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2 THE HONORABLE RICHARD A. JONES
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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

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

10 Plaintiff,

11 v.

12 LITHIA MOTORS, INC.,

13 Defendant.

No. 2:11-cv-00859-RAJ

DECLARATION OF ROB WILLIAMSON
AND KIM WILLIAMS IN SUPPORT OF
PLAINTIFF'S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
PROPOSED CLASS ACTION
SETTLEMENT

NOTE ON MOTION CALENDAR:
August 8, 2011

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15
16 Rob Williamson and Kim Williams, hereby declare as follows:

17 1. We are two of the attorneys for the Plaintiff in this action and proposed Class,
18 and submit this declaration to provide the Court with further information regarding the
19 background and negotiations that led to the proposed settlement that is submitted to this Court
20 for preliminary approval.

21 2. On April 21, 2011, Plaintiff filed a class action complaint in the Superior
22 Court of the State of Washington for King County, Case on behalf of a Washington and
23 National class state class alleging violations of RCW 80.36.400 (the "WADAD"), the
24 Washington Consumer Protection Act (RCW 19.86), the Washington Anti-Text statute (RCW
25 19.190.060) and the Telephone Consumer Protection Act ("TCPA"), 47 USC§227 (B) (1) (A)

26 DECLARATION OF ROB WILLIAMSON AND KIM WILLIAMS
IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF PROPOSED CLASS ACTION
SETTLEMENT - 1
(NO. C10-00413 RSL)

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2 (iii), all arising from the alleged delivery of text messages for the purpose of commercial
3 solicitation by automatic dialing and announcing device (“ADAD”) allegedly done by or on
4 behalf of Defendant. On May 23, 2011, Defendant removed the case to the United States
5 District Court for the Western District of Washington (the “Action”).

6 3. Defendant contends it is not liable for any claims asserted in the Action, that it
7 has valid defenses to those claims, and that neither Plaintiff nor any putative class member it
8 purports to represent has suffered any recoverable damages. It contends it sent text messages
9 on twice, in April 2011, to the cell phones of customers who had provided their numbers, and
10 that some class members had expressly consented to the receipt of text messages. It contents it
11 did not intend to cause injury. Further it would argue that requiring payment of \$500.00 for
12 each text sent would violate due process. Notwithstanding these and other defenses, Defendant
13 also concluded that prompt resolution of the case to minimize both delay and expense was in its
14 best interests.

15 4. The Parties’ participated in a lengthy one day mediation in Seattle, Washington
16 before the Honorable Terrance Lukens (Ret.) of JAMS on July 5, 2011 (the “Mediation”).
17 Judge Lukens was selected because he is a highly regarded and respected mediator, and has had
18 extensive experience with class actions, including those arising out of claims under the TCPA
19 and related state laws. The Settlement Agreement was not reached at the end of the mediation
20 but after continued negotiations with the assistance of Judge Lukens, the case was settled,
21 subject to Court approval. A true and correct copy of the Settlement Agreement is attached
22 hereto as Exhibit A.

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DECLARATION OF ROB WILLIAMSON AND KIM WILLIAMS
IN SUPPORT OF PLAINTIFF’S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF PROPOSED CLASS ACTION
SETTLEMENT - 2
(NO. C10-00413 RSL)

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2 5. After conducting substantial investigation into the facts and law relating to the
3 matters set forth in the Action regarding the claims asserted as well as Defendant's legal and
4 factual defenses, we have concluded that a settlement according to the terms set forth in this
5 Agreement represents a fair, adequate and reasonable settlement of the Action and is in the best
6 interest of the Settlement Class in light of the risks, costs and uncertainty of further litigating
7 the Action, and the substantial benefits to be received by the Settlement Class pursuant to the
8 terms of this Agreement;
9

10 6. Prior to and during the mediation, counsel for the class learned that the total
11 number of texts made by DMEautomotive, LLC ("DME"), a vendor of Lithia who assisted in
12 providing services to Lithia including text messaging to selected Lithia customers was
13 approximately 57,800, and that a week after the first group of texts were sent, another 48,000
14 were sent to persons within the first group. Defendant also has advised that 6190 persons who
15 were sent texts attempted to opt out from receiving more but nonetheless received a second
16 one. We also learned that records of the addresses of all class members were available.
17

18 7. The settlement that has been reached, including the notice process, payments to
19 the class, and the charitable contributions, is recommended by Judge Lukens.

20 8. The parties were particularly concerned about providing clear yet
21 comprehensive notice to class members, and agreed on a form of notice consisting of a direct
22 mailing that provides essential information to most class members about the settlement and
23 directs them to a webpage where they can obtain detailed information, or a phone number
24 where that detailed information can be requested and questions can be answered. Further a pre-
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DECLARATION OF ROB WILLIAMSON AND KIM WILLIAMS
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SETTLEMENT - 3
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2 paid postcard form of claim form will be enclosed in the letter notice sent to all class members
3 which will facilitate making claims.

4 9. It was particularly important to us that in a settlement which is claims made, and
5 where claims rates and ultimate payments by Defendant cannot be predicted reliably, that some
6 charitable payment be made with unused funds. Here Defendant has agreed that all unused
7 funds and all funds less than the estimated costs of claims administration will be paid to the
8 Legal Foundation of Washington

9
10 10. Defendant has agreed it would not oppose Class Counsel's request to pay a
11 class representative fees of \$10,000 to the class representative and attorney fees and costs of up
12 to \$600,000, if approved by the Court. The settlement provides for Defendant to make
13 payments from a fund of \$1,740,000 available for claims. The law provides for damages of
14 \$500 for violations of the WADAD. The settlement will pay each class member \$175.00 for
15 each text received, and if the second was received after requesting to opt out, then \$500.00,
16 understanding that if the total number of claims exceeds the available fund, payments will be
17 prorated.
18

19 11. Williamson and Williams is a two person law firm founded in 1998 and was
20 originally in Seattle, Washington, moving to Bainbridge Island in 2008. Partners Rob
21 Williamson & Kim Williams have practiced law in the civil litigation arena in the State of
22 Washington for 29 years and 32 years respectively. Our practice has involved representing
23 individuals in personal injury matters, including maritime and railroad injury cases, as well as
24 product liability, employment and real estate matters. We have also represented individuals in
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DECLARATION OF ROB WILLIAMSON AND KIM WILLIAMS
IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR
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SETTLEMENT - 4
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2 matters assigned to the Multi-District Litigation process, namely the Latex Glove litigation in
3 which our firm was lead counsel in Washington State, and the Vioxx litigation. We have
4 represented over 150 workers in the engine department of the Washington State Ferries for
5 hearing loss.

6 12. In the last several years, our practice has focused on complex civil and
7 commercial litigation with an emphasis on consumer protection, primarily involving claims
8 against banks and loan servicers for fees charged when consumers pay off their home loans,
9 and actions under the Telephone Consumer Protection Act and its Washington State equivalent,
10 involving junk faxing, robo-calling and solicitation text messages. We have extensive
11 experience in class actions, collective actions, and other complex matters. We have been
12 appointed lead or co-lead class counsel in numerous cases at both the state and federal level.
13 The defendants in these cases have included companies such as, Best Buy, Comcast, AT&T, T-
14 Mobile USA, Intuit, Sprint, Washington Mutual Bank, Clearwire, Domino's Pizza, Verizon,
15 Payless Shoes, Talbots, Tween Brands, Countrywide and Homestreet Bank.

16 13. Both partners concentrate their practice in complex litigation, including the
17 prosecution of consumer and wage and hour class actions. We have served as co-lead counsel
18 on numerous multi-state and nationwide class actions. We have also handled a number of class
19 action cases in the employment arena involving employers' failure to pay overtime.
20 Defendants in those cases have included United Bakeries, Farmer Brothers Coffee, Dreyer's Ice
21 Cream and Preston Gates Ellis. Ms. Williams received her B.A. from Whitman College and
22 her J.D. from the Willamette University School of Law. Mr. Williamson received his B.A.
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DECLARATION OF ROB WILLIAMSON AND KIM WILLIAMS
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SETTLEMENT - 5
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2 from Princeton University and his J.D. from the Harvard Law School.

3 14. Williamson and Williams is currently litigating or has recently settled the
4 following consumer protection class actions, among others:

- 5
- 6 • *Hicks v. Citigroup*, filed in 2011 on behalf of consumers who receive
7 voluminous numbers of automated, pre-recorded collection phone
8 calls on their personal cell phones in violation of the TCPA, the Fair
9 Debt Collection Practices Act (FDCPA) and state law.
 - 10 • *Kwan, Reasonover and Brown v. Clearwire*, filed in 2009 on behalf
11 of consumers who receive voluminous numbers of automated, pre-
12 recorded collection phone calls on their personal cell phones in
13 violation of the TCPA, the Fair Debt Collection Practices Act
14 (FDCPA) and state law.
 - 15 • *Maclean v. Intuit*, filed in 2009 on behalf of consumers who received
16 voluminous numbers of automated, pre-recorded solicitation phone
17 calls in violation of the TCPA and state law.
 - 18 • *Chesbro v. Best Buy*, filed in 2010 on behalf of consumers who
19 received voluminous numbers of automated, pre-recorded solicitation
20 phone calls in violation of the TCPA and state and federal law.
 - 21 • *Clark and Assing v. Payless Shoe Source*, filed in 2009 on behalf of
22 consumers who received voluminous numbers of automated, pre-
23 recorded solicitation phone calls in violation of state and federal law.
 - 24 • *Hovila v. Tween Brands, Inc.*, filed in 2009 on behalf of consumers
25 who received voluminous numbers of automated, pre-recorded
26 solicitation phone calls in violation of state and federal law.
 - *Cabbage v. Talbots, Inc.* filed in 2009 on behalf of consumers who
received voluminous numbers of automated, pre-recorded solicitation
phone calls in violation of state and federal law.
 - *Palmer v. Sprint* filed in 2009 on behalf of consumers who received
voluminous numbers of automated, pre-recorded solicitation phone
calls to their cellular and residential telephones in violation of the
TCPA and state law.

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SETTLEMENT - 6
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- *Meilleur v. AT&T* filed in 2011 on behalf of consumers who received automated, pre-recorded phone calls made for purposes of commercial solicitation in violation of the TCPA and state and federal law.
 - *Baron & Hovila v. Direct Capital* filed in 2009 on behalf of consumers who received voluminous numbers of automated, pre-recorded solicitation phone calls in violation of state and federal law.
 - *Hartman v. Capital for Merchants* filed in 2009 on behalf of consumers who received voluminous numbers of automated, pre-recorded solicitation phone calls in violation of state and federal law.
 - *Maclean v. Stellar Concepts* filed in 2009 on behalf of consumers who received voluminous numbers of automated, pre-recorded solicitation phone calls in violation of state and federal law.
 - *Gardner v. Capital Advance Solutions* filed in 2009 on behalf of consumers who received voluminous numbers of automated, pre-recorded solicitation phone calls in violation of state and federal law.
 - *Hartman & Hodgins v. United Bank Card* filed in 2010 on behalf of consumers who received voluminous numbers of automated, pre-recorded solicitation phone calls in violation of state and federal law.
 - *Gardner v. US Merchant Systems* filed in 2011 on behalf of consumers who received voluminous numbers of automated, pre-recorded solicitation phone calls in violation of state and federal law.
 - *Seebach v. Allied Telesyn* filed in 2003 on behalf of consumers who received junk faxes in violation of state and federal law.
 - *Kavu Inc. v. Business Payment Systems* filed in 2006 on behalf of consumers who received junk faxes in violation of state and federal law.
 - *Global Education Services, Inc. v The Grantsmanship Center* filed in 2005 on behalf of consumers who received junk faxes in violation of state and federal law.
 - *Transportation Inc. v. Seattle PC Magic, Inc.* filed in 2003 on behalf of consumers who received junk faxes in violation of state and federal law.

DECLARATION OF ROB WILLIAMSON AND KIM WILLIAMS
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SETTLEMENT - 7
(NO. C10-00413 RSL)

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- *Davis v. American General* filed in 2004 on behalf of consumers who were charged illegal fees by their lender or servicer when they either sold or refinanced their homes.
- *Hardie v. Countrywide* filed in 2008 on behalf of consumers who were charged illegal fees by their lender or servicer when they either sold or refinanced their homes.
- *Sando v. Homestreet Bank* filed in 2005 on behalf of consumers who were charged illegal fees by their lender or servicer when they either sold or refinanced their homes.
- *Meier v. Wells Fargo Bank* filed in 2002 on behalf of consumers who were charged illegal fees by their lender or servicer when they either sold or refinanced their homes.

15. In addition to a successful consumer protection practice, Williamson & Williams has litigated the following wage and hour class actions:

- *MacKenzie et al. v. Preston Gates & Ellis* filed in 2002
- *Hill, et al. v. Aramark Uniform* filed in 2001
- *Lapping v. American Cabulance* filed in 2007
- *Pinget et al. v. Dreyers Grand Ice Cream* filed in 2002

16. As reported above, we were involved in negotiating the proposed Settlement in this case and believe the Settlement provides an excellent result for Class members and is fair, adequate, and reasonable.

We declare under penalty of perjury of the laws of the State of Washington that the foregoing statements are true and correct.

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DECLARATION OF ROB WILLIAMSON AND KIM WILLIAMS
IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF PROPOSED CLASS ACTION
SETTLEMENT - 8
(NO. C10-00413 RSL)

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Dated: August 8, 2011 on Bainbridge Island, Washington.

WILLIAMSON & WILLIAMS

s/RobWilliamson

s/Kim Williams

Rob Williamson, WSBA #11387

Kim Williams, WSBA #9077

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Kim@williamslaw.com

DECLARATION OF ROB WILLIAMSON AND KIM WILLIAMS
IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF PROPOSED CLASS ACTION
SETTLEMENT - 9
(NO. C10-00413 RSL)

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CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2011, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record who receive CM/ECF notification, and that the remaining parties shall be served in accordance with the Federal Rules of Civil Procedure.

Dated this 8th day of August 2011.

By s/Rob Williamson
Kim Williams, WSBA #9077
Rob Williamson, WSBA #11387
17253 Agate Street NE
Bainbridge Island, WA 98110
Telephone: (206) 780-4447 Fax: (206) 780-5557
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roblin@williamslaw.com

DECLARATION OF ROB WILLIAMSON AND KIM WILLIAMS
IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF PROPOSED CLASS ACTION
SETTLEMENT - 10
(NO. C10-00413 RSL)

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EXHIBIT A

SETTLEMENT AGREEMENT AND RELEASE

I. PARTIES

The parties (the "Parties") to this Settlement Agreement and Release ("Settlement Agreement" or "Agreement") are Kevin McClintic, individually and in his representative capacity on behalf of the Class Members defined below ("Plaintiff"), and Lithia Motors, Inc. ("Lithia" or "Defendant"). The law firm of Williamson and Williams ("W&W") is a signatory as provided in Section III.B.

II. RECITALS

A. On April 21, 2011, Plaintiff filed an action styled *Kevin McClintic, on behalf of himself and all others similarly situated v. Lithia Motors, Inc.*, in King County Superior Court, Cause No. 11-2-14632-4 SEA (the "Lawsuit"). Plaintiff's complaint alleged that Lithia violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 ("TCPA"); the Washington Automatic Dialing and Answering Devices Act, RCW 80.36.400 ("WADAD"); RCW 19.190.060; and the Washington Consumer Protection Act. RCW 19.86 *et. seq.*, The Lawsuit also included allegations seeking to represent and certify two classes comprised of:

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

All Washington persons who received a text message on their cellular telephones from Defendant or on Defendant's behalf for commercial solicitation, at any time for the period that begins 4 years from the date of this complaint to trial (Washington State Class).

B. On May 23, 2011, Lithia removed the Lawsuit to the United States District Court for the Western District of Washington at Seattle. The Lawsuit was assigned Cause No. 11-cv-00859-RAJ.

C. On July 14, 2011, Lithia filed its answer to the complaint.

D. Without any admissions, the Parties, through their counsel, conferred regarding how the risk, time, and expense of litigation might be reduced by engaging in an early mediation of the case. On May 9, 2011, Plaintiff provided a settlement demand.

E. The Parties agreed to an early mediation of the case and selected the Hon. Terrence Lukens (Ret.) to serve as the mediator because of his extensive experience in the mediation of TCPA cases.

F. DMEautomotive, LLC (“DME”) is a vendor of Lithia and assisted in providing services to Lithia including text messaging to selected Lithia customers. DME, without any admission of liability, agreed to participate in the mediation and efforts to settle the Lawsuit.

G. Judge Lukens conferred with counsel for the Parties, and on July 5, 2011, the Parties participated in a lengthy mediation of the case. Judge Lukens continued to work with the Parties to finalize a settlement of all issues raised in the Lawsuit.

H. This Agreement is a compromise of disputed claims, and this Agreement, any related documents and any negotiations relating to it shall not be construed as or deemed to be evidence of or an admission or concession of any liability or wrongdoing on the part of Defendant or any of the Released Parties (defined below), with respect to any claim of any fault or liability or wrongdoing or damage whatsoever.

III. AGREEMENT

In consideration of the foregoing, the terms and conditions set forth herein, and the benefits flowing to the Parties from the Settlement Agreement as set forth herein, it is hereby agreed by and among the Plaintiff, each of the Class Members (defined below), and the Defendant, that, subject to final approval of the Court after a hearing or hearings as provided for in this Settlement Agreement, that the Lawsuit and the Released Claims (defined below) shall be finally and fully compromised, settled and released, and the Lawsuit shall be dismissed with prejudice, upon and subject to the terms and conditions of this Settlement Agreement.

A. Definitions.

The following terms have the meaning set forth in this Section III.A. or such other Section identified below. This section is provided for ease of reference and is not a complete list of defined terms; other definitions are contained throughout this Settlement Agreement:

1. The term “Approved Claim” means any payment claim submitted by a Class Member on a timely, fully completed and signed Claim Form in the form of Exhibit A that identifies that Class Member’s cellular phone as a number that appears on the list of numbers that were sent text messages on behalf of Lithia, that states how many text messages were received and whether the Class Member sent an opt out message via return text message, call or email, and that is approved for payment by the Settlement Administrator.

2. The term “Class Counsel” means the law firm of W&W.

3. The term “Class Member” means a member of the Settlement Class who does not timely file a Request for Exclusion Form in the form of Exhibit E that excludes him or her from the Settlement, whether or not he or she ever received actual notice of the Lawsuit or the Settlement or submitted a Claim Form.

4. The term “Class Period” means the time period on and from April 21, 2007, until and through the Date of Settlement.

5. The term “Claim Form” is synonymous with Exhibit A.

6. The term “Claims Deadline” means the latest date for a Claim Form to be submitted and considered for approval, which shall be sixty (60) days after the Notice, defined in Section III.C.6, is mailed.

7. The term “Class Members Payment Sum” means One Million, Seven Hundred Forty Thousand Dollars (\$1,740,000) as defined in Section III.C.2.a below.

8. The term “Class Representative” means Kevin McClintic.

9. The term “Date of Settlement” means the date of entry of the Order Granting Preliminary Approval of the Settlement.

10. The term “Effective Date” means the date defined in Section III.C.13 below.

11. The term “Preliminary Approval Order” is synonymous with Exhibit B.

12. The term “Released Parties” is defined in Section III.C.8.

13. The term “Releasing Parties” is defined in Section III.C.8.

14. The term “Released Claims” is defined in Section III.C.8.

15. The term “Settlement Administrator” means Garden City Group and any successor or successor that Defendant designates to administer the payment claims process and provide certain means of notice to the Settlement Class as provided for in this Agreement.

16. The term “Settlement Class” is defined in Section III.B.

17. The term “Text Message” means a short message service message directed to a wireless device through the use of the telephone number assigned to the device.

B. Class Certification, Class Representatives and Class Counsel.

For the purposes of this Settlement Agreement only, the Parties hereby stipulate to the conditional certification of a settlement class (the “Settlement Class”) pursuant to Rules 23(a), (b)(2) and (b)(3), comprised of:

All persons within the United States who received a Text Message on their cellular telephones from Defendant or on Defendant’s behalf, at any time during the Class Period, including all persons within the United States who received a

second Text Message from Defendant or on Defendant's behalf after attempting to opt out after receiving a first Text Message.

The Settlement Class shall be certified as set forth above for the purposes of this Settlement Agreement only. In the event that this Settlement Agreement is terminated as provided herein or if for any reason the Court does not enter a Final Order Approving Class Action Settlement and Judgment as provided in Section II.C.7. below, then such conditional class certification and this Settlement Agreement shall become null and void, to the same effect as stated in Section III.C.12. below, and the Parties shall not be affected in any way by such prior conditional certification. Subject to Court approval, Plaintiff shall be appointed by the Court as class representative of the Settlement Class ("Class Representative") and the law firm of W&W shall be appointed by the Court as counsel of the Settlement Class (the "Class Counsel"). Class Counsel, who are signatories hereof, represent and warrant that they have the authority, on behalf of Plaintiff, to execute, deliver and perform the Settlement and to consummate all of the transactions contemplated herein. Class Counsel further represents and warrants that they have sufficient experience and expertise in these types of matters to adequately represent the Settlement Class as required by law.

C. The Settlement Consideration.

1. **Injunction.** Defendant shall stipulate to the entry of an injunction that enjoins Defendant from violating the TCPA, 47 U.S.C. § 227, and/or RCW 19.190.060 through the unlawful use of an automatic dialing and announcing device ("ADAD") to deliver text messages for commercial solicitation to Class Members who have not provided express consent. Such injunction shall be null and void in the event of, or to the extent that, governing law as it now exists or may exist in the future would allow such activity.

2. **Class Relief.** Defendant shall establish a Settlement Fund in the amount of Two Million, Five Hundred Thousand Dollars (\$2,500,000.00) out of which the following shall be paid:

a. Payments to Class Members. One Million, Seven Hundred Forty Thousand Dollars (\$1,740,000) (the "Class Members Payment Sum") shall be available for payments to Class Members. Defendant shall issue, or cause the Settlement Administrator to issue, via mail, a check to each Class Member who timely submits a valid Claim Form establishing an Approved Claim and receipt of at least one Text Message during the Class Period. The amount of the payment shall be as follows:

(1) One Hundred Seventy-Five Dollars (\$175.00) for the first Text Message received.

(2) One Hundred Seventy-Five Dollars (\$175.00) for the second Text Message received by Class Members who did not attempt to opt-out of receiving future Text Messages via return text, call or email to Defendant.

(3) Five Hundred Dollars (\$500.00) for the second Text Message received by Class Members who attempted to opt out after receiving the first Text Message.

(4) In the event that the amount of Approved Claim payments exceeds the available Class Members Payment Sum, the amount of the settlement payments to Class Members pursuant to this Section III.C.2.a. will be reduced pro rata.

(5) In the event that there are Class Members Payment Sum funds remaining after all Approved Claims are paid, the balance of the Class Members Payment Sum funds will be donated to the Legal Foundation of Washington.

- b. Payment of settlement administration costs of up to \$150,000.
- c. Payment of an incentive award to the Class Representative of \$10,000.
- d. Payments of plaintiff's attorneys' fees and costs of up to \$600,000.

3. Class Administration.

a. Defendant shall select, engage and pay the fees and expenses of the Settlement Administrator to provide or supervise Notice to the Settlement Class as set forth in Section III.C.6, in receiving and reviewing Claim Forms for cash payments as set forth in Section III.C.2.a. above, and in performing its functions hereunder.

b. The Settlement Administrator shall review each Claim Form submitted, determine whether the submitting claimant is an eligible Class Member, determine whether the payment sought in the Claim Form should be an Approved Claim, and determine the correct amount due each eligible Class Member who submitted an Approved Claim. The latest date for a Claim Form to be submitted and considered for approval shall be by the Claims Deadline, sixty (60) days after the Notice is mailed.

c. All decisions of the Settlement Administrator are final and are not subject to appeal or review unless evidence is provided that the Settlement Administrator did not act in good faith.

4. Attorneys' Fees and Incentive Award.

a. Class Counsel shall file a motion requesting that the Court award them attorneys' fees and reimbursement for litigation expenses and costs in a total amount not to exceed Six Hundred Thousand Dollars (\$600,000). Class Counsel's request shall be posted on the website referenced in Section III.C.6.c no later than 60 days prior to the final approval hearing. The award by the Court of any amount of attorneys' fees, costs and expenses less than the amount of \$600,000 shall not affect the binding nature of the Settlement Agreement on the Parties, and under no circumstances shall an award of attorneys' fees, costs and expenses in an

amount less than the amount for which Class Counsel applies be grounds to set aside, avoid or disaffirm this Settlement Agreement. The award of attorneys' fees, costs and expenses (not to exceed \$600,000) approved by the Court shall be paid by Defendant within five days after the Effective Date. Other than as stated in this paragraph, Defendant shall have no obligation to pay or reimburse Class Counsel, Plaintiff or any Class Member for any attorneys' fees, litigation expenses or costs.

b. Incentive Award to Plaintiff. In addition to any relief to which he may be entitled under this Settlement Agreement, and in recognition of his efforts on behalf of the Settlement Class, the Class Representative shall, subject to the approval of the Court, be awarded an incentive award of Ten Thousand Dollars (\$10,000). Defendant shall pay such amount via check to the Class Representative, such check to be sent care of Class Counsel, within thirty (30) days after the date the Court enters the Final Judgment and Order of Dismissal if there have been no objections to the Settlement Agreement, and, if there have been such objections, within five (5) days after the Effective Date.

5. Preliminary Approval Order. Class Counsel shall file a motion for:

- a. preliminary approval of the Settlement and this Agreement;
- b. conditional class certification for purposes of settlement only;
- c. approval of the Class Notice; and
- d. scheduling of final approval hearing.

Class Counsel shall note such motion for hearing no later than sixty (60) days after this Settlement Agreement is signed by all Parties and W&W, as evidenced by the latest of the dates of signature stated in the signature block at the end of this Agreement. A copy of the [Proposed] Order Granting Preliminary Approval of Settlement, Conditional Class Certification, Approval of the Class Notice, and Scheduling a Final Settlement Approval Hearing ("Preliminary Approval Order") agreed to by the Parties is attached hereto as Exhibit B.

6. Notice and Claim Form. Subject to the Court's entry of the Preliminary Approval Order, the Parties agree that Defendant and the Settlement Administrator will provide the Settlement Class with notice of the proposed Settlement and a Claim Form by the following methods below ("Notice").

a. Mail. No later than forty-five (45) calendar days after entry of the Preliminary Approval Order, Defendant shall mail a letter notice of settlement to the last known addresses Lithia maintains in its business records of Class Members. The notice will be substantially similar to the form attached as Exhibit C, which will also enclose a postcard claim form, postage prepaid, to be completed and returned by Class Members who choose to make claims.

b. Telephone Support. The Settlement Administrator will provide a toll free telephone number for Class Members who do not have access to a computer to obtain information about the Settlement Agreement. The telephone support will remain active for a period of sixty (60) consecutive calendar days, starting on the initial date Notice is mailed pursuant to subsection a. above. Defendant is not required to provide live operator telephone support.

c. Internet Posting. The Settlement Administrator will set up an internet website and post the full class notice of the Settlement and Claims Form for a period of sixty (60) consecutive calendar days, starting on the date that the Notices are mailed. The posting will be substantially similar to the full class Notice of the Settlement attached hereto as Exhibit D. The Settlement Administrator will also post on the internet website a Request for Exclusion Form. The form will be substantially similar to the request for exclusion form attached hereto as Exhibit E.

7. Order for Final Approval of Class Settlement. At the Final Settlement Approval Hearing, Class Counsel shall petition the Court in the Lawsuit to enter an order for final judgment that approves the Settlement and dismisses the claims of the Class Members with prejudice, in the form of Exhibit F attached hereto (the "Final Order Approving Class Action Settlement and Judgment").

8. Release. Effective upon entry of the Order of Final Approval of the Class Settlement and dismissal of the Lawsuit with prejudice, the Releasing Parties each hereby fully, finally, and forever settles, releases, relinquishes and discharges each and all of the Released Claims against each and all of the Released Parties. The "Releasing Parties" are the Plaintiff, each Class Member, and each of their respective spouses and former spouses, as well as present, former, and future respective heirs, executors, administrators, representatives, agents, partners, successors, predecessors in interest and assigns, as well as, with respect to any Releasing Party that is not a natural person, its parent corporations, subsidiaries, affiliates, members, partners, related entities, predecessor or successor companies and any entity which shares common ownership or control, in whole or in part, along with the present or former directors, officers, owners, managers, employees, vendors, and agents of any of them, whether in their individual or official capacities (specifically including, but not limited to, their attorneys, investigators, representatives, and assigns).

The "Released Parties" are Lithia Motors, Inc., DMEautomotive LLC, and their respective parents, subsidiaries, affiliates, members, partners, related entities, predecessor or successor companies and any entity which shares common ownership or control, in whole or in part, with any of the foregoing, along with the present or former directors, officers, owners, managers, employees, representatives, assigns, vendors, and agents of any of them, whether in their individual or official capacities (specifically including, but not limited to, their attorneys, investigators, and representatives).

The "Released Claims" are all claims, causes of action, demands, judgments, damages, liabilities, whether known or unknown, contingent or non-contingent, including but not limited to any and all attorneys' fees, costs, expenses, disbursements and interest, which any of the

Releasing Parties now owns or holds or has at any time owned or held, against any or all of the Released Parties and which arise out of or are in any way connected with the transmission of any Text Message sent by Defendant or on its behalf by any of the Released Parties during the Class Period. This release specifically includes, but is not limited to, any and all claims based upon or related to any violation of any statute or regulation including without limitation claims under the WADAD (RCW 80.36.400), the TCPA (47 U.S.C. § 227), the Washington Consumer Protection Act (RCW 19.86), and RCW 19.190.060, any claim for emotional or mental distress, lost profits, incidental or consequential damages, interest, penalties, attorneys fees, costs, or disbursements, or any other claim for damages of any kind not specifically described above, whether asserted in the Lawsuit or which could have been asserted in the Lawsuit.

Without limiting the foregoing, the Released Claims specifically extend to the claims that the Releasing Parties do not know or suspect to exist in their favor as of the Date of Settlement. In connection with such waiver and relinquishment, each and all of the Releasing Parties, on behalf of themselves individually and in their representative capacities are irrevocably deemed to acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they now know or believe to be true with respect to the subject matter of this Settlement Agreement, but that it is their intention to release fully, finally and forever all Released Claims, and in furtherance of such intention, the release of the Released Claims will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts. **In addition, the Releasing Parties (and each of them) specifically acknowledge that they may later discover additional injuries or damages that are not known to them at this time. This Settlement specifically applies to such later discovered injuries or damages, and Releasing Parties specifically accept the risk that they may later discover such injuries or damages.**

9. **Dismissal with Prejudice.** Entry of the Order of Final Approval of Class Settlement, Plaintiff and the Settlement Class shall be a dismissal the Lawsuit with prejudice. Further, Plaintiff specifically authorizes Class Counsel to prepare and execute any and all additional documents reasonably necessary to effectuate the dismissal with prejudice.

10. **Objections.** Any Class Member who wants to object to the Settlement Agreement, including Class Counsel's request for attorneys fees, must file a written objection and/or a Notice of Intention to Appear with the Court, and serve copies on Class Counsel and Defendant's counsel, no later than twenty (20) calendar days prior to the final settlement approval hearing. The objection must state:

- a. the full name, address, and telephone number of the person objecting;
- b. the words "Notice of Objection" or "Formal Objection"; and
- c. in clear and concise terms, the legal and factual arguments supporting the objection.

The objection will not be valid if it only objects to the Lawsuit's appropriateness or merits. Class Members who fail to make objections in this manner will be deemed to have waived any

objections and will be foreclosed from making any objections (whether by appeal or any other process) to the Agreement. Only Class Members who file and serve timely written objections and/or Notices of Intention to Appear (“Objectors”) can speak at the final settlement approval hearing. Notwithstanding anything else contained in this Settlement Agreement, if more than one thousand (1,000) of the members of the Settlement Class request exclusion from the Settlement Class, then the Defendant may, in its sole discretion, notify Class Counsel in writing that it has elected to terminate this Settlement Agreement, effective upon the giving of such notification. In order to be effective, such notification must be provided to Class Counsel within fifteen (15) days of Defendant’s being informed in writing by the Settlement Administrator that more than One Thousand (1,000) members of the Settlement Class have requested exclusion. In the event Defendant elects to terminate this Settlement Agreement and the settlement under this provision, the Parties and the Lawsuit will be returned to the *status quo ante* and this Settlement Agreement shall be null and void to the same effect as stated in Section III.C.12.

11. No Tax Withholdings or Advice. Class Members shall be solely responsible for the reporting and payment of any federal, state and/or local income or other tax or any other withholdings, if any, on any of the benefits conveyed pursuant to the Settlement. Defendant makes no representations, and has made no representations, as to the taxability of the relief to Plaintiff and the other Class Members, the attorneys’ fees, costs or expenses to Class Counsel, or the incentive award to Plaintiff. Class Members are responsible for seeking their own tax advice at their own expense.

12. Effect of Court Disapproval. This Agreement and all associated exhibits and attachments are made for the sole purpose of attempting to consummate the settlement of the Lawsuit on a class-wide basis. The Parties enter the Settlement Agreement in compromise of claims that are disputed in good faith. Because this action is pled as a putative class action, and because the Settlement is on a class-wide basis, the Settlement Agreement must receive preliminary and final approval by the Court. In the event the Court in this Lawsuit or any other court:

- a. disapproves, sets aside, or modifies this Settlement Agreement;
- b. declines for any reason to enter or give effect to a Preliminary Approval Order;
- c. declines for any reason to enter or give effect to an Order of Final Approval of the Settlement; or
- d. holds that the Final Order Approving Class Action Settlement and Judgment, or any judgment entered pursuant thereto, should in any material part be overturned or modified in any material way,

then the Parties shall use their best efforts to effectively cure deficiencies in order to obtain Court approval, provided that such best efforts shall not be deemed to require Defendant to pay any additional sums than is provided herein. In the event such efforts are unsuccessful, and after the passage of sixty (60) days from the date of the Court’s actions outlined in this Section III.C.12,

then the Settlement Agreement shall become null and void, and, except as to the following provisions herein shall be of no force or effect whatsoever, shall not be referred to or used for any purpose whatsoever, and the Lawsuit shall be deemed to revert to its status as of the date and time immediately prior to the execution of this Settlement Agreement and the negotiation, terms and entry of the Settlement and this Settlement Agreement shall remain subject to the provisions of Federal Rule of Evidence 408, any and all statutes of a similar nature, and the mediation privilege. Upon such an occurrence, the Parties shall jointly move that any and all orders entered pursuant to the Settlement be vacated and shall proceed with the Lawsuit as if this Settlement Agreement had never been executed; provided, however, that in the event that the Parties, within fifteen (15) days of any such action of any court, jointly elect to appeal from or otherwise seek review or reconsideration of such court action, the Settlement Agreement shall not be deemed null and void until such time as such court action becomes final after any proceedings arising directly or indirectly from the Parties' appeal(s) or other attempt(s) to have such court action reversed, withdrawn or overturned. In the event the Settlement Agreement is determined null and void, the Parties shall not refer to the fact and terms of the Settlement or this Settlement Agreement to establish liability or otherwise support the Parties' substantive positions in the Lawsuit, and any and all funds paid, less actual expenses incurred by the Settlement Administrator, shall be returned to Defendant forthwith.

13. Effective Date of Settlement. The settlement and release of claims contemplated by this Settlement Agreement shall be deemed effective, and the Parties and Class Members shall be definitively bound thereto, on the date (the "Effective Date") that is ten (10) days after the date that each and all of the following conditions have occurred:

- a. this Settlement Agreement has been signed by Plaintiff, Defendant and Class Counsel;
- b. the Court has entered the Preliminary Approval Order, granting preliminary approval of the Settlement Agreement and approving a form of Notice, as provided in Sections III.C.5. and III.C.6.;
- c. the Court has entered the Final Order Approving Class Action Settlement and Judgment, as provided in Section III.C.7., dismissing the Lawsuit with prejudice; and
- d. the judgment has become Final.

The date the judgment has become "Final" is thirty (30) days after entry of the Final Order Approving Class Action Settlement and Judgment (Exhibit F) if no appeal is timely filed by an Objector. If any appeal is taken or review is sought of the judgment, the judgment becomes "Final" the day after the mandate is issued or the appeal or other petition for review is dismissed or subsequent appellate or review proceedings concluded. Upon the occurrence of the Effective Date:

- (1) the Settlement Agreement shall be the exclusive remedy for any and all Released Claims of the Class Members;

(2) Defendant shall not be subject to liability or expense of any kind with respect to the Released Claims to any Class Member except as set forth herein; and

(3) Plaintiff and the Class Members shall be permanently barred from initiating, asserting or prosecuting any and all Released Claims against any Released Party in any federal or state court in the United States or any other tribunal.

14. **Washington Law.** The rights and obligations of the Parties hereto are to be construed, interpreted and enforced solely in accordance with the laws of Washington State, without giving effect to any conflict of laws principles. The Parties agree that any judicial proceeding arising out of or resulting from or relating to this Settlement Agreement, or the breach thereof shall be filed only in the U.S. District Court for the Western District of Washington in Seattle, which has jurisdiction over this matter.

15. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts and delivered by facsimile to counsel. All executed counterparts, including those delivered to counsel by facsimile, and each of them shall be deemed to be one and the same instrument. A facsimile copy shall be considered an original for all purposes.

16. **No Admission.** The Parties specifically understand that the promises made in accordance with the Settlement are not to be construed as an admission by any of the Parties or Released Parties for any purpose and understand that the Parties and the Released Parties all deny liability for the allegations made in the Lawsuit. Plaintiff further understands that the Settlement has been made for business reasons. As such, neither this Settlement Agreement nor any act performed or document executed pursuant to or in furtherance of this Settlement Agreement:

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 the Plaintiff, the deficiency of any defense that has been or could have been asserted in the Lawsuit, 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 any Released Party, 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 Class Members, or each or any of them, as an admission, concession or evidence of, the infirmity or strength of any claims raised in the Lawsuit, the truth or falsity of any fact alleged by any Party, or the availability or lack of availability of meritorious defenses to the claims raised in the Lawsuit;

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 Parties or Released Parties in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. However, the Settlement Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to the settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Settlement Agreement. If the Settlement Agreement is approved by the Court, any Party or any of the Released Parties may file this Settlement Agreement and/or the Final Judgment and Order of Dismissal with Prejudice 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 and the Class Members, 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 Class Members, or each and any of them, or against the Released Parties, or each or any of them, that any of Plaintiff's or the Class Members' claims are with or without merit or that damages recoverable in the Lawsuit would have exceeded or would have been less than any particular amount.

17. Modifications Only in Writing and Authorization of Class Counsel. This Settlement Agreement may be amended or modified only by a written instrument signed by all of the undersigned Parties or their assignees or successors-in-interest, and the undersigned counsel; except that Plaintiff, individually and as Class Representative, expressly authorizes Class Counsel to take all appropriate action required or permitted to be taken by the Class Members pursuant to this Settlement Agreement to effectuate its terms, and also expressly authorizes Class Counsel to enter into such modifications or amendments to this Agreement on behalf of the Class Members as Class Counsel deems appropriate. The Settlement Agreement and its Exhibits reflect the entire agreement of Plaintiff, the Class Members, and Defendant, relative to the subject matter hereof and supersedes all prior or contemporaneous oral or written understandings, statements, representations or promises.

18. Severability. If any clause, provision, Section, or paragraph of this Settlement Agreement shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or paragraph of the Settlement Agreement shall be construed and enforced as if such illegal, invalid or enforceable clause, paragraph or other provisions had not been contained herein.

19. Legal Representation. The Parties to this Settlement Agreement acknowledge that they have been represented by qualified legal counsel both in connection with the Lawsuit and in connection with the negotiation, drafting and execution of this Settlement Agreement. Accordingly, the language used in this Settlement Agreement will be deemed to be language

chosen by the Parties hereto to express their mutual intent, and no rule of strict construction against any Party hereto will apply to any term or condition of this Settlement Agreement.

20. **Approval Procedure.** The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extensions of time that might be necessary to carry out any of the provisions of the Settlement Agreement. All applications for Court approval or Court orders required under the Settlement Agreement shall be made on notice to Class Counsel and Defendant's Counsel.

21. **Court Jurisdiction.** The administration and consummation of this Settlement Agreement shall be under and pursuant to the authority of the Court. The Court shall retain jurisdiction to protect preserve and implement the Settlement Agreement, including, but not limited to, the Releases set forth in Section III.C.8. The Court expressly retains jurisdiction in order to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement Agreement, including, but not limited to, orders enjoining Class Members from prosecuting claims that are released pursuant to the Settlement Agreement.

22. **Litigation Expenses.** Except as otherwise provided in the Settlement Agreement, each Party hereto shall bear his, her or its own expenses related to the Lawsuit.

23. **Document Retention.** The Parties may destroy documents associated with the administration of the Settlement one year after Final Judgment or 180 days after all benefits under the Settlement Agreement have been distributed, whichever is later.

24. **Notices.** Where this Agreement requires notice to the Parties, such notice shall be sent to the following counsel: Rob Williamson of Williamson & Williams and Grant Degginger of Lane Powell PC.

25. **Commercially Reasonable Efforts.** The Parties agree to cooperate in the execution of such documents and pleadings as are reasonably necessary and appropriate to obtain approval of and implementation of the Settlement Agreement, and to use commercially reasonable efforts to perform all terms of the Settlement Agreement.

26. **Cooperation.** The Parties (a) acknowledge that it is their intent to consummate the Settlement Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Settlement Agreement and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of the Settlement Agreement. Class Counsel and Defendant's counsel agree to cooperate with one another in seeking Court approval of the Preliminary Approval Order, the Settlement Agreement, the Final Order Approving Class Action Settlement and Judgment and Order of Dismissal with Prejudice, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval and performance of the Settlement Agreement. In the event that a matter should arise that is not expressly addressed in the Settlement Agreement, or if the Parties disagree as to the interpretation or application of any provision of this Settlement Agreement, the Parties shall

attempt to agree upon an appropriate resolution, and failing such agreement, shall abide by the decision of the Court as to the appropriate disposition. The Parties agree to cooperate in conducting such reasonable confirmatory discovery as is necessary to confirm bases upon which Plaintiff has entered into the Settlement Agreement.

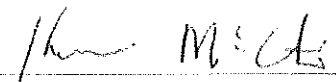
27. **Exhibits.** All of the Exhibits to the Settlement Agreement are material and integral parts thereof and are fully incorporated herein by this reference as though fully set forth herein. The Exhibits are:

- a. EXHIBIT A – Claim Form
- b. EXHIBIT B – [Proposed] Order Granting Preliminary Approval of Settlement, Class Certification, Approving Class Notice, and Scheduling a Final Settlement Approval Hearing
- c. EXHIBIT C – Summary Notice of Settlement of Class Action
- d. EXHIBIT D – Long Form Notice of Settlement of Class Action
- e. EXHIBIT E – Request for Exclusion
- f. EXHIBIT F – [Proposed] Final Order Approving Class Action Settlement and Judgment

IN WITNESS WHEREOF, the Parties enter into this Agreement this _____ day of _____, 2011.

PLAINTIFF

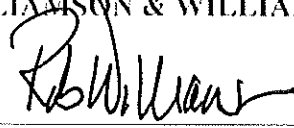
LITHIA MOTORS, INC.



Kevin McClintic
Date of Signature: AUG 8, 2011

By _____
Its _____
Date of Signature: _____

WILLIAMSON & WILLIAMS

By 

Rob Williamson, WSBA No. 11387
Kim Williams, WSBA No. 9077
Attorneys for Plaintiff
Date of Signature: 8/8/2011

attempt to agree upon an appropriate resolution, and failing such agreement, shall abide by the decision of the Court as to the appropriate disposition. The Parties agree to cooperate in conducting such reasonable confirmatory discovery as is necessary to confirm bases upon which Plaintiff has entered into the Settlement Agreement.

27. **Exhibits.** All of the Exhibits to the Settlement Agreement are material and integral parts thereof and are fully incorporated herein by this reference as though fully set forth herein. The Exhibits are:


- a. EXHIBIT A – Claim Form
- b. EXHIBIT B – [Proposed] Order Granting Preliminary Approval of Settlement, Class Certification, Approving Class Notice, and Scheduling a Final Settlement Approval Hearing
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- d. EXHIBIT D – Long Form Notice of Settlement of Class Action
- e. EXHIBIT E – Request for Exclusion
- f. EXHIBIT F – [Proposed] Final Order Approving Class Action Settlement and Judgment

IN WITNESS WHEREOF, the Parties enter into this Agreement this _____ day of _____, 2011.

PLAINTIFF

Kevin McClintic
Date of Signature: _____

LITHIA MOTORS, INC.

By 

Its Executive Vice President
Date of Signature: 8-7-2011

WILLIAMSON & WILLIAMS

By _____
Rob Williamson, WSBA No. 11387
Kim Williams, WSBA No. 9077
Attorneys for Plaintiff
Date of Signature: _____

Exhibit A
Claim Form

McClintic v. Lithia Motors, Inc., Litigation
Claim Form

YOU MUST SUBMIT YOUR CLAIM FORM NO LATER THAN [DATE].

Please type the following information:

Name (first, middle, and last): _____

Residential Street Address: _____

City, State, Zip Code: _____

Home Telephone Number: _____

Cellular Phone Number that Received Text Message(s): _____

I received ONE TWO text messages from Lithia. (Circle one or two)

I received a second text message from Lithia after I attempted to opt out; YES NO

I certify that the foregoing is true and correct to the best of my knowledge. I have read the Release of Claims in the Notice that appears on the opposite side of the letter, which advised me of this settlement and that has also been posted on the website, and understand I am bound by that Release.

Dated: _____

Signature: _____

RELEASE OF CLAIMS.

On behalf of myself, my spouse, former spouse(s), present, former and future respective heirs, executors, administrators, representatives, agents, partners, successors, predecessors in interest and assigns, as well as, if I am executing this on behalf of an entity that is not a natural person, its parents, subsidiaries, affiliates, related entities, predecessor or successor companies and any entity which shares common ownership or control, in whole or in part, along with the present or former directors, officers, owners, managers, employees, vendors, and agents of any of them, whether in their individual or official capacities (specifically including, but not limited to, their attorneys, investigators, representatives, and assigns) (the "Releasing Parties"), I hereby fully, finally and forever release, relinquish, and discharge all claims, causes of action, demands, judgments, damages, liabilities, whether known or unknown, contingent or non-contingent, including but not limited to any and all attorneys' fees, costs, expenses, disbursements and interest, which I or any of the Releasing Parties now owns or holds or has at any time owned or held, against any or all of the Released Parties (as defined in the Settlement Agreement at Section III.C.8) and which arise out of or are in any way connected with the transmission of any Text Message sent by Lithia or on its behalf by any of the Released Parties during the Class Period (as defined in the Settlement Agreement at Section III.C.8). This release specifically includes, but is not limited to, any and all claims, causes of action, demands, judgments, damages, liabilities, whether known or unknown, contingent or non-contingent, including but not limited to any and all attorneys' fees, costs, expenses, disbursements and interest, which any of the Releasing Parties now owns or holds or has at any time owned or held, against any or all of the Released Parties and which arise out of or are in any way connected with the transmission of any Text Message sent by Defendant or on its behalf by any of the Released Parties during the Class Period. This release specifically includes, but is not limited to, any and all claims based upon or related to any violation of any statute or regulation including without limitation claims under the WADAD (RCW 80.36.400), the TCPA (47 U.S.C. § 227), the Washington Consumer Protection Act (RCW 19.86), and RCW 19.190.060, any claim for emotional or mental distress, lost profits, incidental or consequential damages, interest, penalties, attorneys fees, costs, or disbursements, or any other claim for damages of any kind not specifically described above, whether asserted in the Lawsuit or which could have been asserted in the Lawsuit.

Without limiting the scope of the foregoing, this release extends to the claims that the Releasing Parties do not know or suspect to exist in their favor as of the Date of Settlement (as defined in the Settlement Agreement at Section III.A.9.). In connection with such release, each and all of the Releasing Parties, on behalf of themselves individually and in their representative capacities irrevocably acknowledge and agree that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they now know or believe to be true with respect to the subject matter of this Settlement Agreement, but that it is their intention to release fully, finally and forever all claims, and in furtherance of such intention, the release herein will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts. **In addition, the Releasing Parties (and each of them) specifically acknowledge that they may later discover additional injuries or damages that are not known to them at this time. This Release specifically applies to such later discovered injuries or damages, and**

Releasing Parties specifically accept the risk that they may later discover such injuries or damages.

Exhibit B

[Proposed] Order Granting Preliminary Approval of Settlement,
Class Certification, Approving Class Notice and Scheduling a
Final Settlement Approval Hearing

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:

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.

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

II. CERTIFICATION OF SETTLEMENT CLASS

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

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

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

III. APPROVING CLASS NOTICE

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

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.

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

IV. CLAIMS

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

V. REQUESTS FOR EXCLUSION

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

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

VI. FINAL APPROVAL HEARING DATE AND RIGHT TO OBJECT TO SETTLEMENT

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

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.

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

Exhibit C

Summary Notice of Settlement of Class Action

NOTICE OF SETTLEMENT OF CLASS ACTION

In April of this year, commercial Text Messages were sent on behalf of Lithia Motors, Inc. (“Lithia”) to the cellular telephones of customers in portions of the United States. Alleging that these messages were unlawful under both state and federal law, Kevin McClintic (“McClintic”) filed a class action lawsuit against Lithia.

Lithia and McClintic, on behalf of all Class Members, have reached a settlement of the class action which has been given preliminary approval by Judge Richard A. Jones of the United States District Court for the Western District of Washington at Seattle. You are a member of the class and can receive an award under the settlement by completing the enclosed post card/Claim Form. If you received one or two texts, you will receive \$175.00 for each text message you received. If you tried to opt out of receiving text messages from Lithia but still received a second text, you will receive \$500.00 for the second text. In the event that the number of claims received exceeds the amount available in the Class Member Payment Sum (\$1,740,000) to pay claims, then payments will be reduced pro rata.

Please read the full notice of the proposed settlement at the Settlement Administrator’s website at _____ or by requesting a copy from the Settlement Administrator by mail. The full notice contains the release that you are giving by submitting a claim form, and includes other details regarding the settlement. The release is also set forth on the back of this letter. You can also obtain a form to exclude yourself from the settlement by mailing a request to or calling the Settlement Administrator as shown below.

If you wish to claim an award under this settlement, you must send in your claim form no later than _____, 2011. If you want to be excluded from the settlement, you must send in the form no later than _____, 2011. If you do not request to be excluded from the settlement before _____, 2011, you will be deemed to have released Lithia from all claims.

[SETTLEMENT ADMINISTRATOR]
[MAILING ADDRESS]
[CITY], [STATE] [ZIP CODE]
[PHONE NUMBER]

RELEASE OF CLAIMS.

On behalf of myself, my spouse, former spouse(s), present, former and future respective heirs, executors, administrators, representatives, agents, partners, successors, predecessors in interest and assigns, as well as, if I am executing this on behalf of an entity that is not a natural person, its parents, subsidiaries, affiliates, related entities, predecessor or successor companies and any entity which shares common ownership or control, in whole or in part, along with the present or former directors, officers, owners, managers, employees, vendors, and agents of any of them, whether in their individual or official capacities (specifically including, but not limited to, their attorneys, investigators, representatives, and assigns) (the "Releasing Parties"), I hereby fully, finally and forever release, relinquish, and discharge all claims, causes of action, demands, judgments, damages, liabilities, whether known or unknown, contingent or non-contingent, including but not limited to any and all attorneys' fees, costs, expenses, disbursements and interest, which I or any of the Releasing Parties now owns or holds or has at any time owned or held, against any or all of the Released Parties (as defined in the Settlement Agreement at Section III.C.8) and which arise out of or are in any way connected with the transmission of any Text Message sent by Lithia or on its behalf by any of the Released Parties during the Class Period (as defined in the Settlement Agreement at Section III.C.8). This release specifically includes, but is not limited to, any and all claims, causes of action, demands, judgments, damages, liabilities, whether known or unknown, contingent or non-contingent, including but not limited to any and all attorneys' fees, costs, expenses, disbursements and interest, which any of the Releasing Parties now owns or holds or has at any time owned or held, against any or all of the Released Parties and which arise out of or are in any way connected with the transmission of any Text Message sent by Defendant or on its behalf by any of the Released Parties during the Class Period. This release specifically includes, but is not limited to, any and all claims based upon or related to any violation of any statute or regulation including without limitation claims under the WADAD (RCW 80.36.400), the TCPA (47 U.S.C. § 227), the Washington Consumer Protection Act (RCW 19.86), and RCW 19.190.060, any claim for emotional or mental distress, lost profits, incidental or consequential damages, interest, penalties, attorneys fees, costs, or disbursements, or any other claim for damages of any kind not specifically described above, whether asserted in the Lawsuit or which could have been asserted in the Lawsuit.

Without limiting the scope of the foregoing, this release extends to the claims that the Releasing Parties do not know or suspect to exist in their favor as of the Date of Settlement (as defined in the Settlement Agreement at Section III.A.9.). In connection with such release, each and all of the Releasing Parties, on behalf of themselves individually and in their representative capacities irrevocably acknowledge and agree that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they now know or believe to be true with respect to the subject matter of this Settlement Agreement, but that it is their intention to release fully, finally and forever all claims, and in furtherance of such intention, the release herein will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts. **In addition, the Releasing Parties (and each of them) specifically acknowledge that they may later discover additional injuries or damages that are not known to them at this time. This Release specifically applies to such later discovered injuries or damages, and**

Releasing Parties specifically accept the risk that they may later discover such injuries or damages.

Exhibit D

Long Form of Notice of Settlement of Class Action

LEGAL NOTICE

TO: All persons who between April 21, 2007 until and through the date of Settlement received a commercial text message from Lithia Motors, Inc.

IF YOU ARE A MEMBER OF THIS CLASS OF PERSONS, YOU SHOULD READ THIS NOTICE CAREFULLY BECAUSE IT WILL AFFECT YOUR LEGAL RIGHTS AND OBLIGATIONS

A settlement has been proposed in a class action lawsuit pending in the United States District Court, Western District of Washington, entitled *McClintic v. Lithia Motors, Inc.*, Case No. 2:11-cv-00859-RAJ. This Notice explains the nature of the Lawsuit, the general terms of the proposed settlement, and your legal rights and obligations.

GENERAL BACKGROUND

Plaintiff Kevin McClintic filed a class action lawsuit against Lithia Motors, Inc. ("Lithia"), on behalf of the Class of persons described above. The lawsuit alleges Lithia violated Washington and Federal law by transmitting Text Messages to cellular telephones of class members without their express consent. Lithia denies any wrongdoing and any liability whatsoever, and no court or other entity has made any judgment or other determination of any liability.

The Parties have determined that it is in their best interests to settle the Lawsuit to avoid the expenses, inconveniences, and interferences with ongoing business operations that are associated with litigation. In addition, Judge Richard A. Jones of the Western District of Washington has determined that the Action should proceed as a class action for settlement purposes only, with Plaintiff Kevin McClintic as the Class Representative, and granted preliminary approval of the settlement, subject to a final fairness hearing discussed below.

THE PROPOSED SETTLEMENT

Lithia agrees to the entry of an injunction that enjoins it from violating the TCPA, 47 U.S.C. § 227, and/or RCW 19.190.060 through the unlawful use of an automatic dialing and announcing device ("ADAD") to deliver Text Messages for commercial solicitation to individuals who have not provided express consent.

Lithia also agrees to establish a Settlement Fund of \$2,500,00.00 and to make \$1,740,000 (called the Class Member Payment Sum) of that fund available to provide Class Members who submit a timely and valid Claim Form \$175.00 for each text received with the exception that a Class Member who received a second text after attempting to opt out from receiving text messages from Lithia will receive \$500.00 for the second text message. In the event that the number of claims exceeds the amount available to pay claims, the payments will be reduced pro rata.

Each check issued shall be valid for sixty (60) days. The value of any checks that are not negotiated by a Class Member shall revert back to the Legal Foundation of Washington.

Subject to Court approval, the Class Representative will be paid an incentive award of \$10,000 for his services as Class Representative and his efforts in bringing the Lawsuit, and the attorneys for the Class (“Class Counsel”) will be paid up to a maximum of \$600,000 total for their attorneys’ fees and costs. The Court will make the final decision as to the amounts to be paid to the Class Representatives and Class Counsel. These amounts will not affect the benefits provided to the Class.

DISMISSAL OF ACTION AND RELEASE OF ALL CLAIMS

If the Court approves the proposed settlement, it will enter a judgment in the action with prejudice as to all Class Members. All Class Members who do not validly and timely request to be excluded from the proposed settlement and their spouses and former spouses, as well as present, former, and future respective heirs, executors, administrators, representatives, agents, partners, successors, predecessors in interest and assigns, as well as, with respect to any Releasing Party that is not a natural person, its parents, subsidiaries, affiliates, related entities, predecessor or successor companies and any entity which shares common ownership or control, in whole or in part, along with the present or former directors, officers, owners, managers, employees, vendors, and agents of any of them, whether in their individual or official capacities (specifically including, but not limited to, their attorneys, investigators, representatives, and assigns,) (“Releasing Parties”) will be forever barred from prosecuting their own lawsuits and deemed to have fully, finally and forever released, relinquished, and discharged Lithia Motors, Inc., DMEautomotive LLC, and their respective parents, subsidiaries, affiliates, members, partners, related entities, predecessor or successor companies and any entity which shares common ownership or control, in whole or in part, with any of the foregoing, along with the present or former directors, officers, owners, managers, employees, representatives, assigns, vendors, and agents of any of them, whether in their individual or official capacities (specifically including, but not limited to, their attorneys, investigators, and representatives) (“Released Parties”), from all claims, causes of action, demands, judgments, damages, liabilities, whether known or unknown, contingent or non-contingent, including but not limited to any and all attorneys’ fees, costs, expenses, disbursements and interest, which any of the Releasing Parties now owns or holds or has at any time owned or held, against any or all of the Released Parties and which arise out of or are in any way connected with the transmission of any Text Message sent by Defendant or on its behalf by any of the Released Parties during the Class Period. This release specifically includes, but is not limited to, any and all claims, causes of action, demands, judgments, damages, liabilities, whether known or unknown, contingent or non-contingent, including but not limited to any and all attorneys’ fees, costs, expenses, disbursements and interest, which any of the Releasing Parties now owns or holds or has at any time owned or held, against any or all of the Released Parties and which arise out of or are in any way connected with the transmission of any Text Message sent by Defendant or on its behalf by any of the Released Parties during the Class Period. This release specifically includes, but is not limited to, any and all claims based upon or related to any violation of any statute or regulation including without limitation claims under the WADAD (RCW 80.36.400), the TCPA (47 U.S.C. § 227), the Washington Consumer Protection Act (RCW 19.86), and RCW 19.190.060, any claim for emotional or mental distress, lost profits, incidental or consequential damages, interest, penalties, attorneys fees, costs, or disbursements, or any other claim for damages of any kind not

specifically described above, whether asserted in the Lawsuit or which could have been asserted in the Lawsuit.

Without limiting the scope of the foregoing, this release extends to the claims that the Releasing Parties do not know or suspect to exist in their favor as of the Date of Settlement (as defined in the Settlement Agreement at Section III.A.9.). In connection with such release, each and all of the Releasing Parties, on behalf of themselves individually and in their representative capacities irrevocably acknowledge and agree that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they now know or believe to be true with respect to the subject matter of this Settlement Agreement, but that it is their intention to release fully, finally and forever all claims, and in furtherance of such intention, the release herein will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts. **In addition, the Releasing Parties (and each of them) specifically acknowledge that they may later discover additional injuries or damages that are not known to them at this time. This Release specifically applies to such later discovered injuries or damages, and Releasing Parties specifically accept the risk that they may later discover such injuries or damages.**

FINAL SETTLEMENT APPROVAL HEARING

On _____ at ____ .m., a Final Settlement Approval Hearing will be held on the fairness of the proposed settlement. At the Final Settlement Approval Hearing, the Court will be available to hear any objections and arguments concerning the proposed settlement's fairness. The Final Settlement Approval Hearing will take place before the Honorable Richard A. Jones in Court Room No. __ (__th Floor) of the United States Courthouse, Western District of Washington, located at 700 Stewart Street, Seattle, WA 98101.

HOW TO RECEIVE YOUR AWARD

You must complete a Claim Form to receive your award.. The Claim Form was enclosed in the notice mailed to you, and is also available by contacting the Settlement Administrator at:

McClintic v. Lithia, Claims Administrator
[SETTLEMENT ADMINISTRATOR]
[MAILING ADDRESS]
[CITY], [STATE] [ZIP CODE]
[FAX NUMBER]
[PHONE NUMBER]

The Claim Form must be mailed to the Settlement Administrator postmarked no later than _____ at the address above. Lithia may verify the accuracy of information set forth in any submitted Claim Form. If you do not submit a valid and timely Claim Form, you will not receive benefits under the settlement, but you will still be bound by the Settlement unless you exclude yourself. The delivery date is deemed to be the date the form is deposited in the U.S. Mail, postage prepaid, as evidenced by the postmark.

HOW TO EXCLUDE YOURSELF FROM THE SETTLEMENT

You may exclude yourself from the Class and the Settlement. If you want to be excluded, you must send the Request for Exclusion form that is available from the Settlement Administrator, postmarked no later than _____.

McClintic v. Lithia Claims
[SETTLEMENT ADMINISTRATOR]
[MAILING ADDRESS]
[CITY], [STATE] [ZIP CODE]

If you timely request exclusion from the Class, you will be excluded from the Class, you will not be bound by the judgment entered in the Lawsuit, and you will not be precluded from prosecuting any timely individual claim against Lithia or any Released Party based on the conduct complained of in the Lawsuit.

HOW TO OBJECT TO THE SETTLEMENT

If you wish to object to the settlement, you must file a written objection and/or a Notice of Intention to Appear with the Court, and serve such objection and/or notice on Class Counsel and Lithia's Counsel at the addresses set forth below. Any written objections and/or Notice of Intention to Appear must state: (a) the name of the Action and case number, "*McClintic v. Lithia Motors, Inc.*, Case No. 2:11-cv-00859-RAJ" (b) the full name, address, and telephone number of the person objecting, (c) a statement that the person is a Class Member; (d) the words "Notice of Objection" or "Formal Objection," (e) in clear and concise terms, the legal and factual arguments supporting the objection; and (f) whether the person intends to appear to speak at the Fairness Hearing. If you only object to the appropriateness or merits of the Action, then your objection will be deemed invalid. Class Members who fail to make objections in the manner specified above will be deemed to have waived any objections and will be foreclosed from making any objections (whether by a subsequent objection, intervention, appeal, or any other process) to the Settlement. Only Class Members who filed and served timely written objections and/or Notices of Intention to Appear can speak at the Fairness Hearing. To speak at the hearing, you must file your objection papers with the Court and deliver or postmark the papers to Class Counsel and Lithia's Counsel no later than [DATE].

CLASS COUNSEL
ROB WILLIAMSON
KIM WILLIAMS
WILLIAMSON & WILLIAMS
17253 Agate Street NE
Bainbridge Island, WA 98110

LITHIA MOTORS, INC. COUNSEL
GRANT DEGGINGER
LANE POWELL P.C.
1420 Fifth Avenue, Suite 4100
Seattle, WA 98101

IF YOU DO NOT TIMELY MAKE YOUR OBJECTION, YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS AND WILL NOT BE ENTITLED TO SPEAK AT THE FAIRNESS HEARING. You may, but need not, enter an appearance through counsel of your choice. If you do, you will be responsible for your personal attorney's fees and costs.

ADDITIONAL INFORMATION

The above description of the Lawsuit is general and does not cover all of the issues and proceedings that have occurred. In order to see the complete file, including the actual settlement agreement, you should visit the Administrative Office of the U.S. Courts, PACER Service Center, located at <http://pacer.psc.uscourts.gov/>. You may also visit or call the Clerk's office of the Western District of Washington located on the Floor of the United States Courthouse, 700 Stewart Street, Seattle, WA 98101. The phone number of the Clerk's office is (206) 370-8400. The Clerk will tell you how to obtain the file for inspection and copying at your own expense.

This notice is merely a summary of the terms of the Settlement. The complete terms and conditions are set forth in the Settlement Agreement, which is available from the Court's file. To fully understand the terms and conditions of settlement, the Court recommends that you read the Settlement Agreement, because it may contain language, terms, conditions and procedures that are not mentioned or explained in this notice. In the event of any conflict or disagreement between the language of this notice and the Settlement Agreement, the Settlement Agreement will control.

DO NOT ADDRESS ANY SUBSTANTIVE QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE COURT OR THE JUDGE'S CHAMBERS.

Dated: _____, 2011 By: _____
HONORABLE RICHARD A. JONES
UNITED STATES DISTRICT COURT JUDGE

Exhibit E
Request for Exclusion

Exhibit F

[Proposed] Final Order Approving Class Action Settlement and Judgment

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

3. Class Members means all persons who fall within the definition of the Class and who have not timely and properly requested exclusion. A list of those persons who have timely and properly requested exclusion from the Class is appended to this Final Order and Judgment as Attachment 1.

4. This Court has jurisdiction over the subject matter of this Lawsuit and over all parties to the Settlement Agreement, including all Class Members.

5. The Notice to the Class given pursuant to the Court's Preliminary Approval Order constituted the best notice practicable under the circumstances to all potential members of the Class, and fully complied with Fed. R. Civ. P. 23(e)(1).

6. The settlement set forth in the Settlement Agreement, which is incorporated herein by reference, is now hereby approved as fair, reasonable, and adequate to all parties and Class Members, pursuant to Fed. R. Civ. P. 23(e).

7. Plaintiff and all Class Members (1) are bound by this Order, (2) are forever barred from instituting, maintaining, or prosecuting any claim, demand, action or cause of action of any nature, whether known or unknown, suspected or unsuspected, which they may have or ever have had against the Released Parties (as defined in the Settlement Agreement) arising directly or indirectly out of the facts alleged or the claims raised in this Lawsuit, including the transmission or distribution of Text Messages (as defined in the Settlement Agreement) during Class Period (as defined in the Settlement Agreement), and (3) have released and discharged the Released Parties from any and all liability with respect to such claims, including but not limited to all claims, causes of action, demands, judgments, damages, liabilities, whether known or unknown, contingent or non-contingent, including but not limited to any and all attorneys' fees,

**[PROPOSED] FINAL ORDER AND
JUDGMENT - 2**

Case No. C11-0859 RAJ

costs, expenses, disbursements and interest, which any of the Releasing Parties now owns or holds or has at any time owned or held, against any or all of the Released Parties and which arise out of or are in any way connected with the transmission of any Text Message sent by Defendant or on its behalf by any of the Released Parties during the Class Period. This specifically includes, but is not limited to, any and all claims based upon or related to any violation of any statute or regulation including without limitation claims under the WADAD (RCW 80.36.400), the TCPA (47 U.S.C. § 227), the Washington Consumer Protection Act (RCW 19.86), and RCW 19.190.060, any claim for emotional or mental distress, lost profits, incidental or consequential damages, interest, penalties, attorneys fees, costs, or disbursements, or any other claim for damages of any kind not specifically described above, whether asserted in the Lawsuit or which could have been asserted in the Lawsuit.

8. The parties stipulate to injunctive relief, and the Court hereby enters an order of injunction that enjoins Defendant from violating the TCPA, 47 U.S.C. § 227, and/or RCW 19.190.060 through the unlawful use of an automatic dialing and announcing device (“ADAD”) to deliver text messages for commercial solicitation to Class Members who have not provided express consent. Such injunction shall be null and void in the event of, or to the extent that, governing law as it now exists or may exist in the future would allow such activity.

9. Neither the Settlement Agreement, nor any of its terms or provisions, nor any document executed pursuant to it, nor any other act taken to negotiate or carry it out, shall be construed as or raise any presumption or inference of a concession or admission, or a waiver of any right, claim, or defense of any party to it or any Class Member, except insofar as such rights, claims, or defenses are expressly released or discharged by this Order.

10. Neither the Settlement Agreement, nor any of its terms or provisions, nor any document executed pursuant to it, nor any other act taken to negotiate it or carry it out 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 any proceeding to enforce the terms of the Settlement Agreement.

11. The Court reserves jurisdiction over the parties to the Settlement, including all Class Members, for purposes of supervising the implementation, enforcement, construction, and interpretation of the Settlement Agreement.

12. The Court approves and directs that all Class Members who timely submitted an Approved Claim be mailed \$175.00 for each text message received except any Class Member who received a second text after attempting to opt out from receiving text messages from Defendant who, for that second text, will be paid \$500.00. The payments are subject to pro rata reduction under the conditions described in the Settlement Agreement.

13. The Court hereby approves an award of Class Counsel attorneys' fees and costs of \$_____ to be paid in the manner provided in the Settlement Agreement. This award is not a liability of Defendant except as provided in the Settlement Agreement.

14. The Court further hereby approves an incentive payment of \$10,000.00 to Plaintiff to be paid as provided in the Settlement Agreement. This payment is not a liability of Defendant except as provided in the Settlement Agreement.

15. To the extent that there is any inconsistency between the terms of this Order and the terms of the Settlement Agreement, the terms of the Settlement Agreement shall control.

16. This Action is hereby DISMISSED ON THE MERITS AND WITH PREJUDICE.

17. The Court directs the Clerk to immediately enter this Final Order and Judgment.

DATED this _____ day of _____, 2011.

Richard A. Jones
United States District Judge

ATTACHMENT 1

[Spreadsheet of names requesting exclusion]

**[PROPOSED] FINAL ORDER AND
JUDGMENT - 5**
Case No. C11-0859 RAJ

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