Securities Regulation Daily Wrap Up, CORPORATE FINANCE—E.D. Pa.: Shareholders allege Five Below issued misleading statements about trend-right strategy, (Aug. 26, 2025)

Securities Regulation Daily Wrap Up

By Suzanne Cosgrove

The court granted defendant's motion to dismiss the class action in part and denied it in part.

A federal district court partly dismissed a putative class action brought by all shareholders of the retail store chain Five Below who purchased or owned stock in the company between December 1, 2022, and July 16, 2024, against Five Below, Inc. and two of its executives (*In Re Five Below, Inc., Securities Litigation*, No. 2:24-cv-03638-GAM (E.D. Pa. Aug. 25, 2025)).

The plaintiffs contended Five Below issued a series of false or misleading statements during the class period related to its trend-right strategy and execution, inventory loss referred to as "shrink," and Five Below's "triple-double" plan to double earnings and triple the number of stories.

Led by the retirement systems for certain public employees in Arkansas, the plaintiffs stated the truth about the company's financial condition was finally revealed to investors through corrective disclosures that were made in 2024. The value of Five Below stock then fell as a result.

The plaintiffs also asserted that Five Below's stock was kept at an artificially high price during the class period because of Five Below's false and misleading statements, leading to a securities fraud claim under Sections 10(b) and 20(a) of the Securities Exchange Act, 15 U.S.C. § 78j(b) and § 78t(a).

Requirements for a claim. The defendants filed a motion to dismiss the claims. Citing Aetna, Inc. Sec. Litig., 617 F.3d 272, 277 (3d Cir. 2010) the court noted that to establish a claim of securities fraud under Rule 10b-5, plaintiffs must show: (1) a material misrepresentation (or omission); (2) scienter; (3) a connection with the purchase or sale of a security; (4) reliance, often referred to in cases involving public securities markets as 'transaction causation'; (5) economic loss; and (6) 'loss causation,' i.e., a causal connection between the material misrepresentation and the loss.

The defendants argued that the plaintiffs did not meet their burden as to the first, second and sixth elements. The court found the plaintiffs met their burden on some, but not all, of the allegedly false or misleading statements. Accordingly, the court granted defendants' motion to dismiss in part and denied it in part.

Case background. In addition to the company, the action was brought against defendant Joel Anderson, Five Below's president and CEO from 2015 until July 15, 2024, and Kenneth Bull, who served as Five Below's CFO from 2012 until July 2023 and became its COO in March 2023. Throughout the class period, Bull spoke regularly at quarterly earnings calls and certified SEC filings.

Addressing the plaintiffs' key allegations, which included failings with its trend-right strategy, the court found products, such as fidget spinners and Squishmallows, contributed to its significant growth as a company prior to the class period. But while trending items were still being identified and marketed during the class period, their execution was deteriorating, the plaintiffs claimed.

Beyond puffery. The court concurred. "Though many of the 'trend-right' statements appear at first glance to be

© 2026 CCH Incorporated and its affiliates and licensors.
All rights reserved.

classic examples of puffery, Defendants, through their own representations to investors, made Five Below's ability to identify and execute on its trend-right strategy material," the court stated.

The case is No. 2:24-cv-03638-GAM.

Judge: McHugh, G.

Attorneys: David M. Klauder (Bielli & Klauder) for David Felton and Tyler Himes. Jay A. Dubow (Troutman Pepper Locke) for Five Below, Inc., Joel Anderson and Kenneth Bull.

Companies: Five Below, Inc.

MainStory: TopStory CorporateGovernance DirectorsOfficers FormsFilings FraudManipulation GCNNews PublicCompanyReportingDisclosure ShareholderActivismNews PennsylvaniaNews

https://prod.resource.cch.com/resource/scion/document/default/sld0155662f8a6fc74236b275e76ab410ed81?cfu=Legal&cpid=WKUS-Legal-Cheetah&uAppCtx=cheetah

© 2026 CCH Incorporated and its affiliates and licensors. All rights reserved.