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COURT, DISTRICT OF UTAH

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James S. Jardine (Bar No. 1647)  
John A. Adams (Bar No. 0023)  
Kevin G. Glade (Bar No. 4038)  
**RAY QUINNEY & NEBEKER**  
36 South State Street, Suite 1400  
P.O. Box 45385  
Salt Lake City, Utah 84145-0385  
Telephone: (801) 532-1500

Attorneys for Plaintiffs

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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American Bankers Association;  
Utah Bankers Association; Bank of Utah;  
Liberty Bank; First Utah Bank; and Frontier  
Bank, FSB

Plaintiffs,

v.

National Credit Union Administration

Defendant.

Ci Judge J. Thomas Greene  
DECK TYPE: Civil  
DATE STAMP: 07/15/2003 @ 08:42:07  
Ju CASE NUMBER: 2:03CV00621 JTG

**COMPLAINT**

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**NATURE OF THIS ACTION**

1. Plaintiffs bring this complaint for declaratory and other relief under 5 U.S.C §§ 702 through 706; 28 U.S.C. §§ 2201 and 2202; the Federal Credit Union Act, 12 U.S.C. § 1751, et seq.; and Rule 57 of the Federal Rules of Civil Procedure to challenge the approval given by the National Credit Union Administration to an application made by Tooele Federal Credit

Union to expand its community field of membership from one Utah county (Tooele County) to six Utah counties (Tooele County, Salt Lake County, Davis County, Weber County, Morgan County and Summit County). The approval of this unprecedented expansion constitutes an arbitrary and capricious departure from and violation of the Federal Credit Union Act and the credit union membership regulations promulgated thereunder.

2. This Complaint also challenges the approval given by National Credit Union Administration to subsequent applications made by America First Federal Credit Union and Goldenwest Federal Credit Union to claim the same unlawful six-county community field of membership given to Tooele Federal Credit Union.

### **JURISDICTION**

3. Because this action arises under the Administrative Procedure Act, 5 U.S.C. § 701, et seq., and the Federal Credit Union Act, 12 U.S.C. § 1751, et seq., this Court has subject-matter jurisdiction over this action under 28 U.S.C. § 1331.

4. Venue is properly laid in this District under 28 U.S.C. § 1391.

### **PARTIES**

5. Plaintiff American Bankers Association (the “ABA”) is the largest national trade association of the banking industry in the United States. The ABA represents commercial and savings banks and savings and loans associations operating in all fifty states, including Utah. Among the functions undertaken by the ABA for its members is to monitor and to seek to enforce competitive fairness in the regulation of financial institutions.

6. Plaintiff Utah Bankers Association (the “UBA”) is a trade association representing the interests of banks and other financial institutions located throughout Utah.

7. Plaintiffs Bank of Utah, Liberty Bank, First Utah Bank, and Frontier Bank, FSB are banks (the “Banks”) with operations in one or more of the six counties claimed by Tooele Federal Credit Union, America First Federal Credit Union and Goldenwest Federal Credit Union in their fields of membership.

8. Defendant National Credit Union Administration (“NCUA”) is an agency of the United States Government and is responsible for administering the Federal Credit Union Act, 12 U.S.C. § 1751, et seq. (the “Credit Union Act”), throughout the United States, including in Utah.

## **FACTUAL BACKGROUND**

### **A. The NCUA’s Membership Rule**

9. Federal credit unions are mutually owned financial institutions chartered and regulated by the NCUA pursuant to the Credit Union Act. They have significant tax and regulatory advantages over banks that compete with them for business.

10. In 1990, the ABA and certain member institutions filed suit against the NCUA challenging the NCUA’s policy of chartering credit unions in violation of the field of membership limits set forth in the federal credit union statute in effect at that time. Specifically, the NCUA was permitting multiple group credit unions in violation of the applicable statute. In February 1998, the United States Supreme Court ruled in favor of the ABA, invalidating the NCUA’s policy of chartering multiple group credit unions. National Credit Union Administration v. First National Bank & Trust Co. et al., 522 U.S. 479 (1998).

11. In August 1998, the Congress passed the Credit Union Membership Access Act (“CUMAA”).

12. CUMAA was compromise legislation, providing greater flexibility to federal credit unions in some areas, but imposing greater restrictions in others.

13. With respect to its limiting effect, CUMAA imposed a new “local” restriction on community credit unions. Membership for a community credit union is now limited to “[p]ersons or organizations within a well-defined local community, neighborhood, or rural district” 12 U.S.C. § 1759(b)(3) (emphasis added). In prior law, the word “local” did not appear.

14. The NCUA acknowledged that Congress’ new requirement that a well-defined community be “local” imposed a “more circumspect and restricted approach to chartering community credit unions.” 63 Fed. Reg. at 72,012 (1998). The NCUA also stated that a community credit union has a new burden “to demonstrate more definitively how it meets the local requirement.” *Id.*

15. A federal credit union can adopt either a single group model, a multiple group model, or a geographic model for its membership. The single group model limits membership to employees of the same employer or members of the same association, wherever located. The multiple group model grants membership to employees at different designated employers or members of different associations within reasonable proximity of one another. The geographic model identifies its members as residents of a well-defined local community, neighborhood, or rural district. Pursuant to the Credit Union Act, to meet the new constraints of CUMAA, the NCUA promulgated Interpretive Ruling and Policy Statement 99-1, to be effective January 1, 1999, governing membership for federal credit unions, as amended on October 27, 2000, March 20, 2001, and April 24, 2002 (collectively referred as “IRPS 99-1”). IRPS 99-1 sets out

restrictions that limit the fields of membership for single group and multiple group credit unions and for community credit unions.

16. With respect to community credit unions, IRPS 99-1 provides in relevant part the following limits on the scope of membership for a community credit union:

NCUA policy is to limit the community to a single, geographically well-defined area where individuals have common interests or interact.

. . .

NCUA has established the following requirements for community charters:

- The geographic area's boundaries must be clearly defined;
- The charter applicant must establish that the area is a 'well-defined local, community, neighborhood, or rural district'; and
- The residents must have common interests or interact.

. . .

'Well-defined' means the proposed area has specific geographic boundaries. Geographic boundaries may include a city, township, county (or its political equivalent), or clearly identifiable neighborhood.

. . .

The meaning of local community, neighborhood, or rural district includes a variety of factors. Most prominent is the requirement that the residents of the proposed community area interact or have common interests. In determining interaction and/or common interests, a number of factors become relevant. For example, the existence of a single major trade area, shared governmental or civic facilities, or area newspaper is significant evidence of community interaction and/or common interests. Conversely, numerous trade areas, multiple taxing authorities, and multiple political jurisdictions, tend to diminish the characteristics of a local area.

Population and geographic size are also significant factors in determining whether the area is local in nature. A large population in a small geographic area or a small population in a large geographic area may meet NCUA community chartering requirements. For example, an ethnic neighborhood, a rural area, a

city, and a county with 300,000 or less residents will generally have sufficient interaction and/or common interests to meet community charter requirements. While this may most often be true, it does not preclude community charters consisting of multiple counties or local areas with populations of any size from meeting community charter requirements.

Conversely, a larger population in a large geographic area may not meet NCUA community chartering requirements. It is more difficult for a major metropolitan city, a densely populated county, or an area covering multiple counties with significant population to have sufficient interaction and/or common interests, and to therefore demonstrate that these areas meet the requirement of being “local.” In such cases, documentation supporting the interaction and/or common interests will be greater than the evidence necessary for a smaller and less densely populated area.

In most cases, the ‘well-defined local community, neighborhood, or rural district’ requirement will be met if (1) the area to be served is in a recognized single political jurisdiction, i.e., a county or its political equivalent or any contiguous political subdivisions contained therein, and if the population of the requested well-defined area does not exceed 300,000 or (2) the area to be served is in multiple contiguous political jurisdictions, i.e. a county or its political equivalent or any political subdivisions contained therein and if the population of the requested well-defined area does not exceed 200,000.

. . .

National Credit Union Administration Chartering and Field of Membership Manual, pp. 2-46 to 2-47, effective May 24, 2002.

#### **B. Tooele Federal Credit Union Application**

17. On or about December 6, 2002, Tooele Federal Credit Union (“Tooele FCU”) made application to the NCUA to expand Tooele FCU’s community field of membership (the “Tooele Application”). Prior to the Tooele Application, Tooele FCU’s community field of membership consisted of Tooele County, Utah.

18. With complete disregard for the limits of the Credit Union Act and IRPS 99-1, the Tooele Application sought to expand Tooele FCU’s community field of membership to add five

additional counties in Utah: Salt Lake County, Davis County, Weber County, Morgan County and Summit County (with Tooele County, referred to collectively as the “Six Counties”).

19. The Region VI Director of the NCUA gave the Tooele Application a favorable recommendation and submitted it to the NCUA Board for approval. The submission was made pursuant to a Board Action Memorandum dated March 26, 2003.

20. At a hearing on April 24, 2003, the NCUA’s three-member Board, in a split decision, voted 2 to 1 to approve the Tooele Application.

**C. America First Federal Credit Union and Goldenwest Federal Credit Union Applications**

21. On May 1, 2003, the Region VI Director of the NCUA approved America First Federal Credit Union’s (“America First”) application for a community field of membership covering the Six Counties (the “America First Application”). The sole basis for the approval of the America First Application was the prior approval given by the NCUA to the Tooele Application.

22. Similarly, on May 5, 2003, the Region VI Director of the NCUA approved Goldenwest Federal Credit Union’s (“Goldenwest”) application for a community field of membership covering the Six Counties (the “Goldenwest Application”). Again, the sole basis for the approval of the Goldenwest Application was the prior approval given by the NCUA to the Tooele Application.

**D. Approval of the Tooele Application Was an Arbitrary and Capricious Violation of the Credit Union Act and IRPS 99-1**

23. The NCUA's approval of the Tooele Application was an arbitrary and capricious action in violation of and contrary to the Credit Union Act and IRPS 99-1 for reasons that include without limitation each of the following:

a. The Tooele Application sought, and the NCUA approved, a more than 34-fold increase of Tooele FCU's field of membership from a population base of approximately 40,735 (the population of Tooele County) to a population of approximately 1,411,514 (the combined population of the Six Counties). A field of membership consisting of 1,411,514 residents is beyond the statutory limit of a "well-defined local community, neighborhood, or rural district." The population of the Six Counties is more than seven times greater than the limit of 200,000 people identified in IRPS 99-1 for multiple contiguous political jurisdictions. Furthermore, the Tooele Application seeks the inclusion of three densely populated counties (Salt Lake County, Davis County and Weber County) into Tooele FCU's field of membership. IRPS 99-1 recognizes an implicit presumption that one densely populated county does not have sufficient interaction and common interests. The requisite interaction and common interests become literally impossible to establish when considering the inclusion of three, not one, densely populated counties into a community field of membership.

b. The Tooele Application asserts as a ground for approval that the Six Counties include three counties, Salt Lake County, Davis County and Weber County, which comprised the Salt Lake-Ogden Metropolitan Statistical Area (the "Salt Lake MSA"). The NCUA relied unreasonably on Tooele FCU's argument based on the Metropolitan

Statistical Area factor in approving the Tooele Application. Tooele County was not included in the Salt Lake MSA. In addition, neither Morgan County nor Summit County was included in the Salt Lake MSA. A geographic area more expansive than one Metropolitan Statistical Area cannot be a “well-defined local community, neighborhood, or rural district” as required by the Credit Union Act. In addition, that statutory requirement cannot be met when a credit union seeks to expand its community field of membership to add an entire Metropolitan Statistical Area, no part of which was previously included in its field of membership. Finally, since the NCUA’s approval of the Tooele Application, the federal Office of Management and Budget has made significant adjustments to the Metropolitan Statistical Areas in Utah. The Salt Lake MSA now consists of Salt Lake County, Tooele County and Summit County. A new Metropolitan Statistical Area, the Ogden-Clearfield Metropolitan Statistical Area, was created, which consists of Davis County, Weber County and Morgan County. Tooele FCU now claims in its field of membership two complete Metropolitan Statistical Areas, which cannot fit the statutory limit of the well-defined local community. Moreover, the ever-changing configurations of Metropolitan Statistical Areas confirm (1) that a Metropolitan Statistical Area is not an indication of a community with unique interaction and commonality, and (2) that the IRPS 99-1 requirement that the community have “clearly defined” boundaries is not satisfied by a reference to a Metropolitan Statistical Area, which is subject to change.

c. The Six Counties forming the basis of the Tooele Application and its approval by the NCUA contain numerous political jurisdictions and taxing authorities (e.g., cities,

towns, improvement or special service districts). The Tooele Application failed to identify each such jurisdiction and taxing authority and, more importantly, failed to explain how each such jurisdiction and taxing authority have common characteristics with respect to issues regarding local government and taxation that would justify an unprecedented, multiple county field of membership.

d. The Tooele Application provides no explanation or analysis, and the NCUA did not seek further information, as to how particular characteristics of Tooele County alone (the original community for Tooele FCU) create an affinity or interaction with particular characteristics of each of the other five counties, which might justify expansion of Tooele FCU's community field of membership.

e. There was a complete failure by the NCUA to consider or discuss in a genuine, realistic manner, the origins of Tooele FCU's present community and the reasonable and practical options for expansion by Tooele FCU. For example, The Tooele Application mistakenly claims that growth in Tooele County alone is unlikely. Quite to the contrary, there has been a 53.1% increase in Tooele County population between 1990 to 2000. Moreover, the Tooele Application shows that its previous community field of membership did not, in fact, include all of Tooele County. The Tooele Application states that the Tooele FCU's field of membership was:

Persons who live, work, worship, or attend school in, and businesses and other legal entities in Tooele County, except for those persons who live within the City Limits of Grantsville, and except those person who are eligible for primary membership in the Dugway Federal Credit Union.

Besides future population growth in Tooele County, Tooele FCU had the potential to draw members from other parts of Tooele County.

f. The Tooele Application erroneously claimed the Wasatch Front Regional Council (the “WFRC”) constituted an indication of a well-defined local community, and the NCUA relied unreasonably on that claim. The NCUA failed to recognize the limited purpose, scope and effect of the WFRC. The WFRC was created for the limited purpose of establishing a review agency to comply with requirements of federal law to obtain federal grants and loans, with a focus primarily on transportation issues. Over 90% of the funding of the WFRC originates with the federal government. In that regard, the WFRC is a voluntary, interlocal cooperative organization of municipal and county governments (1) to provide a discussion forum for elected officials and (2) to coordinate local programs with federal and Utah State programs. The WFRC is not a new layer of government binding its county members. The WFRC does not give a citizen a new public forum in addition to his or her municipality or county. WFRC does not conduct events for, or communicate with, the population at large. The WFRC has little or no degree of recognition among the population at large. The WFRC does not have taxing authority. Residents living in the counties covered by the WFRC do not vote with respect to WFRC proposals. The WFRC operates for the sole convenience and benefit of local governments and has no direct relationship to the citizenry. Furthermore, the Tooele Application does not identify any particular issue of local government addressed by the WFRC that distinguishes its five county members with respect to issues faced by other counties throughout Utah.

g. Summit County and its municipalities are not members of the WFRC. More importantly, the Tooele Application failed to explain that Summit County is a member of

Mountainland Association of Governments, a municipal planning organization similar to WRFC, covering Utah County, Wasatch County and Summit County. The membership of Summit County in this other municipal planning organization contradicts conclusory statements in the Tooele Application that Summit County is connected in all respects with Salt Lake County, statements upon which the NCUA relied.

h. The Tooele Application claimed LDS Church membership throughout the Six Counties as a basis for a well-defined local community. The NCUA relied unreasonably on that claim. With respect to LDS Church membership in the Six Counties, the total percentage is approximately 58%, not 72% as falsely claimed in the Tooele Application and erroneously relied on by the NCUA. In addition, the Tooele Application failed to provide any evidence that membership in the LDS Church within the Six Counties distinguishes the Six Counties with respect to LDS Church membership from other counties in the Utah and areas in contiguous states with concentrations of LDS Church membership. More importantly, the Tooele Application failed to explain, and the NCUA failed to consider, the greater diversity and lack of commonality among and within the Six Counties when compared with other counties in Utah. When ranking the 29 Utah counties according to the percentage of LDS Church membership (1<sup>st</sup> being the highest and 29<sup>th</sup> the lowest), two of the Six Counties rank in the top half (Morgan County, 1<sup>st</sup>, and Davis County, 13<sup>th</sup>) while the other four counties are in the lower half. Indeed, all four counties are roughly in the bottom third (Tooele County, 20<sup>th</sup>, Weber County, 23<sup>rd</sup>, Salt Lake County, 24<sup>th</sup>, and Summit County, 28<sup>th</sup>). Thus, the Tooele Application failed to explain that LDS Church membership in four of the Six Counties is, on a percentage

basis, among the bottom third of all Utah counties and therefore indicates a greater diversity of religious affiliation. Finally, although Salt Lake City is the world headquarters for the LDS Church, worship within the LDS Church occurs on a neighborhood level (in wards and stakes), not on a multiple county basis.

i. The NCUA unreasonably accepted at face value the false impression created by the Tooele Application that the Six Counties comprise a geographically isolated group of counties, separated from other populated areas by mountains, forests and deserts covering hundreds of miles. To create that false impression, the Tooele Application did not inform the NCUA that the Six Counties represent only a part of the populated area along the Wasatch front. The Tooele Application failed to inform the NCUA of the Provo-Orem Metropolitan Statistical Area (the “Provo-Orem MSA”) contiguous to the Salt Lake MSA. The Provo-Orem MSA includes Utah County, which has an approximate population of 359,000, second only to Salt Lake County in population throughout the state. The Tooele Application failed to inform the NCUA of other Utah population centers such as Logan, Brigham City, Heber City, Cedar City and St. George. The large Provo-Orem MSA and the other population areas outside the Six Counties all have characteristics common with each of the Six Counties and affirm that the Six Counties have no distinguishing characteristics of commonality and interaction when compared with the rest of the State of Utah. The Tooele Application fails to explain how the Six Counties are distinguishable in commonality or interaction when considered with other Wasatch front counties or other populated areas throughout the state. An entire state cannot be a well-defined local community. In short, the Tooele Application represents an

unsupported and ineffective effort to identify an arbitrary group of Wasatch front counties for the sole purpose of dramatic credit union expansion.

j. The Tooele Application also fails to identify the geographic barriers *among* the Six Counties, which contradict any suggestion that the Six Counties represent a community from a geographic perspective. Tooele County is completely isolated by mountains and the Great Salt Lake, with only a narrow interstate corridor linking it with the outskirts of Salt Lake County. Tooele County has no practical traffic link with any of the other five counties. Similarly, Summit County is separated by mountains, with only a long, narrow interstate corridor linking it with the outskirts of Salt Lake County, with no significant traffic link with any of the other five counties. Morgan County is separated by mountains and has only a narrow interstate traffic link with Weber County and a circuitous interstate connection with Summit County. These geographic barriers inhibit any actual interaction and affinity among residents of the Six Counties.

k. The NCUA's recognition of Salt Lake City as the primary trade center within the Six Counties did not distinguish the Six Counties as a set of counties with identifiable interactive features and commonality. Salt Lake City is the primary trade center for the Six Counties, the other Wasatch front counties ignored by the Tooele Application, the entire State of Utah, and parts of Wyoming, Idaho and Nevada. These Six Counties are not distinctive in that regard; the Six Counties have no interaction with Salt Lake City that is different from interaction between any other county (for example, Utah County, Wasatch County or Box Elder County) and Salt Lake City. More significantly, the Tooele Application affirms that there is very little interaction and commonality among

the Six Counties other than with Salt Lake County. For example, with the exception of commuting traffic into Salt Lake County, the Tooele Application affirms that there is very little commuting among the Six Counties other than Salt Lake County, with the possible exception of commuting traffic between Davis County and Weber County (which establishes only that Davis County and Weber County may have an affinity that none of the other Six Counties have). In addition, the Tooele Application provides no information regarding significant commerce, activities, growth and shopping opportunities within each of the Six Counties other than in Salt Lake County. Again, the Tooele Application has no information that would indicate a unique interaction and commonality among the Six Counties that distinguish them from the balance of the Wasatch front, the balance of the State of Utah, and areas in Idaho, Wyoming and Nevada.

1. References in the Tooele Application to the University of Utah, located in Salt Lake County, and Weber State University, located in Weber County, provide no reasonable basis for a conclusion that the Six Counties constitute an interactive community with commonality. The data provided in the Tooele Application with respect to the University of Utah shows that most of its students come from Salt Lake County, with very few students, in relative terms, coming from Morgan County, Summit County, Tooele County, Davis County and Weber County. The data provided with respect to Weber State University shows that most of its students come from Weber County and Davis County, with very few students, in relative terms, coming from Morgan County, Summit County, Tooele County and Salt Lake County. As an example, the Tooele

Application states that Salt Lake County has 63.6% of the state's population; however, it reports that only 6.77% of Weber State University's student population come from Salt Lake County. Accordingly, the only conclusion that could be drawn by the NCUA with respect to these universities is that each serves two very separate, distinctive communities – the University of Utah serves the Salt Lake County community and Weber State University serves the community of Weber County and Davis County. In addition, the Tooele Application has a glaring deficiency with respect to colleges and universities. The Tooele Application does not mention the significant fact that two of the largest universities in the State of Utah are located in Utah County. Brigham Young University has a student population of approximately 34,000 and Utah Valley State College has a student population of approximately 23,600. Each of these Utah County schools draws from the Six Counties, further diluting any theory that the University of Utah and Weber State University provide a unique interaction and commonality throughout the Six Counties alone with respect to higher education. Similarly, other universities and colleges throughout the state draw from the Six Counties. For example, pursuant to service area designations made by the Utah board of regents, Utah State University, located in Logan, Utah, provides undergraduate classes in Tooele County.

m. The Tooele Application identifies sports, entertainment and convention facilities in Salt Lake County such as the Delta Center, the Salt Palace Convention Center and the E Center; however, there is no discussion or analysis in the Tooele Application, or undertaken by the NCUA, as to (1) how such facilities are used by residents of the Six Counties other than residents of Salt Lake County, (2) how such facilities are used

exclusively by residents of the Six Counties in such a way as to develop or sustain a unique interaction and commonality, and (3) more importantly, how such usage by the Six Counties is different than the usage by residents of other counties throughout the State of Utah.

n. Similarly, with respect to hospitals, the Tooele Application has no discussion or analysis as to how hospitals throughout the Six Counties are used by residents from counties other than the county in which the hospital is located in such a way as to create an identifiable interaction and commonality that distinguishes the Six Counties, and how such usage by residents of different counties is identifiably different than usages by residents from the remaining 23 counties in Utah and areas of Idaho, Wyoming and Nevada.

o. The Tooele Application notes the prominence of The Salt Lake Tribune and The Deseret Morning News and their circulations as a basis for commonality among the Six Counties. As with other factors noted in the Tooele Application, the predominance of these two Salt Lake City newspapers relate to the entire State of Utah. There is no relationship between these newspapers and the Six Counties that suggests a unique interaction or commonality among the Six Counties. What is more significant is the failure of the Tooele Application to discuss, and the NCUA to address, the circulation and the competing voice of The Ogden Standard Examiner, the third largest paper in Utah, and other local newspapers throughout the Six Counties.

p. Because of the deficiencies of the Tooele Application, it is evident that the approval by the NCUA was made without reasonable effort by the NCUA to verify or

investigate the accuracy, completeness or relevance of the data provided by Tooele FCU. The approval of the Tooele Application was given without any notice or opportunity for public comment. The NCUA abdicated its statutory responsibility to ensure that the Tooele FCU charter expansion met the requirements of the Credit Union Act and IRPS 99-1.

q. The NCUA failed to explain or to justify why the Tooele Application overcomes the implicit presumption of IRPS 99-1 that a densely populated metropolitan area or county will not have the attributes of a well-defined local community.

r. It is evident that the NCUA approved the Six County charter for Tooele FCU for the sole purpose of “marking the turf” or “creating a slippery slope” for other credit unions to claim the same or similar, ever-expanding community fields of membership. That intention was confirmed by the immediate approval of the America First Application and the Goldenwest Application, applications made by credit unions that are significantly larger than Tooele FCU, to include the Six Counties.

24. The NCUA was unreasonable in its review of the Tooele Application and in its determination that the Tooele Application was responsive, complete and accurate and unreasonable in its interpretation of the Credit Union Act and IRPS 99-1 as permitting approval of the Tooele Application.

### **E. Injury to Plaintiffs**

25. Members of the ABA and the UBA, including the Banks, for whom the ABA and the UBA respectively appear, operate in the markets located within the Six Counties and compete with federal credit unions for business.

26. By reason of the approval by the NCUA of the Tooele Application, ABA and UBA members, including the Banks, will be subjected to unlawful competition in their business or potential business, which competition would not exist but for the NCUA's unlawful approval of the Tooele Application. The NCUA's approval of the Tooele Application inflicts and threatens serious competitive injury to ABA and UBA members, including the Banks. The subsequent approval of the America First Application and the Goldenwest Application, given on the immediate coattails of the Tooele Application approval, multiplies the ruinous competition for ABA and UBA members.

### **CLAIMS FOR RELIEF**

#### **Count One**

27. Paragraphs 1-26 are incorporated herein by reference.

28. The NCUA's approval of the Tooele Application violates the membership limitations imposed by the Credit Union Act on the formation of, and membership in, community credit unions, as set forth in 12 U.S.C. § 1751, et seq., and is therefore unlawful, null and void.

29. With respect to the Credit Union Act, the NCUA's approval of the Tooele Application is arbitrary, capricious, an abuse of discretion, unreasonable, and not in accordance with law and therefore is unlawful, null and void. 5 U.S.C. §§ 702 through 706.

30. By reason of the NCUA's approval of the Tooele Application, which unlawfully expands Tooele's community field of membership, members of the ABA and the UBA are subject to unlawful competition as described above. The NCUA's approval of the unlawful Tooele Application violates the membership limitations of the Credit Union Act and inflicts and threatens serious competitive injury to members of the ABA and the UBA.

31. There is an actual controversy concerning the rights and obligations of the parties under the Credit Union Act.

32. Pursuant to Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202, plaintiffs, as persons who are affected by the NCUA's approval of the Tooele Application, are entitled to a declaratory judgment from this Court defining and declaring plaintiffs' rights under the Credit Union Act. Specifically, plaintiffs are entitled to a declaration by the Court that the NCUA's approval of the Tooele Application is unlawful, null and void.

### **Count Two**

33. Paragraphs 1-32 are incorporated herein by reference.

34. The NCUA's approval of the Tooele Application violates the membership limitations and requirements imposed by IRPS 99-1 on the formation of, and membership in, community credit unions and is therefore unlawful, null and void.

35. With respect to IRPS 99-1, the NCUA's approval of the Tooele Application is arbitrary, capricious, an abuse of discretion, unreasonable, and not in accordance with law and therefore is unlawful, null and void. 5 U.S.C. §§ 702 through 706.

36. By reason of the NCUA's approval of the Tooele Application, which unlawfully expands Tooele's community field of membership, members of the ABA and the UBA are

subject to unlawful competition as described above. The NCUA's approval of the unlawful Tooele Application violates the membership limitations of IRPS 99-1 and inflicts and threatens serious competitive injury to members of the ABA and the UBA.

37. There is an actual controversy concerning the rights and obligations of the parties under IRPS 99-1.

38. Pursuant to Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202, plaintiffs, as persons who are affected by the NCUA's approval of the Tooele Application, are entitled to a declaratory judgment from this Court defining and declaring plaintiffs' rights under IRPS 99-1. Specifically, plaintiffs are entitled to a declaration by the Court that the NCUA's approval of the Tooele Application is unlawful, null and void.

### **Count Three**

39. Paragraphs 1-38 are incorporated herein by reference.

40. The NCUA's approvals of the America First Application and the Goldenwest Application, which are based solely on the prior approval of the unlawful Tooele Application, violate the membership limitations and requirements placed by the Credit Union Act and IRPS 99-1 on the formation of, and membership in, community credit unions, as set forth in 12 U.S.C. § 1751 et. seq., and are therefore unlawful, null and void.

41. The NCUA's approvals of the America First Application and the Goldenwest Application are arbitrary, capricious, an abuse of discretion, unreasonable and not in accordance with law and therefore are unlawful, null and void. 5 U.S.C. §§ 702 through 706.

42. By reason of the NCUA's approvals of the America First Application and the Goldenwest Application, which gave America First and Goldenwest unlawful community fields

of membership, members of the ABA and the UBA are subject to unlawful competition as described above. The NCUA's approvals of the America First Application and the Goldenwest Application violate the membership limitations of the Credit Union Act and IRPS 99-1 and inflict and threaten serious competitive injury to members of the ABA and the UBA.

43. There is an actual controversy concerning the rights and obligations of the parties under the Credit Union Act and IRPS 99-1.

44. Pursuant to Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C §§ 2201 and 2202, plaintiffs, as persons who are affected by the NCUA's approvals of the America First Application and the Goldenwest Application, are entitled to a declaratory judgment from this Court defining and declaring plaintiffs' rights under the Credit Union Act and IRPS 99-1. Specifically, plaintiffs are entitled to a declaration by the Court that the NCUA's approvals of the America First Application and the Goldenwest Application are unlawful, null and void.

#### **Count Four**

45. Paragraphs 1-44 are incorporated herein by reference.

46. On or about March 27, 2003, the NCUA promulgated new membership regulations in Interpretive Ruling and Policy Statement 03-1 ("IRPS 03-01") to be effective on May 15, 2003.

47. The NCUA's approvals of the Tooele Application, the America First Application and the Goldenwest Application all predate the effective date of IRPS 03-1. Nonetheless, in the event or to the extent the approvals of the Tooele Application, the America First Application and the Goldenwest Application were made on the basis of or in anticipation of the effectiveness of

IRPS 03-1, the approvals are a violation of the Credit Union Act for each of the following reasons: (1) IRPS 03-1, by its terms, is an unreasonable, arbitrary and capricious interpretation and application of the Credit Union Act; (2) the terms and restrictions of IRPS 03-1 were misapplied to the three applications; and (3) IRPS 03-1 was arbitrarily and capriciously applied by the NCUA to the three applications.

48. There is an actual controversy concerning the rights and obligations of the parties under IRPS 03-1 to the extent IRPS 03-1 was considered in the approvals of the Tooele Application, the America First Application and the Goldenwest Application.

49. Pursuant to Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202, plaintiffs, as persons who are affected by the NCUA's approvals of the Tooele Application, the America First Application and the Goldenwest Application, are entitled to a declaratory judgment from this Court defining and declaring plaintiffs' rights under IRPS 03-1. Specifically, plaintiffs are entitled to a declaration by this Court that the NCUA's approvals of the Tooele Application, the America First Application and the Goldenwest Application are unlawful, null and void.

#### **Count Five**

50. Paragraphs 1-49 are incorporated herein by reference.

51. The America First Application purports to include a request by America First to operate branches or other facilities that are located outside the Six Counties, including without limitation Box Elder County, Utah County, St. George, Utah and Mesquite, Nevada.

52. Upon information and belief, America First continues to operate its branches located outside the Six Counties.

53. To the extent the NCUA's approval of the America First Application permits America First to operate branches or other facilities that are located outside the Six Counties, such approval is a violation of the Credit Union Act and IRPS 99-1.

54. Members of the UBA and the ABA who compete in areas outside the Six Counties in which America First operates these unlawful branches and facilities would be subjected to unlawful and ruinous competition.

55. There is an actual controversy concerning the rights and obligations of the parties under the Credit Union Act and IRPS 99-1 with respect to any branches or other facilities that America First is permitted to operate outside the Six Counties.

56. Pursuant to Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202, plaintiffs, as persons who are affected by the NCUA's approval of the America First Application, are entitled to a declaratory judgment from this Court defining and declaring plaintiffs' rights under the Credit Union Act and IRPS 99-1. Specifically, plaintiffs are entitled to a declaration by the Court that the NCUA's approval of the America First Application is unlawful, null and void on the additional grounds that it permits the operations of America First branches and facilities outside the Six Counties.

57. Count Five is made in the alternative to Counts Three and Four, which claim that the inclusion of the Six Counties in the America First community field of membership is a violation of the Credit Union Act, IRPS 99-1 and, if applicable, IRPS 03-1.

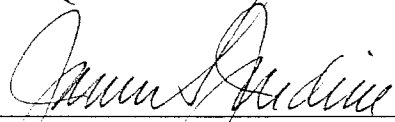
**RELIEF REQUESTED**

Wherefore, plaintiffs request that this Court enter judgment, pursuant to 5 U.S.C. §§ 702 through 706; 28 U.S.C. §§ 2201 and 2202; and Rule 57 of the Federal Rules of Civil Procedure:

- (1) Declaring that the NCUA's approval of the Tooele Application is unlawful, null and void;
- (2) Declaring that the NCUA's approval of the America First Application is unlawful, null and void;
- (3) Declaring that the NCUA's approval of the Goldenwest Application is unlawful, null and void;
- (4) Enjoining the NCUA from implementing the approval of the Tooele Application, the America First Application and the Goldenwest Application;
- (5) Enjoining the NCUA from approving any other credit union applications seeking or expanding a community charter to include the Six Counties on the basis of the Tooele Application;
- (6) Ordering the NCUA to pay plaintiffs' costs; and
- (7) Granting such other relief, including preliminary relief, as the Court may find just and reasonable.

DATED this 14<sup>th</sup> day of July, 2003.

RAY QUINNEY & NEBEKER



James S. Jardine  
John A. Adams  
Kevin G. Glade  
Attorneys for Plaintiffs

Plaintiffs' Addresses:

American Bankers Association  
1120 Connecticut Avenue, N.W.  
Washington, D.C. 20036

Utah Bankers Association  
185 South State Street  
Salt Lake City, Utah 84111

Bank of Utah  
2605 Washington Boulevard  
Ogden, Utah 84401

Liberty Bank  
326 South 500 East  
Salt Lake City, Utah 84102

First Utah Bank  
3826 South 2300 East  
Salt Lake City, Utah 84109

Frontier Bank, FSB  
1245 Deer Valley Drive  
Park City, Utah 84098

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