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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

SHARON A. MARBLEY,

Plaintiff and Appellant,

v.

THE PERMANENTE MEDICAL  
GROUP, INC.,

Defendant and Respondent.

H036708

(Santa Clara County

Super. Ct. No. CV139824)

Plaintiff Sharon A. Marbley sued defendant The Permanente Medical Group<sup>1</sup> for wrongful termination and other employment-related causes of action. The trial court granted defendant's motion to dismiss the complaint after a demurrer was sustained and plaintiff failed to amend within the time allowed. (Code Civ. Proc., § 518, subd. (f)(2).)<sup>2</sup> Plaintiff appeals from the order of dismissal. Finding no error, we shall affirm.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiff filed a complaint in state court in April 2009. She alleged that she began working for defendant in 1991 and that defendant terminated her employment on January 14, 2008. Because plaintiff's employment was governed by the terms of a collective bargaining agreement, defendant maintained that federal law was controlling and

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<sup>1</sup> Plaintiff's complaint named three Kaiser entities. All amended complaints name only The Kaiser Permanente Medical Group, Inc., or The Permanente Medical Group. According to defendant, the latter is its correct name.

<sup>2</sup> Further unspecified section references are to the Code of Civil Procedure.

removed the case to federal court. The federal court dismissed three causes of action and remanded the case to state court where plaintiff filed a first amended complaint.

Back in state court, defendant's demurrers to the first and second amended complaints were sustained with leave to amend. Plaintiff filed a third amended complaint on June 14, 2010. Defendant again demurred. Hearing on the demurrer was set for October 21, 2010. Plaintiff filed opposition to the demurrer noting the correct date for the hearing on her opposing papers. Nevertheless, she did not appear for the hearing and later claimed she thought the hearing was supposed to be held on October 27.

The trial court sustained the demurrer to the third amended complaint on grounds plaintiff failed to state a cause of action, granting leave to amend the first six of the seven causes of action. The written order explains how each cause of action is insufficient and as to each states that the demurrer is sustained "with 20 days leave to amend." On December 23, 2010, well after the 20 days had expired, plaintiff had not filed a fourth amended complaint and defendant filed a motion to dismiss pursuant to section 581, subdivision (f). The hearing was set for February 10, 2011. Defendant mailed its moving papers to plaintiff at her established address on December 22, 2010. On January 11, 2011, plaintiff filed papers titled "opposition" but which, in substance, requested leave to file a fourth amended complaint. The hearing on the motion to dismiss took place as scheduled on February 10, 2011. Again plaintiff did not appear. The trial court granted the motion and directed defense counsel to prepare the order. The written order was filed March 1, 2011.

Plaintiff attempted to file a fourth amended complaint on February 15, 2011, five days after the motion to dismiss had been heard. On February 16, 2011, she filed papers alleging that the court "never mailed a scheduled Calendar hearing for Feb. 10th 2011." On March 3, 2011, the trial court struck plaintiff's fourth amended complaint, noting, "Dismissal has ended the case." Plaintiff filed a motion for reconsideration but filed a notice of appeal on March 18, 2011, before the reconsideration motion could be heard.

## II. DISCUSSION

Subject to an exception not applicable here, section 581, subdivision (f)(2), provides that the court may dismiss a complaint as to a defendant when, “after a demurrer to the complaint is sustained with leave to amend, the plaintiff fails to amend it within the time allowed by the court and either party moves for dismissal.” We review the trial court’s decision to dismiss an action under section 581, subdivision (f)(2) for abuse of discretion. (*Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 612 (*Leader*)). As always, we begin our review of the trial court’s decision by presuming it is correct. We reverse it only if plaintiff affirmatively shows that the ruling was wrong. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

Much of plaintiff’s argument concerns alleged deficiencies in the way the clerk’s office handled her papers. No deficiencies are apparent in the record before us. The clerk’s transcript shows that plaintiff was given timely notice of all hearings as required by law. The trial court’s order sustaining the demurrer to the third amended complaint is clear and specific about what plaintiff was required to do to correct her pleading. Indeed, plaintiff had been given three prior opportunities to amend her pleading and managed to do so at those times.

Plaintiff also argues that she should have received some response from the court to the opposition papers she filed on January 11, 2011.<sup>3</sup> Defendant’s motion to dismiss was on calendar for February 10, 2011; plaintiff was entitled to come to court to be heard on that date and argue any of the points she raised in her January 11 papers but she did not appear. After the court granted the motion to dismiss, the case was over; there was nothing more for it to do.

We recognize that plaintiff, who is not an attorney, has represented herself throughout this litigation. The rule in our courts is that when a litigant acts as his or her

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<sup>3</sup> Subsequent pleadings allege that plaintiff had submitted a proposed order with those papers, although the proposed order does not appear in the record.

own attorney the litigant is held to the same restrictive rules of procedure and evidence as an attorney--no different, no better, no worse. (*Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638-639; *Monastero v. Los Angeles Transit Co.* (1955) 131 Cal.App.2d 156, 160-161.) Notwithstanding the rule, the trial court took extra care to insure that plaintiff understood what was required of her and gave her several opportunities to correct her pleading so that her claims could be resolved by a trial. The failure to amend when allowed is, in effect, an admission that plaintiff has stated the case as best she can. (*Cano v. Glover* (2006) 143 Cal.App.4th 326, 330.) Plaintiff has offered no explanation for her failure to file a fourth amended complaint within the time allowed or, indeed, at any time before the trial court heard defendant's motion to dismiss. Since plaintiff has not made an affirmative showing that the trial court abused its discretion in granting the dismissal motion, we have no basis for reversal.<sup>4</sup>

### III. DISPOSITION

The order of dismissal is affirmed.

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<sup>4</sup> In appealing from the order of dismissal, plaintiff is entitled to review of the order sustaining the demurrer as well. (*Leader, supra*, 89 Cal.App.4th at p. 611.) We cannot apprehend in plaintiff's briefs any argument or authority to support a claim that the trial court erred in sustaining the demurrer. Thus, we treat that aspect of plaintiff's appeal as abandoned. (*Ibid.*)

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Premo, J.

WE CONCUR:

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Rushing, P.J.

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Elia, J.