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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**MOSSER COMPANIES, INC.,**

Plaintiff,

vs.

**ROBERT D EBERWEIN,**

Defendant.

CASE NO. 17-cv-05707-YGR

**ORDER DISMISSING ACTION WITHOUT  
PREJUDICE**

Re: Dkt. Nos. 1, 3

On October 3, 2017, defendant Robert D. Eberwein, representing himself *pro se*, filed this action styled as a removal. (Dkt. No. 1.) Defendant's filing does not sufficiently identify in his removal papers from which proceeding below he is seeking removal, or the basis for this Court's jurisdiction. At page 1 of Docket Number 1, he indicates that he is removing the action from *Mosser v. Eberwein*, No. 17-CV-659496 (S.F. Sup. Ct.). Attached to this document, however, are several documents that do not appear to pertain to the proceeding from which he is seeking removal, including: a motion to reopen adversary proceedings filed in bankruptcy court in the Southern District of New York, an order directing payment of fee or amended IFP application in the Southern District of New York, an application to proceed IFP filed in the Southern District of New York, and an order denying an ex parte application for shortening of time filed in bankruptcy court in the Northern District of California, among several others. None of these matters can be removed.

With regard to the San Francisco Superior Court case referenced herein, defendant has transmitted to this court the following: (i) a notice of appeal regarding an August 31, 2017 order, filed on September 28, 2017; (ii) an August 31, 2017 order authorizing service of summons and complaint by posting and mailing; (iii) a partial copy of the docket; and (iv) a judgment for plaintiff in the amount of \$7,425.00, entered on October 2, 2017 for an unlawful detainer. (Dkt. No. 1 at 12–14; 23–26.) These are similarly not removable.

United States District Court  
Northern District of California


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Concurrently, defendant filed an application to proceed *in forma pauperis*. (Dkt. No. 3.) However, defendant’s filing does not provide sufficient facts demonstrating his need for relief with regard to filing fees. In fact, his application lists multiple individuals as declarants, and appears to be copied whole-sale from defendant’s previous attempt at removing what appears to be the same action earlier this year. *See* Docket, *Mosser Cos., Inc. v. Eberwein, et al.*, No. 17-CV-3678-HSG (N.D. Cal.).

Plaintiff’s complaint is **DISMISSED WITHOUT PREJUDICE** to identify the basis of removal jurisdiction and identify what pending complaint, if any, he seeks to remove from state court. *See* 28 U.S.C. § 1441 (“[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.”). If plaintiff fails to respond within twenty-eight (28) days of this Order, the Clerk of the Court shall terminate the docket and close the file.

**IT IS SO ORDERED.**

Dated: October 13, 2017

  
YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT COURT JUDGE