

**EXHIBIT
"D"**

FILED: QUEENS COUNTY CLERK 08/12/2015 04:18 PM

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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ANNA AYBAR, ORLANDO GONZALEZ,
JESENIA AYBAR, as legal guardian on behalf of
KEYLA CABRAL, an infant over the age of fourteen
(14) years; JESENIA AYBAR, as Administratrix of the
ESTATE OF NOELIA OLIVERAS, JESENIA AYBAR,
as Administratrix of the ESTATE OF TIFFANY CABRAL,
a deceased infant under the age of fourteen (14) years, and
ANNA AYBAR, as Administratrix of the ESTATE OF
CRYSTAL CRUZ-AYBAR,

INDEX No. 706909/2015

Plaintiffs,

- against -

JOSE A. AYBAR, JR., FORD MOTOR CO.,
THE GOODYEAR TIRE & RUBBER CO., and
“JOHN DOES 1 THRU 30,”

**DEFENDANT THE
GOODYEAR TIRE &
RUBBER CO.’S
VERIFIED ANSWER TO
VERIFIED COMPLAINT
WITH AFFIRMATIVE
DEFENSES**

Defendants.

-----X

Defendant The Goodyear Tire & Rubber Co. (“Goodyear”), by its attorneys, DLA Piper LLP (US), respectfully answers plaintiffs’ Verified Complaint upon information and belief, as follows:

1-20. Goodyear lacks knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 1-20 of plaintiffs’ complaint, and refers all questions of law to the Court.

21-22. Goodyear denies paragraphs 21-22 of plaintiffs’ complaint in the form alleged, but admits portions of the allegations, and refers all questions of law to the Court. Goodyear specifically admits only that it is an Ohio corporation with its principal place of business in

Akron, Ohio. By way of further answer, Goodyear specifically denies any allegations relating to personal jurisdiction in the State of New York.

23-28. Goodyear denies paragraphs 23-28 of plaintiffs' complaint in the form alleged, but admits portions of the allegations, and refers all questions of law to the Court. Goodyear specifically admits only that it is an Ohio corporation registered in the State of New York. By way of further answer, Goodyear specifically denies any allegations relating to personal jurisdiction in the State of New York.

29. Goodyear denies paragraph 29 of plaintiffs' complaint in the form alleged, but admits portions of the allegations, and refers all questions of law to the Court. Goodyear specifically admits only that it is in the business of designing, testing, manufacturing, marketing and selling certain tires. By way of further answer, Goodyear specifically denies any allegations relating to personal jurisdiction in the State of New York.

30. Goodyear denies paragraph 30 of plaintiffs' complaint in the form alleged, but admits portions of the allegations, and refers all questions of law to the Court. Goodyear specifically admits only that it is in the business of designing, testing, manufacturing and selling certain tires.

31-32. Goodyear denies each and every allegation contained in paragraphs 31-32 of plaintiffs' complaint in the form alleged, and refers all questions of law to the Court.

33. Goodyear lacks knowledge or information sufficient to form a belief as to the allegations contained in paragraph 33 of plaintiffs' complaint, including whether plaintiffs have correctly identified the brand, size or DOT number of the subject tire, and refers all questions of law to the Court. However, assuming any of plaintiffs' allegations contained in paragraph 33 are correct, Goodyear specifically admits only that it designs, manufactures and sells tires with the

name "Wrangler AP," having a size designation of P245/70R16. All remaining allegations directed to Goodyear in paragraph 33 are denied.

34. Goodyear lacks knowledge or information sufficient to form a belief as to the allegations contained in paragraph 34 of plaintiffs' complaint, and refers all questions of law to the Court.

35. Goodyear denies each and every allegation contained in paragraph 35 of plaintiffs' complaint, and refers all questions of law to the Court.

36-42. Goodyear lacks knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 36-42 of plaintiffs' complaint, and refers all questions of law to the Court.

43. To the extent that any allegations contained in paragraph 43 of plaintiffs' complaint are specifically directed to Goodyear and relate to the subject tire, Goodyear denies those allegations, and refers all questions of law to the Court. Goodyear specifically denies that the tire in question failed or that plaintiffs have suffered any damages or injuries that resulted from the conduct of Goodyear. With regard to the remaining allegations contained in paragraph 43, Goodyear lacks knowledge or information sufficient to form a belief, and refers all questions of law to the Court.

44. To the extent that any allegations contained in paragraph 44 of plaintiffs' complaint are specifically directed to Goodyear and relate to tires on the subject vehicle, Goodyear denies those allegations in the form alleged, and refers all questions of law to the Court. With regard to the remaining allegations contained in paragraph 44, Goodyear lacks knowledge or information sufficient to form a belief, and refers all questions of law to the Court.

45-49. Goodyear denies each and every allegation contained in paragraphs 45-49 of plaintiffs' complaint relating to the subject tire, and refers all questions of law to the Court. With regard to the remaining allegations contained in paragraphs 45-49, Goodyear lacks knowledge or information sufficient to form a belief, and refers all questions of law to the Court.

AS AND FOR A FIRST CAUSE OF ACTION

**On behalf of plaintiff, ANA AYBAR
(Negligence and/or Products Liability against all defendants)**

50. Goodyear repeats, reiterates and re-alleges herein its answers to each allegation set forth in paragraphs 1-49 of plaintiffs' complaint. With regard to the allegations contained in paragraph 50, Goodyear lacks knowledge or information sufficient to form a belief, and refers all questions of law to the Court.

51-55. Goodyear denies each and every allegation contained in paragraphs 51-55 of plaintiffs' complaint specific to Goodyear, and refers all questions of law to the Court. With regard to the remaining allegations contained in paragraphs 51-55, Goodyear lacks knowledge or information sufficient to form a belief, and refers all questions of law to the Court. Goodyear specifically denies that the tire in question failed or that plaintiffs have suffered any damages or injuries that resulted from the conduct of Goodyear.

WHEREFORE, defendant The Goodyear Tire & Rubber Co. denies that plaintiffs are entitled to any of the relief sought in their complaint, and demands judgments in its favor and against plaintiffs and all other parties, together with costs of suit, attorneys' fees and such other costs as this Court may deem appropriate.

AS AND FOR A SECOND CAUSE OF ACTION

**On behalf of plaintiff, ORLANDO GONZALEZ
(Negligence and/or Products Liability against all defendants)**

56. Goodyear repeats, reiterates and re-alleges herein its answers to each allegation set forth in paragraphs 1-55 of plaintiffs' complaint.

57-62. Goodyear denies each and every allegation contained in paragraphs 57-62 of plaintiffs' complaint specific to Goodyear, and refers all questions of law to the Court. With regard to the remaining allegations contained in paragraphs 57-62, Goodyear lacks knowledge or information sufficient to form a belief, and refers all questions of law to the Court. Goodyear specifically denies that the tire in question failed or that plaintiffs have suffered any damages or injuries that resulted from the conduct of Goodyear.

WHEREFORE, defendant The Goodyear Tire & Rubber Co. denies that plaintiffs are entitled to any of the relief sought in their complaint, and demands judgments in its favor and against plaintiffs and all other parties, together with costs of suit, attorneys' fees and such other costs as this Court may deem appropriate.

AS AND FOR A THIRD CAUSE OF ACTION

**On behalf of plaintiff, KEYLA CABRERA
(Negligence and/or Products Liability against all defendants)**

63. Goodyear repeats, reiterates and re-alleges herein its answers to each allegation set forth in paragraphs 1-62 of plaintiffs' complaint.

64. Goodyear lacks knowledge or information sufficient to form a belief as to the allegations contained in paragraph 64 of plaintiffs' complaint, and refers all questions of law to the Court.

65-70. Goodyear denies each and every allegation contained in paragraphs 65-70 of plaintiffs' complaint specific to Goodyear, and refers all questions of law to the Court. With

regard to the remaining allegations contained in paragraphs 65-70, Goodyear lacks knowledge or information sufficient to form a belief, and refers all questions of law to the Court. Goodyear specifically denies that the tire in question failed or that plaintiffs have suffered any damages or injuries that resulted from the conduct of Goodyear.

WHEREFORE, defendant The Goodyear Tire & Rubber Co. denies that plaintiffs are entitled to any of the relief sought in their complaint, and demands judgments in its favor and against plaintiffs and all other parties, together with costs of suit, attorneys' fees and such other costs as this Court may deem appropriate.

AS AND FOR A FOURTH CAUSE OF ACTION

On behalf of plaintiff, NOELLA OLIVERAS

(Negligence and/or Products Liability and Wrongful Death against all defendants)

71. Goodyear repeats, reiterates and re-alleges herein its answers to each allegation set forth in paragraphs 1-70 of plaintiffs' complaint.

72. Goodyear lacks knowledge or information sufficient to form a belief as to the allegations contained in paragraph 72 of plaintiffs' complaint, and refers all questions of law to the Court.

73-78. Goodyear denies each and every allegation contained in paragraphs 73-78 of plaintiffs' complaint specific to Goodyear, and refers all questions of law to the Court. With regard to the remaining allegations contained in paragraphs 73-78, Goodyear lacks knowledge or information sufficient to form a belief, and refers all questions of law to the Court. Goodyear specifically denies that the tire in question failed or that plaintiffs have suffered any damages or injuries that resulted from the conduct of Goodyear.

WHEREFORE, defendant The Goodyear Tire & Rubber Co. denies that plaintiffs are entitled to any of the relief sought in their complaint, and demands judgments in its favor and

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

AS AND FOR A FIFTH CAUSE OF ACTION
On behalf of plaintiff, CRYSTAL CRUZ-AYBAR
(Negligence and/or Products Liability and Wrongful Death against all defendants)

79. Goodyear repeats, reiterates and re-alleges herein its answers to each allegation set forth in paragraphs 1-78 of plaintiffs' complaint.

80. Goodyear lacks knowledge or information sufficient to form a belief as to the allegations contained in paragraph 80 of plaintiffs' complaint, and refers all questions of law to the Court.

81-86. Goodyear denies each and every allegation contained in paragraphs 81-86 of plaintiffs' complaint specific to Goodyear, and refers all questions of law to the Court. With regard to the remaining allegations contained in paragraphs 81-86, Goodyear lacks knowledge or information sufficient to form a belief, and refers all questions of law to the Court.

WHEREFORE, defendant The Goodyear Tire & Rubber Co. denies that plaintiffs are entitled to any of the relief sought in their complaint, and demands judgments in its favor and against plaintiffs and all other parties, together with costs of suit, attorneys' fees and such other costs as this Court may deem appropriate.

AS AND FOR A SIXTH CAUSE OF ACTION
On behalf of plaintiff, TIFFANY CABRAL
(Negligence and/or Products Liability and Wrongful Death against all defendants)

87. Goodyear repeats, reiterates and re-alleges herein its answers to each allegation set forth in paragraphs 1-86 of plaintiffs' complaint.

88. Goodyear lacks knowledge or information sufficient to form a belief as to the allegations contained in paragraph 88 of plaintiffs' complaint, and refers all questions of law to the Court.

89-94. Goodyear denies each and every allegation contained in paragraphs 89-94 of plaintiffs' complaint specific to Goodyear, and refers all questions of law to the Court. With regard to the remaining allegations contained in paragraphs 89-94, Goodyear lacks knowledge or information sufficient to form a belief, and refers all questions of law to the Court. Goodyear specifically denies that the tire in question failed or that plaintiffs have suffered any damages or injuries that resulted from the conduct of Goodyear.

WHEREFORE, defendant The Goodyear Tire & Rubber Co. denies that plaintiffs are entitled to any of the relief sought in their complaint, and demands judgments in its favor and against plaintiffs and all other parties, together with costs of suit, attorneys' fees and such other costs as this Court may deem appropriate.

AS AND FOR A SEVENTH CAUSE OF ACTION

On behalf of all plaintiffs

(Strict Products Liability against defendant, FORD MOTOR COMPANY)

95. Goodyear repeats, reiterates and re-alleges herein its answers to each allegation set forth in paragraphs 1-94 of plaintiffs' complaint.

96-106. Goodyear denies each and every allegation contained in paragraphs 96-106 of plaintiffs' complaint specific to Goodyear, and refers all questions of law to the Court. By way of further response, Goodyear specifically denies that the tire in question failed or that plaintiffs have suffered any damages or injuries that resulted from the conduct of Goodyear. With regard to the remaining allegations contained in paragraphs 96-106, which appear directed to other

defendants, Goodyear lacks knowledge or information sufficient to form a belief, and refers all questions of law to the Court.

WHEREFORE, defendant The Goodyear Tire & Rubber Co. denies that plaintiffs are entitled to any of the relief sought in their complaint, and demands judgments in its favor and against plaintiffs and all other parties, together with costs of suit, attorneys' fees and such other costs as this Court may deem appropriate.

AS AND FOR AN EIGHTH CAUSE OF ACTION

On behalf of all plaintiffs

(Strict Products Liability against defendant, THE GOODYEAR TIRE & RUBBER CO.)

107. Goodyear repeats, reiterates and re-alleges herein its answers to each allegation set forth in paragraphs 1-106 of plaintiffs' complaint.

108. Goodyear lacks knowledge or information sufficient to form a belief as to the allegations contained in paragraph 108 of plaintiffs' complaint, and refers all questions of law to the Court.

109-115. Goodyear denies each and every allegation contained in paragraphs 109-115 of plaintiffs' complaint, and refers all questions of law to the Court. Goodyear specifically denies that the tire in question failed or that plaintiffs have suffered any damages or injuries that resulted from the conduct of Goodyear.

WHEREFORE, defendant The Goodyear Tire & Rubber Co. denies that plaintiffs are entitled to any of the relief sought in their complaint, and demands judgments in its favor and against plaintiffs and all other parties, together with costs of suit, attorneys' fees and such other costs as this Court may deem appropriate.

AS AND FOR A NINTH CAUSE OF ACTION**On behalf of all plaintiffs****(Breach of Warranty against defendant, THE GOODYEAR TIRE & RUBBER CO.)**

116. Goodyear repeats, reiterates and re-alleges herein its answers to each allegation set forth in paragraphs 1-115 of plaintiffs' complaint.

117-125. Goodyear denies each and every allegation contained in paragraphs 117-125 of plaintiffs' complaint, and refers all questions of law to the Court. Goodyear specifically denies that the tire in question failed or that plaintiffs have suffered any damages or injuries that resulted from the conduct of Goodyear.

WHEREFORE, defendant The Goodyear Tire & Rubber Co. denies that plaintiffs are entitled to any of the relief sought in their complaint, and demands judgments in its favor and against plaintiffs and all other parties, together with costs of suit, attorneys' fees and such other costs as this Court may deem appropriate.

AS AND FOR A TENTH CAUSE OF ACTION**On behalf of all plaintiffs****(Unfair and Deceptive Trade Practices – GBL §349
against defendant, THE GOODYEAR TIRE & RUBBER CO.)**

126. Goodyear repeats, reiterates and re-alleges herein its answers to each allegation set forth in paragraphs 1-125 of plaintiffs' complaint.

127-133. Goodyear denies each and every allegation contained in paragraphs 127-133 of plaintiffs' complaint, and refers all questions of law to the Court. Goodyear specifically denies that the tire in question failed or that plaintiffs have suffered any damages or injuries that resulted from the conduct of Goodyear.

WHEREFORE, defendant The Goodyear Tire & Rubber Co. denies that plaintiffs are entitled to any of the relief sought in their complaint, and demands judgments in its favor and

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

AS AND FOR AN ELEVENTH CAUSE OF ACTION

On behalf of all plaintiffs

(Unfair and Deceptive Trade Practices – GBL §349
against defendant, FORD MOTOR COMPANY)

134. Goodyear repeats, reiterates and re-alleges herein its answers to each allegation set forth in paragraphs 1-133 of plaintiffs' complaint.

135-141. The allegations contained in paragraphs 135-141 of plaintiffs' complaint appear to be directed to other defendants. As such, Goodyear lacks knowledge or information sufficient to form a belief, and refers all questions of law to the Court. To the extent any allegations contained in paragraphs 135-141 are directed to Goodyear, Goodyear denies each allegation, and refers all questions of law to the Court. By way of further answer, Goodyear specifically denies that the tire in question failed or that plaintiffs have suffered any damages or injuries that resulted from the conduct of Goodyear.

WHEREFORE, defendant The Goodyear Tire & Rubber Co. denies that plaintiffs are entitled to any of the relief sought in their complaint, and demands judgments in its favor and against plaintiffs and all other parties, together with costs of suit, attorneys' fees and such other costs as this Court may deem appropriate.

AFFIRMATIVE DEFENSES

**AS AND FOR THE FIRST AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

Upon information and belief, plaintiffs' complaint should be dismissed because this Court lacks personal jurisdiction over Goodyear.

**AS AND FOR THE SECOND AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

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

**AS AND FOR THE THIRD AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

Plaintiffs' Verified Complaint fails to state a cause of action against Goodyear upon which relief may be granted.

**AS AND FOR THE FOURTH AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

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

**AS AND FOR THE FIFTH AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

Plaintiffs' claims may be barred in whole or in part because plaintiffs lack the capacity to sue.

**AS AND FOR THE SIXTH AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

Plaintiffs have failed to name or join essential and necessary party(ies).

**AS AND FOR THE SEVENTH AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

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

**AS AND FOR THE EIGHTH AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

Goodyear denies that the tire allegedly involved in the incident at issue was defective or unreasonably dangerous for its ordinary intended use at the time it left Goodyear's possession.

**AS AND FOR THE NINTH AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

Goodyear believes, and therefore avers, that the injuries and damages alleged by plaintiffs in their complaint were caused by the acts and/or omissions of persons and/or entities over whom or which Goodyear had no control, as shall be determined during the course of discovery.

**AS AND FOR THE TENTH AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

Assuming, *arguendo*, that the product allegedly involved in this accident was a Goodyear product, then that product was not in the same condition at the time it was allegedly used by plaintiffs as it was at the time it passed out of the control of Goodyear.

**AS AND FOR THE ELEVENTH AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

The conduct of individuals and/or entities other than Goodyear – and over whom/which it had no control – constitute superseding, intervening causes of the incident, injuries and damages alleged by plaintiffs, if any.

**AS AND FOR THE TWELFTH AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

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

**AS AND FOR THE THIRTEENTH AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

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

**AS AND FOR THE FOURTEENTH AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

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

**AS AND FOR THE FIFTEENTH AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

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

**AS AND FOR THE SIXTEENTH AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

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

**AS AND FOR THE SEVENTEENTH AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

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

**AS AND FOR THE EIGHTEENTH AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

If any product manufactured, assembled or sold by Goodyear was involved in the alleged accident, then the product as designed and manufactured by Goodyear complied with the state of the art, and any claims against Goodyear are barred.

**AS AND FOR THE NINETEENTH AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

Goodyear has breached no common-law, statutory or contractual duty to plaintiffs or to any other party to this litigation.

**AS AND FOR THE TWENTIETH AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

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

**AS AND FOR THE TWENTY-FIRST AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

At the time the subject tire was distributed and/or delivered to the initial purchaser or user, the tire was assembled, manufactured and distributed in compliance with all applicable Federal Regulations and in accordance with the generally recognized prevailing industry standards in existence.

**AS AND FOR THE TWENTY-SECOND AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

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

**AS AND FOR THE TWENTY-THIRD AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

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

**AS AND FOR THE TWENTY-FOURTH AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

Plaintiffs may have assumed the risk inherent in the activity in which they were engaged in at the time damages were allegedly incurred.

**AS AND FOR THE TWENTY-FIFTH AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

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

**AS AND FOR THE TWENTY-SIXTH AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

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

**AS AND FOR THE TWENTY-SEVENTH AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

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

**AS AND FOR THE TWENTY-EIGHTH AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

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

**AS AND FOR THE TWENTY-NINTH AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

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

**AS AND FOR THE THIRTIETH AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

In the event that plaintiffs receive a verdict or judgment against Goodyear, then said verdict or judgment must be reduced, and Goodyear is entitled to the appropriate set-off pursuant to GOL [PCI]15-108.

**AS AND FOR THE THIRTY-FIRST AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

Plaintiffs' claims may be barred by the doctrine of waiver.

**AS AND FOR THE THIRTY-SECOND AFFIRMATIVE DEFENSE,
DEFENDANT GOODYEAR STATES:**

Plaintiffs' claims may be barred by the doctrine of estoppel.

WHEREFORE, defendant The Goodyear Tire & Rubber Co. demands judgment in its favor and against plaintiffs and all other parties, together with costs of suit, attorneys' fees, and such other and further relief as this court may deem appropriate.

New York, New York
August 12, 2015

DLA PIPER LLP (US)

By: Kevin W. Rethore

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
ANNA AYBAR, ORLANDO GONZALEZ,
JESENIA AYBAR, as legal guardian on behalf of
KEYLA CABRAL, an infant over the age of fourteen
(14) years; JESENIA AYBAR, as Administratrix of the
ESTATE OF NOELIA OLIVERAS, JESENIA AYBAR,
as Administratrix of the ESTATE OF TIFFANY CABRAL,
a deceased infant under the age of fourteen (14) years, and
ANNA AYBAR, as Administratrix of the ESTATE OF
CRYSTAL CRUZ-AYBAR

INDEX No. 706909/2015

Plaintiffs,
- against -

JOSE A. AYBAR, JR., FORD MOTOR COMPANY,
THE GOODYEAR TIRE & RUBBER CO., and
“JOHN DOES 1 THRU 30”

**ATTORNEY'S
VERIFICATION IN
SUPPORT OF
DEFENDANT THE
GOODYEAR TIRE &
RUBBER CO.'S ANSWER
TO PLAINTIFFS'
VERIFIED COMPLAINT**

Defendants

-----X

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

1. That he is associated with the law firm of DLA Piper LLP (US), attorneys for defendant The Goodyear Tire & Rubber Co.
2. That he has read the foregoing document and knows the contents thereof, and that the same is true to the best of his knowledge, except as to the matters therein alleged upon information and belief and that, as to those matters, he believes the answers to be true.
3. That the reason why this affirmation is being made by the affiant and not by the defendant is that the defendant does not reside in the county in which the affiant's firm maintains an office.

4. That the source of the affiant's information and the grounds of his belief as to all the matters therein alleged upon information and belief are reports from and communications had with said defendant.

New York, New York
August 12, 2015

DLA PIPER LLP (US)

By: Kevin W. Rethore

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