

1 Evan Smith (Bar No. SBN 242352)
2 BRODSKY SMITH
3 9465 Wilshire Blvd., Ste. 300
4 Beverly Hills, CA 90212
5 Tel: (877) 534-2590
6 Fax: (310) 247-0160

7 *Attorneys for Plaintiff*

FILED

Superior Court of California
County of San Francisco

MAR 11 2025

CLERK OF THE SUPERIOR COURT

By Victor Pa. Ponder Deputy

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 PRECILA BALABBO,

12 Plaintiff,

13 v.

14 DGL GROUP, LTD., 1616 HOLDINGS, INC.,
15 FIVE BELOW, INC.,

16 Defendants.

Case No.: CGC-24-614085

CONSENT JUDGMENT

Judge: Christine Van Aken
Dept.: 301

Hearing Date: March 10, 2025

Hearing Time: 9:30 AM

Complaint Filed: April 19, 2024

1 **1. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between Precila Balabbo
3 acting on behalf of the public interest (hereinafter “Balabbo”) and DGL Group, Ltd. (“DGL” or
4 “Defendant”) with Balabbo and Defendant collectively referred to as the “Parties” and each of them
5 as a “Party.” Balabbo is an individual residing in California that seeks to promote awareness of
6 exposures to toxic chemicals and improve human health by reducing or eliminating hazardous
7 substances contained in consumer products. DGL is alleged to be a person in the course of doing
8 business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

9 **1.2 Allegations and Representations.** Balabbo alleges that Defendant has exposed
10 individuals to lead from its sales of DGL Group, Ltd. car charms, UPC # 888255274564 without
11 providing a clear and reasonable exposure warning pursuant to Proposition 65. Lead is listed
12 pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth
13 defects or other reproductive harm.

14 **1.3 Notice of Violation/Action.** On or about April 20, 2023, Balabbo served DGL and
15 various public enforcement agencies with documents entitled “60-Day Notice of Violation”
16 pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant violated
17 Proposition 65 for failing to warn consumers and customers that use of DGL Group, Ltd. car
18 charms, UPC # 888255274564 exposes users in California to lead. No public enforcer has brought
19 and is diligently prosecuting the claims alleged in the Notice. On April 19, 2024, Balabbo filed a
20 complaint (the “Complaint”).

21 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that
23 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
24 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
25 of all claims which were or could have been raised in the Action based on the facts alleged therein
26 and in the Notice.

1 1.5 Defendant denies the material allegations contained in Balabbo's Notice and
2 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
3 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of
4 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
5 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
6 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the
7 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

8 **2. DEFINITIONS**

9 2.1 **Covered Products.** The term "Covered Products" means DGL Group, Ltd. car
10 charms, UPC # 888255274564 that are manufactured, distributed, shipped into California and
11 offered for sale in California by DGL.

12 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
13 entered as a Judgment of the Court.

14 **3. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**

15 3.1 **Reformulation of Products.** Commencing within ninety (90) days after the
16 Effective Date, and continuing thereafter, Products that DGL directly manufactures, imports,
17 distributes, sells, or offers for sale in California shall either be: (a) reformulated Products pursuant
18 to § 3.2, below; or (b) labeled with a clear and reasonable exposure warning pursuant to §§ 3.3 -
19 3.4, below. For purposes of this Settlement Agreement, a "Reformulated Product" is a Product that
20 is in compliance with the standard set forth in § 3.2, below. The warning requirement set forth in
21 §§ 3.3 - 3.4 shall not apply to any Reformulated Product.

22 3.2 **Reformulation Standard.** "Reformulated Products" shall mean Products that
23 produce a wipe test result no higher than 1 microgram (µg) of lead when analyzed pursuant to
24 NIOSH method no. 9100.

25 3.3 **Clear and Reasonable Warning.** Commencing within 90 days after the Effective
26 Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3
27 and 3.4 must be provided for all Products that DGL manufacturers, imports, distributes, sells, or
28

1 offers for sale in California that is not a Reformulated Product. There shall be no obligation for
2 DGL to provide an exposure warning for Products that entered the stream of commerce within 90
3 days after the Effective Date. The warning shall consist of either the **Warning or Alternative**
4 **Warning** described in §§ 3.3(a) or (b), respectively:

5 (a) **Warning.** The “Warning” shall consist of the statement:

6 **⚠ WARNING:** This product can expose you to chemicals including lead, which
7 is known to the State of California to cause cancer and birth defects or other
reproductive harm. For more information go to www.P65Warnings.ca.gov.

8 (b) **Alternative Warning:** DGL may, but is not required to, use the alternative
9 short-form warning¹ as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

10 **⚠ WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

11 **3.4 A Warning or Alternative Warning** provided pursuant to § 3.3 must print the word
12 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
13 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
14 triangle with a black outline, except that if the sign or label for the Products does not use the color
15 yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the
16 height of the word “**WARNING:**”. The **Warning or Alternative Warning** shall be affixed to or
17 printed on the Products’ packaging or labeling, or on a placard, shelf tag, sign or electronic device
18 or automatic process, provided that the **Warning or Alternative Warning** is displayed with such
19 conspicuousness, as compared with other words, statements, or designs as to render it likely to be
20 read and understood by an ordinary individual under customary conditions of purchase or use. The
21 **Warning or Alternative Warning** may be contained in the same section of the packaging, labeling,
22 or instruction booklet that states other safety warnings, if any, concerning the use of the Product
23 and shall be at least the same size as those other safety warnings. If “consumer information,” as
24 that term is defined in Title 27, California Code of Regulations, Section 25600.1(c) as it may be
25 amended from time to time, is provided in a foreign language, DGL shall provide the **Warning or**

26
27 ¹ An **Alternative Warning** on a Covered Product manufactured and labeled after January 1, 2028 shall be provided
28 in accordance with Title 27, California Code of Regulations, § 25603(c).

1 **Alternative Warning** in the foreign language in accordance with applicable warning regulations
2 adopted by the State of California's Office of Environmental Health Hazard Assessment
3 ("OEHHA").

4 In addition to affixing the **Warning** or **Alternative Warning** to the Product's packaging or
5 labeling, the **Warning** or **Alternative Warning** shall be posted on websites where DGL offers
6 Products for sale to consumers in California. The requirements of this Section shall be satisfied if
7 the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word
8 "**WARNING**," appears on the product display page, or by otherwise prominently displaying the
9 warning to the purchaser prior to completing the purchase. To comply with this Section, DGL shall
10 (a) post the **Warning** or **Alternative Warning** on its own website and, if it has the ability to do so,
11 on the websites of its third-party internet sellers; and (b) if it does not have the ability to post the
12 **Warning** or **Alternative Warning** on the websites of its third-party internet sellers, provide such
13 sellers with written notice in accordance with Title 27, California Code of Regulations, Section
14 25600.2. Third-party internet sellers of the Product that have been provided with written notice in
15 accordance with Title 27, California Code of Regulations, Section 25600.2 are not released in
16 Section 5 of this Agreement if they fail to meet the warning requirements of this Section.

17 **3.5 Compliance with Warning Regulations.** The Parties agree that DGL shall be
18 deemed to be in compliance with this Settlement Agreement by either adhering to § 3 of this
19 Settlement Agreement or by complying with warning regulations adopted by the State of
20 California's OEHHA applicable to the Product and the exposure at issue.

21 **4. MONETARY TERMS**

22 **4.1 Civil Penalty.** DGL shall pay \$2,000.00 as a Civil Penalty pursuant to Health and
23 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
24 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil
25 Penalty remitted to Balabbo, as provided by California Health & Safety Code § 25249.12(d).

26 **4.1.1** Within ten (10) days of the Effective Date, DGL shall issue two separate
27 checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and to (b)
28

1 "Precila Balabbo" in the amount of \$500.00. Payment owed to Balabbo pursuant to this Section
2 shall be delivered to the following payment address:

3 Evan J. Smith, Esquire
4 Brodsky Smith
5 Two Bala Plaza, Suite 805
6 Bala Cynwyd, PA 19004

7 Payment owed to OEHHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
8 to OEHHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

9 For United States Postal Service Delivery:

10 Mike Gyurics
11 Fiscal Operations Branch Chief
12 Office of Environmental Health Hazard Assessment
13 P.O. Box 4010
14 Sacramento, CA 95812-4010

15 For Non-United States Postal Service Delivery:

16 Mike Gyurics
17 Fiscal Operations Branch Chief
18 Office of Environmental Health Hazard Assessment
19 1001 I Street
20 Sacramento, CA 95814

21 A copy of the check payable to OEHHHA shall be mailed to Brodsky Smith at the address set forth
22 above as proof of payment to OEHHHA.

23 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, DGL shall pay
24 \$24,000.00 to Brodsky Smith as complete reimbursement for Balabbo's attorneys' fees and costs
25 incurred as a result of investigating, bringing this matter to the attention of DGL, litigating and
26 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code
27 of Civil Procedure § 1021.5.

28 5. **RELEASE OF ALL CLAIMS**

5.1 This Consent Judgment is a full, final, and binding resolution between Balabbo
acting on her own behalf, and on behalf of the public interest, and DGL, and its parents,
shareholders, members, directors, officers, managers, employees, representatives, agents,
attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
predecessors, successors and assigns ("Defendant Releasees"), and all entities to whom they

1 directly or indirectly distribute or sell Covered Products, including but not limited to manufacturers,
2 suppliers, distributors, wholesalers, customers, licensors, licensees retailers, including but not
3 limited to 1616 Holdings, Inc., Five Below, Inc., and its parents, subsidiaries, and affiliates,
4 franchisees, and cooperative members ("Downstream Releasees"), of all claims for violations of
5 Proposition 65 based on exposure to lead from use of the Covered Products manufactured,
6 distributed, or sold by DGL within 90 days after the Effective Date, as set forth in the Notice. It is
7 the Parties' intention that this Consent Judgment shall have preclusive effect such that no other
8 actions by private enforcers, whether purporting to act in his, her, or its interests or the public
9 interest shall be permitted to pursue and take any action with respect to any violation of Proposition
10 65 based on exposure to lead from use of the Covered Products that was alleged in the Complaint,
11 or that could have been brought pursuant to the Notice against DGL and the Downstream Releasees
12 ("Proposition 65 Claims"). DGL's compliance with the terms of this Consent Judgment constitutes
13 compliance with Proposition 65 by DGL with regard to exposure to lead from use of the Covered
14 Products.

15 5.2 In addition to the foregoing, Balabbo, on behalf of herself, her past and current
16 agents, representatives, attorneys, and successors and assignees, and not in her representative
17 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
18 legal action and releases DGL, Defendant Releasees, and Downstream Releasees from any and all
19 manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
20 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of
21 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
22 future, with respect to any alleged violations of Proposition 65 related to or arising from Covered
23 Products manufactured, distributed, or sold by DGL, Defendant Releasees or Downstream
24 Releasees. With respect to the foregoing waivers and releases in this paragraph, Balabbo hereby
25 specifically waives any and all rights and benefits which she now has, or in the future may have,
26 conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as
27 follows:
28

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
2 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
3 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
4 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
5 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
6 DEBTOR OR RELEASED PARTY.

7 5.3 DGL waives any and all claims against Balabbo, her attorneys and other
8 representatives, for any and all actions taken, or statements made (or those that could have been
9 taken or made) by Balabbo and her attorneys and other representatives, whether in the course of
10 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
11 and with respect to Covered Products.

12 **6. INTEGRATION**

13 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
14 any and all prior negotiations and understandings related hereto shall be deemed to have been
15 merged within it. No representations or terms of agreement other than those contained herein exist
16 or have been made by any Party with respect to the other Party or the subject matter hereof.

17 **7. NOTICES**

18 7.1 Unless specified herein, all correspondence and notices required to be provided
19 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
20 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
21 by the other party at the following addresses:

22 For Defendant:

23 Jeffrey E. Zinder
24 McCoy Leavitt Laskey LLC
25 25101 The Old Rd., Ste. 222
26 Stevenson Ranch, CA 91381

27 And

28 For Balabbo:

Evan Smith
Brodsky Smith
9465 Wilshire Blvd., Ste. 300
Beverly Hills, CA 90212

Any party, from time to time, may specify in writing to the other party a change of address to

1 which all notices and other communications shall be sent.

2 **8. COUNTERPARTS; FACSIMILE SIGNATURES**

3 8.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
4 which shall be deemed an original, and all of which, when taken together, shall constitute one and
5 the same document.

6 **9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
7 **APPROVAL**

8 9.1 Balabbo agrees to comply with the requirements set forth in California Health &
9 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
10 Defendant agrees it shall support approval of such Motion.

11 9.2 This Consent Judgment shall not be effective until it is approved and entered by the
12 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
13 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
14 days, the case shall proceed on its normal course.

15 9.3 If the Court approves this Consent Judgment and is reversed or vacated by an
16 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
17 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
18 its normal course on the trial court's calendar.

19 **10. MODIFICATION**

20 10.1 This Consent Judgment may be modified only by further stipulation of the Parties
21 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

22 **11. ATTORNEY'S FEES**

23 11.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
24 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

25 11.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
26 pursuant to law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12. RETENTION OF JURISDICTION

12.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

13. AUTHORIZATION

13.1 The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this document and certify that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

AGREED TO:

AGREED TO:

Date: _____

Date: 1/14/25

By: _____
PRECILA BALABBO

By: [Signature]
DGL GROUP, LTD.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12. RETENTION OF JURISDICTION


12.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

13. AUTHORIZATION

13.1 The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this document and certify that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

AGREED TO:

AGREED TO:

Date: 1 / 20 / 25
By: 
PRECILA BALABBO

Date: _____
By: _____
DGL GROUP, LTD.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 3 / 10 / 25


Judge of Superior Court
CHRISTINE VAN AKEN 