

SUPREME COURT  
**FILED**

JUL 11 2018

Court of Appeal, Third Appellate District - No. C083788

Jorge Navarrete Clerk

S249223

Deputy

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

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SHEILA HALOUSEK, Plaintiff and Appellant,

v.

PUBLIC EMPLOYEES' RETIREMENT SYSTEM, Defendant and Respondent.

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The request for judicial notice is denied as unnecessary because all documents subject to the request were designated as part of the record on appeal. (*Townsel v. Superior Court* (1999) 20 Cal.4th 1084, 1087, fn. 1.)

The petition for review is denied.

**CANTIL-SAKAUYE**

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*Chief Justice*

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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SHEILA HALOUSEK,

Plaintiff and Appellant,

v.

PUBLIC EMPLOYEES' RETIREMENT SYSTEM,

Defendant and Respondent.

C083788

(Super. Ct. No. 34-2016-  
00189864CUOEGDS)

Sheila Halousek filed an administrative complaint with the State Personnel Board (SPB) against her employer, the California Public Employees' Retirement System (CalPERS), alleging discrimination based on a perceived mental disability, failure to reasonably accommodate, and failure to engage in an interactive process. After the SPB ruled against her, Halousek brought suit in the Sacramento County Superior Court on the same facts and legal theories rather than filing a petition for writ of administrative mandamus seeking to overturn the SPB's adverse decision. The trial court sustained

a CalPERS demurrer without leave to amend, ruling, among other things, that Halousek's lawsuit is barred by res judicata or collateral estoppel.

Representing herself, Halousek now contends CalPERS took illegal action against her resulting in the constructive termination of her employment. But her appellate briefs do not show how the trial court erred or abused its discretion with argument and citation to the record and legal authority. Her contentions are forfeited, and we will affirm the judgment.

### STANDARD OF REVIEW

In reviewing an order sustaining a demurrer, we assume the truth of all properly pleaded factual allegations, but we do not accept the truth of contentions, deductions or conclusions of fact or law. (*Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 924; *Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 20.) We will determine whether the trial court abused its discretion in concluding that it is not reasonably possible Halousek could amend the complaint to cure the identified defects. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) However, we will affirm the judgment of dismissal if it is correct on any theory. (*Hendy v. Losse* (1991) 54 Cal.3d 723, 742.)

Because we have no duty to search the record for evidence, we will disregard factual contentions not supported by a proper citation to the record. (*Grant-Burton v. Covenant Care, Inc.* (2002) 99 Cal.App.4th 1361, 1379; see *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239.) In addition, we will not address contentions that are not developed with argument and citations to authority, or contentions raised for the first time in appellant's reply brief. (*Interinsurance Exchange v. Collins* (1994) 30 Cal.App.4th 1445, 1448; *Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764.)

### BACKGROUND

Halousek does not support her factual assertions with citations to the record. (Cal. Rules of Court, rule 8.204(a)(1)(C).) Instead, she invites us to "Kindly refer to the Clerk's Transcripts on Appeal for any additional information" and asks us to "See the

Clerk's Transcript on Appeal for additional details." We disregard the unsupported factual assertions.

Halousek began working for CalPERS as an investment officer in August 2000. According to Halousek, on April 1, 2013, she asked her supervisor for the rest of the week off because her mother was visiting. While on vacation, and unbeknownst to her, CalPERS placed her on medical leave on April 3. Halousek returned to work from vacation on April 8. On April 9, employees supposedly saw her sitting in a catatonic state, although no one approached her about their concerns.

A supervisor apparently scheduled a meeting with her, her husband, her union representative, and a human resources representative on April 10 to discuss her mental health; she claimed she was unaware of the meeting and did not attend. CalPERS then placed Halousek on administrative time off. Although the supervisor gave her husband the paperwork at the meeting, according to Halousek, her husband never told her she was on administrative time off and never gave her the paperwork.

Not knowing that she was on administrative time off, Halousek reported to work on April 11. While there, she met with various supervisors, human resources personnel, her union representative, and a reasonable accommodations coordinator. She claimed she did not know she had missed the previous day's meeting, and was confused. Halousek was eventually told she had to leave and was escorted off the premises.

She returned the next day to try to meet with a senior investment officer to clear up the situation. A human resources representative told her to leave, which she did. She again tried to contact CalPERS employees on April 15. She was eventually escorted from the building by security. Based on Halousek's conduct toward other employees, CalPERS obtained a workplace restraining order against her, requiring her to stay 100 yards away from her supervisor and the workplace.

CalPERS requested that Halousek submit to an independent medical examination on May 10, 2013, to determine her fitness for duty. Halousek felt uncomfortable with the

doctor and declined to answer his questions. After noting it was difficult to provide an accurate diagnosis because Halousek refused to participate in the examination, the doctor concluded Halousek was not fit to perform her essential job functions, nor the essential functions of any other position at CalPERS.

On June 13, 2013, CalPERS notified Halousek that it was filing an application for involuntary disability retirement on her behalf because she was unable to perform her essential job functions. (Gov. Code, § 19253.5.)<sup>1</sup> Halousek allegedly sought and obtained a second independent medical examination by a different doctor who concluded she was fit to perform her essential job functions. In December 2013, CalPERS cancelled its application for involuntary disability retirement for Halousek, claiming she had service retired based on various documents she had signed.

Halousek filed a discrimination complaint with the SPB on April 29, 2014. Her SPB complaint alleged that CalPERS discriminated against her based on a perceived mental disability, failed to reasonably accommodate her, and failed to engage in an interactive process in violation of the Fair Employment and Housing Act (FEHA). (§ 12900 et seq.)

Halousek's SPB complaint was heard by an administrative law judge on May 18, 2015. At the hearing, Halousek refused to produce documents supporting her claims because she did not want CalPERS to see them. She testified for less than five minutes, and did not call any other witnesses on her behalf. At the close of her case-in-chief, the administrative law judge granted CalPERS's motion to dismiss the complaint. The administrative law judge's proposed decision concluded Halousek failed to provide any evidence to support her claims. The SPB adopted the proposed decision on July 7, 2015.

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<sup>1</sup> Undesignated statutory references are to the Government Code.

Halousek did not seek rehearing before the SPB and did not file a petition for writ of administrative mandamus seeking to vacate the SPB's final decision.

While the administrative proceeding was pending, Halousek filed a verified petition for writ of mandate and complaint for declaratory and injunctive relief in the Sacramento County Superior Court on July 3, 2014, challenging alleged flaws in CalPERS's employer-initiated disability retirement procedures. The petition for writ of mandate did not challenge the SPB's decision regarding her disability discrimination claims.

Halousek also filed a complaint for discrimination with the Department of Fair Employment and Housing (DFEH) on July 17, 2014. She received a right to sue letter from the DFEH on February 5, 2015.

On January 29, 2016, Halousek filed a lawsuit against CalPERS in the Sacramento County Superior Court, asserting the same claims and issues she raised in her administrative complaint before the SPB. A first cause of action for disability discrimination (§ 12940, subd. (a)) alleged that CalPERS wrongfully placed Halousek on involuntary leave, discharged her, and refused to reinstate her based on a perceived mental disability. A second cause of action alleged that CalPERS failed to provide reasonable accommodations (§ 12940, subd. (m)) for her perceived mental disability, and a third cause of action alleged that CalPERS failed to engage in an interactive process with her to determine effective reasonable accommodations (§ 12940, subd. (n)). A fourth cause of action alleged retaliation based on her requests for reasonable accommodation and her attempts to engage in an interactive process (§ 12940, subd. (h)), and a fifth cause of action alleged CalPERS failed and refused to take any reasonable steps to prevent disability discrimination (§ 12940, subd. (k)).

CalPERS demurred on the grounds that claim and issue preclusion barred Halousek's civil complaint because she failed to challenge the SPB's adverse decision by filing a petition for writ of mandate. Halousek did not timely oppose the demurrer.

The trial court sustained the demurrer with leave to amend, finding that Halousek's claims were precluded by a final judgment in the administrative hearing before the SPB.

Halousek filed a first amended complaint containing the same causes of action initially pleaded and adding four new causes of action without leave of court for violation of the California Public Employees' Retirement Law, violation of constitutional due process, declaratory relief and injunctive relief. CalPERS demurred to the first amended complaint on the same grounds as before and also concurrently moved to strike the four new causes of action Halousek pleaded without the trial court's authorization. Halousek did not oppose either the demurrer or the motion to strike.

The trial court sustained the demurrer to the first amended complaint without leave to amend, ruling that all the FEHA causes of action were barred by the doctrines of res judicata or collateral estoppel in light of the SPB's adverse decision on those claims, which Halousek never challenged. The trial court granted without leave to amend CalPERS's motion to strike the four new causes of action asserted without the trial court's authorization in the first amended complaint. The trial court entered a judgment of dismissal in CalPERS's favor on September 15, 2016.

Halousek filed a motion to set aside and vacate the judgment of dismissal based on inadvertence, surprise, mistake, or excusable neglect (Code Civ. Proc., § 473). The trial court denied the motion.

## DISCUSSION

Halousek contends CalPERS took illegal action against her resulting in the constructive termination of her employment. The contention is targeted at her underlying claims, but she does not address whether (or how) the trial court erred or abused its discretion in sustaining the demurrer without leave to amend or granting the motion to strike. Because Halousek failed to develop meaningful arguments with citations to authority, her contentions are forfeited. (*Interinsurance Exchange, supra*, 30 Cal.App.4th at p. 1448.)

To the extent Halousek references trial court error for the first time in her reply brief, the references are not developed in a meaningful argument and are not supported by citations to relevant authority. Moreover, we do not consider points raised for the first time in a reply brief, because such consideration would deprive the respondent of an opportunity to counter the argument. (*Reichardt, supra*, 52 Cal.App.4th at p. 764.)

In any event, our review of the record confirms the trial court did not err or abuse its discretion. Once a public employee chooses a forum to assert discrimination claims, the employee must exhaust “the chosen administrative forum’s procedural requirements.” (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1088.) Moreover, if a public employee has requested a non-FEHA administrative remedy and obtained an adverse decision, the employee “must exhaust judicial remedies by filing a petition for writ of mandate in the trial court, or else the administrative decision will be binding on subsequent FEHA claims.” (*Page v. Los Angeles County Probation Dept.* (2004) 123 Cal.App.4th 1135, 1142; see *Schifando*, at pp. 1090-1091.) Halousek received an adverse ruling from the SPB on her discrimination claims and was not free to ignore the administrative process and proceed to an FEHA action for damages in the trial court based on the same theories and issues. (*Page, supra*, 123 Cal.App.4th at p. 1142.) Her failure to exhaust administrative and judicial remedies means the SPB’s decision barred her subsequent FEHA action under the doctrines of res judicata and collateral estoppel. (*Page*, at pp. 1142-1143.)

The first amended complaint’s causes of action for disability discrimination, failure to accommodate and failure to engage in the interactive process raise the same claims against the same party, CalPERS, as her prior SPB complaint. They are barred by res judicata. Halousek had six months to challenge the SPB’s adverse findings by filing a petition for writ of mandate in the superior court but did not do so. (§ 19630) Because Halousek could no longer challenge the SPB’s adverse findings, the trial court did not



abuse its discretion in sustaining CalPERS's demurrer to those causes of action without leave to amend.

Collateral estoppel bars Halousek's causes of action for retaliation and failure to prevent discrimination. Issue preclusion does not require identical causes of action, it precludes parties from relitigating specific issues previously determined. (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341.) In pleading her retaliation cause of action, Halousek's only alleged protected activity was a request for accommodation and an attempt to engage in the interactive process with CalPERS. The SPB determined there was no evidence CalPERS failed to reasonably accommodate Halousek or failed to engage her in the interactive process. Her claim of failure to prevent discrimination also fails, because actionable discrimination is a foundational requirement for such a claim. (*Trujillo v. North County Transit Dist.* (1998) 63 Cal.App.4th 280, 284, 289.) Whether Halousek was subjected to discrimination was asserted at the SPB and decided against her.

Because the time to challenge the SPB's decision had long since passed, the trial court did not abuse its discretion in sustaining the demurrer without leave to amend.

In addition, the trial court did not abuse its discretion in granting the motion to strike, because Halousek was not authorized to include new causes of action in her first amended complaint. When a trial court sustains a demurrer with leave to amend, the scope of the grant of leave is ordinarily a limited one. (*People ex rel. Dept. of Public Works v. Clausen* (1967) 248 Cal.App.2d 770, 785-786.) The plaintiff may amend the complaint only as authorized by the trial court's order, and may not add new causes of action without permission to do so unless the new cause of action is within the scope of the order granting leave to amend. (*Harris v. Wachovia Mortgage, FSB* (2010) 185 Cal.App.4th 1018, 1023.) A trial court may strike causes of action not drawn or filed in conformity with its previous orders. (Code Civ. Proc., § 436, subd. (b); *Community Water Coalition v. Santa Cruz County Local Agency Formation Com.* (2011)

200 Cal.App.4th 1317, 1329.) Here, the record shows Halousek did not obtain the trial court's permission to add the four new causes of action when amending her complaint, and the four new causes of action are not within the scope of the order granting leave to amend as they were not raised in the original complaint. (*Community Water Coalition*, at p. 1329.)

DISPOSITION

The judgment is affirmed.



MAURO, J.

We concur:



ROBIE, Acting P. J.



HOCH, J.