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Raylene King
County Clerk
Whatcom County, WA
Case Number: 25-2-02400-37

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF WHATCOM**

MORGAN CROUCH, MALLORY SANTIC,
ELYSE SPARKS, and DALANA BROWN,
on their own behalf and on behalf of all others
similarly situated,

Plaintiffs,

v.

BEYOND, INC. D/B/A OVERSTOCK.COM

Defendant.

Case No. 25-2-02400-37

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

I. NATURE OF THE ACTION

1
2
3 1. This is a class action brought by Named Plaintiffs Morgan Crouch
4 (“Crouch”), Mallory Santic (“Santic”), Elyse Sparks (“Sparks”), and Dalana Brown
5 (“Brown”) (collectively “Named Plaintiffs”) against Beyond, Inc. d/b/a Overstock.com
6 (“Overstock” or “Defendant”) for false and misleading email marketing.

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

9 3. First, Defendant sends emails with subject lines that falsely represent
10 unqualified discounts on purchases without disclosing material exclusions (“Percentage

11 Discount Emails”). The subject lines of the Percentage Discount Emails imply a
12 straightforward percentage discount on the recipient’s entire purchase (such as “15% off
13 your entire order” or “15% off your purchase”), without limitations or exclusions, enticing
14 consumers to open the email in anticipation of a broad bargain. Upon opening the email,
15 however, the body reveals that there are significant exclusions that do not qualify for the
16 percentage discount.

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

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

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

32 7. Second, Defendant sends emails that misstate the duration of given
33 promotions, in an apparent effort to drive sales by creating a false sense of urgency

34 (“Limited Sale Emails”). These misstatements are material because they mislead
35 reasonable consumers about sale durations, inducing urgency that affects purchasing
36 decisions, as recognized by the FTC in 16 C.F.R. § 233.5.

37 8. The subject lines of the Limited Sales Emails falsely claim that a certain
38 sale or discount is limited to a specific time, such as “ends today” or “ends tonight” or
39 “ends very soon,” when, in reality, the offer lasts longer than advertised or the item has
40 already been on sale for longer than advertised.

41 9. Defendant also uses its preconceived “sale extensions” as an excuse to send
42 consumers additional emails purporting to notify them that a sale is ending or that a sale
43 has been extended. This practice causes consumers’ inboxes to become inflated with spam.

44 10. Defendant’s practice of sending Percentage Discount Emails and Limited
45 Sale Emails that contain false and misleading information in the subject line violates the
46 Washington Commercial Electronic Mail Act (“CEMA”), RCW 19.190, and the
47 Washington Consumer Protection Act, RCW 19.86.

48 11. By sending Percentage Discount Emails and Limited Sale Emails with false
49 and misleading information to Named Plaintiffs and the Class (defined below), Defendant
50 clogs email inboxes with false information and violates Named Plaintiffs and Class
51 members rights to be free from deceptive commercial emails.

52 12. Named Plaintiffs bring this action as a class action on behalf of persons
53 residing in Washington who also received Defendant’s false and misleading emails. Named
54 Plaintiffs requested relief includes an injunction to end these practices, an award to Named
55 Plaintiffs and Class members of statutory damages under RCW 19.190.040 (1) and treble

56 damages under RCW 19.86.090 for each illegal email sent, and an award of attorneys' fees
57 and costs.

58 **II. PARTIES**

59

60 13. Named Plaintiff Crouch is a citizen of Washington, residing in Whatcom
61 County, Washington.

62 14. Named Plaintiff Santic is a citizen of Washington, residing in Clark County,
63 Washington.

64 15. Named Plaintiff Sparks is a citizen of Washington, residing in Whatcom
65 County, Washington.

66 16. Named Plaintiff Brown is a citizen of Washington, residing in King County,
67 Washington.

68 17. Defendant Overstock is a corporation formed under the laws of the State of
69 Delaware. Defendant currently is, and at all relevant times in the past has, engaged in
70 substantial business activities in Washington.

71 18. Defendant owns and operates a large online marketplace, ships its products
72 into the state of Washington and sends the marketing emails at issue in this Complaint to
73 consumers throughout Washington.

74 **III. JURISDICTION AND VENUE**

75 19. This Court has subject matter jurisdiction over this civil action pursuant to,
76 without limitation, Section 6 of Article IV of the Washington State Constitution (Superior
77 Court jurisdiction, generally), RCW 19.86.090 (Superior Court jurisdiction over Consumer
78 Protection Act claims) and RCW 19.190.090 (Superior Court jurisdiction over Commercial
79 Electronic Mail Act claims).

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

86 21. This Court also has personal jurisdiction over Defendant under RCW
87 19.86.160. For example, and without limitation, Defendant engaged and is continuing to
88 engage in conduct in violation of RCW 19.86 which has had and continues to have an
89 impact in Washington which said chapter reprehends.

90 22. Venue is proper in Whatcom County Superior Court because Defendant has
91 its residence in County. RCW 4.12.025. Currently and at all relevant times, Defendant has
92 transacted business in Whatcom County, including without limitation by sending the
93 marketing emails alleged herein to residents of Whatcom County, and maintaining stores
94 for the transaction of business within Whatcom County.

95 **IV. FACTUAL ALLEGATIONS**

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

99
100 23. Washington's Commercial Electronic Mail Act ("CEMA") regulates
101 deceptive email marketing.

102 24. "CEMA was enacted to protect concrete interests in being free from
103 deceptive commercial e-mails. CEMA's prohibition on sending commercial e-mails with
104 false or misleading subject lines . . . creates a substantive right to be free from deceptive

105 commercial emails.” *Harbers v. Eddie Bauer, LLC*, 415 F. Supp. 3d 999, 1011 (W.D.
106 Wash. 2019).

107 25. The Washington Supreme Court recently confirmed this understanding,
108 holding that RCW 19.190.020(1)(b) “prohibits the use of any false or misleading
109 information in the subject line of a commercial e-mail.” *Brown v. Old Navy, LLC*, 4 Wn.3d
110 580, 583 (2025).

111 26. An injury occurs anytime a commercial email is transmitted that contains
112 false or misleading information in the subject line. *Id.* at 1011. In *Brown*, the Washington
113 Supreme Court reaffirmed that “the injury is receiving the e-mail that violates CEMA,”
114 and that a plaintiff need not show actual damages to recover statutory penalties. *Brown*, 4
115 Wn.3d at 585.

116 27. Under CEMA, it is irrelevant whether misleading commercial emails were
117 solicited. *Harbers*, 415 F. Supp. 3d at 1011. The Washington Supreme Court echoed this
118 point in *Brown*, emphasizing that the statute is not limited to deception about the nature or
119 solicitation of the message but applies broadly to any false or misleading subject line.
120 *Brown*, 4 Wn.3d at 590, 594.

121 28. CEMA creates an independent but limited private right of action which can
122 be asserted by a person who is the recipient of a commercial electronic mail message which
123 contains false or misleading information in the subject line. RCW 19.190.030(1)(b). A
124 plaintiff who successfully alleges and proves such a violation may obtain, among other
125 things, an injunction against the person who initiated the transmission. RCW
126 19.190.090(1). In addition, the statute authorizes statutory damages of \$500 per violation.

127 RCW 19.190.040(1); *see also Brown*, 4 Wn.3d at 585 (confirming that no showing of
128 actual damages is required to recover statutory damages under CEMA).

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

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

139 31. Washington and federal courts have held that a plaintiff states a CPA claim
140 solely by alleging a violation of the CEMA. *See State v. Heckel*, 143 Wash.2d 824, 24 P.3d
141 404, 407 (2001).

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

145
146 32. Defendant has initiated (or conspired to initiate) the transmission of
147 hundreds of commercial electronic mail messages with false or misleading subject lines to
148 Named Plaintiffs and the Class. The emails were electronic mail messages, in that they
149 were each an electronic message sent to an electronic mail address; the emails from
150 Defendant also referred to an internet domain, whether or not displayed, to which an
151 electronic mail message can or could be sent or delivered.

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

153 34. The emails were sent at Defendant's direction and were approved by
154 Defendant.

155 **1. Percentage Discount Emails**

156 35. Defendant frequently sends emails with subject lines promising a
157 percentage off the recipient's purchase. The body of these emails (and fine print), however,
158 contains significant and material exclusions.

159 36. For example, on May 22, 2025, Defendant sent Named Plaintiffs and Class
160 members an email with a subject line that stated: "Don't forget: take an EXTRA 10% off
161 your purchase[.]"

162 37. On May 25, 2025, Defendant sent Named Plaintiffs and Class members an
163 email with a subject line that stated: Don't miss up to 70% off + an extra 15% off your
164 order [fire emoji]."

165 38. Again, on May 25, 2025, Defendant sent Named Plaintiffs and Class
166 members an email with a subject line that stated: "Take an extra 15% off your entire
167 order—ends tomorrow!"

168 39. On May 26, 2025, Defendant sent Named Plaintiffs and Class members an
169 email with a subject line that stated: "Last chance [siren emoji] Up to 70% off + an extra
170 15% off your purchase[.]"

171 40. On September 1, 2025, Defendant sent Named Plaintiffs and Class members
172 an email with a subject line that stated: "App exclusive: extra 15% off your ENTIRE order
173 [smiley face emoji]."

174 41. These subject lines imply that a straightforward discount will be applied on
175 the recipient's purchase, without limitations or exclusions.

176 42. The fine print at the bottom of each email, however, states that exclusions
177 will apply from the unqualified offer in the subject line.

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

180 44. Such omissions as to what constitutes "entire" or "your order" or "your
181 purchase" in the subject lines of these types of emails create a reasonable probability that
182 consumers will be misled about the true scope of the discount.

183 45. And Defendant understands how to restrict an offer in the subject line of an
184 email because from time to time, Defendant does in fact restrict the scope of the sale in the
185 subject line.

186 46. For instance, on June 9, 2025, Defendant sent Named Plaintiffs and Class
187 members an email with a subject line that stated: "Up to 60% off ends TOMORROW[.]"

188 2. Limited Sale Emails

189 47. Defendant also frequently sends emails with subject lines advertising the
190 "limited" nature of sales, discounts, and prices. For example, Defendant sends emails that
191 state a sale "ends today" or "ends tonight" or it "ends very soon," implying urgency and
192 finality, but then follows up with extensions of the same offer. By stating that a sale is only
193 on for a limited time, Defendant suggests an offer's rarity or urgency, stimulating
194 consumers' desire to get the deal before it ends. Defendant knowingly understates sale
195 durations in subject lines, as evidenced by their routine extensions of advertised "limited"
196 periods, to create this false urgency. These misstatements are material because they mislead

197 reasonable consumers about sale durations, inducing urgency that affects purchasing
198 decisions, as recognized by the FTC in 16 C.F.R. § 233.5.

199 48. Defendant's Limited Sales Emails are false or misleading because the sales,
200 discounts, and prices advertised as limited in time are not actually limited in time, as
201 Defendant routinely extends them beyond the advertised end dates.

202 49. On May 26, 2024, Defendant sent an email with a subject line stating
203 "Memorial Day Deals End VERY Soon!"

204 50. On May 27, 2024, Defendant sent an email with a subject line stating
205 "LAST CALL: Memorial Day Deals End Tonight!"

206 51. On May 28, 2024, Defendant sent an email with a subject line stating
207 "EXTENDED! Up to 70% off Memorial Day Deals! [party face emoji.]"

208 52. On May 29, 2024, Defendant sent an email with a subject line stating "Up
209 to 70% off Memorial Deals EXTENDED! [three celebratory emojis.]"

210 53. On July 18, 2024, Defendant sent an email with a subject line stating
211 "Extended?! YESSS! 1 More Day for Up to 50% Off!"

212 54. And on September 3, 2024, Defendant sent an email with a subject line
213 stating "...EXTENDED!! Up to 70% Off! [alarm clock emoji.]"

214 55. By falsely stating the duration of the sale and issuing serial "extension"
215 emails, Defendant misled consumers regarding the true time limits of the offer.

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

219 56. Defendant sent the misleading commercial emails to email addresses that
220 Defendant knew, or had reason to know, were held by Washington residents, either because
221

222 (i) Defendant had a physical Washington address that was associated with the recipient;
223 (ii) Defendant had access to data regarding the recipient indicating that they were in
224 Washington state; or (iii) information was available to Defendant upon request from the
225 registrant of the internet domain name contained in the recipient's electronic mail address.

226 57. Defendant knows where many of its customers reside through several
227 methods.

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

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

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

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

239 62. Fifth, discovery will also show that Defendant employs sophisticated third
240 parties who create profiles of customers and potential customers, including their email
241 address and physical location.

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

245 64. At all times relevant to this Complaint, Named Plaintiffs resided in
246 Washington.

247 65. Named Plaintiffs have received Defendant's emails for several years.

248 66. Named Plaintiffs have received hundreds of marketing emails from
249 Defendant within the last four years, and typically received more than five emails every
250 week.

251 67. Named Plaintiffs received emails from Defendant through email providers
252 that have data limits. Named Plaintiffs currently have several hundred emails from
253 Defendant in their inboxes, but discovery will show that they have received more emails
254 that they have deleted to conserve the finite space available in their email inboxes.

255 68. Defendant knows, or has reason to know, that Named Plaintiffs' email
256 addresses are held by Washington residents. Named Plaintiffs have accounts with
257 Defendant that reflect their home address in Washington. Named Plaintiffs have made
258 several purchases from the Defendant's website that have been delivered to her home in
259 Washington. Named Plaintiffs have also repeatedly clicked on links contained in
260 Defendant's emails from her computer, which was registered to an IP address in
261 Washington at all relevant times, or from their smart phone, which was located in
262 Washington unless Named Plaintiffs happened to be traveling.

263 69. Named Plaintiffs received the emails with false and misleading subject lines
264 described above. Named Plaintiffs received additional emails with false and misleading
265 subject lines from Defendant.

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

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

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

276 73. Named Plaintiffs have identified many more Defendant emails with false
277 and misleading subject lines. These emails were sent between October 6, 2021 and the date
278 this Complaint was filed, showing that Defendant engaged in this conduct throughout the
279 relevant time period.

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

286 **V. CLASS ACTION ALLEGATIONS**

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

289 All Washington residents¹ who, within four years before the
290 date of the filing of this complaint until the date any order
291 certifying a class is entered, received an email from or at the
292 behest of Defendant that contained a subject line stating or
293 implying that 1) a percentage discount would apply to the
294 recipient's "purchase" or "order" and "with no conditions or
295 exclusions; or 2) a sale, discount, price, or other offer would
296 end soon or on a definitive date, and the sale, discount, price,
297 or other offer continued to be offered for at least an
298 additional day.

299
300 Excluded from the Class are Defendant, any entity in which
301 Defendant has a controlling interest or that has a controlling
302 interest in Defendant, and Defendant's legal representatives,
303 assignees, and successors. Also excluded are the judge to
304 whom this case is assigned and any member of the judge's
305 immediate family.

306
307 76. Numerosity. The Class is so numerous that joinder of all members is
308 impracticable. The Class has more than 1,000 members. Moreover, the disposition of the
309 claims of the Class in a single action will provide substantial benefits to all parties and the
310 Court.

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

- 314 a. Whether Defendant sent commercial electronic mail messages with
315 false and misleading information in the subject lines;
- 316 b. Whether Defendant initiated the transmission or conspired to initiate the
317 transmission of commercial electronic mail messages to recipients
318 residing in Washington State in violation of RCW 19.190.020;

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

- 319 c. Whether a violation of RCW 19.190.020 establishes all the elements of
320 a claim under Washington's Consumer Protection Act, RCW 19.86 *et*
321 *seq.*;
- 322 d. Whether Named Plaintiffs and the proposed Class are entitled to an
323 injunction enjoining Defendant from sending the unlawful emails in the
324 future; and
- 325 e. The nature and extent of Class-wide damages.

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

329 79. Adequacy. Named Plaintiffs will fairly and adequately protect the interests
330 of the Class. Named Plaintiffs have retained competent and capable attorneys with
331 significant experience in complex and class action litigation, including consumer class
332 actions. Counsel for Named Plaintiffs have significant experience representing consumers
333 in cases involving violations of CEMA. Named Plaintiffs and their counsel are committed
334 to prosecuting this action vigorously on behalf of the Class and have the financial resources
335 to do so. Neither Named Plaintiffs nor their counsel have interests that are contrary to or
336 that conflict with those of the proposed Class.

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

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

350 82. Injunctive Relief. Defendant's conduct is uniform as to all members of the
351 Class. Defendant has acted or refused to act on grounds that apply generally to the Class,
352 so that final injunctive relief or declaratory relief is appropriate with respect to the Class as
353 a whole. Named Plaintiffs further alleges, on information and belief, that the emails
354 described in this Complaint are substantially likely to continue in the future if an injunction
355 is not entered.

356 **VI. CAUSES OF ACTION**

357 **FIRST CLAIM FOR RELIEF**
358 (Violation of Washington's Commercial Electronic Mail Act, RCW 19.190 et seq.)
359

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

362 84. Washington's CEMA prohibits any "person," as that term is defined in
363 RCW 19.190.010(11), from initiating or conspiring to initiate the transmission of a
364 commercial electronic mail message from a computer located in Washington or to an
365 electronic mail address that the sender knows, or has reason to know, is held by a
366 Washington resident that contains false or misleading information in the subject line. These

367 prohibitions target falsity or deception, as interpreted in *Brown v. Old Navy, LLC*, 567 P.3d
368 38 (Wash. 2025).

369 85. Defendant is a “person” within the meaning of the CEMA, RCW
370 19.190.010(11).

371 86. Defendant initiated the transmission or conspired to initiate the transmission
372 of one or more commercial electronic mail messages to Named Plaintiffs and proposed
373 Class members with false or misleading information in the subject line.

374 87. Defendant’s acts and omissions violated RCW 19.190.020(1)(b). Defendant
375 knew or had reason to know of the falsity of the subject lines, as shown by its repeated
376 patterns of omitting conditions and exclusions in subject lines while burying them in the
377 fine print of the body of the email.

378 88. Defendant’s acts and omissions injured Named Plaintiffs and proposed
379 Class members, as receipt of such misleading emails constitutes injury under CEMA and
380 the CPA as a matter of law, clogging inboxes and wasting time.

381 89. The balance of the equities favors the entry of permanent injunctive relief
382 against Defendant. Named Plaintiffs, the members of the Class, and the general public will
383 be irreparably harmed absent the entry of permanent injunctive relief against Defendant. A
384 permanent injunction against Defendant is in the public interest. Defendant’s unlawful
385 behavior is, based on information and belief, ongoing as of the date of the filing of this
386 pleading; absent the entry of a permanent injunction, Defendant’s unlawful behavior will
387 not cease and, in the unlikely event that it voluntarily ceases, is likely to reoccur.

388 90. Pursuant to RCW 19.190.040(1), Named Plaintiffs and each Class member
389 is entitled to the greater of \$500 per commercial electronic mail message sent in violation
390 of RCW 19.190.020(1)(b) or actual damages.

391 91. In addition, Named Plaintiffs and Class members are therefore entitled to
392 injunctive relief in the form of an order enjoining further violations of RCW
393 19.190.020(1)(b).

394 **SECOND CLAIM FOR RELIEF**

395 (Per se violation of Washington's Consumer Protection Act, RCW 19.86 et seq.)

396
397 92. Named Plaintiffs reallege and incorporate by reference each and every
398 allegation set forth in the preceding paragraphs.

399 93. Named Plaintiffs and Class members are “persons” within the meaning of
400 the CPA, RCW 19.86.010(1).

401 94. Defendant violated the CEMA by initiating or conspiring to initiate the
402 transmission of commercial electronic mail messages to Named Plaintiffs and Class
403 members that contain false or misleading information in the subject line, amounting to
404 material deception.

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

407 96. A violation of the CEMA establishes all five elements of Washington’s
408 Consumer Protection Act as a matter of law.

409 97. Defendant’s violations of the CEMA are unfair or deceptive acts or
410 practices that occur in trade or commerce under the CPA. RCW 19.190.100.

411 98. Defendant's unfair or deceptive acts or practices vitally affect the public
412 interest and thus impact the public interest for purposes of applying the CPA. RCW
413 19.190.100.

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

418 100. Defendant engaged in a pattern and practice of violating the CEMA. As a
419 result of Defendant's acts and omissions, Named Plaintiffs and Class members have
420 sustained damages, including \$500 in statutory damages, for each and every email that
421 violates the CEMA. The full amount of damages will be proven at trial. Named Plaintiffs
422 and Class members are entitled to recover actual damages and treble damages, together
423 with reasonable attorneys' fees and costs, pursuant to RCW 19.86.090.

424 101. Under the CPA, Named Plaintiffs and members of the Class are also entitled
425 to, and do seek, injunctive relief prohibiting Defendant from violating the CPA in the
426 future.

427 102. Defendant's deceptive practices are ongoing and likely to continue absent
428 injunction, as evidenced by its consistent email patterns, vitally affecting the public interest
429 in truthful commercial communications.

430 **VII. REQUEST FOR RELIEF**

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

433 A. That the Court certify the proposed Class;

- 434 B. That the Court appoint Named Plaintiffs as Class Representative;
- 435 C. That the Court appoint the undersigned counsel as counsel for the Class;
- 436 D. That the Court grant injunctive relief as permitted by law to ensure that
- 437 Defendant will not continue to engage in the unlawful conduct described in
- 438 this Complaint;
- 439 E. That the Court enter a judgment awarding any other injunctive relief
- 440 necessary to ensure Defendant's compliance with the CEMA;
- 441 F. That Defendant be immediately restrained from altering, deleting, or
- 442 destroying any documents or records that could be used to identify members
- 443 of the Class;
- 444 G. That Named Plaintiffs and all Class members be awarded statutory damages
- 445 in the amount of \$500 for each violation of the CEMA pursuant to RCW
- 446 19.190.040(1) and treble damages pursuant to RCW 19.86.090;
- 447 H. That the Court enter an order awarding Named Plaintiffs reasonable
- 448 attorneys' fees and costs; and
- 449 I. That Named Plaintiffs and all Class members be granted other relief as is
- 450 just and equitable under the circumstances.

451 **VIII. TRIAL BY JURY**

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

453 Dated this 27th day of October, 2025

454 Respectfully submitted,

455 Z LAW, LLC

456 /s/ David M. Trojanowski (WSBA # 56258)

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