

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARY K. JONES, individually and on behalf of all
others similarly situated,

Plaintiff,

-against-

PFIZER, INC; HENRY A. MCKINNELL;
JEFFREY B. KINDLER; FRANK D'AMELIO;
DAVID L. SHEDLARZ; ALAN G. LEVIN; IAN
C. READ; JOSEPH FECZKO; KAREN KATEN; J.
PATRICK KELLY; and ALLEN WAXMAN,

Defendants.

ALVIN K. HELLERSTEIN, U.S.D.J.:

**ORDER GRANTING MOTION TO
STRIKE**

10 Civ. 3864 (AKH)

This is a putative class action for violations of the federal securities laws. The consolidated class action complaint spreads across seventy-five pages. It alleges that defendants Pfizer, Inc. and certain of its senior executives failed to make material disclosures in respect of unlawful off-label marketing and promotions of Pfizer's prescription drugs, which allegedly posed significant adverse risks to Pfizer's business.

Defendants have moved to dismiss the complaint, and their motion is supported by a declaration intended to present a thick book of more than 150 exhibits. Plaintiffs move to strike certain of the exhibits.

Plaintiffs' motion to strike is granted. A motion to dismiss is brought pursuant to Federal Rule of Civil Procedure 12(b)(6) to test the legal sufficiency of the pleadings. See Cooper v. Parsky, 140 F.3d 433, 440 (2d Cir. 1998) ("The task of the court in ruling on a Rule 12(b)(6) motion 'is merely to assess the legal feasibility of the complaint . . .'" (quoting Ryder Energy Distribution Corp. v. Merrill Lynch Commodities Inc., 748 F.2d 774, 779 (2d Cir.

1984))). Subsection (d) of that rule gives the court discretion to entertain matters outside of the pleadings, such as affidavits and exhibits. See Fed. R. Civ. P. 12(d). However, if the court exercises that discretion, the court must convert the Rule 12(b)(6) motion into a Rule 56 motion for summary judgment and give all parties “a reasonable opportunity to present all the material that is pertinent to the motion.” Id.; see Global Network Commc’ns, Inc. v. City of N.Y., 458 F.3d 150, 155 (2d Cir. 2006) (describing Rule 12(d)’s requirement of conversion as “strictly enforce[d]” and “mandatory”).

This is not the time to decide the merits. Defendants’ motion to dismiss tests the legal sufficiency of the pleadings. I exercise my discretion to confine my review only to the pleadings and the briefs in support of and in opposition to the motion, and not to review any material outside of the pleadings.

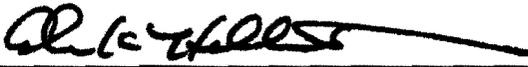
A thick book of exhibits, evidentiary in nature, is also not suitable to be included with the pleadings themselves. A complaint—even one alleging securities fraud in violation of federal law—should include “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Moreover, “[e]ach allegation must be simple, concise, and direct.” Fed. R. Civ. P. 8(d)(1). Accordingly, the exhibits to plaintiffs’ consolidated class action complaint are hereby stricken and plaintiffs are given leave to file, within ten days, an amended complaint that refers to only a limited number of exhibits essential to understanding the complaint’s material allegations.

Because plaintiffs will be amending their pleadings within the next ten days, defendants’ motion to dismiss is hereby denied without prejudice to renewal upon the filing of an amended complaint.

The Clerk will note that the motion to strike (Doc. No. 62) and the motion to dismiss (Doc. No. 54) are terminated.

SO ORDERED.

Dated: April 5, 2011
New York, New York


ALVIN K. HELLERSTEIN
United States District Judge