

SETTLEMENT AGREEMENT

BETWEEN

**THE STATES OF MASSACHUSETTS,
CALIFORNIA, ILLINOIS, IOWA, MARYLAND, MINNESOTA, NEW JERSEY, NEW
YORK, NORTH CAROLINA, OREGON, PENNSYLVANIA, RHODE ISLAND,
VERMONT, AND THE DISTRICT OF COLUMBIA**

AND

FIVE GUYS FRANCHISOR, LLC

PARTIES

1. The States of Massachusetts, California, Illinois, Iowa, Maryland, Minnesota, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, and the District of Columbia (the “Settling States”), by and through their Attorneys General (collectively, “the Attorneys General”), are charged with enforcement of, among other things, their respective state’s consumer protection and antitrust laws, and other related statutes and regulations.

2. Five Guys Franchisor, LLC is a Delaware limited liability company with its principal offices or place of business in Lorton, Virginia. Five Guys Franchisor, LLC is a franchisor, and its corporate and franchisee-operated restaurants are in the business of offering hamburgers, hot dogs, and French fries, among other food products, for sale to consumers under the service mark Five Guys® Burgers and Fries.

DEFINITIONS

3. “No-Poach Provisions” refers to any and all language contained within franchise or license agreements or any documents ancillary thereto which restricts, limits or prohibits any

Five Guys franchisee or Five Guys-operated store from hiring, recruiting or soliciting employees of Five Guys and/or any other Five Guys franchisee for employment. Such language includes, but is not limited to, any “no-solicitation,” “no-switching,” and/or “no-hire” provisions.

4. “Five Guys” shall mean Five Guys Franchisor, LLC, and shall include its directors, officers, managers, agents acting within the scope of their agency, and employees as well as its successors and assigns, affiliates, controlled subsidiaries, and predecessor franchisor entities.

THE INVESTIGATION BY THE ATTORNEYS GENERAL

5. The Attorneys General undertook an investigation pertaining to certain No-Poach Provisions contained in Five Guys’ franchise agreements and other restrictions on employees’ ability to move between employment at different Five Guys franchises or locations. As a result of the investigation, the Attorneys General determined:

- a. Five Guys has independently-owned franchise locations in each of the Settling States;
- b. Beginning in at least 2003, Five Guys began including No-Poach Provisions in its franchise agreements; and
- c. Five Guys’ use of No-Poach Provisions in its franchise agreements may have limited, and may continue to limit job opportunities, restricted employees’ earning potential and upward job mobility, and deprived other franchisees of the opportunity to hire workers with requisite skills and

experience. The economic consequences of these restrictions may be significant.

6. The Attorneys General allege that this course of conduct may constitute a violation of the Settling States' antitrust laws. The Attorneys General further allege that these methods, acts, or practices may constitute unfair methods of competition and/or unfair or deceptive acts or practices in the conduct of trade or commerce in violation of the Settling States' consumer protection laws, and may violate other laws in some or all of the Settling States governing the free exercise of the right to contract for employment.

7. Five Guys denies that its use of No-Poach Provisions violated the Settling States' laws or resulted in the consequences referenced above.

8. Five Guys enters into this Agreement for the purpose of resolving this investigation only, and this Agreement does not create any rights for any third party.

9. This Agreement is made without trial or adjudication of any issue of fact or law and without the initiation of any legal action by any of the Settling States. Without admitting to any violation of law, the parties have voluntarily and knowingly entered into this Agreement in order to avoid the time, expense, and uncertainty of litigation.

10. The Attorneys General have conferred in good faith with Five Guys and its attorneys, and the parties have agreed to resolve the allegations through this Agreement.

ASSURANCES

11. Five Guys agrees that it will no longer include No-Poach Provisions in any of its franchise agreements in the United States signed after the execution date of this Agreement.

12. Five Guys agrees it will not enforce any No-Poach Provision in any of its existing franchise agreements in the United States and will not seek to intervene in any action brought by the Attorney General of any of the Settling States against a current or former franchisee that enforces or attempts to enforce an existing No-Poach Provision. However, Five Guys may fully defend itself and its practices in any case in which it is named as a party.

13. Within 30 days of execution of this Agreement, Five Guys will send a letter to all of its current franchisees with stores located in the Settling States who are operating under franchise agreements containing No-Poach Provisions (the “Affected Franchisees”), stating that Five Guys, in accordance with an agreement with the Attorney General of the State in which the store is located, is requesting that the No-Poach Provisions be removed from existing franchise agreements. The notice that Five Guys will send to these franchisees will be substantially in the form of the letter attached hereto as Exhibit A. That letter will include the proposed amendment that Five Guys is requesting that the Affected Franchisee agree to, which will remove the No-Poach Provisions from its franchise agreements.

14. The proposed amendment that will be included with each letter will be substantially in the form of the amendment attached hereto as Exhibit B.

15. The letter to Affected Franchisees will also include instructions to post a notice at the workplace in a location where it can easily be read to inform employees of this Agreement. Five Guys will recommend that such notice be posted through December 31, 2020. A template of such notice in English and Spanish is attached hereto as Exhibit C. Five Guys will also post this

notice in its own restaurants located in the Settling States. Such notice shall be posted through December 31, 2020.

16. If, after the 30-day period set forth in Paragraph 13, Five Guys becomes aware of a franchisee with a store located in one of the Settling States attempting to enforce a No-Poach Provision, and Five Guys is unable to persuade such franchisee to desist from enforcing or attempting to enforce such provision, Five Guys will notify the Attorney General of the state in which the store is located and the Massachusetts Attorney General within thirty (30) days of learning of the attempted enforcement. Notice shall be provided by both United States Postal Service and email to the appropriate Settling States' signatory to this Agreement.

17. In addition to sending the letter to its current franchisees in the Settling States pursuant to Paragraph 13 above, Five Guys will respond promptly to any inquiries from such franchisees regarding the request to amend the terms of the franchise agreement and will encourage its current franchisees in the Settling States to sign the proposed amendment. Within 150 days of execution of this Agreement, Five Guys will provide: (a) a list of all Affected Franchisees in the Settling States that indicates whether each such franchisee has executed the proposed amendment, refused to execute the proposed amendment, or is requesting an extension to execute the proposed amendment to the Settling States; and (b) copies of all executed amendments it has obtained with the Affected Franchisees to the Massachusetts Attorney General. However, Five Guys is under no obligation to offer its franchisees any consideration – monetary or otherwise – in order to induce them to sign the proposed amendment or take any adverse action against such franchisees if they refuse to do so. A decision by a franchisee not to

amend its franchise agreement, or not to do so within 150 days of this Agreement, shall not mean that Five Guys has not complied with its obligations under this Agreement.

18. If Five Guys learns that an Affected Franchisee in a Settling State intends in good faith to sign the proposed amendment but is unable to do so within the time period specified in Paragraph 17, Five Guys will notify the Massachusetts Attorney General, to seek a mutually agreeable extension. During any such extension, the Attorneys General will not take further investigative or enforcement action against the franchisee for the use of No-Poach Provisions.

19. Within 180 days of execution of this Agreement, Five Guys will submit a declaration to the Attorneys General, signed under penalty of perjury, stating whether all provisions of this Agreement have been satisfied.

MISCELLANEOUS PROVISIONS

20. This Agreement shall be governed by and interpreted in accordance with the respective laws of the Settling State that is seeking to enforce the Agreement against Five Guys or against which Five Guys is seeking enforcement.

21. Five Guys is represented by and has consulted with counsel in connection with the decision to enter into this Agreement.

22. This Agreement shall be binding upon Five Guys, and any company or entity through which it does business, or which is under its direct or indirect control by any means, or any of those companies' or entities' predecessors or successors in interest, parent corporations, holding companies, subdivisions, subsidiaries, affiliated entities, officers, directors, trustees, partners, agents, servants, employees, and contract workers.

23. This Agreement shall have the same effect as an Assurance of Discontinuance, Assurance of Voluntary Compliance, or a Stipulated Judgment, and it may be filed in court pursuant to the respective laws of each Settling State.¹

24. In the event that any of the Settling States believe that Five Guys has breached the terms of this agreement:

- a. The Settling State or States will provide written notice of the alleged breach to Five Guys by both United States Postal Service and email to the below contacts:

Erin Lewis Roberts, Esquire
Deputy General Counsel
Five Guys
10718 Richmond Highway
Lorton, VA 22074
email: eroberts@fiveguys.com

with copy to:
Jan Gilbert, Esquire
Gray Plant Mooty
600 New Hampshire Avenue, NW
The Watergate – Suite 700
Washington, DC 20037

- b. Five Guys will have forty-five (45) days following receipt of the written notice to cure any alleged breach; and
- c. Notwithstanding the cure period provided in Sub-Paragraph (b) above, the Settling States are not required to provide notice in advance of taking any

¹ With respect to California, this Agreement will only become effective once it has been entered as a stipulated judgment pursuant to California Code of Civil Procedure section 664.6.

enforcement action if necessary to protect the health, safety or welfare of the public.

25. If a court of competent jurisdiction determines that Five Guys has materially breached this Agreement, then:

- a. For each material breach of this Agreement that results in a refusal to hire, Five Guys shall pay the Settling States an aggregate amount of no more than \$100,000, determined at the Settling States' discretion, unless Five Guys establishes that the breach was unintentional and that Five Guys cured the breach within forty-five (45) days of receipt of written notice from the Settling States.
- b. For each material breach of this Agreement that does not result in a refusal to hire, Five Guys shall pay the Settling States an aggregate amount of no more than \$10,000, determined at the Settling States discretion, unless Five Guys establishes that the breach was unintentional and Five Guys cured the breach within forty-five (45) days of receipt of written notice from the Settling States; and
- c. In the event that a payment is due under this Paragraph, Five Guys shall also pay the reasonable fees and costs incurred by the Settling States in enforcing the terms of this Agreement, if litigation is required, including without limitation attorneys' fees, expenses, and the costs of investigation and litigation, as determined by the court.

26. The Attorneys General agree not to proceed with or institute any civil action or other proceeding against Five Guys or any company through which Five Guys does business or which is under its direct or indirect control by any means, for the use of No-Poach Provisions prior to the execution of this Agreement. The Attorneys General further agree not to proceed with or institute any civil action or other proceeding against any of Five Guys' current franchisees, for the use of No-Poach Provisions prior to the execution of this agreement, to the extent such franchisee enters into the proposed amendment described in Paragraph 14 above and posts the proposed notice described in Paragraph 15. Notwithstanding this paragraph, nothing in this Agreement shall be construed as preventing the Attorneys General from reopening this matter in the event of a suspected violation of this Agreement. Nothing in this Agreement serves to waive, release, or otherwise affect any claims or potential claims of individuals or classes of individuals not party to this Agreement, even if one or more of the Attorneys General could have brought those claims on their behalf.

27. Notwithstanding Paragraph 26, the Attorneys General reserve the right to take further investigative or enforcement action against any Affected Franchisee that does not sign the proposed amendment described in Paragraph 14, or fails to post the proposed notice described in Paragraph 15.

28. Nothing in this Agreement shall be construed as relieving Five Guys of a duty to comply with all applicable federal, state and local laws, regulations, rules, and permits.

29. This Agreement contains the complete agreement between the Attorneys General and Five Guys related to the conduct at issue. No promises, representations, or warranties other

than those set forth in this Agreement have been made by the Attorneys General or by Five Guys.

This Agreement supersedes all prior communications, discussions, or understandings regarding

No-Poach Provisions between the Attorneys General and Five Guys, whether oral or in writing.

This Agreement can only be modified or supplemented by a written document signed by Five Guys and the applicable Attorney(s) General.

30. The Attorneys General and Five Guys agree and represent that any persons signing this Agreement are authorized by proper authorities to execute this Agreement on their behalf.

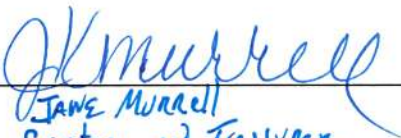
By signing below, Five Guys agrees to comply with all of the terms of this Agreement.

31. Execution of this Agreement does not constitute an approval by the Settling States of any of Five Guys' business acts or practices.

32. Five Guys may petition the Attorneys General of any Settling State to modify or terminate the Agreement on the basis of material changes in law, rule, regulation, judicial or administrative decision or interpretation.

AGREED TO AND APPROVED BY:

FIVE GUYS FRANCHISOR, LLC

Name: 
Title: James Murrell
Secretary and Treasurer

Five Guys Franchisor, LLC

FOR THE SETTLING STATES:

MASSACHUSETTS



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Massachusetts Office of the Attorney
General
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CALIFORNIA



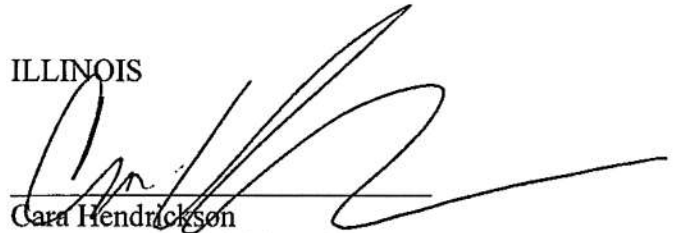
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VERMONT



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EXHIBIT A

SAMPLE NOTICE TO AFFECTED FRANCHISEES

Dear [Franchisee Name]:

In July 2018, the Attorneys General of California, Illinois, Iowa, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, and the District of Columbia (the "States") requested information from Five Guys regarding our franchise agreements. In particular, the States objected to any "No-Poach Provisions" or policies which restrict the hiring or solicitation of employees between Five Guys and its franchisees, including [Franchisee Name]. These No-Poach Provisions, which are also known as "non-solicitation" or "no hire" provisions, do appear in some Five Guys franchise agreements.

We have cooperated with the Attorneys General and have entered into a Settlement Agreement (attached) without admitting or denying that Five Guys or its franchisees have violated any law or regulation or acted improperly in any respect. We believe the franchise system's interests are best served by resolving the matter without costly and protracted litigation.

Under the Agreement with the States, Five Guys will no longer enforce No-Poach Provisions in any of our existing franchise agreements in the United States. Moreover, Five Guys will not include any such provisions in any future franchise agreements.

Please be advised that should you attempt to enforce any such provision against another franchisee, Five Guys will not intervene or help to enforce it and your actions may be subject to further investigation by the States.

Our Agreement with the States requires that we request from franchisees who have executed franchise agreements containing No-Poach Provisions with locations in any of the States, that they agree to amend their existing franchise agreements to remove the No-Poach Provisions, and to provide notice to their employees of this Agreement through December 31, 2020. Enclosed for your signature is: (1) an amendment to your franchise agreement(s) with Five Guys to remove the No-Poach Provisions, and (2) a notice to your employees provided by the States in English and Spanish.

To the extent that you agree to this amendment to your franchise agreement and post the enclosed employee notice in a location where it can easily be read by your employees, the States have committed to not pursue any suit, or take any investigative or enforcement action against you for conduct relating to the No-Poach Provision of your franchise agreement, up to and including the date you sign the amendment.

Please sign and return the amendment to me as soon as possible. If you decide not to sign the enclosed amendment by [insert date, within 150 days of execution] or fail to post the employee notice through December 31, 2020, the States have indicated that they

reserve the right to investigate you and/or pursue enforcement actions against you relating to the contractual provisions described above.

If you have any questions or concerns, please contact me at [Contact Info].

If you receive any media inquiries, please refer them to [contact].

Sincerely,

[Name, Title]

EXHIBIT B

UNIVERSAL ADDENDUM TO AGREEMENTS

THIS UNIVERSAL ADDENDUM TO AGREEMENTS (this “**Addendum**”) is dated as of _____, 2019 (the “**Effective Date**”), and hereby modifies, amends, and supplements that certain Development Agreement dated as of _____, 20__ (as amended, supplemented, or otherwise modified from time to time, the “**Development Agreement**”) by and between FIVE GUYS FRANCHISOR, LLC, a Delaware limited liability company (the “**Franchisor**”), and _____, an individual residing in the State of _____ (the “**Developer**”), and each of those franchise agreements (collectively, the “**Franchise Agreements**”) signed in connection with the Development Agreement. All capitalized terms used herein and not otherwise defined shall have the respective meanings ascribed to such terms in the Development Agreement and the Franchise Agreements referenced below.

WITNESSETH:

WHEREAS, the Franchisor and the Developer are parties to the Development Agreement for purposes of establishing and operating a certain number of FIVE GUYS® restaurants in the Territory described therein;

WHEREAS, the Developer (on behalf of himself and each of the franchisees under the Franchise Agreements (together, the “**Franchisees**”) and the Franchisor intend to amend certain provisions of the Development Agreement and the Franchise Agreements, all in accordance with the terms set forth in this Addendum; and

WHEREAS, the Developer represents and warrants that he is duly authorized to sign this Addendum on behalf of the Franchisees under the Franchise Agreements.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties hereto agree as follows:

1. As of the Effective Date of this Addendum, the portions of the Franchise Agreements identified below which restrict your ability to employ, or seek to employ, or otherwise induce any person who is employed by the Franchisor, or any of its affiliates or by any other Five Guys® franchisee or developer of the Franchisor are hereby deleted from each Franchise Agreement, and are of no further force or effect. Likewise, any restriction on our ability to recruit or hire any employee of yours or your Affiliates is hereby deleted from each Franchise Agreement, and is of no further force or effect. Specifically, Sections [VI.C(3)] and [IX.D(2)] of the Development Agreement and Sections [VI.F] and [X.C(2)(b)] of each Franchise Agreement are hereby deleted in their entirety and shall have no force or effect.

2. Except as otherwise provided above, all of the terms and conditions of the Development Agreement and the Franchise Agreements shall continue in full force and effect, and the representations, warranties, and covenants contained in the Development Agreement and the Franchise Agreements shall be read to give effect to the rights that are granted under this Addendum. In the event of any conflict or ambiguity between the terms of this Addendum and the Development Agreement and /or the Franchise Agreements, the terms of this Addendum shall control.

IN WITNESS WHEREOF. the parties hereto have executed this Addendum as of the Effective Date written above.

WITNESS:

By: _____

FRANCHISOR:

By: _____

Name: _____

Title: Authorized Signatory

WITNESS:

By: _____

DEVELOPER:

By: _____

EXHIBIT C

EMPLOYEE NOTICE
(post through December 31, 2020)

In July 2018, the Attorney General of your state asked Five Guys to stop using or enforcing No-Poach Provisions in its Franchise Agreements. The Attorney General believes that No-Poach Provisions may have prevented some employees from getting a job at another Five Guys location.

Five Guys does not believe that it acted improperly in any way, and denies that it violated any law. However, Five Guys cooperated with the Attorney General and agreed to stop using or enforcing these provisions.

You are allowed to be recruited or hired by Five Guys or another Five Guys franchisee in the future, if you so desire.

If you have any questions or concerns, please contact Five Guys Franchisor, LLC and your state Attorney General's Office [include list of phone numbers or Email].

AVISO DE EMPLEADO
(publique hasta el 31 de diciembre de 2020)

En julio de 2018, el Fiscal General de su estado solicitó a Five Guys que deje de usar o hacer cumplir provisiones de no-Pochar en sus acuerdos de franquicia. El Fiscal General cree que no-Pochar provisiones pueden haber prevenido a algunos empleados de conseguir un trabajo en otra locación de Five Guys.

Five Guys no cree que actuó incorrectamente de ninguna manera, y niega que haya violado cualquier ley. Five Guys cooperó con el Fiscal General y acordó a dejar de usar o hacer cumplir estas provisiones.

Se le permite ser reclutado o contratado por Five Guys u otro Five Guys franquiciado en el futuro, si así lo desea.

Si tiene cualquier pregunta o preocupaciones, por favor contacte a Five Guys y a la Oficina del Fiscal General de su estado [include list of phone numbers or Email].