

EXHIBIT 1

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered into by Plaintiff Elizabeth Busch (“Plaintiff”), individually and on behalf of the class of persons she seeks to represent, and by Defendant Bluestem Brands, Inc. (“Defendant” or “Bluestem”). Plaintiff and Defendant are referred to collectively in this Agreement as the “Parties.”

1. RECITALS

1.01. On March 14, 2016, Elizabeth Busch and Thomas Busch filed a Complaint in the United States District Court for the District of Minnesota entitled *Elizabeth Busch and Thomas Busch, on behalf of themselves and all others similarly situated vs. Bluestem Brands, Inc.*, assigned Case No. 16-cv-00644-WMW-HB (the “Action”). On September 20, 2016, Plaintiff Elizabeth Busch filed a First Amended Complaint (“FAC”), which excluded Thomas Busch as a Plaintiff and limited claims to a text message class, excluding the previously pled auto-dialer and robo-call class. (Dkt. 32.)

1.02. On October 4, 2016, Bluestem filed an Answer to the FAC denying any and all liability. (Dkt. 34.)

1.03. Bluestem has denied, and continues to deny, all material allegations of the FAC and denies all allegations of wrongdoing and liability. Nevertheless, taking into account the unique circumstances of this case, and the uncertainty and risks inherent in any litigation, Bluestem has concluded that further defense of the Action would be protracted, burdensome and expensive, and that it is desirable and beneficial to fully and finally settle and terminate the Action in the manner and upon the terms and conditions set forth in this Agreement, subject to Court approval.

1.04. This Agreement resulted from good faith, arm's-length settlement negotiations, including two mediation sessions before the Hon. Arthur J. Boylan (Ret.). Bluestem has provided Plaintiff with certain information concerning her claims, including data regarding the number of text messages sent from Bluestem's third-party vendors to individuals who, like Plaintiff, were sent text messages after the individuals' accounts were coded as "wrong party" during an outbound call. The Parties also participated in direct discussions about a possible resolution of this litigation, including telephonic meetings. Bluestem has provided a declaration confirming the composition, coding, and database sources used to query data in determining the Settlement Class.

1.05. Based on their investigation and the negotiations described in this Agreement, along with the discovery that has taken place throughout the Action, Class Counsel have concluded, taking into account the sharply contested issues involved, the risks, uncertainty and cost of further prosecution of this litigation, and the substantial benefits to be received by class members pursuant to this Agreement, that a settlement with Bluestem on the terms set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement Class Members.

1.06. Plaintiff's Motion for Preliminary Approval will include a request for leave from the Court to certify, for settlement purposes only, a class comporting with the definition agreed-upon by the Parties and will mirror the definition set forth in Section 2.30 below. Assuming the Court grants the Motion for Final Approval of the Agreement, the Action will be promptly dismissed with prejudice.

1.07. The Parties understand, acknowledge and agree that the execution of this Agreement constitutes the settlement and compromise of disputed claims, subject to preliminary and final approval by the Court. This Agreement is inadmissible as evidence against any party

except to enforce the terms of the Agreement and is not an admission of wrongdoing or liability on the part of any party to this Agreement. It is the Parties' desire and intention to effect a full, complete and final settlement and resolution of all existing disputes and claims as set forth herein.

2. DEFINITIONS

2.01. “**Action**” means the Action captioned *Elizabeth Busch, on behalf of herself and all others similarly situated vs. Bluestem Brands, Inc.*, assigned Case No. 16-cv-00644-WMW-HB, including any and all appeals.

2.02. “**Agreement**” means this Settlement Agreement and Release.

2.03. “**Approved Claim**” means a Claim Form submitted by a Settlement Class Member that is (a) submitted timely and in accordance with the directions required for submitting a Claim Form pursuant to Sections 9.02 and 9.03 of this Agreement, (b) fully and truthfully completed and executed, with all of the information requested in the Claim Form, and (c) signed by the Settlement Class Member, physically or electronically, with the required affirmation.

2.04. “**Bluestem**” means Bluestem Brands, Inc., including any of its divisions.

2.05. “**CAFA Notice**” means the notice required by 28 U.S.C. § 1715(b).

2.06. “**Claim Form**” means the one of the documents substantially in the form attached hereto as **Exhibit A** (i.e., the postcard claim form or regular claim form), as approved by the Court. The postcard claim form shall be sent to Class Members along with the postcard notice and shall be a detachable form that can be filled-in and returned, postage prepaid, to make a claim. The regular claim form shall be available on the Settlement Website where it can be downloaded by a Class Member if she or he wants to submit a claim by mail.

2.07. “**Claims Administrator**” shall mean Angeion Group.

2.08. “**Claims Deadline**” means 90 days after Direct Notice.

2.09. “**Class Counsel**” means Ronald A. Marron, Alexis M. Wood and Kas L. Gallucci of The Law Offices of Ronald A. Marron and Thomas J. Lyons, Jr. of Consumer Justice Center, P.A.

2.10. “**Class Period**” means March 14, 2012 through and including October 15, 2018.

2.11. “**Class Representative**” means Plaintiff Elizabeth Busch.

2.12. “**Court**” means the United States District Court for the District of Minnesota, and United States District Judge Wilhelmina M. Wright to which the Action is assigned, or any judge who may succeed her as Judge in this Action.

2.13. “**Cy Pres Recipient**” means the Minnesota Federal Court Pro Se Project or Minnesota Volunteer Lawyers Network. Should the Court not approve either of these entities as a *cy pres* recipient, the *Cy Pres Recipient* shall mean any other such organization that the Court deems appropriate.

2.14. “**Direct Notice**” means the notice of settlement in the form attached hereto as **Exhibit B**, sent in a postcard format no later than thirty (30) days after preliminary approval is granted, summarizing the terms of the settlement and advising Settlement Class Members of their options in submitting a claim, excluding themselves, or objecting to the settlement.

2.15. “**Effective Date**” means the first business day after which all of the events and conditions specified in Section 16.01 have been met and have occurred.

2.16. “**Final Approval Hearing**” means the hearing held by the Court to determine whether to finally approve the settlement of this Action as set forth in this Agreement as fair,

reasonable and adequate, and at which the Court will determine the amounts of the payments set forth in Sections 5.01 and 5.02.

2.17. **“Final Approval Order”** means the Court’s Order approving the Agreement as fair, reasonable and adequate and entering Final Judgment.

2.18. **“Final Judgment”** means the date when the Judgment has become final as provided in Section 13.01.

2.19. **“Funding Date”** means the date, which shall be no later than fourteen (14) days after the issuance of the Preliminary Approval Order, on which Bluestem shall deposit the balance of the Settlement Fund (\$5,250,000.00).

2.20. **“Targeted Facebook Notice”** means the notice of settlement detailed in Section 8.04.

2.21. **“Notice”** means the notices to be provided to Settlement Class Members as set forth in Section 8, including, without limitation, the Direct Notice, the Website Notice to be posted on the Settlement Website, and the Targeted Facebook Notice (should the Claims Administrator and Class Counsel deem it necessary). The forms of Notice are further described in Sections 8.02 through 8.06. The forms of the Direct Notice, Website Notice and the Settlement Website will comply with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure.

2.22. **“Objection Deadline”** means sixty (60) days after Direct Notice.

2.23. **“Opt-Out Deadline”** means sixty (60) days after Direct Notice.

2.24. **“Person”** shall mean, without limitation, any individual and his or her spouse, heirs, successors, representatives, and assigns.

2.25. **“Plaintiff”** means Elizabeth Busch and the Settlement Class Members, for purposes of this settlement only.

2.26. **“Preliminary Approval Order”** means the Court’s Order entered in connection with the Preliminary Approval Hearing.

2.27. **“Released Claims”** means those claims released in Section 15.

2.28. **“Released Parties”** means Bluestem, and its past, present and future parents, subsidiaries, affiliated companies and corporations, and each of their respective past, present, and future directors, officers, managers, employees, general partners, limited partners, principals, agents, insurers, reinsurers, shareholders, attorneys, agents (including its vendors ExactTarget, West, Experian, and Oracle/Responsys to the extent the agents sent text messages on behalf of Bluestem), advisors, representatives, predecessors, successors, divisions, joint ventures, assigns, or related entities, and each of their respective executors, successors, assigns, and legal representatives.

2.29. **“Releasing Parties”** means Plaintiff and Settlement Class Members and their respective present or past estates, heirs, assigns, successors, agents, attorneys, executors, and any other representatives of any of these Persons and entities.

2.30. **“Settlement Class”** refers to the following: All persons in the United States who were sent a text message to a cellular telephone from or on behalf of Bluestem and where the number was coded by Bluestem as a “wrong party” on an outbound call, during the Class Period (i.e., March 14, 2012 through October 15, 2018). Excluded from the Settlement Class are Bluestem, its parent companies, affiliates or subsidiaries, or any entities in which such companies have a controlling interest; and any employees thereof; the judge or magistrate judge to whom the

Action is assigned and any member of those judges' staffs and immediate families, and any persons who timely and validly request exclusion from the Settlement Class. There are approximately 688,561 persons in the Settlement Class.

2.31. **"Settlement Class Member"** means a Person who falls within the definition of the Settlement Class as set forth above and who has not submitted a valid request for exclusion.

2.32. **"Settlement Costs"** means all costs incurred in the litigation by the Settlement Class and their attorneys, including but not limited to Plaintiff's attorneys' fees, the cost of litigation, the cost of notice and claims administration, and all other costs incurred in this Action by or on behalf of the class.

2.33. **"Settlement Fund"** means the sum of five million two hundred and fifty thousand dollars (\$5,250,000.00) that Bluestem agrees to pay in accordance with the terms and conditions of this Agreement to settle the Action in full. The Settlement Fund shall be used for Settlement Costs and all amounts to be paid to Settlement Class Members and Class Counsel under this Agreement, including any Incentive Award to the Class Representative, and any fee award to Class Counsel. The Settlement Fund represents the total extent of Bluestem's monetary obligations under this Agreement. The Settlement Fund shall be maintained in an interest-bearing account if possible, at a bank chosen by the Claims Administrator, which is insured by the Federal Deposit Insurance Corporation and that has total assets of at least five-hundred million dollars (\$500,000,000) and a short-term deposit rating of at least P-1 (Moody's) or A-1 (Standard & Poor's). No unclaimed monies will revert to Defendant, but instead will be distributed to the *Cy Pres* Recipient. Any cost associated with opening and/or maintaining the bank account to hold the Settlement Fund shall be deducted from the Settlement Fund. The Settlement Administrator shall

be responsible for all tax filings with respect to any earnings on the Settlement Fund and the payment of all taxes that may be due on such earnings. Bluestem shall wire the full Settlement Fund to the Claims Administrator within fourteen (14) days of Preliminary Approval.

2.34. “**Settlement Website**” means the Internet website operated by the Claims Administrator as described in Section 8.06.

2.35. “**Text Message List**” means the list of cellular phone numbers to which Bluestem sent text messages, during the class period, and where the number was coded by Bluestem as “wrong party” on an outbound call. The Text Message List shall be identified from reasonably available records maintained by Bluestem. The Text Message List will include cellular telephone numbers only. In order to be a Settlement Class Member, the cellular telephone number of the claimant must be on the Text Message List.

2.36. “**TCPA**” means the Telephone Consumer Protection Act, 47 U.S.C. § 227 and any regulations or rulings promulgated under it.

2.37. “**Website Notice**” means the long-form of Notice describing the terms of this Agreement in a question and answer format, which will be made available on the Settlement Website as described in Section 8.05, the form of which is attached hereto as **Exhibit C**, informing the Settlement Class Members in detail of their rights and obligations related to this Settlement, and advising them how to file a claim, to exclude themselves from the settlement, or to object.

3. CLASS COUNSEL AND CLASS REPRESENTATIVES

3.01. Class Representative and Class Counsel Appointment. For settlement purposes, Elizabeth Busch will seek to be appointed as the Class Representative for the Settlement Class. The Class Counsel for the Settlement Class are as follows: Ronald A. Marron, Alexis M. Wood,

and Kas L. Gallucci of The Law Offices of Ronald A. Marron and Thomas J. Lyons, Jr. of Consumer Justice Center, P.A.

4. SETTLEMENT TERMS AND BENEFITS TO THE SETTLEMENT CLASS

4.01. Total Payment. Bluestem agrees to pay \$5,250,000.00 to settle the Action and obtain a full release from the Settlement Class Members of all Released Claims in accordance with the terms and conditions of this Agreement. The Settlement Fund established by Bluestem will be used to pay Approved Claims, any and all Settlement Costs, and the Class Representative Incentive Award awarded by the Court. Settlement Class Members will be eligible for a cash payment, the amount of which is dependent upon the number of Approved Claims. No remaining funds shall revert to Bluestem or otherwise be paid to Bluestem. Rather, all funds remaining after the payment of all Settlement Costs will be distributed to the *Cy Pres* Recipient.

4.02. Amount Paid per Claim. The amount paid per Approved Claim shall be divided among the approved claimants on a *pro rata* basis from the amount remaining in the Settlement Fund after payment of all Settlement Costs and the Class Representative Incentive Award awarded by the Court from the Settlement Fund.

4.03. Qualifying for Payment. Settlement Class Members shall qualify for payment from the Settlement Fund if they submit an Approved Claim and the cellular phone number they submit on their Claim Form is on the Text Message List as a phone number that was sent a text message during the Class Period by or on behalf of Bluestem and where the number was coded by Bluestem as a “wrong party” on an outbound call. Only one claim for each cellular phone number that received an allegedly offending text shall be permitted unless the Claims Administrator determines that multiple claimants were the subscriber or primary user of the same cellular phone number

during different time frames within the Class Period, in which case each such individual will be eligible to qualify for a payment from the Settlement Fund.

4.04. Uncashed Checks. Any uncashed checks issued to Settlement Class Members in accordance with this Agreement, as well as any unclaimed funds remaining in the Settlement Fund after payment of all Approved Claims, all Settlement Costs, the fee award to Class Counsel, and any Incentive Award to the Class Representative, shall be distributed to those Settlement Class Members with Approved Claims who have cashed their checks subject to the per claimant limitation set forth in Section 4.03, and provided that the *pro rata* amount of those checks is more than \$10. Should any funds remain undistributed upon the expiration of the settlement checks and any second distribution checks, the remaining funds shall be distributed to the *Cy Pres* Recipient.

5. ATTORNEYS' FEES, COSTS, AND PAYMENT TO CLASS REPRESENTATIVE

5.01. Attorneys' Fees and Costs. No later than fourteen (14) days prior to the Objection Deadline, Class Counsel shall move the Court for an award of attorneys' fees and expenses to be paid from the Settlement Fund ("Fee Award"). The Fee Award will compensate all work of Class Counsel in connection with the Action, including all proceedings in the District Court and in connection with any and all appeals. Class Counsel has agreed, with no consideration from Bluestem, to limit their request for fees to no more than one-third or 33.3% of the Settlement Fund. Payment of any award of attorneys' fees and costs shall be made solely from the Settlement Fund and Class Counsel will not seek fees from any other source. The amount of the payment from the Settlement Fund to Class Counsel will be determined by the Court. Should the Court award less than the amount sought by Class Counsel, the difference in the amount sought and the amount ultimately awarded pursuant to this Section shall remain in the Settlement Fund to be distributed

to Settlement Class Members with Approved Claims. Upon appropriate Court order so providing, any Fee Award awarded to Class Counsel by the Court and any costs approved by the Court shall be paid by the Claims Administrator from the Settlement Fund no later than three (3) business days after the Effective Date.

5.02. Incentive Award. The Class Representative shall be paid an incentive award for the time and effort she has personally invested in this Action, upon approval by the Court (“Incentive Award”). The amount of the Incentive Award shall be decided by the Court and shall not exceed \$7,500.00. If approved by the Court, within three (3) business days after the Effective Date and after receipt of completed W-9 forms from Plaintiff and Class Counsel, the Claims Administrator shall pay to Class Counsel the Incentive Award, and Class Counsel shall disburse such funds to the Class Representative. Should the Court award less than the amount requested by Plaintiff, the difference in the amount sought and the amount ultimately awarded shall remain in the Settlement Fund to be distributed to Settlement Class Members with Approved Claims.

5.03. Settlement Independent of Award of Fees, Costs and Incentive Payments. The payments of the Fee Award and the Incentive Award set forth in Sections 5.01 and 5.02 are subject to and dependent upon the Court’s approval of the Agreement as fair, reasonable, adequate, and in the best interests of Settlement Class Members. However, this Agreement is not dependent upon the Court’s approving Plaintiff’s and Class Counsel’s requests for such payments or awarding the particular amounts sought by Plaintiff or Class Counsel. In the event the Court declines the requests or awards less than the amounts sought, this Settlement shall continue to be effective and enforceable by the Parties.

6. PRELIMINARY APPROVAL

6.01. Order of Preliminary Approval. As soon as practicable after the execution of this Agreement, Plaintiff shall move the Court for entry of the Preliminary Approval Order. In her motion for preliminary approval, the Plaintiff will request that:

- A. the Court conditionally certify the Settlement Class for settlement purposes only and without prejudice to Bluestem's right to contest class certification if this Agreement is not approved, appoint Plaintiff as Class Representative for settlement purposes only, and appoint Class Counsel as counsel for the Settlement Class for settlement purposes only;
- B. the Court preliminarily approve the settlement and this Agreement as fair, adequate, and reasonable, and within the reasonable range of possible final approval;
- C. the Court approve the form and contents of Notice, and find that the notice program set forth herein constitutes the best notice practicable under the circumstances and satisfies due process and Rule 23 of the Federal Rules of Civil Procedure;
- D. the Court direct that Notice be provided to the Settlement Class, in accordance with this Agreement and within thirty (30) days of following entry of the Preliminary Approval Order;
- E. the Court approve the Claims Form and claims procedure described herein for the Settlement Class;

- F. the Court set the date and time for the Final Approval Hearing, which may be continued by the Court from time to time without the necessity of further notice;
- G. the Court, pending determination of whether the Settlement should be finally approved, bar and enjoin all persons in the Settlement Class, individually, and on a representative basis or other capacity, from commencing or prosecuting against any of the Released Parties any action, arbitration, or proceeding in any court, arbitration forum or tribunal asserting any of the Released Claims unless they timely opt-out, except that members of the Settlement Class may participate in any regulatory or government proceeding or investigation;
- H. the Court, pending final determination of whether the Settlement should be approved, stay all proceedings except those related to effectuating the Settlement; and
- I. the Court set the Claims Deadline, the Objection Deadline, and the Opt-Out Deadline.

7. ADMINISTRATION AND NOTIFICATION PROCESS

7.01. Third-Party Claims Administrator. The Claims Administrator shall be responsible for all matters relating to the administration of this settlement, as set forth herein. Those responsibilities include, but are not limited to, obtaining electronic and/or physical addresses associated with the phone numbers on the Text Message List (including by reverse telephone look up), providing notice, obtaining new addresses for returned mail, setting up and maintaining the

Settlement Website and toll-free telephone number, fielding inquiries about the settlement, processing claims, acting as a liaison between Settlement Class Members and the Parties regarding claims information, approving claims, rejecting any Claim Form where there is evidence of fraud, directing the mailing of settlement payments to Settlement Class Members, maintaining reasonably detailed records of exclusion requests and objections, processing Claim Forms in a responsive, cost effective and timely manner, and undertaking any other tasks reasonably required to effectuate the administration of this Agreement. The Claims Administrator will provide, at a minimum, monthly updates on the claims status to counsel for all Parties and will respond to the Parties' questions about the status of the case or related matters in a timely manner. The Claims Administrator shall make its records pertaining to this Agreement (including without limitation Claim Forms) available to Class Counsel and Bluestem's counsel upon request. The Claims Administrator shall also provide reports and other information to the Court as the Court may require.

7.02. Text Message List. To facilitate the notice and claims administration process, Bluestem and its counsel have provided to Class Counsel, in an electronically searchable and readable format, the Text Message List, which includes the cellular telephone numbers to whom text messages were sent by or on behalf of Bluestem after the number was coded as a "wrong party" on an outbound call during the Class Period. Bluestem will provide the Text Message List to the Claims Administrator as well. There are approximately 688,561 unique cellular phone numbers on the Text Message List. Any personal information relating to Settlement Class Members provided to the Claims Administrator or the Parties pursuant to this Settlement Agreement shall be provided solely for the purpose of providing notice to Settlement Class

Members and informing them about their rights further to this Settlement; shall be kept in strict confidence and subject to the Stipulated Protective Order; shall not be disclosed to any third party; and shall be used for no other purpose. Notwithstanding the above, Bluestem may use information relating to Settlement Class Members as a defense to future litigation, including for the purpose of showing that the alleged claims have been released pursuant to this Settlement.

7.03. Payment of Notice and Claims Administration Costs. All settlement administration costs, including the Claims Administrator fees, shall be paid directly from the Settlement Fund, once created. If this Agreement is terminated or fails to become effective, Bluestem shall be responsible for payment to the Claims Administrator of any claims administration costs necessarily incurred by the Claims Administrator prior to being notified that administration services are no longer required.

7.04. Distribution of the Settlement Fund. The Claims Administrator shall distribute the funds in the Settlement Fund in the following order and within the time period set forth with respect to each such payment:

- A. no later than three (3) business days after the Effective Date, the Claims Administrator shall pay taxes and tax-related expenses, if any, or, at the Claims Administrator's discretion, it shall reserve an amount of the Settlement Fund sufficient to pay taxes and tax-related expenses as described in Section 18;
- B. no later than three (3) business days after the Effective Date, the Claims Administrator shall pay to the Class Representatives any Incentive Award ordered by the Court, as described in Section 5.02;

- C. no later than three (3) business days after the Effective Date, the Claims Administrator shall pay to Class Counsel any award of attorneys' fees, costs, or expenses ordered by the Court, as described in Section 5.01;
- D. no later than twenty (20) days after the Effective Date, the Claims Administrator shall be paid for any unreimbursed costs of administration;
- E. no later than thirty (30) days after the Effective Date, the Claims Administrator shall pay the Settlement Awards to Settlement Class Members who submitted Approved Claims pursuant to Section 9; and
- F. upon the earlier of (i) the cashing of the last Settlement Award check (including any second distribution in accordance with the provisions of Section 4.04), or (ii) the passage of 195 days since the mailing of the last Settlement Award check, the Claims Administrator shall pay any amount remaining in the Settlement Fund account from any uncashed settlement checks to the *Cy Pres* Recipient, after all remaining costs of administration are paid.

8. NOTICE PLAN

8.01. Best Notice Practicable Under the Circumstances. The Parties agree to provide the best notice that is practicable under the circumstances, including individual notice to Settlement Class Members who have been identified through reasonable effort. The Parties further agree that the notice penetration must meet any minimum notice requirements as required by law, and in an amount sufficient to support any declaration to the Court by the Claims Administrator stating a sufficient notice penetration has been achieved.

8.02. Mailing of Direct Notice. The Claims Administrator shall use the Text Message List to do what it believes is necessary, including reverse phone look up, to obtain each Settlement Class Member's last known address. The Claims Administrator shall send Direct Notice to each Settlement Class Member by first class mail within thirty (30) days after entry of the Preliminary Approval Order. The Claims Administrator shall check each address against the United States Post Office National Change of Address Database before the initial mailing. To the extent deemed necessary by the Claims Administrator, the last known address of Settlement Class Members will be subject to confirmation or updating as follows: (a) the Claims Administrator may conduct a reasonable search to locate an updated address for any Settlement Class Member whose Settlement Notice is returned as undeliverable; (b) the Claims Administrator shall update addresses based on any forwarding information received from the United States Post Office; and (c) the Claims Administrator shall update addresses based on information it receives and through any requests received from Settlement Class Members.

8.03. Re-Mailing of Returned Postcard Notices. Any Direct Notices that are returned as non-deliverable with a forwarding address or with an updated address shall promptly be re-mailed (either electronically or physically) by the Claims Administrator to such address.

8.04. Targeted Facebook (Publication) Notice. The Claims Administrator will create and implement a targeted Facebook programmatic digital media campaign with banner ads as needed to accomplish sufficient reach.

8.05. Website Notice. The Claims Administrator shall post on the website a long form of the Notice in a question and answer format which sets forth the details of the settlement and the

rights of Settlement Class Members to participate in the Settlement, to exclude themselves, or to object to the settlement.

8.06. Settlement Website. Within 30 days of the entry of the Preliminary Approval Order, the Claims Administrator shall maintain and administer a dedicated Settlement Website (www.bluestemtextsettlement.com) containing class information and related documents, along with information necessary to file a claim. At a minimum, such documents shall include the Settlement Agreement and Exhibits, the Notice, the Website Notice, the Preliminary Approval Order, a downloadable Claim Form which may be printed and mailed to the Claims Administrator, an electronic version of the Claim Form which may be completed and submitted electronically, the operative Complaint, and when filed, the application for attorneys' fees and costs and the Final Approval Order.

8.07. Toll-Free Telephone Number. Within thirty (30) days after entry of the Preliminary Approval Order, the Claims Administrator shall set up a toll-free telephone number that will provide automated information on the settlement, the Settlement Class Members' rights, and important deadlines, as well as provide hard-copy settlement documents at a Settlement Class Member's request. That telephone number shall be maintained until the Claims Deadline. After that time, and through the date the Final Approval Order is entered, a recording will advise any caller to the toll-free telephone number that the Claims Deadline has passed and the details regarding the settlement may be reviewed on the Settlement Website.

8.08. CAFA Notice. Bluestem shall be responsible for timely compliance with the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715.

9. CLAIMS PROCESS

9.01. Potential Claimants. Each Settlement Class Member who does not timely and validly request exclusion from the Settlement as required in this Agreement shall be entitled to submit a Claim Form. Each Settlement Class Member shall be entitled to make only one claim per cellular telephone number that received text messages.

9.02. How to Make a Claim. In order to make a claim, a Settlement Class Member must submit a fully completed Claim Form by the Claims Deadline as set forth in the Direct Notice, Website Notice, and (if applicable) Targeted Facebook Notice. Any Claim Form postmarked or submitted after the Claims Deadline shall be deemed untimely and an invalid claim.

9.03. How a Claim is Approved. The Claims Administrator shall review all submitted Claims Forms to ensure they are complete and to screen for fraud, including without limitation, by cross-referencing the information provided on the Claim Form against the Text Message List. The Claims Administrator will reject a Claim Form where there is evidence of fraud. The Claims Administrator also will reject a Claim Form that does not contain all requested information, after giving the claimant a reasonable opportunity to provide any missing information.

A Settlement Class Member may submit more than one cellular phone number in connection with a claim until all numbers at which the Class Member received Bluestem's text messages have been checked against the Text Message List. The Claims Administrator shall check those submitted cellular phone numbers against the phone numbers in the Text Message List, immediately and electronically, if possible. If the claimant's cellular telephone number matches a cellular telephone number on the Text Message List, the claimant provides the other information required by the Claim Form, and there is no evidence of fraud, that claim will be approved. The

Claims Administrator may take reasonable steps to verify that the claimant was texted by or on behalf of Bluestem at the cellular phone number at issue during the Class Period.

In the event that Bluestem or its counsel receives any new contact information regarding any Settlement Class Members, Bluestem and its counsel shall use such information solely in connection with this Settlement and for no other purpose.

10. CLAIM REVIEW PROCESS

10.01. Review of Approved or Denied Claims. Each Settlement Class Member who does not exclude himself or herself from the Settlement Class and who makes a timely claim shall have his or her claim reviewed by the Claims Administrator. The Claims Administrator shall review the claims and advise the Parties, at a minimum, on a monthly basis of the number of claims that have been approved and denied. Counsel shall be entitled to contest the approval or denial of any claims, first through conferring with the Claims Administrator. However, if those issues are unresolved at the time of the fairness hearing, that will not prevent the Final Approval Hearing from going forward, with the issues to be resolved at a later date but within sixty (60) days of the entry of any order regarding the Final Approval Hearing, including any order for final approval of the settlement.

10.02. Mailing of Settlement Checks. For Settlement Class Members who submitted Approved Claims, the Claims Administrator shall send them settlement checks via U.S. mail no later than thirty (30) days after the Effective Date, or such other date as the Court may set. If any settlement checks are returned, the Claims Administrator shall attempt to obtain a new mailing address for that Settlement Class Member by taking the steps described in Section 8.02. If after a second mailing the settlement check is again returned, no further efforts need be taken by the

Claims Administrator to resend the check. The Claims Administrator shall advise Class Counsel and counsel for Bluestem of the names of the claimants whose checks are returned by the postal service as soon as practicable. Each settlement check will be negotiable for one hundred and eighty (180) days after it is issued, and shall so state on the face of the check. Any funds not paid out as the result of uncashed settlement checks shall be distributed pursuant to Section 4.04, and then to the *Cy Pres* Recipient as specified in this Agreement after all costs of settlement administration have been paid.

11. OPT-OUTS AND OBJECTIONS

11.01. Opting Out of the Settlement. A Settlement Class Member may request to be excluded from the Settlement Class by sending a complete written request to the Claims Administrator postmarked on or before the Opt-Out Deadline to be excluded from the Settlement Class, which is personally signed by the Settlement Class Member seeking to be excluded. The complete written request must include the Settlement Class Member's name, his or her address, the name of the Action (i.e., *Busch v. Bluestem Brands, Inc.*), a statement that he or she wishes to be excluded from the Settlement Class, and the cellular telephone number on which he or she allegedly received a text message sent by or on behalf of Bluestem. A request to be excluded that does not include all of the foregoing information, that is sent to an address other than that designated in the Notice, or that is not postmarked within the time specified, shall be invalid, and the Persons serving such a requests shall be deemed to remain members of the Settlement Class and shall be bound as Settlement Class Members by this Settlement Agreement, if approved. Any member of the Settlement Class who elects to be excluded shall not: (1) be bound by any orders or the Final Judgment; (2) be entitled to relief under this Settlement Agreement; (3) gain any rights

by virtue of this Settlement Agreement; nor (4) be entitled to object to any aspect of this Settlement Agreement. “Mass” or “class” requests for exclusion shall not be allowed.

11.02. Objections. Any Settlement Class Member who intends to object to the fairness of this settlement must file a written objection with the Court, and provide a copy of the objection to the Claims Administrator, Class Counsel and counsel for Bluestem no later than the Objection Deadline in accordance with the below:

A. In the written objection, the Settlement Class Member must state his or her full name, address, current telephone number, the reasons for his or her objection, and to ensure membership in the Settlement Class, (1) the cellular telephone number(s) on which he or she allegedly received a text message sent by or on behalf of Bluestem. All supporting documents, evidence, arguments and citations must also be attached to the Objection.

B. Any Settlement Class Member who objects may appear at the Final Approval Hearing, either in person or through an attorney hired at the his or her own expense, to object to the fairness, reasonableness, or adequacy of this Agreement or the settlement. A Settlement Class Member or his or her attorney intending to make an appearance at the Fairness Hearing must: (a) file a notice of appearance with the Court no later seven (7) days prior to the Claims Deadline, or as the Court may otherwise direct; and (b) serve a copy of such notice of appearance on all counsel for all Parties. The Parties will have the same right to seek discovery from any objecting Settlement Class Member as they would if the objector was a party in the Action, including the right to take the objector’s deposition, as

permitted by the Court. Any Settlement Class Member who fails to timely file a written objection with the Court shall not be permitted to object to this Settlement Agreement at the Final Approval Hearing, shall be foreclosed from seeking any review of this Agreement by appeal or other means, and shall be deemed to have waived his or her objections and be forever barred from making any such objections in the Action or any other related action or proceeding.

12. FINAL APPROVAL AND JUDGMENT ORDER

12.01. No later than fourteen (14) calendar days prior to the Final Approval Hearing, the Claims Administrator shall file with the Court and serve on counsel for all Parties a declaration stating that the Notice required by the Agreement has been completed in accordance with the terms of the Preliminary Approval Order.

12.02. If the Settlement is approved preliminarily by the Court, and all other conditions precedent to the settlement have been satisfied, no later than fourteen (14) calendar days prior to Final Approval Hearing:

- A. The Parties shall both request, individually or collectively, that the Court enter a Final Approval Order, with Class Counsel filing a memorandum of points and authorities in support of the motion; and,
- B. Counsel for the Class and Bluestem may file a memorandum addressing any objections submitted to the Settlement.

12.03. At the Final Approval Hearing, the Court will consider and determine whether the provisions of this Agreement should be approved, whether the Agreement should be finally approved as fair, reasonable, and adequate, whether any objections to the Agreement should be

overruled, whether the fee award and incentive payments to the Class Representative should be approved, and whether a judgment finally approving the Agreement should be entered.

12.04. This Agreement is subject to and conditioned upon the issuance by the Court of a Final Approval Order that grants final approval of this Agreement and:

- A. finds that the Notice provided satisfies the requirements of due process and Fed. R. Civ. P. 23(e)(1);
- B. finds that Settlement Class Members have been adequately represented by the Class Representative and Class Counsel;
- C. finds that the Settlement Agreement is fair, reasonable and adequate to the Settlement Class, that each Settlement Class Member shall be bound by this Agreement, including the releases in 15.01, and that this Settlement Agreement should be and is approved;
- D. dismisses on the merits and with prejudice all claims of the Settlement Class Members asserted against Bluestem in the Action, without fees or costs to any party except as provided in this Agreement;
- E. permanently enjoins each and every Settlement Class Member from bringing, joining, prosecuting, or continuing to prosecute any Released Claims against Bluestem or the Released Parties; and,
- F. retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation and enforcement of this Settlement.

13. FINAL JUDGMENT

13.01 The Judgment entered at or after the Final Approval Hearing approving the Settlement Agreement and determining the Fee Award and Incentive Award shall be deemed final one business day following the latest of the following events: (i) the date upon which the time expires for filing or noticing any appeal of the Court's Final Judgment approving this Agreement; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award and/or Incentive Award, the date of completion, in a manner that finally affirms and leaves in place the Final Judgment without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on *certiorari*.

14. CONFIRMATORY DISCOVERY

14.01. Defendant has provided a declaration confirming the composition, coding, and database sources used to query data in determining the Settlement Class and Defendant has provided the Text Message Class List (data) which represents the total number of unique cellphone numbers to which a text message was sent by or on behalf of Bluestem where the cellular telephone number texted was coded as a "wrong number" during the Class Period.

15. RELEASE OF CLAIMS

15.01. Released Claims. As of the Effective Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and

forever released, resolved, relinquished and discharged each and all of the Released Parties from each of the Released Claims (as defined below). The release does not apply to Persons who timely opt-out of the Settlement in accordance with the terms of this Agreement.

“Released Claims” means any and all claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, and attorneys’ fees of any nature whatsoever, whether based on any federal law (including the Telephone Consumer Protection Act, 47 U.S.C. § 227), state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, punitive or compensatory, as of the date of the Final Approval Order, that arise out of or relate in any way to the sending of allegedly unauthorized text messages by or on behalf of Bluestem during the Class Period.

15.02. Waiver of Unknown Claims. Without limiting the foregoing, the Released Claims specifically extend to claims that Settlement Class Members do not know or suspect to exist in their favor at the time that the Settlement, and the Releases contained therein, becomes effective. This Section constitutes a waiver of such claims, without limitation as to any other applicable law, including Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

15.03. Class Plaintiff and the Settlement Class Members understand and acknowledge the significance of these waivers of California Civil Code Section 1542 and any other applicable federal or state statute, case law, rule or regulation relating to limitations on releases. In connection with such waivers and relinquishment, Class Plaintiff and the Settlement Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts that they now know or believe to be true with respect to the subject matter of the Settlement, but that it is their intention to release fully, finally and forever all Released Claims with respect to the Released Parties, and in furtherance of such intention, the releases of the Released Claims will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

15.04. Covenant Not to Sue. Class Plaintiff and Settlement Class Members agree and covenant, and each Settlement Class member will be deemed to have agreed and covenanted, not to sue any Released Party with respect to any of the Released Claims, or otherwise assist others in doing so, and agree to be forever barred from doing so, in any court of law, equity, or any other forum.

**16. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL,
CANCELLATION OR TERMINATION OF AGREEMENT**

16.01. The Effective Date of this Settlement Agreement shall not occur unless and until each and every one of the following events occurs, and shall be the date upon which the last (in time) of the following events occurs:

- A. this Agreement has been signed by the Parties, Class Counsel and Bluestem's Counsel;

- B. the Court has entered an order granting Preliminary Approval of the Agreement;
- C. the Court has entered an order finally approving the Agreement, following notice to the Settlement Class and a Final Approval Hearing, as provided in the Federal Rules of Civil Procedure, and has entered the Final Judgment, or a judgment substantially consistent with this Agreement; and
- D. the Final Judgment has become final, as set forth in Section 13.01 above.

16.02. If some or all of the conditions specified in Section 16.01 are not met, or in the event that this Settlement Agreement is not approved by the Court, or the settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then this Settlement Agreement shall be cancelled and terminated subject to Section 16.05, unless Class Counsel and Bluestem's Counsel mutually agree in writing to proceed with this Agreement. Notwithstanding anything herein, the Parties agree that the Court's decision as to the amount of the Fee Award to Class Counsel set forth above or the Incentive Award to the Class Representatives, regardless of the amounts awarded, shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination of the Agreement.

16.03. Either Side May Terminate the Agreement. Plaintiff and Bluestem shall each have the right to unilaterally terminate this Agreement by providing written notice of his, her, their or its election to do so ("Termination Notice") to all other Parties hereto within ten (10) calendar days of any of the following occurrences:

- A. the Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement Agreement;

- B. an appellate court reverses the Final Approval Order, and the Agreement is not reinstated without material change by the Court on remand;
- C. any court incorporates into, or deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, Final Approval Order, or the Settlement Agreement in a material way, unless such modification or amendment is accepted in writing by all Parties;
- D. the Effective Date does not occur; or
- E. any other ground for termination provided for elsewhere in this Agreement occurs.

16.04. In the event that the number of persons in the Settlement Class who validly and timely submit opt-out requests exceeds 500 people, Defendant, in its sole and absolute discretion, may terminate this Agreement.

16.05. Revert to Status Quo. If either Plaintiff or Bluestem terminates this Agreement as provided herein, the Agreement shall be of no force and effect and the Parties' rights and defenses shall be restored, without prejudice, to their respective positions as if this Agreement had never been executed, any orders entered by the Court in connection with this Agreement shall be vacated, and this Agreement shall not be used for any purpose whatsoever against any of the Parties. However, any payments made to the Claims Administrator for services rendered to the date of termination shall not be refunded to Bluestem.

17. NO ADMISSION OF LIABILITY

17.01. Bluestem denies any liability or wrongdoing of any kind associated with the alleged claims in the operative complaints. Bluestem has denied and continues to deny each and every

material factual allegation and all claims asserted against them in the Action. Nothing herein shall constitute an admission by Bluestem of wrongdoing or liability, or of the truth of any allegations in the Action. Nothing herein shall constitute an admission by Bluestem that the Action is properly brought on a class or representative basis, or that classes may be certified in this Action, other than for settlement purposes. To this end, the settlement of the Action, the negotiation and execution of this Agreement, and all acts performed or documents executed pursuant to or in furtherance of the Settlement: (i) are not and shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Bluestem or of the truth of any of the allegations in the Action; (ii) are not and shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part of Bluestem in any civil, criminal or administrative proceeding in any court, arbitration forum, administrative agency or other tribunal; and, (iii) are not and shall not be deemed to be and may not be used as an admission of the appropriateness of these or similar claims for class certification.

17.02. Pursuant to Federal Rules of Evidence Rule 408 and any similar provisions under the laws of other states, neither this Agreement nor any related documents filed or created in connection with this Agreement shall be admissible in evidence in any proceeding, except as necessary to approve, interpret or enforce this Agreement.

18. TAXES

18.01. Qualified Settlement Fund. The Parties agree that the account into which the Settlement Fund is deposited is intended to be and will at all times constitute a “qualified settlement fund” within the meaning of Treas. Reg. §1.468B 1

18.02. Claims Administrator is “Administrator”. For the purpose of §1.468B of the Code

and the Treasury regulations thereunder, the Claims Administrator shall be designated as the “administrator” of the Settlement Fund. The Claims Administrator shall cause to be timely and properly filed all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. §1.468B 2(k)). Such returns on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in Section 18.03

18.03. Expenses Paid from Fund. Any expenses reasonably incurred by the Claims Administrator in carrying out the duties described in this Agreement, including fees of tax attorneys and/or accountants, shall be paid by the Claims Administrator from the Settlement Fund pursuant to its estimates and invoice for services rendered, in accordance with Section 7.04.

18.04. Responsibility for Taxes on Distribution. Any person or entity that receives a distribution from the Settlement Fund pursuant to Section 7.04 shall be solely responsible for any taxes or tax-related expenses owed or incurred by that person or entity by reason of that distribution. Such taxes and tax-related expenses shall not be paid from the Settlement Fund.

18.05. Bluestem is Not Responsible. Plaintiff and Class Counsel shall fully bear all the tax consequences of any and all benefits received by the Settlement Class Members from Bluestem in connection with this Agreement. Plaintiff acknowledges that Bluestem and its attorneys provided no tax advice related to this Agreement and that Bluestem may be required to file certain Form 1099 or other information reports with the United States Internal Revenue Service. Plaintiff has been advised to consult with tax counsel of Plaintiff’s own choice to seek legal and tax advice regarding the taxability or non-taxability of consideration provided herein. In no event shall Bluestem or any of the other Released Parties have any responsibility or liability for taxes or tax-

related expenses arising in connection with the payment or distribution of the Settlement Fund to Plaintiff, Class Counsel or any other person or entity, and the Settlement Fund shall indemnify and hold Bluestem and the other Released Parties harmless for all such taxes and tax-related expenses (including, without limitation, taxes and tax-related expenses payable by reason of any such indemnification).

19. MISCELLANEOUS

19.01. Entire Agreement. This Agreement constitutes the entire agreement between the Parties. No representations, warranties or inducements have been made to any of the Parties, other than those representations, warranties, and covenants contained in this Agreement.

19.02. Non-Waiver of Debts/Obligations Owing By Class Members. The Parties understand and agree that this Settlement Agreement and any terms herein shall not affect in any regard any debt or obligation owed by any Plaintiff or other Persons to Bluestem and/or its clients, principals and their related or affiliated entities. This Settlement Agreement does not operate to waive, extinguish, terminate, reduce or affect any debt or obligation owed by Plaintiff or Settlement Class Members, and shall not impair or limit any right or cause of action or right to enforce or otherwise collect any underlying debt or amount owed to Bluestem and their clients, principals and their related or affiliated entities.

19.03. Jurisdiction. The Court shall retain continuing and exclusive jurisdiction over the Parties to this Agreement, including the Plaintiff and all Settlement Class Members, for purposes of the administration and enforcement of this Agreement.

19.04. No Construction Against Drafter. This Agreement was drafted jointly by the Parties and, in construing and interpreting this Agreement, no provision of this Agreement shall

be construed or interpreted against any Party based upon the contention that this Agreement or a portion of it was purportedly drafted or prepared by that Party.

19.05. Resolution of Disputes. The Parties shall cooperate in good faith in the administration of this Settlement Agreement. Should the Parties have any disputes regarding the administration of this Settlement Agreement, the Parties shall first attempt to resolve their dispute through non-binding mediation with the Hon. Arthur J. Boylan (ret.) in Minneapolis, MN. Should the Parties be unable to resolve their dispute through mediation with Judge Boylan, they shall present the dispute to the Court for resolution.

19.06. Counterparts. This Agreement may be signed in counterparts and the separate signature pages executed by the Parties and their counsel may be combined to create a document binding on all of the Parties and together shall constitute one and the same instrument. Signature by digital, facsimile, or in PDF format will constitute sufficient execution of this Agreement. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

19.07. Time Periods. The time periods and dates described herein are subject to Court approval and may be modified upon order of the Court or written stipulation of the Parties.

19.08. Authority. Each person executing this Settlement Agreement on behalf of any of the Parties hereto represents that such person has the authority to so execute this Agreement.

19.09. No Oral Modifications. This Agreement may not be amended, modified, altered or otherwise changed in any manner, except by a writing signed by a duly authorized agent of Bluestem and Plaintiff, and approved by the Court.

19.10. Advice of Counsel. The Parties have relied upon the advice and representation of counsel, selected by them, concerning the claims hereby released. The Parties have read and

understand fully this Agreement and have been fully advised as to the legal effect hereof by counsel of their own selection and intend to be legally bound by the same.

19.11. Effect of Agreement. Whether the Effective Date occurs or this Agreement is terminated, neither this Agreement nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the settlement:

- A. is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them as an admission, concession or evidence of, the validity of any Released Claims, the truth of any fact alleged by Plaintiff, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the reasonableness of the settlement amount or the Fee Award, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or any of them;
- B. is, may be deemed, or shall be used, offered or received against Bluestem as, an admission, concession or evidence of any fault, misrepresentation or omission with respect to any statement or written document approved or made by the Released Parties, or any of them;
- C. is, may be deemed, or shall be used, offered or received against Plaintiff or the Settlement Class, or each or any of them as an admission, concession or evidence of, the infirmity or strength of any claims asserted in the Action, the truth or falsity of any fact alleged by Bluestem, or the availability or lack of availability of meritorious defenses to the claims raised in the Action;

- D. is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them as an admission or concession with respect to any liability, negligence, fault or wrongdoing as against any Released Parties, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. However, the settlement, this Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Agreement and/or settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Agreement. Moreover, if this Settlement Agreement is approved by the Court, any party or any of the Released Parties may file this Agreement and/or the Final Judgment in any action that may be brought against such party or Parties in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion, or similar defense or counterclaim;
- E. is, may be deemed, or shall be construed against Plaintiff, or each or any of them, or against the Released Parties, or each or any of them, as an admission or concession that the consideration to be given hereunder represents an amount equal to, less than or greater than that amount that could have or would have been recovered after trial; and
- F. is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiff and the Settlement Class, or each

and any of them, or against the Released Parties, or each or any of them, that any of Plaintiff's claims are with or without merit or that damages recoverable in the Action would have exceeded or would have been less than any particular amount.

19.12. No Waiver. The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

19.13. Force of Terms. The breach of one or more provisions of this Agreement by one party shall not be sufficient to void any other terms of this Agreement, which shall remain in force. However, the non-breaching party shall retain all of his, her or its rights under applicable law to obtain a remedy for such breach.

19.14. Exhibits. The Exhibits to this Agreement are material and integral parts hereof and are fully incorporated herein by reference. The Parties understand portions of those Exhibits may be modified as deemed necessary by the Parties and the Court, and so long as there is no material change in the terms, the Parties shall not refuse to accept such modifications.

19.15. Integration. This Agreement and any Exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements and undertakings with respect to the matters set forth herein. No representations, warranties or inducements have been made to any party concerning this Settlement Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents. This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

19.16. Fees and Costs. Except as otherwise provided herein, each Party shall bear its own attorneys' fees and costs incurred in any way related to the Action.

19.17. Warranty. Plaintiff represents and warrants that they have not assigned any claim or right or interest relating to any of the Released Claims against the Released Parties to any other Person or party and that they are fully entitled to release the same. Bluestem warrants that the person signing this Agreement on its behalf has full authority to do so.

19.18. Media. Neither party will issue a press release or respond to media inquiries about the Settlement of this matter. The parties will keep the settlement and settlement terms confidential until the filing of the preliminary approval motion with the Court.

19.19. Notices. Unless otherwise stated herein, any notice required or provided for under this Agreement shall be in writing and may be sent by electronic mail, fax or hand delivery, postage prepaid, as follows:

If to Class Counsel:

Ronald A. Marron
Alexis M. Wood
Kas L. Gallucci
Law Offices of Ronald A. Marron
651 Arroyo Drive
San Diego, CA 92103
Telephone: 619-696-9006
ron@consumersadvocates.com
alexis@consumersadvocates.com
kas@consumersadvocates.com

Thomas J. Lyons, Jr.
Consumers Justice Center, P.A.
367 Commerce Court
Vadnais Heights, Minnesota 55127
Telephone: (651) 770-9707
tommy@consumerjusticecenter.com

If to counsel for Defendant Bluestem Brands, Inc.:

Erin L. Hoffman
Nate Brennaman
Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Telephone (612) 766-7000
erin.hoffman@FaegreBD.com
nate.Brennaman@FaegreBD.com

IN WITNESS WHEREOF, the Parties and their duly authorized attorneys have caused this Agreement to be executed this 15 day of April, 2019.

Plaintiff Elizabeth Busch

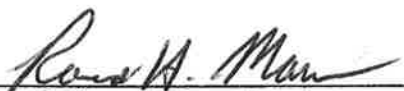
Defendant Bluestem Brands, Inc.


Elizabeth Busch, Plaintiff and Class Representative

By: _____
Its Authorized Representative

[Name] _____

APPROVED AS TO FORM:


Law Offices of Ronald A. Marron
651 Arroyo Drive
San Diego, CA 92103
Telephone: 619-696-9006

Attorney for Plaintiff Elizabeth and the Settlement Class

Erin L. Hoffman
Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Telephone (612) 766-7000

For Bluestem Brands, Inc.

Plaintiff Elizabeth Busch

Defendant Bluestem Brands, Inc.

Elizabeth Busch, Plaintiff and Class
Representative

By: Neil P. Ayotte
Its Authorized Representative
Neil P. Ayotte
Executive Vice President & General Counsel

APPROVED AS TO FORM:

Law Offices of Ronald A. Marron
651 Arroyo Drive
San Diego, CA 92103
Telephone: 619-696-9006

Attorney for Plaintiff Elizabeth and the
Settlement Class

Erin L. Hoffman
Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Telephone (612) 766-7000

For Bluestem Brands, Inc.

IN WITNESS WHEREOF, the Parties and their duly authorized attorneys have caused this Agreement to be executed this ____ day of April, 2019.

Plaintiff Elizabeth Busch

Defendant Bluestem Brands, Inc.

Elizabeth Busch, Plaintiff and Class Representative


By: _____
Its Authorized Representative

[Name] _____

APPROVED AS TO FORM:

Law Offices of Ronald A. Marron
651 Arroyo Drive
San Diego, CA 92103
Telephone: 619-696-9006

Attorney for Plaintiff Elizabeth and the Settlement Class



Erin L. Hoffman

Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Telephone (612) 766-7000

For Bluestem Brands, Inc.

EXHIBIT A

CLAIM FORM

**MUST BE
SUBMITTED
NO LATER THAN
MONTH XX, 2019**

**Elizabeth Busch v. Bluestem Brands, Inc.,
Case No. 16-cv-00644-WMW-HB (D. Minn.)**

For Office Use Only

*Instructions. Fill out each section of this form
and sign where indicated.*

Name: _____
First Name M.I. Last Name

Street Address: _____

City: _____

State: _____ **Zip Code:** _____ - _____ (zip4 optional)

Email (optional): _____ @ _____ . _____

Current Telephone Number: (_____) - _____ - _____

Cellphone Number(s) at Which You Received the Text Message(s): (_____) - _____ - _____

(_____) - _____ - _____

Class Member ID (if known): _____

TO RECEIVE BENEFITS FROM THIS SETTLEMENT, YOU MUST PROVIDE ALL OF THE INFORMATION ABOVE, AND YOU MUST SIGN THIS CLAIM FORM.

YOUR CLAIM FORM MUST BE SUBMITTED ONLINE BY 11:59 P.M. CENTRAL TIME ON [CLAIMS DEADLINE] OR SENT BY MAIL TO THE ADDRESS BELOW AND POSTMARKED BY [CLAIMS DEADLINE]

Elizabeth Busch v. Bluestem Brands, Inc.
**Bluestem Brands Text Settlement
Claims Administrator
[Address]**

Class Member Affirmation: By submitting this Claim Form and checking the box below, I declare that I am a member of the Settlement Class and that the following statement is true (box must be checked to receive payment):

I affirm that I was the subscriber or primary user of the cellular telephone number(s) listed above at some time from March 14, 2012, through October 15, 2018, that I received one or more text messages from Bluestem at the number(s) identified above and that I did not have an account with a Bluestem business (Fingerhut or Gettington) or otherwise did not consent to receive those text messages. I declare under penalty of perjury under the laws of the State in which this affirmation is executed and the United States of America that the information provided above is true and correct.

SIGNATURE: _____

PRINTED NAME: _____ **DATED:** ____ / ____ / ____

Carefully separate at perforation

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Elizabeth Busch v. Bluestem Brands, Inc.,
Case No. 16-cv-00644-WMW-HB (D. Minn.)

CLAIM FORM

[admin] ID: «[Admin] ID»
«First Name» «Last Name»
«Address1»
«City», «State» «Zip»

Name/Address Changes:

I am a member of the settlement class in *Busch v. Bluestem*. I affirm that I was the subscriber or primary user of the cellular telephone number(s) listed below at some time from March 14, 2012, through October 15, 2018, that I received one or more text messages from Bluestem at the number and that I did not have an account with a Bluestem business (Fingerhut or Gettington) or otherwise did not consent to receive those text messages. I declare under penalty of perjury under the laws of the State in which this affirmation is executed and the U.S. that the information provided above is true and correct.

Bottom Inside

Signature: _____

Telephone number on which I received the text(s):

Date of signature: _____

To receive a payment you must enter all requested information above, sign and mail this claim form, postmarked on or before [Month] [day], 2019.

Or you may visit the settlement website, www.bluestemtextsettlement.com, or call [redacted].

To exclude yourself from the class action settlement you must mail a written request for exclusion to the Claims Administrator, postmarked on or before [Month] [day], 2019. Your request must include the information required by the Court's [month] [day], 2019 Order.

IF YOU MOVE, send your CHANGE OF ADDRESS to the Settlement Administrator at the address on the backside of this form.

Postage
prepaid

Bar Code To Be Placed Here

Postal Service: Please do not mark Barcode

Bottom Outside

Busch v. Bluestem Brands Settlement Administrator
[Address]

EXHIBIT B

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

**If you received a text message on
your cell phone from or on behalf
of Bluestem d/b/a Fingerhut or
Gettington from March 14, 2012,
through October 15, 2018, your
rights could be affected by a class
action lawsuit captioned:**

Elizabeth Busch v. Bluestem Brands, Inc.,
U. S. District Court of Minnesota,
Case No. 16-cv-00644-WMW-HB

**This is a notice of a settlement of a class
action lawsuit. This is not a notice of a
lawsuit against you.**

**Please keep this postcard
for future reference.**

Bluestem Claims Administrator
c/o _____
P.O. Box [XXX]
[City], [State and zip code]

[Reference# Barcode]

Class Member ID: [Reference Number]

**Firstname Lastname
Address1
Address2
City, State Zip**

A Settlement has been reached in a class action lawsuit, *Busch v. Bluestem Brands, Inc.*, U.S. District Court of Minnesota, No. 16-cv-00644-WMW-HB (the "Lawsuit"). Plaintiff has sued Bluestem Brands dba Fingerhut or Gettington ("Defendant") under the Telephone Consumer Protection Act for sending text messages to consumers allegedly without their consent. Defendant denies any wrongdoing.

Who is included? The "Settlement Class" includes all persons in the U.S. who were sent a text message to a cellular telephone from or on behalf of Bluestem and where the number was coded by Bluestem as a "wrong party" on an outbound call, during the Class Period (i.e., March 14, 2012 through October 15, 2018). Defendant's records show your cell phone number may have been sent a text message by or on behalf of Bluestem during the Class Period and therefore you may be entitled to submit a claim as a part of this Settlement.

What does the Settlement provide? If approved by the Court, Defendant will provide a \$5,250,000 Settlement Fund. After deducting attorneys' fees (no more than one-third of the Settlement Fund, or \$1,750,000), attorneys' costs (not to exceed \$15,000), an Incentive Award of no more than \$7,500 to the Class Representative, and the costs of notice and claims administration (estimated to be approximately \$430,000), the Settlement Fund will be divided equally among all Settlement Class Members who submit valid claims. If any money remains unclaimed those Class Members who timely submitted valid claims and cashed their settlement checks may receive a *pro rata* distribution of the remaining money if the remaining amount will provide for more than \$10 per person. If any money still remains after that point, or if the amount remaining is below \$10 per person, the remaining money will be donated to the Minnesota Federal Court Pro Se Project or Minnesota Volunteer Lawyers Network or a similar organization approved by the Court.

If you are a member of the Class as described above, your legal rights are affected, and you have several options right now. **(1) Submit a Claim:** if you received wrong number texts from a Bluestem business (Fingerhut or Gettington), you may timely complete and return the claim form found on the backside of this postcard, or timely submit a claim online at www.bluestemtextsettlement.com, in which case you will receive a proportionate share of the settlement fund after deducting the above-listed expenses and will release any claim(s) you have against Bluestem related to the claims in this case. **(2) Do nothing:** You will not receive payment and you will be bound by the Court's Orders and Judgment and give up your right to sue the Defendant and certain other persons and entities about the legal claims resolved by the settlement. **(3) Exclude yourself:** Keep the right to sue the Defendant about the legal claims involved in this matter, but **you will not receive payment from this settlement.** The exclusion deadline is **Month Day, 2019**. **(4) Object/Request To Appear:** Write to the Court and say why you don't like the settlement and/or request permission to speak at the fairness hearing by **Month Day, 2019**. The Court will hold a Fairness Hearing at **00:00 a.m.** on **Month Day, 2019**, before Judge Wilhelmina M. Wright in Courtroom _____ of the U.S. Courthouse, 334 Federal Building, 316 N. Robert Street, St. Paul, Minnesota 55101. The Court will consider whether the proposed settlement is fair, reasonable, and adequate and whether to approve attorneys' fees and costs to Class Counsel and a service award to the Class Representative, and consider objections, if any. The motion for attorneys' fees and costs will be posted on the website after it is filed.

www.bluestemtextsettlement.com 1-xxx-xxx-xxxx

EXHIBIT C

IF YOU RECEIVED A TEXT MESSAGE ON YOUR CELL PHONE FROM OR ON BEHALF OF BLUESTEM BRANDS FROM MARCH 14, 2012, THROUGH OCTOBER 15, 2018, YOUR RIGHTS MAY BE AFFECTED BY A CLASS ACTION SETTLEMENT.

A court authorized this notice. This is not a solicitation from a lawyer.
 You are not being sued. This notice is to inform you of a class action settlement.

- A Settlement has been reached in a class action lawsuit claiming that Bluestem Brands, Inc. dba Fingerhut or Gettington (hereinafter “Defendant”) violated the Telephone Consumer Protection Act by sending allegedly unauthorized text messages to wrong number cellular telephones without their consent.
- The Settlement includes all persons in the United States who were sent a text message to a cellular telephone from or on behalf of Bluestem and where the number was coded by Bluestem as a “wrong party” on an outbound call, during the Class Period (i.e., March 14, 2012 through October 15, 2018).
- Defendant has agreed to pay \$5,250,000 (the “Settlement Fund”) to settle the lawsuit. After deducting costs of notice and claims administration, attorneys’ fees and litigation costs, and an incentive payment to the class representative, the remaining amount will be divided on a *pro rata* basis (equally) among class members who file a valid claim.
- Your legal rights are affected regardless of whether you act or don’t act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
File a Claim Form	This is the only way to receive a cash payment from the Settlement Fund.
Exclude Yourself from the Settlement	This is the only option that allows you to be part of any other lawsuit against the Defendant for the legal claims made in this lawsuit and released by the Settlement Agreement. You will not receive a cash payment.
Object to the Settlement	Write to the Court with reasons why you do not like the Settlement.
Participate in the Final Approval Hearing	Ask the Court for permission for you or your attorney to appear and be heard at the final fairness hearing.
Do Nothing	If you do nothing, you will not receive a cash payment from the Settlement Fund and you will give up your rights to be part of any other lawsuit against the Defendant for the legal claims made in this lawsuit and released by the Settlement Agreement.

- These rights and options—and the deadlines to exercise them—are explained in this Notice. For complete details, view the Settlement Agreement, available at www.bluestemtextsettlement.com, or call 1-____-____.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be distributed if the Court approves the Settlement and after any appeals are resolved.

Questions? Call [insert number] or go to www.bluestemtextsettlement.com

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Questions? Call [insert number] or go to www.bluestemtextsettlement.com

BASIC INFORMATION

1. Why is this Notice being provided?

The Court directed that this Notice be sent because you have a right to know about the proposed Settlement that has been reached in this class action lawsuit and about all of your options before the Court decides whether to grant final approval of the Settlement. If the Court approves the Settlement, the Claims Administrator appointed by the Court will make the payments that the Settlement provides to those who have submitted valid and approved claims. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of this case is the United States District Court for Minnesota. The case is known as *Busch v. Bluestem Brands, Inc.*, Case No. 16-cv-00644-WMW-HB (the “Action”). The person who filed the lawsuit, Elizabeth Busch, is called the Plaintiff. The company she sued, Bluestem Brands, Inc. doing business as Fingerhut or Gettington, is called the Defendant.

2. WHAT IS THIS LAWSUIT ABOUT?

Plaintiff claims that Defendant violated the Telephone Consumer Protection Act (“TCPA”) by sending text messages to wrong number cellular telephones using an automatic telephone dialing system, without consent. Defendant denies any wrongdoing.

3. WHAT IS A CLASS ACTION?

In a class action, one or more people called a Class Representative(s), in this case Elizabeth Busch, sues on behalf of people who have similar claims. Together, the Class Representative and group of individuals are called the Class or Class Members. One court resolves the issues for all Class Members, except for those who request to be excluded from the Settlement.

4. WHY IS THERE A SETTLEMENT?

The Court did not decide in favor of Plaintiff or Defendant. Instead, the Plaintiff and Defendant agreed to settle the Action to avoid the risks and cost of a trial. The Settlement also allows Class Members to be compensated without further delay. The Class Representative and her attorneys think the Settlement is best for all Class Members.

WHO IS INCLUDED IN THE SETTLEMENT CLASS?

5. AM I INCLUDED?

If you received a postcard providing notice of the Settlement, you have been identified as a user of a cell phone number that Defendant’s records show as having been sent a text message by or on behalf of Bluestem during the relevant time period. Specifically, the Settlement includes all persons in the United States who were sent a text message to a cellular telephone from or on behalf of Bluestem and where the number was coded by Bluestem as a “wrong party” on an outbound call, during the Class Period (i.e., March 14, 2012 through October 15, 2018). The Parties estimate that there are approximately 688,561 persons in the Settlement Class.

THE SETTLEMENT BENEFITS

6. WHAT DOES THE SETTLEMENT PROVIDE?

The Settlement provides \$5,250,000 (the “Settlement Fund”). After deducting the notice and claims administration costs, payment of attorneys’ fees and costs of litigation, and any incentive payment to the Class Representative, the net Settlement Fund will be divided equally among all Settlement Class Members who file approved claims.

7. HOW MUCH WILL MY PAYMENT BE?

Payment amounts depend on the number of valid claims submitted. Each Settlement Class Member who files an approved claim will be entitled to a one-time *pro rata* (i.e., equal or proportional) share of the net Settlement Fund per person. The

Questions? Call [insert number] or go to www.bluestemtextsettlement.com

Claims Administrator will issue payments by way of check. Any unclaimed or un-cashed funds or checks will be divided among the Settlement Class Members who cashed their settlement checks if the remaining amount will provide for more than \$10 per person, otherwise it will become part of the Settlement Fund for *cy pres* distribution to the Minnesota Federal Court Pro Se Project or Minnesota Volunteer Lawyers Network or a similar organization approved by the Court.

HOW TO GET SETTLEMENT BENEFITS

8. HOW DO I FILE A CLAIM FOR A PAYMENT?

You may make a claim for a cash payment in one of two ways:

- (1) Completing and returning your post card claim form that was mailed to you,
- (2) Submitting a claim online at the Claims Administrator's Settlement website:
www.insert.com, or

- (3) Submitting a claim by mail by either downloading a Claim Form from the Settlement website or requesting by telephone that the Claims Administrator mail you a copy of the Claim Form, completing such paper Claim Form, and mailing the completed Claim Form to the Claims Administrator.

Claim Forms must be submitted online by 11:59 p.m. Central Time on [insert date] or postmarked by [insert date]. You may make only one claim for each cellular phone number that received a text message from Defendant's text messaging platforms.

9. WHEN WILL I GET MY PAYMENT?

The Court has scheduled a Final Approval Hearing before Judge Wilhelmina M. Wright on [DATE AND TIME] in Courtroom _____ of the U.S. Courthouse, 334 Federal Building, 316 N. Robert Street, St. Paul, Minnesota 55101. If the settlement is approved by the Court, the checks will be issued approximately 90 days after the Court's approval.

THE LAWYERS REPRESENTING YOU

10. DO I HAVE A LAWYER IN THIS CASE?

Yes, the Court has appointed Ronald A. Marron, Alexis M. Wood and Kas L. Gallucci of The Law Offices of Ronald A. Marron, 651 Arroyo Drive, San Diego, CA 92103 and Thomas J. Lyons, Jr. of Consumer Justice Center, P.A. to represent you and other Class Members as "Class Counsel." Their contact information is below.

Ronald A. Marron
Alexis M. Wood
Kas L. Gallucci
The Law Offices of Ronald A. Marron
651 Arroyo Drive
San Diego, California 92108
Admin@ConsumersAdvocates.com

Thomas J. Lyons, Jr.
Consumer Justice Center, P.A.
367 Commerce Court
Vadnais Heights, Minnesota 55127
tommy@consumerjusticecenter.com

You may hire your own lawyer at your own expense, but you don't have to.

11. HOW WILL THE LAWYERS, CLASS REPRESENTATIVE AND CLAIMS ADMINISTRATOR BE PAID?

Class Counsel will apply to the Court for their attorneys' fees (no more than one-third of the Settlement Fund, or \$1,750,000.00), and costs not to exceed \$15,000.00, as well as all reasonable costs and expenses associated with giving notice to the Class Members and administering the Settlement (estimated to be approximately \$430,000.00), and an Incentive Award in the amount of no more than \$7,500.00 for the Class Representative for her efforts in bringing the action and assisting throughout the litigation. If approved by the Court, all of these amounts will be deducted and paid from the Settlement Fund before making payments to Class Members who submit valid claims.

Questions? Call [insert number] or go to www.bluestemtextsettlement.com

YOUR RIGHTS AND OPTIONS

12. WHAT HAPPENS IF I DO NOTHING AT ALL?

If you're a member of the Settlement Class and you do nothing at all, you will remain in the Settlement, but you will not get a payment. If the Court approves the Settlement, you'll give up your right to sue Bluestem on the issues the Settlement concerns through an individual or class action.

If you're a member of the Settlement Class but want to retain your rights to sue Bluestem on the issues the Settlement concerns, you have the option to exclude yourself, which is discussed below.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want to participate in this Settlement, or you want to keep the right to sue or continue to sue Defendant on your own, then you must take steps to get out of the Settlement. This is called "excluding yourself" from or "opting out" of the Class.

13. WHAT HAPPENS IF I ASK TO BE EXCLUDED?

If you're a Settlement Class Member and you ask to be excluded from the Settlement, you'll keep the right to sue Bluestem on the issues the Settlement concerns, but Bluestem can raise all of its defenses. You will not be legally bound by the Court's orders or any judgment related to the Class and the Defendant in this class action and you will not be entitled to any relief the Settlement provides.

14. HOW DO I ASK TO BE EXCLUDED?

You may request to be excluded from the Settlement Class by sending a letter to the Claims Administrator. For your request to be valid, you must send a written request (1) stating that you want to be excluded from the Settlement in *Busch v. Bluestem Brands, Inc.*, No. 16-cv-00644-WMW-HB, (2) including your name, address, and the telephone number at which you allegedly received a text message from or on behalf of Bluestem, (3) that is physically signed by you, and (4) postmarked on or before [redacted], 2019. You must mail your exclusion request to:

Bluestem Brands Settlement Administration

c/o _____

P.O. Box [XXX]

[City], [State and zip code]

You cannot exclude yourself on the phone or by email. "Mass" or "class" requests for exclusion are not allowed.

15. IF I DO NOT EXCLUDE MYSELF, CAN I SUE THE DEFENDANT FOR THE SAME THING LATER?

If you are a member of the Settlement Class and you do not submit a request for exclusion, you'll give up your right to sue Bluestem on the issues the settlement concerns through an individual or class action.

16. IF I EXCLUDE MYSELF FROM THE SETTLEMENT CLASS, CAN I GET ANYTHING FROM THE SETTLEMENT?

No. If you exclude yourself from the Settlement Class, do not submit a Claim Form. You will no longer be able to receive a benefit from the Settlement.

17. HOW DO I TELL THE COURT THAT I DO NOT LIKE THE SETTLEMENT?

If you are a Class Member, you can object to the Settlement or a portion of it. You can give reasons why you think the Court should not approve it. The Court will consider your views before making a decision. To object, you must mail a letter or other document saying that you object to the Settlement of *Busch v. Bluestem Brands, Inc.*, United States District Court of Minnesota, Case No. 16-cv-00644. Your objection must also include your name, address, current telephone number, the telephone number at which you allegedly received a text message from or on behalf of Bluestem, your signature, the reason you object to the Settlement and any documents that support your objection. Mail the objection to the Clerk of the Court at the address below, postmarked no later than _____, 2019. If you are represented by a lawyer, your lawyer must electronically file your objection or comment with the Court. Include your lawyer's contact information in the objection or comment.

Clerk of the Court
U.S. District Court of Minnesota
316 N. Robert Street
100 Federal Building
Saint Paul, Minnesota 55101

18. MAY I SPEAK TO THE COURT ABOUT MY OBJECTION?

Yes, you may also ask the Court for permission to speak at the fairness hearing. To do so, you must either include in your objection a statement designating it as your "Objection and Notice of Intention to Appear at Final Fairness Hearing," or you must send a letter stating such intent to the Clerk of the Court. If submitted separately from an objection, your Notice of Intention to Appear at Final Fairness Hearing must include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be postmarked no later than _____, 2019.

You cannot object or speak at the hearing if you "excluded yourself" from the Class.

19. WHAT IS THE DIFFERENCE BETWEEN OBJECTING TO AND ASKING TO BE EXCLUDED FROM THE SETTLEMENT?

Objecting simply means telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself means telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself from the Settlement Class, you're excluding yourself from the entire Settlement, and you have no basis to object because the case no longer affects you.

THE COURT'S FINAL APPROVAL HEARING

20. WHEN AND WHERE IS THE FINAL APPROVAL HEARING?

The Court will hold a Final Approval Hearing at _____ .m. on _____ 2019 at the United States District Court of Minnesota, in Courtroom _____ of the U.S. Courthouse, 334 Federal Building, 316 N. Robert Street, St. Paul, Minnesota 55101, before the honorable Wilhelmina M. Wright. If anyone has asked to speak at the hearing (see Question 18), Judge Wright will listen to him or her at that time. The Court will decide after the hearing whether to approve: (1) the Settlement as fair and reasonable; (2) the amount of attorneys' fees and costs of litigation; (3) the costs of notice and claims administration; and (4) the incentive payment to be provided to the Plaintiff as Class Representative. The Motion for Attorney's fees and costs will be posted on the website after it is filed and before the Final Approval Hearing.

We do not know how long these decisions will take.

21. DO I HAVE TO COME TO THE HEARING?

No. Class Counsel will answer questions Judge Wright may have that are directed to the Class. But you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mail your written objection on time, the Court will consider it.

GETTING MORE INFORMATION

22. ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement, which can be viewed or downloaded [www.bluestemtextsettlement.com] and is part of the Court's file, a public record. Many of the Court papers, including this Notice, the Settlement Agreement and the Order for Preliminary Approval are also posted on the Settlement website www.bluestemtextsettlement.com. You can obtain a copy of the Settlement Agreement or review any other part of the papers relating to the lawsuit by examining the records of this case, *Busch v. Bluestem Brands, Inc.*, Case No. 16-cv-00644-WMW-HD at the Clerk's office at the U.S. District Court of Minnesota, 316 N. Robert Street, 100 Federal Building, St. Paul, Minnesota 55101. The clerk's office has the ability to make copies of any such public documents for you for a fee. Also, all filed documents in the case, including the Settlement documents, are available for viewing online for a fee through the Court's PACER document review system (www.pacer.gov). Any questions that you may have concerning this Notice should not be directed to the Court, but should be directed to the Claims Administrator.

**CONTACT THE CLAIMS ADMINISTRATOR WITH ANY QUESTIONS
1-XXX-XXX-XXXX OR GO TO WWW.BLUSTEMTEXTSETTLEMENT.COM.**

23. WHAT AM I GIVING UP IN EXCHANGE FOR THE SETTLEMENT?

Unless you exclude yourself, you will release Bluestem, and its past, present and future parents, subsidiaries, affiliated companies and corporations, and each of their respective past, present, and future directors, officers, managers, employees, general partners, limited partners, principals, agents, insurers, reinsurers, shareholders, attorneys, advisors, representatives, predecessors, successors, divisions, joint ventures, assigns, or related entities, and each of their respective executors, successors, assigns, and legal representatives (collectively "Released Parties") from any and all claims related to unauthorized text messages sent by or on behalf of Bluestem during the Class Period. You will no longer be able to sue, continue to sue, or be part of any other lawsuit against Defendant and related parties about the claims made in this Action and released by the Settlement Agreement. You will be legally bound by all of the Court's orders, as well as the "Released Claims" (see next question).

24. WHAT ARE THE RELEASED CLAIMS?

The "Released Claims" are any and all claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, and attorneys' fees of any nature whatsoever, whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, punitive or compensatory, as of the date of the Final Approval Order, that arise out of or relate in any way to the sending of allegedly unauthorized text messages by or on behalf of Bluestem during the Class Period, including alleged violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 ("TCPA"), and similar state laws relating to sending of text messages without consent.

The full terms of this Release are contained in the Settlement Agreement, Section 15.01 available at www.bluestemtextsettlement.com, or at the public court records on file in this lawsuit.