

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Customers who made a purchase from Five Below on fivebelow.com with a credit or debit card in late 2018/early 2019 from Five Below may be eligible for a payment from a class action settlement.

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

Si desea recibir esta notificación en español, llámenos.

- A Settlement has been reached with Five Below, Inc. in a class action lawsuit about a data security incident that occurred on August 14, 2018, August 28, 2018, and from approximately September 18, 2018 through September 19, 2018 and November 13, 2018 through January 11, 2019 (the “Security Incident”). Five Below announced the Security Incident in October 2018 and February 2019. The lawsuit was filed asserting claims against Five Below relating to the Security Incident. Five Below denies all of the claims and says it did not do anything wrong.
- Starting in late 2018, Five Below suffered a cyberattack on the system it uses to accept payments for orders placed and paid for with a credit or debit card on the Internet from Five Below’s website. During the cyberattack, an unknown criminal attacker or attackers potentially could have accessed names, addresses, payment card numbers, expiration dates, and card security codes that customers entered into the Five Below website’s checkout page during the time periods noted above.
- The Settlement Class includes all residents of the United States whose information may have been affected by the Security Incident. You should have received an email or (if your email address on file did not work) a letter from the settlement administrator if you are a member of the Settlement Class. This notification includes a unique username and password for you to verify your identity to receive the settlement benefits described in this notice. If for some reason you have not received login information, but believe you are a Settlement Class Member, please call 1-866-742-4955 to verify your identity and receive further information on how to file a claim.
- The Settlement provides reimbursement of up to \$250 for out-of-pocket expenses and documented lost time that resulted from the Security Incident for persons who file a valid claim form, as further described below.
- You must file a Claim Form to receive a payment. You can file a claim online on this website, www.fivebelowcardsettlement.com, download a Claim Form and mail it, or you may call 1-866-742-4955 and ask that a Claim Form be mailed to you. The claim deadline is October 9, 2020. You must use the username and password received with your notification to verify your identity as a member of the Settlement Class. If for some reason you did not receive login information, but believe you are a Settlement Class Member, please call 1-866-742-4955 to verify your identity and receive further information on how to file a claim.

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

Your Legal Rights & Options in this Settlement		
Submit a Claim	You must submit a claim to get a payment.	Deadline October 9, 2020.
Ask to be Excluded	This allows you to sue Five Below over the claims resolved by this Settlement. You will not get anything from this Settlement.	Deadline September 9, 2020.
Object	Write to the Court about why you do not like the Settlement. You can still get a payment.	Deadline September 9, 2020.
Do Nothing	You get no payment and you 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 in favor of the Settlement.

Questions? Call 1-866-742-4955 or visit www.fivebelowcardsettlement.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.

Judge John R. Padova of the United States District Court for the Eastern District of Pennsylvania is overseeing this case. The case is known as *Abdelmessih v. Five Below, Inc.*, Case No. 2:19-cv-1487. The person who sued is called the Plaintiff. Five Below is called the Defendant.

2. What is this lawsuit about?

The lawsuit claims that Five Below was responsible for the Security Incident that occurred, and asserts claims such as: negligence, invasion of privacy, breach of implied contract, negligence per se, breach of fiduciary duty, violation of Florida’s Deceptive and Unfair Trade Practices Act, and breach of confidence. The lawsuit seeks compensation for people who had losses as a result of the Security Incident.

Five Below denies all of Plaintiff’s claims and asserts it did not do anything wrong.

3. Why is this lawsuit a class action?

In a class action, one or more people called “Representative Plaintiffs” sue on behalf of all people who have similar claims. All of these people together are the “Settlement Class” or “Settlement Class Members.” In this case, the Representative Plaintiff is Marie Abdelmessih. One court resolves the issues for all Settlement Class Members, except for those who exclude themselves from the Settlement 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 claims will get compensation. The Representative Plaintiff and her attorneys believe the Settlement is fair, reasonable, and adequate and, thus, in the best interests of the Settlement Class and its members. The Settlement does not mean that Five Below 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 if you reside in the United States and used a credit or debit card to make a purchase on fivebelow.com during the Security Incident. If you were affected, you should have received an email or letter notification. Specifically excluded from the Settlement Class are: (a) individuals who are or were during the Security Incident officers or directors of Five Below; and (b) any justice, judge, magistrate judge, or law clerk to whom this case is assigned; (c) the attorneys representing the Parties in the Litigation; (d) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Security Incident or who pleads nolo contendere to any

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such charge, and (e) Settlement Class Members who timely and validly request exclusion from the Settlement Class (for more information about requesting exclusion see questions 13–15).

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, or have any other questions related to the Settlement, you may:

1. Call 1-866-742-4955;
2. Email info@rg2claims.com; or
3. Write to:
Five Below Cardmember Settlement
c/o RG/2 Claims Administration LLC
P.O. Box 59479
Philadelphia, PA 19102-9579

Please do not contact the Court with questions.

THE SETTLEMENT BENEFITS

7. What does the Settlement provide?

The Settlement will provide payments to people who submit valid claims for expenses or time incurred as a result of the Security Incident. The dates during which you are eligible to receive reimbursement depend on when your information was potentially affected. Specifically, if you received initial notice of the Security Incident in October 2018, you are entitled to reimbursement for expenses or time incurred between August 14, 2018 and the Claims Deadline, except reimbursement for purchase of a credit report, which must have been purchased after you received notification from Five Below. If you received notice of the Security Incident in February 2019, you are entitled to reimbursement for expenses or time incurred between November 13, 2018 and the Claims Deadline, again except reimbursement for purchase of a credit report, which must have been purchased after you received notification from Five Below. You do not need to identify or recall when you received notice to submit a claim. Your unique identifier will identify this information to the Settlement Administrator. If for some reason you have not received unique identifier login information, but believe you are a Settlement Class Member, please call 1-866-742-4955 to verify your identity and receive further information on how to file a claim.

The Settlement also provides that Defendant provide confirmation that it hired a dedicated IT security employee and, on an annual basis, implement the following data security measures related to the systems at issue in the Litigation: penetration testing, employee training related to data security, and an audit conducted by a Qualified Security Assessor for compliance with the Payment Card Industry Data Security Standard.

8. What payments are available?

Settlement Class Members are eligible to receive reimbursement of up to \$250.00 (in total per class member, subject to an aggregate cap of \$112,000.00) for the following categories of out-of-pocket expenses:

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- Unreimbursed bank fees;
- Unreimbursed card reissuance fees;
- Unreimbursed overdraft fees;
- Unreimbursed charges related to unavailability of funds;
- Unreimbursed late fees;
- Unreimbursed over-limit fees;
- Long distance telephone charges;
- Cell minutes (if charged by the minute);
- Internet usage charges (if charged by the minute or the amount of data usage);
- Text messages (if charged by the message);
- Unreimbursed charges, including fraudulent charges, from banks or credit card companies;
- Postage and shipping charges;
- Interest on payday loans due to card cancelation or due to over-limit situation;
- Cost for obtaining credit reports;
- Reimbursement of up to five hours of documented lost time (at \$20 per hour) if you incurred a fraudulent charge for which you have documentation, as a result of the Security Incident, or three hours if you do not have documentation, spent dealing with replacement card issues, updating automatic payments associations, contesting fraudulent charges, and otherwise dealing with the Security Incidents; and
- An additional \$22 payment for each credit or debit card on which documented fraudulent charges were incurred as a result of the Security Incident.

Claims are capped in the aggregate at \$112,000.00. If the total amount of valid claims exceeds \$112,000.00, each approved claim will be reduced on a pro rata basis.

Reasonable documentation must be submitted with your Claim Form showing that the Security Incident resulted in the expense being incurred in order to receive reimbursement for out-of-pocket costs. More details are provided in the Settlement Agreement, which is available at www.fivebelowcardsettlement.com.

HOW TO GET BENEFITS

9. How do I get benefits?

To get payment from the Settlement, you must complete a Claim Form. Please read the instructions carefully, fill out the Claim Form, provide reasonable documentation (where applicable), and submit it online or mail it postmarked no later than **October 9, 2020**, to:

Five Below Cardmember Settlement
 c/o RG/2 Claims Administration LLC
 P.O. Box 59479
 Philadelphia, PA 19102-9579

Questions? Call 1-866-742-4955 or visit www.fivebelowcardsettlement.com

You may submit a claim online or download a copy at www.fivebelowcardsettlement.com or you may request one by mail by calling 1-866-742-4955.

10. How will claims be decided?

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

If the claim is complete and the Claims Administrator denies the claim entirely or partially, the claimant will be provided an opportunity to have their claim reviewed by an impartial Claims Referee selected by the parties.

REMAINING IN THE SETTLEMENT

11. Do I need to do anything to remain in the Settlement?

You do not have to do anything to remain in the Settlement, but if you want a payment, you must submit a Claim Form postmarked by **October 9, 2020**.

12. What am I giving up as part of the Settlement?

If the Settlement becomes final, you will give up your right to sue Five Below for the claims being resolved by this Settlement. The specific claims you are giving up against Five Below are described in paragraphs 1.19, 1.20, 1.27 of the Settlement Agreement. You will be releasing Five Below and all related people or entities as described in Section IV.6 of the Settlement Agreement. The Settlement Agreement is available at www.fivebelowcardsettlement.com.

The Settlement Agreement describes the released claims with specific descriptions, so read it carefully. If you have any questions you can talk to the law firms listed in Question 16 for free or you can, of course, talk to your own lawyer at your own expense.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from this Settlement, but you want to keep the right to sue Five Below 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.

13. 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. You will also not be bound by any judgment in this case.

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

Questions? Call 1-866-742-4955 or visit www.fivebelowcardsettlement.com

No. Unless you exclude yourself, you give up any right to sue Five Below 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.

15. 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 *Abdelmessih v. Five Below, Inc.*, Case No. 2:19-cv-1487. Include your name, address, and signature. You must mail your Exclusion Request postmarked by **September 9, 2020**, to:

Five Below Cardmember Settlement
c/o RG/2 Claims Administration LLC
P.O. Box 59479
Philadelphia, PA 19102-9579

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

Yes. The Court appointed the following lawyers as Class Counsel: Patrick A. Barthle II of Morgan & Morgan Complex Litigation Group and Charles E. Schaffer of Levin Sedran & Berman, LLP.

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.

17. How will the lawyers be paid?

Class Counsel will request the Court's approval of an award for attorneys' fees and reasonable costs and expenses of \$93,750.00. Class Counsel will also request approval of an incentive award of \$1,500.00 for the Representative Plaintiff. Any amount that the Court awards for attorneys' fees, costs, expenses, and incentive awards will be paid separately by Five Below and will not reduce the amount of payments to Settlement Class Members who submit valid claims.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or some part of it.

18. 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, *Abdelmessih v. Five Below, Inc.*, Case No. 2:19-cv-1487, with the Clerk of the Court at the address below.

Your objection must include all of the following information: (i) your full name, address, telephone number, and e-mail address (if any); (ii) information identifying you as a Settlement Class Member; (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection that you believe applicable; (iv) the identity of all counsel representing you; (v) a statement whether you

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and/or your counsel will appear at the Final Fairness Hearing; (vi) your signature and the signature of your duly authorized attorney or other duly authorized representative, if applicable; and (vii) a list, by case name, court, and docket number, of all other cases in which you and/or your counsel has filed an objection to any proposed class action settlement within the last three (3) years.

Your objection must be **postmarked** no later than **September 9, 2020** to:

Clerk of the Court
United States District Court, Eastern District of Pennsylvania
James A. Byrne U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

In addition, you must **mail** a copy of your objection to Class Counsel and Defense Counsel, postmarked no later than **September 9, 2020**:

Class COUNSEL	Defense Counsel
Patrick Barthle Morgan & Morgan 201 N Franklin St, 7th Floor Tampa, FL 33602	Sam A. Camardo Baker & Hostetler, LLP 127 Public Square, Suite 2000 Cleveland, OH 44114

19. 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

The Court will hold a hearing to decide whether to grant final approval of the Settlement.

20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at 10:30 a.m. on **November 19, 2020**, in Courtroom Room 17-B at the James A. Byrne U.S. Courthouse 601 Market Street, Philadelphia, PA 19106. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check www.fivebelowcardsettlement.com or call 1-866-742-4955.

At this hearing, the Court will 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 an incentive award 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.

21. 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

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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 mailed it according to the instructions provided in Question 18, the Court will consider it.

22. 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 18, including all the information required.

Your Objection must be **filed** with the Clerk of the Court for United States District Court for the Eastern District of Pennsylvania no later than **September 9, 2020**. In addition, you must **mail** a copy of your objection to both Class Counsel and Defense Counsel listed in Question 18, postmarked no later than **September 9, 2020**:

IF YOU DO NOTHING

23. What happens if I do nothing?

If you do nothing, you will get no benefits from this Settlement. Once 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 against Five Below about the legal issues in this case, ever again.

You must exclude yourself from the Settlement if you want to retain the right to sue Five Below for the claims resolved by this Settlement.

GETTING MORE INFORMATION

24. How do I get more information?

This Notice only provides a summary the proposed Settlement. Complete details about the Settlement can be found in the Settlement Agreement available at www.fivebelowcardsettlement.com.

You may also:

1. Write to:
Five Below Cardmember Settlement
c/o RG/2 Claims Administration LLC
P.O. Box 59479
Philadelphia, PA 19102-9579
2. Visit the Settlement website at www.fivebelowcardsettlement.com.
3. Call the toll-free number 1-866-742-4955.

Questions? Call 1-866-742-4955 or visit www.fivebelowcardsettlement.com