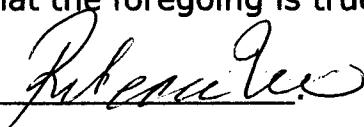


I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 27, 2024

Respectfully, REBECCA WU



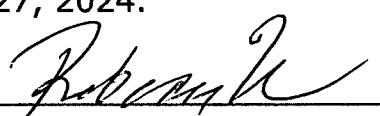
CERTIFICATE OF WORD COUNT OR PAGE COUNT

I CERTIFY THAT THE PAGE COUNT IS 40 pages NOT INCLUDING BEFORE THE PETITION OR THE BELOW APPENDIX AND ATTACHMENTS per Rule 33. The word or page limits do not include the pages containing the questions presented, the list of parties and corporate affiliates of the filing party, the table of contents, the table of cited authorities, the listing of counsel at the end of the document, or any appendix.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 27, 2024.

REBECCA WU



APPENDIX

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is [x] reported as Denial for the Writ of Mandate. 9/28/2023 The opinion of the THIRD COURT OF APPEALS CALIFORNIA court appears at Appendix A the petition and is [x] reported at Not Published — No Similar decision made, -Case Rebecca Wu vs State Teachers Retirement System case C095632 State Supreme Court Denied Petition for Review 12/13/23 - Appendix A.1

Sacramento Superior Court Case Wu vs STRS 34-2020-80003303 Judgment on the Pleadings and Denied Mandate is in Appendix B Judgement Order and Opinion of the Superior Court on tentative Judgment on the Pleadings on December 17, 2022

And Judgment on the Pleadings is January 4th 2023, Notice of Judgement on the Pleading On January 5th 2022 is in (Appendix B)

Sacramento Superior Court Case Wu vs STRS 34-2020-80003303 Motion for Protective Order and Motion for Protective Order Tentative Ruling October 15, 2021 is in (Appendix B)

Denied Petition for Review in State Supreme Court of California on 12/13/2023 (Appendix A and C)
Rebecca Wu vs California State Teachers Retirement System Case S282626 (Appendix C)

Appellant's Petition for Rehearing in the Court of Appeal in the State of California in the Third Appellate District for Case Wu vs CalSTRS **C095632** on 10/17/2023 is in (Appendix D)

The Notice of Proposed Rulemaking for CCR 27100-27103 with the intent of the legislature or CalSTRS in Title 5, Division 3 Teachers Retirement System Article 16 "MEMBERS RIGHT TO INTERNAL APPEAL OF A

DETERMINATION BY CALSTRS STAFF OF A RIGHT TO A BENEFIT OR OBLIGATION

"When a [member] making a request.. and "guidelines..to exhaust CALSTRS administrative remedies When disputing how CALSTRS is administering a benefit.. Informative Digest/POLICY

STATEMENT OVERVIEW California Constitution ART XVI at 17 Ed code 22301, rights and under 27100-27103 "for a member ... or Entity to exhaust CALSTRS Administrative remedies.. and

"describes and implements procedures for a member ..or entity to follow when making a request or disputing a decision. The regulations also articulate what information is required to move the informal process forward to the next internal level which provides transparency and predictability .." and

"CALSTRS has made the following .as required by the Cal Administrative Procedures Act and Office of Administrative Law is in (Appendix E.)

INITIAL STATEMENT OF REASONS by CALSTRS (Appendix E)

Title 5, Division 3, Chapter 1, Article 16 "EDC 22207 authorizes the board to perform any acts administration [Opposition to Motion for protective and in Opposition to judgment on pleadings and all briefs , rehearing, CCR 27100-27103 "Section 27101.Applies to any request.." Program Director [manager] makes a Decision then Program Executive decides if it goes up to an Administrative hearing right away or a Determination. However, unlike Wu request 27102 applies to an Audit Finding. Then Section 27103 applies to the Administrative process for hearing for both. If no review or Decision is done then one cannot move up in the internal process.

California Education Code 22308 in its discretion to do Correction of Errors or Omissions members in (APPENDIX F)

EDUCATION code 22206 (as cited to inaccurately in the 3rd court of appeal Ruling)

(b) the board may excuse any audit finding provided all of the following conditions are met.

1.) Was prior to July 1, 2002 (4)was included in an audit [Wu was not in audit finding or audit] (APPENDIX F)

News Release President of drywall company indicted under ERISA. Used "Other Pay" as was done

in the Wu Case (see Wu vs TRUSD in US Supreme Court) Used paperwork to hide overtime. In Wu case worse With no overtime pay or Salary per a Probationary Salary Schedule as per a CBA. (APPENDIX F)

BOARD SUMMARY REPORT AUDITS AND RISK MANAGEMENT COMMITTEE
Compensation and Review Unit was not processing or any records of the Request for Review or Determination. CRU [top manager Jody Cozad but not his fault he told me he was afraid of those above} Recommended database and standard measurements. "Room for improvement in processing the CRU In time and adequately." page 4 September 15, 2016 (APPENDIX G, and Motion for protective order Sacramento Superior Court Exhibit) (APPENDIX G)

TEACHERS RETIREMENT BOARD –Audits and Risk Management Committee. Fiscal year 2017-2019 Wu worked from 2007-2016 as a misclassified teacher at KHS school but paid as a substitute Wu was NOT IN THIS Audit. In 2017 Wu worked again as a substitute when everyone else was Reclassified But Wu and she had only a lawsuit filed in 2015 that ended Dec 2023 denied Petition. This shows there were issues Wu presented in her Wu vs TRUSD case, Extra Duty was system issue and Wu did not use Overtime or Extra Duty paychecks and pay same for all hours even though It is toBe used after 5 periods for All teachers in the district. Wu filed this in her Opposition to MOTION for protective ORder In Wu vs STRS in this case in Sacramento Superior court) and cited in her Opp

to the Pleadings and Referenced in all Appeal Briefs and rehearing and state Supreme Court.
(EXHIBIT H)

PROOF OF SERVICE ...APPENDIX H

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATE: July 27, 2024



A.1

SUPREME COURT
FILED

DEC 13 2023

Court of Appeal, Third Appellate District - No. C095632

Jorge Navarrete Clerk

S282626

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

REBECCA WU, Plaintiff and Appellant,

v.

CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM, Defendant and
Respondent.

The petition for review is denied.

GUERRERO

Chief Justice

Petition for Writ of Certiorari **Appendix A**

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)

REBECCA WU,

C095632

Plaintiff and Appellant,

(Super. Ct. No. 34-2020-
80003303-CU-WM-GDS)

v.

CALIFORNIA STATE TEACHERS' RETIREMENT
SYSTEM,

Defendant and Respondent.

Plaintiff Rebecca Wu appeals the trial court's order granting defendant California State Teachers' Retirement System's (CalSTRS) motion for judgment on the pleadings. Specifically, the trial court found that CalSTRS had no duty to audit an individual school district to determine whether teacher employees, such as Wu, were properly classified by the school district under the Education Code.

On appeal, Wu agrees CalSTRS cannot change her classification with the school district that employed her but contends CalSTRS has a duty to investigate her proper classification for the purpose of calculating her service credits and retirement contributions. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND¹

Wu worked for the Twin Rivers Unified School District (District) for many years in a position classified as an hourly substitute teacher. (*Wu v. Twin Rivers Unified School Dist.*, *supra*, C088570.) Substitute teachers are defined by statute as those who “fill positions of regularly employed persons absent from service.” (Ed. Code,² § 44917.) Wu, however, did not replace a teacher but taught independent study students three days a week in a yearly-set schedule. (*Wu*.) By statute, she should have been classified as a probationary teacher because she did not fit into any other definition of teachers under the Education Code. (See *California Teachers Assn. v. Vallejo City Unified School Dist.* (2007) 149 Cal.App.4th 135, 146 [“Section 44915 . . . establishes probationary status as the default classification for teachers whom the Education Code does not require to be classified otherwise”].) In a separate proceeding, Wu sued the District for misclassifying her as a substitute teacher and requested as relief only that the District reclassify her as a tenured/permanent teacher. (*Wu*.) Probationary teachers become tenured/permanent teachers once they have worked 75 percent of the days in a school year for two consecutive years. (§§ 44908, 44929.21, subd. (b).) We determined the District had misclassified Wu, but that she was not entitled to tenured/permanent status because she

¹ We construe Wu’s request for judicial notice of our opinion in *Wu v. Twin Rivers Unified School Dist.* (Mar. 2, 2023, C088570) [nonpub. opn.] as a motion to incorporate by reference and grant that motion. We note that CalSTRS is aware of that opinion and referenced our ruling in its appellate brief.

² Undesignated section references are to the Education Code.

For example, we may deem arguments forfeited when the appellant discusses or raises lurking or tangential arguments without providing proper headings identifying the arguments as issues to be decided on appeal. (*Pizarro v. Reynoso* (2017) 10 Cal.App.5th 172, 179 [“Failure to provide proper headings forfeits issues that may be discussed in the brief but are not clearly identified by a heading”]; *Imagistics Internat., Inc. v. Department of General Services* (2007) 150 Cal.App.4th 581, 593, fn. 10 [appellate courts have no duty to respond to improperly headed lurking or tangential arguments].) “We may and [also] do ‘disregard conclusory arguments that are not supported by pertinent legal authority or fail to disclose the reasoning by which the appellant reached the conclusions [s]he wants us to adopt.’” (*United Grand Corp. v. Malibu Hillbillies, LLC* (2019) 36 Cal.App.5th 142, 153.) Finally, “‘[a]rguments should be tailored according to the applicable standard of appellate review.’” [Citation.] Failure to acknowledge the proper scope of review is a concession of a lack of merit,’” rendering the arguments subject to forfeiture. (*Ewald v. Nationstar Mortgage, LLC* (2017) 13 Cal.App.5th 947, 948.) We deem several of Wu’s arguments forfeited under the foregoing legal principles, as discussed *post*.

I

The Scope Of The Appeal

Wu’s notice of appeal provides she is appealing from the trial court’s order granting CalSTRS’s motion for judgment on the pleadings and denying her leave to amend. In her opening brief, Wu purports to also appeal the trial court’s orders granting CalSTRS’s request for a protective order and overruling Wu’s demurrer to CalSTRS’s answer. Wu has failed to articulate in her opening brief how the additional orders pertaining to the protective order and the demurrer “necessarily affect[] the judgment or order appealed from or which substantially affect[her] rights.” (Code Civ. Proc., § 906; see Cal. Rules of Court, rule 8.204(a)(2)(B).) We are unable to determine from the record how the trial court’s granting of a protective order and overruling of a demurrer

affected its ruling pertaining to CalSTRS's motion for judgment on the pleadings. Thus, Wu's appeal from the trial court's order granting CalSTRS's motion for judgment on the pleadings cannot be construed to also include a challenge to the trial court's orders pertaining to the protective order and demurrer.

Moreover, Wu does not spend any time in her appellate brief arguing why the trial court erred when granting the protective order and overruling her demurrer. Thus, to the extent those issues may be cognizable, Wu has forfeited any consideration of them. (See *Imagistics Internat., Inc. v. Department of General Services, supra*, 150 Cal.App.4th at p. 593, fn. 10 [appellate courts have no duty to respond to improperly headed lurking or tangential arguments].) Accordingly, our review is limited to the trial court's order granting CalSTRS's motion for judgment on the pleadings without leave to amend.

II

The Trial Court Properly Granted CalSTRS's Motion For Judgment On The Pleadings

To state a claim under Code of Civil Procedure section 1085, Wu must demonstrate “(1) no ‘plain, speedy, and adequate’ alternative remedy exists [citation]; (2) ‘a clear, present . . . ministerial duty on the part of the respondent’”; and (3) a correlative ‘“clear, present and beneficial right in the petitioner to the performance of that duty.”’” (*People v. Picklesimer* (2010) 48 Cal.4th 330, 339-340.) “A ministerial duty is an obligation to perform a specific act in a manner prescribed by law whenever a given state of facts exists, without regard to any personal judgment as to the propriety of the act.” (*Id.* at p. 340.)

Since mandamus is a remedy to “compel a public agency to comply with a ministerial duty,” not “to compel [it] to exercise its discretion in a particular manner,” “[a]n action’s classification as ministerial or discretionary . . . is crucial to the ultimate question whether mandate lies.” (*Citizens for Amending Proposition L v. City of Pomona* (2018) 28 Cal.App.5th 1159, 1186.) A duty is ministerial when the action is unqualifiedly required; “[a] public entity has a ministerial duty to comply with its own

rules and regulations where they are valid and unambiguous.’” (*Ibid.*) For questions of law, such as whether a duty exists, the appellate court applies a de novo review.

(*Hayes v. Temecula Valley Unified School Dist.* (2018) 21 Cal.App.5th 735, 746.) If the government has taken a discretionary action, however, “mandate lies only to correct abuses of discretion.” (*Citizens for Amending Proposition L*, at p. 1186.)

Wu agrees with the trial court that CalSTRS cannot audit the District for the purpose of changing her classification under the Education Code. In her opening brief, Wu asserts she should have been classified as a tenured/permanent teacher, as her lawsuit against the District alleged, or separately that rights prescribed in a collective bargaining agreement between the District and substitutes at secondary schools should extend to her. In essence, Wu argued there were multiple bases for calculating the District’s contributions and her credits and CalSTRS has a duty to determine which one is accurate. After filing her opening brief, we decided Wu’s case against the District, concluding she was a probationary teacher who never achieved tenured/permanent status, and thus the District was not required to change Wu’s classification to tenured/permanent teacher. (*Wu v. Twin Rivers Unified School Dist.*, *supra*, C088570.) In Wu’s reply brief she does not argue that a change in her classification from a substitute to a probationary teacher altered the District’s contributions or her service credits. Instead, she maintains her right to an increase in her retirement benefits derives from a collective bargaining agreement benefiting a bargaining unit of which she was not a member—according to Wu, because of her misclassification and status as an hourly employee. Accordingly, Wu’s contention remains that CalSTRS has a duty to audit the District’s classification of her, for the purposes of her retirement calculations, in light of the definitions contained in the Education Code and rights negotiated for certain classes of teachers in a bargaining agreement.

But to do what Wu asks CalSTRS to do would effectively result in a reclassification of Wu’s position with the District, at least as it pertains to CalSTRS.

Thus, we are not persuaded by Wu's efforts to distinguish what she is asking CalSTRS to do from reclassifying her position under the Education Code. As Wu demonstrates in her petition, her requested relief pertaining to CalSTRS hinges on her request that the trial court declare the District misclassified her employment status under the Education Code. Thus, Wu impliedly concedes the relief requested from CalSTRS is contingent on first gaining relief from the District.

The authorities cited by Wu do not alter the conclusion that CalSTRS does not have a ministerial duty to audit the District's teacher classification determinations. Wu cites to CalSTRS's general authority to audit school districts found in section 22206.

But, the statutory language of this section leaves the performance of an audit to the discretion of CalSTRS. (§ 22206, subd. (a) [“As often as the board determines necessary, it may audit or cause to be audited the records of any public agency”].) Thus, even if Wu were correct that CalSTRS *could* audit the District on her behalf for the purpose of classifying her employment status under the Education Code, CalSTRS does not have a ministerial duty to do so.

CalSTRS also does not have a duty to investigate the District's classification of Wu's employment status pursuant to California Code of Regulations, title 5, sections 27100 through 27103. Those sections provide for the administrative process of challenging a CalSTRS's decision or a final audit. (*Ibid.*) This review does not extend to teacher classifications under the Education Code, but merely to issues pertaining to calculations of retirement benefits. (See *id.*, § 27100, subd. (a) [an “applicant” is defined as a CalSTRS member “requesting review or appealing with respect to payment of allowances, benefits or refunds, or with respect to crediting service, or correction of records pursuant to [the State Teachers' Retirement System], [the Health Care Benefits Program] and [the State Teachers' Retirement System Cash Benefit Program] and [decisions of CalSTRS's chief executive officer]”].)

At times, Wu alludes to a CalSTRS audit of the District wherein CalSTRS found the District did not properly report some information or had “ ‘room for improvement’ ” regarding its processes. Wu is unclear about what audit finding she is challenging and has not alleged that she requested a review of any particular audit finding pursuant to the procedures outlined in CalSTRS’s regulations. (See Cal. Code Regs., tit. 5, §§ 27100-27103.) Instead, she appears to argue CalSTRS abused its discretion in its audit of the District by failing to audit her employment record altogether. But even if CalSTRS failed to audit her employment record, Wu has failed to carry her burden to show CalSTRS abused its discretion when doing so because her claim of error rests on CalSTRS’s consideration of information outside its purview.

Wu often cites to lists of authority without context or substantive argument explaining how those authorities demonstrate CalSTRS has a ministerial duty to audit the District’s classification of her employment status under the Education Code and the rights flowing from that classification. Because those references are not linked to any cogent argument demonstrating an entitlement to relief, we do not consider them. (See *United Grand Corp. v. Malibu Hillbillies, LLC*, *supra*, 36 Cal.App.5th at p. 153.) Wu also cites to the California and United States Constitutions generally asserting violations of her due process rights and retiree protections. Wu again fails to provide any reasoning to connect such authority to her conclusions regarding CalSTRS’s auditing responsibility. Thus, we do not consider Wu’s arguments relying on constitutional authority. (*Ibid.*)

We also do not consider Wu’s merit arguments as to the District’s classification of her employment status. Those arguments are irrelevant to this appeal, where we are determining the duties of CalSTRS and not whether the District misclassified Wu.

Wu argues she can amend her complaint to state a claim by adding other parties as plaintiffs that are similarly situated to her. Wu does not explain how the addition of other plaintiffs would confer a duty on CalSTRS to audit the District’s classification of teachers. Thus, Wu has not shown she can amend her pleadings to state a claim for relief.

DISPOSITION

The judgment is affirmed. The parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)



ROBIE, Acting P. J.

We concur:



RENNER, J.



KRAUSE, J.