

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES W SCHUBERT,

Plaintiff,

v.

THE BANK OF NEW YORK MELLON, et
al.,

Defendants.

Case No. 17-cv-00856-KAW

**ORDER DENYING REQUEST TO
AMEND DISMISSAL ORDER**

Re: Dkt. No. 45

On February 8, 2017, Plaintiff James W. Schubert brought the instant suit against Defendants The Bank of New York Mellon and Bank of America, N.A., asserting claims for quiet title and declaratory relief. (Dkt. No. 1-1.) Plaintiff also filed a motion for preliminary injunction to enjoin a trustee's sale for the pendency of the action. Defendants subsequently filed a motion to dismiss the case, based on res judicata. (Dkt. No. 14.) On June 14, 2017, the Court granted Defendants' motion to dismiss, but granted Plaintiff leave to file an amended complaint within twenty-one days, to add claims based on an alleged breach of the settlement agreement. (Dkt. No. 42 at 18.) The Court also ordered the parties to meet and confer and stipulate to a briefing schedule on Plaintiff's motion for preliminary injunction. (Id.) On June 28, 2017, the parties stipulated to a briefing schedule, with Plaintiff's moving papers due by July 10, 2017, Defendants' opposition due by July 19, 2017, and Plaintiff's reply due by July 24, 2017. (Dkt. No. 43.) The Court granted the stipulation, and set the hearing date on Plaintiff's motion for preliminary injunction for September 7, 2017. (Dkt. No. 44.)

Plaintiff did not file an amended complaint or his motion for preliminary injunction. Instead, on July 13, 2017, Plaintiff filed a request that the Court amend its dismissal order to deny leave to amend, "in order to facilitate the finality of judgment" and allow Plaintiff "to seek

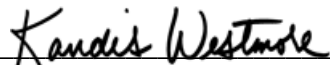
1 appellate review of the Court's determination that Defendants are entitled to dismissal of the
2 claims articulated against them by way of his complaint." (Dkt. No. 45 at 1-2.)

3 The Court DENIES Plaintiff's request because Plaintiff provides no legal basis for
4 amending the dismissal order to deny leave to amend. Instead, the proper procedure is for Plaintiff
5 to "obtain an appealable judgment by 'filing in writing a notice of intent not to file an amended
6 complaint.'" *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1064 (9th Cir. 2004) (quoting *WMX*
7 *Techs., Inc. v. Miller*, 104 F.3d 1133, 1135 (9th Cir. 1997) (internal modification omitted); see
8 also *Lopez v. City of Needles*, 95 F.3d 20, 22 (9th Cir. 1996) ("Unless a plaintiff files in writing a
9 notice of intent not to file an amended complaint, such dismissal order is not an appealable final
10 decision"). Once Plaintiff has filed his notice of intent, the Court may enter a final judgment
11 dismissing all claims with prejudice under Federal Rule of Civil Procedure 12(b)(6), which allows
12 the case to be appealed. *Edwards*, 356 F.3d at 1064.

13 Thus, pursuant to *Edwards*, Plaintiff may file a notice of intent not to file an amended
14 complaint, at which point the Court will dismiss all claims with prejudice and enter a final
15 judgment.

16 IT IS SO ORDERED.

17 Dated: July 14, 2017

18 
KANDIS A. WESTMORE
19 United States Magistrate Judge
20
21
22
23
24
25
26
27
28