

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 23-cv-2584-DDD-SKC

TEVA PHARMACEUTICALS USA, INC.,

Plaintiff,

v.

PHILIP J. WEISER, in his official capacity as Attorney General of the State of Colorado; and PATRICIA A. EVACKO, ERIC FRAZER, RYAN LEYLAND, JAYANT PATEL, AVANI SONI, KRISTEN WOLF, and ALEXANDRA ZUCCARELLI, in their official capacity as members of the Colorado State Board of Pharmacy;

Defendants.

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**BOARD MEMBER DEFENDANTS' NOTICE OF JOINDER IN CO-  
DEFENDANTS' RESPONSE IN OPPOSITION TO THE PLAINTIFF'S  
MOTION FOR PRELIMINARY INJUNCTION**

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Defendants Patricia A. Evacko, Eric Frazer, Ryan Leyland, Jayant Patel, Avani Soni, Kristen Wolf, and Alexandra Zuccarelli, (collectively, "the Board Members"), through their undersigned counsel and pursuant to Fed. R. Civ. P. 10(c), hereby notify the Court of their joinder in the Response in Opposition to the Plaintiff's Motion for Preliminary Injunction [Doc. #20], except for Section I.B., filed by their co-defendants Michael Conway<sup>1</sup> and Philp J. Weiser.

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<sup>1</sup> Michael Conway was dismissed by Stipulation of the parties on November 20, 2023. See Doc. ## 31,32.

The Board Members joinder in the Response is appropriate for the following reasons:

1. Plaintiff Teva Pharmaceuticals USA, Inc. (“Teva”) filed an Amended Complaint [Doc. #22] and Motion for Preliminary Injunction [Doc. #2] seeking declaratory and injunctive relief against the Defendants in this case.

2. Teva’s claims and legal arguments against the Defendants are identical, and all relate to enforcement of the portion of Colorado HB 23-1002 created a program for Coloradans with an epinephrine prescription, who are ineligible for Medicaid or Medicare and who do not have prescription drug insurance coverage that limits the co-pay for epinephrine auto-injectors, to obtain a two-pack of epinephrine auto-injectors for \$60 (the “Affordability Program”). *See* Doc. #22.

3. The Board Members, who are members of the Colorado State Board of Pharmacy, former co-defendant Michael Conway, who is the Commissioner of the Colorado Division of Insurance, and co-defendant Philip J. Weiser, who is the Colorado Attorney General, are all State officials being sued in their official capacities. *See id.* at 4, ¶¶ 6-13.

4. Former co-defendant Michael Conway and co-defendant Philip J. Weiser previously filed a Response in Opposition to the Plaintiff’s Motion for Preliminary Injunction [Doc #20] (“Response”) raising issues regarding the Court’s subject matter jurisdiction over Teva’s claims, including standing, ripeness, and Eleventh Amendment sovereign immunity. *See* Doc. #20.

5. The Response's arguments relating to standing and ripeness focus on Teva's claims and not any issue specific to any of the Defendants. *See id.* at 10-13.

6. Similarly, the Response's arguments relating to whether Eleventh Amendment sovereign immunity applies to bar Teva's claims, located in Section 1.A., rely on the Defendants' common status as State officials, the nature of Teva's claims, and Teva's requested relief. *See id.* at 4-8.

7. The Board Members do not join in the Response's arguments in Section I.B., as they pertain to co-defendants' specific roles (or lack thereof) in enforcing the Affordability Program. *See Doc. #20* at 8-10.

8. Finally, the Response's arguments pertaining to irreparable harm and whether public interest weighs in favor of allowing the Affordability Program to take effect apply equally to all Defendants. *See id.* at 13-18.

9. Apart from the arguments appearing in Section I.B. of the Response, all legal arguments contained within the Response apply equally to the Board Members. Thus, in the interest of judicial economy and pursuant to Fed. R. Civ. P. 10(c), the Board Members join in and adopt the legal arguments set forth in the Response, excluding Section I.B.

10. In addition to the arguments advanced in the Response, Section II of The Attorney General's Motion to Dismiss [Doc. #29] advances the argument that the Affordability Program is a proper exercise of the State's police power to regulate pharmaceuticals and, therefore, is not a taking. *See Doc. #29* at 10-14. As this relates

to Teva's likelihood of success on the merits and applies equally to the Board Members, the Board Members incorporate by reference, as if fully restated herein, Section II of The Attorney General's Motion to Dismiss pursuant to Fed. R. Civ. P. 10(c).

For the reasons stated in the Response in Opposition to the Plaintiff's Motion for Preliminary Injunction [Doc. #20], excluding Section I.B, and Section II of The Attorney General's Motion to Dismiss [Doc. #29], the Board Members respectfully request that the Court deny Plaintiff's Motion for Preliminary Injunction.

Dated this 20th day of November 2023.

Respectfully submitted by:

PHILIP J. WEISER  
Attorney General

*s/ Jennifer Johnson*

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STATEMENT OF COMPLIANCE

I hereby certify that the foregoing pleading complies with the type-volume limitation set forth in Judge Domenico's Practice Standard III(A)(I).

*/s/ Jennifer Johnson*

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