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CASE #: 26-2-25571-7 SEA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY

DIVYA GAUTAM, on her own behalf and on
behalf of others similarly situated,

Plaintiff,

vs.

THISTLE HEALTH INC.,

Defendant.

Case No.: _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Divya Gautam, on her own behalf and on behalf of others similarly situated, on information and belief except to her own experiences and matters of public record, complains of Thistle Health Inc., (“Defendant” or “Thistle”), 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

1 or misleading information in the subject line” to the email address of a Washington resident. RCW
2 19.190.020(1)(b).

3 3. Defendant Thistle engages in the precise activity which CEMA prohibits.

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

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

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

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

16 II. JURISDICTION AND VENUE

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

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

20 III. PARTIES

21 10. Plaintiff Divya Gautam is a resident of King County, Washington.

22 11. Defendant Thistle Health Inc. is a Delaware corporation with its principal address
23 at 771 Eubanks Drive, Vacaville, California, 95688, and a registered agent in the State of
24

1 Washington at Northwest Registered Agent, LLC, 522 W. Riverside Avenue, Suite N, Spokane,
2 WA, 99201.

3 12. Defendant sells its products in Washington through its website and is thus subject
4 to personal jurisdiction in this Court. *See, e.g., Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*,
5 592 U.S. 351 (2021).

6 IV. FACTUAL ALLEGATIONS

7 A. CEMA protects Washington consumers from deceptive spam emails.

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

10 14. In 1998, the Legislature found that the “volume of commercial electronic mail” was
11 “growing,” generating an “increasing number of consumer complaints.” Laws of 1998, ch. 149,
12 § 1.

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

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

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

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

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

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

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

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

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

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

22 25. CEMA’s “truthfulness requirements” increase the costs of sending deceptive
23 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 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 Defendant’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

1 meaningless deadline that just resets when reached.” *Bringing Dark Patterns to Light*, *supra* para.
2 30, at 22.

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

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

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

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

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

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

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

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

3 40. These false time scarcity claims are a staple of Defendant’s marketing scheme to
4 compel consumers to purchase its products.

5 41. Thistle is a meal subscription and delivery company. Thistle’s subscription plans
6 are offered on its website, www.thistle.co.

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

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

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

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

1 original promotion has ended—Thistle compels consumers to purchase quickly while withholding
2 terms that consumers need so they can make informed buying decisions. Defendant’s 2025
3 President’s Day Sale provides an apt example of this strategy at work.

4 46. First, Thistle sends consumers marketing emails advertising a new promotion. For
5 instance, on February 13, 2025, Defendant transmitted an email with the subject line: “🇺🇸 Savings
6 are here! \$150 off for President's Day[.]” Inside the email and below a portrait-style image of
7 George Washington enjoying a squash, Thistle invited recipients to take \$150 off their meals and
8 provided a link which consumers could use to sign up for Defendant’s subscription service.

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

12 48. Regarding the President’s Day Sale, Thistle followed up on its February 13 email
13 by pelting consumers’ inboxes with an urgent warning about the promotion’s advertised end date.

14 49. On February 17, 2025, Defendant transmitted an email with the subject heading:
15 “Final day for \$150 off!” Inside the email, Thistle warned consumers that they “must sign up
16 today” to receive the “presidential discount.”

17 50. Despite this unambiguous deadline concerning the end of the \$150 discount, the
18 promotion did not conclude on February 17, 2025, as Defendant advertised. Nor did Thistle ever
19 intend for the President’s Day Sale to end on February 17, 2025. Small print appearing at the
20 bottom of the February 17 email confirmed the falsity of the subject line. In white text, the
21 disclaimer stated: “This offer expires Tuesday, February 18, 2025 at 11:59 PM PST.”

22 51. While the contents of the February 17, 2025, email demonstrate the misleading
23 nature of the email’s subject line, additional confirmation would soon follow.

1 52. In the final stage of its scheme, Thistle extends the life of the promotion, proving
2 the falsity of the deadline it first advertised. An email transmitted on the following day, February
3 18, 2025, was titled, “Back for seconds! \$150 off extended for today only!” The disclaimer
4 appearing within the email repeated the deadline used in the February 17, 2025, email: “This offer
5 expires Tuesday, February 18, 2025 at 11:59 PM PST.” Thus, the email confirmed that the
6 President’s Day Sale was extended beyond the end date that Thistle communicated in its February
7 17, 2025, subject line.

8 53. Further, the February 18, 2025, subject line was also false and misleading. Within
9 the subject heading, Thistle claimed that the sale was “extended.” However, as the fine print in the
10 February 17, 2025, email confirms, Thistle always intended for the sale to conclude on
11 February 18. There was no extension; the sale simply ended on the date which Thistle always
12 intended.

13 54. These examples demonstrate the misleading nature of Thistle’s subject lines. The
14 President’s Day Sale didn’t end on February 17, 2025, and that date was not the “Final Day” for
15 consumers to participate in the advertised promotion. Instead, Thistle continued to offer the same
16 discount the following day. The false deadline for the President’s Day Sale is simply one example
17 and one element of Defendant’s cohesive marketing strategy meant to compel consumers to
18 purchase subscriptions from its website.

19 55. In another example of its scheme, Thistle sent misleading subject lines regarding
20 an Earth Week Sale in April 2025.

21 56. The promotion offered new customers 50% off their first week of meals. An email
22 sent on April 26, 2025, announced the end of the promotion in its subject line: “Last Chance! Earth
23 Week Sale Ends Tomorrow 🌍🌱[.]” The email’s preview text emphasized the upcoming end of
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1 the sale: “You’ve got one more day to enjoy 50% off!” Inside, a banner appearing at the top of the
2 email featured large scrolling text that further emphasized it was the “LAST DAY TO SAVE.”
3 Below that, even larger text continued to warn, “50% Off Ends Tomorrow[.]” Then, in small text
4 at the bottom of the email, Thistle provided yet another caution: “Offer expires Sunday,
5 April 27, 2025 at 11:59 PM PST.”

6 57. The following day, April 27, 2025, Thistle once again visited consumers’ inboxes
7 with additional time pressure. An email transmitted on that date carried the subject heading: “Final
8 Hours - Earth Week Sale Ends Tonight 🌍🌱 [.]”, Thistle used the email’s preview text to convey
9 more urgency: “50% off ends tonight—good for you, good for the planet.” Inside, the body of the
10 email featured more of the same. Large text warned “50% OFF ENDS TONIGHT” and “FINAL
11 HOURS.” Small text at the bottom of the email maintained the same alleged deadline: “Offer
12 expires Sunday, April 27, 2025 at 11:59 PM PST.”

13 58. However, to the detriment of consumers, the April 26 and April 27 subject lines
14 communicated a false deadline. The 50% off promotion did not conclude despite Thistle’s multiple
15 representations to the contrary.

16 59. The advertised discount was still active the next day, April 28, 2025. An email sent
17 on that date was titled, “🌍 EARTH DAY SALE EXTENDED 🌍 [.]” The body of the email
18 confirmed that the 50% off discount was still available and that the April 26 and April 27 subject
19 line communicated a false conclusion for the sale.

20 60. So, despite the unambiguous deadline that it communicated to consumers in the
21 subject lines of its April 26 and April 27 emails, Thistle continued to offer the same discount
22 beyond the alleged end date.

23 61. By stuffing consumer inboxes with such misinformation, Thistle ensures that email
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1 recipients lack the accurate details needed to make educated buying decisions. Additional instances
2 of Defendant's deceptive marketing scheme have occurred this year as well.

3 62. For example, Thistle transmitted subject lines containing false time scarcity claims
4 while advertising "The Fresh Start Sale" in January 2026. The promotion offered 50% off meals
5 for new customers.

6 63. On January 11, 2026, Thistle sent consumers an email warning them that the end
7 of the discount opportunity was approaching. The email was titled: "Don't Miss Out: The Fresh
8 Start Sale Ends Tomorrow[.]" Inside, the email included large text warning consumers that there
9 were "[j]ust two days left to get 50% off" their first week of meals. Small text appearing at the
10 bottom of the email specified the precise minute the sale would end: "Offer expires Tuesday,
11 January 13, 2026 at 11:59 PM PST."

12 64. The deceptive campaign sprouted again the next day. On January 12, 2026, Thistle
13 sent an email titled: "LAST CHANCE: 50% Off[.]" The email included preview text reinforcing
14 the subject line's urgent warning: "Lock it in before midnight." The body of the email asserted
15 additional time pressure, claiming "50% off expires at midnight – don't miss it." Finally, small
16 text near the bottom of the email repeated the deadline: "Offer expires Tuesday, January 13, 2026
17 at 11:59 PM PST."

18 65. Both the January 11 and January 12 subject lines were false and misleading. Thistle
19 never intended to conclude its "Fresh Start Sale" on January 12 as confirmed by the fine print
20 appearing in both emails. Each of the January 11 and January 12 emails revealed January 13 as the
21 sale's true deadline.

22 66. Following the misrepresentations on January 11 and January 12, Thistle transmitted
23 a third misleading subject line on January 13, 2026. The message was sent with the subject line:
24

1 “Sale Extended 1 More Day: Get Your Fresh Start Before Midnight[.]”

2 67. So, the January 11 and January 12 subject lines are false and misleading because
3 they present January 12 as the final day for the 50% off opportunity. However, as the small print
4 in each of those emails confirms, Thistle never intended for January 12 to be sale’s deadline.
5 Additionally, the January 13, 2026, subject line is also false and misleading because Thistle used
6 it to claim that the Fresh Start Sale was extended for a single day. However, January 13 was not an
7 extended date. The small print in the January 11 and January 12 emails clearly indicate that
8 January 13 was always intended to be the promotion’s deadline.

9 68. Another example occurred in May 2026, during a Memorial Day-themed
10 promotion where Thistle offered new customers 40% off their first week along with free delivery
11 through August 30, 2026.

12 69. On May 25, 2026, Thistle transmitted an email with the subject line: “Last call for
13 40% off + free delivery all summer[.]” The email’s preview text emphasized the impending end of
14 the promotion, “Memorial Day Sale ends TONIGHT” while the body of the email cautioned
15 consumers not to “miss your last chance to get 40% off your first week plus free delivery all
16 summer!” Small text at the bottom of the email revealed the real end date for the Memorial Day
17 promotion: “Offer expires Tuesday, May 26, 2026 at 11:59 PM PST.”

18 70. Thus, May 25 was not the “last call” for the Memorial Day sale. As the small print
19 deadline confirms, Thistle transmitted the misleading subject line knowing that it did not intend to
20 conclude the promotion on May 25.

21 71. Even so, Thistle returned to consumers’ inboxes to deliver another false and
22 misleading subject line the following day. On May 26, 2026, it sent an email with the subject
23 heading: “SALE EXTENDED: One Day Only!” The email’s preview text continued to maintain
24

1 the charade: “Missed it? Here’s one last chance[.]”

2 72. Predictably, however, the May 26, 2026, email also contained false and misleading
3 information in its subject line. The Memorial Day Sale wasn’t extended because, as the fine print
4 of the May 25 email confirms, Thistle always planned to conclude the sale on May 26. Thus,
5 May 26, 2026, didn’t constitute an extension; it was simply the final day of the sale as Thistle
6 intended.

7 73. Each of the subject lines identified above are installments in Defendant’s scheme;
8 steps evidencing Thistle’s coordinated marketing strategy to deceive consumers with false
9 information about the duration and availability of its promotions.

10 74. Sale extensions are not the only method that Thistle uses to pressure consumers
11 with false and misleading information concerning the availability of its promotions. In other
12 examples of its deceptive marketing scheme, Thistle continued to pelt consumers’ inboxes with
13 email subject lines emphasizing the limited duration of offers. However, rather than extend a sale
14 outright, Thistle waited until the originally advertised “deadline” had passed then knowingly
15 revived the same offer shortly thereafter.

16 75. An example of this approach comes from April 2023 when Thistle advertised a
17 promotion for new customers offering \$120 off their first four weeks of purchases.

18 76. On April 22, 2023, it transmitted an email with the subject line: “🌱 FINAL
19 HOURS! \$120 OFF!” The email’s preview text emphasized the short time remaining: “Last chance
20 to save on plant-powered Thistle meals.” Text within the email mirrored the false urgency: “Today
21 is the **final day** to get \$120 off your first 4 weeks of Thistle meals!”

22 77. However, to the detriment of consumers, the April 22, 2023, subject line
23 communicated a false deadline. Consumers’ opportunity to get \$120 off did not end on that date.
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1 78. Within days, Thistle returned to consumers' inboxes and confirmed the falsity of
2 the April 22, 2023, subject line by advertising the same offer.

3 79. On April 27, 2023, it sent an email titled, "🌱 Save Big TODAY! Get \$120 OFF!"
4 and presenting consumers with the same savings offered on April 22, 2023.

5 80. As the April 27, 2023, email confirms, Thistle never intended to limit the \$120 offer
6 to the earlier promotion despite the deadline it presented to consumers in its April 22, 2023, subject
7 line. The "FINAL HOURS!" warning was a misleading strategy meant to increase sales by
8 presenting the \$120 discount as a scarce opportunity. Clearly, it was not.

9 81. The misleading nature of these communications couldn't be plainer. Consumers in
10 receipt of the April 22, 2023, email are urged to purchase the advertised products quickly because,
11 according to the subject line sent on that date, the special pricing was ending soon. However,
12 within days, Thistle advertised the same discount once again.

13 82. As these examples demonstrate, Thistle is engaged in a scheme where it pressures
14 consumers to purchase products from its website using subject lines which falsely represent the
15 availability of its offers.

16 **C. Thistle knows when it sends emails to Washington residents.**

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

21 84. First, the sheer volume of email marketing that Thistle engages in put it on notice
22 that Washington residents would receive its emails.

23 85. Second, Thistle may obtain location information tied to email addresses when
24

1 consumers make purchases from Thistle through digital platforms, or otherwise self-report such
2 information to Thistle.

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

6 87. Specifically, Thistle appears to use Klaviyo to manage its email marketing
7 campaigns and SendGrid as its transportation provider. Klaviyo informs Thistle where the
8 recipients of its marketing emails are located using IP geolocation and other data extracted from
9 recipients' interactions with Thistle, which Klaviyo tracks in detail.¹ Thus, this platform should
10 allow Thistle to access a list of every email address that was sent a marketing email. It should also
11 allow Thistle to determine who viewed the emails and who clicked on any links within them.

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

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

19 90. Sixth, Thistle may obtain information that the recipients of its marketing emails are
20 Washington residents because that information is available, upon request, from the registrant of
21

22 ¹ See "Understanding when and how Klaviyo sets a profile's location," Klaviyo (July 7, 2025) (describing
23 "how a profile's location and timezone information are set and updated"), <https://help.klaviyo.com/hc/en-us/articles/115005073907/>; "Understanding profiles in Klaviyo," Klaviyo (Aug. 5, 2025) ("Each individual profile
24 features an activity log to capture a timeline of their interactions with your business," including receiving emails,
opening emails, and clicking links within emails.), <https://help.klaviyo.com/hc/en-us/articles/115005247088/>.

1 the Internet domain names contained in the recipients' email addresses. *See* RCW 19.190.020(2).

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

5 **D. Thistle violated Plaintiff's right under CEMA to be free from deceptive**
6 **commercial emails.**

7 92. Thistle has spammed Plaintiff with commercial emails whose subject lines contain
8 false or misleading statements in violation of her right to be free from such annoyance and
9 harassment under CEMA.

10 93. Plaintiff received every email referenced herein, including the following emails
11 from Thistle which included false or misleading information within their subject lines:

12 a. An email sent on January 11, 2026, titled: "Don't Miss Out: The Fresh Start
13 Sale Ends Tomorrow[.]" This email contained a false or misleading subject
14 line sent by Thistle as described above at paragraphs 62 through 67.

15 b. An email sent on January 12, 2026, titled: "LAST CHANCE: 50% Off"
16 This email contained a false or misleading subject line sent by Thistle as
17 described above at paragraphs 62 through 67.

18 94. The subject lines of these emails are false or misleading in violation of CEMA.

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

21 **V. CLASS ALLEGATIONS**

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

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

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

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

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

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

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

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

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

104. 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.

105. 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.

106. 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

107. Plaintiff incorporates and realleges paragraphs 1-95 above.

108. 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 ... [u]ses a subject line which, based on the person's actual knowledge or knowledge fairly implied on the basis of objective circumstances, contains false or misleading information in the subject line.” RCW 19.190.020(1)(b).

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

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

111. 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).

112. 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).

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

Second Claim to Relief

Violation of the Consumer Protection Act, RCW 19.86.020

114. Plaintiff incorporates and realleges paragraphs 1–95 above.

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

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

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

7 118. CEMA provides that “[n]o person may initiate the transmission, conspire with
8 another to initiate the transmission, or assist the transmission, of a commercial electronic mail
9 message ... to an electronic mail address that the sender knows, or has reason to know, is held by
10 a Washington resident that ... [u]ses a subject line which, based on the person's actual knowledge
11 or knowledge fairly implied on the basis of objective circumstances, contains false or misleading
12 information in the subject line.” RCW 19.190.020(1)(b).

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

14 120. Defendant initiated the transmission, conspired with another to initiate the
15 transmission, or assisted the transition of “commercial electronic mail messages” within the
16 meaning of CEMA. RCW 19.190.010(2).

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

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

23 123. For Defendant’s violation of the CPA, Plaintiff and putative members are entitled
24

1 to an injunction against further violations; the greater of Plaintiff's actual damages or liquidated
2 damages of \$100 per violation, trebled; and costs of the suit, including a reasonable attorney's fee.

3 **VII. JURY DEMAND**

4 124. Plaintiff will demand a jury trial by separate document in accordance with Local
5 Civil Rule 38(b).

6 **VIII. PRAYER FOR RELIEF**

7 Plaintiff asks that the Court:

8 A. Certify the proposed Class, appoint Plaintiff as Class representative, and appoint
9 undersigned counsel as Class counsel;

10 B. Enter a judgment in Plaintiff's and the Class's favor permanently enjoining
11 Defendant from the unlawful conduct alleged;

12 C. Enter a judgment in Plaintiff's and the Class's favor awarding actual or liquidated
13 damages, trebled, according to proof;

14 D. Award Plaintiff costs of suit, including reasonable attorneys' fees; and

15 E. Order such further relief the Court finds appropriate.

16
17 Dated: August 6, 2026

Respectfully submitted,

18 By: /s/ Samuel J. Strauss

Samuel J. Strauss, WSBA No. 46971

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*** Applications for admission *pro hac*
vice forthcoming**