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8 *Attorneys for Plaintiff*

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
07/15/2024
Clerk of the Court
BY: AUSTIN LAM
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

CGC-24-616406

11 EMA BELL,
12 Plaintiff,
13 vs.
14 1616 HOLDINGS, INC., FIVE BELOW,
15 INC.,
16 Defendants.

Case No.:
**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**
**(Violation of Health & Safety Code § 25249.5 et
seq.)**

17 Plaintiff Ema Bell (“Plaintiff”), by and through her attorneys, alleges the following cause
18 of action in the public interest of the citizens of the State of California.

BACKGROUND OF THE CASE

19 1. Plaintiff brings this representative action on behalf of all California citizens to
20 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
21 the Health and Safety Code § 25249.5 et seq (“Proposition 65”), which reads, in relevant part,
22 “[n]o person in the course of doing business shall knowingly and intentionally expose any
23 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
24 giving clear and reasonable warning to such individual ...”. Health & Safety Code § 25249.6.

25 2. This complaint is a representative action brought by Plaintiff in the public interest
26 of the citizens of the State of California to enforce the People’s right to be informed of the health
27 hazards caused by exposure to lead, a toxic chemical found in (a) Pawsitively Fun ceramic pet
28 bowls, UPC # 721756172444, (b) Pawsitively Fun ceramic treat jars, UPC # 721756172420, and
(c) Room 2 Room ceramic chip dip bowls, # 1922342826331 sold and/or distributed by defendants

1 1616 Holdings, Inc. and/or Five Below, Inc. (collectively, “Defendants” and each a “Defendant”)
2 in California.

3 3. Lead is a harmful chemical known to the State of California to cause cancer and
4 birth defects or other reproductive harm. On October 1, 1992, the state of California listed lead as
5 a chemical known to cause cancer and it has come under the purview of Proposition 65 regulations
6 since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
7 25249.10(b). On February 27, 1987, the State of California listed lead as a chemical known to
8 cause birth defects or other reproductive harm.

9 4. Proposition 65 requires all businesses with ten (10) or more employees that operate
10 within California or sell products therein to comply with Proposition 65 regulations. Included in
11 such regulations is the requirement that businesses must label any product containing a Proposition
12 65-listed chemical that will create an exposure above safe harbor levels with a “clear and
13 reasonable” warning before “knowingly and intentionally” exposing any person to any such listed
14 chemical.

15 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
16 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
17 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
18 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
19 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
20 25249.7.

21 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,
22 without a requisite exposure warning, (a) Pawsitively Fun ceramic pet bowls, UPC #
23 721756172444, (b) Pawsitively Fun ceramic treat jars, UPC # 721756172420, and (c) Room 2
24 Room ceramic chip dip bowls, # 1922342826331 (collectively, the “Products” and each a
25 “Product”) that expose persons to lead when used for their intended purpose.

26 7. Defendants’ failure to warn consumers and other individuals in California of the
27 health hazards associated with exposure to lead in conjunction with the sale and/or distribution of
28

1 the Products is a violation of Proposition 65 and subjects Defendants to the enjoinder and civil
2 penalties described herein.

3 8. Plaintiff seeks civil penalties against Defendants for their violations of Proposition
4 65 in accordance with Health and Safety Code § 25249.7(b).

5 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
6 Defendants to provide purchasers or users of the Products with required warnings related to the
7 dangers and health hazards associated with exposure to lead pursuant to Health and Safety Code §
8 25249.7(a).

9 10. Plaintiff further seeks a reasonable award of attorney's fees and costs.

10 PARTIES

11 11. Plaintiff is a citizen of the State of California acting in the interest of the general
12 public to promote awareness of exposures to toxic chemicals in products sold in California and to
13 improve human health by reducing hazardous substances contained in such items. She brings this
14 action in the public interest pursuant to Health and Safety Code § 25249.7(d).

15 12. Defendant 1616 Holdings, Inc., through its business, effectively imports,
16 distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies
17 by its conduct that it imports, distributes, sells, and/or offers the Products for sale or use in the
18 State of California. Plaintiff alleges that defendant 1616 Holdings, Inc. is a "person" in the course
19 of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

20 13. Defendant Five Below, Inc., through its business, effectively imports, distributes,
21 sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct
22 that it imports, distributes, sells, and/or offers the Products for sale or use in the State of California.
23 Plaintiff alleges that defendant Five Below, Inc. is a "person" in the course of doing business
24 within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

25 VENUE AND JURISDICTION

26 14. Venue is proper in the County of San Francisco because one or more of the
27 instances of wrongful conduct occurred, and continue to occur in this county and/or because
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1 Defendants conducted, and continue to conduct, business in the County of San Francisco with
2 respect to the Products.

3 15. This Court has jurisdiction over this action pursuant to California Constitution
4 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
5 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the enforcement
6 of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has
7 jurisdiction over this lawsuit.

8 16. This Court has jurisdiction over Defendants because each Defendant is either a
9 citizen of the State of California, has sufficient minimum contacts with the State of California, is
10 registered with the California Secretary of State as foreign corporations authorized to do business
11 in the State of California, and/or has otherwise purposefully availed itself of the California market.
12 Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent
13 and permissible with traditional notions of fair play and substantial justice.

14 **STATUTORY BACKGROUND**

15 17. The people of the State of California declared in Proposition 65 their right “[t]o be
16 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
17 harm.” (Section 1(b) of Initiative Measure, Proposition 65.)

18 18. To effect this goal, Proposition 65 requires that individuals be provided with a
19 “clear and reasonable warning” before being exposed to substances listed by the State of California
20 as causing cancer and/or birth defects or other reproductive harm. H&S Code § 25249.6 states, in
21 pertinent part:

22 No person in the course of doing business shall knowingly and intentionally expose any
23 individual to a chemical known to the state to cause cancer or reproductive toxicity without
24 first giving clear and reasonable warning to such individual...

25 19. An exposure to a chemical in a consumer product is one “which results from a
26 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
27 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
28 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...

1 shall provide a warning to any person to whom the product is sold or transferred unless the product
2 is packaged or labeled with a clear and reasonable warning.”

3 20. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or
4 more of the following methods individually or in combination:¹

5 a. A warning that appears on a product’s label or other labeling.

6 b. Identification of the product at the retail outlet in a manner which provides
7 a warning. Identification may be through shelf labeling, signs, menus, or a combination
8 thereof.

9 c. The warnings provided pursuant to subparagraphs (a) and (b) shall be
10 prominently placed upon a product’s labels or other labeling or displayed at the retail outlet
11 with such conspicuousness, as compared with other words, statements, designs, or devices
12 in the label, labeling or display as to render it likely to be read and understood by an
13 ordinary individual under customary conditions of purchase or use.

14 d. A system of signs, public advertising identifying the system and toll-free
15 information services, or any other system that provides clear and reasonable warnings.

16 21. Proposition 65 provides that any “person who violates or threatens to violate” the
17 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
18 “threaten to violate” is defined to mean creating “a condition in which there is a substantial
19 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil
20 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to
21 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

22 **FACTUAL BACKGROUND**

23 22. On October 1, 1992, the state of California listed lead as a chemical known to cause
24 cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code
25

26 _____
27 ¹ Alternatively, a person in the course of doing business may elect to comply with the warning
28 requirements set out in the amended version of 27 CCR 25601, *et.seq.* as amended on August 30,
2016, and operative on August 30, 2018.

1 Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On February 27,
2 1987, the State of California listed lead as a chemical known to cause birth defects or other
3 reproductive harm. In summary, lead was listed under Proposition 65 as a chemical known to the
4 State to cause cancer and birth defects or other reproductive harm.

5 23. The exposures that are the subject of the Notice result from the purchase,
6 acquisition, handling and recommended use of the Product. The primary route of exposure to the
7 is through dermal absorption directly through the skin when consumers use, touch, or handle the
8 Products. Exposure through ingestion will occur by touching the Product with subsequent touching
9 of the user's hand to mouth. No clear and reasonable warning is provided with the Products
10 regarding the health hazards of exposure.

11 24. Defendants have processed, marketed, distributed, offered to sell and/or sold the
12 Products in California since at least November 3, 2023 with respect to the Pawsitively Fun ceramic
13 pet bowls; since at least January 31, 2024 with respect to the Pawsitively Fun ceramic treat jars;
14 and since at least February 5, 2024 with respect to the Room 2 Room ceramic chip dip bowls. The
15 Products continue to be distributed and sold in California without the requisite warning
16 information.

17 25. At all times relevant to this action, Defendants have knowingly and intentionally
18 exposed users and/or consumers of the Products to lead without first giving a clear and reasonable
19 exposure warning to such individuals.

20 26. As a proximate result of acts by each Defendant, as a person in the course of doing
21 business within the meaning of H&S Code § 25249.11, individuals throughout the State of
22 California, including in San Francisco County, have been exposed to lead without a clear and
23 reasonable warning on the Products. The individuals subject to the violative exposures include
24 normal and foreseeable users and consumers that use the Products, as well as all others exposed to
25 the Products.

1 **SATISFACTION OF NOTICE REQUIREMENTS**

2 27. Plaintiff purchased the Product from Five Below, Inc. At the time of purchase,
3 Defendants did not provide a Proposition 65 exposure warning for lead or any other Proposition
4 65 listed chemical in a manner consistent with H&S Code § 25603.1 as described *supra*.

5 28. The Product were sent to a testing laboratory to determine if, and what amount of,
6 lead would migrate and/or leach from the Products.

7 29. The laboratory provided the results of its analysis. Results of this test determined
8 the Product exposes users to lead (the “Chemical Test Report”).

9 30. Plaintiff provided the Chemical Test Report and Product to an analytical chemist
10 to determine if, based on the findings of the Chemical Test Report and the reasonable and
11 foreseeable use of the Product, exposure to lead will occur at levels that require Proposition 65
12 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of the California
13 Code of Regulations.

14 31. On November 3, 2023, Plaintiff received from the analytical chemist an exposure
15 assessment report which concluded that persons in California who use the Pawsitively Fun ceramic
16 pet bowls will be exposed to levels of lead that require a Proposition 65 exposure warning. On
17 January 31, 2024, Plaintiff received from the analytical chemist an exposure assessment report
18 which concluded that persons in California who use the Pawsitively Fun ceramic treat jars will be
19 exposed to levels of lead that require a Proposition 65 exposure warning. On February 5, 2024,
20 Plaintiff received from the analytical chemist an exposure assessment report which concluded that
21 persons in California who use the Room 2 Room ceramic chip dip bowls will be exposed to levels
22 of lead that require a Proposition 65 exposure warning.

23 32. On November 3, 2023 (Pawsitively Fun ceramic pet bowls), January 31, 2024
24 (Pawsitively Fun ceramic treat jars), and February 5, 2024 (Room 2 Room ceramic chip dip bowls),
25 Plaintiff gave notice of alleged violation of Health and Safety Code § 25249.6 (collectively, the
26 “Notices” and each a “Notice”) to Defendants concerning the exposure of California citizens to
27 lead contained in the Products without proper warning, subject to a private action to Defendants
28 and to the California Attorney General’s office and the offices of the County District attorneys and

1 City Attorneys for each city with a population greater than 750,000 persons wherein the herein
2 violations allegedly occurred. See attached at Exhibits “A” – “C” a true and correct copy of each
3 Notice.

4 33. The Notice complied with all procedural requirements of Proposition 65 including
5 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at
6 least one person with relevant and appropriate expertise who reviewed relevant data regarding lead
7 exposure, and that counsel believed there was meritorious and reasonable cause for a private
8 action.

9 34. After receiving the Notices, and to Plaintiff’s best information and belief, none of
10 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
11 cause of action against Defendants under Proposition 65 to enforce the alleged violations which
12 are the subject of the Notice.

13 35. Plaintiff is commencing this action more than sixty (60) days from the date of the
14 Notice to Defendants, as required by law.

15 **FIRST CAUSE OF ACTION**

16 **(By Plaintiff against Defendants for the Violation of Proposition 65)**

17 36. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 35 of
18 this Complaint as though fully set forth herein.

19 37. Defendants have, at all times mentioned herein, acted as distributor, and/or retailer
20 of the Product.

21 38. Use of the Products will exposed users to lead, a hazardous chemical found on the
22 Proposition 65 list of chemicals known to be hazardous to human health.

23 39. The Product does not comply with the Proposition 65 warning requirements.

24 40. Plaintiff, based on her best information and belief, avers that at all relevant times
25 herein, and since at least November 3, 2023 with respect to the Pawsitively Fun ceramic pet bowls;
26 since at least January 31, 2024 with respect to the Pawsitively Fun ceramic treat jars; and since at
27 least February 5, 2024 with respect to the Room 2 Room ceramic chip dip bowls, continuing until
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1 the present, that Defendants have continued to knowingly and intentionally expose California users
2 and consumers of the Product to lead without providing required warnings under Proposition 65.

3 41. The exposures that are the subject of the Notice result from the purchase,
4 acquisition, handling and recommended use of the Product. The primary route of exposure to the
5 is through dermal absorption directly through the skin when consumers use, touch, or handle the
6 Products. Exposure through ingestion will occur by touching the Product with subsequent touching
7 of the user's hand to mouth. No clear and reasonable warning is provided with the Products
8 regarding the health hazards of exposure.

9 42. Plaintiff, based on her best information and belief, avers that such exposures will
10 continue every day until clear and reasonable warnings are provided to purchasers and users or
11 until this known toxic chemical is removed from the Products.

12 43. Defendants have knowledge that the normal and reasonably foreseeable use of the
13 Products exposes individuals to lead, and Defendants intend that exposures to lead will occur by
14 its deliberate, non-accidental participation in the importation, distribution, sale and offering of the
15 Products to consumers in California

16 44. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
17 Complaint.

18 45. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
19 described acts, each Defendant is liable for a maximum civil penalty of \$2,500 per day per
20 violation.

21 46. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
22 authorized to grant injunctive relief in favor of Plaintiff and against Defendants.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants and requests the following relief:

- A. That the court assess civil penalties against each Defendant in the amount of \$2,500 per day for each violation for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);
- B. That the court preliminarily and permanently enjoin Defendants mandating Proposition 65 compliant warnings on the Products;
- C. That the court grant Plaintiff reasonable attorney’s fees and costs of suit, in the amount of \$50,000.00.
- D. That the court grant any further relief as may be just and proper.

Dated: July 15, 2024

BRODSKY SMITH



By: _____
Evan J. Smith (SBN242352)
Ryan P. Cardona (SBN302113)
9465 Wilshire Boulevard, Suite 300
Beverly Hills, CA 90212
Telephone: (877) 534-2590
Facsimile: (310) 247-0160

Attorneys for Plaintiff

EXHIBIT “A”

LAW OFFICES
BRODSKY SMITH

9595 WILSHIRE BLVD., STE. 900
BEVERLY HILLS, CA 90212
877.534.2590
www.brodskysmith.com

NEW JERSEY OFFICE
1310 NORTH KINGS HIGHWAY
CHERRY HILL, NJ 08934
856.795.7250

NEW YORK OFFICE
240 MINEOLA BOULEVARD
MINEOLA, NY 11501
516.741.4977

PENNSYLVANIA OFFICE
TWO BALA PLAZA, STE. 805
BALA CYNWYD, PA 19004
610.667.6200

November 3, 2023

Member/Manager Garven, LLC 1450 Northland Drive Mendota Heights, MN 55120	Member/Manager Garven, LLC 4530 W. 77 th Street, Suite 200 Edina, MN 55435
President/CEO 1616 Holdings, Inc. 701 Market Street, Suite 300 Philadelphia, PA 19106	President/CEO 1616 Holdings, Inc. c/o CSC-Lawyers Incorporating Service 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833
President/CEO Five Below, Inc. c/o CSC-Lawyers Incorporating Service 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833	President/CEO Five Below, Inc. 1818 Market Street, Suite 2000 Philadelphia, PA 19103

60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act¹

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky Smith represents Ema Bell ("Bell"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Bell has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

¹ The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

I. DESCRIPTION OF THE VIOLATION

- 1. Enforcer:** Ema Bell, 222 S. Figueroa St. Apt. 1212, Los Angeles, CA 90012-2581; (Ph) 424-332-3817.
- 2. Alleged Violator(s):** Garven, LLC; 1616 Holdings, Inc.; Five Below, Inc.
- 3. Time Period of Exposure:** Violations have been occurring since at least November 3, 2023 and are continuing to this day.
- 4. Listed Chemical:** Lead. Lead is listed under Proposition 65 as a chemical known to the State to cause cancer and birth defects or other reproductive harm.
- 5. Product:**

Product²	Non- Exclusive Examples of the Product
Pet Bowl	Pawsitively Fun Ceramic Pet Bowl UPC# 721756172444

- 6. Description of Exposure:** The exposures that are the subject of this Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to the Listed Chemical is through dermal absorption directly through the skin when consumers use, touch, or handle the Products. Some amount of exposure through ingestion can occur by touching the Product with subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

II. PROPOSITION 65 INFORMATION

For the Violators' reference, enclosed is a copy of "Proposition 65: A Summary" that has been prepared by the Office of Environmental Health Hazard Assessment ("OEHHA"). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

III. RESOLUTION OF THE CLAIMS

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Bell against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Bell is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

² The specifically identified example of the Product in this Notice is to assist the recipients' investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Bell's position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators' custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

Bell has retained me as legal counsel in connection with this Notice. Please direct all communications regarding this Notice to my attention at Brodsky Smith, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.

Sincerely,



Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

EXHIBIT “B”

LAW OFFICES
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www.brodskysmith.com

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1310 NORTH KINGS HIGHWAY
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MINEOLA, NY 11501
516.741.4977

PENNSYLVANIA OFFICE
TWO BALA PLAZA, STE. 805
BALA CYNWYD, PA 19004
610.667.6200

January 31, 2024

Member/Manager Garven, LLC 1450 Northland Drive Mendota Heights, MN 55120	Member/Manager Garven, LLC 4530 W. 77 th Street, Suite 200 Edina, MN 55435
Member/Manager Garven, LLC 4600 W. 77 th Street, Suite 200 Edina, MN 55435-4904	President/CEO 1616 Holdings, Inc. c/o CSC-Lawyers Incorporating Service 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833
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With respect to the Product herein, Bell has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or

¹ The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

reproductive toxicity without first providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

I. DESCRIPTION OF THE VIOLATION

1. **Enforcer:** Ema Bell, 222 S. Figueroa St. Apt. 1212, Los Angeles, CA 90012-2581; (Ph) 424-332-3817.
2. **Alleged Violator(s):** Garven, LLC; 1616 Holdings, Inc.; Five Below, Inc.
3. **Time Period of Exposure:** Violations have been occurring since at least January 31, 2024 and are continuing to this day.
4. **Listed Chemical:** Lead. Lead is listed under Proposition 65 as a chemical known to the State to cause cancer and birth defects or other reproductive harm.
5. **Product:**

Product²	Non- Exclusive Examples of the Product
Treat Jar	Pawsitivity Fun Ceramic Treat Jar UPC# 721756172420

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to the Listed Chemical is through dermal absorption directly through the skin when consumers use, touch, or handle the Products. Some amount of exposure through ingestion can occur by touching the Product with subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

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² The specifically identified example of the Product in this Notice is to assist the recipients' investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Bell's position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators' custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Bell is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

Bell has retained me as legal counsel in connection with this Notice. **Please direct all communications regarding this Notice to my attention at Brodsky Smith, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.**

Sincerely,



Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

EXHIBIT “C”

LAW OFFICES
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February 5, 2024

President/CEO 1616 Holdings, Inc. c/o CSC-Lawyers Incorporating Service 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833	President/CEO 1616 Holdings, Inc. 701 Market Street, Suite 300 Philadelphia, PA 19106
President/CEO Five Below, Inc. 1818 Market Street, Suite 2000 Philadelphia, PA 19103	President/CEO Five Below, Inc. 701 Market Street, Suite 300 Philadelphia, PA 19106
President/CEO Five Below, Inc. c/o CSC-Lawyers Incorporating Service 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833	

60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act¹

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky Smith represents Ema Bell ("Bell"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Bell has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

¹ The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

I. DESCRIPTION OF THE VIOLATION

1. **Enforcer:** Ema Bell, 222 S. Figueroa St. Apt. 1212, Los Angeles, CA 90012-2581; (Ph) 424-332-3817.
2. **Alleged Violator(s):** 1616 Holdings, Inc.; Five Below, Inc.
3. **Time Period of Exposure:** Violations have been occurring since at least February 5, 2024 and are continuing to this day.
4. **Listed Chemical:** Lead. Lead is listed under Proposition 65 as a chemical known to the State to cause cancer and birth defects or other reproductive harm.
5. **Product:**

Product²	Non- Exclusive Examples of the Product
Dip Bowl	Room 2 Room Ceramic Chip Dip Bowls 1922342826331

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to the Listed Chemical is through dermal absorption directly through the skin when consumers use, touch, or handle the Products. Some amount of exposure through ingestion can occur by touching the Product with subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

II. PROPOSITION 65 INFORMATION

For the Violators' reference, enclosed is a copy of "Proposition 65: A Summary" that has been prepared by the Office of Environmental Health Hazard Assessment ("OEHHA"). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

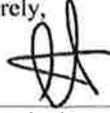
III. RESOLUTION OF THE CLAIMS

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Bell against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Bell is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

² The specifically identified example of the Product in this Notice is to assist the recipients' investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Bell's position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators' custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

Bell has retained me as legal counsel in connection with this Notice. Please direct all communications regarding this Notice to my attention at Brodsky Smith, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.

Sincerely,



Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary