

FILED
2025 DEC 15 10:06 AM
KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE #: 25-2-37665-6 SEA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY

GRANT PHILLIPS AND ANIRUDH
MANIKA, each individually and on behalf of
all others similarly situated,

Plaintiffs,

vs.

PACIFIC SUNWEAR OF CALIFORNIA,
LLC d/b/a PACSUN,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY DEMAND

CLASS ACTION COMPLAINT
Case No.

Dovel & Luner, LLP
201 Santa Monica Blvd., Suite 600
Santa Monica, CA 90401
(310) 656-7066

Table of Contents

1

2 I. Introduction 1

3 II. Parties 1

4 III. Jurisdiction and Venue 2

5 IV. Facts 2

6 A. Defendant’s false and misleading emails 2

7 B. Defendant’s emails injure consumers and are materially deceptive 9

8 V. Class Action Allegations 11

9 VI. Claims 12

10 Count 1: Violations of Washington’s Commercial Electronic Mail Act 12

11 Count 2: Violations of the Washington Consumer Protection Act 13

12 VII. Jury Demand 15

13 VIII. Prayer for Relief 15

14

15

16

17

18

19

20

21

22

23

24

25

26

27

1 **I. Introduction.**

2 1. Deceptive emails plague consumers' inboxes. The Washington legislature, concerned
3 with deception in emails, enacted the Washington Commercial Electronic Mail Act ("CEMA"), RCW
4 19.190, which, among other things, prohibits any person from sending a commercial email with a false
5 or misleading subject line. RCW 19.190.020.

6 2. For marketing emails that advertise sales or product discounts, CEMA prohibits subject
7 lines that misrepresent when a purported sale ends and the size of the true discount. *Brown v. Old Navy*
8 LLC, 4 Wn.3d 580 (Wash. 2025).

9 3. Defendant Pacific Sunwear of California, LLC d/b/a Pacsun ("Pacsun") makes, markets,
10 and sells clothing, shoes, hats, jewelry, hair and skin products, and other items ("Products").

11 4. Defendant sends commercial emails to Washington residents on its mailing list. These
12 emails frequently contain subject lines that advertise time-limited promotions or discounts on Pacsun
13 Products. For example, "Final Hrs! \$29 Jeans + 30% Off 1000s of Styles," and "Last Chance Δ Extra
14 25% Off Sitewide Δ ." But the sales do not really end when the emails say they will, and the true
15 discount is not what the emails claim.

16 5. These deceptive emails are material to consumers. They drive sales and profits by
17 creating a false sense of urgency to purchase before the sale ends and a false sense of value based on a
18 misleading discount.

19 6. Plaintiffs are Washington residents who received Pacsun's deceptive emails. Plaintiffs
20 bring this case for themselves and other Washington consumers who received Defendant's deceptive
21 emails.

22 **II. Parties.**

23 7. Plaintiff Grant Phillips is domiciled in Woodinville, Washington.

24 8. Plaintiff Anirudh Manika is domiciled in Bothell, Washington.

25 9. The proposed Class includes citizens of Washington.

26 10. Defendant Pacific Sunwear of California, LLC is a California company with its principal
27 place of business at 3450 E Miraloma Avenue Anaheim, CA 92806.

1 **III. Jurisdiction and Venue.**

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

7 12. This Court has personal jurisdiction over Pacsun under RCW 4.28.185. Pacsun transacts
8 business in Washington and the claims giving rise to this action arise from Defendant’s transaction of
9 business in this state and also Defendant’s purposeful transmission of electronic mail messages to
10 Washington residents. This Court also has personal jurisdiction over Pacsun under RCW 19.86.160
11 because Pacsun has engaged in conduct in violation of the CPA that has had an impact in Washington.

12 13. Venue is proper in King County Superior Court because Pacsun resides here for
13 purposes of venue. RCW 4.12.025. At all relevant times, Pacsun has transacted business in King County,
14 including by selling products to customers living in King County, operating retail stores in King County,
15 and by sending electronic mail messages to residents of King County, including to Plaintiff Phillips.

16 **IV. Facts.**

17 **A. Defendant’s false and misleading emails.**

18 14. Pacsun sells directly to consumers through its website, www.pacsun.com and through its
19 retail stores. Pacsun frequently advertises substantial sales on its website. For example:
20
21
22
23
24
25
26
27



Internet Archive May 22, 2024¹

15. Pacsun also advertises its sales through marketing emails sent to consumers on its mailing list (including Washington consumers).

16. Pacsun’s marketing emails are false and misleading in multiple ways.

17. Deceptive time limits. The subject lines say that the advertised sale will end imminently (e.g. “Ends soon,” “Final day,” “Final hours,” or “Move fast”). This drives sales by motivating consumers to buy before the sale ends. But the sales don’t actually end when the emails say they will. Instead, Pacsun regularly extends the sales after the false deadline has expired, or quickly replaces the advertised sale with a materially similar (or even better) sale. This allows Pacsun to profit from a false sense of urgency. Consumers are being tricked into thinking they must buy during the time-limited sale to get the advertised discount.

18. Deceptive discounts. Pacsun’s email subject lines also say that consumers will receive a substantial discount (e.g., “25% off”). This makes reasonable consumers believe that they are getting a discount off Defendant’s regular prices. But in truth, Defendants offers substantial discounts so frequently that consumers are not really getting the advertised discount off the regular prices (the prices

¹<https://archive.org/about/>.

1 that most consumers have to pay). This allows Defendant to profit from a false sense of value
 2 (consumers' false belief that they are getting a substantial discount off the regular prices).

3 **Deceptive Time Limits**

4 19. Pacsun regularly puts false time limits on its sales.

5 20. For example, the table below shows the subject lines of emails sent to Plaintiffs
 6 advertising \$29 jeans. The emails suggested that it was consumers' last or final chance to get this pricing.
 7 But then the sale was extended, or the same sale (or a materially similar sale or better sale) quickly
 8 popped up again. The following table of emails sent to Plaintiffs illustrates this pattern:

9

Date	Email Subject Line	Sale
August 2, 2024	\$29 Denim & Pants Ends Tonight 🎉	\$29 & up Denim and Pants
August 3, 2024	\$29 & Up Denim/Pants EXTENDED (+ FREE Ship!)	\$29 & up Denim and Pants
August 27, 2024	Move Fast! 🏃 \$29+ Jeans & Extra 30% Off Ends Soon	\$29 & up Jeans and Pants
September 3, 2025	Last Day! Extra 30% Off Sitewide & \$29 Jeans 🎉	\$29 Jeans and Pants
September 9, 2024	Move Fast! \$29 Jeans & Extra 25% Off Is ON	\$29 Jeans and Pants
September 10, 2024	\$29 For The Last Time: Your Fave Baggy Jeans 🍷	\$29 Jeans and Pants
October 3, 2024	\$29 Jeans Is ON (But Not For Long!) + FREE Ship	\$29 Jeans and Pants
October 4, 2024	Ends Soon ⚠️ Extra 25% Off Sitewide + \$29 Jeans	\$29 Jeans and Pants
October 5, 2024	MOVE FAST! \$29 Jeans/Pants Ends Tonight	\$29 Jeans and Pants
October 5, 2024	FINAL HRS → \$29 Jeans/Pants (+ FREE Ship!)	\$29 Jeans and Pants
October 6, 2024	Extra 25% Off Sitewide & \$29 Denim Ends Tonight 🕒	\$29 Jeans and Pants
October 22, 2024	\$29 Jeans ✓ Extra 30% Off ✓	\$29 Jeans and Pants
October 24, 2024	\$29 Jeans & Pants 🕒 Final Hrs To Stock Up!	\$29 Jeans and Pants
November 14, 2024	\$29 STEAL: Our Best Jeans & Pants 🏆	\$29 Jeans and Pants

Date	Email Subject Line	Sale
October 16, 2025	Final Chance 🕒 \$29 Jeans & Pants	\$29 & up Jeans and Pants
October 20, 2025	\$29 & up jeans are exiting the chat	\$29 & up Jeans and Pants
October 21, 2025	Final Hrs! \$29 Jeans + 30% Off 1000s of Styles	\$29 & up Jeans and Pants
November 13, 2025	NOW \$29: Your Favorite Jeans & Pants 📢	\$29 Jeans and Pants
November 20, 2025	\$29 JEANS. EXTRA 30% OFF EARLY ACCESS. GOING FAST! 🏃	\$29 Jeans and Pants

21. As the table illustrates, Pacsun’s emails repeatedly tell consumers that this deal “ends tonight,” is in its “final hrs,” or it is their “last chance” or “final chance” to get it. But again and again, the sale is extended or the same sale is quickly back. This pattern is no accident: Pacsun puts in the misleading time limits, knowing that the sale will not really end or will quickly be back, because these misleading time limits create a sense of urgency and drive sales.

22. This is not the only example of this pattern. Pacsun does the same thing with emails offering a percentage off its regular prices. The email subject lines suggest that the sales will end soon, are in their final hours, or that it’s the last day. But what actually happens is that the same sale is “extended” beyond the deadline or a materially similar (or better) sale soon replaces that sale. This happens repeatedly, over months. The following table of emails sent to Plaintiffs illustrates this pattern:

Date	Email Subject Line	Sale
January 19, 2025	Up To 30% Off Sitewide ENDS SOON ⚠️	Up to 30% Off Sitewide
January 20, 2025	Last Day! 🕒 Up To 30% Of Sitewide 🕒	Up to 30% Off Sitewide
January 26, 2025	Final Hrs! Extra 20% Off Sitewide Ends Tn 🕒	Extra 20% Off Sitewide
January 28, 2025	Up To 25% Off Early Spring Sale 📢	Up to 25% Off Sitewide
February 02, 2025	Up To 25% Off Til Tmr: Jeans, Graphics, Hoodies	Up to 25% Off Sitewide
February 03, 2025	Last Day! Up To 25% Off Early Spring Styles 🌟	Up to 25% Off Sitewide

Date	Email Subject Line	Sale
February 09, 2025	Super Sunday Savings: Up To 50% Off 100 Styles 🌟	Up to 50% Off Hundreds Of Styles
February 18, 2025	Final Day: 30% Off 1,000+ Styles 🕒	30% Off Sitewide
February 18, 2025	Move fast! 30% off is about to expire 🏃	30% Off Sitewide
February 19, 2025	30% Off Sitewide Just Got EXTENDED 🖱️	30% Off Sitewide
February 20, 2025	-FINAL HRS ⌚ 30% Off Sitewide Extra 20% Off Markdowns	30% Off Sitewide
February 26, 2025	(Extra 25% off) Iconic looks for every invite 📧	Extra 25% Off Sitewide
February 28, 2025	Last Chance ⚠️ Extra 25% Off Sitewide ⚠️	Extra 25% Off Sitewide
March 6, 2025	🕒 = when you realize EXTRA 20% OFF is on	Extra 20% Off Sitewide
March 15, 2025	Extra 20% off your order? Lucky you!	Extra 20% Off Your Order
March 17, 2025	Last Call! The Met Early Access, Extra 20% Off Your Order	Extra 20% Off Your Order
March 18, 2025	Extended: Extra 20% Off Your Order 🕒	Extra 20% Off Your Order
March 25, 2025	30% off ends tn + gear that's built for the hustle 🏃	30% Off Hundreds of Styles
March 31, 2025	30% Off New Styles & FREE Ship ENDS SOON ⚠️	30% Off New Arrivals
April 3, 2025	Open for EXTRA 30% OFF your festival looks 🌟	Extra 30% Off Sitewide
April 7, 2025	Extra 30% Off Festival Season Sale ENDS SOON ⚠️	Extra 30% Off Sitewide

23. As the table illustrates, when the emails said it was the last chance or the sale would end soon, that was false and misleading. The same sale was repeatedly “extended” beyond the deadline, or a materially similar (or even better) sale was quickly introduced. And this happened again and again. Again, this is no accident: it is an intentional marketing tactic designed to create a false sense of urgency and drive sales.

Deceptive Discounts

24. Defendant’s emails are deceptive in a second way: the amount of savings they advertise is false and misleading.

25. For example, as illustrated above, Defendant sends emails that advertise savings of at least 25% off. Defendant’s emails lead reasonable consumers to believe that, if they buy during the sale, they will get a substantial discount off Defendant’s regular prices (the prices most consumers have to pay).

26. But in truth, Pacsun offers extremely frequent discounts of 25% off or more. This is illustrated by the table of emails above, which illustrates how frequently Pacsun emails about discounts. It is also shown by the following table, taken from internet archives of Defendant’s website, which illustrates the frequency of its sales in 2024:

Date	Advertised Sale
January 1, 2024	Up to 50% OFF the Entire Site + Free Shipping; Up to 70% OFF Winter Clearance
January 29, 2024	Final Day Member Exclusive Extra 30% Off Sitewide; Final Day Starting At \$19 Jeans & Pants + Free Shipping
February 2, 2024	The Winter Sale Extra 25% Off Select Styles; Last Day \$8 & Up Tees & Tops; Last Chance Up to 70% Off All Markdowns
February 17, 2024	Long Weekend Big Sale 30% Off Sitewide; Extra 20% Off Markdowns
March 8, 2024	ENDS SOON: EXTRA 20% OFF YOUR ORDER!; Limited Time Up to 70% Off All Markdowns
March 27, 2024	Limited Time Extra 30% Off (Almost) Everything
April 4, 2024	Limited Time 40% Off (Almost) Everything + Free Shipping; Hurry! Ends Soon 50% Off Best Festival Picks
April 18, 2024	Extra 30% Off Sitewide; Ends Tonight \$10 & Up Festival Favorites
May 3, 2024	Limited Time Extra 30% Off New Arrivals; Last Day Denim Deal \$19 & Up + Free Shipping on Jeans & Pants
May 22, 2024	Long Weekend Big Sale Extra 30% Off Sitewide; The Shorts & Swim Sale \$15 & Up
June 15, 2024	Limited Time Up to 50% Off Thousands of Styles

Date	Advertised Sale
June 25, 2024	Summer Stock-Up Extra 25% Off Sitewide; Going Fast! \$19 & Up Jeans & Pants + FREE Shipping
July 3, 2024	Limited Time 4 th Of July Sale Extra 30% Off The Entire Site; Up to 40% Off New Swim; Limited Time Extra 50% Off Markdowns
July 26, 2024	Limited Time Extra 30% Off New Fall Collection + Free Shipping; Extra 10% Off Online with Apple Pay! Use Code: APPLEPAY Ends 7/31; \$15 & Up Shorts & Swim Sale + Free Shipping
August 1, 2024	Save More Extra 30% Off New Fall Arrivals + Free Shipping; \$29 & Up Denim & Pants Deal + FREE SHIPPING
August 16, 2024	Limited Time Campus Favorites 40% Off + Free Shipping; Limited Time Denim & Pants \$25 & Up + Free Shipping; Sale on Sale Extra 50% Off All Markdowns
September 23, 2024	Limited Time Extra 30% Off Fall Best Sellers
October 1, 2024	Limited Time Sale Extra 25% Off Sitewide; Limited Time Most-Wanted Styles edikted 25% Off; Member Exclusive Free Shipping On Everything
November 1, 2024	Ends Tmrw 30% Off Hoodies, Tops, & Sweatshirts + Free Shipping On All Orders
November 18, 2024	Black Friday (Early Access) Extra 30% Off Sitewide + Everything Ships FREE
December 3, 2024	50% Off Everything* + FREE Shipping On All Orders!*; Limited Time Up to 70% Off All Markdowns*
December 28, 2024	Up to 50% Off* Sitewide; Up to 70% Off* Markdowns

27. Because these sales are so frequent, most consumers are in fact paying the supposedly discounted prices. This means that consumers are not really getting the advertised discounts off regular prices (the price most consumers pay). Instead, they are getting a much smaller discount off the regular price, or no real discount at all.

28. So when Pacsun’s email subject lines promise a substantial percentage discount off its regular prices (e.g. 20% off or 30% off) this is false and misleading.

29. Defendant is constantly sending commercial emails to recipients on its mailing list. Plaintiffs received multiple emails from Defendant weekly, and sometimes received multiple per day,

1 many of which include false or misleading subject lines regarding Defendant's promotions. Based on the
2 emails Defendant sent to Plaintiffs, Defendant has sent at least thousands of emails to Washington
3 recipients, with similar false or misleading subject lines.

4 30. Defendant knows, or has reason to know, that it sends its emails containing false and
5 misleading subject lines to Washington residents. Defendant knows where recipients of its emails reside
6 because (i) Defendant has physical addresses associated with recipients' accounts or orders; or (ii)
7 Defendant has access to data regarding the recipient including the recipient's state of residence, such as
8 IP address tracking. Additionally, several Pacsun retail stores are located in Washington, so Pacsun
9 knows that some of its customers and recipients of its mailing list are Washington residents.

10 31. Defendant also knows what sales it is offering and what sales it plans to offer in the near
11 future. It knows that, in truth, it is not really consumers' last or final chance to get the advertised sales.
12 Defendant also knows how frequently it runs discounts and thus knows that consumers are not really
13 getting the advertised discount off Defendant's regular prices (the prices most consumers pay).

14 **B. Defendant's emails injure consumers and are materially deceptive.**

15 32. Defendant's false and misleading emails result in actual and substantial injury to
16 Plaintiffs. It violates Plaintiffs' statutory right not to receive commercial emails that contain false or
17 misleading subject lines, which the legislature has deemed to be a "matter[] vitally affecting the public
18 interest." RCW 19.190.030(3). Violation of a right that vitally affects the public interest results in actual
19 and substantial harm to Plaintiffs and putative Class members.

20 33. Defendant's emails containing false and misleading information also clog up inboxes,
21 waste limited data space, and violate Plaintiffs' and putative class members' statutory right to be free
22 from deceptive commercial emails.

23 34. Pacsun's emails are also deceptive and material to reasonable consumers.

24 35. Consumers care about receiving discounts. Receiving a good deal—a discount—is
25 important to consumers, and material to a consumer's purchasing decisions about the Products.
26
27

1 36. Discounts drive purchases. Consumers are more likely to buy a product when they think
2 they are getting a good deal. They are also willing to pay more for products, if they believe the product is
3 worth more than they are paying for and that they are getting a substantial discount.

4 37. Research confirms that discounts are important to consumers. “Nearly two-thirds of
5 consumers surveyed admitted that a promotion or a coupon often closes the deal, if they are wavering
6 or are undecided on making a purchase.”² And, “two-thirds of consumers have made a purchase they
7 weren’t originally planning to make solely based on finding a coupon or discount,” while “80% [of
8 consumers] said they feel encouraged to make a first-time purchase with a brand that is new to them if
9 they found an offer or discount.”³

10 38. Similarly, when consumers believe that an offer is expiring soon, the sense of urgency
11 makes them more likely to buy a product.⁴

12 39. When a reasonable consumer sees Pacsun’s emails saying that the discount will end
13 imminently, they expect that if they miss the sale, the discount will not be available again soon.
14 Consumers do not expect that the sale will be extended or that a materially similar (or better) sale will
15 quickly replace it. This creates a false sense of urgency to buy that drives sales and profits.

16 40. Similarly, when a reasonable consumer sees a substantial discount (e.g. “25% off”), they
17 believe they are getting a discount off Defendant’s regular prices. They do not expect that the
18 supposedly discounted price is really the regular price. This misleading sense of value drives sales and
19 profits.

21 ² Invesp, How Discounts Affect Online Consumer Buying Behavior
22 (<https://www.invespro.com/blog/how-discounts-affect-online-consumer-buying-behavior/>)

23 ³ RetailMeNot Survey: Deals and Promotional Offers Drive Incremental Purchases Online,
24 Especially Among Millennial Buyers (<https://www.prnewswire.com/news-releases/retailmenot-survey-deals-and-promotional-offers-drive-incremental-purchases-online-especially-among-millennial-buyers-300635775.html>)

25 ⁴ CXL, Creating Urgency, (<https://cxl.com/blog/creating-urgency/>) (last accessed November
26 16, 2025) (increasing urgency by advertising limited time nature of promotion increased conversion rates
27 nearly 300%); Adestra, Dynamic email content leads to 400% increase in conversions for Black Friday
email (<https://uplandsoftware.com/adestra/resources/success-story/dynamic-email-content-leads-to-400-increase-in-conversions-for-black-friday-email/>) (400% higher conversation rate for ad that
increased urgency via countdown timer).

1 41. This is why Defendant sends these emails. Defendant's emails make Washington
2 consumers more likely to open the emails, read the emails, buy the Products quickly, and be willing to
3 pay more for the Products. This increases demand, drives sales, allows Defendant to sell more Products
4 than it otherwise could, and allows Defendant to charge more than it otherwise could.

5 42. Plaintiffs were not and putative class members are not aware that Defendant's email
6 subject lines are false and misleading. Reasonable consumers are not deceptive discount detectives (nor
7 should they have to be). Reasonable consumers are not monitoring Defendant's emails and website and
8 tracking its discounts to determine whether Defendant is deceiving them about its sales.

9 **V. Class Action Allegations.**

10 43. Plaintiffs bring the asserted claims on behalf of the proposed Class of:

- 11 • all Washington residents who received promotional emails from Pacsun with subject
12 lines advertising sales or discounts on Pacsun Products, during the applicable statute of
13 limitations.

14 44. The following people are excluded from the proposed Class: (1) any Judge or Magistrate
15 Judge presiding over this action and the members of their family; (2) Defendant, Defendant's
16 subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a
17 controlling interest and their current employees, officers and directors; (3) persons who properly execute
18 and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been
19 finally adjudicated on the merits or otherwise released; (5) Plaintiffs' counsel and Defendant's counsel,
20 and their experts and consultants; and (6) the legal representatives, successors, and assigns of any such
21 excluded persons.

22 ***Numerosity***

23 45. The proposed Class contains members so numerous that separate joinder of each
24 member of the Class is impractical. There are at least thousands of Class members in Washington.

25 46. Class members can be identified through Defendant's electronic mailing lists and public
26 notice.

1 ***Predominance of Common Questions***

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

- 4 (1) whether Defendant's email subject lines regarding its discounts are false or misleading;
5 (2) whether Defendant's email subject lines violate CEMA;
6 (3) whether Defendant's email subject lines violate the CPA;
7 (4) the greater of actual damages and statutory damages due to Plaintiffs and the proposed Class.

8 ***Typicality & Adequacy***

9 48. Like members of the proposed Class, Plaintiffs received emails from Defendant that
10 contain false or misleading subject lines regarding Defendant's discounts.

11 49. There are no conflicts of interest between Plaintiffs and the Class.

12 ***Superiority***

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

17 **VI. Claims.**

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

19 **(By Plaintiffs and the Class)**

20 51. Plaintiffs incorporate the facts alleged above.

21 52. Plaintiffs bring this cause of action on behalf of themselves and members of the Class.

22 53. Pacsun is a "person" under CEMA. RCW 19.190.010(11).

23 54. As alleged in detail above, Pacsun violated CEMA by initiating the transmission of
24 commercial electronic mail messages that contained false or misleading information in the subject line to
25 Plaintiffs' and Class members' electronic mail addresses.

26 55. Defendant sent these emails to Plaintiffs and Class members for the purpose of
27 promoting Pacsun's Products for sale.

1 56. Defendant knew or had reason to know that it transmitted such emails to email
2 addresses held by Washington residents, including Plaintiffs.

3 57. Defendant's acts and omissions violated RCW 19.190.020(1)(b).

4 58. Defendant's acts and omissions injured Plaintiffs and Class members.

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

11 60. Plaintiffs and Class members are therefore entitled to injunctive relief in the form of an
12 order enjoining further violations of RCW 19.190.020(1)(b).

13 **Count 2: Violations of the Washington Consumer Protection Act**

14 **(By Plaintiffs and the Class)**

15 61. Plaintiffs incorporate the facts alleged above.

16 62. Plaintiffs bring this cause of action on behalf of themselves and members of the Class.

17 63. Plaintiffs and Class members are "persons" within the meaning of the CPA. RCW
18 19.86.010(1).

19 64. As alleged in detail above, Defendant violated CEMA by initiating the transmission of
20 commercial electronic mail messages to Plaintiffs and Class members that contained false or misleading
21 information in the subject line.

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

23 66. A violation of CEMA establishes all elements of the CPA as a matter of law.

24 67. As alleged in detail above, Defendant's transmission of commercial electronic mail
25 messages to Plaintiffs and Class members that contained false or misleading information in the subject
26 line also violates the CPA because it constitutes unfair or deceptive practices that occur in trade or
27 commerce.

1 Unfair Acts or Practices

2 68. As alleged in detail above, Defendant committed “unfair” acts by falsely stating in email
3 subject lines that it was offering a discount off the regular prices of its Products, and that the discount
4 was time-limited, when this was not accurate.

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

10 Deceptive Acts or Practices

11 70. As alleged in detail above, Defendant’s representations in email subject lines that its
12 Products were on sale for a limited time and that the customers could receive the advertised discounts
13 only in that limited time are deceptive.

14 71. Defendant’s representations were likely to deceive, and did deceive, Plaintiffs and other
15 reasonable recipients. Defendant knew, or should have known through the exercise of reasonable care,
16 that these statements were inaccurate and misleading.

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

19 73. Defendant’s acts and omissions caused injury to Plaintiffs and Class members. In
20 addition, violations of CEMA establish the injury and causation elements of a CPA claim as a matter of
21 law.

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

1 75. Under the CPA, Plaintiffs and Class members are entitled to seek, and do seek, the
2 greater of actual damages and statutory damages of \$500 per email that violates CEMA. In addition,
3 Plaintiffs and Class members seek treble damages, which are permitted under the CPA, including for
4 CEMA violations. Plaintiffs seek treble damages to further Plaintiffs' and Class members' financial
5 rehabilitation, encourage citizens to bring CPA actions, deter Defendant and other persons from
6 committing CEMA violations, and punish Defendant for its false and misleading advertising practices.

7 76. Plaintiffs and Class members are also entitled to, and seek, injunctive relief prohibiting
8 Defendant's further violations of the CPA.

9 **VII. Jury Demand.**

10 77. Plaintiffs demand the right to a jury trial on all claims so triable.

11 **VIII. Prayer for Relief.**

12 78. Plaintiffs seek the following relief for themselves and the proposed Class:

- 13 • An order certifying the asserted claims, or issues raised, as a class action;
- 14 • A judgment in favor of Plaintiffs and the proposed Class;
- 15 • The greater of actual or statutory damages, treble damages, and punitive damages where
16 applicable;
- 17 • Pre- and post-judgment interest;
- 18 • An injunction prohibiting Defendant's deceptive conduct, as allowed by law;
- 19 • Reasonable attorneys' fees and costs, as allowed by law;
- 20 • Any additional relief that the Court deems reasonable and just.
- 21
- 22
- 23
- 24
- 25
- 26
- 27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Dated: December 15, 2025

Respectfully submitted,

By: /s/ Cody Hoesly
Cody Hoesly (WSBA #41190)
choesly@bargsinger.com
BARG SINGER HOESLY PC
121 SW Morrison St., Ste. 600
Portland, OR 97204
Ph. (503) 241-3311

Jonas B. Jacobson (WSBA #62890)
jonas@dovel.com
DOVEL & LUNER, LLP
201 Santa Monica Blvd., Suite 600
Santa Monica, California 90401
Telephone: (310) 656-7066
Facsimile: (310) 656-7069

Counsel for Plaintiffs