

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KEVIN MCCLINTIC, on behalf of himself)
and all others similarly situated,)
)
) Plaintiff,)
)
) v.)
)
) LITHIA MOTORS, INC.)
)
) Defendant.)

No. 11-cv-00859RAJ

**LITHIA MOTORS, INC.’S
ANSWER TO PLAINTIFF’S
COMPLAINT FOR DAMAGES,
INJUNCTIVE AND
DECLARATORY RELIEF**

Lithia Motors, Inc. (“Lithia”), for its Answer to the Complaint herein, denies and alleges as follows:

INTRODUCTION

1. In answering paragraph 1, Lithia admits that it owns and operates automobile dealerships. With respect to the remaining allegations contained in paragraph 1, Lithia denies the same and all inferences to be drawn therefrom.

2. In answering paragraph 2, Lithia denies each and every allegation contained therein and all inferences to be drawn therefrom.

3. In answering paragraph 3, Lithia denies that it is liable to the Plaintiff or any allegedly similarly situated persons. Lithia further denies that this case is amenable to certification of a class under Federal Rule of Civil Procedure 23(b). With respect to the

1 remaining allegations contained in paragraph 3, Lithia denies the same and all inferences to be
2 drawn therefrom.

3 4. In answering paragraph 4, Lithia denies that Plaintiff is entitled to injunctive
4 relief or to an award of any damages, costs, or fees, whatsoever. With respect to any
5 remaining allegations contained in paragraph 4, Lithia denies the same and all inferences to be
6 drawn therefrom.

7 I. PARTIES, JURISDICTION, VENUE

8 5. In answering paragraph 5, Lithia admits that it is a corporation with its
9 principal place of business in Oregon. Lithia further admits that it conducts business in the
10 State of Washington with citizens and residents of this state. With respect to any remaining
11 allegations contained in paragraph 5, Lithia denies the same and all inferences to be drawn
12 therefrom.

13 6. In answering paragraph 6, Lithia lacks sufficient information to admit or deny
14 the allegations therein. Therefore, Lithia denies the same and all inferences to be drawn
15 therefrom.

16 7. In answering paragraph 7, Lithia lacks sufficient information to admit or deny
17 the allegations therein. Therefore, Lithia denies the same and all inferences to be drawn
18 therefrom.

19 8. In answering paragraph 8, Lithia admits that this Federal District Court has
20 subject matter jurisdiction over this action. Lithia specifically denies, however, that it
21 committed any tortuous acts. Lithia further denies that it sent any unsolicited text messages to
22 any telephone in King County, Washington. With respect to any remaining allegations
23 contained in paragraph 8, Lithia denies the same and all inferences to be drawn therefrom.

24 II. FACTS

25 9. In answering paragraph 9, Lithia denies each and every allegation contained
26 therein and all inferences to be drawn therefrom.

1 **Count A. Violation of RCW 80.36.400**

2 19. Answering paragraph 19, no response is required in that paragraph 19 pleads
3 conclusions of law and not allegations of fact. Notwithstanding this, Lithia denies each and
4 every allegation contained in paragraph 19 and all inferences to be drawn therefrom.

5 20. Answering paragraph 20, no response is required in that paragraph 20 pleads
6 conclusions of law and not allegations of fact. Notwithstanding this, Lithia denies each and
7 every allegation contained in paragraph 20 and all inferences to be drawn therefrom.

8 21. Answering paragraph 21, Lithia denies each and every allegation contained
9 therein and all inferences to be drawn therefrom. Answering further, Lithia specifically
10 denies that it has caused Plaintiff, or any putative class member, any damages whatsoever.

11 **Count B. Violation of RCW 19.190.060**

12 22. Answering paragraph 22, no response is required in that paragraph 22 pleads
13 conclusions of law and not allegations of fact. Notwithstanding this, Lithia denies each and
14 every allegation contained in paragraph 22 and all inferences to be drawn therefrom.

15 23. Answering paragraph 23, no response is required in that paragraph 23 pleads
16 conclusions of law and not allegations of fact. Notwithstanding this, Lithia denies each and
17 every allegation contained in paragraph 23 and all inferences to be drawn therefrom.

18 24. Answering paragraph 24, Lithia denies each and every allegation contained
19 therein and all inferences to be drawn therefrom. Answering further, Lithia specifically denies
20 that it has caused Plaintiff, or any putative class member, any damages whatsoever.

21 **Count C. Violation of RCW 19.86 (Washington Consumer Protection Act (CPA))**

22 25. Answering paragraph 25, no response is required in that paragraph 25 pleads
23 conclusions of law and not allegations of fact. Notwithstanding this, Lithia denies each and
24 every allegation contained in paragraph 25 and all inferences to be drawn therefrom.

25 26. Answering paragraph 26, no response is required in that paragraph 26 pleads
26 conclusions of law and not allegations of fact. Notwithstanding this, Lithia denies each and

1 every allegation contained in paragraph 26 and all inferences to be drawn therefrom.
2 Answering further, Lithia specifically denies that it has caused Plaintiff, or any putative class
3 member, any damages whatsoever.

4 **Count D. Violations of the Telephone Consumer Protection Act (National Class)**

5 27. Answering paragraph 27, Lithia admits that it caused certain text messages to
6 be sent. With respect to the remaining allegations contained in paragraph 27, Lithia denies
7 the same and all inferences to be drawn therefrom.

8 28. Answering paragraph 28, no response is required in that paragraph 28 pleads
9 conclusions of law and not allegations of fact. Notwithstanding this, Lithia denies each and
10 every allegation contained in paragraph 28 and all inferences to be drawn therefrom.

11 29. Answering paragraph 29, no response is required in that paragraph 29 pleads
12 conclusions of law and not allegations of fact. Notwithstanding this, Lithia denies each and
13 every allegation contained in paragraph 29 and all inferences to be drawn therefrom.

14 30. Answering paragraph 30, Lithia denies each and every allegation contained in
15 paragraph 30 and all inferences to be drawn therefrom. Answering further, Lithia specifically
16 denies that it has caused Plaintiff, or any putative class member, any damages whatsoever.

17 **IV. CLASS ACTION ALLEGATIONS**

18 31. Answering paragraph 31, Lithia denies each and every allegation contained
19 therein and all inferences to be drawn therefrom.

20 32. Answering paragraph 32, Lithia denies that certification of this case as a class
21 action is proper under CR 23(b)(2) and/or CR 23(b)(3) and/or any other provision. Lithia
22 further denies that it sent any unsolicited text messages to Plaintiff or any other member of the
23 putative classes. As to the remaining allegations, Lithia denies the same and all inferences to
24 be drawn therefrom.

25 33. Answering paragraph 33, Lithia denies that certification of this case as a class
26 action is proper. Lithia further denies that it violated the TCPA, the Washington Consumer

1 Protection Act, RCW 80.36.400 and/or RCW 19.190.060. Lithia further denies that it is liable
2 to the Plaintiff or to any member of the putative classes, whatsoever. As to the remaining
3 allegations, Lithia denies the same and all inferences to be drawn therefrom.

4 34. Answering paragraph 34, Lithia denies that certification of this case as a class
5 action is proper. Lithia further denies that there are any questions of law or fact common to
6 the putative National and Washington classes. Lithia further denies that it violated the TCPA,
7 the Washington Consumer Protection Act, RCW 80.36.400 and/or RCW 19.190.060. Lithia
8 further denies that it is liable to the Plaintiff or to any member of the putative classes,
9 whatsoever. As to the remaining allegations, Lithia denies the same and all inferences to be
10 drawn therefrom.

11 35. Answering paragraph 35, Lithia denies that certification of this case as a class
12 action is proper. Lithia further denies that the claims asserted by the Plaintiff are typical of
13 the members of the putative classes. Lithia further denies that it violated the TCPA, the
14 Washington Consumer Protection Act, RCW 80.36.400 and/or RCW 19.190.060. Lithia
15 further denies that it is liable to the Plaintiff or to any member of the putative classes,
16 whatsoever. As to the remaining allegations, Lithia denies the same and all inferences to be
17 drawn therefrom.

18 36. Answering paragraph 36, Lithia denies that certification of this case as a class
19 action is proper. Lithia further denies that the Plaintiff will fairly and adequately protect the
20 class. Lithia further denies that it violated the TCPA, the Washington Consumer Protection
21 Act, RCW 80.36.400 and/or RCW 19.190.060. Lithia further denies that it is liable to the
22 Plaintiff or to any member of the putative classes, whatsoever. As to the remaining
23 allegations, Lithia denies the same and all inferences to be drawn therefrom.

24 37. Answering paragraph 37, Lithia denies that certification of this case as a class
25 action is proper under CR 23(b)(3) or any other provision. Lithia further denies that it
26 violated the TCPA, the Washington Consumer Protection Act, RCW 80.36.400 and/or RCW

1 19.190.060. Lithia further denies that it is liable to the Plaintiff or to any member of the
2 putative classes, whatsoever. As to the remaining allegations, Lithia denies the same and all
3 inferences to be drawn therefrom.

4 38. Answering paragraph 38, Lithia denies that certification of this case as a class
5 action is proper under CR 23(b)(2) or any other provision. Lithia further denies that it
6 violated the TCPA, the Washington Consumer Protection Act, RCW 80.36.400 and/or RCW
7 19.190.060. Lithia further denies that it is liable to the Plaintiff or to any member of the
8 putative classes, whatsoever. As to the remaining allegations, Lithia denies the same and all
9 inferences to be drawn therefrom.

10 **RELIEF SOUGHT**

11 In answering Plaintiff's prayer for relief, Lithia specifically denies that it is liable to
12 the Plaintiff or any member of the putative classes for any alleged damages, injunctive relief,
13 equitable relief, or extraordinary relief, whatsoever. Lithia further denies that it has violated
14 any federal or state law.

15 **AFFIRMATIVE DEFENSES**

16 Lithia asserts the following affirmative defenses:

- 17 1. Plaintiff's Complaint fails to state a claim upon which relief may be granted.
 - 18 2. Plaintiff's state law claims are preempted by applicable federal law and
19 regulations.
 - 20 3. Plaintiff's claims are barred under the doctrine of waiver, estoppel, consent
21 and/or unclean hands.
 - 22 4. Plaintiff has consented to being contacted via text message by the Defendant.
 - 23 5. Plaintiff's claims are barred by the applicable statute of limitations.
 - 24 6. The message allegedly sent to Plaintiff was permitted.
 - 25 7. Plaintiff lacks standing to maintain the instant cause of action.
- 26

1 8. Plaintiff has no private right of action to seek all or some of the relief sought in
2 the Complaint.

3 9. Defendant denies that Plaintiff suffered any injury to business or property but
4 to the extent the Plaintiff claims to have suffered damage, Plaintiff failed to mitigate his
5 damages, if any.

6 10. Plaintiff failed to allege that he suffered any damages.

7 11. Plaintiff is not entitled to the damages he seeks to recover in this action.

8 12. Defendant denies that Plaintiff can establish that class certification is
9 appropriate here, but even if a class was certified, the putative classes are not entitled to the
10 damages alleged in the Complaint.

11 13. Defendant has established and implemented, with due care, reasonable
12 practices and procedures to effectively prevent text message solicitations in violation of
13 federal and state law.

14 14. RCW 80.36.400 is inapplicable to the Defendant's alleged conduct.

15 15. Defendant asserts an affirmative defense that it intends to rely upon such
16 defenses as may become legally available hereunder or become apparent during discovery,
17 including without limitation those defenses specific to the statutory law and common law of
18 the State of Washington and the United States of America which were available at the time
19 the action was commenced or became available during the pendency of this proceeding and
20 thereby reserves the right to amend its answer to assert any such defenses.

21 **PRAYER FOR RELIEF**

22 WHEREFORE Defendant prays that this Court:

- 23 1. Dismiss the Plaintiff's claims and enter a judgment for the Defendant;
24 2. Decline to certify this case as a class action;
25 3. Award Defendant its attorneys' fees and costs; and
26 4. Grant Defendant such other and further relief as may be just and proper.

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DATED: July 14, 2011

LANE POWELL PC

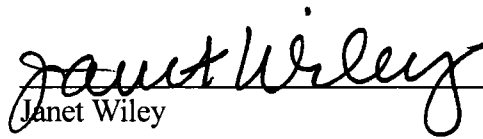
By s/Erin M. Wilson
Grant S. Degginger, WSBA No. 15261
Erin M. Wilson, WSBA No, 42454
Attorneys for Lithia Motors, Inc.

1 **CERTIFICATE OF SERVICE**

2 Pursuant to RCW 9.A.72.085, the undersigned certifies under penalty of perjury under
3 the laws of the State of Washington, that on the 14th day of July, 2011, the document attached
4 hereto was presented to the Clerk of the Court for filing and uploading to the CM/ECF
5 system. In accordance with their ECF registration agreement and the Court's rules, the Clerk
6 of the Court will send e-mail notification of such filing to all CM/ECF participants and any
7 non-CM/ECF participants will be served in accordance with the Federal Rules of Civil
8 Procedure.

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16 DATED this 14th day of July, 2011 at Seattle, Washington.

17 
18 Janet Wiley