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6 **UNITED STATES DISTRICT COURT**
7 **SOUTHERN DISTRICT OF CALIFORNIA**
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9 CHARLES KNUFF,

10 Plaintiff,

11 vs.

12 GARY S. GEVISSER, ADAM TUCKER,
et al.,

13 Defendants.

CASE NO. 10cv1374-WQH-WVG

ORDER

14 HAYES, Judge:

15 Defendant Gary S. Gevisser, a nonprisoner proceeding pro se, initiated this action by
16 filing a document entitled, "Motion Demand & Notice for Dismissal and Removal for
17 Injunction, Relief, Demurrer & Declaration." (Doc. # 1 at 1). The Court construes this
18 document as a notice of removal.

19 **REQUIREMENTS OF THE REMOVAL STATUTE**

20 "The venue of removed actions is governed by 28 U.S.C. § 1441(a).... Section 1441(a)
21 expressly provides that the proper venue of a removed action is 'the district court of the United
22 States for the district and division embracing the place where such action is pending.'" *Polizzi*
23 *v. Cowles Magazines, Inc.*, 345 U.S. 663, 665-66 (1953) (quoting 28 U.S.C. § 1441(a)). The
removal statute also provides:

24 A defendant ... desiring to remove any civil action ... from a State court shall file
25 in the district court of the United States for the district and division within which
26 such action is pending a notice of removal ... and containing a short and plain
statement of the grounds for removal, together with a copy of all process,
pleadings, and orders served upon such defendant ... in such action.

27 28 U.S.C. § 1446(a).

28 The removing Defendant has failed to comply with the removal statute by failing to

1 attach to the notice of removal “a copy of all process, pleadings, and orders served upon such
2 defendant” in the state court action. *Id.* It appears from the documents before this Court that
3 Defendant is attempting to remove a state court action pending in Dallas County, Texas. Any
4 action pending in Texas state court must be removed to the appropriate United States District
5 Court in Texas. *See* 28 U.S.C. § 1441(a).

6 FAILURE TO PAY THE FILING FEE


7 “The clerk of each district court shall require the parties instituting any civil action, suit
8 or proceeding in such court, whether by original process, removal or otherwise, to pay a filing
9 fee of \$350.” 28 U.S.C. § 1914(a). An action may proceed despite a party’s failure to pay this
10 filing fee only if the party is granted leave to proceed in forma pauperis pursuant to 28 U.S.C.
11 § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *City of Ashland*
12 *v. Cooper*, 863 F.2d 691, 692-93 (9th Cir. 1988) (removal).

13 The removing Defendant has not prepaid the \$350 filing fee required to commence a
14 civil action, nor has he submitted a motion to proceed in forma pauperis. Therefore, this case
15 must be dismissed.

16 CONCLUSION

17 IT IS HEREBY ORDERED that this action is DISMISSED without prejudice for
18 failing to pay the \$350 filing fee or file a motion to proceed in forma pauperis pursuant to 28
19 U.S.C. § 1915(a). The Clerk of the Court shall provide the removing Defendant with this
20 Court’s approved form “Motion and Declaration in Support of Motion to Proceed In Forma
21 Pauperis.” If the filing fee is paid or a motion to proceed in forma pauperis is granted, this
22 action may then be subject to dismissal if the requirements of the removal statute are not
23 satisfied, including but not limited to filing the notice of removal in the proper venue and
24 attaching to the notice of removal “a copy of all process, pleadings, and orders served upon
25 such defendant” in the state court action. 28 U.S.C. § 1446(a).

26 DATED: July 7, 2010

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28 **WILLIAM Q. HAYES**
United States District Judge