

FILED

NOT FOR PUBLICATION

MAY 31 2018

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARILYN BRYANT,

Plaintiff-Appellant,

v.

BNSF RAILWAY COMPANY AND  
BURLINGTON NORTHERN SANTA FE  
CORPORATION, Successor to Atchison,  
Topeka and Santa Fe Railway and Santa Fe  
Pacific Corporation; et al.,

Defendants-Appellees.

No. 16-56333

D.C. No. 2:16-cv-01267-DSF-JEM

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Dale S. Fischer, District Judge, Presiding

Submitted May 29, 2018\*\*

Before: THOMAS, Chief Judge, and TROTT and SILVERMAN, Circuit Judges.

Marilyn Bryant appeals pro se from the district court's judgment dismissing for lack of subject matter jurisdiction her action alleging state law claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Ass'n of Am. Med.*

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*Colleges v. United States*, 217 F.3d 770, 778 (9th Cir. 2000), and we affirm.

The district court properly dismissed Bryant’s action for lack of subject matter jurisdiction because Bryant failed to exhaust her claim as required under the Railroad Retirement Act. 45 U.S.C. § 355(b) (“The Board is authorized and directed to make findings of fact with respect to any claim for benefits and to make decisions as to the right of any claimant to benefits.”); *id.* § 355(c)(7) (“Any issue determinable pursuant to this subsection and subsection (f) of this section shall not be determined in any manner other than pursuant to this subsection and subsection (f) of this section.”).

The district court properly dismissed without leave to amend because amendment would have been futile. *See Am. W. Airlines, Inc. v. GPA Grp., Ltd.*, 877 F.2d 793, 801 (9th Cir. 1989) (holding that the district court properly determined amendment was futile because allegations failed to establish jurisdiction).

Contrary to Bryant’s contention, the district court did not assess costs.

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

All pending motions are denied.

**AFFIRMED.**