

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

LEANN GENTRY AND JAMES GENTRY
4040 W. 131st Terrace,
Leawood, KS 66209

Plaintiffs,

v.

SOLCO HEALTHCARE U.S., LLC,
REGISTERED AGENT:
INTERSTATE DOCUMENT FILINGS INC.
208 West State St.
Trenton, New Jersey 08608

PRINSTON PHARMACEUTICALS, INC.,
REGISTERED AGENT:
JUN DU
2001 Eastpark Boulevard,
Cranbury, New Jersey 08512

TEVA PHARMACEUTICALS USA, INC.
REGISTERED AGENT:
CORPORATE CREATIONS NETWORK INC.
2747 Olive Blvd., #300
Saint Louis, Missouri 63141

THE HARVARD DRUG GROUP, L.L.C. d/b/a
MAJOR PHARMACEUTICALS
REGISTERED AGENT:
C T CORPORATION SYSTEM
120 South Central Ave.
Clayton Missouri 63105

HEN HOUSE MARKETPLACE, LLC.
REGISTERED AGENT:
R. OTTO MALY
211 N. Stadium Blvd.
Columbia, Missouri 65203

Civil Action No. 2:18-cv-4214

Removed from the Circuit
Court of Boone County,
Missouri, Case No.
18BA-CV03617

JURY TRIAL DEMANDED

FOUR B CORP.)
d/b/a Balls Food Stores)
REGISTERED AGENT:)
LUDER & WEIST, LLC)
7400 W. 132 Street, Ste. 110)
Overland Park, Kansas 66213)
)
John Does 1-4)
Service to be determined)
)
Defendants)

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant Teva Pharmaceuticals USA, Inc. (“Teva”), by and through its undersigned attorneys, hereby removes this case from the Circuit Court of Boone County, Missouri, case no. 18BA-CV03617, to the United States District Court for the Western District of Missouri, Central Division, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. In support thereof, Teva states:

STATE COURT PROCEEDINGS

1. On or about September 5, 2018, Plaintiffs Leann Gentry and James Gentry (“Plaintiffs”), filed a Petition in the Circuit Court of Boone County, Missouri, case no. 18BA-CV03617, naming as defendants Teva Pharmaceuticals USA, Inc., Solco Healthcare U.S., LLC (“Solco”) Princeton Pharmaceuticals, Inc. (“Princeton”), The Harvard Drug Group, L.L.C. d/b/a Major Pharmaceuticals (“HDG”), and Hen House Marketplace, LLC (“Hen House”). (See **Ex. A**).¹

¹ In accordance with 28 U.S.C. § 1446(a), a complete copy of all state court process, pleadings, orders, and other filings, including Plaintiffs’ Petition and First Amended Petition, is attached hereto as **Exhibit A**.

2. According to the notice of service filed in the state court docket on September 13, 2018, Plaintiffs' Petition, setting forth Plaintiffs' claims for relief, was served on Teva on September 12, 2018. (**Ex. A**).

3. According to the notice of service filed in the state court docket on September 14, 2018, Plaintiffs' Petition was served on HDG on September 13, 2018. (**Ex. A**).

4. According to the notice of service filed in the state court docket on September 17, 2018, Plaintiffs' Petition was served on Princeton on September 12, 2018. (**Ex. A**).

5. According to the notice of service filed in the state court docket on September 21, 2018, Plaintiffs' Petition was served on Hen House on September 20, 2018. (**Ex. A**).

6. According to the notice of service filed in the state court docket on September 28, 2018, Plaintiffs' Petition was served on Solco on September 14, 2018. (**Ex. A**).

7. On October 9, 2018, Plaintiffs filed a First Amended Petition for Damages ("Am. Pet.") adding Four B Corp. (hereinafter "Four B") and John Does 1-4 as additional defendants. (**Ex. A**). Four B and John Does 1-4 have yet to be served.

8. Upon information and belief, no other process, proceedings, or orders have been filed or issued in the case or served on Defendants. Teva and Defendants consenting to removal specifically reserve all rights to assert any defenses and/or objections to which they may be entitled, including but not limited to proper service.

9. This case is removable to this United States District Court, pursuant to 28 U.S.C. § 1332(a)(1), because this Court has original subject matter jurisdiction over this action between citizens of different states in which the amount in controversy exceeds \$75,000.

10. Venue is proper under 28 U.S.C. § 1441(a) because the United States District Court for the Western District of Missouri, Central Division, is the United States District Court

for the district and division embracing the place where the state court case was pending, specifically, the Circuit Court of Boone County, Missouri.

CITIZENSHIP OF PARTIES

11. According to the Amended Petition, Plaintiffs are or were citizens of Kansas and reside or resided at 4040 W. 131st Terrace, Leawood, Kansas 66209. (Am. Pet. ¶¶ 1-2).

12. None of the entities properly joined as Defendants are businesses incorporated under the laws of Missouri or Kansas, or have their principal place of business in Missouri or Kansas.

13. Plaintiffs allege that Solco was at all pertinent times and currently is a Delaware limited liability company whose principal place of business is located in New Jersey. (Am. Pet. ¶ 3). A limited liability company has the citizenship of each of its members for purposes of diversity jurisdiction. *GMAC Commercial Credit LLC v. Dillard Dept. Stores, Inc.*, 357 F.3d 827, 829 (8th Cir. 2004). Plaintiffs assert that Solco is a wholly-owned subsidiary of Princeton and Zhejiang Huahai Pharmaceutical. (Am. Pet. ¶ 3). Princeton is incorporated in Delaware with its principal place of business in New Jersey. (Am. Pet. ¶ 4). Zhejiang Huahai Pharmaceutical Co., Ltd. is a Chinese corporation, with U.S subsidiaries, including Huahai US, Inc. On information and belief, Solco is a wholly-owned subsidiary of Huahai US, Inc., the sole member of Solco, which is a New Jersey corporation with its principal place of business in New Jersey. For purposes of 28 U.S.C. § 1332(c)(1), Solco was and is a citizen of Delaware and New Jersey, and it was not and is not a citizen of Missouri or Kansas.

14. Plaintiffs allege that Princeton is a Delaware corporation with its principal place of business in New Jersey. (Am. Pet. ¶ 4). Under 28 U.S.C. § 1332(c)(1) a corporation is deemed to be “a citizen of every State and foreign state by which it has been incorporated and of the State

or foreign state where it has its principal place of business” For purposes of 28 U.S.C. § 1332(c)(1), Princeton is therefore deemed to be a citizen of Delaware and New Jersey, and it was not and is not a citizen of Missouri or Kansas.

15. Plaintiffs incorrectly allege that Teva is a corporation organized under the laws of Pennsylvania with its principal place of business in Pennsylvania. (Am. Pet. ¶ 5). In fact, Teva is a corporation organized under the laws of Delaware with a principal place of business in Pennsylvania. For purposes of 28 U.S.C. § 1332(c)(1), Teva is therefore deemed to be a citizen of Delaware and Pennsylvania, and it was not and is not a citizen of Missouri or Kansas.

16. Plaintiffs allege that Defendant HDG is a Michigan limited liability company with its principal place of business in Michigan. (Am. Pet. ¶ 6). On information and belief, HDG is a wholly-owned subsidiary of Generic Drug Holdings, Inc., which is its sole member. Generic Drug Holdings, Inc. is a Delaware corporation with its principal place of business in Delaware. For purposes of 28 U.S.C. § 1332(c)(1), HDG therefore was and is a citizen of Delaware, and it was not and is not a citizen of Missouri or Kansas. *See GMAC Commercial Credit LLC*, 357 F.3d at 829.

17. Plaintiffs allege that “Hen House Marketplace Inc.” is a limited liability company organized under the laws of Missouri with a principal place of business in Missouri. (Am. Pet. ¶ 7). “Hen House Marketplace Inc.” is misidentified and is not a legal entity. To the extent Plaintiffs intended to refer to the Hen House Marketplace, LLC entity identified in the case caption, upon information and belief, Hen House Marketplace, LLC is a real estate holding company that has been misidentified in this action since it has no role in the ownership, operation, or management of the Hen House pharmacy in Leawood, Kansas, where Plaintiffs allegedly purchased valsartan. If Hen House were properly a party to this action, it would be

deemed a citizen of Missouri for purposes of diversity jurisdiction. However, as set forth below, the citizenship of Hen House should be disregarded because this party has been fraudulently joined to defeat diversity. *See* 28 U.S.C. § 1441 (“A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest **properly joined** and served as defendants is a citizen of the State in which such action is brought.” (emphasis added)).

18. Four B is a Kansas corporation with its principal place of business in Kansas. (Am. Pet. ¶ 8). For purposes of 28 U.S.C. § 1332(c)(1), Four B therefore was and is a citizen of Kansas, and it was not and is not a citizen of Missouri. As set forth below, the citizenship of Four B should be disregarded because it has been fraudulently joined to defeat diversity. *See* 28 U.S.C. § 1441.

19. The “Doe” Defendants are alleged to have dispensed prescriptions to Plaintiff Leann Gentry in Kansas, but their state of residence is not indicated. (Am. Pet. ¶ 9). Regardless, the citizenship of these unidentified defendants is irrelevant to diversity removal. *See* 28 U.S.C. § 1441(b)(1) (“citizenship of defendants sued under fictitious names shall be disregarded”); *see also, Noble v. Ozborn-Hessey Logistics*, 2015 WL 852392, at *3 (W.D. Mo. Feb. 26, 2015) (“Pursuant to 28 U.S.C. § 1441(b)(1), the Court disregards the citizenship of the John Doe Defendants.”).

FRAUDULENT JOINDER OF DEFENDANTS HEN HOUSE AND FOUR B

20. The putative Kansas citizenship of Four B, if properly joined, would destroy diversity jurisdiction under 28 U.S.C. § 1332(a), because Four B and Plaintiffs are citizens of Kansas. Alternatively, Hen House’s putative Missouri citizenship would preclude removal under

28 U.S.C. § 1441(b)(2), which prevents removal if a properly joined defendant is a citizen of the state in which the action is brought.

21. However, a fraudulently joined defendant's citizenship is disregarded and does not prevent removal under either of the above-described circumstances (lack of diversity / home state exception). *See, e.g., Couzens v. Donohue*, 854 F.3d 508, 513 (8th Cir. 2017).

22. A defendant is considered fraudulently joined if “there exists no reasonable basis in fact and law supporting a claim against [it]” *Wiles v. Capitol Indem. Corp.*, 280 F.3d 868, 871 (8th Cir. 2002).

A. Choice of Law

23. Missouri conflicts of law principles will govern the choice-of-law inquiry, because a district court sitting in diversity must apply the choice-of-law rules of the state in which the action was originally filed. *See Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941); *Wolfley v. Solelectron USA, Inc.*, 541 F.3d 819, 823 (8th Cir. 2008) (applying Missouri choice of law principles).

24. When determining choice-of-law questions in both tort and contract cases, Missouri courts apply the “most significant relationship” test established by the Restatement (Second) of Conflicts of Law. *See Dorman v. Emerson Elec. Co.*, 23 F.3d 1354, 1358 (8th Cir. 1994); *Kennedy v. Dixon*, 439 S.W.2d 173, 184 (Mo. 1969). This test is applied individually to each particular issue under the principle of “dépeçage” and is a two-step process. *See Glasscock v. Miller*, 720 S.W.2d 771, 775 (Mo. Ct. App. 1986). The first step is to determine whether an actual conflict of law exists, for if no conflict exists, the law of the forum state applies by default. *See, e.g., Wilson v. Image Flooring, LLC*, 400 S.W.3d 386, 396 (Mo. Ct. App. 2013) (noting differences between Kansas and Missouri tort laws).

25. For the reasons discussed below, Hen House and Four B are fraudulently joined under both Missouri and Kansas law, so on this issue no actual conflict of laws exists, and the law of the forum state, Missouri, applies by default.

**B. No Reasonable Basis Exists for Claims Against Hen House
or Four B Under Missouri Law**

26. Hen House and Four B have been fraudulently joined by Plaintiffs because Missouri's "innocent seller" statute confirms there is no reasonable basis in fact or law to support a claim by Plaintiffs against either entity.

27. Missouri's "innocent seller" statute, Mo. Rev. Stat. § 537.762.1 (2000), provides that in a products liability action "[a] defendant whose liability is based solely on his status as a seller in the stream of commerce may be dismissed from a products liability claim as provided in this section." *See also* Mo. Rev. Stat. § 537.760 (2000) (defining products liability claims under Missouri law). Plaintiffs' Amended Petition makes essentially no factual allegations against Four B, other than describing it as a corporation d/b/a Balls Food Stores, (Am. Pet. ¶ 8), presumably based on Four B's purported business relationship with the Kansas pharmacy where Plaintiffs allegedly purchased valsartan, (*see* Am. Pet. ¶ 18).² Hen House, as alleged in Plaintiffs' Amended Petition, was merely a "seller in the stream of commerce" of the product at issue. (*See* Am. Pet. ¶ 18). Accordingly, there is no reasonable basis for liability against Four B or Hen House under Missouri law, and their joinder in this action is fraudulent as it is solely designed to deprive federal courts of jurisdiction. *See Wiles*, 280 F.3d at 871 ("Joinder is fraudulent and

² Based on information and belief, Defendant Hen House Market Place, LLC is a Missouri real estate holding company with no connection to the ownership and operation of the Hen House Market (Kansas grocery store) where Plaintiff Leann Gentry allegedly filled her prescriptions. Rather, Kansas corporation Four B, d/b/a Balls Food Stores, owns and operates the chain of Hen House Market grocery stores. Plaintiffs amended their Petition on October 9, 2018, to name Four B as a defendant, but failed to dismiss Hen House Marketplace, LLC.

removal is proper when there exists no reasonable basis in fact and law supporting a claim against the resident defendants.”); *see, e.g., Couzens*, 854 F.3d at 513.

28. Missouri’s innocent seller statute, Mo. Rev. Stat. § 537.762 (2000), provides, in relevant part:

1. A defendant whose liability is based solely on his status as a seller in the stream of commerce may be dismissed from a products liability claim as provided in this section.
2. This section shall apply to any products liability claim in which another defendant, including the manufacturer, is properly before the court and from whom total recovery may be had for plaintiff’s claim.
- ...
6. No order of dismissal under this section shall operate to divest a court of venue or jurisdiction otherwise proper at the time the action was commenced. A defendant dismissed pursuant to this section shall be considered to remain a party to such action only for such purposes.
7. An order of dismissal under this section shall be interlocutory until final disposition of plaintiff’s claim by settlement or judgment and may be set aside for good cause shown at anytime prior to such disposition.

29. The Missouri Supreme Court has held that this statute contains both substantive and procedural provisions. *Gramex Corp. v. Green Supply, Inc.*, 89 S.W.3d 432, 445 (Mo. 2002). The substantive provisions of the statute are subsections 1 and 2, which require that the defendant seeking dismissal demonstrate that its liability is solely based on its status as a seller in the stream of commerce and that the plaintiff can fully recover from another defendant, such as the manufacturer, who is properly before the court. *See Miravalle v. One World Tech., Inc.*, 2018 WL 3643722, at *2 (E.D. Mo. Aug. 1, 2018).

30. Plaintiffs' claims in this case against Hen House and Four B are entirely based on their status as sellers in the stream of commerce. (*See generally* Am. Pet.).

31. The remaining Defendants are the manufacturers of the drug at issue. Although the manufacturer Defendants deny liability in this action, Plaintiffs may fully recover from the manufacturer Defendants if liability is found under applicable law. *See Kampelman v. Codman & Shurteef, Inc., et al.*, 2009 WL 2382775 (E.D. Mo. July 31, 2009).

32. When a forum-defendant's liability is precluded by the innocent seller statute, joinder of that defendant for the purpose of defeating diversity and avoiding federal jurisdiction is fraudulent. *See Wichmann v. The Proctor & Gamble Manuf. Co.*, 2006 WL 3626904 (E.D. Mo. Dec. 11, 2006) (finding that complete diversity existed because joinder of the sole Missouri defendant, a supplier of allegedly defective tampons, was fraudulent based on Missouri's innocent seller statute); *Thomas v. Brown & Williamson Tobacco Corp.*, 2006 WL 1198473 (W.D. Mo. Apr. 28, 2006) (finding complete diversity and denying plaintiff's motion to remand based on fraudulent joinder of only Missouri defendants under innocent seller statute where there were no allegations that Missouri defendants knew of or concealed any defects in the allegedly defective products); *Spears v. Bayer Corp.*, 2004 WL 7081940 (W.D. Mo. Mar. 29, 2004) (finding that removal was proper because the sole Missouri defendant's liability was based entirely on its status as a seller and that another defendant properly before the court was could satisfy any recovery to which plaintiff was entitled).

33. The cases which have declined to recognize the innocent seller statute as a basis for removal due to fraudulent joinder of innocent seller-defendants are distinguishable and should not prevent removal of this action. Numerous cases decided before the Missouri Supreme Court's decision in *Gramex* (and some subsequent cases which failed to recognize this decision),

incorrectly relied on the proposition that the innocent seller statute was entirely procedural, not substantive. *See, e.g., Drake v. N. Am. Phillips Corp.*, 204 F. Supp. 2d 1204, 1206 (E.D. Mo. 2002); *Dorsey v. Sekisui Am. Corp.*, 79 F. Supp. 2d 1089, 1091 (E.D. Mo. 1999). Several district courts have relied on subsection 6 as a basis for granting remand to state court, but, respectfully, this provision is properly viewed as procedural. *Compare Baron v. Ford Motor Co.*, 2012 WL 1898780 (W.D. Mo. May 23, 2012); *Wiederhold v. Safety Kleen Corp.*, 2014 WL 12617435 (W.D. Mo. Feb. 26, 2014); *Coplin v. Mr. Heater, Inc.*, 2012 WL 1596887 (E.D. Mo. May 7, 2012); *Fahy v. Taser Intern., Inc.*, 2010 WL 559249 (E.D. Mo. Feb. 10, 2010), *with Miravalle*, 2018 WL 3643722; *Wichmann*, 2006 WL 3626904; *Thomas*, 2006 WL 1198473. Finally, the allegations against Four B and Hen House do not plausibly state a claim for relief against a grocer/pharmacy on any basis other than Four B's and Hen House's status as sellers in the stream of commerce, *see, e.g., Platt v. PPG Industries, Inc.*, 2010 WL 3733578 (E.D. Mo. Sept. 20, 2010) (rejecting argument that seller-defendant was fraudulently joined on the basis of allegations which impose liability on seller for specific conduct), and another defendant properly before the court is able to fully satisfy any judgment to which Plaintiffs may be entitled, *see, e.g., Harrell v. Clarke Power Products, Inc.*, 2011 WL 749681 (E.D. Mo. Feb. 24, 2011) (finding that there was doubt as to whether the actual manufacturer of the product at issue was present in the action and able to satisfy a potential judgment).

34. Moreover, the allegations against Hen House and Four B impose a duty on them as a grocer/pharmacy to engage in highly scientific testing and experimentation of valsartan to detect an alleged impurity which was not known to exist in the product and was not detected by either the manufacturer or numerous regulatory agencies. (*See generally* Am. Pet.). Thus, the allegations themselves do not support a claim against the resident defendant-seller. *See*

Hollenback v. Taser International, Inc., 2011 WL 5102402 (W.D. Mo. Oct. 27, 2011); *Wichmann*, 2006 WL 3626904.

C. No Conflict of Law Exists Because Hen House and Four B Are Also Fraudulently Joined Under Kansas Law

35. Hen House and Four B's potential liability is similarly precluded by Kansas's "intermediate seller" statute, K.S.A. § 60-3306, which provides, in pertinent part:

(a) A product seller shall not be subject to liability in a product liability claim arising from an alleged defect in a product, if the product seller establishes that:

- (1) Such seller had no knowledge of the defect;
- (2) such seller in the performance of any duties the seller performed, or was required to perform, could not have discovered the defect while exercising reasonable care;
- (3) such seller was not a manufacturer of the defective product or product component;
- (4) the manufacturer of the defective product or product component is subject to service of process either under the laws of the state of Kansas or the domicile of the person making the product liability claim; and
- (5) any judgment against the manufacturer obtained by the person making the product liability claim would be reasonably certain of being satisfied.

36. In the present case, there is no allegation or reasonable basis to conclude that Hen House or Four B had knowledge of any defect, and the law imposes no duty upon a pharmacy to discover a defect such as the one alleged by Plaintiffs here.

37. Moreover, to the extent the Court finds that a conflict of law exists between Missouri and Kansas law and that Kansas substantive law applies, Plaintiffs premise their claim of negligence on alleged duties that cannot be attributed to Hen House or Four B as a pharmacy prescription medication dispenser under Kansas law. Plaintiffs' Amended Petition does not

allege and Kansas law does not impose on such entities a legal duty to inspect the product for harmful impurities, (Am. Pet. ¶ 24(a)), to oversee or monitor manufacturing process changes, (Am. Pet. ¶ 24(b)-(c)), or to cease dispensation of a product prior to a manufacturer or FDA product recall, (Am. Pet. ¶ 24(d)). Plaintiffs have stated no claim of negligence against Defendants Hen House or Four B and have no claim of negligence against either of these defendants.

38. Defendants Hen House and Four B also cannot be held strictly liable as a seller of a defective product under Kansas product liability law. The Kansas Product Liability Act applies only to “product sellers” or “manufacturers.” K.S.A. § 60-3302(a)-(b). Hen House and Four B are not “manufacturers” under the Act. *See* K.S.A. § 60-3302(b). Hen House and Four B also are not “product sellers,” as this definition *excludes* “health care providers.” K.S.A. § 60-3302(a). For the purposes of the Act’s definition, healthcare provider includes board-licensed pharmacists. *Id.*; K.S.A. § 40-3401(f).³

39. Under Kansas law, the practice of pharmacy is defined as a service-based activity, not the sale of goods. *See* K.S.A. § 65-1626a(b)(1) (defining practice of pharmacy, describing services, with no reference to sale of goods). Consistent with the statutory definition, pharmacy *dispensing* of prescription medication is a service and not a sale of goods. *See, e.g.*, K.S.A. § 65-1626(p) (placing retail pharmacies within the definition of “dispenser”); K.S.A. § 65-1626(o) (defining “dispense” as “delivering prescription medication to the ultimate user . . . by or pursuant to the lawful order of a practitioner . . .”). By contrast, under Kansas law, the sale of

³ Pharmacists are also healthcare providers under Missouri law. Mo. Rev. Stat. § 538.205(6); *see also, Beuke v. Pharmacia & Upjohn Co.*, 2000 WL 34430453, *2 (E.D. Mo. 2000) (holding that “a pharmacy is a health care provider, for it renders services to a patient in the ordinary course of a pharmacist’s profession.”). Strict liability is not applicable to healthcare providers under Missouri law. *Kampelman* at *3-5.

prescription medications is limited to “distributors” who are not retail pharmacy dispensers. *See* K.S.A. § 65-1626(q)-(r).

40. Because Hen House and Four B are not product sellers under Kansas law, there also can be no claim for breach of warranty, which is a claim premised upon a sale transaction. Under Kansas law, there must be a buyer-seller relationship. *See* K.S.A. § 84-2-301 & K.S.A. § 84-2-314.⁴

41. Accordingly, Four B and Hen House are fraudulently joined under both Missouri and Kansas law. Therefore, no conflict of law exists on this issue, Missouri law applies by default, and the presence of these fraudulently joined parties should be disregarded for purposes of evaluating diversity jurisdiction on removal.⁵

42. When the citizenships of Defendants Hen House and Four B are disregarded, this matter is between citizens of different states, and none of the removing parties or other defendants are citizens of the state of Missouri.

CONSENT TO REMOVAL OF ALL DEFENDANTS

43. Pursuant to 28 U.S.C. § 1446(b)(2)(A), all defendants which have been properly joined and served consent to the removal of this action.

44. Defendants Solco and Prinston consent to removal and have executed the Consent to Removal attached as **Exhibit B**.

45. Defendant HDG consents to removal and has executed the Consent to Removal attached as **Exhibit C**.

⁴ For an example of a similar outcome, *see Duckett v. SCP, 2006-C23-202, LLC*, 225 F. Supp. 3d 432, 435–36 (D.S.C. 2015) (refusing to remand because fraudulently joined pharmacy was a healthcare provider that could not be held strictly liable or liable for breach of warranty).

⁵ Defendants reserve the right to brief this choice of law issue more fully as needed.

46. Because Hen House⁶ and Four B have been fraudulently joined, their consent to removal is unnecessary. *Couzens*, 854 F.3d at 513 (consent of fraudulently joined defendant is not required); *see also*, 28 U.S.C. § 1446(b)(2)(A) (requiring consent only of properly joined defendants).

AMOUNT IN CONTROVERSY

47. Removal is proper under 28 U.S.C. § 1446(c)(2)(B) if the Court finds, by a preponderance of the evidence, that the amount in controversy exceeds \$75,000.00, exclusive of interests and costs.

48. Under § 1446(a), a defendant seeking to remove a case must include in its notice of removal “a short and plain statement of the grounds for removal.” The United States Supreme Court has explained that “by borrowing the familiar ‘short and plain statement’ standard” from Rule 8(a) of the Federal Rules of Civil Procedure, Congress “intended to ‘simplify the pleading requirements for removal’ and to clarify that courts should ‘apply the same liberal rules [to removal allegations] that are applied to other matters of pleading.’” *Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547, 553 (2014) (quoting H.R. Rep. No. 100-889, p. 71 (1988)) (internal quotation marks omitted). To satisfy the “short and plain statement” requirement, the removal notice must allege the amount in controversy “plausibly” but “need not contain evidentiary submissions” to support the allegation. *Id.* at 551, 553. The general federal rule is that the amount in controversy is determined by the complaint itself. *See Horton v. Liberty Mut. Ins. Co.*, 367 U.S. 348, 353 (1961). The Eighth Circuit has stated that “[t]he district court has subject matter jurisdiction in a diversity case when a fact finder could legally conclude,

⁶ To the extent Plaintiffs’ Amended Petition refers to “Hen House Marketplace Inc.,” (Am. Pet. ¶ 7), “Hen House Marketplace Inc.” is not a legal entity and has no ability act in this action, including to join in or consent to this removal.

from the pleadings and proof adduced to the court before trial, that the damages that the plaintiff suffered are greater than \$75,000.00.” *Kopp v. Kopp*, 280 F.3d 883, 884 (8th Cir. 2002). The jurisdictional question “is not whether the damages are greater than the requisite amount, but whether a fact finder might legally conclude that they are.” *Id.* at 885.

49. Here, Plaintiffs’ Amended Petition states only, “Plaintiffs’ damages exceed \$25,000.” (Am. Pet. ¶ 20).

50. Plaintiff Leann Gentry claims that as a result of ingesting the product at issue she was diagnosed with breast cancer on or about September 6, 2016, and that to treat this disease she has subsequently had medical procedures including: surgical removal of cancerous tissue, chemotherapy, and other unnamed treatments and medications for breast cancer. (Am. Pet. ¶ 19). She further alleges that her breast cancer has caused her natural pain and suffering, pain and suffering specifically associated with breast cancer and its treatments, the increased likelihood of recurrence of breast cancer, and mental anguish associated with said increased likelihood of recurrence. (*Id.*). Plaintiff James Gentry separately asserts a claim for loss of consortium, seeking damages for both past and future loss of consortium. (Am. Pet. ¶¶ 44-46).

51. Plaintiffs also seek punitive damages. (Am. Pet. ¶¶ 28, 37 and 43). “Punitive damages are included in determining the amount in controversy.” *Didonato v. Dochroeden*, No. 4:11-CV-00118 NAB, 2011 WL 2312089, at *1 (E.D. Mo. June 10, 2011) (citing *Larkin v. Brown*, 41 F.3d 387, 389 (8th Cir. 1994)); *see also Dowell v. Debt Relief Am., L.P.*, No. 2:07-CV-27 JCH, 2007 WL 1876478, at *2 (E.D. Mo. June 27, 2007) (“Assuming Plaintiff’s claims are successful, her actual damages are probably less than \$10,000. The possibility of punitive damages and attorney’s fees, however, means that a fact finder could legally conclude that Plaintiff’s damages are greater than \$75,000.” (internal citation omitted)).

52. Further, evidence of verdicts in cases alleging similar causes of action may satisfy the burden of showing the amount in controversy. *See Rodgers v. Wolfe*, 2006 WL 335716, at *3 (E.D. Mo. Feb. 14, 2006); *Conner v. Minnesota Life Ins. Co.*, 2015 WL 13404335, at *1 (W.D. Mo. Sept. 2, 2015). Jury awards in excess of \$75,000 in similar pharmaceutical design defect cases are not unusual. *See, e.g., Scroggin v. Wyeth Pharmaceuticals*, 2008 WL 212168 (Ed. Ark. 2008) (\$29,750,000 award for hormone replacement medication allegedly causing defendant to suffer breast cancer); *Daniel v. Wyeth, Inc.*, 2007 WL 2350319 (Pa. Cir. Ct. 2007) (\$1,500,000 verdict for alleged contraction of breast cancer after taking prescription medication prempo); *B.G. v. Janssen Pharmaceuticals, Inc.*, 2013 WL 6925786 (E.D Pa. 2013) (\$10,955,000 award for alleged negligent design of drug Topamax causing birth defects); *Livshits v. Natural Surgical Specialties*, 1991 WL 447300 (S.D.N.Y. 1991) (\$4,450,000 award for release of toxic carcinogen in breast implant causing cancer).

53. Based on these allegations, it is plain the amount in controversy as pled in the Amended Petition exceeds the \$75,000 jurisdictional threshold. *See, e.g., Quinn v. Kimble*, 228 F. Supp. 2d 1038, 1041 (E.D. Mo. 2002) (finding the jurisdictional amount in controversy requirement satisfied and concluding “as legal matter that a fact finder might conclude that the damages of each plaintiff exceeds the jurisdictional amount” where plaintiffs claimed “numerous serious and disabling injuries”).

PROCEDURAL REQUIREMENTS FOR REMOVAL

54. As required by 28 U.S.C. § 1446(b), this Notice of Removal is being filed within thirty (30) days of Teva’s receipt, by service of process or otherwise, of the initial pleading. It is being filed in the District Court setting forth the claim for relief upon which this proceeding is based and which establishes the right to remove this action to this Court. *See id.*

55. Copies of all process, pleadings, and orders on file with the Circuit Court of Boone County in this matter are attached hereto as **Exhibit A**.

56. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served this day upon Plaintiffs and filed with the Clerk of the Circuit Court of Boone County, Missouri. A copy of the notice to the state court clerk, without exhibits, is attached hereto as **Exhibit D**. A copy of the notice to Plaintiffs will be filed in this case.

57. By removing this matter, Defendant Teva does not waive and expressly reserves any rights it may have, including, without limitation, all available arguments and affirmative defenses.

58. In the event Plaintiffs file a request to remand, or the Court considers remand *sua sponte*, Defendant Teva respectfully request the opportunity to submit additional argument and/or evidence in support of removal.

WHEREFORE, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant Teva hereby removes the above-captioned action, case no. 18BA-CV03617, from the Circuit Court of Boone County, Missouri, to the United States District Court for the Western District of Missouri, Central Division.

Dated: October 11, 2018.

Respectfully submitted,

ARMSTRONG TEASDALE LLP

/s/ Matthew D. Turner

William Ray Price, Jr. MO BAR 29142

Matthew D. Turner MO BAR 48031

7700 Forsyth Blvd., Suite 1800

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GREENBERG TRAURIG LLP

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Brian H. Rubenstein (*pro hac vice* application to be filed)

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2001 Market Street

Philadelphia, PA 19103

Tel 215.988.7820

Fax: 215.717.5238

rubensteinb@gtlaw.com

Attorneys for Teva Pharmaceuticals USA, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2018, I electronically filed the foregoing **NOTICE OF REMOVAL** with the Clerk of the Court using the CM/ECF system and I hereby certify that I have mailed by United States Postal Service the document to the following:

Louis C. Accurso
Burton S. Haigh
THE ACCURSO LAW FIRM
4646 Roanoke Parkway
Kansas City, Missouri 64112

Attorneys for Plaintiffs

Kevin F. Hormuth
GREENSFELDER, HEMKER & GALE, P.C.
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St. Louis, MO 63102

Attorneys for Defendants Solco and Princeton

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CROWELL & MORING LLP
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20th Floor
Irvine, CA 92614

Robbie F. Rogart
Andrew D. Kaplan
CROWELL & MORING LLP
1001 Pennsylvania Avenue NW
Washington, DC 20004

Attorneys for Defendant The Harvard Drug Group, L.L.C. d/b/a Major Pharmaceuticals

Hen House Marketplace, LLC
c/o R. Otto Maly
211 N. Stadium Boulevard
Columbia, MO 65203

Four B Corp.
c/o Luder & Weist, LLC
7400 W. 132 Street, Suite 110
Overland Park, Kansas 66213

/s/ Matthew D. Turner
Matthew D. Turner

EXHIBIT A

**IN THE 13TH JUDICIAL CIRCUIT, BOONE COUNTY, MISSOURI
CIRCUIT COURT**

LEANN GENTRY AND JAMES GENTRY)
4040 W. 131st. Terrace,)
Leawood, KS 66209)

Plaintiffs)

v.)

SOLCO HEALTHCARE U.S., LLC,)
REGISTERED AGENT:)
INTERSTATE DOCUMENT FILINGS INC.)
208 West State St.)
Trenton, New Jersey 08608)

Case No. _____

PRINSTON PHARMACEUTICALS, INC.,)
REGISTERED AGENT:)
JUN DU)
2001 Eastpark Boulevard,)
Cranbury, New Jersey 08512)

TEVA PHARMACEUTICALS USA, INC.)
REGISTERED AGENT:)
CORPORATE CREATIONS NETWORK INC.)
12747 Olive Blvd., #300)
Saint Louis, Missouri 63141)

THE HARVARD DRUG GROUP, L.L.C. d/b/a)
MAJOR PHARMACEUTICALS)
REGISTERED AGENT:)
C T CORPORATION SYSTEM)
120 South Central Ave.)
Clayton, Missouri 63105)

HEN HOUSE MARKETPLACE, LLC.)
REGISTERED AGENT:)
R. OTTO MALY)
211 N. Stadium Blvd.)
Columbia, Missouri 65203)

Defendants)

PETITION FOR DAMAGES

Case code: TD

COME NOW, Plaintiffs, by and through undersigned Counsel, to bring this Petition for Damages against Defendants Solco Healthcare U.S., LLC (“Solco”), Princeton Pharmaceutical, Inc. (“Princeton”), Teva Pharmaceuticals USA, Inc. (“Teva”), The Harvard Drug Group d/b/a Major Pharmaceuticals (“Major Pharmaceuticals”) and Hen House Marketplace, LLC (“Hen House”). Plaintiffs make the following allegations pursuant to their investigation and best knowledge and belief.

PARTIES

1. Leann Gentry is an individual residing at 4040 W. 131st. Terrace, Leawood, Kansas 66209 and who is at all times relevant herein the spouse of James Gentry.

2. James Gentry is an individual residing at 4040 W. 131st. Terrace, Leawood, Kansas 66209 and who is at all times relevant herein the spouse of Leann Gentry.

3. Defendant Solco Healthcare U.S., LLC. (“Solco”) is a limited liability company organized under the laws of the state of Delaware and maintains its principal place of business at 2202 Eastpark Boulevard, Suite A, Cranbury, New Jersey 08512. Defendant Solco is in the business of the marketing and distribution of generic pharmaceuticals which are primarily manufactured in facilities in China. Defendant Solco is, upon information and belief, a fully owned subsidiary of Princeton Pharmaceuticals, Inc and Zhejiang Huahai Pharmaceutical, both major drug manufacturing businesses.

4. Defendant Princeton Pharmaceutical, Inc. (“Princeton”) is a corporation organized under the laws of the state of Delaware and maintains its principal place of

business at 2202 Eastpark Boulevard, Cranbury, New Jersey 08512. Defendant Princeton represents to customers that Defendant Solco is the U.S. sales and marketing division of Princeton Pharmaceuticals. Defendant Princeton can be served by serving its registered agent, Jun Du, at 2001 Eastpark Boulevard, Cranbury, New Jersey 08512.

5. Defendant Teva Pharmaceuticals USA (“Teva”), Inc. is a corporation organized under the laws of the state of Pennsylvania and maintains its principal place of business at 1090 Horsham Road, North Wales, Pennsylvania 19454. Defendant Teva can be served by serving its registered agent at Corporate Creations Network, Inc., 12747 Olive Boulevard, #300, Saint Louis, Missouri 63141.

6. Defendant The Harvard Drug Group d/b/a Major Pharmaceuticals (“Major Pharmaceuticals”) is a limited liability company organized under the state of Michigan and maintains its principal place of business at 17177 North Laurel Park, Suite 233, Livonia, Michigan 48152 and who can be served by serving its registered agent at C T Corporation System 120 South Central Avenue, Clayton, Missouri 63105.

7. Defendant Hen House Marketplace Inc. (“Hen House”) is a limited liability company organized under the state of Missouri and maintains its principal place of business at 211 North Stadium Boulevard, Suite 201, Columbia, Missouri 65203 and who can be served by serving its registered agent R. Otto Maly at 211 North Stadium Boulevard, Suite 201, Columbia, Missouri 65203.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this action pursuant to the Missouri Constitution Art. V, section 14 as well as personal jurisdiction over a corporation with its domicile in the State of Missouri.

9. Venue is appropriate in Boone County, Missouri pursuant to R.S.Mo. §508.010 in that Hen House is a Missouri Corporation with a registered agent located in Boone County, Missouri.

ALLEGATIONS COMMON TO ALL COUNTS

10. Plaintiff Leann Gentry was prescribed Valsartan, a generic prescription medication contaminated with N-nitrosodimethylamine (“NDMA”), a carcinogenic and liver-damaging impurity.

11. Defendants Solco, Princeton, Teva and Harvard/Major’s manufacturing and distribution of the Valsartan prescription medication was principally for the treatment of high blood pressure and congestive heart failure.

12. Due to manufacturing defects, certain generic formulations of Valsartan-containing prescriptions have become contaminated with NDMA.

13. NDMA is a priority toxic pollutant as listed by 40 CFR §131.36. Exposure to NDMA can cause liver damage and cancer in humans and is classified as a probable human carcinogen.

14. On July 13, 2018, the U.S. Food & Drug Administration (“FDA”) announced a voluntary recall of several brands of Valsartan-containing generic medications. The recall was due to the presence of NDMA in the recalled products. The FDA’s notice states:

“NDMA is classified as a probable human carcinogen (a substance that could cause cancer) based on results from laboratory tests. The presence of NDMA was unexpected and is thought to be related to changes in the way the active substance was manufactured.”

15. The European Medicines Agency explained that “NDMA is an unexpected impurity that was not detected by routine tests carried out by [Solco and Princeton’s parent company in China, Zhejiang Huahai]” and that the change in the manufacturing process which led to the impurity was introduced in 2013 and is “believed to have produced NDMA as a side product.” Therefore, this contamination is likely to have existed for approximately six years before being detected.

16. Plaintiff Leann Gentry purchased the valsartan-containing medication from Hen House in Leawood, Kansas from approximately 2013 to 2018.

17. Plaintiff Leann Gentry was injured by ingesting an acutely toxic substance, specifically NDMA, which was present in the Valsartan medication manufactured, distributed and/or sold by defendants. Plaintiffs injuries include but are not limited to: diagnosis of breast cancer (ductal carcinoma) on or about September 6, 2016; surgical removal of cancerous tissue; chemotherapy; the cost of treatments and medications for the breast cancer; the natural pain and suffering related to having breast cancer; the pain and suffering associated with breast cancer and its treatments; the increased likelihood of recurrence of breast cancer and the mental anguish associated with said increased likelihood of re-occurrence.

18. Plaintiffs’ damages exceed \$25,000.

COUNT I: NEGLIGENCE

19. To the extent they do not conflict, Plaintiffs incorporate by reference all other paragraphs contained in this Petition for Damages.

20. Defendants owed a duty of ordinary care to Plaintiffs to manufacture, distribute and sell the subject Valsartan medications free from harmful defects and impurities.

21. Plaintiff Leann Gentry used the valsartan-containing medication in a manner reasonably anticipated by Defendants.

22. Defendants breached their duty of ordinary care by failing to act as a reasonably careful manufacturer or seller engaged in the same business when manufacturing, distributing, and selling the medication contaminated with NDMA by failing to:

- a. Conduct reasonable inspection of the product to ensure it was free of harmful impurities and/or defects;
- b. Ensure the changes in manufacturing processes would not produce results in the composition of the medication that would render the medication harmful to humans;
- c. Evaluate the effects of the manufacturing changes of process to ensure the product would be free of harmful defects and impurities once change was implemented;
- d. Pull the product from sale to the public until the U.S. recall in July 2018 despite notice of defect being made public internationally prior to July 2018.

23. As a direct and proximate result of Defendants' negligence, Plaintiff was injured as more fully set forth herein when ingesting an acutely toxic substance, specifically NDMA, which was negligently present in the Valsartan-containing medication manufactured, distributed and/or sold by defendants.

24. Defendants knew or should have known the product contained NDMA at the time the product was placed into the stream of commerce.

25. Defendants knew when they manufactured, distributed and/or sold the medication that it was intended for consumption by members of the public.

26. As this defective condition dates back to 2012, with approximately six years between when the defect arose and any action was taken, Defendants' conduct evinces a complete indifference and/or reckless disregard for the rights and safety of others, as such Plaintiffs are entitled to punitive damages to deter this conduct by others.

WHEREFORE, Plaintiffs pray for damages against defendants in this action for general damages sustained by each, special damages as such sums to be proven at trial, punitive damages in an amount that will properly punish defendants and deter others from like conduct and for other such sums the Court may deem just and proper.

COUNT II: STRICT LIABILITY

27. To the extent they do not conflict, Plaintiffs incorporate by reference all other paragraphs contained in this Petition for Damages.

28. Defendants are engaged in the business of manufacturing and/or selling the Valsartan-containing medication ingested by Plaintiff Leann Gentry.

29. At the time it was sold by defendants, the Valsartan-containing medication was in a defective condition and unreasonably dangerous to persons such as Plaintiff Leann Gentry when put to a reasonably anticipated use because it contained NDMA, a known carcinogen.

30. The Valsartan-containing medication ingested by Plaintiff Leann Gentry was expected to reach and did reach the hands of plaintiff without substantial change in the condition in which it was manufactured and sold.

31. The Valsartan-containing medication sold by defendants was used in a manner reasonably anticipated.

32. Defendants knew or should have known the valsartan-containing medication contained NDMA at the time the medication was placed into the stream of commerce.

33. The Valsartan-containing medication ingested by Plaintiff Leann Gentry and sold by defendants was the direct and proximate cause of Plaintiff Leann Gentry's damages, all as more fully described in herein.

34. Defendants knew when they manufactured, distributed and/or sold the medication that it was intended for consumption by members of the public.

35. As this defective condition dates back to 2012, with approximately six years between when the defect arose and any action taken, Defendants' conduct evinces a complete indifference and/or reckless disregard for the rights and safety of others, as such Plaintiffs are entitled to punitive damages to deter this conduct by others.

WHEREFORE, Plaintiffs pray for damages against defendants in this action for general damages sustained by each, special damages as such sums to be proven at trial,

punitive damages in an amount that will properly punish defendants and deter others from like conduct and for other such sums the Court may deem just and proper.

COUNT III: BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

36. To the extent they do not conflict, Plaintiffs incorporate by reference all other paragraphs contained in this Petition for Damages.

37. Defendants customarily sell the Valsartan-containing product purchased and consumed by Plaintiff Leann Gentry.

38. At the time of the sales of the Valsartan-containing medication, the medication was not fit for the ordinary purpose for which the medication is used, as it contained NDMA, a known carcinogen.

39. Plaintiff Leann Gentry was a person who was reasonably expected to use, consume or be affected by the medication and she was injured as a result of her reasonably anticipated use of the medication, all as more fully described herein.

40. Plaintiff Leann Gentry used the medicine in a manner reasonably intended for its use.

41. As this defective condition dates back to 2012, with approximately six years between when the defect arose and any action taken, Defendants' conduct evinces a complete indifference and/or reckless disregard for the rights and safety of others, as such Plaintiffs are entitled to punitive damages to deter this conduct by others.

WHEREFORE, Plaintiffs pray for damages against defendants in this action for general damages sustained by each, special damages as such sums to be proven at trial,

punitive damages in an amount that will properly punish defendants and deter others from like conduct and for other such sums the Court may deem just and proper.

COUNT IV: LOSS OF CONSORTIUM

42. To the extent they do not conflict, Plaintiffs incorporate by reference all other paragraphs contained in this Petition for Damages.

43. At all times relevant herein, Plaintiff James Gentry was the lawfully wedded husband of Leann Gentry and was entitled to her service, society and companionship.

44. As a direct and proximate result of Defendants' negligence, actions and lack of actions described above, Plaintiff James Gentry has suffered a loss of consortium and will in the future continue to suffer a loss of consortium.

WHEREFORE, Plaintiffs pray for damages against defendants in this action for general damages sustained by each, special damages as such sums to be proven at trial, punitive damages in an amount that will properly punish defendants and deter others from like conduct and for other such sums the Court may deem just and proper.

Respectfully submitted,

THE ACCURSO LAW FIRM
A Professional Corporation

/s/Louis C. Accurso

Louis C. Accurso Mo. Bar #29827

Burton S. Haigh Mo. Bar #49259

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Kansas City, Missouri 64112

PH: (816) 561-3900

FAX: (816) 561-2992

laccurso@accursolaw.com

bhaigh@accursolaw.com

ATTORNEYS FOR PLAINTIFFS



IN THE 13TH JUDICIAL CIRCUIT, BOONE COUNTY, MISSOURI

Judge or Division: JODIE C ASEL	Case Number: 18BA-CV03617	(Date File Stamp)
Plaintiff/Petitioner: LEANN GENTRY	Plaintiff's/Petitioner's Attorney/Address LOUIS CARL ACCURSO 4646 ROANOKE PKY KANSAS CITY, MO 64112-1227	
Defendant/Respondent: SOLCO HEALTHCARE U.S., LLC	Court Address: 705 E Walnut COLUMBIA, MO 65201	
Nature of Suit: CC Pers Injury-Prod Liab		

Summons in Civil Case

The State of Missouri to: SOLCO HEALTHCARE U.S., LLC

Alias:

REGISTERED AGENT:
INTERSTATE DOCUMENT FILINGS INC.
208 WEST STATE ST
TRENTON NJ 08608

COURT SEAL OF



BOONE COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for plaintiff/petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

09/06/2018

Date

/s/Tammy Grimes

Clerk

Further Information:

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within 30 days after the date of issue.

I certify that I have served the above summons by: (check one)

☐ delivering a copy of the summons and a copy of the petition to the defendant/respondent.

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☐ (for service on a corporation) delivering a copy of the summons and a copy of the complaint to: _____ (name) _____ (title).

☐ other: _____

Served at _____ (address)

in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

Subscribed and sworn to before me on _____ (date).

(Seal)

My commission expires: _____

Date

Notary Public

Sheriff's Fees, if applicable

Summons \$ _____

Non Est \$ _____

Sheriff's Deputy Salary

Supplemental Surcharge \$ 10.00

Mileage \$ _____ (_____ miles @ \$._____ per mile)

Total \$ _____

A copy of the summons and a copy of the petition must be served on **each** defendant/respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.



IN THE 13TH JUDICIAL CIRCUIT, BOONE COUNTY, MISSOURI

Judge or Division: JODIE C ASEL	Case Number: 18BA-CV03617	(Date File Stamp)
Plaintiff/Petitioner: LEANN GENTRY	Plaintiff's/Petitioner's Attorney/Address LOUIS CARL ACCURSO 4646 ROANOKE PKY KANSAS CITY, MO 64112-1227	
Defendant/Respondent: SOLCO HEALTHCARE U.S., LLC	Court Address: 705 E Walnut COLUMBIA, MO 65201	
Nature of Suit: CC Pers Injury-Prod Liab		

Summons in Civil Case

The State of Missouri to: PRINSTON PHARMACEUTICALS, INC

Alias:

REGISTERED AGENT:

JUN DU
2001 EASTPARK BOULEVARD
CRANBURY, NJ 08512

COURT SEAL OF



BOONE COUNTY

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Signature of Sheriff or Server

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(Seal)

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Date

Notary Public

Sheriff's Fees, if applicable

Summons \$ _____

Non Est \$ _____

Sheriff's Deputy Salary

Supplemental Surcharge \$ 10.00

Mileage \$ _____ (_____ miles @ \$. _____ per mile)

Total \$ _____

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IN THE 13TH JUDICIAL CIRCUIT, BOONE COUNTY, MISSOURI

Judge or Division: JODIE C ASEL	Case Number: 18BA-CV03617	(Date File Stamp)
Plaintiff/Petitioner: LEANN GENTRY	Plaintiff's/Petitioner's Attorney/Address LOUIS CARL ACCURSO 4646 ROANOKE PKY KANSAS CITY, MO 64112-1227	
Defendant/Respondent: SOLCO HEALTHCARE U.S., LLC	Court Address: 705 E Walnut COLUMBIA, MO 65201	
Nature of Suit: CC Pers Injury-Prod Liab		

Summons in Civil Case

The State of Missouri to: **TEVA PHARMACEUTICALS USA, INC.**

Alias:

REGISTERED AGENT:
CORPORATE CREATIONS NETWORK INC
12747 OLIVE BLVD #300
SAINT LOUIS MO 63141

COURT SEAL OF



BOONE COUNTY

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- ☐ other: _____.

Served at _____ (address)
in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

Subscribed and sworn to before me on _____ (date).

(Seal)

My commission expires: _____

Date

Notary Public

Sheriff's Fees, if applicable

Summons	\$ _____
Non Est	\$ _____
Sheriff's Deputy Salary	
Supplemental Surcharge	\$ 10.00
Mileage	\$ _____ (_____ miles @ \$. _____ per mile)
Total	\$ _____

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Plaintiff/Petitioner: LEANN GENTRY	Plaintiff's/Petitioner's Attorney/Address LOUIS CARL ACCURSO 4646 ROANOKE PKY KANSAS CITY, MO 64112-1227	
Defendant/Respondent: SOLCO HEALTHCARE U.S., LLC	Court Address: 705 E Walnut COLUMBIA, MO 65201	
Nature of Suit: CC Pers Injury-Prod Liab		

Summons in Civil Case

The State of Missouri to: **THE HARVARD DRUG GROUP D/B/A MAJOR PHARMACEUTICALS**

Alias:

REGISTERED AGENT:
C T CORPORATION SYSTEM
120 SOUTH CENTRAL AVE
CLAYTON MO 63105

COURT SEAL OF



BOONE COUNTY

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09/06/2018

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/s/Tammy Grimes

Clerk

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in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

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Signature of Sheriff or Server

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(Seal)

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Date

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Sheriff's Fees, if applicable

Summons \$ _____

Non Est \$ _____

Sheriff's Deputy Salary

Supplemental Surcharge \$ 10.00

Mileage \$ _____ (_____ miles @ \$. _____ per mile)

Total \$ _____

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Judge or Division: JODIE C ASEL	Case Number: 18BA-CV03617	(Date File Stamp)
Plaintiff/Petitioner: LEANN GENTRY	Plaintiff's/Petitioner's Attorney/Address LOUIS CARL ACCURSO 4646 ROANOKE PKY KANSAS CITY, MO 64112-1227	
Defendant/Respondent: SOLCO HEALTHCARE U.S., LLC	Court Address: 705 E Walnut COLUMBIA, MO 65201	
Nature of Suit: CC Pers Injury-Prod Liab		

Summons in Civil Case

The State of Missouri to: HEN HOUSE MARKETPLACE, LLC.

Alias:

REGISTERED AGENT: R. OTTO MALY
211 NORTH STADIUM BOULEVARD
COLUMBIA, MO 65203

COURT SEAL OF



BOONE COUNTY

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09/06/2018

Date

/s/Tammy Grimes

Clerk

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in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

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Signature of Sheriff or Server

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(Seal)

My commission expires: _____

Date

Notary Public

Sheriff's Fees, if applicable

Summons	\$ _____
Non Est	\$ _____
Sheriff's Deputy Salary	\$ _____
Supplemental Surcharge	\$ 10.00
Mileage	\$ _____ (_____ miles @ \$. _____ per mile)
Total	\$ _____

PAID

A copy of the summons and a copy of the petition must be served on **each** defendant/respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

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IN THE 13TH JUDICIAL CIRCUIT, BOONE COUNTY, MISSOURI

Judge or Division: JODIE C ASEL	Case Number: 18BA-CV03617
Plaintiff/Petitioner: LEANN GENTRY	Plaintiff's/Petitioner's Attorney/Address LOUIS CARL ACCURSO 4646 ROANOKE PKY KANSAS CITY, MO 64112-1227
Defendant/Respondent: SOLCO HEALTHCARE U.S., LLC	Court Address: 705 E Walnut COLUMBIA, MO 65201
Nature of Suit: CC Pers Injury-Prod Liab	(Date File Stamp)

Summons in Civil Case

The State of Missouri to: TEVA PHARMACEUTICALS USA, INC.
Alias:

REGISTERED AGENT:
CORPORATE CREATIONS NETWORK INC
12747 OLIVE BLVD #300
SAINT LOUIS MO 63141

COURT SEAL OF

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09/06/2018 /s/Tammy Grimes
Date Clerk

Further Information:

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I certify that I have served the above summons by: (check one)

☐ delivering a copy of the summons and a copy of the petition to the defendant/respondent.

☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the defendant/respondent with _____, a person of the defendant's/respondent's family over the age of 15 years who permanently resides with the defendant/respondent.

☒ (for service on a corporation) delivering a copy of the summons and a copy of the complaint to: Alex (name) Manager (title).

☐ other: _____

Served at 12747 Olive #300 (address)
in St Louis (County/City of St. Louis), MO, on 9/12/18 (date) at 0830 (time).

Scott DePolito Printed Name of Sheriff or Server [Signature] Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

Subscribed and sworn to before me on _____ (date).

(Seal) My commission expires: _____ Date _____ Notary Public

Sheriff's Fees, if applicable

Summons	\$ _____
Non Est	\$ _____
Sheriff's Deputy Salary	\$ _____
Supplemental Surcharge	\$ 10.00
Mileage	\$ _____ (_____ miles @ \$ _____ per mile)
Total	\$ _____

A copy of the summons and a copy of the petition must be served on **each** defendant/respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

18 smcc-7643

RECEIVED
2018 SEP 10 AM 10:31
ST LOUIS COUNTY
SHERIFF'S OFFICE

9-11-18
KLC



IN THE 13TH JUDICIAL CIRCUIT, BOONE COUNTY, MISSOURI

SB 10-6

Judge or Division: JODIE C ASEL	Case Number: 18BA-CV03617
Plaintiff/Petitioner: LEANN GENTRY	Plaintiff's/Petitioner's Attorney/Address LOUIS CARL ACCURSO 4646 ROANOKE PKY KANSAS CITY, MO 64112-1227
Defendant/Respondent: SOLCO HEALTHCARE U.S., LLC	Court Address: 705 E Walnut COLUMBIA, MO 65201
Nature of Suit: CC Pers Injury-Prod Liab	

(Date File Stamp)

Summons in Civil Case

The State of Missouri to: THE HARVARD DRUG GROUP D/B/A MAJOR PHARMACEUTICALS

Alias:

REGISTERED AGENT:
C T CORPORATION SYSTEM
120 SOUTH CENTRAL AVE
CLAYTON MO 63105

COURT SEAL OF



BOONE COUNTY

30 CTOR

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for plaintiff/petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

09/06/2018

Date

/s/Tammy Grimes

Clerk

Further Information:

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within 30 days after the date of issue.

I certify that I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the defendant/respondent.
- ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the defendant/respondent with _____, a person of the defendant's/respondent's family over the age of 15-years who permanently resides with the defendant/respondent.

☒ (for service on a corporation) delivering a copy of the summons and a copy of the complaint to: *CTW A. BRANDON* (name) *INTAKE SPECIALIST* (title).

☐ other: _____

Served at *CT CORPORATION SYSTEM* (address)
in *ST. LOUIS* (County/City of St. Louis), MO, on *9/13/18* (date) at *9⁰⁰am* (time).

ROCHELL HUEY
Printed Name of Sheriff or Server

[Signature]
Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

Subscribed and sworn to before me on _____ (date).

(Seal)

My commission expires: _____ (date) _____ Notary Public

Sheriff's Fees, if applicable

Summons	\$ _____
Non Est	\$ _____
Sheriff's Deputy Salary	
Supplemental Surcharge	\$ 10.00
Mileage	\$ _____ (_____ miles @ \$ _____ per mile)
Total	\$ _____

A copy of the summons and a copy of the petition must be served on **each** defendant/respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

SEP 10 2018

RECEIVED
2018 SEP 10 AM 10:31
ST. LOUIS COUNTY
SHERIFF'S OFFICE

18 smcc-1642

9-11-18

***** AFFIDAVIT OF SERVICE *****

SEPTEMBER 11, 2018

SHERIFF'S NUMBER: L 287594 Defendant Sequence 1 of 1 Officer: DAVID DEMAIIO
Type of Service: SUMMONS AND COMPLAINT

I, MILDRED S. SCOTT, Sheriff of MIDDLESEX COUNTY, do hereby deputize

D. Demaio

(Print Officer's Name)

and appoint to be my deputy, to execute and return the writ to court as directed by law.

ATTORNEY	CHECK #	AMOUNT
THE ACCURSO LAW FIRM	44822	\$ 31.48
4646 ROANOKE PKWY	Control : # 796968	
KANSAS CITY, MO 64112		

COURT DATA INUNEZ
Court of Issuance IN THE 13TH JUDICIAL CIRCUIT Return Date
Docket 18BACV03617 State MI County of Venue BOONE COUNTY

CAPTION OF CASE
LEANN GENTRY
VS SOLCO HEALTHCARE U.S LLC

DEFENDANT OR NAMED WITHIN TO BE SERVED
CORPORATION NAME PRINSTON PHARMACEUTICALS INC
2001 EASTPARK BOULEVARD
CRANBURY, NJ 08512

PAPERS SERVED
SUMMONS and PETITION and PLEASE GET DESCRIPTION OF PERSON SERVED

SERVICE DATA RECORDED
[☒] Served Successfully [] Unable to Serve Date: 9-12-18
Time: 1125

REMARKS

Copy/Copies Served [] Personally [] On Officer, Director or Trustee
[] On Competent Household Member [] On Managing Agent ATTEMPTS []
Over The Age of 14 Years [] On Registered Agent
[] Personally Served on Self and for Spouse [] On Other

PERSON SERVED: *Michelle*
[] Defendant Is in the Military [] Defendant Not in the Military

Sex : [] Male [☒] Female
Skin : [☒] White [] Black [] Yellow [] Brown [] Red
Height: [] Under 5 Feet [☒] 5.0-5.6 Feet [] 5.7-6.0 Feet [] Over 6 Feet
Weight: [] Under 100 lbs [☒] 100-150 lbs [] 151-200 lbs [] Over 200 lbs
Hair : [☒] Black [] Brown [] Blond [] Gray [] Red [] White [] Balding
Age : [] 14-20 [☒] 21-35 [] 36-50 [] 51-65 [] Over 65

SWORN TO AND SUBSCRIBED BEFORE ME
ON September 12, 2018

BARBARA A DELOATCH

NOTARY PUBLIC
STATE OF NEW JERSEY
ID # 2281052
MY COMMISSION EXPIRES DEC. 28, 2021


Signature
Deputy Sheriff of MIDDLESEX COUNTY
State of New Jersey



IN THE 13TH JUDICIAL CIRCUIT, BOONE COUNTY, MISSOURI

Judge or Division: JODIE C ASEL	Case Number: 18BA-CV03617
Plaintiff/Petitioner: LEANN GENTRY	Plaintiff's/Petitioner's Attorney/Address LOUIS CARL ACCURSO 4646 ROANOKE PKY KANSAS CITY, MO 64112-1227
Defendant/Respondent: SOLCO HEALTHCARE U.S., LLC	Court Address: 705 E Walnut COLUMBIA, MO 65201
Nature of Suit: CC Pers Injury-Prod Liab	(Date File Stamp)

Summons in Civil Case

The State of Missouri to: PRINSTON PHARMACEUTICALS, INC Alias: REGISTERED AGENT: JUN DU 2001 EASTPARK BOULEVARD CRANBURY, NJ 08512 COURT SEAL OF  BOONE COUNTY	<p>You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for plaintiff/petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.</p> <p>09/06/2018 /s/Tammy Grimes Date Clerk</p>
---	--

Further Information: Sheriff's or Server's Return Note to serving officer: Summons should be returned to the court within 30 days after the date of issue. I certify that I have served the above summons by: (check one) <input type="checkbox"/> delivering a copy of the summons and a copy of the petition to the defendant/respondent. <input type="checkbox"/> leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the defendant/respondent with _____, a person of the defendant's/respondent's family over the age of 15 years who permanently resides with the defendant/respondent. <input type="checkbox"/> (for service on a corporation) delivering a copy of the summons and a copy of the complaint to: _____ (name) _____ (title). <input type="checkbox"/> other: _____ Served at _____ (address) in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time). _____ Printed Name of Sheriff or Server _____ Signature of Sheriff or Server Must be sworn before a notary public if not served by an authorized officer: Subscribed and sworn to before me on _____ (date). (Seal) My commission expires: _____ Date _____ Notary Public	
--	--

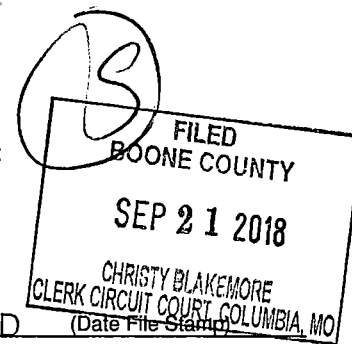
Sheriff's Fees, if applicable Summons \$ _____ Non Est \$ _____ Sheriff's Deputy Salary Supplemental Surcharge \$ 10.00 Mileage \$ _____ (_____ miles @ \$._____ per mile) Total \$ _____ A copy of the summons and a copy of the petition must be served on each defendant/respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.	
---	--



IN THE 13TH JUDICIAL CIRCUIT, BOONE COUNTY, MISSOURI

2018006078

Judge or Division: JODIE C ASEL	Case Number: 18BA-CV03617
Plaintiff/Petitioner: LEANN GENTRY	Plaintiff's/Petitioner's Attorney/Address LOUIS CARL ACCURSO 4646 ROANOKE PKY KANSAS CITY, MO 64112-1227
Defendant/Respondent: SOLCO HEALTHCARE U.S., LLC	Court Address: 705 E Walnut COLUMBIA, MO 65201
Nature of Suit: CC Pers Injury-Prod Liab	



Summons in Civil Case

The State of Missouri to: HEN HOUSE MARKETPLACE, LLC.

SEP 10 2018

Alias:

REGISTERED AGENT: R. OTTO MALY
211 NORTH STADIUM BOULEVARD
COLUMBIA, MO 65203

COURT SEAL OF



BOONE COUNTY

BOONE COUNTY
SHERIFF'S DEPT.

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for plaintiff/petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

09/06/2018

Date

/s/Tammy Grimes

Clerk

Further Information:

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within 30 days after the date of issue.

I certify that I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the defendant/respondent.
☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the defendant/respondent with a person of the defendant's/respondent's family over the age of 15 years who permanently resides with the defendant/respondent.

☒ (for service on a corporation) delivering a copy of the summons and a copy of the complaint to:

Amenda Pope (name) Attorney (title).

☐ other:

Served at 211 N Stadium # 203 Col MO (address)

in Boone (County/City of St. Louis), MO, on 9-20-18 (date) at 1132 (time).

[Signature]
Printed Name of Sheriff or Server

[Signature]
Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

Subscribed and sworn to before me on _____ (date).

(Seal)

My commission expires: _____

Date

Notary Public

Sheriff's Fees, if applicable

Summons \$ 20.00

Non Est \$ _____

Sheriff's Deputy Salary _____

Supplemental Surcharge \$ 10.00

Mileage \$ _____ (_____ miles @ \$ _____ per mile)

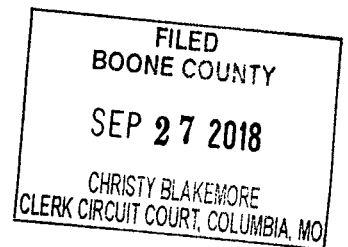
Total \$ 30.00

PAID

A copy of the summons and a copy of the petition must be served on each defendant/respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.



Trista Snyder
Tel 602.445.8000
Fax 602.445.8100
snyder@gtlaw.com



September 27, 2018

Boone County Court Clerk
Attn: Sandra
Facsimile: 573-886-4044

Re: 18BA-CV039617; Corporation Service – Document ID 18-SMCC-1257
(09/13/2018)

Dear Sandra:

Thank you for speaking with me over the phone. Regarding our conversation, I am requesting a document from Case No. 18BS-CV03617 – Leann Gentry et al v. Solco Healthcare U.S., et al. The document that I have specifically requested is:

09/13/2018 – Corporation Served
Document ID – 18SMCC-1257; Served to – Teva Pharmaceuticals USA, Inc.

A payment by credit card was made on 09/27/2018 for delivery of this document. Please mail a copy (no certification necessary) to my attention at:

2375 E. Camelback Road, Suite 700
Phoenix, AZ 85016

Please let me know if there are any questions. I may be contacted via the above information. Thank you.

Best regards,

Trista Snyder
Research Attorney

TCS:



IN THE 13TH JUDICIAL CIRCUIT, BOONE COUNTY, MISSOURI


Judge or Division: JODIE C ASEL	Case Number: 18BA-CV03617
Plaintiff/Petitioner: LEANN GENTRY	Plaintiff's/Petitioner's Attorney/Address LOUIS CARL ACCURSO 4646 ROANOKE PKY KANSAS CITY, MO 64112-1227
Defendant/Respondent: SOLCO HEALTHCARE U.S., LLC	Court Address: 705 E Walnut COLUMBIA, MO 65201
Nature of Suit: CC Pers Injury-Prod Liab	

(Date File Stamp)

Summons in Civil Case

The State of Missouri to: SOLCO HEALTHCARE U.S., LLC
Alias:

REGISTERED AGENT:
INTERSTATE DOCUMENT FILINGS INC.
208 WEST STATE ST
TRENTON NJ 08608

COURT SEAL OF

BOONE COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for plaintiff/petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

09/06/2018 /s/Tammy Grimes
Date Clerk

Further Information:

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within 30 days after the date of issue.

I certify that I have served the above summons by: (check one)

☐ delivering a copy of the summons and a copy of the petition to the defendant/respondent.

☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the defendant/respondent with _____, a person of the defendant's/respondent's family over the age of 15 years who permanently resides with the defendant/respondent.

☐ (for service on a corporation) delivering a copy of the summons and a copy of the complaint to: _____ (name) _____ (title).

☐ other: _____

Served at _____ (address)
in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server _____ Signature of Sheriff or Server _____
Must be sworn before a notary public if not served by an authorized officer:

Subscribed and sworn to before me on _____ (date).

(Seal)

My commission expires: _____ Date _____ Notary Public _____

Sheriff's Fees, If applicable

Summons \$ _____

Non Est \$ _____

Sheriff's Deputy Salary

Supplemental Surcharge \$ 10.00

Mileage \$ _____ (_____ miles @ \$._____ per mile)

Total \$ _____

A copy of the summons and a copy of the petition must be served on each defendant/respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

Office of the Mercer County Sheriff Sheriff's Return of Service



**JOHN A. KEMLER
SHERIFF**



MERCER COUNTY CIVIL COURT HOUSE
175 SOUTH BROAD STREET
P.O. Box 8068
TRENTON, NEW JERSEY 08650-0068
TELEPHONE: (609) 989-7666/6369
FAX: (609) 278-8041

18004324

UNDERSHERIFFS
PEDRO MEDINA
JESSICA PLUMERI
JASON SALVATORE

ASSISTANT TO THE SHERIFF
CATHLEEN G. GARTON

CHIEF SHERIFF'S OFFICER
CHRISTOPHER KENYON

CHIEF WARRANT OFFICER
BRIAN D. AMANTIA

PLAINTIFF

LEANN GENTRY

DEFENDANT

SOLCO HEALTHCARE U.S., PRINSTON
PHARMACEUTICALS, TEVA
PHARMACEUTICAL USA, ET AL.,

COUNTY:
THE 13TH
JUDICIAL
CIRCUIT,
BOONE
COUNTY,
MISSOURI

DOCKET #

18BA-CV03617

I SERVED THE FOLLOWING PAPERS: OUT OF STATE, SUMMONS IN CIVIL CASE, PETITION FOR DAMAGES, JURISDICTION AND VENUE, ALLEGATION COMMON TO ALL COUNTS, ON THE WITHIN-NAMED DEFENDANT IN MERCER COUNTY, NEW JERSEY

SERVICE NAME	SERVED	NOT SERVED DATE/TIME	DATE	T I M E	ADDRESS	SERVICE INFO
SOLCO HEALTHCARE U.S.	C		9-14-18	0930	208 WEST STATE STREET TRENTON, NJ 08608	Christopher MORRIS

STATE OF NEW JERSEY
COUNTY OF MERCER
I, JOHN A. KEMLER, SHERIFF
of said County do hereby
deputize and appoint

R. Sammons
to be my deputy, to execute and
return the writ according to law.

Witness my hand and seal this

14 day of September
A.D. 2018.

JAMES D. FREEMAN
NOTARY PUBLIC OF NEW JERSEY
Comm. # 50050031
My Commission Expires 11/22/2021

JOHN A. KEMLER
Sheriff (L.S.)

- * Type of Service
- A Personal Service
- B Household member over the age of 14 years, at usual place of abode
- ☒ C Served person authorized to accept service/Managing agent
- D Unable to locate, unknown at address given
- E Address Out of County
- F Avoiding service, made many attempts
- G Affixed
- H Certified Mail
- I Other

JOHN A. KEMLER, SHERIFF, by

Sheriff's Fee \$32.75

IN THE CIRCUIT COURT OF BOONE COUNTY
THIRTEENTH JUDICIAL CIRCUIT
STATE OF MISSOURI

LEANN GENTRY and JAMES GENTRY,)	
)	
Plaintiffs,)	
)	
v.)	Cause No. 18BA-CV03617
)	
SOLCO HEALTHCARE U.S., LLC, et al.,)	
)	
Defendants.)	

**DEFENDANTS SOLCO HEALTHCARE U.S., LLC AND
PRINSTON PHARMACEUTICALS, INC.'S ENTRY OF APPEARANCE**

COME NOW Kevin F. Hormuth and the law firm of Greensfelder, Hemker & Gale, P.C.,
and enter their appearance on behalf of Defendants Solco Healthcare U.S., LLC and Prinston
Pharmaceuticals, Inc.

Respectfully submitted,

GREENSFELDER, HEMKER & GALE, P.C.

By /s/ Kevin F. Hormuth
Kevin F. Hormuth, # 48165
kfh@greensfelder.com
10 S. Broadway, Suite 2000
St. Louis, MO 63102
Telephone: 314-241-9090
Facsimile: 314-345-5466

*Attorneys for Defendants Solco Healthcare U.S.,
LLC and Prinston Pharmaceuticals, Inc.*

CERTIFICATE OF SERVICE

The undersigned certifies that on this 1st day of October, 2018, the foregoing was filed electronically with the Circuit Clerk and served electronically to all counsel of record via Case.net.

/s/ Kevin F. Hormuth

**IN THE 13TH JUDICIAL CIRCUIT, BOONE COUNTY, MISSOURI
CIRCUIT COURT**

LEANN GENTRY AND JAMES GENTRY
4040 W. 131st. Terrace,
Leawood, KS 66209

Plaintiffs

v.

SOLCO HEALTHCARE U.S., LLC,
REGISTERED AGENT:
INTERSTATE DOCUMENT FILINGS INC.
208 West State St.
Trenton, New Jersey 08608

Case No.: 18BA – CV03617

PRINSTON PHARMACEUTICALS, INC.,
REGISTERED AGENT:
JUN DU
2001 Eastpark Boulevard,
Cranbury, New Jersey 08512

TEVA PHARMACEUTICALS USA, INC.
REGISTERED AGENT:
CORPORATE CREATIONS NETWORK INC.
12747 Olive Blvd., #300
Saint Louis, Missouri 63141

THE HARVARD DRUG GROUP, L.L.C. d/b/a
MAJOR PHARMACEUTICALS
REGISTERED AGENT:
C T CORPORATION SYSTEM
120 South Central Ave.
Clayton, Missouri 63105

HEN HOUSE MARKETPLACE, LLC.
REGISTERED AGENT:
R. OTTO MALY
211 N. Stadium Blvd.
Columbia, Missouri 65203

FOUR B CORP.)
d/b/a Balls Food Stores)
REGISTERED AGENT:)
LUDER & WEIST, LLC)
7400 W. 132 Street, Ste. 110)
Overland Park, Kansas 66213)
)
John Does 1-4)
Service to be determined)
)
Defendants)

FIRST AMENDED PETITION FOR DAMAGES

Case code: TD

COME NOW, Plaintiffs, by and through undersigned Counsel, to bring this Petition for Damages against Defendants Solco Healthcare U.S., LLC (“Solco”), Princeton Pharmaceutical, Inc. (“Princeton”), Teva Pharmaceuticals USA, Inc. (“Teva”), The Harvard Drug Group d/b/a Major Pharmaceuticals (“Major Pharmaceuticals”), Hen House Marketplace, LLC (“Hen House”), Four B. Corp. and John Does 1-4. Plaintiffs make the following allegations pursuant to their investigation and best knowledge and belief.

PARTIES

1. Leann Gentry is an individual residing at 4040 W. 131st. Terrace, Leawood, Kansas 66209 and who is at all times relevant herein the spouse of James Gentry.

2. James Gentry is an individual residing at 4040 W. 131st. Terrace, Leawood, Kansas 66209 and who is at all times relevant herein the spouse of Leann Gentry.

3. Defendant Solco Healthcare U.S., LLC. (“Solco”) is a limited liability company organized under the laws of the state of Delaware and maintains its principal place of business at 2202 Eastpark Boulevard, Suite A, Cranbury, New Jersey 08512.

Defendant Solco is in the business of the marketing and distribution of generic pharmaceuticals which are primarily manufactured in facilities in China. Defendant Solco is, upon information and belief, a fully owned subsidiary of Princeton Pharmaceuticals, Inc and Zhejiang Huahai Pharmaceutical, both major drug manufacturing businesses.

4. Defendant Princeton Pharmaceutical, Inc. (“Princeton”) is a corporation organized under the laws of the state of Delaware and maintains its principal place of business at 2202 Eastpark Boulevard, Cranbury, New Jersey 08512. Defendant Princeton represents to customers that Defendant Solco is the U.S. sales and marketing division of Princeton Pharmaceuticals. Defendant Princeton can be served by serving its registered agent, Jun Du, at 2001 Eastpark Boulevard, Cranbury, New Jersey 08512.

5. Defendant Teva Pharmaceuticals USA (“Teva”), Inc. is a corporation organized under the laws of the state of Pennsylvania and maintains its principal place of business at 1090 Horsham Road, North Wales, Pennsylvania 19454. Defendant Teva can be served by serving its registered agent at Corporate Creations Network, Inc., 12747 Olive Boulevard, #300, Saint Louis, Missouri 63141.

6. Defendant The Harvard Drug Group d/b/a Major Pharmaceuticals (“Major Pharmaceuticals”) is a limited liability company organized under the state of Michigan and maintains its principal place of business at 17177 North Laurel Park, Suite 233, Livonia, Michigan 48152 and who can be served by serving its registered agent at C T Corporation System 120 South Central Avenue, Clayton, Missouri 63105.

7. Defendant Hen House Marketplace Inc. (“Hen House”) is a limited liability company organized under the state of Missouri and maintains its principal place of business

at 211 North Stadium Boulevard, Suite 201, Columbia, Missouri 65203 and who can be served by serving its registered agent R. Otto Maly at 211 North Stadium Boulevard, Suite 201, Columbia, Missouri 65203.

8. Defendant Four B. Corp. upon information and belief d/b/a Balls Food Stores, is a foreign corporation, with a principal place of business in the State of Kansas and who can be served by serving their registered agent Luder & Weist, LLC at 7400 W. 132nd Street, Suite 110, Overland Park, Kansas 66213.

9. Defendants John Does 1-4 are defendants who actually dispensed the prescriptions in question to Plaintiff Gentry and at all times relevant herein were acting within the course and scope of their employment with Four B. Corp.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over this action pursuant to the Missouri Constitution Art. V, section 14 as well as personal jurisdiction over a corporation with its domicile in the State of Missouri.

11. Venue is appropriate in Boone County, Missouri pursuant to R.S.Mo. §508.010 in that Hen House is a Missouri Corporation with a registered agent located in Boone County, Missouri.

ALLEGATIONS COMMON TO ALL COUNTS

12. Plaintiff Leann Gentry was prescribed Valsartan, a generic prescription medication contaminated with N-nitrosodimethylamine (“NDMA”), a carcinogenic and liver-damaging impurity.

13. Defendants Solco, Princeton, Teva and Harvard/Major's manufacturing and distribution of the Valsartan prescription medication was principally for the treatment of high blood pressure and congestive heart failure.

14. Due to manufacturing defects, certain generic formulations of Valsartan-containing prescriptions have become contaminated with NDMA.

15. NDMA is a priority toxic pollutant as listed by 40 CFR §131.36. Exposure to NDMA can cause liver damage and cancer in humans and is classified as a probable human carcinogen.

16. On July 13, 2018, the U.S. Food & Drug Administration ("FDA") announced a voluntary recall of several brands of Valsartan-containing generic medications. The recall was due to the presence of NDMA in the recalled products. The FDA's notice states: "NDMA is classified as a probable human carcinogen (a substance that could cause cancer) based on results from laboratory tests. The presence of NDMA was unexpected and is thought to be related to changes in the way the active substance was manufactured."

17. The European Medicines Agency explained that "NDMA is an unexpected impurity that was not detected by routine tests carried out by [Solco and Princeton's parent company in China, Zhejiang Huahai]" and that the change in the manufacturing process which led to the impurity was introduced in 2013 and is "believed to have produced NDMA as a side product." Therefore, this contamination is likely to have existed for approximately six years before being detected.

18. Plaintiff Leann Gentry purchased the valsartan-containing medication from Hen House in Leawood, Kansas from approximately 2013 to 2018.

19. Plaintiff Leann Gentry was injured by ingesting an acutely toxic substance, specifically NDMA, which was present in the Valsartan medication manufactured, distributed and/or sold by defendants. Plaintiffs injuries include but are not limited to: diagnosis of breast cancer (ductal carcinoma) on or about September 6, 2016; surgical removal of cancerous tissue; chemotherapy; the cost of treatments and medications for the breast cancer; the natural pain and suffering related to having breast cancer; the pain and suffering associated with breast cancer and its treatments; the increased likelihood of recurrence of breast cancer and the mental anguish associated with said increased likelihood of re-occurrence.

20. Plaintiffs' damages exceed \$25,000.

COUNT I: NEGLIGENCE

21. To the extent they do not conflict, Plaintiffs incorporate by reference all other paragraphs contained in this Petition for Damages.

22. Defendants owed a duty of ordinary care to Plaintiffs to manufacture, distribute and sell the subject Valsartan medications free from harmful defects and impurities.

23. Plaintiff Leann Gentry used the valsartan-containing medication in a manner reasonably anticipated by Defendants.

24. Defendants breached their duty of ordinary care by failing to act as a reasonably careful manufacturer or seller engaged in the same business when manufacturing, distributing, and selling the medication contaminated with NDMA by failing to:

- a. Conduct reasonable inspection of the product to ensure it was free of harmful impurities and/or defects;
- b. Ensure the changes in manufacturing processes would not produce results in the composition of the medication that would render the medication harmful to humans;
- c. Evaluate the effects of the manufacturing changes of process to ensure the product would be free of harmful defects and impurities once change was implemented;
- d. Pull the product from sale to the public until the U.S. recall in July 2018 despite notice of defect being made public internationally prior to July 2018.

25. As a direct and proximate result of Defendants' negligence, Plaintiff was injured as more fully set forth herein when ingesting an acutely toxic substance, specifically NDMA, which was negligently present in the Valsartan-containing medication manufactured, distributed and/or sold by defendants.

26. Defendants knew or should have known the product contained NDMA at the time the product was placed into the stream of commerce.

27. Defendants knew when they manufactured, distributed and/or sold the medication that it was intended for consumption by members of the public.

28. As this defective condition dates back to 2012, with approximately six years between when the defect arose and any action was taken, Defendants' conduct evinces a complete indifference and/or reckless disregard for the rights and safety of others, as such Plaintiffs are entitled to punitive damages to deter this conduct by others.

WHEREFORE, Plaintiffs pray for damages against defendants in this action for general damages sustained by each, special damages as such sums to be proven at trial, punitive damages in an amount that will properly punish defendants and deter others from like conduct and for other such sums the Court may deem just and proper.

COUNT II: STRICT LIABILITY

29. To the extent they do not conflict, Plaintiffs incorporate by reference all other paragraphs contained in this Petition for Damages.

30. Defendants are engaged in the business of manufacturing and/or selling the Valsartan-containing medication ingested by Plaintiff Leann Gentry.

31. At the time it was sold by defendants, the Valsartan-containing medication was in a defective condition and unreasonably dangerous to persons such as Plaintiff Leann Gentry when put to a reasonably anticipated use because it contained NDMA, a known carcinogen.

32. The Valsartan-containing medication ingested by Plaintiff Leann Gentry was expected to reach and did reach the hands of plaintiff without substantial change in the condition in which it was manufactured and sold.

33. The Valsartan-containing medication sold by defendants was used in a manner reasonably anticipated.

34. Defendants knew or should have known the valsartan-containing medication contained NDMA at the time the medication was placed into the stream of commerce.

35. The Valsartan-containing medication ingested by Plaintiff Leann Gentry and sold by defendants was the direct and proximate cause of Plaintiff Leann Gentry's damages, all as more fully described in herein.

36. Defendants knew when they manufactured, distributed and/or sold the medication that it was intended for consumption by members of the public.

37. As this defective condition dates back to 2012, with approximately six years between when the defect arose and any action taken, Defendants' conduct evinces a complete indifference and/or reckless disregard for the rights and safety of others, as such Plaintiffs are entitled to punitive damages to deter this conduct by others.

WHEREFORE, Plaintiffs pray for damages against defendants in this action for general damages sustained by each, special damages as such sums to be proven at trial, punitive damages in an amount that will properly punish defendants and deter others from like conduct and for other such sums the Court may deem just and proper.

COUNT III: BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

38. To the extent they do not conflict, Plaintiffs incorporate by reference all other paragraphs contained in this Petition for Damages.

39. Defendants customarily sell the Valsartan-containing product purchased and consumed by Plaintiff Leann Gentry.

40. At the time of the sales of the Valsartan-containing medication, the medication was not fit for the ordinary purpose for which the medication is used, as it contained NDMA, a known carcinogen.

41. Plaintiff Leann Gentry was a person who was reasonably expected to use, consume or be affected by the medication and she was injured as a result of her reasonably anticipated use of the medication, all as more fully described herein.

42. Plaintiff Leann Gentry used the medicine in a manner reasonably intended for its use.

43. As this defective condition dates back to 2012, with approximately six years between when the defect arose and any action taken, Defendants' conduct evinces a complete indifference and/or reckless disregard for the rights and safety of others, as such Plaintiffs are entitled to punitive damages to deter this conduct by others.

WHEREFORE, Plaintiffs pray for damages against defendants in this action for general damages sustained by each, special damages as such sums to be proven at trial, punitive damages in an amount that will properly punish defendants and deter others from like conduct and for other such sums the Court may deem just and proper.

COUNT IV: LOSS OF CONSORTIUM

44. To the extent they do not conflict, Plaintiffs incorporate by reference all other paragraphs contained in this Petition for Damages.

45. At all times relevant herein, Plaintiff James Gentry was the lawfully wedded husband of Leann Gentry and was entitled to her service, society and companionship.

46. As a direct and proximate result of Defendants' negligence, actions and lack of actions described above, Plaintiff James Gentry has suffered a loss of consortium and will in the future continue to suffer a loss of consortium.

WHEREFORE, Plaintiffs pray for damages against defendants in this action for general damages sustained by each, special damages as such sums to be proven at trial, punitive damages in an amount that will properly punish defendants and deter others from like conduct and for other such sums the Court may deem just and proper.

Respectfully submitted,

THE ACCURSO LAW FIRM
A Professional Corporation

/s/Louis C. Accurso

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ATTORNEYS FOR PLAINTIFFS

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

LEANN GENTRY AND JAMES GENTRY
4040 W. 131st Terrace,
Leawood, KS 66209

Plaintiffs,

v.

SOLCO HEALTHCARE U.S., LLC,
REGISTERED AGENT:
INTERSTATE DOCUMENT FILINGS INC.
208 West State St.
Trenton, New Jersey 08608

PRINSTON PHARMACEUTICALS, INC.,
REGISTERED AGENT:
JUN DU
2001 Eastpark Boulevard,
Cranbury, New Jersey 08512

TEVA PHARMACEUTICALS USA, INC.
REGISTERED AGENT:
CORPORATE CREATIONS NETWORK INC.
2747 Olive Blvd., #300
Saint Louis, Missouri 63141

THE HARVARD DRUG GROUP, L.L.C. d/b/a
MAJOR PHARMACEUTICALS
REGISTERED AGENT:
C T CORPORATION SYSTEM
120 South Central Ave.
Clayton Missouri 63105

HEN HOUSE MARKETPLACE, LLC.
REGISTERED AGENT:
R. OTTO MALY
211 N. Stadium Blvd.
Columbia, Missouri 65203

Civil Action No. _____

FOUR B CORP.)
d/b/a Balls Food Stores)
REGISTERED AGENT:)
LUDER & WEIST, LLC)
7400 W. 132 Street, Ste. 110)
Overland Park, Kansas 66213)
)
John Does 1-4)
Service to be determined)
)
Defendants)

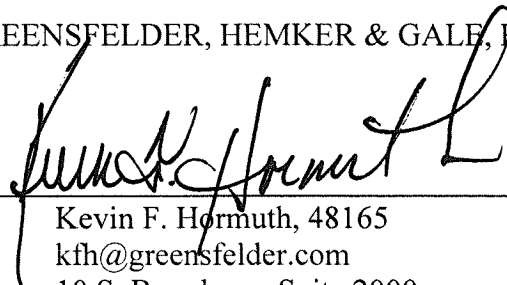
**CONSENT TO REMOVAL BY DEFENDANTS SOLCO HEALTHCARE U.S., LLC
AND PRINSTON PHARMACEUTICALS, INC.**

Defendants Solco Healthcare U.S., LLC and Prinston Pharmaceuticals, Inc. hereby consent to removal of Case No. 18BA-CV03617 from the 13th Judicial Circuit, Boone County, Missouri Circuit Court to the United States District Court for the Western District of Missouri, Central Division.

Dated this 10th day of October, 2018.

Respectfully submitted,

GREENSFELDER, HEMKER & GALE, P.C.

By 

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Facsimile: (314) 345-5466

*Attorneys for Solco Healthcare U.S., LLC and
Prinston Pharmaceuticals, Inc.*

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

LEANN GENTRY AND JAMES GENTRY
4040 W. 131st Terrace,
Leawood, KS 66209

Plaintiffs,

v.

SOLCO HEALTHCARE U.S., LLC,
REGISTERED AGENT:
INTERSTATE DOCUMENT FILINGS INC.
208 West State St.
Trenton, New Jersey 08608

PRINCETON PHARMACEUTICALS, INC.,
REGISTERED AGENT:
JUN DU
2001 Eastpark Boulevard,
Cranbury, New Jersey 08512

TEVA PHARMACEUTICALS USA, INC.
REGISTERED AGENT:
CORPORATE CREATIONS NETWORK INC.
2747 Olive Blvd., #300
Saint Louis, Missouri 63141

THE HARVARD DRUG GROUP, L.L.C. d/b/a
MAJOR PHARMACEUTICALS
REGISTERED AGENT:
C T CORPORATION SYSTEM
120 South Central Ave.
Clayton Missouri 63105

HEN HOUSE MARKETPLACE, LLC.
REGISTERED AGENT:
R. OTTO MALY
211 N. Stadium Blvd.
Columbia, Missouri 65203

Civil Action No. _____

FOUR B CORP.)
d/b/a Balls Food Stores)
REGISTERED AGENT:)
LUDER & WEIST, LLC)
7400 W. 132 Street, Ste. 110)
Overland Park, Kansas 66213)
)
John Does 1-4)
Service to be determined)
)
Defendants)

CONSENT TO REMOVAL BY DEFENDANT THE HARVARD DRUG GROUP, L.L.C.
D/B/A MAJOR PHARMACEUTICALS

Defendant The Harvard Drug Group, L.L.C. d/b/a Major Pharmaceuticals hereby consents to removal of Case No. 18BA-CV03617 from the 13th Judicial Circuit, Boone County, Missouri Circuit Court to the United States District Court for the Western District of Missouri, Central Division.

Dated this 10th day of October, 2018.



Daniel A. Sasse, # 48997
dsasse@crowell.com
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***Attorneys for The Harvard Drug Group,
L.L.C. d/b/a Major Pharmaceuticals***

EXHIBIT D

**IN THE 13TH JUDICIAL CIRCUIT, BOONE COUNTY, MISSOURI
CIRCUIT COURT**

LEANN GENTRY AND JAMES GENTRY
4040 W. 131st Terrace,
Leawood, KS 66209

Plaintiffs,

v.

SOLCO HEALTHCARE U.S., LLC,
REGISTERED AGENT:
INTERSTATE DOCUMENT FILINGS INC.
208 West State St.
Trenton, New Jersey 08608

PRINCETON PHARMACEUTICALS, INC.,
REGISTERED AGENT:
JUN DU
2001 Eastpark Boulevard,
Cranbury, New Jersey 08512

TEVA PHARMACEUTICALS USA, INC.
REGISTERED AGENT:
CORPORATE CREATIONS NETWORK INC.
2747 Olive Blvd., #300
Saint Louis, Missouri 63141

THE HARVARD DRUG GROUP, L.L.C. d/b/a
MAJOR PHARMACEUTICALS
REGISTERED AGENT:
C T CORPORATION SYSTEM
120 South Central Ave.
Clayton Missouri 63105

HEN HOUSE MARKETPLACE, LLC.
REGISTERED AGENT:
R. OTTO MALY
211 N. Stadium Blvd.
Columbia, Missouri 65203

Case No. 18BA-CV03617

FOUR B CORP.)
d/b/a Balls Food Stores)
REGISTERED AGENT:)
LUDEK & WEIST, LLC)
7400 W. 132 Street, Ste. 110)
Overland Park, Kansas 66213)
)
John Does 1-4)
Service to be determined)
)
Defendants)

NOTICE TO STATE COURT OF FILING NOTICE OF REMOVAL

TO: Circuit Clerk, Boone County
705 E. Walnut Street
Columbia, MO 65201

PLEASE TAKE NOTICE that Defendant Teva Pharmaceuticals USA, Inc. has removed this action to the United States District Court for the Western District of Missouri pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. Attached hereto as **Exhibit 1** is a true and correct copy of the removal papers filed with the United States District Court for the Western District of Missouri on October 11, 2018.

Pursuant to 28 U.S.C. § 1446, the filing of this Notice of Removal in the United States District Court, together with the filing of a copy of the present Notice with this Court, effects the removal of the action, and this Court may proceed no further unless and until this case is remanded.

Respectfully submitted,

ARMSTRONG TEASDALE LLP

/s/ Matthew D. Turner

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Matthew D. Turner MO BAR 48031

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***Attorneys for Teva Pharmaceuticals USA,
Inc.***

CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2018, I electronically filed the foregoing **NOTICE TO STATE COURT OF FILING NOTICE OF REMOVAL** with the Clerk of the Court using the Court's electronic filing system and served upon the following by the Court's electronic notification system, email, and/or by U.S. mail:

Louis C. Accurso (e-notice and mail)
Burton S. Haigh
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/s/Matthew D. Turner
Matthew D. Turner

JS 44 (Rev 09/10)

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI****CIVIL COVER SHEET**

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Western District of Missouri.

The completed cover sheet must be saved as a pdf document and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s):

First Listed Plaintiff:
Leann Gentry ;
2 Citizen of Another State; Kansas
County of Residence: Outside This District

Additional Plaintiff(s):
James Gentry ;
2 Citizen of Another State; Kansas

Defendant(s):

First Listed Defendant:
Solco Healthcare U.S., LLC ;
5 Incorporated and Principal Place of Business in Another State; Delaware
County of Residence: Outside This District

Additional Defendants(s):
Prinston Pharmaceuticals, Inc. ;
5 Incorporated and Principal Place of Business in Another State; Delaware

Teva Pharmaceuticals USA, Inc. ;
5 Incorporated and Principal Place of Business in Another State; Delaware

The Harvard Drug Group, L.L.C. d/b/a Major Pharmaceuticals ;
5 Incorporated and Principal Place of Business in Another State; Michigan

Four B Corp. ;
5 Incorporated and Principal Place of Business in Another State; Kansas

Hen House Marketplace, LLC ;
4 Incorporated or Principal Place of Business in This State;

County Where Claim For Relief Arose: Boone County

Plaintiff's Attorney(s):

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Defendant's Attorney(s):

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Basis of Jurisdiction: 4. Diversity of Citizenship

Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff: 2 Citizen of Another State

Defendant: 5 Incorporated and Principal Place of Business in Another State

Origin: 2. Removed From State Court

State Removal County: Boone County

State Removal Case Number: 18BA-CV03617

Nature of Suit: 367 Health Care/Pharmaceutical Product Liability

Cause of Action: Pharmaceutical product liability

Requested in Complaint

Class Action: Not filed as a Class Action

Monetary Demand (in Thousands): exceed \$25,000

Jury Demand: Yes

Related Cases: Is NOT a refiling of a previously dismissed action

Signature: Matthew D. Turner

Date: 10/11/2018

If any of this information is incorrect, please close this window and go back to the Civil Cover Sheet Input form to make the correction and generate the updated JS44. Once corrected, print this form, sign and date it, and submit it with your new civil action.