

**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' JOINDER IN THE ATTORNEY
GENERAL'S REPLY IN SUPPORT OF HIS MOTION TO DISMISS
[DOC. # 45]**

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 Reply in Support of His Motion to Dismiss [Doc. #45] ("Attorney General's Reply").

The Board Members' joinder in Attorney General's Reply 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. On November 15, 2023, the Attorney General filed his Motion to Dismiss [Doc. #29].

5. On November 20, 2023, the Board Members filed their timely Notice of Joinder in the Attorney General’s Motion to Dismiss [Doc. #35]. As detailed in the Notice, the Attorney General’s Motion raised arguments that equally applied to the Board Members. *See* Doc. #35.

6. On December 6, 2023, Teva filed its Opposition to the Attorney General’s Motion to Dismiss [Doc. #37].

7. As with the Attorney General's Motion to Dismiss [Doc. #29], the legal arguments in the Attorney General's Reply relate to subjects that apply equally to the Board Members, including 11th Amendment sovereign immunity, standing, ripeness, whether Teva has an adequate remedy at law, and whether the Affordability Act constitutes an appropriate exercise of the State's police powers.

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 Reply.

For the reasons stated in The Attorney General's Motion to Dismiss [Doc. #29], Response in Opposition to the Plaintiff's Motion for Preliminary Injunction [Doc. #20], excluding Section I.B., and the Attorney General's Reply [Doc. #45], the Board Members respectfully request that the Court dismiss the Amended Complaint [Doc. #22] in its entirety.

Dated this 13th day of December 2023.

Respectfully submitted by:

PHILIP J. WEISER
Attorney General

s/ Jennifer Johnson

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**Counsel of Record for the Board Member
Defendants*

STATEMENT OF COMPLIANCE

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

s/ Jennifer Johnson