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

CHASE BANK USA, N.A.,
Plaintiff,
v.
LEANDRO H. DURAN,
Defendant

No. C-06-2258 MMC
ORDER REMANDING ACTION

AND RELATED CROSS-ACTION
_____ /

Before the Court is cross-defendant Arrow Financial Services LLC's ("Arrow") Notice of Removal, filed March 29, 2006. Arrow asserts the district court has federal question jurisdiction over the action because a cross-complaint filed by Leandro H. Duran ("Duran") against plaintiff Chase Bank USA, N.A. and third parties, including Arrow, purportedly contains a federal question.

A third-party defendant, such as Arrow, has no right to remove a case to federal court. See First Nat'l Bank v. Curry, 301 F. 3d 456, 461 (6th Cir. 2005) (citing cases and treatises so holding). As a result, a district court lacks subject matter jurisdiction over an action removed by a third- party defendant. See id. at 467. Because this Court lacks subject matter jurisdiction over the above-titled action, the action must be remanded. See

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1 28 U.S.C. § 1447(c) (“If at any time before final judgment it appears that the district court
2 lacks subject matter jurisdiction, the case shall be remanded.”).

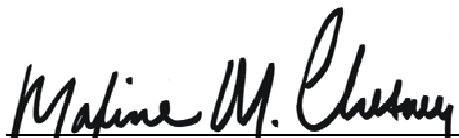
3 Further, even assuming Arrow could have removed the instant case, the grounds
4 asserted by Arrow do not support removal jurisdiction. Each claim alleged by Duran arises
5 under state law. Although Arrow asserts that Duran’s state law claims are completely
6 preempted by the Fair Credit Reporting Act (“FCRA”), specifically, by 15 U.S.C.
7 § 1681t(b)(1)(F), and thus are removable, Arrow cites no authority to support such
8 assertion. Indeed, those courts that have examined the issue have found FCRA
9 preemption does not support removal. See, e.g., King v. Retailers Nat’l Bank, 388 F. Supp.
10 2d 913, 916 (N.D. Ill. 2005) (holding FCRA does not “completely preempt” state law claims
11 for purposes of removal jurisdiction); Watkins v. Trans Union, L.L.C., 118 F. Supp. 2d 1217,
12 1220-23 (N.D. Ala. 2000) (holding “complete preemption doctrine” inapplicable to FCRA;
13 finding “Congress did not intend to make state law causes of action defensively preempted
14 by the FCRA removable to federal court”); see also Caterpillar, Inc. v. Williams, 482 U.S.
15 386, 393 (1987) (“[I]t is now settled law that a case may not be removed to federal court on
16 the basis of a federal defense, including the defense of preemption.”) (emphasis in
17 original).¹

18 Accordingly, the Court hereby REMANDS the above-titled action for lack of subject
19 matter jurisdiction, pursuant to 28 U.S.C. § 1447(c), to the Superior Court of the State of
20 California, in and for the County of Alameda.

21 The Clerk shall close the file.

22 **IT IS SO ORDERED.**

23 Dated: April 5, 2006

24 
25 MAXINE M. CHESNEY
United States District Judge

26 _____
27 ¹Arrow cites two cases in its Notice of Removal. Neither involves a complaint
28 removed under a theory of complete preemption, nor is the subject of complete, as
opposed to defensive, preemption addressed. See Howard v. Blue Ridge Bank, 371 F.
Supp. 2d 1139, 1143-44 (N.D. Cal. 2005); Davis v. Maryland Bank, 2002 WL 32713429,
*11-14 (N.D. Cal. 2002).