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**STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,  
  
Plaintiff,  
  
v.  
  
ERNESTO HABERLI, also known as  
EDUARDO WARREN individually  
and on behalf of his marital community,  
  
Defendant.

NO.  
  
COMPLAINT FOR INJUNCTIVE  
AND ADDITIONAL RELIEF UNDER  
THE UNFAIR BUSINESS  
PRACTICES--CONSUMER  
PROTECTION ACT AND THE  
UNSOLICITED ELECTRONIC MAIL  
ACT

**COMES NOW**, plaintiff, State of Washington, by and through its attorneys Christine O. Gregoire, Attorney General; and Paula Selis, Senior Counsel, and brings this action against defendant named herein. The state alleges the following on information and belief:

**I. JURISDICTION AND VENUE**

**1.1.** This Complaint is filed and these proceedings are instituted under the provisions of RCW 19.86, the Unfair Business Practices--Consumer Protection Act, and RCW 19.190, the Unsolicited Electronic Mail Act.

**1.2.** Jurisdiction of the Attorney General to commence this action is conferred by RCW 19.86.080 and RCW 19.190.030(2).

**1.3.** The violations alleged herein have been and are being committed in whole or in part in King County, in the State of Washington by the defendant named herein.

1 **II. DEFENDANT**

2 **2.1** Defendant Ernesto Haberli, also known as Eduardo Warren, sends unsolicited  
3 commercial electronic mail to Washington residents. Defendant Ernesto Haberli is married to  
4 Jane Doe Haberli, and together they constitute a marital community. All actions taken by  
5 defendant Eduardo Warren were for the benefit of his marital community. Defendant Ernesto  
6 Haberli resides at 2110 Markwood Lane, Houston, TX 77053.

7 **III. NATURE OR TRADE OF COMMERCE**

8 **3.1.** Defendant sends electronic mail messages (“email”) to individuals located in  
9 Washington. In order to induce the intended recipient to open the message, defendant’s email  
10 contains a misleading subject line and sender name in the “from” field of the message. For  
11 example, a subject line sent by defendant is “board meeting 3ish”. In the “from” field of the  
12 same email message, the defendant has included the sender name “Mac Kalli.”

13 **3.2.** Defendant’s email message functions as a “teaser” that encourages recipients go  
14 to a specific website. Defendant’s email message text promotes various goods or services. For  
15 example, the text of one message promotes the sale of commercial prescription medications  
16 (e.g., “genuine FDA approved VIAGRA”) and the text of another message promotes a web site  
17 offering hard core pornography (e.g., ...”Do you like watching little girls....with their  
18 animals??? That’s what we thought! We know what you want!”...).

19 **3.3** Along with a textual “teaser”, defendant’s email includes one or more hypertext  
20 links that direct the recipient to a website. The website in turn provides the mechanism for  
21 obtaining the goods or services advertised in the email. For example, the defendant’s email  
22 links recipients to a commercial website selling prescription medication (e.g., to a website  
23 named “universalmeds.com” which offers customers “... other products from weight loss to  
24 hair loss products...”).



1 line “board meeting 3ish” creates the misleading impression that the recipient is being invited  
2 to a scheduled meeting. In reality, the email contains links leading to an offer of the sale of  
3 prescription medication. Neither of the subject lines noted accurately describes the content of  
4 the messages. Rather, the intent of the subject lines is to mislead the recipient into opening and  
5 reading the entire text of the message.

6 **4.5.** The use of false or misleading information in the subject line of a commercial  
7 electronic mail message violates RCW 19.190.030(1)(b). Pursuant to RCW 19.190.030(2),  
8 defendant’s violation of RCW 19.190.030(1)(b) constitutes a *per se* violation of the Consumer  
9 Protection Act, RCW 19.86.

10 **4.6.** The conduct described above constitutes unfair or deceptive acts or practices in  
11 trade or commerce and unfair methods of competition in violation of RCW 19.86.020.

## 12 **V. SECOND CAUSE OF ACTION**

13 **5.1.** Plaintiff realleges Paragraphs 3.1 through 4.6 and incorporates them herein as if  
14 set forth in full.

15 **5.2.** When an electronic mail message appears in a recipient’s mailbox, the sender’s  
16 name or identity appears with the subject line of the message. This information is also part of  
17 the downloaded message itself and is displayed in the “from” field. The purpose of the  
18 information is to identify the originator of the message. This information, along with the  
19 subject line, provides direction to the user about the urgency of the message, the need to  
20 download it, and the source of the information contained in the message.

21 **5.3** Defendant misrepresents the identity of the sender of his electronic mail. For  
22 example, instead of identifying the true originator in the “From” line, defendant offers false  
23 sender identification using names such as “Mac Kalli.” By using a false originating name,  
24 defendant attempts to create a sense of familiarity in the mind of the recipient about the source  
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1 of message. The false sense of familiarity is, in turn, a deceptive tactic that encourages the  
2 recipient to open and read the text of what is in fact a commercial message.

3 **5.4.** The misrepresentation of information identifying the point of origin of a  
4 commercial electronic mail message violates RCW 19.190.030(1)(a). Pursuant to RCW  
5 19.190.030(2), defendant's violation of RCW 19.190.030(1)(a) constitutes a *per se* violation of  
6 the Consumer Protection Act, RCW 19.86.

7 **VI. PRAYER FOR RELIEF**

8 **WHEREFORE**, plaintiff, **STATE OF WASHINGTON**, prays for relief as follows:

9 **6.1.** That the Court adjudge and decree that defendant has engaged in the conduct  
10 complained of herein.

11 **6.2.** That the Court adjudge and decree that the conduct complained of in Paragraphs  
12 4.5 and 5.3 constitutes violations of the Unsolicited Electronic Mail Act, Chapter 19.190 RCW,  
13 and pursuant to RCW 19.190.030(2) constitutes per se violations of the Consumer Protection Act,  
14 Chapter 19.86 RCW.

15 **6.3.** That the Court adjudge and decree that the conduct complained of in Paragraphs  
16 4.5, 5.3 constitutes unfair or deceptive acts or practices and unfair methods of competition in  
17 violation of the Consumer Protection Act, Chapter 19.86 RCW.

18 **6.4.** That the Court issue a permanent injunction enjoining and restraining defendant  
19 and his representatives, successors, assigns, officers, agents, servants, employees, and all other  
20 persons acting or claiming to act for, on behalf of, or in active concert or participation with  
21 defendant from continuing or engaging in the unlawful conduct complained of herein.

22 **6.5.** That the Court assess civil penalties, pursuant to RCW 19.86.140, of up to two  
23 thousand dollars (\$2,000) per violation against the defendant for each and every violation of RCW  
24 19.86.020 caused by the conduct complained of herein.

