

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

BRITTANY MAY, ERIKA RANCK,
LAUREN TURNER, and STEPHEN
THOMAS, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

FIVE GUYS ENTERPRISES, LLC,

Defendant.

Case No.: 1:23-cv-00029

**PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT
AND CERTIFICATION OF SETTLEMENT CLASS**

Plaintiffs move for entry of an order granting final approval of this proposed class action settlement and certifying the settlement class. For the reasons set forth below, Plaintiffs respectfully request that the Court, after the final approval hearing scheduled for July 12, 2024, grant this motion, grant Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Service Award to Plaintiffs, and enter a final judgment dismissing this case. This Motion is supported by the Memorandum in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Certification of Settlement Class; Declaration of Sara Rugg of Angeion Group Regarding Settlement Administration (Exhibit 1 to the Memorandum); the Declaration of Co-Class Counsel Ryan D. Maxey in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement

and Certification of Settlement Class (Exhibit 2 to the Memorandum), and all files, records, and proceedings in this matter.

Date: June 22, 2024

Respectfully submitted,

/s/ Steven T. Webster

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CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2024, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notice of electronic filing to all counsel of record.

/s/ Steven T. Webster

Steven T. Webster (VSB No. 31975)
Webster Book LLP

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LAUREN TURNER, and STEPHEN
THOMAS, on behalf of themselves and all
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FIVE GUYS ENTERPRISES, LLC,

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**PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT
AND CERTIFICATION OF SETTLEMENT CLASS**

Plaintiffs move for entry of an order granting final approval of this proposed class action settlement and certifying the settlement class. For the reasons set forth below, Plaintiffs respectfully request that the Court, after the final approval hearing scheduled for July 12, 2024, grant this motion, grant Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Service Award to Plaintiffs, and enter a final judgment dismissing this case.

I. Introduction

Plaintiffs, by and through the undersigned Settlement Class Counsel,¹ on behalf of themselves and the Settlement Class, respectfully submit this Memorandum of Law in support of their motion pursuant to Federal Rule of Civil Procedure ("Rule") 23(e) requesting final approval of this proposed class action settlement ("Settlement") on the terms set forth in the Settlement

¹ The Court appointed (1) Ryan D. Maxey of Maxey Law Firm; (2) David K. Lietz of Milberg Coleman Bryson Phillips Grossman, PLLC; and (3) M. Anderson Berry of Clayco C. Arnold, A Professional Corp., as Class Counsel. (ECF No. 23 ¶ 2).

Agreement (“S.A.”) (ECF No. 21-1) and for certification of the Settlement Class.²

If approved, the Settlement will successfully resolve the claims of 37,862 individuals nationwide who were notified of a security incident that Five Guys announced on or around December 29, 2022 (the “Security Incident”). The Settlement brings meaningful resolution and significant benefits to the Settlement Class without requiring further delay, risk, and expense. As discussed below, the Settlement calls for Defendant to establish a non-reversionary Qualified Settlement Fund of \$700,000 (“Settlement Fund”) for the benefit of eligible Class Members. Defendant also has committed to maintain substantial business practice changes in relation to its network and data security. Further, Defendant, through the Settlement Fund, will pay all costs of notice and administration (\$92,703.13 incurred to date). **Exhibit 1**, Declaration of Sara Rugg of Angeion Group Regarding Settlement Administration (“Rugg Decl.”) ¶ 19.

On January 4, 2024, the Court preliminarily approved the Settlement, finding that the Court “will likely be able to approve the proposed Settlement as fair, reasonable, and adequate.” (ECF No. 23) (“Preliminary Approval Order”) ¶ 1. The Court-ordered Notice Plan has since been executed; nothing has changed to alter the Court’s initial assessment that the Settlement is fair, reasonable, and adequate. The Settlement Class’s reaction to the Settlement has been overwhelmingly positive. Of the 37,862 individual potential Class Members who were sent Notice,

² Unless otherwise defined, all capitalized terms have the meanings set forth in the Settlement Agreement or in the Declaration of David K. Lietz in Support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement (“Lietz Decl.”) (ECF No. 21-3) and the Declaration of Ryan D. Maxey in Support of Plaintiffs’ Motion for an Award of Attorneys’ Fees, Reimbursement of Expenses, and Service Award to Plaintiffs (“Decl. in Support of Fees, Expenses, and Service Awards”) (ECF No. 25-1). Both Declarations are an integral part of this submission and, for the sake of brevity herein, Plaintiffs respectfully refer the Court to the Declarations for a detailed description of, inter alia: the procedural history of the Action and the claims asserted, the negotiations resulting in the Settlement and the risks of continued litigation.

only two (2) have timely requested exclusion and none have submitted timely objections. This response weighs in favor of final approval.

For the reasons detailed below, Plaintiffs and Class Counsel respectfully submit that the Settlement meets the standards for final approval under Rule 23, and is a fair, reasonable, and adequate result for the Settlement Class. Plaintiffs request that the Court finally approve the Settlement, certify the settlement class, grant Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Service Award to Plaintiffs, and enter a final judgment dismissing this case.

II. Summary of the Action and Settlement

Plaintiffs respectfully refer the Court to their Memorandum of Law in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement (ECF No. 21) and their Memorandum of Law in Support of Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Service Award to Plaintiffs (ECF No. 25) for a thorough recitation of the substantive and procedural background of this litigation. For the purposes of final approval, Plaintiffs highlight the following:

A. Background

Plaintiffs allege that on or about December 29, 2022, Defendant announced the Security Incident, during which the personally identifiable information ("PII") of 37,862 individuals was potentially compromised. Soon after Plaintiffs filed their Consolidated Class Action Complaint, the Parties, by and through their respective counsel, began discussing the possibility for early resolution. The Parties agreed that an early resolution was warranted. Over the next few months, the Parties engaged in extensive arm's length settlement negotiations. Negotiations included a significant exchange of information, allowing both Parties to evaluate the strengths and

weaknesses of Plaintiffs' claims and Defendant's defenses. Class Counsel were in a well-informed position to mediate before Judge John W. Thornton (Ret.) and reach the very favorable Settlement before the Court.

B. Terms of the Settlement

If the Settlement receives final approval, the \$700,000 non-reversionary Qualified Settlement Fund established by Defendant will be used to:

1) provide up to \$400.00 per person reimbursement of unreimbursed costs or expenditures incurred by a Class member in responding to notice of the Security Incident that were incurred between September 17, 2022 and the Claims Deadline, as a result of the Security Incident ("Ordinary Losses"), including, but not limited to, costs associated with accessing or freezing/unfreezing credit reports with any credit reporting agency and other miscellaneous expenses incurred related to any Ordinary Out-of-Pocket Loss such as notary, fax, postage, copying, mileage, and long-distance telephone charges; and credit monitoring or other mitigative costs;

2) for Settlement Class Members with Ordinary Out-of-Pocket Losses, provide payment for up to four (4) hours of lost time spent remedying issues related to the Security Incident, calculated at the rate of Twenty-Five Dollars and Zero Cents (\$25.00) per hour;

3) provide reimbursement of up to \$6,500 per person for unreimbursed 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");

4) for Settlement Class Members with Extraordinary Out-of-Pocket Losses, provide payment for up to three (3) additional hours of time spent remedying issues related to the Security

Incident, calculated at the rate of Twenty-Five Dollars and Zero Cents (\$25.00) per hour;

5) in lieu of submitting claims for reimbursement of Ordinary or Extraordinary Out-of-Pocket Losses and/or lost time, provide an Alternative Cash Payment of \$150, subject to a *pro rata* increase or reduction based on the number of valid claims submitted; and

6) for Settlement Class Members who reside in California, an additional cash payment of \$100 in recognition of their statutory rights, subject to upward or downward proration.

In addition to the cash payments offered, each Settlement Class Member is eligible to enroll in a total of two (2) years of identity theft protection and credit monitoring services, the cost of which will be paid for out of the Settlement Fund.

In addition to the monetary relief and credit monitoring services provided, Defendant has committed, for a period of three (3) years following the execution of the S.A., to pay for, implement, and continue business practices related to network and data security.

Based upon their extensive experience in complex litigation and data privacy, Class Counsel believe that the \$700,000 Settlement Fund will be ample to pay the claims of Settlement Class Members. However, if there are insufficient monies to pay all claims, claims for out-of-pocket losses and lost time will be reduced on a *pro rata* basis. If monies remain in the Settlement Fund after the payment of all claims, attorneys' fees, costs, expenses, and service awards to the Class Representatives, the remaining funds will be used to increase the alternative cash payments *pro rata* until all monies are consumed. No monies will revert to Defendant.

In all, the total settlement value is greater than the \$700,000 that Defendant is paying to create the Qualified Settlement Fund and for costs of notice and claims administration.

III. Preliminary Approval and Notice

On December 21, 2023, Plaintiffs moved the Court to grant preliminary approval of the

Settlement, approve the proposed Notice Plan, direct notice be given to the Settlement Class, and Schedule a Final Approval Hearing. (ECF No. 20). On January 4, 2024, the Court granted Plaintiffs' motion. (ECF No. 23). Pursuant to the Preliminary Approval Order, the Settlement Administrator implemented the Notice Plan, disseminating notices to 37,862 potential members of the Settlement Class via U.S. mail. *See* Rugg Decl. ¶¶ 5-9. Notice was also provided via an internet website. *Id.* ¶¶ 11-12.

Notice instructed Class Members of their legal rights and options in this Settlement, including: the option to submit a Claim Form to receive monetary payment for losses suffered; the option to ask to be excluded from the Settlement and retain the right to bring an individual action against Defendant; the option to object to the Settlement; the option to attend the Final Approval Hearing; and the option to do nothing and not receive a monetary payment from the Settlement. (ECF No. 21-1 at 50-65). The deadline for Class Members to exclude themselves or object to the proposed Settlement passed on May 6, 2024, (ECF No. 23 at 10), and only two (2) exclusion requests and no objections have been received to date. Rugg Decl. ¶¶ 17-18. The claim deadline was May 6, 2024, and approximately 2,425 claims have been received to date. *Id.* ¶ 15.

IV. The Settlement Merits Final Approval by the Court

A. The Notice to Settlement Class Members was Sufficient.

“[T]he adequacy of the notice [of a class action settlement] has both a constitutional and a procedural component.” *McAdams v. Robinson*, 26 F.4th 149, 157 (4th Cir. 2022). “To bind an absent class member, notice to the class must provide ‘minimal procedural due process protection.’” *Id.* (quoting *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985)). “‘The [absent class member] must receive notice plus an opportunity to be heard and participate in the litigation.’” *Id.* (quoting *Phillips Petroleum Co.*, 472 U.S. at 812). “That notice must be ‘reasonably

calculated, under all the circumstances, to apprise [absent class members] of the pendency of the action and afford them an opportunity to present their objections.” *Id.* (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)).

“On the procedural front, Federal Rule of Civil Procedure 23(e) governs notice to absent class members.” *Id.* “It requires ‘direct notice in a reasonable manner to all class members who would be bound by the proposal.’” *Id.* (quoting Fed. R. Civ. P. 23(e)(1)(B)). “But it doesn’t specify what the notice must say.” *Id.* “Rather, the notice need only ‘fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings.’” *Id.* (quoting *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 114 (2d Cir. 2005)). “Put another way, ‘Rule 23(e) requires notice that describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.’” *Id.* (quoting *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 946 (9th Cir. 2015)).

Here, the notice “provided Class Members with, among other things, details regarding the nature of this lawsuit, the terms of the Settlement Agreement, the release of all claims under both state law and federal law, information regarding objecting to the proposed settlement, and the fairness hearing.” *Boger v. Citrix Sys., Inc.*, No. 19-CV-01234-LKG, 2023 WL 3763974 (D. Md. June 1, 2023) (approving notice); *see generally* (ECF No. 21-1 at 50-65).

The notice was issued in the manner outlined in the Preliminary Approval Order. *See* Rugg Decl. ¶¶ 7-8. On February 05, 2024, Angeion caused the Postcard Notice to be mailed via USPS first class mail, postage prepaid to the 37,862 Class Members. *Id.* ¶ 7. As of June 13, 2024, the USPS had returned 717 of the initial Notices with a forwarding address; Angeion updated the Class List for these records and re-mailed Notice to these 717 records. *Id.* ¶ 8. As of June 13, 2024, a

total of 8,938 Notices mailed had been returned by the USPS as undeliverable without a forwarding address; Angeion conducted address verification searches (“skip traces”) in an attempt to locate updated addresses; of the records subjected to a skip trace, a new address was located for 6,123 of them; Angeion updated the Class Member database and re-mailed Notices to the 6,123 Class Members located via this process; of the re-mailed Notices, none had been returned by the USPS a second time. *Id.* ¶ 9.

On March 20, 2024, Angeion caused a Reminder Postcard notice to be mailed via USPS first class mail, postage prepaid to the 35,012 Class Members whose initial notice was not returned as undeliverable and no updated address was found. *Id.* ¶ 10.

On January 10, 2024, Angeion established the following website dedicated to this Settlement: www.fgdatasettlement.com (“Settlement Website”). *Id.* ¶ 11. The Settlement Website contains downloadable versions of the Claim Form, Long-Form Notice, Settlement Agreement, and Order Granting Plaintiffs’ Unopposed Motion for Preliminary Approval. *Id.* The Settlement Website also has a “Frequently Asked Questions” page which provides Class Members with answers to common inquiries about the Settlement, and a “Contact Us” page which provides Class Members with the mailing address, phone number and email address to contact the Settlement Administrator. *Id.*

On February 5, 2024, Angeion also established a toll-free hotline dedicated to this Settlement to further apprise Class Members of their rights and options in the Settlement: 1-833-657-4055. *Id.* ¶ 13. The toll-free hotline utilizes an interactive voice response (“IVR”) system to provide Class Members with responses to frequently asked questions and provide essential information regarding the Settlement. *Id.* Class Members may also leave a message for the Settlement Administrator, provide updated information, or ask additional questions and Angeion

will call them back. This hotline is accessible 24 hours a day, 7 days a week. *Id.*

These facts confirm that notice was distributed in a reasonable manner to all class members who would be bound by the settlement and satisfied the Constitution’s Due Process requirements. *See, e.g., Boger*, 2023 WL 3763974, at *12 (approving notice where “the Settlement Administrator sent Notice via the United States Postal Service to 526,544 Class Members for which mailing address data was available” and “administered a settlement website and a toll-free number, through which the Class Members could obtain additional information about the Settlement”); *Feinberg v. T. Rowe Price Grp., Inc.*, 610 F. Supp. 3d 758, 766 (D. Md. 2022) (approving notice where it “was either mailed or emailed to each class member, and the administrator also set up a dedicated website and toll-free number for class members to access or call.”).

B. The Settlement Meets the Standards for Final Approval Under Rule 23(e)

“Per Federal Rule of Civil Procedure 23(e), a class action may only be settled with the court’s approval.” *Galloway v. Williams*, No. 3:19-CV-470, 2020 WL 7482191, at *4 (E.D. Va. Dec. 18, 2020) (Payne, J.) (citing Fed. R. Civ. P. 23(e)). “If the settlement proposal would bind all class members, a court may only approve the settlement proposal after it holds a hearing and subsequently finds that the settlement proposal is fair, reasonable, and adequate.” *Id.* (citing Fed. R. Civ. P. 23(e)(2)).

In determining whether a settlement is fair, reasonable, and adequate, the court must consider whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm's length;
- (C) the relief provided for the class is adequate, taking into account:

- (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e) (3); and
- (D) the proposal treats class members equitably relative to each other.

Id. (citing Fed. R. Civ. P. 23(e)(2)).

“Nevertheless, “[t]he primary concern addressed by Rule 23(e) is the protection of class members whose rights may not have been given adequate consideration during the settlement negotiations.” *Id.* (quoting *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991)). “In the Fourth Circuit, the Rule 23(e) (2) analysis has been condensed into the two-step *Jiffy Lube* test which examines the fairness and adequacy of the settlement.” *Id.* (citing *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 254 (E.D. Va. 2009)); *see, e.g., In re Zetia (Ezetimibe) Antitrust Litig.*, No. 2:18MD2836, 2023 WL 6871635, at *3-6 (E.D. Va. Oct. 18, 2023) (Smith, J.) (applying the *Jiffy Lube* test in granting final approval).

1. Fairness

“Under the fairness prong of the *Jiffy Lube* test, the court must assess the procedural fairness of the settlement negotiations.” *Galloway*, 2020 WL 7482191, at *3 (citing *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. at 254). “The relevant factors to evaluate the fairness of the settlement negotiations are ‘(1) the posture of the case at the time settlement was proposed; (2) the extent of discovery that had been conducted; (3) the circumstances surrounding the negotiations; and (4) the

experience of counsel.” *Id.* (quoting *Brown v. Transurban USA, Inc.*, 318 F.R.D. 560, 571 (E.D. Va. 2016)).

a. The posture of the case at the time settlement was proposed.

Although Defendant had not yet filed a motion to dismiss, by the time the parties mediated, Class Counsel, who are experienced in prosecuting data breach class actions, had a clear view of the strengths and weaknesses of their case and were in a strong position to make an informed decision regarding the reasonableness of a potential settlement. **Exhibit 2**, Declaration of Co-Class Counsel Ryan D. Maxey (“Maxey Decl.”) ¶ 2. This supports the fairness of the settlement. *See, e.g., In re Novant Health, Inc.*, No. 1:22-CV-697, 2024 WL 3028443, at *6 (M.D.N.C. June 17, 2024) (deeming this factor satisfied where the parties negotiated a settlement while the court was evaluating a second motion to dismiss); *Pierce v. Statebridge Co., LLC*, No. 1:20CV117, 2021 WL 1711784, at *2 (M.D.N.C. Apr. 29, 2021) (deeming this factor satisfied where “Plaintiff’s Counsel and Defendant’s Counsel are both experienced in complex litigation, including class action litigation” and “had ‘a clear view of the strengths and weaknesses’ of their case and were in a strong position to make an informed decision regarding the reasonableness of a potential settlement”) (citation omitted); *Hinkle v. Matthews*, No. 2:15-CV-13856, 2018 WL 6004680, at *2 (S.D.W. Va. Nov. 15, 2018) (deeming this factor satisfied where “Plaintiff’s Counsel and Defendant’s Counsel, who are both experienced in prosecuting complex class action claims such as these, had ‘a clear view of the strengths and weaknesses’ of their case and were in a strong position to make an informed decision regarding the reasonableness of a potential settlement.”) (citation omitted).

b. The extent of discovery that had been conducted.

Prior to filing and during this action, Class Counsel investigated information available

online related to the Security Incident, including reviewing reports that Defendant filed with various authorities related to the Security Incident. Maxey Decl. ¶ 3. Prior to mediation, Plaintiffs requested and obtained from Defendant information about (i) the number of persons impacted by the Security Incident, including the number of such persons who were California residents; (ii) the types of information impacted by the Security Incident; (iii) how Defendant acquired the information; (iv) whether the information was encrypted; (v) the forms in which Defendant notified impacted persons of the Security Incident; (vi) how and when the Security Incident occurred, including the technical details and the identity of the perpetrator; (vii) whether forensic reports were prepared; (viii) Defendant's communications with law enforcement related to the Security Incident; (ix) the extent to which impacted persons took advance of Defendant's offer to provide complimentary identity monitoring; (x) Defendant's efforts to address the Security Incident, including any remediation of Defendant's systems; (xi) Defendant's efforts to monitor for misuse of the information; (xii) Defendant's communications with the perpetrator; and (xiii) Defendant's insurance coverage information. *Id.* ¶ 4. This supports the fairness of the settlement. *See, e.g., In re Novant Health, Inc.*, 2024 WL 3028443, at *6 (deeming this factor satisfied where the case settled before formal discovery but the defendant disclosed information about data sharing to impacted individuals and authorities, class counsel gathered publicly available information, the defendant provided contact information for class members to the settlement administrator, and the parties engaged in limited, informal discovery for settlement purposes).

c. The circumstances surrounding the negotiations.

The parties mediated this case before a retired judge, John W. Thornton. Maxey Decl. ¶ 4. After the June 2023 mediation, and over the course of a month, the parties negotiated a term sheet outlining the settlement terms. *Id.* In September 2023, Plaintiffs sent Defendant a draft 38-page

formal settlement agreement. *Id.* Over the following two (2) months, the parties negotiated the final details of the S.A. *Id.* The S.A. was fully executed on December 6, 2023. *Id.* This supports the fairness of the settlement. *See, e.g., In re Novant Health, Inc.*, 2024 WL 3028443, at *6 (deeming this factor satisfied where “[m]ediation was conducted by an independent mediator and was a collaborative process”).

d. The experience of counsel.

As explained in the Lietz Declaration (filed with the preliminary approval motion), “Class Counsel have led some of the country’s most complex civil litigation; have been recognized by courts and national publications for our knowledge and experience in privacy and data breach cases; and are responsible for groundbreaking data breach settlements, including in settlements approved in this judicial district.” Lietz Decl. ¶ 2; *see generally id.* ¶¶ 3-18. This supports the fairness of the settlement.

2. Adequacy

“Under the adequacy prong of the *Jiffy Lube* test, the court assesses the substantive adequacy of the settlement agreement.” *Galloway*, 2020 WL 7482191, at *4 (citing *Brown*, 318 F.R.D. at 571). “The relevant factors to evaluate the adequacy of the settlement are ‘(1) the relative strength of the plaintiffs’ case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement.’” *Id.* (quoting *Brown*, 318 F.R.D. at 573).

a. The relative strength of the plaintiffs’ case on the merits.

Because the law surrounding data breaches is still developing, it is challenging to evaluate

the likelihood of Plaintiffs prevailing at trial. Moreover, Plaintiffs' claims have not been tested through litigation discovery and dispositive motions. This supports the adequacy of the settlement. *See, e.g., In re Novant Health, Inc.*, 2024 WL 3028443, at *6 (“The law surrounding data privacy and the surreptitious sharing of user data is still developing, making it challenging for the parties to evaluate the likelihood of prevailing at trial.”); *Robinson v. Carolina First Bank NA*, No. 7:18-CV-02927-JDA, 2019 WL 719031, at *10 (D.S.C. Feb. 14, 2019) (deeming this factor satisfied where “Defendant has not had the opportunity to test Plaintiff’s legal claims through litigation discovery and dispositive motions”).

b. The existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial.

Here, there is no dispute that the Security Incident occurred. Regarding difficulties of proof as to other issues in this action, such as whether or not the Security Incident resulted from Defendant’s negligence and whether or not Plaintiffs’ alleged damages are cognizable under applicable law, it is simply unknown how future litigation may have impacted the quality of the Settlement. *See Robinson*, 2019 WL 719031, at *10 (analyzing this factor and reasoning that “while Plaintiff is confident in the strength of her case, it is unclear to what extent litigation may present issues that underscore the desirability of this settlement”).

c. The anticipated duration and expense of additional litigation.

Had this action not settled, the parties would likely have litigated a motion to dismiss. If the motion to dismiss were not granted, the parties would have engaged in discovery, including expert discovery, followed by motions for class certification and summary judgment. If a class were certified and summary judgment denied, the action would have proceeded to and through trial. Given the rapidly evolving law in data breach cases, and that no data breach cases have been

tried to date (to the knowledge of Class Counsel), it is reasonably possible that an appeal would have followed. Simply put, to continue this action to its end would have taken years and required substantial expense. This supports the adequacy of the settlement. *See, e.g., In re Novant Health, Inc.*, 2024 WL 3028443, at *6 (deeming this factor satisfied where “lengthy discovery, including the deposing of expert witnesses on damages, motions for summary judgment, and a motion for class certification would occur before final resolution could take place”); *Feinberg*, 610 F. Supp. 3d at 768 (deeming this factor satisfied where “the risk of appeal—and its attendant costs—was particularly acute in a case, such as this one, that presents a novel question”); *Robinson*, 2019 WL 719031, at *10 (deeming this factor satisfied where “a case such as this, a fully contested class action lawsuit would be expected to take significant time to resolve at the District Court level and additional time would result from any appeals. Likewise, the expenses for such a complex case, to include the completion of merits and expert discovery, class certification briefing, dispositive motions, trial, post-trial motions, and possible appeals would entail substantial expenses for all parties”).

d. The solvency of the defendants and the likelihood of recovery on a litigated judgment.

Defendant’s Media Fact Sheet, available on its website as of June 19, 2024, states that Defendant operates over 1,800 stores across North America, Europe, Asia, the Middle East, and Australia.³ Plaintiffs have no reason to believe that Defendant’s solvency would have impacted the likelihood of recovery on a litigated judgment. “However, given the other factors weighing in favor of the adequacy of the Settlement Agreement, this factor alone ‘should not preclude final

³ *See* <https://www.fiveguys.com/-/media/public-site/files/media-fact-sheets/five-guys-media-fact-sheet-web.ashx> (last visited June 19, 2024).

approval of the proposed Settlement.” *In re Zetia (Ezetimibe) Antitrust Litig.*, 2023 WL 6871635, at *5; *see, e.g., In re Novant Health, Inc.*, 2024 WL 3028443, at *6 (deeming this factor satisfied where the defendant was “a large entity with substantial assets, it was insured for any losses incurred in this case, and there are no issues about [its] solvency that affected settlement”); *Galloway*, 2020 WL 7482191, at *9 (deeming this factor to have “no bearing” where class counsel did not provide argument but the court had “no reason to believe” there was a risk of insolvency).

e. The degree of opposition to the settlement.

Of the 37,862 Settlement Class Members, only two (2) sought exclusion and none objected. Rugg Decl. ¶¶ 17-18. This reflects a low degree of opposition to the settlement, supporting the adequacy of the settlement. *See, e.g., In re Novant Health, Inc.*, 2024 WL 3028443, at *6 (deeming this factor satisfied where thirty-seven (37) of over 1.3 million class members sought exclusion and none objected); *In re Zetia (Ezetimibe) Antitrust Litig.*, 2023 WL 6871635, at *2 n.3, 5 (deeming this factor satisfied where sixteen (16) class members timely sought exclusion and none objected); *Haney*, 2023 WL 2596845, at *3 (deeming this factor satisfied where 190 of 350,000 class members sought exclusion and thirty-one (31) initially objected).

V. CONCLUSION

Considering the factors bearing on the fairness and adequacy of the settlement, the Court should approve the notice to class members and find that the settlement meets the standard for final approval under Rule 23(e). Plaintiffs respectfully request the Court enter the order proposed by the Parties granting final approval and certifying the Settlement Class; grant Plaintiffs’ Motion for an Award of Attorneys’ Fees, Reimbursement of Expenses, and Service Award to Plaintiffs; and enter a final judgment dismissing this case.

Dated: June 22, 2024

Respectfully Submitted,

/s/ Steven T. Webster

Steven T. Webster (VSB No. 31975)

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CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2024, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notice of electronic filing to all counsel of record.

/s/ Steven T. Webster
Steven T. Webster (VSB No. 31975)
WEBSTER BOOK LLP

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

BRITTANY MAY, ERICKA RANCK, LAUREN
TURNER, AND STEPHEN THOMAS, on behalf
of themselves and all other similarly situated,

Plaintiffs,

-v-

FIVE GUYS ENTERPRISES, LLC,

Defendant.

Case No.: 1:23-cv-00029

Honorable Claude M Hilton

**DECLARATION OF SARA RUGG OF ANGEION GROUP REGARDING
SETTLEMENT ADMINISTRATION**

I, SARA RUGG, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am an Associate Project Manager with Angeion Group, LLC (“Angeion”), the Settlement Administrator retained in this matter, located at 1650 Arch Street, Suite 2210, Philadelphia, PA 19103. I am over 21 years of age and am not a party to this action. I have personal knowledge of the facts set forth herein.

2. Angeion was retained by the Parties and appointed by this Court to serve as Settlement Administrator and to, among other tasks, provide notice to potential Class Members; respond to Class Member inquiries; receive and process Claim Form submissions; receive and process opt outs and objections; and perform other duties as specified in the *Settlement Agreement* and by the directives of the Court, including but not limited to the *Order Granting Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement* (“Preliminary Approval Order”), entered on January 04, 2024.

3. Angeion is not related to or affiliated with the Plaintiff, Plaintiff’s Counsel, Defendant or Defendant’s Counsel.

CAFA NOTICE

4. Angeion has been informed that the Defendant has notified the appropriate officials

in compliance with 28 U.S.C. §1715.

CLASS LIST

5. On January 11, 2023, Angeion received from Defendant's Counsel the Settlement Class List consisting of 37,922 records. Each record included Class Member's name and address. Angeion reviewed the records that were provided and deduped records belonging to the same person or entity to compile the Class Member database ("Class List"). These efforts resulted in 37,862 unique Class Member records.

MAILED NOTICE

6. Prior to mailing, Angeion process the 37,862 mailing addresses through the United States Postal Service ("USPS") National Change of Address ("NCOA") database to identify updated address information for individuals and businesses who have moved in the last four years and filed a change of address card with the USPS. The NCOA results provided 2,264 updated addresses for Class Members. Angeion updated the Class List with these updated addresses prior to mailing.

7. On February 5, 2024, Angeion caused the Postcard Notice to be mailed via USPS first class mail, postage prepaid to the 37,862 Class Members. A true and accurate copy of the Postcard Notice is attached hereto as **Exhibit A**.

8. As of June 21, 2024, the USPS has returned 717 of the initial Notices with a forwarding address. Angeion has updated the Class List for these records and has re-mailed Notice to these 717 records.

9. As of June 21, 2024, a total of 8,938 Notices mailed have been returned by the USPS as undeliverable without a forwarding address. Angeion conducted address verification searches ("skip traces") in an attempt to locate updated addresses. Of the records subjected to a skip trace, a new address was located for 6,123 of them. Angeion updated the Class Member database and has re-mailed Notices to the 6,123 Class Members located via this process. Of the re-mailed Notices, none have been returned by the USPS a second time.

REMINDER NOTICE

10. On March 20, 2024, Angeion caused a Reminder Postcard notice to be mailed via USPS first class mail, postage prepaid to the 35,012 Class Members whose initial notice was not returned as undeliverable and no updated address was found. A true and accurate copy of the Reminder Postcard Notice is attached hereto as **Exhibit B**.

CASE SPECIFIC WEBSITE

11. On January 10, 2024, Angeion established the following website dedicated to this Settlement: www.fgdatasettelement.com (“Settlement Website”). The Settlement Website contained an online portal where Class Members may submit a claim. The Settlement Website contains downloadable versions of the Claim Form, Long-Form Notice, Settlement Agreement, and Order Granting Plaintiffs’ Unopposed Motion for Preliminary Approval. The Settlement Website also has a “Frequently Asked Questions” page which provides Class Members with answers to common inquiries about the Settlement, and a “Contact Us” page which provides Class Members with the mailing address, phone number and email address to contact the Settlement Administrator. True and accurate copies of the Long-Form Notice and Claim Form are attached hereto as **Exhibit C** and **Exhibit D**, respectively.

12. As of June 21, 2024, the Settlement Website has had 23,241 unique visitors totaling 49,677 page views..

CASE SPECIFIC HOTLINE

13. On February 5, 2024, Angeion also established a toll-free hotline dedicated to this Settlement to further apprise Class Members of their rights and options in the Settlement: 1-833-657-4055. The toll-free hotline utilizes an interactive voice response (“IVR”) system to provide Class Members with responses to frequently asked questions and provide essential information regarding the Settlement. Class Members may also leave a message for the Settlement Administrator, provide updated information, or ask additional questions and Angeion will call them back. This hotline is accessible 24 hours a day, 7 days a week.

14. As of June 21, 2024, Angeion has received 822 calls for a total of 3,583 minutes.

CLAIM FORM SUBMISSIONS

15. The deadline for Class Members to submit a Claim Form was May 6, 2024. As of June 21, 2024, Angeion has received 2,425 Claim Forms (212 via mail, 2,213 via the online portal).

16. Claim Forms could be submitted for one or more of the following settlement benefits: (1) cash payment; (2) credit monitoring services; (3) statutory payment to California residents; and (4) reimbursement for out-of-pocket expenses related to the data breach. Of the 2,425 Claim Forms received, a total of 978 claims were submitted for credit monitoring services, 2,128 claims were submitted for the alternative cash payment, 11 claims were submitted for out-of-pocket losses and/or spent time, and 238 claims for the California statutory benefit.

EXCLUSION REQUESTS AND OBJECTIONS

17. The deadline for Class Members to exclude themselves from the Settlement was May 6, 2024. As of June 21, 2024, Angeion has received two requests for exclusion. The exclusion requests received are attached hereto as **Exhibit E**.

18. The deadline for Class Members to object to the Settlement was May 6, 2024. As of June 21, 2024, Angeion has not received any objections to the Settlement.

NOTICE AND ADMINISTRATION COSTS

19. Through May 31, 2024, Angeion has incurred \$92,703.13 in costs to provide notice and administer the settlement.

DISTRIBUTION AND REMAINING TASKS

20. Angeion will continue to process the Claim Forms received and Angeion will also keep the Parties apprised of any additional exclusion requests or objections received after the deadline.

21. Upon issuance of a Final Order from this Court and achievement of the benchmarks set forth in the Settlement Agreement, Angeion will cause the distribution of Settlement benefits to take place in accordance with the terms of the Settlement Agreement or as otherwise directed by this Court.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: June 21, 2024


SARA RUGG

Exhibit A

**Notice of Proposed Settlement of
Class Action**

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 and free credit monitoring in a class action settlement.

A settlement has been reached in a class action lawsuit about a security incident that occurred in or about 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”). The lawsuit alleges that Five Guys was responsible for the Security Incident because it did not take appropriate care to protect PII from unauthorized disclosure. Five Guys denies the claims and denies any wrongdoing.

*Five Guys Data Breach Class Action
c/o Settlement Administrator
1650 Arch Street, Suite 2210
Philadelphia, PA 19103*

A Federal Court Authorized This Notice

This is Not a Solicitation from a Lawyer



Postal Service: Please do not mark barcode

Notice ID: «Notice ID»
Confirmation Code: «Confirmation Code»
«FirstName» «LastName»
«Address1»
«Address2»
«City», «StateCd» «Zip»
«CountryCd»

First-Class
Mail
US Postage
Paid
Permit # ____

Five Guys' records show you are likely a member of the Settlement Class. If the Court approves the settlement, individuals to whom Five Guys sent notice of the Security Incident that it announced on or around December 29, 2022, may submit a claim for two years of free identity theft protection and credit monitoring services and may also submit a claim for **cash** benefits, including one or more of: (i) a cash payment of **\$150**; (ii) if you are a resident of California, an **additional** cash payment of **\$100**; (iii) reimbursement of up to **\$400** for unreimbursed "ordinary" out-of-pocket losses fairly traceable to the Security Incident and time spent remediating issues related to the Security Incident (instead of the \$150 cash payment); and/or (iv) reimbursement of up to **\$6,500** for unreimbursed "extraordinary" out-of-pocket losses fairly traceable to the Security Incident and time spent remediating issues related to the Security Incident (instead of the \$150 cash payment). 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 a pro rata (proportional) adjustment depending upon the number of valid claims filed.

You must file a Claim Form to receive a cash payment and/or the identity theft protection and credit monitoring services. You can file a claim online or download a Claim Form at www.fgdatasettlement.com and mail it, or you may call 1-833-657-4055 and ask that a Claim Form be mailed to you. The claim deadline is **May 6, 2024**. You must use the following Notice ID and Confirmation Code to file a Claim Form to verify your identity as a member of the Settlement Class.

Other Options. If you do not want to be legally bound by the settlement, you must exclude yourself by **May 6, 2024**. If you stay in the settlement, you may object to it by **May 6, 2024**. A more detailed notice is available to explain how to exclude yourself or object at www.fgdatasettlement.com or call 1-833-657-4055 to request a copy of the more detailed notice.

On **July 12, 2024, at 10:00 a.m.** the Court will hold a hearing on whether to approve the settlement, Class Counsel's request for attorneys' fees of \$231,000.00 and reimbursement of costs and expenses of up to \$20,000.00, and service awards of up to \$2,500 for each of the four Representative Plaintiffs. You or your own lawyer, if you have one, may ask to appear and speak at the hearing at your own cost, but you do not have to.

This is only a summary. For detailed information visit www.fgdatasettlement.com or call 1-833-657-4055. You may contact the Claims Administrator at Five Guys Settlement Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103.

Exhibit B

**Notice of Proposed Settlement of
Class Action**

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 and free credit monitoring in a class action settlement.

A settlement has been reached in a class action lawsuit about a security incident that occurred in or about 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”). The lawsuit alleges that Five Guys was responsible for the Security Incident because it did not take appropriate care to protect PII from unauthorized disclosure. Five Guys denies the claims and denies any wrongdoing.

*Five Guys Data Breach Class Action
c/o Settlement Administrator
1650 Arch Street, Suite 2210
Philadelphia, PA 19103*

A Federal Court Authorized This Notice

This is Not a Solicitation from a Lawyer



Postal Service: Please do not mark barcode

Notice ID: «Notice ID»
Confirmation Code: «Confirmation Code»
«FirstName» «LastName»
«Address1»
«Address2»
«City», «StateCd» «Zip»
«CountryCd»

First-Class
Mail
US Postage
Paid
Permit # ____

Five Guys' records show you are likely a member of the Settlement Class. If the Court approves the settlement, individuals to whom Five Guys sent notice of the Security Incident that it announced on or around December 29, 2022, may submit a claim for two years of free identity theft protection and credit monitoring services and may also submit a claim for **cash** benefits, including one or more of: (i) a cash payment of **\$150**; (ii) if you are a resident of California, an **additional** cash payment of **\$100**; (iii) reimbursement of up to **\$400** for unreimbursed "ordinary" out-of-pocket losses fairly traceable to the Security Incident and time spent remedying issues related to the Security Incident (instead of the \$150 cash payment); and/or (iv) reimbursement of up to **\$6,500** for unreimbursed "extraordinary" out-of-pocket losses fairly traceable to the Security Incident and time spent remedying issues related to the Security Incident (instead of the \$150 cash payment). 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 a pro rata (proportional) adjustment depending upon the number of valid claims filed.

You must file a Claim Form to receive a cash payment and/or the identity theft protection and credit monitoring services. You can file a claim online or download a Claim Form at www.fgdatasettlement.com and mail it, or you may call 1-833-657-4055 and ask that a Claim Form be mailed to you. The claim deadline is **May 6, 2024**. You must use the following Notice ID and Confirmation Code to file a Claim Form to verify your identity as a member of the Settlement Class.

Other Options. If you do not want to be legally bound by the settlement, you must exclude yourself by **May 6, 2024**. If you stay in the settlement, you may object to it by **May 6, 2024**. A more detailed notice is available to explain how to exclude yourself or object at www.fgdatasettlement.com or call 1-833-657-4055 to request a copy of the more detailed notice.

On **July 12, 2024, at 10:00 a.m.** the Court will hold a hearing on whether to approve the settlement, Class Counsel's request for attorneys' fees of \$231,000.00 and reimbursement of costs and expenses of up to \$20,000.00, and service awards of up to \$2,500 for each of the four Representative Plaintiffs. You or your own lawyer, if you have one, may ask to appear and speak at the hearing at your own cost, but you do not have to.

This is only a summary. For detailed information visit www.fgdatasettlement.com or call 1-833-657-4055. You may contact the Claims Administrator at Five Guys Settlement Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103.

Exhibit C

**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

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION..... Page 5

1. Why was this Notice issued?
2. What is this lawsuit about?
3. Why is this lawsuit a class action?
4. Why is there a settlement?

WHO IS IN THE SETTLEMENT?..... Page 5

5. How do I know if I am included in the settlement?
6. What if I am not sure whether I am included in the settlement?

THE SETTLEMENT BENEFITS..... Page 6

7. What does the settlement provide? Page 6
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? Page 7
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? Page 7
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 fairly traceable to the Security Incident and/or spent time remedying issues related to the Security Incident? Page 8
11. What additional payments are available for residents of California? Page 8
12. What identity theft protection and credit monitoring services are available? Page 8

HOW TO GET BENEFITS..... Page 8

13. How do I get benefits?
14. How will claims be decided?

REMAINING IN THE SETTLEMENT..... Page 8

15. Do I need to do anything to remain in the settlement?
16. What am I giving up as part of the settlement?

EXCLUDING YOURSELF FROM THE SETTLEMENT..... Page 9

17. If I exclude myself, can I get a payment from this settlement?
18. If I do not exclude myself, can I sue Five Guys for the same thing later?
19. How do I exclude myself from the settlement?

THE LAWYERS REPRESENTING YOU..... Page 10

20. Do I have a lawyer in this case?
21. How will the lawyers be paid?

OBJECTING TO THE SETTLEMENT..... Page 10

22. How do I tell the Court that I do not like the settlement?
23. What is the difference between objecting and asking to be excluded?

THE COURT’S FAIRNESS HEARING..... Page 10

24. When and where will the Court decide whether to approve the settlement?
25. Do I have to attend the hearing?

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

26. May I speak at the hearing?

IF YOU DO NOTHING..... Page 12

27. What happens if I do nothing?

GETTING MORE INFORMATION..... Page 12

28. How do I get more information?

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

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’

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

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.

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

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 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.

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 remedying 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

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

- 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.

Exhibit D

M M M

You should fill out this Claim Form online or submit it by mail if you received a Notice of Security Incident from Five Guys Enterprises, LLC (“Five Guys”) on or around December 29, 2022.

You may receive a payment if you properly and timely complete this Claim Form, the settlement is approved, and you are found to be eligible for a payment.

Please refer to the Settlement Notice posted on the settlement website, www.fgdatasettlement.com, for more information. You can submit your claim for a settlement award in two ways:

1. Online at www.fgdatasettlement.com by following instructions on the “Submit a Claim” page; or
2. By mail to the Claims Administrator at this address: Five Guys Claims Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103.

Only one Settlement Claim may be submitted per Settlement Class Member. Your claim must be submitted online or postmarked by **M** to be considered for payment.

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Please provide the Notice ID and Confirmation Code that the Claims Administrator provided to you in the postcard or email notifying you of the settlement. If you do not have this information but believe you may be a class member, please contact the Claims Administrator at 1-833-657-4055.

Notice ID: _____ Confirmation Code: _____

Please provide us your information so we may contact you:

Name (First, MI, Last): _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone: _____ E-mail (if any): _____

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For more information about this section of the Claim Form and the types of awards available and the rules for receiving an award, please review the Notice and the Settlement Agreement (available at www.fgdatasettlement.com). Cash benefit payments are subject to a pro rata (proportional) adjustment depending upon the number of valid claims filed.

- A. Settlement Class Members may receive an Alternative Cash Payment of _____ if they do not claim an Ordinary or Extraordinary Out-of-Pocket Losses Award or an Attested Time Award. If you are a Settlement Class Member and you are claiming this award, check this box:

Cash Payment (do not check this box if you checked any of the boxes below for reimbursement awards or attested time) (complete Sections 4 and 5)

- B. California Settlement Class Members may ___ receive a _____ California Statutory Payment. If you are a California resident and are claiming this award, check this box:

California Statutory Payment (complete section 4 and 5)

- C. Settlement Class Members who incurred Ordinary Out-of-Pocket Losses fairly traceable to the Security Incident may claim a Reimbursement Award and also an Attested Time Award (at \$25 per hour for up to 4 hours of time spent remedying issues related to the Security Incident) for a total of up to _____. Which award(s) are you claiming (check all that apply)?

Ordinary Out-of-Pocket Losses Reimbursement Award (complete Sections 3.A, 4 and 5)

Attested Time Award (complete Sections 3.A, 4 and 5)

- D. Additionally, Settlement Class Members who incurred Extraordinary Out-of-Pocket Losses fairly traceable to the Security Incident may claim a Reimbursement Award and also an Attested Time Award (at \$25 per hour for up to an additional 3 hours of time spent remedying issues related to the Security Incident) for a total of up to \$6,500.00. Which award(s) are you claiming (check all that apply)?

Extraordinary Out-of-Pocket Losses Reimbursement Award (complete Sections 3.B, 4, and 5)

Attested Time Award (complete Sections 3.B, 4 and 5)

- E. Additionally, all Settlement Class Members are eligible to enroll in two (2) years of free Identity Theft Protection and Credit Monitoring Services, which include dark web scanning, identity theft insurance, real-time credit monitoring, and access to fraud resolution agents. If you wish to enroll in free Identity Theft Protection and Credit Monitoring Services, check this box:

Two (2) Years of Free Identity Theft Protection and Credit Monitoring Services

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Check the box for each category of out-of-pocket losses or lost time that you incurred as a result of the Security Incident. Please be sure to fill in the total amount you are claiming for each category and attach the required documentation as described in **d** (if you are asked to provide account statements 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). Please round total amounts down or up to the nearest dollar.

rd r d d

If you incurred “Ordinary Out-of-Pocket Losses” that are fairly traceable to the Security Incident and/or spent time remedying issues related to the Security Incident, you may be entitled to compensation for these losses and this time. “Ordinary Out-of-Pocket Losses” are unreimbursed costs or expenditures incurred by a Settlement Class Member in responding to notice of the Security Incident that were incurred on or after September 17, 2022, as result of the Security Incident. Ordinary Out-of-Pocket Losses may include, without limitation the following: (1) costs incurred on or after September 17, 2022 associated with accessing or freezing/unfreezing credit reports with any credit reporting agency; (2) other miscellaneous expenses incurred related to any Ordinary Out-of- Pocket Loss such as notary, fax, postage, copying, mileage, and long-distance telephone charges; and (3) credit monitoring or other mitigative costs that were incurred on or after September 17, 2022. Check all boxes that apply:

Costs incurred on or after September 17, 2022, associated with accessing or freezing/unfreezing credit reports with any credit reporting agency.

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Other miscellaneous expenses incurred related to any Ordinary Out-of- Pocket Losses such as notary, fax, postage, copying, mileage, and long-distance telephone charges incurred on or after September 17, 2022.

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PayPal*:	_____	(PayPal Email Address)
Venmo*:	_____	(Venmo Email Address)
Zelle*:	_____	(Zelle Email Address)
Paper Check via Mail:		

*If you select payment via PayPal, Venmo or Zelle, the email address entered on this form will be used to process the payment to your account linked to that email address. If you do not have a PayPal, Venmo or Zelle account, you will be prompted to open one using the email address entered on this form.

The information I have supplied in this Claim Form is true and correct to the best of my recollection and this form was executed on the date set forth below.

I understand that all information provided on this Claim Form is subject to verification and that I may be asked to provide supplemental information by the Claims Administrator before my claim will be considered complete and valid.

Print Name: _____

Signature: _____

Date: _____

Once you've completed all applicable sections, please mail this Claim Form and all required supporting documentation to the address provided below, postmarked by **M** .

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

Exhibit E

Number	Class Member	Date Exclusion Received	Postmarked Date
1	Zhuo Zhang	4/9/2024	
2	Christa Anderson	4/2/2024	

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

BRITTANY MAY, ERIKA RANCK,
LAUREN TURNER, and STEPHEN
THOMAS, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

FIVE GUYS ENTERPRISES, LLC,

Defendant.

Case No.: 1:23-cv-00029

**CO-CLASS COUNSEL RYAN D. MAXEY'S DECLARATION IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

Ryan D. Maxey declares as follows:

1. I am one of Class Counsel¹ in this matter, together with David K. Lietz and M. Anderson Berry. I have personal knowledge of all the matters addressed in this Declaration, including the negotiations that culminated with the filing of the proposed settlement (the "Settlement") now before the Court. *See* Settlement Agreement ("S.A.") (ECF No. 21-1).

2. Although Defendant had not yet filed a motion to dismiss, by the time the parties mediated, Class Counsel, who are experienced in prosecuting data breach class actions, had a clear view of the strengths and weaknesses of their case and were in a strong position to make an informed decision regarding the reasonableness of a potential settlement.

¹ The Court appointed (1) Ryan D. Maxey of Maxey Law Firm; (2) David K. Lietz of Milberg Coleman Bryson Phillips Grossman, PLLC; and (3) M. Anderson Berry of Clayco C. Arnold, A Professional Corp., as Class Counsel. (ECF No. 23 ¶ 2).

3. Prior to filing and during this action, Class Counsel investigated information available online related to the Security Incident, including reviewing reports that Defendant filed with various authorities related to the Security Incident.

4. Prior to mediation, Plaintiffs requested and obtained from Defendant information about (i) the number of persons impacted by the Security Incident, including the number of such persons who were California residents; (ii) the types of information impacted by the Security Incident; (iii) how Defendant acquired the information; (iv) whether the information was encrypted; (v) the forms in which Defendant notified impacted persons of the Security Incident; (vi) how and when the Security Incident occurred, including the technical details and the identity of the perpetrator; (vii) whether forensic reports were prepared; (viii) Defendant's communications with law enforcement related to the Security Incident; (ix) the extent to which impacted persons took advantage of Defendant's offer to provide complimentary identity monitoring; (x) Defendant's efforts to address the Security Incident, including any remediation of Defendant's systems; (xi) Defendant's efforts to monitor for misuse of the information; (xii) Defendant's communications with the perpetrator; and (xiii) Defendant's insurance coverage information.

5. The parties mediated this case before a retired judge, John W. Thornton. After the June 2023 mediation, and over the course of a month, the parties negotiated a term sheet outlining the settlement terms. In September 2023, Plaintiffs sent Defendant a draft 38-page formal settlement agreement. Over the following two (2) months, the parties negotiated the final details of the S.A. The S.A. was fully executed on December 6, 2023.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED this 21st day of June, 2024 in the United States of America.

_____/s *Ryan D. Maxey*_____

Ryan D. Maxey