

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Sloan v. Verily Life Sciences LLC

Sloan · No. 24-cv-07516-EMC (EMC) · Decided September 8, 2025

SUMMARY

The Northern District of California denied Verily Life Sciences LLC’s motion to dismiss or compel arbitration in Ryan Sloan’s action alleging retaliation in breach of an employment contract. The court held that the arbitration agreement did not clearly and unmistakably delegate to the arbitrator whether the claim fell within the agreement’s exclusion for retaliation claims, and further held that the claim was excluded from arbitration. The court also concluded that Sloan plausibly alleged an express or implied contractual term prohibiting retaliation through Verily’s Code of Conduct.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Edward M. Chen
JURISDICTION	United States District Court for the Northern District of California
DECIDED	September 8, 2025
DOCKET	24-cv-07516-EMC (EMC)
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved to dismiss Count I, retaliation in breach of contract, under Federal Rule of Civil Procedure 12(b)(6), or alternatively to compel arbitration. The district court denied both requests.
STANDARD OF REVIEW	For the Rule 12(b)(6) motion, the court accepted well-pleaded factual allegations as true, construed the pleadings in Plaintiff’s favor, and asked whether the complaint stated a facially plausible claim. For arbitration, the court determined whether an enforceable arbitration agreement covered the dispute and whether there was clear and unmistakable evidence that gateway arbitrability questions had been delegated.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Verily Life Sciences LLC v. Ryan Sloan

TOPICS

employment contracts

retaliation

arbitration

motions to dismiss

breach of contract

PRACTICE AREAS

employment law

contract law

civil procedure

arbitration

health law

civil rights

QUESTIONS PRESENTED

1. Whether the arbitration agreement clearly and unmistakably delegated to the arbitrator the question whether Plaintiff's contract-retaliation claim fell within the agreement's exclusion for retaliation claims.
2. Whether Plaintiff's retaliation-in-breach-of-contract claim was excluded from arbitration under the arbitration agreement.
3. Whether the employment agreement expressly incorporated Verily's Code of Conduct or alternatively supported an implied contractual term prohibiting retaliation.
4. Whether the Second Amended Complaint stated a plausible claim for retaliation in breach of contract under Rule 12(b)(6).

HOLDINGS

1. The arbitration agreement did not clearly and unmistakably delegate to the arbitrator the gateway question whether a retaliation claim fell within the agreement's exclusion for retaliation claims.
2. Plaintiff's retaliation-in-breach-of-contract claim fell within the arbitration agreement's exclusion for claims for retaliation and therefore was not subject to arbitration.
3. The employment agreement plausibly incorporated Verily's Code of Conduct, making its prohibition against retaliation an express contractual term.
4. Even if the Code of Conduct was not expressly incorporated, the allegations plausibly supported an implied contractual term prohibiting retaliation.
5. Plaintiff stated a plausible claim for retaliation in breach of contract, so dismissal under Rule 12(b)(6) was unwarranted.

KEY QUOTATIONS

"Courts should not assume that the parties agreed to arbitrate arbitrability unless there is clear and unmistakable evidence that they did so."

"The plain text of paragraph 4 carves out from arbitration claims of harassment, discrimination, and retaliation without regard to the particular legal basis underlying the claim."

"As the Code of Conduct is incorporated, its prohibition against retaliation constitutes an express term of the contract."

FACTUAL BACKGROUND

Ryan Sloan, a former high-level sales employee of Verily, entered into an employment agreement consisting of an offer letter, an at-will employment agreement, and an arbitration agreement. The employment documents

incorporated or referenced Verily's Employee Handbook and Code of Conduct, and the Code of Conduct expressly prohibited retaliation against employees who reported concerns in good faith. After Sloan raised concerns about alleged HIPAA violations and their concealment from clients, Verily terminated him and took other adverse actions, which Sloan alleged violated the contractual prohibition against retaliation.

PROCEDURAL HISTORY

Plaintiff filed a Second Amended Complaint asserting retaliation in breach of contract, Title VII retaliation, and ADA association-discrimination claims. The court had previously dismissed a California Labor Code section 1102.5 claim, compelled an FMLA interference claim to arbitration, and stayed the Title VII and ADA claims; Plaintiff later dismissed the FMLA claim with prejudice and obtained leave to add the contract-retaliation claim. Defendant then moved to dismiss or compel arbitration, and the court denied the motion.

DISPOSITION

other

CASES CITED

- Godun v. JustAnswer LLC, 135 F.4th 699, 708 (9th Cir. 2025)
- Brennan v. Opus Bank, 796 F.3d 1125, 1130 (9th Cir. 2015)
- Caremark, LLC v. Chickasaw Nation, 43 F.4th 1021, 1029 (9th Cir. 2022)
- First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 944 (1995)
- DirectTV, LLC, 977 F.3d 713, 716 (9th Cir. 2020)
- Shaw v. Regents of University of California, 58 Cal. App. 4th 44, 54 (Cal. App. 1997)
- River Supply, Inc. v. Oracle Am., Inc., No. 3:23-cv-02981-LB, 2023 U.S. Dist. LEXIS 199431, at *25-26 (N.D. Cal. Nov. 6, 2023)
- Rodriguez v. Google LLC, 2021 U.S. Dist. LEXIS 251626, at *19 (N.D. Cal. Aug. 18, 2021)
- Brown v. Google LLC, 685 F. Supp. 3d 909, 930 (N.D. Cal. 2023)
- In re Anthem, Inc. Data Breach Litig., No. 15-MD-02617-LHK, 2016 U.S. Dist. LEXIS 70594, at *119 (N.D. Cal. May 27, 2016)
- King v. Larsen Realty, Inc., 121 Cal. App. 3d 349 (Cal. App. 1981)
- Silva v. Providence Hospital of Oakland, 14 Cal. 2d 762, 773 (Cal. 1939)
- Faigin v. Signature Grp. Holdings, Inc., 211 Cal. App. 4th 726, 739 (Cal. App. 2012)
- Guz v. Bechtel National Inc., 24 Cal. 4th 340 (Cal. 2000)
- Scott v. Pac. Gas & Elec. Co., 11 Cal. 4th 454, 463 (1995)
- Foley v. Interactive Data Corp., 47 Cal. 3d 654, 681 (1988)
- Partners LLC v. BNP Paribas, No. C 07-6198 MHP, 2010 WL 546497, at *8 (N.D. Cal. Feb. 10, 2010)
- Garibaldi v. Bank of Am. Corp., 2014 WL 1338563, at *3 (N.D. Cal. Apr. 1, 2014)
- Scheller v. Interstae Realty Mangement, No. 2:14-CV-0457 MCE KJN, 2014 WL 2918879, at *7 (E.D. Cal. June 24, 2014)

- Doe v. Bridges to Recovery, LLC, No. 2:20-CV-348-SVW, 2021 WL 3494635, at *2 (C.D. Cal. May 4, 2021)
- Kashmiri v. Regents of Univ. of California, 156 Cal. App. 4th 809, 833-34, 67 Cal. Rptr. 3d 635, 653 (Cal. App. 2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007)
- Levitt v. Yelp! Inc., 765 F.3d 1123, 1135 (9th Cir. 2014)
- Manzarek v. St. Paul Fire & Marine Ins. Co., 519 F.3d 1025, 1031 (9th Cir. 2008)

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
 RYAN SLOAN, Case No. 24-cv-07516-EMC (EMC) 8 Plaintiffs, ORDER DENYING
 DEFENDANT'S 9 v. MOTION TO DISMISS OR COMPEL ARBITRATION 10 VERILY LIFE
 SCIENCES LLC, 11 Defendants. Docket No. 61 12 13 14 15 16 Plaintiff Ryan Sloan is a former
 employee of Defendant, Verily Life Sciences, LLC 17 (“Verily”).

In his Second Amended Complaint, Plaintiff alleges that after he raised concerns 18 internally
 about Verily’s breaches of HIPAA, Verily retaliated against him in breach of his 19 employment
 contract. Plaintiff also brings claims for retaliation in violation of Title VII of the 20 Civil Rights
 Act and violation of the ADA through Association Discrimination. Verily moves to 21 dismiss
 only Count I, Retaliation in Breach of Contract, or in the alternative, to compel it to 22 arbitration.

Having considered the parties’ briefs, as well as the oral argument of counsel, the 23 Court hereby
 DENIES the motion to dismiss or compel arbitration. 24 25 I. FACTUAL & PROCEDURAL
 BACKGROUND 26 27 Plaintiff is a former high-level sales employee of Defendant Verily, a life-
 sciences research 1 on April 19, 2022 entered into an employment agreement with Verily itself.

The employment 2 || agreement appears to have consisted of an offer letter, an “At-Will
 Employment, Confidential 3 || Information and Invention Assignment Agreement,” (the “At-Will
 Agreement”), and an 4 || Arbitration Agreement. Dkt. No. 1-1.

The offer letter included an integration clause stating that 5 || the At-Will Agreement, “together
 with its Exhibit, the Arbitration Agreement for U.S. Employees, 6 and any executed written offer
 letter between Verily and me, are the entire agreement between 7 || Verily and me with respect to
 the subject matter in such documents.” Jd. 8 The At-Will Agreement includes a section stating:?

9. Employee Handbook and Code of Conduct. | understand that Verily maintains an Employee
 Handbook and a Code of Conduct. | understand that as a Verily employee, Verily’s Employee
 Handbook and Code of Conduct, as well as and all of the 10 policies contained within or
 incorporated by reference into either the Employee Handbook or Code of Conduct apply to me. |
 agree to read, understand and comply with the policies set forth or incorporated into the Verily
 Employee Handbook and Code of Conduct.

2 Id.; see also Dkt. No. 58 ¶ 32. 5 3 The Code of Conduct states in bold text that “VERILY PROHIBITS RETALIATION of ia any kind against anyone who reports concerns in good faith.” Dkt. No. 58 4] 25. The Code of 5 1s Conduct defines retaliation as an “[a]n adverse action that can take various forms, such as threats, 16 mistreatment, harassment, negative performance reviews, demotion, suspension, reduced 5 7 compensation, denial of benefits, or termination.” Jd.

The Code of Conduct states that it is 5 18 “designed as a roadmap to provide you with guidance on how we expect Veeps [employees] to 19 live the Verily values and make ethical decisions in our leadership and work.” Dkt. No. 61-1. 20 The Employee Handbook likewise “prohibits retaliation.” Dkt. No. 50-2 at 19.

The Employee Handbook states that its “employment practices, guidelines and policies do not form part of your employment contract/offer letter.” Dkt. No. 61 at 5. Further, the Handbook states 73 that “Verily reserves the right to add to, modify, or delete any of its employment practices, guidelines and policies at any time.” Jd. 25 26 27 28 1 The Handbook also includes a section titled “Legal Agreements,” reproduced below.

Dkt. 2 || No. 62 at 3. This section lists two documents, a “Confidentiality agreement” and “Code of 3 Conduct.” Id. The section states, “You are also bound by Verily’s Code of Conduct.” Id. 4 5 Legal Agreements 6 Confidentiality agreement When you joined Verily, you signed an agreement containing various obligations including the 7 requirement to hold confidential information, proprietary information, and trade becrets in strictest g confidence.

Please reference the terms of your agreement for specifics. 9 Code of Conduct 10 You are also bound by Verily’s Code of Conduct. The Verily Code of Conduct outlines how to protect yourself from possible conflicts and the importance of keeping our proprietary information and trade 11 secrets confidential.

We encourage you to review the Verily Code of Conduct carefully. 12 os 13 The 2022 Arbitration Agreement applies to claims “arising out of or related to” “the v 14 || employment relationship, or the termination of that relationship.” Dkt. No. 1-1 at 12.

The 15 || Arbitration Agreement “does not apply to claims for... retaliation.” Jd. The Arbitration Q 16 || Agreement includes a delegation clause stating that “Except as otherwise stated in this Agreement, 17 you and the Company agree that any legal dispute or controversy... concerning the scope... of Z 18 || this Agreement, shall be resolved” by arbitration.

Dkt. No. 28-1. 19 After Plaintiff raised persistent concerns about Verily’s alleged HIPAA violations and its 20 || alleged concealment of those violations from its clients, Verily terminated Plaintiff, among other 21 adverse actions. Plaintiff contends that these actions constituted retaliation in violation of his 22 || employment contract. 23 Procedural Background 24 This is Plaintiff’s Second Amended Complaint.

The Court previously dismissed [REDACTED] 25 claim for retaliation under California Labor Code Section 1102.5 because he is a Georgia citizen 26 || who never worked in California. Dkt. No. 40. In the same order, the Court compelled [REDACTED] 27 claim for FMLA interference to arbitration and stayed Plaintiffs remaining claims for Title VII 28 || and ADA violations.

Jd. Verily did not move to arbitrate those claims. Plaintiff chose to dismiss 1 his FMLA claim with prejudice rather than arbitrate it. Dkt. No. 48. Plaintiff was subsequently 2 granted leave to amend his complaint to add a claim for “Retaliation in Breach of Contract.” Dkt. 3 No. 56. Defendant now moves to dismiss this claim, or in the alternative, compel it to arbitration.

4 5 II. DISCUSSION 6 7 The Court begins with Verily’s motion to compel arbitration, since if the Breach of 8 Contract claim is arbitrable, it will be for the arbitrator, not the Court, to determine whether a 9 claim has been stated. 10 11 A. Motion to Compel Arbitration 12 13 The Federal Arbitration Act “requires courts to compel the arbitration of claims covered by 14 an enforceable arbitration agreement.” *Kseniya Godun v. JustAnswer LLC*, 135 F.4th 699, 708 15 (9th Cir.

2025). In deciding whether to compel arbitration, a court must determine two “gateway” 16 issues: (1) whether there is an agreement to arbitrate between the parties; and (2) whether the 17 agreement covers the dispute. *Brennan v. Opus Bank*, 796 F.3d 1125, 1130 (9th Cir. 2015). 18 Arbitration agreements may contain a “delegation clause” that delegates to the arbitrator “gateway 19 questions of arbitrability, such as whether the agreement covers a particular controversy.” 20 *Caremark, LLC v. Chickasaw Nation*, 43 F.4th 1021, 1029 (9th Cir.

2022). However, “[c]ourts 21 should not assume that the parties agreed to arbitrate arbitrability unless there is clear and 22 unmistakable evidence that they did so.” *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 23 944 (1995); accord *Brennan*, 796 F.3d at 1130. Delegation clauses are thus subject to distinct 24 treatment. 25 Here, there is no dispute that the parties entered into an arbitration agreement.

Dkt. No. 26 40. Plaintiff has not challenged the enforceability of this agreement, and the Court has previously 27 ordered the parties to arbitration. *Id.* The only disagreement between the parties is whether 1 and whether this question is to be determined by the court or the arbitrator – i.e. the scope of the 2 delegation clause. 3 The arbitration agreement contains the following relevant provisions: 4 “Except as it otherwise provides, this Agreement applies to any dispute, past, present or future, arising out of or related to Employee’s (“you” or “your”) employment with verily 5 Life Sciences LLC (“Company”)... or termination of employment....” Dkt.

No. 1-1 ¶ 1. 6 “Except as otherwise stated in this Agreement, you and the Company agree that any legal 7 dispute or controversy covered by this Agreement, or arising out of, relating to, or concerning the scope, validity, enforceability, waiver, or breach of this Agreement, shall be 8 resolved by final and binding arbitration....” Dkt. No. 1-1 ¶ 1. 9 “This Agreement does not apply to

claims for harassment, discrimination, retaliation, workers compensation, state disability insurance or unemployment insurance benefits, or 10 representative actions for civil penalties filed under the California Private Attorneys General Act....” Dkt.

No. 1-1 ¶ 4. 12 13 Here, the arbitration agreement contains a provision delegating disputes concerning 14 “scope” of arbitration. Since whether Plaintiff’s breach of contract claim is covered by the 15 arbitration clause (and its retaliation exclusion) is a question of scope, the agreement arguably 16 delegates that question to an arbitrator. 17 However, the delegation clause itself begins with a caveat that it applies “[e]xcept as 18 otherwise stated in this Agreement.” This caveat contemplates that there will be provisions of the 19 agreement to which the delegation clause does not apply.

A natural reading of this clause in 20 tandem with paragraph 4, which lists claims excluded from the agreement, suggests those 21 exclusions are not within the scope of the delegation clause. These excluded matters would, 22 under paragraph 4, include claims for retaliation listed therein. 23 Defendant argues that this reading causes a chicken-and-egg problem, where a court would 24 have to make a gateway determination pursuant to the delegation clause to determine if claims are 25 excluded from the delegation clause.

But the delegation clause includes specific language 26 contemplating exceptions, and it is not so absurd that the parties may not have wanted to delegate 27 arbitrability for claims wholly excluded from the agreement.

Thus, it is reasonable to assume the 1 chicken-and-egg problem and is consistent with the text of the agreement. 2 At the very least, the language of the agreement does not express a “clear and 3 unmistakable” intent to delegate gateway arbitration questions for “claims for harassment, 4 discrimination, retaliation, workers compensation, state disability insurance or unemployment 5 insurance benefits, or representative actions for civil penalties filed under the California Private 6 Attorneys General Act.” Without that “clear and unmistakable” showing, under First Options of 7 Chicago and Brennan, the Court cannot assume arbitrability of the exception in paragraph 4 was 8 delegated.

Thus, in light of this ambiguity and the lack of “clear and unmistakable” intent of the 9 parties to delegate, the Court, not the arbitrator, must determine whether Plaintiff’s retaliation 10 claims based on breach of contract falls within the exclusion of paragraph 4. 11 Defendant argues that the claim does not constitute a “claim[] for... retaliation” because 12 (1) retaliation is not a cause of action in itself, (2) because retaliation is not an element of a breach 13 of contract claim, and (3) because the exclusion covers statutory claims but not other causes of 14 action.

15 Defendant’s first argument does not follow. The agreement plainly exempts claims of 16 retaliation and does not limit this exemption to claims based on certain legal theories. It describes

17 the gravamen of the claim, not the legal bases therefor. That there is not a standalone legal cause 18 of action for retaliation is immaterial. Harassment, discrimination, and retaliation — all of which 19 are excluded under paragraph 4 — are claims that are not, in a strict sense, standalone claims 20 untied to some legal basis, be it, e.g., Title VII or FEHA, a tort based on public policy, or an 21 express or implied contract.

The plain text of paragraph 4 carves out from arbitration claims of 22 harassment, discrimination, and retaliation without regard to the particular legal basis underlying 23 the claim. Defendant's interpretation of the clause would effectively read all such claims out of 24 the exclusion. 25 Defendant's second argument fares no better.

As Defendant acknowledges, breach is an 26 element of a breach of contract claim, and here the breach alleged here is retaliation, something 27 expressly prohibited by the Code of Conduct, which as explained below, is part of the employment 1 Finally, Defendant argues that the exclusion only encompasses statutory claims to 2 retaliation, such as a claim under Cal. Labor Code § 1102.5.

Again, this limitation is nowhere to 3 be found in the actual text of the agreement, and Defendants present no extrinsic evidence that 4 paragraph 4 was so intended. 5 Accordingly, Plaintiff's retaliation in breach of contract claim falls under the arbitration 6 agreement's exclusion. Defendant's motion to compel arbitration is therefore DENIED. 7 8 B. Motion to Dismiss for Failure to State a Claim 9 10 1.

Legal Standard 11 Under Federal Rule of Civil Procedure 12(b)(6), a defendant may move to dismiss a cause 12 of action for failure to state a claim for relief. To overcome a Rule 12(b)(6) motion after the 13 Supreme Court's decisions in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell Atlantic Corp. v. 14 Twombly*, 550 U.S. 544 (2007), a plaintiff's "factual allegations [in the complaint] 'must...

15 suggest that the claim has at least a plausible chance of success.'" *Levitt v. Yelp! Inc.*, 765 F.3d 16 1123, 1135 (9th Cir. 2014). The court "accept[s] factual allegations in the complaint as true and 17 construe[s] the pleadings in the light most favorable to the nonmoving party." *Manzarek v. St. 18 Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir.

2008). But "allegations in a 19 complaint... may not simply recite the elements of a cause of action [and] must contain sufficient 20 allegations of underlying facts to give fair notice and to enable the opposing party to defend itself 21 effectively." *Levitt*, 765 F.3d at 1135 (internal quotation marks omitted). "A claim has facial 22 plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable 23 inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. "The 24 plausibility standard is not akin to a probability

requirement, but it asks for more than a sheer 25 possibility that a defendant has acted unlawfully.” Id. (internal quotation marks omitted).

26 27 2. Plaintiff’s Retaliation in Breach of Contract Claim 1 DirectTV, LLC, 977 F.3d 713, 716 (9th Cir. 2020). The parties agree that California law controls 2 here. Under California law, a contract is either express or implied. Civ. Code, § 1619.

The terms 3 of an express contract are stated in words. Civ. Code, § 1620. 4 a. Express Incorporation 5 Under California law, “[a] contract may validly include the provisions of a document not 6 physically a part of the basic contract.” Shaw v. Regents of University of California, 58 7 Cal.App.4th 44, 54 (Cal. App. 1997). “Where it is clear that a party is assenting to a contract that 8 incorporates other documents by reference, the incorporation is valid — and the terms of the 9 incorporated document are binding — so long as the incorporation is clear and unequivocal, the 10 reference is called to the attention of the other party and he consents thereto, and the terms of the 11 incorporated document are known or easily available to the contracting parties.” River Supply, 12 Inc. v. Oracle Am., Inc., No. 3:23-cv-02981-LB, 2023 U.S. Dist.

LEXIS 199431, at *25-26 (N.D. 13 Cal. Nov. 6, 2023). To incorporate another document, “the document need not recite that it 14 incorporates another document, so long as it guides the reader to the incorporated document.” 15 Shaw, 58 Cal.App.4th at 54. While the “mere fact of a hyperlink” is not sufficient to show 16 incorporation, Rodriguez v. Google LLC, 2021 U.S. Dist.

LEXIS 251626, at *19 (N.D. Cal. Aug. 17 18, 2021), a hyperlink “embedded within language that references the title of the linked page,” 18 suffices, Brown v. Google LLC, 685 F. Supp. 3d 909, 930 (N.D. Cal. 2023) (holding that users 19 could have “reasonably concluded” the terms of a hyperlinked page were incorporated because the 20 agreement stated that the hyperlinked page “appli[ed]” to the user).

21 Here, the At-Will Agreement includes a provision stating that “all of the policies” within 22 the “Employee Handbook or Code of Conduct” “apply to” the employee. Dkt. No. 1-1 at 8. The 23 employee further agreed to “read, understand, and comply” with these policies. Id. Both the 24 Employee Handbook and Code of Conduct were hyperlinked in the agreement. Id. While the 25 Employee Handbook had language that Verily’s “employment practices, guidelines and policies 26 do not form part of your employment contract/offer letter,” the Code of Conduct had no such 27 language.

In fact, the Employee Handbook describes the Code of Conduct as a “legal agreement” 1 satisfies the incorporation standard: the Code of Conduct is specifically mentioned in the 2 Agreement, the Code is referred to by Verily as a legal agreement, it is called to the employee’s 3 attention that he must read, understand, and comply with the Code (and thus has binding effect), 4 and the terms of the Code are easily available via hyperlink.

5 The existence of an integration clause in the At-Will Employee agreement does not prevent 6 incorporation. Integration clauses generally prohibit evidence extrinsic to the written contract to 7 vary, alter or add to its terms.

In re Anthem, Inc. Data Breach Litig., No. 15-MD-02617-LHK, 8 2016 U.S. Dist. LEXIS 70594, at *119 (N.D. Cal. May 27, 2016). However, when a contract 9 incorporates another document by reference, that document becomes part of the universe of the 10 “entire agreement”—it is no longer the kind of extrinsic evidence the integration clause excludes. 11 Id. (citing King v. Larsen Realty, Inc., 121 Cal. App.

3d 349 (Cal. App. 1981)). Thus, the “entire 12 agreement” clause in the At-Will Agreement does not prevent the incorporation of the Code of 13 Conduct. As the Code of Conduct is incorporated, its prohibition against retaliation constitutes an 14 express term of the contract. 15 b. Implied Agreement 16 Furthermore, even without a finding of incorporation into the express contract, there is a 17 basis for finding the terms of the Code of Conduct to be part of an implied agreement between the 18 parties.

The existence and terms of an implied contract may arise from “a mutual agreement and 19 intent to promise where the agreement and promise have not been expressed in words.” Silva v. 20 Providence Hospital of Oakland 14 Cal.2d 762, 773 (Cal. 1939).

Although “[t]here cannot be a 21 valid express contract and an implied contract, each embracing the same subject, but requiring 22 different results,” Faigin v. Signature Grp. Holdings, Inc., 211 Cal. App. 4th 726, 739 (Cal. App. 23 2012); see also Guz v. Bechtel National Inc., 24 Cal. 4th 340 (Cal. 2000) ([A]n at-will provision in 24 an express written agreement, signed by the employee, cannot be overcome by proof of an implied 25 contrary understanding.”), the existence of a written contract “does not preclude” the existence of 26 an implied term consistent with the express contract.

Faigin, 211 Cal. App. 4th at 739. “The 27 question whether such an implied-in-fact agreement exists is a factual question for the trier of fact 1 336–337. 2 “In the employment context” in particular, California courts “will not confine themselves 3 to examining the express agreements between the employer and individual employees, but will 4 also look to the employer's policies, practices, and communications in order to discover the 5 contents of an employment contract.” Scott v. Pac.

Gas & Elec. Co., 11 Cal. 4th 454, 463 (Cal. 6 1995). The California Supreme Court has held that “the trier of fact can infer an agreement... 7 based on the employee’s reasonable reliance on the company’s personnel manual or policies.” 8 Foley v. Interactive Data Corp., 47 Cal. 3d 654, 681 (Cal. 1988).

In other words, employee handbooks or policies can create an implied term when employees “had a reasonable expectation that the company would follow its own [] policy.” *Id.* “When an employer promulgates formal personnel policies and procedures in handbooks, manuals, and memoranda disseminated to employees, a strong inference may arise that the employer intended workers to rely on these policies as terms and conditions of their employment, and that employees did reasonably so rely.” *Guz*, 24 Cal. 4th 317 at 344.

As discussed above, the At-Will Agreement states that “all of the policies” within the “Employee Handbook or Code of Conduct” “apply to” the employee and that the employee agrees to “comply” with these policies. Dkt. No. 1-1 at 8. And again, the Employee Handbook describes the Code of Conduct as a “legal agreement” and states that the Employee is “bound by” the Code of Conduct.” To the extent that the Code of Conduct is not already incorporated into the employment agreement, this language suggests that Code of Conduct’s prohibition on retaliation constitutes an implied term of the contract.

The parties’ expectations were informed by all these statements surrounding the formation of the employment relationship. And since the term of the Code of Conduct, include the prohibition on retaliation, does not conflict with the express terms of the contract (it does not affirmatively sanction retaliation), the express contract does not bar such an implied term.

Faigin, 211 Cal. App. 4th at 739. Cases cited by Verily where certain terms have been found not to be implied are clearly distinguishable. These cases involve situations where there is a clear disclaimer of contract 1 *Partners LLC v. BNP Paribas*, No. C 07-6198 MHP, 2010 WL 546497, at *8 (N.D. Cal. Feb. 10, 2 2010) (employee handbook with disclaimer that it was “not intended to in any way create a 3 contract of employment, either express or implied” did not create an implied contract); *Garibaldi 4 v. Bank of Am.*

Corp., 2014 WL 1338563, at *3 (N.D. Cal. Apr. 1, 2014) (employee handbook did 5 not create a contract where it “expressly” stated that it did “not establish enforceable rights, 6 contractual or otherwise....” and that “defendant retained the right to modify, suspend, or terminate 7 the handbook’s terms at any time.”); *Scheller v. Interstae Realty Mangement*, No. 2:14-CV-0457 8 MCE KJN, 2014 WL 2918879, at *7 (E.D.

Cal. June 24, 2014) (employee handbook with express 9 and unambiguous disclaimer of contractual rights did not confer them). Thus, Verily’s statement 10 in the Employee Handbook that its “employment practices, guidelines and policies do not form 11 part of your employment contract/offer letter,” negates any reasonable reliance upon the Employee 12 Handbook as part of an implied contract.

In contrast, as noted above, the Code of Conduct 13 contains no such explicit disclaimer. 14 Verily argues that language in the Code of Conduct that it is “designed as a roadmap to 15 provide you

with guidance” demonstrates that the Code of Conduct was “merely informational.” 16 Doe v. Bridges to Recovery, LLC, No. 2:20-CV-348-SVW, 2021 WL 3494635, at *2 (C.D.

Cal. 17 May 4, 2021). But Verily also told its employees that the Code of Conduct was a “legal 18 document” that the employee was “bound by.” Given this language, the parties could have 19 reasonably expected that the Code of Conduct, with its unequivocal language forbidding 20 retaliation, was part of the employment contract. See *Kashmiri v. Regents of Univ. of California*, 21 156 Cal. App.

4th 809, 833, 67 Cal. Rptr. 3d 635, 653 (2007) (specific promise not to raise fees 22 reasonably understood as implied contractual term, despite University’s “general statements” that 23 fees could be changed). 24 If there is any further doubt, even if one were to conclude there is conflicting language in 25 Verily’s documents, the Court construes the contract against the drafter.

See e.g., *Kashmiri*, 156 26 Cal. App. 4th 809 at 834; *Thomas Weisel*, 2010 WL 546497, at *8. Plaintiff has alleged sufficient 27 facts for a trier of fact to find that the Code of Conduct provided for an implied term of non- 1 III. CONCLUSION 2 Verily does not dispute that if there were a contractual term for non-retaliation, whether 3 express or implied, Plaintiff has pled sufficient facts to show that Verily retaliated against him in 4 violation of that term.

Dkt. No. 61 at 4. The Court therefore finds that Plaintiff has stated a claim 5 for breach of contract. Defendant’s motion to dismiss is DENIED. 6 7 IT IS SO ORDERED. 8 9 Dated: September 8, 2025 10 11 EDWA. CHEN 12 United States District Judge 15 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28