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CASE #: 26-2-18891-2 SEA

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

TIMOTHY BROOKS, on his own behalf and on behalf of others similarly situated, Plaintiff, v. ADORAMA INC., Defendant.	Case No.: ______________________ SEA CLASS ACTION COMPLAINT <u>JURY TRIAL DEMANDED</u>

Timothy Brooks ("Plaintiff"), 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 Adorama Inc. ("Adorama" or "Defendant") 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

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or misleading information in the subject line" to the email address of a Washington resident." RCW 19.190.020(1)(b).

3. Adorama engages in the precise activity which CEMA prohibits.

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

5. 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.

6. Through their deceptive time-sensitivity, Adorama falsely narrows the field—steering consumers away from shopping for better deals—to its own products that must be purchased *now*.

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

II. JURISDICTION AND VENUE

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

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

10. Defendant sells its products in Washington through its website and thus subject to personal jurisdiction in this court. *See, e.g., Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351 (2021).

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III. PARTIES

11. Plaintiff Timothy Brooks is a resident of King County, Washington.

12. Defendant Adorama Inc. is incorporated in New York with its principal place of business at 42 West 18th St New York City, NY 10011.

IV. FACTUAL ALLEGATIONS

A. CEMA protects Washington consumers from deceptive spam emails.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26. CEMA's "truthfulness requirements" thereby advance the statute's aim of

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

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

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

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

B. The subject lines of Adorama's marketing emails make false time scarcity claims.

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

31. 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." *Bringing Dark Patterns to Light*, *supra* para. 30, at 22.

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32. "False or misleading scarcity claims can change the behavior of consumers." *Online Choice Architecture*, *supra* para. 30, at 27.

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

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

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

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

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

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

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

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

41. Adorama is a retailer of photography, video, and audio equipment. It sells its products directly through its website, www.adorama.com.

42. To advertise its products and encourage purchases, Adorama routinely sends spam emails to consumers, including consumers in Washington. These emails are part of a calculated marketing strategy that Adorama orchestrates in advance to maximize sales by distorting factual information about the duration and availability of its promotions.

43. Unfortunately for those recipients, Adorama regularly titles its emails with urgent subject headings that do not reflect the true availability of the advertised deal. This strategy is demonstrated in the examples discussed below.

44. Adorama has tailored its approach to fit a number of offers, including promotion extensions. In these examples, Adorama sends consumers marketing emails to advertise an offer, promotion, or sale. Then, it uses the subject lines of follow-up emails to present the promotional pricing as a scarce or time-limited opportunity. This strategy commands consumers' attention and pressures them to purchase Adorama's products. Finally, once the originally advertised "deadline" has passed, Adorama knowingly extends the same promotion to a new end date.

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

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46. As an example of Adorama's marketing scheme, on May 1, 2026, Adorama sent consumers a mass email with the subject line, "Up to 50% Off – Last Chance!" The contents of the email indicated the sale was up to 50% off.

47. The subject line of the May 1, 2026, email was false or misleading as the same deal would be offered just a few days later, as Adorama knew and intended when it or its contractors crafted this marketing campaign.

48. On May 4, 2026, Adorama sent an email to consumers with the subject line, "Up to 50% Off Canon, Sony, Fujifilm & More," again offering a 50% discount.

49. As another example of this scheme, on July 3 and 4, 2024, Adorama spammed consumers three mass emails about its July 4th Sale, with the subject lines, "⏳ Time's Almost Up: July 4th Deals End Tomorrow," "Final Day to Celebrate with Huge Saving!", and "⏰ Final Hours: Last Chance for July 4th Savings."

50. The subject lines of the July 3 and 4 emails were false or misleading as it was not the "final hours" for consumers to shop this sale, as Adorama knew and intended when it or its contractors crafted this marketing campaign.

51. The very next day, on July 5, 2024, Adorama sent an email to consumers with the subject line, "🔔 Extension Alert: July 4th Savings!", extending the same sale that was previously advertised to end the day before.

52. Adorama used the same anti-consumer tactics, less than a year prior to advertise its Labor Day Sale.

53. On September 4, 2023, Adorama sent consumers two mass emails with the subject lines, "Last Day! Labor Day Deals Expiring" and "Final Hours to Save BIG!".

54. The subject lines of the September 4, 2023, emails were false or misleading as it

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was not the "last day" or "final hours" for consumers to shop this sale, as Adorama knew and intended when it or its contractors crafted this marketing campaign.

55. The very next day, on September 5, 2023, Adorama sent an email to consumers with the subject line, "🔔 Labor Day Deals EXTENDED!", extending the same sale that was previously advertised to end the day before.

56. As another example of Adorama's marketing scheme, on February 25, 2023, Adorama sent consumers a mass email with the subject line, "Final Day: Up to 40% OFF Best-Selling Gear".

57. The subject line of the February 25, email was false or misleading as it was not the "final day" for consumers to receive up to 40% off, as Adorama knew and intended when it or its contractors crafted this marketing campaign.

58. Just one day later, on February 26, Adorama sent an email to consumers with the subject line, "There's Still Time, Friend!", extending the same sale that was previously advertised as ending the day before.

59. As the subject lines of these examples of Adorama's marketing tactics demonstrate, Adorama is engaged in a scheme where it pressures consumers to purchase its products by falsely representing the limited availability of its offers.

60. This complicated and seemingly perpetual series of promotions, threatened terminations, and renewals of the same offer is a strong indication that these promotions do not reflect any underlying business realities of supply or demand. To the contrary, they are just marketing tricks, components of preplanned, preconceived marketing strategies—all at consumers' expense.

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C. Adorama knows when it sends emails to Washington residents.

61. A sophisticated commercial enterprise, like Adorama, 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.

62. First, the sheer volume of email marketing that Adorama engages in puts it on notice that Washington residents would receive its emails. Adorama has sent consumers more than two emails per week over the last year.

63. Second, Adorama may obtain location information tied to email addresses when consumers purchase Adorama's products, or otherwise self-report such information to Adorama.

64. Third, Adorama may obtain location information tied to email addresses by tracking the IP addresses of devices used to open Adorama's emails, which in turn can be correlated to physical location (as illustrated, for example, by the website https://whatismyipaddress.com/).

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

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

67. Sixth, Adorama may obtain information that the recipients of its 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

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19.190.020(2).

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

D. Adorama violated Plaintiff's right under CEMA to be free from deceptive commercial emails.

69. Adorama has spammed Plaintiff Brooks, a Washington citizen, 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.

70. Plaintiff Brooks received, for example, the following emails from Adorama, each of which is misleading for the reasons detailed above, at a personal email address:

71. "Last Day! Labor Day Deals Expiring" on September 4, 2023; and

72. "Final Day: Up to 40% OFF Best-Selling Gear" on February 25, 2023.

73. The subject lines of these emails are false or misleading in violation of CEMA, as discussed in detail, *supra*.

74. The subject lines contained false statements of fact as to the "duration or availability of a promotion." *Brown*, 567 P.3d at 47.

V. CLASS ALLEGATIONS

75. Plaintiff brings this action under Civil Rule 23 on behalf of the following putative class ("Class"):

> All Washington residents who, during the Class Period, received a commercial email sent by Defendant, on behalf of Defendant, or with Defendant's assistance, that contained messaging in the email subject line which misrepresented the facts of a sale, deal, or promotion.

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

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

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

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

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

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

82. Plaintiff will fairly and adequately protect the Class's interests because, among other reasons, Plaintiff shares the Class's interest in avoiding unlawful false or misleading

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marketing; has no interest adverse to the Class; and has retained competent counsel extensively experienced in consumer protection and class action litigation.

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

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

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

VI. CLAIMS TO RELIEF

First Claim to Relief

Violation of the Commercial Electronic Mail Act, RCW 19.190.020

86. Plaintiff incorporates and realleges paragraphs 1–74 above.

87. 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

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

88. Defendant is a "person" within the meaning of CEMA. RCW 19.190.010(11).

89. Defendant initiated the transmission, conspired with another to initiate the transmission, or assisted the transmission of "commercial electronic mail messages" within the meaning of CEMA. RCW 19.190.010(2).

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

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

92. For Defendant's violation of CEMA, Plaintiff is entitled to all available relief, including an injunction against further violations.

<u>Second Claim to Relief</u>

Violation of the Consumer Protection Act, RCW 19.86.020

93. Plaintiff incorporates and realleges paragraphs 1-74 above.

94. The CPA provides that "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." RCW 19.86.020.

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

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

97. 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).

98. Defendant is a "person" within the meaning of CEMA. RCW 19.190.010(11).

99. Defendant initiated the transmission, conspired with another to initiate the transmission, or assisted the transmission of "commercial electronic mail messages" within the meaning of CEMA. RCW 19.190.010(2).

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

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

102. For Defendant's violation of the CPA, Plaintiff and putative members are entitled to an injunction against further violations; the greater of Plaintiff's actual damages or liquidated damages of $500 per violation, trebled; and costs of the suit, including a reasonable attorney's fee.

VII. JURY DEMAND

103. Plaintiff will demand a jury trial by separate document in accordance with Local

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Civil Rule 38(a).

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.

Date: June 10, 2026

Respectfully submitted,

/s/ Samuel J. Strauss

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