

Michael T. Rooney, Esq.
Celia Ann Rooney, Esq.
Rooney & Rooney, Attorneys
1515 Market Street, Suite 1200
Philadelphia, PA 19102
215.854.4085
mrooney47@comcast.net
crooney12@comcast.net
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

RAMONA ESTRELLA,	:	HONORABLE JOSEPH H. RODRIGUEZ
Plaintiff,	:	HONORABLE JOEL SCHNEIDER
	:	
v.	:	Civil Action No. 15-4286
ERIC KFIR YAHAV, M.D.,	:	
CAMCARE HEALTH CORPORATION,	:	NOTICE OF MOTION FOR REMAND
TEVA PHARMACEUTICALS,	:	
JOHN DOE CORPORATIONS A-J	:	Return Date: September 8, 2015
AND JOHN DOES A-J	:	

TO: PAUL J. FISHMAN, ESQ., U.S. ATTORNEY
ANNE B. TAYLOR, ESQ., ASSISTANT U.S. ATTORNEY
401 Market Street, Fourth Floor
Camden, NJ 08101

PAUL J. COSGROVE, ESQ.
Ulmer & Berne, LLP
600 Vine Street, Suite 2800
Cincinnati, OH 45202-2409
Attorney for Defendant Teva Pharmaceuticals USA, Inc.

PLEASE TAKE NOTICE: that on Monday, September 8, 2015, Plaintiff

Ramona Estrella, by and through her undersigned attorney, shall seek an order for remand to the state court before the Honorable Joseph Rodriguez, United States District Judge.

In support of this motion, Plaintiff will rely upon: (1) Certification of Plaintiff's Counsel with attachments and (2) a Memorandum of Law. Plaintiff also incorporates by reference her Response, filed contemporaneously herewith, to the Motion to Dismiss of Defendants. A proposed order is also submitted herewith.

Respectfully submitted,

August 3, 2015

s/Michael T. Rooney, Esq.
Attorney for Plaintiff

Michael T. Rooney, Esq.
Celia Ann Rooney, Esq.
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Plaintiff,	:	HONORABLE JOEL SCHNEIDER
	:	
v.	:	Civil Action No. 15-4286
	:	
ERIC KFIR YAHAV, M.D.,	:	MEMORANDUM OF LAW
CAMCARE HEALTH CORPORATION,	:	IN SUPPORT OF PLAINTIFF'S
TEVA PHARMACEUTICALS,	:	MOTION FOR REMAND
JOHN DOE CORPORATIONS A-J	:	
AND JOHN DOES A-J	:	Return Date: September 8, 2015

MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF'S MOTION FOR REMAND

Dated: August 3, 2015

Respectfully submitted,
s/Michael T. Rooney
And Celia A. Rooney (with him on
the brief)
ROONEY & ROONEY, ATTORNEYS
Attorneys for Plaintiff

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Michael T. Rooney, Esq.
Celia Ann Rooney, Esq.
Rooney & Rooney, Attorneys
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TEVA PHARMACEUTICALS,	:	MOTION FOR REMAND
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AND JOHN DOES A-J	:	Return Date: September 8, 2015

Plaintiff, Ramona Estrella, by and through her undersigned attorney, hereby moves this Honorable Court for an order remanding the instant action to the New Jersey Superior Court, Camden County, for the reasons that the removal was untimely and this court lacks subject matter jurisdiction and states as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND

On August 25, 2014, this medical malpractice action was filed in the Superior Court of New Jersey, Camden County, docket number 3331-14, naming Dr. Yahav and Camcare Health Corporation as medical defendants and Teva Pharmaceuticals USA, Inc., as the manufacturer of the intrauterine device which is alleged to have

harmed the Plaintiff. See Exhibit A, Complaint attached hereto. Defendants Yahav and Camcare Health Corporation were served with process on 9/30/14 and 10/2/14, respectively. Their Answers were due by 11/06/14, but neither responded to the lawsuit by entering an appearance or filing an Answer. See Exhibits B and C, Affidavits of Service upon Defendants Yahav and Camcare.

Plaintiff, anticipating Defendants would follow the procedural requirements, obtained an Affidavit of Merit, as required under New Jersey Statutes 2A:53A-27, from a Board Certified Obstetrical and Gynecological physician dated 11/24/14. See Exhibit D, Affidavit of Merit by Dr. Carol M. McIntosh. In mid-April, 2015, as the time for taking a default judgment approached, Plaintiff's counsel contacted the legal department of Camcare Health Corporation to ask their intentions. No response was received and no documents were filed in court. On 05/04/2015, the time for filing an Answer being almost six months past due, Plaintiff requested that the clerk of the state court in Camden enter the default against Defendants Yahav and Camcare pursuant to New Jersey Rules of Court, Rule 4:43-1. See Exhibit E, Request for Entry of Default against Defendants Yahav and Camcare Health Corp.

On 06/23/15, the U.S. Attorney's office, having never appeared in the state court, abruptly filed a Notice of Removal in this Court. See Exhibit F, Notice of Removal. The Defendants filed nothing at all in the state court until 06/24/2015, when the U.S. Attorney's office filed copies of the Notice of Removal of the action, filed in the New Jersey District Court the day before. See Exhibit G, Docket Sheet from the Camden County Superior Court in Case No. 3331-14.

The Notice of Removal filed in the federal court purports to be based upon 42 U.S.C. § 233, but the very specific requirements of that statute which would have conferred subject matter jurisdiction to this court have not been met by the Defendants or by the U.S. Attorney's office. Exhibit F. The cover letter to the state court purports to base the filing and the notice to take no further action there upon the general removal statute § 1446(d), yet the time requirements of §1446(b), requiring the filing of the removal within 30 days was also not followed. See Exhibit H, Cover letter to the Camden County Superior Court of New Jersey clerk.

The Removal by the U.S. Attorney's office was untimely and the procedure improper, thereby depriving this court of subject matter jurisdiction. This case should therefore be remanded to the state court where it was initially filed. In the alternative, at the minimum, this court should stay this matter in order to permit limited discovery on the issues raised concerning its subject matter jurisdiction and hold a hearing to determine whether the Defendants Yahav and Camcare are in fact "federal defendants" and maintained that status at the time of the incidents complained of when Plaintiff was harmed by their alleged medical negligence. See also Plaintiff's Response to Defendants Yahav and Camcare's Motion to Dismiss under Rule 12(b)(1).

II. QUESTION PRESENTED:

Should this Court remand this case to the New Jersey Superior Court, Camden County where the removal was untimely and this court does not have subject matter jurisdiction?

Suggested Answer: Yes.

III. LEGAL ARGUMENT

A. FEDERAL COURTS HAVE LIMITED SUBJECT MATTER JURISDICTION AND REMOVAL STATUTES MUST BE STRICTLY CONSTRUED

Article III of the United States Constitution, in Section 1, establishes the United States Supreme Court and gives Congress the authority to establish the lower federal courts. Section 2 of Article III establishes categories of cases which the federal district court may hear. U.S. Const., Art. III, §§ 1 and 2. The two main types of cases are described as federal question and diversity cases, under 28 U.S.C. §§ 1331 and 1332.

As the Third Circuit has stated in the context of a removed diversity case:

...[T]he removing party carries a "heavy burden of persuasion" in making this showing. Steel Valley Author. v. Union Switch & Signal Div., 809 F.2d 1006, 1012 n. 6 (3d Cir.1987), cert. dismissed, 484 U.S. 1021, 108 S.Ct. 739, 98 L.Ed.2d 756 (1988); see also Boyer v. Snap-On Tools Corp., 913 F.2d 108, 111 (3d Cir.1990), cert. denied, --- U.S. ----, 111 S.Ct. 959, 112 L.Ed.2d 1046 (1991). It is logical that it should have this burden, **for removal statutes "are to be strictly construed against removal and all doubts should be resolved in favor of remand."** Steel Valley, 809 F.2d at 1010 (citing Abels v. State Farm Fire & Casualty Co., 770 F.2d 26, 29 (3d Cir.1985)).

Batoff v. State Farm Insurance, 977 F.2d 848, ____ (3d Cir. 1992) (emphasis added).

Removal statutes must be narrowly construed because proper procedures in removing a case initially filed in state court are precisely what confers subject matter jurisdiction in the federal courts. This is not a mere technicality or procedural nicety: it goes to the very authority of the district court to hear the matter brought before it and to make decisions affecting the rights of the parties involved. In discussing these well-established legal and Constitutional principles,

the U.S. Court of Appeals for the 11th Circuit has stated:

They are `empowered to hear only those cases within the judicial power of the United States as defined by Article III of the Constitution,' and which have been entrusted to them by a jurisdictional grant authorized by Congress." *University of South Ala. v. American Tobacco Co.*, [168 F.3d 405](#), 409 (11th Cir.1999). A district court which exercises jurisdiction it does not have "unconstitutionally invades the powers reserved to the states to determine controversies in their own courts" and "offends fundamental principles of separation of powers." *Id.* at 410.

The subject matter jurisdiction of a federal district court is Constitutional and statutory in nature and therefore cannot be waived or otherwise conferred upon the court by the parties. *Univ. of South Alabama v. American Tobacco Co.*, [168 F.3d 405](#), 409 (11th Cir. 1999). "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case **shall be remanded**" to state court pursuant to 42 U.S.C. § 1447(c).

Moreover, the U.S. Supreme Court has held that removal statutes must be strictly construed because of these important constitutional implications, requiring that the federal courts "scrupulously confine their own jurisdiction to the precise limits which the statute has defined." *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 109, 61 S.Ct. 868, 872, 85 L.Ed. 1214 (1941) (citing *Healy v. Ratta*, 292 U.S. 263, 270, 54 S.Ct. 700, 703, 78 L.Ed.1248 (1934). See also, *Allen v. Christenberry*, [327 F.3d 1290](#), (11th Cir. 2003) (reversing a denial of remand for failure to meet the removal requirements of 42 U.S.C. §233 and instructing the district court to remand to state court; further discussion *infra*.)

In the instant case, Defendants Yahav and Camcare Health Corporation,

after ignoring the basic procedures required of them in the state court for many months, to the extent that default was entered against them there, have now in this court, by the United States Attorney's office, disregarded the basic procedures and time requirements set forth very specifically in the statute they cite as authority for this defective removal. The court should not permit this. The removing Defendants bear the burden of establishing jurisdiction in this court, and as will be shown in the next section, they have not done so. Therefore, the case should be remanded and no further action taken in this court.

B. DEFENDANTS YAHAV AND CAMCARE HEALTH CORPORATION BY THE UNITED STATES HAVE FAILED TO MEET THE MANDATORY REQUIREMENTS OF 42 U.S.C. § 233 AND THUS REMAND IS REQUIRED

Defendants' removal notice cites 42 U.S.C. §233 as their authority for this belated removal to federal court. However, the very specific requirements of that statute have not been met and thus the removal is untimely and defective, depriving this court of subject matter jurisdiction.

A brief overview of the statutory scheme and purpose will place the issue in context. In 1992, Congress passed the Federally Funded Community Health Centers Assistance Act, which permits such centers and their individual employees or contractors to apply for medical negligence liability coverage through the federal government and, if they meet the requirements annually, the protections of coverage under the Federal Tort Claims Act (FTCA) are afforded to them. The centers and their employees would then be deemed employees of the Public Health

Service for purposes of government paid liability coverage and requiring injured parties to follow the procedures of the FTCA. 42 U.S.C. § 233(a). Other subsections of the statute set out the procedures to be followed to remove a case initially filed in state court (see below). Importantly, there are very specific requirements to obtain and maintain such status, and to ensure that the status was in effect at the time of the injury and the procedures performed were within the scope of the employment.

Under Subsection (b), any such center or employee who has been served with a medical negligence lawsuit “shall deliver...all process served upon him” to his immediate superior, and in turn, “shall promptly furnish” copies to the Attorney General or his designee, such as the U.S. Attorney’s office for the district where the action is filed. 42 U.S.C. § 233(b).

There are two, and only two, statutory procedures in the statute for removal to federal court. 42 U.S.C. §§ 233(c), (l). The removal in subsection (c) is clarified in subsection (l)(1) and an additional procedure is provided in (l)(2). Subsections (c) and (l)(1), read together, provide that the United States Attorney shall appear **within 15 days** in the state court where such an action is filed and certify that the individual defendants were deemed employees of the PHS and acting within the scope of that employment at the time of the alleged negligence pursuant to 28 U.S.C. § 2679. The U.S. Attorney shall then remove the case to the federal district court. It is important to note that because even a diligent plaintiff often does not know and cannot find out that such deemed employees are or may be “federal defendants”, the statute at (c) specifically provides for tolling in the language which states, “any limitation of time for commencing, or filing an application...shall be deemed to have

been suspended during the pendency of the civil action...under this section.” 42 U.S.C. § 233(c); see also, Santos ex Rel. Beato v. U.S., 559 F.3d 189 (3d Cir. 2009) (holding that equitable tolling applied under the FTCA where “deemed” status and partial federal funding of apparently private actors would not have been revealed in public information or other sources to a reasonably diligent plaintiff).

At subsection (l)(1), added as an amendment to the original provisions of the act in 1995, provides the 15 day time period, triggered by notice of the suit, for the AG or his designee to act in the state court and then remove the action. Some courts have held that despite this amendment to the act, the AG can remove the action at any time before the commencement of trial in the state court, see, e.g., Celestine v. Mt. Vernon Neighborhood Health Center, 403 F. 3d 76 (2d Cir. 2005). However, that finding would appear to nullify the explicit 15-day rule for action in the state court provided in the later amendment and that contradicts the strict construction of the statute. Moreover, the result in Celestine turned on the fact that Celestine did not file an administrative claim pursuant to the FTCA within 60 days after her case was dismissed.

In the event the AG fails to act within the statutory time period, subsection §233(l)(2) provides an additional procedure for the Defendants themselves to remove the case to federal court. The statute provides as follows:

(2) If the Attorney General fails to appear in State court within the time period prescribed under paragraph (1), upon petition of any entity or officer, governing board member, employee, or contractor of the entity named, the civil action or proceeding shall be removed to the appropriate United States district court. The civil action or proceeding **shall be stayed** in such court until such court conducts a hearing, and makes a determination, as to the appropriate forum or procedure for the assertion of the claim for damages

described in subsection (a) of this section and issues an order consistent with such determination.

This court must examine several issues with regard to its subject matter jurisdiction in this case. Proper procedures necessary to the conferring of jurisdiction were not followed here by the U.S. Attorney's office or by the individual defendants. The U.S. Attorney did not appear at all in the state court. After plaintiff asked the clerk to enter default on May 4, 2015, almost six months after their answers were due, the U.S. Attorney waited another almost two months before filing a notice in the state court after removal. Given the very purpose of the Act and its amendments were to ensure and require timely and prompt responses to the filing of such actions by the AG, the dilatory tactics of the U.S. Attorney's office has severely prejudiced plaintiff in seeking compensation for the harm sustained at the hands of these defendants. The individual Defendants Yahav and Camcare sat on their hands and did absolutely nothing to alert plaintiff or the state court that they may be "deemed" federal employees. They did not petition this court for removal when the AG did not appear within 15 days—assuming they even provided copies of the suit papers when they were served last year; an issue for discovery. Plaintiff submits that in addition to the statutory and constitutional requirements of the statutes themselves in both state and federal court, the utter disregard of these defendants of the rules and mandatory requirements should not be rewarded.

At the very least, this Court should permit limited discovery concerning its subject matter jurisdiction and conduct a hearing as to the issues involved and the appropriate forum for these proceedings, staying all other proceedings, particularly

the Motion to Dismiss filed by the United States which should be stricken from the calendar and held in abeyance until this court rules on this motion to remand. Otherwise, the Court should remand the matter to state court *instanter* for the reasons already established that the removal was untimely and defective and deprived the court of subject matter jurisdiction.

IV. RELIEF REQUESTED



Based upon the foregoing, Plaintiff respectfully requests that this Honorable Court stay all proceedings until limited discovery and a hearing is conducted concerning its subject matter jurisdiction, including striking the Defendants' Motion to Dismiss from the calendar until a determination is made on that threshold issue. In the alternative, Plaintiff submits that this Honorable Court should remand the case to the New Jersey Superior Court, Camden County, for the reasons established that the removal was untimely and defective and deprived the court of subject matter jurisdiction.

Dated: August 3, 2015

Respectfully submitted,
s/Michael T. Rooney
And Celia A. Rooney (with him on
the brief)
Attorneys for Plaintiff

Exhibit A

Appendix XII-B1

	CIVIL CASE INFORMATION STATEMENT (CIS)		FOR USE BY CLERK'S OFFICE ONLY	
	Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule 4:5-1</i> Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i>, if information above the black bar is not completed or attorney's signature is not affixed		PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA	
			CHG/CK NO.	
			AMOUNT:	
		OVERPAYMENT:		
		BATCH NUMBER:		
ATTORNEY / PRO SE NAME Michael T. Rooney, Esq.		TELEPHONE NUMBER (215) 854-4085	COUNTY OF VENUE Camden	
FIRM NAME (if applicable) Rooney & Rooney, Attorneys at Law		DOCKET NUMBER (when available) <i>L-3331-14</i>		
OFFICE ADDRESS 1515 Market Street, Suite 1200 Philadelphia, PA 19102		DOCUMENT TYPE Complaint		
		JURY DEMAND <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
NAME OF PARTY (e.g., John Doe, Plaintiff) RAMONA ESTRELLA, Plaintiff		CAPTION Ramona Estrella, Plaintiff v. Eric Klif Yahav, M.D., et al.		
CASE TYPE NUMBER (See reverse side for listing) 604	HURRICANE SANDY RELATED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A -27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.		
RELATED CASES PENDING? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		IF YES, LIST DOCKET NUMBERS		
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN		
THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.				
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION				
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		IF YES, IS THAT RELATIONSHIP: <input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input checked="" type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS Patient-Physician		
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION				
 DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION		
WILL AN INTERPRETER BE NEEDED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		IF YES, FOR WHAT LANGUAGE? Spanish		
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with <i>Rule 1:38-7(b)</i> .				
ATTORNEY SIGNATURE: <i>Michael T. Rooney</i> <i>8/24/14</i>				

ROONEY & ROONEY
Michael T. Rooney, Esq.
Celia Ann Rooney, Esq.
Atty IDs:1351998/3011998
1515 Market Street, Suite 1200
Philadelphia, PA 19102
Email: mrooney47@comcast.net
Email: crooney12@comcast.net
Phone: 215.854.4085
Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF NEW JERSEY
CAMDEN COUNTY**

RAMONA ESTRELLA :
1229 N. 22nd Street :
Camden, New Jersey 08105 :
PLAINTIFF, :

CIVIL ACTION

DOCKET NO. L-3331-14

-V-

CODE: 604

ERIC KFIR YAHAV, M.D.

MEDICAL NEGLIGENCE

1 Alpha Avenue, Suite 27
Voorhees, New Jersey 08043

-AND-

CAMCARE HEALTH CORPORATION
817 Federal Street
Camden, NJ 08103

-AND-

TEVA PHARMACEUTICALS USA, INC.
1090 Horsham Road
North Wales, PA 19454

-AND-

BAYER HEALTHCARE PHARMACEUTICALS,
INC.

100 Bayer Boulevard
Whippany, New Jersey 07981

-AND-

COMPLAINT

JOHN DOE CORPORATIONS A through J,
-AND-JOHN DOES A through J, (fictitiously
named entities and persons whose identities
are unknown to Plaintiff),

Defendant(s).

Plaintiff RAMONA ESTRELLA, by and through her undersigned attorney, by way of her

Complaint, states as follows:

THE PARTIES:

1. Plaintiff RAMONA ESTRELLA is an adult individual residing at the address in the caption and a citizen of the Commonwealth of Pennsylvania for purposes of diversity jurisdiction.

2. Defendant ERIC KFIR YAHAV, M.D., is an adult individual whose principal place of business is at the address in the caption, where he may be served with summons, and who, at all times relevant herein, was a licensed physician in the State of New Jersey and held himself out to the public as a specialist in obstetrics and gynecology in the State of New Jersey.

3. Defendant CAMCARE HEALTH CORPORATION, INC., is a domestic non-profit corporation or other business entity established under the laws of the State of New Jersey, with its principal place of business at the address in the caption, and which was the actual or ostensible employer, master or principal of certain individual persons as set forth below, and which may be served with summons at the address in the caption.

4. Defendant TEVA PHARMACEUTICALS USA, INC., is a corporation or other business entity organized under the laws of the State of Delaware, with its principal place of business at the address in the caption, and which may be served with summons at the address of its registered service agent in the State of New Jersey as follows: Corporate Creations Network, 811 Church Road, Suite 105, Cherry Hill, NJ 08002; this Defendant manufactured, marketed and sold the intrauterine device (IUD) with the brand name "Paragard."

5. Defendant BAYER HEALTHCARE PHARMACEUTICALS, INC., is a corporation or other business entity organized under the laws of the State of Delaware, with its principal place of business at

the address in the caption, and which may be served with summons at the address of its registered service agent in the State of New Jersey as follows: Corporation Service Company, 830 Bear Tavern Road, West Trenton, NJ 08628; this Defendant manufactured, marketed and sold the intrauterine device (IUD) with the brand name "Mirena."

6. Defendant(s) JOHN DOE CORPORATIONS A through J, are fictitiously named corporations or other business entities whose identities are not presently known to the Plaintiff RAMONA ESTRELLA and may be known to the named Defendants which participated in the care and treatment of Plaintiff in one or more of the following capacities: actual or ostensible employers, masters, staffing agencies, or principals, or actual or ostensible agents, servants and/or employees of any of the named Defendants; suppliers or distributors of goods and/or services to the Plaintiff during her care and treatment at the times complained of herein; manufacturers, sellers, designers, packagers, marketers, or distributors of certain surgical products or supplies implanted, replaced, or removed from the Plaintiff; or in any other way participated in the care and treatment of the Plaintiff and who are or may be liable to the Plaintiff for injuries and harm and damages caused to her as alleged hereinafter.

7. Defendant(s) JOHN DOES A through J, whether male or female, are fictitiously named individuals whose identities are not presently known to the Plaintiff RAMONA ESTRELLA and who may be known to the named Defendants, who participated in the care and treatment of Plaintiff in one or more of the following capacities: health care assistants or professionals; pre-operative, operative or recovery room personnel; nurses, nurses' assistants or CNA's; interns, residents or fellows; actual or

ostensible agents, servants and/or employees of any of the named Defendants or any of the John Doe Corporations or individuals, whether known or unknown to the Plaintiff at the present time, or who otherwise participated in the care and treatment of the Plaintiff, including the provision or supply of any services or products, and who are or may be liable to the Plaintiff for the injuries and harm and damages caused to her under the theories of liability as alleged hereinafter.

THE MEDICAL EVENTS AND PERSONAL INJURIES AND BACKGROUND:

8. Prior to the events complained of, Plaintiff RAMONA ESTRELLA came under the care and treatment of Defendant ERIC KFIR YAHAV, M.D. (hereinafter “YAHAV” or “Dr. Yahav”), a specialist in obstetrics and gynecology, for general gynecological services, prenatal care and childbirth, and follow up gynecological care including placement of an intrauterine device, its later removal and replacement with a different IUD, as set forth in more detail below.

9. Defendant Yahav was aware of Plaintiff’s medical history.

10. Prior to the subject procedures in August of 2012, Plaintiff, then a minor child of 17, was in relative good health and had a healthy child born on July 5, 2012, without complication, after which she sought contraception by means of an IUD.

11. There is no indication in the records or reports of Defendant YAHAV that he adequately advised Plaintiff concerning the risks and dangers as well as benefits of using a contraceptive intrauterine device, or that he could misplace it, or that it could malfunction, or that he could mistakenly insert a Paragard IUD (which contains copper as a method of spermicide) rather than a Mirena IUD which contains

hormones as the method of preventing conception; furthermore, it does not appear in the records that he warned her about the possibility of becoming unable to bear children as a consequence of using an IUD.

12. On August 27, 2012, Defendant Yahav performed a procedure in the CAMCARE Health facility in which he reportedly inserted a Paragard IUD in the Plaintiff's uterus rather than a Mirena IUD, which is what Plaintiff requested and consented to; Dr. Yahav did not advise plaintiff of the change in device.

13. Following the August 27, 2012, procedure in which the Paragard IUD was inserted, which was not the device which Plaintiff selected, Plaintiff complained of ongoing and extreme and worsening pain in her abdomen and further experienced severe internal hemorrhaging and bleeding .

14. On August 30, 2012, following a phone call to the CAMCARE facility to describe her pain and symptoms, a physician told her through the nurse to go directly to the Emergency Room at Cooper University Hospital in Camden, New Jersey, which she did.

15. On August 30, 2012, Dr. Yahav met Plaintiff at the hospital and performed a laparoscopic procedure in which the Paragard IUD, described grossly as a "copper T" IUD by a pathologist, was removed; the device was found behind the uterus in the intra-abdominal cavity.

16. In the records, the device was described as having been "misplaced" and having "malfunctioned."

17. Prior to each of Plaintiff's procedures, Dr. YAHAV and others involved in her medical care failed to develop an adequate differential diagnosis, failed to adequately examine and order diagnostic studies, and otherwise failed to give her adequate pre-operative assessment and care.

18. As a direct and proximate result of the negligence and medical malpractice of the healthcare Defendants and all Defendants, and in combination and concurrence with the unreasonable dangerousness and defectiveness of the medical and surgical products which malfunctioned or were otherwise defective including the failure to adequately warn physicians and patients when they left the control of the manufacturing/distributing Defendants, and also due to the breaches of warranty of fitness for a particular purpose, Plaintiff sustained serious, permanent, incurable, and disabling injuries to the organs in her pelvic and abdominal areas, including internal abdominal scarring and other injuries and conditions, which place her in greater risk of harm in the future, and in all probability, have harmed her in making her unable to have children in the future.

19. As a further direct and proximate result of the negligence of the healthcare Defendants and the defective products of the Manufacturing Defendants, Plaintiff has sustained substantial special damages including medical bills in the past and future, and incurred additional liens and subrogation interests which have to be accounted for out of any recovery made from responsible Defendants herein, including a substantial Medicare or Medicaid lien.

20. As a further direct and proximate result of the negligence of the healthcare Defendants and the defective products of the Manufacturing Defendants, Plaintiff has sustained in the past and will sustain in the future lost wages and lost earning capacity.

21. As a further direct and proximate result of the negligence of the healthcare Defendants and the defective products of the Manufacturing Defendants, Plaintiff has sustained substantial general damages for severe and continuing pain and suffering, loss of enjoyment of life in the past and future, disability,

physical deformity, scarring, impairment of functional abilities, embarrassment, inconvenience, humiliation, and other unliquidated damages for the harm caused to her.

22. The negligent acts and omissions of all of the Defendants, breaches of warranty, and the defectiveness of the products and other conduct, combined and commingled to cause, contributed to cause and were substantial factors in causing the harm, injuries and damages to the Plaintiff.

23. Defendants are or may be liable to the Plaintiff on theories of direct liability as well as vicarious liability for the acts and omissions of their actual or ostensible agents, servants and employees, and the doctrine of *respondent superior* is claimed herein.

24. The healthcare Defendants at all times relevant, had sole custody and control of all instrumentalities used in the surgeries upon Plaintiff, while Plaintiff was under anesthesia, and otherwise unable to help herself or avoid the harm being caused, and the harm complained of normally does not occur without acts or omissions in negligence, and therefore, the doctrine of *res ipsa loquitur* is claimed herein.

25. At all times relevant herein, Dr. YAHAV was in charge as the surgeon during the procedures and surgeries on Plaintiff which took place in August of 2012, and had a duty to adequately train, instruct and supervise the physician's assistant, residents, interns nurses, and other assistants so as to properly care for Plaintiff.

26. At all times relevant herein, Dr. YAHAV and his assistants were employees, agents and/or servants of Defendant CAMCARE HEALTH CORPORATION, INC., and therefore, that Defendant is or may be liable for their negligent acts and omissions and other misconduct.

27. At all times relevant herein, there were involved in the activities of the healthcare Defendants and in the activities of the manufacturing Defendants, unidentified individuals and businesses entities, herein fictitiously named as “John Doe Corporations A through J” and “John Does A through J”, who are or may be liable to the Plaintiff along with the named Defendants on the basis of each of the Counts below, and each Count is intended to include such business entities and individuals, reserving Plaintiff’s right to discover their identities and amend her pleading to name them when revealed.

28. The negligent conduct of the named and fictitiously named Defendants, their fraud and misrepresentation, breaches of warranty, and the defective product combined and commingled to cause, contributed to cause and were substantial factors in causing harm to the plaintiff.

**COUNT I: NEGLIGENCE: MEDICAL MALPRACTICE:
PLAINTIFF V. DEFENDANT ERIC KFIR YAHAV, M.D., AND DEFENDANT CAMCARE
HEALTH CORPORATION, INC.**

29. Plaintiff incorporates by reference all of the preceding paragraphs as though fully set forth herein.

30. At all times relevant herein, Defendants YAHAV, M.D., and the hospital medical staff, and others present in and participating in the incidents complained of, were agents, employees or servants of the Defendant CAMCARE HEALTH CORPORATION, INC., and as such, their employers and/or principals are vicariously liable for their employees’, agents’ and/or servants’ negligent acts and omissions and other misconduct.

31. At all times relevant herein, the Healthcare Defendants and the Manufacturing Defendants are also directly liable for their own negligent acts and omissions to the extent that they

participated in the decisions, actions and conduct which caused, contributed to cause, or were substantial factors in causing the harm to Plaintiff as alleged herein.

32. Defendant YAHAV had duties to the Plaintiff as her gynecologist, attending physician, and surgeon, first, to do no harm, and otherwise, to perform the subject surgeries and procedures and examinations in a manner which met the standards of professional care for a specialist in his field and which was not performed in a manner to the detriment of the best interests of his patient.

33. Defendant YAHAV breached his duties to the Plaintiff, causing her irreparable harm.

34. The negligent acts and omissions of Defendant YAHAV included but were not limited to the following:

- a) Performing a procedure and a surgery in a negligent and careless manner;
- b) Doing inadequate investigation into the potential risks and consequences of performing the procedures in the manner which he performed them;
- c) Using the wrong device in the initial IUD insertion, to-wit: inserting a Paragard device in the Plaintiff instead of a Mirena IUD as requested by and consented to by the Plaintiff;
- d) Inserting the Paragard IUD in the wrong place and in the wrong manner, resulting in its migration outside of the uterus and into the intra-abdominal cavity;
- e) Negligently perforating the Plaintiff's uterus while using a HUMI manipulator device;
- f) Misplacing, misaligning, or mal-positioning the IUD device so that it was not properly inserted into the uterus and was found to be outside and behind the uterus;
- h) Replacing a misplaced, malfunctioning IUD with a different device which also caused problems;
- i) Permitting an incompetent surgical assistant to participate in Plaintiff's procedures;

- j) Failing to adequately supervise assistants and nurses in the operating room;
- k) Failing to obtain adequate consultations before performing surgery;
- l) Using improper technique and performance of a procedure for which the device was contra-indicated;
- m) Knowingly violating the product safety warnings mandated by the United States Food and Drug Administration;
- n) Failing to take into account the condition of the Plaintiff, the contra-indications she had at the time of the initial insertion, failing to note and document the critical physical details of the examination such as the presentation of the uterus prior to insertion, and failure to do an ultrasound.
- o) Being otherwise negligent, grossly negligent and careless in the care and treatment of plaintiff.

35. The above negligent acts and omissions fell below the acceptable standards of care for a gynecologist and gynecological surgeon in the field and were substantial factors in causing the harm to the Plaintiff set forth above.

WHEREFORE, Plaintiff asks this court to enter judgment in her favor and against the Defendant(s), jointly and severally, in an amount in excess of \$15,000.00, exclusive of interest and costs, and such other and further relief, including punitive damages, to which the court may deem her entitled.

**COUNT II: BATTERY: LACK OF INFORMED CONSENT:
PLAINTIFF V. DEFENDANT ERIC KLIF YAHAV, M.D.**

36. Plaintiff incorporates by reference all of the previous paragraphs as though fully set forth herein.

37. Defendant YAHAV had a duty to advise Plaintiff of all of the significant risks and side effects of the subject procedures, including the risks of failure or negligence in placement of the implanted devices which he selected and placed, and including the increased risk of harm from improper sizing and

placement of such hardware, the increased risk to her of the use of the products in ways not approved by the FDA, and the harm which would likely be caused to her by the contraindicated procedure and use of such medical devices.

38. Defendant failed to advise Plaintiff that he was not inserting the Mirena IUD which she had requested and consented to, and instead inserted a Paragard IUD, depriving Plaintiff of the opportunity of giving fully informed consent to the procedure.

39. Defendant YAHAV and the other medical Defendants failed to advise Plaintiff that the procedures she would undergo were either unnecessary or contraindicated.

40. As a result of these failures of the Defendants to fully inform plaintiff and obtain her informed consent, Dr. YAHAV and the other Defendants committed a medical battery upon the Plaintiff, thereby causing her harm.

41. A reasonable person in Plaintiff's position would not have consented to the procedures had she been fully informed of the matters a person would expect the physician to disclose about the benefits and risks of the device, the specific use of the device, which device was being used, the alternatives available to the patient, the "off-label" and/or experimental use of the device and attendant risks, the safety warnings provided which restricted the usage of the device to certain procedures which did not include the procedure selected by Defendants.

42. Plaintiff would not have consented to the surgeries complained of had she been fully apprised of all material and significant risks withheld from her knowledge and of the financial dealings of Dr.

YAHAV with the Manufacturing Defendants including, upon information and belief, the presence of sales representative(s) in the locations where she expected to receive care from competent and qualified medical personnel only.

43. The undisclosed risks of the treatment, the misplacement of the device, the malfunctioning of the device and the selection and improper insertion of a different device than the one which Plaintiff requested and consented to, did in fact happen and caused irreparable harm to the Plaintiff.

WHEREFORE, Plaintiff asks this court to enter judgment in her favor and against the Defendant(s), jointly and severally, in an amount in excess of \$15,000.00, exclusive of interest and costs, and such other and further relief, including punitive damages, to which the court may deem her entitled.

**COUNT III: LIABILITY OF HEALTH CARE PROVIDERS FOR MEDICAL DEVICES
UNDER THE NJ PRODUCT LIABILITY ACT: § 2A:58C-11
PLAINTIFF V. DEFENDANTS YAHAV AND CAMCARE HEALTH CORPORATION**

44. Plaintiff incorporates by reference all of the preceding paragraphs as though fully set forth herein.

45. Defendants YAHAV and CAMCARE HEALTH CORPORATION are health care providers as defined by the New Jersey Product Liability Act, § 2A:58C-1 et seq.

46. The IUD products identified in this complaint are “medical devices.”

47. The health care providers named herein knowingly violated the product safety Warning(s) mandated by the U.S. Food and Drug Administration.

48. At all times relevant hereto, the medical Defendants named herein and others not presently known to Plaintiff but described as John Doe Corporations A through J and John Does A through J, and including the sales representative(s) in the operating room(s) or procedure rooms during Plaintiff's surgeries or procedures participated in the sale and distribution of medical products into the stream of commerce when they knew or should have known that the manner of use and selection of such products in the surgical procedures upon Plaintiff were used in violation of the Act.

49. At all times relevant hereto, Defendants YAHAV and CAMCARE HEALTH CORPORATION: (1) exercised some significant control over the design, manufacture, packaging or labeling of the medical device relative to the defect in the medical device which caused the Plaintiff's injuries, and/or (2) knew or should have known of the defective nature of the medical device when used in violation of the product warnings, which caused the Plaintiff's injuries, and/or (3) created a defect in the medical device which caused the Plaintiff's injuries; all in violation of the Act, 2A:58C-11, and all as specified above.

50. The products and medical devices as used for this Plaintiff were adulterated due to the Defendants' failure to comply with federal regulations.

51. The medical products and medical devices as used for this Plaintiff were misbranded due to the Defendants' failure to comply with federal regulations.

52. The medical products and medical devices as used for this Plaintiff deviated from the device's approved design and manufacturing processes.

53. Plaintiff was unaware of the defects in the products and devices which made them unreasonably unsafe and unfit for their use and unfit for the particular use in Plaintiff, and she was not in a position to recognize or control or avoid the unreasonably unsafe defect in the products.

54. As a direct and proximate result of the foregoing activities and conduct and defective uses of the products herein, the Plaintiff has suffered the injuries, damages and losses as set forth herein.

WHEREFORE, the Plaintiff demands judgment in her favor and against the Defendants, jointly and severally, for an amount in excess of \$15,000.00 which will fully and adequately compensate her, together with such interest, attorney's fees, costs of suit and such other relief as this Honorable Court may deem her entitled.

**COUNT IV: PRODUCT LIABILITY UNDER THE NEW JERSEY PRODUCT LIABILITY ACT, N.J.STAT. § 2A:58C-1 et seq.:
PLAINTIFF V. DEFENDANTS TEVA PHARMACEUTICALS AND BAYER HEALTHCARE PHARMACEUTICALS**

55. Plaintiff incorporates by reference each of the foregoing paragraphs as though fully set forth herein.

56. The New Jersey Legislature promulgated the Product Liability Act in order to clarify certain aspects of product liability law in the state and not to supercede or abrogate provisions of the common law or commercial law which provide remedies for and protect consumers from the hazards of unreasonably dangerous products under claims for express warranty and warranty for a particular purpose.

57. The New Jersey common law and statutory law claims herein parallel federal requirements as to medical devices and therefore are not pre-empted.

58. Section 2A:58C-2 of the Act states that a manufacturer or product seller shall be liable to the plaintiff if the plaintiff shows by a preponderance of the evidence that the product was “not reasonably fit, suitable or safe for its intended purpose” because it (a) deviated from design specifications or from other units (manufacturing defect); and/or (b) failed to contain adequate warnings or instructions.

59. The Manufacturing Defendants are liable to Plaintiff in this case as manufacturers, sellers, designers, marketers, labelers, packagers and distributors of the products which caused plaintiff personal injuries, damages and harm.

60. The Manufacturing Defendants participated in the manufacture, packaging, labeling, distribution, and sale of surgical products implanted in the plaintiff including the Paragard IUD and the Mirena IUD which were defective and unreasonably dangerous to the Plaintiff in that they failed or malfunctioned and were not fit for the purpose for which they were intended.

61. The subject products were defective in that they were not accompanied by adequate warnings and instructions concerning the hazards they posed to patients as required by the FDA requirements for Class II and III devices of this nature.

62. The subject products were defective in that they were not fit, suitable, or reasonably safe as manufactured and sold and used in a manner not approved by the FDA with the knowledge and encouragement of the Manufacturing Defendant.

63. The defects in the products existed at the time they left the control of the manufacturers, distributors, marketers and sellers and entered into the stream of commerce and the condition of the product remained substantially the same until the time of the events complained of herein.

64. The products did not contain adequate warnings of the dangers of use in the manner in which the IUDs were used in Plaintiff.

65. The above-described defects, singly or in combination, directly and proximately caused the harm to plaintiff alleged herein.

WHEREFORE, Plaintiff asks this court to enter judgment in her favor and against the Defendant(s) in an amount in excess of \$15,000.00, exclusive of interest and costs, and such other and further relief, including punitive damages, to which the court may deem her entitled.

**COUNT V: FRAUDULENT CONCEALMENT:
PLAINTIFF V. DEFENDANTS YAHAV AND CAMCARE HEALTH CORPORATION INC.**

66. Plaintiff incorporates by reference all of the preceding paragraphs as though fully set forth herein.

67. Under New Jersey law, healthcare providers are required to produce a true, unaltered, and complete copy of a patient's chart or records upon request by the patient or patient's representative within 30 days of such request.

68. Plaintiff's representatives herein requested copies of the medical records and diagnostic films on her behalf from Defendants YAHAV, CAMCARE HEALTH CORPORATION, and third party COOPER UNIVERSITY HOSPITAL by and through STAR-MED CORPORATION.

69. To date, Plaintiff's representative has not received true, unaltered, and complete copies of the requested records or complete diagnostic films in response to Plaintiff's proper requests, including an executed HIPAA-compliant authorization for the release of the records and tender of payment and has not received an affidavit of any custodian.

70. It is believed and therefore averred that the named providers are fraudulently concealing the records and films in order to deprive plaintiff of her rights to investigate thoroughly and pursue her potential claims against them, individually or in combination.

71. Said records and films were and are material to the proper pursuit of this litigation.

72. Said records and films were and are in the possession of Defendants.

73. Defendants have intentionally withheld, altered and/or destroyed the evidence to prevent plaintiff's representatives from a thorough and accurate investigation into her claims.

74. Plaintiff preserves her rights to present evidence of her damages, amend her pleadings, and to present additional causes of action which may be revealed in the records and films in the underlying actions for medical negligence and/or product liability as the litigation progresses and additional information is discovered.

WHEREFORE, Plaintiff respectfully requests the appropriate instructions to the jury at the appropriate time and upon appropriate proof of fraudulent concealment as to each or all of the named defendants or those fictitiously named individuals or corporations later identified and for such damages as have been caused to Plaintiff by such fraudulent concealment and such other and further relief as this Court deems

appropriate.

ADDITIONAL CLAIM FOR PUNITIVE DAMAGES FOR COUNTS I through V:

75. Plaintiff incorporates by reference all of the preceding paragraphs as though fully set forth herein.

76. Punitive damages claims are not a separate cause of action but an additional claim for damages above and beyond compensatory damages, which are separately demanded as a convenience and for clarity, should the evidence warrant an instruction by the Court to the jury under the heightened standard of judging the conduct of defendants.

77. The conduct of the Defendants was outrageous in that it was malicious, wanton, willful, oppressive and/or showed a reckless indifference to the interests, life, and safety of the Plaintiff, entitling Plaintiff to an award of punitive damages, over and above her compensatory damages in order to punish the Defendants for their outrageous misconduct and to deter the Defendants and others from committing similar acts.

78. The specific act(s) or omission(s) warranting an award of punitive damages include, but are not limited to:

- a) Inserting the wrong IUD without advising Plaintiff or obtaining her consent;
- b) Concealing and minimizing adverse events from the public, patients, physicians, and facilities; in off-label experimental ways;
- c) Taking advantage of patients by experimenting on the patients without their knowledge or consent.

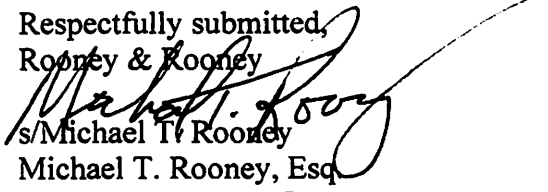
79. Under the New Jersey Punitive Damages Act, 2A:15-5.9 *et seq.*, Defendant(s) acts and omissions caused the harm suffered by plaintiff and they were actuated by actual malice or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed by those acts or omissions, and/or defective products, in that there was a significant likelihood that serious harm would arise from the conduct or products, and that Defendant(s) was/were highly aware that such reckless disregard would result in serious harm to patients, and the conduct of the Defendant(s) continued for an unreasonable period of time even after it/they knew of the harm being caused by its/their conduct and/or products.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court issue judgment in her favor and against all Defendants, individually, jointly, and severally, in a sum in excess of the jurisdictional limit of this court, exclusive of interest and costs, over and above compensatory damages, as and for punitive damages, to punish defendants' outrageous and reckless disregard of the lives and safety of others, and to deter others from similar conduct, together with such other relief as this Court may deem appropriate.

JURY OF 12 DEMANDED FOR TRIAL.

Attorneys' Lien Requested.

Dated: August 25, 2014

Respectfully submitted,
Rooney & Rooney

s/Michael T. Rooney
Michael T. Rooney, Esq.
Celia Ann Rooney, Esq.
Attorneys for Plaintiff

DESIGNATION OF TRIAL COUNSEL

Michael T. Rooney, Esq., and Celia Ann Rooney, Esq., are hereby designated trial counsel for Plaintiffs in the captioned matter.

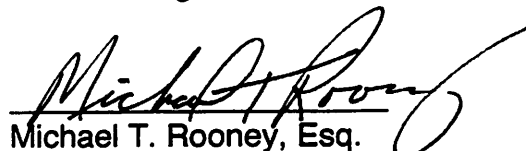
Dated: 8/24/14


Michael T. Rooney, Esq.
Attorney for Plaintiff

CERTIFICATION

I certify that the matter in controversy is not the subject of any other action or arbitration hearing, now or contemplated and that no other parties need be joined in this action. I recognize my continuing obligation to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

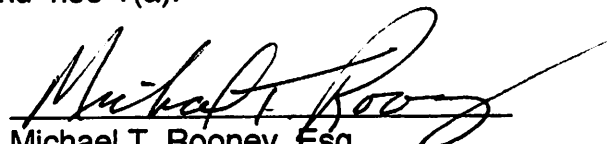
Dated: 8/24/14


Michael T. Rooney, Esq.
Attorney for Plaintiff

JURY DEMAND

The plaintiffs demand trial by a jury on all of the triable issues of this complaint, pursuant to New Jersey Court Rules 1:8-2(b) and 4:35-1(a).

Dated: 8/24/14


Michael T. Rooney, Esq.

CAMDEN COUNTY
SUPERIOR COURT
HALL OF JUSTICE
CAMDEN NJ 08103

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (856) 379-2200
COURT HOURS 8:30 AM - 4:30 PM

DATE: AUGUST 26, 2014
RE: ESTRELLA VS YAHAV MD
DOCKET: CAM 1 - 003331 14

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 3.

DISCOVERY IS 450 DAYS AND RUNS FROM THE FIRST ANSWER OR 90 DAYS
FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE PRETRIAL JUDGE ASSIGNED IS: HON ROBERT G. MILLENKY

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 101
AT: (856) 379-2200 EXT 3070.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A
CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING.
PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE
WITH R.4:5A-2.

ATTENTION:

ATT: MICHAEL T. ROONEY
ROONEY & ROONEY
TWO PENN CENTER PLAZA
SUITE 200
PHILADELPHIA PA 19102

JUAXTS

Exhibit B

RAMONA ESTRELLA
PLAINTIFF
- vs -
ERIC KFIR YAHAV, M.D. ET AL
DEFENDANT

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION CAMDEN COUNTY
Docket No. CAM-L-3331-14

Person to be Served
ERIC KFIR YAHAV, M.D.
1 ALPHA AVE. STE 27
VOORHEES, NJ 08043

AFFIDAVIT OF SERVICE
(For Use By Private Service)

Papers Served: SUITIONS AND COMPLAINT, TAN AND CIS

Service Data:

Served Successfully Not Served _____ Date: 09/30/2014 Time: 3:00PM Attempts: _____

<p>_____ Delivered a copy to him/her personally</p> <p>_____ Left a copy with a competent household member of over 14 years of age residing therein.</p> <p><input checked="" type="checkbox"/> Left a copy with a person authorized to accept service, e.g. managing agent, registered agent, etc.</p>	<p>Name of person served and relationship / title:</p> <p><u>GLORIA MUCKENSTURM</u></p> <p><u>OFFICE MANAGER</u></p>
---	--

Description of Person Accepting Service:

SEX: **FEMALE** COLOR: **WHITE** HAIR: **BROWN** APP.AGE: **64** APP. HT: **5/4** APP. WT: **130**
OTHER:

Comments Or Remarks:

Server Data:

Subscribed and Sworn to before me on the ~~30th~~ day of ~~January~~, 2015 by the affiant who is personally known to me.

Clay Matthews
NOTARY PUBLIC

I, JOSEPH RUSSO, was at the time of service a competent adult not having a direct interest in the litigation. I declare under penealty of perjury that the foregoing is true and correct.

Joseph A. Russo 2-2-15
Signature of Process Server Date

Our Job Number: 132245

NJLS Process Service
2333 U.S. Hwy 22 West
Union, NJ 07083
908-686-7300

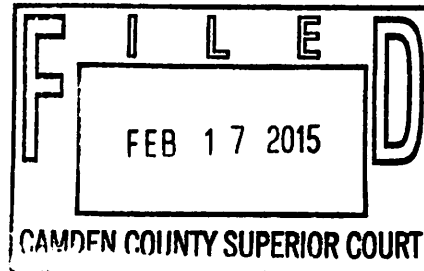


Exhibit C

RAMONA ESTRELLA
PLAINTIFF
- vs -
ERIC KFIR YAHAV, M.D. ET AL
DEFENDANT

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION CAMDEN COUNTY
Docket No. CAM-L-3331-14

Person to be Served
CAMCARE HEALTH CORPORATION
817 FEDERAL ST.
CAMDEN, NJ 08103

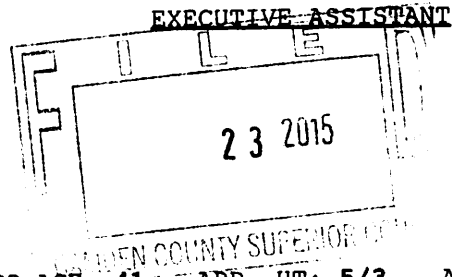
AFFIDAVIT OF SERVICE
(For Use By Private Service)

Papers Served: SUMMONS AND COMPLAINT, TAN AND CIS

Service Data:

Served Successfully Not Served _____ Date: 10/02/2014 Time: 12:40PM Attempts: _____

- _____ Delivered a copy to him/her personally Name of person served and relationship / title:
- _____ Left a copy with a competent household member of over 14 years of age residing therein. LUZALDA PAGAN
- Left a copy with a person authorized to accept service, e.g. managing agent, registered agent, etc. EXECUTIVE ASSISTANT



Description of Person Accepting Service:

SEX: **FEMALE** COLOR: **HISPANIC** HAIR: **BROWN** APP. AGE: **41** APP. HT: **5/3** APP. WT: **150**
OTHER:

Comments Or Remarks:

Server Data:

Subscribed and Sworn to before me on the 02th day of **OCTOBER**, 2014 by the affiant who is personally known to me.

I, **JOSEPH RUSSO**, was at the time of service a competent adult not having a direct interest in the litigation. I declare under penalty of perjury that the foregoing is true and correct.

Joseph A. Russo
Signature of Process Server

10-2-14
Date

Lisa Virgilio
NOTARY PUBLIC

Our Job Number: 132246



NJLS Process Service
2333 U.S. Hwy 22 West
Union, NJ 07083
908-686-7300

Exhibit D

ROONEY & ROONEY
Michael T. Rooney, Esq.
Celia Ann Rooney, Esq.
Atty IDs:1351998/3011998
1515 Market Street, Suite 1200
Philadelphia, PA 19102
Email: mrooney47@comcast.net
Email: crooney12@comcast.net
Phone: 215.854.4085
Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF NEW JERSEY
CAMDEN COUNTY**

RAMONA ESTRELLA : CIVIL ACTION
1229 N. 22nd Street :
Camden, New Jersey 08105 : DOCKET NO. L-3331-14
PLAINTIFF, :
-V- : CODE: 604
ERIC KFIR YAHAV, M.D. :MEDICAL NEGLIGENCE
1 Alpha Avenue, Suite 27 :
Voorhees, New Jersey 08043 :
-AND- :
CAMCARE HEALTH CORPORATION :
817 Federal Street :
Camden, NJ 08103 :
-AND- :
TEVA PHARMACEUTICALS USA, INC. :
1090 Horsham Road :
North Wales, PA 19454 :
-AND- :
BAYER HEALTHCARE PHARMACEUTICALS, :
INC. :
100 Bayer Boulevard : AFFIDAVIT OF MERIT
Whippany, New Jersey 07981 :
-AND- :
JOHN DOE CORPORATIONS A through J, :
-AND-JOHN DOES A through J, (fictitiously :
named entities and persons whose identities :
are unknown to Plaintiff), :
Defendant(s). :

1. I, CAROL M. MCINTOSH, M.D., FACOG, OBE, am a physician
licensed to practice medicine in the State of Virginia and I also hold an

international medical license through ~~Granada~~^{Srenada} International; I am Board Certified in Obstetrics and Gynecology since 1993.

2. I am further qualified to make this affidavit of merit in this matter in that I devote most of my clinical practice to cases in obstetrics and gynecology, including the insertion and removal of intrauterine contraceptive devices such as involved in this case. I am a physician in Obstetrics and Gynecology with Attending physician privileges at Inova Fairfax Hospital and two private practice offices located in Falls Church and Fairfax, Virginia, respectively.

3. I have attached a true and correct copy of my current Curriculum Vitae as Exhibit 1.

4. I have no financial interest in this case.

5. I have reviewed medical records pertaining to the care and treatment of the patient, Ramona Estrella, by the medical providers named in the complaint.

6. It is my professional medical opinion and belief that there exists a reasonable probability that the care, skill or knowledge exercised or exhibited in the treatment, practice or work that is the subject of the complaint, including the patient's care and treatment by Eric K. Yahev, M.D., at CamCare Health Corporation, fell outside acceptable professional medical standards or treatment practices, and caused or contributed to the cause of injuries sustained by Ramona Estrella.

7. I certify that the foregoing statements made by me are true to the best of my knowledge, information, and belief. I understand that if any of the foregoing statements are willfully false, I am subject to punishment.

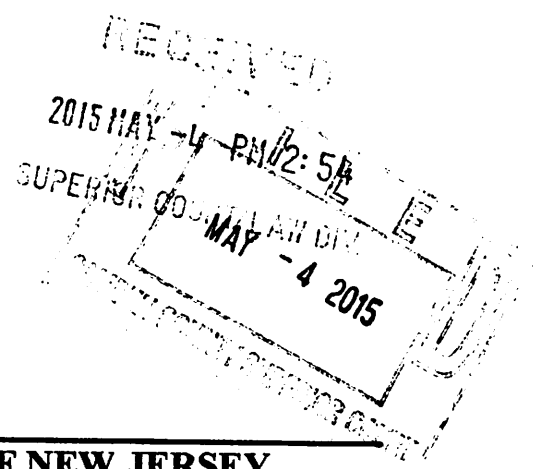
Dated: Nov. 24, 2014

Signed: 

Carol M. McIntosh, M.D.

Exhibit E

ROONEY & ROONEY
Michael T. Rooney, Esq.
Celia Ann Rooney, Esq.
Atty IDs: 1351998/3011998
1515 Market Street, Suite 1200
Philadelphia, PA 19102
Email: mrooney47@comcast.net
Email: crooney12@comcast.net
Phone: 215.854.4085
Attorneys for Plaintiff



**SUPERIOR COURT OF THE STATE OF NEW JERSEY
CAMDEN COUNTY**

RAMONA ESTRELLA	:	CIVIL ACTION
1229 N. 22 nd Street	:	
Camden, New Jersey 08105	:	DOCKET NO. L-3331-14
PLAINTIFF,	:	
-V-	:	
ERIC KFIR YAHAV, M.D.	:	
1 Alpha Avenue, Suite 27	:	
Voorhees, New Jersey 08043	:	
-AND-	:	REQUEST FOR ENTRY OF
CAMCARE HEALTH CORPORATION	:	DEFAULT AGAINST
817 Federal Street	:	DEFENDANTS YAHAV AND
Camden, NJ 08103	:	CAMCARE HEALTH CORP
-AND-	:	
TEVA PHARMACEUTICALS USA, INC.	:	
Et al.	:	
Defendant(s).	:	

TO THE CLERK OF THE SUPERIOR COURT OF NEW JERSEY, CAMDEN COUNTY, LAW DIVISION:

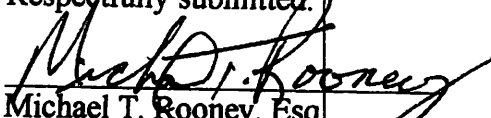
Plaintiff RAMONA ESTRELLA, by and through her undersigned attorney, hereby respectfully requests pursuant to Rule 4:43-1 that default be entered against Defendants Eric Kfir Yahav, M.D., and Camcare Health Corporation, for the reason that they have failed to file answers to the Complaint, plead, or otherwise defend in this matter during the time permitted for them to do so. Proofs of service upon them of the

Summons and Complaint, along with the track assignment, have been filed of record on the docket and copies are attached here for the Clerk's convenience. Copies of this Request for Entry of Default, along with the attorney's affidavit in support and copies of the proofs of service, are being served at the same time as the filing of this request at the same addresses the defendants were served with original process in accordance with the Rules of the Court.

In support of this request, Affidavit of Plaintiff's Attorney is submitted herewith.

Dated: May 1, 2015

Respectfully submitted,


Michael T. Rooney, Esq.
Rooney & Rooney, Attorneys
Attorney for Plaintiff

ROONEY & ROONEY
Michael T. Rooney, Esq.
Celia Ann Rooney, Esq.
Atty IDs: 1351998/3011998
1515 Market Street, Suite 1200
Philadelphia, PA 19102
Email: mrooney47@comcast.net
Email: crooney12@comcast.net
Phone: 215.854.4085
Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF NEW JERSEY
CAMDEN COUNTY**

RAMONA ESTRELLA : CIVIL ACTION
1229 N. 22nd Street :
Camden, New Jersey 08105 : DOCKET NO. L-3331-14
PLAINTIFF, :
-V- :
ERIC KFIR YAHAV, M.D. :
1 Alpha Avenue, Suite 27 : AFFIDAVIT OF ATTORNEY
Voorhees, New Jersey 08043 : IN SUPPORT OF PLAINTIFF'S
-AND- : REQUEST FOR ENTRY OF
CAMCARE HEALTH CORPORATION : DEFAULT AGAINST
817 Federal Street : DEFENDANTS YAHAV AND
Camden, NJ 08103 : CAMCARE HEALTH CORP
-AND- :
TEVA PHARMACEUTICALS USA, INC. :
Et al. :
Defendant(s). :

I, Michael T. Rooney, Esq., of the law firm of Rooney & Rooney, Attorneys at Law, attorneys for the Plaintiff, certify and state in support of this Request for Default against Defendants Yahav and Camcare Health Corporation as follows:

1. I am attorney of record and lead trial counsel in the captioned matter.
2. I am fully familiar with the case and have personal knowledge of the facts asserted herein.

3. This action arises from alleged medical negligence and was filed on August 25, 2014, docket number CAM-L-3331-14 and was assigned Track 3 and assigned to team 101.
4. Service of original process of Summons, Complaint, and Track Assignment was successful on all four named defendants.
5. Defendant Bayer was subsequently voluntarily dismissed by stipulation.
6. Defendant Teva Pharmaceuticals filed an Answer.
7. Defendant Erik Kfir Yahav, M.D., was served with process at his regular place of business on 09/30/2014 at 3 p.m. An Affidavit of Service was filed on 02/02/2015 by New Jersey Lawyers Service, by process server Joseph Russo. See Exhibit A to this Affidavit.
8. Defendant Camcare Health Corporation was served with process at its principal place of business on 10/02/2014 at 12:40 pm. An Affidavit of Service was filed on 01/23/2015 by New Jersey Lawyers Service, by process server Joseph Russo. See Exhibit B to this Affidavit.
9. Defendant Yahav had until November 4, 2014, in order to file an answer or otherwise plead and has failed to do so up to the present date of May 1, 2015.
10. Defendant Camcare Health Corporation had until November 6, 2014, in order to file an answer or otherwise plead and has failed to do so up to the present date of May 1, 2015.

11. The time for these defendants to plead or move has expired and has not been extended.
12. This formal written request to enter default is being filed with the clerk and sent to the defaulting defendants, along with the proofs of service, at the same addresses where they were served with process within six months of the actual default, and thus, the clerk is authorized to enter default under Rule 4:43-1.
13. Counsel has no knowledge or information of any changes in the addresses for Defendants Yahav and Camcare Health Corporation.
14. I certify that the foregoing statements made by me are true and correct to the best of my knowledge, information, and belief. I understand that if any of the statements made by me are willfully false, I am subject to punishment.

Dated: 5/1/15

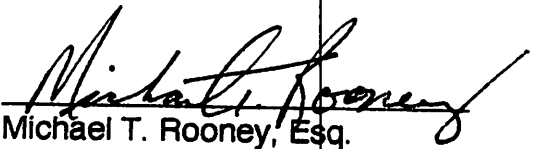

Michael T. Rooney, Esq.
Rooney & Rooney, Attorneys
Attorney for Plaintiff

Exhibit F

Paul J. Cosgrove, Esquire
Ulmer & Berne LLP
600 Vine Street, Suite 2800
Cincinnati, OH 45202-2409
Attorney for Defendant Teva Pharmaceuticals USA, Inc.

PLEASE TAKE NOTICE that this case, previously pending in the New Jersey Superior Court, Law Division, Cumberland County, Docket No. L-3331-14, is hereby removed to the United States District Court for the District of New Jersey, pursuant to 42 U.S.C. § 233(c). The United States of America is hereby substituted for removing Defendants Eric Kfir Yahav, M.D. and Camcare Health Corporation (collectively "Federal Defendants"), pursuant to 42 U.S.C. § 233(c) and (g), with respect to all of the claims set forth against those parties in the Complaint. The United States of America, by and through its undersigned attorneys, respectfully state the following in support of the removal of this matter:

1. The Complaint was filed in the New Jersey Superior Court, Law Division, Cumberland County, on or about August 25, 2014. See Exhibit A (State Court Docket). The trial has not yet occurred. See Docket, Ex. A. Service of process has not been effected upon the Federal Defendants in the manner specified in and required under Fed. R. Civ. P. 4(i).
2. Plaintiff has filed this civil action seeking damages from the Federal Defendants for personal injuries she allegedly sustained as the direct and proximate result of the Federal Defendants' alleged negligence (i.e., medical malpractice). See Exhibit B (Complaint).
3. At all times relevant to this Complaint, the Federal Defendants were deemed employees of the United States pursuant to 42 U.S.C. § 233(g). See Exhibit C (Declaration of Erica Gibson).
4. This action is deemed to be an action against the United States because the Federal Defendants were acting within the scope of employment as employees of the United States pursuant to 28 U.S.C. § 2679(d) and 42 U.S.C. § 233(c). See Exhibit D (Certification of Scope of Employment).

5. Sections 233(a) and (g) of Title 42 of the United States Code, as amended by the Federally Supported Health Centers Assistance Act of 1995 (Public Law 104-73) provide that the Federal Tort Claims Act ("FTCA") is the exclusive remedy for tort claims against the United States.
6. The United States District Courts have exclusive jurisdiction over tort actions filed against the United States under the FTCA. 28 U.S.C. § 1346(b).
7. Counsel for co-Defendant Teva Pharmaceuticals USA, Inc. has consented to the removal of this matter to federal court.
8. This Notice of Removal will be filed with the Clerk of the New Jersey Superior Court, Law Division, Cumberland County, and will be served on all parties in accordance with 28 U.S.C. § 1446(d). See Exhibit E (Letter to Clerk of New Jersey Superior Court).

PAUL J. FISHMAN
United States Attorney

s/Anne B. Taylor
By: ANNE B. TAYLOR
Assistant U.S. Attorney

Dated: June 23, 2015

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Ramona Estrella,)
)
Plaintiff,)
)
v.)
)
Eric Kfir Yahav, M.D.,)
Camcare Health Corporation,)
Teva Pharmaceuticals USA, Inc.,)
Bayer Healthcare Pharmaceuticals, Inc.,)
John Doe Corporation A through J)
and John Does A through J,)
)
Defendants.)
)

Case No.

DECLARATION OF
ERICA GIBSON

1. I am a Staff Attorney in the General Law Division, Office of the General Counsel, Department of Health and Human Services (the "Department"). I am familiar with the official records of administrative tort claims maintained by the Department as well as with the system by which those records are maintained.

2. The Department has a Claims Branch that maintains in a computerized database a record of administrative tort claims filed with the Department, including those filed with respect to federally supported health centers that have been deemed to be eligible for Federal Tort Claims Act malpractice coverage.

3. As a consequence, if a tort claim had been filed with the Department with respect to Camcare Health Corporation, its approved delivery sites, or its employees or qualified contractors, a record of that filing would be maintained in the Claims Branch's database.

-2-

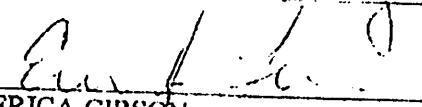
4. I caused a search of the Claims Branch's database to be conducted and found no record of an administrative tort claim filed by Ramona Estrella or an authorized representative relating to Camcare Health Corporation and/or Eric K. Yahav, M.D.

5. I have also reviewed official agency records and determined that Camcare Health Corporation was deemed eligible for Federal Tort Claims Act malpractice coverage effective January 1, 2011, and that its coverage has continued without interruption since that time. The Secretary of Health and Human Services' authority to deem entities as Public Health Service employees under 42 U.S.C. § 233(g) has been delegated to the Associate Administrator, Bureau of Primary Health Care, Health Resources and Services Administration. Copies of the notifications by the Associate Administrator, Bureau of Primary Health Care, Health Resources and Services Administration, Department of Health and Human Services, to Camcare Health Corporation are attached to this declaration as Exhibit 1.

6. Official agency records further indicate that Eric K. Yahav, M.D., was an employee of Camcare Health Corporation at all times relevant to the complaint in this case.

I declare under penalty of perjury that the foregoing is true and correct. 28 U.S.C. § 1746.


Dated at Washington, D.C., this 18th day of May, 2015.


ERICA GIBSON
Staff Attorney, Claims and Employment Law Branch
General Law Division
Office of the General Counsel
Department of Health and Human Services

Health Corporation were acting within the scope of their employment as employees of the United States at the time of the conduct alleged in the Complaint.

PAUL J. FISHMAN
United States Attorney

By:


Caroline Sadlowski
Chief, Civil Division

Dated: June 11, 2015

Exhibit G

CVM1023 AUTOMATED CASE MANAGEMENT SYSTEM 07/28/15
 PAGE: 001 OF 001 DOCUMENT LIST 14:12

VENUE : CAMDEN COURT : LAW CVL DOCKET #: L C03331 14
 CASE TITLE : ESTRELLA VS YAHAV MD

S	DATE FILED	DOC NUM	DOCUMENT TYPE	NON CONF	FILING/TARGET PARTY NAME	ATTORNEY NAME	MUL DOC PTY STA
	08 25 2014	001	COMP JRY DEMAND		ESTRELLA	ROONEY & ROO	N
	10 24 2014	002	VOL DISM		BAYER HEALTH	ATTY REQUIRE	N
	11 20 2014	003	ORDR EXTND TIME		TEVA PHARMAC	ULMER & BERN	N GR
	11 20 2014	004	ANS JRY DEMAND		TEVA PHARMAC	ULMER & BERN	N
	01 23 2015	005	PRF SERVC		CAMCARE HEAL	FISHMAN	N
	02 17 2015	006	PRF SERVC		YAHAV MD	FISHMAN	N
	05 04 2015	007	REQ DEFLT		ESTRELLA	ROONEY & ROO	N
	05 04 2015	008	CERTIFICTN		ESTRELLA	ROONEY & ROO	N
	06 24 2015	009	NOTICE REMOVAL		YAHAV MD	FISHMAN	Y

CV900123 END OF SEARCH

PF1=INQRY PF2=MAINT
 PF4=PROMPT PF6=CONSOLIDATED CASE LIST PF7=PRIOR PF8=NEXT PF22=HELP:

Exhibit H



U.S. Department of Justice
United States Attorney
District of New Jersey

Anne B. Taylor
Assistant United States Attorney
anne.taylor@usdoj.gov

Camden Federal Building & U.S. Courthouse 856.757.5031
401 Market Street, 4th Floor Fax: 856.757.5416
P.O. Box 2098
Camden, NJ 08101-2098

June 23, 2015

Via Federal Express

New Jersey Superior Court
Clerk, Law Division
Camden County Hall of Justice
101 South 5th Street, Suite 150
Camden, NJ 08103-4001

Re: Ramona Estrella v. Yahav, et al.
Docket No.: CAM-L-3331-14 (N.J. Super. Ct.)

Dear Sir or Madam:

Pursuant to 28 U.S.C. § 1446(d), I enclose two copies of the Notice of Removal filed in this matter with the United States District Court for the District of New Jersey at Camden. Kindly file the Notice, thereby effecting removal of this action to the District Court, and return a stamped copy to this Office in the enclosed self-addressed stamped envelope.

Effective upon the filing of the Notice in the New Jersey Superior Court, the action is removed to the District Court and by statutory directive the state court "shall proceed no further . . ." Id. Consequently, any future filings in this matter should be forwarded to the Clerk of the United States District Court, at Camden, for filing. Thank you for your assistance in this regard.

If you have any questions, please call me at (856) 757-5031.

Respectfully submitted,

PAUL J. FISHMAN
United States Attorney

By: ANNE B. TAYLOR
Assistant U.S. Attorney

Enclosures

cc: Michael T. Rooney, Esquire (via regular mail w/o encls.)
Celia Ann Rooney, Esquire (via regular mail w/o encls.)
Paul J. Cosgrove, Esquire (via regular mail w/o encls.)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

RAMONA ESTRELLA,	:	HONORABLE JOSEPH H. RODRIGUEZ
Plaintiff,	:	HONORABLE JOEL SCHNEIDER
	:	
v.	:	Civil Action No. 15-4286
ERIC KFIR YAHAV, M.D.,	:	
CAMCARE HEALTH CORPORATION,	:	ORDER FOR REMAND
TEVA PHARMACEUTICALS,	:	
JOHN DOE CORPORATIONS A-J	:	
AND JOHN DOES A-J	:	

AND NOW, on this ____ day of _____, 2015, this matter having been opened to the court by Michael T. Rooney, Esq., attorney for Plaintiff, on his motion for remand, and this Court, upon consideration of the moving papers and response in opposition, if any, finds that the same should be and is hereby, granted;

IT IS THEREFORE ORDERED that this case is remanded to the New Jersey Superior Court, Camden County.

IN THE ALTERNATIVE:

IT IS ORDERED that Plaintiff is permitted to conduct discovery into the claims of the Defendants that they are “federal defendants” and whether they met the requirements for removal to this court, and other matters related to this court’s subject matter jurisdiction; thereafter the court will schedule and conduct a hearing on those issues. All other proceedings are stayed, including Defendants’ Motion to Dismiss, pursuant to 42 U.S.C. § 233(l).

Joseph H. Rodriguez, J. USDC-NJ

Michael T. Rooney, Esq.
Celia Ann Rooney, Esq.
Rooney & Rooney, Attorneys
1515 Market Street, Suite 1200
Philadelphia, PA 19102
215.854.4085
mrooney47@comcast.net
crooney12@comcast.net
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

RAMONA ESTRELLA,	:	HONORABLE JOSEPH H. RODRIGUEZ
Plaintiff,	:	HONORABLE JOEL SCHNEIDER
	:	
v.	:	Civil Action No. 15-4286
ERIC KFIR YAHAV, M.D.,	:	
CAMCARE HEALTH CORPORATION,	:	Certificate of Service-
TEVA PHARMACEUTICALS,	:	Notice of Motion for Remand
JOHN DOE CORPORATIONS A-J	:	
AND JOHN DOES A-J	:	

I, Michael T. Rooney, Esq., Attorney for Plaintiff, certify that adverse parties have been served through the electronic filing system by serving their attorneys as follows:

PAUL J. FISHMAN, ESQ., U.S. ATTORNEY
ANNE B. TAYLOR, ESQ., ASSISTANT U.S. ATTORNEY
Attorney for the United States of America

PAUL J. COSGROVE, ESQ.
Attorney for Defendant Teva Pharmaceuticals USA, Inc.

Dated: August 3, 2015

s/Michael T. Rooney
Attorney for Plaintiff