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8  
9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE EASTERN DISTRICT OF WASHINGTON  
11  
12

13 SELAY SHAHPUR and LINDSEY  
14 SMITH, on their own behalf and on  
15 behalf of others similarly situated,

16 Plaintiffs,

17 vs.

18 ULTA SALON, COSMETICS &  
19 FRAGRANCE, INC.,

20 Defendant.

21 Case No.: 2:25-cv-284

22 **AMENDED CLASS ACTION  
23 COMPLAINT**

24 Plaintiffs Selay Shahpur and Lindsey Smith, on their own behalf and on behalf  
25 of others similarly situated, on information and belief except to their own  
26 experiences and matters of public record, complain of Defendant Ulta Salon,  
27 Cosmetics & Fragrance, Inc. (Ulta), as follows:

28 **I. INTRODUCTION**

29 1. In 1998, to protect Washington consumers from the annoyance and  
30 harassment caused by the burgeoning spam email industry, the Washington State  
31

1 Legislature enacted the Commercial Electronic Mail Act (CEMA), codified at  
2 chapter 190 of title 19 of the Revised Code of Washington (RCW).

3 2. Among other things, CEMA prohibits transmitting a commercial email  
4 with “false or misleading information in the subject line” to the email address of a  
5 Washington resident. RCW 19.190.020(1)(b).

6 3. Defendant Ulta engages in the precise activity which CEMA prohibits.

7 4. Ulta spams Washington consumers, including Plaintiffs, with  
8 commercial emails whose subject lines employ various tactics to create a false sense  
9 of urgency in consumers’ minds—and ultimately, from consumers’ wallets.

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

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

17 7. Plaintiffs challenge Ulta’s harassment of Washington consumers with  
18 deceptive marketing for violations of the Commercial Electronic Mail Act (RCW  
19.190.020) and the Consumer Protection Act (RCW 19.86.020) for injuries caused,  
20 additionally seeking injunctive relief against such violations in the future.

## 1 II. JURISDICTION AND VENUE

2 8. Defendant has invoked this Court's jurisdiction under 28 U.S.C. § 1332  
3 and 28 U.S.C. §§ 1441, 1446, and 1453. *See* ECF No. 1.

4 9. Venue is proper in the Eastern District of Washington, under 28 U.S.C.  
5 § 1441 because this district and division embrace the place from which Defendant  
6 removed this action, Spokane County Superior Court (Case No. 25-2-03149-32).

## 7 III. PARTIES

8 10. Plaintiffs Selay Shahpur and Lindsey Smith are residents of Spokane  
9 County, Washington.

10 11. Defendant Ulta Salon, Cosmetics & Fragrance, Inc., is a corporation  
12 incorporated under the laws of Delaware with its principal place of business in  
13 Bolingbrook, Illinois.

## 14 IV. FACTUAL ALLEGATIONS

### 15 A. CEMA protects Washington consumers from deceptive spam 16 emails.

17 12. The Supreme Court of Washington has made clear: “[A]ll Internet users  
18 ... bear the cost of deceptive spam.” *State v. Heckel*, 143 Wn. 2d 824, 835 (2001)  
19 (en banc).

20 13. In 1998, the Legislature found that the “volume of commercial  
21 electronic mail” was “growing,” generating an “increasing number of consumer  
22

1 complaints.” Laws of 1998, ch. 149, § 1.

2 14. While it’s been nearly three decades since CEMA’s enactment, the  
3 problems caused by unsolicited commercial email, *i.e.* spam email, have grown  
4 exponentially.  
5

6 15. The problems, however, are not limited to email content. Subject lines  
7 of emails are framed to attract consumers’ attention away from the spam barrage to  
8 a message that entices consumers to click and, ultimately, *purchase*.  
9

10 16. In 2003, the United States Congress found that “[m]any senders of  
11 unsolicited commercial electronic mail purposefully include misleading information  
12 in the messages’ subject lines in order to induce the recipients to view the messages.”  
13  
14 15 U.S.C. § 7701(a)(8).

15 17. In 2012, one study estimated that Americans bear “costs of almost \$20  
16 billion annually” due to unsolicited commercial email. Justin M. Rao & David H.  
17 Reiley, *The Economics of Spam*, 26 J. of Econ. Perspectives 87, 88 (2012).

18 19. Even when bulk commercial email marketers are operating under color  
20 of consumer consent, the reality is that “[m]ost privacy consent”—especially under  
21 the “notice-and-choice” approach predominant in the United States—“is a fiction.”  
22  
23 Daniel J. Solove, *Murky Consent: An Approach to the Fictions of Consent in Privacy*  
24  
25 *Law*, 104 Boston Univ. L. Rev. 593, 596 (2024).

26 19. Consumers therefore routinely “consent” to receive flurries of  
27

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

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

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

15 22. The Legislature presciently intended CEMA to “provide some  
16 immediate relief” for these problems by prohibiting among other things commercial  
17 emails that “contain untrue or misleading information in the subject line.” Laws of  
18 1998, ch. 149, § 1.

19 23. CEMA thereby protects Washington consumers against the “harms  
20 resulting from deceptive commercial e-mails,” which “resemble the type of harms  
21

1 remedied by nuisance or fraud actions.” *Harbers v. Eddie Bauer, LLC*, 415 F. Supp.  
2 3d 999, 1008 (W.D. Wash. 2019).

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

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

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

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

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

1           **B. The subject lines of Ulta's marketing emails make false time**  
2           **scarcity claims.**

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

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

14           31. "False or misleading scarcity claims can change the behaviour of  
15 consumers." *Online Choice Architecture*, *supra* para. 29, at 27.

16           32. Representations about the timing and duration of sales, discounts, and  
17 other special offers are fundamentally representations about prices, and such  
18 representations matter to ordinary consumers. *See, e.g.*, Huiliang Zhao *et al.*, *Impact*  
19 of Pricing and Product Information on Consumer Buying Behavior with Consumer  
20 Satisfaction in a Mediating Role, 12 *Frontiers in Psychology* 720151 (2021),  
21  
22  
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1 available at <https://PMC8710754.pdf/fpsyg-12-720151.pdf>.

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

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

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

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

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

18 38. False time scarcity claims also harm market competition. Consumers  
19 learn to ignore scarcity claims, “meaning that when a product [or offer] is truly  
20 scarce, the seller will not be able to credibly communicate this information.” *Id.*  
21  
22

1 39. These false time scarcity claims are a staple of Ulta's email scheme to  
2 corral consumers to purchase its products.

3 40. **Urgent Spam Emails.** Ulta is practiced in this trick of luring in  
4 consumers through urgent subject headings in emails that do not reflect the true  
5 availability of the deal itself, as demonstrated below.

6 7 41. For example, Ulta has deployed its deceptive strategy by extending  
8 promotions beyond their advertised end date. A promotion in late 2021 serves as an  
9 apt example.

10 11 42. On December 19, 2021, Ulta sent an email titled: "LAST CHANCE:  
12 \$10 off \$40 or \$20 off \$100!" The body of the email confirmed that the offer would  
13 end on December 19 at 11:59 pm. However, the claim made in the email's subject  
14 line was untrue. December 19 was not consumers' "last chance" to participate in the  
15 promotion.

16 17 43. Within days, Ulta would return to consumers' inboxes with a December  
18 22, 2021, email demonstrating the falsity of the December 19 warning. The subject  
19 line of the message stated: "\$10 off \$40 and \$20 off \$100? Extended thru TODAY[.]"

20 21 44. Thus, despite Ulta's December 19, 2021, subject line, consumers had  
22 additional time to accept the offer. The "last chance" warning was simply an example  
23 of Ulta's deceptive strategy: manufacturing false time pressure meant to drive  
24 consumers to its website and, ultimately, the checkout screen. This kind of deception  
25 26 27

1 is particularly effective around the holidays, when consumers are looking for  
2 bargains and are perhaps already late in buying gifts.

3 45. Ulta deployed its strategy again in December 2022 with additional  
4 holiday deception.

5 46. On December 19, 2022, Ulta sent a message with the subject line:  
6 “ENDS TONIGHT: \$10 or \$20 off!” The promotion gave consumers two promo  
7 codes to use for purchases on Ulta’s website. One could be used to take \$10 off a  
8 \$40 purchase, the other took \$20 off a \$100 purchase.

9 47. Later that same day, Ulta leveraged additional pressure against  
10 consumers, sending an email titled, “LAST CHANCE on \$10 off \$40 or \$20 off  
11 \$100 🚨 [,]” to remind them that time to use the discounts was running out. A siren  
12 emoji accenting the subject line emphasized the defendant’s warning. Even so,  
13 December 19 was not the last chance for consumers to participate in the promotion.

14 48. On December 20, 2022, Ulta sent consumers an email with the subject  
15 line: “🎁 Gift of TIME: \$10 or \$20 off, now extended! 🕒 [,]”

16 49. Despite warning consumers that the offer “ends tonight” and that  
17 December 19 was their “last chance” to participate, Ulta extended the promotion and  
18 proved the falsity of its December 19 subject lines. Consumers in receipt of the  
19 December 19, 2022, emails were not at risk of missing the deal had they ignored the  
20 subject line because Ulta did not end the promotion as advertised.

1 50. The false conclusions of time-limited promotions are simply a  
2 marketing strategy meant to compel consumers to purchase Ulta's products.

3 51. However, Ulta has not limited its misleading subject lines to promotion  
4 extensions. It has also deployed its strategy with other urgent "\$10 off" offers.

5 52. For example, on February 17, 2025, Ulta sent an email with the subject  
6 line, "Say bye to \$10 off \$50 or \$20 off \$100! 🙌[,]" indicating that consumers will  
7 miss out on the offer if they don't act immediately—as confirmed by the body of the  
8 email, which stated "Offer ends Mon, February 17 at 11:59pm CT."

9 53. This was not true. On the very next day, February 18, 2025, Ulta issued  
10 another email with the subject heading \$10 off for you! ❤️" where the body of the  
11 email demonstrated that the "\$10 off" deal offered on February 17 was, in fact,  
12 available through February 22, 2025.

13 54. In another example, on May 10, 2024, Ulta sent an email with the  
14 subject line, "[recipient name], your \$10 off disappears TOMORROW 😱,"  
15 indicating that consumers would miss out on this offer if they didn't act  
16 immediately—as confirmed by the body of the email, which stated "Offer ends May  
17 11 at 11:59pm CT."

18 55. But this offer didn't "disappear." In fact, it was regularly available in  
19 May 2024. Ulta sent an email a few days later, on May 24, 2024, with the subject  
20 heading: "\$10 off in store or online?! We're in." The following week, on May 31,

1 2024, it sent another email to consumers using the subject line: “ Just for you, —  
2 ! Claim your \$10 OFF now .” The content of both emails stated, in fine print,  
3 “Offer ends June 1 at 11:59pm CT.”

5 56. Later that same year, Ulta pummeled consumers with an email on  
6 Friday, October 18, 2024, including the urgent subject heading: “Your \$10 off  
7 expires Saturday!  [.]”

9 57. But in that same month, on October 29, 2024, Ulta sent another email  
10 with the subject line, “\$10 OFF just landed in your beauty bag.” That offer was  
11 “valid through 11.23.24.”

13 58. As the October 29, 2024, email demonstrates, the expiration dates and  
14 deadlines that Ulta leverages against consumers, including the one referenced in the  
15 October 18 subject line, are completely contrived.

17 59. Ulta orchestrated another deception in 2022. On March 4, 2022, it sent  
18 an email titled: “See you later, \$10 off[.]” The warning in the subject line was clear.  
19 Consumers needed to act fast to participate in the promotion. Even so, the email  
20 informed consumers there was only “2 days left” of the offer. The email’s subject  
21 line communicates urgency to the receiving consumer and indicates that the  
22 promotion will not last.

25 60. Rather than “see you later,” a more honest title for Ulta’s March 4 email  
26 would have been, “See you soon...very soon.”

1 61. Within the same month, on March 25, 2022, Ulta would return to  
2 consumers' inboxes with a \$10 offer. The email's subject line stated: "[recipient's  
3 name], here's \$10 off on us!" As the March 25 email demonstrated, the March 4,  
4 2022, email was deceptive.  
5

6 62. Then, in May, Ulta recycled the strategy along with the misleading  
7 subject line. On May 5, 2022, Ulta transmitted an email to consumers with the title:  
8 "See you later, \$10 off[.]"  
9

10 63. Later the same month, on May 26, 2022, Ulta was advertising the offer  
11 to consumers yet again in an email titled: "\$10 off anything you want[.]". Thus,  
12 consumers were not in jeopardy of missing out on the offer, despite the warnings and  
13 urgency communicated in Ulta's subject lines.  
14

15 64. Indeed, Ulta frequently offers the "\$10 off" deal throughout a given  
16 year, using different kinds of deceptive language to communicate to the consumer  
17 that the deal is fleeting, though it is not. In 2023, for example, it advertised the deal  
18 in the following emails and subject lines:  
19

- 21 a. 1/20/23: "Psst: \$10 off for you "
- 22 b. 2/24/23: "\$10 off—yes, includes prestige & fragrance! "
- 23 c. 3/24/23: "Get \$10 off inside "
- 24 d. 4/25/23: "LAST CALL: \$10 off \$40"
- 25 e. 5/5/23: "LAST CHANCE: Get \$10 off inside  "

1 f. 6/13/23: “YES WAY  \$10 off, including prestige & fragrance”

2 g. 7/7/23: “\$10 off is allll yours   \$10 off inside   \$10 OFF  \$20 OFF 

11 65. In addition to the May and October examples discussed above, Ulta also  
12 sent emails offering “\$10 off” on multiple occasions in 2024, as demonstrated in the  
13 following subject lines. While these titles employ various warnings and emojis, the  
14 same deceptive strategy is at work – conforming the email to whatever holiday is  
15 closest (hearts in late January, closest to Valentine’s day), indicating that the  
16 promotion is ephemeral when that is not true, and emphasizing that the consumer  
17 must act quickly in some fashion to gain the benefit of the deal.  
18

21 a. 1/26/24: “Don’t forget  \$10 OFF including prestige &  
22 fragrance  \$10 or \$20 OFF 

AMENDED CLASS ACTION  
COMPLAINT  
No. 2:25-cv-284

- d. 4/23/24: “ OMG \$10 off \$50?? Yes, please  \$10 off \$50 or \$20 off \$50”
- f. 8/23/24: “Say bye  to your \$10 OFF tomorrow...”
- g. 9/6/24: “Here’s \$10 to add something to your  LAST CHANCE: Cyber Monday deals + \$10 off  
+ FREE

66. True to form, Ulta has continued this same deceptive pattern in 2025.

In addition to the February subject line discussed above Ulta offered the “\$10 off” deal in the following emails as well:

- a. 1/24/25: "Say bye to your \$10 OFF tomorrow... 
- b. 3/21/25: " FYI: Your \$10 off expires tomorrow! 
- c. 5/22/25: "[email recipient], get \$10 or \$20 off your purchase 

67. This persistent pattern of offering \$10 off belies Ulta's repeated and deceptive assertions that the offer will "disappear" or that a consumer must "say bye" to such offers. In fact, the offer regenerates repeatedly from month to month. The offer is simply repeated, repackaged, and redeployed. While the language may vary, the same strategy is maintained: trying to convince the consumer that they must act quickly, lest they lose the deal.

1 68. Ulta uses deception in other promotions as well, as demonstrated by  
2 subject lines advertising its “50% off” deals.

3 69. For example, on March 27, 2025, Ulta sent an email to consumers,  
4 stating in the subject heading: “LAST DAY! 50% off Beauty Steals ❤️[.]”

5 70. Later that same day, Ulta ratcheted up the time pressure by sending  
6 consumers an email titled, “LAST CHANCE—50% off Beauty Steals ends today!”

7 71. But March 27 was not the “last day” nor the “last chance” for this 50%  
8 off deal.

9 72. On March 28, Ulta sent another email that invoked the same urgency in  
10 the subject line: “⌚ LAST CHANCE 50% OFF Beauty Steals.”

11 73. Thus, the March 28, 2025, email confirms that the March 27 subject  
12 lines, and the urgency they fostered, were misleading.

13 74. In another example, on March 23, 2024, Ulta repeated its pattern,  
14 sending an email with the subject heading: “⚠️ LAST CHANCE ⚠️ Get 50% off  
15 Beauty Steals!” The capital letters and the triangular exclamation mark emoji  
16 heighten the urgency of the subject line. But, in fact, the deal was offered through  
17 March 28, 2024.

18 75. And consumers had yet another “chance” at this deal just days later, on  
19 April 9, 2024, when Ulta sent an email, offering in the subject line: “IT’S BACK!  
20 Up to 50% off during SPRING HAUL ❤️[.]”

1 76. Yet another example of the defendant's misleading strategy came in  
2 July 2024. At that time, Ulta deceptively marketed a 10% off promotion.

3 77. On July 21, 2024, Ulta sent consumers an email with the heading:  
4 "LAST DAY to get 10% off."

5 78. Yet, just four days later, on July 25, 2024, it ran a *better deal* that  
6 equated to 20% off (*i.e.* \$20 off \$100 and \$10 off \$50).

7 79. Similarly, on November 4, 2023, Ulta ran an email campaign with the  
8 subject heading, "ENDS TODAY Up to 40% off makeup"—a "40% off" deal Ulta  
9 ran again on November 11, 2023.

10 80. These and other examples of Ulta's commercial emails whose subject  
11 lines contain false or misleading statements are attached to this Class Action  
12 Complaint as Exhibit A.

13 **C. Ulta knows when it sends marketing emails to addresses held by  
14 Washington residents.**

15 81. A sophisticated commercial enterprise, like Ulta, which is engaged in  
16 persistent marketing through mass email campaigns across the United States, has  
17 several ways of knowing where the recipients of its marketing emails are located.  
18 The means it employs are peculiarly with its knowledge.

19 82. First, the sheer volume of email marketing that Ulta engages in put it  
20 on notice that Washington residents would receive its emails. Since 2021, Ulta has  
21 been sending marketing emails at a rate averaging (at least) 400 per year, 30 per  
22

1 month, and 1 per day.

2 83. Second, Ulta may obtain location information tied to email addresses  
3 when consumers make purchases from Ulta through digital platforms, including  
4 Ulta's website, or otherwise self-report such information to Ulta.  
5

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

11 85. Specifically, Ulta appears to use Salesforce Marketing Cloud to manage  
12 its email marketing campaigns. This platform allows Ulta to identify anyone who  
13 receives its marketing emails, determine who opens them, and track who clicks on  
14 any links within them.  
15

16 86. Ulta is likely able to infer the general geographic location of recipients  
17 by state based on their IP address at the time of email open or link click.  
18

19 87. Fourth, Ulta may obtain location information tied to email addresses by  
20 purchasing consumer data from commercial data brokers such as Acxiom, Oracle,  
21 and Equifax, which sell access to databases linking email addresses to physical  
22 locations, among other identifiers.  
23

25 88. Fifth, Ulta may obtain location information tied to email addresses by  
26 using "identity resolution" services offered by companies such as LiveRamp, which  
27

1 can connect consumers' email addresses to their physical locations, among other  
2 identifiers.

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

7 90. Finally, Ulta can also learn the residency of the consumers it sells to  
8 when they place orders on its website that ship to a certain state, or when a consumer  
9 creates an account with Ulta and must provide their state or location to do so.

10 91. It is thus highly probable that a seller of Ulta's size and sophistication  
11 employs not just one but several means of tying consumers' email addresses to their  
12 physical locations, at least at the state level, and that Ulta knows when it sends  
13 marketing emails to Washington residents.

14 **D. Ulta has violated Plaintiffs' right under CEMA to be free from  
15 deceptive commercial emails.**

16 92. Ulta has spammed Plaintiffs Shahpur and Smith with commercial  
17 emails whose subject lines contain false or misleading statements in violation of their  
18 right to be free from such annoyance and harassment under CEMA.

19 93. Both plaintiffs received "\$10 off" email promotions as described above  
20 in Section B. Specifically, Plaintiff Shahpur received the February 17, 2025, email,  
21 "Say bye to \$10 off \$50 or \$20 off \$100! 🙌" email and the October 18, 2024, email,  
22

1 “Your \$10 off expires Saturday!  [.]” Plaintiff Smith received the October 7, 2023,  
2 email titled: “TWO. MORE. DAYS. Get \$10 off  [.]”  
3

4 94. These emails were false or misleading in violation of CEMA, for  
5 misrepresenting the availability and timing of deals, as described herein.  
6

7 95. These email subject lines contained false statements of fact as to the  
8 “duration or availability of a promotion.” *Brown*, 567 P.3d at 47.  
9

## 10 V. CLASS ALLEGATIONS

11 96. Plaintiffs bring this action under Civil Rule 23 on behalf of the  
12 following putative class (“Class”):  
13

14 All Washington citizens holding an email address to which  
15 Defendant sent or caused to be sent any email listed in  
16 Exhibit A during the Class Period.  
17

18 97. Excluded from the Class are Defendant’s officers, directors, and  
19 employees; Defendant’s parents, subsidiaries, affiliates, and any entity in which  
20 Defendant has a controlling interest; undersigned counsel for Plaintiffs; and all  
21 judges and court staff to whom this action may be assigned, as well as their  
22 immediate family members.  
23

24 98. The Class Period extends from the date four years before Plaintiffs’  
25 initial Class Action Complaint was filed to the date a class certification order is  
26 entered in this action.  
27

28 99. Plaintiffs reserve the right to amend the Class definition as discovery  
29

1 reveals additional emails containing false or misleading information in the subject  
2 line that Defendant sent or caused to be sent during the Class Period to email  
3 addresses held by Washington residents.  
4

5 100. The Class is so numerous that joinder of all members is impracticable  
6 because the Class is estimated to minimally contain thousands of members.  
7

8 101. There are questions of law or fact common to the class, including  
9 without limitation whether Defendant sent commercial emails containing false or  
10 misleading information in the subject line; whether Defendant sent such emails to  
11 email addresses it knew or had to reason to know were held by Washington residents;  
12 whether Defendant's conduct violated CEMA; whether Defendant's violation of  
13 CEMA constituted a *per se* violation of the Consumer Protection Act, RCW  
14 19.86.020 (CPA); and whether Defendant should be enjoined from such conduct.  
15

16 102. Plaintiffs' claims are typical of the Class's because, among other  
17 reasons, Plaintiffs and Class members share the same statutory rights under CEMA  
18 and the CPA, which Defendant violated in the same way by the uniform false or  
19 misleading marketing messages it sent to all putative members.  
20  
21

22 103. Plaintiffs will fairly and adequately protect the Class's interests  
23 because, among other reasons, Plaintiffs share the Class's interest in avoiding  
24 unlawful false or misleading marketing; have no interest adverse to the Class; and  
25 have retained competent counsel extensively experienced in consumer protection  
26  
27

1 and class action litigation.

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

10 105. The questions of law or fact common to the members of the Class  
11 predominate over any questions affecting only individual members, in that, among  
12 other ways, Defendant has violated their rights under the same laws by the same  
13 conduct, and the only matters for individual determination are the number of false  
14 or misleading emails received by each Class member and that Class member's  
15 resulting damages.  
16  
17

18 106. A class action is superior to other available methods for the fair and  
19 efficient adjudication of the controversy because, among other reasons, the claims  
20 at issue may be too small to justify individual litigation and management of this  
21 action as a class action presents no special difficulties.  
22  
23

## VI. CLAIMS TO RELIEF

### First Claim to Relief Violation of the Commercial Electronic Mail Act, RCW 19.190.020

27 107. Plaintiffs incorporate and reallege paragraphs 1–95 above.

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

7 109. Defendant is a “person” within the meaning of CEMA. RCW  
8 19.190.010(11).

10 110. Defendant initiated the transmission, conspired with another to initiate  
11 the transmission, or assisted the transition of “commercial electronic mail messages”  
12 within the meaning of CEMA. RCW 19.190.010(2).

14 111. Defendant initiated the transmission, conspired with another to initiate  
15 the transmission, or assisted the transmission of such messages to electronic mail  
16 addresses that Defendant knew, or had reason to know, were held by Washington  
17 residents, including because Defendant knew that Plaintiffs and putative members  
18 were Washington residents as such “information is available, upon request, from the  
19 registrant of the internet domain name contained in the recipient’s electronic mail  
20 address”. RCW 19.190.020(b)(2).

23 112. Defendant initiated the transmission, conspired with another to initiate  
24 the transmission, or assisted the transmission of such messages that contained false  
25 or misleading information in the subject line, as described herein, in violation of  
26  
27

1 CEMA. RCW 19.190.020(1)(b).

2 113. For Defendant's violation of CEMA, Plaintiffs are entitled to all  
3 available relief, including an injunction against further violations.  
4

5 **Second Claim to Relief**  
6 **Violation of the Consumer Protection Act, RCW 19.86.020**

7 114. Plaintiff incorporates and realleges paragraphs 1–95 above.

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

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

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

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

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

120. Defendant initiated the transmission, conspired with another to initiate

1 the transmission, or assisted the transition of “commercial electronic mail messages”  
2 within the meaning of CEMA. RCW 19.190.010(2).

3 121. Defendant initiated the transmission, conspired with another to initiate  
4 the transmission, or assisted the transmission of such messages to electronic mail  
5 addresses that Defendant knew, or had reason to know, were held by Washington  
6 residents.  
7

8 122. Defendant initiated the transmission, conspired with another to initiate  
9 the transmission, or assisted the transmission of such messages that contained false  
10 or misleading information in the subject line, as described herein, in violation of  
11 CEMA. RCW 19.190.020(1)(b).  
12

13 123. For Defendant’s violation of the CPA, Plaintiffs and putative members  
14 are entitled to an injunction against further violations; the greater of Plaintiffs’ actual  
15 damages or liquidated damages of \$500 per violation, trebled; and costs of the suit,  
16 including reasonable attorneys’ fees.  
17

18 **VII. JURY DEMAND**  
19

20 124. Plaintiffs demand a jury trial on all issues so triable.  
21

22 **VIII. PRAYER FOR RELIEF**  
23

24 Plaintiffs asks that the Court:  
25

26 A. Certify the proposed Class, appoint Plaintiffs as Class representative,  
27 and appoint undersigned counsel as Class counsel;  
28

1 B. Enter a judgment in Plaintiffs' and the Class's favor permanently  
2 enjoining Defendant from the unlawful conduct alleged;

3 C. Enter a judgment in Plaintiffs' and the Class's favor awarding actual  
4 or liquidated damages, trebled, according to proof;

5 D. Award Plaintiffs costs of suit, including reasonable attorneys' fees;

6 and

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

8  
9 DATE: October 23, 2025

10 Respectfully submitted,

11 /s/ Walter Smith

12 Walter M. Smith

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15  
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7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE EASTERN DISTRICT OF WASHINGTON  
9

10 SELAY SHAHPUR and LINDSEY  
11 SMITH, on their own behalf and on  
12 behalf of others similarly situated,

13 Plaintiffs,

14 vs.

15 ULTA SALON, COSMETICS &  
16 FRAGRANCE, INC.,

17 Defendant.

18 Case No.: 2:25-cv-284

19  
20 **AMENDED CLASS ACTION  
21 COMPLAINT**

22 **EXHIBIT A**

Date	Subject Line
12/19/21	LAST CHANCE: \$10 off \$40 or \$20 off \$100!
3/4/22	See you later, \$10 off
5/5/22	See you later, \$10 off
12/19/22	ENDS TONIGHT: \$10 or \$20 off!
12/19/22	LAST CHANCE on \$10 off \$40 or \$20 off \$100 
4/25/23	LAST CALL: \$10 off \$40
5/5/23	Get \$10 off inside 

1	11/4/23	ENDS TODAY Up to 40% off makeup
2	3/3/24	HOURS LEFT 💕 \$10 or \$20 OFF 💕
3	3/23/24	⚠️ LAST CHANCE ⚠️ Get 50% off Beauty Steals!
4	5/10/24	[recipient name], your \$10 off disappears TOMORROW 😱
5	7/8/24	FINAL DAY \$10 off \$50 or \$20 off 100
6	7/21/24	LAST DAY to get 10% off
7	8/23/24	Say bye 🙌 to your \$10 OFF tomorrow...
8	10/18/24	Your \$10 off expires Saturday! 💰
9	12/2/24	⚠️ LAST CHANCE: Cyber Monday deals + \$10 off + FREE gift! ⚠️
10	1/24/25	Say bye to your \$10 OFF tomorrow... 🙌
11	2/17/25	Say bye to \$10 off \$50 or \$20 off \$100! 🙌
12	3/21/25	⚠️ FYI: Your \$10 off expires tomorrow! ⚠️
13	3/27/25	LAST DAY! 50% off Beauty Steals ❤️
14	3/27/25	LAST CHANCE—50% off Beauty Steals ends today!
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