

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

If Five Guys Enterprises, LLC (“Five Guys”) sent you a Notice of Security Incident that it announced on or around December 29, 2022, you may be eligible for a cash payment in a class action settlement.

A court authorized this notice. This is not a solicitation from a lawyer.

- A settlement has been reached in a class action lawsuit about a security incident that occurred in or around September 2022, which potentially exposed personally identifiable information (“PII”) of current and former employees of Five Guys and likely a small number of dependents or beneficiaries and independent contractors (the “Security Incident”). A lawsuit was filed against Five Guys, alleging that it did not take appropriate care to protect these individuals from the Security Incident. Five Guys denies all of the Plaintiffs’ claims in the lawsuit and maintains it did not do anything wrong but has agreed to settle the case to avoid the expense and burdens of litigation.
- The settlement includes all Persons to whom Five Guys sent notice of the Security Incident that it announced on or around December 29, 2022 (“Settlement Class Members”).
- The settlement allows individuals to whom Five Guys sent notice of the Security Incident to request a **\$150** cash payment **or** reimbursement of out-of-pocket expenses fairly traceable to the Security Incident and compensation for time spent remedying issues related to the Security Incident (up to **\$400** for ordinary expenses and up to **\$6,500** for extraordinary losses such as fraud or identity theft). California residents to whom Five Guys sent notice of the Security Incident are allowed to request an additional cash payment of **\$100**. The total settlement fund for this matter is in the amount of \$700,000. The Settlement Fund will be used to pay for: (1) reimbursement for Ordinary and/or Extraordinary Out-of-Pocket Losses and Attested Time; (2) Alternative Cash Payments; (3) California Statutory Payments; (4) Credit Monitoring Services; (5) notice and administration costs; (6) service award payments approved by the Court; and (7) attorneys’ fees and expenses awarded by the Court. The cash benefit payments are subject to pro rata (proportional) adjustment, depending upon the number of valid claims filed.
- You must use the Notice ID and Confirmation Code received with your postcard or email notification to verify your identity as a Settlement Class Member. If for some reason you did not receive this information, but believe you are a Settlement Class Member, please call 1-833-657-4055 to verify your identity and receive further information on how to file a claim.
- The settlement also provides Settlement Class Members with two years of identity theft protection and credit monitoring services. You must file a claim to receive this benefit.

Your legal rights are affected even if you do nothing. Read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
Submit a Claim	The only way to get identity theft protection and credit monitoring services and/or a cash payment. You must submit a claim by May 6, 2024 .
Ask to be Excluded	Get no payment or identity theft protection and credit monitoring services. The only option that allows you to sue Five Guys over the claims resolved by this settlement. You must exclude yourself by May 6, 2024 .

Object	Write to the Court about what you do not like about the settlement. You must object by May 6, 2024 .
Do Nothing	Get no payment or identity theft protection and credit monitoring services. Give up rights.

- These rights and options – **and the deadlines to exercise them** – are explained in this notice.
- The Court in charge of this case still has to decide whether to grant final approval of the settlement. Payments will only be made after the Court grants final approval of the settlement and after any appeals are resolved.

Questions? Call 833-657-4055 or visit www.fgdatasettlement.com

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BASIC INFORMATION

1. Why was this Notice issued?

The Court authorized this notice because you have a right to know about the proposed settlement in this class action lawsuit and about all of your options before the Court decides whether to give “final approval” to the settlement. This notice explains the legal rights and options that you may exercise before the Court decides whether to approve the settlement.

This matter involves a lawsuit styled *Brittany May, et al. v. Five Guys Enterprises, LLC*, in the United States District Court for the Eastern District of Virginia, Case No. 1:23-cv-00029. The persons who sued are called the Plaintiffs. Five Guys is called the Defendant.

2. What is this lawsuit about?

The lawsuit claims that Five Guys (“Defendant”) was responsible for the Security Incident and asserts claims for negligence, breach of implied contract, violation of the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), declaratory judgment, negligence *per se*, violation of the Virginia data breach notification law, unjust enrichment, and violation of the California Consumer Privacy Act. The lawsuit seeks compensation for people to whom Five Guys sent notice of the Security Incident.

Five Guys denies all of the Plaintiffs’ claims and maintains it did not do anything wrong.

3. Why is this lawsuit a class action?

In a class action, one person called the “Representative Plaintiff” sues on behalf of all people who have similar claims. All of these people together are the “Class” or “Class Members.” In this case, the Representative Plaintiffs are Brittany May, Erika Ranck, Lauren Turner, and Stephen Thomas. One Court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

4. Why is there a settlement?

By agreeing to settle, both sides avoid the cost and risk of a trial, and people who submit valid timely claims will get compensation. The Representative Plaintiffs and their attorneys believe the settlement is fair, reasonable, and adequate and, thus, best for the Settlement Class and its members. The settlement does NOT mean that Five Guys did anything wrong.

WHO IS IN THE SETTLEMENT?

5. How do I know if I am included in the settlement?

You are included in the Settlement Class if Five Guys sent you notice of the Security Incident that it announced on or around December 29, 2022.

Excluded from the Settlement Class are: (1) the Judge and Magistrate Judge presiding over the Lawsuits, any members of the Judges’ respective staffs, and immediate members of the Judges’

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respective families; (2) officers, directors, members and shareholders of Defendant; (3) persons who timely and validly request exclusion from and/or opt-out of the Settlement Class and their successors and assigns; and (4) any person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity or occurrence of the Security Incident or who pleads nolo contendere to any such charge.

6. What if I am not sure whether I am included in the settlement?

If you are not sure whether you are included in the settlement, you may call 1-833-657-4055 with questions or visit www.fgdatasettlement.com. You may also write with questions to Five Guys Claims Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103. Please do not contact the Court with questions.

THE SETTLEMENT BENEFITS

7. What does the settlement provide?

The settlement will provide identity theft protection and credit monitoring services to all Settlement Class Members who choose to enroll by submitting a valid and timely claim for such services. The settlement will also provide cash payments to people who submit valid and timely claims.

There are four types of general payments that are available to Class Members:

- (1) A cash payment of approximately \$150, subject to a *pro rata* (proportional) adjustment depending upon the number of valid claims filed (Question 10);
- (2) An additional cash payment of approximately \$100 for California residents, subject to a *pro rata* (proportional) adjustment depending upon the number of valid claims filed (Question 11);
- (3) Reimbursement of up to \$400.00 for “ordinary” out-of-pocket losses fairly traceable to the Security Incident and/or spent time remedying issues related to the Security Incident (instead of the approximately \$150 cash payment) subject to a *pro rata* (proportional) adjustment depending upon the number of valid claims filed (Question 8);
- (4) Reimbursement of up to \$6,500.00 for “extraordinary” out-of-pocket losses fairly traceable to the Security Incident and/or spent time remedying issues related to the Security Incident (instead of the approximately \$150 cash payment) subject to a *pro rata* (proportional) adjustment depending upon the number of valid claims filed (Question 9);

You must provide proof of your Settlement Class membership when filing a claim by providing the unique Notice ID and Confirmation Code on the notice you received by postcard or e-mail. If for some reason you did not receive this information, but believe you are a Settlement Class Member, please call 1-833-657-4055 to verify your identity and receive further information on how to file a claim.

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If you provide a bill or payment card statement as part of required proof for any part of your claim, you may redact unrelated transactions and all but the last four digits of any account number. In order to claim each type of payment, you must provide related documentation with the Claim Form, and the expense for which you are submitting a claim form cannot have been reimbursed through any other source.

The settlement also includes identity theft protection and credit monitoring services for a period of 2 years from the effective date of the settlement.

Finally, as part of the settlement, Five Guys has agreed, for a period of 3 years, to pay for, implement and continue specified business practices related to information and network security. More details are provided in the Settlement Agreement, which is available at www.fgdatasettlement.com.

8. What payments are available for individuals who incurred “ordinary” out-of-pocket losses fairly traceable to the Security Incident and/or spent time remedying issues related to the Security Incident?

Settlement Class Members who incurred “ordinary” out-of-pocket losses fairly traceable to the Security Incident and/or spent time remedying issues related to the Security Incident may make a claim for up to \$400.00 per Settlement Class Member.

“Ordinary” out-of-pocket losses are unreimbursed costs or expenditures incurred by a Settlement Class Member that were incurred after September 17, 2022, as result of the Security Incident, and may include, without limitation, the following:

- costs incurred on or after September 17, 2022, associated with accessing or freezing/unfreezing credit reports with any credit reporting agency;
- miscellaneous expenses incurred related to any Out-of- Pocket Loss such as notary, fax, postage, copying, mileage, bank, and long-distance telephone charges;
- unpaid time off work to address issues fairly traceable to the Security Incident at the actual hourly rate of that Settlement Class Member; and
- credit monitoring or other mitigative costs that were incurred on or after September 17, 2022.

Class members with Ordinary Out-of-Pocket Losses may also submit a claim for up to 4 hours of time spent remedying issues related to the Security Incident at a rate of \$25 per hour by providing an attestation and a brief description of (1) the actions taken in response to the Security Incident and (2) the time associated with each action. Cash payments are subject to a *pro rata* (proportional) adjustment depending upon the number of valid claims filed.

9. What payments are available for individuals who incurred “extraordinary” out-of-pocket losses fairly traceable to the Security Incident and/or spent time remedying issues related to the Security Incident?

Class Members who incurred “extraordinary” out-of-pocket losses fairly traceable to the Security Incident and/or spent time remedying issues related to the Security Incident may make a claim for up to \$6,500.00 per Class Member.

“Extraordinary Out-of-Pocket Losses” are unreimbursed losses, costs or expenditures incurred by a Settlement Class Member that are fairly traceable to the Security Incident and are losses that are

not already covered by one or more of the normal reimbursement categories. Extraordinary Out-of-Pocket Losses may include, without limitation, the unreimbursed costs, expenses, losses or charges incurred a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of the Settlement Class Member's personal information.

Class Members with Extraordinary Out-of-Pocket Losses may also submit a claim for up to 3 additional hours of time spent remediating issues related to the Security Incident at a rate of \$25 per hour by providing an attestation and a brief description of (1) the actions taken in response to the Security Incident and (2) the time associated with each action. Cash payments are subject to a *pro rata* (proportional) adjustment depending upon the number of valid claims filed.

10. What payments are available for individuals who would prefer a cash payment in lieu of making a claim for reimbursement of "ordinary" and/or "extraordinary" out-of-pocket losses?

Class Members may elect to receive a cash payment of approximately \$150 in lieu of making a claim for reimbursement of "ordinary" and/or "extraordinary" out-of-pocket losses fairly traceable to the Security Incident and/or spent time remediating issues related to the Security Incident. This cash payment is subject to *pro rata* increase or decrease, depending upon the number of valid claims submitted.

11. What additional payments are available for residents of California?

Class Members who reside in California may also make a claim for an additional cash payment of approximately \$100, subject to *pro rata* increase or decrease, depending upon the number of valid claims submitted.

HOW TO GET BENEFITS

12. How do I get benefits?

To ask for a payment and request identity theft protection and credit monitoring services you must complete and submit a Claim Form. Claim Forms are available at www.fgdatasettlement.com or you may request one be sent to you by mail by calling 1-833-657-4055. Read the instructions carefully, fill out the Claim Form, and submit it online at www.fgdatasettlement.com or mail it postmarked no later than **May 6, 2024**, to:

Five Guys Claims Administrator
1650 Arch Street, Suite 2210
Philadelphia, PA 19103

13. How will claims be decided?

The Claims Administrator will decide in their professional judgment whether the information provided on a Claim Form is complete, timely and valid. The Claims Administrator may require additional information from any claimant. If the required information is not timely provided, the claim will be considered invalid and will not be paid.

REMAINING IN THE SETTLEMENT

14. Do I need to do anything to remain in the settlement?

Questions? Call 833-657-4055 or visit www.fgdatasettlement.com

You do not have to do anything to remain in the settlement, but if you want a payment and to request identity theft protection and credit monitoring services you must submit a Claim Form postmarked by **May 6, 2024**.

15. What am I giving up as part of the settlement?

If the settlement becomes final, you will give up your right to sue for the claims being resolved by this settlement. The specific claims you are giving up are described in Section 1.25 of the Settlement Agreement. You will be “releasing” Five Guys and all related people or entities as described in Sections 1.24 and 1.26 of the Settlement Agreement. The Settlement Agreement is available at www.fgdatasettlement.com.

The Settlement Agreement describes the released claims with specific descriptions, so read it carefully. If you have any questions you can talk to one of the attorneys listed in Question 19 for free or, you can, of course, talk to your own lawyer at your own expense if you have questions about what this means.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment and the benefits from this settlement, but you want to keep the right to sue Five Guys about issues in this case, then you must take steps to get out of the Settlement Class. This is called excluding yourself from – or is sometimes referred to as “opting out” of – the Settlement Class.

16. If I exclude myself, can I get a payment from this settlement?

No. If you exclude yourself, you will not be entitled to any benefits of the settlement, but you will not be bound by any judgment in this case.

17. If I do not exclude myself, can I sue Five Guys for the same thing later?

No. Unless you exclude yourself, you give up any right to sue for the claims that this settlement resolves. You must exclude yourself from the Settlement Class to start your own lawsuit or to be part of any different lawsuit relating to the claims in this case. If you exclude yourself, do not submit a Claim Form to ask for a payment or to request identity theft protection and credit monitoring services.

18. How do I exclude myself from the settlement?

To exclude yourself, send a letter that says you want to be excluded from the settlement in the lawsuit styled, *Brittany May, et al. v. Five Guys Enterprises, LLC*, in the United States District Court for the Eastern District of Virginia, Case No. 1:23-cv-00029. Include your name, address, and signature. You must mail your Exclusion Request postmarked by **May 6, 2024**, to:

Five Guys Settlement Administrator
Attn: Exclusions
P.O. Box 58220, Philadelphia, PA 19102

Questions? Call 833-657-4055 or visit www.fgdatasettlement.com

THE LAWYERS REPRESENTING YOU

19. Do I have a lawyer in this case?

Yes. The Court appointed the following lawyers as “Class Counsel”: Ryan D. Maxey of Maxey Law Firm, P.A., 107 N. 11th St. #402, Tampa, Florida 33602, (813) 448-1125; David K. Lietz of Milberg Coleman Bryson Phillips Grossman, PLLC, 5335 Wisconsin Ave., NW, Suite 440, Washington, D.C., 20015, (866) 252-0878; and M. Anderson Berry of Clayco C. Arnold, A Professional Corporation, 865 Howe Ave., Sacramento, CA 95825, (916) 239-4778.

You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

20. How will the lawyers be paid?

Class Counsel will request the Court’s approval of an award for attorneys’ fees of up to \$231,000.00 and reasonable costs and expenses of up to \$20,000. Class Counsel will also request approval of service awards of \$2,500 for each of the four Representative Plaintiffs.

OBJECTING TO THE SETTLEMENT

21. How do I tell the Court that I do not like the settlement?

You can object to the settlement if you do not like it or some part of it. The Court will consider your views. To do so, you must **file** a written objection in this case, *Brittany May v. Five Guys Enterprises, LLC*, in the United States District Court for the Eastern District of Virginia, Case No. 1:23-cv-00029, with the Clerk of the Court at the address below.

Your objection must include all of the following:

- the name and case number of this Litigation;
- your full name, address, telephone number, and e-mail address (if any);
- information identifying you as a Settlement Class Member, including proof that you are a member of the Settlement Class, which is described in response to Question 5 (examples include the notice of this settlement you received by mail or by email or notice of the Security incident you received from Five Guys);
- a written statement of all grounds for the objection, accompanied by any legal support for the objection that you believe is applicable;
- the identity of all counsel representing you, if any, in connection with your objection;
- a statement confirming whether you intend to personally appear and/or testify at the Final Fairness Hearing;
- a statement identifying all class action settlements you objected to in the previous 5 years; and

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- your signature or the signature of your duly authorized attorney or other duly authorized representative, if any.

To be timely, your objection must be electronically **filed** with the Clerk of the Court no later than **May 6, 2024**, or mailed first-class postage prepaid to the Clerk of the Court for the United States District Court for the Eastern District of Virginia postmarked no later than **May 6, 2024**.

In addition, you must serve Class Counsel and Defense Counsel through the Court’s electronic filing system (if filed electronically) or via U.S. Mail (if mailed to the Clerk of Court), postmarked no later than **May 6, 2024**:

Court	Class Counsel	Five Guys’ Counsel
Clerk of the Court Albert V. Bryan U.S. Courthouse 401 Courthouse Square Alexandria, VA 22314	Ryan D. Maxey MAXEY LAW FIRM, P.A. 107 N. 11 TH ST. #402 Tampa, Florida 33602 David K. Lietz MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC 5335 Wisconsin Ave., NW, Suite 440 Washington, D.C. 20015 M. Anderson Berry CLAYEO C. ARNOLD, A PROFESSIONAL CORP. 865 Howe Avenue Sacramento, CA 95825	Elizabeth Scully BAKER HOSTETLER 1050 Connecticut Avenue, N.W., Suite 1100 Washington, DC 20036-5403

22. What is the difference between objecting and asking to be excluded?

Objecting is telling the Court that you do not like the settlement and why you do not think it should be approved. You can object only if you do not exclude yourself from the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT’S FAIRNESS HEARING

23. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing at 10:00 a.m. **Friday, July 12, 2024**, at the United States District Court for the Eastern District of Virginia, Albert V. Bryan U.S. Courthouse, 401 Courthouse Square, Alexandria, VA 22314, Courtroom 800 (or by Zoom if the Court so orders) to consider whether the settlement is fair, reasonable, and adequate. If there are timely objections,

the Court will consider them and will listen to people who have asked to speak at the hearing if such a request has been properly made. The Court will also rule on the request for an award of attorneys' fees and reasonable costs and expenses, as well as the request for service awards for the Representative Plaintiffs. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check www.fgdatasettlement.com or call 1-833-657-4055.

22. Do I have to attend the hearing?

No. Class Counsel will present the Settlement Agreement to the Court. You or your own lawyer are welcome to attend at your expense, but you are not required to do so. If you send an objection, you do not have to come to the Court to talk about it. As long as you filed your written objection on time with the Court and served it according to the instructions provided in Question 21, the Court will consider it.

24. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must file an objection according to the instructions in Question 21, including all the information required therein. Your Objection must be **filed** with the Clerk of Court for the United States District Court for the Eastern District of Virginia by e-filing it or mailing it on or postmarked no later than **May 6, 2024**. In addition, you must serve a copy of your objection on both Class Counsel and Defense Counsel listed in Question 21, either through the Court's ECF filing and notification system or by mail, postmarked no later than **May 6, 2024**.

IF YOU DO NOTHING

25. What happens if I do nothing?

If you do nothing, you will get no benefits from this settlement. Unless you exclude yourself, after the settlement is granted final approval and the judgment becomes final, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit about the legal issues in this case ever again against Five Guys or any related people or entities as described in Sections 1.24 and 1.26 of the Settlement Agreement. The Settlement Agreement is available at www.fgdatasettlement.com.

GETTING MORE INFORMATION

26. How do I get more information?

This Notice summarizes the proposed settlement. More details are in a Settlement Agreement. You can get a copy of the Settlement Agreement at www.fgdatasettlement.com. You may also write with questions to the Claims Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103. You can also get a Claim Form at the website, or by calling the toll-free number, 1-833-657-4055.

Questions? Call 833-657-4055 or visit www.fgdatasettlement.com