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KING COUNTY
SUPERIOR COURT CLERK
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CASE #: 26-2-18671-5 SEA

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

GREG AKSELROD, individually and on behalf of all others and similarly situated, Plaintiff, v. HARVARD BUSINESS SCHOOL PUBLISHING CORPORATION *doing business as:* HARVARD BUSINESS REVIEW., Defendant.	Case No.: ____________________ SEA CLASS ACTION COMPLAINT JURY TRIAL DEMANDED

I. INTRODUCTION

1. This is a putative class action under Washington law brought to address deceptive and unlawful emails that 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. Defendant Harvard Business School Publishing Corporation ("Defendant" or "Harvard") is a provider of education management and teaching materials (the "Products"). The Products are sold by Defendant through its website https://hbr.org/ throughout the United States.

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3. Defendant markets its Products by email to Washington residents. The subject lines in these emails often promote "sales" and "discounts" on the Products. However, many subject lines are false, misleading, and unlawful because they promote discounts under false time restrictions.

4. Getting an advertised bargain is important to consumers. Consumers are more likely to purchase an item if it is advertised as a good deal.

5. Further, if a sale is advertised as ending soon, consumers are even more likely to buy now, rather than wait, comparison shop, and/or buy something else.

6. There is nothing wrong with a legitimate sale. But a fictitious sale—that is, one with made-up regular/former prices or made-up expirations—is deceptive and illegal. Moreover, advertising false and misleading discounts in the subject line of a promotional email violates CEMA and the Washington Consumer Protection Act ("CPA"). *Brown v. Old Navy LLC*, 567 P.3d 38 (Wash. 2025).

7. Defendant sent emails with misleading subject lines regarding "sales" that would supposedly end on a specific day when in truth the sales were extended or not limited to the extent represented.

8. For example, Defendant's emails often contained subject lines describing sales that are time limited and end soon—e.g., "Today only, take 40% off your order of $100 or more." These subject lines lead reasonable consumers to believe that if they don't buy before the sale ends, they won't be able to get the advertised discount. In truth, the sale was either extended, reinstituted, or replaced shortly thereafter by another sale. So, the deals did not genuinely expire as advertised.

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

10. Plaintiff is a Washington resident who received Defendant's deceptive email advertisements. Plaintiff brings this case to protect Washington residents from Defendant's false and misleading emails about its purported limited-time discounts.

II. PARTIES

11. Plaintiff Gregory Akselrod is domiciled in King County, Washington and has been a citizen and resident of Washington during at least the preceding three years.

12. The proposed class includes citizens of Washington.

13. Defendant Harvard Business School Publishing Corporation is a Massachusetts corporation.

III. JURISDICTION AND VENUE

14. 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 gives Washington Superior Courts jurisdiction over claims brought under CEMA and the CPA.

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

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that had an impact in Washington. Finally, Plaintiff received emails from Defendant while in Washington.

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

IV. FACTUAL ALLEGATIONS

A. Defendant's False and Misleading Emails Regarding Discounts.

17. Defendant sells education management and teaching materials directly to consumers through Defendant's website https://hbr.org/. Defendant's marketing includes emails to consumers.

18. Defendant's emails created the false impression that its discounts are limited in time.

19. Defendant advertised these discounts extensively through emails to recipients on their mailing list who either registered an account on https://hbr.org/ or previously made purchases from https://hbr.org/. Additionally, this information is contained in the subject lines of emails.

20. When Defendant advertises the discounts through emails with subject lines such as "Today only: take 40% off your order of $100 or more sitewide," reasonable consumers interpret the advertisements to mean that recipients will get a discount off of the former and regular prices charged by Defendant on the website in the recent past and for a substantial time.

21. In other words, reasonable recipients believe that they will receive up to "__% off" the former and regular prices charged on the website in the recent past, and those higher prices represent the amount that consumers formerly and consistently had to pay for Defendant's goods on the website before the sale began, and represent the prices that consumers will consistently have

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to pay in the future for Defendant's goods when the sale ends. This creates a sense of value and urgency: buy now, and you will receive something worth more than you pay for; or wait, and you will pay more for the same thing later.

22. Defendant also sent emails with subject lines stating that purported sales were set to expire soon, or on a specific date. But when many sales ended, they were either extended upon expiration or another comparable sale began shortly thereafter (oftentimes within a week), and the Products' prices did not immediately revert to and stay at the supposed pre-sale Reference Prices for a reasonably substantial time period. The cycle continues repeatedly.

23. Defendant sent numerous commercial emails to Class Members containing the following subject lines on the following dates. The emails below are examples and are not exhaustive.

E-Mail Subject	Date
Cyber Monday Extended: Save on the ideas shaping 2026	12/2/2025
This Cyber Monday, build the leadership library you'll use all year	12/1/2025
Last chance: Save 50% on a subscription	4/25/2025
Last chance for 40% off your entire purchase	1/24/2025
Our sitewide sale is extended! Take 40% off your entire purchase	1/23/2025
New year, new you: Take 40% off your entire purchase	1/21/2025
Cyber Monday extended: Last chance to level up for less.	12/3/2024
Jeremy, invest in your future this Cyber Monday.	12/2/2024
Extended! Take 40% off your order of $100 or more.	9/24/2024
Today only, take 40% off your order of $100 or more.	9/23/2024
Sale extended! Take 40% off your order of $100 or more	6/18/2024

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E-Mail Subject	Date
Today only: take 40% off your order of $100 or more sitewide	6/17/2024
Last day! Take 40% off your order of $100 or more	3/28/2024
Extended! Take 40% off your order of $100 or more	3/26/2024
Today only, take 40% off your order of $100 or more	3/25/2024
Today only — save on our bestselling boxed sets!	2/23/2024
Last chance for 30% off your entire purchase	1/26/2024
Our site-wide sale is extended! Take 30% off your entire purchase	1/25/2024
Reach your potential with HBR books and tools, now 30% off	1/23/2024
Sale extended! Save 40% off $75 or more*	11/30/2023
Our biggest sale of the year is here	11/27/2023
Valued Reader, last day to save 40% — Cyber Monday extended!	11/29/2022
Today only — 40% off! Cyber Monday starts now.	11/28/2022

24. Reasonable recipients of these emails would believe that Defendant was offering a limited time sale. They would believe that the sale would end at the stated time, and if they wait beyond that time, then the sale will be over, and the Products' prices would immediately return to and *stay* at their regular prices.

25. But as shown above, many emails contain false subject lines representing that sales were active, limited in time, and about to end, while in truth Defendant always planned to (1) "extend" or reinstitute the same sale shortly after expiration, or (2) offer comparable discounts shortly after expiration and for a longer time.

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26. These false time scarcity claims are a staple of Defendant's marketing scheme to compel consumers to purchase its products.

27. This misleading marketing strategy is intended to maximize sales during both the initial promotion, as well as the subsequent extension. While Defendant may present these extensions as though they are an unexpected favor to consumers, they are anything but. By deploying false time pressure with surprise extensions—which are only disclosed once the original promotion has ended—Defendant compels consumers to purchase quickly while withholding terms that consumers need so they can make informed buying decisions.

28. For example, on 12/1/2025, Defendant sent an email stating "This Cyber Monday, build the leadership library you'll use all year." But Defendant's sale styled being for Cyber Monday only was not limited to 12/1/2025. Indeed, as shown above, Defendant sent an email the next day on 12/2/2025 stating "Cyber Monday Extended: Save on the ideas shaping 2026." So, the 12/1/2025 email subject line was false and deceptive.

29. As another example, on 9/23/2024, Defendant sent an email stating "Today only, take 40% off your order of $100 or more." But Defendant's sale styled as "40% off" was not limited to 9/23/2024. Indeed, as shown above, Defendant sent an email the next day on 9/24/2024 stating "Extended! Take 40% off your order of $100 or more." So, the 9/23/2024 email subject line was false and deceptive.

30. Similarly, on 6/17/2024, Defendant an email stating "Today only: take 40% off your order of $100 or more sitewide." But Defendant's sale styled as "40% off" was not limited to 6/17/2024. Indeed, as shown above, Defendant sent another email the next day on 6/18/2024 stating "Sale extended! Take 40% off your order of $100 or more." So, the 6/17/2024 email subject line was false and deceptive.

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31. These are just a few examples from a very narrow time frame. As the subject lines of its marketing emails demonstrate, Defendant employs a strategy where it pressures consumers to purchase products from its website by falsely representing the extent and limited availability of its discounts.

B. Defendant's Emails to Plaintiff and Class Members Violate CEMA and the CPA.

32. Washington's CEMA regulates deceptive email marketing. CEMA prohibits the sending of a commercial email that "[c]ontains false or misleading information in the subject line." RCW 19.190.020.

33. Violating this provision of CEMA also violates the CPA. RCW 19.190.030.

34. Advertising fake discounts in the subject line of a promotional email, with fake time pressure, violates CEMA and, accordingly, the CPA. *Brown v. Old Navy LLC*, 567 P.3d 38 (Wash. 2025).

35. Defendant's email advertisements contain subject lines that misstate the duration of the purported sales. As a result, these promotional emails contain false or misleading information in the subject line, in violation of CEMA and the CPA.

36. Defendant sends these emails for the purpose of promoting the Products for sale and to drive sales to the website.

37. Defendant's email subject lines stating the supposed duration of its sales are false and misleading because, as discussed above, sales either (1) are regularly available, or (2) did not expire at the advertised time.

38. Defendant's email subject lines stating that recipients will receive significant savings if the recipients purchase during the sale are false and misleading because, as discussed above, consumers do not truly receive the advertised discounts. Instead, because substantial

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discounts are commonly available, the purported discount is actually much smaller (or there is no discount at all).

39. By misrepresenting the duration of its purported sales in email subject lines, Defendant creates a false sense of urgency. Recipients who read the email subject lines believe that if they act now, they can purchase a higher value item at a limited-time discount; but if they wait, then the discount will expire and if they want to purchase a Product, they will have to pay the former or regular price.

40. Defendant designs the subject lines of the promotional emails to induce recipients to make a purchase during the supposedly limited-time sales. Defendant's email subject lines often contain words spurring recipients to make purchases immediately before time runs out. But because the Products are regularly on sale, each of these email subject lines stating the sale is ending soon are false and misleading.

41. Defendant is constantly sending commercial emails to recipients on its website's mailing list, typically multiple times a week, and sometimes multiple times per day. Plaintiff and Class Members received such emails from Defendant, many of which include false or misleading subject lines regarding fake discounts with fake time limitations.

42. Defendant knows, or has reason to know, its emails containing false and misleading subject lines are sent to Washington residents. Defendant knows or has reason to know where recipients of its emails reside for at least the following reasons.

a. For consumers who made a purchase on Defendant's website, Defendant has physical addresses associated with the recipient's name, email address, and order.

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b. For consumers who visit Defendant's website and register to receive marketing emails, on information and belief, Defendant collects and has access to data regarding the recipient's state of residence via geolocation and IP address tracking. First, IP addresses are sufficient to confirm the user's physical location including city, state, and zip code.[1]

c. Second, under the heading "What Type of Information Does HBP Collect" Defendant's Privacy Policy provides that Defendant collects consumers' "[c]ontact information, such as name, *postal address*, phone number, fax number, and *e-mail address*" and automatically collects consumers' "website use information and online user activity when you visit our site. This may include, but is not limited to, page views, button clicks, form submission, product views and purchases, customer events, information about your Internet service provider, your operating system, browser type, domain name, *Internet protocol (IP) address, location information*, your access times, the website that referred you to us, the Web pages you request, and the date and time of those requests." (Emphasis added.)

d. For consumers who browse Defendant's website or click on Defendant's emails, on information and belief, Defendant can track their IP addresses. It is a standard business practice among major e-commerce companies to employ email and website marketing tools, like tracking pixels, which allow the sender to identify the person opening and clicking on the email by IP

[1] See https://nordvpn.com/ip-lookup/ ("Looking up an IP address shows you the geolocation of that IP address, including the country, state, city, and zip code.")

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address, or the person browsing the website by IP address. Indeed, under the heading "What Type of Information Does HBP Collect" Defendant's Privacy Policy admits to automatically collecting consumers' IP addresses amongst other website use information and user activity.

e. Defendant has access to granular location information tied to email addresses from commercial data brokers like Oracle, Equifax, and Lexis. Defendant can purchase consumer data from these brokers which connects individuals to email addresses, state of residence, and physical location. To that end, Defendant's Privacy Policy states under the heading "Personal Data Collected From Other Sources" that it collects personal information "from other trusted third-party sources to target our communications so that we can inform you of products, services, or other offers that may be of interest to you, and for internal business analysis or other business purposes. The categories of Personal Data we may collect from other sources include contact information or employment or education information."

f. Defendant may obtain information that some recipients of marketing emails are Washington residents because that information is available, upon request, from the registrant of the Internet domain names contained in the recipients' email addresses. *See* RCW 19.190.020(2).

g. Defendant had reason to know the marketing emails were sent to Washington residents based on the extremely high volume of outbound marketing emails which are continuously sent to everyone on its mailing list.

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43. Defendant knows what sales it offers on its website and the prices advertised on its website. Defendant also knows that, in truth, the sales are not truly ending as advertised and products are regularly discounted on the website.

C. <u>Defendant's Deceptive Emails Violate Federal Law.</u>

44. The Federal Trade Commission Act ("FTCA") prohibits "unfair or deceptive acts or practices in or affecting commerce[.]" 15 U.S.C. § 45(a)(1). Under FTC regulations, discounting schemes like that employed in Defendant's email subject lines are deceptive practices that violate the FTCA.

45. Pursuant to 16 C.F.R. § 233.1, entitled Former Price Comparisons:

> (a) One of the most commonly used forms of bargain advertising is to offer a reduction from the advertiser's own former price for an article. If the *former price* is the actual, bona fide price at which the article was offered to the public on a *regular basis* for a *reasonably substantial period of time*, it provides a legitimate basis for the advertising of a price comparison. Where the former price is genuine, the bargain being advertised is a true one. If, on the other hand, the former price being advertised is not bona fide but fictitious – for example, where an *artificial, inflated price* was established for the purpose of enabling the subsequent offer of a large reduction – the "bargain" being advertised is a false one; the purchaser is not receiving the unusual value he expects.
>
> (b) A former price is not necessarily fictitious merely because no sales at the advertised price were made. The advertiser should be especially careful, however, in such a case, that the price is one at which the product was openly and actively offered for sale, for a *reasonably substantial period of time*, in the *recent*, regular course of her business, honestly and in good faith – and, of course, not for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based.
>
> (c) The following is an example of a price comparison based on a fictitious former price. John Doe is a retailer of Brand X fountain pens, which cost him $5 each. His usual markup is 50 percent over cost; that is, his regular retail price is $7.50. In order subsequently to offer an unusual "bargain," Doe begins offering Brand X at $10 per pen. He realizes that he will be able to sell no, or very few, pens at this inflated price. But he doesn't care, for he maintains that price for only a few days. Then he "cuts" the price to its usual level—$7.50—and advertises: "Terrific Bargain: X Pens, Were $10, Now Only $7.50!" *This is obviously a false claim*. The advertised "bargain" is not genuine.
>
> (d) Other illustrations of fictitious price comparisons could be given. An advertiser might use a price at which he *never offered the article at all*; he might feature a price

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> which was *not used in the regular course of business*, or which was *not used in the recent past* but at some *remote period in the past*, without making disclosure of that fact; he might use a price that was not openly offered to the public, or that was *not maintained for a reasonable length of time*, but was immediately reduced.
>
> (e) If the former price is set forth in the advertisement, *whether accompanied or not* by descriptive terminology such as "Regularly," "Usually," "Formerly," etc., the advertiser should make certain that the former price is not a fictitious one. If the former price, or the amount or percentage of reduction, is not stated in the advertisement, as when the ad merely states, "Sale," the advertiser must take care that the amount of reduction is not so insignificant as to be meaningless. It should be sufficiently large that the consumer, if he knew what it was, would believe that a genuine bargain or saving was being offered. An advertiser who claims that an item has been "Reduced to $9.99," when the former price was $10, is misleading the consumer, who will understand the claim to mean that a much greater, and not merely nominal, reduction was being offered.

46. FTC regulations prohibit false and misleading claims regarding the duration and expiration of sales, like those employed in the subject lines of Defendant's emails. Indeed, retailers "should not offer an advance sale under circumstances where they do not in good faith expect to increase the price at a later date, or *make a 'limited' offer which, in fact, is not limited*." 16 C.F.R. § 233.5.

D. Research Confirms That Time-Limited Discounts Influence Consumer Behavior and Perceptions of Value.

47. Studies and articles support the effectiveness of Defendant's deceptive email scheme.

48. "By creating an impression of savings, the presence of a higher reference price enhances subjects' perceived value and willingness to buy the product."[2] Thus, "empirical studies indicate that, as discount size increases, consumers' perceptions of value and their willingness to buy the product increase, while their intention to search for a lower price decreases."[3]

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[2] Dhruv Grewal & Larry D. Compeau, *Comparative Price Advertising: Informative or Deceptive?*, 11 J. Pub. Pol'y & Mktg. 52, 55 (Spring 1992).

[3] *Id.* at 56.

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49. "[R]eference prices are important cues consumers use when making the decision concerning how much they are willing to pay for the product."[4] This study also concluded that "consumers are likely to be misled into a willingness to pay a higher price for a product simply because the product has a higher reference price."[5]

50. Additionally, as "considerable evidence" suggests, "consumers react to scarcity and divert their attention to information where they might miss opportunities."[6]

51. A study regarding the effect of the time-limited advertisement "10 Hours Only Super Sale" concluded that "[t]he willingness to buy was significantly higher" and "the attitude towards the deal was more favorable."[7]

52. An article explains that, in a test case, the addition of countdown timers increased conversion rates "from ~3.5% to ~10%."[8]

53. Another article explains: "We compared the performance to previous 'big sale' campaigns featuring a similar single-minded design, but without the countdown timer. The uplift was impressive showing . . . 400% higher conversion rate" with countdown timer.[9]

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[4] Jerry B. Gotlieb & Cyndy Thomas Fitzgerald, An Investigation Into the Effects of Advertised Reference Prices On the Price Consumers Are Willing To Pay For the Product, 6 J. of App'd Bus. Res. 1 (1990).

[5] *Id.*

[6] U.K. Competition & Mkts. Auth., *Online Choice Architecture—How Digital Design Can Harm Competition and Consumers* 26 (2022), https://perma.cc/V848-7TVV/

[7] *See* Aggarwal, P., *Use it or lose it: Purchase acceleration effects of time-limited promotions*, Journal of Consumer Behaviour (Sept. 17, 2002) at 399-401.

[8] *See* CXL, *How Creating a Sense of Urgency Increased Sales by 332%* (Feb. 28, 2023), at pp. 10-18, available at https://cxl.com/blog/creating-urgency (last visited May 26, 2026).

[9] *See* Upland Software, *Dynamic email content leads to 400% increase in conversions for Black Friday email*, available at https://uplandsoftware.com/adestra/resources/case-study/dynamic-email-content-leads-to-400-increase-in-conversions-for-black-friday-email/ (last visited May 26, 2026).

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54. Thus, creating a false sense of urgency is a common way that online marketers manipulate consumer choice. The FTC has identified the "False Limited Time Message" as one example of false time scarcity claims, in which the marketer creates "pressure to buy immediately by saying the offer is good only for a limited time or that the deal ends soon—but without a deadline or with a meaningless deadline that just resets when reached."[10]

55. False scarcity claims are psychologically effective and harm consumers by manipulating their decision-making to their detriment—and the seller's benefit.

56. Accordingly, research confirms that deceptive discount advertising is intended to, and does, influence consumer behavior by artificially inflating consumer perceptions of an item's value and causing consumers to spend money they otherwise would not have, purchase items they otherwise would not have, and/or purchase products from a specific retailer.

E. Plaintiff Gregory Akselrod

57. Harvard has spammed Plaintiff Akselrod with commercial emails whose subject lines contain false or misleading statements in violation of his right to be free from such annoyance and harassment under CEMA.

58. Plaintiff Akselrod provided Harvard with his email address and has been receiving emails since at least July 3, 2023, including all of the violative emails detailed above in paragraph 23.

59. Plaintiff Akselrod received, for example, the following emails from Harvard, each of which is misleading as discussed above, at a personal email address:

a. 12/1/2025: "Cyber Monday Extended: Give your leadership a lift"

b. 4/24/2025: "Last chance: Save 50% on a subscription"

[10] *Fed. Trade Comm'n, Bringing Dark Patterns to Light* 22 (2022), https://perma.cc/847M-EY69/.

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c. 3/27/2024: "Last day! Take 40% off your order of $100 or more"

d. 1/23/2025: "Last chance for 40% off your entire purchase"

e. 1/22/2025: "Our sitewide sale is extended! Take 40% off your entire purchase"

f. 12/2/2024: "Cyber Monday extended: Last chance to level up for less."

g. 9/23/2024: "Extended! Take 40% off your order of $100 or more."

h. 9/22/2024: "Today only, take 40% off your order of $100 or more."

i. 6/17/2024: "Sale extended! Take 40% off your order of $100 or more"

j. 6/16/2024: "Today only, take 40% off your order of $100 or more."

k. 3/25/2024: "Extended! Take 40% off your order of $100 or more"

l. 3/24/2024: "Today only, take 40% off your order of $100 or more"

m. 2/22/2024: "Today only — save on our bestselling boxed sets!"

n. 1/25/2024: "Last chance for 30% off your entire purchase"

o. 1/24/2024: "Our site-wide sale is extended! Take 30% off your entire purchase"

p. 11/29/2023: "Sale extended! Save 40% off $75 or more*"

60. Plaintiff Akselrod received Defendant's emails at issue while he was physically present in Washington.

61. Plaintiff Akselrod would have liked to receive truthful information from Defendant regarding its Products. However, due to Defendant's conduct, Plaintiff Akselrod cannot be certain which emails from Defendant contain truthful information and which emails are spam with false and misleading information in subject lines designed to spur consumers into making a purchase.

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Thus, without a court order requiring Defendant to only send honest emails about sales, Plaintiff Akselrod cannot discern which emails are not false or misleading.

F. <u>No Adequate Remedy at Law.</u>

62. Plaintiff seeks an injunction. Plaintiff is permitted to seek an injunction because he has no adequate remedy at law. Legal remedies here are not adequate because they would not stop Defendant from continuing to transmit emails with false or misleading subject lines to Washington residents.

V. CLASS ACTION ALLEGATIONS

63. Plaintiff brings the asserted claims on behalf of the following proposed class (the "Class") and subclasses:

> All Washington residents who, during the Class Period and while present in Washington, received promotional emails from Defendant with subject lines either (i) advertising "% off" discounts; (ii) stating a sale, discount, or price would end at a specified date but the same sale, discount, or price was extended upon expiration; or (iii) stating a sale, discount, or price is time limited, ending, or tethered to a holiday or event, when Defendant reinstated the same or comparable sale, discount, or price for a longer time.

64. Plaintiff reserves the right to propose additional subclasses based on specific subcategories of emails and Class Members at class certification.

65. The Class Period is the time period beginning on the date established by the Court's determination of any applicable statute of limitations and ending on the date a class certification order is entered in this action. Thus, the statute of limitations begins no later than the date four years before this Complaint is filed.

66. 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 the Defendant

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or its parents have a controlling interest and their current employees, officers and directors; and (3) Plaintiff's counsel and Defendant's counsel.

Numerosity

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

68. Class Members can be identified through Defendant's electronic mailing lists, internal records, and public notice.

Predominance of Common Questions

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

a. whether Defendant's email subject lines regarding purported discounts are false or misleading;

b. whether Defendant's email subject lines violate CEMA;

c. whether Defendant's email subject lines violate the CPA; and

d. the greater of actual damages or statutory damages due to the Plaintiff and the proposed Class.

Typicality & Adequacy

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

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

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Superiority

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

VI. CLAIMS

<u>Count 1: Violations of Washington's Commercial Electronic Mail Act</u>

(By Plaintiff and the Class)

73. Plaintiff incorporates paragraphs 1-72 above.

74. Plaintiff brings this cause of action individually and on behalf of members of the Class.

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

76. Defendant is a "person" under CEMA. RCW 19.190.010(11).

77. As alleged more fully above, Defendant violated CEMA by initiating the transmission of commercial electronic mail messages that contained false or misleading information in the subject line to Plaintiff's and Class Members' electronic mail addresses.

78. Defendant sent these emails to Plaintiff and Class Members for the purpose of promoting the Products for sale.

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

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

81. Defendant's acts and omissions injured the Plaintiff and Class Members.

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

83. 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 via Misleading Emails

(By Plaintiff and the Class)

84. Plaintiff incorporates paragraphs 1-72 above.

85. Plaintiff brings this cause of action individually and on behalf of members of the Class.

86. Plaintiff and Class Members are "persons" within the meaning of the CPA. RCW 19.86.010(1).

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

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

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89. A violation of CEMA establishes all elements of the CPA as a matter of law. *Wright v. Lyft*, 189 Wn. 2d 718 (2017).

90. As alleged more fully above, Defendant's transmission of commercial electronic 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

91. 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 and former prices of its Products, and that the discount was only available for a limited time, when none of this was true (or at minimum was highly misleading).

92. The harm to Plaintiff and the Class greatly outweighs the public utility of Defendant's conduct. There is no public utility to misrepresenting the duration of sales. Plaintiff 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

93. As alleged in detail above, Defendant's representations in email subject lines that the Products were on sale, that the sale was limited in time, are deceptive.

94. Defendant's representations were misleading to Plaintiff and other reasonable recipients. Defendant knew, through the exercise of reasonable care, that these statements were inaccurate and misleading.

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

96. 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.

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

98. 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. In addition, Plaintiff and Class Members seek treble damages, which are permitted under the CPA, including for CEMA violations. Plaintiff seeks treble damages to further Plaintiff's and Class Members' financial rehabilitation, encourage citizens to bring CPA actions, deter Defendant and other persons from committing CEMA violations, and punish Defendant for false and misleading advertising practices.

99. Plaintiff and Class Members are also entitled to, and seek, injunctive relief prohibiting further violations of the CPA.

VII. JURY DEMAND

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

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VIII. PRAYER FOR RELIEF

101. Plaintiff seeks the following relief for themselves and the proposed Class:

A. An order certifying the asserted claims, or issues raised, as a class action;

B. A judgment in favor of Plaintiff and the proposed Class;

C. The greater of actual or statutory damages, treble damages, and punitive damages where applicable;

D. Pre- and post-judgment interest;

E. An injunction prohibiting Defendant's deceptive conduct, as allowed by law;

F. Reasonable attorneys' fees and costs, as allowed by law;

G. Any additional relief that the Court deems reasonable and just.

[Counsel signatures to follow on next page.]

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