

City of Orlando Police Officers' Pension Fund v. Five Below, Inc.

COURT: United States District Court for the Eastern District of Pennsylvania
CASE NUMBER: 24-cv-4905
CLASS PERIOD: 12/01/2022 - 07/16/2024
CASE LEADERS: Hannah Ross, Avi Josefson, Scott R. Foglietta

On September 16, 2024, Bernstein Litowitz Berger & Grossmann LLP ("BLB&G") filed a class action lawsuit in the U.S. District Court for the Eastern District of Pennsylvania alleging violations of the federal securities laws by Five Below, Inc. ("Five Below" or the "Company") and certain of the Company's current and former executives (collectively, "Defendants"). The action is brought on behalf of all investors who purchased or otherwise acquired Five Below common stock between December 1, 2022, and July 16, 2024, inclusive (the "Class Period"). This case is related to a previously filed securities class action pending against Five Below captioned *Himes v. Five Below, Inc.*, No. 24-cv-3638 (E.D. Pa.), which asserts a shorter class period of March 20, 2024 through July 16, 2024.

BLB&G filed this action on behalf of its client, City of Orlando Police Officers' Pension Fund, and the case is captioned *City of Orlando Police Officers' Pension Fund v. Five Below, Inc.*, No. 24-cv-4905 (E.D. Pa.). The complaint is based on an extensive investigation and a careful evaluation of the merits of this case. To view the complaint, see the **Case Documents** section of this page.

Five Below's Alleged Fraud

Five Below is an "extreme value" retailer offering popular or "trend-right" merchandise targeted at the "tween" and teen demographic, with most of its products priced at or below \$5. The Company's business depends on identifying and sourcing trend-right products at low costs and then quickly selling them to capitalize on existing trends before those trends fade and new trends emerge.

The complaint alleges that, throughout the Class Period, Defendants made numerous materially false and misleading statements and omissions concerning Five Below's ability to identify and capitalize on trending products and the Company's overall growth plan. Specifically, Defendants repeatedly attributed Five Below's disappointing financial results to elevated levels of "shrink"—an increase in inventory that is lost, stolen, or otherwise unaccounted for—and other macroeconomic factors, while assuring investors that the Company's growth and sales remained intact. As a result of these misrepresentations, Five Below common stock traded at artificially inflated prices throughout the Class Period.

In reality, Defendants knew that Five Below was struggling to identify and capitalize on trending products, and that the Company's growth plan was stalling. The truth began to emerge on March 20, 2024, when the Company reported disappointing financial results for the fourth quarter of 2023, which missed analysts' consensus earnings-per-share target of \$3.78 per share by \$0.13 per share, or approximately 3.5%. These disclosures caused the price of Five Below stock to decline by \$32.18 per share, or over 15%. However, Defendants continued to downplay broader problems with the Company's business and blamed the poor results entirely on greater than expected levels of shrink.

The truth was further revealed on June 5, 2024, when Five Below released its first quarter 2024 financial results and disclosed a nearly 15% year-over-year decline in operating income, and made what analysts described as “deep cuts” to its sales guidance for the remainder of the year after first quarter sales “fell short.” As a result of these disclosures, the price of Five Below stock declined by an additional \$14.07 per share, or approximately 11%. Despite these additional disclosures, Defendants continued to assure investors that the Company was executing effectively on its business strategy.

Then, on July 16, 2024, Five Below announced the sudden departure of its Chief Executive Officer, Joel Anderson, and further reduced its net sales and earnings guidance, which had already been severely cut just weeks prior. These disclosures caused the price of Five Below stock to decline by another \$25.57 per share, or 25%.

The filing of this action does not alter the previously established deadline to seek appointment as Lead Plaintiff. Pursuant to the August 1, 2024 notice published in connection with the *Himes* action, under the Private Securities Litigation Reform Act of 1995, investors who purchased or otherwise acquired Five Below securities during the Class Period may, no later than September 30, 2024, seek to be appointed as Lead Plaintiff for the Class. Any member of the proposed Class may seek to serve as Lead Plaintiff through counsel of their choice, or may choose to do nothing and remain a member of the proposed Class.

If you wish to discuss this action or have any questions concerning this notice or your rights or interests, please contact Scott R. Foglietta of BLB&G at 212-554-1903, or via e-mail at scott.foglietta@blbglaw.com.

Case Documents

- January 13, 2025 - Second Amended Class Action Complaint
- September 16, 2024 - Initial Complaint
- September 16, 2024 - PSLRA Notice