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SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY

STEVEN CLIMENSON, individually and on behalf of all others similarly situated, *Plaintiff*, vs. SKULLCANDY, INC. *Defendant.*	Case No. **CLASS ACTION COMPLAINT** **JURY DEMAND**

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I. Introduction.

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

2. For marketing emails that advertise sales or product discounts, CEMA prohibits subject lines that misrepresent when or whether a purported sale is ending or that announce offers that are available for longer than the time stated in the subject line. *Brown v. Old Navy LLC*, 4 Wn.3d 580 (2025).

3. Defendant Skullcandy, Inc., ("Skullcandy" or "Defendant") markets and sells various headphones, earbuds, speakers, and other auditory and gaming accessories ("Skullcandy Products" or "Products") to consumers. The Products are sold online through Defendant's website, www.skullcandy.com.

4. Defendant sends commercial emails to Washington residents on its mailing list. These emails frequently contain subject lines that advertise time-limited promotions or discounts on Skullcandy Products. For example, such subject lines include phrases like "Final Hours. Don't Miss Out"; "Last chance"; and "ONLY HOURS LEFT." But these sales do not really end when the subject lines say they will. Instead, Skullcandy will either extend the sale or "replace" the sale with a materially similar one.

5. These deceptive emails are material to consumers. They drive sales and profits by creating a false sense of urgency, spurring consumers to make purchases before the sale ends.

6. Plaintiff is a Washington resident who received Skullcandy's deceptive marketing emails. Plaintiff brings this case on behalf of himself and other Washington residents who received Defendant's deceptive emails.

II. Parties.

7. Plaintiff Steven Climenson is domiciled in Vancouver, Washington.

8. The proposed Class includes citizens of Washington.

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9. Defendant Skullcandy, Inc. is a Delaware corporation with its principal place of business in Park City, Utah.

III. Jurisdiction and Venue.

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

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

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

IV. Facts.

A. Defendant sends emails with false and misleading subject lines advertising fake deadlines for discounts on Skullcandy Products.

13. Skullcandy markets and sells Skullcandy Products online through its website and through email.

14. Skullcandy sends emails with false and misleading subject lines advertising its discounts.

15. Skullcandy regularly sends commercial emails to Washington residents advertising supposed limited-duration sales in the subject lines. These email subject lines state that the sales are in their "Final Hours," have "ONLY HOURS LEFT," are on their "LAST DAY," or are available for

"Today only." These kinds of email subject lines convey to reasonable recipients that the advertised promotions will end shortly after the emails are sent. They convey that unless consumers buy during the limited, advertised window (*i.e.*, before the "Final hours"), the opportunity to receive a discount will disappear and the consumer will have to pay full price for the Products. This is not true. When one promotion supposedly ends, Defendant quickly extends it or replaces it with a materially similar sale that entitles consumers to receive materially similar (or better) discounts to the ones that supposedly just ended. This pattern is no accident: Defendant puts false and misleading time limits in its email subject lines knowing that the sale will not really end when the email says or will quickly be replaced by a materially similar sale because these false and misleading time limits create a sense of urgency and drive sales. The extension or replacement of these supposedly expiring sales with materially similar sales are pre-planned and systematic. These subject lines allow Defendant to profit from a false sense of urgency.

16. Defendant routinely sends these kinds of false and misleading emails to Plaintiff and other Washington residents, and has sent emails with similar subject lines to Washington residents throughout the statute of limitations period. Below are examples of some of the false or misleading email subject lines, containing fake time limits for Defendant's discounts, that Defendant sent to Plaintiff.

17. On October 10, 2025, Defendant sent a commercial email to Plaintiff and other Washington residents with the subject line "Fan Favorites. Final Hours. Don't Miss Out." Based on the subject line, reasonable recipients of this October 10, 2025, email believed that Skullcandy was offering a limited-time promotion through which consumers could receive discounts on the Skullcandy Products. They also believed that Defendant was offering a limited-time sale that was in its "Final Hours" *i.e.*, was ending shortly. And they believed that, if consumers were to wait past the expiration period, the sale would end, the opportunity to receive a discount on the Products would be over, and the Products' prices would return to their regular prices (the prices to which the supposed discount offer applied).

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From: Skullcandy <noreply@skullcandy.com>
Sent: Friday, October 10, 2025 4:58 PM
To: [redacted]
Subject: Fan Favorites. Final Hours. Don't Miss Out



LAST CALL: THE SALE ENDS TONIGHT

ONCE IT'S GONE, IT'S GONE FOR GOOD.

18. This is reinforced by the body of the email, which states "Last call: the sale ends tonight" and "Once it's gone, it's gone for good."

19. But the promotion was not in its "Final Hours." After October 10, 2025, the prices for the Skullcandy Products did not return to their purported regular prices. Instead, through another commercial email, Defendant notified Plaintiff and other Washington residents that the sale was "extended."

From: Skullcandy <noreply@skullcandy.com>
Sent: Sunday, October 12, 2025 4:58 PM
To: [redacted]
Subject: We're Not Done Yet. One More Day of Deals.



SALE EXTENDED. ENDS TONIGHT.

ONCE IT'S GONE, IT'S GONE FOR GOOD.

20. This was not a one-off, bona fide extension. Defendant has a pattern and practice of pre-planning supposed sale "extensions." This allows it to advertise the supposed end of the promotion twice, and creates a false sense of urgency that spurs sales and increases profits. As a result, the

"extension" shows that the October 10 email subject line stating that the promotion was in its "Final Hours" was false and misleading.

21. As mentioned above, Defendant regularly advertises the imminent end of a promotion only to "extend" the promotion. For another example, on November 28, 2025, Defendant sent Plaintiff and other Washington residents an email with the subject line "50% OFF BLACK FRIDAY: ONLY HOURS LEFT." Based on the subject line, reasonable recipients of this November 28, 2025, email believed that Skullcandy was offering a limited-time promotion through which consumers could receive a 50% discount on Skullcandy Products. They also believed that Defendant was offering a limited-time sale for Black Friday that had "ONLY HOURS LEFT" *i.e.*, was ending shortly. And they believed that, if consumers were to wait past the expiration period, the sale would end, the opportunity to receive a discount on the Products would be over, and the Products' prices would return to their regular prices (the prices to which the supposed 50% discount offer applied).

From: Skullcandy <noreply@skullcandy.com>
Sent: Friday, November 28, 2025 4:57 PM
To: [redacted]
Subject: 50% OFF BLACK FRIDAY: ONLY HOURS LEFT



50% OFF BLACK FRIDAY IS ALMOST OVER

HOURS LEFT....

22. But the next day, November 29, 2025, Defendant "extended" its Black Friday sale through an email to Plaintiff and other Washington residents with the subject line "JUST IN: Over 50% off Black Friday Extended." The "extended" Black Friday sale continued until November 30, 2025, which Defendant advertised with another email subject line stating "HOURS LEFT: BLACK FRIDAY SALE, SAVE OVER 50%."

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From: Skullcandy <noreply@skullcandy.com>
Sent: Saturday, November 29, 2025 4:57 PM
To: [redacted]
Subject: JUST IN: Over 50% off Black Friday Extended.



BLACK FRIDAY

SALE EXTENDED

SAVE OVER 50% ON OUR BEST STUFF.

From: Skullcandy <noreply@skullcandy.com>
Sent: Sunday, November 30, 2025 4:52 PM
To: [redacted]
Subject: HOURS LEFT: BLACK FRIDAY SALE, SAVE OVER 50%



SALE EXTENDED

JUST FOR YOU

HOURS LEFT: YOU CAN STILL SAVE OVER 50%

23. Skullcandy's November 29 "extension" of the Black Friday sale was not a bona fide extension. It was pre-planned and calculated to create a false sense of urgency, spur sales, and increase its profits. And the extension shows that the November 28 email subject line, stating that the Black Friday sale had "ONLY HOURS LEFT" was false and misleading; the Black Friday sale continued to be available for days after the November 28 email was sent.

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24. The false and misleading commercial emails did not end there. Immediately after the Black Friday sale supposedly ended, on December 1, 2025, Defendant replaced it with a materially identical sale, which Defendant advertised in an email sent to Plaintiff and other Washington residents with the subject line "CYBER MONDAY: LAST DAY FOR OVER 50% OFF." In other words, Skullcandy continued offering the same "OVER 50%" off promotion, but just changed its name. This December 1 email shows that the November 28 and November 30 email subject lines advertising that the Black Friday sale had "HOURS LEFT" were false and misleading; reasonable recipients of these email subject lines stating that the Black Friday sale had hours left believed that, after the Black Friday sale was over, the Skullcandy Products would return to their regular prices (the prices at which they sold before the promotion). They did not believe that the Black Friday promotion would immediately be replaced with a materially identical sale (albeit with a different name).

From: Skullcandy <noreply@skullcandy.com>
Sent: Monday, December 1, 2025 7:02 AM
To: [redacted]
Subject: CYBER MONDAY: LAST DAY FOR OVER 50% OFF



TAKE OVER 50% OFF

PREMIUM SOUND

25. The December 1 email subject line was also false and misleading. It was not the "LAST DAY" for over 50% off, because Skullcandy went on to "extend" the Cyber Monday sale, and advertised the extension in a December 3, 2025 email to Plaintiff and other Washington residents with the subject line "By Demand: Cyber Deals Extended Up to 50% Off." The "extended" Cyber Monday sale continued to be available until at least December 5, 2025, when it was replaced by a Holiday Sale (also offering "Over 50%" off) that continued until at least December 9, 2025. So, contrary to the

December 1 subject line stating that it was the "LAST DAY" for the Cyber Monday sale, consumers could continue to purchase the Skullcandy Products at substantial discounts over a week later. And like the other supposed "extensions" of promotions discussed above, the Cyber Monday "extension" was not a bona fide extension. Rather, it was a pre-planned extension designed to create a false sense of urgency for the Skullcandy Products.

From: Skullcandy <noreply@skullcandy.com>
Sent: Wednesday, December 3, 2025 4:58 PM
To: [redacted]
Subject: By Demand: Cyber Deals Extended 🔥 Up to 50% Off



CYBER DEALS EXTENDED

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From: Skullcandy <noreply@skullcandy.com>
Sent: Tuesday, December 9, 2025 4:57 PM
To: [redacted]
Subject: Last Chance to Get Stocking Stuffers Delivered On Time

GET IT IN TIME.

KEEP IT LOUD.

THE HOLIDAY CLOCK IS ALMOST OUT



26. In sum, consumers could continue to receive Skullcandy's 50% off promotion from the start of Defendant's Black Friday sale on November 17, 2025, until at least December 9, 2025. Along the way, Skullcandy advertised in email subject lines on November 28, November 30, and December 1 that the sales were ending imminently. Each of these email subject lines, as well as the November 29 and December 3 email subject lines advertising the supposed "extension" of these sales, were false and misleading.

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27. Defendant continued this practice of either "extending" its promotions or replacing them with materially similar promotions throughout the statute of limitations period. For another example, on August 24, 2025, Defendant sent an email to Plaintiff and other Washington residents with the subject line "50% off is ending at midnight!"

From: Skullcandy <noreply@skullcandy.com>
Sent: Sunday, August 24, 2025 4:59 PM
To: [redacted]
Subject: 50% off is ending at midnight!



FINAL HOURS

BACK TO SKULL SALE ENDS TONIGHT

From: Skullcandy <noreply@skullcandy.com>
Sent: Tuesday, August 26, 2025 5:58 PM
To: [redacted]
Subject: 40% Off Sitewide Only At Skullcandy.com



READY FOR LABOR DAY?

UNLOCK 40% OFF SITEWIDE FIRST

28. Based on the subject line, reasonable recipients of the August 24, 2025, email believed that if they purchased during the sale, they would receive a special discount of 50% off. They also believed that Defendant was offering a limited-time sale that was "ending at midnight." And they believed that, if consumers were to wait until after midnight to make their purchase, the sale would end, the opportunity to receive a discount on the Products would be over, and the Products' prices would return to their regular prices (the prices to which the 50% off offer applied). Instead, by August 26,

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2025, Defendant was advertising a new promotion "40% Off Sitewide Only at Skullcandy.com." So the Products did not return to their regular prices, they instead continued to be available at heavily discounted prices.

29. Similarly, on December 25, 2025, Defendant sent an email to Plaintiff and other Washington residents with the subject line "Take 40% Off Sitewide: Today only." Contrary to the expectations of reasonable recipients, however, the next day Defendant continued to offer a materially similar sale: "You gave, now get up to 50% off."

From: Skullcandy <noreply@skullcandy.com>
Sent: Thursday, December 25, 2025 4:58 PM
To: [redacted]
Subject: Take 40% Off Sitewide: Today only.



HOLIDAY FLASH SALE STARTS NOW

ONE DAY ONLY

From: Skullcandy <noreply@skullcandy.com>
Sent: Friday, December 26, 2025 4:58 PM
To: [redacted]
Subject: You gave, now get up to 50% off.



GET WHAT YOU

REALLY WANTED?

30. The subject lines of the emails above—and of other commercial emails Defendant sent to Washington residents stating that Defendant's sales will end soon, are on their last call, and so forth—are false and misleading. To reasonable recipients, these subject lines convey that the advertised discount is only available for a limited period, that the limited period will end imminently, and that when the period ends the Skullcandy Products will go back to retailing at the full price to which the advertised promotion is supposedly applied. But in reality, after the specified time period, Defendant either reveals a pre-planned extension of the sale or replaces the supposedly ending sale with the same or materially similar sale offering materially similar discounts on the Skullcandy Products. So email subject lines that contain these false statements about the duration or end of a sale are false and misleading because they convey that the discounts will end and that the Products will return to their full prices unless the consumer buys them before the promotions are supposed to expire, when in reality, the Products continue to be available at heavily discounted prices even after the supposed deadline.

31. This pattern is no accident: Defendant puts the misleading time limits in its email subject lines, knowing that the sale will not really end when the email says it will or that the sale will quickly be replaced by a materially similar one because these misleading time limits create a sense of urgency and drive sales.

32. Defendant is constantly sending commercial emails to recipients on its mailing list. Plaintiff often received multiple emails from Defendant weekly, and the emails Defendant sends to Washington residents, like the ones above, include false or misleading subject lines regarding Defendant's promotions. Based on the emails Defendant sent to Plaintiff, Defendant has sent at least hundreds of emails to Washington recipients with similar false or misleading subject lines.

33. Defendant knows what sales it is offering and what sales it plans to offer in the near future. It knows that, in truth, the opportunity to receive supposed discounts will not end on the advertised end date of its sales, and that it is not really the last chance for consumers to get the advertised sales.

34. 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

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Defendant from continuing to transmit emails with false or misleading subject lines to Washington residents.

B. Defendant knows when it sends emails to Washington residents.

35. Defendant knows, or has reason to know, that it sends emails containing false and misleading subject lines to Washington residents.

36. A sophisticated commercial enterprise, like Defendant, which is engaged in persistent marketing through mass email campaigns, has several ways of knowing where the recipients of its marketing emails, including Plaintiff, are located. The means Defendant uses are particularly within its knowledge.

37. First, the sheer volume of email marketing that Defendant engages in puts it on notice that Washington residents would receive its emails.

38. Second, Defendant obtains location information tied to email addresses when consumers make purchases from Defendant, or otherwise self-report such information to Defendant. For example, Washington consumers supply Defendant with their billing and/or shipping addresses when they make a purchase.

39. Third, Defendant obtains location information tied to email addresses by tracking the IP addresses (or other geolocation data) of devices used to open its emails or visit its website, which in turn can be correlated to physical location (as illustrated, for example, by the website https://whatismyipaddress.com/).[1] Similarly, Defendant likely uses email marketing software platforms to manage its email marketing campaigns. These types of platforms allow Defendant to identify anyone who receives its marketing emails, determine who opens them, and track who clicks on any links within them.

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[1] Defendant's Privacy Notice, available at https://www.skullcandy.com/policies/privacy-policy (last accessed October 6, 2026), describes Defendant's collection and usage of location information, like physical address, IP address, and geographic region, through a variety of tracking technologies.

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40. Fourth, Defendant can 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.

41. Fifth, Defendant 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.

42. Sixth, Defendant can obtain confirmation 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 19.190.020(2).

C. Defendant's emails are materially deceptive.

43. Defendant's false and misleading email subject lines are deceptive and material to reasonable consumers.

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

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

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46. Research confirms that discounts are important to consumers. "Nearly two-thirds of consumers surveyed admitted that a promotion or a coupon often closes the deal, if they are wavering or are undecided on making a purchase."[2] And, "two-thirds of consumers have made a purchase they weren't originally planning to make solely based on finding a coupon or discount," while "80% [of consumers] said they feel encouraged to make a first-time purchase with a brand that is new to them if they found an offer or discount."[3]

47. Similarly, when consumers believe that an offer is expiring soon, the sense of urgency makes them more likely to buy a product.[4, 5] That a discount is ending soon is important to reasonable consumers' purchasing decisions.

48. 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."[6]

49. These types of 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."[7]

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[2] Invesp, How Discounts Affect Online Consumer Buying Behavior (https://www.invespcro.com/blog/how-discounts-affect-online-consumer-buying-behavior/) (last accessed October 6, 2026).

[3] RetailMeNot Survey: Deals and Promotional Offers Drive Incremental Purchases Online, Especially Among Millennial Buyers (https://www.prnewswire.com/news-releases/retailmenot-survey-deals-and-promotional-offers-drive-incremental-purchases-online-especially-among-millennial-buyers-300635775.html) (last accessed October 6, 2026).

[4] CXL, Creating Urgency, (https://cxl.com/blog/creating-urgency/) (last accessed October 6, 2026) (increasing urgency by advertising limited time nature of promotion increased conversion rates nearly 300%).

[5] Adestra, Dynamic email content leads to 400% increase in conversions for Black Friday email (https://uplandsoftware.com/adestra/resources/success-story/dynamic-email-content-leads-to-400-increase-in-conversions-for-black-friday-email/) (last accessed October 6, 2026) (400% higher conversation rate for ad that increased urgency via countdown timer).

[6] *Bringing Dark Patterns to Light* (2022), at p. 22 (https://perma.cc/847M-EY69/) (last accessed October 6, 2026).

[7] *Online Choice Architecture- How Digital Design Can Harm Competition and Consumers* (2022), at p. 26 (https://perma.cc/V848-7TVV/) (last accessed October 6, 2026).

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50. Under this false time pressure, "consumers might take up an offer to minimise the uncertainty of passing it up."[8]

51. 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."[9]

52. Defendant sends these emails for the purpose of promoting its Products and driving sales. By misrepresenting the duration or end of its supposed discounts, Defendant creates a false sense of urgency. And Defendant compounds this sense of urgency by accompanying the promise of deals with statements like "Final Hours." These tactics work. When a reasonable consumer sees Defendant's email subject lines saying that the discount will end imminently, they expect that if they miss the sale, the discount will not be available again soon. So if they act now, they can purchase a higher value Product at a limited-time discount. If they wait, then the discount will expire and they will have to pay the former or regular price. Reasonable consumers do not expect that a materially similar sale will quickly replace the advertised promotion or that the Products will continue to be available at a supposed discount. This creates a false sense of urgency to buy that drives sales and profits.

53. Defendant's email subject lines also make Washington consumers more likely to open the emails, read the emails, buy the Products quickly, and be willing to pay more for the Products. This increases demand, drives sales, allows Defendant to sell more Products than it otherwise could, and allows Defendant to charge more than it otherwise could.

V. Class Action Allegations.

54. Plaintiff brings the asserted claims on behalf of the proposed Class of: all Washington residents who received promotional emails from Skullcandy with subject lines advertising time-limited sales on Skullcandy Products, during the applicable statute of limitations.

55. The following people are excluded from the proposed Class: (1) any Judge or Magistrate Judge presiding over this action and the members of their family; (2) Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a

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[8] *Id.*

[9] *Id.* at p. 27.

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controlling interest and their current employees, officers and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and Defendant's counsel, and their experts and consultants; and (6) the legal representatives, successors, and assigns of any such excluded persons.

Numerosity

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

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

Predominance of Common Questions

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

(1) whether Defendant's email subject lines regarding its discounts are false or misleading;

(2) whether Defendant's email subject lines violate CEMA;

(3) whether Defendant's email subject lines violate the CPA;

(4) the greater of actual damages and statutory damages due to Plaintiff and the proposed Class.

Typicality & Adequacy

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

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

Superiority

61. 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.

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VI. Claims.

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

(By Plaintiff and the Class)

62. Plaintiff incorporates the facts alleged above.

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

64. Skullcandy is a "person" under CEMA. RCW 19.190.010(11).

65. As alleged in detail above, Skullcandy violated CEMA by initiating the transmission of, or assisting in the transmission of, commercial electronic mail messages that contained false or misleading information in the subject lines to Plaintiff's and Class members' electronic mail addresses.

66. Defendant sent these emails to Plaintiff and Class members for the purpose of promoting the Skullcandy Products for sale.

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

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

69. Defendant's acts and omissions injured Plaintiff and Class members.

70. 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 against Defendant. A permanent injunction against Defendant is in the public interest. 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.

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

Count 2: Violations of the Washington Consumer Protection Act

(By Plaintiff and the Class)

72. Plaintiff incorporates the facts alleged above.

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

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

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

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

77. A violation of CEMA establishes all elements of the CPA, including injury and causation, as a matter of law. *Wright v. Lyft, Inc.*, 189 Wn.2d 718, 732 (2017) (CEMA "establishes the injury and causation elements of a CPA claim as a matter of law."); *Brown v. Old Navy, LLC*, 4 Wn.3d 580, 592 (2025) ("CEMA does not require a showing of injury for statutory damages to be awarded because the injury is receiving the e-mail that violates CEMA.").

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

Unfair Acts or Practices

79. As alleged in detail above, Defendant committed "unfair" acts by falsely stating in email subject lines that it was offering limited-time promotions that were ending soon when this was not accurate.

80. The harm to Plaintiff and the Class greatly outweighs the public utility of Defendant's conduct. There is no public utility in misrepresenting the duration of promotions. Plaintiff's and the Class's injury was not outweighed by any countervailing benefits to consumers or competition. Misleading consumers only injures healthy competition and harms consumers.

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Deceptive Acts or Practices

81. As alleged in detail above, Defendant's representations in email subject lines that its Products were on sale for a limited time and that the promotions were ending soon are deceptive.

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

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

84. 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.

85. Under the CPA, Plaintiff and Class members are entitled to seek, and do seek, the greater of actual damages and statutory damages of $100 per email that violates CEMA.

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

VII. Jury Demand.

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

VIII. Prayer for Relief.

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

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

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Respectfully submitted,

By: */s/ Cody Hoesly*

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