

Exhibit 1 to Memo of Law

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MICHAEL ETZEL, individually and on)	
behalf of all others similarly situated,)	Civil Action File Number:
)	1:15-CV-01055-LMM
)	
)	
)	
Plaintiff,)	
v.)	
)	
HOOTERS OF AMERICA, LLC,)	
)	
Defendant.)	

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is made and entered into this 8th day of August, 2017, by and between the following “Parties”: Hooters of America, LLC (“HOA”), and plaintiff and putative class representative Michael Etzel (“Plaintiff” or “Class Representative”), individually and on behalf of the Participating Class Members (as defined herein) of the Settlement Class (as defined herein) as recipients of the January 28, 2015 text message (the “Text Message”) alleged to be sent in violation of the Telephone Consumers Protection Act, 47 USC § 227 (“TCPA”).

WHEREAS, Plaintiff brought this action on behalf of himself and other similar recipients of the Text Message;

WHEREAS, HOA denies any and all liability, injury, or damage to the Settlement Class, and denies that it sent text messages via autodialer to persons without the requisite levels of prior consent, but has agreed to enter this Settlement Agreement to avoid the expense, inconvenience, and risks of litigation, and any other present or future litigation arising out of the same facts that gave rise to the Class Action, and to avoid the distraction and diversion of HOA personnel and resources, and to put to rest this controversy with its customers;

WHEREAS, Class Counsel have concluded, after due investigation and after carefully considering the relevant circumstances, including, without limitation, the claims asserted in the Class Action and the legal and factual defenses thereto and the applicable law, and after review of documents and data provided by HOA and otherwise obtained by Class Counsel, that it would be in the best interests of the Plaintiff and the Class Members to enter into this Settlement Agreement to avoid the uncertainties of litigation, to assure that the benefits reflected herein are obtained for the Plaintiff and all Class Members, and that this Settlement fairly reflects the value of the claims; and, as a result, Class Counsel consider the settlement set forth

herein to be fair, reasonable, adequate, and in the best interests of Plaintiff and all members of the Class;

WHEREAS, arm's-length settlement negotiations have taken place between Class Counsel and counsel for HOA over an extensive period of time, and this Settlement Agreement, which embodies all of the terms and conditions of the settlement between HOA and the Plaintiff and the Class, has been reached, subject to the approval of the Court and Final Approval as provided herein;

WHEREAS, it is anticipated that this Settlement Agreement will resolve all claims, potential claims, or other relief against or potentially against the Releasees (as defined herein) that have been, or could have been, raised in the Class Action.

NOW, THEREFORE, in consideration of the covenants, terms, and releases in this Settlement Agreement and for other good and valuable consideration, it is by and among the undersigned agreed that the Class Action be settled, compromised, and fully resolved as to the Releasees, all subject to the approval of the Court and the following terms and conditions:

A. Definitions

The following terms, as used in this Settlement Agreement, have the following meanings. The definitions herein are solely for purposes of this Agreement and do

not constitute an admission by any party with respect to the underlying facts as they may be relevant to the Plaintiff's claims:

1. "Action" or "Class Action" means the pending litigation among the parties captioned Michael Etzel, individually and on behalf of all others similarly situated, v. Hooters of America, LLC, No. 1:15-CV-01055-LMM, pending in the Northern District of Georgia.

2. "Claims Deadline" means 90 days after the Notice Deadline.

3. "Claim Form" or "Claim" means the form Settlement Class Members must submit to be eligible for relief under the terms of the Settlement, the proposed form of which is attached hereto as **Exhibit B**.

4. "HOA" means Hooters of America, LLC, and all of its successors.

5. "Settlement Agreement" means this settlement agreement.

6. "Claims" and/or "Released Claims" means any and all suits, claims, rights, demands, assertions, allegations, causes of action, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, debts, liabilities, judgments, or remedies, which are related to the subject matter of the Class Action, whether arising under federal or state or any other law, including all claims that were or could have been brought in the Class Action.

7. “Claims Administrator” means an independent professional service to be selected by Class Counsel and charged with administering the claims process and distribution of the settlement. The Parties have selected KCC LLC to be the administrator subject to Court Approval.

8. “Class Counsel” means the law firms of Carr & Weatherby, LLP; Weinberg Wheeler Hudgins Gunn & Dial; and the Law Office of David Ghattas.

9. “Class Member” or “Settlement Class Member” or “Class” means each member of the proposed Settlement Class.

10. “Complaint” means the Class Action Complaint filed in the Action on April 8, 2015.

11. “Court” means the U.S. District for the Northern District of Georgia, Atlanta Division.

12. “Effective Date” means the date on which the Settlement Agreement becomes final in accordance with the terms of Section C6 below.

13. “Execution Date” means the date of the execution of this Settlement Agreement by Plaintiff and HOA.

14. “Notice” means the notices of proposed class action settlement that the Parties will ask the Court to approve in connection with the motion for preliminary approval of the Settlement.

15. “Notice Deadline” means 30 days after the Court’s Order Preliminarily Approving the Settlement Agreement is entered.

16. “Objection Deadline” means 60 days after the Notice Deadline.

17. “Opt-Out Deadline” means 60 days after the Notice Deadline.

18. “Settlement Website” means the website that the Claims Administrator will establish as soon as practicable following Preliminary Approval, but prior to the commencement of the Notice Program, as a means for Settlement Class Members to obtain notice of and information about the Settlement, through and including hyperlinked access to this Agreement, the Notice, the order preliminarily approving this Settlement, the Claim Form, the Complaint and such other documents as Class Counsel and HOA agree to post or that the Court orders posted on the website. These documents shall remain on the Settlement Website at least until Final Approval. The URL of the Settlement Website shall be www.HOATCPAsettlement.com. Participating Class Members shall also be able to submit Claim Forms electronically via the Settlement Website. The Settlement Website shall not include any advertising and shall remain operational until at least 30 days after distribution of the funds and Final Approval.

19. “Settlement Opt Out” means a Class Member who has submitted a valid request by the Opt-Out Deadline for exclusion from the Settlement Class pursuant to the opt-out procedure adopted by the Court.

20. “Participating Class Member” means every entity and person falling within the definition of the Settlement Class defined herein that is not a Settlement Opt Out (i.e., has not made a timely and valid request for exclusion from the Settlement Class pursuant to the opt-out procedure approved by the Court).

21. “Releasees” means, jointly and severally, individually and collectively, HOA, past, present and future parents, subsidiaries, divisions, affiliates, stockholders, investors, equity holders, parent entities, owners, members, officers, advisors, investors, and each and any of its past, present, and future respective members, officers, directors, insurers, general or limited partners, employees, agents, legal representatives, together with the predecessors, heirs, attorneys and executors, administrators, successors and assigns of the foregoing.

22. “Releasers” means, jointly and severally, individually and collectively, each and every Plaintiff and Participating Class Member, including any of his, her or its past, present or future parents, subsidiaries, divisions, affiliates, stockholders, and each and any of their respective past, present, and future stockholders, officers, directors, insurers, general or limited partners, agents, attorneys, employees, legal

representatives, trustees, associates, heirs, executors, administrators, purchasers, predecessors, successors and assigns, acting in their capacity as such, and anyone claiming by or through them.

23. “Class” means the owners of the approximately 54,955 telephone numbers that are claimed to have been sent a text message without prior consent on behalf of Hooters’ mClub on or about January 28, 2015. Excluded from the Class is the judge presiding over this matter, any members of her judicial staff, the officers and directors of HOA, and persons who timely and validly request exclusion from the Class.

24. “Injunction” means the Injunction attached as **Exhibit A** prohibiting HOA from sending a text message or otherwise contacting the Class Members in violation of the TCPA, without having received an express written consent for such contact, after the Effective Date of the Settlement Agreement.

25. “Tier One Class Member” or “Tier One” refers to a Class Member who Plaintiff contends opted-out of receiving any text message from HOA by sending a “STOP” message (or something similar), revoking consent to receive future

messages from HOA before the Text Message was sent. There are approx. 7,351 telephone numbers that would belong to Tier One Class Members.¹

26. “Tier Two Class Member” or “Tier Two” refers to a Class Member who Plaintiff contends opted-out of receiving any text message from HOA by not responding to HOA’s October 2013 Text Message regarding reaffirming their prior consent to receive mClub messages. There are approx. 46,593 telephone numbers that would belong to Tier Two Class Members.

B. Stipulation to Class Certification.

1. The Parties hereby stipulate for the purposes of this Settlement Agreement that the requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(3) are satisfied in this case, and, subject to Court approval, the Settlement Class defined in paragraph A23 shall be certified for settlement purposes as to the Releasees.

2. The Parties’ agreement as to certification of the Settlement Class is only for the Purpose of effectuating this settlement and for no other purpose. The Parties retain all of their respective positions, objections, arguments and/or defenses with respect to class certification if the Settlement Agreement is rescinded or otherwise

¹ The Parties obtained the list of telephone numbers from HOA’s prior vendor, State of Text, LLC (“SoT”), whose database of information was used to determine which recipients of the January 28, 2015 text are Class Members. The Parties agreed to exclude telephone numbers that HOA contends did not receive the message based on “error codes” shown in the sender Silver Pop’s transmission logs.

does not receive Final Approval as defined herein. The Parties acknowledge that there has been no stipulation to a class or certification of a class for any purposes other than effectuating the Settlement Agreement, and that if the Settlement Agreement does not receive Final Approval as defined herein, this agreement as to certification of the Settlement Class becomes null and void *ab initio* and no party may cite to this Settlement Agreement or certification of the Settlement Class in support of or against an argument for certifying a class.

C. Approval of this Settlement Agreement and Dismissal of Claims

1. Plaintiff, Class Counsel, HOA and their counsel agree to use their reasonable best efforts to effectuate this Settlement Agreement, including, but not limited to, cooperating in promptly seeking both preliminary and final approval of this Settlement Agreement (including the giving of class notice under Federal Rules of Civil Procedure 23(c) and (e) to secure certification of the Settlement Class), and the prompt, complete, and final dismissal with prejudice of the Action as to all Releasees. HOA agrees not to object to Plaintiff's request for preliminary and final approval of class-wide settlement insofar as those requests are made in accordance with this Settlement Agreement.

2. By the court-ordered deadline, currently August 9, 2017, Plaintiff shall submit to the Court a motion for preliminary approval of this Settlement Agreement,

for authorization to disseminate notice to the Settlement Class, and for a stay of all proceedings against the Releasees in the Class (the “Motion”). The Motion shall include: (a) the definition of the Settlement Class to be certified by the Court pursuant to this Settlement Agreement; (b) the proposed form of, method for, and date of dissemination of notice to the Settlement Class; (c) a proposed form of preliminary approval order; and, (d) a proposed Injunction.

3. Within ten (10) days of the filing of the Motion, HOA (or a vendor retained by it) shall, at HOA’s own expense, notify federal and state officials as specified in 28 U.S.C. §§ 1715(a) & (b).

4. **Notice Program:** Upon preliminary approval of the Settlement Agreement, Class Counsel shall, in accordance with Fed. R. Civ. P. 23 and the Court’s order, provide Settlement Class Members with Notice.

a. Notice will be provided to the Class Members in two ways. *First*, notice will be by written mail (post-card) pursuant to addresses determined from a look-up on the telephone numbers using a historic look-up process designed to identify the owner of the telephone number on January 28, 2015. The Claims Administrator will use multiple databases to determine addresses and names of the cellular telephone owners at the time the text message was sent. *Second*, to notify the

persons whose addresses are unable to be located, the Class Administrator will place online advertisements targeting adult cell phone owners 18 years of age and over on Google Display and Facebook networks, for a total purchase of at least 15 million impressions.

- b. The Notice will clearly state: “(1) the nature of the action; (2) the definition of the class certified; (3) the claims, issues or defenses; (4) that a class member may enter an appearance through an attorney if the member so desires; (5) that the court will exclude any member from the class who requests exclusion (6); the time and manner for requesting exclusion; and (7) the binding effect of a class judgment on members.” Fed. R. Civ. P. 23(c)(2)(B). The agreed-upon post-card Notice Form is attached hereto as **Exhibit C**. In addition, on the website there will be a Q&A with additional common questions answered, attached hereto as **Exhibit D**.

- c. The failure of any Class Member to receive notice or any other document as described in this Settlement Agreement shall not be a basis for invalidating this Settlement Agreement or any order entered pursuant thereto, and the Settlement Agreement, Release, and

covenants not to sue shall nevertheless be binding and the final judgment approving the Settlement Agreement effective, in accordance with each of their respective terms.

- d. Claim forms will be able to be submitted either via mail/return postcard or online via the Settlement Website. The agreed-upon Claim Form that can be printed from the website and submitted via mail is attached hereto as **Exhibit B**. The Class Administrator will construct the Settlement Website to house documents for class members (e.g., Settlement Agreement, Notice, online version of Claim Form) and to provide online submission of claims for class members who would rather submit claims online than via mail. The link to that website (www.HOATCPAsettlement.com) will be provided in the mail notices and publication notices. The Class Administrator will make available on the class action website a way for persons to enter their telephone numbers as of January 28, 2015, to see if they are a Class Member.
- e. The Notice shall include a procedure for Class Members to exclude themselves from the Class by notifying the Claims Administrator in writing of the intent to exclude himself or herself from the Class. Such written notification must be postmarked no later than the Opt-Out

Deadline, as specified in the Notice. The written notification must include the individual's name and address and telephone number on January 28, 2015; a statement that he or she wants to be excluded from the Consumer Action; and the individual's signature. The Claims Administrator shall provide the Parties with copies of all opt-out notifications, and a final list of all who have timely and validly excluded themselves from the Class, which Class Counsel may move to file under seal with the Court no later than 10 days prior to the Final Approval Hearing. Any Class Member who does not timely and validly exclude himself or herself shall be bound by the terms of the Settlement, upon Final Approval by the Court.

- f. The Notice shall also include a procedure for Class Members to object to the Settlement and/or to Class Counsel's application for attorneys' fees, costs and expenses. Objections to the Settlement or to the application for fees, costs, and expenses are to be mailed to the Class Administrator and be postmarked by no later than the Objection Deadline, as specified in the Notice. The Class Administrator will provide copies of any objections to Class Counsel and HOA's counsel, and objections will be provided to the Court before the Final Approval

hearing. An objection must set forth: a. the name of the Action; b. the objector's full name, address, and telephone number; c. an explanation of the basis upon which the objector claims to be a Class Member; d. all grounds for the objection, accompanied by any legal support for the objection; e. the identity (if any) of all counsel representing the objector who will appear at the Final Approval Hearing; f. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and g. the objector's signature on the written objection.

- g. The Notice Program shall be completed by the Notice Deadline, excluding any re-mails for Mail Notices that are returned undeliverable, which re-mails must be completed thirty (30) days before the Claims Deadline.
- h. The Claims Administrator shall post the Notice on the Settlement Website in the form agreed to by the Parties and approved by the Court. The Notice shall be posted on the Settlement Website before Claim forms are mailed out and before publication notice begins.
- i. Within seven (7) days after the Notice Deadline, the Claims Administrator shall provide Class Counsel and HOA with one or more

affidavit(s) confirming that the Notice Program and posting of Notice on the Settlement Website were completed in accordance with the Parties' instructions and the Court's approval. Class Counsel shall file such affidavit(s) with the Court as an exhibit to or in conjunction with Class Representative's motion for final approval of the Settlement.

- j. The costs of the Claims Administrator shall be borne by and paid by HOA in accordance with Section E2 below.

5. **Final Approval:** Class Counsel shall promptly submit a motion for final approval of the Settlement Agreement to the Court after notice is given to the members of the Settlement Class of the Settlement Hearing.

- a. The Motion for Final Approval and Requested Order will include at least the following items to be requested from the Court: (1) Approving finally this Settlement Agreement and its terms as a fair, reasonable, and adequate settlement as to the Participating Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms; (2) Ordering that, as to the Releasees, the Action be dismissed with prejudice and, except as specifically provided for in this Settlement Agreement, without costs; (3) Discharging and releasing the Releasees and Releasers from all

Released Claims, in conformance with this Settlement Agreement; (4) Reserving exclusive jurisdiction over the Settlement and this Settlement Agreement, including the administration and consummation of this settlement; (5) Entering the Injunction attached as **Exhibit A**; (6) Determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the judgment of dismissal as to the Releasees shall be final and entered forthwith; (7) Requiring Class Counsel to file with the Clerk of the Court a record of Settlement Opt-Outs, and to provide a copy of the record to counsel for HOA; and (8) Ordering the Claims administrator to pay all timely and valid claims via electronic delivery of the gift cards detailed elsewhere in this Agreement.

- b. The Final Approval hearing shall be scheduled no earlier than 90 days after the CAFA notices in paragraph C3 are mailed to ensure compliance with 28 U.S.C. § 1715. By no later than 30 days after the Objection Deadline, Plaintiff shall file a motion for final approval of the Settlement and a motion for attorneys' fees, costs, and expenses for Service Awards. At the Final Approval Hearing, the Court will consider the motion for final approval of the Settlement, and Class

Counsel's application for attorneys' fees, costs, expenses and for Service Awards. The Court, in its discretion, may also hear argument as to any Class Members (or their counsel) who object to the Settlement or to the application for attorneys' fees, costs, expenses, and for awards to the class representative, provided the objectors filed timely objections that meet all of the requirements listed in paragraph C4f.

6. This Settlement Agreement shall become final and shall be deemed to have received final approval ("Final Approval") on the date that: (a) the Court has entered a final order approving this Settlement Agreement under Rule 23(e) of the Federal Rules of Civil Procedure, entering the stipulated Injunction, and a final judgment dismissing the Action as against the Releasees with prejudice as to all Participating Class Members and without costs; and (b) the time for appeal or to seek permission to appeal from the Court's approval of this Settlement Agreement and entry of a final judgment as described in clause (a) above has expired or, if appealed, approval of this Settlement Agreement and the final judgment has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmation has become no longer subject to further appeal or review. The Parties agree that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure

nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining the time of finality of the judgment. On the Execution Date of this Settlement Agreement, the Parties shall be bound by its terms, and this Settlement Agreement shall not be rescinded unless in accordance with terms provided herein. Appeals relating solely to attorneys' fees or costs shall not delay the Final Approval of this Settlement Agreement and shall not delay the entry of final judgment, or the finality of the judgment, as to the claims against any of the Releasees. In the event that Final Approval is not received or this Settlement Agreement is rescinded as provided herein, this Settlement Agreement becomes null and void.

7. The Parties acknowledge that HOA is entering into this Settlement Agreement to eliminate the uncertainty, burden, and expense of litigation without any presumption or inference of admission of liability or wrongdoing or bad faith on the part of the Releasees, and without any inference of admission of any violations of the TCPA so as to support claims for statutory damages and/or actual damages. The terms of this Settlement Agreement, the negotiations leading up to this Settlement Agreement, performance in accordance with this Settlement Agreement, and the data, documents, or information exchanged between the Parties in connection with, or pursuant to, this Settlement Agreement, may not be offered, taken, construed, or introduced as evidence of liability or as an admission or

statement of wrongdoing by the Releasees, either in this Class Action, or in any pending or future civil or criminal proceeding in any court of law or equity or before any government, administrative, or regulatory agency or other tribunal in the United States or elsewhere in the world, except in a proceeding to enforce this Settlement Agreement or to defend against the assertion of the claims in this Class Action by Releasees or as otherwise required by law.

8. The Parties also acknowledge and agree that, in the event that Final Approval is not obtained, nothing herein shall be admissible against the Plaintiff or any members of the Class or be construed in any way as an admission against interest.

D. Release and Discharge.

1. Upon the occurrence of the Final Approval, and in consideration of the issuance of the Gift Cards and the Court's entry of the Injunction, as specified in Section E of this Settlement Agreement, and for other valuable consideration recited herein, the Releasees shall be completely released, acquitted, and forever discharged from and against any and all Claims, demands, actions, suits, and causes of action, whether class, individual, or otherwise in nature, damages of any nature whatsoever, liabilities of any nature whatsoever, including costs, expenses, penalties, and attorney's fees, that Releasors, or anyone of them, whether directly, indirectly,

derivatively, or in any capacity whatsoever, ever had, now has, or hereafter can, shall, or may have against the Releasees, whether known or unknown, suspected or unsuspected, in law or equity, relating in any way to or on account of or arising out of the facts, occurrences, transactions, or other matters alleged in the Complaint in the Action, or contained in complaints containing the same or similar allegations regarding the Text Message and the alleged violation of the TCPA in sending the Text Message, through the Effective Date of this Settlement Agreement. Nothing herein shall bar any claim of the Releasors against the Releasees with respect to any alleged violation of the Injunction (Exhibit F).

2. Each Releasor waives California Civil Code Section 1542 and similar provisions in other states. Each Releasor hereby certifies that he, she, or it is aware of and has read and reviewed the following provision of California Civil Code Section 1542 (“Section 1542”): “A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.” The provisions of the release set forth above shall apply according to their terms, regardless of the provisions of Section 1542 or any equivalent, similar, or comparable present or future law or principle of law of any jurisdiction. Each Releasor may hereafter discover facts other than or different

from those which he, she, or it knows or believes to be true with respect to the Claims that are the subject matter of this Settlement Agreement, but each Releasor hereby expressly and fully, finally and forever waives and relinquishes, and forever settles and releases any known or unknown, suspected or unsuspected, contingent or non-contingent, Claim, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts, as well as any and all rights and benefits existing under (i) Section 1542 or any equivalent, similar or comparable present or future law or principle of law of any jurisdiction and (ii) any law or principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of the release set forth above, without regard to the subsequent discovery or existence of such other or different facts.

3. Upon the occurrence of the Final Approval, Releasees will release, acquit, and forever discharge any claims against the Releasors, whether known or unknown, that relate to or arise out of the facts, occurrences, transactions, or other matters alleged in the Complaint in the Action.

E. Settlement Consideration

1. HOA will make available up to ONE MILLION TWO HUNDRED NINETY NINE THOUSAND FOUR HUNDRED AND TEN DOLLRS

(\$1,299,410.00) in gift cards for distribution to Class Members who submit valid claims.

- a. Tier One Class Members, whose claims are approved by the Class Administrator, will receive an electronic HOA gift card in the amount of FIFTY DOLLARS (\$50.00) each.
- b. Tier Two Class Members, whose claims are approved by the Class Administrator, will receive an electronic HOA gift card in the amount of TWENTY DOLLARS (\$20.00) each, unless that amount is decreased on a pro-rata basis as further provided below.
- c. The Gift Cards will be subject to the Rules applicable to all HOA Gift Cards, located on HOA's website as of July 17, 2017. https://hooters.cashstar.com/about/terms_and_conditions/. Further, HOA agrees that the Gift Cards subject to this Settlement are fully transferable, redeemable at all Hooters' restaurants (operated or franchised) affiliated locations for any items or combination of items (subject to laws concerning alcohol consumption), do not require any purchase for their activation, and have no expiration date.
- d. Each Class Member will be required to represent on the claim form that the information provided in the claim form (which will include a

statement that the telephone number in question belonged to claimant on January 28, 2015) is true and correct.

- e. A telephone number will only be classified into one tier and is only eligible for one level of Gift Card payment; for example, if a number did not reply “Y” to the October 2013 text, and also said “stop” at some later point, that number would be classified as belonging to a Tier One Class Member, entitled to a \$50 gift card.
- f. Only one gift card can be claimed per person (i.e., if someone had registered more than one phone number with the mClub that falls into the categories above, only one Gift Card can be claimed).
- g. The Parties have stipulated to lists including Tier One and Tier Two telephone numbers, which derived from a master list provided by HOA’s prior vendor, State of Text, LLC (“SoT”). The Class Members with the date of “10/18/2013” in Column J, and with no transmission error code, are Tier Two Class Members. The Class Members with any other date listed in Column J, and with no transmission error code, are Tier One Class Members. The two lists will be provided to the Class Administrator and can be filed under seal with the Court at the Court’s request.

h. The Claims Administrator will endeavor to make sure that only one claim is paid per telephone number. If two claims for the same number are submitted, the Claims Administrator will determine which is paid and may do so by requesting extrinsic proof of ownership on January 28, 2015 of the telephone number in question.

2. In addition to the funds made available in Paragraph 1, HOA will pay the cost of administration through the offices of a Claims Administrator selected and approved by the parties.

a. HOA will place an additional ONE HUNDRED TWENTY THOUSAND SEVEN HUNDRED FORTY DOLLARS (\$120,740.00) into the class fund to cover the \$10,000 anticipated payment to Mr. Etzel as the class representative, the \$20,740 processing and information fee to SoT, and the costs of class administration (which, along with the administrator's affidavit summarizing the claims process and results, is expected to be no more than \$90,000 based on proposals received to date). The \$120,740.00 will be placed in an escrow account, within 10 days of the Preliminary Approval of the Settlement Agreement.

- b. In the event cost of administration exceeds \$120,740.00, upon showing by the Class Administrator of circumstances requiring additional funds, HOA will agree to add up to FIFTEEN THOUSAND DOLLARS (\$15,000.00) in additional monies to the escrow account for class administration. Should further funds be required past that point, then the amounts available for gift cards to Tier Two Class Members will be adjusted downward on a pro-rata basis to account for the additional costs of administration.
- c. To the extent that the administrative costs and class representative payment are less than the \$120,740.00 cash that HOA will provide at the outset to the class fund, the difference in the actual cost and \$120,740.00 will not revert to HOA but will be paid to the Atlanta Union Mission for homeless women and children as a tax-deductible donation to that charity.

3. The Parties agree that in the event the Gift Card Claims plus cash expenditures under this agreement (including attorneys' fees awarded by the Court) exceed ONE MILLION FOUR HUNDRED TWENTY THOUSAND ONE HUNDRED FIFTY DOLLARS (\$1,420,150.00), then the Gift Card amounts for Tier Two Class Members will be adjusted downward on a pro-rata basis.

4. HOA agrees that it will not oppose a request from Plaintiff that he receive TEN THOUSAND DOLLARS (\$10,000.00) as a service award from the class administration cash portion of class fund, for his service as named representative in this action.

5. In addition to the funds provided in paragraph 1 and 2, subject to the condition in paragraph 3, HOA will not oppose a request from Class Counsel for attorney's fees/costs of up to FOUR HUNDRED FORTY FOUR THOUSAND DOLLARS (\$444,000.00). The amount of fees/costs will be determined by the Court upon application for fees and costs by Class Counsel, and will be provided in cash from HOA to Class Counsel within twenty-one (21) days of the Court's order awarding fees/costs.

6. The Parties further agree to the Court's Entry of an Injunction prohibiting HOA from sending a text message to the Class Members without having received the requisite prior consent under the TCPA for such contact, after the Effective Date of the Settlement Agreement. The form of the Injunction is attached hereto as **Exhibit A**. The Injunction will be entered at the time of Final Approval.

7. In the event that more than 100 persons opt-out of the class, HOA will have the option to withdraw from this Settlement.

F. Claims Administrator

1. The Claims Administrator shall administer various aspects of the Settlement as described in Section E1 and perform such other functions as are specified for the Claims Administrator elsewhere in this Agreement, including, but not limited to: overseeing administration of the Settlement Fund; providing Mail Notice and Notice via Online Advertisements to Class Members as described in Section C4; establishing and operating the Settlement Website; administering the Claims processes; and overseeing the distribution of Gift Card payments according to the processes and criteria set forth herein.

2. The duties of the Claims Administrator, in addition to other responsibilities that are described in this Agreement, include:

- a. Performing a reverse phone number look up on the list of telephone numbers belonging to Class Members, which will be sent by the Parties to the Administrator on the Execution Date, to determine the addresses of as many Class Members as possible. The Administrator will perform multiple searches using different databases. The process that the Administrator utilizes will be approved by HOA and Class Counsel. For the Class Members whose addresses are located, the Claims Administrator shall mail a post-card Notice to them via First Class U.S. Mail. In accordance with the Notice Program, the

Claims Administrator shall also advertise online via Facebook and Google targeted advertisements that comply with the Notice requirements for a purchase of at least 15,000,000 impressions.

- b. Establishing and maintaining a U.S. mailbox for mailed written notifications of exclusion from the Settlement Class;
- c. Establishing and maintaining the Settlement Website;
- d. Establishing and maintaining a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answering the questions of Settlement Class Members who call with or otherwise communicate such inquiries;
- e. Responding to any mailed Settlement Class Member inquiries;
- f. Processing all written notifications of exclusion from the Settlement Class;
- g. Providing bi-monthly reports and, no later than ten days after the Opt-Out and Objection Deadline (both 60 days after the Notice Deadline), a report to Class Counsel and HOA, that summarize the number of written notifications of exclusion received that week, the total number of written notifications of exclusion received to date, the number of opt-outs and objections returned to the sender with

deficiency notices, and other pertinent information as requested by Class Counsel and HOA's counsel;

- h. At least 14 days in advance of the Final Approval Hearing, preparing and delivering to Class Counsel an affidavit to submit to the Court that: (i) attests to implementation of the Notice Program in accordance with the Preliminary Approval Order; (ii) opines on the sufficiency of the Notice Program and the response from Class Members; and (ii) identifies each Settlement Class Member who timely and properly provided written notification of exclusion from the Class;
- i. Reviewing, determining the validity of, and responding to all Claims submitted by Settlement Class Members, pursuant to criteria set forth in Sections V and VI;
- j. After the Effective Date, overseeing the process of transmitting Gift Cards to Settlement Class Members in accordance with Section E1;
- k. Providing bi-monthly reports and a final report to Class Counsel and HOA that summarize the number of Claims since the prior reporting period, the total number of Claims received to date, the number of any Claims approved and denied since the prior reporting period, the

total number of Claims approved and denied to date, and other pertinent information as requested by Class Counsel and HOA's counsel; and

1. Performing any function related to Settlement administration at the agreed-upon instruction of both Class Counsel and HOA.

3. The costs of the Claims Administrator shall be borne by and separately paid by HOA, in accordance with Section E2.

G. Miscellaneous

1. Class Counsel and Plaintiff shall not assist any person or entity that timely opted out of the Settlement Class, or their counsel, in any way in litigation or preparation for litigation concerning the subject matter of the Class Action.

2. HOA and Plaintiff expressly reserve all of their respective rights, defenses, and positions in the Class Action, without prejudice, to the extent that the Settlement Agreement does not receive Final Approval from the Court or, if appealed, from the Appellate Court or if the Settlement Agreement is rescinded by any party to this Settlement Agreement or otherwise becomes null and void.

3. For the purpose of construing or interpreting this Settlement Agreement, Plaintiff and HOA agree that it is to be deemed to have been drafted

equally by all parties hereto and shall not be construed strictly for or against any party.

4. The Parties acknowledge and agree that this Settlement Agreement contains the entire understanding between the Parties with respect to the subject matter hereof, that there is no representation, agreement, or obligation regarding the Settlement which is not expressly set forth in this Settlement Agreement, and that no representation, inducement, promise, or agreement not expressly set forth in the text of this Agreement shall be of any force or effect.

5. The Parties agree to execute and deliver to each other party from time-to-time such reasonable additional instruments or documents and to perform such other reasonable acts as may be necessary or desirable to effectuate this Settlement Agreement.

6. All terms of the Settlement Agreement are contractual and not mere recitals. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Releasors and Releasees. Subject to the Court's Final Approval, each and every covenant and agreement made herein by Plaintiff shall be binding upon all Participating Class Members and Releasors.

7. Nothing expressed or implied in this Settlement Agreement is intended to or shall be construed to confer upon or give any person or entity other than

Plaintiff, Participating Class Members, Releasors, and Releasees any right or remedy under or by reason of this Settlement Agreement.

8. This Settlement Agreement may be modified or amended only by a writing jointly executed by Class Counsel and counsel for HOA, subject (if after preliminary or final approval by the Court) to approval by the Court. Amendments and modifications may be made without notice to the Settlement Class unless notice is required by law or by the Court.

9. All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of the State of Georgia without regard to its choice of law or conflict of law principles.

10. HOA, the Releasors, and each Participating Class Member hereby irrevocably submit to the exclusive jurisdiction of the U.S. District Court for the Northern District of Georgia for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement. Nothing herein shall be construed as a submission to jurisdiction for any purpose other than enforcement of the Settlement Agreement.

11. Any disputes between or among HOA and any Participating Class Member or Settlement Class Members concerning matters contained in this Settlement Agreement shall, if they cannot be resolved by negotiation and

agreement, be submitted to the Court. The Court shall retain jurisdiction over the implementation and enforcement of this Settlement Agreement.

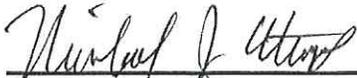
12. The headings used in this Settlement Agreement are intended for convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement.

13. This Settlement Agreement contains an entire, complete and integrated statement of each and every term and provision agreed to by and among the parties, and it is not subject to any condition not provided for herein

14. This Settlement Agreement may be executed in counterparts by Class Counsel, HOA and its counsel, and a facsimile or pdf signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

15. Each of the undersigned attorneys and parties represents that they are fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement, subject to Court approval.

Agreed to this 9th day of August, 2017



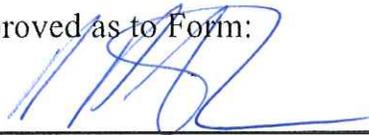
Michael Etzel
as Putative Class Representative

Hooters of America, LLC

By: _____

Its: _____

Approved as to Form:



W. Pitts Carr
Georgia Bar No. 11210
Alex D. Weatherby
Georgia Bar No. 819975
CARR & WEATHERBY, LLP
10 North Parkway Square
4200 Northside Parkway, N.W.
Atlanta, Georgia 30327
(404) 442-9000 Telephone
(404) 442-9700 Facsimile
pcarr@wpcarr.com
aweatherby@wpcarr.com

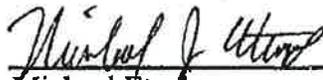
Becca J. Wahlquist
SNELL & WILMER L.L.P.
350 South Grand Avenue, Suite 2600
Two California Plaza
Los Angeles, California 90071

Alisa P. Cleek
Georgia Bar No. 581063
TAYLOR ENGLISH DUMA, LLP
1600 Parkwood Circle, Suite 400
Atlanta, Georgia 30339
770.434.6868 Telephone
770.434.7376 Facsimile

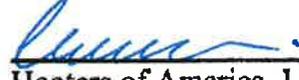
Nicholas P. Panayotopoulos
Georgia Bar No. 560679
Nan Rigby
Georgia Bar No. 605453
WEINBERG WHEELER
HUDGINS GUNN & DIAL
3344 Peachtree Road, N.E., Suite 2400
Atlanta, Georgia 30326
(404) 832-9540 Telephone
(404) 875-9433 Facsimile
NPanaoy@wwhgd.com
NRigby@wwhgd.com

*Attorneys for Defendant Hooters of
America, LLC*

Agreed to this 9th day of August, 2017

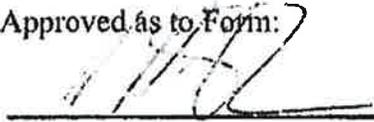


Michael Etzel
as Putative Class Representative



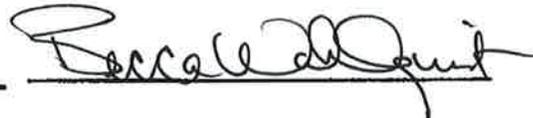
Hooters of America, LLC
By: Claudia Levital
Its: Chief Legal Officer

Approved as to Form:



W. Pitts Carr
Georgia Bar No. 11210
Alex D. Weatherby
Georgia Bar No. 819975
CARR & WEATHERBY, LLP
10 North Parkway Square
4200 Northside Parkway, N.W.
Atlanta, Georgia 30327
(404) 442-9000 Telephone
(404) 442-9700 Facsimile
pcarr@wpcarr.com
aweatherby@wpcarr.com

Nicholas P. Panayotopoulos
Georgia Bar No. 560679
Nan Rigby
Georgia Bar No. 605453
WEINBERG WHEELER
HUDGINS GUNN & DIAL
3344 Peachtree Road, N.E., Suite 2400
Atlanta, Georgia 30326
(404) 832-9540 Telephone
(404) 875-9433 Facsimile
NPanaoy@wwhgd.com
NRigby@wwhgd.com



Becca J. Wahlquist
SNELL & WILMER L.L.P.
350 South Grand Avenue, Suite 2600
Two California Plaza
Los Angeles, California 90071

Alisa P. Cleek
Georgia Bar No. 581063
TAYLOR ENGLISH DUMA, LLP
1600 Parkwood Circle, Suite 400
Atlanta, Georgia 30339
770.434.6868 Telephone
770.434.7376 Facsimile

*Attorneys for Defendant Hooters of
America, LLC*

David Ghattas
Georgia Bar No. 292457
LAW OFFICE OF DAVID
GHATTAS
1265 Seven Springs Circle
Marietta, Georgia 30068
(404) 643-1249 Telephone
Dghattas1@aol.com

Attorneys for Plaintiff

Exhibit A to Settlement Agreement

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MICHAEL ETZEL, individually and
on behalf of all others similarly
situated,

Plaintiff,

v.

HOOTERS OF AMERICA, LLC,

Defendant.

CIVIL ACTION FILE NO.
1:15-cv-01055-LMM

[PROPOSED] STIPULATED INJUNCTION

The Parties have consented to the entry of this Injunction as a condition of the Settlement Agreement.

WHEREFORE, the Court HEREBY enjoins Hooters of America, LLC (“HOA”) from sending a text message or otherwise contacting the Class Members¹ at the numbers in the Class List in a manner which violates the Telephone Consumer Protection Act.

HOA is specifically PROHIBITED from sending a text message to the Class Members at the numbers in the Class List, unless HOA receives express, written

¹Defined terms have the same meaning herein, as they do in the Settlement Agreement.

consent for such contact by the Class Member, provided to HOA after the Effective Date of the Settlement Agreement.

SO ORDERED, This ____ day of _____, 2017.

Hon. Leigh Martin May
Judge, U.S District Court, Northern District of Georgia

Exhibit B to Settlement Agreement

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA
Michael Etzel v. Hooters of America, LLC, Case No. 1:15-cv-01055-LMM

YOU CAN SUBMIT THIS FORM ONLINE BEFORE XXXX at
www.HOATCPAsettlement.com

OR MAIL THIS CLAIM FORM POSTMARKED BY XXXXXXXX to
HOA TCPA Settlement
P.O. Box. XXXX, El Segundo, CA, XXXX

CLAIM FORM

Full Name: _____

Mailing Address: _____ **City:** _____

State: _____ **ZIP:** _____ **Telephone Number:** _____

SETTLEMENT OVERVIEW:

Hooters of America LLC (“HOA”) has agreed to a \$1.29 million settlement to resolve claims related to a text message sent from Shortcode 877-67 on or about January 28, 2015 (the “Text Message”). You are a member of the Settlement Class if the documents collected by Class Counsel show that you received the “Text Message” and had either (1) specifically revoked your prior consent for mClub messages (“Tier One Member”), or (2) did not consent to receive mClub messages from HOA after October 2013 (“Tier Two Member”). **You can check online at www.HOATCPAsettlement.com or call 1-XXX-XXX-XXXX for free to check whether you are a class member or to review case documents in this litigation, including the Settlement Agreement.**

HOA will provide gift cards to class members (\$50 for Tier One; \$20 for Tier Two) who submit a timely and valid claim form. Gift Cards are transferable, redeemable at all Hooters restaurants for any items or combination of items (other than alcohol), do not require any purchase for their activation, and have no expiration date. You must submit a claim form to receive the Gift Card.

IMPORTANT! You must identify a telephone number in the Class to be eligible for a Gift Card. If you have any questions or if you not sure whether you are a member, please call 1-XXX-XXX-XXXX.

YOUR CLAIM:

I received the Text Message on January 28, 2015, on my **telephone number:**

_____ (provide CLEAR 10-digit telephone number)

I hereby certify that the information I provided in this claim form is true and correct.

Name: _____ **Signature:** _____

Date: _____

Exhibit C to Settlement Agreement

Hooters of America, LLC TCPA Settlement Administrator

P.O. Box 40007

College Station, TX 77842-4007

«Barcode»

Postal Service: Please do not mark barcode

Claim#: FDR-«ClaimID»-«MailRec»

«First1» «Last1»

«CO»

«Addr2»

«Addr1»

«City», «St» «Zip»

«Country»

HOA

U.S. District Court, Northern District of Georgia, Michael A. Tzetz v. Hooters of America, LLC, No. 15-cv-4651
This is NOT a solicitation from a lawyer. The Federal Court in this case has authorized this notice.

A settlement has been reached in a class action lawsuit claiming that Hooters of America, LLC (“HOA”) sent a text message on January 28, 2015, without obtaining each recipient’s prior express written consent in violation of the federal Telephone Consumer Protection Act. HOA has agreed to settlement to avoid the uncertainties and expenses of litigation.

Am I a class member? Our records indicate you may be a member of the settlement class either because you (1) specifically revoked your prior consent for mClub messages (“Tier One Member”), or (2) did not affirm consent to receive any messages after October 16, 2013 (“Tier Two Member”). You can check online at www.HOATCPAsettlement.com or call 1-XXX-XXX-XXXX to check whether you are a class member or to review case documents in this litigation, including the Settlement Agreement.

What can I get? If the Court approves the settlement, class members submitting a timely, valid claim form will receive a Hooters’ Gift Card (\$50 for Tier One; \$20 for Tier Two). Gift Cards are transferable, do not require purchase for activation, and have no expiration date. Tier Two card amounts may be decreased depending on the number of claims. Class members will also receive an injunction prohibiting HOA from sending additional text messages to them without consent.

How do I get an award? To receive a Gift Card, you **must** submit a timely and properly completed Claim Form no later than XXXXX. You may mail the Claim Form available at www.HOATCPAsettlement.com or submit one online. You can check online for free whether you are a class member at www.HOATCPAsettlement.com

What are my other options? You may exclude yourself from the settlement class by sending the Administrator a letter by XX-XX-XX. If excluded, you cannot get an award, but you retain claims you may have against HOA over the issues in the case. If you do not exclude yourself, you and/or your lawyer may appear before the Court and/or object to the proposed settlement. Your written objection must be post-marked by XX-XX-XX. Specific instructions about how to object or exclude yourself from the settlement are available at HOATCPAsettlement.com. If you do not exclude yourself, and the Court approves the settlement, you will be bound by all of the Court’s orders and judgments and your claims relating to the text message will be released and resolved.

Who represents me? The Court has appointed counsel to represent the Class, led by Carr & Weatherby, LLP, and Weinberg Wheeler Hudgins Gunn & Dial, LLC. If you want to be represented by your own lawyer, you may hire one at your expense.

When will the Court consider the proposed settlement? The Court will hold a Final Approval Hearing at XXX a.m. on XXXX, in Courtroom XXXXXXXXXXXXXXXX. At that hearing, the Court will: hear any objections concerning the fairness of the settlement; determine the fairness of the settlement; decide whether to approve Class Counsel’s request for attorneys’ fees and expenses of up to \$444,000; and decide whether to award the Class Representative \$10,000. The Court may award less.

How do I get more information? For more information, including the full Notice, Claim Form and Settlement Agreement go to www.HOATCPAsettlement.com or contact the Settlement Administrator at XXXXX or at the address on the reverse side.

Exhibit D to Settlement Agreement

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA
Michael Etzel v. Hooters of America, LLC, Case No. 1:15-cv-01055-LMM

**IF YOU RECEIVED A TEXT MESSAGE FROM HOOTERS (SHORTCODE 877-67) ON
JANUARY 28, 2015 YOU MAY BE ELIGIBLE FOR BENEFITS
FROM A TCPA CLASS ACTION SETTLEMENT**

BASIC INFORMATION

1. Why is there a notice?

A Court authorized this notice because you have a right to know about a proposed settlement in a lawsuit against Hooters of America, LLC (“HOA”), and all of your options, before the Court decides whether to give final approval to the settlement. This notice explains the nature of the lawsuit, the general terms of the settlement, and your legal rights and options.

The lawsuit was brought on behalf of persons who received a text message from HOA on January 28, 2015, but who claim that the message was sent via an autodialer did not consent to receiving the message. The text message came from Short Code 877-67 and read as follows: *Hooters Fans: Our mClub has moved! Don’t worry, you’ll still receive exclusive news, just from a new number. Reply STOP to unsubscribe. Msg&Data rates may apply.*“ (This text message will be referred to in this notice as the “Text Message”).

Judge Leigh Martin May of the U.S. District Court for the Northern District of Georgia is overseeing this litigation. The litigation is known as Michael Etzel v. Hooters of America, LLC, Case No. 1:15-cv-01055-LMM. One of the persons who received the text, Mike Etzel, sued Hooters and is called the “Plaintiff.” Hooters is called the “Defendant.”

2. What is this lawsuit about?

On January 28, 2015, HOA sent the Text Message to the Plaintiff and many other recipients. Plaintiff contends that he and many other recipients had informed HOA before January 28, 2015, not to send any future text messages. The Plaintiff contends that a federal statute, known as the Telephone Consumer Protection Act (“TCPA”) 47 USCS § 227, prohibited Hooters from sending the text message to these recipients. HOA denies any wrongdoing, and no court or other judicial entity has made any judgment or other determination of any wrongdoing. Nonetheless, to avoid the further costs of litigation, HOA has agreed to settle.

3. Why is this a class action?

In a class action, one or more people called “class representatives” sue on behalf of themselves and other people with similar claims. All of these people together are the “class” or “class members.” One court resolves the issues for all class members, except for those who exclude themselves from the settlement class.

4. Why is there a settlement?

Questions? Go to www.HOATCPAsettlement.com or call 1-8xx-xxx-xxxx

The Court has not decided in favor of Plaintiff or HOA. Instead, both sides agreed to a settlement. Settlements avoid the costs and uncertainty of a trial and related appeals, while providing benefits to members of the settlement class (“Settlement Class Members”). The “Settlement Class Representative” appointed to represent the class, and the attorneys for the Settlement Class (“Settlement Class Counsel,” see Question 14) think the settlement is best for all Settlement Class Members.

WHO IS PART OF THE SETTLEMENT?

5. How do I know if I am part of the settlement?

You are a member of the Settlement Class if you received the Text Message and the records from HOA’s vendors shows that you had withdrawn or failed to reaffirm your consent to receive messages from HOA’s mClub program. Class Counsel acquired information from the vendors administering HOA’s mClub programs to locate the telephone numbers that fall into these two categories. The person who owned the telephone number on January 28, 2015 when the Text Message was sent is a Class Member.

YOU CAN CHECK ONLINE FOR FREE WHETHER YOU ARE A CLASS MEMBER. SIMPLY GO TO WWW.HOATCPAsettlement.COM, ENTER THE PHONE NUMBER YOU HAD ON JANUARY 28, 2015, AND FIND OUT IF YOU’RE A CLASS MEMBER.

Alternatively, if you are not sure whether you are included in the Settlement Class, call **1-8XX-XXX-XXXX**.

THE SETTLEMENT BENEFITS

6. What does the settlement provide?

HOA has agreed to provide Gift Cards (\$50 or \$20) to eligible Settlement Class Members that can be redeemed at Hooters retail locations, subject to HOA’s rules for Gift Cards (see Question 8). HOA has also agreed to pay attorneys’ fees, costs, and expenses (see Question 15) and the costs of notifying the class and administering the settlement. HOA will also pay a Service Award to the Class Representative.

In addition, HOA will be prohibited from sending text messages to a class member’s specified cell phone number in the future unless you provide express written consent after the entry of the settlement.

A more detailed description of these changes is available in the Settlement Agreement which is available at www.HOATCPAsettlement.com.

7. What can I get from the settlement?

Questions? Go to www.HOATCPAsettlement.com or call 1-8XX-XXX-XXXX

Gift Card: A \$1.29 million Settlement Fund will pay for gift cards (\$20 or \$50) to class members who submit a timely claim form. Gift Cards are transferable, redeemable at all Hooters restaurants for any items or combination of items (other than alcohol), do not require any purchase for their activation, and have no expiration date. You must submit a claim form to receive the Gift Card. **You can submit a claim form by simply filling out the online claim submission form at the below website or you can mail the same. You can check online for free whether you are a class member.**

Injunction: Regardless of whether you submit a claim for a gift card HOA will be prohibited from sending any future text messages to a class member's specified cell phone unless you provide express written consent after the entry of the settlement.

8. Will I receive a \$20 or \$50 Gift Card?

The Settlement Class has two levels of members.

"Tier One" Class Members will receive a \$50 Gift Card. Tier One Class Members are recipients that sent a message to HOA such as "STOP" and still received the Text Message.

Tier Two Class Members are recipients that did not inform HOA after October 16, 2013 (when a text message was sent asking them to reaffirm their prior consent) that they wanted to receive further messages from HOA. They will receive a \$20 Gift Card (which may be decreased slightly, if the number of claims exceeds the available funds for Tier Two payouts).

HOW TO GET BENEFITS?

9. How do I get a payment?

To get a payment, you will need to submit a Claim Form on the Settlement Website (www.HOATCPAsettlement.com) by **DAY-MONTH-YEAR** or submit a Claim Form by mail, which must be postmarked by **DAY-MONTH-YEAR**. The Claim Form is provided with this Notice, and further, is available at www.HOATCPAsettlement.com or by calling 1-8XX-XXX-XXXX. **Submitting a claim form is easy, taking a few minutes maximum.**

10. When will I receive my Gift Card?

If you submit a complete, accurate, valid, and timely Claim Form, the Settlement Administrator will send your payment to you after the settlement is finally approved and all appeals and other reviews have been resolved or exhausted. The process is likely to take several months.

11. What am I giving up to stay in the Settlement Class?

Unless you exclude yourself from the settlement, you will give up your right to sue HOA and its affiliates/vendors or be part of any other lawsuit against HOA and its affiliates/vendors about the issues this settlement resolves. Unless you exclude yourself, all of the Court's decisions will bind you. The specific claims you are giving up against HOA and other released parties affiliated with

Questions? Go to www.HOATCPAsettlement.com or call 1-8XX-XXX-XXXX

HOA are called “Claims”. The Claims are described in the Settlement Agreement which is available at www.HOATCPAsettlement.com. The Settlement Agreement describes the Claims you would be releasing with specific and accurate legal descriptions, so read it carefully.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you want to keep the right to sue or continue to sue HOA based on claims this settlement resolves, you must take steps to get out of the Settlement Class.

12. How do I exclude myself from the settlement?

To exclude yourself from the settlement, you must send a letter by U.S. Mail to the Claims Administrator saying that you wish to do so. Your “Request for Exclusion” must include:

- the name of the Action (Etzel v. Hooters of America, LLC or similar identifying words);
- your full name, address, and telephone number;
- an explanation of the basis upon which you claim to be a Class Member;
- all grounds for your objection, accompanied by any legal support for the objection;
- the identity (if any) of any attorney representing you who will appear at the Final Approval Hearing;
- a statement confirming whether you intend to personally appear and/or testify at the Final Approval Hearing; and,
- your signature on the written objection

You must mail your exclusion request, postmarked no later than **DATE/MONTH/YEAR**, to:
[MAILING ADDRESS FOR CLAIMS ADMINISTRATOR]

You cannot exclude yourself by telephone or by email. You cannot exclude yourself by mailing a notification to any other location or after the deadline of **DATE/MONTH/YEAR**. Your exclusion letter must be signed by you, personally, and not your lawyer or anyone else acting on your behalf.

13. If I exclude myself, can I still get a Gift Card or the Benefit of the Injunction?

No. If you exclude yourself, you cannot receive the Gift Card or the benefit of the Injunction.

THE LAWYERS REPRESENTING YOU

14. Do I have a lawyer in the case?

Yes. The Court appointed the following attorneys to represent you and other Settlement Class Members as “Settlement Class Counsel.”

W. Pitts Carr Alex D. Weatherby Carr & Weatherby, LLP 4200 Northside Parkway NW	Nicholas P. Panayotopoulos Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC 3344 Peachtree Road	David Ghattas Law Office of David Ghattas 1265 Seven Springs Circle
---	--	--

Questions? Go to www.HOATCPAsettlement.com or call 1-8xx-xxx-xxxx

Building 10 Atlanta, GA 30327	Suite 2400 Atlanta, Georgia 30326	Marietta, Georgia 30068
----------------------------------	--------------------------------------	-------------------------

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

15. How will the lawyers be paid?

Settlement Class Counsel will ask the Court to award attorneys' fees, and reimburse reasonable costs and expenses. HOA has agreed not to object to a fee/cost/expense award of \$440,000. These fees and costs will be paid separately by HOA and will not reduce the amount of benefits provided to the Class, unless the Class Gift Cards, Administrative Expenses, and Fees exceed \$1.42 million, at which point the Tier Two Gift Cards will be adjusted down proportionally.

OBJECTING TO THE SETTLEMENT

16. How do I tell the Court that I don't like the settlement?

If you are a Settlement Class Member, you can object to the settlement if you don't think it is fair, reasonable, or adequate. You can give reasons why you think the Court should not approve it. The Court will consider your views.

To object, you must send a letter stating that you object to the settlement. Your objection must include:

- The name of this proceeding (Etzel v. Hooters of America, or similar identifying words);
- Your full name, address, and telephone number;
- Information illustrating that you are a Settlement Class Member, including your telephone number on January 28, 2015;
- The reasons for the objection, as well as any documents supporting the objection;
- Any evidence or other information you wish to introduce in support of your objections;
- A statement of whether you or your lawyer intends to appear and/or testify at the Final Approval Hearing; and
- Your signature on the written objection (an attorney's signature is not sufficient).

To be considered by the Court, your objection must be mailed, postmarked no later than **DATE/MONTH/YEAR**, to the Claims Administrator at _____ . The Claims Administrator will provide valid objections to the attorneys and to the Court. **NOTE: DO NOT SEND OBJECTIONS DIRECTLY TO THE COURT OVERSEEING THIS CASE.**

17. What's the difference between objecting and excluding myself?

Objecting is simply telling the Court that you don't like something about the settlement, but you remain a member of the Settlement Class.

Questions? Go to www.HOATCPAsettlement.com or call 1-8xx-xxx-xxxx

Excluding yourself is telling the Court that you don't want to be included in the settlement. If you exclude yourself, you have no basis to object to the settlement and related releases because the settlement no longer affects you.

FINAL APPROVAL HEARING

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

The Court will hold a Final Approval Hearing at **TIME** on **DATE**, in the Courtroom of Judge Leigh Martin May at the U.S. District Court for the Northern District of Georgia, located in Courtroom 2107 of the Richard B. Russell Federal Building and United States Courthouse, 75 Ted Turner Dr., SW, Atlanta, Georgia 30303-3309. This hearing date and time may be moved. Please refer to the Settlement Website for notice of any changes.

At the Final Approval Hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to people who appear at the hearing. The Court may also decide how much Settlement Class Counsel will receive as attorneys' fees and costs and whether to award service payments to Settlement Class Representatives. After the Final Approval Hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

19. Do I have to come to the hearing?

No. Settlement Class Counsel will answer questions the Court may have. However, you are welcome to come at your own expense. If you submit a written objection, you don't have to come to Court to talk about it. As long as you submitted your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

IF I DO NOTHING

20. What happens if I do nothing?

If you are a Settlement Class Member and do nothing, then you will not receive a Gift Card and your claims against HOA and its affiliates will be released. This means that you will not be able to start a lawsuit or be part of another lawsuit against HOA or its affiliates over the claims resolved by the settlement. You will receive the benefit of the injunction.

GETTING MORE INFORMATION

21. How do I get more information?

This notice summarizes the settlement. More details are in the Settlement Agreement itself. You can get a copy of the Settlement Agreement at www.HOATCPAsettlement.com or from the Settlement Administrator by calling toll-free **1-XXX-XXX-XXXX** or writing to Settlement

Questions? Go to www.HOATCPAsettlement.com or call 1-8xx-xxx-xxxx

Administrator at **XXXXXXXXXX**. The status of the settlement, any appeals, any claims made, and the date of payments will be posted on the Settlement Website.

Questions? Go to www.HOATCPAsettlement.com or call 1-8xx-xxx-xxxx