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

REBECCA WU,

C093905

Plaintiff and Appellant,

(Super. Ct. No. 34-2019-
00261122-CU-PO-GDS)

v.

GINA CARREON et al.,

Defendants and Respondents.

Plaintiff Rebecca Wu, in propria persona, appeals from the dismissal of her complaint after the trial court sustained demurrers brought by defendants Gina Carreon and Peter Rittling. Wu contends she can amend her complaint to state a claim. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Through prior matters, we have become familiar with the general contours of Wu's dispute with the Twin Rivers School District (District).¹ In sum, the District hired Wu as a substitute teacher and she was paid on an hourly basis. (*Wu v. Twin Rivers Unified Sch. Dist.*, *supra*, C088570.) The District, however, used her as an independent studies teacher, whose job duties qualified the position for a probationary classification instead of a substitute classification. (*Ibid.*) But because the District did not employ Wu for more than 75 percent of the days in a school year, Wu was never able to achieve a tenured classification. (*Ibid.*) In her attempt to achieve tenured status, she brought suits against several entities. From this litigation, Wu was unable to achieve: (1) a tenured classification from the District (*ibid.*); (2) direction from the Board to the District and the union representing classroom teachers within the District to include Wu's independent

¹ We construe Wu's motion to add new evidence as a request for judicial notice. We grant the motion, insofar as it requests us to consider our unpublished opinion in *Wu v. Twin Rivers Unified Sch. Dist.* (Mar. 2, 2023, C088570). (Evid. Code, §§ 451, subd. (a), 452, subd. (d); see *Dwan v. Dixon* (1963) 216 Cal.App.2d 260, 265 [“a court may take judicial notice of the contents of its own records”].) We deny the request insofar as it requests us to consider our published decision in *Wu v. Public Employment Relations Bd.* (2022) 87 Cal.App.5th 715. Because that opinion is published, we may consider it without taking judicial notice. (*Gionfriddo v. Major League Baseball* (2001) 94 Cal.App.4th 400, 410, fn. 7 [“‘A request for judicial notice of published materials is unnecessary. Citation to the materials is sufficient’ ”].) We further deny the request to the extent Wu requests us to take judicial notice of her ongoing complaint against the District before the Public Employment Relations Board (Board). Wu did not provide us with the documents she would like us to judicially notice. Further, to the extent Wu seeks for us to consider new evidence related to her complaint before the Board, it is inappropriate for an appellate court to consider evidence not before the trial court. (*Glassman v. Safeco Ins. Co. of America* (2023) 90 Cal.App.5th 1281, 1307 [“Documents not presented in the trial proceeding generally cannot be included as part of the record on appeal and must be disregarded on appeal as beyond the scope of review”].) On our own motion, we take judicial notice of the unpublished decision in *Wu v. Cal. State Teachers' Ret. Sys.* (Sept. 28, 2023, C095632). (Evid. Code, §§ 451, subd. (a), 452, subd. (d).)

studies teaching position in the collective bargaining agreement (*Wu v. Public Employment Relations Bd.*, *supra*, 87 Cal.App.5th at pp. 725-730); or (3) a reclassification from the California State Teachers' Retirement System (CalSTRS) to calculate the District's retirement contributions (*Wu v. Cal. State Teachers' Ret. Sys.*, *supra*, C095632).

In this action, Wu sued Carreon, the District's assistant superintendent of human resources, and Rittling, the District's attorney assigned to the human resources department. Wu alleged in the operative complaint she was hired by the District in 2007 as an hourly teacher working with independent studies students. According to Wu, in 2015 she made complaints about the District's misclassification of her and her colleagues, while encouraging her colleagues to join a union. She was later represented by the California Teachers Association and sued the District regarding her misclassification and desire to be classified as a tenured teacher. Rittling represented the District in this litigation and worked with Carreon on issues relating to the litigation. His representation of the District began in 2013.

During the litigation with the District regarding Wu's misclassification, Carreon informed Wu and her similarly classified colleagues that whatever Wu obtained in litigation would extend to her similarly classified colleagues, but Wu refused to settle without her similarly classified colleagues being included in the settlement. As a result of her refusal to settle, Wu was demoted in 2016 to another misclassified position, while 25 of her colleagues were reclassified to tenured positions and another person was hired. Thus, Wu alleged Carreon's and Rittling's "gross illegal violations of ministerial duties" caused her exclusion from union representation, which further denied her the rights and benefits that accompanied union representation, as well as caused inaccurate reporting to CalSTRS for purposes of her retirement calculation. (Capitalization omitted.)

Wu alleged that from April 2017 through June 2017, she made several complaints to the District that it failed to maintain adequate services for students and committed

criminal behavior. Wu also made these complaints to the Sacramento County Office of Education “and [human resources] knew.” Rittling responded to Wu’s complaints in June 2017.

Wu alleged the District ultimately fired her without explanation “in August 2017[,] five days after Gina Carreon sent Peter Rittling an email on July 25th that Wu had come in whistleblowing [and] had no business being there and [asked] how do[es] the District] keep her away.” (Boldface omitted.) Wu alleged she was not told she was fired and did not see a letter from the District pertaining to her termination until 2019 when Carreon showed her the letter during a Board hearing.

At the time Wu was purportedly terminated in 2017, she represented herself in her misclassification action against the District. In August 2017, Wu attended a meeting of the District’s board of trustees and did not speak. Following her presence at the meeting, Wu received a “threatening letter that said it was a misdemeanor to disturb a school [m]eeting or [s]chool, and ONLY to talk to Rittling about litigation.” Wu alleged that, because she was making whistleblower claims at the time the letter was sent, she was “[s]cared, [i]ntimidated, and frightened to go back to the [District’s b]oard [of trustees] to continue to whist[le]blow, afraid to speak out at elected board meetings, was SCARED to continue to reasonabl[y] [i]nvestigate . . . her [t]ermination status[,] which she thought might be her fault.” (Boldface, underlining, & some capitalization omitted.)

Thereafter, Wu alleged Rittling and Carreon engaged in various deceptive and intimidating litigation tactics as it pertained to her misclassification litigation with the District. The alleged tactics included, but were not limited to, Carreon intimidating Wu’s witnesses so they would not blame the District’s officials for Wu’s misclassification and Rittling blocking her when coming out of the bathroom in an effort to prevent her from deposing a witness. Wu further alleged Rittling and Carreon prevented District officials from discussing her retirement calculation with CalSTRS in response to an audit inquiry by CalSTRS.

Wu filed the operative complaint alleging 39 causes of action against Carreon and Rittling—some causes of action were alleged against them jointly, while others were alleged against them separately. As far as we can discern, Wu alleged causes of action for wrongful/whistleblower termination or interference, negligence, breaches of ministerial duties, misrepresentation/concealment/fraud, intentional infliction of emotional distress, and breach of the covenant of good faith and fair dealing.

Wu further filed a petition to file a civil conspiracy claim against Rittling pursuant to Civil Code² section 1714.10. In it, she relied on the facts alleged in the operative complaint, including that Rittling was the attorney for the District at the time Carreon was the assistant superintendent of human resources. Wu argued that while working together, Rittling and Carreon “deceiv[ed] the [s]chool board of [m]inisterial duties to [W]u by the [D]istrict.” In particular, Wu claimed Rittling deceived her and the District about her classification and related entitlements, as well as through his intimidating litigation tactics. The trial court denied the petition because it failed to demonstrate through admissible evidence that Rittling conspired with Carreon or anyone else to commit an act constituting a tort or other civil wrongdoing for which Wu could recover.

Defendants filed demurrers to the operative complaint. The trial court sustained them without leave to amend as to all causes of action for a variety of reasons, which we will detail below. Consequently, Wu’s complaint was dismissed.

Wu appeals.

DISCUSSION

It is a “well-established rule of appellate review that a judgment or order is presumed correct.” (*Hotels Nevada, LLC v. L.A. Pacific Center, Inc.* (2012) 203 Cal.App.4th 336, 348.) “It is the appellant’s burden to demonstrate the existence of

² Undesignated section references are to the Civil Code.

reversible error.” (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 766.) This, basic rule applies to all litigants, including those who represent themselves on appeal. Self-represented litigants are not entitled to special treatment. (*McComber v. Wells* (1999) 72 Cal.App.4th 512, 523.) “Pro[pria] per[sona] litigants are held to the same standards as attorneys.” (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543.) “A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation.” (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 985.)

Wu raises a variety of unfocused arguments, and it is difficult to ascertain what arguments apply to which causes of action. Overall, Wu acknowledges her operative complaint was deficient. While she takes issue with the trial court’s rulings, her effort is exhaustive and again unfocused and unorganized such that we are unable to ascertain the legal theories Wu relies upon for relief. Thus, we will examine Wu’s causes of action as raised in the operative complaint and the trial court’s orders that sustained defendants’ demurrers, and compare these documents to Wu’s appellate briefing to determine whether she can correct the defects identified by the trial court. “[P]laintiff bears the burden of proving an amendment could cure the defect.” (*T.H. v. Novartis Pharmaceuticals Corp.* (2017) 4 Cal.5th 145, 162.)

I

An Amendment Cannot Cure The Defects Pertaining To Rittling

All but one of Wu’s 27 causes of action alleged against Rittling were based on Rittling’s conduct while representing the District and done in conjunction with Carreon, an employee of his client (conspiracy causes of action). For example, the 26 conspiracy causes of action against Rittling were alleged: (1) as joint causes of action against both defendants (causes of action five through eight, twelve, thirteen, sixteen, nineteen, twenty-two, twenty-four through twenty-six, & thirty-three through thirty-nine); (2) as identical causes of action to causes of action alleged against Carreon (causes of action

two, three, eleven, fourteen, & twenty); or (3) as acts of conspiring with Carreon (causes of action eighteen, thirty-one, & thirty-two).³ The trial court sustained Rittling's demurrer to the conspiracy causes of action because they all pertained to his conduct with his client while attempting to resolve a claim.⁴ Thus, the trial court found Wu was required to obtain leave of court before filing the operative complaint under section 1714.10.

Wu does not appear to dispute the trial court's denial of her petition for leave to file a complaint based on a civil conspiracy. Instead, she argues much of Rittling's conduct falls outside the context of her case, and thus she was not required to obtain permission before filing her operative complaint. We disagree.

Section 1714.10, subdivision (a) requires a court order before a plaintiff can file an action against an attorney that includes a claim relying on a civil conspiracy with a client arising from any attempt to contest or settle a claim while representing the client.

Wu's operative complaint alleged she was hired in 2007 as an hourly teacher, which was when she was misclassified, and that she made a complaint against the District regarding her classification as early as 2015. Her conspiracy causes of action arise from conduct at a Board hearing regarding her case (causes of action two, three, & five), a 2017 letter sent to Wu warning her against disrupting a meeting of the District's board of trustees (causes of action six & seven), her termination (causes of action eight, eleven, &

³ The one cause of action not alleged to involve Carreon was a cause of action for intentional infliction of emotional distress (cause of action twenty-three) arising from Rittling's conduct of intimidating Wu against deposing a witness as she exited the bathroom. We will discuss this cause of action later in our Discussion.

⁴ The trial court sustained Rittling's demurrer for other reasons. As to all but one cause of action alleged against Rittling, the trial court found Wu did not defeat the litigation privilege applicable to Rittling's conduct occurring during litigation. The trial court also found fault in nearly every cause of action alleged against Rittling for failing to provide a needed element of the claim.

thirty-one), Rittling's failure to correct her classification and attendant benefits when provided with evidence of her misclassification (causes of action twelve through fourteen, sixteen, eighteen, nineteen, twenty-two, twenty-four, & thirty-four through thirty-nine), and Rittling's litigation tactics in attempting to silence witnesses and otherwise interfere with her whistleblowing activities (causes of action twenty, twenty-five, twenty-six, thirty-two, & thirty-three). All of this conduct occurred as part of Rittling's representation of the District and in connection to Wu's claim against the District that she was misclassified. Wu does not place blame with Rittling for the initial misclassification—she alleges she was hired in 2007, six years before Rittling was hired to represent the District. As a consequence, Wu has not demonstrated these 26 causes of action fall outside the protection of section 1714.10.

Wu argues she falls under an exception to section 1714.10's requirements because Rittling's involvement resulted in a financial benefit to him. Not so. As Wu acknowledges, the financial benefit required to fall outside the protection offered by section 1714.10 is that the attorney received a benefit beyond their normal monetary compensation. (*Berg & Berg Enterprises, LLC v. Sherwood Partners, Inc.* (2005) 131 Cal.App.4th 802, 810.) Wu has not alleged any facts in her operative complaint or raised any new facts in her opening brief alleging Rittling obtained a financial benefit outside his payment for legal services. Thus, Wu has not demonstrated she can amend her complaint such that her causes of action arising from a civil conspiracy survive a demurrer.

Finally, Wu points to a host of arguments she claims prevent state courts from applying section 1714.10 to bar claims against attorneys. First, Wu argues that because Rittling represented a public agency, he should be held to a higher standard allowing for lawsuits without first jumping through the hoops of gaining permission pursuant to section 1714.10. Wu does not support this assertion with legal reasoning, only a citation to *Arnel Development Co. v. City of Costa Mesa* (1980) 28 Cal.3d 511, 514, footnote 3,

which we conclude is inapplicable. Indeed, the footnote Wu cites to is merely a notation of the city attorney's conduct and not a point of analysis in the context of that case. (*Id.* at pp. 513-514 & fn. 3.) Given Wu's failure to cite relevant authority and provide reasoned legal analysis, she has not demonstrated she can amend her complaint such that she did not need to comply with section 1714.10.

Wu also argues the supremacy clause of the United States Constitution acts to prevent application of section 1714.10, especially if she amends her complaint to state a civil rights claim. Wu does not cite to any authority demonstrating that the supremacy clause prevents application of section 1714.10 to her causes of action. Her citation to *Hung v. Wang* (1992) 8 Cal.App.4th 908, 915, does not assist her and in fact proves the opposite. In *Hung*, the appellate court held that section 1714.10 does not infringe on a party's constitutional rights to due process, a jury trial, or equal protection. (*Hung*, at pp. 914-915.) Further, Wu has not cited to authority demonstrating section 1714.10 does not apply to a federal civil rights claim under title 42 United States Code section 1983 brought in state court. Her citation to *West v. Atkins* (1988) 487 U.S. 42, 54-56, demonstrates Rittling acted under the color of state law, but does not address the applicability of section 1714.10 to a federal civil rights claim alleged against him. Wu's argument that state procedural rights cannot bar federal claims is unavailing because section 1714.10 does not bar a federal civil rights claim, but merely provides a gatekeeping function to filter out frivolous lawsuits. (*Favila v. Katten Muchin Rosenman LLP* (2010) 188 Cal.App.4th 189, 209 [§ 1714.10 applies only to the prefilings requirement, providing "at best, . . . only an additional procedural safeguard against meritless claims"].) As a consequence, Wu has not demonstrated that amending her complaint to include a federal civil rights claim cures the defects identified by the trial court.

The intentional infliction of emotional distress cause of action alleged as Wu's twenty-third cause of action is the only cause of action that *may* not be connected to a

civil conspiracy considering that it was not alleged as occurring as a result of Rittling conspiring with his client, and instead, is based on Rittling's lone intimidation of Wu against deposing a witness while she left a bathroom. The trial court sustained Rittling's demurrer to this cause of action because Wu did "not identify any conduct by Rittling [that] can be fairly characterized as so extreme and outrageous as to exceed that which is tolerated in a civilized society." (See *Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050-1051 ["conduct is 'outrageous' when it is so ' ' 'extreme as to exceed all bounds of that usually tolerated in a civilized community' " , "].) Wu does not mount an argument for why the trial court's ruling in this regard was erroneous or how she can amend her complaint to demonstrate Rittling's conduct was outrageous. Thus, Wu has not demonstrated amendment can cure the defect identified by the trial court as it relates to her twenty-third cause of action.

In sum, Wu has not demonstrated the trial court erred by sustaining Rittling's demurrer to the causes of action alleged against him. Because we conclude Wu failed to demonstrate error as to a single theory per alleged cause of action, we do not address each ground the trial court cited as a reason for sustaining the demurrer, or Wu's challenges to those grounds.

II

An Amendment Cannot Cure The Defects Pertaining To Carreon

Wu alleged many causes of action against Carreon. The trial court sustained Carreon's demurrer to a large portion of those causes of action on the ground that Wu failed to gain permission to file a case based on a civil conspiracy involving an attorney pursuant to section 1714.10. The trial court reasoned that because Rittling was alleged to have conspired with Carreon, and Wu could not demonstrate a conspiracy involving Rittling, her causes of action against Carreon failed to state a claim because Carreon could not conspire by herself. On appeal, Wu asserts she can amend her causes of action against Carreon such that they are alleged against Carreon alone and are not dependent on

Rittling's conduct or a conspiracy. We will assume Wu is capable of amending her complaint in such a way (*Favila v. Katten Muchin Rosenman LLP, supra*, 188 Cal.App.4th at p. 206 [a “[c]ivil conspiracy is not an independent tort”]), and we will address her arguments for amendment in light of the other findings made by the trial court when sustaining Carreon's demurrer.

Wu also complains throughout her appellate briefing that she does not understand the trial court's reasons for sustaining Carreon's demurrer and was left clueless by the court and defendants about how to amend her causes of action to state a claim without further and more particular explanations. For this reason, we will address each of Wu's causes of action against Carreon in the order she presents them, instead of grouping similar causes of action found throughout the complaint together as the trial court did.

The first three causes of action alleged against Carreon were for defamation, misrepresentation, and fraud (causes of action one, four, & seven). These three causes of action appear to pertain to Carreon's alleged false statement during a Board hearing that she had sent a termination letter to Wu. Wu alleged in her operative complaint that she did not receive this letter and that Carreon lied when making the statement. Among other reasons, the trial court sustained Carreon's demurrer to these causes of action finding Wu failed to timely file her suit after rejection of her government tort claim.

In her appellate briefing, Wu argues she was not required to file a government tort claim. Wu's argument, however, appears to be specific to her whistleblower claims and a potential federal civil rights claim, not the defamation, misrepresentation, and fraud claims raised in her first three causes of action against Carreon. Indeed, the trial court did not find a defect in Wu's whistleblower claims related to the filing of a government tort claim. As to her first three causes of action against Carreon, Wu cites to no authority demonstrating she was free to file them without first filing a government tort claim. (See *Hernandez v. City of Stockton* (2023) 90 Cal.App.5th 1222, 1230 [“As a general rule, no suit for money or damages may be brought against a public entity [or its employees] until

a written claim, known as a government [tort] claim, is presented to and rejected by that entity”].) Thus, Wu has not demonstrated that amendment could cure the defect identified by the trial court.

Alternatively, Wu asserts she did file a government tort claim and her time to file a court action after the rejection of that claim was tolled because she was pursuing cases related to her misclassification against the District in the trial court and before the Board. Wu appears to argue that the filing of these other cases alone was sufficient to toll the six-month limitation to file her suit against Carreon. The legal authority Wu cites, however, reflects a more complex standard. For example, in *Elkins v. Derby* (1974) 12 Cal.3d 410, 414, 417-418, our Supreme Court determined the doctrine of equitable tolling requires timely notice, lack of prejudice to the defendant, and reasonable and good faith conduct on the part of the plaintiff. Wu does not engage with this standard or attempt to demonstrate how she can meet each element, especially in light of the fact that the District was the defendant in her other actions and not the individual defendants named here. As a result, Wu has not demonstrated how amending the complaint would cure the defect identified by the trial court.

Wu alleged in her sixth and seventh causes of action that Carreon committed fraud and concealed information from her when Rittling sent her a letter in August 2017, around the time of her termination and whistleblowing activities, that she would commit a misdemeanor if she disrupted meetings of the District’s board of trustees or school activities. Wu alleged this letter prevented her from attending meetings of the District’s board of trustees and complaining about unlawful conduct on behalf of the District. Among other reasons, the trial court sustained Carreon’s demurrer to these causes of action because Wu failed to timely file her suit after rejection of her government tort claim. As demonstrated with Wu’s first three causes of action against Carreon, Wu has not demonstrated she can amend her complaint to cure this defect.

Wu's eighth through tenth causes of action allege whistleblower termination and wrongful termination against Carreon. The trial court sustained Carreon's demurrer to these causes of action on a variety of grounds, including importantly that Wu did not allege that Carreon was her employer. In her appellate briefing, Wu challenges the trial court's various rulings, but she does not address the fact that Carreon is not her employer. For this reason, Wu has not demonstrated that she can amend her complaint to state a cause of action for either whistleblower termination or wrongful termination against Carreon. (See *Yau v. Allen* (2014) 229 Cal.App.4th 144, 154 [the elements of a claim for wrongful discharge include an employer-employee relationship].)

Wu's twelfth cause of action alleged Carreon "[c]onspired maliciously actual fraud and corruption with actual malice to have Wu's employer [the District] violate her rights to her position, tenure, probationary status, and her right to due process in many years including 2016[through]2017." Wu's thirteenth cause of action alleged fraud in the reporting of Wu's credits and classification to CalSTRS for the purpose of her retirement benefits. Among other reasons, the trial court sustained Carreon's demurrer to these causes of action because Wu failed to timely file her suit after rejection of her government tort claim. As demonstrated with Wu's first three causes of action against Carreon, Wu has not demonstrated she can amend her complaint to cure this defect.

Wu's fifteenth cause of action alleged intentional or negligent infliction of emotional distress without elaboration. The trial court sustained Carreon's demurrer to this cause of action because Wu failed to allege any conduct that can fairly be "characterized as so extreme and outrageous as to exceed that which is tolerated in a civilized society." (See *Hughes v. Pair, supra*, 46 Cal.4th at pp. 1050-1051.) Indeed, Wu did not allege any specific conduct under her headings for this cause of action. In her appellate briefing, she does not elaborate on this specific cause of action and again realleges all the factual allegations for her complaint and generally asserts the conduct at issue caused her emotional damage. It does not appear that Wu addresses her *claims* of

intentional infliction of emotional distress. As a result, Wu has again unsuccessfully met her burden to establish the elements for this cause of action by failing to specify the offending conduct and how it caused her injury.

Wu's sixteenth and seventeenth causes of action allege negligence and negligence per se, respectively. The negligence cause of action relied on Wu's allegations that Carreon misrepresented facts during her litigation against the District. Her negligence per se cause of action relies on allegations that Carreon did not comply with her ministerial duties pursuant to the Education Code. Similarly, Wu's nineteenth cause of action alleged that Carreon failed to discharge her mandatory duties under Government Code section 815.6. Among other reasons, the trial court sustained Carreon's demurrer to these causes of action because Wu failed to timely file her suit after rejection of her government tort claim. As demonstrated with Wu's first three causes of action against Carreon, Wu has not demonstrated she can amend her complaint to cure this defect.

Wu's twenty-first cause of action alleged whistleblower interference. The trial court sustained Carreon's demurrer to this cause of action for a variety of reasons, including that Wu did not allege that Carreon was her employer. In her appellate briefing, Wu does not address the fact that Carreon is not her employer. For this reason, Wu has not demonstrated that she can amend her complaint to state a cause of action for either whistleblower termination or wrongful termination against Carreon. (See *Yau v. Allen, supra*, 229 Cal.App.4th at p. 154.)

Wu's twenty-second cause of action alleged breach of the implied covenant of good faith and fair dealing. The trial court sustained Carreon's demurrer to this cause of action because Wu did not allege that she was in a contractual relationship with Carreon. In her appellate briefing, Wu does not address the trial court's finding, except to allege that Carreon prevented her from being considered a beneficiary of the contract between the District and the union representing classroom teachers in the District. Wu does not assert she was in a contractual relationship with Carreon. (*Oasis West Realty, LLC v.*

Goldman (2011) 51 Cal.4th 811, 821 [to demonstrate a breach of the covenant of good faith and fair dealing, the plaintiff must show the existence of a contract between the parties].) Thus, Wu has not demonstrated the trial court erred when sustaining Carreon's demurrer to this cause of action.

Wu's twenty-fourth cause of action alleged "emotional distress for all cause[s] of action." (Capitalization & boldface omitted.) Among other reasons, the trial court sustained Carreon's demurrer to this cause of action because Wu failed to timely file her suit after rejection of her government tort claim. As demonstrated with Wu's first three causes of action against Carreon, Wu has not demonstrated she can amend her complaint to cure this defect.

Wu's twenty-fifth through thirtieth, and thirty-third causes of action alleged whistleblower termination and interference, which the trial court found were defective because Wu could not allege Carreon was her employer. In her appellate briefing, Wu does not address the fact that Carreon is not her employer. For this reason, Wu has not demonstrated that she can amend her complaint to state a cause of action for either whistleblower termination or wrongful termination against Carreon. (See *Yau v. Allen, supra*, 229 Cal.App.4th at p. 154.)

Wu's thirty-fourth cause of action alleged intentional infliction of emotional distress based on all of her allegations. The trial court sustained Carreon's demurrer to this cause of action because Wu failed to allege any conduct that can fairly be "characterized as so extreme and outrageous as to exceed that which is tolerated in a civilized society." (See *Hughes v. Pair, supra*, 46 Cal.4th at pp. 1050-1051.) In her appellate briefing, Wu does not elaborate on this specific cause of action and again realleges all the factual allegations for her complaint and generally asserts the conduct at issue caused her severe emotional distress. It does not appear that Wu addresses her *claims* of intentional infliction of emotional distress. As a result, Wu has not met her

burden to establish the elements for this cause of action by failing to specify the offending conduct and how it caused her injury.

Wu's thirty-fifth cause of action alleges negligence based on all of her allegations. Wu's thirty-sixth and thirty-seventh causes of action allege concealment, misrepresentation, and fraud for Carreon attempting to interfere with CalSTRS's audit and for fraudulently reporting her retirement credits to CalSTRS as part of their regular reporting duties. Among other reasons, the trial court sustained Carreon's demurrer to this cause of action because Wu failed to timely file her suit after rejection of her government tort claim. As demonstrated with Wu's first three causes of action against Carreon, Wu has not demonstrated she can amend her complaint to cure this defect.

Wu's thirty-eighth cause of action alleged breach of the implied covenant of good faith and fair dealing as related to all of her allegations. The trial court sustained Carreon's demurrer to this cause of action because Wu did not establish that she was in a contractual relationship with Carreon. In her appellate briefing, Wu does not address the trial court's finding, except to allege that Carreon prevented her from being considered a beneficiary of the contract between the District and the union representing classroom teachers in the District. Wu does not assert she was in a contractual relationship with Carreon. (*Oasis West Realty, LLC v. Goldman, supra*, 51 Cal.4th at p. 821.) As discussed, Wu cannot demonstrate the trial court erred when sustaining Carreon's demurrer to this cause of action.

Wu's thirty-ninth cause of action alleged negligence relying on all of the allegations contained in the complaint. Among other reasons, the trial court sustained Carreon's demurrer to this cause of action because Wu failed to timely file her suit after rejection of her government tort claim. As demonstrated with Wu's first three causes of action against Carreon, Wu has not demonstrated she can amend her complaint to cure this defect.

Finally, Wu argues she can recast her entire complaint to allege federal civil rights causes of action under title 42 United States Code section 1983, which would not need to comply with state procedural rules, nor could those claims be extinguished by state law grants of immunity. Carreon argues it is inappropriate to entertain Wu's amendment contention to add a new claim at this stage of her case. We disagree with Carreon's contention that Wu cannot seek to amend her complaint with the addition of a new cause of action.

A plaintiff can argue for leave to amend to state new causes of action, even for the first time on appeal, after an order sustaining a demurrer. (See *Gutierrez v. Carmax Auto Superstores California* (2018) 19 Cal.App.5th 1234, 1244-1245; *Dudley v. Department of Transportation* (2001) 90 Cal.App.4th 255, 259-260.) To prove amendment is possible, however, a "plaintiff must demonstrate how the complaint can be amended. [Citation.] While such a showing can be made for the first time to the reviewing court [citation], it must be made." (*Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, 711.) "To satisfy that burden on appeal, a plaintiff 'must show in what manner he [or she] can amend his [or her] complaint and how that amendment will change the legal effect of his or [her] pleading.' " (*Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43.)

Wu's general assertions regarding potential federal civil rights claims fail to demonstrate how her amendment would change the legal effect of her pleading. Assuming state procedural rules and immunities do not apply to federal civil rights claims, Wu does not address common law immunities applicable to federal civil rights claims. (*Rieman v. Vazquez* (9th Cir. 2024) 96 F.4th 1085, 1090 [“Defendants in [title 42 U.S.C.] § 1983 suits are generally entitled to only immunities that existed at common law”].) Wu further states, in a rather conclusory fashion, that all of Carreon's ministerial decisions are not immune from liability in a federal civil rights action. By ministerial decisions, it appears Wu is referring to a smaller class of conduct than alleged overall in

her operative complaint. Thus, as an initial matter, Wu has not demonstrated that recasting *all* her causes of action against Carreon as federal civil rights causes of action can change the legal effect of her pleading.

To the extent Wu asserts Carreon violated her ministerial duties resulting in constitutional violations, Wu does not assert facts sufficient to establish that Carreon was under a mandatory or ministerial duty, Carreon breached that duty, and the breach caused a violation of Wu's constitutional rights. (*Long v. County of Los Angeles* (9th Cir. 2006) 442 F.3d 1178, 1185 [to state a federal civil rights claim, a plaintiff must allege that a right secured by the United States Constitution was violated and the "violation was committed by a person acting under the color of . . . law"].) This defect was identified by the trial court in its order sustaining Carreon's demurrer.

In her opening appellate brief, Wu asserts Carreon caused the District to violate its duty to report information to CalSTRS that corresponded with her proper classification and it's duty to correct her classification once Wu informed Carreon of her misclassification. Wu has not tied these assertions to any particular duty held by Carreon and does not explain how a breach of the duty resulted in *constitutional* violations. As a consequence, we are unable to distinguish a viable federal civil rights theory upon which Wu can gain relief. (See *AE ex rel. Hernandez v. County of Tulare* (9th Cir. 2012) 666 F.3d 631, 637 [the Ninth Circuit Court of Appeals has held, specific to federal civil rights claims, that " 'allegations in a complaint or counterclaim may not simply recite the elements of a cause of action, but must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively' "].)

Accordingly, Wu has not demonstrated error in the trial court's order. Thus, she is not entitled to reversal.

DISPOSITION

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

/s/
ROBIE, Acting P. J.

We concur:

/s/
KRAUSE, J.

/s/
MESIWALA, J.

Exhibit C

Exhibit D

IN THE
Court of Appeal of the State of California
IN AND FOR THE
THIRD APPELLATE DISTRICT

REBECCA WU,
Plaintiff and Appellant,
v.
GINA CARREON et al.,
Defendants and Respondents.

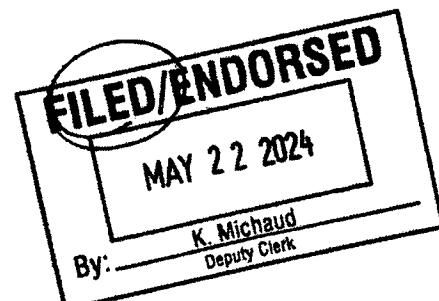
C093905
Sacramento County
No. 34201900261122CUPOGDS

BY THE COURT:

Appellant's petition for rehearing is denied.


ROBIE, Acting P.J.

cc: See Mailing List



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from this filing is
available in the
Clerk's Office.**