

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Sebastian Rako v. VMware LLC, et al.

Rako · No. 25-cv-05142-SVK · Decided November 25, 2025

SUMMARY

The United States District Court for the Northern District of California considers motions to dismiss Sebastian Rako’s claims against VMware LLC and other defendants. The court dismisses the False Claims Act retaliation claim, and related conspiracy and wrongful-termination claims to the extent based on that claim, with leave to amend. The remaining dismissal arguments are denied without prejudice, and the court permits filing of a First Amended Complaint by December 31, 2025.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Susan van Keulen
JURISDICTION	United States District Court for the Northern District of California
DECIDED	November 25, 2025
DOCKET	25-cv-05142-SVK
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff's pro se complaint asserted False Claims Act retaliation, California Labor Code retaliation, civil conspiracy, and wrongful termination in violation of public policy. Defendants moved to dismiss under Federal Rule of Civil Procedure 12(b)(6).
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court considered the complaint, materials incorporated by reference, and matters subject to judicial notice; presumed well-pleaded allegations true; drew reasonable inferences in plaintiff's favor; and required enough facts to state a facially plausible claim for relief.
PRECEDENTIAL VALUE	Unknown; district court order with no reported citation.
PARTIES	Sebastian Rako v. VMware LLC, Michael Brewster, Jeremy Hoke, Kaiser Aluminum Corporation, Mike Wood, Tami Mills

TOPICS

motions to dismiss

false claims act

retaliation

whistleblower

civil procedure

PRACTICE AREAS

civil procedure

False Claims Act

employment retaliation

whistleblower law

QUESTIONS PRESENTED

1. Whether the complaint plausibly alleged that Rako engaged in protected conduct under the False Claims Act's retaliation provision.
2. Whether the complaint plausibly alleged that VMware knew Rako engaged in FCA-protected conduct.
3. Whether the FCA-based portions of the civil-conspiracy and wrongful-termination claims could survive when the underlying FCA retaliation claim was inadequately pleaded.
4. Whether the court should reach defendants' remaining arguments concerning the state-law and other claims at the motion-to-dismiss stage.

HOLDINGS

1. A plaintiff alleging efforts to stop FCA violations must plausibly allege that the plaintiff in good faith believed, and that a reasonable employee in the same or similar circumstances might believe, that the employer was possibly committing fraud against the government. Rako's complaint did not allege sufficient facts connecting VMware's alleged licensing fraud with a false claim made to the government.
2. The complaint did not plausibly allege that VMware knew Rako had engaged in FCA-protected conduct because the complaint did not first plausibly allege that Rako engaged in protected conduct.
3. The FCA retaliation cause of action was dismissed under Rule 12(b)(6), with leave to amend because the court did not find that the pleading deficiencies were incurable.
4. To the extent the civil-conspiracy and wrongful-termination claims depended on the deficient FCA retaliation claim, those portions were also dismissed with leave to amend.
5. In this case, the court ordered that future filings containing authorities located through specified AI or automated text-generation tools include a footnote stating: "Located through AI; Checked."

KEY QUOTATIONS

"an employee engages in protected activity where (1) the employee in good faith believes, and (2) a reasonable employee in the same or similar circumstances might believe [] that the employer is possibly committing fraud against the government." (Document text, Section III.B.1)

"Parties, including pro se parties, and counsel shall not file or otherwise present to the Court any briefs, pleadings, materials, other documents, or argument which contain AI-hallucinated citations to law, case or legal citations which are fictitious or non-existent, or any assertions of law or fact that cannot be corroborated." (Document text, Section III.A)

FACTUAL BACKGROUND

Sebastian Rako worked as a VMware sales professional from approximately August 2021 until June 2022. He alleged that he discovered Kaiser Aluminum was using VMware licenses beyond authorized limits and had cybersecurity and compliance deficiencies relating to facilities involved in defense production. Rako alleged that he reported the issues internally, refused to process license information he believed was false, and was suspended and terminated after attempting to stop the conduct.

PROCEDURAL HISTORY

Plaintiff filed the complaint on June 18, 2025. The court considered fully briefed motions to dismiss filed by VMware, Kaiser and Wood, and Mills. The court dismissed the FCA retaliation claim with leave to amend, dismissed the derivative portions of the conspiracy and wrongful-termination claims with leave to amend, and denied the remaining dismissal arguments without prejudice.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand. Plaintiff may file a First Amended Complaint by December 31, 2025, with a redline comparing it to the original complaint. Defendants must respond within fourteen days after filing. VMware's motion was granted with leave to amend as to the FCA retaliation claim and derivative FCA-based portions of the conspiracy and wrongful-termination claims; the remaining dismissal arguments in the motions were denied without prejudice.

CASES CITED

- Metzler Inv. GmbH v. Corinthian Colls., Inc., 540 F.3d 1049, 1061 (9th Cir. 2008)
- Usher v. City of L.A., 828 F.2d 556, 561 (9th Cir. 1987)
- In re Gilead Scis. Sec. Litig., 536 F.3d 1049, 1055 (9th Cir. 2008)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)
- Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003)
- Moore v. Cal. Institute of Tech., 275 F.3d 838, 844-45 (9th Cir. 2002)
- Winter ex rel. United States v. Garden Reg'l Hosp. & Med. Ctr., Inc., 953 F.3d 1108, 1114 (9th Cir. 2020)
- Allison Engine Co. v. United States ex rel. Sanders, 553 U.S. 662 (2008)
- Amphastar Pharms. Inc. v. Aventis Pharma SA, No. EDCV-09-0023 MJG, 2012 WL 5512466, at *10-11 (C.D. Cal. Nov. 14, 2012)
- Mooney v. Fife, 118 F.4th 1081, 1089-92 (9th Cir. 2024)
- U.S. ex rel. Hopper v. Anton, 91 F.3d 1261, 1269 (9th Cir. 1996)
- Layton v. Terremark No. Amer., No. 5:13-cv-03093-PSG, 2014 WL 2538679, at *7 (N.D. Cal. June 5, 2014)
- U.S. ex rel. Campie v. Gilead Scis., Inc., 862 F.3d 890, 907 (9th Cir. 2017)
- United States v. Wal-Mart Stores East, LP, 858 Fed. App'x 867, 879-80 (6th Cir. 2021)
- Sneddon v. ABF Freight Sys., 489 F. Supp. 2d 1124, 1131 (S.D. Cal. 2007)

- Vasile v. Flagship Financial Grp., LLC, No. 2:12-cv-02912-KJM-CKD, at *4 (E.D. [text truncated])

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