff happened to be traveling.

313 86. Named Plaintiffs received the emails with false and misleading subject lines
314 described above. Named Plaintiffs received additional emails with false and misleading
315 subject lines from Defendant.

316 87. Defendant sent these emails to Named Plaintiffs for the purpose of
317 promoting Defendant's goods for sale.

318 88. Defendant initiated the transmission or conspired to initiate the transmission
319 of these commercial electronic mail messages to Named Plaintiffs.

320 89. Named Plaintiffs do not want to receive emails with false and misleading
321 subject lines from Defendant, though they would like to continue receiving truthful
322 information from Defendant regarding its products. Due to Defendant's conduct, however,
323 Named Plaintiffs cannot tell which emails from Defendant contain truthful information or
324 which emails are spam with false and misleading information designed to spur them to
325 make a purchase.

326 90. Named Plaintiffs have identified more than two hundred fifty (250)
327 Defendant emails with false and misleading subject lines. These emails were sent between
328 October 6, 2021 and July 1, 2025, showing that Defendant engaged in this conduct
329 throughout the relevant time period.

330 91. Named Plaintiffs continue to receive emails with false and misleading
331 subject lines. Because Named Plaintiffs have deleted some of the emails they have received
332 from Defendant, they are not presently able to identify all the emails with false and
333 misleading subject lines they have received. Defendant is aware of all the emails it has sent
334 Named Plaintiffs and discovery will show the full number of illegal false and misleading
335 emails Defendant has sent throughout the relevant time period.

336 **V. CLASS ACTION ALLEGATIONS**

337 92. Class Definition. Pursuant to Civil Rule 23(b)(3), Named Plaintiffs bring
338 this case as a class action on behalf of a Class defined as:

339 All Washington residents¹ who, within four years before the
340 date of the filing of this complaint until the date any order
341 certifying a class is entered, received an email from or at the
342 behest of Defendant that contained a subject line stating or
343 implying that 1) a “free gift” or “free [item]” was being
344 offered to the recipient, with no purchase requirement or any
345 conditions or exclusions; 2) a percentage discount would be
346 applied to the recipient’s “purchase[,]” with no conditions or
347 exclusions.

348
349 Excluded from the Class are Defendant, any entity in which
350 Defendant has a controlling interest or that has a controlling
351 interest in Defendant, and Defendant's legal representatives,
352 assignees, and successors. Also excluded are the judge to
353 whom this case is assigned and any member of the judge's
354 immediate family.

¹ Residents” shall have the same meaning as “persons” as defined in RCW 19.190.010(11) and RCW 19.86.010(a).

355
356 93. Numerosity. The Class is so numerous that joinder of all members is
357 impracticable. The Class has more than 1,000 members. Moreover, the disposition of the
358 claims of the Class in a single action will provide substantial benefits to all parties and the
359 Court.

360 94. Commonality. There are numerous questions of law and fact common to
361 Plaintiff and members of the Class. The common questions of law and fact include, but are
362 not limited to:

- 363 a. Whether Defendant sent commercial electronic mail messages with
364 false and misleading information in the subject lines;
- 365 b. Whether Defendant initiated the transmission or conspired to initiate the
366 transmission of commercial electronic mail messages to recipients
367 residing in Washington State in violation of RCW 19.190.020;
- 368 c. Whether a violation of RCW 19.190.020 establishes all the elements of
369 a claim under Washington's Consumer Protection Act, RCW 19.86 *et*
370 *seq.*;
- 371 d. Whether Named Plaintiffs and the proposed Class are entitled to an
372 injunction enjoining Defendant from sending the unlawful emails in the
373 future; and
- 374 e. The nature and extent of Class-wide damages.

375 95. Typicality. Named Plaintiffs' claims are typical of the claims of the Class.
376 Named Plaintiffs' claims, like the claims of the Class, arise out of the same common course
377 of conduct by Defendant and are based on the same legal and remedial theories.

378 96. Adequacy. Named Plaintiffs will fairly and adequately protect the interests
379 of the Class. Named Plaintiffs have retained competent and capable attorneys with
380 significant experience in complex and class action litigation, including consumer class
381 actions. Counsel for Named Plaintiff have significant experience representing consumers
382 in cases involving violations of CEMA. Named Plaintiffs and their counsel are committed
383 to prosecuting this action vigorously on behalf of the Class and have the financial resources
384 to do so. Neither Named Plaintiffs nor their counsel have interests that are contrary to or
385 that conflict with those of the proposed Class.

386 97. Predominance. Defendant has a standard practice of initiating or conspiring
387 to initiate commercial electronic mail messages to email addresses held by Washington
388 State residents. The common issues arising from this conduct predominate over any
389 individual issues. Adjudication of these issues in a single action has important and desirable
390 advantages of judicial economy.

391 98. Superiority. Named Plaintiffs and members of the Class have been injured
392 by Defendant's unlawful conduct. Absent a class action, however, most Class members
393 likely would find the cost of litigating their claims prohibitive. Class treatment is superior
394 to multiple individual suits or piecemeal litigation because it conserves judicial resources,
395 promotes consistency and efficiency of adjudication, provides a forum for small claimants,
396 and deters illegal activities. The members of the Class are readily identifiable from
397 Defendant's records and there will be no significant difficulty in the management of this
398 case as a class action.

399 99. Injunctive Relief. Defendant's conduct is uniform as to all members of the
400 Class. Defendant has acted or refused to act on grounds that apply generally to the Class,

401 so that final injunctive relief or declaratory relief is appropriate with respect to the Class as
402 a whole. Named Plaintiffs further alleges, on information and belief, that the emails
403 described in this Complaint are substantially likely to continue in the future if an injunction
404 is not entered.

405 **VI. CAUSES OF ACTION**

406 **FIRST CLAIM FOR RELIEF**

407 (Violation of Washington's Commercial Electronic Mail Act, RCW 19.190 *et seq.*)

409 100. Named Plaintiffs reallege and incorporate by reference each and every
410 allegation set forth in the preceding paragraphs.

411 101. Washington's CEMA prohibits any "person," as that term is defined in
412 RCW 19.190.010(11), from initiating or conspiring to initiate the transmission of a
413 commercial electronic mail message from a computer located in Washington or to an
414 electronic mail address that the sender knows, or has reason to know, is held by a
415 Washington resident that contains false or misleading information in the subject line. These
416 prohibitions target falsity or deception, as interpreted in *Brown v. Old Navy, LLC*, 567 P.3d
417 38 (Wash. 2025).

418 102. Defendant is a "person" within the meaning of the CEMA, RCW
419 19.190.010(11).

420 103. Defendant initiated the transmission or conspired to initiate the transmission
421 of one or more commercial electronic mail messages to Named Plaintiffs and proposed
422 Class members with false or misleading information in the subject line.

423 104. Defendant's acts and omissions violated RCW 19.190.020(1)(b). Defendant
424 knew or had reason to know of the falsity of the subject lines, as shown by its repeated

425 patterns of omitting conditions and exclusions in subject lines while burying them in the
426 fine print of the body of the email.

427 105. Defendant's acts and omissions injured Named Plaintiffs and proposed
428 Class members, as receipt of such misleading emails constitutes injury under CEMA and
429 the CPA as a matter of law, clogging inboxes and wasting time.

430 106. The balance of the equities favors the entry of permanent injunctive relief
431 against Defendant. Named Plaintiffs, the members of the Class, and the general public will
432 be irreparably harmed absent the entry of permanent injunctive relief against Defendant. A
433 permanent injunction against Defendant is in the public interest. Defendant's unlawful
434 behavior is, based on information and belief, ongoing as of the date of the filing of this
435 pleading; absent the entry of a permanent injunction, Defendant's unlawful behavior will
436 not cease and, in the unlikely event that it voluntarily ceases, is likely to reoccur.

437 107. Pursuant to RCW 19.190.040(1), each Named Plaintiff and each Class
438 member is entitled to the greater of \$500 per commercial electronic mail message sent in
439 violation of RCW 19.190.020(1)(b) or actual damages.

440 108. In addition, Named Plaintiffs and Class members are therefore entitled to
441 injunctive relief in the form of an order enjoining further violations of RCW
442 19.190.020(1)(b).

443 **SECOND CLAIM FOR RELIEF**
444 (Per se violation of Washington's Consumer Protection Act, RCW 19.86 et seq.)
445

446 109. Named Plaintiffs reallege and incorporate by reference each and every
447 allegation set forth in the preceding paragraphs.

448 110. Named Plaintiffs and Class members are "persons" within the meaning of
449 the CPA, RCW 19.86.010(1).

450 111. Defendant violated the CEMA by initiating or conspiring to initiate the
451 transmission of commercial electronic mail messages to Named Plaintiffs and Class
452 members that contain false or misleading information in the subject line, amounting to
453 material deception.

454 112. A violation of CEMA is a “per se” violation of the Washington Consumer
455 Protection Act (“CPA”), RCW 19.86.010, *et seq.* RCW 19.190.030.

456 113. A violation of the CEMA establishes all five elements of Washington’s
457 Consumer Protection Act as a matter of law.

458 114. Defendant’s violations of the CEMA are unfair or deceptive acts or
459 practices that occur in trade or commerce under the CPA. RCW 19.190.100.

460 115. Defendant’s unfair or deceptive acts or practices vitally affect the public
461 interest and thus impact the public interest for purposes of applying the CPA. RCW
462 19.190.100.

463 116. Pursuant to RCW 19.190.040(1), damages to each recipient of a commercial
464 electronic mail message sent in violation of the CEMA are the greater of \$500 for each
465 such message or actual damages, which establishes the injury and causation elements of a
466 CPA claim as a matter of law.

467 117. Defendant engaged in a pattern and practice of violating the CEMA. As a
468 result of Defendant’s acts and omissions, Named Plaintiffs and Class members have
469 sustained damages, including \$500 in statutory damages, for each and every email that
470 violates the CEMA. The full amount of damages will be proven at trial. Named Plaintiffs
471 and Class members are entitled to recover actual damages and treble damages, together
472 with reasonable attorneys’ fees and costs, pursuant to RCW 19.86.090.

473 118. Under the CPA, Named Plaintiffs and members of the Class are also entitled
474 to, and do seek, injunctive relief prohibiting Defendant from violating the CPA in the
475 future.

476 119. Defendant's deceptive practices are ongoing and likely to continue absent
477 injunction, as evidenced by its consistent email patterns, vitally affecting the public interest
478 in truthful commercial communications.

479 **VII. REQUEST FOR RELIEF**

480 WHEREFORE, Named Plaintiffs, on their own behalf and on behalf of the
481 members of the Class, request judgment against Defendant as follows:

- 482 A. That the Court certify the proposed Class;
- 483 B. That the Court appoint Named Plaintiffs as Class Representatives;
- 484 C. That the Court appoint the undersigned counsel as counsel for the Class;
- 485 D. That the Court grant injunctive relief as permitted by law to ensure that
486 Defendant will not continue to engage in the unlawful conduct described in
487 this Complaint;
- 488 E. That the Court enter a judgment awarding any other injunctive relief
489 necessary to ensure Defendant's compliance with the CEMA;
- 490 F. That Defendant be immediately restrained from altering, deleting, or
491 destroying any documents or records that could be used to identify members
492 of the Class;
- 493 G. That Named Plaintiffs and all Class members be awarded statutory damages
494 in the amount of \$500 for each violation of the CEMA pursuant to RCW
495 19.190.040(1) and treble damages pursuant to RCW 19.86.090;

496 H. That the Court enter an order awarding Named Plaintiffs reasonable
497 attorneys' fees and costs; and

498 I. That Named Plaintiffs and all Class members be granted other relief as is
499 just and equitable under the circumstances.

500 **VIII. TRIAL BY JURY**

501 Named Plaintiffs demand a trial by jury for all issues so triable.

502 Dated this 22nd day of October, 2025.

503 Respectfully submitted,

504 Z LAW, LLC

505 /s/ David M. Trojanowski (WSBA # 56258)
506 Cory L. Zajdel, Esq. (*pro hac*
507 *vice forthcoming*)
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