

STATE OF INDIANA  
COUNTY OF MONROE

SS:

MONROE COUNTY CIRCUIT COURT  
CAUSE NO. **53C06-2511-CT-003260**

LISA COLE, ASHLEY JOHNSON,  
MISTY GREBEL, ALEXIS BRIMHALL,  
KAYLA SLACHTA and JILL  
REISINGER, on their own behalf and on  
behalf of all others similarly situated,

Plaintiffs,

v.

ULTA SALON, COSMETICS &  
FRAGRANCE, INC.,

Defendant.

## **Plaintiffs' Class Action Complaint**

### **I. NATURE OF THE ACTION**

1. This is a class action brought by Named Plaintiffs Lisa Cole (“Cole”), Ashley Johnson (“Johnson”), Misty Grebel (“Grebel”), Alexis Brimhall (“Brimhall”), Kayla Slachta (“Slachta”), Jill Reisinger (“Reisinger”) (collectively “Named Plaintiffs”) against Defendant Ulta Salon, Cosmetics & Fragrance, Inc. (“Ulta” or “Defendant”) for false and misleading email marketing.

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

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

4. The subject lines of the Free Gift Emails falsely imply that “free” gifts are being provided unconditionally and at no cost to the recipient. Upon opening the email, however, the body reveals that the “free” gifts require qualifying purchases.

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

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

7. Defendant’s Free Gift Emails are misleading as the exclusions contained in the fine print within the body of the email substantially restrict the offer’s applicability, failing to disclose terms “at the outset” in a manner that avoids misunderstanding. Defendants knowingly omit these exclusions in Free Gift Emails subject lines to drive email opens and engagement, as evidenced by their consistent use of fine-print disclaimers in promotional emails.

8. Second, Defendant sends emails with subject lines that falsely represent unqualified discounts on purchases without disclosing material exclusions (“Percentage Discount Emails”). The subject lines of the Percentage Discount Emails imply a straightforward percentage discount on the recipient’s entire purchase (such as “20% OFF your entire purchase”), without limitations or exclusions, enticing consumers to open the email in anticipation of a broad bargain. Upon opening the email, however, the body reveals that there are significant exclusions that do not qualify for the percentage discount.

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

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

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

12. Defendant's practice of sending Free Gift Emails and Percentage Discount Emails that contain false and misleading information in the subject line violates Indiana's Deceptive Commercial Electronic Mail statute, Ind. Code § 24-5-22-7(b)(3) ("IDCEM").

13. By sending emails with false and misleading information in the subject lines to Named Plaintiffs and the Class (defined below), Defendant clogs email inboxes with false information and violates Named Plaintiffs' and Class members' rights to be free from deceptive commercial emails.

14. Named Plaintiffs bring this action as a class action on behalf of persons residing in Indiana who also received Defendant's false and misleading emails. Named Plaintiffs requested relief includes an award to Named Plaintiffs and Class members of statutory presumptive damages of \$500 per illegal email, attorney's fees, costs, and injunctive relief under Ind. Code § 24-5-22-10(d).

## II. PARTIES

15. Named Plaintiff Cole is a citizen of Indiana and resides in Monroe County.

16. Named Plaintiff Johnson is a citizen of Indiana and resides in Wayne County.

17. Named Plaintiff Grebel is a citizen of Indiana and resides in Morgan County.

18. Named Plaintiff Brimhall is a citizen of Indiana and resides in Johnson County.

19. Named Plaintiff Slachta is a citizen of Indiana and resides in Lake County.

20. Named Plaintiff Reisinger is a citizen of Indiana and resides in Warrick County.

21. Defendant Ulta is a corporation chartered under the laws of the State of Delaware. Defendant currently is, and at all relevant times in the past has, engaged in substantial business activities in Indiana.

22. Defendant owns and operates a large online marketplace, maintains more than twenty (20) physical stores in the state, and sends the marketing emails at issue in this Complaint to consumers throughout Indiana.

### **III. JURISDICTION AND VENUE**

23. This Court has subject-matter jurisdiction over this action under Indiana law.

24. This Court has personal jurisdiction over Defendant because, among other things, Ulta initiated or assisted the transmission of commercial email that violates Ind. Code § 24-5-22 to addresses held by Indiana residents and/or from a computer located in Indiana, and a person outside Indiana who initiates or assists such transmissions knowing or having reason to know the messages will be received in Indiana submits to the jurisdiction of Indiana courts. Ind. Code § 24-5-22-7(c), and § 24-5-22-10(e).

25. Venue is proper because a substantial part of the events or omissions giving rise to the claims occurred in this county, including the receipt of the commercial emails.

### **IV. FACTUAL ALLEGATIONS**

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

26. The IDCEM regulates deceptive email marketing.

27. The IDCEM creates an independent but limited private right of action which can be asserted by a person who is the recipient of a commercial electronic mail message which contains false or misleading information in the subject line.

28. A plaintiff who successfully alleges and proves such a violation may obtain an injunction against future violations, statutory damages of \$500 per violation and attorneys' fees.

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

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

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

31. The emails were sent at Defendant's direction and were approved by Defendant.

**1. Free Gift Emails**

32. Defendant frequently sends emails with subject lines stating that a "free" gift is available to the recipient of the email. The body of these emails (and fine print), however, contains conditions that must be satisfied in order for the recipient to receive their promised "free gift" that, as it turns out, is not actually free.

33. On November 25, 2023, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: "Did someone say FREE GIFT? (Choose from 8!) [hands emoji.]"

34. On November 27, 2023, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “[fire emojis] FREE 22 PC gift + JUST ADDED Cyber Monday deals [emoji.]”

35. On November 30, 2023, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “A \$131 value-but FREE for you! [heart emoji.]”

36. On December 2, 2023, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Want a FREE mystery gift? [heart emoji.]”

37. On December 4, 2023, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 28 PC gift can be yours [heart emoji.]”

38. On December 5, 2023, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “[ghost emoji] Get your FREE 5 PC fragrance gift[.]”

39. On December 6, 2023, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “This [star emoji] FREE 28 PC gift [star emoji] has your name on it[.]”

40. On January 7, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Want a FREE 6 PC beauty gift?”

41. On January 10, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Love Drunk Elephant? Get this gift FREE[.]”

42. On January 10, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “[Name], this FREE Urban Decay 4 PC gift has your name on it[.]”

43. On January 12, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “For you: FREE 9 PC gift [emoji.]”

44. On January 15, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE Drybar gift right this way [hand emoji.]”

45. On January 19, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 4 PC Beekman 1802 gift [stars emoji] Today only 4-8 [stars emoji.]”

46. On January 21, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 13 PC gift + new finds & deals [stars emoji.]”

47. On January 22, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Philosophy fans: FREE 5 PC gift inside [hand emoji.]”

48. On January 31, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “[ghost emoji] Score a FREE full size 3 PC Hempz gift while you can[.]”

49. On February 7, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “[heart emoji] FREE 4 PC Gucci fragrance gift[.]”

50. On February 7, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “[heart emoji] FREE 4 PC Armani gift (\$100 value!) [heart emoji.]”

51. On February 9, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Choose from 3 FREE 26 PC gifts! [present emoji.]”

52. On February 12, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “[ghost emoji] FREE 5 PC Sunday Riley skin care gift[.]”

53. On February 12, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE YSL gift + looks for your zodiac [emoji.]”

54. On February 20, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 7 PC makeup gift inside [heart emoji.]”

55. On February 21, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “[face emoji] Quick! Grab your FREE 7 PC gift [face emoji.]”

56. On February 26, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “SO MANY FREE GIFTS INSIDE [hand pointing emoji.]”

57. On March 8, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Hello, free 8 PC gift [hands emoji] Choose from 3!”

58. On March 11, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Yep! [ghost emoji] Free 5 PC Peach & Lily gift inside[.]”

59. On March 13, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “[face emoji] Free 4 PC MAC gift [face emoji.]”

60. On March 20, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 4 PC Too Faced gift? Yes, please!”

61. On March 27, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “It's YOURS: Free 5 PC Clinique gift [present emoji.]”

62. On March 31, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 3 PC Jimmy Choo gift!”

63. On April 8, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “[sun emoji] FREE 5 PC Beekman 1802 gift right this way [arrow emoji.]”

64. On April 13, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “[face emoji] Choose between 2 FREE 11 PC gifts [face emoji.]”

65. On April 15, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 4 PC Burberry fragrance gift [face emoji.]”

66. On April 17, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “4 hours only: FREE 5 PC Benefit Cosmetics gift [heart emoji.]”

67. On April 17, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Get this Half Magic gift-for FREE [stars emoji.]”

68. On April 18, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE MYSTERY GIFT (choose from 5!) [hands emoji.]”

69. On April 22, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “2X points and SO. Many. Free. GIFTS [face emoji.]”

70. On April 29, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “8 hours only: FREE Yves Saint Laurent gift worth \$100 [face emoji.]”

71. On April 30, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “[face emoji] FREE 10 PC makeup gift (\$95 value!)[.]”

72. On May 1, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Mugler Fragrances: FREE 4 PC gift [face emoji.]”

73. On May 5, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “All yours: FREE 4 PC Kate Spade gift [flower emoji.]”

74. On May 9, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 5 PC Viktor&Rolf fragrance gift [emoji.]”

75. On May 13, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE gifts & deals [finger pointing emoji.]”

76. On May 15, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 4 PC FULL-SIZE r.e.m. beauty gift[.]”

77. On May 20, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “For your makeup bag [ghost emoji] FREE 4 PC Bobbi Brown gift[.]”

78. On May 22, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Act fast! FREE IT Cosmetics gift available for 8 hours only!”

79. On May 29, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 3 PC Olehenriksen gift! [hands emoji.]”

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

81. On June 8, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 11 PC gift [face emoji.]”

82. On June 9, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “APP ONLY! FREE 12 PC gift for you [face emoji.]”

83. On June 10, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “\$115 Prada-but FREE for you!”

84. On June 12, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Want FREE Drunk Elephant? Open this [finger pointing emoji.]”

85. On June 17, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 4 PC Dermalogica gift for you [heart emoji.]”

86. On June 19, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “New from Fenty + FREE 4 PC gift[.]”

87. On June 26, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Oh, FREE 4 PC Sol de Janeiro gift! [heart.]”

88. On June 26, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 4 PC Bumble and bumble gift [face emoji.]”

89. On June 30, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 3 PC \*full size\* gift from The Ordinary[.]”

90. On July 3, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 4 PC Vacation suncare gift [palm tree emoji.]”

91. On July 4, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Cue the fireworks [emoji] FREE 12 PC gift is inside!”

92. On July 5, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Woah-don't sleep on this FREE 5 PC Clinique gift!”

93. On July 15, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Choose your FREE clean makeup gift from PUR or Jane Iredale [emoji.]”

94. On July 18, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 20 PC gift for you + everything you need for rush [heart emoji.]”

95. On July 22, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 3 PC Briogeo gift is YOURS [heart emoji.]”

96. On July 24, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 11 PC gift to prep for back to school [face emoji.]”

97. On July 31, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE deluxe 4 PC Buxom gift [heart emoji] limited time only!”

98. On August 1, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 12 PC gift + 5X points [heart emoji.]”

99. On August 7, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “[face emoji] FREE 4 PC Laura Mercier gift inside [face emoji.]”

100. On August 15, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “[heart emoji] MEMBER EXCLUSIVE [heart emoji] Free 26 PC gift[.]”

101. On August 19, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 26 PC beauty bag [heart and stars emoji.]”

102. On August 21, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “YAY for OUAI! Get this 4 PC gift FREE [heart emoji.]”

103. On August 23, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Your FREE 6 PC gift is inside[.]”

104. On August 28, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 10 PC makeup gift for you! [heart emoji.]”

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

106. On September 7, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Choose your FREE 5 PC gift[.]”

107. On September 8, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE Dolce&Gabbana 5 PC gift [face and stars emoji.]”

108. On September 9, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Your FREE Benefit Cosmetics gift is this way [finger pointing emoji.]”

109. On September 11, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Hey, Too Faced fans! Get your FREE 5 PC gift [heart and eyes emoji.]”

110. On September 14, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Choose your FREE 7 PC mystery gift [heart and eyes emoji.]”

111. On September 15, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Ready, set, GLOW [forward arrow emoji] FREE 4 PC gift from St. Tropez [stars emoji.]”

112. On September 16, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Your FREE Stila gift is waiting [party face emoji.]”

113. On September 17, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE skin care gift (a \$120 value!) [shocked face emoji.]”

114. On September 18, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Your [purse emoji] needs this FREE 5 PC NUDESTIX makeup gift [lipstick emoji.]”

115. On September 23, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 14 PC gift & Fall Haul offers you can’t miss [fire emoji.]”

116. On September 25, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “[hour glass emoji] 4 PC Hourglass gift inside [hour glass emoji.]”

117. On September 25, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE Chloe fragrances [smiley face emoji.]”

118. On September 30, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Get this 7 PC Estee Lauder FREE gift tonight only!”

119. On October 3, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Choose your FREE beauty bag! [heart emoji.]”

120. On October 5, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Member exclusive [gift bag and stars emoji] FREE 9 PC beauty bag, choose from 3[.]”

121. On October 9, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “[peach emoji] FREE 6 PC Peach & Lily skin care gift today only! [peach emoji.]”

122. On October 9, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “You deserve this FREE 6 PC bareMinerals gift + 2X points [stars emoji.]”

123. On October 10, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Inside: FREE 8 PC gift + the hottest giftable sets [gift box emoji.]”

124. On October 14, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Re(MARC)able [smiley face emoji] Your FREE Marc Jacobs gift! [heart emoji.]”

125. On November 17, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 12 PC gift + up to 40% OFF fragrances [hands emoji.]”

126. On November 27, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Gifts for them, FREE gifts for you [heart emoji.]”

127. On December 9, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “For YOU: FREE 11 PC gift + 20% off [heart emoji.]”

128. On December 9, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “For YOU: FREE 11 PC gift [heart emoji][.]”

129. On December 27, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “This 17 PC gift? It's FREE! [face emoji][.]”

130. On December 27, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “3X points + FREE 8 PC skin care gift[.]”

131. On December 30, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE RABANNE [face emoji] Get your 5 PC gift now[.]”

132. On January 1, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Get your FREE Bobbi Brown gift! [heart emoji][.]”

133. On January 1, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “NEW NARS + FREE 5 PC gift [gift box emoji].”

134. On January 2, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 7 PC body care gift [smiley face emoji] (hello, self-care!)[.]”

135. On January 5, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “[stars emoji] FREE 4 PC Dermalogica gift (deluxe samples included!) [stars emoji][.]”

136. On January 8, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Free 4 PC Sol de Janeiro gift-today only! [heart emoji][.]”

137. On January 9, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 6 PC gift + beauty that takes care of \*you\* [heart face emoji][.]”

138. On January 10, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Your FREE 8 PC skin care gift [present emoji] choose from 2!”

139. On January 14, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Alexis, FREE 11 PC gift + TONS of skin care deals for you [eyes emoji][.]”

140. On January 15, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Don’t miss your FREE 5 PC Biolage gift [heart face and plant emoji][.]”

141. On January 15, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE Kiehl’s Since 1851 gift for you! [heart face emoji][.]”

142. On January 18, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 18 PC skin care gift - a \$133 value! [surprised face emoji][.]”

143. On January 19, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “A FREE 5 PC Philosophy gift to love [heart emoji][.]”

144. On January 20, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “You need this FREE 4 PC NYX Professional Makeup gift[.]”

145. On January 22, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 4 PC Snif fragrance gift [face emoji][.]”

146. On January 22, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “4 PC Fenty Beauty gift - it's ON [emoji][.]”

147. On January 27, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 3 PC Ralph Lauren fragrance gift[.]”

148. On January 29, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE Prada for you, Alexis [face emoji.]”

149. On January 29, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “[elephant emoji] FREE Drunk Elephant gift inside [finger pointing emoji][.]”

150. On February 2, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Love notes + FREE 12 PC fragrance gift[.]”

151. On February 5, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “A FREE 4 PC Yves Saint Laurent fragrance gift (yes, really)[.]”

152. On February 7, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Choose from 3 FREE 21 PC gifts !!”

153. On February 10, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Meet NOYZ [heart emoji] (and get 5 of their scents for FREE!)[.]”

154. On February 12, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “2 days until V-Day + 14 PC gift that’s a beauty dream come true [emoji][.]”

155. On February 13, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Buy one get one FREE minis + FREE 15 PC gift[.]”

156. On February 16, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 4 PC Kopari Beauty gift with deluxe samples!”

157. On February 25, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “[heart emoji] FREE 9 PC dermatologist recommended skin care gift [heart emoji][.]”

158. On February 26, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Hair self-care: A FREE 5 PC Bumble and bumble gift [emoji][.]”

159. On February 26, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Honey, you need this 4 PC Farmacy gift [honey pot emoji][.]”

160. On March 2, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE Grande Cosmetics starter kit inside[.]”

161. On March 3, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “[flower emoji] Get this 5 PC FREE Clinique gift TODAY ONLY [flower emoji][.]”

162. On March 5, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “9 FREE TSA approved minis (\$90+ value!)[]”

163. On March 8, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE International Women's Day gift [heart emoji][]”

164. On March 10, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “This FREE 7 PC Origins gift is a \$98 value! [plant emoji][]”

165. On March 19, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Score a FREE 4 PC Shiseido gift (\$56 value!) [present and star emoji][]”

166. On March 23, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Grab your FREE KYLIE COSMETICS & KYLIE JENNER FRAGRANCES gift! [face emoji][]”

167. On March 24, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “This FREE Marc Jacobs gift is SO GOOD [face emoji][]”

168. On March 25, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 5 PC skin care gift + NEW spring skin picks [flower emoji][]”

169. On March 26, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Oooh, a FREE 5 PC Benefit Cosmetics gift [heart emoji][]”

170. On March 29, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “All things FREE: 13 PC gift + 9 PC Ulta Beauty Collection gift[.]”

171. On March 29, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 13 PC gift + sooo many Spring Haul deals [gift bag emoji.]”

172. On March 31, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 4 PC Beekman 1802 gift [face emoji].[.]”

173. On April 1, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “These Spring Haul picks + FREE gift have your name on them!”

174. On April 1, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “[plant emoji] FREE 7 PC Conscious Beauty gift [plant emoji].[.]”

175. On April 2, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “HUGE deals | FREE gifts | Spring HAUL [surprised face emoji].[.]”

176. On April 4, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Quick! Claim your FREE 6 PC Morphe gift [eyes emoji].[.]”

177. On April 4, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “[peach emoji] It's National Vitamin C Day [peach emoji] Here's your FREE 7 PC gift!”

178. On April 5, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 9 PC gift + save on Truly, Le Monde Gourmand & more [heart emoji][.]”

179. On April 14, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Get this 5 PC Burberry gift tonight only! [heart emoji][.]”

180. On April 16, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “This FREE 6 PC WYN gift (\$65+ value!) will be a big hit [tennis ball emoji][.]”

181. On April 16, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Your FREE Bobbi Brown gift right this way [forward arrow emoji][.]”

182. On April 19, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “It's raining FREE gifts & product drops! [raining umbrella emoji][.]”

183. On April 22, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE fragrance gifts you'll only find here [face emoji][.]”

184. On April 27, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “This FREE 4 PC Matrix hair gift is extra [stars emoji] shiny [stars emoji][.]”

185. On April 28, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 12 PC gift (\$100+ value!) for your next music festival[.]”

186. On April 30, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 5 PC Cecred gift [heart emoji][.]”

187. On May 3, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE gift + Spring trend alert [siren emoji] Must-have makeup sticks[.]”

188. On May 4, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Get this FREE 5 PC Dolce&Gabbana gift + 5X points[.]”

189. On May 7, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE gift (\$128 value!) [stars emoji] from Viktor&Rolf[.]”

190. On May 8, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 4 PC Mugler gift (\$100 value!) + 5X points! [stars emoji.]”

191. On May 9, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Gifts for all moms + FREE Wellness gift[.]”

192. On May 12, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “[bow tie emoji] Sabrina Carpenter’s fave hair care + FREE gift[.]”

193. On May 18, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “[sun emoji] Sun-day fun day FREE gift, deals & more! [sun emoji][.]”

194. On May 19, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “FREE 5 PC Estee Lauder gift [face emoji][.]”

195. On May 19, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Say “I do” to this FREE gift + wedding makeup picks [engagement ring emoji.]”

196. On May 21, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “On Wednesdays we get a FREE 4 PC Tarte gift [heart emoji][.]”

197. On June 9, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Get your FREE 4 PC Clarins skin care & makeup gift[.]”

198. On August 15, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Did someone say FREE GIFTS? [surprised face emoji][.]”

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

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

201. In addition, Defendant further restricts the “free gift” offer in the fine print of the email by noting that exclusions apply, that the “free gift” is only valid while supplies last,

and that “[g]ift item cannot be used to satisfy the dollar purchase requirement for the free gift.”

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

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

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

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

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

207. And on August 22, 2025, Defendant sent Class members an email with a subject line that stated: “[Name], FREE 6 PC gift with \$55 online purchase & 20% off hair tools! Details inside[.]”

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

209. For instance, throughout the year, Class Members receive an email with a subject line that states: “[Name], your FREE bday gift is inside + 2X points [heart emoji.]”

210. Class members can receive this annual “FREE bday gift” by showing a barcode in store without the need to make any additional purchase.

## **2. Percentage Discount Emails**

211. Defendant also frequently sends emails with subject lines promising a percentage off the recipient’s entire purchase. The body of these emails (and fine print), however, contains significant and material exclusions.

212. For example, on February 2, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “You’ll [heart emoji] this: 10% OFF your next purchase[.]”

213. On March 7, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Take 10% off your next purchase and [heart emoji] get glowing [heart emoji][.]”

214. On March 12, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Don’t miss 10% off your purchase[.]”

215. On March 29, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “20% off your purchase! Just because. [face emoji][.]”

216. On June 12, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Don’t miss 10% off your purchase[.]”

217. On July 20, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Don’t miss 10% off your purchase[.]”

218. On December 3, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “20% OFF your entire purchase, [Name!] [money bag emoji][.]”

219. On December 8, 2024, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “Want 20% off your entire purchase?”

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

221. On April 20, 2025, Defendant sent Named Plaintiffs and Class members an email with a subject line that stated: “LAST DAY for 20% off your entire purchase...HOP TO IT [heart emoji][.]”

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

223. However, the fine print at the bottom of each email reveals that the percentage discount excludes numerous brands and categories, such as CHANEL and certain “Beauty Deals” and clearance items. It also discloses that the offer cannot be combined with other promotions or applied to specific services or gift cards. These exclusions, located in dense, small-font text at the bottom of the email, materially alter the scope of the purported “entire purchase” discount promised in the subject line.

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

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

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

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

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

228. Defendant knows where many of its customers reside through several methods.

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

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

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

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

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

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

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

236. At all times relevant to this Complaint, Named Plaintiffs resided in Indiana.

237. Named Plaintiffs have received Defendant's emails for at least two (2) years.

238. Named Plaintiffs have received hundreds of marketing emails from Defendant, and typically receive more than five emails every week.

239. Named Plaintiffs receive emails from Defendant through email providers that have data limits. Named Plaintiffs currently have hundreds of emails from Defendant in their inboxes, but discovery will show that they have received more emails than they have deleted to conserve the finite space available in their email inbox.

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

241. Named Plaintiffs received the emails with false and misleading subject lines described above. Named Plaintiffs received additional emails with false and misleading subject lines from Defendant.

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

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

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

245. Named Plaintiffs have identified hundreds of Defendant emails with false and misleading subject lines. These emails were sent over the course of several years, showing that Defendant engaged in this conduct throughout the relevant time period.

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

## **V. CLASS ACTION ALLEGATIONS**

247. Class Definition. Named Plaintiffs bring this case as a class action on behalf of a Class defined as:

All Indiana residents who, within two years before the date of the filing of this complaint until the date any order certifying a class is entered, received an email from or at the behest of Defendant that contained a subject line stating or implying that 1) a “free gift” or “free” [item] was being offered to the recipient, with no purchase requirement or any conditions or exclusions.; or 2) a percentage discount off would apply to the recipient’s “purchase” or “next purchase” or “entire purchase” with no conditions or exclusions.

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

248. Numerosity. The Class is so numerous that joinder of all members is impracticable. The Class has more than 100 members. Moreover, the disposition of the claims of the Class in a single action will provide substantial benefits to all parties and the Court.

249. Commonality. There are numerous questions of law and fact common to Named Plaintiffs and members of the Class. The common questions of law and fact include, but are not limited to:

- a. Whether Defendant sent commercial electronic mail messages with false or misleading information in the subject lines;
- b. Whether Defendant initiated the transmission or conspired to initiate the transmission of commercial electronic mail messages to recipients residing in Indiana in violation of IDCEM;

- c. Whether Named Plaintiffs and the proposed Class are entitled to an injunction enjoining Defendant from sending the unlawful emails in the future; and
- d. The nature and extent of Class-wide injury and damages.

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

251. Adequacy. Named Plaintiffs will fairly and adequately protect the interests of the Class. Named Plaintiffs have retained competent and capable attorneys with significant experience in complex and class action litigation, including consumer class actions. Counsel for Named Plaintiffs have significant experience representing consumers in cases including deceptive email statutes. Named Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf of the Class and have the financial resources to do so. Neither Named Plaintiffs nor their counsel have interests that are contrary to or that conflict with those of the proposed Class.

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

253. Superiority. Named Plaintiffs and members of the Class have been injured by Defendant's unlawful conduct. Absent a class action, however, most Class members likely would find the cost of litigating their claims prohibitive. Class treatment is superior to multiple

individual suits or piecemeal litigation because it conserves judicial resources, promotes consistency and efficiency of adjudication, provides a forum for small claimants, and deters illegal activities. The members of the Class are readily identifiable from Defendant's records and there will be no significant difficulty in the management of this case as a class action.

## **VI. CAUSE OF ACTION**

### (Violation of Indiana's Deceptive Commercial Electronic Mail Statute, Ind. Code § 24-5-22-1 *et seq*)

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

255. Indiana Code § 24-5-22-2(a) defines "Commercial electronic mail" as "an electronic mail message sent to promote real property, goods, or services for sale or lease."

256. All emails sent to Named Plaintiffs and the Class were "commercial electronic mail," as the purpose of those emails was to advertise goods or services for sale.

257. Indiana Code § 24-5-22-7(b)(3) contains the following prohibition related to Commercial Electronic Mail: "A person may not initiate or assist in the transmission of a commercial electronic mail message that contains false or misleading information in the subject line."

258. Ulta is the person that initiated or assisted in the transmission of the emails.

259. Indiana Code § 24-5-22-7(a) provides that "A person knows that the intended recipient of a commercial electronic mail message is an Indiana resident if the information is available, upon request, from the registrant of the Internet domain name contained in the recipient's electronic mail address."

260. Information concerning the residency of Named Plaintiffs and Class members is (and was) available on request from the registrant of the Internet domain name contained in Named Plaintiffs' and Class members' electronic mail addresses.

261. Defendant also collects address information for each person that creates a rewards account or makes a purchase online for delivery before it sends any Commercial Electronic Mail.

262. Defendant also uses pixels, tracking software, cookies, and other third-party resources to determine the location of Class members.

263. Named Plaintiffs and Class members shopped and made purchases online and had products delivered to their residences in Indiana.

264. Named Plaintiffs and Class members shopped in stores located in Indiana and saved Indiana stores as their preferred locations.

265. Named Plaintiffs and Class members are and were, in fact, residents of Indiana at the time the emails were transmitted by Ulta.

266. Named Plaintiffs and Class members were the intended recipients of the emails.

267. Ulta knew or should have known that Named Plaintiffs and members of the Class, the intended recipients of the aforementioned emails, are and were Indiana residents when Ulta sent the emails.

268. Indiana Code § 24-5-22-10 provides that a person who is adversely affected by a violation of section 7 of this chapter may bring an action against a person who initiated or assisted in the transmission of a commercial electronic mail message that violates section 7 to: (1) enjoin further violation of section 7 of this chapter; (2) recover the greater of actual damages arising from the violation or presumptive damages of five hundred dollars (\$500).

269. Under Indiana Code § 24-5-22, it is irrelevant whether the emails were solicited.

270. Each of the emails sent is a separate violation of Indiana Code § 24-5-22-7(b)(3).

271. In violation of Indiana Code § 24-5-22-7(b)(3), the emails each contain subject lines with false or misleading information that had the capacity, tendency, or effect of deceiving the recipient.

272. For example, many of the emails contain subject lines that state Named Plaintiffs and Class members were being offered something for “free,” including in many instances a “free gift,” without explaining in the subject line that a minimum purchase requirement applied to the offer.

273. A purchaser who only reads the subject line of the emails (and does not read the fine print within the body of the email) would be unaware of the minimum purchase requirement for each email that offered a “free” item or a “free gift.”

274. Likewise, many of the emails contain subject lines that state Named Plaintiffs and Class members were being offered a percentage discount off their “entire purchase” or “next purchase,” without disclosing in the subject line that the discount was subject to substantial exclusions and limitations.

275. A purchaser who only reads the subject line of the emails (and does not read the fine print within the body of the email) would be unaware that the percentage discount did not apply to numerous brands, services, and products, and that other conditions and restrictions significantly limited the scope of the offer.

276. Ulta initiated or assisted in the transmission of the emails to Named Plaintiffs and Class members, which each contained false and/or misleading information in the subject line that had the capacity to deceive the recipient, as stated herein.

277. Each email constitutes a separate violation under Indiana Code § 24-5-22-7(b)(3).

278. As a result, Named Plaintiffs and the Class are entitled to injunctive relief, presumptive damages of five hundred dollars (\$500) per violating message (or compensatory damages if greater), attorney's fees, and litigation costs pursuant to Indiana Code § 24-5-22-10(d).

## **VII. REQUEST FOR RELIEF**

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

- A. an order assuming jurisdiction of this case;
- B. an order certifying the proposed Class under Indiana Trial Rule 23;
- C. an order appointing Named Plaintiffs as Class Representatives;
- D. an order appointing the undersigned counsel as counsel for the Class;
- E. an order awarding statutory damages pursuant to Indiana Code § 24-5-22-10(d) in the amount of five hundred dollars (\$500) for each violating message, or compensatory damages if greater;
- F. an order enjoining Defendant from further transmitting or causing to be transmitted commercial electronic mail messages in violation of the Indiana Commercial Electronic Mail Act, pursuant to Indiana Code § 24-5-22-10(b).
- G. an order awarding Named Plaintiffs reasonable attorneys' fees and costs; and
- H. an order awarding pre-judgment and post-judgment interest on all sums awarded to Named Plaintiffs and the Class; and
- I. an order awarding other relief as is just and equitable under the circumstances.

Respectfully submitted,

RILEYCATE, LLC

Dated: November 24, 2025

/s/ William N. Riley

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