

The Honorable Richard A. Jones

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

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

*Plaintiff,*

and

DAN MCLAREN, individually and on behalf  
of a class and subclass of similarly situated  
individuals,

*Plaintiffs-Intervenors*

v.

LITHIA MOTORS, INC.

*Defendant.*

No. 11-cv-00859 RAJ

**DECLARATION OF JAY EDELSON IN  
SUPPORT OF PLAINTIFF-  
INTERVENOR DAN MCLAREN'S  
MOTION TO INTERVENE**

NOTE ON MOTION CALENDAR:  
AUGUST 12, 2011

**DECLARATION OF JAY EDELSON**

1  
2 I, JAY EDELSON, hereby aver, pursuant to 28 U.S.C. § 1746, that I have personal  
3 knowledge of all matters set forth herein unless otherwise indicated, and would testify thereto if  
4 called as a witness in this matter.

5 1. I am an adult over the age of 18, and a resident of the State of Illinois. I am one of  
6 the managing partners at Edelson McGuire, LLC, the law firm representing Plaintiff-Intervenor  
7 Dan McLaren in this matter. I am fully competent to make this Declaration, and make such  
8 Declaration in support of McLaren’s Motion to Intervene.  
9

10 2. Attached as Exhibit 1 is a true and accurate copy of an email sent on July 6, 2011,  
11 by John Ochoa, an attorney at my firm, to Roblin Williamson and Kim Williams.

12 3. Attached as Exhibit 2 is a true and accurate copy of an email sent on July 6, 2011,  
13 by Roblin Williamson to John Ochoa and myself.

14 4. Attached as Exhibit 3 is a true and accurate copy of an email sent on July 6, 2011,  
15 by me to Roblin Williamson.

16 5. Attached as Exhibit 4 is a true and accurate copy of an email sent on July 11, 2011,  
17 by John Ochoa to Roblin Williamson.

18 6. Attached as Exhibit 5 is a true and accurate copy of an email sent on July 12, 2011,  
19 by Roblin Williamson to John Ochoa.

20 7. Attached as Exhibit 6 is a true and accurate copy of an email sent on July 12, 2011,  
21 by me to Roblin Williamson.

22 8. Attached as Exhibit 7 is a true and accurate copy of an email sent on July 12, 2011,  
23 by Roblin Williamson to me.

24 9. Attached as Exhibit 8 is a true and accurate copy of an email sent on July 12, 2011,  
25 by me to Roblin Williamson.  
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1           10.     Attached as Exhibit 9 is a true and accurate copy of an email sent on July 12, 2011,  
2 by Kim Williams to me and Roblin Williamson.

3           11.     Attached as Exhibit 10 is a true and accurate copy of an email sent on July 12,  
4 2011, by me to Kim Williams.

5           12.     Attached as Exhibit 11 is a true and accurate copy of an email sent on July 12,  
6 2011, to me from Kim Williams.

7           13.     Attached as Exhibit 12 is a true and accurate copy of an email sent by me to Kim  
8 Williams.

9           14.     On July 28, 2011, I received a telephone call from a person who identified himself  
10 as Judge Terrence Lukens (Ret.). Prior to this phone call I had not contacted Judge Lukens.

11           15.     Judge Lukens told me that he was the mediator in a mediation between the  
12 Williamson law firm and Lane Powell, P.C., in the case *McClintic v. Lithia Motors*.

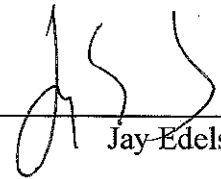
13           16.     Judge Lukens informed me that the parties had reached a settlement in the  
14 *McClintic* action.

15           17.     Judge Lukens said that during the first round of mediation, before the parties  
16 became aware of the *McLaren* action, their settlement discussions did not involve additional  
17 monetary compensation for an opt-out class. He said that during the second round of mediations,  
18 after the parties became aware of the *McLaren* action, the parties then began to discuss providing  
19 more relief for the "opt-out class" of individuals.

20           18.     Judge Lukens also informed me that the *McLaren* action was a significant topic of  
21 conversation during the parties' second round of mediation.  
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I declare under penalty of perjury that the foregoing is true and correct. Executed on  
August 12, 2011.

  
\_\_\_\_\_  
Jay Edelson

# Exhibit 1

**Zimbra****jochoa@edelson.com**

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**Lithia Motors**

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**From :** John Ochoa <jochoa@edelson.com>

Wed, Jul 06, 2011 05:30 PM

**Subject :** Lithia Motors 1 attachment**To :** roblin@williamslaw.com**Cc :** Jay Edelson <jedelson@edelson.com>**Reply To :** John Ochoa <jochoa@edelson.com>

Mr. Williamson,

On behalf of myself and Jay Edelson, it was nice speaking with you earlier today. Per your request, attached to this email is a copy of the class action complaint that our firm filed earlier this month.

You will notice that Mr. McLaren represents not only a class of persons who received the initial message on April 11, but also a secondary class of individuals who opted out, then received subsequent text messages. We understand that your view on this is that while your plaintiff did not have standing to sue for these subsequent text messages, there still may be law that supports your plaintiff's right to represent both classes. Our concern is that your plaintiff may not be able to adequately represent the interests of these "opt-out" plaintiffs in a class settlement.

We appreciate you reaching out to defense counsel and informing them of our desire to be involved in any settlement discussion on behalf of the opt-out class. (We are sensitive of the fact that you filed your case several weeks before ours and do not want to unnecessarily upset the applecart.) We look forward to hearing your thoughts after you speak to defense counsel.

Sincerely,

John

John Ochoa | Edelson McGuire LLC  
350 North LaSalle, Suite 1300  
Chicago, IL 60654

312.572.7209 (direct) | 312.589.6370 (firm) | 312.589.6378 (fax)  
[jochoa@edelson.com](mailto:jochoa@edelson.com) | [www.edelson.com](http://www.edelson.com)



**Complaint.pdf**

323 KB

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MO  
①

James Forbes  
JAMES FORBES, PC  
2608 NW Ordway Avenue  
Bend, OR 97701  
Phone: (541) 382-3917

FILED 05 JUL '11 11:08 USDC-ORF

Michael J. McMorrow (*Pro Hac Vice* pending)  
John C. Ochoa (*Pro Hac Vice* pending)  
EDELSON MCGUIRE LLC  
350 N. LaSalle Street, Suite 1300  
Chicago, Illinois 60654

**IN THE UNITED STATES DISTRICT COURT**  
**DISTRICT OF OREGON**  
**PORTLAND DIVISION**

<p><b>DAN MCLAREN</b>, individually and on behalf of a class and subclass of similarly situated individuals,</p> <p style="text-align: center;"><b>PLAINTIFF,</b></p> <p>v.</p> <p><b>LITHIA MOTORS, INC.</b>, an Oregon corporation,</p> <p style="text-align: center;"><b>DEFENDANT.</b></p>	<p>Case No. <b>CV 11-810 MO</b></p> <p><b>CLASS ACTION ALLEGATION COMPLAINT</b></p> <p><b>VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT 47 U.S.C. § 227 et seq.</b></p> <p><b>DEMAND FOR JURY TRIAL</b></p>
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**CLASS ACTION COMPLAINT**

Plaintiff Dan McLaren ("Plaintiff") brings this Class Action Complaint against Lithia Motors, Inc. ("Defendant" or "Lithia Motors") to stop Defendant's practice of making unsolicited text message calls to cellular telephones, and to obtain redress for all persons injured by its conduct. Plaintiff, for his Class Action Complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences, and as to all other matters, upon information and belief, including investigation conducted by his attorneys.

**CLASS ACTION COMPLAINT**

#41316



### NATURE OF THE CASE

1. Wireless spam is a growing problem in the United States. According to a recent study conducted by the Pew Research Center, “Spam isn’t just for email anymore; it comes in the form of unwanted text messages of all kinds—from coupons to phishing schemes—sent directly to user’s cell phones.” In fact, “57% of adults with cell phones have received unwanted or spam text messages on their phone.” Amanda Lenhart, *Cell Phones and American Adults: They Make Just as Many Calls, but Text Less than Teens*, Pew Research Center (2010) at <http://pewinternet.org/Reports/2010/Cell-Phones-and-American-Adults.aspx>.

2. In an effort to promote the sale of its automotive products, Lithia Motors, an automobile dealership, engaged in an especially pernicious form of marketing: the transmission of unauthorized advertisements in the form of “text message” calls to the cellular telephones of consumers throughout the nation.

3. By effectuating these unauthorized text message calls (hereinafter, “wireless spam”), Defendant has caused consumers actual harm, not only because consumers were subjected to the aggravation that necessarily accompanies wireless spam, but also because consumers frequently have to pay their cell phone service providers for the receipt of such wireless spam.

4. In order to redress these injuries, Plaintiff, on behalf of himself and a nationwide class and subclass of similarly situated individuals, brings this suit under the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”), which prohibits unsolicited voice and text calls to cell phones.

5. On behalf of the class and subclass, Plaintiff seeks an injunction requiring Defendant to cease all wireless spam activities towards him and the proposed class and subclass,

as well as an award of actual and statutory damages to the class and subclass members, together with costs and reasonable attorneys' fees.

#### **PARTIES**

6. Plaintiff is a citizen of the State of Oregon.

7. Defendant is an automobile dealership that sells new and used cars throughout the nation, including in Oregon and this District. It is a company organized and existing under the laws of the State of Oregon and maintains its principal place of business in the State of Oregon.

#### **JURISDICTION AND VENUE**

8. The Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332 (d) because: (a) at least one member of the putative class is a citizen of a state different from Defendant, (b) the amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and (c) none of the exceptions under that subsection apply to this action.

9. Venue is proper in the District of Oregon under 28 U.S.C. § 1391 because Defendant resides in this District.

10. This Court has personal jurisdiction over the Defendant because the acts alleged herein were committed in Oregon and/or because the Defendant maintains offices in this District.

#### **CONDUCT COMPLAINED OF**

11. In recent years, marketers who often have felt stymied by federal laws limiting solicitation by telephone, facsimile machine, and e-mail have increasingly looked to alternative technologies through which to send bulk solicitations cheaply.

12. One of the newest types of such bulk marketing is to advertise through Short Message Services, commonly know as text messages. The term "Short Message Service," "SMS," or "text message" describes a messaging system that allows cellular telephone

subscribers to use their cellular telephones to send and/or receive short text messages, usually limited to 160 characters.

13. An "SMS message" is a text message call directed to a wireless device through the use of the telephone number assigned to the device. When an SMS message call is successfully made, the recipient's cell phone rings, alerting him or her that a call is being received.

14. Unlike more conventional advertisements, SMS message calls, and particularly wireless spam, can actually cost their recipients money, because cell phone users must frequently pay their respective wireless service providers either for each text message call they receive, or incur a usage allocation deduction to their text plan, regardless of whether or not the message is authorized.

15. Beginning in at least April of 2011 and continuing for weeks if not months thereafter, Defendant and/or its agents caused mass transmissions of wireless spam to the cell phones of what they hoped were potential customers of Defendant's automobiles.

16. For instance, on or about April 11, 2011, Plaintiff's cell phone rang, indicating that a text call was being received.

17. The "from" field of the transmission was identified as "35703," which is an abbreviated telephone number known as a SMS short code and operated by Defendant's agents.

The body of the text message read:

0% FINANCING ON USED VEHICLES DURING THE BIGGEST  
SALE EVER. OVER 3000 USED VEHICLES AT LITHIA  
MOTORS HTTP://BIT.LY/HOJPLX  
REPLY STOP TO OPT-OUT

18. Upon receiving this message, Plaintiff attempted to "opt-out" of receiving further messages by replying "STOP" to the text message above.

19. Despite Plaintiff's request to not receive further messages from Lithia Motors, on April 19, 2011, his cell phone rang again, indicating that a text call was being received.

20. The "from" field of the transmission was identified as "35703," which is an SMS short code operated by Defendant's agents. The body of the text message read:

WE ARE SERIOUS, 0% ON USED VEHICLES,  
SHOP LITHIA @ HTTP://BIT.LY/DS675E  
TO SEE FOR YOURSELF

21. Defendant's and/or its agents' use of a short code enabled Defendant's mass transmission of wireless spam to a list of cellular telephone numbers, including those belonging to Plaintiff and the proposed Class and Subclass.

22. At no time did Plaintiff consent to the receipt of the above-referenced text messages or any other such wireless spam text messages from Defendant.

#### CLASS ALLEGATIONS

23. Plaintiff brings this action on behalf of himself and a class (the "Class") defined as follows: All persons in the United States and its territories who received one or more unauthorized text message advertisements on behalf of Defendant.

24. Plaintiff also brings this action on behalf of himself and a subclass (the "Subclass") defined as follows: All persons in the United States and its territories who received one or more unauthorized text message advertisements on behalf of Defendant after affirmatively "opting-out" of the receipt of any further text message advertisements from Defendants.

25. In order to make its *en masse* transmission of text message advertisements economical, Defendant uses lists of thousands of cellular telephone numbers. As such, the Class and Subclass consists of thousands of individuals, making joinder impractical.

26. Common questions of law and fact exist as to all members of the Class, and such questions predominate over questions affecting Plaintiff or individual members. Common questions for the Class include:

- (a) Does the wireless spam Defendant distributed violate the TCPA?
- (b) Are the Class members entitled to treble damages based on the willfulness of Defendant's conduct?

27. Common questions of law and fact exist as to all members of the Subclass, and such questions predominate over questions affecting Plaintiff or individual members. Common questions for the Subclass include:

- (a) Did Subclass members opt-out of receiving further messages from the Defendant?
- (b) Did Subclass members continue receiving unauthorized text messages from Defendant after opting-out?
- (c) Are the Class members entitled to treble damages based on the willfulness of Defendant's conduct?

28. Plaintiff will fairly and adequately protect the interests of the Class and Subclass, his claims are typical of the claims of the members of the Class and Subclass, and he has retained counsel competent and experienced in similar class action litigation.

29. A class action is superior to other available methods for fairly and efficiently adjudicating this controversy because, among other things, (a) joinder of all members of the Class and Subclass is impracticable, and (b) many members of the Class and Subclass cannot vindicate their rights by individual lawsuits because their damages are small relative to the burden and expense of litigating individual actions.

**COUNT I**

**(Violation of the TCPA, 47 U.S.C. § 227: On behalf of the Class and Subclass)**

30. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

31. Defendant and its agents made unsolicited commercial text calls to the wireless telephone numbers of Plaintiff and the other members of the Class and Subclass using equipment that had the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers.

32. These text calls were made *en masse* through the use of a short code without the prior express consent of Plaintiff and the Class and Subclass.

33. Defendant has, therefore, violated the TCPA, 47 U.S.C. § 227(b)(1)(A)(iii). As a result of Defendant's illegal conduct, the members of the Class and Subclass suffered actual damages and, under section 227(b)(3)(B), are each entitled to, *inter alia*, a minimum of \$500.00 in damages for each such violation of the TCPA.

34. Defendant's misconduct was willful and knowing, and the Court should, pursuant to section 227(b)(3)(C), treble the amount of statutory damages recoverable by Plaintiff and members of the Class and Subclass.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Dan McLaren, on behalf of himself and the Class and Subclass, prays for the following relief:

1. An order certifying the Class and Subclass as defined above;
2. An injunction requiring Defendant to cease all wireless spam activities;
3. An award of actual and statutory damages;

4. An award of reasonable attorneys' fees and costs; and
5. Such further and other relief the Court deems reasonable and just.

**JURY DEMAND**

Plaintiff requests trial by jury of all claims that can be so tried.

July 1, 2011

**DAN MCLAREN**, individually and on behalf of a  
class and subclass of similarly situated individuals

By: \_\_\_\_\_

One of Plaintiff's attorneys

James Forbes  
jim@jimforbesattorney.com  
JIM FORBES, P.C.  
2608 NW Ordway Avenue  
Bend, OR 97701

Michael J. McMorrow (*Pro Hac Vice* pending)  
mjmcorrow@edelson.com  
John C. Ochoa (*Pro Hac Vice* pending)  
jochoa@edelson.com  
EDELSON MCGUIRE LLC  
350 N. LaSalle Street, Suite 1300  
Chicago, Illinois 60654

# Exhibit 2



Zimbra

jochoa@edelson.com

---

**RE: Lithia Motors**

---

**From :** Rob Williamson <roblin@williamslaw.com>

Wed, Jul 06, 2011 07:00 PM

**Subject :** RE: Lithia Motors**To :** John Ochoa <jochoa@edelson.com>**Cc :** Jay Edelson <jedelson@edelson.com>, Kim Williams <kim@williamslaw.com>

Thank you for sending the compliant which I have, already forwarded to our mediator and opposing counsel. I am sorry we might have stated off on the wrong foot but you can imagine we don't take kindly to suggestions that since you have never heard of us we are probably neither experienced nor competent. We have been very involved in TCPA litigation for years, have some published decisions regarding preemption and efforts to pick off class representatives with offers of judgment, have prevailed on numerous class certification motions in state and federal court, etc. Our mediator is very experienced and highly respected. What do you and Mr. Edelson have in mind going forward?

---

**From:** John Ochoa [<mailto:jochoa@edelson.com>]**Sent:** Wednesday, July 06, 2011 3:30 PM**To:** [roblin@williamslaw.com](mailto:roblin@williamslaw.com)**Cc:** Jay Edelson**Subject:** Lithia Motors

Mr. Williamson,

On behalf of myself and Jay Edelson, it was nice speaking with you earlier today. Per your request, attached to this email is a copy of the class action complaint that our firm filed earlier this month.

You will notice that Mr. McLaren represents not only a class of persons who received the initial message on April 11, but also a secondary class of individuals who opted out, then received subsequent text messages. We understand that your view on this is that while your plaintiff did not have standing to sue for these subsequent text messages, there still may be law that supports your plaintiff's right to represent both classes. Our concern is that your plaintiff may not be able to adequately represent

the interests of these "opt-out" plaintiffs in a class settlement.

We appreciate you reaching out to defense counsel and informing them of our desire to be involved in any settlement discussion on behalf of the opt-out class. (We are sensitive of the fact that you filed your case several weeks before ours and do not want to unnecessarily upset the applecart.) We look forward to hearing your thoughts after you speak to defense counsel.

Sincerely,

John

John Ochoa | Edelson McGuire LLC

350 North LaSalle, Suite 1300

Chicago, IL 60654

312.572.7209 (direct) | 312.589.6370 (firm) | 312.589.6378 (fax)

[jochoa@edelson.com](mailto:jochoa@edelson.com) | [www.edelson.com](http://www.edelson.com)

---

# Exhibit 3

**Zimbra****jochoa@edelson.com**

---

**Re: Lithia Motors**

---

**From :** Jay Edelson <jedelson@edelson.com>

Wed, Jul 06, 2011 07:07 PM

**Subject :** Re: Lithia Motors**To :** Rob Williamson <roblin@williamslaw.com>**Cc :** John Ochoa <jochoa@edelson.com>, Kim Williams <kim@williamslaw.com>

Rob,

Absolutely no offense was intended. I was clumsily trying to figure out how you were structuring the settlement without having you reveal any privileged conversations. (I figured if you had settled similar cases, it would be likely you would stick with a similar structure.). I do not doubt your experience or your skill.

In terms of moving forward, our preference would be that we are invited into the mediation process, wherein we would focus on the secondary class that is not included in your complaint. We respect your relationship with defense counsel as well as the work you have done to date and will follow your general tone, so that we do not do anything that is disruptive to the process.

Let me know if this all makes sense for you.

Best,

Jay

Sent from my iPad

On Jul 6, 2011, at 7:00 PM, Rob Williamson <[roblin@williamslaw.com](mailto:roblin@williamslaw.com)> wrote:

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**Sent:** Wednesday, July 06, 2011 3:30 PM  
**To:** [roblin@williamslaw.com](mailto:roblin@williamslaw.com)  
**Cc:** Jay Edelson  
**Subject:** Lithia Motors

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Sincerely,

John

John Ochoa | Edelson McGuire LLC

350 North LaSalle, Suite 1300

Chicago, IL 60654

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[jochoa@edelson.com](mailto:jochoa@edelson.com) | [www.edelson.com](http://www.edelson.com)

---

# Exhibit 4

Zimbra

jedelson@edelson.com

---

**Re: Lithia Motors**

---

**From :** John Ochoa <jochoa@edelson.com>

Mon, Jul 11, 2011 02:19 PM

**Subject :** Re: Lithia Motors**To :** roblin@williamslaw.com**Cc :** Kim Williams <kim@williamslaw.com>, Jay Edelson, Esq. <jedelson@edelson.com>**Reply To :** John Ochoa <jochoa@edelson.com>

Mr. Williamson,

As you may be aware, our lawsuit against Lithia Motors has gotten significant press attention, and we are concerned that some of the comments made by Lithia's counsel are threatening the class action process. Given this, we are preparing to move forward with class certification as to the opt-out subclass pled in our Complaint. I know we had talked last week about our firm joining the mediation process that is currently ongoing with the Defendant, especially with respect to the opt-outs, as your plaintiff is not a member of this class. Going forward, we would like to know if you want to work together with our firm in reaching a resolution of this case. In any event, we would like to keep you informed of our intentions in this case. Please let me know if you are available for a phone call today.

Sincerely,

John

John Ochoa | Edelson McGuire LLC  
350 North LaSalle, Suite 1300  
Chicago, IL 60654  
312.572.7209 (direct) | 312.589.6370 (firm) | 312.589.6378 (fax)  
[jochoa@edelson.com](mailto:jochoa@edelson.com) | [www.edelson.com](http://www.edelson.com)

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**From:** "Jay Edelson" <jedelson@edelson.com>**To:** "Rob Williamson" <roblin@williamslaw.com>**Cc:** "John Ochoa" <jochoa@edelson.com>, "Kim Williams" <kim@williamslaw.com>**Sent:** Wednesday, July 6, 2011 7:07:44 PM**Subject:** Re: Lithia Motors

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Jay

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**Sent:** Wednesday, July 06, 2011 3:30 PM

**To:** [roblin@williamslaw.com](mailto:roblin@williamslaw.com)

**Cc:** Jay Edelson

**Subject:** Lithia Motors

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Sincerely,

John

John Ochoa | Edelson McGuire LLC  
350 North LaSalle, Suite 1300  
Chicago, IL 60654  
312.572.7209 (direct) | 312.589.6370 (firm) | 312.589.6378 (fax)  
[jochoa@edelson.com](mailto:jochoa@edelson.com) | [www.edelson.com](http://www.edelson.com)

---

# Exhibit 5

**Zimbra****jochoa@edelson.com**

---

**Lithia Motors**

---

**From :** Rob Williamson <roblin@williamslaw.com>

Tue, Jul 12, 2011 10:54 AM

**Subject :** Lithia Motors**To :** John Ochoa <jochoa@edelson.com>**Cc :** Kim Williams <kim@williamslaw.com>, Jay Edelson  
<jedelson@edelson.com>

We have asked defense counsel to determine, if possible, the number of persons who opted out but nonetheless received a second text. With that information we can determine better what's at stake and how to proceed.

Rob Williamson  
17253 Agate Street NE  
Bainbridge Island, WA 98110

Office (Direct): (206) 780-4457  
Cell: (206) 321-1917  
Fax: (206) 780-5557

---

# Exhibit 6

**Zimbra****jochoa@edelson.com**

---

**Re: Lithia Motors**

---

**From :** Jay Edelson, Esq. <jedelson@edelson.com> Tue, Jul 12, 2011 12:00 PM  
**Subject :** Re: Lithia Motors  
**To :** Rob Williamson <roblin@williamslaw.com>  
**Cc :** Kim Williams <kim@williamslaw.com>, John Ochoa <jochoa@edelson.com>

Rob,

Can you give us a sense of your time frame? We spoke to defense counsel yesterday and it seemed as if you had not broached the subject with them (based on our emails we had thought that would have already had happened.)

-Jay

---

**From:** "Rob Williamson" <roblin@williamslaw.com>  
**To:** "John Ochoa" <jochoa@edelson.com>  
**Cc:** "Kim Williams" <kim@williamslaw.com>, "Jay Edelson" <jedelson@edelson.com>  
**Sent:** Tuesday, July 12, 2011 10:54:06 AM  
**Subject:** Lithia Motors

We have asked defense counsel to determine, if possible, the number of persons who opted out but nonetheless received a second text. With that information we can determine better what's at stake and how to proceed.

Rob Williamson  
17253 Agate Street NE  
Bainbridge Island, WA 98110

Office (Direct): (206) 780-4457  
Cell: (206) 321-1917  
Fax: (206) 780-5557



# Exhibit 7



Zimbra

jochoa@edelson.com

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**RE: Lithia Motors**

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**From :** Rob Williamson <roblin@williamslaw.com> Tue, Jul 12, 2011 12:10 PM  
**Subject :** RE: Lithia Motors  
**To :** Jay Edelson, Esq. <jedelson@edelson.com>  
**Cc :** Kim Williams <kim@williamslaw.com>, John Ochoa <jochoa@edelson.com>

With whom did you speak?

---

**From:** Jay Edelson, Esq. [mailto:[jedelson@edelson.com](mailto:jedelson@edelson.com)]  
**Sent:** Tuesday, July 12, 2011 10:01 AM  
**To:** Rob Williamson  
**Cc:** Kim Williams; John Ochoa  
**Subject:** Re: Lithia Motors

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**From:** "Rob Williamson" <[roblin@williamslaw.com](mailto:roblin@williamslaw.com)>  
**To:** "John Ochoa" <[jochoa@edelson.com](mailto:jochoa@edelson.com)>  
**Cc:** "Kim Williams" <[kim@williamslaw.com](mailto:kim@williamslaw.com)>, "Jay Edelson" <[jedelson@edelson.com](mailto:jedelson@edelson.com)>  
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---

# Exhibit 8

Zimbra

jochoa@edelson.com

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**Re: Lithia Motors**

---

**From :** Jay Edelson, Esq. <jedelson@edelson.com> Tue, Jul 12, 2011 12:12 PM  
**Subject :** Re: Lithia Motors  
**To :** Rob Williamson <roblin@williamslaw.com>  
**Cc :** Kim Williams <kim@williamslaw.com>, John Ochoa <jochoa@edelson.com>

Grant Degginger

---

**From:** "Rob Williamson" <roblin@williamslaw.com>  
**To:** "Jay Edelson, Esq." <jedelson@edelson.com>  
**Cc:** "Kim Williams" <kim@williamslaw.com>, "John Ochoa" <jochoa@edelson.com>  
**Sent:** Tuesday, July 12, 2011 12:10:57 PM  
**Subject:** RE: Lithia Motors

With whom did you speak?

---

**From:** Jay Edelson, Esq. [mailto:[jedelson@edelson.com](mailto:jedelson@edelson.com)]  
**Sent:** Tuesday, July 12, 2011 10:01 AM  
**To:** Rob Williamson  
**Cc:** Kim Williams; John Ochoa  
**Subject:** Re: Lithia Motors

Rob,

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**From:** "Rob Williamson" <roblin@williamslaw.com>  
**To:** "John Ochoa" <jochoa@edelson.com>

**Cc:** "Kim Williams" <[kim@williamslaw.com](mailto:kim@williamslaw.com)>, "Jay Edelson" <[jedelson@edelson.com](mailto:jedelson@edelson.com)>

**Sent:** Tuesday, July 12, 2011 10:54:06 AM

**Subject:** Lithia Motors

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---

# Exhibit 9

Zimbra

jochoa@edelson.com

---

**RE: Lithia Motors**

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**From :** Kim Williams <[kim@williamslaw.com](mailto:kim@williamslaw.com)>

Tue, Jul 12, 2011 12:29 PM

**Subject :** RE: Lithia Motors**To :** Jay Edelson, Esq. <[jedelson@edelson.com](mailto:jedelson@edelson.com)>, Rob Williamson <[roblin@williamslaw.com](mailto:roblin@williamslaw.com)>**Cc :** John Ochoa <[jochoa@edelson.com](mailto:jochoa@edelson.com)>

Hi Jay,

I'm Rob's partner. We have been asking Grant Degginger for this information since last week, pretty much daily, so I don't know why he gave you the impression we haven't. Grant is a very nice guy but he's not getting the information to us, perhaps because his client isn't getting it to him. Did he give you any information regarding the number of people who received the text message and unsuccessfully tried to opt out, or any of the other statistics? Rob's last email to Grant on the subject of the opt out subclass went out yesterday afternoon around 3 so we should hear something today but who knows. We will keep you posted.

What did Lithia's counsel say or do that makes you worry about class cert for the opt out subclass?

Best,

Kim Williams

Kim Williams  
Williamson & Williams  
17253 Agate Street NE  
Bainbridge Island, WA 98110  
[Kim@Williamslaw.com](mailto:Kim@Williamslaw.com)  
206 780-4447

---

**From:** Jay Edelson, Esq. [<mailto:jedelson@edelson.com>]**Sent:** Tuesday, July 12, 2011 10:13 AM**To:** Rob Williamson**Cc:** Kim Williams; John Ochoa**Subject:** Re: Lithia Motors

Grant Degginger

---

**From:** "Rob Williamson" <[roblin@williamslaw.com](mailto:roblin@williamslaw.com)>  
**To:** "Jay Edelson, Esq." <[jedelson@edelson.com](mailto:jedelson@edelson.com)>  
**Cc:** "Kim Williams" <[kim@williamslaw.com](mailto:kim@williamslaw.com)>, "John Ochoa" <[jochoa@edelson.com](mailto:jochoa@edelson.com)>  
**Sent:** Tuesday, July 12, 2011 12:10:57 PM  
**Subject:** RE: Lithia Motors

With whom did you speak?

---

**From:** Jay Edelson, Esq. [<mailto:jedelson@edelson.com>]  
**Sent:** Tuesday, July 12, 2011 10:01 AM  
**To:** Rob Williamson  
**Cc:** Kim Williams; John Ochoa  
**Subject:** Re: Lithia Motors

Rob,

Can you give us a sense of your time frame? We spoke to defense counsel yesterday and it seemed as if you had not broached the subject with them (based on our emails we had thought that would have already had happened.)

-Jay

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**From:** "Rob Williamson" <[roblin@williamslaw.com](mailto:roblin@williamslaw.com)>  
**To:** "John Ochoa" <[jochoa@edelson.com](mailto:jochoa@edelson.com)>  
**Cc:** "Kim Williams" <[kim@williamslaw.com](mailto:kim@williamslaw.com)>, "Jay Edelson" <[jedelson@edelson.com](mailto:jedelson@edelson.com)>  
**Sent:** Tuesday, July 12, 2011 10:54:06 AM  
**Subject:** Lithia Motors

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Cell: (206) 321-1917  
Fax: (206) 780-5557

---

# Exhibit 10

Zimbra

jochoa@edelson.com

---

**Re: Lithia Motors**

---

**From :** Jay Edelson, Esq. <jedelson@edelson.com>

Tue, Jul 12, 2011 12:41 PM

**Subject :** Re: Lithia Motors**To :** Kim Williams <kim@williamslaw.com>**Cc :** John Ochoa <jochoa@edelson.com>, Rob  
Williamson <roblin@williamslaw.com>

Given your email, it seems that Grant was being less than forthright. I'm not sure I understand your question posed in your last sentence. Can you rephrase it?

-Jay

---

**From:** "Kim Williams" <kim@williamslaw.com>**To:** "Jay Edelson, Esq." <jedelson@edelson.com>, "Rob Williamson" <roblin@williamslaw.com>**Cc:** "John Ochoa" <jochoa@edelson.com>**Sent:** Tuesday, July 12, 2011 12:29:56 PM**Subject:** RE: Lithia Motors

Hi Jay,

I'm Rob's partner. We have been asking Grant Degginger for this information since last week, pretty much daily, so I don't know why he gave you the impression we haven't. Grant is a very nice guy but he's not getting the information to us, perhaps because his client isn't getting it to him. Did he give you any information regarding the number of people who received the text message and unsuccessfully tried to opt out, or any of the other statistics? Rob's last email to Grant on the subject of the opt out subclass went out yesterday afternoon around 3 so we should hear something today but who knows. We will keep you posted.

What did Lithia's counsel say or do that makes you worry about class cert for the opt out subclass?

Best,

Kim Williams

Kim Williams

Williamson & Williams  
17253 Agate Street NE  
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Kim@Williamslaw.com  
206 780-4447

---

**From:** Jay Edelson, Esq. [mailto:[jedelson@edelson.com](mailto:jedelson@edelson.com)]  
**Sent:** Tuesday, July 12, 2011 10:13 AM  
**To:** Rob Williamson  
**Cc:** Kim Williams; John Ochoa  
**Subject:** Re: Lithia Motors

Grant Degginger

---

**From:** "Rob Williamson" <[roblin@williamslaw.com](mailto:roblin@williamslaw.com)>  
**To:** "Jay Edelson, Esq." <[jedelson@edelson.com](mailto:jedelson@edelson.com)>  
**Cc:** "Kim Williams" <[kim@williamslaw.com](mailto:kim@williamslaw.com)>, "John Ochoa" <[jochoa@edelson.com](mailto:jochoa@edelson.com)>  
**Sent:** Tuesday, July 12, 2011 12:10:57 PM  
**Subject:** RE: Lithia Motors

With whom did you speak?

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**From:** Jay Edelson, Esq. [mailto:[jedelson@edelson.com](mailto:jedelson@edelson.com)]  
**Sent:** Tuesday, July 12, 2011 10:01 AM  
**To:** Rob Williamson  
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**To:** "John Ochoa" <[jochoa@edelson.com](mailto:jochoa@edelson.com)>  
**Cc:** "Kim Williams" <[kim@williamsllaw.com](mailto:kim@williamsllaw.com)>, "Jay Edelson" <[jedelson@edelson.com](mailto:jedelson@edelson.com)>  
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---

# Exhibit 11

Zimbra

jochoa@edelson.com

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**RE: Lithia Motors**

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**From :** Kim Williams <kim@williamslaw.com>

Tue, Jul 12, 2011 12:52 PM

**Subject :** RE: Lithia Motors**To :** Jay Edelson, Esq. <jedelson@edelson.com>**Cc :** John Ochoa <jochoa@edelson.com>, Rob Williamson <roblin@williamslaw.com>

This is what your partner Mr. Ochoa said in a recent email: *As you may be aware, our lawsuit against Lithia Motors has gotten significant press attention, and we are concerned that some of the comments made by Lithia's counsel are threatening the class action process.*

That is what I was asking about.

Kim

---

**From:** Jay Edelson, Esq. [mailto:[jedelson@edelson.com](mailto:jedelson@edelson.com)]**Sent:** Tuesday, July 12, 2011 10:42 AM**To:** Kim Williams**Cc:** John Ochoa; Rob Williamson**Subject:** Re: Lithia Motors

Given your email, it seems that Grant was being less than forthright. I'm not sure I understand your question posed in your last sentence. Can you rephrase it?

-Jay

---

**From:** "Kim Williams" <kim@williamslaw.com>**To:** "Jay Edelson, Esq." <jedelson@edelson.com>, "Rob Williamson" <roblin@williamslaw.com>**Cc:** "John Ochoa" <jochoa@edelson.com>**Sent:** Tuesday, July 12, 2011 12:29:56 PM**Subject:** RE: Lithia Motors

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Kim Williams

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206 780-4447

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**From:** Jay Edelson, Esq. [<mailto:jedelson@edelson.com>]  
**Sent:** Tuesday, July 12, 2011 10:13 AM  
**To:** Rob Williamson  
**Cc:** Kim Williams; John Ochoa  
**Subject:** Re: Lithia Motors

Grant Degginger

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**From:** "Rob Williamson" <[roblin@williamslaw.com](mailto:roblin@williamslaw.com)>  
**To:** "Jay Edelson, Esq." <[jedelson@edelson.com](mailto:jedelson@edelson.com)>  
**Cc:** "Kim Williams" <[kim@williamslaw.com](mailto:kim@williamslaw.com)>, "John Ochoa" <[jochoa@edelson.com](mailto:jochoa@edelson.com)>  
**Sent:** Tuesday, July 12, 2011 12:10:57 PM  
**Subject:** RE: Lithia Motors

With whom did you speak?

---

**From:** Jay Edelson, Esq. [<mailto:jedelson@edelson.com>]  
**Sent:** Tuesday, July 12, 2011 10:01 AM



**To:** Rob Williamson  
**Cc:** Kim Williams; John Ochoa  
**Subject:** Re: Lithia Motors

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# Exhibit 12

Zimbra

jochoa@edelson.com

---

**Re: Lithia Motors**

---

**From :** Jay Edelson, Esq. <jedelson@edelson.com>

Tue, Jul 12, 2011 12:48 PM

**Subject :** Re: Lithia Motors**To :** Kim Williams <kim@williamslaw.com>**Cc :** John Ochoa <jochoa@edelson.com>, Rob Williamson <roblin@williamslaw.com>

Oh, I understand now. We weren't suggesting that defendant's comments might hurt our chances to get a class certified. Rather, we believe that their public statements are aimed at interfering with the class action process more generally by misinforming putative class members about our respective lawsuits. There is a strong body of law explaining that such public campaigns are improper and can be enjoined.

-Jay

---

**From:** "Kim Williams" <kim@williamslaw.com>**To:** "Jay Edelson, Esq." <jedelson@edelson.com>**Cc:** "John Ochoa" <jochoa@edelson.com>, "Rob Williamson" <roblin@williamslaw.com>**Sent:** Tuesday, July 12, 2011 12:52:43 PM**Subject:** RE: Lithia Motors

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**Cc:** "Kim Williams" <[kim@williamslaw.com](mailto:kim@williamslaw.com)>, "John Ochoa" <[jochoa@edelson.com](mailto:jochoa@edelson.com)>  
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