

1 Reuben Yeroushalmi (SBN 193981)
2 Shannon E. Royster (SBN 314126)
3 **YEROUSHALMI & YEROUSHALMI***
4 9100 Wilshire Boulevard, Suite 240W
5 Beverly Hills, CA 90212
6 Telephone: (310) 623-1926
7 Facsimile: (310) 623-1930

8 Attorneys for Plaintiff,
9 CONSUMER ADVOCACY GROUP, INC.

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, *et al.*,

18 Defendants.

CASE NO. 20STCV22881

[PROPOSED] CONSENT JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

[Assigned for All Purposes to the
Hon. Stuart M. Rice, Dept. 49]

Complaint Date: June 17, 2020

19 **1. INTRODUCTION**

20 1.1 This Consent Judgment is entered into by and between Plaintiff, Consumer
21 Advocacy Group, Inc. (referred to as “CAG”) acting on behalf of itself and in the public interest,
22 and Defendants Five Below, Inc. and 1616 Holdings, Inc., formerly known as Five Below
23 Merchandising, Inc., (collectively, “Settling Defendants”), which are referred to individually as a
24 Party and are collectively referred to as “Parties.”

25 **1.2 Settling Defendants**

26 1.2.1 CAG alleges that Settling Defendants are Pennsylvania corporations which each
27 employ ten or more persons. For purposes of this Consent Judgment only, Settling Defendants
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1 are each deemed to be a person in the course of doing business in California and otherwise
2 subject to the provisions of Health & Safety Code § 25249.5 *et seq.*, known as Proposition 65.

3 1.2.2 CAG alleges that each of the Settling Defendants sells, and/or distributes
4 consumer products in California. The Settling Defendants do not manufacture consumer
5 products, including Covered Products (as defined below). Five Below is a “retail seller” for
6 purposes of Proposition 65 and 1616 Holdings, Inc. only sells and distributes consumer products
7 to Five Below, Inc.

8 **1.3 Listed Chemicals**

9 1.3.1 Di (2-ethylhexyl) Phthalate (“DEHP”), also known as Diethyl Hexyl Phthalate
10 and Bis (2-ethylhexyl) Phthalate, has been listed by the State of California under Proposition 65
11 as a chemical known to cause cancer and birth defects or other reproductive harm.

12 1.3.2 1.3.2 Di-n-butyl Phthalate (“DBP”) has been listed by the State of California
13 under Proposition 65 as a chemical known to cause Developmental and Reproductive Toxicity.

14 **1.4 Notices of Violation**

15 1.4.1 On or about November 12, 2019, CAG served a “60-Day Notice of Intent to Sue
16 for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“AG#2019-
17 02121”) (“November 12, 2019 Notice”) that CAG alleges provided Settling Defendants with
18 notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in
19 California of exposures to DBP contained in certain sandals sold by Settling Defendants in
20 California. No public enforcer has commenced or diligently prosecuted the allegations set forth
21 in the November 12, 2019 Notice.

22 1.4.2 On or about May 20, 2020, CAG served a “60-Day Notice of Intent to Sue for
23 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“AG# 2020-01258”)
24 (“May 20, 2020 Notice”) that CAG alleges provided Settling Defendants with notice of alleged
25 violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of
26 exposures to DEHP and DBP contained in certain sandals sold, manufactured, and/or distributed
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1 by Settling Defendants in California. No public enforcer has commenced or diligently
2 prosecuted the allegations set forth in the May 20, 2020 Notice.

3 1.4.3 On or about June 18, 2020, CAG served a “60-Day Notice of Intent to Sue for
4 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“AG# 2020-01554”)
5 (“June 18, 2020 Notice”) that CAG alleges provided Settling Defendants with notice of alleged
6 violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of
7 exposures to DBP and DEHP contained in certain sandals sold, manufactured, and/or distributed
8 by Settling Defendants in California. No public enforcer has commenced or diligently
9 prosecuted the allegations set forth in the June 18, 2020 Notice.

10 1.4.4 On or about January 28, 2021, CAG served a “60-Day Notice of Intent to Sue for
11 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“AG# 2021-00188”)
12 (“January 28, 2021 Notice”) that CAG alleges provided Five Below, Inc. with notice of alleged
13 violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of
14 exposures to DEHP contained in certain sneakers sold, manufactured, and/or distributed by
15 Settling Defendants in California. No public enforcer has commenced or diligently prosecuted
16 the allegations set forth in the January 28, 2021 Notice.

17 1.4.5 On or about August 12, 2021, CAG served a “60-Day Notice of Intent to Sue for
18 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“AG# 2021-02019”)
19 (“August 12, 2021 Notice”) that CAG alleges provided Settling Defendants with notice of
20 alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in
21 California of exposures to DEHP and DBP contained in certain sandals sold, manufactured,
22 and/or distributed by Settling Defendants in California. No public enforcer has commenced or
23 diligently prosecuted the allegations set forth in the August 12, 2021 Notice.

24 **1.5 Complaint**

25 1.5.1 On June 17, 2020, CAG filed a Complaint for civil penalties and injunctive relief
26 (“Complaint 1”) in this action against Settling Defendants. Complaint 1 alleges, among other
27 things, that Proposition 65 was violated for alleged failure to give clear and reasonable warnings
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1 of alleged exposure to DBP in sandals with plastic components, based on the November 19, 2019
2 Notice.

3 1.5.2 Plaintiff makes the same allegations against Settling Defendants based on and
4 with respect to the products referenced in the May 20, 2020 Notice, the June 18 Notice, the
5 January 28, 2021 Notice and the August 21, 2021 Notice (which, together with the November
6 19, 2019 Notice, are collectively referred to as the “Notices”). For purposes of this Consent
7 Judgment only, the Parties stipulate that Complaint 1 is deemed to be amended to assert such
8 claims, such that it contains allegations regarding violations of Proposition 65 based on each of
9 the Notices (which, as amended by stipulation, is referred to below as the “Complaint”).

10 **1.6 Consent to Jurisdiction**

11 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
12 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
13 over Settling Defendants as to the acts alleged in the Complaint, that venue is proper in the County
14 of Los Angeles, and that this Court has jurisdiction to approve and enter this Consent Judgment as
15 a full settlement and resolution of the allegations as alleged against Settling Defendants, and of all
16 claims which were or could have been raised by any person or entity based in whole or in part,
17 directly or indirectly, on the facts alleged in the Complaint and in the Notices or arising therefrom
18 or related thereto.

19 **1.7 No Admission**

20 Settling Defendants each denies the material allegations contained in the Notices and
21 Complaint, and maintains that it has not violated Proposition 65, and that all of the products that
22 it has sold or distributed for sale in California, including the Covered Products, have been, and are,
23 in compliance with all laws. This Consent Judgment resolves claims that are denied and disputed.
24 The Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all
25 claims between the Parties for the purpose of avoiding prolonged litigation. Nothing in this
26 Consent Judgment shall be construed as an admission by any of the Parties of any allegation in the
27 Notices or the Complaint, or of any fact, finding, conclusion of law, issue of law, or violation of
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1 law of any kind, including without limitation, any admission concerning any alleged or actual
2 violation of Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine,
3 including but not limited to the meaning of the terms “knowingly and intentionally expose” or
4 “clear and reasonable warning” as used in Health and Safety Code section 25249.6. Nothing in
5 this Consent Judgment, nor compliance with its terms, shall constitute or be construed as an
6 admission by any of the Parties of any fact, finding, conclusion of law, issue of law, or violation
7 of law, or of any fault, wrongdoing, or liability by Settling Defendants, or any of their respective
8 officers, directors, employees, or parents, subsidiaries or affiliates. Neither this Consent Judgment
9 itself, nor any portion of this Consent Judgment, nor the fact that the Parties have entered into a
10 settlement to resolve all claims between them may be offered or admitted as evidence in any
11 administrative or judicial proceeding or litigation in any court, agency, or forum. Furthermore,
12 nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy, argument,
13 or defense the Parties may have in any other or future legal proceeding, except as expressly
14 provided in this Consent Judgment.

15 **2. DEFINITIONS**

16 2.1 **“Covered Products”** means (1) **1616 Private Label Sandals**, which are defined
17 as sandals containing plastic components that are distributed by or manufactured for 1616
18 Holdings, Inc. (formerly known as Five Below Merchandising, Inc.) and include the products
19 referenced in the Notices other than the January 28, 2021 Notice, and (2) **Sneakers**, defined as
20 Blush Color Sneakers with Holographic Design; "Solemates"; "Style: Electra-16, Color:
21 Blush/Rose Gold; Size 10"; "UPC 8 14402 02773 8"; "Made in China manufactured by ELIS
22 LLC" as referenced in the January 28, 2021 Notice, but limited to those sold to or by Settling
23 Defendants only.

24 2.2 **“Effective Date”** means the date that this Consent Judgment is approved and
25 entered by the Court.

26 2.3 **“DEHP”** means Di (2-ethylhexyl) Phthalate, also known as Diethyl Hexyl
27 Phthalate and Bis (2-ethylhexyl) Phthalate
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1 2.4 “DBP” means Di-n-butyl Phthalate .

2 2.5 “Listed Chemicals” means DEHP and/or DBP.

3 2.6 “Notices” means the Notices named in Section 1.4.

4 2.7 “Complaint” means the Complaint as it is defined in Section 1.5.

5 **3. INJUNCTIVE RELIEF/REFORMULATION**

6 3.1 After the Effective Date, and subject to the provisions of Section 4.3, Settling
7 Defendants shall not order for sale in California any 1616 Private Label Sandals unless they are
8 required to contain the Listed Chemical(s) in accessible components at a level at or below 0.1%
9 (1,000 parts per million), by weight (the “Reformulation Standard”).

10 3.2 Any 1616 Private Label Sandals ordered by Settling Defendants prior to the
11 Effective Date that are received and subsequently sold in California after the Effective Date
12 shall, unless they were required to meet the Reformulation Standard, be accompanied by a clear
13 and reasonable warning, consistent with 27 California Code of Regulations (“CRR”) section
14 25600 *et seq.*

15 3.3 Any warnings provided pursuant to Section 3.2 shall be affixed to the packaging of,
16 or directly on, or attached to the 1616 Private Label Sandals, and be prominently placed with
17 such conspicuousness as compared with other words, statements, designs, or devices as to render
18 it likely to be read and understood by an ordinary individual under customary conditions before
19 purchase or use. The equilateral triangle pictogram shall be in yellow with a black exclamation
20 mark; provided however, the pictogram may be in black and white instead of yellow if the label
21 does not contain the color yellow. The warning may also be provided by posting a sign, shelf
22 tag, or shelf sign for the consumer product at each point of display of the product or in the
23 manner provided for with respect to internet sales, as provided for in 27 CCR sections 25601 and
24 25602, as they may be subsequently amended.

25 3.4 After the Effective Date, Settling Defendants shall not sell or distribute for sale in
26 California any Sneakers.

1 **4. SETTLEMENT PAYMENT**

2 4.1 **Total Settlement Payment and Due Date:** Within ten (10) business days of the
3 Effective Date Settling Defendants shall pay a total of two hundred and sixty thousand dollars
4 and zero cents (\$260,000.00) in full and complete settlement of any and all claims for civil
5 penalties, damages, attorney’s fees, expert fees or any other claim for costs, expenses or
6 monetary relief of any kind for claims that were or could have been asserted in the Notices or
7 Complaint (and in consideration of the releases contained in Section 5), as follows:

8 4.1.1 **Civil Penalty:** Settling Defendants shall pay forty-five thousand seven hundred
9 and twenty dollars \$45,720.00 as a Civil Penalty pursuant to Health and Safety Code section
10 25249.7(b), to be apportioned in accordance with California Health & Safety Code § 25192, with
11 75% of these funds remitted to the State of California’s Office of Environmental Health Hazard
12 Assessment (“OEHHA”) and the remaining 25% of the Civil Penalty remitted to CAG, as
13 provided by California Health & Safety Code § 25249.12(d).

14 Within ten (10) days of the Effective Date, Settling Defendants shall issue two separate
15 checks for the civil penalty payment (a) to OEHHA in the amount of thirty-four thousand two
16 hundred and ninety dollars (\$34,290.00) representing 75% of the total civil penalty and (b) to
17 CAG in the amount of eleven thousand four hundred and thirty dollars (\$11,430.00) representing
18 25% of the total civil penalty. Settling Defendants shall issue separate 1099s for each of the
19 above payments: (a) to OEHHA in the amount of thirty-four thousand two hundred and ninety
20 dollars (\$34,290.00) and deliver it to P.O. Box 4010, Sacramento, CA 95812 (EIN: 68-
21 0284486); and (b) to CAG in the amount of eleven thousand four hundred and thirty dollars
22 (\$11,430.00) and deliver it to CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard,
23 Suite 240W, Beverly Hills, California 90212.

24 4.1.2 **Additional Settlement Payments:** Within ten (10) days of the Effective Date,
25 Settling Defendants shall also issue one check for thirty-four thousand two hundred and eighty
26 dollars (\$34,280.00) to “Consumer Advocacy Group, Inc.” pursuant to Health & Safety Code §
27 25249.7(b) and California Code of Regulations, Title 11 § 3203(d). CAG intends and agrees to
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1 use this portion of the total settlement payment as follows, (a) eighty five percent (85%) for fees
2 CAG allegedly incurred related to the investigation, purchase, testing, and related expert
3 evaluation for of the Covered Products and to offset the costs of future litigation enforcing
4 Proposition 65 but excluding attorney fees; and (b) fifteen percent (15%) for administrative costs
5 incurred during investigation and litigation to reduce the public’s exposure to the Proposition 65
6 Listed Chemicals by notifying those persons and/or entities believed to be responsible for such
7 exposures and attempting to persuade those persons and/or entities to reformulate their products or
8 the source of exposure to completely eliminate or lower the level of the Proposition 65 Listed
9 Chemicals, including but not limited to costs of documentation and tracking of products
10 investigated, storage of products, website enhancement and maintenance, computer and software
11 maintenance, investigative equipment, CAG’s member’s time for work done on investigations,
12 office supplies, mailing supplies and postage. Within 30 days of a request from the Attorney
13 General, CAG shall provide to the Attorney General copies of documentation demonstrating how
14 the above funds have been spent. CAG shall be solely responsible for ensuring the proper
15 expenditure of such additional settlement payment.

16 **4.1.3 Reimbursement of Attorney Fees and Costs:** Settling Defendants shall issue a
17 payment in the amount of one hundred and eighty thousand dollars (\$180,000.00) payable to
18 “Yeroushalmi & Yeroushalmi” as complete reimbursement for any and all reasonable
19 investigation fees and costs, attorneys’ fees, expert fees, and any and all other costs and expenses
20 incurred as a result of investigating, bringing this matter to Settling Defendants’ attention,
21 litigating, negotiating a settlement in the public interest, and seeking and obtaining court
22 approval of this Consent Judgment.

1 4.2 Other than the payment to OEHHA described above, all payments referenced in
2 Sections 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi, Yeroushalmi
3 & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The payment to
4 OEHHA shall be delivered directly to OEHHA, either at (a) 1001 I Street, Mail Stop 12-B,
5 Sacramento, California 95814, Attn: Mike Gyurics; or (b) P.O. Box 4010, Sacramento, CA
6 95812, Attn: Mike Gyurics. A copy of the check payable to OEHHA shall be mailed to
7 Yeroushalmi & Yeroushalmi at the address set forth above as proof of payment to OEHHA.

8 4.3. Beginning two years after the Effective Date, Settling Defendants can opt out of
9 the Reformulation Standard with respect to 1616 Private Label Sandals (but shall otherwise
10 remain obligated to comply with the applicable provisions of Proposition 65 with respect to 1616
11 Private Label Sandals), by giving notice and paying an additional penalty in the amount of sixty-
12 five thousand dollars (\$65,000), to be allocated 75% to OEHHA and 25% to CAG and paid in
13 the manner provided for in Section 4.1.1.

14 **5. MATTERS COVERED BY THIS CONSENT JUDGMENT &**
15 **RELEASE OF ALL CLAIMS**

16 5.1 This Consent Judgment is a full, final, and binding resolution between CAG, on
17 behalf of itself and in the public interest, and each of the Settling Defendants and their respective
18 shareholders, officers, directors, insurers, employees, parents, shareholders, divisions,
19 subdivisions, subsidiaries, partners, affiliates, sister companies, predecessors, and each of their
20 successors and assigns (“Defendant Releasees”), and all entities from whom Settling Defendants,
21 directly or indirectly, have as of the Effective Date ordered, purchased, sourced, received or
22 otherwise acquired Covered Products to, including, but not limited to, upstream vendors,
23 suppliers, and manufacturers and each of their respective , shareholders, members, directors,
24 officers, managers, employees, representatives, agents, attorneys, divisions, subdivisions,
25 subsidiaries, partners, sister companies, and affiliates, and their predecessors, successors and
26 assigns (collectively, “Upstream Releasees”), of all claims for alleged or actual violations of
27 Proposition 65 based on exposures to any Listed Chemicals in Covered Products, any of which
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1 were or are ordered, distributed or sold by Settling Defendants up through the Effective Date as
2 set forth in the Notices and Complaint. Settling Defendants and Defendant Releasees’
3 compliance with this Consent Judgment shall constitute compliance with Proposition 65 with
4 respect to alleged exposures to any Listed Chemicals from Covered Products, any of which are
5 sold by Settling Defendants or Defendant Releasees after the Effective Date. Nothing in this
6 Section affects CAG’s right to commence or prosecute an action under Proposition 65 against
7 any person other than Settling Defendants, Defendant Releasees, or Upstream Releasees.

8 5.2 CAG, on behalf of itself, its past and current agents, representatives, attorneys,
9 successors, assignees and for any others claiming through or under CAG, hereby waives all
10 rights to institute or participate in, directly or indirectly, any form of legal action and releases all
11 claims, including, without limitation, all manner of actions, causes of action, charges, rights,
12 promises, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or
13 expenses (including, but not limited to, investigation fees, expert fees, and attorneys’ fees) of any
14 nature whatsoever, in law or in equity, whether known or unknown, fixed or contingent
15 (collectively “Claims”), against Settling Defendants, Defendant Releasees, and Upstream
16 Defendant Releasees related to or arising from any actual or alleged violation of Proposition 65
17 or any other statutory or common law claim regarding the Covered Products ordered,
18 manufactured, distributed or sold by the Settling Defendants or Defendant Releasees through the
19 Effective Date, regarding any actual or alleged failure to warn about exposure to any Listed
20 Chemicals from the Covered Products. In furtherance of the foregoing, CAG on behalf of itself
21 only, hereby waives any and all rights and benefits which it now has, or in the future may have,
22 conferred upon it with respect to Claims regarding the Covered Products ordered, manufactured,
23 distributed, or sold by Settling Defendants or Defendant Releasees through the Effective Date
24 arising from any violation of Proposition 65 or any other statutory or common law regarding the
25 failure to warn about exposure to any Listed Chemicals from the Covered Products by virtue of
26 the provisions of section 1542 of the California Civil Code, which provides as follows:

27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
28 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO

1 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
2 RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
3 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
4 DEBTOR OR RELEASED PARTY.

5 CAG understands and acknowledges that the significance and consequence of this waiver of
6 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
7 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any
8 violation of Proposition 65 or any other statutory or common law regarding the Covered
9 Products ordered, manufactured, distributed, or sold by Settling Defendants, Defendant
10 Releasees, or Upstream Releasees through the Effective Date regarding the failure to warn about
11 actual or alleged exposure to any Listed Chemicals from the Covered Products, CAG will not be
12 able to make any claim for those damages, penalties or other relief against Settling Defendants,
13 Defendant Releasees or Upstream Releasees. Furthermore, CAG acknowledges that it intends
14 these consequences for any such Claims arising from any violation of Proposition 65 or any
15 other statutory or common law regarding the failure to warn about exposure to any Listed
16 Chemicals from the Covered Products as may exist as of the Effective Date but which CAG does
17 not know exist, and which, if known, would materially affect their decision to enter into this
18 Consent Judgment, regardless of whether their lack of knowledge is the result of ignorance,
19 oversight, error, negligence, or any other cause.

18 **6. ENTRY OF CONSENT JUDGMENT**

19 6.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
20 California Health & Safety Code § 25249.7(f).

21 6.2 Concurrently upon entry of an order approving this Consent Judgment, the
22 Complaint in this action shall be deemed amended as set forth in Section 1.5.

23 6.3 Within five (5) days of the payments of all amounts outlined in Section 4 CAG
24 will file a Request for Dismissal without prejudice for the causes of action or claims asserted in
25 the Complaint, outlined in Section 1.5.

26 6.4 If this Consent Judgment is not approved in full by the Court: (a) this Consent
27 Judgment and any and all prior agreements between the Parties merged herein shall terminate
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1 and become null and void, and the actions shall revert to the status that existed prior to the
2 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft
3 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement
4 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any
5 purpose in this action, or in any other proceeding; and (c) the Parties agree to meet and confer to
6 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

7 **7. MODIFICATION OF JUDGMENT**

8 7.1 This Consent Judgment may be modified only upon written agreement of the
9 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
10 any Party as provided by law and upon entry of a modified Consent Judgment by the Court.
11 Nothing contained in this Consent Judgment shall be deemed to limit Settling Defendants' ability
12 to seek to modify its terms based in changes in circumstances or applicable law with respect to
13 the Covered Products, the Listed Chemical(s) or Proposition 65 generally.

14 7.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
15 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

16 **8. ENFORCEMENT OF JUDGMENT**

17 8.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
18 hereto.

19 **9. RETENTION OF JURISDICTION**

20 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
21 terms of this Consent Judgment under Code of Civil Procedure section 664.6.

22 9.2 In any proceeding brought by either Party to enforce this Consent Judgment, the
23 prevailing Party shall be entitled to recover its reasonable attorney's fees and costs.

24 **10. SERVICE ON THE ATTORNEY GENERAL**

25 10.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the
26 California Attorney General so that the Attorney General may review this Consent Judgment
27 prior to its submittal to the Court for approval. Forty-five (45) days after the Attorney General
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1 has received the aforementioned copy of this Consent Judgment, CAG may submit it to the Court
2 for approval.

3 **11. ATTORNEY FEES**

4 11.1 Except as specifically provided in Sections 4.1.3 and 9.2, each Party shall bear its
5 own attorneys' fees and costs in connection with the claims resolved in this Consent Judgment.

6 **12. GOVERNING LAW**

7 12.1 The validity, construction, terms, and performance of this Consent Judgment shall
8 be governed by the laws of the State of California, without reference to any conflicts of law
9 provisions of California law.

10 12.2 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
11 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
12 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
13 rendered inapplicable by reason of law generally as to the Covered Products or Listed
14 Chemicals, then Settling Defendants may provide written notice to CAG of any asserted change
15 in the law, and shall have no further obligations pursuant to this Consent Judgment with respect
16 to, and to the extent that, the Covered Products are so affected. Nothing in this Consent
17 Judgment shall be interpreted to relieve Settling Defendants from any obligation to comply with
18 any other pertinent state or federal law or regulation.

19 12.3 The Parties, including their counsel, have participated in the preparation of this
20 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
21 Consent Judgment was subject to revision and modification by the Parties and has been accepted
22 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
23 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
24 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
25 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
26 resolved against the drafting Party should not be employed in the interpretation of this Consent
27 Judgment and, in this regard, the Parties hereby waive California Civil Code section 1654.
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AGREED TO:

AGREED TO:

Date: May 25, 2022

Date: _____, 2022

Michael Marcus

Name: Michael Marcus

Name: _____

Title: Director

Title: _____

For CONSUMER ADVOCACY GROUP, INC.

For FIVE BELOW, INC.

AGREED TO:

Date: _____, 2022

Name: _____

Title: _____

For 1616 HOLDINGS, INC., formerly known as Five Below Merchandising, Inc.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

1 **13. EXECUTION AND COUNTERPARTS**

2 13.1 This Consent Judgment may be executed in counterparts and by means of
3 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
4 one document and have the same force and effect as original signatures.

5 **14. NOTICES**

6 14.1 Any notices under this Consent Judgment shall be by hand-delivery, electronic
7 service, overnight courier with proof of receipt or delivery of First-Class Mail.

8 If to CAG:

9 Reuben Yeroushalmi
10 reuben@yerausalmi.com
11 Yeroushalmi & Yeroushalmi
12 9100 Wilshire Boulevard, Suite 240W
13 Beverly Hills, CA 90212

14 If to Settling Defendants:

15 Five Below, Inc., in care of its agent for service of process as then-listed on the
16 California Secretary of State website, which currently is Corporation Service
17 Company, 2710 Gateway Oaks Drive Suite 150N, Sacramento, CA 95833

18 1616 Holdings, Inc., in care of its agent for service of process as then-listed on the
19 California Secretary of State website, which currently is Corporation Service
20 Company, 2710 Gateway Oaks Drive Suite 150N, Sacramento, CA 95833

21 With a copy to:

22 Sonja Inglin
23 Cermak & Inglin, LLP
24 12121 Wilshire Boulevard, Suite 322
25 Los Angeles, CA 90025

26 **15. AUTHORITY TO STIPULATE**

27 15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
28 by the Party he or she represents to enter into this Consent Judgment and to execute it on behalf
of the Party represented and legally to bind that party.

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AGREED TO:

AGREED TO:

Date: _____, 2022

Date: May 25, 2022

Ronald J. Masciantonio

Name: _____

Name: Ronald J. Masciantonio

Title: _____

Title: SVP & General Counsel

For CONSUMER ADVOCACY GROUP,
INC.

For FIVE BELOW, INC.

AGREED TO:

Date: May 25, 2022

Ronald J. Masciantonio

Name: Ronald J. Masciantonio

Title: Secretary

For 1616 HOLDINGS, INC., formerly
known as Five Below Merchandising, Inc.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT