

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

FEB 09 2016

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

FLOYD L. MORROW and MARLENE  
MORROW, individually and on behalf of  
those similarly situated,

Plaintiffs - Appellants,

v.

CITY OF SAN DIEGO, a charter city; et  
al.,

Defendants - Appellees.

No. 14-55001

D.C. No. 3:11-cv-01497-GPC-  
KSC

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
Gonzalo P. Curiel, District Judge, Presiding

Submitted February 5, 2016\*\*  
Pasadena, California

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

Before: CALLAHAN and N.R. SMITH, Circuit Judges and RAKOFF,<sup>\*\*\*</sup> Senior District Judge.

Floyd L. and Marlene Morrow appeal from the district court's December 4, 2013 order denying their motions to file an amended complaint and substitute Doe defendants in their 42 U.S.C. § 1983 action alleging that defendants violated the Morrows' equal protection rights by citing them for land use violations on their property. We grant the City of San Diego's motion to dismiss the appeal for lack of appellate jurisdiction.

The December 4, 2013 order is not an appealable final decision because it did not end the litigation on the merits or "clearly evidence[] the judge's intention that it be the court's final act in the matter." *Nat'l Distribution Agency v. Nationwide Mut. Ins. Co.*, 117 F.3d 432, 433 (9th Cir. 1997) (quoting *Slimick v. Silva (In re Slimick)*, 928 F.2d 304, 307 (9th Cir. 1990)); *see also* 28 U.S.C. § 1291 ("The courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . ."). The Morrows contend that the order nonetheless is appealable because it was based on *Pullman* abstention. *See R.R. Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496 (1941); *Confederated Salish v. Simonich*, 29 F.3d 1398, 1407 (9th Cir. 1994)

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<sup>\*\*\*</sup> The Honorable Jed S. Rakoff, Senior District Judge for the U.S. District Court for the Southern District of New York, sitting by designation.

(holding that a decision granting *Pullman* abstention is an appealable order). The December 4, 2013 order, however, did not grant *Pullman* abstention; rather, the district court granted abstention in an earlier order, from which the Morrows did not timely appeal. We therefore lack jurisdiction to hear this appeal.

**DISMISSED.**