

**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.

**BOARD MEMBER DEFENDANTS' NOTICE OF JOINDER IN THE
ATTORNEY GENERAL'S MOTION TO DISMISS [DOC. # 29]**

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 Attorney General’s Motion to Dismiss [Doc. #29].

The Board Members’ joinder in The Attorney General’s Motion to Dismiss [Doc. #29] (“Attorney General’s Motion”) 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 Colorado HB23-1002, specifically, the provisions setting up an affordability program for epinephrine auto-injectors (“Affordability Program”). *See* Doc. #22.

3. The Board Members, who are members of the Colorado State Board of Pharmacy, and Philip J. Weiser, who is the Colorado Attorney General (“Attorney General”), are all State officials being sued in their official capacities. *See id.* at 4, ¶¶ 6-13.

4. The Attorney General’s Motion raises issues relating to the Court’s subject matter jurisdiction over Teva’s claims, including standing, ripeness, and Eleventh Amendment sovereign immunity. *See* Doc. #29 at pp. 4-10.

5. These topics were also addressed in the Response in Opposition to the Plaintiff’s Motion for Preliminary Injunction [Doc. #20] (“Response”) in which the Board Members previously joined. *See* Doc. #33. The Board Members incorporate the Response’s legal arguments that this Court lacks subject matter jurisdiction to hear Teva’s claims, excluding those found in Section I.B. of the Response (Doc. #20 at 8-10), in which the Board Members did not join. *See* Doc. #33 at 3, ¶¶ 7, 9.

6. The Attorney General’s Motion also 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 pp. 10-14.

7. The Attorney General's legal arguments relate to subjects that apply equally to the Attorney General and the Board Members. None of the Attorney General's legal arguments are based exclusively on the portions of the Affordability Program that apply only to him.

8. 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 Attorney General's Motion.

For the reasons stated in The Attorney General's Motion to Dismiss [Doc. #29] and in the Response in Opposition to the Plaintiff's Motion for Preliminary Injunction [Doc. #20], excluding Section I.B., the Board Members respectfully request that the Court dismiss the Amended Complaint [Doc. #22] in its entirety.

Dated this 20th day of November 2023.

Respectfully submitted by:

PHILIP J. WEISER
Attorney General

s/ Jennifer Johnson _____
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