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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

JESSIE D. PRITCHETT,

Plaintiff and Appellant,

v.

PHILLIP CLINE,

Defendant and Respondent.

F066534

(Super. Ct. No. VCU248303)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Tulare County. Melinda M. Reed, Judge.

Jessie D. Pritchett, in pro. per., for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

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* Before Wiseman, Acting P.J., Levy, J. and Poochigian, J.

STATEMENT OF THE CASE AND FACTS

Appellant, Jessie D. Pritchett, in pro. per., filed two complaints in the Tulare County Superior Court naming as defendant Tulare County District Attorney Phillip Cline, claiming defendant Cline breached a plea agreement entered into by appellant in a criminal case. (It appears the complaints were filed under the same superior court number.) Defendant Cline filed a demurrer. On December 10, 2012, the superior court sustained the demurrer without leave to amend. Appellant filed a notice of appeal from the orders sustaining the demurrer without leave to amend on December 26, 2012. According to the Tulare County Superior Court docket, no final judgment has been entered.

This court issued a briefing order granting appellant time to explain why this court should not dismiss his appeal for lack of a judgment or appealable order. Appellant submitted a letter brief stating that he “is unlikely to be provided with a judgment of dismissal from the Honorable Judge Reed based on prejudice and as such will proceed on letter brief.” The letter thereafter addresses the merits of the appeal. The letter brief failed to address the issue of appealability.

DISCUSSION

An order sustaining a demurrer, whether with or without leave to amend, is not appealable; appeal is proper only after entry of a dismissal on such an order. (*Sisemore v. Master Financial, Inc.* (2007) 151 Cal.App.4th 1386, 1396.)

The appeal in the above entitled action is dismissed on the ground appellant attempts to appeal from an order sustaining a demurrer without leave to amend. Such an order is not appealable and this court declines to deem the order to incorporate a judgment of dismissal. Appeal is proper only after entry of a judgment of dismissal. (*Sisemore v. Master Financial, Inc, supra*, 151 Cal.App.4th at p. 1396.)

DISPOSITION

The appeal from the order sustaining the demurrer is dismissed. Appellant's remedy is to secure a final judgment and to file a timely notice of appeal from the judgment.