

Court of Appeals Docket #: 24-3590

Docketed: 06/07/2024

Nature of Suit: 3446 Americans w/Disabilities Act-Othr

ESA Management, LLC v. Kaler, et al.

Appeal From: San Diego, Southern California

Fee Status: Due in District Court

APPENDIX A

Case Type Information:

- 1) Civil
- 2) Private
- 3)

Originating Court Information:

District: Southern District of California : 3:24-cv-00175-RBM-MMP

Trial Judge: Ruth Bermudez Montenegro, Magistrate Judge

Date Filed: 01/25/2024

Date Order/Judgment:

06/05/2024

Date Order/Judgment EOD:

06/05/2024

Date NOA Filed:

06/06/2024

Date Rec'd COA:

06/06/2024

- 06/07/2024 1 **CASE OPENED.** A copy of your notice of appeal / petition filed in 3:24-cv-00175-RBM-MMP has been received in the Clerk's office of the United States Court of Appeals for the Ninth Circuit. The U.S. Court of Appeals docket number **24-3590** has been assigned to this case. All communications with the court must indicate this Court of Appeals docket number. Please carefully review the docket to ensure the name(s) and contact information are correct. It is your responsibility to alert the court if your contact information changes. **Resources Available**
For more information about case processing and to assist you in preparing your brief, please review the Case Opening Information (for attorneys and pro se litigants) and review the Appellate Practice Guide. Counsel should consider contacting the court's Appellate Mentoring Program for help with the brief and argument. [Entered: 06/07/2024 02:13 PM]
- 06/07/2024 2 **SCHEDULE NOTICE.** Appeal Opening Brief (No Transcript Due) (Appellant) 7/17/2024, Appeal Answering Brief (No Transcript Due) (Appellee) 8/16/2024. **For appeal no. 24-3590, 3:24-cv-00175-RBM-MMP.** All briefs shall be served and filed pursuant to FRAP 31 and 9th Cir. R. 31-2.1. Failure of the petitioner(s)/appellant(s) to comply with this briefing schedule will result in automatic dismissal of the appeal. See 9th Cir. R. 42-1. [Entered: 06/07/2024 02:18 PM]
- 06/20/2024 3 **ORDER FILED.** (Barry G. SILVERMAN, Patrick J. BUMATAY, Gabriel P. SANCHEZ)
The district court's June 5, 2024 order remanded this case to state court for lack of subject matter jurisdiction, for the same reasons set forth in the district court's prior remand order entered on August 2, 2023 in Southern District of California Case No. 3:23-cv-01324-RBM-MMP. A review of the record demonstrates that this court lacks jurisdiction over this appeal of the district court's June 5, 2024 order remanding the action to state court for lack of subject matter jurisdiction. See 28 U.S.C. § 1447(d) (order remanding a removed action to state court for lack of subject matter jurisdiction pursuant to § 1447(c) "is not reviewable on appeal or otherwise"); Acad. of Country Music v. Cont'l Cas. Co., 991 F.3d 1059, 1066 (9th Cir. 2021) (review of district court's characterization of remand for lack of subject-matter jurisdiction under § 1447(c) limited to confirming that that characterization was colorable); Kunzi v. Pan Am. World Airways, Inc., 833 F.2d 1291, 1293 (9th Cir. 1987); see also Aguon-Schulte v. Guam Election Comm'n, 469 F.3d 1236, 1240 n.4 (9th Cir. 2006) (remand order not reviewable under exception to 28 U.S.C. § 1447(d)'s bar where notice of removal did not assert § 1443 as a ground for removal). Consequently, this appeal is dismissed for lack of jurisdiction. DISMISSED [Entered: 06/20/2024 04:12 PM]
- 07/12/2024 4 **MANDATE ISSUED** Barry G. SILVERMAN, Patrick J. BUMATAY, Gabriel P. SANCHEZ [Entered: 07/12/2024 09:19 AM]

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

JUN 20 2024

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

ESA MANAGEMENT, LLC,

Plaintiff - Appellee,

v.

TIMOTHY KALER,

Defendant - Appellant,

and

DOES 1-10,

Defendant.

No. 24-3590

D.C. No.

3:24-cv-00175-RBM-MMP

Southern District of California,
San Diego

ORDER

Before: SILVERMAN, BUMATAY, and SANCHEZ, Circuit Judges.

The district court's June 5, 2024 order remanded this case to state court for lack of subject matter jurisdiction, for the same reasons set forth in the district court's prior remand order entered on August 2, 2023 in Southern District of California Case No. 3:23-cv-01324-RBM-MMP. A review of the record demonstrates that this court lacks jurisdiction over this appeal of the district court's June 5, 2024 order remanding the action to state court for lack of subject matter jurisdiction. *See* 28 U.S.C. § 1447(d) (order remanding a removed action to state court for lack of subject matter jurisdiction pursuant to § 1447(c) "is not reviewable on appeal or otherwise"); *Acad. of Country Music v. Cont'l Cas. Co.*,

991 F.3d 1059, 1066 (9th Cir. 2021) (review of district court's characterization of remand for lack of subject-matter jurisdiction under § 1447(c) limited to confirming that that characterization was colorable); *Kunzi v. Pan Am. World Airways, Inc.*, 833 F.2d 1291, 1293 (9th Cir. 1987); *see also Aguon-Schulte v. Guam Election Comm'n*, 469 F.3d 1236, 1240 n.4 (9th Cir. 2006) (remand order not reviewable under exception to 28 U.S.C. § 1447(d)'s bar where notice of removal did not assert § 1443 as a ground for removal). Consequently, this appeal is dismissed for lack of jurisdiction.

DISMISSED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

APPENDIX A

FILED

JUL 12 2024

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

ESA MANAGEMENT, LLC,

Plaintiff - Appellee,

v.

TIMOTHY KALER,

Defendant - Appellant,

and

DOES 1-10,

Defendant.

No. 24-3590

D.C. No.

3:24-cv-00175-RBM-MMP

Southern District of California,
San Diego

MANDATE

The judgment of this Court, entered June 20, 2024, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to
Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

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APPENDIX B

CLOSED,LNO

U.S. District Court
Southern District of California (San Diego)
CIVIL DOCKET FOR CASE #: 3:24-cv-00175-RBM-MMP

ESA Management, LLC v. Kaler et al
Assigned to: District Judge Ruth Bermudez Montenegro
Referred to: Magistrate Judge Michelle M. Pettit
Case in other court: USCA, 24-03590
Superior Court of California, County of San
Diego, 37-02023-00010833-CL-UD-CTL
Cause: 28:1441rl Removal- Rent, Lease, & Ejectment

Date Filed: 01/25/2024
Date Terminated: 06/05/2024
Jury Demand: Defendant
Nature of Suit: 446 Civil Rights: Americans
with Disabilities - Other
Jurisdiction: Federal Question

Plaintiff**ESA Management, LLC**

represented by **Audette Paul Morales**
Gordon Rees Scully Mansukhani LLP
5 Park Plaza
Suite 1100
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949-255-6967
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant**Timothy Kaler**

represented by **Timothy Kaler**
1295 Carlsbad Village Drive, Ste. 100-TC
Carlsbad, CA 92008
760-986-5674
PRO SE

Defendant**Does 1 to 10**

Date Filed	#	Docket Text
01/25/2024	<u>1</u>	NOTICE OF REMOVAL with Jury Demand, IFP Filed, filed by Timothy Kaler. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Exhibits) The new case number is 3:24-cv-175-JAH-BGS. Judge John A. Houston and Magistrate Judge Bernard G. Skomal are assigned to the case.(rxc) (jms). (Entered: 01/26/2024)
01/25/2024	<u>2</u>	MOTION for Leave to Proceed in forma pauperis by Timothy Kaler. (rxc) (jms). (Entered: 01/26/2024)
02/08/2024	<u>3</u>	SUPPLEMENTAL DOCUMENT by Timothy Kaler re <u>1</u> Notice of Removal,. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit)(bdc) (Entered: 02/09/2024)
02/21/2024	<u>4</u>	NOTICE OF RELATED CASE(S) of case(s) 23cv1324. (All non-registered users served via U.S. Mail Service)(bdc) (jms). (Entered: 02/21/2024)
02/22/2024	<u>5</u>	RESPONSE in Opposition re <u>4</u> Notice of Related Case filed by Timothy Kaler. (bdc) (jms). (Entered: 02/22/2024)
03/22/2024	<u>6</u>	MOTION to Remand to State Court by ESA Management, LLC. (Attachments: # <u>1</u> Memo of Points and Authorities Memorandum of Points and Authorities in Support of Plaintiff's Motion for Remand, # <u>2</u> Declaration of Juliana C. Ferraz in Support of Plaintiff's Motion for Remand, # <u>3</u> Exhibit 1 - UD Complaint, # <u>4</u> Exhibit 2 - Proof of Service, # <u>5</u> Exhibit 3 - Defendant's Demurrer, # <u>6</u> Exhibit 4 - Removal to Federal Court, # <u>7</u> Exhibit 5 - Docket to 323-cv-01324, # <u>8</u> Exhibit 6 - Eviction Docket, # <u>9</u> Exhibit 7 - Docket to 324-cv-00175, # <u>10</u> Proof of Service re Motion for Remand)(Ferraz, Juliana) (jpp). (Entered: 03/22/2024)
03/22/2024	<u>7</u>	ORDER OF TRANSFER PURSUANT TO LOW NUMBER RULE, re <u>4</u> Notice of Related Case. Case reassigned to District Judge Ruth Bermudez Montenegro and Magistrate Judge Michelle M. Pettit for all further proceedings. Judge John A. Houston, Magistrate Judge Bernard G. Skomal no longer assigned to case. Create association to 3:23-cv-01324-RBM-MMP. The new case number is 24CV0175-RBM-MMP.. Signed by Judge John A. Houston on 3/05/2024. Signed by Judge Ruth Bermudez Montenegro on 3/22/2024.(All non-registered users served via U.S. Mail Service)(jpp) (Entered: 03/22/2024)
03/25/2024	<u>8</u>	MOTION to remove Judges by Timothy Kaler. (jpp) (Entered: 03/25/2024)
04/17/2024	<u>9</u>	Opposition to incorrectly file 3/22/2024 motion filed by Plaintiff; MOTION to Strike, by Timothy Kaler. Modified on 4/17/2024 to replace image, NEF resent to all parties. (jpp). (Entered: 04/17/2024)
06/05/2024	<u>10</u>	ORDER: (1) Remanding case to State Court for lack of subject matter jurisdiction. (2) Denying Defendant's application to proceed in District Court without prepaying fees or costs as moot. (3) Denying Defendant's motion to remove Judge as moot. (4) Denying Defendant's opposition to incorrectly filed 3/22/24 motion as moot. Signed by District Judge Ruth Bermudez Montenegro on 6/05/2024. (cc: Superior Court) (All non-registered users served via U.S. Mail Service)(jpp) (Entered: 06/05/2024)
06/06/2024	<u>11</u>	NOTICE OF APPEAL to the 9th Circuit by Timothy Kaler Re: ECF No. <u>10</u> Order on Motion for Leave to Proceed In Forma Pauperis, Order on Motion to Remand to State Court, Order on Motion for Miscellaneous Relief, Order on Motion to Strike Document. IFP Filed (Notice of Appeal electronically transmitted to US Court of Appeals.) (Attachments: # <u>1</u> In Forma Pauperis, # <u>2</u> Proof of Service)(All non-registered users served via U.S. Mail Service)(mjw)(jrd) (Entered: 06/06/2024)
06/07/2024	<u>12</u>	USCA Case Number 24-3590 for <u>11</u> Notice of Appeal to 9th Circuit, filed by Timothy Kaler. (Attachments: # <u>1</u> Attorney Appeal Case Opening, # <u>2</u> Pro Se Appeals Case

via U.S. Mail Service)(mjw) (Entered: 06/07/2024)

APPENDIX B

06/07/2024	<u>13</u>	USCA Time Schedule Order as to <u>11</u> Notice of Appeal to 9th Circuit, filed by Timothy Kaler. (NOTICE TO PARTIES of deadlines regarding appellate transcripts: Appellant shall file transcript designation and ordering form with the US District Court, provide a copy of the form to the court reporter, and make payment arrangements with the court reporter on or by 7/8/2024 (see Ninth Circuit Rule 10-3.1); Due date for filing of transcripts in US District Court is 8/7/2024.) (cc: Court Reporter). (All non-registered users served via U.S. Mail Service)(mjw) (Entered: 06/07/2024)
06/20/2024	<u>14</u>	Dispositive Order - Dismiss of USCA as to <u>11</u> Notice of Appeal to 9th Circuit, filed by Timothy Kaler (All non-registered users served via U.S. Mail Service)(dim) (Entered: 06/21/2024)
07/12/2024	<u>15</u>	MANDATE of USCA as to <u>11</u> Notice of Appeal to 9th Circuit, filed by Timothy Kaler. (All non-registered users served via U.S. Mail Service)(dim)(jrd) (Entered: 07/15/2024)

APPENDIX B

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ESA MANAGEMENT, LLC,

Plaintiff,

v.

TIMOTHY KALER,

Defendant.

Case No.: 3:24-cv-00175-RBM-MMP

ORDER:

**(1) REMANDING CASE TO STATE
COURT FOR LACK OF SUBJECT
MATTER JURISDICTION**

**(2) DENYING DEFENDANT'S
APPLICATION TO PROCEED IN
DISTRICT COURT WITHOUT
PREPAYING FEES OR COSTS AS
MOOT**

**(3) DENYING DEFENDANT'S
MOTION TO REMOVE JUDGE AS
MOOT**

**(4) DENYING DEFENDANT'S
OPPOSITION TO INCORRECTLY
FILED 3/22/24 MOTION AS MOOT**

[Doc. 2, 6, 8, 9]

APPENDIX B

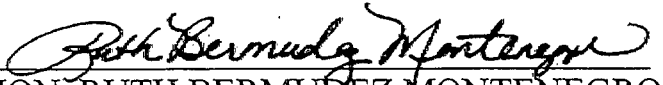
1 On January 25, 2024, Defendant Timothy Kaler ("Defendant") filed a Notice of
2 Removal of Case No. 37-2023-00010833-CL-UD-CTL ("Notice of Removal"), which was
3 initiated in the Superior Court of California, County of San Diego ("San Diego Superior
4 Court"). (Doc. 1.) This is the second time that Defendant has removed this case to federal
5 court. (See Case No. 3:23-cv-01324-RBM-MMP, Docs. 1, 4.) On March 22, 2024,
6 Plaintiff ESA Management, LLC ("Plaintiff") filed a Motion for Remand ("Motion").
7 (Doc. 6.)

8 In its Motion, Plaintiff asserts that Defendant failed to include in his Notice of
9 Removal "a copy of all process, pleadings, and orders served upon such defendant" in
10 violation of 28 U.S.C. § 1446(a). (Doc. 6-1 at 3.) Plaintiff also asserts that removal is
11 untimely under 28 U.S.C. § 1446 (b)(1), which states that a defendant seeking to remove a
12 case to federal court has 30 days from the date of service of the summons to file notice of
13 removal. (*Id.*) Relatedly, Plaintiff argues that Defendant has already appeared in the San
14 Diego Superior Court. (*Id.* at 4.) Finally, Plaintiff reminds the Court that it already
15 remanded this unlawful detainer action to San Diego Superior Court once. (*Id.*; see also
16 Case No. 3:23-cv-01324-RBM-MMP, Doc. 4.)

17 The Court **REMANDS** this action to San Diego Superior for the same reasons set
18 forth in its prior order. (See Case No. 3:23-cv-01324-RBM-MMP, Doc. 4.) Additionally,
19 the Court **DENIES AS MOOT** Defendant's Application to Proceed in District Court
20 Without Prepaying Fees or Costs (Doc. 2), Defendant's Motion to Remove Judge (Doc. 8),
21 and Defendant's Opposition to Incorrectly Filed 3/22/24 Motion Filed by Plaintiff (Doc.
22 9). The Court **DIRECTS** the Clerk of Court to close this case.

23 **IT IS SO ORDERED.**

24 DATE: June 5, 2024

25 
26 HON. RUTH BERMUDEZ MONTENEGRO
27 UNITED STATES DISTRICT JUDGE
28