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CASE #: 26-2-15375-2 SEA

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

MATTHEW WILDMAN, on his own behalf and on behalf of others similarly situated, Plaintiff, v. HICKORY FARMS, LLC, Defendant.	Case No.: _____ SEA CLASS ACTION COMPLAINT JURY TRIAL DEMANDED

Plaintiff Matthew Wildman, 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 Hickory Farms, LLC ("Defendant" or "Hickory Farms"), 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 or misleading information in the subject line" to the email address of a Washington resident. RCW

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19.190.020(1)(b).

3. Defendant Hickory Farms engages in the precise activity which CEMA prohibits.

4. Hickory Farms 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 this deceptive time-sensitivity, Hickory Farms falsely narrows the field—steering consumers away from shopping for better deals—to its own products that must be purchased *now*.

7. Plaintiff challenges Hickory Farms' 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.

III. PARTIES

10. Plaintiff Matthew Wildman is a resident of King County, Washington.

11. Defendant Hickory Farms, LLC, is a Delaware company with its principal address at 311 S. Wacker Dr., Suite 2030, Chicago, IL 60606, and a registered agent in the State of

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Washington at C T Corporation System, 711 Capitol Way S., Suite 204, Olympia, WA, 98501.

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

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 Hickory Farms' 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 the defendant's marketing scheme to compel consumers to purchase its products.

41. Hickory Farms is a food and gift retailer. The company's merchandise is available at its seasonal retail locations, through other brick-and-mortar retailers, and on its website, www.hickoryfarms.com.

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

43. **Urgent Spam Emails.** Unfortunately for those recipients, Hickory Farms 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. Hickory Farms has tailored its approach to fit a number of offers, including promotion extensions. In these examples, Hickory Farms 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 from Defendant's website and retail locations. Finally, once the originally advertised "deadline" has passed, Hickory Farms knowingly extends the promotion to a new end date.

45. This misleading marketing strategy allows Hickory Farms to maximize sales during both the initial promotion, as well as the subsequent extension. While Hickory Farms 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

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original promotion has ended—Hickory Farms compels consumers to purchase quickly while withholding terms that consumers need so they can make informed buying decisions. A 2022 "free" shipping promotion provides an apt example of this strategy at work.

46. First, Hickory Farms sends consumers marketing emails advertising a new promotion. For instance, on June 10, 2022, it transmitted an email with the subject line: "4 days left! Get free shipping for Father's Day[.]" The body of the email encouraged recipients to "HURRY!" and "Snag a gift for Dad."

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

48. Regarding the free shipping event, Hickory Farms followed up on its June 10 email by planting a crop of urgent subject lines in consumers' inboxes.

49. On June 11, 2022, it transmitted an email with the subject heading: "Only two days left for free standard shipping!"

50. The next day, June 12, 2022, Hickory Farms sent consumers yet another email warning of the promotion's impending conclusion within its title: "Pssst! Free standard shipping ends tomorrow[.]"

51. Later that day, it pelted consumers' inboxes with another email pressuring them to act fast using the subject line: "Time's running out to get free Father's Day shipping[.]" Inside, the email featured a countdown timer indicating that the opportunity would end on June 13, 2022. Large text within the email also confirmed that the promotion, "ENDS TOMORROW!"

52. Despite this unambiguous deadline concerning the end of the free shipping offer, the promotion did not conclude on June 13, 2022, as advertised. Instead of providing consumers

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with accurate terms, the retailer chose to keep them in the dark regarding the sale's end date and orchestrated a scheme to promulgate false information.

53. In the final stage of its scheme, Hickory Farms extends the life of the promotion, proving the falsity of the deadline it first advertised. For the Father's Day free shipping offer, Hickory Farms revealed that the promotion would not conclude as advertised on June 13, 2022. An email transmitted on that date was titled, "..and here you were thinking you missed it (Free shipping extended!)[,]" and stated that free shipping would continue to be available until the following day, June 14, 2022.

54. The June 13 email confirms the misleading nature of Hickory Farms' previous subject lines. The company's free shipping offer didn't end on June 13, 2022. Instead, Hickory Farms continued to offer free shipping the following day. The false deadline for the free shipping promotion is simply one example and one element of Defendant's cohesive marketing strategy meant to compel consumers to purchase its merchandise.

55. Hickory Farms redeployed its ruse for another shipping promotion a few months later; yet again pairing a false deadline with a surprise extension.

56. An email sent on October 11, 2022, announced the beginning of the promotion in its subject line: "Attention Shoppers! 1 Day Free Shipping[.]" Inside the email, large text made clear that the opportunity would last for "1 DAY ONLY!"

57. Later that day, Hickory Farms transmitted another email to layer additional time pressure on consumers. That email carried the subject heading, "⏰ Ends Tonight ⏰ Free shipping[,]" and featured a countdown timer ticking away the remaining time, down to the second, until the opportunity would end.

58. However, to the detriment of consumers, both of the October 11, 2022, subject lines

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communicated a false deadline. The free shipping promotion did not end on that date.

59. The sale was still active on October 12, 2022. An email sent on that date was titled, "⏰ Free Shipping offer extended! ⏰ Ends Today![,]" and confirmed the falsity of the October 11, 2022, subject line.

60. So, despite the unambiguous deadline that it communicated in its October 11, 2022, subject lines, Hickory Farms continued to offer the same promotion the day after the advertised deadline.

61. By stuffing consumer inboxes with such misinformation, Hickory Farms ensures that email recipients lack the accurate details needed to make educated buying decisions. An additional example of Hickory Farms' deceptive practices occurred later that very same month.

62. On October 21, 2022, Hickory Farms sent consumers a Halloween-themed email to advertise free shipping on select items. The email was titled: "You'll freak for this one-day deal!"

63. However, the free shipping offer was not a one-day deal.

64. On October 22, 2022, Hickory Farms communicated the real end date of the promotion in an email with the subject line: "Extended: Your exclusive deal[.]" As confirmed by the content of the email, Hickory Farms made the allegedly "one-day" deal available for three days, not concluding the offer until October 23, 2022.

65. In an example from the following month, Hickory Farms repeated its strategy for a Black Friday buy one, get one sale.

66. On November 25, 2022, Hickory Farms transmitted an email with the subject line: "BOGO 50% is back! One day only!" Inside, the email stated that the offer was a buy one, get one 50% off offer for gift sets priced at $45 or higher.

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67. Later that day, Hickory Farms sent consumers another email featuring a subject line heavy with time pressure: "🚨 Final Hours 🚨 Don't miss this BOGO 50% off!" A countdown timer inside the email further emphasized the limited time remaining for consumers to participate in the opportunity.

68. True to form, however, the deadline which Hickory Farms communicated to consumers in its November 25 subject lines was a false one.

69. On November 26, 2022, one day after the promotion would supposedly end, Hickory Farms transmitted an email titled: "📢 Just in: BOGO 50% off extended[.]"

70. The November 26 email confirmed that the "one day only" and "Final hours" warnings contained in the November 25, 2022, subject lines were merely misleading time pressure claims designed to deceive consumers rather than a reliable fact about the opportunity to save on multiple purchases.

71. The following year, 2023, provides several additional examples of Hickory Farms' deceptive marketing scheme.

72. On February 5, 2023, it sent consumers an email with the subject line: "Two days left: Free shipping for Valentine's Day!"

73. Quickly thereafter, Hickory Farms continued to transmit subject lines meant to pressure consumers with false time scarcity claims.

74. On February 6, 2023, it sent an email with the subject heading: "Free shipping ends tomorrow! Don't wait to order!"

75. Then, on February 7, 2023, the day which Hickory Farms advertised as the deadline for the promotion, it sent an email titled: "Ends Today: Free Standard Shipping for V-Day[.]"

76. The promotion, however, was "extended," confirming that the February 5, February

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6, and February 7 subject lines were false.

77. On February 8, 2023, Hickory Farms sent consumers an email announcing the extension within the email's subject line: " Surprise! Free standard shipping is extended[.]"

78. Each of the subject lines identified above are installments in Hickory Farms' scheme; steps evidencing Hickory Farms' coordinated marketing strategy to deceive consumers with false information about the duration and availability of its promotions.

79. Hickory Farms also transmitted false and misleading subject lines in connection with its 2023 Easter promotion.

80. On April 2, 2023, it sent an email titled: "Last Chance 25% Off Easter Sale[.]" Inside, large text appearing in all capital letters at the top of the email specified a free shipping offer and its deadline: "FREE SHIPPING ENDS TOMORROW ORDER BY 3PM EST[.]"

81. The next day, April 3, 2023, Hickory Farms sent an email explicitly warning consumers about the limited time remaining for the free shipping offer within its subject line: "Last Day for Free Shipping by Easter!" A timer graphic inside the email counted down the remaining hours, minutes, and seconds until the opportunity's alleged end.

82. Consistent with Hickory Farms' deceptive pattern, the April 3 subject line and the time pressure it leveraged against consumers were false.

83. Later that day, Hickory Farms sent an email with the subject heading: " EGGS-TENDED free shipping!" Indeed, neither Hickory Farms' deception nor the Easter-themed shipping offer had concluded. Hickory Farms simply deployed its April 3, 2023, subject line to gin up consumer interest in its products – not to provide consumers with reliable factual representations about when the free shipping opportunity ended.

84. The following month, Hickory Farms repeated its scheme for yet another free

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shipping promotion.

85. It transmitted an email to consumers on May 8, 2023, with the subject line: "Last day for free shipping on Mom's gift[.]" Inside the email, a countdown graphic displayed the time remaining until the advertised end of the free shipping promotion.

86. Much like the previous shipping promotion examples, the advertised end date for the holiday-themed free shipping offer was a fake deadline. Hickory Farms never intended to conclude the sale on May 8, despite the unambiguous deadline it communicated to consumers in its May 8, 2023, subject line.

87. Later that day, Hickory Farms provided consumers with the real deadline for its free shipping promotion in an email titled: "Mother's Day Surprise! Free shipping is extended!" As the body of the email confirmed, the actual end date for the promotion was May 9, 2023.

88. Hickory Farms has paired false deadlines with surprise extensions to deceive customers about the duration of Father's Day offers as well.

89. It did so in 2023, when advertising a free shipping promotion during the Father's Day holiday. The email subject lines which Hickory Farms transmitted to advertise the offer demonstrate the company's deceptive pattern:

a. June 12, 2023: "Free shipping ends today!"

b. June 12, 2023: "⚠ Final hours for Free Shipping for Father's Day gifts!"

c. June 12, 2023: "Extended! Free shipping for Father's Day" in an email that made clear "FREE STANDARD SHIPPING ENDS TOMORROW!"

90. Thus, the free shipping opportunity didn't end on June 12, 2023, despite the clear deadline advertised in both earlier emails.

91. October 2023 brought a "Falliday Sale" which yielded additional examples of

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Hickory Farms' misleading marketing strategy.

92. On October 10, 2023, it sent consumers an email titled: "Today Only! Save up to 20%[.]" Text within the email warned consumers to "Hurry" to save up to 20% off select items on Hickory Farms' website.

93. Later that day, Hickory Farms applied additional pressure by pelting consumers with another email containing a subject line with false time scarcity claims: "Ending Soon! Save up to 20%[.]" Text within the email emphasized that the opportunity was "TODAY ONLY!"

94. October 10, 2023, however, was not the only day for the up to 20% off promotion.

95. On October 11, 2023, Hickory Farms sent an email titled, "Sale E-x-t-e-n-d-e-d! Save up to 20%[,]" which confirmed the falsity of the October 10 subject lines.

96. Unfortunately for consumers, Hickory Farms continued to deploy deceptive email subject lines in December as well. For example, when Hickory Farms held a free shipping promotion, it falsely communicated a December 1, 2023, deadline for the offer, as demonstrated by the subject lines used to perpetuate the ruse:

a. December 11, 2023: "!! Today only !! Free shipping on almost everything!"

b. December 11, 2023: "📣 Final hours: free shipping on almost everything! 📣[.]"

c. December 11, 2023: Ho, ho, ho no! Free shipping ends ✨ tonight! ✨[.]"

d. December 12, 2023: "Free shipping, no minimum is E-X-T-E-N-D-E-D!"

97. The following week, Hickory Farms executed the scheme yet again as confirmed by the following email subject lines:

a. December 16, 2023: "Free shipping on almost everything! One. Day. Only!"

b. December 16, 2023: "⚠ Final hours: free shipping on almost everything!

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⚠[.]"

c. December 16, 2023: "!! Last chance for free shipping with no minimum purchase !![.]"

d. December 17, 2023: "E-X-T-E-N-D-E-D! Free shipping, no minimum purchase!"

98. However, Hickory Farms was not content with two deceptive free shipping campaigns within the same month. The following day, it reprised its ruse while advertising a free standard shipping promotion in emails with the following subject headings:

a. December 18, 2023: "Last chance for free standard shipping!"

b. December 18, 2023: "📦 👕 Final hours for free standard shipping! 👕 📦[.]"

c. December 18, 2023: "🎉 Surprise! Free standard shipping is extended! 🎉[.]"

99. The last email confirmed that the free standard shipping offer would be available until December 20, 2023.

100. Hickory Farms continued to transmit email subject lines with false and misleading information in 2024. Several examples arose in the context of free shipping promotions as these subject lines confirm:

a. June 9, 2024: "Free shipping ends tomorrow! Don't wait to order gifts for Father's Day!"

b. June 10, 2024: "📦 📦 Free shipping for Father's Day ends today! (Order by 3pm ET)[.]"

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c. June 10, 2024: "● Free shipping EXTENDED! ●" in an email that made clear "FREE STANDARD SHIPPING ENDS TOMORROW!"

d. December 16, 2024: "Today only! FREE shipping SITEWIDE! [.]"

e. December 16, 2024: Free shipping SITEWIDE today only – procrastinators rejoice!"

f. December 16, 2024: "⏰ Tick-tock: FREE shipping SITEWIDE ends soon!"

g. December 16, 2024: "✨ Last call: FREE shipping on EVERYTHING, ends tonight! ✨ [.]"

h. December 17, 2024: "🎉 FREE shipping SITEWIDE extended – Guaranteed Christmas delivery!"

101. In other examples from 2024, Hickory Farms deployed deceptive subject lines to advertise discount promotions. For instance, it levied multiple emails at consumers in July 2024 to pressure them to participate in a 20% off "charcuterie essentials" promotion. As these subject lines confirm, Hickory Farms communicated a false deadline so it could urge consumers to purchase quickly while concealing the promotion's true end date:

a. July 16, 2024: "Two days only! Save 20% on charcuterie essentials!"

b. July 16, 2024: "🔥 Ends tomorrow: 20% off Hot Summer Savings 🔥 [.]"

c. July 17, 2024: "Final hours to save 20%! Sale ends tonight."

d. July 18, 2024: "Extended! Two more days to save 20%!"

102. In a series of other examples from later in the year, Hickory Farms deceptively

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titled marketing emails in connection with its Falliday Sale which offered up to 20% off select items. As the subject lines below demonstrate, Hickory Farms first communicated an October 8, 2024, deadline for the promotion. It was not until October 8 had passed that Hickory Farms revealed the real deadline for the discount:

a. October 8, 2024: "Today only! Save up to 20%[.]"

b. October 8, 2024: "Summer Sausage, crackers and more...now on sale! (TODAY only)[.]"

c. October 8, 2024: "⚠ Final hours to say up to 20% + free shipping[.]"

d. October 9, 2024: "E-X-T-E-N-D-E-D! Save up to 20% for one more day!"

103. The following month, Hickory Farms revived its buy one, get one 50% off promotion. It also revived its misleading marketing strategy when advertising the sale.

104. On November 29, 2024, it transmitted an email titled: "⚠ BOGO 50% ends tonight! ⚠[.]"

105. Then, on November 30, 2024, it sent an email with the subject line, "✨E-X-T-E-N-D-E-D! Black Friday BOGO 50% is still here! ✨[,]" confirming the falsity of the November 29, 2024, subject line and the false end date which it contained.

106. In 2025, Hickory Farms continued to send marketing emails which falsely represented the duration of its sales, discounts, and promotions to consumers.

107. During a St. Patrick's Day-themed event, for example, it claimed reduced pricing would be available for a single day. Instead, Hickory Farms quickly extended the promotion, as demonstrated in the subject lines of the emails used to advertise the event:

a. March 17, 2025: "☘ ☘ Lucky you! Save 71% on snacks today only

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☘ ☘ [.]"

b. March 17, 2025: "☘ ☘ Ends Tonight! Save 71% on snacks ☘ ☘ [.]"

c. March 18, 2025: "☘ Extended! Save 71% on snacks + $5 shipping ☘ [.]"

108. Additional examples come from a Mother's Day promotion.

109. On May 3, 2025, Hickory Farms transmitted an email with the subject line: "Hurry, only 3 days left for $5 shipping for Mom (Plus, save up to 25%)[.]"

110. On May 5, 2025, Hickory Farms returned to consumers' inboxes to continue misrepresenting the end date for the Mother's Day free shipping promotion. An email sent on that date carried the subject line: "$5 standard shipping for Mother's Day ends today! Don't miss out!" Text within the email repeated the subject line's "Ends Today" warning and affirmed that the offer was for "standard shipping."

111. Both emails, along with their subject lines, however, misrepresented the duration of the standard shipping offer. May 5, 2025, was a false deadline which Hickory Farms communicated to consumers so they would purchase from Hickory Farms' website.

112. Hickory Farms revealed the real end date for the standard shipping promotion within the title of an email sent on the evening of May 5, 2025: "EXTENDED! $5 standard shipping for Mother's Day ends tomorrow!"

113. Thus, the true deadline for the free standard shipping offer was May 6, 2025, not May 5, 2025, as the prior subject lines indicated.

114. Hickory Farms celebrated Father's Day much the same way.

115. It sent an email on June 8, 2025, warning that yet another standard shipping opportunity was coming to an end. The subject line was titled: "[ENDS TOMORROW] $5 standard shipping for Father's Day!"

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116. The next day, June 9, 2025, Hickory Farms followed up with another email emphasizing the impending end of the promotion in its subject line: "Hurry! $5 Standard shipping for Father's Day ends today!"

117. Again, both subject lines contained false information. Later, on June 9, 2025, Hickory Farms sent consumers an email titled: "$5 Standard shipping EXTENDED! Order by tomorrow at 3PM EST[.]"

118. So, the true deadline for the standard shipping promotion was June 10, 2025, not June 9.

119. Hickory Farms continued to transmit subject lines with false and misleading information relating to its shipping and discount promotions. Several additional examples arose in 2025 as these subject lines confirm:

a. October 7, 2025: "[TODAY ONLY] Save up to 20% + Free shipping!"

b. October 7, 2025: "Did you hear? Falliday Savings up to 20% + Free Shipping [TODAY ONLY][.]"

c. October 7, 2025: "⚠ Final hours to say up to 20% + free shipping[.]"

d. October 8, 2025: "E-X-T-E-N-D-E-D! Save up to 20% for one more day!"

e. November 28, 2025: "⚠ BOGO 50% ends tonight! ⚠[.]"

f. November 29, 2025: "[EXTENDED] BOGO 50% OFF holiday gifts is still here!"

g. December 12, 2025: "⚡ ⚡ Today Only! Take 30% OFF + Free Shipping ⚡ ⚡ [.]"

h. December 12, 2025: "⚠ ENDS TONIGHT! 30% OFF + Free Shipping! ⚠[.]"

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i. December 13, 2025: "E-X-T-E-N-D-E-D | Save 30% + Free Shipping[.]"

j. December 15, 2025: "Today only! FREE shipping SITEWIDE! [.]"

k. December 15, 2025: "Free shipping SITEWIDE today only – procrastinators rejoice!"

l. December 15, 2025: " Last call: FREE shipping on EVERYTHING, ends tonight! [.]"

m. December 16, 2025: " FREE shipping SITEWIDE extended – Guaranteed Christmas delivery!"

120. As these examples demonstrate, Hickory Farms is engaged in a scheme where it pressures consumers to purchase products from its website using subject lines which falsely represent the availability of its offers.

C. Hickory Farms knows when it sends emails to Washington residents.

121. A sophisticated commercial enterprise, like Hickory Farms, 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.

122. First, the sheer volume of email marketing that Hickory Farms engages in put it on notice that Washington residents would receive its emails. For instance, for the years 2023 through 2025, Hickory Farms transmitted roughly 538 emails per year, 44 emails per month, 10 emails per week, and 1.47 emails per day.

123. Second, Hickory Farms may obtain location information tied to email addresses when consumers make purchases from Hickory Farms through digital platforms, or otherwise self-

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report such information to Hickory Farms.

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

125. Specifically, Hickory Farms appears to use Salesforce Marketing Cloud to manage its email marketing campaigns. This platform should allow Hickory Farms to access a list of every email address that was sent a marketing email. It should also allow Hickory Farms to determine who viewed the emails and who clicked on any links within them.

126. Fourth, Hickory Farms 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.

127. Fifth, Hickory Farms 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.

128. Sixth, Hickory Farms 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 19.190.020(2).

129. 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.

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

130. Hickory Farms has spammed Plaintiff 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.

131. For example, Plaintiff received the following emails from Hickory Farms:

a. An email sent on May 5, 2025, titled: "$5 standard shipping for Mother's Day ends today! Don't miss out!" This email contained a false or misleading subject line sent by Hickory Farms as described above at paragraphs 108 through 113.

b. An email sent on June 9, 2025, titled: "Hurry! $5 Standard shipping for Father's Day ends today!" This email contained a false or misleading subject line sent by Hickory Farms as described above at paragraphs 114 through 117.

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

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

V. CLASS ALLEGATIONS

134. 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 the Defendant, on behalf of the 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.

135. Excluded from this definition of the Class are Defendant's officers, directors, and

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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.

136. 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.

137. 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.

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

139. 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.

140. 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.

141. 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

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experienced in consumer protection and class action litigation.

142. 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.

143. 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.

144. 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

145. Plaintiff incorporates and realleges paragraphs 1-133 above.

146. 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."

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RCW 19.190.020(1)(b).

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

148. 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).

149. 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).

150. 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).

151. 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

152. Plaintiff incorporates and realleges paragraphs 1–133 above.

153. 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.

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

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155. 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).

156. 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).

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

158. 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).

159. 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.

160. 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).

161. 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

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

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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.

[Counsel signatures to follow on next page.]

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Date: May 8, 2026

Respectfully submitted,

/s/ Samuel J. Strauss

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