

EXHIBIT

"B"

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
JOSE AYBAR,

INDEX No. 706908/2015

Plaintiff,

- against -

THE GOODYEAR TIRE & RUBBER COMPANY,
and GOODYEAR DUNLOP TIRES NORTH AMERICA,
LTD.

**DEFENDANTS THE
GOODYEAR TIRE &
RUBBER CO.'S AND
GOODYEAR DUNLOP
TIRES NORTH
AMERICA, LTD.'S
VERIFIED ANSWER
TO VERIFIED
COMPLAINT WITH
AFFIRMATIVE
DEFENSES**

Defendants.
-----X

Defendants The Goodyear Tire & Rubber Co. ("Goodyear") and Goodyear Dunlop Tires North America, Ltd. ("GDTNA"), by their attorneys, DLA Piper LLP (US), respectfully answer plaintiff's Verified Complaint upon information and belief, as follows:

1. Goodyear and GDTNA lack knowledge or information sufficient to form a belief as to the allegations contained in paragraph 1 of plaintiff's complaint, and refer all questions of law to the Court.

2. Goodyear and GDTNA deny paragraph 2 of plaintiff's complaint in the form alleged, but admit portions of the allegations, and refer all questions of law to the Court. It is admitted only that Goodyear is an Ohio corporation with its principal place of business in Akron, Ohio. By way of further answer, Goodyear and GDTNA specifically deny any allegations relating to personal jurisdiction in the State of New York.

3. Goodyear and GDTNA deny paragraph 3 of plaintiff's complaint in the form alleged, but admit portions of the allegations, and refer all questions of law to the Court. It is

admitted only that GDTNA is an Ohio corporation with its principal place of business in Akron, Ohio and that Goodyear and GDTNA are each in the business of designing, testing, manufacturing, marketing, and selling certain tires. By way of further answer, Goodyear and GDTNA specifically deny any allegations relating to personal jurisdiction in the State of New York.

4. Goodyear and GDTNA deny paragraph 4 of plaintiff's complaint in the form alleged, and refer all questions of law to the Court.

FACTS

5-6. Goodyear admits the allegations of paragraphs 5 and 6 of plaintiff's complaint; GDTNA denies each and every allegation contained in paragraphs 5 and 6 in the form alleged, and refers all questions of law to the Court.

7-8. Goodyear and GDTNA deny each and every allegation contained in paragraphs 7-8 of plaintiff's complaint in the form alleged, and refer all questions of law to the Court.

9. GDTNA denies the allegations of paragraph 9 of plaintiff's complaint in the form alleged, and refers all questions of law to the Court. Goodyear lacks knowledge or information sufficient to form a belief as to the allegations contained in paragraph 9 of plaintiff's complaint, including whether plaintiff has correctly identified the brand, size or DOT number of "the subject tires [sic]", and refer all questions of law to the Court. However, assuming any of plaintiff's allegations contained in paragraph 9 are correct, Goodyear admits only that it designs, manufactures and sells tires with the name "Wrangler AP", having a size designation of P245/70R16. GDTNA denies the allegations of paragraph 9 of plaintiff's complaint and specifically denies that it designs, manufactures and sells tires with the name "Wrangler AP", or the tire specifically identified in this averment of plaintiff's complaint. By way of further

answer, plaintiff has specifically identified one tire by a DOT number and erroneously refer to it in the plural throughout his complaint. That reference is inappropriate and, as such, specifically denied herein and hereafter.

10. Goodyear and GDTNA lack knowledge or information sufficient to form a belief as to the allegations contained in paragraph 10 of plaintiff's complaint, and refer all questions of law to the Court.

11. Goodyear and GDTNA lack knowledge or information sufficient to form a belief as to the allegations contained in paragraph 11 of plaintiff's complaint, and refer all questions of law to the Court. By way of further response, Goodyear specifically denies that the tire allegedly in question "unexpectedly failed/separated" as a result of any action on the part of Goodyear, or that plaintiff has suffered any damages or injuries that resulted from the conduct of Goodyear. GDTNA specifically denies that it designed, manufactured or sold "the subject tires [sic]."

12-13. Goodyear and GDTNA lack knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 12-13 of plaintiff's complaint, and refer all questions of law to the Court. By way of further response, Goodyear and GDTNA specifically deny that plaintiff has suffered any damages or injuries that resulted from the conduct of the Goodyear or GDTNA.

A FIRST CLAIM BASED ON STRICT PRODUCTS LIABILITY

14. Goodyear and GDTNA repeat, reiterate and re-allege herein their answers to each allegation set forth in paragraphs 1-13 of plaintiff's complaint.

15. Goodyear and GDTNA lack knowledge or information sufficient to form a belief as to the allegations contained in paragraph 15 of plaintiff's complaint, and refer all questions of law to the Court. By way of further response, Goodyear and GDTNA specifically deny the

allegations that “the subject tires [sic]” “were sold, delivered, or otherwise placed in the stream of commerce by Defendants” in the form alleged, and refer all questions of law to the Court. In any event, GDTNA specifically denies that it designed, manufactured or sold “the subject tires [sic],” or may be held liable for any damages or injuries allegedly caused by thereby.

16-17. Goodyear and GDTNA deny each and every allegation contained in paragraphs 16-17 of plaintiff’s complaint, and refer all questions of law to the Court. GDTNA specifically denies that it designed, manufactured or sold “the subject tires [sic],” or may be held liable for any damages or injuries allegedly caused thereby.

18-20. Goodyear and GDTNA deny each and every allegation contained in paragraphs 18-20 of plaintiff’s complaint, and refer all questions of law to the Court. Goodyear and GDTNA specifically deny that plaintiff has suffered any damages or injuries that resulted from the conduct of Goodyear or GDTNA. By way of further response, GDTNA specifically denies that it designed, manufactured or sold “the subject tires [sic],” or may be held liable for any damages or injuries allegedly caused thereby.

WHEREFORE, defendants The Goodyear Tire & Rubber Co. and Goodyear Dunlop Tires North America, Ltd. deny that plaintiff is entitled to any of the relief sought in the complaint, and demand judgment in their favor and against plaintiff and all other potential parties, together with costs of suit, attorneys’ fees, and such other costs as this Court may deem appropriate.

A SECOND CLAIM FOR NEGLIGENCE

21. Goodyear and GDTNA repeat, reiterate and re-allege herein their answers to each allegation set forth in paragraphs 1-20 of plaintiff’s complaint.

22-27. Goodyear and GDTNA deny each and every allegation contained in paragraphs 22-27 of plaintiff's complaint, and refer all questions of law to the Court. By way of further response, Goodyear and GDTNA specifically deny that plaintiff has suffered any damages or injuries that resulted from the conduct of Goodyear or GDTNA. By way of further response, GDTNA specifically denies that it designed, manufactured or sold "the subject tires [sic]," or may be held liable for any damages or injuries allegedly caused thereby.

WHEREFORE, defendants The Goodyear Tire & Rubber Co. and Goodyear Dunlop Tires North America, Ltd. deny that plaintiff is entitled to any of the relief sought in the complaint, and demand judgment in their favor and against plaintiff and all other potential parties, together with costs of suit, attorneys' fees, and such other costs as this Court may deem appropriate.

A THIRD CLAIM FOR BREACH OF WARRANTY

28. Goodyear and GDTNA repeat, reiterate and re-allege herein their answers to each allegation set forth in paragraphs 1-27 of plaintiff's complaint.

29-36. Goodyear and GDTNA deny each and every allegation contained in paragraphs 29-36 of plaintiff's complaint, and refer all questions of law to the Court. By way of further response, Goodyear and GDTNA specifically deny that plaintiff has suffered any damages or injuries that resulted from the conduct of Goodyear or GDTNA. By way of further response, GDTNA specifically denies that it designed, manufactured or sold "the subject tires [sic]," or may be held liable for any damages or injuries allegedly caused thereby.

WHEREFORE, defendants The Goodyear Tire & Rubber Co. and Goodyear Dunlop Tires North America, Ltd. deny that plaintiff is entitled to any of the relief sought in the complaint, and demand judgment in their favor and against plaintiff and all other potential

parties, together with costs of suit, attorneys' fees, and such other costs as this Court may deem appropriate.

A FOURTH CLAIM UNFAIR AND DECEPTIVE TRADE PRACTICES (GBL § 349)

37. Goodyear and GDTNA repeat, reiterate and re-allege herein their answers to each allegation set forth in paragraphs 1-36 of plaintiff's complaint.

38-43. Goodyear and GDNTA deny each and every allegation contained in paragraphs 38-43 of plaintiff's complaint, and refer all questions of law to the Court. By way of further response, Goodyear and GDTNA specifically deny that plaintiff has suffered any damages or injuries that resulted from the conduct of Goodyear or GDTNA. By way of further response, GDTNA specifically denies that it designed, manufactured or sold "the subject tires [sic]," or may be held liable for any damages or injuries allegedly caused thereby.

WHEREFORE, defendants The Goodyear Tire & Rubber Co. and Goodyear Dunlop Tires North America, Ltd. deny that plaintiff is entitled to any of the relief sought in the complaint, and demand judgment in their favor and against plaintiff and all other potential parties, together with costs of suit, attorneys' fees, and such other costs as this Court may deem appropriate.

AFFIRMATIVE DEFENSES

**AS AND FOR THE FIRST AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

Upon information and belief, plaintiff's complaint should be dismissed because this Court lacks personal jurisdiction over the Goodyear defendants.

**AS AND FOR THE SECOND AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

Plaintiff's claims may be barred and/or limited, in whole or in part, by the applicable statute(s) of limitations.

**AS AND FOR THE THIRD AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

Plaintiff's complaint fails to state a cause of action against the Goodyear defendants upon which relief may be granted.

**AS AND FOR THE FOURTH AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

The events may show that plaintiff's claims are barred in whole or in part by the doctrine of spoliation.

**AS AND FOR THE FIFTH AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

Plaintiff's claims may be barred in whole or in part because he lacks the capacity to sue.

**AS AND FOR THE SIXTH AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

Plaintiff has failed to name or join essential and necessary party(ies).

**AS AND FOR THE SEVENTH AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

No product as designed, manufactured, assembled or sold by the Goodyear defendants caused the alleged accident or any alleged injury, damage or loss to the plaintiff or any other person or party.

**AS AND FOR THE EIGHTH AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

Assuming, *arguendo*, that the tire(s) allegedly involved in this accident was a Goodyear product, then the Goodyear defendants deny that the product was defective or unreasonably dangerous for its ordinary intended use at the time the tire(s) left the possession of the Goodyear defendants.

**AS AND FOR THE NINTH AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

The Goodyear defendants believe, and therefore aver, that the injuries and damages alleged by plaintiff in the complaint were caused by the acts and/or omissions of persons and/or entities over whom or which the Goodyear defendants had no control, as shall be determined during the course of discovery.

**AS AND FOR THE TENTH AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

Assuming, *arguendo*, that the tire(s) allegedly involved in this accident was a Goodyear product, then that product was not in the same condition at the time it was allegedly used by plaintiff as when it passed out of the control of the Goodyear defendants.

**AS AND FOR THE ELEVENTH AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

If a product of the Goodyear defendants was involved as alleged, then the conduct of individuals and/or entities other than the Goodyear defendants, over whom/which they had no control, constitute superseding, intervening causes of the incident, injuries and damages alleged by plaintiff, if any.

**AS AND FOR THE TWELFTH AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

If a product of the Goodyear defendants was involved as alleged, then that product(s), subsequent to the time that it left the control of the Goodyear defendant(s), may have undergone substantial alteration, abuse, and/or misuse, and such alteration, abuse, and/or misuse may have caused the accident and/or damages alleged in plaintiff's complaint.

**AS AND FOR THE THIRTEENTH AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

Plaintiff's claims may be barred and/or recovery may be limited by virtue of the failure of others outside of the Goodyear defendants' control to properly care for, service, or maintain the tire(s) allegedly at issue.

**AS AND FOR THE FOURTEENTH AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

No product sold or distributed by the Goodyear defendants was a substantial contributing factor to any injury or damage alleged to have been sustained by plaintiff.

**AS AND FOR THE FIFTEENTH AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

If any product manufactured, assembled or sold by the Goodyear defendants was involved in the alleged accident, that product was reasonably fit and safe for its intended purpose when it left the control of the Goodyear defendant(s).

**AS AND FOR THE SIXTEENTH AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

If any product manufactured, assembled or sold by the Goodyear defendants was involved in the alleged accident, then the sole, proximate cause of the alleged accident and any alleged injury, damage or loss allegedly sustained by plaintiff was the modification or substantial change of that product after it left the possession or control of the Goodyear defendants by a person or party other than the Goodyear defendants or its agents, servants, workers or employees.

**AS AND FOR THE SEVENTEENTH AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

If any product designed, manufactured, assembled or sold by the Goodyear defendants was involved in the alleged accident, then the sole, proximate cause of the alleged accident and any alleged injury, damage or loss allegedly sustained by plaintiff was the abnormal and unforeseeable use, misuse or abuse of the product by a person or party other than the Goodyear defendants or their agents, servants, workers or employees.

**AS AND FOR THE EIGHTEENTH AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

If any product designed, manufactured, assembled or sold by the Goodyear defendants was involved in the alleged accident, then the product as designed and manufactured by the

Goodyear defendants complied with the state of the art, and any claims against the Goodyear defendants are barred.

**AS AND FOR THE NINETEENTH AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

The Goodyear defendants have breached no common law, statutory or contractual duty to plaintiff or to any other potential party to this litigation.

**AS AND FOR THE TWENTIETH AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

Some or all of plaintiff's claims against the Goodyear defendants are pre-empted by the Federal Motor Vehicle Safety Act and/or the National Traffic and Motor Vehicle Safety Act and regulations promulgated thereunder. The Secretary of the United States Department of Transportation has promulgated Federal Motor Vehicle Safety Standards (including FMVSS 109 and 119) pursuant to the Federal Motor Vehicle Safety Act and the National Traffic and Motor Vehicle Safety Act. These standards require, *inter alia*, that certain statements be embossed upon the sidewalls of tires in order to place sufficient information to permit their proper selection and use. The regulations also prescribe certain performance standards for tires. If the tire(s) in question is proven to have been a Goodyear product, then that tire(s) complied, in every respect, with those performance standards and marking requirements as the Secretary deemed applicable to the tire(s).

**AS AND FOR THE TWENTY-FIRST AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

If any product designed, manufactured, assembled or sold by the Goodyear defendants was involved in the alleged accident, then at the time the subject tire(s) was distributed and/or

delivered to the initial purchaser or user, the tire(s) was designed, manufactured, assembled and sold in compliance with all applicable Federal Regulations and in accordance with the generally recognized prevailing industry standards in existence.

**AS AND FOR THE TWENTY-SECOND AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

Plaintiff failed to give proper and prompt notice of any alleged breach of warranty to the Goodyear defendants and, accordingly, any claims based on breach of warranty are barred according to the provisions of UCC 2-607.

**AS AND FOR THE TWENTY-THIRD AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

Any oral warranties upon which plaintiff relied are inadmissible and unavailable because of the provision of the applicable statute of frauds as provided in UCC 2-201.

**AS AND FOR THE TWENTY-FOURTH AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

Plaintiff may have assumed the risk inherent in the activity in which he was engaged in at the time damages were allegedly incurred.

**AS AND FOR THE TWENTY-FIFTH AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

Plaintiff incurred no damages as a result of any act(s) or omission(s) by the Goodyear defendants and/or failed to mitigate damages, including the use of available restraints.

**AS AND FOR THE TWENTY-SIXTH AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

If plaintiff incurred damages or injuries as alleged in the complaint, then such damages may have been incurred as a result of his own comparative and/or contributory negligence, without any negligence, strict products liability or breach of warranty on behalf of the Goodyear defendants. Any damages to which plaintiff may be entitled should be diminished in the same proportion as their own negligence and/or culpable conduct bears to the total negligence and/or conduct responsible for the damages sustained.

**AS AND FOR THE TWENTY-SEVENTH AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

The Goodyear defendants assert that if this action is subject to Article 16 of the CPLR, in accordance with the limitations of joint and several liability in Article 16 of the CPLR, the Goodyear defendants cannot be held liable in excess of its proportionate share of liability, if any.

**AS AND FOR THE TWENTY-EIGHTH AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

In the event that plaintiff recovers a verdict or judgment against the Goodyear defendants, then said verdict or judgment must be reduced pursuant to CPLR 4545(c) by those amounts that have or will, with reasonable certainty, replace or indemnify plaintiff, in whole or in part, for any past or future claimed economic loss, from any collateral source such as insurance, social security, workers compensation or employee benefit programs.

**AS AND FOR THE TWENTY-NINTH AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

In accordance with CPLR 1601 *et seq.*, the liability of the Goodyear defendants, if any, to the plaintiff for non-economic loss is limited to its equitable share, determined in accordance with the relative culpability of all persons contributing to the total liability for non-economic loss, including named parties and others over whom plaintiff could have obtained personal jurisdiction with due diligence.

**AS AND FOR THE THIRTIETH AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

In the event that plaintiff receives a verdict or judgment against the Goodyear defendants, then said verdict or judgment must be reduced, and the Goodyear defendants are entitled to the appropriate set-off pursuant to GOL §15-108.

**AS AND FOR THE THIRTY-FIRST AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

If any product designed, manufactured, assembled or sold by the Goodyear defendants was involved in the alleged accident, then the Goodyear defendants deny that the product allegedly involved in this incident was defective or unreasonably dangerous for its ordinary intended use at the time they left the possession of the Goodyear defendants.

**AS AND FOR THE THIRTY-SECOND AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

Plaintiff's claims may be barred by the doctrine of waiver.

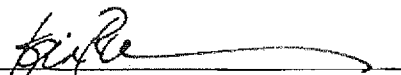
**AS AND FOR THE THIRTY-THIRD AFFIRMATIVE DEFENSE,
THE GOODYEAR DEFENDANTS STATE:**

Plaintiff's claims may be barred by the doctrine of estoppel.

WHEREFORE, defendants The Goodyear Tire & Rubber Co. and Goodyear Dunlop Tires North America, Ltd. demand judgment in their favor and against plaintiff and all other potential parties, together with costs of suit, attorneys' fees, and such other and further relief as this court may deem appropriate.

New York, New York
September 4, 2015

DLA PIPER LLP (US)

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
JOSE AYBAR,

Plaintiff,

- against -

THE GOODYEAR TIRE & RUBBER COMPANY,
and GOODYEAR DUNLOP TIRES NORTH AMERICA,
LTD.

Defendants.
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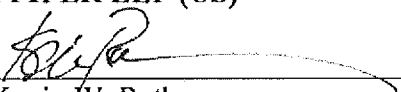
**ATTORNEY'S
VERIFICATION IN
SUPPORT OF
DEFENDANTS THE
GOODYEAR TIRE &
RUBBER CO.'S AND
GOODYEAR DUNLOP
TIRES NORTH
AMERICA, LTD.'S
ANSWER TO
PLAINTIFF'S
COMPLAINT**

The undersigned affirms the truth of the following statement under penalties of perjury pursuant to Rule 2106 of the Civil Practice Law and Rules:

1. That he is associated with the law firm of DLA Piper LLP (US), attorneys for defendants The Goodyear Tire & Rubber Co. and Goodyear Dunlop Tires North America, Ltd.
2. That he has read the foregoing document and knows the contents thereof, and that the same is true to the best of his knowledge, except as to the matters therein alleged upon information and belief and that, as to those matters, he believes the answers to be true.
3. That the reason why this affirmation is being made by the affiant and not by the defendants is that the defendants do not reside in the county in which the affiant's firm maintains an office.
4. That the source of the affiant's information and the grounds of his belief as to all the matters therein alleged upon information and belief are reports from and communications had with said defendants.

New York, New York
September 4, 2015

DLA PIPER LLP (US)

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