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KING COUNTY
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CASE #: 26-2-18067-9 SEA

SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY

CAMERON CROW, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

FACTOR75, LLC,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY DEMAND

CLASS ACTION COMPLAINT
Case No.

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I. Introduction.

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

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

3. Defendant Factor75, LLC, ("Factor") markets and sells prepared meals ("Factor Products" or "Products") to consumers. The Products are sold online through Defendant's website, www.factor75.com.

4. Defendant sends commercial emails to Washington residents on its mailing list. These emails frequently contain subject lines that advertise time-limited promotions or discounts on Factor Products. For example, "Limited Time Only: \$135 OFF us Memorial Day Sale," "Ending Soon: Surprise Sale + \$135 OFF," and "Final Hours for \$135 OFF." But the sales do not really end when the subject lines say they will. And the true discounts are not what the emails claim.

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

6. Plaintiff is a Washington resident who received Factor's deceptive emails. Plaintiff brings this case for himself and other Washington consumers who received Defendant's deceptive emails.

II. Parties.

7. Plaintiff Cameron Crow is domiciled in Yakima, Washington.

8. The proposed Class includes citizens of Washington.

9. Defendant Factor75, LLC, is a Delaware LLC with its principal place of business in Illinois.

III. Jurisdiction and Venue.

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

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

12. Venue is proper in King County Superior Court because Factor resides here for purposes of venue. RCW 4.12.025. At all relevant times, Factor has transacted business in King County, including by selling Products to customers living in King County and by sending electronic mail messages to residents of King County.

IV. Facts.

A. Defendant sends emails with false and misleading subject lines advertising supposed discounts on Factor Products.

13. Factor markets and sells prepared meals online. Factor delivers its Products in boxes shipped weekly to consumers containing prepared meals for that week.

14. Factor regularly advertises Factor Products through marketing emails sent to recipients on its mailing list (including Washington consumers). In those email advertisements, Defendant advertises purported discounts on those Products.

15. Factor’s marketing emails have subject lines that are false and misleading in multiple ways.

16. Deceptive time limits. Factor’s email subject lines often convey that the advertised discounts are limited duration and/or will end imminently (e.g. “Final Hours,” “ending soon,” or “Last

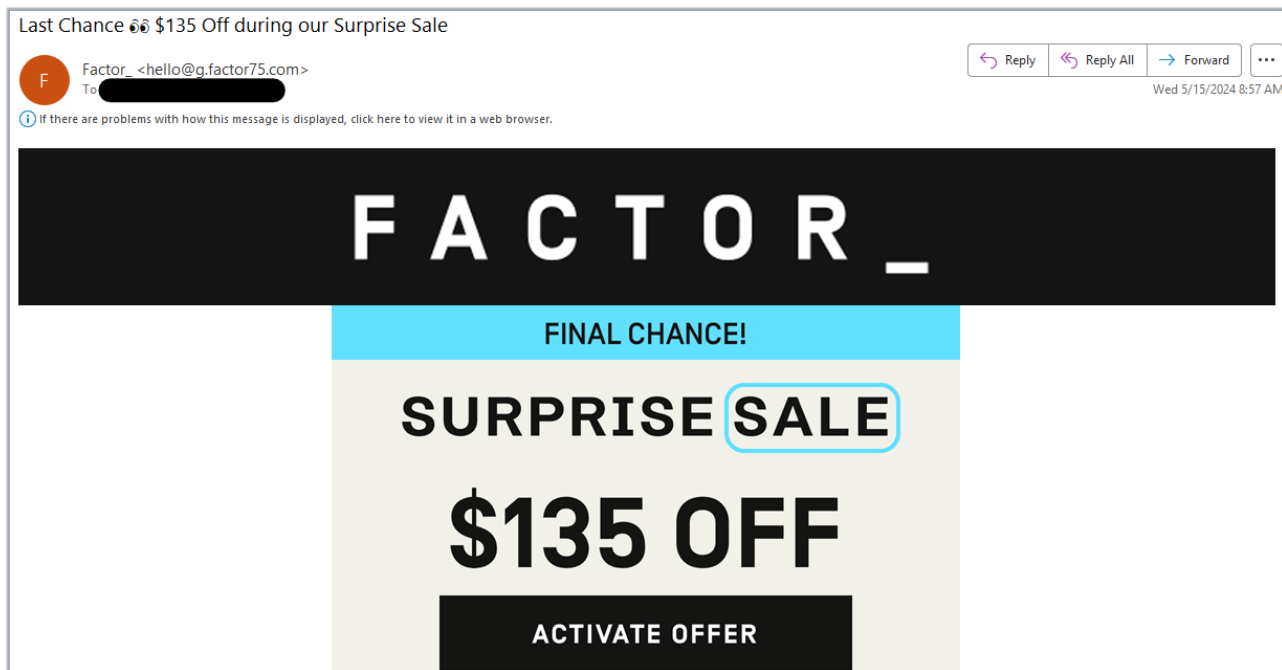
Chance”). To reasonable consumers, these statements convey that the discounts are only available for a short period, and that if they don’t buy during that short period, they will no longer have the opportunity to get the discount and will have to pay the full non-discounted price to obtain the same Products later. This drives sales by motivating consumers to buy before the sale ends. But the opportunity to get a discount does not actually end when the email subject lines say it will end. Instead, Factor regularly extends the sales after the false deadline has expired, or—within days—replaces the sale that ends with a materially similar (or even better) sale. This allows Factor to profit from a false sense of urgency.

17. Deceptive discounts. Factor’s email subject lines also frequently specify a dollar or percentage off discount (e.g., “\$135 Off”) that consumers can obtain by buying during the supposedly time-limited sale. To reasonable consumers, these statements convey that, by buying during the sale, they will obtain the advertised percentage or dollar amount off Defendant’s regular prices for its initial subscriptions. But in truth, Defendant offers substantial discounts so frequently that the list prices Defendant advertises are not the prices at which initial subscriptions usually retail. Instead, due to Defendant’s frequent discounting, few (if any) customers actually pay full price for an initial subscription. This allows Defendant to profit from a false sense that consumers are getting a special deal.

Deceptive Time Limits

18. Factor regularly sends commercial emails to its customers advertising supposedly limited-duration sales. The email subject lines state that the sales are “Limited Time Only,” “Ending Soon,” or that it is the “Last Chance” to obtain the advertised discounts, and so forth. Factor’s subject lines also state that the sales are tied to certain holidays (e.g., “Memorial Day Sale,” “Fall Flash Sale,” or “Labor Day Sale”). To reasonable consumers, these subject lines convey that if the consumer does not buy during the specified period, the opportunity to obtain a discount will disappear and the consumer will have to pay Defendant’s list price.

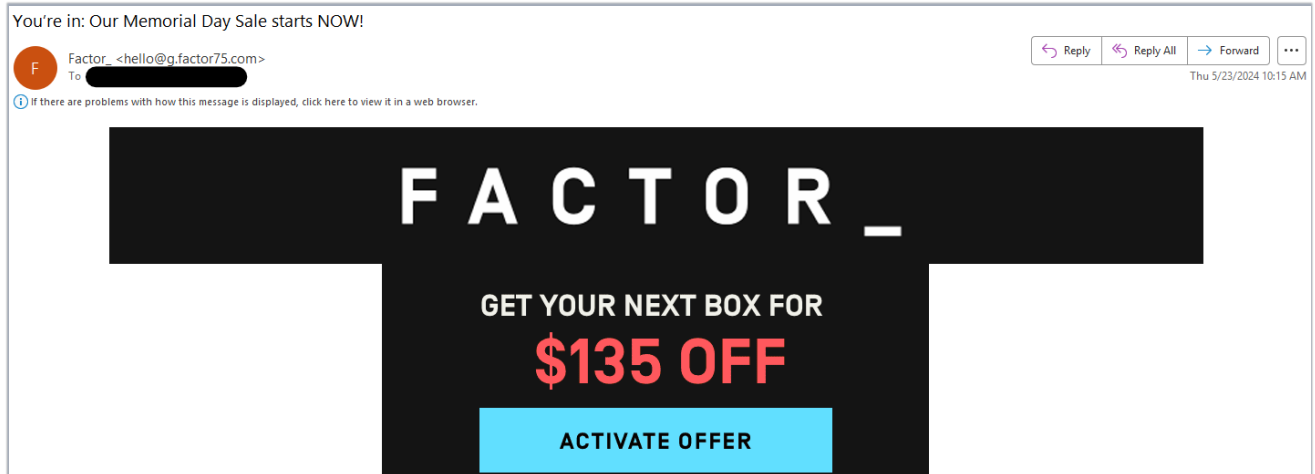
19. For example, on May 15, 2024, Defendant sent a commercial email to Plaintiff and other Washington residents with the subject line “Last Chance ☺ \$135 Off during our Surprise Sale.”



20. Reasonable recipients of this email would believe based on the subject line that Defendant is offering \$135 off as a time-limited promotion (e.g. that this is the “Last Chance” to get the promotion). Reasonable consumers would believe that if they wait, the sale will be over and the Products’ prices will return to their regular prices.

21. But Defendant’s sale was not time-limited as advertised. In other words, this was not the “Last Chance” for the sale.

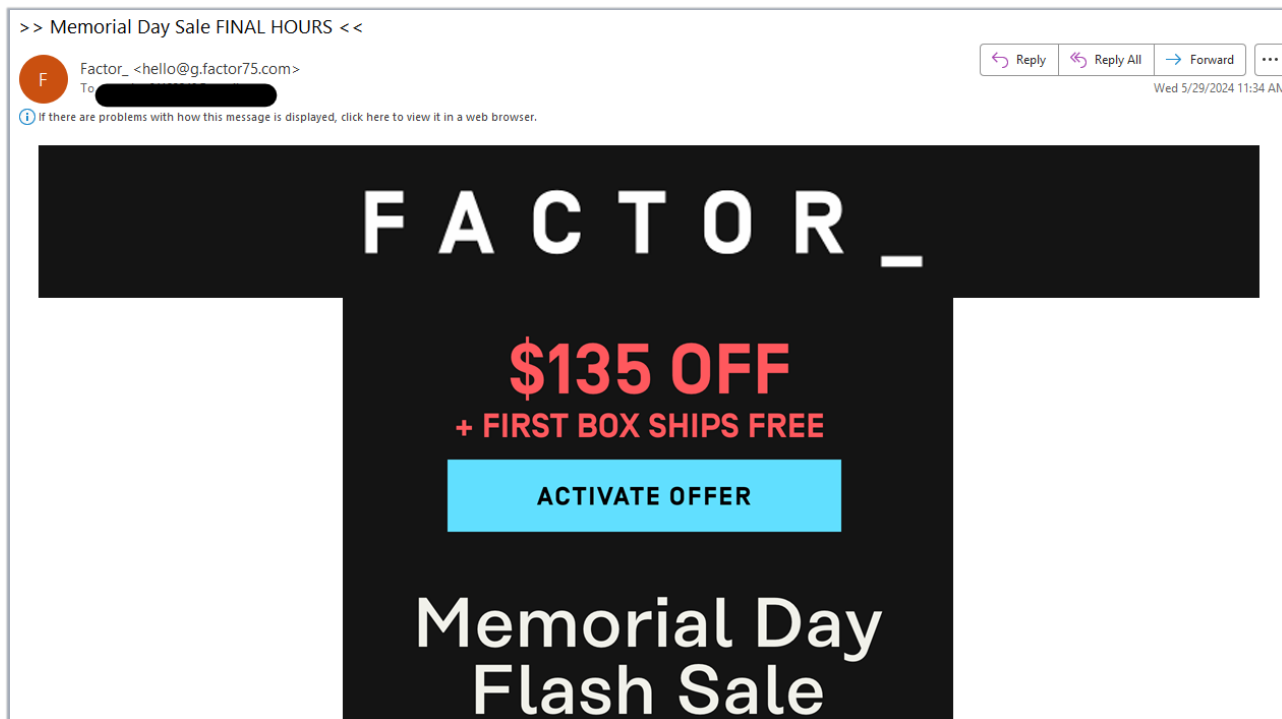
22. For example, on May 23, 2024, just eight days later, Defendant sent a commercial email to Plaintiff and other Washington residents with the subject line “You’re in: Our Memorial Day Sale starts NOW!”



23. This email was advertising the same sale that supposedly was on its “Last Chance” 8 days before on May 15, 2024.

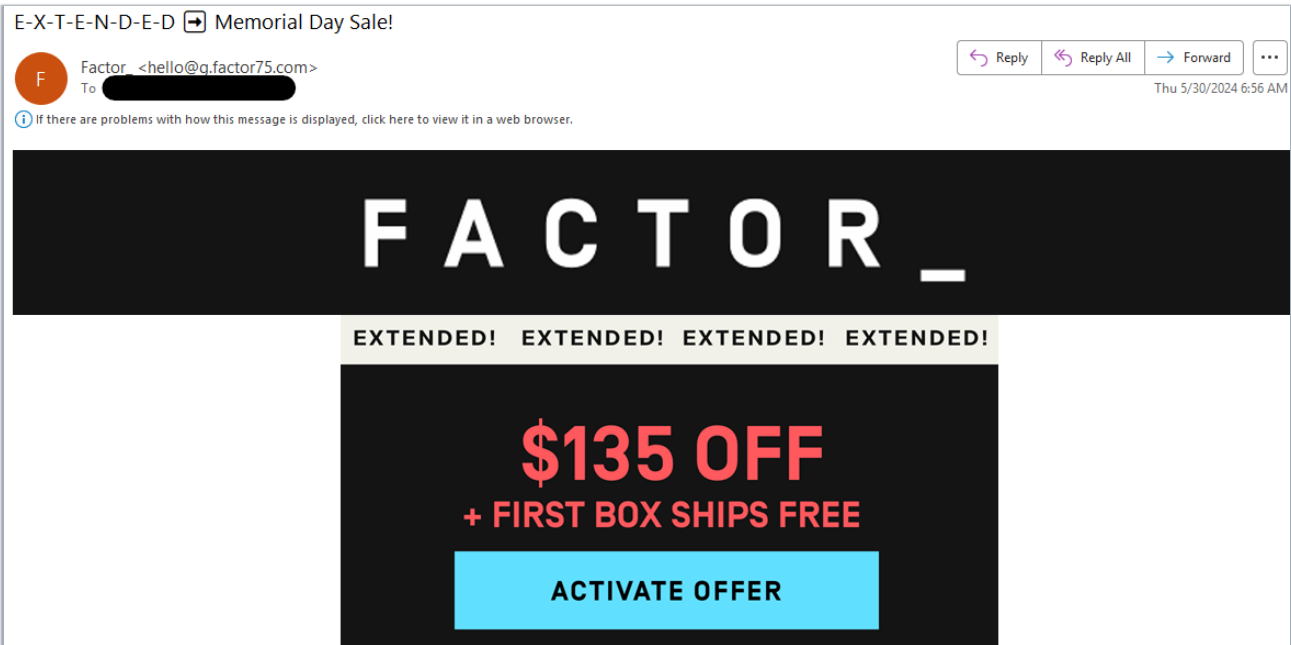
24. Reasonable recipients of this May 23, 2024, email would believe based on the subject line that Defendant is offering \$135 off as a time-limited promotion (e.g. that the promotion would only last during the Memorial Day period). Reasonable consumers would believe that if they wait, the sale will be over and the Products’ prices will return to their regular prices.

25. Defendant then sent additional commercial emails to Plaintiff and other Washington residents with subject lines advertising \$135 off as a limited time sale tied to Memorial Day, including a May 29, 2024 email with the subject line “>> Memorial Day Sale FINAL HOURS <<.”

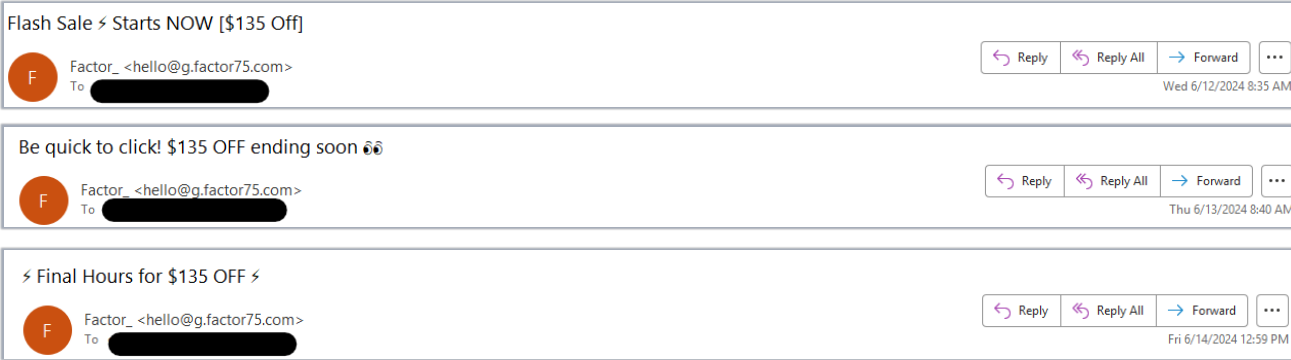


26. Reasonable recipients of this email would believe based on the subject line that Defendant is offering \$135 off as a time-limited promotion (e.g, that the promotion would only last a few more “HOURS”). Reasonable consumers would believe that if they wait, the sale will be over and the Products’ prices will return to their regular prices.

27. But the next day, May 30, 2024, Defendant sent a commercial email to Plaintiff and other Washington residents offering the same \$135 off sale with the subject line “E-X-T-E-N-D-E-D  Memorial Day Sale!”



28. And within two weeks, Defendant again sent commercial emails to Plaintiff and other Washington residents with subject lines advertising a purportedly time-limited sale of \$135 off. For example:



29. But the \$135 off deal did not end on May 15, 2024, after Memorial Day 2024, on June 14, 2024, or any of the other times that Factor's email subject lines said it would. Factor offered the same deal—\$135 off—regularly throughout the rest of 2024, including in commercial email subject lines sent to Plaintiff and other Washington residents that advertised the deal as time-limited. The following table shows the date and subject line of some of those emails.

Date	Email Subject Line	Advertised Sale
7/8/2024	Offer UPGRADE: \$135 Off [July 4th Sale]	\$135 Off
7/9/2024	July 4th savings inside → → →	\$135 Off
7/10/2024	Last Chance: \$135 OFF July 4th Sale	\$135 Off

Date	Email Subject Line	Advertised Sale
7/23/2024	Last Chance: \$135 Off Ends Tonight	\$135 Off
8/11/2024	Summer S-A-L-E 🌀 \$135 Off	\$135 Off
9/5/2024	Labor Day Sale [Limited Time Only]	\$135 Off
9/6/2024	Savings Ending Soon: \$135 Off	\$135 Off
9/18/2024	Surprise! Limited time only sale	\$135 Off
9/29/2024	🌀 Get \$135 Off during our Fall Flash Sale 🌀	\$135 Off
11/21/2024	Exclusive pre-sale access starts NOW	\$135 Off
11/22/2024	Why wait? Black Friday early access inside	\$135 Off
11/23/2024	Why wait? Black Friday early access inside	\$135 Off
11/28/2024	Happy Thanksgiving from Factor 📺	\$135 Off
12/31/2024	\$135 OFF New Year Sale starts NOW	\$135 Off

30. The subject lines of the emails above—and of other commercial emails Defendant sent to Washington consumers stating that Defendant’s \$135 off sales end tonight, are limited time, and so forth—are false and misleading. These subject lines convey that unless consumers buy during the limited, advertised window, the opportunity to receive a discount will disappear and the consumer will have to pay full price for Defendant’s Products. In truth, the opportunity to receive a discount would remain available indefinitely: Defendant’s \$135 off sales are regularly offered throughout 2024 entitling consumers to receive the same discounts to the ones that supposedly “end[] soon” or are available for a “Limited Time Only.” And as the table on the page below shows, in every commercial, sale-advertisement email Defendant sent to Plaintiff in 2024 where Defendant did not offer a \$135 off sale, Defendant offered a materially similar sale. In other words, Defendant offered a materially similar sale in every single sale-advertisement email it sent to Plaintiff in 2024, despite often advertising these sales as time-limited in the email subject lines. This pattern is no accident: Factor puts in the misleading time limits in its email subject lines, knowing that the sale will not really end when the email says or will quickly be replaced by a materially similar one, because these misleading time limits create a sense of urgency and drive sales.

Deceptive Discounts

31. Defendant’s email subject lines are deceptive in a second way: the amount of savings they advertise is false and misleading. As illustrated by the table below, Defendant sends emails that advertise percent or dollar off savings in the subject lines. Defendant’s subject lines lead reasonable

consumers to believe that, if they buy during the sale, they will get a discount off Defendant's regular prices for the initial subscription period (the prices most consumers have to pay) in the amount or percentage specified.

32. In truth, however, Defendant always offers similar discounts for initial subscriptions in its commercial emails. As the following table shows, Plaintiff has 127 commercial emails he received from Defendant from January of 2024 until January of 2025. All 127 emails offered a materially similar sale.

Date	Email Subject Line	Advertised Sale
1/18/2024	50% Off America's #1 Ready-To-Eat Meal Kit	50% off your 1st box and 20% off your next 4 boxes ¹
1/31/2024	Make eating smart, easy w/ \$130 OFF	\$130 Off
2/1/2024	It's our birthday! Let's celebrate 🎂 \$135 OFF	\$135 Off
2/2/2024	Stop scrolling >>> start saving 🛒	\$135 Off
2/3/2024	\$135 OFF Our 11th Birthday Sale 🎂	\$135 Off
2/4/2024	It's our birthday! (and we're gifting \$135 OFF)	\$135 Off
2/5/2024	11th Birthday Sale 🎂 Get \$135 OFF	\$135 Off
2/6/2024	FINAL HOURS 🕒 11th Birthday Sale	\$135 Off
2/8/2024	Extended ➡ One more day for \$135 OFF!	\$135 Off
2/9/2024	Free Wellness Shots for Life + First box ships FREE 📦	\$130 Off
2/10/2024	\$130 OFF ready-to-eat meals delivered to your doorstep	\$130 Off
2/11/2024	Get \$130 OFF fast, fit meals [first box ships free!]	\$130 Off
2/12/2024	You've got options: Keto, Calorie-Smart, Veggie, Protein Plus	\$130 Off
2/13/2024	Limited-time offer: \$130 off & free wellness shots for life	\$130 Off
2/14/2024	\$130 OFF chef-prepared meals [first box ships free!]	\$130 Off
2/15/2024	EARLY ACCESS: Presidents' Day Sale starts now	\$135 Off
2/16/2024	\$135 OFF America's #1 Ready-to-Eat Meal Delivery Service	\$135 Off
2/17/2024	Long weekends call for quick meals	\$135 Off
2/18/2024	\$135 OFF Presidents' Day Flash Sale ⚡	\$135 Off
2/19/2024	Save big this Presidents' Day w/ \$135 OFF	\$135 Off
2/20/2024	No debate needed - you won't want to miss this sale	\$135 Off

¹ Each Factor customer gets one box delivered each week, with the amount of prepared meals in the box varying based on the chosen plan. The weekly price for each box varies from around \$90 to \$230 (plus shipping) with the most popular plan being \$92.94. So an offer of 50% off a first box and 20% off the next four boxes is substantially similar to an offer of \$130 or \$135 off. (Since 50% off of \$92.94 is \$46.47 and 20% off \$92.47 is \$18.59, this percentage off deal offers customers at least \$120 off (\$46.47 off the first box, and \$18.59 off the next four boxes)).

Date	Email Subject Line	Advertised Sale
2/21/2024	\$135 OFF Presidents' Day Flash Sale [LAST CALL]	\$135 Off
2/22/2024	+1 [Presidents' Day Sale EXTENDED]	\$135 Off
2/24/2024	Fuel up with fan favorites 🍔	\$130 Off
2/25/2024	Get \$130 OFF our most-loved meals	\$130 Off
2/27/2024	Meals to match your lifestyle ➡ ➡ ➡	\$130 Off
2/29/2024	Ready to try something new to eat?	\$130 Off
3/9/2024	\$130 OFF meals that support your wellness goals 🧘	\$130 Off
3/12/2024	Ready-to-eat meals + \$130 OFF	\$130 Off
3/15/2024	Discover your next favorite nutritious, ready-to-eat meal	\$130 Off
3/18/2024	Your new favorite chef-crafted meal is waiting ➡	\$130 Off
3/19/2024	\$130 OFF No prep, no mess meals	\$130 Off
3/21/2024	SURPRISE [Sale] 🎉 \$135 OFF + Free Wellness Shots for Life	\$135 Off
3/22/2024	Did you see this deal 🍷	\$135 Off
3/23/2024	Surprise Sale Served: \$135 OFF	\$135 Off
3/24/2024	Did you hear?! SURPRISE SALE	\$135 Off
3/26/2024	Ending Soon: Surprise Sale + \$135 OFF	\$135 Off
3/27/2024	Final hours to save 🕒 \$135 OFF	\$135 Off
3/29/2024	No prep, no mess meals ready in 2 minutes	\$130 Off
3/30/2024	Crafted by chefs, approved by dietitians [just for you]	\$130 Off
3/31/2024	\$130 OFF our most-loved meals	\$130 Off
4/3/2024	Enjoy premium ready-to-eat meals delivered to your doorstep	\$130 Off
4/5/2024	\$135 OFF Spring Flash Sale starts NOW!	\$135 Off
4/7/2024	Spring Flash Sale ⚡ \$135 OFF	\$135 Off
4/8/2024	Don't miss out on this special spring offer	\$135 Off
4/9/2024	Spring Flash Sale [Final Hours 🕒]	\$135 Off
4/11/2024	👋 We're saying goodbye to free wellness shots for life	\$130 Off
4/12/2024	\$130 OFF Ending soon ➡ free wellness shots for life	\$130 Off
4/13/2024	Don't miss this lifetime deal!	\$130 Off
4/14/2024	Last day to claim your FREE wellness shots for life	\$130 Off
4/15/2024	Breakfast, lunch, dinner [and everything in between]	\$130 Off
5/9/2024	Fuel up for less w/ \$130 OFF	\$130 Off
5/11/2024	Fresh, never frozen meals ready in 2 minutes	\$130 Off
5/12/2024	\$130 OFF Calorie-smart, flavor-focused meals	\$130 Off
5/13/2024	SURPRISE Sale! [Limited Time Only]	\$135 Off
5/14/2024	Get \$135 OFF during this SALE!	\$135 Off
5/15/2024	Last Chance 🍷 \$135 Off during our Surprise Sale	\$135 Off
5/17/2024	Keto made easy ✅	\$130 Off
5/19/2024	\$130 OFF Fresh, ready-to-eat meals	\$130 Off
5/21/2024	The "what's for dinner?" solution	\$130 Off
5/22/2024	\$130 OFF deliciously convenient meals	\$130 Off
5/23/2024	You're in: Our Memorial Day Sale starts NOW!	\$135 Off
5/24/2024	➡ ➡ ➡ Stop scrolling... start saving!	\$135 Off

Date	Email Subject Line	Advertised Sale
5/25/2025	🕒 SALE 🕒 \$135 OFF 🕒 SALE 🕒	\$135 Off
5/26/2024	Limited Time Only: \$135 OFF us Memorial Day Sale	\$135 Off
5/27/2024	Offer UPGRADE [\$135 Off + Free Shipping]	\$135 Off
5/28/2024	\$135 OFF + Free Shipping Memorial Day Sale	\$135 Off
5/29/2024	>> Memorial Day Sale FINAL HOURS <<	\$135 Off
5/30/2024	E-X-T-E-N-D-E-D ➡ Memorial Day Sale!	\$135 Off
6/1/2024	Perfectly portioned and ready-to-eat meals	\$130 Off
6/5/2024	Eat clean around the clock w/ \$130 OFF	\$130 Off
6/7/2024	Get fresh (never frozen) meals delivered to your doorstep	\$130 Off
6/9/2024	Ready-to-eat Keto meals w/ 15g of net carbs or LESS	\$130 Off
6/12/2024	Flash Sale ⚡ Starts NOW [\$135 Off]	\$135 Off
6/13/2024	Be quick to click! \$135 OFF ending soon ⏰	\$135 Off
6/14/2024	⚡ Final Hours for \$135 OFF ⚡	\$135 Off
6/17/2024	Perfectly portioned & ready-to-eat Calorie Smart meals	\$130 Off
6/20/2024	☑ Mark dinner as done with \$130 OFF	\$130 Off
6/21/2024	Get \$130 OFF dietitian-approved meals	\$130 Off
6/23/2024	Wellness made easy w/ \$130 OFF	\$130 Off
6/26/2024	Fresh (never frozen) meals for \$130 OFF	\$130 Off
6/28/2024	Perfectly portioned, ready-to-eat meals ➡	\$130 Off
6/30/2024	Chef-crafted 🍷 dietitian-approved [and \$130 OFF]	\$130 Off
7/2/2024	\$130 OFF Save Now + Savor Later!	\$130 Off
7/3/2024	Skip the grocery store next week ➡ ➡	\$130 Off
7/4/2024	Summer savings are waiting [get \$130 OFF]	\$130 Off
7/5/2024	Summertime savings on Factor's ready-made meals	\$130 Off
7/6/2024	\$130 OFF meals to fuel your fun	\$130 Off
7/7/2024	Thrive all summer long w/ \$130 OFF ready-made meals	\$130 Off
7/8/2024	Offer UPGRADE: \$135 Off [July 4th Sale]	\$135 Off
7/9/2024	July 4th savings inside ➡ ➡ ➡	\$135 Off
7/10/2024	Last Chance: \$135 OFF July 4th Sale	\$135 Off
7/23/2024	Last Chance: \$135 Off Ends Tonight	\$135 Off
7/26/2024	Fuel your day with fresh, never-frozen meals	\$130 Off
7/29/2024	\$130 OFF Breakfast, lunch & dinner ✓	\$130 Off
7/30/2024	Eat well, easily w/ \$130 OFF [plus, first box ships free]	\$130 Off
8/11/2024	Summer S-A-L-E 🕒 \$135 Off	\$135 Off
8/18/2024	\$130 OFF + Free Wellness Shots for 3 Months	\$130 Off
8/23/2024	No prep, no mess meals ready in just 2 minutes!	\$130 Off
8/27/2024	Get Free Wellness Shots for 3 Months [Plus, \$130 Off]	\$130 Off
9/5/2024	Labor Day Sale [Limited Time Only]	\$135 Off
9/6/2024	Savings Ending Soon: \$135 Off	\$135 Off
9/12/2024	Get the nutrition you need with \$130 off dietitian-approved meals	\$130 Off
9/18/2024	Surprise! Limited time only sale	\$135 Off
9/20/2024	Get \$130 Off ready-made meals that make eating well, easy	\$130 Off

Date	Email Subject Line	Advertised Sale
9/29/2024	🍁 Get \$135 Off during our Fall Flash Sale 🍁	\$135 Off
10/7/2024	No matter your schedule, Factor can fuel you all day long	\$130 Off
10/10/2024	Get \$130 off ready-made calorie smart, protein plus & keto meals	\$130 Off
10/16/2024	\$130 off ➡ Keto meals ready-to-eat in just 2 minutes	\$130 Off
10/20/2024	Get \$130 off fresh ready-to-eat meals	\$130 Off
10/28/2024	Enjoy convenient, no prep meals ready in 2 minutes	\$130 Off
10/30/2024	Get \$130 off America's best meal delivery service	\$130 Off
11/6/2024	So many options, from Keto to Calorie Smart 🍴	\$130 Off
11/9/2024	Get \$130 Off & ditch the takeout!	\$130 Off
11/21/2024	Exclusive pre-sale access starts NOW	\$135 Off
11/22/2024	Why wait? Black Friday early access inside	\$135 Off
11/23/2024	Why wait? Black Friday early access inside	\$135 Off
11/28/2024	Happy Thanksgiving from Factor 🦃	\$135 Off
12/4/2024	🔓 Just Unlocked: \$140 OFF + First Box Ships Free	\$140 Off
12/7/2024	🔔 Did you hear? \$140 OFF during Cyber Week	\$140 Off
12/13/2024	Maximum flavor, minimum effort ready-to-eat meals	Up to \$130 Off
12/17/2024	Get \$130 Off 🍴 Fresh, never frozen meals	Up to \$130 Off
12/23/2024	Meals for every lifestyle: Keto, Calorie Smart, Protein Plus and more	50% off your 1st box and 20% off your next 4 boxes
12/25/2024	Ditch the meal prepping and planning	50% off your 1st box and 20% off your next 4 boxes
12/31/2024	\$135 OFF New Year Sale starts NOW	\$135 Off
1/7/2025	Offer Upgrade: \$140 OFF + First Box Ships Free	\$140 Off
1/10/2025	Get fresh, never frozen 2-minute meals	Up to \$130 Off

33. These perpetual sales are also advertised on Factor's website. Like in its commercial emails, Factor's website constantly advertises discounts on initial subscriptions only to have the sale be extended or replaced by the same or a materially similar sale. To confirm the perpetual nature of Defendant's sales, Plaintiff's counsel investigated Defendant's advertising practices using the Internet Archive's Wayback Machine (available at www.archive.org).² The investigation showed that Defendant's website offered a materially similar sale every month in 2024 and 2025 just like how Defendant's emails always offered materially similar sales.

² The Internet Archive, available at www.archive.org, is a library that archives web pages. <https://archive.org/about/>.

Website Date ³	Advertised Sale
1/4/24	50% off your 1st box and 2 free wellness shot for life per box
2/15/24	50% off your 1st box and 2 free wellness shot for life per box
3/8/24	50% off your 1st box and 2 free wellness shot for life per box
4/25/24	50% off your 1st box + 20% off your next month
5/11/24	50% off your 1st box + 20% off your next month
6/18/24	50% off your 1st box + 20% off your next month
7/13/24	50% off your 1st box + 20% off your next month
8/24/24	50% off your 1st box + free wellness shots for life
9/18/24	50% off your 1st box + free wellness shots for life
10/6/24	50% off your 1st box + free wellness shots for life
11/15/24	50% off your 1st box + free wellness shots for life
12/14/24	50% off your 1st box + free shipping on your first box
1/7/25	50% off your 1st box + free shipping on your first box
2/12/25	50% off your 1st box + free shipping on your first box
3/19/25	50% off your 1st box + free shipping on your first box
4/8/25	50% off + free shipping
5/16/25	50% off + free shipping
6/15/25	50% off + free shipping
7/9/25	50% off your first box
8/16/25	50% off your first box + free breakfast for 1 year
9/4/25	50% off your first box + free breakfast for 1 year
10/1/25	50% off your first box + free breakfast for 1 year
11/8/25	50% off your first box + free breakfast for 1 year
12/23/25	50% off your first box + free breakfast for 1 year

34. Because Defendant's sales are constant, most consumers are in fact paying supposedly discounted prices for the initial subscription period, not the advertised list prices to which the discounts are applied. This means that when consumers buy during the advertised sales, they do not actually get the advertised discounts off the advertised regular prices of the initial subscription, because most consumers are not paying the advertised regular prices. Instead, they get a much smaller discount off the actual regular price (the price that most consumers pay) of the initial subscription, or no real discount at all.

³ Date refers to the date of the archive available on the Wayback Machine.

35. So Defendant's email subject lines promising a specified percentage or dollar discount off its regular prices of the initial subscriptions are false and misleading for this reason, too.

36. Defendant is constantly sending commercial emails to recipients on its mailing list. Plaintiff received multiple emails from Defendant weekly, many of which included false or misleading subject lines regarding Defendant's promotions. Based on the emails Defendant sent to Plaintiff, Defendant has sent at least thousands of emails to Washington recipients, with similar false or misleading subject lines.

37. Defendant knows, or has reason to know, that it sends its emails containing false and misleading subject lines to Washington residents, including Plaintiff. First, the sheer volume of email marketing that Defendant engages in puts it on notice that Washington residents would receive its emails. Second, Defendant knows where recipients of its emails reside because (i) Defendant has physical addresses associated with recipients' accounts or orders; (ii) Defendant has access to data regarding the recipient including the recipient's state of residence, such as IP address tracking or other geolocation data; (iii) Defendant utilizes online tracking technologies to identify and locate consumers who click on links contained in its marketing emails or visit its website; (iv) Defendant advertises services specifically for Washington residents⁴; (v) according to its privacy policy, Defendant automatically collects device data from users of its website and online services, including computer or mobile device operating system type and version number, manufacturer and model, browser type, screen resolution, IP address, the website the user visited before browsing its website, and general location information such as city, state, or geographic area; (vi) according to its privacy policy, Defendant automatically collects precise geolocation data of users of its mobile application; or (vii) information regarding the residence of the recipient was available to Defendant upon request from the registrant of the internet domain name contained in the recipient's electronic mail address. So Factor knows that some of its customers and recipients of its mailing list are Washington residents.

38. Defendant also knows what sales it is offering and what sales it plans to offer in the near future. It knows that, in truth, the opportunity to receive substantial discounts will not end on the

⁴ <https://www.factor75.com/eat/seattle-meal-delivery>.

1 advertised end date of its sales; and that it is not really consumers' last or final chance to get the
 2 advertised sales. Defendant also knows how frequently it runs discounts and thus knows that consumers
 3 are not really getting the advertised discount off Defendant's purported regular prices for its initial
 4 subscriptions.

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

6 39. Defendant's false and misleading emails result in actual and substantial injury to Plaintiff.
 7 It violates Plaintiff's statutory right not to receive commercial emails that contain false or misleading
 8 subject lines, which the legislature has deemed to be a "matter[] vitally affecting the public interest."
 9 RCW 19.190.030(3). Violation of a right that vitally affects the public interest results in actual and
 10 substantial harm to Plaintiff and putative Class members.

11 40. Defendant's emails containing false and misleading information also clog up inboxes,
 12 waste limited data space, and violate Plaintiff's and putative Class members' statutory right to be free
 13 from deceptive commercial emails.

14 41. Factor's deceptive email subject lines are also material to reasonable consumers.

15 42. Consumers care about receiving discounts. Receiving a good deal—a discount—is
 16 important to consumers, and material to a consumer's purchasing decisions about the Products.

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

20 44. Research confirms that discounts are important to consumers. "Nearly two-thirds of
 21 consumers surveyed admitted that a promotion or a coupon often closes the deal, if they are wavering
 22 or are undecided on making a purchase."⁵ And, "two-thirds of consumers have made a purchase they
 23 weren't originally planning to make solely based on finding a coupon or discount," while "80% [of
 24
 25
 26

27 ⁵ Invesp, How Discounts Affect Online Consumer Buying Behavior
 (<https://www.invespcro.com/blog/how-discounts-affect-online-consumer-buying-behavior/>).

consumers] said they feel encouraged to make a first-time purchase with a brand that is new to them if they found an offer or discount.”⁶

45. Similarly, when consumers believe that an offer is expiring soon, the sense of urgency makes them more likely to buy a product.⁷

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

47. Similarly, when a reasonable consumer sees a substantial discount (e.g. “\$135 off”), they believe they are getting a discount off Defendant’s regular prices for initial subscriptions. They do not expect that the supposedly discounted price is really the regular price that most people pay for such subscriptions. This misleading sense of a special deal drives sales and profits.

48. This is why Defendant sends these emails. Defendant intends to deceive consumers into believing that its discounts are limited time and into believing that consumers are getting a substantial discount off the regular price of initial subscriptions. Defendant’s email subject lines make Washington consumers more likely to open the emails, read the emails, buy the Products quickly, and be willing to pay more for the Products. This increases demand, drives sales, allows Defendant to sell more Products than it otherwise could, and allows Defendant to charge more than it otherwise could.

V. Class Action Allegations.

49. Plaintiff brings the asserted claims on behalf of the proposed Class of:

- all Washington residents who received promotional emails from Factor with subject lines

⁶ RetailMeNot Survey: Deals and Promotional Offers Drive Incremental Purchases Online, Especially Among Millennial Buyers (<https://www.prnewswire.com/news-releases/retailmenot-survey-deals-and-promotional-offers-drive-incremental-purchases-online-especially-among-millennial-buyers-300635775.html>).

⁷ CXL, Creating Urgency, (<https://cxl.com/blog/creating-urgency/>) (last accessed November 16, 2025) (increasing urgency by advertising limited time nature of promotion increased conversion rates nearly 300%); Adestra, Dynamic email content leads to 400% increase in conversions for Black Friday email (<https://uplandsoftware.com/adestra/resources/success-story/dynamic-email-content-leads-to-400-increase-in-conversions-for-black-friday-email/>) (400% higher conversation rate for ad that increased urgency via countdown timer).

advertising sales or discounts on Factor Products, during the applicable statute of limitations.

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

Numerosity

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

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

Predominance of Common Questions

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

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

Typicality & Adequacy

54. Like members of the proposed Class, Plaintiff received emails from Defendant that contained false or misleading subject lines regarding Defendant's discounts.

55. There are no conflicts of interest between Plaintiff and the Class.

1 ***Superiority***

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

6 **VI. Claims.**

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

8 **(By Plaintiff and the Class)**

9 57. Plaintiff incorporates the facts alleged above.

10 58. Plaintiff brings this cause of action on behalf of himself and members of the Class.

11 59. Factor is a "person" under CEMA. RCW 19.190.010(11).

12 60. As alleged in detail above, Factor violated CEMA by initiating the transmission of, or
13 assisting in the transmission of, commercial electronic mail messages that contained false or misleading
14 information in the subject line to Plaintiff's and Class members' electronic mail addresses.

15 61. Defendant sent these emails to Plaintiff and Class members for the purpose of
16 promoting Factor's Products for sale.

17 62. Defendant knew or had reason to know that it transmitted such emails to email
18 addresses held by Washington residents, including Plaintiff.

19 63. Defendant's acts and omissions violated RCW 19.190.020(1)(b).

20 64. Defendant's acts and omissions injured Plaintiff and Class members.

21 65. The balance of equities favors the entry of permanent injunctive relief against
22 Defendant. Plaintiff, the members of the Class, and the general public will be irreparably harmed absent
23 the entry of permanent injunctive relief against Defendant. A permanent injunction against Defendant is
24 in the public interest. Defendant's unlawful behavior is ongoing as of the date of the filing of this
25 pleading, so without the entry of a permanent injunction, Defendant's unlawful behavior will not cease
26 and, in the unlikely event that it voluntarily ceases, is likely to reoccur.

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

Count 2: Violations of the Washington Consumer Protection Act

(By Plaintiff and the Class)

67. Plaintiff incorporates the facts alleged above.

68. Plaintiff brings this cause of action on behalf of himself and members of the Class.

69. Plaintiff and Class members are “persons” within the meaning of the CPA. RCW 19.86.010(1).

70. As alleged in detail above, Defendant violated CEMA by initiating the transmission of, or assisting in transmission of, commercial electronic mail messages to Plaintiff and Class members that contained false or misleading information in the subject line.

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

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

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

Unfair Acts or Practices

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

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

Deceptive Acts or Practices

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

77. Defendant's representations were likely to deceive Plaintiff and other reasonable recipients. Defendant knew, or should have known through the exercise of reasonable care, that these statements were inaccurate and misleading.

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

79. Defendant's acts and omissions caused injury to Plaintiff and Class members. Violations of CEMA establish the injury and causation elements of a CPA claim as a matter of law.

80. Under the CPA, Plaintiff and Class members are entitled to seek, and do seek, the greater of actual damages and statutory damages of \$500 per email that violates CEMA.

81. Plaintiff and Class members are also entitled to, and seek, injunctive relief prohibiting Defendant's further violations of the CPA.

VII. Jury Demand.

82. Plaintiff demands the right to a jury trial on all claims so triable.

VIII. Prayer for Relief.

83. Plaintiff seeks the following relief for himself and the proposed Class:

- An order certifying the asserted claims, or issues raised, as a class action;
- A judgment in favor of Plaintiff and the proposed Class;
- The greater of actual or statutory damages;
- Pre- and post-judgment interest;
- An injunction prohibiting Defendant's deceptive conduct, as allowed by law;
- Reasonable attorneys' fees and costs, as allowed by law;
- Any additional relief that the Court deems reasonable and just.

1
2 Dated: June 3, 2026

Respectfully submitted,

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