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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.
DECLARATION OF ERIN M.
WILSON IN SUPPORT OF
DEFENDANT’S NOTICE OF
REMOVAL

ERIN M. WILSON declares as follows:

1. I am a citizen of the United States of America, am over the age of 18 years, and am competent to make this declaration based upon my personal knowledge and to identify the exhibits attached hereto. I am an attorney at Lane Powell PC, which represents Defendant Lithia Motors, Inc. (“Lithia”).

2. Lithia is incorporated in the State of Oregon. Attached hereto as Exhibit A is a true and correct copy of Lithia’s Business Registration with the Oregon business database.

3. On April 26, 2011, Plaintiff Kevin McClintic served NRAI, Lithia’s corporate service company, with the Summons and Complaint for Damages, Injunctive and Declaratory Relief. The Summons and Complaint are attached hereto as Exhibit B.

DECLARATION OF ERIN M. WILSON IN SUPPORT
OF DEFENDANT’S NOTICE OF REMOVAL - 1

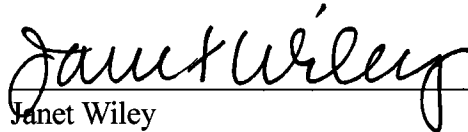
LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

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 23rd day of May, 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
of the Court will send e-mail notification of such filing to all CM/ECF participants and any
non-CM/ECF participants will be served in accordance with the Federal Rules of Civil
Procedure.

6 Kim Williams
7 Rob Williamson
8 Williamson & Williams
9 17253 Agate Street NE
10 Bainbridge Island, WA 98110
11 E-Mail: roblin@williamslaw.com
12 E-Mail: kim@williamslaw.com

13 DATED this 23rd day of May, 2011 at Seattle, Washington.

14 
15 Janet Wiley

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DECLARATION OF ERIN M. WILSON IN SUPPORT
OF DEFENDANT'S NOTICE OF REMOVAL - 3

EXHIBIT A

Business Registry Business Name Search

New Search

Business Entity Data

05-16-2011
08:29

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Next Renewal Date	Renewal Due?
085131-11	DBC	ACT	OREGON	12-23-1968	12-23-2011	
Entity Name	LITHIA MOTORS, INC.					
Foreign Name						

New Search

Associated Names

Type	PRINCIPAL PLACE OF BUSINESS					
Addr 1	360 E JACKSON ST					
Addr 2						
CSZ	MEDFORD	OR	97501	Country	UNITED STATES OF AMERICA	

Please click here for general information about registered agents and service of process.

Type	AGT REGISTERED AGENT	Start Date	03-30-2009	Resign Date
Of Record	462580-83 NATIONAL REGISTERED AGENTS, INC.			
Addr 1	325 13TH ST NE STE 501			
Addr 2				
CSZ	SALEM	OR	97301	Country UNITED STATES OF AMERICA

Type	MAL MAILING ADDRESS			
Addr 1	360 E JACKSON ST			
Addr 2				
CSZ	MEDFORD	OR	97501	Country UNITED STATES OF AMERICA

Type	PRE PRESIDENT	Resign Date	
Name	BRYAN B DEBOER		
Addr 1	360 E JACKSON ST		
Addr 2			
CSZ	MEDFORD	OR 97501	Country UNITED STATES OF AMERICA

Type	SEC SECRETARY	Resign Date	
Name	SIDNEY B DEBOER		
Addr 1	360 E JACKSON ST		
Addr 2			
CSZ	MEDFORD	OR 97501	Country UNITED STATES OF AMERICA

New Search

Name History

Business Entity Name	Name Type	Name Status	Start Date	End Date
LITHIA MOTORS, INC.	EN	CUR	12-23-1968	

Please read before ordering Copies.

New Search

Summary History

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Image Date	Action	Transaction Date	Effective Date	Status	Name/Agent Change	Dissolved By
12-09-2010	ANNUAL REPORT PAYMENT	12-09-2010	12-08-2010	SYS		
02-02-2010	CHANGE OF REGISTERED AGENT/ADDRESS	02-02-2010		FI		
11-09-2009	ANNUAL REPORT PAYMENT	11-09-2009	11-06-2009	SYS		
03-30-2009	CHANGE OF REGISTERED AGENT/ADDRESS	03-30-2009		FI	Agent	
11-21-2008	ANNUAL REPORT PAYMENT	11-21-2008	11-20-2008	SYS		
11-14-2007	ANNUAL REPORT PAYMENT	11-14-2007	11-13-2007	SYS		
12-13-2006	AMENDMENT TO ANNUAL REPORT	12-13-2006		FI		
11-30-2006	ANNUAL REPORT PAYMENT	11-30-2006	11-29-2006	SYS		
12-09-2005	ANNUAL REPORT PAYMENT	12-09-2005	12-08-2005	SYS		
12-03-2004	ANNUAL REPORT PAYMENT	12-03-2004	12-01-2004	SYS		
01-14-2004	ARTICLES OF MERGER	01-14-2004		FI		
12-08-2003	ANNUAL REPORT PAYMENT	12-08-2003	12-05-2003	SYS		
12-02-2002	ANNUAL REPORT PAYMENT	12-02-2002		SYS		
07-30-2002	CHANGE OF REGISTERED AGENT/ADDRESS	07-30-2002		FI	Agent	
12-13-2001	ANNUAL REPORT PAYMENT	12-13-2001		SYS		
12-04-2000	STRAIGHT RENEWAL	12-04-2000		FI		
01-12-2000	CHANGED RENEWAL	01-12-2000		FI		
12-28-1999	STRAIGHT RENEWAL	12-17-1999		FI		
05-13-1999	NB AMENDMENT	05-13-1999		FI		
11-25-1998	STRAIGHT RENEWAL	11-19-1998		FI		
11-28-1997	STRAIGHT RENEWAL	11-17-1997		FI		
12-05-1996	STRAIGHT RENEWAL	11-22-1996		FI		
10-21-1996	NB AMENDMENT	10-21-1996		FI		
04-27-1996	NB AMENDMENT	04-27-1996		FI		
11-21-1995	STRAIGHT RENEWAL	11-21-1995		FI		
12-01-1994	STRAIGHT RENEWAL	11-30-1994		FI		
12-01-1993	STRAIGHT RENEWAL	11-17-1993		FI		
11-23-1992	STRAIGHT RENEWAL	11-18-1992		FI		
11-18-1991	STRAIGHT RENEWAL	11-14-1991		FI		
11-23-1990	STRAIGHT RENEWAL	11-16-1990		FI		
11-28-1989	AMENDED RENEWAL	11-24-1989		FI		
11-28-1989	AGENT/AUTH REP CHNG	11-24-1989		FI		
11-30-1988	AMENDED RENEWAL	11-28-1988		FI		
11-17-1987	STRAIGHT RENEWAL	11-17-1987		FI		
11-18-1986	STRAIGHT RENEWAL	11-14-1986		FI		
12-23-1985	AMENDED RENEWAL	12-13-1985		FI		
12-26-1984	STRAIGHT RENEWAL	12-19-1984		FI		

EXHIBIT B

FILED

11 APR 21 PM 12:23

KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 11-2-14632-4 SEA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

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6 KEVIN MCCLINTIC, on behalf of himself and
all others similarly situated,

Plaintiff,

Case No.

SUMMONS

7
8 vs.

9 LITHIA MOTORS, INC.,

10 Defendant.

11
12 TO: LITHIA MOTORS, INC., Defendant

13 A lawsuit has been started against you in the above-entitled Court by the Plaintiff.
14 Plaintiff's claims are stated in the written Complaint, a copy of which is served upon you with
15 this Summons.

16 In order to defend against the lawsuit, you must respond to the Complaint by stating your
17 defense in writing, and serve a copy upon the undersigned attorney for the Plaintiff within twenty
18 (20) days after the service of this Summons, or within sixty (60) days if this Summons was
19 served outside the State of Washington, excluding the day of service, or a default judgment may
20 be entered against you without notice. A default judgment is one where the Plaintiff is entitled to
21 what has been asked for because you have not responded. If you serve a notice of appearance on
22 the undersigned attorney, you are entitled to notice before a default judgment may be entered.

23
24 If you wish to seek the advice of an attorney in this matter, you should do so promptly so
25 that your written response, if any, may be served on time.
26

**WILLIAMSON
& WILLIAMS** | 17253 AGATE STREET NE
RAINBIDGE ISLAND, WA 98110
(206) 780-4447
(206) 780-5557 (FAX)
www.williamsfirm.com

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THIS SUMMONS is issued pursuant to Rule 4 of the Superior Court Civil Rules of the
State of Washington.

DATED this 21st day of April, 2011.

WILLIAMSON & WILLIAMS


By: _____
Kim Williams, WSBA #9077
Rob Williamson, WSBA #11387

*Attorneys for Plaintiff and the
Proposed Classes*

**WILLIAMSON
& WILLIAMS** | 17253 AGATE STREET NE
BAINBRIDGE ISLAND, WA 98110
(206) 780-4447
(206) 780-5557 (FAX)
www.williamslaw.com

FILED

11 APR 21 PM 12:23

KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 11-2-14632-4 SEA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

KEVIN MCCLINTIC, on behalf of himself and
all others similarly situated,

Plaintiff,

vs.

LITHIA MOTORS, INC.,

Defendant.

Case No.

COMPLAINT FOR DAMAGES,
INJUNCTIVE AND DECLARATORY
RELIEF

Plaintiff Kevin McClintic, individually and as class representative for a Washington State and National Classes of similarly situated entities and individuals, alleges as follows:

INTRODUCTION

1. In an effort to promote the sale of its products, Defendant, the owner and operator of automobile dealerships in the West and Midwest, engaged in an especially pernicious form of marketing: the transmission of unauthorized advertisements, in the form of "text messages" calls, to the cellular telephone of consumers across the nation.

2. By effectuating these text message calls, Defendant has caused consumers actual harm, not only because consumers were subjected to the aggravation and the invasion of privacy that necessarily accompanies unsolicited text messages, but also because consumers frequently have to pay their cell phone service providers for the receipt of such texts.

3. Plaintiff, on behalf of himself and a National Class and a Washington Class of similarly situated persons, brings this suit under the Telephone Consumer Protection Act

1 (TCPA), 47 USC§227 *et seq* which prohibits unsolicited text calls to cell phones, as well as the
2 applicable Washington statutes set forth herein.
3

4 4. Plaintiff also seeks injunctive relief and the award of statutory damages, together with
5 costs and reasonable attorney fees.

6 I. PARTIES, JURISDICTION, VENUE

7 5. Defendant Lithia Motors, Inc. is a corporation with its principal place of business
8 in Oregon. Defendant conducts significant business in the State of Washington with citizens and
9 residents of this State.
10

11 6. Plaintiff is a resident of King County, Washington and receives text messages on
12 his cellular telephone, primarily in King County.

13 7. The text message that is the subject of this Complaint was received on Plaintiff's
14 cellular telephone in King County, Washington.

15 8. Venue and Jurisdiction are proper under RCW 4.12.020, RCW 2.08.010, and
16 Washington Constitution Article. 4, §6.
17

18 II. FACTS

19 9. In recent years, businesses forbidden or limited by state or federal laws with respect
20 to solicitations over residential telephones, facsimile machines, or e-mails, have looked to
21 alternative technologies through which to send bulk solicitations inexpensively.

22 10. One of the newest types of such bulk marketing is to advertise through Short Message
23 Services. The term "Short Message Service" or "SMS" describes a messaging system that allows
24 cellular telephone subscribers to use their cellular telephones to send and receive short text
25 messages, usually limited to 160 or so characters.
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11. An "SMS message" is a text message call directed to a wireless device through the use of the telephone number assigned to the device. When an SMS message call is successfully made, the recipient's cell phone typically rings or otherwise makes a signal alerting her or him that a call is received. As cellular telephones are inherently mobile and are frequently carried by their owners, calls to cellular telephones, including SMS messages, may be received by the called party virtually anywhere in the world.

12. Unlike more conventional solicitations, text messages actually cost the recipients money, because cell phone users must frequently pay their wireless service providers either for each text message call they receive or for a text plan that includes a specified number of messages, regardless of whether or not the message is authorized.

13. In addition to the cost to consumers, sending text messages can cause consumers to lose storage capacity on their cellular telephones and related devices, to the point that storage capacity is exhausted and a consumer is unable to receive necessary or expected communications, consumers are deprived of the opportunity immediately to question the seller of goods and services about the veracity of the seller's claims set out in the text, the privacy of consumers is invaded, telephone networks upon which consumers rely are used inefficiently and harmed to the detriment of consumers, and consumers are annoyed and harassed.

14. On April 11, 2011, Defendant sent or caused to be sent a text message to Plaintiff's cellular telephone.

15. The text message was as follows:

"From: 35703
0% financing on used vehicles during the Biggest Sale Ever. Over
3000 used vehicles at Lithia motors <http://bit.ly/hojpLX> REPLY
STOP TO Opt-Out
10:00 am 4/11/11"

1 Defendant's text message to Plaintiff was for the purpose of commercial solicitation, and
2 Plaintiff did not consent, expressly or impliedly, to the receipt of the text.
3

4 16. Upon information and belief, Defendant sent similar text messages to numerous
5 cellular telephone subscribers in Washington State, including subscribers in King County, and
6 subscribers in other states.

7 17. Upon information and belief, Defendant will continue to send or cause to send
8 text messages to the cellular telephones of persons in Washington State and other states.
9

10 III. CAUSES OF ACTION

11 18. Plaintiff realleges the foregoing paragraphs as if fully stated herein. The
12 following causes of action are, to the extent necessary, stated in the alternative.

13 Count A. Violation of RCW 80.36.400

14 19. RCW 80.36.400 provides, in pertinent part, as follows:

15 (2) No person may use an automatic dialing and announcing
16 device for purposes of commercial solicitation. This
17 section applies to all commercial solicitation intended to
be received by telephone customers within the state.

18 20. Defendant has violated RCW 80.36.400.

19 21. As a result of said conduct, Plaintiff and members of this Washington Class are
20 entitled to recover \$500.00 in damages from the Defendant for each violation of the statute, and
21 treble those damages because of the willful conduct of Defendant.
22

23 Count B. Violation of RCW 19.190.060

24 22. RCW 19.190.060 provides as follows:

25 No person conducting business in the state may initiate or
26 assist in the transmission of an electronic commercial text
message to a telephone number assigned to a Washington
resident for cellular telephone or pager service that is

1
2 equipped with short message capability or any similar
capability allowing the transmission of text messages.

3 23. Defendant violated RCW 19.190.060 by transmitting or cause to be transmitted
4 electronic commercial text messages to Plaintiff's cellular telephone and to the cellular telephone
5 or pagers of the Washington subclass members.

6 24. As a result of said conduct, Plaintiff and members of the Washington State Class
7 have sustained damages. Under RCW 19.190.060, Plaintiff and the class members are entitled to
8 recover damages for each violation of the statute, as well as treble damages, attorney's fees and
9 other remedies as permitted by law.
10

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

12 25. RCW 19.19.060 provides as follows:

13 The legislature finds that the practices covered by this
14 section are matters vitally affecting the public interest for
15 the purpose of applying the consumer protection act,
16 chapter 19.86 RCW. A violation of this section is not
17 reasonable in relation to the development and preservation
18 of business and is an unfair or deceptive act in trade or
commerce and an unfair method of competition for the
purpose of applying the consumer protection act, chapter
19.86 RCW.

19 RCW 80.36.400 provides as follows:

20 A violation of this section is a violation of chapter 19.86 RCW.

21 26. As a result of said conduct, Plaintiff and members of the Washington State Class
22 have sustained damages. Under the CPA, Plaintiff and all members of said Class are entitled to
23 injunctive relief enjoining Defendant's unlawful conduct, as well as incidental, statutory and
24 actual damages, and treble that amount, and costs of suit and attorney's fees.
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**Count D. Violations of the Telephone Consumer Protection Act
(National Class)**

27. Defendant made or caused to be made text calls to Plaintiff and this National Class using an automatic telephone dialing system, within the meaning of 47 USC § 227 (a). By using such equipment system, Defendant was able to make thousands of text calls to consumers automatically without human intervention.

28. These calls were made without the prior express consent of Plaintiff and the other members of the Class.

29. As a result of said conduct, Defendant has, therefore, violated the Telephone Consumer Protection Act, 47 USC§227 (B) (1) (A) (iii), which makes it "unlawful for any person within the United States... To make any call (other than a call for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice... to any telephone number assigned to a... cellular telephone service..."

30. As a result of Defendant's illegal conduct, Plaintiff and members of the National Class are entitled to recover \$500.00 in damages from the Defendant for each violation of the Telephone Consumer Protection Act, and treble those damages because of the willful conduct of Defendant.

IV. CLASS ACTION ALLEGATIONS

31. Plaintiff realleges the foregoing paragraphs as if fully stated herein.

32. This class action is brought and may be maintained pursuant to CR 23(b)(2) and (b)(3). Plaintiff seeks to represent two Classes comprised of:

All Washington persons who received a text message on their cellular telephones from Defendant or on Defendant's behalf for commercial

1 solicitation purposes, at any time for the period that begins 4 years from
2 the date of this complaint to trial (Washington State Class), and

3 All persons within the United States who received a text message on their
4 cellular telephones from Defendant or on Defendant's behalf, at any time
5 for the period that begins 4 years from the date of this complaint to trial
(National Class).

6 33. **Numerosity.** The Classes are so numerous that joinder of all members is
7 impracticable. Upon information and belief the Classes exceed 100 in number.

8 34. **Common Questions of Law and Fact.** The questions of law and fact are the
9 same for all class members, including whether the Defendant's conduct violated RCW
10 80.36.400, RCW 19.19.060 and the CPA, and the TCPA, as to Plaintiff and all other Class
11 members.

12 35. **The Plaintiff's Claims are Typical of the Classes.** Plaintiff's claims are typical
13 of the Classes in that they arise from Defendant's repeated violation of RCW 80.36.400, RCW
14 19.19.060 and the CPA, and the TCPA, as to Plaintiff and all other Class members.

15 36. **The Plaintiff Will Fairly and Adequately Protect the Class.** Plaintiff will
16 adequately represent and protect the interests of the Classes because he has retained competent
17 and experienced counsel and his interests in the litigation are not antagonistic to the other
18 members of the Classes.

19 37. **A Class Action is Maintainable Under CR 23(b)(3).** The questions of law and
20 fact common to all members of the Class predominate over questions affecting only individual
21 members of the Classes, because all members of the Classes were subjected to Defendant's
22 unlawful texting. The prosecution of separate actions by individual members of the Classes
23 against Defendant would create the risk of inconsistent or varying adjudications and
24 incompatible standards of treatment. On information and belief, there are no other pending class
25
26

1 actions concerning these issues. A class action is superior to any other available means for the
2 adjudication of this controversy. This action will cause an orderly and expeditious
3 administration of the Class's claims; economies of time, effort and expense will be fostered; and
4 uniformity of decisions will be ensured at the lowest cost and with the least expenditure of
5 judicial resources.

7 38. A Class Action is Maintainable Under CR 23(b)(2). Defendant has acted on
8 grounds generally applicable to Plaintiff and the Classes as alleged herein, thereby making
9 appropriate injunctive and declaratory relief, as well as incidental damages, with respect to the
10 Classes as a whole.

12 V. PRAYER FOR RELIEF

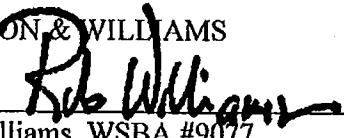
13 WHEREFORE, the Plaintiff, on behalf of himself and the Classes of similarly situated
14 individuals and entities, respectfully requests that the Court enter judgment in his favor and in
15 favor of the Classes for:

- 16 A. Certification of the Classes pursuant to CR 23(b)(2) and CR 23(b)(3);
- 17 B. Granting injunctive relief as permitted by law to ensure that Defendant will not
18 continue to send text messages to subscribers of cellular telephone services in the
19 United States and Washington State for commercial solicitation purposes;
- 20 C. Judgment against Defendant for incidental statutory damages of not less than
21 \$500.00 per legal violation involved in each message sent to Plaintiff and each
22 member of the Classes, trebled, and other damages as are permitted by law;
- 23 D. Judgment against Defendant for attorney's fees and costs as permitted by law;
- 24 E. Any other or further relief which the Court deems fair and equitable.
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DATED: April 21, 2011.

WILLIAMSON & WILLIAMS

By 

Kim Williams, WSBA #9077

Rob Williamson, WSBA #11387

Attorneys for Plaintiff and the Proposed Classes

