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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MITSUBISHI MOTORS CREDIT OF
AMERICA, INC.,

Plaintiff

v.

EL CERRITO AUTOMOTIVE
INVESTMENTS, INC., et al.,

Defendants

No. C-05-5366 MMC

ORDER REMANDING ACTION

Before the Court is plaintiff and counter-defendant Mitsubishi Motors Credit of America, Inc.'s ("MMCA") Notice of Removal, by which MMCA has removed the above-titled action to federal court. The action consists of MMCA's complaint against defendants El Cerrito Automotive Investments, Inc., Bruce Kavich, and Zoran J. Zarich (collectively, "El Cerrito") and El Cerrito's cross-complaint against MMCA.

MMCA's complaint alleges only state law claims against El Cerrito, and MMCA does not allege diversity of citizenship. Rather, MMCA alleges that because El Cerrito's cross-complaint includes a claim arising under federal law, specifically, a claim under 18 U.S.C. § 1962, the federal district court has federal question jurisdiction over the action.

Only claims set forth in the plaintiff's complaint can establish "arising under" jurisdiction. See Holmes Group, Inc. v. Vornado Air Circulation Systems, Inc., 535 U.S.


1 826, 831 (2002). “[A] counterclaim – which appears as part of the defendant’s answer, not
2 as part of the plaintiff’s complaint – cannot serve as the basis for ‘arising under’
3 jurisdiction.” Id. Here, MMCA’s complaint does not include any claim that arises under
4 federal law. Consequently, the Court lacks “arising under” jurisdiction. See id.

5 Accordingly, the Court hereby REMANDS the above-titled action for lack of subject
6 matter jurisdiction, pursuant to 28 U.S.C. § 1447(c), to the Superior Court of the State of
7 California, in and for the County of Contra Costa.

8 The Clerk shall close the file.

9 **IT IS SO ORDERED.**

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11 Dated: January 3, 2005


MAXINE M. CHESNEY
United States District Judge

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