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

MERRILL SHAPIRO, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

GOOD AMERICAN, LLC,

Defendant.

Case No.:

CLASS ACTION COMPLAINT FOR
VIOLATION OF THE CONSUMER
PROTECTION ACT, RCW 19.86, AND
THE COMMERCIAL ELECTRONIC
MAIL ACT, RCW 19.190

DEMAND FOR TRIAL BY JURY

I. NATURE OF THE ACTION

1. This is a class action against Defendant, Good American, LLC (“Good American” or “Defendant”) for false and misleading email marketing.

2. Good American sends emails containing false or misleading information in the subject lines to Washington consumers. For example, Good American sends emails that misstate the length of sales, in an effort to drive sales by creating a false sense of urgency. The subject line of these kinds of emails falsely claims that a certain sale or discount is limited to a specific time or about to expire, such as “limited time only,” “final hours,” “last day,” “ending soon,” “ends tonight,” or “one day left,” when, in reality, the offer lasts longer than advertised. As another example, Good American sends emails with subject lines claiming that a sale or discount has been “extended,” when, in reality, Good American always planned the sale to continue during the advertised extension.

1 **III. JURISDICTION AND VENUE**

2 10. This Court has subject matter jurisdiction over this civil action pursuant to, without
3 limitation, Section 6 of Article IV of the Washington State Constitution (Superior Court
4 jurisdiction, generally), RCW 19.86.090 (Superior Court jurisdiction over Consumer Protection
5 Act claims) and RCW 19.190.090 (Superior Court jurisdiction over Commercial Electronic Mail
6 Act claims).

7 11. This Court has personal jurisdiction over Good American under RCW 4.28.185.
8 This Court may exercise personal jurisdiction over the out-of-state Good American because the
9 claims alleged in this civil action arose from, without limitation, Good American’s purposeful
10 transmission of electronic mail messages to consumers within the State of Washington. In addition,
11 Good American intended, knew, or is chargeable with the knowledge that its out-of-state actions
12 would have a consequence within Washington.

13 12. This Court also has personal jurisdiction over Good American under RCW
14 19.86.160. For example, Good American engaged and is continuing to engage in conduct in
15 violation of RCW 19.86 which has had and continues to have an impact in Washington.

16 13. Venue is proper in King County Superior Court because, at all relevant times,
17 Plaintiff has resided in Seattle, Washington and received the alleged false and misleading emails
18 while residing in this County. RCW 4.12.020. Venue is also proper because Good American has
19 transacted business in King County, including without limitation by sending the marketing emails
20 alleged herein to residents of King County, conducted substantial online retail sales and business
21 with residents in King County, and shipped clothing and other consumer goods to residents in King
22 County. RCW 4.12.025.

23 **IV. LEGAL FRAMEWORK**

24 **A. The CEMA prohibits initiating or conspiring to initiate the transmission of**
25 **commercial e-mails with false or misleading subject lines.**

26 14. Washington’s Commercial Electronic Mail Act (CEMA) regulates deceptive email
27 marketing.

1 15. CEMA prohibits sending an email advertisement to a Washington resident that
2 “[c]ontains false or misleading information the subject line.” RCW 19.190.020(1)(b). A violation
3 of this prohibition is an unfair or deceptive act that occurs in trade or commerce and violates the
4 public interest under the Consumer Protection Act. RCW 19.190.030(3).

5 16. “CEMA’s prohibition on sending commercial e-mails with false or misleading
6 subject lines . . . creates a substantive right to be free from deceptive commercial e-mails.” *Harbers*
7 *v. Eddie Bauer, LLC*, 415 F. Supp. 3d 999, 1011 (W.D. Wash. 2019) (holding that the plaintiff
8 sufficiently pleaded concrete injury-in-fact for alleged CEMA violations based on her receipt of
9 marketing emails from the defendant containing allegedly false “xx% off” statements in the subject
10 line). Washington courts have held that “[t]he harms resulting from deceptive commercial e-mails
11 resemble the type of harms remedied by nuisance or fraud actions.” *Id.* at 1008.

12 17. An injury occurs anytime a commercial e-mail is transmitted that contains false or
13 misleading information in the subject line. *Id.* at 1011.

14 18. Under CEMA, it is irrelevant whether misleading commercial e-mails were
15 solicited. *Id.*

16 19. CEMA creates a private of right of action for injunctive relief for people who
17 receive commercial emails with subject lines containing false or misleading information. RCW
18 19.190.090(1). A plaintiff who successfully alleges and proves such a violation may obtain, among
19 other things, an injunction against the person who initiated the transmission. RCW 19.190.090(1).
20 *Wright v. Lyft, Inc.*, 189 Wn.2d 718, 728 n.3 (2017) (“we note that a plaintiff may bring an action
21 to enjoin any CEMA violation.”).

22 20. It is a violation of the Consumer Protection Act (RCW 19.86 *et seq.*) to send or
23 conspire with another person to send an email that contains false or misleading information in the
24 subject line. RCW 19.190.030(1); *see also* RCW 19.190.030(2) (providing “that the practices
25 covered by this chapter are matters vitally affecting the public interest for the purpose of applying
26 the consumer protection act, chapter 19.86 RCW. The Legislature declared that a violation of
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1 section 030 is not reasonable in relation to the development and preservation of business and is an
2 unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose
3 of applying the consumer protection act, chapter 19.86 RCW.”).

4 21. Damages for a violation of the prohibition on sending an email with false or
5 misleading information in the subject line are \$500 or actual damages, whichever is greater. RCW
6 19.190.040.

7 22. To establish a violation of Washington’s Consumer Protection Act (“CPA”), a
8 claimant must establish five elements: (1) an unfair or deceptive act or practice, (2) in trade or
9 commerce, (3) that affects the public interest, (4) injury to plaintiff’s business or property, and (5)
10 causation. *Hangman Ridge Stables, Inc. v. Safeco Title Ins. Co.*, 719 P.2d 531, 533 (Wash. 1986).
11 Washington and federal courts have held that a plaintiff states a CPA claim solely by alleging a
12 violation of the CEMA. *See State v. Heckel*, 143 Wash.2d 824, 24 P.3d 404, 407 (2001) (“RCW
13 19.190.030 makes a violation of [CEMA] a per se violation of the [CPA].”). Indeed, by alleging a
14 CEMA violation of RCW 19.190.020, a plaintiff alleges all five elements of a CPA violation. *See*
15 *Gordon v. Virtumundo, Inc.*, 575 F.3d 1040, 1065 (9th Cir. 2009) (citing *Hangman Ridge Training*
16 *Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wash.2d 778, 719 P.2d 531, 535–37 (1986)); *Wright*,
17 406 P.3d at 1155 (“We conclude that RCW 19.190.040 establishes the injury and causation
18 elements of a CPA claim as a matter of law.”).

19 **V. FACTUAL ALLEGATIONS**

20 **A. Good American initiates (or conspires to initiate) the transmission of commercial e-**
21 **mails with false or misleading subject lines.**

22 23. Good American has initiated (or conspired to initiate) the transmission of dozens
23 uniform commercial electronic mail messages with false or misleading subject lines to Plaintiff
24 and the Class, which Good American sends as email blasts to consumers in Washington and
25 nationwide. The emails were electronic mail messages, in that they were each an electronic
26 message sent to an electronic mail address; the emails from Good American also referred to an
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1 internet domain, whether or not displayed, to which an electronic mail message can or could be
2 sent or delivered.

3 24. Good American sent the emails for the purpose of promoting its goods for sale.

4 25. The emails were sent by Good American or at Good American's direction and were
5 approved by Good American.

6 26. Good American's emails frequently advertise the "limited" nature of sales,
7 discounts, and prices. For example, on January 11, 2023, Good American sent an email with a
8 subject line, "25% OFF SITEWIDE - LIMITED TIME ONLY." By stating that a sale is only for
9 a limited time, Good American suggests an offer's rarity or urgency, stimulating consumers' desire
10 to get the deal before it's gone while simultaneously inducing fear of missing a good buy.

11 27. Good American designs the subject lines of its marketing emails to tap into
12 consumers' fear of missing out—going so far as to feature images of hourglasses and clocks in the
13 email subject line itself next to words such as "TIME IS RUNNING OUT," or "ENDING SOON."
14 Other email subject lines spur the recipient to make purchases, prompting the recipient that it is
15 their "LAST CHANCE," and "DON'T MISS OUT."

16 28. Good American also repeatedly sends emails purportedly granting recipients "VIP
17 EARLY ACCESS" to a sale even though the email is disseminated to all consumers rather than a
18 select subgroup of "very important people" and the everyone has access to the offers. There is
19 nothing "early" about the advertised sale—it simply marks the planned start of a promotion.

20 29. The fact that such statements are false and misleading has been recognized by the
21 Federal Trade Commission, which directs that sellers should not "make a 'limited' offer which, in
22 fact, is not limited." 16 C.F.R. § 233.5.

23 30. Research has also shown that emails that convey a sense of urgency in email
24 subject lines (e.g., "BUY NOW," "HURRY"), have higher open rates than emails without such
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1 subject lines.¹ Here, the urgency conveyed by Good American’s email subject lines is false, and
2 thus consumers are being seduced into opening emails that they would not have opened if the
3 subject lines had been truthful.

4 31. Good American also uses the purportedly limited nature of its offers to send *more*
5 emails to consumers than it otherwise might, which imposes costs on consumers receiving these
6 emails and clogs up their inboxes. Good American may send a single consumer up to three
7 marketing emails *per day*, and commonly sends 2 marketing emails *every day*, many of them
8 advertising short-duration sale offers (e.g., “limited time only,” “ending soon,” or “ending today”).
9 For example, Good American has a pattern and practice of sending a series of emails related to a
10 sale by sending: (1) an initial email offering “early access” to a sale; (2) a second email describing
11 the sale as “limited time only”; (3) a third email stating that the sale “ends soon,” “ends tomorrow,”
12 or is within its “final hours”; (4) a fourth email stating “last call”, creating a sense of urgency in
13 consumers to make purchases before the sale ends, only for Good American to ultimately send (5)
14 a fifth email after the purported expiration time of the sale stating that the sale has been “extended.”

15 32. Below is an example of a series of emails Good American recently sent to Plaintiff:

16 Sent: Wed 4/26/2023 7:04:16 AM (UTC-07:00)
17 From: "Haley @ GOOD AMERICAN" <help@goodamerican.com>
18 Subject: Early Access: FLASH SALE

19 Sent: Sat 4/29/2023 2:01:54 PM (UTC-07:00)
20 From: "GOOD AMERICAN" <noreply@goodamerican.com>
21 Subject: There’s Still Time for 25% off

22 Sent: Sun 4/30/2023 2:00:18 PM (UTC-07:00)
23 From: "Haley @ Good American" <help@goodamerican.com>
24 Subject: Final Hours! 25% off sitewide!

25 ¹ See The Ultimate 2023 Email Marketing Stats List, <https://codecrew.us/email-marketing-stats-you-need-to-know-the-ultimate-list/> (“subject lines with a sense of urgency (BUY NOW, HURRY) have a 22% open rate. That’s quite a bit higher than normal.”); Urgency Emails: An All-Inclusive Guide For Marketers To Drive Maximum Conversions, <https://email.uplers.com/blog/complete-guide-to-urgency-emails/>; Email Subject Line Tips That Guarantee High Open Rates, <https://www.loginradius.com/blog/growth/email-subject-line-tips-for-high-open-rates/> (“subject lines displaying exclusivity and urgency increases open rates upto 22%”).

1 Sent: Mon 5/1/2023 7:07:46 AM (UTC-07:00)
2 From: "GOOD AMERICAN" <noreply@goodamerican.com>
3 Subject: EXTENDED: 25% Off Sitewide

4 Sent: Tue 5/2/2023 12:00:47 PM (UTC-07:00)
5 From: "Haley @ Good American" <help@goodamerican.com>
6 Subject: EXTENDED! 25% off sitewide!

7 33. Good American violates CEMA because the statements in the email subject lines
8 intended to seduce consumers into opening the email advertisements are false and misleading, and
9 Good American's conduct in misrepresenting the true subjects of its promotional advertisements in
10 the email subject lines deprives consumers of the ability make informed choices about which
11 emails to open and spend time reading, or to delete. There are numerous examples of Good
12 American emails that can be shown to have false and misleading information in the subject lines
13 just by reviewing the subject lines of other Good American emails. While there are too many
14 examples to include them all here, the facts alleged below show the types of false and misleading
15 email subject lines Good American deploys.

16 34. Specifically, Good American engages in a pattern and practice of misrepresenting the
17 length of sales, both as to the start and end of the sale, by sending emails stating that it is offering
18 "early access" to a sale, that the sale is ending soon and then, after the sale purportedly ends,
19 sending another email "extending" sale. These emails are false and misleading for several reasons.

20 35. First, there is nothing "early" about Good American's "early access" sales.
21 Discovery will show that the "early" access was offered to all consumers receiving Good
22 American's emails and that Good American always planned to start the sale for everyone on that
23 date.

24 36. Good American sent Plaintiff fifteen emails containing a subject line stating that
25 Good American was granting Plaintiff "early access" to a sale:

Date Sent	Email Subject
8/30/2022	Early Access: 20% off Sitewide!
9/13/2022	EARLY ACCESS: 25% OFF SITEWIDE

10/13/2022	EARLY ACCESS: 20% Off
11/3/2022	Early access to shop our sale!
11/9/2022	VIP Early Access: 20% Off Sitewide
11/20/2022	Black Friday Early Access: 30% OFF SITEWIDE
11/22/2022	Re: Black Friday Early Access: 30% OFF SITEWIDE
11/27/2022	Cyber Monday Early Access: 30% OFF EVERYTHING
12/7/2022	GIFTING SALE EARLY ACCESS - 20% off!
12/14/2022	Early Access: End of Season Sale!
1/11/2023	Early Access: 25% Off Sitewide
2/2/2023	VIP Early Access: \$50 OFF!
2/16/2023	VIP Early Access: \$89 - \$139 Denim
4/5/2023	VIP Early Access: \$50 OFF!
4/26/2023	Early Access: FLASH SALE

37. Second, the emails for “extended” sales are often sent following long holiday weekends when consumers are back at their computers or on their phones after a weekend of activity. However, discovery will show that Good American employees did not gather at the end of the planned sale and determine that the sale should be extended. Instead, the sale was always planned to continue such that the advertised “extension” is fake.

38. Between August 2022 and May 2023, Good American engaged in this pattern and practice of sending false and misleading emails in relation to seven different sales, as shown below.

39. September 2022: Defendant sent Plaintiff more than 15 emails regarding a 25% Off sale, including the following emails:

DATE SENT	EMAIL SUBJECT LINE
9/13/2022	EARLY ACCESS: 25% OFF SITEWIDE
9/19/2022	Final Hours! Get 25% Off EVERYTHING!
9/20/2022	LAST DAY: 25% OFF EVERYTHING
9/20/2022	⌚ TIME IS RUNNING OUT ⌚
9/21/2022	⚡ THIS SALE ENDS TONIGHT ⚡
9/21/2022	⚡ SALE EXTENDED: 25% OFF EVERYTHING ⚡

40. The subject line of the email sent on September 13, 2022 was false and misleading because there was nothing “early” about the sale being offered that day—it was offered to all email

1 recipients and was always scheduled to start on that day. The subject lines of the emails sent on
 2 September 19 and 20 stating “Final Hours!,” “LAST DAY,” and “TIME IS RUNNING OUT”
 3 were false and misleading because the sale did not end on September 20. The subject line of the
 4 email sent on September 21 stating “SALE EXTENDED” was false and misleading because,
 5 discovery will show, the sale was always scheduled to continue to September 21, 2023.

6 41. November 2022: Good American sent Plaintiff 25 emails regarding its 30% Off
 7 “Black Friday” and “Cyber Monday” sales, including the following emails:

DATE SENT	EMAIL SUBJECT LINE
11/20/2022	Black Friday Early Access: 30% OFF SITEWIDE
11/22/2022	Re: Black Friday Early Access: 30% OFF SITEWIDE
11/26/2022	ENDING SOON - Black Friday Sale
11/26/2022	EXTENDED! 30% OFF EVERYTHING!
11/27/2022	FINAL HOURS BLACK FRIDAY SALE
11/27/2022	Cyber Monday Early Access: 30% OFF EVERYTHING
11/28/2022	Last Call! 30% off everything ends at midnight!
11/30/2022	CYBER WEEK SALE EXTENDED

15 42. The subject lines of the emails sent on November 20, 22, and 27 were false and
 16 misleading because there was nothing “early” about offers—it was offered to all email recipients
 17 and was always scheduled to be offered on those days. The subject lines of the emails sent on
 18 November 26, 27, and 28 stating “ENDING SOON,” “FINAL HOURS,” and “Last Call!” were
 19 false and misleading because the 30% off sale did not end but continued through December 1,
 20 2022. The subject lines the emails sent on November 26 and 30 stating the sale was “EXTENDED”
 21 were false and misleading because, as discovery will show, Good American had long planned to
 22 offer the sale through December 1, 2022.

23 43. December 2022: Good American sent Plaintiff two emails regarding a 50% off
 24 markdowns sale, advertised as a “Sale on Sale” or its “End of Season” sale:

DATE SENT	EMAIL SUBJECT LINE
12/14/2022	Early Access: End of Season Sale!
12/19/2022	Extra 50% off Markdowns starting NOW!

44. The subject line of the email sent on December 14 was false and misleading because there was nothing “early” about the sale being offered that day—it was offered to all email recipients and was always scheduled to start on that day. The subject line the email sent on December 19 stating “Extra 50% off Markdowns starting NOW!” was false and misleading because the sale had been offered since December 14.

45. January 2023: Defendant sent 14 emails about a 25% off sale for the long weekend for Martin Luther King, Jr. Day, including the following emails:

DATE SENT	EMAIL SUBJECT LINE
1/11/2023	Early Access: 25% Off Sitewide
1/16/2023	Ending Soon! 25% Off Sitewide!
1/16/2023	LAST CHANCE: 25% OFF SITEWIDE*
1/17/2023	SALE EXTENDED: 25% off sitewide*

46. The subject line the email sent on January 11 was false and misleading because there was nothing “early” about the sale being offered that day—it was offered to all email recipients and was always scheduled to start on that day. The subject lines of the emails sent on January 16 stating “Ending Soon!” and “LAST CHANCE” were false and misleading because the 25% off sale did not end but continued through January 17. The subject lines of the email sent on January 17 stating the sale was “EXTENDED” was false and misleading because, as discovery will show, Good American had long planned to offer the sale through January 17.

47. March 2023: Defendant sent Plaintiff more than 15 emails about a 25% off sale. Of those email advertisements, including the following emails:

DATE SENT	EMAIL SUBJECT LINE
3/22/2023	ENDING SOON - Friends & Family sale
3/23/2023	25% OFF EVERYTHING ENDS TODAY
3/24/2023	EXTENDED: 25% OFF EVERYTHING

48. The subject lines of the emails sent on March 22 and 23 stating “ENDING SOON” and “ENDS TODAY” were false and misleading because the 25% off sale did not end but

1 continued through March 26. The subject line of the email sent on March 24 stating the sale was
2 “EXTENDED” was false and misleading because, as discovery will show, Good American had
3 long planned to continue the sale.

4 49. March 2023: Defendant sent Plaintiff 3 emails about a 30% off “flash sale,” as
5 shown below:

DATE SENT	EMAIL SUBJECT LINE
3/29/2023	Flash Sale! 30% OFF!
3/30/2023	ENDS TONIGHT: 30% Off Select Styles
3/31/2023	Flash Sale Extended! 30% Off Spring Picks

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9 50. “Flash sales” are commonly understood by consumers to mean a sale of short
10 duration.

11 51. The subject line of the email sent on March 30 stating “ENDS TONIGHT” was
12 false and misleading because the sale did not end but continued through March 31. The subject
13 line of the email sent on January 17 stating the sale was “Extended” was false and misleading
14 because, as discovery will show, Good American had long planned to offer the sale through
15 March 31.

16 52. April-May 2023: Defendant sent Plaintiff 9 emails about a 25% off “flash sale,”
17 four of which are shown below:

DATE SENT	EMAIL SUBJECT LINE
4/26/2023	Early Access: FLASH SALE
4/30/2023	Final Hours! 25% off sitewide!
5/1/2023	EXTENDED: 25% Off Sitewide
5/2/2023	EXTENDED! 25% off sitewide!

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21 53. The subject line of the email sent on April 26 advertising “Early Access” to a
22 “FLASH SALE” was false and misleading because (i) there was nothing “early” about the sale
23 being offered that day—it was offered to all email recipients and was always scheduled to start on
24 that day; and (ii) the sale lasted for a week and was not a “flash” sale. The subject line of the email
25 sent on April 30 stating “Final Hours!” was false and misleading because the sale did not end but
26 continued through May 3. The subject lines of the emails sent on May 1 and 2 stating the sale was
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1 “EXTENDED” were false and misleading because, as discovery will show, Good American had
2 long planned to offer the sale through those dates.

3 54. These sorts of emails with false and misleading subject lines mask the true subject
4 of the email advertisements, undermine consumer confidence in online commerce, and harm
5 legitimate marketers that provide truthful information about their goods and services for sale.

6 **B. Good American Sends Commercial Emails to Consumers Whom It Knows, Or Has**
7 **Reason to Know, Reside In Washington.**

8 55. Good American sent the misleading commercial emails to email addresses that
9 Good American knew, or had reason to know, belong to Washington residents, either because (i)
10 Good American had a physical Washington address that was associated with the recipient; (ii)
11 Good American had access to data regarding the recipient indicating that they were in Washington
12 state; or (iii) information was available to Good American upon request from the registrant of the
13 internet domain name contained in the recipient’s electronic mail address.

14 56. Good American knows where many of its email recipients reside.

15 57. First, for any person that places an order online from Good American, Good
16 American associates an email address with a shipping address and/or billing address.

17 58. Second, Good American encourages online shoppers to create online accounts
18 associated with their email addresses. Customers save shipping addresses, billing addresses, and
19 phone numbers in their Good American accounts.

20 59. Third, discovery will show that Good American employs methods to track the
21 effectiveness of its marketing emails and to identify consumers that click on links contained in
22 Good American’s marketing emails, including by identifying their physical location. For example,
23 discovery will show that Good American gathers information such as geocoordinates and IP
24 addresses from individuals who click on links in Good American commercial emails, and that
25 Good American can use such information to determine whether the recipient is in Washington.

26 60. Fourth, discovery will show Good American also utilizes cookies, pixels, and other
27 online tracking technologies to identify and locate the consumers that sign up for email

1 advertisements on its website or click on links contained in Good American’s advertisements and
2 marketing emails. For example, Good American advertises on Facebook and Instagram and
3 encourages consumers that click on those ads to sign up for marketing emails as soon as they land
4 on the Good American website and deploys the Meta Pixel on its website, which tracks persons
5 who sign up for email advertisements and links that activity to consumers’ Facebook profiles and
6 information shared from those profiles, including geographic location.

7 61. Fifth, discovery will also show that Good American employs sophisticated third
8 parties who create profiles of customers and potential customers, including their email address and
9 physical location.

10 62. Sixth, Good American routinely collects and uses consumers’ state of residence to
11 calculate sales tax on consumers’ purchases.

12 63. Lastly, Good American knew, should have known, or had reason to know that it
13 sends marketing emails to Washington residents due to the tracking information available from the
14 methods described above, its large volume of commerce in the state, and the volume of marketing
15 emails it sends to people around the country. *See Heckel*, 122 Wash. App. at 6 (holding as a matter
16 of law that a defendant had a reason to know that he sent emails to Washington residents by sending
17 over 100,000 emails a week to people around the country).

18 64. Discovery will show that, at the time it sent the emails with false and misleading
19 subject lines, Good American had access to the data described above regarding the location of
20 consumers in Washington to whom it sent the emails.

21 **C. Good American initiated (or conspired to initiate) the transmission of illegal emails**
22 **to Plaintiff.**

23 65. At all times relevant to this Complaint, Plaintiff resided in Washington State.

24 66. Plaintiff has received Good American emails since at least August 2022. Plaintiff
25 has received hundreds of marketing emails from Good American since that date, and typically
26 receives 1-3 emails every day.

27 67. Plaintiff receives emails from Good American at a gmail.com email address.

1 Plaintiff pays for storage from Google at \$1.99 per month. Plaintiff currently has at least 498 emails
2 from Good American in her inbox.² The emails with the false and misleading subject lines
3 identified herein are taking up limited space in Plaintiff's inbox.

4 68. Good American knows, or has reason to know, that Plaintiff's email address is held
5 by a Washington resident. Plaintiff signed up for email advertisements from Good American after
6 clicking on an ad displayed to her on social media (Facebook or Instagram) and Plaintiff has shared
7 her location with Facebook. Plaintiff has also repeatedly clicked on links contained in Good
8 American emails from her computer, which was registered to an IP address in Washington at all
9 relevant times, or from her smart phone, which was located in Washington unless Plaintiff
10 happened to be traveling.

11 69. Plaintiff received the emails with false and misleading subject lines alleged above,
12 and received additional emails that are similarly false and misleading as the examples alleged
13 above.

14 70. Plaintiff was deceived by the emails because she believed that Good American was
15 accurately representing the length of its sales in the email subject lines. These emails abridged
16 Plaintiff's right to be free from misleading commercial mail messages provided by the Washington
17 legislature.

18 71. Every email Good American has sent to Plaintiff was sent for the purpose of
19 promoting Good American's goods for sale.

20 72. Good American initiated the transmission or conspired to initiate the transmission
21 of these commercial electronic mail messages to Plaintiff.

22 73. Plaintiff never solicited emails with false and misleading subject lines from Good
23 American and does not want to receive these spam messages.

24 74. The email subject lines disguised the true subject of the email (e.g., a sale that was
25 not in its "final hours") in an effort to trick Plaintiff into opening the email.

26
27 ² Discovery may show that Plaintiff has received more emails that she has deleted.

1 than stated or implied; or (3) a sale was “extended” but in fact the
2 sale was planned to run through the stated or implied extension.

3 Excluded from the Class are Good American, any entity in which Good American has a controlling
4 interest or that has a controlling interest in Good American, and Good American’s legal
5 representatives, assignees, and successors. Also excluded are the judge to whom this case is
6 assigned and any member of the judge’s immediate family.

7 78. Numerosity. The Class is so numerous that joinder of all members is impracticable.
8 The Class has more than 1,000 members. Moreover, the disposition of the claims of the Class in a
9 single action will provide substantial benefits to all parties and the Court.

10 79. Commonality. There are numerous questions of law and fact common to Plaintiff
11 and members of the Class. The common questions of law and fact include, but are not limited to:

12 a. Whether Good American sent commercial electronic mail messages with
13 false and misleading information in the subject lines;

14 b. Whether Good American initiated the transmission or conspired to initiate
15 the transmission of commercial electronic mail messages to recipients residing in Washington
16 State in violation of RCW 19.190.020;

17 c. Whether a violation of RCW 19.190.020 establishes all the elements of a
18 claim under Washington’s Consumer Protection Act, RCW 19.86 *et seq.*;

19 d. Whether Plaintiff and the proposed Class are entitled to an injunction
20 enjoining Good American from sending the unlawful emails in the future; and

21 e. The nature and extent of Class-wide injury and damages.

22 80. Typicality. Plaintiff’s claims are typical of the claims of the Class. Plaintiff’s
23 claims, like the claims of the Class arise out of the same common course of conduct by Good
24 American and are based on the same legal and remedial theories.

25 81. Adequacy. Plaintiff will fairly and adequately protect the interests of the Class.
26 Plaintiff has retained competent and capable attorneys with significant experience in complex and
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1 class action litigation, including consumer class actions and class actions involving violations of
2 CEMA. Plaintiff and her counsel are committed to prosecuting this action vigorously on behalf of
3 the Class and have the financial resources to do so. Neither Plaintiff nor her counsel have interests
4 that are contrary to or that conflict with those of the proposed Class.

5 82. Predominance. Good American has a standard practice of initiating or conspiring
6 to initiate commercial electronic mail messages to email addresses held by Washington State
7 residents. The common issues arising from this conduct predominate over any individual issues.
8 Adjudication of these issues in a single action has important and desirable advantages of judicial
9 economy.

10 83. Superiority. Plaintiff and members of the Class have been injured by Good
11 American's unlawful conduct. Absent a class action, however, most Class members likely would
12 find the cost of litigating their claims prohibitive. Class treatment is superior to multiple individual
13 suits or piecemeal litigation because it conserves judicial resources, promotes consistency and
14 efficiency of adjudication, provides a forum for small claimants, and deters illegal activities. The
15 members of the Class are readily identifiable from Good American's records and there will be no
16 significant difficulty in the management of this case as a class action.

17 84. Injunctive Relief. Good American's conduct is uniform as to all members of the
18 Class. Good American has acted or refused to act on grounds that apply generally to the Class, so
19 that final injunctive relief or declaratory relief is appropriate with respect to the Class as a whole.
20 Plaintiff further alleges, on information and belief, that the emails described in this Complaint are
21 substantially likely to continue in the future if an injunction is not entered.

1 **SECOND CLAIM FOR RELIEF**

2 **(Per se violation of Washington’s Consumer Protection Act, RCW 19.86 et seq.)**

3 93. Plaintiff realleges and incorporates by reference each and every allegation set forth
4 in the preceding paragraphs.

5 94. Plaintiff and Class members are “persons” within the meaning of the CPA, RCW
6 19.86.010(1).

7 95. Good American violated the CEMA by initiating or conspiring to initiate the
8 transmission of commercial electronic mail messages to Plaintiff and Class members’ that contain
9 false or misleading information in the subject line.

10 96. A violation of CEMA is a “per se” violation of the Washington Consumer
11 Protection Act (“CPA”), RCW 19.86.010, et seq. RCW 19.190.030.

12 97. A violation of the CEMA establishes all five elements of Washington’s Consumer
13 Protection Act as a matter of law.

14 98. Good American’s violations of the CEMA are unfair or deceptive acts or practices
15 that occur in trade or commerce under the CPA. RCW 19.190.100; RCW 19.190.030(3).

16 99. Good American’s unfair or deceptive acts or practices vitally affect the public
17 interest and thus impact the public interest for purposes of applying the CPA. RCW 19.190.100;
18 RCW 19.190.030(3).

19 100. Pursuant to RCW 19.19.040(1), damages to each recipient of a commercial
20 electronic mail message sent in violation of the CEMA are the greater of \$500 for each such
21 message or actual damages, which establishes the injury and causation elements of a CPA claim
22 as a matter of law. *Lyft*, 406 P.3d at 1155.

23 101. Good American engaged in a pattern and practice of violating the CEMA. As a
24 result of Good American’s acts and omissions, Plaintiff and Class members have sustained
25 damages, including \$500 in statutory damages, for each and every email that violates the CEMA.
26 The full amount of damages will be proven at trial. Plaintiff and Class members are entitled to
27

1 recover actual damages and treble damages, together with reasonable attorneys' fees and costs,
2 pursuant to RCW 19.86.090.

3 102. Under the CPA, Plaintiff and members of the Class are also entitled to, and do seek,
4 injunctive relief prohibiting Good American from violating the CPA in the future.

5 **VIII. REQUEST FOR RELIEF**

6 WHEREFORE, Plaintiff, on their own behalf and on behalf of the members of the Class,
7 request judgment against Good American as follows:

- 8 A. That the Court certify the proposed Class;
- 9 B. That the Court appoint Plaintiff as Class Representative.
- 10 C. That the Court appoint the undersigned counsel as counsel for the Class;
- 11 D. That the Court should grant injunctive relief as permitted by law to ensure that
12 Good American will not continue to engage in the unlawful conduct described in this Complaint;
- 13 E. That the Court enter a judgment awarding any other injunctive relief necessary to
14 ensure Good American's compliance with the CEMA;
- 15 F. That Good American be immediately restrained from altering, deleting or
16 destroying any documents or records that could be used to identify members of the Class;
- 17 G. That Plaintiff and all Class members be awarded statutory damages in the amount
18 of \$500 for each violation of the CEMA pursuant to RCW 19.190.020(1)(b) and treble damages
19 pursuant to RCW 19.86.090;
- 20 H. That the Court enter an order awarding Plaintiff reasonable attorneys' fees and
21 costs; and
- 22 I. That Plaintiff and all Class members be granted other relief as is just and equitable
23 under the circumstances.

24 **IX. TRIAL BY JURY**

25 Plaintiff demands a trial by jury for all issues so triable.
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