

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Anne M. Leathers, et al.,

Plaintiffs,

v.

United States of America, et al.,

Defendants.

Case No. 1:23-cv-00175-JPH

District Judge Jeffrey P. Hopkins

**DEFENDANT PFIZER INC.’S MOTION TO DISMISS PLAINTIFFS’ COMPLAINT
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 8**

Defendant Pfizer Inc. (“Pfizer”) moves to dismiss the Complaint of Plaintiffs Anne M. Leathers, et al., under Federal Rule of Civil Procedure 41(b), for failure to comply with Federal Rule of Civil Procedure 8. A memorandum of law supporting this motion follows.

Dated: June 27, 2023

Respectfully submitted,

/s/ Lisa Messner

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**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT PFIZER INC.’S MOTION TO DISMISS**

I. INTRODUCTION

Rule 8 requires that a complaint contain “a short and plain statement of the grounds for the court’s jurisdiction” and “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(1)-(a)(2). On March 28, 2023, Plaintiffs filed their Complaint against 18 defendants, including Pfizer and 16 Federal Defendants. In contravention of Rule 8, the Complaint is a sprawling, unfocused narrative spanning more than 170 pages, with an additional 70 pages of appended exhibits and over 300 footnotes. Despite its length, the Complaint largely fails to plead particularized claims against the named Defendants, including Pfizer, making it difficult if not impossible to determine what Plaintiffs are alleging, against whom, and the specific relief sought. In addition, each of the four counts “incorporate[s] all preceding allegations,” with no meaningful attempt to identify which of the hundreds of paragraphs of generalized assertions are purportedly relevant to any one of Plaintiffs’ claims for relief. *See* Compl., ECF No. 1 at PageID 123, 142, 158, 164.

It is not the responsibility of Defendants, or of this Court, to wade through Plaintiffs' unwieldy Complaint to piece together the basis for Plaintiffs' claims. Plaintiffs' prolix, unfocused pleading "fails to perform the essential functions" of defining the factual assertions and claims at issue in this action and, thus, cannot meet the basic pleading requirements of Rule 8. *See Harmon v. Honeywell Intelligrated*, No. 1:19-CV-670, 2019 WL 5862813, at *1 (S.D. Ohio Nov. 8, 2019), *report and recommendation adopted*, No. 1:19CV670, 2019 WL 6310192 (S.D. Ohio Nov. 25, 2019) (quoting *McHenry v. Renne*, 84 F.3d 1172, 1180 (9th Cir. 1996)). As such, Pfizer respectfully requests that this Court exercise its authority pursuant to Federal Rule of Civil Procedure 41(b) to dismiss Plaintiffs' Complaint for failure to comply with Rule 8.

II. LEGAL STANDARD

Rule 8 requires that a complaint contain "a short and plain statement of the grounds for the court's jurisdiction" and "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(1)-(a)(2). In addition, the allegations in a complaint must be "simple, concise, and direct." Fed. R. Civ. P. 8(d)(1). "Rule 8 proscribes" the "obfuscation of the plaintiff's claims" through "a lack of requisite concision and simplicity." *Kensu v. Corizon, Inc.*, 5 F.4th 646, 651 (6th Cir. 2021).

This Court has authority pursuant to Rule 41(b) of the Federal Rules of Civil Procedure to dismiss Plaintiffs' Complaint for failure to comply with Rule 8. *See Schafer v. City of Defiance Police Dep't*, 529 F.3d 731, 736 (6th Cir. 2008) (stating that Federal Rule of Civil Procedure 41(b) "confers on district courts the authority to dismiss an action for failure of a plaintiff...to comply with the Rules."); *see, e.g., Kensu*, 5 F.4th at 651 (upholding the district court's dismissal of Plaintiffs' second complaint under Rule 41(b) for violating Rule 8). In considering a Rule 41(b) motion, courts enjoy "substantial discretion," permitting effective management of their dockets

and “avoidance of unnecessary burdens on the tax-supported courts and opposing parties.” *Schafer*, 529 F.3d at 736 (quotation omitted).

III. ARGUMENT

Plaintiffs’ Complaint neither provides a “short and plain” statement of the claims at issue nor sets forth “simple, concise, and direct” allegations. Quite the opposite. The 172-page complaint is a meandering recitation of Plaintiffs’ views as to the purported ills of COVID-19 vaccination. Courts regularly dismiss complaints of this nature for violating Rule 8’s “short and plain statement” requirement. *See, e.g., Pompy v. Monroe Bank & Tr.*, No. 19-10334, 2020 WL 2394942, at *3 (E.D. Mich. Jan. 17, 2020), *report and recommendation adopted*, No. 19-10334, 2020 WL 1502007 (E.D. Mich. Mar. 30, 2020) (dismissing 189-page complaint as excessively “verbose”); *Plymale v. Freeman*, 930 F.2d 919, 1991 WL 54882, *1 (6th Cir. Apr. 12, 1991) (holding that the district court did not abuse its discretion in dismissing “rambling” 119-page complaint); *Flayter v. Wisconsin Dep’t of Corr.*, 16 Fed. Appx. 507, 509 (7th Cir. 2001) (dismissing 116-page 242-paragraph complaint pursuant to Rule 8(a)(2)); *see also Kuot v. Corrections Corp. of America*, 2018 WL 655158 (M.D. Tenn. Feb. 1, 2018) (finding 143-page “rambling, repetitive, and far-reaching” complaint violated Rule 8 and requiring the plaintiff to file an amended complaint).

Moreover, Plaintiffs’ Complaint is muddled and full of extraneous detail to the point that it is “hard to figure out which allegations are really at issue and which are background.” *See Kensu*, 5 F.4th at 651 (holding that even plaintiff’s second amended pleading “would cause both the court and the defendants undue difficulty in determining the claims and allegations actually at issue”). The bulk of Plaintiffs’ Complaint consists of lengthy diatribes about irrelevant facts with no tether to any purported injury suffered by the named Plaintiffs. For example, Plaintiffs assert

several injuries to their unborn family members, and the public and minor children at large, that are speculative and emotional in nature, with no allegations to support any claim of standing to represent the interests of those third parties. *See* Compl., ECF No. 1 at PageID 3-23. Even after a careful read of the entirety of Plaintiffs' Complaint, it remains wholly unclear what injury Plaintiffs—who have not received any COVID-19 vaccine, let alone the Pfizer vaccine—are alleging they suffered at Pfizer's hand. *See id.* In short, the Complaint is “so ‘verbose, confused and redundant that its true substance, if any, is well disguised.’” *Kensu*, 5 F.4th at 651 (quoting *Gillibeau v. City of Richmond*, 417 F.2d 426, 431 (9th Cir. 1969)). This “obfuscation of plaintiff's claims” violates the requirements of Rule 8. *Id.* *See also Harmon*, 2019 WL 5862813, at *1 (finding that the length, level of detail, and over-inclusive nature of plaintiff's allegations in the amended complaint presented difficulty to defendants in preparing a responsive pleading).

The Middle District of Florida recently granted Pfizer's motion to dismiss under similar circumstances. In *Horowitz v. Pfizer Inc.*, plaintiff filed a 90-page complaint against Pfizer and several other defendants asserting claims allegedly arising from the COVID-19 vaccine. No. 2:20-CV-955-JLB-NPM, 2021 WL 3679101 (M.D. Fla. Aug. 19, 2021). As here, plaintiff's complaint spanned more than 300 paragraphs; was “teem[ing] with vague, conclusory, and immaterial allegations” (including allegations of propaganda, fraud, and false advertising about the safety and efficacy of COVID-19 vaccinations); “fail[ed] to distinguish between Defendants' conduct;” and “lack[ed] facts detailing which party took what action and when.” *Id.* at *1, *3. The district court granted the defendants' motions to dismiss, finding that plaintiff had filed an “impermissible shotgun pleading” that “prevent[ed] the Court from reaching the merits of Defendants' motions to dismiss in any meaningful way.” *Id.* at *1. Before doing so, the court advised plaintiff to

“seriously consider the purpose of his suit and whether such grievances are amenable to the judicial process.” *Id.* at *6-*7. The same result is appropriate here.

Allowing Plaintiffs’ “bald accusations to survive...a motion to dismiss would then place the burden of litigation on the defendant in a way that would appear to violate the spirit, if not the letter, of the Supreme Court’s recent decision in *Ashcroft v. Iqbal*, where the Court stated that ‘Rule 8 does not empower respondent to plead the bare elements of his cause of action ... and expect his complaint to survive a motion to dismiss.’” *McCoy v. Stokes*, No. 2:12-CV-655, 2012 WL 5289518, at *2 (S.D. Ohio Oct. 25, 2012) (internal citation omitted). Plaintiffs’ Complaint places an “undue burden” on Pfizer and the other defendants in this litigation to “parse through lengthy paragraphs...in order to determine what to admit, deny, and what they can neither admit nor deny.” *Plaintiff v. Wayne State Univ.*, No. 20-CV-11718, 2021 WL 243155, at *4 (E.D. Mich. Jan. 29, 2021). It also imposes a significant and unnecessary burden on this court. Such a “confusing[] and redundant complaint can complicate a court’s ability to conduct pretrial discovery and formulate pretrial orders.” *Id.* Where, as here, a complaint is so “‘prolix and/or confusing [that it] makes it difficult for the defendant to file a responsive pleading and makes it difficult for the trial court to conduct orderly litigation,’” the court should not allow the pleading to stand. *Agee v. Alphatec Spine, Inc.*, No. 1:15-CV-750, 2017 WL 5706002, at *2 (S.D. Ohio Mar. 27, 2017) (quoting *Vicom, Inc. v. Harbridge Merch. Servs., Inc.*, 20 F.3d 771, 775-76 (7th Cir. 1994)).

IV. CONCLUSION

For the foregoing reasons, Pfizer respectfully requests that this Court dismiss Plaintiffs' Complaint for failure to comply with Rule 8.

Dated: June 27, 2023

Respectfully submitted,

/s/ Lisa Messner

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of June, 2023, a true and correct copy of the foregoing was filed using the Court's ECF system, which will serve copies on all counsel of record.

June 27, 2023

/s/ Lisa Messner
Lisa Messner