

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JENNIFER HARBERS, for Herself, as a
Private Attorney General, and/or On Behalf
Of All Others Similarly Situated,

Plaintiff,

v.

EDDIE BAUER, LLC, and DOES 1-20,
inclusive,

Defendants.

Civil Action No.: 2:19-cv-968

NOTICE OF REMOVAL

[Originally King County Superior Court
Case No. 19-2-13499-2 SEA]

PLEASE TAKE NOTICE that Defendant Eddie Bauer LLC (“Eddie Bauer”), pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, hereby removes the above-captioned action from the King County Superior Court to the United States District Court for the Western District of Washington.

I. INTRODUCTION

1. This Action is properly removed to this Court pursuant to 28 U.S.C. § 1441 because this Court has jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d) (“CAFA”), in that this Action is a civil action in which the alleged amount in controversy

1 exceeds the sum of \$5,000,000 exclusive of costs and interest, has more than 100 members in
2 the proposed putative class, and involves citizens of different states.

3 **II. BACKGROUND**

4 2. On May 20, 2019, Plaintiff Jennifer Harbers, purportedly on behalf of herself
5 and “all others similarly situated,” filed a civil action in the King County Superior Court
6 entitled *Jennifer Harbers v. Eddie Bauer LLC*, King County Superior Court, Case No. 19-2-
7 13499-2 SEA. Plaintiff served the Summons and Complaint on Eddie Bauer on May 22, 2019.
8 (See Exhibit A, which includes the Summons, Complaint and additional documents as served
9 on Eddie Bauer.) A First Amended Complaint, which is filed herewith, was filed by the
10 Plaintiff and served on June 12, 2019.

11 3. The Complaint, which is styled as a class action, purports to bring claims under
12 Washington’s Consumer Protection Act (“CPA”), RCW Chapter 19.86 and Washington’s
13 Commercial Electronic Mail Act (“CEMA”), RCW Chapter 19.190. Plaintiff’s Complaint
14 alleges that Eddie Bauer has violated CEMA, and in turn CPA, by sending marketing emails
15 with deceptive subject lines.

16 4. The proposed putative nationwide class consists of “[a]ll residents of the United
17 States of America who, within the applicable limitations period, received an email from or at
18 the behest of Eddie Bauer LLC that contained in the subject line: (a) a ‘xx% Off’ or similar
19 statement and/or (b) a statement indicating a discount on ‘Everything,’ ‘Your Purchase,’ or
20 similar language when one or more products were excluded from discount.” (Complaint ¶ 33.)

21 5. In the alternative, the proposed Washington State class consists of “[a]ll
22 residents of the State of Washington who, within the applicable limitations period, received an
23 email from or at the behest of Eddie Bauer LLC that contained in the subject line: (a) a ‘xx%
24 Off’ or similar statement and/or (b) a statement indicating a discount on ‘Everything,’ ‘Your
25 Purchase,’ or similar language when one or more products were excluded from the discount.”
26 (Complaint ¶ 34.)
27

6. Nothing in this Notice of Removal should be interpreted as a concession of liability, the appropriateness of venue, the appropriateness of class treatment, Plaintiff’s class definition, or the validity of Plaintiff’s claim for relief. Eddie Bauer reserves the right to supplement and amend this Notice of Removal.

III. REQUIREMENTS FOR REMOVAL UNDER CAFA

7. This Court has original jurisdiction over this action under the Class Action Fairness Act of 2005 (“CAFA”), codified in part at 28 U.S.C. §§ 1332(d) and 1453. Under CAFA, a district court shall have original jurisdiction over any putative civil class action in which: (1) there are at least 100 members in all proposed plaintiff classes; (2) “the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs”; and (3) “any member of a class of plaintiffs is a citizen of a state different from any defendant.” 28 U.S.C. § 1332(d)(2), 5). Because this action meets each of CAFA’s requirements, it may be removed to federal court. 28 U.S.C. § 1441(a) (“[A]ny civil action brought in a State Court of which the district courts of the United States have original jurisdiction, may be removed by the defendant.”).

IV. THE REQUIREMENTS FOR REMOVAL UNDER CAFA ARE SATISFIED

A. The Number of Proposed Class Members Exceeds 100

8. The Complaint alleges that members of the putative class are “so numerous that joinder of all members is impracticable,” but does not identify the number of class members. (Complaint ¶ 38.) However, Section A of the Complaint’s prayer for relief indicates that Plaintiff believes that the class consists of at least 50,000 people ($\$25,000,000 \div \$500 = 50,000$ email recipients).

9. According to Plaintiff’s Complaint, the putative nationwide class is “[a]ll residents of the United States of America who, within the applicable limitations period, received an email from or at the behest of Eddie Bauer LLC that contained in the subject line: (a) a ‘xx% Off’ or similar statement and/or (b) a statement indicating a discount on

1 ‘Everything,’ ‘Your Purchase,’ or similar language when one or more products were excluded
2 from discount.” (Complaint ¶ 33.)

3 10. More than 100 individuals from the State of Washington received electronic
4 mail messages from Eddie Bauer during the class period. The Complaint alleges that the
5 putative class includes nearly every customer in the United States on Eddie Bauer’s email list.
6 The size of the putative class thus well exceeds 100 members.

7 **B. The Amount in Controversy Exceeds \$5 Million**

8 11. Defendant denies Plaintiff’s substantive allegations, the appropriateness of class
9 treatment, and that Plaintiff is entitled to any of the relief sought in her Complaint, and does not
10 waive any defense with respect to any of Plaintiff’s claims. Nonetheless, the amount in
11 controversy is determined by accepting Plaintiff’s allegations as true. See *Cain v. Hartford Life*
12 *& Accident Ins. Co.*, 890 F. Supp. 2d 1246, 1249 (C.D. Cal. 2012) (“In measuring the amount
13 in controversy, a court must assume that the allegations of the complaint are true and assume
14 that a jury will return a verdict for the plaintiff on all claims made in the complaint.”).

15 12. Here, taking Plaintiff’s allegations as true, the amount in controversy in this
16 action (including attorney’s fees) exceeds \$5,000,000. The complaint requests the following
17 relief:

18 A. For statutory damages of \$500 to be awarded to Plaintiff and to each member
19 of the Class for each instance in which a defendant initiated (or conspired with
20 another to initiate or assisted) the transmission of a commercial electronic mail
21 message which contained false or misleading information in the subject line (an
22 amount of statutory damages which will be proven at trial but which Plaintiff
23 estimates will be at least \$25 million per violative email multiplied by more than
24 43 violative emails) pursuant to, without limitation, RCW 19.190.040;

25 (Prayer for Relief ¶ a.)

26 13. Case law is clear that “the amount-in-controversy allegation of a defendant
27 seeking federal-court adjudication should be accepted when not contested by the plaintiff or
questioned by the court.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547,
549-50, (2014) (citations omitted); *see also* Schwarzer, Tashima, et al., *California Practice*

1 Guide: Federal Civil Procedure Before Trial (2016) § 2:2395, at 2D-30 (“[D]efendant may
2 simply allege in its notice of removal that the jurisdictional threshold has been met and
3 discovery may be taken with regard to that question.”); *id.* § 2:3435, at 2D-172 – 173
4 (“Defendant’s notice of removal ‘need include only a plausible allegation that the amount in
5 controversy exceeds the jurisdictional threshold.’). Further, CAFA’s legislative history
6 indicates that even if the Court “is uncertain about whether all matters in controversy in a
7 purported class action do not in the aggregate exceed the sum or value of \$5,000,000, the court
8 should err in favor of exercising jurisdiction over the case.” Senate Report on the Class Action
9 Fairness Act of 2005 Dates of Consideration and Passage, S. Rep. 109-14.

10 14. Plaintiff seeks damages which are the greater of (a) the actual damages incurred
11 by Plaintiff and each member of the Class or (b) the statutory damages of \$500 to be awarded
12 to Plaintiff and to each member of the Class for each instance in which a defendant initiated the
13 transmission of a commercial email message. (Prayer for Relief ¶ c.) Given the number of
14 potential class members, and the number of commercial email messages, the amount in
15 controversy easily exceeds \$5,000,000. Plaintiff estimates that the total amount of statutory
16 damages “will be at least \$25 million per violative email multiplied by more than 43 violative
17 emails.” (Prayer for Relief ¶ a.)

18 15. Plaintiff also seeks an award of attorney’s fees and injunctive relief. (Prayer for
19 Relief ¶¶ k, e). While Eddie Bauer denies that Plaintiff is entitled to either, each pushes the
20 amount in controversy even further above the \$5,000,000 million minimum. *See Guglielmino*
21 *v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007); *In re Quintus Sec. Litig.*, 148 F.
22 Supp. 2d 967, 973 (N.D. Cal. 2001) (benchmark for attorneys’ fees is 25% of 10 the common
23 fund); *Tompkins v. Basic Research LLC*, No. 5-08-244, 2008 WL 71808316, at *4 & n9 (E.D.
24 Cal. Apr. 22, 2008) (noting that under CAFA, the amount in controversy includes defendants’
25 potential cost of compliance with a request for injunctive relief).

1 **C. Minimum Diversity Exists**

2 16. Diversity exists for purposes of removal under CAFA where “any member of a
3 class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2).
4 “[T]he term ‘class members’ means the persons (named or unnamed) who fall within the
5 definition of the proposed or certified class in a class action.” 28 U.S.C. § 1332(d)(1)(D).

6 17. Plaintiff is a resident of Washington. (Complaint ¶ 4.) However, the putative
7 nationwide class includes customers from across the country. (*Id.* ¶ 33.)

8 18. Diversity exists because Eddie Bauer is a citizen of the States of Washington
9 and Delaware, as the citizenship of an unincorporated association is defined at 28 U.S.C.
10 §1332(d)(10). Ordinarily, for purposes of diversity jurisdiction, an unincorporated association
11 has the citizenships of all of its members. *See Johnson v. Columbia Props. Anchorage, LP.*, 437
12 F.3d 894, 899 (9th Cir. 2006). However, the “exception to this rule is for class actions brought
13 pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(10).” *Moss v. Infinity Ins. Co.*,
14 2015 WL 7351395, at *2 (N.D. Cal. Nov. 20, 2015). CAFA abrogates the traditional rule that
15 an unincorporated association shares the citizenship of each of its members for diversity
16 purposes. *See Davis v. HSBC Bank Nevada, N.A.*, 557 F.3d 1026, 1032 n.13 (9th Cir. 2009) (A.
17 Kleinfeld, concurring) (“For qualifying class actions such as this one, CAFA abrogates the
18 traditional rule that an unincorporated association shares the citizenship of each of its members
19 for diversity purposes”).

20 19. For purposes of diversity jurisdiction under CAFA, “an unincorporated
21 association shall be deemed to be a citizen of the State where it has its principal place of
22 business and the State under whose laws it is organized.” 28 U.S.C. § 1332(d)(10). *See also*
23 *Abrego v. The Dow Chem. Co.*, 443 F.3d 676, 684 (9th Cir. 2006) (“Certain aspects of CAFA,
24 it is true, evidence Congress’s intent that the district courts’ jurisdiction vis-a-vis certain kinds
25 of actions be broadened rather than restricted. For example ... under § 1332(d)(10), ‘an
26 unincorporated association [is] ... deemed to be a citizen of the State where it has its principal
27 place of business and the State under whose laws it is organized,’ which departs from the rule

1 that frequently destroys diversity jurisdiction, that ‘a limited partnership’s [or unincorporated
2 association’s] citizenship for diversity purposes can be determined only by reference to all of
3 the entity’s members”); *Kim v. Shellpoint Partners, LLC*, 2016 WL 1241541, at *5 (S.D. Cal.
4 Mar. 30, 2016) (“For CAFA’s purposes, [defendant] is a citizen both of the state where it has
5 its principal place of business and the state under whose laws it is organized. *See* 28 U.S.C. §
6 1332(d)(10).”). To determine the principal place of business for diversity purposes, the
7 appropriate test is the “nerve center” test. *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192 (2010).

8 20. Eddie Bauer is “a limited liability company chartered under the laws of the State
9 of Delaware and which currently has and at all relevant times in the past had its headquarters,
10 executive office, principal place of business or nerve center in Bellevue, Washington.”
11 (Complaint ¶ 5.) Therefore, under 28 U.S.C. § 1332(d)(10), Eddie Bauer is a citizen of
12 Delaware and Washington.

13 21. The diversity requirement is clearly satisfied because the putative class includes
14 members from across the country, and Eddie Bauer is not a citizen of all fifty states.

15 **D. No CAFA Exceptions Apply**

16 22. The Action does not fall within any of exclusion to removal jurisdiction
17 recognized by 28 U.S.C. § 1332(d), and Plaintiff has the burden of proving otherwise. *See*
18 *Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1021 (9th Cir. 2007) (“[T]he party seeking
19 remand bears the burden to prove an exception to CAFA’s jurisdiction”).

20 **V. THE OTHER PROCEDURAL REQUISITES FOR REMOVAL ARE SATISFIED**

21 23. Removal to this judicial district and division is proper under 28 U.S.C. §§
22 1441(a), 1446(a), because the King County Superior Court is located within the Western
23 District of Washington.

24 24. This Notice of Removal is timely because it was filed within thirty days of May
25 22, 2019, the date on which Eddie Bauer was served with the Summons and Complaint. 28
26 U.S.C. § 1446(b).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

25. Pursuant to 28 U.S.C. § 1446(a), a copy of the Summons, Complaint, and all other documents served on Eddie Bauer are attached as Exhibit A.

26. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal and all documents in support thereof and concurrently therewith are being filed with the Clerk of the King County Superior Court. Written notice of the filing of this Notice of Removal is being served upon counsel for Plaintiff.

27. Pursuant to LCR 101(b)(1) and (3), Plaintiff’s First Amended Complaint filed June 12, 2019 and Jury Demand filed May 28, 2019 are filed herewith. A certificate of service is included below pursuant to LCR 101(b)(2).

VI. CONCLUSION

Eddie Bauer respectfully submits that this action is removed properly pursuant to the Class Action Fairness Act.

//

Respectfully submitted this 21st day of June, 2019,

SEED IP Law Group LLP

/s/Marc C. Levy
Marc C. Levy, WSBA No. 19203

/s/Thomas A. Shewmake
Thomas A. Shewmake, WSBA No. 50765
701 Fifth Ave., Suite 5400
Seattle, WA 98104
Telephone: 206-622-4900
Facsimile: 206-682-6031
marcl@seedip.com
tomshewmake@seedip.com

STEPTOE & JOHNSON LLP
Stephanie A. Sheridan (*pro hac vice forthcoming*)
Anthony J. Anscombe (*pro hac vice forthcoming*)
Meegan B. Brooks (*pro hac vice forthcoming*)
One Market Street
Steuart Tower, Suite 1800
San Francisco, CA 94105
Telephone: 415-365-6700
Facsimile: 415-365-6699
ssheridan@steptoe.com
aanscombe@steptoe.com
mbrooks@steptoe.com

Attorneys for Defendant
Eddie Bauer LLC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of June 2019, I caused to be electronically filed the foregoing NOTICE OF REMOVAL with the Clerk of Court using the CM/ECF system, which will send electronic notification of such filing to the following counsel of record:

Daniel M. Hattis, WSBA No. 50428
dan@hattislaw.com
HATTIS & LUKACS
400 108th Avenue, Suite 500
Bellevue, WA 98004

/s/Jennifer Ruppert
Jennifer Ruppert

6845472_1.doc

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

JENNIFER HARBERS, for Herself, as a Private Attorney General, and/or On Behalf Of All Others Similarly Situated

(b) County of Residence of First Listed Plaintiff King County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Daniel M. Hattis HATTIS & LUKACS 400 108th Avenue, Suite 500, Bellevue, WA 98004 Tel: 425.233.8650

DEFENDANTS

EDDIE BAUER LLC, and DOES 1-20, inclusive

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) Marc C. Levy, Thomas A. Shewmake Seed Intellectual Property Law Group LLP 701 Fifth Avenue, Suite 5400, Seattle, WA 98104 Tel: 206.622.4900

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location. Includes categories like Citizen of This State, Citizen of Another State, and Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. §§ 1332(d), 1441, 1446 and 1453

Brief description of cause: CAFA removal based on diversity of class action alleging CPA and CEMA claims.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 25,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 06/21/2019 SIGNATURE OF ATTORNEY OF RECORD /Marc C. Levy/

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

0S00
GEFJÁRMPÁFGÁEJKEÁDE
SQÓÁOUWÞVÝ
ÚWÚÖÜQÜÁÔUWÜVÁÖŠÖÜS
ÒÈZŠÖÖ
ÔÈJÒÁMÁFJĚĚHIJJĚÁUÖCE

**SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY**

JENNIFER HARBERS,
for Herself, as a Private Attorney
General, and/or On Behalf Of All
Others Similarly Situated,

Plaintiff,

v.

EDDIE BAUER LLC,
and DOES 1–20, inclusive,

Defendants.

No. 19-2-13499-2 SEA

FIRST AMENDED CLASS ACTION
COMPLAINT FOR STATUTORY
DAMAGES AND INJUNCTIVE
RELIEF UNDER THE CONSUMER
PROTECTION ACT, RCW 19.86 AND
FOR INJUNCTIVE RELIEF UNDER
THE COMMERCIAL ELECTRONIC
MAIL ACT, RCW 19.190

JUDGE LUM, DEPT. 12

Plaintiff JENNIFER HARBERS, demanding trial by jury as to all issues so triable in a separate document to be filed, alleges as follows, on personal knowledge and/or on information and belief and/or upon the investigation of Plaintiff’s counsel, against Defendant EDDIE BAUER LLC (“Eddie Bauer”), and Defendants Does 1 through 20, inclusive:

I. INTRODUCTION

1. Defendant Eddie Bauer LLC (“Eddie Bauer”) is a retailer of outdoor clothing, accessories, and gear for men and women (www.eddiebauer.com). As alleged herein, Eddie Bauer has violated and continues to violate the Washington Consumer Protection Act, RCW 19.86, and/or the Washington Commercial Electronic Mail Act, RCW 19.190, by

1 transmitting emails to consumers in Washington and nationwide which contain false or
2 misleading information in the subject lines.

3 2. In short, Eddie Bauer transmits emails to consumers in Washington and
4 nationwide which state in the subject lines that Eddie Bauer is offering discounts at a specified
5 percentage off and/or that the discounts apply to “everything.” These statements are false or
6 misleading because, in reality, Eddie Bauer is not offering the products at the promised
7 discount and/or Eddie Bauer is not offering the discounts on “everything.”

8 3. Consequently, Plaintiff and the applicable class of consumers she represents are
9 entitled to statutory damages and injunctive relief under the Washington Consumer Protection
10 Act and injunctive relief under the Washington Commercial Electronic Mail Act, as well as
11 attorneys’ fees and costs.

12 **II. PARTIES**

13 4. Plaintiff Jennifer Harbers is a citizen of the United States of America and a
14 citizen of the State of Washington. She is an adult who resides in the City of Redmond, King
15 County, Washington State.

16 5. Defendant Eddie Bauer LLC is a limited liability company chartered under the
17 laws of the State of Delaware and which currently has and at all relevant times in the past had
18 its headquarters, executive office, principal place of business or nerve center in Bellevue,
19 Washington.

20 6. Defendants Doe 1 through Doe 20, inclusive, aided, abetted and/or dominated
21 Defendant Eddie Bauer LLC in such a manner that Doe 1 through Doe 20, inclusive, are each
22 directly, contributorily, vicariously, derivatively and/or otherwise liable for the acts or
23 omissions of Defendant Eddie Bauer LLC. Plaintiff is currently unaware of the true identities
24 of Doe 1 through Doe 20, inclusive; Plaintiff anticipates that, upon learning the true identities
25 of any of Doe 1 through Doe 20, inclusive, Plaintiff will either freely amend the operative
26 complaint or request leave from the Court to amend the operative complaint.

1 **III. JURISDICTION AND VENUE**

2 7. This Court has subject matter jurisdiction over this civil action pursuant to,
3 without limitation, Section 6 of Article IV of the Washington State Constitution (Superior
4 Court jurisdiction, generally) and RCW 19.86.090 (Superior Court jurisdiction over Consumer
5 Protection Act claims).

6 8. This Court has personal jurisdiction over each of the defendants pursuant to,
7 without limitation, RCW 4.28.185, in that: (1) Defendant Eddie Bauer LLC is headquartered in
8 Washington State and is authorized to do business and regularly conducts business in
9 Washington State; (2) the claims alleged herein arise from Defendant Eddie Bauer LLC's
10 activities within Washington State; and/or (3) Defendant Eddie Bauer LLC has committed
11 tortious acts within the State of Washington (as alleged, without limitation, throughout this
12 Complaint).

13 9. With regard to the cause of action brought pursuant to the Washington
14 Consumer Protection Act, this Court has personal jurisdiction over each of the defendants
15 pursuant to RCW 19.86.160. For example, and without limitation, Defendant Eddie Bauer LLC
16 has engaged in conduct in violation of RCW Chapter 19.86 which has had an impact in
17 Washington State which said chapter reprehends.

18 10. Venue is proper in King County Superior Court because, without limitation,
19 Plaintiff Harbers resides in King County; Defendant Eddie Bauer LLC is headquartered in King
20 County; a significant portion of the acts giving rise to this civil action occurred in King County;
21 and/or Defendant Eddie Bauer LLC intended to and did have a substantial and foreseeable
22 effect on trade or commerce in King County.

23 11. Within the jurisdiction of King County Superior Court, this civil action is
24 assigned to the Seattle Case Assignment Area because, without limitation, Defendant Eddie
25 Bauer LCC is headquartered in the City of Bellevue, King County, and Plaintiff resides in the
26 City of Redmond, King County.

1 **IV. FACTUAL ALLEGATIONS**

2 12. Defendant Eddie Bauer is a popular retailer which claims to offer “premium-
3 quality clothing, accessories, and gear for men and women that complement today’s modern
4 outdoor lifestyle.”

5 13. Eddie Bauer sells its products through its website, www.eddiebauer.com, and in
6 its retail stores. Eddie Bauer currently operates approximately 370 stores in North America,
7 with at least eight locations in Washington State. The Eddie Bauer website is accessible from
8 Washington State and nationwide, and consumers in Washington State and nationwide view the
9 contents of the Eddie Bauer website and purchase goods from Eddie Bauer’s website.

10 14. Almost all the products sold by Eddie Bauer are branded as Eddie Bauer
11 products, and are exclusively sold by Eddie Bauer.

12 **A. Background Information: Eddie Bauer’s “Sales” Are False, And Not**
13 **“Everything” Is On Sale.**

14 15. Eddie Bauer creates purported list prices for its Eddie Bauer-branded products
15 which are inflated far above Eddie Bauer’s intended and regular true selling prices for the
16 products. However, for nearly all of its products, these list prices are false and inflated where
17 Eddie Bauer rarely, if ever, offers the products at the list price. The list prices do not in fact
18 represent the value or regular selling price of the products. Eddie Bauer invents the inflated list
19 prices, which act as false reference prices for advertised false perpetual discounts, in order to
20 create the illusion that Eddie Bauer is offering “premium-quality” clothing and gear.

21 16. Eddie Bauer advertises perpetual “sales” where its products are consistently
22 discounted by 30% to 50% from Eddie Bauer’s self-created list price. For most days of the
23 year, Eddie Bauer advertises store-wide and website-wide sales of a fixed percentage (ranging
24 from 30% to 50%) off. For the other days of the year, Eddie Bauer continues to advertise sales
25 and discounts for the large majority of its products. Based on investigation of Plaintiff’s
26 counsel and on information and belief, Eddie Bauer’s online and in-store list and sales prices
27 are the same or substantially the same.

28 17. For example, based on Plaintiff’s counsel’s investigation, in 2017 there were a

1 total of 290 days in which Eddie Bauer advertised on its website a site-wide sale of either “xx%
2 Off Everything” or “xx% Off Your Entire Purchase.” For the remaining 75 days of 2017, Eddie
3 Bauer continued to offer approximately 60–70% of its products at a discounted price. There
4 was not a single day in 2017 where Eddie Bauer did not offer the majority of its products for
5 sale at a discounted price or offer a fixed percentage off (typically between 30-50% off) of
6 one’s entire purchase.

7 18. Plaintiff’s counsel has been monitoring Eddie Bauer’s website since
8 January 16, 2016, and has assembled a comprehensive historical database of daily prices and
9 screenshots of approximately 1.94 million daily offerings for 8,053 products over these 1,243
10 days.

11 19. Plaintiff’s counsel’s investigation and data demonstrates that only a tiny fraction
12 of products offered by Eddie Bauer in its stores and on its website is consistently offered
13 without an advertised discount. These few non-discounted products primarily consist of
14 sleeping bags, tents, and non-Eddie Bauer brand (i.e., third-party brand) products.

15 20. For the rest of Eddie Bauer’s products (more than 90% of its products), Eddie
16 Bauer’s discounts and list prices are false because Eddie Bauer rarely if ever offers its products
17 at the advertised list price.

18 21. Also, as further described below, when Eddie Bauer claims that “everything” (or
19 a similar word) is on sale, not “everything” is on sale. Typically, “everything” does not in fact
20 include sleeping bags, tents, and non-Eddie Bauer brand (i.e. third-party brand) products.




21 **B. Eddie Bauer Routinely Transmits Commercial Emails Containing False Or**
22 **Misleading Information In The Subject Lines.**

23 22. As part of its regular marketing plan, Eddie Bauer routinely transmits
24 commercial emails containing false or misleading information in the subject lines. (As used in
25 this Complaint, allegations that Eddie Bauer “transmitted” an email are allegations that Eddie
26 Bauer initiated the transmission of the email, conspired with another to initiate the transmission
27 of the email and/or assisted the transmission of the email.)

28 23. From at least November 24, 2017, Defendant Eddie Bauer has transmitted

1 numerous commercial electronic mail messages to Plaintiff Jennifer Harbers (and to a
2 nationwide class of consumers similarly situated to Ms. Harbers) containing false or misleading
3 information in the subject line.

4 24. Eddie Bauer transmitted at least twenty-seven (27) emails which falsely or
5 misleadingly stated “xx% Off Everything” or “xx% Off Your Purchase” or similar language in
6 the subject line. Plaintiff received each of these emails on the date, and containing the email
7 subject line, specified below:

<u>Date</u>	<u>Email Subject Line</u>
12/16/2017	 Ho-Ho-Whoa! 50% Off Everything
12/17/2017	Limited Time! 50% Off EVERYTHING
02/13/2018	Starts Today! 40% Off Everything
03/08/2018	Take 30% Off EVERYTHING
03/13/2018	Starts Today! 40% Off Everything
03/30/2018	50% Off Everything? This Is MADNESS!
03/31/2018	Spring Madness! 50%  FF EVERYTHING
04/08/2018	Last Day! 40% Off Everything
04/26/2018	Limited Time! 40% Off Your Purchase
06/18/2018	Last Day! 40% Off Everything
06/28/2018	 Starts Today! 50% OFF EVERYTHING
07/02/2018	Oooh! Ahhh! Everything's 50% Off
07/17/2018	50% Off E-V-E-R-Y-T-H-I-N-G!
08/03/2018	Take 40% OFF EVERYTHING!
08/31/2018	Starts Today! 50% Off Everything
09/04/2018	Last Day! 50% Off Everything
11/29/2018	 FINAL HOURS! 50% Off Your Purchase
12/16/2018	50% Off Everything + Special Deals!
12/17/2018	50% Off Everything + 60% Off Fleece!

02/12/2019	STARTS TODAY! 40% Off Everything!
02/19/2019	LAST DAY! 40% Off Everything
03/22/2019	STARTS TODAY! Save 40% On EVERYTHING!
03/28/2019	STARTS TODAY! 50% Off Everything
03/30/2019	Spring Madness! 50% off EVERYTHING!
04/05/2019	50% Off Everything? This Is MADNESS!
04/08/2019	50% Off Everything ENDS TODAY!
04/08/2019	LAST SHOOT! 50% Off EVERYTHING!





25. The “xx% Off” statements in these email subject lines are false or misleading. Plaintiff thought—as would an ordinary and reasonable consumer—that the “xx% Off” statements were a percentage off the price at which Eddie Bauer previously offered its products in good faith for a significant period of time. In reality, Eddie Bauer calculated the “% Off” statements from fictitious list prices at which Eddie Bauer never offered its products, rarely offered its products, and/or temporarily offered its products in bad faith to concoct the so-called discount. There was no asterisk or other indicator in the subject line to notify the email recipients that Eddie Bauer had assigned these words and symbols an invented or subjective meaning rather than their ordinary or objective meaning.

26. The language in these email subject lines that the purported discounts were off of “Everything” was a second false statement in each of these email subject lines. Plaintiff thought—as would an ordinary and reasonable consumer—that the off “Everything” statements indicated that *all* of the products offered at Eddie Bauer’s stores and website were being offered at a discount. In fact, some products were not discounted, consisting primarily of sleeping bags, tents, and non-Eddie Bauer brand (i.e., third-party brand) products. There was no asterisk or other indicator in the subject line to notify the email recipients that Eddie Bauer had assigned “Everything” an invented or subjective meaning rather than its ordinary or objective meaning.

27. Likewise, the statements in the April 26, 2018 and November 29, 2018 email

1 subject lines that the purported discounts were “Off Your Purchase” were false or misleading.
 2 Plaintiff thought—as would an ordinary and reasonable consumer—that “Off Your Purchase”
 3 indicated that all of the products offered at Eddie Bauer’s stores and website were being offered
 4 at a discount. In reality, some products were not discounted, consisting primarily of sleeping
 5 bags, tents, and non-Eddie Bauer brand (i.e., third-party brand) products. There was no asterisk
 6 or other indicator in the subject line to notify consumers that Eddie Bauer had assigned the
 7 words “Off Your Purchase” an invented or subjective meaning rather than their ordinary or
 8 objective meaning.

9 28. Eddie Bauer also transmitted another sixteen (16) emails which falsely or
 10 misleadingly stated “xx% Off”, “Take xx% Off”, “Get xx% Off” or similar language in the
 11 subject line (unlike the email subject lines above, there was not a second and simultaneous false
 12 or misleading statement that “Everything” was discounted). Plaintiff received each of these
 13 emails on the date, and containing the email subject line, specified below:

<u>Date</u>	<u>Email Subject Line</u>
11/24/2017	 Final Hours! 50% Off + Free Shipping
11/26/2017	Sunday Funday! 50% Off + Free Shipping
11/27/2017	Cyber Monday! 50% Off + Free Shipping
11/27/2017	Final Hours! 50% Off + Free Shipping
11/28/2017	Cyber Monday EXTENDED! 50% Off + Free Shipping
11/28/2017	Hours Left! 50% Off + Free Shipping
12/12/2017	 Final Hours! 50% Off + Free Shipping
12/23/2017	Semi-Annual Sale – 50% Off
03/16/2018	40% Off + FREE SHIPPING!
04/02/2018	It’s Not T   late! Take 50% Off!
07/17/2018	Final Hours! 50% Off Ends Soon
10/23/2018	Shop ASAP! 40% Off Ends Today
10/25/2018	Use Code Inside. GET 50% OFF!

11/22/2018	Happy Thanksgiving! Take 50% Off
12/08/2018	50% Off + SPECIAL DEALS INSIDE!
12/11/2018	 Final Hours! 50% Off Ends Soon

29. Plaintiff thought—as would an ordinary and reasonable consumer—that the “xx% Off”, “Take xx% Off”, and “Get xx% Off” statements were a percentage off the price at which Eddie Bauer previously offered that product in good faith for a significant period of time. In reality, Eddie Bauer calculated the “% Off” statements from fictitious list prices at which Eddie Bauer never offered that product, rarely offered that product, and/or temporarily offered that product in bad faith to concoct the so-called discount. There was no asterisk or other indicator in the subject line to notify the email recipients that Eddie Bauer had assigned these words and symbols an invented or subjective meaning rather than their ordinary or objective meaning.

30. Based on information and belief, Eddie Bauer transmitted, within the applicable limitations period, other emails with similarly false or misleading information in the subject line which were received by Plaintiff and/or by others similarly situated.

31. The false or misleading nature of Eddie Bauer’s statements was not obvious and was not reasonably ascertainable by Plaintiff or another ordinary and reasonable consumer; as such, the discovery rule should enlarge the applicable limitations period.

32. As of the date of the filing of this pleading, Plaintiff is still receiving Eddie Bauer’s commercial emails. Plaintiff would like to continue to receive Eddie Bauer’s commercial emails, provided that the subject lines of the emails do not contain false or misleading information.

1 **V. CLASS ACTION ALLEGATIONS**

2 33. Plaintiff Harbers brings this class-action lawsuit on behalf of herself and the
3 members of the following nationwide class (the “National Class”):

4 **All residents of the United States of America who, within the**
5 **applicable limitations period, received an email from or at the**
6 **behest of Eddie Bauer LLC that contained in the subject line:**
7 **(a) a “xx% Off” or similar statement and/or (b) a statement**
8 **indicating a discount on “Everything,” “Your Purchase,” or**
9 **similar language when one or more products were excluded**
10 **from the discount.**

11 34. In the alternative, Plaintiff Harbers brings this class-action lawsuit on behalf of
12 herself and the members of the following Washington State class (the “Washington Class”):

13 **All residents of the State of Washington who, within the**
14 **applicable limitations period, received an email from or at the**
15 **behest of Eddie Bauer LLC that contained in the subject line:**
16 **(a) a “xx% Off” or similar statement and/or (b) a statement**
17 **indicating a discount on “Everything,” “Your Purchase,” or**
18 **similar language when one or more products were excluded**
19 **from the discount.**

20 35. Plaintiff pleads the National Class and the Washington Class as alternatives
21 because a discrete factual issue may determine whether Eddie Bauer is liable to the National
22 Class or to the Washington Class. If Plaintiff establishes by the requisite burden of persuasion
23 that Eddie Bauer transmitted one or more emails with a false or misleading subject line from “a
24 computer located in Washington” (RCW 19.190.020(1)), then Eddie Bauer faces liability to the
25 National Class for its misconduct within the State of Washington. *See Thornell v. Seattle*
26 *Service Bureau, Inc.*, 184 Wn.2d 793, 796 (2015) (nationwide liability under Consumer
27 Protection Act for defendant headquartered in Washington State). In the unlikely event Plaintiff
28 cannot establish said fact, then Eddie Bauer still faces significant alternative liability—to the
class of Washington State residents to whom Eddie Bauer transmitted emails with false or
misleading subject lines. *See* RCW 19.190.020(1) (“to an electronic mail address that the
sender knows, or has reason to know, is held by a Washington resident”).

1 36. The term “Class” as used in this Complaint is a reference to either or both of the
2 National Class and/or the Washington Class as context dictates.

3 37. Specifically excluded from the Class are each defendant, any entity in which a
4 defendant has a controlling interest or which has a controlling interest in a defendant, a
5 defendant’s agents and employees and attorneys, the bench officers to whom this civil action is
6 assigned, and the members of each bench officer’s staff and immediate family.

7 38. **Numerosity.** Plaintiff does not know the exact number of Class members but is
8 informed and believes that the Class easily comprises tens of thousands of people in
9 Washington State alone. As such, Class members are so numerous that joinder of all members
10 is impracticable.

11 39. **Commonality and Predominance.** Well-defined, nearly identical legal or factual
12 questions affect the members of the Class. These questions predominate over questions that
13 might affect individual Class members. These common questions include, but are not limited
14 to, the following:

- 15 a. Eddie Bauer’s policies and actions regarding the content of its
16 promotional emails;
- 17 b. The accuracy of the subject lines of Eddie Bauer’s promotional emails;
- 18 c. Whether the pled conduct of Eddie Bauer is injurious to the public
19 interest;
- 20 d. Whether Eddie Bauer should be ordered to pay statutory damages; and/or
- 21 e. Whether Eddie Bauer should be enjoined from further engaging in the
22 misconduct alleged herein.

23 40. The prosecution of separate actions by individual members of the Class would
24 create a risk of inconsistent or varying adjudications with respect to individual members of the
25 Class which would establish incompatible standards of conduct for the party opposing the class.

26 41. The party opposing the Class has acted or refused to act on grounds generally
27 applicable to the Class, thereby making appropriate final injunctive relief or corresponding
28 declaratory relief with respect to the Class as a whole.

1 47. The Washington Consumer Protection Act (the “CPA”), RCW 19.86, was first
2 enacted in 1961 and is Washington’s principal consumer protection statute. The CPA “replaces
3 the now largely discarded standard of *caveat emptor* with a standard of fair and honest
4 dealing.” Washington Pattern Jury Instruction Civil No. 310.00 (Consumer Protection Act—
5 Introduction).

6 48. The CPA’s primary substantive provision declares unfair methods of
7 competition and unfair or deceptive acts or practices to be unlawful. RCW 19.86.020. “The
8 purpose of the private right of action is to enlist the aid of private individuals to assist in the
9 enforcement of the [CPA]. Private consumers may obtain injunctive relief, even if the
10 injunction would not directly affect the individual’s own rights. Thus, the private right of action
11 serves the public interest by preventing unfair or deceptive practices from continuing
12 unchecked.” Washington Pattern Jury Instruction Civil No. 310.00 (Consumer Protection
13 Act—Introduction) (citations and punctuation omitted).

14 49. The CPA recognizes and incorporates *per se* violations. The Washington
15 Legislature routinely prohibits certain specified conduct but, instead of creating a new and
16 independent private right of action to enforce the prohibition, the Legislature deems the
17 unlawful conduct to be a *per se* violation of the CPA. If a defendant engages in that unlawful
18 conduct, a plaintiff may file a CPA complaint alleging the *per se* violation and seek the
19 remedies which Plaintiff chooses to seek that are available under the CPA and/or under the
20 statute which forbids the *per se* violation. *See* Washington Pattern Jury Instruction Civil
21 No. 310.03 (*Per Se* Violation of Consumer Protection Act) and Appendix H (Consumer
22 Protection Act *Per Se* Violations).

23 50. A plaintiff can plead a violation of the Washington Consumer Protection Act by
24 pleading that the CPA was violated *per se* due to a violation of the Washington Commercial
25 Electronic Mail Act. *See* RCW 19.190.030(1)(b) (“It is a violation of the consumer protection
26 act, chapter 19.86 RCW . . . to initiate the transmission of a commercial electronic mail
27 message that . . . [c]ontains false or misleading information in the subject line.”); Washington
28 Statutes of 1998, chapter 149, § 4 (approved by Governor on March 25, 1998).

1 51. The Washington Commercial Electronic Mail Act (“CEMA”) prohibits a person
2 from initiating the transmission from a computer located in Washington State of a commercial
3 electronic mail message which contains false or misleading information in the subject line.
4 RCW 19.190.020(1)(b). CEMA also prohibits a person from initiating the transmission to an
5 electronic mail address that the sender knows, or has reason to know, is held by a Washington
6 State resident of a commercial electronic mail message that contains false or misleading
7 information in the subject line. RCW 19.190.020(1)(b).

8 52. A plaintiff who successfully pleads and proves a CEMA violation as a *per se*
9 violation of the CPA may recover the remedies which Plaintiff chooses to seek that are
10 available under the CPA (e.g., injunctive relief, attorneys’ fees and costs (RCW 19.86.090))
11 and/or the remedies available under CEMA (e.g., statutory damages of \$500 per email sent in
12 violation of CEMA and injunctive relief (RCW 19.190.040, RCW 19.190.090)).

13 53. Plaintiff Harbers’ actual damages are \$0.00; to the extent that Ms. Harbers seeks
14 damages, she seeks *only* statutory damages.

15 54. Defendant Eddie Bauer LLC has initiated the transmission of numerous
16 commercial electronic mail messages to Plaintiff Harbers (the “Emails”). The Emails were
17 electronic mail messages, in that they were electronic messages sent to an electronic mail
18 address; the Emails from Eddie Bauer also referred to an internet domain, whether or not
19 displayed, to which an electronic mail message can or could be sent or delivered.

20 55. Eddie Bauer sent the Emails for the purpose of promoting goods or services for
21 sale or lease. Eddie Bauer was the original sender of the Emails.

22 56. Plaintiff Harbers received the Emails at her electronic mail address, which is the
23 destination, commonly expressed as a string of characters, at which she receives and to which
24 electronic mail may be sent or delivered.

25 57. Eddie Bauer initiated the transmission, conspired with another to initiate the
26 transmission and/or assisted the transmission of the Emails from a computer located in
27 Washington State. In the alternative and/or cumulatively, Eddie Bauer initiated the
28 transmission, conspired with another to initiate the transmission and/or assisted the

1 transmission of the Emails to one or more electronic mail addresses that Eddie Bauer knew, or
2 had reason to know, were held by a Washington State resident, i.e., Ms. Harbers and/or others
3 similarly situated.

4 58. At all relevant times, Eddie Bauer knew that the intended recipient
5 (Ms. Harbers) was a resident of the State of Washington because, without limitation, Eddie
6 Bauer possessed actual knowledge of Ms. Harbers' state of residence, Eddie Bauer possessed
7 constructive knowledge of Ms. Harbers' state of residence, information was available to Eddie
8 Bauer upon request from the registrant of the internet domain name contained in the recipient's
9 electronic mail address, and/or Eddie Bauer otherwise knew or should have known or had
10 reason to know that Ms. Harbers was a resident of the State of Washington.

11 59. The subject line of each Email contained "xx% Off" language and/or the words
12 "Everything" or "Your Purchase." None of the Emails had a subject line containing an asterisk
13 or other indication that the words in the subject line had a special or invented meaning.

14 60. In violation of the Washington Consumer Protection Act (as based *per se* upon a
15 violation of the Washington Commercial Electronic Mail Act) and for the reasons alleged
16 hereinabove, the subject line of each Email contained false or misleading information.

17 61. Generally, a plaintiff pleading a claim under the Washington Consumer
18 Protection Act must plead five necessary elements: (1) an unfair or deceptive act or practice (2)
19 in trade or commerce (3) that affects the public interest, (4) injury to plaintiff's business and
20 property, and (5) causation. *Wright v. Lyft, Inc.*, 189 Wn.2d 718, 728 (2017). Because Plaintiff
21 alleges a *per se* CPA violation by alleging a CEMA violation, all of these five elements are
22 satisfied as a matter of law. *Id.* at 724.

23 62. Eddie Bauer's misconduct as alleged herein was not performed in good faith.
24 Eddie Bauer's misconduct as alleged herein was not reasonable in relation to the development
25 and preservation of business.

26 63. The balance of the equities favors the entry of permanent injunctive relief
27 against Defendant Eddie Bauer. Plaintiff, the members of the Class and the general public will
28 be irreparably harmed absent the entry of permanent injunctive relief against Defendant.

1 Plaintiff, the members of the Class and the general public lack an adequate remedy at law. A
2 permanent injunction against Defendant is in the public interest. Defendant's unlawful behavior
3 is, based on information and belief, ongoing as of the date of the filing of this pleading; absent
4 the entry of a permanent injunction, Defendant's unlawful behavior will not cease and, in the
5 unlikely event that it voluntarily ceases, is likely to reoccur.

6 **COUNT II**

7 **Violation of the Washington Commercial Electronic Mail Act**
8 **(RCW Chapter 19.190)**
9 **(For Injunctive Relief Only)**
10 **AGAINST DEFENDANT EDDIE BAUER LLC**
11 **AND DEFENDANTS DOES 1 THROUGH 20**

12 64. Plaintiff realleges and incorporates by reference all paragraphs alleged
13 hereinbefore.

14 65. Plaintiff Harbers pleads this count in three separate capacities: in her individual
15 capacity, as a private attorney general seeking the imposition of public injunctive relief and/or
16 as a putative class representative serving on behalf of all others similarly situated.

17 66. The Washington Commercial Electronic Mail Act ("CEMA"), RCW 19.190,
18 creates an independent but limited private of right of action which can be asserted by, among
19 others, a person who is the recipient of a commercial electronic mail message which contains
20 false or misleading information in the subject line. RCW 19.190.030(1)(b). A plaintiff who
21 successfully alleges and proves such a violation may obtain, among other things, an injunction
22 against the person who initiated the transmission. RCW 19.190.090(1). It is Plaintiff's intent in
23 this count to plead an independent CEMA cause of action only to the limited extent that it is
24 recognized by law, e.g., when a plaintiff seeks injunctive relief. *Wright v. Lyft, Inc.*, 189 Wn.2d
25 718, 728 n. 3 (2017) ("we note that a plaintiff may bring an action to enjoin any CEMA
26 violation."); *Gragg v. Orange Cab Co.*, 145 F. Supp. 3d 1046, 1052 (W.D. Wash. 2015).

27 67. Defendant Eddie Bauer LLC has initiated the transmission of numerous
28 commercial electronic mail messages to Plaintiff Harbers (the "Emails"). The Emails were
electronic mail messages, in that they were each an electronic message sent to an electronic
mail address; the Emails from Eddie Bauer also referred to an internet domain, whether or not

1 displayed, to which an electronic mail message can or could be sent or delivered.

2 68. Eddie Bauer sent the Emails for the purpose of promoting goods or services for
3 sale or lease. Eddie Bauer was the original sender of the Emails.

4 69. Plaintiff Harbers received the Emails at her electronic mail address, which is the
5 destination, commonly expressed as a string of characters, at which she receives and to which
6 electronic mail may be sent or delivered.

7 70. Eddie Bauer initiated the transmission, conspired with another to initiate the
8 transmission and/or assisted the transmission of the Emails from a computer located in
9 Washington State. In the alternative and/or cumulatively, Eddie Bauer initiated the
10 transmission, conspired with another to initiate the transmission and/or assisted the
11 transmission of the Emails to one or more electronic mail addresses that Eddie Bauer knew, or
12 had reason to know, were held by a Washington State resident, i.e., Ms. Harbers and/or others
13 similarly situated.

14 71. At all relevant times, Eddie Bauer knew that the intended recipient
15 (Ms. Harbers) was a resident of the State of Washington because, without limitation, Eddie
16 Bauer possessed actual knowledge of Ms. Harbers' state of residence, Eddie Bauer possessed
17 constructive knowledge of Ms. Harbers' state of residence, information was available to Eddie
18 Bauer upon request from the registrant of the internet domain name contained in the recipient's
19 electronic mail address, and/or Eddie Bauer otherwise knew or should have known or had
20 reason to know that Ms. Harbers was a resident of the State of Washington.

21 72. The subject line of each Email contained "xx% Off" language and/or the words
22 "Everything" or "Your Purchase." None of the Emails had a subject line containing an asterisk
23 or other indication that the words in the subject line had a special or invented meaning.

24 73. In violation of CEMA and for the reasons alleged hereinabove, the subject line
25 of each Email contained false or misleading information.

26 74. The balance of the equities favors the entry of permanent injunctive relief
27 against Defendant Eddie Bauer. Plaintiff, the members of the Class and the general public will
28 be irreparably harmed absent the entry of permanent injunctive relief against Defendant.

1 Plaintiff, the members of the Class and the general public lack an adequate remedy at law. A
2 permanent injunction against Defendant is in the public interest. Defendant's unlawful behavior
3 is, based on information and belief, ongoing as of the date of the filing of this pleading; absent
4 the entry of a permanent injunction, Defendant's unlawful behavior will not cease and, in the
5 unlikely event that it voluntarily ceases, is likely to reoccur.

6 **PRAYER FOR RELIEF**

7 Plaintiff JENNIFER HARBERS, on behalf of herself individually, as a private attorney
8 general, and/or on behalf of the Class of all others similarly situated, hereby respectfully
9 requests that this Court order relief and enter judgment against Defendant Eddie Bauer LLC
10 and/or Defendants Does 1 through 20, inclusive, individually, jointly, severally and/or as
11 otherwise appropriate, as follows:

12 **As To The First Claim (Violation of the Washington Consumer Protection Act):**

13 A. For statutory damages of \$500 to be awarded to Plaintiff and to each member of
14 the Class for each instance in which a defendant initiated (or conspired with another to initiate
15 or assisted) the transmission of a commercial electronic mail message which contained false or
16 misleading information in the subject line (an amount of statutory damages which will be
17 proven at trial but which Plaintiff estimates will be at least \$25 million per violative email
18 multiplied by more than 43 violative emails) pursuant to, without limitation, RCW 19.190.040;

19 B. For an order that each Defendant be permanently enjoined from the unlawful
20 conduct alleged herein pursuant to, without limitation, RCW 19.86.090;

21 **As To The Second Claim (Violation of the Washington Commercial Electronic**
22 **Mail Act):**

23 C. For an order that each Defendant be permanently enjoined from the unlawful
24 conduct alleged herein pursuant to, without limitation, RCW 19.190.090(1);

25 **As To Each And Every Claim:**

26 D. For an order certifying the proposed Class and appointing Plaintiff and her
27 counsel to represent the Class;

1 E. For an order that each Defendant be permanently enjoined from the unlawful
2 conduct alleged herein;

3 F. For an order that the Court retain jurisdiction to police Defendants' compliance
4 with the permanent injunctive relief;

5 G. For post-judgment interest to the extent allowed by law;

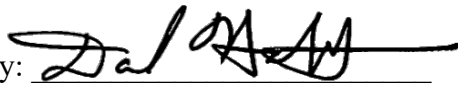
6 H. For attorneys' fees to the extent allowed by law; and/or

7 I. For costs to the extent allowed by law.

8 DATED this 12th day of June, 2019.

9 Presented by:

10 HATTIS & LUKACS

11
12 By: 
13 Daniel M. Hattis

14 Daniel M. Hattis, WSBA No. 50428
15 dan@hattislaw.com
16 Che Corrington, WSBA No. 54241
17 che@hattislaw.com
18 HATTIS & LUKACS
19 400 108th Avenue, Suite 500
20 Bellevue, WA 98004
21 Tel: 425.233.8650
22 Fax: 425.412.7171
23 www.hattislaw.com

24 Attorneys for Plaintiff Jennifer Harbers
25 and the Proposed Class
26
27
28

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that, on the 12th day of June, 2019, at approximately 2:45 a.m., the document attached hereto was filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel on record in the matter.

DATED this 12th day of June, 2019.

/s/ Daniel M. Hattis
Daniel M. Hattis, WSBA No. 50428

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED
2019 MAY 28 04:24 PM
KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE #: 19-2-13499-2 SEA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY**

JENNIFER HARBERS,
for Herself, as a Private Attorney
General, and/or On Behalf Of All
Others Similarly Situated,

Plaintiff,

v.

EDDIE BAUER LLC,
and DOES 1–20, inclusive,

Defendants.

No. 19-2-13499-2 SEA

PLAINTIFF’S DEMAND
FOR JURY TRIAL

JUDGE LUM, DEPT. 12

FILED DATE: 05/20/2019

1 TO: The Clerk of the Court for King County

2 AND TO: Eddie Bauer LLC

3
4 Plaintiff elects to have all claims and issues in the above captioned case tried by a jury
5 of **twelve** persons. Plaintiff has paid to the Clerk of the Court for King County the jury fee
6 required by law.

7
8 DATED this 28th day of May, 2019.

9
10 Presented by:

11 HATTIS & LUKACS

12 By: 
13 Daniel M. Hattis

14 Daniel M. Hattis, WSBA No. 50428
15 dan@hattislaw.com
16 HATTIS & LUKACS
17 400 108th Avenue, Suite 500
18 Bellevue, WA 98004
19 Tel: 425.233.8650
20 Fax: 425.412.7171
21 www.hattislaw.com

22 Attorneys for Plaintiff Jennifer Harbers
23 and the Proposed Class

EXHIBIT A

NOTICE OF REMOVAL



**Service of Process
Transmittal**

05/22/2019

CT Log Number 535535471

TO: Domenick Gallo
Eddie Bauer LLC
10401 NE 8th St # 500
Bellevue, WA 98004-4346

RE: Process Served in Washington

FOR: Eddie Bauer LLC (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: JENNIFER HARBERS, ETC., PLTF. vs. EDDIE BAUER LLC, ET AL., DFTS.
DOCUMENT(S) SERVED: SUMMONS, COMPLAINT, COVER SHEET, ORDER, NOTICE, ATTACHMENT(S)
COURT/AGENCY: King County Superior Court, WA
Case # 192134992SEA
NATURE OF ACTION: Violation of the Washington Consumer Protection Act
ON WHOM PROCESS WAS SERVED: CT Corporation System, Olympia, WA
DATE AND HOUR OF SERVICE: By Process Server on 05/22/2019 at 14:20
JURISDICTION SERVED : Washington
APPEARANCE OR ANSWER DUE: Within 20 days after the service of this summons, excluding the day of service
ATTORNEY(S) / SENDER(S): Daniel M. Hattis
HATTIS & LUKACS
400 108th Avenue, Suite 500
Bellevue, WA 98004
425-233-8650
ACTION ITEMS: SOP Papers with Transmittal, via UPS Next Day Air , 1ZX212780136199231
Image SOP
Email Notification, TERESA DALTON teresa.dalton@eddiebauer.com
Email Notification, Jessica Yanez Jessica.Yanez@eddiebauer.com
Email Notification, Domenick Gallo Domenick.Gallo@eddiebauer.com
SIGNED: CT Corporation System
ADDRESS: 711 Capitol Way S.
Suite 204
Olympia, WA 98501
TELEPHONE: 602-277-4792

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY**

JENNIFER HARBERS,
for Herself, as a Private Attorney
General, and/or On Behalf Of All
Others Similarly Situated,

Plaintiff,

v.

EDDIE BAUER LLC,
and DOES 1-20, inclusive,

Defendants.

No. _____

SUMMONS (20 DAYS)

TO THE DEFENDANT: A lawsuit has been started against you in the above entitled court by JENNIFER HARBERS, plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and by serving a copy upon the person signing this summons within 20 days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiff is entitled to

1 what she asks for because you have not responded. If you serve a notice of appearance on the
2 undersigned person, you are entitled to notice before a default judgment may be entered.

3 You may demand that the plaintiff file this lawsuit with the court. If you do so, the
4 demand must be in writing and must be served upon the person signing this summons. Within
5 14 days after you serve the demand, the plaintiff must file her lawsuit with the court, or the
6 service on you of this summons and complaint will be void.

7 If you wish to seek the advice of an attorney in this matter, you should do so promptly
8 so that your written response, if any, may be served on time.

9 This summons is issued pursuant to rule 4 of the Superior Court Civil Rules of
10 the State of Washington.

11

12 DATED this 20th day of May, 2019.

13

14

Presented by:

15

HATTIS & LUKACS

16

17

By: _____
Daniel M. Hattis

18

Daniel M. Hattis, WSBA No. 50428
dan@hattislaw.com
HATTIS & LUKACS
400 108th Avenue, Suite 500
Bellevue, WA 98004
Tel: 425.233.8650
Fax: 425.412.7171
www.hattislaw.com

19

20

21

22

23

Attorneys for Plaintiff Jennifer Harbers
and the Proposed Class

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY**

JENNIFER HARBERS, for Herself, as a Private Attorney General, and/or On Behalf Of All Others Similarly Situated, <p style="text-align: right;">Plaintiff,</p>	v.	EDDIE BAUER LLC, and DOES 1–20, inclusive, <p style="text-align: right;">Defendants.</p>
---	----	--

No. _____

**CLASS ACTION COMPLAINT FOR
DAMAGES AND INJUNCTIVE
RELIEF UNDER THE CONSUMER
PROTECTION ACT, RCW 19.86 AND
FOR INJUNCTIVE RELIEF UNDER
THE COMMERCIAL ELECTRONIC
MAIL ACT, RCW 19.190**

Plaintiff JENNIFER HARBERS, demanding trial by jury as to all issues so triable in a separate document to be filed, alleges as follows, on personal knowledge and/or on information and belief and/or upon the investigation of Plaintiff’s counsel, against Defendant EDDIE BAUER LLC (“Eddie Bauer”), and Defendants Does 1 through 20, inclusive:

I. INTRODUCTION

1. Defendant Eddie Bauer LLC (“Eddie Bauer”) is a retailer of outdoor clothing, accessories, and gear for men and women (www.eddiebauer.com). As alleged herein, Eddie Bauer has violated and continues to violate the Washington Consumer Protection Act,

1 RCW 19.86, and/or the Washington Commercial Electronic Mail Act, RCW 19.190, by
2 transmitting emails to consumers in Washington and nationwide which contain false or
3 misleading information in the subject lines.

4 2. In short, Eddie Bauer transmits emails to consumers in Washington and
5 nationwide which state in the subject lines that Eddie Bauer is offering discounts at a specified
6 percentage off and/or that the discounts apply to “everything.” These statements are false or
7 misleading because, in reality, Eddie Bauer is not offering the products at the promised
8 discount and/or Eddie Bauer is not offering the discounts on “everything.”

9 3. Consequently, Plaintiff and the applicable class of consumers she represents are
10 entitled to damages and injunctive relief under the Washington Consumer Protection Act and
11 injunctive relief under the Washington Commercial Electronic Mail Act, as well as attorneys’
12 fees and costs.

13

14 **II. PARTIES**

15 4. Plaintiff Jennifer Harbers is a citizen of the United States of America and a
16 citizen of the State of Washington. She is an adult who resides in the City of Redmond, King
17 County, Washington State.

18 5. Defendant Eddie Bauer LLC is a limited liability company chartered under the
19 laws of the State of Delaware and which currently has and at all relevant times in the past had
20 its headquarters, executive office, principal place of business or nerve center in Bellevue,
21 Washington.

22 6. Defendants Doe 1 through Doe 20, inclusive, aided, abetted and/or dominated
23 Defendant Eddie Bauer LLC in such a manner that Doe 1 through Doe 20, inclusive, are each
24 directly, contributorily, vicariously, derivatively and/or otherwise liable for the acts or
25 omissions of Defendant Eddie Bauer LLC. Plaintiff is currently unaware of the true identities
26 of Doe 1 through Doe 20, inclusive; Plaintiff anticipates that, upon learning the true identities
27 of any of Doe 1 through Doe 20, inclusive, Plaintiff will either freely amend the operative
28 complaint or request leave from the Court to amend the operative complaint.

1 **III. JURISDICTION AND VENUE**

2 7. This Court has subject matter jurisdiction over this civil action pursuant to,
3 without limitation, Section 6 of Article IV of the Washington State Constitution (Superior
4 Court jurisdiction, generally) and RCW 19.86.090 (Superior Court jurisdiction over Consumer
5 Protection Act claims).

6 8. This Court has personal jurisdiction over each of the defendants pursuant to,
7 without limitation, RCW 4.28.185, in that: (1) Defendant Eddie Bauer LLC is headquartered in
8 Washington State and is authorized to do business and regularly conducts business in
9 Washington State; (2) the claims alleged herein arise from Defendant Eddie Bauer LLC's
10 activities within Washington State; and/or (3) Defendant Eddie Bauer LLC has committed
11 tortious acts within the State of Washington (as alleged, without limitation, throughout this
12 Complaint).

13 9. With regard to the cause of action brought pursuant to the Washington
14 Consumer Protection Act, this Court has personal jurisdiction over each of the defendants
15 pursuant to RCW 19.86.160. For example, and without limitation, Defendant Eddie Bauer LLC
16 has engaged in conduct in violation of RCW Chapter 19.86 which has had an impact in
17 Washington State which said chapter reprehends.

18 10. Venue is proper in King County Superior Court because, without limitation,
19 Plaintiff Harbers resides in King County; Defendant Eddie Bauer LLC is headquartered in King
20 County; a significant portion of the acts giving rise to this civil action occurred in King County;
21 and/or Defendant Eddie Bauer LLC intended to and did have a substantial and foreseeable
22 effect on trade or commerce in King County.

23 11. Within the jurisdiction of King County Superior Court, this civil action is
24 assigned to the Seattle Case Assignment Area because, without limitation, Defendant Eddie
25 Bauer LCC is headquartered in the City of Bellevue, King County, and Plaintiff resides in the
26 City of Redmond, King County.

27

28

1 **IV. FACTUAL ALLEGATIONS**

2 12. Defendant Eddie Bauer is a popular retailer which claims to offer “premium-
3 quality clothing, accessories, and gear for men and women that complement today’s modern
4 outdoor lifestyle.”

5 13. Eddie Bauer sells its products through its website, www.eddiebauer.com, and in
6 its retail stores. Eddie Bauer currently operates approximately 370 stores in North America,
7 with at least eight locations in Washington State. The Eddie Bauer website is accessible from
8 Washington State and nationwide, and consumers in Washington State and nationwide view the
9 contents of the Eddie Bauer website and purchase goods from Eddie Bauer’s website.

10 14. Almost all the products sold by Eddie Bauer are branded as Eddie Bauer
11 products, and are exclusively sold by Eddie Bauer.

12 **A. Background Information: Eddie Bauer’s “Sales” Are False, And Not**
13 **“Everything” Is On Sale.**

14 15. Eddie Bauer creates purported list prices for its Eddie Bauer-branded products
15 which are inflated far above Eddie Bauer’s intended and regular true selling prices for the
16 products. However, for nearly all of its products, these list prices are fake and inflated where
17 Eddie Bauer rarely, if ever, offers the products at the list price. The list prices do not in fact
18 represent the value or regular selling price of the products. Eddie Bauer invents the inflated list
19 prices, which act as false reference prices for advertised fake perpetual discounts, in order to
20 create the illusion that Eddie Bauer is offering “premium-quality” clothing and gear.

21 16. Eddie Bauer advertises perpetual “sales” where its products are consistently
22 discounted by 30% to 50% from Eddie Bauer’s self-created list price. For most days of the
23 year, Eddie Bauer advertises store-wide and website-wide sales of a fixed percentage (ranging
24 from 30% to 50%) off. For the other days of the year, Eddie Bauer continues to advertise sales
25 and discounts for the large majority of its products. Based on investigation of Plaintiff’s
26 counsel and on information and belief, Eddie Bauer’s online and in-store list and sales prices
27 are the same or substantially the same.

28 17. For example, based on Plaintiff’s counsel’s investigation, in 2017 there were a

1 total of 290 days in which Eddie Bauer advertised on its website a site-wide sale of either “xx%
2 Off Everything” or “xx% Off Your Entire Purchase.” For the remaining 75 days of 2017, Eddie
3 Bauer continued to offer approximately 60–70% of its products at a discounted price. There
4 was not a single day in 2017 where Eddie Bauer did not offer the majority of its products for
5 sale at a discounted price or offer a fixed percentage off (typically between 30-50% off) of
6 one’s entire purchase.

7 18. Plaintiff’s counsel has been monitoring Eddie Bauer’s website since
8 January 16, 2016, and has assembled a comprehensive historical database of daily prices and
9 screenshots of approximately 1.9 million daily offerings for approximately 8,000 products over
10 these 1,217 days.

11 19. Plaintiff’s counsel’s investigation and data demonstrates that only a tiny fraction
12 of products offered by Eddie Bauer in its stores and on its website is consistently offered
13 without an advertised discount. These few non-discounted products primarily consist of
14 sleeping bags, tents, and non-Eddie Bauer brand (i.e., third party brand) products.

15 20. For the rest of Eddie Bauer’s products (more than 90% of its products), Eddie
16 Bauer perpetually or nearly perpetually offers the products at a discount of 30% to 50% from
17 the list price.

18 21. Eddie Bauer concocts its list prices principally so that it can fabricate perpetual
19 “sales” and discounts. Based on information and belief, Eddie Bauer utilizes a formula to set
20 the list price for its perpetually discounted products at a dollar amount which is 43% to 100%
21 higher than the sales price at which Eddie Bauer intends to actually offer and sell its products.
22 For example, for a product Eddie Bauer intends to regularly sell at \$20.00, Eddie Bauer will set
23 a fake list price of between \$28.00 and \$40.00, so that it can offer a perpetual discount of
24 between 30% and 50% off and still meet its revenue and profit margin targets.

25 22. Also, as noted below, when Eddie Bauer claims that “everything” (or a similar
26 word) is on sale, not “everything” is on sale. Typically, “everything” does not in fact include
27 sleeping bags, tents, and non-Eddie Bauer brand (i.e. third party brand) products.

28

1 **B. Eddie Bauer Routinely Transmits Commercial Emails Containing False Or**
2 **Misleading Information In The Subject Lines.**

3 23. As part of its regular marketing plan, Eddie Bauer routinely transmits
4 commercial emails containing false or misleading information in the subject lines. (As used in
5 this Complaint, allegations that Eddie Bauer “transmitted” an email are allegations that Eddie
6 Bauer initiated the transmission of the email, conspired with another to initiate the transmission
7 of the email and/or assisted the transmission of the email.)

8 24. From at least November 24, 2017, Defendant Eddie Bauer has transmitted
9 numerous electronic mail messages to Plaintiff Jennifer Harbers (and to a nationwide class of
10 consumers similarly situated to Ms. Harbers) containing false or misleading information in the
11 subject line.

12 25. Eddie Bauer transmitted at least twenty-seven (27) emails which falsely or
13 misleadingly stated “xx% Off Everything” or “xx% Off Your Purchase” or similar language in
14 the subject line. Plaintiff received each of these emails on the date specified below and
15 containing the email subject line specified below (listed below in the format: [date]: “[email
16 subject line]”):

- 17 • December 16, 2017: “🎉 Ho-Ho-Whoa! 50% Off Everything.”
- 18 • December 17, 2017: “Limited Time! 50% Off EVERYTHING.”
- 19 • February 13, 2018: “Starts Today! 40% Off Everything.”
- 20 • March 8, 2018: “Take 30% Off EVERYTHING.”
- 21 • March 13, 2018: “Starts Today! 40% Off Everything.”
- 22 • March 30, 2018: “50% Off Everything? This Is MADNESS!”
- 23 • March 31, 2018: “Spring Madness! 50% 🎉 OFF EVERYTHING.”
- 24 • April 8, 2018: “Last Day! 40% Off Everything.”
- 25 • April 26, 2018: “Limited Time! 40% Off Your Purchase.”
- 26 • June 18, 2018: “Last Day! 40% Off Everything.”
- 27 • June 28, 2018: “🌟 Starts Today! 50% OFF EVERYTHING.”
- 28 • July 2, 2018: “Oooh! Ahhh! Everything's 50% Off.”

- 1 • July 17, 2018: “50% Off E-V-E-R-Y-T-H-I-N-G!”
- 2 • August 3, 2018: “Take 40% OFF EVERYTHING!”
- 3 • August 31, 2018: “Starts Today! 50% Off Everything.”
- 4 • September 4, 2018: “Last Day! 50% Off Everything.”
- 5 • November 29, 2018: “🕒 FINAL HOURS! 50% Off Your Purchase.”
- 6 • December 16, 2018: “50% Off Everything + Special Deals!”
- 7 • December 17, 2018: “50% Off Everything + 60% Off Fleece!”
- 8 • February 12, 2019: “STARTS TODAY! 40% Off Everything!”
- 9 • February 19, 2019: “LAST DAY! 40% Off Everything.”
- 10 • March 22, 2019: “STARTS TODAY! Save 40% On EVERYTHING!”
- 11 • March 28, 2019: “STARTS TODAY! 50% Off Everything.”
- 12 • March 30, 2019: “Spring Madness! 50% off EVERYTHING!”
- 13 • April 5, 2019: “50% Off Everything? This Is MADNESS!”
- 14 • April 8, 2019: “50% Off Everything ENDS TODAY!”
- 15 • April 8, 2019: “LAST SH🔴T! 50% Off EVERYTHING!”

16 26. The “xx% Off” statements in these email subject lines are false or misleading.
17 Plaintiff thought—as would an ordinary and reasonable consumer—that the “xx% Off”
18 statements were a percentage off the price at which Eddie Bauer previously offered its products
19 in good faith for a significant period of time. In reality, Eddie Bauer calculated the “% Off”
20 statements from fictitious list prices at which Eddie Bauer never offered its products, rarely
21 offered its products, and/or temporarily offered its product in bad faith to concoct the so-called
22 discount. There was no asterisk or other indicator in the subject line to notify the email
23 recipients that Eddie Bauer had assigned these words and symbols an invented or subjective
24 meaning rather than their ordinary or objective meaning.




25 27. The language in these email subject lines that the purported discounts were off
26 of “Everything” was a second false statement in each of these email subject lines. Plaintiff
27 thought—as would an ordinary and reasonable consumer—that the off “Everything” statements
28 indicated that *all* of the products offered at Eddie Bauer’s stores and website were being

1 offered at a discount. In fact, some products were not discounted, consisting primarily of
2 sleeping bags, tents, and non-Eddie Bauer brand (i.e., third party brand) products. There was no
3 asterisk or other indicator in the subject line to notify the email recipients that Eddie Bauer had
4 assigned “Everything” an invented or subjective meaning rather than its ordinary or objective
5 meaning.

6 28. Likewise, the statements in the April 26, 2018 and November 29, 2018 email
7 subject lines that the purported discounts were “Off Your Purchase” were false or misleading.
8 Plaintiff thought—as would an ordinary and reasonable consumer—that “Off Your Purchase”
9 indicated that *all* of the products offered at Eddie Bauer’s stores and website were being
10 offered at a discount. In reality, some products were not discounted, consisting primarily of
11 sleeping bags, tents, and non-Eddie Bauer brand (i.e., third party brand) products. There was no
12 asterisk or other indicator in the subject line to notify consumers that Eddie Bauer had assigned
13 the words “Off Your Purchase” an invented or subjective meaning rather than their ordinary or
14 objective meaning.

15 29. Eddie Bauer also transmitted another sixteen (16) emails which falsely or
16 misleadingly stated “xx% Off”, “Take xx% Off”, “Get xx% Off” or similar language in the
17 subject line (unlike the email subject lines above, there was not a second and simultaneous false
18 or misleading statement that “Everything” was discounted). Plaintiff received each of these
19 emails on the date specified below and containing the email subject line specified below (listed
20 below in the format: [date]: “[email subject line]”):

- 21 • November 24, 2017: “⌘ Final Hours! 50% Off + Free Shipping.”
- 22 • November 26, 2017: “Sunday Funday! 50% Off + Free Shipping.”
- 23 • November 27, 2017: “Cyber Monday! 50% Off + Free Shipping.”
- 24 • November 27, 2017: “Final Hours! 50% Off + Free Shipping.”
- 25 • November 28, 2017: “Cyber Monday EXTENDED! 50% Off + Free Shipping.”
- 26 • November 28, 2017: “Hours Left! 50% Off + Free Shipping.”
- 27 • December 12, 2017: “⌘ Final Hours! 50% Off + Free Shipping.”
- 28 • December 23, 2017: “Semi-Annual Sale – 50% Off”

- 1 • March 16, 2018: “40% Off + FREE SHIPPING!”
- 2 • April 2, 2018: “It’s Not T   late! Take 50% Off!”
- 3 • July 17, 2018: “Final Hours! 50% Off Ends Soon”
- 4 • October 23, 2018: “Shop ASAP! 40% Off Ends Today.”
- 5 • October 25, 2018: “Use Code Inside. GET 50% OFF!”
- 6 • November 22, 2018: “Happy Thanksgiving! Take 50% Off.”
- 7 • December 8, 2018: “50% Off + SPECIAL DEALS INSIDE!”
- 8 • December 11, 2018: “ Final Hours! 50% Off Ends Soon.”

9 30. Plaintiff thought—as would an ordinary and reasonable consumer—that the
10 “xx% Off”, “Take xx% Off”, and “Get xx% Off” statements were a percentage off the price at
11 which Eddie Bauer previously offered that product in good faith for a significant period of
12 time. In reality, Eddie Bauer calculated the “% Off” statements from fictitious list prices at
13 which Eddie Bauer never offered that product, rarely offered that product, and/or temporarily
14 offered that product in bad faith to concoct the so-called discount. There was no asterisk or
15 other indicator in the subject line to notify the email recipients that Eddie Bauer had assigned
16 these words and symbols an invented or subjective meaning rather than their ordinary or
17 objective meaning.

18 31. Based on information and belief, Eddie Bauer transmitted, within the applicable
19 limitations period, other emails with similarly false or misleading information in the subject
20 line which were received by Plaintiff and/or by others similarly situated.

21 32. The false or misleading nature of Eddie Bauer’s statements was not obvious and
22 was not reasonably ascertainable by Plaintiff or another ordinary and reasonable consumer; as
23 such, the discovery rule should enlarge the applicable limitations period.

24
25
26
27
28

1 **V. CLASS ACTION ALLEGATIONS**

2 33. Plaintiff Harbers brings this class-action lawsuit on behalf of herself and the
3 members of the following nationwide class (the “National Class”):

4 **All residents of the United States of America who, within the**
5 **applicable limitations period, received an email from or at the**
6 **behest of Eddie Bauer LLC that contained in the subject line:**
7 **(a) a “xx% Off” or similar statement and/or (b) a statement**
8 **indicating a discount on “Everything,” “Your Purchase,” or**
9 **similar language when one or more products were excluded**
10 **from the discount.**

11 34. In the alternative, Plaintiff Harbers brings this class-action lawsuit on behalf of
12 herself and the members of the following Washington State class (the “Washington Class”):

13 **All residents of the State of Washington who, within the**
14 **applicable limitations period, received an email from or at the**
15 **behest of Eddie Bauer LLC that contained in the subject line:**
16 **(a) a “xx% Off” or similar statement and/or (b) a statement**
17 **indicating a discount on “Everything,” “Your Purchase,” or**
18 **similar language when one or more products were excluded**
19 **from the discount.**

20 35. Plaintiff pleads the National Class and the Washington Class as alternatives
21 because a discrete factual issue may determine whether Eddie Bauer is liable to the National
22 Class or to the Washington Class. If Plaintiff establishes by the requisite burden of persuasion
23 that Eddie Bauer transmitted one or more emails with a false or misleading subject line from “a
24 computer located in Washington” (RCW 19.190.020(1)), then Eddie Bauer faces liability to the
25 National Class for its misconduct within the State of Washington. *See also Thornell v. Seattle*
26 *Service Bureau, Inc.*, 184 Wn.2d 793, 796 (2015) (nationwide liability under Consumer
27 Protection Act for defendant headquartered in Washington State). In the unlikely event Plaintiff
28 cannot establish said fact, then Eddie Bauer still faces significant alternative liability—to the
class of Washington State residents to whom Eddie Bauer transmitted emails with false or
misleading subject lines. *See* RCW 19.190.020(1) (“to an electronic mail address that the
sender knows, or has reason to know, is held by a Washington resident”).

1 36. The term “Class” as used in this Complaint is a reference to either or both of the
2 National Class and/or the Washington Class as context dictates.

3 37. Specifically excluded from the Class are each defendant, any entity in which a
4 defendant has a controlling interest or which has a controlling interest in a defendant, a
5 defendant’s agents and employees and attorneys, the bench officers to whom this civil action is
6 assigned, and the members of each bench officer’s staff and immediate family.

7 38. *Numerosity.* Plaintiff does not know the exact number of Class members but is
8 informed and believes that the Class easily comprises tens of thousands of people in
9 Washington State alone. As such, Class members are so numerous that joinder of all members
10 is impracticable.

11 39. *Commonality and Predominance.* Well-defined, nearly identical legal or factual
12 questions affect the members of the Class. These questions predominate over questions that
13 might affect individual Class members. These common questions include, but are not limited
14 to, the following:

- 15 a. Eddie Bauer’s policies and actions regarding the content of its
16 promotional emails;
- 17 b. The accuracy of the subject lines of Eddie Bauer’s promotional emails;
- 18 c. Whether the pled conduct of Eddie Bauer is injurious to the public
19 interest;
- 20 d. Whether Eddie Bauer should be ordered to pay damages; and/or
- 21 e. Whether Eddie Bauer should be enjoined from further engaging in the
22 misconduct alleged herein.

23 40. The prosecution of separate actions by individual members of the Class would
24 create a risk of inconsistent or varying adjudications with respect to individual members of the
25 Class which would establish incompatible standards of conduct for the party opposing the class.

26 41. The party opposing the Class has acted or refused to act on grounds generally
27 applicable to the Class, thereby making appropriate final injunctive relief or corresponding
28 declaratory relief with respect to the Class as a whole.

1 47. The Washington Consumer Protection Act (the “CPA”), RCW 19.86, was first
2 enacted in 1961 and is Washington’s principal consumer protection statute. The CPA “replaces
3 the now largely discarded standard of *caveat emptor* with a standard of fair and honest
4 dealing.” Washington Pattern Jury Instruction Civil No. 310.00 (Consumer Protection Act—
5 Introduction).

6 48. The CPA’s primary substantive provision declares unfair methods of
7 competition and unfair or deceptive acts or practices to be unlawful. RCW 19.86.020. “Private
8 rights of action may now be maintained for recovery of actual damages, costs, and a reasonable
9 attorney’s fee. RCW 19.86.090. A private plaintiff may be eligible for treble damages
10 Private consumers may obtain injunctive relief, even if the injunction would not directly affect
11 the individual’s own rights. RCW 19.86.090.” Washington Pattern Jury Instruction Civil No.
12 310.00 (Consumer Protection Act—Introduction).

13 49. The CPA recognizes and incorporates *per se* violations. The Washington
14 Legislature routinely prohibits certain specified conduct but, instead of creating a new and
15 independent private right of action to enforce the prohibition, the Legislature deems the
16 unlawful conduct to be a *per se* violation of the CPA. If a defendant engages in that unlawful
17 conduct, a plaintiff may file a CPA complaint alleging the *per se* violation and seek the
18 remedies available under the CPA and/or also seek the remedies available under the statute
19 which forbids the *per se* violation. *See* Washington Pattern Jury Instruction Civil No. 310.03
20 (*Per Se* Violation of Consumer Protection Act) and Appendix H (Consumer Protection Act *Per*
21 *Se* Violations).

22 50. A plaintiff can plead a violation of the Washington Consumer Protection Act by
23 pleading that the CPA was violated *per se* due to a violation of the Washington Commercial
24 Electronic Mail Act. *See* RCW 19.190.030(1)(b) (“It is a violation of the consumer protection
25 act, chapter 19.86 RCW . . . to initiate the transmission of a commercial electronic mail
26 message that . . . [c]ontains false or misleading information in the subject line.”); Washington
27 Statutes of 1998, chapter 149, § 4 (approved by Governor on March 25, 1998).

28 51. The Washington Commercial Electronic Mail Act (“CEMA”) prohibits a person

1 from initiating the transmission from a computer located in Washington State of a commercial
2 electronic mail message which contains false or misleading information in the subject line.
3 RCW 19.190.020(1)(b). CEMA also prohibits a person from initiating the transmission to an
4 electronic mail address that the sender knows, or has reason to know, is held by a Washington
5 State resident of a commercial electronic mail message that contains false or misleading
6 information in the subject line. RCW 19.190.020(1)(b).

7 52. A plaintiff who successfully pleads and proves a CEMA violation as a *per se*
8 violation of the CPA may recover the remedies available under the CPA (e.g., actual damages,
9 increased damages of up to treble actual damages (subject to a statutory maximum), injunctive
10 relief, attorneys' fees and costs (RCW 19.86.090)) and/or the remedies available under CEMA
11 (e.g., actual damages or statutory damages of \$500 per email sent in violation of CEMA and
12 injunctive relief (RCW 19.190.040, RCW 19.190.090)).

13 53. Defendant Eddie Bauer LLC has initiated the transmission of numerous
14 commercial electronic mail messages to Plaintiff Harbers (the "Emails"). The Emails were
15 electronic mail messages, in that they were electronic messages sent to an electronic mail
16 address; the Emails from Eddie Bauer also referred to an internet domain, whether or not
17 displayed, to which an electronic mail message can or could be sent or delivered.

18 54. Eddie Bauer sent the Emails for the purpose of promoting goods or services for
19 sale or lease. Eddie Bauer was the original sender of the Emails.

20 55. Plaintiff Harbers received the Emails at her electronic mail address, which is the
21 destination, commonly expressed as a string of characters, at which she receives and to which
22 electronic mail may be sent or delivered.

23 56. Eddie Bauer initiated the transmission, conspired with another to initiate the
24 transmission and/or assisted the transmission of the Emails from a computer located in
25 Washington State. In the alternative and/or cumulatively, Eddie Bauer initiated the
26 transmission, conspired with another to initiate the transmission and/or assisted the
27 transmission of the Emails to one or more electronic mail addresses that Eddie Bauer knew, or
28 had reason to know, were held by a Washington State resident, i.e., Ms. Harbers and/or others

1 similarly situated.

2 57. At all relevant times, Eddie Bauer knew that the intended recipient
3 (Ms. Harbers) was a resident of the State of Washington because, without limitation, Eddie
4 Bauer possessed actual knowledge of Ms. Harbers' state of residence, Eddie Bauer possessed
5 constructive knowledge of Ms. Harbers' state of residence, information was available to Eddie
6 Bauer upon request from the registrant of the internet domain name contained in the recipient's
7 electronic mail address, and/or Eddie Bauer otherwise knew or should have known or had
8 reason to know that Ms. Harbers was a resident of the State of Washington.

9 58. The subject line of each Email contained "xx% Off" language and/or the words
10 "Everything" or "Your Purchase." None of the Emails had a subject line containing an asterisk
11 or other indication that the words in the subject line had a special or invented meaning.

12 59. In violation of the Washington Consumer Protection Act (as based *per se* upon a
13 violation of the Washington Commercial Electronic Mail Act) and for the reasons alleged
14 hereinabove, the subject line of each Email contained false or misleading information.

15 60. Generally, a plaintiff pleading a claim under the Washington Consumer
16 Protection Act must plead five necessary elements: (1) an unfair or deceptive act or practice (2)
17 in trade or commerce (3) that affects the public interest, (4) injury to plaintiff's business and
18 property, and (5) causation. *Wright v. Lyft, Inc.*, 189 Wn.2d 718, 728 (2017). Because Plaintiff
19 alleges a *per se* CPA violation by alleging a CEMA violation, all of these five elements are
20 satisfied as a matter of law. *Id.* at 724.

21 61. Eddie Bauer's misconduct as alleged herein was not performed in good faith.
22 Eddie Bauer's misconduct as alleged herein was not reasonable in relation to the development
23 and preservation of business.

24 62. The balance of the equities favors the entry of permanent injunctive relief
25 against Defendant Eddie Bauer. Plaintiff, the members of the Class and the general public will
26 be irreparably harmed absent the entry of permanent injunctive relief against Defendant.
27 Plaintiff, the members of the Class and the general public lack an adequate remedy at law. A
28 permanent injunction against Defendant is in the public interest. Defendant's unlawful behavior

1 is, based on information and belief, ongoing as of the date of the filing of this pleading; absent
2 the entry of a permanent injunction, Defendant's unlawful behavior will not cease and, in the
3 unlikely event that it voluntarily ceases, is likely to reoccur.

4 **COUNT II**

5 **Violation of the Washington Commercial Electronic Mail Act
(RCW Chapter 19.190)**

6 **(For Injunctive Relief Only)**

7 **AGAINST DEFENDANT EDDIE BAUER LLC
AND DEFENDANTS DOES 1 THROUGH 20**

8 63. Plaintiff realleges and incorporates by reference all paragraphs alleged
9 hereinbefore.

10 64. Plaintiff Harbers pleads this count in three separate capacities: in her individual
11 capacity, as a private attorney general seeking the imposition of public injunctive relief and/or
12 as a putative class representative serving on behalf of all others similarly situated.

13 65. The Washington Commercial Electronic Mail Act ("CEMA"), RCW 19.190,
14 creates an independent but limited private of right of action which can be asserted by, among
15 others, a person who is the recipient of a commercial electronic mail message which contains
16 false or misleading information in the subject line. RCW 19.190.030(1)(b). A plaintiff who
17 successfully alleges and proves such a violation may obtain, among other things, an injunction
18 against the person who initiated the transmission. RCW 19.190.090(1). It is Plaintiff's intent in
19 this count to plead an independent CEMA cause of action only to the limited extent that it is
20 recognized by law, e.g., when a plaintiff seeks injunctive relief. *Wright v. Lyft, Inc.*, 189 Wn.2d
21 718, 728 n. 3 (2017) ("we note that a plaintiff may bring an action to enjoin any CEMA
22 violation."); *Gragg v. Orange Cab Co.*, 145 F. Supp. 3d 1046, 1052 (W.D. Wash. 2015).

23 66. Defendant Eddie Bauer LLC has initiated the transmission of numerous
24 commercial electronic mail messages to Plaintiff Harbers (the "Emails"). The Emails were
25 electronic mail messages, in that they were each an electronic message sent to an electronic
26 mail address; the Emails from Eddie Bauer also referred to an internet domain, whether or not
27 displayed, to which an electronic mail message can or could be sent or delivered.

28 67. Eddie Bauer sent the Emails for the purpose of promoting goods or services for

1 sale or lease. Eddie Bauer was the original sender of the Emails.

2 68. Plaintiff Harbers received the Emails at her electronic mail address, which is the
3 destination, commonly expressed as a string of characters, at which she receives and to which
4 electronic mail may be sent or delivered.

5 69. Eddie Bauer initiated the transmission, conspired with another to initiate the
6 transmission and/or assisted the transmission of the Emails from a computer located in
7 Washington State. In the alternative and/or cumulatively, Eddie Bauer initiated the
8 transmission, conspired with another to initiate the transmission and/or assisted the
9 transmission of the Emails to one or more electronic mail addresses that Eddie Bauer knew, or
10 had reason to know, were held by a Washington State resident, i.e., Ms. Harbers and/or others
11 similarly situated.

12 70. At all relevant times, Eddie Bauer knew that the intended recipient
13 (Ms. Harbers) was a resident of the State of Washington because, without limitation, Eddie
14 Bauer possessed actual knowledge of Ms. Harbers' state of residence, Eddie Bauer possessed
15 constructive knowledge of Ms. Harbers' state of residence, information was available to Eddie
16 Bauer upon request from the registrant of the internet domain name contained in the recipient's
17 electronic mail address, and/or Eddie Bauer otherwise knew or should have known or had
18 reason to know that Ms. Harbers was a resident of the State of Washington.

19 71. The subject line of each Email contained "xx% Off" language and/or the words
20 "Everything" or "Your Purchase." None of the Emails had a subject line containing an asterisk
21 or other indication that the words in the subject line had a special or invented meaning.

22 72. In violation of CEMA and for the reasons alleged hereinabove, the subject line
23 of each Email contained false or misleading information.

24 73. The balance of the equities favors the entry of permanent injunctive relief
25 against Defendant Eddie Bauer. Plaintiff, the members of the Class and the general public will
26 be irreparably harmed absent the entry of permanent injunctive relief against Defendant.
27 Plaintiff, the members of the Class and the general public lack an adequate remedy at law. A
28 permanent injunction against Defendant is in the public interest. Defendant's unlawful behavior

1 is, based on information and belief, ongoing as of the date of the filing of this pleading; absent
2 the entry of a permanent injunction, Defendant's unlawful behavior will not cease and, in the
3 unlikely event that it voluntarily ceases, is likely to reoccur.

4 **PRAYER FOR RELIEF**

5 Plaintiff JENNIFER HARBERS, on behalf of herself individually, as a private attorney
6 general, and/or on behalf of the Class of all others similarly situated, hereby respectfully
7 requests that this Court order relief and enter judgment against Defendant Eddie Bauer LLC
8 and/or Defendants Does 1 through 20, inclusive, individually, jointly, severally and/or as
9 otherwise appropriate, as follows:

10 **As To The First Claim (Violation of the Washington Consumer Protection Act):**

- 11 A. For actual damages pursuant to, without limitation, RCW 19.86.090;
- 12 B. For an increase in the award of actual damages of up to treble the actual
13 damages (up to the statutory maximum of \$25,000 to be awarded to Plaintiff and to each
14 member of the Class for each violative email) pursuant to, without limitation, RCW 19.86.090;
- 15 C. For damages which are the greater of (a) the actual damages incurred by
16 Plaintiff and each member of the Class or (b) the statutory damages of \$500 to be awarded to
17 Plaintiff and to each member of the Class for each instance in which a defendant initiated (or
18 conspired with another to initiate or assisted) the transmission of a commercial electronic mail
19 message which contained false or misleading information in the subject line (an amount of
20 statutory damages which will be proven at trial but which Plaintiff estimates will be at least \$25
21 million per violative email multiplied by more than 43 violative emails) pursuant to, without
22 limitation, RCW 19.190.040;
- 23 D. For nominal damages;
- 24 E. For an order that each Defendant be permanently enjoined from the unlawful
25 conduct alleged herein pursuant to, without limitation, RCW 19.86.090;

26 **As To The Second Claim (Violation of the Washington Commercial Electronic**
27 **Mail Act):**

- 28 F. For an order that each Defendant be permanently enjoined from the unlawful

1 conduct alleged herein pursuant to, without limitation, RCW 19.190.090(1);

2 **As To Each And Every Claim:**

3 G. For an order certifying the proposed Class and appointing Plaintiff and her
4 counsel to represent the Class;

5 H. For an order that each Defendant be permanently enjoined from the unlawful
6 conduct alleged herein;

7 I. For an order that the Court retain jurisdiction to police Defendants' compliance
8 with the permanent injunctive relief;

9 J. For pre-judgment and/or post-judgment interest to the extent allowed by law;

10 K. For attorneys' fees to the extent allowed by law;

11 L. For costs to the extent allowed by law; and/or

12 M. For any other relief the Court deems just and proper, including, without
13 limitation, temporary, preliminary and/or permanent injunctive relief.

14 DATED this 20th day of May, 2019.

15 Presented by:

16 HATTIS & LUKACS
17

18 By: _____
19 Daniel M. Hattis

20 Daniel M. Hattis, WSBA No. 50428
dan@hattislaw.com
21 Che Corrington, WSBA No. 54241
che@hattislaw.com
22 HATTIS & LUKACS
400 108th Avenue, Suite 500
23 Bellevue, WA 98004
Tel: 425.233.8650
24 Fax: 425.412.7171
www.hattislaw.com

25 Attorneys for Plaintiff Jennifer Harbers
26 and the Proposed Class

27

28

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

Jennifer Harbers

vs

Eddie Bauer LLC

No. 19-2-13499-2 SEA

**CASE INFORMATION COVER SHEET AND
AREA DESIGNATION**

(CICS)

CAUSE OF ACTION

TTO - Tort /Other

AREA OF DESIGNATION

SEA

Defined as all King County north of Interstate 90 and including all of Interstate 90 right of way, all of the cities of Seattle, Mercer Island, Issaquah, and North Bend, and all of Vashon and Maury Islands.

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

JENNIFER HARBERS

Plaintiff(s)

vs

Eddie Bauer LLC

Defendant(s)

NO. 19-2-13499-2 SEA

ORDER SETTING CIVIL CASE SCHEDULE

ASSIGNED JUDGE: LUM, Dept. 12

FILED DATE: 05/20/2019

TRIAL DATE:05/18/2020

A civil case has been filed in the King County Superior Court and will be managed by the Case Schedule on Page 3 as ordered by the King County Superior Court Presiding Judge.

I. NOTICES

NOTICE TO PLAINTIFF: The Plaintiff may serve a copy of this **Order Setting Case Schedule (Schedule)** on the Defendant(s) along with the **Summons and Complaint/Petition**. Otherwise, the Plaintiff shall serve the **Schedule** on the Defendant(s) within 10 days after the later of: (1) the filing of the **Summons and Complaint/Petition** or (2) service of the Defendant's first response to the **Complaint/Petition**, whether that response is a **Notice of Appearance**, a response, or a Civil Rule 12 (CR 12) motion. The **Schedule** may be served by regular mail, with proof of mailing to be filed promptly in the form required by Civil Rule 5 (CR 5).

NOTICE TO ALL PARTIES:

All attorneys and parties should make themselves familiar with the King County Local Rules (KCLCR) -- especially those referred to in this **Schedule**. In order to comply with the **Schedule**, it will be necessary for attorneys and parties to pursue their cases vigorously from the day the case is filed. For example, discovery must be undertaken promptly in order to comply with the deadlines for joining additional parties, claims, and defenses, for disclosing possible witnesses [See KCLCR 26], and for meeting the discovery cutoff date [See KCLCR 37(g)].

You are required to give a copy of these documents to all parties in this case.

I. NOTICES (continued)

CROSSCLAIMS, COUNTERCLAIMS AND THIRD PARTY COMPLAINTS:

A filing fee of \$240 must be paid when any answer that includes additional claims is filed in an existing case.

KCLCR 4.2(a)(2)

A Confirmation of Joinder, Claims and Defenses or a Statement of Arbitrability must be filed by the deadline in the schedule. The court will review the confirmation of joinder document to determine if a hearing is required. If a Show Cause order is issued, all parties cited in the order must appear before their Chief Civil Judge.

PENDING DUE DATES CANCELED BY FILING PAPERS THAT RESOLVE THE CASE:

When a final decree, judgment, or order of dismissal of all parties and claims is filed with the Superior Court Clerk's Office, and a courtesy copy delivered to the assigned judge, all pending due dates in this *Schedule* are automatically canceled, including the scheduled Trial Date. It is the responsibility of the parties to 1) file such dispositive documents within 45 days of the resolution of the case, and 2) strike any pending motions by notifying the bailiff to the assigned judge.

Parties may also authorize the Superior Court to strike all pending due dates and the Trial Date by filing a *Notice of Settlement* pursuant to KCLCR 41, and forwarding a courtesy copy to the assigned judge. If a final decree, judgment or order of dismissal of all parties and claims is not filed by 45 days after a *Notice of Settlement*, the case may be dismissed with notice.

If you miss your scheduled Trial Date, the Superior Court Clerk is authorized by KCLCR 41(b)(2)(A) to present an *Order of Dismissal*, without notice, for failure to appear at the scheduled Trial Date.

NOTICES OF APPEARANCE OR WITHDRAWAL AND ADDRESS CHANGES:

All parties to this action must keep the court informed of their addresses. When a Notice of Appearance/Withdrawal or Notice of Change of Address is filed with the Superior Court Clerk's Office, parties must provide the assigned judge with a courtesy copy.

ARBITRATION FILING AND TRIAL DE NOVO POST ARBITRATION FEE:

A Statement of Arbitrability must be filed by the deadline on the schedule if the case is subject to mandatory arbitration and service of the original complaint and all answers to claims, counterclaims and cross-claims have been filed. If mandatory arbitration is required after the deadline, parties must obtain an order from the assigned judge transferring the case to arbitration. Any party filing a Statement must pay a \$250 arbitration fee. If a party seeks a trial de novo when an arbitration award is appealed, a fee of \$400 and the request for trial de novo must be filed with the Clerk's Office Cashiers.

NOTICE OF NON-COMPLIANCE FEES:

All parties will be assessed a fee authorized by King County Code 4A.630.020 whenever the Superior Court Clerk must send notice of non-compliance of schedule requirements and/or Local Civil Rule 41.

King County Local Rules are available for viewing at www.kingcounty.gov/courts/clerk.

II. CASE SCHEDULE

* CASE EVENT	EVENT DATE
Case Filed and Schedule Issued.	05/20/2019
* Last Day for Filing Statement of Arbitrability without a Showing of Good Cause for Late Filing [See KCLMAR 2.1(a) and Notices on Page 2]. \$220 arbitration fee must be paid	10/28/2019
* DEADLINE to file Confirmation of Joinder if not subject to Arbitration [See KCLCR 4.2(a) and Notices on Page 2].	10/28/2019
DEADLINE for Hearing Motions to Change Case Assignment Area [KCLCR 82(e)].	11/12/2019
DEADLINE for Disclosure of Possible Primary Witnesses [See KCLCR 26(k)].	12/16/2019
DEADLINE for Disclosure of Possible Additional Witnesses [See KCLCR 26(k)].	01/27/2020
DEADLINE for Jury Demand [See KCLCR 38(b)(2)].	02/10/2020
DEADLINE for a Change in Trial Date [See KCLCR 40(e)(2)].	02/10/2020
DEADLINE for Discovery Cutoff [See KCLCR 37(g)].	03/30/2020
DEADLINE for Engaging in Alternative Dispute Resolution [See KCLCR 16(b)].	04/20/2020
DEADLINE: Exchange Witness & Exhibit Lists & Documentary Exhibits [KCLCR 4(j)].	04/27/2020
* DEADLINE to file Joint Confirmation of Trial Readiness [See KCLCR 16(a)(1)]	04/27/2020
DEADLINE for Hearing Dispositive Pretrial Motions [See KCLCR 56; CR 56].	05/04/2020
* Joint Statement of Evidence [See KCLCR 4 (k)]	05/11/2020
DEADLINE for filing Trial Briefs, Proposed Findings of Fact and Conclusions of Law and Jury Instructions (Do not file proposed Findings of Fact and Conclusions of Law with the Clerk)	05/11/2020
Trial Date [See KCLCR 40].	05/18/2020

The * indicates a document that must be filed with the Superior Court Clerk's Office by the date shown.

III. ORDER

Pursuant to King County Local Rule 4 [KCLCR 4], IT IS ORDERED that the parties shall comply with the schedule listed above. Penalties, including but not limited to sanctions set forth in Local Rule 4(g) and Rule 37 of the Superior Court Civil Rules, may be imposed for non-compliance. It is FURTHER ORDERED that the party filing this action must serve this *Order Setting Civil Case Schedule* and attachment on all other parties.

DATED: 05/20/2019



PRESIDING JUDGE

IV. ORDER ON CIVIL PROCEEDINGS FOR ASSIGNMENT TO JUDGE

READ THIS ORDER BEFORE CONTACTING YOUR ASSIGNED JUDGE.

This case is assigned to the Superior Court Judge whose name appears in the caption of this case schedule. The assigned Superior Court Judge will preside over and manage this case for all pretrial matters.

COMPLEX LITIGATION: If you anticipate an unusually complex or lengthy trial, please notify the assigned court as soon as possible.

APPLICABLE RULES: Except as specifically modified below, all the provisions of King County Local Civil Rules 4 through 26 shall apply to the processing of civil cases before Superior Court Judges. The local civil rules can be found at www.kingcounty.gov/courts/clerk/rules/Civil.

CASE SCHEDULE AND REQUIREMENTS: Deadlines are set by the case schedule, issued pursuant to Local Civil Rule 4.

THE PARTIES ARE RESPONSIBLE FOR KNOWING AND COMPLYING WITH ALL DEADLINES IMPOSED BY THE COURT'S LOCAL CIVIL RULES.

A. Joint Confirmation regarding Trial Readiness Report

No later than twenty one (21) days before the trial date, parties shall complete and file (with a copy to the assigned judge) a joint confirmation report setting forth whether a jury demand has been filed, the expected duration of the trial, whether a settlement conference has been held, and special problems and needs (e.g., interpreters, equipment).

The Joint Confirmation Regarding Trial Readiness form is available at www.kingcounty.gov/courts/scforms. If parties wish to request a CR 16 conference, they must contact the assigned court. Plaintiff's/petitioner's counsel is responsible for contacting the other parties regarding the report.

B. Settlement/Mediation/ADR

a. Forty five (45) days before the trial date, counsel for plaintiff/petitioner shall submit a written settlement demand. Ten (10) days after receiving plaintiff's/petitioner's written demand, counsel for defendant/respondent shall respond (with a counter offer, if appropriate).

b. Twenty eight (28) days before the trial date, a Settlement/Mediation/ADR conference shall have been held. **FAILURE TO COMPLY WITH THIS SETTLEMENT CONFERENCE REQUIREMENT MAY RESULT IN SANCTIONS.**

C. Trial

Trial is scheduled for 9:00 a.m. on the date on the case schedule or as soon thereafter as convened by the court. The Friday before trial, the parties should access the court's civil standby calendar on the King County Superior Court website www.kingcounty.gov/courts/superiorcourt to confirm the trial judge assignment.

MOTIONS PROCEDURES

A. Noting of Motions

Dispositive Motions: All summary judgment or other dispositive motions will be heard with oral argument before the assigned judge. The moving party must arrange with the hearing judge a date and time for the hearing, consistent with the court rules. Local Civil Rule 7 and Local Civil Rule 56 govern procedures for summary judgment or other motions that dispose of the case in whole or in part. The local civil rules can be found at www.kingcounty.gov/courts/clerk/rules/Civil.

Non-dispositive Motions: These motions, which include discovery motions, will be ruled on by the assigned judge without oral argument, unless otherwise ordered. All such motions must be noted for a date by which the ruling is requested; this date must likewise conform to the applicable notice requirements. Rather than noting a time of day, the Note for Motion should state "Without Oral Argument." Local Civil Rule

7 governs these motions, which include discovery motions. The local civil rules can be found at www.kingcounty.gov/courts/clerk/rules/Civil.

Motions in Family Law Cases not involving children: Discovery motions to compel, motions in limine, motions relating to trial dates and motions to vacate judgments/dismissals shall be brought before the assigned judge. All other motions should be noted and heard on the Family Law Motions calendar. Local Civil Rule 7 and King County Family Law Local Rules govern these procedures. The local rules can be found at www.kingcounty.gov/courts/clerk/rules.

Emergency Motions: Under the court's local civil rules, emergency motions will usually be allowed only upon entry of an Order Shortening Time. However, some emergency motions may be brought in the Ex Parte and Probate Department as expressly authorized by local rule. In addition, discovery disputes may be addressed by telephone call and without written motion, if the judge approves in advance.

B. Original Documents/Working Copies/ Filing of Documents: All original documents must be filed with the Clerk's Office. Please see information on the Clerk's Office website at www.kingcounty.gov/courts/clerk regarding the requirement outlined in LGR 30 that attorneys must e-file documents in King County Superior Court. The exceptions to the e-filing requirement are also available on the Clerk's Office website. The local rules can be found at www.kingcounty.gov/courts/clerk/rules.

The working copies of all documents in support or opposition must be marked on the upper right corner of the first page with the date of consideration or hearing and the name of the assigned judge. The assigned judge's working copies must be delivered to his/her courtroom or the Judges' mailroom. Working copies of motions to be heard on the Family Law Motions Calendar should be filed with the Family Law Motions Coordinator. Working copies can be submitted through the Clerk's office E-Filing application at www.kingcounty.gov/courts/clerk/documents/eWC.

Service of documents: Pursuant to Local General Rule 30(b)(4)(B), e-filed documents shall be electronically served through the e-Service feature within the Clerk's eFiling application. Pre-registration to accept e-service is required. E-Service generates a record of service document that can be e-filed. Please see the Clerk's office website at www.kingcounty.gov/courts/clerk/documents/efiling regarding E-Service.

Original Proposed Order: Each of the parties must include an original proposed order granting requested relief with the working copy materials submitted on any motion. **Do not file the original of the proposed order with the Clerk of the Court.** Should any party desire a copy of the order as signed and filed by the judge, a pre-addressed, stamped envelope shall accompany the proposed order. The court may distribute orders electronically. Review the judge's website for information: www.kingcounty.gov/courts/SuperiorCourt/judges.

Presentation of Orders for Signature: All orders must be presented to the assigned judge or to the Ex Parte and Probate Department, in accordance with Local Civil Rules 40 and 40.1. Such orders, if presented to the Ex Parte and Probate Department, shall be submitted through the E-Filing/Ex Parte via the Clerk application by the attorney(s) of record. E-filing is not required for self-represented parties (non-attorneys). If the assigned judge is absent, contact the assigned court for further instructions. If another judge enters an order on the case, counsel is responsible for providing the assigned judge with a copy.

Proposed orders finalizing settlement and/or dismissal by agreement of all parties shall be presented to the Ex Parte and Probate Department. Such orders shall be submitted through the E-Filing/Ex Parte via the Clerk application by the attorney(s) of record. E-filing is not required for self-represented parties (non-attorneys). Formal proof in Family Law cases must be scheduled before the assigned judge by contacting the bailiff, or formal proof may be entered in the Ex Parte Department. **If final order and/or formal proof are entered in the Ex Parte and Probate Department, counsel is responsible for providing the assigned judge with a copy.**

C. Form

Pursuant to Local Civil Rule 7(b)(5)(B), the initial motion and opposing memorandum shall not exceed 4,200 words and reply memoranda shall not exceed 1,750 words without authorization of the court. The word count

includes all portions of the document, including headings and footnotes, except 1) the caption; 2) table of contents and/or authorities, if any; and 3) the signature block. Over-length memoranda/briefs and motions supported by such memoranda/briefs may be stricken.

IT IS SO ORDERED. FAILURE TO COMPLY WITH THE PROVISIONS OF THIS ORDER MAY RESULT IN DISMISSAL OR OTHER SANCTIONS. PLAINTIFF/PETITIONER SHALL FORWARD A COPY OF THIS ORDER AS SOON AS PRACTICABLE TO ANY PARTY WHO HAS NOT RECEIVED THIS ORDER.



PRESIDING JUDGE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Eddie Bauer Sent Misleading Emails Advertising False Discounts, Class Action Alleges](#)
