

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 and he/she 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 HOA 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?

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 **1-888-334-1086**.

Questions? Go to www.HOATCPASettlement.com or call 1- 888-334-1086

THE SETTLEMENT BENEFITS

6. What does the settlement provide?

HOA has agreed to provide Gift Cards (\$20 or \$50) to eligible Settlement Class Members that can be redeemed at Hooters locations, subject to HOA's rules for Gift Cards (see Question 8). The Gift Cards will be delivered to Class Members via email, at the email address you provide on the Claim Form. 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?

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 **December 20, 2017** or submit a Claim Form by mail, which must be postmarked by **December 20, 2017**. The Claim Form is available at www.HOATCPASettlement.com or by calling 1-888-334-1086. **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 Gift Card to you via email 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 at least.

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 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 Settlement 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 as of January 28, 2015;
- an explanation of the basis upon which you claim to be a Class Member;
- a statement that you wish to be excluded from the Settlement; and,
- your signature on the written request for exclusion

You must mail your exclusion request, postmarked no later than **November 20, 2017**, to:

HOA TCPA Settlement Administrator

c/o KCC Class Action Services

P.O. Box 404000

Louisville KY, 40233-4000

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 **November 20, 2017**. 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 Building 10 Atlanta, Georgia 30327	Nicholas P. Panayotopoulos Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC 3344 Peachtree Road Suite 2400 Atlanta, Georgia 30326	David Ghattas Law Office of David Ghattas 1265 Seven Springs Circle Marietta, Georgia 30068
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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 LLC, 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 **November 20, 2017**, to the Settlement Administrator at HOA TCPA Settlement Administrator, c/o KCC Class Action Services, P.O. Box. 404000, Louisville KY, 40233-4000. The Settlement 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.

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 **9:00 am EST on February 2, 2018**, 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- 888-334-1086** or writing to Settlement Administrator at HOA TCPA Settlement Administrator, c/o KCC Class Action Services, P.O. Box. 404000, Louisville KY, 40233-4000. The status of the settlement, any appeals, any claims made, and the date of payments will be posted on the Settlement Website.