

1 **SECOND ADDENDUM TO SETTLEMENT AGREEMENT**

2 This Second Addendum to Settlement Agreement is entered into by and between Lance
3 Rodgers (**hereinafter “Rodgers” and/or “Class Representative”**) as Court-appointed
4 representative of the plaintiff class (**hereinafter the “Plaintiff Class”**), on the one hand, and L&M
5 Tire Company, Inc., a California corporation, d/b/a Express Tire (**hereinafter “L&M”**) on the
6 other hand:

7 **RECITALS**

8 A. WHEREAS, on November 5, 2013, Rodgers, as Court-appointed representative of
9 the Plaintiff Class, on the one hand, and L&M, on the other hand, entered into a Settlement
10 Agreement regarding that civil action styled *Lance Rodgers v. L&M Tire Company, et al.*, Case
11 number 37-2012-00103186-CU-BT-CTL (**hereinafter the “Civil Action”**), now pending in the
12 Superior Court of California for the County of San Diego (**hereinafter the “Settlement
13 Agreement”**);

14 B. WHEREAS, the Settlement Agreement left certain terms “TBD” or “To Be
15 Determined”; and

16 C. WHEREAS, on March 7, 2014, the parties executed an Addendum to Settlement
17 Agreement regarding those items left “TBD” or “To Be Determined” in the Settlement Agreement
18 (**hereinafter the “First Addendum”**).

19 NOW, THEREFORE, the parties to the Settlement Agreement and the First Addendum
20 thereto do hereby agree that the following Sections of the Settlement Agreement and First
21 Addendum shall be amended and substituted as follows. Unless otherwise specifically amended or
22 substituted herein, all terms of the Settlement Agreement and First Addendum shall remain in full
23 force and effect:

24 The language in Paragraph 10 of the Settlement Agreement shall be deleted in its entirety
25 and replaced with the following language:

26 **10. Release by the Plaintiff Class.**

27 Upon final approval of this Settlement Agreement, and without any
28

1 requirement of further documentation except the Order Granting Final Approval of
2 the Settlement, Plaintiff and the Plaintiff Class hereby release, absolve and discharge
3 L&M, and parent, subsidiary and related companies or business concerns, assignees
4 or purchasers, past, present and future, and each of them, including without
5 limitation, each of its employees, officers, directors, shareholders, partners,
6 members, trustees, affiliates, attorneys, agents or representatives (hereinafter
7 collectively referred to as "Releasees"), from any and all claims (at law or in equity),
8 actions, civil and monetary charges, complaints, causes of action, rights, demands,
9 debts, damages, accountings, liens, agreements, contracts, covenants, suits,
10 obligations, and claims for attorneys' fees, (hereinafter collectively referred to as
11 "Claims"), known and unknown, which arose at any time, or are related, in any way,
12 to the claims alleged in the Amended Complaint or arising out of defendant's alleged
13 violation of various consumer protection statutes including, but not limited to, the
14 California Insurance Code or Song-Beverly Consumer Warranty Act (Civ. Code
15 Section 1791 et seq.) through its sale of the Auto Tire Protection Plan.

16 By participating in the settlement, each Class Member is giving up his or her
17 right to bring a separate action for claims which arise from or are related, in any
18 way, to the claims alleged in the Complaint.

19 This Settlement Agreement, however, does not affect any release on behalf
20 of any Class Member who opts out by signing and timely returning the opt-out
21 notice. Nor does this Settlement Agreement affect any release of any obligation
22 L&M has, or may have, to perform services under any TPP previously sold, or under
23 any warranty which may have previously been made by L&M. This release does
24 not apply to any claims for bodily injury or property damage arising from the sale
25 of any tires by L&M.

26 //

27 //

28

1 The language in Paragraphs 8 and 9(c) of the First Addendum shall be deleted in its entirety
2 and replaced with the following language:

3 **8. Class Representative Service Payment.** Subject to Court approval
4 and the provisions of Section 9(c), *infra*, L&M shall compensate the Class
5 Representative for services rendered for the benefit of the Plaintiff Class, and for
6 risks assumed on behalf of the Plaintiff Class, in the total sum of \$5,000. L&M shall
7 not object to, or file any papers in relation to, the Class Representative's request for
8 approval of the agreed-upon service payment. In the event an objection to this
9 Section is made by any member of the Plaintiff Class and sustained by the Court,
10 this portion of the Settlement Agreement shall be severed.

11 **9(c) Payment to Class Representative.** L&M shall pay to the Class
12 Representative such service payment as may be awarded by the Court (which shall
13 not exceed the sum of \$5,000) no later than forty-five (45) calendar days after entry
14 of an order granting final approval of this Settlement Agreement. Such payment
15 shall be by wire transfer to Class Counsel, as shall be instructed by the Class Counsel
16 in writing. Class Counsel shall report payment to the Class Representative on a
17 Form 1099. Time is of the essence as to the scheduled payment to the Class
18 Representative, and, if L&M fails to make the scheduled payment to the Class
19 Representative by the date due, the Class Representative shall provide notice to
20 L&M and its counsel a 10-day right to cure. In the event L&M fails to make
21 payment within the specified period, the Class Representative shall be entitled to
22 immediate issuance of a writ of execution for the amount past due (to be obtained
23 upon *ex parte* application, filed not sooner than three court days after notice of
24 default is sent by e-mail to Defendant's counsel of record in the Civil Action), plus
25 reasonable attorneys' fees incurred in the collection of any past due payment.

26 //

27 //

28


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

//
//

IN WITNESS WHEREOF, the parties hereto have executed this Second Addendum to Settlement Agreement on the dates indicated below.

Dated: MARCH 26, 2014

LANCE RODGERS, Individually and as Class Representative

By: 
Lance Rodgers

Dated: _____, 2014

L&M TIRE COMPANY, INC., a California Corporation, d/b/a EXPRESS TIRE

By: _____
Ernest Joe Jubela, COO

APPROVED AS TO FORM AND CONTENT:


Dated: _____, 2014

TEEPLE HALL, LLP

By: _____
Gregory M. Garrison, Esq.
California Bar No. 165215
Attorneys for Plaintiff Class

Dated: _____, 2014

DUCKOR SPRADLING METZGER & WYNNE

By: 
Scott L. Metzger, Esq.
California Bar No. 89718
Annette C. Clark, Esq.
California Bar No. 208216

Attorneys for Defendant L&M Tire Company, Inc.

the Civil Action), plus reasonable attorneys' fees incurred in the collection of any past due payment.

//

//

IN WITNESS WHEREOF, the parties hereto have executed this Second Addendum to Settlement Agreement on the dates indicated below.

Dated: _____, 2014

LANCE RODGERS, Individually and as Class Representative

By: _____
Lance Rodgers

Dated: 3/27, 2014

L&M TIRE COMPANY, INC., a California Corporation, d/b/a EXPRESS TIRE

By: 
Ernest Joe Jubela, COO

APPROVED AS TO FORM AND CONTENT:

Dated: _____, 2014

TEEPLE HALL, LLP

By: _____
Gregory M. Garrison, Esq.
California Bar No. 165215
Attorneys for Plaintiff Class

Dated: _____, 2014
WYNNE

DUCKOR SPRADLING METZGER &

By: _____
Scott L. Metzger, Esq.
California Bar No. 89718
Attorneys for Defendant L&M Tire Company, Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

//
//

IN WITNESS WHEREOF, the parties hereto have executed this Second Addendum to Settlement Agreement on the dates indicated below.

Dated: _____, 2014

LANCE RODGERS, Individually and as Class Representative

By: _____
Lance Rodgers

Dated: _____, 2014

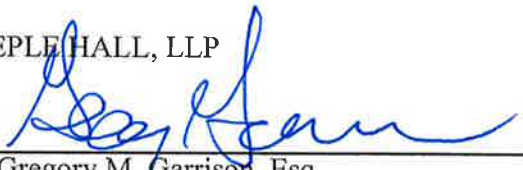
L&M TIRE COMPANY, INC., a California Corporation, d/b/a EXPRESS TIRE

By: _____
Ernest Joe Jubela, COO

APPROVED AS TO FORM AND CONTENT:


Dated: _____, 2014

TEEPLE HALL, LLP

By: 
Gregory M. Garrison, Esq.
California Bar No. 165215
Attorneys for Plaintiff Class

Dated: _____, 2014

DUCKOR SPRADLING METZGER & WYNNE

By: 
Scott L. Metzger, Esq.
California Bar No. 89718
Annette C. Clark, Esq.
California Bar No. 208216

Attorneys for Defendant L&M Tire Company, Inc.

1 //

2 //

3 IN WITNESS WHEREOF, the parties hereto have executed this Second Addendum to
4 Settlement Agreement on the dates indicated below.

5 Dated: _____, 2014 LANCE RODGERS, Individually and as Class
6 Representative

7 By: _____
8 Lance Rodgers

9 Dated: _____, 2014 L&M TIRE COMPANY, INC., a California
10 Corporation, d/b/a EXPRESS TIRE

11 By: _____
12 Ernest Joe Jubela, COO

13 APPROVED AS TO FORM AND CONTENT:

14 Dated: _____, 2014 TEEPLE HALL, LLP

15 By: _____
16 Gregory M. Garrison, Esq.
17 California Bar No. 165215
Attorneys for Plaintiff Class

18 Dated: _____, 2014 DUCKOR SPRADLING METZGER & WYNNE

19 By:  _____
20 Scott L. Metzger, Esq.
21 California Bar No. 89718
22 Annette C. Clark, Esq.
23 California Bar No. 208216

24 Attorneys for Defendant L&M Tire
25 Company, Inc.

26
27
28