

**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.

THE ATTORNEY GENERAL’S ANSWER TO FIRST AMENDED COMPLAINT

Defendant Philip J. Weiser, in his official capacity as Colorado Attorney General (the
“Attorney General”), hereby submits the following Answer to Plaintiff’s First Amended
Complaint for Declaratory and Injunctive Relief [Doc. 22] (“First Amended Complaint”).

PRELIMINARY STATEMENT

1. The Attorney General lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 1 of the First Amended Complaint, and therefore, denies the allegations in Paragraph 1 the First Amended Complaint.
2. The Attorney General denies the allegations in Paragraph 2 of the First Amended Complaint.
3. The Attorney General denies the allegations in Paragraph 3 of the First Amended

Complaint.

4. The Attorney General denies the allegations in Paragraph 4 of the First Amended Complaint.

PARTIES

5. The Attorney General admits that Teva currently manufactures generic epinephrine auto-injectors in .3 milligram and .15 milligram sizes. The Attorney General lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 5 of the First Amended Complaint, and therefore, denies the remaining allegations in Paragraph 5 of the First Amended Complaint.

6. The Attorney General denies the allegations in Paragraph 6 of the First Amended Complaint, except admits that the Attorney General and the members of the Board of Pharmacy have been named as defendants only in their official capacities.

7. The Attorney General admits the allegations in Paragraph 7 of the First Amended Complaint.

8. The Attorney General admits the allegations in Paragraph 8 of the First Amended Complaint.

9. The Attorney General admits the allegations in Paragraph 9 of the First Amended Complaint.

10. The Attorney General admits the allegations in Paragraph 10 of the First Amended Complaint.

11. The Attorney General admits the allegations in Paragraph 11 of the First Amended Complaint.

12. The Attorney General admits the allegations in Paragraph 12 of the First Amended Complaint.

13. The Attorney General admits the allegations in Paragraph 13 of the First Amended Complaint.

14. The Attorney General admits the allegations in Paragraph 14 of the First Amended Complaint.

15. The Attorney General admits the allegations in Paragraph 15 of the First Amended Complaint.

JURISDICTION AND VENUE

16. The Attorney General denies the allegations in Paragraph 16 of the First Amended Complaint.

17. The Attorney General denies the allegations in Paragraph 17 of the First Amended Complaint.

18. The Attorney General denies the allegations in Paragraph 18 of the First Amended Complaint.

19. The Attorney General denies the allegations in Paragraph 19 of the First Amended Complaint.

20. The Attorney General denies the allegations in Paragraph 20 of the First Amended Complaint.

21. The Attorney General denies the allegations in Paragraph 21 of the First Amended Complaint.

FACTUAL BACKGROUND

22. The Attorney General admits that epinephrine auto-injectors are used by individuals experiencing anaphylaxis, which is a potentially fatal allergic reaction that can involve swelling of the throat and tongue, vomiting, and medical shock. The Attorney General lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 22 of the First Amended Complaint, and therefore, denies the remaining allegations in Paragraph 22 of the First Amended Complaint.

23. The Attorney General denies the allegations in Paragraph 23 of the First Amended Complaint, except admits that Governor Jared Polis signed HB23-1002 on June 7, 2023 and refers to that bill for its contents, and admits that Teva does not challenge the constitutional validity of HB23-1002's sixty dollar cap on copayments.

24. The Attorney General denies the allegations in Paragraph 24 of the First Amended Complaint, except admits that Governor Jared Polis signed HB23-1002 on June 7, 2023 and refers to that bill for its contents.

25. The Attorney General denies the allegations in Paragraph 25 of the First Amended Complaint, except admits that Governor Jared Polis signed HB23-1002 on June 7, 2023 and refers to that bill for its contents.

26. The Attorney General denies the allegations in Paragraph 26 of the First Amended Complaint, except admits that Governor Jared Polis signed HB23-1002 on June 7, 2023 and refers to that bill for its contents.

27. The Attorney General denies the allegations in Paragraph 27 of the First Amended Complaint, except admits that Colorado has the authority to increase low-income

Coloradans' access to epinephrine auto-injectors.

28. The Attorney General lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 28 of the First Amended Complaint, and therefore, denies the allegations in Paragraph 28 of the First Amended Complaint.

29. The Attorney General lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 29 of the First Amended Complaint, and therefore, denies the allegations in Paragraph 29 of the First Amended Complaint.

30. The Attorney General lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 30 of the First Amended Complaint, and therefore, denies the allegations in Paragraph 30 of the First Amended Complaint.

31. If The Attorney General denies the allegations in Paragraph 31 of the First Amended Complaint.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

(Declaratory/Injunctive Relief – Violation of the Takings Clause of the Fifth Amendment)

32. The Attorney General reasserts and incorporates by reference his preceding answers as though fully set out herein.

33. The Attorney General denies the allegations in Paragraph 33 of the First Amended Complaint.

34. The Attorney General denies the allegations in Paragraph 34 of the First Amended Complaint.

35. The Attorney General denies the allegations in Paragraph 35 of the First

Amended Complaint.

36. The Attorney General denies the allegations in Paragraph 36 of the First Amended Complaint.

**SECOND CAUSE OF ACTION
(42 U.S.C. § 1983 and 42 U.S.C. § 1988)**

37. The Attorney General reasserts and incorporates by reference his preceding answers as though fully set out herein.

38. The Attorney General denies the allegations in Paragraph 38 of the First Amended Complaint.

39. The Attorney General denies the allegations in Paragraph 39 of the First Amended Complaint.

40. The Attorney General denies the allegations in Paragraph 40 of the First Amended Complaint.

PRAYER FOR RELIEF

The Attorney General denies each and every allegation contained in the First Amended Complaint not expressly admitted, and denies all averments contained in Teva's "Prayer for Relief" in Paragraphs A-D of the First Amended Complaint, including that Plaintiff is entitled to the requested relief.

AFFIRMATIVE DEFENSES

1. The Attorney General is immune from suit in this Court under the Eleventh Amendment since Teva can seek just compensation in state court.

2. The Attorney General is immune from suit in this Court under the Eleventh Amendment since Teva is not entitled to injunctive relief and, therefore, *Ex Parte Young* does not apply.

3. Teva's claims are not justiciable.

4. Teva's claims fail because the Affordability Program would not affect a taking in the future.

5. The First Amended Complaint fails to state a claim for which relief may be granted.

WHEREFORE, the Attorney General respectfully requests the Court dismiss Teva's First Amended Complaint in its entirety, enter judgment in favor of the Defendants, along with any other further relief this Court deems proper.

DATED: January 10, 2023.

PHILIP J. WEISER

Attorney General

s/Pawan Nelson

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