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Case Number: 26-2-04058-31

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

MELISSA ERWIN, on behalf of herself and
on behalf of others similarly situated,

Plaintiff,

v.

TOPO DESIGNS, LLC,

Defendant.

26-2-04058-31

No. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Melissa Erwin, on behalf of herself and on behalf of others similarly situated, on information and belief except to their own experiences and matters of public record, complains of Defendant Topo Designs, LLC, 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).

2. Among other things, CEMA prohibits transmitting a commercial email to a Washington resident’s email address that “[c]ontains false or misleading information in the subject

**ATT
A**

1 line.” RCW 19.190.020(1)(b).

2 3. Defendant Topo Designs, LLC, (“Topo Designs”) engages in the precise activity
3 which CEMA prohibits.

4 4. Topo Designs spams Washington consumers, including Plaintiff, with commercial
5 emails whose subject lines employ various tactics to create a false sense of urgency in consumers’
6 minds—and ultimately, from consumers’ wallets.

7 5. This false urgency wastes consumers’ time by enticing them to engage with Topo
8 Designs marketing for fear of missing out. It also floods consumers’ email inboxes with repeated
9 false notifications that the time to act—*i.e., purchase*—is short.

10 6. And through this deceptive time-sensitivity, Topo Designs falsely narrows the
11 field—steering consumers away from shopping for better deals—to its own products that must be
12 purchased *now*.

13 7. Plaintiff challenges Topo Designs’s harassment of Washington consumers with
14 deceptive marketing as violations of the Commercial Electronic Mail Act (CEMA), RCW 19.190,
15 and the Consumer Protection Act (CPA), RCW 19.86, seeking damages for injuries caused and
16 injunctive relief against such violations in the future.

17 **II. JURISDICTION AND VENUE**

18 8. The Court has jurisdiction of this case under RCW 2.08.010.

19 9. Venue is proper in King County under RCW 4.12.020(3) because Plaintiff’s cause
20 of action, or some part thereof, arose in Snohomish County.

21 **III. PARTIES**

22 10. Plaintiff Melissa Erwin is a resident of Snohomish County, Washington.

23 11. Defendant Topo Designs, LLC, is a limited liability company formed under the
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1 laws of Colorado with its principal place of business at 3975 Monaco Pkwy, Denver, CO 80207.

2 12. Topo Designs sells its products in Washington both through its website and at brick-
3 and-mortar stores, including retailers such as REI and Backcountry.

4 **IV. FACTUAL ALLEGATIONS**

5 **A. CEMA protects Washington consumers from deceptive spam emails.**

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

8 14. In 1998, the Legislature found that the “volume of commercial electronic mail” was
9 “growing,” generating an “increasing number of consumer complaints.” Laws of 1998, ch. 149,
10 § 1.

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

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

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

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

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

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

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

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

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

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

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

22 26. CEMA’s “truthfulness requirements” thereby advance the statute’s aim of
23 protecting consumers “from the problems associated with commercial bulk e-mail” while
24

1 facilitating commerce “by eliminating fraud and deception.” *Id.*

2 27. CEMA “mean[s] exactly what it says”: in “broad” but “patently clear” language,
3 CEMA unambiguously prohibits “sending Washington residents commercial e-mails that
4 contain *any* false or misleading information in the subject lines of such e-mails.” *Certification from*
5 *U.S. Dist. Ct. for W. Dist. of Wash. in Brown v. Old Navy, LLC*, 567 P.3d 38, 44, 46–47 (Wash.
6 2025).

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

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

12 **B. The subject lines of Topo Designs marketing emails make false time scarcity**
13 **claims.**

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

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

24 32. “False or misleading scarcity claims can change the behaviour of consumers.”

1 *Online Choice Architecture*, *supra* para. 29, at 27.

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

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

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

14 36. Under time pressure, “consumers might take up an offer to minimise the uncertainty
15 of passing it up.” *Id.*

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

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

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

23 40. Topo Designs sells outdoor apparel and equipment through its website and at brick-
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1 and-mortar retailers in Washington and across the country.

2 41. To advertise its products in Washington and encourage Washington consumers to
3 purchase them, Topo Designs frequently sends spam emails to consumers with misleading and
4 deceptive subject headings.

5 42. Topo Designs regularly gives its emails falsely urgent subject headings that do not
6 reflect the true availability of an advertised promotion.

7 43. In a recurring tactic, Topo Designs repeatedly warns consumers that their time to
8 benefit from a promotion is almost over. Then, the next day, Topo Designs “extends” the same
9 offer. In this way, Topo Designs creates false “peaks” of urgency in consumers’ minds.

10 44. These “extensions” are mere marketing tactics. Topo Designs marketing executives
11 are not frantically meeting overnight and genuinely deliberating about whether to extend a
12 particular promotion. Rather, as witnessed by their recurrence and regularity, these urgency claims
13 are part of a pre-conceived marketing plan.

14 45. In other words, the initial time scarcity claims are false or misleading, and known
15 by Topo Designs to be such when made.

16 46. This misleading marketing strategy allows Topo Designs to extract the maximum
17 of amount of revenue from consumers during the life of a promotion and its subsequent
18 “extension.”

19 47. For example, on December 11, 2025, Topo Designs sent consumers a mass email
20 announcing the end of a 30 percent discount on its website offerings with the subject line, “🔔
21 Ends Tomorrow - 30% Off Sitewide”.

22 48. The offer was not ending the next day.

23 49. On December 12, Topo Designs sent consumers a mass email with the subject line,
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1 “🕒 30% Off Sitewide Ends Tonight”.

2 50. The offer was not ending that night.

3 51. Again on December 12, Topo Designs sent consumers a mass email with the subject
4 line, “🕒 Hours Left: 30% Off Sitewide”.

5 52. The offer was not ending in hours.

6 53. These subject lines were false or misleading.

7 54. The very next day, December 13, Topo Designs sent consumers a mass email with
8 the subject line, “⚡ Extended: 30% Off Sitewide Last Chance Sale”.

9 55. This extension was followed up by two further attempts to create urgency in
10 consumers’ minds: on December 14 with the subject line “Last Chance (For Real) on 30% Off
11 Sitewide” and again on the same day with the subject line “30% Off Sitewide ends at
12 MIDNIGHT”.

13 56. With its winking “Last Chance (For Real)”, the first December 14 subject line
14 practically acknowledges the knowing deceptiveness of the previous subject lines.

15 57. Indeed, the entire promotion originated in a false time urgency message: it was
16 named the “LAST CHANCE” sale and announced on December 5 with the subject line, “LAST
17 CHANCE is here. 30% OFF SITEWIDE”—when Topo Designs knew it would offer the promotion
18 for another nine days, through December 14.

19 58. Through its false time urgency tactics, Topo Designs spun the end of one promotion
20 into five different occasions to harass consumers about its “conclusion.”

21 59. For further example, on July 9, 2025, Topo Designs sent consumers a mass email
22 with the subject line, “🕒 Summer Sale Ends Tomorrow”, representing that discounts of up to 40
23 percent would end the next day.
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1 60. The offer was not ending the next day.

2 61. On July 10, Topo Designs sent consumers a mass email with the subject line, “🕒
3 Ends Tonight: Up to 40% OFF”.

4 62. The offer was not ending that night.

5 63. Again on July 10, Topo Designs sent consumers a mass email with the subject line,
6 “🕒 Final Hours for The Summer Sale”.

7 64. The offer was not ending in hours.

8 65. These subject lines were false or misleading.

9 66. The very next day, July 11, Topo Designs sent consumers a mass email with the
10 subject line, “⚡ Summer Sale Extended”.

11 67. Again, this false “extension” was an occasion for Topo Designs to create still more
12 urgency in consumers’ minds, with three further emails announcing, “🌲 Up to 40% OFF ends
13 tomorrow”, “Summer Sale is over tonight”, and “🕒 Only a few hours left...”.

14 68. Through its false time urgency tactics, Topo Designs spun the end of one promotion
15 into six different occasions to harass consumers about its “conclusion.”

16 69. For further example, on December 8, 2024, Topo Designs sent consumers a mass
17 email with the subject line, “30% OFF Sitewide Ends Tomorrow”.

18 70. On December 9, Topo Designs sent consumers a mass email with the subject line,
19 “🕒 Final day to save 30% OFF site-wide”.

20 71. Again on December 9, Topo Designs sent consumers a mass email with the subject
21 line, “🕒 Last Call: Hours Left for 30% OFF Sitewide”.

22 72. These subject lines were false or misleading. The 30 percent discount offer would
23
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1 not be ending on December 9, as Topo Designs represented three times in its subject lines.

2 73. The very next day, December 10, Topo Designs sent consumers a mass email with
3 the subject line, “48 Hours Only - Last Chance Sale Extended”.

4 74. For further example, on September 1, 2024, Topo Designs sent consumers a mass
5 email with the subject line, “Labor Day Sale Ends Tomorrow - Up To 60% OFF”.

6 75. On September 2, Topo Designs sent consumers a mass email with the subject line,
7 “Ending Tonight! Up to 60% Off”.

8 76. Again on September 2, Topo Designs sent consumers a mass email with the subject
9 line, “🔥 Only a few hours left”.

10 77. These subject lines were false or misleading. These subject lines were false or
11 misleading. The 30 percent discount offer would not be ending on September 2, as Topo Designs
12 represented three times in its subject lines.

13 78. The very next day, September 3, Topo Designs sent consumers a mass email with
14 the subject line, “Labor Day Sale Extended!”

15 79. For further example, on May 28, 2024, Topo Designs sent consumers a mass email
16 with the subject line, “Up To 50% Off Ends Tonight”.

17 80. This subject line was false or misleading. The 50 percent discount offer would not
18 be ending on May 28.

19 81. The very next day, on May 29, Topo Designs sent consumers a mass email with the
20 subject line, “Up To 50% Off Extended!”

21 82. For further example, on November 28, 2023, Topo Designs sent consumers a mass
22 email with the subject line, “🔴 Cyber Sale Ends Today!”, notifying consumers that offers of up
23 to 60 percent off selected items would be ending that day.
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1 83. This subject line was false or misleading. The 60 percent discount offer would not
2 be ending on November 28.

3 84. The very next day, on November 29, Topo Designs sent consumers a mass email
4 with the subject line, “Up to 60% Off Extended!”.

5 85. In short, Topo Designs engages in an email marketing strategy by which it creates
6 a false sense of urgency, misrepresents when sales end, and then arbitrarily extends those sales to
7 further pull in consumers with subject headings that are just not true.

8 86. These examples of Topo Designs’s programmatic, and programmatically false or
9 misleading, commercial marketing campaigns are attached to this Complaint as Exhibit A.

10 **C. Topo Designs knows when it sends emails to Washington residents.**

11 87. A sophisticated commercial enterprise, like Topo Designs, which is engaged in
12 persistent marketing through mass email campaigns across the United States, has several ways of
13 knowing where the recipients of its marketing emails are located. The means it employs are
14 peculiarly with its knowledge.

15 88. First, the sheer volume of Topo Designs email marketing put it on notice that
16 Washington residents would receive its emails.

17 89. Second, Topo Designs may obtain location information tied to email addresses
18 when consumers make purchases from Topo Designs through digital platforms, including Topo
19 Designs’s website, or otherwise self-report such information to Topo Designs.

20 90. Third, Topo Designs may obtain location information tied to email addresses by
21 tracking the IP addresses of devices used to open Topo Designs emails, which in turn can be
22 correlated to physical location (as illustrated, for example, by the website
23 <https://whatismyipaddress.com/>).

1 91. Specifically, Topo Designs appears to use Klaviyo to manage its email marketing
2 campaigns. Klaviyo tells Topo Designs where the recipients of its marketing emails are located
3 using IP geolocation and other data extracted from recipients' interactions with Topo Designs,
4 which Klaviyo tracks in detail. *See* "Understanding when and how Klaviyo sets a profile's
5 location," Klaviyo (July 7, 2025) (describing "how a profile's location and timezone information
6 are set and updated"), <https://help.klaviyo.com/hc/en-us/articles/115005073907/>; "Understanding
7 profiles in Klaviyo," Klaviyo (Aug. 5, 2025) ("Each individual profile features an activity log to
8 capture a timeline of their interactions with your business," including receiving emails, opening
9 emails, and clicking links within emails.), [https://help.klaviyo.com/hc/en-](https://help.klaviyo.com/hc/en-us/articles/115005247088/)
10 [us/articles/115005247088/](https://help.klaviyo.com/hc/en-us/articles/115005247088/).

11 92. Fourth, Topo Designs may obtain location information tied to email addresses by
12 purchasing consumer data from commercial data brokers such as Acxiom, Oracle, and Equifax,
13 which sell access to databases linking email addresses to physical locations, among other
14 identifiers.

15 93. Fifth, Topo Designs may obtain location information tied to email addresses by
16 using "identity resolution" services offered by companies such as LiveRamp, which can connect
17 consumers' email addresses to their physical locations, among other identifiers.

18 94. Sixth, Topo Designs may obtain information that the recipients of its marketing
19 emails are Washington residents because that information is available, upon request, from the
20 registrant of the Internet domain names contained in the recipients' email addresses. *See*
21 RCW 19.190.020(2).

22 95. It is thus highly probable that a seller of Topo Designs's size and sophistication
23 employs not just one but several means of tying consumers' email addresses to their physical
24

1 locations, at least at the state level.

2 **D. Topo Designs violated Plaintiff’s right under CEMA to be free from deceptive**
3 **commercial emails.**

4 96. Topo Designs has bombarded Erwin with commercial emails whose subject lines
5 contain false or misleading statements in violation of her right to be free from such annoyance and
6 harassment under CEMA.

7 97. For example, Erwin received both July 10, 2025, emails described above the same
8 day they were sent at a personal Gmail account.

9 98. For further example, Erwin received the December 9, 2024, “Last Call” email
10 described above the same day it was sent at a personal Gmail account.

11 99. These emails contained false or misleading subject lines, in violation of CEMA,
12 that misrepresented the timing and availability of promotional offers, and therefore, fundamentally,
13 Topo Designs prices.

14 100. Put differently, these emails contained false or misleading statements of fact as to
15 the “duration or availability of a promotion.” *Brown*, 567 P.3d at 47.

16 101. Because of the programmatic nature of Topo Design’s email marketing, it is likely
17 that Erwin received all of the marketing emails Topo Design has sent since her email address was
18 added to its distribution list, beyond those listed above, which Erwin happened to save in her email
19 inbox.

20 **V. CLASS ACTION ALLEGATIONS**

21 102. Plaintiff brings this action under Civil Rule 23 on behalf of the following putative
22 class (“Class”):

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

1 103. Excluded from this definition of the Class are Defendant’s officers, directors, and
2 employees; Defendant’s parents, subsidiaries, affiliates, and any entity in which Defendant has a
3 controlling interest; undersigned counsel for Plaintiff; and all judges and court staff to whom this
4 action may be assigned, as well as their immediate family members.

5 104. The Class Period extends from the date four years before this Class Action
6 Complaint is filed to the date a class certification order is entered in this action.

7 105. Plaintiff reserves the right to amend the Class definition as discovery reveals
8 additional emails containing false or misleading information in the subject line that Defendant sent
9 or caused to be sent during the Class Period to email addresses held by Washington residents.

10 106. The Class is so numerous that joinder of all members is impracticable because the
11 Class is estimated to minimally contain thousands of members.

12 107. There are questions of law or fact common to the class, including without limitation
13 whether Defendant sent commercial emails containing false or misleading information in the
14 subject line; whether Defendant sent such emails to email addresses it knew or had to reason to
15 know were held by Washington residents; whether Defendant’s conduct violated CEMA; whether
16 Defendant’s violation of CEMA constituted a *per se* violation of the CPA; and whether Defendant
17 should be enjoined from such conduct.

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

22 109. Plaintiff will fairly and adequately protect the Class’s interests because, among
23 other reasons, Plaintiff shares the Class’s interest in avoiding unlawful false or misleading
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1 marketing; has no interest adverse to the Class; and has retained competent counsel extensively
2 experienced in consumer protection and class action litigation.

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

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

13 112. A class action is superior to other available methods for the fair and efficient
14 adjudication of the controversy because, among other reasons, the claims at issue may be too small
15 to justify individual litigation and management of this action on as a class presents no special
16 difficulties.

17 **VI. CLAIMS TO RELIEF**

18 **First Claim to Relief**

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

20 113. Plaintiff incorporates and realleges paragraphs 1–101 above.

21 114. CEMA provides that “[n]o person may initiate the transmission, conspire with
22 another to initiate the transmission, or assist the transmission, of a commercial electronic mail
23 message ... to an electronic mail address that the sender knows, or has reason to know, is held by
24

1 a Washington resident that ... [c]ontains false or misleading information in the subject line.”
2 RCW 19.190.020(1)(b).

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

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

7 117. Defendant initiated the transmission, conspired with another to initiate the
8 transmission, or assisted the transmission of such messages to electronic mail addresses that
9 Defendant knew, or had reason to know, were held by Washington residents, including because
10 Defendant knew that Plaintiff and putative members were Washington residents through
11 “information is available, upon request, from the registrant of the internet domain name contained
12 in the recipient’s electronic mail address.” RCW 19.190.020(b)(2).

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

16 119. For Defendant’s violation of CEMA, Plaintiff is entitled to all available relief,
17 including an injunction against further violations.

18 **Second Claim to Relief**

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

20 120. Plaintiff incorporates and realleges paragraphs 1–101 above.

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

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

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

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

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

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

13 127. Defendant initiated the transmission, conspired with another to initiate the
14 transmission, or assisted the transmission of such messages to electronic mail addresses that
15 Defendant knew, or had reason to know, were held by Washington residents.

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

19 129. For Defendant’s violation of the CPA, Plaintiff and putative class members are
20 entitled to an injunction against further violations; the greater of Plaintiff’s actual damages or
21 liquidated damages of \$500 per violation, trebled; and costs of suit, including reasonable attorneys’
22 fees.

VII. JURY DEMAND

130. Plaintiff will demand a jury trial by separate document in accordance with Local Civil Rule 38(b).

VIII. PRAYER FOR RELIEF

Plaintiff asks that the Court:

A. Certify the proposed Class, appoint Plaintiff as Class representatives, and appoint undersigned counsel as Class counsel;

B. Enter a judgment in Plaintiff’s and the Class’s favor permanently enjoining Defendant from the unlawful conduct alleged;

C. Enter a judgment in Plaintiff’s and the Class’s favor awarding actual or liquidated damages, trebled, according to proof;

D. Award Plaintiff’s cost of suit, including reasonable attorneys’ fees; and

E. Order such further relief the Court finds appropriate.

[Counsel signatures to follow on next page.]

1 RESPECTFULLY SUBMITTED this 23rd day of April, 2026.

2
3 /s/ Samuel J. Strauss

Samuel J. Strauss, WSBA No. #46971

Raina C. Borrelli*

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21 *** Applications for admission**

pro hac vice forthcoming