

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. 2:11-cv-00859-RAJ

[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT

NOTE ON MOTION CALENDAR:
AUGUST 8, 2011

THIS MATTER came before the Court for consideration of the Motion for Preliminary Approval of Proposed Class Action. The Court, having considered the motion, the exhibits thereto, the Joint Declaration of Rob Williamson and Kim Williams in support of the motion, the Settlement Agreement attached as Exhibit A to said Declaration and all other matters properly before the Court, hereby orders as follows:

I. PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

1. The Court, for purposes of this Order, adopts the definitions set forth in the Settlement Agreement and Release ("Settlement Agreement") submitted in support of this motion.

2. The Court finds that the terms contained in the Settlement Agreement falls within the range of possible approval, and hereby grants preliminary approval of the Settlement Agreement, subject to final approval to be considered at the Final Settlement Approval Hearing set forth below.

[PROPOSED] ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT--1
(C11-0859 RAJ)

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2 3. Except as otherwise agreed to by the parties, all proceedings in this action shall be
3 stayed pending the occurrence of the Effective Date or termination of the Settlement Agreement,
4 except as to proceedings relating to the Settlement Agreement, including Plaintiff's Counsel's
5 request for attorneys' fees and costs.

6 **II. CERTIFICATION OF SETTLEMENT CLASS**

7 4. Pursuant to the Settlement Agreement and for purposes of this settlement only,
8 the Court certifies the following Settlement Class pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and
9 23(b)(3):

10 All persons within the United States who received a Text Message on their
11 cellular telephones from Defendant or on Defendant's behalf, at any time during
12 the Class Period, including all persons within the United States who received a
13 second Text Message from Defendant or on Defendant's behalf after attempting
14 to opt out after receiving a first Text Message.

15 5. This certification is effective and binding only with respect to proceedings related
16 to or encompassed by the Settlement Agreement. If the Settlement Agreement is not approved or
17 is terminated for any reason, this certification shall be vacated by its terms and the Action shall
18 revert to the status with respect to class certification that existed before execution of the
19 Settlement Agreement. In such event, Defendant's stipulation to this Settlement Class in
20 conjunction with the Settlement Agreement shall not be construed as or raise any presumption or
21 inference of a concession or an admission as to the propriety of certification of this Settlement
22 Class or any other.

23 **III. APPROVING CLASS NOTICE**

24 6. The Court approves the Claim Form and the Notice of Settlement of Class Action
25 ("Class Notice"), substantially in the form of Exhibits A and C of the Settlement Agreement.

26 7. Notice shall be provided to the Settlement Class by causing the Class Notice
(Exhibit C) to be mailed to all Class Members. In addition, the long form of Class Notice
(Exhibit D) will be available on a web site to be created and maintained by the Settlement
Administrator.

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2 8. The Court determines that these forms of notice and the mailing of Notice and
3 Claim Form will constitute the best notice practicable under the circumstances to the Settlement
4 Class and will fully comply with Fed. R. Civ. Pro. 23, Washington Civil Rule 23 and the
5 Washington State and United States Constitutions.

6 **IV. CLAIMS**

7 9. Subject to the terms and conditions set forth in the Settlement Agreement, class
8 members who make a timely, valid claim will be paid \$175.00 for each text message they
9 received and, if the second text was received after a class member had attempted to opt out from
10 receiving text messages from Lithia, for that second text, \$500.00. In the event that the number
11 of valid claims submitted exceeds the funds available in the Class Members Payment Sum
12 (\$1,740,000) to pay claims, the payments will be reduced pro rata.

13 **V. REQUESTS FOR EXCLUSION**

14 9. Members of the Settlement Class may request exclusion from the settlement by
15 sending a completed Request for Exclusion (Exhibit E to the Settlement Agreement) to the
16 Claims Administrator no later than 60 days after the Notices described above are published and
17 mailed. The date of a request for exclusion shall be the post-marked date of the request.

18 10. All persons who submit valid requests for exclusion shall have no rights under the
19 Settlement Agreement. All Class Members who do not request exclusion shall be bound by this
20 Court's orders, including but not limited to the Final Order and Judgment.

21 **VI. FINAL APPROVAL HEARING DATE AND RIGHT TO OBJECT TO**
22 **SETTLEMENT**

23 11. A Final Approval Hearing will be held on _____, at _____ at
24 The Federal Courthouse for the Western District of Washington, 700 Stewart Street, Seattle WA
25 98101, at which time the Court will determine, among other matters, whether the Settlement
26 Agreement is fair, reasonable, and adequate. The Court may adjourn or continue the Final
Approval Hearing without further notice to the Class.

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12. Any member of the Settlement Class who has not requested exclusion and who opposes approval of the Settlement Agreement has a right to appear at the Final Approval Hearing to show why the Settlement Agreement should not be approved. Any member of the Settlement Class who has not requested exclusion and who wishes to object to the Settlement Agreement must file with the Court and serve upon Plaintiff's counsel a written notice of objection no later than twenty days prior to the Final Approval Settlement Hearing.

13. The notice of objection should demonstrate the objecting Class Member's membership in the Class and state the reasons for the objection. Only Class Members who have filed and served such notices of objection will be entitled to be heard at the Final Settlement Approval Hearing, unless the Court orders otherwise.

14. The Parties shall file any responses to objections no later than ten (10) days before the Final Approval Hearing.

**VII. APPOINTMENT OF COUNSEL AND CLASS REPRESENTATIVE AND
TIMING OF COUNSEL'S APPLICATION FOR ATTORNEY FEES**

15. The Court, upon consideration of: (i) the work counsel has done in identified and investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the claims of the type asserted in the action; (iii) counsel's knowledge of the applicable law; (iv) the resources counsel will commit to representing the class; (v) and other matters pertinent to counsel's ability to fairly and adequately represent the interest of the class, appoints the law firm of Williamson and Williams to represent the Settlement Class. The Court also appoints Kevin McClintic as Class Representative.

16. In order that class members may review and, if they choose, object to the award of attorney fees which Class Counsel will request, the Petition for Approval of Fees must be filed and posted to the website referenced above no later than 60 days prior to the Final Settlement Approval Hearing.

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VIII. OTHER PROVISIONS

17. Neither this Order, nor the Settlement Agreement, nor any of the terms or provisions thereto, nor any of the negotiations or proceedings connected with them, shall be referred to, offered as evidence, or received in evidence in any pending or future, civil, criminal, or administrative action or proceeding, except in a proceeding to enforce the Settlement Agreement.

18. Upon motion of the parties, the Court may, for good cause, extend any of the deadlines set forth in the Order without further notice to the Settlement Class.

19. Not later than ten (10) business days before the Final Approval Hearing, class counsel shall submit memoranda in support of the Court granting final approval and a motion under Fed. R. Civ. P. 54(d)(2) in support of their request for attorneys' fees and costs.

20. The calculation of any periods of time in this Order shall be made as provided under Fed. R. Civ. P. 6(a).

SO ORDERED this _____ day of _____, 2011.

THE HONORABLE RICHARD A. JONES
UNITED STATES DISTRICT JUDGE

Presented by:

WILLIAMSON & WILLIAMS

/s/ Rob Williamson _____

Rob Williamson, WSBA #11387

Kim Williams, WSBA #9077

Attorney for Plaintiff Kevin McClintic