

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Schouker v. Swarm Industries, Inc. dba Polyswarm

Schouker · No. 24-cv-07373-JSC · Decided April 3, 2025

SUMMARY

The United States District Court for the Northern District of California rules on Defendants’ motion to dismiss Patricia Schouker’s claims against Swarm Industries, Inc., doing business as PolySwarm, and its CEO. The court denies dismissal of the gender discrimination and harassment, FEHA failure-to-prevent, and California Labor Code whistleblower retaliation claims, while dismissing the disability-based claims, FEHA retaliation, tort and contract claims, declaratory-relief claim, and the individual-capacity harassment claim against the CEO.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Jacqueline Scott Corley
JURISDICTION	United States District Court for the Northern District of California
DECIDED	April 3, 2025
DOCKET	24-cv-07373-JSC
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved under Federal Rules of Civil Procedure 8 and 12(b)(6) to dismiss all twelve causes of action in Plaintiff's first amended complaint.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, dismissal is proper when the complaint lacks a cognizable legal theory or fails to allege sufficient facts to support one. The court accepts well-pleaded allegations as true and draws reasonable inferences in the plaintiff's favor. Rule 8 dismissal is appropriate only when allegations are so broad or confusing that a defendant cannot adequately respond.
PRECEDENTIAL VALUE	Unpublished federal district court order; persuasive value only
PARTIES	Patricia Schouker v. Swarm Industries, Inc. dba Polyswarm, Steven Bassi, Jr.

TOPICS

motions to dismiss

employment discrimination

hostile work environment

whistleblower

disability discrimination

PRACTICE AREAS

employment law

civil rights

disability discrimination

whistleblower retaliation

civil procedure

QUESTIONS PRESENTED

1. Whether the first amended complaint was an impermissible shotgun pleading under Rule 8.
2. Whether Plaintiff plausibly pleaded gender discrimination under Title VII and FEHA.
3. Whether Plaintiff plausibly pleaded FEHA disability discrimination and disability-based harassment.
4. Whether Plaintiff plausibly pleaded gender-based harassment and a hostile work environment under FEHA.
5. Whether Plaintiff could sue the CEO individually under an alter-ego theory for FEHA harassment.
6. Whether Plaintiff plausibly pleaded failure to prevent discrimination and harassment under FEHA.
7. Whether Plaintiff plausibly pleaded retaliation under FEHA.
8. Whether Plaintiff plausibly pleaded intentional or negligent infliction of emotional distress.
9. Whether Plaintiff plausibly pleaded breach of contract based on the commission arrangement.
10. Whether Plaintiff was entitled to declaratory relief concerning past confidentiality and loyalty obligations.
11. Whether Plaintiff plausibly pleaded whistleblower retaliation under California Labor Code section 1102.5(b).

HOLDINGS

1. The complaint was not subject to dismissal under Rule 8 because its headings and factual organization gave Defendants adequate notice of the factual basis for each claim.
2. Plaintiff plausibly alleged gender discrimination under Title VII and FEHA.
3. Plaintiff did not plausibly allege a FEHA-qualifying disability or disability-based hostile work environment.
4. Plaintiff plausibly alleged gender-based harassment and a hostile work environment against PolySwarm.
5. Plaintiff did not plausibly allege an alter-ego basis for holding CEO Bassi personally liable for the gender-harassment claim.
6. Plaintiff plausibly alleged a FEHA failure-to-prevent claim because she plausibly alleged underlying gender discrimination and harassment.
7. Plaintiff failed to plausibly allege causation for FEHA retaliation.
8. Plaintiff failed to plausibly allege intentional or negligent infliction of emotional distress.

9. Plaintiff failed to state a breach-of-contract claim because she continued working after receiving notice of the reduced commission terms.
10. Plaintiff was not entitled to declaratory relief because the requested declaration concerned alleged past violations and lacked sufficient immediacy.
11. Plaintiff plausibly alleged whistleblower retaliation under California Labor Code section 1102.5(b).

KEY QUOTATIONS

“Because the complaint does not “deprive[] Defendants from knowing the factual bases of each of the causes of actions,”” (at 2)

“as long as the employee continued in employment with notice of the new terms, the employee has no action for breach of contract as a matter of law.” (at 20)

“A declaratory judgment is not a corrective action, and therefore, it should not be used to remedy past wrongs.” (at 21)

FACTUAL BACKGROUND

Schouker worked for PolySwarm from July 2021 until her termination in August 2024, ultimately serving as Vice President of Alliance and Strategic Partnership. She alleged that male supervisors subjected her to gender-based comments, unequal treatment, diminished responsibilities, reduced commissions, and demeaning assignments, while the company failed to address her complaints. She also alleged health problems and requested accommodation, but the court found the allegations too vague to establish a FEHA-qualifying disability. Separately, she reported to the CEO that PolySwarm's DHS-related operations involved Kaspersky software and potentially violated federal contracting restrictions; shortly thereafter, she alleged a series of retaliatory actions culminating in her termination.

PROCEDURAL HISTORY

Plaintiff sued her former employer and its CEO, asserting gender and disability discrimination, harassment, retaliation, failure to prevent discrimination and harassment, emotional-distress torts, breach of contract, declaratory relief, and California Labor Code whistleblower retaliation. Defendants moved to dismiss. The court denied dismissal of the gender-discrimination, gender-harassment, failure-to-prevent, and whistleblower-retaliation claims, and granted dismissal with leave to amend as to the disability, FEHA-retaliation, emotional-distress, contract, and declaratory-relief claims.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand. The court granted dismissal of Counts Three, Five, Seven, Eight, Nine, Ten, and Eleven with leave to amend. Any amended complaint attempting to replead those claims was due April 18, 2025; no new

defendants or claims could be added without prior permission. If no amended complaint was filed, the case would proceed on the surviving claims.

CASES CITED

- Sollberger v. Wachovia Sec., LLC, No. SACV 09-0766 AG (ANx), 2010 WL 2674456, at *4 (C.D. Cal. June 30, 2010)
- Apothio, LLC v. Kern Cnty., 599 F. Supp. 3d 983, 1001 (E.D. Cal. 2022)
- George v. Grossmont Cuyamaca Cmty. Coll. Dist. Bd. of Governors, No. 22-CV-0424-BAS-DDL, 2022 WL 17330467, at *15 (S.D. Cal. Nov. 29, 2022)
- In re Meta Pixel Tax Filing Cases, 724 F. Supp. 3d 987, 1005 (N.D. Cal. 2024)
- Somers v. Apple, Inc., 729 F.3d 953, 959 (9th Cir. 2013)
- Godwin v. Hunt Wesson, Inc., 150 F.3d 1217, 1218 (9th Cir. 1998)
- Hawn v. Exec. Jet Mgmt., Inc., 615 F.3d 1151, 1156 (9th Cir. 2010)
- Muldrow v. City of St. Louis, 601 U.S. 346, 355 (2024)
- Davis v. Team Elec. Co., 520 F.3d 1080, 1089 (9th Cir. 2008)
- Ayala v. Frito Lay, Inc., 263 F. Supp. 3d 891, 905 (E.D. Cal. 2017)
- Kelley v. The Conco Companies, 196 Cal. App. 4th 191, 212 (2011)
- Chuang v. University of California Davis, 225 F.3d 1115, 1126 (9th Cir. 2000)
- Yanowitz v. L'Oreal USA, Inc., 36 Cal. 4th 1028, 1036 (2005)
- Kaur v. Foster Poultry Farms LLC, 83 Cal. App. 5th 320, 344 (2022)
- Jensen v. Wells Fargo Bank, 85 Cal. App. 4th 245, 258 (2000)
- Herrera v. Nationwide Mut. Ins. Co., No. LA-CV-15-09023 JAK (JEMX), 2017 WL 11628157, at *6 (C.D. Cal. June 9, 2017)
- Roby v. McKesson Corp., 47 Cal. 4th 686, 694 (2009)
- Cornell v. Berkeley Tennis Club, 18 Cal. App. 5th 908, 926-27 (2017)
- Galvan v. Dameron Hosp. Assn., 37 Cal. App. 5th 549, 563 (2019)
- Ortiz v. Dameron Hosp. Assn., 37 Cal. App. 5th 568, 582 (2019)
- Hughes v. Pair, 46 Cal. 4th 1035, 1043 (2009)
- Lyle v. Warner Bros. Television Prods., 38 Cal. 4th 264, 295 (2006)
- Cam-Carson, LLC v. Carson Reclamation Auth., 82 Cal. App. 5th 535, 549 (2022)
- Resh, Inc. v. Conrad, No. 22-CV-01427-EJD, 2024 WL 4177944, at *4 (N.D. Cal. Sept. 11, 2024)
- Steele v. Youthful Offender Parole Bd., 162 Cal. App. 4th 1241, 1252 (2008)
- Flores v. City of Westminster, 873 F.3d 739, 749 (9th Cir. 2017)
- Schneider v. California Department of Corrections, 151 F.3d 1194, 1197 n.1 (9th Cir. 1998)
- Christensen v. Superior Court, 54 Cal. 3d 868, 903 (1991)
- Schneider v. TRW, Inc., 67 F. Supp. 3d 1091, 1099 (N.D. Cal. 2014)
- Huggins v. Longs Drug Stores Cal., Inc., 6 Cal. 4th 124, 129 (1993)
- Software Design & Application, Ltd. v. Hoefer & Arnett, Inc., 49 Cal. App. 4th 472, 482 (1996)

- Vasquez v. Residential Invs., Inc., 118 Cal. App. 4th 269, 278 (2004)
- Muse Brands, LLC v. Gentil, No. 15-CV-01744-JSC, 2015 WL 4572975, at *11 (N.D. Cal. July 29, 2015)
- Potter v. Firestone Tire & Rubber Co., 6 Cal. 4th 965, 984 (1993)
- Davis v. Nordstrom, Inc., 755 F.3d 1089, 1093 (9th Cir. 2014)
- DiGiacinto v. Ameriko-Omserv Corp., 59 Cal. App. 4th 629, 637 (1997)
- Maryland Casualty Co. v. Pacific Coal & Oil Co., 312 U.S. 270, 273 (1941)
- John M. Floyd & Assocs., Inc. v. First Imperial Credit Union, No. 16-CV-1851 DMS (WVG), 2017 WL 4810223, at *5 (S.D. Cal. Oct. 25, 2017), aff'd, 771 F. App'x 840 (9th Cir. 2019)
- Seattle Audubon Soc. v. Moseley, 80 F.3d 1401, 1405 (9th Cir. 1996)
- McVeigh v. Recology San Francisco, 213 Cal. App. 4th 443, 468 (2013)
- Choi v. Wal-Mart Assocs., Inc., No. 8:23-CV-02376-SB-KES, 2024 WL 5431492, at *6 (C.D. Cal. Nov. 25, 2024)
- Bacon v. Woodward, 104 F.4th 744, 753 (9th Cir. 2024)
- United States v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003)