

COPY
ORIGINAL FILED

NOV 12 2013

SUPERIOR COURT
STEVEN'S COUNTY, WA

STATE OF WASHINGTON
STEVENS COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

WESTERN BY DESIGN, LLC, d/b/a
1880 WESTERN WEAR, a Washington
Limited Liability Company; and **GWEN
HANSEN**, President, Chief Executive
Officer and Owner of 1880 Western
Wear,

Defendants.

NO. **2013 2 00534 2**
SUMMONS

TO THE ABOVE-NAMED DEFENDANTS

AND TO YOUR ATTORNEY:

RON COLLINS
COLLINS LAW FIRM, INC.
160 S. ELM STREET
COLVILLE, WA 99114

A lawsuit has been started against Defendants in the above-entitled court by the State of Washington, Plaintiff. Plaintiff's claims are 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 serve a copy upon the person signing this summons within 20 days after the service of this Summons (or if served outside the state of Washington, within 60 days), excluding the day of service, or a default judgment may be entered against you without notice. A

SUMMONS

COPY

1

ATTORNEY GENERAL OF WASHINGTON
West 1116 Riverside Avenue
Spokane, WA 99201-1194
(509) 456-3123

1 default judgment is one where Plaintiff is entitled to what he asks for because you have not
2 responded. If you serve a Notice of Appearance on the undersigned attorney, you are entitled to
3 notice before a default judgment may be entered.

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

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

10 This Summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State
11 of Washington.

12 DATED this 8th day of November, 2013.

13 ROBERT W. FERGUSON
14 Attorney General

15 

16 BROOKS CLEMMONS, WSBA #22896
17 Assistant Attorney General
18 Attorneys for Plaintiff State of Washington
19 W. 1116 Riverside Avenue
20 Spokane, WA 99201-1194
21 (509) 456-3282
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1880 WESTERN WEAR, a
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Owner of 1880 Western Wear,

Defendants.

NO. 2013 2 00534 2

COMPLAINT FOR INJUNCTIVE
AND OTHER RELIEF UNDER THE
CONSUMER PROTECTION ACT

The Plaintiff, State of Washington, by and through its attorneys Robert W. Ferguson, Attorney General, and James Brooks Clemmons, Jr., Assistant Attorney General, brings this action against Defendants 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 the Unfair Business Practices—Consumer Protection Act, Chapter 19.86 RCW.

1.2 The violations alleged in this Complaint have been committed in whole or in part in Stevens County, Washington, by Defendants named herein.

1.3 Authority of the Attorney General to commence this action is conferred by RCW 19.86.080 and RCW 19.86.140.

1 1.4 Venue is proper in Stevens County pursuant to RCW 4.12.020 and RCW
2 4.12.025.

3 II. DEFENDANTS

4 2.1 Defendant Western By Design, LLC, d/b/a 1880 Western Wear (hereinafter
5 1880 Western Wear) is a Washington limited liability company. Its principal place of business
6 is located at 665 B-Dry Gulch Rd., Colville, Washington 99114. Defendant 1880 Western
7 Wear is and has at all times relevant to this action been engaged in the marketing and sale of
8 western clothing and related products through its Web site <http://www.1880westernwear.com>.

9 2.2 Defendant Gwen Hansen (hereinafter Hansen) is and has at all times relevant to
10 this action been the President, Chief Executive Officer, and owner of Defendant 1880 Western
11 Wear. As the President, Chief Executive Officer and owner of Defendant 1880 Western Wear,
12 Defendant Hansen has control over 1880 Western Wear's policies, practices, and activities.
13 Defendant Hansen resides in the state of Washington. Defendant Hansen claims to be the sole
14 employee of 1880 Western Wear.

15 2.3 Defendants 1880 Western Wear and Hansen are collectively referred to as
16 "Defendants."

17 III. NATURE OF TRADE OR COMMERCE

18 3.1 Defendants market and sell western clothing and other related products through
19 their website, <http://www.1880westernwear.com>.

20 3.2 Defendants sell their products to consumers across the country and the world.
21 Consumers who see the products on Defendants' website either order the products directly
22 online or contact them by telephone or email to place orders. The prices for Defendants'
23 products range from a few dollars for smaller items such as costume jewelry, to hundreds of
24 dollars for large purchases such as leather clothing. Many consumers who purchase from
25 Defendants buy multiple items, like matching leather pants and vests. Defendants also design
26 custom items for consumers, such as leather dusters and jackets.

1 3.3 Defendants have solicited, advertised, and sold products in Stevens County
2 through their website, <http://www.1880westernwear.com>, and through ads in magazines such
3 as “Cowboys and Indians” and “Western Horseman.”

4
5 **IV. FIRST CAUSE OF ACTION— VIOLATION OF RCW 19.86 BY
MISPRESENTATION OF SHIPPING AND DELIVERY DATES**

6 4.1 Plaintiff realleges Paragraphs 1.1 through 3.3 and incorporates them as if set
7 forth fully herein.

8 4.2 In the course of selling western clothing and other products to consumers,
9 Defendants represent that the consumers’ orders will be shipped within a specified period of
10 time. On their website, <http://www.1880westernwear.com>, Defendants represent generally that
11 consumers’ orders would ship within 3 to 5 days after receipt of order for in stock items and 10
12 to 12 weeks or sooner for custom designed items such as coats, chaps, chinks, and dusters
13 <http://www.1880westernwear.com/shipping.php>. Defendants further represent that additional
14 time may be required to fulfill a custom design order if there are delays associated with supply
15 materials or if the order is “changed, added to or altered by the customer after cutting of
16 materials.”

17 4.3 Many consumers order products from Defendants for special events, including
18 but not limited to weddings, where consumers rely on the Defendants’ representations of
19 shipping or delivery by a date certain.

20 4.4 In many cases, Defendants have failed to ship items ordered within the time
21 frame represented to the customer where there has been no identified material supply issue and
22 the customer has not “changed, added to or altered” the order after the cutting of materials.
23 Consumers have invested hundreds of dollars for western clothing items, and have not received
24 the product they ordered within the time period represented by Defendants. This includes
25 customers who have ordered products for special occasions where Defendants have
26 represented delivery of the product by a date certain and the consumer has not “changed, added

1 to or altered” the order after the cutting of materials and no material supply issue had been
2 identified.

3 4.5 In one representative example from 2012, a consumer paid \$209.00 for a
4 shipment of a wool vest and shirt. More than five months after purchase, she still had not
5 received the items, despite the fact that she was promptly charged for the full amount of the
6 order. She contacted Defendants on several occasions and was told that her items would ship
7 the following week. Over a year after the purchase date, the customer had not received her
8 items or a refund despite several promises from the Defendants to the contrary. In another
9 example from 2009, a consumer paid over \$230.00 for a vest. After waiting several weeks he
10 contacted the Defendants to inquire about the status of his order. On multiple occasions he was
11 told that his item was being made and would ship in a week or had already been shipped. After
12 several months of waiting, he requested a refund. As of January 2011, more than 18 months
13 after the purchase date, he still had not received the item or a refund. Another customer
14 purchased a skirt set in 2013 for \$251.00. Almost two months after the order, she still had not
15 received the items. Other consumers have had similar experiences. As of the date of this
16 Complaint, the Attorney General’s Office and the Better Business Bureau had received over 85
17 consumer complaints detailing Defendants’ delays in delivery, non-delivery of the product
18 ordered, or a delay in issuing a refund.

19 4.6 When inquiring about the status of their order in many instances consumers are
20 unsuccessful in reaching or making contact with Defendants. When consumers do make
21 contact with Defendants they often represent that the orders will be shipped by a date certain or
22 within a specified time frame. For example, consumers have been told their items would be
23 shipped “tomorrow” or by “the following Monday.” In many instances, despite Defendants’
24 assurances, the items are not shipped as represented.

25 4.7 The conduct described above constitutes unfair or deceptive acts or practices in
26 trade or commerce, and unfair methods of competition in violation of RCW 19.86.020.

1 4.8 Defendants' conduct affected the public interest and had the capacity to mislead
2 a substantial number of consumers and constitutes unfair or deceptive acts or practices in trade
3 or commerce, and unfair methods of competition in violation of RCW 19.86.020.

4
5 **V. SECOND CAUSE OF ACTION— VIOLATION OF RCW 19.86 BY**
6 **USING UNFAIR AND DECEPTIVE DELIVERY PRACTICES**

7 5.1 Plaintiff realleges Paragraphs 1.1 through 4.8 and incorporates them as if set
8 forth fully herein.

9 5.2 Defendants' have a pattern and practice of failing to meet the delivery deadlines
10 described on their website and/or fail to deliver products as represented to customers.
11 Defendants have a pattern and practice of not notifying customers of alternative or extended
12 delivery dates. Defendants' conduct in regard to delivery and shipping dates constitutes an
13 unfair practice by analogy because Defendants conduct does not comport with the federal Mail
14 or Telephone Order Rule (hereinafter MTOR). 16 C.F.R. pt. 435, 76 Fed. Reg. 60,715 (Sept.
15 30, 2011). Pursuant to the MTOR, sellers in the Defendants' position are prohibited from
16 soliciting mail or telephone order sales unless they have a reasonable basis to expect shipping
17 the ordered merchandise within the time stated on the solicitation, or, if no time is stated,
18 within 30 days of receipt of an order. The MTOR further requires a seller to seek the buyer's
19 consent to the delayed shipment when the seller learns that it cannot ship within the time stated
20 or, if no time is stated, then within 30 days of the order. If the buyer does not consent, the seller
21 must promptly refund all money paid for the unshipped merchandise.

22 5.3 On multiple occasions, Defendants' have misrepresented delivery and shipment
23 dates and failed to obtain customer consent for extended delivery dates leaving consumers
24 without products often times specifically purchased for a special occasion. In many cases,
25 customers end up contacting the Defendants multiple times to inquire about delivery dates
26 and/or requesting a refund after receiving misleading information about the shipping and

1 delivery of ordered items. Even after requesting a refund, consumers usually wait for an
2 extended period of time, over a year in some instances, before receiving a refund.

3 5.4 The conduct described above constitutes unfair or deceptive acts or practices in
4 trade or commerce, and unfair methods of competition in violation of RCW 19.86.020.

5 5.5 Defendants' conduct affected the public interest and had the capacity to mislead
6 a substantial number of consumers and constitutes unfair or deceptive acts or practices in trade
7 or commerce, and unfair methods of competition in violation of RCW 19.86.020.

8
9 **V. THIRD CAUSE OF ACTION— VIOLATION OF RCW 19.86
BY USING AN UNFAIR REFUND POLICY**

10 6.1 Plaintiff realleges Paragraphs 1.1 through 5.5 and incorporates them as if set
11 forth fully herein.

12 6.2 Defendants refund policy posted and identified on their website reads that
13 “[t]here are no refunds after 5 business day...exchange only” and “no refunds for custom
14 orders on any items...”. <http://www.1880westernwear.com/shipping.php>.

15 6.3 In many cases, Defendants not only do not ship or deliver the product ordered
16 by the customer within the represented delivery period but do not deliver or ship the product
17 for months, and in some cases more than a year, after the represented delivery time. In these
18 cases, Defendants have not notified the customer of the delayed delivery and have not sought
19 the customer's consent to a delayed delivery date. In most of these cases, consumers feel their
20 only option is to ask for a refund after Defendants have not shipped or delivered the product.
21 In these same cases, consumers' phone or email requests for Defendants to provide a refund go
22 unanswered. In many cases, those who finally are able to reach the Defendants are falsely
23 advised that their refunds will be posted shortly or have already been mailed out. In one
24 example, a customer had purchased some clothing items from the Defendants in April of 2012
25 with an expected delivery date in May. After waiting for several months and inquiring about
26 her order through phone, email, and fax, she finally asked for a refund. Defendants promised

1 she would be refunded on or around November 9, 2012. As of August of 2013, this consumer
2 still had not received a refund from the Defendants. Other consumers have had similar
3 experiences; many have resorted to filing complaints with their banks or credit unions in order
4 to get reimbursed or to receive a chargeback.

5 6.4 The conduct described above constitutes unfair or deceptive acts or practices in
6 trade or commerce, and unfair methods of competition in violation of RCW 19.86.020.

7 6.5 Defendants' conduct affected the public interest and had the capacity to mislead
8 a substantial number of consumers and constitutes unfair or deceptive acts or practices in trade
9 or commerce, and unfair methods of competition in violation of RCW 19.86.020.

10
11 **VI. FOURTH CAUSE OF ACTION— VIOLATION OF RCW 19.86
FAILURE TO RESPOND TO CONSUMER COMPLAINTS**

12 7.1 Plaintiff realleges Paragraphs 1.1 through 6.5 and incorporates them as if set
13 forth fully herein.

14 7.2 In many instances, consumers contact Defendants to inquire about the status of
15 their orders when products the consumer purchased are not delivered within the time frame
16 represented. Some consumers contact Defendants via email; others call on the telephone.
17 Some consumers attempt to contact Defendants repeatedly through both means. In many
18 instances, Defendants fail to respond to consumers' contacts. Consumers who have left
19 telephonic messages for Defendants have failed to get return calls. Consumers who have sent
20 emails have failed to receive timely responses.

21 7.3 The conduct described above constitutes unfair or deceptive acts or practices in
22 trade or commerce, and unfair methods of competition in violation of RCW 19.86.020.

23 **VII. PRAYER FOR RELIEF**

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

25 8.1 That the Court adjudge and decree that defendants have engaged in the conduct
26 complained of herein.

1 8.2 That the Court adjudge and decree that the conduct complained of in Paragraphs
2 4.1 through 7.3 constitutes unfair or deceptive acts or practices and unfair methods of competition
3 in violation of the Consumer Protection Act, Chapter 19.86 RCW.

4 8.3 That the Court issue a permanent injunction enjoining and restraining Defendants
5 and their representatives, successors, assigns, officers, agents, servants, employees, and all other
6 persons acting or claiming to act for, on behalf of, or in active concert or participation with
7 Defendants from continuing or engaging in the unlawful conduct complained of herein.

8 8.4 That the Court assess civil penalties, pursuant to RCW 19.86.140, of up to two
9 thousand dollars (\$2,000) per violation against Defendants for each and every violation of RCW
10 19.86.020 caused by the conduct complained of herein.

11 8.5 That the Court make such orders pursuant to RCW 19.86.080 as it deems
12 appropriate to provide for restitution to consumers of money or property acquired by Defendants
13 as a result of the conduct complained of herein.

14 8.6 That the Court make such orders pursuant to RCW 19.86.080 to provide that
15 Plaintiff, State of Washington, have and recover from Defendants the costs of this action,
16 including reasonable attorney's fees.

17 8.7 That the Court order such other relief as it may deem just and proper to fully and
18 effectively dissipate the effects of the conduct complained of herein, or which may otherwise
19 seem proper to the Court.

20 DATED this 8th day of November, 2013.

21 ROBERT W. FERGUSON
22 Attorney General

23 

24 BROOKS CLEMMONS, WSBA #22896
25 Assistant Attorney General
26 Attorneys for Plaintiff State of Washington
W. 1116 Riverside Avenue
Spokane, WA 99201-1194
(509) 456-3282