

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.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Janis L. Sammartino
JURISDICTION	United States District Court for the Southern District of California
DECIDED	August 5, 2025
DOCKET	24-CV-143 JLS (DDL)
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendants moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss the first cause of action as to Skerrett and the second cause of action as to both defendants. The court granted the motion, dismissing the challenged claims with or without prejudice as specified in the order.
STANDARD OF REVIEW	Under Rule 12(b)(6), the court determines whether the complaint states a cognizable legal theory and sufficient facts under Rule 8(a). It accepts well-pleaded facts as true, draws reasonable inferences in plaintiff's favor, and requires sufficient factual matter to state a claim that is plausible on its face.
PRECEDENTIAL VALUE	unpublished
PARTIES	Paul A. Lapchak v. Paradigm Biopharmaceuticals (USA), Inc., Donna Skerrett

TOPICS

motions to dismiss

whistleblower

retaliation

breach of contract

civil procedure

PRACTICE AREAS

civil procedure

employment law

whistleblower

contracts

health law

QUESTIONS PRESENTED

1. Whether Lapchak adequately pleaded a breach-of-contract claim against Skerrett when he alleged that the Employment Agreement was between himself and Paradigm, not Skerrett.
2. Whether Lapchak could assert California Labor Code section 1102.5 claims against Skerrett without alleging an employment relationship between himself and Skerrett.
3. Whether Lapchak adequately pleaded a section 1102.5(b) retaliation claim against Paradigm based on alleged reports of drug toxicity and compensation-related complaints.
4. Whether Lapchak adequately pleaded a section 1102.5(c) retaliation claim against Paradigm by alleging complaints about unsafe drug activity without identifying a refusal to participate in unlawful conduct.

HOLDINGS

1. A breach-of-contract claim cannot proceed against Skerrett where the pleaded Employment Agreement was between Lapchak and Paradigm and Skerrett was not alleged to be a party to the agreement.
2. The plaintiff's section 1102.5 whistleblower claim against Skerrett was dismissed because the complaint did not allege an employment relationship between Lapchak and Skerrett, and the court rejected the theory that the statutory phrase 'any person acting on behalf of the employer' permits individual liability under the circumstances presented.
3. The complaint failed to state a section 1102.5(b) retaliation claim against Paradigm because the alleged drug-toxicity report did not identify a specific legal violation and the compensation-related allegations did not identify to whom plaintiff complained or otherwise adequately plead Paradigm's awareness of protected activity.
4. A section 1102.5(c) claim requires allegations that the employee refused to participate in conduct that would violate a statute, rule, or regulation; complaints about allegedly unlawful activity, without allegations identifying the requested conduct and the employee's refusal, are insufficient.

KEY QUOTATIONS

"A plaintiff must be able to identify a specific state or federal statute, rule, or regulation which he believed was being violated." (at 8)

"complaints of alleged unlawful activity alone are insufficient to show he refused to participate in such activity." (at 11)

FACTUAL BACKGROUND

Paul A. Lapchak was employed by Paradigm as its Global Head of Translational Development under an employment agreement that allegedly provided compensation and Paradigm shares. He alleged that Paradigm failed to timely provide certain shares and that he reported toxicity concerns regarding Paradigm's PPS or Zilosul drug, after which his computer access was disabled and he was later terminated. The Second Amended Complaint asserted contract, whistleblower, wage-and-hour, and retaliation claims, but the motion challenged only the contract claim against Skerrett and the whistleblower claim against both defendants.

PROCEDURAL HISTORY

Plaintiff filed the action on January 22, 2024, and later filed a First Amended Complaint asserting four causes of action. The court dismissed several claims without prejudice and with leave to amend on February 7, 2025. Plaintiff filed a Second Amended Complaint asserting seven causes of action, after which defendants filed the motion addressed in this order. The court granted the motion and gave plaintiff twenty-one days either to file another amended complaint or state that he would not do so.

DISPOSITION

dismissed

REMAND INSTRUCTIONS

Within twenty-one days, plaintiff must file an amended complaint or indicate that he will not do so. Any amended complaint must be complete in itself; claims not realleged may be deemed waived. Failure to comply may result in dismissal under Rule 41(b).

CASES CITED

- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)
- Wi-LAN Inc. v. LG Electronics, Inc., 382 F. Supp. 3d 1012, 1020 (S.D. Cal. 2019)
- Retail Property Trust v. United Brotherhood of Carpenters & Joiners of America, 768 F.3d 938, 945 (9th Cir. 2014)
- DeSoto v. Yellow Freight System, Inc., 957 F.2d 655, 658 (9th Cir. 1992)
- Schreiber Distributing Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1401 (9th Cir. 1986)
- Posner v. Essex Insurance Co., 178 F.3d 1209, 1222 (11th Cir. 1999)
- United States v. \$11,500 in U.S. Currency, 710 F.3d 1006, 1013 (9th Cir. 2013)
- Edwards v. Occidental Chemical Corp., 892 F.2d 1442, 1445 n.2 (9th Cir. 1990)
- Simons v. United States, 497 F.2d 1046, 1049 n.2 (9th Cir. 1974)
- Grisham v. Philip Morris, Inc., 670 F. Supp. 2d 1014, 1022 (C.D. Cal. 2009)
- Dawson v. Caregard Warranty Service, Inc., No. 5:23-CV01139-SB-SP, 2024 WL 661198, at *1 (C.D. Cal. Jan. 12, 2024)
- Friedman v. Jenkins, No. 23-cv-05036-JSW, 2024 WL 1182878, at *5 (N.D. Cal. Mar. 19, 2024)
- Reno v. Baird, 18 Cal. 4th 640 (1998)

- Jones v. Lodge at Torrey Pines Partnership, 42 Cal. 4th 1158 (2008)
- La v. San Mateo County Transit District, No. 14-cv-01768-WHO, 2014 WL 4632224, at *6 (N.D. Cal. Sept. 16, 2014)
- Cleveland v. Ludwig Institute Cancer Research Ltd., No. 21cv871 JM (JLB), 2022 WL 80265, at *4 (S.D. Cal. Jan. 7, 2022)
- Chan v. Canadian Standards Association, No. SACV 19-2162-JVS (JDE), 2020 WL 2496174, at *2 (C.D. Cal. Mar. 16, 2020)
- Morgan v. Regents of University of California, 105 Cal. Rptr. 2d 652, 666 (Ct. App. 2001)
- Care First Surgical Center v. ILWU-PMA Welfare Plan, No. CV 14-01480 MMM AGRX, 2014 WL 6603761, at *4 (C.D. Cal. July 28, 2014)
- Noone v. Hitachi Rail STS USA, Inc., No. 8:24-cv-00131-FWS-KES, 2024 WL 5415115, at *5 (C.D. Cal. Dec. 2, 2024)
- Casissa v. First Republic Bank, Nos. C 09-4129 CW, C 09-4130 CW, 2012 WL 3020193, at *8 (N.D. Cal. July 24, 2012)
- Tobin v. City & County of San Francisco Police Department, No. 13-cv-01504-MEJ, 2015 WL 1885632, at *5 (N.D. Cal. Apr. 24, 2015)
- Fernandes v. TW Telecom Holdings Inc., No. 2:13-CV-02221-GEB-CKD, 2013 WL 6583970, at *1, *3-*4 (E.D. Cal. Dec. 16, 2013)
- Ferretti v. Pfizer Inc., 855 F. Supp. 2d 1017, 1025-27 (N.D. Cal. 2012)
- Applied Underwriters, Inc. v. Lichtenegger, 913 F.3d 884, 890-91 (9th Cir. 2019)
- Lacey v. Maricopa County, 693 F.3d 896, 928 (9th Cir. 2012)