

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

Anne M. Leathers, et al.,

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

Plaintiffs,

District Judge Jeffrey P. Hopkins

-v-

United States of America, et al.,

Defendants.

Plaintiffs’ Response in Opposition to Defendant Ad Council’s Joinder in Pfizer’s Motion to Dismiss Plaintiffs’ Complaint For Failure to Comply with Federal Rule of Civil Procedure 8(a)¹

* * * * *

The Ad Council makes no attempt to explain why the allegations in Plaintiffs’ Complaint specific to it are deficient. The sole “deficiency” it cites is a proof-reading error in the Caption of the Complaint (which erroneously identifies the Court as the Northern District of Ohio instead of the Southern District.) [*Id.*] This “egregious” error, it asserts, is additional evidence of Plaintiffs’ “inattention to clarity and compliance with federal pleading standards” that “is endemic throughout the complaint.” [*Id.*] However, the Ad Council’s characterization of Plaintiffs’ Complaint, like Pfizer’s, misses the mark.

¹ Plaintiffs do not oppose the Ad Council’s Motion to Stay pending disposition of their Motion to Dismiss. [*Ad Council’s Mtn. Stay*, Doc. #32, PageID 689 - 696] The Ad Council joins in both Pfizer’s Motion to Dismiss and its Reply Brief and, in so doing, incorporates Pfizer’s arguments in each of those filings in support of its Motion to Dismiss. [*Ad Council Notice of Joinder Pfizer Mtn. Dismiss*, Doc. #31, Page ID 686 – 687; *Ad Council Notice of Joinder Pfizer Reply*, Doc. #37, Page ID 718]

The Ad Council greatly over-exaggerates the significance of the error in the Caption of the Complaint in what is a glaringly obvious attempt to discredit Plaintiffs' counsel and, thus, disparage the Complaint as a whole. It is the substance of the factual allegations that are at issue here. A ***proof-reading error*** in the Caption of the Complaint has no bearing whatsoever on federal pleading standards and is easily cured by amendment. In counsel's review and proofing of this 173-page, multi-plaintiff Complaint,² it is easy to understand how this ***inconsequential oversight*** occurred. The Ad Council makes much ado about nothing.

Turning to federal pleading standards, the Complaint very clearly alleges the basis for liability of the Ad Council. It sets out the Ad Council's ***intimate*** relationship with the government, alleging that it acts as a "propaganda arm" of the government and has "partnered" with HHS, CDC, NIH, DHS, FEMA and the COVID Collaborative to spread COVID-19 disinformation, that it "sponsors false and deceptive Public Service Advertisements (PSAs) for, at the direction or with the assistance of, the U.S. government * * * as to the necessity for, and safety and efficacy of, the "vaccines" and "has partnered with the CDC and other private corporations to fund and design campaigns to convince employers to institute "vaccine" mandates to undermine and override the EUA statute's (21 U.S.C. §360bbb-3 (e)(1)(A)(2)(ii)(III)) codification of the right to refuse the "vaccines" and the right to informed consent. [*Complaint* Doc. #1, PageID 3, 28, 31 - 32]

The significant role the Ad Council played in assisting the government in its unconstitutional and illegal actions is clearly set out in the Complaint. [*Id.*, PageID 3, 28, 31 -

² There are ten Plaintiffs in this action from various counties (judicial districts) within this state. Plaintiffs' counsel was admitted to practice in the Northern District of Ohio over 45 years ago (3-16-1979). (A copy of the Certificate of Good Standing from the U.S. District Court for the Northern District of Ohio is attached hereto.) He was not admitted to practice in the Southern District until just prior to the filing of this action.

32, 48, 106 – 107, 111 – 112, 153] Plaintiffs have cited specific instances in which the Ad Council ran or sponsored ads containing material misrepresentations of fact (the “It’s Up To You” campaign [*Id.*, PageID 106]; the “Do it for Me” Public Service Advertisement (PSA) targeting young adults and children [*Id.*, PageID 107]; and, PSAs using Sesame Street characters to target children [*Id.* PageID 108, 111 - 112])

In its Reply Brief³, Pfizer seeks to discredit the Complaint by attacking Plaintiffs’ Opposition to its Motion to Dismiss. Likening Plaintiffs’ counsel to a pro se litigant⁴, it cites Plaintiffs’ failure to reference Rule 8 or “cite a single authority” to support its characterization of Plaintiffs’ Opposition as nothing but a “rambling, repetitive, [and] far reaching” rehash of “the allegations in their Complaint.” [*Pfizer Reply*, Doc. #36, PageID 713 citing at note 1, *Kuot v. Corrections Corp. of America*, 2018 WL 655158 (M.D. Tenn. Feb. 1, 2018)] However, it is obvious from Plaintiffs’ Opposition to both the Federal Defendants’ and Pfizer’s Motions to Dismiss that Plaintiffs do not take issue with the state of the law, merely the application of the law to the facts of this case. [*Plaintiff’s Opp. Fed. Defs. Mtn. Dismiss*, Doc #18, PageID 612 - 623] The law having been fully and adequately briefed, there was no reason for Plaintiffs to cite Rule 8 or any case law in opposition to Pfizer’s Motion to Dismiss. Plaintiffs’ summary of relevant allegations in the Complaint is meant to aid the Court in assessing Plaintiffs’ compliance with Rule 8 and serves the purpose of showing that the Complaint, far from being rambling and unfocused (and thus deficient under Fed.R.Civ.P. 8(a)), clearly lays out the predicate for liability as to each of the Defendants.

³ As the Ad Council joined in Pfizer’s Reply Brief in support of its Motion to Dismiss, Plaintiffs may properly address the issues raised in Pfizer’s Reply Brief here. [*Ad Council Notice of Joinder Pfizer Reply*, Doc. #37, PageID 718]

⁴ Most cases cited by Defendants involved pro se litigants.

Pfizer further attempts to discredit Plaintiffs' Opposition to its Motion to Dismiss, and thus the Complaint, accusing Plaintiffs of "advancing an unsupported standing argument irrelevant at this stage of the proceedings." [*Pfizer Reply*, Doc. #36, PageID 713] Pfizer overlooks two important facts. First, it was Pfizer that sought to characterize any allegations of injuries to third parties as *irrelevant and extraneous* in the absence of allegations of *third party standing*. [*Pfizer Mtn. Dismiss*, Doc. #27, PageID 662 – 663] Second, Plaintiffs never argued third party standing. Quite the contrary. Plaintiffs conceded they did not make a claim of third party standing and merely addressed the *relevance* of allegations of injuries to third parties in the context of public policy considerations and cited other bases to establish relevance "*separate and distinct from any injuries suffered by third parties*." (Emphasis Added) [*Pltfs. Opp. Pfizer Mtn. Dismiss*, Doc. #34, PageID 702, 704] Plaintiffs narrowly tailored their response to address issues raised by Pfizer (extraneous and irrelevant allegations) and *clearly did not argue standing*. This distinction should not have been lost on Pfizer's counsel, but their Reply certainly suggests otherwise. Whether this was a misreading of Plaintiffs' Opposition, or an intentional mischaracterization of Plaintiffs' argument is unknown. In either event, this assertion is wholly without merit.

Contrary to Pfizer's assertion, Plaintiffs have not reversed course by "now claiming that the government's actions were 'all...of necessity based upon Pfizer's' conduct."⁵ [*Pfizer Reply*, Doc.#36, Page ID 715, citing *Pltfs. Opp.* Doc. #34, PageID 707, note 10] It is obvious from the allegations in the Complaint that, but for Pfizer's fraudulent conduct and the great influence it

⁵ This issue is addressed here for the sole purpose of responding to arguments advanced by Pfizer and the Ad Council, by incorporation of Pfizer's Reply, that Plaintiffs' Opposition to their joint Motion to Dismiss evinces their inability "to consistently present the logic of their purported claims." [*Pfizer Reply*, Doc.#36, PageID 714 – 715]

wielded over trusted federal health agencies (regulatory capture), Plaintiffs would not have been injured. The contributions Pfizer, the Ad Council and the government made to exacting the statutory and constitutional deprivations pleaded in this case are not mutually exclusive. They acted *together* in pursuit of a *common* objective—to exact a deprivation of Plaintiffs statutory right to refuse the “vaccine” by penalizing them for their refusal, subjecting them to discrimination and violating, or threatening to violate, their right to informed consent. The Complaint is not hard to follow. Each defendant is given credit where credit is due.

CONCLUSION

For the foregoing reasons and those set out by Plaintiffs in their opposition to Pfizer’s Motion to Dismiss, Plaintiffs respectfully request this Court deny the Ad Council’s Motion to Dismiss.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the CM/ECF system, will be sent via electronic mail to the registered participants as identified on the Notice of Electronic Filing.

July 29, 2023

s/ George R. Smith, Jr.
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