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# New York Supreme Court

## Appellate Division—Second Department

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

**Docket No.:  
2019-12110**

*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,*

*(For Continuation of Caption See Inside Cover)*

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### JOINT RECORD ON APPEAL

#### Volume 1 of 2 (Pages 1 to 482)

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*(For Continuation of Appearances See Inside Cover)*

---

– against –

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

*Defendant-Respondent.*

---

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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**STATEMENT PURSUANT TO CPLR § 5531 [1-2]**

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**New York Supreme Court  
Appellate Division—Second Department**

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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.*

---

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.*

---

1. The index number of the case in the court below is 703632/17.
2. The full names of the original parties are as set forth above. There have been no changes.
3. The action was commenced in Supreme Court, Queens County.
4. On or about June 17, 2014, Plaintiffs sued U.S. Tires and Wheels of Queens, LLC. Issue was joined on or about March 17, 2015 by service of a Verified Answer. On or about July 19, 2016, Defendant U.S. Tires and Wheels of Queens, LLC. impleaded Goodyear Tire & Rubber Company, Goodyear Dunlop Tires North America, Ltd., and Ford Motor Company by serving a Third-Party Summons and Complaint. Issue was joined on or about September 21, 2016 by service of a Verified Answer from The Goodyear Tire & Rubber Company and September 29, 2016 by service of a Verified Answer from Ford Motor Company.
5. The nature and object of the action involves an automobile accident.
6. This appeal is from an Order of the Honorable Denis J. Butler, dated September 25, 2019, which denied Third-Party Defendant The Goodyear Tire & Rubber Company's Motion to Dismiss the Third-Party Complaint, denied Third-Party Defendant Ford Motor Company's Motion to Dismiss the Third-Party Complaint and granted the Third-Party Plaintiff's Cross-Motion to Amend the Complaint.
7. This appeal is on the full reproduced record.

NOTICE OF APPEAL OF FORD MOTOR COMPANY,  
DATED OCTOBER 17, 2019 [3 - 5]

FILED: QUEENS COUNTY CLERK 10/17/2019 02:42 PM  
NYSCEF DOC. NO. 205

INDEX NO. 703632/2017

RECEIVED NYSCEF: 10/17/2019

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

---

X  
JOSE AYBAR, ORLANDO GONZALES, JOSE  
AYBAR as Administrator of THE ESTATE OF  
CRYSTAL CRUZ-AYBAR, 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 AYBRA as Administratrix of THE  
ESTATE OF T.C.,

**NOTICE OF APPEAL**

Index No. 703632/2017

Plaintiffs,

- against -

US TIRE AND WHEELS OF QUEENS, LLC,  
Defendant.

---

X  
US TIRE AND WHEELS OF QUEENS, LLC,  
Third-Party Plaintiff,

- against -

THE GOODYEAR TIRE & RUBBER COMPANY,  
GOODYEAR DUNLOP TIRES NORTH  
AMERICA, LTD, and FORD MOTOR COMPANY,  
Third-Party Defendants.

X  
SIR/MADAM:

PLEASE TAKE NOTICE, that the above named defendant, FORD MOTOR COMPANY, by its attorneys AARONSON RAPPAPORT FEINSTEIN & DEUTSCH, LLP, hereby appeal to the Appellate Division of the Supreme Court, Second Department, from that portion of the annexed Order of the Supreme Court, Queens County (Honorable Denis J. Butler, J.S.C.) dated September 25, 2017 and entered in the office of the clerk of the court on or about September 27, 2019, which

FILED: QUEENS COUNTY CLERK 10/17/2019 02:42 PM

NYSCEF DOC. NO. 205

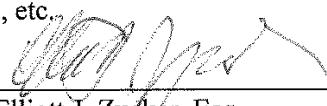
INDEX NO. 703632/2017

RECEIVED NYSCEF: 10/17/2019

denied FORD MOTOR COMPANY's motion to dismiss for lack of general or specific jurisdiction, and from each and every part of said order adverse to the interests of the appealing defendant.

Dated: New York, New York  
October 17, 2019

Yours, etc.,

  
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NYSCEF DOC. NO. 205

INDEX NO. 703632/2017

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Third-Party Defendant GOODYEAR DUNLAP TIRES NORTH AMERICA was dismissed from this case in an order of October 11, 2017.

**NOTICE OF APPEAL OF THE GOODYEAR TIRE  
& RUBBER COMPANY, DATED OCTOBER 21, 2019 [6 - 7]**

**FILED: QUEENS COUNTY CLERK 10/21/2019 06:23 PM**  
NYSCEF DOC. NO. 208

INDEX NO. 703632/2017

RECEIVED NYSCEF: 10/21/2019

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X  
JOSE AYBAR, ORLANDO GONZALES,  
JOSE AYBAR as Administrator of THE ESTATE OF  
CRYSTAL CRUZ-AYBAR, JESENIA AYBAR as  
Administratrix 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.,

**NOTICE OF APPEAL**

Plaintiffs,

Index No. 703632/2017

- against -

US TIRES AND WHEELS OF QUEENS, LLC,

Defendant.

-----X  
US TIRES AND WHEELS OF QUEENS, LLC,

Third-Party Plaintiff,

- against -

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

Third-Party Defendants.

-----X

PLEASE TAKE NOTICE, that the above-named defendant, THE GOODYEAR TIRE & RUBBER COMPANY, by its attorneys DLA PIPER LLP (US), hereby appeals to the Appellate Division of the Supreme Court of the State of New York, Second Department, from that portion of the annexed order of the Supreme Court, Queens County (Hon. Denis J. Butler, J.S.C.) dated September 25, 2019 and entered in the office of the clerk of the court on or about September 27,

2019, which denied THE GOODYEAR TIRE & RUBBER COMPANY's motion to dismiss, and from each and every part of said order adverse to the interests of the appealing defendant.

Dated: New York, New York  
October 21, 2019

**DLA PIPER LLP (US)**

By: /s/ Jayne A. Risk  
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DECISION AND ORDER OF THE HONORABLE DENIS J. BUTLER,  
DATED SEPTEMBER 25, 2019, APPEALED FROM, WITH NOTICE OF ENTRY

THE ORDER APPEALED FROM INADVERTENTLY REFERENCES NYSCEF DOC NOS. 55-60 INSTEAD OF DOC NOS. 88-92; DOC NOS. 55-60 IS ASSIGNED TO PLAINTIFF'S MOTION FOR PRO HAC VICE ADMISSION (MOTION SEQ. NO. 15) WHICH WAS DECIDED ON APRIL 13, 2018 (DOC NO. 64) [8 - 15]

**FILED: QUEENS COUNTY CLERK 09/27/2019 04:56 PM**  
NYSCEF DOC. NO. 202

INDEX NO. 703632/2017

RECEIVED NYSCEF: 09/27/2019

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DENIS J. BUTLER IAS Part 12  
Justice

-----x  
JOSE AYBAR, ORLANDO GONZALES, JOSE AYBAR  
as Administrator of THE ESTATE OF  
CRYSTAL CRUZ-AYBAR, JESENIA AYBAR AS  
Administratrix 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.,

Index No.:  
703632/2017

Motion Date:  
May 7, 2019

Motion Seq. Nos.:  
017 & 019

Plaintiff(s),

-against-

US TIRES AND WHEELS OF QUEENS, LLC.,

Defendant.

-----x  
US TIRES AND WHEELS OF QUEENS, LLC,

Third-Party Plaintiff,

FILED  
SEP 27 2019  
COUNTY CLERK  
QUEENS COUNTY

-agaisnt-

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

Third-Party Defendants.

-----x  
The following numbered papers were read on the separate motions by third-party defendant The Goodyear Tire & Rubber Company for an order, pursuant to CPLR 3211 (a) (7) and (8), dismissing the third-party complaint for failure to state a cause of action and lack of general or specific personal jurisdiction, and by third-party defendant Ford Motor Company, pursuant to CPLR 3211 (a) (8), for an order dismissing the third-party complaint for lack of general or specific personal jurisdiction; and on the cross-motion by

third-party plaintiff US Tires and Wheels of Queens, LLC, for an order amending its complaint and staying the action pending a decision on the appeals in the companion cases before the Court of Appeals regarding personal jurisdiction.

	Papers <u>Numbered</u>
Notice of Motion - Affidavits - Exhibits.....	E55-60;154-163
Notice of Cross Motion - Affidavits - Exhibits....	E164-171
Answering Affidavits - Exhibits.....	E94-103;122-127 172-175;189-196
Reply Affidavits.....	E129;176-188

Upon the foregoing papers, the motions and cross-motion are determined as follows:

This action arises out of an automobile accident allegedly caused by a defective tire designed and manufactured by third-party defendant The Goodyear Tire & Rubber Company (Goodyear), and a defectively designed and manufactured Ford Explorer, designed and manufactured by third-party defendant Ford Motor Company (Ford). Plaintiff alleges that he brought the tires to defendant/third-party plaintiff US Tires and Wheels of Queens, LLC (US Tires), asked that they be inspected, tested, and, if found to be safe, installed upon plaintiff Aybar's vehicle. Plaintiff Jose Aybar purchased his Ford Explorer in New York State. The vehicle was registered and predominantly used in the State of New York. The tire(s) was purchased and installed in New York. The driver and all the occupants were residents of New York. While traveling through Virginia, the aforesaid tire exploded, the Ford Explorer flipped over, and, tragically, of the six occupants in the vehicle, three perished and three were seriously injured.

In the companion cases, *Aybar v Goodyear and Ford* and *Aybar v Aybar*, Goodyear and Ford brought separate motions in Supreme Court, Queens County, seeking to dismiss the complaint against each of them, respectively, on the grounds of lack of general jurisdiction. The Honorable Thomas D. Raffaele, pursuant to the orders dated May 25, 2016, found the defendants subject to general jurisdiction, however, those decisions were subsequently reversed on appeal by the Appellate Division, Second Department, on January 23, 2019. In a footnote to the decision, the Appellate Division, Second Department, stated it was not making a determination regarding specific jurisdiction as the plaintiffs neither presented that issue for argument nor was third-party plaintiff US Tires a party to those motions and had no significant opportunity to defend.

Ever since the sweeping decision by the Supreme Court of the United States in *Daimler AG v Bauman* (571 US 117 [2014]), the constitutional limitation upon state general jurisdiction requires that for a nonresident or foreign corporation to be subject to jurisdiction for all purposes it must have such continuous and systematic business contacts within the forum state as to be considered "at home." Less clear than the stated threshold is the manner in which a court weighs the various factors involved in ascertaining whether the foreign corporation has been shown to have met this standard. In the aforementioned companion cases, the Appellate Division has determined that defendants Ford and Goodyear are not subject to the general jurisdiction of the State of New York as the extent of their contacts here do not rise to the level of being "at home" (see *Aybar v Aybar*, 169 AD3d 137 [2d Dept 2019]). Here, third-party plaintiff has not sufficiently raised any additional issues of fact or factors to be considered requiring jurisdictional discovery. As to the ruling on general jurisdiction, this court is currently constrained to adhere to the determination by the Appellate Division, Second Department, subject to the appeal pending before the Court of Appeals of the State of New York.

Turning to specific jurisdiction, it must be ascertained whether third-party defendants fall within the reach of New York's long-arm jurisdiction statute, CPLR 302. After review, it appears that the pertinent portion of the statute is within CPLR 302 (a) (1), thereby requiring a determination as to whether third-party defendants (1) transacted business in New York, and, if so, (2) whether there is an arguable nexus or substantial relationship between the business transacted and the claim asserted (see *Al Rushaid v Pictet & Cie*, 28 NY3d 316 [2016]; *Licci v Lebanese Can. Bank, SAL*, 20 NY3d 327 [2012]; *Fischbarg v Doucet*, 9 NY3d 375 [2007]). Causation is not a requirement but merely a relatedness such that the legal claim is not completely unmoored from the former, regardless of the ultimate merits of the claim (see *Al Rushaid*, 28 NY3d 316; *Licci*, 20 NY3d 327). It is only required that the claim, in some arguable way, be connected to the transaction (*id.*).

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. Although quite extensive, the Appellate Division, Second Department, ruled these contacts did not rise to the level of rendering both Ford and Goodyear "at home" in the State of New York. However, it 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 (see *McGowan v Smith*, 52 NY2d 268 [1981]).

With regard to the second prong, although the products at issue herein were manufactured out of state by third-party defendants, the nature of their businesses 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.

In *McGowan* (52 NY2d 268), a fondue pot purchased in Buffalo, New York, manufactured by a Japanese company, exploded in Canada. A third-party action was brought against the Japanese manufacturer in New York. The court determined that several visits to New York State by a representative of the Japanese Company was insufficient to be characterized as purposeful activities within the state, so that specific jurisdiction under CPLR 302 (a) (1) was denied. Here, the purposeful business activities of both third-party defendants greatly exceed that required by the court in *McGowan*. 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 (see *Codling v Paglia*, 32 NY2d 330 [1973]). 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 (see *McGowan*, 52 NY2d 268), targeted at New York residents, wound up in New York, and harmed plaintiffs, residents of New York (*id.*). As in *McGowan*, the pure happenstance in this matter is the fateful trip by plaintiffs to Virginia.

It is noted that, with similar facts, the US Supreme Court found a lack of jurisdiction when the place of occurrence, alone, did not satisfy the minimal contacts requirement of the constitution (see *World-Wide Volkswagen Corp., v Woodson*, 444 US 286 [1980]). Therein, the court stated, “[f]low of a manufacturer’s products into the forum, we have explained, may bolster an affiliation germane to specific jurisdiction” (*World-Wide Volkswagen Corp.*, 444 US at 297). Both third-party defendants assure the flow of their products to New York through their myriad assortment of purposeful activities in which they partake. It is noted that a case cited by Ford, *Magill v Ford Motor Co.* (2016 CO 57, 379 P3d 1033 [2016]), while denying general personal jurisdiction over Ford in Colorado, the Supreme Court of Colorado remanded the matter to the lower court to consider whether specific jurisdiction was applicable. Further noted, in *Pitts v Ford Motor Co.* (127 F Supp 3d 676 [2015]), it was ruled that Mississippi’s long-arm statute subjected Ford to specific personal jurisdiction in that state.

These purposeful activities far exceed the minimal contacts with the State of New York necessary to pass constitutional muster (see *Paterno v Laser Spine Inst.*, 24 NY3d 370 [2014]). Furthermore, the nature of the business activities of the parties satisfies the requirement for an arguable nexus and substantial relationship between that business and the causes of action revolving around the alleged defective products purchased and installed on the vehicle in New York (see *Al Rushaid*, 28 NY3d 316; see also *Thomas v Ford Motor Company*, 289 F Supp3d 941 [ED Wis 2017]; *Ford Motor Co. v Montana Eighth Judicial District Court*, 395 Mont 478 [2019]). Therefore, the provisions of CPLR 302 (a) (1) are satisfied, rendering third-party defendants subject to specific personal jurisdiction in the State of New York.

As to that branch of Goodyear’s motion to dismiss for failure to state a cause of action, pursuant to CPLR 3211 (a) (7), a key element of common law indemnification is not a duty running from the indemnitor to the injured party but rather is a separate duty owed the indemnitee by the indemnitor (see *Raquet v Braun*, 90 NY2d 177 [1997]). The predicate of common law indemnification is vicarious liability, such that there is no actual fault on the part of the proposed indemnitee (see *Board of Managers of Olive Park Condominium v Maspeth Prop., LLC.*, 170 AD3d 645 [2d Dept 2019]; *Dreyfus v MPCC Corp*, 124 AD3d 830 [2d Dept 2015]). If the cause of action against third-party plaintiff is based on allegations of its own negligence, it cannot receive the benefit of the doctrine (*id.*). Since the basis of plaintiff’s complaint against US Tires is that US Tires was negligent in failing to inspect or test the tires, and ascertain as to their safety prior to installation,

third party-plaintiff's cause of action for common law indemnification is dismissed.

However, a defendant may seek contribution from a third party even if the injured plaintiff has no direct right of recovery against that party, either because of a substantive legal rule or a procedural bar (see *Raquet*, 90 NY2d 177; *Bivona v Danna & Assoc., P.C.*, 123 AD3d 956 [2d Dept 2014]). The critical requirement for apportionment by contribution under CPLR 1401 et seq. is that the breach of duty owed a duty to the plaintiff and such breach had a part in causing or augmenting the injury for which contribution is sought (*id.*).

Accordingly, the motions by Ford and Goodyear seeking to dismiss the third-party complaint for lack of specific personal jurisdiction are denied, the branch of Goodyear's motion to dismiss the cause of action based on common law indemnification is granted. The cross-motion by third-party plaintiff to amend its answer is granted, and the amended complaint in the form proposed must be served and filed within twenty (20) days of service of a notice of entry of this order upon the respective attorneys for the parties. In all other respects, the motions and cross-motion are denied.

This constitutes the Decision and Order of the Court.

Dated: September 25, 2019



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Denis J. Butler, J.S.C.



FILED: QUEENS COUNTY CLERK 10/21/2019 04:56 PM  
NYSCEF DOC. NO. 207

INDEX NO. 703632/2017

RECEIVED NYSCEF: 10/21/2019

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----x

JOSE AYBAR, ORLANDO GONZALES,  
JOSE AYBAR as Administrator of THE ESTATE OF  
CRYSTAL CRUZ-AYBAR, JESENIA AYBAR as  
Administratrix 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.,

**NOTICE OF ENTRY**

Plaintiffs,

Index No. 703632/2017

- against -

US TIRES AND WHEELS OF QUEENS, LLC,

Defendant.

-----x

US TIRES AND WHEELS OF QUEENS, LLC,

Third-Party Plaintiff,

- against -

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

Third-Party Defendants.

-----x

PLEASE TAKE NOTICE, that the within is a true copy of a Decision and Order of the Supreme Court, Queens County (Hon. Denis J. Butler, J.S.C.) dated September 25, 2019. This Decision and Order was entered in the office of the clerk of the court on or about September 27, 2019.

FILED: QUEENS COUNTY CLERK 10/21/2019 04:56 PM

NYSCEF DOC. NO. 207

INDEX NO. 703632/2017

RECEIVED NYSCEF: 10/21/2019

Dated: New York, New York  
October 21, 2019

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DLA PIPER LLP (US)  
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The Goodyear Tire & Rubber Company*

To: OMRANI & TAUB, P.C.  
*Attorneys for Plaintiff*  
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**NOTICE OF MOTION, BY THIRD-PARTY DEFENDANT THE GOODYEAR  
TIRE & RUBBER COMPANY, FOR AN ORDER DISMISSING THE  
THIRD-PARTY COMPLAINT, DATED MAY 15, 2018 [16 - 18]**

**FILED: QUEENS COUNTY CLERK 05/15/2018 02:51 PM**  
NYSCEF DOC. NO. 88

INDEX NO. 703632/2017

RECEIVED NYSCEF: 05/15/2018

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----	X
JOSE AYBAR, ORLANDO GONZALES, JOSE	:
AYBAR as Administrator of THE ESTATE OF	:
CRYSTAL CRUZ-AYBAR, JESENIA AYBAR as	:
Administratrix 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 TIFFANY CABRAL,	Index No. 703632/2017 [E-Filed]
Plaintiffs,	: Previously Index No. 9344/2014
v.	:
US TIRE AND WHEELS OF QUEENS, LLC,	<b>NOTICE OF MOTION</b>
Defendant.	:
-----	X
US TIRE AND WHEELS OF QUEENS, LLC,	:
Third-Party Plaintiff,	:
v.	:
THE GOODYEAR TIRE & RUBBER COMPANY	:
and GOODYEAR DUNLOP TIRE NORTH	:
AMERICA, LTD and FORD MOTOR COMPANY	:
Third-Party Defendants.	:
-----	X

**PLEASE TAKE NOTICE** that, upon the accompanying Affirmation in Support of Third-Party Defendant The Goodyear Tire & Rubber Company's Motion to Dismiss, dated May 15, 2018, upon all of the exhibits annexed thereto, and upon all pleadings and proceedings heretofore had herein, the undersigned will move this Court at the Queens County Courthouse, Centralized Motion Part, Courtroom 25, located at 88-11 Sutphin Blvd., Jamaica, NY 11435, on June 8, 2018, at 11:00 a.m., or as soon thereafter as counsel can be heard, for an Order dismissing with prejudice the Third-Party Complaint of Third-Party Plaintiff US Tire and Wheels of Queens, LLC pursuant to N.Y. C.P.L.R. 3211(a)(7) and (8), and for such other and further relief as this Court deems just and proper.

FILED: QUEENS COUNTY CLERK 05/15/2018 02:51 PM

NYSCEF DOC. NO. 88

INDEX NO. 703632/2017

RECEIVED NYSCEF: 05/15/2018

**PLEASE TAKE FURTHER NOTICE** that, pursuant to New York Civil Practice Law and Rules 2214(b), answering papers and any notice of cross-motion, with supporting papers, if any, shall be served upon the undersigned at least seven (7) days before the return date of this motion.

Dated: May 15, 2018

**DLA PIPER LLP (US)**

By: /s/ Kevin W. Rethore  
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FILED: QUEENS COUNTY CLERK 05/15/2018 02:51 PM  
NYSCEF DOC. NO. 88

INDEX NO. 703632/2017

RECEIVED NYSCEF: 05/15/2018

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Jose A. Aybar, Jr.*

**AFFIRMATION OF KEVIN W. RETHORE, FOR THIRD-PARTY DEFENDANT  
THE GOODYEAR TIRE & RUBBER COMPANY, IN SUPPORT  
OF MOTION, DATED MAY 15, 2018 [19 - 38]**

**FILED: QUEENS COUNTY CLERK 05/15/2018 02:51 PM**

NYSCEF DOC. NO. 89

INDEX NO. 703632/2017

RECEIVED NYSCEF: 05/15/2018

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----	X
JOSE AYBAR, ORLANDO GONZALES, JOSE AYBAR as Administrator of THE ESTATE OF CRYSTAL CRUZ-AYBAR, JESENIA AYBAR as Administratrix 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 TIFFANY CABRAL,	:
Plaintiffs,	:
v.	:
US TIRE AND WHEELS OF QUEENS, LLC,	:
Defendant.	:
-----	X
US TIRE AND WHEELS OF QUEENS, LLC,	:
Third-Party Plaintiff,	:
v.	:
THE GOODYEAR TIRE & RUBBER COMPANY and GOODYEAR DUNLOP TIRE NORTH AMERICA, LTD and FORD MOTOR COMPANY	:
Third-Party Defendants.	:
-----	X

I, Kevin W. Rethore, an attorney admitted to practice law before the state courts of New York, affirms the following, under penalty of perjury:

1. I am a partner with the law firm of DLA Piper LLP (US), attorneys for Third-Party defendant The Goodyear Tire & Rubber Company (“Goodyear”) in the above-captioned matter and I am fully familiar with the facts and circumstances herein.
2. This affirmation is being submitted in support of the within motion to dismiss pursuant to CPLR 3211(a)(7) and (8), seeking an order dismissing the Third-Party Complaint by

U.S. Tire and Wheels of Queens, LLC (“USTW”) for lack of personal jurisdiction and failure to state a claim for common law indemnification, as follows.

### **INTRODUCTION**

3. USTW’s third-party action is derivative of the litigation captioned *Aybar, et al. v. US Tire and Wheels of Queens, LLC*, Index No. 703632/2017 (Sup. Ct., Queens Cnty.) – an action initiated by the Aybar Plaintiffs<sup>1</sup> against USTW for damages they allegedly sustained as a result of a July 1, 2012 motor vehicle accident involving a 2002 Ford Explorer, in Virginia. (Hereafter, the “Aybar/USTW Action.”) Specifically, the Aybar Plaintiffs alleged that the accident directly resulted from USTW’s negligence in inspecting and installing a ten year old, used tire on the left rear position of the Explorer just two weeks before the accident occurred.

4. USTW brought the instant third-party action against Goodyear (and Ford Motor Company) seeking common law indemnification and contribution, in the event that USTW is found liable to Plaintiffs in the Aybar/USTW Action.

5. USTW’s Third-Party Complaint against Goodyear must be dismissed in its entirety, as a matter of law. Simply stated, Goodyear is not subject to personal jurisdiction in this Court here. First, USTW fails to demonstrate, as it must, that the Court has jurisdiction over Goodyear under either New York’s long arm statute (CPLR § 302) or the Due Process clause of the U.S. Constitution. Goodyear is not subject to personal jurisdiction in New York under the state’s long-arm statute, because it neither committed a tort in New York (as the tire was built and designed by Goodyear outside of New York) nor caused an injury in the State (as the accident occurred in Virginia). Goodyear also submits its own record evidence demonstrating it did not commit a tort in New York, cause any injury in New York, and is certainly not “at home”

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<sup>1</sup> Jose Aybar, Orlando Gonzales, Jose Aybar as Administrator of The Estate of Crystal Cruz-Aybar, Jesenia Aybar as Administratrix of The Estate of Noelia Oliveras, Jesenia Aybar as Legal Guardian on behalf of K.C., Anna Aybar and Jesenia Aybar as Administratrix of The Estate of T.C. (collectively “Aybar Plaintiffs” or “Plaintiffs.”)

in New York such that the exercise of general jurisdiction would be appropriate. *See Daimler AG v. Bauman*, 571 U.S. 117, 139 (2014). Accordingly, dismissal is appropriate under CPLR 3211(a)(8) for lack of personal jurisdiction.

6. The United States Supreme Court's decision in *Daimler* makes clear that Goodyear is not subject to general or "all purpose" jurisdiction in New York. In *Daimler*, the Court narrowed the "minimum contacts" test for general jurisdiction, building upon the *Goodyear Dunlop Tires Operations, S.A. v. Brown* decision, by requiring a corporate defendant to have "affiliations with the State [that] are so continuous and systematic as to render [it] essentially at home in the forum State." 571 U.S. at 139 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)).

7. Absent exceptional circumstances not present here, a corporation is "at home" only in the states: (1) where it is incorporated, and (2) where it has its principal place of business. *Id.* at 137.<sup>2</sup> Goodyear is an *Ohio* corporation with its principal places of business located at 200 Innovation Way in Akron, *Ohio*.

8. Likewise, specific jurisdiction over Goodyear in New York in this lawsuit is lacking because USTW's allegations do not arise from Goodyear's contacts with the state. As explained by the United States Supreme Court in *Walden v. Fiore*, the Constitution does not permit the exercise of jurisdiction based on the "activity of another party or a third person." *Walden v. Fiore*, 134 S. Ct. 1115, 1122 (2014) (quotations omitted). Further, and equally significant, the mere fact that a plaintiff who was allegedly injured in an accident is a resident of

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<sup>2</sup> Notably, New York appellate courts, including the Second Department have rendered decisions consistent with *Daimler*. See *Fernandez v. DaimlerChrysler A.G.*, 143 A.D.3d 765, 767, 40 N.Y.S.3d 128, 131 (2d Dep't 2016); *D & R Global Selections, S.L. v. Bodega Olegario Falcon Pineiro*, 128 A.D.3d 486 (1st Dep't 2015); *Marcio Magdalena v. Eduardo Lins, et al.*, 123 A.D.3d 600, 999 N.Y.S.2d 44 (1st Dep't 2014).

New York does not establish jurisdiction either, as “injury to a forum resident is not . . . sufficient.” *Id.* at 1125.

9. Upon information and belief, the tire in question was neither designed nor manufactured in New York, nor is there any evidence that Goodyear sold it there. Absent general or specific personal jurisdiction over Goodyear in this case, the instant motion to dismiss should be granted.

10. Finally, USTW also fails to state a claim for common law indemnification against Goodyear under CPLR 3211(a)(7), as a matter of established law. A party has no right to common law indemnification where it faces liability in its own right, and independent of any potential liability exposure that the potential indemnitor faces. In asserting a right to common law indemnification from Goodyear here, USTW seeks indemnification for potential exposure to underlying negligence claims that are entirely distinct from the product liability claims asserted separately against Goodyear.

#### **STATEMENT OF PERTINENT FACTS**

11. On June 17, 2014, Plaintiffs initiated suit against USTW in the Supreme Court of the State of New York, Queens County (*i.e.*, the Aybar/USTW Action). As noted above, that action arises out of a July 1, 2012 motor vehicle collision in Virginia. According to the pleadings filed in that case, USTW allegedly inspected and installed tires on a 2002 Ford Explorer for plaintiff Jose Aybar just two weeks prior to the collision. (*See* USTW’s Third-Party Complaint, at Ex. A (*Aybar Plaintiffs’ Amended Verified Complaint*), at ¶¶ 19-20, 25, attached hereto as Exhibit 1.) Plaintiffs allege that USTW “did not properly and adequately inspect, examine, check and/or test the tires and placed them on plaintiff Jose Aybar’s vehicle knowing that the vehicle would be driven with those tires.” (*Id.*, at Ex. A, at ¶¶ 20-21.) Plaintiffs also allege that the “collision occurred solely as a result of the negligence and carelessness of the defendant

because the tires were not fit for safe use on the vehicle and defendant placed them on the vehicle anyway without warning Mr. Aybar about their condition.” (*Id.*, at Ex. A, ¶ 26; *see also id.* at Ex. A, ¶¶ 31-38.) Based on the foregoing, Plaintiffs set forth multiple causes of action against USTW, sounding in negligence, negligent infliction of emotional distress, wrongful death, and a survival action for conscious pain and suffering. (*See generally id.*, at Ex. A, ¶¶ 39-133).

12. On or around July 19, 2016, USTW filed the Third-Party Complaint against Goodyear, Goodyear Dunlop Tires North America, LTD,<sup>3</sup> and Ford Motor Company (the “Third-Party Action”). USTW asserts cause of action in the Third-Party Action solely for common law indemnification and contribution “if [USTW] is held liable to anyone” in the Aybar/USTW Action. (Ex. 1, ¶ 5.)

13. The Third-Party Complaint contains no jurisdictional allegations as to any of the third-party defendants.

14. Goodyear answered the Third-Party Complaint on September 21, 2016, specifically asserting affirmative defenses based on lack of personal jurisdiction and failure to state a claim. (*See* Third-Party Defendant [Goodyear’s] Answer to Third-Party Complaint With Affirmative Defenses And Cross Claims, at 2, attached hereto as **Exhibit 2**.)

15. Upon information and belief, the tire allegedly at issue in the Aybar/USTW Action was not designed or manufactured in New York. Nor could it have been, as Goodyear does not have any Wrangler AP manufacturing plants in New York. (*See* Affidavit of Joseph G. Dancy, dated May 14, 2018, (“Dancy Aff.”), ¶¶ 7-8, attached hereto as **Exhibit 3**.) Instead, the tire was designed by Goodyear in Akron, Ohio and built in Union City, Tennessee. (*Id.* ¶ 5.) The

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<sup>3</sup> Goodyear Dunlop Tires North America, LTD was dismissed from the Third-Party Action on October 11, 2017. *See* NYSCEF Doc. No. 54.

tire was more than ten years old when plaintiff Jose Aybar had it inspected and installed on his 2002 Ford Explorer by USTW. (*See id.* ¶ 5.)

16. Upon leaving Goodyear's possession and control at the manufacturing plant in or about the 4th week of 2002, Goodyear engaged in no known activity at all relating to the subject tire. (*See id.* ¶ 6.)

### **ARGUMENT**

#### **I. THE COURT LACKS PERSONAL JURISDICTION OVER GOODYEAR**

17. USTW bears the ultimate burden of proving a basis for personal jurisdiction over Goodyear in this case. *See, e.g., Carrs v. Avco Corp.*, 124 A.D.3d 710, 2 N.Y.S.3d 533 (2d Dep't 2015). To do so, USTW must prove that personal jurisdiction over Goodyear is proper under both the New York long-arm statute (CPLR § 302), as well as under the Due Process clause of the U.S. Constitution. *See LaMarca v. Pak-Mor Mfg. Co.*, 95 N.Y.2d 210, 213, 735 N.E.2d 883, 886 (2000). USTW cannot establish either.

##### **A. THE COURT DOES NOT HAVE JURISDICTION OVER GOODYEAR UNDER NEW YORK'S LONG-ARM STATUTE.**

18. In the Third-Party Complaint, USTW fails to allege any basis for jurisdiction over Goodyear. However, Goodyear anticipates USTW will argue that jurisdiction is predicated on CPLR § 302.

19. Significantly, the long-arm statute does not extend as far as is constitutionally permissible. *See, e.g., Kreutter v. McFadden Oil Corp.*, 71 N.Y. 2d 460, 471, 522 N.E.2d 40, 46 (1988). Instead, as the New York Court of Appeals has recognized, long-arm or "single act" jurisdiction under CPLR § 302 is intended to be narrower and more restrictive: "the long-arm statute 'does not confer jurisdiction in every case where it is constitutionally permissible'" and "'a situation can occur in which the necessary contacts to satisfy due process are present, but *in*

*personam* jurisdiction will not be obtained in this State because the statute does not authorize it.”” *Ehrenfeld v. Bin Mahfouz*, 9 N.Y.3d 501, 512, 881 N.E.2d 830, 837-8 (2007) (citations omitted).

20. In light of this, under CPLR § 302, the Court may exercise personal jurisdiction over plaintiff’s claims here only if Goodyear “commit[ted] a tortious act within the state,” or if Goodyear “commit[ted] a tortious act without the state causing injury to person or property within the state.” CPLR § 302(a)(2)-(3). Neither basis of long-arm jurisdiction is satisfied.

21. Further, jurisdiction under CPLR § 302 is limited to the contacts specifically listed in the statute and the claim over which jurisdiction is asserted must arise out of those contacts. *See McGowan v. Smith*, 52 N.Y.2d 268, 272, 419 N.E.2d 321, 323 (1981); *Williams v. Enterprise Rent-A-Car of Boston, Inc.*, 35 A.D.3d 264, 264, 826 N.Y.S.2d 59, 60 (App. Div. 2006). In other words, there must be a “substantial relationship” between a defendant’s activities and the plaintiff’s claim. *Fernandez*, 143 A.D.3d at 767, 40 N.Y.S.3d at 131.

22. Here, USTW cannot satisfy the requirements under any branch of CPLR § 302. First, “to determine whether personal jurisdiction exists under CPLR 302(a)(1), a court must determine (1) whether the defendant transacted business in New York and, if so, (2) whether the cause of action asserted arose from that transaction.” *Id.* The Goodyear tire at issue was designed, manufactured, and first sold outside of New York, and there is no nexus or relationship between USTW’s claim and Goodyear’s business in New York. (*See* Ex. 3 (Dancy Aff.), at ¶¶ 5-6.) USTW is *not* a Goodyear “authorized service center” or a Goodyear “authorized dealer” and was not at any time material hereto; such relationships/designations can only be established by “a specific contractual agreement with Goodyear actually authorizing such a relationship.” (*Id.* ¶¶ 11-14.) USTW does not have and cannot produce any such contract. (*See id.* ¶ 14.)

Accordingly, Goodyear is not subject to jurisdiction under CPLR § 302(a)(1) because USTW's claim does not "arise" from Goodyear's transaction of business in New York.

23. CPLR § 302(a)(2) is also inapplicable because Goodyear did not commit a tortious act within New York. It has long been held that a product-manufacturer does not commit a tort within New York when the product allegedly at issue is manufactured outside of the state.

*Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc.*, 15 N.Y.2d 443, 459-64, 209 N.E.2d 68, 76-78 (1965). In this case, Goodyear designed the subject tire in Ohio and manufactured it in Tennessee. (Ex. 3, at ¶¶ 5, 8.) As such, Goodyear did not commit a tortious act within the State, under CPLR §302(a)(2).

24. Finally, Goodyear did not commit a tortious act outside of New York that caused injury *inside* New York. As the Second Department has emphasized, for purposes of CPLR § 302(a)(3), "the 'situs of the injury is the location of the original event which caused the injury, *not the location where the resultant damages are subsequently felt by the plaintiff.*" *Paterno v. Laser Spine Inst.*, 112 A.D.3d 34, 44, 973 N.Y.S.2d 681, 688 (2d Dep't 2013) (citation omitted) (emphasis in original), *aff'd* 24 N.Y.3d 370, 23 N.E.3d 988 (2014). Goodyear's alleged tortious conduct did not cause an injury *inside* New York, because Plaintiffs were injured in Virginia.

25. Personal jurisdiction over Goodyear is therefore not permissible under the New York long-arm statute and USTW's Third-Party Complaint against Goodyear should be dismissed on that basis, alone.

**B. EXERCISING PERSONAL JURISDICTION OVER GOODYEAR  
WOULD VIOLATE DUE PROCESS.**

26. Consistent with due process, a court may exercise personal jurisdiction over a non-resident defendant only if there are “minimum contacts” between the defendant and the forum state. *See, e.g., Deutsche Bank Secs., Inc. v. Montana Bd. of Invs.*, 7 N.Y.3d 65, 71, 850 N.E.2d 1140, 1143 (2006). The quantity and nature of the contacts required depends on whether the plaintiff alleges general or specific personal jurisdiction.

27. General jurisdiction is broader than specific jurisdiction, permitting a court to exercise jurisdiction over a defendant even when the litigation arises out of non-forum contacts. A court asserts “general jurisdiction” over a defendant when the court is permitted to hear “any and all claims against” that defendant. *Goodyear*, 564 U.S. at 919. Because general jurisdiction is not related to the events giving rise to the suit, courts impose a more stringent minimum contacts test, requiring the plaintiff to establish that the defendant’s “affiliations with the State are so ‘continuous and systematic’ as to render it essentially at home in the forum State.” *Daimler*, 571 U.S. at 139; *see Mejia-Haffner v. Killington, Ltd.*, 119 A.D.3d 912, 990 N.Y.S.2d 561 (2d Dep’t 2014).

28. By contrast, specific jurisdiction, “depends on an ‘affiliation between the forum and the underlying controversy,’ principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State’s regulation.” *Goodyear*, 564 U.S. at 919. Such jurisdiction is “confined to adjudication of ‘issues deriving from, or connected with, the very controversy that establishes jurisdiction.’” *Id.* In assessing minimum contacts for specific jurisdiction, “[a] court must look to ‘whether there was some act by which the defendant purposefully availed itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.’ The defendant’s suit-related conduct must

create a substantial connection with the forum State.” *SPV Osus Ltd. v. UBS AG*, 882 F.3d 333, 344 (2d Cir. 2018) (citation omitted).

29. Here, Goodyear is not subject to personal jurisdiction under either a general or specific theory of jurisdiction.

i. **Goodyear Is Not “At Home” in New York.**

30. The *Daimler* decision makes it clear that Goodyear is not amenable to general jurisdiction in New York. Under *Daimler*, the key question in analyzing whether general jurisdiction exists over a given defendant is whether that defendant’s “affiliations with the State are so ‘continuous and systematic’ as to render [it] essentially at home in the forum State.” *Daimler*, 571 U.S. at 139 (quoting *Goodyear*, 564 U.S. at 919). The consequences of finding general jurisdiction exists are certainly pronounced: a defendant will be subject to suit in that state for *any and all* claims, including claims that do not implicate the defendant’s activities there. *Daimler*, 571 U.S. at 127 (emphasis added). Consequently, “only a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction.” *Id.* at 137. “With respect to a corporation, the place of incorporation and principal place of business are paradigm bases for jurisdiction,” because they are “unique,” “easily ascertainable,” and “afford plaintiffs recourse to at least one clear and certain forum in which a corporate defendant may be sued on *any and all* claims.” *Id.* (internal quotations omitted); *see also Norex Petroleum, Ltd. v. Blavatnik*, No. 650591/11, 2015 N.Y. Misc. LEXIS 3136, at \*48-49, (Sup. Ct. N.Y. Cnty. Aug. 25, 2015).

31. *Daimler* involved a California action brought against two defendants: Daimler A.G., a company based outside the country, and Mercedes-Benz USA (MBUSA), a domestic

company located in a different state.<sup>4</sup> *Daimler*, 571 U.S. at 121. The Supreme Court held that the California court lacked general personal jurisdiction over both defendants, because neither were incorporated in California, nor did either entity have its principal place of business there. *Id.* at 138. Permitting general personal jurisdiction to exist over MBUSA in California would have meant that such jurisdiction “would presumably be available in every other State in which MBUSA’s sales are sizable” – a proposition the Supreme Court rejected. *Id.* at 139. A contrary holding would “broadly and unfairly expose multi-state or multi-national corporations to [general personal] jurisdiction in many states.” *George v. Uponor Corp.*, 988 F. Supp. 2d 1056, 1079 (D. Minn. 2013); *see also Lexion Med., LLC v. SurgiQuest, Inc.*, 8 F. Supp. 3d 1122, 1127-28 (D. Minn. 2014) (holding based on *Daimler* that sale of a product and regular service work on that product did not establish general personal jurisdiction).

32. The Second Circuit has held that “when a corporation is neither incorporated nor maintains its principal place of business in a state, mere contacts, no matter how ‘systematic and continuous,’ are extraordinarily unlikely to” allow general jurisdiction. *Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 629 (2d Cir. 2016); *see also Sonera Holding B.V. v. Cukurova Holding A.S.*, 750 F.3d 221, 226 (2d Cir. 2014) (*Daimler* and *Goodyear* “make clear that even a company’s ‘engage[ment] in a substantial, continuous, and systematic course of business’ is alone insufficient to render it at home in a forum”) (citation omitted; brackets in original).

33. Similarly, New York state and federal courts applying New York law have repeatedly rejected general jurisdiction over non-New York corporations, even where the corporations owned manufacturing plants, ran restaurants, or operated bank branches in the

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<sup>4</sup> Defendant MBUSA – a subsidiary of defendant Daimler – was a Delaware corporation, having its principal place of business in New Jersey, and conducting business nationwide. MBUSA’s primary contacts with the forum state (California) were its distribution of vehicles in the state and its establishment of regional facilities. *Daimler*, 571 U.S. at 121.

State. *Stroud v. Tyson Foods, Inc.*, 91 F. Supp. 3d 381, 387-88 (E.D.N.Y. 2015) (finding the operation of manufacturing plants and restaurants insufficient to find general jurisdiction); *Karoon v. Credit Suisse Grp. AG*, No. 15 Civ. 4643 (JPO), 2016 WL 815278, at \*3 (S.D.N.Y. Feb. 29, 2016) (finding the operation of a bank branch insufficient to find general jurisdiction); *Fernandez*, 143 A.D. 3d at 767, 40 N.Y.S.3d at 131; *see also SPV Osus Ltd.*, 882 F.3d at 343-44 (finding no general or specific jurisdiction over Luxemburg company); *Gucci Am., Inc. v. Bank of China*, 768 F.3d 122, 135 (2d Cir. 2014) (Second Circuit analyzed the impact of the *Daimler* opinion in connection with New York’s long-arm statute, held that no personal jurisdiction existed, despite defendant’s continuous and systematic conduct of business in New York and presence of branches there). In short, even engaging in “continuous business” in New York is “insufficient to establish general jurisdiction after *Daimler*.<sup>5</sup> *Karoon*, 2016 WL 815278, at \*3.

34. Applied here, *Daimler*’s holding dictates that this Court lacks general personal jurisdiction over Goodyear because it is an Ohio corporation, with its principal place of business in Ohio – that is the jurisdiction in which they are “essentially at home.” *Daimler*, 571 U.S. at 138. There is no other basis for asserting general jurisdiction over Goodyear. *Daimler* made it clear that general jurisdiction may only be exercised over a corporation outside of those “paradigm bases of jurisdiction”— *i.e.*, a corporation’s place of incorporation and its principal place of business – only in an “exceptional case.”<sup>5</sup> *Id.* at 139 n.19 (emphasis added).

35. There are no “exceptional” facts about this case that render Goodyear “essentially at home” in New York, particularly because the Court further clarified that a corporation is not at

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<sup>5</sup> The *Daimler* Court provided an example of such an “exceptional” case, where a Philippine company had temporarily made Ohio its principal place of business. *Daimler*, 571 U.S. at 129.

home in “every State in which [it] engages in a substantial, continuous, and systematic course of business.” *Daimler*, 571 U.S. at 138.<sup>6</sup>

36. Significantly, USTW makes no effort to establish personal jurisdiction. That fact notwithstanding, generic allegations that a defendant conducts business in New York does not satisfy a plaintiff’s burden and is insufficient to confer general jurisdiction in light of *Daimler*’s mandate. *See Morrow v. Calico Res Corp.*, No. 14 Civ. 03348, 2015 WL 535342, at \*5 (D. Colo. Feb. 9, 2015) (citing *Daimler*, 571 U.S. at 138 n.18); and *Sonera Holding B.V.*, 750 F.3d at 226, *cert denied*, 134 S. Ct. 2888 (2014).

37. Goodyear did not design, manufacture, test or inspect the subject tire – or P245/70R16 Wrangler AP tires, for that matter – in New York. (Ex. 3 (Dancy Aff.), at ¶¶ 5, 8.) Nor did Goodyear direct any marketing or sales activities regarding the Wrangler AP tire in New York. (*See id.* ¶ 9.) Unlike Vehicle Identification Numbers (“VINs”) for motor vehicles, DOT serial numbers are not used to record ownership of a given tire over its service life. (*Id.* ¶ 6.) Goodyear does not have any way of tracking the sale of vehicles or products equipped with its tires as original equipment, nor is there a way to identify sales transactions involving replacement tires. (*See id.*) Goodyear therefore has no records indicating where or to whom an individual tire was sold – or its location, history or condition – after it left the manufacturing plant. (*Id.*) Moreover, Goodyear has no knowledge as to how or when the subject tire first entered the State of New York, nor does it possess any information that Goodyear was involved in any sale of the subject tire in the New York, if any sale occurred there at all. (*Id.*)

38. At all relevant times, Goodyear was and is “at home” in Ohio under *Daimler* and its progeny; as such, it is not subject to general jurisdiction in New York.

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<sup>6</sup> “Otherwise, ‘at home’ would be synonymous with ‘doing business’ tests implicating the exercise of specific jurisdiction.” *Daimler*, at 139 n.20.

ii. **Goodyear Is Not Subject To Specific Jurisdiction in New York for the Conduct Alleged in this Case.**

39. USTW also cannot meet its burden to establish specific or “case-related” jurisdiction over Goodyear, because it has not pled – nor does Goodyear have – any case-related contacts with the State of New York.

40. “The inquiry whether a forum State may assert specific jurisdiction over a nonresident defendant ‘focuses on the relationship among the defendant, the forum, and the litigation.’” *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014) (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775 (1984)).

41. Constitutionally, specific jurisdiction turns on whether “the defendant has ‘purposefully directed’ his activities at . . . the forum and the litigation ‘arises out of or relates to’ those activities.” *Gucci Am., Inc.*, 768 F.3d at 136 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)). The U.S. Supreme Court reemphasized that the relationship between the defendant’s conduct and the forum “must arise out of contacts that the ‘defendant *himself*’ creates with the forum . . . [and the] ‘minimum contacts’ analysis looks to the defendant’s contacts with the forum . . . itself, not the defendant’s contacts with persons who reside there.” *Walden* at 1122. In short, “the plaintiff cannot be the only link between the defendant and the forum.” *Id.*

42. There is simply nothing in USTW’s or the Aybar Plaintiffs’ complaints or otherwise that the subject tire – a used tire installed on the subject vehicle by an independent third party in New York more than ten years after the tire was made – found its way into the state through the actions of anyone other than third parties, independent of Goodyear. As indicated above, “contacts between . . . third parties[] and the forum State” do not provide a basis for specific jurisdiction. *Id.*

43. Moreover, USTW has not pled that Goodyear specifically “targeted” New York or its residents with respect to the marketing or sale of any products, including Wrangler AP P245/70R16 tires and/or the subject tire, nor could it support such a position, if it had. *See Faber v. Townsend Farms, Inc.*, 54 F. Supp. 3d 1182, 1189 (D. Colo. 2014) (granting motion to dismiss because, *inter alia*, “the Court can find no facts in the complaint . . . suggesting that [the defendant] engaged in a ‘regular flow’ or ‘regular course’ of dealing with Colorado or did anything else suggesting it targeted Colorado.”) Goodyear’s advertising, marketing and sales activities relating to the Wrangler AP tire, and any other tire, are not and never have been specifically directed at the State of New York or New York residents. (*See* Ex. 3 (Dancy Aff.), at ¶ 9).

44. Here, a used tire was inspected and installed on the subject vehicle by a third party, independent of Goodyear (*i.e.*, USTW) more than ten years after the tire was made. The Aybar Plaintiffs now allege numerous causes of action against USTW, alleging the “collision occurred *solely as a result of the negligence and carelessness of [USTW]* because the tires were not fit for safe use on the vehicle and defendant placed them on the vehicle anyway without warning Mr. Aybar about their condition.” (Ex. 1, at Ex. A (Aybar/ USTW Complaint), at ¶ 26 (emphasis added).) There is simply no allegation in the Third-Party Complaint connecting Goodyear to the installation of the subject tire. *See Walden*, 134 S. Ct. at 1122 (“contacts between . . . third parties[] and the forum State” do not provide a basis for specific jurisdiction).

45. The fact that the injured plaintiff is a resident of New York does not establish specific jurisdiction because “injury to a forum resident is not a sufficient connection to the forum.” *Walden*, 134 S. Ct. at 1125. Therefore, the fact that a New York resident was injured in Virginia is also insufficient to confer specific jurisdiction in New York. As the Appellate

Division has held, “[t]he situs of the injury is the location of the original event which caused the injury, not the location where the resultant damages are subsequently felt by the plaintiff.” *Vaichunas v. Tonyes*, 61 A.D.3d 850, 851, 877 N.Y.S.2d 204, 205 (2d Dep’t 2009). Plaintiff simply cannot show that the suit “arise[s] or relate[s] to the defendant’s contacts with the forum.” *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984).

46. The mere fact that plaintiff Jose Aybar sought out a third party tire shop in Queens, New York to inspect his ten year old used tire and install it on his 2002 Ford Explorer has nothing to do with any conduct Goodyear may have had in New York or purposely directed toward the state.

47. Accordingly, specific jurisdiction over Goodyear is completely lacking.

## **II. USTW FAILS TO STATE A CLAIM AGAINST GOODYEAR FOR COMMON LAW INDEMNIFICATION**

48. In this Third-Party action, USTW brings suit against Goodyear for common law indemnification and contribution. (Ex. 1 (USTW Third-Party Compl.), at ¶ 5.) Here, USTW allegedly harmed the Aybar Plaintiffs by independently and negligently inspecting and installing Jose Aybar’s tire in June of 2012 – *ten years* after the tire was made. Accordingly, the causes of action directed to USTW are separate and apart from any duty allegedly owed by Goodyear to the Aybar Plaintiffs in the product liability context. In these circumstances, a claim for common law indemnity by USTW against Goodyear must be dismissed.

49. On a motion to dismiss under CPLR 3211(a)(7), “the facts pleaded are presumed to be true and accorded every favorable inference,” however, “allegations consisting of bare legal conclusions, as well as factual claims either inherently incredible or flatly contradicted by documentary evidence, are not entitled to such consideration.” *Wilson v. Hochberg*, 245 A.D.2d

116, 116, 665 N.Y.S.2d 653, 653-54 (1st Dep’t 1997); *see also M&B Joint Venture, Inc. v. Laurus Master Fund, Ltd.*, 49 A.D.3d 258, 260, 853 N.Y.S.2d 300, 303 (1st Dep’t 2008) (same).

50. Common law indemnification “permits one who has been compelled to pay for the wrong of another to recover from the wrongdoer the damages it paid to the injured party.” *Bivona v. Danna & Assocs., P.C.*, 123 A.D.3d 956, 957-58, 999 N.Y.S.2d 490, 493 (2d Dep’t 2014) (citations omitted). The legal principle applies only where the “plaintiff’s injury is solely passive, and thus its liability is purely vicarious.” *Id.* Accordingly, if a party has “actually participated in the wrongdoing” then common law indemnification is inapplicable. *See id.* (citing *Bedessee Imports, Inc. v. Cook, Hall & Hyde, Inc.*, 45 A.D.3d 792, 796, 847 N.Y.S.2d 151, 155; *see also 17 Vista Fee Assocs. v. Teachers Ins. & Annuity Ass’n of Am.*, 259 A.D.2d 75, 80, 693 N.Y.S.2d 554, 557-58).

51. In turn, “[t]he party seeking indemnification ‘must have delegated exclusive responsibility for the duties giving rise to the loss to the party from whom indemnification is sought,’ and must not have committed actual wrongdoing itself.” *Tiffany at Westbury Condo. By Its Bd. of Managers v. Marelli Dev. Corp.*, 40 A.D.3d 1073, 1077, 840 N.Y.S.2d 74, 78 (2d Dep’t 2007) (citing *17 Vista Fee Assocs.*, 259 A.D.2d at 80, 693 N.Y.S.2d 554). “[T]he key element of a common-law cause of action for indemnification is not a duty running from the indemnitor to the injured party, but rather is ‘a separate duty owed the indemnitee by the indemnitor.’” *Greenberg v. Blake*, 117 A.D.3d 683, 684, 985 N.Y.S.2d 279, 281 (2d Dep’t 2014) (quoting *Raquet v. Braun*, 90 N.Y.2d 177, 183, 659 N.Y.S.2d 237, 240 (1997).).

52. Accordingly, common law indemnification claims fail as a matter of law where “the third-party plaintiffs would not be compelled to pay damages for the alleged negligent acts of the third-party defendants.” *Balkheimer v. Spanton*, 103 A.D.3d 603, 604, 959 N.Y.S.2d 697,

698 (2d Dep’t 2013) (dismissing common law indemnification claim on motion to dismiss) (citing *Lovino, Inc. v. Lavallee Law Offices*, 96 A.D.3d 909, 946 N.Y.S.2d 875; *Jakobleff v. Cerrato, Sweeney & Cohn*, 97 A.D.2d 786, 786–787, 468 N.Y.S.2d 894, 895).

53. In *Lovino, Inc. v. Lavallee Law Offices*, the Second Department reversed a trial court’s denial of a third-party defendant’s CPLR 3211(a)(7) motion to dismiss a common law indemnification claim. 96 A.D.3d 909, 910, 946 N.Y.S.2d 875, 876 (2d Dep’t 2012). The Second Department explained that although “the defendants third-party plaintiffs and the third-party defendant both allegedly violated duties to the plaintiffs in the main action, *they did not violate the same duty or share responsibility for the same injury, and the defendants third-party plaintiffs are not being compelled to pay damages for the wrongful act of the third-party defendant.*” *Id.* 96 A.D.3d at 910, 946 N.Y.S.2d at 876 (emphasis added); *see also Schottland v. Brown Harris Stevens Brooklyn, LLC*, 137 A.D.3d 997, 999, 27 N.Y.S.3d 634, 636–37 (2d Dep’t 2016) (common law indemnification claim dismissed because “any potential liability” of third party plaintiff was result of its own actions); *Jakobleff v. Cerrato, Sweeney & Cohn*, 97 A.D.2d 786, 786–787, 468 N.Y.S.2d 894, 895 (2d Dep’t 1983) (affirming dismissal of common law indemnification claim where third party plaintiffs are charged with own negligence); *Old Republic Nat’l Title Ins. v. Kaufman*, No. 96 Civ. 4533 (JSM), 1997 WL 309212, at \*2 (S.D.N.Y. June 9, 1997) (defendants have “no right to indemnity” where complaint seeks to hold defendants “responsible for their own wrongs”).

54. Here, USTW’s common law indemnity claim fails as a matter of law for at least two reasons. First, USTW fails to set forth any duty that Goodyear owes to USTW, as indemnitee. *See Greenberg v. Blake*, 117 A.D.3d 683, 684, 985 N.Y.S.2d 279, 281 (2d Dep’t 2014).

55. Second, the claim fails because any liability that USTW faces will be due to USTW's *own* duties to the Aybar Plaintiffs, and not any duty owed by Goodyear to the Aybar Plaintiffs. Specifically, USTW alone is alleged to have inspected and installed the subject tire for plaintiff Jose Aybar in June 2012, and "did not properly and adequately inspect, examine, check and/or test the tires and placed them on plaintiff Jose Aybar's vehicle knowing the vehicle would be driven with those tires." (Ex. 1, at Ex. A (Aybar/USTW Compl.), at ¶¶ 20-21.) Further, the "collision occurred *solely as a result of the negligence and carelessness of [USTW]* because the tires were not fit for safe use on the vehicle and defendant placed them on the vehicle anyway without warning Mr. Aybar about their condition." (*Id.*, at Ex. A, at ¶ 26 (emphasis added); *see also id.*, at Ex. A, at ¶¶ 31 – 38 (stating collision occurred solely as a result of the negligence and carelessness of the defendant [USTW])).) Based on the foregoing, the Aybar complaint sets forth fourteen causes of action against USTW alleging theories of negligence, negligent infliction of emotional distress, wrongful death, and a survival action for conscious pain and suffering. (*See generally id.*, at Ex. A, at ¶¶ 39 – 133.) Those claims contrast any product liability claims by the Aybar Plaintiffs of defective design or manufacturing against Goodyear. Therefore, to the extent USTW faces any liability to Aybar, the duties allegedly violated by USTW are distinct from those duties allegedly owed to the Plaintiffs by Goodyear. *See Lovino, Inc.*, 96 A.D.3d at 910, 946 N.Y.S.2d at 876.

56. Under these circumstances, USTW cannot claim that it is owed any common law indemnity because the conduct at issue involves different duties allegedly owed to the Aybar Plaintiffs. Accordingly, and as a matter of law, the common law indemnification claim against Goodyear must be dismissed.

**CONCLUSION**

57. For the foregoing reasons, Third-Party Defendant The Goodyear Tire & Rubber Company respectfully requests that this Court grant its motion to dismiss Third-Party Plaintiff USTW's complaint in its entirety for lack of personal jurisdiction and failure to state a claim and grant such other and further relief as the Court deems just and proper in the circumstances.

Dated: May 15, 2018

**DLA PIPER LLP (US)**

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**EXHIBIT 1 TO RETHORE AFFIRMATION -  
THIRD-PARTY COMPLAINT, DATED JULY 19, 2016 [39 - 44]**

**FILED: QUEENS COUNTY CLERK 05/15/2018 02:51 PM**  
NYSCEF DOC. NO. 90

INDEX NO. 703632/2017

RECEIVED NYSCEF: 05/15/2018

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X  
JOSE AYBAR, ORLANDO GONZALES, JOSE AYBAR  
as Administrator of THE ESTATE OF CRYSTAL CRUZ-  
AYBAR, JESENIA AYBAR as Administratrix of THE  
ESTATE OF NOELIA OLIVERAS, JESENIA AYBAR as  
LEGAL GUARDIAN on behalf of KEILA CABRAL, a  
minor, ANNA AYBAR and JESENIA AYBAR as  
Administratrix of THE ESTATE OF TIFFANY CABRAL,

Index No.: 9344/2014

**THIRD-PARTY  
COMPLAINT**

Plaintiffs,

-against-

US TIRES AND WHEELS OF QUEENS, LLC,

Defendant.

-----X  
US TIRES AND WHEELS OF QUEENS, LLC,

Third-Party Plaintiff,

-against-

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

Third-Party Defendants.

-----X

Defendant/third-party plaintiff, U.S. Tires and Wheels of Queens, LLC, by its attorneys,  
Marshall Dennehey Warner Coleman & Goggin, as and for its third-party complaint against The  
Goodyear Tire & Rubber Company, Goodyear Dunlop Tires North America, Ltd. and Ford  
Motor Company, alleges upon information and belief, as follows:

1. Plaintiffs commenced an action for personal injury and wrongful death against defendant/third-party plaintiff US Tires and Wheel of Queens, LLC under Index No. 9344/14 for

US Tire's alleged negligence in the installation of Goodyear tires on plaintiff-Jose Aybar's Ford Explorer. The tires allegedly failed, causing an accident and injuries on July 1, 2012. Complaint & Answer (**Exhibit A**).

2. Plaintiff Jose Aybar commenced a separate action against The Goodyear Tire & Rubber Company, and Goodyear Dunlop Tires North America, Ltd., (hereinafter "Goodyear") under Index No. 706908/15, alleging that Goodyear was liable to him for the same July 1, 2012 accident based on strict products liability, negligence, breach of warranty, and deceptive trade practices. Complaint in Index No. 706908/15 (**Exhibit B**).

3. Plaintiffs Anna Aybar, Orlando Gonzalez, Jesenia Aybar, as legal guardian on behalf of Keyla Cabral, an infant over the age of fourteen (14) years; Jesnia 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, commenced an action against Jose A. Aybar, Jr., Ford Motor Company, The Goodyear Tire & Rubber Co., and John Does 1 thru 30, under Index No. 706909/15 for the same July 1, 2012 accident based on strict products liability, negligence, breach of warrant, and deceptive trade practices. Complaint in Index No. 706909/15 (**Exhibit C**).

**AS AND FOR A FIRST CAUSE OF ACTION  
AGAINST THE THIRD-PARTY DEFENDANTS  
(COMMON LAW INDEMNITY AND CONTRIBUTION)**

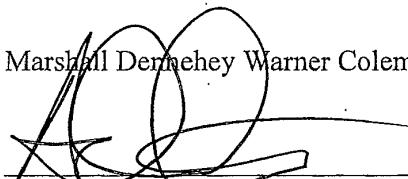
4. Defendant/third-party plaintiff repeats and realleges the allegations contained in paragraphs 1 through 3 as if set forth fully herein.

5. If US Tires and Wheels of Queens LLC is held liable to anyone in this action, its liability and damages will have arisen out of the affirmative active and primary negligence of The Goodyear Tire & Rubber Company, Goodyear Dunlop Tires North America, Ltd. and Ford Motor Company, their agents, servants or employees, and without any active or primary negligence or active participation on the part of US Tires and Wheels of Queens LLC, and that if any negligence or liability is found to exist on the part of US Tires and Wheels of Queens LLC, that liability and negligence would be secondary or passive or the result solely of the operation of law as opposed to negligence of The Goodyear Tire & Rubber Company, Goodyear Dunlop Tires North America, Ltd. and Ford Motor Company, whose liability and negligence will be active and primary, and if the plaintiff's allegations are proven true at trial US Tires and Wheels of Queens LLC will be entitled to and demands common law indemnification or contribution from The Goodyear Tire & Rubber Company, Goodyear Dunlop Tires North America, Ltd. and Ford Motor Company for the amount of any verdict or judgment that may be recovered against it in this action.

**WHEREFORE**, defendant/third-party plaintiff U.S. Tires and Wheels of Queens, LLC demands judgment over and against The Goodyear Tire & Rubber Company, Goodyear Dunlop Tires North America, Ltd. and Ford Motor Company for all or part of any verdict or judgment that may be had against the defendant/third-party plaintiff in this action; judgment against The Goodyear Tire & Rubber Company, Goodyear Dunlop Tires North America, Ltd. and Ford Motor Company, for all attorneys' fees, costs, interest, other expenses and all costs of settlement of the claim and/or satisfaction of judgment as may be obtained against defendant/third-party plaintiff U.S. Tires and Wheels of Queens, LLC, in connection with the subject action because of

third-party defendants' negligence; and together with all costs, interest, expenses, and legal fees incurred in defending the litigation.

Dated: New York, New York  
July 19, 2016

Marshall Dennehey Warner Coleman & Goggin  
  
By: \_\_\_\_\_  
Adam C. Calvert  
Attorneys for Defendant/Third-Party Plaintiff  
U.S. Tires and Wheels of Queens, LLC  
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New York, New York 10005  
Tel: (212) 376-6400  
Fax: (212) 376-6490  
File No.: 40318.00121

To: Through the Secretary of State – New York upon:  
The Goodyear Tire & Rubber Company  
200 Innovation Way  
Akron, OH 44316

Through the Secretary of State – New York upon:  
Goodyear Dunlop Tires North America, Ltd.  
C/o Corporation Service Company  
80 State Street  
Albany, New York 12201

Through the Secretary of State – New York upon:  
Ford Motor Company  
1 American Road  
Dearborn, MI 48126

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Attorneys for Plaintiffs  
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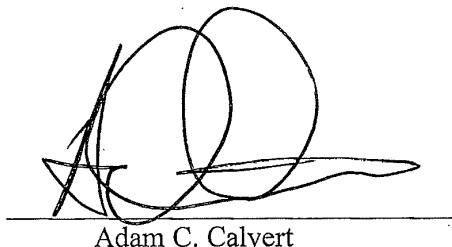
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ATTORNEY VERIFICATION

Adam C. Calvert, an attorney admitted in the State of New York, affirms and says:

I am associated with the firm of Marshall Dennehey Warner Coleman & Goggin, attorneys for defendant/third-party plaintiff U.S. Tires and Wheels of Queens, LLC. I have read the Verified Third-Party Complaint and know its contents and they are true to my knowledge, except those matters which are stated to be alleged on information and belief, and as to those matters I believe them to be true. The reason why this verification is made by me instead of by defendant/third-party plaintiff U.S. Tires and Wheels of Queens, LLC, is because it is not in the county where my firm maintains an office.

Dated: New York, New York  
July 19, 2016



Adam C. Calvert

**EXHIBIT A TO COMPLAINT -  
(I) AMENDED VERIFIED COMPLAINT, DATED SEPTEMBER 23, 2014 [45 - 73]**

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

-----X  
 JOSE AYBAR, ORLANDO GONZALES, JOSE AYBAR  
 as Administrator of THE ESTATE OF CRYSTAL CRUZ-  
 AYBAR, JESENIA AYBAR as Administratrix of THE  
 ESTATE OF NOELIA OLIVERAS, JESENIA AYBAR  
 as LEGAL GUARDIAN on behalf of KEILA CABRAL, a  
 minor, ANNA AYBAR and JESENIA AYBAR as  
 Administratrix of THE ESTATE OF TIFFANY  
 CABRAL,

Plaintiffs,  
-against-

US TIRES AND WHEELS OF QUEENS, LLC

Defendant.

-----X

Jose Aybar, individually, Orlando Gonzales, individually, Jose Aybar as the  
 Administrator of the Estate of Crystal Cruz-Aybar, Jesenia Aybar as the Administratrix  
 of the Estate of Noelia Oliveras, Jesenia Aybar as the Administratrix of the Estate of  
 Tiffany Cabral, Jesenia Aybar as Legal Guardian on behalf of Keila Cabral, a minor,  
 Anna Aybar, individually, by their attorneys Cohen, Placitella & Roth, P.C. as and for  
 their Amended Verified Complaint against Defendant US Tires and Wheels of Queens  
 ("defendant") allege and set forth as follows:

**INTRODUCTION**

1. The causes of action set forth herein arise out of a motor vehicle collision  
 that occurred on July 1, 2012 as a result of the negligence and carelessness of the  
 defendant ("the collision").
2. The collision occurred on Interstate 85 in Brunswick County, Virginia and  
 near the intersection with Route 644.

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THE PARTIES

3. Defendant US Tires and Wheels of Queens, LLC is a limited liability corporation existing and organized under and by virtue of the laws of the State of New York.

4. At all times relevant to this action defendant US Tires and Wheels of Queens operated its business in Queens County, State of New York.

5. Plaintiff Jose Aybar is an individual residing in the County of Hudson, State of New Jersey. At the time of the collision plaintiff Jose Aybar was residing in Queens County, State of New York.

6. Jose Aybar is the Administrator of the Estate of Crystal Cruz-Aybar, his deceased wife, and Jose Aybar brings an action individually and as Administrator of the Estate of Crystal Cruz-Aybar and on behalf of The Estate of Crystal Cruz-Aybar ("plaintiff Estate of Cruz-Aybar").

7. At the time of the collision and her death, Crystal Cruz-Aybar, deceased, was the wife of plaintiff Jose Aybar.

8. At the time of the collision and her death, Crystal Cruz-Aybar, deceased, was an individual residing in Queens County, State of New York.

9. Plaintiff Orlando Gonzales is an individual residing in the County of Hudson, State of New Jersey.

10. Plaintiff Jesenia Aybar is the Administratrix of the Estate of Noelia Oliveras and Jesenia Aybar brings an action as Administratrix of the Estate of Noelia Oliveras and on behalf of The Estate of Noelia Oliveras ("plaintiff Estate of Oliveras").

11. At the time of the collision and her death, Noelia Oliveras, deceased, was an individual residing in the County of Hudson, State of New Jersey.

12. At the time of the collision and her death, Noelia Oliveras, deceased, was the mother of plaintiff Jesenia Aybar.

13. Plaintiff Jesenia Aybar is the Administratrix of the Estate of Tiffany Cabral, a deceased minor, and Jesenia Aybar brings an action as Administratrix of the Estate of Tiffany Cabral and on behalf of The Estate of Tiffany Cabral, a deceased minor, ("plaintiff Estate of Cabral").

14. At the time of the collision and her death, Tiffany Cabral, deceased, was an individual residing in the County of Hudson, State of New Jersey.

15. At the time of the collision and her death, Tiffany Cabral, deceased, was the sister of plaintiff Jesenia Aybar.

16. On the 11<sup>th</sup> day of November 2012, prior to the commencement of this action, Jesenia Aybar was granted sole custody of Keila Cabral, a minor, pursuant to an Order of the Superior Court of New Jersey, Chancery Division-Family Part, County of Hudson.

17. Jesenia Aybar as Legal Guardian of Keila Cabral, a minor, brings this action on behalf of the minor plaintiff, Keila Cabral ("plaintiff Keila Cabral").

18. Plaintiff Anna Aybar is an individual residing in the County of Queens, State of New York.

#### FACTS

19. On or about June 17, 2012, plaintiff Jose Aybar brought his vehicle, a 2002 Ford Explorer, to defendant US Tires and Wheels of Queens, LLC for service.

20. At the time of this service, plaintiff Jose Aybar brought with him tires to be inspected and examined and, if suitable for use, installed by defendant for Mr. Aybar's use in driving to Disney World in Orlando, Florida.

21. Upon information and belief, defendant did not properly and adequately inspect, examine, check and/or test the tires and placed them on plaintiff Jose Aybar's vehicle knowing that the vehicle would be driven with those tires.

22. The defendant had a duty to properly and adequately inspect, examine, check and/or test the tires prior to placing them on plaintiff Jose Aybar's vehicle and to warn Mr. Aybar if they were not in a safe condition to use, and defendant negligently and carelessly disregarded that duty.

23. The defendant had a duty to not place unsafe tires on plaintiff Jose Aybar's vehicle so that plaintiff Jose Aybar and his passengers would be reasonably safe in his vehicle and defendant negligently and carelessly disregarded that duty.

24. Upon information and belief, defendant had actual and constructive knowledge prior to placing the tires on plaintiff Jose Aybar's vehicle that the tires were not fit for use on plaintiff Jose Aybar's vehicle due to their poor condition.

25. Upon information and belief, on July 1, 2012, plaintiff Jose Aybar was driving his vehicle on Interstate 85 in Virginia as part of a return trip from Disney World to New York when the left rear tire of the vehicle failed, causing plaintiff Jose Aybar to lose control of his vehicle, the vehicle to overturn, strike a guard rail and then strike a tree.

26. Upon information and belief, the collision occurred solely as a result of the negligence and carelessness of the defendant because the tires were not fit for safe use

on the vehicle and defendant placed them on the vehicle anyway without warning Mr. Aybar about their condition.

27. The tires were unsafe, very low on tread and there were visible signs of dry rot prior to and at the time defendant placed them on plaintiff Jose Aybar's vehicle.

28. Upon information and belief, defendant provided no warning to plaintiff Jose Aybar about the condition of the tires.

29. The collision was caused by reason of the negligent and careless service performed by defendant, by reason of the failure of the defendant to properly and adequately inspect, examine, check and/or test the tires prior to placing them on plaintiff Jose Aybar's vehicle, by reason of defendant's the placement of the unsafe tires on the vehicle despite their poor and unfit condition for use and by reason of the failure of defendant to provide plaintiff Jose Aybar with any warning after making the negligent and careless decision to place the defective tires on the vehicle.

30. At the time of the collision, plaintiff Jose Aybar was operating his vehicle and plaintiff Orlando Gonzales, plaintiff Anna Aybar, plaintiff Keila Cabral, a minor, Tiffany Cabral, Crystal Cruz-Aybar and Noelia Oliveras were passengers in the vehicle.

31. As a result of the collision, caused solely by the negligence and carelessness of the defendant, jointly, severally and collectively, Jose Aybar, Orlando Gonzales, Anna Aybar, Keila Cabral, a minor, Tiffany Cabral, Crystal Cruz-Aybar and Noelia Oliveras were injured and/or died.

32. As a result of the collision, caused solely by the negligence and carelessness of the defendant, plaintiff Jose Aybar suffered severe and permanent injuries, including but not limited to two herniated disks, two bilateral disk bulges,

lacerations on his arms and legs and broken blood vessels in his eye. Mr. Aybar underwent medical treatment and rehabilitation and will be in need for future medical care and expense. He has undergone and will continue to undergo pain and suffering, mental anguish and loss of life's pleasures.

33. As a result of the collision, caused solely by the negligence and carelessness of the defendant, plaintiff Orlando Gonzales suffered severe and permanent injuries, including but not limited to fractured ribs, fracture of his left arm, two herniated disks, and lacerations. Mr. Gonzalez underwent medical treatment and rehabilitation and will be in need for future medical care and expense. He has undergone and will continue to undergo pain and suffering, mental anguish and loss of life's pleasures.

34. As a result of the collision, caused solely by the negligence and carelessness of the defendant, plaintiff Anna Aybar suffered severe and permanent injuries, including but not limited to crushed bones in her left hand, broken bones in her left foot, a dislocated pelvis, a dislocated right leg, and various cuts and bruises. She has had multiple surgeries, medical treatment and rehabilitation. Ms. Aybar will be in need for future medical care and expense. She has undergone and will continue to undergo pain and suffering, mental anguish and loss of life's pleasures.

35. As a result of the collision, caused solely by the negligence and carelessness of the defendant, plaintiff Keila Cabral, a minor, suffered severe and permanent injuries, including but not limited to a fractured pelvis and multiple lacerations resulting in scarring. Ms. Cabral underwent medical treatment and rehabilitation and will be in need for future medical care and expense. She has undergone and will continue to undergo pain and suffering, mental anguish and loss of life's pleasures.

36. As a result of the collision, caused solely by the negligence and carelessness of the defendant, Tiffany Cabral was ejected from the vehicle and died as a result of her injuries.

37. As a result of the collision, caused solely by the negligence and carelessness of the defendant, Crystal Cruz-Aybar was ejected from the vehicle and died as a result of her injuries.

38. As a result of the collision, caused solely by the negligence and carelessness of the defendant, Noelia Oliveras was partially ejected from the vehicle and died as a result of her injuries.

**AND AS FOR THE FIRST CAUSE OF ACTION  
NEGLIGENCE**

(On behalf of plaintiff Jose Aybar against defendant US Tires and Wheels of Queens)

39. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

40. Plaintiff Jose Aybar was operating his motor vehicle at the time of the aforementioned collision that is the subject of this lawsuit.

41. As a result of the collision caused solely by the negligence and carelessness of the defendant, as set forth above, plaintiff Jose Aybar was caused to suffer severe bodily injuries.

42. Plaintiff Jose Aybar's injuries were caused without any fault and/or negligence on the part of plaintiff Jose Aybar or any other plaintiff or passenger in his vehicle.

43. That by reason of the foregoing, plaintiff Jose Aybar was caused to sustain serious injuries described above.

44. That by reason of the foregoing, plaintiff Jose Aybar was damaged in an amount to be determined upon the trial of this action and in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction, together with the costs and disbursements of this action.

**AND AS FOR THE SECOND CAUSE OF ACTION  
NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS**

(On behalf of plaintiff Jose Aybar against defendant US Tires and Wheels of Queens)

45. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

46. Plaintiff Jose Aybar was operating his motor vehicle at the time of the aforementioned collision that is the subject of this lawsuit.

47. Plaintiff Jose Aybar's wife, Crystal Cruz-Aybar, deceased, his mother, Noelia Oliveras, deceased, and his sister, Tiffany Cabral, deceased, were all passengers in plaintiff Jose Aybar's vehicle and were killed as a result of the collision caused solely by the negligence and carelessness of the defendant.

48. As a result of the collision caused solely by the negligence and carelessness of the defendant, as set forth above, plaintiff Jose Aybar witnessed the injuries and death of his wife, mother and sister.

49. As a result of the collision caused solely by the negligence and carelessness of the defendant, as set forth above, plaintiff Jose Aybar was within the zone of danger and feared for his own safety and was in fact injured as well.

50. That by reason of the foregoing, plaintiff Jose Aybar was caused to sustain serious injuries including shock, mental anguish and emotional distress; that these injuries are permanent and ongoing; and as a result of said injuries plaintiff Jose Aybar

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has been and will be caused to incur expenses for medical care and attention and as a further result plaintiff Jose Aybar was and will be rendered unable to perform his normal activities and duties and has sustained a resultant loss therefrom.

51. That by reason of the foregoing, plaintiff Jose Aybar was damaged in an amount to be determined upon the trial of this action and in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction, together with the costs and disbursements of this action.

AND AS FOR THE THIRD CAUSE OF ACTION  
NEGLIGENCE

(On behalf of plaintiff Orlando Gonzales against defendant US Tires and Wheels of Queens)

52. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

53. Plaintiff Orlando Gonzales was a front seat passenger in the motor vehicle operated by plaintiff Jose Aybar at the time of the aforementioned collision that is the subject of this lawsuit.

54. As a result of the collision caused solely by the negligence and carelessness of the defendant, as set forth above, plaintiff Orlando Gonzales was caused to suffer severe bodily injuries.

55. Plaintiff Orlando Gonzales' injuries were caused without any fault and/or negligence on the part of plaintiff Jose Aybar or any other plaintiff or passenger in the vehicle.

56. That by reason of the foregoing, plaintiff Orlando Gonzales was caused to sustain serious injuries described above.

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57. That by reason of the foregoing, plaintiff Orlando Gonzales was damaged in an amount to be determined upon the trial of this action and in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction, together with the costs and disbursements of this action.

**AND AS FOR THE FOURTH CAUSE OF ACTION  
NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS  
(On behalf of plaintiff Orlando Gonzales against  
defendant US Tires and Wheels of Queens)**

58. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

59. Plaintiff Orlando Gonzales was a front seat passenger in the motor vehicle operated by plaintiff Jose Aybar at the time of the aforementioned collision that is the subject of this lawsuit.

60. Plaintiff Orlando Gonzales' fiancée, Noelia Oliveras, deceased, was also a passenger in plaintiff Jose Aybar's vehicle and was killed as a result of the collision caused solely by the negligence and carelessness of the defendant.

61. As a result of the collision caused solely by the negligence and carelessness of the defendant, as set forth above, plaintiff Orlando Gonzales witnessed the injuries and death of his fiancée. Plaintiff Orlando Gonzales was a front seat passenger in the motor vehicle operated by plaintiff Jose Aybar at the time of the aforementioned collision that is the subject of this lawsuit.

62. As a result of the collision caused solely by the negligence and carelessness of the defendant, as set forth above, plaintiff Orlando Gonzales was within the zone of danger and feared for his own safety and was in fact injured as well.

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63. That by reason of the foregoing, plaintiff Orlando Gonzales was caused to sustain serious injuries including shock, mental anguish and emotional distress; that these injuries are permanent and ongoing; and as a result of said injuries plaintiff Orlando Gonzales has been and will be caused to incur expenses for medical care and attention and as a further result plaintiff Orlando Gonzales was and will be rendered unable to perform his normal activities and duties and has sustained a resultant loss therefrom.

64. That by reason of the foregoing, plaintiff Orlando Gonzales was damaged in an amount to be determined upon the trial of this action and in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction, together with the costs and disbursements of this action.

AND AS FOR THE FIFTH CAUSE OF ACTION  
WRONGFUL DEATH

(On behalf of plaintiff The Estate of Crystal Cruz-Aybar against defendant US Tires and Wheels of Queens)

65. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

66. Plaintiff Jose Aybar as the Administrator of the Estate of Crystal Cruz-Aybar brings this claim on behalf of the Estate of Crystal Cruz-Aybar and all those entitled to recover damages on behalf of the Estate of Crystal Cruz-Aybar, including her surviving husband plaintiff Jose Aybar.

67. Plaintiff Jose Aybar as Administrator of the Estate of Crystal Cruz-Aybar brings this claim for the wrongful death of his wife Crystal Cruz-Aybar, deceased.

68. Crystal Cruz-Aybar, deceased, was a second row passenger in the motor vehicle operated by plaintiff Jose Aybar at the time of the aforementioned collision that is the subject of this lawsuit.

69. Crystal Cruz-Aybar, deceased, was injured, ejected from the vehicle and killed as a result of the collision that is the subject of this lawsuit and which was caused solely by the negligence and carelessness of the defendant.

70. Crystal Cruz-Aybar, deceased, was injured and killed without any fault and/or negligence on the part of plaintiff Jose Aybar or any other plaintiff or passenger in the vehicle.

71. Crystal Cruz-Aybar, deceased, was 22 years old at the time of her death and was in good health, sober, industrious, and in possession of all of her faculties and was steadily employed as a secretary/receptionist.

72. The surviving husband, plaintiff Jose Aybar, and all other distributees of the Estate of Crystal Cruz-Aybar, deceased, were dependent upon Crystal Cruz-Aybar, deceased, for support, comfort and maintenance, and have been and will be deprived of this support, comfort and maintenance.

73. Furthermore, the additional relatives of Crystal Cruz-Aybar, deceased, have been and will be deprived of their relationship and communion with Crystal Cruz-Aybar, deceased.

74. In connection with the injuries and death sustained by Crystal Cruz-Aybar, deceased, all caused solely by the negligence and carelessness of the defendant, the Estate of Crystal Cruz-Aybar, deceased, necessarily incurred expenses in various and diverse amounts, including but not limited to medical and funeral expenses, and will necessarily incur expenses in various and diverse amounts in the settlement of the Estate of Crystal Cruz-Aybar, deceased.

75. That by reason of the foregoing, plaintiff the Estate of Crystal Cruz-Aybar, deceased, surviving husband plaintiff Jose Aybar and the other distributes, have suffered damages and claim all pecuniary losses in an amount to be determined upon the trial of this action and in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction, together with the costs and disbursements of this action.

**AND AS FOR THE SIXTH CAUSE OF ACTION**  
**SURVIVAL ACTION/CONSCIOUS PAIN AND SUFFERING**  
**(On behalf of plaintiff The Estate of Crystal Cruz-Aybar against**  
**defendant US Tires and Wheels of Queens)**

76. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

77. Solely by reason of the carelessness and negligence of the defendant, as alleged herein, Crystal Cruz-Aybar, deceased, was caused to suffer severe injuries and be ejected from plaintiff Jose Aybar's vehicle at the time of the collision, upon which time Crystal Cruz-Aybar, deceased, suffered grievous pain, agony and mental anguish and upon information and belief she was conscious after being injured and then died at the scene of the collision.

78. That by reason of the foregoing, plaintiff the Estate of Crystal Cruz-Aybar, deceased, have suffered damages in an amount to be determined upon the trial of this action and in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction, together with the costs and disbursements of this action.

AND AS FOR THE SEVENTH CAUSE OF ACTION  
WRONGFUL DEATH  
(On behalf of plaintiff The Estate of Noelia Oliveras against  
defendant US Tires and Wheels of Queens)

79. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

80. Jesenia Aybar as the Administratrix of the Estate of Noelia Oliveras brings this claim on behalf of the Estate of Noelia Oliveras and all those entitled to recover damages on behalf of the Estate of Noelia Oliveras, including Jose Aybar, Anna Aybar, Keila Cabral and Jesenia Aybar.

81. Jesenia Aybar as the Administratrix of the Estate of Noelia Oliveras brings this claim for the wrongful death of Noelia Oliveras, deceased.

82. Noelia Oliveras, deceased, was a third row passenger in the motor vehicle operated by plaintiff Jose Aybar at the time of the aforementioned collision that is the subject of this lawsuit.

83. Noelia Oliveras, deceased, was injured, partially ejected from the vehicle and killed as a result of the collision that is the subject of this lawsuit and which was caused solely by the negligence and carelessness of the defendant.

84. Noelia Oliveras, deceased, was injured and killed without any fault and/or negligence on the part of plaintiff Jose Aybar or any other plaintiff or passenger in the vehicle.

85. Noelia Oliveras, deceased, was 42 years old at the time of her death and was in good health, sober, industrious, and in possession of all of her faculties and was steadily employed as a real estate agent.

86. The distributees of the Estate of Noelia Oliveras, deceased, including her son plaintiff Jose Aybar and daughters Jesenia Aybar, Anna Aybar, and Keila Cabral were dependent upon Noelia Oliveras, deceased, for support, comfort and maintenance, and have been and will be deprived of this support, comfort and maintenance.

87. Furthermore, the additional relatives of Noelia Oliveras, deceased, have been and will be deprived of their relationship and communion with Noelia Oliveras, deceased,

88. In connection with the injuries and death sustained by Noelia Oliveras, deceased, all caused solely by the negligence and carelessness of the defendant, the Estate of Noelia Oliveras, deceased, necessarily incurred expenses in various and diverse amounts, including but not limited to medical and funeral expenses, and will necessarily incur expenses in various and diverse amounts in the settlement of the Estate of Noelia Oliveras, deceased.

89. That by reason of the foregoing, plaintiff the Estate of Noelia Oliveras, deceased, her surviving next of kin including her son plaintiff Jose Aybar and daughters Jesenia Aybar, Anna Aybar and Keila Cabral and the other distributees, have suffered damages and claim all pecuniary losses in an amount to be determined upon the trial of this action and in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction, together with the costs and disbursements of this action.

**AND AS FOR THE EIGHTH CAUSE OF ACTION  
SURVIVAL ACTION/CONSCIOUS PAIN AND SUFFERING  
(On behalf of plaintiff The Estate of Noelia Oliveras against  
defendant US Tires and Wheels of Queens)**

90. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

91. Solely by reason of the carelessness and negligence of the defendant, as alleged herein, Noelia Oliveras, deceased, was caused to suffer severe injuries and be partially ejected from plaintiff Jose Aybar's vehicle at the time of the collision, upon which time Noelia Oliveras, deceased, suffered grievous pain, agony and mental anguish and upon information and belief she was conscious after being injured and then died while being transported to the hospital.

92. That by reason of the foregoing, plaintiff the Estate of Noelia Oliveras, deceased, have suffered damages in an amount to be determined upon the trial of this action and in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction, together with the costs and disbursements of this action.

**AND AS FOR THE NINTH CAUSE OF ACTION  
NEGLIGENCE  
(On behalf of plaintiff Keila Cabral, a minor, against  
defendant US Tires and Wheels of Queens)**

93. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

94. Jesenia Aybar as Legal Guardian of Keila Cabral, a minor, brings this claim on behalf of Keila Cabral, a minor.

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95. Plaintiff Keila Cabral, a minor, was a third row passenger in the motor vehicle operated by plaintiff Jose Aybar at the time of the aforementioned collision that is the subject of this lawsuit.

96. As a result of the collision caused solely by the negligence and carelessness of the defendant, as set forth above, plaintiff Keila Cabral, a minor, was caused to suffer severe bodily injuries.

97. The injuries sustained by Keila Cabral, a minor, were caused without any fault and/or negligence on the part of plaintiff Jose Aybar or any other plaintiff or passenger in the vehicle.

98. That by reason of the foregoing, plaintiff Keila Cabral, a minor, was caused to sustain serious injuries, as described above.

99. That by reason of the foregoing, plaintiff Keila Cabral, a minor, was damaged in an amount to be determined upon the trial of this action and in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction, together with the costs and disbursements of this action.

**AS AND FOR THE TENTH CAUSE OF ACTION  
NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS**

(On behalf of plaintiff Keila Cabral against  
defendant US Tires and Wheels of Queens)

100. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

101. Plaintiff Keila Cabral was a third row passenger in the motor vehicle operated by plaintiff Jose Aybar at the time of the aforementioned collision that is the subject of this lawsuit.

102. Plaintiff Keila Cabral's mother, Olivia Oliveras, deceased, and her sister, Tiffany Cabral, deceased, were all passengers in plaintiff Jose Aybar's vehicle and were killed as a result of the collision caused solely by the negligence and carelessness of the defendant.

103. As a result of the collision caused solely by the negligence and carelessness of the defendant, as set forth above, plaintiff Keila Cabral witnessed the injuries and death of her mother and sister.

104. As a result of the collision caused solely by the negligence and carelessness of the defendant, as set forth above, plaintiff Keila Cabral was within the zone of danger and feared for her own safety and was in fact injured as well.

105. That by reason of the foregoing, plaintiff Keila Cabral was caused to sustain serious injuries including shock, mental anguish and emotional distress; that these injuries are permanent and ongoing; and as a result of said injuries plaintiff Keila Cabral has been and will be caused to incur expenses for medical care and attention and as a further result plaintiff Keila Cabral was and will be rendered unable to perform her normal activities and has sustained a resultant loss therefrom.

106. That by reason of the foregoing, plaintiff Jose Keila Cabral was damaged in an amount to be determined upon the trial of this action and in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction, together with the costs and disbursements of this action.

AND AS FOR THE ELEVENTH CAUSE OF ACTION  
NEGLIGENCE

(On behalf of plaintiff Anna Aybar against  
defendant US Tires and Wheels of Queens)

107. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

108. Plaintiff Anna Aybar, was a second row passenger in the motor vehicle operated by plaintiff Jose Aybar at the time of the aforementioned collision that is the subject of this lawsuit.

109. As a result of the collision caused solely by the negligence and carelessness of the defendant, as set forth above, plaintiff Anna Aybar was caused to suffer severe bodily injuries and be ejected from the vehicle.

110. The injuries sustained by Anna Aybar were caused without any fault and/or negligence on the part of plaintiff Jose Aybar or any other plaintiff or passenger in the vehicle.

111. That by reason of the foregoing, plaintiff Anna Aybar was caused to sustain serious injuries described above.

112. That by reason of the foregoing, plaintiff Anna Aybar was damaged in an amount to be determined upon the trial of this action and in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction, together with the costs and disbursements of this action.

**AND AS FOR THE TWELTH CAUSE OF ACTION  
NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS**  
(On behalf of plaintiff Anna Aybar against  
defendant US Tires and Wheels of Queens)

113. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

114. Plaintiff Anna Aybar was a second row passenger in the motor vehicle operated by plaintiff Jose Aybar at the time of the aforementioned collision that is the subject of this lawsuit.

115. Plaintiff Anna Aybar's mother, Noelia Oliveras, deceased, and her sister, Tiffany Cabral, deceased, were all passengers in plaintiff Jose Aybar's vehicle and were killed as a result of the collision caused solely by the negligence and carelessness of the defendant.

116. As a result of the collision caused solely by the negligence and carelessness of the defendant, as set forth above, plaintiff Anna Aybar witnessed the injuries and death of her mother and sister.

117. As a result of the collision caused solely by the negligence and carelessness of the defendant, as set forth above, plaintiff Anna Aybar was within the zone of danger and feared for her own safety and was in fact injured as well.

118. That by reason of the foregoing, plaintiff Anna Aybar was caused to sustain serious injuries including shock, mental anguish and emotional distress; that these injuries are permanent and ongoing; and as a result of said injuries plaintiff Anna Aybar has been and will be caused to incur expenses for medical care and attention and as a further result plaintiff Anna Aybar was and will be rendered unable to perform her normal activities and duties and has sustained a resultant loss therefrom.

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119. That by reason of the foregoing, plaintiff Anna Aybar was damaged in an amount to be determined upon the trial of this action and in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction, together with the costs and disbursements of this action.

AND AS FOR THE THIRTEENTH CAUSE OF ACTION  
WRONGFUL DEATH

(On behalf of plaintiff The Estate of Tiffany Cabral, a deceased minor, against defendant US Tires and Wheels of Queens)

120. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

121. Jesenia Aybar, as Administratrix of the Estate of Tiffany Cabral, a deceased minor, brings this claim on behalf of the Estate of state of Tiffany Cabral, a deceased minor, and all those entitled to recover damages on behalf of the Estate of Tiffany Cabral, including Jesenia Aybar, Jose Aybar, Anna Aybar and Keila Cabral.

122. Jesenia Aybar, as Administratrix of the Estate of Tiffany Cabral, a deceased minor, brings this claim for the wrongful death of Tiffany Cabral, a deceased minor.

123. Tiffany Cabral, a deceased minor, was a second row passenger in the motor vehicle operated by plaintiff Jose Aybar at the time of the aforementioned collision that is the subject of this lawsuit.

124. Tiffany Cabral, a deceased minor, at the time of the collision was the sister of plaintiffs Jesenia Aybar, Jose Aybar and Keila Cabral and the daughter of Noelia Oliveras, deceased.

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125. Tiffany Cabral, a deceased minor, was injured, ejected from the vehicle and killed as a result of the collision that is the subject of this lawsuit and which was caused solely by the negligence and carelessness of the defendant.

126. Tiffany Cabral, a deceased minor, was injured and killed without any fault and/or negligence on the part of plaintiff Jose Aybar or any other plaintiff or passenger in the vehicle.

127. Tiffany Cabral, a deceased minor, was 8 years old at the time of her death and was in good health, sober, industrious, and in possession of all of her faculties and was a young student with the majority of her life remaining.

128. The relatives of Tiffany Cabral, a deceased minor, have been and will be deprived of their relationship and communion with Tiffany Cabral, a deceased minor.

129. In connection with the injuries and death sustained by Tiffany Cabral, a deceased minor, all caused solely by the negligence and carelessness of the defendant, the Estate of Tiffany Cabral, a deceased minor, necessarily incurred expenses in various and diverse amounts, including but not limited to medical and funeral expenses, and will necessarily incur expenses in various and diverse amounts in the settlement of the Estate of Tiffany Cabral, a deceased minor.

130. That by reason of the foregoing, plaintiff the Estate of Tiffany Cabral, a deceased minor, surviving next of kin and the other distributees, have suffered damages and claim all pecuniary losses in an amount to be determined upon the trial of this action and in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction, together with the costs and disbursements of this action.

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AND AS FOR THE FOURTEENTH CAUSE OF ACTION  
SURVIVAL ACTION/CONSCIOUS PAIN AND SUFFERING  
(On behalf of plaintiff The Estate of Tiffany Cabral, a deceased minor,  
against US Tires and Wheels of Queens)

131. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

132. Solely by reason of the carelessness and negligence of the defendant, as alleged herein, Tiffany Cabral, a deceased minor, was caused to suffer severe injuries and be ejected from plaintiff Jose Aybar's vehicle at the time of the collision, upon which time Tiffany Cabral, a deceased minor, suffered grievous pain, agony and mental anguish and upon information and belief she was conscious after being injured and then died at the scene of the collision.

133. That by reason of the foregoing, plaintiff the Estate of Tiffany Cabral, a deceased minor, has suffered damages and claim all pecuniary losses in an amount to be determined upon the trial of this action and in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction, together with the costs and disbursements of this action.

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WHEREFORE, all plaintiffs demand judgment against defendant on all claims and in an amount to be determined upon the trial of this action together with the costs and disbursements of this action.

Dated: Sept. 23, 2014  
Red Bank, NJ

COHEN, PLACITELLA & ROTH, P.C

By:

  
Christopher M. Placitella, Esquire  
Attorney No. 2202497  
Joel S. Rosen, Esquire  
Mark B. Goodheart, Esquire  
Jared M. Placitella, Esquire  
Attorney No. 5216817  
2001 Market Street, Suite 2900  
Philadelphia, PA 19103  
Attorneys for all Plaintiffs

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VERIFICATION

STATE OF NEW YORK )

COUNTY OF NEW YORK )

ANNA AYBAR, hereby duly sworn, deposes and says:

I am the Plaintiff in the within action; I have read the foregoing COMPLAINT and know the contents thereof; the same is true to my own knowledge, except as to matters therein stated to be alleged upon information and belief; and as to those matters I believe them to be true.

Anna Aybar  
ANNA AYBAR

Sworn to before me on this  
30th day of May 2014

MARGARET RHEINSTADTER  
NOTARY PUBLIC

COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL

MARGARET RHEINSTADTER, Notary Public  
City of Philadelphia, Phila, County  
My Commission Expires October 11, 2015

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VERIFICATION

STATE OF NEW YORK )

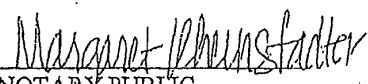
COUNTY OF NEW YORK )

JESENIA AYBAR, hereby duly sworn, deposes and says:

I am the Plaintiff in the within action; I have read the foregoing COMPLAINT and know the contents thereof; the same is true to my own knowledge, except as to matters therein stated to be alleged upon information and belief; and as to those matters I believe them to be true.

  
JESENIA AYBAR

Sworn to before me on this  
30th day of May 2014

  
NOTARY PUBLIC

COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL

MARGARET REINSTADTER, Notary Public  
City of Philadelphia, Phila. County  
My Commission Expires October 11, 2016

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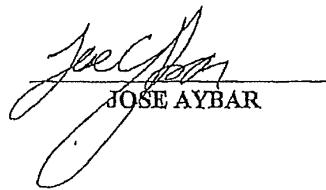
VERIFICATION

STATE OF NEW YORK )

COUNTY OF NEW YORK )

JOSE AYBAR, hereby duly sworn, deposes and says:

I am the Plaintiff in the within action; I have read the foregoing COMPLAINT and know the contents thereof; the same is true to my own knowledge, except as to matters therein stated to be alleged upon information and belief; and as to those matters I believe them to be true.

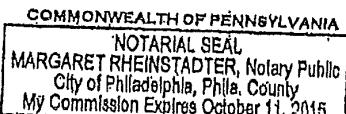


JOSE AYBAR

Sworn to before me on this  
30th day of May 2014



MARGARET RHEINSTADTER  
NOTARY PUBLIC



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VERIFICATION

STATE OF NEW YORK )

COUNTY OF NEW YORK )

ORLANDO GONZALEZ, hereby duly sworn, deposes and says:

I am the Plaintiff in the within action; I have read the foregoing COMPLAINT and know the contents thereof; the same is true to my own knowledge, except as to matters therein stated to be alleged upon information and belief; and as to those matters I believe them to be true.



ORLANDO GONZALEZ

Sworn to before me on this  
30<sup>th</sup> day of May 2014

Margaret Rheinstader  
NOTARY PUBLIC.

COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL

MARGARET RHEINSTADER, Notary Public  
City of Philadelphia, Phila, County  
My Commission Expires October 11, 2016

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Index No. 9344/2014

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

JOSE AYBAR, ORLANDO GONZALES, JOSE AYBAR as Administrator of  
THE ESTATE OF CRYSTAL CRUZ-AYBAR, JESENIA AYBAR as  
Administratrix of THE ESTATE OF NOELIA OLIVERAS, JESENIA AYBAR  
as LEGAL GUARDIAN on behalf of KEILA CABRAL, a minor, ANNA  
AYBAR and JESENIA AYBAR as Administratrix of THE ESTATE OF  
TIFFANY CABRAL,

Plaintiffs,

-against-

US TIRES AND WHEELS OF QUEENS, LLC

Defendant.

AMENDED VERIFIED COMPLAINT

*COHEN, PLACITELLA & ROTH, P.C.*  
*Attorneys for Plaintiffs*  
2001 Market Street  
Suite 2900  
Philadelphia, PA 19103

*Tel:* (215) 567-3500

**EXHIBIT A TO COMPLAINT -  
(II) VERIFIED ANSWER TO AMENDED SUMMONS  
AND COMPLAINT, DATED MARCH 17, 2015 [74 - 91]**

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X  
JOSE AYBAR, ORLANDO GONZALES, JOSE AYBAR  
as Administrator of THE ESTATE OF CRYSTAL CRUZ-  
AYBAR, JESENIA AYBAR as Administratrix of THE  
ESTATE OF NOELIA OLIVERAS, JESENIA AYBAR as  
LEGAL GUARDIAN on behalf of KEILA CABRAL, a  
minor, ANNA AYBAR and JESENIA AYBAR as  
Administratrix of THE ESTATE OF TIFFANY CABRAL,

Index No.: 9344/2014

**VERIFIED ANSWER TO  
AMENDED SUMMONS  
AND COMPLAINT**

Plaintiffs,

-against-

US TIRES AND WHEELS OF QUEENS, LLC,

Defendant.

-----X

Defendant, U.S. Tires and Wheels of Queens, LLC i/s/h/a US Tires and Wheels of  
Queens, LLC, by its attorneys, Marshall Dennehey Warner Coleman & Goggin, as and for its  
Answer to the plaintiff's Amended Complaint alleges as follows:

1. Denies the allegations contained in paragraph "1" of the Amended Verified  
Complaint and refer all questions of law to the Court..
2. Denies having knowledge or information sufficient to form a belief as to the  
allegations contained in paragraph "2" of the Amended Verified Complaint.

**THE PARTIES**

3. Denies the allegations contained in paragraph "3" of the Amended Verified  
Complaint, except admits that defendant is a limited liability company.
4. Admit the allegations contained in paragraph "4" of the Verified Complaint.
5. Denies having knowledge or information sufficient to form a belief as to the  
allegations contained in paragraph "5" of the Amended Verified Complaint.

6. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "6" of the Amended Verified Complaint.
7. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "7" of the Amended Verified Complaint.
8. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "8" of the Amended Verified Complaint.
9. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "9" of the Amended Verified Complaint.
10. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "10" of the Amended Verified Complaint.
11. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "11" of the Amended Verified Complaint.
12. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "12" of the Amended Verified Complaint.
13. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "13" of the Amended Verified Complaint.
14. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "14" of the Amended Verified Complaint.
15. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "15" of the Amended Verified Complaint.
16. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "16" of the Amended Verified Complaint.

17. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "17" of the Amended Verified Complaint.

18. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "18" of the Amended Verified Complaint.

**FACTS**

19. Denies the allegations contained in paragraph "19" of the Amended Verified Complaint.

20. Denies the allegations contained in paragraph "20" of the Amended Verified Complaint.

21. Denies the allegations contained in paragraph "21" of the Amended Verified Complaint.

22. Denies the allegations contained in paragraph "22" of the Amended Verified Complaint and refer all questions of law to the Court..

23. Denies the allegations contained in paragraph "23" of the Amended Verified Complaint and refer all questions of law to the Court.

24. Denies the allegations contained in paragraph "24" of the Amended Verified Complaint and refer all questions of law to the Court.

25. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "25" of the Verified Complaint.

26. Denies the allegations contained in paragraph "26" of the Amended Verified Complaint and refer all questions of law to the Court.

27. Denies the allegations contained in paragraph "27" of the Amended Verified Complaint.

28. Denies the allegations contained in paragraph "28" of the Amended Verified Complaint.

29. Denies the allegations contained in paragraph "29" of the Amended Verified Complaint and refer all questions of law to the Court.

30. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "30" of the Amended Verified Complaint.

31. Denies the allegations contained in paragraph "31" of the Amended Verified Complaint and refer all questions of law to the Court.

32. Denies the allegations contained in paragraph "32" of the Amended Verified Complaint and refer all questions of law to the Court.

33. Denies the allegations contained in paragraph "33" of the Amended Verified Complaint and refer all questions of law to the Court.

34. Denies the allegations contained in paragraph "34" of the Amended Verified Complaint and refer all questions of law to the Court.

35. Denies the allegations contained in paragraph "35" of the Amended Verified Complaint and refer all questions of law to the Court.

36. Denies the allegations contained in paragraph "36" of the Amended Verified Complaint and refer all questions of law to the Court.

37. Denies the allegations contained in paragraph "37" of the Amended Verified Complaint and refer all questions of law to the Court.

38. Denies the allegations contained in paragraph "38" of the Amended Verified Complaint and refer all questions of law to the Court.

**AS AND FOR THE FIRST CAUSE OF ACTION**

39. Answering defendant, repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "38" above as if more fully set forth at length herein.

40. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "40" of the Amended Verified Complaint.

41. Denies the allegations contained in paragraph "41" of the Amended Verified Complaint and refer all questions of law to the Court.

42. Denies the allegations contained in paragraph "42" of the Amended Verified Complaint and refer all questions of law to the Court.

43. Denies the allegations contained in paragraph "43" of the Amended Verified Complaint.

44. Denies the allegations contained in paragraph "44" of the Amended Verified Complaint.

**AS AND FOR THE SECOND CAUSE OF ACTION**

45. Answering defendant, repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "44" above as if more fully set forth at length herein.

46. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "46" of the Amended Verified Complaint.

47. Denies the allegations contained in paragraph "47" of the Amended Verified Complaint and refer all questions of law to the Court.

48. Denies the allegations contained in paragraph "48" of the Amended Verified Complaint and refer all questions of law to the Court.

49. Denies the allegations contained in paragraph "49" of the Amended Verified Complaint and refer all questions of law to the Court.

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50. Denies the allegations contained in paragraph "50" of the Amended Verified Complaint.

51. Denies the allegations contained in paragraph "51" of the Amended Verified Complaint.

**AS AND FOR THE THIRD CAUSE OF ACTION**

52. Answering defendant, repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "51" above as if more fully set forth at length herein.

53. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "53" of the Amended Verified Complaint.

54. Denies the allegations contained in paragraph "54" of the Amended Verified Complaint and refer all questions of law to the Court.

55. Denies the allegations contained in paragraph "55" of the Amended Verified Complaint and refer all questions of law to the Court.

56. Denies the allegations contained in paragraph "56" of the Amended Verified Complaint.

57. Denies the allegations contained in paragraph "57" of the Amended Verified Complaint.

**AS AND FOR THE FOURTH CAUSE OF ACTION**

58. Answering defendant, repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "57" above as if more fully set forth at length herein.

59. Plaintiff Orlando Gonzales' claim for negligent infliction of emotional distress was dismissed by the Court. See, Exhibit "A".

60. Plaintiff Orlando Gonzales' claim for negligent infliction of emotional distress was dismissed by the Court. See, Exhibit "A".

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61. Plaintiff Orlando Gonzales' claim for negligent infliction of emotional distress was dismissed by the Court. See, Exhibit "A".

62. Plaintiff Orlando Gonzales' claim for negligent infliction of emotional distress was dismissed by the Court. See, Exhibit "A".

63. Plaintiff Orlando Gonzales' claim for negligent infliction of emotional distress was dismissed by the Court. See, Exhibit "A".

64. Plaintiff Orlando Gonzales' claim for negligent infliction of emotional distress was dismissed by the Court. See, Exhibit "A".

**AS AND FOR THE FIFTH CAUSE OF ACTION**

65. Answering defendant, repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "64" above as if more fully set forth at length herein.

66. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "66" of the Amended Verified Complaint.

67. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "67" of the Amended Verified Complaint.

68. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "68" of the Amended Verified Complaint.

69. Denies the allegations contained in paragraph "69" of the Amended Verified Complaint and refer all questions of law to the Court.

70. Denies the allegations contained in paragraph "70" of the Verified Complaint and refer all questions of law to the Court.

71. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "71" of the Amended Verified Complaint.

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72. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "72" of the Amended Verified Complaint.

73. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "73" of the Amended Verified Complaint.

74. Denies the allegations contained in paragraph "74" of the Amended Verified Complaint and refer all questions of law to the Court.

75. Denies the allegations contained in paragraph "75" of the Amended Verified Complaint.

**AS AND FOR THE SIXTH CAUSE OF ACTION**

76. Answering defendant, repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "75" above as if more fully set forth at length herein.

77. Denies the allegations contained in paragraph "77" of the Amended Verified Complaint and refer all questions of law to the Court.

78. Denies the allegations contained in paragraph "78" of the Amended Verified Complaint.

**AS AND FOR THE SEVENTH CAUSE OF ACTION**

79. Answering defendant, repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "78" above as if more fully set forth at length herein.

80. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "80" of the Amended Verified Complaint.

81. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "81" of the Amended Verified Complaint.

82. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "82" of the Amended Verified Complaint.

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83. Denies the allegations contained in paragraph "83" of the Amended Verified Complaint and refer all questions of law to the Court.

84. Denies the allegations contained in paragraph "84" of the Amended Verified Complaint and refer all questions of law to the Court.

85. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "85" of the Amended Verified Complaint.

86. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "86" of the Amended Verified Complaint.

87. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "87" of the Amended Verified Complaint.

88. Denies the allegations contained in paragraph "88" of the Amended Verified Complaint and refer all questions of law to the Court.

89. Denies the allegations contained in paragraph "89" of the Amended Verified Complaint.

**AS AND FOR THE EIGHTH CAUSE OF ACTION**

90. Answering defendant, repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "89" above as if more fully set forth at length herein.

91. Denies the allegations contained in paragraph "91" of the Amended Verified Complaint and refer all questions of law to the Court.

92. Denies the allegations contained in paragraph "92" of the Amended Verified Complaint.

**AS AND FOR THE NINTH CAUSE OF ACTION**

93. Answering defendant, repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "92" above as if more fully set forth at length herein.

94. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "94" of the Amended Verified Complaint.

95. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "95" of the Amended Verified Complaint.

96. Denies the allegations contained in paragraph "96" of the Amended Verified Complaint and refer all questions of law to the Court.

97. Denies the allegations contained in paragraph "97" of the Amended Verified Complaint and refer all questions of law to the Court.

98. Denies the allegations contained in paragraph "98" of the Amended Verified Complaint.

99. Denies the allegations contained in paragraph "99" of the Amended Verified Complaint.

**AS AND FOR THE TENTH CAUSE OF ACTION**

100. Answering defendant, repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "99" above as if more fully set forth at length herein.

101. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "101" of the Amended Verified Complaint.

102. Denies the allegations contained in paragraph "102" of the Amended Verified Complaint and refer all questions of law to the Court.

103. Denies the allegations contained in paragraph "103" of the Amended Verified Complaint and refer all questions of law to the Court.

104. Denies the allegations contained in paragraph "104" of the Amended Verified Complaint and refer all questions of law to the Court.

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105. Denies the allegations contained in paragraph "105" of the Amended Verified Complaint.

106. Denies the allegations contained in paragraph "106" of the Amended Verified Complaint.

**AS AND FOR THE ELEVENTH CAUSE OF ACTION**

107. Answering defendant, repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "106" above as if more fully set forth at length herein.

108. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "108" of the Amended Verified Complaint.

109. Denies the allegations contained in paragraph "109" of the Amended Verified Complaint and refer all questions of law to the Court.

110. Denies the allegations contained in paragraph "110" of the Amended Verified Complaint and refer all questions of law to the Court.

111. Denies the allegations contained in paragraph "111" of the Amended Verified Complaint.

112. Denies the allegations contained in paragraph "112" of the Amended Verified Complaint.

**AS AND FOR THE TWELFTH CAUSE OF ACTION**

113. Answering defendant, repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "112" above as if more fully set forth at length herein.

114. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "114" of the Amended Verified Complaint.

115. Denies the allegations contained in paragraph "115" of the Amended Verified Complaint and refer all questions of law to the Court.

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116. Denies the allegations contained in paragraph "116" of the Amended Verified Complaint and refer all questions of law to the Court.

117. Denies the allegations contained in paragraph "117" of the Amended Verified Complaint and refer all questions of law to the Court.

118. Denies the allegations contained in paragraph "118" of the Amended Verified Complaint.

119. Denies the allegations contained in paragraph "119" of the Amended Verified Complaint.

**AS AND FOR THE THIRTEENTH CAUSE OF ACTION**

120. Answering defendant, repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "119" above as if more fully set forth at length herein.

121. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "121" of the Amended Verified Complaint.

122. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "122" of the Amended Verified Complaint.

123. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "123" of the Amended Verified Complaint.

124. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "124" of the Amended Verified Complaint.

125. Denies the allegations contained in paragraph "125" of the Amended Verified Complaint and refer all questions of law to the Court.

126. Denies the allegations contained in paragraph "126" of the Amended Verified Complaint and refer all questions of law to the Court.

127. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph "127" of the Amended Verified Complaint.

128. Denies the allegations contained in paragraph "128" of the Amended Verified Complaint and refer all questions of law to the Court.

129. Denies the allegations contained in paragraph "129" of the Amended Verified Complaint and refer all questions of law to the Court.

130. Denies the allegations contained in paragraph "130" of the Amended Verified Complaint.

**AS AND FOR THE FOURTEENTH CAUSE OF ACTION**

131. Answering defendant, repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "130" above as if more fully set forth at length herein.

132. Denies the allegations contained in paragraph "132" of the Amended Verified Complaint and refer all questions of law to the Court.

133. Denies the allegations contained in paragraph "133" of the Amended Verified Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

134. If the plaintiffs sustained any injuries and/or damages at the time and place alleged in the Amended Complaint, the plaintiffs assumed the risk inherent in the activity in which plaintiffs was then engaged and further such injuries and/or damages were caused by reason of the culpable conduct and/or negligence of the plaintiffs without any negligence on the part of these answering defendants contributing thereto.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

135. Upon information and belief, any past or future costs or expenses incurred or to be incurred by the plaintiffs, the distributees and the next of kin for medical care, dental care,

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custodial care or rehabilitative services, loss of earnings or other economic loss has been or will with reasonable certainty be replaced or indemnified in whole or in part from the collateral source as defined in Section 4545(c) or the New York Civil Practice Law and Rules. If any damages are recoverable against defendants, the amount of such damages shall be diminished by the amount of the funds which plaintiffs have or shall receive from such collateral source.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

136. If defendant is found to be at all liable, it is entitled to a limitation of such liability pursuant to Article 16 of the CPLR.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

137. The plaintiffs have failed to join necessary and indispensable parties to this action.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

138. That plaintiffs' complaint should be dismissed for failure to state a cause of action.

**AS AND FOR AN SIXTH AFFIRMATIVE DEFENSE**

139. This answering defendant is entitled to an offset pursuant to General Obligations Law ("GOL") 15-108.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

140. If the plaintiffs sustained the injuries and damages complained of, which are denied, said injuries and damages were caused in whole or part by the conduct of one or more parties whose conduct this answering Defendant is not responsible for, have no control over, or with whom this answering Defendant has no legal relation.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

141. The decedents were not conscious at any time after receiving the injuries that allegedly resulted in their deaths; therefore, decedents may not recover damages for conscious pain and suffering.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

142. Plaintiffs' injuries, if any, were caused by the intervening or superceding acts and/or omissions of persons other than the defendant, who were neither under the control nor in the employment of defendant and for whose acts and/or omissions the defendant bears no responsibility.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

143. The causes of action set forth in the Amended Verified Complaint are barred by the applicable statute of limitations.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

144. That the injuries and damages, if any, sustained by the plaintiffs, were caused by or aggravated by the failure and refusal of the plaintiffs to make use of the seat belts in the motor vehicle in which they were passengers, and that any claimed injuries or damages would not have been sustained or would have been greatly minimized had plaintiffs made use of the seat belts provided.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

145. Plaintiffs lack standing.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

146. Plaintiffs' claims are barred by the doctrine of unclean hands.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

147. Plaintiffs failed to mitigate damages.

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AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

148. Plaintiffs did not sustain a "serious injury" sufficient to satisfy the no-fault threshold as prescribed by the Insurance Law of the State of New York. Plaintiffs' claims are barred and precluded by Article 51, Sections 5101, 5102, 5103 and 5104 of the New York State Insurance Law or the corresponding law prescribed by the State of New Jersey or Virginia.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

149. The damages, if any, alleged to have been sustained by Plaintiffs were caused in whole or part by the culpable conduct of the Plaintiffs. Plaintiffs as passengers of the vehicle had the duty and responsibility to notify and prevent the vehicle driver from taking risk and prevent the driver from violating the law.

AS AND FOR A FIRST COUNTERCLAIM AGAINST  
PLAINTIFF JOSE AYBAR FOR COMMON-LAW CONTRIBUTION  
AND INDEMNIFICATION

150. At all times herein mentioned, plaintiff Jose Aybar was careless, reckless and negligent in the ownership, operation, management, maintenance, supervision and control of his motor vehicle, in operating said motor vehicle at an improper and excessive rate of speed; in failing to yield the right-of-way; in failing to avoid this accident; in failing to heed the rules of the road; in failing to properly and adequately use and maintain the braking, wheels, and/or steering mechanisms of his vehicle; in causing this accident and in failing to avoid this incident; and in violating the applicable various rules, regulations, statutes, ordinances and provisions.

151. The negligence and carelessness of plaintiff Jose Aybar was a direct and proximate cause of the accident.

152. By reason of the foregoing, Defendant U.S. Tires and Wheels of Queens, LLC is entitled to indemnification and contribution from and judgment over and against the plaintiff for indemnification and/or contribution in the amount of money paid by defendant over and above

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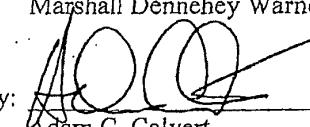
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its equitable share of the judgment, verdict and/or recovery, as determined in accordance with the relative culpability of each party liable for contribution.

WHEREFORE, Defendant U.S. Tires and Wheels of Queens, LLC i/s/h/a US Tires and Wheels of Queens, LLC demands judgment as follows:

- (a) dismissing the Amended Verified Complaint;
- (b) granting defendant U.S. Tires and Wheels of Queens, LLC's counterclaim;
- (c) awarding them costs and disbursements of this action, including attorneys' fees; and
- (d) for such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
March 17, 2015

Marshall Dennehey Warner Coleman & Goggin  
  
By: \_\_\_\_\_  
Adam C. Calvert  
Attorneys for Defendant  
U.S. Tires and Wheels of Queens, LLC  
i/s/h/a US Tires and Wheels of Queens, LLC  
Wall Street Plaza • 88 Pine Street – 21<sup>st</sup> Floor  
New York, New York 10005  
Tel: (212) 376-6400  
Fax: (212) 376-6490  
File No.: 40318.00121

To: Cohen, Placitella & Roth, P.C.  
Attorneys for all Plaintiffs  
2001 Market Street, Suite 2900  
Philadelphia, Pennsylvania 19103

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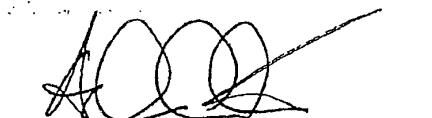
RECEIVED NYSCEF: 05/15/2018

ATTORNEY VERIFICATION

Adam C. Calvert, an attorney duly admitted to practice law in the State of New York, affirms and says:

I am associated with the law firm of Marshall Dennehey Warner Coleman & Goggin, attorneys for Defendant, U.S. Tires and Wheels of Queens, LLC i/s/h/a US Tires and Wheels of Queens, LLC. I have read the annexed Answer and know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters, I believe them to be true. This Verification is made by me instead of by Defendant because they do not maintain a place of business in the County where your affiant's office is located.

Dated: New York, New York  
March 17, 2015



\_\_\_\_\_  
Adam C. Calvert

27/2035652.v1

**EXHIBIT B TO COMPLAINT -  
SUMMONS AND VERIFIED COMPLAINT, DATED JUNE 30, 2015 [92 - 102]**

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**FILED: QUEENS COUNTY CLERK 07/01/2015 04:04 PM**  
NYSCEF DOC. NO. 1

INDEX NO. 706908/2015

RECEIVED NYSCEF: 07/01/2015

**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.*

-----X **Summons**

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, 2015

CERTAIN & 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

**FILED: QUEENS COUNTY CLERK 05/15/2018 02:51 PM**

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS****JOSE AYBAR,**X Index No.:  
Date Filed:*Plaintiff,*  
-against-**THE GOODYEAR TIRE & RUBBER COMPANY,  
and GOODYEAR DUNLOP TIRES NORTH  
AMERICA, LTD.,***Defendants.*Plaintiff designates  
**QUEENS COUNTY**  
as trial venueThe basis of venue  
Residence of PlaintiffX **Verified Complaint**

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.

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### 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:

FILED: QUEENS COUNTY CLERK 05/15/2018 02:51 PM

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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

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X  
JOSE AYBAR,

Index No.:

*Plaintiff,*  
-against-

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

*Attorney's  
Verification  
(Affirmation)*

*Defendants.*

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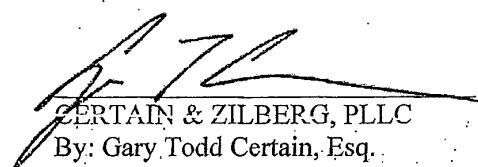
I, the undersigned, an attorney admitted to practice in the Courts of the State of New York, state that I am the attorney of record for the plaintiff in the within action; that I have read the foregoing Verified Complaint and know its contents; that it is true to my own knowledge, except as to matters 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 affiant 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.

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*Index No.*

Year 20\_\_\_\_

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


---

**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 &amp; ZILBERG, PLLC

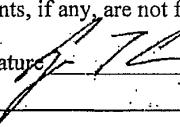
*Attorneys for Plaintiff*909 Third Avenue, 28<sup>th</sup> Floor

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 &amp; ZILBERG, PLLC

*Attorneys for Plaintiff* JOSE AYBAR909 Third Avenue, 28<sup>th</sup> Floor

New York, New York 10022

Telephone: (212) 687-7800

*TO:**Attorney(s) for*

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

JOSE AYBAR, ORLANDO GONZALES, JOSE AYBAR  
as Administrator of THE ESTATE OF CRYSTAL CRUZ-  
AYBAR, JESENIA AYBAR as Administratrix of THE  
ESTATE OF NOELIA OLIVERAS, JESENIA AYBAR as  
LEGAL GUARDIAN on behalf of KEILA CABRAL, a  
minor, ANNA AYBAR and JESENIA AYBAR as  
Administratrix of THE ESTATE OF TIFFANY CABRAL,

Plaintiffs,  
-against-

US TIRES AND WHEELS OF QUEENS, LLC

Defendant.

Index No.: 9344/2014

Plaintiff  
designates Queens  
County as the  
place of trial.

*Amended.*  
**SUMMONS**

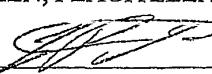
7/19/2014  
The basis of venue  
is: Defendant's  
Principal Place of  
Business

TO THE ABOVE NAMED DEFENDANT:

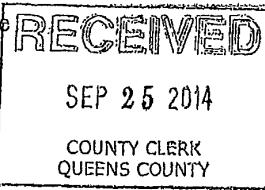
YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiffs' attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Amended Verified Complaint pursuant to section 3215 of the New York Civil Practice Law and Rules.

Dated: September 23 2014  
Red Bank, NJ

COHEN, PLACITELLA &amp; ROTH, P.C.

By: 

Christopher M. Placitella, Esquire  
Attorney No. 2202497  
Joel S. Rosen, Esquire  
Mark B. Goodheart, Esquire  
Jared M. Placitella, Esquire  
Attorney No. 5216817



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2001 Market Street, Suite 2900  
Philadelphia, PA 19103  
Attorneys for all Plaintiffs

TO DEFENDANT ADDRESSED:

US Tires and Wheels of Queens  
8924 Metropolitan Avenue  
Rego Park, NY 11374

**EXHIBIT C TO COMPLAINT -  
SUMMONS AND VERIFIED COMPLAINT  
OF JOSE AYBAR, DATED JUNE 30, 2015 [103 - 132]**

**FILED: QUEENS COUNTY CLERK 05/15/2018 02:51 PM**  
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**FILED: QUEENS COUNTY CLERK 07/01/2015 04:05 PM**  
NYSCEF DOC. NO. 1

INDEX NO. 706909/2015

RECEIVED NYSCEF: 07/01/2015

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

INDEX:

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

DATE FILED:

*S U M M O R S*

Plaintiffs,

Plaintiff designates  
Queens County as place of trial

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

Basis of venue:  
Plaintiff Anna Aybar's residence:  
1726 Himrod Street,  
Ridgewood, Queens, NY 11416

Defendants

**YOU ARE HEREBY SUMMONED** to answer the Complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after service is complete if this summons is not personally delivered to you within the State of New York), and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York  
June 30, 2015

*Yours, etc.*

*OMRANI & TAUB, P.C.*  
By: Michael A. Taub, Esq.  
*Attorney(s) for the Plaintiff*  
909 Third Ave., - 28<sup>th</sup> Floor  
New York, New York 10022  
(212) 599-5550

PROMPTLY FORWARD THIS DOCUMENT TO YOUR INSURANCE COMPANY:

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Defendant's addresses:

JOSE AYBAR  
7208 Tonnelle Avenue  
North Bergen, NJ  
*(service via Department of State and/or Personal Service)*

THE GOODYEAR TIRE & RUBBER CO  
200 Innovation Way  
Akron, OH 44316-0001  
*(service via Department of State)*

FORD MOTOR COMPANY  
1 American Rd.  
Dearborn, MI 48126  
*(service via Department of State)*

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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, and ANNA AYBAR, as  
Administratrix of the ESTATE OF CRYSTAL CRUZ-AYBAR

Index No.:

Plaintiffs,

**VERIFIED  
COMPLAINT**

-against-

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

Defendants.

-----x

Plaintiff, by and through his attorneys, OMRANI & TAUB, P.C., complaining of the defendants herein, respectfully alleges, upon information and belief, as follows:

1. That at all times relevant herein, the Plaintiff, ANNA AYBAR, was and still is a resident of the County of Queens, State of New York.
2. That on the 1<sup>st</sup> day of July, 2012 and at all times relevant herein, the defendant, JOSE A. AYBAR, JR., was a resident of the State of New York.
3. The on the 1<sup>st</sup> day of July, 2012 and at all times relevant herein, the defendant, JOSE A. AYBAR, JR., was the owner of a certain motor vehicle bearing New York State license plate registration number FGV9198 for the year 2012 and assigned Vehicle Identification No. 1FMDU74WX2ZB89795.
4. That on or about the 1<sup>st</sup> day of July, 2012 and at all times relevant herein, the defendant, JOSE A AYBAR, JR., was the operator of the aforesaid motor vehicle bearing New York State license plate registration number FGV9198.

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5. That at all times relevant herein, the defendant, JOSE A. AYBAR, JR., maintained the aforesaid motor vehicle bearing New York State license plate registration number FGV9198.

6. That at all times relevant herein, the defendant, JOSE A. AYBAR, JR., managed the aforesaid motor vehicle bearing New York State license plate registration number FGV9198.

7. That at all times relevant herein, the defendant, JOSE A. AYBAR, JR., controlled the aforesaid motor vehicle bearing New York State license plate registration number FGV9198.

8. That at all times relevant herein, the defendant, FORD MOTOR COMPANY, was and still is a corporation, duly organized and existing pursuant to the laws of the State of Delaware, with a principal place of business in Dearborn, Michigan, and was at all times herein mentioned authorized and/or qualified to conduct business, and was conducting business, in the State of New York.

9. That at all times relevant herein, the defendant, FORD MOTOR COMPANY, was and still is a foreign corporation duly registered with the New York Department of State, and was authorized to transact business in the State of New York.

10. That at all times relevant herein, the defendant, FORD MOTOR COMPANY, transacted business, and derived substantial revenue from the sale of its products, in the State of New York.

11. That at all times relevant herein, the defendant, FORD MOTOR COMPANY, owned real property and/or leased various premises, and otherwise conducted business at said locations, within the State of New York, and within the County of Queens.

12. That at all times relevant herein, the defendants, "JOHN DOES 1 thru 30", and each of them, were individuals, corporations, partnerships, and/or associations residing in and/or authorized to do business in, and/or were doing business in the State of New York, and derived substantial income from said business. The true names and/or capacities, whether individual, corporate, associate, governmental or otherwise of defendants, "JOHN DOES 1 thru 30",

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inclusive and each of them, are unknown to the plaintiffs, who therefore sue said defendants by such fictitious names. When the true names and/or capacities of said defendants are ascertained, the plaintiffs will seek leave of this Court to amend the Complaint accordingly.

13. That each of the defendants designated herein as a "JOHN DOE" was responsible, negligently or in some other actionable manner, for the events and happenings herein referred to which proximately caused the damages to the plaintiff as hereinafter alleged herein, either through said defendant's own negligence or through the conduct of its agents, servants, employees or representatives in some other matter.

14. That at all times relevant herein, the defendants designated as "JOHN DOE", and each of them, were the agents, servants, employees, representatives and/or joint venturers of the defendant, FORD MOTOR COMPANY, and/or their co-defendants and were, as such, acting within the course, scope and authority of said relationship.

15. That at all times relevant herein, the defendants, FORD MOTOR COMPANY and "JOHN DOES 1 thru 30", inclusive, were engaged in the business of manufacturing, fabricating, designing, assembling, distributing, selling, inspecting, servicing, repairing, marketing, warranting, selling, retailing, wholesaling and advertising certain motor vehicles, and or its component parts, bearing the designations Ford Explorer for the year 2002.

16. That at all times relevant herein, the defendants, FORD MOTOR COMPANY and/or "JOHN DOES 1 thru 30", inclusive, manufactured, fabricated, designed, assembled, distributed, and sold into the stream of commerce, the aforesaid 2002 Ford Explorer model motor vehicle, and each and every component part thereof, bearing New York State license plate registration number FGV9198 for the year 2012 and Vehicle Identification No. 1FMDU74WX2ZB89795 (hereinafter referred to as the subject "Ford Explorer").

17. That at all times relevant herein, the defendants, FORD MOTOR COMPANY and/or "JOHN DOES 1 thru 30" inclusive, marketed, warranted, sold, retailed, wholesaled and advertised the aforesaid 2002 Ford Explorer motor vehicle bearing New York State license plate

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registration number FGV9198 for the year 2012 and Vehicle Identification No. 1FMDU74WX2ZB89795.

18. That at all times relevant herein, the defendants, FORD MOTOR COMPANY and/or "JOHN DOES 1 thru 30" inclusive, inspected, serviced and/or repaired the aforesaid 2002 Ford Explorer motor vehicle bearing New York State license plate registration number FGV9198 for the year 2012 and Vehicle Identification No. 1FMDU74WX2ZB89795.

19. That at all times relevant herein, the defendants knew, or in the exercise of reasonable care should have known, that the aforesaid subject Ford Explorer motor vehicle would be used without inspection for defects in its parts, component parts, mechanisms or design, for use in the State of New York and elsewhere.

20. That at all times relevant herein, there existed certain defective, unsafe and defective condition(s) in the design, manufacture, fabrication and/or assembly of the aforesaid subject 2002 Ford Explorer motor vehicle bearing New York State license plate registration number FGV9198 for the year 2012 and Vehicle Identification No. 1FMDU74WX2ZB89795.

21. That at all times relevant herein, the defendant, THE GOODYEAR TIRE & RUBBER CO., was and still is a corporation, duly organized and existing pursuant to the laws of the State of Ohio, Delaware, with a principal place of business in Akron, Ohio, and was at all times herein mentioned authorized and/or qualified to conduct business, and was conducting business, in the State of New York.

22. That at all times relevant herein, the defendant, THE GOODYEAR TIRE & RUBBER CO., was and still is an unincorporated business enterprise, duly organized and existing pursuant to the laws of the State of Ohio, Delaware, with a principal place of business in Akron, Ohio, and was at all times herein mentioned authorized and/or qualified to conduct business, and did conduct business, in the State of New York.

23. That at all times relevant herein, the defendant, THE GOODYEAR TIRE & RUBBER CO., was and still is a foreign corporation duly registered with the New York

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Department of State, and as such was authorized to transact business in the State of New York.

24. That at all times relevant herein, the defendant, THE GOODYEAR TIRE & RUBBER CO., was and still is a domestic corporate entity, duly registered with the New York Department of State.

25. That at all times relevant herein, the defendant, THE GOODYEAR TIRE & RUBBER CO., was and still is a business enterprise duly registered with the New York Department of State, and as such was authorized to transact business in the State of New York.

26. That at all times relevant herein, the defendant, THE GOODYEAR TIRE & RUBBER CO., transacted business and derived substantial revenue from the sale of its products, within the State of New York.

27. That at all times relevant herein, the defendant, THE GOODYEAR TIRE & RUBBER CO., owned real property and/or leased various premises, and otherwise conducted business at said locations, within the State of New York, and within the County of Queens.

28. That at all times relevant herein, the defendant, THE GOODYEAR TIRE & RUBBER CO., regularly does and/or solicits business and drives substantial revenue from goods used and consumed and services rendered in the State of New York.

29. That at all times relevant herein, the defendant, THE GOODYEAR TIRE & RUBBER CO., was and still is in the business of designing, testing, manufacturing, marketing and selling tires for automobiles that are marketed, sold and used through the world, and in the State of New York.

30. That at all times relevant herein, the defendant, THE GOODYEAR TIRE & RUBBER CO., was and still is a designer, manufacturer and/or seller of "GOODYEAR" brand tires.

31. That at all times relevant herein, the defendant, THE GOODYEAR TIRE & RUBBER CO., has represented to the public or has otherwise held itself out as having expertise and/or special knowledge in the design, fabrication and manufacture of motor vehicle tires.

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32. That at all times relevant herein, the defendant, THE GOODYEAR TIRE & RUBBER CO., has represented to the public that its tires are well constructed and safe to use as tires for motor vehicles, including the subject 2002 Ford Explorer herein.

33. That at all times relevant herein, the defendant, THE GOODYEAR TIRE & RUBBER CO., designed, fabricated, manufactured and/or sold, into the stream of commerce, "Goodyear" brand tires, and more specifically, a "Wrangler AP P245/70R16 106S tire bearing the DOT # MK9L3NER0402 (hereinafter the subject "Goodyear Wrangler AP tire").

34. That on or about late 2011, the defendant, JOSE A. AYBAR, JR., purchased and received delivery of the aforesaid subject "Ford Explorer" motor vehicle bearing VIN #: 1FMDU74WX2ZB89795, together with the "subject tire" from a third-party and thereafter used and operated the aforesaid "Ford Explorer" and the subject "Goodyear Wrangler AP tire" as intended.

35. That the aforesaid subject "Goodyear Wrangler AP tire" was dangerous, hazardous and defective, and was otherwise unsuitable for the use for which it was intended.

36. That on or about the 1<sup>st</sup> day of July, 2012 and at all times relevant herein, the plaintiff, ANNA AYBAR, was a passenger in the aforesaid motor vehicle bearing New York State license plate registration number FGV9198.

37. That on or about the 1<sup>st</sup> day of July and at all times relevant herein, the plaintiff, ORLANDO GONZALEZ, was a passenger in the aforesaid motor vehicle bearing New York State license plate registration number FGV9198.

38. That on or about the 1<sup>st</sup> day of July and at all times relevant herein, the plaintiff, KAYLA CABRAL, was a passenger in the aforesaid motor vehicle bearing New York State license plate registration number FGV9198.

39. That on or about the 1<sup>st</sup> day of July and at all times relevant herein, the plaintiff, NOELIA OLIVERAS, deceased, was a passenger in the aforesaid motor vehicle bearing New York State license plate registration number FGV9198.

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40. That on or about the 1<sup>st</sup> day of July and at all times relevant herein, the plaintiff, CRYSTAL N. CRUZ-AYBAR, deceased, was a passenger in the aforesaid motor vehicle bearing New York State license plate registration number FGV9198.

41. That on or about the 1<sup>st</sup> day of July and at all times relevant herein, the plaintiff, TIFFANY CABRAL (deceased infant), was a passenger in the aforesaid motor vehicle bearing New York State license plate registration number FGV9198.

42. That at all times, Interstate Highway 85, Northbound, at or about mile marker #24, in the County of Brunswick, State of Virginia, was and still is a public roadway.

43. That on the 1<sup>st</sup> day of July, 2012 while the defendant, JOSE A. AYBAR, JR., was operating the aforesaid "Ford Explorer" at or about the aforesaid roadway location, the subject "Ford Explorer" became unstable following the failure of the rear driver's side subject "Goodyear Wrangler AP tire", thereby causing and/or allowing and otherwise resulting in said subject motor vehicle to lose stability and control, and to overturn and roll over multiple times.

44. That said loss of control and subsequent rollover was due, in whole or in part, to a dynamic oversteer resulting from the rear or lateral instability of the subject "Ford Explorer", which was beyond the recovery capabilities of the defendant operator, JOSE A. AYBAR, JR., as a non-professional driver, which eventually caused the subject "Ford Explorer" vehicle's remaining tires to exceed their maximum cornering speed causing the vehicle in turn to roll due to its low Static Stability Factor ("SSF"), i.e. high center of gravity and comparatively narrow wheel base.

45. That at all times relevant herein, the defendants, and each of them, had a duty to properly manufacture, design, assemble, package, test, fabricate, analyze, inspect, merchandise, market, distribute, label, advertise, promote, market, sell, supply, warn, select, and repair the aforesaid subject "Ford Explorer" and/or the subject "Goodyear Wrangler AP tire" and/or aftermarket parts and/or installation guides.

46. That at all times relevant herein, the defendants, and each of them, knew or in the

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exercise of reasonable care should have known that the subject "Ford Explorer" and/or the subject "Goodyear Wrangler AP tire" and any component parts and/or aftermarket parts and/or installation guides were not properly manufactured, designed, assembled, packaged, tested, fabricated, analyzed, inspected, merchandised, marketed, distributed, labeled, advertised, promoted, sold, supplied, leased, rented, repaired, selected and provided inadequate warnings for the use and purpose for which it was intended and posed unreasonable risk of injury those person(s) who used it.

47. That the defendants, and each of them, so negligently and carelessly, manufactured, designed, assembled, packaged, tested, fabricated, analyzed, inspected, merchandised, marketed, distributed, labeled, advertised, marketed, promoted, sold, supplied, leased, rented, repaired, selected and provided inadequate warnings and provided the aforesaid subject Ford Explorer and each of its component parts and/or aftermarket parts and/or installation guides so that the same was a defective and dangerous product, unsafe for the respective use and purpose for which it was intended when used and driven as recommended or for reasonably foreseeable misuse by said defendants and each of them, in that said Subject Explorer and each of its component parts and/or aftermarket parts and/or installation guides during a reasonably foreseeable maneuver was unstable, dangerous and would rollover with roof crushing instability causing injury to its occupants, as alleged hereinabove.

48. That at all time relevant herein the aforesaid subject "Ford Explorer" and subject "Goodyear Wrangler AP tire" were unreasonably dangerous, unstable, hazardous and otherwise defective, during a reasonably foreseeable driving and/or driving maneuvers made with due care.

49. That said tire failure of the subject "Goodyear Wrangler AP tire", including, but not necessarily limited to complete tread separation and blowout was due, in whole or in part, to negligent design, fabrication and manufacture, improper and/or inadequate testing and inspecting, and failure to properly, sufficiently, diligently and/or adequately warning or instructing purchasers and/or third-party installers and/or end users of said product.

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**AS AND FOR A FIRST CAUSE OF ACTION**

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

50. That by reason of the foregoing, the plaintiff, ANNA AYBAR, was caused to be seriously injured, and to sustain painful, permanent, and disabling personal injuries requiring medical care and treatment.
51. That said injuries and related damages were caused by the negligence, carelessness and/or recklessness of the defendants herein, their agents, servants, employees and/or assigns, jointly and severally, and without any negligence on the part of the plaintiff contributing thereto.

52. That as a result of the foregoing, the plaintiff, ANNA AYBAR, sustained a Serious Injury as defined by Section §5102 of the Insurance Law of the State of New York.

53. That as a result of the foregoing, the plaintiff, ANNA AYBAR, sustained, and/or will continue to accrue, a loss greater than Basic Economic Loss as defined by Section §5102 of the Insurance Law of the State of New York.

54. That this action falls within one or more of the exceptions set forth in CPLR §1602. Plaintiff defers all issues of law to the Court for resolution at the time of trial.

55. That by reason of the foregoing, the Plaintiff, ANNA AYBAR, has been damaged in an amount to be determined by the court and/or a jury, in excess of the jurisdictional dollar limits of all lower courts which might otherwise have jurisdiction over the action.

**AS AND FOR A SECOND CAUSE OF ACTION**

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

56. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in the

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paragraphs of this Complaint marked and designated as "1" through "49" herein, with the same force and effect as though the same were set forth herein at length.

57. That by reason of the foregoing, the plaintiff, ORLANDO GONZALEZ, was caused to be seriously injured, and to sustain painful, permanent, and disabling personal injuries requiring medical care and treatment.

58. That said injuries and related damages were caused by the negligence, carelessness and/or recklessness of the defendants herein, their agents, servants, employees and/or assigns, jointly and severally, and without any negligence on the part of the plaintiff contributing thereto.

59. That as a result of the foregoing, the plaintiff, ORLANDO GONZALEZ, sustained a Serious Injury as defined by Section §5102 of the Insurance Law of the State of New York.

60. That as a result of the foregoing, the plaintiff, ORLANDO GONZALEZ, sustained, and/or will continue to accrue, a loss greater than Basic Economic Loss as defined by Section §5102 of the Insurance Law of the State of New York.

61. That this action falls within one or more of the exceptions set forth in CPLR §1602. Plaintiff defers all issues of law to the Court for resolution at the time of trial.

62. That by reason of the foregoing, the plaintiff, ORLANDO GONZALEZ, has been damaged in an amount to be determined by the court and/or a jury, in excess of the jurisdictional dollar limits of all lower courts which might otherwise have jurisdiction over the action.

**AS AND FOR A THIRD CAUSE OF ACTION**

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

63. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in the paragraphs of this Complaint marked and designated as "1" through "49" herein, with the same force and effect as though the same were set forth herein at length.

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64. That on July 1, 2012 the infant plaintiff, KEYLA CABRERA, was fourteen (14) years old, having been born on May 21, 1998. At present she is seventeen(17) years old, and brings suit by and through her legal guardian, Anna Aybar.

65. That by reason of the foregoing, the infant plaintiff, KEYLA CABRERA, was caused to be seriously injured, and to sustain painful, permanent, and disabling personal injuries requiring medical care and treatment.

66. That said injuries and related damages were caused by the negligence, carelessness and/or recklessness of the defendants herein, their agents, servants, employees and/or assigns, jointly and severally, and without any negligence on the part of the plaintiff contributing thereto.

67. That as a result of the foregoing, the plaintiff, KEYLA CABRERA, sustained a Serious Injury as defined by Section §5102 of the Insurance Law of the State of New York.

68. That as a result of the foregoing, the plaintiff, KEYLA CABRERA, sustained, and/or will continue to accrue, a loss greater than Basic Economic Loss as defined by Section §5102 of the Insurance Law of the State of New York.

69. That this action falls within one or more of the exceptions set forth in CPLR §1602. Plaintiff defers all issues of law to the Court for resolution at the time of trial.

70. That by reason of the foregoing, the plaintiff, KEYLA CABRERA, has been damaged in an amount to be determined by the court and/or a jury, in excess of the jurisdictional dollar limits of all lower courts which might otherwise have jurisdiction over the action.

**AS AND FOR A FOURTH CAUSE OF ACTION**  
On behalf of THE ESTATE OF NOELIA OLIVERAS  
(Negligence and/or Products Liability and Wrongful Death against all defendants)

71. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in the

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paragraphs of this Complaint marked and designated as "1" through "49" herein, with the same force and effect as though the same were set forth herein at length.

72. That on July 1, 2012 NOELIA OLIVERAS, was forty two (42) years old, having been born on July 19, 1979. Her estate brings suit by and through JESENIA AYBAR, as duly appointed Administratrix of the ESTATE OF NOELIA OLIVERAS.

73. That by reason of the foregoing, NOELIA OLIVERAS, and the ESTATE OF NOELIA OLIVERAS, was caused to be seriously injured, and to sustain painful, permanent, and disabling personal injuries requiring medical care and treatment, and eventually and ultimately resulting in her death.

74. That said injuries and related damages were caused by the negligence, carelessness and/or recklessness of the defendants herein, their agents, servants, employees and/or assigns, jointly and severally, and without any negligence on the part of the plaintiff contributing thereto.

75. That as a result of the foregoing, the plaintiff, NOELIA OLIVERAS, and the ESTATE OF NOELIA OLIVERAS, sustained a Serious Injury as defined by Section §5102 of the Insurance Law of the State of New York.

76. That as a result of the foregoing, the plaintiff, NOELIA OLIVERAS, and the ESTATE OF NOELIA OLIVERAS, sustained, and/or will continue to accrue, a loss greater than Basic Economic Loss as defined by Section §5102 of the Insurance Law of the State of New York.

77. That this action falls within one or more of the exceptions set forth in CPLR §1602. Plaintiff defers all issues of law to the Court for resolution at the time of trial.

78. That by reason of the foregoing, the plaintiff, the ESTATE OF NOELIA OLIVERAS, has been damaged in an amount to be determined by the court and/or a jury, in excess of the jurisdictional dollar limits of all lower courts which might otherwise have jurisdiction over the

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action.

**AS AND FOR A FIFTH CAUSE OF ACTION**

**On behalf of THE ESTATE OF CRYSTAL CRUZ-AYBAR  
(Negligence and/or Products Liability and Wrongful Death against all defendants)**

79. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in the paragraphs of this Complaint marked and designated as "1" through "49" herein, with the same force and effect as though the same were set forth herein at length.

80. That on July 1, 2012 CRYSTAL CRUZ-AYBAR was twenty-two (22) years of age, having been born on August 25, 1989. Her estate brings suit by and through JESENIA AYBAR, as duly appointed Administratrix of the ESTATE OF CRYSTAL CRUZ-AYBAR.

81. That by reason of the foregoing, CRYSTAL CRUZ-AYBAR, and the ESTATE OF CRYSTAL CRUZ-AYBAR, was caused to be seriously injured, and to sustain painful, permanent, and disabling personal injuries requiring medical care and treatment, and eventually and ultimately resulting in her death.

82. That said injuries and related damages were caused by the negligence, carelessness and/or recklessness of the defendants herein, their agents, servants, employees and/or assigns, jointly and severally, and without any negligence on the part of the plaintiff contributing thereto.

83. That as a result of the foregoing, the plaintiff, CRYSTAL CRUZ-AYBAR, and the ESTATE OF CRYSTAL CRUZ-AYBAR, sustained a Serious Injury as defined by Section §5102 of the Insurance Law of the State of New York.

84. That as a result of the foregoing, the plaintiff, CRYSTAL CRUZ-AYBAR, and the ESTATE OF CRYSTAL CRUZ-AYBAR, sustained, and/or will continue to accrue, a loss greater than Basic Economic Loss as defined by Section §5102 of the Insurance Law of the State of New York.

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85. That this action falls within one or more of the exceptions set forth in CPLR §1602.

Plaintiff defers all issues of law to the Court for resolution at the time of trial.

86. That by reason of the foregoing, the plaintiff, the ESTATE OF CRYSTAL CRUZ-AYBAR, has been damaged in an amount to be determined by the court and/or a jury, in excess of the jurisdictional dollar limits of all lower courts which might otherwise have jurisdiction over the action.

AS AND FOR A SIXTH CAUSE OF ACTION

On behalf of THE ESTATE OF TIFFANY CABRAL

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

87. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in the paragraphs of this Complaint marked and designated as "1" through "49" herein, with the same force and effect as though the same were set forth herein at length.

88. That on July 1, 2012 TIFFANY CABRAL was an infant eight (8) years of age, having been born on January 22, 2004. Her estate brings suit by and through JESENIA AYBAR, as duly appointed Administratrix of the ESTATE OF TIFFANY CABRAL.

89. That by reason of the foregoing, TIFFANY CABRAL, and the ESTATE OF TIFFANY CABRAL, was caused to be seriously injured, and to sustain painful, permanent, and disabling personal injuries requiring medical care and treatment, and eventually and ultimately resulting in her death.

90. That said injuries and related damages were caused by the negligence, carelessness and/or recklessness of the defendants herein, their agents, servants, employees and/or assigns, jointly and severally, and without any negligence on the part of the plaintiff contributing thereto.

91. That as a result of the foregoing, the plaintiff, TIFFANY CABRAL, and the ESTATE OF TIFFANY CABRAL, sustained a Serious Injury as defined by Section §5102 of the Insurance

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Law of the State of New York.

92. That as a result of the foregoing, the plaintiff, TIFFANY CABRAL and the ESTATE OF TIFFANY CABRAL, sustained, and/or will continue to accrue, a loss greater than Basic Economic Loss as defined by Section §5102 of the Insurance Law of the State of New York.

93. That this action falls within one or more of the exceptions set forth in CPLR §1602. Plaintiff defers all issues of law to the Court for resolution at the time of trial.

94. That by reason of the foregoing, the plaintiff, the ESTATE OF TIFFANY CABRAL, has been damaged in an amount to be determined by the court and/or a jury, in excess of the jurisdictional dollar limits of all lower courts which might otherwise have jurisdiction over the action.

**AS AND FOR A SEVENTH CAUSE OF ACTION**

On behalf of all plaintiffs  
(Strict Products Liability against defendant; FORD MOTOR COMPANY)

95. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in the paragraphs of this Complaint marked and designated as "1" through "94" herein, with the same force and effect as though the same were set forth herein at length.

96. That the defendants knew, or should have known, that the subject "Ford Explorer" vehicle was to be purchased and used without inspection for defects by the foreseeable users of said vehicle, including but not limited to the plaintiffs herein.

97. That the subject "Ford Explorer" and each of its parts, component parts and/or aftermarket parts and/or installation guides mentioned herein was manufactured, designed, assembled, packaged, tested, warranted, fabricated, analyzed, inspected, merchandised, marketed, distributed, labeled, advertised, promoted, warranted, sold, supplied, leased, repaired, modified, aftermarket modified, adjusted, selected and/or used with inherent vices and defects both in design and manufacturing and by failure to warn (hereinafter "subject defects") which made it dangerous, hazardous and unsafe both for its intended use or for reasonably foreseeable misuses.

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98. That the plaintiffs are informed and believe, and thereupon allege, that these "subject defects" include, but are not necessarily limited to, the following conditions:

A. Insufficient lateral and roll stability so as to keep the vehicle upright during cornering and handling by an ordinary driver during reasonably foreseeable roadway and traffic conditions, which Defendants at all times knew and were aware could and did cause substantial severe and life-threatening injuries and head and neck injuries when used in a reasonably foreseeable manner, and which Defendants, and each of them further knew and were aware, would fail to keep the vehicle upright during cornering and handling by an ordinary driver during reasonably foreseeable roadway and traffic conditions. Despite the availability to defendants of the technology to include AdvanceTrac, with RSC, Ford's electronic stability enhancement system, which includes four integrated components; the Anti-lock Brake system, Traction Control, Yaw Control, and a vehicle-roll motion sensor, defendants did not include such available roll stability control systems in the subject Ford Explorer, which systems would have prevented the roll over accident and the injuries sustained the plaintiff during the subject accident sequence;

B. SKATE, or loss of rear end directional control and high propensity to roll Over during foreseeable usage;

C. Lateral instability and rollover propensities;

D. Despite the defendants' awareness of the aforementioned dangers and defects, the defendants failed to give any warnings, and or adequate warnings, to the plaintiff and/or other purchasers and end users of the subject Ford Explorer of the aforementioned known dangers and defects.

99. That at all times relevant herein, the defendants, and each of them, knew and intended that said vehicles would be purchased, operated and/or used by members of the general public who would rely on the defendants to transmit any relevant warnings about said vehicles.

100. That the subject "Ford Explorer", and each of its component parts and/or after market parts and/or installation guides, was unsafe for its intended use and/or reasonably

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foreseeable misuse by reason of defects in its design and/or manufacturing and/or failure to warn by said defendants, and each of them, in that when the subject Explorer and each of its component parts and/or after market parts and/or installation guides was used by the plaintiffs, on or about July 1, 2012 as intended and in a foreseeable manner, that the subject "Ford Explorer", during reasonably foreseeable operation and driving maneuvers, was dangerous and otherwise defective, and did suffer a loss of lateral control; and did roll over, which was the proximate and competent producing cause of the serious injuries and resulting damages set forth herein-above.

101. That as a direct and foreseeable and legal result of the conduct of the defendants, and the aforementioned defects inherent in the subject "Ford Explorer vehicle", control over said vehicle was lost by the defendant, JOSE A. AYBAR, JR., resulting in it rolling over and leaving the roadway following the failure of the subject "GOODYEAR Wrangler AP tire" mounted on the driver's side rear wheel, thereby causing the subject incident of July 1<sup>st</sup>, 2012 and the severe and serious injuries sustained by the plaintiffs herein.

**Allegations supporting Exemplary Damages**

102. That the plaintiffs further allege that the defendants, FORD MOTOR COMPANY and/or "JOHN DOES 1 THRU 30", and each of them, intentionally engaged in conduct which, with respect to the "subject defects" which plaintiffs allege herein were a legal cause of their loss, damages, serious injuries, disability, death, permanent disability and economic losses, exposed the plaintiffs and other end users of the subject "Ford Explorer" to serious potential danger known to the defendants in order to advance the defendants' pecuniary interests and thus acted with a conscious disregard for the safety of the plaintiff and other users of the subject "Ford Explorer", warranting an award of exemplary damages against the defendant.

103. That the defendants, FORD MOTOR COMPANY and "JOHN DOES 1-30" inclusive, knowingly and deliberately falsified test results, ignored and suppressed data, rejected changes recommended by their own engineers and their own marketing departments to increase

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stability by lowering the center of gravity and increasing track width of the Ford Explorer motor vehicle and tire sizes, and further falsely mischaracterized adverse test data which these defendants knew at the time showed that their trucks, vans, suv's and pick-ups, including the subject "Ford Explorer" and similar vehicles, were prone to skid and to rollover and were defective and unsafe in real world rollover accidents thereby exposing members of the public and users of said vehicles to death and/or serious head and spinal injuries.

104. That by putting profit and public relations image in front of safety, Defendant FORD MOTOR COMPANY and/or "JOHN DOES 1-30", inclusive, produced a vehicle that was prone to handling and control problems, prone to loss of control and going out of control in response to foreseeable simple accident avoidance maneuvers when operated by the ordinary driver, stability problems that resulted in unnecessary rollovers.

105. That by reason thereof, the plaintiffs, ANNA AYBAR, ORLANDO GONZALEZ, KEYLA AYBAR, NOELIA OLIVERAS, CRYSTAL CRUZ-AYBAR and TIFFANY CABRAL, were caused to be injured, and to sustain painful, permanent, and disabling personal injuries requiring medical care and treatment, resulting in the death of the plaintiffs, NOELIA OLIVERAS, CRYSTAL CRUZ-AYBAR and TIFFANY CABRAL.

106. That by reason thereof, the plaintiffs herein, and each of them and/or their respective estates, have been damaged in a substantial sum of money in an amount to be determined by the court and/ or a jury, in excess of the jurisdictional limits of all lower courts which might otherwise have jurisdiction over the action.

**AS AND FOR AN EIGHTH CAUSE OF ACTION**

On behalf of all plaintiffs

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

107. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in the paragraphs of this Complaint marked and designated as "1" through "106" herein, with the same force and effect as though the same were set forth herein at length.

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108. That the subject Goodyear Wrangler AP tire" was received by the defendant, JOSE A. AYBAR, JR., and ultimately used by the plaintiff's herein, in substantially the same condition in which it was sold, delivered, or otherwise placed in the stream of commerce by the defendant, THE GOODYEAR TIRE & RUBBER CO.

109. The subject tire was defective in design, manufacture and component materials and parts and in the inadequacy and inaccuracy of accompanying instructions, labels and warnings.

110. That the subject tire, as designed and constructed, was unfit for their intended use and was therefore unreasonably dangerous to its intended and anticipated user(s).

111. That the defendant, THE GOODYEAR TIRE & RUBBER CO., failed to warn others, including end users and/or installers, of said known defects and unfitness for the use on motor vehicles.

112. That as a result of the defective nature of the subject product the Plaintiffs herein, ANNA AYBAR, ORLANDO GONZALEZ, KEYLA AYBAR, NOELIA OLIVERAS, CRYSTAL CRUZ-AYBAR and TIFFANY CABRAL, were caused to be injured, and to sustain painful, permanent, and disabling personal injuries requiring medical care and treatment, resulting in the death of the plaintiffs, NOELIA OLIVERAS, CRYSTAL CRUZ-AYBAR and TIFFANY CABRAL.

113. For claims based upon the above, the Defendants are strictly liable for the Plaintiff's resulting injuries.

114. For claims based upon strict products liability, the defendant, THE GOODYEAR TIRE & RUBBER CO. and/or "JOHN DOES 1 thru 30" are liable to the Plaintiffs for compensatory damages in a sum greater than the jurisdictional limits of all lower Courts.

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115. That by reason thereof, the plaintiffs herein, and each of them and/or their respective estates, have been damaged in a substantial sum of money in an amount to be determined by the court and/ or a jury, in excess of the jurisdictional limits of all lower courts which might otherwise have jurisdiction over the action.

**AS AND FOR A NINTH CAUSE OF ACTION**

**On behalf of all plaintiffs**

**(Breach of Warranty against Defendant, THE GOODYEAR TIRE & RUBBER CO.)**

116. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in the paragraphs of this Complaint marked and designated as "1" through "115" herein, with the same force and effect as though the same were set forth herein at length.

117. That the defendant, THE GOODYEAR TIRE & RUBBER CO., warranted by implication that the subject tire was 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.

118. That the defendant, THE GOODYEAR TIRE & RUBBER CO., made express representations about the quality, design, safety and fitness of its product as an inducement to encourage the purchase and use of its product.

119. That the defendant, THE GOODYEAR TIRE & RUBBER CO.'s, warranties with respect to the subject tire were breached when the subject tire and its component parts proved to be unsafe and not reasonably suitable and fit for the uses intended and expected.

120. That those breaches of express warranties by said defendant were the proximate cause of the Plaintiffs injuries as alleged in this complaint.

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121. That the defendant, THE GOODYEAR TIRE & RUBBER CO., breached the warranties in that the product failed to perform and operate as promised, implied, expected and relied upon.

122. That as a direct result of Plaintiffs reliance on said Defendant's product, they sustained the injuries and other damages complained of herein.

123. For claims based upon breach of warranty the defendant, THE GOODYEAR TIRE & RUBBER CO., is liable to the Plaintiffs for compensatory damages in a sum greater than the jurisdictional limits of all lower Courts.

124. That by reason thereof, the plaintiffs, ANNA AYBAR, ORLANDO GONZALEZ, KEYLA AYBAR, NOELIA OLIVERAS, CRYSTAL CRUZ-AYBAR and TIFFANY CABRAL, were caused to be injured, and to sustain painful, permanent, and disabling personal injuries requiring medical care and treatment, and resulting in the death of the plaintiffs, NOELIA OLIVERAS, CRYSTAL CRUZ-AYBAR and TIFFANY CABRAL.

125. That by reason thereof, the plaintiffs herein, and each of them and/or their respective estates, have been damaged in a substantial sum of money in an amount to be determined by the court and/ or a jury, in excess of the jurisdictional limits of all lower courts which might otherwise have jurisdiction over the action.

**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. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in the paragraphs of this Complaint marked and designated as "1" through "125" herein, with the same force and effect as though the same were set forth herein at length.

127. That the defendant, THE GOODYEAR TIRE & RUBBER CO., concealed and/or

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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.

128. That the defendant, THE GOODYEAR TIRE & RUBBER CO., 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.

129. That prior to the subject incident, the defendant were aware of prior incidents that demonstrated the need for further warnings and/or instructions.

130. 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.

131. 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 product in violation of the New York State General Business Law (NYS GBL) prohibition against unfair and deceptive trade practices pursuant to GBL §349.

132: That by reason thereof, the plaintiffs, ANNA AYBAR, ORLANDO GONZALEZ, KEYLA AYBAR, NOELIA OLIVERAS, CRYSTAL CRUZ-AYBAR and TIFFANY CABRAL, were caused to be injured, and to sustain painful, permanent, and disabling personal injuries requiring medical care and treatment, and resulting in the death of the plaintiffs, NOELIA OLIVERAS, CRYSTAL CRUZ-AYBAR and TIFFANY CABRAL.

133. That by reason thereof, the plaintiffs herein, and each of them and/or their respective estates, have been damaged in a substantial sum of money in an amount to be determined by the court and/ or a jury, in excess of the jurisdictional limits of all lower courts

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which might otherwise have jurisdiction over the action.

**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. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in the paragraphs of this Complaint marked and designated as "1" through "133" herein, with the same force and effect as though the same were set forth herein at length.

135. That the defendant, ford motor company, concealed and/or failed to reveal material facts that were known, or should have been known, to them with respect to the subject 2002 "Ford Explorer" and similar vehicles, and their attendant hazards and risks described hereinabove.

136. That the defendant, FOR MOTOR COMPANY, 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 its above-described unreasonable propensity for loss of stability and rollover following rear axle tire failure.

137. That prior to the subject incident, the defendant were aware of prior incidents that demonstrated the need for further warnings, instructions and/or recall.

138. Despite defendants' awareness of the serious nature of said risks involved to end users of the 2002 Ford Explorer SUVs, 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 said vehicles, including but not limited to the subject "Ford Explorer".

139. Defendants' conduct in failing to issue a proper warning, instruction, recall, or take any other reasonable prophylactic action needlessly exposed the public to the latent dangers

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of its product in violation of the New York State General Business Law (NYS GBL) prohibition against unfair and deceptive trade practices pursuant to GBL §349.

140. That by reason thereof, the plaintiffs, ANNA AYBAR, ORLANDO GONZALEZ, KEYLA AYBAR, NOELIA OLIVERAS, CRYSTAL CRUZ-AYBAR and TIFFANY CABRAL, were caused to be injured, and to sustain painful, permanent, and disabling personal injuries requiring medical care and treatment, and resulting in the death of the plaintiffs, NOELIA OLIVERAS, CRYSTAL CRUZ-AYBAR and TIFFANY CABRAL.

141. That by reason thereof, the plaintiffs herein, and each of them and/or their respective estates, have been damaged in a substantial sum of money in an amount to be determined by the court and/or a jury, in excess of the jurisdictional limits of all lower co

*WHEREFORE*, the plaintiffs demand judgment of the defendants, joint and severally, on each Cause of Action, in an amount of money to be determined by the court and/or a jury, together with interest, costs and disbursements of this action.

Dated: New York, New York  
June 30, 2015

*Yours, etc.*

*OMRANI & TAUB, P.C.*  
*By: Michael A. Taub, Esq.*  
*Attorney(s) for the Plaintiff*  
*909 Third Ave., - 28<sup>th</sup> Floor*  
*New York, New York 10022*  
*(212) 599-5550*

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STATE OF NEW YORK      }  
                            }  
                            }ss.:  
COUNTY OF NEW YORK     }

MICHAEL A. TAUB, ESQ., being duly sworn, affirms and says that:

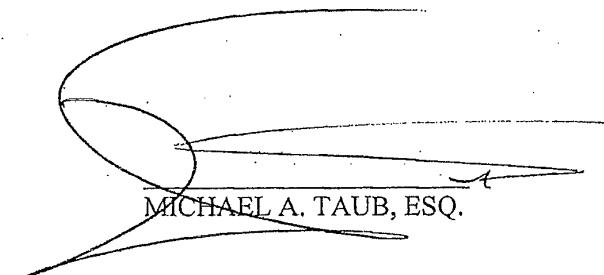
He is an attorney duly admitted to practice law in the State of New York and is a member of the firm of OMRANI & TAUB, P.C. in the within action; that he has read the foregoing **Summons and Verified Complaint** and knows the contents thereof, that the same is true to the best of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes them to be true.

The reason this verification is not made by the plaintiff is that plaintiff resides and is located outside the county wherein he maintains his principal office.

The source of deponent's information and the grounds for his belief, as to those matters stated upon information and belief, are statements furnished to deponent by plaintiff, personal investigation of this matter and from records in deponent's file.

I affirm the foregoing statements to be true under the penalties of perjury.

Dated: New York, New York  
June 30, 2015

  
MICHAEL A. TAUB, ESQ.

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Index No.: **Year:**  
**SUPREME COURT OF THE STATE OF NEW YORK**  
**COUNTY OF QUEENS**

---

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

*Plaintiff(s),*  
 -against-

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

*Defendant(s).*

---

### **SUMMONS AND VERIFIED COMPLAINT**

#### **OMRANI & TAUB, P.C.**

Attorneys for: PLAINTIFF  
 909 THIRD AVENUE - 28<sup>TH</sup> FLOOR  
 NEW YORK, NEW YORK 10022  
 TEL: (212) 599-5550

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 in the annexed documents are not frivolous.

Dated: June 30, 2015  
 New York, New York

Signature .....  
 Printed Name: MICHAEL A. TAUB, ESQ.

PLEASE TAKE NOTICE

NOTICE OF            that the within is a (certified) true copy of a  
 ENTRY            entered in the office of the clerk of the within named Court on            20          

NOTICE OF            that an Order of which the within is a true copy will be presented for settlement to the  
 SETTLEMENT Hon.            at             
 on           , at            20          , at            M.

**OMRANI & TAUB, P.C.**

Attorneys for: PLAINTIFF  
 909 THIRD AVENUE-28<sup>TH</sup> FLOOR  
 NEW YORK, NEW YORK 10022

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STATE OF NEW YORK )  
 :  
 COUNTY OF NEW YORK )

**AFFIDAVIT OF SERVICE**RE: *Jose Aybar et al*

Index No.: 9344/14

Lynel J. Taylor, being duly sworn, deposes and says:

I am not a party to the within action, am over 18 years of age, am employed by Marshall, Dennehey, Warner, Coleman & Goggin, Wall Street Plaza, 88 Pine Street, 21<sup>st</sup> Floor, New York, New York 10005 and resides in Hudson County, New Jersey.

On September 29, 2016, I served a true copy of the within **NOTICE OF IMPLAIDER and THIRD-PARTY SUMMONS AND COMPLAINT** in the following manner:

by mailing same in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the U.S. Postal service by first class mail, addressed to the last known address of the addressee(s) indicated below:

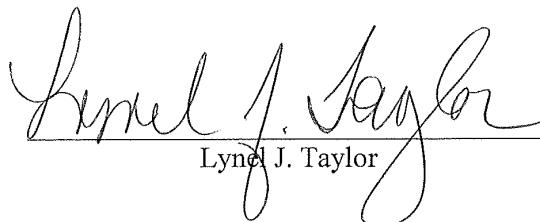
Omrani & Taub, P.C.  
 Attorneys for Plaintiffs  
 909 Third Avenue, 28th Floor  
 New York, New York 10022  
 212-599-5550

Certain & Zilberg  
 Attorneys for Plaintiff  
 Jose Aybar  
 909 3rd Avenue  
 New York, New York 10022  
 (212) 687-7800

DLA Piper LLP (US)  
 Attorneys for Defendant  
 The Goodyear Tire & Rubber Co  
 1251 Avenue of the Americas – 27<sup>th</sup> Floor  
 New York, New York 10020  
 Tel: (212) 335-4500

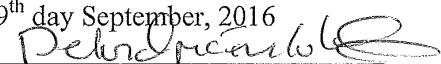
Aaronson, Rappaport, Feinstein  
 & Deutsch, LLP  
 Attorneys for Defendant  
 Ford Motor Co.  
 600 Third Avenue  
 New York, New York 10016  
 Tel: (212) 593-6700

Montfort, Healy, McGuire & Salley  
 Attorneys for Defendant  
 Jose A. Aybar, Jr.  
 840 Franklin Avenue  
 P.O. Box 7677  
 Garden City, New York 11530-7677  
 Tel: (516) 747-4082



Lynel J. Taylor

Sworn to before me this  
 29<sup>th</sup> day September, 2016

  
 Notary Public

**DEBORAH McINTOSH-LECONTE**  
 Notary Public, State of New York  
 No.01MC5060400  
 Qualified in Kings County  
 Commission Expires May 20, 2018

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X Index No.: 9344/2014  
JOSE AYBAR, ORLANDO GONZALES, JOSE AYBAR  
as Administrator of THE ESTATE OF CRYSTAL CRUZ-  
AYBAR, JESENIA AYBAR as Administratrix of THE  
ESTATE OF NOELIA OLIVERAS, JESENIA AYBAR as  
LEGAL GUARDIAN on behalf of KEILA CABRAL, a  
minor, ANNA AYBAR and JESENIA AYBAR as  
Administratrix of THE ESTATE OF TIFFANY CABRAL,

Plaintiffs,

-against-

US TIRES AND WHEELS OF QUEENS, LLC,

Defendant.

-----X

\*\*AND OTHER ACTIONS\*\*

=====

**NOTICE OF IMPLAIDER and THIRD-PARTY SUMMONS & COMPLAINT**

=====

MARSHALL DENNEHEY WARNER COLEMAN & GOGGIN

Attorneys for Defendant

U.S. Tires and Wheels of Queens, LLC i/s/h/a US Tires and Wheels of Queens, LLC

Wall Street Plaza, 88 Pine Street, 21<sup>st</sup> Floor  
New York, New York 10005  
(212) 376-6400

**EXHIBIT 2 TO RETHORE AFFIRMATION -  
ANSWER TO THIRD-PARTY COMPLAINT WITH AFFIRMATIVE DEFENSES  
AND CROSS-CLAIM, DATED SEPTEMBER 21, 2016, WITH VERIFICATION [133 - 145]**

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

JOSE AYBAR, ORLANDO GONZALES, JOSE AYBAR as Administrator of the THE ESTATE OF CRYSTAL CRUZ-AYBAR, JESENIA AYBAR as Administratrix of THE ESTATE OF NOELIA OLIVERAS, JESENIA AYBAR as LEGAL GUARDIAN on behalf of KEILA CABRAL, a minor, ANNA AYBAR and JESENIA AYBAR as Administratrix of THE ESTATE OF TIFFANY CABRAL,	: X
Plaintiffs,	: <b>THIRD-PARTY DEFENDANT THE GOODYEAR TIRE &amp; RUBBER COMPANY'S ANSWER TO THIRD-PARTY COMPLAINT WITH AFFIRMATIVE DEFENSES AND CROSS-CLAIM</b>
v.	: <b>THIRD-PARTY DEFENDANT THE GOODYEAR TIRE &amp; RUBBER COMPANY'S ANSWER TO THIRD-PARTY COMPLAINT WITH AFFIRMATIVE DEFENSES AND CROSS-CLAIM</b>
US TIRE AND WHEELS OF QUEENS, LLC,	: X
Defendant.	: X
US TIRE AND WHEELS OF QUEENS, LLC,	: X
Third-Party Plaintiff,	: X
v.	: X
THE GOODYEAR TIRE & RUBBER COMPANY and GOODYEAR DUNLOP TIRE NORTH AMERICA, LTD and FORD MOTOR COMPANY	: X
Third-Party Defendants.	: X

Third-Party Defendant The Goodyear Tire & Rubber Company ("Goodyear"), by its attorneys, DLA Piper LLP (US), answers Defendant/Third-Party Plaintiff's Complaint upon information and belief, as follows:

1. Admitted in part; denied in part. Goodyear denies that multiple tires are alleged to have failed in the alleged incident, as stated in the Defendant/Third-Party Plaintiff's

Complaint; however, Goodyear admits the remaining facts alleged in paragraph 1 of the Third-Party Complaint.

2. Goodyear admits the facts alleged in paragraph 2 of the Third-Party Complaint.
3. Goodyear admits the facts alleged in paragraph 3 of the Third-Party Complaint.

**AS AND FOR A FIRST CAUSE OF ACTION  
AGAINST THE THIRD-PARTY DEFENDANT  
(COMMON LAW INDEMNITY AND CONTRIBUTION)**

4. Goodyear repeats, reiterates and re-alleges herein its answers to each allegation set forth in paragraphs 1-3 of the Third-Party Complaint.
5. Goodyear denies the allegations contained in paragraph 5 of the Third-Party Complaint, and refers all questions of law to the Court.

**AFFIRMATIVE DEFENSES**

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

Upon information and belief, Defendant/Third-Party Plaintiff's Complaint should be dismissed because this Court lacks personal jurisdiction over the Goodyear defendants.

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

Defendant/Third-Party Plaintiff's Complaint fails to state a cause of action against Goodyear upon which relief may be granted.

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

The events may show that Defendant/Third-Party Plaintiff's claims are barred in whole or in part by the doctrine of spoliation.

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

Defendant/Third-Party Plaintiff's claims may be barred in whole or in part because it lacks the capacity to sue.

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

Defendant/Third-Party Plaintiff has failed to name or join essential and necessary parties.

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

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

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

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

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

Goodyear believes, and therefore avers, that the injuries and damages alleged by Plaintiffs 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 NINTH AFFIRMATIVE DEFENSE,  
GOODYEAR STATES:**

Assuming, *arguendo*, that the tire 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 when it passed out of Goodyear's control.

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

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

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

If a Goodyear product was involved as alleged, then that product, subsequent to the time that it left Goodyear's control, 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' Complaint.

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

Defendant/Third-Party Plaintiff's 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 THIRTEENTH AFFIRMATIVE DEFENSE,  
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 FOURTEENTH AFFIRMATIVE DEFENSE,  
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 FIFTEENTH AFFIRMATIVE DEFENSE,**  
**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 Goodyear's possession or control by a person or party other than the Goodyear or its agents, servants, workers, or employees.

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

If any product designed, 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 SEVENTEENTH AFFIRMATIVE DEFENSE,**  
**GOODYEAR STATES:**

If any product designed, 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 EIGHTEENTH AFFIRMATIVE DEFENSE,**  
**GOODYEAR STATES:**

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

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

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

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

If any product designed, manufactured, assembled, or sold by Goodyear was involved in the alleged accident, then at the time the subject tire(s) was distributed and/or delivered to the initial purchaser or user, the tire(s) was designed, manufactured, assembled and sold in compliance with all applicable Federal Regulations and in accordance with the generally recognized prevailing industry standards in existence.

**AS AND FOR THE TWENTY-FIRST AFFIRMATIVE DEFENSE,  
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.

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

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

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

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

**AS AND FOR A CROSS-CLAIM BY DEFENDANT GOODYEAR  
AGAINST U.S. TIRES AND WHEELS OF QUEENS LLC**

If Goodyear is held liable to anyone in this action, its liability and damages will have arisen out of the affirmative, active, and primary negligence of U.S. Tires and Wheels of Queens LLC, its agents, servants, or employees, and without any active or primary negligence or active participation on the part of Goodyear, and that if any negligence or liability is found to exist on the part of Goodyear, that liability and negligence would be secondary or passive or the result solely of the operation of law, as opposed to the negligence of U.S. Tires and Wheels of Queens LLC, whose liability and negligence will be active and primary, and if Plaintiffs' allegations are proven true at trial, Goodyear will be entitled to and demands common law indemnification or contribution from U.S. Tires and Wheels of Queens LLC for the amount of any verdict or judgment that may be recovered against it in this action.

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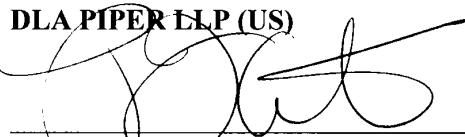
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WHEREFORE, Third-Party Defendant The Goodyear Tire & Rubber Company demands judgment in its favor and against Defendant/Third-Party Plaintiff and all other potential parties, together with costs of suit, attorneys' fees, and such other and further relief as this court may deem appropriate.

Dated: September 21, 2016

By:   
Peter J. Canto  
1251 Avenue of the Americas – 27th Floor  
New York, New York 10020  
Phone: (212) 335-4500  
Fax: (212) 335-4501

Kevin W. Rethore  
Robert W. Smith, III (pending *pro hac vice*)  
1650 Market Street, Suite 4900  
Philadelphia, PA 19103  
Phone: (215) 656-3349  
Fax: (215) 656-3301

*Attorneys for Third-Party Defendant  
The Goodyear Tire & Rubber Company*

TO: Omrani & Taub, P.C.  
16 Court Street, 28<sup>th</sup> Floor  
Brooklyn, NY 11241  
*Attorneys for the Plaintiffs*

Marshall Dennehy Warner Coleman & Coggin  
Wall Street Plaza  
88 Pine Street, 21<sup>st</sup> Floor  
New York, NY 10005  
*Attorneys for Defendant/Third-Party Plaintiff,  
U.S. Tire and Wheels of Queens, LLC*

Certain & Zilberg, P.C.

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909 Third Avenue – 28th Floor  
New York, NY 10022  
*Attorneys for Third-Party Defendant,  
Jose A. Aybar, Jr.*

Aaronson, Rappaport, Feinstein & Deutsch, LLP  
600 Third Avenue  
New York, NY 10016  
*Attorneys for Third-Party Defendant,  
Ford Motor Company*

Montfort, Healy, McGuire & Salley  
840 Franklin Avenue  
P.O. Box 7677  
Garden City, NY 11530-7677  
*Attorneys for Third-Party Defendant,  
Jose A. Aybar, Jr.*

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

JOSE AYBAR, ORLANDO GONZALES, JOSE AYBAR as Administrator of the THE ESTATE OF CRYSTAL CRUZ-AYBAR, JESENIA AYBAR as Administratrix of THE ESTATE OF NOELIA OLIVERAS, JESENIA AYBAR as LEGAL GUARDIAN on behalf of KEILA CABRAL, a minor, ANNA AYBAR and JESENIA AYBAR as Administratrix of THE ESTATE OF TIFFANY CABRAL,	: X
Plaintiffs,	: Index No. 9344/2014
v.	: ATTORNEY'S VERIFICATION IN SUPPORT OF THIRD-PARTY DEFENDANT THE GOODYEAR TIRE & RUBBER COMPANY'S ANSWER TO THIRD-PARTY COMPLAINT WITH AFFIRMATIVE DEFENSES AND CROSS-CLAIM
US TIRE AND WHEELS OF QUEENS, LLC,	: X
Defendant.	: X
US TIRE AND WHEELS OF QUEENS, LLC,	: X
Third-Party Plaintiff,	: X
v.	: X
THE GOODYEAR TIRE & RUBBER COMPANY and GOODYEAR DUNLOP TIRE NORTH AMERICA, LTD and FORD MOTOR COMPANY	: X
Third-Party 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 Third-Party Defendant The Goodyear Tire & Rubber Company.

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 Third-Party Defendant is that the Third-Party 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 Third-Party Defendant.

New York, New York  
September 20, 2016

DLA PIPER LLP (US)  
By:

Peter J. Cetuto  
1251 Avenue of the Americas – 27th Floor  
New York, New York 10020  
Phone: (212) 335-4500  
Fax: (212) 335-4501

*Attorneys for Third-Party Defendant  
The Goodyear Tire & Rubber Company*

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AFFIRMATION OF SERVICE BY MAIL

STATE OF NEW YORK        )  
                                  ss.:  
COUNTY OF QUEENS        )

I, Peter John Couto, an attorney at law admitted to practice in the State of New York, hereby affirm that on September 21, 2016, I served the attached **THIRD-PARTY DEFENDANT THE GOODYEAR TIRE & RUBBER COMPANY'S ANSWER TO THIRD-PARTY COMPLAINT WITH AFFIRMATIVE DEFENSES AND CROSS-CLAIM** upon

Omrani & Taub, P.C.  
16 Court Street, 28<sup>th</sup> Floor  
Brooklyn, NY 11241  
*Attorneys for the Plaintiffs*

Marshall Dennehy Warner Coleman & Coggins  
Wall Street Plaza  
88 Pine Street, 21<sup>st</sup> Floor  
New York, NY 10005  
*Attorneys for Defendant/Third-Party Plaintiff,  
U.S. Tire and Wheels of Queens, LLC*

Certain & Zilberg, P.C.  
909 Third Avenue – 28th Floor  
New York, NY 10022  
*Attorneys for Third-Party Defendant,  
Jose A. Aybar, Jr.*

Aaronson, Rappaport, Feinstein & Deutsch, LLP  
600 Third Avenue  
New York, NY 10016  
*Attorneys for Third-Party Defendant,  
Ford Motor Company*

Montfort, Healy, McGuire & Salley  
840 Franklin Avenue  
P.O. Box 7677  
Garden City, NY 11530-7677  
*Attorneys for Third-Party Defendant,  
Jose A. Aybar, Jr.*

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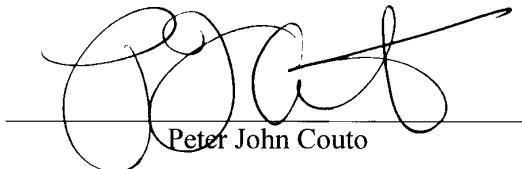
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at the address designated by said attorney(s) for that purpose, by mailing a true and correct copy of same, enclosed and properly sealed in a postpaid envelope, which I deposited in an official depository under the exclusive care and custody of the United States Postal Services within the State of the New York.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York  
September 21, 2016



Peter John Couto

**EXHIBIT 3 TO RETHORE AFFIRMATION -  
AFFIRMATION OF JOSEPH G. DANCY, DATED MAY 14, 2018 [146 - 149]**

**FILED: QUEENS COUNTY CLERK 05/15/2018 02:51 PM**  
NYSCEF DOC. NO. 92

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

----- X

JOSE AYBAR, ORLANDO GONZALES, JOSE  
AYBAR as Administrator of THE ESTATE OF  
CRYSTAL CRUZ-AYBAR, JESENIA AYBAR as  
Administratrix 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., a minor,

**AFFIRMATION OF  
JOSEPH G. DANCY**

Plaintiffs,

INDEX No. 703632/2017

v.

US TIRES AND WHEELS OF QUEENS, LLC,

Defendant.

----- X

US TIRES AND WHEELS OF QUEENS, LLC,

Third-Party Plaintiff,

v.

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

Third-Party Defendants.

----- X

I, Joseph G. Dancy, declare as follows:

1. My name is Joseph G. Dancy. I am over the age of 18, have personal knowledge of the matters set forth in this declaration, unless otherwise stated, and if called as a witness I would be competent to testify to the matters in this declaration. The facts stated in this declaration are true and correct.

2. I hold a Bachelor of Science degree from the United States Naval Academy, Annapolis, Maryland. For the past 24 years I have been employed by The Goodyear Tire & Rubber Company ("Goodyear") in various positions involving tire manufacturing, design, engineering, testing and development. Currently, I am a Chief Tire Analysis Engineer in Goodyear's Global

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Product Analysis Department. My responsibilities include inspecting tires that have been sent to Goodyear as a result of tire disablements, in order to determine the cause of the problem, if possible.

3. By virtue of my tenure with Goodyear, I am generally familiar with Goodyear's United States business operations, its relationship with company-owned and authorized retailers that sell Goodyear tires, and the location of Goodyear's businesses, including its manufacturing facilities.<sup>1</sup> I am also familiar with the records that Goodyear keeps on the tires it manufactures.

4. Goodyear was incorporated in the State of Ohio and its principal place of business is located at 200 Innovation Way, Akron, Ohio. Goodyear is in the business of designing and manufacturing original equipment and replacement tires, such as passenger and light truck tires, commercial truck tires, aircraft tires, off-road tires, race tires and tires for specialized applications.

5. The tire at issue in this case is a P245/70R16 Goodyear Wrangler AP tire bearing DOT # MK9L3NER0402 ("subject tire"). The subject tire was designed in Akron, Ohio by Goodyear. According to the tire's DOT serial number, the subject tire was manufactured at Goodyear's Union City, Tennessee plant in the 4th week of 2002.

6. Unlike Vehicle Identification Numbers ("VINs"), DOT serial numbers do not track ownership of a tire. Thus, Goodyear has no knowledge as to how or when the subject tire first entered the State of New York as claimed by plaintiff, nor does it possess any information that Goodyear was involved in the sale of the subject tire in the State of New York, if any.

7. Goodyear currently operates a chemical plant located in Niagara Falls, New York. This plant did not manufacture P245/70R16 Wrangler AP tires, including the subject tire, or any component parts thereof.

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<sup>1</sup> Goodyear Dunlop Tires North America, Ltd. was originally named as a third-party defendant in this action, but subsequently dismissed from the case by Court Order dated October 23, 2017. As such, it is no longer a party to this action.

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8. At all relevant times, P245/70R16 Wrangler AP tires were and have been designed, tested, manufactured or inspected by Goodyear outside of New York.

9. Goodyear's advertisements, marketing and sales activities regarding the P245/70R16 Wrangler AP tire, and any other tire, are not, and never have been, directed specifically at the State of New York or New York residents. Any warnings or instructions related to the tire emanated and/or would have emanated from outside of New York, as well.

10. According to the Third-Party Complaint, US Tire and Wheels of Queens, LLC ("USTW") inspected and installed the subject tire on the Ford Explorer at issue, on or about June 17, 2012.<sup>2</sup>

11. A tire retailer or dealer is not an "authorized Goodyear dealer" or "authorized Goodyear service center" unless it has entered into a specific contractual arrangement with Goodyear actually authorizing such a relationship.

12. USTW is not a Goodyear-authorized dealer, nor was it a Goodyear authorized dealer at any time material hereto.

13. USTW is not a Goodyear-authorized service center, nor was it authorized by Goodyear to represent or refer to itself as such at any time material hereto.

14. USTW is not a recognized member of the authorized Goodyear Tire & Service Network, nor has it been authorized by Goodyear to represent or refer to itself as such at any time material hereto.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct.

<sup>2</sup> Third-Party Complaint, Exh. A (Amended Verified Complaint), ¶¶19-22.

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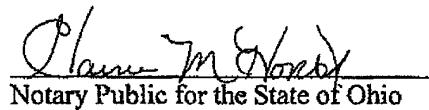
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Executed this 14 day of May, 2018 at Akron, Ohio.



Subscribed and sworn to before me on this 14 day of May, 2018.

  
\_\_\_\_\_  
Notary Public for the State of Ohio

My Commission Expires: 7/29/2019



Elaine M. Horst  
Resident Summit County  
Notary Public, State of Ohio  
My Commission Expires: 07/29/2019

**AFFIRMATION OF ADAM C. CALVERT, FOR DEFENDANT/THIRD-PARTY PLAINTIFF, IN  
OPPOSITION TO THIRD-PARTY DEFENDANT THE GOODYEAR TIRE & RUBBER  
COMPANY'S MOTION TO DISMISS THE THIRD-PARTY COMPLAINT, DATED JUNE 5,  
2018 [150 - 155]**

**FILED: QUEENS COUNTY CLERK 06/05/2018 04:22 PM**  
NYSCEF DOC. NO. 94

INDEX NO. 703632/2017

RECEIVED NYSCEF: 06/05/2018

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X  
JOSE AYBAR, ORLANDO GONZALES, JOSE AYBAR  
as Administrator of THE ESTATE OF CRYSTAL CRUZ-  
AYBAR, JESENIA AYBAR as Administratrix 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.,

Index No.: 9344/2014

E-file Index No.: 703632/17E

**AFFIRMATION  
IN OPPOSITION  
TO GOODYEAR  
MOTION TO DISMISS**

Plaintiffs,

-against-

US TIRES AND WHEELS OF QUEENS, LLC,

Defendant.

-----X  
US TIRES AND WHEELS OF QUEENS, LLC,

Third-Party Plaintiff,

-against-

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

Third-Party Defendants.

-----X  
Adam C. Calvert, an attorney admitted to practice law in the New York State Courts,  
affirms the following under the penalty of perjury:

1. I am a shareholder with Marshall Dennehey Warner Coleman & Goggin,  
attorneys for defendant/third-party plaintiff U.S. Tires. I am familiar with this case, and I submit  
this affirmation in opposition to Goodyear's motion to dismiss the third-party complaint against it  
for lack of personal jurisdiction.

I. Goodyear's motion is barred by collateral estoppel—the court has already determined that there is personal jurisdiction over Goodyear

2. Goodyear's motion disingenuously omits the most important fact—that this issue was already decided against Goodyear in a related action—and Goodyear is therefore barred by collateral estoppel from making the same argument here.

3. Goodyear's motion fails to mention that there are two related actions. The plaintiffs sued Ford and Goodyear for negligence and products liability for the same accident as our case, alleging that the tire and Ford Explorer at issue were defective. One action was brought by Jose Aybar, the driver of the vehicle, against Goodyear for negligence and products liability in the manufacture of the tires. Complaint – Index No.: 706908/15 (**Exhibit A**); Goodyear Answer—Index No.: 706908/15 (**Exhibit B**). The other action was brought by the passengers against Jose Aybar, Goodyear, Ford, and John Doe defendants. The complaints against Goodyear and Ford were for negligence and products liability in the manufacture of the tires and the vehicle. Complaint—Index No.: 706909/15 (**Exhibit C**); Goodyear Answer—Index No.: 706909/15 (**Exhibit D**); Ford Answer—Index No.: 706909/15 (**Exhibit E**).

4. U.S. Tires' third-party complaint against Goodyear and Ford in this action is based on the plaintiffs' claims against Ford and Goodyear in the other actions. The three actions are joined for discovery with leave for the parties to file a later motion to consolidate and/or joint trial at a later date. Joint Discovery Stipulation (**Exhibit F**).

5. Ford and Goodyear moved to dismiss the complaints in those other actions for lack of personal jurisdiction, making the same arguments Goodyear makes in the instant motion. Those motions were denied by this Court in two orders issued by Judge Raffaele. Orders on Motions to Dismiss (**Exhibit G**). Judge Raffaele found that there was personal jurisdiction over Goodyear and Ford even after *Daimler* based on their being "at home" in New York and their

consent to jurisdiction by registering to do business in New York. Those decisions are currently the subject of an appeal, which is pending before the Second Department.

6. Those decisions are binding on the instant motion under the doctrine of collateral estoppel. Collateral estoppel, or issue preclusion, requires the court to give conclusive effect to another court's determination when two basic components are met: (1) the issue sought to be precluded is identical to a material issue necessarily decided in the first action and decisive of the second action; and (2) there was a full and fair opportunity to contest this issue. See *D'Arata v. New York Central Mutual Fire Ins. Co.*, 76 N.Y.2d 659 (1990); *Kaufman v. Eli Lilly & Co.*, 65 N.Y.2d 449 (1985).

7. Here, the elements of collateral estoppel are satisfied. First, the issues are identical to the issues decided in the other actions—whether there is personal jurisdiction over Goodyear for the accident involving the plaintiffs. The court decided that there was personal jurisdiction over Goodyear based on Goodyear being "at home" in New York and its consent to jurisdiction by registering to do business in New York. Second, Goodyear had a full and fair opportunity to contest the issue in the other actions, as demonstrated by its motions to dismiss on those grounds and pending appeal.

8. Courts have routinely found that collateral estoppel bars defendants from relitigating personal jurisdiction issues already decided against defendants in other proceedings. In *Keeler v. West Mountain Corp.*, 105 A.D.2d 953 (3d Dep't 1984), a fourth-party defendant moved to dismiss the complaint against it for lack of personal jurisdiction and the court denied on the grounds of collateral estoppel because the fourth-party defendant had previously moved to dismiss a related complaint for lack of personal jurisdiction and that motion was denied. See also *Staton Wholesale v. Barker*, 257 A.D.2d 902 (3d Dep't 1999) (previously decided personal

jurisdiction question was collateral estoppel on later motion to dismiss for lack of personal jurisdiction). In *Matter of Lunt & Bell, LLC v. State of New York*, 90 A.D.3d 930 (2d Dep't 2011), the court found that collateral estoppel barred a defendant from claiming lack of personal jurisdiction in one action because there was a finding of personal jurisdiction over that defendant in another action. In *DirectTV Latin America, LLC v. Pratola*, 94 A.D.3d 628 (1st Dep't 2012), the court held that "the issue whether New York courts have personal jurisdiction over defendants Pratola and Clemente pursuant to CPLR 301 and 302 was determined in the prior federal action and, pursuant to the doctrine of collateral estoppel, may not be re-litigated." See also *Fernando v. Fernando*, 2010 U.S. Dist. LEXIS 79254 (E.D.N.Y. 2010) (previously decided personal jurisdiction issue had collateral estoppel effect).

9. Therefore, collateral estoppel bars Goodyear from moving to dismiss the third-party action based on lack of personal jurisdiction. Whether or not this court has personal jurisdiction over Goodyear was already decided in the related actions and that decision is binding on the instant motion.

10. Notably, collateral estoppel bars Goodyear from rearguing the personal jurisdiction ground already decided against it, so this court does not need to analyze whether the decision was correct. We submit that the prior decision was correct for the reasons detailed in U.S. Tire's brief on the appeal of that decision. Brief (**Exhibit H**).

11. We would also add that there are additional reasons for finding that Goodyear is subject to personal jurisdiction on the third-party claims for contribution and indemnity asserted by U.S. Tires. Namely, the contribution and indemnity claims arise from U.S. Tires' alleged liability to the plaintiff for installing a Goodyear tire in New York at U.S. Tires' garage. In other words, the act at issue—installation of the tire—occurred in New York. And any judgment

against U.S. Tires would be in New York, meaning that U.S. Tires' claims against Goodyear on that judgment would also arise in New York. This additional ground for specific jurisdiction was recognized in an earlier decision from Your Honor after Goodyear made a motion to stay this action. Decision on Stay (**Exhibit I**).

## **II. The claim for common-law indemnification should not be dismissed**

12. Goodyear also argues that the claim for indemnification should be dismissed. However, there is a valid indemnity claim against Goodyear because the plaintiffs claims are that U.S. Tires was negligent for installing a defective Goodyear tire on the vehicle. Courts have consistently held that "it is well settled that a seller or distributor of a defective product has an implied right of indemnification as against the manufacturer of the product." *Godoy v. Abamaster of Miami, Inc.*, 302 A.D.2d 57 (2d Dep't 2003). In addition, a downstream seller or installer of a defective product (like U.S. Tires) has a right of indemnification against the manufacturer of that product. *Nutting v. Ford Motor Co., Inc.*, 180 A.D.2d 122 (3d Dep't 1992).

13. "That common-law right of indemnification 'encompasses the right to recover attorneys' fees, costs, and disbursements incurred in connection with defending the suit brought by the injured party.'" *Chapel v. Mitchell*, 84 N.Y.2d 345, 347 (1994). Therefore, if a jury were to find that U.S. Tires was not at fault, but that Goodyear was at fault for manufacturing a defective product, U.S. Tires would be entitled to attorney's fees, costs, and disbursements for defending this suit.

14. Moreover, it is simply too soon to decide the merits of the various claims amongst the parties. There has been little to no discovery and the basis for each parties' liability is still in question.

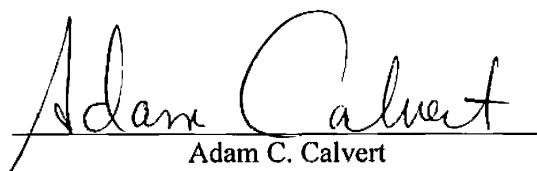
15. Finally, we should mention that Goodyear's answer to U.S. Tire's third-party complaint also asserts a counter-claim for indemnity against U.S. Tires. If, as Goodyear claims, there cannot be indemnity in this type of action, its indemnity counter-claim should be dismissed as well.

### **Conclusion**

16. The court should deny Goodyear's motion. The issue of personal jurisdiction over Goodyear was already decided in the related actions and those decisions have collateral estoppel effect against Goodyear in this action. The common-law indemnification claim should not be dismissed because U.S. Tires has a right of indemnification against Goodyear, an alleged manufacturer of a defective product.

WHEREFORE, the court should issue an order denying Goodyear's motion in its entirety, together with such other and further relief as the court deems just and proper.

Dated: New York, New York  
June 5, 2018



Adam C. Calvert

**EXHIBIT A TO CALVERT AFFIRMATION -  
SUMMONS AND VERIFIED COMPLAINT  
OF JOSE AYBAR, DATED JUNE 30, 2015 [156 - 164]**

**FILED: QUEENS COUNTY CLERK 06/05/2018 04:22 PM**

NYSCEF DOC. NO. 95

**FILED: QUEENS COUNTY CLERK 07/01/2015 04:04 PM**

NYSCEF DOC. NO. 1

INDEX NO. 703632/2017

RECEIVED NYSCEF: 06/05/2018

INDEX NO. 706908/2015

RECEIVED NYSCEF: 07/01/2015

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

-----X Index No.:  
**JOSE AYBAR,** 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, 2015

CERTAIN & 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

FILED: QUEENS COUNTY CLERK 06/05/2018 04:22 PM

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INDEX NO. 703632/2017

RECEIVED NYSCEF: 06/05/2018

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

**JOSE AYBAR,***Plaintiff,  
-against-***THE GOODYEAR TIRE & RUBBER COMPANY,  
and GOODYEAR DUNLOP TIRES NORTH  
AMERICA, LTD.,***Defendants.***X Index No.:  
Date Filed:****Plaintiff designates  
QUEENS COUNTY  
as trial venue****The basis of venue  
Residence of Plaintiff****Verified Complaint**

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.

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## 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 A YBAR 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.

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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:

FILED: QUEENS COUNTY CLERK 06/05/2018 04:22 PM  
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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

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X  
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 affiant 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.

**FILED: QUEENS COUNTY CLERK 06/05/2018 04:22 PM**

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


---

**JOSE AYBAR,***Plaintiff,*

-against-

---

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


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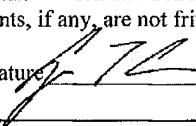
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**Summons and Verified Complaint**


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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                           
*Entry*200                *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                                                 , 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*

**EXHIBIT B TO CALVERT AFFIRMATION -  
ANSWER OF THE GOODYEAR TIRE & RUBBER COMPANY  
AND GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD.,  
DATED SEPTEMBER 4, 2015 [165 - 181]**

**FILED: QUEENS COUNTY CLERK 06/05/2018 04:22 PM**  
NYSCEF DOC. NO. 96 INDEX NO. 706908/2018  
**FILED: QUEENS COUNTY CLERK 09/04/2015 08:46 AM**  
NYSCEF DOC. NO. 2

INDEX NO. 703632/2017  
RECEIVED NYSCEF: 06/05/2018 INDEX NO. 706908/2018  
RECEIVED NYSCEF: 09/04/2015

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF QUEENS

-----x  
 JOSE AYBAR,

Plaintiff,

- against -

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

INDEX No. 706908/2015

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

Defendants.

-----x

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

1. Goodyear and GDTNA lack knowledge or information sufficient to form a belief as to the allegations contained in paragraph 1 of plaintiff's complaint, and refer all questions of law to the Court.
2. Goodyear and GDTNA deny paragraph 2 of plaintiff's complaint in the form alleged, but admit portions of the allegations, and refer all questions of law to the Court. It is admitted only that Goodyear is an Ohio corporation with its principal place of business in Akron, Ohio. By way of further answer, Goodyear and GDTNA specifically deny any allegations relating to personal jurisdiction in the State of New York.
3. Goodyear and GDTNA deny paragraph 3 of plaintiff's complaint in the form alleged, but admit portions of the allegations, and refer all questions of law to the Court. It is

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

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

FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**A SECOND CLAIM FOR NEGLIGENCE**

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

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

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

**A THIRD CLAIM FOR BREACH OF WARRANTY**

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

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

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

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

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

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

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

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

**AFFIRMATIVE DEFENSES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

New York, New York  
September 4, 2015

**DLA PIPER LLP (US)**

By: 

Kevin W. Rethore, Esquire  
Peter Cuoto, Esquire  
1251 Avenue of the Americas – 27th Floor  
New York, New York 10020  
Phone: (212) 335-4500  
Fax: (212) 335-4501  
*Attorneys for Defendant The Goodyear Tire & Rubber Co. and Goodyear Dunlop Tires North America, Ltd.*

TO: Gary Todd Certain, Esquire  
CERTAIN & ZILBERG, PLLC  
909 Third Avenue – 28th Floor  
New York, NY 10022  
Phone: (212) 687-7800  
*Attorney for Plaintiff*

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X  
JOSE AYBAR,

INDEX No. 706908/2015

Plaintiff,

- against -

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

Defendants.

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

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

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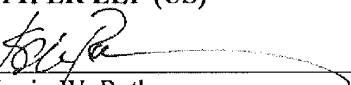
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New York, New York  
September 4, 2015

**DLA PIPER LLP (US)**

By: 

Kevin W. Rethore

1251 Avenue of the Americas – 27th Floor  
New York, New York 10020

Phone: (212) 335-4500

Fax: (212) 335-4501

*Attorneys for Defendant The Goodyear Tire  
& Rubber Co.*

TO: Gary Todd Certain, Esquire  
CERTAIN & ZILBERG, PLLC  
909 Third Avenue – 28th Floor  
New York, NY 10022  
Phone: (212) 687-7800  
*Attorney for Plaintiff*

**EXHIBIT C TO CALVERT AFFIRMATION -  
SUMMONS AND VERIFIED COMPLAINT OF  
ANNA AYBAR, ET AL., DATED JUNE 30, 2015 [182 - 209]**

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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:**

**DATE FILED:**

**S U M M O R S**

Plaintiffs,

-against-

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

Defendants

Plaintiff designates  
Queens County as place of trial

Basis of venue:  
Plaintiff Anna Aybar's residence:  
1726 Himrod Street,  
Ridgewood, Queens, NY 11416

**YOU ARE HEREBY SUMMONED** to answer the Complaint in this action  
and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a  
notice of appearance on the Plaintiff's attorney within 20 days after the service of this summons,  
exclusive of the day of service (or within 30 days after service is complete if this summons is not  
personally delivered to you within the State of New York), and in case of your failure to appear or  
answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York  
June 30, 2015

Yours, etc.

OMPRANI & TAUB, P.C.  
By: Michael A. Taub, Esq.  
*Attorney(s) for the Plaintiff*  
909 Third Ave., - 28<sup>th</sup> Floor  
New York, New York 10022  
(212) 599-5550

PROMPTLY FORWARD THIS DOCUMENT TO YOUR INSURANCE COMPANY:

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Defendant's addresses:

JOSE AYBAR  
7208 Tonnelle Avenue  
North Bergen, NJ  
*(service via Department of State and/or Personal Service)*

THE GOODYEAR TIRE & RUBBER CO  
200 Innovation Way  
Akron, OH 44316-0001  
*(service via Department of State)*

FORD MOTOR COMPANY  
1 American Rd.  
Dearborn, MI 48126  
*(service via Department of State)*

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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, and ANNA AYBAR, as  
Administratrix of the ESTATE OF CRYSTAL CRUZ-AYBAR

Index No.:

Plaintiffs,

**VERIFIED  
COMPLAINT**

-against-

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

Defendants.

-----X

Plaintiff, by and through his attorneys, OMRANI & TAUB, P.C., complaining of the defendants herein, respectfully alleges, upon information and belief, as follows:

1. That at all times relevant herein, the Plaintiff, ANNA AYBAR, was and still is a resident of the County of Queens, State of New York.
2. That on the 1<sup>st</sup> day of July, 2012 and at all times relevant herein, the defendant, JOSE A. AYBAR, JR., was a resident of the State of New York.
3. The on the 1<sup>st</sup> day of July, 2012 and at all times relevant herein, the defendant, JOSE A. AYBAR, JR., was the owner of a certain motor vehicle bearing New York State license plate registration number FGV9198 for the year 2012 and assigned Vehicle Identification No. 1FMDU74WX2ZB89795.
4. That on or about the 1<sup>st</sup> day of July, 2012 and at all times relevant herein, the defendant, JOSE A. AYBAR, JR., was the operator of the aforesaid motor vehicle bearing New York State license plate registration number FGV9198.

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5. That at all times relevant herein, the defendant, JOSE A. AYBAR, JR., maintained the aforesaid motor vehicle bearing New York State license plate registration number FGV9198.

6. That at all times relevant herein, the defendant, JOSE A. AYBAR, JR., managed the aforesaid motor vehicle bearing New York State license plate registration number FGV9198.

7. That at all times relevant herein, the defendant, JOSE A. AYBAR, JR., controlled the aforesaid motor vehicle bearing New York State license plate registration number FGV9198.

8. That at all times relevant herein, the defendant, FORD MOTOR COMPANY, was and still is a corporation, duly organized and existing pursuant to the laws of the State of Delaware, with a principal place of business in Dearborn, Michigan, and was at all times herein mentioned authorized and/or qualified to conduct business, and was conducting business, in the State of New York.

9. That at all times relevant herein, the defendant, FORD MOTOR COMPANY, was and still is a foreign corporation duly registered with the New York Department of State, and was authorized to transact business in the State of New York.

10. That at all times relevant herein, the defendant, FORD MOTOR COMPANY, transacted business, and derived substantial revenue from the sale of its products, in the State of New York.

11. That at all times relevant herein, the defendant, FORD MOTOR COMPANY, owned real property and/or leased various premises, and otherwise conducted business at said locations, within the State of New York, and within the County of Queens.

12. That at all times relevant herein, the defendants, "JOHN DOES 1 thru 30", and each of them, were individuals, corporations, partnerships, and/or associations residing in and/or authorized to do business in, and/or were doing business in the State of New York, and derived substantial income from said business. The true names and/or capacities, whether individual, corporate, associate, governmental or otherwise of defendants, "JOHN DOES 1 thru 30",

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inclusive and each of them, are unknown to the plaintiffs, who therefore sue said defendants by such fictitious names. When the true names and/or capacities of said defendants are ascertained, the plaintiffs will seek leave of this Court to amend the Complaint accordingly.

13. That each of the defendants designated herein as a "JOHN DOE" was responsible, negligently or in some other actionable manner, for the events and happenings herein referred to which proximately caused the damages to the plaintiff as hereinafter alleged herein, either through said defendant's own negligence or through the conduct of its agents, servants, employees or representatives in some other matter.

14. That at all times relevant herein, the defendants designated as "JOHN DOE", and each of them, were the agents, servants, employees, representatives and/or joint venturers of the defendant, FORD MOTOR COMPANY, and/or their co-defendants and were, as such, acting within the course, scope and authority of said relationship.

15. That at all times relevant herein, the defendants, FORD MOTOR COMPANY and "JOHN DOES 1 thru 30", inclusive, were engaged in the business of manufacturing, fabricating, designing, assembling, distributing, selling, inspecting, servicing, repairing, marketing, warranting, selling, retailing, wholesaling and advertising certain motor vehicles, and or its component parts, bearing the designations Ford Explorer for the year 2002.

16. That at all times relevant herein, the defendants, FORD MOTOR COMPANY and/or "JOHN DOES 1 thru 30", inclusive, manufactured, fabricated, designed, assembled, distributed, and sold into the stream of commerce, the aforesaid **2002 Ford Explorer** model motor vehicle, and each and every component part thereof, bearing New York State license plate registration number FGV9198 for the year 2012 and Vehicle Identification No.

1FMDU74WX2ZB89795 (hereinafter referred to as the subject "Ford Explorer").

17. That at all times relevant herein, the defendants, FORD MOTOR COMPANY and/or "JOHN DOES 1 thru 30" inclusive, marketed, warranted, sold, retailed, wholesaled and advertised the aforesaid 2002 Ford Explorer motor vehicle bearing New York State license plate

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registration number FGV9198 for the year 2012 and Vehicle Identification No. 1FMDU74WX2ZB89795.

18. That at all times relevant herein, the defendants, FORD MOTOR COMPANY and/or "JOHN DOES 1 thru 30" inclusive, inspected, serviced and/or repaired the aforesaid 2002 Ford Explorer motor vehicle bearing New York State license plate registration number FGV9198 for the year 2012 and Vehicle Identification No. 1FMDU74WX2ZB89795.

19. That at all times relevant herein, the defendants knew, or in the exercise of reasonable care should have known, that the aforesaid subject Ford Explorer motor vehicle would be used without inspection for defects in its parts, component parts, mechanisms or design, for use in the State of New York and elsewhere.

20. That at all times relevant herein, there existed certain defective, unsafe and defective condition(s) in the design, manufacture, fabrication and/or assembly of the aforesaid subject 2002 Ford Explorer motor vehicle bearing New York State license plate registration number FGV9198 for the year 2012 and Vehicle Identification No. 1FMDU74WX2ZB89795.

21. That at all times relevant herein, the defendant, THE GOODYEAR TIRE & RUBBER CO., was and still is a corporation, duly organized and existing pursuant to the laws of the State of Ohio, Delaware, with a principal place of business in Akron, Ohio, and was at all times herein mentioned authorized and/or qualified to conduct business, and was conducting business, in the State of New York.

22. That at all times relevant herein, the defendant, THE GOODYEAR TIRE & RUBBER CO., was and still is an unincorporated business enterprise, duly organized and existing pursuant to the laws of the State of Ohio, Delaware, with a principal place of business in Akron, Ohio, and was at all times herein mentioned authorized and/or qualified to conduct business, and did conduct business, in the State of New York.

23. That at all times relevant herein, the defendant, THE GOODYEAR TIRE & RUBBER CO., was and still is a foreign corporation duly registered with the New York

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Department of State, and as such was authorized to transact business in the State of New York.

24. That at all times relevant herein, the defendant, THE GOODYEAR TIRE & RUBBER CO., was and still is a domestic corporate entity, duly registered with the New York Department of State.

25. That at all times relevant herein, the defendant, THE GOODYEAR TIRE & RUBBER CO., was and still is a business enterprise duly registered with the New York Department of State, and as such was authorized to transact business in the State of New York.

26. That at all times relevant herein, the defendant, THE GOODYEAR TIRE & RUBBER CO., transacted business and derived substantial revenue from the sale of its products, within the State of New York.

27. That at all times relevant herein, the defendant, THE GOODYEAR TIRE & RUBBER CO., owned real property and/or leased various premises, and otherwise conducted business at said locations, within the State of New York, and within the County of Queens.

28. That at all times relevant herein, the defendant, THE GOODYEAR TIRE & RUBBER CO., regularly does and/or solicits business and drives substantial revenue from goods used and consumed and services rendered in the State of New York.

29. That at all times relevant herein, the defendant, THE GOODYEAR TIRE & RUBBER CO., was and still is in the business of designing, testing, manufacturing, marketing and selling tires for automobiles that are marketed, sold and used through the world, and in the State of New York.

30. That at all times relevant herein, the defendant, THE GOODYEAR TIRE & RUBBER CO., was and still is a designer, manufacturer and/or seller of "GOODYEAR" brand tires.

31. That at all times relevant herein, the defendant, THE GOODYEAR TIRE & RUBBER CO., has represented to the public or has otherwise held itself out as having expertise and/or special knowledge in the design, fabrication and manufacture of motor vehicle tires.

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32. That at all times relevant herein, the defendant, THE GOODYEAR TIRE & RUBBER CO., has represented to the public that its tires are well constructed and safe to use as tires for motor vehicles, including the subject 2002 Ford Explorer herein.

33. That at all times relevant herein, the defendant, THE GOODYEAR TIRE & RUBBER CO., designed, fabricated, manufactured and/or sold, into the stream of commerce, "Goodyear" brand tires, and more specifically, a "Wrangler AP P245/70R16 106S tire bearing the DOT # MK9L3NER0402 (hereinafter the subject "Goodyear Wrangler AP tire").

34. That on or about late 2011, the defendant, JOSE A. AYBAR, JR., purchased and received delivery of the aforesaid subject "Ford Explorer" motor vehicle bearing VIN #: 1FMDU74WX2ZB89795, together with the "subject tire" from a third-party and thereafter used and operated the aforesaid "Ford Explorer" and the subject "Goodyear Wrangler AP tire" as intended.

35. That the aforesaid subject "Goodyear Wrangler AP tire" was dangerous, hazardous and defective, and was otherwise unsuitable for the use for which it was intended.

36. That on or about the 1<sup>st</sup> day of July, 2012 and at all times relevant herein, the plaintiff, ANNA AYBAR, was a passenger in the aforesaid motor vehicle bearing New York State license plate registration number FGV9198.

37. That on or about the 1<sup>st</sup> day of July and at all times relevant herein, the plaintiff, ORLANDO GONZALEZ, was a passenger in the aforesaid motor vehicle bearing New York State license plate registration number FGV9198.

38. That on or about the 1<sup>st</sup> day of July and at all times relevant herein, the plaintiff, KAYLA CABRAL, was a passenger in the aforesaid motor vehicle bearing New York State license plate registration number FGV9198.

39. That on or about the 1<sup>st</sup> day of July and at all times relevant herein, the plaintiff, NOELIA OLIVERAS, deceased, was a passenger in the aforesaid motor vehicle bearing New York State license plate registration number FGV9198.

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40. That on or about the 1<sup>st</sup> day of July and at all times relevant herein, the plaintiff, CRYSTAL N. CRUZ-AYBAR, deceased, was a passenger in the aforesaid motor vehicle bearing New York State license plate registration number FGV9198.

41. That on or about the 1<sup>st</sup> day of July and at all times relevant herein, the plaintiff, TIFFANY CABRAL (deceased infant), was a passenger in the aforesaid motor vehicle bearing New York State license plate registration number FGV9198.

42. That at all times, Interstate Highway 85, Northbound, at or about mile marker #24, in the County of Brunswick, State of Virginia, was and still is a public roadway.

43. That on the 1<sup>st</sup> day of July, 2012 while the defendant, JOSE A. AYBAR, JR., was operating the aforesaid "Ford Explorer" at or about the aforesaid roadway location, the subject "Ford Explorer" became unstable following the failure of the rear driver's side subject "Goodyear Wrangler AP tire", thereby causing and/or allowing and otherwise resulting in said subject motor vehicle to lose stability and control, and to overturn and roll over multiple times.

44. That said loss of control and subsequent rollover was due, in whole or in part, to a dynamic oversteer resulting from the rear or lateral instability of the subject "Ford Explorer", which was beyond the recovery capabilities of the defendant operator, JOSE A. AYBAR, JR., as a non-professional driver, which eventually caused the subject "Ford Explorer" vehicle's remaining tires to exceed their maximum cornering speed causing the vehicle in turn to roll due to its low Static Stability Factor ("SSF"), i.e. high center of gravity and comparatively narrow wheel base.

45. That at all times relevant herein, the defendants, and each of them, had a duty to properly manufacture, design, assemble, package, test, fabricate, analyze, inspect, merchandise, market, distribute, label, advertise, promote, market, sell, supply, warn, select, and repair the aforesaid subject "Ford Explorer" and/or the subject "Goodyear Wrangler AP tire" and/or aftermarket parts and/or installation guides.

46. That at all times relevant herein, the defendants, and each of them, knew or in the

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exercise of reasonable care should have known that the subject "Ford Explorer" and/or the subject "Goodyear Wrangler AP tire" and any component parts and/or aftermarket parts and/or installation guides were not properly manufactured, designed, assembled, packaged, tested, fabricated, analyzed, inspected, merchandised, marketed, distributed, labeled, advertised, promoted, sold, supplied, leased, rented, repaired, selected and provided inadequate warnings for the use and purpose for which it was intended and posed unreasonable risk of injury those person(s) who used it.

47. That the defendants, and each of them, so negligently and carelessly, manufactured, designed, assembled, packaged, tested, fabricated, analyzed, inspected, merchandised, marketed, distributed, labeled, advertised, marketed, promoted, sold, supplied, leased, rented, repaired, selected and provided inadequate warnings and provided the aforesaid subject Ford Explorer and each of its component parts and/or aftermarket parts and/or installation guides so that the same was a defective and dangerous product, unsafe for the respective use and purpose for which it was intended when used and driven as recommended or for reasonably foreseeable misuse by said defendants and each of them, in that said Subject Explorer and each of its component parts and/or aftermarket parts and/or installation guides during a reasonably foreseeable maneuver was unstable, dangerous and would rollover with roof crushing instability causing injury to its occupants, as alleged hereinabove.

48. That at all time relevant herein the aforesaid subject "Ford Explorer" and subject "Goodyear Wrangler AP tire" were unreasonably dangerous, unstable, hazardous and otherwise defective, during a reasonably foreseeable driving and/or driving maneuvers made with due care.

49. That said tire failure of the subject "Goodyear Wrangler AP tire", including, but not necessarily limited to complete tread separation and blowout was due, in whole or in part, to negligent design, fabrication and manufacture, improper and/or inadequate testing and inspecting, and failure to properly, sufficiently, diligently and/or adequately warning or instructing purchasers and/or third-party installers and/or end users of said product.

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**AS AND FOR A FIRST CAUSE OF ACTION**  
On behalf of plaintiff, ANA AYBAR  
(Negligence and/or Products Liability against all defendants)

50. That by reason of the foregoing, the plaintiff, ANNA AYBAR, was caused to be seriously injured, and to sustain painful, permanent, and disabling personal injuries requiring medical care and treatment.

51. That said injuries and related damages were caused by the negligence, carelessness and/or recklessness of the defendants herein, their agents, servants, employees and/or assigns, jointly and severally, and without any negligence on the part of the plaintiff contributing thereto.

52. That as a result of the foregoing, the plaintiff, ANNA AYBAR, sustained a Serious Injury as defined by Section §5102 of the Insurance Law of the State of New York.

53. That as a result of the foregoing, the plaintiff, ANNA AYBAR, sustained, and/or will continue to accrue, a loss greater than Basic Economic Loss as defined by Section §5102 of the Insurance Law of the State of New York.

54. That this action falls within one or more of the exceptions set forth in CPLR §1602. Plaintiff defers all issues of law to the Court for resolution at the time of trial.

55. That by reason of the foregoing, the Plaintiff, ANNA AYBAR, has been damaged in an amount to be determined by the court and/or a jury, in excess of the jurisdictional dollar limits of all lower courts which might otherwise have jurisdiction over the action.

**AS AND FOR A SECOND CAUSE OF ACTION**  
On behalf of plaintiff, ORLANDO GONZALEZ  
(Negligence and/or Products Liability against all defendants)

56. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in the

paragraphs of this Complaint marked and designated as "1" through "49" herein, with the same force and effect as though the same were set forth herein at length.

57. That by reason of the foregoing, the plaintiff, ORLANDO GONZALEZ, was caused to be seriously injured, and to sustain painful, permanent, and disabling personal injuries requiring medical care and treatment.

58. That said injuries and related damages were caused by the negligence, carelessness and/or recklessness of the defendants herein, their agents, servants, employees and/or assigns, jointly and severally, and without any negligence on the part of the plaintiff contributing thereto.

59. That as a result of the foregoing, the plaintiff, ORLANDO GONZALEZ, sustained a Serious Injury as defined by Section §5102 of the Insurance Law of the State of New York.

60. That as a result of the foregoing, the plaintiff, ORLANDO GONZALEZ, sustained, and/or will continue to accrue, a loss greater than Basic Economic Loss as defined by Section §5102 of the Insurance Law of the State of New York.

61. That this action falls within one or more of the exceptions set forth in CPLR §1602. Plaintiff defers all issues of law to the Court for resolution at the time of trial.

62. That by reason of the foregoing, the plaintiff, ORLANDO GONZALEZ, has been damaged in an amount to be determined by the court and/or a jury, in excess of the jurisdictional dollar limits of all lower courts which might otherwise have jurisdiction over the action.

**AS AND FOR A THIRD CAUSE OF ACTION**  
**On behalf of plaintiff, KEYLA CABRERA**  
**(Negligence and/or Products Liability against all defendants)**

63. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in the paragraphs of this Complaint marked and designated as "1" through "49" herein, with the same force and effect as though the same were set forth herein at length.

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64. That on July 1, 2012 the infant plaintiff, KEYLA CABRERA, was fourteen (14) years old, having been born on May 21, 1998. At present she is seventeen(17) years old, and brings suit by and through her legal guardian, Anna Aybar.

65. That by reason of the foregoing, the infant plaintiff, KEYLA CABRERA, was caused to be seriously injured, and to sustain painful, permanent, and disabling personal injuries requiring medical care and treatment.

66. That said injuries and related damages were caused by the negligence, carelessness and/or recklessness of the defendants herein, their agents, servants, employees and/or assigns, jointly and severally, and without any negligence on the part of the plaintiff contributing thereto.

67. That as a result of the foregoing, the plaintiff, KEYLA CABRERA, sustained a Serious Injury as defined by Section §5102 of the Insurance Law of the State of New York.

68. That as a result of the foregoing, the plaintiff, KEYLA CABRERA, sustained, and/or will continue to accrue, a loss greater than Basic Economic Loss as defined by Section §5102 of the Insurance Law of the State of New York.

69. That this action falls within one or more of the exceptions set forth in CPLR §1602. Plaintiff defers all issues of law to the Court for resolution at the time of trial.

70. That by reason of the foregoing, the plaintiff, KEYLA CABRERA, has been damaged in an amount to be determined by the court and/or a jury, in excess of the jurisdictional dollar limits of all lower courts which might otherwise have jurisdiction over the action.

**AS AND FOR A FOURTH CAUSE OF ACTION**  
On behalf of THE ESTATE OF NOELIA OLIVERAS  
(Negligence and/or Products Liability and Wrongful Death against all defendants)

71. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in the

paragraphs of this Complaint marked and designated as "1" through "49" herein, with the same force and effect as though the same were set forth herein at length.

72. That on July 1, 2012 NOELIA OLIVERAS, was forty two (42) years old, having been born on July 19, 1979. Her estate brings suit by and through JESENIA AYBAR, as duly appointed Administratrix of the ESTATE OF NOELIA OLIVERAS.

73. That by reason of the foregoing, NOELIA OLIVERAS, and the ESTATE OF NOELIA OLIVERAS, was caused to be seriously injured, and to sustain painful, permanent, and disabling personal injuries requiring medical care and treatment, and eventually and ultimately resulting in her death.

74. That said injuries and related damages were caused by the negligence, carelessness and/or recklessness of the defendants herein, their agents, servants, employees and/or assigns, jointly and severally, and without any negligence on the part of the plaintiff contributing thereto.

75. That as a result of the foregoing, the plaintiff, NOELIA OLIVERAS, and the ESTATE OF NOELIA OLIVERAS, sustained a Serious Injury as defined by Section §5102 of the Insurance Law of the State of New York.

76. That as a result of the foregoing, the plaintiff, NOELIA OLIVERAS, and the ESTATE OF NOELIA OLIVERAS, sustained, and/or will continue to accrue, a loss greater than Basic Economic Loss as defined by Section §5102 of the Insurance Law of the State of New York.

77. That this action falls within one or more of the exceptions set forth in CPLR §1602. Plaintiff defers all issues of law to the Court for resolution at the time of trial.

78. That by reason of the foregoing, the plaintiff, the ESTATE OF NOELIA OLIVERAS, has been damaged in an amount to be determined by the court and/or a jury, in excess of the jurisdictional dollar limits of all lower courts which might otherwise have jurisdiction over the

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action.

AS AND FOR A FIFTH CAUSE OF ACTION

**On behalf of THE ESTATE OF CRYSTAL CRUZ-AYBAR**

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

79. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in the paragraphs of this Complaint marked and designated as "1" through "49" herein, with the same force and effect as though the same were set forth herein at length.

80. That on July 1, 2012 CRYSTAL CRUZ-AYBAR was twenty-two (22) years of age, having been born on August 25, 1989. Her estate brings suit by and through JESENIA AYBAR, as duly appointed Administratrix of the ESTATE OF CRYSTAL CRUZ-AYBAR.

81. That by reason of the foregoing, CRYSTAL CRUZ-AYBAR, and the ESTATE OF CRYSTAL CRUZ-AYBAR, was caused to be seriously injured, and to sustain painful, permanent, and disabling personal injuries requiring medical care and treatment, and eventually and ultimately resulting in her death.

82. That said injuries and related damages were caused by the negligence, carelessness and/or recklessness of the defendants herein, their agents, servants, employees and/or assigns, jointly and severally, and without any negligence on the part of the plaintiff contributing thereto.

83. That as a result of the foregoing, the plaintiff, CRYSTAL CRUZ-AYBAR, and the ESTATE OF CRYSTAL CRUZ-AYBAR, sustained a Serious Injury as defined by Section §5102 of the Insurance Law of the State of New York.

84. That as a result of the foregoing, the plaintiff, CRYSTAL CRUZ-AYBAR, and the ESTATE OF CRYSTAL CRUZ-AYBAR, sustained, and/or will continue to accrue, a loss greater than Basic Economic Loss as defined by Section §5102 of the Insurance Law of the State of New York.

85. That this action falls within one or more of the exceptions set forth in CPLR §1602.

Plaintiff defers all issues of law to the Court for resolution at the time of trial.

86. That by reason of the foregoing, the plaintiff, the ESTATE OF CRYSTAL CRUZ-AYBAR, has been damaged in an amount to be determined by the court and/or a jury, in excess of the jurisdictional dollar limits of all lower courts which might otherwise have jurisdiction over the action.

**AS AND FOR A SIXTH CAUSE OF ACTION**

**On behalf of THE ESTATE OF TIFFANY CABRAL**

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

87. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in the paragraphs of this Complaint marked and designated as "1" through "49" herein, with the same force and effect as though the same were set forth herein at length.

88. That on July 1, 2012 TIFFANY CABRAL was an infant eight (8) years of age, having been born on January 22, 2004. Her estate brings suit by and through JESENIA AYBAR, as duly appointed Administratrix of the ESTATE OF TIFFANY CABRAL.

89. That by reason of the foregoing, TIFFANY CABRAL, and the ESTATE OF TIFFANY CABRAL, was caused to be seriously injured, and to sustain painful, permanent, and disabling personal injuries requiring medical care and treatment, and eventually and ultimately resulting in her death.

90. That said injuries and related damages were caused by the negligence, carelessness and/or recklessness of the defendants herein, their agents, servants, employees and/or assigns, jointly and severally, and without any negligence on the part of the plaintiff contributing thereto.

91. That as a result of the foregoing, the plaintiff, TIFFANY CABRAL, and the ESTATE OF TIFFANY CABRAL, sustained a Serious Injury as defined by Section §5102 of the Insurance

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Law of the State of New York.

92. That as a result of the foregoing, the plaintiff, TIFFANY CABRAL and the ESTATE OF TIFFANY CABRAL, sustained, and/or will continue to accrue, a loss greater than Basic Economic Loss as defined by Section §5102 of the Insurance Law of the State of New York.

93. That this action falls within one or more of the exceptions set forth in CPLR §1602. Plaintiff defers all issues of law to the Court for resolution at the time of trial.

94. That by reason of the foregoing, the plaintiff, the ESTATE OF TIFFANY CABRAL, has been damaged in an amount to be determined by the court and/or a jury, in excess of the jurisdictional dollar limits of all lower courts which might otherwise have jurisdiction over the action.

**AS AND FOR A SEVENTH CAUSE OF ACTION**

**On behalf of all plaintiffs  
(Strict Products Liability against defendant, FORD MOTOR COMPANY)**

95. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in the paragraphs of this Complaint marked and designated as "1" through "94" herein, with the same force and effect as though the same were set forth herein at length.

96. That the defendants knew, or should have known, that the subject "Ford Explorer" vehicle was to be purchased and used without inspection for defects by the foreseeable users of said vehicle, including but not limited to the plaintiffs herein.

97. That the subject "Ford Explorer" and each of its parts, component parts and/or aftermarket parts and/or installation guides mentioned herein was manufactured, designed, assembled, packaged, tested, warranted, fabricated, analyzed, inspected, merchandised, marketed, distributed, labeled, advertised, promoted, warranted, sold, supplied, leased, repaired, modified, aftermarket modified, adjusted, selected and/or used with inherent vices and defects both in design and manufacturing and by failure to warn (hereinafter "subject defects") which made it dangerous, hazardous and unsafe both for its intended use or for reasonably foreseeable misuses.

98. That the plaintiffs are informed and believe, and thereupon allege, that these "subject defects" include, but are not necessarily limited to, the following conditions:

A. Insufficient lateral and roll stability so as to keep the vehicle upright during cornering and handling by an ordinary driver during reasonably foreseeable roadway and traffic conditions, which Defendants at all times knew and were aware could and did cause substantial severe and life-threatening injuries and head and neck injuries when used in a reasonably foreseeable manner, and which Defendants, and each of them further knew and were aware, would fail to keep the vehicle upright during cornering and handling by an ordinary driver during reasonably foreseeable roadway and traffic conditions. Despite the availability to defendants of the technology to include AdvanceTrac, with RSC, Ford's electronic stability enhancement system, which includes four integrated components; the Anti-lock Brake system, Traction Control, Yaw Control, and a vehicle-roll motion sensor, defendants did not include such available roll stability control systems in the subject Ford Explorer, which systems would have prevented the roll over accident and the injuries sustained the plaintiff during the subject accident sequence;

B. SKATE, or loss of rear end directional control and high propensity to roll Over during foreseeable usage;

C. Lateral instability and rollover propensities;

D. Despite the defendants' awareness of the aforementioned dangers and defects, the defendants failed to give any warnings, and or adequate warnings, to the plaintiff and/or other purchasers and end users of the subject Ford Explorer of the aforementioned known dangers and defects.

99. That at all times relevant herein, the defendants, and each of them, knew and intended that said vehicles would be purchased, operated and/or used by members of the general public who would rely on the defendants to transmit any relevant warnings about said vehicles.

100. That the subject "Ford Explorer", and each of its component parts and/or after market parts and/or installation guides, was unsafe for its intended use and/or reasonably

foreseeable misuse by reason of defects in its design and/or manufacturing and/or failure to warn by said defendants, and each of them, in that when the subject Explorer and each of its component parts and/or after market parts and/or installation guides was used by the plaintiffs, on or about July 1, 2012 as intended and in a foreseeable manner, that the subject "Ford Explorer", during reasonably foreseeable operation and driving maneuvers, was dangerous and otherwise defective, and did suffer a loss of lateral control, and did roll over, which was the proximate and competent producing cause of the serious injuries and resulting damages set forth herein-above.

101. That as a direct and foreseeable and legal result of the conduct of the defendants, and the aforementioned defects inherent in the subject "Ford Explorer vehicle", control over said vehicle was lost by the defendant, JOSE A. AYBAR, JR., resulting in it rolling over and leaving the roadway following the failure of the subject "GOODYEAR Wrangler AP tire" mounted on the driver's side rear wheel, thereby causing the subject incident of July 1<sup>st</sup>, 2012 and the severe and serious injuries sustained by the plaintiffs herein.

**Allegations supporting Exemplary Damages**

102. That the plaintiffs further allege that the defendants, FORD MOTOR COMPANY and/or "JOHN DOES 1 THRU 30", and each of them, intentionally engaged in conduct which, with respect to the "subject defects" which plaintiffs allege herein were a legal cause of their loss, damages, serious injuries, disability, death, permanent disability and economic losses, exposed the plaintiffs and other end users of the subject "Ford Explorer" to serious potential danger known to the defendants in order to advance the defendants' pecuniary interests and thus acted with a conscious disregard for the safety of the plaintiff and other users of the subject "Ford Explorer", warranting an award of exemplary damages against the defendant.

103. That the defendants, FORD MOTOR COMPANY and "JOHN DOES 1-30" inclusive, knowingly and deliberately falsified test results, ignored and suppressed data, rejected changes recommended by their own engineers and their own marketing departments to increase

stability by lowering the center of gravity and increasing track width of the Ford Explorer motor vehicle and tire sizes, and further falsely mischaracterized adverse test data which these defendants knew at the time showed that their trucks, vans, suv's and pick-ups, including the subject "Ford Explorer" and similar vehicles, were prone to skid and to rollover and were defective and unsafe in real world rollover accidents thereby exposing members of the public and users of said vehicles to death and/or serious head and spinal injuries.

104. That by putting profit and public relations image in front of safety, Defendant FORD MOTOR COMPANY and/or "JOHN DOES 1-30", inclusive, produced a vehicle that was prone to handling and control problems, prone to loss of control and going out of control in response to foreseeable simple accident avoidance maneuvers when operated by the ordinary driver, stability problems that resulted in unnecessary rollovers.

105. That by reason thereof, the plaintiffs, ANNA AYBAR, ORLANDO GONZALEZ, KEYLA AYBAR, NOELIA OLIVERAS, CRYSTAL CRUZ-AYBAR and TIFFANY CABRAL, were caused to be injured, and to sustain painful, permanent, and disabling personal injuries requiring medical care and treatment, resulting in the death of the plaintiffs, NOELIA OLIVERAS, CRYSTAL CRUZ-AYBAR and TIFFANY CABRAL.

106. That by reason thereof, the plaintiffs herein, and each of them and/or their respective estates, have been damaged in a substantial sum of money in an amount to be determined by the court and/ or a jury, in excess of the jurisdictional limits of all lower courts which might otherwise have jurisdiction over the action.

**AS AND FOR AN EIGHTH CAUSE OF ACTION**

**On behalf of all plaintiffs**

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

107. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in the paragraphs of this Complaint marked and designated as "1" through "106" herein, with the same force and effect as though the same were set forth herein at length.

108. That the subject Goodyear Wrangler AP tire" was received by the defendant, JOSE A. AYBAR, JR., and ultimately used by the plaintiff's herein, in substantially the same condition in which it was sold, delivered, or otherwise placed in the stream of commerce by the defendant, THE GOODYEAR TIRE & RUBBER CO.

109. The subject tire was defective in design, manufacture and component materials and parts and in the inadequacy and inaccuracy of accompanying instructions, labels and warnings.

110. That the subject tire, as designed and constructed, was unfit for their intended use and was therefore unreasonably dangerous to its intended and anticipated user(s).

111. That the defendant, THE GOODYEAR TIRE & RUBBER CO., failed to warn others, including end users and/or installers, of said known defects and unfitness for the use on motor vehicles.

112. That as a result of the defective nature of the subject product the Plaintiffs herein, ANNA AYBAR, ORLANDO GONZALEZ, KEYLA AYBAR, NOELIA OLIVERAS, CRYSTAL CRUZ-AYBAR and TIFFANY CABRAL, were caused to be injured, and to sustain painful, permanent, and disabling personal injuries requiring medical care and treatment, resulting in the death of the plaintiffs, NOELIA OLIVERAS, CRYSTAL CRUZ-AYBAR and TIFFANY CABRAL.

113. For claims based upon the above, the Defendants are strictly liable for the Plaintiff's resulting injuries.

114. For claims based upon strict products liability, the defendant, THE GOODYEAR TIRE & RUBBER CO. and/or "JOHN DOES 1 thru 30" are liable to the Plaintiffs for compensatory damages in a sum greater than the jurisdictional limits of all lower Courts.

115. That by reason thereof, the plaintiffs herein, and each of them and/or their respective estates, have been damaged in a substantial sum of money in an amount to be determined by the court and/ or a jury, in excess of the jurisdictional limits of all lower courts which might otherwise have jurisdiction over the action.

**AS AND FOR A NINTH CAUSE OF ACTION**

**On behalf of all plaintiffs**

**(Breach of Warranty against Defendant, THE GOODYEAR TIRE & RUBBER CO.)**

116. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in the paragraphs of this Complaint marked and designated as "1" through "115" herein, with the same force and effect as though the same were set forth herein at length.

117. That the defendant, THE GOODYEAR TIRE & RUBBER CO., warranted by implication that the subject tire was 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.

118. That the defendant, THE GOODYEAR TIRE & RUBBER CO., made express representations about the quality, design, safety and fitness of its product as an inducement to encourage the purchase and use of its product.

119. That the defendant, THE GOODYEAR TIRE & RUBBER CO's., warranties with respect to the subject tire were breached when the subject tire and its component parts proved to be unsafe and not reasonably suitable and fit for the uses intended and expected.

120. That those breaches of express warranties by said defendant were the proximate cause of the Plaintiffs injuries as alleged in this complaint.

121. That the defendant, THE GOODYEAR TIRE & RUBBER CO., breached the warranties in that the product failed to perform and operate as promised, implied, expected and relied upon.

122. That as a direct result of Plaintiffs reliance on said Defendant's product, they sustained the injuries and other damages complained of herein.

123. For claims based upon breach of warranty the defendant, THE GOODYEAR TIRE & RUBBER CO., is liable to the Plaintiffs for compensatory damages in a sum greater than the jurisdictional limits of all lower Courts.

124. That by reason thereof, the plaintiffs, ANNA AYBAR, ORLANDO GONZALEZ, KEYLA AYBAR, NOELIA OLIVERAS, CRYSTAL CRUZ-AYBAR and TIFFANY CABRAL, were caused to be injured, and to sustain painful, permanent, and disabling personal injuries requiring medical care and treatment, and resulting in the death of the plaintiffs, NOELIA OLIVERAS, CRYSTAL CRUZ-AYBAR and TIFFANY CABRAL.

125. That by reason thereof, the plaintiffs herein, and each of them and/or their respective estates, have been damaged in a substantial sum of money in an amount to be determined by the court and/ or a jury, in excess of the jurisdictional limits of all lower courts which might otherwise have jurisdiction over the action.

**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. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in the paragraphs of this Complaint marked and designated as "1" through "125" herein, with the same force and effect as though the same were set forth herein at length.

127. That the defendant, THE GOODYEAR TIRE & RUBBER CO., 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.

128. That the defendant, THE GOODYEAR TIRE & RUBBER CO., 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.

129. That prior to the subject incident, the defendant were aware of prior incidents that demonstrated the need for further warnings and/or instructions.

130. 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.

131. 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 product in violation of the New York State General Business Law (NYS GBL) prohibition against unfair and deceptive trade practices pursuant to GBL §349.

132. That by reason thereof, the plaintiffs, ANNA AYBAR, ORLANDO GONZALEZ, KEYLA AYBAR, NOELIA OLIVERAS, CRYSTAL CRUZ-AYBAR and TIFFANY CABRAL, were caused to be injured, and to sustain painful, permanent, and disabling personal injuries requiring medical care and treatment, and resulting in the death of the plaintiffs, NOELIA OLIVERAS, CRYSTAL CRUZ-AYBAR and TIFFANY CABRAL.

133. That by reason thereof, the plaintiffs herein, and each of them and/or their respective estates, have been damaged in a substantial sum of money in an amount to be determined by the court and/ or a jury, in excess of the jurisdictional limits of all lower courts

which might otherwise have jurisdiction over the action.

**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. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in the paragraphs of this Complaint marked and designated as "1" through "133" herein, with the same force and effect as though the same were set forth herein at length.

135. That the defendant, ford motor company, concealed and/or failed to reveal material facts that were known, or should have been known, to them with respect to the subject 2002 "Ford Explorer" and similar vehicles, and their attendant hazards and risks described hereinabove.

136. That the defendant, FOR MOTOR COMPANY, 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 its above-described unreasonable propensity for loss of stability and rollover following rear axle tire failure.

137. That prior to the subject incident, the defendant were aware of prior incidents that demonstrated the need for further warnings, instructions and/or recall.

138. Despite defendants' awareness of the serious nature of said risks involved to end users of the 2002 Ford Explorer SUVs, 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 said vehicles, including but not limited to the subject "Ford Explorer".

139. Defendants' conduct in failing to issue a proper warning, instruction, recall, or take any other reasonable prophylactic action needlessly exposed the public to the latent dangers

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of its product in violation of the New York State General Business Law (NYS GBL) prohibition against unfair and deceptive trade practices pursuant to GBL §349.

140. That by reason thereof, the plaintiffs, ANNA AYBAR, ORLANDO GONZALEZ, KEYLA AYBAR, NOELIA OLIVERAS, CRYSTAL CRUZ-AYBAR and TIFFANY CABRAL, were caused to be injured, and to sustain painful, permanent, and disabling personal injuries requiring medical care and treatment, and resulting in the death of the plaintiffs, NOELIA OLIVERAS, CRYSTAL CRUZ-AYBAR and TIFFANY CABRAL.

141. That by reason thereof, the plaintiffs herein, and each of them and/or their respective estates, have been damaged in a substantial sum of money in an amount to be determined by the court and/ or a jury, in excess of the jurisdictional limits of all lower co

*WHEREFORE*, the plaintiffs demand judgment of the defendants, joint and severally, on each Cause of Action, in an amount of money to be determined by the court and/or a jury, together with interest, costs and disbursements of this action.

Dated: New York, New York  
June 30, 2015

*Yours, etc.*

*OMRANI & TAUB, P.C.*  
By: Michael A. Taub, Esq.  
*Attorney(s) for the Plaintiff*  
909 Third Ave., - 28<sup>th</sup> Floor  
New York, New York 10022  
(212) 599-5550

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STATE OF NEW YORK      }  
                                }  
                                }ss.:  
COUNTY OF NEW YORK    }

MICHAEL A. TAUB, ESQ., being duly sworn, affirms and says that:

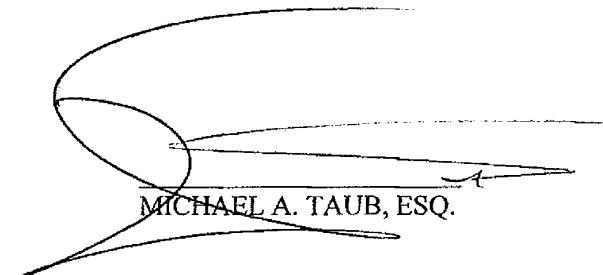
He is an attorney duly admitted to practice law in the State of New York and is a member of the firm of OMRANI & TAUB, P.C. in the within action; that he has read the foregoing **Summons and Verified Complaint** and knows the contents thereof, that the same is true to the best of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes them to be true.

The reason this verification is not made by the plaintiff is that plaintiff resides and is located outside the county wherein he maintains his principal office.

The source of deponent's information and the grounds for his belief, as to those matters stated upon information and belief, are statements furnished to deponent by plaintiff, personal investigation of this matter and from records in deponent's file.

I affirm the foregoing statements to be true under the penalties of perjury.

Dated: New York, New York  
June 30, 2015

  
MICHAEL A. TAUB, ESQ.

**FILED: QUEENS COUNTY CLERK 06/05/2018 04:22 PM**

NYSCEF DOC. NO. 97

INDEX NO. 703632/2017

RECEIVED NYSCEF: 06/05/2018

Index No.: **Year:**  
**SUPREME COURT OF THE STATE OF NEW YORK**  
**COUNTY OF QUEENS**

---

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

*Plaintiff(s),*  
 -against-

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

*Defendant(s).*

---

### **SUMMONS AND VERIFIED COMPLAINT**

#### **OMRANI & TAUB, P.C.**

Attorneys for: PLAINTIFF  
 909 THIRD AVENUE - 28<sup>TH</sup> FLOOR  
 NEW YORK, NEW YORK 10022  
 TEL: (212) 599-5550

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 in the annexed documents are not frivolous.

Dated: *June 30, 2015*  
 New York, New York

Signature .....  
 Printed Name: *MICHAELA TAUB, ESQ.*

PLEASE TAKE NOTICE

NOTICE OF ENTRY *that the within is a (certified) true copy of a*  
*entered in the office of the clerk of the within named Court on* *20* \_\_\_\_

NOTICE OF SETTLEMENT

*that an Order of which the within is a true copy will be presented for settlement to the*  
*Hon. at*  
*on 200\_\_\_\_, at M.*

#### **OMRANI & TAUB, P.C.**

Attorneys for: PLAINTIFF  
 909 THIRD AVENUE-28<sup>TH</sup> FLOOR  
 NEW YORK, NEW YORK 10022

**EXHIBIT D TO CALVERT AFFIRMATION -  
ANSWER OF THE GOODYEAR TIRE & RUBBER  
COMPANY, DATED AUGUST 12, 2015 [210 - 232]**

**FILED: QUEENS COUNTY CLERK 06/05/2018 04:22 PM**

NYSCEF DOC. NO. 98

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

NYSCEF DOC. NO. 10

INDEX NO. 703632/2017

RECEIVED NYSCEF: 06/05/2018 INDEX NO. 706909/2015

RECEIVED NYSCEF: 08/12/2015

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 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.

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**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

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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.

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**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.

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**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.

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**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.

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**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

Kevin W. Rethore, Esquire  
Peter J. Coufo, Esquire  
1251 Avenue of the Americas – 27th Floor  
New York, New York 10020  
Phone: (212) 335-4500  
Fax: (212) 335-4501  
*Attorneys for Defendant The Goodyear Tire & Rubber Co.*

FILED: QUEENS COUNTY CLERK 06/05/2018 04:22 PM

NYSCEF DOC. NO. 98

INDEX NO. 703632/2017

RECEIVED NYSCEF: 06/05/2018

TO: Michael A. Taub, Esquire  
Omrani & Taub , P.C.  
909 Third Avenue – 28th Floor  
New York, NY 10022  
*Attorney for Plaintiffs*

Jose Aybar, Jr.  
7208 Tonnelle Avenue  
North Bergen, NJ 07047  
*Defendant (no counsel of record)*

Peter J. Fazio, Esquire  
Aaronson Rappaport Feinstein & Deutsch, LLP.  
600 Third Avenue  
New York, NY 10016  
*Attorneys for Defendant Ford Motor Co.*

FILED: QUEENS COUNTY CLERK 06/05/2018 04:22 PM

NYSCEF DOC. NO. 98

INDEX NO. 703632/2017

RECEIVED NYSCEF: 06/05/2018

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.

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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  
1251 Avenue of the Americas – 27th Floor  
New York, New York 10020  
Phone: (212) 335-4500  
Fax: (212) 335-4501  
*Attorneys for Defendant The Goodyear Tire & Rubber Co.*

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TO: Michael A. Taub, Esquire  
Omrani & Taub , P.C.  
909 Third Avenue – 28th Floor,  
New York, NY 10022  
*Attorney for Plaintiff's*

Jose Aybar, Jr.  
7208 Tonnelle Avenue  
North Bergen, NJ 07047

Ford Motor Company  
c/o Peter J. Fazio, Esquire  
Aaronson Rappaport Feinstein & Deutsch, LLP.  
600 Third Avenue  
New York, NY 10016

**EXHIBIT E TO CALVERT AFFIRMATION -  
ANSWER OF FORD MOTOR COMPANY, DATED JUNE 8, 2016 [233 - 244]**

**FILED: QUEENS COUNTY CLERK 06/05/2018 04:22 PM**

NYSCEF DOC. NO. 99

**FILED: QUEENS COUNTY CLERK 06/08/2016 06:58 PM**

NYSCEF DOC. NO. 44

INDEX NO. 703632/2017

RECEIVED NYSCEF: 06/05/2018

INDEX NO. 706909/2015

RECEIVED NYSCEF: 06/08/2016

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

---

ANNA AYBAR, ORLANDO GONZALEZ,  
JESENIA AYBAR, as legal guardian on behalf of  
K.C., 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  
T.C., a deceased infant under the age of fourteen  
(14) years, and ANNA AYBAR, as Administratrix  
of the ESTATE OF CRYSTAL CRUZ-AYBAR

**VERIFIED ANSWER**

Index No. 706909/2015

**JURY DEMAND**

Plaintiffs,

- against -

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

Defendants.

---

Defendant, FORD MOTOR COMPANY, by its attorneys, AARONSON RAPPAPORT FEINSTEIN & DEUTSCH, LLP, as and for its answer to plaintiffs' Verified Complaint, respectfully shows to this Court and alleges upon information and belief:

1. Denies the knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph(s) "1", "2", "3", "5", "6", "7", "12", "13", "14", "21", "22", "23", "24", "25", "26", "27", "28", "29", "30", "31", "32", "33", "34", "35" and "42" and refer all questions of law to this Honorable Court.

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2. Denies the knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph(s) "4", "36", "37", "38", "39", "40", "41" and "49".
3. Denies the allegations contained in paragraph(s) "8" and "10" in the form alleged, except admits that FORD MOTOR COMPANY is a corporation duly organized and existing pursuant to the laws of the State of Delaware, with a principal place of business in Dearborn, Michigan.
4. Denies the allegations in the form allege except admits that Ford Motor Company is and was a foreign corporation with its principal place of business in Michigan and its State of incorporation in Delaware. Ford Motor Company admits it is registered to conduct business in New York and therefore, was authorized to conduct business in New York. Ford Motor Company, however, denies that it submitted itself to the personal jurisdiction of this Court as Ford Motor Company is not "at home" in New York, and the suit does not arise from any Ford conduct in New York.
5. Denies the allegations contained in paragraph(s) "15" and "16" in the form alleged, except admits that FORD MOTOR COMPANY, in part, designed and manufactured the 2002 Ford Explorer.
6. Denies the allegations contained in paragraph(s) "17", "18", "19" and "45" in the form alleged, except admits that FORD MOTOR COMPANY's 2002 Ford Explorer is fit for its intended purpose and denies knowledge or information sufficient to form a belief as to allegations against the other defendants.
7. Denies the allegations contained in paragraph(s) "11" and "20".
8. Denies the allegations contained in paragraph(s) "43", "44", "46", "47" and "48", as to FORD MOTOR COMPANY and denies knowledge or information sufficient to form a

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belief as to allegations as to the remaining defendants.

**AS AND FOR A FIRST CAUSE OF ACTION**  
**On behalf of plaintiff, ANA AYBAR**  
**(Negligence and/or Products Liability against all defendants).**

9. Denies the allegations contained in paragraph(s) "50" and "51" as to FORD MOTOR COMPANY and denies knowledge or information sufficient to form a belief as to allegations as to the remaining defendants and refers all questions of law to this Honorable Court.

10. Denies the allegations contained in paragraph(s) "52", "53" and "55", as to FORD MOTOR COMPANY and denies knowledge or information sufficient to form a belief as to allegations as to the remaining defendants.

11. Denies the knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph(s) "54" and refer all questions of law to this Honorable Court.

**AS AND FOR A SECOND CAUSE OF ACTION**  
**On behalf of plaintiff, ORLANDO GONZALEZ**  
**(Negligence and/or Products Liability against all defendants).**

12. In response to paragraph "56", repeats each admission or denial contained in paragraph(s) "1" through "55" herein as though fully set forth hereat.

13. Denies the allegations contained in paragraph(s) "57" and "58", as to FORD MOTOR COMPANY and denies knowledge or information sufficient to form a belief as to allegations as to the remaining defendants.

14. Denies the allegations contained in paragraph(s) "59", "60" and "62", as to FORD MOTOR COMPANY and denies knowledge or information sufficient to form a belief as to

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allegations as to the remaining defendants and refers all questions of law to this Honorable Court.

15. Denies the knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph(s) "61" and refer all questions of law to this Honorable Court.

**AS AND FOR A THIRD CAUSE OF ACTION**  
**On behalf of plaintiff, KEYLA CABRERA**  
**(Negligence and/or Products Liability against all defendants).)**

16. In response to paragraph "63", repeats each admission or denial contained in paragraph(s) "1" through "62" herein as though fully set forth hereat.

17. Denies the knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph(s) "64" and "69" and respectfully refers all questions of law to this Honorable Court.

18. Denies the allegations contained in paragraph(s) "65", "66", "67", "68" and "70", as to FORD MOTOR COMPANY and denies knowledge or information sufficient to form a belief as to allegations as to the remaining defendants and refers all questions of law to this Honorable Court.

**AS AND FOR A FOURTH CAUSE OF ACTION**  
**On behalf of THE ESTATE OF NOELIA OLIVERAS**  
**(Negligence and/or Products Liability and Wrongful Death against all defendants).)**

19. In response to paragraph "71", repeats each admission or denial contained in paragraph(s) "1" through "70" herein as though fully set forth hereat.

20. Denies the knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph(s) "72" and "77" and respectfully refers all questions of law to this Honorable Court.

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21. Denies the allegations contained in paragraph(s) "73", "74", "75", "76" and "78", as to FORD MOTOR COMPANY and denies knowledge or information sufficient to form a belief as to allegations as to the remaining defendants and refers all questions of law to this Honorable Court.

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

22. In response to paragraph "79", repeats each admission or denial contained in paragraph(s) "1" through "78" herein as though fully set forth hereat.

23. Denies the knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph(s) "80" and "85" and respectfully refers all questions of law to this Honorable Court.

24. Denies the allegations contained in paragraph(s) "81", "82", "83", "84 and "86", as to FORD MOTOR COMPANY and denies knowledge or information sufficient to form a belief as to allegations as to the remaining defendants and refers all questions of law to this Honorable Court.

**AS AND FOR A SIXTH CAUSE OF ACTION**  
**On behalf of THE ESTATE OF T.C.**  
**(Negligence and/or Products Liability and Wrongful Death against all defendants).**

25. In response to paragraph "87", repeats each admission or denial contained in paragraph(s) "1" through "86" herein as though fully set forth hereat.

26. Denies the knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph(s) "88" and "93" and respectfully refers all questions of law to this Honorable Court.

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27. Denies the allegations contained in paragraph(s) "89", "90", "91", "92" and "94", as to FORD MOTOR COMPANY and denies knowledge or information sufficient to form a belief as to allegations as to the remaining defendants and refers all questions of law to this Honorable Court.

**AS AND FOR A SEVENTH CAUSE OF ACTION**  
**On behalf of all plaintiffs**  
**(Strict Products Liability against defendant, FORD MOTOR COMPANY)**

28. In response to paragraph "95", repeats each admission or denial contained in paragraph(s) "1" through "94" herein as though fully set forth hereat.

29. Denies the allegations contained in paragraph(s) "96", as to FORD MOTOR COMPANY and denies knowledge or information sufficient to form a belief as to allegations as to the remaining defendants and refers all questions of law to this Honorable Court.

30. Denies the allegations contained in paragraph(s) "97" and "98 A, B, C and D" and "100".

31. Denies the allegations contained in paragraph(s) "99" in the form alleged, except admits that the 2002 Ford Explorer is fit for its intended purpose and denies knowledge or information sufficient to form a belief as to all allegations as to the remaining defendants.

32. Denies the allegations contained in paragraph(s) "101", as to FORD MOTOR COMPANY and denies knowledge or information sufficient to form a belief as to allegations as to the remaining defendants and refers all questions of law to this Honorable Court.

**Allegations Supporting Exemplary Damages**

33. Denies the allegations contained in paragraph(s) "102", "103", "104", "105 and "106", as to FORD MOTOR COMPANY and denies knowledge or information sufficient to form a belief as to allegations as to the remaining defendants and refers all questions of law to

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this Honorable Court.

**AS AND FOR AN EIGHTH CAUSE OF ACTION**

**On behalf of all plaintiffs**

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

34. In response to paragraph "107", repeats each admission or denial contained in paragraph(s) "1" through "106" herein as though fully set forth hereat.
35. Denies the knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph(s) "108", "109", "110" and "111" and respectfully refers all questions of law to this Honorable Court.
36. Denies the allegations contained in paragraph(s) "112", "113", "114" and "115", as to FORD MOTOR COMPANY and denies knowledge or information sufficient to form a belief as to allegations as to the remaining defendants and refers all questions of law to this Honorable Court.

**AS AND FOR A NINTH CAUSE OF ACTION**

**On behalf of all plaintiffs**

**(Breach of Liability against defendant, THE GOODYEAR TIRE & RUBBER CO.)**

37. In response to paragraph "116", repeats each admission or denial contained in paragraph(s) "1" through "115" herein as though fully set forth hereat.
38. Denies the knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph(s) "117", "118", "119", "121" and "123" and respectfully refers all questions of law to this Honorable Court.
39. Denies the allegations contained in paragraph(s) "120", "122", "124" and "125", as to FORD MOTOR COMPANY and denies knowledge or information sufficient to form a belief as to allegations as to the remaining defendants and refers all questions of law to this Honorable Court.

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**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.)

40. In response to paragraph "126", repeats each admission or denial contained in paragraph(s) "1" through "125" herein as though fully set forth hereat.

41. Denies the knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph(s) "127" and "128" and respectfully refers all questions of law to this Honorable Court.

42. Denies the allegations contained in paragraph(s) "129", "130", "131", "132" and "133", as to FORD MOTOR COMPANY and denies knowledge or information sufficient to form a belief as to allegations as to the remaining defendants and refers all questions of law to this Honorable Court.

**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.)

43. In response to paragraph "134", repeats each admission or denial contained in paragraph(s) "1" through "133" herein as though fully set forth hereat.

44. Denies the allegations contained in paragraph(s) "135", "136" and "137".

45. Denies the allegations contained in paragraph(s) "138", "139", "140" and "141", as to FORD MOTOR COMPANY and denies knowledge or information sufficient to form a belief as to allegations as to the remaining defendants and refers all questions of law to this Honorable Court.

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**AS AND FOR THE FIRST AFFIRMATIVE DEFENSE**

46. That the Court lacks personal jurisdiction over the answering defendant.

**AS AND FOR THE SECOND AFFIRMATIVE DEFENSE**

47. The liability of the answering defendant(s), if any, is limited pursuant to CPLR Article 16.

**AS AND FOR THE THIRD AFFIRMATIVE DEFENSE**

48. The cause(s) of action set forth in plaintiffs' complaint are barred inasmuch as the action was not instituted within the time period prescribed by all applicable Statute of Limitations.

**AS AND FOR THE FOURTH AFFIRMATIVE DEFENSE**

49. That the injuries claimed by plaintiffs in the complaint were cause in whole or in part, by the culpable conduct of the plaintiffs which either bars the claims completely or else diminishes the damages by the proportion that such culpable conduct of the plaintiffs bear to the total culpable conduct causing the injuries.

**AS AND FOR THE FIFTH AFFIRMATIVE DEFENSE**

50. Plaintiffs' cause of actions are barred by UCC §2.313.

**AS AND FOR THE SIXTH AFFIRMATIVE DEFENSE**

51. Plaintiffs' cause of actions are barred by UCC §2.314.

**AS AND FOR THE SEVENTH AFFIRMATIVE DEFENSE**

52. Plaintiffs' cause of actions are barred by UCC §2.315.

**AS AND FOR THE EIGHTH AFFIRMATIVE DEFENSE**

53. The complaint should be dismissed for failing to name all indispensable parties.

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**AS AND FOR THE NINTH AFFIRMATIVE DEFENSE**

54. The complaint should be dismissed and/or plaintiffs' potential recovery reduced proportionally because the accident and/or plaintiffs' injuries/death were caused by the acts of others who are not named as defendants in this case.

**AS AND FOR THE TENTH AFFIRMATIVE DEFENSE**

55. The defendant, FORD MOTOR COMPANY is entitled to an offset pursuant to GOL§15-108.

**AS AND FOR THE ELEVENTH AFFIRMATIVE DEFENSE**

56. The complaint should be dismissed because plaintiffs did not avail themselves of all of the safety restraints available in the vehicle including, but not limited to, the proper use of their safety belt.

**AS AND FOR THE TWELFTH AFFIRMATIVE DEFENSE**

57. The claim for exemplary/punitive damages should be dismissed because it fails to state a valid cause of action.

**AS AND FOR THE THIRTEENTH AFFIRMATIVE DEFENSE**

58. The claim for exemplary/punitive damages should be dismissed because it violates the United States Constitution and the New York State Constitution.

**AS AND FOR A CROSS CLAIM BY DEFENDANT, FORD MOTOR COMPANY**

59. That if the plaintiff was caused to sustain damages at the time and place set forth in Plaintiffs' complaint through any carelessness, recklessness, and negligence other than plaintiffs' own, then said damages arose in whole or in part from the active carelessness, negligence and/or breach of common law and/or statutory duty of the co-defendant, JOSE A. AYBAR, JR., with the negligence, if any, on the part of the answering defendant being passive,

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secondary, derivative and/or vicarious in nature. If any judgment is recovered herein by the plaintiff against the answering defendant, then the answering defendant will be entitled to contribution and/or complete indemnification from the co-defendant, JOSE A. AYBAR, JR. for the full amount of any recovery claimed or obtained by the plaintiff as against the defendant, FORD MOTOR COMPANY.

WHEREFORE, defendant, FORD MOTOR COMPANY, demands judgment dismissing the Complaint, together with the costs and disbursements of the within action.

Dated: New York, New York  
June 8, 2016

*Yours, etc.,*

BY: Peter J. Fazio  
AARONSON RAPPAPORT FEINSTEIN  
& DEUTSCH, LLP  
Attorneys for Defendant  
FORD MOTOR COMPANY  
Office & P.O. Address  
600 Third Avenue  
New York, New York 10016  
Tel.: (212) 593-6700

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**ATTORNEY'S VERIFICATION**

STATE OF NEW YORK )  
: ss:  
COUNTY OF NEW YORK )

PETER J. FAZIO, being duly sworn, deposes and says:

That I am a member in the firm of attorneys representing the defendant FORD MOTOR COMPANY.

That I have read the attached **VERIFIED ANSWER** and the same is true to my own belief, except as to matters alleged on information and belief, and as to those matters, I believe them to be true to the best of my knowledge.

My sources of information are a claims file containing statements, reports and records of investigation, investigators, parties and witnesses, with which I am fully familiar.

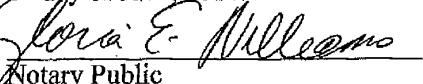
That this verification is made by me because my client does not reside within the county where I maintain my office.



PETER J. FAZIO

Sworn to before me this

8<sup>th</sup> day of June, 2016.



Notary Public

GLORIA E. WILLIAMS  
Notary Public, State of New York  
No. 01WI5031377  
Qualified in Queens County  
Commission Expires Aug. 1, 2018

**EXHIBIT F TO CALVERT AFFIRMATION -  
STIPULATION, DATED MARCH 8, 2016**

**FILED: QUEENS COUNTY CLERK 06/05/2018 04:22 PM**  
NYSCEF DOC. NO. 100

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Supreme Court Civil Term  
COUNTY OF QUEENS

Index No. 9344/14

Motion Calendar No. 3

Jose Aybar, et al Plaintiff )  
)  
)  
)  
)-against-  
U.S. Tire & Wheel, L.L.C. Defendant )  
)

**STIPULATION**

HON. Judge Butler  
DATE 3/8/16

- The parties to this action agree as follows:
- U.S. Tire's motion at current date is resolved in accordance with the three cases having index numbers, 9344/14, 706709/14, 706709/15 re joined for discovery only at this time without prejudice to settle the motion for consolidation and joint trial at a later date by any party.
  - NOT dated at index #, 9344/14 (redacted) (redacted) are hereby extended to June 16, 2017.

P.J. Canto  
March 12 2016  
CPLR § 124(1)(a) PLT  
for D. Aybar in A.D. 142

P.J. Canto  
PETER J. CANTO  
DLA Piper LLP (US)

9344/14 + 706709/15 Attys for Goodyear  
DLA Piper LLP (US)  
DTS ... received  
+06/06/16

AAPOL  
Form 3(h) (Temp) - 706709/15

**EXHIBIT G TO CALVERT AFFIRMATION -  
VARIOUS ORDERS [246 - 275]**

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**FILED: QUEENS COUNTY CLERK 05/31/2016 12:19 PM**  
NYSCEF DOC. NO. 43

INDEX NO. 706909/2015

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Short Form Order

**NEW YORK SUPREME COURT - QUEENS COUNTY**

Present: HONORABLE THOMAS D. RAFFAELE IA Part 13  
Justice

ANNA AYBAR, ORLANDO GONZALEZ, x  
JESENIA AYBAR, as legal guardian on behalf  
of KEYLA CABRAL, an infant over the age  
of fourteen (14) years, YESENIA AYBAR, as  
Administratrix of the ESTATE OF NOELIA  
OLIVARAS, 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  
Number 706909/2015

Motion  
Date January 13, 2016

Sequence No. 2

Plaintiffs,

-against-

JOSE A. AYBAR, JR., FORD MOTOR COMPANY,  
THE GOODYEAR TIRE & RUBBER CO., AND  
"JOHN DOES 1 THROUGH 30",

*FILED  
MAY 31 2016  
COUNTY CLERK  
QUEENS COUNTY*

Defendants.

x

The following papers numbered 1 to 9 read on this motion by defendant Goodyear Tire & Rubber Co. for an order pursuant to CPLR 3211(a)(8) dismissing the complaint against it.

**Papers  
Numbered**

Notice of Motion - Affidavits - Exhibits.....	1
Answering Affidavits - Exhibits.....	2-3
Reply Affidavits.....	4-9
Memoranda of Law .....	

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Upon the foregoing papers it is ordered that the motion is denied.

There are two related cases pending in the New York State Supreme Court, County of Queens: (1) *Aybar v The Goodyear Tire & Rubber Company*, Index No. 706908/15 and (2) *Aybar v Aybar*, Index No. 706909/15). Defendant Goodyear has submitted similar motions in both cases for the purpose of challenging basis jurisdiction. The Ford Motor Company has also submitted a similar motion challenging basis jurisdiction in *Aybar v Aybar*, Index No. 706909/15.

The plaintiffs in this action allege the following: In 2011, defendant Jose A. Aybar, Jr. (Jose), a resident of New York State, purchased a Ford Explorer motor vehicle equipped with a Goodyear Wrangler AP Tire. The Goodyear Tire & Rubber Co. (Goodyear), a foreign corporation registered with the New York State Department of State, manufactured the Wrangler tire. On July 1, 2012, as Jose operated the Ford Explorer northbound on Interstate Highway 85 in the County of Brunswick, Virginia, the vehicle became unstable because of the failure of the Wrangler tire, and the vehicle rolled over several times. Anna Aybar, Orlando Gonzalez, Kayla Cabral, and Noelia Oliveras, Crystal N. Cruz-Aybar, and Tiffany Cabral passengers in the vehicle, were injured and/or killed. On or about July 1, 2015, this action for, inter alia, negligence and products liability ensued.

The plaintiffs' attorney, relying on an internet search, further alleges: "Goodyear has maintained a 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,

Goodyear alleges the following: It is an Ohio corporation with its principal place of business located on East Market Street, Akron, Ohio. Goodyear manufactured the tire used on Jose's car in Union City, Tennessee in 2002, and at some point after the company first sold the tire, Jose acquired it and brought the used tire to New York where a party unrelated to Goodyear inspected it and installed it approximately two weeks before the accident.

Defendant Goodyear has moved to dismiss the complaint against it for lack of in personam jurisdiction, relying on *Daimler A.G. v Bauman* (134 S Ct. 746 [2014]). In *Bauman*, Argentinian residents brought an action against Daimler, A.G., a German

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corporation, under the Alien Tort Statute and the Torture Victims Protection Act, alleging that its wholly-owned Argentinian subsidiary helped state security forces to kidnap, detain, torture, and kill the plaintiffs or their relatives during Argentina's "Dirty War." The United States Supreme Court held that due process did not permit the exercise of general jurisdiction over the parent corporation, which had a subsidiary operating in California. The Supreme Court drew a distinction between specific jurisdiction and general jurisdiction. Specific jurisdiction concerns adjudicatory authority where the suit arises out of or relates to the defendant's contacts with the forum. General jurisdiction in substance concerns adjudicatory authority in cases arising anywhere, and "[t]he paradigm all-purpose forums for general jurisdiction are a corporation's place of incorporation and principal place of business \*\*\*." (*Daimler AG v Bauman, supra*, 749.) Another forum may assert general jurisdiction over foreign sister-state or foreign-country corporations to hear any and all claims against them when their affiliations with the state are so continuous and systematic as to render them essentially at home in the forum state. (*Daimler AG v Bauman, supra*.) General jurisdiction requires affiliations so continuous and systematic as to make the foreign corporation essentially at home in the forum state, i.e., similar to a domestic enterprise in that state. (*Daimler AG v Bauman, supra*.)

In determining whether a court of New York has personal jurisdiction over a non-domiciliary, a two-step analysis must be employed. First, the court must inquire whether there is a statute which confers jurisdiction over the non-domiciliary, and, second, the court must inquire whether the exercise of jurisdiction meets due process standards. (See, *Darrow v Deutschland*, 119 AD3d 1142; *Andrew Greenberg, Inc. v Sirtech Canada, Ltd.*, 79 AD3d 1419.)

In the case at bar, CPLR 302, "Personal jurisdiction by acts of non-domiciliaries," New York State's long arm statute, does not provide a basis for the assertion of in personam jurisdiction over defendant Goodyear, and *Bauman*'s effect on the statute need not be considered here. CPLR 302 applies to "a cause of action arising from any of the acts enumerated in this section." Goodyear manufactured and sold the tire out of state, and the plaintiffs sustained injury out-of state. (See, CPLR 302 (a)(1) and(3); *Jacobs v 201 Stephenson Corp.*, -AD3d-, -NYS3d- 2016 WL 1355693.)

CPLR 301, "Jurisdiction over persons, property or status," is New York's statute for general jurisdiction, and it provides that "[a] court may exercise such jurisdiction over persons, property, or status as might have been exercised heretofore." A foreign corporation is subject to the jurisdiction of New York courts under CPLR 301 "if it has engaged in such a continuous and systematic course of doing business here that a finding of its presence in this jurisdiction is warranted." (*Landoil Res. Corp. v Alexander & Alexander Servs., Inc.*, 77 NY2d 28, 33 [internal quotation marks and citations omitted].)

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In view of defendant Goodyear's extensive activities in this state since approximately 1924, a finding of "a continuous and systematic course of doing business" in New York can easily be made. "Even if this statutory standard is met, however, the Due Process Clause of the 14th Amendment limits the exercise of general jurisdiction to those cases in which a corporation's affiliations with the State are so continuous and systematic as to render [it] essentially at home in the forum State." (*Hood v Ascent Med. Corp.*, 2016 WL 1366920 [SDNY] [internal quotation marks and citations omitted]; see, *Goodyear Dunlop Tires Operations, S.A. v Brown*, 131 S.Ct. 2846. [HN 5: "foreign subsidiaries of United States tire manufacturer were not subject to general jurisdiction in North Carolina courts in action arising from bus accident in France allegedly caused by tire that was manufactured and sold abroad, although some of the tires made abroad by the foreign subsidiaries had reached North Carolina through the stream of commerce"].) There are New York State appellate cases decided after *Bauman* which have found a lack of general jurisdiction over the defendants. (See *R & M Kinastone, I.I.C. v Mega Int'l Commercial Bank Co.*, 131 AD3d 259; *D & R Glob. Selections, S.L. v Pineiro*, 128 AD3d 486; *Magdalena v Lins*, 123 AD3d 600.)

This court has concluded that neither *Goodyear Dunlop Tires Operations, S.A. v. Brown* (*supra*), nor *Daimler A.G. v. Bauman* (*supra*), nor the New York State appellate cases require the dismissal of the case at bar. In *Goodyear Dunlop Tires Operations, S.A. v. Brown* (*supra*), the estates of two minor North Carolina residents who died in a bus accident that occurred in France brought an action in a North Carolina state court against several subsidiaries of a United States tire manufacturer, including subsidiaries organized and operating in Luxembourg, Turkey, and France. The United States Supreme Court held that the North Carolina court lacked both specific and general jurisdiction over the foreign subsidiaries. The foreign subsidiaries were not registered to do business in North Carolina; had no place of business, employees, or bank accounts there; did not design, manufacture, or advertise their products in North Carolina; and did not solicit business in the state or sell or ship tires to North Carolina customers. The plaintiffs tried to argue that the North Carolina court had jurisdiction because "a small percentage of their [the subsidiaries'] tires were distributed in North Carolina by other Goodyear USA affiliates" (*Goodyear Dunlop Tires Operations, S.A. v Brown, supra*, 2848), and The North Carolina Court of Appeals decided that the state court had general jurisdiction over the foreign subsidiaries, whose tires had reached North Carolina through the stream of commerce. The United States Supreme Court reversed with an opinion that stated "[c]onfusing or blending general and specific jurisdictional inquiries," the North Carolina courts had erroneously found jurisdiction (*Goodyear Dunlop Tires Operations, S.A. v. Brown, supra*, 2851.). In reference to the tenuous relationship between the foreign subsidiaries and North Carolina, the Supreme Court stated: "A connection so limited between the forum and the foreign corporation, we hold, is an inadequate basis for the

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exercise of general jurisdiction." (*Goodyear Dunlop Tires Operations, S.A. v Brown, supra*, 2851.) In sharp contrast, the plaintiffs here have alleged without contradiction, inter alia, that defendant Goodyear has operated numerous stores in this state since approximately 1924 and has employed thousands of workers in those stores. Goodyear has an organization of facilities in this state engaged in day-to-day activities. Defendant Goodyear's activities within New York have been so continuous and systematic as to render it subject to the general jurisdiction of this state's courts. This court notes that in *Goodyear Dunlop Tires Operations, S.A. v Brown, (supra)*, the parent corporation, which operated plants in North Carolina and regularly engaged in commercial activity there, did not contest the North Carolina court's jurisdiction over it.

The New York State appellate cases decided after *Bauman* which found a lack of general jurisdiction over the defendants are distinguishable from the case at bar because of the level of Goodyear's activities within New York. In *B & M Kingstone, LLC v Mega Int'l Commercial Bank Co. (supra, 264)*, the Appellate Division, First Department, held that "under *Daimler*, New York does not have general jurisdiction over Mega's worldwide operations," the Mega International Commercial Bank Company being an international banking corporation, organized under the laws of Taiwan, with its principal place of business located there, and having 128 branches worldwide, only one of which was in New York. But the court found that there was jurisdiction (as discussed below, apparently not general jurisdiction) to compel compliance with information subpoenas arising from the bank's registration with the Superintendent of the Department of Financial Services and filing of a written instrument appointing the superintendent as an agent for service of process. "Mega consented to the necessary regulatory oversight in return for permission to operate in New York, and therefore is subject to jurisdiction requiring it to comply with the appropriate Information Subpoenas \*\*\*." (*B & M Kingstone, LLC v Mega Int'l Commercial Bank Co., supra, 265* [internal quotation marks and citation omitted].) In *D & R Glob. Selections, S.L. v Pineiro (supra)*, the Appellate Division, First Department held that the New York court did not have general jurisdiction pursuant to CPLR 301 or specific jurisdiction pursuant to CPLR 302 over a Spanish winery, but the appellate court mentioned only the winery's visits to this state to promote its products as a contact with New York. In *Magdalena v Lins (supra)*, the Appellate Division, First Department held that the New York court had no jurisdiction over the defendants, mentioning only an apartment in this state which a defendant owned but did not live in (his daughters did) as the only contact with New York.

In view of the foregoing, this court finds that defendant Goodyear's activities with the State of New York have been so continuous and systematic that the company is essentially at home here. (See, *Daimler A.G. v Bauman, supra*.)

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There is another reason for finding general jurisdiction over defendant Goodyear. In New York, it has long been the rule that a foreign corporation may consent to general jurisdiction in this state under CPLR 301 by registering as a foreign corporation and designating a local agent for service of process. (*See, Bagdon v Philadelphia & Reading Coal & Iron Co.*, 217 NY 432.) “[W]here a foreign corporation has expressly appointed the New York Secretary of State (or some other person within the state) as its agent for service of process, the plaintiff's cause of action need not have arisen out of any business conducted by the foreign corporation in New York.” (Alexander, Practice Commentaries, McKinney's Con. Law of NY, Book 7B, C301:6[c], p21.) After *Bauman*, the courts have split on the question of the constitutional validity of basing general jurisdiction on such registration statutes. (*See, Alexander, 2015 Practice Commentaries, McKinney's Con. Law of NY, Book 7B, C301:8[c].*) There is no New York state court appellate authority directly on point. In *B & M Kingstone, LLC v Mega Int'l Commercial Bank Co.* (*supra*), the appellate court relied on Banking Law §200 which provides in substance that, *inter alia*, no foreign banking corporation shall conduct business in this state unless it filed with the Superintendent of Banking a written instrument appointing him as its agent “upon whom all process in any action or proceeding against it on a cause of action arising out of a transaction with its New York agency or agencies or branch or branches, may be served with the same force and effect as if it were a domestic corporation and had been lawfully served with process within the state \*\*\*.” (Emphasis added.) Banking Law §200 concerns a limited jurisdiction, while other state registration statutes have been interpreted as a conferring general jurisdiction over a foreign corporation. The court notes parenthetically Alexander's observation that “[i]t would have been helpful if the [Mega] court had clarified how the suit at issue – a special proceeding to enforce an information subpoena–arose out of a transaction with the New York branch.” (Alexander, Practice Commentaries [2015], McKinney's Cons Laws of NY, Book 7B, p5.)

Other registration and/or appointment statutes, e.g., Business Corp. Law §§ 304 and 1304, have been interpreted as conferring general jurisdiction over foreign corporations. (*See, e.g., Doubet LLC v Trustees of Columbia Univ. in City of New York*, 99 AD3d 433; *Augsbury Corp. v Petrokey Corp.*, 97 AD2d 173; *Bailen v Air & Liquid Systems Corp.*, 2013 WL 1369452 [N.Y.Sup].) *Bauman* does not expressly address general jurisdiction based on such statutes, but the case's implication for such jurisdiction has become a matter of controversy. This court agrees with those courts that hold that general jurisdiction based on consent through registration and appointment survives *Bauman*. “When,\*\*\* the basis for jurisdiction is the voluntary compliance with a state's registration statute, which has long and unambiguously been interpreted as constituting consent to general jurisdiction in that state's courts, the corporation can have no uncertainty as to the jurisdictional consequences of its actions.” (*Acorda Therapeutics, Inc. v Mylan Pharm. Inc.*, 18 F Supp 3d 372, 391 [D. Del. 2013], aff'd on

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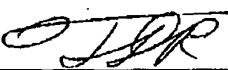
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2016 WL 1077048 [Mar. 18, 2016].) In New York, foreign corporations have been on notice since 1916 that registration to conduct business in this state amounts to consent to general jurisdiction here, and they can always cancel their registration if their business interests lead them to do so.

The instant motion lacks merit. This court has jurisdiction over defendant Goodyear because of the degree of its systematic and continuous activity in New York and because of its registration to do business in New York.

Dated: May 25 2016

  
THOMAS D. RAFFAELE, J.S.C.

FILED  
MAY 31 2016  
COUNTY CLERK  
QUEENS COUNTY

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**FILED: QUEENS COUNTY CLERK 05/31/2016 12:15 PM**

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INDEX NO. 706909/2015

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## Short Form Order

## NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE THOMAS D. RAFFAELE IA Part 13  
Justice

X

ANNA AYBAR, ORLANDO GONZALEZ, JESENIA  
 AYBAR, as legal guardian on behalf of  
 K.C., 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  
 T.C., a deceased infant under the age of  
 fourteen (14) years, and ANNA AYBAR, as  
 Administratrix of the ESTATE OF CRYSTAL  
 CRUZ-AYBAR,

Index  
 Number:  
 706909/2015 of  
 Motion  
 Date: 12/9/15  
 Motion Seq. No. 1

Plaintiffs,

-against-

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

Defendants.

*FILED*  
*MAY 31 2016*  
*COUNTY CLERK*  
*QUEENS COUNTY*

X

The following papers numbered 1 to 9 read on this motion by defendant, Ford Motor Company, for an order, pursuant to CPLR Section 3211(A)(8), dismissing plaintiffs' verified complaint, in its entirety as against Ford Motor Company, (Ford), on the grounds that there is no personal jurisdiction and directing the Clerk of the Court to enter judgment accordingly on behalf of Ford Motor Company and granting such other and further relief as this court deems just and proper.

Papers  
Numbered

Notice of Motion - Affidavits - Exhibits.....	1-4
Affirmation in Opposition.....	5-7
Reply Affirmation.....	8-9

Defendant, Ford's motion to dismiss is denied in its entirety for the reasons stated herein.

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The essential argument proffered by defendant, Ford is that Ford is not subject to personal jurisdiction in New York under the long-arm statute; since Ford neither committed a tort in New York, because the Explorer was built and designed outside the state and that defendant did not cause injury in the state because the subject accident which caused the death of three of the seven passengers traveling in the Ford 2002 Explorer occurred in the state of Virginia. Defendant Ford relies on the recent seminal case of *Daimler A.G. v Bauman*, 134 S.Ct. 746, 762 [2014] which articulated a new standard of presence jurisdiction, according to CPLR Section 301. This new standard is whether the foreign corporation's affiliations with the state are so "continuous and systematic" as to render it essentially "at home" in the forum state.

A review of the complaint shows that plaintiffs' causes of action against defendant, Ford sound in negligence, products liability, strict product liability and wrongful death (see Verified Complaint, dated June 30, 2015). The complaint specifically alleges that on July 1, 2012, while co-defendant owner and operator was driving his used 2002 Ford Explorer in Virginia, the vehicle became "unstable following the failure of the rear driver's side subject 'Goodyear Wrangler AP tire' thereby causing and/or allowing and otherwise resulting in said subject motor vehicle losing stability and control, and to overturn and roll over multiple times" (*id* at paragraph 43). Plaintiffs further allege that the 2002 Explorer had "certain defective, unsafe, and defective condition(s) in the design, manufacture, fabrication and/or assembly" (*id* at paragraph 20).

On July 1, 2012, as defendant Jose Aybar operated the Ford Explorer northbound on Interstate Highway 85 in the County of Brunswick, Virginia, the vehicle became unstable because of the failure of the Wrangler tire, and the vehicle rolled over several times. Anna Aybar, Orlando Gonzalez, Kayla Cabral, Noelia Oliveras, Crystal N. Cruz-Aybar and Tiffany Cabral passengers in the vehicle, were injured and/or killed. On or about July 1, 2012 this action for, *inter alia*, negligence, products liability and wrongful death ensued.

As stated above, defendant Ford moves to dismiss the complaint against it for lack of *in personam* jurisdiction, relying on *Daimler A.G. v Bauman*, 134 S Ct. 746 [2014]). For the reasons set forth herein, this court finds that Ford's reliance on *Daimler A.G. v Bauman* is misplaced.

It is undisputed that the 2002 Ford Explorer was purchased

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in New York and used primarily 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 on the 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 Department of State as an active foreign business corporation.

Defendant, Ford moves to dismiss the complaint against it for lack of *in personam* jurisdiction, relying on *Daimler AG v Bauman*, 134 S Ct. 746 [2014]). In *Bauman*, Argentinian residents brought an action against Daimler, ..., a German corporation, under the Alien Tort Statute and the Torture Victims Protection Act, alleging that its wholly-owned Argentinian subsidiary helped state security forces to kidnap, detain, torture, and kill the plaintiffs or their relatives during Argentina's "Dirty War." The United States Supreme Court held that due process did not permit the exercise of general jurisdiction over the parent corporation, which had a subsidiary operating in California. The Supreme Court drew a distinction between specific jurisdiction and general jurisdiction. Specific jurisdiction concerns adjudicatory authority where the suit arises out of or relates to the defendant's contacts with the forum.

General jurisdiction in substance concerns adjudicatory authority in cases arising anywhere, and "[t]he paradigm all-purpose forums for general jurisdiction are a corporation's place of incorporation and principal place of business \*\*\*." (*Daimler AG v Bauman*, *supra*, 749.) Another forum may assert general jurisdiction over foreign sister-state or foreign-country corporations to hear any and all claims against them when their affiliations with the state are so continuous and systematic as to render them essentially at home in the forum state. (*Daimler AG v Bauman*, *supra*.) General jurisdiction requires affiliations so continuous and systematic as to make the foreign corporation essentially at home in the forum state, i.e., similar to a domestic enterprise in that state. *Id.*

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*AG v Bauman, supra.)*

In determining whether a court of New York has personal jurisdiction over a non-domiciliary, a two-step analysis must be employed. First, the court must inquire whether there is a statute which confers jurisdiction over the non-domiciliary, and, second, the court must inquire whether the exercise of jurisdiction meets due process standards. (See *Darrow v Deutschland*, 119 AD3d 1142; *Andrew Greenberg, Inc. v Sirtech Canada, Ltd.*, 79 AD3d 1419.)

In the case at bar, CPLR 302, "Personal jurisdiction by acts of non-domiciliaries," New York State's long arm statute, does not provide a basis for the assertion of in personam jurisdiction over defendant Ford. CPLR 302 (a)(3) provides for the exercise of jurisdiction over a foreign defendant who commits a tortious act outside the state which causes the injury within the state. This statute does not apply to the case at bar.

CPLR 301 reads in relevant part: "Jurisdiction over persons, property or status," is New York's statute for general jurisdiction, and it provides that "[a] court may exercise such jurisdiction over persons, property, or status as might have been exercised heretofore." A foreign corporation is subject to the jurisdiction of New York courts under CPLR 301 "if it has engaged in such a continuous and systematic course of doing business here that a finding of its presence in this jurisdiction is warranted." (*Landoil Res. Corp. v Alexander & Alexander Servs., Inc.*, 77 NY2d 28, 33 [internal quotation marks and citations omitted]). In view of defendant Ford's extensive activities in this state since approximately 1920, a finding of "a continuous and systematic course of doing business" in New York can easily be made. "Even if this statutory standard is met, however, the Due Process Clause of the 14th Amendment limits the exercise of general jurisdiction to those cases in which a corporation's affiliations with the State are so continuous and systematic as to render [it] essentially at home in the forum State." (*Hood v Ascent Med. Corp.*, 2016 WL 1366920 [SDNY] [internal quotation marks and citations omitted]; see, *Goodyear Dunlop Tires Operations, S.A. v Brown*, 131 S.Ct. 2846. [HN 5: "foreign subsidiaries of United States tire manufacturer were not subject to

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general jurisdiction in North Carolina courts in action arising from a bus accident in France allegedly caused by a tire that was manufactured and sold abroad, although some of the tires made abroad by the foreign subsidiaries had reached North Carolina through the stream of commerce".) There are New York State appellate cases decided after *Bauman* which have found a lack of general jurisdiction over the defendants. (See, *B & M Kingstone, LLC v Mega Int'l Commercial Bank Co.*, 131 AD3d 259; *D & R Glob. Selections, S.L. v Pineiro*, 128 AD3d 486; *Magdalena v Lins*, 123 AD3d 600.)

This court has concluded that neither *Goodyear Dunlop Tires Operations, S.A. v Brown* (*supra*), nor *Daimler A.G. v Bauman* (*supra*), nor the New York State appellate cases require the dismissal of the case at bar. In *Goodyear Dunlop Tires Operations, S.A. v. Brown* (*supra*), the estates of two minor North Carolina residents who died in a bus accident that occurred in France brought an action in a North Carolina state court against several subsidiaries of a United States tire manufacturer, including subsidiaries organized and operating in Luxembourg, Turkey, and France. The United States Supreme Court held that the North Carolina court lacked both specific and general jurisdiction over the foreign subsidiaries. The foreign subsidiaries were not registered to do business in North Carolina; had no place of business, employees, or bank accounts there; did not design, manufacture, or advertise their products in North Carolina; and did not solicit business in the state or sell or ship tires to North Carolina customers. The plaintiffs tried to argue that the North Carolina court had jurisdiction because "a small percentage of their [the subsidiaries'] tires were distributed in North Carolina by other Goodyear USA affiliates" (*Goodyear Dunlop Tires Operations, S.A. v Brown, supra*, 2848), and The North Carolina Court of Appeals decided that the state court had general jurisdiction over the foreign subsidiaries, whose tires had reached North Carolina through the stream of commerce. The United States Supreme Court reversed with an opinion that stated "[c]onfusing or blending general and specific jurisdictional inquiries," the North Carolina courts had erroneously found jurisdiction (*Goodyear Dunlop Tires Operations, S.A. v Brown, supra*, 2851.) In reference to the tenuous relationship between the foreign subsidiaries and North

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Carolina, the Supreme Court stated: "A connection so limited between the forum and the foreign corporation, we hold, is an inadequate basis for the exercise of general jurisdiction." (*Goodyear Dunlop Tires Operations, S.A. v Brown, supra*, 2851.)

In sharp contrast, plaintiff Aybar has alleged without contradiction, *inter alia*, that the 2002 Ford Explorer was purchased in New York and used primarily in New York by co-defendant Jose Aybar. The subject vehicle was also registered and licensed in New York. Ford has an organization of facilities in this state engaged in day-to-day activities. Ford also has many franchises across the state. Defendant Ford's activities within New York have been so continuous and systematic as to render it subject to the general jurisdiction of this state's courts. Parenthetically, this court notes that in *Goodyear Dunlop Tires Operations, S.A. v Brown, (supra)*, the parent corporation, which operated plants in North Carolina and regularly engaged in commercial activity there, did not contest the North Carolina court's jurisdiction over it.

The New York State appellate cases decided after *Bauman* which found a lack of general jurisdiction over the defendants are distinguishable from the case at bar because of the level of Ford's activities within New York. In *B & M Kingstone, LLC v Mega Int'l Commercial Bank Co. (supra, 264)*, the Appellate Division, First Department, held that "under *Daimler*, New York does not have general jurisdiction over Mega's worldwide operations," the Mega International Commercial Bank Company being an international banking corporation, organized under the laws of Taiwan, with its principal place of business located there, and having 128 branches worldwide, only one of which was in New York. But the court found that there was jurisdiction (as discussed below, apparently not general jurisdiction) to compel compliance with information subpoenas arising from the bank's registration with the Superintendent of the Department of Financial Services and filing of a written instrument appointing the superintendent as an agent for service of process. "Mega consented to the necessary regulatory oversight in return for permission to operate in New York, and therefore is subject to jurisdiction requiring it to comply with the appropriate Information Subpoenas

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\*\*\*." (*B & M Kingstone, LLC v Mega Int'l Commercial Bank Co.*, *supra*, 265 [internal quotation marks and citation omitted].) In *D & R Glob. Selections, S.L. v Pineiro* (*supra*), the Appellate Division, First Department held that the New York court did not have general jurisdiction pursuant to CPLR 301 or specific jurisdiction pursuant to CPLR 302 over a Spanish winery, but the appellate court mentioned only the winery's visits to this state to promote its products as a contact with New York. In *Magdalena v Lins* (*supra*), the Appellate Division, First Department held that the New York court had no jurisdiction over the defendants, mentioning only an apartment in this state which a defendant owned but did not live in (his daughters did) as the only contact with New York.

In view of the foregoing, this court finds that defendant Ford's activities with the State of New York have been so continuous and systematic that the company is essentially at home here. (See, *Daimler A.G. v Bauman*, *supra*.)

There is another reason for finding general jurisdiction over defendant Ford. In New York, it has long been the rule that a foreign corporation may consent to general jurisdiction in this state under CPLR 301 by registering as a foreign corporation and designating a local agent for service of process. (See, *Bagdon v Philadelphia & Reading Coal & Iron Co.*, 217 NY 432.) "[W]here a foreign corporation has expressly appointed the New York Secretary of State (or some other person within the state) as its agent for service of process, the plaintiff's cause of action need not have arisen out of any business conducted by the foreign corporation in New York." (Alexander, Practice Commentaries, *McKinney's Con. Law of NY*, Book 7B, C301:6[c], p21.) After *Bauman*, the courts have split on the question of the constitutional validity of basing general jurisdiction on such registration statutes. (See, Alexander, 2015 Practice Commentaries, *McKinney's Con. Law of NY*, Book 7B, C301:8[c].) There is no New York state court appellate authority directly on point. In *B & M Kingstone, LLC v Mega Int'l Commercial Bank Co.* (*supra*), the appellate court relied on Banking Law §200 which provides in substance that, *...no foreign banking corporation shall conduct business in this state unless it filed with the*

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Superintendent of Banking a written instrument appointing him as its agent "upon whom all process in any action or proceeding against it on a cause of action arising out of a transaction with its New York agency or agencies or branch or branches, may be served with the same force and effect as if it were a domestic corporation and had been lawfully served with process within the state \*\*\*." (Emphasis added.) Banking Law §200 concerns a limited jurisdiction, while other state registration statutes have been interpreted as a conferring general jurisdiction over a foreign corporation. The court notes parenthetically Alexander's observation that "[i]t would have been helpful if the [Mega] court had clarified how the suit at issue - a special proceeding to enforce an information subpoena- arose out of a transaction with the New York branch." (Alexander, Practice Commentaries [2015], McKinney's Cons Laws of NY, Book 7B, p5.)

Other registration and/or appointment statutes, e.g., Business Corp. Law §§304 and 1304, have been interpreted as conferring general jurisdiction over foreign corporations. (See, e.g., *Doubet LLC v Trustees of Columbia Univ. in City of New York*, 99 AD3d 433; *Augsbury Corp. v Petrokey Corp.*, 97 AD2d 173; *Bailen v Air & Liquid Systems Corp.*, 2013 WL 1369452 [N.Y.Sup].) Bauman does not expressly address general jurisdiction based on such statutes, but the case's implication for such jurisdiction has become a matter of controversy. This court agrees with those courts that hold that general jurisdiction based on consent through registration and appointment survives Bauman. "When, \*\*\* the basis for jurisdiction is the voluntary compliance with a state's registration statute, which has long and unambiguously been interpreted as constituting consent to general jurisdiction in that state's courts, the corporation can have no uncertainty as to the jurisdictional consequences of its actions." (*Acorda Therapeutics, Inc. v Mylan Pharm. Inc.*, 78 F Supp 3d 572, 591 [D. Del. 2015], aff'd on other grounds,, 2016 WL 1077048 [Mar. 18, 2016].) In New York, foreign corporations have been on notice since 1916 that registration to conduct business in this state amounts to consent to general jurisdiction here, and they can always cancel their registration if their business interests lead them to do so.

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The instant motion lacks merit. This court has jurisdiction over defendant Ford because of the degree of its systematic and continuous activity in New York and because of its registration to do business in New York.

Dated: May 25, 2016

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Thomas D. Raffaele, J.S.C.

FILED  
MAY 31 2016  
COUNTY CLERK  
QUEENS COUNTY

**FILED: QUEENS COUNTY CLERK 06/05/2018 04:22 PM**

NYSCEF DOC. NO. 101

INDEX NO. 703632/2017

RECEIVED NYSCEF: 06/05/2018

**FILED: QUEENS COUNTY CLERK 05/31/2016 12:16 PM**

NYSCEF DOC. NO. 31

INDEX NO. 706908/2015

RECEIVED NYSCEF: 05/31/2016

## Short Form Order

## NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE THOMAS D. RAFFAELE IA Part 13  
Justice

JOSE AYBAR,

x

Index

Number 706908/2015

Plaintiff,

Motion

Date January 11, 2016

-against-

Motion Sequence No. 1

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

Defendants.

The following papers numbered 1 to 9 read on this motion by defendant Goodyear Tire &amp; Rubber Co. for an order pursuant to CPLR 3211(a)(8) dismissing the complaint against it.

**FILED**  
MAY 31 2016  
COUNTY CLERK  
QUEENS COUNTY

Papers  
Numbered

Notice of Motion - Affidavits - Exhibits.....	1
Answering Affidavits - Exhibits.....	2
Reply Affidavits.....	3
Memoranda of Law .....	

Upon the foregoing papers it is ordered that the motion is denied.

There are two related cases pending in the New York State Supreme Court, County of Queens: (1) *Aybar v The Goodyear Tire & Rubber Company*, Index No. 706908/15 and (2) *Aybar v Aybar*, Index No. 706909/15. Defendant Goodyear has submitted similar motions in both cases for the purpose of challenging basis jurisdiction. The Ford Motor Company has also submitted a similar motion challenging basis jurisdiction in *Aybar v Aybar*, Index No. 706909/15.

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In 2011, plaintiff Jose Aybar, a resident of New York State, purchased a used Ford Explorer motor vehicle equipped with a Goodyear Wrangler AP Tire from Jose Velez, another resident of this state. The Goodyear Tire & Rubber Co. (Goodyear), a foreign corporation registered with the New York State Department of State, manufactured the Wrangler tire. On July 1, 2012, as Jose operated the Ford Explorer northbound on Interstate Highway 85 in the County of Brunswick, Virginia, the vehicle allegedly became unstable because of the failure of the Wrangler tire, and the vehicle rolled over several times. Anna Aybar, Orlando Gonzalez, Kayla Cabral, and Noelia Oliveras, Crystal N. Cruz-Aybar, and Tiffany Cabral passengers in the vehicle, were injured and/or killed. On or about July 1, 2015, this action for, *inter alia*, negligence and strict products liability ensued.

The plaintiff's attorney, relying on an internet search, further alleges: (1) Goodyear has owned and operated a chemical plant in Houghtaling, New York since the 1940's; (2) Goodyear has been the exclusive supplier of tires and related products for the New York City Transit Authority bus fleet since 1987; (3) Goodyear maintains at least 180 authorized Goodyear dealers for its products within New York State; (4) Goodyear owns and operates numerous service centers in New York State which employ many residents of the state. Defendant Goodyear does not deny these allegations.

Goodyear alleges the following: It is an Ohio corporation with its principal place of business located on East Market Street, Akron, Ohio. Goodyear manufactured the tire used on Jose's car in Union City, Tennessee in 2002, and at some point after the company first sold the tire, Jose acquired it and brought the used tire to New York where a party unrelated to Goodyear inspected it and installed it approximately two weeks before the accident.

Defendant Goodyear has moved to dismiss the complaint against it for lack of in personam jurisdiction, relying on *Daimler A.G. v Bauman* (134 S Ct. 746 [2014]). In *Bauman*, Argentinian residents brought an action against Daimler, A.G., a German corporation, under the Alien Tort Statute and the Torture Victims Protection Act, alleging that its wholly-owned Argentinian subsidiary helped state security forces to kidnap, detain, torture, and kill the plaintiffs or their relatives during Argentina's "Dirty War." The United States Supreme Court held that due process did not permit the exercise of general jurisdiction over the parent corporation, which had a subsidiary operating in California. The Supreme Court drew a distinction between specific jurisdiction and general jurisdiction. Specific jurisdiction concerns adjudicatory authority where the suit arises out of or relates to the defendant's contacts with the forum. General jurisdiction in substance concerns adjudicatory authority in cases arising anywhere, and "[t]he paradigm all-purpose forums for general jurisdiction are a corporation's place of incorporation and

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principal place of business \*\*\*.” (*Daimler AG v Bauman, supra*, 749.) Another forum may assert general jurisdiction over foreign sister-state or foreign-country corporations to hear any and all claims against them when their affiliations with the state are so continuous and systematic as to render them essentially at home in the forum state. (*Daimler AG v Bauman, supra*.) General jurisdiction requires affiliations so continuous and systematic as to make the foreign corporation essentially at home in the forum state, i.e., similar to a domestic enterprise in that state. (*Daimler AG v Bauman, supra*.)

In determining whether a court of New York has personal jurisdiction over a non-domiciliary, a two-step analysis must be employed. First, the court must inquire whether there is a statute which confers jurisdiction over the non-domiciliary, and, second, the court must inquire whether the exercise of jurisdiction meets due process standards. (*See Darrow v Deutschland*, 119 AD3d 1142; *Andrew Greenberg, Inc. v. Sirtech Canada, Ltd.*, 79 AD3d 1419.)

In the case at bar, CPLR 302, “Personal jurisdiction by acts of non-domiciliaries,” New York State’s long arm statute, does not provide a basis for the assertion of in personam jurisdiction over defendant Goodyear in regard to the causes of action for strict products liability, negligence, and breach of warranty, and *Bauman’s* effect on the statute need not be considered here as far as those causes of action are concerned. CPLR 302 applies to “a cause of action arising from any of the acts enumerated in this section.” Insofar as the causes of action for strict products liability, negligence, and breach of warranty are concerned. Goodyear manufactured and sold the tire out of state, and the plaintiff sustained injury out-of state. (*See*, CPLR 302 (a)(1) and (3); *Jacobs v 201 Stephenson Corp.*, -AD3d-, -NYS3d- 2016 WL 1355693.) In regard to the cause of action based on General Business Law §349, which prohibits deceptive acts and practices in the conduct of business, plaintiff Aybar alleges that Goodyear committed a tortious act within the state (*see*, CPLR 302[a][2]) by concealing information and by failing to warn consumers about the dangers of the tire.

The assertion of the cause of action based on GBL§349 raises jurisdictional issues which the court will not grapple with, since they are academic in light of the remainder of this decision.

CPLR 301, “Jurisdiction over persons, property or status,” is New York’s statute for general jurisdiction, and it provides that “[a] court may exercise such jurisdiction over persons, property, or status as might have been exercised heretofore.” A foreign corporation is subject to the jurisdiction of New York courts under CPLR 301 “if it has engaged in such a continuous and systematic course of doing business here that a finding of its presence in this jurisdiction is warranted.” (*Landoil Res. Corp. v Alexander &*

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*Alexander Servs., Inc.*, 77 NY2d 28, 33 [internal quotation marks and citations omitted]). In view of defendant Goodyear's extensive activities in this state since approximately 1924, a finding of "a continuous and systematic course of doing business" in New York can easily be made. "Even if this statutory standard is met, however, the Due Process Clause of the 14th Amendment limits the exercise of general jurisdiction to those cases in which a corporation's affiliations with the State are so continuous and systematic as to render [it] essentially at home in the forum State." (*Hood v Ascent Med. Corp.*, 2016 WL 1366920 [SDNY] [internal quotation marks and citations omitted]; see, *Goodyear Dunlop Tires Operations, S.A. v Brown*, 131 S.Ct. 2846. [HN 5: "foreign subsidiaries of United States tire manufacturer were not subject to general jurisdiction in North Carolina courts in action arising from bus accident in France allegedly caused by tire that was manufactured and sold abroad, although some of the tires made abroad by the foreign subsidiaries had reached North Carolina through the stream of commerce"].) There are NEW YORK STATE APPELLATE CASES DECIDED AFTER ~~Bauman~~ WHICH HAVE FOUND A LACK OF general jurisdiction over the defendants. (See, *B & M Kingstone, LLC v Mega Int'l Commercial Bank Co.*, 131 AD3d 259; *D & R Glob. Selections, S.L. v Pineiro*, 128 AD3d 486; *Magdalena v Lins*, 123 AD3d 600.)

This court has concluded that neither *Goodyear Dunlop Tires Operations, S.A. v Brown* (*supra*), nor *Daimler A.G. v Bauman* (*supra*), nor the New York State appellate cases require the dismissal of the case at bar. In *Goodyear Dunlop Tires Operations, S.A. v. Brown* (*supra*), the estates of two minor North Carolina residents who died in a bus accident that occurred in France brought an action in a North Carolina state court against several subsidiaries of a United States tire manufacturer, including subsidiaries organized and operating in Luxembourg, Turkey, and France. The United States Supreme Court held that the North Carolina court lacked both specific and general jurisdiction over the foreign subsidiaries. The foreign subsidiaries were not registered to do business in North Carolina; had no place of business, employees, or bank accounts there; did not design, manufacture, or advertise their products in North Carolina; and did not solicit business in the state or sell or ship tires to North Carolina customers. The plaintiffs tried to argue that the North Carolina court had jurisdiction because "a small percentage of their [the subsidiaries'] tires were distributed in North Carolina by other Goodyear USA affiliates" (*Goodyear Dunlop Tires Operations, S.A. v Brown, supra*, 2848), and The North Carolina Court of Appeals decided that the state court had general jurisdiction over the foreign subsidiaries, whose tires had reached North Carolina through the stream of commerce. The United States Supreme Court reversed with an opinion that stated "[c]onfusing or blending general and specific jurisdictional inquiries," the North Carolina courts had erroneously found jurisdiction (*Goodyear Dunlop Tires Operations, S.A. v Brown, supra*, 2851.) In reference to the tenuous relationship between the foreign subsidiaries and North Carolina, the Supreme Court stated: "A connection so

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limited between the forum and the foreign corporation, we hold, is an inadequate basis for the exercise of general jurisdiction." (*Goodyear Dunlop Tires Operations, S.A. v Brown, supra*, 2851.) In sharp contrast, plaintiff Aybar has alleged without contradiction, inter alia, that defendant Goodyear has operated numerous stores in this state since approximately 1924 and has employed thousands of workers in those stores. Goodyear has an organization of facilities in this state engaged in day-to-day activities. Defendant Goodyear's activities within New York have been so continuous and systematic as to render it subject to the general jurisdiction of this state's courts. This court notes that in *Goodyear Dunlop Tires Operations, S.A. v Brown, (supra)*, the parent corporation, which operated plants in North Carolina and regularly engaged in commercial activity there, did not contest the North Carolina court's jurisdiction over it.

The New York State appellate cases decided after *Bauman* which found a lack of general jurisdiction over the defendants are distinguishable from the case at bar because of the level of Goodyear's activities within New York. In *B & M Kingstone, LLC v Mega Int'l Commercial Bank Co.* (*supra*, 264), the Appellate Division, First Department, held that "under *Daimler*, New York does not have general jurisdiction over Mega's worldwide operations," the Mega International Commercial Bank Company being an international banking corporation, organized under the laws of Taiwan, with its principal place of business located there, and having 128 branches worldwide, only one of which was in New York. But the court found that there was jurisdiction (as discussed below, apparently not general jurisdiction) to compel compliance with information subpoenas arising from the bank's registration with the Superintendent of the Department of Financial Services and filing of a written instrument appointing the superintendent as an agent for service of process. "Mega consented to the necessary regulatory oversight in return for permission to operate in New York, and therefore is subject to jurisdiction requiring it to comply with the appropriate Information Subpoenas \*\*\*." (*B & M Kingstone, LLC v Mega Int'l Commercial Bank Co.*, *supra*, 265 [internal quotation marks and citation omitted].) In *D & R Glob. Selections, S.L. v Pineiro (supra)*, the Appellate Division, First Department held that the New York court did not have general jurisdiction pursuant to CPLR 301 or specific jurisdiction pursuant to CPLR 302 over a Spanish winery, but the appellate court mentioned only the winery's visits to this state to promote its products as a contact with New York. In *Magdalena v Lins (supra)*, the Appellate Division, First Department held that the New York court had no jurisdiction over the defendants, mentioning only an apartment in this state which a defendant owned but did not live in (his daughters did) as the only contact with New York.

In view of the foregoing, this court finds that defendant Goodyear's activities with the State of New York have been so continuous and systematic that the company is essentially at home here. (See, *Daimler A.G. v. Bauman, supra*.)

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There is another reason for finding general jurisdiction over defendant Goodyear. In New York, it has long been the rule that a foreign corporation may consent to general jurisdiction in this state under CPLR 301 by registering as a foreign corporation and designating a local agent for service of process. (*See, Bagdon v Philadelphia & Reading Coal & Iron Co.*, 217 NY 432.) “[W]here a foreign corporation has expressly appointed the New York Secretary of State (or some other person within the state) as its agent for service of process, the plaintiff's cause of action need not have arisen out of any business conducted by the foreign corporation in New York.” (Alexander, Practice Commentaries, McKinney's Con. Law of NY, Book 7B, C301:6[c], p21.) After *Bauman*, the courts have split on the question of the constitutional validity of basing general jurisdiction on such registration statutes. (*See, Alexander*, 2015 Practice Commentaries, McKinney's Con. Law of NY, Book 7B, C301:8[c].) There is no New York state court appellate authority directly on point. In *B & M Kingstone, LLC v Mega Int'l Commercial Bank Co.* (*supra*), ~~the appellate committee on Banking Law §200 which provides in substance that, inter alia, no foreign banking corporation shall conduct business in this state unless it filed with the Superintendent of Banking a written instrument appointing him as its agent “upon whom all process in any action or proceeding against it on a cause of action arising out of a transaction with its New York agency or agencies or branch or branches, may be served with the same force and effect as if it were a domestic corporation and had been lawfully served with process within the state \*\*\*.”~~ (Emphasis added.) Banking Law §200 concerns a limited jurisdiction, while other state registration statutes have been interpreted as a conferring general jurisdiction over a foreign corporation. The court notes parenthetically Alexander's observation that “[i]t would have been helpful if the [Mega] court had clarified how the suit at issue – a special proceeding to enforce an information subpoena – arose out of a transaction with the New York branch.” (Alexander, Practice Commentaries [2015], McKinney's Cons Laws of NY, Book 7B, p5.)

Other registration and/or appointment statutes, e.g., Business Corp. Law §§304 and 1304, have been interpreted as conferring general jurisdiction over foreign corporations. (*See, e.g., Doubet LLC v Trustees of Columbia Univ. in City of New York*, 99 AD3d 433; *Augsbury Corp. v Petrokey Corp.*, 97 AD2d 173; *Bailen v Air & Liquid Systems Corp.*, 2013 WL 1369452 [N.Y.Sup.].) *Bauman* does not expressly address general jurisdiction based on such statutes, but the case's implication for such jurisdiction has become a matter of controversy. This court agrees with those courts that hold that general jurisdiction based on consent through registration and appointment survives *Bauman*. “When,\*\*\* the basis for jurisdiction is the voluntary compliance with a state's registration statute, which has long and unambiguously been interpreted as constituting consent to general jurisdiction in that state's courts, the corporation can have no

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*Inc. v Mylan Pharm. Inc.*, 78 F Supp 3d 572, 591 [D. Del. 2015], aff'd on other grounds., 2016 WL 1077048 [Mar. 18, 2016].) In New York, foreign corporations have been on notice since 1916 that registration to conduct business in this state amounts to consent to general jurisdiction here, and they can always cancel their registration if their business interests lead them to do so.

The instant motion lacks merit. This court has jurisdiction over defendant Goodyear because of the degree of its systematic and continuous activity in New York and because of its registration to do business in New York.

Dated: May 25, 2016

  
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Thomas D. Raffaele, J.S.C.

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INDEX NO. 706908/2015

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## Short Form Order

## NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE THOMAS D. RAFFAELE IA Part 13  
Justice

JOSE AYBAR,

x

Index

Number 706908/2015

Plaintiff,

Motion

-against-

Date January 11, 2016

Motion Sequence No. 1

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

Defendants.

x

The following papers numbered 1 to 9 read on this motion by defendant Goodyear Tire &amp; Rubber Co. for an order pursuant to CPLR 3211(a)(8) dismissing the complaint against it.

<u>Papers</u>	<u>Numbered</u>
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Notice of Motion - Affidavits - Exhibits.....	1
Answering Affidavits - Exhibits.....	2
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Upon the foregoing papers it is ordered that the motion is denied.

There are two related cases pending in the New York State Supreme Court, County of Queens: (1) *Aybar v The Goodyear Tire & Rubber Company*, Index No. 706908/15 and (2) *Aybar v. Aybar*, Index No. 706909/15. Defendant Goodyear has submitted similar motions in both cases for the purpose of challenging basis jurisdiction. The Ford Motor Company has also submitted a similar motion challenging basis jurisdiction in *Aybar v Aybar*, Index No. 706909/15.

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In 2011, plaintiff Jose Aybar, a resident of New York State, purchased a used Ford Explorer motor vehicle equipped with a Goodyear Wrangler AP Tire from Jose Velez, another resident of this state. The Goodyear Tire & Rubber Co. (Goodyear), a foreign corporation registered with the New York State Department of State, manufactured the Wrangler tire. On July 1, 2012, as Jose operated the Ford Explorer northbound on Interstate Highway 85 in the County of Brunswick, Virginia, the vehicle allegedly became unstable because of the failure of the Wrangler tire, and the vehicle rolled over several times. Anna Aybar, Orlando Gonzalez, Kayla Cabral, and Noelia Oliveras, Crystal N. Cruz-Aybar, and Tiffany Cabral passengers in the vehicle, were injured and/or killed. On or about July 1, 2015, this action for, *inter alia*, negligence and strict products liability ensued.

The plaintiff's attorney, relying on an internet search, further alleges: (1) Goodyear has owned and operated a chemical plant in Niagara, New York since the 1940's; (2) Goodyear has been the exclusive supplier of tires and related products for the New York City Transit Authority bus fleet since 1987; (3) Goodyear maintains at least 180 authorized Goodyear dealers for its products within New York State; (4) Goodyear owns and operates numerous service centers in New York State which employ many residents of the state. Defendant Goodyear does not deny these allegations.

Goodyear alleges the following: It is an Ohio corporation with its principal place of business located on East Market Street, Akron, Ohio. Goodyear manufactured the tire used on Jose's car in Union City, Tennessee in 2002, and at some point after the company first sold the tire, Jose acquired it and brought the used tire to New York where a party unrelated to Goodyear inspected it and installed it approximately two weeks before the accident.

Defendant Goodyear has moved to dismiss the complaint against it for lack of in personam jurisdiction, relying on *Daimler A.G. v Bauman* (134 S Ct. 746 [2014]). In *Bauman*, Argentinian residents brought an action against Daimler, A.G., a German corporation, under the Alien Tort Statute and the Torture Victims Protection Act, alleging that its wholly-owned Argentinian subsidiary helped state security forces to kidnap, detain, torture, and kill the plaintiffs or their relatives during Argentina's "Dirty War." The United States Supreme Court held that due process did not permit the exercise of general jurisdiction over the parent corporation, which had a subsidiary operating in California. The Supreme Court drew a distinction between specific jurisdiction and general jurisdiction. Specific jurisdiction concerns adjudicatory authority where the suit arises out of or relates to the defendant's contacts with the forum. General jurisdiction in substance concerns adjudicatory authority in cases arising anywhere, and "[t]he paradigm all-purpose forums for general jurisdiction are a corporation's place of incorporation and

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In determining whether a court of New York has personal jurisdiction over a non-domiciliary, a two-step analysis must be employed. First, the court must inquire whether there is a statute which confers jurisdiction over the non-domiciliary, and, second, the court must inquire whether the exercise of jurisdiction meets due process standards. (*See Darrow v Deutschland*, 119 AD3d 1142; *Andrew Greenberg, Inc. v. Sintech Canada Ltd.* 70 AD3d 1410.)

In the case at bar, CPLR 302, "Personal jurisdiction by acts of non-domiciliaries," New York State's long arm statute, does not provide a basis for the assertion of in personam jurisdiction over defendant Goodyear in regard to the causes of action for strict products liability, negligence, and breach of warranty, and *Bauman's* effect on the statute need not be considered here as far as those causes of action are concerned. CPLR 302 applies to "a cause of action arising from any of the acts enumerated in this section." Insofar as the causes of action for strict products liability, negligence, and breach of warranty are concerned. Goodyear manufactured and sold the tire out of state, and the plaintiff sustained injury out-of state. (*See*, CPLR 302 (a)(1) and (3); *Jacobs v 201 Stephenson Corp.*, -AD3d-, -NYS3d- 2016 WL 1355693.) In regard to the cause of action based on General Business Law §349, which prohibits deceptive acts and practices in the conduct of business, plaintiff Aybar alleges that Goodyear committed a tortious act within the state (*see*, CPLR 302[a][2]) by concealing information and by failing to warn consumers about the dangers of the tire.

The assertion of the cause of action based on GBL§349 raises jurisdictional issues which the court will not grapple with, since they are academic in light of the remainder of this decision.

CPLR 301, "Jurisdiction over persons, property or status," is New York's statute for general jurisdiction, and it provides that "[a] court may exercise such jurisdiction over persons, property, or status as might have been exercised heretofore." A foreign corporation is subject to the jurisdiction of New York courts under CPLR 301 "if it has engaged in such a continuous and systematic course of doing business here that a finding of its presence in this jurisdiction is warranted. *General Inv. Corp. v. Almazan* 22

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In view of the foregoing, this court finds that defendant Goodyear's activities with the State of New York have been so continuous and systematic that the company is essentially at home here. (See, *Daimler A.G. v Bauman, supra*.)

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There is another reason for finding general jurisdiction over defendant Goodyear. In New York, it has long been the rule that a foreign corporation may consent to general jurisdiction in this state under CPLR 301 by registering as a foreign corporation and designating a local agent for service of process. (*See, Bagdon v Philadelphia & Reading Coal & Iron Co.*, 217 NY 432.) “[W]here a foreign corporation has expressly appointed the New York Secretary of State (or some other person within the state) as its agent for service of process, the plaintiff's cause of action need not have arisen out of any business conducted by the foreign corporation in New York.” (Alexander, Practice Commentaries, McKinney's Con. Law of NY, Book 7B, C301:6[c], p21.) After *Bauman*, the courts have split on the question of the constitutional validity of basing general jurisdiction on such registration statutes. (*See, Alexander, 2015 Practice Commentaries, McKinney's Con. Law of NY, Book 7B, C301:8[c]*.) There is no New York state court appellate authority directly on point. In *B & M Kingstone, LLC v Mega Int'l Commercial Bank Co.* (*supra*), the appellate court relied on Banking Law §200 which provides in substance that, *inter alia*, no foreign banking corporation shall conduct business in this state unless it filed with the Superintendent of Banking a written instrument appointing him as its agent “upon whom all process in any action or proceeding against it on a cause of action arising out of a transaction with its New York agency or agencies or branch or branches, may be served with the same force and effect as if it were a domestic corporation and had been lawfully served with process within the state \*\*\*.” (Emphasis added.) Banking Law §200 concerns a limited jurisdiction, while other state registration statutes have been interpreted as a conferring general jurisdiction over a foreign corporation. The court notes parenthetically Alexander's observation that “[i]t would have been helpful if the [Mega] court had clarified how the suit at issue -- a special proceeding to enforce an information subpoena-- arose out of a transaction with the New York branch.” (Alexander, Practice Commentaries [2015], McKinney's Cons Laws of NY, Book 7B, p5.)

Other registration and/or appointment statutes, e.g., Business Corp. Law §§304 and 1304, have been interpreted as conferring general jurisdiction over foreign corporations. (*See, e.g., Doubet LLC v Trustees of Columbia Univ. in City of New York*, 99 AD3d 433; *Augsbury Corp. v Petrokey Corp.*, 97 AD2d 173; *Bailen v Air & Liquid Systems Corp.*, 2013 WL 1369452 [N.Y.Sup].) *Bauman* does not expressly address general jurisdiction based on such statutes, but the case's implication for such jurisdiction has become a matter of controversy. This court agrees with those courts that hold that general jurisdiction based on consent through registration and appointment survives *Bauman*. “When,\*\*\* the basis for jurisdiction is the voluntary compliance with a state's registration statute, which has long and unambiguously been interpreted as constituting consent to general jurisdiction in that state's courts, the corporation can have no uncertainty as to the jurisdictional consequences of its actions.” (*Acorda Therapeutics*,

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*Inc. v Mylan Pharm. Inc.*, 78 F Supp 3d 572, 591 [D. Del. 2015], aff'd on other grounds,, 2016 WL 1077048 [Mar. 18, 2016].) In New York, foreign corporations have been on notice since 1916 that registration to conduct business in this state amounts to consent to general jurisdiction here, and they can always cancel their registration if their business interests lead them to do so.

The instant motion lacks merit. This court has jurisdiction over defendant Goodyear because of the degree of its systematic and continuous activity in New York and because of its registration to do business in New York.

Dated: May 25, 2016

  
\_\_\_\_\_  
Thomas D. Raffaele, J.S.C.

FILED  
MAY 31 2016  
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QUEENS COUNTY

EXHIBIT H TO CALVERT AFFIRMATION -  
BRIEF FOR NON-PARTY RESPONDENT, DATED FEBRUARY 15, 2017 [276 - 315]

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*To be Argued by:*  
**ADAM C. CALVERT**  
*(Time Requested: 15 Minutes)*

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**New York Supreme Court**  
**Appellate Division—Second Department**

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JOSE AYBAR,

*Plaintiff-Respondent,*

**Docket No.:**  
**2016-07396**

— against —

THE GOODYEAR TIRE & RUBBER CO.,

*Defendant-Appellant,*

— and —

GOODYEAR DUNLOP TIRE NORTH AMERICA, LTD.,

*Defendant.*

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U.S. TIRES AND WHEELS OF QUEENS, L.L.C.,

*Non-Party Respondent.*

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**BRIEF FOR NON-PARTY RESPONDENT**

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### **Counterstatement of Questions Presented**

1. Whether the trial court correctly found that there was personal jurisdiction in New York over Goodyear based on its continuous and systematic contacts in New York?

Yes, because Goodyear is "at home" in New York.

2. Whether the trial court correctly found that there was personal jurisdiction in New York over Goodyear because it is registered to do business in the state and appointed an agent for service of process?

Yes, because registering to do business in the state and appointing an agent for service of process confers general jurisdiction over Goodyear.

3. Whether the trial court correctly found that there was no personal jurisdiction over Goodyear based on specific jurisdiction under CPLR 302?

No, there is specific jurisdiction under CPLR 302(a)(1) and CPLR 302(a)(3)(i) & (ii).

### Counterstatement of Facts

#### The Claims

The plaintiff is a vehicle owner from New York who was driving back to New York from Disney World with his family when one of the Goodyear tires on his Ford Explorer blew. R.5. The Ford Explorer ran off the road, killing three of the passengers and injuring three other passengers and the driver. R.5.

The plaintiff claims that the accident happened because of a defective design in the Ford Explorer, which was purchased and registered in New York. R.5. He also claims that the accident happened because of a defective Goodyear tire. R.5. The Goodyear tire and the Ford Explorer were allegedly serviced at U.S. Tires, a garage in Queens, New York. U.S. Tires is a registered Goodyear service facility on Goodyear's website.<sup>1</sup>

The passenger-plaintiffs sued Ford and Goodyear in Queens County Supreme Court in one action, from which there were related motions to dismiss and a pending appeal under Docket Nos. 2016-06194 & 2016-07397. R.4. The driver-plaintiff sued Goodyear in Queens County Supreme Court in another action, from which this appeal stems. R.29-37. All plaintiffs sued U.S. Tires in Queens County Supreme

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<sup>1</sup> This fact was not part of the record below, but can be made available to the court at oral argument.

Court in a third action. U.S. Tires commenced a third-party action against Ford and Goodyear for contribution and indemnity for their role in causing the accident.<sup>2</sup>

#### Goodyear's Motions to Dismiss

Goodyear moved to dismiss the complaint against it for lack of personal jurisdiction. R.11-28. It argued that there was no general personal jurisdiction because under the recent U.S. Supreme Court case *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), general personal jurisdiction can only be obtained in states where a corporation is "at home," which Goodyear argues are limited to a corporation's state of incorporation and principal place of business. R.11-28. It also argued that there was no specific personal jurisdiction under CPLR 302(a) because it did not commit a tortious act in the State or a tortious act outside the State causing injury within the State. R.11-28.

In support of its motion, Goodyear offered an incomplete and conclusory affidavit that downplays New York's interest in this case. R.38-40. Goodyear's affidavit states that its principal place of business and state of incorporation are Ohio, the tire was designed in Ohio, and the tire was manufactured in Tennessee. R.38-40. Goodyear knows nothing about the chain of custody of the tire, not even where it

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<sup>2</sup> The pleadings and third-party action in the case involving U.S. Tires was not part of the Record on Appeal. Moreover, the third-party action was brought after the motions to dismiss were decided. These documents can be provided to the court at oral argument.

was shipped to initially after it was manufactured. R.38-40. There has been no discovery of the chain of purchase of the tire or Goodyear's relationship to New York in general.

Although no jurisdictional discovery was conducted, in opposition, the plaintiff argued that Goodyear owns and operates hundreds of service centers throughout New York, it has been the exclusive provider of tires to the New York City Transit Authority since 1987, it has been the exclusive provider of tires to New York State agencies since at least 2010, and it has at least one manufacturing facility in New York. R.41-49. The plaintiff and U.S. Tires also argued that Goodyear consented to jurisdiction by registering to do business in New York and appointing an agent for service of process. R.44-45, 311-13. Finally, they argued that there was specific jurisdiction under CPLR 302(a). R.41-49.

#### The Supreme Court's Orders

The Supreme Court (Thomas D. Raffaele, J.S.C.) denied Goodyear's motion. R.4-10. The court found that there was no specific personal jurisdiction under CPLR 302(a)(1) & (3) because the Goodyear tire was manufactured out of state and the injuries were sustained out-of-state. R.6. The court found that there was general personal jurisdiction over Goodyear because its "activities with the State of New York have been so continuous and systematic that the company is essentially at home here." R.8. It also found that there was general personal jurisdiction because

Goodyear consented to jurisdiction as a registered foreign corporation that designated an agent for service of process, thereby consenting to jurisdiction. R.9-10.

### **Goodyear's Appeal**

The Queens County Clerk entered the order on May 31, 2016. R.3. Goodyear timely appealed the Supreme Court's order on June 23, 2016. R. 3.

### **Argument Summary**

The Supreme Court correctly found that it has personal jurisdiction over Goodyear.

First, the court has personal jurisdiction under a general jurisdiction analysis because Goodyear is "at home" in New York. Goodyear sells its products throughout New York, own and operates service centers throughout New York, and operates manufacturing facilities in New York.

Second, there is general personal jurisdiction over Goodyear because it is a registered foreign corporation authorized to do business in New York, with an appointed agent for service of process. This registration is a consent to general personal jurisdiction in New York.

Third, there is personal jurisdiction over Goodyear under a specific jurisdiction theory. Goodyear is subject to personal jurisdiction under CPLR 302(a)(1) because it "transacts any business within the state or contract anywhere to

supply goods or services in the state." It is also subject to personal jurisdiction under CPLR 302(a)(3)(i) or (ii) because it committed "a tortious act without the state causing injury to person or property within the state" and "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 "expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce."

If this Court agrees with Goodyear, the results would be disastrous. There would be one suit against Ford in Michigan or Delaware, another against Goodyear in Ohio, and a third against U.S. Tires in New York. Inconsistent verdicts are all but guaranteed in this scenario and judicial resources would be wasted.

Finally, while this Court should find that there is jurisdiction over Goodyear on the current record, if the Court is inclined to agree with Goodyear it should at least order jurisdictional discovery.

### **Argument**

#### **POINT I—THERE IS GENERAL JURISDICTION OVER GOODYEAR, EVEN AFTER THE SUPREME COURT'S DECISION IN *DAIMLER***

The trial court correctly held that Goodyear is subject to general jurisdiction in New York, even after the U.S. Supreme Court's decision in *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014). Goodyear's activities in New York are so

continuous and systematic to render it "at home" in New York, even though New York is not Goodyear's state of incorporation or principal places of business.

*Daimler*'s facts are much different than the facts of this case. The defendant in *Daimler* was a German corporation that was being sued based on the conduct of its subsidiary that conducted business in California. Here, Goodyear is a U.S. corporation that conducts significant business in New York directly, not only through a subsidiary. Goodyear owns and operates hundreds of service centers throughout New York, it has been the exclusive provider of tires to the New York City Transit Authority since 1987, it has been the exclusive provider of tires to New York State agencies since at least 2010, and it has at least one manufacturing facility in New York. U.S. Tires is one of Goodyear's authorized service centers. Goodyear is a registered foreign corporation in New York.

General jurisdiction is not limited to the place of incorporation and principal place of business. *Daimler* explicitly stated that a corporation could be "at home" in places other than its principal place of business and state of incorporation in "an exceptional case." *Id.* at 761. The court cited to *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), as an example of such a situation, which involved a corporation that had a temporary headquarters in the forum state. However, the court's use of *Perkins* as an example does not foreclose the possibility of other

exceptions, such as jurisdiction over one of the largest tire manufacturers in the country.

Another consideration in *Daimler* that absent in our case are the international considerations. *Daimler* (and prior Supreme Court cases involving general jurisdiction) involved non-U.S. corporations where the acts underlying the case took place outside the U.S. and there were no connections to the forum state. Here, Goodyear is a domestic corporation that committed acts in the United States that injured New York residents. Other courts have held that Ford can be subject to general jurisdiction even after *Daimler* for these same reasons, with that same rationale applying to Goodyear. *State ex rel. Ford Motor Co. v. McGraw*, 788 S.E.2d 319, 333 (W.Va. 2016).

Therefore, this Court should uphold the trial court's decision that Goodyear is subject to jurisdiction in New York, even after *Daimler*, because its substantial activities in New York render it "at home" in New York.

**POINT II—THERE IS GENERAL JURISDICTION OVER GOODYEAR BASED ON ITS REGISTRATION TO DO BUSINESS IN NEW YORK**

General personal jurisdiction has consistently been found based on a defendant's consent to jurisdiction by registering to do business in New York. The trial court correctly held that Goodyear is subject to jurisdiction because it is

registered to do business in New York. *Daimler* does not change this well-settled rule.

**A. Consent by registration has been recognized as a valid basis for personal jurisdiction for over a century**

A company can always consent to jurisdiction in a state or waive jurisdiction.

*See Ins. Corp. of Ir. v. Compagnie Des Bauxites De Guinee*, 456 U.S. 694, 703 (1982). Jurisdiction by consent or waiver has been upheld by the U.S. Supreme Court for nearly 150 years. That line of cases began with *Ex parte Schollenberger*, 96 U.S. 369 (1877). In *Schollenberger*, the U.S. Supreme Court first held that a state legislature may require a foreign corporation to consent to general personal jurisdiction as a condition of being granted the right to do business in that state:

[I]f the legislature of a State requires a foreign corporation to consent to be 'found' within its territory, for the purpose of the service of process in a suit, as a condition to doing business in the State, and the corporation does so consent, the fact that it is found gives the jurisdiction, notwithstanding the finding was procured by consent.

*Id.* at 377. In *Pennsylvania Fire Insurance Co. v. Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917), the court affirmed that it had "little doubt" that the appointment of an agent by a foreign corporation for service of process could subject it to general personal jurisdiction. *Id.* at 95. This principle was recently reiterated by the U.S. Supreme Court in *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 880 (2011),

citing *Compagnie*, and in *Burnham v. Superior Court of California*, 495 U.S. 604 (1990). *Burnham* upheld personal jurisdiction based on in-state service on a non-resident defendant. The court cited a string of cases, most importantly ones applying the in-state service rule to foreign corporate defendants accepting service by agent, to conclude that the in-state service rule "remains the practice of, not only a substantial number of the States, but as far as we are aware *all* the States and the Federal Government." *Id.* at 615-16.

For over 100 years, New York state courts have recognized that registration to do business in New York and designation of the Secretary of State for service of process under Business Corporations Law 304(b) & 1304 is tantamount to consent to personal jurisdiction in New York. See *Bagdon v. Philadelphia & Reading Coal & Iron Co.*, 217 N.Y. 432 (1916); *Muollo v. Crestwood Village, Inc.*, 155 A.D.2d 420 (2d Dep't 1989); *Augsbury Corp. v. Petrokey Corp.*, 97 A.D.2d 173, 175-76 (3d Dep't 1983); *Chong v. Healthtronics, Inc.*, 2007 U.S. Dist. LEXIS 45956 at \*17 (E.D.N.Y. 2007).

**B. *Daimler* did not overrule precedent upholding jurisdiction by consent through registration**

*Daimler* did not address consent by registration and did not overrule the well-settled precedent that registration to do business in New York carries with it consent to be sued in New York. There was no chance to consider whether there was personal jurisdiction based on consent by registration in *Daimler* because California

(the subject state in that case) does not interpret its registration statute as subjecting corporations that register to consent to personal jurisdiction. In fact, the court's citation to *Perkins*, for the "textbook case of general jurisdiction appropriately exercised over a foreign corporation that has *not consented* to suit in the forum," suggests that the *Daimler* court was deciding a case where the corporation had not consented to general jurisdiction via a registration statute. *Daimler*, 134 S. Ct. at 755-56 (quoting) (emphasis added). The two other general jurisdictional cases examined by *Daimler* similarly concerned defendants who were not authorized to do business in the forum state and had not consented to suit. See *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2852 (2011) (stating that defendants were not registered to do business in North Carolina); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 411 (1984) (noting that defendant had never been authorized to do business in Texas and never had an agent for service of process in Texas). If the U.S. Supreme Court wanted to overrule the existing precedent finding jurisdiction based on consent via registration, it is up to the U.S. Supreme Court to do so explicitly. *Rodriguez de Quijas v. Shearson/Am. Exp., Inc.*, 490 U.S. 477, 484 (1989) ("If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions."); see also *State*

*Oil Co. v. Khan*, 522 U.S. 3, 20 (1997) (Even if a Supreme Court precedent contains many "infirmities" and rests upon "wobbly, moth-eaten foundations," it remains the "Court's prerogative alone to overrule one of its precedents."). This rationale was used by a New Jersey federal court to uphold consent to personal jurisdiction by registration in a case decided after *Daimler*. *Senju Pharm. Co., Ltd. v. Metrics, Inc.*, 96 F. Supp. 3d 428, 437-438 (D.N.J. 2015).

**C. Cases after *Daimler* have held that consent by registration is still valid**

Post-*Daimler* cases have upheld consent by registration jurisdiction. In *Perrigo Co. v. Merial Ltd.*, 2015 U.S. Dist. LEXIS 45214 (D. Neb. 2015), the court upheld general jurisdiction over a defendant based on its registration to do business in the state, finding that *Daimler* did not overrule the consent by registration caselaw. It explained that *Daimler* only applied to cases where a corporation can be compelled to submit to general jurisdiction, whereas the consent by registration caselaw was a separate inquiry because those cases dealt with voluntary consent. Courts in other cases have reached the same result under this rationale. See *Beach v. Citigroup Alternative Invs. LLC*, 2014 U.S. Dist. LEXIS 30032 (S.D.N.Y. 2014) ("Notwithstanding [the limitations on jurisdiction imposed by *Daimler*] a corporation may consent to jurisdiction in New York under CPLR § 301 by registering as a foreign corporation and designating a local agent."); *Otsuka Pharm. Co. v. Mylan Inc.*, 106 F. Supp. 3d 456, 469 (D. N.J. 2015); *Chalkey v. Smithkline*

*Beecham Corp.*, 2016 U.S. Dist. LEXIS 21462 (E.D. Mo. 2016) (holding that consent to general personal jurisdiction via a registration and appointment of agent for service was still valid after *Daimler*); *Regal Beloit America, Inc. v. Broad Ocean Motor LLC*, 2016 U.S. Dist. LEXIS 85123 (E.D. Mo. 2016) (same); *Acorda Therapeutics Inc. v. Mylan Pharms. Inc.*, 817 F.3d 755, 769 (Fed. Cir. 2016) (O'Malley, J., concurring) (finding that consent to jurisdiction by registration was still valid after *Daimler*); *Serov v. Kerzner Int'l Resorts, Inc.*, 2016 N.Y. Misc. LEXIS 2818 (Sup. Ct., N.Y. Cty. 2016) (finding general jurisdiction over foreign corporation because of registration). Other cases after *Daimler* have held that similar business registration statutes also entail obligations of the defendant to submit itself to the jurisdiction of New York courts. *Vera v. Republic of Cuba*, 91 F. Supp. 3d 561 (S.D.N.Y. 2015); *Matter of B&M Kingstone, LLC v. Mega Int'l Commercial Bank Co., Ltd.*, 131 A.D.3d 259 (1st Dep't 2015).

The lack of explicit language in the Business Corporations Law stating that registration and appointment carries with it consent to jurisdiction does not mean that the statute cannot be read this way. *Pennsylvania Fire Ins.*, 243 U.S. at 96 ("[W]hen a power actually is conferred by a document, the party executing it takes the risk of the interpretation that may be put upon it by the courts.") (dealing with consent to jurisdiction by registration). Goodyear points out that the New York Legislature has proposed a bill that would amend the BCL to include specific

language that registration in New York subjects the corporation to general jurisdiction in New York as evidence of the absence of such a standard in the current law. However, the Committee Report on the bill states that the purpose of the bill is to "clarify and *confirm* the well-established New York policy on corporate consent," pointing out that New York courts have consistently recognized that consent is a part of the registration. New York Senate Committee Report for S.B. 4846 (Apr. 23, 2015). In other words, the bill is not meant to change the current interpretation of the existing statute, rather it is meant to make that current interpretation explicit and thereby prevent corporations from arguing that consent to general jurisdiction is not a part of the current statute, the very thing that Goodyear is trying to do in our case.

Goodyear relies heavily on the Second Circuit's post-*Daimler* decision in *Brown v. Lockheed Martin Corp.*, 814 F.3d 619 (2d Cir. 2016), where the court addressed Connecticut's consent by registration statute. That case is distinguishable. First, *Brown* considered Connecticut's registration statute, not New York's. Second, central to the court's decision in *Brown* was the fact that consent to general jurisdiction in Connecticut was not explicit in either the language of Connecticut's registration statute or in the caselaw interpreting that statute. *Id.* at 622, 626, 633-35. That is not the case for New York's registration statute, which has consistently been interpreted by New York courts as conferring general jurisdiction over a corporation that registers in New York (see above). Notably, the court's analysis in

*Brown* focused not only on the explicit language of the statute and absence of language stating that corporations consented to general jurisdiction (a point made by Goodyear), but also on the caselaw interpreting that statute (a point ignored by Goodyear). Third, the court in *Brown* stated that the result would be different in states where either the registration statute explicitly contains language stating that the corporation would be subject to general jurisdiction *or* in states where the courts have interpreted the registration statute this way, like New York. *Id.* at 640 ("The registration statute in the state of New York has been definitively constructed to [confer general jurisdiction over registered corporations] . . . ."). In implicitly accepting the constitutionality of this New York registration caselaw, the court in *Brown* also pointed out another major difference between that case and our case: in *Brown*, the plaintiff was not a Connecticut resident and the underlying tort did not occur in Connecticut. *Id.* at 641. Finally, it is up to the New York Courts to determine the meaning of its registration statute, not the Second Circuit, particularly not in a case that examined Connecticut's registration statute. *Id.* at 636 n.17 (acknowledging that Connecticut Supreme Court has the final say on the meaning of its registration statute).

**D. Jurisdiction by registration is not unfair to Goodyear**

Registration to do business is voluntary. *Neirbo Co. v. Bethlehem Shipbuilding Corp.*, 308 U.S. 165, 175 (1939) (holding that "[a] statute calling for [designation of an agent for service of process in the forum state] is constitutional, and the designation of the agent 'a voluntary act'" (citing *Pennsylvania Fire*, 243 U.S. 93)). Businesses that register also gain certain rights and privileges as part of registration. The trade-off for those privileges is that they are subject to personal jurisdiction in New York. This is "part of the bargain by which [the foreign corporation] enjoys the business freedom of the State of New York." Practice Commentaries, CPLR 310:8, citing *Neirbo*, 308 U.S. at 175.

Goodyear argues that it is forced to register because if it does not register it cannot sue in New York and would be enjoined from operations in New York. This is disingenuous. Goodyear complains about the unfairness of being subject to jurisdiction in New York courts when a product it marketed in New York, purchased by a New Yorker, and being used on a vehicle registered by to New Yorker injures a New Yorker. Yet Goodyear does not want to give up its ability to sue in New York.

Goodyear also argues that conferring general jurisdiction via registration will open the doors to out-of-state plaintiffs suing Goodyear in New York in cases that have nothing to do with New York. This is unfounded. There was no doubt before

*Daimler* that Goodyear was subject to general jurisdiction in New York, so these fears would have manifested already, but they have not.

Goodyear acts as if being sued in New York is a substantial burden. It is a large, national corporation that does significant business in New York. It has the resources to litigate cases in New York, which it frequently does, not only as a defendant, but as a plaintiff. Yet Goodyear has no trouble arguing that New Yorkers who are injured by its products must sue them in Ohio. There is also the very telling admission of Goodyear that suit would be proper in Virginia. Virginia has no interest in this case and its only relationship is that the accident occurred there by happenstance. And litigating this case in Virginia would be at least, if not more, burdensome to Goodyear, not to mention the burden on the plaintiffs and U.S. Tires.

Finally, Goodyear makes the dubious argument that New York has no interest in this case. New Yorkers have been killed and injured, allegedly because of Goodyear's defective product. A product that was advertised and sold in New York and being used on a New York registered vehicle. U.S. Tires, a New York garage, is also a defendant. New York has a substantial interest in this case and should have jurisdiction over Goodyear.

**POINT III—THERE IS SPECIFIC JURISDICTION OVER GOODYEAR UNDER CPLR 302**

There is also specific general jurisdiction over Goodyear.

CPLR 302 deals with specific jurisdiction. It reads:

- (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.

In our case, there is jurisdiction under 302(a)(1) and 302(a)(3)(i) or (ii).

**A. Goodyear is subject to specific jurisdiction under CPLR 302(a)(1)**

CPLR 302(a)(1) allows for jurisdiction over a foreign corporation if it "transacts any business within the state or contracts anywhere to supply goods or services in the state."

There should be no dispute that Goodyear transacts business in New York and contracts to supply goods and services in New York. This requires that the defendant "avails itself of the privilege of conducting activities [in New York], thus invoking the benefits and protections of its laws." *Fischbarg v. Doucet*, 9 N.Y.3d 375 (2007); see also *Paterno v. Laser Spine Inst.*, 24 N.Y.3d 370, 377 (2014) ("where the non-domiciliary seeks out and initiates contact with New York, solicits business in New York, and establishes a continuing relationship, a non-domiciliary can be said to transact business within the meaning of CPLR 302(a)(1)"). Goodyear sells numerous products throughout New York, including the Goodyear Wrangler tires involved in this case.

Jurisdiction under 302(a)(1) requires some connection between the claim and the defendant's transaction of business or supply of goods or services in New York. See *Johnson v. Ward*, 4 N.Y.3d 516, 519 (2005); *LaChapelle v. Torres*, 1 F. Supp. 3d 163, 177 (S.D.N.Y. 2014) (CPLR 302(a)(1) requires an "articulable nexus" between the transaction and the claim). This 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. Presumably, Goodyear will rely on the fact that the Goodyear tire was not manufactured in or initially sold in New York to argue that the accident is not related to its business in New York. It would be wrong.

The connection requirement of 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. Pictet & Cie*, 28 N.Y.3d 316 (2016), the Court of Appeals found that 302(a)(1)’s nexus requirement was satisfied where 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 Goodyear tire was part of a nationwide marketing for the product. *Id.* at 21-23. *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) where 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 69, 2016 U.S. App. LEXIS 19236 at \* 38-39 (2d Cir. 2016) (evidence of the intent to market a product nationwide sufficient for minimum contacts in New York).

In *State ex rel. Ford Motor Co. v. McGraw*, 788 S.E.2d 319 (W.Va. 2016), Ford made this same argument regarding the nexus requirement for specific jurisdiction under a similar long-arm statute in West Virginia. In *McGraw*, "Ford contends that because the Ford Explorer 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 rejected this argument, saying:

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. Ford had this same argument rejected in *Rhodehouse v. Ford Motor Co.*, 2016 U.S. Dist. LEXIS 167780 (E.D.Ca. 2016), a case where it argued that there was no nexus for specific jurisdiction over a California resident injured by a Ford vehicle registered in California because the vehicle was manufactured in Kentucky

and sold to an independently-owned dealer in Canada. The court rejected Ford's argument, relying on Ford's extensive sales and marketing in the state and that the vehicle was registered in the state and injured a resident of the state. *Id.* at \* 11.

In our case, 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 Goodyear tires were manufactured outside New York is irrelevant. Goodyear's sale of this product generally 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, an authorized Goodyear service center in Queens.

**B. Goodyear is subject to specific jurisdiction under 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, Goodyear committed tortious acts without the state—it manufactured and designed the product 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. Goodyear may 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 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 Goodyear proposes: allowing a national manufacturer to avoid the jurisdiction of New York courts where a New York resident is injured by a product marketed in

New York. 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), that CPLR 302(a)(2) did not encompass products liability actions where the plaintiff was injured by a product manufactured outside 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 burden unfairly 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.3d 81 (2d Cir. 2001), the court found that the place of injury was New York under CPLR 302(a)(3). In *Distefano*, the plaintiff brought a wrongful termination claim. He 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 purchase and use of the Goodyear tire on a vehicle owned and registered in New York, even if the resulting accident happened in Virginia.

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.

i. **There is jurisdiction under 302(a)(3)(i)**

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. Goodyear engages 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 small percentage of the defendant's total sales does not mean that it does not "derive

substantial revenue" under this section. *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.

Goodyear engages in regular business in New York and derives substantial revenue from goods sold in New York; therefore, jurisdiction is proper under CPLR 302(a)(3)(i).

**ii. There is jurisdiction under 302(a)(3)(ii)**

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 Goodyear "derives substantial revenue from interstate or international commerce."

Goodyear may argue that the other portion of this subsection is not satisfied—that it "expect or should reasonably expect the act to have consequences in the state"—because the Goodyear tire was 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 U.S. Dist. LEXIS 138041 (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 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, Goodyear should have reasonably expected that its products could result in injury or consequences in New York based on its marketing and sale of the product in New York in general.

### **C. Specific jurisdiction in this case does not violate due process**

In addition to compliance with CPLR 302, the exercise of jurisdiction must also comply with federal due process requirements. *See Fort Knox Music Inc. v. Baptiste*, 203 F.3d 193, 196 (2d Cir. 2000).

A state may constitutionally exercise jurisdiction over non-domiciliary defendants provided they had "certain minimum contacts with [the forum State] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. State of Wash.*, 326 U.S. 310, 316

(1945), quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940). "Minimum contacts" with the forum state depends on whether the defendant's "conduct and connection with the forum State" are such that it "should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. at 286, 297 (1980). 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 forum State." *Id.*

In *LaMarca*, the Court of Appeals found that due process requirements were satisfied where the defendant-manufacturer was incorporated in another state and did not have any direct New York connections other than a New York distributor. The court relied on the fact that the defendant was a United States corporation, fully familiar with New York law, adding that "New York has an interest in providing a convenient forum for [the plaintiff], a New York resident who was injured in New York and may be entitled to relief under New York law." *LaMarca*, 95 N.Y.2d at 218. The court then said the following, which applies especially well to Goodyear:

When a company of [defendant's] size and scope profits from sales to New Yorkers, it is not at all unfair to render it judicially answerable for its actions in this State. Considering that [defendant's] long business arm extended to New York, it seems only fair to extend correspondingly the reach of New York's jurisdictional long-arm. In all, we conclude that asserting jurisdiction over [defendant] in New York would not offend traditional notions of fair play and substantial justice.

*Id.* at 218-19; *see also Darienzo*, 74 A.D.2d 342 (due process was satisfied because product manufacturer placed the product in the stream of commerce with the expectation that they will be purchased in New York).

The U.S. Supreme Court has stated that jurisdiction in similar cases comport with due process requirements. *Ashai Metal Industry Co. v. Superior Court of Cal., Solano Cty.*, 480 U. S. 102, 112 (1987) (opinion of O'Connor, J.) (specific jurisdiction may lie over a foreign defendant that places a product into the "stream of commerce" while also "designing the product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State"); *World-Wide Volkswagen*, 444 U. S. at 297 ("[I]f the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it 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.").

In this case, finding that the New York courts have jurisdiction over Goodyear does not violate due process. It marketed and sold the product in New York and

therefore it should reasonably expect the product's defects to have consequences in New York.

**POINT IV—THE RESULT PROPOSED BY GOODYEAR WOULD HAVE DISASTROUS CONSEQUENCES ON THIS CASE AND OTHERS**

If this Court agrees with Goodyear and holds that it is not subject to personal jurisdiction in this case that decision would have disastrous consequences. It would result in one lawsuit against Ford in Michigan or Delaware, another against Goodyear in Ohio, and a third against U.S. Tires in New York. U.S. Tires would also need to prosecute its cross-claims against Ford and Goodyear in some forum. Inconsistent verdicts are almost guaranteed under this scenario. Discovery could not be coordinated between the various actions, resulting in duplicity and wasting judicial resources. *See LaMarca*, 95 N.Y.2d at 219 (“[I]t would be orderly to allow plaintiff to sue all named defendants in New York. A single action would promote the interstate judicial system's shared interests in obtaining the most efficient resolution of the controversy.”).

Goodyear cries prejudice at the prospect of litigating this case in New York, apparently blind to the fact that its products, which was sold and marketed in New York and being used on a New York registered vehicle, injured New York residents. Jurisdictional requirements are meant to prevent out-of-state companies from being hauled into court in a state that has no connection with the accident or the defendants. That danger is absent from this case. Goodyear is a large, national corporation that

is more than capable of litigating this case in New York. New York has a substantial interest in seeing that injured New York residents are provided with a forum to sue manufacturers who sell their products in the New York market injuring New Yorkers. A finding by this Court in favor of Goodyear would deprive the plaintiffs of that forum.

**POINT V—IF NOTHING ELSE, JURISDICTIONAL DISCOVERY IS WARRANTED**

The court should find that there is jurisdiction over Goodyear on the current record. However, if the court finds that it cannot decide the jurisdictional issue on the current record, it should, at a minimum, order jurisdictional discovery.

To obtain jurisdictional discovery, the party asserting jurisdiction "need only demonstrate that facts may exist" or "make a "sufficient start in demonstrating" the basis for personal jurisdiction over the defendants "to warrant further discovery on the issue of personal jurisdiction." *Peterson v. Spartan Industries*, 33 N.Y.2d 463, 466 (1974); *HBK Master Fund L.P. v. Troika Dialog USA, Inc.*, 85 A.D.3d 665, 666 (1st Dep't 2011).

Here, there are many unanswered questions that warrant jurisdictional discovery. There has been no discovery about the extent of Goodyear's overall operations in New York or its marketing and sale of the products in general. Moreover, there has been no discovery about the manufacture or sale of the specific product involved in this accident.

### Conclusion

This Court should find that New York has personal jurisdiction over Goodyear. Goodyear's contacts with New York are substantial enough to render it "at home" in New York under the U.S. Supreme Court's decision in *Daimler*. Goodyear also consented to personal jurisdiction because it is a registered foreign corporation authorized to do business in New York. Finally, there is specific jurisdiction under CPLR 302(a)(1) and 302(a)(3)(i) & (ii). If the court rules that there is no jurisdiction over Goodyear, the result would be multiple lawsuits in different states, all but guaranteeing inconsistent verdicts and the waste of judicial resources. This would impose a substantial burden on the plaintiffs and U.S. Tires. New York has a substantial interest in hearing this case. Products sold by Goodyear killed and injured New Yorkers. Goodyear should be required to answer those allegations in a New York court.

Dated:      New York, New York  
                February 15, 2017

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Adam C. Calvert

**APPELLATE DIVISION – SECOND DEPARTMENT  
CERTIFICATE OF COMPLIANCE**

I hereby certify pursuant to 22 NYCRR § 670.10.3(f) that the foregoing brief was prepared on a computer using Microsoft Word.

*Type.* A proportionally spaced typeface was used, as follows:

Name of typeface: Times New Roman  
Point size: 14  
Line spacing: Double

*Word Count.* The total number of words in this brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service, certificate of compliance, or any authorized addendum containing statutes, rules, regulations, etc., is 7,715.

Dated:      New York, New York  
                February 15, 2017

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**EXHIBIT I TO CALVERT AFFIRMATION -  
ORDER, DATED AUGUST 2, 2017 [316 - 323]**

**FILED: QUEENS COUNTY CLERK 06/05/2018 04:22 PM**  
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INDEX NO. 703632/2017

RECEIVED NYSCEF: 06/05/2018

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

-----x  
JOSE AYBAR, ORLANDO GONZALES, JOSE AYBAR as  
Administrator of the Estate of CRYSTAL CRUZ-AYBAR,  
JESENIA AYBAR, as Administratrix of the Estate of  
NOELIA OLIVERAS, JESENIA AYBAR as a legal  
Guardian on behalf of K. C., a minor, ANNA  
AYBAR and JESENIA AYBAR as Proposed Administratrix  
Of the Estate of T. C.

Index: 703632/17

**NOTICE OF ENTRY**

Plaintiffs,

- against -

US TIRES AND WHEELS OF QUEENS, LLC.

Defendant,

-----x  
US TIRES AND WHEELS OF QUEENS, LLC.

Third-Party Plaintiff,

-against-

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

Third-Party Defendants,

Yours, etc.

OMRANI & TAUB, P.C.  
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909 Third Avenue, 28<sup>th</sup> Floor  
New York, New York 10022  
(212) 599-5550

**PLEASE TAKE NOTICE, that the within is a true copy of an Order dated August 2,  
2017 duly entered in the office of the clerk on August 15, 2017.**

Dated:      New York, New York  
                August 29, 2017

FILED: QUEENS COUNTY CLERK 06/05/2018 04:22 PM

NYSCEF DOC. NO. 103

INDEX NO. 703632/2017

RECEIVED NYSCEF: 06/05/2018

To: MARSHALL DENNEHEY WARNER  
COLEMAN & GOGGIN  
Attn: Adam C. Calvert, Esq.  
*Attorney(s) for Defendant in Action #1*  
**US TIRES AND WHEELS OF QUEENS, LLC.**  
Wall Street Plaza  
88 Pine Street, 21st Floor  
New York, NY 10005  
(212) 376-6400

CC: AARONSON RAPPAPORT  
FLEINSTEIN & DEUTSCH, LLP  
*Attorneys for Defendant(s)*  
**FORD MOTOR COMPANY**  
600 Third Avenue  
New York, NY 10016  
(212) 582-6700

DLA PIPER LLP  
*Attorneys for Defendants*  
**THE GOOD YEAR TIRE & RUBBER CO.**  
1251 Avenue of Americas, 27th Floor  
New York, NY 10020  
(212) 335-4500

MONTFORT, HEALY, McGUIRE & SALLEY, LLP  
*Attorney for Defendant*  
**JOSE AYBAR, Jr.**  
840 Franklin Avenue  
Garden City, NY 11530  
(516) 747-4082

CERTAIN & ZILBERG, PLLC  
*Attorney(s) for co-plaintiff in Actions #1 and #2*  
**JOSE AYBAR**  
909 Third Avenue, Suite 2803  
New York, NY 10022  
(212) 687-7800

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INDEX NO. 703632/2017

RECEIVED NYSCEF: 06/05/2018

INDEX NO. 703632/2017

RECEIVED NYSCEF: 08/15/2017

FILED: QUEENS COUNTY CLERK 08/15/2017 02:58 PM

NYSCEF DOC. NO. 43

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

ORIGINAL

Present: HONORABLE DENIS J. BUTLER IAS Part 12  
Justice

-----x  
JOSE AYBAR, ORLANDO GONZALES, JOSE AYBAR  
as Administrator of THE ESTATE OF  
CRYSTAL CRUZ-AYBAR, JESENIA AYBAR AS  
Administratrix 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.,

Index  
Number: 9344/2014

Motion Date:  
July 20, 2017

Motion Seq. No. 13

Plaintiff(s),

-against-

US TIRES AND WHEELS OF QUEENS, LLC.,

Defendant(s).

-----x  
US TIRES AND WHEELS OF QUEENS, LLC.,

Third-Party Plaintiff,

-against-

THE GOODYEAR TIRE & RUBBER COMPANY  
and FORD MOTOR COMPANY,

Third-Party Defendant.

-----x  
The following papers numbered 1 to 6 were read on this motion by  
third-party defendant, The Goodyear Tire & Rubber Company, for an  
order staying the proceedings.

**FILED: QUEENS COUNTY CLERK 06/05/2018 04:22 PM**

NYSCEF DOC. NO. 103

INDEX NO. 703632/2017

**FILED: QUEENS COUNTY CLERK 08/15/2017 02:58 PM**

NYSCEF DOC. NO. 43

RECEIVED NYSCEF: 06/05/2018

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**Papers  
Numbered**

Notice of Motion, Affirmation.....E23-24

Upon the foregoing papers it is ordered that the unopposed motion is determined as follows:

Third-Party Defendant in the above-captioned action, The Goodyear Tire & Rubber Company ("Goodyear"), seeks a stay of this action pursuant to CPLR § 2201 and 5519(c), while Goodyear pursues its appeals of this Court's decisions (Rafaele, J.) denying Goodyear's motions to dismiss for lack of personal jurisdiction in two other actions (Index No. 706908/2015 and Index No. 706909/2015). The three actions relate to the same single-vehicle accident. In the instant action, Defendant U.S. Tires and Wheels of Queens LLC asserts third party claims against Goodyear. In the other two actions, Plaintiffs sue Goodyear directly.

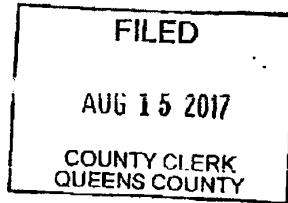
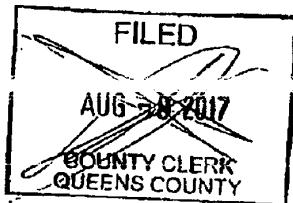
Goodyear advises the Court that the instant action was previously joined for purposes of discovery with the two actions now under appeal. Goodyear contends that "the Second Department's imminent decision in the Appeal will constitute binding authority on the instant action, potentially resulting in the dismissal of Goodyear altogether." However, Goodyear does not articulate how this could be so. According to Goodyear, the appeals will resolve whether this Court has general personal jurisdiction over Goodyear, the trial court having already found a lack of specific jurisdiction with respect to Plaintiffs' products liability claims. But the above-captioned matter appears to involve different claims against Goodyear by a different party - namely, Defendant/Third Party Plaintiff Tires and Wheels of Queens LLC - who may very well be able to demonstrate specific jurisdiction over Goodyear. Goodyear does not indicate whether it has even raised lack of personal jurisdiction as a defense against the third party claims in this action.

Accordingly, the motion for a stay is DENIED.

This constitutes the Decision and Order of the Court.

Dated: August 2 , 2017

Denis J. Butler, J.S.C.



**FILED: QUEENS COUNTY CLERK 06/05/2018 04:22 PM**

NYSCEF DOC. NO. 103

**FILED: QUEENS COUNTY CLERK 08/29/2017 05:21 PM**

NYSCEF DOC. NO. 44

INDEX NO. 703632/2017

RECEIVED NYSCEF: 06/05/2018

INDEX NO. 703632/2017

RECEIVED NYSCEF: 08/29/2017

**Affidavit of Service by Mail**

STATE OF NEW YORK                            }  
     } ss:  
 COUNTY OF QUEENS                            }

MARIA COLÓN, being duly sworn, deposes and says:

That deponent is not a party to this action, is over the age of eighteen years and resides in the state of New York.

That on the 29<sup>th</sup> day of August, 2017 at approximately 4:30 P.M., deponent served the within ORDER WITH NOTICE OF ENTRY upon:

MARSHALL DENNEHEY WARNER  
 COLEMAN & GOGGIN  
 Attn: Adam C. Calvert, Esq.  
*Attorney(s) for Defendant in Action #1*  
*US TIRES AND WHEELS OF QUEENS, LLC.*  
 Wall Street Plaza  
 88 Pine Street, 21st Floor  
 New York, NY 10005

AARONSON RAPPAPORT  
 FEINSTEIN & DEUTSCH, LLP  
*Attorneys for Defendant(s)*  
*FORD MOTOR COMPANY*  
 600 Third Avenue  
 New York, NY 10016

DLA PIPER LLP  
*Attorneys for Defendants*  
*THE GOOD YEAR TIRE & RUBBER CO.*  
 1251 Avenue of Americas, 27th Floor  
 New York, NY 10020

MONTFORT, HEALY, McGUIRE & SALLEY, LLP  
*Attorney for Defendant*  
*JOSE AYBAR, Jr.*  
 840 Franklin Avenue  
 Garden City, NY 11530

CERTAIN & ZILBERG, PLLC  
*Attorney(s) for co-plaintiff in Actions #1 and #2*  
*JOSE AYBAR*  
 909 Third Avenue, Suite 2803  
 New York, NY 10022

**FILED: QUEENS COUNTY CLERK 06/05/2018 04:22 PM**

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INDEX NO. 703632/2017

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INDEX NO. 703632/2017

RECEIVED NYSCEF: 08/29/2017

counsel for the Defendant(s) in the action herein, by enclosing a true copy of same in a postpaid wrapper properly addressed to the above, and depositing said wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service within the State of New York by REGULAR mail.

  
\_\_\_\_\_  
MARÍA COLÓN

Sworn and subscribed to before me  
on this 29<sup>th</sup> day of August, 2017

NOTARY PUBLIC, STATE OF NEW YORK  
NOTARY PUBLIC  
NO. 01L06294335  
QUALIFIED IN QUEENS COUNTY  
COMMISSION EXPIRES 12/16/2017

JENNY G. LORO  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01L06294335  
QUALIFIED IN QUEENS COUNTY  
COMMISSION EXPIRES 12/16/2017

**FILED: QUEENS COUNTY CLERK 06/05/2018 04:22 PM**

NYSCEF DOC. NO. 103

INDEX NO. 703632/2017

RECEIVED NYSCEF: 06/05/2018

Index No.: 703632

Year: 2017

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

---

JOSE AYBAR, ORLANDO GONZALES, JOSE AYBAR as Administrator of THE ESTATE OF CRYSTAL CRUZ-AYBAR, JESENIA AYBAR as Administratrix of THE ESTATE OF NOELIA OLIVERAS, JESENIA AYBAR as LEGAL GUARDIAN on behalf of KEILA CABRAL, a minor, ANNA AYBAR and JESENIA AYBAR as Administratrix of THE ESTATE OF TIFFANY CABRAL

*Plaintiffs,*

-against-

US TIRES AND WHEELS OF QUEENS, LLC.

*Defendant.*

---

**ORDER WITH NOTICE OF ENTRY**

---

**OMRANI & TAUB, P.C.**

*Attorneys for: PLAINTIFF  
909 THIRD AVENUE - 28<sup>TH</sup> FLOOR  
NEW YORK, NEW YORK 10022  
TEL: (212) 599-5550*

*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 in the annexed documents are not frivolous.*

*Dated: August 29, 2017  
New York, New York*

*Signature \_\_\_\_\_  
Printed Name: MICHAEL A. TAUB, ESQ.*

**PLEASE TAKE NOTICE**

NOTICE OF *that the within is a (certified) true copy of a  
ENTRY entered in the office of the clerk of the within named Court on* 20 \_\_\_\_\_

NOTICE OF *that an Order of which the within is a true copy will be presented for settlement to the  
SETTLEMENT Hon. at  
on* 200 \_\_\_\_\_, at M.

**OMRANI & TAUB, P.C.**

*Attorneys for: PLAINTIFF  
909 THIRD AVENUE - 28<sup>TH</sup> FLOOR  
NEW YORK, NEW YORK 10022*

**FILED: QUEENS COUNTY CLERK 06/05/2018 04:22 PM**

NYSCEF DOC. NO. 103

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RECEIVED NYSCEF: 06/05/2018



## NYSCEF - Queens County Supreme Court Confirmation Notice



This is an automated response for Supreme Court / Court of Claims cases. The NYSCEF site has received your electronically filed document(s) for:

**JOSE AYBAR et al v. - US TIRES AND WHEELS OF QUEENS, LLC et al**

**703632/2017**

**Assigned Judge: Denis Butler**

**Documents Received on 08/29/2017 05:21 PM**

<b>Doc #</b>	<b>Document Type</b>	<b>Motion #</b>
44	NOTICE OF ENTRY	013
Does not contain an SSN or CPI as defined in 202.5(e) or 206.5(e)		

### Filing User

Name: <b>MICHAEL ANDREW TAUB</b>	
Phone #:	E-mail Address: <b>mtaub@omraniandtaub.com</b>
Fax #:	Work Address: <b>909 3RD AVE FL 28 NEW YORK, NY 10022</b>

### E-mail Notifications

An e-mail notification regarding this filing has been sent to the following address(es) on 08/29/2017 05:21 PM:

**CALVERT, ADAM CHRISTOPHER - accalvert@mdwcg.com**  
**COUTO, PETER JOHN - Peter.Couto@dlapiper.com**  
**FAZIO, PETER JOSEPH - pjfazio@arfdlaw.com**  
**SAEZ AGUIRRE, WALSY K. - wksaez@arfd.com**  
**TAUB, MICHAEL ANDREW - mtaub@omraniandtaub.com**  
**ZILBERG, MICHAEL - mzilberg@certainlaw.com**

**NOTE: If submitting a working copy of this filing to the court, you must include as a notification page firmly affixed thereto a copy of this Confirmation Notice.**

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**Audrey I. Pheffer, Queens County Clerk and Clerk of the Supreme Court - apheffer@nycourts.gov**  
 Phone: 718-298-0173, 718-298-0601 Website: <https://www.nycourts.gov/COURTS/11jd/queensclerk>

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**NYSCEF Resource Center - EFile@nycourts.gov**  
 Phone: (646) 386-3033 Fax: (212) 401-9146 Website: [www.nycourts.gov/efile](http://www.nycourts.gov/efile)

**AFFIRMATION OF MICHAEL A. TAUB, FOR PLAINTIFFS, IN OPPOSITION  
TO THIRD-PARTY DEFENDANT THE GOODYEAR TIRE & RUBBER  
COMPANY'S MOTION TO DISMISS THE THIRD-PARTY  
COMPLAINT, DATED JULY 20, 2018 [324 - 342]**

**FILED: QUEENS COUNTY CLERK 07/27/2018 12:16 PM**  
NYSCEF DOC. NO. 122

INDEX NO. 703632/2017  
RECEIVED NYSCEF: 07/27/2018

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----x  
JOSE AYBAR, ORLANDO GONZALES, JOSE AYBAR as  
Administrator of the Estate of CRYSTAL CRUZ-AYBAR,  
JESENIA AYBAR, as Administratrix of the Estate of  
NOELIA OLIVERAS, JESENIA AYBAR as a legal  
Guardian on behalf of KEILA CABRAL, a minor, ANNA  
AYBAR and JESENIA AYBARas Proposed Administratrix  
of the Estate of TIFFANY CABRAL

*Plaintiffs*

- against -

Action #1  
Index: 9344/14

**PLAINTIFFS'  
OPPOSITION TO  
MOTION TO DISMISS  
CAUSE OF ACTION  
AGAINST THIRD-PARTY  
DEFENDANT, THE  
GOODYEAR TIRE &  
RUBBER COMPANY**

US TIRES AND WHEELS OF QUEENS, LLC.

*Defendant.*

-----x  
US TIRES AND WHEELS OF QUEENS, LLC.

*Third-Party Plaintiff,*

-against-

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

*Third-Party Defendants.*

-----x  
MICHAEL A. TAUB, ESQ., an attorney duly admitted to practice law before the Courts  
of the State of New York, hereby affirms the following under penalty of perjury: That

1. I am an attorney with the Law Offices of OMRANI & TAUB, P.C., attorney(s)  
for each of the plaintiffs in the above entitled action, except for JOSE AYBAR, who is

represented by separate counsel. I am fully familiar with the facts and circumstances surrounding this action.

2. This affirmation is submitted in opposition to the motion by the Third-Party Defendant, THE GOODYEAR TIRE & RUBBER CO., (hereinafter "GOODYEAR"), seeking to dismiss the third-party action asserted against it, arguing lack of personal jurisdiction over GOODYEAR in New York State Supreme Court, Queens County in the instant matter.

3. At the outset, it must be asserted that this motion is premature, as very little discovery has been exchanged, and EBTs of all parties, particularly a representative of GOODYEAR, remain outstanding. Thus, while GOODYEAR no doubt expects the Court to have extensive familiarity with its well known, extensively advertised tire products, it puts the plaintiffs at a disadvantage as the full extent of GOODYEAR's business dealings in New York (including questions regarding the amount of revenue received from its New York business presence) remains undisclosed, and can only be guessed at by the plaintiffs, and this court, in responding to the instant motion. Suffice it to say that GOODYEAR's presence in New York State is significant, pervasive, ongoing and long-standing (i.e. systematic and continuous), and that GOODYEAR no doubt derives significant revenue from its New York presence.

4. Jurisdiction over the third-party defendant, GOODYEAR, is easily established pursuant to CPLR §302(a)(1) and CPLR §302(a)(4), which reads as follows:

**§ 302. Personal jurisdiction by acts of non-domiciliaries**

(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.**

5. Here, subsections (2) and (3) are not required elements to be satisfied, so long as either subsection (1) or subsection (4) is satisfied, which is why each subsection is separated by the word “or” rather than “and”. For this reason, subsection (2) and (3) are lined out in order to avoid unnecessary distraction and to direct the attention of the court to that portion of the statute that is relevant herein.

6. Assuming that GOODYEAR is a foreign corporation, which is not contested, it qualifies as a “non-domiciliary” for purposes of applicability of CPLR §302. Thus, it is incumbent upon GOODYEAR to assert, and present evidence, that it does not transact any business within New York, or contract anywhere to supply goods or services in New York; and that it does not own, use or possess any real property situated within New York. GOODYEAR fails to make that argument, and ultimately cannot make that argument with a straight face. The GOODYEAR Tire & Rubber Co. clearly and unequivocally transacts business within New York State, and supplies tires in New York, and services motor vehicles in New York at any one of its

numerous GOODYEAR Auto Service Centers located throughout the State. Contrary to GOODYEAR's argument in its supporting papers, it is unnecessary for purposes of the Long Arm statute for the actual product that is the subject of the lawsuit to be manufactured in New York. And it is not necessary for the tortious act to have occurred in New York State (which is the reason §(1) is separated from §(2) by the word "OR" as opposed to "and").

7. The gist of GOODYEAR'S argument rests in its categorization of the jurisdiction herein to be general, or 'all purpose' jurisdiction, as opposed to 'specific jurisdiction (which requires that matter to arise from contacts within the forum state). Here, although the subject GOODYEAR tire ultimately failed while being temporarily operated on a federal interstate highway outside of New York, specific jurisdiction is nevertheless asserted, as the cause(s) of action arose out of GOODYEAR's specific contacts within the State, as its allegedly defective tire was mounted onto a vehicle that was registered to a New York resident and duly licensed in New York State.

8. GOODYEAR's argument assumes that general jurisdiction is the sole basis of the third-party jurisdiction herein (it is not), and rests its argument almost exclusively on the fairly recent and controversial Supreme Court holding in Daimler A.G. v. Bauman, 134 S. Ct. 746 (2013), which arguably narrows the definition of 'minimum contacts' under the traditional reach of long arm jurisdiction. Relying on the Daimler decision, GOODYEAR argues that it is a foreign corporation, registered in Ohio with its principal place of business and corporate headquarters also in Ohio, and that its affiliations and business operations within New York State are not *so* "continuous and systematic" as to render it essentially at home in New York for purposes of general jurisdiction, and that it does not otherwise "avail itself of jurisdiction in New York." Neither of these assertions are compelling. GOODYEAR maintains both a substantial

and continuous business presence in New York State. And it has voluntarily availed itself of jurisdiction in New York. Thus, even if this court were to ignore the obvious nexus of the defective tire allegation to GOODYEAR's pervasive and ongoing business of marketing, distributing and selling tires in New York State for use on millions of New York registered motor vehicles, it is argued that GOODYEAR would nevertheless be subject to general jurisdiction in New York State.

9. As the instant motion to dismiss has been made pre-discovery, Plaintiff asks the Court to take judicial notice of the following, upon information and belief:

- A) GOODYEAR is a well-recognized brand name, and is primarily in the business of manufacturing, marketing and distributing tires for usage on automobiles;
- B) GOODYEAR tires are marketed and sold throughout New York State, and are distributed and sold by virtually every business which services automobiles or sells automobile tires, including but not limited to Pep Boys Auto Centers, Mavis Discount Tires, Sears Auto Centers, Ford dealerships, GMC dealerships, etc., etc.
- C) In addition to wholesale distribution, GOODYEAR owns, operates and/or controls the franchise for scores of 'Goodyear Tire and Auto Service Centers' actively operating and doing business throughout New York State, including right here in this jurisdiction in Queens, which sell and promote GOODYEAR tire products exclusively under its brand name, and which display the GOODYEAR company logo on its signs both outside and inside the stores, employing thousands of New Yorkers. [Annexed hereto

as EXHIBIT "1" is a printout from the GOODYEAR website identifying at least sixty-two separate GOODYEAR Auto Service Centers in New York]. GOODYEAR even brags in its on-line literature on its company website that its Goodyear Auto Service Centers are "wholly owned and operated by the Goodyear Tire & Rubber Company since 1924"! [See EXHIBIT "2"].

- D) GOODYEAR tires are found, by the millions, upon vehicles, new and used, that are sold, marketed, registered and operated throughout every county in New York State.

10. In short, GOODYEAR's corporate presence in New York is pervasive. It has engaged in, and continues to engage in, continuous and systematic, ongoing business in New York State, probably deriving millions (if not hundreds of millions) of dollars in revenue from its New York business operations and sales of its products in New York State. Indeed, it is a far stretch for GOODYEAR to assert, with a straight face argument, that it does not maintain affiliations within New York that are continuous and systematic.

11. GOODYEAR essentially argues that its corporate presence in New York, though continuous and systematic, nevertheless does not subject it to general jurisdiction in New York State, relying upon the Daimler decision, *Id.* However, as will be argued herein, that case is easily distinguishable from the facts and circumstances herein. In the Daimler case, a group of Argentina nationals filed suit in a California Federal Court against Daimler AG (a foreign German public stock company) over tortious acts allegedly committed by agents of its subsidiary, Mercedez-Benz of Argentina, in Argentina back in 1976-1983 during what is referred to as Argentina's "dirty war". The Supreme Court held that, under those facts, the minimum

contacts that Daimler had in California did not support general jurisdiction in California under California's long-arm statute.

12. The Daimler fact pattern is a far cry and easily distinguishable from the case at bar, where Queens, New York residents have sued a Queens, New York company (the defendant/ third-party plaintiff, US TIRES AND WHEELS OF QUEENS, LLC), in connection with a single vehicle, tire failure and subsequent rollover accident, which resulted from the failure of a defective GOODYEAR tire product that was negligently mounted on said vehicle. Here, the lead plaintiff resides in Queens, New York. The first party defendant resides and operates a business in Queens, New York. The subject motor vehicle (which even provided first-party, no-fault benefits under the motor vehicle laws of New York) was registered, licensed and insured in New York. The subject vehicle was purchased in New York, owned by a New York resident, and garaged full time in New York State. Furthermore, the initial tort giving rise to this litigation was committed by the defendant/third-party-plaintiff in New York State. Indeed, New York State is the only reasonable, logical and rational venue for this action to have been brought.

13. Unlike the plaintiffs in Daimler, the plaintiffs herein were not 'forum shopping' for a favorable foreign jurisdiction. They brought suit in Queens, New York where the lead most of the plaintiffs resided, where the vehicle owner resided, where the vehicle was registered and garaged, where the defendant's business was located and where the initial tort was committed. Likewise, the third-party plaintiff was not forum shopping. New York State is the only rational venue for the third-party action at issue herein to have been asserted.

14. The Court should note for the record that there are two other related actions pending in Supreme Court, Queens County, which have been joined (though not yet fully consolidated) for purposes of joint discovery, in which the plaintiffs herein have already brought

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direct actions against the movant, GOODYEAR, et. al. Said actions are captioned and identified as follows:

-----x  
JOSE AYBAR

Action #2  
Index: 706908/15

Plaintiff,

-against-

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

Defendants,

-----x  
ANNA AYBAR, ORLANDO GONZALES, JESENIA  
AYBAR, as legal guardian on behalf of KEILA 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

Action #3  
Index No.: 706909/2015

Plaintiffs,

-against-

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

Defendant(s)

-----x  
15. This Court should note that GOODYEAR previously filed a similar motion to dismiss Actions #2 and #3, upon essentially the exact same jurisdictional grounds argued in the instant motion to dismiss the third-party action. Said motion to dismiss was denied by decision of J.S.C. Thomas D. Raffaele on May 25, 2016. [A copy of Judge Raffaele's decision is annexed

hereto as **EXHIBIT “3”**]. Arguably, Judge Raffaele’s decision is controlling in the instant matter, and the doctrine of ‘issue preclusion’ should prevail.

16 In his well reasoned, seven page decision, Justice Raffaele specifically held that GOODYEAR’s motion had “no merit”; that the defendant, GOODYEAR’s contacts were significant, systematic and continuous; and that the new ‘exceptional circumstances’ test as articulated in the Daimler decision was satisfied; and that GOODYEAR voluntarily consented to jurisdiction in New York by virtue of registering its corporation with the NY Department of State , and appointing an in-State agent to accept service of process service of process on its behalf here in New York. \*[Said decision is presently on Appeal].

17. Nevertheless, in what amounts to a second bite at the apple, GOODYEAR now moves to have the third-party action against it dismissed, arguing that New York State does not have jurisdiction over GOODYEAR as a third-party defendant. It is respectfully asserted that the doctrine of “issue preclusion” applies, as jurisdiction over Goodyear in this court has already been determined. To the extent that the issue may be outside the rubric of issue preclusion, Judge Raffaele’s decision, and his findings, should nevertheless be instructive to this bench.

18. GOODYEAR attempts to argue that the Third-Party claim against it herein sounds in products liability, where the initial action sounds only in negligence, and is thus improperly brought. Yet the very basis of the negligence claim is the underlying failure of the main defendant, US TIRES AND WHEELS OF QUEENS, LLC., to properly inspect, recognize and communicate the subject tire’s lack of road worthiness to the plaintiffs, due to its defective design, manufacturing and assembly flaws attributed to GOODYEAR. In other words, the main action and the third-party action are inextricably intertwined, particularly in light of the

companion actions which assert direct causes of action against GOODYEAR sounding in products liability].

GOODYEAR'S AFFILIATIONS WITH THE STATE OF NEW YORK ARE SO CONTINUOUS AND SYSTEMATIC AS TO RENDER IT ESSENTIALLY AT HOME IN NEW YORK STATE, AND IN ANY EVENT, SATISFIES 'EXCEPTIONAL CIRCUMSTANCES'

#### I. SYSTEMATIC AND CONTINUOUS

19. While the Daimler decision appears to have narrowed the ‘minimum contacts’ test for general jurisdiction, by requiring a corporate defendant to have “affiliations with the State that are so continuous and systematic as to render it essentially at home in the forum State,” it obviously did not altogether abolish general jurisdiction. Here, the issue is not about fishing for evidence of minimum contacts with the state, since GOODYEAR’s contacts with New York State are publicly known and far beyond minimum. Indeed, GOODYEAR’s affiliations are so extensive, long-standing and pervasive, so “systematic and continuous,” that GOODYEAR is “essentially at home” in New York State. This somewhat new (yet at the same time traditional) standard is specifically articulated throughout the Daimler decision. “Accordingly, the inquiry under Goodyear is not whether a foreign corporation’s in-forum contact can be said to be in some sense “continuous and systematic,” it is whether that corporation’s “affiliations with the State are so ‘continuous and systematic’ as to render [it] essentially at home in the forum State.” Daimler at 761 (*citing Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915).

20. Thus, in applying Daimler, the pertinent question before this Court is whether GOODYEAR’s business affiliations within New York State are so pervasive, and “continuous and systematic” as to render it essentially “at home” in New York State, whereby it effectively “avails itself of jurisdiction in New York,” for purpose of general jurisdiction under CPLR §302.

21. Upon information and belief (recall, this motion is premature, having been filed pre-discovery) GOODYEAR has been systemically and continuously doing business in New York since at least 1924. It 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. It is no wonder, then, that Goodyear has registered with the New York State Department of State, Division of Corporations, in order to be fully authorized to conduct business within the State of New York and avail itself of the laws of the State of New York. Discovery would likely reveal that sale of their respective products within New York State have amounted to hundreds of millions, if not billions, of dollars in revenue.

22. Furthermore, in the case at bar, the subject motor vehicle bearing the subject GOODYEAR tire at issue herein (which was originally installed upon the vehicle when it was new), was purchased (albeit used) by the plaintiff, JOSE AYBAR, in New York State. JOSE AYBAR is a New York State resident. The vehicle was lawfully registered with the DMV in New York State and bore New York State license plates. It was garaged full time in New York State, and it was driven, 99% of the time, within New York State. It was allegedly negligently serviced by the defendant, US TIRES AND WHEELS OF QUEENS LLC, at a Queens, New York auto shop. It was merely happenstance that the subject single car rollover accident

occurred outside of New York State, as the vehicle was being operated upon a Federal Interstate Highway at the time, returning from a short vacation road trip to Florida and back.

23. It is upon this singular basis alone, the location of the occurrence (a federal interstate highway in Virginia, where the vehicle was merely passing through on its way back to New York on the time and date of occurrence) that allows the moving defendant even a straight face argument against jurisdiction in New York. (Had the tire failure-rollover occurred on the same Federal Highway within New York's borders, the defendants would have even less basis at all to challenge jurisdiction). However, as stressed earlier in this brief, it is not necessary, for purposes of obtaining general or specific jurisdiction under either CPLR §302(a)(1) or CPLR §302(a)(4) for the actual tort to have occurred within the borders of New York State, so long as there is sufficient corporate presence in New York, as here.

24. Here, the alleged tort by the first-named defendant, US TIRES AND WHEELS OF QUEENS, LLC., occurred in Queens, New York (albeit the resulting tire failure occurred on the highway in Virginia). On that basis, GOODYEAR essentially asks this court to treat the plaintiffs and the third-party plaintiff herein (who are New York State residents) on equal footing as the Argentina nationals who forum selected a California Federal District Court venue in which to sue Daimler (a German company) over events which occurred forty years ago in Argentina! The Supreme Court correctly held that Daimler was not amenable to suit in California for injuries allegedly caused by the conduct of Daimler subsidiary MB Argentina that took place 40 years ago entirely outside the United States, where none of the parties were residents of the United States. Notably, unlike here, the Supreme Court found that the plaintiffs in Daimler did not even have "minimum contacts" with the forum State. Compare that to the facts herein, where

New York State was not only the logical choice of venue, but perhaps the *only* proper venue for this lawsuit.

## II. EXCEPTIONAL CIRCUMSTANCES

25. The Daimler court did not specifically define precise elements of “exceptional circumstances” which would subject an out-of-state corporation to general jurisdiction in the forum state, but it stressed that elements of due process, and traditional notions of fairness were intertwined into this new standard. Here, unlike the parties in Daimler and its select progeny, the plaintiffs (and third-party-plaintiff), did not forum select New York State out of thin air. Indeed, as demonstrated hereinabove, it was virtually the only choice for proper venue, as the originally named defendant was a New York resident company, and the plaintiff(s) were New York residents, and the subject motor vehicle (which bore the subject GOODYEAR tires) was a New York registered motor vehicle. Nor was Federal Court an option, as there was no diversity. Likewise, Virginia (the location of the ultimate rollover) is not, and could not, be a proper venue, as neither the plaintiffs nor the defendant (nor the third-party defendants) were residents of Virginia.

26. GOODYEAR asserts that, under the facts and circumstances herein, the only possible jurisdiction over it in this case would be in the state of Ohio, as they are incorporated in Ohio and their principal corporate headquarters is in Ohio. Yet they fail to recognize that Ohio is a completely wrong jurisdiction for all of the remaining litigants on both sides. Bringing suit (or third-party action) against GOODYEAR in Ohio would effectively require a separate action altogether, rather than a third-party action. Taking GOODYEAR’s position further, virtually dozens of inter-state jurisdictions could be ultimately invoked, followed by dozens of motions to

consolidate into one ultimate jurisdiction. Such civil practice could take years just to establish a venue for litigation.

27. This could not have been the intent of the Supreme Court in deciding Daimler. And indeed, the Daimler holding specifically carved out an exceptional circumstances test. It is argued herein that a third-party action such as this, involving multiple defendants who contributed to manufacturing and marketing a single product, each with a different and distinct home jurisdiction, rises to the level of exceptional circumstance, allowing for a single venue, so long as the initial action was properly brought, as here, in the proper venue against the original defendants. But the Daimler holding does not automatically limit jurisdiction to a foreign corporation's domicile. Rather, it clearly recognizes that general jurisdiction can still be obtained under "exceptional circumstances" or sufficient "corporate presence."

### III. REGISTRATION AS A FOREIGN CORPORATION DOING BUSINESS IN NEW YORK STATE

28. Moreover, as argued in the third-party-plaintiff's opposition papers already submitted in opposition to the instant motion, GOODYEAR has voluntarily availed itself of the laws of New York, by voluntarily registering its corporate presence in New York State with the Department of State, and thus has voluntarily consented to accept service of process within New York State by appointing an in-state agent to accept service of process on its behalf. [Annexed hereto as **EXHIBIT "4"** is a true and accurate printout taken from the NYS Department of State website, documenting GOODYEAR's filing as a foreign business corporation actively doing business in New York, dating back to 1956].

29. This has been held to amount to a knowing consent to general jurisdiction in the courts of New York. *See Steuben Foods, Inc. v. Oystar Group*, 2013 WL 2105894 (W.D.N.Y.

2013); Rockefeller University v. Ligand Pharmaceuticals, Inc., 581 F. Supp.2d 461, 466-67 (S.D.N.Y) 2008); Augsbury Corp. v. Petrokey Corp., 470 NYS2d 787, (3<sup>rd</sup> Dept., 1983). This is deemed “part of the bargain by which [a foreign corporation] enjoys the business freedom of the State of New York.” Neirbo Co. v. Bethlehem Shipbuilding Corp., 308 U.S. 165, at 175. As argued by the defendant/third-party-plaintiff, the moving defendant availed itself of New York laws, and thereby consented to personal jurisdiction in New York, by duly registering its corporation with the NYS Department of State.

#### IV. CONCLUSION

30. Here, GOODYEAR has maintained a 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 city and elsewhere throughout New York State, and it employs hundreds, probably 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. In short, its ongoing, continuous and systematic business dealings and affiliations in New York State easily satisfy the requirements of CPLR §302, and rise far above the 'minimum contacts' traditionally required by the courts in order to obtain general jurisdiction over a corporate entity. They also further satisfy the so-called "exceptional circumstances" test, as newly articulated in the controversial and fairly recent Daimler decision cited by GOODYEAR throughout its moving papers. The proper analysis to undertake is not whether GOODYEAR is *actually* at home in New York State, but if it is 'essentially at home' for the purpose of obtaining jurisdiction in a New York under the facts and circumstances herein.

31. Whether this court applies the 'Corporate Presence' test or the 'Exceptional Circumstances' test, the result is the same. GOODYEAR's actual corporate presence and

pervasive business dealings and affiliations in New York are so substantial, systematic and continuous that it has availed itself of New York law, and is effectively "at home" in New York State for purposes of both specific and general jurisdiction.

32. Even post-*Bauman*, New York courts have continued to assure New York plaintiffs that CPLR 302 remains viable. In D & R Global Selections, S.L. v. Pineiro, 128 A.D.3d 486 (1<sup>st</sup> Dep't 2015), the Appellate Division reiterated that a "defendant's visits to New York to promote its wine business constitutes transaction of business here" under CPLR §302.

#### V. ADDITIONAL TIME FOR LIMITED JURISDICTIONAL DISCOVERY

33. Should the court not readily find that jurisdiction over GOODYEAR is established, Plaintiff's request they be afforded a period of limited jurisdictional discovery to fully assess the full extent of defendant GOODYEAR's contacts with this state. Uniquely absent from Goodyear's papers is any allegation that they are not "essentially at home" in New York. Limited jurisdictional discovery will reveal that not only is Goodyear authorized to do business in this State and derives substantial income from that business, but that it is a virtual domestic corporation, operating at all levels, retail and wholesale, here. The failure to both make and support, with evidence in admissible form, an allegation that is was is 'essentially at home' in this State is fatal to defendant's application. Peters v. Peters, 127 A.D.3d 656, 657 (1<sup>st</sup> Dep't 2015) ["(T)he Daimler decision supports plaintiff's position that Daimler did not establish a new rule, but "clarified" the general jurisdiction standard previously "set forth" in Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 131 S.Ct. 2846, [2011]; (See also In re Roman Catholic Diocese of Albany, N.Y. Inc., 745 F.3d 30, 37 [2d Cir.2014] ). Under the standard first articulated in Goodyear, UBS did not contest in its motion papers that it is not "essentially at

home" in New York Id. at 2851); therefore, it waived its objection based on personal jurisdiction"]. The failure to make that essential allegation waives any objection based on lack of personal jurisdiction.

34. Finally, GOODYEAR cannot claim violation of its due process rights here. The United States Supreme Court's due process precedents provide that: "So long as a party avails itself of the benefits of the forum, has sufficient minimum contacts with it, and should reasonably expect to defend its actions there, due process is not offended if that party is subjected to jurisdiction even if not 'present' in that State." Fischbarg v. Doucet, 9 N.Y.3d 375, 384-85 (2007). Compare to within, where GOODYEAR's "presence" is apparent and undisputed.

35. There should be no issue that the Supreme Court of the State of New York, Queens County, is the most proper and appropriate venue for this action. With regard to the third-party action at issue herein, it has been readily established that GOODYEAR conducts substantial business in New York, and does engage in pervasive, ongoing, continuous business, and owns or controls property within New York State. For the reasons stated herein, said contacts are sufficient under both the 'Corporate Presence' test and the more narrow 'Exceptional Circumstances' test (if that is indeed the new standard). It should be clear that jurisdiction over GOODYEAR (and FORD, as well, for that matter) satisfies any and all due process concerns raised by the Daimler decision. GOODYEAR may indeed *prefer* to haul all of the parties into its home state of Ohio (as FORD would undoubtedly prefer to litigate its defense in its home state of Michigan), but that option is entirely unpractical and improper, and would only serve to raise additional and even more compelling jurisdictional issues for the other parties. Simply put, there is no one single jurisdiction that will satisfy all of the parties herein, but surely this case belongs in Queens County, New York where jurisdiction and venue is just and proper.

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GOODYEAR cannot seriously expect this court to sever it from the case or dismiss the claims (and now cross-claims) against it for lack of personal jurisdiction, given its pervasive, continuous, systematic and ongoing business presence in New York.

36. For the reasons addressed herein, the instant motion to dismiss the third-party claims against the movant, THE GOODYEAR TIRE AND RUBBER COMPANY, as third-party defendant, for lack of personal jurisdiction over it, should be denied in its entirety.

Dated: New York, New York  
July 20, 2018

Yours, etc.

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**EXHIBIT 1 TO TAUB AFFIRMATION -  
LIST OF STORES [343 - 360]**

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12/9/2015.

Find a Store | Goodyear Auto Service Center

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Call us 1-866-370-0700

Chat LIVE! Our phones are open: (866)705-0700  
Mon-Fri: 09:00 AM - 05:00 PM EST

### Stores in Your Area

Find a Goodyear Auto Service Center near you. If you schedule an appointment, we'll save the information for your next visit.

Results for stores near:

11550



We found 19 Goodyear Auto Service Center store(s) within 50 miles of your search.

**A Goodyear Auto Service Center**

Hempstead

101 North Franklin Street  
Hempstead, NY 11550-3022  
(516) 489-3700

Distance: .76 mi  
One block north of Hempstead  
Tumpike

Hours:

MON 7:00 am to 6:00 pm  
TUE 7:00 am to 6:00 pm  
WED 7:00 am to 6:00 pm  
THU 7:00 am to 6:00 pm  
FRI 7:00 am to 6:00 pm  
SAT 7:00 am to 6:00 pm  
SUN Closed

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**B Goodyear Auto Service Center**

Freeport

65 East Sunrise Highway  
Freeport, NY 11520-3922  
(516) 898-1750

Distance: 3.73 mi  
In front of the Freeport Train  
Station next to Dunkin' Donuts

Hours:

MON 7:00 am to 7:00 pm  
TUE 7:00 am to 7:00 pm  
WED 7:00 am to 7:00 pm  
THU 7:00 am to 7:00 pm  
FRI 7:00 am to 7:00 pm  
SAT 7:00 am to 6:00 pm  
SUN 9:00 am to 5:00 pm

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**C Goodyear Auto Service Center**

Levittown

3181 Hempstead Tumpike  
Levittown, NY 11756-1318  
(516) 798-2444

Distance: 5.80 mi  
1/4 mile east of Tri-County Flea  
Market

Hours:

MON 7:00 am to 7:00 pm  
TUE 7:00 am to 7:00 pm  
WED 7:00 am to 7:00 pm  
THU 7:00 am to 7:00 pm  
FRI 7:00 am to 7:00 pm  
SAT 7:00 am to 6:00 pm  
SUN 7:00 am to 4:00 pm

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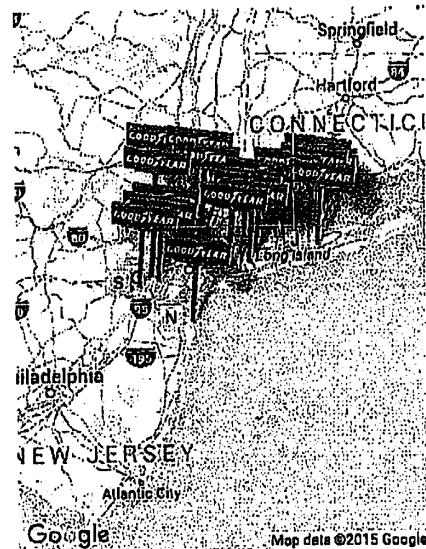
**D Goodyear Auto Service Center**

Jericho

336 North Broadway  
Jericho, NY 11753-2031  
(516) 433-7730

Hours:

MON 7:00 am to 7:00 pm  
TUE 7:00 am to 7:00 pm  
WED 7:00 am to 7:00 pm  
THU 7:00 am to 7:00 pm  
FRI 7:00 am to 7:00 pm  
SAT 7:00 am to 6:00 pm



Click on a map marker for additional store info.

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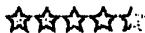
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Distance: 7.47 mi  
Just south of LIE and Northern State Parkway, next to Waldbaum's

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SUN 9:00 am to 4:00 pm

[More Store Details](#)[Read Reviews](#) [Review this store](#)

Goodyear Auto Service Center  
Lawrence

101 Rockaway Turnpike  
Lawrence, NY 11659-1021  
(516) 239-0800

Distance: 7.51 mi  
1/4 mile north of Cosico

Hours:  
MON 7:00 am to 7:00 pm  
TUE 7:00 am to 7:00 pm  
WED 7:00 am to 7:00 pm  
THU 7:00 am to 7:00 pm  
FRI 7:00 am to 7:00 pm  
SAT 7:00 am to 6:00 pm  
SUN 9:00 am to 5:00 pm

[More Store Details](#)[Read Reviews](#) [Review this store](#)

Goodyear Auto Service Center  
Commack

6400 Jericho Turnpike  
Commack, NY 11725-2828  
(516) 499-4200

Distance: 10.96 mi  
Corner of Jericho and Commack Road

Hours:  
MON 7:00 am to 8:00 pm  
TUE 7:00 am to 8:00 pm  
WED 7:00 am to 8:00 pm  
THU 7:00 am to 8:00 pm  
FRI 7:00 am to 8:00 pm  
SAT 7:00 am to 8:00 pm  
SUN 9:00 am to 5:00 pm

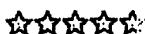
[More Store Details](#)[Read Reviews](#) [Review this store](#)

Goodyear Auto Service Center  
Englewood

41 South Dean Street  
Englewood, NJ 07631-3511  
(201) 568-8200

Distance: 22.71 mi  
Behind Benzzi Buch Mercedes

Hours:  
MON 7:00 am to 7:00 pm  
TUE 7:00 am to 7:00 pm  
WED 7:00 am to 7:00 pm  
THU 7:00 am to 7:00 pm  
FRI 7:00 am to 7:00 pm  
SAT 7:00 am to 6:00 pm  
SUN 9:00 am to 4:00 pm

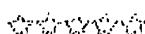
[More Store Details](#)[Read Reviews](#) [Review this store](#)

Goodyear Auto Service Center  
Westwood

39 Kinderkamack Road  
Westwood, NJ 07675-3002  
(201) 722-0914

Distance: 26.74 mi  
Kinderkamack Road & Crest Street

Hours:  
MON 7:00 am to 7:00 pm  
TUE 7:00 am to 7:00 pm  
WED 7:00 am to 7:00 pm  
THU 7:00 am to 7:00 pm  
FRI 7:00 am to 7:00 pm  
SAT 7:00 am to 5:00 pm  
SUN Closed

[More Store Details](#)[Be the first to write a review](#)

Goodyear Auto Service Center  
Centrocoach

1527 Middle Country Road

Hours:  
MON 7:00 am to 7:00 pm  
TUE 7:00 am to 7:00 pm

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**A** Centerreach, NY 11720  
(631) 732-1857

**B** Distance: 31.31 mi  
Corner of Middle Country Road  
and N. Coleman Rd

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WED 7:00 am to 7:00 pm  
THU 7:00 am to 7:00 pm  
FRI 7:00 am to 7:00 pm  
**SAT** 7:00 am to 6:00 pm  
SUN 9:00 am to 5:00 pm

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**C** Goodyear Auto Service Center  
Patchogue

**D** 368 East Main Street  
Patchogue, NY 11772-3115  
(631) 664-0200

**E** Distance: 32.89 mi  
Across from Dunkin' Donuts

**F** Hours:  
MON 7:00 am to 6:00 pm  
TUE 7:00 am to 6:00 pm  
WED 7:00 am to 6:00 pm  
THU 7:00 am to 6:00 pm  
FRI 7:00 am to 6:00 pm  
SAT 7:00 am to 5:00 pm  
SUN 9:00 am to 4:00 pm

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**G** Goodyear Auto Service Center  
Port Jefferson

**H** 1200 Route 112  
Port Jefferson Station, NY  
11770-3057  
(631) 828-0700

**I** Distance: 34.20 mi  
Next to B&J Lumber

**J** Hours:  
MON 7:00 am to 7:00 pm  
TUE 7:00 am to 7:00 pm  
WED 7:00 am to 7:00 pm  
THU 7:00 am to 7:00 pm  
FRI 7:00 am to 7:00 pm  
SAT 7:00 am to 6:00 pm  
SUN 9:00 am to 5:00 pm

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**K** Goodyear Auto Service Center  
Coram

**L** 285 Middle Country Road  
Coram, NY 11727-4401  
(631) 698-8100

**M** Distance: 34.81 mi  
Across from Home Depot

**N** Hours:  
MON 7:00 am to 6:00 pm  
TUE 7:00 am to 6:00 pm  
WED 7:00 am to 6:00 pm  
THU 7:00 am to 6:00 pm  
FRI 7:00 am to 6:00 pm  
SAT 7:00 am to 5:00 pm  
SUN 9:00 am to 4:00 pm

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**P** Goodyear Auto Service Center  
Clark

**R** 1093 Central Avenue  
Clark, NJ 07068-1113  
(732) 381-5340

**S** Distance: 36.21 mi  
Next to White Diamond Plaza

**T** Hours:  
MON 7:00 am to 7:00 pm  
TUE 7:00 am to 7:00 pm  
WED 7:00 am to 7:00 pm  
THU 7:00 am to 7:00 pm  
FRI 7:00 am to 7:00 pm  
SAT 8:00 am to 5:00 pm  
SUN 9:00 am to 5:00 pm

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**U** Goodyear Auto Service Center  
Eatontown

**V** Hours:  
MON 7:00 am to 7:00 pm

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12/9/2015

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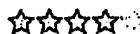
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261 Highway 35  
Eatontown, NJ 07724-2158  
(732) 542-6510

Distance: 36.31 mi  
Diagonally across the  
intersection from the Monmouth  
Mall

Find a Store | Goodyear Auto Service Center

TUE 7:00 am to 7:00 pm  
WED 7:00 am to 7:00 pm  
THU 7:00 am to 7:00 pm  
FRI 7:00 am to 7:00 pm  
SAT 7:00 am to 6:00 pm  
SUN Closed

[More Store Details](#)[Read Reviews](#) [Review this store](#)**Goodyear Auto Service Center****Menlo**

40 Parsonage Road  
Edison, NJ 08837-2416  
(732) 649-0860

Distance: 36.60 mi  
Across from Menlo Park Mall

**Hours:**

MON 7:00 am to 7:00 pm  
TUE 7:00 am to 7:00 pm  
WED 7:00 am to 7:00 pm  
THU 7:00 am to 7:00 pm  
FRI 7:00 am to 7:00 pm  
SAT 7:00 am to 6:00 pm  
SUN 9:00 am to 5:00 pm

[More Store Details](#)[Read Reviews](#) [Review this store](#)**Goodyear Auto Service Center****Parsippany**

740 Route 46  
Parsippany, NJ 07054-3401  
(973) 283-0550

Distance: 40.77 mi  
In the Arlington Plaza

**Hours:**

MON 7:00 am to 7:00 pm  
TUE 7:00 am to 7:00 pm  
WED 7:00 am to 7:00 pm  
THU 7:00 am to 7:00 pm  
FRI 7:00 am to 7:00 pm  
SAT 7:00 am to 6:00 pm  
SUN 9:00 am to 4:00 pm

[More Store Details](#)[Read Reviews](#) [Review this store](#)**Goodyear Auto Service Center****South Plainfield**

911 Oak Tree Avenue Suite F  
South Plainfield, NJ 07080-  
5130  
(800) 822-0428

Distance: 40.89 mi  
In Oak Park Commons  
Shopping Center, next to CVS

**Hours:**

MON 7:30 am to 8:00 pm  
TUE 7:30 am to 8:00 pm  
WED 7:30 am to 8:00 pm  
THU 7:30 am to 8:00 pm  
FRI 7:30 am to 8:00 pm  
SAT 7:30 am to 8:00 pm  
SUN 9:00 am to 8:00 pm

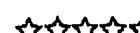
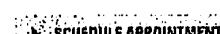
[More Store Details](#)[Read Reviews](#) [Review this store](#)**Goodyear Auto Service Center****Butler**

1570 Route 23 North  
Butler, NJ 07405-1821  
(973) 492-6028

Distance: 43.98 mi  
Next to Hess gas station

**Hours:**

MON 7:00 am to 7:00 pm  
TUE 7:00 am to 7:00 pm  
WED 7:00 am to 7:00 pm  
THU 7:00 am to 7:00 pm  
FRI 7:00 am to 7:00 pm  
SAT 7:00 am to 6:00 pm  
SUN Closed

[More Store Details](#)[Read Reviews](#) [Review this store](#)

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[Find a Store](#) | Goodyear Auto Service Center

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5

**Goodyear Auto Service Center  
Somerset**

**Hours:**

**MON** 7:00 am to 8:00 pm  
**TUE** 7:00 am to 8:00 pm  
**WED** 7:00 am to 8:00 pm  
**THU** 7:00 am to 8:00 pm  
**FRI** 7:00 am to 8:00 pm  
**SAT** 7:00 am to 8:00 pm  
**SUN** 8:30 am to 5:00 pm

Distance: 67.09 mi

*Next to McDonald's and Dunkin' Donuts*

[More Store Details](#)



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**†† Only on selected discontinued tires, not available at all stores. While supplies last. No rain checks. Prices shown exclude installation, taxes and fees, TPMS. Not to be combined with any other offer on same product. Instant savings does not apply. Offer valid only at Goodyear Auto Service Center locations. Offer void where prohibited. See store for full details.**

**§§ Free Flat Repair Includes:** Dismounting and inspection of the tire to determine the cause of the inflation pressure loss and whether or not it can be repaired. Repairs performed in accordance with strict industry standards and Proper plugging/pinching from the inside of the tire if suitable for repair. Most passenger and light truck tires and is applicable only to individual consumers and does not include a new TPMS sensor.

**\* There may be fees associated with your tire purchase and these may vary by location. Some states and local municipalities charge fees and taxes specifically on tires. Some vehicles require additional parts and/or labor to install tires. These fees are listed on our website and on your invoice when your tires are installed.**

**\*\* Your local store manager will do their best to ensure that the tire you select is in stock before you arrive for your scheduled appointment.**

**§ Suggested price is based on the vehicle manufacturer's recommendations based on type and amount of oil for your vehicle. Up to 5 quarts of oil. Cartridge or non standard filter and/or additional diesel oil extra. Fluid/filter disposal charges may apply. Additional charge for shop supplies, up to 7% or \$25 maximum, may be added. See store for complete details. Special State Exceptions: FL - Waste oil / filter fee may apply: CA - \$2.50 fluid / filter disposal fee apply but no additional charge for shop supplies apply; PA - no fluid disposal charges apply; NY - no fluid disposal or additional charge for shop supplies apply. No other discounts apply. Cash value 1/50¢.**

1 Get a Goodyear® \$100 Gas Visa® Prepaid Card by mail-in rebate with the purchase of a set of four of the following tires: Assurance ComfortTred Touring, Assurance Fuel Max, Assurance Fuel Max, Assurance TripleTred All-Season, Assurance TripleTred All-Season, Assurance All-Season, Eagle Sport All-Season, Eagle F1 Asymmetric 2, Eagle F1 Asymmetric 2 ROF, Eagle F1 Asymmetric All-Season, Signature HP, Ultra Grip Ice, Ultra Grip Ice WRT, Ultra Grip Winter, SP Winter Sport 4D, SP Winter Sport 3D, SP Winter Sport 3D ROF, Dunlop Winter Maxx, Winter Maxx S/W, Wrangler Fortitude HT, Wrangler SRA, Wrangler All-Terrain Adventure with Kevlar. All offers with the Goodyear Credit Card are subject to credit approval. Qualifying purchase must be made at an authorized participating U.S. Goodyear Auto Service Center or website on the Goodyear Credit Card. Offers valid only for U.S. residents with mailing addresses in the U.S. and U.S. territories. Mail-In Rebate paid in the form of a Goodyear Gas Visa Prepaid Card, which can be used at any fuel establishments that accept Visa debit cards. Mail-In Rebate offers valid only on purchases between 10/1/15 and 12/31/15. One Mail-In Rebate for a prepaid card per qualifying purchase and per invoice. Limit one (1) rebate form per tire purchase, per envelope. Commercial fleets are not eligible for these rebates. Not valid on previous purchases. Rebate offered by Goodyear and Citibank, N.A. Purchases made on the Goodyear Credit Card are subject to credit approval. The Goodyear Credit Card is issued by Citibank, N.A. This completed form must be postmarked, or submitted online, no later than January 31, 2016. Allow 6 to 8 weeks for prebate card delivery. Goodyear reserves the right to substitute a check of equal value in lieu of a Prepaid Card at its discretion. Fraudulent submissions will not be honored and may be prosecuted. Goodyear is not responsible for noncomplying Rebate Submissions or for lost, late, illegible, postage-due or undeliverable mail. Noncomplying Rebate Submissions will not be honored, acknowledged or returned. Void where taxed, restricted or prohibited by law. All decisions made by Goodyear (or its authorized representatives) relating to the validity of any submissions are final and binding. This promotion is subject to all federal, state, and local laws and regulations. Retain copies of the materials you submit. Goodyear reserves the right to modify, revise or discontinue the program at any time without written notice. Any questions regarding interpretation of the program rules shall be resolved by The Goodyear Tire & Rubber Company. Goodyear does not guarantee acceptance of Gas Prepaid Card at all gas stations. See store associate for complete offer details and mail-in rebate form. Additional terms and conditions apply. Prepaid card is given to you as a rebate and no money has been paid by you for the card. Prepaid card is issued by MetaBank®, Member FDIC, pursuant to a license from Visa U.S.A. Inc. No cash access or recurring payments. Can be used at fuel establishments that accept Visa debit cards, see website below. Card valid for up to 6 months, funds do not expire and may be available after card expiration date, monthly card account management and post-expiration card reissuance fees may apply. Card terms and conditions apply, see MyPrepaidCenter.com/visa-gas. MetaBank does not endorse this credit card offer.

2 All offers with the Goodyear Credit Card are subject to credit approval. Qualifying purchase must be made at an authorized participating U.S. Goodyear Auto Service Center or website on the Goodyear Credit Card. Offers valid only for U.S. residents with mailing addresses in the U.S. and U.S. territories. Consumers can choose for their mail-in rebate to be paid in the form of one of the following \$100 gift cards: The Home Depot, Spa Week, Toys R Us, Best Buy or Dick's Sporting Goods. Additional terms and conditions apply to rebate; see gift cards for retailer terms and conditions. See store associate for complete details and mail-in rebate form. Goodyear is not responsible for the acceptability of the card by any merchant. Get a \$100 Gift Card by mail-in rebate with the purchase of a set of four of the following tires: Assurance ComforTred Touring, Assurance Fuel Max, Assurancecs Fuel Max, Assurance TripleTred All-Season, Assurancecs TripleTred All-Season, Assurance All-Season, Eagle Sport All-Season, Eagle F1 Asymmetric 2, Eagle F1 Asymmetric 2 ROF, Eagle F1 Asymmetric All-Season, Signature HP, Ultra Grip Ice, Ultra Grip Ice WRT, Ultra Grip Winter, SP Winter Sport 4D, SP Winter Sport 4D ROF, SP Winter Sport 3D, SP Winter Sport 3D ROF, Dunlop Winter Maxx, Winter Maxx SJ8, Wrangler Furtitude HT, Wrangler SR-A, Wrangler All-Terrain Adventure with Kevlar. Mail-In Rebate offers valid only on purchases between 10/1/15 - 12/31/15. One Mail-In Rebate for a Gift Card per qualifying purchase and per invoice. Limit one (1) rebate form per tire purchase, per envelope. Commercial fleets are not eligible for these rebates. Not valid on previous purchases. Rebate offered by Goodyear and Citibank, N.A. Purchases made on the Goodyear Credit Card are subject to credit approval. The Goodyear Credit Card is issued by Citibank, N.A. This completed form must be postmarked, or submitted online, no later than January 31, 2016. Allow 8 to 12 weeks for Gift Card delivery. Goodyear reserves the right to substitute a check of equal value in lieu of a Gift Card at its discretion. Fraudulent submissions will not be honored and may be prosecuted. Goodyear is not responsible for noncomplying Rebate Submissions or for lost, late, illegible, postage-due or undeliverable mail. Noncomplying Rebate Submissions will not be honored, acknowledged or returned. Void where taxed, restricted or prohibited by law. All decisions made by Goodyear (or its authorized representatives) relating to the validity of any submissions are final and binding. This promotion is subject to all federal, state, and local laws and regulations. Retain copies of the materials you submit. Goodyear reserves the right to modify, revise or discontinue the program at any time without written notice. Any questions requiring interpretation of the program rules shall be resolved by The Goodyear Tire & Rubber Company. See store associate for complete offer details and mail-in rebate form. Additional terms and conditions apply. The listed merchants are in no way affiliated with Goodyear, nor are the listed merchants considered sponsors or co-sponsors of this program. Use of merchant names and/or logos is by permission of each respective merchant and all trademarks are the property of their respective owners.

<sup>†</sup> Mail-In Rebate offers valid on purchases between October 1 and December 31, 2015. One Mail-In Rebate for a Prepaid Card per qualifying purchase and per invoice. Limit one (1) rebate form per line purchase, per envelope. Offers available only at authorized participating Goodyear Auto Service Centers and websites. Offer valid only for U.S. residents who are individual consumers with mailing addresses in the U.S. and U.S. territories. Commercial fleets are not eligible for these rebates. Rebates are on a set of four tires. If your vehicle requires six tires, rebates are available on a prorated basis for the two additional tires. The prorated rebate amount, per additional tire, is 25% of the rebate amount listed above. The minimum purchase is a set of four tires and the maximum purchase is six tires per invoice. Purchases made on the Goodyear Credit Card are subject to credit approval. Get rebate when you purchase a set of four of the following tires: Assurance Fuel Max, Assurance <sup>SM</sup> F1 Fuel Max, Ultra Grip Winter, Assurance All-Season, Eagle Sport All-Season, Wrangler SR-A, Dunlop Signature HP, Winter Maxx SJ8, Assurance TripleTred All-Season, Assurance <sup>SM</sup> TripleTred All-Season, Eagle F1 Asymmetric 2, Eagle F1 Asymmetric 2 ROF, Wrangler Fortitude HT, Ultra Grip Ice, Ultra Grip Ice WRT, SP Winter Sport 4D, SP Winter Sport 4D ROF, SP Winter Sport 3D, SP Winter Sport 3D ROF, Assurance ConforTred Touring, Eagle F1 Asymmetric All-Season, Wrangler All-Terrain Adventure with Kevlar. Base portion of rebate offered by Goodyear and doubled portion of rebate offered by CitiBank N.A. The Goodyear Credit Card

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12/9/2015

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Find a Store | Goodyear Auto Service Center

348 N.Y. / FTS/STP



Our phones are open: 1855786-0788

Mon-Fri: 08:00 AM - 9:00 PM EST

## Stores in Your Area

Find a Goodyear Auto Service Center near you. If you schedule an appointment, we'll save the information for your next visit.

Results for stores near:

buffalo



We found 10 Goodyear Auto Service Center store(s) within 50 miles of your search.

**A** Goodyear Auto Service Center

Niagara

380 Niagara Street  
Buffalo, NY 14201-1833  
(716) 854-2014

Distance: .66 mi  
1/2 mile north of City Hall

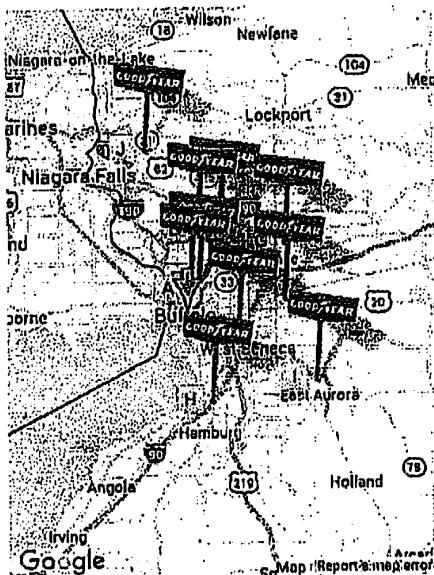
Hours:

MON 7:30 am to 6:00 pm  
TUE 7:30 am to 6:00 pm  
WED 7:30 am to 6:00 pm  
THU 7:30 am to 6:00 pm  
FRI 7:30 am to 6:00 pm  
SAT 7:30 am to 5:00 pm  
SUN Closed

[More Store Details](#)

SCHEDULE APPOINTMENT

[Read Reviews](#) [Review this store](#)



Click on a map marker for additional store info.

**B** Goodyear Auto Service Center

Main

1355 Main Street  
Buffalo, NY 14209-1905  
(716) 884-6331

Distance: 1.78 mi  
Corner of Main and Ullico, one  
mile south of Canisius College

Hours:

MON 7:30 am to 6:00 pm  
TUE 7:30 am to 6:00 pm  
WED 7:30 am to 6:00 pm  
THU 7:30 am to 6:00 pm  
FRI 7:30 am to 6:00 pm  
SAT 7:30 am to 5:00 pm  
SUN Closed

[More Store Details](#)

SCHEDULE APPOINTMENT

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**C** Goodyear Auto Service Center

West Seneca

300 Orchard Park Road  
West Seneca, NY 14224-2635  
(716) 826-2062

Distance: 5.70 mi  
Across from Potter Road  
BOCES Center

Hours:

MON 7:30 am to 7:00 pm  
TUE 7:30 am to 7:00 pm  
WED 7:30 am to 7:00 pm  
THU 7:30 am to 7:00 pm  
FRI 7:30 am to 7:00 pm  
SAT 7:30 am to 7:00 pm  
SUN 10:00 am to 4:00 pm

[More Store Details](#)

SCHEDULE APPOINTMENT

[Read Reviews](#) [Review this store](#)

**D** Goodyear Auto Service Center

Kenmore

1795 Sheridan Drive  
Kenmore, NY 14223-1211  
(716) 873-1400

Distance: 6.53 mi

Hours:

MON 7:30 am to 7:00 pm  
TUE 7:30 am to 7:00 pm  
WED 7:30 am to 7:00 pm  
THU 7:30 am to 7:00 pm  
FRI 7:30 am to 7:00 pm  
SAT 7:30 am to 6:00 pm  
SUN 8:00 am to 4:00 pm

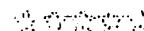
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*Near Delaware Rd, next to the Tonawanda Police Dept*[More Store Details](#)[Read Reviews](#) [Review this store](#)[SCHEDULE APPOINTMENT](#)**Goodyear Auto Service Center**  
Tonawanda1280 Niagara Falls Blvd  
Tonawanda, NY 14210-8924  
(716) 637-8720Distance: 7.63 mi  
*Across from Boulevard Mall***Hours:**MON 7:30 am to 8:00 pm  
TUE 7:30 am to 8:00 pm  
WED 7:30 am to 8:00 pm  
THU 7:30 am to 8:00 pm  
FRI 7:30 am to 8:00 pm  
SAT 7:30 am to 6:00 pm  
SUN 9:00 am to 5:00 pm[More Store Details](#)[Read Reviews](#) [Review this store](#)[SCHEDULE APPOINTMENT](#)**Goodyear Auto Service Center**  
Depew4972 Transit Road  
Depew, NY 14043  
(716) 685-3971Distance: 9.19 mi  
*Corner Lasson and Transit***Hours:**MON 7:00 am to 7:00 pm  
TUE 7:00 am to 7:00 pm  
WED 7:00 am to 7:00 pm  
THU 7:00 am to 7:00 pm  
FRI 7:00 am to 7:00 pm  
SAT 7:30 am to 6:00 pm  
SUN 9:00 am to 4:00 pm[More Store Details](#)[Be the first to write a review](#)[SCHEDULE APPOINTMENT](#)**Goodyear Auto Service Center**  
Amherst7128 Transit Road  
Amherst, NY 14221-7214  
(716) 634-9800Distance: 10.55 mi  
*1/4 mile south of Main***Hours:**MON 7:30 am to 7:00 pm  
TUE 7:30 am to 7:00 pm  
WED 7:30 am to 7:00 pm  
THU 7:30 am to 6:00 pm  
FRI 7:30 am to 6:00 pm  
SAT 7:30 am to 6:00 pm  
SUN 9:00 am to 5:00 pm[More Store Details](#)[Read Reviews](#) [Review this store](#)[SCHEDULE APPOINTMENT](#)**Goodyear Auto Service Center**  
Hamburg5566 Camp Road  
Hamburg, NY 14075-3702  
(716) 649-4755Distance: 10.61 mi  
*Directly across from Pizza Hut***Hours:**MON 7:30 am to 7:00 pm  
TUE 7:30 am to 7:00 pm  
WED 7:30 am to 7:00 pm  
THU 7:30 am to 7:00 pm  
FRI 7:30 am to 6:00 pm  
SAT 7:30 am to 6:00 pm  
SUN Closed[More Store Details](#)[Read Reviews](#) [Review this store](#)[SCHEDULE APPOINTMENT](#)**Goodyear Auto Service Center**  
East Aurora120 Gray Street  
East Aurora, NY 14052-2144  
(716) 652-7030

Distance: 14.99 mi

**Hours:**MON 7:30 am to 6:00 pm  
TUE 7:30 am to 6:00 pm  
WED 7:30 am to 8:00 pm  
THU 7:30 am to 6:00 pm  
FRI 7:30 am to 6:00 pm  
SAT 8:00 am to 5:00 pm

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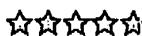
NYSCEF 12/25/2018 SOC. NO. 124

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*In the East Aurora Village Shopping Plaza*

Find a Store | Goodyear Auto Service Center

SUN 9:00 am to 3:00 pm

[More Store Details](#)[Read Reviews](#) [Review this store](#)[Schedule Appointment](#)**Goodyear Auto Service Center**

Niagara Falls

1755 Military Road  
Niagara Falls, NY 14204-1733  
(716) 297-0555Distance: 15.29 mi  
Across street from Factory  
Outlet Mall

Hours:

MON 7:30 am to 8:00 pm  
TUE 7:30 am to 8:00 pm  
WED 7:30 am to 8:00 pm  
THU 7:30 am to 8:00 pm  
FRI 7:30 am to 8:00 pm  
SAT 7:30 am to 8:00 pm  
SUN 9:00 am to 6:00 pm[More Store Details](#)[Read Reviews](#) [Review this store](#)[Schedule Appointment](#)[Vehicle Directory](#) | [Schedule Appointment](#) | [Email Sign Up](#) | [Contact Us](#) | [About Us](#) | [Careers](#)

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Español

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† Only on select discontinued tires, not available at all stores. While supplies last. No rain checks. Prices shown exclude installation, taxes and fees. TPMS. Not to be combined with any other offer on same product. Instant savings does not apply. Offer valid only at Goodyear Auto Service Center locations. Offer void where prohibited. See store for full details.

§§ Free Flat Repair Includes: Dismounting and inspection of the tire to determine the cause of the inflation pressure loss and whether or not it can be repaired. Repairs performed in accordance with strict industry standards and Proper plugging/patching from the inside of the tire if suitable for repair. Most passenger and light truck tires and is applicable only to individual consumers and does not include a new TPMS sensor.

\* There may be fees associated with your tire purchase and these may vary by location. Some states and local municipalities charge fees and taxes specifically on tires. Some vehicles require additional parts and/or labor to install tires. These fees are listed on the website and on your invoice when your tires are installed.

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§ Suggested price is based on the vehicle manufacturer's recommendations based on type and amount of oil for your vehicle. Up to 5 quarts of oil. Cartridge or non standard filter and/or additional diesel oil extra. Fluid/filter disposal charges may apply. Additional charge for shop supplies, up to 7% or \$25 maximum, may be added. See store for complete details. Special State Exceptions: FL - Waste Oil / Filter fee may apply; CA - \$2.50 fluid / filter disposal fee apply but no additional charge for shop supplies apply; PA - no fluid disposal charges apply; NY - no fluid disposal or additional charge for shop supplies apply. No other discounts apply. Cash value 1/50¢.

1 Get a Goodyear® \$100 Gas Visa® Prepaid Card by mail-in rebate with the purchase of a set of four of the following tires: Assurance ComfortTred Touring, Assurance Fuel Max, Assurance Fuel Max, Assurance TripleTred All-Season, Assurance TripleTred All-Season, Assurance All-Season, Eagle Sport All-Season, Eagle F1 Asymmetric 2, Eagle F1 Asymmetric 2 ROF, Eagle F1 Asymmetric All-Season, Signature HP, Ultra Grip Ice, Ultra Grip Ice WRT, Ultra Grip Winter, SP Winter Sport 4D, SP Winter Sport 4D ROF, SP Winter Sport 3D, SP Winter Sport 3D ROF, Dunlop Winter Maxx, Winter Maxx SJ8, Wrangler Fortitude HT, Wrangler SRA, Wrangler All-Terrain Adventure with Kevlar. All offers with the Goodyear Credit Card are subject to credit approval. Qualifying purchase must be made at an authorized participating U.S. Goodyear Auto Service Center or website on the Goodyear Credit Card. Offers valid only for U.S. residents with mailing addresses in the U.S. and U.S. territories. Mail-In Rebate paid in the form of a Goodyear Gas Visa Prepaid Card, which can be used at any fuel establishments that accept Visa debit cards. Mail-In Rebate offers valid only on purchases between 10/1/15 and 12/31/15. One Mail-In Rebate for a prepaid card per qualifying purchase and per invoice. Limit one (1) rebate form per purchase. Commercial fleets are not eligible for these rebates. Not valid on previous purchases. Rebate offered by Goodyear and Citibank, N.A. Purchases made on the Goodyear Credit Card are subject to credit approval. The Goodyear Credit Card is issued by Citibank, N.A. This completed form must be postmarked, or submitted online, no later than January 31, 2016. Allow 6 to 8 weeks for prepaid card delivery. Goodyear reserves the right to substitute a check of equal value in lieu of a Prepaid Card at its discretion. Fraudulent submissions will not be honored and may be prosecuted. Goodyear is not responsible for noncomplying Rebate Submissions or for lost, late, illegible, postage-due or undeliverable mail. Noncomplying Rebate Submissions will not be honored, acknowledged or returned. Void where taxed, restricted or prohibited by law. All decisions made by Goodyear (or its authorized representatives) relating to the validity of any submissions are final and binding. This promotion is subject to all federal, state, and local laws and regulations. Retain copies of the materials you submit. Goodyear reserves the right to modify, revise or discontinue the program at any time without written notice. Any questions requiring interpretation of the program rules shall be resolved by The Goodyear Tire & Rubber Company. Goodyear does not guarantee acceptance of Gas Prepaid Card at all gas stations. See store associate for complete offer details and mail-in rebate form. Additional terms and conditions apply. Prepaid card is given to you as a rebate and no money has been paid by you for the card. Prepaid card is issued by MetaBank®, Member FDIC, pursuant to a license from Visa U.S.A. Inc. No cash access or recurring payments. Can be used at fuel establishments that accept Visa debit cards. see website below. Card valid for up to 6 months. funds do not expire and may be available after card expiration date. monthly card account management and post-expiration card re-issuance fees may apply. Card terms and conditions apply, see MyPrepaidCenter.com/Visa/Visa-Gas. MetaBank does not endorse this credit card offer.

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† Mail-In Rebate offers valid on purchases between October 1 and December 31, 2015. One Mail-In Rebate for a Prepaid Card per qualifying purchase and per invoice. Limit one (1)

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12/9/2015

Find a Store | Goodyear Auto Service Center

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866.377.7111

Our phones are open 1855725-0700

Mon-Fri: 08:00 AM - 8:00 PM EST



## Stores in Your Area

Find a Goodyear Auto Service Center near you. If you schedule an appointment, we'll save the information for your next visit.

Results for stores near:

syracuse



We found 10 Goodyear Auto Service Center store(s) within 50 miles of your search.

### A: Goodyear Auto Service Center

Syracuse

424 East Water Street  
Syracuse, NY 13202-1139  
(315) 475-4161

Distance: .17 mi  
Corner of Water and Townsend,  
across from Smith's Restaurant  
Supply

#### Hours:

MON 7:00 am to 6:00 pm  
TUE 7:00 am to 6:00 pm  
WED 7:00 am to 6:00 pm  
THU 7:00 am to 6:00 pm  
FRI 7:00 am to 6:00 pm  
SAT 8:00 am to 4:00 pm  
SUN Closed

[More Store Details](#)



[Read Reviews](#) [Review this store](#)



### B: Goodyear Auto Service Center

De Witt

3135 Erie Blvd East  
De Witt, NY 13214-1202  
(315) 446-2443

Distance: 3.53 mi  
Between Thompson Rd and  
Bridge St, across from Texas  
Roadhouse

#### Hours:

MON 7:00 am to 6:00 pm  
TUE 7:00 am to 6:00 pm  
WED 7:00 am to 6:00 pm  
THU 7:00 am to 6:00 pm  
FRI 7:00 am to 6:00 pm  
SAT 8:00 am to 5:00 pm  
SUN Closed

[More Store Details](#)



[Read Reviews](#) [Review this store](#)



### C: Goodyear Auto Service Center

Mattydale

2801 Brewerton Road  
Mattydale, NY 13211-1002  
(315) 456-2426

Distance: 4.02 mi  
Just off Route 81N exit, next to  
Kmart Plaza

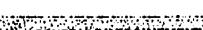
#### Hours:

MON 8:00 am to 6:00 pm  
TUE 8:00 am to 6:00 pm  
WED 8:00 am to 6:00 pm  
THU 8:00 am to 6:00 pm  
FRI 8:00 am to 6:00 pm  
SAT 8:00 am to 5:00 pm  
SUN Closed

[More Store Details](#)



[Read Reviews](#) [Review this store](#)



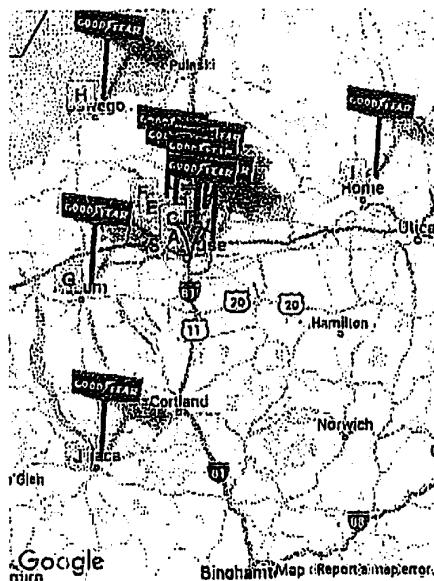
### D: Goodyear Auto Service Center

Cicero

5884 East Circle Drive  
Cicero, NY 13039-8609

#### Hours:

MON 7:00 am to 6:00 pm  
TUE 7:00 am to 6:00 pm  
WED 7:00 am to 6:00 pm  
THU 7:00 am to 6:00 pm



Click on a map marker for additional store info.

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(315) 458-6026

Distance: 7.08 mi  
*Corner of East Circle and South Bay Rd. across from Driver's Village*

[Find a Store | Goodyear Auto Service Center](#)

FRI 7:00 am to 6:00 pm  
 SAT 8:00 am to 5:00 pm  
 SUN 9:00 am to 5:00 pm

[More Store Details](#)[Read Reviews](#) [Review this store](#)[SCHEDULE APPOINTMENT](#)

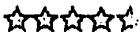
Goodyear Auto Service Center  
Liverpool

7608 Oswego Road Suite 1  
Liverpool, NY 13090-2944  
(315) 622-4002

Distance: 7.42 mi  
*In Bayberry Plaza on Route 57*

**Hours:**

MON 7:00 am to 6:00 pm  
 TUE 7:00 am to 6:00 pm  
 WED 7:00 am to 6:00 pm  
 THU 7:00 am to 6:00 pm  
 FRI 7:00 am to 6:00 pm  
 SAT 8:00 am to 5:00 pm  
 SUN 9:00 am to 5:00 pm

[More Store Details](#)[Read Reviews](#) [Review this store](#)[SCHEDULE APPOINTMENT](#)

Goodyear Auto Service Center  
Baldwinsville

3594 Route 31  
Baldwinsville, NY 13027-8232  
(315) 652-6673

Distance: 10.73 mi  
*In Kimbrook Plaza, Moyer's  
Comer next to Bank of America*

**Hours:**

MON 7:00 am to 6:00 pm  
 TUE 7:00 am to 6:00 pm  
 WED 7:00 am to 6:00 pm  
 THU 7:00 am to 6:00 pm  
 FRI 7:00 am to 6:00 pm  
 SAT 8:00 am to 5:00 pm  
 SUN Closed

[More Store Details](#)[Read Reviews](#) [Review this store](#)[SCHEDULE APPOINTMENT](#)

Goodyear Auto Service Center  
Auburn

37 East Genesee Street  
Auburn, NY 13021-4027  
(315) 252-7286

Distance: 22.34 mi  
*At/exit east exit John St*

**Hours:**

MON 8:00 am to 6:00 pm  
 TUE 8:00 am to 6:00 pm  
 WED 8:00 am to 6:00 pm  
 THU 8:00 am to 6:00 pm  
 FRI 8:00 am to 6:00 pm  
 SAT 8:00 am to 5:00 pm  
 SUN Closed

[More Store Details](#)[Read Reviews](#) [Review this store](#)[SCHEDULE APPOINTMENT](#)

Goodyear Auto Service Center  
Oswego

61 East Second Street  
Oswego, NY 13126-2125  
(315) 343-4078

Distance: 33.66 mi  
*Corner of Second and Route 104, turn down East Second toward Lake Ontario, half a block down*

**Hours:**

MON 7:00 am to 6:00 pm  
 TUE 7:00 am to 6:00 pm  
 WED 7:00 am to 6:00 pm  
 THU 7:00 am to 6:00 pm  
 FRI 7:00 am to 6:00 pm  
 SAT 8:00 am to 5:00 pm  
 SUN Closed

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**Goodyear Auto Service Center**  
Rome

1745 Black River Blvd North  
Rome, NY 13440-2425  
(315) 338-6540

Distance: 37.92 mi  
Across from Price Chopper

## Hours:

MON 7:00 am to 6:00 pm  
TUE 7:00 am to 6:00 pm  
WED 7:00 am to 6:00 pm  
THU 7:00 am to 6:00 pm  
FRI 7:00 am to 6:00 pm  
SAT 8:00 am to 6:00 pm  
SUN 8:00 am to 5:00 pm



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**Goodyear Auto Service Center**

Ithaca

411 Elmira Road  
Ithaca, NY 14850-8739  
(607) 273-4590

Distance: 47.38 mi  
Across the street from Home Depot  
Depot on Route 13, next to Butternilk Falls State Park

## Hours:

MON 7:30 am to 7:00 pm  
TUE 7:30 am to 7:00 pm  
WED 7:30 am to 7:00 pm  
THU 7:30 am to 7:00 pm  
FRI 7:30 am to 7:00 pm  
SAT 7:30 am to 6:00 pm  
SUN 9:00 am to 4:00 pm

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[Vehicle Directory](#) | [Schedule Appointment](#) | [Email Sign Up](#) | [Contact Us](#) | [About Us](#) | [Careers](#)



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†† Only on select discontinued tires, not available at all stores. While supplies last. No rain checks. Prices shown exclude installation, taxes and fees, TPMS. Not to be combined with any other offer or same product. Instant savings does not apply. Offer valid only at Goodyear Auto Service Center locations. Offer void where prohibited. See store for full details.

§§ Free Flat Repair Includes: Dismounting and inspection of the tire to determine the cause of the inflation pressure loss and whether or not it can be repaired. Repairs performed in accordance with strict industry standards and Proper plugging/patching from the inside of the tire if suitable for repair. Most passenger and light truck tires and is applicable only to individual consumers and does not include a new TPMS sensor.

\* There may be fees associated with your tire purchase and these may vary by location. Some states and local municipalities charge fees and taxes specifically on tires. Some vehicles require additional parts and/or labor to install tires. These fees are listed on the website and on your invoice when your tires are installed.

\*\* Your local store manager will do their best to ensure that the tire you select is in stock before you arrive for your schedule appointment.

§ Suggested price is based on the vehicle manufacturer's recommendations based on type and amount of oil for your vehicle. Up to 5 quarts of oil. Cartridge or non standard filter and/or additional diesel oil extra. Fluid/filter disposal charges may apply. Additional charge for shop supplies, up to 7% or \$25 maximum, may be added. See store for complete details. Special State Exemptions: FL - Waste oil / filter fee may apply; CA - \$2.50 fluid / filter disposal fee apply but no additional charge for shop supplies apply; PA - no fluid disposal charges apply; NY - no fluid disposal or additional charge for shop supplies apply. No other discounts apply. Cash value 1/50¢.

1 Get a Goodyear® \$100 Gas Visa® Prepaid Card by mail-in rebate with the purchase of a set of four of the following tires: Assurance ComforTred Touring, Assurance Fuel Max, Assurance Fuel Max, Assurance TripleTred All-Season, Assurance TripleTred All-Season, Assurance All-Season, Eagle Sport All-Season, Eagle F1 Asymmetric 2, Eagle F1 Asymmetric 2 ROF, Eagle F1 Asymmetric All-Season, Signature HP, Ultra Grip Ice WRT, Ultra Grip Winter, SP Winter Sport 4D, SP Winter Sport 4D ROF, SP Winter Sport 3D, SP Winter Sport 3D ROF, Dunlop Winter Maxx, Winter Maxx SJ8, Wrangler Fortitude HT, Wrangler SR-A, Wrangler All-Terrain Adventure with Kevlar. All offers with the Goodyear Credit Card. Offers valid only for U.S. residents with mailing addresses in the U.S. and U.S. territories. Mail-In Rebate paid in the form of a Goodyear Gas Visa Prepaid Card, which can be used at any fuel establishments that accept Visa debit cards. Mail-In Rebate offers valid only on purchases between 10/1/15 and 12/31/15. One Mail-In Rebate for a prepaid card per qualifying purchase and per invoice. Limit one (1) rebate form per tire purchase, per envelope. Commercial fleets are not eligible for these rebates. Not valid on previous purchases. Rebate offered by Goodyear and Citibank, N.A. Purchases made on the Goodyear Credit Card are subject to credit approval. The Goodyear Credit Card is issued by Citibank, N.A. This completed form must be postmarked, or submitted online, no later than January 31, 2016. Allow 8-12 weeks for prepay card delivery. Goodyear reserves the right to substitute a check or equal value in lieu of a Prepaid Card at its discretion. Fraudulent submissions will not be honored and may be prosecuted. Goodyear is not responsible for noncomplying Rebate Submissions or for lost, late, illegible, postage-due or undeliverable mail. Noncomplying Rebate Submissions will not be honored, acknowledged or returned. Void where taxed, restricted or prohibited by law. All decisions made by Goodyear (or its authorized representatives) relating to the validity of any submissions are final and binding. This promotion is subject to all federal, state, and local laws and regulations. Retain copies of the materials you submit. Goodyear reserves the right to modify, revise or discontinue the program at any time without written notice. Any questions regarding interpretation of the program rules shall be resolved by The Goodyear Tire & Rubber Company. Goodyear does not guarantee acceptance of Gas Prepaid Card at all gas stations. See store associate for complete offer details and mail-in rebate form. Additional terms and conditions apply. Prepaid card is given to you as a rebate and no money has been paid by you for the card. Prepaid card is issued by MetaBank®, Member FDIC, pursuant to a license from Visa U.S.A. Inc. No cash access or recurring payments. Can be used at fuel establishments that accept Visa debit cards, see website below. Card valid for up to 6 months, funds do not expire and may be available after card expiration date. monthly card account management and post-expiration card re-issuance fees may apply. Card terms and conditions apply, see MyPrepaidCenter.com/visa/gas. MetaBank does not endorse this credit card offer.

2 All offers with the Goodyear Credit Card are subject to credit approval. Qualifying purchase must be made at an authorized participating U.S. Goodyear Auto Service Center or website on the Goodyear Credit Card. Offers valid only for U.S. residents with mailing addresses in the U.S. and U.S. territories. Consumers can choose for their mail-in rebate to be paid in the form of one of the following \$100 gift cards: The Home Depot, Spa Week, Toys R Us, Best Buy or Dick's Sporting Goods. Additional terms and conditions apply to rebate gift cards for retailer terms and conditions. See store associate for complete details and mail-in rebate form. Goodyear is not responsible for the acceptability of the card by any merchant. Get a \$100 Gift Card by mail-in rebate with the purchase of a set of four of the following tires: Assurance ComforTred Touring, Assurance Fuel Max, Assurance TripleTred All-Season, Assurance TripleTred All-Season, Assurance All-Season, Eagle Sport All-Season, Eagle F1 Asymmetric 2, Eagle F1 Asymmetric 2 ROF, Eagle F1 Asymmetric All-Season, Signature HP, Ultra Grip Ice, Ultra Grip Ice WRT, Ultra Grip Winter, SP Winter Sport 4D, SP Winter Sport 4D ROF, SP Winter Sport 3D, SP Winter Sport 3D ROF, Dunlop Winter Maxx, Winter Maxx SJ8, Wrangler Fortitude HT, Wrangler SR-A, Wrangler All-Terrain Adventure with Kevlar. Mail-In Rebate offers valid only on purchases between

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12/9/2015

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Find a Store | Goodyear Auto Service Center

Last Visit: 07/27/2018

Our phones are open: (865)795-0703  
► Chat LIVE  
Mon-Fri: 08:00 AM - 8:00 PM EST

## Stores in Your Area

Find a Goodyear Auto Service Center near you. If you schedule an appointment, we'll save the information for your next visit.

Results for stores near:

rochester



We found 7 Goodyear Auto Service Center store(s) within 50 miles of your search.

**Goodyear Auto Service Center**

Irondequoit

1985 East Ridge Road  
Irondequoit, NY 14622-2459  
(585) 266-8880

Distance: 3.72 mi  
1/2 mile east of Medley Center

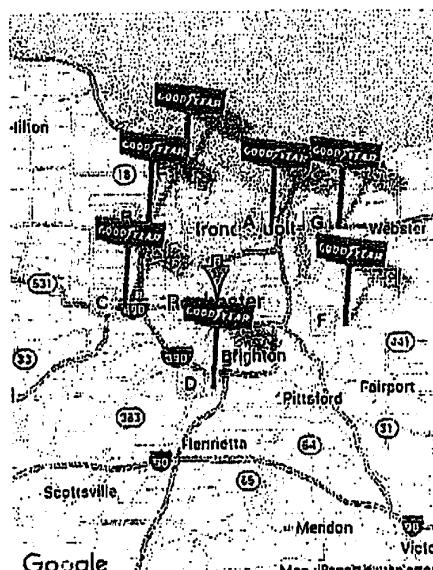
Hours:

MON 7:30 am to 6:00 pm  
TUE 7:30 am to 6:00 pm  
WED 7:30 am to 6:00 pm  
THU 7:30 am to 6:00 pm  
FRI 7:30 am to 6:00 pm  
SAT 8:00 am to 5:00 pm  
SUN Closed

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Click on a map marker for additional store info.

**Goodyear Auto Service Center**

Ridge Road West

2040 Ridge Road West  
Rochester, NY 14626-2721  
(585) 228-4010

Distance: 4.87 mi  
Between 390 and Greece Ridge Center

Hours:

MON 7:00 am to 6:00 pm  
TUE 7:00 am to 6:00 pm  
WED 7:00 am to 6:00 pm  
THU 7:00 am to 6:00 pm  
FRI 7:00 am to 6:00 pm  
SAT 7:30 am to 6:00 pm  
SUN Closed

[More Store Details](#)

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**Goodyear Auto Service Center**

Gates

1805 Buffalo Road  
Rochester, NY 14624-1503  
(585) 429-7020

Distance: 4.97 mi  
Westmar Plaza Across from Big Lots

Hours:

MON 8:00 am to 6:00 pm  
TUE 8:00 am to 6:00 pm  
WED 8:00 am to 6:00 pm  
THU 8:00 am to 6:00 pm  
FRI 8:00 am to 6:00 pm  
SAT 8:00 am to 5:00 pm  
SUN Closed

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**Goodyear Auto Service Center**

Henrietta

576 Jefferson Road  
Rochester, NY 14623-3240  
(585) 424-3010

Distance: 5.11 mi

Hours:

MON 7:00 am to 7:00 pm  
TUE 7:00 am to 7:00 pm  
WED 7:00 am to 7:00 pm  
THU 7:00 am to 7:00 pm  
FRI 7:00 am to 7:00 pm  
SAT 7:00 am to 6:00 pm  
SUN 9:00 am to 4:00 pm

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On 252, next to Marketplace  
Mall[Find a Store | Goodyear Auto Service Center](#)[More Store Details](#)[Read Reviews](#) [Review this store](#)**G Goodyear Auto Service Center**

Greco

3925 Dewey Avenue  
Greco, NY 14616-2519  
(585) 621-6990Distance: 5.88 mi  
On 18, across from Northgate Plaza**Hours:**MON 7:30 am to 7:00 pm  
TUE 7:30 am to 7:00 pm  
WED 7:30 am to 7:00 pm  
THU 7:30 am to 7:00 pm  
FRI 7:30 am to 7:00 pm  
SAT 8:00 am to 6:00 pm  
SUN Closed[More Store Details](#)[Read Reviews](#) [Review this store](#)**G Goodyear Auto Service Center**

Penfield Road

1863 Penfield Road  
Rochester, NY 14625-2549  
(585) 248-2601Distance: 6.36 mi  
Across from Delta Sonic**Hours:**MON 7:30 am to 7:00 pm  
TUE 7:30 am to 7:00 pm  
WED 7:30 am to 7:00 pm  
THU 7:30 am to 7:00 pm  
FRI 7:30 am to 7:00 pm  
SAT 8:00 am to 6:00 pm  
SUN 9:00 am to 4:00 pm[More Store Details](#)[Read Reviews](#) [Review this store](#)**G Goodyear Auto Service Center**

Webster

2186 Empire Blvd  
Webster, NY 14580-2000  
(585) 787-6830Distance: 6.43 mi  
On -04, next to Loews Movie Theater**Hours:**MON 7:30 am to 7:00 pm  
TUE 7:30 am to 7:00 pm  
WED 7:30 am to 7:00 pm  
THU 7:30 am to 7:00 pm  
FRI 7:30 am to 6:00 pm  
SAT 8:00 am to 5:00 pm  
SUN 9:00 am to 4:00 pm[More Store Details](#)[Read Reviews](#) [Review this store](#)[Vehicle Directory](#) | [Schedule Appointment](#) | [Email Sign Up](#) | [Contact Us](#) | [About Us](#) | [Careers](#)

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† Only on select discontinued tires, not available at all stores. While supplies last. No rain checks. Prices shown exclude installation, taxes and fees, TPMS. Not to be combined with any other offer or same product. Instant savings does not apply. Offer valid only at Goodyear Auto Service Center locations. Offer void where prohibited. See store for full details.

§ Free Flat Repair Includes: Dismounting and inspection of the tire to determine the cause of the initial pressure loss and whether or not it can be repaired. Repairs performed in accordance with strict industry standards and Proper plugging/patching from the inside of the tire if suitable for repair. Most passenger and light truck tires and is applicable only to individual consumers and does not include a new TPMS sensor.

\* There may be fees associated with your tire purchase and these may vary by location. Some states and local municipalities charge fees and taxes specifically on tires. Some vehicles require additional parts and/or labor to install tires. These fees are listed on the website and on your invoice when your tires are installed.

\*\* Your local store manager will do their best to ensure that the tire you select is in stock before you arrive for your schedule appointment.

§ Suggested price is based on the vehicle manufacturer's recommendations based on type and amount of oil for your vehicle. Up to 5 quarts of oil. Cartridge or non standard filter and/or additional diesel oil extra. Fluid/filter disposal charges may apply. Additional charge for shop supplies, up to 7% or \$25 maximum, may be added. See store for complete details. Special State Exceptions: FL - Waste oil / filter fee may apply; CA - \$2.50 fluid / filter disposal fee apply but no additional charge for shop supplies apply; PA - no fluid disposal charges apply; NY - no fluid disposal or additional charge for shop supplies apply. No other discounts apply. Cash value 1/80¢.

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**Chat LIVE**  
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## Stores in Your Area

Find a Goodyear Auto Service Center near you. If you schedule an appointment, we'll save the information for your next visit.

Results for stores near:

Corning



We found 3 Goodyear Auto Service Center store(s) within 50 miles of your search.

### A Goodyear Auto Service Center

Corning

20 Denison Parkway  
Corning, NY 14830-2606  
(607) 936-8021

Distance: .08 mi  
On 352, across from the  
Rockwell Museum

#### Hours:

MON 7:00 am to 8:00 pm  
TUE 7:00 am to 8:00 pm  
WED 7:00 am to 8:00 pm  
THU 7:00 am to 8:00 pm  
FRI 7:00 am to 8:00 pm  
SAT 7:30 am to 8:00 pm  
SUN Closed

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### B Goodyear Auto Service Center

Elmira

220 West Gray Street  
Elmira, NY 14801-2907  
(607) 734-5103

Distance: 13.11 mi  
Across the street from the First  
Arena in Downtown Elmira

#### Hours:

MON 7:30 am to 8:00 pm  
TUE 7:30 am to 8:00 pm  
WED 7:30 am to 8:00 pm  
THU 7:30 am to 8:00 pm  
FRI 7:00 am to 6:00 pm  
SAT 8:00 am to 5:00 pm  
SUN Closed

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[Read Reviews](#) [Review this store](#)

### C Goodyear Auto Service Center

Ithaca

411 Elmira Road  
Ithaca, NY 14850-8739  
(607) 273-4580

Distance: 33.35 mi  
Across the street from Home  
Depot on Route 13, next to  
Buttermilk Falls State Park

#### Hours:

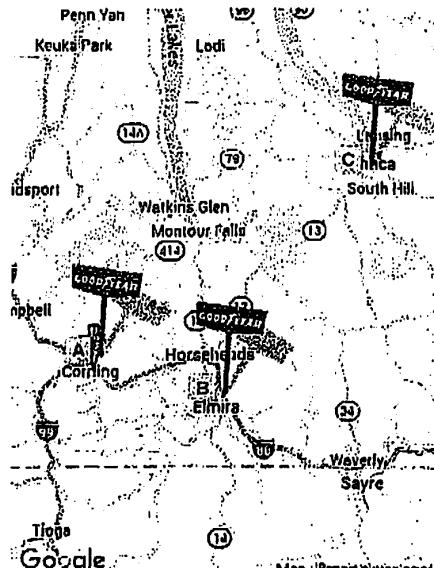
MON 7:30 am to 7:00 pm  
TUE 7:30 am to 7:00 pm  
WED 7:30 am to 7:00 pm  
THU 7:30 am to 7:00 pm  
FRI 7:30 am to 7:00 pm  
SAT 7:30 am to 6:00 pm  
SUN 9:00 am to 4:00 pm

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1-800-4-A-GOODYEAR

Our phones are open: (360) 785-0708

Mon-Fri: 09:00 AM - 5:00 PM EST

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## Stores in Your Area

Find a Goodyear Auto Service Center near you. If you schedule an appointment, we'll save the information for your next visit.

Results for stores near:

Binghamton



We found 4 Goodyear Auto Service Center store(s) within 50 miles of your search.

A Goodyear Auto Service Center  
Binghamton

72 Henry Street Suite 76  
Binghamton, NY 13901-3040  
(607) 722-5331

Distance: .48 mi  
Two blocks from Binghamton  
Mets Stadium

Hours:

MON 7:00 am to 6:00 pm  
TUE 7:00 am to 6:00 pm  
WED 7:00 am to 6:00 pm  
THU 7:00 am to 6:00 pm  
FRI 7:00 am to 6:00 pm  
SAT 8:00 am to 5:00 pm  
SUN Closed

[More Store Details](#)

SCHEDULE APPOINTMENT

[Read Reviews](#) [Review this store](#)

B Goodyear Auto Service Center  
Endicott

300 Hammon Avenue  
Endicott, NY 13760-5167  
(607) 754-5222

Distance: 6.58 mi  
In the Kmart plaza

Hours:

MON 7:00 am to 6:00 pm  
TUE 7:00 am to 6:00 pm  
WED 7:00 am to 6:00 pm  
THU 7:00 am to 6:00 pm  
FRI 7:00 am to 6:00 pm  
SAT 8:00 am to 5:00 pm  
SUN Closed

[More Store Details](#)

SCHEDULE APPOINTMENT

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C Goodyear Auto Service Center  
Ithaca

411 Elmer Road  
Ithaca, NY 14850-8739  
(607) 273-4580

Distance: 37.91 mi  
Across the street from Home  
Depot on Route 13, next to  
Buttermilk Falls State Park

Hours:

MON 7:30 am to 7:00 pm  
TUE 7:30 am to 7:00 pm  
WED 7:30 am to 7:00 pm  
THU 7:30 am to 7:00 pm  
FRI 7:30 am to 7:00 pm  
SAT 7:30 am to 6:00 pm  
SUN 9:00 am to 4:00 pm

[More Store Details](#)

SCHEDULE APPOINTMENT

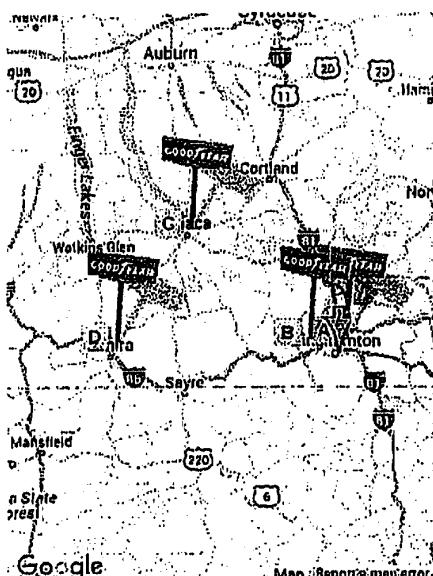
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D Goodyear Auto Service Center  
Elmira

220 West Gray Street  
Elmira, NY 14901-2907  
(607) 734-5103

Hours:

MON 7:30 am to 6:00 pm  
TUE 7:30 am to 6:00 pm  
WED 7:30 am to 6:00 pm  
THU 7:30 am to 6:00 pm  
FRI 7:30 am to 6:00 pm  
SAT 8:00 am to 5:00 pm



Click on a map marker for additional store info.

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Our phones are open: (866)750-0708  
Mon-Fri: 08:00 AM - 8:01 PM EST

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Find a Goodyear Auto Service Center near you. If you schedule an appointment, we'll save the information for your next visit.

Results for stores near:

waterloo, new york



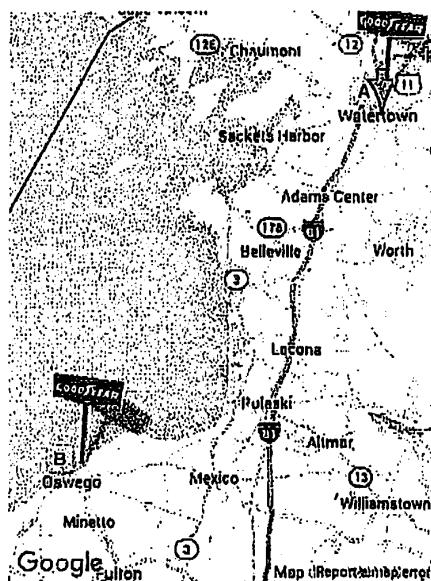
We found 2 Goodyear Auto Service Center store(s) within 50 miles of your search.

Goodyear Auto Service Center  
Watertown342 Court Street  
Watertown, NY 13601-2514  
(315) 782-2900Distance: .28 mi  
At end of Coffeen Street, next  
to Globe Mini Mall

## Hours:

MON 7:00 am to 8:00 pm  
TUE 7:00 am to 8:00 pm  
WED 7:00 am to 8:00 pm  
THU 7:00 am to 8:00 pm  
FRI 7:00 am to 8:00 pm  
SAT 8:00 am to 6:00 pm  
SUN 8:00 am to 5:00 pm[More Store Details](#)[Read Reviews](#) [Review this store](#)[SCHEDULE APPOINTMENT](#)Goodyear Auto Service Center  
Oswego81 East Second Street  
Oswego, NY 13126-2125  
(315) 343-4078Distance: 46.44 mi  
Corner of Second and Route  
104, turn down East Second  
toward Lake Ontario, half a  
block down

## Hours:

MON 7:00 am to 8:00 pm  
TUE 7:00 am to 8:00 pm  
WED 7:00 am to 8:00 pm  
THU 7:00 am to 8:00 pm  
FRI 7:00 am to 8:00 pm  
SAT 8:00 am to 6:00 pm  
SUN Closed[More Store Details](#)[Read Reviews](#) [Review this store](#)[SCHEDULE APPOINTMENT](#)

Click on a map marker for additional store info.

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Español

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Follow Goodyear Auto Service Centers



† Only on select discontinued tires, not available at all stores. While supplies last. No rain checks. Prices shown exclude installation, taxes and fees. TPMS. Not to be combined with any other offer on same product. Instant savings does not apply. Offer valid only at Goodyear Auto Service Center locations. Offer void where prohibited. See store for full details.

§§ Free Flat Repair Includes: Dismounting and inspection of the tire to determine the cause of the inflation pressure loss and whether or not it can be repaired. Repairs performed in accordance with strict industry standards and Proper plugging/patching from the inside of the tire if suitable for repair. Most passenger and light truck tires and is applicable only to individual consumers and does not include a new TPMS sensor.

\* There may be fees associated with your tire purchase and these may vary by location. Some states and local municipalities charge fees and taxes specifically on tires. Some vehicles require additional parts and/or labor to install tires. These fees are listed on the website and on your invoice when your tires are installed.

\*\* Your local store manager will do their best to ensure that the tire you select is in stock before you arrive for your scheduled appointment.

§ Suggested price is based on the vehicle manufacturer's recommendations based on type and amount of oil for your vehicle. Up to 5 quarts of oil. Cartridge or non standard filter and/or additional diesel oil extra. Fluid/filter disposal charges may apply. Additional charge for shop supplies, up to 7% or \$25 maximum, may be added. See store for complete details. Special State Exceptions: FL - Waste oil / filter fee may apply; CA - \$2.50 fluid / filter disposal fee apply but no additional charge for shop supplies apply; PA - no fluid disposal charges apply; NY - no fluid disposal or additional charge for shop supplies apply. No other discounts apply. Cash value 1/50¢.

! Get a Goodyear® \$100 Gas Visa® Prepaid Card by mail-in rebate with the purchase of a set of four of the following tires: Assurance ComforTred Touring, Assurance Fuel Max,

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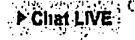
NYSCEF DOC. NO. 124  
2015

INDEX NO. 703632/2017

Find a Store | Goodyear Auto Service Center

RECEIVED NYSCEF: 07/27/2018

Call Us: 855-795-0704

 Our phones are open: 855-795-0704  
Mon-Fri 08:00 AM - 9:00 PM EST

## Stores in Your Area

Find a Goodyear Auto Service Center near you. If you schedule an appointment, we'll save the information for your next visit.

Results for stores near:

Binghamton



We found 4 Goodyear Auto Service Center store(s) within 50 miles of your search.

### Goodyear Auto Service Center Binghamton

72 Henry Street Suite 78  
Binghamton, NY 13901-3040  
(607) 722-5331

Distance: .48 mi  
Two blocks from Binghamton  
Mets Stadium

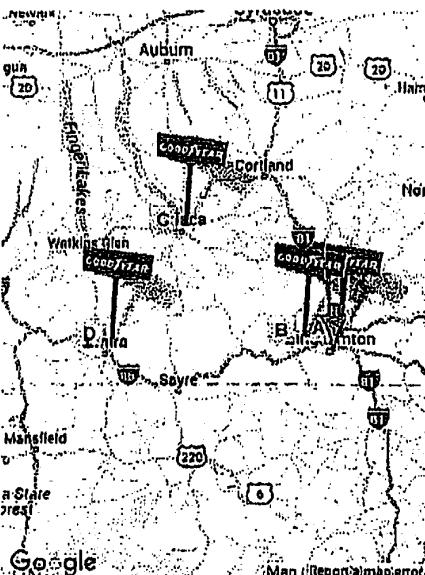
#### Hours:

MON 7:00 am to 6:00 pm  
TUE 7:00 am to 6:00 pm  
WED 7:00 am to 6:00 pm  
THU 7:00 am to 6:00 pm  
FRI 7:00 am to 6:00 pm  
SAT 8:00 am to 5:00 pm  
SUN Closed

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Click on a map marker for additional store info.

### Goodyear Auto Service Center Endicott

300 Harrison Avenue  
Endicott, NY 13760-5167  
(607) 754-5222

Distance: 6.98 mi  
In the Kmart plaza

#### Hours:

MON 7:00 am to 6:00 pm  
TUE 7:00 am to 6:00 pm  
WED 7:00 am to 6:00 pm  
THU 7:00 am to 6:00 pm  
FRI 7:00 am to 6:00 pm  
SAT 8:00 am to 5:00 pm  
SUN Closed

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### Goodyear Auto Service Center Ithaca

411 Elma Road  
Ithaca, NY 14850-8739  
(607) 273-4580

Distance: 37.01 mi  
Across the street from Home  
Depot on Route 13, next to  
Buttermilk Falls State Park

#### Hours:

MON 7:30 am to 7:00 pm  
TUE 7:30 am to 7:00 pm  
WED 7:30 am to 7:00 pm  
THU 7:30 am to 7:00 pm  
FRI 7:30 am to 7:00 pm  
SAT 7:30 am to 6:00 pm  
SUN 8:00 am to 4:00 pm

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### Goodyear Auto Service Center Elmira

220 West Gray Street  
Elmira, NY 14901-2907  
(607) 734-5103

#### Hours:

MON 7:30 am to 6:00 pm  
TUE 7:30 am to 6:00 pm  
WED 7:30 am to 6:00 pm  
THU 7:30 am to 6:00 pm  
FRI 7:30 am to 6:00 pm  
SAT 8:00 am to 5:00 pm



**EXHIBIT 2 TO TAUB AFFIRMATION -  
WEBSITE "ABOUT US" PAGE [361 - 362]**

**FILED: QUEENS COUNTY CLERK 07/27/2018 12:16 PM**  
7/27/2018 NYSCEF DOC. NO. 125 About Us | Goodyear Auto Service

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## About Goodyear Auto Service

### **Thanks for wanting to get to know us a little better.**

We've been wholly owned and operated by the Goodyear Tire & Rubber company since 1924. Since then, our goal has been to exceed our customers' expectations by providing expert tire and automotive service in a friendly, all-questions-welcome atmosphere. Put simply: we provide care, quality and respect for you and your car.

We partner with you throughout your automotive care experience to help you decide how Goodyear Auto Service can help get you back on the road. In our partnership with you, our team of attentive and determined auto care professionals exemplify how Goodyear Auto Service:

- Believes in the promise of the Goodyear brand
- Represents more than 90 years of collective knowledge and specialized expertise
- Works hard to deliver a positive experience and delight our customers above all else

With hundreds of locations nationwide, finding authentic and approachable automotive care in your neighborhood is simple and convenient.

### **Learn more about our products and popular services:**

[Find Tires](#) >

[Oil Change](#) >

[Brakes](#) >

[Wheel Alignment](#) >

[See All Services](#) >

**FIND TIRES**

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About Us | Goodyear Auto Service

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200 Innovation Way, Akron, OH 44315

FINE PRINT - TREAD LIFE, REBATES, REBATE LIMITS, PASTERCARD™, PREDI CARD®, AND  
ADDITIONAL LEGAL CLAIMS . . . † † † §

**EXHIBIT 3 TO TAUB AFFIRMATION -  
ORDER, DATED MAY 25, 2016 [363 - 371]**

**FILED: QUEENS COUNTY CLERK 07/27/2018 12:16 PM**  
**NYC: QUEENS COUNTY CLERK 05/31/2016 12:15 PM**  
 NYSCEF DOC. NO. 42

INDEX NO. 703632/2017

RECEIVED BY NYSCEF 706909/2015 8  
 RECEIVED NYSCEF: 05/31/2016

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE THOMAS D. RAFFAELE IA Part 13  
 Justice

X

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

Index  
 Number:  
 706909/2015 of

Motion  
 Date: 12/9/15

Motion Seq. No. 1

Plaintiffs,

-against-

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

Defendants.

**FILED**  
 MAY 31 2016  
 COUNTY CLERK  
 QUEENS COUNTY

X

The following papers numbered 1 to 9 read on this motion by defendant, Ford Motor Company, for an order, pursuant to CPLR Section 3211(A)(8), dismissing plaintiffs' verified complaint, in its entirety as against Ford Motor Company, (Ford), on the grounds that there is no personal jurisdiction and directing the Clerk of the Court to enter judgment accordingly on behalf of Ford Motor Company and granting such other and further relief as this court deems just and proper.

Papers  
Numbered

Notice of Motion - Affidavits - Exhibits.....	1-4
Affirmation in Opposition.....	5-7
Reply Affirmation.....	8-9

Defendant, Ford's motion to dismiss is denied in its entirety for the reasons stated herein.

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The essential argument proffered by defendant, Ford is that Ford is not subject to personal jurisdiction in New York under the long-arm statute; since Ford neither committed a tort in New York, because the Explorer was built and designed outside the state and that defendant did not cause injury in the state because the subject accident which caused the death of three of the seven passengers traveling in the Ford 2002 Explorer occurred in the state of Virginia. Defendant Ford relies on the recent seminal case of *Daimler A.G. v Bauman*, 134 S.Ct. 746, 762 [2014] which articulated a new standard of presence jurisdiction, according to CPLR Section 301. This new standard is whether the foreign corporation's affiliations with the state are so "continuous and systematic" as to render it essentially "at home" in the forum state.

A review of the complaint shows that plaintiffs' causes of action against defendant, Ford sound in negligence, products liability, strict product liability and wrongful death (see Verified Complaint, dated June 30, 2015). The complaint specifically alleges that on July 1, 2012, while co-defendant owner and operator was driving his used 2002 Ford Explorer in Virginia, the vehicle became "unstable following the failure of the rear driver's side subject 'Goodyear Wrangler AP tire' thereby causing and/or allowing and otherwise resulting in said subject motor vehicle losing stability and control, and to overturn and roll over multiple times" (*id* at paragraph 43). Plaintiffs further allege that the 2002 Explorer had "certain defective, unsafe, and defective condition(s) in the design, manufacture, fabrication and/or assembly" (*id* at paragraph 20).

On July 1, 2012, as defendant Jose Aybar operated the Ford Explorer northbound on Interstate Highway 85 in the County of Brunswick, Virginia, the vehicle became unstable because of the failure of the Wrangler tire, and the vehicle rolled over several times. Anna Aybar, Orlando Gonzalez, Kayla Cabral, Noelia Oliveras, Crystal N. Cruz-Aybar and Tiffany Cabral passengers in the vehicle, were injured and/or killed. On or about July 1, 2012 this action for, *inter alia*, negligence, products liability and wrongful death ensued.

As stated above, defendant Ford moves to dismiss the complaint against it for lack of *in personam* jurisdiction, relying on *Daimler A.G. v Bauman*, 134 S Ct. 746 [2014]). For the reasons set forth herein, this court finds that Ford's reliance on *Daimler A.G. v Bauman* is misplaced.

It is undisputed that the 2002 Ford Explorer was purchased

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in New York and used primarily 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 on the 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 Department of State as an active foreign business corporation.

Defendant, Ford moves to dismiss the complaint against it for lack of *in personam* jurisdiction, relying on *Daimler A.G. v Bauman*, 134 S Ct. 746 [2014]). In *Bauman*, Argentinian residents brought an action against Daimler, A.G., a German corporation, under the Alien Tort Statute and the Torture Victims Protection Act, alleging that its wholly-owned Argentinian subsidiary helped state security forces to kidnap, detain, torture, and kill the plaintiffs or their relatives during Argentina's "Dirty War." The United States Supreme Court held that due process did not permit the exercise of general jurisdiction over the parent corporation, which had a subsidiary operating in California. The Supreme Court drew a distinction between specific jurisdiction and general jurisdiction. Specific jurisdiction concerns adjudicatory authority where the suit arises out of or relates to the defendant's contacts with the forum.

General jurisdiction in substance concerns adjudicatory authority in cases arising anywhere, and "[t]he paradigm all-purpose forums for general jurisdiction are a corporation's place of incorporation and principal place of business \*\*\*." (*Daimler AG v Bauman*, *supra*, 749.) Another forum may assert general jurisdiction over foreign sister-state or foreign-country corporations to hear any and all claims against them when their affiliations with the state are so continuous and systematic as to render them essentially at home in the forum state. (*Daimler AG v Bauman*, *supra*.) General jurisdiction requires affiliations so continuous and systematic as to make the foreign corporation essentially at home in the forum state, i.e., similar to a domestic enterprise in that state. (*Daimler*

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*AG v Bauman, supra.)*

In determining whether a court of New York has personal jurisdiction over a non-domiciliary, a two-step analysis must be employed. First, the court must inquire whether there is a statute which confers jurisdiction over the non-domiciliary, and, second, the court must inquire whether the exercise of jurisdiction meets due process standards. (See *Darrow v Deutschland*, 119 AD3d 1142; *Andrew Greenberg, Inc. v Sirtech Canada, Ltd.*, 79 AD3d 1419.)

In the case at bar, CPLR 302, "Personal jurisdiction by acts of non-domiciliaries," New York State's long arm statute, does not provide a basis for the assertion of in personam jurisdiction over defendant Ford. CPLR 302 (a)(3) provides for the exercise of jurisdiction over a foreign defendant who commits a tortious act outside the state which causes the injury within the state. This statute does not apply to the case at bar.

CPLR 301 reads in relevant part: "Jurisdiction over persons, property or status," is New York's statute for general jurisdiction, and it provides that "[a] court may exercise such jurisdiction over persons, property, or status as might have been exercised heretofore." A foreign corporation is subject to the jurisdiction of New York courts under CPLR 301 "if it has engaged in such a continuous and systematic course of doing business here that a finding of its presence in this jurisdiction is warranted." (*Landoil Res. Corp. v Alexander & Alexander Servs., Inc.*, 77 NY2d 28, 33 [internal quotation marks and citations omitted]). In view of defendant Ford's extensive activities in this state since approximately 1920, a finding of "a continuous and systematic course of doing business" in New York can easily be made. "Even if this statutory standard is met, however, the Due Process Clause of the 14th Amendment limits the exercise of general jurisdiction to those cases in which a corporation's affiliations with the State are so continuous and systematic as to render [it] essentially at home in the forum State." (*Hood v Ascent Med. Corp.*, 2016 WL 1366920 [SDNY] [internal quotation marks and citations omitted]; see, *Goodyear Dunlop Tires Operations, S.A. v Brown*, 131 S.Ct. 2846. [HN 5: "foreign subsidiaries of United States tire manufacturer were not subject to

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general jurisdiction in North Carolina courts in action arising from a bus accident in France allegedly caused by a tire that was manufactured and sold abroad, although some of the tires made abroad by the foreign subsidiaries had reached North Carolina through the stream of commerce".) There are New York State appellate cases decided after *Bauman* which have found a lack of general jurisdiction over the defendants. (See, *B & M Kingstone, LLC v Mega Int'l Commercial Bank Co.*, 131 AD3d 259; *D & R Glob. Selections, S.L. v Pineiro*, 128 AD3d 486; *Magdalena v Lins*, 123 AD3d 600.)

This court has concluded that neither *Goodyear Dunlop Tires Operations, S.A. v Brown* (*supra*), nor *Daimler A.G. v Bauman* (*supra*), nor the New York State appellate cases require the dismissal of the case at bar. In *Goodyear Dunlop Tires Operations, S.A. v. Brown* (*supra*), the estates of two minor North Carolina residents who died in a bus accident that occurred in France brought an action in a North Carolina state court against several subsidiaries of a United States tire manufacturer, including subsidiaries organized and operating in Luxembourg, Turkey, and France. The United States Supreme Court held that the North Carolina court lacked both specific and general jurisdiction over the foreign subsidiaries. The foreign subsidiaries were not registered to do business in North Carolina; had no place of business, employees, or bank accounts there; did not design, manufacture, or advertise their products in North Carolina; and did not solicit business in the state or sell or ship tires to North Carolina customers. The plaintiffs tried to argue that the North Carolina court had jurisdiction because "a small percentage of their [the subsidiaries'] tires were distributed in North Carolina by other Goodyear USA affiliates" (*Goodyear Dunlop Tires Operations, S.A. v Brown, supra*, 2848), and The North Carolina Court of Appeals decided that the state court had general jurisdiction over the foreign subsidiaries, whose tires had reached North Carolina through the stream of commerce. The United States Supreme Court reversed with an opinion that stated "[c]onfusing or blending general and specific jurisdictional inquiries," the North Carolina courts had erroneously found jurisdiction (*Goodyear Dunlop Tires Operations, S.A. v Brown, supra*, 2851.) In reference to the tenuous relationship between the foreign subsidiaries and North

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Carolina, the Supreme Court stated: "A connection so limited between the forum and the foreign corporation, we hold, is an inadequate basis for the exercise of general jurisdiction." (*Goodyear Dunlop Tires Operations, S.A. v Brown, supra*, 2851.)

In sharp contrast, plaintiff Aybar has alleged without contradiction, *inter alia*, that the 2002 Ford Explorer was purchased in New York and used primarily in New York by co-defendant Jose Aybar. The subject vehicle was also registered and licensed in New York. Ford has an organization of facilities in this state engaged in day-to-day activities. Ford also has many franchises across the state. Defendant Ford's activities within New York have been so continuous and systematic as to render it subject to the general jurisdiction of this state's courts. Parenthetically, this court notes that in *Goodyear Dunlop Tires Operations, S.A. v Brown, (supra)*, the parent corporation, which operated plants in North Carolina and regularly engaged in commercial activity there, did not contest the North Carolina court's jurisdiction over it.

The New York State appellate cases decided after *Bauman* which found a lack of general jurisdiction over the defendants are distinguishable from the case at bar because of the level of Ford's activities within New York. In *B & M Kingstone, LLC v Mega Int'l Commercial Bank Co.* (*supra*, 264), the Appellate Division, First Department, held that "under *Daimler*, New York does not have general jurisdiction over Mega's worldwide operations," the Mega International Commercial Bank Company being an international banking corporation, organized under the laws of Taiwan, with its principal place of business located there, and having 128 branches worldwide, only one of which was in New York. But the court found that there was jurisdiction (as discussed below, apparently not general jurisdiction) to compel compliance with information subpoenas arising from the bank's registration with the Superintendent of the Department of Financial Services and filing of a written instrument appointing the superintendent as an agent for service of process. "Mega consented to the necessary regulatory oversight in return for permission to operate in New York, and therefore is subject to jurisdiction requiring it to comply with the appropriate Information Subpoenas

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\*\*\*." (*B & M Kingstone, LLC v Mega Int'l Commercial Bank Co.*, *supra*, 265 [internal quotation marks and citation omitted].) In *D & R Glob. Selections, S.L. v Pineiro (supra)*, the Appellate Division, First Department held that the New York court did not have general jurisdiction pursuant to CPLR 301 or specific jurisdiction pursuant to CPLR 302 over a Spanish winery, but the appellate court mentioned only the winery's visits to this state to promote its products as a contact with New York. In *Magdalena v Lins (supra)*, the Appellate Division, First Department held that the New York court had no jurisdiction over the defendants, mentioning only an apartment in this state which a defendant owned but did not live in (his daughters did) as the only contact with New York.

In view of the foregoing, this court finds that defendant Ford's activities with the State of New York have been so continuous and systematic that the company is essentially at home here. (See, *Daimler A.G. v Bauman, supra.*)

There is another reason for finding general jurisdiction over defendant Ford. In New York, it has long been the rule that a foreign corporation may consent to general jurisdiction in this state under CPLR 301 by registering as a foreign corporation and designating a local agent for service of process. (See, *Bagdon v Philadelphia & Reading Coal & Iron Co.*, 217 NY 432.) "[W]here a foreign corporation has expressly appointed the New York Secretary of State (or some other person within the state) as its agent for service of process, the plaintiff's cause of action need not have arisen out of any business conducted by the foreign corporation in New York." (Alexander, Practice Commentaries, *McKinney's Con. Law of NY*, Book 7B, C301:6[c], p21.) After *Bauman*, the courts have split on the question of the constitutional validity of basing general jurisdiction on such registration statutes. (See, Alexander, 2015 Practice Commentaries, *McKinney's Con. Law of NY*, Book 7B, C301:8[c].) There is no New York state court appellate authority directly on point. In *B & M Kingstone, LLC v Mega Int'l Commercial Bank Co.* (*supra*), the appellate court relied on Banking Law §200 which provides in substance that, inter alia, no foreign banking corporation shall conduct business in this state unless it filed with the

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Superintendent of Banking a written instrument appointing him as its agent "upon whom all process in any action or proceeding against it on a cause of action arising out of a transaction with its New York agency or agencies or branch or branches, may be served with the same force and effect as if it were a domestic corporation and had been lawfully served with process within the state \*\*\*." (Emphasis added.) Banking Law §200 concerns a limited jurisdiction, while other state registration statutes have been interpreted as a conferring general jurisdiction over a foreign corporation. The court notes parenthetically Alexander's observation that "[i]t would have been helpful if the [Mega] court had clarified how the suit at issue - a special proceeding to enforce an information subpoena- arose out of a transaction with the New York branch." (Alexander, Practice Commentaries [2015], McKinney's Cons Laws of NY, Book 7B, p5.)

Other registration and/or appointment statutes, e.g., Business Corp. Law §§304 and 1304, have been interpreted as conferring general jurisdiction over foreign corporations. (See, e.g., *Doubet LLC v Trustees of Columbia Univ. in City of New York*, 99 AD3d 433; *Augsbury Corp. v Petrokey Corp.*, 97 AD2d 173; *Bailen v Air & Liquid Systems Corp.*, 2013 WL 1369452 [N.Y.Sup].) *Bauman* does not expressly address general jurisdiction based on such statutes, but the case's implication for such jurisdiction has become a matter of controversy. This court agrees with those courts that hold that general jurisdiction based on consent through registration and appointment survives *Bauman*. "When,\*\*\* the basis for jurisdiction is the voluntary compliance with a state's registration statute, which has long and unambiguously been interpreted as constituting consent to general jurisdiction in that state's courts, the corporation can have no uncertainty as to the jurisdictional consequences of its actions." (*Acorda Therapeutics, Inc. v Mylan Pharm. Inc.*, 78 F Supp 3d 572, 591 [D. Del. 2015], aff'd on other grounds,, 2016 WL 1077048 [Mar. 18, 2016].) In New York, foreign corporations have been on notice since 1916 that registration to conduct business in this state amounts to consent to general jurisdiction here, and they can always cancel their registration if their business interests lead them to do so.

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The instant motion lacks merit. This court has jurisdiction over defendant Ford because of the degree of its systematic and continuous activity in New York and because of its registration to do business in New York.

Dated: May 25, 2016

-----  
Thomas D. Raffaele, J.S.C.



FILED  
MAY 31 2016  
COUNTY CLERK  
QUEENS COUNTY

**EXHIBIT 4 TO TAUB AFFIRMATION -  
NYS DEPARTMENT OF STATE, DIVISION OF CORPORATIONS ENTITY INFORMATION  
[372 - 373]**

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NY 3/26/2018 DOC. NO. 127

Entity Information

INDEX NO. 703632/2017

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## NYS Department of State

### Division of Corporations

#### Entity Information

The information contained in this database is current through July 25, 2018.

**Selected Entity Name:** THE GOODYEAR TIRE & RUBBER COMPANY

Selected Entity Status Information

**Current Entity Name:** THE GOODYEAR TIRE & RUBBER COMPANY

**DOS ID #:** 99296

**Initial DOS Filing Date:** DECEMBER 31, 1956

**County:** NEW YORK

**Jurisdiction:** OHIO

**Entity Type:** FOREIGN BUSINESS CORPORATION

**Current Entity Status:** ACTIVE

#### Selected Entity Address Information

**DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)**

C/O CORPORATION SERVICE COMPANY

80 STATE STREET

ALBANY, NEW YORK, 12207-2543

#### Chief Executive Officer

RICHARD J KRAMER

200 INNOVATION WAY

AKRON, OHIO, 44316-0001

#### Principal Executive Office

THE GOODYEAR TIRE & RUBBER COMPANY

200 INNOVATION WAY

AKRON, OHIO, 44316-0001

#### Registered Agent

CORPORATION SERVICE COMPANY

80 STATE STREET

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NYSCEF DOC. NO. 127 # of Shares Type of Stock \$ Value per Share

INDEX NO. 703632/2017

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No Information Available

\*Stock information is applicable to domestic business corporations.

#### Name History

Filing Date	Name Type	Entity Name
DEC 31, 1956	Actual	THE GOODYEAR TIRE & RUBBER COMPANY

A Fictitious name must be used when the Actual name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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**AFFIRMATION OF JUSTIN EDWARD KERNER, FOR THIRD-PARTY DEFENDANT  
THE GOODYEAR TIRE & RUBBER COMPANY, IN FURTHER SUPPORT OF  
MOTION TO DISMISS THE THIRD-PARTY COMPLAINT, DATED AUGUST 20, 2018 [374 -  
383]**

**FILED: QUEENS COUNTY CLERK 08/20/2018 01:43 PM**  
NYSCEF DOC. NO. 129

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RECEIVED NYSCEF: 08/20/2018

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----	X
JOSE AYBAR, ORLANDO GONZALES, JOSE AYBAR as Administrator of THE ESTATE OF CRYSTAL CRUZ-AYBAR, JESENIA AYBAR as Administratrix 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 TIFFANY CABRAL,	:
Plaintiffs,	:
v.	:
US TIRE AND WHEELS OF QUEENS, LLC,	:
Defendant.	:
-----	X
US TIRE AND WHEELS OF QUEENS, LLC,	:
Third-Party Plaintiff,	:
v.	:
THE GOODYEAR TIRE & RUBBER COMPANY and GOODYEAR DUNLOP TIRE NORTH AMERICA, LTD and FORD MOTOR COMPANY	:
Third-Party Defendants.	:
-----	X

I, Justin Edward Kerner, an attorney admitted to practice law before the state courts of New York, affirm the following under penalty of perjury:

1. I am an associate with DLA Piper LLP (US), counsel for Third-Party Defendant The Goodyear Tire & Rubber Company (“Goodyear”). I am familiar with the facts and circumstances described herein.

2. This affirmation is submitted in further support of Goodyear's motion to dismiss the third-party claims asserted by Defendant/Third-Party Plaintiff, U.S. Tire and Wheels of Queens, LLC ("USTW"), for lack of personal jurisdiction and failure to state a cause of action for common-law indemnification. Specifically, it is submitted in response to Plaintiffs' "Opposition" to Goodyear's motion.<sup>1</sup>

### INTRODUCTION

3. This Court cannot exercise personal jurisdiction over Goodyear without violating its rights under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.

4. Goodyear is not subject to personal jurisdiction in this action, and the third-party claims asserted against it should be dismissed.

5. Plaintiffs raise four contrary arguments in their "Opposition" to Goodyear's motion. First, they argue in favor of a finding of issue preclusion, urging adoption of the decision in *Aybar v. Aybar* (Index No. 706909/2015) (the "Anna Aybar" action), in which the court concluded that Goodyear consented to the exercise of general jurisdiction by registering to do business in the State of New York. However, issue preclusion does not apply here. As set forth in Goodyear's Attorney Affirmation in Further Support of its Motion to Dismiss (filed on June 11, 2018) ("Goodyear's Reply to USTW"):

- Goodyear has not yet had a *full* and fair opportunity to litigate the issue at hand. The *Anna Aybar* decision was appealed, and, during the pendency of that appeal, the doctrine of collateral estoppel is inapplicable as a matter of law.
- Moreover, the doctrine of collateral estoppel does not apply to purely legal issues, e.g., statutory interpretation. Thus, it does not apply here, where the issue to be

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<sup>1</sup> Plaintiffs sought and were granted leave to be heard on Goodyear's motion to dismiss the third-party claims asserted by US Tire and Wheels of Queens, LLC ("USTW"). They have not, however, demonstrated how their interests could possibly be affected by Goodyear's dismissal. They cannot. By their own admission, Plaintiffs maintain two other New York actions against Goodyear, in which they have asserted claims directly against the Ohio-based tire company.

considered is the proper interpretation of New York's business registration statutory scheme.

- Collateral estoppel should not be applied here because the claims at issue in both *Anna Aybar* and *Jose Aybar* (Index No. 706908/15) are materially different from those at issue in this action. In *Anna* and *Jose Aybar*, plaintiffs asserted product liability claims against Goodyear (and others). Here, by contrast, they assert pure negligence claims against USTW based on its installation of a tire that was in such bad condition that it should have been removed from service.

6. Second, Plaintiffs argue for the exercise of general jurisdiction over Goodyear based upon its "continuous and systematic" sales and business operations in New York. However, that argument flies in the face of binding precedent from the Supreme Court of the United States, which demonstrates that any such exercise of activity-based general jurisdiction would constitute reversible error. *See BNSF Ry. Co. v. Tyrell*, 137 S. Ct. 1549, 1558-59 (2017). Goodyear is not "at home" in New York, and it should not be subjected to the exercise of general jurisdiction here. *See Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014) (noting that the paradigm for the exercise of general jurisdiction are those in which a corporation is "at home"—*i.e.*, "the place of incorporation and principal place of business"). After all, a "corporation that operates in many places can scarcely be deemed at home in all of them." *Id.* at 139 n.20.

7. Third, Plaintiffs argue that general jurisdiction may be exercised over Goodyear because Goodyear complied with New York's business registration statute. But the principal decision upon which they rely, the *Anna Aybar* decision, was wrongly decided. As detailed below, that decision does not align with more recent, post-*Daimler* case law issued by state and federal courts across this State.<sup>2</sup>

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<sup>2</sup> Indeed, it is likely that the *Anna Aybar* decision will be reversed. Goodyear's appeal is still pending before the Second Department.

8. Fourth, and finally, Plaintiffs urge the exercise of specific jurisdiction based on their allegation that the tire at issue was “mounted onto a vehicle that was registered to a New York resident and duly licensed in New York State.” (Pls.’ Opp’n, ¶ 7.) But it is black-letter law that “mere injury to a forum resident is *not* a sufficient connection to the forum,” *Walden v. Fiore*, 571 U.S. 277, 290 (2014) (emphasis added), and “the plaintiff cannot be the only link between the defendant and the forum. Rather, it is the *defendant’s* conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him,” *id.* at 285 (emphasis added). No such conduct was alleged here. Plaintiffs do not dispute that Goodyear designed the tire in Ohio and manufactured it in Tennessee (*see* Dancy Aff., ¶ 5 (attached to the Att’y Affirmation in Supp. of Goodyear’s Mot. to Dismiss, which was filed on May 15, 2018 (the “Rethore Aff.”), as Ex. 3)), and they do not allege where, when, or to whom Goodyear sold that tire, which Plaintiffs purchased from a non-party.<sup>3</sup>

9. For all of these reasons, Plaintiffs’ arguments are meritless.<sup>4</sup> Goodyear is not subject to jurisdiction in this third-party action, and each of the claims asserted against it should be dismissed.

## ARGUMENT

### I. COLLATERAL ESTOPPEL IS INAPPLICABLE.

10. Plaintiffs first argue that “the doctrine of ‘issue preclusion’ applies” based upon the *Anna Aybar* decision, in which general jurisdiction was exercised over Goodyear. However, like USTW, Plaintiffs fail to recognize that issue preclusion does not and cannot apply here as a

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<sup>3</sup> See, e.g., *Aybar v. Cohen, Placitella & Roth, PC*, 58 Misc.3d 1226(A), 2018 N.Y. Slip Op. 50278(u), at \*1 (N.Y. Sup. Ct. Feb. 28, 2018) (finding that Jose Aybar purchased the tire from his cousin, who had kept it in storage in an unspecified location for some unspecified period of time).

<sup>4</sup> Further, Plaintiffs do not dispute that USTW’s common law indemnification claim fails as a matter of law.

matter of law. That is so for each of the reasons stated in Goodyear's Reply to USTW, which is incorporated by reference here. (*See* Goodyear's Reply to USTW, ¶¶ 9-23.)

**II. BECAUSE GOODYEAR IS NOT "AT HOME" IN THE STATE OF NEW YORK,  
THIS COURT SHOULD NOT EXERCISE GENERAL JURISDICTION.**

11. Plaintiffs next argue that Goodyear's "corporate presence in New York is pervasive" and so "continuous and systematic" that it should be deemed at home and subjected to the exercise of general jurisdiction here. (Pls.' Opp'n, ¶¶ 10, 20; *see also id.* at ¶¶ 19-21.)

12. In so doing, Plaintiffs ignore that Goodyear is not at home in the State of New York because it is not incorporated here and does not maintain its principal place of business here. *See Bauman*, 571 U.S. at 137 (internal quotation marks and alterations omitted) ("With respect to a corporation, the place of incorporation and principal place of business are paradigm bases for general jurisdiction.").

13. Moreover, they disregard that a "corporation that operates in many places can scarcely be deemed at home in all of them. . . . Nothing in *International Shoe [v. Washington*, 326 U.S. 310 (1945)] and its progeny suggests that a particular quantum of local activity should give a State authority over a far larger quantum of . . . activity having no connection to any in-state activity." *Id.* at 139 n.20 (citations and some internal quotation marks omitted).

14. The Supreme Court of the United States reaffirmed the limited bases for exercising general jurisdiction in *BNSF Railway Co. v. Tyrell*, in which the plaintiffs—like Plaintiffs here, with respect to Goodyear—urged the exercise of general jurisdiction based on BNSF's business activities in the forum State, which were significant; the defendant railway company had "over 2,000 miles of railroad track and more than 2,000 employees in" the forum. 137 S. Ct. at 1559. Nevertheless, the Court concluded that BNSF was not "so heavily engaged in activity" in the forum so "as to render it essentially at home" there. *Id.*

15. In so doing, the Court also clarified the sort of “exceptional case” in which a corporation might be deemed “at home” in a forum other than that in which it is incorporated or maintains its principal place of business. *Id.* It cited *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), demonstrating that the “exceptional case” is, as the term suggests, the exception rather than the rule. In *Perkins*, a Filipino company was deemed to be at home (and subject to the exercise of general jurisdiction) in Ohio because its owner relocated to Ohio during the Japanese occupation of the Philippines. In effect, the owner transported the company’s principal place of business from the Philippines to Ohio, where he conducted the company’s day-to-day business by, *inter alia*, employing administrative staff, maintaining office files, distributing checks, using local banks, holding directors’ meetings, and supervising policies related to the company’s Filipino operations. 342 U.S. at 448.

16. Plaintiffs argue otherwise, but no such exceptional circumstances are present here. Plaintiffs may not invoke general jurisdiction simply by arguing that Goodyear sells products here. “[E]ven regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales.” *Goodyear Dunlop Tire Operations, S.A. v. Brown*, 564 U.S. 915, 930 n.6 (2011).

### **III. GOODYEAR DID NOT CONSENT TO THE EXERCISE OF GENERAL JURISDICTION BY REGISTERING WITH THE DEPARTMENT OF STATE TO DO BUSINESS HERE.**

17. Plaintiffs also argue that Goodyear “voluntarily availed itself of the laws of New York . . . by voluntarily registering its corporate presence in New York State with the Department of State, and thus has voluntarily consented to accept service of process within New York State . . . .” (Pls.’ Opp’n, ¶ 28.) They conflate Goodyear’s agreement to accept service of process with consent to the exercise of general jurisdiction. (*See id.* at ¶¶ 28-29.)

18. The decisions Plaintiffs cite—including three that precede *Bauman*, and the *Anna Aybar* decision, which has been appealed and is under review by the Second Department—lend them no aid. They represent the minority view. The majority of courts to consider post-*Daimler* whether business registration constitutes consent to the exercise of personal jurisdiction have answered with a resounding “no.” See *Spratley v. FCA US LLC*, No. 17-cv-62, 2017 WL 4023348, at \*4 (N.D.N.Y. Sept. 12, 2017) (“The Court agrees with the majority of district courts that have considered this issue: after *Daimler*, registration to do business in New York does not amount to consent to general jurisdiction.”); *Amelius v. Grand Imperial LLC*, 57 Misc.3d 835, 852, 64 N.Y.S.3d 855, 868 (N.Y. Sup. Ct. 2017) (“For the dual reasons that the statutes do not adequately apprise foreign corporations that they will be subject to general jurisdiction in the courts of this State and that foreign corporations are required to register for conducting a lesser degree of business in this State than the Supreme Court of the United States has ruled should entail general jurisdiction, this Court finds that Yelp is not subject to general jurisdiction merely because it has registered to do business here.”).<sup>5</sup>

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<sup>5</sup> See also, e.g., *Wilderness USA, Inc. v. DeAngelo Bros. LLC*, 265 F. Supp. 3d 301, 313-14 (W.D.N.Y. 2017) (criticizing the minority view for its “brief and incomplete analytical treatment of this issue,” and concluding that “it is clear that New York’s registration statute does not provide an express requirement of consent to general jurisdiction as a condition for a foreign corporation to become authorized to transact business within the state”); *Famular v. Whirlpool Corp.*, No. 16-cv-944, 2017 WL 2470844, at \*4 (S.D.N.Y. June 7, 2017) (“[T]he Court agrees with defendants that . . . a foreign defendant is not subject to the general personal jurisdiction of the forum state merely by registering to do business with the state, whether that be through a theory of consent by registration or otherwise.”); *Bonkowski v. HP Hood LLC*, No. 15-cv-4956, 2016 WL 4536868, at \*3 (E.D.N.Y. Aug. 30, 2016) (declining “to give New York’s statutory scheme such an expansive reading”); *Taormina v. Thrifty Car Rental*, No. 16-cv-3255, 2016 WL 7392214, at \*6 (S.D.N.Y. Dec. 21, 2016); *Chatwal Hotels & Resorts LLC v. Dollywood Co.*, 90 F. Supp. 3d 97, 105 (S.D.N.Y. 2015); *Kyowa Seni, Co. v. ANA Aircraft Technics, Co.*, --- N.Y.S.3d ----, 2018 WL 3321410 (N.Y. Sup. Ct. July 5, 2018) (holding that the defendants’ mere “registration in New York is an insufficient grounds for this Court to exercise general jurisdiction over them”).

19. Plaintiffs' argument has been widely rejected with good reason. "If mere registration . . . sufficed to confer general jurisdiction by implicit consent, every corporation would be subject to general jurisdiction in every state in which it registered, and *Daimler*'s ruling would be robbed of meaning by a back-door thief." *Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 640 (2d Cir. 2016).

**IV. PLAINTIFFS' HALF-HEARTED ATTEMPT TO INVOKE SPECIFIC JURISDICTION SHOULD BE SUMMARILY REJECTED.**

20. In passing, Plaintiffs state that "specific jurisdiction is . . . asserted." (Pls.' Opp'n, ¶ 7.) However, they offer no citations or argument to support that assertion. Thus, they waive the right to present argument in favor of the exercise of specific jurisdiction.

21. In any event, specific jurisdiction cannot be exercised here without violating Goodyear's Due Process rights. Specific jurisdiction is appropriate only where the defendant has "minimum contacts" with the forum and the plaintiffs' claims "arise out of or relate to" those contacts. *Bristol-Myers Squibb Co. v. Super. Ct. of Cal., S.F. Cnty.*, 137 S. Ct. 1773, 1780 (2017) (alterations omitted). Here, Plaintiffs' claims neither arise out of nor relate to any New York actions attributable to Goodyear. As noted above, Goodyear designed the tire at issue in Ohio and manufactured it in Tennessee. (See Dancy Aff., ¶ 5.)

22. Plaintiffs disregard those facts and repeatedly urge the Court to examine their own contacts with the State. (See Pls.' Opp'n, ¶¶ 7, 13.) But Plaintiff's relationship with the forum should not be part of the Court's jurisdictional calculus. It is not relevant that Plaintiffs live here, stored their vehicle here, or asked USTW to inspect and install the tire at issue here. "Rather, it is the **defendant's** conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him." *Walden*, 571 U.S. at 285 (emphasis added).

**V. JURISDICTIONAL DISCOVERY WOULD SERVE NO PURPOSE.**

23. Plaintiffs contend that jurisdictional discovery would prove that Goodyear is “authorized to do business in this State and derives substantial income from that business . . .” (Pls.’ Opp’n, ¶ 33.) However, they fail to show that such discovery would aid the Court’s resolution of Goodyear’s jurisdictional challenge. As detailed above, neither a finding that Goodyear is registered to do business in the State of New York nor findings pertaining to the extent of Goodyear’s sales or revenue in this State could possibly justify the exercise of personal jurisdiction. Goodyear is not at home here, and there is no evidence of record suggesting (let alone showing) that Goodyear has taken any actions in New York that relate to Plaintiffs’ product liability claims.

**CONCLUSION**

24. Despite Plaintiffs’ urging, Goodyear is not subject to personal jurisdiction in this Court, in this lawsuit.

25. Accordingly, for the foregoing reasons and also for the reasons stated in Goodyear’s opening affirmation and Goodyear’s Reply to USTW, the third-party claims asserted against Goodyear should be dismissed with prejudice.

Dated: August 20, 2018

**DLA PIPER LLP (US)**

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INDEX NO. 703632/2017

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**NOTICE OF MOTION, BY THIRD-PARTY DEFENDANT FORD MOTOR COMPANY, FOR AN ORDER DISMISSING THE THIRD-PARTY COMPLAINT, DATED FEBRUARY 26, 2019 [384 - 386]**

**FILED: QUEENS COUNTY CLERK 02/26/2019 05:28 PM**  
NYSCEF DOC. NO. 154

INDEX NO. 703632 2017

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

X  
JOSE AYBAR, ORLANDO GONZALES, JOSE  
AYBAR as Administrator of THE ESTATE OF  
CRYSTAL CRUZ-AYBAR, Jesenia Aybar as  
Administrator of THE ESTATE OF NOELIA  
OLIVERAS, Jesenia Aybar as Legal Guardian on  
behalf of KEILA CABRAL, a minor, Anna Aybar  
and Jessica Aybar as Proposed Administratrix of  
THE ESTATE OF TIFFANY CABRAL,

Index No. 703632/2017 [E-Filed]

*Previously* Index No. 9344/2014

Plaintiffs,

**NOTICE OF MOTION**

- against -

*Oral Argument Requested*

US TIRE AND WHEELS OF QUEENS, LLC,  
Defendant.

X

US TIRE AND WHEELS OF QUEENS, LLC,  
Third-Party Plaintiff,

- against -

THE GOODYEAR TIRE & RUBBER COMPANY;  
GOODYEAR DUNLOP TIRES NORTH  
AMERICA, LTD; and FORD MOTOR COMPANY,  
Third-Party Defendants.

X

**COUNSELORS:**

**PLEASE TAKE NOTICE**, that upon the Affirmation of WALSY KARINA SAEZ AGUIRRE, ESQ. dated February 26, 2019, and upon all the pleadings and proceedings heretofore had and held herein, Third-Party Defendant FORD MOTOR COMPANY ("Ford") will move this Court at the Queens County Courthouse, Part 12, Courtroom 42, located at 88-11 Sutphin Boulevard, Jamaica, New York 11435, on the 26<sup>th</sup> day of March at 9:30 a.m., or as soon

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INDEX NO. 703632 2017

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thereafter as counsel may be heard, for an Order:

- (i) dismissing the Third-Party Complaint of Third-Party Plaintiff US Tire and Wheels of Queens, LLC ("US Tire") against Ford, pursuant to C.P.L.R. § 3211(a)(8), due to lack of personal jurisdiction; and
- (ii) for such other and further relief as this Court deems just and proper.

**PLEASE TAKE FURTHER NOTICE** that answering affidavits, if any, are required to be served upon the undersigned at least seven (7) days prior to the return date of this motion, pursuant to C.P.L.R. § 2214(b).

Dated: New York, New York  
February 26, 2019

Yours, etc.



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**AFFIRMATION OF WALSY K. SAEZ AGUIRRE, FOR THIRD-PARTY DEFENDANT  
FORD MOTOR COMPANY, IN SUPPORT OF MOTION, DATED FEBRUARY 26, 2019 [387  
- 416]**

**FILED: QUEENS COUNTY CLERK 02/26/2019 05:28 PM**  
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INDEX NO. 703632/2017

RECEIVED NYSCEF: 02/26/2019

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

JOSE AYBAR, ORLANDO GONZALES, JOSE  
AYBAR as Administrator of THE ESTATE OF  
CRYSTAL CRUZ-AYBAR, Jesenia Aybar as  
Administrator of THE ESTATE OF NOELIA  
OLIVERAS, Jesenia Aybar as Legal Guardian on  
behalf of KEILA CABRAL, a minor, Anna Aybar  
and Jessica Aybar as Proposed Administratrix of  
THE ESTATE OF TIFFANY CABRAL,

**AFFIRMATION IN SUPPORT OF  
FORD MOTOR COMPANY'S  
MOTION TO DISMISS**

Index No. 703632/2017 [E-Filed]

*Previously* Index No. 9344/2014

*Oral Argument Requested*

US TIRES AND WHEELS OF QUEENS, LLC,  
Defendant.

US TIRES AND WHEELS OF QUEENS, LLC,  
Third-Party Plaintiff,

- against -

THE GOODYEAR TIRE & RUBBER COMPANY;  
GOODYEAR DUNLOP TIRES NORTH  
AMERICA, LTD; and FORD MOTOR COMPANY,  
Third-Party Defendants.

Walsy K. Saez Aguirre, an attorney duly admitted to the practice of law before the Courts of the State of New York, hereby affirms the following to be true, upon information and belief, and under the penalty of perjury:

1. I am an associate of the law firm of Aaronson Rappaport Feinstein & Deutsch, LLP, attorneys for Third-Party Defendant Ford Motor Company ("Ford") in the above-captioned

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matter. As such, I am fully familiar with the facts and circumstances of this action by virtue of my review of the file maintained by this office.

2. This Affirmation is submitted in support of Ford's cross-motion seeking an Order dismissing the Third-Party Complaint of US Tires and Wheels of Queens, LLC ("US Tires") against Ford, pursuant to C.P.L.R. § 3211(a)(8), due to lack of personal jurisdiction; and granting such other and further relief as this Court deems just and proper.

3. Ford respectfully submits that this Court is compelled to dismiss US Tires' third-party action against Ford based on the standard for personal jurisdiction established in *Daimler A.G. v. Bauman*, 134 S. Ct. 746, 571 U.S. 117 (2014), which was reaffirmed in *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 198 L. Ed. 36 (2017) and followed by the New York Appellate Division, Second Department, in *Anna Aybar, et al. v. Jose A. Aybar, Jr. et al.*, No. 2016-06194, 2016-07397, 2019 N.Y. App. Div. LEXIS 444, 2019 N.Y. Slip. Op. 00412 (2d Dep't Jan. 23, 2019) (Exhibit "A"). In *Aybar*, which involves the same facts, parties and legal issues in this case, the Second Department held that this Court *does not* have personal jurisdiction over Ford.

4. Ford also respectfully requests that this action be stayed pursuant to C.P.L.R. § 3214(b) while this cross-motion remains pending.

5. In the instant action, Ford has not submitted prior applications for the relief sought herein before this Court or any other court.<sup>1</sup>

<sup>1</sup> Before filing the instant motion, Ford had filed a cross-motion seeking the same relief but that cross-motion was withdrawn before it was briefed, argued or resolved. Ford has only applied for the same relief in the related action, *Anna Aybar, et al. v. Ford Motor Company, et al.*, Index No. 706909/2015 ("Action 3"), in which Defendant/Third-Party Plaintiff US Tires is not a party, and which involves products liability claims against Ford based on the same facts giving rise to the instant action. In August 2015, Ford moved this Court to dismiss Action 3 based on lack of personal jurisdiction. On January 23, 2019, the Second Department ruled that there is no personal jurisdiction over Ford, and granted Ford's motion to dismiss in Action 3 on appeal. See *Aybar*, 2019 N.Y. App. Div. LEXIS 444 (Ex. A).

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**PRELIMINARY STATEMENT**

6. This is one of three companion negligence and personal injury actions arising out of a single-vehicle accident involving a 2002 Ford Explorer (the “Subject Vehicle”). Plaintiffs filed the instant lawsuit on or about June 17, 2014 against US Tires and Wheels of Queens, LLC (“US Tires”), which was the auto service shop that installed the rear left-side tire that apparently failed and caused the accident. On or about September 29, 2016, Defendant US Tires commenced this third-party action against Ford Motor Company (“Ford”), seeking indemnification and contribution for any damages for which it might be liable to Plaintiffs.

7. This cross-motion is not about the merits, however, but whether this Court has personal jurisdiction over Ford. Pursuant to U.S. Supreme Court and existing New York appellate precedent, US Tires’ Third Party Complaint fails to establish personal jurisdiction over Ford, and must be dismissed. Indeed, the Second Department recently issued a decision on point, ruling in the companion case *Anna Aybar, et al. v. Ford Motor Company, et al.* (Action 3) that New York courts *do not* have personal jurisdiction over Ford under the facts giving rise to this action. *See Aybar*, 2019 N.Y. App. Div. LEXIS 444 (Ex. A). As a result, not only is this Court compelled to follow the binding precedent of *Aybar* but also, US Tire’s is barred from asserting this third-party action against Ford under the collateral estoppel doctrine.

8. Under the Fourteenth Amendment’s Due Process Clause, Ford must be subject to either general or specific jurisdiction in New York on US Tires’ claims in order for the Court to exercise personal jurisdiction over Ford. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 918-19, 131 S. Ct. 2846, 2850-2851 (2011). Here, US Tires’ claims against Ford should be dismissed under Section 3211(a)(8) of the New York Civil Practice Law and Rules (“C.P.L.R.”) because this Court lacks personal jurisdiction over Ford.

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9. As to general jurisdiction, Ford is not “at home” in New York. The United States Supreme Court established that a corporation is at home only (i) where it is incorporated and (ii) where it has its principal place of business, unless there are exceptional circumstances, which are not present here. *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. at 1558-59; *Daimler*, 134 S. Ct. at 760-762. See also *Fernandez v. DaimlerChrysler, A.G.*, 143 A.D.3d 765, 766, 40 N.Y.S.3d 128, 130-131 (2d Dep’t 2016); *Carrs v. Avco Corp.*, 124 A.D.3d 710, 2 N.Y.S.3d 533, 533-534 (2d Dep’t 2015); *Marcio Magdalena v Eduardo Lins, et al.*, 123 A.D.3d 600, 999 N.Y.S.2d 44 (1st Dep’t 2014). Ford is not “at home” in New York because it is incorporated in Delaware, its principal place of business is in Michigan, and its activities in New York are not sufficiently “continuous and systematic” as to render it essentially “at home” in the State. *Aybar*, 2019 N.Y. App. Div. LEXIS 444, at \*11-26 (Ex. A.).

10. As to specific jurisdiction, the U.S. Supreme Court released an opinion reiterating that specific jurisdiction requires a “connection between the forum and the specific claims at issue.” *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1781 (2017). The Court referred to its decision in *Walden v. Fiore*, 134 S. Ct. 1115 (2014) as “illustrat[ing] this requirement.” *Id.* The Court explained that there was no specific jurisdiction over the defendant in *Walden* even though the plaintiff “suffered foreseeable harm” in the forum because the “relevant conduct occurred entirely” out-of-state. *Id.* at 1781-82 (quoting *Walden*, 134 S. Ct. at 1124, 1126) (emphasis omitted). Here, Ford is not subject to specific jurisdiction in New York because US Tires’ third-party claims against Ford do not arise from any contact Ford has with New York. See C.P.L.R. § 302(a)(1).

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11. Based on the fact that neither general nor specific personal jurisdiction over Ford is proper in this case, US Tires' Third-Party Complaint against Ford must be dismissed in its entirety.

#### STATEMENT OF FACTS

##### **I. BACKGROUND REGARDING THE UNDERLYING LAWSUIT**

12. As previously mentioned, this action is one of three related lawsuits pending before this Court, which arise out of a single-vehicle accident that occurred on July 1, 2012 at Interstate 85 in Brunswick County, Virginia. Plaintiff Jose Aybar was driving a 2002 Ford Explorer (the "Subject Vehicle") with six other passengers when the vehicle's rear left-side tire (the "Subject Tire") allegedly failed, causing the driver to lose control of the vehicle and leading the vehicle to roll over. (*See Amended Summons and Complaint, Index No. 703632/2017 ("Action 1"), Exhibit "B," at ¶¶ 25, 30; Summons and Complaint, Index No. 706908/2015 ("Action 2"), Exhibit "C," at ¶ 11; Summons and Complaint, Index No. 706909/2015 ("Action 3"), Exhibit "D," at ¶¶ 3-4, 36-41, 43.*) As a result of the accident, three passengers died and four passengers, including the driver, suffered bodily injuries. (Am. Compl. Action 1, Ex. B, at ¶¶ 31-38; Compl. Action 2, Ex. C, at ¶¶ 12-13; Compl. Action 3, Ex. D, at ¶¶ 50, 57, 65, 73, 81, 89.)

13. On or about June 17, 2014, Plaintiffs commenced the instant action ("**Action 1**") against US Tires for personal injury and wrongful death, alleging that the accident occurred due to US Tires' negligent installation of the Subject Tire and improper servicing of the Subject Vehicle. (*See Am. Compl., Action 1, Ex. B.*) On or about July 2015, Jose Aybar commenced a separate action ("**Action 2**") against The Goodyear Tire & Rubber Company ("Goodyear Tire") and Goodyear Dunlop Tires North America, Ltd. ("Goodyear Dunlop"), bringing claims

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grounded on strict product liability, negligence, breach of warranty and deceptive trade practices.

(*See Compl., Action 2, Ex. C.*) Ford is not a party to Action 2. On or about July 20, 2015, the plaintiffs in the instant action, with the exception of Jose Aybar, commenced a separate third action (“**Action 3**”) against Jose Aybar, Ford, Goodyear Tire, and “John Does 1 through 30.” (*See Compl., Action 3, Ex. D.*)

14. On or about September 29, 2016, Defendant US Tires impleaded Goodyear Tire, Goodyear Dunlop, and Ford into Action 1, by serving the Third-Party Summons and Complaint annexed as **Exhibit “E,”** which seeks indemnification and contribution from Ford, Goodyear Tire and Goodyear Dunlop for damages for which it might be found liable to Plaintiffs. In its Third-Party Complaint, US Tires reiterates Plaintiffs’ allegations of negligence in Action 1 against US Tires (based on the installation of the tires), and refers to Plaintiffs’ claims against Ford, Goodyear Tire and Goodyear Dunlop in Actions 2 and 3 based on strict products liability, negligence, breach of warranty and deceptive trade practices. (*See Third-Party Compl., Ex. E, at ¶¶ 1-3.*) The crux of US Tires’ third-party claim against Ford is that if US Tires is held liable, its liability and damages will have arisen out of the “affirmative active and primary negligence” of Ford, in addition to third-party co-defendants Goodyear Tire and Goodyear Dunlop. (*See id.*)

15. In the instant action, US Tires did not assert any jurisdictional allegations at all against Ford or even specify that Ford engaged in any specific conduct with respect to the Subject Vehicle. Also, Plaintiffs did not assert any claims against Ford in Action 1, and the third-party co-defendants in Action 1 did not assert any cross-claims against Ford. As a result, US Tires is the only party required to establish jurisdiction over Ford. On September 29, 2016, Ford served a Verified Answer to US Tires’ Third-Party Complaint, which is annexed as **Exhibit**

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“F.” In this Verified Answer, Ford pleaded lack of personal jurisdiction as an affirmative defense. (See Ford’s Answer to Third-Party Complaint in Action 1, Ex. F, at ¶ 5.)

## II. THE SUBJECT VEHICLE

16. As stated in the Affidavit of Robert Pascarella annexed as Exhibit “G,” Ford did not design or manufacture the Subject Vehicle in New York. (Affidavit of Robert Pascarella, Ex. G, at ¶¶ 5, 7.) In fact, Ford does not have any Ford Explorer manufacturing plants in New York. (*Id.* at ¶ 8.) The Subject Vehicle was assembled at the St. Louis Assembly Plant, which is located in Missouri, and was first sold by Ford to Team Ford Lincoln, an independently-owned Ford dealership located in Ohio. (*Id.* at ¶¶ 5, 6.)

## III. FORD’S INCORPORATION, PRINCIPAL PLACE OF BUSINESS, AND BUSINESS REGISTRATION

17. Ford is incorporated in Delaware and its principal place of business is in Michigan. (Pascarella Aff., Ex. G, at ¶ 4.)

18. As mandated under Section 304 of the Business Corporation Law, Ford applied for authorization to do business in the State of New York, registered as a foreign business corporation with the New York State Department of State, and appointed the Secretary of State as its agent for service of process. By simply complying with the requirements of the Business Corporation Law, Ford has not consented to general jurisdiction in New York. *See Aybar*, 2019 N.Y. App. Div. LEXIS 444, at \*2, 15-26 (Ex. A).

## STANDARD

19. Third-party plaintiffs have the burden of establishing personal jurisdiction over a defendant by a preponderance of the evidence. *Bernardo v. Barrett*, 57 N.Y.2d 1006, 443 N.E.2d 953 (1982); *Wells Fargo Bank, N.A. v. Moza*, 129 A.D.3d 946, 947, 13 N.Y.S.3d 127, 128 (2d Dep’t 2015). *See also CRT Invs., Ltd. v. BDO Seidman, LLP*, 85 A.D.3d 470, 471, 925

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N.Y.S.2d 439, 440 (1st Dep’t 2011); *Pramer S.C.A. v. Abaplus Intl. Corp.*, 76 A.D.3d 89, 95, 907 N.Y.S.2d 154 (1st Dep’t 2010). Where a third-party defendant has objected to the court’s exercise of personal jurisdiction, the third-party plaintiff bears the ultimate burden of proving jurisdiction based on evidence. See *Aybar*, 2019 N.Y. App. Div. LEXIS 444, at \*8; *Mejia-Haffner v Killington, Ltd.*, 119 A.D.3d 912, 914, 990 N.Y.S. 2d 561, 564 (2d Dep’t 2014). To establish personal jurisdiction over Ford, US Tires must demonstrate that personal jurisdiction is proper under both the Constitution’s Due Process Clause and the New York long-arm statute, C.P.L.R. Section 302. See *LaMarca v. Pak-Mor Mfg. Co.*, 95 N.Y.2d 210, 213, 735 N.E.2d 883, 886 (2000). As further elaborated below, US Tires cannot establish either basis of jurisdiction here, and as a result, their third-party action against Ford must be dismissed under C.P.L.R. Section 3211(a)(8).

### ARGUMENT

#### **I. THE DUE PROCESS CLAUSE DOES NOT PERMIT THE EXERCISE OF PERSONAL JURISDICTION OVER FORD.**

20. A court’s exercise of personal jurisdiction over a defendant is limited by the Due Process Clause, which requires compliance with “traditional notions of fair play and substantial justice.” See *Daimler*, 134 S. Ct. at 633; *Goodyear Dunlop*, 564 U.S. at 923; *Int’l Shoe Co. v. Wash.*, 326 U.S. 310, 323-324, 66 S. Ct. 154, 161-162 (1945); *Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 625, 2016 U.S. App. LEXIS 2763, at \*11-12 (2d Cir. 2016); see also *LaMarca*, 95 N.Y.2d at 213 (noting that plaintiffs must prove that personal jurisdiction is proper under the Constitution’s Due Process Clause). A court may only exercise personal jurisdiction over a nonresident defendant so long as there exist sufficient “minimum contacts” between the defendant and the forum state as to give rise to general or specific jurisdiction without offending Due Process guarantees. See *BNSF*, 137 S. Ct. at 1558-59; *Bristol-Myers*, 137 S. Ct. at 1785,

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1779-80 (citing *Helicopteros Nacionales De Colombia v. Hall*, 466 U.S. 408, 414, 104 S. Ct. 1868, 1872 (1984)); *Brown*, 814 F.3d at 625. See also *Deutsche Bank Securities, Inc. v. Montana Board of Investments*, 7 N.Y.3d 65, 71, 850 N.E.2d 1140, 1142 (Ct. App. 2006).

21. Here, exercising personal jurisdiction over Ford would be improper under the Due Process Clause because Ford does not have the requisite “minimum contacts” with New York so as to give rise to general or specific jurisdiction. First, under binding U.S. Supreme Court and New York Appellate Division precedent set forth in *Daimler*, *BNSF* and *Aybar*, New York courts do not have general personal jurisdiction over Ford because Ford is not essentially “at home” in New York. *Aybar*, 2019 N.Y. App. Div. LEXIS 444, at \*23-26 (Ex. A).

22. Second, the Court cannot exercise specific jurisdiction over Ford in this matter because this action *does not* arise out of, or even relate to Ford’s contacts with New York. See C.P.L.R. § 302(a)(1); *Bristol-Myers*, 137 S. Ct. at 1780; *Walden*, 134 S. Ct. at 1121-1122. Notably, Third-Party Plaintiff US Tires does not even assert any jurisdictional allegations against Ford. (See Third-Party Compl., Ex. E.) As there is no basis for this Court to establish general or specific jurisdiction over Ford, this case must be dismissed.

*a. New York Does Not Have General Jurisdiction Over Ford Because Ford Is Not “Essentially at Home” in New York.*

23. To establish general jurisdiction over a defendant, the plaintiff must demonstrate that the defendant’s affiliations with the state are “so ‘continuous and systematic’ as to render it essentially at home in the forum.” *BNSF*, 137 S. Ct. at 1552-1553; *Bristol-Myers*, 137 S. Ct. at 1780 (citing *Goodyear Dunlop*, 564 U.S. at 919); *Daimler*, 134 S. Ct. at 761; *Brown*, 814 F.3d at 627; *Aybar*, 2019 N.Y. App. Div. LEXIS 444, at \*9-12 (Ex. A). A corporation is essentially “at home” where it is incorporated or where it has its principal place of business, except in a “truly

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'exceptional' case."<sup>2</sup> *BNSF*, 137 S. Ct. at 1552; *Daimler*, 134 S. Ct. at 760. However, a corporation is *not* deemed to be "at home" in "every State in which [it] engages in a substantial, continuous, and systematic course of business." *Daimler*, 134 S. Ct. at 761-62; *see also Bristol-Myers*, 137 S. Ct. at 1780 (citing *Daimler*, 134 S. Ct. at 760); *Sonera Holding B.V. v. Cukurova Holdings A.S.*, 750 F.3d 221, 226, 2014 U.S. App. LEXIS 7809, at \*11-12 (2d Cir. 2014), *cert. denied*, 134 S. Ct. 2888, 189 L. Ed. 2d 837 (2014) ("[*Daimler* and *Goodyear*] make clear that even a company's engagement in a substantial, continuous, and systematic course of business is alone insufficient to register it at home in a forum.") (internal quotation marks omitted); *Aybar*, 2019 N.Y. App. Div. LEXIS 444, at \*10-11 (Ex. A). The U.S. Court of Appeals for the Second Circuit and the New York Appellate Division have recognized the restrictions the Supreme Court established in *Daimler*. *See Brown*, 814 F.3d at 619; *Stroud v. Tyson Foods, Inc.*, 91 F. Supp. 3d 381, 2015 U.S. Dist. LEXIS 29038 (E.D.N.Y. 2015); *Aybar*, 2019 N.Y. App. Div. LEXIS 444 (Ex. A); *Marcio*, 123 A.D.3d 600.

24. In *Daimler*, the Supreme Court held that California lacked general personal jurisdiction over defendants Daimler A.G. and Mercedes-Benz USA, which were incorporated and headquartered outside of California. 134 S. Ct. at 751. The Supreme Court based its decision on the fact neither Daimler nor Mercedes-Benz were incorporated under the laws of, or had their principal place of business in, California. *Id.* at 761. The Court reasoned that allowing

<sup>2</sup> Both *BNSF* and *Daimler* cite to *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 72 S. Ct. 413 (1952), as an "exceptional case." *BNSF*, 137 S. Ct. at 1558. Benguet was a mining company physically located in the Phillipines. Because the Japanese captured the mine lands during wartime, the president of Benguet, who was also general manager and principal stockholder of Benguet, relocated the business temporarily to Ohio, where he maintained the books, maintained company bank accounts, paid employees, conducted business meetings, and managed the wartime business of the corporation. Plaintiff sued Benguet on claims that did not arise in Ohio and did not relate to Benguet's activities in Ohio. *Perkins*, 342 U.S. at 447-8. The Court found that the president of Benguet "carried on in Ohio a continuous and systemic supervision of the necessarily limited wartime activities of the company." 342 U.S. at 448. The Supreme Court held that, under this set of circumstances, it would not be a violation of federal due process for Ohio courts to exercise jurisdiction over Benguet. *Id.*

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general personal jurisdiction over the defendants in California would have made general personal jurisdiction available in every state in which the defendants' sales were sizable. *Id.*

25. Following *Daimler*, the Second Circuit also held that “[g]eneral jurisdiction over a defendant satisfies due process only if the defendant is headquartered or incorporated in the forum state or is otherwise ‘at home’ in that state.” *Thackurdeen v. Duke Univ.*, 660 Fed. Appx. 43, 45, 2016 U.S. App. LEXIS 16164, \*3-4 (2d Cir. 2016). The Second Circuit has recognized that under *Daimler*, even if a corporation has a “substantial, continuous, and systematic course of business” in the forum, that fact alone is not sufficient to render the corporation “at home” in the forum state. *Sonera Holding*, 750 F.3d at 226 (citing *Daimler*, 134 S. Ct. at 761). See also *Gucci Am. v. Bank of China*, 768 F.3d 122, 135, 2014 U.S. App. LEXIS 17948, at \*29-32 (2d Cir. 2014) (concluding that applying *Daimler*, the Bank of China was not subject to general jurisdiction in New York because it was incorporated and headquartered elsewhere and, though it had branch offices and conducted business in New York, its contacts were not sufficiently continuous and systematic for it to be deemed to be essentially “at home” in the state); *Continental Indus. Group, Inc. v. Equate Petro. Co.*, 586 Fed. Appx. 768, 2014 U.S. App. LEXIS 19316 (2d Cir. 2014) (affirming the dismissal of an action because the plaintiff did not allege that the defendant was headquartered or incorporated in New York, and did not allege sufficient facts to demonstrate that the defendant was “at home” in the state).

26. Federal courts around the country have come to the same conclusion in cases involving large corporations. For example, in *Stroud v. Tyson Foods, Incorporated*, the U.S. District Court for the Eastern District of New York dismissed a plaintiff's claims against Tyson Foods and Wendy's based on lack of personal jurisdiction, concluding that neither defendant had sufficient contacts with New York as to make them essentially “at home” in the State. 91 F.

Supp. 3d at 381. The plaintiff in Stroud argued that the defendants were essentially at home in New York because Tyson operated a manufacturing plant in Buffalo, New York, through an alter ego company, and Wendy's had significant contacts with New York through a subsidiary. *Id.* at 387-388. The court rejected these arguments and concluded that even if the contacts of Tyson's alleged alter-ego company and Wendy's New York subsidiary could be attributed to the defendants, those contacts were insufficient to make the defendants "at home" in the State in light of the defendants' operations worldwide. *Id.* In its analysis, the court noted that Tyson's Buffalo manufacturing facility was only one of hundreds of manufacturing plants it operated nationwide, and that Wendy's operated over 6,500 restaurants worldwide. *Id.* at 388-389. Based on *Daimler*, the court noted that the defendants cannot be considered to be "at home" in every forum where they operate restaurants or manufacturing plants. *Id.* at 388.

27. Similarly, in *Ritchie Capital Management, L.L.C. v. Costco Wholesale Corporation*, 2015 U.S. Dist. LEXIS 176994 (S.D.N.Y. 2015), the Southern District found that Costco is not subject to general jurisdiction in New York, although it generates \$2.8 billion in annual revenue from New York, has seventeen warehouses in the State, and has 3,400 employees in the State. Relying on *Daimler*, the court found that the plaintiffs were unable to demonstrate that Costco had a disproportionate concentration of business in New York and therefore, it could not be deemed to be essentially "at home" in the State. *Id.* at 16-19.

28. Several courts have rendered similar decisions as it relates to Ford. In fact, last month, the Second Department reversed this Court's decision by Judge Thomas D. Raffaele denying Ford's motion to dismiss Plaintiffs' claims in Action 3 due to lack of personal jurisdiction. *Aybar*, 2019 N.Y. App. Div. LEXIS 444 (Ex. A). In its decision, the Second Department held Ford is not at home in New York because Ford is not incorporated in and does

not have its principal place of business in New York. In its analysis, the court emphasized *Daimler's* mandate that general jurisdiction “calls for an appraisal of a corporation’s activities in their entirety, nationwide and worldwide” and “[a] corporation that operates in many places can scarcely be deemed to be at home in all of them.” *Id.* at \*11-12. The court found that an appraisal of the magnitude of Ford’s activities in New York in the context of Ford’s activities worldwide establishes that Ford cannot be deemed to be “at home” in New York. *Id.* at \*14.

29. Additionally, last year, the Texas Court of Appeals reversed a lower court’s decision denying Ford’s motion to dismiss based on lack of personal jurisdiction, after finding that Ford’s contacts with Texas were not so “continuous and systematic” as to render it essentially at home in Texas. *Ford Motor Company, et al. v. Natividad Cardenas Cejas, et al.*, No. 09-16-00280-CV, 2018 Tex. App. LEXIS 1389 (Tex. App. –Beaumont [9<sup>th</sup> Dist.] Feb. 22, 2018). The appellees in *Cardenas* argued that Texas courts had personal jurisdiction over Ford because Ford designed products for the Texas market; had established channels of regular communication with Texas customers; and advertised, owned property, had offices and employees, paid taxes, and maintained a registered agent in Texas. *Id.* at \*15. However, the court found that those facts were “insufficient to permit the assertion of all-purpose general jurisdiction over claims like Plaintiffs’.” *Id.* at \*27. The court also found that the jurisdictional facts the appellees pled did not give rise to “exceptional” circumstances warranting general jurisdiction.

30. In Florida, a district court held that Ford was not subject to general jurisdiction in that state even though Ford “conducts a large volume of business” there. *Erwin v. Ford Motor Co.*, No. 8:16-cv-01322-SCB-AEP, 2016 WL 7655398, at \*12 (M.D. Fla. Aug. 31, 2016). In Colorado, a court held that Ford was not subject to general jurisdiction there, even though Ford

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sold vehicles in Colorado through a network of independent franchised dealers and “maintain[ed] several offices and businesses in the state.” *Magill v. Ford Motor Co.*, 379 P.3d 1033, 1036, 1039 (Colo. 2016). A California district court held that Ford was not subject to general jurisdiction in that state even though the plaintiff alleged that Ford has a regional headquarters and research-and-innovation center in California and sold over 200,000 vehicles a year there. *Sullivan v. Ford Motor Co.*, No. 16-cv-03505-JST, 2016 WL 6520174, at \*2 (N.D. Cal. Nov. 3, 2016). Also, in 2015, a Mississippi district court ruled that it did not have personal jurisdiction over Ford because Ford’s contacts with Mississippi were not sufficiently “continuous and systematic” as to render Ford at home in the State. *Pitts v. Ford Motor Company*, 127 F. Supp. 3d 676, 2015 U.S. Dist. LEXIS 121673 (S.D. Miss. 2015). The plaintiffs in *Pitts* alleged that Ford was qualified and registered to do business, contracted with a Mississippi-based dealership, and had a registered agent, sold or distributed new vehicles, advertised, and purchased dealerships in Mississippi.

31. Here, the Court is compelled to follow *Daimler* and the Second Department’s decision in *Aybar*, and rule that Ford is not subject to general jurisdiction in New York. Accordingly, US Tires’ Third-party Complaint must be dismissed as against Ford.

**b. This Court Cannot Exercise Specific Jurisdiction Over Ford in this Case Without Violating the Due Process Clause.**

32. To determine whether a defendant has sufficient “minimum contacts” with the forum as to give rise to specific jurisdiction, a court must analyze the relationship between the defendant, the forum and the litigation. *Walden*, 134 S. Ct. at 1121 (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775, 104 S. Ct. 1473, 1478 (1984)). See also *Bristol-Myers*, 137 S. Ct. at 1780-1781 (discussing that there must be affiliation between the forum and the underlying claims at issue). For a court to exercise specific jurisdiction over a claim, the

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defendant's suit-related conduct must create a substantial connection with the forum state. *Walden*, 134 S. Ct. at 1121. *See also Bristol-Myers*, 137 S. Ct. at 1781 (quoting *Goodyear Dunlop*, 564 U.S. at 919) (noting that "for a court to exercise specific jurisdiction over a claim, there must be an 'affiliation between the forum and the underlying controversy, principally [an] activity or occurrence that takes place in the forum State'"). Contacts "between the plaintiff (or third parties) and the forum State" do not suffice, because "the plaintiff cannot be the only link between the defendant and the forum." *BNSF*, 137 S. Ct. at 1121. Also, specific jurisdiction cannot arise solely based on the action of third parties. *See Bristol-Myers*, 137 S. Ct. at 1781; *Walden*, 134 S. Ct. at 1115. *See also Helicopteros*, 466 U.S. at 417 ("[u]nilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction.").

33. In *Bristol-Myers Squibb Company v. Superior Court*, the Supreme Court held that California state courts lacked specific general jurisdiction over the claims of nonresidents, after finding that there was no adequate connection between California and the nonresidents' claims. 137 S. Ct. 1773. In *Bristol-Myers*, a group of consumers, most of whom were not California residents, brought state-law claims against a California pharmaceutical company based on injuries they claimed they suffered from a drug manufactured by that company. The Court found that because the nonresidents were not prescribed the drug in California, did not purchase or consume the drug in California, and were not injured by the drug in California, there was no adequate connection between the forum and the defendant's conduct giving rise to the claims at issue.

34. Further, merely claiming injury within the forum state is insufficient to confer specific jurisdiction. *Walden*, 134 S. Ct. at 1122; *Keeton*, 465 U.S. at 775; *Helicopteros*

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*Nacionales*, 466 U.S. at 414 n.8. In *Walden v. Fiore*, the Supreme Court ruled that a Nevada district court did not have specific jurisdiction over a nonresident defendant because no part of the defendant's course of action occurred in Nevada and the defendant did not form any jurisdictionally relevant contacts with the forum. 134 S. Ct. 1115. The plaintiffs in *Walden* were Nevada residents who claimed that the defendant, a Georgia police officer for the Drug Enforcement Administration, violated their Fourth Amendment rights by unlawfully searching them and seizing their cash in Atlanta, Georgia, while they were preparing to board a plane to Nevada. *Id.* at 1119-1120. The Court found that the defendant did not have the necessary "minimum contacts" with the State to warrant specific jurisdiction, because the relevant conduct took place in Georgia and the defendant did not create any case-related contacts with the State of Nevada. *Id.* at 1124. The Court noted that the mere fact that the defendant's conduct affected Nevada residents and allegedly caused harm in Nevada was not sufficient to make the defendant subject to personal jurisdiction in that state. *Id.* at 1121-1123.

35. Here, there is no specific jurisdiction over US Tires' third-party claims against Ford because the required connection between Ford's alleged suit-related conduct, New York, and US Tires' claims against Ford is lacking. See *id.* at 1781 (citing *Goodyear Dunlop*, 564 U.S. at 919) (noting that when there is no connection between the forum and the underlying controversy, principally through an activity or occurrence that takes place within the forum, "specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State"). Ford's alleged suit-related conduct bears no connection to New York, as Ford did not engage in manufacturing, distributing, selling, or designing the Subject Vehicle within the State. (See Pascarella Aff., Ex. G, at ¶¶ 5-10.). US Tires' third-party claims against Ford are not

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even premised on any in-state activities by Ford. Additionally, the Subject Vehicle was brought to the New York only through the actions of other parties.

**II. THE COURT IS ALSO UNABLE TO ASSERT PERSONAL JURISDICTION OVER FORD UNDER NEW YORK'S LONG-ARM STATUTE.**

36. New York's long-arm statute, C.P.L.R. Section 302, outlines the requirements to establish specific jurisdiction over foreign corporations. Under the statute, a foreign corporation is subject to specific jurisdiction in New York if it transacts business within the State, and the claims asserted *arise from* its business activity within the State. *See* C.P.L.R. § 302(a)(1); *Pincione v. D'Alfonso*, 506 Fed. Appx. 22, 24, 2012 U.S. App. LEXIS 25986 (2d Cir. 2012); *Sole Resort. S.A. de C.V. v. Allure Resorts Mgmt. LLC*, 450 F.3d 100, 103, 2006 U.S. App. LEXIS 14538, at \*8 (2d Cir. 2006); *In re Dental Supplies Antitrust Litig.*, No. 16 Civ. 696 (BMC) (BRB), 2017 U.S. Dist. LEXIS 153265, at \*22 (E.D.N.Y. Sept. 20, 2017). Additionally, Sections 302(a)2 and 3 of the statute permit New York courts to exercise personal jurisdiction over foreign corporations who commit a tortious act within the State of New York, or a tortious act outside of the State that causes injury to a person or property within New York. *See* C.P.L.R. § 302(a)(2)-(3).

37. The Court of Appeals has established that Section 302(a)(2) *does not* apply to foreign manufacturers in products liability actions who improperly manufacture products outside of the State. *Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc.*, 15 N.Y.2d 443, 459-64, 209 N.E.2d 68, 76-78 (1965). Also, the Second Department has emphasized that for purposes of C.P.L.R. Section 302(a)(3), "the 'situs of the injury is the location of the original event which caused the injury, *not the location where the resultant damages are subsequently felt by the plaintiff.*" *Paterno v. Laser Spine Inst.*, 112 A.D.3d 34, 44, 973 N.Y.S.2d 681, 688 (2d Dep't 2013) (citation omitted; emphasis in original).

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38. Specific jurisdiction under New York's long-arm statute can only be established where the claims arise from the types of contacts specifically outlined in C.P.L.R. Section 302. C.P.L.R. § 302(c). See also *McGowan v. Smith*, 52 N.Y.2d 268, 272, 419 N.E.2d 321, 323 (1981); *Williams v. Enterprise Rent-A-Car of Boston, Inc.*, 35 A.D.3d 264, 264, 826 N.Y.S.2d 59, 60 (1st Dep't 2006). Accordingly, for jurisdiction to exist under New York's long-arm statute, there must be a "substantial relationship" between a defendant's activities and the plaintiff's causes of action. *Fernandez*, 143 A.D.3d at 767.

39. The New York Court of Appeals has established that the scope of New York's long-arm statute is narrower and more restrictive than the jurisdictional limits of Due Process. See *Ehrenfeld v. Bin Mahfouz*, 9 N.Y.3d 501, 512, 881 N.E.2d 830, 837-838 (Ct. App. 2007). In *Ehrenfeld*, the Court explained that the "the long-arm statute 'does not confer jurisdiction in every case where it is constitutionally permissible'" and "'a situation can occur in which the necessary contacts to satisfy due process are present, but *in personam* jurisdiction will not be obtained in this State because the statute does not authorize it.'" *Id.* at 512.

40. Here, US Tires cannot establish personal jurisdiction over Ford under the New York long-arm statute because neither its third-party claims nor Plaintiffs' underlying claims arise out of Ford's activities within the State of New York. For the same reasons, US Tires cannot show that Ford committed any tortious acts that would make it subject to New York's long-arm jurisdiction under C.P.L.R. Section 302(a)(2) or (3). Based on *Longines-Wittnauer Watch*, Section C.P.L.R. Section 302(a)(2) does not apply to Ford, as Ford cannot be deemed to have committed a tortious act within New York because it did not manufacture, primarily design or sell the Subject Vehicle within New York. Finally, the torts Plaintiffs claim Ford committed did not cause any injury within New York within the meaning of C.P.L.R. Section 302(a)(3),

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because the accident that caused Plaintiffs' injuries occurred in Virginia, not New York. See *Paterno*, 112 A.D.3d at 44. As a result, US Tires cannot establish specific jurisdiction over Ford under New York's long-arm statute.

**III. FORD'S CROSS-MOTION TO DISMISS MUST BE GRANTED IN LIGHT OF THE SECOND DEPARTMENT'S RECENT DECISION IN *AYBAR*.**

41. This Court is compelled to grant Ford's cross-motion to dismiss based on *Aybar* on two grounds. First, *Aybar* is binding precedent upon this Court. Second, as the Second Department already decided on the issues raised in this cross-motion, US Tires' third-party claims against Ford are barred under the doctrine of collateral estoppel.

*a. The Second Department Already Determined that this Court Lacks Personal Jurisdiction Over Ford Under the Facts of the Companion Cases.*

42. Shortly after Action 3 was commenced, Ford and Goodyear Tire moved pursuant to C.P.L.R. Section 3211(a)(8) to dismiss that action as against them based on lack of personal jurisdiction. On or about May 25, 2016, Judge Raffaele of this Court issued separate orders denying Ford's and Goodyear's motions in Action 3. See *Aybar v. Aybar*, No. 706909/2015, 2016 N.Y. Misc. LEXIS 2263, 2016 N.Y. Slip. Op. 31139(U) (Sup. Ct., Queens County 2016); *Aybar v. Aybar*, No. 706909/2015, 2016 N.Y. Misc. LEXIS 2253, 2016 N.Y. Slip. Op. 31138(U) (Sup. Ct., Queens County 2016). The Court found that it had general jurisdiction over both defendants. As to Ford, the Court found that Ford's activities in New York were so continuous and systematic that it was essentially "at home" in the State because Ford has facilities in New York engaged in day-to-day activities and many franchises within the State. *Aybar v. Aybar*, 2016 N.Y. Misc. LEXIS 2263, at \*8-10. It also found that Ford consented to general jurisdiction in New York when it registered as a foreign corporation to do business in New York and designated a local agent for service of process within the State. *Id.* at \*10-12.

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43. Thereafter, Ford and Goodyear Tire perfected an appeal with the Second Department, and oral arguments were heard on March 26, 2018. Plaintiffs and US Tires fully participated in litigating the issue of personal jurisdiction over both Ford and Goodyear Tire before this Court and before the Appellate Division.

44. *On January 23, 2019, the Second Department issued a unanimous decision granting Ford's and Goodyear's motion to dismiss on appeal, finding that personal jurisdiction is lacking in these companion actions.* Specifically, the Second Department decided on the following jurisdictional issues, which are identical to the issues presented in this cross-motion:

- (i) whether a foreign corporation becomes subject to general personal jurisdiction in New York through the mere act of registering to do business in or appointing an agent for service of process within New York; and
- (ii) whether Ford has sufficiently “continuous and systematic contacts” as to render it to be “at home” in New York and make it subject to personal jurisdiction.

The Second Department decided these questions in the negative. *See Aybar*, 2019 N.Y. App. Div. LEXIS 444 (Ex. A). In its decision, the court squarely rejected Plaintiffs' argument that Ford has sufficient contacts in New York to permit the exercise of general jurisdiction based on its operation of numerous facilities, ownership of property and property expenses, employment of residents, contracts with dealerships, and litigation in the State. *Id.* at \*4, 8-15. The court also squarely rejected Plaintiffs' and US Tires' arguments that Ford consented to general jurisdiction in New York by registering to do business with the New York Secretary of State and appointing an agent for service of process in the State. *Id.* at \*6-7, 15.

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45. In reaching its decision, the Second Department described the evolution of personal jurisdiction jurisprudence, and determined that under the strictures of *Daimler*, Ford's contacts with New York cannot be deemed to be sufficiently continuous and systematic as to warrant the exercise of general jurisdiction over claims that are unrelated to any activity occurring in New York. *Id.* at \*13-14. The court found that although Ford had extensive commercial activities in New York, Ford cannot be considered to be "at home" in New York in the context of its worldwide activities since *Daimler* has changed altered the *in personam* jurisdiction landscape. *Id.* at \*14.

46. Additionally, the court analyzed New York and federal jurisprudence construing the act of registering to do business in New York and designating an agent for service in the State as consent to general jurisdiction, and found that those cases are no longer good law in light of *Daimler*. See *id.* at \*16-25. The court noted that the pre-*Daimler* cases finding that a foreign corporation's compliance with business registration statutes constitutes consent were premised on the reasoning that registering to do business in and appointing a local agent of service in New York constituted consent to be found "present" in New York. *Id.* at \*23-24. The court noted that *Daimler* has established that general jurisdiction cannot be exercised solely based on such presence and therefore, those cases can no longer be followed. See *id.* at \*23-25. *Id.* at \*24.

**b. The Second Department's Decision in Aybar Is Dispositive of the Instant Third-Party Action Against Ford.**

47. It is settled that trial courts must follow precedent from the Appellate Division in its own department. See *Gutin v. Frank Mascali & Sons, Inc.*, 11 N.Y.2d 97, 99, 181 N.E.2d 449, 450 (Ct. App. 1962); *Stewart v. Volkswagen*, 181 A.D.2d 4 (2d Dep't 1992); *Pataki v. New York State Assembly*, 190 Misc. 2d 716, 735 (Sup. Ct., Albany Co. 2002). Accordingly, this

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Court is compelled to follow the Second Department's decision in *Aybar* and dismiss this third-party action against Ford based on lack of personal jurisdiction.

*c. Based on Aybar, US Tires' Third-Party Claims Are Barred Under the Doctrine of Collateral Estoppel.*

48. Under the doctrine of collateral estoppel, parties are precluded from re-litigating in a subsequent action issues that were clearly raised in a prior action and decided against that party, regardless of whether the actions involve the same causes of action. *Ryan v. New York Tel. Co.*, 62 N.Y.2d 494, 500-501, 467 N.E.2d 487, 490 (Ct. App. 1984). A party is collaterally estopped from litigating an issue in a subsequent lawsuit if the issue was material to the initial action and essential to the decision rendered, and is the same issue to be determined in the second action, such that ““a different judgment in the second would destroy or impair rights or interests established by the first.”” *Id.* Collateral estoppel applies if (i) there is an identity of issue that has been “necessarily decided in the prior action and is decisive of the present action,” and (ii) the parties had a full and fair opportunity to challenge the decision which is now deemed controlling. *Schwartz v Public Adm'r of County of Bronx*, 24 N.Y.2d 65, 71, 246 N.E.2d 725 (Ct. App. 1969).

49. New York appellate and trial courts have found that under the doctrine of collateral estoppel, the issue of whether a defendant is subject to personal jurisdiction in New York cannot be re-litigated if it was fully briefed and determined. In *Keeler v. West Mountain Corp.*, 105 A.D.2d 953, 482 N.Y.S.2d 92 (3d Dep’t 1984), the Third Department found that the doctrine of collateral estoppel barred a fourth-party defendant from asserting the affirmative defense of lack of personal jurisdiction because the court had already previously decided, on appeal in a prior action, that New York courts had personal jurisdiction over the defendant. The court found that collateral estoppel applied because the issue of personal jurisdiction was

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material to the prior action and essential to the decision therein, it was the same issue to be determined in the subsequent action, and the fourth-party defendant had a full and fair opportunity to contest the issue because it had moved to dismiss on the basis of lack of personal jurisdiction in the prior action.

50. Similarly, in *DirecTV Latin America, LLC and Latin American Sports, LLC v. Carlos Pratola, et al.*, 94 A.D.3d 628, 942 N.Y.S.2d 528 (1st Dep’t 2012), the First Department ruled that the issue of whether New York courts had personal jurisdiction over two defendants could not be re-litigated pursuant to the doctrine of collateral estoppel because the issue had already been determined in a prior federal action. As a federal court had already found that New York courts did not have personal jurisdiction over the defendants, the First Department found that the appellants’ claims against the defendants who were deemed not to be subject to the court’s personal jurisdiction were barred under the doctrine of collateral estoppel. Consequently, the appellate court affirmed the lower court’s decision granting the defendants’ motion to dismiss the complaint on the basis of lack of personal jurisdiction.

51. Here, the doctrine of collateral estoppel applies to this case because (i) there is identity of issues, and (ii) all parties had a full and fair opportunity to contest the issue. First, the requirement of identity is met because the issue of whether this Court has personal jurisdiction over Ford was the point determined in Action 1 through the Second Department’s recent *Aybar* decision, and it is the same point to be determined in this cross-motion. The Appellate Division already determined that New York courts *do not* have personal jurisdiction over Ford under the facts of the companion actions. Second, the parties had a full and fair opportunity to contest the issue of whether Ford is subject to personal jurisdiction in New York, as they litigated the issue first before this Court in *Aybar v. Aybar*, No. 706909/2015, 2016 N.Y. Misc. LEXIS 2263, 2016

N.Y. Slip. Op. 31139(U) (Sup. Ct, Queens County 2016), and then on appeal before the Second Department. Although Third-Party Plaintiff US Tires was not a party in Action 1, it fully participated as a nonparty-respondent in the appeal and its arguments were fully addressed by this Court as well as the Second Department. *See Aybar*, 2019 N.Y. App. Div. LEXIS 444, at \*6-9, 15 (Ex. A). As a result, this Court must rule that US Tires' third-party action against Ford is barred under the doctrine of collateral estoppel, and grant Ford's cross-motion.

**IV. FORD HAS NOT CONSENTED TO GENERAL JURISDICTION IN NEW YORK BY REQUESTING AUTHORIZATION TO DO BUSINESS IN NEW YORK, AS MANDATED UNDER BUSINESS CORPORATION LAW SECTION 304.**

52. The Business Corporation Law ("B.C.L.") expressly prohibits foreign corporations from doing business within New York unless they designate the New York Secretary of State as their agent for service in their application for authority to conduct business in New York. *See* N.Y. C.L.S. Bus. Corp. § 304(b). Due to B.C.L. Section 304, Ford could not do business in New York unless it applied with the New York Department of State for authority to conduct business in the New York, and agreed to designate the Secretary of State as an agent upon whom process against Ford may be served. Accordingly, Ford's decision to file an application with the Department of State, register with the State as a foreign corporation, and appoint the Secretary of State as its service agent was obligatory and *not* a voluntary decision.

53. As the Second Department noted in *Aybar*, there is no statutory basis for the argument that registering to do business in and appointing an agent for process in New York constitutes consent to the jurisdiction of New York for all purposes. *Aybar*, 2019 N.Y. App. Div. LEXIS 444, at \*15 (Ex. A). Additionally, construing Section 304 as requiring foreign corporations to consent to general jurisdiction in New York would be unconstitutional. Accordingly, this Court cannot adopt that interpretation of the statute.

*a. There Is No Basis to Interpret Compliance with B.C.L. Section 304 as Consent to General Jurisdiction.*

54. Nothing in the B.C.L. indicates that foreign corporations consent to general jurisdiction in New York by applying for authority to do business in the State and appointing the Secretary State as agent for service, in compliance with the requirements of Section 304. In fact, Section 304 does not even mention the words “jurisdiction” or “consent.” As a result, this provision cannot be interpreted to mean that a foreign corporation becomes subject to all-purpose jurisdiction, regardless of its connection to New York, simply by appointing the Secretary of State as agent for service of process. *See People v. Tatta*, 196 A.D.2d 328, 283, 610 N.Y.S.2d 280, 282 (2d Dep’t 1994) (noting that courts “ought not to add to words having a definite meaning or interpret a statute when there is no need to do so.”); *see also Nat’l Fuel Gas Dist. Corp. v. Pub. Serv. Comm’n of N.Y.*, 277 A.D.2d 981, 981, 715 N.Y.S.2d 821, 822 (4th Dep’t 2000) (discussing that “[c]ourts are not free to amend a statute by adding words that do not appear therein.”).

55. Further, as the Second Department concluded in *Aybar*, any New York case law on consent-by-registration is no longer good law in the post-*Daimler* era. 2019 N.Y. App. Div. LEXIS 444, at \*16, 23-26 (Ex. A). Under *Daimler*, it would be “unacceptably grasping” if courts asserted general jurisdiction over a foreign corporation merely based on registration to do business in the state and the appointment of an in-state agent for service, without the corporation’s express consent to general jurisdiction. *Id.* at \*24. *See also Kyowa Seni, Co., Ltd. v ANA Aircraft Technics, Co., Ltd.*, No. 650589/2017, 60 Misc. 3d 898, 903, 80 N.Y.S.3d 866, 869 (Sup. Ct., NY County 2018).

56. Here, the fact that Ford is registered as a foreign business with New York and appointed the New York Secretary of State as its agent for process of service, as it was legally

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required to do under Section 304, does not form basis for establishing general jurisdiction over Ford. *Aybar*, 2019 N.Y. App. Div. LEXIS 444, at \*15-26 (Ex. A). As noted, Ford did not consent to general jurisdiction in New York and B.C.L. Section 304 did not explicitly notify Ford that by applying and registering to do business in New York, it would be subject to being sued within the State.

57. None of this means that B.C.L. Section 304 has no effect. Service of process—the act of formally notifying a defendant of a lawsuit—and personal jurisdiction are distinct concepts. Ford's act of appointing the Secretary of State as its agent under Section 304 means that a plaintiff may validly serve process on Ford through the Secretary in a suit that has a sufficient nexus with Ford's activities in New York. But Ford's appointment of the Secretary does not free a plaintiff from proving that such a nexus exists. Accordingly, the Court should follow the Second Department's decision in *Aybar* and hold that, as a statutory matter, Ford's compliance with B.C.L. Section 304 did not mean that Ford can be sued in New York on any and all causes of action here.

*b. If the Court Were To Construe B.C.L. Section 304 as Requiring Ford to Consent to General Jurisdiction in New York as a Condition of Doing Business in the State, the Statute Would Be Unconstitutional.*

58. Even if it were true that registration constitutes consent to jurisdiction under New York's long-arm statute, it does not follow that registration constitutes consent under the Due Process Clause. As previously discussed, a party seeking to establish personal jurisdiction over a defendant must prove that jurisdiction over the defendant is proper under the long-arm statute and the Due Process Clause. *See LaMarca*, 95 N.Y.2d at 214. This distinction is crucial here because New York courts have doubted that a finding of general jurisdiction under C.P.L.R. § 301 satisfies the federal due process analysis following *Daimler*. *See Sonera*, 750 F.3d at 224 n.2 (noting that there is "some tension" between the test under C.P.L.R. Section 301 and

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*Daimler's tests for general jurisdiction); Continental Indus. Grp., Inc. v. Equate Protechem Co.*, 586 Fed. App'x 768, 769-770, 2014 U.S. App. LEXIS 19316, at \*3 (2d Cir. 2014) (holding that “[w]hatever the application of CPLR § 301 might be here, it is clear from the facts that general jurisdiction...would be inconsistent with due process” and *Daimler*).

59. If the Court were to find that B.C.L. Section 304 required Ford to consent to general jurisdiction in New York as a condition of doing business here, the statute would be unconstitutional for two reasons. First, the statute would violate *Daimler*'s mandate. See *Aybar*, 2019 N.Y. App. Div. LEXIS 444, at \*24 (Ex. A). Numerous New York federal and state courts have explained that after *Daimler*, the mere fact of being registered to do business in and appointing an agent for service in the State does not confer general jurisdiction. See, e.g., *Wilderness USA, Inc. v. DeAngelo Brothers LLC*, 265 F.Supp.3d 301, 312, 2017 U.S. Dist. LEXIS 135555, at \*21-22 (W.D.N.Y. 2017); *Famulari v. Whirlpool Corp.*, No. 16 CV 944 (VB), 2017 U.S. Dist. LEXIS 8265, 2017 WL 2470844 (S.D.N.Y. 2017); *Sae Han Sheet Co. v. Eastman Chemical Corp.*, 2017 U.S. Dist. LEXIS 173410 (S.D.N.Y. 2017); *Taormina v. Thrifty Car Rental*, 2016 U.S. Dist. LEXIS 176673, 2016 WL 7392214 (S.D.N.Y. 2016); *Aybar*, 2019 N.Y. App. Div. LEXIS 444, at \*15-26 (Ex. A); *Kyowa*, 60 Misc. 3d at 902-904; *Matter of Gibson v Air & Liquid Sys. Corp.*, No. 190187/15, 2018 N.Y. Misc. LEXIS 2603, \*10-13, 2018 N.Y. Slip. Op. 31324(U), 5-6 (Sup. Ct., New York County 2018); *Matter of Grabowski v A.O. Smith Corp.*, No. 190267/2017, 2018 N.Y. Misc. LEXIS 2643, \*5-7, 2018 N.Y. Slip. Op. 31367(U), 2-3 (Sup. Ct., New York County 2018); *Amelious v. Grand Imperial LLC*, 64 N.Y.3d (Sup. Ct., New York County 2017).

60. This is important because New York has never given corporations any notice that by simply registering to do business in New York, they are exposing themselves to suits within

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the State for activities they conduct anywhere in the world. As noted by Justice Sherri L. Eisenpress in her May 23, 2017 Order in *Alexandru Barbayanni v. Ford Motor Co., et al.*, Index No. 032616/2017 (Sup. Ct., Rockland County, May 23, 2017), which is annexed as Exhibit "H," several courts have found that:

registration statutes like New York's do not explicitly notify foreign corporations that registration to do business will open the door to unlimited personal jurisdiction in the State [of New York]; that such an exercise of jurisdiction is coercive and incommensurate with the amount of power a State reasonably needs to have over foreign corporations doing business in order to protect its citizens; registration to do business here [in New York] is a relatively minor ministerial act; and registration does not require the corporation to make any kind of statement that it is consenting to general jurisdiction. (See Justice Eisenpress' May 23, 2017 Order, Ex. H, at 8-9.)

61. Second, if compliance with the statute was interpreted as consent to personal jurisdiction, the statute would unconstitutionally restrict a corporation's right to do business in New York. A state may not require a corporation, as a condition to obtaining a permit to do business within the state, to surrender its due process rights. *See Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2596, 570 U.S. 595, 607 (2013) (quoting *S. Pac. Co. v. Denton*, 146 U.S. 202, 207, 13 S. Ct. 44 (1892)) (noting that the "unconstitutional conditions" doctrine prohibits a state from requiring a "corporation, as a condition precedent to obtaining a permit to do business within [a] State, to surrender a right and privilege secured to it by the Constitution"); *Frost v. R.R. Comm'n*, 271 U.S. 583, 595, 46 S. Ct. 605, 608 (1926) (noting that "[t]hough a state may have the power, if it sees fit to subject its citizens to the inconvenience, of prohibiting all foreign corporations from transacting business within its jurisdiction, it has no power to impose unconstitutional conditions upon their doing so."). Interpreting Section 304 as a requirement that foreign companies submit to New York's jurisdiction before they are able to conduct business within the State would be unconstitutional because it would bar companies

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from asserting their federal due process rights to resist state-court jurisdiction over matters unconnected to their activities in the State.

62. Fortunately, the B.C.L. does not have to be interpreted in a manner that makes it unconstitutional. Under settled rules of statutory interpretation “where there are two possible interpretations [of a statute] the court will accept that which avoids constitutional doubts.”

*Courtesy Sandwich Shop, Inc. v. Port of N.Y. Auth.*, 12 N.Y.2d 379, 389, 190 N.E.2d 402, 405 (1963); *see also Long Island Trust Co. v. Porta Aluminum Corp.*, 44 A.D.2d 118, 122, 354 N.Y.S.2d 134, 139 (2d Dep’t 1974) (“We are also obliged to construe statutes as to avoid constitutional doubts.”) (citation omitted). Accordingly, the Court should reject this unconstitutional interpretation of the B.C.L.

**V. DISCOVERY IN THIS ACTION MUST BE STAYED PURSUANT TO C.P.L.R. § 3214(b), WHILE THIS CROSS-MOTION IS PENDING.**

63. C.P.L.R. Section 3214(b) provides that service of a notice of motion under Sections 3211, 3212 or 3213 stays disclosure until determination of the motion so long as the motion is not solely based on the defense of improper service. C.P.L.R. § 3214(b). Stays under Section 3214(b) are automatic. *See, e.g., Arts4all, Ltd. v. Hancock*, 54 A.D.3d 286, 291, 863 N.Y.S.2d 193, 197 (1st Dep’t 2008) (noting that a stay of disclosure went into effect pursuant to C.P.L.R. Section 3214(b) when the defendant moved for summary judgment); *Jeudi v. Columbo*, 278 A.D.2d 370, 371, 718 N.Y.S.2d 623, 624 (2d Dep’t 2000) (noting that discovery was automatically stayed pursuant to C.P.L.R. Section 3214(b) due to a pending motion seeking to dismiss the complaint). Here, Ford moved to dismiss US Tire’s third-party Complaint by a notice of motion, and its cross-motion does not concern any allegations of improper service. As a result, this action must be stayed pending determination of Ford’s Section 3211 cross-motion.

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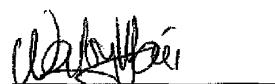
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CONCLUSION

64. Ford is not subject to personal jurisdiction in New York. Third-Party Plaintiff US Tires is unable to establish a basis for general or specific jurisdiction over Ford. First, Ford is not “at home” in the State of New York, as it is not incorporated in nor maintains its principal place of business within the State. Second, there is no specific jurisdiction over Ford because Plaintiffs’ and US Tires’ underlying allegations do not arise out of any contact between Ford and this forum. Indeed, the Second Department has already ruled that based on the facts giving rise to this action, this Court *does not* have personal jurisdiction over Ford. *See Aybar*, 2019 N.Y. App. Div. LEXIS 444. Consequently, this Court must grant Ford’s cross-motion in its entirety, and dismiss US Tires’ third-party claims against Ford based on lack of personal jurisdiction.

Dated: New York, New York  
February 26, 2019



Walsy K. Sáez Aguirre

**EXHIBIT A TO SAEZ AGUIRRE AFFIRMATION -  
APPELLATE DIVISION, SECOND DEPARTMENT  
DECISION, DATED JANUARY 23, 2019 [417 - 441]**

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**Aybar v Aybar**

Supreme Court of New York, Appellate Division, Second Department

January 23, 2019, Decided

2016-06194, 2016-07397

**Reporter**

2019 N.Y. App. Div. LEXIS 444 \*; 2019 NY Slip Op 00412 \*\*; 2019 WL 288307

[\*\*1] Anna Aybar, et al., plaintiffs-respondents, v Jose A. Aybar, Jr., et al., defendants, Ford Motor Company, et al., appellants; U.S. Tires and Wheels of Queens, LLC, nonparty-respondent. (Index No. 706909/15)

**Notice:** THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION.  
THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

## Core Terms

Tires, general jurisdiction, do business, courts, foreign corporation, service of process, personal jurisdiction, activities, appointed, registering, corporation's, designating, Operations, plant, manufactured, continuous, consented, systematic, worldwide, cause of action, submit evidence, motions, registration statute, residents, contacts, secretary of state, affiliations, dealerships, Appeals, principal place of business

## Case Summary

### Overview

**HOLDINGS:** [1]-New York could not exercise personal general jurisdiction over defendants foreign car or tire makers as to a Virginia injury because their New York contacts, given their global activities, did not permit asserting general jurisdiction over claims unrelated to New York activity; [2]-The makers did not consent to personal jurisdiction by registering to do business under Business Corporation Law §§ 1301(a) and 1304(a)(6) or appointing the Secretary of State as their agent, under Business Corporation Law § 304(b), because, under evolving in personam jurisdiction law, this did not consent to New York courts' general jurisdiction on

claims unrelated to New York; [3]-Plaintiffs alleged injured parties were not entitled to further discovery under [CPLR 3211\(d\)](#) because their failure to allege facts supporting personal jurisdiction did not show how more discovery might show it.

**Outcome**

Judgment reversed.

## **LexisNexis® Headnotes**

Civil Procedure > ... > In Rem & Personal Jurisdiction > In Personam Actions > Challenges

Evidence > Burdens of Proof > Allocation

Civil Procedure > ... > In Rem & Personal Jurisdiction > In Personam Actions > Consent

### **[HN1](#) In Personam Actions, Challenges**

It is fundamental that a court must acquire personal jurisdiction over a defendant before it can render a judgment against that defendant. A defendant may consent to a court's exercise of personal jurisdiction or waive the right to object to it ([CPLR 3211\(e\)](#)), but when a defendant has objected to a court's exercise of personal jurisdiction, the plaintiff bears the burden of coming forward with sufficient evidence to prove jurisdiction.

Civil Procedure > ... > In Rem & Personal Jurisdiction > In Personam Actions > Minimum Contacts

Civil Procedure > ... > In Rem & Personal Jurisdiction > In Personam Actions > Substantial

2019 N.Y. App. Div. LEXIS 444, \*444; 2019 NY Slip Op 00412, \*\*1

## Contacts

### **HN2** In Personam Actions, Minimum Contacts

Under modern jurisprudence, a court may assert general all-purpose jurisdiction or specific conduct-linked jurisdiction over a particular defendant. A court with general jurisdiction may hear any claim against that defendant, even if all the incidents underlying the claim occurred in a different state. Specific jurisdiction, on the other hand, depends on an affiliation between the forum and the underlying controversy, principally, activity or an occurrence that takes place in the forum state and is therefore subject to the state's regulation.

Court has limited the scope of general jurisdiction to that definition, and has rejected a standard that would allow the exercise of general jurisdiction in every state in which a corporation is engaged in a substantial, continuous, and systematic course of business. The Court has instructed that, with respect to corporations, the paradigm bases for general jurisdiction are the place of incorporation and principal place of business. Although the Court has not limited the exercise of general jurisdiction to those two forums, it has left open only the possibility of an "exceptional case" where a corporate defendant's operations in another state are so substantial and of such a nature as to render the corporation at home in that state.

## Civil Procedure > ... > In Rem & Personal Jurisdiction > In Personam Actions > Doing Business

## Civil Procedure > ... > In Rem & Personal Jurisdiction > In Personam Actions > Substantial Contacts

### **HN3** In Personam Actions, Doing Business

General jurisdiction in New York is provided for in [CPLR 301](#), which allows a court to exercise such jurisdiction over persons, property, or status as might have been exercised heretofore. A foreign corporation has been amenable to suit in New York under [CPLR 301](#) if it has engaged in such a continuous and systematic course of doing business there that a finding of its presence in New York was warranted.

## Civil Procedure > ... > In Rem & Personal Jurisdiction > In Personam Actions > Doing Business

### **HN5** In Personam Actions, Doing Business

Standing alone, mere in-state business does not suffice to permit the assertion of general jurisdiction over claims that are unrelated to any activity occurring in a forum state. To determine whether a foreign corporate defendant's affiliations with the state are so continuous and systematic as to render it essentially at home, the general jurisdiction inquiry does not focus solely on the magnitude of the defendant's in-state contacts but instead calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide. A corporation that operates in many places can scarcely be deemed at home in all of them.

## Civil Procedure > ... > In Rem & Personal Jurisdiction > In Personam Actions > Doing Business

## Civil Procedure > ... > In Rem & Personal Jurisdiction > In Personam Actions > Substantial Contacts

### **HN4** In Personam Actions, Doing Business

The U.S. Supreme Court has addressed the distinction between general and specific jurisdiction and stated that a court is authorized to exercise general jurisdiction over a foreign corporation when the corporation's affiliations with a state are so continuous and systematic as to render them essentially at home in the forum state. The

## Business & Corporate Law > Foreign Corporations > Qualifications

### **HN6** Foreign Corporations, Qualifications

Business Corporation Law § 1301(a) provides that a foreign corporation shall not do business in New York until it has been authorized to do so. Business Corporation Law § 304(b) provides, inter alia, that no foreign corporation may be authorized to do business in New York unless in its application for authority, it designates the Secretary of State as the agent upon whom process against the corporation may be served. Similarly, Business Corporation Law § 1304(a)(6) requires a foreign corporation, in its application for authority to do business in New York, to designate the

## 2019 N.Y. App. Div. LEXIS 444, \*444; 2019 NY Slip Op 00412, \*\*1

Secretary of State as its agent upon whom process against it may be served and an address to which process received by the Secretary of State is to be mailed.

New York and appointing a local agent for service of process, a foreign corporation has consented to be found in New York. Daimler has made clear, however, that general jurisdiction cannot be exercised solely on such presence.

**Business & Corporate Law > Foreign Corporations > Qualifications**

**Civil Procedure > ... > In Rem & Personal Jurisdiction > In Personam Actions > Consent**

**HN7 [+] Foreign Corporations, Qualifications**

New York's business registration statutes do not expressly require consent to general jurisdiction as a cost of doing business in New York, nor do they expressly notify a foreign corporation that registering to do business there has such an effect. There has been longstanding judicial construction, however, by New York courts and federal courts interpreting New York law, that registering to do business in New York and appointing an agent for service of process constitutes consent to general jurisdiction. In view of the evolution of in personam jurisdiction jurisprudence, and, particularly the way in which Daimler has altered that jurisprudential landscape, it cannot be said that a corporation's compliance with the existing business registration statutes constitutes consent to the general jurisdiction of New York courts to be sued upon causes of action that have no relation to New York.

**Civil Procedure > ... > In Rem & Personal Jurisdiction > In Personam Actions > Doing Business**

**HN8 [+] In Personam Actions, Doing Business**

Following the United States Supreme Court's decision in Daimler, personal jurisdiction cannot be asserted against a foreign corporation based solely on the corporation's continuous and systematic business activity in New York.

**Civil Procedure > ... > In Rem & Personal Jurisdiction > In Personam Actions > Consent**

**HN9 [+] In Personam Actions, Consent**

It has been held that by registering to do business in

**Business & Corporate Law > Foreign Corporations > Qualifications**

**Civil Procedure > ... > In Rem & Personal Jurisdiction > In Personam Actions > Consent**

**HN10 [+] Foreign Corporations, Qualifications**

Asserting jurisdiction over a foreign corporation based on the mere registration and the accompanying appointment of an in-state agent by the foreign corporation, without the express consent of the foreign corporation to general jurisdiction, is "unacceptably grasping" under Daimler.

**Business & Corporate Law > Foreign Corporations > Qualifications**

**Civil Procedure > ... > In Rem & Personal Jurisdiction > In Personam Actions > Consent**

**HN11 [+] Foreign Corporations, Qualifications**

A corporate defendant's registration to do business in New York and designation of the Secretary of State to accept service of process in New York does not constitute consent by the corporation to submit to the general jurisdiction of New York for causes of action that are unrelated to the corporation's affiliations with New York.

**Counsel:** [\*1] Aaronson Rappaport Feinstein & Deutsch, LLP (Eliot J. Zucker, Peter J. Fazio, and Hogan Lovells U.S. LLP, New York, NY [Sean Marotta], of counsel), for appellant Ford Motor Company, and DLA Piper LLP, New York, NY (Kevin W. Rethore of counsel), for appellant Goodyear Tire & Rubber Co. (one brief filed).

Omroni & Taub, P.C. (Parker Waichman, LLP, Port Washington, NY [Jay L. T. Breakstone and Jessica L. Richman], of counsel), for plaintiffs-respondents.

Marshall Dennehey Warner Coleman & Goggin, P.C., New York, NY (Adam C. Calvert of counsel), for

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nonparty-respondent.

**Judges:** JOHN M. LEVENTHAL, J.P., SANDRA L. SGROI, HECTOR D. LASALLE, VALERIE BRATHWAITE NELSON, JJ. LEVENTHAL, J.P., SGROI and LASALLE, JJ., concur.

**Opinion by:** BRATHWAITE NELSON

## Opinion

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APPEAL by the defendant Ford Motor Company, in an action to recover damages for personal injuries and wrongful death, from an order of the Supreme Court (Thomas D. Raffaele, J.), entered May 31, 2016, in Queens County, and SEPARATE APPEAL by the defendant Goodyear Tire & Rubber Co. from an order of the same court, also entered May 31, 2016. The first order denied the motion of the defendant Ford Motor Company pursuant to [CPLR 3211\(a\)\(8\)](#) to dismiss the complaint insofar as asserted against [\*2] it for lack of personal jurisdiction. The second order denied the motion of the defendant Goodyear Tire & Rubber Co., pursuant to [CPLR 3211\(a\)\(8\)](#) to dismiss the complaint insofar as asserted against it for lack of personal jurisdiction.

BRATHWAITE NELSON, J.

We consider on these appeals whether, following the United States Supreme Court decision in [Daimler AG v Bauman \(571 U.S. 117, 134 S. Ct. 746, 187 L. Ed. 2d 624\)](#), a foreign corporation may still be deemed to have consented [\*\*2] to the general jurisdiction of New York courts by virtue of having registered to do business in New York and appointed a local agent for the service of process. We conclude that it may not.

I.

This action arises from a July 1, 2012, automobile accident that occurred on an interstate highway in Virginia. The defendant Jose A. Aybar, Jr., a New York resident, was operating a 2002 Ford Explorer that was registered in New York when one of its tires allegedly failed, causing the vehicle to become unstable and overturn and roll multiple times. Three of the six passengers died as a result of the accident and the other three were injured. The plaintiffs are the surviving passengers and the representatives of the deceased passengers' estates. They allege, among other things, that the defendant Ford Motor [\*3] Company

(hereinafter Ford) negligently manufactured and designed the Ford Explorer, and that the defendant Goodyear Tire & Rubber Co. (hereinafter Goodyear) negligently manufactured and designed the faulty tire.

Ford is incorporated in Delaware, with its principal place of business in Michigan, and Goodyear is incorporated in, and has its principal place of business in, Ohio. The complaint alleges that at all relevant times both corporations were registered to do business in New York, and that each, in fact, conducted business in New York and derived substantial revenue from such business.

Ford moved pursuant to [CPLR 3211\(a\)\(8\)](#) to dismiss the complaint insofar as asserted against it on the ground that the Supreme Court lacked personal jurisdiction over it. In support of its motion, Ford submitted evidence that the subject vehicle was manufactured in Missouri and sold to a dealership in Ohio in March 2002, from where it was sold to an individual not involved in this lawsuit, and that the vehicle was not designed in New York. Ford also submitted evidence that it did not have any Ford Explorer manufacturing plants in New York, and it did not directly engage in the servicing of Ford vehicles in New York, [\*4] which is done exclusively by independent dealers. Aybar purchased the subject vehicle and tire in 2011 from a third party in New York.

In opposition to the motion, the plaintiffs argued that Ford was subject to general jurisdiction in New York because Ford maintained a substantial and continuous presence in New York. To support this proposition, the plaintiffs pointed to "hundreds" of Ford dealerships employing numerous New York residents, and they submitted evidence that Ford operated a stamping (manufacturing) plant in Hamburg, New York, which employed approximately 600 people and for which Ford had received incentive packages and tax credits from New York State. In reply, Ford submitted evidence that it had 62 plants and franchise agreements with 11,980 dealerships worldwide, and argued that its economic contacts with New York were not so substantial as compared to its contacts elsewhere so as to render Ford "at home" in New York.

Goodyear also moved pursuant to [CPLR 3211\(a\)\(8\)](#) to dismiss the complaint insofar as asserted against it on the ground of lack of personal jurisdiction. In support of its motion, Goodyear submitted evidence that the subject tire was designed in Ohio, manufactured in Tennessee [\*5] in 2002, and tested and inspected outside of New York. Goodyear asserted that it had no

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way of tracking the sale or ownership of a given tire over its service life, but could identify that the subject class of tire was sold as original equipment for certain Isuzu and Ford vehicles, and as a replacement tire. Goodyear additionally submitted evidence that it operated a chemical plant in New York and that it was a member of a limited liability company which owned and operated a tire manufacturing plant in New York, but that neither plant manufactured the subject tire, and that Goodyear did not specifically direct advertising of the subject tire at New York residents.

In opposition to Goodyear's motion, the plaintiffs argued that Goodyear was subject to general jurisdiction in New York because its business affiliations within New York were so pervasive or continuous and systematic as to render it essentially "at home" in New York State. The plaintiffs submitted evidence that Goodyear had numerous tire and auto service center storefront locations in New York, from which the plaintiffs argued it could be inferred that Goodyear employed hundreds, possibly thousands, of New York residents. [\*6] In reply, Goodyear submitted evidence that it had plants, service centers, and other properties worldwide. It argued that it employed "a [\*3] tremendous number of people" worldwide, and that its economic contacts with New York were not so substantial as compared with its contacts elsewhere so as to render Goodyear "at home" in New York.

Nonparty U.S. Tires and Wheels of Queens, LLC (hereinafter U.S. Tires), was a defendant in a separate action brought by the plaintiffs arising from the same accident. At the time of the motions to dismiss of Ford and Goodyear, there was a pending motion to consolidate the two actions. U.S. Tires submitted opposition papers to the subject motions, and argued that both Ford and Goodyear had consented to general jurisdiction in New York by registering to do business with the New York Secretary of State and designating an agent for service of process in New York. U.S. Tires noted that it was a New York corporation with its principal place of business in New York, and, thus, if Ford and Goodyear were to succeed on their motions, the result would be three separate lawsuits, all involving the same accident, which, U.S. Tires contended, would likely result in inconsistent [\*7] verdicts, duplication of discovery, and waste of judicial resources.

In response to U.S. Tires's opposition, Ford argued that the opposition was untimely, U.S. Tires lacked standing to oppose the motion, and, on the merits, Ford's compulsory registration to do business in New York and

appointment of the Secretary of State as its agent for service of process did not constitute consent to general jurisdiction in New York. Goodyear advanced similar arguments in response to U.S. Tires's opposition.

In separate orders, each entered May 31, 2016, the Supreme Court, Queens County (hereinafter the motion court), denied the motions, concluding that Ford and Goodyear were each subject to general jurisdiction in New York. The motion court found that the activities of both Ford and Goodyear in New York were so continuous and systematic that both Ford and Goodyear are essentially at home here. The motion court also found that both Ford and Goodyear had otherwise consented to general jurisdiction in New York by each registering to do business in New York as a foreign corporation and designating a local agent for service of process. With regard to Ford's activities in New York, the motion court pointed [\*8] to the facts that Aybar purchased the vehicle in New York and primarily used it in New York, Ford has an organization of facilities in New York engaged in day-to-day activities, and Ford has many franchises across New York. With regard to Goodyear, the motion court relied upon the facts that Goodyear had operated numerous stores in New York since approximately 1924 and had employed thousands of workers in those stores, and it has an organization of facilities in New York engaged in day-to-day activities. Ford and Goodyear appeal.<sup>1</sup>

## II.

**HN1** It is fundamental that a court must acquire personal jurisdiction over a defendant before it can render a judgment against that defendant (see *Burnham v Superior Court of Cal., County of Marin*, 495 U.S. 604, 608, 110 S. Ct. 2105, 109 L. Ed. 2d 631; *Insurance Corp. of Ireland v Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702, 102 S. Ct. 2099, 72 L. Ed. 2d 492). A defendant may consent to a court's exercise of personal jurisdiction (see *National Equipment Rental, Ltd. v Szukhent*, 375 U.S. 311, 316, 84 S. Ct. 411, 11 L. Ed. 2d 354), or waive the right to object to it (see *CPLR 3211[e]*; *Insurance Corp. of Ireland v Compagnie des Bauxites de Guinee*, 456 U.S. at 703; *Iacovangelo v Shepherd*, 5 N.Y.3d 184, 186, 833 N.E.2d 259, 800

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<sup>1</sup>We note that the motion court did not rule on the merits of the issue of whether U.S. Tires could properly oppose the motions of Ford and Goodyear. On their appeals, neither Ford nor Goodyear raise this issue. We therefore assume, without deciding, that U.S. Tires has standing to oppose the motions and that its opposition was not untimely.

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[N.Y.S.2d 116](#)), but when a defendant has objected to the court's exercise of personal jurisdiction, the plaintiff bears the burden of coming forward with sufficient evidence to prove jurisdiction (see *Fischbarg v Doucet*, [9 N.Y.3d 375, 381, 880 N.E.2d 22, 849 N.Y.S.2d 501, n 5; Mejia-Haffner v Killington, Ltd.](#), [119 A.D.3d 912, 914, 990 N.Y.S.2d 561](#)).

**HN2** Under modern jurisprudence, a court may assert general all-purpose jurisdiction or specific conduct-linked jurisdiction over a particular defendant (see *Daimler AG v Bauman*, [571 U.S. at 122](#); *Goodyear Dunlop Tires Operations, S. A. v Brown*, [564 U.S. 915, 131 S. Ct. 2846, 180 L. Ed. 2d 796](#)). "A court with general jurisdiction [\*9] may hear any claim against that defendant, even if all the incidents underlying the claim occurred in a different State" (*Bristol-Myers Squibb Co. v Superior Court of Cal., San Francisco County, U.S.*, [137 S Ct 1773, 1780, 198 L. Ed. 2d 395](#); see *Goodyear Dunlop Tires Operations, S. A. v Brown*, [564 U.S. at 919](#)). "Specific jurisdiction, on the other hand, depends on an affiliation between the forum and the underlying controversy, principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation" (*Goodyear Dunlop Tires Operations, S. A. v Brown*, [564 U.S. at 919](#) [internal quotation marks and brackets omitted]; see *Bristol-Myers Squibb Co. v Superior Court of Cal., San Francisco County, U.S.*, [137 S Ct at 1780](#); *Daimler AG v Bauman*, [571 U.S. at 127](#)).

Here, in opposing the motions of Ford and Goodyear, the plaintiffs asserted that New York courts have general jurisdiction over each defendant. 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<sup>2</sup> (see *CPLR 302*).

**HN3** General jurisdiction in New York is provided for in *CPLR 301*, which allows a court to exercise "such jurisdiction over persons, property, or status as might have been exercised heretofore." Prior to the United States Supreme Court's decision in *Daimler AG v Bauman* ([571 U.S. 117, 134 S. Ct. 746, 187 L. Ed. 2d 624](#)), a foreign corporation was amenable to suit in New York under *CPLR 301* if it [\*10] had engaged in "such a continuous and systematic course of doing business"

here that a finding of its presence' in this jurisdiction [was] warranted" (*Landoil Resources Corp. v Alexander & Alexander Servs.*, [77 NY2d 28, 33, 565 N.E.2d 488, 563 N.Y.S.2d 739](#), quoting *Laufers v Ostrow*, [55 NY2d 305, 309-310, 434 N.E.2d 692, 449 N.Y.S.2d 456](#)). The parties do not dispute that there is statutory authority for the exercise of general jurisdiction over Ford or Goodyear, or that the exercise of such jurisdiction would be consistent with New York law. The disagreement lies in whether the exercise of such jurisdiction would comport with the limits imposed by federal due process since *Daimler*.

In *Goodyear Dunlop Tires Operations, S. A. v Brown*, **HN4** the Supreme Court addressed the distinction between general and specific jurisdiction, and stated that a court is authorized to exercise general jurisdiction over a foreign corporation when the corporation's affiliations with the state "are so continuous and systematic as to render them essentially at home in the forum State" ([564 U.S. at 919](#), quoting *International Shoe Co. v Washington*, [326 U.S. 310, 317, 66 S. Ct. 154, 90 L. Ed. 95](#)). In *Daimler*, the Court limited the scope of general jurisdiction to that definition, and rejected a standard that would allow the exercise of general jurisdiction in every state in which a corporation is engaged in a substantial, continuous, and systematic course of business ([571 U.S. at 137](#)). The Court instructed [\*11] that, with respect to corporations, the paradigm bases for general jurisdiction are the place of incorporation and principal place of business (see *id.*). Although the Court did not limit the exercise of general jurisdiction to those two forums, it left open only the possibility of an "exceptional case" where a corporate defendant's operations in another state were "so substantial and of such a nature as to render the corporation at home in that State" (*id. at 139 n 19*; see *BNSF Ry Co. v Tyrrell*, [U.S. , 137 S Ct 1549, 1558, 198 L. Ed. 2d 36](#)).

Neither Ford nor Goodyear is incorporated in New York or has its principal place of business here. Thus, New York courts can exercise general jurisdiction over each defendant only if the plaintiffs have established that its affiliations with New York are so continuous and systematic as to render it essentially "at home" here.

Since *Daimler*, the Supreme Court has reiterated that, **HN5** standing alone, mere "in-state business . . . does not suffice to permit the assertion of general jurisdiction over claims . . . that are unrelated to any activity occurring in [the forum State]" (*BNSF Ry Co. v Tyrrell*, [U.S. at , 137 S Ct at 1559](#)). To determine

<sup>2</sup>The arguments of nonparty U.S. Tires that specific jurisdiction is present in this case are not properly before this Court since they were not raised before the motion court.

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whether a foreign corporate defendant's affiliations with the state are so continuous and systematic as to render it essentially at home, *Daimler* [\*12] advised that "the general jurisdiction inquiry does not focus solely on the magnitude of the defendant's in-state contacts," but "instead calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide. A corporation that operates in many places can scarcely be deemed at home in all of them" (*Daimler AG v Bauman*, 571 U.S. at 139 n 20; see *BNSF Ry Co. v Tyrell*, U.S. at , 137 S Ct at 1559).

The *Daimler* Court suggested that *Perkins v Benguet Consol. Mining Co.* (342 U.S. 437, 72 S. Ct. 413, 96 L. Ed. 485, 63 Ohio Law Abs. 146) [\*5] exemplified the "exceptional case" in which a corporate defendant's operations in the forum state were so substantial and of such a nature as to render the corporation "at home" in that state (see *Daimler AG v Bauman*, 571 U.S. at 129). In *Perkins*, the defendant was incorporated in the Philippine Islands, where it owned and operated certain mines (342 U.S. at 439). Its operations were completely halted during the Japanese occupation of the Islands in World War II. During that interim, the president of the company, who was also the general manager and principal stockholder, returned to his home in Ohio, where he maintained an office and conducted the corporation's affairs (see *id. at 447-448*). The Supreme Court held that Ohio courts could exercise general jurisdiction over the corporation without offending due process (see *id. at 448*). The Supreme Court later noted that "Ohio was the corporation's [\*13] principal, if temporary, place of business so that Ohio jurisdiction was proper even over a cause of action unrelated to the activities in the State" (*Keeton v Hustler Magazine, Inc.*, 465 U.S. 770, 779, 104 S. Ct. 1473, 79 L. Ed. 2d 790 n 11, see *Daimler AG v Bauman*, 571 U.S. at 130).

## A.

The plaintiffs argue that New York courts have general jurisdiction over Ford because Ford has "become woven into the fabric of New York state domestic activity." They point to the facts that Ford has been authorized to do business in New York since 1920, it operates numerous facilities in New York, it owns property in New York and spends at least \$150 million to maintain the property, it employs significant numbers of New York residents, it contracts with hundreds of dealerships in New York to sell its products under the Ford brand name, and it has frequently been a litigant in New York courts.

Under the strictures of *Daimler*, Ford's contacts with New York are insufficient to permit the assertion of

general jurisdiction over claims that are unrelated to any activity occurring in New York. Ford concedes that it has extensive commercial activities in New York, but it notes that it has extensive commercial activities throughout the country and worldwide. Indeed, while the plaintiffs point to Ford's one factory in New York, employing [\*14] approximately 600 people, and Ford's contracts with "hundreds" of dealerships in the state, Ford presented evidence that it has 62 plants, employing about 187,000 people, and 11,980 franchise agreements with dealerships worldwide. Appraising the magnitude of Ford's activities in New York in the context of the entirety of Ford's activities worldwide, it cannot be said that Ford is at home in New York.

## B.

The plaintiffs contend that Goodyear's presence in New York is special, as it has conducted business in New York for nearly a century, it has owned and operated a chemical plant here since the 1940's, as well as a tire manufacturing plant, it has availed itself of New York's courts, and it has leased and subleased real estate in New York, maintained a network of dealers and service centers, and employed thousands of people in New York since 1924. Like Ford, Goodyear concedes that it has extensive commercial activity in New York, but it points to the evidence that it has 50 manufacturing plants worldwide and it operates approximately 1,200 retail outlets for the sale of its tires worldwide. Appraising Goodyear's activities in their entirety, Goodyear also is not at home in New York such [\*15] that New York courts might exercise general jurisdiction over any claim brought against it.

## III.

The plaintiffs also argue that Ford and Goodyear each consented to the jurisdiction of New York courts for all purposes, including this suit, by registering to do business in New York and appointing an agent for service of process. The plaintiffs do not rely on any particular business registration statute in making this argument. Before the motion court, U.S. Tires, which raised this argument, relied only on *CPLR 301*. Nevertheless, as relevant to these defendants, we note that *HNG* [+] Business Corporation Law § 1301(a) provides that "[a] foreign corporation shall not do business in this state until it has been authorized to do so." Business Corporation Law § 304(b) provides, inter alia, that no foreign corporation may be authorized to do business in New York unless in its application for authority, it designates the secretary of state as the agent upon whom process against the corporation may

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be served. Similarly, Business Corporation Law § 1304(a)(6) requires a foreign corporation, in its application for authority to do business in New York, to designate the secretary of state as its agent upon whom process against it may be served and an address to which process received by the Secretary of State is to be [\*16] mailed.

**HNT** New York's business registration statutes do not expressly require consent to general [\*6] jurisdiction as a cost of doing business in New York, nor do they expressly notify a foreign corporation that registering to do business here has such an effect. There has been longstanding judicial construction, however, by New York courts and federal courts interpreting New York law, that registering to do business in New York and appointing an agent for service of process constitutes consent to general jurisdiction (see e.g. *Bagdon v Philadelphia & Reading Coal & Iron Co.*, 217 NY 432, 436-437, 111 N.E. 1075; *Doubet LLC v Trustees of Columbia Univ. in the City of N. Y.*, 99 A.D.3d 433, 434-435, 952 N.Y.S.2d 16; *Augsbury Corp. v Petrokey Corp.*, 97 AD2d 173, 175-176, 470 N.Y.S.2d 787; *Le Vine v Isoserve, Inc.*, 70 Misc 2d 747, 749, 334 N.Y.S.2d 796 [Sup Ct, Albany County 1972]; *Robfogel Mill-Andrews Corp. v Cupples Co., Mfrs.*, 67 Misc 2d 623, 624, 323 N.Y.S.2d 381 [Sup Ct, Monroe County 1971]; *Carlton Props. v 328 Props.*, 208 Misc. 776, 143 N.Y.S.2d 140 [Sup Ct, Nassau County 1955]; *Devlin v Webster*, 188 Misc 891, 66 N.Y.S.2d 464 [Sup Ct, NY County 1946], affd 272 A.D. 793, 71 N.Y.S.2d 706; *Rockefeller Univ. v Ligand Pharmaceuticals*, 581 F Supp 2d 461, 464-467 [SD NY] [listing numerous federal cases finding consent by registration]; cf. *Muollo v Crestwood Vil.*, 155 AD2d 420, 421, 547 N.Y.S.2d 87). We hold that in view of the evolution of in personam jurisdiction jurisprudence, and, particularly the way in which *Daimler* has altered that jurisprudential landscape, it cannot be said that a corporation's compliance with the existing business registration statutes constitutes consent to the general jurisdiction of New York courts, to be sued upon causes of action that have no relation to New York.<sup>3</sup>

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<sup>3</sup>The parties observe that post *Daimler*, some New York lawmakers have proposed amending Business Corporation Law § 1301 to expressly provide that a corporation's application to do business in New York constitutes consent to personal jurisdiction in lawsuits in New York for all actions against the corporation (see 2015 NY Senate-Assembly Bill S4846, A6714). No such changes in the law have been effected to date, and we decline the appellants' invitation to opine on the constitutionality of any such possible

In New York, the theory of consent by registration originates in the 1916 opinion of Judge Cardozo in *Bagdon v Philadelphia & Reading Coal & Iron Co.* (217 NY 432, 111 N.E. 1075). There, the Court of Appeals held that a foreign corporation [\*17] could be sued in New York upon a cause of action that had no relation to the corporation's New York activities because the corporation had consented to the jurisdiction of New York by obtaining authorization to do business here and appointing an agent for service of process in New York. *Bagdon* must be understood within the historical context in which it was decided.

At the time *Bagdon* was decided, in personam jurisdiction was still largely limited by the conceptual structure of *Pennoyer v Neff* (95 U.S. 714, 24 L. Ed. 565). In *Pennoyer*, decided shortly after the enactment of the Fourteenth Amendment, the United States Supreme Court held that a court's jurisdiction was restricted by its territorial limits or geographic bounds (see *id. at 720*), and, thus, no state could exercise jurisdiction over persons or property outside of its territory (see *id. at 722*). "Pennoyer sharply limited the availability of in personam jurisdiction over defendants not resident in the forum State. If a nonresident defendant could not be found in a State, he could not be sued there" (*Shaffer v Heitner*, 433 U.S. 186, 199, 97 S. Ct. 2569, 53 L. Ed. 2d 683). To complicate matters, under the 19th century view, a corporation could have "no legal existence" outside of its state of incorporation (*Bank of Augusta v Earle*, 38 U.S. 519, 588, 10 L. Ed. 274), and, thus, could be sued only in the state of incorporation, no matter [\*18] how extensive its business in another state (see *Brown v Lockheed Martin Corp.*, 814 F3d 619, 631).

"In time, however, that strict territorial approach yielded to a less rigid understanding" (*Daimler AG v Bauman*, 571 U.S. at 126). States enacted statutes requiring the appointment by foreign corporations of agents upon whom process could be served "primarily to subject them to the jurisdiction of [the] local courts in controversies growing out of transactions within the [S]tate" (*Morris & Co. v Skandinavia Ins. Co.*, 279 U.S. 405, 409, 49 S. Ct. 360, 73 L. Ed. 762). The business registration statutes conditioned a corporation's authority to do business in a state on its designation of an appointed agent within the state to accept service. "Pointing to the acceptance of service by an in-state agent appointed by the corporation, a state could tenably argue that the corporation had voluntarily

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amendment.

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consented to jurisdiction there and that, notwithstanding *Earle*, it was present' in the state because it maintained an agent there" (*Brown v Lockheed Martin Corp.*, 814 F3d at 632). In addition, federal jurisprudence evolved such that a foreign corporation could be subject to the jurisdiction of a state's courts if the corporation was doing business within the state and service was made in the state upon [\*\*7] some duly authorized officer or agent who was representing the corporation in its business (see *St. Louis Southwestern R. Co. of Tex. v Alexander*, 227 U.S. 218, 226, 33 S. Ct. 245, 57 L. Ed. 486; *Herndon-Carter Co. v James N. Norris, Son & Co.*, 224 U.S. 496, 499, 32 S. Ct. 550, 56 L. Ed. 857; *Peterson v Chicago, R. I. & P.R. Co.*, 205 U.S. 364, 390, 27 S. Ct. 513, 51 L. Ed. 841).

Turning [\*19] back to the Court of Appeals' decision in *Bagdon*, there, a New York resident sued a Pennsylvania corporation for an alleged breach of contract that occurred in Pennsylvania. The defendant corporation was registered to do business in New York and had appointed an agent for the service of process in New York (see *Bagdon v Philadelphia & Reading Coal & Iron Co.*, 217 NY at 433). The defendant conceded the presence of an agent in New York, but argued that the scope of the agency of the person appointed to accept service of process in its behalf must be limited to actions which arose out of the business transacted in New York (see *id. at 433-434*). The Court of Appeals rejected the defendant's argument and found that the defendant could properly be sued in New York on the cause of action, even though it did not arise from the defendant's activities in New York. The Court reasoned that by obtaining a certificate from New York to do business here, the defendant had entered into a binding contract with New York. In exchange for the right to do business in New York, the defendant had filed a stipulation in the office of the secretary of state designating a person upon whom process may be served within the state (see *id. at 436*). The Court found that this person was a "true agent" [\*20] of the defendant, and the stipulation was a "true contract" with New York (*id.*). The Court held that the actions in which this agent was to represent the corporation were not limited, and, as long as New York had subject matter jurisdiction over the action, service on the agent would give jurisdiction of the person (see *id. at 437*). The Court further explained that the agent was in the service of the corporation engaged in business in New York, and that the agent's "presence" brought the corporation within the jurisdiction of New York (*id. at 439*).

One year after *Bagdon* was decided, the Court of

Appeals extended this reasoning to a corporation that apparently was unlicensed in New York, but which was doing regular business here. In *Tauza v Susquehanna Coal Co.*, the Court held that New York courts had jurisdiction over a foreign corporation that was doing business in New York and which had been served with process through a managing agent in its New York office, and that the court's jurisdiction "[did not] fail because the cause of action sued upon [had] no relation in its origin to the business here transacted" (220 NY 259, 268, 115 N.E. 915). The Court stated that "[t]he essential thing is that the corporation shall have come into [\*21] the state. When once it is here, it may be served; and the validity of the service is independent of the origin of the cause of action" (*id. at 268-269*).

Twenty-three years after *Bagdon*, the Supreme Court of the United States interpreted a successor New York registration statute in accordance with *Bagdon*, and found that the defendant had consented to be sued in the courts of New York by designating an agent in New York for the service of process (see *Neirbo Co. v Bethlehem Shipbuilding Corp.*, 308 U.S. 165, 174-175, 60 S. Ct. 153, 84 L. Ed. 167). The Court observed that the statute calling for such a designation was constitutional, and the designation of the agent was "a voluntary act" (*id. at 175*, quoting *Pennsylvania Fire Ins. Co. v Gold Issue Mining & Milling Co.*, 243 U.S. 93, 96, 37 S. Ct. 344, 61 L. Ed. 610).

New York courts continued to be guided by the requirement that a defendant must be found to be "present" in the state in order to exercise jurisdiction over the defendant in accordance with federal due process (see *Simonson v International Bank*, 14 NY2d 281, 285, 200 N.E.2d 427, 251 N.Y.S.2d 433). By registering to do business in New York and appointing an agent for the service of process, a foreign corporation was, in effect, consenting to be found within New York (see *Pohlers v Exeter Mfg. Co.*, 293 NY 274, 280, 56 N.E.2d 582 ["A designation of a public officer upon whom service may be made has the same effect as a voluntary consent"]).

In 1945, the United States Supreme Court decided *International Shoe Co. v State of Washington* (326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95), which altered our in personam jurisdiction jurisprudence. [\*22] *International Shoe* extended the analysis beyond physical presence and authorized a state court to exercise personal jurisdiction over an out-of-state defendant if the defendant has "certain minimum contacts with [the State] such that the maintenance of the suit does not

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offend traditional notions of fair play and substantial justice" (*id. at 316*, quoting *Milliken v Meyer*, 311 U.S. 457, 463, 61 S. Ct. 339, 85 L. Ed. 278; see *Goodyear Dunlop Tires Operations, S.A. v Brown*, 564 U.S. 915, 923, 131 S. Ct. 2846, 180 L. Ed. 2d 796). "Following *International Shoe*, the relationship among the defendant, the forum, and the litigation, rather than the mutually exclusive sovereignty of the States on which the rules of *Pennoyer* rest, became the central concern of the inquiry into personal jurisdiction" (*Daimler AG v Bauman*, 571 U.S. at 126, quoting *Shaffer v Heitner*, 433 U.S. at 204).

After *International Shoe*, courts began to differentiate between general all-purpose jurisdiction and specific case-linked jurisdiction (see *Goodyear Dunlop Tires Operations, S. A. v Brown*, 564 U.S. at 919). In New York, in 1962, the Legislature enacted *CPLR 302* to effect specific jurisdiction, and *CPLR 301* to ensure that the general jurisdiction historically exercised in New York was not thought to be limited by the enactment of *CPLR 302* (see Vincent C. Alexander, Practice Commentaries, *McKinney's Cons Laws of NY*, Book 7B, *CPLR 301* at 7 [2010 ed]). In the interim between *International Shoe* and *Daimler*, where jurisdiction has been predicated on *CPLR 301*, the [\*23] prevailing logic has continued to be that there is no need to establish a connection between the cause of action at issue and the foreign defendant's business activities within the State, "because the authority of the New York courts is based solely upon the fact that the defendant is engaged in such a continuous and systematic course of "doing business" here as to warrant a finding of its "presence" in this jurisdiction" (*McGowan v Smith*, 52 NY2d 268, 272, 419 N.E.2d 321, 437 N.Y.S.2d 643, quoting *Simonson v International Bank*, 14 NY2d at 285; accord *Landoil Resources Corp. v Alexander & Alexander Servs.*, 77 NY2d 28, 33, 565 N.E.2d 488, 563 N.Y.S.2d 739). Some courts have continued to find that by registering to do business in New York and designating an agent for service of process, a foreign corporation has constructively consented to general in personam jurisdiction in New York in exchange for the privilege of doing business here (see *Doubet LLC v Trustees of Columbia Univ. in the City of N. Y.*, 99 A.D.3d at 434-435; *Augsbury Corp. v Petrokey Corp.*, 97 AD2d at 175-176; *Le Vine v Isoserve, Inc.*, 70 Misc 2d at 749; *Robfogel Mill-Andrews Corp. v Cupples Co. Mfrs.*, 67 Misc 2d at 624; *Rockefeller Univ. v Ligand Pharmaceuticals*, 581 F Supp 2d at 464-467).

As discussed above, *HN8*[<sup>14</sup>] following the United States Supreme Court's decision in *Daimler*, personal

jurisdiction cannot be asserted against a foreign corporation based solely on the corporation's continuous and systematic business activity in New York. The consent-by-registration line of cases is predicated on the reasoning *HN9*[<sup>15</sup>] that by registering to do business in New York and appointing a local agent for service of process, a foreign corporation has consented [\*24] to be found in New York. *Daimler* made clear, however, that general jurisdiction cannot be exercised solely on such presence (see *Daimler AG v Bauman*, 571 U.S. at 137-138). The Supreme Court expressly cautioned that cases such as *Tauza v Susquehanna Coal Co.* (220 NY 259, 115 N.E. 915) which uphold the exercise of general jurisdiction based on the presence of a local office, "should not attract heavy reliance today" (*Daimler AG v Bauman*, 571 U.S. at 138 n 18). As other courts have observed, it appears that every state in the Union has enacted a registration statute that requires foreign corporations to register to do business and appoint an in-state agent for service of process (see *Genuine Parts Co. v Cepec*, 137 A3d 123, 143; *Brown v Lockheed Martin Corp.*, 814 F3d at 640; see also Tanya J. Monestier, *Registration Statutes, General Jurisdiction, and the Fallacy of Consent*, 36 Cardozo L Rev 1343, 1363 n 109 [listing statutes]). We agree with those courts that *HN10*[<sup>16</sup>] asserting jurisdiction over a foreign corporation based on the mere registration and the accompanying appointment of an in-state agent by the foreign corporation, without the express consent of the foreign corporation to general jurisdiction, would be "unacceptably grasping" under *Daimler* (*Daimler AG v Bauman*, 571 U.S. at 138).

The Court of Appeals does not appear to have cited to *Bagdon* or relied upon its consent-by-registration theory since *International Shoe* was decided. We think that this is a strong indicator that [\*25] its rationale is confined to that era, which was dominated by *Pennoyer*'s territorial thinking, and that it no longer holds in the post-*Daimler* landscape. We conclude that *HN11*[<sup>17</sup>] a corporate defendant's registration to do business in New York and designation of the secretary of state to accept service of process in New York does not constitute consent by the corporation to submit to the general jurisdiction of New York for causes of action that are unrelated to the corporation's affiliations with New York.

## IV.

The plaintiffs contend in the alternative that the motions should be denied on the ground that additional discovery is needed because facts essential to justify opposition may exist but cannot now be stated (cf.

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CPLR 3211[d]). The plaintiffs have not alleged any facts that would support personal jurisdiction and thus have failed to indicate how further discovery might lead to evidence showing that personal jurisdiction exists here (see Leuthner v Homewood Suites by Hilton, 151 A.D.3d 1042, 1045, 58 N.Y.S.3d 437; Mejia-Haffner v Killington Ltd., 119 A.D.3d 912, 915, 990 N.Y.S.2d 561).

Accordingly, the Supreme Court should have granted the separate motions of Ford and Goodyear to dismiss the complaint insofar as asserted against each of them for lack of personal [[\*\*8]] jurisdiction.

The orders entered May 31, 2016, are reversed, on the law, [[\*26]] and the separate motions of the defendants Ford Motor Company and Goodyear Tire & Rubber Co. pursuant to CPLR 3211(a)(8) to dismiss the complaint insofar as asserted against them are granted.

LEVENTHAL, J.P., SGROI and LASALLE, JJ., concur.

ORDERED that the orders entered May 31, 2016, are reversed, on the law, with costs, and the separate motions of the defendants Ford Motor Company and Goodyear Tire & Rubber Co. pursuant to CPLR 3211(a)(8) to dismiss the complaint insofar as asserted against them are granted.

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INDEX NO. 706909/2018

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Supreme Court of the State of New York  
Appellate Division: Second Judicial Department

D57109

C/htr

AD3d

Argued - March 26, 2018

JOHN M. LEVENTHAL, J.P.  
SANDRA L. SGROI  
HECTOR D. LASALLE  
VALERIE BRATHWAITE NELSON, JJ.

2016-06194  
2016-07397

OPINION & ORDER

Anna Aybar, et al., plaintiffs-respondents, v Jose A. Aybar, Jr., et al., defendants, Ford Motor Company, et al., appellants; U.S. Tires and Wheels of Queens, LLC, nonparty-respondent.

(Index No. 706909/15)

APPEAL by the defendant Ford Motor Company, in an action to recover damages for personal injuries and wrongful death, from an order of the Supreme Court (Thomas D. Raffaele, J.), entered May 31, 2016, in Queens County, and SEPARATE APPEAL by the defendant Goodyear Tire & Rubber Co. from an order of the same court, also entered May 31, 2016. The first order denied the motion of the defendant Ford Motor Company pursuant to CPLR 3211(a)(8) to dismiss the complaint insofar as asserted against it for lack of personal jurisdiction. The second order denied the motion of the defendant Goodyear Tire & Rubber Co., pursuant to CPLR 3211(a)(8) to dismiss the complaint insofar as asserted against it for lack of personal jurisdiction.

Aaronson Rappaport Feinstein & Deutsch, LLP (Eliot J. Zucker, Peter J. Fazio, and Hogan Lovells US LLP, New York, NY [Sean Marotta], of counsel), for appellant Ford Motor Company, and DLA Piper LLP, New York, NY (Kevin W. Rethore of counsel), for appellant Goodyear Tire & Rubber Co. (one brief filed).

Omroni & Taub, P.C. (Parker Waichman, LLP, Port Washington, NY [Jay L. T. Breakstone and Jessica L. Richman], of counsel), for plaintiffs-respondents.

January 23, 2019

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AYBAR v AYBAR

Marshall Dennehey Warner Coleman & Goggin, P.C., New York, NY (Adam C. Calvert of counsel), for nonparty-respondent.

BRATHWAITE NELSON, J.

We consider on these appeals whether, following the United States Supreme Court decision in *Daimler AG v Bauman* (571 US 117), a foreign corporation may still be deemed to have consented to the general jurisdiction of New York courts by virtue of having registered to do business in New York and appointed a local agent for the service of process. We conclude that it may not.

I.

This action arises from a July 1, 2012, automobile accident that occurred on an interstate highway in Virginia. The defendant Jose A. Aybar, Jr., a New York resident, was operating a 2002 Ford Explorer that was registered in New York when one of its tires allegedly failed, causing the vehicle to become unstable and overturn and roll multiple times. Three of the six passengers died as a result of the accident and the other three were injured. The plaintiffs are the surviving passengers and the representatives of the deceased passengers' estates. They allege, among other things, that the defendant Ford Motor Company (hereinafter Ford) negligently manufactured and designed the Ford Explorer, and that the defendant Goodyear Tire & Rubber Co. (hereinafter Goodyear) negligently manufactured and designed the faulty tire.

Ford is incorporated in Delaware, with its principal place of business in Michigan, and Goodyear is incorporated in, and has its principal place of business in, Ohio. The complaint alleges that at all relevant times both corporations were registered to do business in New York, and that each, in fact, conducted business in New York and derived substantial revenue from such business.

Ford moved pursuant to CPLR 3211(a)(8) to dismiss the complaint insofar as asserted against it on the ground that the Supreme Court lacked personal jurisdiction over it. In support of its motion, Ford submitted evidence that the subject vehicle was manufactured in Missouri and sold to a dealership in Ohio in March 2002, from where it was sold to an individual not involved in this lawsuit, and that the vehicle was not designed in New York. Ford also submitted evidence that it did not have any Ford Explorer manufacturing plants in New York, and it did not directly engage in the servicing of Ford vehicles in New York, which is done exclusively by independent dealers.

Aybar purchased the subject vehicle and tire in 2011 from a third party in New York.

In opposition to the motion, the plaintiffs argued that Ford was subject to general jurisdiction in New York because Ford maintained a substantial and continuous presence in New York. To support this proposition, the plaintiffs pointed to "hundreds" of Ford dealerships employing numerous New York residents, and they submitted evidence that Ford operated a stamping (manufacturing) plant in Hamburg, New York, which employed approximately 600 people and for which Ford had received incentive packages and tax credits from New York State. In reply, Ford submitted evidence that it had 62 plants and franchise agreements with 11,980 dealerships worldwide, and argued that its economic contacts with New York were not so substantial as compared to its contacts elsewhere so as to render Ford "at home" in New York.

Goodyear also moved pursuant to CPLR 3211(a)(8) to dismiss the complaint insofar as asserted against it on the ground of lack of personal jurisdiction. In support of its motion, Goodyear submitted evidence that the subject tire was designed in Ohio, manufactured in Tennessee in 2002, and tested and inspected outside of New York. Goodyear asserted that it had no way of tracking the sale or ownership of a given tire over its service life, but could identify that the subject class of tire was sold as original equipment for certain Isuzu and Ford vehicles, and as a replacement tire. Goodyear additionally submitted evidence that it operated a chemical plant in New York and that it was a member of a limited liability company which owned and operated a tire manufacturing plant in New York, but that neither plant manufactured the subject tire, and that Goodyear did not specifically direct advertising of the subject tire at New York residents.

In opposition to Goodyear's motion, the plaintiffs argued that Goodyear was subject to general jurisdiction in New York because its business affiliations within New York were so pervasive or continuous and systematic as to render it essentially "at home" in New York State. The plaintiffs submitted evidence that Goodyear had numerous tire and auto service center storefront locations in New York, from which the plaintiffs argued it could be inferred that Goodyear employed hundreds, possibly thousands, of New York residents. In reply, Goodyear submitted evidence that it had plants, service centers, and other properties worldwide. It argued that it employed "a tremendous number of people" worldwide, and that its economic contacts with New York were not so substantial as compared with its contacts elsewhere so as to render Goodyear "at home" in New York.

Nonparty U.S. Tires and Wheels of Queens, LLC (hereinafter U.S. Tires), was a defendant in a separate action brought by the plaintiffs arising from the same accident. At the time of the motions to dismiss of Ford and Goodyear, there was a pending motion to consolidate the two actions. U.S. Tires submitted opposition papers to the subject motions, and argued that both Ford and Goodyear had consented to general jurisdiction in New York by registering to do business with the New York Secretary of State and designating an agent for service of process in New York. U.S. Tires noted that it was a New York corporation with its principal place of business in New York, and, thus, if Ford and Goodyear were to succeed on their motions, the result would be three separate lawsuits, all involving the same accident, which, U.S. Tires contended, would likely result in inconsistent verdicts, duplication of discovery, and waste of judicial resources.

In response to U.S. Tires's opposition, Ford argued that the opposition was untimely, U.S. Tires lacked standing to oppose the motion, and, on the merits, Ford's compulsory registration to do business in New York and appointment of the Secretary of State as its agent for service of process did not constitute consent to general jurisdiction in New York. Goodyear advanced similar arguments in response to U.S. Tires's opposition.

In separate orders, each entered May 31, 2016, the Supreme Court, Queens County (hereinafter the motion court), denied the motions, concluding that Ford and Goodyear were each subject to general jurisdiction in New York. The motion court found that the activities of both Ford and Goodyear in New York were so continuous and systematic that both Ford and Goodyear are essentially at home here. The motion court also found that both Ford and Goodyear had otherwise consented to general jurisdiction in New York by each registering to do business in New York as a foreign corporation and designating a local agent for service of process. With regard to Ford's activities in New York, the motion court pointed to the facts that Aybar purchased the vehicle in New York and primarily used it in New York, Ford has an organization of facilities in New York engaged in day-to-day activities, and Ford has many franchises across New York. With regard to Goodyear, the motion court relied upon the facts that Goodyear had operated numerous stores in New York since approximately 1924 and had employed thousands of workers in those stores, and it has an organization of facilities in New York engaged in day-to-day activities. Ford and Goodyear appeal.<sup>1</sup>

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<sup>1</sup>We note that the motion court did not rule on the merits of the issue of whether U.S. Tires could properly oppose the motions of Ford and Goodyear. On their appeals, neither Ford nor Goodyear

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## II.

It is fundamental that a court must acquire personal jurisdiction over a defendant before it can render a judgment against that defendant (*see Burnham v Superior Court of Cal., County of Marin*, 495 US 604, 608; *Insurance Corp. of Ireland v Compagnie des Bauxites de Guinee*, 456 US 694, 702). A defendant may consent to a court's exercise of personal jurisdiction (*see National Equipment Rental, Ltd. v Szukhent*, 375 US 311, 316), or waive the right to object to it (*see CPLR 3211[e]*; *Insurance Corp. of Ireland v Compagnie des Bauxites de Guinee*, 456 US at 703; *Iacovangelo v Shepherd*, 5 NY3d 184, 186), but when a defendant has objected to the court's exercise of personal jurisdiction, the plaintiff bears the burden of coming forward with sufficient evidence to prove jurisdiction (*see Fischbarg v Doucet*, 9 NY3d 375, 381 n 5; *Mejia-Haffner v Killington, Ltd.*, 119 AD3d 912, 914).

Under modern jurisprudence, a court may assert general all-purpose jurisdiction or specific conduct-linked jurisdiction over a particular defendant (*see Daimler AG v Bauman*, 571 US at 122; *Goodyear Dunlop Tires Operations, S. A. v Brown*, 564 US 915). "A court with general jurisdiction may hear *any* claim against that defendant, even if all the incidents underlying the claim occurred in a different State" (*Bristol-Myers Squibb Co. v Superior Court of Cal., San Francisco County*, \_\_\_\_ US \_\_\_\_, 137 S Ct 1773, 1780; *see Goodyear Dunlop Tires Operations, S. A. v Brown*, 564 US at 919). "Specific jurisdiction, on the other hand, depends on an affiliation between the forum and the underlying controversy, principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation" (*Goodyear Dunlop Tires Operations, S. A. v Brown*, 564 US at 919 [internal quotation marks and brackets omitted]; *see Bristol-Myers Squibb Co. v Superior Court of Cal., San Francisco County*, \_\_\_\_ US \_\_\_\_, 137 S Ct at 1780; *Daimler AG v Bauman*, 571 US at 127).

Here, in opposing the motions of Ford and Goodyear, the plaintiffs asserted that New York courts have general jurisdiction over each defendant. 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

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raise this issue. We therefore assume, without deciding, that U.S. Tires has standing to oppose the motions and that its opposition was not untimely.

statute<sup>2</sup> (see CPLR 302).

General jurisdiction in New York is provided for in CPLR 301, which allows a court to exercise "such jurisdiction over persons, property, or status as might have been exercised heretofore." Prior to the United States Supreme Court's decision in *Daimler AG v Bauman* (571 US 117), a foreign corporation was amenable to suit in New York under CPLR 301 if it had engaged in "such a continuous and systematic course of 'doing business' here that a finding of its 'presence' in this jurisdiction [was] warranted" (*Landoil Resources. Corp. v Alexander & Alexander Servs.*, 77 NY2d 28, 33, quoting *Laufer v Ostrow*, 55 NY2d 305, 309-310). The parties do not dispute that there is statutory authority for the exercise of general jurisdiction over Ford or Goodyear, or that the exercise of such jurisdiction would be consistent with New York law. The disagreement lies in whether the exercise of such jurisdiction would comport with the limits imposed by federal due process since *Daimler*.

In *Goodyear Dunlop Tires Operations, S. A. v Brown*, the Supreme Court addressed the distinction between general and specific jurisdiction, and stated that a court is authorized to exercise general jurisdiction over a foreign corporation when the corporation's affiliations with the state "are so 'continuous and systematic' as to render them essentially at home in the forum State" (564 US at 919, quoting *International Shoe Co. v Washington*, 326 US 310, 317). In *Daimler*, the Court limited the scope of general jurisdiction to that definition, and rejected a standard that would allow the exercise of general jurisdiction in every state in which a corporation is engaged in a substantial, continuous, and systematic course of business (571 US at 137). The Court instructed that, with respect to corporations, the paradigm bases for general jurisdiction are the place of incorporation and principal place of business (see *id.*). Although the Court did not limit the exercise of general jurisdiction to those two forums, it left open only the possibility of an "exceptional case" where a corporate defendant's operations in another state were "so substantial and of such a nature as to render the corporation at home in that State" (*id.* at 139 n 19; see *BNSF Ry Co. v Tyrrell*, \_\_\_\_\_ US \_\_\_\_\_, 137 S Ct 1549, 1558).

Neither Ford nor Goodyear is incorporated in New York or has its principal place of business here. Thus, New York courts can exercise general jurisdiction over each defendant only if the plaintiffs have established that its affiliations with New York are so continuous and systematic

<sup>2</sup>The arguments of nonparty U.S. Tires that specific jurisdiction is present in this case are not properly before this Court since they were not raised before the motion court.

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as to render it essentially “at home” here.

Since *Daimler*, the Supreme Court has reiterated that, standing alone, mere “in-state business . . . does not suffice to permit the assertion of general jurisdiction over claims . . . that are unrelated to any activity occurring in [the forum State]” (*BNSF Ry Co. v Tyrrell*, \_\_\_\_ US at \_\_\_\_, 137 S Ct at 1559). To determine whether a foreign corporate defendant’s affiliations with the state are so continuous and systematic as to render it essentially at home, *Daimler* advised that “the general jurisdiction inquiry does not focus solely on the magnitude of the defendant’s in-state contacts,” but “instead calls for an appraisal of a corporation’s activities in their entirety, nationwide and worldwide. A corporation that operates in many places can scarcely be deemed at home in all of them” (*Daimler AG v Bauman*, 571 US at 139 n 20; *see BNSF Ry Co. v Tyrrell*, \_\_\_\_ US at \_\_\_\_, 137 S Ct at 1559).

The *Daimler* Court suggested that *Perkins v Benguet Consol. Mining Co.* (342 US 437) exemplified the “exceptional case” in which a corporate defendant’s operations in the forum state were so substantial and of such a nature as to render the corporation “at home” in that state (*see Daimler AG v Bauman*, 571 US at 129). In *Perkins*, the defendant was incorporated in the Philippine Islands, where it owned and operated certain mines (342 US at 439). Its operations were completely halted during the Japanese occupation of the Islands in World War II. During that interim, the president of the company, who was also the general manager and principal stockholder, returned to his home in Ohio, where he maintained an office and conducted the corporation’s affairs (*see id.* at 447-448). The Supreme Court held that Ohio courts could exercise general jurisdiction over the corporation without offending due process (*see id.* at 448). The Supreme Court later noted that “Ohio was the corporation’s principal, if temporary, place of business so that Ohio jurisdiction was proper even over a cause of action unrelated to the activities in the State” (*Keeton v Hustler Magazine, Inc.*, 465 US 770, 779 n 11, *see Daimler AG v Bauman*, 571 US at 130).

A.

The plaintiffs argue that New York courts have general jurisdiction over Ford because Ford has “become woven into the fabric of New York state domestic activity.” They point to the facts that Ford has been authorized to do business in New York since 1920, it operates numerous facilities in New York, it owns property in New York and spends at least \$150 million to maintain the property, it employs significant numbers of New York residents, it contracts with hundreds of dealerships in New York to sell its products under the Ford brand name, and it has frequently been

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a litigant in New York courts.

Under the strictures of *Daimler*, Ford's contacts with New York are insufficient to permit the assertion of general jurisdiction over claims that are unrelated to any activity occurring in New York. Ford concedes that it has extensive commercial activities in New York, but it notes that it has extensive commercial activities throughout the country and worldwide. Indeed, while the plaintiffs point to Ford's one factory in New York, employing approximately 600 people, and Ford's contracts with "hundreds" of dealerships in the state, Ford presented evidence that it has 62 plants, employing about 187,000 people, and 11,980 franchise agreements with dealerships worldwide. Appraising the magnitude of Ford's activities in New York in the context of the entirety of Ford's activities worldwide, it cannot be said that Ford is at home in New York.

B.

The plaintiffs contend that Goodyear's presence in New York is special, as it has conducted business in New York for nearly a century, it has owned and operated a chemical plant here since the 1940's, as well as a tire manufacturing plant, it has availed itself of New York's courts, and it has leased and subleased real estate in New York, maintained a network of dealers and service centers, and employed thousands of people in New York since 1924. Like Ford, Goodyear concedes that it has extensive commercial activity in New York, but it points to the evidence that it has 50 manufacturing plants worldwide and it operates approximately 1,200 retail outlets for the sale of its tires worldwide. Appraising Goodyear's activities in their entirety, Goodyear also is not at home in New York such that New York courts might exercise general jurisdiction over any claim brought against it.

III.

The plaintiffs also argue that Ford and Goodyear each consented to the jurisdiction of New York courts for all purposes, including this suit, by registering to do business in New York and appointing an agent for service of process. The plaintiffs do not rely on any particular business registration statute in making this argument. Before the motion court, U.S. Tires, which raised this argument, relied only on CPLR 301. Nevertheless, as relevant to these defendants, we note that Business Corporation Law § 1301(a) provides that "[a] foreign corporation shall not do business in this state until it has been authorized to do so." Business Corporation Law § 304(b) provides, inter alia, that no foreign corporation may be authorized to do business in New York unless in its

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application for authority, it designates the secretary of state as the agent upon whom process against the corporation may be served. Similarly, Business Corporation Law § 1304(a)(6) requires a foreign corporation, in its application for authority to do business in New York, to designate the secretary of state as its agent upon whom process against it may be served and an address to which process received by the Secretary of State is to be mailed.

New York's business registration statutes do not expressly require consent to general jurisdiction as a cost of doing business in New York, nor do they expressly notify a foreign corporation that registering to do business here has such an effect. There has been longstanding judicial construction, however, by New York courts and federal courts interpreting New York law, that registering to do business in New York and appointing an agent for service of process constitutes consent to general jurisdiction (*see e.g. Bagdon v Philadelphia & Reading Coal & Iron Co.*, 217 NY 432, 436-437; *Doubet LLC v Trustees of Columbia Univ. in the City of N. Y.*, 99 AD3d 433, 434-435; *Augsbury Corp. v Petrokey Corp.*, 97 AD2d 173, 175-176; *Le Vine v Isoserve, Inc.*, 70 Misc 2d 747, 749 [Sup Ct, Albany County 1972]; *Robfogel Mill-Andrews Corp. v Cupples Co., Mfrs.*, 67 Misc 2d 623, 624 [Sup Ct, Monroe County 1971]; *Carlton Props. v 328 Props.*, 208 Misc 776 [Sup Ct, Nassau County 1955]; *Devlin v Webster*, 188 Misc 891 [Sup Ct, NY County 1946], *affd* 272 App Div 793; *Rockefeller Univ. v Ligand Pharmaceuticals*, 581 F Supp 2d 461, 464-467 [SD NY][listing numerous federal cases finding consent by registration]; *cf. Muollo v Crestwood Vil.*, 155 AD2d 420, 421). We hold that in view of the evolution of in personam jurisdiction jurisprudence, and, particularly the way in which *Daimler* has altered that jurisprudential landscape, it cannot be said that a corporation's compliance with the existing business registration statutes constitutes consent to the general jurisdiction of New York courts, to be sued upon causes of action that have no relation to New York.<sup>3</sup>

In New York, the theory of consent by registration originates in the 1916 opinion of Judge Cardozo in *Bagdon v Philadelphia & Reading Coal & Iron Co.* (217 NY 432). There, the Court of Appeals held that a foreign corporation could be sued in New York upon a cause of action

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<sup>3</sup>The parties observe that post *Daimler*, some New York lawmakers have proposed amending Business Corporation Law § 1301 to expressly provide that a corporation's application to do business in New York constitutes consent to personal jurisdiction in lawsuits in New York for all actions against the corporation (*see* 2015 NY Senate-Assembly Bill S4846, A6714). No such changes in the law have been effected to date, and we decline the appellants' invitation to opine on the constitutionality of any such possible amendment.

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that had no relation to the corporation's New York activities because the corporation had consented to the jurisdiction of New York by obtaining authorization to do business here and appointing an agent for service of process in New York. *Bagdon* must be understood within the historical context in which it was decided.

At the time *Bagdon* was decided, *in personam* jurisdiction was still largely limited by the conceptual structure of *Pennoyer v Neff* (95 US 714). In *Pennoyer*, decided shortly after the enactment of the Fourteenth Amendment, the United States Supreme Court held that a court's jurisdiction was restricted by its territorial limits or geographic bounds (*see id.* at 720), and, thus, no state could exercise jurisdiction over persons or property outside of its territory (*see id.* at 722). "*Pennoyer* sharply limited the availability of *in personam* jurisdiction over defendants not resident in the forum State. If a nonresident defendant could not be found in a State, he could not be sued there" (*Shaffer v Heitner*, 433 US 186, 199). To complicate matters, under the 19th century view, a corporation could have "no legal existence" outside of its state of incorporation (*Bank of Augusta v Earle*, 38 US 519, 588), and, thus, could be sued only in the state of incorporation, no matter how extensive its business in another state (*see Brown v Lockheed Martin Corp.*, 814 F3d 619, 631).

"In time, however, that strict territorial approach yielded to a less rigid understanding" (*Daimler AG v Bauman*, 571 US at 126). States enacted statutes requiring the appointment by foreign corporations of agents upon whom process could be served "primarily to subject them to the jurisdiction of [the] local courts in controversies growing out of transactions within the [S]tate" (*Morris & Co. v Skandinavia Ins. Co.*, 279 US 405, 409). The business registration statutes conditioned a corporation's authority to do business in a state on its designation of an appointed agent within the state to accept service. "Pointing to the acceptance of service by an in-state agent appointed by the corporation, a state could tenably argue that the corporation had voluntarily consented to jurisdiction there and that, notwithstanding *Earle*, it was 'present' in the state because it maintained an agent there" (*Brown v Lockheed Martin Corp.*, 814 F3d at 632). In addition, federal jurisprudence evolved such that a foreign corporation could be subject to the jurisdiction of a state's courts if the corporation was doing business within the state and service was made in the state upon some duly authorized officer or agent who was representing the corporation in its business (*see St. Louis Southwestern R. Co. of Tex. v Alexander*, 227 US 218, 226; *Herndon-Carter Co. v James N. Norris, Son & Co.*, 224 US 496, 499; *Peterson v Chicago, R. I. & P.R. Co.*, 205 US 364, 390).

Turning back to the Court of Appeals' decision in *Bagdon*, there, a New York

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resident sued a Pennsylvania corporation for an alleged breach of contract that occurred in Pennsylvania. The defendant corporation was registered to do business in New York and had appointed an agent for the service of process in New York (*see Bagdon v Philadelphia & Reading Coal & Iron Co.*, 217 NY at 433). The defendant conceded the presence of an agent in New York, but argued that the scope of the agency of the person appointed to accept service of process in its behalf must be limited to actions which arose out of the business transacted in New York (*see id.* at 433-434). The Court of Appeals rejected the defendant's argument and found that the defendant could properly be sued in New York on the cause of action, even though it did not arise from the defendant's activities in New York. The Court reasoned that by obtaining a certificate from New York to do business here, the defendant had entered into a binding contract with New York. In exchange for the right to do business in New York, the defendant had filed a stipulation in the office of the secretary of state designating a person upon whom process may be served within the state (*see id.* at 436). The Court found that this person was a "true agent" of the defendant, and the stipulation was a "true contract" with New York (*id.*). The Court held that the actions in which this agent was to represent the corporation were not limited, and, as long as New York had subject matter jurisdiction over the action, service on the agent would give jurisdiction of the person (*see id.* at 437). The Court further explained that the agent was in the service of the corporation engaged in business in New York, and that the agent's "presence" brought the corporation within the jurisdiction of New York (*id.* at 439).

One year after *Bagdon* was decided, the Court of Appeals extended this reasoning to a corporation that apparently was unlicensed in New York, but which was doing regular business here. In *Tauza v Susquehanna Coal Co.*, the Court held that New York courts had jurisdiction over a foreign corporation that was doing business in New York and which had been served with process through a managing agent in its New York office, and that the court's jurisdiction "[did not] fail because the cause of action sued upon [had] no relation in its origin to the business here transacted" (220 NY 259, 268). The Court stated that "[t]he essential thing is that the corporation shall have come into the state. When once it is here, it may be served; and the validity of the service is independent of the origin of the cause of action" (*id.* at 268-269).

Twenty-three years after *Bagdon*, the Supreme Court of the United States interpreted a successor New York registration statute in accordance with *Bagdon*, and found that the defendant had consented to be sued in the courts of New York by designating an agent in New York for the

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service of process (*see Neirbo Co. v Bethlehem Shipbuilding Corp.*, 308 US 165, 174-175). The Court observed that the statute calling for such a designation was constitutional, and the designation of the agent was ““a voluntary act”” (*id.* at 175, quoting *Pennsylvania Fire Ins. Co. v Gold Issue Mining & Milling Co.*, 243 US 93, 96).

New York courts continued to be guided by the requirement that a defendant must be found to be “present” in the state in order to exercise jurisdiction over the defendant in accordance with federal due process (*see Simonson v International Bank*, 14 NY2d 281, 285). By registering to do business in New York and appointing an agent for the service of process, a foreign corporation was, in effect, consenting to be found within New York (*see Pohlers v Exeter Mfg. Co.*, 293 NY 274, 280 [“A designation of a public officer upon whom service may be made has the same effect as a voluntary consent”]).

In 1945, the United States Supreme Court decided *International Shoe Co. v State of Washington* (326 US 310), which altered our *in personam* jurisdiction jurisprudence. *International Shoe* extended the analysis beyond physical presence and authorized a state court to exercise personal jurisdiction over an out-of-state defendant if the defendant has “certain minimum contacts with [the State] such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice’” (*id.* at 316, quoting *Milliken v Meyer*, 311 US 457, 463; *see Goodyear Dunlop Tires Operations, S.A. v Brown*, 564 US 915, 923). “Following *International Shoe*, ‘the relationship among the defendant, the forum, and the litigation, rather than the mutually exclusive sovereignty of the States on which the rules of *Pennoyer* rest, became the central concern of the inquiry into personal jurisdiction’” (*Daimler AG v Bauman*, 571 US at 126, quoting *Shaffer v Heitner*, 433 US at 204).

After *International Shoe*, courts began to differentiate between general all-purpose jurisdiction and specific case-linked jurisdiction (*see Goodyear Dunlop Tires Operations, S. A. v Brown*, 564 US at 919). In New York, in 1962, the Legislature enacted CPLR 302 to effect specific jurisdiction, and CPLR 301 to ensure that the general jurisdiction historically exercised in New York was not thought to be limited by the enactment of CPLR 302 (*see Vincent C. Alexander, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B, CPLR 301 at 7* [2010 ed]). In the interim between *International Shoe* and *Daimler*, where jurisdiction has been predicated on CPLR 301, the prevailing logic has continued to be that there is no need to establish a connection between the cause of action at issue and the foreign defendant’s business activities within the State, “because the

authority of the New York courts is based solely upon the fact that the defendant is ‘engaged in such a continuous and systematic course of “doing business” here as to warrant a finding of its “presence” in this jurisdiction’” (*McGowan v Smith*, 52 NY2d 268, 272, quoting *Simonson v International Bank*, 14 NY2d at 285; *accord Landoil Resources Corp. v Alexander & Alexander Servs.*, 77 NY2d 28, 33). Some courts have continued to find that by registering to do business in New York and designating an agent for service of process, a foreign corporation has constructively consented to general in personam jurisdiction in New York in exchange for the privilege of doing business here (see *Doubet LLC v Trustees of Columbia Univ. in the City of N. Y.*, 99 AD3d at 434-435; *Augsbury Corp. v Petrokey Corp.*, 97 AD2d at 175-176; *Le Vine v Isoserve, Inc.*, 70 Misc 2d at 749; *Robfogel Mill-Andrews Corp. v Cupples Co., Mfrs.*, 67 Misc 2d at 624; *Rockefeller Univ. v Ligand Pharmaceuticals*, 581 F Supp 2d at 464-467).

As discussed above, following the United States Supreme Court’s decision in *Daimler*, personal jurisdiction cannot be asserted against a foreign corporation based solely on the corporation’s continuous and systematic business activity in New York. The consent-by-registration line of cases is predicated on the reasoning that by registering to do business in New York and appointing a local agent for service of process, a foreign corporation has consented to be found in New York. *Daimler* made clear, however, that general jurisdiction cannot be exercised solely on such presence (see *Daimler AG v Bauman*, 571 US at 137-138). The Supreme Court expressly cautioned that cases such as *Tauza v Susquehanna Coal Co.* (220 NY 259) which uphold the exercise of general jurisdiction based on the presence of a local office, “should not attract heavy reliance today” (*Daimler AG v Bauman*, 571 US at 138 n 18). As other courts have observed, it appears that every state in the Union has enacted a registration statute that requires foreign corporations to register to do business and appoint an in-state agent for service of process (see *Genuine Parts Co. v Cepec*, 137 A3d 123, 143; *Brown v Lockheed Martin Corp.*, 814 F3d at 640; see also Tanya J. Monestier, *Registration Statutes, General Jurisdiction, and the Fallacy of Consent*, 36 Cardozo L Rev 1343, 1363 n 109 [listing statutes]). We agree with those courts that asserting jurisdiction over a foreign corporation based on the mere registration and the accompanying appointment of an in-state agent by the foreign corporation, without the express consent of the foreign corporation to general jurisdiction, would be “unacceptably grasping” under *Daimler* (*Daimler AG v Bauman*, 571 US at 138).

The Court of Appeals does not appear to have cited to *Bagdon* or relied upon its

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consent-by-registration theory since *International Shoe* was decided. We think that this is a strong indicator that its rationale is confined to that era, which was dominated by *Pennoyer*'s territorial thinking, and that it no longer holds in the post-*Daimler* landscape. We conclude that a corporate defendant's registration to do business in New York and designation of the secretary of state to accept service of process in New York does not constitute consent by the corporation to submit to the general jurisdiction of New York for causes of action that are unrelated to the corporation's affiliations with New York.

## IV.

The plaintiffs contend in the alternative that the motions should be denied on the ground that additional discovery is needed because facts essential to justify opposition may exist but cannot now be stated (*cf. CPLR 3211[d]*). The plaintiffs have not alleged any facts that would support personal jurisdiction and thus have failed to indicate how further discovery might lead to evidence showing that personal jurisdiction exists here (*see Leuthner v Homewood Suites by Hilton*, 151 AD3d 1042, 1045; *Mejia-Haffner v Killington Ltd.*, 119 AD3d 912, 915).

Accordingly, the Supreme Court should have granted the separate motions of Ford and Goodyear to dismiss the complaint insofar as asserted against each of them for lack of personal jurisdiction.

The orders entered May 31, 2016, are reversed, on the law, and the separate motions of the defendants Ford Motor Company and Goodyear Tire & Rubber Co. pursuant to CPLR 3211(a)(8) to dismiss the complaint insofar as asserted against them are granted.

LEVENTHAL, J.P., SGROI and LASALLE, JJ., concur.

ORDERED that the orders entered May 31, 2016, are reversed, on the law, with costs, and the separate motions of the defendants Ford Motor Company and Goodyear Tire & Rubber Co. pursuant to CPLR 3211(a)(8) to dismiss the complaint insofar as asserted against them are granted.

SUPREME COURT, STATE OF NEW YORK  
APPELLATE DIVISION SECOND DEPT.  
ENTER:  
I, APRILANNE AGOSTINO, Clerk of the Appellate Division of the Supreme Court, Second Judicial Department, do hereby certify that I have compared this copy with the original filed in my office on JAN 23 2019 and that this copy is a correct transcription of said original.  
IN WITNESS WHEREOF I have hereunto set my hand and affixed  
the seal of this Court JAN 23 2019

*Aprilanne Agostino*  
Aprilanne Agostino  
Clerk of the Court



January 23, 2019

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**EXHIBIT B TO SAEZ AGUIRRE AFFIRMATION -  
AMENDED SUMMONS AND AMENDED VERIFIED COMPLAINT  
OF JOSE AYBAR, ET AL., DATED SEPTEMBER 23, 2014 [442 - 472]**

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

X  
JOSE AYBAR, ORLANDO GONZALES, JOSE AYBAR  
as Administrator of THE ESTATE OF CRYSTAL CRUZ-  
AYBAR, JESENIA AYBAR as Administratrix of THE  
ESTATE OF NOELIA OLIVERAS, JESENIA AYBAR as  
LEGAL GUARDIAN on behalf of KEILA CABRAL, a  
minor, ANNA AYBAR and JESENIA AYBAR as  
Administratrix of THE ESTATE OF TIFFANY CABRAL,

Plaintiffs,  
-against-

US TIRES AND WHEELS OF QUEENS, LLC

Defendant.

Index No.: 9344/2014

Plaintiff  
designates Queens  
County as the  
place of trial.

*Amended*  
**SUMMONS**

S.C.P. 29 2014  
The basis of venue  
is: Defendant's  
Principal Place of  
Business

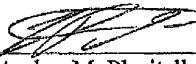
X

TO THE ABOVE NAMED DEFENDANT:

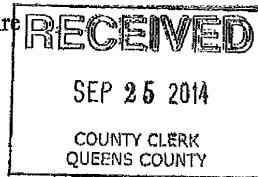
YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiffs' attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Amended Verified Complaint pursuant to section 3215 of the New York Civil Practice Law and Rules.

Dated: September 23 2014  
Red Bank, NJ

COHEN, PLACITELLA & ROTH, P.C.

By: 

Christopher M. Placitella, Esquire  
Attorney No. 2202497  
Joel S. Rosen, Esquire  
Mark B. Goodheart, Esquire  
Jared M. Placitella, Esquire  
Attorney No. 5216817



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2001 Market Street, Suite 2900  
Philadelphia, PA 19103  
Attorneys for all Plaintiffs

**TO DEFENDANT ADDRESSED:**

US Tires and Wheels of Queens  
8924 Metropolitan Avenue  
Rego Park, NY 11374

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-X

JOSE AYBAR, ORLANDO GONZALES, JOSE AYBAR  
as Administrator of THE ESTATE OF CRYSTAL CRUZ-  
AYBAR, JESENIA AYBAR as Administratrix of THE  
ESTATE OF NOELIA OLIVERAS, JESENIA AYBAR  
as LEGAL GUARDIAN on behalf of KEILA CABRAL, a  
minor, ANNA AYBAR and JESENIA AYBAR as  
Administratrix of THE ESTATE OF TIFFANY  
CABRAL,

Index No.: 9344/2014

AMENDED  
VERIFIED  
COMPLAINT

Plaintiffs,

-against-

US TIRES AND WHEELS OF QUEENS, LLC

Defendant,

-X

Jose Aybar, individually, Orlando Gonzales, individually, Jose Aybar as the  
Administrator of the Estate of Crystal Cruz-Aybar, Jesenia Aybar as the Administratrix  
of the Estate of Noelia Oliveras, Jesenia Aybar as the Administratrix of the Estate of  
Tiffany Cabral, Jesenia Aybar as Legal Guardian on behalf of Keila Cabral, a minor,  
Anna Aybar, individually, by their attorneys Cohen, Placitella & Roth, P.C. as and for  
their Amended Verified Complaint against Defendant US Tires and Wheels of Queens  
("defendant") allege and set forth as follows:

INTRODUCTION

1. The causes of action set forth herein arise out of a motor vehicle collision  
that occurred on July 1, 2012 as a result of the negligence and carelessness of the  
defendant ("the collision").
2. The collision occurred on Interstate 85 in Brunswick County, Virginia and  
near the intersection with Route 644.

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THE PARTIES

3. Defendant US Tires and Wheels of Queens, LLC is a limited liability corporation existing and organized under and by virtue of the laws of the State of New York.

4. At all times relevant to this action defendant US Tires and Wheels of Queens operated its business in Queens County, State of New York.

5. Plaintiff Jose Aybar is an individual residing in the County of Hudson, State of New Jersey. At the time of the collision plaintiff Jose Aybar was residing in Queens County, State of New York.

6. Jose Aybar is the Administrator of the Estate of Crystal Cruz-Aybar, his deceased wife, and Jose Aybar brings an action individually and as Administrator of the Estate of Crystal Cruz-Aybar and on behalf of The Estate of Crystal Cruz-Aybar ("plaintiff Estate of Cruz-Aybar").

7. At the time of the collision and her death, Crystal Cruz-Aybar, deceased, was the wife of plaintiff Jose Aybar.

8. At the time of the collision and her death, Crystal Cruz-Aybar, deceased, was an individual residing in Queens County, State of New York.

9. Plaintiff Orlando Gonzales is an individual residing in the County of Hudson, State of New Jersey.

10. Plaintiff Jesenia Aybar is the Administratrix of the Estate of Noelia Oliveras and Jesenia Aybar brings an action as Administratrix of the Estate of Noelia Oliveras and on behalf of The Estate of Noelia Oliveras ("plaintiff Estate of Oliveras").

11. At the time of the collision and her death, Noelia Oliveras, deceased, was an individual residing in the County of Hudson, State of New Jersey.

12. At the time of the collision and her death, Noelia Oliveras, deceased, was the mother of plaintiff Jesenia Aybar.

13. Plaintiff Jesenia Aybar is the Administratrix of the Estate of Tiffany Cabral, a deceased minor, and Jesenia Aybar brings an action as Administratrix of the Estate of Tiffany Cabral and on behalf of The Estate of Tiffany Cabral, a deceased minor, ("plaintiff Estate of Cabral").

14. At the time of the collision and her death, Tiffany Cabral, deceased, was an individual residing in the County of Hudson, State of New Jersey.

15. At the time of the collision and her death, Tiffany Cabral, deceased, was the sister of plaintiff Jesenia Aybar.

16. On the 11<sup>th</sup> day of November 2012, prior to the commencement of this action, Jesenia Aybar was granted sole custody of Keila Cabral, a minor, pursuant to an Order of the Superior Court of New Jersey, Chancery Division-Family Part, County of Hudson.

17. Jesenia Aybar as Legal Guardian of Keila Cabral, a minor, brings this action on behalf of the minor plaintiff, Keila Cabral ("plaintiff Keila Cabral").

18. Plaintiff Anna Aybar is an individual residing in the County of Queens, State of New York.

#### FACTS

19. On or about June 17, 2012, plaintiff Jose Aybar brought his vehicle, a 2002 Ford Explorer, to defendant US Tires and Wheels of Queens, LLC for service.

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20. At the time of this service, plaintiff Jose Aybar brought with him tires to be inspected and examined and, if suitable for use, installed by defendant for Mr. Aybar's use in driving to Disney World in Orlando, Florida.

21. Upon information and belief, defendant did not properly and adequately inspect, examine, check and/or test the tires and placed them on plaintiff Jose Aybar's vehicle knowing that the vehicle would be driven with those tires.

22. The defendant had a duty to properly and adequately inspect, examine, check and/or test the tires prior to placing them on plaintiff Jose Aybar's vehicle and to warn Mr. Aybar if they were not in a safe condition to use, and defendant negligently and carelessly disregarded that duty.

23. The defendant had a duty to not place unsafe tires on plaintiff Jose Aybar's vehicle so that plaintiff Jose Aybar and his passengers would be reasonably safe in his vehicle and defendant negligently and carelessly disregarded that duty.

24. Upon information and belief, defendant had actual and constructive knowledge prior to placing the tires on plaintiff Jose Aybar's vehicle that the tires were not fit for use on plaintiff Jose Aybar's vehicle due to their poor condition.

25. Upon information and belief, on July 1, 2012, plaintiff Jose Aybar was driving his vehicle on Interstate 85 in Virginia as part of a return trip from Disney World to New York when the left rear tire of the vehicle failed, causing plaintiff Jose Aybar to lose control of his vehicle, the vehicle to overturn, strike a guard rail and then strike a tree.

26. Upon information and belief, the collision occurred solely as a result of the negligence and carelessness of the defendant because the tires were not fit for safe use

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on the vehicle and defendant placed them on the vehicle anyway without warning Mr. Aybar about their condition.

27. The tires were unsafe, very low on tread and there were visible signs of dry rot prior to and at the time defendant placed them on plaintiff Jose Aybar's vehicle.

28. Upon information and belief, defendant provided no warning to plaintiff Jose Aybar about the condition of the tires.

29. The collision was caused by reason of the negligent and careless service performed by defendant, by reason of the failure of the defendant to properly and adequately inspect, examine, check and/or test the tires prior to placing them on plaintiff Jose Aybar's vehicle, by reason of defendant's the placement of the unsafe tires on the vehicle despite their poor and unfit condition for use and by reason of the failure of defendant to provide plaintiff Jose Aybar with any warning after making the negligent and careless decision to place the defective tires on the vehicle.

30. At the time of the collision, plaintiff Jose Aybar was operating his vehicle and plaintiff Orlando Gonzales, plaintiff Anna Aybar, plaintiff Keila Cabral, a minor, Tiffany Cabral, Crystal Cruz-Aybar and Noelia Oliveras were passengers in the vehicle.

31. As a result of the collision, caused solely by the negligence and carelessness of the defendant, jointly, severally and collectively, Jose Aybar, Orlando Gonzales, Anna Aybar, Keila Cabral, a minor, Tiffany Cabral, Crystal Cruz-Aybar and Noelia Oliveras were injured and/or died.

32. As a result of the collision, caused solely by the negligence and carelessness of the defendant, plaintiff Jose Aybar suffered severe and permanent injuries, including but not limited to two herniated disks, two bilateral disk bulges,

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lacerations on his arms and legs and broken blood vessels in his eye. Mr. Aybar underwent medical treatment and rehabilitation and will be in need for future medical care and expense. He has undergone and will continue to undergo pain and suffering, mental anguish and loss of life's pleasures.

33. As a result of the collision, caused solely by the negligence and carelessness of the defendant, plaintiff Orlando Gonzales suffered severe and permanent injuries, including but not limited to fractured ribs, fracture of his left arm, two herniated disks, and lacerations. Mr. Gonzalez underwent medical treatment and rehabilitation and will be in need for future medical care and expense. He has undergone and will continue to undergo pain and suffering, mental anguish and loss of life's pleasures.

34. As a result of the collision, caused solely by the negligence and carelessness of the defendant, plaintiff Anna Aybar suffered severe and permanent injuries, including but not limited to crushed bones in her left hand, broken bones in her left foot, a dislocated pelvis, a dislocated right leg, and various cuts and bruises. She has had multiple surgeries, medical treatment and rehabilitation. Ms. Aybar will be in need for future medical care and expense. She has undergone and will continue to undergo pain and suffering, mental anguish and loss of life's pleasures.

35. As a result of the collision, caused solely by the negligence and carelessness of the defendant, plaintiff Keila Cabral, a minor, suffered severe and permanent injuries, including but not limited to a fractured pelvis and multiple lacerations resulting in scarring. Ms. Cabral underwent medical treatment and rehabilitation and will be in need for future medical care and expense. She has undergone and will continue to undergo pain and suffering, mental anguish and loss of life's pleasures.

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36. As a result of the collision, caused solely by the negligence and carelessness of the defendant, Tiffany Cabral was ejected from the vehicle and died as a result of her injuries.

37. As a result of the collision, caused solely by the negligence and carelessness of the defendant, Crystal Cruz-Aybar was ejected from the vehicle and died as a result of her injuries.

38. As a result of the collision, caused solely by the negligence and carelessness of the defendant, Noelia Oliveras was partially ejected from the vehicle and died as a result of her injuries.

**AND AS FOR THE FIRST CAUSE OF ACTION  
NEGLIGENCE**

(On behalf of plaintiff Jose Aybar against  
defendant US Tires and Wheels of Queens)

39. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

40. Plaintiff Jose Aybar was operating his motor vehicle at the time of the aforementioned collision that is the subject of this lawsuit.

41. As a result of the collision caused solely by the negligence and carelessness of the defendant, as set forth above, plaintiff Jose Aybar was caused to suffer severe bodily injuries.

42. Plaintiff Jose Aybar's injuries were caused without any fault and/or negligence on the part of plaintiff Jose Aybar or any other plaintiff or passenger in his vehicle.

43. That by reason of the foregoing, plaintiff Jose Aybar was caused to sustain serious injuries described above.

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44. That by reason of the foregoing, plaintiff Jose Aybar was damaged in an amount to be determined upon the trial of this action and in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction, together with the costs and disbursements of this action.

**AND AS FOR THE SECOND CAUSE OF ACTION  
NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS**

(On behalf of plaintiff Jose Aybar against  
defendant US Tires and Wheels of Queens)

45. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

46. Plaintiff Jose Aybar was operating his motor vehicle at the time of the aforementioned collision that is the subject of this lawsuit.

47. Plaintiff Jose Aybar's wife, Crystal Cruz-Aybar, deceased, his mother, Noelia Oliveras, deceased, and his sister, Tiffany Cabral, deceased, were all passengers in plaintiff Jose Aybar's vehicle and were killed as a result of the collision caused solely by the negligence and carelessness of the defendant.

48. As a result of the collision caused solely by the negligence and carelessness of the defendant, as set forth above, plaintiff Jose Aybar witnessed the injuries and death of his wife, mother and sister.

49. As a result of the collision caused solely by the negligence and carelessness of the defendant, as set forth above, plaintiff Jose Aybar was within the zone of danger and feared for his own safety and was in fact injured as well.

50. That by reason of the foregoing, plaintiff Jose Aybar was caused to sustain serious injuries including shock, mental anguish and emotional distress; that these injuries are permanent and ongoing; and as a result of said injuries plaintiff Jose Aybar

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has been and will be caused to incur expenses for medical care and attention and as a further result plaintiff Jose Aybar was and will be rendered unable to perform his normal activities and duties and has sustained a resultant loss therefrom.

51. That by reason of the foregoing, plaintiff Jose Aybar was damaged in an amount to be determined upon the trial of this action and in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction, together with the costs and disbursements of this action.

**AND AS FOR THE THIRD CAUSE OF ACTION  
NEGLIGENCE**

(On behalf of plaintiff Orlando Gonzales against defendant US Tires and Wheels of Queens)

52. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

53. Plaintiff Orlando Gonzales was a front seat passenger in the motor vehicle operated by plaintiff Jose Aybar at the time of the aforementioned collision that is the subject of this lawsuit.

54. As a result of the collision caused solely by the negligence and carelessness of the defendant, as set forth above, plaintiff Orlando Gonzales was caused to suffer severe bodily injuries.

55. Plaintiff Orlando Gonzales' injuries were caused without any fault and/or negligence on the part of plaintiff Jose Aybar or any other plaintiff or passenger in the vehicle.

56. That by reason of the foregoing, plaintiff Orlando Gonzales was caused to sustain serious injuries described above.

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57. That by reason of the foregoing, plaintiff Orlando Gonzales was damaged in an amount to be determined upon the trial of this action and in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction, together with the costs and disbursements of this action.

**AND AS FOR THE FOURTH CAUSE OF ACTION  
NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS**

(On behalf of plaintiff Orlando Gonzales against  
defendant US Tires and Wheels of Queens)

58. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

59. Plaintiff Orlando Gonzales was a front seat passenger in the motor vehicle operated by plaintiff Jose Aybar at the time of the aforementioned collision that is the subject of this lawsuit.

60. Plaintiff Orlando Gonzales' fiancée, Noelia Oliveras, deceased, was also a passenger in plaintiff Jose Aybar's vehicle and was killed as a result of the collision caused solely by the negligence and carelessness of the defendant.

61. As a result of the collision caused solely by the negligence and carelessness of the defendant, as set forth above, plaintiff Orlando Gonzales witnessed the injuries and death of his fiancée. Plaintiff Orlando Gonzales was a front seat passenger in the motor vehicle operated by plaintiff Jose Aybar at the time of the aforementioned collision that is the subject of this lawsuit.

62. As a result of the collision caused solely by the negligence and carelessness of the defendant, as set forth above, plaintiff Orlando Gonzales was within the zone of danger and feared for his own safety and was in fact injured as well.

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63. That by reason of the foregoing, plaintiff Orlando Gonzales was caused to sustain serious injuries including shock, mental anguish and emotional distress; that these injuries are permanent and ongoing; and as a result of said injuries plaintiff Orlando Gonzales has been and will be caused to incur expenses for medical care and attention and as a further result plaintiff Orlando Gonzales was and will be rendered unable to perform his normal activities and duties and has sustained a resultant loss therefrom.

64. That by reason of the foregoing, plaintiff Orlando Gonzales was damaged in an amount to be determined upon the trial of this action and in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction, together with the costs and disbursements of this action.

**AND AS FOR THE FIFTH CAUSE OF ACTION  
WRONGFUL DEATH**

(On behalf of plaintiff The Estate of Crystal Cruz-Aybar against defendant US Tires and Wheels of Queens)

65. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

66. Plaintiff Jose Aybar as the Administrator of the Estate of Crystal Cruz-Aybar brings this claim on behalf of the Estate of Crystal Cruz-Aybar and all those entitled to recover damages on behalf of the Estate of Crystal Cruz-Aybar, including her surviving husband plaintiff Jose Aybar.

67. Plaintiff Jose Aybar as Administrator of the Estate of Crystal Cruz-Aybar brings this claim for the wrongful death of his wife Crystal Cruz-Aybar, deceased.

68. Crystal Cruz-Aybar, deceased, was a second row passenger in the motor vehicle operated by plaintiff Jose Aybar at the time of the aforementioned collision that is the subject of this lawsuit.

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69. Crystal Cruz-Aybar, deceased, was injured, ejected from the vehicle and killed as a result of the collision that is the subject of this lawsuit and which was caused solely by the negligence and carelessness of the defendant.

70. Crystal Cruz-Aybar, deceased, was injured and killed without any fault and/or negligence on the part of plaintiff Jose Aybar or any other plaintiff or passenger in the vehicle.

71. Crystal Cruz-Aybar, deceased, was 22 years old at the time of her death and was in good health, sober, industrious, and in possession of all of her faculties and was steadily employed as a secretary/receptionist.

72. The surviving husband, plaintiff Jose Aybar, and all other distributees of the Estate of Crystal Cruz-Aybar, deceased, were dependent upon Crystal Cruz-Aybar, deceased, for support, comfort and maintenance, and have been and will be deprived of this support, comfort and maintenance.

73. Furthermore, the additional relatives of Crystal Cruz-Aybar, deceased, have been and will be deprived of their relationship and communion with Crystal Cruz-Aybar, deceased.

74. In connection with the injuries and death sustained by Crystal Cruz-Aybar, deceased, all caused solely by the negligence and carelessness of the defendant, the Estate of Crystal Cruz-Aybar, deceased, necessarily incurred expenses in various and diverse amounts, including but not limited to medical and funeral expenses, and will necessarily incur expenses in various and diverse amounts in the settlement of the Estate of Crystal Cruz-Aybar, deceased.

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75. That by reason of the foregoing, plaintiff the Estate of Crystal Cruz-Aybar, deceased, surviving husband plaintiff Jose Aybar and the other distributees, have suffered damages and claim all pecuniary losses in an amount to be determined upon the trial of this action and in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction, together with the costs and disbursements of this action.

**AND AS FOR THE SIXTH CAUSE OF ACTION  
SURVIVAL ACTION/CONSCIOUS PAIN AND SUFFERING  
(On behalf of plaintiff The Estate of Crystal Cruz-Aybar against  
defendant US Tires and Wheels of Queens)**

76. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

77. Solely by reason of the carelessness and negligence of the defendant, as alleged herein, Crystal Cruz-Aybar, deceased, was caused to suffer severe injuries and be ejected from plaintiff Jose Aybar's vehicle at the time of the collision, upon which time Crystal Cruz-Aybar, deceased, suffered grievous pain, agony and mental anguish and upon information and belief she was conscious after being injured and then died at the scene of the collision.

78. That by reason of the foregoing, plaintiff the Estate of Crystal Cruz-Aybar, deceased, have suffered damages in an amount to be determined upon the trial of this action and in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction, together with the costs and disbursements of this action.

**AND AS FOR THE SEVENTH CAUSE OF ACTION  
WRONGFUL DEATH  
(On behalf of plaintiff The Estate of Noelia Oliveras against  
defendant US Tires and Wheels of Queens)**

79. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

80. Jesenia Aybar as the Administratrix of the Estate of Noelia Oliveras brings this claim on behalf of the Estate of Noelia Oliveras and all those entitled to recover damages on behalf of the Estate of Noelia Oliveras, including Jose Aybar, Anna Aybar, Keila Cabral and Jesenia Aybar.

81. Jesenia Aybar as the Administratrix of the Estate of Noelia Oliveras brings this claim for the wrongful death of Noelia Oliveras, deceased.

82. Noelia Oliveras, deceased, was a third row passenger in the motor vehicle operated by plaintiff Jose Aybar at the time of the aforementioned collision that is the subject of this lawsuit.

83. Noelia Oliveras, deceased, was injured, partially ejected from the vehicle and killed as a result of the collision that is the subject of this lawsuit and which was caused solely by the negligence and carelessness of the defendant.

84. Noelia Oliveras, deceased, was injured and killed without any fault and/or negligence on the part of plaintiff Jose Aybar or any other plaintiff or passenger in the vehicle.

85. Noelia Oliveras, deceased, was 42 years old at the time of her death and was in good health, sober, industrious, and in possession of all of her faculties and was steadily employed as a real estate agent.

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86. The distributees of the Estate of Noelia Oliveras, deceased, including her son plaintiff Jose Aybar and daughters Jesenia Aybar, Anna Aybar, and Keila Cabral were dependent upon Noelia Oliveras, deceased, for support, comfort and maintenance, and have been and will be deprived of this support, comfort and maintenance.

87. Furthermore, the additional relatives of Noelia Oliveras, deceased, have been and will be deprived of their relationship and communion with Noelia Oliveras, deceased.

88. In connection with the injuries and death sustained by Noelia Oliveras, deceased, all caused solely by the negligence and carelessness of the defendant, the Estate of Noelia Oliveras, deceased, necessarily incurred expenses in various and diverse amounts, including but not limited to medical and funeral expenses, and will necessarily incur expenses in various and diverse amounts in the settlement of the Estate of Noelia Oliveras, deceased.

89. That by reason of the foregoing, plaintiff the Estate of Noelia Oliveras, deceased, her surviving next of kin including her son plaintiff Jose Aybar and daughters Jesenia Aybar, Anna Aybar and Keila Cabral and the other distributees, have suffered damages and claim all pecuniary losses in an amount to be determined upon the trial of this action and in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction, together with the costs and disbursements of this action.

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**AND AS FOR THE EIGHTH CAUSE OF ACTION  
SURVIVAL ACTION/CONSCIOUS PAIN AND SUFFERING  
(On behalf of plaintiff The Estate of Noelia Oliveras against  
defendant US Tires and Wheels of Queens)**

90. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

91. Solely by reason of the carelessness and negligence of the defendant, as alleged herein, Noelia Oliveras, deceased, was caused to suffer severe injuries and be partially ejected from plaintiff Jose Aybar's vehicle at the time of the collision, upon which time Noelia Oliveras, deceased, suffered grievous pain, agony and mental anguish and upon information and belief she was conscious after being injured and then died while being transported to the hospital.

92. That by reason of the foregoing, plaintiff the Estate of Noelia Oliveras, deceased, have suffered damages in an amount to be determined upon the trial of this action and in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction, together with the costs and disbursements of this action.

**AND AS FOR THE NINTH CAUSE OF ACTION  
NEGLIGENCE  
(On behalf of plaintiff Keila Cabral, a minor, against  
defendant US Tires and Wheels of Queens)**

93. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

94. Jesenia Aybar as Legal Guardian of Keila Cabral, a minor, brings this claim on behalf of Keila Cabral, a minor.

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95. Plaintiff Keila Cabral, a minor, was a third row passenger in the motor vehicle operated by plaintiff Jose Aybar at the time of the aforementioned collision that is the subject of this lawsuit.

96. As a result of the collision caused solely by the negligence and carelessness of the defendant, as set forth above, plaintiff Keila Cabral, a minor, was caused to suffer severe bodily injuries.

97. The injuries sustained by Keila Cabral, a minor, were caused without any fault and/or negligence on the part of plaintiff Jose Aybar or any other plaintiff or passenger in the vehicle.

98. That by reason of the foregoing, plaintiff Keila Cabral, a minor, was caused to sustain serious injuries, as described above.

99. That by reason of the foregoing, plaintiff Keila Cabral, a minor, was damaged in an amount to be determined upon the trial of this action and in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction, together with the costs and disbursements of this action.

**AS AND FOR THE TENTH CAUSE OF ACTION  
NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS  
(On behalf of plaintiff Keila Cabral against  
defendant US Tires and Wheels of Queens)**

100. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

101. Plaintiff Keila Cabral was a third row passenger in the motor vehicle operated by plaintiff Jose Aybar at the time of the aforementioned collision that is the subject of this lawsuit.

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102. Plaintiff Keila Cabral's mother, Olivia Oliveras, deceased, and her sister, Tiffany Cabral, deceased, were all passengers in plaintiff Jose Aybar's vehicle and were killed as a result of the collision caused solely by the negligence and carelessness of the defendant.

103. As a result of the collision caused solely by the negligence and carelessness of the defendant, as set forth above, plaintiff Keila Cabral witnessed the injuries and death of her mother and sister.

104. As a result of the collision caused solely by the negligence and carelessness of the defendant, as set forth above, plaintiff Keila Cabral was within the zone of danger and feared for her own safety and was in fact injured as well.

105. That by reason of the foregoing, plaintiff Keila Cabral was caused to sustain serious injuries including shock, mental anguish and emotional distress; that these injuries are permanent and ongoing; and as a result of said injuries plaintiff Keila Cabral has been and will be caused to incur expenses for medical care and attention and as a further result plaintiff Keila Cabral was and will be rendered unable to perform her normal activities and has sustained a resultant loss therefrom.

106. That by reason of the foregoing, plaintiff Jose Keila Cabral was damaged in an amount to be determined upon the trial of this action and in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction, together with the costs and disbursements of this action.

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AND AS FOR THE ELEVENTH CAUSE OF ACTION  
NEGLIGENCE

(On behalf of plaintiff Anna Aybar against  
defendant US Tires and Wheels of Queens)

107. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

108. Plaintiff Anna Aybar, was a second row passenger in the motor vehicle operated by plaintiff Jose Aybar at the time of the aforementioned collision that is the subject of this lawsuit.

109. As a result of the collision caused solely by the negligence and carelessness of the defendant, as set forth above, plaintiff Anna Aybar was caused to suffer severe bodily injuries and be ejected from the vehicle.

110. The injuries sustained by Anna Aybar were caused without any fault and/or negligence on the part of plaintiff Jose Aybar or any other plaintiff or passenger in the vehicle.

111. That by reason of the foregoing, plaintiff Anna Aybar was caused to sustain serious injuries described above.

112. That by reason of the foregoing, plaintiff Anna Aybar was damaged in an amount to be determined upon the trial of this action and in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction, together with the costs and disbursements of this action.

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**AND AS FOR THE TWELTH CAUSE OF ACTION  
NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS**

(On behalf of plaintiff Anna Aybar against  
defendant US Tires and Wheels of Queens)

113. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

114. Plaintiff Anna Aybar was a second row passenger in the motor vehicle operated by plaintiff Jose Aybar at the time of the aforementioned collision that is the subject of this lawsuit.

115. Plaintiff Anna Aybar's mother, Noelia Oliveras, deceased, and her sister, Tiffany Cabral, deceased, were all passengers in plaintiff Jose Aybar's vehicle and were killed as a result of the collision caused solely by the negligence and carelessness of the defendant.

116. As a result of the collision caused solely by the negligence and carelessness of the defendant, as set forth above, plaintiff Anna Aybar witnessed the injuries and death of her mother and sister.

117. As a result of the collision caused solely by the negligence and carelessness of the defendant, as set forth above, plaintiff Anna Aybar was within the zone of danger and feared for her own safety and was in fact injured as well.

118. That by reason of the foregoing, plaintiff Anna Aybar was caused to sustain serious injuries including shock, mental anguish and emotional distress; that these injuries are permanent and ongoing; and as a result of said injuries plaintiff Anna Aybar has been and will be caused to incur expenses for medical care and attention and as a further result plaintiff Anna Aybar was and will be rendered unable to perform her normal activities and duties and has sustained a resultant loss therefrom.

119. That by reason of the foregoing, plaintiff Anna Aybar was damaged in an amount to be determined upon the trial of this action and in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction, together with the costs and disbursements of this action.

**AND AS FOR THE THIRTEENTH CAUSE OF ACTION  
WRONGFUL DEATH**

**(On behalf of plaintiff The Estate of Tiffany Cabral, a deceased minor, against defendant US Tires and Wheels of Queens)**

120. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

121. Jesenia Aybar, as Administratrix of the Estate of Tiffany Cabral, a deceased minor, brings this claim on behalf of the Estate of state of Tiffany Cabral, a deceased minor, and all those entitled to recover damages on behalf of the Estate of Tiffany Cabral, including Jesenia Aybar, Jose Aybar, Anna Aybar and Keila Cabral.

122. Jesenia Aybar, as Administratrix of the Estate of Tiffany Cabral, a deceased minor, brings this claim for the wrongful death of Tiffany Cabral, a deceased minor.

123. Tiffany Cabral, a deceased minor, was a second row passenger in the motor vehicle operated by plaintiff Jose Aybar at the time of the aforementioned collision that is the subject of this lawsuit.

124. Tiffany Cabral, a deceased minor, at the time of the collision was the sister of plaintiffs Jesenia Aybar, Jose Aybar and Keila Cabral and the daughter of Noelia Oliveras, deceased.

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125. Tiffany Cabral, a deceased minor, was injured, ejected from the vehicle and killed as a result of the collision that is the subject of this lawsuit and which was caused solely by the negligence and carelessness of the defendant.

126. Tiffany Cabral, a deceased minor, was injured and killed without any fault and/or negligence on the part of plaintiff Jose Aybar or any other plaintiff or passenger in the vehicle.

127. Tiffany Cabral, a deceased minor, was 8 years old at the time of her death and was in good health, sober, industrious, and in possession of all of her faculties and was a young student with the majority of her life remaining.

128. The relatives of Tiffany Cabral, a deceased minor, have been and will be deprived of their relationship and communion with Tiffany Cabral, a deceased minor.

129. In connection with the injuries and death sustained by Tiffany Cabral, a deceased minor, all caused solely by the negligence and carelessness of the defendant, the Estate of Tiffany Cabral, a deceased minor, necessarily incurred expenses in various and diverse amounts, including but not limited to medical and funeral expenses, and will necessarily incur expenses in various and diverse amounts in the settlement of the Estate of Tiffany Cabral, a deceased minor.

130. That by reason of the foregoing, plaintiff the Estate of Tiffany Cabral, a deceased minor, surviving next of kin and the other distributees, have suffered damages and claim all pecuniary losses in an amount to be determined upon the trial of this action and in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction, together with the costs and disbursements of this action.

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**AND AS FOR THE FOURTEENTH CAUSE OF ACTION  
SURVIVAL ACTION/CONSCIOUS PAIN AND SUFFERING  
(On behalf of plaintiff The Estate of Tiffany Cabral, a deceased minor,  
against US Tires and Wheels of Queens)**

131. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs, as if fully set forth herein.

132. Solely by reason of the carelessness and negligence of the defendant, as alleged herein, Tiffany Cabral, a deceased minor, was caused to suffer severe injuries and be ejected from plaintiff Jose Aybar's vehicle at the time of the collision, upon which time Tiffany Cabral, a deceased minor, suffered grievous pain, agony and mental anguish and upon information and belief she was conscious after being injured and then died at the scene of the collision.

133. That by reason of the foregoing, plaintiff the Estate of Tiffany Cabral, a deceased minor, has suffered damages and claim all pecuniary losses in an amount to be determined upon the trial of this action and in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction, together with the costs and disbursements of this action.

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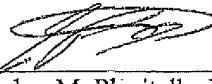
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WHEREFORE, all plaintiffs demand judgment against defendant on all claims and in an amount to be determined upon the trial of this action together with the costs and disbursements of this action.

Dated: Sept. 23, 2014  
Red Bank, NJ

COHEN, PLACITELLA & ROTH, P.C

By:   
Christopher M. Placitella, Esquire  
Attorney No. 2202497  
Joel S. Rosen, Esquire  
Mark B. Goodheart, Esquire  
Jared M. Placitella, Esquire  
Attorney No. 5216817  
2001 Market Street, Suite 2900  
Philadelphia, PA 19103  
Attorneys for all Plaintiffs

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VERIFICATION

STATE OF NEW YORK )

COUNTY OF NEW YORK )

ANNA AYBAR, hereby duly sworn, deposes and says:

I am the Plaintiff in the within action; I have read the foregoing COMPLAINT and know the contents thereof; the same is true to my own knowledge, except as to matters therein stated to be alleged upon information and belief; and as to those matters I believe them to be true.

Anna Aybar

ANNA AYBAR

Sworn to before me on this  
30<sup>th</sup> day of May 2014

Margaret Rheinstader  
NOTARY PUBLIC

COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL

MARGARET RHEINSTADER, Notary Public  
City of Philadelphia, Phila. County  
My Commission Expires October 11, 2015

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VERIFICATION

STATE OF NEW YORK )

COUNTY OF NEW YORK )

JESENIA AYBAR, hereby duly sworn, deposes and says:

I am the Plaintiff in the within action; I have read the foregoing COMPLAINT and know the contents thereof; the same is true to my own knowledge, except as to matters therein stated to be alleged upon information and belief; and as to those matters I believe them to be true.



\_\_\_\_\_  
JESENIA AYBAR

Sworn to before me on this  
30th day of May 2014



MARGARET RHEINSTADTER  
NOTARY PUBLIC

COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL

MARGARET RHEINSTADTER, Notary Public  
City of Philadelphia, Phila. County  
My Commission Expires October 11, 2016

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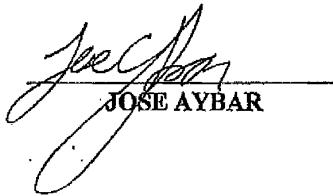
VERIFICATION

STATE OF NEW YORK )

COUNTY OF NEW YORK )

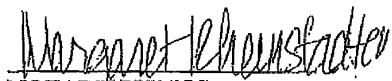
JOSE AYBAR, hereby duly sworn, deposes and says:

I am the Plaintiff in the within action; I have read the foregoing COMPLAINT and know the contents thereof; the same is true to my own knowledge, except as to matters therein stated to be alleged upon information and belief; and as to those matters I believe them to be true.

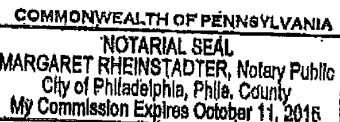


JOSE AYBAR

Sworn to before me on this  
30th day of May 2014



MARGARET RHEINSTADTER  
NOTARY PUBLIC



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VERIFICATION

STATE OF NEW YORK )

COUNTY OF NEW YORK )

ORLANDO GONZALEZ, hereby duly sworn, deposes and says:

I am the Plaintiff in the within action; I have read the foregoing COMPLAINT and know the contents thereof; the same is true to my own knowledge, except as to matters therein stated to be alleged upon information and belief; and as to those matters I believe them to be true.



ORLANDO GONZALEZ

Sworn to before me on this  
30th day of May 2014

Margaret Rheinstadter  
NOTARY PUBLIC.

COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
MARGARET RHEINSTADTER, Notary Public  
City of Philadelphia, Phila. County  
My Commission Expires October 11, 2015

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Index No. 9344/2014

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

JOSE AYBAR, ORLANDO GONZALES, JOSE AYBAR as Administrator of  
THE ESTATE OF CRYSTAL CRUZ-AYBAR, JESENIA AYBAR as  
Administratrix of THE ESTATE OF NOELIA OLIVERAS, JESENIA AYBAR  
as LEGAL GUARDIAN on behalf of KEILA CABRAL, a minor, ANNA  
AYBAR and JESENIA AYBAR as Administratrix of THE ESTATE OF  
TIFFANY CABRAL,

Plaintiffs,  
-against-

US TIRES AND WHEELS OF QUEENS, LLC

Defendant.

AMENDED VERIFIED COMPLAINT

**COHEN, PLACITELLA & ROTH, P.C.**  
*Attorneys for Plaintiffs*  
2001 Market Street  
Suite 2900  
Philadelphia, PA 19103

Tel: (215) 567-3500

**EXHIBIT C TO SAEZ AGUIRRE AFFIRMATION -  
SUMMONS AND VERIFIED COMPLAINT OF  
JOSE AYBAR, DATED JUNE 30, 2015  
(REPRODUCED HEREIN AT PP. 156-164)**

**EXHIBIT D TO SAEZ AGUIRRE AFFIRMATION -  
SUMMONS AND VERIFIED COMPLAINT OF  
ANNA AYBAR, ET AL., DATED JUNE 30, 2015  
(REPRODUCED HEREIN AT PP. 182-209)**

**EXHIBIT E TO SAEZ AGUIRRE AFFIRMATION -  
THIRD-PARTY SUMMONS AND THIRD-PARTY COMPLAINT  
OF JOSE AYBAR, ET AL., DATED JULY 19, 2016 [474 - 482]**

**FILED: QUEENS COUNTY CLERK 02/26/2019 05:28 PM**

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X  
JOSE AYBAR, ORLANDO GONZALES, JOSE AYBAR  
as Administrator of THE ESTATE OF CRYSTAL CRUZ-  
AYBAR, JESENIA AYBAR as Administratrix of THE  
ESTATE OF NOELIA OLIVERAS, JESENIA AYBAR as  
LEGAL GUARDIAN on behalf of KEILA CABRAL, a  
minor, ANNA AYBAR and JESENIA AYBAR as  
Administratrix of THE ESTATE OF TIFFANY CABRAL,

Index No.: 9344/2014

**THIRD-PARTY  
SUMMONS**

Plaintiffs,

-against-

US TIRES AND WHEELS OF QUEENS, LLC,

Defendant.

-----X  
US TIRES AND WHEELS OF QUEENS, LLC,

Third-Party Plaintiff,

-against-

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

Third-Party Defendants.

-----X

**ABOVE-NAMED THIRD PARTY DEFENDANTS:**

YOU ARE HEREBY SUMMONED to answer the third-party complaint of the defendant/third-party plaintiff, U.S. Tires and Wheels of Queens, LLC, which is served on you, and to serve a copy of your answer on the attorneys for the defendant/third-party plaintiff; counsel for the plaintiffs, Omrani & Taub, P.C., 16 Court Street, 28<sup>th</sup> Floor, Brooklyn, New York 11241; Certain & Zilberg, PLLC, 909 Third Avenue – 28<sup>th</sup> Floor, New York, New York 10022; attorneys for defendant/third-party defendant, Ford Motor Company, Aaron, Rappaport,

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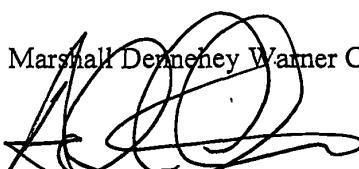
Feinstein & Deutsch, LLP, 600 Third Avenue, New York, New York 10016; attorneys for defendant/third-party defendant The Goodyear Tire & Rubber Company, DLA Piper LLP (US), 1251 Avenue of the Americas – 27<sup>th</sup> Floor, New York, New York 10020; and attorneys for defendant, Jose A. Aybar, Jr., Montfort, Healy, McGuire & Salley, 840 Franklin Avenue, P.O. Box 7677, Garden City, New York 11530-7677 within 20 days after the service of the summons, exclusive of the date of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York), and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the third-party complaint.

PLEASE TAKE NOTICE that pursuant to CPLR § 3402(b), the title of this action has been changed from the title of the plaintiff's complaint to the title of this third-party summons and complaint.

Dated: New York, New York  
July 19, 2016

Marshall Dennehey Warner Coleman & Goggin

By:

  
Adam C. Calvert

Attorneys for Defendant/Third-Party Plaintiff  
U.S. Tires and Wheels of Queens, LLC  
Wall Street Plaza · 88 Pine Street – 21<sup>st</sup> Floor  
New York, New York 10005  
Tel: (212) 376-6400  
Fax: (212) 376-6490  
File No.: 40318.00121

To: Through the Secretary of State – New York upon:  
The Goodyear Tire & Rubber Company  
200 Innovation Way  
Akron, OH 44316

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Through the Secretary of State – New York upon:  
Goodyear Dunlop Tires North America, Ltd.  
C/o Corporation Service Company  
80 State Street  
Albany, New York 12201

Through the Secretary of State – New York upon:  
Ford Motor Company  
1 American Road  
Dearborn, MI 48126

Omrani & Taub, P.C.  
Attorneys for Plaintiffs  
16 Court Street – 28<sup>th</sup> Floor  
Brooklyn, New York 11241  
Tel: (718) 855-1350

Certain & Zilberg, PLLC  
909 Third Avenue – 28th Floor  
New York, New York 10022  
212-687-7800

Aaronson, Rappaport, Feinstein & Deutsch, LLP  
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DLA Piper LLP (US)  
Attorneys for Defendant/Third-Party Defendant  
The Goodyear Tire & Rubber Company  
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New York, New York 10020  
Tel: (212) 335-4500

Montfort, Healy, McGuire & Salley  
Attorneys for Defendant Jose A. Aybar, Jr.  
840 Franklin Avenue  
PO Box 7677  
Garden City, New York 11530-7677  
516-747-4082

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X  
JOSE AYBAR, ORLANDO GONZALES, JOSE AYBAR  
as Administrator of THE ESTATE OF CRYSTAL CRUZ-  
AYBAR, JESENIA AYBAR as Administratrix of THE  
ESTATE OF NOELIA OLIVERAS, JESENIA AYBAR as  
LEGAL GUARDIAN on behalf of KEILA CABRAL, a  
minor, ANNA AYBAR and JESENIA AYBAR as  
Administratrix of THE ESTATE OF TIFFANY CABRAL,

Index No.: 9344/2014

**THIRD-PARTY  
COMPLAINT**

Plaintiffs,

-against-

US TIRES AND WHEELS OF QUEENS, LLC,

Defendant.

-----X  
US TIRES AND WHEELS OF QUEENS, LLC,

Third-Party Plaintiff,

-against-

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

Third-Party Defendants.

-----X

Defendant/third-party plaintiff, U.S. Tires and Wheels of Queens, LLC, by its attorneys,  
Marshall Dennehey Warner Coleman & Goggin, as and for its third-party complaint against The  
Goodyear Tire & Rubber Company, Goodyear Dunlop Tires North America, Ltd. and Ford  
Motor Company, alleges upon information and belief, as follows:

1. Plaintiffs commenced an action for personal injury and wrongful death against defendant/third-party plaintiff US Tires and Wheel of Queens, LLC under Index No. 9344/14 for

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US Tire's alleged negligence in the installation of Goodyear tires on plaintiff-Jose Aybar's Ford Explorer. The tires allegedly failed, causing an accident and injuries on July 1, 2012. Complaint & Answer (**Exhibit A**).

2. Plaintiff Jose Aybar commenced a separate action against The Goodyear Tire & Rubber Company, and Goodyear Dunlop Tires North America, Ltd., (hereinafter "Goodyear") under Index No. 706908/15, alleging that Goodyear was liable to him for the same July 1, 2012 accident based on strict products liability, negligence, breach of warranty, and deceptive trade practices. Complaint in Index No. 706908/15 (**Exhibit B**).

3. Plaintiffs Anna Aybar, Orlando Gonzalez, Jesenia Aybar, as legal guardian on behalf of Keyla Cabral, an infant over the age of fourteen (14) years; Jesnia 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, commenced an action against Jose A. Aybar, Jr., Ford Motor Company, The Goodyear Tire & Rubber Co., and John Does 1 thru 30, under Index No. 706909/15 for the same July 1, 2012 accident based on strict products liability, negligence, breach of warrant, and deceptive trade practices. Complaint in Index No. 706909/15 (**Exhibit C**).

**AS AND FOR A FIRST CAUSE OF ACTION  
AGAINST THE THIRD-PARTY DEFENDANTS  
(COMMON LAW INDEMNITY AND CONTRIBUTION)**

4. Defendant/third-party plaintiff repeats and realleges the allegations contained in paragraphs 1 through 3 as if set forth fully herein.

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5. If US Tires and Wheels of Queens LLC is held liable to anyone in this action, its liability and damages will have arisen out of the affirmative active and primary negligence of The Goodyear Tire & Rubber Company, Goodyear Dunlop Tires North America, Ltd. and Ford Motor Company, their agents, servants or employees, and without any active or primary negligence or active participation on the part of US Tires and Wheels of Queens LLC, and that if any negligence or liability is found to exist on the part of US Tires and Wheels of Queens LLC, that liability and negligence would be secondary or passive or the result solely of the operation of law as opposed to negligence of The Goodyear Tire & Rubber Company, Goodyear Dunlop Tires North America, Ltd. and Ford Motor Company, whose liability and negligence will be active and primary, and if the plaintiff's allegations are proven true at trial US Tires and Wheels of Queens LLC will be entitled to and demands common law indemnification or contribution from The Goodyear Tire & Rubber Company, Goodyear Dunlop Tires North America, Ltd. and Ford Motor Company for the amount of any verdict or judgment that may be recovered against it in this action.

**WHEREFORE**, defendant/third-party plaintiff U.S. Tires and Wheels of Queens, LLC demands judgment over and against The Goodyear Tire & Rubber Company, Goodyear Dunlop Tires North America, Ltd. and Ford Motor Company for all or part of any verdict or judgment that may be had against the defendant/third-party plaintiff in this action; judgment against The Goodyear Tire & Rubber Company, Goodyear Dunlop Tires North America, Ltd. and Ford Motor Company, for all attorneys' fees, costs, interest, other expenses and all costs of settlement of the claim and/or satisfaction of judgment as may be obtained against defendant/third-party plaintiff U.S. Tires and Wheels of Queens, LLC, in connection with the subject action because of

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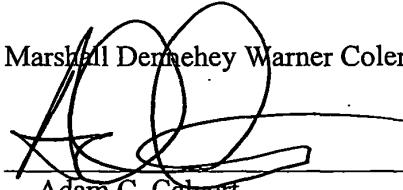
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third-party defendants' negligence; and together with all costs, interest, expenses, and legal fees incurred in defending the litigation.

Dated: New York, New York  
July 19, 2016

Marshall Dennehey Warner Coleman & Goggin

By:

  
Adam C. Calvert

Attorneys for Defendant/Third-Party Plaintiff  
U.S. Tires and Wheels of Queens, LLC  
Wall Street Plaza · 88 Pine Street – 21<sup>st</sup> Floor  
New York, New York 10005  
Tel: (212) 376-6400  
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To: Through the Secretary of State – New York upon:  
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C/o Corporation Service Company  
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Dearborn, MI 48126

Omrani & Taub, P.C.  
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600 Third Avenue  
New York, New York 10016  
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Montfort, Healy, McGuire & Salley  
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840 Franklin Avenue  
PO Box 7677  
Garden City, New York 11530-7677  
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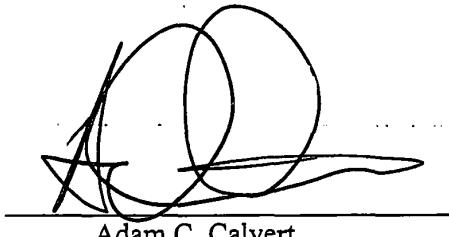
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**ATTORNEY VERIFICATION**

Adam C. Calvert, an attorney admitted in the State of New York, affirms and says:

I am associated with the firm of Marshall Dennehey Warner Coleman & Goggin, attorneys for defendant/third-party plaintiff U.S. Tires and Wheels of Queens, LLC. I have read the Verified Third-Party Complaint and know its contents and they are true to my knowledge, except those matters which are stated to be alleged on information and belief, and as to those matters I believe them to be true. The reason why this verification is made by me instead of by defendant/third-party plaintiff U.S. Tires and Wheels of Queens, LLC, is because it is not in the county where my firm maintains an office.

Dated: New York, New York  
July 19, 2016



A handwritten signature in black ink, appearing to read "Adam C. Calvert". The signature is fluid and includes a stylized "A" and "C".

Adam C. Calvert