

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

FEB 15 2023

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

JANE DOE, an individual; JOHN DOE, No. 1, No. 2, No. 3, No. 4, individuals,

Plaintiffs-Appellants,

v.

ROB BONTA, in his official capacity as Attorney General of the State of California; DOES, 1-25, inclusive,

Defendants-Appellees.

No. 23-55133

D.C. No.

3:22-cv-00010-LAB-DEB

Southern District of California,
San Diego

ORDER

This appeal challenges the district court’s January 12, 2023 order dismissing appellants’ complaint and denying their motion for a preliminary injunction as moot. The January 12, 2023 order provided that, “[t]o the extent Plaintiffs wish to amend their claims, they may do so by filing a motion for leave to amend by February 10, 2023.”

To the extent that appellants challenge the district court’s dismissal of their complaint pursuant to 28 U.S.C. § 1291, this court may presently lack jurisdiction over this appeal because “a plaintiff, who has been given leave to amend, may not file a notice of appeal simply because he does not choose to file an amended complaint. A further district court determination must be obtained.” *See WMX Techs., Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997).

To the extent that appellants challenge the interlocutory denial of their motion for preliminary injunction pursuant to 28 U.S.C. § 1292(a)(1), the appeal may be dismissed upon the entry of final judgment in the district court. This court has explained that “it is pointless for us to decide what preliminary relief [a plaintiff] should have obtained” after the underlying claims have been dismissed. *See SEC v. Mount Vernon Mem’l Park*, 664 F.2d 1358, 1361 (9th Cir. 1982) (dismissing an appeal from an order denying a motion for preliminary injunction following the district court’s dismissal and entry of final judgment).

Within 21 days after this order, appellants shall file a written response indicating whether they intend this appeal to be a final judgment appeal pursuant to 28 U.S.C. § 1291 or an interlocutory appeal pursuant to 28 U.S.C. § 1292(a)(1). Appellants shall also explain whether this court has jurisdiction over this appeal. Appellees may respond within 10 days after appellants’ response.

If necessary, the court will establish an appropriate briefing schedule by separate order.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Alex Christopher
Deputy Clerk
Ninth Circuit Rule 27-7