

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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

Plaintiff,

v.

LITHIA MOTORS, INC.,

Defendant.

CLASS ACTION

No. 2:11-cv-00859-RAJ

DECLARATION OF ROB WILLIAMSON
IN SUPPORT OF PLAINTIFF'S MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT

Noted for Hearing: October 11, 2012 @
2:00 p.m.

Rob Williamson hereby declare as follows:

1. My partner, Kim Williams, and I are counsel for Plaintiff and the proposed Settlement Class in this action.

2. This case was resolved relatively soon after the complaint was filed. It involved claims under the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, and various state laws, including RCW 80.36.400, RCW 19.190.060 and RCW 19.86. Lithia expressed its desire to attempt to settle the claims of this case utilizing the services of the Honorable Terrence Lukens of JAMS, in Seattle. The Settlement Agreement provides for payments \$175.00 to class members for each text they received, except that if a class member received a second text after requesting Lithia to stop sending text messages, they will be paid \$500.00 for the second text, for

DECLARATION OF ROB WILLIAMSON IN SUPPORT OF PLAINTIFF'S
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT - 1
(No. 2:11-cv-00859-RAJ)

**WILLIAMSON
& WILLIAMS**

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1 a total of \$675.00. The Settlement Agreement also provided that payments were to be adjusted
2 based upon claims rates. See paragraph 8, *infra*. In addition, Defendant is required to pay all
3 costs of settlement administration, including costs of notice (estimated to be \$150,000.00),
4 litigation expenses and costs of the Plaintiff and the class, and an incentive award to the class
5 representative.

6
7 3. The parties agreed to use The Garden City Group (“GCG”) as the settlement
8 administrator. The costs of administration incurred to date and any additional costs GCG incurs
9 through final distribution will be paid by Defendant.

10 4. The names of the persons requesting exclusion are listed on Attachment 1 to the
11 proposed Final Order and Judgment and as Exhibit B to the Declaration of Jennifer M. Keough
12 of GCG.

13
14 5. The Court has also been asked to approve an award of attorney’s fees and costs of
15 a total not to exceed \$600,000.00 and a class representative service award of \$10,000.00 for
16 Plaintiff McClintic. A separate motion regarding the payments to Counsel and Plaintiff was
17 submitted to the Court and posted on the website created by the settlement administrator on July
18 10, 2012 as required in the Preliminary Approval Order (Dkt. #37). There have been no
19 objections to the requested fees for Counsel or to the service award for Plaintiff.

20
21 6. In this case, the parties proposed a notice plan specifically designed to reach the
22 maximum number of members of the class. Direct mail notice was accomplished for the vast
23 majority of class members. This was the most effective way to provide class members with the
24 requisite information about this case. In addition, a long form of notice was posted on a website
25 maintained by GCG, which also included a downloadable version of the Claim or Exclusion
26

1 form and various court documents, including the Settlement Agreement, the Preliminary
2 Approval Order, the Order Approving Class Notice, and the Motion for Award of Attorneys'
3 Fees and Costs and Service Award to the Named Plaintiff.

4
5 7. The notice summarized the settlement in plain language and identified the
6 deadlines for making claims, opting out or objecting. The notice also identified Class Counsel
7 and the class representative, the date when Class Counsel would submit their motion for fees and
8 an incentive award for the named Plaintiff, and described the relief that would be provided to
9 class members. Counsel for the parties believes the notice was an adequate and easily
10 comprehended explanation of the settlement and its terms to class members.

11 8. As set forth in the Declaration of Jennifer Keough, GCG approved 2703 claims,
12 and identified five categories of claims which were considered deficient. The parties have
13 agreed, subject to the Court's approval, to permit the claims of categories 1 through 4 and
14 disallow all of category 5. With respect to categories 2 and 3, which total 368, the parties agree
15 to treat the claims as asserting the receipt of one text only. With respect to category 1, which
16 total 6 claims, one class member will be deemed to have asserted the receipt of one text only,
17 three will deemed to have asserted the receipt of two texts and two will be deemed to have
18 asserted the receipt of a second text after attempting to opt out of the texting from Defendant.
19 Category 4 includes 39 class members who signed both boxes on the Claim or Exclusion Form.
20 The parties are mindful that the Court required the Form to include this language: "If you enter
21 information in both boxes, your response will be invalid, and you will be deemed to have
22 submitted no response." Nevertheless, it is clear that each of these class members intended to
23 make a claim as they completed the box, "Participating In The Settlement." Included within the
24
25
26

1 39 class members, eight requested payment for one text, seven claimed receipt of two texts,
2 fifteen claimed receipt of a second text after trying to opt out, and nine did not indicate receipt of
3 one or two texts and would be deemed to have made a claim for one text only.

4
5 If all four categories of deficient claims are allowed, then a total number of claims for
6 one text only would be 992, for 2 texts only would be 787, and for receipt of a second text after
7 attempting to opt out would be 1337. This would amount to a total number of claims of 3116.
8 Payment of those claims at \$175, \$350, and \$675, respectively, would total \$1,351,525
9 (\$173,600, \$275,450, \$902,475, respectively). The Settlement Agreement provides for
10 \$1,740,000 to be available for claims. Accordingly, payment to each class member to the
11 increased by 28.74%. Thus a class member entitled to \$175 would be paid \$225.30, and one
12 entitled to \$350 would be paid \$450.60, and one entitled to \$675 will be paid \$869.

13
14 Payments in these amounts compare favorably to other settlements in which we have
15 been involved, and factually our knowledge represent the most ever been paid for violations of the
16 TCPA.

17 9. In this case, Class Counsel believed the Plaintiff's case was strong. Defendant
18 would have certainly argued that class members had consented, implicitly or otherwise, to the
19 receipt of text messages, and would have raised objections to class certification because of
20 individual issues regarding consent.

21
22 10. There is no question that continued litigation in this case would involve
23 formal discovery and the potential for discovery disputes, motion practice, protracted trial
24 preparation and attendant expenses for all parties and a lengthy trial during which numerous
25 witnesses, including experts for both sides, would likely be called to testify.
26

1 Further, the trial would likely be followed by an appeal on one or more issues, and the
2 total duration of this litigation would extend for the next several years to come. The settlement
3 assures a timely and relatively expeditious resolution of the case for all concerned.
4

5 11. As set forth in our Declaration in Support of Preliminary Approval (Dkt. #20) and
6 Motion for Attorney Fees (Dkt. #39), the experience of class counsel is extensive, both with
7 respect to consumer class action litigation in general, as well as litigation involving state and
8 federal violations of laws restricting robo-call and junk fax solicitations.

9 12. At the time we filed our Motion for Attorney Fees, we estimated that a combined
10 additional 25 hours would be needed to complete our work on this case. In fact, we have spent
11 an additional 39 hours working on claims review and administration, the final approval pleadings
12 and on other matters related to settlement approval.
13

14 13. The proposed Class in this case meets the numerosity, commonality, and
15 typicality standards. Defendant identified approximately 59,000 unique Class Members.

16 14. In evaluating the proposed Settlement, Plaintiff and his counsel have considered
17 the expense and length of time necessary to prosecute the claims through trial and possible
18 appeal, the claims asserted by the Class, the logistic complexities involved in resolving such
19 claims, and the defenses available to the Defendant. The risk, expense, and uncertainty in class
20 actions and defenses asserted in this case were all considered.
21

22 15. Based on these and other considerations, Plaintiff and his counsel have concluded
23 that it is in the best interest of the members of the class to compromise and settle without further
24 adversarial proceedings.

25 16. Attached hereto as Exhibit A is Dan McLaren's Claim Form.
26

1 I declare under penalty of perjury under the laws of the State of Washington that the
2 foregoing is true and correct.

3 Dated this 28th day of September, 2012 on Bainbridge Island, WA.
4

5 WILLIAMSON & WILLIAMS
6

7 By /s/ Rob Williamson
8 Rob Williamson, WSBA #11387
9 WILLIAMSON & WILLIAMS
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11 Bainbridge Island, WA 98110
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15 Attorneys for Plaintiff
16
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EXHIBIT A

**MUST BE
POSTMARKED
ON OR BEFORE
SEPTEMBER 14, 2012**

McClintic v. Lithia Motors, Inc. Class Action Litigation
c/o GCG
P.O. Box 9786
Dublin, OH 43017-5686
Toll-Free: 1 (888) 624-6705

LAD



Claim No: LAD7458617 Control No: 7176174414



DAN MCLAREN
755 STEVEN STREET #223
MEDFORD, OR 97504



Claim or Exclusion Form

McClintic v. Lithia Motors, Inc. Class Action Litigation
No. C11-859RAJ, United States District Court for the Western District of Washington

YOUR CLAIM OR EXCLUSION FORM MUST BE POSTMARKED NO LATER THAN SEPTEMBER 14, 2012. Please review a summary of the Release in the Notice accompanying this Claim or Exclusion Form. A copy of the complete Release can be found on the Settlement Administrator's website at www.TextClassSettlement.com and in the Settlement Agreement.

Please type or neatly print the following information. The Settlement Administrator will use this information solely for reviewing your claim.

Name (first, middle, and last):
 Daniel Richard McLaren

Residential Street Address:
 755 Stevens St #223

City: Medford State: OR Zip Code: 97504

Home Telephone Number: (541) 778-0926 Cellular Phone Number that Received Text Message(s): (541) 778-0926

Please complete only one of the following two boxes. If you enter information in both boxes, your response will be invalid, and you will be deemed to have submitted no response.

PARTICIPATING IN THE SETTLEMENT

If you wish to 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: 9/11/2012 Signature: [Signature]

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not wish to participate in the settlement, please sign below:

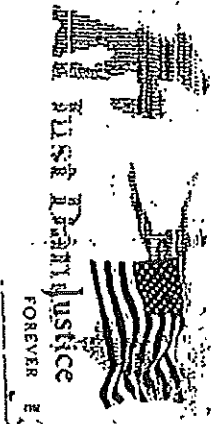
I wish to request to exclude myself from being a member of the Settlement Class.

Dated: _____ Signature: _____

McLaren
755 Stevens St #223
Medford, OR 97504

WEEDFORD OR 975

14 SEP 2012 PM 1 L



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Class Action Litigation
c/o GCLB
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