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CASE #: 25-2-38353-9 SEA

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

JOHN MILITO, individually and on behalf of  
all others similarly situated,

*Plaintiff,*

v.

MATTRESS FIRM, INC.,

*Defendant.*

No.

**CLASS ACTION COMPLAINT**

**I. INTRODUCTION**

1. This is a putative class action under Washington law brought to address deceptive and unlawful emails that plague consumers' inboxes. The Washington legislature, concerned with deception in emails, enacted the Washington Commercial Electronic Mail Act ("CEMA"), RCW 19.190, which, among other things, prohibits any person from sending a commercial email with a false or misleading subject line. RCW 19.190.020.

2. Defendant Mattress Firm, Inc. ("Defendant" or "Mattress Firm") sells and markets mattresses (the "Products"). The Products are sold by Defendant through its website [www.MattressFirm.com](http://www.MattressFirm.com).

CLASS ACTION COMPLAINT

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1           3. Defendant markets its Products by email to Washington residents. The subject lines in  
2 these emails often promote “sales” and “discounts” on the Products. However, many subject lines are  
3 false, misleading, and unlawful because they promote misleading discounts, under false time  
4 restrictions, and/or from misleading regular and former prices.

5           4. Getting an advertised bargain is important to consumers. Consumers are more likely to  
6 purchase an item if it is advertised as a good deal.

7           5. Further, if a sale is advertised as ending soon, consumers are even more likely to buy  
8 now, rather than wait, comparison shop, and/or buy something else.

9           6. There is nothing wrong with a legitimate sale. But a fictitious sale—that is, one with  
10 made-up regular/former prices or made-up expirations—is deceptive and illegal. Moreover,  
11 advertising false and misleading discounts in the subject line of a promotional email violates CEMA  
12 and the Washington Consumer Protection Act (“CPA”). *Brown v. Old Navy LLC*, 567 P.3d 38 (Wash.  
13 2025).

14           7. For many Products, Defendant’s sales were not legitimate because the Products are  
15 regularly available on the website at a discount from a higher regular and former price (called the  
16 “Reference Price”). So, the purported discounts were false and misleading because discounts are  
17 regularly available. Additionally, Defendant promoted these misleading discounts by sending emails  
18 with false and misleading subject lines.

19           8. Defendant also sent emails with misleading subject lines regarding “sales” that would  
20 supposedly end on a specific day when in truth the sales were extended or not limited to the extent  
21 represented.

22           9. For example, Defendant’s emails contained subject lines such as “We’re giving you up  
23 to 72% off—3 days only.” These subject lines lead reasonable consumers to believe that there is a  
24 substantial sale in effect and Defendant’s regular and former prices are normally much higher. In truth,  
25 Defendant’s Products were often available for purchase on the website for less than the Reference  
26 Price. So, the regular price is actually a discounted price, and the amount of the advertised discount is  
27 misleading.

10. As another example, Defendant's emails often contained subject lines describing sales that are time limited and end soon—e.g., "We unlocked it early: Extra 20% off Cyber Monday starts now!" These subject lines lead reasonable consumers to believe that if they don't buy before the sale ends, they won't be able to get the advertised discount. In truth, the sale was either extended, reinstituted, or replaced shortly thereafter by another sale. So, the deals did not genuinely expire as advertised.

11. Plaintiff is a Washington resident who received Defendant's deceptive email advertisements. Plaintiff brings this case to protect Washington residents from Defendant's false and misleading emails about its purported limited-time discounts.

## II. PARTIES

12. Plaintiff John Milito is domiciled in King County, Washington and has been a citizen and resident of Washington during at least the preceding three years.

13. The proposed class includes citizens of Washington.

14. Defendant Mattress Firm, Inc. is a Delaware corporation.

## III. JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction under the Washington State Constitution, which sets forth the jurisdiction of Washington Superior Courts. This Court also has subject matter jurisdiction under the Consumer Protection Act (CPA), RCW 19.86.090, and the Commercial Electronic Mail Act (CEMA), RCW 19.190.090, which give Washington Superior Courts jurisdiction over claims brought under CEMA and the CPA.

16. This Court has personal jurisdiction over Defendant under RCW 4.28.185. Defendant transacts business in Washington. The claims giving rise to this action arise from Defendant's transaction of business in this state and Defendant's purposeful transmission of electronic mail messages to Washington residents. This Court also has personal jurisdiction over Defendant under RCW 19.86.160 because Defendant engaged in conduct in violation of the CPA that had an impact in Washington. Finally, Plaintiff received emails from Defendant while in Washington.

1           17. Venue is proper in King County Superior Court because Defendant resides here for  
2 purposes of venue. RCW 4.12.025. At all relevant times, Defendant transacted business in King  
3 County, including by sending electronic mail messages to residents of King County and by selling  
4 products to customers living in King County.

5                                   **IV. FACTUAL ALLEGATIONS**

6           **A. Defendant's False and Misleading Emails Regarding Discounts.**

7           18. Defendant markets and sells mattresses directly to consumers through Defendant's  
8 website [www.MattressFirm.com](http://www.MattressFirm.com). Defendant's marketing includes emails to consumers.

9           19. Defendant's emails created the false impression that the Products' regular and former  
10 prices as charged on the website are higher than they truly are, the discounts are limited in time, and  
11 the discounts are genuine.

12           20. Defendant advertised these discounts extensively through emails to recipients on their  
13 mailing list who either registered an account on [MattressFirm.com](http://MattressFirm.com) or previously made purchases from  
14 [MattressFirm.com](http://MattressFirm.com). Additionally, this information is contained in the subject lines of emails.

15           21. When Defendant advertises the discounts through emails with subject lines such as "Up  
16 to 20% Off" or "Up to 72% Off," reasonable consumers interpret the advertisements to mean that  
17 recipients will get a discount off of the former and regular prices charged by Defendant on the website  
18 in the recent past and for a substantial time.

19           22. In other words, reasonable recipients believe that they will receive up to "\_\_% off" the  
20 former and regular prices charged on the website in the recent past, and those higher prices represent  
21 the amount that consumers formerly and consistently had to pay for Defendant's goods on the website  
22 before the sale began, and represent the prices that consumers will consistently have to pay in the  
23 future for Defendant's goods when the sale ends. This creates a sense of value and urgency: buy now,  
24 and you will receive something worth more than you pay for; or wait, and you will pay more for the  
25 same thing later.

26           23. Defendant also sent emails with subject lines stating that purported sales were set to  
27 expire soon, or on a specific date, or when a holiday ends. But when many sales ended, they were

1 either extended or another comparable sale began, and the Products' prices did not immediately revert  
 2 to the supposed pre-sale Reference Prices for a reasonably substantial time period. The cycle continues  
 3 repeatedly.

4 24. Defendant sent numerous commercial emails to Class Members containing the  
 5 following subject lines on the following dates. The emails below are examples and are not exhaustive.

E-Mail Subject	Date
We're giving you up to 72% off—3 days only	11/1/2025
We're keeping our spooky deals alive! Claim your extra 15% off tonight	11/1/2025
You've earned it: Take an extra 20% off till 8am	11/3/2025
Today's your lucky day—we're giving you an extra 10% off	11/5/2025
You've earned it: Extra 15% off is all yours	11/6/2025
Score up to 72% off a bed you & your back will love	11/8/2025
Hurry—use code HOLIDAY to unlock your extra 20% off by 9am	11/8/2025
Flash Sale Alert You're getting an extra 20% off	11/9/2025
You deserve it: Here's an extra 20% off	11/11/2025
Flash Sale Alert Extra 15% off is yours for the taking	11/13/2025
Don't miss out: Score up to 72% off—but only till Monday!	11/15/2025
ATTN night owls Swoop in & take up to 20% off	11/17/2025
Your extra 15% off is inside Unlock with code AFTERHOURS	11/20/2025
72 Hours Only: Save up to 72% now	11/22/2025
You're invited to save Get up to 72% off through Monda	11/23/2025
Your ticket to better sleep: Enjoy up to 20% off before 8am	11/24/2025
We appreciate you Take an extra 20% off with code THANKS	11/26/2025
We're giving thanks with an extra 20% off—ends 8am tomorrow	11/27/2025
Add to cart ASAP *All* brands are on sale + up to 72% off!	11/28/2025
Your move: Use code FLASH to secure an *extra* 20% off	11/28/2025
John, last chance Extra 20% off ends *tomorrow* at 9am	11/29/2025
Final chance for up to 72% off! This Black Friday deal ends tomorrow.	11/30/2025
We unlocked it early: Extra 20% off Cyber Monday starts now!	11/30/2025
Clock's ticking Use code CYBER to claim your extra 20% off	12/1/2025
A bonus surprise for you—extra 20% off is extended! Ends tonight.	12/2/2025

24  
 25 25. To further confirm Defendant regularly offers and advertises discounts through emails  
 26 for Products sold via the website, Plaintiff's counsel reviewed the subject lines of emails sent by  
 27 Defendant from December 13, 2024 to March 8, 2025. On nearly every day, Defendant sent an email

1 advertising a limited-time sale. This investigation revealed that Defendant sent emails containing the  
 2 following subject lines on the listed dates:

E-Mail Subject	Date
One Day Only Act fast & get an extra 20% off	12/13/2024
Today only: You're invited to get an extra 20% off	12/13/2024
You've been selected for an extra 20% off—today only!	12/13/2024
We're giving you up to 72% off—shop now!	12/14/2024
You get up to 72% off! Snap up your savings now.	12/14/2024
We're offering up to 72% off: Don't miss out!	12/14/2024
You deserve it: Get an extra 20% off with code NIGHTOWL	12/15/2024
URGENT: extra 20% off ends at 8AM—get it while you can!	12/18/2024
You deserve this: Up to 60% off + an (exclusive!) extra 10% off	12/20/2024
You earned it: Save up to 72% for a limited time	12/21/2024
Hurry: Up to 25% off ends 8AM—save on your best zzz's!	12/22/2024
We're gifting you an extra 25% off—code: HOLIDAY	12/24/2024
You deserve it: Up to 70% off at the New Year's Sale!	12/26/2024
It's not too late to save up to 70% (but hurry!)	12/28/2024
You earned this late-night offer: Up to 25% off ends 8AM	12/29/2024
FLASH SALE Extra 25% off ends 8AM	12/30/2024
Our NYE gift to you: an extra 25% off (ends 8AM)	12/31/2024
Start 2025 right with an extra 25% off	1/1/2025
Up to 70% off ends tomorrow Get your dream bed for less	1/4/2025
Up to 25% off ends 8AM (!) and we don't want you to miss it	1/5/2025
Up to 60% off: Find deep discounts on deeper sleep	1/10/2025
Cozy up to that much-needed upgrade: Up to 72% off ends Monday!	1/11/2025
You're in luck: Score up to 20% off till 8AM—online only!	1/12/2025
Up to 72% off ends tonight Don't snooze on better zzz's	1/13/2025
Extra 15% off ends 8AM: It pays to stay up late	1/15/2025
Don't miss this: Up to 72% off ends Monday—tick tock	1/18/2025
Got weekend plans? Extra 20% off ends 8AM	1/19/2025
Extra 20% off ends soon—find your dream bed for less!	1/20/2025
LAST CALL: Our Big Weekend Flash Sale ends soon—hurry!	1/21/2025
Clock's ticking: Up to 60% off top brands ends Tuesday	1/24/2025
Hurry: Up to 72% off ends Monday	1/25/2025
Embrace your inner night owl: Up to 20% off ends 8AM	1/26/2025
Heads up: Our 72 Hour Sale ends tonight!	1/27/2025
Reminder: Our 72 Hour Sale officially wraps up tonight!	1/27/2025
Surprise, Here's an extra 15% off mattresses & more	1/29/2025
Up to 72% off is here for three days only Upgrade now	2/1/2025



E-Mail Subject	Date
Spend more, save more Take up to 20% off now	2/2/2025
Open now for an extra 15% off Use code AFTERHOURS by 8AM	2/5/2025
Kick off better zzz's with up to 72% off—final whistle Monday!	2/8/2025
Super sleep, super savings Score up to 20% off till 8AM	2/9/2025
The clock is ticking: Your up to 72% off ends tonight	2/10/2025
We're giving you up to 70% off—ends soon!	2/12/2025
We're giving you an extra 15% off—use it before 8AM	2/13/2025
Up to 70% off the perfect bed? Make your move & save big.	2/15/2025
It's here! Take an extra 20% off mattresses, bedding & more.	2/15/2025
Alert: Flash Sale! Enjoy an extra 20% off until 9AM.	2/17/2025
Last chance Your extra 20% off ends at 9AM—shop now	2/18/2025
Heads up: Our 72 Hour Sale is on! Score major savings on top brands.	2/22/2025
Friendly reminder: 72 Hour Sale ends tomorrow!	2/23/2025
Message for night owls: up to 20% off—sale ends at 8AM!	2/24/2025
Our Prezzy Day Sale ends Tuesday: Hurry & score a major upgrade!	2/26/2025
No plans this weekend? Score up to 72% off & refresh your rest!	3/1/2025
Up to 20% off ends tomorrow: Don't miss your chance to move on it!	3/3/2025
We're giving you an extra 15% off—limited time only	3/6/2025
You're in luck: up to 72% off mattresses is here	3/8/2025

26. Reasonable recipients of these emails would believe that Defendant was offering a limited time sale. They would believe that, if they purchase during the sale, they will receive a genuine discount off the regular and former prices of the Products which Defendant consistently charged on the website in the recent past. Moreover, they would believe that the sale would end at the stated time, and if they wait beyond that time, then the sale will be over, and the Products' prices would immediately return to and *stay* at their regular prices.

27. But as shown above, many emails contain false subject lines representing that sales were active, limited in time, and about to end, while in truth Defendant always planned to (1) "extend" or reinstitute the same sale shortly after expiration, or (2) continue to offer comparable discounts for a longer time.

28. For example, on 11/1/2025, Defendant sent an email stating "We're giving you up to 72% off—3 days only." But Defendant's sales styled as "up to 72% off" were not limited to those 3

1 days. Indeed, as shown above, Defendant also sent emails advertising “up to 72% off” on 11/8/2025,  
 2 11/15/2025, 11/22/2025, 11/23/2025, 11/28/2025, and 11/30/2025. So, the email subject line was  
 3 deceptive.

4 29. As another example, on 11/3/2025, Defendant sent an email stating “You’ve earned it:  
 5 Take an extra 20% off till 8am.” But on 11/5/2025, one day after expiration, Defendant instituted an  
 6 “extra 10% off sale.” Then, on 11/6/2025, Defendant instituted an “extra 15% off sale.” And on  
 7 11/8/2025, 11/9/2025, 11/11/2025, 11/17/2025, 11/24/2025, 11/26/2025, 11/27/2025, 11/28/2025,  
 8 11/29/2025, 11/30/2025, 12/1/2025, and 12/2/2025, Defendant’s emails contained subject lines  
 9 advertising a reinstituted “extra 20% off” or “up to 20% off” discount. So, the supposedly urgent “20%  
 10 off” discount on 11/3/2025 was misleading because the same or comparable discounts were  
 11 consistently available.

12 30. Similarly, on 11/30/2025 and 12/1/2025, Defendant sent emails with the subject lines  
 13 “We unlocked it early: Extra 20% off Cyber Monday starts now!” and “Clock’s ticking Use code  
 14 CYBER to claim your extra 20% off.” Reasonable consumers interpret these subject lines to mean the  
 15 advertised sale would terminate on Cyber Monday (i.e., Monday December 1, 2025). But according  
 16 to the subject line of an email dated 12/2/2025, the same “extra 20% off” sale was “extended.” So,  
 17 again, the subject lines were false and misleading.

18 31. These are just a few examples from a very narrow time frame.

19 **B. Defendant’s Emails to Plaintiff and Class Members Violate CEMA and the CPA.**

20 32. Washington’s CEMA regulates deceptive email marketing. CEMA prohibits the  
 21 sending of a commercial email that “[c]ontains false or misleading information in the subject line.”  
 22 RCW 19.190.020.

23 33. Violating this provision of CEMA also violates the CPA. RCW 19.190.030.

24 34. Advertising fake discounts in the subject line of a promotional email, with fake time  
 25 pressure, violates CEMA and, accordingly, the CPA. *Brown v. Old Navy LLC*, 567 P.3d 38 (Wash.  
 26 2025).



1           35. Defendant's email advertisements contain subject lines that misstate the duration of the  
2 purported sales and/or misstate the discount that recipients would purportedly receive for purchasing  
3 during the sale. As a result, these promotional emails contain false or misleading information in the  
4 subject line, in violation of CEMA and the CPA.

5           36. Defendant sends these emails for the purpose of promoting the Products for sale and to  
6 drive sales to the website.

7           37. Defendant's email subject lines stating the supposed duration of its sales are false and  
8 misleading because, as discussed above, sales either (1) are regularly available, or (2) did not expire  
9 at the advertised time.

10          38. Defendant's email subject lines stating that recipients will receive significant savings  
11 if the recipients purchase during the sale are false and misleading because, as discussed above,  
12 consumers do not truly receive the advertised discounts. Instead, because substantial discounts are  
13 commonly available, the purported discount is actually much smaller (or there is no discount at all).

14          39. By misrepresenting the duration of its purported sales in email subject lines, Defendant  
15 creates a false sense of urgency. Recipients who read the email subject lines believe that if they act  
16 now, they can purchase a higher value item at a limited-time discount; but if they wait, then the  
17 discount will expire and if they want to purchase a Product, they will have to pay the former or regular  
18 price.

19          40. Defendant designs the subject lines of the promotional emails to induce recipients to  
20 make a purchase during the supposedly limited-time sales. Defendant's email subject lines often  
21 contain words spurring recipients to make purchases immediately before time runs out. But because  
22 the Products are regularly on sale, each of these email subject lines stating the sale is ending soon are  
23 false and misleading.

24          41. Defendant is constantly sending commercial emails to recipients on its website's  
25 mailing list, typically multiple times a week. Plaintiff and Class Members received such emails from  
26 Defendant, many of which include false or misleading subject lines regarding fake discounts with fake  
27

1 time limitations. On information and belief, Defendant sent at least tens of thousands of emails to  
 2 Washington recipients with similar false or misleading subject lines.

3 42. Defendant knows, or has reason to know, its emails containing false and misleading  
 4 subject lines are sent to Washington residents. Defendant knows where recipients of its emails reside  
 5 for at least the following reasons.

- 6 a. For consumers who made a purchase on Defendant's website, Defendant has  
 7 physical addresses associated with the recipient's name, email address, and  
 8 order.
- 9 b. For consumers who register an account on Defendant's website, on information  
 10 and belief, Defendant has access to data regarding the recipient's state of  
 11 residence via geolocation and IP address tracking. First, IP addresses are  
 12 sufficient to confirm the user's physical location including city, state, and zip  
 13 code.<sup>1</sup> Second, under the heading "Types of Personal Information We Collect  
 14 About You," Defendant's Privacy Policy states it collects "Non-Specific  
 15 Geolocation Data, as inferred from your IP address." And under the subheading  
 16 "Cookies," the Privacy Policy states: "We collect cookies, which are small text  
 17 files that may be stored on your device when you use our websites. The cookies  
 18 we use may contain information – such as a unique user ID – or collect  
 19 information, *such as your IP address* or if you create an account with us on any  
 20 of our websites, *email address*. Cookies allow us to recognize your device when  
 21 you return to our website."
- 22 c. For consumers who browse Defendant's website or click on Defendant's  
 23 emails, on information and belief, Defendant can track their IP addresses. It is  
 24 a standard business practice among major e-commerce companies to employ  
 25 email and website marketing tools, like tracking pixels, which allow the sender  
 26

27 <sup>1</sup> See <https://nordvpn.com/ip-lookup/> ("Looking up an IP address shows you the geolocation of that IP address, including the country, state, city, and zip code.")

1 to identify the person opening and clicking on the email by IP address, or the  
2 person browsing the website by IP address.

3 d. To that end, Defendant's Privacy Policy states: "When you use our website, we  
4 share *information that we collect* from you, such as your *email address*, phone  
5 number, *IP address* or information about your browser or operating system,  
6 with our identity partners/service providers. These partners return an online  
7 identification code that we may store in our first-party cookie for our use in  
8 online, in-app, and cross-channel advertising and which may be shared with  
9 advertising companies to enable interest-based and targeted advertising."

10 e. Defendant's Privacy Policy goes on to state: "We allow third-party companies  
11 (e.g., Google and PayPal) to place tags on our digital properties. The tags may  
12 collect information about your activity on our websites and may be used by  
13 these third-parties to provide us with data and marketing analytics. . . . We may  
14 display interest-based ads to you when you are using Facebook through a tool  
15 offered by Facebook called the Custom Audience Tool. . . . The tool lets  
16 Mattress Firm convert your e-mail address to a unique number that Facebook  
17 uses to match to unique numbers Facebook generates from e-mail addresses of  
18 its users. . . . We may display interest-based ads to you when you are using  
19 Google through a tool offered by Google called the Custom Match Program. . .  
20 . The tool lets Mattress Firm convert your e-mail address to a unique number  
21 that Google uses to match to unique numbers Google generates from e-mail  
22 addresses of its users."

23 f. Defendant has access to granular location information tied to email addresses  
24 from commercial data brokers like Oracle, Equifax, and Lexis. Defendant can  
25 purchase consumer data from these brokers which connects individuals to email  
26 addresses, state of residence, and physical location. To that end, Defendant's  
27 Privacy Policy states: "We may obtain your *personal information* from *third-*

1                    *party sources*, such as marketing and advertising partners, service providers,  
 2                    your friends and family, and social media companies.”

3                    g. Defendant may obtain information that some recipients of marketing emails are  
 4                    Washington residents because that information is available, upon request, from  
 5                    the registrant of the Internet domain names contained in the recipients’ email  
 6                    addresses. *See* RCW 19.190.020(2).

7                    h. Defendant had reason to know the marketing emails were sent to Washington  
 8                    residents based on the extremely high volume of outbound marketing emails  
 9                    which are continuously sent to everyone on its mailing list.

10                  43. Defendant knows what sales it offers on its website and the prices advertised on its  
 11                  website. Defendant also knows that, in truth, the sales are not truly ending as advertised and products  
 12                  are regularly discounted on the website.

13                  44. Defendant’s commercial emails containing false and misleading information about  
 14                  fake sales clog up inboxes with spam email, waste data space, and violate Plaintiff’s and putative Class  
 15                  Members’ statutory right to be free from deceptive commercial emails.

16                  **C. Defendant’s Deceptive Emails Violate Federal Law.**

17                  45. The Federal Trade Commission Act (“FTCA”) prohibits “unfair or deceptive acts or  
 18                  practices in or affecting commerce[.]” 15 U.S.C. § 45(a)(1). Under FTC regulations, discounting  
 19                  schemes like that employed in Defendant’s email subject lines are deceptive practices that violate the  
 20                  FTCA.

21                  46. Pursuant to 16 C.F.R. § 233.1, entitled Former Price Comparisons:

22                  (a) One of the most commonly used forms of bargain advertising is to offer a reduction  
 23                  from the advertiser’s own former price for an article. If the *former price* is the actual, bona  
 24                  fide price at which the article was offered to the public on a *regular basis* for a *reasonably*  
 25                  *substantial period of time*, it provides a legitimate basis for the advertising of a price  
 26                  comparison. Where the former price is genuine, the bargain being advertised is a true one.  
 27                  If, on the other hand, the former price being advertised is not bona fide but fictitious – for  
 example, where an *artificial, inflated price* was established for the purpose of enabling the  
 subsequent offer of a large reduction – the “bargain” being advertised is a false one; the  
 purchaser is not receiving the unusual value he expects.

(b) A former price is not necessarily fictitious merely because no sales at the advertised price were made. The advertiser should be especially careful, however, in such a case, that the price is one at which the product was openly and actively offered for sale, for a *reasonably substantial period of time*, in the *recent*, regular course of her business, honestly and in good faith – and, of course, not for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based.

(c) The following is an example of a price comparison based on a fictitious former price. John Doe is a retailer of Brand X fountain pens, which cost him \$5 each. His usual markup is 50 percent over cost; that is, his regular retail price is \$7.50. In order subsequently to offer an unusual “bargain,” Doe begins offering Brand X at \$10 per pen. He realizes that he will be able to sell no, or very few, pens at this inflated price. But he doesn’t care, for he maintains that price for only a few days. Then he “cuts” the price to its usual level—\$7.50—and advertises: “Terrific Bargain: X Pens, Were \$10, Now Only \$7.50!” *This is obviously a false claim.* The advertised “bargain” is not genuine.

(d) Other illustrations of fictitious price comparisons could be given. An advertiser might use a price at which he *never offered the article at all*; he might feature a price which was *not used in the regular course of business*, or which was *not used in the recent past* but at some *remote period in the past*, without making disclosure of that fact; he might use a price that was not openly offered to the public, or that was *not maintained for a reasonable length of time*, but was immediately reduced.

(e) If the former price is set forth in the advertisement, *whether accompanied or not* by descriptive terminology such as “Regularly,” “Usually,” “Formerly,” etc., the advertiser should make certain that the former price is not a fictitious one. If the former price, or the amount or percentage of reduction, is not stated in the advertisement, as when the ad merely states, “Sale,” the advertiser must take care that the amount of reduction is not so insignificant as to be meaningless. It should be sufficiently large that the consumer, if he knew what it was, would believe that a genuine bargain or saving was being offered. An advertiser who claims that an item has been “Reduced to \$9.99,” when the former price was \$10, is misleading the consumer, who will understand the claim to mean that a much greater, and not merely nominal, reduction was being offered.

47. FTC regulations also prohibit false and misleading claims regarding the duration and expiration of sales, like those employed in the subject lines of Defendant’s emails. Indeed, retailers “should not offer an advance sale under circumstances where they do not in good faith expect to increase the price at a later date, or *make a ‘limited’ offer which, in fact, is not limited.*” 16 C.F.R. § 233.5.

#### **D. Research Confirms That Time-Limited Discounts Influence Consumer Behavior**

1                   and Perceptions of Value.

2           48.     Studies and articles support the effectiveness of Defendant's deceptive email scheme.

3           49.     "By creating an impression of savings, the presence of a higher reference price  
4 enhances subjects' perceived value and willingness to buy the product."<sup>2</sup> Thus, "empirical studies  
5 indicate that, as discount size increases, consumers' perceptions of value and their willingness to buy  
6 the product increase, while their intention to search for a lower price decreases."<sup>3</sup>

7           50.     "[R]eference prices are important cues consumers use when making the decision  
8 concerning how much they are willing to pay for the product."<sup>4</sup> This study also concluded that  
9 "consumers are likely to be misled into a willingness to pay a higher price for a product simply because  
10 the product has a higher reference price."<sup>5</sup>

11          51.     A study regarding the effect of the time-limited advertisement "10 Hours Only Super  
12 Sale" concluded that "[t]he willingness to buy was significantly higher" and "the attitude towards the  
13 deal was more favorable."<sup>6</sup>

14          52.     An article explains that, in a test case, the addition of countdown timers increased  
15 conversion rates "from ~3.5% to ~10%."<sup>7</sup>

16          53.     Another article explains: "We compared the performance to previous 'big sale'  
17 campaigns featuring a similar single-minded design, but without the countdown timer. The uplift was  
18 impressive showing . . . 400% higher conversion rate" with countdown timer.<sup>8</sup>

19  
20 <sup>2</sup> Dhruv Grewal & Larry D. Compeau, *Comparative Price Advertising: Informative or Deceptive?*, 11  
J. Pub. Pol'y & Mktg. 52, 55 (Spring 1992).

21 <sup>3</sup> *Id.* at 56.

22 <sup>4</sup> Jerry B. Gotlieb & Cyndy Thomas Fitzgerald, *An Investigation Into the Effects of Advertised  
Reference Prices On the Price Consumers Are Willing To Pay For the Product*, 6 J. of App'd Bus.  
Res. 1 (1990).

23 <sup>5</sup> *Id.*

24 <sup>6</sup> See Aggarwal, P., *Use it or lose it: Purchase acceleration effects of time-limited promotions*, Journal  
of Consumer Behaviour (Sept. 17, 2002) at 399-401.

25 <sup>7</sup> See CXL, *How Creating a Sense of Urgency Increased Sales by 332%* (Feb. 28, 2023), at pp. 10-18,  
available at <https://cxl.com/blog/creating-urgency> (last visited November 3, 2025).

26 <sup>8</sup> See Upland Software, *Dynamic email content leads to 400% increase in conversions for Black Friday  
email*, available at [https://uplandsoftware.com/adestra/resources/case-study/dynamic-email-content-](https://uplandsoftware.com/adestra/resources/case-study/dynamic-email-content-leads-to-400-increase-in-conversions-for-black-friday-email/)  
27 [leads-to-400-increase-in-conversions-for-black-friday-email/](https://uplandsoftware.com/adestra/resources/case-study/dynamic-email-content-leads-to-400-increase-in-conversions-for-black-friday-email/) (last visited November 3, 2025).



1           54. Accordingly, research confirms that deceptive discount advertising is intended to, and  
 2 does, influence consumer behavior by artificially inflating consumer perceptions of an item's value  
 3 and causing consumers to spend money they otherwise would not have, purchase items they otherwise  
 4 would not have, and/or purchase products from a specific retailer.

5           **E. Plaintiff John Milito**

6           55. Plaintiff Milito visited www.MattressFirm.com on his MacBook using Google Chrome  
 7 and registered an online account with Mattress Firm on October 28, 2025. He registered his account  
 8 while physically located in King County, Washington. In so doing, he provided Defendant with his  
 9 email address and Defendant collected his IP address.

10          56. Thus, since at least October 28, 2025, on information and belief, Defendant knew that  
 11 Plaintiff Milito was a resident of Washington and that any emails sent to Plaintiff Milito would be sent  
 12 to a Washington resident.

13          57. Plaintiff Milito received each of the emails listed in paragraph 24, above. These emails  
 14 are only representative examples.

15          58. Plaintiff Milito received Defendant's emails at issue while he was physically present  
 16 in Washington.

17          59. Plaintiff would have liked to receive truthful information from Defendant regarding its  
 18 Products. However, due to Defendant's conduct, Plaintiff cannot be certain which emails from  
 19 Defendant contain truthful information and which emails are spam with false and misleading  
 20 information in subject lines designed to spur consumers into making a purchase. Thus, without a court  
 21 order requiring Defendant to only send honest emails about sales, Plaintiff cannot discern which emails  
 22 are not false or misleading.

23           **F. No Adequate Remedy at Law.**

24          60. Plaintiff seeks an injunction. Plaintiff is permitted to seek an injunction because he has  
 25 no adequate remedy at law. Legal remedies here are not adequate because they would not stop  
 26 Defendant from continuing to transmit emails with false or misleading subject lines to Washington  
 27 residents.

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**V. CLASS ACTION ALLEGATIONS**

61. Plaintiff brings the asserted claims on behalf of the following proposed class (the "Class") and subclasses:

All Washington residents who, during the Class Period and while present in Washington, received promotional emails from Defendant with subject lines either (i) advertising "% off" discounts; (ii) stating a sale, discount, or price would end at a specified date but the same sale, discount, or price was extended upon expiration; or (iii) stating a sale, discount, or price is time limited, ending, or tethered to a holiday or event, when Defendant reinstated the same or comparable sale, discount, or price for a longer time.

62. Plaintiff reserves the right to propose additional subclasses based on specific subcategories of emails and Class Members at class certification.

63. The Class Period is the time period beginning on the date established by the Court's determination of any applicable statute of limitations and ending on the date a class certification order is entered in this action. Thus, the statute of limitations begins no later than the date four years before this Complaint is filed.

64. The following people are excluded from the proposed Class: (1) any Judge or Magistrate Judge presiding over this action and the members of their family; (2) Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current employees, officers and directors; and (3) Plaintiff's counsel and Defendant's counsel.

***Numerosity***

65. The proposed Class contains members so numerous that separate joinder of each member of the class is impractical. There are at least tens of thousands of Class Members in Washington.

66. Class Members can be identified through Defendant's electronic mailing lists, internal records, and public notice.

***Predominance of Common Questions***

1           67. There are questions of law and fact common to the proposed Class. Common questions  
2 of law and fact include, without limitation:

- 3           a. whether Defendant's email subject lines regarding purported discounts are  
4 false or misleading;  
5           b. whether Defendant's email subject lines violate CEMA;  
6           c. whether Defendant's email subject lines violate the CPA; and  
7           d. the greater of actual damages or statutory damages due to the Plaintiff and the  
8 proposed Class.

9           ***Typicality & Adequacy***

10          68. Like members of the proposed Class, Plaintiff received emails from Defendant that  
11 contained false or misleading subject lines regarding discounts.

12          69. There are no conflicts of interest between Plaintiff and the Class.

13           ***Superiority***

14          70. A class action is superior to all other available methods for the fair and efficient  
15 adjudication of this litigation because individual litigation of each claim is impractical. It would be  
16 unduly burdensome to have individual litigation of thousands of individual claims in separate lawsuits,  
17 every one of which would present the issues presented in this lawsuit.

18                   **VI. CLAIMS**

19                   **Count 1: Violations of Washington's Commercial Electronic Mail Act**

20                   **(By Plaintiff and the Class)**

21          71. Plaintiff incorporates paragraphs 1-70 above.

22          72. Plaintiff brings this cause of action individually and on behalf of members of the Class.

23          73. Defendant is a "person" under CEMA. RCW 19.190.010(11).

24          74. As alleged more fully above, Defendant violated CEMA by initiating the transmission  
25 of commercial electronic mail messages that contained false or misleading information in the subject  
26 line to Plaintiff's and Class Members' electronic mail addresses.  
27

1 75. Defendant sent these emails to Plaintiff and Class Members for the purpose of  
2 promoting the Products for sale.

3 76. Defendant knew or had reason to know that it transmitted such emails to email  
4 addresses held by Washington residents, including Plaintiff.

5 77. Defendant's acts and omissions violated RCW 19.190.020(1)(b).

6 78. Defendant's acts and omissions injured the Plaintiff and Class Members.

7 79. The balance of equities favors the entry of permanent injunctive relief against  
8 Defendant. Plaintiff, the members of the Class, and the general public will be irreparably harmed  
9 absent the entry of permanent injunctive relief. Defendant's unlawful behavior is ongoing as of the  
10 date of the filing of this pleading, so without the entry of a permanent injunction, Defendant's unlawful  
11 behavior will not cease and, in the unlikely event that it voluntarily ceases, is likely to reoccur.

12 80. Plaintiff and Class Members are therefore entitled to injunctive relief in the form of an  
13 order enjoining further violations of RCW 19.190.020(1)(b).

14 **Count 2: Violations of the Washington Consumer Protection Act via Misleading Emails**

15 **(By Plaintiff and the Class)**

16 81. Plaintiff incorporates paragraphs 1-70 above.

17 82. Plaintiff brings this cause of action individually and on behalf of members of the Class.

18 83. Plaintiff and Class Members are "persons" within the meaning of the CPA. RCW  
19 19.86.010(1).

20 84. As alleged above, Defendant violated CEMA by initiating the transmission of  
21 commercial electronic mail messages to Plaintiff and Class Members that contained false or  
22 misleading information in the subject line.

23 85. A violation of CEMA is a per se violation of the CPA. RCW 19.190.030(1).

24 86. A violation of CEMA establishes all elements of the CPA as a matter of law.

25 87. As alleged more fully above, Defendant's transmission of commercial electronic  
26 messages to Plaintiff and Class Members that contained false or misleading information in the subject  
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1 line also violates the CPA because it constitutes unfair or deceptive practices that occur in trade or  
2 commerce.

3 ***Unfair Acts or Practices***

4 88. As alleged in detail above, Defendant committed “unfair” acts by falsely stating in  
5 email subject lines that it was offering a discount off the regular and former prices of its Products, and  
6 that the discount was only available for a limited time, when none of this was true (or at minimum was  
7 highly misleading).

8 89. The harm to Plaintiff and the Class greatly outweighs the public utility of Defendant’s  
9 conduct. There is no public utility to misrepresenting whether the Products are discounted and  
10 misrepresenting the duration of sales. Plaintiff and the Class’s injury was not outweighed by any  
11 countervailing benefits to consumers or competition. Misleading consumers only injures healthy  
12 competition and harms consumers.

13 ***Deceptive Acts or Practices***

14 90. As alleged in detail above, Defendant’s representations in email subject lines that the  
15 Products were on sale, that the sale was limited in time, and that customers were receiving substantial  
16 discounts, are deceptive.

17 91. Defendant’s representations were misleading to Plaintiff and other reasonable  
18 recipients. Defendant knew, through the exercise of reasonable care, that these statements were  
19 inaccurate and misleading.

20 92. Defendant’s unfair or deceptive acts or practices vitally affect the public interest and  
21 thus impact public interest for purposes of applying the CPA. RCW 19.190.030(3); RCW 19.190.100.

22 93. Defendant’s acts and omissions caused injury to Plaintiff and Class Members.  
23 Violations of CEMA establish the injury and causation elements of a CPA claim as a matter of law.  
24 *See Harbers v. Eddie Bauer, LLC*, 415 F. Supp. 3d 999, 1002–04 (W.D. Wash. 2019) (“by alleging a  
25 CEMA violation of RCW 19.190.020, a plaintiff alleges all five elements of a CPA violation . . . .Of  
26 particular relevance, a plaintiff alleging a CEMA violation under RCW 19.190.030(1) need not allege  
27 injury or causation beyond the CEMA violation. . . .Moreover, the Washington Supreme Court

1 recently held that CEMA's liquidated damages provision, RCW 19.190.040, establishes the injury and  
2 causation elements of a CPA claim as a matter of law.”).

3 94. Under the CPA, “[p]rivate rights of action may ... be maintained for recovery of actual  
4 damages, costs, and a reasonable attorney’s fee. A private plaintiff may be eligible for treble damages,”  
5 and “may obtain injunctive relief, even if the injunction would not directly affect the individual’s own  
6 rights.” Washington Pattern Jury Instruction Civil No. 310.00 (Consumer Protection Act—  
7 Introduction) (internal citations omitted); RCW § 19.86.090.

8 95. Under the CPA, Plaintiff and Class Members are entitled to seek, and do seek, the  
9 greater of actual damages and statutory damages of \$500 per email that violates CEMA. In addition,  
10 Plaintiff and Class Members seek treble damages, which are permitted under the CPA, including for  
11 CEMA violations. Plaintiff seeks treble damages to further Plaintiff’s and Class Members’ financial  
12 rehabilitation, encourage citizens to bring CPA actions, deter Defendant and other persons from  
13 committing CEMA violations, and punish Defendant for false and misleading advertising practices.

14 96. Plaintiff and Class Members are also entitled to, and seek, injunctive relief prohibiting  
15 further violations of the CPA.

## 16 VII. JURY DEMAND

17 97. Plaintiff demands the right to a jury trial on all claims so triable.

## 18 VIII. PRAYER FOR RELIEF

19 98. Plaintiff seeks the following relief for himself and the proposed Class:

- 20 A. An order certifying the asserted claims, or issues raised, as a class action;
- 21 B. A judgment in favor of Plaintiff and the proposed Class;
- 22 C. The greater of actual or statutory damages, treble damages, and punitive damages  
23 where applicable;
- 24 D. Pre- and post-judgment interest;
- 25 E. An injunction prohibiting Defendant’s deceptive conduct, as allowed by law;
- 26 F. Reasonable attorneys’ fees and costs, as allowed by law;
- 27 G. Any additional relief that the Court deems reasonable and just.



Dated: December 19, 2025

Respectfully submitted,

By: /s/ M. Anderson Berry

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