

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 20th day of July, two thousand twenty-two.

Present:

William J. Nardini,
Eunice C. Lee,
Myrna Pérez,
Circuit Judges.

Collin Kaiser,

Plaintiff-Appellant,

v.

22-665

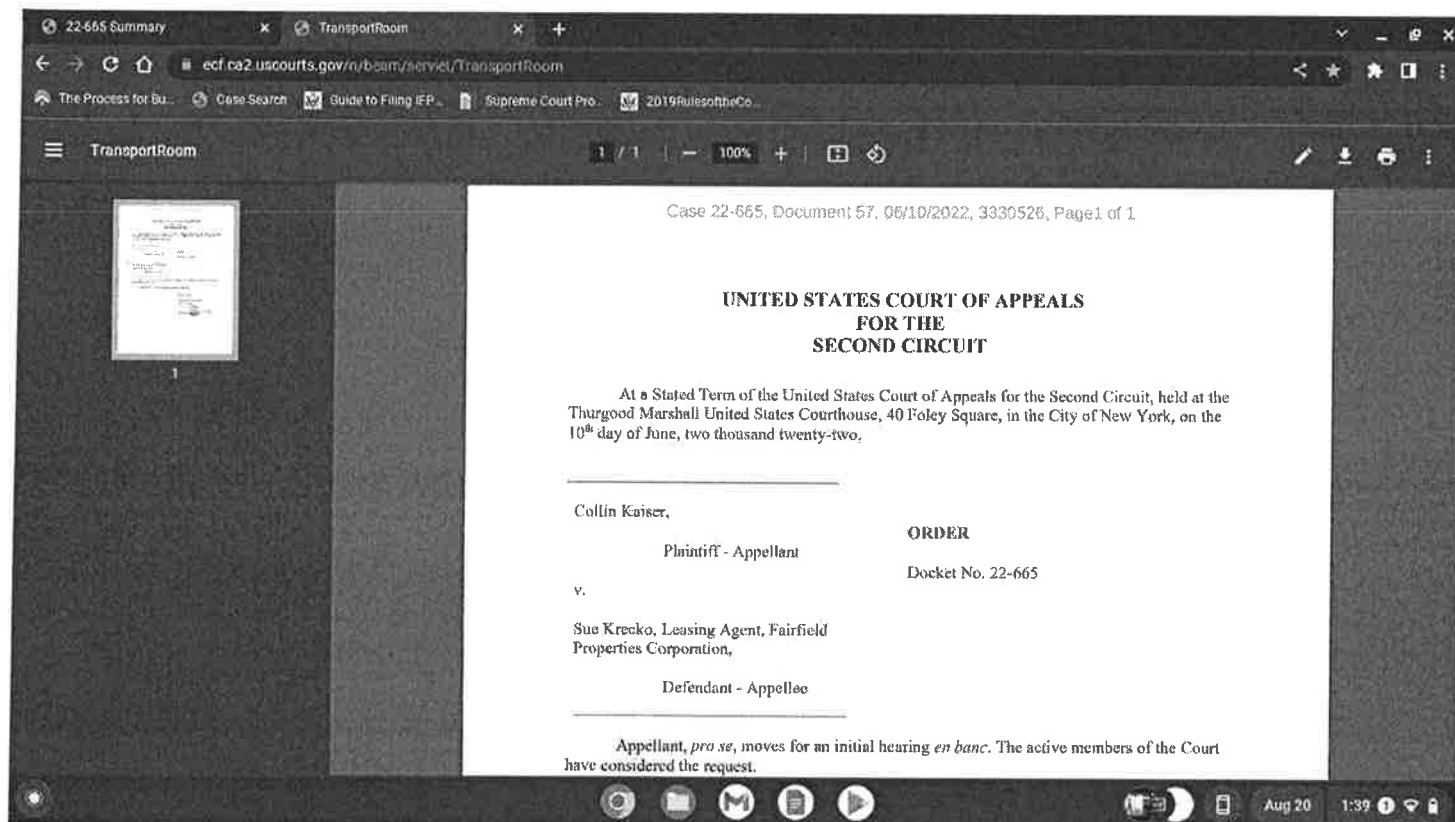
Sue Krecko, Leasing Agent, Fairfield Properties Corporation,

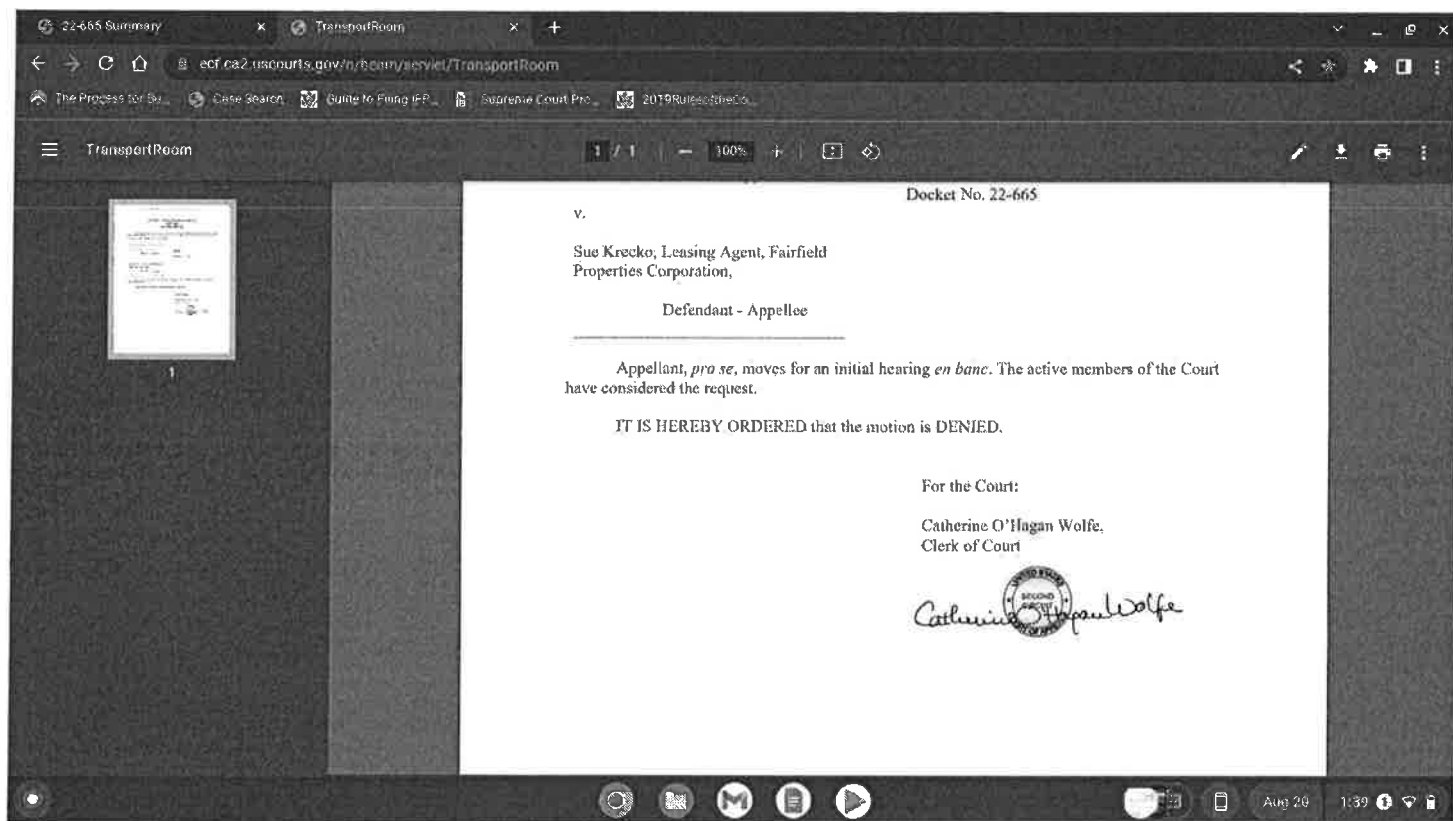
Defendant-Appellee.

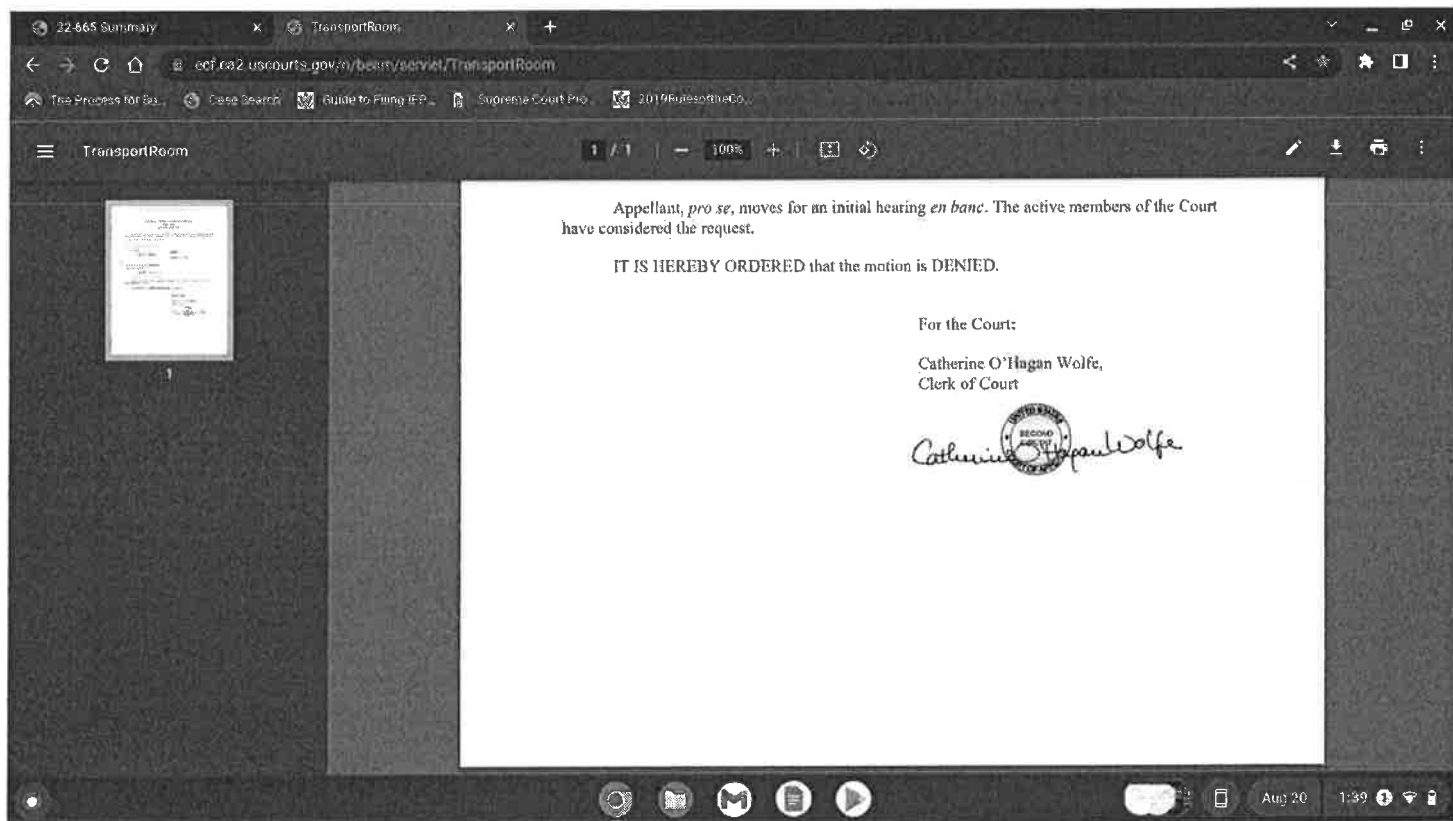
Appellant, pro se, moves for leave to proceed in forma pauperis ("IFP"). Appellee moves to dismiss the appeal. Upon due consideration, it is hereby ORDERED that the IFP motion is DENIED and the appeal is DISMISSED because it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also* 28 U.S.C. § 1915(e). More specifically, Appellant's Section 1983 claim fails because Appellant has not alleged that he has been deprived of a constitutional right by a state actor or otherwise because of state action. *See Flagg v. Yonkers Sav. & Loan Ass'n*, 396 F.3d 178, 186 (2d Cir. 2005) ("Because the United States Constitution regulates only the Government, not private parties, a litigant claiming that his constitutional rights have been violated must first establish that the challenged conduct constitutes state action.") (internal quotation marks omitted). It is further ORDERED that the motion to dismiss is DENIED as moot.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court


Catherine O'Hagan Wolfe







**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X
COLLIN KAISER,

Plaintiff,

- against -

FAIRFIELD PROPERTIES and SUE KRECKO,

Defendants.
-----X

JUDGMENT

CV 20-5399 (GRB) (JMW)

An Order Adopting Report and Recommendations of Honorable Gary R. Brown, United States District Judge, having been filed on March 11, 2022; adopting the findings and recommendations contained in the February 11, 2022 Report and Recommendation of United States Magistrate Judge James M. Wicks; granting Defendants' motion to dismiss; denying Plaintiff's motion for summary as moot; denying *in forma pauperis* status for the purpose of any appeal; and respectfully directing the Clerk of the Court to close the case, it is

ORDERED AND ADJUDGED that Plaintiff Collin Kaiser take nothing of Defendants Fairfield Properties and Sue Krecko; that the findings and recommendations contained in the February 11, 2022 Report and Recommendation of United States Magistrate Judge James M. Wicks are adopted; that Defendants' motion to dismiss is granted; that Plaintiff's motion for summary judgment is denied as moot; that *in forma pauperis* status for the purpose of any appeal is denied; and that this case is closed.

Dated: March 14, 2022
Central Islip, New York

BRENN A. MAHONEY
CLERK OF COURT

BY: /s/ JAMES J. TORITTO
DEPUTY CLERK

Appendix C

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Appeal Brief - Google Docs x Appeal Appendix - Google Docs x LJI Rule 28, Briefs | Federal Rules x Saved Cases | PACER PACER x Eastern District of New York x

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03/09/2022	38	Letter in Response to Plaintiff's Objection to Magistrate Wicks' Report and Recommendation by Fairfield Properties Corporation, Sue Krecko (Sherven, Jennifer) (Entered: 03/09/2022)
03/11/2022		<p>ORDER ADOPTING REPORT AND RECOMMENDATIONS for 38 Motion to Dismiss for Failure to State a Claim, filed by Fairfield Properties Corporation, Sue Krecko, 33 Motion for Summary Judgment filed by Collin Kaiser, 35 Report and Recommendations, granting 30 Motion to Dismiss for Failure to State a Claim, finding as moot 33 Motion for Summary Judgment.</p> <p>Presently before the Court is the Report and Recommendation dated February 11, 2022, DE 35, of United States Magistrate Judge James M. Wicks recommending that Defendants' motion to dismiss, DE 30, be granted and Plaintiff's summary judgment motion, DE 33, be denied as moot.</p> <p>In reviewing a Report and Recommendation, the district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party makes specific and timely objections to a Magistrate Judge's findings or recommendations as to dispositive motions, the district court must apply a de novo standard of review to the portions of the Report and Recommendation to which the objection is made. Fed. R. Civ. P. 72(b); see <i>LLC v. Doe</i>, 604 F.3d 110, 116 (2d Cir. 2010); see also 28 U.S.C. § 636(b)(1). However, "general or conclusory objections, or objections which merely recite the same arguments presented to the magistrate judge, are reviewed for clear error." <i>Caldarola v. Town of Smithtown</i>, No. 09-cv-272, 2011 U.S. Dist. LEXIS 37280, at *1 (E.D.N.Y. Apr. 4, 2011). The Court has carefully reviewed and considered Plaintiff's objections and finds that they fail to raise any colorable objection to the Report and Recommendation and principally restate the conclusory allegations set forth in Plaintiff's motion papers. Because Plaintiff's objections largely consist of general conclusory arguments as well as facts and issues that were presented to Judge Wicks, the undersigned may review the Report and Recommendation for clear error.</p> <p>Nevertheless, although de novo review is not required, the Court has conducted a de novo review of the Report and Recommendation in an abundance of caution. Having carefully reviewed Plaintiff's objections, the motion papers, the applicable law, and having conducted a careful review of the Report and Recommendation de novo, the Court adopts the findings and recommendations contained in the well-reasoned and exceedingly thorough Report and Recommendation dated February 11, 2022, DE 35, of Magistrate Judge Wicks in their entirety. 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b); see <i>Caldarola</i>, 2011 U.S. Dist. LEXIS 37280, at *1, see also <i>Thomas v. Arn</i>, 474 U.S. 140, 150 (1985); <i>Mario v. P & C Food Mkts., Inc.</i>, 313 F.3d 758, 766 (2d Cir. 2002); <i>Pirolean v. Caserta</i>, No. 10-CV-5670 (SJF), 2012 WL 5389931, at *1 (E.D.N.Y. Oct. 29, 2012).</p> <p>Accordingly, IT IS HEREBY ORDERED that Defendants' motion to dismiss, DE 30, be granted and Plaintiff's summary judgment motion, DE 33, be denied as moot.</p> <p>The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore in forma pauperis status is denied for the purpose of any appeal.</p> <p>The Clerk of the Court is respectfully directed to serve a copy of this Order on the pro se plaintiff and close the case.</p> <p>Ordered by Judge Gary R. Brown on 3/11/2022. c/ecf (Tabbaz, Joseph) (Entered: 03/11/2022)</p>
03/14/2022	39	CLERK'S JUDGMENT: ORDERED AND ADJUDGED that Plaintiff Collin Kaiser take nothing of Defendants Fairfield Properties and Sue Krecko; that the findings and recommendations contained in the February 11, 2022 Report and Recommendation of United States Magistrate Judge James M. Wicks are adopted; that Defendants' motion to dismiss is granted; that Plaintiff's motion for summary judgment is denied as moot; that in forma pauperis status for the purpose of any appeal is denied; and that this case is closed. Ordered by Clerk of Court on 3/14/2022 (CM to pro se plaintiff with an appeal packet). (Toritto, Jim) (Entered: 03/14/2022)

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The Process for... PACER Second Cir... Case Search... LIT Rule 28	
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06/22/2021	22 Letter objecting to the continuance of the briefing schedule for the defendant's motion to dismiss which was denied without prejudice by Judge Gary Brown filed by Collin Kaiser (Porne, Lisa) (Entered: 06/22/2021)
06/23/2021	ORDER re 22 Letter. To the extent that pro se plaintiff's letter is intended to be construed as an objection to the Motion Order of June 11, 2021 issued by Judge Wick, DE 27, the objection is so noted and plaintiff's request is DENIED. The briefing schedule for defendant's motion to dismiss as set forth in the aforementioned Order remains in place. The Clerk of the Court is respectfully directed to mail a copy of this Order to the pro se plaintiff. Ordered by Judge Gary R. Brown on 6/23/2021. (Mell, Stephen) (Entered: 06/23/2021)
06/24/2021	30 Fully Briefed MOTION to Dismiss for Failure to State a Claim by Fairfield Properties Corporation, Sue Krecho. (Attachments: # 1 Declaration Defendant's Declaration of Jennifer E. Sherven, Esq. in Support of Defendants' Motion to Dismiss, # 2 Exhibit Defendants' Exhibit A - Amended Complaint, # 3 Memorandum in Support Defendants' Memorandum of Law in Support, # 4 Memorandum in Opposition Plaintiff's Memorandum in Opposition, # 5 Memorandum in Support Defendants' Reply Memorandum of Law in Further Support, # 6 Affidavit of Service) (Sherven, Jennifer) (Entered: 06/24/2021)
06/24/2021	31 AFFIDAVIT of Service for Reply Memorandum of Law served on Collin Kaiser on June 24, 2021, filed by Fairfield Properties Corporation, Sue Krecho. (Sherven, Jennifer) (Entered: 06/24/2021)
06/28/2021	ORDER REFERRING MOTION: 20 Fully Briefed MOTION to Dismiss for Failure to State a Claim. Defendant's motion, DE 30, is respectfully referred to the assigned Magistrate Judge in accordance with this Court's Order of May 17, 2021. The Clerk of the Court is respectfully directed to mail a copy of this Order to the pro se plaintiff. Ordered by Judge Gary R. Brown on 6/28/2021. (Mell, Stephen) (Entered: 06/28/2021)
07/16/2021	32 MOTION for Extension of Time to File the briefing of Plaintiff's Motion for Summary Judgment by Fairfield Properties Corporation, Sue Krecho. (Sherven, Jennifer) (Entered: 07/16/2021)
07/16/2021	ORDER granting 32 Motion for Extension of Time to File opposition and reply on Plaintiff's motion for summary judgment. Defendants' time to serve opposition is extended to an including July 26, 2021 and Plaintiff's reply shall be serve on or before August 9, 2021. So Ordered by Magistrate Judge James M. Wick on 7/16/2021. (Wicks, James) (Entered: 07/16/2021)
07/20/2021	33 MOTION for Summary Judgment by Collin Kaiser. (Tinsley, Chelsea) (Entered: 07/20/2021)
08/02/2021	34 MEMORANDUM in Opposition to 33 MOTION for Summary Judgment filed by Fairfield Properties Corporation, Sue Krecho. (Attachments: # 1 Declaration Declaration of Jennifer E. Sherven, Esq. in Support of Defendants' Opposition to Plaintiff's Motion for Summary Judgment, # 2 Exhibit A - Affidavit of Susan Krecho, # 3 Exhibit B - Affidavit of David Berger, # 4 Rule 56 - Statement Defendants' Response to Plaintiff's Local Rule 56.1 Statement, # 5 Affidavit of Service) (Sherven, Jennifer) (Entered: 08/02/2021)
11/22/2021	ORDER REFERRING MOTION 33 Plaintiff's motion for summary judgment is respectfully referred to the assigned Magistrate Judge for a Report & Recommendation. The Clerk of the Court is respectfully directed to mail a copy of this Order to the pro se plaintiff. Ordered by Judge Gary R. Brown on 11/22/2021. clx1 (Talbott, Joseph) (NEF regenerated for statistical purposes) (Porne, Lisa) (Entered: 12/07/2021)
02/11/2022	35 REPORT AND RECOMMENDATIONS: For the foregoing reasons (Please See Order for Further Details), the undersigned respectfully recommends that Defendant's motion to dismiss be granted as to Plaintiff's FHA claims under 41, 3024 and 3617, and 1 1903 claims, and that Plaintiff's claim pursuant to NYHRL be dismissed without prejudice. The undersigned additionally recommends that this dismissal not be accompanied with leave to amend. Alternatively, if the undersigned's recommendation as to Defendant's motion to dismiss is not adopted, then the undersigned further recommends that Plaintiff's motion for summary judgment be denied in its entirety. So Ordered by Magistrate Judge James M. Wick on 2/11/2022. (Ortiz, Grace) (Entered: 02/11/2022)
02/24/2022	36 OBJECTION to 35 Report and Recommendations filed by Collin Kaiser. (Tinsley, Chelsea) (Entered: 02/24/2022)

General Docket
Court of Appeals, 2nd Circuit

Court of Appeals Docket #: 22-665

Nature of Suit: 3443 CIVIL RIGHTS-Accommodations

Kaiser v. Krecko

Appeal From: EDNY (CENTRAL ISLIP)

Fee Status: IFP Pending in USCA

Docketed: 03/29/2022

Termed: 07/20/2022

Case Type Information:

- 1) Civil
- 2) Private
- 3) -

Originating Court Information:

District: 0207-2 : 20-cv-5399

Trial Judge: Gary R. Brown, U.S. District Judge

Trial Judge: James M. Wicks, U.S. Magistrate Judge

Date Filed: 11/06/2020

Date Order/Judgment:

03/14/2022

Date NOA Filed:

03/24/2022

Date Rec'd COA:

03/29/2022

Prior Cases:

None

Current Cases:

None

Panel Assignment: Not available

Collin Kaiser

Plaintiff - Appellant

Collin Kaiser, -

[NTC Pro Se]

Firm: 631-235-7280

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Sue Krecko, Leasing Agent

Defendant - Appellee

Jennifer E. Sherven, Esq., -

Direct: 516-681-1100

[COR NTC Retained]

Kaufman, Dolowich & Voluck, LLP

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Woodbury, NY 11797

Fairfield Properties Corporation

Defendant - Appellee

Jennifer E. Sherven, Esq., -

Direct: 516-681-1100

[COR NTC Retained]

(see above)

Collin Kaiser,

Plaintiff - Appellant

v.

Sue Krecko, Leasing Agent, Fairfield Properties Corporation,

Defendant - Appellee

03/29/2022



1

45 pg, 1.82 MB

NOTICE OF CIVIL APPEAL, with district court docket, on behalf of Appellant Collin Kaiser, FILED. [3287693] [22-665] [Entered: 03/30/2022 09:36 AM]

03/29/2022



2

1 pg, 79.34 KB

DISTRICT COURT JUDGMENT, dated 03/14/2022, RECEIVED. [3287698] [22-665] [Entered: 03/30/2022 09:40 AM]

03/29/2022



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8 pg, 298.07 KB

ELECTRONIC INDEX, in lieu of record, FILED. [3287700] [22-665] [Entered: 03/30/2022 09:40 AM]

03/29/2022



4

2 pg, 107.84 KB

FORM D-P, on behalf of Appellant Collin Kaiser, FILED. Service date 03/23/2022 by US mail. [3287702] [22-665] [Entered: 03/30/2022 09:42 AM]

03/29/2022



5

8 pg, 312.3 KB

MOTION, to proceed in forma pauperis, on behalf of Appellant Collin Kaiser, FILED. Service date 03/23/2022 by US mail. [3287704] [22-665] [Entered: 03/30/2022 09:43 AM]

03/29/2022 ☐ 4 FORM D-P, on behalf of Appellant Collin Kaiser, FILED. Service date 03/23/2022 by US mail.[3287702] [22-665] [Entered: 03/30/2022 09:42 AM]
2 pg, 107.84 KB

03/29/2022 ☐ 5 MOTION, to proceed in forma pauperis, on behalf of Appellant Collin Kaiser, FILED. Service date 03/23/2022 by US mail.[3287704] [22-665] [Entered: 03/30/2022 09:43 AM]
8 pg, 312.3 KB

03/30/2022 ☐ 6 INSTRUCTIONAL FORMS, to Pro Se litigant, SENT.[3287706] [22-665] [Entered: 03/30/2022 09:44 AM]
1 pg, 91.62 KB

03/30/2022 ☐ 9 ACKNOWLEDGMENT AND NOTICE OF APPEARANCE, on behalf of Appellee Fairfield Properties Corporation and Sue Krecko, FILED. Service date 03/30/2022 by email, US mail.[3288024] [22-665] [Entered: 03/30/2022 12:26 PM]
1 pg, 90.9 KB

04/08/2022 ☐ 17 ACKNOWLEDGMENT AND NOTICE OF APPEARANCE FORM, on behalf of Party Collin Kaiser, FILED. Service date 04/08/2022 by email.[3294268] [22-665] [Entered: 04/11/2022 08:51 AM]
3 pg, 648.61 KB

04/08/2022 ☐ 18 SUPPLEMENTARY PAPERS TO MOTION [5], on behalf of Appellant Collin Kaiser, FILED. Service date 04/08/2022 by US mail.[3294273] [18] [22-665] [Entered: 04/11/2022 08:55 AM]
102 pg, 25.89 MB

04/11/2022 ☐ 20 SUPPLEMENTARY PAPERS TO MOTION [5], on behalf of Appellant Collin Kaiser, FILED. Service date 04/11/2022 by US mail.[3294968] [20] [22-665] [Entered: 04/12/2022 08:38 AM]
72 pg, 29.33 MB

04/12/2022 ☐ 23 SUPPLEMENTARY PAPERS TO MOTION [5], on behalf of Appellant Collin Kaiser, FILED. Service date 07/21/2021 by US mail.[3295757] [23] [22-665] [Entered: 04/13/2022 08:38 AM]
102 pg, 25.88 MB

04/15/2022 ☐ 26 LR 31.2 SCHEDULING NOTIFICATION, on behalf of Appellant Collin Kaiser, informing Court of proposed due date 06/15/2022, RECEIVED. Service date 04/15/2022 by US mail.[3298469] [22-665] [Entered: 04/18/2022 10:13 AM]
2 pg, 483.29 KB

04/20/2022 ☐ 27 SUPPLEMENTARY PAPERS TO MOTION [5], on behalf of Appellant Collin Kaiser, FILED. Service date 04/20/2022 by US mail.[3300887] [27] [22-665] [Entered: 04/21/2022 08:25 AM]
130 pg, 65.99 MB

04/22/2022 ☐ 30 SUPPLEMENTARY PAPERS TO MOTION [5], on behalf of Appellant Collin Kaiser, FILED. Service date 03/23/2022 by email.[3301692] [30] [22-665] [Entered: 04/22/2022 09:41 AM]
34 pg, 8.52 MB

04/29/2022 ☐ 33 MOTION, to dismiss, on behalf of Appellee Fairfield Properties Corporation and Sue Krecko, FILED. Service date 04/29/2022 by email. [3306655] [22-665] [Entered: 04/29/2022 04:56 PM]
150 pg, 36.48 MB

05/03/2022 ☐ 37 APPENDIX, volume 1 of 1, (pp. 1-170), on behalf of Appellant Collin Kaiser, FILED. Service date 05/03/2022 by US mail.[3309344] [22-665] [Entered: 05/04/2022 05:00 PM]

05/05/2022 ☐ 38 OPPOSITION TO MOTION to dismiss, [33], on behalf of Appellant Collin Kaiser, FILED. Service date 05/05/2022 by US mail. [3310378] [38] [22-665] [Entered: 05/06/2022 09:21 AM]
21 pg, 21.11 MB

05/11/2022 ☐ 44 BRIEF, on behalf of Appellant Collin Kaiser, FILED. Service date 05/11/2022 by US mail. [3314472] [22-665] [Entered: 05/13/2022 09:43 AM]
60 pg, 16.15 MB

05/12/2022 ☐ 46 SUPPLEMENTARY PAPERS TO MOTION [5], on behalf of Appellant Collin Kaiser, FILED. Service date 05/12/2022 by US mail.[3314477] [46] [22-665] [Entered: 05/13/2022 09:46 AM]
11 pg, 3.14 MB

05/13/2022 ☐ 42 DEFECTIVE DOCUMENT, Appendix, [37], on behalf of Appellant Collin Kaiser, copy sent to pro se appellant, FILED.[3314460] [22-665] [Entered: 05/13/2022 09:34 AM]
2 pg, 147.78 KB

05/13/2022 ☐ 43 APPENDIX, volume 1 of 1, (pp. 1-171), on behalf of Appellant Collin Kaiser, FILED. Service date 05/03/2022 by US mail.[3314467] [22-665] [Entered: 05/13/2022 09:39 AM]
172 pg, 79.19 MB

05/13/2022 ☐ 42 CURED DEFECTIVE APPENDIX [42] [43] on behalf of Appellant

- 05/13/2022 ☐ 42 DEFECTIVE DOCUMENT, Appendix, [37], on behalf of Appellant Collin Kaiser, copy sent to pro se appellant, FILED.[3314460] [22-665] [Entered: 05/13/2022 09:34 AM]
2 pg, 147.73 KB
- 05/13/2022 ☐ 43 APPENDIX, volume 1 of 1, (pp. 1-171), on behalf of Appellant Collin Kaiser, FILED. Service date 05/03/2022 by US mail.[3314467] [22-665] [Entered: 05/13/2022 09:39 AM]
172 pg, 79.19 MB
- 05/13/2022 ☐ 45 CURED DEFECTIVE APPENDIX, [42], [43], on behalf of Appellant Collin Kaiser, FILED.[3314473] [22-665] [Entered: 05/13/2022 09:45 AM]
- 05/20/2022 ☐ 49 LR 31.2 SCHEDULING NOTIFICATION, on behalf of Appellee Fairfield Properties Corporation and Sue Krecko, informing Court of proposed due date 08/10/2022, RECEIVED. Service date 05/20/2022 by email, US mail.[3318915] [22-665] [Entered: 05/20/2022 12:26 PM]
2 pg, 84.98 KB
- 05/23/2022 ☐ 50 MOTION, for hearing en banc, on behalf of Appellant Collin Kaiser, FILED. Service date 05/22/2022 by US mail.[3319422] [22-665] [Entered: 05/23/2022 09:45 AM]
- 05/23/2022 ☐ 51 DEFECTIVE DOCUMENT, Motion for hearing en banc, [50], on behalf of Appellant Collin Kaiser, copy sent to pro se appellant, FILED. [3319426] [22-665] [Entered: 05/23/2022 09:46 AM]
2 pg, 150.47 KB
- 05/24/2022 ☐ 52 MOTION, for hearing en banc, on behalf of Appellant Collin Kaiser, FILED. Service date 05/22/2022 by US mail.[3320111] [22-665] [Entered: 05/24/2022 09:22 AM]
13 pg, 3.7 MB
- 05/24/2022 ☐ 53 CURED DEFECTIVE MOTION FOR HEARING EN BANC, [51], [52], on behalf of Appellant Collin Kaiser, FILED.[3320115] [22-665] [Entered: 05/24/2022 09:23 AM]
- 06/10/2022 ☐ 57 MOTION ORDER, denying motion for an initial hearing en banc, [52] filed by Appellant Collin Kaiser, FILED. [3330526][57] [22-665] [Entered: 06/10/2022 12:06 PM]
1 pg, 146.98 KB
- 06/27/2022 ☐ 60 ORAL ARGUMENT STATEMENT LR 34.1 (a), on behalf of filer Appellant Collin Kaiser, FILED. Service date 06/25/2022 by email. [3338197] [22-665] [Entered: 06/27/2022 09:04 AM]
2 pg, 685.92 KB
- 07/05/2022 ☐ 61 SUPPLEMENTARY PAPERS TO MOTION [5], on behalf of Appellant Collin Kaiser, FILED. Service date 06/01/2022 by US mail.[3342370] [61] [22-665] [Entered: 07/06/2022 09:20 AM]
11 pg, 2.39 MB
- 07/20/2022 ☐ 67 NEW CASE MANAGER, Khadijah Young, ASSIGNED.[3351278] [22-665] [Entered: 07/20/2022 04:12 PM]
1 pg, 69.42 KB
- 07/20/2022 ☐ 68 MOTION ORDER, denying motion to proceed in forma pauperis [5] filed by Appellant Collin Kaiser; denying as moot motion to dismiss [33] filed by Appellee Sue Krecko and Fairfield Properties Corporation, by WJN ECL, MP, copy to pro se, FILED. [3351293][68] [22-665] [Entered: 07/20/2022 04:21 PM]
1 pg, 137.94 KB
- 07/20/2022 ☐ 69 APPEAL, pursuant to court order, dated 07/20/2022, DISMISSED. [3351305] [22-665] [Entered: 07/20/2022 04:23 PM]
1 pg, 137.94 KB
- 08/04/2022 ☐ 71 PAPERS, brief, appendix, memo, and letters on behalf of Appellant Collin Kaiser, RECEIVED.[3361172] [22-665] [Entered: 08/05/2022 05:19 PM]
336 pg, 16.68 MB
- 08/04/2022 ☐ 72 MOTION, for reconsideration en banc, on behalf of Appellant Collin Kaiser, FILED. Service date 05/22/2022 by US mail.[3361176] [22-665] [Entered: 08/05/2022 05:23 PM]
- 08/08/2022 ☐ 73 DEFECTIVE DOCUMENT, motion for reconsideration en banc, [72], on behalf of Appellant Collin Kaiser, FILED.[3361316] [22-665] [Entered: 08/08/2022 09:31 AM]
2 pg, 129.06 KB

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MOTION, for hearing en banc, on behalf of Appellant Collin Kaiser, FILED. Service date 05/22/2022 by US mail.[3319422] [22-665] [Entered: 05/23/2022 09:45 AM]

05/23/2022 51

2 pg, 150.47 KB

DEFECTIVE DOCUMENT, Motion for hearing en banc, [50], on behalf of Appellant Collin Kaiser, copy sent to pro se appellant, FILED. [3319426] [22-665] [Entered: 05/23/2022 09:46 AM]

05/24/2022 52

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MOTION, for hearing en banc, on behalf of Appellant Collin Kaiser, FILED. Service date 05/22/2022 by US mail.[3320111] [22-665] [Entered: 05/24/2022 09:22 AM]

05/24/2022 53

CURED DEFECTIVE MOTION FOR HEARING EN BANC, [51], [52], on behalf of Appellant Collin Kaiser, FILED.[3320115] [22-665] [Entered: 05/24/2022 09:23 AM]

06/10/2022 57

1 pg, 140.98 KB

MOTION ORDER, denying motion for an initial hearing en banc, [52] filed by Appellant Collin Kaiser, FILED. [3330526][57] [22-665] [Entered: 06/10/2022 12:06 PM]

06/27/2022 60

2 pg, 685.92 KB

ORAL ARGUMENT STATEMENT LR 34.1 (a), on behalf of filer Appellant Collin Kaiser, FILED. Service date 06/25/2022 by email. [3338197] [22-665] [Entered: 06/27/2022 09:04 AM]

07/05/2022 61

11 pg, 2.59 MB

SUPPLEMENTARY PAPERS TO MOTION [5], on behalf of Appellant Collin Kaiser, FILED. Service date 06/01/2022 by US mail.[3342370] [61] [22-665] [Entered: 07/06/2022 09:20 AM]

07/20/2022 67

1 pg, 89.42 KB

NEW CASE MANAGER, Khadijah Young, ASSIGNED.[3351278] [22-665] [Entered: 07/20/2022 04:12 PM]

07/20/2022 68

1 pg, 137.94 KB

MOTION ORDER, denying motion to proceed in forma pauperis [5] filed by Appellant Collin Kaiser; denying as moot motion to dismiss [33] filed by Appellee Sue Krecko and Fairfield Properties Corporation, by WJN ECL, MP, copy to pro se, FILED. [3351293][68] [22-665] [Entered: 07/20/2022 04:21 PM]

07/20/2022 69

1 pg, 137.94 KB

APPEAL, pursuant to court order, dated 07/20/2022, DISMISSED. [3351305] [22-665] [Entered: 07/20/2022 04:23 PM]

08/04/2022 71

336 pg, 16.68 MB

PAPERS, brief, appendix, memo, and letters on behalf of Appellant Collin Kaiser, RECEIVED.[3361172] [22-665] [Entered: 08/05/2022 05:19 PM]

08/04/2022 72

MOTION, for reconsideration en banc, on behalf of Appellant Collin Kaiser, FILED. Service date 05/22/2022 by US mail.[3361176] [22-665] [Entered: 08/05/2022 05:23 PM]

08/08/2022 73

2 pg, 129.06 KB

DEFECTIVE DOCUMENT, motion for reconsideration en banc, [72], on behalf of Appellant Collin Kaiser, FILED.[3361316] [22-665] [Entered: 08/08/2022 09:31 AM]

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U.S. District Court
Eastern District of New York (Central Islip)
CIVIL DOCKET FOR CASE #: 2:20-cv-05399-GRB-JMW

Kaiser v. Krecko et al
Assigned to: Judge Gary R. Brown
Referred to: Magistrate Judge James M. Wicks
Cause: 28:1983 Civil Rights

Date Filed: 11/06/2020
Date Terminated: 03/14/2022
Jury Demand: Plaintiff
Nature of Suit: 443 Civil Rights: Accommodations
Jurisdiction: Federal Question

Plaintiff

Collin Kaiser

represented by Collin Kaiser
799 Canal Rd.
Mt. Sinai, NY 11766
631-235-7280
Email: collinkaiser40@protonmail.com
PRO SE

V.

Defendant

Sue Krecko
Leasing Agent

represented by Jennifer E. Sherven
Kaufman Dolowich & Voluck, LLP
135 Crossways Park Drive
Ste 201
Woodbury, NY 11797
516-681-1100
Fax: 516-681-1101
Email: jsherven@kdvglaw.com

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Saranicole Alfeche Duaban
Kaufman, Dolowich & Voluck LLP
135 Crossways Park Drive
Ste 201
Woodbury, NY 11797
516-681-1100
Email: sduaban@kdvglaw.com
ATTORNEY TO BE NOTICED

Defendant:

Fairfield Properties Corporation

represented by Jennifer E. Sherven
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Saranicole Alfeche Duaban
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
11/06/2020	1	COMPLAINT against All Defendants Was the Disclosure Statement on Civil Cover Sheet completed -No., filed by Collin Kaiser. (Attachments: # 1 Civil Cover Sheet) (Cox, Dwayne) (Entered: 11/06/2020)
11/06/2020	2	MOTION for Leave to Proceed in forma pauperis by Collin Kaiser. (Cox, Dwayne) (Entered: 11/06/2020)
11/06/2020	3	In accordance with Rule 73 of the Federal Rules of Civil Procedure and Local Rule 73.1, the parties are notified that if all parties consent a United States magistrate judge of this court is available to conduct all proceedings in this civil action including a (jury or nonjury) trial and to order the entry of a final judgment. Attached to the Notice is a blank copy of the consent form that should be filled out, signed and filed electronically only if all parties wish to consent. The form may also be accessed at the following link: http://www.uscourts.gov/uscourts/FormsAndFees/Forms/A0085.pdf . You may withhold your consent



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11/06/2020	2	MOTION for Leave to Proceed in forma pauperis by Collin Kaiser. (Cox, Dwayne) (Entered: 11/06/2020)
11/06/2020	3	In accordance with Rule 73 of the Federal Rules of Civil Procedure and Local Rule 73.1, the parties are notified that if all parties consent a United States magistrate judge of this court is available to conduct all proceedings in this civil action including a (jury or nonjury) trial and to order the entry of a final judgment. Attached to the Notice is a blank copy of the consent form that should be filled out, signed and filed electronically only if all parties wish to consent. The form may also be accessed at the following link: http://www.uscourts.gov/uscourts/FormsAndFees/Forms/AO085.pdf . You may withhold your consent without adverse substantive consequences. Do NOT return or file the consent unless all parties have signed the consent. (Cox, Dwayne) (Entered: 11/06/2020)
11/12/2020	4	NOTICE of Change of Address by Collin Kaiser - Docket Updated. (Tirado, Chelsea) (Entered: 11/13/2020)
11/13/2020	5	Letter to pro se litigant Collin Kaiser from the Pro Se Office returning USB drive without docketing or consideration. (Tirado, Chelsea) (Entered: 11/13/2020)
11/13/2020	6	Letter to pro se litigant Collin Kaiser from the Pro Se Office acknowledging receipt of civil actionh. (Tirado, Chelsea) (Entered: 11/13/2020)
11/18/2020	7	Letter to pro se litigant Collin Kaiser from the Pro Se Office returning documents without docketing or consideration. (Tirado, Chelsea) (Entered: 11/18/2020)
11/19/2020	8	AMENDED COMPLAINT against Fairfield Properties Corporation, Sue Krecko, filed by Collin Kaiser. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C) (Tirado, Chelsea) (Attachment 2 replaced on 11/30/2020) (Tirado, Chelsea). (Entered: 11/20/2020)
01/19/2021	9	ORDER granting 2 Motion for Leave to Proceed in forma pauperis - Accordingly, plaintiff's request to proceed in forma pauperis is GRANTED, IT IS HEREBY ORDERED that plaintiff is granted leave to file the complaint without payment of the filing fee; and IT IS FURTHER ORDERED that the Clerk of Court must forward to the United States Marshal Service for the Eastern District of New York copies of plaintiff's summonses, complaint, and this Order for service upon the defendants; IT IS FURTHER ORDERED that the Clerk of Court must mail a copy of this Order to the plaintiff, SO Ordered by Judge Gary R. Brown on 1/19/2021. (Tirado, Chelsea) (Entered: 01/19/2021)
01/19/2021	10	Summons Issued as to Sue Krecko. (Tirado, Chelsea) (Entered: 01/19/2021)
01/19/2021	11	Summons Issued as to Fairfield Properties Corporation (Tirado, Chelsea) (Entered: 01/19/2021)
01/28/2021	12	NOTICE of Change of Address by Collin Kaiser - Docket updated. (Tirado, Chelsea) (Entered: 01/29/2021)
03/09/2021	13	NOTICE of Change of Address by Collin Kaiser - Docket updated. (Tirado, Chelsea) (Entered: 03/09/2021)
03/29/2021	14	SUMMONS Returned Executed by Collin Kaiser. Fairfield Properties Corporation served on 3/19/2021, answer due 4/9/2021; Sue Krecko served on 3/19/2021, answer due 4/9/2021. (Tirado, Chelsea) (Entered: 03/30/2021)
03/31/2021	15	NOTICE of Change of Address by Collin Kaiser - Docket updated. (Tirado, Chelsea) (Entered: 04/01/2021)
04/09/2021	16	NOTICE of Appearance by Saranicole Alieche Duaban on behalf of Fairfield Properties Corporation, Sue Krecko (aty to be noticed) (Duaban, Saranicole) (Entered: 04/09/2021)
04/09/2021	17	NOTICE of Appearance by Jennifer E. Sherven on behalf of Fairfield Properties Corporation, Sue Krecko (aty to be noticed) (Sherven, Jennifer) (Entered: 04/09/2021)

04/09/2021	16	NOTICE of Appearance by Saranicole Affecio Duaban on behalf of Fairfield Properties Corporation, Sue Krecko (aty to be noticed) (Duaban, Saranicole) (Entered: 04/09/2021)
04/09/2021	17	NOTICE of Appearance by Jennifer E. Sherven on behalf of Fairfield Properties Corporation, Sue Krecko (aty to be noticed) (Sherven, Jennifer) (Entered: 04/09/2021)
04/09/2021	18	MOTION for pre motion conference by Fairfield Properties Corporation, Sue Krecko, (Sherven, Jennifer) (Entered: 04/09/2021)
04/14/2021		<p>ORDER granting in part and denying in part 18 Motion for Pro Motion Conference. The Court waives its pre-motion conference requirement, and establishes the following briefing schedule: defendants are directed to serve (but not file) their motion on or before May 14, 2021; pro se plaintiff is directed to serve defendants with his opposition to defendants' motion on or before June 14, 2021, and defendants are directed to serve plaintiff with any reply memorandum and to file the fully briefed motion on or before June 28, 2021. The parties are reminded to consult the undersigned's individual rules regarding motions, including bundling and page limits for Memoranda of Law, before filing their respective briefs.</p> <p>The Clerk of the Court is respectfully directed to mail a copy of this Order as well as a copy of the undersigned's individual rules to the pro se plaintiff.</p> <p>Ordered by Judge Gary R. Brown on 4/14/2021. (Meil, Stephen) (Entered: 04/14/2021)</p>
05/07/2021	19	Letter to pro se plaintiff Collin Kaiser from the Pro Se Department returning documents without docketing or consideration (Trado, Chelsea) (Entered: 05/07/2021)
05/10/2021	20	Letter to pro se plaintiff Collin Kaiser from the Pro Se Department returning documents without docketing or consideration, (Tirado, Chelsea) (Entered: 05/10/2021)
05/14/2021	21	MOTION to Dismiss for Failure to State a Claim by Fairfield Properties Corporation, Sue Krecko (Sherven, Jennifer) (Entered: 05/14/2021)
05/14/2021	22	AFFIDAVIT/DECLARATION in Support re 21 MOTION to Dismiss for Failure to State a Claim filed by Fairfield Properties Corporation, Sue Krecko, (Attachments: # 1 Exhibit A - Amended Complaint) (Sherven, Jennifer) (Entered: 05/14/2021)
05/14/2021	23	MEMORANDUM in Support re 21 MOTION to Dismiss for Failure to State a Claim filed by Fairfield Properties Corporation, Sue Krecko, (Sherven, Jennifer) (Entered: 05/14/2021)
05/14/2021	24	AFFIDAVIT of Service for Motion to Dismiss; Declaration in Support and Memorandum of Law in Support served on Collin Kaiser on May 14, 2021, filed by Fairfield Properties Corporation, Sue Krecko, (Sherven, Jennifer) (Entered: 05/14/2021)
05/17/2021		ORDER denying 21 Motion to Dismiss for Failure to State a Claim. The motion is denied without prejudice to renewal upon complying with the undersigned's individual rules, including the bundling rule. See Rule II, Ordered by Judge Gary R. Brown on 5/17/2021. (Meil, Stephen) (Entered: 05/17/2021)
05/17/2021		ORDER re 21 MOTION to Dismiss for Failure to State a Claim, 18 MOTION for pre motion conference: Defendant's anticipated motion pursuant to Rule 12 of the Federal Rules of Civil Procedure is respectfully referred to the assigned Magistrate Judge for a Report & Recommendation. The Clerk of the Court is respectfully directed to mail a copy of this Order to the pro se plaintiff. Ordered by Judge Gary R. Brown on 5/17/2021. (Meil, Stephen) (Entered: 05/17/2021)
05/24/2021		Case Reassigned to Magistrate Judge James M. Wicks, Magistrate Judge Anne Y. Shields no longer assigned to the case. Please download and review the Individual Practices of the assigned Judges, located on our website. Attorneys are responsible for providing courtesy copies to judges where their Individual Practices require such. (Corsini, Alexander) (Entered: 05/24/2021)

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05/17/2021		ORDER re <u>21</u> MOTION to Dismiss for Failure to State a Claim, <u>18</u> MOTION for pre motion conference: Defendant's anticipated motion pursuant to Rule 12 of the Federal Rules of Civil Procedure is respectfully referred to the assigned Magistrate Judge for a Report & Recommendation. The Clerk of the Court is respectfully directed to mail a copy of this Order to the pro se plaintiff. Ordered by Judge Gary R. Brown on 5/17/2021. (Meil, Stephen) (Entered: 05/17/2021)				
05/24/2021		Case Reassigned to Magistrate Judge James M. Wicks. Magistrate Judge Anne Y. Shields no longer assigned to the case. Please download and review the Individual Practices of the assigned Judges, located on our website . Attorneys are responsible for providing courtesy copies to judges where their Individual Practices require such. (Corstini, Alexander) (Entered: 05/24/2021)				
05/25/2021	<u>25</u>	MOTION for pre motion conference by Collin Kaiser. (Tirado, Chelsea) (Entered: 05/26/2021)				
06/02/2021	<u>26</u>	MEMORANDUM in Support of Plaintiff's Opposition to Defendant's Motion to Dismiss filed by Collin Kaiser. (Tirado, Chelsea) (Entered: 06/02/2021)				
06/02/2021		ORDER re <u>25</u> MOTION for pre motion conference. Pro se plaintiff's request for a pre-motion conference, or in the alternative a briefing schedule, for plaintiff's anticipated motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, as well as the motion itself, is respectfully referred to the assigned Magistrate Judge for a Report and Recommendation. The Clerk of the Court is respectfully directed to mail a copy of this Order to the pro se plaintiff. Ordered by Judge Gary R. Brown on 6/2/2021. (Meil, Stephen) (Entered: 06/02/2021)				
06/02/2021		ORDER granting <u>25</u> Motion for Pre Motion Conference: Plaintiff's application for a pre-motion conference is granted, and accordingly, a pre-motion telephone conference will be held before Magistrate Judge James M. Wicks on June 11, 2021 at 11:00 AM, to address both (1) Defendant's anticipated motion pursuant to Fed. R. Civ. P. 12, and (2) Plaintiff's anticipated motion pursuant to Fed. R. Civ. P. 56, both of which were referred by District Judge Gary R. Brown. The conference will be conducted before Judge Wicks via the Court's AT&T Conference line at: 866-434-5269, enter access code 9025281# at the prompt. The Clerk of the Court is respectfully directed to mail a copy of this Order to the pro se plaintiff. Ordered by Magistrate Judge James M. Wicks on 6/2/2021. (Weinstein, Tracy) (Entered: 06/02/2021)				
06/11/2021	<u>27</u>	Minute Order for proceedings held before Magistrate Judge James M. Wicks. PRE MOTION CONFERENCE. Pro Se Plaintiff: Collin Kaiser (by telephone). Counsel For Defendant: Jennifer E. Sherven (by telephone). Telephone Pre Motion Conference held on 6/11/2021 at 11:00 AM. Plaintiff was heard on his pre-motion letter for summary judgment (DE 25) and a discussion was held regarding summary judgment and a briefing schedule was set as follows: Plaintiff to serve his summary judgment motion to Defendant on or before June 18, 2021; Defendant to serve plaintiff with opposition papers on or before July 19, 2021; Plaintiff to serve Defendant with any reply papers on or before August 2, 2021. The parties shall not file the motion papers and exhibits with the Court until all papers have been served. Each party shall arrange for filing their respective papers on the summary judgment motion once the reply is served since Plaintiff requested to file his own papers. As to Defendant's Motion to Dismiss, that motion remains returnable on June 28, 2021 and the full set of motion papers will be filed at that time by defense counsel. The parties were directed to comply with Judge Wicks' Individual Rules, including Rule § 3(C)(1)(A), regarding service and filing of the fully briefed motions. Other: Plaintiff is directed to retrieve from the clerk's office the papers and items he previously delivered in connection with his pre-motion letter. Any documents and exhibits Plaintiff intends to rely upon in support of his anticipated motion for summary judgment shall be served and filed in accordance with the directive above. The Clerk's Office is directed to mail a copy of this order along with a copy of the HofstraPro Se Legal Assistant Program flyer to the pro se litigant. (FTR Log #AT&T: 11-01-11:25)(Ortiz, Grisel) (Entered: 06/11/2021)				
06/22/2021	<u>28</u>	NOTICE of Change of Address: Collin Kaiser new address 799 Canal Rd. (Cubano, Jazmin) (Entered: 06/22/2021)				
06/22/2021	<u>29</u>	Letter objecting to the continuance of the briefing schedule for the defendant's motion to dismiss which was denied without prejudice by Judge Gary Brown filed by Collin Kaiser (Florio, Lisa) (Entered: 06/22/2021)				
06/23/2021		ORDER re <u>29</u> Letter. To the extent that pro se plaintiff's letter is intended to be construed as an objection to the Minute Order of June 11, 2021 issued by Judge Wicks, DE 27, the objection is so noted and plaintiff's request is DENIED. The briefing schedule for defendant's motion to dismiss as set forth in the aforementioned Order remains in place. The Clerk of the Court is respectfully directed to mail a copy of				

06/22/2021	29	Letter objecting to the continuance of the briefing schedule for the defendant's motion to dismiss which was denied without prejudice by Judge Gary Brown filed by Collin Kaiser (Florio, Lisa) (Entered: 06/22/2021)
06/23/2021		ORDER re 29 Letter. To the extent that pro se plaintiff's letter is intended to be construed as an objection to the Minute Order of June 11, 2021 issued by Judge Wicks, DE 27, the objection is so noted and plaintiff's request is DENIED. The briefing schedule for defendant's motion to dismiss as set forth in the aforementioned Order remains in place. The Clerk of the Court is respectfully directed to mail a copy of this Order to the pro se plaintiff. Ordered by Judge Gary R. Brown on 6/23/2021. (Meil, Stephen) (Entered: 06/23/2021)
06/24/2021	30	Fully Briefed MOTION to Dismiss for Failure to State a Claim by Fairfield Properties Corporation, Sue Krecko. (Attachments: # 1 Declaration Defendants' Declaration of Jennifer E. Sherven, Esq. in Support of Defendants' Motion to Dismiss, # 2 Exhibit Defendants' Exhibit A - Amended Complaint, # 3 Memorandum in Support Defendants' Memorandum of Law in Support, # 4 Memorandum in Opposition Plaintiff's Memorandum in Opposition, # 5 Memorandum in Support Defendants' Reply Memorandum of Law in Further Support, # 6 Affidavit of Service) (Sherven, Jennifer) (Entered: 06/24/2021)
06/24/2021	31	AFFIDAVIT of Service for Reply Memorandum of Law served on Collin Kaiser on June 24, 2021, filed by Fairfield Properties Corporation, Sue Krecko. (Sherven, Jennifer) (Entered: 06/24/2021)
06/28/2021		ORDER REFERRING MOTION: 30 Fully Briefed MOTION to Dismiss for Failure to State a Claim Defendants' motion, DE 30, is respectfully referred to the assigned Magistrate Judge in accordance with this Court's Order of May 17, 2021. The Clerk of the Court is respectfully directed to mail a copy of this Order to the pro se plaintiff. Ordered by Judge Gary R. Brown on 6/28/2021. (Meil, Stephen) (Entered: 06/28/2021)
07/16/2021	32	MOTION for Extension of Time to File <i>the briefing of Plaintiff's Motion for Summary Judgment</i> by Fairfield Properties Corporation, Sue Krecko. (Sherven, Jennifer) (Entered: 07/16/2021)
07/18/2021		ORDER granting 32 Motion for Extension of Time to File opposition and reply on Plaintiff's motion for summary judgment. Defendants' time to serve opposition is extended to an including July 26, 2021 and Plaintiff's reply shall be serve on or before August 9, 2021. So Ordered by Magistrate Judge James M. Wicks on 7/18/2021. (Wicks, James) (Entered: 07/18/2021)
07/28/2021	33	MOTION for Summary Judgment by Collin Kaiser. (Tirado, Chelsea) (Entered: 08/02/2021)
08/02/2021	34	MEMORANDUM in Opposition re 33 MOTION for Summary Judgment filed by Fairfield Properties Corporation, Sue Krecko. (Attachments: # 1 Declaration Declaration of Jennifer E. Sherven, Esq. in Support of Defendants' Opposition to Plaintiff's Motion for Summary Judgment, # 2 Exhibit A - Affidavit of Susan Krecko, # 3 Exhibit B - Affidavit of David Berger, # 4 Rule 56.1 Statement Defendants' Response to Plaintiff's Local Rule 56.1 Statement, # 5 Affidavit of Service) (Sherven, Jennifer) (Entered: 08/02/2021)
11/22/2021		ORDER REFERRING MOTION 33 : Plaintiff's motion for summary judgment is respectfully referred to the assigned Magistrate Judge for a Report & Recommendation. The Clerk of the Court is respectfully directed to mail a copy of this Order to the pro se plaintiff. Ordered by Judge Gary R. Brown on 11/22/2021. c/ecf (Tubbaz, Joseph) (NEF regenerated for statistical purposes) (Florio, Lisa) (Entered: 12/07/2021)
02/11/2022	35	REPORT AND RECOMMENDATIONS: For the foregoing reasons (Please See Order for Further Details), the undersigned respectfully recommends that Defendants' motion to dismiss be granted as to Plaintiff's FHA claims under §§ 3604 and 3617, and § 1983 claims, and that Plaintiff's claim pursuant to NYHRL be dismissed without prejudice. The undersigned additionally recommends that this dismissal not be accompanied with leave to amend. Alternatively, if the undersigned's recommendation as to Defendants' motion to dismiss is not adopted, then the undersigned further recommends that Plaintiff's motion for summary judgment be denied in its entirety. So Ordered by Magistrate Judge James M. Wicks on 2/11/2022. (Ortiz, Grisel) (Entered: 02/11/2022)
02/24/2022	36	OBJECTION to 35 Report and Recommendations filed by Collin Kaiser. (Tirado, Chelsea) (Entered: 02/24/2022)

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02/11/2022	35	REPORT AND RECOMMENDATIONS. For the foregoing reasons (Please See Order for Further Details), the undersigned respectfully recommends that Defendants' motion to dismiss be granted as to Plaintiff's FHA claims under §§ 3604 and 3617, and § 1983 claims, and that Plaintiff's claim pursuant to NYHRL be dismissed without prejudice. The undersigned additionally recommends that this dismissal not be accompanied with leave to amend. Alternatively, if the undersigned's recommendation as to Defendants' motion to dismiss is not adopted, then the undersigned further recommends that Plaintiff's motion for summary judgment be denied in its entirety. So Ordered by Magistrate Judge James M. Wicks on 2/11/2022. (Ortiz, Grisel) (Entered: 02/11/2022)
02/24/2022	36	OBJECTION to 35 Report and Recommendations filed by Collin Kaiser. (Tirado, Chelsea) (Entered: 02/24/2022)
02/24/2022	37	EXHIBIT G by Collin Kaiser. (Tirado, Chelsea) (Entered: 02/24/2022)
03/09/2022	38	Letter in Response to Plaintiff's Objection to Magistrate Wicks' Report and Recommendation by Fairfield Properties Corporation, Sue Krecko (Sheven, Jennifer) (Entered: 03/09/2022)
03/11/2022		<p>ORDER ADOPTING REPORT AND RECOMMENDATIONS for 30 Motion to Dismiss for Failure to State a Claim, filed by Fairfield Properties Corporation, Sue Krecko, 33 Motion for Summary Judgment filed by Collin Kaiser, 35 Report and Recommendations, granting 30 Motion to Dismiss for Failure to State a Claim; finding as moot 33 Motion for Summary Judgment.</p> <p>Presently before the Court is the Report and Recommendation dated February 11, 2022, DE 35, of United States Magistrate Judge James M. Wicks recommending that Defendants' motion to dismiss, DE 30, be granted and Plaintiff's summary judgment motion, DE 33, be denied as moot.</p> <p>In reviewing a Report and Recommendation, the district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party makes specific and timely objections to a Magistrate Judge's findings or recommendations as to dispositive motions, the district court must apply a de novo standard of review to the portions of the Report and Recommendation to which the objection is made. Fed. R. Civ. P. 72(b); see <i>LLC v. Doe 3</i>, 604 F.3d 110, 116 (2d Cir. 2010); see also 28 U.S.C. § 636(b)(1). However, "general or conclusory objections; or objections which merely recite the same arguments presented to the magistrate judge, are reviewed for clear error." <i>Caldarola v. Town of Smithtown</i>, No. 09-cv-272, 2011 U.S. Dist. LEXIS 37280, at *1 (E.D.N.Y. Apr. 4, 2011). The Court has carefully reviewed and considered Plaintiff's objections and finds that they fail to raise any colorable objection to the Report and Recommendation and principally restate the conclusory allegations set forth in Plaintiff's motion papers. Because Plaintiff's objections largely consist of general conclusory arguments as well as facts and issues that were presented to Judge Wicks, the undersigned may review the Report and Recommendation for clear error.</p> <p>Nevertheless, although de novo review is not required, the Court has conducted a de novo review of the Report and Recommendation in an abundance of caution. Having carefully reviewed Plaintiff's objections, the motion papers, the applicable law, and having conducted a careful review of the Report and Recommendation de novo, the Court adopts the findings and recommendations contained in the well-reasoned and exceedingly thorough Report and Recommendation dated February 11, 2022, DE 35, of Magistrate Judge Wicks in their entirety. 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b); see <i>Caldarola</i>, 2011 U.S. Dist. LEXIS 37280, at *1; see also <i>Thomas v. Arn</i>, 474 U.S. 140, 150 (1985); <i>Maria v. P & C Food Mktg., Inc.</i>, 313 F.3d 758, 766 (2d Cir. 2002); <i>Pineau v. Caserta</i>, No. 10-CV-5670 (SJF), 2012 WL 5389931, at *1 (E.D.N.Y. Oct. 29, 2012).</p> <p>Accordingly, IT IS HEREBY ORDERED that Defendants' motion to dismiss, DE 30, be granted and Plaintiff's summary judgment motion, DE 33, be denied as moot.</p> <p>The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore in forma pauperis status is denied for the purpose of any appeal.</p>

		<p>Nevertheless, although de novo review is not required, the Court has conducted a de novo review of the Report and Recommendation in an abundance of caution. Having carefully reviewed Plaintiff's objections, the motion papers, the applicable law, and having conducted a careful review of the Report and Recommendation de novo, the Court adopts the findings and recommendations contained in the well-reasoned and exceedingly thorough Report and Recommendation dated February 11, 2022, DE 35, of Magistrate Judge Wicks in their entirety. 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b); see <i>Caldarola</i>, 2011 U.S. Dist. LEXIS 37260, at *1, see also <i>Thomas v. Arn</i>, 474 U.S. 140, 150 (1985); <i>Mario v. P & C Food Mkt., Inc.</i>, 313 F.3d 758, 766 (2d Cir. 2002); <i>Piroulet v. Caserta</i>, No. 10-CV-5670 (SJF), 2012 WL 5389931, at *1 (E.D.N.Y. Oct. 29, 2012).</p> <p>Accordingly, IT IS HEREBY ORDERED that Defendants' motion to dismiss, DE 30, be granted and Plaintiff's summary judgment motion, DE 33, be denied as moot.</p> <p>The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore in forma pauperis status is denied for the purpose of any appeal.</p> <p>The Clerk of the Court is respectfully directed to serve a copy of this Order on the pro se plaintiff and close the case.</p> <p>Ordered by Judge Gary R. Brown on 3/11/2022 c/ecf (Tahbaz, Joseph) (Entered: 03/11/2022)</p>
03/14/2022	39	CLERK'S JUDGMENT: ORDERED AND ADJUDGED that Plaintiff Collin Kaiser take nothing of Defendants Fairfield Properties and Sue Krecko, that the findings and recommendations contained in the February 11, 2022 Report and Recommendation of United States Magistrate Judge James M. Wicks are adopted; that Defendants' motion to dismiss is granted; that Plaintiff's motion for summary judgment is denied as moot; that in forma pauperis status for the purpose of any appeal is denied; and that this case is closed. Ordered by Clerk of Court on 3/14/2022 (CM to pro se plaintiff with an appeal packet). (Toritto, Jim) (Entered: 03/14/2022)
03/24/2022	40	NOTICE OF APPEAL as to 39 Clerk's Judgment by Collin Kaiser. *Originally sent directly to the Court of Appeals and they transferred it to EDNY. (Landow, Concetta) (Entered: 03/29/2022)
03/24/2022	41	MOTION for Leave to Appeal in forma pauperis by Collin Kaiser. (Landow, Concetta) (Entered: 03/29/2022)
03/29/2022		Electronic Index to Record on Appeal sent to US Court of Appeals. 40 Notice of Appeal; Collin Kaiser originally sent his paperwork to USCA, they transferred to EDNY for processing. Documents are available via Pacer. For docket entries without a hyperlink or for documents under seal, contact the court and we'll arrange for the document(s) to be made available to you. (Landow, Concetta) (Entered: 03/29/2022)
03/31/2022		ORDER denying 41 Motion for Leave to Appeal in forma pauperis. As the Court stated in its March 11, 2022 order adopting the Report and Recommendation, pursuant to 28 U.S.C. § 1915(a)(3) any appeal would not be taken in good faith and therefore in forma pauperis status is denied for the purpose of any appeal. The Clerk of the Court is respectfully directed to serve a copy of this Order on the pro se plaintiff. Ordered by Judge Gary R. Brown on 3/31/2022. (Tahbaz, Joseph) (Entered: 03/31/2022)

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		<p>(E.D.N.Y. Oct. 29, 2012).</p> <p>Accordingly, IT IS HEREBY ORDERED that Defendants' motion to dismiss, DE 30, be granted and Plaintiff's summary judgment motion, DE 33, be denied as moot.</p> <p>The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore in forma pauperis status is denied for the purpose of any appeal.</p> <p>The Clerk of the Court is respectfully directed to serve a copy of this Order on the pro se plaintiff and close the case.</p> <p>Ordered by Judge Gary R. Brown on 3/11/2022. /s/ef (Tahbaz, Joseph) (Entered: 03/11/2022)</p>
03/14/2022	39	CLERK'S JUDGMENT: ORDERED AND ADJUDGED that Plaintiff Collin Kaiser take nothing of Defendants Fairfield Properties and Sue Krecko; that the findings and recommendations contained in the February 11, 2022 Report and Recommendation of United States Magistrate Judge James M. Wicks are adopted; that Defendants' motion to dismiss is granted; that Plaintiff's motion for summary judgment is denied as moot; that in forma pauperis status for the purpose of any appeal is denied; and that this case is closed. Ordered by Clerk of Court on 3/14/2022 (CM to pro se plaintiff with an appeal packet). (Toritto, Jim) (Entered: 03/14/2022)
03/24/2022	40	NOTICE OF APPEAL as to 39 Clerk's Judgment by Collin Kaiser. *Originally sent directly to the Court of Appeals and they transferred it to EDNY. (Landow, Concetta) (Entered: 03/29/2022)
03/24/2022	41	MOTION for Leave to Appeal in forma pauperis by Collin Kaiser. (Landow, Concetta) (Entered: 03/29/2022)
03/29/2022		Electronic Index to Record on Appeal sent to US Court of Appeals. 40 Notice of Appeal, Collin Kaiser originally sent his paperwork to USCA, they transferred to EDNY for processing. Documents are available via PACER. For docket entries without a hyperlink or for documents under seal, contact the court and we'll arrange for the document(s) to be made available to you. (Landow, Concetta) (Entered: 03/29/2022)
03/31/2022		ORDER denying 41 Motion for Leave to Appeal in forma pauperis. As the Court stated in its March 11, 2022 order adopting the Report and Recommendation, pursuant to 28 U.S.C. § 1915(a)(3) any appeal would not be taken in good faith and therefore in forma pauperis status is denied for the purpose of any appeal. The Clerk of the Court is respectfully directed to serve a copy of this Order on the pro se plaintiff. Ordered by Judge Gary R. Brown on 3/31/2022. (Tahbaz, Joseph) (Entered: 03/31/2022)

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MANDATE

E.D.N.Y. — C. Islip
20-cv-5399
Brown, J.
Wicks, M.J.

United States Court of Appeals FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 20th day of July, two thousand twenty-two.

Present:

William J. Nardini,
Eunice C. Lee,
Myrna Pérez,
Circuit Judges.

Collin Kaiser,

Plaintiff-Appellant,

v.

22-665

Sue Krecko, Leasing Agent, Fairfield Properties Corporation,

Defendant-Appellee.

Appellant, pro se, moves for leave to proceed in forma pauperis ("IFP"). Appellee moves to dismiss the appeal. Upon due consideration, it is hereby ORDERED that the IFP motion is DENIED and the appeal is DISMISSED because it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also* 28 U.S.C. § 1915(e). More specifically, Appellant's Section 1983 claim fails because Appellant has not alleged that he has been deprived of a constitutional right by a state actor or otherwise because of state action. *See Flagg v. Yonkers Sav. & Loan Ass'n*, 396 F.3d 178, 186 (2d Cir. 2005) ("Because the United States Constitution regulates only the Government, not private parties, a litigant claiming that his constitutional rights have been violated must first establish that the challenged conduct constitutes state action.") (internal quotation marks omitted). It is further ORDERED that the motion to dismiss is DENIED as moot.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

Catherine O'Hagan Wolfe

Catherine O'Hagan Wolfe



MANDATE ISSUED ON 08/31/2022

Appendix H

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