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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CENTURY BANKCARD  
SERVICES, INC.

Plaintiff,

vs.

U.S. BANCORP and BAY VIEW  
BANK,

Defendants.

CV 03-9239 FMC (PJWx)

**ORDER GRANTING  
PLAINTIFF'S MOTION TO  
REMAND**

**FOR PUBLICATION**

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This matter is before the Court on Plaintiff's Motion to Remand (docket nos. 7 and 9), filed April 30, 2004. The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set for May 24, 2004, is removed from the Court's calendar. For the reasons set forth below, the Court **hereby grants** Plaintiff's Motion to Remand.

**I. Background**

On November 12, 2003, Plaintiff Century Bankcard Services filed this action in Los Angeles Superior Court against Defendants U.S. Bancorp and Bay View Bank. The Complaint asserts the following causes of action: (1) breach of contract against Bay View Bank; (2) breach of contract against U.S. Bancorp; and (3) intentional interference with a contractual relationship

1 against U.S. Bancorp. Plaintiff is a California corporation with its principal  
2 place of business in California. U.S. Bancorp is a Delaware corporation with  
3 its principal place of business in Minnesota.

4 Plaintiff alleges that on or about December 10, 1999, it entered into an  
5 agreement with Bay View Bank, whereby Plaintiff would provide merchant-  
6 related credit card services to Bay View Bank. The agreement also contained  
7 a Non-Compete provision whereby Bay View Bank agreed not to solicit any  
8 merchant for credit card processing at any time, whether or not the  
9 agreement had been terminated. Plaintiff alleges that in or around  
10 November 1, 2002, U.S. Bancorp purchased Bay View Bank's entire branch  
11 structure, and that U.S. Bancorp verified, in writing, that it was aware of, and  
12 agreed to comply with, the Non-Compete provision. Plaintiff alleges that on  
13 or around January 2003, Defendants Bay View Bank and U.S. Bancorp, as  
14 Bay View Bank's successor in interest, breached the agreement between Bay  
15 View Bank and Plaintiff, by failing and refusing to comply with the Non-  
16 Compete provision. Plaintiff alleges that Defendants directly solicited  
17 Plaintiff's merchant customers and caused the merchant customers to  
18 transfer their business to Defendants. Plaintiff also alleges that in or around  
19 January 2003, U.S. Bancorp intentionally interfered with the agreement  
20 between Plaintiff and Bay View Bank by directly soliciting Plaintiff's  
21 merchant customers.

22 On December 17, 2003, U.S. Bancorp removed the case to this Court  
23 contending that there was both federal question and diversity jurisdiction.  
24 U.S. Bancorp explained that Bay View Bank was dissolved on September 30,  
25 2003 and no longer exists. Plaintiff filed the instant Motion to Remand on  
26 April 30, 2004.

1 **II. Motion to Remand**

2 A motion to remand is the proper procedure for challenging removal.  
3 *See N. Cal. Dist. Council of Laborers v. Pittsburgh-Des Moines Steel Co.*, 69 F.3d  
4 1034, 1038 (9th Cir. 1995). The removal statute is strictly construed, and any  
5 doubt about the right of removal is resolved in favor of remand. *See Gaus v.*  
6 *Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992); *Prize Frieze, Inc. v. Matrix, Inc.*,  
7 167 F.3d 1261, 1265 (9th Cir. 1999). Consequently, if a plaintiff challenges  
8 the defendant’s removal of a case, the defendant bears the burden of  
9 establishing the propriety of the removal. *See Gaus*, 980 F.2d at 566; *Duncan*  
10 *v. Stuetzle*, 76 F.3d 1480, 1485 (9th Cir. 1996).

11 **III. Discussion**

12 U.S. Bancorp alleges that federal question jurisdiction exists in this  
13 case pursuant to 28 U.S.C. § 1348. Section 1348 provides that “district courts  
14 shall have original jurisdiction of ... any civil action to wind up the affairs of  
15 any [national banking] association.” “A court should look to the entire  
16 transaction in question [citations omitted] to see if the civil action affects the  
17 liquidation of an insolvent national bank.” *Stevens v. Lowder*, 643 F.2d 1078,  
18 1079 (5th Cir. 1981).

19 Plaintiff argues that this action does not involve winding up Bay View  
20 Bank’s affairs. Plaintiff asserts that it entered into an agreement with Bay  
21 View Bank prior to Bay View Bank’s dissolution. Plaintiff then asserts that  
22 Bay View Bank breached that agreement by failing to comply with the Non-  
23 Compete provision in January 2003, after Bay View Bank’s dissolution. The  
24 Court agrees, Plaintiff’s breach of contract claim does not present an action  
25 for winding up the affairs of Bay View Bank, and is wholly unrelated to Bay  
26 View Bank’s dissolution, or transactions arising from it, and therefore does  
27 not constitute an action under § 1348. *See Gaff v. F.D.I.C.*, 828 F.2d 1145  
28 (6th Cir. 1987)(finding that the plaintiff’s state claims did not constitute an

1 action under § 1348, because the claims sought to redress injuries resulting  
2 from actions by the bank's officers prior to the bank's insolvency).

3 U.S. Bancorp's authority is inapposite. In *Stevens*, shareholders of an  
4 insolvent bank asserted claims against the purchasers of the insolvent bank's  
5 assets; the claims included fraud, breach of confidential relationship and  
6 conspiracy in connection with the purchase of the bank's assets. *Stevens*, 643  
7 F.2d at 1079. The Fifth Circuit found that the district court had jurisdiction  
8 over the plaintiffs' claims under § 1348, because claims which belong to an  
9 insolvent bank and claims arising out of insolvency and the purchase of the  
10 insolvent bank's assets are within the scope of winding up the insolvent  
11 bank's affairs. *Id.* at 1080.

12 Here, Plaintiff is not asserting any claims that belong to Bay View  
13 Bank nor any claims arising out of the purchase of Bay View Bank's assets.  
14 Plaintiff alleges that U.S. Bancorp is liable for breach of contract because it is  
15 Bay View Bank's successor in interest; however, the breach of contract and  
16 intentional interference claims do not arise out of any wrongdoing associated  
17 with the transfer of assets between Bay View Bank and U.S. Bancorp. The  
18 agreement was entered before Bay View Bank's dissolution and the alleged  
19 breach occurred after the dissolution; the breach did not arise out of, nor was  
20 it connected to, the dissolution. U.S. Bancorp does not provide authority  
21 supporting the proposition that any claim against an already dissolved bank  
22 falls within the scope of § 1348.

23 U.S. Bancorp also alleges that diversity jurisdiction exists between it  
24 and Plaintiff.<sup>1</sup> Plaintiff is a California corporation with its principal place of  
25 business in California. U.S. Bancorp is a Delaware corporation with its  
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27  
28 <sup>1</sup> This action was filed after Bay View Bank ceased to exist; accordingly, the Court will  
not consider the citizenship of Bay View Bank in determining diversity jurisdiction.

1 principal place of business in Minnesota. Plaintiff alleges that U.S. Bancorp  
2 operates as U.S. Bank in Los Angeles. (Mtn. at 4:23-24.)

3 Plaintiff argues that pursuant to 28 U.S.C. § 1348, U.S. Bancorp is a  
4 citizen of California. Section 1348 provides that “The district court shall  
5 have original jurisdiction of ... any civil action to wind up the affairs of any  
6 [national banking] association, and any action by a banking association  
7 *established* in the district for which the court is held ... to enjoin the  
8 Comptroller of the Currency, or any receiver acting under his direction ...  
9 All national banking associations shall, for the purposes of all other actions  
10 by or against them, be deemed citizens of the States in which they are  
11 respectively *located*.” 28 U.S.C. § 1348 (emphasis added).

12 In *Citizens & Southern National Bank v. Bougas*, 434 U.S. 35, 98 S.Ct. 88  
13 (1977), the Supreme Court considered the definitions of the terms  
14 “established” and “located” as used in 12 U.S.C. § 94, a statute governing  
15 venue of suits against national banking associations, which utilized both  
16 terms at the time *Bougas* was decided. The Supreme Court ruled that, for  
17 venue purposes, “established” and “located” have separate and distinct  
18 meanings: a federally chartered bank is “established” in the place specified  
19 in the bank’s charter and is “located” in any state in which it maintains an  
20 authorized branch. *Id.* at 39, 44. The Supreme Court acknowledged that  
21 some federal cases found that the words “established” and “located” are  
22 functionally synonymous and are restricted to mean the place designated in  
23 the bank’s charter. *Id.* at 40, n.6 (citing to, *inter alia*, *United States Nat. Bank*  
24 *v. Hill*, 434 F.2d 1019, 1020 (9th Cir. 1970). However, the Supreme Court  
25 distinguished those cases, because they “necessarily were concerned with the  
26 word ‘established’ and not with ‘located.’” *Id.* The Supreme Court noted  
27 that “located” appears in other federal statutes concerning national banks,  
28 including 28 U.S.C. § 1348. *Id.* at 36, n.1.

1           The Court’s research has disclosed no Ninth Circuit decision on this  
2 issue. Following *Bougas* and the reasoning therein, a majority of district  
3 courts have concluded that a national banking association is “located” in any  
4 state where it maintains a branch office, and is therefore a citizen of that state  
5 for diversity purposes pursuant to 28 U.S.C. §1348. See *Roozenboom v. U.S.*  
6 *Bank*, 2000 WL 249403, \*3 (D. Or. Feb. 22, 2000)(“[r]ecently, the trend of  
7 the federal courts has been to find that a national banking association is a  
8 citizen in each state in which it maintains branch offices”); *Firststar Bank,*  
9 *N.A. v. Faul*, 2000 WL 1724669, \*2 (N.D. Ill. Oct. 23, 2000); *First Union Corp.*  
10 *v. American Cas. Co. of Reading, PA*, 222 F. Supp. 2d 767, 769 (W.D.N.C.  
11 2001); *Frontier Ins. Co. v. MTN Owner Trust*, 111 F. Supp. 2d 376, 379  
12 (S.D.N.Y. 2000); *Norwest Bank Minnesota, N.A. v. Patton*, 924 F. Supp. 114,  
13 115 (D. Colo. 1996); *Ferraiolo Const., Inc. v. Keybank*, 978 F. Supp. 23, 25  
14 (D. Me. 1997). *But see Bank of America, N.A. v. Johnson*, 186 F. Supp. 2d  
15 1182, (W.D. Okla. 2001) (Under 28 U.S.C. § 1348, a national bank is located  
16 only where it has its principal place of business and in the state listed in its  
17 organization certificate; if Congress had intended otherwise, it would have  
18 “expressly provide[d] that national banking associations would be deemed  
19 citizens of all states in which they have, e.g., a branch office”).

20           Applying the majority rule that a national banking association is a  
21 citizen of any state in which it maintains a branch office, there is not  
22 diversity between Plaintiff and U.S. Bancorp. Because U.S. Bancorp  
23 maintains a branch in Los Angeles, both Plaintiff and U.S. Bancorp are  
24 citizens of California.

25           U.S. Bancorp argues that Plaintiff has not provided any evidence that  
26 U.S. Bancorp is the same entity as its subsidiary, U.S. Bank, N.A., the branch  
27 located in Los Angeles. However, for purposes of diversity jurisdiction, a  
28 national banking association is deemed a citizen of the states in which it is

1 located, which includes states in which it has a branch. The determination  
2 of whether the branch qualifies as the same legal entity is irrelevant to the  
3 analysis of diversity jurisdiction.

4 U.S. Bancorp also argues that summary judgment is appropriate in this  
5 case; however the Court will not reach the merits of the case having  
6 determined that it is without jurisdiction.

7 U.S. Bancorp, as the removing party, has failed to meet its burden of  
8 establishing the propriety of removal on the basis of either federal question  
9 or diversity jurisdiction.

10 The Court denies Plaintiff's request for attorneys fees in connection  
11 with the Motion to Remand. The Court also denies U.S. Bancorp's request  
12 for monetary sanctions against Plaintiff and its counsel.

#### 13 **IV. Conclusion**

14 For the reasons stated above, the Court **hereby grants** Plaintiff's  
15 Motion to Remand (docket nos. 7 and 9) and this action is **hereby remanded**  
16 to Los Angeles Superior Court.

17  
18 May 20, 2004

19 /S/

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21 **FLORENCE-MARIE COOPER, Judge**  
22 **UNITED STATES DISTRICT COURT**