

# **If you purchased a “Tire Protection Plan” from Express Tire on or after August 27, 2008, you could be entitled to the benefits of a class action settlement.**

*This Notice and its contents have been approved by the Superior Court of California for the County of San Diego. This is not a solicitation from a lawyer*

The purpose of this Notice is to inform you of your rights under the settlement, as well as your rights to opt-out of the settlement and plaintiff class or object to the settlement.

- The contents of this Notice are for customers of L&M Tire Company, Inc., a California corporation, d/b/a Express Tire (hereinafter “Express Tire”) who purchased a “Tire Protection Plan” (hereinafter the “TPP” or “TPP Plan”) from Express Tire on or after August 27, 2008. All such customers of L&M are referred to in this Notice as the “Plaintiff Class”.
- The settlement will provide a store credit to members of the Plaintiff Class of **\$10.00 for each TPP Plan purchased** between (and including) August 27, 2008 and November 5, 2013. For example, if you purchased four (4) TPP Plans you would be entitled to a credit of \$40.00. This store credit will be valid for one (1) year and can be combined with any other sales or special offers made by Express Tire. The store credit will not in any way invalidate or cancel coverage under any active TPP Plan.
- The Court-approved lawyers for the Plaintiff Class will ask the Court for up to \$355,000 in attorney fees and expenses for investigating the facts, litigating the case, and negotiating the settlement. In addition, the person who brought the claims on behalf of the Plaintiff Class, known as the “Class Representative”, will ask the Court for up to \$5,000 for bringing the claims, participating in the lawsuit, and assuming risks on behalf of the Plaintiff Class. The Court will have the power to award a lesser sum, if the Court finds either request to be unreasonable. The payment of attorney fees and the class representative fee are separate from the compensation given to the Plaintiff Class, will not come out of any fund to be paid to the Plaintiff Class, and will not reduce your recovery or the recovery of the Plaintiff Class.
- The two sides disagree as to whether Express Tire violated the law through its sale of the TPP, and the settlement represents the results of an arms-length negotiation.
- **Your legal rights are affected whether you do or don’t act. Read this notice carefully.** Your options are: (1) Do nothing and be eligible for the benefits of the settlement; (2) Exclude yourself and be able to bring your own lawsuit against Express Tire regarding its sale of the TPP; (3) Go to a hearing and ask to speak in Court about the fairness of the settlement; or (4) Object and write to the Court about why you don’t like the settlement.
- Your rights and options—**and the deadlines to exercise them**—are explained below.
- The Court still has to decide whether to approve the settlement. You will be entitled to the benefits of the settlement if it gets approved. Please be patient.

## **AM I A MEMBER OF THE PLAINTIFF CLASS?**

You are a member of the Plaintiff Class if you are within the following description: **“All persons who are citizens of the State of California and who at any time after August 27, 2008, purchased L&M Tire’s Tire Protection Plan.”**

## **WHAT IS A CLASS ACTION?**

In a class action, one or more people called Class Representatives (in this case Lance Rodgers) sue on behalf of people who have similar claims. All these people are a Class or Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. Judge John S. Meyer of the California Superior Court in San Diego is in charge of this lawsuit. The lawsuit is captioned *Lance Rodgers v. L&M Tire Company, Inc., et al.*, Case Number 37-2012-00103186-CU-BT-CTL (the “Lawsuit”).

## **WHAT IS THE LAWSUIT ABOUT?**

In the Lawsuit, the Plaintiff Class alleges that Express Tire offers for sale a written TPP, which the Plaintiff Class alleges is a “vehicle insurance contract” under the California Insurance Code. The Plaintiff Class alleges that Express Tire’s sale of the TPP violated the Insurance Code in the following ways:

- The Plaintiff Class alleges that Express Tire is legally required to have either insurance coverage for its obligations under the TPP, or a net worth of at least one hundred million dollars (\$100,000,000), and that Express Tire has neither.
- The Plaintiff Class alleges that Express Tire has failed to make a disclosure which the Plaintiff Class has alleged Express Tire was required to make in regard to the alleged insurance-or-net-worth requirement.
- The Plaintiff Class alleges that the text of the TPP is legally required to conspicuously print in bold type both the language in the TPP that excludes coverage, and the language in the TPP that imposes duties upon the purchaser, and that Express Tire has allegedly failed to comply with these alleged legal requirements.
- The Plaintiff Class alleges that the text of the TPP is legally required to state the obligor’s full corporate name (or a fictitious name approved by the Insurance Commissioner), and that Express Tire has allegedly failed to comply with this alleged legal requirement.
- The Plaintiff Class alleges that the TPP is legally required to state the name of the purchaser and the name of the seller, and that Express Tire has allegedly failed to comply with this alleged legal requirement.
- The Plaintiff Class alleges that the TPP is legally required to conspicuously state the TPP’s purchase price, and that Express Tire has allegedly failed to comply with this alleged legal requirement.
- The Plaintiff Class alleges that the TPP is legally required to contain a clear description and identification of the covered product, and that Express Tire has allegedly failed to comply with this alleged legal requirement.
- The Plaintiff Class alleges that the TPP is legally required to state the consequences of any failure of the purchaser to provide preventative maintenance or perform any other obligations, and that Express Tire has allegedly failed to comply with this alleged legal requirement.
- The Plaintiff Class alleges that the TPP is legally required to contain a step-by-step explanation of the procedure that the customer should follow in order to obtain performance of any obligation under the TPP including whether the costs of transporting the product for service or repairs will be paid by Express Tire, and that Express Tire has allegedly failed to comply with this alleged legal requirement.
- The Plaintiff Class alleges that the TPP is legally required to describe any right to cancel the TPP if the purchaser returns the covered product or the product is sold, lost, stolen, or destroyed, or, if there is no right to cancel or the right to cancel is limited, a statement of that fact, and that Express Tire has allegedly failed to comply with this alleged legal requirement.
- The Plaintiff Class alleges that the TPP is legally required to state that it is cancelable by the purchaser within the first 60 days after receipt of the contract, and that it is legally required to disclose in a specified manner the customer’s cancellation and refund rights, and that Express Tire has allegedly failed to comply with these alleged legal requirements.

In the Lawsuit, the Plaintiff Class alleges that Express Tire’s above alleged violations of the Insurance Code gave rise to legal claims under California’s Unfair Competition Law (Cal. Bus. Prof. Code § 17200, et seq.) and the Consumer Legal Remedies Act. The Plaintiff Class sought recovery of the monies which Express Tire obtained through sale of the TPP through alleged unfair competition, actual and exemplary damages which the Plaintiff Class contended Express Tire’s customers have suffered as a result of the practices described above, as well as an injunction (i.e., a court order) requiring Express Tire to cease and desist from the alleged unlawful acts.

Express Tire denied, and continues to deny, that it has engaged in any improper conduct, or that it has any liability to anyone in relation to the allegations of the Lawsuit. The Court previously determined that the Lawsuit should proceed as a class action. In permitting the Lawsuit to proceed as a class action, the Court made no determination of the merits of the action (that is to say, the Court has not, as yet, made any determination whether the Plaintiff Class have any valid claim against Express Tire).

### **WHY IS THERE A SETTLEMENT?**

The Court did not decide in favor of the Plaintiff Class or Express Tire. The Plaintiff Class thinks that it could have won between approximately \$6.44 and \$8.00 per TPP sold if it had won. Express Tire thinks that the Plaintiff Class would not have won anything from a trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they avoid the cost of a trial, the uncertainty of the outcome of a trial, and the people affected will get compensation. The Class Representative and the attorneys for the Plaintiff Class think the settlement is best for all members of the Plaintiff Class.

### **THE SETTLEMENT BENEFITS—WHAT YOU GET AND MUST DO**

The parties have now reached a proposed settlement of the Lawsuit (the “Settlement”) and the Court has made a preliminary determination that the Settlement would be fair, adequate and reasonable.

The Settlement will provide a store credit to members of the Plaintiff Class of **\$10.00 for each TPP Plan purchased** between (and including) August 27, 2008 and November 5, 2013. For example, if you purchased four (4) TPP Plans you would be entitled to a credit of \$40.00. This store credit will be valid for one (1) year and can be combined with any other sales or special offers made by Express Tire. The store credit will not in any way invalidate or cancel coverage under any TPP Plan that has not otherwise expired by its terms. The store credit certificate will be available for download at [www.ExpressTire.com](http://www.ExpressTire.com) and available at Express Tire’s retail locations. Express Tire will verify your purchase(s) of the TPP prior to issuing the credit certificate.

In addition, Express Tire states in the Settlement that it has stopped selling the TPP.

### **THE LIMITED RELEASE OF YOUR CLAIMS AGAINST EXPRESS TIRE**

By participating in the Settlement, each Class Member is giving up his or her right to bring a separate lawsuit for claims which arise from or are related, in any way, to the claims alleged in the Lawsuit or arising out of Express Tire’s alleged violation of various consumer protection statutes including, but not limited to, the California Insurance Code or Song-Beverly Consumer Warranty Act (Civ. Code Section 1791 et seq.) through its sale of the TPP.

The Settlement, however, does not affect any release on behalf of any Class Member who opts out by signing and timely returning the opt-out notice. Nor does the Settlement affect any release of any obligation Express Tire has, or may have, to perform services under any TPP previously sold, or under any warranty which may have previously been made by Express Tire. The release does not apply to any claims for bodily injury or property damage arising from the sale of any tires by Express Tire.

### **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If, after reading this Notice, you wish to opt-out of (not be included in) the Plaintiff Class and the Settlement, you must complete, sign, and mail in your Request for Exclusion using the form available for download at <http://cases.GCGInc.com/ExpressTire/> and available at Express Tire’s retail locations. Make sure to fill out the form completely. You must mail your exclusion request postmarked no later than **July 25, 2014** to:

Rodgers v. L&M Tire Company  
c/o GCG  
P.O. Box 10089  
Dublin, OH 43017-6689

If you opt-out, you will not receive any benefits under the Settlement and cannot object to the Settlement. However, if you opt-out you will not be legally bound by anything that happened in the Lawsuit and will be able to sue Express Tire relating to the issues in the Lawsuit. If you do not opt-out, you will be included in the Plaintiff Class, will receive the above-described benefits and will not be able to sue Express Tire relating to the issues in the Lawsuit.

### **CLASS COUNSEL AND CLASS REPRESENTATIVE**

The Court has approved Gregory M. Garrison, Esq., Megan A. Richmond, Esq., and Alexander E. Papaefthimiou, Esq. to represent all members of the Plaintiff Class, including you, as a group. These lawyers are called “Class Counsel”. You will not be charged for these lawyers. **If you want to be represented by your own lawyer in or related to the Litigation, you may hire one at your own expense.**

The Court has also approved Lance Rodgers to act as the representative of the Plaintiff Class or “Class Representative”.

Class Counsel will ask the Court to approve payment of up to \$355,000 to them for attorneys' fees and expenses, and payment of up to \$5,000 to Lance Rodgers for his services as Class Representative. The fees to Class Counsel would be based upon the hours Class Counsel actually worked on the case, and would pay them for investigating the facts, litigating the case, and negotiating the Settlement. The fees to the Class Representative would compensate him for bringing the claims, participating in the Lawsuit, and assuming risks on behalf of the Plaintiff Class. The Court may award less than these amounts, if it determines either request to be excessive or unreasonable.

Under the Settlement, Express Tire will separately pay the fees, expenses and payments that the Court awards. These amounts will not reduce the recovery available to your or the other members of the Plaintiff Class. Express Tire has agreed not to oppose these fees and expenses. Express Tire will also pay the costs to administer the Settlement.

### **OBJECTING TO THE SETTLEMENT**

If you are a Class Member, you can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to the proposed class action Settlement in *Lance Rodgers v. L&M Tire Company, Inc., et al.*, Case Number 37-2012-00103186-CU-BT-CTL. Be sure to include your name, address, telephone number, your signature, and the reasons you object to the Settlement. Mail the objection to these three (3) different places postmarked no later than **July 25, 2014**:

#### **The Court**

Clerk of the Superior Court  
ATTN: DEPARTMENT 61  
330 West Broadway  
San Diego, CA 92101

#### **Class Counsel**

Gregory M. Garrison  
TEEPLE HALL, LLP  
9255 Towne Centre Dr., Ste. 500  
San Diego, CA 92121

#### **Counsel for Express Tire**

Scott L. Metzger  
Annette C. Clark  
DUCKOR SPRADLING  
METZGER & WYNNE  
3043 4<sup>th</sup> Avenue  
San Diego, CA 92103

There is a difference between objecting to the Settlement and opting-out. Objecting is simply telling the Court that you don't like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you cannot object because the case no longer affects you.

### **THE COURT'S FAIRNESS HEARING**

The Court has scheduled a final fairness hearing on the Settlement, which will occur in Department 61 of the Superior Court, in the Hall of Justice, at 330 West Broadway, San Diego, California 92101 at **10:30 a.m. on August 29, 2014**. At the final fairness hearing, the Court will decide whether or not to finally approve the Settlement.

At the same time and place, the Court will also consider Class Counsel's request for fees and costs, and the request for the Class Representative service payment. Any Class Member has the right to appear at the hearing, although no Class Member is required to do so.

### **IF YOU DO NOTHING**

**If you do nothing, you will be bound by the outcome of the Litigation and Settlement.** If the Settlement is approved by the Court at the final fairness hearing, you will be eligible to receive the benefits of the Settlement, but will be prohibited from suing Express Tire on claims related to the Lawsuit, as explained above.

### **GETTING MORE INFORMATION**

This Notice summarizes the proposed Settlement. For more information, you may: (1) Write to Class Counsel, Gregory M. Garrison, TEEPLE HALL LLP, 9255 Towne Centre Drive, Suite 500, San Diego, California 92121; or (2) Visit the website at <http://cases.GCGInc.com/ExpressTire/>. A copy of the Settlement Agreement is available for download on <http://cases.GCGInc.com/ExpressTire/>. The pleadings and all other records in the Lawsuit may be examined and copied at any time during regular business hours at the office of the Clerk of the Superior Court, 330 West Broadway, San Diego, California 92101.

**Do not call or write to the Court or the Clerk of the Court. All inquiries should be in writing and should be directed to the Class Counsel identified above.**