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KING COUNTY
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CASE #: 26-2-05686-2 SEA

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

JULY DODSON, TENADORE FOWLER,
and RYAN TAMM, on their own behalf and
on behalf of others similarly situated,

Plaintiffs,

vs.

DESTINATION XL GROUP, INC.,
d/b/a DXL BIG + TALL,

Defendant.

Case No.: _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs July Dodson, Tenadore Fowler, and Ryann Tamm (“Plaintiffs”), on their own behalf and on behalf of others similarly situated, on information and belief except to their own experiences and matters of public record, complain of Defendant Destination XL Group, Inc. *d/b/a* DXL Big + Tall (“DXL” or “Defendant”), as follows:

I. INTRODUCTION

1. In 1998, to protect Washington consumers from the annoyance and harassment caused by the burgeoning spam email industry, the Washington State Legislature enacted the Commercial Electronic Mail Act (CEMA), codified at chapter 190 of title 19 of the Revised Code of Washington (RCW).

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III. PARTIES

10. Plaintiffs Tenadore Fowler and Ryan Tamm are residents of King County, Washington.

11. Plaintiff July Dodson is a resident of Spokane County, Washington.

12. Defendant DXL is a Delaware foreign corporation with its principal place of business at 555 Turnpike Street, Canton, Massachusetts, 02021.

13. Defendant DXL has a registered agent in the state of Washington: CT Corporation System, 711 Capitol Way S Suite 204, Olympia, Washington, 98501.

IV. FACTUAL ALLEGATIONS

A. CEMA Protects Washington Consumers from Deceptive Spam Emails.

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

15. In 1998, the Legislature found that the “volume of commercial electronic mail,” was “growing,” generating an “increasing number of consumer complaints.” Laws of 1998, Ch. 149, § 1.

16. In the nearly three decades since, the problems caused by unsolicited commercial email, *i.e.* spam email, have grown exponentially.

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

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

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

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

8 21. Consumers therefore routinely “consent” to receive flurries of commercial emails
9 which they did not meaningfully request and in which they have no genuine interest.

10 22. This includes emails sent to consumers from businesses with which they have no
11 prior relationship—by virtue of commercial data brokers and commercial data sharing agreements.

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

19 24. The Legislature presciently intended CEMA to “provide some immediate relief”
20 for these problems by prohibiting among other things commercial emails that “contain untrue or
21 misleading information in the subject line.” Laws of 1998, Ch. 149, § 1.

22 25. CEMA thereby protects Washington consumers against the “harms resulting from
23 deceptive commercial e-mails,” which “resemble the type of harms remedied by nuisance or fraud
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1 actions.” *Harbers v. Eddie Bauer, LLC*, 415 F. Supp. 3d 999, 1008 (W.D. Wash. 2019).

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

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

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

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

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

17 **B. The Subject Lines of DXL’s Marketing Emails Make False Time Scarcity**
18 **Claims.**

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

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

5 33. “False or misleading scarcity claims can change the behaviour of consumers.”
6 *Online Choice Architecture, supra* para. 30, at 27.

7 34. Representations about the timing and duration of sales, discounts, and other special
8 offers are fundamentally representations about prices, and such representations matter to ordinary
9 consumers. *See, e.g., Huiliang Zhao et al., Impact of Pricing and Product Information on*
10 *Consumer Buying Behavior with Consumer Satisfaction in a Mediating Role*, 12 *Frontiers in*
11 *Psychology* 720151 (2021), available at
12 <https://pmc.ncbi.nlm.nih.gov/articles/PMC8710754/pdf/fpsyg-12-720151.pdf/>.

13 35. False scarcity claims are psychologically effective. As “considerable evidence”
14 suggests, “consumers react to scarcity and divert their attention to information where they might
15 miss opportunities.” *Online Choice Architecture, supra* para. 30, at 26.

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

19 37. Under time pressure, “consumers might take up an offer to minimize the uncertainty
20 of passing it up.” *Id.*

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

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

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

5 41. These false time scarcity claims are a staple of Defendant DXL’s email scheme to
6 corral consumers to purchase its products.

7 42. **Urgent Spam Emails.** DXL is practiced in this trick of luring consumers through
8 urgent subject headings in emails that do not reflect the true availability of the deal itself, as the
9 examples below demonstrate.

10 43. DXL is a retail fashion brand that sells men’s apparel and accessories. The
11 company regularly uses false time scarcity claims to entice consumers to purchase its products
12 through its website, www.dxl.com.

13 44. DXL’s deceptive strategy is no more readily apparent than in its promotion
14 extensions. In the following examples, DXL announces promotional pricing, demanding
15 consumers’ attention by presenting that pricing as a scarce or time-limited opportunity. Once the
16 advertised deadline has passed, DXL purports to extend the promotion to a new end date.

17 45. This misleading marketing strategy allows DXL to maximize sales during the life
18 of a promotion. By using false deadlines, however, the approach also prevents consumers from
19 making informed purchasing decisions.

20 46. For example, on February 20, 2023, DXL sent consumers an email with the subject
21 line: “Extra 30% OFF Select Clearance ENDS TONIGHT!” offering a deal for “up to 40% off
22 clearance” with “an extra 30% off select clearance.”

23 47. In fact, the deal did not “end tonight.”
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1 48. The very next day, February 21, 2023, it sent an email with the headline, “SALE
2 EXTENDED! One More Day to Save BIG” offering the same “up to 40% off” plus an “extra 30%
3 off select clearance.”

4 49. Another example of this pattern was deployed in October 2024.

5 50. DXL first announced a 50% Off promotion on October 10, 2024, saying, in the
6 body of the email, “Now thru October 14.” And true to its (false) word, DXL issued a series of
7 emails emphasizing the purported end of the 50% Off promotion on October 14, 2024 in the subject
8 lines of the emails:

9 51. **10/13/2024:** “Carpe The Deals! Up To 50% Off Clearance Ends Tomorrow.”

10 52. **10/13/2024:** “WAIT! Don’t Delete! Up To 50% Off Clearance Ends Tomorrow.”

11 53. **10/14/2024:** “Last Day! Up To 50% Off Clearance.”

12 54. **10/14/2024:** “🕒 The Savings End At Midnight!”

13 55. Of course, the 50% Off deal did not end on October 14. The very next day, October
14 15, 2024, DXL sent emails saying in the subject lines: “EXTENDED! 1 More Day To Save Up To
15 50% On Clearance” and “Final Call! Up To 50% Off Clearance.”

16 56. But even October 15 was far from the “Final Call” for this 50% off deal. On October
17 17, 2024, DXL sent an email with the subject heading: “Bonus. Clearance. Up To 50% Off. All
18 Your Favorite Words.”

19 57. Indeed, from its initial announcement of the deal on October 10, 2024, DXL *knew*
20 that the deal would not end on October 14. In the teeny-tiny fine print at the very bottom of the
21 October 10 email, it stated “Offer valid thru 10/20/2024.”

22 58. Aligned with that *purported* deadline, on October 20, 2024, DXL urged consumers
23 with the subject headings: “In A Few Hours, Up To 50% Off Will Be 100% Gone” and “100%
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1 Hurry!! Our Clearance Event Ends Today.”

2 59. But even this alleged deadline was not the real deadline.

3 60. DXL sent emails on October 21, 2024—the true *end* of the 50% off clearance
4 deal—that said in the headline: “SURPRISE! Clearance Event Extended Today!” and “Hours Left!
5 Up To 50% Off Clearance Event Ends Tonight!”

6 61. So, consumers in receipt of the urgent calls to action in the October 14, October 17
7 and October 20, 2024 emails did not need to purchase on those days in order to access the 50% off
8 clearance deal, because it continued through at least October 21, 2024.

9 62. The very next month, DXL used a similar technique when advertising its “50% off
10 clearance” sale.

11 63. On November 10, 2024, DXL spammed consumers with an email, saying in the
12 subject line, “Fall Frenzy Sale Is Fizzling Out Tomorrow,” and then on November 11, 2024, DXL
13 sent mass emails warning them in the headline: “Big Savings End Today! Big Sorry From Us,”
14 and “🕒 The Savings End At Midnight!”

15 64. These November 10 and 11 subject lines were false or misleading. The “50% off
16 clearance” promotion did not, in fact, end on November 11.

17 65. The very next day, on November 12, 2024, DXL sent consumers another marketing
18 email with the subject line: “Extended Our SALES EVENT. Woke Up Feeling Generous,” proving
19 DXL’s November 10th claim that the sale would “fizzle out tomorrow” and its November 11th
20 claim that the promotion was “ending at midnight” was false.

21 66. In the very same month, DXL again misled consumers about its “Black Friday
22 BOGO Sale.” On November 29, 2024, DXL sent another urgent email about the “Black Friday
23 BOGO,” saying in the subject heading: “🕒 FINAL HOURS for BOGO FREE Deals!”

1 67. Of course, those weren't the "final hours" for this deal. On November 30, DXL sent
2 another email to consumers, saying, "Extended Black Friday Deals End Tonight!"

3 68. Another example came on Cyber Monday in 2024.

4 69. On Monday, December 2, 2024, DXL sent an email titled: "🎁 Cyber Monday
5 Deals Ending! 10%, 20%, 30% OFF!"

6 70. But the *Cyber Monday* deal did not end on Monday.

7 71. The next day, *Tuesday*, December 3, 2024, DXL offered the same Cyber Monday
8 promotion, with the subject line: "EXTENDED! Cyber Monday Deals, Up To 30% OFF!"

9 72. DXL's deceptive implication on Monday, December 2nd, that the Cyber Monday
10 deal would actually "end" on Cyber Monday is reinforced in the graphic DXL included in the body
11 of the Tuesday, December 3rd email:



23 73. DXL again deployed this false time scarcity email strategy in early 2025 with its
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1 “Snowpocalypse” 50% off promotion.

2 74. On February 16, 2025, it spammed consumers with emails, urging in the subject
3 headings, “Up To 50% Off: Snowpocalypse Savings End Tomorrow” and “Get ‘Em While It’s
4 Cold: Up To 50% Off Ends Tomorrow.”

5 75. Did it end tomorrow? Of course it did not.

6 76. Two days later, on February 18, 2025, DXL sent an email titled, “🧊 It’s Still Cold!!
7 Snowpocalypse SALE Extended,” offering the same deal that it falsely stated was set to end on
8 February 17.

9 77. Despite the contrived time scarcity, consumers had another opportunity during
10 which they could accept DXL’s offer a mere two days after the advertised deadline.

11 78. DXL repeated its well-worn “Cyber Monday” trick in December 2025.

12 79. On Monday, December 1, 2025, DXL announced the launch of a “Cyber Monday”
13 promotion in emails with the subject headings: “—, Cyber Monday Ends Tonight! 20% Off Entire
14 Site,” and “—, Cyber Monday Ends Tonight! 20% Off Entire Site.”

15 80. But the Cyber Monday deal did not end on Monday as promised.

16 81. And as it did in 2024, DXL sent an email on *Tuesday*, December 2, 2025, saying,
17 in the subject lines: “❖ It’s Cyber Tuesday! 20% Off Savings Extended!” and “Cyber Monday
18 Isn’t Over: 20% Off Our Entire Site.”

19 82. Nor was this the last falsely urgent email headline in 2025.

20 83. In another instance of this persistent pattern, on December 14, 2025, DXL returned
21 to consumers’ inboxes to announce a 30% off sitewide sale, with the subject lines: “Everything
22 Online & In-Store = 30% OFF! Ends Today!” and “Last Day! 30% OFF Everything At DXL.”

23 84. One day later, on December 15, 2025, DXL proved the falsity of the “ends today”
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1 and “last day” representations with another email, saying in the subject line: “Extended! 30% OFF
2 Everything! Online Only!”

3 85. These and other examples of DXL commercial emails whose subject lines contain
4 false or misleading statements are attached to this Complaint as Exhibit A.

5 **C. DXL Knows When It Sends Emails to Washington Residents.**

6 86. A sophisticated commercial enterprise that is engaged in persistent marketing
7 through mass email campaigns across the United States, like DXL, has several ways of knowing
8 where the recipients of its marketing emails are located. The means it employs are peculiarly with
9 its knowledge.

10 87. First, the sheer volume of DXL email marketing put it on notice that Washington
11 residents would receive its emails. In the last twelve (12) months, DXL has sent over one thousand
12 three hundred twenty-six (1,326) marketing emails, averaging over three emails per day.

13 88. Second, DXL may obtain location information tied to email addresses when
14 consumers make purchases from DXL through digital platforms, including the DXL website, or
15 otherwise self-report such information to DXL.

16 89. Third, DXL may obtain location information tied to email addresses by tracking the
17 IP addresses of devices used to open DXL emails, which in turn can be correlated to physical
18 location (as illustrated, for example, by the website <https://whatismyipaddress.com/>).

19 90. Fourth, DXL may obtain location information tied to email addresses through the
20 use of sophisticated marketing and analytics platforms. Specifically, to manage its email marketing
21 campaigns, DXL appears to use Bluecore to manage its email marketing campaign. Bluecore
22 “unifies identity, behavior and product signals to deliver personalized experiences across email,
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1 SMS, site and paid media that drive profitable growth.”¹ Through Bluecore, DXL should know
2 every email address that each marketing email was sent to, as well as information about email
3 addresses that viewed its emails and clicked on links in the emails.

4 91. Fifth, DXL may obtain location information tied to email addresses by purchasing
5 consumer data from commercial data brokers such as Acxiom, Oracle, and Equifax, which sell
6 access to databases linking email addresses to physical locations, among other identifiers.

7 92. Sixth, DXL may obtain location information tied to email addresses by using
8 “identity resolution” services offered by companies such as LiveRamp, which can connect
9 consumers’ email addresses to their physical locations, among other identifiers.

10 93. Seventh, DXL may obtain information that the recipients of its marketing emails
11 are Washington residents because that information is available, upon request, from the registrant
12 of the Internet domain names contained in the recipients’ email addresses. *See*
13 RCW 19.190.020(2).

14 94. It is thus highly probable that a seller of DXL’s size and sophistication employs not
15 just one but several means of tying consumers’ email addresses to their physical locations, at least
16 at the state level.

17 **D. DXL Violated Plaintiffs’ Rights Under CEMA to be Free from Deceptive**
18 **Commercial Emails.**

19 95. DXL has bombarded Plaintiffs with commercial emails whose subject lines contain
20 false or misleading statements in violation of their rights to be free from such annoyance and
21 harassment under CEMA.

22 96. For example, Plaintiffs received emails containing false or misleading subject lines

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24 ¹ *Orchestrate 1:1 retail personalization across every channel*, BLUECORE,
<https://www.bluecore.com/> (last visited Jan. 27, 2026).

1 sent by DXL in 2023, 2024, and 2025, as described above in Section B. These messages were sent
2 to Plaintiffs' personal Gmail addresses:

3 97. On February 20, 2023, at 3:25 p.m., Plaintiff July Dodson received the email,
4 described above at ¶ 46, with the subject line: "Extra 30% OFF Select Clearance ENDS
5 TONIGHT!"

6 98. On October 14, 2024, at 9:15 a.m., Plaintiff Ryan Tamm received the email,
7 described above at ¶ 53, with the subject line: "Last Day! Up To 50% Off Clearance."

8 99. On October 20, 2024, at 6:15 p.m., Plaintiff Ryan Tamm received the email,
9 described above at ¶ 58, with the subject line: "In A Few Hours, Up To 50% Off Will Be 100%
10 Gone."

11 100. On November 11, 2024, at 6:16 a.m., Plaintiff Ryan Tamm received the email,
12 described above at ¶ 63, with the subject line: "Big Savings End Today! Big Sorry From Us."

13 101. On November 29, 2024, at 4:15 p.m., Plaintiff Ryan Tamm received the email,
14 described above at ¶ 67, with the subject line "⌚ FINAL HOURS for BOGO FREE Deals!"

15 102. On December 2, 2024, at 4:08 p.m., Plaintiff Ryan Tamm received the email,
16 described above at ¶ 70, with the subject line "🎁 Cyber Monday Deals Ending! 10%, 20%, 30%
17 OFF!"

18 103. On February 16, 2025, at 6:16 a.m., Plaintiff Ryan Tamm received the email,
19 described above at ¶ 75, with the subject line: "Up To 50% Off: Snowpocalypse Savings End
20 Tomorrow."

21 104. On December 1, 2025, at 4:16 p.m., Plaintiff Ryan Tamm received the email,
22 described above at ¶ 80, with the subject line: "Ryan, Cyber Monday Ends Tonight! 20% Off Entire
23 Site."
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1 105. On December 1, 2025, at 4:18 p.m., Plaintiff Tenadore Fowler received the email,
2 described above at ¶ 80, with the subject line: “Tenadore, Cyber Monday Ends Tonight! 20% Off
3 Entire Site.”

4 106. On December 14, 2025, at 3:10 p.m., Plaintiff Ryan Tamm received the email,
5 described above at ¶ 84, with the subject line: “Last Day! 30% OFF Everything At DXL.”

6 107. On December 14, 2025, at 6:19 a.m., Plaintiff July Dodson received the email,
7 described above at ¶ 84, with the subject line: “Everything Online & In-Store = 30% OFF! Ends
8 Today!”

9 108. These emails’ subject lines were false or misleading in violation of CEMA for
10 misrepresenting the timing of the deals.

11 109. These emails’ subject lines contained false statements of fact as to the “duration or
12 availability of a promotion.” *Brown*, 567 P.3d at 47.

13 **V. CLASS ACTION ALLEGATIONS**

14 110. Plaintiffs bring this Action under Civil Rule 23 on behalf of the following putative
15 Class (“Class”):

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

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

22 112. The Class Period extends from the date four years before this Class Action
23 Complaint is filed to the date a Class certification order is entered in this Action.

24 113. Plaintiffs reserve the right to amend the Class definition as discovery reveals

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

3 114. The Class is so numerous that joinder of all members is impracticable because the
4 Class is estimated to minimally contain thousands of members.

5 115. There are questions of law or fact common to the Class, including without
6 limitation whether Defendant sent commercial emails containing false or misleading information
7 in the subject line; whether Defendant sent such emails to email addresses it knew or had to reason
8 to know were held by Washington residents; whether Defendant's conduct violated CEMA;
9 whether Defendant's violation of CEMA constituted a *per se* violation of the CPA; and whether
10 Defendant should be enjoined from such conduct.

11 116. Plaintiffs' claims are typical of the Class's because, among other reasons, Plaintiffs
12 and Class Members share the same statutory rights under CEMA and the CPA, which Defendant
13 violated in the same way by the uniform false or misleading marketing messages it sent to all
14 putative members.

15 117. Plaintiffs will fairly and adequately protect the Class's interests because, among
16 other reasons, Plaintiffs share the Class's interest in avoiding unlawful false or misleading
17 marketing; have no interest adverse to the Class; and have retained competent counsel extensively
18 experienced in consumer protection and Class Action litigation.

19 118. Defendant has acted on grounds generally applicable to the Class, in that, among
20 other ways, it engaged in the uniform conduct of sending uniform commercial emails to Plaintiffs
21 and the Class, which violate CEMA and the CPA in the same way, and from which it may be
22 enjoined as to Plaintiffs and all Class Members, thereby making appropriate final injunctive relief
23 with respect to the Class as a whole.

1 119. The questions of law or fact common to the members of the Class predominate over
2 any questions affecting only individual members, in that, among other ways, Defendant has
3 violated their rights under the same laws by the same conduct, and the only matters for individual
4 determination are the number of false or misleading emails received by each Class Member and
5 that Class Member's resulting damages.

6 120. A Class Action is superior to other available methods for the fair and efficient
7 adjudication of the controversy because, among other reasons, the claims at issue may be too small
8 to justify individual litigation and management of this Action on as a Class presents no special
9 difficulties.

10 **VI. CLAIMS TO RELIEF**

11 **First Claim to Relief**

12 **Violation of the Commercial Electronic Mail Act, RCW 19.190.020**

13 121. Plaintiffs incorporate and reallege paragraphs 1–120 above.

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

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

20 124. Defendant initiated the transmission, conspired with another to initiate the
21 transmission, or assisted the transition of “commercial electronic mail messages” within the
22 meaning of CEMA. RCW 19.190.010(2).

23 125. Defendant initiated the transmission, conspired with another to initiate the
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1 transmission, or assisted the transmission of such messages to electronic mail addresses that
2 Defendant knew, or had reason to know, were held by Washington residents, including because
3 Defendant knew that Plaintiffs and putative Class Members were Washington residents through
4 “information is available, upon request, from the registrant of the internet domain name contained
5 in the recipient’s electronic mail address.” RCW 19.190.020(b)(2).

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

9 127. For Defendant’s violation of CEMA, Plaintiffs are entitled to all available relief,
10 including an injunction against further violations.

11 **Second Claim to Relief**

12 **Violation of the Consumer Protection Act, RCW 19.86.020**

13 128. Plaintiffs incorporate and reallege paragraphs 1–120 above.

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

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

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

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

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

3 134. Defendant initiated the transmission, conspired with another to initiate the
4 transmission, or assisted the transition of “commercial electronic mail messages” within the
5 meaning of CEMA. RCW 19.190.010(2).

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

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

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

16 **VII. JURY DEMAND**

17 138. Plaintiffs will demand a jury trial by separate document in accordance with Local
18 Civil Rule 38(b).

19 **VIII. PRAYER FOR RELIEF**

20 Plaintiffs ask that the Court:

21 A. Certify the proposed Class, appoint Plaintiffs as Class representatives, and appoint
22 undersigned counsel as Class counsel;

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

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

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

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

7 *[Counsel signatures to follow on next page.]*

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1 Date: February 12, 2026

Respectfully submitted,

2 /s/ Samuel J. Strauss

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*** Applications for admission**

***pro hac vice* forthcoming**