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FILED
San Francisco County Superior Court

SEP 23 2025

CLERK OF THE COURT

BY:  Deputy Clerk

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

10. EMA BELL,
11.

12. Plaintiff,

13. v.

14. 1616 HOLDINGS, INC., FIVE BELOW, INC.,

15. Defendants.

Case No.: CGC-24-616406

CONSENT JUDGMENT

Judge: Joseph M. Quinn
Dept.: 302

Hearing Date: September 23, 2025

Hearing Time: 9:00 AM

Complaint Filed: July 15, 2024

1 **1. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between Ema Bell acting
3 on behalf of the public interest (hereinafter "Bell") and 1616 Holdings, Inc. and Five Below, Inc.
4 (collectively, "Five Below" or "Defendants" and each a "Defendant") with Bell and Defendants
5 collectively referred to as the "Parties" and each of them as a "Party." Bell is an individual residing
6 in California that seeks to promote awareness of exposures to toxic chemicals and improve human
7 health by reducing or eliminating hazardous substances contained in consumer products. Five
8 Below is alleged to be a person in the course of doing business for purposes of Proposition 65, Cal.
9 Health & Safety Code §§ 25249.6 et seq.

10 **1.2 Allegations and Representations.** Bell alleges that Defendants have exposed
11 individuals to lead from its sales of (a) Pawsitively Fun ceramic pet bowls, UPC # 721756172444,
12 (b) Pawsitively Fun ceramic treat jars, UPC # 721756172420, and (c) Room 2 Room ceramic chip
13 dip bowls, # 1922342826331 without providing a clear and reasonable exposure warning pursuant
14 to Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical known to the State of
15 California to cause cancer and birth defects or other reproductive harm.

16 **1.3 Notices of Violation/Action.** On November 3, 2023, Bell served Five Below and
17 various public enforcement agencies with documents entitled "60-Day Notice of Violation"
18 pursuant to Health & Safety Code §25249.7(d) (the "November Notice"), alleging that Defendants
19 violated Proposition 65 for failing to warn consumers and customers that use of Pawsitively Fun
20 ceramic pet bowls exposes users in California to lead. No public enforcer has brought and is
21 diligently prosecuting the claims alleged in the November Notice.

22 On January 31, 2024, Bell served Five Below and various public enforcement agencies with
23 documents entitled "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d)
24 (the "January Notice"), alleging that Defendants violated Proposition 65 for failing to warn
25 consumers and customers that use of Pawsitively Fun ceramic treat jars exposes users in California
26 to lead. No public enforcer has brought and is diligently prosecuting the claims alleged in the
27 January Notice.

28

1 On February 5, 2024, Bell served Five Below and various public enforcement agencies with
2 documents entitled "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d)
3 (the "February Notice"), alleging that Defendants violated Proposition 65 for failing to warn
4 consumers and customers that use of Room 2 Room ceramic chip dip bowls exposes users in
5 California to lead. No public enforcer has brought and is diligently prosecuting the claims alleged
6 in the February Notice.¹

7 1.4 On July 15, 2024, Bell filed a complaint (the "Complaint").

8 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
9 jurisdiction over Defendants as to the allegations contained in the Action filed in this matter, that
10 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
11 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
12 of all claims which were or could have been raised in the Action based on the facts alleged therein
13 and in the Notices.

14 1.6 Defendants deny the material allegations contained in Bell's Notices and Complaint
15 and maintain that they have not violated Proposition 65. Nothing in this Consent Judgment shall be
16 construed as an admission by Defendants of any fact, finding, issue of law, or violation of law; nor
17 shall compliance with this Consent Judgment constitute or be construed as an admission by
18 Defendants of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
19 denied by Defendants. However, this section shall not diminish or otherwise affect the obligations,
20 responsibilities, and duties of Defendants under this Consent Judgment.

21 **2. DEFINITIONS**

22 2.1 **Covered Products.** The term "Covered Products" means (a) Pawsitively Fun
23 ceramic pet bowls, UPC # 721756172444, (b) Pawsitively Fun ceramic treat jars, UPC #
24 721756172420, and (c) Room 2 Room ceramic chip dip bowls, # 1922342826331 that are
25 manufactured, distributed, shipped into California and offered for sale in California by Five Below.
26

27 ¹ The November Notice, January Notice, and February Notice are collectively referred to herein as, the "Notices."
28

1 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
2 entered as a Judgment of the Court.

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

4 3.1 **Reformulation of Products.** Commencing within ninety (90) days after the
5 Effective Date, and continuing thereafter, Covered Products that Five Below directly manufactures,
6 imports, distributes, sells, or offers for sale in California shall either be: (a) Reformulated Products
7 pursuant to § 3.2, below; or (b) labeled with a clear and reasonable exposure warning pursuant to
8 §§ 3.3 - 3.4, below. For purposes of this Consent Judgment, a "Reformulated Product" is a Covered
9 Product that is in compliance with the standard set forth in § 3.2, below. The warning requirement
10 set forth in §§ 3.3 - 3.4 shall not apply to any Reformulated Product.

11 3.2 **Reformulation Standard.** "Reformulated Products" shall mean Covered Products
12 intended for retail sale in California that meet any of the following standards:

13 3.2.1 Covered Products that produce a wipe test result no higher than 1 microgram
14 (µg) of lead when analyzed pursuant to NIOSH method no. 9100; or

15 3.2.2 Covered Products that contain no more than 90 parts per million ("ppm")
16 lead in any decoration, colored artwork, designs and/or marking on the surface of the
17 Covered Products when analyzed pursuant to U.S. Environmental Protection Agency
18 testing methodologies 3050B or equivalent methodologies utilized by federal or state
19 agencies for the purpose of determining lead content in a solid substance.

20 3.3 **Clear and Reasonable Warning.** Commencing within 90 days after the Effective
21 Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3
22 and 3.4 must be provided for those Covered Products that Five Below manufactures, imports,
23 distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be
24 no obligation for Five Below to provide an exposure warning for Covered Products that entered the
25 stream of commerce within 90 days after the Effective Date. The warning shall consist of either the
26 **Warning or Alternative Warning** described in §§ 3.3(a) or (b), respectively:
27
28

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

⚠ WARNING: This product can expose you to chemicals including lead, which 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.

(b) **Alternative Warning:** Five Below may, but is not required to, use the alternative short-form warning² as set forth in this § 3.3(b) (“Alternative Warning”) as follows:

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

3.4. A Warning or Alternative Warning provided pursuant to § 3.3 must print the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Covered Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “**WARNING:**”. The **Warning or Alternative Warning** shall be affixed to or printed on the Covered Products’ packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process only if such electronic device or automatic process provides the **Warning or Alternative Warning** without the purchaser having to seek it out, provided that the **Warning or Alternative Warning** is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. The **Warning or Alternative Warning** may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Product and shall be at least the same size as those other safety warnings. If “consumer information,” as that term is defined in Title 27, California Code of Regulations, Section 25600.1(c) as it may be amended from time to time, is provided in a foreign language, Five Below shall provide the **Warning or Alternative Warning** in the foreign language in accordance with applicable warning regulations adopted by the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”).

² An **Alternative Warning** on a Covered Product manufactured and labeled after January 1, 2028 shall be provided in accordance with Title 27, California Code of Regulations, § 25603(b).

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

3.5 Compliance with Warning Regulations. The Parties agree that Five Below shall be deemed to be in compliance with this Consent Judgment by either adhering to § 3 of this Consent Judgment or by complying with warning regulations adopted by the State of California's OEHHA applicable to the Covered Product and the exposure at issue.

4. MONETARY TERMS

4.1 Civil Penalty. Five Below shall pay \$3,000.00 as a Civil Penalty pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil Penalty remitted to Bell, as provided by California Health & Safety Code § 25249.12(d).

4.1.1 Within ten (10) days of the Effective Date, Five Below shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$2,250.00; and to (b) "Ema Bell" in the amount of \$750.00. Payment owed to Bell pursuant to this Section shall be delivered to the following payment address:

Evan J. Smith, Esquire

1 Brodsky Smith
2 Two Bala Plaza, Suite 805
3 Bala Cynwyd, PA 19004

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

6 For United States Postal Service Delivery:

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

12 For Non-United States Postal Service Delivery:

13 Mike Gyurics
14 Fiscal Operations Branch Chief
15 Office of Environmental Health Hazard Assessment
16 1001 I Street
17 Sacramento, CA 95814

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

20 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Five Below shall pay
21 \$32,000.00 to Brodsky Smith as complete reimbursement for Bell's attorneys' fees and costs
22 incurred as a result of investigating, bringing this matter to the attention of Five Below, litigating
23 and negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to
24 Code of Civil Procedure § 1021.5.

25 **5. RELEASE OF ALL CLAIMS**

26 5.1 This Consent Judgment is a full, final, and binding resolution between Bell acting
27 on her own behalf, and on behalf of the public interest, and Five Below, and its parents,
28 shareholders, members, directors, officers, managers, employees, representatives, agents,
attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
predecessors, successors and assigns, One Design Home LLC, and Garven, LLC ("Defendants
Releasees"), of all claims for violations of Proposition 65 based on exposure to lead from use of
the Covered Products manufactured, distributed, or sold by Defendants Releasees within 90 days
after the Effective Date, as set forth in the Notices. It is the Parties' intention that this Consent

1 Judgment shall have preclusive effect such that no other actions by private enforcers, whether
2 purporting to act in his, her, or its interests or the public interest shall be permitted to pursue and
3 take any action with respect to any violation of Proposition 65 based on exposure to lead from use
4 of the Covered Products that was alleged in the Complaint, or that could have been brought pursuant
5 to the Notices against the Defendants Releasees ("Proposition 65 Claims"). Five Below's
6 compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
7 by Five Below with regard to exposure to lead from use of the Covered Products.

8 5.2 In addition to the foregoing, Bell, on behalf of herself, her past and current agents,
9 representatives, attorneys, and successors and assignees, and not in her representative capacity,
10 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action
11 and releases Defendants Releasees from any and all manner of actions, causes of action, claims,
12 demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages,
13 charges, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown,
14 in law or equity, fixed or contingent, now or in the future, with respect to any alleged violations of
15 Proposition 65 related to or arising from Covered Products manufactured, distributed, or sold by
16 Defendants Releasees. With respect to the foregoing waivers and releases in this paragraph, Bell
17 hereby specifically waives any and all rights and benefits which she now has, or in the future may
18 have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides
19 as follows:

20 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
21 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
22 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
23 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
24 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
25 DEBTOR OR RELEASED PARTY.

26 5.3 Five Below waives any and all claims against Bell, her attorneys and other
27 representatives, for any and all actions taken, or statements made (or those that could have been
28 taken or made) by Bell and her attorneys and other representatives, whether in the course of
investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
and with respect to Covered Products.

1 **6. INTEGRATION**

2 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
3 any and all prior negotiations and understandings related hereto shall be deemed to have been
4 merged within it. No representations or terms of agreement other than those contained herein exist
5 or have been made by any Party with respect to the other Party or the subject matter hereof.

6 **7. NOTICES**

7 7.1 Unless specified herein, all correspondence and notices required to be provided
8 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
9 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
10 by the other party at the following addresses:

11 For Defendants:

12 Karen Palladino Ciccone
13 Cermak & Inglin LLP
14 12121 Wilshire Blvd., Ste. 322
15 Los Angeles, CA 90025

16 And

17 For Bell:

18 Evan Smith
19 Brodsky Smith
20 9465 Wilshire Blvd., Ste. 300
21 Beverly Hills, CA 90212

22 Any party, from time to time, may specify in writing to the other party a change of address to
23 which all notices and other communications shall be sent.

24 **8. COUNTERPARTS; FACSIMILE SIGNATURES**

25 8.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
26 which shall be deemed an original, and all of which, when taken together, shall constitute one and
27 the same document.
28

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

3 9.1 Bell agrees to comply with the requirements set forth in California Health & Safety
4 Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
5 Defendants agree they shall support approval of such Motion.

6 9.2 This Consent Judgment shall not be effective until it is approved and entered by the
7 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
8 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
9 days, the case shall proceed on its normal course.

10 9.3 If the Court approves this Consent Judgment and is reversed or vacated by an
11 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
12 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
13 its normal course on the trial court's calendar.

14 **10. MODIFICATION**

15 10.1 This Consent Judgment may be modified only by further stipulation of the Parties
16 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

17 **11. ATTORNEY'S FEES**

18 11.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
19 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

20 11.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
21 pursuant to law.

22 **12. RETENTION OF JURISDICTION**

23 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
24 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:

Date: _____

By: _____
EMA BELL

AGREED TO:

Date: 7/31/2025

By: Ron Massiantonio
1616 HOLDINGS, INC.

AGREED TO:

Date: 7/31/2025

By: Ron Massiantonio
FIVE BELOW, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

1 **13. AUTHORIZATION**

2 13.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this
4 document and certify that he or she is fully authorized by the Party he or she represents to execute
5 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
6 explicitly provided herein, each Party is to bear its own fees and costs.

7 **AGREED TO:**

8
9 Date: 8 / 5 / 25

10 By: 

11 EMA BELL

AGREED TO:

Date: _____

By: _____

1616 HOLDINGS, INC.

AGREED TO:

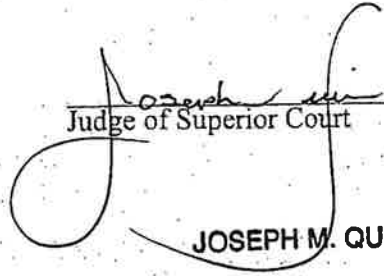
Date: _____

By: _____

FIVE BELOW, INC.

18 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

19 Dated: Sept. 23, 2025

20 
21 Judge of Superior Court

22 JOSEPH M. QUINN
23
24
25
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27
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