

1 Reuben Yeroushalmi (SBN 193981)

2 reuben@yerausalmi.com

3 **YEROUSHALMI & YEROUSHALMI***

4 9100 Wilshire Boulevard, Suite 240W

5 Beverly Hills, California 90212

6 Telephone: (310) 623-1926

7 Facsimile: (310) 623-1930

8 Attorneys for Plaintiff,

9 CONSUMER ADVOCACY GROUP, INC.

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Superior Court of California,
County of Los Angeles
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David W. Slayton,
Executive Officer/Clerk of Court,
By Y. Ayala, Deputy Clerk

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES**

12 CONSUMER ADVOCACY GROUP, INC.,
13 in the public interest,

14 Plaintiff,

15 v.

16 FIVE BELOW, INC., a Pennsylvania
17 Corporation;
18 1616 HOLDINGS, INC., a Pennsylvania
19 Corporation;
20 and DOES 1-10,

21 Defendants.

CASE NO. **25STCV11401**

COMPLAINT FOR PENALTY AND
INJUNCTION

Violation of Proposition 65, the Safe
Drinking Water and Toxic Enforcement
Act of 1986 (*Health & Safety Code*, §
25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL
CASE (exceeds \$35,000)

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27 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges one cause of action against
28 defendants FIVE BELOW, INC.; 1616 HOLDINGS, INC., and DOES 1-10 as follows:

THE PARTIES

1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an organization qualified to do business in the State of California. CAG is a person within the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting as a private attorney general, brings this action in the public interest as defined under Health and Safety Code Section 25249.7, subdivision (d).
2. Defendant FIVE BELOW, INC. (“FIVE BELOW”) is a Pennsylvania Corporation, qualified to do business in California, and doing business in the State of California at all relevant times herein.
3. Defendant 1616 HOLDINGS, INC. (“1616”) is a Pennsylvania Corporation, qualified to do business in California, and doing business in the State of California at all relevant times herein.
4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-10, and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.
5. At all times mentioned herein, the term “Defendants” includes FIVE BELOW, 1616, and DOES 1-10.
6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all times mentioned herein have conducted business within the State of California.
7. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-10, was an agent, servant, or employee of each of the other Defendants. In conducting the activities alleged in this Complaint, each of the Defendants was acting within the course and scope of this agency, service, or employment, and was acting with the consent, permission, and authorization of each of

1 the other Defendants. All actions of each of the Defendants alleged in this Complaint
2 were ratified and approved by every other Defendant or their officers or managing
3 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the
4 alleged wrongful conduct of each of the other Defendants.

- 5 8. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
6 Defendants was a person doing business within the meaning of Health and Safety Code
7 Section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
8 employees at all relevant times.

9 **JURISDICTION**

- 10 9. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
11 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
12 those given by statute to other trial courts. This Court has jurisdiction over this action
13 pursuant to Health and Safety Code Section 25249.7, which allows enforcement of
14 violations of Proposition 65 in any Court of competent jurisdiction.
- 15 10. This Court has jurisdiction over Defendants named herein because Defendants either
16 reside or are located in this State or are foreign corporations authorized to do business in
17 California, are registered with the California Secretary of State, or who do sufficient
18 business in California, have sufficient minimum contacts with California, or otherwise
19 intentionally avail themselves of the markets within California through their
20 manufacture, distribution, promotion, marketing, or sale of their products within
21 California to render the exercise of jurisdiction by the California courts permissible
22 under traditional notions of fair play and substantial justice.
- 23 11. Venue is proper in the County of Los Angeles because one or more of the instances of
24 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
25 because Defendants conducted, and continue to conduct, business in the County of Los
26 Angeles with respect to the consumer product that is the subject of this action.
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BACKGROUND AND PRELIMINARY FACTS

12. In 1986, California voters approved an initiative to address growing concerns about exposure to toxic chemicals and declared their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp., Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources from contamination, to allow consumers to make informed choices about the products they buy, and to enable persons to protect themselves from toxic chemicals as they see fit.
13. Proposition 65 requires the Governor of California to publish a list of chemicals known to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code* § 25249.8. The list, which the Governor updates at least once a year, contains over 700 chemicals and chemical families. Proposition 65 imposes warning requirements and other controls that apply to Proposition 65-listed chemicals.
14. All businesses with ten (10) or more employees that operate or sell products in California must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited from knowingly discharging Proposition 65-listed chemicals into sources of drinking water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and reasonable” warnings before exposing a person, knowingly and intentionally, to a Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).
15. Proposition 65 provides that any person “violating or threatening to violate” the statute may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7. “Threaten to violate” means “to create a condition in which there is a substantial probability that a violation will occur.” *Health & Safety Code* § 25249.11(e). Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation, recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

- 1 16. Plaintiff identified certain practices of manufacturers and distributors of Hanging Storage
2 Bins of exposing, knowingly and intentionally, persons in California to Diethyl Hexyl
3 Phthalate and Di (2-ethylhexyl) phthalate of such products without first providing clear
4 and reasonable warnings of such to the exposed persons prior to the time of exposure.
5 Plaintiff later discerned that Defendants engaged in such practice.
- 6 17. On January 1, 1988, the Governor of California added Diethyl Hexyl Phthalate and Di
7 (2-ethylhexyl) phthalate (“DEHP”) to the list of chemicals known to the State to cause
8 cancer, (*Cal. Code Regs.* tit. 27, § 27001(b)) and on October 24, 2003, the Governor
9 added DEHP to the list of chemicals known to the State to cause developmental male
10 reproductive toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)). Pursuant to Health and
11 Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of DEHP
12 to the list of chemicals known to the State to cause reproductive toxicity, DEHP became
13 fully subject to Proposition 65 warning requirements and discharge prohibitions.

14 **SATISFACTION OF PRIOR NOTICE**

- 15 18. Plaintiff served the following notices for alleged violations of Health and Safety Code
16 Section 25249.6, concerning consumer products exposures:
- 17 a. On or about September 16, 2024, Plaintiff gave notice of alleged violations of
18 Health and Safety Code Section 25249.6, concerning consumer products
19 exposures subject to a private action to FIVE BELOW, 1616, and to the
20 California Attorney General, County District Attorneys, and City Attorneys for
21 each city containing a population of at least 750,000 people in whose
22 jurisdictions the violations allegedly occurred, concerning the Hanging Storage
23 Bins.
- 24 b. On or about September 23, 2024, Plaintiff gave notice of alleged violations of
25 Health and Safety Code Section 25249.6, concerning consumer products
26 exposures subject to a private action to FIVE BELOW, 1616, and to the
27 California Attorney General, County District Attorneys, and City Attorneys for
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each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the Hanging Storage Bins.

19. Before sending the notice of alleged violations, Plaintiff investigated the consumer products involved, the likelihood that such products would cause users to suffer significant exposures to DEHP, and the corporate structure of each of the Defendants.

20. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for Plaintiff who executed the certificate had consulted with at least one person with relevant and appropriate expertise who reviewed data regarding the exposures to DEHP, the subject Proposition 65-listed chemical of this action. Based on that information, the attorney for Plaintiff who executed the Certificate of Merit believed there was a reasonable and meritorious case for this private action. The attorney for Plaintiff attached to the Certificate of Merit served on the Attorney General the confidential factual information sufficient to establish the basis of the Certificate of Merit.

21. Plaintiff's notice of alleged violations also included a Certificate of Service, and a document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

22. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff gave notice of the alleged violations to FIVE BELOW, 1616, and the public prosecutors referenced in Paragraph 18.

23. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor any applicable district attorney or city attorney has commenced and is diligently prosecuting an action against the Defendants.

1 **FIRST CAUSE OF ACTION**

2 **(By CONSUMER ADVOCACY GROUP, INC. and against FIVE BELOW, 1616, and**
3 **DOES 1-10 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
4 **Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

5 **Home Accessories**

6 24. Plaintiff repeats and incorporates by reference paragraphs 1 through 23 of this complaint
7 as though fully set forth herein.

8 25. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
9 distributor, promoter, or retailer of Hanging Storage Bins ("Storage Bins"), including but
10 not limited to: "ROOM2ROOM"; "OVER THE DOOR STORAGE"; "5.88 in. x 12.75
11 in. x 38.5 in."; "MAX WEIGHT LIMIT: 6.61lbs per Shelf"; "UPC 1922343011811";
12 "Made in China"; "Distributed by 1616 Holdings, Inc.".

13 26. Storage Bins contain DEHP.

14 27. Defendants knew or should have known that DEHP has been identified by the State of
15 California as a chemical known to cause cancer, developmental and reproductive toxicity
16 and therefore was subject to Proposition 65 warning requirements. Defendants were also
17 informed of the presence of DEHP in Storage Bins within Plaintiff's notice of alleged
18 violations further discussed above at Paragraph 18a and 18b.

19 28. Plaintiff's allegations regarding Storage Bins concerns "[c]onsumer products
20 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
21 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
22 exposure that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, §
23 25602(b). Storage Bins are consumer products, and, as mentioned herein, exposures to
24 DEHP took place as a result of such normal and foreseeable consumption and use.

25 29. Plaintiff is informed, believes, and thereon alleges that between September 16, 2021, and
26 the present, each of the Defendants knowingly and intentionally exposed California
27 consumers and users of Storage Bins, which Defendants manufactured, distributed, or
28 sold as mentioned above, to DEHP, without first providing any type of clear and

1 reasonable warning of such to the exposed persons before the time of exposure.
2 Defendants have distributed and sold Storage Bins in California. Defendants know and
3 intend that California consumers will use and consume Storage Bins, thereby exposing
4 them to DEHP. Further, Plaintiff is informed, believes, and thereon alleges that
5 Defendants are selling Storage Bins under a brand or trademark that is owned or licensed
6 by the Defendants or an entity affiliated thereto; have knowingly introduced DEHP into
7 Storage Bins or knowingly caused DEHP to be created in Storage Bins; have covered,
8 obscured or altered a warning label that has been affixed to Storage Bins by the
9 manufacturer, producer, packager, importer, supplier or distributor of Storage Bins; have
10 received a notice and warning materials for exposure from Storage Bins without
11 conspicuously posting or displaying the warning materials; and/or have actual
12 knowledge of potential exposure to DEHP from Storage Bins. Defendants thereby
13 violated Proposition 65.

14 30. The principal routes of exposure are through dermal contact, ingestion and inhalation.
15 Persons sustain exposures by handling Storage Bins without wearing gloves or any other
16 personal protective equipment, or by touching bare skin or mucous membranes with
17 gloves after handling Storage Bins, as well as through direct and indirect hand to mouth
18 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
19 Storage Bins.

20 31. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
21 Proposition 65 as to Storage Bins have been ongoing and continuous, as Defendants
22 engaged and continue to engage in conduct which violates Health and Safety Code
23 Section 25249.6, including the manufacture, distribution, promotion, and sale of Storage
24 Bins, so that a separate and distinct violation of Proposition 65 occurred each and every
25 time a person was exposed to DEHP by Storage Bins as mentioned herein.
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1 32. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
2 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
3 violations alleged herein will continue to occur into the future.

4 33. Based on the allegations herein, Defendants are liable for civil penalties of up to
5 \$2,500.00 per day per individual exposure to DEHP from Storage Bins, pursuant to
6 Health and Safety Code Section 25249.7(b).

7 34. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
8 filing this Complaint.

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10 **PRAYER FOR RELIEF**

11 Plaintiff demands against each of the Defendants as follows:

- 12 1. A permanent injunction mandating Proposition 65-compliant warnings;
13 2. Penalties pursuant to Health and Safety Code Section 25249.7, subdivision (b);
14 3. Costs of suit;
15 4. Reasonable attorney fees and costs; and
16 5. Any further relief that the court may deem just and equitable.

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18 Dated: April 18, 2025

YEROUSHALMI & YEROUSHALMI*

19 /s/ Reuben Yeroushalmi

20 Reuben Yeroushalmi
21 Attorneys for Plaintiff,
22 CONSUMER ADVOCACY GROUP, INC.
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