To be Argued by:
LESTER CHANIN
(Time Requested: 15 Minutes)

New York Supreme Court

Appellate Division—Second Department

JOSE AYBAR and JOSE AYBAR as Administrator of THE ESTATE OF CRYSTAL CRUZ-AYBAR,

Plaintiffs,

– and –

ORLANDO GONZALES, JESENIA AYBAR as Administrator of THE ESTATE OF NOELIA OLIVERAS, JESENIA AYBAR as Legal Guardian on behalf of K.C., a minor, ANNA AYBAR and JESENIA AYBAR as Administratrix of THE ESTATE OF T.C.,

Plaintiffs-Respondents,

– against –

U.S. TIRES AND WHEELS OF QUEENS, LLC,

Defendant-Respondent.

Docket No.: 2019-12110

(For Continuation of Caption See Inside Cover)

BRIEF FOR DEFENDANT/THIRD-PARTY PLAINTIFF-RESPONDENT U.S. TIRES AND WHEELS OF QUEENS, LLC

FARBER BROCKS & ZANE, LLP
400 Garden City Plaza, Suite 100
Garden City, New York 11530
(516) 739-5100
lchanin@fbzlaw.com

Attorneys for Defendant/Third-Party Plaintiff-Respondent U.S. Tires and Wheels of Queens, LLC

Queens County Clerk's Index No. 703632/17

U.S. TIRES AND WHEELS OF QUEENS, LLC,

Third-Party Plaintiff-Respondent,

– against –

THE GOODYEAR TIRE & RUBBER COMPANY
and FORD MOTOR COMPANY,

Third-Party Defendants-Appellants,

– and –

GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD,

Third-Party Defendant.

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COUNTER QUESTIONS PRESENTED

Whether the Court below correctly denied the motion to dismiss the Third-Party Complaint against an automobile manufacturer and tire manufacturer for lack of specific personal jurisdiction over a negligence, strict products liability suit with indemnification and contributions third-party claims stemming from a rollover accident that killed three and seriously injured three based on its determination that the court has specific jurisdiction, pursuant to the New York long-arm statute, CPLR §302(a) and the due process clause of the U.S. Constitution, based on the facts in the record, including that: Plaintiffs or their decedents were all New York residents, who were returning to New York when the accident occurred due to alleged defects in the vehicle and one of its tires, as well as the servicing thereof in New York; the vehicle and tire were purchased second hand in New York; the vehicle was registered, garaged and primarily used in New York; the Third-Party Defendants-Appellants, which are registered to do business in New York with designated agents for service of process in New York, each have numerous wholly owned or contractual relationships with independent dealers who sell their products, both new and used, to residents of New York and both specifically target New York residents with their extensive advertising and marketing efforts on a continuous ongoing basis for both their new and used products.

It is respectfully submitted that the Court below correctly denied the motion, and the Order appealed from should therefore be affirmed.

Whether the Court below otherwise correctly denied the motion to dismiss the Third-Party Complaint.

It is respectfully submitted that the Court below otherwise correctly denied the motion to dismiss, and the Order appealed from should therefore be affirmed.

PRELIMINARY STATEMENT

In this action, the plaintiffs allege they and their decedents were injured in a July 1, 2012 accident when a Ford Explorer with Goodyear tires that plaintiff Jose A. Aybar ("Aybar") was driving, with five of his family members as passengers on a return trip from Disney World to Queens, New York, where they resided, flipped over after the tread on one of the Goodyear tires separated, causing the death of three and the serious injury of three others (the "Accident").

The Accident spawned three lawsuits, *Aybar v. Aybar* and *Aybar v. Goodyear Tire & Rubber Co.,* in which the plaintiffs brought suit against Ford Motor Company ("Ford") and Goodyear Tire & Rubber Company ("Goodyear"), respectively, alleging products liability and defective design and manufacturing, as well as the within suit, which the plaintiffs brought against defendant/third-party plaintiff-respondent U.S. Tires and Wheels of Queens, LLC ("U.S. Tires"), a resident of Queens, New York, alleging that it negligently installed and inspected the subject tire on the Ford Explorer. U.S. Tire, in turn, impleaded Ford and Goodyear as third-party defendants in the within action.

In *Aybar v. Aybar* and *Aybar v. Goodyear*, Ford and Goodyear moved to dismiss the suits based on lack of general jurisdiction. The motions were granted by the lower court, but reversed on appeal by this Court in its January 23, 2019 Order, which did not address the issue of specific jurisdiction.

Ford and Goodyear have moved to dismiss the Third-Party Action in the within suit, claiming lack of specific personal jurisdiction under the New York long-arm statute, CPLR §302(a), and the due process clause of the federal Constitution. In its Order dated September 25, 2019 (the 'September 25, 2019 Order"), the Court below correctly denied the motion based on its determination that it has specific jurisdiction over the suit based on the facts in the record.

Ford and Goodyear's entire argument is based on their unsustainable contention that they have no connection with the transactions at issue in this litigation, while they inconsistently admit: they marketed, promoted, advertised, sold and serviced their products in New York; they have numerous wholly owned or contractual relationships with independent dealers who sell their products, new and used, to residents of New York; their goods and products are a large part of the used car and tire markets in New York; they are registered and authorized to do business in New York; and Plaintiffs and U.S. Tires are New York residents.

They admit that they manufactured the alleged defective products at issue, and cannot dispute that they established and maintained an enormous commercial

infrastructure in New York to support and promote their products (both new and used), spent many millions of dollars marketing and advertising their products (both new and used) in New York, continuously intruded into the homes, cars and other intimate surroundings of New York residents, including Mr. Aybar, with their television, radio, computer and other advertisements (in English and Spanish), beckoning to them and undoubtedly influencing them to buy their products, including the very products Mr. Aybar purchased that are the subject of this litigation.

It is a slender reed indeed for Ford and Goodyear to rest their case on the contention that they did not directly sell Mr. Aybar the products, considering that they indirectly orchestrated and promoted those very sales through their massive, pervasive commercial intrusion into this state, which they planned with great deliberation and at enormous expense, with many dollars expended in New York, seeking and benefiting from the very sales from which they now attempt to disassociate themselves, based on the false pretense that they had no involvement, no complicity.

It is no secret that automobile manufacturers such as Ford benefit enormously from the sale of their replacement parts (and likely services) for older vehicles such as the Ford Explorer at issue, many of which are purchased second hand from third parties, as here. It is common knowledge that as an automobile

ages, it requires more and more replacement parts, which are frequently purchased directly or indirectly from the manufacturer, to the great benefit of the manufacturer. Through its concerted efforts, Ford instigated the sale of the Ford Explorer to Mr. Aybar based on its New York contacts and stood to benefit from that sale in New York. It cannot now walk away from the transactions it fostered and facilitated by making hyper-technical arguments, claiming no connection to them, at the time when Mr. Aybar and the other plaintiffs seek legal redress for the injuries they sustained, for the death of their decedents stemming from those transactions.

Nor can Goodyear justifiably disassociate itself from the purchase of its used tires, which it too promoted and indirectly benefited from, including the tire at issue in this litigation.

Based upon all the relevant circumstances and the Record before this Court and the Court below, the September 25, 2019 Order should be affirmed by this Honorable Court.

COUNTER-STATEMENT OF FACTS

Since the Brief of Third-Party Defendants Ford and Goodyear blends fact, misstated fact and argument that cannot be distinguished, it is respectfully requested that this Court refer to the Counter-Statement of Facts set forth herein.

A. This Court Summarized the Motions to Dismiss in the Related *Aybar v. Aybar* Action and Some of the Facts Pertinent to General Jurisdiction

In its January 23, 2019 Opinion & Order in the joint appeal in the related action *Aybar v. Aybar*, 169 A.D.3d 137 (2d Dep't), *lv. to app. Granted*, 33 N.Y.3d 905 (2019), *lv. to app. granted*, 34 N.Y.3d 905 (2019) this Court summarized the underlying motions in that case based on general jurisdiction and the facts thereto, which are set forth at R.590-92.

B. Ford and Goodyear Both Concede They Conduct "Extensive Commercial Activities in New York"

This Court also noted in its January 23, 2019 Order in *Aybar v. Aybar*, 33 N.Y.3d 1044 (2019) that: "Ford concedes that it has extensive commercial activities in New York" and "Goodyear concedes that it has extensive commercial activity in New York." (R.596)

C. This Court Limited Its Review in the Appeal in *Aybar v. Aybar* to General Jurisdiction, Leaving Specific Jurisdiction an Open Issue

In *Aybar v. Aybar*, this Court granted Ford and Goodyear's motions to dismiss based on its finding that notwithstanding their extensive contacts and dealings in New York, they did not rise to the level of making them "at home" in the State sufficient for general jurisdiction. The Court, however, left open the issue of whether it has specific jurisdiction over them. The Court noted:

> The plaintiffs did not assert that the court could exercise specific jurisdiction over these defendants in this action, and, thus, we do not consider whether jurisdiction might be exercised over them pursuant to New York's long-arm jurisdiction statute (see CPLR 302).

(R.593-94)

The Court further noted that: "The arguments of nonparty U.S. Tires that specific jurisdiction is present in this case are not properly before the Court since they were not raised before the motion court." (R.594, fn. 2)

D. Ford and Goodyear Admit They Transact Business in New York for Long-Arm-Act Purposes and that They "Purposefully Market, Promote, Advertise, and Sell Products in New York"

Ford and Goodyear concede "that they transacted some business in New York for long-arm-act purposes." (Appellant's Brf., at 11) They admit that this "requirement is met so long as the defendant's activities were purposeful" and that their activity in New York meets that standard because: "Ford and Goodyear purposefully market, promote, advertise, and sell products in New York." (*Id.*)

Ford and Goodyear further concede the extensive dealings the Court below found each of them have with New York, adding the meaningless qualifier that they "might" do them, which does not negate their admissions, which include:

- "Ford and Goodyear might 'market[], promot[e], advertis[e],' sell, and service their products in New York" (Appellant's Brf. at 15, quoting the September 25, 2019 Decision and Order in the Court below (Dennis J. Butler, J.) (the "Sept. 25, 2019 Order") (R.8-13, at 11);

- "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." (Appellant's Brf., at 15 (quoting the Sept. 25, 2019 Order at R. 11));

- "It might have been 'foreseeable and anticipated by these parties [Ford and Goodyear] that their goods and products are a large part of the used car and tire markets in the State of New York.'" (Appellant's Brf., at 15 (quoting the Sept. 25, 2019 Order at R. 11));

- "Ford and Goodyear might be 'registered and authorized to do business in New York.'" (Appellant's Brf., at 15 (quoting the Sept. 25, 2019 Order at R. 11));

- "Plaintiffs and U.S. Tires are New York residents" (Appellant's Brf., at 11); and that

- "Ford and Goodyear transacted business in New York." (Appellant's Brf., at 16)

E. Additional Undisputed Facts the Supreme Court in *Aybar v. Aybar* Found Regarding Ford's Involvement in the Accident and the Extent of Its Contacts with New York

The Supreme Court in *Aybar v. Aybar* found the following additional undisputed facts pertaining to the Accident and Ford's contacts with New York:

> It is undisputed that the 2002 Ford Explorer was purchased in New York by co-defendant Jose Aybar. The subject vehicle was also registered and licensed with the Department of Motor Vehicles in New York State. The vehicle was traveling through Virginia en route back to New York when the accident occurred. Moreover, Ford maintains a continuous and substantial presence in New York. It owns property in New York (*see* Exhibit 1 to opposition, $150 million dollars invested by Ford to upgrade its Hamburg, New York plant). It has hundreds

> of dealerships selling Ford products under its brand name in New York. Since 1920, Ford has been registered with the New York State corporation.

(R.609)

The Court below in the *Aybar v. Aybar* action found additional facts pertinent to this inquiry regarding Goodyear's contacts with New York:

> The plaintiffs' attorney, relying on an internet search, further alleges: "Goodyear has maintained substantial and continuous presence in New York since approximately 1924. It owns real property in New York. It owns and operates nearly one hundred storefront tire and auto service center stores located in every major city and throughout New York State, and it employs thousands of New York State residents at those stores. It also distributes its tires for sale at hundreds of additional locations throughout New York State." Defendant Goodyear does not deny these allegations.

(R.635)

Plaintiffs' internet search also found:

> [A] search of Goodyear's public website conducted in June 2017 using Goodyear's website "Stores Near You" search function shows: (1) 36 registered Goodyear service facilities in Queens County alone; (2) 34 registered Goodyear service facilities within a 5 mile radius of [U.S. Tires], the registered Goodyear service facility where the Wrangler Tire and Mr. Aybar's Ford Explorer were serviced …; and (3) 84 registered Goodyear service facilities within a 10 mile radius of U.S. Tires.
>
> Goodyear advertises to the public that it has one or more registered Goodyear Tire Stores in at least 325 different cities within New York State.

(R.768, FN1 and 2)

F. Plaintiffs Requested that the Court Below in the Within Action Take Judicial Notice that Ford Brand Automobiles, Both New and Used, Are Widely Sold, Serviced and Advertised Throughout New York State

Plaintiffs in the within action asked the Court below to take judicial notice of the fact:

> That thousands upon thousands of FORD brand automobiles are sold in every corner of New York State, and have been for decades. Such sales include both used vehicles and brand new vehicles, which are widely advertised, and regularly sold, leased and serviced at hundreds of FORD dealerships located throughout New York State;

(R.706)

G. Plaintiffs in Opposition to Goodyear's Motion to Dismiss in the Court Below Argued that Goodyear Has Engaged in Extensive Dealings and Advertising, For Many Decades, in the State of New York

Plaintiffs in the within action argued in opposition to Goodyear's motion to dismiss in the Court below, *inter alia,* that:

> [GOODYEAR] reportedly owns, manages and/or essentially controls scores of business outlets through tightly controlled company owned stores and/or franchises bearing the GOODYEAR corporate name, corporate logo and corporate color scheme, and which advertise, promote and sell exclusively the corporate

> products of GOODYEAR. GOODYEAR has conducted such business and derived substantial revenue from such business for several uninterrupted decades. It advertises extensively in New York. Millions upon millions of their tire products are sold and utilized on automobiles throughout New York State.

(R.334 ¶ 21)

H. Ford Specifically Tailors Its Advertising and Marketing to Target Members of the Hispanic Community, Including Plaintiff Jose Aybar, in "Very Localized" Campaigns Purposefully Designed to "Appeal to the Local Crowd" in New York and Elsewhere

In an article published in 2010 (the year before the Accident), Dave Rodriguez, a well-known "multi-cultural marketing manager at Ford," admitted that Ford tailors its marketing and advertising[1] to "very localized" subgroups within the Hispanic community in the U.S, including the New York market.[2] Ford does not treat the more than 50 million persons of Hispanic descent in this

[1] Ford spent $2.28 billion dollars on advertising in the United States in 2012. https://www.statista.com/statistics/261535/ford-motors-advertising-spending-in-the-us/

[2] While this article is not in the Record, we respectfully submit that the Court should take judicial notice of it because it is a highly relevant admission made in a public forum by a Ford representative who specializes in marketing to the Hispanic community. The Court should also consider this material because U.S. Tires has not been given an opportunity to conduct significant jurisdictional discovery, which would undoubtedly have confirmed this information. This information is also highly relevant to rebut Ford and Goodyear's many assertions that they "did not target the Explorer and tire at New York", that their connection with the claims is "merely coincidental," that the Ford Explorer and subject tire wound up in New York due to "a series of fortuitous circumstances" and the claims "did not arise out of or relate to any of their New York contacts." (*See* Appellant's Brf., at 7, 16 and 25 (quotations omitted)) Contrary to their many assertions, it is abundantly clear that Ford and likely Goodyear specifically tailored and directed their extensive marketing and advertising efforts to promote their new and used products in New York, including the subject Ford Explorer and Goodyear tire.

country,[3] including plaintiff Jose Aybar, in a monolithic way. Quite to the contrary, Ford eschews a "cookie cutter approach" to the Hispanic community, carefully targeting subgroups in specific areas of the country, including the New York region, depending on where in Latin America most of them come from, to more effectively promote its business and sell its products. It is clear based on this admission, that Ford tailors its marketing in the New York area to the subgroups of Hispanics that predominate in New York, including persons originating from Puerto Rico and the Dominican Republic,[4] where the plaintiff's surname, Aybar, is prevalent.[5]

The article explained how Ford specifically micro-targets Hispanics in the New York region and other regions:

> A one-size-fits-all strategy just won't cut it when it comes to reaching this varied demo. The 47 million Hispanics in the U.S. (as of July 1 2008 according to the U.S. Census Bureau) hail from 20 Spanish-speaking nations including Latin America and Spain. As Dave Rodriguez multi-cultural marketing manager at Ford puts it "The Hispanic market is very localized and targeted as it relates to specific regions of the country and it is a very

[3] Based on the 2010 Census, there were more than 50 million persons of Hispanic origin living in the United States. *See* "Origin of Race and Hispanic Origin: 2010," in 2010 Census Briefs, at 4 (https://www.census.gov/content/dam/Census/library/publications/2011/dec/c2010br-02.pdf)

[4] Based on the 2010 Census, New York State was the U.S. state with the largest population from the Dominican Republic by far, 674,787. *See* Wikipedia, the Free Encyclopedia, at https://en.wikipedia.org/wiki/Dominican_Americans (citing statistics from the 2010 U.S. Census).

[5] Based on a "genealogy portal," the plaintiff's surname, Aybar, is most prevalent in the Dominican Republic. *See* Forebears.io, at https://forebears.io/surnames/aybar.

> connected community. A cookie cutter approach isn't going to work." Ford approaches all of its multicultural marketing including Hispanic on two fronts: national and grassroots. While it connects via broad passions such as music sports or women's issues on a national level it gives each national program a regional bent. With music for example programs in New York or Miami feature artists with a Caribbean orientation that appeal to local crowds. In the Southwest or California the feeling is more Mexican.

Sandra O'Loughlin, *Targeting the Hispanic Demographic in Events*, Eventmarketer.com (Jan. 28, 2010), at https://www.eventmarketer.com/article/targeting-hispanic-demographic-events/.

I. Ford and Goodyear's Motions to Dismiss in the Court Below

Ford and Goodyear moved to dismiss U.S. Tires claims against them for lack of personal jurisdiction. (R.8-9, 16-18, 384-386) Ford and Goodyear argued that neither the claims of US Tires or the Plaintiffs satisfy the New York Long Arm Statute, CPLR §302, sufficient to establish specific jurisdiction. Neither disputed that they "transact[ed] any business within" the State of New York, pursuant to CPLR §302(a)(1), but both argued that neither US Tires nor the Plaintiffs' claims arise out of Ford's or Goodyear's activities or transaction of business in New York sufficient to satisfy the statute. (R.25 ¶ 22, R. 404 ¶ 40) They both also argued that the Court below did not have specific jurisdiction over them under the due process clause because Plaintiffs' claims did not arise out of or

relate to any of their New York contacts. (R.400-403, R. 32-34)

In opposition to the motions to dismiss, US. Tires argued, *inter alia,* that the CPLR §302(a)(1) requirement of some connection between the claim and the defendant's transaction of business or supply of goods or services in New York was satisfied because:

> In our case, Ford sold the exact same model Ford Explorer in New York with the same design flaws and manufacturing defects as the incident Explorer. Goodyear sold this exact same model tire in New York with the same design flaws and manufacturing defects as the incident tire. That the incident Explorer was not manufactured in New York and that it was initially shipped to a dealer outside New York are irrelevant. So is the fact that the Goodyear tires were manufactured outside New York. Ford and Goodyear's sale of these products in general in New York satisfies the nexus requirement of 302(a)(1). In addition, the vehicle was registered in New York and injured New York residents. The tire was on that New York registered vehicle and allegedly serviced by U.S. Tires, a service center in Queens that regularly services Goodyear tires and Ford Explorers. It is not only the plaintiffs' claims that satisfy the nexus requirement, but also U.S. Tires' third-party claims for indemnity and contribution, which arise from New York contacts. Specifically, any judgment the plaintiffs may obtain against U.S. Tires would be in New York. U.S. Tires' contribution and indemnity claims would stem from that New York judgment. Moreover, the underlying facts of the case also connect U.S. Tires' contribution and indemnity claims to New York because the tire and vehicle were serviced in New York in a shop that regularly services Goodyear tires and Ford Explorers.

(R.529 ¶ 41)

With respect to due process, U.S. Tires argued (R.535-537), *inter alia*, that: "finding that the New York courts have jurisdiction over Ford and Goodyear does not violate due process. They marketed and sold their products in New York and therefore they should reasonably expect the products' defects to have consequences in New York." (R.537 ¶ 65)

J. The September 25, 2019 Order by the Court Below

In the September 25, 2019 Order (R.8-13), the Court below denied the motions to dismiss of Ford and Goodyear based on alleged lack of personal jurisdiction. (R.13). The Court below held that the first prong of CPLR §302(a)(1), whether the defendants "transacted business in New York" (R.10), was clearly satisfied sufficient to establish specific jurisdiction: "It is undisputed that both Ford and Goodyear have considerable financial and business contacts and dealings in the State of New York and have had these contacts for a lengthy period of time. . . . [I]t is without question that these contacts satisfied the first prong of the long-arm statute, in that both third-party defendants transact business within the State of New York." (R.10)

The Court below also found that the second prong under CPLR §302(a)(1), "whether there is an arguable nexus or substantial relationship between the business transacted and the claim asserted" (R.10), was also satisfied sufficient to

establish specific jurisdiction over Ford and Goodyear:

> With respect to the second prong, although the products at issue herein were manufactured out of state by third party defendants, the nature of their business within New York State include, but are not limited to, marketing, promoting, advertising, sales, and servicing (either through corporate owned entities or independent contractors or dealers under contract) of their products. These business activities are directly targeted at the New York market, consisting of millions of resident drivers. Ford and Goodyear manufacture these vehicles and tires outside the state, but sell these vehicles and tires throughout New York State, nationally, and internationally. More specifically, both third-party defendants locate themselves throughout New York State, around the country, and the world, for these purposes. Here, in the State of New York, as aforesaid, they each have numerous wholly owned or contractual relationships with independent dealers who sell their products, both new and used, to residents of New York. Both spend considerable capital on sophisticated marketing, advertising and promotional programs to sell their products and enhance their brand names in New York State. It is certainly 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. In addition to the vast business and financial dealings by third-party defendants here in New York, both parties are registered and authorized to do business in New York.
>
> * * *
>
> Here, the purposeful activities of both third-party defendants [within the state] greatly exceed that required by the [Court of Appeals]. Whether a specific vehicle or part was sold by the respective defendants, it is well settled that a manufacturer of defective products who places them into the stream of commerce may be held strictly liable for injuries caused by its products,

> regardless of privity, foreseeability, or due care. Notwithstanding whether Ford or Goodyear sold the particular product directly to plaintiffs, of greater significance is whether the products manufactured elsewhere were placed into the stream of commerce as a result of the purposeful business activities of the parties in this state, targeted at New York residents, wound up in New York, and harmed plaintiffs, residents of New York. . . . [T]he pure happenstance in this matter is the fateful trip by plaintiffs to Virginia.

(R.11 (citations omitted))

The Court below also held that the "purposeful activities" in New York of Ford and Goodyear "far exceed" the requirements for "minimal contacts" under the due process clause of the U.S. Constitution:

> Both third-party defendants assure the flow of their products to New York through their myriad assortment of purposeful activities in which they partake. . . . These purposeful activities far exceed the minimal contacts within the State of New York necessary to pass constitutional muster.

(R.12)

K. The Instant Appeal

On or about October 17, 2019, Ford served and filed a Notice of Appeal from the September 25, 2019 Order. (R.3-5) On or about October 21, 2019, Goodyear served and filed a Notice of Appeal from the September 25, 2019 Order. (R.6-7)

ARGUMENT

POINT I

THE COURT BELOW CORRECTLY RULED THAT IT HAS SPECIFIC JURISDICTION OVER FORD AND GOODYEAR, PURSUANT TO CPLR §302(a), WHICH SHOULD BE AFFIRMED

CPLR §302(a), which addresses specific jurisdiction, provides:

> (a) Acts which are the basis of jurisdiction. As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary, or his executor or administrator, who in person or through an agent:
>
> (1) transacts any business within the state or contracts anywhere to supply goods or services in the state; or
>
> (2) commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act; or
>
> (3) commits a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if he
>
> (i) regularly does or solicits business or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or

(ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce; or

(4) owns, uses or possesses any real property situated within the state.

A. Ford and Goodyear are Subject to Specific Jurisdiction Under CPLR §302(a)(1)

1. The Two-Prong Test to Determine Specific Jurisdiction Under CPLR §302(a)(1)

This Court recently set forth the two-prong test for determining whether the court has specific jurisdiction over a foreign domiciliary, pursuant to CPLR §302(a)(1):

> In order to determine whether personal jurisdiction exists under CPLR 302 (a) (1), the court must determine (1) whether the defendant "purposefully availed itself of 'the privilege of conducting activities within the forum State' by either transacting business in New York or contracting to supply goods or services in New York" (*923 *D&R Global Selections, S.L. v Bodega Olegario Falcon Pineiro*, 29 NY3d 292, 297 [2017], quoting *Rushaid v Pictet & Cie*, 28 NY3d 316, 323 [2016]), and (2) whether the claim arose from that business transaction or from the contract to supply good or services (*see D&R Global Selections, S.L. v Bodega Olegario Falcon Pineiro*, 29 NY3d at 297; *Rushaid v Pictet & Cie*, 28 NY3d at 323).

Qudsi v. Larios, 173 A.D.3d 920, 922–23 (2d Dep't 2019).

Ford and Goodyear's dealings in New York satisfy both prongs of this test, as is discussed below.

2. Ford and Goodyear Concede Their Extensive Dealings in New York Satisfy the "Purposeful Availment" First Prong of the Test to Determine Specific Jurisdiction, Pursuant to CPLR §302(a)(1)

Ford and Goodyear explicitly concede that they "purposefully market, promote, advertise, and sell products in New York", in satisfaction of the first prong of the CPLR §302(a)(1) test. They admit in the Appellant's Brief:

> 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 Appellant's Brf., at 11.

3. There is an "Articulable Nexus" or "Substantial Relationship" Between Ford and Goodyear's New York Activities and the Claims, Triggering the Second Prong of the CPLR §302(a)(1) Test

(a) The "Articulable Nexus" Standard Generally

In *Qudsi v. Larios, supra,* this Court explained how the second prong of the CPLR §302(a)(1) test operates:

> In order to satisfy the second prong of the jurisdictional inquiry, there must be an "articulable nexus" (*McGowan v Smith*, 52 NY2d at 272) or a "substantial relationship"

> (*Kreutter v McFadden Oil Corp.*, 71 NY2d 460, 467 [1988]) between a defendant's New York activities and the cause of action sued upon.

Id., 173 A.D.3d at 923.

The "articulable nexus" standard does not require a "causal link" between the claim and the defendant's New York contacts. *Id.* The nexus requirement is "relatively permissive" and does not require causation, but merely "a relatedness between the transaction and the legal claim such that the latter is not completely unmoored from the former, regardless of the ultimate merits of the claim." *Licci v. Lebanses Can. Bank, SAL*, 20 N.Y.3d 327, 339 (2012). The claim need only be "in some way arguably connected to the transaction." *Id.* at 340.

The connection requirement of CPLR §302(a)(1) is satisfied so long as the product is marketed in New York, even if the specific product that caused the injury was not sold in New York initially. In *Rushaid v. Pietet & Cie*, 28 N.Y.3d 316 (2016), the Court of Appeals found that the statute's nexus requirement was satisfied when the bank accounts in New York were part of a larger fraud scheme conducted by the defendants that took place elsewhere, just like the sale of the Ford Explorer and Goodyear tire were part of a nationwide marketing for those products. *Id.* *See also Singer v. Walker*, 15 N.Y.2d 443 (1965) (foreign manufacturer was subject to jurisdiction under 302(a)(1) where a New York retailer sold one of its hammers to the plaintiff who was injured in an accident that

occurred out of state); *Tonns v. Spiegel's,* 90 A.D.2d 548 (2d Dep't 1982) (court found jurisdiction under 302(a)(1) when the defendant was an out of state manufacturer who made a defective product sold to the plaintiff through a New York retailer); *EMI Christian Music Grp. v. MP3tunes, LLC,* 840 F.3d 79 (2d Cir. 2016) (evidence of the intent to market a product nationwide sufficient for minimum contacts in New York).

(b) Where, As Here, the Defendant Specifically Targets The Forum State (New York) with Its Advertising, Marketing and Products, Which Allegedly Cause Injury, an "Articulable Nexis" is Found to Exist

Where, as here, the defendant specifically targeted New York consumers in their advertising or marketing campaign, as the Court below found that Ford and Goodyear did (R.11) and as Ford has admitted (*supra*, at 10-12), New York courts have found that there is a substantial relationship between defendants' advertising and marketing activities and the claim asserted against them sufficient to confer specific jurisdiction.

"The extent of a defendant's advertising and solicitation in a forum state are clearly factors to consider in evaluating whether a court in the forum state has personal jurisdiction over the defendant. A defendant's advertising through direct mail or catalogs, specifically targeted toward the residents of a forum state is sufficient to support an assertion of specific jurisdiction." *Hamilton v. Accu-Tek,*

32 F.Supp.2d 47, 70 (E.D.N.Y. 1998) (citation omitted). *Accord Pilates, Inc. v. Pilates Inst., Inc.*, 891 F.Supp. 175, 179 (S.D.N.Y. 1995) ("I conclude that plaintiff has established a prima facie case that the Institute has deliberately targeted its products and services at New York residents, and that . . . there is a sufficient relationship between defendant corporation's purposeful transactions and this action to confer jurisdiction under CPLR §302(a)(1)."). *Cf. Surdo v. Stamina Products, Inc.*, 2015 WL 5918318, at *3 (S.D.N.Y. Oct. 9, 2015) ("a court can find that a defendant directed its efforts toward the forum state [for purposes of due process] if the defendant designed the product for the forum state market, advertised in the forum state, or marketed the product through a distributor who agreed to serve as the sales agent in the forum state.)

For example, in *State Farm Fire & Cas. Co. v. Swizz Style, Inc.*, 246 F. Supp. 3d 880, 892 (S.D.N.Y. 2017), the court held that it had specific jurisdiction over a Swiss manufacturer of air purifiers with respect to an indemnity claim the distributor asserted against the manufacturer, stemming from a fire allegedly caused by one of its air purifier, where the manufacturer had directly targeted the New York area with its products. The court held:

> Swizz Style has alleged that a significant volume of its sales—as the exclusive distributor in the United States—were directed to New York, that Stadler Form was aware of and "targeted" New York specifically, and that Stadler Form might reasonably have suspected it could be called upon to answer for any fires related to the Viktor air

> purifiers in light of the retrofitting kits it provided to Swizz Style to correct the overheating problem. . . . Therefore, Swizz Style has alleged Stadler Form had the minimum contacts with New York necessary to support the exercise of specific jurisdiction.

Id. at 892 (citation omitted and emphasis added).

Robins v. Procurement Treatment Centers, Inc., 157 A.D.3d 606 (1st Dep't 2018) is also on point. In *Robins,* the court held that the court had specific jurisdiction, pursuant to CPLR §302(a)(1), over a proton radiation treatment facility in New Jersey (PPM) with respect to injurious treatment the plaintiff, a New York resident, allegedly received there, based in substantial part on PPM's targeting of New York residents for its services. The court held:

> With regard to specific jurisdiction (CPLR 302[a][1]), the record shows that PPM's activities in New York were purposeful and that there is a substantial relationship between the transaction and the claim asserted. PPM chose and marketed its Somerset, New Jersey, location to target New York residents, touting its proximity to New York in advertising, entered into an agreement with a consortium of New York City hospitals for the referral of cancer patients for treatment at its facility, and provided the consortium's doctors with privileges at its facility.

Id. at 607 (citation and quotations omitted).

Williams v. Summit Marine, Inc., 2019 WL 4142635 (N.D.N.Y. Aug. 30, 2019) is also instructive on this point, although the court found there was no specific jurisdiction under those highly distinguishable facts. In *Williams,* the plaintiffs were allegedly injured by a faulty boat lift in New York and sued the

manufacturer of the boat lift (Summit) and an alleged component part manufacturer (Automated), a Michigan corporation, which allegedly manufactured the winch brake of the boat lift. The court held that it did not have specific jurisdiction over Automated, pursuant to CPLR §302(a)(1), because there was no evidence that Automated targeted the New York market:

> To be sure, the pleadings contain no allegations that Automated designed, manufactured, or tested winch brakes for the New York market or marketed, distributed, sold, or delivered them to New York consumers. In fact, there are no allegations pertaining to the location of any of Automated defendants' conduct associated with winch brakes, let alone the winch brake at issue. Moreover, there are no allegations from which it can be reasonably inferred that Automated defendants targeted the New York market or knew that boat lifts comprised of their winch brakes were being sold to New York consumers. Further, Summit Marine does not point to a single aspect of its claims that arises from Automated defendants' New York contacts.
>
> Without alleging more than Automated was and is doing business within New York, it cannot be reasonably inferred that there was a substantial relationship between any business transacted by Automated defendants and the claims asserted. Accordingly, plaintiffs and Summit Marine fail to satisfy their burden of making a prima facie showing of personal jurisdiction under N.Y. C.P.L.R. 302(a)(1).

Id., slip op. at *3-*4 (citations and quotations omitted).

In stark contrast to *Williams,* the record in the instant case demonstrates, as the Court below correctly found, that Ford and Goodyear specifically targeted New

York residents, with millions of dollars of advertising and marketing, and sold millions of dollars of their products in New York, including the Ford Explorer and the Goodyear tire at issue, thereby establishing the "articulable nexus" or "substantial relationship" necessary for specific jurisdiction under CPLR §302(a)(1).

(c) Where, As Here, the Defendant Specifically Targets the Forum State (New York) with Its Products, Which Allegedly Cause Injury, an "Articulable Nexis" Exists

Ford also argued that there was an insufficient nexus for specific jurisdiction in a substantially similar case under a similar long arm statute in West Virginia in *State ex rel. Ford Motor Co. v. McGraw*, 788 S.E.2d 319 (W. Va. 2016), which the court rejected. "Ford contend[ed] that because the Ford Explorer [involved in the accident] was manufactured in Kentucky, sold to a dealer in Florida and entered West Virginia via a third party, Ford's asserted activities in West Virginia do not have anything to do with the West Virginia claim." *Id.* at 342. The court disagreed:

> We decline to use the place of sale as a per se rule to defeat specific jurisdiction. Such an approach ignores even the plurality in *J. McIntyre* that indicated that the inquiry considers both the defendant's conduct and the economic realities of the market the defendant seeks to serve. It also utterly ignores the "targeting" of a forum for the purpose of developing a market. The focus in a stream of commerce or stream of commerce plus analysis is not the discrete individual sale, but, rather, the development of a market for products in a forum.

Id. at 343.

In *Hoagland v. Ford Motor Co.*, 2007 WL 2789768 (W.D. Ky. Sept. 21, 2007), which involved interpretation of a Kentucky long-arm statute similar to 302(a)(1), Ford also argued that "'no act or omission by Ford within Kentucky causally relates to' the injuries at issue" sustained in the accident in Indiana and therefore there was no specific jurisdiction. *Id.*, slip op. at *3. As in the instant action, the plaintiff's decedent, a Kentucky resident, purchased the Ford Explorer from an in-state resident and was injured out of state on a "trip that started and was intended to end in Kentucky." *Id.*, slip op. at *3. The court rejected Ford's argument and held that it had specific personal jurisdiction over Ford under both the Kentucky long-arm statute and Federal due process:

> [I]n the matter at hand, there is no dispute that Ford manufactured the Escort at issue, nor is there any dispute that Ford introduced it into the stream of commerce or that such activities constitute Ford's regular course of business in Kentucky, from which it derives substantial revenue. Similarly, the court finds that by manufacturing and introducing this automobile into the stream of commerce, Ford purposefully availed itself of the privileges of acting and causing consequences in Kentucky, that the plaintiff's cause of action arose from the purchase of this car in Kentucky, and that the connection between Ford's actions, the events giving rise to this suit, and Kentucky are such that the court's exercise of jurisdiction over Ford is reasonable. The court concludes that the requirements of the due process clause and Kentucky's long-arm statute have been met;

Id.

In the within case, Ford sold this exact same model Ford Explorer in New York with the same alleged flaws and manufacturing defects as the incident Explorer. Goodyear sold this exact same model tire in New York with the same design flaws and manufacturing defects as the incident tire. That the incident Explorer was not manufactured in New York and that it was initially shipped to a dealer outside New York is irrelevant. So is the fact that the Goodyear tires were manufactured outside New York. As Judge Butler correctly found in the Court below, Ford and Goodyear's sales of these products in general in New York satisfies the nexus requirement of 302(a)(1). In addition, the vehicle was registered in New York and injured New York residents. The tire was on that New York registered vehicle and allegedly serviced by U.S. Tires, a service center in Queens that regularly serviced Goodyear tires and Ford Explorers. It is not only the plaintiffs' claims that satisfy the nexus requirement, but also U.S. Tires' third-party claims for indemnity and contribution, which arise from New York contacts. Specifically, any judgment the plaintiffs may obtain against U.S. Tires would be in New York. U.S. Tires' contribution and indemnity claims would stem from that New York judgment. Moreover, the underlying facts of the case also connect U.S. Tires' claims to New York because the tire and vehicle was serviced in New York in a shop that regularly serviced Goodyear tires and Ford Explorers.

4. The Principal Cases Ford and Goodyear Rely on Are Clearly Distinguishable

Ford and Goodyear principally rely on and repeatedly cite three cases, claiming: "These cases decide this one." (Appellant's Brf., at 14) Contrary to their assertions, the cases are clearly distinguishable.

In *Fernandez v. DaimlerChrysler,* 143 A.D.3d 765 (2d Dep't 2016), Daimler, a German corporation over which the plaintiff sought personal jurisdiction, did not manufacture the subject vehicle involved in the accident or any of its allegedly defective component parts. Nor did the Court address its advertising or marketing activities targeted to New York, if any.

In *Krajewski v. Osterlund, Inc.,* 111 A.D.2d 905 (2d Dep't 1985), the defendant (Osterlund), a Pennsylvania corporation, over whom personal jurisdiction was sought, did not manufacture the truck involved in the accident, unlike Ford and Goodyear. Rather, it was manufactured by a Michigan company that had filed for bankruptcy ten years before the decision. Additionally, the plaintiff failed to lay a foundation establishing that Osterlund did business in New York, in contrast to the instant case, in which Ford and Goodyear freely admit they "purposefully market, promote, advertise and sell products in New York." (Appellant's Brf., at 11)

Pichardo v. Zayas, 122 A.D.3d 699 (2d Dep't 2014) is also readily distinguishable from the case at bar. It did not involve manufacture of an allegedly

defective product, but rather an accident in which the plaintiff was allegedly injured while operating a table saw at the defendants' home in New Jersey. Unlike Ford and Goodyear, the defendants in *Pichardo* submitted evidence that they did not own property in New York, did not solicit business in New York, did not derive substantial business revenue in New York and did not engage in persistent business activities in New York. *Id.* at 700.

In contrast to the defendants in the above cases, Ford and Goodyear admit not only that they manufactured the Ford Explorer and subject tire, but that they had extraordinarily extensive and pervasive contacts with New York, including that: (i) they marketed, promoted, advertised, sold and serviced their products in New York; (ii) they have numerous wholly owned or contractual relationships with independent dealers who sell their products, new and used, to residents of New York; (iii) their goods and products are a large part of the used car and tire markets in New York; (iv) they are registered and authorized to do business in New York; and (v) Plaintiffs and U.S. Tires are New York residents. (Appellant's Brf., at 15-16)

Ford and Goodyear's position that they had no connection with the Plaintiff's and U.S. Tire's claims is entirely unfounded and unsustainable. They cannot dispute that they manufactured the alleged defective products at issue, set up and maintained an enormous business infrastructure in New York to support

and promote those products (both new and used), spent many millions of dollars marketing and advertising (in English and Spanish) those products (both new and used) in New York, constantly interjecting themselves into Mr. Aybar's very home and car with their television, radio and computer advertisements, beckoning to him and undoubtedly influencing him to buy their products, including the very products he purchased that are the subject of this litigation.

Yet, they brazenly deny this very reality by repeatedly arguing: (i) "the claims here have no link to New York" (Appellant's Brf., at 2); (ii) "Neither Ford nor Goodyear had any contacts in New York with Plaintiffs, U.S. Tires, the Explorer, or the tire installed on it" (*id.* at 5); (iii) "the claims did not arise from any contact Ford or Goodyear have with New York" (*id.* at 7); (iv) "Plaintiffs' claims did not arise out of or relate to any of their New York contacts" (*id.*); (v) "*All* of Ford and Goodyear's allegedly relevant conduct took place outside New York" (*id.* at 14); (vi) "Here, the connection between Ford and Goodyear's New York transactions and the asserted tort is, at best, 'merely coincidental.'"

It is a slender reed indeed for them to rest their case on the fact that they did not directly sell Aybar the products, when they indirectly orchestrated and promoted those very sales through their massive, pervasive commercial intrusion into New York, seeking (and benefiting from) the very sales they now attempt to disassociate themselves from.

It is no secret that automobile manufacturers such as Ford benefit enormously from the sale of their replacement parts (and possibly services) for older vehicles such as the Ford Explorer at issue, many of which are purchased second hand from third parties, as here. It is common sense and common knowledge that as an automobile ages, it requires more and more replacement parts, which are frequently purchased directly or indirectly from the manufacturer, to the great benefit of the manufacturer. Through its concerted efforts, Ford instigated the sale of the Ford Explorer to Aybar based on its New York contacts and benefited from that sale in New York. It cannot now walk away based on hyper-technical arguments, claiming no connection to the transaction it facilitated, when Aybar seeks to hold it accountable for defects in that product, which allegedly killed three of his relatives and seriously injured three others, including himself.

Based on the foregoing, the Court should sustain the September 25, 2019 Order holding that the court has specific jurisdiction over Ford and Goodyear, pursuant to CPLR §302(a)(1).

5. Ford and Goodyear Are Subject to Specific Jurisdiction, Pursuant to CPLR §302(a)(3)

The court also has specific jurisdiction in this case under CPLR §302(a)(3). The first requirement of CPLR §302(a)(3) is that the defendant "commits a tortious

act without the state causing injury to person or property within the state." Here, Ford and Goodyear committed tortious acts without the state—they manufactured and designed the products outside of New York.

Those tortious acts caused "injury to person or property within the state." The products injured the plaintiffs, who are New York residents. Ford and Goodyear argue that the injury did not occur "within the state" because the accident happened in Virginia. The court should reject this argument.

Traditionally, in the case of personal injury or property damage, whether the injury occurred "within the state" is determined by the location of the accident. *McGowan v. Smith*, 52 N.Y.2d 268 (1981). The courts have consistently held that pain and suffering or discovery of damages in New York after the injury occurs in another state will not suffice. *Id.*

On this question, however, the Court of Appeals has indicated that it is open for a reconsideration of this "first injury" rule. In *Ingraham v. Carroll*, 90 N.Y.2d 592 (1997), the court addressed the question of jurisdiction under CPLR §302(a)(3) over a Vermont physician who examined the plaintiff in Vermont, but continued to send instructions to her New York physicians. The court decided the question under CPLR §302(a)(3)(ii), by "assuming, without deciding, that the alleged tortious conduct in Vermont caused injury within New York" *Id.* at 597. The dissenting opinion observed that the majority's choice not to affirm the lower

court's ruling that the place of injury was New York signaled the court's willingness to reconsider the place of injury rule in "a more propitious and better assembled case, that may be otherwise determinative of outcome and contributive to the dispositional analysis and developing jurisprudence." *Id* at 604. This is that case.

CPLR §302(a)(3) was enacted precisely to prevent the untenable situation Ford and Goodyear propose: allowing national manufacturers to avoid the jurisdiction of the New York courts where a New York resident is injured by a product marketed in New York and serviced by a New York garage that attempts to assert claims for contribution and indemnity against the manufacturers. When CPLR §302 was amended in 1966 to add CPLR §302(a)(3), the legislature did so in response to the Court of Appeals' determination in *Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc.*, 15 N.Y.2d 443 (1965), which held that CPLR §302(a)(2) did not encompass products liability actions where the plaintiff was injured by a product manufactured outside of New York. L. 1966, ch. 590, effective September 1, 1966; Report of the Judicial Conference on the CPLR to the 1966 Legislature, Leg. Doc. (1967) No. 90, pp. 339-344. The amendment was meant to be broad enough to provide legal redress to New York residents who are injured by foreign tortfeasors and yet, not so broad as to unfairly burden nonresidents, whose connection with the state is remote and who could not

reasonably be expected to foresee that their acts outside of New York could have harmful consequences in New York. *See* Report of the Judicial Conference on the CPLR to the 1966 Legislature, Leg. Doc. (1967) No. 90, pp. 340-344. Denying jurisdiction under CPLR §302(a)(3) in our case would subvert the purpose of the statute.

Other cases support this reading of CPLR §302(a)(3), finding that the "original event" (i.e., the injury) happened in New York even if the accident happened elsewhere. In *Distefano v. Carozzi North America*, 286 F.2d 81 (2d Cir. 2001), a wrongful termination action, the court found that the place of injury was New York under CPLR 302(a)(3). The plaintiff worked in New York for a Rhode Island company. The decision to fire him was made outside of New York. He was fired during a meeting that took place in New Jersey. The court found that the "original event" (losing his employment) took place in New York despite the other acts occurring in other states. Here, the same rationale applies. The "original injury" was in New York—the sale, registration, and ownership of the Ford Explorer and Goodyear tire and servicing of them at U.S. Tires in Queens, even if the resulting accident happened in Virginia.

Moreover, even if the plaintiffs' injuries arose in Virginia, the same cannot be said of U.S. Tires' claims against Ford and Goodyear. U.S. Tires' claims against them would stem from a judgment by the plaintiffs against U.S. Tires in

New York. Thus, the "injury" to U.S. Tires would be in New York. Moreover, the underlying event—U.S. Tires' servicing of the tire and vehicle at its garage in Queens—also happened in New York. A garage that regularly sells and services the allegedly defective products should be able to recover against the manufacturers in the state where the work was done.

Therefore, the initial requirement of § CPLR 302(a)(3) is satisfied. Jurisdiction under CPLR 302(a)(3) then requires satisfaction of either subdivision (i) or (ii). Both are satisfied in our case.

a. <u>There is jurisdiction under 302(a)(3(i)</u>

Subsection 302(a)(3)(i) requires that the tortfeasor "regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state." There should be no dispute that this subsection is satisfied. Ford and Goodyear engage in regular business in the state and derive substantial revenue from goods sold in the state.

Jurisdiction under this section does not require the same quantity of contacts required for general jurisdiction under CPLR §301. *See Ingraham v. Carroll*, 90 N.Y.2d 592, 597 (1997). Just because the sales in New York might be only a fraction of the defendant's total sales does not mean that it does not "derive substantial revenue" (*i.e.*, many millions of dollars) under this section. *See Allen v.*

Canadian General Electric Co., Ltd., 65 A.D.2d 39 (3d Dep't 1978), *aff'd,* 50 N.Y.2d 935. Rather, this subsection is intended to apply to defendants "'who have sufficient contacts with this state so that it is not unfair to require them to answer in this state for injuries they cause here by acts done elsewhere.'" *Ingraham*, 90 N.Y.2d at 597, citing 12th Ann Report of NY Jud Conf, at 343.

Ford and Goodyear engage in regular business in New York and derive substantial revenue from goods sold in New York. Therefore, jurisdiction is proper under CPLR §302(a)(3)(i).

b. <u>There is jurisdiction under 302(a)(3)(ii)</u>

Jurisdiction is also proper under CPLR §302(a)(3)(ii), which requires that the defendant "expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce."

Again, there should be no dispute that Ford and Goodyear "derives substantial revenue from interstate or international commerce." Ford and Goodyear argue that the other portion of this subsection is not satisfied-that they "expect or should reasonably expect the act to have consequences in the state"—because the Ford Explorer and Goodyear tire were not shipped to New York initially.

Courts have consistently held that "the place where delivery or transfer of title occurs is, under the terms of 302 (a)(3)(ii), not relevant to whether the out-of-state act was tortious with foreseeable in-state consequences." *Dingeldey v. VMI-EPE-Holland B.V*, 2016 WL 6248680 (Oct. 26, 2016 W.D.N.Y. 2016) (finding jurisdiction under 302(a)(3)(ii) over manufacturer from Netherlands). In *Darrow v. Deutschland*, 119 A.D.3d 1142 (3d Dep't 2014), the court found jurisdiction under CPLR 302(a)(3)(ii) over a German manufacturer that sold a product in New York and other states via a distributor. This "rendered it likely that its products would be sold in New York" and the defendant should have "reasonably expected a manufacturing defect to have consequences in the state." Id. at 1144.

In *LaMarca v. Pak-Mor Manufacturing Co*., 95 N.Y.2d 210 (2000), the Court of Appeals found jurisdiction under 302(a)(3)(ii), rejecting a similar argument focused on the point of the initial sale of the product. The plaintiff was a New York resident that was injured by a defective product. The defendant-manufacturer was a Texas corporation and the product was manufactured in Virginia. The defendant had no property or presence in New York, although it did advertise and sell products in New York. The defendant focused on the fact that title for the product was passed to a distributor in Virginia to argue that they could not have reasonably expected consequences in New York. The court rejected that argument because the defendant marketed the product in New York and knew that

its products would be sold in New York. *See also Darienzo v. Wise Shoe Stores, Inc.*, 74 A.D.2d 342 (2d Dept. 1980) (jurisdiction under 302(a)(3)(ii) over foreign manufacturer because it knew that some of its products would be sold in New York stores and therefore it "did or should have reasonably expected forum consequences to arise in New York."); *Napolitano v Mastic Bicycles & Fitness Co.*, 279 A.D.2d 461, 462 (2d Dept. 2001) (holding that a non-domiciliary may be subject to suit if "the sale of one of its products arises from the efforts of the manufacturer or distributor to serve directly the market for its product in other countries or States, and its allegedly defective merchandise has been a source of injury.").

Therefore, Ford and Goodyear should have reasonably expected that these products could result in injury or consequences in New York based on their marketing and sale of the products in New York in general and regular servicing and sales of those products at garages in New York like U.S. Tires.

Based on the foregoing cases and facts in the record, the Court should affirm the holding by the Court below that it has specific jurisdiction over Ford and Goodyear under the New York Long-Arm Statute, CPLR §302(a)(1)

POINT II

THE COURT BELOW CORRECTLY RULED THAT IT HAS SPECIFIC JURISDICTION OVER FORD AND GOODYEAR, CONSISTENT WITH DUE PROCESS, WHICH SHOULD BE AFFIRMED

To establish that the court has specific jurisdiction it must comply with federal due process. As the Court of Appeals has explained:

> Exercise of personal jurisdiction under CPLR 302(a)(1) must also comport with federal due process. We have recognized that CPLR 302 and due process are "not coextensive"; nonetheless, while "personal jurisdiction permitted under the long-arm statute may theoretically be prohibited under due process analysis, we would expect such cases to be rare. Federal due process requires first that a defendant have "minimum contacts" with the forum state such that the defendant should reasonably anticipate being haled into court there, and second, that the prospect of having to defend a suit in New York comports with traditional notions of fair play and substantial justice.

D & R Glob. Selections, S.L. v. Bodega Olegario Falcon Pineiro, 29 N.Y.3d 292, 299–300 (2017) (citations and quotations omitted).

A. Ford and Goodyear Had "Minimum Contacts" with New York Sufficient for Due Process

A defendant may reasonably foresee the prospect of defending a suit in the forum state if it "purposefully avails itself of the privilege of conducting activities within the State." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297

(1980). As the Court below correctly found, Ford and Goodyear's "purposeful activities far exceed the minimal contacts with the State of New York necessary to pass constitutional muster" (R.12), as discussed below.

In *LaMarca v. Pac-Mor Manufacturing Co.*, 95 N.Y.2d 210 (2010), the Court of Appeals found jurisdiction under 302(a)(3)(ii), rejecting a similar argument raised by Appellants herein, which focused on the point of the initial sale of the product. The plaintiff was a New York resident that was allegedly injured by a defective product. The defendant-manufacturer was a Texas corporation and the product was manufactured in Virginia. The defendant had no property or presence in New York, although it did advertise and sell its products in New York. The defendant focused on the fact that title for the product was passed to a distributor in Virginia to argue that they could not have reasonably expected consequences in New York. The court rejected that argument because the defendant marketed the product in New York and knew that its products would be sold in New York. *See also Darienzo v. Wise Shoe Stores, Inc.*, 74 A.D.2d 342 (2d Dep't 1980) (jurisdiction under 302(a)(3)(ii) over foreign manufacturer because it knew that some of its products would be sold in New York stores and therefore it "did or should have reasonably expected forum consequences to arise in New York); *Napolitano v. Mastic Bicycles & Fitness Co.*, 279 A.D.2d 461, 462 (2d Dep't 2001) (holding that a non-domiciliary may be subject to suit if "the sale of

one of its products arises from the efforts of the manufacturer or distributor to serve directly the market for its product in other countries or States, and its allegedly defective merchandise has been a source of injury.").

Therefore, Ford and Goodyear should have reasonably expected that these products could result in injury or consequences in New York based on their marketing, advertising and sale of products in New York in general, their specific targeting of New Yorkers and their regular servicing and sales of those products at garages in New York like U.S. Tires.

Numerous cases involving substantially similar facts, including *Hoagland v,. Ford Motor Co.*, 2007 WL 2789768 (W.D. Ky. Sept. 21, 2007), discussed at length, *supra*, at 26-27, have been found to pass Constitutional muster under the due process clause and to comport with traditional notions of fair play and substantial justice. For example, in *Thomas v. Ford Motor Co.*, 289 F.Supp.3d 941 (E.D. Wis. 2017), the plaintiffs, Wisconsin residents, who owned a 2009 Ford Flex that was primarily designed and developed in Michigan and assembled in Canada, traveled to Pennsylvania to visit their daughter, where they were involved in an accident. They sued Ford in federal court in Wisconsin, asserting claims of negligence and strict liability. Ford moved to dismiss based on a lack of personal jurisdiction, making similar arguments to those that Ford and Goodyear assert in the within action. The court denied the motion, holding that it had specific

jurisdiction over Ford, consistent with due process, based on facts and arguments on both sides substantially similar to those in the instant case:

> Plaintiffs allege that Ford has been continuously licensed to do business in Wisconsin since 2003 and had designated CT Corporation System located in Madison, Wisconsin as its registered agent for service of process. They contend that Ford's advertising in Wisconsin is pervasive and its website specifically targets Wisconsin residents by allowing them to view the incentives and offers available in their locality. Although the Plaintiffs did not provide Wisconsin specific sales information, they noted that Ford has 122 dealerships located in Wisconsin that sell new and used Ford-brand vehicles. Ford certifies "pre-owned" vehicles and offers incentives for consumers that purchase a certified pre-owned Ford vehicle from one of its dealers. Plaintiffs allege that Ford is willing to serve consumers in Wisconsin and, as a result, has derived benefits from Wisconsin purchasing and owning its new and used vehicles. In sum, Plaintiffs have made a *prima facie* showing that Ford purposefully availed itself of the privilege of conducting activities in Wisconsin.
>
> * * *
>
> The fact that Ford did not initially sell the Thomases' Ford Flex in Wisconsin is wholly irrelevant to the personal jurisdiction inquiry. Rather, it is Ford's willingness to serve and sell to Wisconsin consumers buying its products that make it reasonable for Ford to anticipate being haled into a Wisconsin court. Plaintiffs have satisfied the *due process* requirements of the personal jurisdiction inquiry. Accordingly, Ford is subject to personal jurisdiction in this court for the purposes of this action.

Id. at 946-948 (citations omitted).

Michelin North America, Inc. v. De Santiago, 584 S.W.3d 114 (Tex. Ct. App. 2018) is also on point. In *Michelin*, the plaintiff, a Texas resident, who had purchased a second-hand Michelin tire in Texas and was involved in a rollover accident in Mexico, and sued Michelin, which manufactured the tire out of state, in a Texas court. The court held that it had specific jurisdiction over Michelin consistent with the federal due process clause:

> This case exposes the limits of using the stream of commerce metaphor as a legal test. Whether this case involves one continuous stream of commerce or the portaging of an item from one stream to another is less a matter of legality and more a matter of perspective. We are inclined to believe this scenario represents the uninterrupted, albeit indirect, flow of one stream of commerce foreseeably brining an item into a forum targeted by Michelin – a forum, we note, in which Michelin should have reasonably expected to be subject to litigation.
>
> * * *
>
> Michelin targeted Texas. The tire hit its target. Michelin expected and wanted the tire to hit its target. Whether Michelin made money off the specific sale to Lopez is not strictly relevant to the minimum contacts theory.
>
> The distinction Michelin draws between the tire being "new" and "used" is a distinction without a jurisdictional difference for minimum contacts purposes. The focus of a products liability case is the condition of the product at the time it left the manufacturer's possession.
>
> * * *
>
> In sum, Michelin has purposefully availed itself of Texas as a marketplace for its tires and it was reasonably

> foreseeable that it would have to answer suit in Texas related to those tires. Minimum contacts are established.

Id. at 134-135.

The Minnesota Supreme Court held last year that the court has specific jurisdiction over Ford, consistent with due process, in a highly analogous case, *Bandemer v. Ford Motor Co.*, 931 N.W.2d 744 (Minn. 2019), *cert. granted*, 140 S.Ct. 916 (2020). Rejecting the same argument that Ford makes here, that it did not have sufficient "minimum contacts" with the forum state (Minnesota) because no part of its tortious conduct, designing, manufacturing, warrantying or warning about the vehicle involved in the accident at issue occurred in Minnesota, the court held, with equal application to this case:

> This is not a case where a 1994 Ford Grand Victoria fortuitously ended up in Minnesota. Ford has sold thousands of such Crown Victoria cars and hundreds of thousands of other types of cars to dealerships in Minnesota. Because the Crown Victoria is the very type of car that Bandemer alleges was defective, Ford's sales to the Minnesota dealerships are connected to the claims at issue here. Bandemer's claims are about the design of the Crown Victoria and therefore his claims are about more than one specific car. Ford also collected data on how its cars performed through Ford dealerships in Minnesota and used that data to inform improvements to its designs and to train mechanics. Part of Bandemer's claim is that Ford failed to detect a defect in its vehicle design. Those activities, and the failure to detect, likewise relate to the claims here. Ford directs marketing and advertisements directly to Minnesotans, with the hope that they will purchase and drive more Ford vehicles. A Minnesotan bought a Ford vehicle, and it is

> alleged that the vehicle did not live up to Ford's safety claims. In determining whether a defendant has sufficient 'minimum contacts,' we consider the contacts alleged by the plaintiff in the aggregate and not individually, by looking at the totality of the circumstances.
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> * * *
>
> Because there is a substantial connection between the defendant Ford, the forum Minnesota, and the claims brought by Bandemer, Ford's contacts with Minnesota suffice to establish specific personal jurisdiction over the company regarding Bandemer's claims.

Id., at 754-755 (citation and quotation omitted).

Ford conceded that it was reasonable to require it to appear in a Minnesota court, consistent with "fair play and substantial justice" (*Id.* at 755), given its extensive dealings in the state, as Ford and Goodyear must do in this case as well, given their extensive dealings in New York.

The Supreme Court of Montana last year likewise rejected the same argument Ford makes herein, in *Ford Motor Co. v. Montana Eighth Judicial District Court*, 443 P.3d 407 (Mont. 2019), *cert. granted,* 140 S.Ct. 917 (2020), where the court held:

> At its core, due process is concerned with fairness and reasonableness: Is it fair and reasonable to ask an out-of-state defendant to defend a specific lawsuit in Montana? Companies build vehicles specifically for interstate travel. Irrespective of where a company initially designed, manufactured, or first sold a vehicle, it is fair to say that a company designing, manufacturing, and selling vehicles can reasonably foresee (even expect) its vehicles to cross state lines. When a company engages in the

> design, manufacture, and distribution of products specifically designed for interstate travel, it is both fair and reasonable to require the company to defend a lawsuit in a state where the product caused injury as long as the company has otherwise purposefully availed itself of the privilege of doing business in that state and if a nexus exists between the product and the defendant's in-state activity. Where a company first designed, manufactured, or sold a vehicle is immaterial to the personal jurisdiction inquiry, and focusing on those limited factors would unduly restrict courts of this state from exercising specific personal jurisdiction that comports with due process over nonresident defendants in cases such as this one.
>
> * * *
>
> A nexus exists between Gullett's use of the Explorer and Ford's in-state activity. Ford advertises, sells, and services vehicles in Montana. Ford makes it convenient for Montana residents to drive Ford vehicles by offering maintenance, repair, and recall services in Montana. Gullett's use of the Explorer in Montana is tied to Ford's activities of selling, maintaining, and repairing vehicles in Montana. Further, Ford could have reasonably foreseen the Explorer—a product specifically built to travel—being used in Montana. We accordingly conclude that Lucero's claims "relate to" Ford's Montana activities.

Id. at 416.

In another similar case involving an accident in a Ford vehicle, *Antonini v. Ford Motor Co.*, 2017 WL 3633287 (M.D. Pa. Aug. 23, 2017), the court held, *inter alia*, that Ford, which it found had "directly enticed" the plaintiff to purchase a used Ford vehicle in the forum state (Pennsylvania), had the required "minimum contacts" with Pennsylvania for purposes of due process and specific jurisdiction,

even though Ford did not manufacture the vehicle in Pennsylvania or sell it to the Plaintiff:

> Defendant directly and heavily advertised in Pennsylvania over a number of years and in a variety of mediums. The purpose of this in-state activity was to entice Pennsylvanians to buy and drive Ford brand vehicles, new or used. Defendant did this, in part, by advertising the safety of its vehicles. In this way, Defendant benefited from the laws of Pennsylvania by using the state as a platform to increase the number of Pennsylvanians purchasing and driving Ford brand vehicles. This in-state activity, according to the Amended Complaint, directly enticed Plaintiff to buy a used Ford. Thus, Defendant's forum related contacts achieved exactly what Defendant was seeking to achieve: it influenced a Pennsylvania driver to choose to purchase and drive a Ford brand vehicle. Further, the claim arose because Plaintiff was allegedly injured while driving her Ford Explorer in the same state in which Defendant had influenced her decision to buy the vehicle. Accordingly, there is a direct and close relationship between Defendant seeking to entice Plaintiff and other Pennsylvanians to purchase and drive Ford brand vehicles, in part by touting the cars as safe, and Plaintiff's claim that a defect in her Ford Explorer caused her injury while she was driving in the state where she was originally influenced by Defendant's advertisements to buy the vehicle.

Id., slip op. at *4 (citations omitted).

The court held that Ford "has the required minimum contacts with Pennsylvania in this case under a stream of commerce," reasoning:

> Here, the particular vehicle was sold to a New York dealership, and eventually resold to a Pennsylvania resident. Although the claim must still relate to a defendant's contacts with the forum state for a court to

> exercise personal jurisdiction over that defendant under a stream of commerce theory, the defendant does not have to put the product directly into the forum state. Here, Defendant's alleged actions showed its willingness to serve the Pennsylvania market and that Defendant derived benefits from Pennsylvanians owning new and used Ford brand vehicles. Further, as discussed above, it was Defendant's advertising in Pennsylvania that prompted Plaintiff to purchase a Ford brand vehicle.

Id., slip op. at *6 (citation omitted).

Similarly, in *Griffin v. Ford Motor Co.*, 2017 WL 3841890 (W.D. Tex. 3841890), where the plaintiff, a Texas resident, was injured in a Ford vehicle she purchased used in Texas, the court held that it had specific jurisdiction, in conformance with due process, over Ford. The court reasoned, *inter alia*:

> In this case, Griffin produced evidence Ford introduced thousands of Ford Focus vehicles into the stream of commerce. *See* Ford May 2017 U.S. Sales. Ford does not contend these vehicles were not sold in Texas, just that the Vehicle at issue was originally sold in Michigan and therefore exited the stream of commerce before reaching Texas. But Ford does not dispute it directs marketing and advertising activities related to the Ford Focus vehicles in Texas; it distributes Ford Focus vehicles in Texas; or it sells part to maintain or service Ford Focus vehicles purchased by Texas consumers. Where, as here, the Vehicle was owned by a Texas resident, registered in Texas, and the defect surfaced in Texas, Ford cannot convincingly argue Griffin's claims—which are based on Ford's "promoting and/or distributing" of the Ford Focus in Texas—do not arise out of or relate to Ford's contacts with Texas.

Id. at *3. *Accord Marin v. Michelin N. Am.*, 2017 WL 5505323 (W.D. Tex. 2017) (following *Griffin* in holding that court had specific jurisdiction over Michelin with respect to a tire it manufactured outside the forum state).

In *Tarver v. Ford Motor Co.*, 2016 WL 7077045 (W.D. Okla. Dec. 5, 2016), another suit in which the court held that it had specific jurisdiction over Ford, in compliance with due process, stemming from an accident involving a Ford vehicle manufactured outside the forum state (Oklahoma). The court reasoned:

> Here, it is indisputable that Ford delivered its vehicles into the "stream of commerce" with the expectation that they would be purchased by consumers in Oklahoma. The pivotal question is whether Ford engaged in any "additional conduct" such that it could be said to have purposefully availed itself of the privilege of conducting business in Oklahoma. The Court holds that Ford did engage in such activity under the test enunciated in [*Asahi Metal Indus. Co., Ltd. v. Superior Ct. of Cal., Solano County*, 480 U.S. 102 (1987)]. First, Ford designs and manufacturers its vehicles for the U.S. market, which includes Oklahoma. Second, it is undisputed that Ford vehicles, including the F-150, are the subject of a nationwide advertising campaign and that Ford specifically advertises its vehicles on a continuous basis in Oklahoma. Moreover, Ford maintains numerous dealerships throughout Oklahoma; Ford, in conjunction with these dealerships, establishes channels for providing regular advice, service, and product information to Oklahoma customers.
>
> The Court finds unavailing Ford's argument that personal jurisdiction does not exist because the subject vehicle was assembled in Kansas City, Missouri and later sold to an independent dealership in Indiana. The pivotal inquiry under the stream of commerce theory is whether a

> defendant has attempted to serve a market and expects its product to be used there. Irrespective of the state of assembly, Ford designs, manufactures, markets, and sells products specifically built for interstate travel, which includes Oklahoma. Ford manufactured and sold the subject vehicle with the reasonable expectation it would be used in Oklahoma and this action arises from the vehicle's use in Oklahoma.

Id., slip op. at *5 (citation omitted).

In another analogous case involving an accident in a Ford vehicle, *Rhodehouse v. Ford Motor Co.*, 2016 WL 7104238 (E.D. Cal. Dec. 5, 2016), the court held that it had specific jurisdiction, consistent with due process, over Ford in the forum state (California), even though Ford did not manufacture the vehicle in California or directly sell it to the plaintiff. The court held, *inter alia*:

> Given that Ford vehicles saturate California roads and dealerships and that Ford advertisements pervade California media, this Court finds that Ford has purposefully availed itself of the privilege of conducting activities in California.
>
> * * *
>
> Ford has strong and pervasive connections to California, i.e. Ford "specifically seeks, or expects" to sell its cars in California. In light of these strong connections, the fact that the accident injured a California resident and occurred in the state of California in a California-registered vehicle sufficiently establishes a nexus between Ford's contacts with California and Mr. Rhodehouse's claims.

Id., slip op. at *2, *4. *See also Hatton v. Chrysler Canada, Inc.*, 937 F.Supp.2d 1356, 1366 (M.D. Fla. 2013) ("the Court finds that Chrysler Canada purposely

availed itself of the protections of the State of Florida. Chrysler Canada assembled the subject Chrysler 300 M for Chrysler United States, which distributes nationally in the United States, and therefore Chrysler Canada invoked the benefits and protections of those states, including Florida. *World–Wide Volkswagen Corp.*, 444 U.S. [286,] 297, 100 S.Ct. 559 [1980]. Therefore, 'it is not unreasonable to subject [defendant] to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others.' *Id.*")

As in the many foregoing cases, Ford and Goodyear manufactured, marketed and advertised the Ford Explorer and tire at issue by specifically targeting New York residents with their products, directly enticing Mr. Aybar to purchase those products in New York in the second hand market. They promoted the sale of their used products in New York and benefited from those sales. They created an enormous infrastructure for marketing, servicing and repairing those products in New York to foster those sales. With an extraordinary amount of deliberation, care, effort and expense in the State of New York, Ford and Goodyear created, orchestrated, nurtured and sustained the commercial environment or conditions needed to induce Mr. Aybar to purchase the Ford Explorer and Goodyear tire at issue.

That they did not directly sell the products or pull the proverbial trigger themselves, is of no moment given their culpability for launching the

instrumentalities of alleged harm targeted at New York residents, combined with their extensive in-state involvement in doing everything in their power to promote and facilitate those sales, from which they stood to benefit, albeit indirectly.

The New York cases Ford and Goodyear rely on are either not controlling or distinguishable. The cases they cite from other jurisdictions are distinguishable and/or not persuasive, in contrast to the cases cited by U.S. Tires herein. For example, in *Erwin v. Ford Motor Co.*, 2016 WL 7655398 (M.D. Fla. Aug. 31, 2016), unlike the instant case, the plaintiff was a resident of Ohio and lived only part-time in the forum state, Florida. Moreover, unlike the instant case, the plaintiff did not purchase the vehicle in the forum state. Finally, the claim did not arise out of Ford's advertising in the forum state, since the vehicle was purchased in Ohio, in contrast to the facts of the instant case.

The decision in *Schmitigal v. Twohig*, 2019 WL 4689228 (D.S.C. Sept. 26, 2019) was subsequently vacated and dismissed based on lack of subject matter jurisdiction. *Id.*, 2020 WL 2468754 (D.S.C. May 13, 2020).

Kommer v. Ford Motor Co., 2019 WL 2895384 (N.D.N.Y. June 19, 2019) was a class action suit, which is fundamentally different from the instant action. None of the claims in *Kommer* involved New York state law, in stark contrast to the instant action. Only one of the four putative plaintiffs in *Kommer* was a New York resident. Whereas, Ford and Goodyear concede that the plaintiffs in the

within action are New York residents. Appellant's Brf., at 11. Additionally, none of the vehicles at issue in *Kommer* were sold in New York. Whereas, the Ford Explorer and tire at issue in the within action were sold in New York, albeit second hand, which is a distinction between the instant action and *Gaillet v. Ford Motor Co.*, 2017 WL 1684639 (E.D. Mich. May 3, 2017) as well.

In *Progressive County Mutual Insurance Co. v. Goodyear Tire & Rubber Co., 2019 WL 846056 (S.D. Miss. Feb. 21, 2019),* the plaintiff purchased the tire at issue in a state other than the forum state. Whereas, in the instant case, Aybar purchased the Goodyear tire at issue in New York.

Cahen v. Toyota Motor Corp., 147 F.Supp. 955, 962 (N.D. Cal. 2015), *aff'd on other grounds*, 717 Fed.Appx. 720 (9th Cir. 2017) too is very dissimilar to the instant action. It is a putative class action. It did not involve personal injuries, but rather economic injuries. Only one of the plaintiffs in *Cahen* resided in the forum state (California). The out-of-state plaintiffs did not assert claims based on California law. Therefore, they were dismissed from the suit.

B. Ford and Goodyear Have Not and Cannot Meet Their Burden of Demonstrating that Traditional Notions of Fair Play and Substantial Justice Would Render Jurisdiction Unreasonable

Ford and Goodyear "minimum contacts" with New York having been established, the burden is on them to "'present a compelling case that the presence

of some other considerations would render jurisdiction unreasonable.'" *D & R Glob. Selections, S.L. v. Bodega Olegario Falcon Pineiro*, 29 N.Y.3d 292, 300, 78 N.E.3d 1172, 1177–78 (2017) (quoting *LaMarca v. Pak–Mor Mfg. Co.*, 95 N.Y.2d 210, 216 (2000) (citation and internal quotation marks omitted). In other words, they have the burden of demonstrating that for the court to exercise personal jurisdiction over them would violate "traditional notions of fair play and substantial justice."

It should be noted that in addition to holding that the court had specific jurisdiction over the defendant, consistent with due process, the above cases, *supra*, at 43-55, explicitly or implicitly held that their exercise of specific jurisdiction of the defendant(s) comports with traditional notions of fair play and substantial justice.

Ford and Goodyear, however, have not even attempted to make that showing. Therefore, it is respectfully submitted that the Court should affirm the September 25, 2019 Order, finding that the Court below has personal jurisdiction over them.

CONCLUSION

For all the foregoing reasons, as well as those set forth in U.S. Tires' papers below, it is respectfully requested that this Honorable Court affirm the September 25, 2019 Order denying Ford and Goodyear's motion to dismiss the action based on lack of specific personal jurisdiction.

Dated: Garden City, New York
July 6, 2020

FARBER BROCKS & ZANE L.L.P.

By: Lester Chanin
Lester Chanin

Attorneys for Defendant-Respondent
U.S. Tires and Wheels of Queens, LLC
400 Garden City Plaza, Suite 100
Garden City, New York 11530
(516) 739-5100

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