

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Lapchak v. Paradigm Biopharmaceuticals (USA), Inc.

No. 24-CV-143 JLS (DDL) (S.D. Cal. Aug. 5, 2025) · No. 24-CV-143 JLS (DDL) · Decided August 5, 2025

SUMMARY

The United States District Court for the Southern District of California granted Defendants’ Rule 12(b)(6) motion to dismiss claims in Paul A. Lapchak’s Second Amended Complaint. The court dismissed the breach-of-contract claim against Donna Skerrett without prejudice and with leave to amend, and dismissed the California Labor Code section 1102.5 whistleblower claims against Skerrett with prejudice. The section 1102.5(b) and (c) claims against Paradigm Biopharmaceuticals (USA), Inc. were dismissed without prejudice and with leave to amend.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 PAUL A. LAPCHAK, an individual, Case No.: 24-CV-143 JLS (DDL) 12
Plaintiff, ORDER GRANTING DEFENDANTS’ 13 v. MOTION TO DISMISS 14 PARADIGM
BIOPHARMACEUTICALS (ECF No. 19) (USA), INC., a Delaware corporation; and 15
DONNA SKERRETT, an individual, 16 Defendants. 17 18 Presently before the Court are
Defendants Paradigm Biopharmaceuticals (USA), 19 Inc. (“Paradigm”) and Donna Skerrett’s
 (“Skerrett”) (collectively, “Defendants”) Motion 20 to Dismiss Plaintiff’s Second Amended
Complaint’s First and Second Causes of Action 21 (“Mot.,” ECF No. 19) and Memorandum of
Points and Authorities in Support Thereof 22 (“Mem.,” ECF No. 19-1).

Plaintiff Paul A. Lapchak (“Plaintiff”) filed an Opposition to 23 the Motion (“Opp’n,” ECF No.
20), to which Defendants submitted a Reply (“Reply,” ECF 24 No. 21. The Court took this matter
under submission without oral argument pursuant to 25 Civil Local Rule 7.1(d)(1) on June 27,
2025. ECF No. 22.

Having carefully considered 26 the Parties’ arguments, Plaintiff’s Second Amended Complaint
 (“SAC,” ECF No. 18), and 27 the law, the Court GRANTS Defendants’ Motion to Dismiss. 28 / / /

1 BACKGROUND 2 I. Procedural Background 3 Plaintiff initiated this action by filing a
Complaint against Defendants on January 4 22, 2024. See ECF No. 1. Plaintiff filed his First
Amended Complaint (“FAC”) on March 5 28, 2024, alleging four causes of action: (1) breach of
contract against all Defendants; 6 (2) breach of fiduciary duties against Skerrett; (3) violation of
“California Whistleblower 7 Statute” against all Defendants; and (4) violations of “California
employment law” against 8 all Defendants.

ECF No. 4 (“FAC”). Subsequently, Defendants filed a Motion to Dismiss 9 Plaintiff’s First, Second, and Fourth Causes of Action for failure to state a claim upon 10 which relief can be granted. See generally ECF No. 9. 11 On February 7, 2025, the Court granted Defendants’ Motion and dismissed 12 Plaintiff’s First, Second, and Fourth Cause of Action. See ECF No. 15 (“FAC Order”) at 9.

13 However, the dismissal was without prejudice and the Court granted Plaintiff leave to 14 amend his complaint. See FAC Order at 18–19. 15 On April 29, 2025, Plaintiff filed a Second Amended Complaint (“SAC,” ECF 16 No. 18). Plaintiff’s SAC now alleges seven causes of action: (1) breach of contract against 17 both Defendants; (2) violation of “California Whistleblower Statute” against both 18 Defendants; (3) violation of California Labor Code § 204 against Paradigm, (4) violation 19 of California Labor Code § 203 against Paradigm; (5) violation of California Labor Code 20 § 226 against Paradigm; (6) retaliation in violation of public policy against Paradigm; 21 (7) and retaliation under California Labor Code § 98.6 against Paradigm.

See generally 22 SAC. 23 On May 13, 2025, Defendants filed a Motion to Dismiss (1) the First Cause of Action 24 as to Defendant Skerrett only, and (2) the Second Cause of Action for Whistleblower 25 Violations as to both Defendants. See Mot.

On June 12, 2025, Plaintiff filed an Opposition. 26 See Opp’n. And on June 18, 2025, Defendants filed their Reply. See Reply. 27 / / / 28 / / / 1 II. Second Amended Complaint: Plaintiff’s Allegations 2 Plaintiff Paul Lapchak, a San Diego, California resident, is a renowned scientist with 3 a PhD in Pharmacology. SAC ¶¶ 1, 8. Plaintiff was hired by Paradigm, a Delaware 4 corporation that develops and sells drug formulas, to be its executive, holding the title of 5 “Global Head of Translational Development,” on or about October 7, 2022.

Id. ¶¶ 2, 9, 11. 6 Plaintiff and Paradigm entered into a contract, the “Employment Agreement,” which 7 required Paradigm to provide certain financial compensation and Paradigm shares to 8 Plaintiff as part of the employment inducement. Id. ¶¶ 24, 25. Plaintiff was an executive 9 for approximately 12 months, and his last performance evaluation indicated he “exceeded 10 on all measures of performance.” Id. ¶ 10.

On or about October 3, 2023, Paradigm sent 11 Plaintiff a new employment agreement that had not been negotiated with him, and which 12 “materially altered several aspects of the parties’ agreed-upon contractual relationship.” 13 Id. ¶ 12.

On or about October 10, 2023, Plaintiff protested the changes and stated he would 14 not enter into the new agreement. Id. ¶ 13. 15 Plaintiff is also a shareholder in Paradigm and shares promised to him have not been 16 timely provided, as set forth in his Employment Agreement. Id. ¶ 14.

For example, his 17 “sign on bonus” of 25,000 shares were due October 24, 2022, and were not timely provided. 18 Id. ¶ 15. His one-year anniversary 100,000 shares were due October 24, 2023, and were 19 also not timely provided. Id. ¶ 16.

On October 29, 2023, Paradigm issued a “trading halt” 20 and issued a “rights offer” or “entitlement offer” to its employees, and Plaintiff timely 21 exercised his entitlement/rights offer as to the missing 125,000 shares of Paradigm stock. 22 Id. ¶ 17. Plaintiff has not received the 125,000 shares to which he is entitled, nor other 23 shares to which he is entitled under a capital raise.

Id. ¶ 18. He indicates Defendant 24 Skerrett, “is a person responsible for Paradigm’s failure to pay Lapchak wages under 25 California law.” Id. ¶ 31. 26 One of the drugs Paradigm currently develops is a pentosan polysulfate sodium 27 (“PPS”), an “FDA-approved drug that has a long track record of safely treating 28 inflammation for over 60 years.” Id. ¶ 11.

Paradigm’s primary focus, per Plaintiff, is to 1 develop PPS (under the name of Zilosul®) to treat osteoarthritis. Id. 2 On November 1, 2023, at a company-wide team meeting, Plaintiff “presented an 3 overview of drug toxicity of PPS or Zilosul.” Id. ¶ 20. Then on November 17, 2023, 4 Plaintiff “presented a power point deck to Paradigm’s safety officer, director of clinical 5 operations, and head of osteoarthritis[,] summarizing significant multi-organ toxicity of 6 Paradigm’s drug product, PPS or Zilosul.” Id. ¶ 20.

Plaintiff proceeded to inform the 7 regulatory department of the multi-organ toxicity of the same product. Id. Subsequently, 8 purportedly retaliating against Plaintiff’s actions, Defendants disabled Plaintiff’s access to 9 the workplace computers. Id. ¶ 21.

After Plaintiff protested, Defendants purportedly 10 “falsely claimed” Plaintiff was still an employee. Id. ¶ 21. Defendants formally terminated 11 Plaintiff on or about January 12, 2024. Id. ¶ 22. 12 LEGAL STANDARD 13 Rule 12(b)(6) permits a party to raise by motion the defense that the complaint 14 “fail[s] to state a claim upon which relief can be granted.” Fed.

R. Civ. P. 12(b)(6). The 15 Court evaluates whether a complaint states a cognizable legal theory and sufficient facts in 16 light of Federal Rule of Civil Procedure 8(a), which requires a “short and plain statement 17 of the claim showing that the pleader is entitled to relief.” “[A] plaintiff’s obligation to 18 provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and 19 conclusions, and a formulaic recitation of the elements of a cause of action will not do.” 20 Bell Atl.

Corp. v. Twombly, 550 U.S. 544, 555 (2007) (alteration in original). 21 To survive a 12(b)(6) motion, then, “a complaint must contain sufficient factual 22 matter... to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 23 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 570). A claim is facially plausible 24 when the facts pled “allow[] the court to draw

the reasonable inference that the defendant 25 is liable for the misconduct alleged.” Id. “[W]here the well-pleaded facts do not permit 26 the court to infer more than the mere possibility of misconduct, the complaint has alleged— 27 but it has not ‘show[n]’—‘that the pleader is entitled to relief.’” Id. at 679 (second 28 alteration in original) (quoting Fed.

R. Civ. P. 8(a)(2)). 1 When reviewing a motion to dismiss under Rule 12(b)(6), the Court applies its 2 “judicial experience and common sense.” Id. (citation omitted). Further, “a district court 3 must accept as true all facts alleged in the complaint” and “draw all reasonable inferences 4 in favor of the plaintiff.” *Wi-LAN Inc. v. LG Elecs., Inc.*, 382 F. Supp. 3d 1012, 1020 5 (S.D.

Cal. 2019) (citing *Retail Prop. Tr. v. United Bhd. of Carpenters & Joiners of Am.*, 676 F.3d 938, 945 (9th Cir. 2014)). Where a complaint does not survive 12(b)(6) review, 7 the Court will grant leave to amend unless it determines that no modified contention 8 “consistent with the challenged pleading... could cure the deficiency.” *DeSoto v. Yellow 9 Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir.

1992) (quoting *Schreiber Distrib. Co. v. 10 Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986)). 11 ANALYSIS 12 Defendants argue Plaintiff’s First and Second Causes of Action fail to state a claim 13 upon which relief can be granted, and as such, they should be dismissed with prejudice 14 pursuant to Federal Rule of Civil Procedure 12(b)(6). See Mem. at 1.

The Court addresses 15 each argument in turn. 16 I. First Cause of Action 17 Defendants argue that Plaintiff has failed to plead his First Cause of Action—a 18 breach of contract claim—against Skerrett, as he fails to allege Skerrett was a party to the 19 Employment Agreement at issue, and in fact, alleges that the parties to his Employment 20 Agreement were limited to himself and Paradigm.

Mem. at 5 (citing SAC ¶ 24). 21 Plaintiff, in turn, agrees that he “should pursue his wage claims against Skerrett 22 under California employment law rather than via contract theory, and requests permission 23 to amend the SAC accordingly.” Opp’n at 2.

As the Parties agree that Plaintiff has not 24 sufficiently pled the First Cause of Action against Skerrett, the Court GRANTS 25 Defendants’ Motion and DISMISSES the First Cause of Action as to Skerrett. 26 Defendants argue in their Reply that leave to amend “to add a new cause of action” 27 should not be granted. Reply at 2. Instead, Defendants urge the Court to “follow[] the 28 Eleventh Circuit’s lead,” and deny Plaintiff’s request to amend as improper, as it was made 1 in his Opposition, rather than a separately filed motion.

Id. (citing *Posner v. Essex Ins. 2 Co.*, 178 F.3d 1209, 1222 (11th Cir. 1999)). The Court declines to do so, as this Court is 3 bound by the Ninth Circuit, where a party may indeed properly present a request for leave 4 to amend in an opposition to a motion to dismiss. See, e.g., *United States v.*

\$11,500 in 5 U.S. Currency, 710 F.3d 1006, 1013 (9th Cir. 2013) (citation omitted); *Edwards v. 6 Occidental Chem.*

Corp., 892 F.2d 1442, 1445 n.2 (9th Cir. 1990) (citations omitted); 7 *Simons v. United States*, 497 F.2d 1046, 1049 n.2 (9th Cir. 1974); *Grisham v. Philip Morris, 8 Inc.*, 670 F. Supp. 2d 1014, 1022 (C.D. Cal. 2009) (citations omitted) (“In this Circuit, 9 courts may construe other filings, including oppositions to motions, as motions to amend 10 where amendment would be proper.”).

Under the circumstances here, the Court determines 11 a modified contention “consistent with the challenged pleading could... possibly cure the 12 deficiency.” *Schreiber Distrib. Co.*, 806 F.2d at 1401. 13 Accordingly, the First Cause of Action as to Skerrett is DISMISSED WITHOUT 14 PREJUDICE AND WITH LEAVE TO AMEND. 15 II.

Second Cause of Action 16 Plaintiff’s Second Cause of Action alleges Skerrett and Paradigm violated the 17 California Whistleblower Statute, specifically California Labor Code Sections 1102.5(b) 18 and (c). Defendants argue the Second Cause of Action must be dismissed as to Skerrett 19 because Plaintiff does not allege an employment relationship between himself and Skerrett.

20 Mem. at 9. And with respect to Paradigm, Defendants contend Plaintiff has failed to plead 21 sufficient facts to state a claim for relief, under either Section 1102.5(b) or (c). *Id.* at 6–8. 22 The Court will take each argument in turn. 23 A. Defendant Skerrett 24 Defendants argue that Plaintiff’s SAC again fails to plead any facts suggesting an 25 employment relationship between Plaintiff and Skerrett.

Mem. at 9. And Defendants 26 reiterate their position, with which the Court agreed in its past FAC Order, that Plaintiff 27 must plead an employment relationship in order to state a Section 1102.5 claim against 28 Skerrett. See *id.*; see also FAC Order at 13. 1 Plaintiff, in response, does not appear to argue he has sufficiently alleged an 2 employment relationship between himself and Skerrett.

Instead, he renews his prior failed 3 argument that he need not allege an employment relationship between himself and Skerrett 4 as she “acted on behalf of the employer.” Opp’n at 2. In support of this argument, Plaintiff 5 again relies on the statutory language of Sections 1102.5(b) and (c) that provide “[a]n 6 employer, or any person acting on behalf of the employer, shall not retaliate against an 7 employee....” *Id.* (emphasis added).

8 The Court has already rejected this argument, and it does so again here. True, 9 Section 1102.5 was amended in 2013 (effective January 1, 2014) to include the language, 10 “or any person acting on behalf of the employer.” See *Dawson v. Caregard Warranty 11 Serv., Inc.*, No. 5:23-CV01139-SB-SP, 2024 WL 661198, at *1 (C.D. Cal. Jan. 12, 2024). 12 Yet, in the decade since

Section 1102.5 was amended, no court has adopted position that 13 the amendments effective in 2014 to Section 1102.5 permit individual liability.

Friedman 14 v. Jenkins, No. 23-cv-05036-JSW, 2024 WL 1182878, at *5 (N.D. Cal. Mar. 19, 2024). 15 “Instead, courts have almost uniformly applied two California Supreme Court decisions, 16 *Reno v. Baird*, 18 Cal.4th 640 (1998) and *Jones v. Lodge at Torrey Pines P’ship*, 42 Cal.4th 17 1158 (2008), to find that nonemployer individuals are not subject to personal liability for 18 alleged retaliation against whistleblowers.” Id. 19 Accordingly, Plaintiff’s Second Cause of Action is subject to dismissal.

The Court 20 also finds, here, that leave to amend is not warranted. Plaintiff does not assert he can allege 21 an employment relationship between himself and Skerrett and instead is solely advancing 22 a theory the Court has already disposed of.

The Court thus finds that leave to amend would 23 be futile. 24 Therefore, the Court GRANTS Defendants’ Motion and DISMISSES the Second 25 Cause of Action WITH PREJUDICE and WITHOUT LEAVE TO AMEND as to 26 Defendant Donna Skerrett. 27 / / / 28 / / / 1 B. Defendant Paradigm 2 The Court next addresses whether Plaintiff sufficiently pled a claim against 3 Paradigm under Labor Code Section 1102.5(b) and Section 1102.5(c).

4 1. Alleged Violations of Section 1102.5(b) 5 Section 1102.5(b) prohibits retaliation against an employee for: 6 disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a 7 government or law enforcement agency, to a person with 8 authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or 9 noncompliance, or for providing information to, or testifying 10 before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the 11 information discloses a violation of state or federal statute, or a 12 violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is 13 part of the employee’s job duties.

14 Cal. Lab. Code § 1102.5(b). Plaintiff alleges he reported “drug toxicity” and made 15 “complaints of failure to timely issue shares, removal of vested PTO wages, and failure to 16 pay 401K monies owed to him,” and “within days,” Paradigm “disconnect[ed] him from 17 all Paradigm computer systems,” then formally terminated him. SAC ¶ 46. Defendants 18 argue these allegations are insufficient to state a claim.

19 First, with respect to Plaintiff’s report of “drug toxicity,” Defendants argue 20 Plaintiff’s SAC is deficient as “he points to no illegal activity he purportedly disclosed.” 21 Mem. at 7. The Court previously dismissed this claim as deficient for the same reason. 22 FAC Order at 11–12. Specifically, the Court noted that while Plaintiff’s FAC implied 23 some FDA regulation may

have been violated, the weight of authority showed such a 24 generalized reference was insufficient to put defendant on notice.

Id. at 12. 25 Plaintiff, in his Opposition, acknowledges this Court previously held he “needed to 26 allege in his SAC which federal or state statutes he contended were violated with more 27 detail about the same,” Opp’n at 3, but argues he has now done so.

The Court disagrees. 28 1 Plaintiff’s SAC alleges that under the Food, Drug, and Cosmetic Act, 21 U.S.C. 2 § 301, et seq., a drug must be proven safe and effective prior to marketing it, and Plaintiff 3 reported to Defendants that the PPS or Zilosul drug that Defendants made “was not safe 4 and effective.” SAC ¶ 41. But these allegations are still too general to sufficiently put 5 Paradigm on notice.

See *La v. San Mateo Cnty. Transit Dist.*, No. 14-cv-01768-WHO, 6 2014 WL 4632224, at *6 (N.D. Cal. Sept. 16, 2014) (holding the plaintiff’s “citation to a 7 whole statutory framework” did not properly state a claim under section 1102.5); *Cleveland 8 v. Ludwig Inst. Cancer Rsch. Ltd.*, No. 21cv871 JM (JLB), 2022 WL 80265, at *4 (S.D. 9 Cal. Jan. 7, 2022) (dismissing a claim under section 1102.5 because the plaintiff’s belief 10 that the defendant violated “some provision of 2 CFR Part 200” failed to give the defendant 11 fair notice); *Chan v. Canadian Standards Ass’n*, No. SACV 19-2162-JVS (JDE), 2020 WL 12 2496174, at *2 (C.D.

Cal. Mar. 16, 2020) (“A plaintiff must be able to identify a specific 13 state or federal statute, rule, or regulation which he believed was being violated.” (emphasis 14 added)). Accordingly, to the extent Plaintiff alleges a violation of Section 1102.5(b) based 15 on reports of drug toxicity, such a claim must be dismissed. 16 Next, as to Plaintiff’s allegations concerning his compensation related complaints, 17 Defendants argue Plaintiff’s SAC “omits facts to support a causal link between the 18 protected activity and the adverse action.” Mem. at 7. “Plaintiff must plead a causal link 19 between [his] disclosure of what [he] had reasonable cause to believe constituted 20 Defendants’ illegal conduct, and Defendants’ adverse actions.” *Dowell v. Contra Costa 21 County*, 928 F. Supp. 2d 1137, 1156 (N.D.

Cal. 2013). “Causation may be inferred from 22 circumstantial evidence, including ‘the employer’s knowledge that the [employee] engaged 23 in protected activities and the proximity in time between the protected action and allegedly 24 retaliatory employment decision.’” Id. (quoting *Morgan v. Regents of Univ. of Cal.*, 105 25 Cal. Rptr. 2d 652, 666 (Ct. App. 2000)).

However, “[t]he employer’s awareness is an 26 essential component of the causal link.” Id. (citing *Morgan*, 105 Cal. Rptr. 2d at 666). 27 In its prior Order dismissing the FAC, the Court found Plaintiff’s allegation he 28 “complained to a person with authority over him, or to another employee who had the 1 authority to investigate, discover, or correct the violation or

noncompliance, about drug 2 toxicity, and also about his unissued shares, and his unpaid wages,” conclusory.

FAC 3 Order at 13. Consequently, the Court held Plaintiff had not provided sufficient “factual 4 matter” to plead Paradigm was aware that Plaintiff had engaged in a protected activity. Id. 5 Plaintiff’s SAC no longer includes this conclusory allegation, but Defendants argue 6 the SAC again fails to state a claim, as Plaintiff still fails to identify to whom he might 7 have made his compensation-related complaints.

Mem. at 8. For example, in SAC 8 paragraphs 42 and 44, Plaintiff alleges he complained to “Defendant,” singular. But he 9 never defines “Defendant.” This leaves Defendants unable to ascertain to whom Plaintiff 10 allegedly complained, and thus what facts support Plaintiff’s claim that Paradigm was 11 aware of his complaints. Id. 12 Plaintiff does not directly address this point in response but possibly suggests he 13 made the complaints of the “illegal withholding of wages, illegal removal of vested wages 14 PTO” to Skerrett.

Opp’n at 6. But “[a]rguments made in briefs are not facts alleged in the 15 complaint, and the court cannot consider them in deciding a motion to dismiss.” *Care First 16 Surgical Ctr. v. ILWU-PMA Welfare Plan*, No. CV 14-01480 MMM AGRX, 2014 WL 17 6603761, at *4 (C.D. Cal. July 28, 2014).

The Court is persuaded that by failing to identify 18 to whom he allegedly complained or that the individuals responsible for terminating his 19 employment had any reason to know that Plaintiff purportedly complained, Plaintiff has 20 not sufficiently pled facts to support a causal link between the protected activity—his 21 compensation related complaints—and adverse action.

See *Dowell*, 928 F. Supp. 2d 22 at 1156 (“Without an allegation that Defendants were aware that Plaintiff engaged in 23 protected activity, there can be no basis to find a causal link between the protected activity 24 and adverse action.”); see also *Noone v. Hitachi Rail STS USA, Inc.*, No. 8:24-cv-00131- 25 FWS-KES, 2024 WL 5415115, at *5 (C.D. Cal. Dec. 2, 2024) (finding plaintiff failed to 26 allege a causal link under section 1102.5 even though she alleged who she complained to, 27 where she only stated in a “conclusory manner” that “Defendant” took the retaliatory action 28 against her).

1 In light of the foregoing deficiencies, the Court GRANTS Paradigm’s Motion to 2 Dismiss as to Plaintiff’s Section 1102.5(b) claim and DISMISSES such claim. However, 3 the Court does not believe the claim’s defects are necessarily irreparable, and therefore 4 DISMISSES this claim WITHOUT PREJUDICE and WITH LEAVE TO AMEND. 5 2. Alleged Violations of Section 1102.5(c) 6 Section 1102.5(c) states that an employer “shall not retaliate against an employee 7 for refusing to participate in an activity that would result in a violation of state or federal 8 statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.” 9 “In enacting

the statute, the California Legislature intended ‘to protect employees who 10 refuse to act at the direction of their employer or refuse to participate in activities of an 11 employer that would result in a violation of law.’” *Casissa v. First Rep. Bank*, Nos. C 09– 12 4129 CW, C 09–4130 CW, 2012 WL 3020193, at *8 (N.D.

Cal. July 24, 2012) (quoting 13 Act of Sept. 22, 2003, ch. 484, § 1, 2003 Cal. Legis. Serv. 484). “As with section 1102.5(b), 14 to establish a prima facie case under section 1102.5(c), a plaintiff must offer proof that: 15 (1) he engaged in a protected activity[;] (2) the defendant subjected him to adverse 16 employment actions; and (3) that there is a causal link between the two.” *Tobin v. City & 17 Cnty.*

S.F. Police Dep’t, No. 13-cv-01504-MEJ, 2015 WL 1885632 at *5 (N.D. Cal. April 18 24, 2015). 19 Defendants argue that Plaintiff fails to sufficiently allege he refused to participate in 20 any alleged unlawful conduct, and thus his Section 1102.5(c) claim must be dismissed. 21 Mem. at 6. Plaintiff argues his SAC is sufficient because he alleges that: 22 Paradigm did not want to stop pushing forward its unsafe drug despite being warned by Lapchak and others of the serious 23 problems with the drugs.

As such, Paradigm was asking Dr. 24 Lapchak to violate his ethical duties and engage in unlawful activity by continuing to push forward with drug trials of a drug 25 that was demonstrably unsafe. 26 Opp’n at 4–5 (citing SAC ¶ 47). And Plaintiff argues that “as a physician, Dr. Lapchak 27 must observe ethical duties, and under the FDCA law, drugs must be safe and effective or 28 they may not be given to the public.” *Id.* at 5.

1 The Court agrees with Defendants that these allegations are insufficient to show 2 Plaintiff refused to participate in any allegedly unlawful conduct. Plaintiff does not allege 3 who asked him to engage in alleged unlawful conduct or when or how he informed that 4 person he was refusing to engage in such conduct. While Plaintiff alleges he made reports 5 of “drug toxicity”—notwithstanding that, as explained above, he has not identified the 6 specific law he believed was being violated—complaints of alleged unlawful activity alone 7 are insufficient to show he refused to participate in such activity.

See e.g., *Tobin*, 2015 8 WL 1885632, at *5 (“[Plaintiff] merely asserts that he complained about Defendants’ 9 practices and questioned whether they were legal. Without more, Plaintiff’s bare assertion 10 that he refused to further Defendants’ ‘illegal policies’ does not place him within the class 11 of persons that section 1102.5(c) is designed to protect.”); see also *Fernandes v. TW 12 Telecom Holdings Inc.*, No. 2:13–CV–02221–GEB–CKD, 2013 WL 6583970, at *1, 3–4 13 (E.D.

Cal. Dec. 16, 2013) (dismissing section 1102.5(c) claim where plaintiff “refus[ed] to 14 ignore” safety and compliance violations, finding that this allegation “do[es] not evince” a 15 refusal to participate in an illegal activity); cf. *Ferretti v Pfizer Inc*, 855 F. Supp. 2d 1017, 16 1025–27 (N.D.

Cal. 2012) (denying dismissal of a section 1102.5(c) claim where plaintiff 17 indicated that she would not conduct Phase III of her employer's product studies and 18 requested a transfer).

19 However, the Court does not believe amendment would be futile. Therefore, the 20 Court DISMISSES Plaintiff's Section 1102.5(c) claim WITHOUT PREJUDICE and 21 WITH LEAVE TO AMEND as to Paradigm. 22 CONCLUSION 23 In light of the foregoing, the Court GRANTS Defendants' Motion to Dismiss (ECF 24 No. 19) Plaintiff's Second Amended Complaint as follows: 25 1. Plaintiff's First Cause of Action as to Defendant Skerrett is DISMISSED 26 WITHOUT PREJUDICE and WITH LEAVE TO AMEND.

27 2. Plaintiff's Second Cause of Action as to Defendant Skerrett is DISMISSED 28 WITH PREJUDICE and WITHOUT LEAVE TO AMEND. 1 3. Plaintiff's Second Cause of Action, to the extent premised on Section 2 || 1102.5(b), is DISMISSED WITHOUT PREJUDICE and WITH LEAVE TO AMEND 3 ||as to Defendant Paradigm. 4 4. Plaintiff's Second Cause of Action, to the extent premised on Section 5 || 1102.5(c), is DISMISSED WITHOUT PREJUDICE and WITH LEAVE TO AMEND 6 ||as to Defendant Paradigm.

7 Within twenty-one (21) days of this Order, Plaintiff either (1) SHALL FILE an 8 |}amended complaint, or (2) SHALL INDICATE to the Court that he will not do so. 9 || Failure to timely select either of the above options may result in the dismissal of all 10 ||claims for failure to comply with a court order pursuant to Federal Rule of Civil 11 || Procedure 41(b).

See Applied Underwriters, Inc. v. Lichtenegger, 913 F.3d 884, 890-91 12 || (9th Cir. 2019) (explaining courts may dismiss an action under Rule 41(b) when a plaintiff 13 to comply with a court order requiring the filing of an amended complaint). Any 14 || amended complaint must be complete in and of itself without reference to Plaintiff's FAC 15 SAC; claims not realleged in the amended complaint will be considered waived.

See 16 Cal. CivLR 15.1; Lacey v. Maricopa County, 693 F.3d 896, 928 (9th Cir. 2012) 17 || (noting claims dismissed with leave to amend that are not realleged in an amended pleading 18 || may be considered waived). 19 IT IS SO ORDERED 20 || Dated: August 5, 2025 ☐☐ 21 pee Janis L. Sammartino 79 United States District Judge 23 24 25 26 27 28