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7 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
8 **IN AND FOR THE COUNTY OF SKAGIT**
9

10 BREE LUARK, individually and on behalf of
11 others similarly situated,

12 Plaintiff,

13 vs.

14 WAYFAIR INC.,

15 Defendant.
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Civil Action No. 26-2-00679-29

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Bree Luark (“Plaintiff”), on behalf of herself and others similarly situated, by
 2 and through her attorneys, based on personal knowledge with respect to her circumstances and
 3 based upon information and belief pursuant to the investigation of counsel as to all other
 4 allegations, alleges the following:

5 6 **I. INTRODUCTION**

7 *“Every inbox is a battlefield.”¹*

8 1. In 1998, the Washington State Legislature passed the Commercial Electronic
 9 Mail Act, RCW § 19.190.005, *et seq.* (“CEMA”), in response to complaints that Washington
 10 citizens reported to the state Attorney General’s Office.²

11 2. The Attorney General’s Office reported it received more than 1,000 complaints
 12 about spam email, including about 322 complaints about unsolicited email during a five-month
 13 period in 1997.³

14 3. Users also reported that senders sometimes disguise advertisements by putting
 15 false or misleading information on the subject line of commercial e-mail messages.⁴

16 4. The legislation was not expected to be a “cure-all,” but it was targeted to address
 17 the hundreds of thousands of unsolicited and/or fraudulent emails Washington residents
 18 received daily.⁵

23 ¹ THE PSYCHOLOGY OF SUBJECT LINES: DATA-BACKED WORDS THAT BOOST OPEN RATES,
 24 <https://growthwayadvertising.com/the-psychology-of-subject-lines-data-backed-words-that-boost-open-rates/> (last visited Mar. 12, 2026).

25 ² See Wash. S. Comm. on Energy & Utilities Rep. on ESHB 2758, at 1-2 (Wash. Feb. 16, 1998).

26 ³ *Id.* at 2, 3.

⁴ *Id.* at 3.

⁵ *Id.*

1 5. Legislative testimony emphasized that CEMA “allows expansion of Internet
2 usage while curtailing abuses before they reach crisis.”⁶

3 6. As the State of Washington has repeatedly reminded state and federal trial
4 courts, private actions are “integral” to the State’s ability to enforce CEMA.⁷

5 7. Despite the enactment of CEMA and the Washington Legislature’s clear
6 intention to prohibit spam emails, including those with false or misleading information in the
7 email’s subject line, Defendant Wayfair Inc. (“Wayfair” or “Defendant”) continues to send
8 emails expressly prohibited by the Act.

9 8. Specifically, Defendant is sending emails that violate CEMA by using emails
10 whose subject lines create a false sense of urgency.

11 9. For example, Defendant repeatedly sent emails to Washington residents telling
12 them that sales were ending imminently, only to extend them once they were set to expire.

13 10. The false sense of urgency entices consumers to engage with Defendant’s
14 marketing with repeated false notifications that there is only a limited time available to take
15 advantage of sales-based savings.

16 11. In reality, these sales are extended or repeated. Thus, consumers, like Plaintiff,
17 are induced to act quickly and under a false sense of pressure.

18 12. Plaintiff seeks redress for Defendant’s violations of the CEMA by, *inter alia*, by
19 obtaining an order enjoining Defendant from sending emails with deceptive subject lines to
20 Washington residents.
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23 ⁶ Wash. S. Comm. on Energy, Technology & Telecommunications Rep. on H.B. 1037 (Wash.
24 1999); *see also* Wash. H. Comm. on Technology, Telecommunications & Energy
25 Appropriations Rep. on HB 1037 (1999) (“The efficacy of the Internet is being endangered by
the proliferation of spam.”).

26 ⁷ *See, e.g. Agnew, et. al., v. Macy’s Retail Holdings, LLC*, Plaintiff-Intervenor State of
Washington’s Response in Opposition to Defendant Macy’s Retail Holdings, LLC’s Motion to
Dismiss, 2:25-cv-02006; ECF No. 22, (W.D. Wash. Feb. 03, 2026).

II. PARTIES

13. Plaintiff Bree Luark is a resident of Sedro-Wooley, Washington, which is located in Skagit County. Plaintiff has received emails from Wayfair since March of 2023. She has received Defendant's deceptive emails while residing and present in Washington. Plaintiff has never made a purchase from Wayfair.

14. The proposed class includes citizens of Washington.

15. Defendant Wayfair Inc. is a Delaware corporation and has its principal place of business in Boston, Massachusetts.

16. On information and belief, Wayfair offers, sells, and distributes products to customers and potential customers across the United States, including to consumers in the State of Washington, through its website. Wayfair advertises its products for sale to Washington residents by sending numerous soliciting emails, described below.

III. JURISDICTION AND VENUE

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

18. This Court has personal jurisdiction over Defendant under RCW 4.28.185. Defendant transacts business in Washington. The claims giving rise to this action arise from Defendant's transaction of business in this State and also Defendant's purposeful transmission of electronic mail messages to Washington residents, including Plaintiff. This Court also has personal jurisdiction over Defendant under RCW 19.86.160 because Defendant engaged in conduct in violation of the CPA that had an impact in Washington. Defendant has certain minimum contacts with the State of Washington. Defendant has and continues to purposefully perform some acts or consummate some transactions in the State of Washington, and Plaintiff's

claims arise from, or are connected with, Defendant's actions in this State. The assumption of jurisdiction by this Court does not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature, and extent of the activity in the State of Washington, the relative convenience of the parties, the benefits and protection of laws of the State of Washington afforded the respective parties, and the basic equities of the situation.

19. Venue in this Court is proper under RCW 4.12.025 because a substantial part of the acts or omissions giving rise to the claims alleged herein occurred here, and Defendant is subject to personal jurisdiction here. At all relevant times, Defendant transacted business in Skagit County, including by selling products to customers living in Skagit County and by sending electronic mail messages to residents of Skagit County, including Plaintiff.

IV. BACKGROUND

A. The CEMA

20. CEMA provides that "No person may initiate the transmission, conspire with another to initiate the transmission, or assist the transmission, of a commercial electronic mail message from a computer located in Washington or to an electronic mail address that the sender knows, or has reason to know, is held by a Washington resident that . . . [c]ontains false or misleading information in the subject line. RCW § 19.190.020.

21. CEMA defines "Commercial electronic mail message" as "an electronic mail message sent for the purpose of promoting real property, goods, or services for sale or lease" RCW § 19.190.010(2).

22. Unwanted commercial electronic mail messages (also known as "spam"⁸) are more than a mere annoyance. "The receipt of unsolicited commercial electronic mail may result

⁸ As noted by the Washington State Supreme Court in *State v. Heckel*, the "use of the term 'spam' as Internet jargon for this seemingly ubiquitous junk e-mail arose out of a skit by the British comedy troupe Monty Python, in which a waitress can offer a patron no single menu item that does not include spam: 'Well, there's spam, egg, sausage and spam. That's not got

1 in costs to recipients who cannot refuse to accept such mail and who incur costs for the storage
 2 of such mail, or for the time spent accessing, reviewing, and discarding such mail, or for both.”
 3 15 U.S.C. § 7701(3). “Many senders of unsolicited commercial electronic mail purposefully
 4 include misleading information in the messages’ subject lines in order to induce the recipients
 5 to view the messages.” 15 U.S.C. § 7701(8).

6 23. “CEMA sought to give consumers relief from commercial spam e-mail by
 7 requiring accuracy and truthfulness in the subject lines of such e-mails. The legislature sought
 8 to achieve this objective by targeting an e-mail’s header and subject lines: the two pieces of
 9 information consumers first glean when faced with the choice of deleting a message or engaging
 10 with its content.” *Brown v. Old Navy, LLC*, 567 P.3d 38, 45 (Wash. 2025).

11 24. CEMA sought to give consumers relief from commercial spam e-mail by
 12 requiring accuracy and truthfulness in the subject lines of such e-mails. The Legislature sought
 13 to achieve this objective by targeting an e-mail’s header and subject lines: the two pieces of
 14 information consumers first glean when faced with the choice of deleting a message or engaging
 15 with its content. *Brown*, 567 P.3d at 45.

16 25. A violation of CEMA’s email regulations is a *per se* violation of Washington’s
 17 CPA. RCW § 19.190.030(1).

18 26. CEMA does not require a showing of actual damages. The injury is receiving
 19 the email that violates the regulations.

20 27. “[C]ommercial e-mails containing false or misleading subject lines pose a risk
 21 to an individual’s interest in being free from the nuisance and loss of productivity, given the
 22 fact that such e-mails are less likely to be screened by a service provider’s filtering system.”
 23 *Harbers v. Eddie Bauer, LLC*, 415 F. Supp. 3d 999, 1010 (W.D. Wash. 2019).

24
 25 much spam in it.” 24 P.3d 404, 406 (Wash. 2001) (*quoting* 2 Graham Chapman et al., *THE*
 26 *COMPLETE MONTY PYTHON’S FLYING CIRCUS: ALL THE WORDS* 27 (Pantheon Books 1989)).

28. The subject lines of emails may be materially misleading even if the emails themselves were not solicited. *See Harbers*, 415 F. Supp. 3d at 1011.

29. Practices governed by CEMA “are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW.” RCW § 19.190.030(3). “A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86.” RCW § 19.190.030(3).

30. “[I]ndividuals have a right to be free from certain forms of deceptive commercial e-mail advertisements, and [CEMA] imposes restrictions to accomplish this goal and decrease the risk of harm related to deceptive spam practices.” *Harbers*, 415 F. Supp. 3d at 1008.

31. “[C]lass actions [like this] are a critical piece of the enforcement of consumer protection law.” *Scott v. Cingular Wireless*, 160 Wash. 2d 843, 853, 161 P.3d 1000, 1006 (2007).

B. Subject Lines that Create a False Sense of Urgency are False and Misleading.

32. Creating urgency is a “tried-and-true tactic to get [an advertiser’s] emails opened and read”⁹

33. Advertisers use time-limited discounts to drive sales, describing it as like playing a “time-sensitive game” which “forces” consumers to “take action.”¹⁰

⁹ Burdon, Mark, “150+ Sales Email Subject Lines That Get Opened, Read, and Responded To” available at <https://blog.hubspot.com/sales/sales-email-subject-lines-that-get-prospects-to-open-read-and-respond>, last accessed March 3, 2026.

¹⁰ Taylor, Marcus, “How to Effectively Create Urgency in Sales (11 Best Ways)” March 17, 2025, available at [How to Effectively Create Urgency in Sales \(11 Best Ways\)](#) (last accessed March 5, 2026).

34. When the time limitation is not true or is not intended to be imposed, this is a material misrepresentation because it misleads the recipients as to the duration of the sales promotion, affecting consumer behavior. *Ma v. Nike, Inc.*, No. C25-1235JLR, 2026 LX 45808, at *9 (W.D. Wash. Jan. 14, 2026).

35. “Representations of fact-like the duration or availability of a promotion, its terms and nature, the cost of goods, and other facts” that Washington residents rely upon in their consumer decision-making process are subject to CEMA’s subject-line provision. *Brown*, 567 P.3d at 47.

36. In 2022, the Federal Trade Commission issued a report about so called digital “dark practices” in electronic advertising, which manipulate users into making choices that they might not have otherwise made¹¹. The report identified false limited time messages as one such “dark practice” describing it as a way of creating pressure either without a deadline or with a meaningless deadline that just resets when reached.”¹²

37. Similarly, the United Kingdom’s Competition and Markets Authority reviewed empirical studies of consumer interactions with commercial emails and found that “false or misleading scarcity claims can change the behavior of consumers and cause them harm.”¹³ Beyond financial injuries, false scarcity claims can lead consumers to having a negative attitude towards shopping, to consider fewer brands, and to have lower satisfaction with their choices.¹⁴ False scarcity claims can damage trust in markets because consumers will learn to ignore these claims. Indeed, in the United Kingdom, it is specifically prohibited to “falsely stat[e] that a product will only be available for a very limited time, or that it will only be available on

¹¹ FTC Staff Report, “Bringing Dark Patterns to Light”, available at Bringing Dark Patterns to Light (last accessed March 5, 2026).

¹² *Id.*

¹³ Competition and Markets Authority, “Online Choice Architecture: How Digital Design Can Harm Competition and Consumers,” April 2022, available at https://assets.publishing.service.gov.uk/media/624c27c68fa8f527710aaf58/Online_choice_architecture_discussion_paper.pdf, last accessed March 5, 2026.

¹⁴ *Id.*

particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice.”¹⁵

V. FACTUAL ALLEGATIONS

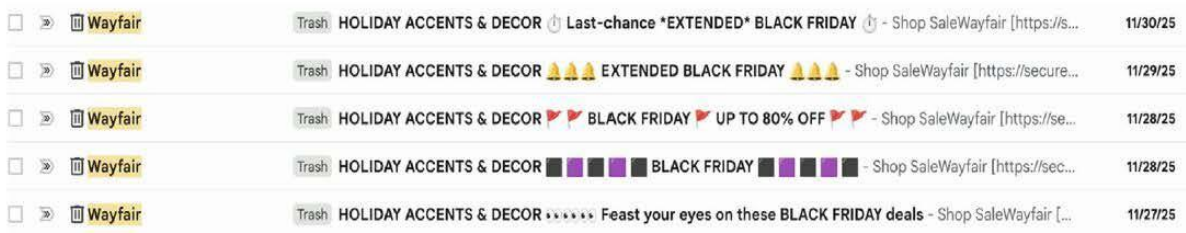
A. **The Subject Lines of Wayfair’s Marketing Emails Are False and Misleading.**

38. Recipients of Wayfair’s email marketing often receive two to three emails per day, many including information that violates CEMA.

39. Wayfair frequently engages in sending emails with false or misleading subject lines, particularly emails with false time-limited sales information.

40. Wayfair often sends an email warning of a time-limited sale, only to “extend” the sale duration the next day.

41. For instance, on Friday, November 28, 2025, Wayfair sent multiple emails regarding its “Black Friday” sale, including one that highlighted the sale with red flags – suggesting an urgency to purchase that day. Yet on Saturday, November 29, 2025, Wayfair sent an email indicating that its Black Friday sale was “Extended.” But the sale did not end on the 29th either, as an email sent by Wayfair on November 30, 2025, included the subject line: “Last-chance *EXTENDED* Black Friday”:



42. As another example, on December 1, 2025, Wayfair sent an email with the subject line: “TODAY ONLY: CYBER MONDAY.”

¹⁵ Consumer Protections from Unfair Trading Regulations 2008, Schedule 1, available at <https://www.legislation.gov.uk/uksi/2008/1277/schedule/1/made> (last accessed March 5, 2026).

Subject: ○○○ TODAY ONLY: CYBER MONDAY ○○○



43. Later that day, Wayfair sent an email with the subject line: “CYBER MONDAY ENDS TONIGHT.”

Subject: CLIMBING TOYS & SLIDES ●●● CYBER MONDAY ●●● ENDS TONIGHT ●●●



44. Yet, on December 2, 2025, Wayfair sent an email to consumers with the subject line: “CYBER MONDAY EXTENDED”:

Subject: CRATES AND CARRIERS CYBER MONDAY EXTENDED

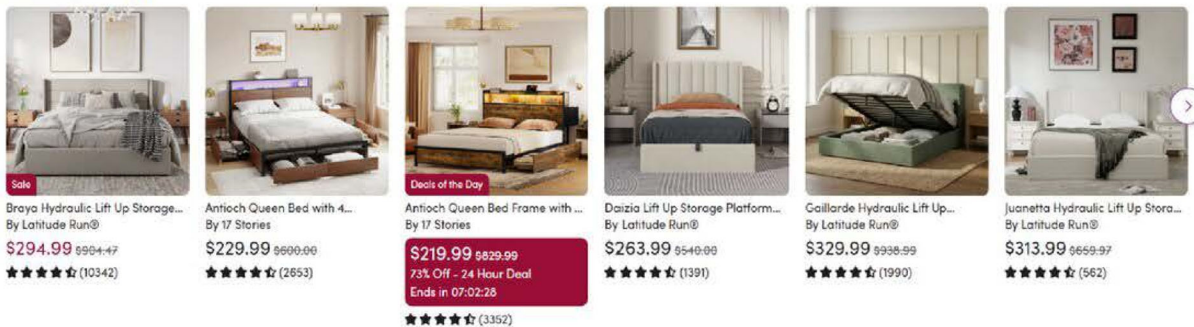


picked just for you

45. As indicated, Wayfair has created a false sense of urgency to customers on numerous occasions by acting as if its “sales” were ending or in its final days and hours, but—as evidenced by the fact that Wayfair continually extends these “sales”—Wayfair knows that these email subject lines would create a false sense of urgency because the sale was actually not ending.

46. In fact, every email Wayfair sends to its customers claiming that its products are on a “limited-time” sale is misleading, as its products are rarely—if ever—offered for their suggested retail prices. A glance at Wayfair’s website shows that products are routinely offered for the claimed “sale” prices listed in Wayfair’s email marketing:

scores at 50% off



47. Thus, every email Wayfair sends that promotes a limited sale price of “up to” a certain percentage off its products violates CEMA because Wayfair’s products are always listed as “up to” a certain percentage off.

Subject: 🇺🇸 📢 Our 72-HOUR CLEAROUT is BACK 📢 🇺🇸



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1 **B. Wayfair Knows Its Emails Are Sent to Washington Residents.**

2 48. Wayfair does not limit its email distribution list to residents of any particular
3 state.

4 49. Indeed, when visiting Wayfair’s website, wayfair.com, Wayfair only asks for an
5 individual’s email address—indicating that Wayfair accepts email addresses from individuals
6 located around the globe:

7
8 **New Here? Grab 10% Off Your First Order.**

Email Address

Submit

9
10 50. Wayfair thus has reason to know that some of the email addresses it collects are
11 from individuals located in the State of Washington.

12 51. Per Wayfair’s website, an individual need not make a purchase to receive
13 Wayfair emails. Nor does an individual need to agree to Wayfair’s Terms of Service to become
14 enrolled in the email subscription.

15 52. Wayfair may obtain location information tied to email addresses by tracking the
16 IP addresses of devices used to open its emails, which in turn can be correlated to physical
17 location (as illustrated, for example, by the website <https://whatismyipaddress.com/>).

18 53. Wayfair likely uses an Oracle service to manage its email marketing campaigns.
19 This platform should allow Wayfair to access a list of every email address that was sent a
20 marketing email. It should also allow Wayfair to determine who viewed the emails and who
21 clicked on any links within them.

22 54. Wayfair is likely able to infer the general geographic location of recipients by
23 state based on their IP address and email address at the time of email open or link click.

24 55. Wayfair explains in its privacy policy that it automatically collects information
25 from every website user including the collection of “Log data and device information (such as
26

1 . . . IP address)” and “Geo-location information” including “IP address, browser information,
2 or mobile GPS information.”¹⁶

3 56. Additionally, Wayfair may obtain location information tied to email addresses
4 by purchasing consumer data from commercial data brokers such as Acxiom, Oracle, and
5 Equifax, which sell access to databases linking email addresses to physical locations, among
6 other identifiers.

7 57. Wayfair may obtain location information tied to email addresses by using
8 “identity resolution” services offered by companies such as LiveRamp, which can connect
9 consumers’ email addresses to their physical locations, among other identifiers.

10 58. Wayfair may obtain information that the recipients of its marketing emails are
11 Washington residents because that information is available, upon request, from the registrant
12 of the Internet domain names contained in the recipients’ email addresses. *See* RCW
13 19.190.020(2).

14 59. Wayfair thus has reason to know that some of the email addresses it collects are
15 from individuals located in the State of Washington.

16 60. Wayfair has knowledge, or at the very least should know, that its emails are
17 being sent to residents of the State of Washington.

18 **C. Wayfair Violated Plaintiff’s Rights Under CEMA and the CPA.**

19 61. Wayfair knew that the subject lines of its emails were false or misleading and
20 created a false sense of urgency as to fake time-limited sales.

21 62. Upon information and belief, Wayfair is aware of its sales and marketing
22 strategies, including the schedule of its upcoming sales.

23
24
25 ¹⁶ *See Privacy Policy, WAYFAIR* (Apr. 1, 2026), available at
26 <https://www.wayfair.com/terms?csnid=&csnutid=fc2eb8f8-92b5-465f-9a1f-6b93f4087994&txid=N%2FQ4V%2BRSRwaR99neg%2B1WuQ%3D%3D#personal-information-we-collect>.

63. Upon information and belief, Wayfair does not actually intend to end a sale on the date(s) it informs customers that a sale is ending. This is evidenced by the fact that *the very next day*, Wayfair typically emails customers regarding the same exact sale continuing or being extended. Wayfair also continuously sends emails regarding the same sales prices running at seemingly all times.

64. Wayfair sent the emails listed above to Plaintiff and members of the proposed class.

65. In doing so, Wayfair violated Plaintiff's and the proposed class members' rights under CEMA and the CPA as they were sent numerous emails creating a false sense of urgency in the hopes of generating sales for Wayfair.

VI. CLASS ALLEGATIONS

66. Pursuant to Washington Civil Rule 23, Plaintiff seeks certification of the following proposed class ("Class"):

All Washington residents who, during the Class Period and while present in Washington, did not make a purchase from Wayfair but nonetheless received promotional emails from Wayfair with subject lines either (i) stating a sale, discount, or price would end at a specified time but the same sale, discount, or price was extended upon expiration; or (ii) stating a sale, discount, or price is time limited, ending, or tethered to a holiday or event, when Wayfair continued to offer or reinstated the same or comparable sale, discount, or price for a longer time.

67. Excluded from the Class are (a) any officers, directors or employees, or immediate family members of the officers, directors, or employees of Defendant or any entity in which Defendant has a controlling interest, (b) any legal counsel or employee of legal counsel for Defendant, and (c) the presiding Judge in this lawsuit, as well as the Judge's staff and their immediate family members.

68. The "Class Period" begins on date four years prior to the date this Complaint is filed and ends on the day that class certification is granted.

69. Plaintiff reserves the right to modify or amend the definitions of the proposed Class before the Court determines whether certification is appropriate.

70. The proposed Class meets the criteria for certification under Washington Civil Rule 23(a), (b)(2), and (b)(3).

71. **Numerosity**. This action is appropriately suited for a class action. The Class is so numerous and geographically dispersed that joinder of all members would be impracticable. Although the exact number of members is currently unknown, it is believed that the Class will consist of thousands of individuals. The members can be identified through objective methods, such as Defendant's records. Notification of the Class members regarding the pendency of this action can be effectively achieved through established, Court-approved methods, including U.S. mail, email, internet postings, social media, and/or published notices.

72. **Predominance of Common Questions of Law and Fact**. This action raises common questions of law and fact that are central to all Class members, and these common issues overwhelmingly predominate over any individual differences. The key legal and factual questions shared by all Class members include, but are not limited to:

- a. Whether Defendant sent emails to email addresses it knew or had reason to know were held by Washington residents;
- b. Whether the subject lines of the emails are false and misleading;
- c. Whether Defendant's conduct violated CEMA;
- d. Whether Defendant's conduct violated the CPA;
- e. Whether Plaintiff and Class members are entitled to equitable relief, including injunctive relief; and
- f. Whether Plaintiff and Class members are entitled to damages or other monetary relief, and if so, the appropriate amount.

73. **Typicality**. Plaintiff's claims are typical of those of the members of the Class. Defendant's consistent pattern of unlawful conduct, as alleged in this case, has caused Plaintiff

1 and the Class members to suffer the same or similar injuries and damages. Moreover, Plaintiff's
2 claims are typical of those of the members of the Class because Plaintiff is advancing the same
3 claims and legal theories on behalf of themselves and all members of the Class. In addition,
4 Plaintiff is entitled to relief under the same causes of action and upon the same facts as all other
5 members of the proposed Class.

6 74. **Adequacy of Representation**. Plaintiff will fairly and adequately represent and
7 protect the interests of the Class and has retained competent counsel experienced in complex
8 litigation and class action litigation. Plaintiff's claims arise out of the same common course of
9 conduct giving rise to the claims of the other members of the Class. Plaintiff has no interests
10 antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiff.

11 75. **Insufficiency of Separate Actions**. Absent a class action, Plaintiff and
12 members of the Class will continue to suffer the harm described herein, for which they would
13 have no remedy. Even if individual consumers could bring separate actions, the resulting
14 multiplicity of lawsuits would cause undue burden and expense for both the Court and the
15 litigants, as well as create a risk of inconsistent rulings and adjudications that might be
16 dispositive of the interests of similarly situated consumers, substantially impeding their ability
17 to protect their interests, while establishing incompatible standards of conduct for Defendant.

18 76. **Injunctive Relief**. Defendant has acted or refused to act on grounds generally
19 applicable to Plaintiff and all members of the Class, thereby making appropriate final injunctive
20 relief, as described below, concerning the members of the Class as a whole. The prosecution of
21 separate actions by individual members of the Class would create a risk of inconsistent or
22 varying adjudication concerning individual members, which would establish incompatible
23 standards of conduct for Defendant. Moreover, adjudications of claims of the individual
24 members of the Class against Defendant would, as a practical matter, be dispositive of the
25 interests of other members of the putative Classes who are not parties to the adjudication and
26 may substantially impair or impede the ability of other members to protect their interests.

77. **Superiority.** A class action is superior to any other available methods for the fair and efficient adjudication of the present controversy for at least the following reasons:

a. The damages suffered by each individual member of the Class do not justify the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct;

b. Even if individual members of the Class had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed;

c. The claims presented in this case predominate over any questions of law or fact affecting individual members of the Class;

d. Individual joinder of all members of the Class is impracticable;

e. Absent a class action, Plaintiff and members of the Class will continue to suffer harm as a result of Defendant's unlawful conduct; and

f. This action presents no difficulty that would impede its management by the Court as a class action, which is the best available means by which Plaintiff and members of the Class can seek redress for the harm caused by Defendant.

78. In the alternative to those claims seeking remedies at law, Plaintiff and Class members allege that no plain, adequate, and complete remedy exists at law to address Defendant's unlawful and unfair business practices. The legal remedies available to Plaintiff are inadequate because they are not "equally prompt and certain and in other ways efficient" as equitable relief. *American Life Ins. Co. v. Stewart*, 300 U.S. 203, 214 (1937).

FIRST COUNT
Violation of Washington's Commercial Electronic Mail Act
[RCW § 19.190.090, RCW § 19.190.020]

79. Paragraphs 1-78 are incorporated by reference as though fully set forth herein.

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

81. Defendant initiated the sending of commercial electronic mail messages as those terms are defined by CEMA, RCW § 19.190.010(2) and (7), to addresses that Defendant knew,

1 or had reason to know, were held by Washington residents because such information was
2 available upon request from the registrant of the internet domain name (RCW § 19.190.020(2)).

3 82. The commercial electronic mail messages that Defendant sent to Washington
4 residents contained false or misleading information in the subject lines in violation of the
5 CEMA. RCW § 19.190.020(1)(b).

6 83. Plaintiff and Class members are Washington residents who received
7 Defendant's emails with false or misleading subject lines and are therefore entitled to all
8 available relief, including an injunction against further violations and damages.

9 **SECOND COUNT**

10 **Violation of Washington's Consumer Protection Act**
11 **[RCW § 19.86.020; RCW § 19.86.090]**

12 84. Paragraphs 1 through 78 herein are incorporated by reference as though fully set
13 forth herein.

14 85. The CPA provides that "[u]nfair methods of competition and unfair or deceptive
15 acts or practices in the conduct of any trade or commerce are hereby declared unlawful." RCW
16 § 19.86.020.

17 86. A violation of CEMA is a *per se* violation of the CPA. RCW § 19.190.030(1).

18 87. As alleged in Paragraphs 1-78, *supra*, Defendant violated the CEMA.

19 88. Any person who is injured by a violation of the CPA may bring a civil action to
20 enjoin further violations and for damages. RCW § 19.86.090.

21 89. Plaintiff and Class members are Washington residents who have been harmed
22 by Defendant's CPA violations;

23 90. For Defendant's violation of the CPA, Plaintiff and putative members are
24 entitled to an injunction against further violations; the greater of Plaintiff's actual damages or
25 liquidated damages of \$500 per violation and costs of the suit.

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1 **WHEREFORE**, Plaintiff prays for the following relief:

- 2 A. An Order from this Court certifying the proposed Class, appointing
3 Plaintiff as class representative, and appointing the undersigned as class
4 counsel;
5 B. A judgment in Plaintiff's and the Class's favor permanently enjoining
6 Defendant from the unlawful conduct alleged;
7 C. Awarding Plaintiff actual or liquidated damages;
8 D. Awarding Plaintiff reasonable attorneys' fees and all costs of this action,
9 to be paid by Defendant, in accordance with CEMA and CPA;
10 E. Awarding pre-and post-judgment interest and court costs as further
11 allowed by law; and
12 F. Awarding any further legal or equitable relief the Court deems just,
 equitable, and/or appropriate.

13 Dated: June 10, 2026.

14 By: /s/ M. Anderson Berry
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16 Brook E. Garberding, WSBA No. 37140
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