

**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

**REPLY MEMORANDUM IN SUPPORT OF DEFENDANT PFIZER INC.’S MOTION
TO DISMISS FOR FAILURE TO COMPLY WITH
FEDERAL RULE OF CIVIL PROCEDURE 8**

Plaintiffs’ Opposition highlights precisely why dismissal is required here. After a 172-page Complaint and a further nine-page response to Pfizer’s Motion, it remains unclear what Plaintiffs are alleging, how their pleaded causes of action bear on any purported conduct by Pfizer, and what redress they seek. Plaintiffs do not so much as *mention* Rule 8 in their Opposition, much less do anything to remedy their failure to comply with its basic pleading requirements. Indeed, Plaintiffs do not cite a single authority to support their Opposition. Instead, they spend nine “rambling, repetitive, and far-reaching”¹ pages rehashing the allegations in the Complaint; advancing an unsupported standing argument irrelevant to this stage of the proceedings; and asserting baseless theories of fraud, ‘joint venture,’ and coercion despite not pleading these causes of action in the Complaint. None of this addresses Plaintiffs’ failure to provide “a short and plain statement” of the basis for their claims in this action. Fed. R. Civ. P. 8(a)(1)-(a)(2), (d)(1).

¹ See *Kuot v. Corrections Corp. of America*, 2018 WL 655158 (M.D. Tenn. Feb. 1, 2018).

Pfizer’s arguments under Rule 8 pertain to the format, structure, and procedural requirements of Plaintiffs’ Complaint. Plaintiffs have no answer to these points. Instead, Plaintiffs provide a lengthy diatribe on “public policy violations,” “the cumulative effect of government misconduct,” and other claims that “implicate the interests of third parties.” *See* Pls.’ Opp’n, ECF No. 34, PageID 702. Plaintiffs’ response does nothing to explain, with “simple, concise, and direct” allegations, what actionable injuries Plaintiffs *have* suffered as a result of Pfizer’s conduct or that of the other Defendants. Fed. R. Civ. P. 8(d)(1).²

Likewise, Plaintiffs do not explain how their purported examples of misconduct in the Opposition are relevant to Pfizer (i.e., “government misconduct,” the government’s inclusion of COVID-19 vaccines on the Childhood Immunization Schedule, the “Biden Administration[’s]...universal ‘vaccination’ policy,” the CDC’s change in definition for “vaccine,” the NIH Treatment Guidelines, and the Ad Council’s Public Service Advertisements), beyond a vague assertion of a “*sympiotic relationship*...between Pfizer and the federal health agencies” (emphasis in original). Pls.’ Opp’n at PageID 704, 706 n.8, 707 n.10. In the rare instances in which Plaintiffs allege conduct by Pfizer, Plaintiffs do not tie the conduct to any alleged injuries suffered. For example, Plaintiffs allege (without any basis) that Pfizer “concealed material information regarding the number of ‘vaccine-related’ adverse events,” but they do not attempt to justify how such alleged concealment could have injured the 10 named unvaccinated Plaintiffs. *See* Compl., ECF No. 1, PageID 46.

Plaintiffs make a halfhearted effort to distinguish *Horowitz*; however, the facts of that case mirror those at issue here. *Horowitz v. Pfizer Inc.*, No. 2:20-CV-955-JLB-NPM, 2021 WL 3679101 (M.D. Fla. Aug. 19, 2021). Plaintiffs’ Complaint “fail[s] to distinguish between Defendants’ conduct,” and Plaintiffs’ “legal theories (and the parties [they] seek[] to hold liable) change page by page, filing by filing.” *Id.* at *1, *6. Even Plaintiffs are unable to consistently

² Plaintiffs’ four pages on “dangers, lack of necessity for, and ineffectiveness of, the ‘vaccines;” “all-cause mortality;” informed consent; “ads targeting children;” and parental rights, similarly lack relevance to Pfizer’s Rule 8 arguments. *See* Pls.’ Opp’n at PageID 703-706.

present the logic of their purported claims. For example, in their opposition to the Federal Defendants, Plaintiffs blamed the government for “using [its] authority to enlist private actors...and state institutions...to assist it in exacting [the alleged] constitutional deprivations.” *See* Pls.’ Opp’n to Fed. Defs., ECF No. 18, PageID 615. In their Opposition here, Plaintiffs reverse course, now claiming that the government’s actions were “all...of necessity, based upon Pfizer’s” conduct. *See* Pls.’ Opp’n at PageID 707 n.10. Contrary to Plaintiffs’ contention, it is Plaintiffs—not Pfizer—who “leave[] the offending allegations to guesswork.” Pls.’ Opp’n at PageID 703 n.4, 704 n.6. As in *Horowitz*, these deficiencies prevent Pfizer and this Court from “reaching the merits” of this matter “in any meaningful way.” *Horowitz*, 2021 WL 3679101 at *1.

It is not Pfizer’s burden to “parse through lengthy paragraphs...in order to determine what to admit, deny, and what they can neither admit nor deny.” Pfizer’s Mem. at PageID 664; *McCoy v. Stokes*, No. 2:12-CV-655, 2012 WL 5289518, at *2 (S.D. Ohio Oct. 25, 2012); *Plaintiff v. Wayne State Univ.*, No. 20-CV-11718, 2021 WL 243155, at *4 (E.D. Mich. Jan. 29, 2021). As the Federal Defendants noted, a defendant should not have to “‘fish a gold coin from a bucket of mud’ to identify the allegations” against it. Fed. Defs.’ Mem., ECF No. 16, PageID 600, *quoting Kensu v. Corizon, Inc.*, 5 F.4th 646, 653 (6th Cir. 2021) (internal quotation omitted). Plaintiffs’ Opposition, like their Complaint, requires just that.

If anything, Plaintiffs’ Opposition further “obfusca[tes] the plaintiff’s claims” and adds to Defendants’ and this Court’s already complicated task to “figure out which allegations are really at issue and which are background.” *Kensu*, 5 F.4th at 651. Under Rule 8, a complaint so “‘prolix and/or confusing’” that it makes it difficult for the defendant to file a responsive pleading and for the court to conduct orderly litigation warrants dismissal. *Agee v. Alphatec Spine, Inc.*, No. 1:15-CV-750, 2017 WL 5706002, at *2 (S.D. Ohio Mar. 27, 2017) (internal quotation omitted).

CONCLUSION

For the reasons above and as stated in Pfizer's memorandum in support of its motion to dismiss, Pfizer respectfully requests that this Court dismiss Plaintiffs' Complaint for failure to comply with Federal Rule of Civil Procedure 8.

Dated: July 27, 2023

Respectfully submitted,

/s/ Lisa A. Messner

Lisa Messner, Trial Attorney
Ohio Bar No. 0074034
MAC MURRAY & SHUSTER LLP
6525 West Campus Oval, Suite 210
New Albany, OH 43054
Phone: (614) 939-9955
Fax: (614) 939-9954
lmessner@msslawgroup.com

Matthew A. Holian (*Pro Hac Vice
Forthcoming*)

DLA Piper LLP (US)
33 Arch Street, 26th Floor
Boston, MA 02110
Phone: (617) 406-6009
Fax: (617) 406-6109
matt.holian@us.dlapiper.com

Ashley A. Carr (*Pro Hac Vice Forthcoming*)

DLA Piper LLP (US)
303 Colorado Street, Suite 3000
Austin, TX 78701
Phone: (512) 457-7251
Fax: (512) 721-2251
ashley.carr@us.dlapiper.com
Attorneys for Pfizer Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of July, 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.

July 27, 2023

/s/ Lisa A. Messner

Lisa Messner