

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30736
LANSING, MICHIGAN 48909

DANA NESSEL
ATTORNEY GENERAL

November 20, 2025

Five Below, Inc.
c/o Jordan Ellis, Esq.
Senior Counsel
701 Market Street, Suite 200
Philadelphia, PA 19106
Jordan.Ellis@fivebelow.com

Via Email c/o Jordan Ellis, Esq.
Via USPS mail c/o Resident Agent

Five Below, Inc., c/o Resident Agent,
CSC-Lawyers Incorporating Service
3410 Belle Chase Way, Ste.600
Lansing, MI 48911

Re: *Notice of Intended Action pursuant to MCL 445.320(2), MCL 445.905(2)*
Five Below, Inc. AG No. 25-0441091-A

TO: FIVE BELOW, INC:

This letter serves as a notice of intended action in accordance with MCL 445.320(2) and MCL 445.905(2).

As background, this Office has enforcement authority for violations of the Shopping Reform and Modernization Act, MCL 445.311 *et seq.* (SRMA). Under the Act, the Attorney General may bring an action seeking appropriate injunctive relief to address pricing violations, including scanner overcharges and failure to display the prices of items offered for sale, pursuant to MCL 445.320.

This Office also has enforcement authority under the Michigan Consumer Protection Act, MCL 445.901 *et seq.* (MCPA). Under this Act, the Attorney General may bring an action seeking injunctive relief to protect the interests of consumers. MCL 445.905. The Attorney General may also conduct formal investigations upon a showing of probable cause to a court through *ex parte* petition. MCL 445.907.

Since June 5, 2025, the Michigan Department of Agriculture and Rural Development (MDARD) has issued 30 Shopping Reform and Modernization Act

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(SRMA) non-compliance findings to various Michigan Five Below stores for scanner overcharges and/or instances of failure to display the price of items in stores.¹

On each such occasion, MDARD discussed the findings and left a copy of MDARD's contemporaneous written report with a store manager at the subject Five Below location. The report advises that the retailer is responsible for correcting all non-compliant conditions and ensuring that the company is meeting the requirements of the SRMA at the location, as well as at related sites. Further, that failure to do so may result in enforcement action being initiated against the retailer by the Attorney General. A list of the Five Below MDARD non-compliance findings by date and store location (city) is attached at Attachment A.

In addition to being repeatedly put on notice of SRMA non-compliance by MDARD, Five Below, Inc. has also been provided notice of concerns regarding SRMA non-compliance at Michigan store locations by this Office. In response, Five Below advised that "an internal pricing audit is currently underway, which we expect to complete in early August 2025. It is our goal to confirm that all displayed prices align with sale prices by this date, and audits will be conducted periodically going forward."² Five Below further advised that it had subsequently "re-trained all Michigan District Managers on the SRMA, instructed them to re-train their respective teams on the SRMA (including how to process penalty pay), and instructed them to verify the prices of all products in their stores. Additionally, the Company has reminded all Michigan District Managers to revisit various internal documents regarding sales procedure and pricing standards as needed. The Company has provided all Michigan District Managers with a copy of the SRMA regulations as well."³

The foregoing measures have not been effective in remedying SRMA violation conduct. MDARD non-compliance findings continue; with 18 MDARD reports documenting scanner overcharges from August 3 to November 5, 2025.⁴ The pricing errors documented by MDARD have a common pattern which has not changed over time: scanning/charging a higher price for items than the price displayed by the shelf tag or on a tag affixed to the item. Many involve products affixed with tags or sitting on shelves with a \$5 shelf sign, which often ring up for \$6 or \$7. Repeat

¹ Findings are from MDARD on-site store inspections conducted pursuant to MCL 445.313(b), which provides that MDARD shall investigate complaints concerning violations of sections 7 and 8 of the SRMA. Of the 36 total inspections to date, only six resulted in a compliance finding.

² June 30, 2025 Five Below/Jordan Ellis letter.

³ July 28, 2025 Five Below/Jordan Ellis letter.

⁴ Notably, a Five Below Burton store location newly opened on August 1, 2025 was found to be non-compliant on August 8, 2025.

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offenses involving the same item have been documented at different stores, as well as offenses at the same stores on different dates.

In total, Five Below has been provided notice of State concerns regarding continued non-compliance with Michigan Law on over 30 occasions since June 3, 2025. As such, Five Below's violations are knowing and persistent.

Relevant to this Notice, the SRMA provides, in part, as follows:

Charging higher price than price displayed on item; violation.

Sec. 8. (1) A person shall not knowingly charge or attempt to charge for a consumer item that is subject to section 7 a retail sale price that is higher than the price displayed for that item.

* * *

(3) It is prima facie evidence of a violation of this section if a price a person charges or attempts to charge for a consumer item that is subject to section 7 is established by electronic identification or calculation by an automatic checkout system and that price exceeds the price displayed for that item.

* * *

Display of total price of consumer item offered for sale; exceptions.

Section 7. (1) Except as otherwise provided in subsection (2) a person shall display the total price of a consumer item offered for sale at retail at the place of the retail sale.

* * *

Section 10. (5) A person that knowingly violates this act or the terms of an injunction, order, decree, or judgment issued under this section shall pay to the state a civil fine of not more than \$1,000.00 for the first violation and not more than \$5,000.00 for the second and any subsequent violation. For the purposes of this subsection, the court that issues an injunction, order, decree, or judgment under this section retains jurisdiction, the action is continued, and the attorney general may petition for recovery of the civil fine described in this subsection.

[MCL 445.318(1),(3); MCL 445.317(1); MCL 445.320(5)]

Based on the above, the Attorney General also has probable cause to believe Five Below, Inc. is engaging in unfair and deceptive trade practices that are prohibited under the MCPA, including but not limited to the following:

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(g) Advertising or representing goods or services with intent not to dispose of those goods or services as advertised or represented.

* * *

(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.

* * *

(cc) Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

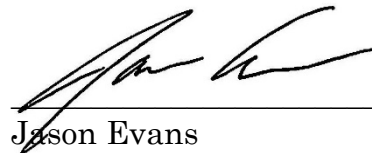
[MCL 445.903(1).]

Under the SRMA and MCPA, this notice gives Five Below, Inc. an opportunity to provide an assurance of discontinuance. Any agreement will require Five Below, Inc. to address all of the above concerns, including, but not limited to, an enforceable agreement to cease and desist pricing practices in violation of the SRMA and MCPA and payment of a civil fine and reimbursement for costs of investigation. Should you wish to explore an assurance agreement, please contact us soon to schedule a meeting to be held on, or before, December 15, 2025.

Absent such an agreement, the Attorney General has the option of either commencing a lawsuit under the SRMA and/or MCPA or commencing an investigation pursuant to MCL 445.907.

We are available to meet with you regarding this matter and look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Evans", is written over a horizontal line.

Jason Evans
Kathy Fitzgerald
Lauren Rogers
Assistant Attorneys General
Corporate Oversight Division
(517) 335-7632

Attachment A

MDARD Non-compliance Findings

MDARD SRMA Non-Compliance Findings; June 5, 2025 – November 6, 2025

Inspection Date	Location	MDARD Report #
6/5/2025	Ann Arbor (Washtenaw Ave.)	618069
6/11/2025	Fenton	618089
6/17/2025	Novi	618105
6/17/2025	Midland	618106
6/24/2025	Lansing (Edgewood Blvd.)	618119
7/9/2025	Orion	618160
7/14/2025	Northville	618161
7/14/2025	Fenton	618179
7/21/2025	Ann Arbor (Washtenaw Ave.)	618200
7/21/2025	Ann Arbor (Maple Rd.)	618201
7/21/2025	Brighton	618202
7/22/2025	Orion	618203
8/5/2025	Burton	618262
8/7/2025	Orion	618279
8/12/2025	Okemos	618254
8/12/2025	Lansing (Edgewood Blvd.)	618255
8/19/2025	Midland	618325
8/19/2025	Saginaw	618327
8/21/2025	Bloomfield Hills	618341
8/26/2025	Kalamazoo	618361
9/2/2025	Ann Arbor (Maple Rd.)	618367
9/9/2025	Flint	618394
10/13/2025	Novi	618515
10/16/2025	Burton	618529
10/28/2025	Allen Park	618540
10/29/2025	Okemos	618563
10/29/2025	Lansing (Mall Ct.)	618514
10/29/2025	Ann Arbor (Maple Rd.)	618564
10/29/2025	Ann Arbor (Washtenaw Ave.)	618561
11/5/2025	Farmington Hills	618578