

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 **Alicia Chin and Five Below, Inc.**

This Settlement Agreement is entered into by and between Alicia Chin (“Chin”) and Five Below, Inc. (“Five Below”). Together, Chin and Five Below are collectively referred to as the “Parties”. Chin is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products.

Five Below is considered a person in the course of doing business or purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code § 25249.6, et seq (“Proposition 65”)

#### 1.2 **General Allegations**

Chin alleges that Five Below imported, manufactured, distributed for sale, shipped for sale, sold, and/or offered for sale in California Kid Safe HP Superman Headphones (Item # HP2- 03390; MID # 0790317; SKU #0 21331 80826 4) (the “Product”) that contain Di(2-ethylhexyl)phthalate (DEHP) without first providing the exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

#### 1.3 **Notice of Violation(s)**

On or about March 10, 2018, Chin served Five Below and Sakar International, Inc. (“Sakar”), and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Five Below and Sakar violated Proposition 65 by failing to warn its customers and consumers in California that the Product exposes users to DEHP. To the

best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

#### **1.4 No Admission**

Five Below denies the material, factual, and legal allegations contained in the Notice and Complaint, and maintains that all of the products it has imported, manufactured, distributed for sale, shipped for sale, sold, and/or offered for sale in California, including the Product, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect Five Below's obligations, responsibilities, and duties under this Settlement Agreement.

#### **1.5 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" means October 10, 2018.

## **2. INJUNCTIVE RELIEF: REFORMULATION**


### **2.1 Reformulation**

Commencing thirty (30) days after the Effective Date, and continuing thereafter, Five Below agrees to only import, manufacture, distribute for sale, ship for sale, sell, and/or offer for sale in California (a) a "Reformulated Product" or (b) a Product with a clear and reasonable warning, as defined by the California Code of Regulations, Title 27, Div. 4, Chap. 1, Art. 6 (commencing at §25600). For purposes of this Settlement Agreement, "Reformulated Product" is a Product containing DEHP in concentrations of less than 0.1 percent (1,000 parts per

million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining DEHP content in a solid substance.

## 2.2 Clear and Reasonable Warning

For purposes of this Settlement Agreement and commencing thirty (30) days after the Effective Date, Five Below shall, for all units of the Product it imports, manufactures, distributes for sale, ships for sale, sell, and/or offer for sale in California that are not a Reformulated Product, provide clear and reasonable warnings as set forth in subsections 2.2(a) or (b) below. Five Below shall employ the use of the warning symbol, which consists of a black exclamation point in a yellow equilateral triangle<sup>1</sup> with a bold black outline, provided in subsection 2.2(a) below. The warning symbol must be placed to the left of the text of the warning in a size no smaller than the height of the word "WARNING". The warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the customer or user understands to which specific Product the warning applies, so as to minimize the risk of customer confusion.

- (a)  **WARNING:** This product can expose you to chemicals including DEHP, which are 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](http://www.P65Warnings.ca.gov).

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<sup>1</sup> If the sign, label or shelf tag for the product is not printed using the color yellow, the symbol may be provided in black and white.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty Payments**

Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in this Settlement Agreement or which are based on or arising out of the Notice against Five Below, Sakar and their respective directors, officers, employees, agents, successors and assigns and all other persons in the chain of sale, distribution and manufacturing of the Product, including without limitation, Sakar (collectively, "Releasees"), Five Below shall pay a total of \$2,000 in civil penalties in accordance with this section. Each penalty payment will be allocated in accordance with Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining twenty-five (25%) to Chin.

Within ten (10) business days after the Effective Date, Five Below shall issue two checks, as set forth below, for its civil penalty payment:

(i) a check in the amount of \$1500 made payable to "OEHHA" and sent to Mike Gyurics, Fiscal Operations Branch Chief, Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95812-4010;

(ii) a check in the amount of \$500 made payable to Alicia Chin and sent to Chin in care of her attorney, O'Neil Dennis, Esquire, at 385 Grand Avenue, Suite 300, Oakland, California, 94610.

#### **3.2 Reimbursement of Attorney's Fees and Costs**

The Parties acknowledge that Chin and her counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of this Settlement Agreement had been settled.

After certain settlement terms had been finalized, the Parties then attempted to, and did, reach an accord on such compensation due to Chin and her counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed through the mutual execution of this Settlement Agreement. Within ten (10) business days after the Effective Date, Five Below shall pay \$8,000 for the fees and costs incurred by Chin in investigating, bringing this matter to the attention of Five Below and Sakar, and negotiating a settlement in the public interest. The payment shall be paid to "O'Neil Dennis" and delivered to:

O'Neil Dennis, Esq.  
385 Grand Avenue, Suite 300  
Oakland, CA 94610

4. **CLAIMS COVERED AND RELEASED**

4.1 **Chin's Individual Release of Claims**

Chin, in her individual capacity only and not in her representative capacity, also provides a release to Five Below, Sakar and the other Releasees which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Chin against the Releasees of any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to the claims asserted in the Notice and DEHP in the Product sold or distributed for sale by Releasees before the Effective Date.

4.2 **Five Below's Release of Chin**

Five Below, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Chin and her attorneys and other representatives, for any and all actions taken or statements made by Chin and her attorneys and other representatives, whether in the course of investigating

claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Product.

5. **SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

6. **GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the state of California and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Product, then Five Below shall provide written notice to Chin of any asserted change in the law, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Product is so affected. Nothing in this Settlement Agreement shall be interpreted to relieve Five Below from any obligation to comply with any pertinent state or federal toxics control laws.

7. **NOTICE**

Unless specified herein, all correspondence and notice required by this Settlement Agreement shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail, return receipt requested; or (iii) a recognized overnight courier to the following addresses:

For Five Below, Inc.:

Five Below, Inc.  
c/o Sonja Inglin, Esq.  
Cermak & Inglin, LLP  
12121 Wilshire Blvd., Suite 322  
Los Angeles, CA 90025

For Chin:

O'Neil Dennis, Esq.  
385 Grand Avenue, Suite 300  
Oakland, CA 94610

Either Party may, from time to time, specify in writing to the other, a change of address to which all notices and other communications shall be sent.

**8. COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**9. POST EXECUTION ACTIVITIES**

Chin agrees to comply with the reporting form requirements referenced in Health and Safety Code § 25249.7(f).

**10. MODIFICATION**

This Settlement Agreement may be modified only by written agreement of the Parties.

11. **AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement and have read, understood, and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

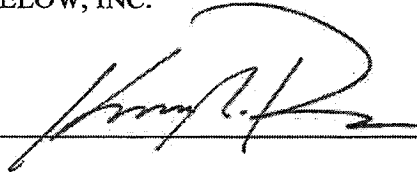
Date: 10/16/18

Date: 10/15/18

By: 

Alicia Chin

FIVE BELOW, INC.

By: 

Name: Kenneth Bull

Title: Chief Financial Officer