The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KEVIN MCCLINTIC on behalf of himself and all others similarly situated, Plaintiff, v. LITHIA MOTORS, INC., Defendant.	No. 2:11-cv-00859-RAJ DECLARATION OF ROB WILLIAMSON IN SUPPORT OF PLAINTIFF MCCLINTIC'S RESPONSE TO PROPOSED PLAINTIFF-INTERVENOR MCLAREN'S MOTION TO INTERVENE NOTED ON MOTION CALENDAR: August 12, 2011

I, Rob Williamson, hereby declare as follows:

1. I am one of the attorneys for the plaintiff, Kevin McClintic, in this action, and make this declaration based upon my personal knowledge.

2. This action was filed originally in the King County Superior Court on April 21, 2011. On May 4, 2011, we were informed by counsel for the Defendant that he had been retained and that his client was interested in trying to resolve the matter on an expedited basis, thereby avoiding delay and expense if possible.

3. This matter was removed to this Court on May 23, 2011.

4. Shortly thereafter the parties agreed to an early mediation and selected King County Superior Court Retired Judge Terrence Lukens, who is a highly respected and skilled mediator

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and has had extensive experience involving class actions which include allegations of violations of the Telephone Consumer Protection Act and state counterparts. The first available date to meet with Judge Lukens was July 5, 2011.

5. Our mediation preparation was extensive, involving an intense factual and legal analysis, and preparation of a mediation package for Judge Lukens. On July 5, 2011, the mediation session lasted well into the evening, and, while it did not produce a settlement, it established a framework and total dollar amount range for an agreement. Participating in the mediation were the parties, their counsel, as well as counsel for DMEautomotive, LLC a vendor used by Defendant for the transmission of the text messages in question. Negotiations were arms-length and extensive and, as mentioned, the mediation session was 12 hours or longer.

6. The structure included a claims-made process, one which would be easily understood and available to class members, the creation of a settlement fund that would be exhausted on claims, costs of administration, costs, and fees, with any unclaimed funds to be donated to the Legal Foundation of Washington. There was to be no reversion to Lithia. Further, some extra payment was to be made to class members who had opted out but nonetheless received a second text. It was also especially important claims process be as simple and effective as possible and that class members making claims be paid for each text message received, rather than one amount regardless of the number of text messages received.

7. Between July 5, 2011, and July 26, 2011, negotiations through Judge Lukens continued. It was our understanding that counsel for both Defendant and DMEautomotive, LLC were explaining the negotiation process and obtaining authority from their respective clients to increase the settlement offer that had been made at the end of the mediation to a level that would

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be acceptable to our side. During that time it was, of course, not possible or proper for us to discuss the terms of a potential settlement with any outside parties, including counsel for Mr. McLaren. On July 26, 2011, most of the terms of the settlement agreement that was reached were complete, and the settlement was finalized, subject to preparation of a detailed agreement, on July 27, 2011.

8. Within a few days after the mediation of July 5, 2011, I was contacted by telephone by counsel for Mr. McLaren. I indicated we had just completed a mediation and were continuing to discuss possible settlement. When questioned by such counsel, I acknowledged that it could be argued that our client, Mr. McClintic, did not have standing to assert a claim on behalf of persons who had attempted to OptOut of the text messaging from Defendant because Mr. McClintic did not attempt to opt out. I also advised McLaren's counsel that I was aware of authority that would nevertheless permit the settlement to include a subclass of persons who attempted OptOut. Either on that day or thereafter we also discussed trying to determine how many persons were in the group who had attempted to OptOut but were nevertheless sent a second text message.

9. As part of the mediation process, we had required that Defendant provide us with information regarding the total number of text messages that were sent. Initially we were told it was approximately 60,000 sent on the date when Mr. McClintic had received his text message, and then a second text message had been sent approximately a week later to a subset of the 60,000 that was approximately 48,000 persons. At the time of the mediation Defendant had not identified the factors that had reduced the size of the second texting by 12,000, nor did it have information regarding how many persons had attempted to OptOut. Subsequently we learned that the exact number sent on the first mailing was 57,800, and also that there were 6190 persons who

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had attempted to OptOut.

10. During our negotiations after July 5, 2011, Defendant was, of course, aware of the action filed by Mr. McLaren in the District Court of Oregon and was determined that any settlement needed to cover all possible claims of any class members. We had discussed during the mediation and subsequent thereto the concept of making a greater award to persons who had attempted to OptOut, based both on the theory that that person would have a stronger claim for exemplary damages as well as a rebuttal of any attempted defense that consent had been given for the texting. We learned during the mediation that it was Defendant's intention to limit the text messages to current or prior customers only, and the text sent to Mr. McClintic was, apparently, sent in error as he had never conducted business with Defendant.

11. While Mr. McLaren's counsel expressed concerns that Mr. McClintic may not be able to adequately represent the interests of the so-called OptOut plaintiffs in a class settlement, we disagreed because the OptOut claim is similar to and inextricably entwined with the claims advanced by Mr. McClintic. Accordingly, we intended to and did reach a settlement that would in fact settle all claims. The settlement that was reached provided, as follows:

1. A Settlement Fund of $2,500,000;
2. A claims made procedure that provides for direct mailed notice of a simple letter and an enclosed, postage prepaid postcard that can be used for making a claim;
3. $1,700,000 of the fund is to be used for claims;
4. Every class member who makes a claim will receive $170.00 for each text received. For a class member who received a second text and had earlier attempted to opt-out, the payment for the second text will be $500.00;
5. Lithia will pay, from the Settlement Fund, $150,000 for costs of administration, which include mailing notice, processing claims and questions, creating a website for class members to access the long form of notice, and distribution of claim checks. If costs of administration exceed $150,000, Lithia will pay those extra costs independently, not from the Settlement Fund.
6. McClintic will be paid a class representative fee of $10,000.00;
7. McClinitc's counsel will be paid fees and costs of $600,000.

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12. This is indeed a very good settlement and, based on our research concerning settlement's obtained by McLaren's counsel in cases referenced in their Motion to Intervene, it appears to confer more benefit on class members than in any settlement achieved by their firm, including in the once case cited that involved compensation available to an OptOut class.

13. Mr. McLaren raises concerns regarding a "hastily arranged settlement" which he suggests raises serious concerns, not only about Mr. McClintic's representation of the so-called OptOut class, but also of the entire class. He also faults Mr. McClintic's counsel for attempting to settle the OptOut claims despite conceding that Mr. McClintic may not have standing to bring a claim.[1] Reference is also made to "... This secret and hurried settlement involving of unrepresented persons..."

14. Counsel for McClintic has been involved in the prosecution and resolution of over 50 class actions involving claims under the Telephone Consumer Protection Act, and its state equivalents, beginning originally with junk fax claims, and more recently suits arising from "robo-calls" solicitations, violations of the do not call provisions, and, with this case, unlawful text solicitations. Judge Lukens has been involved in several mediations involving claims under the TCPA for robo-calls by Intuit, Comcast, Tween Brands, Payless ShoeSource and Talbots, all involving McClintic's counsel, and the latter three involving Lithia's. All resulted in settlements, and Intuit and Comcast have been given preliminary approval by Judge Lasnik of

[1] McLaren also chides counsel for Mr. McClintic for "cutting and pasting" one of his counsel's previously found complaints. *This is simply not true.* McClintic's counsel had never seen any of McLaren counsel's pleadings before preparing the Complaint in this case, and actually relied on pleadings in two other cases with which they were familiar to help create a draft Complaint, *Kazemi v. Payless ShoeSource*, and *Agne v. Rain City Pizza, L.L.C.* Whether counsel in those cases used a Complaint of McLaren's counsel as a drafting aid, we have no way of knowing, but we did not cut and paste anything from McLaren's counsel's pleadings. In addition, the instant Complaint included the particular facts of this case and allegations of violations of Washington statutes and other extensive content that we drafted independently without using any other complaints as a drafting aid. McLaren's counsel's accusations are unfounded.

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this Court, and Tween Brands is pending preliminary approval by Judge Lasnik upon the receipt of a declaration from Tween regarding why notice is better served by mail rather than e-mails.

15. The proposal of Defendant to seek an early resolution of this case was and is not a hurried and secret attempt to harm the interests of any other persons. Discussions regarding mediation and the initial mediation session itself were all before McLaren filed his suit. Discussions which took place after McLaren's suit was filed were necessarily confidential as are all settlement negotiations. Given that the focus of the mediation was to resolve all claims, it was neither necessary nor efficient to bring in new counsel to the mediation process, a process that was substantially complete after the lengthy in-person mediation session on July 5, 2011. McLaren accuses McClintic's counsel of stalling him so that "they could race to the bottom and hastily reach a settlement." This charge is not only untrue, it is unfair to counsel for the parties in this case and to Judge Lukens whose credentials and adherence to superior ethical standards are above reproach.

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

Dated: August 8, 2011

WILLIAMSON & WILLIAMS

/s/ Rob Williamson
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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
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