the tire after it left Goodyear's possession and control at the Tennessee manufacturing plant in 2002. R147.

Ford and Goodyear's motions to dismiss and the Supreme Court's order. Ford and Goodyear moved to dismiss U.S. Tires's claims against them for lack of personal jurisdiction. *See* R8-9, R384-386, R16-18. Ford and Goodyear explained that the Supreme Court did not have specific jurisdiction over them under the New York long-arm statute, CPLR 302(a)(1)-(3), because the claims did not arise from any contact Ford or Goodyear have with New York, and because they did not commit a tortious act in the State or a tortious act outside the State causing injury within the State. R403-405; R24-26. Ford and Goodyear also explained that the Supreme Court did not have specific jurisdiction under the Due Process Clause because Plaintiffs' claims did not arise out of or relate to any of their New York contacts. R400-403; R32-34. Ford and Goodyear finally explained that the Supreme Court did not have general jurisdiction over them under the Due Process Clause because neither is headquartered or incorporated in New York. R395-400; R23-26.

Plaintiffs and U.S. Tires opposed Ford and Goodyear's motions. Plaintiffs argued that Ford and Goodyear's contacts with New York were sufficiently continuous and systematic to render both "at home" in New York for general-jurisdiction purposes, R333-338, R704-706, and that Ford and Goodyear's contacts

with New York were sufficiently related to the cause of action for specific-jurisdiction purposes, R325-326, R710-713. U.S Tires, for its part, insisted that this Court's decision in *Aybar v. Aybar* was incorrect and that the Supreme Court could assert general jurisdiction over Ford and Goodyear. R511-520. U.S. Tires alternatively argued that CPLR 302(a)(1) and (3) authorized the exercise of specific jurisdiction in this case, and that exercising specific jurisdiction would be consistent with due process. R526-537.

The Supreme Court (Denis J. Butler, J.S.C.) denied the motions to dismiss. The court first held that *Aybar v. Aybar* precluded the exercise of general jurisdiction. R10. But the court nonetheless held that it could exercise specific jurisdiction pursuant to CPLR 302(a)(1), which authorizes jurisdiction over foreign defendants who "transact[ ] business in New York" so long as "there is an arguable nexus or substantial relationship between the business transacted and the claim asserted." *Id.* (citing CPLR 302(a)(1)).

The Supreme Court admitted that "the products at issue herein were manufactured out of state," but waved away the importance of "whether Ford or Goodyear sold the particular product directly to plaintiffs." R11. The court instead held that "the nature of" Ford and Goodyear's activities in New York—which included marketing in New York, selling other products in New York, and "locat[ing] themselves throughout New York," *id.*—"satisfies the requirement for

an arguable nexus and substantial relationship between that business and the causes of action revolving around the alleged defective products purchased and installed on the vehicle in New York," R12. In other words, Ford and Goodyear's decision to place their products "into the stream of commerce" was enough to constitute a nexus between their New York contacts and U.S. Tires's causes of action. R11. The Supreme Court also held that exercising specific jurisdiction over Ford and Goodyear did not violate the Due Process Clause. R12.

Ford and Goodyear's appeals. The Queens County Clerk entered the Supreme Court's order on September 27, 2019, R8, and Goodyear served the order with notice of entry on October 21, 2019. Ford and Goodyear timely appealed the Supreme Court's order on October 17 and October 21, respectively. R3-7. The Court of Appeals subsequently granted Plaintiffs' motion for leave to appeal in *Aybar v. Aybar*. *See* 34 N.Y.3d 905 (2019).

ARGUMENT

THE NEW YORK COURTS DO NOT HAVE SPECIFIC JURISDICTION OVER FORD AND GOODYEAR ON U.S. TIRES'S CLAIMS.

Specific jurisdiction is "conduct-linked jurisdiction." *Aybar v. Aybar*, 169 A.D.3d at 142-143. Under both the New York long-arm statute and the Due Process Clause, a New York court's specific jurisdiction is limited to "claims" that "arise from" a non-resident defendant's New York contacts. *Al Rushaid v. Pictet*

& Cie, 28 N.Y.3d 316, 323 (2016); *U.S. Bank Nat'l Ass'n v. Bank of Am. N.A.*, 916 F.3d 143, 150 (2d Cir. 2019) (recounting similar constitutional requirement). But "New York's long-arm statute . . . does not confer jurisdiction in every case where it is constitutionally permissible." *Kreutter v. McFadden Oil Corp.*, 71 N.Y.2d 460, 471 (1988). The Court therefore "first determine[s] whether our long-arm statute (CPLR 302) confers jurisdiction over [the defendant] in light of its contacts with this State." *LaMarca v. Pak-Mor Mfg. Co.*, 95 N.Y.2d 210, 214 (2000). If it does, the Court then "determine[s] whether the exercise of jurisdiction comports with due process." *Id.* And if "either the statutory or constitutional prerequisite is lacking, the action may not proceed." *Williams v. Beemiller, Inc.*, 33 N.Y.3d 523, 528 (2019).

Plaintiffs' and U.S. Tires's specific-jurisdiction arguments here flunk both the long-arm statute and the Due Process Clause. The Court should reverse.

A. New York's Long-Arm Statute Does Not Authorize The Exercise Of Jurisdiction In This Case.

New York's specific-jurisdiction long-arm statute, CPLR 302, allows courts to exercise "specific conduct-linked jurisdiction over a particular defendant" only for certain enumerated acts. *Aybar v. Aybar*, 169 A.D.3d at 142-143. One of those acts is "transact[ing] any business within the state," provided that the "cause of action arise[s] from" that transaction. CPLR 302(a)(1). CPLR 302(a)(1) thus calls for a "twofold" inquiry: First, "the defendant must have conducted sufficient

activities to have transacted business in" New York; second, "the claims must arise from the transactions." *Al Rushaid*, 28 N.Y.3d at 323; *see also Johnson v. Ward*, 4 N.Y.3d 516, 519-520 (2005) (same); *Pichardo v. Zayas*, 122 A.D.3d 699, 701 (2d Dep't 2014) (same).

Ford and Goodyear do not contest that they transacted some business in New York for long-arm-act purposes. The "requirement is met so long as the defendant's activities here were 'purposeful,'" *Piccoli v. Cerra, Inc.*, 174 A.D.3d 754, 755 (2d Dep't 2019) (quoting *Al Rushaid*, 28 N.Y.3d at 323), and Ford and Goodyear purposefully market, promote, advertise, and sell products in New York. *See* R11.

The problem is that Plaintiffs' and U.S. Tires's claims do not arise out of Ford and Goodyear's New York activities. "Essential to the maintenance of a suit against a nondomiciliary under CPLR 302 (subd [a], par 1) is the existence of some articulable nexus between the business transacted and the cause of action sued upon." *McGowan v. Smith*, 52 N.Y.2d 268, 272 (1981). Put otherwise, "the plaintiff's cause of action must have . . . [a] 'substantial relationship' with the defendant's transaction of business" in New York. *D & R Glob. Selections, S.L. v. Bodega Olegario Falcon Pineiro*, 29 N.Y.3d 292, 298-299 (2017) (quoting *Licci v. Lebanese Canadian Bank, SAL*, 20 N.Y.3d 327, 339 (2012)). For the court to

exercise jurisdiction, "at least one element" of the cause of action must "arise[ ] from the [defendant's] New York contacts." *Licci*, 20 N.Y.3d at 341.

But the nexus requirement is not met "where the relationship between the claim and transaction is 'too attenuated' or 'merely coincidental.' " *D & R Glob. Selections*, 29 N.Y.3d at 299 (citation omitted). So in *Fernandez v. DaimlerChrysler, AG*, 143 A.D.3d 765 (2d Dep't 2016), a New York resident sued foreign defendant DaimlerChrysler (A.G.) over a car crash in Pennsylvania. *Id.* at 765. In considering whether the requirements of CPLR 302(a)(1) were satisfied, this Court recognized that Daimler transacted business in New York. *See id.* at 767-768. But the Court held that those contacts did not share an " 'articulable nexus' or a 'substantial relationship' to . . . the allegedly defective parts of the subject vehicle." *Id.* Moreover, the Court noted that Daimler did not even "sell the subject vehicle to the decedant." *Id.* The Court therefore held that "the Supreme Court was not authorized to exercise personal jurisdiction over Daimler pursuant to CPLR 302(a)(1)." *Id.*

This Court held similarly in *Krajewski v. Osterlund, Inc.*, 111 A.D.2d 905 (2d Dep't 1985). There again, this Court held that jurisdiction did not lie over a foreign auto manufacturer for an out-of-state truck accident. *Id.* at 905-906. As in *Fernandez*, the Court recognized that the manufacturer had *some* contacts with New York: It sold current models of the truck "in the State of New York through

franchised dealers." *Id.* at 906. But the cause of action did not arise out any of those sales because the foreign defendant did not sell or manufacture the particular truck involved in the crash. *Id.* The Court accordingly held that CPLR 302(a)(1) did not authorize the exercise of personal jurisdiction over the defendant. *Id.* at 906-907.

Pichardo is the same. In that case, the plaintiff sued New Jersey defendants for a tort occurring at the defendants' New Jersey home. *Pichardo*, 122 A.D.3d at 700. The plaintiff argued that the court could exercise jurisdiction under CPLR 302(a)(1) because the defendants operated a church in Brooklyn where they "solicited donations"; because the defendants had "hired" the plaintiff "on about 30 separate occasions to perform work in Brooklyn and at other locations"; and because the defendants had hired the plaintiff for the job at issue while in New York. *Id.* This Court disagreed. *Id.* at 701. Looking to the plaintiff's claims, the Court explained that the defendants' New York activities had nothing to do with the causes of action: "[T]he alleged duty owed by the" defendants "to the plaintiff, the alleged breach of that duty, and the plaintiff's injury all arose or occurred in New Jersey." *Id.* The Court therefore held that "the relationship between the causes of action asserted in the complaint and the" defendants' "activities within New York were too insubstantial to warrant a New York court's exercise of personal jurisdiction over them pursuant to CPLR 302(a)(1)." *Id.*

These cases decide this one. Although Ford and Goodyear may have some contacts with New York, the relationship between those contacts and this cause of action is "too attenuated" to satisfy CPLR 302(a)(1). *D & R Glob. Selections*, 29 N.Y.3d at 299 (internal quotation marks omitted). *All* of Ford and Goodyear's allegedly relevant conduct took place outside New York: The Explorer was designed in Michigan, assembled in Missouri, and first sold in Ohio, R491, and the Goodyear tire was designed in Ohio and manufactured in Tennessee. R147; *see also* R11 (recognizing that Ford and Goodyear manufactured the products "out of state"). Indeed, not a single "element" of this cause of action "arises from" Ford and Goodyear's New York transactions. *Pichardo*, 122 A.D.3d at 701 (citation omitted). Because Ford and Goodyear did not sell the Explorer or tire in New York, no duty arose in New York. Nor did a breach occur in New York; in a product-defect case, the "tort" occurs where the allegedly defective product is manufactured—in this case, outside of New York. *See Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc.*, 15 N.Y.2d 443, 459-464 (1965). And even the injury did not occur in New York because, under the long-arm statute, "the 'situs of the injury is the location of the original event which caused the injury, not the location where the resultant damages are subsequently felt by the plaintiff.'" *Paterno v. Laser Spine Inst.*, 112 A.D.3d 34, 44 (2d Dep't 2013) (citation omitted), *aff'd*, 24 N.Y.3d 370 (2014). Plaintiffs' injuries here occurred in Virginia. *See* R9.

The Supreme Court ignored this cause-of-action-focused approach, and instead recounted a grab-bag of contacts Ford and Goodyear have with New York. *See* R11. But those contacts are entirely "unmoored" from this cause of action. *D & R Glob. Selections*, 29 N.Y.3d at 299 (citation omitted). Ford and Goodyear might "market[ ], promot[e], advertis[e]," sell, and service their products in New York, R11, but the sale of other products in New York does not satisfy the articulable-nexus requirement. *See Krajewski*, 111 A.D.2d at 906-907. Likewise, Ford and Goodyear might "each have numerous wholly owned or contractual relationships with independent dealers who sell their products, both new and used, to residents of New York," R11, but none of those dealers sold the products Plaintiffs and U.S. Tires complain about. R491, R147. It might have been "foreseeable and anticipated by these parties that their goods and products are a large part of the used car and tire markets in the State of New York," R11, but that is not even sufficient to constitute a purposeful contact with New York, *see Schultz v. Hyman*, 201 A.D.2d 956, 957 (4th Dep't 1994), much less create an articulable nexus between a contact and the cause of action. And Ford and Goodyear might be "registered and authorized to do business in New York," R11, but that registration has nothing to do with Plaintiffs' or U.S. Tires's cause of action. Nor, finally, is it relevant that Plaintiffs and U.S. Tires are New York residents. *See Fantis Foods, Inc. v. Standard Importing Co.*, 49 N.Y.2d 317, 326 (1980) ("It

has . . . long been held that the residence or domicile of the injured party within a State is not a sufficient predicate for jurisdiction . . . .").

In the end, the evidence below establishes only that Ford and Goodyear transacted business in New York. But "[i]t is not enough that a non-domiciliary defendant transact business in New York to confer long-arm jurisdiction." *D & R Glob. Selections*, 29 N.Y.3d at 298. Those transactions must share some "articulable nexus" with the cause of action. *See supra* pp. 11-12. Here, the connection between Ford and Goodyear's New York transactions and the asserted torts is, at best, "merely coincidental." *D & R Glob. Selections*, 29 N.Y.3d at 299 (citation omitted). The Court should reverse for lack of long-arm jurisdiction.

B. Exercising Jurisdiction Over Ford And Goodyear Would Violate Due Process.

Even if New York's long-arm statute authorized jurisdiction over Ford and Goodyear (and it does not), exercising jurisdiction over them would be improper under the Due Process Clause. *See Al Rushaid*, 28 N.Y.3d at 330 ("Exercise of personal jurisdiction under the long-arm statute must comport with federal constitutional due process requirements."). Like the long-arm statute, the Due Process Clause only allows specific jurisdiction where the cause of action is *connected* to the non-resident defendant's forum contacts. There is no such connection here.

The Due Process Clause allows a court to exercise specific jurisdiction over a non-resident defendant only when "the suit 'arise[s] out of or relate[s] to the defendant's contacts with the forum." *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984)) (alterations in original). In other words, federal due process requires a "connection between the forum and the specific claims at issue." *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1781 (2017). "For this reason, 'specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction.'" *Id.* at 1780 (citation omitted). The specific-jurisdiction inquiry therefore "focuses on the relationship among the defendant, the forum, and the litigation." *In re del Valle Ruiz*, 939 F.3d 520, 528 (2d Cir. 2019) (citation omitted). Putting those three pieces together, "[t]he exercise of specific jurisdiction depends on" the defendant's in-forum activity "that *gave rise to*" the litigation. *Id.* at 530 (citation omitted).

This litigation does not arise out of any of Ford and Goodyear's New York contacts. It arises out of a car accident in Virginia involving a vehicle designed in Michigan, assembled in Missouri, and first sold in Ohio, R491, and a tire designed in Ohio and manufactured in Tennessee, R147. The only thing even coming close to connecting this cause of action to New York is Plaintiffs' and U.S. Tires's New York residence. But "however significant the plaintiff's contacts with the forum

may be, those contacts cannot be 'decisive in determining whether the defendant's due process rights are violated.' " *Walden v. Fiore*, 571 U.S. 277, 285 (2014) (quoting *Rush v. Savchuk*, 444 U.S. 320, 332 (1980)).

The U.S. Supreme Court has repeatedly held that there is not specific jurisdiction over a defendant in circumstances like these. It held in another tire product-defect case that "[b]ecause the episode-in-suit, the . . . accident, occurred" outside the forum and the product "alleged to have caused the accident was manufactured and sold" outside the forum, the forum's courts "lacked specific jurisdiction to adjudicate the controversy." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). The Court has also observed that when the accident in a product-defect case occurs outside the forum, "the question [is] one of *general*"—not specific—"jurisdiction." *Daimler*, 571 U.S. at 127 n.5 (emphasis added).

Such is the case here. The Explorer and tire at issue were not manufactured in New York. Nor were they sold in New York. Nor did the accident occur in New York.[3] *See supra* pp. 4-7. There is therefore no specific jurisdiction over

[3] To be clear, Ford and Goodyear do not agree that where an accident occurs or where a plaintiff is injured is jurisdictionally relevant. *Bristol-Myers Squibb* explained that there is no specific jurisdiction when the defendant engages in no suit-related conduct in the forum, even when the plaintiff "suffer[s] foreseeable harm" there. 137 S. Ct. at 1781 (quoting *Walden*, 571 U.S. at 289). Plaintiffs' crash and injury not occurring in New York merely makes U.S. Tires's claims of personal jurisdiction over Ford and Goodyear "even weaker." *Id.* at 1782.

Ford and Goodyear on Plaintiffs' and U.S. Tires's claims in New York. And insofar as this is a question of "general jurisdiction," *see Daimler*, 571 U.S. at 127 n.5, this Court has already held—twice—that Ford and Goodyear are not subject to general jurisdiction in New York. *See Aybar v. Aybar*, 169 A.D.3d at 145-146; *Aybar v. Goodyear*, 175 A.D.3d at 1373-74.

The U.S. Supreme Court has also held that there is no specific jurisdiction over plaintiffs' claims where the "relevant conduct occurred entirely" outside the forum. *Bristol-Myers Squibb*, 137 S. Ct. at 1781-82 (emphasis omitted) (quoting *Walden*, 571 U.S. at 291). So, when a defendant allegedly wrongfully took money from Nevada plaintiffs in Georgia, there was no specific jurisdiction over the defendant in Nevada even though that is where the plaintiffs lived and where they lacked access to their funds. *Walden*, 571 U.S. at 288-291. All of the defendant's relevant conduct—taking the plaintiffs' money—occurred in Georgia. *Id.* Or, when a defendant allegedly harmed plaintiffs by selling a certain prescription drug, there was no specific jurisdiction over the defendant in California with regards to non-resident plaintiffs because the defendant did not develop, manufacture, label, or develop a marketing strategy for that drug in California, and because the non-resident plaintiffs were not prescribed that drug, nor did they purchase or ingest that drug, in California. *Bristol-Myers Squibb*, 137 S. Ct. at 1778, 1781. Again, all

of the defendant's relevant conduct—developing the drug and selling it to the plaintiffs—occurred outside of California. *Id.* at 1782.

So too here. All of Ford and Goodyear's allegedly relevant conduct took place outside of New York. *See supra* pp. 5-7. There is therefore no specific jurisdiction over Ford and Goodyear in New York on Plaintiffs' and U.S. Tires's claims.

A long line of federal courts have dismissed similar claims against Ford and Goodyear. A Mississippi federal court found no specific jurisdiction over Goodyear in a case concerning a tire that "was neither designed nor manufactured" nor purchased in Mississippi. *Progressive Cty. Mut. Ins. Co. v. Goodyear Tire & Rubber Co.*, No. 1:18CV321-LG-RHW, 2019 WL 846056, at *3 (S.D. Miss. Feb. 21, 2019). As that court explained, "[t]hat Goodyear sells this same type of tire in Mississippi, without more, is insufficient to find that" the plaintiff's "claims 'relate to' such sales." *Id.* Similarly, a Georgia federal court held that there was no specific jurisdiction over Ford in Georgia over a car accident occurring in that State where "the vehicle was designed and developed in Michigan[,] . . . manufactured in Canada and sold to a New York dealership," who then "sold it to a New York resident, who sold it to a Tennessee owner, who then sold it to" the plaintiff. *Brown v. Ford Motor Co.*, 347 F. Supp. 3d 1347, 1350 (N.D. Ga. 2018). And a Florida federal court held that Ford was not subject to specific jurisdiction in

that State in an accident involving a vehicle sold by Ford elsewhere because, although the plaintiff "offer[ed] a wide array of contacts Ford has with the state of Florida, ... [n]one of Plaintiff's claims arise out of or relate to the contacts Plaintiff alleges Ford has had with Florida." *Erwin v. Ford Motor Co.*, No. 8:16-cv-01322-T-24 AEP, 2016 WL 7655398, at *7 (M.D. Fla. Aug. 31, 2016). The list goes on.[4] Plaintiffs' and U.S. Tires's claims against Ford and Goodyear are no different than all these prior cases.

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[4] *See Schmitigal v. Twohig*, No. 9:19-CV-01511-DCN, 2019 WL 4689228, at *3-4 (D.S.C. Sept. 26, 2019) (no specific jurisdiction over Ford in South Carolina where "plaintiffs have presented no evidence that demonstrates that their specific claims against Ford arise from Ford's contacts with South Carolina"); *Kommer v. Ford Motor Co.*, No. 17-CV-296 (LEK/DJS), 2019 WL 2895384, at *2-3 (N.D.N.Y. June 19, 2019) (no specific jurisdiction over Ford in New York over claims that "are clearly unrelated in any way to Ford's activity within New York. None of the F-150 vehicles at issue are alleged to have been manufactured in New York."); *Thompson v. Ford Motor Co.*, No. 18-cv-3324-WJM-KMT, 2019 WL 4645446, at *5 (D. Colo. Sept. 24, 2019) (no specific jurisdiction over Ford in Colorado because "Ford did not design or manufacture the Vehicle in Colorado," "did not distribute the Vehicle to a dealership in Colorado," and "did not sell . . . the Vehicle in Colorado"); *Gaillet v. Ford Motor Co.*, No. 16-13789, 2017 WL 1684639, at *4 (E.D. Mich. May 3, 2017) ("Plaintiffs have . . . failed to establish that their claims arise out of or result from those contacts. First, the vehicle involved in the accident is not among those that Defendant sold to independent dealerships in Mississippi. It was distributed to an independent dealership in Georgia, which sold it to a Georgia resident, who in turn sold it to another Georgia resident. The vehicle only entered Mississippi when Plaintiffs transported it there unilaterally."); *Sullivan v. Ford Motor Co.*, No. 16-cv-03505-JST, 2016 WL 6520174, at *3 (N.D. Cal. Nov. 3, 2016) (no personal jurisdiction over Ford in California because its "motion demonstrate[d] that [the plaintiff's] injuries did not stem from Ford's contacts with California, as extensive as those contacts may be"); *Cahen v. Toyota Motor Corp.*, 147 F. Supp. 3d 955, 962 (N.D. Cal. 2015) (no specific jurisdiction over Ford in California where the plaintiffs' causes of action