

# **EXHIBIT**

## **"A"**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS-----X  
JOSE AYBAR,

Index No.:

Date Filed:

*Plaintiff,*

-against-

Plaintiff designates  
**QUEENS COUNTY**  
as trial venue**THE GOODYEAR TIRE & RUBBER COMPANY,  
and GOODYEAR DUNLOP TIRES NORTH  
AMERICA, LTD.,**The basis of venue  
Residence of Plaintiff*Defendants.***Summons**-----X  
To the above named Defendant(s):

**You are hereby summoned** and required to serve upon the Plaintiff's attorney an answer to the complaint in this action with twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you with the State of New York); and in case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York  
June 30, 2015CERTAIN & ZILBERG, PLLC  
Attorneys for Plaintiff, JOSE AYBAR  
*Office and Post Office Address*  
909 Third Avenue, 28<sup>th</sup> Floor  
New York, New York 10022  
Telephone: (212) 687-7800*Defendants' addresses:*

THE GOODYEAR TIRE & RUBBER COMPANY	C/O CORPORATION SERVICE COMPANY 80 STATE STREET ALBANY, NEW YORK 12201
GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD.	C/O CORPORATION SERVICE COMPANY 80 STATE STREET ALBANY, NEW YORK 12201

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS**

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JOSE AYBAR,	Date Filed:
	Plaintiff designates
<i>Plaintiff,</i>	<b>QUEENS COUNTY</b>
-against-	as trial venue
	The basis of venue
<b>THE GOODYEAR TIRE &amp; RUBBER COMPANY, and GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD.,</b>	Residence of Plaintiff
<i>Defendants.</i>	
-----X	<b>Verified Complaint</b>

Plaintiff, JOSE AYBAR, by and through counsel, CERTAIN & ZILBERG, as and for his complaint against the Defendants THE GOODYEAR TIRE & RUBBER COMPANY and GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD., alleges as follows:

**PARTIES**

1. At all times relevant herein, the Plaintiff, JOSE AYBAR, was a natural person residing in the County of Queens, City and State of New York.
2. At all times relevant herein, upon information and belief, Defendant THE GOODYEAR TIRE & RUBBER COMPANY is an active Ohio corporate entity, registered as a foreign corporate entity with the New York State Department of State under Department of State Identification No. 99296 , designating as its New York registered agent Corporation Service Company of 80 State Street, Albany, New York, 12207-2543.
3. Defendant GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD is an active Ohio limited liability company, registered as a foreign limited liability company with the New York State Department of State under Department of State Identification No. 2413740 , designating as its New York registered agent Corporation Service Company of 80 State Street, Albany, New York, 12207-2543. Upon information and belief, Defendants GOODYEAR TIRE & RUBBER CO. and GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD (hereinafter collectively known as the "GOODYEAR Defendants") are in the business of designing, testing, manufacturing, distributing and selling tires for automobiles, trucks and buses that are marketed, sold and used throughout the world, including the State of New York.
4. Upon information and belief, the GOODYEAR Defendants regularly do and/or solicit business and derive substantial revenue from goods used and consumed and services rendered in the State of New York.

**FACTS**

5. Upon information and belief, at all relevant times, the GOODYEAR Defendants were and are designers, manufacturers, and/or sellers of "GOODYEAR" branded tires.
6. At all relevant times, Defendant GOODYEAR TIRE & RUBBER COMPANY was, and is, the owner of the U.S patent and trademark office registered "GOODYEAR" mark.
7. Upon information and belief, at all relevant times, the GOODYEAR Defendants have represented to the public or have otherwise held themselves out as having expertise and/or special knowledge in design and manufacture of vehicle tires.
8. At all relevant times, the GOODYEAR Defendants have represented to the public that their tires are safely and well constructed.
9. Defendants designed, manufactured and/or sold "GOODYEAR" brand tires, and more specifically WRANGLER AP P245/70R16 106S tires bearing the DOT# MK9L3NER0402. (hereinafter "the subject tires")
10. In or about late 2011 Plaintiff purchased and received delivery of a certain 2002 Ford Explorer sport utility vehicle, bearing VIN# 1FMDU74WX2ZB89795, together with the subject tires from a third party.
11. On or about July 1, 2012 JOSE AYBAR was operating the above 2002 Ford Explorer when a WRANGLER AP P245/70R16 106S tire bearing the DOT# MK9L3NER0402 unexpectedly failed/separated causing Plaintiff to lose control of said vehicle and causing said vehicle to roll over.
12. Further, by reason of the aforesaid, Plaintiff suffered and continues to suffer significant pain, physical disability, impairment, discomfort, loss of enjoyment of life and mental anguish.
13. Additionally, Plaintiff has suffered from loss of wages and incurred past, and will incur future medical expenses.

**A FIRST CLAIM BASED ON STRICT PRODUCTS LIABILITY**

14. Plaintiff restates the allegations within the above paragraphs as if fully set forth herein.
15. The subject tires were received by Plaintiff in substantially the same condition in which they were sold, delivered, or otherwise placed in the stream of commerce by Defendants.
16. The subject tires are defective in design, manufacture and component materials and parts and in the inadequacy and inaccuracy of accompanying instructions, labels and warnings.
17. The subject tires as designed and constructed were unfit for their intended use and were therefore unreasonably dangerous to their intended and anticipated users.

18. As a result of the defective nature of the subject product the Plaintiff suffered significant pain, physical disability, impairment, discomfort, loss of enjoyment of life, mental anguish and other losses.
19. For claims based upon the above, the Defendants are strictly liable for the Plaintiff's resulting injuries.
20. For claims based upon strict products liability, Defendants are liable to the Plaintiff for compensatory damages in a sum greater than the jurisdictional limits of all lower Courts.

**A SECOND CLAIM FOR NEGLIGENCE**

21. Plaintiff restates the allegations within the above paragraphs as if fully set forth herein.
22. The GOODYEAR Defendants were negligent in the design, manufacturing, testing, inspection, distribution, promotion, marketing and sale of the product, including but not limited to:
  - a. Negligently designing and manufacturing the product;
  - b. Negligently designing and manufacturing the product so as to permit it to be dangerous to the user of said product;
  - c. Negligently making false and/or misleading representation about the quality of the product and its features;
  - d. Negligently failing to properly, sufficiently and/or accurately warn and or instruct purchasers and/or users of the potential hazards and dangers presented by use of the product;
  - e. Negligently failing to properly test the product; and
  - f. Negligently failing to properly inspect the product.
23. The GOODYEAR Defendants were, or should have been, aware of the allegations of the above paragraph and the related potential for injury.
24. The GOODYEAR Defendants were negligent in the sale, inspection, failure to warn, servicing and repair of the subject tires, including but not limited to:
  - a. Negligently selling the subject tires;
  - b. Negligently making false representations about the quality and condition of the subject tires;
  - c. Negligently failing to properly inspect the subject tires;
  - d. Negligently failing to properly maintain the subject tires;
  - e. Negligently failing to properly service the subject tires; and
  - f. Negligently failing to provide adequate warnings for the subject tires.
25. The GOODYEAR Defendants were, or should have been, aware of the allegations of the above paragraph and the related potential for injury.

26. The Defendants' negligence as alleged above was the proximate cause of the significant pain, physical disability, impairment, discomfort, loss of enjoyment of life, mental anguish and other losses suffered by Plaintiff.
27. As a result of the foregoing negligence, Defendants are liable to the Plaintiff for compensatory damages in a sum greater than the jurisdictional limits of all lower Courts.

**A THIRD CLAIM FOR BREACH OF WARRANTY**

28. Plaintiff restates the allegations within the above paragraphs as if fully set forth herein.
29. The GOODYEAR Defendants warranted by implication that the subject tires were fit and reasonably safe for use and made in consideration of reliable research, design, testing and inspection conducted by qualified and knowledgeable experts and professionals.
30. Further, the GOODYEAR Defendants made express representations about the quality, design, safety and fitness of the product as an inducement to encourage the purchase and use of the product.
31. Defendants' warranties with respect to the subject tires were breached when the subject tires and their component parts proved to be unsafe and not reasonably suitable and fit for the uses intended and expected.
32. Those breaches of express warranties by Defendants were the proximate cause of Plaintiff's injuries as alleged in this complaint.
33. The Defendants breached the warranties in that the product failed to operate as promised, implied, expected and relied upon.
34. As a direct result of Plaintiff's reliance on the Defendants' product, he suffered the injuries complained of herein.
35. As a result of the foregoing breach of warranty, the Plaintiff suffered and continues to suffer significant pain, physical disability, impairment, discomfort, loss of enjoyment of life and mental anguish.
36. For claims based upon breach of warranty the Defendants is liable to the Plaintiff for compensatory damages in a sum greater than the jurisdictional limits of all lower Courts.

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

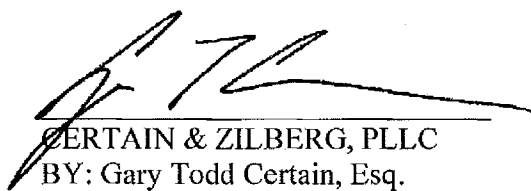
37. Plaintiff repeats and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth at length herein.

38. The GOODYEAR Defendants concealed and/or failed to reveal material facts that were known, or should have been known, to them with respect to the subject tire product and its attendant hazards and risks.
39. The GOODYEAR Defendants failed to provide adequate or reasonable warnings and/or instructions concerning the attendant hazards and risks which It knew or should have known were associated with its product, including but not limited to the safe and effective use life of its tire products including the subject tire product.
40. Before to the subject incident, the defendant were aware of prior incidents that demonstrated the need for further warnings and/or instructions.
41. Despite defendants' awareness of the serious nature of the above defect(s) and age related failures, the defendants took no action to warn plaintiff and other owner, users or bystanders of the potential of injury and/or property loss associated with its tire products including the subject tire.
42. Defendants' conduct in failing to issue a proper warning, instruction, or take any other reasonable prophylactic action needlessly exposed the public to the latent dangers of its products in violation of the New York State General Business Law (NYS GBL) prohibition against unfair and deceptive trade practices pursuant to GBL §349.
43. As a result of the aforesaid malfeasance and nonfeasance, the defendants are liable to plaintiff for damages in an amount to be determined by a jury in addition to an award of attorney's fees and costs, pursuant to the provision of the NYS GBL.

**WHEREFORE**, Plaintiff prays for judgment jointly and severally against the Defendants for damages in a sum in excess of the jurisdictional limits of all lower Courts in addition to attorney's fees, punitive damages, together with interest, costs and other relief that the Court may deem just and proper.

Dated: New York, New York  
June 30, 2015

RESPECTFULLY SUBMITTED:

A handwritten signature in black ink, appearing to read 'G. T. Certain', is written over a horizontal line.

CERTAIN & ZILBERG, PLLC

BY: Gary Todd Certain, Esq.

*For Plaintiff* JOSE AYBAR

909 Third Avenue, 28<sup>th</sup> Floor

New York, New York 10022

Telephone: (212) 687-7800

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS**

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**JOSE AYBAR,**

Index No.:

*Plaintiff,*

-against-

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

**Attorney's  
Verification  
(Affirmation)**

*Defendants.*

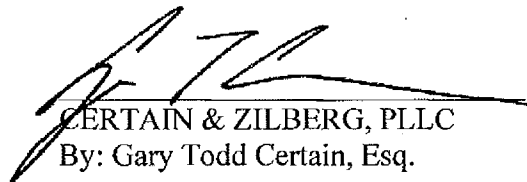
-----X  
I, the undersigned, an attorney admitted to practice in the Courts of the State of New York, state that I am the attorney of record for the plaintiff in the within action; that I have read the foregoing Verified Complaint and know its contents; that it is true to my own knowledge, except as to matters alleged to be on information and belief, and as to those matters I believe it to be true. The reason that this verification is made by me and not by the Plaintiff is because the Plaintiff is not located in the county in which your affirmant maintains his office. The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

Records contained in my filed and conversations had with the Plaintiff.

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated: New York, New York  
June 30, 2015

Affirmed:

  
CERTAIN & ZILBERG, PLLC  
By: Gary Todd Certain, Esq.

Index No.

Year 20\_\_

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**SUPREME COURT OF THE STATE OF NEW YORK**  
**COUNTY OF QUEENS**

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**JOSE AYBAR,***Plaintiff,**-against-***THE GOODYEAR TIRE & RUBBER COMPANY, and**  
**GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD.**

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**Summons and Verified Complaint**

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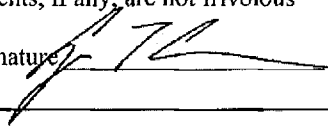
**CERTAIN & ZILBERG, PLLC***Attorneys for Plaintiff*909 Third Avenue, 28<sup>th</sup> Floor

New York, New York 10022

Telephone: (212) 687-7800

*To:**Attorney for**Service of a copy of the within SUMMONS and VERIFIED COMPLAINT is hereby admitted.**Dated:*\_\_\_\_\_  
Attorney(s) for

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained herein and the annexed documents, if any, are not frivolous

Dated June 30, 2015Signature 

GARY T. CERTAIN

**PLEASE TAKE NOTICE***that the within is a certified true copy of a**Notice of* \_\_\_\_\_ *entered in the office of the clerk of the within named Court on**200\_\_**Entry**that an Order of which the within is a true copy will be presented for settlement to the**Notice of* \_\_\_\_\_ *Hon.* \_\_\_\_\_ *at* \_\_\_\_\_ *one of the judge of the within named Court,**Settlement* \_\_\_\_\_ *on* \_\_\_\_\_ *200\_\_* *, at* \_\_\_\_\_ *m.**Dated:* New York, New York**CERTAIN & ZILBERG, PLLC***Attorneys for Plaintiff JOSE AYBAR*909 Third Avenue, 28<sup>th</sup> Floor

New York, New York 10022

Telephone: (212) 687-7800

*TO:**Attorney(s) for*