

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 Settlement 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. DME, which Plaintiff said in the mediation it intended to join in this case, has agreed to pay the entire Settlement Fund on behalf of Lithia, subject to a reservation of rights with respect to that payment.

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 and DME from the Settlement Agreement as set forth herein, it is hereby agreed by and among the Plaintiff, each of the Settlement 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” is defined in Section III.C.1.d.
2. The term “Approved Claims Payments” is defined in Section III.C.1.d.
3. The term “Class Counsel” means the law firm of W&W.
4. The term “Class Period” is defined in Section III.B. below.
5. The term “Claim or Exclusion Form” is synonymous with Exhibit A.
6. The term “Claims Deadline” is defined in Section III.C.1. below.

7. The term "Payment Fund" is defined in Section III.C.1.d below.
8. The term "Class Representative" means Kevin McClintic.
9. The term "Date of Settlement" is defined in Section III.B. below.
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.7.
13. The term "Released Claims" is defined in Section III.C.7.
14. The term "Settlement Administrator" is defined in Section III.C.2.a below.
15. The term "Settlement Class" is defined in Section III.B.
16. The term "Settlement Class Member" is defined in Section III.B. below.
17. The term "Settlement Fund" is defined in Section III.C. below.
18. The term "Text Message" is defined in Section III.B. below.
19. The term "Final Order Approving Class Action Settlement and Judgment" is defined in Section III.C.13. below.

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.6. 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.11. 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. The term “Settlement Class Member” shall mean a member of the Settlement Class who does not timely request to be excluded from the Settlement, whether or not he or she ever received actual notice of the Lawsuit or the Settlement. The term “Class Period” shall mean from April 21, 2007, until and through the Date of Settlement. The term “Date of Settlement” means the date of entry of the Order Granting Preliminary Approval of the Settlement. 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.

C. The Settlement Monetary Consideration.

1. **Class Relief.** The Settlement Fund is a fund in the amount of Two Million Five Hundred Thousand Dollars (\$2,500,000.00), out of which the amounts set forth in Section III.C.1(a)-(d) of this Agreement shall be paid as follows:

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

d. Payments to Settlement Class Members. One Million, Seven Hundred Forty Thousand Dollars (\$1,740,000, plus any increase made pursuant to subsections (5) and (6) below) (the “Payment Fund”) shall be available for payments to Settlement Class Members. Defendant shall issue, or cause the Settlement Administrator to issue, via mail, a check to each Settlement Class Member who timely submits a valid Claim or Exclusion Form requesting to participate in the Settlement and establishing an Approved Claim and receipt of at least one Text Message during the Class Period. The checks for Approved Claims as described below (the “Approved Claims Payments”) sent to Settlement Class Members shall be valid for sixty (60) consecutive calendar days following the issue date. An “Approved Claim” means a claim submitted by a Settlement Class Member on a fully completed and signed Claim or Exclusion Form (in the form of Exhibit A) that: (i) identifies that Settlement Class Member’s cellular phone as a number that appears on the list of numbers that were sent text messages on behalf of Lithia, (ii) states how many text messages were received and whether the Settlement Class Member sent an opt out message via return text message, call or email, and (iii) is approved for payment by the Settlement Administrator. The amount of the payment for each Approved Claim shall be as follows:

(1) One Hundred Seventy-Five Dollars (\$175.00) for the first Text Message received by a Settlement Class Member.

(2) One Hundred Seventy-Five Dollars (\$175.00) for the second Text Message received by a Settlement Class Member 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 a Settlement Class Member who attempted to opt out after receiving the first Text Message.

(4) In the event that the amount of Approved Claims Payments exceeds the available Payment Fund, the amount of the settlement payments to Settlement Class Members pursuant to this Section III.C.1.a. will be reduced pro rata.

(5) In the event that the Court orders an Attorneys' Fees award of less than Six Hundred Thousand Dollars (\$600,000), the Court orders an Incentive Award to the Class Representative of less than Ten Thousand Dollars (\$10,000), or Class Administration costs are lower than One Hundred and Fifty Thousand Dollars (\$150,000), the amount of the Payment Fund will be increased pro rata.

(6) In the event that there are Payment Fund sums remaining after all received claims are reviewed and approved, then the amount of the Approved Claims Payments pursuant to this Section III.C.1 will be increased pro rata.

(7) The value of any checks sent to Settlement Class Members that have not been negotiated within sixty (60) days of the Effective Date will be donated to the Legal Foundation of Washington.

2. Settlement Administration.

a. Defendant shall select, engage and pay the fees and expenses of the Settlement Administrator. The "Settlement Administrator" shall be defined as Garden City Group and any individual or entity that Defendant approves or designates as successor Settlement Administrator.

b. The Settlement Administrator shall provide or supervise Notices to the Settlement Class as set forth in Section III.C.5; receive and review each Claim or Exclusion Form submitted; determine whether the submitting claimant is an eligible Settlement Class Member; determine whether the payment sought in the Claim or Exclusion Form should be an Approved Claim; determine the correct amount due each eligible Settlement Class Member who submitted an Approved Claim; and perform its other functions and duties set forth in the Agreement. The latest date for a Claim or Exclusion Form to be submitted and considered for approval (the "Claims Deadline") shall be sixty (60) days after the Notice, defined in Section III.C.5, is mailed. The Settlement Administrator shall prepare and distribute a list of all persons

who return a form indicating that they wish to be excluded from the Settlement to Class Counsel and counsel for the Defendant.

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.

3. Attorneys' Fees and Incentive Award.

a. Attorneys' Fees. 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.5 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 (5) business 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 Settlement 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 Order Approving Class Action Settlement and Judgment if there have been no objections to the Settlement Agreement, and, if there have been such objections, within five (5) business days after the Effective Date.

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

- a. preliminary approval of the Settlement and this Agreement;
- b. conditional certification of the Settlement Class 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.

5. **Notice and Claim or Exclusion Forms.** 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 (“Notice”) and a Claim or Exclusion Form by the following methods below.

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 Settlement Class Members. The Notice will be substantially similar to the form attached as Exhibit C, which will also enclose a postcard Claim or Exclusion Form, postage prepaid, to be completed and returned by Settlement Class Members who choose to make claims or who choose to be excluded from the Settlement.

b. **Telephone Support.** The Settlement Administrator will provide a toll free telephone number for Settlement Class Members who do not have access to a computer to obtain information about the Settlement Agreement. The telephone support will start on the initial date Notice is mailed pursuant to subsection a. above and remain active until sixty (60) calendar days after the Effective Date. 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 starting on the date that the Notices are mailed and continuing until sixty (60) calendar days after the Effective Date. The posting will be substantially similar to the full class Notice of the Settlement attached hereto as Exhibit D.

6. **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 Settlement Class Members with prejudice, in the form of Exhibit E attached hereto (the “Final Order Approving Class Action Settlement and Judgment”).

7. **Release.** Upon the Effective Date, the Released Parties shall be released and forever discharged, to the fullest extent permissible by law, by each and all of the Settlement Class Members for any claim, cause of action, or damage that they asserted, may have asserted, or could have asserted against the Released Parties arising out of, or in any way related to the Lawsuit or the receipt of or transmission of any Text Messages to any Settlement Class Member by or on behalf of any Released Party during the Class Period. All claims released or discharged pursuant to this section shall be referred to as “Released Claims.”

The “Released Parties” are Lithia Motors, Inc., DMEautomotive LLC (an intended beneficiary of this Agreement and Release), 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).

8. Dismissal with Prejudice. The Final Order Approving Class Action Settlement and Judgment shall include 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.

9. Objections. Any Settlement Class Member may object to the Settlement Agreement, including Class Counsel's request for attorneys' fees, by serving a written objection on the Settlement Administrator, no later than twenty (20) calendar days prior to the final settlement approval hearing. The objection should state:

- a. the full name and address, of the person objecting; and
- b. the basis of the objection.

The Settlement Administrator shall promptly transmit copies of any objections to Class Counsel and Counsel for the Defendant. Counsel for the Parties shall provide copies of any objections to the Court. If a Settlement Class Member fails to make objections, then she/he will be deemed to have waived any objections. Only Settlement Class Members who serve timely written objections can speak at the final settlement approval hearing.

10. Termination by Defendant. 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) Settlement Class Members 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. Settlement 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 Settlement Class Members, the attorneys' fees, costs or expenses to Class Counsel, or the incentive award to Plaintiff. Settlement 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:

- c. disapproves, sets aside, or modifies this Settlement Agreement;
- d. declines for any reason to enter or give effect to a Preliminary Approval Order;
- e. declines for any reason to enter or give effect to the Final Order Approving Class Action Settlement and Judgment; or
- f. 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 thirty (30) 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 Settlement 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.4. and III.C.5.;
- c. the Court has entered the Final Order Approving Class Action Settlement and Judgment, as provided in Section III.C.6., dismissing the Lawsuit with prejudice; and
- d. the judgment therein 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 E) 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 all appeals and all appellate review proceedings are concluded or the time for further appeals or review have expired. Upon the occurrence of the Effective Date:

- (1) the Settlement Agreement shall be the exclusive remedy for any and all Released Claims of the Settlement Class Members;
- (2) Defendant shall not be subject to liability or expense of any kind with respect to the Released Claims to any Settlement Class Member except as set forth herein; and
- (3) Plaintiff and the Settlement 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 retains 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 Settlement 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 Order Approving Class Action Settlement and Judgment 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 Settlement 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 Settlement 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

Settlement 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 Settlement 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 Settlement Class Members as Class Counsel deems appropriate. The Settlement Agreement and its Exhibits reflect the entire agreement of Plaintiff, the Settlement 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.7. 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 Settlement 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 the Effective Date 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 or Exclusion 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 – [Proposed] Final Order Approving Class Action Settlement and Judgment

IN WITNESS WHEREOF, the Parties enter into this Agreement this 16th day of February, 2012.

PLAINTIFF

LITHIA MOTORS, INC.

Kevin McClintic
Date of Signature: _____

By _____
Its _____
Date of Signature: _____

WILLIAMSON & WILLIAMS

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

c. EXHIBIT E - [Proposed] Final Order Approving Class Action Settlement and Judgment

IN WITNESS WHEREOF, the Parties enter into this Agreement this _____ day of _____, 2012.

PLAINTIFF

LITHIA MOTORS, INC.

Kevin McClintic

Kevin McClintic
Date of Signature: 2/14/12

By _____
Its _____
Date of Signature: _____

WILLIAMSON & WILLIAMS

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

c. EXHIBIT E – [Proposed] Final Order Approving Class Action Settlement and Judgment

IN WITNESS WHEREOF, the Parties enter into this Agreement this _____ day of _____, 2012.

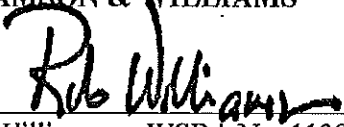
PLAINTIFF

LITHIA MOTORS, INC.

Kevin McClintic
Date of Signature: _____

By _____
Its _____
Date of Signature: _____

WILLIAMSON & WILLIAMS

By  _____
Rob Williamson, WSBA No. 11387
Kim Williams, WSBA No. 9077
Attorneys for Plaintiff
Date of Signature: 2/15/12

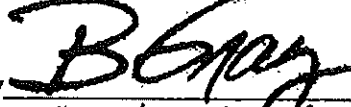
e. EXHIBIT E – [Proposed] Final Order Approving Class Action Settlement and Judgment

IN WITNESS WHEREOF, the Parties enter into this Agreement this _____ day of _____, 2012.

PLAINTIFF

Kevin McClintic
Date of Signature: _____

LITHIA MOTORS, INC.

By 
Its Executive Vice President
Date of Signature: 2-14-2012

WILLIAMSON & WILLIAMS

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

Exhibit A

Claim or Exclusion Form

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

YOU MUST SUBMIT YOUR CLAIM OR EXCLUSION FORM NO LATER THAN [DATE]. Please review a summary of the release in the notice accompanying this claim form. A copy of the complete release can be found on the settlement administrator's website and in the settlement agreement.

Please type or neatly print 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): _____

If you wish to participate in the settlement and submit a claim, please provide the following information:

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.

Dated: _____ Signature: _____

If you do not wish to participate in the settlement, please sign below in order to request to be excluded from the settlement:

I wish to request to exclude myself from being a member of the Settlement Class.

Dated: _____ Signature: _____

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, supplemental memoranda in support of the Motion for Preliminary Approval of the Proposed Class Action, 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 fall 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 or Exclusion Form and the Notice of Settlement of Class Action ("Class Notice"), substantially in the forms of Exhibits A, C and D 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 Settlement 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 or Exclusion 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, Settlement Class Members who make timely, valid approved claims will be paid \$175.00 for each text message they received and, if the second text was received after a Settlement 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 Payment Fund (\$1,740,000) to pay claims, the payments will be reduced pro rata. In the event that the Court orders an Attorneys' Fees award of less than Six Hundred Thousand Dollars (\$600,000), the Court orders an Incentive Award to the Class Representative of less than Ten Thousand Dollars (\$10,000), or Class Administration costs are lower than One Hundred and Fifty Thousand Dollars (\$150,000), the amount of the Payment Fund will be increased pro rata. In the event that there are Payment Fund monies remaining after all Approved Claims are received and processed, the amount of the Approved Claims Payments to Settlement Class Members will be increased pro rata. The value of any checks sent to Settlement Class Members that have not been negotiated within sixty (60) days of the Effective Date will be donated to the Legal Foundation of Washington.

V. REQUESTS FOR EXCLUSION

9. Members of the Settlement Class may request exclusion from the settlement by sending a completed Claim or Exclusion Form (Exhibit A to the Settlement Agreement) to the Settlement Administrator no later than 60 days after the Notices described above are published on the website 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 Settlement Class Members who do not request exclusion shall be bound by this Court's orders, including but not limited to the Final Order Approving Class Action Settlement 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 Settlement Class Member who objects to 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 Settlement Class Member who wishes to object to the Settlement Agreement must serve upon the Settlement Administrator 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 Settlement Class Member's membership in the Settlement Class and state the reasons for the objection. Only Settlement Class Members who have served such notices of objection will be entitled to be heard at the Final 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 Settlement 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 _____, 2012.

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

SUMMARY NOTICE OF SETTLEMENT OF CLASS ACTION

In April of 2011, commercial text messages were sent by or 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. The settlement class includes all persons who received such text messages on or after April 27, 2011, until and through the date of preliminary approval of the class settlement.

Lithia and McClintic, on behalf of all settlement 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 settlement class and may receive an award under the settlement by completing the enclosed postage prepaid "Claim or Exclusion" Form requesting participation in the settlement and providing your claim details. If your claim is approved and you received one or two text messages, 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 approved claims received exceeds the amount available to pay claims (\$1,740,000), then payments will be reduced pro rata. In the event that the number of approved claims received does not exhaust the amount available to pay claims, then approved claim payments will be increased pro rata.

You can exclude yourself from the settlement by marking the appropriate box on the enclosed Claim or Exclusion Form and placing it in the mail postage prepaid, or calling the settlement administrator as shown below.

If you wish to claim an award under this settlement, you must send in your Claim or Exclusion Form no later than _____, 2012. If you want to be excluded from the settlement, you must send in the Claim or Exclusion Form no later than _____, 2012. **If you do not request to be excluded from the settlement before _____, 2012, you will be deemed to have released (given up) all claims, but you will not receive any payment.**

Please read the full Legal 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 Legal Notice contains other details regarding the settlement, including the release that you would be giving unless you affirmatively request to be excluded from the settlement by timely submitting the Claim or Exclusion Form requesting exclusion. A summary description of the release is also set forth on the back of this letter.

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

RELEASE OF CLAIMS SUMMARY

This Release means that by participating in the settlement or by failing to exclude yourself from the settlement, you will be prohibited from suing any of the released parties for any claims relating to text messages you received that were sent on by or behalf of Lithia from April 21, 2007, until and through the Date of Settlement, which is [_____]. The Released Parties include Lithia Motors, Inc., and DMEautomotive LLC. When the Court gives Final Approval of the Settlement, Lithia and DMEautomotive will be released by you for any claim related to this Lawsuit concerning the receipt of any Text Messages sent to you by Lithia or DMEautomotive.

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 the order granting preliminary approval of the 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 settlement 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 Lawsuit 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 establish a settlement fund of \$2,500,00.00 and to make \$1,740,000 (called Payment Fund) of that sum available to make monetary payments to class members who submit a timely and valid claim or exclusion form and make a claim that is approved by the settlement administrator to be appointed by the Court. Settlement class members submitting approved claims shall be paid \$175.00 for each text message received. However, settlement class members 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 approved claims exceed the Payment Fund, the payments will be reduced pro rata. In the event that there are Payment Fund monies remaining after all approved claims are received and processed, the amount of the approved claims payments to settlement class members will be increased pro rata. In the event that the Court orders an attorneys' fees award to the attorneys to the settlement class of less than Six Hundred Thousand Dollars (\$600,000), the Court orders an incentive award to the class representative of less than Ten Thousand Dollars (\$10,000), or class administration costs are lower than One Hundred and Fifty Thousand Dollars (\$150,000), the amount of

approved settlement payments to settlement class members will be increased pro rata. The value of any checks sent to settlement class members that have not been negotiated (cashed) within sixty (60) days of the effective date of settlement will be donated 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 settlement class 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 representative and class counsel.

DISMISSAL OF ACTION AND RELEASE OF ALL CLAIMS

If the Court approves the proposed settlement, it will enter a final and binding judgment in the Lawsuit as to all settlement class members who do not request to exclude themselves from the settlement. The judgment will contain a release of all claims in the following form: Upon the Effective Date of the Settlement, the released parties shall be released and forever discharged, to the fullest extent permissible by law, by each and all of the settlement class members for any claim, cause of action, or damage that they asserted, may have asserted, or could have asserted against the Released Parties arising out of, or in any way related to the lawsuit or the receipt of or transmission of any text messages to any settlement class member by or on behalf of any Released Party during the class period.

The "Released Parties" are Lithia Motors, Inc., DMEautomotive LLC (a vendor of Lithia and an intended beneficiary of the Settlement Agreement), 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 Class Period means the period from and including April 21, 2007, until and through _____, the date of the order granting preliminary approval of the settlement. This Release means that by participating in the settlement or by failing to timely exclude yourself from the settlement, you will be prohibited from suing any of the Released Parties for any claims relating to text messages you received that were sent on by or behalf of Lithia from April 21, 2007, until and through _____.

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 PARTICIPATE IN THE SETTLEMENT

To participate in the settlement, you must complete a claim or exclusion form requesting participation in the settlement and providing your claim details. The claim or exclusion form was enclosed in the notice mailed to you, and is also available by contacting the Settlement Administrator at:

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

The claim or exclusion form must be mailed to the settlement administrator postmarked no later than _____ at the address above. The settlement administrator will verify the accuracy of information set forth in any submitted claim or exclusion form and determine whether you are entitled to a cash award. If you do not submit a valid and timely claim or exclusion 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 must complete a claim or exclusion form, requesting to exclude yourself from the Settlement. The claim or exclusion form was enclosed in the notice mailed to you, and is also available by contacting the settlement administrator. If you want to be excluded, you must send the postage prepaid claim or exclusion form to the settlement administrator identified below, postmarked no later than _____.

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

If you timely request exclusion from the settlement, you will be excluded from the settlement, 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 participate in the settlement but object to some or all of it, you must deliver a written objection to the settlement administrator at the address set forth herein. Any written objections should state: (a) the full name and address of the person objecting,” and (b) the basis

of the objection. Settlement class members who fail to make objections in the manner specified above will be deemed to have waived any objections. Only settlement class members who sent timely written objections can speak at the fairness hearing. To speak at the hearing, you must deliver or postmark the papers to the settlement administrator no later than [DATE]. 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.

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.

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: _____, 2012 By: _____
HONORABLE RICHARD A. JONES
UNITED STATES DISTRICT JUDGE

Exhibit E

[Proposed] Final Order Approving Class Action Settlement and Judgment

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KEVIN MCCLINTIC on behalf of himself and all others similarly situated,)	No. 2:11-cv-00859-RAJ
Plaintiff,)	[PROPOSED] FINAL ORDER AND
v.)	JUDGMENT
LITHIA MOTORS, INC.,)	Note for Hearing: _____
Defendant.)	
)	
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THIS MATTER has previously been considered by the Court which granted the Plaintiff's Motion for Preliminary Approval of the Settlement on _____ (Dkt No. ____). The Plaintiff's Motion for Final Approval of the Settlement Agreement and entry of a final order and judgment concluding this action is now before the Court. The Court having considered the arguments of the parties, the papers submitted in support thereof, and all other matters properly before the Court, hereby ORDERS that:

1. Except as specifically noted below, the Court for purposes of this Order adopts the definitions set forth in the Settlement Agreement unless otherwise defined below.
2. The Class means:

[PROPOSED] FINAL ORDER AND
JUDGMENT - 1
Case No. C11-0859 RAJ

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. Settlement 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 Settlement 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 Settlement Class Members, pursuant to Fed. R. Civ. P. 23(e).

7. Plaintiff and all Settlement Class Members (1) are bound by this Order, and as of the Effective Date as defined in the Settlement Agreement (2) are forever barred from instituting, maintaining, or prosecuting, and hereby release and forever discharge, to the fullest extent permissible by law, any claim, cause of action, or damage that they asserted, may have asserted, or could have asserted against the Released Parties arising out of, or in any way related to this Lawsuit or the receipt of or transmission of any Text Messages to any Settlement Class Member by or on behalf of any Released Party during the Class Period. The "Released Parties" are Lithia Motors, Inc., DMEautomotive LLC (a vendor of Lithia and an intended beneficiary of this Agreement and Release), 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).

8. 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 Settlement Class Member, except insofar as such rights, claims, or defenses are expressly released or discharged by this Order.

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 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.

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

11. The Court approves and directs payments as provided in Section III.C. of the Settlement Agreement.

12. 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.

13. 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.

14. 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.

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

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

DATED this _____ day of _____, 2012.

Honorable Richard A. Jones
United States District Judge

ATTACHMENT 1

[Spreadsheet of names requesting exclusion]