

FILED
2026 APR 09 09:24 AM
KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE #: 26-2-11799-3 SEA

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

EVAN KIRKMAN and AARON SMITH,
on their own behalf and on behalf of others
similarly situated,

Plaintiffs,

v.

TITAN BRANDS, INC., d/b/a TITAN
FITNESS,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Evan Kirkman and Aaron Smith, on behalf of themselves and others similarly situated, by and through her attorneys, based on personal knowledge with respect to their circumstances and based upon information and belief pursuant to the investigation of counsel as to all other allegations, alleges the following:

I. INTRODUCTION

“Every inbox is a battlefield.”¹

1. In 1998, the Washington State Legislature passed the Commercial Electronic Mail

¹ THE PSYCHOLOGY OF SUBJECT LINES: DATA-BACKED WORDS THAT BOOST OPEN RATES, <https://growthwayadvertising.com/the-psychology-of-subject-lines-data-backed-words-that-boost-open-rates/> (last visited April 3, 2026).

1 Act, RCW § 19.190.005, *et seq.* (“CEMA”), in response to complaints that Washington citizens
2 reported to the state Attorney General’s office.²

3 2. The Attorney General’s office reported it received more than 1,000 complaints
4 about spam email, including about 322 complaints about unsolicited email during a five-month
5 period in 1997.³

6 3. Users also reported that senders sometimes disguise advertisements by putting
7 false or misleading information on the subject line of commercial e-mail messages.⁴

8 4. The legislation was not expected to be a “cure-all,” but it was targeted to address
9 the hundreds of thousands of unsolicited and/or fraudulent emails Washington residents received
10 daily.⁵

11 5. Legislative testimony emphasized that CEMA “allows expansion of Internet
12 usage while curtailing abuses before they reach crisis.”⁶

13 6. As the State of Washington has repeatedly reminded state and federal trial courts,
14 private actions are “integral” to the State’s ability to enforce CEMA.⁷

15 7. Despite the enactment of CEMA and the Washington legislature’s clear intention
16 to prohibit spam emails, including those with false or misleading information in the email’s subject
17 line, Defendant continues to send emails expressly prohibited by the Act.
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19
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21 _____
22 ² See Wash. S. Comm. on Energy & Utilities Rep. on ESHB 2758, at 1-2 (Wash. Feb. 16, 1998).

23 ³ *Id.* at 2, 3.

24 ⁴ *Id.* at 3.

25 ⁵ *Id.*

26 ⁶ Wash. S. Comm. on Energy, Technology & Telecommunications Rep. on H.B. 1037 (Wash.
27 1999); *see also* Wash. H. Comm. on Technology, Telecommunications & Energy Appropriations
Rep. on HB 1037 (1999) (“The efficacy of the Internet is being endangered by the proliferation
of spam.”).

⁷ *See, e.g. Agnew, et. al., v. Macy’s Retail Holdings, LLC*, Plaintiff-Intervenor State of
Washington’s Response in Opposition to Defendant Macy’s Retail Holdings, LLC’s Motion to
Dismiss, 2:25-cv-02006; ECF No. 22, (W.D. Wash. Feb. 03, 2026).

1 8. Specifically, Defendant is sending emails that violate CEMA by using emails
2 whose subject lines create a false sense of urgency.

3 9. For example, Defendant Titan Fitness repeatedly sent emails to Washington
4 residents telling them that sales were ending imminently, only to extend them once they were set
5 to expire.

6 10. The false sense of urgency entices consumers to engage with Defendant's
7 marketing with repeated false notifications that there is only a limited time available to take
8 advantage of sales-based savings.

9 11. In reality, these sales are extended or repeated. Thus, consumers, like Plaintiffs,
10 are induced to act quickly and under a false sense of pressure.

11 12. Plaintiffs seek redress for Defendant's violations of the CEMA by, *inter alia*, by
12 obtaining an order enjoining Defendant from sending emails with deceptive subject lines to
13 Washington residents.
14
15

16 **II. PARTIES**

17 13. Plaintiff Evan Kirkman is a resident of Renton, Washington. Plaintiff Kirkman has
18 received emails from Titan Fitness since he made a purchase on the website in June of 2020. He
19 received Defendant's deceptive emails while present in Washington.
20

21 14. Plaintiff Aaron Smith is a resident of Tacoma, Washington. Plaintiff Smith has
22 received emails from Titan Fitness since he created an account on the website to make a purchase
23 in June of 2017. He received Defendant's deceptive emails while present in Washington.

24 15. The proposed class includes citizens of Washington.

25 16. Defendant Titan Brands, Inc., d/b/a Titan Fitness ("Titan"), is a corporation
26 organized and existing under the laws of Tennessee and has a principal place of business at 3839
27

1 Forest Hill Irene Road, Suite 100, Memphis, Tennessee 38125. Titan may be served at its
2 registered agent, Corporation Service Company, 2908 Poston Avenue, Nashville, Tennessee
3 37203-1312. On information and belief, Titan offers, sells, and distributes products to customers
4 and potential customers across the United States, including to consumers in the State of
5 Washington, through various websites. Titan advertises its products for sale to Washington
6 residents by sending numerous soliciting emails, described below.

8 **III. JURISDICTION AND VENUE**

9 17. This Court has subject matter jurisdiction under the Washington State
10 Constitution, which sets forth the jurisdiction of Washington Superior Courts. This Court also has
11 subject matter jurisdiction under the Consumer Protection Act (CPA), RCW 19.86.090, and the
12 Commercial Electronic Mail Act (CEMA), RCW 19.190.090, which give Washington Superior
13 Courts jurisdiction over claims brought under CEMA and the CPA.

14 18. This Court has personal jurisdiction over Defendant under RCW 4.28.185.
15 Defendant transacts business in Washington. The claims giving rise to this action arise from
16 Defendant's transaction of business in this state and also Defendant's purposeful transmission of
17 electronic mail messages to Washington residents, including Plaintiffs. This Court also has
18 personal jurisdiction over Defendant under RCW 19.86.160 because Defendant engaged in
19 conduct in violation of the CPA that had an impact in Washington. Defendant has certain
20 minimum contacts with the State of Washington. Defendant has and continues to purposefully
21 perform some acts or consummate some transactions in the State of Washington, and Plaintiffs'
22 claims arise from, or are connected with, Defendant's actions in this State. The assumption of
23 jurisdiction by this Court does not offend traditional notions of fair play and substantial justice,
24 consideration being given to the quality, nature, and extent of the activity in the State of
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26
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1 Washington, the relative convenience of the parties, the benefits and protection of laws of the
2 State of Washington afforded the respective parties, and the basic equities of the situation

3 19. Venue in this Court is proper under RCW 4.12.025 because a substantial part of
4 the acts or omissions giving rise to the claims alleged herein occurred here, and Defendant is
5 subject to personal jurisdiction here. At all relevant times, Defendant transacted business in King
6 County, including by selling products to customers living in King County and by sending
7 electronic mail messages to residents of King County.
8

9 **IV. BACKGROUND**

10 **A. The CEMA**

11 20. CEMA provides that “No person may initiate the transmission, conspire with
12 another to initiate the transmission, or assist the transmission, of a commercial electronic mail
13 message from a computer located in Washington or to an electronic mail address that the sender
14 knows, or has reason to know, is held by a Washington resident that . . . [c]ontains false or
15 misleading information in the subject line. RCW § 19.190.020.
16

17 21. CEMA defines “Commercial electronic mail message” as “an electronic mail
18 message sent for the purpose of promoting real property, goods, or services for sale or lease . . .
19 .” RCW § 19.190.010(2).
20

21 22. Unwanted commercial electronic mail messages (also known as “spam”⁸) are
22 more than a mere annoyance. “The receipt of unsolicited commercial electronic mail may result
23

24 ⁸ As noted by the Washington State Supreme Court in *State v. Heckel*, the “use of the term ‘spam’
25 as Internet jargon for this seemingly ubiquitous junk e-mail arose out of a skit by the British
26 comedy troupe Monty Python, in which a waitress can offer a patron no single menu item that
27 does not include spam: ‘Well, there’s spam, egg, sausage and spam. That’s not got much spam in
it.’” 24 P.3d 404, 406 (Wash. 2001) (*quoting* 2 Graham Chapman et al., *THE COMPLETE MONTY
PYTHON’S FLYING CIRCUS: ALL THE WORDS 27* (Pantheon Books 1989)).

1 in costs to recipients who cannot refuse to accept such mail and who incur costs for the storage
2 of such mail, or for the time spent accessing, reviewing, and discarding such mail, or for both.”
3 15 U.S.C. § 7701(3). “Many senders of unsolicited commercial electronic mail purposefully
4 include misleading information in the messages’ subject lines in order to induce the recipients to
5 view the messages.” 15 U.S.C. § 7701(8).

6
7 23. “CEMA sought to give consumers relief from commercial spam e-mail by
8 requiring accuracy and truthfulness in the subject lines of such e-mails. The legislature sought to
9 achieve this objective by targeting an e-mail’s header and subject lines: the two pieces of
10 information consumers first glean when faced with the choice of deleting a message or engaging
11 with its content.” *Brown v. Old Navy, LLC*, 567 P.3d 38, 45 (Wash. 2025)

12
13 24. CEMA sought to give consumers relief from commercial spam e-mail by
14 requiring accuracy and truthfulness in the subject lines of such e-mails. The legislature sought to
15 achieve this objective by targeting an e-mail’s header and subject lines: the two pieces of
16 information consumers first glean when faced with the choice of deleting a message or engaging
17 with its content. *Brown*, 567 P.3d at 45.

18
19 25. A violation of CEMA’s email regulations is a *per se* violation of Washington’s
20 Consumer Protection Act. RCW § 19.190.030(1).

21
22 26. CEMA does not require a showing of actual damages. The injury is receiving the
23 email that violates the regulations.

24
25 27. “[C]ommercial e-mails containing false or misleading subject lines pose a risk to
26 an individual's interest in being free from the nuisance and loss of productivity, given the fact that
27 such e-mails are less likely to be screened by a service provider's filtering system.” *Harbers v.*
Eddie Bauer, LLC, 415 F. Supp. 3d 999, 1010 (W.D. Wash. 2019).

1 28. The subject lines of emails may be materially misleading even if the emails
2 themselves were not solicited. *See Harbers*, 415 F. Supp. 3d at 1011.

3 29. Practices governed by CEMA “are matters vitally affecting the public interest for
4 the purpose of applying the consumer protection act, chapter 19.86 RCW.” RCW §
5 19.190.030(3). “A violation of this chapter is not reasonable in relation to the development and
6 preservation of business and is an unfair or deceptive act in trade or commerce and an unfair
7 method of competition for the purpose of applying the consumer protection act, chapter 19.86.”
8 RCW § 19.190.030(3).

9 30. “[I]ndividuals have a right to be free from certain forms of deceptive commercial
10 e-mail advertisements, and [CEMA] imposes restrictions to accomplish this goal and decrease the
11 risk of harm related to deceptive spam practices.” *Harbers*, 415 F. Supp. 3d at 1008.

12 31. “[C]lass actions [like this] are a critical piece of the enforcement of consumer
13 protection law.” *Scott v. Cingular Wireless*, 160 Wash. 2d 843, 853, 161 P.3d 1000, 1006 (2007).

14 **B. Subject Lines that Create a False Sense of Urgency are False and Misleading**

15 32. Creating urgency is a “tried-and-true tactic to get [an advertiser’s] emails opened
16 and read . . .”⁹

17 33. Advertisers use time-limited discounts to drive sales, describing it as like playing
18 a “time-sensitive game” which “forces” consumers to “take action.”¹⁰

19 34. When the time limitation is not true or is not intended to be imposed, this is a
20 material misrepresentation because it misleads the recipients as to the duration of the sales
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25 ⁹ Burdon, Mark, “150+ Sales Email Subject Lines That Get Opened, Read, and Responded To”
26 available at <https://blog.hubspot.com/sales/sales-email-subject-lines-that-get-prospects-to-open-read-and-respond>, last accessed March 3, 2026.

27 ¹⁰ Taylor, Marcus, “How to Effectively Create Urgency in Sales (11 Best Ways)” March 17,
2025. available at [How to Effectively Create Urgency in Sales \(11 Best Ways\)](#) (last accessed March 5, 2026).

1 promotion, affecting consumer behavior. *Ma v. Nike, Inc.*, No. C25-1235JLR, 2026 LX 45808, at
2 *9 (W.D. Wash. Jan. 14, 2026).

3 35. “Representations of fact-like the duration or availability of a promotion, its terms
4 and nature, the cost of goods, and other facts” that Washington residents rely upon in their
5 consumer decision-making process are subject to CEMA’s subject-line provision. *Brown*, 567
6 P.3d at 47.

7
8 36. In 2022, the Federal Trade Commission issued a report about so called digital
9 “dark practices” in electronic advertising, which manipulate users into making choices that they
10 might not have otherwise made¹¹. The report identified false limited time messages as one such
11 “dark practice” describing it as a way of creating pressure either without a deadline or with a
12 meaningless deadline that just resets when reached.”¹²

13
14 37. Similarly, the United Kingdom’s Competition and Markets Authority reviewed
15 empirical studies of consumer interactions with commercial emails and found that “false or
16 misleading scarcity claims can change the behavior of consumers and cause them harm.”¹³

17 Beyond financial injuries, false scarcity claims can lead consumers to having a negative attitude
18 towards shopping, to consider fewer brands, and to have lower satisfaction with their choices.

19 ¹⁴False scarcity claims can damage trust in markets because consumers will learn to ignore these
20 claims. Indeed, in the United Kingdom, it is specifically prohibited to “falsely stat[e] that a
21 product will only be available for a very limited time, or that it will only be available on particular
22

23 ¹¹ FTC Staff Report, “Bringing Dark Patterns to Light”, available at Bringing Dark Patterns to
24 Light (last accessed March 5, 2026).

25 ¹² *Id.*

26 ¹³ Competition and Markets Authority, “Online Choice Architecture: How Digital Design Can
27 Harm Competition and Consumers,” April 2022, available at https://assets.publishing.Service.gov.uk/media/624c27c68fa8f527710aaf58/Online_choice_architecture_discussion_paper.pdf,
last accessed March 5, 2026.

¹⁴ *Id.*

1 terms for a very limited time, in order to elicit an immediate decision and deprive consumers of
2 sufficient opportunity or time to make an informed choice.”¹⁵

3 **V. FACTUAL ALLEGATIONS**

4 **A. The Subject Lines of Titan’s Marketing Emails Are False and Misleading**

5 38. Titan frequently engages in sending emails with false or misleading subject lines,
6 particularly emails with false time-limited sales information.

7
8 39. For instance, on December 23, 2025, Titan emailed its distribution list with the
9 subject “New Blowout Deals JUST Dropped.”

10 40. Then on December 28, 2025, Titan created a false sense of urgency by sending an
11 email with the subject “Final Days: End of Year Blowout Sale.”

12
13 Final Days: End of Year Blowout Sale

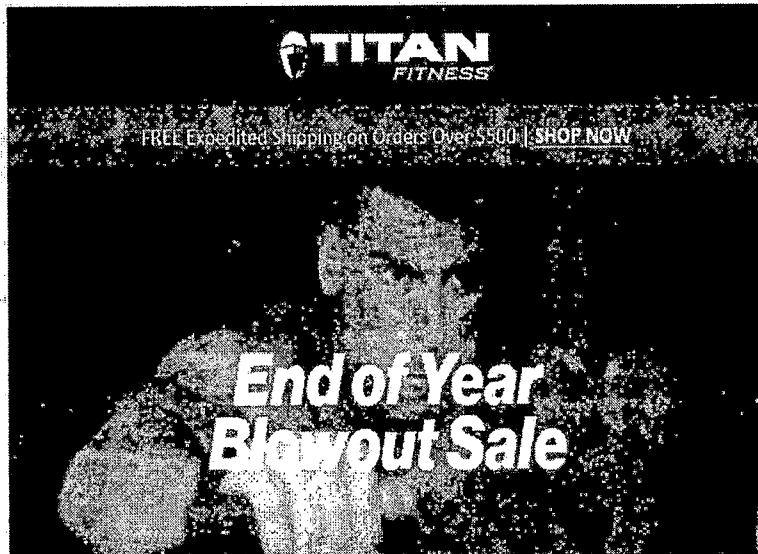


14 Titan Fitness <welcome@titan.fitness>
To: Evan Kirkman

15 < > Reply << >> Reply All >>> Forward 📎 ⋮

Sun 12/28/2025 2:02 PM

16 ⓘ If there are problems with how this message is displayed, click here to view it in a web browser.



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26 ¹⁵ Consumer Protections from Unfair Trading Regulations 2008, Schedule 1, available at
27 <https://www.legislation.gov.uk/uksi/2008/1277/schedule/1/made> (last accessed March 5, 2026).

1 41. Again on December 29, 2025, Titan sent an email with the subject "Final Days for
2 Year-End Savings – Up to 65% Off."

3 42. Titan kept urging the last days of its sale on December 30, 2025, when it sent the
4 email "Save Big, Finish Strong – Blowout Ends Tomorrow," again referencing the same 65% off
5 "blowout" sale.
6

7 Save Big, Finish Strong – Blowout Ends Tomorrow



8 Titan Fitness <welcome@titan.fitness>
To: Evan Kirkman

9 [Reply](#) [Reply All](#) [Forward](#)

Tue 12/30/2025 9:46 AM

10 If there are problems with how this message is displayed, click here to view it in a web browser.



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22 **One Day Left**

23 Clock's ticking – 24 hours to lock in up to 65% off gear built for real results:
24 machines, racks, benches, weights, and elite accessories. Make your move now and
start 2026 ahead. Free shipping included.

25 43. On December 31, 2025, Titan warned customers with an email subject reading
26 "Last Chance: Up to 65% Off Ends Tonight."
27

1 Last Chance: Up to 65% Off Ends Tonight



2 Titan Fitness <welcome@titan.fitness>
To: Evan Kirkman

Reply Reply All Forward

Wed 12/31/2025 1:01 PM

3 If there are problems with how this message is displayed, click here to view it in a web browser.



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11 **Last Chance. Finish Strong.**

12 Final day to score up to 65% off machines, racks, benches, and essentials built for
13 clean reps and lasting results. Year-end savings end tonight at 11:59 PM CT – lock in
your upgrade and step into 2026 ready. Free shipping Included.

14 44. Just hours later, Titan furthered the sense of urgency by sending an email with the
15 subject “Final Hours – Up to 65% Off.”

16 Final Hours – Up to 65% Off

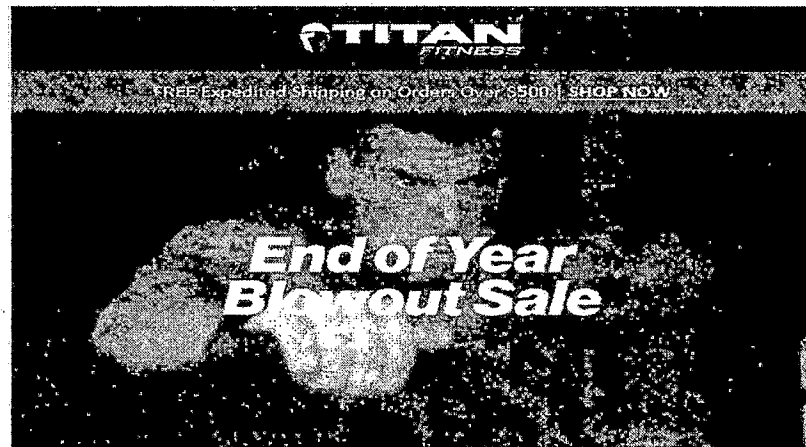


17 Titan Fitness <welcome@titan.fitness>
To: Evan Kirkman

Reply Reply All Forward

Wed 12/31/2025 6:30 PM

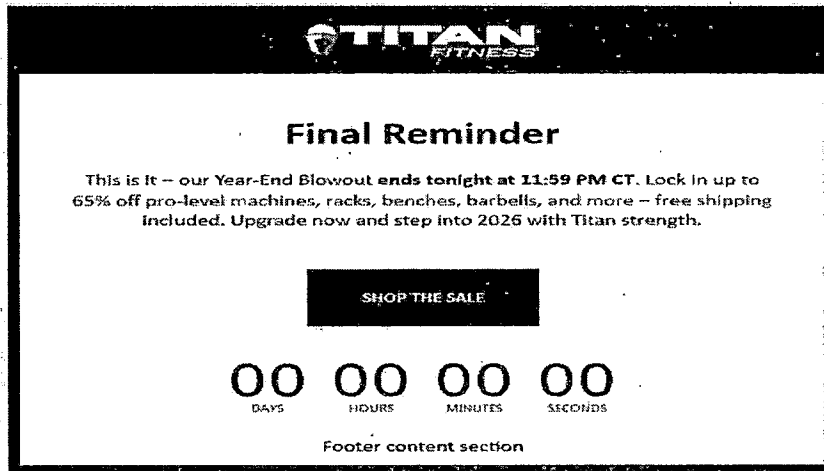
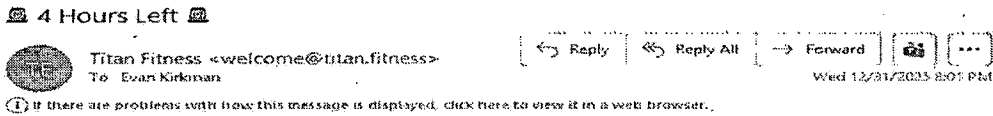
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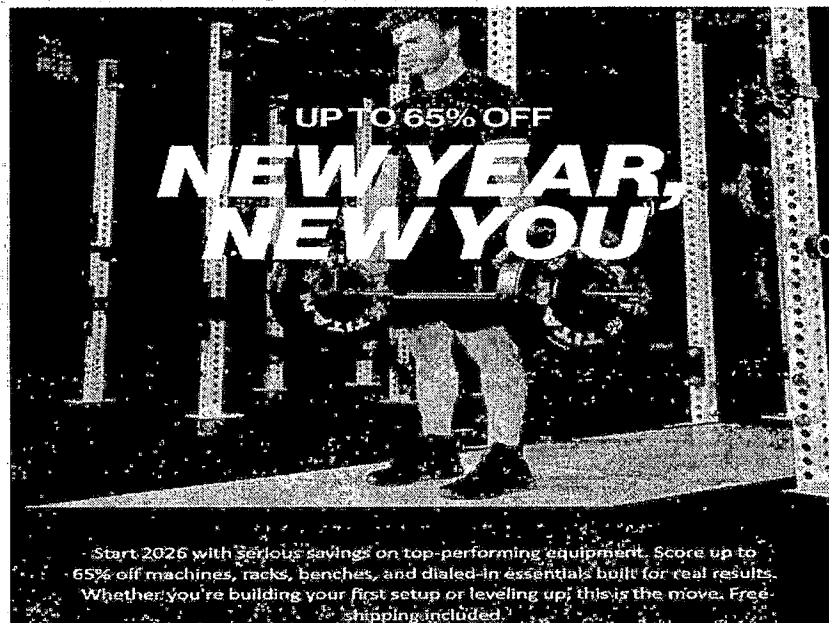
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26 **Final Hours – Up to 65% Off**

27 Make your move and make it count. Save up to 65% off pro-grade machines, racks,
benches, and essentials built for clean reps and lasting results. Lock it in before
midnight and carry momentum into 2026.

1 45. Four hours prior to midnight, Titan sent yet another urgent email, with the subject
2 "4 Hours Left" and included a countdown for the 65% off sale.



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14 46. Yet on January 1, 2026, the very next day, Titan sent an email to its subscribers
15 with the subject "New Year, New Gains - Up to 65% Off Starts NOW."



1 47. Titan followed that email with another on January 2, 2026, that again described
2 the 65% off sale as a “Flash Deal”: “VIP Flash Deals for [Customer] – Up to 65% off.” The body
3 of this email states the deals expire at 11:59 PM.

VIP Flash Deals for Evan – Up to 65% Off

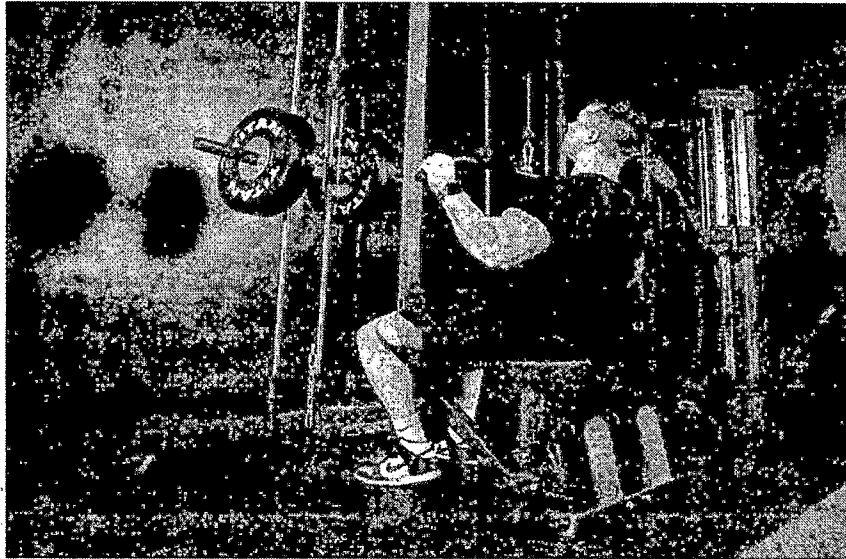


Titan Fitness <welcome@titan.fitness>
To: Evan Kickman

Reply Reply All Forward

Fri 1/2/2026 11:01 AM

If there are problems with how this message is displayed, click here to view it in a web browser.



Your Edge Starts Now.

You're on the list – today only, save up to 65% on pro-level machines, benches, weights, and elite essentials. Claim your favorites before your deals expire at 11:59 PM CT. Free shipping included.

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20 48. Nonetheless, on numerous dates after January 2, 2026—including on January 4,
21 2026, January 5, 2026, January 7, 2026, January 8, 2026, January 15, 2026, January 18, 2026,
22 and January 19, 2026—Titan sent emails to customers with subject lines referencing a “65% off”
23 sale.

24 49. On January 20, 2026, Titan again warned customers that its 65% off “New Years
25 Sale” was ending, sending an email with the subject “New Year’s Sale Ends Tonight – Save Up
26 to 65%” and another hours later with the subject “Final Hours to Save Up to 65%.”
27

1 New Year's Sale Ends Tonight – Save Up to 65%



2 Titan Fitness <welcome@titan.fitness>
To: Evan Kirkman

Reply Reply All Forward

Tue 1/20/2026, 10:03 AM

3 [If there are problems with how this message is displayed, click here to view it in a web browser.](#)



12 Final Hours to Save Up to 65% ⌚



13 Titan Fitness <welcome@titan.fitness>
To: Evan Kirkman

Reply Reply All Forward

Tue 1/20/2026 2:01 PM

14 [If there are problems with how this message is displayed, click here to view it in a web browser.](#)



25 50. Nonetheless, on January 21, 2026, at 12:00 am, Titan emailed customers that its
26 sale had been “extended”: “EXTENDED: New Years Sale – Save Up to 65%.”
27

EXTENDED: New Year's Sale – Save Up to 65%



Titan Fitness <welcome@titan.fitness>
To: Evan Kirkman

Reply Reply All Forward

Wed 1/21/2026 10:02 AM

If there are problems with how this message is displayed, click here to view it in a web browser.



51. At 12:00 pm on January 23, 2026, Titan again stated in an email subject that the 65% off “sale” was ending: “Extended Savings End Tomorrow – Save Up to 65%.”

Extended Savings End Tonight – Save Up to 65%



Titan Fitness <welcome@titan.fitness>
To: Evan Kirkman

Reply Reply All Forward

Fri 1/23/2026 2:00 PM

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52. Shortly thereafter, at 4:30 pm on the same date, Titan sent an email with the subject “Final Hours of Extended Savings – Save Up to 65%.”

Final Hours of Extended Savings – Save Up to 65%



Titan Fitness <welcome@titan.fitness>
To: Evan Kirkman

Reply Reply All Forward

Fri 1/23/2026 5:30 PM

If there are problems with how this message is displayed, click here to view it in a web browser.



53. Unsurprisingly, the next day on January 24, 2026, Titan emailed subscribers with the subject “Resolutions Reloaded Starts NOW – Up to 65% Off.”

Resolutions Reloaded Starts NOW – Up to 65% Off

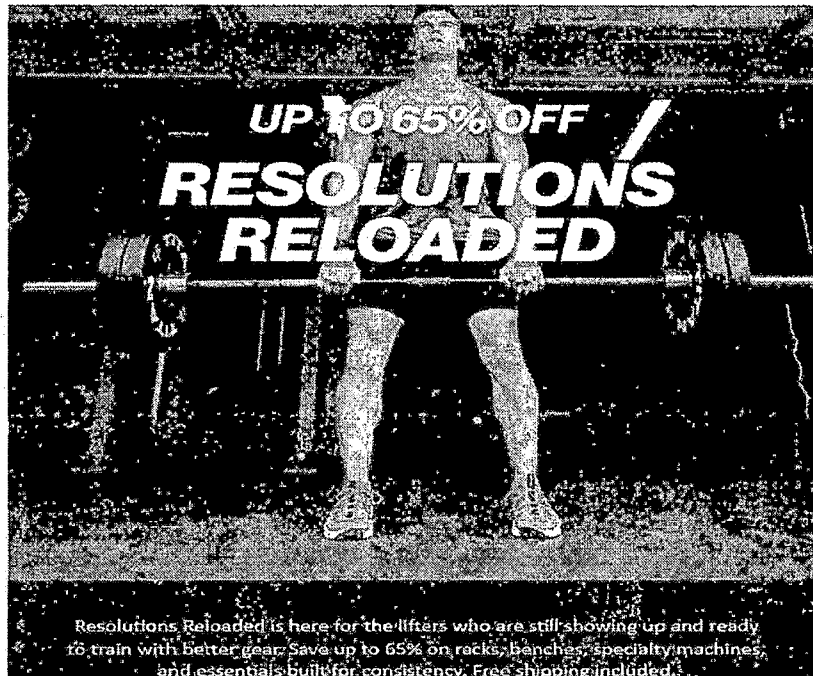


Titan Fitness <welcome@titan.fitness>
To: Evan Kirkman

Reply Reply All Forward

Sat 1/24/2026 10:01 AM

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1 54. Numerous emails sent by Titan to subscribers since that date—including on
2 January 27, 2026, January 28, 2026, January 31, 2026, February 4, 2026, and February 5, 2026—
3 reference the continued 65% off “sale.”

4 55. Indeed, on February 11, 2026, Titan was still emailing subscribers with the subject
5 “Keep Your Momentum This Week – Up to 65% Off.”

6 56. Titan has created a false sense of urgency to customers on numerous occasions by
7 acting as if its 65% off “sale” was ending or in its final days and hours, but—as evidenced by the
8 fact that Titan continually extends the “sale”—knew that the sale was not ending but instead
9 intended to create a false sense of urgency to make a purchase.
10

11 57. Titan has sent similar emails with regard to specific products as well—not just
12 regarding a specific 65% off sale.
13

14 58. For instance, on January 30, 2026, Titan sent its customers an email with the
15 subject “Flash Deal: 20% Off Our #1 Barbell.”

16 Flash Deal: 20% Off Our #1 Barbell



17 Titan Fitness <welcome@titan.fitness>
18 To: Evan Kirkman

19 Reply Reply All Forward


20 Fri 1/30/2026 10:02 AM

21 If there are problems with how this message is displayed, click here to view it in a web browser.



1 59. The next day, January 31, 2026, Titan sent an email with the subject line “1 Day
2 Left: 20% Off – Performance Series Olympic Barbell.”

3 1 Day Left: 20% Off – Performance Series Olympic Barbell

4  Titan Fitness <welcome@titan.fitness>
To: Evan Kirkman

5 [↩ Reply](#) [↩ Reply All](#) [→ Forward](#) [⋮](#)


Sat 1/31/2026 2:00 PM

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14 60. On February 1, 2026, Titan sent an email with the subject “Final Hours: 20% Off
15 – Performance Series Olympic Barbell.”

16 Final Hours: 20% Off – Performance Series Olympic Bar

17  Titan Fitness <welcome@titan.fitness>
To: Evan Kirkman

18 [↩ Reply](#) [↩ Reply All](#) [→ Forward](#) [⋮](#)

Sun 2/1/2026 2:00 PM

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1 61. But then on February 2, 2026, Titan sent an email to customers including
2 information about the Performance Series Olympic Barbell—which remained at 20% off. The
3 sale had in fact not ended the day prior.

Lift with Grip, Control & Confidence.



Titan Fitness <welcome@titan.fitness>
To: Evan Kirkman

Reply Reply All Forward

Mon 2/2/2026 10:02 AM

If there are problems with how this message is displayed, click here to view it in a web browser.

Raise the Bar



Performance Series Olympic Barbell
\$159.97 \$199.99



Safety Squat Bar
\$299.97 \$379.99



14 62. Plaintiff Kirkman has been receiving misleading emails, including but not limited
15 to the emails referenced herein, from Titan Fitness since June of 2020.

16 63. Plaintiff Smith has been receiving misleading emails including but not limited to
17 the emails referenced herein from Titan Fitness since June of 2017.

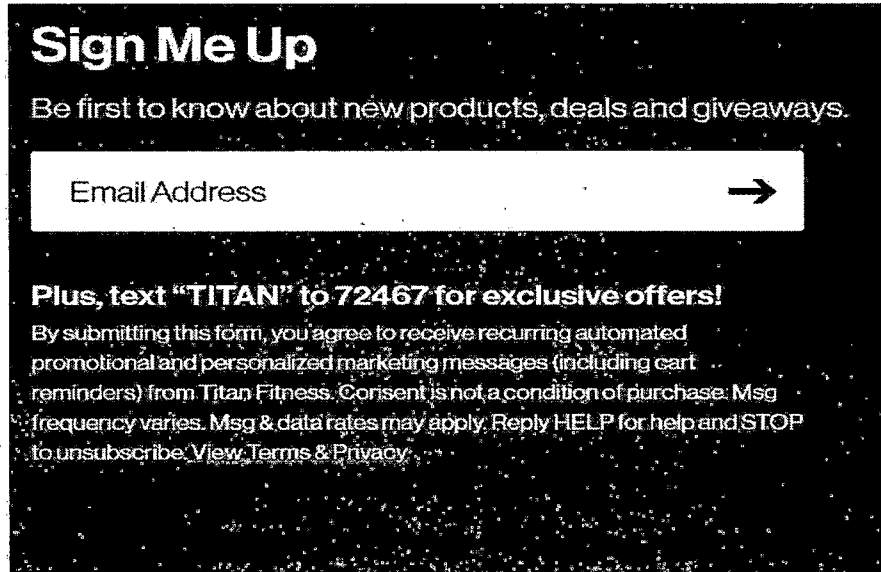
18 **B. Titan Knows or Should Know Its Emails Are Sent to Washington Residents.**

19 64. Titan is a sophisticated enterprise that is engaged in persistent marketing through
20 mass email campaigns across the United States. As such, it has several ways of knowing where
21 the recipients of its marketing emails are located. The means it employs are peculiarly within its
22 knowledge
23

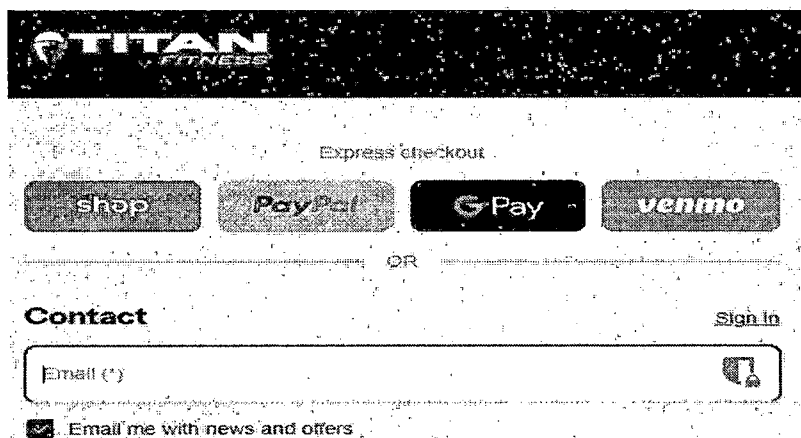
24 65. First, the sheer volume of email marketing that Titan engages in put it on notice
25 that Washington residents would receive its emails. For example, between December 23, 2025
26 and February 2, 2026 Titan sent Plaintiffs and Class Members dozens of marketing emails,
27

1 including but not limited to the emails described herein. Furthermore, Titan does not limit its
2 email distribution list to residents of any particular state.

3 66. Indeed, when visiting Titan’s website, <https://titan.fitness/>, Titan only asks for an
4 individual’s email address—indicating that Titan accepts email addresses from individuals
5 located nationwide, or even around the globe:
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16 67. Furthermore, when users purchase products from the Titan website, Titan also
17 includes a checkbox to allow users making purchases to receive “news and offers” via email.
18



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26 68. Titan thus has information regarding those individuals making a purchase,
27 including the state in which they are located.

1 69. Second, Titan may obtain location information tied to email addresses when
2 consumers make purchases from Titan through digital platforms, including the Titan’s website,
3 or otherwise self-report such information to Titan.

4 70. Third, Titan may obtain location information tied to email addresses by tracking
5 the IP addresses of devices used to open its emails, which in turn can be correlated to physical
6 location (as illustrated, for example, by the website <https://whatismyipaddress.com/>).

7 71. Specifically, Titan likely uses an Oracle service to manage its email marketing
8 campaigns. This platform should allow Titan to access a list of every email address that was sent
9 a marketing email. It should also allow Titan to determine who viewed the emails and who clicked
10 on any links within them.

11 72. Titan is likely able to infer the general geographic location of recipients by state
12 based on their IP address and email address at the time of email open or link click.

13 73. Indeed, Titan’s Privacy Policy provides that “[w]hen you visit our website, log in,
14 register or open an email, cookies, ad beacons, and similar technologies may be used by our online
15 data partners or vendors to associate these activities with information they or others have about
16 you, including your email address. We (or service providers on our behalf) may then send
17 communications and marketing to these email addresses.”¹⁶ Moreover, the Privacy Policy also
18 states that “Titan Fitness may collect your email address via cookies and pixels on the Website
19 through the use of trusted third party partners. These partners may combine your email
20 information with other information they have access to such as mailing address so that Titan
21 Fitness may serve relevant marketing offers to you via direct mail.” *Id.* Moreover, the Privacy
22
23
24

25
26
27 ¹⁶ See <https://titan.fitness/pages/privacy-policy> (last visited April 8, 2026).

1 Policy further provides that Titan’s website collects “Geolocation data” when consumers provide
2 shipping addresses. *Id.*

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

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

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

14
15 77. Titan thus has reason to know that some of the email addresses it collects are from
16 individuals located in the State of Washington.

17 78. Titan has knowledge, or at the very least should know, that its emails are being
18 sent to residents of the State of Washington, including Plaintiffs.

19 **C. Titan Violated Plaintiffs’ Rights Under CEMA and the CPA**

20 79. Titan knew that the subject lines of its emails were false or misleading and created
21 a false sense of urgency as to fake time-limited sales.

22
23 80. Upon information and belief, Titan is aware of its sales and marketing strategies,
24 including the schedule of its upcoming sales.

25 81. Upon information and belief, Titan does not actually intend to end a sale on the
26 dates it emails customers that a sale is ending. This is evidenced by the fact that *the very next day*,

1 Titan is emailing customers regarding the same exact sale continuing or being extended.

2 82. Titan's emails represent a false sense of urgency forcing consumers such as
3 Plaintiffs to take action on its fake sales.

4 83. Titan sent the emails listed above to Plaintiffs and members of the Class.

5 84. In doing so, Titan violated Plaintiffs' and Class members' rights under CEMA and
6 the CPA as they were sent numerous emails creating a false sense of urgency in the hopes of
7 generating sales for Titan.
8

9 **VI. CLASS ALLEGATIONS**

10 85. Pursuant to Federal Rules of Civil Procedure 23(b)(2), (b)(3), and (c)(4), Plaintiffs
11 seek certification of the following class:

12 **All Washington residents who, during the Class Period and**
13 **while present in Washington, received promotional emails from**
14 **Titan with subject lines either (i) stating a sale, discount, or price**
15 **would end at a specified time but the same sale, discount, or**
16 **price was extended upon expiration; or (ii) stating a sale,**
17 **discount, or price is time limited, ending, or tethered to a holiday**
18 **or event, when Titan continued to offer or reinstated the same**
19 **or comparable sale, discount, or price for a longer time.**

20 86. Excluded from the Classes are (a) any officers, directors or employees, or
21 immediate family members of the officers, directors, or employees of Defendant or any entity in
22 which Defendant has a controlling interest, (b) any legal counsel or employee of legal counsel for
23 Defendant, and (c) the presiding Judge in this lawsuit, as well as the Judge's staff and their
24 immediate family members.

25 87. The "Class Period" begins on date four years prior to the date this Complaint is
26 filed and ends on the day that class certification is granted.

27 88. Plaintiffs reserve the right to modify or amend the definitions of the proposed
Class before the Court determines whether certification is appropriate.

1 89. The proposed Class meets the criteria for certification under Fed. R. Civ. P. 23(a),
2 (b)(2), and (b)(3).

3 90. **Numerosity**. This action is appropriately suited for a class action. The Class is so
4 numerous and geographically dispersed that joinder of all members would be impracticable.
5 Although the exact number of members is currently unknown, it is believed that the Class will
6 consist of thousands of individuals. The members can be identified through objective methods,
7 such as Defendant's records. Notification of the Class members regarding the pendency of this
8 action can be effectively achieved through established, Court-approved methods, including U.S.
9 mail, email, internet postings, social media, and/or published notices.
10

11 91. **Predominance of Common Questions of Law and Fact**. This action raises
12 common questions of law and fact that are central to all Class members, and these common issues
13 overwhelmingly predominate over any individual differences. The key legal and factual questions
14 shared by all Class members include, but are not limited to:
15

- 16 a. Whether Defendant sent false and misleading emails to email addresses it knew or
17 had reason to know were held by Washington Residents;
- 18 b. Whether the subject lines of the emails at issue are false and misleading;
- 19 c. Whether Defendants' conduct violated CEMA;
- 20 d. Whether Defendants' conduct violated the CPA;
- 21 e. Whether Plaintiffs and Class members are entitled to equitable relief, including
22 injunctive relief; and
- 23 f. Whether Plaintiffs and Class members are entitled to damages or other monetary
24 relief, and if so, the appropriate amount.

25 92. **Typicality**. Plaintiffs' claims are typical of those of the members of the Class.
26 Defendant's consistent pattern of unlawful conduct, as alleged in this case, has caused Plaintiffs
27 and the Class members to suffer the same or similar injuries and damages. Moreover, Plaintiffs'

1 claims are typical of those of the members of the Class because Plaintiffs are advancing the same
2 claims and legal theories on behalf of themselves and all members of the Class. In addition,
3 Plaintiffs are entitled to relief under the same causes of action and upon the same facts as all other
4 members of the proposed Class.

5 93. **Adequacy of Representation.** Plaintiffs will fairly and adequately represent and
6 protect the interests of the Class and has retained competent counsel experienced in complex
7 litigation and class action litigation. Plaintiffs' claims arise out of the same common course of
8 conduct giving rise to the claims of the other members of the Class. Plaintiffs have no interests
9 antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiffs.
10

11 94. **Insufficiency of Separate Actions.** Absent a class action, Plaintiffs and members
12 of the Class will continue to suffer the harm described herein, for which they would have no
13 remedy. Even if individual consumers could bring separate actions, the resulting multiplicity of
14 lawsuits would cause undue burden and expense for both the Court and the litigants, as well as
15 create a risk of inconsistent rulings and adjudications that might be dispositive of the interests of
16 similarly situated consumers, substantially impeding their ability to protect their interests, while
17 establishing incompatible standards of conduct for Defendant.
18

19 95. **Injunctive Relief.** Defendant has acted or refused to act on grounds generally
20 applicable to Plaintiffs and all members of the Class, thereby making appropriate final injunctive
21 relief, as described below, concerning the members of the Class as a whole. The prosecution of
22 separate actions by individual members of the Class would create a risk of inconsistent or varying
23 adjudication concerning individual members, which would establish incompatible standards of
24 conduct for Defendant. And adjudications of claims of the individual members of the Class
25 against Defendant would, as a practical matter, be dispositive of the interests of other members
26
27

1 of the putative Classes who are not parties to the adjudication and may substantially impair or
2 impede the ability of other members to protect their interests.

3 96. **Superiority**. A class action is superior to any other available methods for the fair
4 and efficient adjudication of the present controversy for at least the following reasons:

- 5
- 6 a. The damages suffered by each individual member of the Class do not justify
7 the burden and expense of individual prosecution of the complex and extensive
8 litigation necessitated by Defendant's conduct;
- 9 b. Even if individual members of the Class had the resources to pursue individual
10 litigation, it would be unduly burdensome to the courts in which the individual
11 litigation would proceed;
- 12 c. The claims presented in this case predominate over any questions of law or
13 fact affecting individual members of the Class;
- 14 d. Individual joinder of all members of the Class is impracticable;
- 15 e. Absent a class action, Plaintiffs and members of the Class will continue to
16 suffer harm as a result of Defendant's unlawful conduct; and
- 17 f. This action presents no difficulty that would impede its management by the
18 Court as a class action, which is the best available means by which Plaintiffs
19 and members of the Class can seek redress for the harm caused by Defendant.

20 97. In the alternative to those claims seeking remedies at law, Plaintiffs and class
21 members allege that no plain, adequate, and complete remedy exists at law to address Defendant's
22 unlawful and unfair business practices. The legal remedies available to Plaintiffs are inadequate
23 because they are not "equally prompt and certain and in other ways efficient" as equitable relief.
24 *American Life Ins. Co. v. Stewart*, 300 U.S. 203, 214 (1937).

25 **FIRST CAUSE OF ACTION**

26 **Violation of Washington's Commercial Electronic Mail Act**
27 **[RCW § 19.190.090, RCW § 19.190.020]**

98. Paragraphs 1 through 97 are incorporated by reference as though fully set forth
herein.

1 99. CEMA prohibits any “person,” as defined within the statute, from initiating or
2 conspiring to initiate the transmission of electronic mail message from a computer located in
3 Washington or to an electronic mail address that the sender knows or “consciously avoids
4 knowing” is held by a Washington resident that contains false or misleading information in the
5 subject line.

6
7 100. Defendant is a “person” within the meaning of CEMA. RCW § 19.190.010(11).

8 101. Defendant initiated the sending of commercial electronic mail messages as those
9 terms are defined by CEMA. RCW § 19.190.010(2) and (7) to electronic mail addresses that
10 Defendant knew, or had reason to know, were held by Washington residents because such
11 information was available through its own consumer records and upon request from the registrant
12 of the internet domain name (RCW § 19.190.020(2)).

13 102. The commercial electronic mail messages that Defendant sent to Washington
14 residents contained false or misleading information in the subject lines in violation of the CEMA.
15 RCW § 19.190.020(1)(b).

16
17 103. Defendant’s deceptive and unfair acts and omissions injured Plaintiffs and
18 members of the Class.

19 104. The balance of equities favors permanent injunctive relief against Defendant.
20 Plaintiffs, and members of the Class and general public, will be irreparably harmed absent
21 permanent injunctive relief. Defendant’s unlawful, deceptive, and unfair conduct as described is
22 unlikely to cease and highly likely to reoccur absent an entry of permanent injunctive relief.

23
24 105. Plaintiffs and Class members are Washington residents who received Defendant’s
25 emails with false or misleading subject lines and are therefore entitled to all available relief,
26 including an injunction against further violations and damages.
27

SECOND CAUSE OF ACTION

**Violation of Washington’s Consumer Protection Act
[RCW § 19.86.020; RCW § 19.86.090]**

1
2
3 106. Paragraphs 1 through 97 herein are re-alleged and incorporated by reference as
4 though fully set forth herein.

5 107. The CPA provides that “[u]nfair methods of competition and unfair or deceptive
6 acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” RCW §
7 19.86.020.

8
9 108. A violation of CEMA is a *per se* violation of the CPA. RCW § 19.190.030(1).

10 109. As alleged in Paragraphs 1-105, *supra*, Defendant violated the CEMA.

11 110. Any person who is injured by a violation of the CPA may bring a civil action to
12 enjoin further violations and for damages. RCW § 19.86.090.

13 111. Plaintiffs and Class members are Washington residents who have been harmed by
14 Defendant’s CPA violations.

15 112. As alleged herein, Defendant’s transmission of commercial electronic messages to
16 Plaintiffs and Class Members that contained false and/or misleading information also violates
17 the CPA because it constitutes unfair or deceptive practices that occur in commerce.

18 113. For Defendant’s violation of the CPA, Plaintiffs and putative members are entitled
19 to an injunction against further violations; the greater of Plaintiff’s actual damages or liquidated
20 damages of \$500 per violation and costs of the suit.
21

22
23 **REQUEST FOR RELIEF**

24 **WHEREFORE**, Plaintiffs pray for the following relief:

25 A. An Order from this Court certifying the proposed Class, appoint Plaintiffs as class
26 representatives, and appoint the undersigned as class counsel;
27

- 1 B. A judgment in Plaintiff' and the Class's favor permanently enjoining Defendant
- 2 from the unlawful conduct alleged;
- 3 C. Awarding Plaintiffs actual or liquidated damages;
- 4 D. Awarding Plaintiffs reasonable attorneys' fees and all costs of this action, to be
- 5 paid by Defendant, in accordance with CEMA and CPA;
- 6 E. Awarding pre-and post-judgment interest and court costs as further allowed by
- 7 law; and
- 8 F. Awarding any further legal or equitable relief the Court deems just, equitable,
- 9 and/or appropriate.

10 DATED: April 8, 2026

EMERY | REDDY, PC

11 By: /s/ M. Anderson Berry
M. Anderson Berry, WSBA No. 63160

12 By: /s/ Brook Garberding
13 Brook Garberding, WSBA No. 37140

14 Gregory Haroutunian (*pro hac vice* forthcoming)
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21 Leslie Pescia (*pro hac vice* forthcoming)
 22 Rachel Minder (*pro hac vice* forthcoming)
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 25 Tel: (212) 532-1091
 Email: lpescia@sirillp.com

26 *Attorneys for Plaintiff*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

EVAN KIRKMAN and AARON SMITH

(b) County of Residence of First Listed Plaintiff King County, WA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

EMERY REDDY, PC, 600 Stewart Street, Suite 1100, Seattle, WA 98101, 206-202-5269

DEFENDANTS

TITAN BRANDS, INC., d/b/a TITAN FITNESS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Epstein Becker & Green, P.C., Courtney McFate, Esq., 1125 NW Couch Street, Suite 500, Portland, Oregon 97209

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, INTELLECTUAL PROPERTY RIGHTS, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Contract, Real Property, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 USC §§ 1332, 1441, 1446 and 1453. Brief description of cause: Claims under the Washington Commercial Electronic Mail Act and Washington Consumer Protection Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ N/A CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Hon. Melinda Young DOCKET NUMBER 26-2-11799-3 SEA

DATE May 15, 2026 SIGNATURE OF ATTORNEY OF RECORD Courtney McFate

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. **Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.