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KING COUNTY
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CASE #: 26-2-15375-2 SEA

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

MATTHEW WILDMAN, on his own behalf
and on behalf of others similarly situated,

Plaintiff,

v.

HICKORY FARMS, LLC,

Defendant.

Case No.: _____ SEA

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Matthew Wildman, on his own behalf and on behalf of others similarly situated, on information and belief except to his own experiences and matters of public record, complains of Hickory Farms, LLC (“Defendant” or “Hickory Farms”), 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 with “false or misleading information in the subject line” to the email address of a Washington resident. RCW

1 19.190.020(1)(b).

2 3. Defendant Hickory Farms engages in the precise activity which CEMA prohibits.

3 4. Hickory Farms spams Washington consumers, including Plaintiff, with commercial
4 emails featuring subject lines which employ various tactics to create a false sense of urgency in
5 consumers' minds—and ultimately, from consumers' wallets.

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

9 6. Through this deceptive time-sensitivity, Hickory Farms falsely narrows the field—
10 steering consumers away from shopping for better deals—to its own products that must be
11 purchased *now*.

12 7. Plaintiff challenges Hickory Farms' harassment of Washington consumers with
13 deceptive marketing for violations of the Commercial Electronic Mail Act (RCW 19.190.020) and
14 the Consumer Protection Act (RCW 19.86.020) for injuries caused, additionally seeking injunctive
15 relief against such violations in the future.

16 **II. JURISDICTION AND VENUE**

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

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

20 **III. PARTIES**

21 10. Plaintiff Matthew Wildman is a resident of King County, Washington.

22 11. Defendant Hickory Farms, LLC, is a Delaware company with its principal address
23 at 311 S. Wacker Dr., Suite 2030, Chicago, IL 60606, and a registered agent in the State of
24

1 Washington at C T Corporation System, 711 Capitol Way S., Suite 204, Olympia, WA, 98501.

2 12. Defendant sells its products in Washington through their website and are thus
3 subject to personal jurisdiction in this Court. *See, e.g., Ford Motor Co. v. Montana Eighth Jud.*
4 *Dist. Ct.*, 592 U.S. 351 (2021).

5 **IV. FACTUAL ALLEGATIONS**

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

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

9 14. In 1998, the Legislature found that the “volume of commercial electronic mail” was
10 “growing,” generating an “increasing number of consumer complaints.” Laws of 1998, ch. 149,
11 § 1.

12 15. While it’s been nearly three decades since CEMA’s enactment, the problems caused
13 by unsolicited commercial email, *i.e.* spam email, have grown exponentially.

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

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

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

23 19. Even when bulk commercial email marketers are operating under color of consumer
24

1 consent, the reality is that “[m]ost privacy consent”—especially under the “notice-and-choice”
2 approach predominant in the United States—“is a fiction.” Daniel J. Solove, *Murky Consent: An*
3 *Approach to the Fictions of Consent in Privacy Law*, 104 Boston Univ. L. Rev. 593, 596 (2024).

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

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

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

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

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

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

23 26. CEMA’s “truthfulness requirements” thereby advance the statute’s aim of
24

1 protecting consumers “from the problems associated with commercial bulk e-mail” while
2 facilitating commerce “by eliminating fraud and deception.” *Id.*

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

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

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

13 **B. The subject lines of Hickory Farms’ marketing emails make false time scarcity**
14 **claims.**

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

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

1 32. “False or misleading scarcity claims can change the behavior of consumers.”

2 *Online Choice Architecture*, *supra* para. 30, at 27.

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

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

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

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

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

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

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

1 40. These false time scarcity claims are a staple of the defendant’s marketing scheme
2 to compel consumers to purchase its products.

3 41. Hickory Farms is a food and gift retailer. The company’s merchandise is available
4 at its seasonal retail locations, through other brick-and-mortar retailers, and on its website,
5 www.hickoryfarms.com.

6 42. To advertise its products and encourage purchases, Hickory Farms routinely sends
7 spam emails to consumers. These emails are part of a calculated marketing strategy that Defendant
8 orchestrates in advance to maximize sales by distorting factual information about the duration and
9 availability of its promotions.

10 43. **Urgent Spam Emails.** Unfortunately for those recipients, Hickory Farms regularly
11 titles its emails with urgent subject headings that do not reflect the true availability of the advertised
12 deal. This strategy is demonstrated in the examples discussed below.

13 44. Hickory Farms has tailored its approach to fit a number of offers, including
14 promotion extensions. In these examples, Hickory Farms sends consumers marketing emails to
15 advertise an offer, promotion, or sale. Then, it uses the subject lines of follow-up emails to present
16 the promotional pricing as a scarce or time-limited opportunity. This strategy commands
17 consumers’ attention and pressures them to purchase from Defendant’s website and retail locations.
18 Finally, once the originally advertised “deadline” has passed, Hickory Farms knowingly extends
19 the promotion to a new end date.

20 45. This misleading marketing strategy allows Hickory Farms to maximize sales during
21 both the initial promotion, as well as the subsequent extension. While Hickory Farms may present
22 these extensions as though they are a favor or unexpected blessing to consumers, they are anything
23 but. By deploying false time pressure with surprise extensions—which are only disclosed once the
24

1 original promotion has ended—Hickory Farms compels consumers to purchase quickly while
2 withholding terms that consumers need so they can make informed buying decisions. A 2022 “free”
3 shipping promotion provides an apt example of this strategy at work.

4 46. First, Hickory Farms sends consumers marketing emails advertising a new
5 promotion. For instance, on June 10, 2022, it transmitted an email with the subject line: “4 days
6 left! Get free shipping for Father’s Day[.]” The body of the email encouraged recipients to
7 “HURRY!” and “Snag a gift for Dad.”

8 47. For the next step in its scheme, Hickory Farms uses the subject lines of its follow-
9 up emails to assert false time pressure on recipients. Such headlines urge consumers to purchase
10 from Hickory Farms’ website by warning them that the offer is coming to an end.

11 48. Regarding the free shipping event, Hickory Farms followed up on its June 10 email
12 by planting a crop of urgent subject lines in consumers’ inboxes.

13 49. On June 11, 2022, it transmitted an email with the subject heading: “Only two days
14 left for free standard shipping!”

15 50. The next day, June 12, 2022, Hickory Farms sent consumers yet another email
16 warning of the promotion’s impending conclusion within its title: “Pssst! Free standard shipping
17 ends tomorrow[.]”

18 51. Later that day, it pelted consumers’ inboxes with another email pressuring them to
19 act fast using the subject line: “Time’s running out to get free Father’s Day shipping[.]” Inside, the
20 email featured a countdown timer indicating that the opportunity would end on June 13, 2022.
21 Large text within the email also confirmed that the promotion, “ENDS TOMORROW!”

22 52. Despite this unambiguous deadline concerning the end of the free shipping offer,
23 the promotion did not conclude on June 13, 2022, as advertised. Instead of providing consumers
24

1 with accurate terms, the retailer chose to keep them in the dark regarding the sale's end date and
2 orchestrated a scheme to promulgate false information.

3 53. In the final stage of its scheme, Hickory Farms extends the life of the promotion,
4 proving the falsity of the deadline it first advertised. For the Father's Day free shipping offer,
5 Hickory Farms revealed that the promotion would not conclude as advertised on June 13, 2022.
6 An email transmitted on that date was titled, "...and here you were thinking you missed it (Free
7 shipping extended!)[,]" and stated that free shipping would continue to be available until the
8 following day, June 14, 2022.

9 54. The June 13 email confirms the misleading nature of Hickory Farms' previous
10 subject lines. The company's free shipping offer didn't end on June 13, 2022. Instead, Hickory
11 Farms continued to offer free shipping the following day. The false deadline for the free shipping
12 promotion is simply one example and one element of Defendant's cohesive marketing strategy
13 meant to compel consumers to purchase its merchandise.

14 55. Hickory Farms redeployed its ruse for another shipping promotion a few months
15 later; yet again pairing a false deadline with a surprise extension.

16 56. An email sent on October 11, 2022, announced the beginning of the promotion in
17 its subject line: "Attention Shoppers! 1 Day Free Shipping[.]" Inside the email, large text made
18 clear that the opportunity would last for "1 DAY ONLY!"

19 57. Later that day, Hickory Farms transmitted another email to layer additional time
20 pressure on consumers. That email carried the subject heading, "🕒 Ends Tonight 🕒 Free
21 shipping[,]" and featured a countdown timer ticking away the remaining time, down to the second,
22 until the opportunity would end.

23 58. However, to the detriment of consumers, both of the October 11, 2022, subject lines
24

1 communicated a false deadline. The free shipping promotion did not end on that date.

2 59. The sale was still active on October 12, 2022. An email sent on that date was titled,
3 “📧 Free Shipping offer extended! 📧 Ends Today![,]” and confirmed the falsity of the October
4 11, 2022, subject line.

5 60. So, despite the unambiguous deadline that it communicated in its October 11, 2022,
6 subject lines, Hickory Farms continued to offer the same promotion the day after the advertised
7 deadline.

8 61. By stuffing consumer inboxes with such misinformation, Hickory Farms ensures
9 that email recipients lack the accurate details needed to make educated buying decisions. An
10 additional example of Hickory Farms’ deceptive practices occurred later that very same month.

11 62. On October 21, 2022, Hickory Farms sent consumers a Halloween-themed email
12 to advertise free shipping on select items. The email was titled: “You’ll freak for this one-day
13 deal!”

14 63. However, the free shipping offer was not a one-day deal.

15 64. On October 22, 2022, Hickory Farms communicated the real end date of the
16 promotion in an email with the subject line: “Extended: Your exclusive deal[.]” As confirmed by
17 the content of the email, Hickory Farms made the allegedly “one-day” deal available for three
18 days, not concluding the offer until October 23, 2022.

19 65. In an example from the following month, Hickory Farms repeated its strategy for a
20 Black Friday buy one, get one sale.

21 66. On November 25, 2022, Hickory Farms transmitted an email with the subject line:
22 “BOGO 50% is back! One day only!” Inside, the email stated that the offer was a buy one, get one
23 50% off offer for gift sets priced at \$45 or higher.

1 67. Later that day, Hickory Farms sent consumers another email featuring a subject line
2 heavy with time pressure: “🔥 Final Hours 🔥 Don't miss this BOGO 50% off!” A countdown
3 timer inside the email further emphasized the limited time remaining for consumers to participate
4 in the opportunity.

5 68. True to form, however, the deadline which Hickory Farms communicated to
6 consumers in its November 25 subject lines was a false one.

7 69. On November 26, 2022, one day after the promotion would supposedly end,
8 Hickory Farms transmitted an email titled: “🔥 Just in: BOGO 50% off extended[.]”

9 70. The November 26 email confirmed that the “one day only” and “Final hours”
10 warnings contained in the November 25, 2022, subject lines were merely misleading time pressure
11 claims designed to deceive consumers rather than a reliable fact about the opportunity to save on
12 multiple purchases.

13 71. The following year, 2023, provides several additional examples of Hickory Farms’
14 deceptive marketing scheme.

15 72. On February 5, 2023, it sent consumers an email with the subject line: “Two days
16 left: Free shipping for Valentine’s Day!”

17 73. Quickly thereafter, Hickory Farms continued to transmit subject lines meant to
18 pressure consumers with false time scarcity claims.

19 74. On February 6, 2023, it sent an email with the subject heading: “Free shipping ends
20 tomorrow! Don't wait to order!”

21 75. Then, on February 7, 2023, the day which Hickory Farms advertised as the deadline
22 for the promotion, it sent an email titled: “Ends Today: Free Standard Shipping for V-Day[.]”

23 76. The promotion, however, was “extended,” confirming that the February 5, February
24

1 6, and February 7 subject lines were false.

2 77. On February 8, 2023, Hickory Farms sent consumers an email announcing the
3 extension within the email's subject line: "🎁 Surprise! 🎁 Free standard shipping is extended[.]"

4 78. Each of the subject lines identified above are installments in Hickory Farms'
5 scheme; steps evidencing Hickory Farms' coordinated marketing strategy to deceive consumers
6 with false information about the duration and availability of its promotions.

7 79. Hickory Farms also transmitted false and misleading subject lines in connection
8 with its 2023 Easter promotion.

9 80. On April 2, 2023, it sent an email titled: "Last Chance 🐣 25% Off Easter Sale[.]"
10 Inside, large text appearing in all capital letters at the top of the email specified a free shipping
11 offer and its deadline: "FREE SHIPPING ENDS TOMORROW ORDER BY 3PM EST[.]"

12 81. The next day, April 3, 2023, Hickory Farms sent an email explicitly warning
13 consumers about the limited time remaining for the free shipping offer within its subject line: "Last
14 Day for Free Shipping by Easter!" A timer graphic inside the email counted down the remaining
15 hours, minutes, and seconds until the opportunity's alleged end.

16 82. Consistent with Hickory Farms' deceptive pattern, the April 3 subject line and the
17 time pressure it leveraged against consumers were false.

18 83. Later that day, Hickory Farms sent an email with the subject heading: "🐣 EGGS-
19 TENDED free shipping!" Indeed, neither Hickory Farms' deception nor the Easter-themed
20 shipping offer had concluded. Hickory Farms simply deployed its April 3, 2023, subject line to gin
21 up consumer interest in its products – not to provide consumers with reliable factual
22 representations about when the free shipping opportunity ended.

23 84. The following month, Hickory Farms repeated its scheme for yet another free
24

1 shipping promotion.

2 85. It transmitted an email to consumers on May 8, 2023, with the subject line: “Last
3 day for free shipping on Mom’s gift[.]” Inside the email, a countdown graphic displayed the time
4 remaining until the advertised end of the free shipping promotion.

5 86. Much like the previous shipping promotion examples, the advertised end date for
6 the holiday-themed free shipping offer was a fake deadline. Hickory Farms never intended to
7 conclude the sale on May 8, despite the unambiguous deadline it communicated to consumers in
8 its May 8, 2023, subject line.

9 87. Later that day, Hickory Farms provided consumers with the real deadline for its
10 free shipping promotion in an email titled: “Mother’s Day Surprise! Free shipping is extended!”
11 As the body of the email confirmed, the actual end date for the promotion was May 9, 2023.

12 88. Hickory Farms has paired false deadlines with surprise extensions to deceive
13 customers about the duration of Father’s Day offers as well.

14 89. It did so in 2023, when advertising a free shipping promotion during the Father’s
15 Day holiday. The email subject lines which Hickory Farms transmitted to advertise the offer
16 demonstrate the company’s deceptive pattern:

- 17 a. June 12, 2023: “Free shipping ends today!”
18 b. June 12, 2023: “⚠ Final hours for Free Shipping for Father's Day gifts!”
19 c. June 12, 2023: “Extended! Free shipping for Father’s Day” in an email that
20 made clear “FREE STANDARD SHIPPING ENDS TOMORROW!”

21 90. Thus, the free shipping opportunity didn’t end on June 12, 2023, despite the clear
22 deadline advertised in both earlier emails.

23 91. October 2023 brought a “Falliday Sale” which yielded additional examples of
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1 Hickory Farms' misleading marketing strategy.

2 92. On October 10, 2023, it sent consumers an email titled: "Today Only! Save up to
3 20%[.]" Text within the email warned consumers to "Hurry" to save up to 20% off select items on
4 Hickory Farms' website.

5 93. Later that day, Hickory Farms applied additional pressure by pelting consumers
6 with another email containing a subject line with false time scarcity claims: "Ending Soon! Save
7 up to 20%[.]" Text within the email emphasized that the opportunity was "TODAY ONLY!"

8 94. October 10, 2023, however, was not the only day for the up to 20% off promotion.

9 95. On October 11, 2023, Hickory Farms sent an email titled, "Sale E-x-t-e-n-d-e-d!
10 Save up to 20%[.]" which confirmed the falsity of the October 10 subject lines.

11 96. Unfortunately for consumers, Hickory Farms continued to deploy deceptive email
12 subject lines in December as well. For example, when Hickory Farms held a free shipping
13 promotion, it falsely communicated a December 1, 2023, deadline for the offer, as demonstrated
14 by the subject lines used to perpetuate the ruse:

- 15 a. December 11, 2023: "!! Today only !! Free shipping on almost everything!"
- 16 b. December 11, 2023: "🔔 Final hours: free shipping on almost everything!
17 🔔[.]"
- 18 c. December 11, 2023: Ho, ho, ho no! Free shipping ends 🌟 tonight! 🌟[.]
- 19 d. December 12, 2023: "Free shipping, no minimum is E-X-T-E-N-D-E-D!"

20 97. The following week, Hickory Farms executed the scheme yet again as confirmed
21 by the following email subject lines:

- 22 a. December 16, 2023: "Free shipping on almost everything! One. Day. Only!"
- 23 b. December 16, 2023: "🔔 Final hours: free shipping on almost everything!
24 🔔[.]"

1 △[.]”

2 c. December 16, 2023: “!! Last chance for free shipping with no minimum
3 purchase !![.]”

4 d. December 17, 2023: “E-X-T-E-N-D-E-D! Free shipping, no minimum
5 purchase!”

6 98. However, Hickory Farms was not content with two deceptive free shipping
7 campaigns within the same month. The following day, it reprised its ruse while advertising a free
8 standard shipping promotion in emails with the following subject headings:

9 a. December 18, 2023: “Last chance for free standard shipping!”

10 b. December 18, 2023: “📦 📦 Final hours for free standard shipping!
11 📦 📦 [.]”

12 c. December 18, 2023: “📦 Surprise! Free standard shipping is extended!
13 📦 [.]”

14 99. The last email confirmed that the free standard shipping offer would be available
15 until December 20, 2023.

16 100. Hickory Farms continued to transmit email subject lines with false and misleading
17 information in 2024. Several examples arose in the context of free shipping promotions as these
18 subject lines confirm:

19 a. June 9, 2024: “Free shipping ends tomorrow! Don't wait to order gifts for
20 Father's Day!”

21 b. June 10, 2024: “📦 📦 Free shipping for Father's Day ends today! (Order
22 by 3pm ET)[.]”

- c. June 10, 2024: “● Free shipping EXTENDED! ●” in an email that made clear “FREE STANDARD SHIPPING ENDS TOMORROW!”
- d. December 16, 2024: “Today only! FREE shipping SITEWIDE! 📦 📦 📦 [.]”
- e. December 16, 2024: Free shipping SITEWIDE today only – procrastinators rejoice!”
- f. December 16, 2024: “🕒 Tick-tock: FREE shipping SITEWIDE ends soon!”
- g. December 16, 2024: “🔔 Last call: FREE shipping on EVERYTHING, ends tonight! 🔔 [.]”
- h. December 17, 2024: “🎁 FREE shipping SITEWIDE extended – Guaranteed Christmas delivery!”

101. In other examples from 2024, Hickory Farms deployed deceptive subject lines to advertise discount promotions. For instance, it levied multiple emails at consumers in July 2024 to pressure them to participate in a 20% off “charcuterie essentials” promotion. As these subject lines confirm, Hickory Farms communicated a false deadline so it could urge consumers to purchase quickly while concealing the promotion’s true end date:

- a. July 16, 2024: “Two days only! Save 20% on charcuterie essentials!”
- b. July 16, 2024: “🕒 Ends tomorrow: 20% off Hot Summer Savings 🕒 [.]”
- c. July 17, 2024: “Final hours to save 20%! Sale ends tonight.”
- d. July 18, 2024: “Extended! Two more days to save 20%!”

102. In a series of other examples from later in the year, Hickory Farms deceptively

1 titled marketing emails in connection with its Falliday Sale which offered up to 20% off select
2 items. As the subject lines below demonstrate, Hickory Farms first communicated an October 8,
3 2024, deadline for the promotion. It was not until October 8 had passed that Hickory Farms
4 revealed the real deadline for the discount:

- 5 a. October 8, 2024: “Today only! Save up to 20%[.]”
- 6 b. October 8, 2024: “Summer Sausage, crackers and more...now on sale!
7 (TODAY only)[.]”
- 8 c. October 8, 2024: “ ⚠ Final hours to say up to 20% + free shipping[.]”
- 9 d. October 9, 2024: “E-X-T-E-N-D-E-D! Save up to 20% for one more day!”

10 103. The following month, Hickory Farms revived its buy one, get one 50% off
11 promotion. It also revived its misleading marketing strategy when advertising the sale.

12 104. On November 29, 2024, it transmitted an email titled: “ ⚠ BOGO 50% ends
13 tonight! ⚠ [.]”

14 105. Then, on November 30, 2024, it sent an email with the subject line, “ ✨ E-X-T-E-
15 N-D-E-D! Black Friday BOGO 50% is still here! ✨ [.]” confirming the falsity of the November
16 29, 2024, subject line and the false end date which it contained.

17 106. In 2025, Hickory Farms continued to send marketing emails which falsely
18 represented the duration of its sales, discounts, and promotions to consumers.

19 107. During a St. Patrick’s Day-themed event, for example, it claimed reduced pricing
20 would be available for a single day. Instead, Hickory Farms quickly extended the promotion, as
21 demonstrated in the subject lines of the emails used to advertise the event:
22

- 23 a. March 17, 2025: “ 🍀 🍀 Lucky you! Save 71% on snacks today only
24

1 🍀 🍀 [.]”

2 b. March 17, 2025: “🍀 🍀 Ends Tonight! Save 71% on snacks 🍀 🍀 [.]”

3 c. March 18, 2025: “🍀 Extended! Save 71% on snacks + \$5 shipping 🍀 [.]”

4 108. Additional examples come from a Mother’s Day promotion.

5 109. On May 3, 2025, Hickory Farms transmitted an email with the subject line: “Hurry,
6 only 3 days left for \$5 shipping for Mom (Plus, save up to 25%)[.]”

7 110. On May 5, 2025, Hickory Farms returned to consumers’ inboxes to continue
8 misrepresenting the end date for the Mother’s Day free shipping promotion. An email sent on that
9 date carried the subject line: “\$5 standard shipping for Mother's Day ends today! Don't miss out!”
10 Text within the email repeated the subject line’s “Ends Today” warning and affirmed that the offer
11 was for “standard shipping.”

12 111. Both emails, along with their subject lines, however, misrepresented the duration
13 of the standard shipping offer. May 5, 2025, was a false deadline which Hickory Farms
14 communicated to consumers so they would purchase from Hickory Farms’ website.

15 112. Hickory Farms revealed the real end date for the standard shipping promotion
16 within the title of an email sent on the evening of May 5, 2025: “EXTENDED! \$5 standard
17 shipping for Mother's Day ends tomorrow!”

18 113. Thus, the true deadline for the free standard shipping offer was May 6, 2025, not
19 May 5, 2025, as the prior subject lines indicated.

20 114. Hickory Farms celebrated Father’s Day much the same way.

21 115. It sent an email on June 8, 2025, warning that yet another standard shipping
22 opportunity was coming to an end. The subject line was titled: “[ENDS TOMORROW] \$5
23 standard shipping for Father's Day!”

1 116. The next day, June 9, 2025, Hickory Farms followed up with another email
2 emphasizing the impending end of the promotion in its subject line: “Hurry! \$5 Standard shipping
3 for Father's Day ends today!”

4 117. Again, both subject lines contained false information. Later, on June 9, 2025,
5 Hickory Farms sent consumers an email titled: “\$5 Standard shipping EXTENDED! Order by
6 tomorrow at 3PM EST[.]”

7 118. So, the true deadline for the standard shipping promotion was June 10, 2025, not
8 June 9.

9 119. Hickory Farms continued to transmit subject lines with false and misleading
10 information relating to its shipping and discount promotions. Several additional examples arose in
11 2025 as these subject lines confirm:

- 12 a. October 7, 2025: “[TODAY ONLY] Save up to 20% + Free shipping!”
- 13 b. October 7, 2025: “Did you hear? Falliday Savings up to 20% + Free
14 Shipping [TODAY ONLY][.]”
- 15 c. October 7, 2025: “⚠ Final hours to say up to 20% + free shipping[.]”
- 16 d. October 8, 2025: “E-X-T-E-N-D-E-D! Save up to 20% for one more day!”
- 17 e. November 28, 2025: “⚠ BOGO 50% ends tonight! ⚠ [.]”
- 18 f. November 29, 2025: “[EXTENDED] BOGO 50% OFF holiday gifts is still
19 here!”
- 20 g. December 12, 2025: “⚡ ⚡ Today Only! Take 30% OFF + Free
21 Shipping ⚡ ⚡ [.]”
- 22 h. December 12, 2025: “⚠ ENDS TONIGHT! 30% OFF + Free
23 Shipping! ⚠ [.]”
24

- i. December 13, 2025: “E-X-T-E-N-D-E-D | Save 30% + Free Shipping[.]”
- j. December 15, 2025: “Today only! FREE shipping SITEWIDE! 📦 📦 📦 [.]”
- k. December 15, 2025: “Free shipping SITEWIDE today only – procrastinators rejoice!”
- l. December 15, 2025: “🎄 Last call: FREE shipping on EVERYTHING, ends tonight! 🎄 [.]”
- m. December 16, 2025: “🎄 FREE shipping SITEWIDE extended – Guaranteed Christmas delivery!”

120. As these examples demonstrate, Hickory Farms is engaged in a scheme where it pressures consumers to purchase products from its website using subject lines which falsely represent the availability of its offers.

C. Hickory Farms knows when it sends emails to Washington residents.

121. A sophisticated commercial enterprise, like Hickory Farms, which is engaged in persistent marketing through mass email campaigns across the United States, has several ways of knowing where the recipients of its marketing emails are located. The means it employs are peculiarly within its knowledge.

122. First, the sheer volume of email marketing that Hickory Farms engages in put it on notice that Washington residents would receive its emails. For instance, for the years 2023 through 2025, Hickory Farms transmitted roughly 538 emails per year, 44 emails per month, 10 emails per week, and 1.47 emails per day.

123. Second, Hickory Farms may obtain location information tied to email addresses when consumers make purchases from Hickory Farms through digital platforms, or otherwise self-

1 report such information to Hickory Farms.

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

6 125. Specifically, Hickory Farms appears to use Salesforce Marketing Cloud to manage
7 its email marketing campaigns. This platform should allow Hickory Farms to access a list of every
8 email address that was sent a marketing email. It should also allow Hickory Farms to determine
9 who viewed the emails and who clicked on any links within them.

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

14 127. Fifth, Hickory Farms may obtain location information tied to email addresses by
15 using “identity resolution” services offered by companies such as LiveRamp, which can connect
16 consumers’ email addresses to their physical locations, among other identifiers.

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

21 129. It is thus highly probable that a seller of Defendant’s size and sophistication
22 employs not just one but several means of tying consumers’ email addresses to their physical
23 locations, at least at the state level.

1 employees; Defendant's parents, subsidiaries, affiliates, and any entity in which Defendant has a
2 controlling interest; undersigned counsel for Plaintiff; and all judges and court staff to whom this
3 action may be assigned, as well as their immediate family members.

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

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

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

11 139. There are questions of law or fact common to the class, including without limitation
12 whether Defendant sent commercial emails containing false or misleading information in the
13 subject line; whether Defendant sent such emails to email addresses it knew or had to reason to
14 know were held by Washington residents; whether Defendant's conduct violated CEMA; whether
15 Defendant's violation of CEMA constituted a *per se* violation of the Consumer Protection Act,
16 RCW 19.86.020 (CPA); and whether Defendant should be enjoined from such conduct.

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

21 141. Plaintiff will fairly and adequately protect the Class's interests because, among
22 other reasons, Plaintiff shares the Class's interest in avoiding unlawful false or misleading
23 marketing; has no interest adverse to the Class; and has retained competent counsel extensively
24

1 experienced in consumer protection and class action litigation.

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

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

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

16 VI. CLAIMS TO RELIEF

17 First Claim to Relief

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

19 145. Plaintiff incorporates and realleges paragraphs 1-133 above.

20 146. CEMA provides that “[n]o person may initiate the transmission, conspire with
21 another to initiate the transmission, or assist the transmission, of a commercial electronic mail
22 message ... to an electronic mail address that the sender knows, or has reason to know, is held by
23 a Washington resident that ... [c]ontains false or misleading information in the subject line.”
24

1 RCW 19.190.020(1)(b).

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

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

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

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

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

17 **Second Claim to Relief**

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

19 152. Plaintiff incorporates and realleges paragraphs 1–133 above.

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

23 154. A violation of CEMA is a *per se* violation of the CPA. RCW 19.190.030.

24

25

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

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

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

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

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

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

18 161. For Defendant’s violation of the CPA, Plaintiff 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, trebled; and costs of the suit, including a reasonable attorney’s fee.

21 **VII. JURY DEMAND**

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

VIII. PRAYER FOR RELIEF

Plaintiff asks that the Court:

- A. Certify the proposed Class, appoint Plaintiff as Class representative, 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 costs of suit, including reasonable attorneys' fees; and
- E. Order such further relief the Court finds appropriate.

[Counsel signatures to follow on next page.]

1 Date: May 8, 2026

Respectfully submitted,

2 /s/ Samuel J. Strauss

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19 *Counsel for Plaintiff and the Putative Class*

20 *** Applications for admission**

pro hac vice forthcoming