

1 Terry Goddard  
Attorney General  
2 (Firm State Bar No. 14000)  
Dena Rosen Epstein  
3 Assistant Attorney General  
State Bar No. 015421  
4 Office of the Attorney General  
1275 West Washington Street  
5 Phoenix, AZ 85007  
consumer@azag.gov

6 Attorneys for Plaintiff  
7

8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

9 **IN AND FOR THE COUNTY OF MARICOPA**

10 STATE OF ARIZONA, *ex rel.* TERRY  
GODDARD, Attorney General,

11 Plaintiff,

12 vs.

13 MICHELIN NORTH AMERICA, INC.,

14 Defendant.  
15

Case No.:

**ASSURANCE OF DISCONTINUANCE**

16 This Assurance of Discontinuance (“Assurance”) is entered into by and between the  
17 Attorneys General of the States of Alaska, Arizona, Delaware, Iowa, Kentucky, Massachusetts,  
18 Montana, Nevada, New Hampshire, New Mexico, North Carolina, Ohio, Pennsylvania, Rhode  
19 Island, Tennessee, Texas and Vermont (hereinafter referred to collectively as the “Attorneys  
20 General,” “States” or “Participating States”) and Michelin North America, Inc. of Greenville,  
21 South Carolina, (hereinafter referred to as “Michelin”).

22 **BACKGROUND**

23 A. Michelin is in the business of making and selling tires for automobiles to  
24 consumers in the United States. As part of its tire sales and marketing program, Michelin  
25 engages in the practice of advertising and promoting the quality, characteristics, uses and  
26 benefits of its tires to consumers in various media outlets.

1 B. Michelin began, in May or June of 2008, promoting its fuel-efficient tires in  
2 various media outlets, including, but not limited to, the Wall Street Journal and USA Today  
3 newspapers. The advertising in the Wall Street Journal and USA Today newspapers consisted of  
4 full page advertisements with the headline, "It's time to fight back. Michelin fuel-efficient, long-  
5 lasting tires help you save money" and "Michelin makes the *most fuel-efficient line of tires on*  
6 *the road*, which saves you money over the life of your tires." (Emphasis added.) (See  
7 Exhibit A.)

8 C. Prior to the date of this Assurance, Michelin also promoted similar fuel-efficiency  
9 claims in radio and television advertisements, including, but not limited to, advertising on ESPN  
10 during various athletic events, such as SEC football games. Examples of the types of  
11 representations made by Michelin during this advertising campaign are:

- 12 1. "Michelin makes the most fuel-efficient line of tires on the road;"
- 13 2. "MICHELIN® fuel-efficient, long-lasting tires help you save money;"
- 14 3. Michelin's fuel-efficient line of tires "saves you money over the life of your  
15 tires;"
- 16 4. "ABOUT \$300 OR 68 GALLONS OF GAS - that's what a set of  
17 MICHELIN® Latitude® Tour HP tires can save you;" and
- 18 5. "ABOUT \$200 OR 51 GALLONS OF GAS - that's what a set of  
19 MICHELIN® Primacy™ MXV4 tires can save you."

20 The promotional claims set forth above are examples only and are not all-inclusive.

21 D. As a result of the advertisements and promotional claims noted above, the  
22 Attorneys General, led by the Attorney General of Tennessee, commenced an investigation into  
23 whether Michelin's advertisements and promotional claims violated the consumer protection  
24 laws of the respective States. Specifically, the Attorneys General contend that:

- 25 6. Michelin's fuel efficiency advertisements did not adequately disclose that  
26 the advertised cost savings claims are based solely on savings in fuel costs.

1           7.     While Michelin promotes in advertisements that “Michelin makes the most  
2 fuel-efficient line of tires on the road, which saves you money over the life of your  
3 tires,\*” Michelin’s own studies indicate that its tires are only the most fuel efficient in a  
4 majority of classes of tires. However, in some classes of tires, a Michelin tire is not the  
5 most fuel-efficient.

6           8.     The footnote disclosures used by Michelin in its fuel efficiency  
7 advertisements were not clear and conspicuous.

8     E.     In response to these allegations, Michelin states the following:

9           1.     It is clear to consumers that the advertisements noted in Paragraphs B and  
10 C refer to savings on fuel and/or at the fuel pump.

11           2.     Michelin believes that its comparative fuel efficiency and fuel savings  
12 claims are substantiated by detailed rolling resistance measurements of more than 200  
13 different tire products across 37 product categories. This rolling resistance data, which  
14 has been provided to the Attorneys General, demonstrates Michelin’s advantage, in terms  
15 of reduced rolling resistance and corresponding fuel savings, in these categories. It is  
16 Michelin’s position that the tests were conducted using one of the tire industry’s leading  
17 test methodologies for measuring fuel efficiency and demonstrate that Michelin tires  
18 were “best in category” in 20 of 37 categories, and that in 29 of the 37 categories  
19 (78 percent), the average rolling resistance of Michelin’s tires was lower than the average  
20 rolling resistance of all of its competitors’ tires.

21     F.     While not necessarily agreeing with Michelin’s statements set forth in  
22 paragraph E, the Participating States acknowledge that their investigation was specifically  
23 limited to the advertising described in paragraphs B and C, and did not question the safety or  
24 quality of Michelin’s tires described in paragraph E and that Michelin cooperated fully with the  
25 multistate investigation.

26     G.     Except for a complaint to an industry self-regulatory body from its competitor,

1 Bridgestone Americas Holdings, Inc., Michelin has received no complaints relating to the  
2 advertising noted in paragraphs B and C above. However, to avoid the time and expense of a  
3 prolonged investigation, Michelin and the Attorneys General desire to enter into this Assurance.

4 NOW, THEREFORE, Michelin and the Attorneys General agree to the following  
5 assurances:

6 **1. DEFINITIONS**

7 As used in this Assurance, the following words or terms shall have the following  
8 meanings:

- 9 1.1 **“Advertise,” “advertisement,” and “advertising”** mean any written, oral,  
10 graphic, or electronic statement, illustration, or depiction that is designed to create  
11 interest in the purchasing of, impart information about the attributes of, publicize  
12 the availability of, or affect the sale or use of, goods or services, whether the  
13 statement appears in a brochure, newspaper, magazine, free-standing insert,  
14 marketing kit, leaflet, mailer, book insert, letter, catalogue, poster, chart, billboard,  
15 electronic mail, website or other digital form, slide, radio, broadcast television,  
16 cable television, or commercial or infomercial whether live or recorded.
- 17 1.2 **“Assurance of Discontinuance” or “Assurance”** refers to this document entitled  
18 Assurance of Discontinuance in the matter of *State of Arizona ex rel. Terry  
19 Goddard, Attorney General v. Michelin North America, Inc., a New York  
20 corporation.*
- 21 1.3 **“Attorney General,” “Participating State,” or “State”** means the Office of the  
22 Arizona Attorney General.
- 23 1.4 **“Attorneys General,” “Attorneys General Working Group,” “Participating  
24 States” and “States”** means the Attorneys General offices of the States or  
25 Commonwealths of Alaska, Arizona, Delaware, Iowa, Kentucky, Massachusetts,  
26 Montana, Nevada, New Hampshire, New Mexico, North Carolina, Ohio,  
Pennsylvania, Rhode Island, Tennessee, Texas and Vermont.
- 1.5 **“Clear and Conspicuous” or “Clearly and Conspicuously”**: A statement is  
“clear and conspicuous” or “clearly and conspicuously” disclosed if, by whatever  
medium, it is understandable and presented in such size, color, contrast, location,  
and audibility, compared to other information with which it is presented, that it is  
readily apparent to the person to whom it is disclosed. If such statement is  
necessary as a modification, explanation or clarification to other information with  
which it is presented, it must be presented in close proximity to the information it  
modifies, in a manner which is readily noticeable and understandable. Further, a

1 disclosure of information is not clear and conspicuous if, among other things, it is  
2 obscured by the background against which it appears or there are other distracting  
3 elements. Statements of limitation must be set out in close conjunction with the  
4 benefits described, or with appropriate captions, of such prominence that they are  
5 not minimized, rendered obscure, presented in an ambiguous fashion, or  
6 intermingled with the context of the statement so as to be confusing or misleading.  
7 To be clear and conspicuous, a statement must also be in understandable language  
8 and syntax, and may not contain any material that is contrary to, inconsistent with,  
9 or in mitigation of the statement.

10 1.6 **“Competent and Reliable Scientific Evidence”** “means tests, analyses, research,  
11 studies, or other evidence based on the expertise of professionals in the relevant  
12 area, that has been conducted and evaluated in an objective manner by persons  
13 qualified to do so, using procedures generally accepted in the profession to yield  
14 accurate and reliable results.”<sup>1</sup>

15 1.7 **“Consumer Protection Laws”** means the unfair or deceptive trade practices or  
16 the consumer protection laws of the Participating States set forth in the  
17 accompanying footnote.<sup>2</sup>

18 1.8 **“Effective Date”** means May 14, 2009.

19 1.9 **“Michelin”** means Michelin North America, Inc., and each of its officers,  
20 directors, owners, employees, representatives, agents, successors, assignees,  
21 affiliates, subsidiaries, merged or acquired entities, future purchasers, parents or  
22 controlling entities, wholly-owned subsidiaries, and all other persons acting  
23 directly or indirectly in concert or participation with Michelin North America, Inc.

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24 1 *FTC v. Sili Neutraceuticals, LLC*, 2008 U.S. Dist. LEXIS 105683 (N.D. Ill. Jan. 23, 2008), *See also: FTC v. Chinery*,  
25 2006 U.S. Dist. LEXIS 94941 (D.N.J. Dec. 21, 2006); *FTC v. Braswell*, 2005 U.S. Dist. LEXIS 39259 (C.D. Cal. Oct.  
26 19, 2005); *FTC v. Harry*, 2004 U.S. Dist. LEXIS 15588 (N.D. Ill. July 27, 2004); *FTC v. Direct Mktg. Concepts, Inc.*,  
2004 U.S. Dist. LEXIS 11628 (D. Mass. June 23, 2004); *FTC v. Walker*, 2002 U.S. Dist. LEXIS 27553 (W.D. Wash.  
Oct. 23, 2002); *FTC v. Communidyne, Inc.*, 1994 U.S. Dist. LEXIS 19469 (N.D. Ill. July 11, 1994).

2 2 **Alaska** – Alaska Unfair Trade Practices and Consumer Protection Act, AS 45.50.471 *et seq.*; **Arizona** - Ariz. Rev.  
Stat. §44-1521 *et seq.*; **Delaware** - 6 Del. C. § 2532 *et seq.* Consumer Fraud Act, 6 Del.C. Section 2511 *et seq.*; **Iowa** -  
The Iowa Consumer Fraud Act, Iowa Code section 714.16; **Kentucky** - KRS 367.110 *et seq.*; **Massachusetts** - Mass.  
Gen. Laws c. 93A, Section 5; **Montana** - Mont. Code Ann. § 30-14-101 *et seq.*; **New Hampshire** -N.H. RSA 358-  
A:7; **New Mexico** – New Mexico Unfair Practices Act, NMSA 1978, S 57-12-1 *et seq.* (1967); **Nevada** - Nevada  
Deceptive Trade Practices Act, Nevada Revised Statutes, 598.0903 *et seq.*; **North Carolina** – North Carolina Unfair  
and Deceptive Trade Practices Act, N.C.G.S. § 75-1.1, *et seq.*; **Ohio** - Ohio Revised Code 1345.01 *et seq.* and the  
substantive rules in Ohio Administrative Code Sections 109:4-3-01 *et seq.*; **Pennsylvania** - Pennsylvania's Unfair  
Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 *et seq.*; **Rhode Island** – Rhode Island General Laws  
Chapter 6-13.1, the “Deceptive Trade Practices Act”; **Tennessee** – Tennessee Consumer Protection Act of 1977, Tenn.  
Code Ann. § 47-18-101 *et seq.*; **Texas** – Texas Deceptive Trade Practices-Consumer Protection Act, Tex. Bus. &  
Com. Code § 17.41, *et seq.*; and **Vermont** - title 9 Vt. Stat. Ann. ch. 63, Vermont Consumer Fraud Act.



1 Tennessee, which shall distribute these funds as designated by and in the sole discretion of the  
2 Participating Attorneys General.

3 3.2 Said payment may be used by the Participating States for attorney's fees and other  
4 costs of investigation and litigation, or to be placed in, or applied to, the consumer protection  
5 enforcement fund, including future consumer protection enforcement, consumer education,  
6 litigation or local consumer aid fund or revolving fund pursuant to A.R.S. § 44-1531.01; used to  
7 defray the costs of the inquiry leading hereto; used for tire safety programs, traffic safety  
8 programs, or environmental programs; or used for any other purposes permitted by State law, at  
9 the sole discretion of each respective Attorney General.

#### 10 4. MONITORING AND COMPLIANCE

11 4.1 Upon request and reasonable notice, Michelin agrees to provide books, records  
12 and documents, including consumer complaints and any responses by Michelin and any  
13 supporting substantiation for any such claims, related to fuel efficiency advertising substantially  
14 similar to the advertising investigated by the Participating States described herein, to the State at  
15 any time, and further, to provide testimony and other information under oath to the State relating  
16 to compliance with this Assurance. Michelin shall make any requested information available  
17 within thirty (30) days of the request, at the Office of the Attorney General, 1275 West  
18 Washington Street, Phoenix, Arizona 85007, or at any other location within the State that is  
19 mutually agreeable in writing to Michelin and the Attorney General. This section shall in no way  
20 limit the State's right to obtain documents, information, or testimony pursuant to any federal or  
21 state law, regulation, or rule.

#### 22 5. PRIVATE RIGHT OF ACTION

23 5.1 Except as may be expressly provided under applicable law, nothing in this  
24 Assurance of Discontinuance shall be construed to affect, restrict, limit or alter any private right  
25 of action that a consumer, person or entity, or any local, state, federal or governmental entity  
26 may have against Michelin.

1           5.2 This Assurance or the acceptance of this Assurance by the State and/or the  
2 Attorney General shall not be deemed to be and is not the grant of any permission, power,  
3 authority or right to any person or entity to act as a “private attorney general” under any of the  
4 statutes cited in footnote 2 above, or with respect to any matter covered by or arising out of this  
5 Assurance or otherwise to assert standing on behalf of the State or the public at large or to assert  
6 any claim seeking declaratory or equitable relief for alleged public or State injury with respect to  
7 any matter covered by this Assurance, except as may already be permitted by law.

8                           **6. REPRESENTATIONS AND WARRANTIES**

9           6.1 Michelin represents and warrants that the execution and delivery of this Assurance  
10 is its free and voluntary act, and that this Assurance is the result of good faith negotiations.  
11 Further, no offer, agreements, or inducements of any nature whatsoever have been made to it by  
12 the State, its attorneys or any employee of the Attorney General’s Office to procure this  
13 Assurance.

14           6.2 Michelin represents that signatories to this Assurance of Discontinuance have  
15 authority to act for and bind Michelin.

16           6.3 Michelin warrants and represents that Michelin North America, Inc. is the proper  
17 party to this Assurance.

18           6.4 As noted in paragraph G of the Background section above, Michelin represents  
19 that it has not received any consumer complaints that were based upon the advertising of fuel-  
20 efficient tires referenced in this Assurance.

21           6.5 Michelin North America, Inc. represents that it is the true legal name of the entity  
22 entering into this Assurance.

23           6.6 Michelin further acknowledges that it understands that the Participating State  
24 expressly relies upon all of the representations and warranties set forth herein, and that if they  
25 are false, unfair, deceptive, misleading or inaccurate, the Participating State has the right to  
26 move to vacate or set aside (in whole or in part) this Assurance and/or to seek sanctions pursuant

1 to state law.

2           7.       **COMPLIANCE WITH ALL LAWS, REGULATIONS AND RULES**

3           7.1       Nothing in this Assurance of Discontinuance shall be construed as relieving  
4 Michelin of the obligation to comply with all federal and state laws, regulations and rules, nor  
5 shall any of the provisions of this Assurance be deemed to be permission to engage in any acts  
6 or practices prohibited by such law, regulation or rule.

7                               **8.       GENERAL PROVISIONS**

8           8.1       Michelin shall not participate directly or indirectly in any activity to form a  
9 separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance or  
10 for any other purpose which would otherwise circumvent any part of this Assurance or the spirit  
11 or purposes of this Assurance.

12           8.2       Acceptance of this Assurance of Discontinuance by the State shall not be deemed  
13 approval by the State of any of Michelin's advertising or other business practices. Further,  
14 neither Michelin nor anyone acting on its behalf shall state or imply or cause to be stated or  
15 implied that the Attorney General or any other governmental unit of the State approved,  
16 sanctioned, or authorized any practice, act, or conduct of the Michelin.

17           8.3       This Assurance may only be enforced by the parties hereto.

18           8.4       Pursuant to A.R.S. § 44-1530, Michelin understands that a violation of this  
19 Assurance of Discontinuance within six (6) years of the filing thereof constitutes prima facie  
20 evidence of a violation of A.R.S. § 44-1522. This Court therefore retains jurisdiction over the  
21 parties and the subject matter for purposes of enabling the State of Arizona to apply to this Court  
22 for the enforcement of and Respondent's compliance with the Assurance of Discontinuance.

23           8.5       The parties agree that this Assurance of Discontinuance shall not be considered an  
24 admission of a violation for any purpose.

25           8.6       Within thirty (30) days of entry of date this Assurance is approved by the Court,  
26 Michelin shall submit a copy of this Assurance to each of its officers, directors, and advertising

1 executives with responsibilities related to the subject matter of this Assurance. Within forty-  
2 five (45) days of a written request, Michelin shall provide substantiation regarding its  
3 compliance with this provision to a particular Participating State.

4 8.7 The titles and headers to each section of this Assurance are for convenience  
5 purposes only and are not intended by the parties to lend meaning to the actual provisions of the  
6 Assurance.

7 8.8 As used herein, the plural shall refer to the singular and the singular shall refer to  
8 the plural and the masculine shall refer to the feminine and the neuter shall refer to the other, as  
9 the context requires.

10 8.9 This document shall not be construed against the drafter because both parties  
11 participated in the drafting of this document.

12 8.10 Nothing in this Assurance shall be construed to limit the authority of the Attorney  
13 General to enforce laws, regulations or rules against Michelin, or to protect the interests of the  
14 State or the people of the State, except if expressly released in paragraph 8.24 below.

15 8.11 Nothing in this Assurance constitutes an agreement by the State concerning the  
16 characterization of the amounts paid hereunder for purposes of any proceeding under the  
17 Internal Revenue Code or any state tax laws.

18 8.12 Michelin waives and shall not assert any defenses Michelin may have based, in  
19 whole or in part, on the Double Jeopardy or Excessive Fines Clauses of the Constitution or  
20 principles set forth in *Hudson v. United States*, 118 S. Ct. 488 (1997), and *Austin v. United*  
21 *States*, 509 U.S. 602 (1993).

22 8.13 Michelin expressly waives and relinquishes any and all rights, remedies, appeals  
23 or other interests that it may possess to a jury trial or any derivative rights that flow from a jury  
24 trial under the State Constitution or United States Constitution or any other law, regulation or  
25 rule, related to the subject matter of this Assurance.

26 8.14 If a Participating State determines that Michelin has failed to comply with any of

1 the terms of this Assurance and intends to file any pleading or take any other action seeking  
2 sanctions or other relief for violations of this Assurance, and if in the Attorney General's sole  
3 discretion the failure to comply does not threaten the health or safety of the citizens of the  
4 Participating State, the Attorney General will first notify Michelin's counsel in writing of such  
5 alleged failure to comply, and Michelin shall have fifteen (15) business days from receipt of  
6 such written notice to provide a good faith written response to the Attorney General's  
7 allegations. The response shall include an affidavit containing, at a minimum:

8 A a statement that Michelin is in full compliance with this Assurance; or

9 B a detailed explanation of how the alleged violation(s) occurred; and

10 C. a statement that the alleged breach(es) cannot be reasonably corrected within  
11 fifteen (15) business days from receipt of the notice, but:

12 (i) Michelin has begun to take prompt corrective action to correct the  
13 breach(es),

14 (ii) Michelin is pursuing such corrective action with due and reasonable  
15 diligence, and

16 (iii) Michelin has provided the Participating State with a detailed and reasonable  
17 time table for correcting the breach(es).

18 If after reviewing the response, the Attorney General and Michelin believe it will be  
19 beneficial to meet and confer in person or by telephone to discuss Michelin's response and the  
20 Attorney General's notice, the parties may do so provided it shall occur during the notice period  
21 unless otherwise agreed in writing by the parties. Further, the State may, if it so elects, extend  
22 the fifteen (15) business day notice period. Nothing herein shall be construed to exonerate any  
23 contempt or failure to comply with any provision of this Assurance after the date of its entry, to  
24 compromise the authority of the Participating State to initiate a proceeding for any contempt or  
25 other sanctions for failure to comply, or to compromise the authority of the court to punish as  
26 contempt any violation of this Assurance. Further, nothing in this subsection shall be construed

1 to limit the authority of the Attorney General to protect the interests of the State or the people of  
2 the State of Arizona.

3 8.15 No waiver, modification, or amendment of the terms of this Assurance shall be  
4 valid or binding unless made in writing, signed by the parties to this Assurance, and approved  
5 by the Court and then only to the extent set forth in such written waiver, modification or  
6 amendment. To seek a modification of this Assurance, Michelin shall send a written request for  
7 modification to the Attorneys General of the Participating States. If more than one Participating  
8 State is involved, Michelin shall also send a copy to the Office of the Tennessee Attorney  
9 General, which will use its best efforts to coordinate the Participating States' response to  
10 Michelin's request for modification. The States shall have no less than ninety (90) days of  
11 receiving such request to provide a response as follows:

12 A. If any Participating State, or the Attorney General thereof, or any agency of a State  
13 charged with the administration of the State's consumer protection statutes,  
14 subsequently enacts or promulgates any legislation, rule or regulation with respect  
15 to the subject matter of this Assurance, or if the applicable law of any Participating  
16 State shall otherwise change so as to be inconsistent and conflict with any  
17 provision of this Assurance, the affected Participating State shall agree to modify  
18 such provision to the limited extent necessary to eliminate such inconsistency and  
19 conflict.

20 B. If the federal government subsequently enacts or promulgates any legislation, rule  
21 or regulation applicable to the subject matter of this Assurance or if the applicable  
22 federal law shall otherwise change so as to be inconsistent and conflict with any  
23 provision of this Assurance, the affected Participating State shall agree to modify  
24 such provision to the limited extent necessary to eliminate such inconsistency and  
25 conflict.

26 8.16 Any failure by any party to this Assurance to insist upon the strict performance by

1 any other party of any of the provisions of this Assurance shall not be deemed a waiver of any of  
2 the provisions of this Assurance, and such party, notwithstanding such failure, shall have the  
3 right thereafter to insist upon the specific performance of any and all of the provisions of this  
4 Assurance and the imposition of any applicable penalties as provided by state law.

5 8.17 If any clause, provision or section of this Assurance is for any reason held illegal,  
6 invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other  
7 clause, provision or section of the Assurance and the Assurance shall be construed and enforced  
8 as if such illegal, invalid or unenforceable clause, section or other provision had not been  
9 contained herein.

10 8.18 Michelin waives any and all challenges in law or equity to the entry of the  
11 Assurance by the courts. Further, Michelin has waived any right to appeal, petition for  
12 *certiorari*, move to reargue or rehear or to otherwise be heard in connection with any judicial  
13 proceedings under this Assurance. This Assurance shall not be construed or used as a waiver or  
14 any limitation of any defense otherwise available to Michelin.

15 8.19 Time shall be of the essence with respect to each provision of this Assurance that  
16 requires action to be taken by either party within a stated time period or upon a specified date.

17 8.20 This Assurance sets forth the entire agreement between the parties, and there are  
18 no representations, agreements, arrangements, or understandings, oral or written, between the  
19 parties relating to the subject matter of this Assurance which are not fully expressed herein or  
20 attached hereto.

21 8.21 Nothing in this Assurance shall be construed to waive any claims of Sovereign  
22 Immunity that the State may have in any action or proceeding.

23 8.22 Michelin has provided the Attorneys General with certain documents,  
24 advertisements, and contracts. Michelin acknowledges and agrees that providing these  
25 documents to the State(s) in no way constitutes the State's pre-approval, review for compliance  
26 with state or federal law or with this Assurance.

1           8.23 Michelin agrees that this Assurance does not entitle Michelin to seek or to obtain  
2 attorneys' fees as a prevailing party under any statute, regulation or rule, and Michelin further  
3 waives any rights to attorneys' fees that may arise under such statute, regulation or rule.

4           8.24 Upon full and final payment of all monetary sums set forth above in Section 3, the  
5 Attorney General of the State of Arizona releases any civil claims regarding Michelin's  
6 advertisement of "fuel-efficient" tires that occurred prior to the date of the execution of this  
7 Assurance, where the particulars of the advertisement were known by, or should have been  
8 known by the Arizona Attorney General prior to the date of the execution of this Assurance, to  
9 the extent that such civil claims arise under States' Consumer Protection Laws cited in footnote  
10 2 above. Nothing in this Assurance shall be construed as a release and/or waiver of any criminal  
11 claims or other civil claims, causes of action, damages, fines, costs, or penalties available to the  
12 State(s) under their respective laws or under any federal law, including, but not limited to,  
13 antitrust laws, environmental and taxation laws, and including, but not limited to, the States'  
14 respective Consumer Acts as these laws may pertain to matters not specified in the  
15 "Background" section of this Assurance or any subsequent State enforcement action regarding  
16 this Assurance.

17           8.25 Michelin further agrees to execute and deliver all authorizations, documents and  
18 instruments which are necessary to carry out the terms and conditions of this Assurance.

19           8.26 This Assurance of Discontinuance may be executed in any number of counterparts  
20 and by different signatories on separate counterparts, each of which shall constitute an original  
21 counterpart hereof and all of which together shall constitute one and the same document. One or  
22 more counterparts of this Assurance may be delivered by facsimile or electronic transmission  
23 with the intent that it or they shall constitute an original counterpart thereof.

24           8.27 This Assurance is entered into by the parties for settlement purposes only. Neither  
25 the fact of, nor any provision contained in this Assurance, nor any action taken hereunder shall  
26 constitute, or be construed as, any admission of the validity of any claim or any factual

1 allegation that was or could have been made by the Attorneys General, or any admission of  
2 wrongdoing, fault, violation of law, or liability of any kind on the part of Michelin, or an  
3 admission by Michelin of any claim or allegation made in any action or proceeding against  
4 Michelin, and Michelin expressly denies any and all allegations set forth in this Assurance. This  
5 Assurance is not intended, and shall not be deemed, to constitute evidence or precedent of any  
6 kind except (1) in any action or proceeding by one of the parties to enforce, rescind, or  
7 otherwise implement or affirm any or all of the terms of this Assurance, or (2) in any action  
8 involving a released claim to support a defense of res judicata, collateral estoppel, release, or  
9 other theory of claim preclusion, issue preclusion, or similar defense. Except as specifically  
10 provided above, or as provided for in state law, this Assurance may not be used in any judicial  
11 or quasi-judicial proceeding for any purpose whatsoever.

## 12 **9. NOTIFICATION TO STATE**

13 9.1 Any notices required to be sent to the State or to Michelin by this Assurance shall  
14 be sent by United States, certified mail, return receipt requested, or other nationally recognized  
15 courier service that provides for tracking services and identification of the person signing for the  
16 document. The documents shall be sent to the following addresses:

17 **For the Arizona Attorney General:**  
18 Office of the Attorney General  
19 Consumer Protection and Advocacy Section  
20 1275 West Washington Street  
21 Phoenix, Arizona 85007  
22 Phone: (602) 542-3702

23 **For Michelin North America, Inc.:**  
24 Michelin North America, Inc.  
25 Attention: General Counsel  
26 One Parkway South  
Greenville, South Carolina 29615  
Phone: (864) 458-5000

## 24 **10. JURISDICTION/VENUE/COURT COSTS**

25 10.1 Jurisdiction of the Court over the subject matter herein and over the person of  
26 Michelin for the purposes of entering into and enforcing this Assurance is admitted. Jurisdiction

1 is retained by the Court for the purpose of enabling the parties to apply for such further orders  
2 and directions as may be necessary or appropriate for the construction, modification or  
3 execution of this Assurance, including enforcement of compliance therewith and assessment of  
4 penalties for violation(s) thereof. Michelin agrees to pay all court costs and to the extent  
5 permitted by state law, reasonable attorneys' fees and any costs associated with any successful  
6 petitions to enforce any provision of this Assurance against Michelin.

7 10.2 Pursuant to A.R.S. § 12-401, venue as to all matters between the parties relating  
8 hereto or arising out of this Assurance is solely in the Maricopa County Superior Court.

9 DATED this 13 day of May, 2009.

10 Terry Goddard  
11 Attorney General

12 

13 \_\_\_\_\_  
14 Dena Rosen Epstein  
15 Assistant Attorney General  
16 Attorneys for Plaintiff

17 PHX-INV-2008-0487 / 45736  
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1 **MICHELIN'S SIGNATURE AND ACKNOWLEDGMENT**

2 Michelin and its attorney have read and understand this Assurance and each of its terms.  
3 Michelin admits to the jurisdiction of the Court in this matter and consents to the entry of this  
4 Assurance. Michelin North America, Inc. agrees to each and every term contained herein.

5 I, Mark I. Williams being first duly sworn on oath, depose and say that I am an officer of  
6 Michelin North America, Inc., and am fully authorized and empowered to sign this Assurance  
7 on behalf of Michelin North America, Inc., and bind the same to the terms hereof.

8  
9   
10 **Mark I. Williams**  
11 **Vice President, General Counsel and Secretary**  
12 **Michelin North America, Inc.**

13 SUBSCRIBED AND SWORN to before me on this 11<sup>th</sup> day of May,  
14 2009.

15   
16 **Notary Public**

17 My Commission Expires:

18 10/2/17

19 **FOR MICHELIN:**

20 **Approved as to form:**

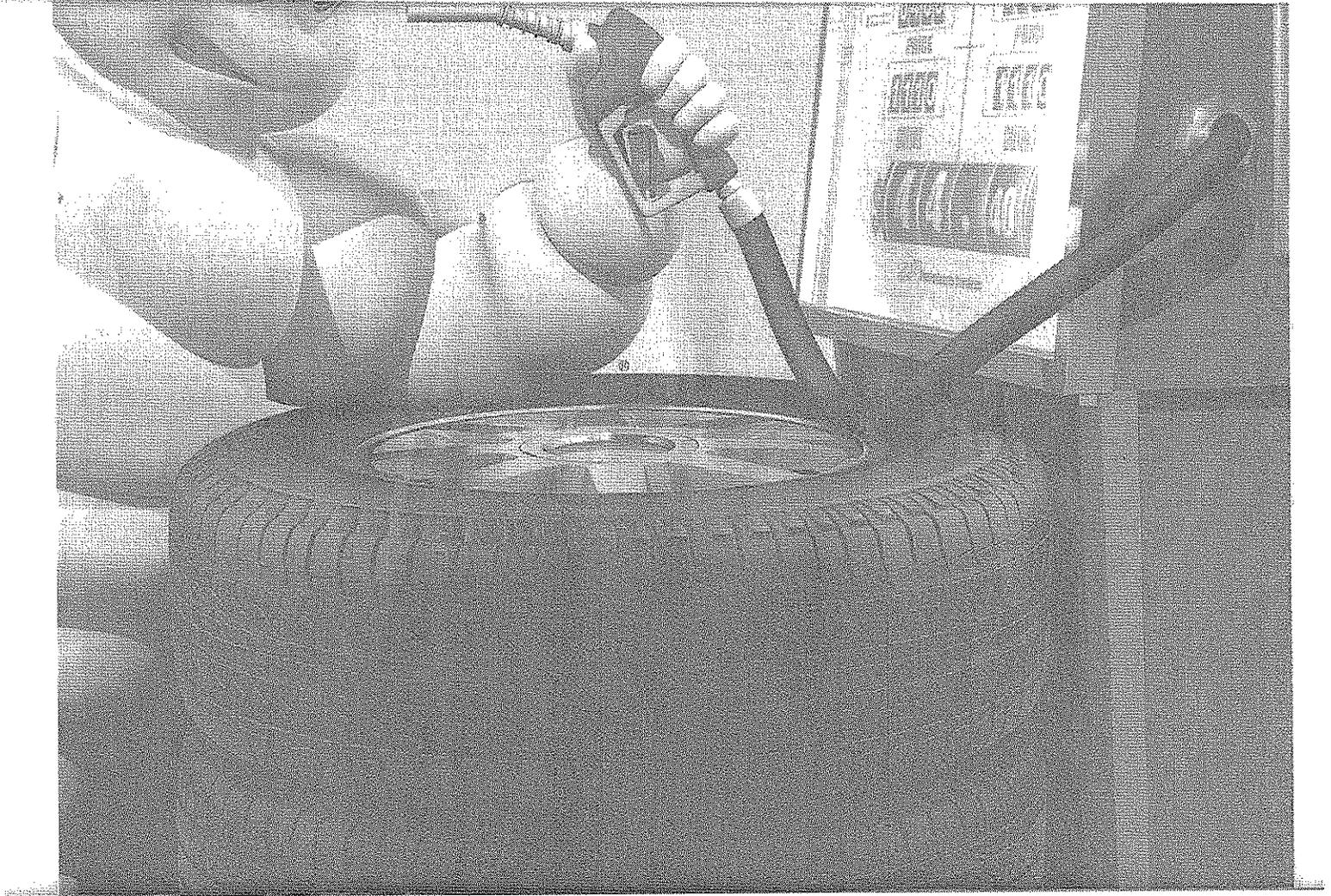
21 

22 **Dana B. Rosenfeld**  
23 **Attorney for Michelin**  
24 **Bryan Cave LLP**  
25 **700 13<sup>th</sup> Street, NW**  
26 **Washington, DC 20005**  
**Telephone: 202-508-6032**  
**Facsimile: 202-508-6200**

# EXHIBIT A

**It's time to fight back.  
MICHELIN® fuel-efficient,  
long-lasting tires help  
you save money.**





Michelin makes the most fuel-efficient line of tires on the road, which saves you money over the life of your tires.\*

- **ABOUT \$300 OR 68 GALLONS OF GAS** — that's what a set of MICHELIN® Latitude® Tour HP tires can save you!
- **ABOUT \$200 OR 51 GALLONS OF GAS** — that's what a set of MICHELIN® Primacy™ MXV4® tires can save you!

To find out more, go to [michelinman.com](http://michelinman.com)



\*Based on EPA's fuel economy estimates for 2005. Fuel economy estimates are based on EPA's test cycle. Actual mileage may vary. © 2005 Michelin North America, Inc. All rights reserved.

\*Rolling resistance testing based on SAE J1269 Industry Practice.  
†MICHELIN® Primacy™ MXV4® 215/50R17 91V compared to Bridgestone® Turanza® with Serenity™ Technology 215/50R17 95V.  
MICHELIN® Latitude® Tour HP 255/55R18 105H compared to Bridgestone® Dueler® H2L Alenza™ 255/55R18 109H.  
Calculated fuel/cost savings are approximate estimations based on several variables, not precise measurements; vehicles equipped with four Michelin® brand tires, and fuel at \$4 per gallon.  
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