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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

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KEVIN McCLINTIC on behalf of	)	C-11-859-RAJ
himself and all others	)	
similarly situated,	)	SEATTLE, WASHINGTON
	)	
Plaintiffs,	)	October 11, 2012
	)	
v.	)	Settlement
	)	
LITHIA MOTORS, INC.	)	
	)	
Defendant.	)	

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VERBATIM REPORT OF PROCEEDINGS  
BEFORE THE HONORABLE RICHARD A. JONES  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: Roblin J. Williamson  
Kim Williams  
Williamson & Williams  
17253 Agate Street NE  
Bainbridge Island, WA 98110

For the Defendant: Grant S. Degginger  
Erin M. Wilson  
Lane Powell, PC  
1420 Fifth Avenue  
Suite 4100  
Seattle, WA 98101

1 THE CLERK: We are here in the matter of McClintic  
2 versus Lithia Motors Inc., Cause No. C-11-859, assigned to  
3 this court. If counsel could please rise and make your  
4 appearances.

5 MS. WILLIAMS: Kim Williams for the plaintiff.

6 MR. WILLIAMSON: Rob Williamson for the plaintiff.

7 THE COURT: Good afternoon to the both of you.

8 MR. DEGGINGER: Grant Degginger for the defendant,  
9 Your Honor.

10 THE COURT: Good afternoon.

11 MS. WILSON: Erin Wilson for the defendant, as well.

12 THE COURT: Good afternoon to you, as well.

13 We are scheduled here today for the final approval of the  
14 proposed settlement agreement. Do the parties wish to make  
15 any offerings to this court, as it seems things are pretty  
16 straightforward as to where we are right now. But I'll  
17 certainly give you the opportunity to make any comments or  
18 offerings before the court makes its ultimate determination.

19 MS. WILLIAMS: Thank you, Your Honor.

20 Well, this is a settlement I think you're pretty familiar  
21 with, Your Honor, so I won't run down all the details for  
22 you. But we're here to seek approval of the settlement and  
23 to answer any questions that the court may have about the  
24 final judgment and order.

25 In particular, as you can see from the form of judgment

1 and order that we submitted, we were actually quite specific  
2 about the dollar amounts that each group that received the  
3 text messages: The group that received one text message; the  
4 group that received a second one after attempting to opt out;  
5 and the group that received just two text messages, will get  
6 under -- the settlement has actually gone up somewhat because  
7 of the claims rate from the \$175, \$350 and \$675 that we had  
8 originally settled upon.

9 So those numbers will change a little bit, if the court  
10 does not accept counsel's recommendation as to the  
11 disposition of the four or five groups of claims that had  
12 deficiencies.

13 As is pointed out in the motion for final approval at  
14 pages four and five, and also discussed in Jennifer Keough's  
15 declaration, from Garden City Group. There were 6 persons  
16 who did not sign the claim; there were 106 where the claim  
17 information was inconsistent, they said yes to having  
18 received one text, but also yes to receiving a second one  
19 after attempting to opt out. For that group we recommend  
20 that those claimants are paid as if they received one text.  
21 For those that didn't sign, we're recommending that they pay  
22 -- be paid for the number they claimed, even though they  
23 forgot to sign the claim form.

24 Then there are 262 that neglected to include the number of  
25 texts received. We're recommending that they be paid as if

1 they received one text. And then this is the group that you  
2 might have the most concern about: There were 39 people who  
3 completed the box participating in the settlement, and  
4 indicated the number of texts they received, but they -- and  
5 they signed the claim, but they is signed the exclusion.  
6 Evidently assuming they saw a signature line and thought they  
7 had to sign twice.

8 And Your Honor had ordered that the claim form would be  
9 invalid if there was information in both boxes. So, we think  
10 those people intended to make a claim. If you disagree, we  
11 can tweak the numbers a little bit so that they will be  
12 excluded and the class members with legitimate claims will  
13 receive a little bit more.

14 And then there were 478 claims where the listed phone  
15 number was not included in the original data of phone numbers  
16 that received text messages. All of these claim forms were  
17 downloaded from the settlement website rather than being  
18 submitted by individuals who received the direct-mail notice.  
19 And we are recommending that those claims not be paid,  
20 because the potential for fraud is just too high. The phone  
21 numbers that they included on their claim forms did not match  
22 the phone numbers in the data for anyone who received one of  
23 these text messages. So that's the rundown on those five  
24 categories of claims.

25 The costs of administration are coming in a little higher

1 than the 150 that we had predicted, but Lithia has agreed to  
2 pay the additional costs above and beyond the settlement  
3 amount.

4 THE COURT: So any overage, Lithia is going to cover?

5 MS. WILLIAMS: That's correct.

6 And then attorneys fees and costs, this is a common fund  
7 case, the attorneys fee request is for approximately  
8 23.8 percent of the common fund. There have been no  
9 objections filed to the fees and costs request by counsel, or  
10 the requested incentive, or service award for Mr. McClintic.  
11 And he has been of great assistance to us in this litigation  
12 from the beginning, reviewing the pleadings. He's been in  
13 regular contact with us, and was throughout the mediation,  
14 and he's been a strong class representative.

15 THE COURT: Counsel, can you give me any more  
16 specifics of what he was doing? You say, "Reviewing  
17 pleadings". How comprehensive was his involvement and what  
18 else specifically was he doing? Because the court normally  
19 doesn't award an incentive payment that high.

20 MS. WILLIAMS: Right. We've had some that high but  
21 not all or even most. So it is a generous service award. He  
22 actually is one of the few clients we've had that took the  
23 class action complaint draft and, you know, had a few changes  
24 in the way we had drafted it in terms of the facts. He was  
25 very concerned and responsible about the fact that it should

1 all be completely accurate.

2 He did not attend the mediation. We were in touch with  
3 him by phone during the mediation. And as you know, this  
4 case settled fairly quickly. So it settled before he was  
5 asked to submit to a deposition.

6 THE COURT: Let me ask you this, counsel. To the  
7 best that you can recall, if you were to cross reference your  
8 attorney's invoices for time spent with your client, or  
9 communicating with your client, what would be your ballpark  
10 of the number of hours that you've actually spent with him?

11 MS. WILLIAMS: I would say five to ten hours.

12 THE COURT: And five to ten hours actual time with  
13 you, that's a pretty healthy and generous payment for that  
14 small amount of time.

15 MS. WILLIAMS: Yes, it is, Your Honor.

16 THE COURT: Okay. Okay.

17 MS. WILLIAMS: We feel he deserves it, but we respect  
18 your opinion, whatever you decide.

19 THE COURT: All right.

20 MS. WILLIAMS: And then as you also know, Your Honor,  
21 there was one objector to the settlement, Mr. McLaren; he  
22 objected through his Chicago counsel. And they're not  
23 present today. He is the same individual that attempted to  
24 intervene in this action earlier on. The court denied that  
25 motion. And he is the plaintiff in a case in Oregon against

1 Lithia and DME. His Oregon claim against Lithia was  
2 dismissed shortly before he filed his claim and his objection  
3 in this case.

4 He objects based on a couple of grounds: One, that the  
5 settlement does not provide for any injunctive relief. We're  
6 not concerned about injunctive relief. His objection does  
7 not suggest what type of injunctive relief might be  
8 appropriate. And this text messaging campaign that this case  
9 is about was in April of 2011, and it was a one-time  
10 occurrence. Lithia is no longer using this form of  
11 marketing. So we don't see the need for an injunction.

12 He also objects that there was no confirmatory discovery  
13 or subpoenas to third parties, as part of the settlement in  
14 this case. We likewise respond that there was no need for  
15 that. The data in this case has actually been quite good,  
16 and as the declaration of Thomas Leonard, who is the Chief  
17 Information Officer at DME, who was responsible for this text  
18 messaging campaign, or handled it for Lithia, as his  
19 declaration in support of Lithia's response to the objection  
20 attests that there are 59,178 class members who received at  
21 least one text.

22 And DME has arrived at that number in consultation with  
23 the text delivery vendor 3CI. So, we know exactly how many  
24 class members there are, the attempt to reach all of them  
25 through direct mail notice and reverse directory search, and

1 actually almost over-noticing so that we were as sure as  
2 possible that we reached these individuals, was quite  
3 thorough.

4 And we believe that the objection should be overruled,  
5 that the settlement is fair, reasonable, and adequate, and  
6 the court should approve it. Thank you.

7 THE COURT: All right. Thank you, counsel. Counsel,  
8 any additional input?

9 MR. DEGGINGER: Really nothing else to add, Your  
10 Honor, unless the court has questions, I'd be happy to  
11 answer.

12 THE COURT: I have no specific questions.

13 Counsel, the court is going to make the following  
14 determinations: First of all I'll note that the objecting  
15 party was limited to one individual, and that was  
16 Mr. McLaren. Mr. McLaren is not present today, and I will  
17 note for the record that the only people present are court  
18 personnel and the attorneys who have been identified on the  
19 record.

20 The two objections that Mr. McLaren has identified, I  
21 believe counsel has adequately addressed in her  
22 representations this afternoon. The court does not see the  
23 value of any injunctive relief, because at this point in time  
24 it merely would be nothing more than saying, just follow the  
25 law. You don't need an injunction to say, follow the law.



1 And, second, he doesn't provide the court with any  
2 affirmative indication of what he believes would be  
3 appropriate injunctive relief. So for those reasons, the  
4 court doesn't believe that that particular objection is  
5 meritorious or worth further comment by the court. So for  
6 that reason that particular objection is denied.

7 As to the type of claim form, the court has previously  
8 addressed that question. The court is satisfied that the  
9 type of form that was sent out was adequate and sufficient.  
10 The court understands it appears that Lithia does know who  
11 sent -- Lithia contends they don't know who actually received  
12 the texts, but the court is satisfied that the claim  
13 processing forms that were sent out were sufficient and  
14 adequate to give any individual the opportunity to file a  
15 claim. So for those reasons the court will deny and overrule  
16 the objections provided by Mr. McLaren.

17 As to the attorneys fees, I'm satisfied that the attorneys  
18 fees requested will be granted in the full amount. The  
19 request for the \$10,000 incentive payment, I believe is the  
20 requested amount, is what I would characterize  
21 extraordinarily high. Counsel has characterized it somewhere  
22 in the range of five to ten hours of actual time with  
23 counsel. It would appear that Mr. McClintic would be  
24 receiving somewhere between \$2,000 to \$1,000 an hour for his  
25 work. And I think that would probably cover at least all of

1 your attorneys fees for this afternoon's appearance. I don't  
2 believe he's done that type of work and deserves that kind of  
3 fee.

4 So that will probably be reduced to somewhere in the  
5 neighborhood of somewhere around \$1,000, as the gesture  
6 demonstrates the level of work he's actually done in this  
7 case.

8 I'm also satisfied that the amount for the class  
9 administrator is sufficient. Counsel has clarified that  
10 Lithia is going to pay for any overage, and that meets the  
11 court's concerns.

12 So, that appears to be the only real issues that we have  
13 to address. I will let you know that I will approve the  
14 settlement and request for attorneys fees as indicated. I'll  
15 make the affirmative finding on the record that what's been  
16 presented to this court by way of resolution of settlement is  
17 fair, reasonable, and adequate. And, counsel, final approval  
18 by way of an order should be out in about a week's time from  
19 now.

20 Was something else to address at this time.

21 MR. WILLIAMSON: Your Honor, if Mr. McClintic is  
22 reduced to whatever amount, there will be some extra money,  
23 which either we painstakingly allocate among all the class,  
24 or agree could go to the law fund, along with uncashed  
25 checks. We just need your guidance in the final order on

1 that.

2 THE COURT: That will be reflected in the final  
3 order.

4 MR. WILLIAMSON: Thank you.

5 THE COURT: Anything further, counsel?

6 MR. DEGGINGER: Nothing further, Your Honor.

7 THE COURT: Thank you all for coming this afternoon.  
8 I appreciate your time and effort. I applaud your efforts in  
9 getting this thing resolved in the manner that you did.  
10 Thank you for being here. Have a good day.

11 (The proceedings recessed.)

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## C E R T I F I C A T E

I, Debbie K. Zurn, RPR, CRR, Court Reporter for the United States District Court in the Western District of Washington at Seattle, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I have caused said stenographic notes to be transcribed under my direction and that the foregoing pages are a true and accurate transcription to the best of my ability.

Dated this 6th day of November, 2012.

*/s/ Debbie Zurn*

DEBBIE ZURN  
OFFICIAL COURT REPORTER