

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

THE PEOPLE OF THE STATE OF
MICHIGAN,

Petitioner,

Case No. 26-80-CP

v

HON. ROSEMARIE AQUILINA

FIVE BELOW, INC.,

Respondent.

Darrin F. Fowler (P53464)
Kathy P. Fitzgerald (P31454)
Lauren Rogers (P82926)
Assistant Attorneys General
Michigan Dept of Attorney General
Corporate Oversight Division
P.O. Box 30736
Lansing, MI 48909
(517) 335-7632
FowlerD1@michigan.gov
FitzgeraldK@michigan.gov
RogersL18@michigan.gov

Christopher Carlson
Dascher L. Pasco
Attorneys for Five Below, Inc.
Troutman Pepper Locke LLP
1001 Haxall Point, 15th Floor
Richmond, VA 23219
(804) 697-1224
Chris.carlson@troutman.com
Dascher.pasco@troutman.com

ASSURANCE OF VOLUNTARY COMPLIANCE AND DISCONTINUANCE

Dana Nessel, Attorney General of the State of Michigan, on behalf of the People of the State of Michigan and Five Below, Inc., a Pennsylvania corporation, hereby execute and agree to be bound by this Assurance of Voluntary Compliance and Discontinuance. This Assurance concerns the resolution of alleged violations of the Shopping Reform and Modernization Act, MCL 445.311 *et seq.* (SRMA) and Michigan Consumer Protection Act (MCPA), MCL 445.901 *et seq.*

Based on the foregoing, the Parties agree as follows:

I. Jurisdiction

1.1 The Department of Attorney General (Attorney General) has jurisdiction over the subject matter of this Assurance pursuant to MCL 445.320 and MCL 445.905.

II. Definitions

2.1 "Affixed Price" means the price that is printed, stamped, marked, or otherwise appears on the item itself or item package.

2.2 "Assurance" means this Assurance of Voluntary Compliance and Discontinuance.

2.3 "Charged Price" means the final price that displays at the point-of-sale for which the consumer is to be charged and/or the price that appears when an item is scanned by handheld scanner or other device tied to the point-of-sale database that accesses the price, whether the item is scanned or purchased.

2.4 "COD" means the Michigan Department of Attorney General Corporate Oversight Division.

2.5 "District Manager(s)" means Five Below employees who are responsible for managing the districts that encompass Five Below stores in Michigan.

2.6 "Display Price" means the lower of an item's Affixed Price or its Shelf Price.

2.7 “Five Below” and “Respondent” means Five Below, Inc., whether acting through employees, contractors, agents, or any other business entity.

2.8 “MDARD” means the Michigan Department of Agriculture and Rural Development.

2.9 “NIA” refers to the Notice of Intended Action issued by the Attorney General on November 20, 2025 to Five Below, Inc. alleging violations of the SRMA and MCPA, pursuant to MCL 445.320(2) and MCL 445.905(2).

2.10 “Parties” means COD and Respondent, collectively.

2.11 “Price Adjustment” means changing the Charged Price to the amount of the lowest Display Price; but only when the Charged Price is higher.

2.12 “Price Check” means a comparison between the Display Price(s) and the Charged Price(s).

2.13 “Price Discrepancy Error Rate” means the frequency that the Charged Price does not match the Display Price measured as a percentage of the total items checked.

2.14 “Promptly” means as soon as possible and not later than within 24 hours.

2.15 “Regional Manager” means the Five Below employee who is responsible for managing the region that encompasses the Five Below stores in Michigan.

2.16 “Scanner Law” and “SRMA” means the Michigan Shopping Reform and Modernization Act, MCL 445.311 et seq.

2.17 “Shelf Price” means the price indicated on a label or electronic signage posted on a shelf above or below the item that has been placed by Five Below for sale, or the price on a container where items of like kind have been placed by Five Below for sale.

2.18 “Updated Display Price” means a Shelf Price that is newly created or Affixed Price correction based on the change of price of an item or other price discrepancy, including between an Affixed Price and Shelf Price of an item.

2.19 “Weekly Compliance Pricing Check” and “Store Level Audit” means a weekly price accuracy inspection conducted by store-crew members and supervised by store managers. Weekly Compliance Pricing Checks must be of at least 50 unique items across all store merchandise categories. Items that are found to be non-compliant should be included in the following week’s Weekly Compliance Pricing Checks.

2.20 All other terms shall have the meaning specifically defined in the SRMA and/or MCPA.

III. Background

3.1 Five Below is a Pennsylvania company that engages in trade or commerce by the sale of consumer items at Five Below store locations in Michigan, with over sixty stores throughout the State.

3.2 Relevant to this Assurance, the Michigan Scanner Law provides:

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 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.

3.3 The SRMA authorizes MDARD to investigate complaints concerning violations of SRMA Sections 7 and 8 and conduct any other investigations it considers advisable. MCL 445.313(b).

3.4 From June 5, 2025 through April 7, 2026, MDARD issued numerous SRMA noncompliance finding reports to various Five Below stores for scanner overcharges and/or instances of failure to display the price of items in stores, following on-site store complaint inspections. Repeat offenses involving the same item were documented at different Five Below stores that did not change over time, as well as offenses at the same store on different dates.

3.5 On November 20, 2025, COD issued the NIA to Five Below, Inc. alleging violations of the SRMA and MCPA; included at Attachment A and incorporated herein by reference.

3.6 Respondent cooperated with COD in its response to the NIA.

3.7 Respondent denies the allegations in the NIA and is offering this Assurance to avoid the time and expense of litigating COD's concerns alleged in therein.

The entry into this Assurance by Respondent, and COD's acceptance of it, is not an admission of liability by Respondent with respect to any issue addressed in this Assurance, nor is it an admission of any factual allegations or legal conclusions stated or implied herein. This Assurance is entered into solely for the purpose of settling and resolving disputes between the Parties and shall not constitute evidence of the existence or non-existence, validity, or invalidity, of any right, claim, or obligation, except as expressly provided herein, and then only for the purposes of enforcement of (or defense against) claims under this Assurance.

IV. Application of Assurance; MCL 445.320(3)

4.1 This Assurance applies to the following acts/practices by Respondent, as shown by MDARD inspection findings of SRMA noncompliance at various Five Below store locations in Michigan from June 5, 2025 through February 12, 2026:

- a. Charging or attempting to charge for a consumer item a retail sale price that is higher than the price displayed for that item, in violation of MCL 445.318; and
- b. Failing to display the total price of a consumer item offered for sale at the place of the retail sale, in violation of MCL 445.317.

V. Parties Bound

5.1 This Assurance binds Five Below, its successor or assigns, and any other related subsidiary, corporation, assumed name or business entity. Five Below is responsible for compliance with the terms of this Assurance, and while Five

Below may use third parties to assist in fulfilling its obligations, Five Below remains solely responsible for ensuring full compliance with all obligations in this Assurance and must ensure that all employees, subcontractors, agents and representatives comply with the terms of the Assurance.

VI. Implementation of Compliance Measures

A. Compliance with Michigan Law

6.1 Five Below shall comply with the SRMA in its pricing practices at Michigan stores.

6.2 Respondent shall implement and maintain policies and protocols intended to ensure ongoing pricing accuracy and compliance with MCL 445.318(1) and MCL 445.317(1), including those set forth in this Section (VI) of this Assurance.

6.3 Respondent will review and improve its internal operations and training materials to establish--and then ensure--ongoing compliance with the SRMA at all Michigan Five Below store locations.

B. Pricing Accuracy

6.4 Respondent shall implement and maintain protocols to ensure that the Display Price of items offered for sale is clearly displayed and accurately reflects the Charged Price. This shall include, but not be limited to:

a. All items bearing an Affixed Price, before being placed in view for customer sale, shall be verified for accuracy by a Price Check and any inaccuracy must be corrected prior to placement on the sales floor.

b. Any discrepancy between a pre-priced/Affixed Price and a Display Price for an item shall be Promptly corrected by an Updated Display Price.

c. Any item that does not have either an Affixed Price or Shelf Price shall be Promptly priced with a Display Price.

d. Daily “recovery,” meaning resetting and reorganization, ensuring that merchandise is clearly and accurately displayed, to include proper placement of misplaced items.

C. Enhanced Hours

6.5 Five Below shall provide all Michigan stores with payroll sufficient to cover at minimum an additional 15 hours per week dedicated to pricing accuracy. This increase shall be measured against the level of payroll funding allocated to each Michigan location as a weekly average during the first quarter of the 2026 calendar year. Five Below shall have discretion regarding how to reallocate this time, so long as decisions are made with the express purpose of maximizing pricing accuracy.

D. Notice of Pricing Error/Discrepancy

6.6 When a consumer makes a Five Below employee aware of a pricing error or discrepancy, the employee shall Promptly inform the store manager and make appropriate price correction consistent with paragraph 6.8, below. The store manager shall then inform the relevant District Manager of the pricing error, for communication and direction to all Michigan stores to Promptly conduct a Price Check for the relevant item and make appropriate correction. Communication may

be made through internal communications processes implemented by Five Below, which may include communication through Five Below's internal messaging system.

6.7 Notice of a price discrepancy by customer overcharge shall be captured at the point of sale by a means to allow for accurate tracking of payments made pursuant to the Scanner Law. The overcharge will also be reported to the store manager who will communicate the violation to the relevant District Manager for communication to other Michigan stores and appropriate Display Price correction, consistent with paragraph 6.6, above.

6.8 Five Below will, within no more than four business hours, review and correct the pricing of the item that is subject of a price discrepancy report.

E. Training

6.9 Beginning no later than 30 days following the Effective Date, Five Below shall implement and maintain new hire training and retraining on no less than an annual basis on the requirements of the SRMA, the requirements of this Assurance, and on pricing accuracy for all stores in Michigan.

6.10 District or Regional Managers shall track and otherwise ensure that the training required under this Section is timely completed.

6.11 Respondent shall obtain written confirmation from each store employee evidencing that they have been trained pursuant to the foregoing and the date thereof.

6.12 Respondent shall maintain records of the name of each employee who has been trained, the date(s) of the training, and the employee confirmation of such training, which shall be retained for at least three years from the date of creation and provided to COD upon request.

F. Pricing Audits

6.13 Audit Record Retention: Five Below shall retain all reports of Pricing Audits and shall produce all such reports to the COD upon request during the period for which the Assurance is in place.

6.14 Any price discrepancies between the Display Price and Charged Price of an item identified in any Pricing Audit conducted by Five Below will be Promptly corrected.

6.15 Weekly Compliance Pricing Checks/Store Level Audits:

a. Beginning no later than 30 days following the Effective Date, Five Below will conduct Weekly Pricing Compliance Checks/Store Level Audits in all stores. Results of Weekly Pricing Compliance Checks shall be reported to the relevant District and Regional Managers on a weekly basis. Any item found to be non-compliant with pricing requirements ("Non-Compliant Item") shall be identified in this weekly report.

b. The Regional Manager shall ensure that any Non-Compliant Item is included in the following four (4) Weekly Pricing Compliance Checks for all Michigan stores.

6.16 Regional Level Audits:

a. Five Below will, at least twice annually, conduct a Pricing Audit of each Michigan store. A Pricing Audit means a price accuracy inspection conducted by either District Managers or members of the Five Below Asset Protection and Store Operations team and designated by Five Below as the audit performed (in part) to fulfill the requirements set forth in this Assurance. Annually, at least one of the Pricing Audits shall be conducted by the Five Below Asset Protection and Store Operations teams.

b. Pricing Audits must be of at least 250 unique items across all store merchandise categories to assess whether the items have a Charged Price that is higher than the item's Display Price.

c. Regional audits will be documented by records identifying for each store:

- (i) The store location and store number
- (ii) The number of items sampled
- (iii) The total number of pricing errors identified
- (iv) For every pricing error found:
 - (a) The name of the item sampled
 - (b) The incorrect price used
 - (c) The correct price
- (v) The failure rate for the Pricing Audit for the best performing store, worst performing store, and the mean pricing failure rate

- (vi) Any stores that are subject to a Pricing Re-Audit as defined below
 - (vii) The actions, if any, taken by Five Below to increase pricing accuracy as a result of the audit.
- d. Regional Audits with a Price Discrepancy Error Rate of more than 2% shall be considered a Failed Audit and be submitted to Respondent's corporate level designee.

6.17 If a Failed Audit occurs:

- a. Five Below shall Promptly submit notice of the Failed Audit to the Regional Manager and relevant District Manager.
- b. Five Below shall, within a period of 60 days, conduct a Pricing Re-Audit of any store in Michigan that fails its Pricing Audit. A "Pricing Re-Audit" means a follow-up audit of a Five Below store that fails a Pricing Audit supervised by the appropriate Regional Manager using the same protocol as the Regional Level Audit (see paragraph 6.16).

6.18 Independent Audits:

- a. Four quarterly audits of 250 items at no more than two (2) Five Below Michigan stores by an independent third party will be conducted beginning in the fourth quarter of 2026 and ending after the third quarter of 2027. The independent auditor shall be selected by COD. The store locations subject to audit and audit protocol will be determined by COD. The cost of the independent auditor will be paid by the Attorney General from the Five Below payment to the Attorney General referenced in paragraph 7.1. COD will provide Five Below at least 48 hours advance

notice of the dates and store locations subject to audit and a copy of the auditor's report after its completion. Five Below shall fully cooperate with the independent auditor to facilitate the audit, including access to Five Below price verification device(s) (handheld scanner) for point-of-sale system access.

b. The independent auditor will prepare a written report for each store audit containing:

- (i) The store location
- (ii) The number of items sampled at each store
- (iii) The total number of pricing errors identified at each store
- (iv) For every pricing error found:
 - (a) The name of the item sampled
 - (b) The incorrect shelf price/affixed price used
 - (c) The correct price
- (v) The aggregate error rate of all stores

6.19 Penalties:

If the aggregate error rate of the stores in the independent audit is above 2%, Five Below shall pay COD an additional \$10,000 for each failed quarterly audit. Respondent shall remit payment of the penalty to COD within thirty (30) days of receipt of a failed quarterly audit report.

G. MDARD Reporting

6.20 Upon receipt of an MDARD Report that indicates noncompliance with the Scanner Law, the relevant District and Regional Managers will be Promptly notified by the relevant store manager.

6.21 MDARD will also provide any report indicating noncompliance to Five Below by emailing Taylor Pack at [REDACTED].

6.22 Respondent's designated corporate management contact shall Promptly communicate the subject pricing to all Michigan stores and direct all stores to perform a Price Check of the reported item(s) and correct any price discrepancies or other identified SRMA violation.

6.23 Any MDARD finding of SRMA noncompliance will be Promptly corrected at the store location while the inspector is in the store.

6.24 Any items identified will be included in the Audits described in Section 6.18 [*supra*]. For the avoidance of doubt, COD is responsible for communicating to the independent auditor that such items shall be included in the Audits.

6.25 Escalated MDARD noncompliance report payments:

a. Same store MDARD noncompliance reports: If any store location receives more than one MDARD noncompliance report, Five Below will pay MDARD:

(i) \$500.00 for a second MDARD SRMA noncompliance report within 30 days,

- (ii) \$1,000.00 for a third and each subsequent MDARD SRMA noncompliance report within 180 days;
- b. Same item MDARD noncompliance report: If any item is the subject of more than one noncompliance report finding across any Michigan store after 30 days from the Effective Date, Five Below shall pay MDARD the following:
- (i) \$250.00 for the second noncompliance report finding;
 - (ii) \$500.00 for the third noncompliance report finding;
 - (iii) \$1,000.00 for the fourth and each subsequent noncompliance report finding.

6.26 MDARD payment invoice pursuant to paragraphs 6.25 will be sent to:

Taylor Pack
Sr Director, Store Process and Systems
Five Below
701 Market Street, Ste. 300
Philadelphia, PA 19106


by first class mail and email.

6.27 Five Below shall remit payment to MDARD within thirty (30) days of the invoice date by check payable to State of Michigan re: Weights and Measures Regulation Fund sent by FedEx/UPS overnight priority mail addressed to:

Michigan Department of Agriculture and Rural Development
940 Venture Lane, Williamston, MI 48895

6.28 Payment(s) to MDARD under paragraphs 6.25 will not preclude any enforcement action that may be brought by the Attorney General for violations of the SRMA for the conduct referenced in the respective noncompliance findings.

VII. Financial Obligations

7.1 Five Below shall pay the sum of \$179,500.00 to the Attorney General. This amount shall be paid within thirty (30) days of the Effective Date. Of this sum, \$50,000.00 shall be remitted to the Michigan Department of Agriculture and Rural Development to defray its costs in assisting in the investigation. A portion of the balance after MDARD remittance will be used to accomplish the Independent Audits provided in paragraph 6.18 including payment of auditor costs and fees; with the remainder distributed to the Attorney General to be used for any lawful purpose.

7.2 Payment shall be made by check payable to the "State of Michigan" sent by FedEx/UPS overnight priority mail addressed to:

Michigan Department of Attorney General
Corporate Oversight Division
Attn. Darrin Fowler, Division Chief
525 West Ottawa St., Fifth Floor
Lansing, MI 48933

VIII. Release

8.1 Upon the Effective Date and payment of the amount required by paragraph 7.1, COD hereby releases and discharges Five Below and any of its affiliates, subsidiaries, predecessors, successors or assigns, and each and all of its past or present officers, directors, associates, shareholders, controlling persons, representatives, employees, attorneys, counselors, advisors, or agents, from any and all civil or administrative claims, demands, rights, actions, causes of action, and liabilities that are based directly or indirectly on the conduct described in the NIA and as alleged in this Assurance that arose prior to the Effective Date. COD agrees

that, except as provided in this Assurance, it shall not proceed with or institute any civil action under the SRMA against Five Below for any conduct or practice prior to the Effective Date to which this Assurance applies, as identified in paragraph 4.1. Nothing herein shall be construed as a waiver or release of claims asserted or that may be asserted by individual consumers, or other state or local governmental agencies.

8.2 Preservation of Law Enforcement Action. Nothing herein precludes the Attorney General from enforcing the provisions of this Assurance, or from pursuing any law enforcement action with respect to the acts or practices of Five Below not covered by this Assurance, or any acts or practices of Five Below conducted after the Effective Date, including those to ensure compliance with the Assurance.

IX. General Provisions

9.1 The terms of this Assurance apply to Respondent's stores in the State of Michigan.

9.2 This Assurance is binding upon, inures to the benefit of, and applies to the Parties and their successors-in-interest. This Assurance does not bind any Division of the Michigan Department of the Attorney General other than COD, or other agencies, boards, commissions or offices of the State of Michigan.

9.3 This Assurance does not create any private right or cause of action to any third party.

9.4 This Assurance does not constitute an approval by the Attorney General of any of Respondent's business practices and Respondent must not make any representation to the contrary.

9.5 Nothing in this Assurance shall be construed as relieving Respondent of its obligations to comply with all state, local, and federal laws, ordinances, regulations or rules, or as granting permission to engage in any acts or practices prohibited by such law, ordinance, regulation or rule.

9.6 If COD determines that Respondent is in material breach of the Assurance, and in COD's reasonable discretion the failure to comply does not threaten the health or safety of the citizens of the State of Michigan and/or does not create an emergency requiring immediate action, COD shall notify the Respondent in writing of the specific breach, and Respondent shall have thirty (30) days to provide a written response.

9.7 No modification of this Assurance is valid unless in writing and signed by all Parties.

9.8 Within seven business days of the Effective Date of this Assurance, COD will file a copy of this Assurance with the Ingham County Circuit Court, as described in MCL 445.906(2).

9.9 Unless otherwise provided herein, for a period of three years from the Effective Date, Respondent agrees, upon request of the COD, to produce any and all records created pursuant to this Assurance within 14 days from the date of request, at Respondent's expense.

9.10 Any failure by COD to exercise any rights under this Assurance shall not be deemed a waiver of any right or any future rights.

X. Termination of Obligations

10.1 Obligations stated in Section VI, with the exception of Paragraphs 6.1, through 6.4 shall terminate three (3) years from the Effective Date.

XI. Signatories, Execution in Counterparts, and Electronic Signatures

11.1 Each undersigned individual represents and warrants that he or she is fully authorized by the Party he or she represents to enter into this Assurance and to legally bind such Party to the terms and conditions of this Assurance.

11.2 This Assurance may be executed in counterparts, each of which is deemed an original hereof, but which together constitute one and the same instrument and agreement, and that facsimile or electronically transmitted signatures may be submitted in connection with this Assurance and are binding on that Party to the same extent as an original signature.

XII. Notice/Delivery of Documents

12.1 Whenever Five Below shall provide notice to the COD under this Assurance, that requirement shall be satisfied by sending notice to:

Corporate Oversight Division
Attn. Darrin Fowler, Division Chief
525 West Ottawa St., 5th Floor
P.O. Box 30736
Lansing, MI 48909
FowlerD1@michigan.gov

12.2 Any notices of other documents sent to Five Below pursuant to this Assurance shall be sent to the following address:

Christos Yatrakis
Chief Legal Officer
Five Below
701 Market Street, Ste. 300
Philadelphia, PA 19106
Christos.yatrakis@fivebelow.com

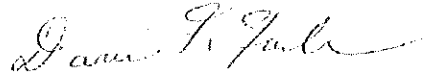
Christopher Carlson
Dascher L. Pasco
Troutman Pepper Locke LLP
1001 Haxall Point, 15th Floor
Richmond, VA 23219
chris.carlson@troutman.com
dascher.pasco@troutman.com

12.3 All notices or other documents to be provided under this Assurance shall be sent by U.S. mail, certified mail return receipt requested, or other nationally recognized courier service that provides tracking services and identification of the person signing for the notice or document, and shall have deemed to be sent upon mailing. Additionally, any notices or documents to be provided under this Assurance shall also be sent by electronic mail to the email address provided for Notice. Any party may update its address by sending written notice to the other party.

XIII. Effective Date

13.1 The Effective Date of this Assurance is the date upon which the COD representative signs this Assurance.

The People of the State of Michigan



Darrin F. Fowler (P53464)
Assistant Attorney General
Michigan Department of Attorney
General Corporate Oversight Division
P.O. Box 30736
Lansing, MI 48909
(517) 335-7632
FowlerD1@michigan.gov

Dated: September 16, 2026



Christopher Carlson
Dascher L. Pasco
Troutman Pepper Locke LLP
1001 Haxall Point, 15th Floor
Richmond, VA 23219
chris.carlson@troutman.com
dascher.pasco@troutman.com

Dated: September 16, 2026